

the Department of Justice ascertains that a subject is under investigation in multiple jurisdictions (whether by one or multiple agencies), they should convey that information to the relevant investigative agencies and the Criminal and/or Civil Divisions of the Department of Justice and the appropriate United States Attorneys' Offices so that, where appropriate, they can develop together a nationwide strategy to most effectively coordinate the multiple efforts and efficiently use resources. Where the subject operates only in one state or in one metropolitan area, communication to the relevant United States Attorneys is sufficient. In other instances of multiple investigations of the same subject, the U.S. Attorney's Office must notify, as early as possible, the Criminal and/or Civil Divisions and relevant investigative agencies by letter or electronic mail of the multiple investigations and the following information:

- A. the identity of the subjects of the investigation;
- B. a summary of the factual allegations to be investigated; and
- C. a preliminary assessment of the statutes which may have been violated.

IV. NATIONAL INITIATIVES.

Where an investigative agency, a United States Attorney's Office, the Civil Division or Criminal Division of the Department of Justice seeks to develop a health care fraud national initiative which would target a common fraudulent scheme perpetrated in a like manner by multiple similarly situated subjects (i.e., particular health care providers) in multiple districts, then they should convey that information to the relevant investigative agencies, the Criminal Division and Civil Division and the appropriate United States Attorneys' Offices so that together they can develop a nationwide strategy to most effectively coordinate the multiple efforts and efficiently use resources. Recent examples of health care fraud national initiatives which would have fallen into this category include: Labscam; hospital laboratory project initiated in Ohio; and the lymphedema pump initiative.

V. RELEVANT FACTORS FOR CONSIDERATION IN DETERMINING PROTOCOL FOR SPECIFIC INVESTIGATIONS/INITIATIVES.

Within one week of receiving notice that a matter constitutes a multidistrict investigation or a national initiative as set forth respectively in III or IV above, the relevant components and investigative agencies will discuss and determine together the appropriate method of pursuing the multidistrict investigation or national initiative including the extent and manner of the coordinating role, if needed, of the Civil Division and/or Criminal Division. Until coordination is determined, the relevant United States Attorneys' Offices, investigative agencies and, where appropriate, the Criminal and/or Civil Division should pursue the investigation in a manner which will not interfere with or compromise investigations in other districts. Relevant factors for this discussion may include but not necessarily be limited to the following factors:

- a. nature of the scheme and investigation and its relation to the district;

- b. the status of any criminal investigation;
- c. traditional False Claims Act venue factors, including where any qui tam cases may have been filed;
- d. resource and expertise of relevant districts;
- e. need for consistency and coordination.

VI. COORDINATION OF MULTIDISTRICT INVESTIGATION/NATIONAL INITIATIVE.

In devising the appropriate method of coordinating the multidistrict investigation or national initiative, the relevant components will ensure that the coordinating office or offices (whether a U.S. Attorney's Office, Civil Division or Criminal Division) perform the following responsibilities and communicate with other affected offices:

Notification of and coordination with other offices of the Department of Justice as appropriate, such as the Associate Attorney General's office, the Deputy Attorney General's office and other offices, Boards and Divisions, as appropriate.

- A. Notification of and coordination with the appropriate headquarters officials of the affected federal agencies to ensure that agency policy concerns are respected.
- B. Providing assistance in securing and coordinating sufficient investigative and audit resources to appropriately handle the matter.
- C. Calling for and organizing strategy and training sessions or meetings that promote the efficient handling of the matter.
- D. Providing assistance in the coordination of discovery requests and responses to discovery affecting multi-district and/or nationwide cases.
- E. Assisting in the establishment of any necessary data bases and ensuring that compatible forms of Automated Litigation Support, to the extent appropriate, are available.
- F. Ensuring consistency to the extent possible in making decisions about initiating actions, which legal theories are to be applied, evaluation of proposed settlements and trial strategies.

VII. GLOBAL SETTLEMENT

In the event that a federal multidistrict investigation is leading to a global settlement, all relevant parties, including appropriate state and local agencies should be informed of negotiations at the earliest possible date so that the appropriate entities, such as National Association of Medicaid Fraud Control Units, can designate a team of representatives to

negotiate on their behalf. Similarly, in the event that a state-led multidistrict investigation results in a global settlement, similar early communication should occur. All global health care fraud settlement must be conducted and completed in accordance with existing Department of Justice procedures concerning such settlements.

VIII. *EVALUATION OF THESE GUIDELINES.*

These guidelines will be revisited by April 1998.

Approved

ATTORNEY GENERAL JANET RENO

[Original signed by Janet Reno]

DATE: 4/2/97

9-44.200 Overview of Authorized Investigative Demands -- Authority

On August 21, 1996, the President signed into law the Health Insurance Portability & Accountability Act, P.L. 104-191. Section 248 of P.L. 104-191 adds a new statute, 18 U.S.C. § 3486. This provision empowers the Attorney General, or the Attorney General's designee, to issue investigative demands to obtain records for investigations relating to Federal criminal health care fraud offenses; these records are not subject to the constraints applicable to grand jury matters set forth in Fed. R. Crim. P. 6(e). The new statute also provides for judicial enforcement of these investigative demands through contempt actions and immunizes persons complying in good faith with such demands from civil liability for disclosure of information. Investigative demands differ from inspector general subpoenas in that the scope of the latter are limited to the statutory authority of the specific inspector general and civil investigations, whereas investigative demands can be directed more broadly to various public and private victims and must involve criminal investigations.

9-44.201 Overview of Authorized Investigative Demands -- Delegation

The Attorney General's authority to issue investigative demands pursuant to 18 U.S.C. § 3486 has been delegated, with authority to redelegate, to the following officials:

1. Each United States Attorney;
2. The Assistant Attorney General for the Criminal Division.

9-44.202 Overview of Authorized Investigative Demands -- Limitations

Authorized investigative demands can be an important source of evidence. Issuance of these demands and access to records obtained pursuant to them, however, must be in accord with a number of legal requirements. This section presents an overview of several specific statutory requirements set forth in 18 U.S.C. § 3486; the statutory language should also be reviewed prior

to issuance of an investigative demand to ensure compliance with the more routine provisions.

1. Subject Matter Limitation

Pursuant to 18 U.S.C. § 3486, the use of authorized investigative demands is limited to investigations relating to "Federal health care offenses." The term "Federal health care offense" is defined in 18 U.S.C. § 24(a) to mean a violation of, or a criminal conspiracy to violate, 18 U.S.C. §§ 669, 1035, 1347, or 1518; and 18 U.S.C. §§ 287, 371, 664, 666, 1001, 1027, 1341, 1343, or 1954 if the violation or conspiracy relates to a health care benefit program. The term "health care benefit program" is defined in 18 U.S.C. § 24(b) as any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract.

2. Geographic Limitation on Document Return

Pursuant to 18 U.S.C. § 3486, the site designated for the production of the records requested pursuant to an authorized investigative demand must be not more than 500 miles from the place where the authorized investigative demand was served.

3. Limitation on Return Date

Pursuant to 18 U.S.C. § 3486, an authorized investigative demand is required to prescribe a return date that allows a reasonable period of time within which the objects can be assembled and made available. Unlike a forthwith subpoena, an investigative demand may not require the immediate production of records at the time it is served.

4. Authority to Compel Testimony Limited

Authorized investigative demands may be used to require the production of records, including books, papers, documents, electronic media, or other objects or tangible things. Pursuant to 18 U.S.C. § 3486, the authority to issue investigative demands to obtain testimony is limited to requiring a custodian of records to give testimony concerning the production and authentication of such records.

5. Restrictions on Individual Health Care Information

Pursuant to 18 U.S.C. § 3486, health information about an individual acquired through an authorized investigative demand may not be used in, or disclosed to any person for use in, any administrative, civil, or criminal action or investigation directed *against* that individual unless the action or investigation arises out of and is directly related to receipt of health care, payment for health care, or action involving a fraudulent claim related to health. Any other use requires a court order upon a showing of good cause. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. In granting such an order, the court shall impose appropriate safeguards against unauthorized disclosure.

6. Limitation on Use After Indictment

After an indictment has been issued, authorized investigative demands may continue to be used in furtherance of an ongoing investigation, provided they are not directed to a defendant. *Cf. United States v. Phibbs*, 999 F.2d 1053, 1077 (6th Cir. 1993), *cert. denied*, 510 U.S. 119 (1994); *United States v. Harrington*, 761 F.2d 1482, 1485 (11th Cir. 1985) (administrative subpoenas issued by Drug Enforcement Administration between indictment and trial held legal when issued to third parties during continuing investigation).

9-44.203 Factors to Consider Prior to Issuance of Authorized Investigative Demands

The following factors should be considered prior to the issuance of an authorized investigative demand:

1. Whether the background of the criminal investigation for which the records are being subpoenaed relates to any act or activity involving a Federal health care offense (as defined in 18 U.S.C. § 24(a)) as required by 18 U.S.C. § 3486.
2. Whether appropriate consideration has been given to the manner in which to enforce the investigative demand in the event of noncompliance.

9-44.204 Authorized Investigative Demands -- Record Keeping Procedures

In light of the fact that the authorized investigative demand is a new enforcement tool, it is anticipated that its use will be closely tracked. In order to enable the Department to reply quickly to inquiries concerning the use of investigative demands, each United States Attorney's office and the Fraud Section of the Criminal Division should maintain records on the following:

1. the number of authorized investigative demands issued and the dates of service;
2. office procedures for the issuance of, and compliance with, authorized investigative demands;
3. whether any health information obtained pursuant to authorized investigative demands was used in, or disclosed in, any administrative, civil or criminal action or investigation directed against the individual who is the subject of the information;
4. whether the investigative demand required testimony from a custodian of records;
5. whether documents were returned pursuant to the authorized investigative demand without judicial enforcement;
6. whether judicial enforcement of the investigative demand was pursued and the result of that litigation.

The specific manner in which this information is maintained is left to the discretion of

each United States Attorney's office and the Fraud Section of the Criminal Division. The challenge for each office is to develop an accurate record keeping system without creating extensive administrative obstacles which render the authorized investigative demand too cumbersome to use.

9-45.000
[RESERVED]

9-46.000
PROGRAM FRAUD
AND BRIBERY

9-46.100	Introduction
9-46.110	Prosecution Policy on Program Fraud and Bribery – Identifiable and Substantial Federal Interest

9-46.100 Introduction

This chapter contains Department policy on the investigation and prosecution of Federal program fraud and bribery through the use of 18 U.S.C. § 666. Congress enacted 18 U.S.C. § 666 to protect the integrity of the vast sums of money distributed through Federal programs. Section 666 is designed to facilitate the prosecution of persons who steal money or otherwise divert property or services from state and local governments or private organizations that receive large amounts of Federal funds.

The Criminal Resource Manual contains a number of articles on this area of the law

The Scope of 18 U.S.C. § 666	Criminal Resource Manual at 1001
Theft and Bribery in Federally Funded Programs	Criminal Resource Manual at 1002
Legislative History of 18 U.S.C. § 666	Criminal Resource Manual at 1003
General Elements of the Offense	Criminal Resource Manual at 1004
Embezzlement	Criminal Resource Manual at 1005
Larceny	Criminal Resource Manual at 1006
Fraud	Criminal Resource Manual at 1007
Knowing Conversion Without Authority	Criminal Resource Manual at 1008
Intentional Misapplication	Criminal Resource Manual at 1009
Knowledge	Criminal Resource Manual at 1010
Property	Criminal Resource Manual at 1011
Value	Criminal Resource Manual at 1012
Aggregation	Criminal Resource Manual at 1013
Organization Receiving Benefits Under a Federal Program	Criminal Resource Manual at 1014

9-46.110 Prosecution Policy on Program Fraud and Bribery -- Identifiable and Substantial Federal Interest

As a matter of Departmental policy, Federal prosecutors should be prepared to demonstrate that a violation of 18 U.S.C. § 666 affects a substantial and identifiable Federal interest before bringing charges. This policy ensures that Federal prosecutions will occur only when significant Federal interests are involved. Consultation with the Fraud Section or Public Integrity Section, Criminal Division, is suggested in cases in which prosecutors doubt the degree of Federal interest. Consistent with the legislative history, prosecution under 18 U.S.C. § 666 should be limited to cases in which the Federal assistance is given pursuant to a specific statutory scheme that authorizes assistance to promote or achieve policy objectives. The statute was not intended to reach every Federal contract or every Federal disbursement.

See the Criminal Resource Manual at 1001 for a discussion of the scope of 18 U.S.C. § 666 and the Federal interest in prosecution.

9-47.000

**FOREIGN CORRUPT PRACTICES ACT
OF 1977 (AS AMENDED)**

- 9-47.100** **Introduction**
 - 9-47.110** **Policy Concerning Criminal Investigations and Prosecutions of the Foreign Corrupt Practices Act**
 - 9-47.130** **Civil Injunctive Actions**
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9-47.100 Introduction

This chapter contains the Department's policy regarding investigations and prosecutions of violations of the Foreign Corrupt Practices Act (FCPA). The FCPA prohibits both United States and foreign corporations and nationals from offering or paying, or authorizing the offer or payment, of anything of value to a foreign government official, foreign political party, party official, or candidate for foreign public office, or to an official of a public international organization in order to obtain or retain business. In addition, the FCPA requires publicly-held United States companies to make and keep books and records which, in reasonable detail, accurately reflect the disposition of company assets and to devise and maintain a system of internal accounting controls sufficient to reasonably assure that transactions are authorized, recorded accurately, and periodically reviewed.

The Criminal Resource Manual contains a discussion of the law in this area

Investigation of Complaints and Web Resources	Criminal Resource Manual at 1015
FCPA Opinion Procedure	Criminal Resource Manual at 1016
Corporate Recordkeeping	Criminal Resource Manual at 1017
Prohibited Foreign Corrupt Practices	Criminal Resource Manual at 1018
Sanctions Against Bribery	Criminal Resource Manual at 1019

9-47.110 Policy Concerning Criminal Investigations and Prosecutions of the Foreign Corrupt Practices Act

No investigation or prosecution of cases involving alleged violations of the antibribery provisions of the Foreign Corrupt Practices Act (FCPA) of 1977 (15 U.S.C. §§ 78dd-1, 78dd-2, and 78dd-3) or of related violations of the FCPA's record keeping provisions (15 U.S.C. § 78m(b)) shall be instituted without the express authorization of the Criminal Division.

Any information relating to a possible violation of the FCPA should be brought immediately to the attention of the Fraud Section of the Criminal Division. Even when such information is developed during the course of an apparently unrelated investigation, the Fraud Section should be notified immediately. Close coordination of such investigations and prosecutions with the Department of State, the United States

Securities and Exchange Commission (SEC) and other interested agencies is essential. Moreover, pursuant to the 1988 amendment to the FCPA, the Department has established a FCPA Opinion Procedure. *See* the Criminal Resource Manual at 1016. As part of this procedure, which is administered by the Fraud Section, the Assistant Attorney General (AAG) for the Criminal Division reviews proposed business conduct that may constitute a violation of the Act and makes a binding decision on whether the Department will take an enforcement action should the transaction proceed further.

Unless otherwise agreed upon by the AAG, Criminal Division, investigations and prosecutions of alleged violations of the antibribery provisions of the FCPA will be conducted by Trial Attorneys of the Fraud Section. Prosecutions of alleged violations of the record keeping provisions, when such violations are related to an antibribery violation, will also be conducted by Fraud Section Trial Attorneys, unless otherwise directed by the AAG, Criminal Division.

The investigation and prosecution of particular allegations of violations of the FCPA will raise complex enforcement problems abroad as well as difficult issues of jurisdiction and statutory construction. For example, part of the investigation may involve interviewing witnesses in foreign countries concerning their activities with high-level foreign government officials. In addition, relevant accounts maintained in United States banks and subject to subpoena may be directly or beneficially owned by senior foreign government officials. For these reasons, the need for centralized supervision of investigations and prosecutions under the FCPA is compelling.

9-47.130 Civil Injunctive Actions

The SEC has authority to obtain civil injunctions against future violations of the record keeping and antibribery provisions of the FCPA by issuers. *See* 15 U.S.C. § 78u. Civil injunctions against violations of the antibribery provisions by domestic concerns and foreign nationals and companies shall be instituted by Trial Attorneys of the Fraud Section in cooperation with the appropriate United States Attorney, unless otherwise directed by the AAG, Criminal Division. *See* §§ 78dd-2(d), 78dd-3(d).

9-48.000
COMPUTER FRAUD

The Computer Crime and Intellectual Property Section (CCIPS) is available to assist with questions regarding computer crimes, other electronic investigations, searches and seizures of electronic evidence, and other high-tech matters. In addition, at least one Assistant United States Attorney in every United States Attorney's Office is designated as a Computer/Telecommunications Coordinator (CTC) and is available to answer such questions.

Further information on computer fraud is available in the Criminal Resource Manual

18 U.S.C. § 1030 -- Pre October 1996	<u>Criminal Resource Manual at 1020</u>
18 U.S.C. § 1030 -- Post October 1996	<u>Criminal Resource Manual at 1021</u>
Computer Crime and Intellectual Property Section	<u>Criminal Resource Manual at 1022</u>
Computer/Telecommunications Coordinator List	<u>Criminal Resource Manual at 1023</u>

For information relating to the Department's guidelines for searching and seizing computers, see the Criminal Resource Manual beginning at 1200.

9-49.000

FRAUD IN CONNECTION WITH ACCESS DEVICES AND CREDIT CARDS

Guidance and legal memoranda relating to this topic can be found in the Criminal Resource Manual

Fraudulent Production, Use or Trafficking in Counterfeit or Unauthorized Access Devices -- 18 U.S.C. § 1029(a)(1-4)	<u>Criminal Resource Manual at 1024</u>
Fraudulent Production, Use, or Trafficking in Telecommunications Instruments Modified or Altered to Access Telecommunications Services -- 18 U.S.C. § 1029(a)(5)	<u>Criminal Resource Manual at 1025</u>
Fraudulent Production, Use, or Trafficking in Hardware or Software Used for Modification of Telecommunications Instruments -- 18 U.S.C. § 1029(a)(6)	<u>Criminal Resource Manual at 1026</u>
Fraudulent Transactions with One or More Access Devices for Payment or Anything of Value totaling \$1000 or more During a One-Year Period -- 18 U.S.C. § 1029(a)(5)	<u>Criminal Resource Manual at 1027</u>
Solicitation of Unauthorized Access Device or Selling Information Regarding an Application to Obtain an Access Device -- 18 U.S.C. § 1029(a)(6)	<u>Criminal Resource Manual at 1028</u>
Fraudulent Presentment and Related Unauthorized Credit Card Transactions Made by Access Device -- 18 U.S.C. § 1029(a)(7)	<u>Criminal Resource Manual at 1029</u>
Definitions	<u>Criminal Resource Manual at 1030</u>
Responsibilities of Investigative Agencies	<u>Criminal Resource Manual at 1031</u>

9-50.000 CHIP Guidance

- 9-50.100 Overview of Roles and Responsibilities in the CHIP Program
 - 9-50.101 United States Attorneys
 - 9-50.102 CHIP Coordinators and CHIP Unit AUSAS
 - 9-50.103 Computer Crime & Intellectual Property Section
 - 9-50.104 Executive Office for United States Attorneys
 - 9-50.200 Specific CHIP Program Responsibilities
 - 9-50.201 Prosecution of Core Offenses
 - 9-50.202 Protecting the Public
 - 9-50.300 Application of Resources
 - 9-50.400 Coordination and Notification
 - 9-50.500 International Investigations
 - 9-50.600 Training
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9-50.100 Overview of Roles and Responsibilities in the CHIP Program

The United States Attorneys' Offices (USAOs), the Computer Crime & Intellectual Property Section (CCIPS), and the Executive Office for United States Attorneys (EOUSA), in coordination with the Office of the Deputy Attorney General, have shared responsibilities for the performance, oversight, monitoring, evaluation, and coordination of the CHIP program.

9-50.101 United States Attorneys

The United States Attorneys have primary responsibility for implementing the CHIP program. These responsibilities include implementing the Department's cyber and intellectual property crime strategies; ensuring that experienced and technically-qualified Assistant United States Attorneys (AUSAs) serve as the district's CHIP prosecutors; ensuring that full time equivalent (FTE) CHIP resources are dedicated to CHIP program objectives; ensuring that the USAO notifies, consults and coordinates with CCIPS and other USAOs in accordance with section 9-50.400; and promoting and ensuring effective interaction with law enforcement, industry representatives, and the public in matters relating to computer and intellectual property crime. The United States Attorney should also ensure that each CHIP AUSA attends relevant training sponsored by the EOUSA's Office of Legal Education (OLE), and in turn trains and advises prosecutors within the district.

9-50.102 CHIP Coordinators and CHIP Unit AUSAs

The CHIP Coordinators and CHIP Unit AUSAs (collectively CHIP AUSAs) in each district have four program responsibilities:

- (1) to prosecute computer crime and intellectual property offenses;
- (2) to serve as the district's legal counsel on matters relating to those offenses, and the collection of electronic or digital evidence;
- (3) to train prosecutors and law enforcement personnel in the region; and
- (4) to conduct public and industry outreach and awareness activities.

The CHIP AUSAs should also ensure that the USAO notifies and coordinates with other USAOs and CCIPS as described in section 9-50.400.

The specific role of CHIP AUSAs in each of the districts will depend on a variety of factors, including the size of the district, whether it has a CHIP Unit or other dedicated CHIP FTE, the number of cyber and intellectual property cases referred, and the particular crime problems within the district. Funded CHIP Unit AUSAs and CHIP Coordinators should focus on the core offenses set forth below. While the United States Attorney retains the discretion to determine how these various roles and functions are carried out, it is essential that all of the CHIP resources are managed appropriately. Moreover, CHIP Units and funded CHIP AUSA positions will be evaluated based on their prosecution of the core offenses set forth in section 9-50.201.

CHIP AUSAs also must serve as the primary points-of-contact for all of the district's law enforcement activities regarding computer crime and intellectual property, including the investigation and prosecution of the district's CHIP cases with a particular emphasis on the core offenses.

9-50.103 Computer Crime & Intellectual Property Section

The Computer Crime & Intellectual Property Section (CCIPS) has primary responsibility for developing the Department's overall computer and intellectual property offense enforcement strategies, for providing programmatic support to the CHIP Network, and for coordinating computer crime and intellectual property investigations and cases that may significantly impact more than one district and/or other countries. In addition to developing and prosecuting their own cases and assisting CHIP prosecutors in cases on request, CCIPS supports the CHIP Network by serving as a source and conduit for information through CHIP Net, a website of resource materials; providing information on cases and current events to the CHIP AUSAs through the distribution of the daily news briefings; providing legal expertise through the distribution of manuals, monographs, case summaries, and legislative analysis; and developing and implementing training programs for CHIP and other prosecutors in conjunction with OLE.

9-50.104 Executive Office for United States Attorneys

EOUSA has primary responsibility for administering the budget for CHIP activities in the USAOs; funding and facilitating training for CHIP prosecutors through OLE; evaluating the CHIP program in the USAOs through its Evaluation and Review Staff (EARS); and providing personnel and facilities support for USAOs that includes CHIP activities. EOUSA's contact for the CHIP Network serves on the Cyber

and Intellectual Property Crime Subcommittee of the Attorney General's Advisory Committee and assists the Subcommittee by providing legal and administrative support; works with CCIPS to develop and facilitate training at the National Advocacy Center for CHIP and other prosecutors; and works with CCIPS to review evaluations of the CHIP program and provide additional guidance or assistance as needed to the districts.

9-50.200 Specific CHIP Program Responsibilities

While it is essential to allow each USAO the flexibility to implement its CHIP program to best meet the needs of its district, it is also important to ensure that USAOs are provided the necessary guidance and information to ensure that each CHIP program is operating consistently with the Department's policies and strategies on the enforcement of intellectual property laws and the pursuit of cyber criminals.

9-50.201 Prosecution of Core Offenses

The first responsibility of CHIP AUSAs is to prosecute computer crime and intellectual property offenses. Those include:

- Violations of the Computer Fraud and Abuse Act, 18 U.S.C. § 1030;
- Telecommunication fraud in violation of the access device statute, 18 U.S.C. §§ 1029(a)(7), (8), or (9);
- CAN-SPAM Act violations, 18 U.S.C. § 1037;
- Illegal interception of electronic communications in violation of Title III of the Omnibus Safe Streets and Crime Control Act, 18 U.S.C. § 2511;
- Unlawful access to stored communications under the Electronic Communications Privacy Act, 18 U.S.C. § 2701;
- Criminal copyright infringement, 18 U.S.C. § 2319;
- Trademark (counterfeit product) offenses, 18 U.S.C. § 2320;
- Circumvention of copyright control systems in violation of the Digital Millennium Copyright Act, 17 U.S.C. §§ 1201 - 1204;
- Satellite signal piracy, 47 U.S.C. §§ 553 and 605;
- Economic espionage and theft of trade secrets in violation of 18 U.S.C. §§ 1831 and 1832;
- Counterfeit labeling offenses, 18 U.S.C. § 2318;
- Live music infringement, 18 U.S.C. § 2319A;
- Unauthorized recording of motion pictures, 18 U.S.C. § 2319B; and
- Counterfeit drug offenses in violation of the Food, Drug and Cosmetic Act, 21 U.S.C. § 331(I).

It is important that CHIP AUSAs use the core set of intellectual property statutes to combat the burgeoning trade in counterfeit and infringing goods and digital property. When possible, AUSAs should both charge and seek convictions for readily provable violations of the above-listed intellectual property statutes. This will have the additional benefit of allowing the Department to better track intellectual

property prosecutions and report the Department's achievements to Congress as required by 18 U.S.C. § 2320(f).

9-50.202 Protecting the Public

When determining which violations of the core CHIP statutes to pursue, USAOs should give first priority to crimes that endanger the health and safety of the public. Trafficking in counterfeit drugs, defective counterfeit electrical devices, or counterfeit automobile brake parts are examples of trademark offenses that pose a health and safety risk. A denial-of-service or other attack on a hospital's computer network is an example of a computer crime with serious public health implications.

9-50.203 Core Offense Targets

CHIP and non-CHIP AUSAs should continue their efforts to pursue large, complex organized crime groups, including those operating in multiple countries. CHIP AUSAs should especially take steps to determine whether the computer crime and intellectual property offenses under investigation are being committed to fund or otherwise support terrorist activities.

9-50.300 Application of Resources

Although all USAOs are generally expected to devote resources to CHIP program objectives, those districts that have received FTE funding for either CHIP Unit personnel or a CHIP Coordinator should utilize those resources consistent with the program objectives described above. This principle also applies to AUSAs assigned to a CHIP Unit as part of matching resources committed by the USAO when it received additional funding for the unit. The creation of "Intellectual Property" and "Computer Crime" case categories in Form USA-5 should enable USAOs to accurately record program work. In addition, the use of performance work elements that reflect non-case related work, such as outreach and training, should encourage such work by CHIP AUSAs and provide an opportunity for them to track and quantify the work not otherwise reflected in case statistics.

The proper application of dedicated CHIP resources will be the subject of review by EOUSA's Evaluation and Review Staff (EARS). In addition, the annual collection of intellectual property prosecution statistics is required by statute, and those statistics will be reviewed along with EARS reports and other available information by the Office of the Deputy Attorney General, in order to determine whether dedicated FTE resources are being effectively used and appropriately allocated.

9-50.400 Coordination and Notification

The CHIP Network (CCIPS, CHIP Unit AUSAs and CHIP Coordinators) will work together to ensure that computer and intellectual property criminal statutes are vigorously enforced throughout the nation. CHIP Network prosecutors should work with each other and law enforcement agencies to share information and reduce conflicts whenever possible.

To reduce conflicts whenever possible, CHIP Network prosecutors should notify CCIPS or other USAOs in certain multi-district, nationwide, and international investigations as set forth below:

1. CCIPS Investigations - Prior to initiating any activity related to an investigation or prosecution in any district, CCIPS should notify the CHIP AUSA for that district.

2. Multi-District Investigations - USAOs should notify CCIPS, and the CHIP AUSAs of the affected districts, of multi-district investigations. "Multi-district investigations" are those in which there is a *significant or substantial connection* to more than one district.
 - a. *Example:* An investigation targeting a group suspected of operating a computer server for the distribution of pirated software would be considered to be multi-district in nature if any of the targets or computer servers are located in more than one district. However, the fact that other individuals may have downloaded the software in another district would not be considered to cause "significant impact" or to result in a "substantial connection" to the district.
 - b. *Example:* If a hacker were to use an Internet Service Provider in another district or counterfeit goods were transhipped through another district, these are not instances that would have a significant or substantial connection to the other district.
3. Nationwide Investigations - USAOs should notify CCIPS of nationwide investigations. CCIPS in turn will notify districts in which defendants are located or otherwise have a significant or substantial connection to the case. "Nationwide investigations" are those that will likely have a significant or substantial impact in all or most of the districts in the United States.
 - a. *Examples:* A creator of a virus that spreads to thousands of computer networks, causing extensive damage in nearly every district, would be the target of a nationwide investigation. A data theft of personal financial information for millions of consumers would be a nationwide investigation.
4. International Investigations - USAOs should notify CCIPS as early as possible in the investigative stage and prior to the charging decision in international investigations. "International investigations" are those in which one or more targets are located in a foreign country.
 - a. Decision Not to Pursue Target - In international investigations with significant foreign targets, USAOs should notify CCIPS whether the USAO intends to prosecute. For example, the USAO may choose not to pursue a counterfeit goods manufacturer who is in a country that will not extradite to the U.S., but CCIPS should nonetheless be notified in order to take steps to determine whether the country would pursue the offender independently. CCIPS will in turn notify the USAO prior to making any disclosure to foreign law enforcement to preclude an adverse impact on the domestic investigation.
5. Significant Judicial Decisions - USAOs should inform CCIPS of significant investigations and prosecutions and any significant judicial decisions issued in such cases. For example, USAOs should send a copy of Urgent Reports (emailed to EOUSA) in cases falling within the CHIP Network's subject matter responsibility. CCIPS should in turn apprise the CHIP Network of significant case events and decisions through its established methods of communication.

9-50.500 International Investigations

We cannot adequately protect our nation's intellectual property without effective international enforcement. Geographic borders pose little impediment to cyber criminals. CHIP AUSAs working on investigations that identify foreign targets or victims should, where appropriate, utilize all available tools and law enforcement channels - including federal investigative agencies' foreign legal attaches and attaches stationed in-country - to establish channels of communication with our foreign counterparts.

Unlike formal methods of obtaining information, such as through Mutual Legal Assistance Treaties, informal evidence-sharing is often more efficient, and sometimes essential, in fast-breaking investigations.

CHIP AUSAs should also seek to invest foreign law enforcement with a stronger stake in the case by encouraging joint investigations and the prosecution of appropriate foreign targets within their own respective countries. This approach has proved successful in obtaining greater cooperation and information sharing in recent international investigations. CCIPS can be a highly useful resource for CHIP prosecutors when pursuing international leads and encouraging foreign enforcement of intellectual property and cybercrime laws. They have experience with such cases, and they have developed an extensive network of foreign law enforcement contacts by working international cases, providing foreign training and technical assistance, and leading such international initiatives as the G8 "24/7" Network, a collection of 46 countries committed to providing immediate assistance in cyber-related criminal investigations.

9-50.600 Training

For ten years, OLE and CCIPS have set the standard for cybercrime legal education by conducting annual training directed at keeping the Department's group of expert prosecutors at the cutting edge of law and emerging technology. OLE should continue to partner with CCIPS in sponsoring the CHIP Network's annual conference. In addition, CCIPS annually conducts the following OLE-sponsored training at the NAC: Basic Cybercrimes and Computer-Based Evidence; Online Undercover Investigations; Intellectual Property; and the Network Crimes Workshop. Both OLE and CCIPS should continue to conduct this and similar training.

Each United States Attorney and CHIP AUSA has the responsibility of ensuring that CHIP Coordinators maintain their expertise by attending conferences and seminars sponsored by the Office of Legal Education, especially the annual CHIP Conference and Intellectual Property Seminar. Although USAOs should encourage other AUSAs to attend OLE/CCIPS-sponsored training, CHIP AUSAs should conduct in-office legal training to keep other AUSAs apprised of critical search and seizure law applicable to obtaining electronic evidence and conducting electronic surveillance. In addition, CHIP AUSAs, especially those in CHIP Units, should improve regional training on intellectual property enforcement for federal and state agents, and continue to conduct outreach to the high-tech industry and rights holder sector to foster the sharing of information critical to effective prosecutions.

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ECONOMIC ESPIONAGE

9-59.100 Economic Espionage Act of 1996 (18 U.S.C. §§ 1831-1837) -- Prosecutive Policy

9-59.110 Economic Espionage Act -- Assignment of Responsibilities

9-59.100 Economic Espionage Act of 1996 (18 U.S.C. §§ 1831-1837) -- Prosecutive Policy

The United States may not file a charge under 18 U.S.C. § 1831 of the Economic Espionage Act (hereinafter the "EEA"), or use a violation under § 1831 of the EEA as a predicate offense under any other law, without the approval of the Assistant Attorney General for the Criminal Division (or the Acting official if a position is filled by an acting official). Responsibility for reviewing requests for approval of charges to be brought under § 1831 rests with the Counterespionage Section which shall obtain approval from the Assistant Attorney General for the Criminal Division

The EEA is not intended to criminalize every theft of trade secrets for which civil remedies may exist under state law. It was passed in recognition of the increasing importance of the value of intellectual property in general, and trade secrets in particular to the economic well-being and security of the United States and to close a federal enforcement gap in this important area of law. Appropriate discretionary factors to be considered in deciding whether to initiate a prosecution under § 1831 or § 1832 include: (a) the scope of the criminal activity, including evidence of involvement by a foreign government, foreign agent or foreign instrumentality; (b) the degree of economic injury to the trade secret owner; (c) the type of trade secret misappropriated; (d) the effectiveness of available civil remedies; and (e) the potential deterrent value of the prosecution. The availability of a civil remedy should not be the only factor considered in evaluating the merits of a referral because the victim of a trade secret theft almost always has recourse to a civil action. The universal application of this factor would thus defeat the Congressional intent in passing the EEA. A more detailed discussion of the prosecutions of theft of trade secrets is contained in the Computer Crime and Intellectual Property Section's manual entitled *Federal Prosecution of Violations of Intellectual Property Rights, (Copyrights, Trademarks and Trade Secrets)*.

See the Criminal Resource Manual for a more detailed discussion of the Economic Espionage Act of 1996

Introduction to the Economic Espionage Act	Criminal Resource Manual at 1122
Letter from Attorney General to Senator Hatch Regarding	Criminal Resource Manual at 1123
Prior Approval Requirement for Economic Espionage	
Prosecutions	
Elements of the Offense Under 18 U.S.C. § 1831	Criminal Resource Manual at 1124

18 U.S.C. § 1831 Element One: The Defendant Stole or, Without Authorization of the Owner, Obtained, Destroyed, or Conveyed Information	Criminal Resource Manual at 1125
18 U.S.C. § 1831 Element Two: The Defendant Knew the Information Was Proprietary	Criminal Resource Manual at 1126
18 U.S.C. § 1831 Element Three: The Information Was a Trade Secret	Criminal Resource Manual at 1127
18 U.S.C. § 1831 Element Four: The Defendant Acted With the Intent to Benefit a Foreign Government, Foreign Instrumentality, or Foreign Agent	Criminal Resource Manual at 1228
Elements of the Offense Under 18 U.S.C. § 1832	Criminal Resource Manual at 1129
18 U.S.C. § 1832 Element One: The Defendant Stole, or Without Authorization of the Owner, Obtained, Destroyed, or Conveyed Information	Criminal Resource Manual at 1130
18 U.S.C. § 1832 Element Two: The Defendant Knew the Information Was Proprietary	Criminal Resource Manual at 1131
18 U.S.C. § 1832 Element Three: The Information Was a Trade Secret	Criminal Resource Manual at 1132
18 U.S.C. § 1832 Element Four: The Defendant Acted With the Intent to Economically Benefit a Third Party	Criminal Resource Manual at 1133
18 U.S.C. § 1832 Element Five: Intent to injure the owner of the trade secret	Criminal Resource Manual at 1134
18 U.S.C. § 1832 Element Six: Interstate or Foreign Commerce	Criminal Resource Manual at 1135
Defenses	Criminal Resource Manual at 1136
Criminal Forfeiture	Criminal Resource Manual at 1137
Civil Proceedings	Criminal Resource Manual at 1138
Confidentiality	Criminal Resource Manual at 1139
Extraterritoriality	Criminal Resource Manual at 1140

9-59.110 Economic Espionage Act -- Assignment of Responsibilities

Supervisory responsibility for prosecutions brought under 18 U.S.C. § 1831 rests with the Counterespionage Section of the Criminal Division which shall obtain approval from the Assistant Attorney General for the Criminal Division. Prosecutors are strongly urged to consult with the Computer Crime and Intellectual Property Section before initiating prosecutions under 18 U.S.C. § 1832. The Federal Bureau of Investigation has investigative responsibility for complaints arising under both of these sections. Cases involving importation of goods which contain or use the misappropriated trade secret may also be investigated by the United States Customs Service.

9-60.000 PROTECTION OF THE INDIVIDUAL

- 9-60.010 Introduction
 - 9-60.020 Sentencing Enhancement -- "Three Strikes" Law
 - 9-60.100 Kidnapping -- 18 U.S.C. §§ 1201 and 1202
 - 9-60.111 Kidnapping/Missing Persons -- Prosecution Policy
 - 9-60.112 Prosecution Policy -- Allegations of "Mental Kidnapping" or "Brainwashing" by Religious Cults
 - 9-60.113 Prosecution Policy -- "Deprogramming" of Religious Sect Members
 - 9-60.200 Criminal Sanctions Against Illegal Electronic Surveillance
 - 9-60.202 Illegal Electronic Eavesdropping -- Prosecution Policy
 - 9-60.203 State Laws
 - 9-60.262 Prosecutive Policy -- 18 U.S.C. § 2512
 - 9-60.300 Extortion
 - 9-60.400 Criminal Sanctions Against Illegal Electronic Surveillance -- The Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1809
 - 9-60.500 Criminal Solicitation
 - 9-60.700 Hostage Taking (18 U.S.C. § 1203) -- Prosecution Policy
 - 9-60.711 Prosecution Policy in Hostage Taking Cases When the Death Penalty is Authorized by Statute
 - 9-60.800 Special Forfeiture of Collateral Profits of Crime ("Son of Sam")
 - 9-60.900 Murder-for-Hire -- 18 U.S.C. § 1958
 - 9-60.910 Prosecution Policy and the Death Penalty
 - 9-60.1000 Carjacking -- 18 U.S.C. § 2119
 - 9-60.1010 Prosecution Policy -- Carjacking Cases
 - 9-60.1015 Department Approval When Death Penalty is Applicable
 - 9-60.1100 Violence Against Women Act
 - 9-60.1112 Restriction on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence (18 U.S.C. 922(g)(9))
 - 9-60.1200 Civil Disturbances and Riots
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9-60.010 Introduction

This chapter focuses on the investigation and prosecution of a variety of crimes against individuals including kidnapping, interstate and foreign extortion, criminal solicitation, hostage taking, murder-for-hire, carjacking, and violence against women. Investigative jurisdiction is vested in the Federal Bureau of Investigation (FBI). Supervisory jurisdiction is vested in the Terrorism and Violent Crime Section (TVCS). Attorneys in TVCS can be reached at (202) 514-0849.

9-60.020 Sentencing Enhancement -- "Three Strikes" Law

The Violent Crime Control and Law Enforcement Act of 1994 included a "Three Strikes" provision, which is now codified at 18 U.S.C. § 3559(c). Under § 3559(c) a defendant will receive mandatory life imprisonment if he or she:

- is convicted in federal court of a "serious violent felony" and
- has two or more prior convictions in federal or state courts, at least one of which is a "serious violent felony." The other prior offense may be a "serious drug offense."

On March 13, 1995, the Assistant Attorney General of the Criminal Division issued a memorandum to all United States Attorneys regarding the "Three Strikes" law.

See the Criminal Resource Manual at 1032 for the text of the memorandum.

9-60.100 Kidnapping -- 18 U.S.C. §§ 1201 and 1202

Kidnapping -- 18 U.S.C. §§ 1201, 1202	<u>Criminal Resource Manual at 1033</u>
Kidnapping -- Federal Jurisdiction	<u>Criminal Resource Manual at 1034</u>
Kidnapping -- Investigative and Supervisory Jurisdiction	<u>Criminal Resource Manual at 1035</u>
FBI Assistance in Missing Persons Cases	<u>Criminal Resource Manual at 1036</u>
24 Hours Rebuttable Presumption	<u>Criminal Resource Manual at 1037</u>
Kidnapping -- Penalty Provision	<u>Criminal Resource Manual at 1038</u>
Kidnapping -- Ransom Money	<u>Criminal Resource Manual at 1039</u>
Use of the Fugitive Felon Act in Parent/Child Kidnappings	<u>Criminal Resource Manual at 1040</u>

9-60.111 Kidnapping/Missing Persons -- Prosecution Policy

It is been the policy of the Federal Bureau of Investigation (FBI) that, except in parental kidnapping matters, every reported kidnapping in which circumstances indicate an actual abduction has taken place is afforded an immediate preliminary investigation to determine whether a full investigation under the Federal kidnapping statute is warranted.

It is the policy of the Criminal Division to review any decision made by the FBI not to conduct an investigation in those missing persons cases wherein the facts indicate possible violations of the Federal kidnapping statute. Under this policy, the FBI will refer information concerning questionable missing person cases to the Criminal Division. The Division will

thoroughly review such information, and if deemed warranted, will request the FBI to commence a kidnapping investigation.

Concern as to the adequacy of the investigative guidelines in situations where much younger children are missing has prompted the FBI to adopt the practice of immediate involvement. With regard to missing children of very tender years, in many cases an abduction may be assumed, so as to warrant an immediate preliminary kidnapping investigation by the FBI.

United States Attorneys who become aware of a missing person case in their district which may involve a kidnapping should insure that such information is brought to the attention of the Criminal Division. Questions concerning this policy should be directed to attorneys of the Terrorism and Violent Crime Section (TVCS).

9-60.112 Prosecution Policy -- Allegations of "Mental Kidnapping" or "Brainwashing" by Religious Cults

In recent years, the Department has received numerous complaints alleging that members of various religious sects are victims of "brainwashing," "mind-control," or "mental kidnapping" by leaders of these groups. A typical allegation is that new members are subjected to intensive indoctrination accompanied by inadequate amounts of food and sleep, with the result that they become "programmed" to obey the wishes and commands of their leader and cease to think for themselves. As a general rule in these situations, there is no information or allegation that the "brainwashed" sect member has been physically restrained from leaving the sect.

It is the Department's position that an allegation of "brainwashing" accompanied by interstate travel would not support a prosecution under the Federal kidnapping statute. *See Chatwin v. United States*, 326 U.S. 455 (1946).

For cases involving possible violations of the peonage or involuntary servitude statutes (18 U.S.C. §§ 1581, 1583 and 1584), consult with the Involuntary Servitude Coordinators, Civil Rights Division, Criminal Section before making a prosecutive determination.

9-60.113 Prosecution Policy -- "Deprogramming" of Religious Sect Members

The Criminal Division has received a substantial number of complaints from members of various religious sects alleging that they have been abducted by their parents or persons acting on behalf of their parents for the purpose of "deprogramming."

It is a general policy of the Department not to become involved in situations which are essentially domestic relations controversies. If a parent abducts his/her adult child from a religious sect, accompanies that child throughout the "deprogramming," and there is no violence or other aggravating circumstances, these facts would weigh against Federal involvement. However, if violence or other aggravating circumstances exist, particularly where professional "deprogrammers" are involved, criminal prosecutions should be pursued if the evidence warrants.

9-60.200 Criminal Sanctions Against Illegal Electronic Surveillance

Criminal sanctions for illegal electronic surveillance can be found in 18 U.S.C. §§ 2510 to 2513, 2701, 3121, 2232(c), 2521, 1367, and 47 U.S.C. §§ 605, 553, 502. Supervisory responsibility for these offenses rests with the Computer Crime and Intellectual Property Section of the Criminal Division.

See the following sections of the Criminal Resource Manual for an overview of the criminal sanctions against illegal electronic surveillance, including related definitions and terms

Criminal Sanctions for Illegal Electronic Surveillance	<u>Criminal Resource Manual at 1040</u>
Investigative Jurisdiction and Supervisory Responsibility	<u>Criminal Resource Manual at 1041</u>
Legislative History	<u>Criminal Resource Manual at 1042</u>
Definition -- "Wire Communication"	<u>Criminal Resource Manual at 1043</u>
Definitions -- "Oral Communication"	<u>Criminal Resource Manual at 1044</u>
Definition -- "Electronic Communication"	<u>Criminal Resource Manual at 1045</u>
Definition -- "Intercept"	<u>Criminal Resource Manual at 1046</u>
Definition: "Electronic, Mechanical, or Other Device"	<u>Criminal Resource Manual at 1047</u>
Definition -- "Person"	<u>Criminal Resource Manual at 1048</u>
Definition -- "Contents"	<u>Criminal Resource Manual at 1049</u>
Scope of 18 U.S.C § 2511 Prohibitions	<u>Criminal Resource Manual at 1050</u>
"Intentional" State of Mind	<u>Criminal Resource Manual at 1051</u>
Elements of Section 2511 Offenses	<u>Criminal Resource Manual at 1052</u>
Exceptions to the Prohibitions Against Intercepting Communications -- Interceptions by Providers of Wire or Electronic Communications Services	<u>Criminal Resource Manual at 1053</u>
Exceptions to the Prohibitions-- Consensual Law Enforcement Interceptions	<u>Criminal Resource Manual at 1054</u>
Exceptions to the Prohibitions -- Other Consensual Interceptions	<u>Criminal Resource Manual at 1055</u>
Exceptions for the Interception of Certain Communications	<u>Criminal Resource Manual at 1056</u>
Other Exceptions	<u>Criminal Resource Manual at 1057</u>

Penalties	<u>Criminal Resource Manual at 1058</u>
Use of the Contents of Illegally Intercepted Communications Against the Interceptor	<u>Criminal Resource Manual at 1059</u>
Scope of 18 U.S.C § 2512 Prohibitions	<u>Criminal Resource Manual at 1060</u>
Unlawful Access to Stored Communications -- 18 U.S.C. § 2701	<u>Criminal Resource Manual at 1061</u>
Unauthorized Installation or Use of Pen Registers and Trap and Trace Devices -- 18 U.S.C. § 3121	<u>Criminal Resource Manual at 1062</u>
Providing Notice of Electronic Surveillance -- 18 U.S.C. § 2232(c)	<u>Criminal Resource Manual at 1063</u>
Injunctions Against Illegal Interception -- 18 U.S.C. § 2521	<u>Criminal Resource Manual at 1064</u>
Interference With the Operation of a Satellite -- 18 U.S.C. § 1367	<u>Criminal Resource Manual at 1065</u>
Interception of Radio Communications -- 47 U.S.C. § 605	<u>Criminal Resource Manual at 1066</u>
Unauthorized Reception of Cable Service -- 47 U.S.C. § 553	<u>Criminal Resource Manual at 1067</u>
Violation of FCC Regulations -- 47 U.S.C. § 502	<u>Criminal Resource Manual at 1068</u>

9-60.202 Illegal Electronic Eavesdropping -- Prosecution Policy

The criminal prohibitions against illegal electronic eavesdropping contained in Title III are part of the same act which permits federal law enforcement officers to engage in court-authorized electronic surveillance. Congress viewed the criminal sanctions and the court authorization provisions as two sides of the same coin. The retention of the government's authorization to engage in court-authorized electronic surveillance may depend on its vigorous enforcement of the sanctions against illegal electronic eavesdropping. Accordingly, it is the Department's policy to vigorously enforce these criminal prohibitions.

The Department's overall prosecutive policy under 18 U.S.C. § 2511 is to focus primarily on persons who engage or procure illegal electronic surveillance as part of the practice of their profession or as incident to their business activities. Less emphasis should be placed on the prosecution of persons who, in the course of transitory situations, intercept communications on their own without the assistance of a professional wiretapper or eavesdropper. This does not mean that such persons are never to be prosecuted, but simply that this type of prosecution is not a major thrust of the Department's enforcement program.

Most illegal interceptions fall into one of five categories: (1) domestic relations, (2) industrial espionage, (3) political espionage, (4) law enforcement, and (5) intra-business. The largest number of interceptions, more than 75 percent, are in the domestic relations category. It is the Department's policy to vigorously investigate and prosecute illegal interceptions of communications which fall within the industrial and political espionage, law enforcement, and intra-business categories. Generally such violations will have interstate ramifications which will make federal prosecution preferable to state prosecution. Nevertheless, in cases where the federal interest is slight, it may be appropriate to defer to state prosecution.

Illegal interceptions arising from domestic relations disputes generally present less of a federal interest and, therefore, local prosecution is more appropriate. However, this does not mean that federal prosecutors should abdicate responsibility for prosecuting such interceptions. Indeed, in view of the preponderance of this kind of interception, no enforcement program can be effective without the initiation of some prosecutions for deterrence purposes. United States Attorneys should develop effective liaison with local prosecutors in order to convince them to shoulder their share of the burden.

Within the category of domestic relations violations, primary attention should be given to those instances in which a professional is involved, such as a private detective, attorney, moonlighting telephone company employee, and supplier of electronic surveillance devices. United States Attorneys should feel free to pursue these cases or refer them to local prosecutors; however, no professional should escape prosecution when a prosecutable case exists.

Domestic relations violations which do not involve a professional interceptor are the lowest priority cases for federal prosecution. Although local prosecution is normally preferable, when local prosecutors are unwilling to pursue the case, resort to federal prosecution may be appropriate. Nevertheless, violations of this type will sometimes prove to be of insufficient magnitude to warrant either federal or state prosecution. In such cases, other measures may prove sufficient, for example, a civil suit for damages (18 U.S.C. § 2520), suppression of evidence (18 U.S.C. § 2515), or forfeiture of the wiretapping or eavesdropping paraphernalia (18 U.S.C. § 2513).

Disturbed persons often suspect that they are the victims of illegal interceptions. Consequently, a complaint which is based solely on suspicious noises heard on the telephone normally does not merit further investigation if the initial line check fails to produce independent evidence of a tap.

9-60.203 State Laws

Title III does not preempt the authority of the states to legislate concerning the interception of communications. The protection of privacy is as much a matter for local concern as protection of persons and property. Accordingly, the efforts of federal law enforcement personnel should supplement, not supplant, local action.

United States Attorneys should review the applicable statutes in their states. When there is no statute or when the existing statutes are inadequate, United States Attorneys should work through their federal-state law enforcement committees to obtain the enactment of appropriate legislation. When suitable state legislation exists but is not sufficiently used by local prosecutors,

United States Attorneys should make efforts to stimulate local enforcement.

9-60.262 Prosecutive Policy -- 18 U.S.C. § 2512

Flagrant violators of 18 U.S.C. § 2512 should be prosecuted vigorously, especially violators who possess such devices in order to engage in electronic surveillance as a business.

Less culpable first offenders and those who violate the statute because of ignorance of the law may be appropriate subjects for more lenient disposition. In some cases a warning may be sufficient. Nevertheless, in all cases except, perhaps, for minor advertising violations, the United States Attorney's Office should require that the prohibited device either be surrendered voluntarily to the FBI or forfeited pursuant to 18 U.S.C. § 2513.

9-60.300 Extortion

Overview -- Interstate and Foreign Extortion	<u>Criminal Resource Manual at 1069</u>
Investigative Jurisdiction in Extortion Cases	<u>Criminal Resource Manual at 1070</u>
Supervisory Authority in Extortion Cases	<u>Criminal Resource Manual at 1071</u>
Special Considerations in Proving a Threat	<u>Criminal Resource Manual at 1072</u>

9-60.400 Criminal Sanctions Against Illegal Electronic Surveillance -- The Foreign Intelligence Surveillance Act (FISA), 50 U.S.C. § 1809

The Foreign Intelligence Surveillance Act -- 50 U.S.C. § 1809	<u>Criminal Resource Manual at 1073</u>
Investigative Jurisdiction	<u>Criminal Resource Manual at 1074</u>
50 U.S.C. § 1809 -- Elements of the Offense	<u>Criminal Resource Manual at 1075</u>
The Intent Requirement	<u>Criminal Resource Manual at 1076</u>
Electronic Surveillance	<u>Criminal Resource Manual at 1077</u>
Persons Covered by 50 U.S.C. § 1809(a)	<u>Criminal Resource Manual at 1078</u>
Penalties	<u>Criminal Resource Manual at 1079</u>
Providing Notice of Electronic Surveillance	<u>Criminal Resource Manual at 1080</u>

Supervisory responsibility for prosecutions involving Section 1809 rests with the Computer Crime and Intellectual Property Section of the Criminal Division.

9-60.500 Criminal Solicitation

Overview of Solicitation	Criminal Resource Manual at 1081
Investigative Jurisdiction	Criminal Resource Manual at 1082
Supervisory Authority	Criminal Resource Manual at 1083
Elements of Solicitation	Criminal Resource Manual at 1084
Indictment Form -- Solicitation to Commit a Crime of Violence	Criminal Resource Manual at 1085
Strongly Corroborative Circumstances	Criminal Resource Manual at 1086
Federal Crime of Violence	Criminal Resource Manual at 1087
Constitutionality	Criminal Resource Manual at 1088
First Amendment Implications	Criminal Resource Manual at 1089
Penalty	Criminal Resource Manual at 1090
Affirmative Defense	Criminal Resource Manual at 1091
Culpability of Solicitee	Criminal Resource Manual at 1092
Multiplicity	Criminal Resource Manual at 1093

9-60.700 Hostage Taking (18 U.S.C. § 1203) -- Prosecution Policy

It is the view of the Department of Justice that most hostage taking matters that arise within the United States are best handled by State and local authorities. However, there may at times be situations in which Federal involvement is appropriate (e.g., if the hostage is a Federal official or an international guest, the party against whom a demand is made is the United States, the perpetrators are international terrorists, etc.). Because of the strong preference for State and local handling of hostage taking matters within the United States, attorneys for the government should discuss a proposed prosecution with the Criminal Division prior to its initiation. In cases of hostage taking outside the United States, other factors, such as legal issues regarding the exercise of extraterritorial jurisdiction, foreign policy considerations, and costs, are involved. Therefore, in cases involving an assertion of extraterritorial jurisdiction, it is mandatory that attorneys for the government seek approval from the Criminal Division prior to the initiation of a proposed prosecution. *See* [USAM 9-2.136](#).

Investigative jurisdiction on hostage taking matters is with the Federal Bureau of Investigation (FBI). The Terrorism and Violent Crime Section (TVCS) has supervisory authority. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the following sections of the Criminal Resource Manual for discussions regarding the crime of hostage taking

Discussion of the Offense of Hostage Taking	<u>Criminal Resource Manual at 1101</u>
Hostage Taking -- Gravamen of the Offense	<u>Criminal Resource Manual at 1102</u>
Jurisdictional Requirements -- 18 U.S.C. Sec. 1203(b)	<u>Criminal Resource Manual at 1103</u>

9-60.711 Prosecution Policy in Hostage Taking Cases When the Death Penalty is Authorized by Statute

The Federal Death Penalty Act of 1994 amended Title 18, United States Code, section 1203 to authorize imposition of the death penalty or life imprisonment when death results from a hostage taking covered by the statute. *See* Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, Tit. VI, § 60003(a)(10), 108 Stat. 1796, 1969 (1994). In any case where a defendant is charged with a hostage taking offense for which the death penalty can be imposed, the U.S. Attorney is required to follow the procedures set out in USAM 9-10.000 and transmit to the Attorney General the information required by those provisions, regardless of whether he or she actually intends to seek the death penalty.

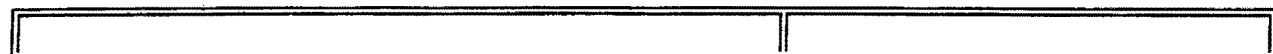
9-60.800 Special Forfeiture of Collateral Profits of Crime ("Son of Sam")

Questions about special forfeitures of the collateral profits of crime under 18 U.S.C. §§ 3681 and 3682 should be directed to the Asset Forfeiture and Money Laundering Section (202) 514-1263. Further information is available in the Criminal Resource Manual at 1104 (Summary of Special Forfeiture Statute) and 1105 (First Amendment Problems of "Son of Sam" Laws).

9-60.900 Murder-for-Hire -- 18 U.S.C. § 1958

The proper investigative agency on murder-for-hire cases is the Federal Bureau of Investigation. Terrorism and Violent Crime Section (TVCS) has supervisory jurisdiction over murder-for-hire offenses. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the Criminal Resource Manual for a discussion of the following issues regarding murder-for-hire



Approval Considerations for Murder-for-Hire Indictments	<u>Criminal Resource Manual at 1106</u>
Murder-for-Hire -- The Offense	<u>Criminal Resource Manual at 1107</u>
Indictment Form	<u>Criminal Resource Manual at 1108</u>
Sample Jury Instruction	<u>Criminal Resource Manual at 1109</u>

9-60.910 Prosecution Policy and the Death Penalty

Prior approval for the initiation of a criminal prosecution under Title 18, United States Code, Section 1958, either by indictment or information, is not required. However, if the death penalty may be applicable, appropriate Department of Justice approval must be obtained. *See* approval guidelines at USAM 9-10.000. The United States Attorney must transmit to the Attorney General the information required by that Chapter, regardless of whether he or she intends to seek the death penalty.

9-60.1000 Carjacking -- 18 U.S.C. § 2119

The Federal Bureau of Investigation (FBI) has been tasked with the authority to investigate violations of the carjacking statute (18 U.S.C. § 2119). The Terrorism and Violent Crime Section (TVCS) has supervisory authority for the carjacking statute. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the Criminal Resource Manual for a discussion of the following issues regarding carjacking

Carjacking Statute	<u>Criminal Resource Manual at 1110</u>
Elements of Carjacking	<u>Criminal Resource Manual at 1111</u>
Constitutionality of the Carjacking Statute	<u>Criminal Resource Manual at 1112</u>
Enactment of the Carjacking Statute and Congressional Power	<u>Criminal Resource Manual at 1113</u>
Double Jeopardy Challenge when 18 U.S.C. §§ 2119 and 924 are Charged	<u>Criminal Resource Manual at 1114</u>
Sample Indictments	<u>Criminal Resource Manual at 1115</u>

9-60.1010 Prosecution Policy -- Carjacking Cases

The offense of motor vehicle theft was traditionally an offense that was prosecuted by State and local law enforcement agencies. In view of the increase of motor vehicle theft and the use of violence in connection with that offense, the Attorney General was directed by the Congress to have the Federal Bureau of Investigation (BFI) and the United States Attorneys' Offices cooperate with State and local officials to investigate carjacking, and, when appropriate and consistent with prosecutorial discretion and resources, prosecute violators in Federal court.

9-60.1015 Department Approval When Death Penalty is Applicable

In carjacking cases in which the Federal death penalty may be applicable, the United States Attorney is required to follow the procedures set forth at USAM 9-10.000. The approval of the Attorney General is necessary to seek the death penalty.

9-60.1100 Violence Against Women Act

The Violence Against Women Act (VAWA), passed as part of the Violent Crime Control and Law Enforcement Act of 1994, Pub. L. 103-322, Title IV, § 40221(a), 108 Stat. 1926, created Federal statutes to prosecute domestic violence in certain situations involving firearms or interstate travel or activity. While domestic violence remains primarily a matter of State and local jurisdiction, prosecutors are encouraged to use the criminal provisions of VAWA in appropriate cases. Factors to be considered are 1) the adequacy of State penalties for domestic violence; for example, out-dated statutes or early parole may provide an inadequate remedy; 2) the interstate nature of the particular offense may make it difficult for local law enforcement to gather evidence from another State; and 3) the potential release of the defendant on bond since some States do not have pre-trial detention statutes. Prosecutors are reminded that 18 U.S.C. § 2263 requires that at any detention hearing held pursuant to 18 U.S.C. § 3142, the "victim shall be given an opportunity to be heard regarding the danger posed by the defendant."

Essential to the effective implementation of the VAWA provisions is coordination with and education of State and local officials. Efforts should be made through your violent crime working groups or Law Enforcement Coordinating Committees to educate state and local counterparts on these provisions, as their assistance, particularly in working with local judges to fashion domestic violence protective orders, is critical.

Violations of the Violence Against Women Act (VAWA), 18 U.S.C. §§ 2261 *et seq.*, are investigated by the Federal Bureau of Investigation (FBI). The Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF) has primary investigative jurisdiction for offenses under the Federal firearms statute (18 U.S.C. § 922); however, the FBI may exercise investigative jurisdiction over violations of this statute when such violations are ancillary to investigations within its jurisdiction. The Terrorism and Violent Crime Section (TVCS) exercises supervisory authority over the criminal enforcement aspect of the Violence Against Women Act (VAWA) statutes. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the Criminal Resource Manual for a discussion of the following issues relating to this topic

Prosecutions Under 18 U.S.C. § 922(g)(8)	<u>Criminal Resource Manual at 1116</u>
Restrictions on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence	<u>Criminal Resource Manual at 1117</u>
Prosecutions Under 18 U.S.C. § 2261(a)(1)	<u>Criminal Resource Manual at 1118</u>
Prosecutions Under 18 U.S.C. § 2261(a)(2)	<u>Criminal Resource Manual at 1119</u>
Prosecutions Under 18 U.S.C. § 2262	<u>Criminal Resource Manual at 1120</u>
Penalties Under 18 U.S.C. §§ 2261 and 2262	<u>Criminal Resource Manual at 1121</u>

9-60.1112 Restriction on the Possession of Firearms by Individuals Convicted of a Misdemeanor Crime of Domestic Violence (18 U.S.C. 922(g)(9))

In the fall of 1996, Congress enacted an amendment (the Lautenberg Amendment) to the Federal Gun Control Act of 1968 which banned the possession of firearms by individuals convicted of a "misdemeanor crime of domestic violence," as defined in the statute. This new provision was codified at 18 U.S.C. § 922(g)(9) and does not contain an exemption for law enforcement or military personnel. The Criminal Division sent all United States Attorneys' Offices a memorandum containing a discussion of the provisions of 18 U.S.C. § 922(g)(9), as well as the Department's prosecution policy. The memorandum is contained in the Criminal Resource Manual at 1117.

In determining whether a particular case merits federal prosecution under 18 U.S.C. § 922 (g)(9), prosecutors should consider the following factors:

- the date of the previous conviction;
- under what circumstances the firearm was obtained;
- whether there are indications of current potential for violence (*i.e.*, recent incidents of domestic violence would be a stronger argument for prosecution than if a number of years had passed since any domestic problems had occurred);
- alternatives available to federal prosecution (state prosecutions, voluntary removal of the weapons);
- whether the potential defendant was "on notice" that his/her possession of a firearm was illegal;
- whether the potential defendant had made any false statements in obtaining the firearm.

Even if a determination is made that prosecution is not warranted, steps should be taken to

assure that the firearm is removed from the possession of the individual prohibited from possessing firearms.

9-60.1200 Civil Disturbances and Riots

United States Attorneys are required to consult with the Terrorism and Violent Crime Section of the Criminal Division prior to instituting grand jury proceedings, filing an information, or seeking an indictment of a violation of 18 U.S.C. §§ 231-233, 2101, 2102.

9-61.000
CRIMES
INVOLVING PROPERTY

9-61.010 Introduction

9-61.100 Motor Vehicle And Aircraft Theft -- 18 U.S.C. §§ 2311-2313

9-61.111 Motor Vehicle and Aircraft Theft -- Prosecution Policy

9-61.112 Motor Vehicle and Aircraft Theft -- Prosecution Policy

9-61.113 Motor Vehicle and Aircraft Theft -- Prosecution Policy

9-61.114 Motor Vehicle and Aircraft Theft -- Notification Requirements

9-61.200 National Stolen Property Act -- 18 U.S.C. § 2311, 2314, and 2315

9-61.210 National Stolen Property Act -- Prosecution Policy

9-61.244 National Stolen Property Act -- Securities

9-61.300 Theft From Interstate Shipment -- 18 U.S.C. § 659

9-61.400 Fencing -- Prosecution Policy

9-61.500 Counterfeiting and Forging of State and Corporate Securities -- 18 U.S.C. § 513

9-61.510 Counterfeiting and Forging Securities -- Prosecution Policy

9-61.600 Bank Robbery and Bank Larceny -- 18 U.S.C. 2113

9-61.601 Bank Robbery -- Disclosure of Information

9-61.610 Bank Robbery -- Prosecution Policy

9-61.670 Bank Extortion -- Charging Policy

9-61.700 Motor Vehicle Theft Prevention Statutes

9-61.710 Motor Vehicle Theft Prevention Offenses -- Policy Considerations

9-61.010 Introduction

This chapter focuses on the law and policy relating to the investigation and prosecution of motor vehicle theft, stolen property offenses, thefts from interstate shipments, fencing, counterfeiting and forging of state and corporate securities, and bank robbery. The Criminal Division's Office of Enforcement Operations (OEO) has supervisory authority over all offenses in this chapter except bank robbery. The Terrorism and Violent Crime Section of the Criminal Division has supervisory authority over bank robbery.

9-61.100 Motor Vehicle and Aircraft Theft -- 18 U.S.C. § § 2311-2313

Title 18 U.S.C. § 2312 makes it an offense to transport in interstate or foreign commerce a motor vehicle or aircraft, knowing it to have been stolen. The receipt, possession, sale, or disposition of a motor vehicle or aircraft which crossed a state or United States boundary after being stolen, with knowledge of its stolen character is an offense punishable in 18 U.S.C. § 2313.

Federal criminal jurisdiction also extends to a variety of other motor vehicle theft related activities. These include altering, removing or obliterating motor vehicle identification numbers,

(18 U.S.C. § 511), trafficking in motor vehicles or motor vehicle parts with altered, removed or obliterated identification numbers (18 U.S.C. § 2321); and the exportation or importation of stolen motor vehicles, off-highway equipment, vessels and aircraft (18 U.S.C. § 553). *See* USAM 9-61.700.

The Federal Bureau of Investigation has investigatory responsibility for auto theft and aircraft theft-related offenses, including violations of 18 U.S.C. §§ 511, 553, 2312, 2313, and 2321. The Office of Enforcement Operations in the Criminal Division has supervisory authority over Dyer Act violations.

For more information on this topic, see the Criminal Resource Manual

Legislative History	<u>Criminal Resource Manual at 1301</u>
Definition of "Stolen"	<u>Criminal Resource Manual at 1302</u>
Definitions -- "Motor Vehicle" -- "Aircraft" -- "Security"	<u>Criminal Resource Manual at 1303</u>
Elements of 18 U.S.C. § 2312	<u>Criminal Resource Manual at 1304</u>
Elements of 18 U.S.C. § 2313	<u>Criminal Resource Manual at 1305</u>
18 U.S.C. §§ 2312 and 2313 -- Predicate Offenses for RICO Prosecution	<u>Criminal Resource Manual at 1306</u>
18 U.S.C. § 2119 -- Carjacking	<u>Criminal Resource Manual at 1307</u>
Venue	<u>Criminal Resource Manual at 1308</u>
Use of 18 U.S.C. § 5001 to Surrender Motor Vehicle Theft Perpetrators Under 21 Years of Age to State Authorities	<u>Criminal Resource Manual at 1309</u>
Additional Research Sources	<u>Criminal Resource Manual at 1310</u>

9-61.111 Motor Vehicle and Aircraft Theft -- Prosecution Policy

Consistent with available resources, organized ring cases and multi-theft operations of motor vehicles involving an interstate or foreign aspect should be Federally investigated and prosecuted. To the extent possible, the investigation and prosecution of this type of professional criminal activity should be conducted in coordination and cooperation with State and local authorities. If the State or local authorities are unable to prosecute the jointly investigated cases, Federal prosecution should be undertaken insofar as is consistent with available resources.

9-61.112 Motor Vehicle and Aircraft Theft -- Prosecution Policy

Except as precluded by USAM 9-61.113, individual interstate and foreign motor vehicle theft cases involving exceptional circumstances may be considered for Federal prosecution if the local or State authorities are justifiably unable to institute a successful prosecution. Because of various other Federal prosecutive priorities, only a portion of the individual theft cases involving exceptional circumstances will qualify for Federal prosecution. In determining whether "exceptional circumstances" justifying Federal prosecution are present, the following examples may be considered illustrative but not exhaustive:

- A. The stolen vehicle is used in the commission of a separate felony for which punishment in the local courts would be expected to be less than for the Dyer Act offense;
- B. The stolen vehicle is demolished, sold, transported or exported to a foreign country, heavily stripped or grossly misused;
- C. An individual steals more than one vehicle in such a manner as to form a pattern of conduct; and
- D. The stolen vehicle is a heavy commercial vehicle or construction or farming equipment, such as a tractor truck, a farm tractor or a bulldozer.

In addition to the above exceptional circumstances, because of an aircraft's normally large monetary value and its ability to be used to commit other serious Federal criminal offenses, such as drug smuggling, each interstate or foreign transportation of a stolen aircraft should be judged for possible Federal prosecution based on its own individual prosecutive merits.

9-61.113 Motor Vehicle and Aircraft Theft -- Prosecution Policy

Except in situations where 18 U.S.C. § 5001 (surrender of youthful offenders to State authorities) is to be utilized or there are indications that organized ring activity may be involved, Federal process should not be filed against an individual, regardless of local prosecutive decisions, in the following instances where a stolen motor vehicle has been transported in interstate or foreign commerce:

- A. Cases involving joy-riding;
- B. Cases in which the individual to be charged is a juvenile (i.e., under 18 years of age); and
- C. Cases in which the individual to be charged is at least 18 but less than 21 years of age and cannot be defined as a recidivist. A "recidivist" for purposes of this policy is a person who has on at least two prior occasions been arrested for motor vehicle thefts and on one or more occasions has been convicted for motor vehicle theft or another criminal offense.

9-61.114 Motor Vehicle and Aircraft Theft -- Notification Requirements

When Federal prosecution is declined for an individual Dyer Act violation, the Assistant United States Attorney making such decision shall notify the investigative agency of such decision and the reasons therefor. The Assistant United States Attorney shall also advise the

investigative agency if "exceptional circumstances" were present in the matter. *See* USAM 9-61.112. In addition, the Assistant United States Attorney shall remind the investigative agency of the provisions of 18 U.S.C. § 5001, if such may be applicable. The Assistant United States Attorney shall request the investigating agency to notify the appropriate local authorities, including the appropriate local prosecutive office where a prosecutable case may be present, of his or her prosecutive determination, and shall request, in those situations involving exceptional circumstances, to be notified by the investigative agency as to what prosecutive action is being undertaken by the local authorities. If the local authorities do not prosecute a matter involving exceptional circumstances, the investigative agency shall so notify the Federal prosecutor. Upon receipt of such notification the United States Attorney should review the matter in accordance with these guidelines, the present caseload of his or her office, the availability of witnesses and the sufficiency of the evidence, and the agreements and understandings reached as a result of the Law Enforcement Coordinating Committee for his or her District to determine whether Federal prosecution is warranted.

9-61.200 National Stolen Property Act -- 18 U.S.C. § 2311, 2314, and 2315

The Federal Bureau of Investigation has investigative jurisdiction for the stolen property offenses set forth in 18 U.S.C. §§ 2311, 2314 and 2315. The Office of Enforcement Operations of the Criminal Division has supervisory responsibility over offenses arising under 18 U.S.C. §§ 2314 and 2315.

See the Criminal Resource Manual for a discussion of the following issues regarding the National Stolen Property Act

General Overview	<u>Criminal Resource Manual at 1311</u>
Goods, Wares, Merchandise	<u>Criminal Resource Manual at 1312</u>
Securities	<u>Criminal Resource Manual at 1313</u>
Money and Wire Transfers	<u>Criminal Resource Manual at 1314</u>
"Tax Stamp" Defined	<u>Criminal Resource Manual at 1315</u>
"Value" Defined	<u>Criminal Resource Manual at 1316</u>
"Stolen" -- "Converted" -- "Taken by Fraud"	<u>Criminal Resource Manual at 1317</u>
"Falsely Made, Forged, Altered, or Counterfeited"	<u>Criminal Resource Manual at 1318</u>
"Forged Endorsement"	<u>Criminal Resource Manual at 1319</u>
Tracing Doctrine	<u>Criminal Resource Manual at 1320</u>
Exceptions and the Proviso Clause	<u>Criminal Resource Manual at 1321</u>

Elements -- First Paragraph of 18 U.S.C. § 2314	Criminal Resource Manual at 1322
Elements -- Second Paragraph of 18 U.S.C. § 2314	Criminal Resource Manual at 1323
Elements -- Third Paragraph of 18 U.S.C. § 2314	Criminal Resource Manual at 1324
Elements -- Fourth Paragraph of 18 U.S.C. § 2314	Criminal Resource Manual at 1325
Elements -- Fifth Paragraph of 18 U.S.C. § 2314	Criminal Resource Manual at 1326
Elements -- First Paragraph of 18 U.S.C. § 2315	Criminal Resource Manual at 1327
Elements -- Second Paragraph of 18 U.S.C. § 2315	Criminal Resource Manual at 1328
Elements -- Third Paragraph of 18 U.S.C. § 2315	Criminal Resource Manual at 1329
Venue	Criminal Resource Manual at 1330
Additional Research Sources	Criminal Resource Manual at 1331

9-61.210 National Stolen Property Act -- Prosecution Policy

Prosecutions under the first two paragraphs of 18 U.S.C. § 2314 and the first paragraph of 18 U.S.C. § 2315 should be governed by the same factors that determine whether other non-governmental thefts or frauds (e.g., mail frauds or wire frauds) should be prosecuted Federally. See USAM 9-43.000 and 9-43.300. The \$5,000 jurisdictional threshold figure, originally adopted in 1934, was selected to limit Federal involvement to significant cases. If the \$5,000 figure had been indexed for inflation the comparable value in 1996 would be approximately \$60,000. These figures are cited in order to provide a historical perspective for these sections. Of course, violations involving less than \$60,000 should be prosecuted Federally where the situation warrants.

The monetary figures are more important when considering prosecution under the "falsely made, forged, altered and counterfeit" securities provisions of 18 U.S.C. §§ 2314 and 2315 which do not require any specific monetary amount to invoke Federal jurisdiction. However, prosecutive judgments under all provisions of 18 U.S.C. §§ 2314 and 2315 should be balanced. Although the "forgery" provisions permit Federal jurisdiction for one forged security, prosecutive discretion should be exercised in favor of those instances where there is some compelling reason to bring the matter in Federal courts. Hence, with regard to forged, falsely made, altered, or counterfeited securities under 18 U.S.C. § 2314 or § 2315, the Department's position is that such offenses are primarily within the purview of State law and should be prosecuted by State authorities where feasible, even though the requisites of Federal jurisdiction under the Act are present. However, Federal prosecution is recommended where particularly appropriate, as where the broad scope of defendant's activities (e.g., interstate "paper hangers") suggests a need for Federal investigative facilities or appears to render inadequate the punishment brought in conjunction with other Federal charges, or where successful State prosecution appears unlikely or the State fails or refuses to entertain prosecution.

9-61.244 National Stolen Property Act -- Securities

The Department takes the position that a stolen or fraudulently obtained credit card is not a security within the meaning of 18 U.S.C. §§ 2311, 2314, or 2315. See the Criminal Resource Manual at 1313 for a more detailed discussion of "securities."

9-61.300 Theft From Interstate Shipment -- 18 U.S.C. § 659

Thefts from interstate shipment should be prosecuted under Federal laws where: (1) there is difficulty in establishing venue for State prosecution; (2) the thefts are systematic or widespread; (3) another related Federal offense is charged against the defendant; or (4) Federal prosecution would be advantageous to the administration of justice, such as in the detection, prevention, or prosecution of crimes generally. Major theft cases and cases involving repeat offenders should be given priority attention under 18 U.S.C. § 659. Since theft from interstate shipment is a concurrent jurisdiction offense, prosecutive agreements with State and local law enforcement authorities are appropriate. *See also* the Criminal Resource Manual at 1332.

The Federal Bureau of Investigation has investigative jurisdiction for offenses committed in violation of 18 U.S.C. § 659. The Office of Enforcement Operations of the Criminal Division has supervisory authority over offenses committed in violation of 18 U.S.C. § 659.

See the Criminal Resource Manual for a discussion of the following issues regarding 18 U.S.C. § 659

General Overview	<u>Criminal Resource Manual at 1333</u>
State Prosecution a Bar	<u>Criminal Resource Manual at 1334</u>
Interstate or Foreign Commerce Aspect of Shipment	<u>Criminal Resource Manual at 1335</u>
Retention of Stolen Character	<u>Criminal Resource Manual at 1336</u>
Venue	<u>Criminal Resource Manual at 1337</u>
Evidence of Proof of Shipment	<u>Criminal Resource Manual at 1338</u>
Evidence of Proof of Value	<u>Criminal Resource Manual at 1339</u>
Drafting Indictments -- Facility from Which the Goods Were Taken	<u>Criminal Resource Manual at 1340</u>
Drafting Indictments -- Election Required Between Theft and Possession	<u>Criminal Resource Manual at 1341</u>
Additional Research Sources	<u>Criminal Resource Manual at 1342</u>

9-61.400 Fencing -- Prosecution Policy

Unless there exists a special need, priority should be given to the prosecution of fences as opposed to the prosecution of thieves. For purposes of this subchapter, "fences" are defined as those who are alleged to have assisted in finding or dealing with more than one buyer for stolen property. Highest priority should be given to the prosecution of fences who operate legitimate businesses and sell stolen property to the public.

When preparing indictments against subjects involved in the redistribution of stolen property particular attention should be given to the provisions of 18 U.S.C. §§ 659, 2312, 2313, 2314, 2315, 2321, and the RICO statute (18 U.S.C. § 1961 *et seq.*) where the fence operates through a legitimate business.

For additional material concerning "fencing," see the following sections of the Criminal Resource Manual

Criminal Redistribution of Stolen Property -- "Fencing"	Criminal Resource Manual at 1343
Drafting Indictments -- Fencing	Criminal Resource Manual at 1344
Fencing Investigations	Criminal Resource Manual at 1345

9-61.500 Counterfeiting and Forging of State and Corporate Securities -- 18 U.S.C. § 513

The Federal Bureau of Investigation has investigative jurisdiction over offenses committed in violation of 18 U.S.C. § 513. The Office of Enforcement Operations of the Criminal Division has supervisory authority over offenses arising under 18 U.S.C. § 513.

The following sections of the Criminal Resource Manual contain discussions relating to 18 U.S.C. § 513

General Overview	Criminal Resource Manual at 1346
Discussion of the Offenses	Criminal Resource Manual at 1347
Relevant Definitions	Criminal Resource Manual at 1348

9-61.510 Counterfeiting and Forging Securities -- Prosecution Policy

Since 18 U.S.C. § 513 considerably expands Federal criminal jurisdiction over non-

Federal securities that are counterfeited and forged, its constitutional basis may be challenged. Accordingly, for constitutional and policy reasons, several factors should be present before Federal jurisdiction is exercised under this provision.

First, the extent of the criminal activity should be sizeable and involve significant past or future interstate activity. Second, in regard to the counterfeiting of State securities, there should clearly be an interstate aspect. Third, common sense must be used, not only to sustain the constitutionality of this important provision, but also to control the number of cases filed in Federal courts. The general prosecution policies set forth in USAM 9-61.210 relating to cases under the National Stolen Property Act should be applied to 18 U.S.C. § 513 offenses. Finally, as to the "implement" provision in subsection 513(b), such implements should bear some connection to State or corporate securities.

In short, the major responsibility for dealing with counterfeit and forged State and corporate securities should lie with State and local governments. In utilizing 18 U.S.C. § 513, the Federal government will be in the best position to defend against constitutional challenges if the statute is applied only to fact patterns clearly showing large-scale organized interstate criminal activity. In addition, each United States Attorney should develop prosecutive understandings concerning the counterfeiting and forgery of State and corporate securities with State and local authorities through the district's Law Enforcement Coordinating Committee.

9-61.600 Bank Robbery and Bank Larceny -- 18 U.S.C. 2113

Title 18, section 2113 of the United States Code is the Federal criminal bank robbery statute. Section 2113 outlines and defines prohibited criminal conduct vis-a-vis federally protected financial institutions and concomitant penalties.

Investigative jurisdiction for bank robbery is vested in the Federal Bureau of Investigation (FBI). The Terrorism and Violent Crime Section (TVCS) has supervisory responsibility over violations of 18 U.S.C. § 2113. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

The following sections of the Criminal Resource Manual contain material related to Bank Robbery and Bank Larceny

Bank Robbery -- General Overview	<u>Criminal Resource Manual at 1349</u>
Bank Theft -- Misrepresentations of Identity	<u>Criminal Resource Manual at 1350</u>
Assault/Use of Dangerous Weapon During Bank Robbery	<u>Criminal Resource Manual at 1351</u>
Federally Insured Financial Institutions	<u>Criminal Resource Manual at 1352</u>
Merger and Separate Offenses	<u>Criminal Resource Manual at 1353</u>

Merger	<u>Criminal Resource Manual at 1354</u>
Possession Offenses	<u>Criminal Resource Manual at 1355</u>
Bank Messenger -- Armored Truck Services	<u>Criminal Resource Manual at 1356</u>
Night Depositories	<u>Criminal Resource Manual at 1357</u>
Automated Teller Machines (ATMs)	<u>Criminal Resource Manual at 1358</u>

9-61.601 Bank Robbery -- Disclosure of Information

Department of Justice personnel should not release information concerning amounts of monies taken in any bank robbery until it becomes a matter of public record by virtue of the return of an indictment or other charging document. See media guidelines in USAM 1-7.000 et seq., 28 CFR § 50.2.

9-61.610 Bank Robbery -- Prosecution Policy

United States Attorneys and the Special Agent-In-Charge (SAC) of the local field division of the Federal Bureau of Investigation (FBI) should meet with their State and local counterparts to arrive at a proper allocation of investigative and prosecutive resources for bank robberies being committed in their respective districts. It continues to be Department policy to reduce Federal involvement in the bank robbery area, and make deliberate progress toward maximum feasible deferral of bank robbery matters to those State and local law enforcement agencies which are prepared to handle them. However, no case should be deferred in favor of State/local investigation or prosecution where the state/local law enforcement authorities will not adequately handle it.

9-61.670 Bank Extortion -- Charging Policy

The first paragraph of 18 U.S.C. § 2113(a) makes criminal the obtaining or attempting to obtain bank property by extortion. The typical bank extortion arises where, by telephone call or other communication, an extortionist conveys a threat to a bank official, and instructs the bank official to deliver bank funds to a specified "drop site," away from bank premises. Thus, many extortions involve no face to face confrontation. Because the bank robbery statute includes extortion and attempted extortion, the Hobbs Act should not be charged in such cases.

9-61.700 Motor Vehicle Theft Prevention Statutes

The Office of Enforcement Operations of the Criminal Division has supervisory responsibility for motor vehicle theft and theft prevention related offenses, including violations of 18 U.S.C. §§ 511, 511A, 553, 2321 and 2322. For information on investigative jurisdiction, see the Criminal Resource Manual at 1360.

The following sections of the Criminal Resource Manual contain discussions of matters

related to Motor Vehicle Theft

Motor Vehicle Theft Prevention Statutes -- General Overview	Criminal Resource Manual at 1359
Mandatory Theft Prevention Standard	Criminal Resource Manual at 1361
Voluntary Theft Prevention Standard	Criminal Resource Manual at 1362
Anti-Fencing Measures	Criminal Resource Manual at 1363
Altering or Removing Motor Vehicle Identification Numbers	Criminal Resource Manual at 1364
Forfeiture of Certain Motor Vehicles and Motor Vehicle Parts	Criminal Resource Manual at 1365
Trafficking in Certain Motor Vehicles or Motor Vehicle Parts	Criminal Resource Manual at 1366
Motor Vehicle Titles as "Securities"	Criminal Resource Manual at 1367
Sale or Receipt of Stolen Motor Vehicles	Criminal Resource Manual at 1368
Chop Shops	Criminal Resource Manual at 1369
Theft Prevention Decals	Criminal Resource Manual at 1370
Importing and Exporting Stolen Property	Criminal Resource Manual at 1371
Importing or Exporting Stolen Motor Vehicles, Off-Highway Mobile Equipment, Vessels, or Aircraft	Criminal Resource Manual at 1372
Unlawful Importing or Exporting of Certain Vehicles and Equipment	Criminal Resource Manual at 1373
Effective Date - Motor Vehicle Identification Numbers	Criminal Resource Manual at 1374
Proving Violations of 18 U.S.C. § 511	Criminal Resource Manual at 1375
Proving Violations of 18 U.S.C. § 2321	Criminal Resource Manual at 1376
Proving Violations of 18 U.S.C. § 553	Criminal Resource Manual at 1377

9-61.710 Motor Vehicle Theft Prevention Offenses -- Policy Considerations

Criminal offenses relating to altering, removing, or obliterating motor vehicle

identification numbers, trafficking in motor vehicles or in motor vehicle parts having altered, removed, or obliterated identification numbers, operating a chop shop, and exporting or importing stolen motor vehicles are governed generally by the Department's prosecutive policy under the Dyer Act (18 U.S.C. §§ 2311 to 2313). *See* USAM 9-61.111 through 9-61.114. Each United States Attorney should develop prosecutive understandings on these criminal offenses with State and local authorities through the district's Law Enforcement Coordinating Committee.

9-62.000
[RESERVED]

9-63.000
PROTECTION OF
PUBLIC ORDER

- 9-63.010 Overview
- 9-63.100 Aircraft Piracy and Related Offenses
- 9-63.110 Interference with Flight Crew Members and Attendants
- 9-63.135 Negotiated Pleas for Aircraft Piracy Within the Special Aircraft Jurisdiction of the United States
- 9-63.161 Prosecution Policy for Carrying Weapons or Explosives Aboard Aircraft (49 U.S.C. § 46505)
- 9-63.171 Prosecution Policy for False Information (49 U.S.C. § 46507(1))
- 9-63.181 Prosecution Policy for Aircraft Piracy Outside the Special Aircraft Jurisdiction of the United States (49 U.S.C. § 46502(b))
- 9-63.200 Destruction of Aircraft and Motor Vehicles and Related Offenses (18 U.S.C. §§ 31 - 35)
- 9-63.221 Prosecutive Policy for 18 U.S.C. § 32(b)
- 9-63.231 Prosecutive Policy for Threats to Destroy Aircraft
- 9-63.241 Prosecutive Policy for Destruction of Motor Vehicles -- 18 U.S.C. § 33
- 9-63.251 Prosecutive Policy for Imparting or Conveying False Information (Bomb Hoax) -- 18 U.S.C. § 35
- 9-63.260 Death Penalty
- 9-63.500 Firearms Generally
- 9-63.514 Prosecutions Under 18 U.S.C. § 922(g)
- 9-63.515 Scienter Standards in National Firearms Act Violations and Other Firearms Offenses
- 9-63.516 Charging Machinegun Offenses Under 18 U.S.C. § 922(o), Instead of Under the National Firearms Act
- 9-63.517 Supreme Court Decision in Bailey v. United States
- 9-63.900 Federal Explosives Statutes -- 18 U.S.C. §§ 841 - 848
- 9-63.902 Restraint in Exercise of Federal Jurisdiction
- 9-63.922 Limitation on Use of Section 844(e) (Bomb Threat)
- 9-63.1100 Tampering with Consumer Products -- 18 U.S.C. § 1365
- 9-63.1110 Tampering with Consumer Products -- Prosecutive Policy
- 9-63.1200 Gangs and Gang-Related Youth Violence -- Approval/Consultation Requirements
- 9-63.1205 Death Penalty Protocol
- 9-63.1220 Youth Violence

9-63.010 Overview

This chapter focuses on the investigation and prosecution of several federal criminal offenses including: aircraft piracy, destruction of aircraft, and firearms offenses. The Terrorism and Violent Crime Section of the Criminal Division has supervisory authority over the offenses in this chapter, unless otherwise noted. *See* USAM 9-130.200 (the Organized Crime Section has supervisory authority over some offenses in this chapter if they involve organized crime or labor/management disputes).

9-63.100 Aircraft Piracy and Related Offenses

Sections 46502, 46504, 46505, 46506, and 46507 of Title 49, United States Code, (formerly section 1472(i) through (n) of Title 49 Appendix) set forth the offenses of aircraft piracy and attempted piracy while in flight within or outside the special aircraft jurisdiction of the United States, interference with flight crew members or flight attendants while in flight within the special aircraft jurisdiction of the United States, carrying weapons or explosives aboard an aircraft, conveyance of false information or threats regarding certain offenses prohibited by 49 U.S.C. §§ 46502, 46504, 46505, 46506, and 46507 and certain common law offenses.

Pursuant to 28 U.S.C. § 538 (formerly 49 U.S.C. App. § 1472(o)), criminal violations of the aircraft piracy and related offense provisions are investigated by the Federal Bureau of Investigation (FBI). *See* Pub. L. 103-272, § 4(e)(1), 108 Stat. 1361. The Federal Aviation Administration (FAA) also has administrative responsibility to prevent and, where warranted, to punish such offenses by civil penalties. The aircraft piracy and related offenses are supervised by the Terrorism and Violent Crime Section (TVCS)(202) 514-0849.

See the following sections of the Criminal Resource Manual for more information regarding the investigation and prosecution of aircraft piracy and related offenses

General Overview	Criminal Resource Manual at 1401
1984 Aircraft Sabotage Act	Criminal Resource Manual at 1402
Public Law No. 103-272	Criminal Resource Manual at 1403
Antiterrorism and Effective Death Penalty Act of 1996	Criminal Resource Manual at 1404
Special Aircraft Jurisdiction of the United States	Criminal Resource Manual at 1405
Aircraft Piracy -- Venue	Criminal Resource Manual at 1406
Aircraft Piracy -- 49 U.S.C. 46502(a)	Criminal Resource Manual at 1407
Attempted Aircraft Piracy	Criminal Resource Manual at 1408
Indictment for Aircraft Piracy	Criminal Resource Manual at 1409
Death Penalty for Aircraft Piracy	Criminal Resource Manual at 1410
Interference With Flight Crew Members or Flight Attendants	Criminal Resource Manual at 1411
Certain Crimes Aboard Aircraft in Flight	Criminal Resource Manual at 1412
Carrying Weapons or Explosives Aboard Aircraft	Criminal Resource Manual at 1413
Attempts to Board Aircraft with Weapon or Explosive	Criminal Resource Manual at 1414
Deadly or Dangerous Weapons	Criminal Resource Manual at 1415
Specific Intent Not Required	Criminal Resource Manual at 1416

Concealment of Weapon
False Information and Threats
Aircraft Piracy Outside the Special Aircraft Jurisdiction
of the United States

Criminal Resource Manual at 1417
Criminal Resource Manual at 1418
Criminal Resource Manual at 1419

9-63.110 Interference with Flight Crew Members and Attendants

Section 46504 of Title 49, United States Code (formerly section 1472(j) of Title 49 Appendix) sets forth the offense of interference with a flight crew member or flight attendant within the special aircraft jurisdiction of the United States, which is defined in 49 U.S.C. § 46501(2). The statute applies to any "individual on an aircraft in the special aircraft jurisdiction of the United States who, by assaulting or intimidating a flight crew member or flight attendant of the aircraft, interferes with the performance of the duties of the member or attendant or lessens the ability of the member or attendant to perform those duties." The statute provides for up to 20 years imprisonment, and further provides for imprisonment for any term of years or life if a dangerous weapon is used. Interference with a flight crew member or attendant is a general intent crime, and does not require a specific intent either to intimidate the flight crew member or attendant or to interfere with the performance of his or her duties. *United States v. Grossman*, 131 F.3d 1449 (11th Cir. 1997).

Venue is governed by the standard venue provisions, 18 U.S.C. §§ 3237 and 3238 and Rule 18, Fed.R.Crim.Proc. See also *United States v. Hall*, 691 F.2d 48 (1st Cir. 1982). "[T]he offense continues for at least as long as the crew are responding directly, and in derogation of their ordinary duties, to the defendant's behavior." *United States v. Hall*, 691 F.2d at 50. Prosecution is always proper in the district over which the aircraft was flying when the interference took place, if that can be determined. In many cases, particularly those in which either (1) the aircraft is diverted due to the defendant's actions, (2) the defendant's interfering actions continue, or (3) the crew remains concerned about defendant's possible further actions, venue is also proper in the district in which the aircraft lands.

Since determining the district over which the aircraft was flying when the action took place may be difficult, and that district may have little or no connection to the matter, the Department advocates prosecution in the district where the aircraft lands and the defendant is deboarded and arrested in all appropriate cases.

The interference and other Title 49 aircraft offenses are supervised by the Terrorism and Violent Crime Section (TVCS), which can be reached at (202) 514-0849.

See also the Criminal Resource Manual at 1411.

9-63.135 Negotiated Pleas for Aircraft Piracy Within the Special Aircraft Jurisdiction of the United States

The Department advocates severe penalties for aircraft hijackers as a deterrent to future acts of piracy. Consequently, United States Attorneys must consult with the Criminal Division's Terrorism and Violent Crime Section before dismissing, in whole or in part, an indictment, information, or complaint containing such charges or entering into any agreement to forego an air piracy prosecution under 49 U.S.C. § 46502(a) (formerly 49 U.S.C. App. § 1472(i))(aircraft piracy within the special aircraft jurisdiction of the United States) in favor of a guilty plea to a lesser offense or decides not to prosecute fully an act of air piracy. See also USAM 9-16.020 (pleas, generally).

9-63.161 Prosecution Policy for Carrying Weapons or Explosives Aboard Aircraft (49 U.S.C. § 46505)

The Federal Aviation Administration (FAA) pre-board screening procedures have resulted in the detection of relatively large numbers of individuals who have attempted to board aircraft with deadly or dangerous weapons concealed on the individual's person or contained in accessible property.

In the overwhelming number of cases, the violators have no prior criminal record and there is no evidence that the person intended to use the weapon to commit an offense aboard the aircraft. Often, the concealed weapon is a knife, the possession of which does not constitute a violation of a Federal or local statute, or the weapon may only marginally constitute a "deadly or dangerous weapon." Some cases involve individuals other than law enforcement officers who have been issued permits by State or local governments to carry firearms, but are not exempted from the enforcement of this statute. As a matter of policy, Federal criminal prosecution of these types of offenders is not warranted, and would constitute an unproductive use of limited prosecutive resources.

Therefore, to achieve uniform application of 49 U.S.C. § 46505 (formerly 49 U.S.C. App. § 1472(l)) (which prohibits carrying weapons or explosives aboard aircraft) while continuing to effectively deter this offense, the following guidelines should be considered in determining whether an offense will be prosecuted.

A. Aggravated cases should be vigorously investigated and criminally prosecuted under 49 U.S.C. § 46505. Such aggravated cases include, but are not limited to, the following examples:

1. The individual has endeavored by obvious and deliberate measures to preclude detection of a concealed weapon on his/her person or in his/her carry-on baggage;
2. Evidence available indicates that the subject intended to use the weapon in the commission of an offense; or
3. The weapon is any type of explosive or incendiary device.

B. Federal criminal prosecution can be declined for those offenses involving the following mitigating factors:

1. Individuals who are not law enforcement officers, but who nevertheless possess valid permits to carry a weapon;
2. Individuals who have no serious criminal records, and the circumstances surrounding the offense are clearly extenuating in nature; or
3. Individuals who possess items which are normally and acceptably used for a noncriminal purpose and which are only marginally of a deadly or dangerous character.

All unaggravated weapons violations will continue to be referred initially to State and local authorities for disposition. Where the State or local authorities are unwilling or unable to prosecute a weapons offense involving a firearm, a civil penalty should be sought pursuant to 49 U.S.C. § 46303 (formerly 49 U.S.C. App. § 1471(d)).

A United States Attorney electing to seek such a civil penalty under FAA regulations should have the Federal Bureau of Investigation (FBI) (or other investigative agency detecting such a violation) refer the violation to the nearest FAA Civil Aviation Security Field Office for appropriate civil action. *See* USAM 9-76.110. The civil penalty provision is one of strict liability. *See United States v. Gutierrez*, 624 F. Supp. 759 (E.D.N.Y. 1985).

Individuals attempting to board aircraft with explosives or incendiary devices, including containers of gasoline or similar flammable liquids, should be criminally prosecuted under 49 U.S.C. § 46505.

See the following sections of the Criminal Resource Manual for a discussion of the law relating to offenses involving carrying weapons or explosives

Carrying Weapons or Explosives Aboard Aircraft	Criminal Resource Manual at 1413
Attempts to Board Aircraft with Weapon or Explosive	Criminal Resource Manual at 1414
Deadly or Dangerous Weapons	Criminal Resource Manual at 1415
Specific Intent Not Required	Criminal Resource Manual at 1416
Concealment of Weapon	Criminal Resource Manual at 1417

9-63.171 Prosecution Policy for False Information (49 U.S.C. § 46507(1))

Title 49 U.S.C. § 46507(1) makes it a crime to willfully and maliciously, or with reckless disregard for safety, convey false information, knowing such information to be false, concerning an attempt to do an act which would be a felony prohibited by various sections of Title 49.

To achieve uniform application of 49 U.S.C. § 46507(1) (formerly 49 U.S.C. App. § 1472(m)(1)), the following guidelines should be considered in determining whether an offense is to be prosecuted:

A. Aggravated cases should be fully investigated and prosecuted. Such aggravated cases include, but are not limited to, the following examples:

1. A hijacking hoax made by a person reporting the alleged hijacking and falsely attributing it to another; or
2. False information not readily disclosed as such resulting in delay of the flight or inconvenience to airport employees and passengers.

B. Federal criminal prosecution under 49 U.S.C. § 46507(1) may be declined in the following instances:

1. False statements made in the vicinity of the inspection point as a poor attempt at humor and suspected to be such by the individual to whom the statement is directed;
2. Statements made by individuals who have no prior criminal record and made under circumstances that are clearly extenuating in nature; or
3. Consistent with the considerations discussed above, cases in which the airlines do not deem the conduct of the individual to be of such seriousness as to warrant his/her removal from a flight or delay his/her travel schedule.

9-63.181 Prosecution Policy for Aircraft Piracy Outside the Special Aircraft Jurisdiction of the United States (49 U.S.C. § 46502(b))

No United States Attorney may 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 without the express authorization of the Assistant Attorney General of the Criminal Division. See USAM 9-2.136. Once an approved indictment is returned, any disposition thereof shall be governed by the same criteria as that for a 49 U.S.C. § 46502(a) offense. See USAM 9-63.135

9-63.200 Destruction of Aircraft and Motor Vehicles and Related Offenses (18 U.S.C. §§ 31 - 35)

The Federal Bureau of Investigation (FBI) investigates incidents involving possible violations of Chapter 2 of Title 18, United States Code. The Terrorism and Violent Crime Section (TVCS) supervises offenses involving 18 U.S.C. §§ 31-35. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the following sections of the Criminal Resource Manual for a more detailed discussion of the law relating to 18 U.S.C. §§ 31-35 offenses

Definitions	Criminal Resource Manual at 1420
Changes to 18 U.S.C. § 32 -- 1984 Aircraft Sabotage Act	Criminal Resource Manual at 1421
Summary of Changes made to 18 U.S.C. § 32 by the Anti-Terrorism Act	Criminal Resource Manual at 1422
Destruction of Aircraft	Criminal Resource Manual at 1423
Extraterritorial Destruction of a Non-United States Civil Aircraft	Criminal Resource Manual at 1424
Threats to Destroy Aircraft	Criminal Resource Manual at 1425
Destruction of Motor Vehicles	Criminal Resource Manual at 1426
Imparting or Conveying False Information (Bomb Hoax)	Criminal Resource Manual at 1427
Bomb Hoax -- Venue	Criminal Resource Manual at 1428
Compromise of Civil Penalty -- 18 U.S.C. § 35(a)	Criminal Resource Manual at 1429
Jury Trial in Civil Action -- 18 U.S.C. § 35(a)	Criminal Resource Manual at 1430

9-63.221 Prosecutive Policy for 18 U.S.C. § 32(b)

Authorization shall be obtained from the Assistant Attorney General of the Criminal Division before an indictment is returned alleging a violation of 18 U.S.C. § 32(b), the Aircraft Sabotage Act. This is consistent with the policy for 49 U.S.C. 46502(b) (formerly 49 U.S.C.App. § 1472(n)), which relates to acts of air piracy committed against foreign civil aircraft which are outside the special aircraft jurisdiction of the United States. *See* USAM 9-2.136 and 9-63.181.

9-63.231 Prosecutive Policy for Threats to Destroy Aircraft

Subsection (c) of Title 18, section 32 prohibits the willful imparting or conveying of threats to do anything to destroy or damage aircraft or aircraft facilities which would violate paragraphs (1) through (5) of subsection (a) or paragraphs (1) through (3) of subsection (b). The threat must be made "with an apparent determination and will to carry the threat into execution."

As with the offense of communicating false information regarding aircraft piracy (*see* USAM 9-63.171), if there is no reason to believe that the individual has the motivation or ability to carry out the threat, there is no reason to expend the resources of the Federal government in criminally prosecuting such an individual. If, however, the threat is issued under circumstances where a reasonable person would believe that it would be carried out and the threat involves an action that would likely endanger the safety of the aircraft, such conduct should be prosecuted vigorously.

9-63.241 Prosecutive Policy for Destruction of Motor Vehicles -- 18 U.S.C. § 33

Section 33 makes it a Federal crime willfully, with intent to endanger the safety of any person on board or anyone he/she believes may be on board, to disable, destroy, tamper with, or place or cause to be placed any explosive or other destructive substance in, upon, or in proximity to any motor vehicle which is used, operated, or employed in interstate or foreign commerce, or its cargo or material used or intended to be used in connection with its operation.

Section 33 of Title 18 is not intended to "federalize" every attack upon a commercial motor vehicle. Damaging a motor vehicle with the intent of injuring the driver or any passenger on board would violate a number of State laws. It is the intent of the Congress that State authorities continue to play the principal role in this area. *See* S.Rep. No. 225, 98th Cong, 1 Sess., at 324, *reprinted in* 1984 U.S. Code Cong. and Adm. News at 3500. Understandings should be reached with State and local authorities reflecting the limited nature of the Federal role. Questions concerning this statute should be directed to the Terrorism and Violent Crime Section, except for questions concerning its application in labor-management disputes, which should be directed to the Labor-Management Unit of the Organized Crime and Racketeering Section. *See* USAM 9-130.200

9-63.251 Prosecutive Policy for Imparting or Conveying False Information (Bomb Hoax) -- 18 U.S.C. § 35

Section 35 of Title 18 provides civil and criminal felony provisions for the conveyance of false information regarding attempts or alleged attempts to destroy, damage, or disable aircraft, aircraft related facilities or motor vehicles and their related facilities.

The Department believes that civil penalties are an effective punishment for the disruption caused by pranksters and jesters who falsely report the presence of bombs or explosives aboard aircraft. Under 18 U.S.C. § 35(a), willfulness need not be shown and the penalty will be recoverable even if the false report was the result of a poor attempt at humor, irritation or fatigue. *See United States v. Rutherford*, 332 F.2d 444 (2d Cir., *cert. denied*, 377 U.S. 994 (1964); *United States v. Sullivan*, 329 F.2d 755 (2d Cir.), *cert. denied*, 377 U.S. 1005 (1964).

The essence of the "impart or convey information" element is the impression created in the minds of those who hear the remark and observe the person making it. These impressions should be tested under the objective standard of what reasonable persons would conclude from the words actually spoken, and from the conduct and demeanor of the speaker. In general, the civil penalty should not be sought where the words amounted to an inquiry, conjecture or speculation, as distinguished from an affirmative imparting of information. Also, if an action is to be initiated, the statement should not be inherently unbelievable and the speaker's conduct and deportment should be consistent with his/her words. However, even if the speaker follows his/her false report with an immediate disclaimer of malevolent intent, he/she has aroused suspicion or doubt which, in the interest of the travelling public's safety, cannot be ignored. A civil penalty should be sought under these circumstances. *See* H.R. Rep. No. 263, 89th Cong., 1 Sess., pp. 1-2 (1965). As a matter of practice, the maximum penalty under the statute should be sought.

In the interest of uniformity, Departmental policy requires that all civil penalty actions under 18 U.S.C. § 35(a) be brought in the district in which the defendant resides. This policy comports with the general practice followed by other Divisions when enforcing civil sanctions.

See the following sections of the Criminal Resource Manual for additional legal issues

Imparting or Conveying False Information (Bomb Hoax)	Criminal Resource Manual at 1427
Imparting or Conveying False Information (Bomb Hoax) -- Venue	Criminal Resource Manual at 1428
Compromise of Civil Penalty -- 18 U.S.C. § 35(a)	Criminal Resource Manual at 1429
Jury Trial in Civil Action -- 18 U.S.C. § 35(a)	Criminal Resource Manual at 1430

9-63.260 Death Penalty

As of September 13, 1994, 18 U.S.C. § 34 carries a viable death penalty for violations of 18 U.S.C. § 32 or § 33 where death results to any person. It is necessary that the Attorney General approve all recommendations by Federal prosecutors to seek the death penalty. *See* USAM 9-10.000 (capital crimes).

9-63.500 Firearms Generally

The Department of the Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF) has primary investigative jurisdiction over violations of the Federal firearms statutes. The Federal Bureau of Investigation, the Postal Service, and the Immigration and Naturalization Service may exercise investigative jurisdiction over violations of Federal firearms statutes when such violations are ancillary to investigations within their jurisdiction. The Terrorism and Violent Crime Section (TVCS) of the Criminal Division exercises supervisory jurisdiction over the Federal firearms statutes (202) 514-0849.

A substantive discussion of firearms statutes is contained in the Criminal Division monograph *Federal Firearms Offenses*, which has been published as part of the Office of Legal Education's Litigation Series, and is also available in USABook format.

The Gun Control Act, The National Firearms Act, and the National Firearms Registration and Transfer Record are also discussed in the Criminal Resource Manual

Department Memorandum -- Staples v. United States	Criminal Resource Manual at 1432
Department Memorandum -- Keeney Memorandum re Bailey	Criminal Resource Manual at 1433
Separate Section 924(c) Counts -- Temporally Discrete Occasions	Criminal Resource Manual at 1434
Post-Conviction Restoration of Civil Rights	Criminal Resource Manual at 1435
Discovery Issues -- National Firearms and Registration Transfer Record -- National Firearms Act	Criminal Resource Manual at 1436

See also USAM 9-60.1100 (discussion of firearms offenses in the context of domestic violence (18 U.S.C. §§ 922(g)(8) and (9)).

9-63.514 Prosecutions Under 18 U.S.C. § 922(g)

In most prosecutions under 18 U.S.C. § 922(g), the defendant is a previously convicted felon who is in possession of a firearm. However, some cases involve weapons possession by a defendant who simultaneously maintains more than one disqualifying status under § 922(g). For example, a defendant may be both a convicted felon and a fugitive from justice, or a convicted felon and an illegal alien. By memorandum dated November 3, 1992 (*see* the Criminal Resource Manual at 1431), the Criminal Division

provided policy guidance to the United States Attorney's Offices on the propriety of charging and convicting a defendant who falls under more than one class of persons disqualified from possessing firearms under § 922(g).

In substance, it is appropriate to charge a defendant who has multiple disqualifying factors with a separate count of unlawful weapons possession under § 922(g) for each disqualifying status. In addition, it is appropriate to present evidence to the factfinder regarding each disqualifying status and to seek a verdict on each separate count. However, because § 922(g) was designed to prohibit the possession of firearms by individuals Congress deemed dangerous, and not to punish such persons solely for having a certain status under the law, a defendant should not be punished separately under two or more separate subdivisions of § 922(g) for a single instance of unlawful weapons possession.

Federal prosecutors should not seek consecutive or concurrent sentences in this situation. Rather, the government should urge the court to "merge" or "combine" the multiple § 922(g) convictions based on different statuses into one conviction for sentencing purposes. See *United States v. Throneburg*, 921 F.2d 654, 657 (6th Cir. 1990) (merging separate convictions under § 922(g)(1) for possession of firearm and ammunition for sentencing purposes); *United States v. Osorio Estrada*, 751 F.2d 128, 135 (2d Cir. 1984), cert. denied, 474 U.S. 830 (1985) ("combining" separate convictions under 21 U.S.C. §§ 848 and 846).

The merger or combining of the convictions under separate subdivisions of § 922(g) achieves several salutary effects. First, it protects the government's interest in safeguarding the validity of each conviction on appeal, should the defendant challenge his inclusion in one of the disqualifying statuses charged in the indictment. See *United States v. Aiello*, 771 F.2d 621, 634 (2d Cir. 1985) (procedure provides for reactivation of combined or merged conviction if appellate court reverses single conviction for which defendant was sentenced). Second, it assures that the defendant is not punished inappropriately solely for having a certain status under the law. See *United States v. Winchester*, 916 F.2d 601, 605-08 (11th Cir. 1990) (ruling that it is inappropriate to sentence a defendant with two disqualifying statuses to consecutive terms of imprisonment for a single instance of unlawful weapons possession).

9-63.515 Scienter Standards in National Firearms Act Violations and Other Firearms Offenses

In *Staples v. United States*, 114 S. Ct. 1793, 1804 (1994), the Supreme Court ruled that, to obtain a conviction for an unregistered automatic weapon, in violation of the National Firearms Act (NFA) (26 U.S.C. § 5861(d)), the government must prove that the defendant knew of the features or characteristics of the weapon that brought it within the scope of the criminal proscription. In the wake of the *Staples* decision, the Solicitor General's Office has concluded that the government should take the position that in all cases prosecuted under the NFA, the government must prove that the defendant knew the features of the firearm that brought it within the scope of the Act. The Criminal Division has issued a memorandum to all United States Attorneys explaining this policy, and has provided suggested jury instructions regarding the knowledge element of a violation of the NFA.

In addition to NFA violations, the Criminal Division believes that the same scienter standard should apply to 18 U.S.C. § 922(o), which makes it unlawful to transfer or possess a machinegun. In such cases, prosecutors should anticipate the requirement that they must prove the defendant's knowledge that the firearm at issue was a machinegun, and they should accede to defense requests for an instruction requiring a finding of such knowledge.

9-63.516 Charging Machinegun Offenses Under 18 U.S.C. § 922(o), Instead of Under the National Firearms Act

Section 922(o) of Title 18 makes it unlawful to transfer or possess a machinegun made after May 19, 1986. In addition, under the NFA, it is unlawful to manufacture or possess a machinegun without first registering it with the Secretary of the Treasury and paying applicable taxes. 26 U.S.C. §§ 5822, 5861. As a result of the enactment of 18 U.S.C. § 922(o), the Secretary of the Treasury no longer will register or accept any tax payments to make or transfer a machinegun made after May 19, 1986. Accordingly, because it is impossible to comply with the registration and taxation provisions in the NFA, prosecutors should charge the unlawful possession or transfer of a machinegun made after May 19, 1986 under § 922(o).

9-63.517 Supreme Court Decision in *Bailey v. United States*

Under 18 U.S.C. § 924(c)(1), a person who "during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm" is subject to a mandatory minimum sentence. In *Bailey v. United States*, 116 S. Ct. 501 (1995), the Supreme Court held that conviction of a defendant for "use" of a firearm under § 924(c) requires "evidence sufficient to show an *active employment* of the firearm by the defendant." *Id.* at 505. The Court rejected the government's contention that storing a weapon near drugs or placing a firearm where it is available for use during a drug transaction constitutes "use" of a firearm under § 924(c). The Court explained that "use" under § 924(c)(1) only "includes brandishing, displaying, bartering, striking with, and most obviously, firing or attempting to fire, a firearm." *Id.* at 508.

The decision in *Bailey* substantially altered prior law concerning the evidence necessary to establish "use" under § 924(c). To assist Federal prosecutors in dealing with the many ramifications of the decision, the Criminal Division sent a memorandum to all United States Attorneys, dated December 13, 1995. Please refer to this memorandum for advice on *Bailey*-related issues, including challenges to prior convictions, and current and future cases prosecuted under § 924(c).

9-63.900 Federal Explosives Statutes -- 18 U.S.C. §§ 841 - 848

For a discussion of the investigative jurisdiction for federal explosive statutes contained in 18 U.S.C. §§ 841-848, see the Criminal Resource Manual at 1438. Supervisory authority for the explosives statutes rests with the Terrorism and Violent Crime Section (TVCS) (202) 514-0849.

Further information is contained in the Criminal Resource Manual

Federal Explosives Statutes -- 18 U.S.C. §§ 841 - 848	Criminal Resource Manual at 1437
Explosive Materials -- Unlawful Acts -- 18 U.S.C. § 842	Criminal Resource Manual at 1439
Scienter for offenses under § 842	Criminal Resource Manual at 1440
Discussion of Selected § 842 Offenses	Criminal Resource Manual at 1441
Plastic Explosives Convention	Criminal Resource Manual at 1442
Other Statutes Affected -- 18 U.S.C. § 842 Cases	Criminal Resource Manual at 1443
Penalty Provisions for § 842 Offenses	Criminal Resource Manual at 1444
Discussion of Selected § 844 Offenses	Criminal Resource Manual at 1445
Other Statutes Affected -- 18 U.S.C. § 844 Offenses	Criminal Resource Manual at 1446

9-63.902 Restraint in Exercise of Federal Jurisdiction

The Criminal Division interprets 18 U.S.C. § 848 as a statement of congressional intent that the Federal government -- absent a specific Federal interest -- will not become involved in bombing matters that can be adequately investigated and prosecuted by local authorities. This interpretation of congressional intent is confirmed by the congressional hearings which led to passage of the Federal explosives statute, wherein Administration witnesses testified that Federal jurisdiction would be exercised only upon a determination by the Attorney General or his/her designee that a Federal prosecution is in the public interest. The members of the congressional committees were explicitly assured that the Department of Justice would not displace the efforts of State and local officials in bombing matters. Accordingly, Federal prosecutors should coordinate with state/local law enforcement authorities before commencing a Federal prosecution.

9-63.922 Limitation on Use of Section 844(e) (Bomb Threat)

Section 844(e) is a specific intent offense that prohibits the use of the mails, telephone, or other instruments of interstate or foreign commerce to make threats or convey false information. As amended by the Antiterrorism Act of 1996, § 724, 110 Stat. at 1300, section 844(e) also prohibits whoever, "in or affecting interstate or foreign commerce," makes false bomb or arson reports. *Id.*

The provisions of 18 U.S.C. § 844(e) should not be used unless a substantial Federal interest is involved. For example, section 844(e) should not be used in a situation involving a bomb threat by a student against a school, or by an employee of an organization other than the Federal government. These types of cases should be deferred to State or local authorities whenever possible. The Federal Bureau of Investigation has been instructed to decline investigation of § 844(e) violations unless the identity of the offender is readily ascertainable or known, or a pattern or plan of these offenses appears to exist.

9-63.1100 Tampering with Consumer Products -- 18 U.S.C. § 1365

For a discussion of the investigative jurisdiction for consumer product tampering offenses, see the Criminal Resource Manual at 1447. The Terrorism and Violent Crime Section (TVCS) has supervisory authority over consumer product tampering offenses. Appropriate attorneys in TVCS can be reached at (202) 514-0849.

See the following sections of the Criminal Resource Manual for more information relating to tampering with consumer products

Tampering with Consumer Products -- The Offenses	Criminal Resource Manual at 1448
Tampering with a Consumer Product	Criminal Resource Manual at 1449
Tainting a Consumer Product	Criminal Resource Manual at 1450
Communicating False Information about a Consumer Product	Criminal Resource Manual at 1451
Threatening to Tamper with a Consumer Product	Criminal Resource Manual at 1452
Conspiracy to Tamper with a Consumer Product	Criminal Resource Manual at 1453
Tampering with Consumer Products -- Definitions	Criminal Resource Manual at 1454

9-63.1110 Tampering with Consumer Products -- Prosecutive Policy

The Federal Anti-Tampering Act, Pub.L. No. 98-127, 97 Stat. 831, October 13, 1983, created section 1365 of Title 18, United States Code, which makes it an offense to tamper with consumer products or to engage in related conduct. It was enacted in response to the Tylenol poisoning deaths in the Chicago area in the fall of 1982.

As in the past, State and local authorities will continue to play a large and significant role in the investigation and prosecution of alleged tampering. The Federal Anti-Tampering Act does not preempt prosecution by State and local authorities for conduct which would be in violation of 18 U.S.C. § 1365. Hence, referral to such authorities is appropriate when no significant Federal interest requires vindication (e.g., in an isolated instance, when there is no serious impact upon commerce, when the wrongdoer has been identified and State or local authorities are prepared to handle the case, etc.).

9-63.1200 Gangs and Gang-Related Youth Violence -- Approval/Consultation Requirements

There are no specific notification, consultation, or prior approval requirements that apply exclusively to gang investigations or prosecutions. However, there are some statutes which may be used in many different types of cases, including gang violence cases, which require prior approval, consultation, or notification. They include the following:

- *RICO* (18 U.S.C. § 1961 *et seq.*): Prosecutors must obtain the prior approval of the Criminal Division, Organized Crime and Racketeering Section (OCRS). *See* USAM 9-110.320.
- *Violent Crimes in Aid of Racketeering* (18 U.S.C. § 1959): Prosecutors must obtain the prior approval of the Criminal Division, Organized Crime and Racketeering Section (OCRS). *See* USAM 9-110.801.
- *"Three Strikes"* (18 U.S.C. § 3559(c)): When filing a Three Strikes case, send an Urgent Report to the attention of the Director of the Executive Office for United States Attorneys (EOUSA). The Terrorism and Violent Crime Section (TVCS) is available to assist in handling the issues arising out of the Three Strikes provision. Contact TVCS attorneys at (202) 514-0849. *See* USAM 9-60.020 for additional information about "Three Strikes."

In a June 19, 1995 memorandum from the Assistant Attorney General, changes were made to the USAM relating to notification, consultation and approval requirements. The changes which may arise in the gang context include:

Consultation is no longer required in:

- Hobbs Act cases (18 U.S.C. § 1951) in which local prosecutor objects to prosecution
- Murder for Hire (18 U.S.C. § 1958) in which local prosecutor objects to prosecution

Criminal Division approval to proceed against juvenile as an adult is no longer required. In place of Department approval, notification to Criminal Division is required prior to filing any motion to transfer to adult proceeding (notify Terrorism and Violent Crime Section (TVCS) attorneys. *See* USAM 9-8.000 *et seq.* (Juveniles).

Consultation is no longer required prior to charging defendant with the Continuing Criminal Enterprise (CCE) statute's (21 U.S.C. § 848) mandatory life sentence provision.

See the following sections of the Criminal Resource Manual for additional information about gang investigations and prosecutions

Resource Material	Criminal Resource Manual at 1455
Gang Migration/Intelligence Sharing	Criminal Resource Manual at 1456
Criminal Street Gangs Statute -- 18 U.S.C. § 521	Criminal Resource Manual at 1457
Sample Enhanced Penalty Information -- 18 U.S.C § 521	Criminal Resource Manual at 1458
Department Memorandum -- Anti-Violent Crime Initiative	Criminal Resource Manual at 1459

9-63.1205 Death Penalty Protocol

A number of statutes used in gang prosecutions require compliance with the Department's "Death Penalty Protocol," which was established on January 27, 1995. In *all cases for which death is a possible penalty* (regardless of whether a district intends to seek the death penalty), a prosecution memorandum and death penalty evaluation must be submitted. See USAM 9-10.000.

9-63.1220 Youth Violence

Experience has shown that prosecutors cannot afford to ignore the juvenile gang members. If only the adult members of the gang are investigated and prosecuted, juveniles will fill the void and the gang will survive. If a gang is being prosecuted Federally, it may also be ill-advised to proceed with local prosecutions of the juveniles, unless the juveniles are pleading guilty and cooperating. A concurrent State or local prosecution requires repeated exposure of witnesses, which presents security concerns.

In a May 13, 1996 memorandum from the Attorney General (and others) to all United States Attorney Offices and Department of Justice law enforcement agencies a youth violence initiative was announced. The memorandum provides specific guidance to United States Attorneys' Offices. Prosecutors involved in the implementation of the strategies outlined in this memorandum are encouraged to call upon the expertise of the various components of the Department, including the Terrorism and Violent Crime Section, and to share successful strategies with the Counsellor to the Attorney General for Youth Violence, Kent Markus, (202) 514-3008.

See also USAM 9-8.000 (Juveniles).

**PROTECTION OF GOVERNMENT
FUNCTIONS -- COUNTERFEITING, POSTAL
VIOLATIONS, FALSE PERSONATION
AND FALSE IDENTIFICATION**

- 9-64.111 Counterfeiting -- 18 U.S.C. § 489 -- Prosecution Policy
 9-64.133 Prosecution Policy -- 18 U.S.C. § 495 or § 510
 9-64.134 Prosecution Policy -- Interspousal Forgery of Government Checks
 9-64.200 Postal Offenses
 9-64.300 False Personation
 9-64.400 False Identification -- 18 U.S.C. § 1028
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9-64.111 Counterfeiting -- 18 U.S.C. § 489 -- Prosecution Policy

Sections 489 and 475 of Title 18 are in essence copyright statutes. However, in the past the Department has sought to limit their application--to avoid a multitude of prosecutions for trivial violations. Prosecution under 18 U.S.C. § 489 has been limited to those instances in which the token or device in question has some potential for being mistaken for a genuine coin by the ignorant or unwary. In this regard, the Department and Secret Service have agreed that no prosecution should be undertaken under 18 U.S.C. § 489 for a token or device which is more than twice the size of a silver dollar or less than half the size of a dime. In gauging whether a token or device which is more than half the size of a dime but less than the size of a silver dollar is appropriate for prosecution, the additional factors of color and design should be closely scrutinized. The Fraud Section of the Criminal Division has supervisory authority over these statutes.

The following sections of the Criminal Resource Manual contain additional information related to counterfeiting prosecutions under 18 U.S.C. § 478 or 18 U.S.C. § 489

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| Counterfeiting -- 18 U.S.C. § 489 | Criminal Resource Manual at 1460 |
| Counterfeit Foreign Obligations or Securities -- 18 U.S.C. § 478 | Criminal Resource Manual at 1461 |
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9-64.133 Prosecution Policy -- 18 U.S.C. § 495 or § 510

Since the enactment of 18 U.S.C. § 510, it has been the position of the Criminal Division that 18 U.S.C. § 510 merely supplements 18 U.S.C. § 495 and that it was neither drafted by the Department nor enacted by the Congress for the purpose of repealing 18 U.S.C. § 495. As a result, in cases in which criminal activities have fallen under the proscription of 18 U.S.C. §§ 495 and 510, the Criminal Division has advised that the case may be prosecuted under either statute.

Prosecutive decisions should be made on a case-by-case basis in accordance with the requirements of the particular case and Department policy. Thus, for example, a forgery of a Treasury check with a face value under \$500, while prosecutable as a misdemeanor under 18 U.S.C. § 510(c), could nevertheless be prosecuted as a felony under 18 U.S.C. § 495 if the defendant is a repeat offender or involved in ring activity. A case involving the forgery of several instruments exceeding \$500 in aggregate value could be brought under the misdemeanor provision of 18 U.S.C. § 510(c) if the facts warrant (by not including all the instruments in the charge), or if brought under 18 U.S.C. § 495 or § 510(a), could be plea negotiated to a misdemeanor under 18 U.S.C. § 510(c). As a general rule, however, when the choice is between charging under the felony provisions of either 18 U.S.C. § 495 or § 510, the Criminal Division prefers charging under 18 U.S.C. § 510 because of the greater penalties available for violations of that section.

The primary thrust of the Department's enforcement program under 18 U.S.C. §§ 495 and 510 is aimed at the organized rings of check forgers and the professional forger who engages in multiple and repeated violations. Efforts should be made to obtain state or local prosecution of persons who engage in a relatively small number of forgeries and who have no prior history of this type of criminal conduct. The Fraud Section, Criminal Division, has supervisory authority over these statutes.

For additional information relating to prosecutions under 18 U.S.C. § 495 and 18 U.S.C. § 510, see the following sections of the Criminal Resource Manual

Forged Endorsements Charged Under 18 U.S.C. §§ 495 or 510	Criminal Resource Manual at 1462
Elements of Offenses -- 18 U.S.C. § 495	Criminal Resource Manual at 1463
Sections 495 and 510 Distinguished	Criminal Resource Manual at 1464

9-64.134 Prosecution Policy -- Interspousal Forgery of Government Checks

It is the general policy of the Department not to prosecute for the interspousal forgery of government checks, because this type of forgery usually emanates from a domestic dispute and is better resolved through either state prosecution or civil litigation. An exception to the general rule against federal prosecution exists where there is independent evidence of intent to defraud, e.g., a court order prohibiting negotiation of a Treasury check, or where there are aggravating circumstances present.

9-64.200 Postal Offenses

The Domestic Security Section (DSS) has supervisory authority over violations of 18 U.S.C. § 2114 and § 1715 and, when the nonmailable article is an explosive or is intended to cause violent injury to a person or property, § 1716.

See the following sections of the Criminal Resource Manual for a discussion of the law relating to various postal violations

Postal Money Orders -- 18 U.S.C. § 500	Criminal Resource Manual at 1465
Robbery or Theft of Mail, Money or Property of the United States -- 18 U.S.C. § 2114	Criminal Resource Manual at 1466
Use of Magistrate to Reduce Postal Violation Caseload	Criminal Resource Manual at 1467
Misdemeanor for Postal Crimes	Criminal Resource Manual at 1468

9-64.300 False Personation

Title 18 U.S.C. § 912 prohibits false personation of officers or employees of the United States. The Fraud Section of the Criminal Division has supervisory authority this statute.

For more information on prosecutions relating to False Personation, see the following sections of the Criminal Resource Manual

False Personation -- Purpose of the Statute	Criminal Resource Manual at 1469
False Personation -- Elements of the Offenses	Criminal Resource Manual at 1470
False Personation -- Methods of Proof	Criminal Resource Manual at 1471
Definition -- "Falsely"	Criminal Resource Manual at 1472
Element Issue -- 18 U.S.C. § 912 -- Intent to Defraud	Criminal Resource Manual at 1473
Element of 18 U.S.C. § 912 -- "Acts as Such"	Criminal Resource Manual at 1474

Element of 18 U.S.C. § 912 -- "Acts as Such"	Criminal Resource Manual at 1474
Element of 18 U.S.C. § 912 -- Demanding or Obtaining a Thing of Value	Criminal Resource Manual at 1475
Element Issue -- 18 U.S.C. § 912 -- "Acting Under Authority"	Criminal Resource Manual at 1476
Criminal Division Recommendation -- 18 U.S.C. § 912	Criminal Resource Manual at 1477

9-64.400 False Identification -- 18 U.S.C. § 1028

The False Identification Crime Control Act of 1982 created 18 U.S.C. § 1028 (Fraud and Related Activity in Connection with Identification Documents) and 18 U.S.C. § 1738 (Mailing Private Identification Documents without a Disclaimer).

Sections 1028 and 1738 of Title 18 do not specifically assign investigative responsibility guidelines for the federal investigative agencies. Primary investigative authority for state and foreign government identification documents is assigned to the Secret Service. In regard to 18 U.S.C. § 1738, the Postal Inspection Service has investigative responsibility when the private identification document was transported through the United States mails; otherwise the FBI has investigative jurisdiction over 18 U.S.C. § 1738 violations. The Fraud Section of the Criminal Division has supervisory authority over cases involving prosecutions under sections 1028 and 1738.

See the following sections of the Criminal Resource Manual for additional information related to prosecutions involving False Identification:

False Identification -- Overview	Criminal Resource Manual at 1501
Prosecuting Violations	Criminal Resource Manual at 1502
Identification Documents	Criminal Resource Manual at 1503
Purpose of 18 U.S.C. § 1028	Criminal Resource Manual at 1504
Covered Instruments	Criminal Resource Manual at 1505
Governmental Issuers	Criminal Resource Manual at 1506
Types of Identification Documents	Criminal Resource Manual at 1507
Specifically Mentioned Identification Documents	Criminal Resource Manual at 1508
Operative Terms	Criminal Resource Manual at 1509
Culpable States of Mind	Criminal Resource Manual at 1510
Critical Nonjurisdictional Terms	Criminal Resource Manual at 1511
Prohibited Acts	Criminal Resource Manual at 1512
Federal Jurisdiction	Criminal Resource Manual at 1513
United States Identification Document	Criminal Resource Manual at 1514
United States Document-Making Implement	Criminal Resource Manual at 1515
Possession With the Intent to Defraud	Criminal Resource Manual at 1517
Is In or Affects Interstate or Foreign Commerce	Criminal Resource Manual at 1518
Transported in the Mail	Criminal Resource Manual at 1519
New Offense -- Related to Unlawful Interception of Communications Under 18 U.S.C. § 2516	Criminal Resource Manual at 1520
Penalties	Criminal Resource Manual at 1521
Venue	Criminal Resource Manual at 1522
Unit of Prosecution -- Selection of Counts	Criminal Resource Manual at 1523

Exceptions for Law Enforcement Activities
False Identification -- Immigration Matters --
18 U.S.C. § 1541-1546

Criminal Resource Manual at 1524
Criminal Resource Manual at 1525

9-65.000
PROTECTION OF
GOVERNMENT OFFICIALS

- 9-65.100 Protection of the President, Presidential Staff, and Certain Secret Service Protectees
 - 9-65.110 Protection of the President and Secret Service Protectees -- Notification Requirement
 - 9-65.140 Publicity Concerning Threats Against Government Officials
 - 9-65.200 Threats Against the President and Successors to the Presidency; Threats Against Former Presidents; and Certain Other Secret Service Protectees
 - 9-65.300 Presidential Assassination Statute -- 18 U.S.C. § 1751
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 - 9-65.402 Presidential Visit-United States Attorney's Responsibility
 - 9-65.463 Competency-Utilization of Federal Facility
 - 9-65.500 Interference with or Obstruction of the Secret Service -- 18 U.S.C. § 3056(d)
 - 9-65.600 Assaults on and Kidnapping of Federal Officers
 - 9-65.611 General Prosecutive Policy Under 18 U.S.C. § 111
 - 9-65.700 Congressional, Cabinet, and Supreme Court Assassination, Kidnapping, and Assault (18 U.S.C. § 351)
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 - 9-65.810 Prosecutive Policy -- Preference for Local Disposition
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 - 9-65.880 Demonstrations
 - 9-65.881 Demonstrations -- Procedures
 - 9-65.882 Demonstrations -- Investigative Decisions by United States Attorneys
 - 9-65.900 Protection of a Member of a Federal Official's Family (18 U.S.C. § 115)
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9-65.100 Protection of the President, Presidential Staff, and Certain Secret Service Protectees

The primary statutes relevant to protection of the President and other Secret Service protectees are as follows: 18 U.S.C. §§ 871, 879, 1751, 1752, and 3056(d). Other relevant statutes include: 18 U.S.C. §§ 115, 351, and 2332b. Supervisory authority over 18 U.S.C. §§ 871, 879, 1751, and 3056(d) rests with the Terrorism and Violent Crime Section (TVCS). Authority over 18 U.S.C. § 1752 rests with the Office of Enforcement Operations of the Criminal Division. For a discussion of the investigative jurisdiction, *see* the Criminal Resource Manual at 1526 (investigative jurisdiction generally) and 1527 (Agreement Between the FBI and the Secret Service).

A general discussion of statutes relating to the protection of the President is in the Criminal Resource Manual at 1525.

9-65.110 Protection of the President and Secret Service Protectees -- Notification Requirement

TVCS should be telephonically notified immediately upon the initiation of any investigation under 18 U.S.C. § 1751. In determining whether a Presidential or Vice-Presidential staff member is a protected person for purposes of determining whether a violation of § 1751(a) (2) has occurred, TVCS should be contacted to verify whether the person was appointed under section 105(a)(2)(A) of Title 3, United States Code.

9-65.140 Publicity Concerning Threats Against Government Officials

Media attention given to certain kinds of criminal activity seems to generate further criminal activity; this is especially true concerning Presidential threats which is well documented by data previously supplied by the United States Secret Service. For example, in the six-month period following the March 30, 1981, attempt on the life of President Reagan, the average number of threats against protectees of the Secret Service increased by over 150 percent from a similar period during the prior year.

Of the individuals who come to the Secret Service's attention as creating a possible danger to one of their protectees, approximately 75 percent are mentally ill. The Secret Service is particularly concerned that media attention given to cases involving threats against protectees may provoke violent acts from such mentally unstable persons.

The United States Attorney must carefully consider the possible adverse effect before releasing information to the public concerning cases and matters involving threats against the President (18 U.S.C. § 871) as well as other Secret Service protectees (18 U.S.C. § 879). This exercise of caution should extend to secondary sources of press information as well (search warrants, affidavits, etc.), and the use of tools such as sealed affidavits should be considered.

See also Media Guidelines, USAM 1-7.000 et seq., and 28 C.F.R. § 50.2.

9-65.200 Threats Against the President and Successors to the Presidency; Threats Against Former Presidents; and Certain Other Secret Service Protectees

The Terrorism and Violent Crime Section of the Criminal Division has supervisory authority over 18 U.S.C. §§ 871 and 879 cases. As great caution must be taken in matters relating to the security of the persons protected by 18 U.S.C. § 871, United States Attorneys are encouraged to consult with the Terrorism and Violent Crime Section (TVCS) of the Criminal Division (202/514-0849) when they have doubts on the prosecutive merit of a case. For the same reason, dismissal of complaints under 18 U.S.C. § 871, when the defendant is in custody under the Mental Incompetency Statutes (18 U.S.C. §§ 4244, 4246), requires approval from TVCS. In other cases, United States Attorneys must consult prior to dismissing a count involving, or entering into any sentence commitment or other case settlement involving a § 871 charge.

See the following sections of the Criminal Resource Manual for a discussion of case and other law defining "threat"

Against the President and Successors to the Presidency	<u>Criminal Resource Manual at 1528</u>
Against Former Presidents and Certain Other Secret Service Protectees	<u>Criminal Resource Manual at 1529</u>
Intent to Carry Out Threat -- Secret Service Protectees	<u>Criminal Resource Manual at 1530</u>
Conditional Threat -- Secret Service Protectees	<u>Criminal Resource Manual at 1531</u>
Against Former Presidents, and Certain Other Secret Service Protectees	<u>Criminal Resource Manual at 1532</u>

9-65.300 Presidential Assassination Statute -- 18 U.S.C. § 1751

Title 18 U.S.C. § 1751 makes it a federal offense for anyone to assault, kill or kidnap, or attempt or conspire to kill or kidnap the President and Vice President of the United States, among others. The Terrorism and Violent Crime Section of the Criminal Division has supervisory authority over matters involving section 1751.

See the following sections of the Criminal Resource Manual for additional materials relating to the Presidential Assassination Statute

Presidential Assassination Statute -- 18 U.S.C. § 1751 -- Constitutionality	<u>Criminal Resource Manual at 1533</u>
Investigative Responsibility -- 18 U.S.C. § 1751(i)	<u>Criminal Resource Manual at 1534</u>
Killing the President -- 18 U.S.C. § 1751(a)	<u>Criminal Resource Manual at 1535</u>
Murder -- Definition and Degrees	<u>Criminal Resource Manual at 1536</u>
Manslaughter Defined	<u>Criminal Resource Manual at 1537</u>
Kidnapping the President -- 18 U.S.C. § 1751(b)	<u>Criminal Resource Manual at 1538</u>
Elements -- Kidnapping the President -- 18 U.S.C. § 1751(b)	<u>Criminal Resource Manual at 1539</u>
Attempting to Kill or Kidnap the President -- 18 U.S.C. § 1751	<u>Criminal Resource Manual at 1540</u>
Conspiracy to Kill or Kidnap the President -- 18 U.S.C. § 1751	<u>Criminal Resource Manual at 1541</u>

Assault -- 18 U.S.C. § 1751(e)	<u>Criminal Resource Manual at 1542</u>
Definitions -- 18 U.S.C. § 1751(f)	<u>Criminal Resource Manual at 1543</u>
Rewards -- 18 U.S.C. § 1751(g)	<u>Criminal Resource Manual at 1544</u>
Suspension of State and Local Jurisdiction -- 18 U.S.C. § 1751(h)	<u>Criminal Resource Manual at 1545</u>

9-65.400 Protection of Temporary Residences and Offices of the President and Other Secret Service Protectees (18 U.S.C. § 1752)

The Secret Service will conduct investigations of alleged violations of Title 18 U.S.C. § 1752 and forward copies of all investigative reports to the United States Attorney and to the Criminal Division. The Office of Enforcement Operations, Criminal Division, has supervisory responsibility for Title 18 U.S.C. § 1752. Inquiries regarding violations of that statute, which violations generally take the form of trespass-like conduct, should be directed to the Office of Enforcement Operations, while inquiries regarding actual or intended violent conduct or acts of terrorism should be directed to the Terrorism and Violent Crime Section, Criminal Division. In particular, the Terrorism and Violent Crime Section has supervisory responsibility for violent crimes against the President or other Secret Service protectees, and over acts of terrorism directed at temporary residences and offices of the President or other protectees; such conduct may constitute violations of § 1752 in addition to the applicable federal felony statutes.

For additional information relating to § 1752, see the following sections of the Criminal Resource Manual:

Protection of Temporary Residences and Offices of the President and Other Secret Service Protectees -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1546</u>
Constitutionality -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1547</u>
Designation of Protected Premises -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1548</u>
Penalties, Venue, Effect on Other Laws -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1549</u>
Local Law Enforcement -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1550</u>
Sectional Analysis -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1551</u>
Other Elements -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1552</u>
Designated Temporary Residences or Offices -- 18	<u>Criminal Resource Manual at 1553</u>

U.S.C. § 1752	
Restricted Areas -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1554</u>
Disruption of Government Business -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1555</u>
Interference With Ingress and Egress -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1556</u>
Violence Within Premises -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1557</u>
Other Considerations -- 18 U.S.C. § 1752	<u>Criminal Resource Manual at 1558</u>
General Services Administration	<u>Criminal Resource Manual at 1559</u>
Secret Service Uniformed Division	<u>Criminal Resource Manual at 1560</u>

9-65.402 Presidential Visit-United States Attorney's Responsibility

When a Presidential visit is scheduled, the United States Attorney should be alert to indications of plans by individuals or groups which may result in activity in violation of Title 18 U.S.C. § 1752. If such activity is anticipated, the United States Attorney should, after consultation with the Secret Service, consider whether preventive measures such as a temporary restraining order would be appropriate, and whether the United States Attorney's Office should be represented at the scene. The United States Attorney should advise the Office of Enforcement Operations of the Criminal Division as early as practicable of the anticipated activity. The United States Attorney should also maintain contact with the appropriate Federal, state, and local law enforcement agencies in order to ensure that background information on the individuals or groups concerned is properly disseminated.

Although state and local ordinances differ as to the exact extent of their coverage, conduct proscribed in 18 U.S.C. § 1752 generally is prohibited in some form at the state or local level. Section 1752 establishes a Federal offense, thus creating Secret Service jurisdiction to prevent such activities.

9-65.463 Competency-Utilization of Federal Facility

Because it is of the utmost importance that the President be fully protected at all times against deranged individuals, if the mental competency of a violator of section 1752 is in question, commitment to an appropriate Federal Medical Center, identified through coordination with the Secret Service, is recommended as an exception to the policy favoring utilization of the services of the local or nearest available psychiatrist or hospital. *But see In re Newchurch*, 807 F.2d 404 (5th Cir. 1986), as discussed in the Criminal Resource Manual at 1561.

9-65.500 Interference with or Obstruction of the Secret Service -- 18 U.S.C. § 3056(d)

Section 3056(d) of Title 18 prohibits knowingly and willfully obstructing, resisting, or interfering with a Federal law enforcement agent who is engaged in protective functions. The Secret Service will conduct investigations of alleged violations of 18 U.S.C. § 3056(d) and forward copies of all investigative reports to the United States Attorney and to the Terrorism and Violent Crime Section (TVCS) of the Criminal Division. The Terrorism and Violent Crime Section has supervisory responsibility over 18 U.S.C. § 3056(d).

For an additional discussion of this offense, *see* the Criminal Resource Manual at 1562.

9-65.600 Assaults on and Kidnapping of Federal Officers

The Terrorism and Violent Crime Section has supervisory authority over 18 U.S.C. §§ 111 and 1114. *See* the Criminal Resource Manual at 1563 for a discussion of the investigative jurisdiction. *See also*:

Assaults in General -- 18 U.S.C. §§ 111 and 1114	<u>Criminal Resource Manual at 1564</u>
Forcible Act Required -- 18 U.S.C. § 111 Threats	<u>Criminal Resource Manual at 1565</u>
Knowledge of Victim's Status as a Federal Officer -- 18 U.S.C. §§ 111 and 1114	<u>Criminal Resource Manual at 1566</u>
Applicability to Informants -- 18 U.S.C. §§ 111 and 1114	<u>Criminal Resource Manual at 1567</u>
Assaults on Specific Officials -- 18 U.S.C. § 1114	<u>Criminal Resource Manual at 1568</u>
Assaults on Staff Members of FCI's	<u>Criminal Resource Manual at 1569</u>
Assaults on Postal Employees -- 18 U.S.C. § 1114	<u>Criminal Resource Manual at 1570</u>
Assaults Between Postal Employees	<u>Criminal Resource Manual at 1571</u>
Assaults Upon Internal Revenue Service Personnel	<u>Criminal Resource Manual at 1572</u>
Kidnapping of Federal Employee/Officer -- 18 U.S.C. § 1201(a)(5)	<u>Criminal Resource Manual at 1573</u>
Kidnapping -- Description of Offense -- 18 U.S.C. § 1201(a)(5)	<u>Criminal Resource Manual at 1574</u>
Case Law -- 18 U.S.C. §§ 111 and 1114	<u>Criminal Resource Manual at 1575</u>

9-65.611 General Prosecutive Policy Under 18 U.S.C. § 111

Title 18 U.S.C. § 1114 extends the protection of 18 U.S.C. § 111 to a diverse collection of

Federal government personnel. The primary focus of the Department's enforcement program is on those employees who have law enforcement duties which regularly expose them to the public (e.g., agents of the FBI, DEA, ATF, Secret Service, IRS, Customs, Postal Inspectors, etc.) and on staff members of Federal correctional institutions. Forcible acts against these categories Federal employees should be prosecuted vigorously. By contrast, offenses against other categories of Federal employees should be referred to the local prosecutor unless the offense is particularly aggravated or there are other unusual factors present justifying Federal action.

9-65.700 Congressional, Cabinet, and Supreme Court Assassination, Kidnapping, and Assault (18 U.S.C. § 351)

Section 351(g) of Title 18, United States Code, assigns investigative jurisdiction over these offenses to the Federal Bureau of Investigation (FBI). The Terrorism and Violent Crime Section has supervisory authority over 18 U.S.C. § 351, and should be notified telephonically immediately upon the initiation of an investigation.

See the following sections of the Criminal Resource Manual for a discussion of the law relating to the assassination, kidnapping and assault of congressional, cabinet and Supreme Court members

Background -- 18 U.S.C. § 351	<u>Criminal Resource Manual at 1601</u>
Killing Individuals Designated in 18 U.S.C. § 351(a)	<u>Criminal Resource Manual at 1602</u>
Member of Congress -- Defined	<u>Criminal Resource Manual at 1603</u>
Member of Congress-Elect -- Defined	<u>Criminal Resource Manual at 1604</u>
Kidnapping -- 18 U.S.C. § 351(b)	<u>Criminal Resource Manual at 1605</u>
Attempt to Kill or Kidnap -- 18 U.S.C. § 351(c)	<u>Criminal Resource Manual at 1606</u>
Dangerous Proximity Test	<u>Criminal Resource Manual at 1607</u>
"Any Act or Endeavor" Test	<u>Criminal Resource Manual at 1608</u>
Conspiracy to Kill or Kidnap -- 18 U.S.C. § 351(d)	<u>Criminal Resource Manual at 1609</u>
Assault -- 18 U.S.C. § 351(e)	<u>Criminal Resource Manual at 1610</u>
Federal Investigative and Prosecutive Jurisdiction -- 18 U.S.C. § 351 -- Effect on State and Local Authority	<u>Criminal Resource Manual at 1611</u>
Authorization for Interception of Wire or Oral Communications -- 18 U.S.C. § 2516	<u>Criminal Resource Manual at 1612</u>

Extraterritoriality -- 18 U.S.C. § 351	<u>Criminal Resource Manual at 1613</u>
Posse Comitatus Waiver -- 18 U.S.C. § 351	<u>Criminal Resource Manual at 1614</u>

9-65.800 Protection of Foreign Officials, Internationally Protected Persons (IPPs) and Official Guests

United States Attorneys should immediately furnish information indicating the existence of any hazard or planned, deliberate attack or conspiracy against foreign officials to the FBI Field Office for FBI dissemination to the United States Secret Service, Department of State, and other interested persons and agencies. United States Attorneys should also provide ongoing assistance to the United States Secret Service in coordinating and obtaining the support of local agencies in the provision of protective services. Supervisory authority over statutes governing the protection of foreign officials, internationally protected persons (IPPs), and official guests rests with the Terrorism and Violent Crime Section (TVCS). Supervisory authority for 18 U.S.C § 970 is divided: The Office of Enforcement Operations has supervisory authority over 18 U.S.C. § 970(a); TVCS has supervisory authority over Section 970(b). For a discussion of investigative jurisdiction, *see* the Criminal Resource Manual at 1616.

For a discussion of the law in this area see the following sections of the Criminal Resource Manual

Protection of Foreign Officials -- Internationally Protected Persons and Official Guests -- 18 U.S.C. §§ 112, 878, 970, 1116, 1117 and 1201	<u>Criminal Resource Manual at 1615</u>
Extraterritorial Criminal Jurisdiction -- 18 U.S.C. §§ 112, 878, 970, 1116, 1117 and 1201	<u>Criminal Resource Manual at 1617</u>
Definitions -- 18 U.S.C. §§ 112, 878, 970, 1116, 1117 and 1201	<u>Criminal Resource Manual at 1618</u>
Application of Definitional Provisions To Officials of the Coordination Council for North American Affairs -- Taiwan	<u>Criminal Resource Manual at 1619</u>
Prosecutive Policy -- IPP Cases -- When Death Penalty is Statutorily Authorized	<u>Criminal Resource Manual at 1620</u>
Substantive Offenses -- Murder -- 18 U.S.C. § 1116	<u>Criminal Resource Manual at 1621</u>
Substantive Offenses -- Conspiracy to Murder -- 18 U.S.C. § 1117	<u>Criminal Resource Manual at 1622</u>
Substantive Offenses -- Kidnapping --	<u>Criminal Resource Manual at 1623</u>

18 U.S.C. § 1201	
Substantive Offenses -- Assault -- 18 U.S.C. § 112	<u>Criminal Resource Manual at 1624</u>
First Amendment -- 18 U.S.C. § 112	<u>Criminal Resource Manual at 1625</u>
Threats and Extortion -- 18 U.S.C. § 878	<u>Criminal Resource Manual at 1626</u>
Destruction of Property -- 18 U.S.C. § 970	<u>Criminal Resource Manual at 1627</u>

9-65.810 Prosecutive Policy -- Preference for Local Disposition

In enacting legislation directed to the protection of foreign officials, internationally protected persons, and official guests, Congress has repeatedly made it clear that such statutes are not intended to preempt the application of State and local criminal law governing the same matter. *See* Pub. L. 92-539, §§ 2, 3; Pub. L. 94-467, § 10. In so doing, Congress has recognized the traditional responsibility of State and local law enforcement authorities for handling common law crimes. Consequently, in cases where State or local law enforcement authorities express a strong preference to prosecute an offense falling under §§ 112, 878, 970, 1116, 1117 and 1201 which relates to foreign dignitaries, the United States Attorney should consider deferring to such request and consult with the Criminal Division in instances where there is disagreement with such authorities as to the appropriate entity to assert criminal jurisdiction.

9-65.811 Authority to Initiate Prosecution

In respect to offenses committed against foreign officials, internationally protected persons, and official guests within the United States, United States Attorneys may ordinarily initiate prosecution without consultation with the Criminal Division. But see USAM 9-65.810, where there is a disagreement between Federal and state/local law enforcement authorities as to who should exercise prosecutive jurisdiction. However, because of the unique foreign policy considerations relating to the diplomatic relationship between the United States and Taiwan, all offenses against members of Taiwan's Coordination Council for North American Affairs (CCNAA) should, absent emergency circumstances, be brought to the attention of the Criminal Division prior to Federal arrest and should, in all cases, be brought to the attention of the Criminal Division prior to indictment.

In cases involving offenses against internationally protected persons committed abroad, legal issues concerning the exercise of extraterritorial jurisdiction, the extraterritorial scope of the statutes, foreign policy considerations, the procurement of witnesses and costs may be involved. Therefore, in cases involving the assertion of extraterritorial jurisdiction under any of these statutes, it is mandatory that Federal prosecutors seek approval from the Criminal Division prior to the initiation of any proposed investigation or prosecution. *See* USAM 9-2.136.

9-65.880 Demonstrations

Normally the violations of 18 U.S.C. § 970 under consideration occur in the course of demonstrations involving a sizable number of persons. When this is so, United States Attorneys

should look to the local police to maintain order and to make any necessary arrests. However, that alone does not relieve Federal officials of responsibilities in the matter. Those responsibilities commence with participation in the coordination of appropriate exchange of intelligence information on potential disturbances likely to affect a foreign facility and arrangements for needed law enforcement response.

As pre-planned or immediately upon notification of a demonstration likely to result in a disturbance, an Assistant United States Attorney should be assigned to monitor the activity on the basis of spot reports from the Federal Bureau of Investigation (FBI) observers at the scene. Presumably the local police will make arrests as the occasion and their judgement dictate. Generally, conduct in violation of the act will also violate local law, but, if only a Federal violation appears, an arrest may be made without obtaining prior authorization from the Criminal Division.

Some suggestion has been made that the FBI observers should make such arrests, but this would not only defeat their purpose as observers but also, because they do not operate in uniform, would be a most ill-advised enforcement effort, inviting the very resistance a uniform is designed to aid in dispelling. This does not mean that an agent on the scene would stand idly by while a mission member entering or leaving the premises was attacked in his/her immediate vicinity. But absent some such exceptional circumstances, any necessary protective measures for protected foreign officials, including arrests for attacks made on their persons should be taken by uniformed officers.

The Terrorism and Violent Crime Section of the Criminal Division has general responsibility for those matters which are of Federal interest. United States Attorneys should be alert for indications of militant political motivation, international in scope with subversive overtones, in reported violations and insure that the presence of any such features of other factors, which may highlight the Federal interest as well as affect the prosecutive merit of a possible violation, are reflected in the FBI's report.

9-65.881 Demonstrations -- Procedures

Upon receipt of information indicating a violation or potential violation of 18 U.S.C. § 970, the Federal Bureau of Investigation (FBI), after notifying the Department of State and consulting with the appropriate United States Attorney, will initiate such investigation as is deemed necessary if it is determined that Federal presence is warranted. The State Department Operations Center, (202) 647-1512, can quickly locate and have the appropriate State Department officials contact the U.S. Attorney in cases wherein the United States Attorney is uncertain as to whether the incident will adversely affect the foreign relations of the United States.

The determination made and action initiated, if any, will be reported by the FBI to the Criminal Division, United States Attorney concerned, United States Secret Service, and Department of State without delay. The Bureau will bring to the attention of the Criminal Division for conclusion any unresolved difference of opinion among the Bureau, Secret Service, Department of State, and United States Attorney concerning action or lack thereof by any of them. If a United States Attorney's Office receives a complaint of violation of section 970, the complainant should be referred to the FBI field office concerned, with advice that, as indicated in

the Department of State communication, most conduct in possible violation of section 970 is more appropriate for disposition under local law, but the FBI will report the complaint to the appropriate United States authorities for consideration of possible Federal disposition.

When the offense is of a nature that merits Federal prosecution, an investigation should be pursued without regard for whether the pertinent foreign officials will agree to appear as witnesses at an ensuing trial. Once a subject has been identified and sufficient evidence has been developed to form the basis for Federal charges, a determination should be sought as to whether the relevant foreign officials will agree to testify.

In instances where there is a Federal interest sufficient to proceed under one of the protection of foreign officials statutes, it may still be advantageous to defer to a local prosecution. This is particularly true where there is a local statute which better fits the crime than does the Federal statute. However, in such cases, the United States Attorney's Office should insure that the FBI monitors the progress of the local prosecution. Should local efforts be dropped prior to a trial, the matter should be reevaluated by the United States Attorney's Office and a new prosecutive determination should be rendered.

9-65.882 Demonstrations -- Investigative Decisions by United States Attorneys

Most demonstrating groups carefully follow the requirements and instructions of the local police officers and when agents of the Federal Bureau of Investigation (FBI) have explained the Federal statutes to them, the demonstrators have attempted to comply with those provisions. If the activity is clearly objectionable (obstructing the entrance way to the building using public access systems), the United States Attorney may wish to ask the FBI to conduct an investigation in addition to the normal procedure of maintaining contact with local officials and keeping informed. The availability and willingness to act of local law enforcement officials, who have the resources and the traditional responsibility to protect people and property, are prime factors to weigh when considering Federal involvement. Another factor to consider is the potential adverse effect upon the conduct of our foreign relations which the activity might have. In making this determination, United States Attorneys may wish to contact the Department of State to discuss the potential impact upon the foreign relations of the United States. The State Department Operations Center, (202) 647-1512 or 1513, can locate the proper officials in the State Department who can give such advice. The obstruction of ingress and egress to and from public buildings and/or the use of public address systems or other sound amplification systems usually violates one or more local law statutes or ordinances. Normally, state and local law enforcement officials will enforce such local laws and Federal officers will act after the activity has terminated or in those isolated instances wherein local officials fail to carry out their responsibilities or cannot because of limited statutory authority, or where Federal action is otherwise deemed necessary.

9-65.900 Protection of a Member of a Federal Official's Family (18 U.S.C. § 115)

The Terrorism and Violent Crime Section (TVCS) has supervisory authority over 18 U.S.C. § 115. Consultation with TVCS is required before initiating an investigation if the matter involves international terrorism. The agency which would have investigative jurisdiction over an assault or murder of a particular Federal official will have corresponding investigative jurisdiction over an assault or murder of a member of that Federal official's family. In most

cases, this will be the Federal Bureau of Investigation (FBI). *See the Criminal Resource Manual at 1563. *See also* the Criminal Resource Manual at 1628.*

9-66.000
PROTECTION OF
GOVERNMENT PROPERTY

- 9-66.010 Introduction
 - 9-66.100 Protection of Government Property -- Real Property
 - 9-66.200 Protection of Government Property -- Personalty
 - 9-66.300 Embezzlement of Government Property
 - 9-66.400 Protection of Public Records, Documents and Other Government Information
 - 9-66.500 Destruction of Government Property (18 U.S.C. §§ 1361-1363, 1366)
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9-66.010 Introduction

One of the principal responsibilities of the federal criminal law is the protection of government property. The property holdings of the United States, its departments and agencies are extensive and include both real and personal property in this country and abroad. In order for the Federal government to perform the wide range of duties assigned to it by law, it must have ready access to these properties and resources. Therefore it is very important that these properties be protected from any theft, misuse or misappropriation.

This chapter focuses on the series of laws that Congress has enacted which prohibit the wrongful taking or misuse of land, personal property and other resources belonging to the United States.

Supervisory authority for prosecutions involving most crimes against government property rests with the Office of Enforcement Operations of the Criminal Division. However, responsibility for certain violent crimes and those involving willful destruction of government property may rest with the Terrorism and Violent Crime Section. Prior authorization of the Criminal Division is not required for instituting these prosecutions. United States Attorneys with questions regarding the application of these laws are encouraged, however, to contact the Criminal Division for assistance. For information on investigatory jurisdiction, *see the Criminal Resource Manual at 1629.*

9-66.100 Protection of Government Property – Real Property

Real Property -- 18 U.S.C. § 7	<u>Criminal Resource Manual at 1630</u>
Real Property -- Other Laws	<u>Criminal Resource Manual at 1631</u>
National Parks and Forests	<u>Criminal Resource Manual at 1632</u>

Natural Resources	<u>Criminal Resource Manual at 1633</u>
Military Bases	<u>Criminal Resource Manual at 1634</u>
Other Federal Buildings	<u>Criminal Resource Manual at 1635</u>

9-66.200 Protection of Government Property -- Personalty

Personalty	<u>Criminal Resource Manual at 1636</u>
18 U.S.C. § 641	<u>Criminal Resource Manual at 1637</u>
Embezzlement of Government Property -- 18 U.S.C. § 641	<u>Criminal Resource Manual at 1638</u>
Definition -- "Steal or Purloin"	<u>Criminal Resource Manual at 1639</u>
Definition -- "Knowing Conversion"	<u>Criminal Resource Manual at 1640</u>
Concept -- "Sell, Convey and Dispose of Government Property Without Authority"	<u>Criminal Resource Manual at 1641</u>
Concept -- Receiving, Concealing or Retaining Stolen Property	<u>Criminal Resource Manual at 1642</u>
Definition -- Property Protected by 18 U.S.C. § 641	<u>Criminal Resource Manual at 1643</u>
Government Property -- Title in the name of the "United States"	<u>Criminal Resource Manual at 1644</u>
State and Local Programs Financed by the <i>Federal</i> Government	<u>Criminal Resource Manual at 1645</u>
Nonappropriated Funds	<u>Criminal Resource Manual at 1646</u>
National Guard Property	<u>Criminal Resource Manual at 1647</u>
Civil Air Patrol Property	<u>Criminal Resource Manual at 1648</u>
Goods in Transit	<u>Criminal Resource Manual at 1649</u>
Government Checks	<u>Criminal Resource Manual at 1650</u>
Seized Property	<u>Criminal Resource Manual at 1651</u>
Intangible Property Interests	<u>Criminal Resource Manual at 1652</u>

Custody of Government Property in the United States	<u>Criminal Resource Manual at 1653</u>
Definition -- "Or Any Property Made or Being Made Under Contract for the United States or Any Department or Agency Thereof"	<u>Criminal Resource Manual at 1654</u>
Element -- Intent	<u>Criminal Resource Manual at 1655</u>
Element -- Value	<u>Criminal Resource Manual at 1656</u>
Proof Problems in Section 641 Prosecutions	<u>Criminal Resource Manual at 1657</u>
Jurisdiction and Venue	<u>Criminal Resource Manual at 1658</u>

9-66.300 Embezzlement of Government Property

Other Embezzlement Provisions	<u>Criminal Resource Manual at 1659</u>
Embezzlement by Court Officers	<u>Criminal Resource Manual at 1660</u>
Embezzlement of Public Funds	<u>Criminal Resource Manual at 1661</u>
Miscellaneous Theft of Government Property Statutes	<u>Criminal Resource Manual at 1662</u>

9-66.400 Protection of Public Records, Documents and Other Government Information

Protection Of Public Records and Documents	<u>Criminal Resource Manual at 1663</u>
Theft of Government Information	<u>Criminal Resource Manual at 1664</u>
Disclosure of Confidential Government Information	<u>Criminal Resource Manual at 1665</u>

9-66.500 Destruction of Government Property (18 U.S.C. § § 1361-1363, 1366)

The Federal Bureau of Investigation (FBI) has the authority to investigate offenses under 18 U.S.C. §§ 1361-1363, 1366. Terrorism and Violent Crime Section (TVCS) has supervisory authority. Attorneys can be reached at (202) 514-0849.

See the following sections of the Criminal Resource Manual for a discussion of the statutes that can be used to prosecute destruction of government property:

18 U.S.C. § 1361	<u>Criminal Resource Manual at 1666</u>
Related Statutes	<u>Criminal Resource Manual at 1667</u>
Malicious Mischief -- Communication lines, stations or systems -- 18 U.S.C. § 1362	<u>Criminal Resource Manual at 1668</u>
Application of Section 1362 to Commercial Radio Stations	<u>Criminal Resource Manual at 1669</u>
Other Statutes Affected	<u>Criminal Resource Manual at 1670</u>
Malicious Mischief -- Buildings or property within special maritime and territorial jurisdiction -- 18 U.S.C. § 1363	<u>Criminal Resource Manual at 1671</u>
Other Statutes Affected	<u>Criminal Resource Manual at 1672</u>
Malicious Mischief -- Destruction of energy facility -- 18 U.S.C. § 1366	<u>Criminal Resource Manual at 1673</u>

9-67.000
[RESERVED]

9-68.000
TRADEMARK
COUNTERFEITING

9-68.100	Introduction
9-68.150	Trademark Counterfeiting -- Reporting Requirements
9-68.500	Trademark Counterfeiting -- Notification to the United States Attorney of Applications for Ex Parte Seizure Orders

9-68.100 Introduction

This chapter focuses on the investigation and prosecution of trademark counterfeiting (18 U.S.C. § 2320). Supervisory responsibility for prosecutions brought under 18 U.S.C. § 2320 rests with the Computer Crimes and Intellectual Property Section of the Criminal Division. Approval authority for all RICO prosecutions rests with the Organized Crime and Racketeering Section of the Criminal Division. See USAM 9-110.000 *et seq.* (RICO). Investigative responsibility for complaints of trademark counterfeiting rests with the Federal Bureau of Investigation. Cases involving importation of infringing articles may also be investigated by the United States Customs Service.

Prior authorization from the Criminal Division is not required for initiating prosecutions under 18 U.S.C. § 2320. However, insofar as applicable civil and criminal statutes have been subject to frequent revision, and criminal trademark violations may often involve other violations of Federal criminal laws that protect intellectual property rights, United States Attorneys are encouraged to consult with the Computer Crimes and Intellectual Property Section on such matters.

For a discussion of the law in the area of trademark counterfeiting, see the following sections of the Criminal Resource Manual

Introduction	Criminal Resource Manual at 1701
Charging Considerations	Criminal Resource Manual at 1702
Elements -- 18 U.S.C. § 2320	Criminal Resource Manual at 1704
First Element -- The Defendant Trafficked or Attempted to Traffic in Goods or Services	Criminal Resource Manual at 1705
Joint Statement on Trademark Counterfeiting Legislation	Criminal Resource Manual at 1706
Second Element -- The Defendant's Trafficking or Attempt to Traffic Was Intentional	Criminal Resource Manual at 1713
Third Element -- The Defendant Used a "Counterfeit Mark"	Criminal Resource Manual at 1714
Requirements for a "Counterfeit Mark"	Criminal Resource Manual at 1715
Specific Exclusions from Definition of "Counterfeit Mark"	Criminal Resource Manual at 1716
Fourth Element -- The Defendant Knew the Mark Was Counterfeit	Criminal Resource Manual at 1717
Defenses	Criminal Resource Manual at 1718

9-68.150 Trademark Counterfeiting -- Reporting Requirements

Section 2320(e), as amended by the Anticounterfeiting Consumer Protection Act of 1996, requires the Attorney General to provide Congress with detailed information concerning investigations and

prosecutions under the criminal intellectual property statutes, 18 U.S.C. §§ 2318, 2319, 2319A, and 2320. See the Criminal Resource Manual at 1703.

9-68.500 Trademark Counterfeiting -- Notification to the United States Attorney of Applications for Ex Parte Seizure Orders

See the Criminal Resource Manual at 1719 for additional information regarding this subject.

9-69.000
PROTECTION OF
GOVERNMENT PROCESSES

9-69.010	Introduction
9-69.100	Protection of Government Processes – Obstruction of Justice
9-69.200	Perjury and False Declarations Before Grand Jury or Court – Prosecution Policy
9-69.300	Prison Offenses (18 U.S.C. §§ 1791-1793)
9-69.400	Fugitive Felon Act (18 U.S.C. § 1073)
9-69.420	Prerequisites to Issuance of Federal Complaint in Aid of States
9-69.421	Parental Kidnapping
9-69.422	Unlawful Flight Warrants for Juvenile Offenders
9-69.430	Unlawful Flight to Avoid Custody or Confinement After Conviction
9-69.440	Unlawful Flight to Avoid Giving Testimony
9-69.460	Federal Information; Indictment; Removal – Approval Required
9-69.500	Escape from Custody Resulting from Conviction (18 U.S.C. §§ 751 and 752)
9-69.502	Prosecution Policy (18 U.S.C. §§ 751 and 752)
9-69.600	Escape from Custody Resulting from Civil Commitment (28 U.S.C. § 1826(c))

9-69.010 Introduction

This chapter focuses on the investigation and prosecution of federal criminal offenses that interfere with the federal justice system. These offenses include obstruction of justice, perjury, escape, and unlawful flight to avoid prosecution. See the Criminal Resource Manual at 1720.

9-69.100 Protection of Government Processes – Obstruction of Justice

The obstruction of justice statutes include 18 U.S.C. §§ 1503, 1505, 1510, 1512-1514, and 1518. Violations of 18 U.S.C. § 1501 and 18 U.S.C. §§ 1512 and 1513, when violence (including a threat thereof) is directed at a person or property, are within the supervisory authority of the Terrorism and Violent Crime Section. Section 1511 of Title 18, United States Code, is supervised by the Organized Crime and Racketeering Section. The Fraud Section has supervisory authority over all other obstruction of justice offenses.

See the following sections of the Criminal Resource Manual for a more detailed discussion of the law on each of these statutes

Obstruction of Justice -- Scope of 18 U.S.C. § 1503	Criminal Resource Manual at 1721
Pending Proceeding Requirement -- 18 U.S.C. § 1503	Criminal Resource Manual at 1722
State of Mind Requirement -- 18 U.S.C. § 1503	Criminal Resource Manual at 1723
Omnibus Clause -- 18 U.S.C. § 1503	Criminal Resource Manual at 1724
Obstruction of Pending Proceeding -- 18 U.S.C. § 1505	Criminal Resource Manual at 1725

Scope of 18 U.S.C. § 1505	Criminal Resource Manual at 1726
Obstruction of Federal Criminal Investigation -- 18 U.S.C. § 1510	Criminal Resource Manual at 1728
Tampering with Victims, Witnesses, or Informants -- 18 U.S.C. § 1512	Criminal Resource Manual at 1729
"Official Proceeding" Requirement -- 18 U.S.C. § 1512	Criminal Resource Manual at 1730
State of Mind -- 18 U.S.C. § 1512	Criminal Resource Manual at 1731
Constitutionality -- 18 U.S.C. § 1512(d)	Criminal Resource Manual at 1732
Scope of 18 U.S.C. § 1513	Criminal Resource Manual at 1733
State of Mind -- 18 U.S.C. § 1513	Criminal Resource Manual at 1734
Obstruction of Health Care Investigations -- 18 U.S.C. § 1518	Criminal Resource Manual at 1735
Inchoate Obstruction of Justice Offenses	Criminal Resource Manual at 1736
Civil Action to Enjoin the Obstruction of Justice -- 18 U.S.C. § 1514	Criminal Resource Manual at 1737
Venue	Criminal Resource Manual at 1738
Offenses Related to Obstruction of Justice Offenses	Criminal Resource Manual at 1739
Other Research Aids	Criminal Resource Manual at 1740

9-69.200 Perjury and False Declarations Before Grand Jury or Court -- Prosecution Policy

Several Federal statutes criminalize perjury and related false statements. The two most commonly used statutes for perjury offenses are 18 U.S.C. §§ 1621 and 1623. The prior authorization of the Criminal Division is required for investigations or prosecutions of perjury before Congress and contempt of Congress. *See also* USAM 9-90.550. Additionally, United States Attorneys are required to consult with the Criminal Division before instituting grand jury proceedings, filing an information, or seeking an indictment of an individual for perjury committed during a trial that resulted in acquittal. In all other perjury cases, no prior authorization or consultation is required.

Generally, perjury offenses fall under the supervisory responsibility of the Division and Section of the Department having responsibility for the basic subject matter. If such responsibility cannot be identified, or if the Division/Section with jurisdiction over the basic subject matter does not have criminal prosecutive responsibilities, i.e., certain civil litigation sections, supervisory responsibility rests with the Fraud Section of the Criminal Division. For information on investigative responsibility, see the Criminal Resource Manual at 1742.

For an overview of the law on perjury and false declarations, including §§ 1621 and 1623, and sample indictments, see the following sections of the Criminal Resource Manual

Perjury and False Declarations Before Grand Jury or Court	Criminal Resource Manual at 1741
Perjury -- Overview of 18 U.S.C. §§ 1621 and 1623 Violations	Criminal Resource Manual at 1743
Elements of Perjury	Criminal Resource Manual at 1744
Elements of Perjury -- Federal Proceeding Under Oath	Criminal Resource Manual at 1745
Elements of Perjury -- Making of a False Statement	Criminal Resource Manual at 1746
Elements of Perjury -- Specific Intent	Criminal Resource Manual at 1747
Elements of Perjury -- Materiality	Criminal Resource Manual at 1748
Comparison of Perjury Statutes -- 18 U.S.C. § 1621 and 1623	Criminal Resource Manual at 1749

Comparison of Perjury Statutes -- 18 U.S.C. § 1621 and 1623	Criminal Resource Manual at 1750
Comparison of Perjury Statutes -- 18 U.S.C. § 1621 and 1623	Criminal Resource Manual at 1751
Subornation of Perjury	Criminal Resource Manual at 1752
Special Problems and Defenses -- Evasive and Unresponsive Answers	Criminal Resource Manual at 1753
Special Problems and Defenses -- Venue	Criminal Resource Manual at 1754
Special Problems and Defenses -- Charging Considerations	Criminal Resource Manual at 1755
Special Problems and Defenses -- Perjury Trap	Criminal Resource Manual at 1756
Special Problems and Defenses -- Collateral Estoppel	Criminal Resource Manual at 1757
Special Problems and Defenses -- Immunity	Criminal Resource Manual at 1758
28 U.S.C. § 1746 Declarations	Criminal Resource Manual at 1759
28 U.S.C. § 1746 -- Unsworn Declarations under Penalty of Perjury	Criminal Resource Manual at 1760
Sentencing Issues	Criminal Resource Manual at 1761
Sample Indictment -- 18 U.S.C. § 1621 (first paragraph)	Criminal Resource Manual at 1762
Sample Indictment -- 18 U.S.C. § 1621 (second paragraph)	Criminal Resource Manual at 1763
Sample Indictment -- 18 U.S.C. § 1622	Criminal Resource Manual at 1764
Sample Indictment -- 18 U.S.C. § 1623	Criminal Resource Manual at 1765
Sample Indictment -- 18 U.S.C. § 1623	Criminal Resource Manual at 1766
Sample Indictment -- 18 U.S.C. § 1623	Criminal Resource Manual at 1767

9-69.300 Prison Offenses (18 U.S.C. §§ 1791-1793)

The Office of Enforcement Operations has supervisory responsibility for these statutes.

An overview of federal prison offenses, including possession of contraband, providing contraband to another, trespassing, and rioting, is contained in the Criminal Resource Manual

Introduction	Criminal Resource Manual at 1768
Elements -- 18 U.S.C. § 1791(a)(1)	Criminal Resource Manual at 1769
Elements -- 18 U.S.C. § 1791(a)(1) -- "Prison"	Criminal Resource Manual at 1770
Elements -- 18 U.S.C. § 1791(a)(1) -- "Contraband"	Criminal Resource Manual at 1771
Elements -- 18 U.S.C. § 1791(a)(2) -- "Prison"	Criminal Resource Manual at 1772
Elements -- 18 U.S.C. § 1791(a)(2) -- "Possess or Provide"	Criminal Resource Manual at 1773
Elements -- 18 U.S.C. § 1791(a)(2) -- "Contraband"	Criminal Resource Manual at 1774
Elements -- 18 U.S.C. § 1792 -- "Participation"	Criminal Resource Manual at 1775
Elements -- 18 U.S.C. § 1792 -- "Mutiny or Riot"	Criminal Resource Manual at 1776
Elements -- 18 U.S.C. § 1792 -- "Federal penal, detention, or correctional facility"	Criminal Resource Manual at 1777
Double Jeopardy	Criminal Resource Manual at 1778
Knowledge of Warden	Criminal Resource Manual at 1779

9-69.400 Fugitive Felon Act – 18 U.S.C. § 1073

Though drawn as a penal statute, and therefore permitting prosecution by the Federal government for its violation, the primary purpose of the Fugitive Felon Act is to permit the Federal government to assist in the location and apprehension of fugitives from state justice. No prior Criminal Division approval is required to authorize unlawful flight complaints in aid of the states. However, the statute expressly requires "formal approval in writing" by a designated Department official before a UFAP violation can be actually prosecuted in federal court. See USAM 9-69.460. For information regarding use of a grand jury to locate a fugitive, see USAM 9-11.120.

Since the primary purpose of the Act is to assist the states in apprehending fugitives from state justice, the Act should not be applied to the interstate or international flight of federal fugitives.

For further information on the Fugitive Felon Act, see the Criminal Resource Manual at 1780. See also Criminal Resource Manual at 1782 (Unlawful Flight Warrants -- Post Arrest Procedures), and 1785 (Unlawful Flight to Avoid Service of Process).

9-69.420 Prerequisites to Issuance of Federal Complaint in Aid of States

A complaint for violation of the Fugitive Felon Act should not be authorized unless there is probable cause to believe that the fugitive moved in interstate or foreign commerce with the intent of avoiding a felony prosecution under the laws of the place from which he fled. In addition, it should be clear that the requesting state authorities are determined to take all necessary steps to extradite or otherwise secure the return of the fugitive, and that it is their intention to bring him to trial on the state charge for which he is sought.

In considering requests for issuing complaints under the Act, care should be exercised to prevent use of the Act to assist in enforcement of any state statute with a clearly discriminatory purpose or in the discriminatory application of an otherwise lawful statute. Similarly, caution should be exercised to prevent use of FBI investigative resources to compel discharge of civil obligations. Thus, requests for federal involvement in worthless check violations, or in desertion/non-support cases should be scrutinized carefully.

9-69.421 Parental Kidnapping

State requests for the filing of unlawful flight complaints in felony parental abduction cases are to be treated in the same manner as other unlawful flight requests. See USAM 9-69.420 for additional policy guidance on unlawful flight complaints. See USAM 9-74.200 and the Criminal Resource Manual at 1781 for additional information regarding international parental kidnapping.

9-69.422 Unlawful Flight Warrants for Juvenile Offenders

A state juvenile delinquency charge does not provide a basis for obtaining an unlawful flight warrant because a juvenile proceeding involves an adjudication of status, not a felony prosecution. However, if a juvenile is charged, as an adult, with a state felony offense, a UFAP warrant may be sought. In such situations, the UFAP complaint must charge an act of juvenile delinquency (unlawful flight) under 18 U.S.C. § 5032.

9-69.430 Unlawful Flight to Avoid Custody or Confinement After Conviction

Selective handling by United States Attorneys will obviate indiscriminate use of the Fugitive Felon Act to locate parolees who have simply failed to report to the parole board or failed to notify the parole board of a change of address. See the Criminal Resource Manual at 1783 for more information on this topic.

9-69.440 Unlawful Flight to Avoid Giving Testimony

The majority of states have adopted the Uniform Act to Secure the Return of Witnesses From Without the State in Criminal Cases. Therefore, a state should be required to exhaust existing remedies for securing the return of witnesses before seeking Federal assistance. See the Criminal Resource Manual at 1784 for more information on this topic.

9-69.460 Federal Information; Indictment; Removal – Approval Required

The Fugitive Felon Act requires formal approval in writing by the Attorney General, Deputy Attorney General, Associate Attorney General, or Assistant Attorney General, before initiating a prosecution for unlawful flight to avoid prosecution, or custody or confinement after conviction, or to avoid giving testimony. Accordingly, under no circumstances should an indictment under the Act be sought nor an information be filed nor should removal proceedings under Rule 40, Federal Rules of Criminal Procedure, be instituted without the written approval of the Assistant Attorney General, Criminal Division. See H.Rep. No. 827, 87th Cong., 1st Sess. (1961), reprinted in, 1961 U.S.Code Cong. & Ad. News, 3242; *United States v. McCord*, 695 F.2d 823 (5th Cir.), cert. denied, 460 U.S. 1073 (1983).

Requests for written approval to prosecute for unlawful flight should be forwarded to the Terrorism and Violent Crime Section of the Criminal Division. Generally, such requests are approved only if it clearly appears that the interests of justice would be frustrated by a failure to prosecute. The Fugitive Felon Act (18 U.S.C. § 1073) requires formal approval in writing by the Attorney General, Deputy Attorney General, Associate Attorney General, or Assistant Attorney General before initiating a prosecution for unlawful flight to avoid prosecution, or custody or confinement after conviction, or to avoid giving testimony. Accordingly, under no circumstances should an indictment under the Act be sought nor an information be filed nor should removal proceedings under Rule 40, Federal Rules of Criminal Procedure, be instituted without the written approval of the Assistant Attorney General, Criminal Division. Requests for written approval to prosecute for unlawful flight should be forwarded to the Terrorism and Violent Crime Section. Generally, such requests are approved only if it clearly appears that the interests of justice would be frustrated by a failure to prosecute. See also the Criminal Resource Manual at 1782.

9-69.500 Escape from Custody Resulting from Conviction (18 U.S.C. §§ 751 and 752)

An overview of the laws relating to escape from custody resulting from conviction can be found in the below-listed sections of the Criminal Resource Manual. The Office of Enforcement Operations has supervisory responsibility for these statutes. The U.S. Marshals Service shall have investigative jurisdiction over the federal escape statutes.

In the event that a federal escapee becomes a subject of an ongoing FBI substantive investigation, the FBI will seek the fugitive's apprehension in coordination with the U.S. Marshals Service

Escape From Custody Resulting from Conviction (18 U.S.C. §§ 751 and 752) -- Introduction	Criminal Resource Manual at 1801
"Escape from Custody" Define	Criminal Resource Manual at 1802
Elements of the Offense of Escape from Custody -- Generally	Criminal Resource Manual at 1803
Elements of the Offense of Escape from Custody -- Intent	Criminal Resource Manual at 1804
Elements of the Offense of Escape from Custody -- Attempt	Criminal Resource Manual at 1805
Aiding and Assisting	Criminal Resource Manual at 1806
Conspiracy	Criminal Resource Manual at 1807
Constructive Custody	Criminal Resource Manual at 1808
Institution or Facility in Which Confined -- Generally	Criminal Resource Manual at 1809
Legal Custody by Attorney General	Criminal Resource Manual at 1810

Expeditious Authorization of Magistrates' Complaints and Warrants in Federal Escape Cases -- Case Authority	Criminal Resource Manual at 1811
Venue in Furlough and "Walkaway" Cases	Criminal Resource Manual at 1812
Prosecution of Escapes by Federal Prisoners Who Have Been Surrendered to the Temporary Custody of State Authorities Pursuant to State Court Writs of Habeas Corpus Ad Testificandum and Ad Prosequendum	Criminal Resource Manual at 1813
Defenses -- Generally	Criminal Resource Manual at 1814
Defenses -- Double Jeopardy	Criminal Resource Manual at 1815
Defenses -- Duress	Criminal Resource Manual at 1816
Defenses -- Intoxication	Criminal Resource Manual at 1817
Defenses -- Insanity	Criminal Resource Manual at 1818
Defenses -- Lack of Mental Capacity	Criminal Resource Manual at 1819

9-69.502 Escape from Custody Resulting from Conviction (18 U.S.C. §§ 751 and 752) -- Prosecution Policy

As a result of decisions handed down by the United States Supreme Court, it is clear that warrants are required to enter premises to arrest escapees from federal custody under 18 U.S.C. § 751 in all cases except where consent or exigent circumstances exist. It is clear from these decisions that in some cases an arrest warrant coupled with a reasonable belief that the escapee is in the premises is sufficient for a lawful entry. As a result of these decisions, discussed more fully in the Criminal Resource Manual at 1811, and in order to provide federal law enforcement officers with all available legal process for the accomplishment of arrests of federal escapees, prosecutors are instructed that in all federal escape cases the issuance of a magistrate's complaint and arrest warrant should be authorized promptly upon completion of the investigation and presentation of the matter to the United States Attorney's Office by the agency involved. Many local law enforcement agencies will not assist in the search for federal escapees if there is no arrest warrant for the escapee. Thus, by promptly issuing the arrest warrant, prosecutors will insure the full cooperation of local law enforcement agencies in the search for and apprehension of the escapee.

Authorization of a complaint and arrest warrant should not be deferred until after apprehension of the escapee. Reevaluation of the prosecutive merit of the individual escape case in which a complaint is authorized may be made after the escapee has been apprehended. At that later time, prosecutors may determine that the case does not merit proceeding further and dismiss the complaint, or the escapee may be indicted within thirty or sixty days, 18 U.S.C. § 3161(b), depending on the availability of a grand jury, and proceed with the prosecution. However, by prompt authorization of the issuance of a magistrate's complaint and warrant, prosecutors will make available to the enforcement agencies legal process which will be sufficient to permit entry into private premises.

9-69.600 Escape from Custody Resulting from Civil Commitment (28 U.S.C. § 1826(c))

An overview of the law relating to escape from custody resulting from civil commitment can be found in the below-listed sections of the Criminal Resource Manual. The Office of Enforcement Operations has supervisory responsibility for this statute. The U.S. Marshals Service has investigative jurisdiction over the federal escape statutes. In the event a federal escape becomes the subject of an on-going FBI substantive investigation, the FBI will seek the fugitive's apprehension in coordination with the U.S. Marshals Service. See USAM 9-69.500.

Further guidance on this topic is available from the Criminal Resource Manual

Escape from Custody Resulting from Civil Commitment (28 U.S.C. §1826(c)) -- Introduction	Criminal Resource Manual at 1820
Congressional Intent	Criminal Resource Manual at 1821
Elements of the Offense of Escape from Custody Resulting from Civil Commitment (28 U.S.C. § 1826(c))	Criminal Resource Manual at 1822
Elements of Offense (28 U.S.C. § 1826(c)) -- Intent	Criminal Resource Manual at 1823
Elements of Offense (28 U.S.C. § 1826(c)) -- Custody	Criminal Resource Manual at 1824
Elements of Offense (28 U.S.C § 1826(c)) -- Commitment	Criminal Resource Manual at 1825
Defenses -- Generally	Criminal Resource Manual at 1826

HARBORING OFFENSES

This chapter covers the two statutes in Title 18 which criminalize the harboring of fugitives from justice. These statutes are 18 U.S.C. § 1071 (concealing a person from arrest) and 18 U.S.C. § 1072 (concealing an escaped prisoner). Other related statutes which are not discussed in this chapter include 18 U.S.C. §§ 751 - 757 (the escape and rescue provisions), and 18 U.S.C. §§ 1073 - 1074 (the flight to avoid prosecution or giving testimony provisions). The Terrorism and Violent Crime Section of the Criminal Division has supervisory jurisdiction over 18 U.S.C. §§ 1071 and 1072. Violations of the statutes are investigated by the Federal Bureau of Investigation.

See the following sections of the Criminal Resource Manual for a discussion of the law relating to harboring offenses:

Applicable Statutes	<u>Criminal Resource Manual at 1827</u>
18 U.S.C. § 1071 -- Elements Of Offense	<u>Criminal Resource Manual at 1828</u>
18 U.S.C. § 1071 -- First Element -- Federal Warrant	<u>Criminal Resource Manual at 1829</u>
18 U.S.C. § 1071 -- Second Element -- Knowledge	<u>Criminal Resource Manual at 1830</u>
18 U.S.C. § 1071 -- Third Element -- Concealing	<u>Criminal Resource Manual at 1831</u>
18 U.S.C. § 1071 -- Fourth Element -- Prevent Discovery or Arrest	<u>Criminal Resource Manual at 1832</u>
18 U.S.C. § 1071 -- No Familial Exception	<u>Criminal Resource Manual at 1833</u>
18 U.S.C. § 1071 -- No Justification Defense	<u>Criminal Resource Manual at 1834</u>
After Conviction of Any Offense	<u>Criminal Resource Manual at 1835</u>
18 U.S.C. § 1072 -- Elements Of Offense	<u>Criminal Resource Manual at 1836</u>
18 U.S.C. § 1072 -- First Element -- "Willful"	<u>Criminal Resource Manual at 1837</u>
18 U.S.C. § 1072 -- Second Element -- Concealing	<u>Criminal Resource Manual at 1838</u>
18 U.S.C. § 1072 -- Third Element -- Escape	<u>Criminal Resource Manual at 1839</u>

9-71.000 COPYRIGHT LAW

9-71.001	Introduction
9-71.010	Prosecution Policy
9-71.015	Reporting Requirements

9-71.001 Introduction

This chapter contains an overview of the criminal copyright laws. The law of copyright is codified at Title 17 of the United States Code. The principal prohibitions relating to criminal copyright infringement are set forth at 17 U.S.C. § 506(a) and 18 U.S.C. § 2319. Titles 17 and 18 also contain a number of other provisions that make illegal certain practices which are inconsistent with Congress' copyright protection scheme. The Computer Crime and Intellectual Property Section of the Criminal Division has supervisory authority over offenses discussed in this chapter.

See the following sections of the Criminal Resource Manual for a discussion of various areas of copyright law:

Prosecution Policy Letter of October 11, 1994	Criminal Resource Manual at 1841
Reporting Requirements	Criminal Resource Manual at 1842
Assignment of Responsibilities	Criminal Resource Manual at 1843
Preemption of State Law	Criminal Resource Manual at 1844
Applicability of Civil Copyright Law	Criminal Resource Manual at 1845
Protection of Intellectual Property	Criminal Resource Manual at 1846
Criminal Copyright Infringement -- 17 U.S.C. § 506(a) and 18 U.S.C. § 2319	Criminal Resource Manual at 1847
Copyright Infringement -- First Element -- Existence of a Valid Copyright	Criminal Resource Manual at 1848
Copyright Infringement -- Second Element -- Infringement	Criminal Resource Manual at 1849
Copyright Infringement -- Third Element -- Willfulness	Criminal Resource Manual at 1850
Copyright Infringement -- Fourth Element -- Commercial Advantage or Private Financial Gain	Criminal Resource Manual at 1851
Copyright Infringement -- Penalties -- 17 U.S.C. § 506(a) and 18 U.S.C. § 2319	Criminal Resource Manual at 1852
Copyright Infringement -- Unauthorized Fixation of and Trafficking in Sound Recording and Music Videos	Criminal Resource Manual at 1853
Copyright Infringement -- First Sale Doctrine	Criminal Resource Manual at 1854
Protection of Copyright Notices -- 17 U.S.C. §§ 506(c) and 506(d)	Criminal Resource Manual at 1855
Copyrights -- False Representations -- 17 U.S.C. § 506(e)	Criminal Resource Manual at 1856
Trafficking in Counterfeit Labels -- 18 U.S.C. § 2318	Criminal Resource Manual at 1857
Interstate Transportation of Stolen Property -- 18 U.S.C. § 2314	Criminal Resource Manual at 1858

9-71.010 Prosecution Policy

In determining whether to proceed with a criminal copyright prosecution, the United States Attorneys should evaluate several important considerations. First, federal law preempts much of the copyright field. *See* 17 U.S.C. § 301. With federal preemption of copyright protection, prosecutors must now recognize that individuals harmed by copyright violations are unlikely to have recourse to state criminal laws. In most instances, criminal prosecution of copyright offenders is possible only within the federal system. United States Attorneys should keep this factor in mind when considering whether to decline prosecution in a copyright case. Thus, a decision by the United States Attorney to decline prosecution in a copyright matter may foreclose all avenues of criminal prosecution. This consideration suggests that all criminal copyright matters should receive careful attention. *See* the Criminal Resource Manual at 1844 for a more in depth discussion of preemption.

Second, the criminal penalties of 17 U.S.C. § 506(a) for willful infringements undertaken for purposes of commercial advantage or private financial gain, form an important part of the copyright enforcement scheme. An increased need for deterrence in this area is reflected in the 1982 enactment of felony penalties for piracy and counterfeiting of sound recordings and audiovisual works. *See* 18 U.S.C. § 2319. Consequently all meritorious cases which fall within the parameters of these felony statutes should receive serious consideration.

Once the technical elements of the offense appear to be satisfied, the United States Attorney is, of course, free to consider additional equitable factors in determining whether to pursue a criminal copyright prosecution.

A. The seriousness of the offense. Felony penalties for first offenses begin at seven copies for audiovisual works, and one hundred copies for sound recordings. In this context, prosecution of felony offenses of comparatively moderate scale may have substantial deterrent impact. It should also be kept in mind that lesser volumes of counterfeiting or pirating activity may suitably lend themselves to the plea bargaining process in particular cases since 18 U.S.C. § 2319(b)(3) provides misdemeanor penalties upon conviction for the first offense. A misdemeanor plea also serves a deterrent function because of the prospect of felony charges for a future offense. Prosecutions focused on the most serious offenders should, of course, be given top priority. Thus, appropriate factors should include the nature and volume of the infringing activity or a prior history of similar conduct by the suspect. Individuals who have continued to infringe for financial gain after civil remedies have been successfully invoked should receive particular attention.

B. The likelihood of successful prosecution. An unsuccessful prosecution may be counterproductive not only in terms of allocation of resources, but also with respect to deterrence. The presence of legal or evidentiary problems should be carefully evaluated, particularly with regard to criminal intent. A suspect actually involved in the manufacture and distribution of infringing works would be a promising candidate for criminal prosecution, since the possession and use of elaborate duplicating equipment and accessories will normally supply effective evidence of criminal intent. As to others in the chain of distribution, different proof of criminal intent is usually required to preclude the successful assertion of defenses.

A number of special charging considerations may become pertinent to cases involving violations of intellectual property rights in electronic environments (such as computer networks), or cases arising in business environments that involve employer-employee relationships. *See* the Criminal Resource Manual at 1841 (DOJ Letter of October 11, 1994 regarding Criminal Prosecution of Copyright Infringement). Special considerations may also arise as the result of statutory changes of consequence that may occur with respect to underlying copyright laws. If assistance or legal advice is needed (or if resource limitations do not permit the handling of a particular case which otherwise merits prosecutive attention), prosecutors are encouraged to contact the Computer Crime and Intellectual Property Section.

9-71.015 Reporting Requirements

The Anticounterfeiting Consumer Protection Act of 1996, Pub. L. No. 104-153, 110 Stat. 1386 (1996), requires the Attorney General to provide Congress with detailed information concerning investigations and prosecutions under the criminal intellectual property statutes, 18 U.S.C. §§ 2318, 2319, 2319A, and 2320. *See* 18 U.S.C. § 2320(e). The Department is presently developing mechanisms to aid in addressing these requirements. For more information see the Criminal Resource Manual at 1842 or contact the Criminal Division's Computer Crime and Intellectual Property Section.

9-72.000 NON-IMMIGRANT VISA CLASSIFICATION

The Violent Crime Control Act of 1994 amended the Immigration and Nationality Act to establish a new "S" nonimmigrant visa classification. *See* 8 U.S.C. § 1101(a)(15)(S).

This classification is available to a limited number of aliens who supply critical reliable information necessary to the successful investigation and/or prosecution of a criminal organization, or who supply or critical reliable information concerning a terrorist organization, if the alien is eligible to receive a State Department reward under the Rewards for Justice Program. *Id.*; *see also* 22 U.S.C. § 2708. The statute permits the aliens selected for the program, and eligible family members, to be admitted to the United States in a temporary nonimmigrant status for up to three years, *see* 8 U.S.C. § 1184(k)(3), and authorizes the Secretary of the Department of Homeland Security to waive most grounds of inadmissibility.

Applications for S nonimmigrant visa classification must be certified by the Assistant Attorney General for the Criminal Division and approved by the Department of Homeland Security. *See* the below-listed sections of the Criminal Resource Manual for more information on the S Visa Program and the procedures to be followed in seeking an S Visa for an alien. Further information concerning the S Visa program may also be obtained by contacting the Policy and Statutory Enforcement Unit in the Office of Enforcement Operations, Criminal Division.

Statutory and Regulatory Basis	Criminal Resource Manual at 1861
Eligibility	Criminal Resource Manual at 1862
Application Procedures	Criminal Resource Manual at 1863
Reporting Requirements	Criminal Resource Manual at 1864
Adjustment to Lawful Permanent Resident Status	Criminal Resource Manual at 1865
Criminal Division Contacts	Criminal Resource Manual at 1867

9-73.000
IMMIGRATION
VIOLATIONS -- PASSPORT
AND VISA VIOLATIONS

- 9-73.010 Immigration Violations -- Supervisory Responsibility
 - 9-73.020 Immigration Violations -- Guidelines for Undercover Operations
 - 9-73.100 Immigration Violations -- 8 U.S.C. § 1324
 - 9-73.200 Immigration Violations -- 8 U.S.C. § 1325-28, 8 U.S.C. § 1253, and 18 U.S.C. § 758
 - 9-73.300 Immigration Violations -- Immigration Officer Authority
 - 9-73.400 Immigration Violations -- Reporting of Decisions
 - 9-73.500 Immigration Violations -- Deportation
 - 9-73.510 Immigration Violations -- Promise of Non-Deportation
 - 9-73.520 Immigration Violations -- Deportation of Criminal Aliens
 - 9-73.600 Passport/Visa Violations -- 18 U.S.C. §§ 1541 to 1546
 - 9-73.700 Marriage Fraud -- 8 U.S.C. § 1325(c) and 18 U.S.C. § 1546
 - 9-73.800 Nationality and Citizenship Offenses
 - 9-73.801 Revocation of Naturalization
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9-73.010 Immigration Violations -- Supervisory Responsibility

Supervisory responsibility for criminal immigration violations and related offenses is assigned to the Terrorism and Violent Crime Section, (202) 514-0849. The "S-Visa" classification program, which may be available for certain cooperating illegal aliens and immediate family members, is supervised by the Policy and Statutory Enforcement Unit in the Office of Enforcement Operations, (202) 514-1077. In addition, the Civil Division's Office of Immigration Litigation, (202) 616-4900, may be able to provide assistance on other immigration related issues.

9-73.020 Immigration Violations -- Guidelines for Undercover Operations

The Attorney General's Guidelines on INS Undercover Operations have been in effect since March 19, 1984. The Guidelines recognize that the use of undercover operations is a lawful and essential technique for the detection and investigation of alien-smuggling conspiracies, fraudulent document offenses, and other violations of federal law within jurisdiction of INS. All undercover proposals require that the position of the United States Attorney's office be obtained before the proposal can be approved. With regard to undercover proposals involving specified sensitive circumstances set forth in the guidelines, such proposals are reviewed by the INS Undercover Operations Review Committee, which consists of representatives of INS and the Criminal Division. Before passing on any such proposal, the Committee requires a letter signed by the USA or a supervisory AUSA, expressly stating that the USA has personally reviewed the proposed operation, including the sensitive circumstances reasonably expected to occur; concurs

with the proposal, its objectives and legality; and agrees to prosecute any meritorious case that is developed.

A copy of the Attorney General's Guidelines on INS Undercover Operations is in the Criminal Resource Manual at 1901.

9-73.100 Immigration Violations -- 8 U.S.C. § 1324

Title 8, U.S.C. § 1324(a) Offenses	<u>Criminal Resource Manual at 1907</u>
Unlawful Employment of Aliens -- Criminal Penalties	<u>Criminal Resource Manual at 1908</u>
Failure to Disclose Role as Preparer of False Application for Immigration Benefits	<u>Criminal Resource Manual at 1909</u>
Material Witnesses in Alien Smuggling Cases	<u>Criminal Resource Manual at 1910</u>

9-73.200 Immigration Violations -- 8 U.S.C. § 1325-28, 8 U.S.C. § 1253, and 18 U.S.C. § 758

8 U.S.C. § 1325 -- Unlawful Entry, Failure to Depart, Fleeing Immigration Checkpoints, Marriage Fraud, Commercial Enterprise Fraud	<u>Criminal Resource Manual at 1911</u>
8 U.S.C. § 1326 -- Reentry After Deportation (Removal)	<u>Criminal Resource Manual at 1912</u>
8 U.S.C. § 1327 -- Aiding Entry of Certain Criminal or Subversive Aliens	<u>Criminal Resource Manual at 1913</u>
8 U.S.C. § 1328 -- Importing Aliens for Immoral Purposes	<u>Criminal Resource Manual at 1914</u>
Willful Failure or Refusal to Depart	<u>Criminal Resource Manual at 1915</u>
High speed Flight From Immigration Checkpoint	<u>Criminal Resource Manual at 1916</u>

9-73.300 Immigration Violations -- Immigration Officer Authority

For a discussion of an Immigration Officer's authority to conduct arrests, searches, and seizures, *see* the Criminal Resource Manual at 1917. Information on arrests of illegal aliens by state and local officers can be found in the Criminal Resource Manual at 1918.

9-73.400 Immigration Violations -- Reporting of Decisions

The outcome of all important prosecutions arising under the immigration and nationality laws should be reported to the Terrorism and Violent Crime Section. In all cases in which the decision is adverse to the government, except criminal cases in which no appeal is allowed by law, copies of the pleadings and other documents, except insofar as previously supplied to the Section, should be promptly submitted along with an appeals recommendation. See USAM 9-2.170 (appeals).

9-73.500 Immigration Violations -- Deportation

On April 28, 1995, the Attorney General issued a memorandum to all federal prosecutors entitled *Deportation of Criminal Aliens*. See the Criminal Resource Manual at 1919. A copy of this Memorandum is reproduced in the Criminal Resource Manual at 1920 through 1941:

Attorney General Memorandum -- Introduction	<u>Criminal Resource Manual at 1920</u>
Stipulated Administrative Deportation in Plea Agreements	<u>Criminal Resource Manual at 1921</u>
Deportation as a Condition of Supervised Release -- Introduction and Background	<u>Criminal Resource Manual at 1922</u>
Deportation as a Condition of Supervised Release -- Usefulness of the Provision	<u>Criminal Resource Manual at 1923</u>
Deportation as a Condition of Supervised Release -- Procedures	<u>Criminal Resource Manual at 1924</u>
Deportation as a Condition of Supervised Release -- the Situation in the Eleventh Circuit	<u>Criminal Resource Manual at 1925</u>
Judicial Deportation -- Statutory Provisions	<u>Criminal Resource Manual at 1926</u>
Judicial Deportation -- Special Considerations Requiring Corrective Legislation	<u>Criminal Resource Manual at 1927</u>
Implementing Judicial Deportation -- General Concerns	<u>Criminal Resource Manual at 1928</u>
Stipulated Judicial Deportation	<u>Criminal Resource Manual at 1929</u>
Contested Judicial Deportation	<u>Criminal Resource Manual at 1930</u>
Appendix A -- Contact List	<u>Criminal Resource Manual at 1931</u>
Appendix B -- Plea Agreement Form -- Basis for	<u>Criminal Resource Manual at 1932</u>

Deportation is an Offense to Which the Defendant Will Plead Guilty	
Appendix C -- Plea Agreement Form -- Basis for Deportation is Unrelated to Offense to Which the Defendant Will Plead Guilty	<u>Criminal Resource Manual at 1933</u>
Appendix D -- Grounds for Judicial Deportation	<u>Criminal Resource Manual at 1934</u>
Appendix E -- Notice of Intent to Request Judicial Deportation	<u>Criminal Resource Manual at 1935</u>
Appendix F -- Factual Allegations in Support of Request for Judicial Order of Deportation (Aggravated Felony)	<u>Criminal Resource Manual at 1936</u>
Appendix G -- Factual Allegations in Support of Request for Judicial Order of Deportation (CIMT)	<u>Criminal Resource Manual at 1937</u>
Appendix H -- Factual Allegations in Support of Request for Judicial Order of Deportation (Multiple CIMT)	<u>Criminal Resource Manual at 1938</u>
Appendix I -- Relief From Deportation	<u>Criminal Resource Manual at 1939</u>
Appendix J -- Plea Agreement Forms for Stipulated Deportations	<u>Criminal Resource Manual at 1940</u>
Attorney General's Working Group	<u>Criminal Resource Manual at 1941</u>

9-73.510 Immigration Violations -- Promise of Non-Deportation

In a criminal case, the United States Attorney should not, as part of a plea agreement or an agreement to testify, or for any other reason, promise an alien that he/she will not be deported, without prior authorization from the INS District Director. See also USAM 9-15.800, which requires that such agreements be approved by the Assistant Attorney General of the Criminal Division, and USAM 9-16.000 which provides additional general information relating to plea agreements in criminal cases.

9-73.520 Immigration Violations -- Deportation of Criminal Aliens

All deportable criminal aliens should be deported unless extraordinary circumstances exist. Accordingly, absent such circumstances, Federal prosecutors should seek the deportation of deportable alien defendants in whatever manner is deemed most appropriate in a particular case. Exceptions to this policy must have the written approval of the USA or a designated supervisory AUSA. In cases handled exclusively by one of the Department's litigating divisions, an exception to the policy must have the written approval of the appropriate Assistant Attorney General or Deputy Assistant Attorney General. The means of effecting the deportation of criminal alien

defendants include: (1) using stipulated administrative deportation orders in connection with plea agreements; (2) providing for deportation as a condition of supervised release under 18 U.S.C. § 3583(d); and (3) seeking judicial deportation orders pursuant to the judicial deportation statute, formerly 8 U.S.C. § 1252a(d), recodified by Section 374 of the Illegal Immigration Reform and Immigrant Responsibility Act at 8 U.S.C. § 1228(c). See USAM 9-73.500 and the Attorney General's April 28, 1995 Memorandum to All Federal Prosecutors, captioned Deportation of Criminal Aliens.

It should be noted that in the above mentioned memorandum, the Attorney General instructed federal prosecutors that to obtain stipulations to deportation they may agree to recommend a one or two level downward departure from the applicable sentencing range in return for the alien's concession of deportability and agreement to accept a final order of deportation. Such downward departure is justified on the basis that it is conduct not contemplated by the guidelines.

9-73.600 Passport/Visa Violations -- 18 U.S.C. § § 1541 to 1546

18 U.S.C. §§ 1541 to 1546 -- Passports and Other Entry Documents	<u>Criminal Resource Manual at 1942</u>
18 U.S.C. § 1541 -- Issuance of Passports Without Authority	<u>Criminal Resource Manual at 1943</u>
18 U.S.C. § 1542 -- False Statement in Application for Passport and Use of a Passport Fraudulently Obtained	<u>Criminal Resource Manual at 1944</u>
18 U.S.C. § 1543 -- Making or Using a Forged Passport	<u>Criminal Resource Manual at 1945</u>
18 U.S.C. § 1544 -- Misuse of a Passport	<u>Criminal Resource Manual at 1946</u>
18 U.S.C. § 1546 -- Fraud and Misuse of Visas, Permits, and Related Documents, and False Personation	<u>Criminal Resource Manual at 1947</u>

9-73.700 Marriage Fraud -- 8 U.S.C. § 1325(c) and 18 U.S.C. § 1546

For a discussion of marriage fraud, *see* the Criminal Resource Manual at 1948.

9-73.800 Nationality and Citizenship Offenses

For a discussion of nationality and citizenship offenses, *see* the Criminal Resource Manual at 1949.

9-73.801 Revocation of Naturalization

No suit to revoke naturalization under 8 U.S.C. § 1451 shall be instituted by a United States Attorney without prior consultation with the Office of Immigration Litigation in the Civil Division. Attorney General's Order No. 851-79 (9/4/79) confers upon the Criminal Division's Office of Special Investigations (OSI) the authority to prepare, initiate and conduct denaturalization proceedings in all federal districts against individuals who, prior to and during World War II, participated in persecution in association with the Nazi government or its allies. OSI may institute denaturalization cases without consulting the Office of Immigration Litigation.

9-74.000
CHILD SUPPORT AND
INTERNATIONAL
PARENTAL KIDNAPPING

9-74.010 Supervisory Authority
9-74.100 Federal Enforcement of Child Support
9-74.105 Child Support -- Notice to Target and Charging Considerations
9-74.200 International Parental Kidnapping

9-74.010 Supervisory Authority

This chapter focuses on the criminal offenses of willful failure to pay past due child support (18 U.S.C. § 228), and international parental kidnapping (18 U.S.C. § 1204). The Child Exploitation and Obscenity Section of the Criminal Division has supervisory authority over each of these offenses.

9-74.100 Federal Enforcement of Child Support

Title 18, United States Code, Section 228, the Child Support Recovery Act of 1992 (CSRA), makes the willful failure to pay a past due support obligation with respect to a child residing in another State a Federal offense. Investigative jurisdiction for this statute is vested in the Federal Bureau of Investigation. In addition, the Department of Health and Human Services (HHS), Office of Inspector General, has been deputized to investigate all Child Support Recovery Act cases.

For more information on child support violations, see the below-listed sections of the Criminal Resource Manual:

Federal Enforcement of Child Support	<u>Criminal Resource Manual at 1950</u>
Elements of the Offense of Failure to Pay Child Support	<u>Criminal Resource Manual at 1951</u>
Definitions	<u>Criminal Resource Manual at 1952</u>
Possible Defenses	<u>Criminal Resource Manual at 1955</u>
Sentencing Issues	<u>Criminal Resource Manual at 1956</u>

9-74.105 Child Support -- Notice to Target and Charging Considerations

Care must be taken to ensure that the criminal process is not used to enforce a civil debt. As such, once a case has been filed it should not be dismissed. Nor should pre-trial diversion be considered, except in extraordinary circumstances, merely because an offender makes payment. An additional consideration militating against dismissal or pre-trial diversion once charges have been filed is that the deterrent impact of the potential felonious second offense would be avoided by dismissal or pre-trial diversion of the first offense. Additionally, no notice to the target is required prior to the filing of charges in these cases. Such a practice must be weighed carefully in light of the considerations discussed above.

The determination as to whether to issue a summons or a warrant in CSRA cases should be made on a case-by-case basis by the United States Attorney's Office prosecuting the case. Since these charges will generally involve individuals who have a history of evasion of court processes and flight, a warrant may be appropriate. However, other cases involving obligors who, for instance, have become established members of another community, may only require a summons to appear.

9-74.200 International Parental Kidnapping

Title 18, United States Code, Section 1204, enacted in 1993, makes it an offense to remove a child who has been in the United States from the United States with the intent to obstruct the lawful exercise of parental rights. Such an offense is punishable by a fine under Title 18, imprisonment for not more than three years, or both.

Until December 1995, United States Attorneys were required to obtain the prior approval of the Criminal Division to initiate a prosecution under 18 U.S.C. § 1204. Although prior approval is no longer required, prosecutors are urged to contact the Child Exploitation and Obscenity Section for assistance. In addition, consultation with the Office of International Affairs is appropriate to determine the possibility for extradition in advance of charging.

For more information concerning 18 U.S.C. 1204 offenses, see the below-listed sections of the Criminal Resource Manual:

International Parental Kidnapping	<u>Criminal Resource Manual at 1957</u>
Definitions	<u>Criminal Resource Manual at 1958</u>
Defenses	<u>Criminal Resource Manual at 1959</u>
Alternate remedy -- Hague Convention on the Civil Aspects of International Child Abduction	<u>Criminal Resource Manual at 1960</u>

Relationship to the Federal Kidnapping Act	<u>Criminal Resource Manual at 1961</u>
Use of Unlawful Flight to Avoid Prosecution warrants (UFAPS)	<u>Criminal Resource Manual at 1962</u>

OBSCENITY, SEXUAL EXPLOITATION, SEXUAL ABUSE, AND RELATED OFFENSES

- 9-75.001 Introduction—Child Abuse, Child Pornography and Obscenity Crimes
 - 9-75.010 RICO Prosecutions
 - 9-75.020 General Prosecution Policies and Priorities
 - 9-75.030 Coordination of Cases and Investigations
 - 9-75.040 Use of a Computer to Commit Child Pornography
 - 9-75.050 Telecommunications
 - 9-75.100 Multiple District Investigations and Prosecutions
 - 9-75.110 Nationwide Investigations
 - 9-75.200 Sexual Abuse—18 U.S.C. 2241 et seq.
 - 9-75.300 Transportation for Illegal Sexual Activity and Related Crimes—18 U.S.C. 2421 et seq.
 - 9-75.400 Obscenity/Sexual Exploitation—Venue
 - 9-75.410 Pre-trial Diversion
 - 9-75.420 Obscenity/Sexual Exploitation—Federal-State Relations
 - 9-75.500 Obscenity/Sexual Exploitation—Forfeiture, Restitution, and Civil Remedies
 - 9-75.510 Obscenity/Sexual Exploitation—Request to Re-export
 - 9-75.600 Sexual Assault/Child Molestation—Federal Rules of Evidence
 - 9-75.610 Child Victims' and Child Witnesses' Rights
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9-75.001 Introduction—Child Abuse, Child Pornography and Obscenity Crimes

Obscenity crimes are prosecuted under 18 U.S.C. §§ 1460 through 1469. The substantive crimes are set forth in sections 1460-1466 and 1468. Section 1467 authorizes criminal forfeiture of the obscene items, the profits or proceeds obtained from the commission of the crimes, and the property used to commit or promote the commission of the obscenity crimes.

Prosecutions involving child pornography and the sexual exploitation of children are initiated under 18 U.S.C. §§ 2251 through 2260. The substantive statutes are sections 2251, 2251A, 2252, 2252A and 2260 and the relevant definitions are set forth in section 2256. Section 2253 authorizes criminal forfeiture, and section 2254 authorizes civil forfeiture, of the items depicting child pornography, the profits or proceeds obtained from the commission of the crimes, and the property used to commit or promote the commission of the crimes. Section 2255 provides a civil remedy for victims and section 2259 provides mandatory restitution to victims. Section 2257 creates record keeping requirements for items depicting sexually explicit conduct and section 2258 creates a misdemeanor crime for failure to report child abuse.

Sexual abuse crimes are prosecuted under 18 U.S.C. §§ 2241 through 2248. The age of the victim and whether force was used are two important facts that help determine the appropriate statute and punishment. Section 2247 increases the maximum penalties for repeat offenders and section 2248 mandates restitution to the victims.

Crimes involving the transportation of individuals for illegal sexual activities are governed by 18 U.S.C. §§ 2421 through 2423. Section 2424 creates reporting requirements for individuals operating homes or other places for prostitution or related activities. Section 2425 addresses the use of interstate facilities to transmit information about a minor. Section 2426 provides that the maximum term of imprisonment for a violation of a Chapter 117 crime after a prior sex offenses conviction shall be two times the term otherwise specified. Finally, Section 2427 includes the production of child pornography in the definition of "sexual activity for which any person can be charged with a criminal offense" in travel cases.

Section 1305 of Title 19 prohibits the importation of obscene items and authorizes the seizure and forfeiture of such items. Sections 3008 and 3010 of Title 39 impose requirements on how and to whom sexually oriented advertisements may be mailed. Individuals who violate these requirements may be prosecuted under 18 U.S.C. §§ 1735 and 1737. Section 223 of Title 47 prohibits, in certain situations, obscene or indecent telephone calls.

For an overview of the statutes that can be used to prosecute persons who commit obscenity, etc. violations, see the below-listed sections of the Criminal Resource Manual

Distribution of Obscene Matter—Statutes	Criminal Resource Manual at 1963
Immoral Articles—Prohibition of Importation	Criminal Resource Manual at 1964
Sexually Oriented Advertisements	Criminal Resource Manual at 1965
Sexual Exploitation of Children	Criminal Resource Manual at 1966
Selling or Buying of Children (Section 2251A)	Criminal Resource Manual at 1967
Certain Activities Relating to Material Involving the Sexual Exploitation of Minors—18 U.S.C. §§ 2252 and 2252A	Criminal Resource Manual at 1968
Certain activities relating to material involving the sexual exploitation of minors	Criminal Resource Manual at 1969 and 2467
Criminal Forfeiture	Criminal Resource Manual at 1970
Civil Forfeiture	Criminal Resource Manual at 1971
Civil Remedy for Personal Injuries	Criminal Resource Manual at 1972
Definitions for 18 U.S.C. §§ 2251, 2251A, 2252A and 2252	Criminal Resource Manual at 1973
Record keeping requirements	Criminal Resource Manual at 1974
Failure to report child abuse	Criminal Resource Manual at 1975
Production of Sexually Explicit Depictions of a Minor for Importation into the United States	Criminal Resource Manual at 1976
Mandatory Restitution (18 U.S.C. § 2259)	Criminal Resource Manual at 1977

9-75.010 RICO Prosecutions

Title 18, United States Code, sections 1461 to 1465 (relating to obscene material), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children) and sections 2421 to 2424 (relating to prostitution and white slave traffic) are predicate offenses for violation of the RICO statutes, 18 U.S.C. §§ 1961 to 1969. *See* 18 U.S.C. § 1961(l). Questions concerning RICO authorization and the application of the RICO guidelines should be addressed to the Organized Crime and Racketeering Section; however, questions concerning obscenity issues, the sexual exploitation of children or the transportation of minors for prostitution or other illegal sexual activities that are involved in RICO should be addressed to the Child Exploitation and Obscenity Section (CEOS). CEOS and Organized Crime and Racketeering jointly will authorize RICO prosecutions that involve a predicate offense of obscenity, sexual exploitation of children or the transportation of children for illegal sexual activities. *See also* USAM 9-110.000 *et. seq.* for additional information on RICO prosecutions.

9-75.020 General Prosecution Policies and Priorities

Prosecution of all crimes involving the sexual abuse or sexual exploitation of children and the distribution of child pornography is strongly encouraged. Investigation has shown that many individuals who produce, import or consensually exchange child pornography do so repeatedly and with full knowledge that it is illegal to do so. In addition, many of these individuals engage in child sexual abuse or would like to do so, given the right opportunity. Many of these people also intentionally engage in occupations or activities that bring them into frequent contact with children. Finally, many people use child pornography to encourage their child victims to engage in sexual activity. In evaluating such cases, consideration should be given to, *inter alia*, characteristics of the material, such as the age of the involved child, the type of conduct depicted, the number of involved children, the quantity of the involved material, whether violence or force is used against the child, and characteristics of the target, such as whether the target currently is engaging in sexual activity with children, whether the target is the parent or guardian, or is in a position of trust with the depicted children, whether the target has shown the material to children, whether the target is making money from the conduct, whether the target has committed any prior offenses involving child sexual abuse or exploitation, and the safety of the community.

Prosecution of large scale distributors of obscene material who realize substantial income from their multi-state operations also is encouraged. Prosecution priority should be given to cases in which there is evidence of involvement by known organized crime figures. However, prosecution of cases involving relatively small distributors can have a deterrent effect and would dispel any notion that obscenity distributors are insulated from prosecution if their operations fail to exceed a predetermined size or if they fragment their business into small-scale operations. Therefore, prosecution of such distributors also may be appropriate on a case-by-case basis. In evaluating obscenity cases, substantial deference should be given to the United States Attorney's determination of the viability of the case based upon the factors set forth in *Miller v. California*, 413 U.S. 15 (1973). Under the legal test of obscenity set forth in that case, material is obscene if, taken as a whole, the average person in the community would find that the material appeals to the prurient interest of its intended audience, depicts sexual conduct in a patently offensive way, and a reasonable person would find the material, taken as a whole, lacks serious literary, artistic, political or scientific value.

9-75.030 Coordination of Cases and Investigations

CEOS and USAOs will work together to ensure that crimes involving child pornography, child sexual abuse, child sexual exploitation and obscenity are vigorously enforced throughout the nation. Generally, such crimes are prosecuted by the USAO in the relevant district. However, CEOS attorneys have

substantial experience in prosecuting these types of crimes and they are available to assist in the investigative stage and/or to handle trials as chair or co-chair.

Prior to initiating any activity related to an investigation or prosecution in a district, CEOS shall notify the United States Attorney for that district. If the United States Attorney objects to CEOS initiating the activity, the matter shall be resolved by the Deputy Attorney General. USAOs shall inform CEOS of all significant investigations and cases being prosecuted in the district as well as all significant judicial decisions issued in such cases.

See also the notification requirement for 18 U.S.C. § 1591 prosecutions in USAM 8-3.120.

9-75.040 Use of a Computer to Commit Child Pornography Crimes

Title 18, United States Code, Section 2252 prohibits, among other things, the interstate distribution of visual depictions of a child engaged in sexually explicit conduct. This statute is applicable regardless of the method of distribution (via mail, shipping, computer, etc.) but it requires that a real child be involved in the production of the sexually explicit depiction. Improved computer technology, such as "morphing," has created a potential defense to section 2252 crimes. Morphing is the term given to the ability to use a computer to change or create an image from another image. An example of morphing is taking a computer image depicting adult pornography and using a computer and specific types of software to change the faces and bodies of the participants so that they appear to depict children.

To address this and other problems, Congress passed the Child Pornography Prevention Act of 1996, which became effective September 30, 1996. This Act created a new crime, 18 U.S.C. § 2252A, that incorporates an expanded definition of prohibited material by using the term "child pornography." The Act also created "child pornography" definitions, 18 U.S.C. § 2256(8) and (9), that eliminate the requirement that a real child be involved in the production of the visual depiction. The constitutionality of the new statute, including the "child pornography" definitions, is being challenged in jurisdictions throughout the nation. See the Criminal Resource Manual at 1969 for further information.

9-75.050 Telecommunications

Title 47 U.S.C. § 223 makes it a Federal offense for any person in interstate or foreign communication by means of a telecommunication device to knowingly make, create or solicit and initiate transmission of any communication which is obscene, lewd, or indecent. This section was amended by the Communications Decency Act of 1996 (CDA). The indecency part of the Act was challenged, and on June 26, 1997, the United States Supreme Court held that the CDA's "indecent transmission" and "patently offensively display" provisions under Sections 223(a)(1)(B) and (a)(2) and 223(d) abridge the freedom of speech protected by the First Amendment. *Reno v. ACLU*, 521 U.S. 844 (1997). On July 30, 1997, the United States District Court in Philadelphia signed a final order permanently enjoining the Attorney General, the Department of Justice, and all acting under the Attorney General's discretion and control, from enforcing, prosecuting, investigating, or reviewing any matter premised upon "indecent communications." The Department, however, is not enjoined from enforcing, prosecuting, investigating, or reviewing allegations of violations of the Section based on prohibited obscenity or child pornography. See the Criminal Resource Manual at 2465.

This section was also amended by the Child Online Protection Act of 1998 which was intended to restrict the dissemination of "obscene" or "harmful to minors" materials over the World Wide Web and provided for civil and criminal penalties. This statute was likewise challenged in *ACLU et al. v. Janet Reno*, 31 F. Supp.2d 473 (E.D. Pa. 1999). The court has entered a stay of proceedings in the case pending the appeal of the preliminary injunction entered by the court.

For additional information related to the section 223 amendments, see the below-listed sections of the Criminal Resource Manual

Telecommunications Offenses Described	Criminal Resource Manual at 1978
Special Considerations in Obscene or Harassing Telephone Calls	Criminal Resource Manual at 1979
Obscene or Harassing Telephone Calls—Jury Trial	Criminal Resource Manual at 1980

9-75.100 Multiple District Investigations and Prosecutions

Multiple district investigations are investigations in which either (1) the target conducts his, her or its business, or commits the charged crimes, in more than one district or (2) there are multiple targets who may be located in different districts.

An example of the first type of investigation is an individual or company that sells or distributes child pornography or obscene material nationwide and, therefore, is subject to prosecution in every district where a customer is located. In this type of multi-district investigation, USAOs shall notify CEOS prior to instituting charges against, or entering into a plea agreement with, the target. The purpose of this notification requirement is to permit CEOS to coordinate prosecutions of the target that may be pending in other districts and/or to prevent the Government's actions in one district from negatively impacting those in another district. Generally, multiple prosecutions are not favored. See USAM 9-2.031 for policies relating to multiple prosecutions. In deciding in which district(s) to initiate charges, the following factors should be considered: (1) where the most serious offense was committed, (2) where the most harm was caused, (3) residence of witnesses, (4) residences of victims, (5) location of evidence, and (6) applicable law.

An example of the second type of investigation is an investigation involving computer crimes being committed over the Internet, where the targets (those distributing and receiving the child pornography or obscene material) may be located in many different districts. In this type of multi-district prosecution, the USAO shall notify CEOS, and the Child Exploitation and Obscenity Coordinator in the other districts, prior to instituting charges against a target. The USAO also shall notify CEOS and the Child Exploitation and Obscenity Coordinator in the other districts of such investigations as early as possible in the investigative stage to permit early resolution of venue issues, if any.

9-75.110 Nationwide Investigations

"Nationwide Investigations" are investigations that will likely have an impact in at least fifteen districts. (See USAM 9-75.100 "Multiple District Investigations and Prosecutions" if the investigation will likely affect less than fifteen but more than one district.) Because such investigations will have a broad impact, an attorney should always supervise their development and implementation. The supervising attorney can be either a USAO or CEOS attorney. The supervising attorney, whether from CEOS or USAO, shall notify CEOS and the Child Exploitation Working Group of the AGAC (through CEOS) during the development of a nationwide investigation, and shall cause to be notified all United States Attorneys of the nationwide investigation prior to its implementation. The supervising attorney conducting a nationwide investigation shall notify the Child Exploitation and Obscenity Coordinator in each district where a potential defendant is located as soon as that information is developed. This will permit any United States Attorney to provide input regarding potential problems with the initiative that may hinder later prosecutions in his or her district.

The supervising attorney shall also complete and submit to CEOS and the Child Exploitation Working Group of the AGAC (through CEOS), a "Notification of Child Exploitation Investigation" form. A review of the proposed nationwide investigation will be performed by an Advisory Committee (appointed by the

Child Exploitation Working Group of the AGAC). The Advisory Committee will be comprised of six federal prosecutors with expertise in the area of child exploitation investigations, one attorney from the Child Exploitation and Obscenity Section of the United States Department of Justice, and technical advisor(s) as deemed necessary by the Advisory Committee. The Advisory Committee will review all proposals for nationwide child exploitation investigations and offer advice regarding the investigation. The Advisory Committee, upon receiving a notification, will notify all districts that a notification has been received and is being considered by the Advisory Committee. The Advisory Committee will discuss the proposal with the initiating district and present advice to the initiating district. The Advisory Committee will prepare a brief report regarding its advice and disseminate the report to all districts within fourteen working days of receiving the notification. The Advisory Committee is also available for consultation and advice concerning investigations that do not rise to the level of "nationwide investigations" but frequently involve many of the same issues as those encountered in large scale investigations.

The supervising attorney also shall keep CEOS and the involved Coordinators apprised as to the progress of the investigation.

9-75.200 Sexual Abuse—18 U.S.C. §§ 2241 et seq.

The primary federal statutes concerning sexual abuse are in Chapter 109A, 18 U.S.C. §§ 2241 to 2245.

For more information on the sexual abuse statutes, see the following sections of the Criminal Resource Manual

Sexual Abuse	Criminal Resource Manual at 1981
Aggravated Sexual Abuse	Criminal Resource Manual at 1982
Sexual Abuse	Criminal Resource Manual at 1983
Sexual Abuse of a Minor or a Ward	Criminal Resource Manual at 1984
Abusive Sexual Contact	Criminal Resource Manual at 1985
Sexual Abuse Resulting in Death	Criminal Resource Manual at 1986
Definitions for 18 U.S.C. §§ 2241-2245	Criminal Resource Manual at 1987
Repeat Offenders	Criminal Resource Manual at 1988
Mandatory Restitution for Sexual Abuse Offenders (18 U.S.C. § 2248)	Criminal Resource Manual at 1989
Sexual Assault	Criminal Resource Manual at 1990
Felony Murder	Criminal Resource Manual at 1991
Use of Interstate Facilities to Transmit Information About a Minor (18 U.S.C. § 2425)	Criminal Resource Manual at 1992
Repeat Offenders (18 U.S.C. §.2426)	Criminal Resource Manual at 1993
Definition of Sexual Activity	Criminal Resource Manual at 1994
Pretrial Detention	Criminal Resource Manual at 1995
Death Penalty	Criminal Resource Manual at 1996
Administrative Subpoenas	Criminal Resource Manual at 1997
Reporting by Electronic Service Providers	Criminal Resource Manual at 1998

9-75.300 Transportation for Illegal Sexual Activity and Related Crimes—18 U.S.C. §§ 2421 et seq.

Section 2421 of Title 18 prohibits anyone from knowingly transporting an individual in interstate or foreign commerce with the intent that the individual engage in prostitution or any criminal sexual activity, or attempts to do so, and imposes a maximum punishment of ten years' imprisonment and/or a fine under Title 18. For information on § 2422 (Coercion and Enticement), see the Criminal Resource Manual at 2001. For information on § 2423 (Transportation of Minors), see the Criminal Resource Manual at 2002. *See also* USAM 9-79.100.

9-75.400 Obscenity/Sexual Exploitation—Venue

Cases under the obscenity and child pornography statutes in which the proscribed item is mailed may be prosecuted in the district where the material is mailed or deposited with a facility of interstate commerce, the district of receipt, or any intermediate district through which the material passes. See 18 U.S.C. § 3237. In cases where there are complaints by postal patrons about the unsolicited receipt of child pornography or obscene material, the district of receipt would appear to be the appropriate choice of venue. On the other hand, in cases involving numerous mailings by a distributor into various districts, the district of origin may be the appropriate venue for the case. Furthermore, if a case is to be based solely upon test purchases by postal inspectors, it may be venued in the district of receipt where the government has some information showing that there were prior mailings into the recipient districts by the individual involved. Prosecutions should not be brought in jurisdictions through which obscene material passes in transit except in unusual circumstances.

Cases under the child pornography and obscenity statutes in which the crime was committed via computer may be prosecuted in the district where the defendant committed any of the acts proscribed in the statutes. In general, in cases in which the crime was committed via the computer, all of the charges (distribution, receipt, possession, etc.) should be brought in the district in which the target and his computer are located. Multiple prosecutions generally are discouraged.

9-75.410 Pre-trial Diversion

Pre-trial diversion for crimes involving child pornography, child sexual abuse, the sexual exploitation of children and obscenity is generally not favored, however, it may be an appropriate and just disposition in certain cases.

9-75.420 Obscenity/Sexual Exploitation—Federal-State Relations

Federal prosecution of obscenity and child pornography cases should focus upon producers and interstate distributors. However, cases involving straight possession may warrant federal prosecution and production and distribution cases may be more appropriately prosecuted in state court. Moreover, many cases include both federal charges (such as distribution of pornography) and local charges (such as sexual abuse). Hence, cooperation between federal and local officers and prosecutors is strongly encouraged and can be highly productive in both federal and local efforts. *See* Fed. R. Cr. P. 6(e). The formation of multi-agency and multi-jurisdictional task forces is strongly encouraged.

9-75.500 Obscenity/Sexual Exploitation—Forfeiture, Restitution, and Civil Remedies

Statutes within the child sexual exploitation and obscenity chapters authorize the criminal forfeiture of any property (1) depicting child pornography or obscene material, (2) constituting or derived from

proceeds obtained from a child pornography obscenity crime or (3) used, or intended to be used, to commit such an offense. 18 U.S.C. §§ 1465, 2253.

Section 2254 permits seizure and civil forfeiture, according to the pertinent customs laws pertaining to civil forfeiture (*see* 19 U.S.C. §§ 1600 *et seq.*), of: (1) equipment used, or intended to be used, in producing, reproducing, transporting, shipping or receiving child pornography or any property used to facilitate such a violation; (2) any child pornography or material containing child pornography; and (3) any property constituting, or derived from, profits or proceeds obtained from a violation of the child pornography laws.

Section 2248 mandates that restitution to sexual abuse victims be imposed upon conviction of violations of sections 2241-2244. Section 2259 mandates the same restitution be made to child pornography or child exploitation victims upon conviction of violations of 18 U.S.C. §§ 2251, 2251A, 2252, 2252A and 2260. Both restitution orders may be enforced by either the government or a victim.

Section 2255 of Title 18 permits a minor victim of a section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 violation to sue for actual damages in any appropriate United States District Court. Sustained damages are deemed to be no less than \$50,000.

9-75.510 Obscenity/Sexual Exploitation—Request to Re-export

For a discussion of requests to re-export, see Criminal Resource Manual at 2469.

9-75.600 Sexual Assault/Child Molestation—Federal Rules of Evidence

For more information on Federal Rules of Evidence 413-415 (effective July 10, 1995), contact David J. Karp in the Office of Policy Development at (202) 514-3273.

9-75.610 Child Victims' and Child Witnesses' Rights

The Victims of Child Abuse Act of 1990 (VCAA) (18 U.S.C. § 3509) was enacted in response to the alarming increase in reports of suspected child abuse cases made each year. In such cases, because the investigation and prosecution of child abuse is extremely complex, too often the system has not paid sufficient attention to the needs and welfare of the child victim, thus aggravating the trauma that the child victim had already experienced. Therefore, in order to address this, the VCAA provided, *inter alia*, authorization for training and technical assistance to judges, attorneys and others involved in State and Federal court child abuse cases; requires certain professionals to report suspected cases of child abuse under Federal jurisdiction; and amends the United States criminal code to ensure protection of children's rights in court and throughout the criminal justice system.

The *Attorney General Guidelines for Victim and Witness Assistance 2000* state that the primary goal of every Justice Department law enforcement officer, investigator, prosecutor, victim/witness professional and staff member shall be to reduce the trauma to child victims and child witnesses caused by the criminal justice system. To that end, Justice Department personnel are required to provide child victims with referrals for services, and should provide child witnesses with services referrals.

For additional information regarding victims, see USAM 3-7.300 *et seq.*



Office of the Attorney General
Washington, D. C. 20530
April 16, 2002

DEPT. OF JUSTICE

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TO: Holders of United States Attorneys' Manual Title 9

FROM: John Ashcroft
Attorney General

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

RE: Revised Policy Re Coordination of Cases and Investigations

AFFECTS: USAM 9-75.030

The following text changes the prior approval requirement to notification when the Child Exploitation and Obscenity Section (CEOS), Criminal Division, initiates any activity related to an investigation or prosecution in a district.

USAM 9-75.030 Coordination of Cases and Investigations

CEOS and USAOs will work together to ensure that crimes involving child pornography, child sexual abuse, child sexual exploitation and obscenity are vigorously enforced throughout the nation. Generally, such crimes are prosecuted by the USAO in the relevant district. However, CEOS attorneys have substantial experience in prosecuting these types of crimes and they are available to assist in the investigative stage and/or to handle trials as chair or co-chair.

Prior to initiating any activity related to an investigation or prosecution in a district, CEOS shall notify the United States Attorney for that district. If the United States Attorney objects to CEOS initiating the activity, the matter shall be resolved by the Deputy Attorney General. USAOs shall inform CEOS of all significant investigations and cases being prosecuted in the district as well as all significant judicial decisions issued in such cases.



U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

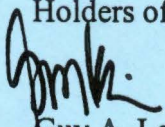
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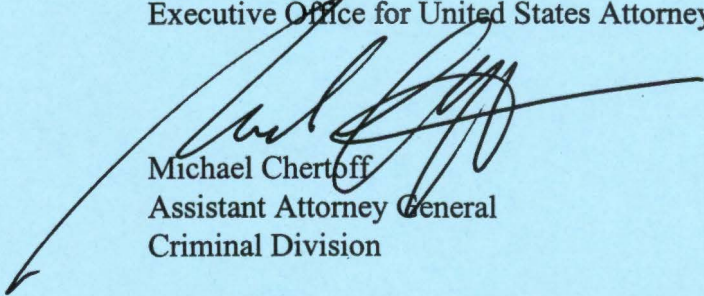
Main Justice Building, Room 2616
950 Pennsylvania Avenue, N. W.
Washington, D.C. 20530

(202) 514-2121

FEB 6 2003

TO: Holders of United States Attorneys' Manual Title 9

FROM: 
Guy A. Lewis
Director
Executive Office for United States Attorneys


Michael Chertoff
Assistant Attorney General
Criminal Division

RE: Protocol for Nationwide Child Exploitation Investigations

AFFECTS: USAM 9-75.110

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Please find attached revised policy which sets forth new guidance at USAM 9-75.110 to address the prosecution of nationwide child exploitation investigations. These cases have significantly increased over the past few years due to the use of the Internet and computers. The new policy affects nationwide cases – cases that are likely to have an impact in all or most districts. Also attached is a Protocol for Nationwide Child Exploitation Investigations and Notification Form. The Protocol and Notification Form will be included in the Title 9 Resource Manual and linked to Title 9, Chapter 75, Obscenity, Sexual Exploitation, Sexual Abuse, and Related Offenses.

The revised policy, Protocol and Notification Form are the result of a joint working group created by the Attorney General's Advisory Committee's Child Exploitation and Obscenity Working Group and the Child Exploitation and Obscenity Section, Criminal Division. Both the Attorney General's Advisory Committee and the Criminal Division have adopted the revised policy.

Attachment (3)

9-75.110 Nationwide Investigations

"Nationwide Investigations" are investigations that will likely have an impact in all or most of the districts. Because such investigations will have a broad impact, an attorney should always supervise their development and implementation. The supervising attorney can be either a USAO or CEOS attorney. The supervising attorney, whether from CEOS or USAO, shall notify the Child Exploitation Working Group of the AGAC and CEOS during the development of a nationwide investigation, and shall notify all United States Attorneys of the nationwide investigation prior to its implementation. The supervising attorney conducting a nationwide investigation shall notify the Child Exploitation and Obscenity Coordinator in each district where a potential defendant is located as soon as that information is developed. This will permit any United States Attorney to provide input regarding potential problems with the initiative that may hinder later prosecutions in his or her district.

The supervising attorney shall also complete and submit to the Child Exploitation Working Group of the AGAC and CEOS, a "Notification of Child Exploitation Investigation" form. A review of the proposed nationwide investigation will be performed by an Advisory Committee (appointed by the Child Exploitation Working Group of the AGAC). The Advisory Committee will be comprised of five federal prosecutors with expertise in the area of child exploitation investigations, one attorney from the Child Exploitation and Obscenity Section of the United States Department of Justice, and two technical advisors. The Advisory Committee will review all proposals for nationwide child exploitation investigations and offer recommendations regarding the investigation. The Advisory Committee will immediately discuss the proposal with the initiating district and orally present recommendations within seven working days of the meeting. The Advisory Committee will prepare a brief report regarding its recommendation and disseminate the report to all districts.

The supervising attorney also shall keep CEOS and the involved Coordinators apprised as to the progress of the investigation.

Notification of Nationwide Child Exploitation Investigation

Date _____

U.S. Attorney's Office point of
contact:

Mailing address:

District:

Telephone number:

A. Investigation to Date

1. Provide brief description of investigation, including proposed charges.

2. Is there a proposed search warrant or arrest date? (Yes/No) _____

a. If yes, what is the date? _____

b. Do you propose to coordinate this date nationwide? (Yes/No) _____

3. Attach a list of U.S. Attorneys' Offices involved or potentially affected.

a. Identify the district with primary venue or jurisdiction. _____

b. Does the originating district intend to pursue a conspiracy charge?(Y/N) _____

4. Identify originating law enforcement agency, lead investigative agency, and all
other agencies involved. _____

B. Targets of Investigation

1. Characteristics of targeted offenders (*check all boxes that apply*):

- | | |
|---|--|
| <input type="checkbox"/> Child Sex Rings | <input type="checkbox"/> Distributors |
| <input type="checkbox"/> Child Prostitution/Trafficking | <input type="checkbox"/> Commercial WWW pages |
| <input type="checkbox"/> Sex Tourism | <input type="checkbox"/> IRC file servers |
| <input type="checkbox"/> Producers | <input type="checkbox"/> Distributed file serving |
| <input type="checkbox"/> Commercial | <input type="checkbox"/> Web-based board / community |
| <input type="checkbox"/> Private | <input type="checkbox"/> E-mail |
| <input type="checkbox"/> Recipients/Collectors | <input type="checkbox"/> Spam |
| <input type="checkbox"/> Users of free content | <input type="checkbox"/> Newsgroups |
| <input type="checkbox"/> Traders | <input type="checkbox"/> Chat rooms |
| <input type="checkbox"/> Purchasers | <input type="checkbox"/> Other (<i>describe</i>): |

2. Number of offenders identified to date (*attach list of names with locations, if feasible*): _____

3. Conduct of known targets

a. Has investigation identified known producers? (Y/N) _____

b. Has investigation identified known molesters and/or ongoing molestation? (Yes/No) _____

c. Has investigation identified targets raising unusual or complex legal issues? (*e.g. law enforcement, publishers, targets with privilege issues (physicians, attorneys, clergy)*) (Yes/No) _____

If yes, explain:

d. Were members of group communicating with each other? Yes/No _____

Identify methods of communication (*check all boxes that apply*):

- Telephone
- Web-based telephone
- Commercial mail services
- IRC Chat
- Instant messaging, including ICQ
- E-mail
- Web-based BBS and communities
- Usenet postings
- In-person meetings
- Data encryption
- Passwords
- Rules of membership in groups
- Other (*explain*):

4. How were targets identified (*check all boxes that apply*)

- Internet log records
- Subscriber information
- Telephone records
- Billing information
- E-mail
- Informant/Cooperating Witness
- Forensic examination of seized computers

C. Timeliness of Investigation

1. When did offenders transmit/receive material? _____
 - a. Is transmission/receipt ongoing? (Yes/No) _____
2. Have any search warrants been executed?(Yes/No) _____
3. Have any arrests been made? (Yes/No) _____
4. Is there a potential for an undercover investigation? (Yes/No) _____
5. Is any member of the group cooperating with the investigation? (Yes/No) _____
6. Is the primary Internet Service Provider cooperating with the investigation? (Yes/No) _____

D. Preservation of Evidence

1. Have Internet logs of criminal activity been obtained/preserved? (Yes/No) _____
 - a. How old are the records? _____

- b. If preserved, when will preservation order expire? _____
- 2. If applicable, has website been preserved, including all pages and links? (Yes/No) _____
- 3. Has there been public disclosure of the investigation? (Yes/No) _____

E. Free Speech Coalition Issues

- 1. Have images been identified as involving real children? (Yes/No) _____

If yes, how many images? _____

If yes, how was digital imaging disproved?

- Images pre-date digital imaging technology
- Victims identified through comparison with known victim images
- Victims known to law enforcement
- Expert testimony
- Other (*explain*):

Protocol for Nationwide Child Exploitation Investigations

The use of the Internet and computers has significantly facilitated and expanded the commission of federal child exploitation offenses. Specifically, this technology has provided a conduit for the distribution of significant quantities of child pornography; has increased the contact between child exploitation offenders; and has enabled the offenders to conceal their true identities in order to gain access to juvenile victims. Recognizing these developments, federal law enforcement agencies have found it necessary to make significant changes in the manner in which they conduct investigations into criminal child exploitation offenses.

As a result of the technology and the behavior of the offenders, the potential number of nationwide investigations is expected to increase. Inherent in the technology is the nearly instantaneous ability of the offenders to violate federal statutes in multiple districts. Examples of such nationwide behavior include the ability of an offender to distribute child pornography to numerous other offenders through the use of the Internet, to manufacture child pornography that is simultaneously broadcast to other offenders, and to conspire with offenders in other districts to transport minors for the purpose of illegal sexual activity.

Recognizing that a nationwide investigation may originate in one district, but may have an impact in all or most of the districts, the need for support and advice to all affected districts is essential. As a preliminary matter, it is critical that as early as possible United States Attorneys' Offices identify the potential that an investigation will identify targets in other districts and lead to referrals to those districts by the investigating law enforcement agency. Even if the initiating district does not intend to pursue a nationwide investigation, the district should appreciate the possibility that nationwide referrals may originate from the investigating law enforcement agency. The initiating district should therefore notify the districts potentially affected by the investigation in a manner consistent with the procedures set forth herein.

Districts may elect to pursue the nationwide aspect of an investigation originating in their district. Because of the broad impact of such an investigation on other districts, it is essential that the investigation be supervised closely by an attorney from that office at the earliest stage, and that notice be issued to all potentially affected districts at the first opportunity.

Pursuant to 9-75.110 of the United States Attorneys' Manual, nationwide investigations will be reviewed by an Advisory Committee, comprised of attorneys and law enforcement agents with expertise in child exploitation cases. The purpose of the review is to ensure the efficient use of law enforcement resources and to identify potential problems and legal issues.

The Child Exploitation Working Group of the Attorney General's Advisory Committee will appoint the Advisory Committee members. The Advisory Committee will be comprised of five federal prosecutors with expertise in the area of child exploitation investigations, one attorney from the Child Exploitation and Obscenity Section of the United States Department of Justice, and two law enforcement agents. The Advisory Committee will review all nationwide investigations and

offer recommendations regarding the investigations. The Advisory Committee will immediately discuss the nationwide investigation with the initiating district and orally present recommendations within seven working days. The Advisory Committee will prepare a brief report regarding its recommendation and disseminate the report to all districts.

9-76.000 TRANSPORTATION

9-76.010 Overview

9-76.050 Transportation -- General Policy

9-76.110 Transportation -- Aviation Policy -- Settlement Authority

9-76.210 Transportation -- Motor Carrier Safety -- Policy

9-76.310 Transportation -- Railroad Safety -- Policy -- Supervisory and Investigatory Authority

9-76.340 Transportation -- Railroad Safety -- Civil Penalty Provisions

9-76.010 Overview

This chapter focuses on civil and criminal litigation conducted under the transportation provisions of Title 49, United States Code including the Federal Aviation Act of 1958, the Motor Carrier Safety Regulations, the Hazardous Materials Transportation Act, and a number of railroad safety statutes.

9-76.050 Transportation -- General Policy

District Court litigation, both civil and criminal, under various transportation provisions contained in Title 49, United States Code, is infrequent. The requisite expertise for the interpretation of these statutes resides with attorneys and other personnel within the agency or department responsible for securing compliance with the applicable statute. Accordingly, the United States Attorney should find it helpful to rely on the agency or departmental attorney for assistance with any referral, and should consider the views, both legal and factual, of the agency or department. A request for assistance from the Criminal Division should be solicited only in: (1) substantial cases; (2) cases in which there is a disagreement with agency personnel regarding whether or not to proceed; and (3) cases involving a national policy decision.

9-76.110 Transportation -- Aviation Policy -- Settlement Authority

United States Attorneys are authorized to effect settlement of the civil penalties provided in 49 U.S.C. § 46301 *et seq.* (formerly 49 U.S.C. § 1471) without the prior approval of the Criminal Division (Fraud Section). In place of the previously required prior approval of the Criminal Division, United States Attorneys are directed to consult with the FAA or its parent organization, the United States Department of Transportation (DOT), as appropriate, regarding settlement proposals. The FAA or DOT may seek Criminal Division review if it believes such review would be helpful to the settlement of the case.

The relatively small amount of money involved in many FAA civil penalty cases must not be a consideration in evaluating the merits of such cases. A civil penalty action is not one to collect a trivial amount owed to the government, but rather it is an important part of the federal enforcement effort to ensure aviation safety.

For additional information on this section, *see* the Criminal Resource Manual at 2004.

9-76.210 Transportation -- Motor Carrier Safety -- Policy

A vigorous enforcement program is followed in regard to offenses which endanger the public on the highways. The United States Attorney should advise the Federal Highway Administration of all significant developments in any such case he is handling. Supervision, if requested, of criminal prosecutions under these Acts is assigned to the Fraud Section of the Criminal Division.

For additional information on this section, *see* the Criminal Resource Manual at 2005.

9-76.310 Transportation -- Railroad Safety -- Policy -- Supervisory and Investigatory Authority

Supervision of criminal prosecutions and civil penalty actions under these Acts is assigned to the Fraud Section of the Criminal Division. The Federal Railroad Administration (FRA) will refer all cases directly to the appropriate United States Attorney, except cases involving novel questions of law. The United States Attorney should advise the Chief Counsel, FRA of all significant developments in a case, including the filing of an information or complaint, the docket number, the arraignment, the trial date, the position taken by the railroad and, the proposed settlement of the case, etc. Copies of such correspondence should be furnished to the Fraud Section of the Criminal Division, when significant or unusual developments or matters are involved. The Criminal Division should, of course, be promptly notified of adverse decisions and of cases where an appeal is taken by the defendant.

Investigations of all cases arising under the railroad safety statutes are conducted by the Federal Railroad Administration.

Additional background information on this section is in the Criminal Resource Manual at 2006 and 2007 (criminal penalty provisions). *See also* USAM 9-76.340.

9-76.340 Transportation -- Railroad Safety -- Civil Penalty Provisions

Due to the mandatory nature of the Federal Claims Collection Act (31 U.S.C § 3711) and the absolute duties which they impose upon carriers, the Department regards the penalties under the Act, although recoverable in civil proceedings, as not being merely civil obligations but penal sanctions, and accordingly does not accept compromise settlements of less than the full statutory penalty on each count with costs, to which the government is entitled as a matter of right. *See* 28 U.S.C. § 1918(a).

For additional information on this section, *see* the Criminal Resource Manual at 2008.

9-77.000
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9-78.000 WORKER PROTECTION STATUTES

The primary federal worker protection statutes are the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.*, the Federal Mine Safety and Health Act of 1977, as amended, 30 U.S.C. § 801 *et seq.*, the Atomic Energy Act, 42 U.S.C. § 2272 *et seq.*, and the Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. 97-470, January 14, 1983, 96 Stat 2584, codified at 29 U.S.C. § 1801 *et seq.* Supervision of criminal prosecutions under these Acts is assigned to the Senior Legal Advisor for Regulatory Enforcement, in the Fraud Section of the Criminal Division. *See* the Criminal Resource Manual at 2009.

Further information is available in the Criminal Resource Manual

Occupational Safety and Health Act	Criminal Resource Manual at 2010
Criminal Violations	Criminal Resource Manual at 2011
Willful Violation of a Safety Standard which Causes Death to an Employee	Criminal Resource Manual at 2012
Unauthorized Advance Notice of Inspection	Criminal Resource Manual at 2013
False Statement, Representation, or Certification	Criminal Resource Manual at 2014
Civil Penalties and Enforcement	Criminal Resource Manual at 2015
Federal Mine Safety and Health Act (MSHA)	Criminal Resource Manual at 2016
Criminal Violations	Criminal Resource Manual at 2017
Willful Violation of a Mandatory Health or Safety Standard or Withdrawal Order	Criminal Resource Manual at 2018
Unauthorized Advance Notice of Inspection	Criminal Resource Manual at 2019
False Statement, Representation, or Certification	Criminal Resource Manual at 2020
Equipment Falsely Represented as Complying with requirements	Criminal Resource Manual at 2021
Civil Penalties and Enforcement	Criminal Resource Manual at 2022
Migrant and Seasonal Agricultural Worker Protection Act	Criminal Resource Manual at 2023
Migrant and Seasonal Agricultural Worker Protection Act -- Referrals from Department of Labor	Criminal Resource Manual at 2024
Provisions of the Migrant and Seasonal Agricultural Worker Protection Act	Criminal Resource Manual at 2025
Enforcement	Criminal Resource Manual at 2026

9-79.000 OTHER CRIMINAL DIVISION STATUTES

9-79.100	Mann Act
9-79.200	Bank Records and Foreign Transactions Act
9-79.400	Failure to Register with the Selective Service System
9-79.410	Desecration of the Flag (18 U.S.C. § 700)
9-79.420	Disclosure Violations -- Tax Reform Act of 1976 (26 U.S.C. § 7213)

9-79.100 Mann Act

The Mann Act, 18 U.S.C. § 2421 *et seq.*, prohibits transporting any individual in interstate or foreign commerce for the purpose of engaging in prostitution or other sexual activity for which any person can be charged with a criminal offense, and related crimes. The Child and Exploitation and Obscenity Section of the Criminal Division is responsible for supervision of the Act.

Unless minors are victims, prosecutions under 18 U.S.C. §§ 2421 and 2422 should generally be limited to persons engaged in commercial prostitution activities, even though commerciality is not an element of the offense. *See Cleveland v. United States*, 329 U.S. 14 (1946), and *Caminetti v. United States*, 242 U.S. 470 (1917). Prosecution of persons other than those engaged in commercial prostitution enterprises such as panderers, operators of houses of prostitution, or call-girl operations, and those acting for or in association with such persons, should not be instituted without consultation with the Child Exploitation and Obscenity Section of the Criminal Division unless the victims are minors.

See the Criminal Resource Manual at 2027, for a brief discussion of the Mann Act.

9-79.200 Bank Records and Foreign Transactions Act

The Money Laundering and Asset Forfeiture Section of the Criminal Division has supervisory authority over the Bank Records and Foreign Transactions Act. Assistant United States Attorneys should keep the Department of Justice advised respecting the developments in important Bank Secrecy Act cases as they arise.

Possible civil penalties in a Bank Secrecy Act prosecution should not be compromised without contacting the Assistant Director, Financial Crimes Enforcement Network, United States Department of the Treasury, 15th and Pennsylvania Avenue, N.W., Washington, D.C. 20220 (202) 622-0400. That office should also be contacted in criminal cases which seem appropriate for civil remedies.

Further information on this subject is contained in the Criminal Resource Manual

Bank Records and Foreign Transactions Act	Criminal Resource Manual at 2028
Overview of the Bank Records and Foreign Transactions Act	Criminal Resource Manual at 2029
Reports on Domestic Financial Transactions	Criminal Resource Manual at 2030
Reporting on Foreign Financial Agency Transactions	Criminal Resource Manual at 2032
Structuring	Criminal Resource Manual at 2033
Sample Instruction -- Elements of 31 U.S.C. § 5324(a)(3)	Criminal Resource Manual at 2034
Use of Other Criminal Statutes	Criminal Resource Manual at 2035
Civil Remedies -- Injunctions	Criminal Resource Manual at 2036
Civil Remedies -- Civil Penalties	Criminal Resource Manual at 2037
Exemptions	Criminal Resource Manual at 2038
Bank Records and Foreign Transactions -- Dissemination of Financial Information	Criminal Resource Manual at 2039
Bank Records and Foreign Transactions -- Financial Crimes Enforcement Network (FinCEN)	Criminal Resource Manual at 2040

9-79.400 Failure to Register with the Selective Service System

United States Attorneys may not decline to prosecute violations of 50 U.S.C. App. § 462(a) involving the failure to register with the Selective Service System without prior notification to the Criminal Division, through the Policy and Statutory Enforcement Unit of the Office of Enforcement Operations. Such notification is necessitated by the requirement of 50 U.S.C. App. § 462(c) that the Department "advise the [Congress] in writing the reasons for its failure" to bring such prosecutions.

9-79.410 Desecration of the Flag (18 U.S.C. § 700)

United States Attorneys shall consult with the Fraud Section of the Criminal Division prior to instituting grand jury proceedings, filing an information, or seeking an indictment for the offense of desecration of the flag, 18 U.S.C. § 700.

**9-79.420 Disclosure Violations -- Tax Reform Act of 1976
(26 U.S.C. § 7213)**

United States Attorneys are required to consult with the Public Integrity Section of the Criminal Division before instituting grand jury proceedings, filing an information, or seeking an indictment of disclosure violations under 26 U.S.C. § 7213.

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9-82.000
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9-83.000
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9-84.000
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PROTECTION OF GOVERNMENT INTEGRITY

9-85.100 Supervisory Jurisdiction

9-85.101 Bribery of Public Officials

9-85.200 Federally Protected Activities (18 U.S.C. § 245)

9-85.210 Violations of Campaign Financing Laws, Federal Patronage Laws, and Corruption of the Electional Process -- Consultation Requirement

9-85.220 Purchase and Sale of Public Office (18 U.S.C. §§ 210, 211)

9-85.230 Lobbying with Appropriated Funds (18 U.S.C. § 1913)

9-85.240 Independent Counsel Provisions -- Ethics In Government Act

9-85.100 Supervisory Jurisdiction

This chapter addresses crimes which affect government integrity, including bribery of public officials and accepting a gratuity, election crimes, and other related offenses. The Public Integrity Section of the Criminal Division has supervisory jurisdiction over these offenses.

9-85.101 Bribery of Public Officials

Section 201 of Title 18 is entitled "Bribery of public officials and witnesses." The statute comprises two distinct offenses, however, in common parlance only the first, codified in section 201(b) of the statute, is true "bribery." The second offense, codified in section 201(c), concerns what are commonly known as "gratuities," although that word does not appear anywhere in the statute. Due to this distinction, government attorneys should take particular care and should not hesitate to consult with the Public Integrity Section of the Criminal Division.

For a discussion of the law see the Criminal Resource Manual

Bribery of Public Officials	Criminal Resource Manual at 2041
Elements Common to Both Bribery and Gratuity Offenses	Criminal Resource Manual at 2042
Comparison of the Elements of the Crimes of Bribery and Gratuities	Criminal Resource Manual at 2043
Particular Elements	Criminal Resource Manual at 2044
United States v. Brewster	Criminal Resource Manual at 2045
Other Issues	Criminal Resource Manual at 2046
Sample Charging Language	Criminal Resource Manual at 2047

9-85.200 Federally Protected Activities (18 U.S.C. § 245)

No prosecution of an offense described in 18 U.S.C. § 245 (Federally Protected Activities) may be undertaken by the United States except upon the certification of the Attorney General or Deputy Attorney General that in his or her judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice. The function of certification may not be delegated. *See* 18 U.S.C. § 245(a)(1). The anti-riot provision, 18 U.S.C. § 245(b)(3), and violations of 18 U.S.C. § 245(b)(1), insofar as it relates to matters not involving discrimination or intimidation on grounds of race, color, religion, or national origin, are assigned to the Criminal Division and requests for certification relating to them should be sent to the Criminal Division.

When the offense involves voting, and race is *not* an issue, prosecutors should contact the Public Integrity Section of the Criminal Division. When the offense involves voting and race *is* an issue, prosecutors should contact the Criminal Section of the Civil Rights Division.

9-85.210 Violations of Campaign Financing Laws, Federal Patronage Laws, and Corruption of the Electional Process -- Consultation Requirement

Consultation with the Public Integrity Section of the Criminal Division is required in all federal criminal matters that focus on violations of federal or state campaign financing laws, federal patronage crimes, and corruption of the election process. These offenses include, but are not limited to, offenses described in: 18 U.S.C. §§ 241 to 242, 592 to 611; 42 U.S.C. §§ 1973i(c), 1973i(e), and 1973gg-10; 2 U.S.C. §§ 431 to 455; and prosecutive theories that focus on election fraud or campaign fund raising violations using 18 U.S.C. §§ 1341, 1343, and 1346; 18 U.S.C. § 1952; 18 U.S.C. §§ 1956 and 1957.

With regard to federal campaign financing matters arising under 2 U.S.C. §§ 431-455, United States Attorneys shall consult with the Public Integrity Section before any inquiry or preliminary investigation is requested or conducted. United States Attorneys shall also consult with the Public Integrity Section before instituting grand jury proceedings, filing an information, or seeking an indictment charging a campaign financing crime.

With regard to all other election crime matters (other than those described in USAM 9-85.200 (Federally Protected Activities)), namely, alleged election fraud or patronage offenses, United States Attorneys shall consult with the Public Integrity Section before an investigation beyond a preliminary inquiry is requested or conducted. In this connection, the Department views any voter interviews in the preelection and balloting periods -- other than interviews of a complainant and any witnesses he or she may identify -- as beyond a preliminary investigation. Thus, the Public Integrity Section should be consulted before such interviews.

Finally, as with campaign financing matters, United States Attorneys also shall consult with the Public Integrity Section before instituting grand jury proceedings, filing an information, or seeking an indictment charging an election fraud or patronage offense.

9-85.220 Purchase and Sale of Public Office (18 U.S.C. §§ 210, 211)

United States Attorneys shall consult with the Public Integrity Section of the Criminal Division before instituting grand jury proceedings, filing an information, or seeking an indictment for violations of 18 U.S.C. §§ 210 and 211 (Purchase and Sale of Public Office).

9-85.230 Lobbying with Appropriated Funds (18 U.S.C. § 1913)

United States Attorneys shall consult with the Public Integrity Section of the Criminal Division before instituting grand jury proceedings, filing an information, or seeking an indictment for violations of 18 U.S.C. § 1913 (Lobbying with Appropriated Funds).

9-85.240 Independent Counsel Provisions -- Ethics In Government Act

The Public Integrity Section is responsible for reviewing and processing all matters arising under the Independent Counsel provisions of the Ethics in Government Act. *See* 28 U.S.C. § 591 *et seq.* Because of the sensitivity of many of these cases and the extremely strict time limitations built into the legislation, the Section should be notified immediately should an allegation against an individual covered by the Act be received.



U.S. Department of Justice
Executive Office for United States Attorneys
Office of the Director

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Main Justice Building, Room 2616
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-2121

Memorandum - Sent via Electronic Mail

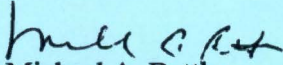
DEPT. OF JUSTICE

DATE: July 26, 2005

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TO: ALL UNITED STATES ATTORNEYS

MAIN LIBRARY

FROM: 
Michael A. Battle
Director

SUBJECT: Approval Requirements for Election Crime Cases

ACTION REQUIRED: None. Information only.

Attached please find a revision to the *United States Attorneys' Manual*, Title 9, Section 9-85.210, issued by John C. Richter, Acting Assistant Attorney General for the Criminal Division which sets forth additional guidance on the consultation requirements for investigation and prosecutions involving campaign financing fraud.

Attachments

cc: All United States Attorneys' Secretaries



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

July 25, 2005

MEMORANDUM TO: Holders of the United States Attorneys' Manual

FROM: *JCR* John C. Richter
Acting Assistant Attorney General
Criminal Division

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

SUBJECT: Approval Requirements for Election Crime Cases

AFFECTS: USAM 9-85.210

Please find attached revised language affecting USAM 9-85.210 which addresses the Department's consultation requirements for election crimes, which include campaign financing crimes, election fraud, and patronage offenses. The revised text sets forth additional guidance on the consultation requirements for investigations and prosecutions involving campaign financing fraud. When the United States Attorneys' Manual was revised in the late 1990's, several of the consultation requirements for campaign financing crimes were eliminated inadvertently. This amendment restores those requirements.

Attachment

USAM 9-85.210 Violations of Campaign Financing Laws, Federal Patronage Laws, and
Corruption of the Election Process – Consultation Requirements

Consultation with the Public Integrity Section of the Criminal Division is required in all federal criminal matters that focus on violations of federal or state campaign financing laws, federal patronage crimes, and corruption of the election process. These offenses include, but are not limited to, offenses described in: 18 U.S.C. §§ 241, 242, 592-611; 42 U.S.C. §§ 1973i(c), 1973i(e), and 1973gg-10; 2 U.S.C. §§ 431-455; and prosecutive theories that focus on election fraud or campaign fundraising violations using 18 U.S.C. §§ 1341, 1343, and 1346; 18 U.S.C. § 1952; or 18 U.S.C. §§ 1956 and 1957.

With regard to federal campaign financing matters arising under 2 U.S.C. §§ 431-455, United States Attorneys shall consult with the Public Integrity Section before any inquiry or preliminary investigation is requested or conducted. United States Attorneys shall also consult with the Public Integrity Section before instituting grand jury proceedings, filing an information, or seeking an indictment charging a campaign financing crime.

With regard to all other election crime matters (other than those described in USAM 9-85.200 (Federally Protected Activities)), namely, alleged election fraud or patronage offenses, United States Attorneys shall consult with the Public Integrity Section before an investigation beyond a preliminary inquiry is requested or conducted. In this connection, the Department views any voter interviews in the preelection and balloting periods – other than interviews of a complainant and any witnesses he or she may identify – as beyond a preliminary investigation. Thus, the Public Integrity Section should be consulted before such interviews.

Finally, as with campaign financing matters, United States Attorneys also shall consult with the Public Integrity Section before instituting grand jury proceedings, filing an information, or seeking an indictment charging an election fraud or patronage offense.

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9-89.000
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NATIONAL SECURITY

- 9-90.010 National Security
 - 9-90.020 National Security Matters -- Prior Approval, Consultation, and Notification Requirements
 - 9-90.050 National/International Security Coordinators in United States Attorneys' Offices
 - 9-90.100 General Policies Concerning Prosecutions For Crimes Directed at National Security and for Other Crimes in which National Security Issues May Arise
 - 9-90.200 Policies and Procedures for Criminal Cases That Involve Classified Information
 - 9-90.210 Contacts with the Intelligence Community Regarding Criminal Investigations or Prosecutions
 - 9-90.230 Disclosure of Classified Information to the Grand Jury
 - 9-90.240 Classified Information Procedures Act (CIPA)
 - 9-90.300 Policies for the Prosecution of Espionage, Export and Other Internal Security Offenses
 - 9-90.400 Atomic Energy Act
 - 9-90.440 Other Prohibited Transactions Involving Nuclear Materials -- 18 U.S.C. § 831
 - 9-90.500 Internal Security
 - 9-90.550 Contempt of Congress -- 2 U.S.C. § 192
 - 9-90.600 Export Control and Unlawful Transactions with Foreign Countries
 - 9-90.610 Export Administration Act -- 50 U.S.C. App. §§ 2401 to 2420
 - 9-90.620 Arms Export Control Act -- 22 U.S.C. § 2778
 - 9-90.630 Trading With the Enemy Act -- 50 U.S.C. App. § 5(b)/Foreign Assets Control
 - 9-90.640 International Emergency Economic Powers Act -- 50 U.S.C. § 1701 et seq.
 - 9-90.700 Registration and Lobbying Provisions
 - 9-90.710 Foreign Agents Registration Act -- 22 U.S.C. § 611 et seq.
 - 9-90.720 Public Officials Acting as Agents of Foreign Principals -- 18 U.S.C. § 219
 - 9-90.800 Miscellaneous
-

9-90.010 National Security

National security encompasses the national defense, foreign intelligence and counterintelligence, international security, and foreign relations. When national security issues arise during a criminal prosecution, they must be resolved through careful coordination by the Department of Justice (Department) with high level officials from the intelligence, military and foreign affairs communities. In addition, the Attorney General, or the Attorney General's designee, has certain statutory authority and obligations related to national security prosecutions. That authority and those obligations may be properly exercised and met only with appropriate coordination with the Department by the respective United States Attorneys' Offices (USAOs). A list of all prior approval, consultation and notification requirements related to national security

can be found in USAM 9-90.020, below. The Counterespionage Section (CES) of the National Security Division has supervisory authority over all offenses in this chapter.

9-90.020 National Security Matters -- Prior Approval, Consultation, and Notification Requirements

A. Authority to Conduct Prosecutions Relating to the National Security. The enforcement of all criminal laws affecting, involving or relating to the national security, and the responsibility for prosecuting criminal offenses, such as conspiracy, perjury and false statements, arising out of offenses related to national security, is assigned to the Assistant Attorney General (AAG) of the National Security Division.

All prosecutions affecting, involving or relating to the national security shall be conducted, handled, or supervised by the AAG, National Security Division, or higher authority. 28 C.F.R. § 0.61. The CES of the National Security Division, under the supervision of the AAG or a higher authority, conducts, handles, and supervises prosecutions affecting, involving or relating to the national security.

Prosecution of a case affecting, involving, or relating to the national security shall not be instituted without the express authorization of the National Security Division or higher authority. The National Security Division shall be consulted before an arrest is made, a search warrant is obtained, a grand jury investigation is commenced, immunity is offered, an indictment is presented, an information filed, or a civil injunctive action filed, a prosecution is declined, a count is dismissed, a sentencing commitment or other disposition is made, or an adverse ruling or decision is appealed in cases affecting, involving, or related to the national security as defined in this section.

Criminal provisions affecting, involving, or relating to the national security are:

- 2 U.S.C. § 192 (Contempts of Congress Related to National Security)
- 8 U.S.C. § 1185(b) (Travel Controls of Citizens)
- 18 U.S.C. § 219 et seq. (Officers and Employees of the United States Acting as Foreign Agents)
- 18 U.S.C. § 791 et seq. (Espionage; Unauthorized Disclosure of Classified Information)
- 18 U.S.C. § 951 et seq. (Neutrality Laws)
- 18 U.S.C. § 1030(a)(1) (Computer Espionage)
- 18 U.S.C. § 1542 et seq. (Passport Violations Related to National Security)
- 18 U.S.C. § 1924 (Unauthorized Removal and Retention of Classified Documents or Material)
- 18 U.S.C. § 1831 (Economic Espionage)
- 18 U.S.C. § 2151 et seq. (Sabotage)
- 18 U.S.C. § 2381 et seq. (Treason, Seditious and Subversive Activities)
- 22 U.S.C. § 611 et seq. (Foreign Agents Registration)
- 22 U.S.C. § 2778 (Arms Export Control Act)
- 42 U.S.C. § 2274 to 2278, 2284, and other Atomic Energy Violations that Affect National Security (Atomic Energy Act)
- 50 U.S.C. § 421 (Intelligence Identities Protection Act)
- 50 U.S.C. § 782 et seq. (Communication of Classified Information by Government Officer or Employee)
- 50 U.S.C. § 851 et seq. (Registration of Person Who Has Knowledge Concerning Espionage Activities)
- 50 U.S.C. § 1701 et seq. (International Emergency Economic Powers Act)
- 50 U.S.C. § 2401 et seq. (Export Administration Act)

50 U.S.C. App. § 5(b) (Trading With the Enemy Act)

B. Consultation Requirements. Consultation with the CES is required in all cases in which classified information plays a role in the prosecutive decision, and all cases that require the protections afforded by the Classified Information Procedures Act, 18 U.S.C. app. §§ 1-16, i.e., cases in which classified information may be disclosed during the pretrial, trial and appellate stages of the litigation.

Before initiating a prosecution under 2 U.S.C. § 441e, Campaign Contributions by Foreign Nationals, the Registration Unit of the CES, (202) 514-1216, should be consulted.

9-90.050 National/International Security Coordinators in United States Attorneys' Offices

Each United States Attorney's Office (USAO) shall designate an Assistant United States Attorney as the National/International Security Coordinator. The National/International Security Coordinator is intended to be the initial point of contact for the office on matters relating to foreign relations, intelligence and national defense. [In some offices, the duties of the National/International Security Coordinator may be divided between foreign affairs and national security issues due to the volume of matters within the office.] The National/International Security Coordinator is responsible for, among other things, notifying the Chief of the CES whenever national security issues arise in the USAO in the course of prosecutions of offenses not related to the national security. In any instance in which the USAO seeks to initiate contact with an agency of the intelligence community regarding national security issues arising during a criminal investigation or prosecution, it is the duty of the National/International Security Coordinator to initiate contact with the Chief of CES prior to undertaking contact with the intelligence community.

The National/International Security Coordinator shall maintain a top secret clearance in order to review and use classified information in connection with national security investigations or prosecutions. The National/International Security Coordinator shall be familiar with Departmental policies related to national security prosecutions and investigations including disclosure of classified information to the grand jury.

The National/International Security Coordinator's primary responsibilities, acting in his or her capacity as point of contact for foreign relations, include acting as the liaison on all incoming and outgoing requests for extradition and mutual legal assistance, and ensuring the timely submission of supporting documents.

The National/International Security Coordinator should be knowledgeable of relevant Department policies, forms, briefs, and memoranda in the area of international affairs, intelligence and national security issues and should serve as the in-house resource and trainer on those issues.

See the Criminal Resource Manual at 2048 for the text of a memorandum that directed United States Attorneys to designate a prosecutor as a National/International Security Coordinator.

9-90.100 General Policies Concerning Prosecutions For Crimes Directed at National Security and for Other Crimes in which National Security Issues May Arise

The Attorney General has determined that all criminal cases relating to activities directed against the national security (*See* USAM at 9-90.300 et seq.), as well as collateral offenses such as perjury that arise out of such activities, are to be supervised by the Assistant Attorney General (AAG), National Security Division. Although the AAG may assign those cases within the National Security Division, prosecution of national security cases will ordinarily be handled by the USAO in the district where venue lies. When a national security investigation is initially referred to the National Security Division, the AAG, or his/her designee, will notify the United States Attorney in that district as soon as possible following the referral. In either

event, the AAG shall retain general supervisory authority over the conduct of the case from its inception until its conclusion, including appeal.

When national security issues arise in United States Attorneys' Offices in the course of prosecutions of offenses not related to the national security, that district's National/International Security Coordinator must notify the Chief of the Counterespionage Section (CES). That Section Chief shall be responsible for insuring that the Assistant United States Attorney (AUSA) assigned to the case is aware of and complies with Departmental policies related to national security prosecutions.

The Criminal Resource Manual contains copies of policy memoranda from the Deputy Attorney General

September 21, 1994, Memorandum from Deputy Attorney General concerning Requirement of Consultation on National Security Issues	Criminal Resource Manual at 2049
May 5, 1995, Memorandum From Deputy Attorney General Concerning Provision of National Security Information to Judges Use of Intelligence Agency Attorneys	Criminal Resource Manual at 2050 and Staff and
May 5, 1995, Memorandum from Deputy Attorney General Concerning Focal Points for Initial Contacts with Intelligence in Criminal Cases	Criminal Resource Manual at 2051 Community

9-90.200 Policies and Procedures for Criminal Cases That Involve Classified Information

With the concurrence of the appropriate Deputy Assistant Attorney General (DAAG), National Security Division, or of the DAAG's designated National Security Division Section Chief, the Department attorney or the assigned Assistant United States Attorney may seek access to classified information in the custody and control of one or more of the United States intelligence agencies. The National Security Division's Counterespionage Section (CES) has primary responsibility to assist all Departmental officials and USAOs on all matters related to national security, including approval of requests for production of preexisting classified information in connection with an anticipated or ongoing criminal prosecution. Other sections of the National Security Division may also assist, according to the subject matter of the activity involved in a particular prosecution. Occasionally, a law enforcement agency may also possess documents that are classified for national security purposes and which should be reviewed in connection with a criminal case. The procedures discussed herein also apply to those documents.

The Classified Information Procedures Act (CIPA), Title 18, United States Code, App. III, is the mechanism by which the disclosure of classified information must be controlled during the course of a criminal prosecution. CES is responsible to insure proper adherence to CIPA, at the pre-trial, trial, and appellate stages of a prosecution. CES personnel will assist the prosecuting attorney in properly drafting a request to an intelligence agency for production of its information and/or materials for review by the Assistant United States Attorney and will provide advice and consultation regarding review and use of those materials.

There are certain unique requirements that apply to cases involving classified information. First, only the Attorney General, the Deputy Attorney General, the Associate Attorney General or the Assistant Attorney General (AAG), National Security Division, can authorize the declination of a prosecution for national security reasons. CIPA sections 12 and 14. Such declinations must be included in a report submitted to Congress pursuant to the requirements of Section 13 of CIPA. This report is initially prepared by the CES.

Further, classified information that is or may be relevant to a criminal prosecution cannot be utilized, even for discovery purposes, without coordinating with the agency that is responsible for classifying or declassifying that information. This rule applies to oral disclosures of classified information, such as certain statements by present or former government employees, or contract employees who hold or held security clearances and were given access to classified information. *See also* USAM 9-90.240.

Because of regulatory limitations on dissemination of classified information, special considerations apply to investigations that involve classified information. First, when interviewing witnesses, classified information may be discussed only if the witnesses have appropriate security clearances and the agency that classified the information has approved such disclosure. *See also* the Criminal Resource Manual at 2056. Second, although the grand jurors are precluded under Fed. R. Crim. P. 6(e)(2) from disclosing matters occurring before the grand jury, a prosecutor nevertheless may not disclose classified information to the grand jury except by agreement of the agency responsible for classifying that information. Third, witnesses, subjects or targets of an investigation who have lawfully acquired classified information cannot lawfully disclose such information to their uncleared attorneys. Those attorneys should therefore either obtain a security clearance that would allow access to the classified information or seek to have the information declassified. If the defense attorney chooses the latter alternative, the prosecutor must file a motion requesting the court to issue a protective order that controls the use of that classified information and protects it from disclosure to unauthorized persons. For guidance on how to handle classified information during investigations or before the grand jury, see USAM 9-90.230 and contact the CES.

9-90.210 Contacts with the Intelligence Community Regarding Criminal Investigations or Prosecutions

A. Generally. Although both are arms of the Executive Branch, the Federal law enforcement and intelligence communities have very distinct identities, mandates, and methods. For the purpose of this chapter, the law enforcement community (LEC) includes all Federal investigative and prosecutive agencies. The intelligence community (IC) includes the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, and the National Reconnaissance Office. It also includes the intelligence components of the Department of State, Federal Bureau of Investigation, Department of Treasury, Department of Energy, and the respective military services. The mission of the LEC is to identify, target, investigate, arrest, prosecute, and convict those persons who commit crimes in violation of Federal laws. The mission of the IC is to perform intelligence activities necessary for the conduct of foreign relations and the protection of the national security, including the collection of information and the production and dissemination of intelligence; and the collection of information concerning espionage, international terrorist activities, and international narcotics activities.

The Federal LEC must carry out its mission in accordance with the provisions of the United States Constitution, case law, statutes, and rules of procedure and evidence. Its compliance with those constraints is continually monitored by the judicial branch. Through its internal affairs and professional responsibility offices, the components of the LEC also perform self-monitoring of the legality of its investigative activities. *See* the Criminal Resource Manual at 2053 (Disclosure Of Grand Jury Information To An Intelligence Agency).

The IC carries out its mission in accordance with the United States Constitution, the National Security Act of 1947 and other statutes, case law, and with select Executive Orders issued by the President, primarily E.O. 12958 (issued by President Clinton on October 14, 1995). The IC's compliance with legislative constraints is monitored by the Senate Select Committee on Intelligence (SSCI) and the House Permanent Select Committee On Intelligence (HPSCI). The IC also polices itself through its various inspectors general offices.

The two communities occasionally find themselves mutually affected by a criminal case, such as when a defendant seeks access to classified information to assist in his/her defense. When that occurs, an issue of major concern to both communities is the adequate protection of sensitive intelligence sources and methods. This protection is accomplished by the prosecutor through invocation of CIPA, and by the IC, by placing restrictions on access to the information, or by including special warnings and caveats that restrict the use of the information.

Although coordination on matters of common concern is critical to the proper functioning of the two communities, prosecutors must be aware of the concomitant need of both communities to maintain a well-delineated separation between criminal prosecutions and foreign intelligence activities, in which less-stringent restraints apply to the government. Not to do so may invite the perception of an attempt to avoid criminal law protections by disguising a criminal investigation as an intelligence operation. The judicial response to that may be the suppression of evidence in the criminal case, e.g., *United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980).

B. Approval to Request a File Search. Initial contacts with the IC by the Department of Justice (Department), or by any United States Attorney's Office (USAO), for the purpose of requesting a search of IC files in connection with a criminal investigation or prosecution must be approved by the National Security Division's CES. A request to the CES by a USAO for a search of IC files for preexisting intelligence information relevant to a criminal investigation or indictment must be in writing and must have been approved by the United States Attorney (USA) or a senior designee, e.g., the First Assistant, or the National/International Security Coordinator.

Such requests shall be undertaken only when there exist objective articulable facts justifying the conclusion that

- (1) within specific files, or category of files, there will likely be information of which the prudent prosecutor should be aware in deciding whether, or against whom, or for what offenses to seek an indictment from the grand jury;
- (2) there are intelligence-related issues likely to arise post-indictment that the prosecutor should address preemptively, and that searching IC files is likely to produce information helpful to resolving those issues; or
- (3) there are documents or information within the intelligence community that fall reasonably within the scope of the prosecutor's affirmative discovery obligations to the defendant, as that scope has been defined by the Federal courts.

That the information within the possession of the intelligence community is classified shall have no effect either on the prosecutor's obligation to undertake the review of IC files or on the legally-mandated scope of that review. Similarly, except as modified by CIPA, the prosecutor's obligation to produce to the defendant information found during that review is unaffected by the classified nature of that information. See the Criminal Resource Manual at 2052, for a discussion of discovery, Brady/Giglio issues, and miscellaneous related issues.

C. The Search Request. Immediately upon the prosecutor's conclusion, based on the principles outlined above, that a search of IC files is appropriate, the prosecutor should consult with the district National/International Security Coordinator and initiate telephonic contact with the National Security Division's CES. The United States Attorney or his/her designee must approve the Assistant United States Attorney's request before it is submitted to the CES. See paragraph B, *supra*. The CES, in consultation with the Office of Intelligence Policy and Review (OIPR), will determine whether a search of IC files is appropriate. If there is a determination that a search of IC files is appropriate under the circumstances described by the prosecutor, the prosecutor will be required to prepare a written search request to be submitted to the IC agencies through the CES.

In line with the Department's general policy, search requests must be focused, narrowly drawn, and based upon carefully reasoned and case-specific grounds. Each request should be accompanied by a prosecution memorandum that sufficiently identifies the individual and corporate targets of the investigation (e.g., full name, known aliases, date of birth, place of birth, social security number, citizenship, etc.); that summarizes the evidence already known about those targets (specifically that which the prosecution believes justifies a search of IC files). Ordinarily, the prosecutor should confine the search request to a period of time that conforms with that of the underlying criminal activity that necessitates the search and that specifies the type of information that is sought (e.g., what, if any, witting relationship the person has had or currently has with an IC agency, payments made to the person, criminal activity known by the IC agency to have been committed by the person in question, etc.). If the prosecutor's search request pertains to witnesses who will testify for the government, the same information should be provided as to them.

The prosecutor should avoid asking an IC agency any conceptual questions or to draw any conclusions about the entities named, especially conclusions of a legal nature. Rather, the search request should present questions that require answers consisting of discrete facts that will enable the prosecutor to draw conclusions concerning the broader conceptual issues extant in his/her case.

D. Submitting the Search Request to the IC. The National Security Division, CES, acting on behalf of the prosecutor, will formally transmit the search request to the appropriate element(s) of the IC. In some cases, that request may be followed by a planning and strategy meeting between the assigned prosecutors, the CES, and representatives of the appropriate IC agencies.

To expedite the pace of the search, the prosecutor should request that each IC agency obtain limited third agency waivers from other IC agencies for purposes of the initial review of documents in response to the search request. Except with certain very sensitive types of classified information, this will normally allow an agency that possesses a responsive classified document originated by another agency to produce that document to the prosecutors without having first to obtain the permission of the originating agency. Any subsequent disclosure or dissemination beyond the prosecutor's initial review of the documents must first be approved by the originating agency.

E. Review of Documents Identified by the IC as Responsive to the Search Request. Members of the prosecution team (including the attorneys and investigators) must have all necessary security clearances before they will be permitted access to classified information. This may be accomplished by contacting the Security Programs Staff for the Executive Office for United States Attorneys. In some instances when delay should be avoided, an uncleared Assistant United States Attorney may have the National/International Security Coordinator or an attorney from the CES review selected documents. During the review of classified information, it is crucial that all regulations pertaining to the handling of classified information be observed. The Justice Management Division's Security and Emergency Planning Staff will assist the prosecutor in taking the necessary measures in the USAO's to physically and administratively protect any classified information that is determined to be relevant to a particular case.

The prosecutor must also be prepared to undertake appropriate measures for keeping track of the IC documents that are produced in response to a search request. Depending on the volume of documents produced, the administrative burden of that process may be enormous. A critical part of that burden will be the establishment of procedures for identifying what documents are produced by the IC agencies, and, thereafter, for indexing those documents that the prosecutor has reviewed and determined to be relevant to the case. In all events, classified documents obtained from the IC must be secured in the appropriate Department approved receptacle and segregated from investigative documents produced by law enforcement agencies. The Department's Security and Emergency Planning Office and CES are available to advise the prosecutor on such matters.

9-90.230 Disclosure Of Classified Information to the Grand Jury

Grand jurors do not have the security clearances required for access to classified information. Accordingly, disclosure of such information to a grand jury may only be done with the approval of the agency responsible for classifying the information sought to be disclosed.

There are measures that a prosecutor can take that will increase the likelihood that the appropriate IC agency will approve the use of its information before the grand jury. First and foremost is the use of an unclassified summary of the information prepared by the prosecutor in concert with the intelligence agency. In other instances, the agency may simply be able to declassify the particular document(s) involved, in whole or in part, by excising certain portions that make the document particularly sensitive but that are not relevant to the use desired by the prosecutor.

Of greater difficulty would be the request of a prosecutor that an intelligence agency officer or asset testify as a witness before the grand jury. If a target of the grand jury investigation was, or is, an intelligence officer, asset, or other employee of the intelligence community, in addition to the usual concerns related to the appearance of a target before the grand jury, the prosecutor must take care to protect against "retaliatory" testimony by that individual, in the form of unauthorized disclosure of classified information. Accordingly, prior to any grand jury appearance by such target, the Assistant United States Attorney, in coordination with the CES, must consult with any intelligence agency whose information may be disclosed by the target's testimony. As a rule, because hearsay testimony is permissible before the grand jury, the prosecutor will likely have alternatives, such as the testimony of a summary witness, that would obviate the need for the agency officer's testimony before the grand jury. If a summary witness is not a viable option, however, the prosecutor must obtain the approval of the CES before making any effort to secure the presence before the grand jury of an intelligence agency officer or asset. The CES will assist the prosecutor as much as possible in arranging for that testimony or in structuring an alternative thereto that will provide essentially the same information to the grand jury.

9-90.240 Classified Information Procedures Act (CIPA)

The Counterespionage Section (CES) is responsible for the development and implementation of policies and procedures related to CIPA. All Assistant United States Attorneys and departmental attorneys prosecuting CIPA cases are required to consult with, and closely coordinate, their cases with the CES. In particular, prosecutors must:

1. notify CES if a district court or appellate court will not accept a substitution proposed by the government under section 6(c);
2. obtain the prior approval of the Solicitor General to file an interlocutory appeal under Section 7(a) of CIPA; and
3. immediately notify CES if it becomes likely that an intelligence agency employee will testify in any criminal case.

See the Criminal Resource Manual at 2054, for a synopsis of CIPA. CES is also responsible for the preparation of reports to Congress concerning cases in which prosecution is declined for national security reasons and reports concerning the operation and effectiveness of the act.

9-90.300 Policies for the Prosecution of Espionage, Export and Other Internal Security Offenses

Chapter 37 of 18 U.S.C. proscribes espionage and related activities. All prosecutions under Chapter 37 shall be initiated and conducted in accordance with USAM 9-90.020. Various statutes supplement the

provisions of Chapter 37 to criminalize activities that jeopardize the national defense or national security. Key national defense and national security provisions are synopsised in the Criminal Resource Manual at 2057. Prosecutions pursuant to these provisions must also be instituted and conducted in accordance with USAM 9-90.020. The Counterespionage Section supervises prosecutions of espionage and espionage related offenses.

9-90.400 Atomic Energy Act

Prosecutions under the Atomic Energy Act, 42 U.S.C. §§ 2272 to 2276, are subject to the requirements of USAM 9-90.020 when they involve the national security. The Atomic Energy Act provides that prosecutions pursuant to it shall be commenced by the Attorney General, after he or she has notified the Nuclear Regulatory Commission. See 42 U.S.C. § 2271(c). Prosecutions brought pursuant to 42 U.S.C. §§ 2272 to 2276 must be expressly authorized by the Attorney General. See the Criminal Resource Manual at 2058.

9-90.440 Other Prohibited Transactions Involving Nuclear Materials -- 18 U.S.C. § 831

The Convention on the Physical Protection of Nuclear Materials Implementation Act of 1982, Pub. L. No. 97-351, makes it a criminal offense: (1) to possess unlawfully or use nuclear material when it will cause substantial injury; (2) to take or use nuclear material without authorization, or to obtain nuclear material fraudulently; or (3) to threaten or attempt to use nuclear material for illegal purposes. See 18 U.S.C. § 831.

9-90.500 Internal Security

Numerous offenses pertaining to the internal security of the United States can be prosecuted only with the approval of, and under the supervision of, the Assistant Attorney General of the National Security Division, or higher authority. Brief synopses of key internal security provisions are provided in the Criminal Resource Manual at 2059. Authorization and supervision requirements are found at USAM 9-90.020. The Counterespionage Section of the National Security Division supervises prosecutions involving internal security.

9-90.550 Contempt of Congress -- 2 U.S.C. § 192

The Counterespionage Section has jurisdiction over prosecutions under 2 U.S.C. § 192 in which witnesses have Communist Party or other subversive connections. Under the provisions of 2 U.S.C. § 194, contempt of Congress cases are referred directly by the Congress to the United States Attorney, by certification. If such a case is referred to a United States Attorney, in accordance with the USAM 9-90.020 he or she should immediately notify the National Security Division, and no prosecution shall be initiated without prior authorization by the National Security Division.

9-90.600 Export Control and Unlawful Transactions with Foreign Countries

The prosecution of any violation of export control statutes shall be authorized only in accordance with USAM 9-90.020 unless otherwise noted.

The Chief of the Counterespionage Section supervises prosecutions of export control offenses, and can be reached at (202) 514-1187.

See also the Criminal Resource Manual at 2060 (Overseas Investigations of Export Control-Related Cases).

9-90.610 Export Administration Act -- 50 U.S.C.App. §§ 2401 to 2420

The Export Administration Act, 50 U.S.C. App. §§ 2401 to 2420, and the rules and regulations promulgated thereunder, 15 C.F.R. §§ 768 to 799, prohibit the exportation of strategic goods and technologies without a license from the Department of Commerce. Violations are investigated by the Department of Commerce and the Customs Service.

The prosecution of Export Administration Act violations frequently involves foreign policy, national security, and intelligence issues that require close coordination with the Department of Commerce, Department of State, the CIA and other agencies. Therefore, prosecution of Export Administration Act violations shall not be undertaken without the prior approval of the National Security Division. *See* USAM 9-90.020. However, the United States Attorney is authorized to take whatever action is necessary to prevent the commission of an offense where time does not permit seeking prior authorization. Often an illegal exportation can be prevented by seizing the items that are about to be exported. Seizure of strategic goods and technologies that are about to be exported in violation of the Export Administration Act is authorized by 50 U.S.C.App. Sec. 2411(a)(2)(B) and 3(A), and 22 U.S.C. Sec. 401.

9-90.620 Arms Export Control Act -- 22 U.S.C. § 2778

The Arms Export Control Act, 22 U.S.C. § 2778, and the rules and regulations promulgated thereunder, 22 C.F.R. § 121-130, prohibit the importation and exportation of arms, ammunition and implements of war without a license from the Department of State. Violations are investigated by the Customs Service.

Unless the unlicensed shipment has no relevance to the foreign relations of the United States (e.g., smuggling small quantities of weapons), prosecution of violations of the Arms Export Control Act should not be undertaken without prior approval of the National Security Division. *See* USAM 9-90.020. However, the United States Attorney is authorized to take whatever action is necessary to prevent the commission of an offense where time does not permit seeking prior authorization. Often an illegal exportation can be circumvented by seizure of the munitions pursuant to the provisions of 22 U.S.C. § 401.

9-90.630 Trading With the Enemy Act -- 50 U.S.C.App. § 5(b)/Foreign Assets Control

Pursuant to the authority granted in the Trading With the Enemy Act, 50 U.S.C.App. § 5(b), the Secretary of the Treasury has promulgated regulations prohibiting unlicensed transactions between U.S. nationals and certain designated foreign countries and their nationals. *See* 31 C.F.R. § 500.101. Investigations of violations of the Foreign Assets Control regulations are conducted by the Treasury Department, and cases are referred by that Department to the CES. The CES must be consulted before charging violations of the Trading With the Enemy Act.

9-90.640 International Emergency Economic Powers Act -- 50 U.S.C. § 1701 et seq.

Pursuant to the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701 to 1706, the President is granted authority to declare a national emergency with respect to any unusual and extraordinary threat, which has its source outside the United States, and to take action to meet that threat including the imposition of controls over property in which any foreign country or a national thereof has an interest. Criminal violations are investigated by the Treasury Department. Prosecution of violations which involve the exportation of property in which a foreign national or foreign country has an interest shall not be undertaken without prior approval of the Counterespionage Section of the National Security Division. *See* USAM 9-90.020.

9-90.700 Registration and Lobbying Provisions

The CES enforces four registration statutes: (1) the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 et seq.; (2) the Voorhis Act, 18 U.S.C. § 2386; (3) the Act of August 1, 1956, 50 U.S.C. §§ 851 to 857; and (4) the Federal Regulation of Lobbying Act, 2 U.S.C. § 261 et seq.; and a related statute, 18 U.S.C. § 219, which is a conflict of interest provision. The express prior approval of the National Security Division or higher authority must be obtained before prosecution may be initiated under any of these provisions. *See* USAM 9-90.020. In addition, the CES is responsible for the supervision of prosecutions under 2 U.S.C. § 441e, the foreign campaign contribution prohibition. The CES should be consulted before initiating grand jury proceedings, or seeking an indictment or filing an information under these provisions. In addition, the Counterespionage Section or higher authority must be consulted prior to the dismissal of any counts pursuant to the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 et seq. *See* USAM 9-90.020. *See also* the Criminal Resource Manual at 2061. For additional information concerning the Foreign Agents Registration Act see the Criminal Resource Manual at 2062 and 2063.

9-90.710 Foreign Agents Registration Act -- 22 U.S.C. § 611 et seq.

The Foreign Agents Registration Act (FARA) requires that agents of foreign principals engaged in political or quasi-political activities register with the Attorney General unless exempt. Inquiries regarding administration and enforcement of FARA should be directed to the Registration Unit, National Security Division, Department of Justice, Washington, D.C. 20530. No prosecution under FARA may be instituted without the express prior approval of the National Security Division or higher authority. *See* the Criminal Resource Manual at 2062 and 2063 for an in depth discussion of FARA.

9-90.720 Public Officials Acting As Agents Of Foreign Principals -- 18 U.S.C. § 219

It is illegal for a public official to act as an agent of a foreign principal in such a manner as to require his/her registration under the Foreign Agents Registration Act (FARA). *See* 18 U.S.C. § 219. This prohibition does not apply to the employment of a foreign agent as a special United States Government employee in any case where the head of the employing agency certifies that such employment is required in the national interest. No prosecution under this section should be instituted without the express authorization of the National Security Division or higher authority. *See* USAM 9-90.020. *See also* the Criminal Resource Manual at 2064 and 2065.

Note that Members of Congress are not expressly covered by 18 U.S.C. § 219.

9-90.800 Miscellaneous

Prosecutions pursuant to criminal statutes not primarily concerned with national security may affect national security. In such situations, prosecutions shall be instituted and conducted under the supervision of the Assistant Attorney General, National Security Division, or higher authority.

9-91.100 Proscribed Material Support or Resources to Designated Foreign Terrorist Organizations Under 18 U.S.C. § 2339B

9-91.100 Proscribed Material Support or Resources to Designated Foreign Terrorist Organizations Under 18 U.S.C. § 2339B

As part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, Congress passed a comprehensive ban on the provision of "material support or resources" to entities that are designated by the United States Government as "foreign terrorist organizations." See 18 U.S.C. § 2339B. This ban includes a prohibition on the provision of "personnel" or "training" to such organizations. This section of the *United States Attorneys' Manual* sets forth the official policy of the Department of Justice on the § 2339B prohibitions relating to "personnel" and "training."

NOTE: Pursuant to the Department's Investigative and Prosecutive Policy for International Terrorism Matters (see USAM 9-2.136), no United States Attorney is to 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 without the express authorization of the Assistant Attorney General of the Criminal Division. This approval requirement applies to all suspected violations of § 2339B.

Section 302 of the AEDPA authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate entities as foreign terrorist organizations if certain statutory criteria are met. Designations last for two years unless revoked or set aside, and the designations can be renewed for additional two year periods. See 8 U.S.C. § 1189; 62 Fed. Reg. 52,650 (1997) (designating 30 organizations); 64 Fed. Reg. 55,112 (1999) (redesignating 27 organizations and adding a group headed by Osama bin Laden); 65 Fed. Reg. 57,641 (2000) (designating Islamic Movement of Uzbekistan); 66 Fed. Reg. 27,442 (2001) (designating the "Real IRA"); *People's Mojahedin Org. of Iran v. Department of State*, 182 F.3d 17 (D.C. Cir. 1999) (rejecting challenges by two designated groups), *cert. denied*, 120 S. Ct. 1846 (2000); *National Council of Resistance of Iran v. Department of State*, 2001 WL 629300 (D.C. Cir. June 8, 2001) (groups that have sufficient U.S. presence are entitled to procedural due process).

Pursuant to section 303 of the AEDPA and 18 U.S.C. § 2339B(a)(1), it is a crime for anyone within the United States or subject to its jurisdiction to knowingly provide "material support or resources" to a designated foreign terrorist organization. The statute also proscribes attempt and conspiracy, and provides for extraterritorial federal jurisdiction. 18 U.S.C. §§ 2339B(a)(1) & (d). Pursuant to a cross-reference to another federal statute, the term "material support or resources" is defined as currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials. See 18 U.S.C. § 2339B(g)(4); 18 U.S.C.

§ 2339A (providing material support to terrorists). Although the same definition of "material support or resources" applies to both 18 U.S.C. § 2339A and 18 U.S.C. § 2339B, the guidance provided in this section of the United States Attorneys' Manual only addresses "personnel" and "training" within the context of 18 U.S.C. § 2339B and is limited to that statute.

The purpose of this section of the United States Attorneys' Manual is to set forth the Department's prosecutive policy on the terms "personnel" and "training" in a manner that provides clear guidance for all present and future cases under § 2339B. As indicated below, this policy reflects the Department's interpretation and understanding of these statutory terms.

Personnel

It is the policy of the Department that a person may be prosecuted under § 2339B for providing "personnel" to a designated foreign terrorist organization *if and only if* that person has knowingly provided the organization with one or more individuals to work under the foreign entity's direction or control. Individuals who act independently of the designated foreign terrorist organization to advance its goals and objectives are not working under its direction or control and may not be prosecuted for providing "personnel" to a designated foreign terrorist organization. Only individuals who have subordinated themselves to the foreign terrorist organization, i.e., those acting as full-time or part-time employees or otherwise taking orders from the entity, are under its direction or control.

NOTE: There are two different ways of providing "personnel" to a designated foreign terrorist organization: 1) by working under the direction or control of the organization; or 2) by recruiting another to work under its direction or control. The statute encompasses both methods, so long as the requisite direction or control is present.

This policy also applies to attempts and conspiracies, i.e., a person may be prosecuted under § 2339B for attempting or conspiring to provide personnel to a designated foreign terrorist organization *if and only if* that person has knowingly attempted or conspired to provide the organization with one or more individuals to work under its direction or control.

The reasons behind this policy are as follows:

First, the most natural interpretation of a statute proscribing the provision of "personnel" "to" a designated organization is that it does not reach independent actors. Rather, it reaches those who have provided employees or individuals who function like employees to serve the designated group and work at its command. See *Webster's Ninth New Collegiate Dictionary* 878 (1989) (defining "personnel" as "a body of persons usu. employed (as in a factory, office, or organization)"). The fact that a designated group may benefit from independent activity (e.g., a third party independently organizes an economic boycott or independently engages in violence against a common enemy) does not mean that "personnel" has therefore been provided to it.

Second, it is prudent to avoid the constitutional questions that would be presented if the statute were interpreted more broadly. Independent speech in support of a designated group is clearly protected by the First Amendment, and the statute can and should be interpreted to avoid criminalizing such speech. See § 301(b) of the AEDPA, 110 Stat. 1247 (Congress' purpose in enacting § 2339B and related provisions was to give the federal government the fullest possible basis, *consistent with the Constitution*, to prevent the provision by U.S. persons of material support or resources to foreign terrorist organizations); H.R. Report No. 104-383, at 44-45 (1995) (ban on "material support or resources" in predecessor bill to AEDPA would not affect one's right to speak on behalf of a designated foreign terrorist organization, in concert with it, or in favor of its attitudes and philosophies).

Third, the interpretation of "personnel" advanced here is limited to that unique term, and does not narrow or affect the Government's ability to prosecute the provision of other types of "material support

or resources" apart from "personnel." Thus, an individual within the United States or subject to its jurisdiction who knowingly sends currency or other physical assets to a designated foreign terrorist organization can, of course, be prosecuted under § 2339B regardless of whether he acted under the direction or control of the organization.

Training

Section 2339B also prohibits knowingly providing any "training" to a designated foreign terrorist organization, regardless of the subject matter of the training. The verb "train" is commonly understood to mean: "to teach so as to make fit, qualified, or proficient." *Webster's Ninth New Collegiate Dictionary* 1251 (1989). As this definition implies, the term "training" connotes instruction or teaching designed to impart specific skills, as opposed to general knowledge (e.g., one can receive training in how to drive a car, but a lecture on the history of the automobile would not normally be thought of as "training").

It is the prosecutive policy of the Department that a person may be prosecuted under § 2339B for providing "training" to a designated foreign terrorist organization *if and only if* that person has knowingly provided instruction to the organization designed to impart one or more specific skills. This policy also applies to attempts and conspiracies, i.e., a person may be prosecuted under § 2339B for attempting or conspiring to provide training to a designated foreign terrorist organization *if and only if* that person has knowingly attempted or conspired to provide instruction to the organization designed to impart one or more specific skills.

Questions relating to this section of the *United States Attorneys' Manual* should be directed to the Terrorism and Violent Crime Section of the Criminal Division at 202-514-0849.



U.S. Department of Justice
Office of the Deputy Attorney General

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The Deputy Attorney General

Washington, D.C. 20530

June 28, 2001

TO: Holders of United States Attorneys' Manual
Title 9

FROM: Larry D. Thompson
Deputy Attorney General

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RE: Proscribed Material Support or Resources to
Designated Foreign Terrorist Organizations
Under 18 U.S.C. § 2339B.

AFFECTS: New Chapter USAM 9-91.000

The following policy creates a new Chapter in Title 9 of the United States Attorneys' Manual at USAM 9-91.000 entitled, Terrorism: Proscribed Material Support or Resources to Designated Foreign Terrorist Organizations Under 18 U.S.C. § 2339B. This new chapter sets forth the Department's policy at USAM 9-91.100 on the statutory prohibition on providing "personnel" or "training" to designated foreign terrorist organizations under 18 U.S.C. § 2339B.

9-91.100 PROSCRIBED MATERIAL SUPPORT OR RESOURCES TO DESIGNATED FOREIGN TERRORIST ORGANIZATIONS UNDER 18 U.S.C. § 2339B

As part of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, Congress passed a comprehensive ban on the provision of "material support or resources" to entities that are designated by the United States Government as "foreign terrorist organizations." See 18 U.S.C. § 2339B. This ban includes a prohibition on the provision of "personnel" or "training" to such organizations. This section of the United States Attorneys' Manual sets forth the official

policy of the Department of Justice on the § 2339B prohibitions relating to "personnel" and "training."¹

Section 302 of the AEDPA authorizes the Secretary of State, in consultation with the Secretary of the Treasury and the Attorney General, to designate entities as foreign terrorist organizations if certain statutory criteria are met. Designations last for two years unless revoked or set aside, and the designations can be renewed for additional two year periods.²

Pursuant to section 303 of the AEDPA and 18 U.S.C. § 2339B(a)(1), it is a crime for anyone within the United States or subject to its jurisdiction to knowingly provide "material support or resources" to a designated foreign terrorist organization. The statute also proscribes attempt and conspiracy, and provides for extraterritorial federal jurisdiction. 18 U.S.C. §§ 2339B(a)(1) & (d). Pursuant to a cross-reference to another federal statute,³ the term "material support or resources" is defined as

currency or other financial securities,
financial services, lodging, training,
safehouses, false documentation or
identification, communications equipment,
facilities, weapons, lethal substances,

¹It should be noted that pursuant to the Department's Investigative and Prosecutive Policy for International Terrorism Matters (see USAM 9-2.136), no United States Attorney is to 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 without the express authorization of the Assistant Attorney General of the Criminal Division. This approval requirement applies to all suspected violations of § 2339B.

²See 8 U.S.C. § 1189; 62 Fed. Reg. 52,650 (1997) (designating 30 organizations); 64 Fed. Reg. 55,112 (1999) (redesignating 27 organizations and adding a group headed by Osama bin Laden); 65 Fed. Reg. 57,641 (2000) (designating Islamic Movement of Uzbekistan); 66 Fed. Reg. 27,442 (2001) (designating the "Real IRA"); *People's Mojahedin Org. of Iran v. Department of State*, 182 F.3d 17 (D.C. Cir. 1999) (rejecting challenges by two designated groups), cert. denied, 120 S. Ct. 1846 (2000); *National Council of Resistance of Iran v. Department of State*, 2001 WL 629300 (D.C. Cir. June 8, 2001) (groups that have sufficient U.S. presence are entitled to procedural due process).

³See 18 U.S.C. § 2339B(g)(4); 18 U.S.C. § 2339A (providing material support to terrorists). Although the same definition of "material support or resources" applies to both 18 U.S.C. § 2339A and 18 U.S.C. § 2339B, the guidance provided in this section of the United States Attorneys' Manual only addresses "personnel" and "training" within the context of 18 U.S.C. § 2339B and is limited to that statute.

explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

The purpose of this section of the United States Attorneys' Manual is to set forth the Department's prosecutive policy on the terms "personnel" and "training" in a manner that provides clear guidance for all present and future cases under § 2339B. As indicated below, this policy reflects the Department's interpretation and understanding of these statutory terms.

Personnel

It is the policy of the Department that a person may be prosecuted under § 2339B for providing "personnel" to a designated foreign terrorist organization *if and only if* that person has knowingly provided the organization with one or more individuals to work under the foreign entity's direction or control.⁴ Individuals who act independently of the designated foreign terrorist organization to advance its goals and objectives are not working under its direction or control and may not be prosecuted for providing "personnel" to a designated foreign terrorist organization. Only individuals who have subordinated themselves to the foreign terrorist organization, i.e., those acting as full-time or part-time employees or otherwise taking orders from the entity, are under its direction or control.

This policy also applies to attempts and conspiracies, i.e., a person may be prosecuted under § 2339B for attempting or conspiring to provide personnel to a designated foreign terrorist organization *if and only if* that person has knowingly attempted or conspired to provide the organization with one or more individuals to work under its direction or control.

The reasons behind this policy are as follows:

First, the most natural interpretation of a statute proscribing the provision of "personnel" "to" a designated organization is that it does not reach independent actors. Rather, it reaches those who have provided employees or individuals who function like employees to serve the designated

⁴ Note that there are two different ways of providing "personnel" to a designated foreign terrorist organization: 1) by working under the direction or control of the organization; or 2) by recruiting another to work under its direction or control. The statute encompasses both methods, so long as the requisite direction or control is present.

group and work at its command. See *Webster's Ninth New Collegiate Dictionary* 878 (1989) (defining "personnel" as "a body of persons usu. employed (as in a factory, office, or organization)"). The fact that a designated group may benefit from independent activity (e.g., a third party independently organizes an economic boycott or independently engages in violence against a common enemy) does not mean that "personnel" has therefore been provided to it.

Second, it is prudent to avoid the constitutional questions that would be presented if the statute were interpreted more broadly. Independent speech in support of a designated group is clearly protected by the First Amendment, and the statute can and should be interpreted to avoid criminalizing such speech. See § 301(b) of the AEDPA, 110 Stat. 1247 (Congress' purpose in enacting § 2339B and related provisions was to give the federal government the fullest possible basis, consistent with the Constitution, to prevent the provision by U.S. persons of material support or resources to foreign terrorist organizations); H.R. Report No. 104-383, at 44-45 (1995) (ban on "material support or resources" in predecessor bill to AEDPA would not affect one's right to speak on behalf of a designated foreign terrorist organization, in concert with it, or in favor of its attitudes and philosophies).

Third, the interpretation of "personnel" advanced here is limited to that unique term, and does not narrow or affect the Government's ability to prosecute the provision of other types of "material support or resources" apart from "personnel." Thus, an individual within the United States or subject to its jurisdiction who knowingly sends currency or other physical assets to a designated foreign terrorist organization can, of course, be prosecuted under § 2339B regardless of whether he acted under the direction or control of the organization.

Training

Section 2339B also prohibits knowingly providing any "training" to a designated foreign terrorist organization, regardless of the subject matter of the training. The verb "train" is commonly understood to mean: "to teach so as to make fit, qualified, or proficient." *Webster's Ninth New Collegiate Dictionary* 1251 (1989). As this definition implies, the term "training" connotes instruction or teaching designed to impart specific skills, as opposed to general knowledge (e.g., one can receive training in how to drive a car, but a lecture on the history of the automobile would not normally be thought of as "training").

It is the prosecutive policy of the Department that a person may be prosecuted under § 2339B for providing "training" to a designated foreign terrorist organization *if and only if* that person has knowingly provided instruction to the organization designed to impart one or more specific skills. This policy also applies to attempts and conspiracies, i.e., a person may be prosecuted under § 2339B for attempting or conspiring to provide training to a designated foreign terrorist organization *if and only if* that person has knowingly attempted or conspired to provide instruction to the organization designed to impart one or more specific skills.

Questions relating to this section of the United States Attorneys' Manual should be directed to the Terrorism and Violent Crime Section of the Criminal Division at 202-514-0849.

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THE CONTROLLED SUBSTANCES ACT

9-100.000 The Controlled Substances Act

9-100.001 The Controlled Substances Act -- Generally

9-100.010 Scheduling of Controlled Substances and Listed Chemicals -- 21 U.S.C. §§ 812; 813; 802(34) and (35)

9-100.020 Attempt and Conspiracy -- 21 U.S.C. §§ 846, 963

9-100.030 Death Penalty for Controlled Substances Offenses

9-100.040 Forfeitures -- 21 U.S.C. § 853

9-100.100 Controlled Substance Destruction Procedures

9-100.200 Procedures Relating to Expungement of Criminal Records Pursuant to 18 U.S.C. § 3607

9-100.500 Narcotic Addict Rehabilitation Act of 1966

9-100.001 The Controlled Substances Act -- Generally

This chapter contains Department of Justice policy that applies to the investigation and prosecution of offenses involving violations of the Controlled Substances Act, which is found in Title 21, United States Code. Specific questions regarding controlled substances offenses may be addressed to the Narcotic and Dangerous Drug Section, Criminal Division.

9-100.010 Scheduling of Controlled Substances and Listed Chemicals -- 21 U.S.C. §§ 812; 813; 802(34) and (35)

The Controlled Substances Act establishes penalties and controls for each schedule. It also contains a now out-dated list of controlled substances and listed chemicals. For the current schedules, see 21 C.F.R. Part 1308 (controlled substances), 21 C.F.R. Part 1300.01 (anabolic steroids) and 21 C.F.R. Part 1310 (listed chemicals). *See the Criminal Resource Manual at 1868.*

9-100.020 Attempt and Conspiracy -- 21 U.S.C. § 846; 963

Section 846 of Title 21 prohibits conspiracies and attempts to violate any substantive offense established by Subchapter *I* of Title 21 ("Control and Enforcement") -- in other words, Section 846 makes it a crime to conspire to violate or attempt to violate any substantive offense set forth in 21 U.S.C. §§ 801-904. Analogously, Section 963 of Title 21 prohibits conspiracies and attempts to violate any substantive offense established by Subchapter *II* of Title 21 ("Import and Export") -- in other words, Section 963 makes it a crime to conspire to violate or attempt to violate any substantive offense set forth in 21 U.S.C. §§ 951-971.

The general conspiracy statute (18 U.S.C. § 371) may not be used to charge a conspiracy involving those sections. *See Principles of Federal Prosecution, USAM 9-27.300* ("Except as hereafter provided, once the decision to prosecute has been made, the attorney for the

government should charge, or should recommend that the grand jury charge, the most serious offense that is consistent with the nature of the defendant's conduct, and that is likely to result in a sustainable conviction").

9-100.030 Death Penalty for Controlled Substances Offenses

The death penalty shall not be sought without prior written authorization of the Attorney General. See the USAM 9-10.000 for Department guidelines regarding the death penalty.

9-100.040 Forfeitures -- 21 U.S.C. § 853

Title 21 U.S.C. § 853 provides for the forfeiture of property, profits, and other rights obtained through or used in the commission of felony drug offenses. Prosecutors are encouraged to include forfeiture offenses in all drug indictments. Contact the Asset Forfeiture and Money Laundering Section for further information.

9-100.100 Controlled Substance Destruction Procedures

This section sets forth the responsibilities of United States Attorneys' Offices (USAO) with respect to drug evidence destruction. See 28 C.F.R. § 50.21.

Each USAO should designate a Drug Evidence Destruction Coordinator (DEDC). This coordinator should preferably be an attorney familiar with the prosecution of narcotics cases and related evidentiary issues. The coordinator will work closely with Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI) and United States Customs Service (USCS) counterparts to ensure that the evidentiary value of the drug evidence is preserved for later use in court. In addition, the coordinator will be responsible for monitoring legal problems, providing advice, and ensuring that the FBI, DEA and USCS 60-day notices are forwarded to the appropriate attorney.

When the USAOs receive the 60-day notice, it should be forwarded to the attorney assigned to the case (and to the DEDC) to determine the appropriate response. The prosecutor may want to contact the DEA, FBI or USCS agent in charge of the case to get the agent's assurance that sufficient photographic documentation of the evidence is or will be available prior to destruction. Furthermore, if the evidence is marijuana, the prosecutor is encouraged to consult with the case agent to make sure that the evidence was accurately weighed and the weighing method was adequately documented for use in court proceedings. Once the appropriate reviews and consultations are complete, the prosecutor may take one of the following actions:

1. Send a written response to the case agent before the 60-day time period elapses permitting sampling and destruction to proceed. (NOTE: The Department encourages prosecutors to do this as soon as possible for cases where there is no basis for an exception request. This will permit DEA, FBI or USCS to begin the sampling and destruction process in less than 60 days, providing laboratory analyses are completed.); or
2. Permit the 60-day time period to elapse, at which point the DEA, FBI or USCS case agent will authorize sampling and destruction with no further notice to the USAOs once laboratory analyses are completed; or
3. Determine that an exception request is warranted, and forward such a written request,

signed personally by the USA, to the DEA, FBI or USCS Special Agent-In-Charge (SAC). It must be received before the expiration date of the 60-day time period.

NOTE: The use of exception requests should be severely limited. In any case in which the USA requests an exception from the SAC, the burden will be on the prosecutor to show the particular circumstances or factors that would adversely affect the government's case. Since the sample retained under the standard procedure will be large -- twice the amount required for maximum mandatory minimum penalties for all substances other than marijuana -- prosecutors are strongly discouraged from filing an exception request on the grounds that the full seizure is needed for jury appeal or other purely strategic purposes.

If the DEA, FBI or USCS SAC denies the exception request to preserve the bulk evidence, the USA will be so notified in writing. The exhibit will be retained for 30 days from the date of the denial notice before sampling and destruction are authorized. The USA may choose to abide by the SAC's decision or may appeal the decision to the Assistant Attorney General (AAG), Criminal Division, to be sent to the Chief of the Narcotic and Dangerous Drug Section, Criminal Division. Once an appeal is filed, the evidence will be maintained intact until the appeal is decided, provided that the DEA or the FBI is notified of the appeal within 30 days of the denial notice. The USCS' policy, however, provides for the commencement of destruction unless the USCS' SAC receives a copy of the decision letter from the AAG granting the appeal within 90 days of USCS' denial notice.

A copy of the appeal request should be sent to the SAC and must be received before the 30-day appeal period has elapsed.

9-100.200 Procedures Relating to Expungement of Criminal Records Pursuant to 18 U.S.C. § 3607

For procedures relating to the expungement of criminal records pursuant to 18 U.S.C. § 3607 (formerly codified at 21 U.S.C. § 844(b)), *see* USAM 3-16.110(C).

9-100.500 Narcotic Addict Rehabilitation Act of 1966

The (Pub.L. No. 89-793) recognizes the fact that narcotic addicts, including those who violate Federal criminal laws, are medical problems and should receive treatment rather than mere punishment. The Narcotic Addict Rehabilitation Act established several different but related types of commitment procedures, all of which contain both institutional and aftercare provisions. Although this act remains in effect, due to lack of appropriation and other reasons it is not utilized to the extent to which it was in the years immediately following its enactment. Other programs are also available to addicted defendants who are sentenced under regular sentencing provisions. *See* the Criminal Resource Manual at 1870 for further discussion of this Act.

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MONEY LAUNDERING

9-105.100	Introduction
9-105.300	Approval Requirements for Money Laundering Cases
9-105.310	Notification of the Asset Forfeiture and Money Laundering Section -- Reporting Requirement
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9-105.330	Consultation Requirements
9-105.600	Prosecution Standards -- Bona Fide Fees Paid to Attorneys for Representation in a Criminal Matter
9-105.700	Prohibition on Giving Notice of the Criminal Derivation of Property
9-105.750	Money Laundering Offenses Under § 1956(a)(1)(A)(ii)

9-105.100 Introduction

The Federal statutes proscribing money laundering were enacted in 1986 with the passage of the Money Laundering Control Act, codified at 18 U.S.C. §§ 1956 and 1957. In order to promote consistency and uniformity in the use of these statutes, certain approval, consultation and notification requirements have been promulgated. These requirements are set forth below. It should be noted that, pursuant to the notification requirement in 9-105.310, copies of all filed indictments and criminal complaints containing money laundering charges must be sent to the Asset Forfeiture and Money Laundering Section regardless of whether the charges required prior approval or consultation with the Section.

The Criminal Resource Manual contains an extensive treatment of the money laundering statutes, with indictment forms and jury instructions, at 2101. A table of contents for these materials is at 2100.

9-105.300 Approval Requirements for Money Laundering Cases

There are four categories of money laundering prosecutions which require prior authorization from the Criminal or Tax Division:

- 1. Extraterritorial Jurisdiction.** Criminal Division (Asset Forfeiture & Money Laundering Section) (AFMLS) approval is required before the commencement of any investigation where jurisdiction to prosecute is based solely on the extraterritorial jurisdiction provisions of §§ 1956 and 1957. Due to the potential international sensitivities, as well as proof problems, involved in using these extraterritorial provisions, no grand jury investigation may be commenced, no indictment may be returned, and no complaint may be filed without the prior approval of AFMLS, Criminal Division when jurisdiction to prosecute these offenses exists only because of these extraterritorial provisions.
- 2. Tax Division Authorization.** Tax Division authorization is required prior to any prosecution under § 1956(a)(1)(A)(ii) where the sole or principal purpose of the financial transaction was to evade the

payment of taxes. Such approval shall be given in accordance with the prosecution policies set forth in USAM 9-105.750.

3. Prosecutions of Attorneys. Criminal Division approval is required for prosecutions of attorneys (under either § 1956 or § 1957) where the financial transaction is one involving attorneys' fees. This approval is required regardless of whether the fee was received in a criminal or civil case. Such approval shall be given in accordance with the prosecution policies set forth in USAM 9-105.600 et seq.

4. Prosecution of a Financial Institution. In any criminal case under §§ 1956 or 1957 of Title 18, or § 5322 of Title 31, in which a financial institution, as defined in 18 U.S.C. § 20 and 31 C.F.R. § 103.11, would be named as a defendant; or in which a financial institution would be named as an unindicted co-conspirator or allowed to enter into a Deferred Prosecution Agreement, AFMLS, Criminal Division approval is required before any indictment, complaint, information, or Deferred Prosecution Agreement is filed. In cases where the financial institution involved is a "non-bank financial institution," such as a check-cashing service or a casa de cambio, which is a stand-alone business and not a branch of a larger institution, the requirement does not apply. However, when such institutions are part of a larger business or a branch of an international institution, Criminal Division approval is required.

The review and approval function for prosecutions under 18 U.S.C. §§ 1956 and 1957, and 31 U.S.C. § 5322 prosecutions, requiring Criminal Division approval has been centralized within the AFMLS. In the case of any prosecution requiring Criminal Division approval under these provisions, a copy of the proposed indictment, complaint, information, or Deferred Prosecution Agreement, and a prosecution memorandum should be sent as soon as possible before the anticipated date of indictment to the Chief of the Asset Forfeiture and Money Laundering Section. The preferred method of transmittal is by overnight carrier. Attorneys are encouraged to seek guidance from the Asset Forfeiture and Money Laundering Section prior to the time an investigation is undertaken and well before a final indictment, complaint, information, or Deferred Prosecution Agreement, and prosecution memorandum are submitted for review.

9-105.310 Notification of the Asset Forfeiture and Money Laundering Section -- Reporting Requirement

In light of the scope of the money laundering statutes, it is essential that the Asset Forfeiture and Money Laundering Section be kept abreast of the way the statutes are being used. While prior review and approval of all §§ 1956 and 1957 prosecutions are not required, it is necessary that the Asset Forfeiture and Money Laundering Section be advised of all prosecutions under those statutes. Therefore, on October 1, 1992, the following notification requirement was implemented:

In *all* criminal cases involving charges under § 1956 or § 1957, or in forfeiture cases involving § 981 or § 982, the United States Attorney's Office or Department component handling the case must notify the Asset Forfeiture and Money Laundering Section by sending a copy of the indictment or complaint to the Section as soon as possible after the return of the indictment or the serving of the complaint.

The form which can should be used to transmit the indictment or complaint to the Section can be found in the Criminal Resource Manual at 2184.

Following sentencing, the Assistant United States Attorney or Department attorney should inform the Section of the nature of the disposition of the case.

Prosecutors are encouraged to consult the Asset Forfeiture and Money Laundering Section prior to bringing charges under §§ 1956 or 1957, either by telephone or by submitting a draft indictment or complaint to the Section in advance of the date of filing. Similarly, prior to the filing of a complaint in any civil

forfeiture case under § 981(a)(1) when no related criminal indictment under § 1956 or § 1957 will be returned, the prosecutor handling the case is encouraged to consult with the Section.

9-105.320 Reporting Requirements Pertaining to Financial Institutions

Section 1504(c) of the Annunzio-Wylie Anti-Money Laundering Act, which was signed and became effective on October 28, 1992 (except as provided otherwise in the bill), added the following subsection to § 1956:

(g) NOTICE OF CONVICTION OF FINANCIAL INSTITUTIONS.--If any financial institution or any officer, director, or employee of any financial institution has been found guilty of an offense under this section, section 1957 or 1960 of this title, or section 5322 of title 31, the Attorney General shall provide written notice of such fact to the appropriate regulatory agency for the financial institution.

In order to implement this requirement, all United States Attorneys Offices or Department components must notify the Asset Forfeiture and Money Laundering Section of such convictions. Attached to the notification letter must be a certified copy of the order of conviction from the court rendering the decision. *See* §§ 1502(a)-(c) and 1503(a)-(b) of the Annunzio-Wylie Act. In addition, the notification should include a file-stamped copy of the indictment, the name of the Assistant United States Attorney who handled the case, and the name of the primary investigative agency involved.

With regard to this notification requirement, three factors should be noted:

First, since this provision was added to § 1956, the relevant definition of the term "financial institution" is that set forth in § 1956(c)(6), which is very broad and includes numerous kinds of businesses other than depository institutions. Based on the prior history of this provision and the context in which it was enacted, it is the position of the Criminal Division that the notification requirement in § 1956(g) be limited to national banks, Federal savings associations, Federal credit unions, federally insured State depository institutions and federally insured State credit unions.

Second, this requirement will apply to persons who were officers, directors or employees of a financial institution either at the time of the offense or at the time of the conviction (i.e., if the offense was committed prior to the defendant's employment at the financial institution).

Third, it should be noted that § 5322 of Title 31 is the penalty provision for violations of other sections of subchapter II of chapter 53 of Title 18 (i.e., §§ 5311-5328); § 5322 does not set out an offense which can be committed. However, we will interpret this provision to include violations of other sections of Title 31 which are punishable under § 5322.

Notifications pursuant to this provision should be sent to: Chief, Asset Forfeiture and Money Laundering Section, Criminal Division. The form which should be used for this notification can be found in the Criminal Resource Manual at 2185.

9-105.330 Consultation Requirements

Consultation with the Criminal Divisions Asset Forfeiture and Money Laundering Section (AFMLS) will provide a means to ensure the orderly development of the case law and to assist prosecutors in applying these statutes in a consistent manner. In the following instances, United States Attorneys' Offices must consult with AFMLS prior to the filing of an indictment or a civil or criminal complaint:

1. Forfeiture of Businesses. In any case where forfeiture of a business is sought under the theory that the business facilitated the money laundering offenses, no forfeiture action, either criminal or civil, may be filed without prior consultation with AFMLS, Criminal Division.

2. Cases Filed Under § 1956(b). Section 1956(b) provides for the imposition of a civil penalty (of not greater than \$10,000 or the value of the property, funds, or monetary instruments involved in the transaction) against anyone who violates the criminal provisions of § 1956(a)(1) and (a)(2). In any case where a civil action under § 1956(b) is going to be brought against a business entity, no complaint may be filed without prior consultation with AFMLS, Criminal Division.

3. Cases Involving Financial Crimes. In any case in which the conduct to be charged as "specified unlawful activity" under §§ 1956 and 1957 consists primarily of one or more financial or fraud offenses, and in which the financial and money laundering offenses are so closely connected with each other that there is no clear delineation between the underlying financial crime and the money laundering offense, no indictment or complaint may be filed without prior consultation with AFMLS, Criminal Division. (This issue is often referred to as the "merger" issue.)

Explanation. Sections 1956 and 1957 both require that the property involved in the money laundering transaction be the *proceeds* of specified unlawful activity at the time that the transaction occurs. The statute does not define when property becomes "proceeds," but the context implies that the property will have been derived from an already completed offense, or a completed phase of an ongoing offense, before it is laundered. Therefore, as a general rule, neither § 1956 nor § 1957 should be used where the same financial transaction represents both the money laundering offense and a part of the specified unlawful activity generating the proceeds being laundered.

4. Prosecutions in Receipt and Deposit Cases. In any case when the conduct to be charged as money laundering under § 1956 or § 1957, or where the basis for a forfeiture action under § 981 consists of the deposit of proceeds of specified unlawful activity into a domestic financial institution account that is clearly identifiable as belonging to the person(s) who committed the specified unlawful activity, no indictment or complaint may be filed without prior consultation with the Asset Forfeiture and Money Laundering Section.

Explanation. One of the major concerns expressed about the use of the money laundering statutes involves a class of money laundering cases often referred to as "receipt and deposit" cases. "Receipt and deposit" cases are those kinds of cases where a person obtains proceeds from specified unlawful activity, which that person committed, and then deposits the proceeds into a bank account that is clearly identifiable as belonging to that person. In that type of transaction, there is generally no concealment involved and the transaction is conducted so that the person can use or enjoy the proceeds of the specified unlawful activity.

The concern has been expressed that "receipt and deposit" cases should not be sentenced as severely as money laundering cases involving more active forms of concealment or promotion because, arguably, the money laundering activity in "receipt and deposit" cases creates little or no additional harm to society above that which was caused by the commission of the underlying offense and, in some cases, merely constitutes the completion of the underlying offense. Such concerns have been responsible, in part, for attempts by the Sentencing Commission to amend the sentencing guidelines in a manner that would reduce the offense levels for money laundering offenses.

While §§ 1956 and 1957 apply to "receipt and deposit" transactions, for reasons of policy, "receipt and deposit" transactions should not be charged unless there are extenuating circumstances. However, a "receipt and deposit" transaction may be charged when the transaction involves other indicia of money laundering such as an effort to conceal or disguise the illegal proceeds, when a financial transaction is conducted to promote *further* unlawful activity, or when the transaction is designed to avoid a transaction reporting requirement.

9-105.600 Prosecution Standards -- Bona Fide Fees Paid to Attorneys for Representation in a Criminal Matter

Section 1957, as originally enacted, granted no exemptions based upon the kind of trade or business engaged in by a potential defendant or the purpose for which a particular "monetary transaction" was undertaken. Thus, the statute, on its face, would have allowed the prosecution of a defense attorney who knowingly received and deposited more than \$10,000 in criminally derived funds as legal fees for representation of a client in a criminal case. At that time, several Congressmen expressed concern that such an application of the statute might infringe upon the Sixth Amendment right to counsel in a criminal case and contemplated adding language to the proposed statute exempting such "attorney fee" transactions. Although no prosecution of a defense attorney had been brought or submitted for consideration, Congress reversed course in 1988 and enacted an express, *but extremely limited*, exemption under § 1957 for "attorney fee" transactions. It did this by enacting § 6182 of the 1988 Act which added the following language at the end of the definition of "monetary transaction" in subsection 1957(f)(1): "but such term does not include any transaction *necessary* to preserve a person's right to representation as guaranteed by the Sixth Amendment of the Constitution." Pub. L. 100-690, 102 Stat. 4354 (emphasis added).

There is no legislative history to clarify this provision and its scope is open to differing interpretations. The statutory exemption would allow criminal prosecution of defense attorneys who knowingly "receive and deposit" tainted funds either as part of a sham or fraudulent transaction, or as legal fees for representation of a client in any non-criminal matter. *See, e.g., Hullom v. Burrows*, 266 F.2d 547, 548 (6th Cir.), *cert. denied*, 361 U.S. 919 (1959) (Sixth Amendment right to counsel does not apply in civil litigation). It would also permit prosecution of a defense attorney who "receives and deposits" tainted funds from a third-party payor as legal fees for representation of a client in a criminal case. Such third-party payments can hardly be said to be necessary to preserve the client's right to counsel in a criminal case because, in the absence of such payments, the client would still be free to retain private counsel with his own funds or to be represented by a public defender or court-appointed counsel if he could not afford to retain private counsel.

Further, in cases involving the civil forfeiture of attorney fees, the Supreme Court has ruled that there is no Sixth Amendment right to use criminally derived property to retain counsel of choice in a criminal case. *See Caplin & Drysdale v. United States*, 109 S. Ct. 2646 (1989); *United States v. Monsanto*, 109 S. Ct. 2657 (1989).

In any event, any prosecution of an attorney under § 1957 for the receipt and deposit of funds allegedly derived from a specified unlawful activity (when the fee appears to be bona fide) is a highly sensitive area and must be approached with great care. Attorneys in such situations, unlike all others who may deal with criminal defendants, may be required to investigate and pursue matters which will provide them with knowledge of the illicit source of the property they receive. Indeed, the failure to investigate such matters may be a breach of ethical standards or may result in a lack of effective assistance to the client.

Because the Department firmly believes that attorneys representing clients in criminal matters must not be hampered in their ability to effectively and ethically represent their clients within the bounds of the law, the Department, as a matter of policy, will not prosecute attorneys under § 1957 based upon the receipt of property constituting bona fide fees for the legitimate representation in a criminal matter, except if (1) there is proof beyond a reasonable doubt that the attorney had actual knowledge of the illegal origin of the specific property received (prosecution is not permitted if the only proof of knowledge is evidence of willful blindness); and (2) such evidence does not consist of (a) confidential communications made by the client preliminary to and with regard to undertaking representation in the criminal matter; or (b) confidential communications made during the course of representation in the criminal matter; or (c) other information obtained by the attorney during the course of the representation and in furtherance of the obligation to effectively represent the client.

What constitutes "representation in a criminal matter" depends on the facts and circumstances of the particular case. In deciding if representation in different but related proceedings constitutes "representation in a single matter," consideration will be given to whether the proceedings relate to investigations or cases arising out of the same facts or transactions, for example, a civil RICO case which arises out of a criminal RICO prosecution.

This prosecution standard applies only to fees received for legal "representation in a criminal matter." Attorneys who receive criminally derived property in exchange for carrying out or engaging in other commercial transactions unrelated to the representation of a client in a criminal matter or for representing a client in a civil matter should be treated the same as any other person.

Proper application of this policy requires examination of three issues: (1) what constitutes bona fide fees; (2) what constitutes actual knowledge; and (3) what evidence may be relied upon to meet the knowledge requirement of the policy.

See the Criminal Resource Manual at 2102 through 2104, for a discussion about each of these issues.

9-105.700 Prohibition on Giving Notice of the Criminal Derivation of Property

No Department attorney shall, either orally or in writing, inform an attorney who is legitimately representing a client in a criminal matter that the property the attorney is receiving is or may be criminally derived solely for the purpose of meeting the requirements of knowledge imposed by this prosecution policy or by the statute.

9-105.750 Money Laundering Offenses Under § 1956(a)(1)(A)(ii)

The Anti-Drug Abuse Act of 1988 (Pub L. 100-690) amended the money laundering provisions of 18 U.S.C. § 1956 by adding a provision which makes it a crime to conduct or attempt to conduct a financial transaction involving the proceeds of criminal activity with the intent to violate § 7201 (attempted tax evasion) or § 7206 (false tax return) of the Internal Revenue Code of 1986 (26 U.S.C.). Thus, § 6471 of the Act amends § 1956 (a)(1) as follows:

Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified criminal activity--

- (A) (i) with the intent to promote the carrying on of specified unlawful activity; or
- (ii) with intent to engage in conduct constituting a violation of § 7201 or § 7206 of the Internal Revenue Code of 1986;

According to the legislative history of the amendment (134 Cong. Rec. S17367 (daily ed. November 10, 1988)):

[The provision] is vital to the effective use of the money laundering statute and would allow the Internal Revenue Service with its expertise in investigating financial transactions to participate in developing cases under § 1956. Under this provision any person who conducts a financial transaction that in whole or in part involves property derived from unlawful activity, intending to engage in conduct that constitutes a violation of the tax laws, would be guilty of a money laundering offense.

This amendment was intended to facilitate and enhance the prosecution of money launderers. It was not intended to provide a substitute for traditional Title 18 and Title 26 charges related to tax evasion, filing

of false returns, including the aiding and abetting thereof, or tax fraud conspiracy. Consequently, appropriate tax-related Title 18 and Title 26 charges are to be utilized when the evidence warrants their use.

The use of the specific intent language set forth in 18 U.S.C. § 1956(a)(1)(A)(ii) in a proposed indictment for a violation of 18 U.S.C. § 1956 requires Tax Division authorization: (1) when the indictment also contains charges for which Tax Division authorization is required, including allegations of tax frauds (e.g., Klein-type) conspiracy; or (2) when 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. Such authorization would be preceded by IRS Regional Counsel review in accordance with normal review procedures, except in Organized Crime Drug Enforcement Task Force cases. (*See* USAM 6-4.210).

Tax Division authorization is not required for use of such language in a money laundering indictment that does not fall in either of the above two categories. It is assumed in situations where Tax Division authorization is not requested that: (1) the principal purpose of the financial transaction was to accomplish some other covered purpose, such as carrying on some specified unlawful activity like drug trafficking; (2) the circumstances do not warrant the filing of substantive tax or tax fraud conspiracy charges; and (3) the existence of a secondary tax evasion or false return motivation for the transaction is one that is readily apparent from the nature of the money laundering transaction itself.

Section 1956 also directs that the authority to investigate money laundering violations is controlled by a Memorandum of Understanding which has been entered into by the Departments of Justice and Treasury and the Postal Service. *See* § 1956(e). Prosecutors should be aware of the provisions of this memorandum and do nothing to cause its abrogation. A copy is contained in the Criminal Resource Manual at 2186.



U.S. Department of Justice

Executive Office for United States Attorneys

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Office of the Director

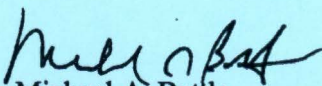
Room 2242, RFK Main Justice Building
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Washington, DC 20530

(202) 514-2121

MEMORANDUM - Sent via Electronic Mail

DATE: JUL 12 2005

TO: ALL UNITED STATES ATTORNEYS
ALL FIRST ASSISTANT UNITED STATES ATTORNEYS
ALL CRIMINAL CHIEFS
ALL CIVIL CHIEFS

FROM: 
Michael A. Battle
Director

SUBJECT: Approval Requirements for Money Laundering Cases

ACTION REQUIRED: For your information.

CONTACT PERSON: Judy Beeman
Executive Assistant
(202) 514-5843

Richard Weber
Chief
Asset Forfeiture and Money Laundering Section
Criminal Division
(202) 514-1263

DEPT. OF JUSTICE

AUG 04 2005

MAIN LIBRARY

Please find attached a copy of a revision to Title 9, Section 9-105.300 of the *United States Attorneys' Manual*. The revised text sets forth an additional prior approval requirement to Title 31, Section 5322 Bank Secrecy Act prosecutions or deferred prosecutions of financial institutions.

Attachment

cc: All United States Attorneys' Secretaries



U.S. Department of Justice

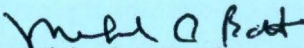
*Executive Office for United States Attorneys
Office of the Director*

*Main Justice Building, Room 2242
950 Pennsylvania Avenue, N. W.
Washington, D.C. 20530*

(202) 514-2121

JUL 12 2005

MEMORANDUM FOR ALL MANUAL HOLDERS

FROM: 
Michael A. Battle
Director

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

SUBJECT: Approval Requirements for Money Laundering Cases

AFFECTS: USAM 9-105.300

Please find attached a revision to the *United States Attorneys' Manual*, Title 9, Section 9-105.300, issued by the Deputy Attorney General which sets forth an additional prior approval requirement to Title 31, Section 5322 Bank Secrecy Act prosecutions or deferred prosecutions of financial institutions.

Attachment

9-105.300 Approval Requirements for Money Laundering Cases

There are four categories of money laundering prosecutions which require prior authorization from the Criminal or Tax Division:

1. **Extraterritorial Jurisdiction.** Criminal Division (Asset Forfeiture & Money Laundering Section) (AFMLS) approval is required before the commencement of any investigation where jurisdiction to prosecute is based solely on the extraterritorial jurisdiction provisions of §§ 1956 and 1957. Due to the potential international sensitivities, as well as proof problems, involved in using these extraterritorial provisions, no grand jury investigation may be commenced, no indictment may be returned, and no complaint may be filed without the prior approval of AFMLS, Criminal Division when jurisdiction to prosecute these offenses exists only because of these extraterritorial provisions.
2. **Tax Division Authorization.** Tax Division authorization is required prior to any prosecution under § 1956(a)(1)(A)(ii) where the sole or principal purpose of the financial transaction was to evade the payment of taxes. Such approval shall be given in accordance with the prosecution policies set forth in USAM 9-105.750.
3. **Prosecutions of Attorneys.** Criminal Division approval is required for prosecutions of attorneys (under either § 1956 or § 1957) where the financial transaction is one involving attorneys' fees. This approval is required regardless of whether the fee was received in a criminal or civil case. Such approval shall be given in accordance with the prosecution policies set forth in USAM 9-105.600 et seq.
4. **Prosecution of a Financial Institution.** In any criminal case under §§ 1956 or 1957 of Title 18, or § 5322 of Title 31, in which a financial institution, as defined in 18 U.S.C. § 20 and 31 C.F.R. § 103.11, would be named as a defendant, or in which a financial institution would be named as an unindicted co-conspirator or allowed to enter into a Deferred Prosecution Agreement, AFMLS, Criminal Division approval is required before any indictment, complaint, information, or Deferred Prosecution Agreement is filed. In cases where the financial institution involved is a "non-bank financial institution," such as a check-cashing service or a casa de cambio, which is a stand-alone business and not a branch of a larger institution, the requirement does not apply. However, when such institutions are part of a larger business or a branch of an international institution, Criminal Division approval is required.

The review and approval function for prosecutions under 18 U.S.C. §§ 1956 and 1957, and 31 U.S.C. § 5322 prosecutions, requiring Criminal Division approval has been centralized within the AFMLS. In the case of any prosecution requiring Criminal Division approval under these provisions, a copy of the proposed indictment, complaint, information, or Deferred

Prosecution Agreement, and a prosecution memorandum should be sent as soon as possible before the anticipated date of indictment to the Chief of the Asset Forfeiture and Money Laundering Section. The preferred method of transmittal is by overnight carrier. Attorneys are encouraged to seek guidance from the Asset Forfeiture and Money Laundering Section prior to the time an investigation is undertaken and well before a final indictment, complaint, information, or Deferred Prosecution Agreement, and prosecution memorandum are submitted for review.

9-106.000
[RESERVED]

9-107.000
[RESERVED]

9-108.000
[RESERVED]

9-109.000
[RESERVED]

9-110.000 ORGANIZED CRIME AND RACKETEERING

- 9-110.010 Introduction
 - 9-110.100 Racketeer Influenced and Corrupt Organizations (RICO)
 - 9-110.101 Division Approval
 - 9-110.200 RICO Guidelines Preface
 - 9-110.210 Authorization of RICO Prosecution -- The Review Process
 - 9-110.300 RICO Guidelines Policy
 - 9-110.310 Considerations Prior to Seeking Indictment
 - 9-110.320 Approval of Organized Crime and Racketeering Section Necessary
 - 9-110.330 Charging RICO Counts
 - 9-110.400 RICO Prosecution (Pros) Memorandum Format
 - 9-110.600 Syndicated Gambling
 - 9-110.700 Loansharking
 - 9-110.800 Violent Crimes in Aid of Racketeering Activity (18 U.S.C. § 1959)
 - 9-110.801 Violent Crimes in Aid of Racketeering (18 U.S.C. § 1959) -- Division Approval
 - 9-110.802 Violent Crimes in Aid of Racketeering (18 U.S.C. §1959) -- Approval Guidelines
 - 9-110.811 The Review Process for Authorization under Section 1959
 - 9-110.812 Specific Guidelines for Section 1959 Prosecutions
 - 9-110.815 Prosecution Memorandum -- Section 1959
 - 9-110.816 Post-Indictment Duties -- Section 1959
 - 9-110.900 The Gambling Ship Act (18 U.S.C. §§ 1081, et seq.)
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9-110.010 Introduction

This chapter focuses on investigations and prosecutions involving RICO, (18 U.S.C. §§ 1961-1968), illegal gambling (18 U.S.C. §§ 1511 and 1955), loansharking (18 U.S.C. §§ 891-896), violent crimes in aid of racketeering (18 U.S.C. § 1959), and gambling ships (18 U.S.C. §§ 1081-1083). The Organized Crime and Racketeering Section of the Criminal Division supervises prosecutions of each of these statutes. For an additional discussion of RICO, see "Racketeer Influenced and Corrupt Organizations (RICO): A Manual for Federal Prosecutors," available from OCRS.

9-110.100 Racketeer Influenced and Corrupt Organizations (RICO)

On October 15, 1970, the Organized Crime Control Act of 1970 became law. Title IX of the Act is the Racketeer Influenced and Corrupt Organizations Statute (18 U.S.C. §§ 1961-1968), commonly referred to as the "RICO" statute. The purpose of the RICO statute is "the elimination of the infiltration of organized crime and racketeering into legitimate organizations operating in interstate commerce." S.Rep. No. 617, 91st Cong., 1st Sess. 76 (1969). However, the statute is sufficiently broad to encompass illegal activities relating to any enterprise affecting interstate or foreign commerce.

Section 1961(10) of Title 18 provides that the Attorney General may designate any department or agency to conduct investigations authorized by the RICO statute and such department or agency may use the investigative provisions of the statute or the investigative power of such department or agency otherwise