

(b) An individual has equipment, implements, or substances that may be used to tamper with a drug test.

(5) Donors will be allowed individual privacy when providing specimens unless collection personnel have reason to believe that the donor may alter or substitute the urine specimen or otherwise tamper with the drug test.

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|| 1-25.7.1 Collection Procedures, ACSAP

The following highlights the collection procedure. For complete details of the collection procedure, refer to Section XI of the Drug Deterrence Program "Alcohol and Controlled Substance Abuse Policy and Procedure Manual."

(1) Breath Alcohol Testing:

(a) Breath Alcohol Testing will be conducted by a Certified Breath Alcohol Technician (BAT).

(b) Prior to testing, the BAT will request to see the donor's photo identification.

(c) Social Security numbers will be used as employee identification numbers.

(d) A Breath Alcohol Testing form will be used to record necessary information.

(e) The breath testing location will provide aural and visual privacy, sufficient to prevent unauthorized persons from seeing or hearing test results.

(2) Drug Testing:

(a) Drug Collections will be conducted by established DDP Collection Officials (CO's).

(b) Prior to testing, the CO will request to see the donor's photo identification.

(c) Social Security numbers will be used as specimen identifying numbers throughout the collection, shipping, and testing phases of the screening to protect the identity of the donor.

(d) Chain of Custody forms shall account for the integrity of each urine specimen by tracking its handling from point of specimen collection to final disposition of the specimen.

(e) Each donor will be escorted by a CO to the collection area. Same sex collectors will be used in the instances where collection personnel have reason to believe that the donor may alter or substitute the urine specimen.

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| 1-25.8 Reporting|Procedures, DFWP|

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCls:

| 1-25.8.1 Applicant|Testing, DFWP|

(1) All tests confirmed positive for drugs will be reviewed by the FBI's medical review officer (MRO) prior to the initiation of any official action. If the MRO determines, after contacting the donor, that there is no alternate medical explanation for the positive test, the DDP Administrator will be notified. A communication will be immediately prepared by the DDP Administrator identifying the donor and describing the drugs identified upon testing. This communication will be forwarded to the Administrative Services Division (ASD), Attention: Bureau Applicant Employment Unit (BAEU), and will become a permanent part of the applicant record. Upon receiving a communication regarding a verified positive test, the BAEU will immediately notify the field office through which the applicant is being processed to discontinue the processing of that applicant. The BAEU will, over the signature of the Personnel Officer, prepare an appropriate letter notifying the applicant that he or she is no longer being considered for employment. (See MIOG, Part 1.67-2.7.4, for additional notification instructions.)

(2) Inquiries and appeals received from applicants being denied employment with the FBI due to positive drug tests will be handled by the Personnel Officer, ASD. Cases in which illegal drugs, such as marijuana, cocaine, or PCP, were detected will not be given further consideration for employment with the FBI. (Also see MIOG, Part 1.67-2.7.1, for guidelines for determining applicants' suitability based on their drug history.) In the event that the drug detected was a legitimate prescription drug and the applicant had failed to inform the FBI that he or she was taking such a drug prior to testing, the applicant may appeal to the Personnel Officer, who will refer the appeal to the MRO for review prior to a final decision. Such appeals will be reviewed on an individual basis taking into consideration the verification of the legitimacy of the drug and possible lack of candor on the part of the applicant.

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| 1-25.8.2 Testing On-Board|Employees, DFWP|**(1) Random Selection and Probationary Testing**

(a) Notification of employees to be tested by random selection and probationary Special Agents within their first two years of employment will be made to field offices and FBIHQ divisions by the FBIHQ DDP. The field office will follow the established collection procedures and forward collected specimens to the testing laboratory.

(b) All examinations confirmed positive for drugs will be reviewed by the FBI's MRO prior to the initiation of any official action. It is the responsibility of the MRO to review all positive test results and medical information provided by the employee for an alternate medical explanation for the positive test. The MRO

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may interview the employee, review medical history, consult with laboratory personnel and order retesting as determined necessary. If no alternate medical explanation can be determined, the test will be designated a "verified positive" by the MRO.

(c) In the event of a "verified positive" test, the MRO will notify the DDP Administrator who will prepare an appropriate communication outlining the selection procedures and test results. This communication will be forwarded through the Assistant Director, [ASD], to the Director, FBI, Attention: Assistant Director, Office of Professional Responsibility (OPR), requesting that the OPR initiate an appropriate investigation.

(d) Investigations conducted by OPR will be conducted in accordance with the FBI regulations regarding investigation of employee misconduct. The results of such investigations will be forwarded to the Adjudication Unit, OPR, for review. The degree of severity of administrative action will be determined on a case-by-case basis.

(e) A copy of the communication prepared for a "verified positive" test will be forwarded to an EAP counselor who will immediately initiate contact with the employee and extend the assistance and rehabilitation services mandated by EO 12564. A letter will be sent by the DDP to the employee outlining the services available and providing names of EAP contacts. This letter will be sent by registered mail, return receipt requested.

(2) Reasonable Suspicion Testing

(a) If an employee is suspected of using illegal drugs, the first-line supervisor will gather information, specific facts, and circumstances leading to and supporting this suspicion. This information is then brought to the second-line supervisor who then decides if there is enough documentation to substantiate reasonable suspicion. This information is then brought to the attention of the SAC or division head who will then determine whether to recommend to OPR that an employee be tested. When such a recommendation is made, a written communication will be prepared to include, at a minimum, the appropriate dates and times of reported drug-related incidents, reliable/credible sources of information and any other justification for a test. This communication is to be forwarded to the OPR, FBIHQ. It is the responsibility of the Assistant Director, OPR, or his/her designee to review the facts in each case and to authorize the institution of an investigation and the collection of a urine specimen for testing.

(b) All test results will be forwarded to OPR by the DDP staff after the MRO has conducted the required review to ensure that an alternate medical reason for the presence of a drug does not exist. Where testing is conducted based on reasonable suspicion, the urine specimen will be obtained by a collection official using set collection procedures. Same-sex collectors will be used in the instances where collection personnel have reason to believe that the donor may alter or substitute the urine specimen. A refusal to provide a specimen will be considered refusal to participate in testing, and administrative action for insubordination may be instituted. Following investigation by OPR, the investigative results will be forwarded to the Adjudication Unit which will act upon each case as outlined under random and probationary testing.

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(3) Follow-up Testing

(a) Follow-up testing, on an unannounced basis, may be required during or after EAP counseling or rehabilitation up to one year after completion of rehabilitation.

(b) In such cases, the DDP Administrator is authorized, at his/her discretion to initiate the collection of a urine specimen for testing. Thereafter, the reporting procedures will be the same as those detailed for reasonable suspicion testing, including direct observation.

(4) Voluntary Testing

In order to demonstrate their commitment to the FBI goal of a drug-free workplace, employees may volunteer for testing by contacting the DDP Administrator. The DDP Administrator, at his/her discretion, is authorized to initiate the collection of a urine specimen for testing. Thereafter, the reporting procedures will be the same as those detailed for random selection testing.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecClis:

1-25.8.3 Reporting Procedures, ACSAP

(1) Alcohol Testing

(a) Notification of drivers to be tested will be made to field offices and FBIHQ divisions by FBIHQ DDP.

(2) Confirmed Positive Alcohol Tests (Greater Than 0.02, Less Than 0.04)

(a) Commercial Drivers (CDs) having a breath alcohol content greater than 0.02 - .039 will be placed on temporary restriction from performing safety-sensitive functions.

(b) Management Officials (MOs) shall complete an FD-907, Temporary Restriction Form, and fax the form to the DDP Administrator.

(3) Confirmed Positive Alcohol Test (0.04 or Greater)

(a) In the event the confirmation test reveals an alcohol concentration of 0.04 or greater, the CD shall be placed on full restriction from performing safety-sensitive functions. MOs shall complete an FD-908, Full Restriction Form, and shall fax this information to the DDP Administrator.

(b) The DDP Administrator will prepare an appropriate communication to the Office of Professional Responsibility (OPR), requesting that the Internal Investigation Unit (IIU) initiate an appropriate investigation.

(c) A copy of this communication will be forwarded to an Employee Assistance Counselor who will immediately contact the employee to extend assistance and provide rehabilitation services.

(d) Investigations conducted by OPR will be conducted in accordance with FBI regulations regarding investigations of employee misconduct. The degree of severity of administrative action will be

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determined on a case-by-case basis, taking into consideration all extenuating or mitigating factors.

(4) Drug Testing

(a) Notification of CDs to be tested will be made to field offices and FBIHQ divisions by FBIHQ DDP.

(b) In the event of a "verified positive" test, the MRO will notify the DDP Administrator who will prepare an appropriate communication of the confirmed positive test. Information regarding the positive test shall be forwarded through the Assistant Director to OPR, requesting that the IIU initiate an appropriate investigation.

(c) A copy of this communication will be forwarded to an Employee Assistance Counselor who will immediately contact the employee to extend assistance and provide rehabilitation services.

(d) Investigations conducted by OPR will be conducted in accordance with FBI regulations regarding investigations of employee misconduct. The degree of severity of administrative action will be determined on a case-by-case basis, taking into consideration all extenuating or mitigating factors.

**EffDte: 11/19/2001 MCRT#: 1162 Div: D3 Cav: SecClis:

[1-25.9 Supervisory Responsibilities, DFWP]

(1) All supervisors will be trained to recognize and address illegal drug use by employees and will be provided information regarding referral of employees to the EAP, procedures and requirements for drug testing and behavioral patterns that give rise to a reasonable suspicion that an employee may be using illegal drugs. First- and second-line supervisors shall:

(a) Be responsible for developing reasonable suspicion of illegal drug use by employees under their supervision after first making appropriate factual observations, documenting those observations and obtaining approval from the next higher supervisor or manager;

(b) Notify the SAC or division head that reasonable suspicion drug tests may be warranted for employees under their supervision; and

(c) Refer employees to the EAP for assistance in obtaining counseling and rehabilitation when there is a finding of illegal drug use.

(2) The SAC or division head shall:

(a) Be responsible for developing reasonable suspicion of illegal drug use by a direct subordinate after making factual observations and documenting those facts;

(b) Determine whether a request to test for reasonable suspicion should be made to OPR for any employee under his or her supervision; and

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(c) Ensure that employees under his or her supervision have been referred to the EAP for assistance in obtaining counseling and rehabilitation when there is a finding of illegal drug use.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCls:

| 1-25.9.1 Supervisory Responsibilities, ACSAP

(1) Supervisors will be trained to recognize alcohol and/or drug use and impairment and will be provided information regarding referral of drivers to the EAP, procedures and requirements for alcohol and/or drug testing and behavioral patterns that give rise to a reasonable suspicion that an employee may be using controlled substances and/or misusing alcohol.

(2) Supervisors shall ensure that Commercial Drivers (CDs) do not perform safety-sensitive functions while taking over-the-counter medications that may impair judgment or motor skills.

(3) Trained supervisors will be responsible for developing reasonable suspicion of illegal drug and/or alcohol misuse based on specific, contemporaneous articulable observations concerning the appearance, behavior, speech or body odors of the driver.

(4) Supervisors will be responsible for placing drivers on restriction as warranted and shall ensure that drivers under his/her supervision have been referred to the EAP for assistance in counseling and rehabilitation.]

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| 1-25.10 Records and Reports, DFWP|

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCls:

| 1-25.10.1 Confidentiality of Test Results, DFWP|

(1) Laboratory results will be forwarded to the MRO. Any positive result which the MRO justifies by appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of an illegal drug will be reported as a negative test result and may not be released for purposes of identifying illegal drug use. The MRO may maintain only those records necessary for compliance with this program and such records shall be the records of the FBI. Records of the MRO may be released to any supervisor or management official having authority to take adverse personnel actions or for purposes of auditing the activities of the MRO.

(2) In order to comply with the Privacy Act and Section 503(e) of Public Law 100-71, the results of a drug test of an FBI employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be to:

(a) The MRO;

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(b) The Employee Assistance Administrator (EAA) when the employee is receiving counseling or treatment or is otherwise participating;

(c) Any supervisory or management official within the FBI having authority to recommend or approve adverse personnel action against such employee; or

(d) A court of competent jurisdiction, pursuant to an order of the court, and where required by the United States government to defend against any challenge against any adverse personnel action.

Test results with all identifying information removed shall also be made available to FBI personnel for data collection and auditing.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCIs:

| 1-25.10.2 Confidentiality of Records, DFWP |

All drug-testing information specifically relating to individuals is confidential and shall be treated as such by anyone authorized to review or compile program records. All records and information of the personnel actions taken on employees with "verified positive" test results shall be maintained in accordance with previously established procedures in regard to the maintenance of records of alleged employee misconduct.

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| 1-25.10.3 Maintenance of Records, DFWP |

(1) The FBI shall establish or amend a recordkeeping system to maintain the records of the DDP consistent with the FBI's Privacy Act System of Records and with all applicable federal laws, rules and regulations regarding confidentiality of records.

(2) If necessary, records may be maintained as required by subsequent administrative or judicial proceedings, or at the discretion of the Director of the FBI. The recordkeeping system should capture sufficient documents to meet the operational and statistical needs of legislation and regulations and include:

(a) Numbers of "verified positive" test results referred by the MRO;

(b) Written material justifying reasonable suspicion testing or evidence that an individual may have altered or tampered with a specimen;

(c) Anonymous statistical reports; and

(d) Other documents the DDP Administrator, MRO, or EAA deems necessary for efficient compliance with this program and which satisfy the records and confidentiality requirements of law.

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| 1-25.10.4 Records Maintained by Government Contractors, DFWP|

Any contractor hired to satisfy any part of this program shall comply with the confidentiality requirements of this program, and with all applicable federal laws, rules, regulations and guidelines.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCls:

| 1-25.10.5 Statistical Information, DFWP|

The DDP Administrator shall collect and compile anonymous statistical data for reporting the number of:

- (1) Random, reasonable suspicion, follow-up, probationary, voluntary and applicant tests;
- (2) "Verified positive" test results;
- (3) Voluntary drug counseling referrals;
- (4) Involuntary drug counseling referrals; and
- (5) Terminations or denial of employment offers resulting from refusal to submit to testing.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCls:

| 1-25.10.6 Validity of Preemployment Drug Tests, DFWP|

To ensure the integrity of the DDP, it is essential that all applicant drug tests are done within one year of EOD.

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| 1-25.10.7 Records and Reports, ACSAP - Confidentiality of Records

The FBI is required to maintain strict standards of confidentiality in carrying out its responsibilities.

(1) Authorized disclosures - The results of drug and alcohol tests shall not be disclosed without the prior written consent of the CD, unless the disclosure would be:

- (a) To a Medical Review Officer.
- (b) To the Administrator of any EAP in which the employee is receiving counseling or treatment or is otherwise participating.
- (c) To supervisory or management officials having authority to take adverse personnel action against such employee.
- (d) Pursuant to an order of a court of competent jurisdiction where required to defend an adverse personnel action.

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(e) To the National Transportation Safety Board as part of an accident investigation.

(2) Maintenance of records

(a) The ACSAP will maintain records in a manner consistent with the Privacy Act and all other applicable laws, rules and regulations regarding confidentiality of records.

(b) Records maintained by government contractors - Any contractor hired to satisfy any part of this program shall comply with the confidentiality requirements of this program and with all applicable federal laws, rules, regulations and guidelines.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCls:

1-25.11 Disciplinary Actions, DFWP

(1) Determination

An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:

(a) Direct observation;

(b) Evidence obtained from an arrest or criminal conviction;

(c) A "verified positive" test result; or

(d) An employee's voluntary admission.

(2) Administrative Actions

The FBI shall immediately refer an employee found to use illegal drugs to the EAP. The FBI shall initiate action to remove or suspend from service any employee the first time that employee is found to illegally use drugs. However, as part of an EAP rehabilitation program, an employee may remain on duty or return to duty if the employee's continued employment would not endanger public health and safety or national security.

(3) Range of Consequences

In determining the severity of the disciplinary action to be taken against an employee found to use illegal drugs, the FBI may consider the nature of the position, the risk to the public of the employee's illegal drug use, and the employee's personnel and/or performance records. The FBI shall initiate disciplinary action against any employee found to use illegal drugs, provided that such action is not required for an employee who voluntarily admits to illegal drug use, obtains counseling or rehabilitation and thereafter refrains from using illegal drugs.

Such disciplinary action may include any of the following measures, but some disciplinary action must be initiated:

(a) Reprimand the employee in writing;

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(b) Place the employee in an enforced leave status;

(c) Suspend the employee for 14 days or less;

(d) Suspend the employee for 15 days or more;

(e) Suspend the employee until he or she successfully completes the EAP or until the FBI determines that action other than suspension is more appropriate; or

(f) Dismiss the employee from the FBI.

(4) Initiation of Mandatory Removal From Service

The FBI shall initiate action to dismiss an employee for:

(a) Refusing to obtain counseling or rehabilitation through the EAP as required by the EO 12564 after having been found to use illegal drugs; or

(b) Having been found not to have refrained from illegal drug use after a first finding of illegal drug use.

(5) Refusal to Take Drug Test When Required

An employee who refuses to be tested when so required will be considered insubordinate and subject to the full range of disciplinary action, up to and including dismissal. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when required. No applicant who refuses to be tested shall be extended an offer of employment.

(6) Voluntary Referral

(a) Pursuant to EO 12564, the FBI is required to discipline any employee found to use illegal drugs in every circumstance except one: If an employee (1) voluntarily admits his or her drug use; (2) completes counseling and rehabilitation through the EAP; and (3) thereafter refrains from drug use, such discipline is not required and may be waived.

(b) The decision whether to discipline a voluntary referral will be made on a case-by-case basis depending upon the facts and circumstances. Although an absolute bar to discipline cannot be provided because of the extreme sensitivity of all FBI positions, the FBI, in determining whether to discipline, shall consider that the employee has come forward voluntarily.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecClS:

1-25.11.1 Disciplinary Actions, AGSAP

(1) Determination - A Commercial Driver (CD) may be found to be engaging in prohibited alcohol and/or drug activity on the basis of appropriate evidence including, but not limited to:

(a) Specific, contemporaneous, articulable

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observations concerning the appearance, behavior, speech or body odors of the driver.

(b) Evidence obtained from an arrest or criminal conviction.

(c) A verified positive test result.

(d) A driver's voluntary admission.

(2) Administrative action - A CD found to be engaged in prohibited alcohol or drug use shall immediately be referred to the EAP. The FBI shall initiate administrative action to remove or suspend from service any CD the first time that CD is found to be engaging in prohibited activity. If, however, the CD has sought out EAP assistance voluntarily as part of an EAP rehabilitation program, a CD may remain on duty if the CD's continued employment would not endanger public health and safety or national security.

(3) Range of consequences - In determining the severity of the disciplinary action regarding a CD found to be engaged in prohibited alcohol and/or drug use, the FBI will take into consideration all extenuating and mitigating factors, the nature of the position, the risk to the public, and the CD's personnel and/or performance records. The FBI shall initiate disciplinary action against any CD found to use illegal drugs, provided that such action is not required for a CD who voluntarily admits to prohibited alcohol or drug use, obtains counseling or rehabilitation and thereafter refrains from prohibited activity.

(4) Initiation of mandatory removal from service - The FBI shall initiate action to dismiss a CD for:

(a) Refusing to obtain counseling or rehabilitation through the EAP as required after being found to be engaging in prohibited alcohol and/or drug activity.

(b) Having been found not to have refrained from prohibited alcohol and/or drug activity after the first finding.

(5) Refusal to take alcohol and/or drug tests when required - A CD who refuses to be tested when so required will be considered insubordinate and subject to the full range of disciplinary action, up to and including dismissal. Attempts to alter or substitute tests will be deemed a refusal. No applicant who refuses to be tested shall be extended an offer of employment.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCl:

11-25.12 Prohibited Activity, ACSAP

(1) ALCOHOL

(a) Alcohol Concentration - No Commercial Driver (CD) shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater. No supervisor having actual knowledge that a CD has an alcohol concentration of 0.04 or greater shall permit the CD to perform or continue to perform safety-sensitive functions.

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(b) Alcohol Possession - No CD shall be on duty or operate a commercial motor vehicle while the CD possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. No supervisor having actual knowledge that a CD possesses unmanifested alcohol may permit the CD to drive or continue to drive a commercial motor vehicle.

(c) On-duty Use - No CD shall use alcohol while performing safety-sensitive functions. No supervisor having actual knowledge that a CD is using alcohol while performing safety-sensitive functions shall permit the CD to perform or continue to perform safety-sensitive functions.

(d) Pre-duty Use - No CD shall perform safety-sensitive functions within four hours after using alcohol. No supervisor having actual knowledge that a CD has used alcohol within four hours shall permit a CD to perform or continue to perform safety-sensitive functions.

(e) Use Following an Accident - No CD required to take a post-accident alcohol test shall use alcohol for eight hours following an accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

(f) Refusal to Submit to a Required Alcohol Test - No CD shall refuse to submit to required alcohol testing under this program. A CD who refuses to be tested will be considered insubordinate and subject to disciplinary action, up to and including dismissal. See Part 1, 1-30.3 of the Manual of Administrative Operations and Procedures (MAOP). Any attempt to alter or substitute an alcohol test will be deemed a refusal to take the alcohol test when required.

(2) DRUGS

(a) Controlled Substance Use - No CD shall perform safety-sensitive functions when the CD uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the CD that the substance does not adversely affect the ability to safely operate a CMV. The CD must notify his/her Management Official (MO), division head or SAC of any condition or drug use which may impair his/her fitness for full duty.

(b) Over-the-Counter Medications - No CD shall perform safety-sensitive functions while taking over-the-counter medications that may impair judgment or motor skills. The CD must notify his/her MO, SAC, or division head of any condition or medication which may impair his/her fitness for full duty.

(c) Positive Drug Test - No CD who has tested positive for controlled substances shall be permitted to perform or continue to perform safety-sensitive functions pending completion of administrative action.

(d) Refusal to Submit to a Required Drug Test - No CD shall refuse to submit to a drug test under this program. A CD who refuses testing shall be considered insubordinate and subject to the full range of disciplinary action, up to and including dismissal. See Part 1, Section 13 of the MAOP. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the drug test when

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| required.

| (e) On-duty Use - No MO, SAC or division head having actual knowledge that a CD has used a controlled substance or an over-the-counter medication, as defined by above, shall permit the CD to perform or continue to perform a safety-sensitive function.

**EffDte: 05/19/2000 MCRT#: 972 Div: D3 Cav: SecCls:

| 1-26 POLICY AND GUIDELINES REGARDING EMPLOYEE PUBLIC SPEECH RIGHTS AND OBLIGATIONS

**EffDte: 11/26/1993 MCRT#: 141 Div: PAD9 Cav: SecCls:

1-26.1 General Statement

(1) This policy is intended to inform FBI employees of their rights and obligations prior to engaging in public speech that is or may be perceived as related to the duties, responsibilities or administration of the FBI. FBI employees enjoy rights protected by the First Amendment, including freedom of expression. However, the FBI has interests as an employer in regulating the speech of its employees that may affect its mission.

(2) This policy seeks to balance the interests of FBI employees in commenting publicly upon matters of public concern, on the one hand, and the interests of the FBI, as their employer, in promoting efficiency and effectiveness in the discharge of its responsibilities, on the other.

(3) The policy and guidance provided herein is based on an analysis of cases decided in the state and Federal courts under the First Amendment. It is founded on generally accepted principles of First Amendment law which address the rights and obligations of public employees who desire to engage in public comment.

(4) Public comment or speech as referred to in this section includes, but is not limited to, interviews given members of the media or others knowing that it is intended to be used in magazines or other publications, letters to editors, and contacts with Congress, its committees and investigative arms.

(5) Any questions concerning the implementation or application of this policy should be directed to the National Press Office, Office of Public and Congressional Affairs, FBIHQ.

**EffDte: 05/19/1994 MCRT#: 231 Div: PAD9 Cav: SecCls:

1-26.2 Types of Employee Public Speech

(1) Public Speech Regarding Matters Unrelated to FBI Employment

(a) FBI employees ordinarily may speak publicly about matters unrelated to their employment if they are expressing their personal views. However, when speaking publicly about such matters, employees should make clear that they are stating their

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personal opinion, not the opinion of the FBI and not their official opinion as an employee of the FBI. Particular care in this regard should be taken if the employee is somehow identified as an FBI employee. For example, an employee may wish to publicly comment on topical social issues, school board issues or other similar matters. Such speech is deemed unrelated to FBI employment and protected under the First Amendment so long as the employee solely and clearly expresses his/her opinions as an individual.

(b) Employees' speech regarding matters unrelated to their employment is subject to the general guidance contained in Title 28, Code of Federal Regulations, entitled "Standards of Conduct" and in Departmental Order 960-81 (10/26/81), which provides that employees shall conduct themselves in a manner that creates and maintains respect for the DOJ and the United States Government.

(2) Public Speech Regarding Issues Closely Related to FBI Mission

(a) Certain matters of significant public concern may be so closely related to the responsibilities and mission of the FBI as to create a substantial likelihood that personal comments on such matters by FBI employees would be perceived as reflecting their official views as FBI employees or the views of the agency. Employee comments regarding such matters as whether use of certain controlled substances should be legalized, whether the Government should punish certain crimes by use of capital punishment or whether a certain criminal statute is constitutional and enforceable are examples of when such misperceptions might occur. When speaking about matters closely related to the responsibilities and mission of the FBI, employees have an obligation to make absolutely clear that they are expressing their personal opinions. Further, certain employees may be precluded from stating publicly their personal opinions on a particular matter. For example, it may be inappropriate for a senior FBI official to express publicly his/her personal view regarding matters within the investigative jurisdiction of the FBI. This is because, as a practical matter, others may perceive the personal views of a senior management employee possessing substantial policy-making authority as indistinguishable from his/her official position as a senior FBI manager. The public expression of personal views in such situations could undermine the ability of the FBI to enunciate official policy or to remain neutral on some issues.

(b) Employees should be alert to situations in which the public expression of their personal views on matters closely related to the responsibilities or mission of the FBI may be perceived as expressing the official views of FBI employees. When such circumstances are identified, the employee should seek guidance from his/her immediate supervisor or division head.

(3) Public Speech Regarding FBI Enforcement Operations or Investigations

(a) Employee public speech regarding specific FBI enforcement operations or investigations is subject to relatively strict regulation. The FBI's policy and guidelines for contact with the news media are contained in the Manual of Administrative Operations and Procedures (MAOP), Part II, Section 5. That section requires that all inquiries by representatives of the news media concerning information under the control of the FBI be referred to designated media representatives of the field office or the National

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Press Office, FBIHQ. Additionally, disclosure of certain types of information, such as classified information or information relating to pending criminal investigations, may be unlawful or regulated by statute, rule or regulation. Therefore, FBI employees must not publicly comment on investigations or enforcement operations unless authorized to do so.

(4) Public Speech Regarding FBI Administration, Personnel Practices or Disciplinary Matters

(a) Employee public speech concerning the administration of the FBI in matters such as investigative programs, personnel practices and procedures, disciplinary matters, the conduct or integrity of its managers and other matters has the potential to undermine the discipline, efficiency, and effectiveness of the agency. Such speech may also affect morale, weaken or destroy necessary working relationships and erode public confidence in the agency. Though public comment on matters such as corruption or racial discrimination may have significant public value, such speech must nonetheless be balanced against the concerns and interests of the Bureau, such as those discussed above. If the public value of the speech outweighs the interests of the FBI, the speech is protected under the First Amendment and may not be the basis for discipline against an employee.

(b) The FBI may effectively address an employee's work-related concerns only if the employee brings the matter to the attention of appropriate supervisory personnel. Therefore, employees are required to express their work-related comments and criticisms to their immediate supervisor, division head, or an appropriate ombudsman at least seven days prior to commenting publicly about such a matter. This rule is not intended to require that an employee in each case obtain the approval of his/her supervisor prior to commenting publicly on a matter he/she believes is of public concern. The rule is, however, intended to accomplish several objectives. First, it will notify the employee's supervisor that the employee believes that a grievance or an issue warrants his/her speaking out publicly. Second, it will assist in channeling the employee's comments and criticisms to the appropriate supervisors, who can then investigate and seek to resolve the matter. Third, it enables supervisors to alert the employee that his/her intended public statement may be inappropriate or impermissible, based upon a balancing of the employee's First Amendment right to comment upon matters of public concern and the FBI's legitimate interests in effectively managing the agency.

(c) If after seven days, the employee still desires to publicly comment on the matter, the employee must notify his/her SAC or Assistant Director of the intent to do so. The SAC or Assistant Director must, in turn, notify the Office of Public and Congressional Affairs.

(5) Speech Protected Under the FBI "Whistleblower" Statute

(a) Federal law expressly prevents the FBI from engaging in adverse employment actions or reprisal against most employees who disclose to the Attorney General, the Department of Justice Office of Professional Responsibility, or the FBI Office of Professional Responsibility, information which is reasonably believed to evidence a violation of law, rule, or regulation; mismanagement; gross waste of funds; abuse of authority; or a substantial and

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specific danger to public health or safety. See, Title 5, United States Code, Section 2303; Title 28, Code of Federal Regulations, Section 0.39(c); MAOP, Part I, Section 1-23.1.

(b) Employees who possess such information and bring it to the attention of the Department of Justice or the FBI under the procedures set forth in paragraph (4), above, before making public comment on it will be considered to have complied with and be protected under this statute.

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1-26.3 Factors Determining Appropriateness of Employee Public Speech

Applicable law regarding the necessary balancing of an employee's First Amendment right to speak publicly regarding a matter of public concern and an agency's legitimate law enforcement interests is complex. It is not possible to list all of the factors that would be considered in determining whether to counsel an employee that his/her proposed public statements may be inappropriate and, therefore, possibly subject the employee to discipline, or whether to discipline an employee for making such comments. However, the following factors are among those that would be considered in determining whether disciplinary action would be appropriate:

(1) The speech violated a specific provision of FBI policy or DOJ regulation (e.g., it concerned a particular FBI investigation and was made by an unauthorized employee).

(2) The speech related only to a personal internal grievance of the employee or other matter that did not implicate a significant public concern. For example, an employee's concern about his/her performance appraisal report, or failure to receive a particular bonus or award is generally a personal matter which does not involve political, social or community concerns and would not, absent other significant factors, constitute protected speech.

(3) The speech compromised or contained classified or sensitive information relating to an investigation or administrative matter.

(4) The public comment was delivered in an intemperate, offensive, caustic or unprofessional manner. For example, if the speech identifies a specific fellow employee or supervisor by name or position and characterizes that person in an intemperate manner as a racist, thief or bigot, the manner of such speech may subject the employee to discipline.

(5) The speech interfered with a pending civil, criminal, personnel or administrative proceeding.

(6) The level and responsibility of the employee and his/her concomitant obligation to support FBI management and its policies. Generally, as employees gain higher positions in the FBI's supervisory and management ranks, there is a corresponding higher duty of loyalty to publicly support FBI policies and executives. The failure to do so, particularly by one who holds a supervisory or management position, can increase the degree of harm to the efficiency and effectiveness to FBI operations and administration.

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(7) The employee criticized another employee or supervisor in a way that undermined discipline or a close working relationship.

(8) The employee made the comments knowing they were false, or with reckless disregard for their truth or falsity.

(9) The employee failed without sufficient cause to use the required seven-day notice of intended public comment.

(10) The speech constituted a disclosure of information prohibited by law. For example, public disclosure of information governed by the Privacy Act, Title 5, United States Code, Section 552a, or Rule 6(e), Federal Rules of Criminal Procedure, could lead to disciplinary action as well as possibly subjecting the employee to potential criminal, civil, or contempt of court sanctions.

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1-26.4 Existing Procedures

(1) Part I of the MAOP contains procedures for addressing certain matters of interest and/or concern to FBI employees. Section 14 establishes a grievance system for the orderly and effective resolution of employee grievances. Section 3 contains procedures relating to Special Agent Career Development Matters, and Section 4 contains procedures relating to Equal Employment/Upward Mobility matters. Employees are encouraged to use these established mechanisms for the resolution of their concerns and grievances.

(2) Employees are also reminded of their obligation under FBI and Department of Justice policies and regulations to submit any written product for which they seek publication to the Office of Public and Congressional Affairs for review prior to publication. See, MAOP, Part I, Section 1-24; Title 28, Code of Federal Regulations, Section 17.144."

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1-26.5 Guidelines on Religious Freedom in the Federal Workplace

The following Guidelines, addressing religious exercise and religious expression, shall apply to all civilian executive branch agencies, officials, and employees in the federal workplace. These Guidelines principally address employees' religious exercise and religious expression when the employees are acting in their personal capacity within the federal workplace and the public does not have regular exposure to the workplace. The Guidelines do not comprehensively address whether and when the government and its employees may engage in religious speech directed at the public.

(1) GUIDELINES FOR RELIGIOUS EXERCISE AND RELIGIOUS EXPRESSION IN THE FEDERAL WORKPLACE

Executive departments and agencies shall permit personal religious expression by federal employees to the greatest extent possible, consistent with the Religious Freedom Restoration Act (Title 42, USC, Section 2000bb-1) and Title VII of the Civil Rights

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Act of 1964 (Title 42, USC, Section 2000e et seq.), as amended and interests in workplace efficiency as described in this set of Guidelines. Agencies shall not discriminate against employees on the basis of religion, require religious participation or nonparticipation as a condition of employment, or permit religious harassment. Agencies shall accommodate employees' exercise of their religion in the circumstances specified in these Guidelines. These requirements are but an application of the general principle that agencies shall treat all employees with the same respect and consideration, regardless of their religion (or lack thereof).

(a) Religious Expression. As a matter of law, agencies shall not restrict personal religious expression by employees in the federal workplace except where the employees' interest in the expression is outweighed by the government's interest in the efficient provision of public services or where the expression intrudes upon the legitimate rights of other employees or creates the appearance, to a reasonable observer, of an official endorsement of religion.

As a general rule, agencies may not regulate employees' personal religious expression on the basis of its content or viewpoint. In other words, agencies generally may not suppress employees' private religious speech in the workplace while leaving unregulated other private employee speech that has a comparable effect on the efficiency of the workplace, including ideological speech on politics and other topics. To do so would be to engage in presumptively unlawful content or viewpoint discrimination. Agencies, however, may, in their discretion, reasonably regulate the time, place, and manner of all employee speech, provided such regulations do not discriminate on the basis of content or viewpoint. The federal government generally has the authority to regulate an employee's private speech, including religious speech, where the employee's interest in that speech is outweighed by the government's interest in promoting the efficiency of the public services it performs. Agencies should exercise this authority evenhandedly and with restraint, and with regard for the fact that in some cultures it is not appropriate to disagree on controversial subjects, including religious ones. Agencies are not required, however, to permit employees to use work time to pursue religious or ideological agendas. Federal employees are paid to perform official work, not to engage in personal, religious, or ideological campaigns during working hours.

(2) EXPRESSION IN PRIVATE WORK AREAS

Employees should be permitted to engage in private religious expression in personal work areas not regularly open to the public to the same extent that they may engage in nonreligious private expression, subject to reasonable content- and viewpoint-neutral standards and restrictions: such religious expression must be permitted so long as it does not interfere with the agency's performance of its official responsibilities.

(a) Expression Among Fellow Employees. Employees should be permitted to engage in religious expression with fellow employees, to the same extent that they may engage in comparable nonreligious private expression, subject to reasonable and content-neutral standards and restrictions. Such expression should not be restricted so long as it does not interfere with workplace efficiency. Though agencies are entitled to regulate such employee

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speech based on reasonable predictions of disruption, they should not restrict speech based on merely hypothetical concerns, having little basis in fact, that the speech will have a deleterious effect on workplace efficiency.

(3) EXPRESSION DIRECTED AT FELLOW EMPLOYEES

(a) Employees are permitted to engage in religious expression directed at fellow employees, and may even attempt to persuade fellow employees of the correctness of their religious views, to the same extent as those employees may engage in comparable speech not involving religion. Some religions encourage adherents to spread the faith at every opportunity, a duty that can encompass the adherent's workplace. As a general matter, proselytizing is as entitled to constitutional protection as any other form of speech — as long as a reasonable observer would not interpret the expression as government endorsement of religion. Employees may urge a colleague to participate or not to participate in religious activities to the same extent that, consistent with concerns of workplace efficiency, they may urge their colleagues to engage in or refrain from other personal endeavors. But employees must refrain from such expression when a fellow employee asks that it stop or otherwise demonstrates that it is unwelcome.

(b) Though personal religious expression is protected in the same way, and to the same extent, as other constitutionally valued speech in the federal workplace, such expression should not be permitted if it is part of a larger pattern of verbal attacks on fellow employees (or a specific employee) not sharing the faith of the speaker. Such speech, by virtue of its excessive or harassing nature, may constitute religious harassment or create a hostile work environment and an agency should not tolerate it.

(4) EXPRESSION IN AREAS ACCESSIBLE TO THE PUBLIC

(a) Where the public has access to the federal workplace, all federal employers must be sensitive to the Establishment Clause's requirement that expression not create the reasonable impression that the government is sponsoring, endorsing, or inhibiting religion generally, or favoring or disfavoring a particular religion. This is particularly important in agencies with adjudicatory functions.

(b) However, even in workplaces open to the public, not all private employee religious expression is forbidden. For example, federal employees may wear personal religious jewelry absent special circumstances (such as safety concerns) that might require a ban on all similar nonreligious jewelry. Employees may also display religious art and literature in their personal work areas to the same extent that they may display other art and literature, so long as the viewing public would reasonably understand the religious expression to be that of the employee acting in his/her personal capacity, and not that of the government itself. Similarly, in their private time employees may discuss religion with willing coworkers in public spaces to the same extent as they may discuss other subjects, so long as the public would reasonably understand the religious expression to be that of the employees acting in their personal capacities.

(5) RELIGIOUS DISCRIMINATION

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Federal agencies may not discriminate against employees on the basis of their religion, religious beliefs, or views concerning religion.

(a) Discrimination in Terms and Conditions. No agency within the executive branch may promote, refuse to promote, hire, refuse to hire, or otherwise favor or disfavor, an employee or potential employee because of his or her religion, religious belief, or views concerning religion.

(b) Coercion of Employees' Participation or Nonparticipation in Religious Activities. A person holding supervisory authority over an employee may not, explicitly or implicitly, insist that the employee participate in religious activities as a condition of continued employment, promotion, salary increases, preferred job assignments, or any other incidents of employment. Nor may a supervisor insist that an employee refrain from participating in religious activities outside the workplace except pursuant to otherwise legal, neutral restrictions that apply to employees' off-duty conduct and expression in general (e.g., restrictions on political activities prohibited by the Hatch Act).

1. This prohibition leaves supervisors free to engage in some kinds of speech about religion. Where a supervisor's religious expression is not coercive and is understood as his or her personal view, that expression is protected in the federal workplace in the same way and to the same extent as other constitutionally valued speech. For example, if surrounding circumstances indicate that the expression is merely the personal view of the supervisor and that employees are free to reject or ignore the supervisor's point of view or invitation without any harm to their careers or professional lives, such expression is so protected.

2. Because supervisors have the power to hire, fire, or promote, employees may reasonably perceive their supervisor's religious expression as coercive, even if it was not intended as such. Therefore, supervisors should be careful to ensure that their statements and actions are such that employees do not perceive any coercion of religious or nonreligious behavior (or respond as if such coercion is occurring), and should, where necessary, take appropriate steps to dispel such misperceptions.

(c) Hostile Work Environment and Harassment. The law against workplace discrimination protects federal employees from being subjected to a hostile environment, or religious harassment, in the form of religiously discriminatory intimidation, or pervasive or severe religious ridicule or insult, whether by supervisors or fellow workers. Whether particular conduct gives rise to a hostile environment, or constitutes impermissible religious harassment, will usually depend upon its frequency or repetitiveness, as well as its severity. The use of derogatory language in an assaultive manner can constitute statutory religious harassment if it is severe or invoked repeatedly. A single incident, if sufficiently abusive, might also constitute statutory harassment. However, although employees should always be guided by general principles of civility and workplace efficiency, a hostile environment is not created by the bare expression of speech with which some employees might disagree. In a country where freedom of speech and religion are guaranteed, citizens should expect to be exposed to ideas with which they disagree.

(6) ACCOMMODATION OF RELIGIOUS EXERCISE

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(a) Federal law requires an agency to accommodate employees' exercise of their religion unless such accommodation would impose an undue hardship on the conduct of the agency's operations. Though an agency need not make an accommodation that will result in more than a de minimis cost to the agency, that cost or hardship nevertheless must be real rather than speculative or hypothetical. The accommodation should be made unless it would cause an actual cost to the agency or to other employees or an actual disruption of work, or unless it is otherwise barred by law.

(b) In addition, religious accommodation cannot be disfavored as compared with other, nonreligious accommodations. Therefore, a religious accommodation cannot be denied if the agency regularly permits similar accommodations for nonreligious purposes.

(c) In those cases where an agency's work rule imposes a substantial burden on a particular employee's exercise of religion, the agency must go further. An agency should grant the employee an exemption from that rule, unless the agency has a compelling interest in denying the exemption, and there is no less restrictive means of furthering that interest.

(7) ESTABLISHMENT OF RELIGION

Supervisors and employees must not engage in activities or expression that a reasonable observer would interpret as either government endorsement or denigration of religion or a particular religion. Activities of employees need not be officially sanctioned in order to violate this principle; if, in all the circumstances, the activities would leave a reasonable observer with the impression that government was endorsing, sponsoring, or inhibiting religion generally or favoring or disfavoring a particular religion, they are not permissible. Diverse factors, such as the context of the expression or whether official channels of communication are used, are relevant to what a reasonable observer would conclude.

(8) GUIDING LEGAL PRINCIPLES

In applying the guidance set forth in this order, executive branch departments and agencies should be advised of the following legal principles.

(a) Religious Expression. It is well-established that the Free Speech Clause of the First Amendment protects government employees in the workplace. This right encompasses a right to speak about religious subjects. The Free Speech Clause also prohibits the government from singling out religious expression for disfavored treatment: "Private religious speech, far from being a First Amendment orphan, is as fully protected under the Free Speech Clause as secular private expression," *Capitol Square Review Board v. Pinette*, 115 S.Ct. 2448 (1995). Accordingly, in the government workplace, employee religious expression cannot be regulated because of its religious character, and such religious speech typically cannot be singled out for harsher treatment than other comparable expression.

1. Many religions strongly encourage their adherents to spread the faith by persuasion and example at every opportunity, a duty that can extend to the adherent's workplace. As

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a general matter, proselytizing is entitled to the same constitutional protection as any form of speech. Therefore, in the governmental workplace, proselytizing should not be singled out because of its content for harsher treatment than nonreligious expression.

2. However, it is also well-established that the government in its role as employer has broader discretion to regulate employees' speech in the workplace than it does to regulate speech among the public at large. Employees' expression on matters of public concern can be regulated if the employees' interest in the speech is outweighed by the interest of the government, as an employer, in promoting the efficiency of the public services it performs through its employees. Governmental employees also possess substantial discretion to impose content-neutral and viewpoint-neutral time, place, and manner rules regulating private employee expression in the workplace (though they may not structure or administer such rules to discriminate against particular viewpoints). Furthermore, employee speech can be regulated or discouraged if it impairs discipline by superiors, has a detrimental impact on close working relationships for which personal loyalty and confidence are necessary, impedes the performance of the speaker's duties or interferes with the regular operation of the enterprise, or demonstrates that the employee holds views that could lead his/her employer or the public reasonably to question whether he/she can perform his/her duties adequately.

3. Consistent with its fully protected character, employee religious speech should be treated within the federal workplace, like other expression on issues of public concern. In a particular case, an employer can discipline an employee for engaging in speech if the value of the speech is outweighed by the employer's interest in promoting the efficiency of the public services it performs through its employee. Typically, however, the religious speech cited as permissible in the various examples included in these guidelines will not unduly impede these interests and should not be regulated. And rules regulating employee speech, like other rules regulating speech, must be carefully drawn to avoid any unnecessary limiting or "chilling" of protected speech.

(b) Discrimination in Terms and Conditions. Title VII of the Civil Rights Act of 1964 makes it unlawful for employers, both private and public, to "fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's ... Religion." 42 U.S.C. Section 2000e-2(a)(1). The federal government also is bound by the equal protection component of the Due Process Clause of the Fifth Amendment, which bars intentional discrimination on the basis of religion. Moreover, the prohibition on religious discrimination in employment applies with particular force to the federal government, for Article VI, Clause 3 of the Constitution bars the government from enforcing any religious test as a requirement for qualification to any office. In addition, if a government law, regulation or practice facially discriminates against employees' private exercise of religion or is intended to infringe upon or restrict private religious exercise, then that law, regulation, or practice implicates the Free Exercise Clause of the First Amendment. Last, under the Religious Freedom Restoration Act, 42 U.S.C. Section 2000bb-1, federal governmental action that substantially burdens a private party's exercise of religion can be enforced only if it is justified

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by a compelling interest and is narrowly tailored to advance that interest.

(c) Coercion of Employees' Participation or Nonparticipation in Religious Activities. The ban on religious discrimination is broader than simply guaranteeing nondiscriminatory treatment in formal employment decisions such as hiring and promotion. It applies to all terms and conditions of employment. It follows that the federal government may not require or coerce its employees to engage in religious activities or to refrain from engaging in religious activity. For example, a supervisor may not demand attendance at (or a refusal to attend) religious services as a condition of continued employment or promotion, or as a criterion affecting assignment of job duties. Quid pro quo discrimination of this sort is illegal. Indeed, wholly apart from the legal prohibitions against coercion, supervisors may not insist upon employees' conformity to religious behavior in their private lives any more than they can insist on conformity to any other private conduct unrelated to employees' ability to carry out their duties.

(d) Hostile Work Environment and Harassment. Employers violate Title VII's ban on discrimination by creating or tolerating a "hostile environment" in which an employee is subject to discriminatory intimidation, ridicule, or insult sufficiently severe or pervasive to alter the conditions of the victim's employment. This statutory standard can be triggered, at the very least, when an employee because of her or his religion or lack thereof, is exposed to intimidation, ridicule, and insult. The hostile conduct - which may take the form of speech - need not come from supervisors or from the employer. Fellow employees can create a hostile environment through their own words and actions.

1. The existence of some offensive workplace conduct does not necessarily constitute harassment under Title VII. Occasional and isolated utterances of an epithet that engenders offensive feelings in an employee typically would not affect conditions of employment, and therefore would not in and of itself constitute harassment. A hostile environment, for Title VII purposes, is not created by the bare expression of speech with which one disagrees. For religious harassment to be illegal under Title VII, it must be sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment. Whether conduct can be the predicate for a finding of religious harassment under Title VII depends on the totality of the circumstances, such as the nature of the verbal or physical conduct at issue and the context in which the alleged incidents occurred. As the Supreme Court has said in an analogous context:

Whether an environment is "hostile" or "abusive" can be determined only by looking at all the circumstances. These may include the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance. The effect on the employee's psychological well-being is, of course, relevant to determining whether the plaintiff actually found the environment abusive. *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 23 (1993).

2. The use of derogatory language directed at an employee can rise to the level of religious harassment if it is severe or invoked repeatedly. In particular, repeated religious

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slurs and negative religious stereotypes, or continued disparagement of an employee's religion or ritual practices, or lack thereof, can constitute harassment. It is not necessary that the harassment be explicitly religious in character or that the slurs reference religion. It is sufficient that the harassment is directed at an employee because of the employee's religion or lack thereof. That is to say, Title VII can be violated by employer tolerance of repeated slurs, insults and/or abuse not explicitly religious in nature if that conduct would not have occurred but for the targeted employee's religious belief or lack of religious belief. Finally, although proselytization directed at fellow employees is generally permissible (subject to the special considerations relating to supervisor expression discussed elsewhere in these Guidelines,) such activity must stop if the listener asks that it stop or otherwise demonstrates that it is unwelcome.

(e) Accommodation of Religious Exercise. Title VII requires employers "to reasonably accommodate...: an employee's or prospective employee's religious observance or practice" unless such accommodation would impose an "undue hardship on the conduct of the employer's business." 42 U.S.C. Section 2000e(j). For example, by statute, if an employee's religious beliefs require him/her to be absent from work, the federal government must grant that employee compensation time for overtime work to be applied against the time lost, unless to do so would harm the ability of the agency to carry out its mission efficiently. 5 U.S.C. Section 5550a.

1. Though an employer need not incur more than de minimis costs in providing an accommodation, the employer hardship nevertheless must be real rather than speculative or hypothetical. Religious accommodation cannot be disfavored relative to other, nonreligious, accommodations. If an employer regularly permits accommodation for nonreligious purposes, it cannot deny comparable religious accommodation: "Such an arrangement would display a discrimination against religious practices that is the antithesis of reasonableness." *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 71 (1986).

2. In the federal government workplace, if neutral workplace rules - that is, rules that do not single out religious or religiously motivated conduct for disparate treatment - impose a substantial burden on a particular employee's exercise of religion, the Religious Freedom Restoration Act requires the employer to grant the employee an exemption from that neutral rule, unless the employer has a compelling interest in denying an exemption and there is no less restrictive means of furthering that interest. 42 U.S.C. Section 2000bb-1.

(f) Establishment of Religion. The Establishment Clause of the First Amendment prohibits the government including its employees from acting in a manner that would lead a reasonable observer to conclude that the government is sponsoring, endorsing or inhibiting religion generally or favoring or disfavoring a particular religion. For example, where the public has access to the federal workplace, employee religious expression should be prohibited where the public reasonably would perceive that the employee is acting in an official, rather than a private, capacity, or under circumstances that would lead a reasonable observer to conclude that the government is endorsing or disparaging religion. The Establishment Clause also forbids federal employees from using government funds or resources (other than those facilities generally available to government

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employees) for private religious uses.

(9) GENERAL

These Guidelines shall govern the internal management of the civilian executive branch. They are not intended to create any new right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Questions regarding interpretations of these Guidelines should be brought to the Office of the General Counsel.

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11-27 SERVICE AS AN EXPERT WITNESS

(1) Restriction. An employee shall not serve, other than on behalf of the United States, as an expert witness, with or without compensation, in any proceeding before a court or agency of the United States in which the United States is a party or has a direct and substantial interest, unless the employee's participation is authorized by the agency under paragraph (3) of this section.

(2) Authorization to serve as an expert witness. Provided that the employee's testimony will not result in compensation for an appearance in violation of 5 CFR 2636.201 or violate any of the principles or standards set forth in the Office of Government Ethics standards of conduct, authorization to provide expert witness service otherwise prohibited by paragraph (1) of this section may be given by the Designated Agency Ethics Official of the agency in which the employee serves when:

(a) After consultation with the agency representing the Government in the proceeding or, if the Government is not a party, with the Department of Justice and the agency with the most direct and substantial interest in the matter, the Designated Agency Ethics Official determines that the employee's service as an expert witness is in the interest of the Government; or

(b) The Designated Agency Ethics Official determines that if the subject matter of the testimony does or does not relate to the employee's official duties as defined in MAOP, Part I, Section 1-16.1.

(3) Nothing in this section prohibits an employee from serving as a fact witness when subpoenaed by an appropriate authority. (See (1).)

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11-28 STANDARDS OF ETHICAL CONDUCT FOR EXECUTIVE BRANCH EMPLOYEES ON DETAIL OUTSIDE THE FBI (See MAOP, Part I, 1-1 (6).)

(1) DETAILS TO OTHER AGENCIES: Except as provided in paragraph (4) of this section, an employee on detail to another agency for a period in excess of 30 calendar days shall remain subject to the Office of Government Ethics (OGE) standards of conduct codified at 5, CFR, Part 2635, and shall be subject to any supplemental agency

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regulations to the OGE standards of conduct of the agency to which he/she is detailed rather than to any supplemental agency regulations of his/her employing agency.

(2) DETAILS TO THE LEGISLATIVE OR JUDICIAL BRANCH: An employee on detail to the legislative or judicial branch for a period in excess of 30 calendar days shall be subject to the ethical standards of the branch or entity to which detailed. For the duration of any such detail or assignment, the employee shall not be subject to the OGE standards of conduct, except this section, or, except as provided in paragraph (4) of this section, to any supplemental agency regulations of his/her employing agency, but shall remain subject to the conflict of interest prohibitions in Title 18 of the United States Code.

(3) DETAILS TO NON-FEDERAL ENTITIES: Except to the extent exempted in writing pursuant to this paragraph, an employee detailed to a non-Federal entity remains subject to the OGE standards of conduct, the FBI standards of conduct and any supplemental agency regulation of the FBI. When an employee is detailed pursuant to statutory authority to an international organization or to a State or local government for a period in excess of six months, the Designated Agency Ethics Official may grant a written exemption from the restrictions of 5, CFR, subsections 2635.201 - 2635.205, based on his/her determination that the entity has adopted written ethical standards covering solicitation and acceptance of gifts which will apply to the employee during the detail and which will be appropriate given the purpose of the detail.

(4) APPLICABILITY OF SPECIAL AGENCY STATUTES: Notwithstanding paragraphs (1) and (2) of this section, an employee who is subject to an agency statute which restricts his/her activities or financial holdings specifically because of his/her status as an employee of that agency shall continue to be subject to any provisions in the supplemental agency regulations of his/her employing agency that implement that statute.

(5) The Department of Justice has submitted and obtained preliminary approval of the following supplemental regulation to the OGE standards of conduct:

Any employee of the Federal Bureau of Investigation or the Drug Enforcement Administration who is subject to any supplemental regulations or standards of ethical conduct by reason of detail or assignment from his/her component to any other entity shall also remain subject to the supplemental regulations and/or standards of ethical conduct of the Department of Justice (including, without limitation, his/her component's internal standards and guidelines, if any); provided, however, that in case of conflict between applicable supplemental regulations and/or standards of ethical conduct, the more restrictive shall govern and control.

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11-29 USE OF AN INDEFINITE SUSPENSION IN MATTERS INVOLVING REVOCATION OF A SECURITY CLEARANCE

(1) All positions within the FBI are Special-Sensitive, as defined in Department of Justice (DOJ) Order 2610.2A, and require a

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Top Secret (TS) security clearance as a condition of employment. The FBI's Security Programs Manager (SPM) has been delegated authority from the DOJ's Security Officer to grant security clearances.

(2) Executive Order (EO) 12356, "National Security Information," requires an affirmative determination of trustworthiness as a prerequisite for a security clearance. EO 10450, "Security Requirements for Government Employment," authorizes the head of the agency or designee, the SPM in the FBI, to conduct investigations to determine whether an individual's access to classified information is clearly consistent with national security interests. If the SPM develops information that establishes that an individual's continued employment with the FBI is not clearly consistent with the interests of national security, the SPM may either suspend access to classified information or revoke the employee's TS clearance.

(3) Suspension of an employee's access to classified information necessarily results in his/her loss of access to any FBI controlled space. During this period of suspension of access, the employee will be placed on administrative leave with pay. Upon reaching a determination to revoke an employee's TS clearance, the SPM will notify the employee and will propose to the FBI's Personnel Officer that the employee be placed on indefinite suspension. Indefinite suspension is defined in MAOP, Part I, 13-11(1). The indefinite suspension will continue for the duration of any appellate proceedings. The SPM's written notification to an employee will include:

(a) the specific basis for the security clearance revocation and

(b) notice concerning an employee's opportunity to appeal the revocation action to the DOJ Security Officer. (See (5).)

(4) Executive Order 10450 sets forth criteria that will be considered when assessing an employee's trustworthiness for employment or retention in employment consistent with the interests of national security. These criteria include, but are not limited to, the following:

(a) Depending on the relation of the government employment to the national security:

1. Any behavior, activities, or associations which tend to show that the individual is not reliable or trustworthy.

2. Any deliberate misrepresentations, falsifications, or omissions of material facts.

3. Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, and/or sexual perversion.

4. Any illness, including any mental condition of a nature which, in the opinion of a competent medical authority, may cause a significant defect in the judgment or reliability of the employee, with due regard to the transient or continuing effect of the illness and the medical findings in such case.

5. Any facts which furnish reason to believe that the individual may be subjected to coercion, influence, or

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| pressure which may cause him/her to act contrary to the best interests
| of the national security.

| (b) Commission of any act of sabotage, espionage,
| treason, or sedition, or attempts thereat or preparation therefor, or
| conspiring with, or aiding or abetting, another to commit or attempt
| to commit any act of sabotage, espionage, treason, or sedition.

| (c) Establishing or continuing a sympathetic
| association with a saboteur, spy, traitor, seditionist, anarchist, or
| revolutionist, or with an espionage or other secret agent or
| representative of a foreign nation or any representative of a foreign
| nation whose interests may be inimical to the interests of the United
| States or with any person who advocates the use of force or violence
| to overthrow the government of the United States or the alteration of
| the form of government of the United States by unconstitutional means.

| (d) Advocacy of the use of force or violence to
| overthrow the government of the United States or of the alteration of
| the form of government of the United States by unconstitutional means.

| (e) Knowing membership with the specific intent of
| furthering the aims of, or adherence to and active participation in,
| any foreign or domestic organization, association, movement, group, or
| combination of persons (hereinafter referred to as organizations)
| which unlawfully advocates or practices the commission of acts of
| force or violence to prevent others from exercising their rights under
| the Constitution or laws of the United States or of any State, or
| which seeks to overthrow the government of the United States or any
| State or subdivision thereof by unlawful means.

| (f) Intentional, unauthorized disclosure to any
| person of security information, or of other information, disclosure of
| which is prohibited by law, or willful violation or disregard of
| security regulations.

| (g) Performing or attempting to perform his/her
| duties, or otherwise acting, so as to serve the interests of another
| government in preference to the interests of the United States.

| (h) Refusal by the individual, upon the ground of
| constitutional privilege against self-incrimination, to testify before
| a congressional committee regarding charges of his/her alleged
| disloyalty or other misconduct.

| (5) A suspension pursuant to Title 5, United States Code
| (USC), Section 7532 is available to an agency as an alternative to the
| indefinite suspension described in (3), above. Section 7532 provides
| that "the head of an agency may suspend without pay an employee of
| his/her agency when he/she considers that action necessary in the
| interests of national security." An employee suspended pursuant to
| this section may be entitled to certain procedural rights (e.g., a
| written statement of the charges against him/her), but will not be
| entitled to the rights afforded to preference eligible employees
| pursuant to Title 5, USC, Section 7513 (See MAOP, Part I, 13-10 and
| 13-11).

| (6) See MAOP, Part I, 13-11 for further information
| concerning the use of an indefinite suspension in personnel matters.

**EffDte: 12/01/1994 MCRT#: 353 Div: D5OP Cav: SecClis:

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| 1-30 ALCOHOL POLICY (SEE MAOP, PART I, 1-2.)

**EffDte: 03/16/1995 MCRT#: 387 Div: OP Cav: SecClS:

| 1-30.1 Background and Purpose (See MAOP, Part I, 1-2 and 15-3.3.)

In, September, 1994, the Director personally reviewed incidents involving employees having been criminally charged with Driving Under the Influence (DUI) of alcohol to determine the FBI's response to the problem posed by alcohol abuse within the FBI. He was convinced that it was necessary to firmly promulgate the FBI's policy regarding alcohol-related misconduct and, in particular, to establish harsh consequences for anyone who operates a motor vehicle while under the influence of alcohol. He addressed the problem both from a preventive and disciplinary standpoint. The policy set forth below, in 1-30.2 through 1-30.4, should in no way be construed to indicate any lack of sensitivity to problems faced by FBI employees or any lessening in his strong endorsement of our Employee Assistance Program (EAP).

**EffDte: 03/16/1995 MCRT#: 387 Div: OP Cav: SecClS:

| 1-30.2 Statement of Policy (See MAOP, Part I, 1-2, 1-30.1 and 15-3.3.)

(1) It has long been the policy of the FBI to forbid employees to consume alcohol while "on-duty." This prohibition is closely tied to the role of FBI Special Agents as law enforcement officers and the perception of the American public that our organization should serve as a role model for law enforcement. With limited exceptions necessary for Special Agents in certain undercover or surveillance assignments, the requirement for all employees to abstain from alcohol during duty hours is reaffirmed.

(2) Special Agents are expected to be available for duty on a 24-hour basis. Consequently, they must take affirmative steps to remain fit for duty at all times.

(3) Every employee is strongly recommended to take steps to avoid operating a motor vehicle after consumption of any alcoholic beverages. Steps such as making prior arrangements for a designated driver at social events are not only a prudent but reasonable course of action which should be taken by all employees despite the minor inconvenience which may be involved.

(4) All employees must redouble their efforts -- as coworkers, as "brick agents" and as supervisors and managers -- to intervene directly to assist those who need EAP help. We must ensure that employees plagued by substance abuse do not endanger themselves, their families, fellow employees, or the public we have all sworn to protect. We must not tolerate or seek to hide problems such as alcoholism which so gravely threaten members of our Bureau or the public's safety.

**EffDte: 03/16/1995 MCRT#: 387 Div: OP Cav: SecClS:

| 1-30.3 Alcohol-Related Misconduct (See MAOP, Part I, 1-2, 1-3.1, 1-30.1, 1-3.1.2, 12-1.5, 13-13 and 15-3.3.)

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In the interest of public safety and the Bureau's integrity, the FBI is obligated to take severe administrative action for alcohol-related misconduct. Employees must be held accountable for their on- and off-duty alcohol-related misconduct, WHETHER OR NOT they are specifically charged with an alcohol-related offense by a local law enforcement agency.

(1) Upon an employee's FIRST offense of driving under the influence or while intoxicated, whether established by a conviction in court or as the result of an administrative inquiry, he/she will be suspended from duty, without pay, for a period of not less than 30 days. If aggravating circumstances are present, he/she may be terminated from employment. A SECOND offense will result in termination, absent compelling mitigating circumstances.

(2) Immediately following an employee's arrest for driving while under the influence (DUI) or while intoxicated (DWI), an employee will be prohibited by his/her division/office head from operating a government motor vehicle for an indefinite period of time. This indefinite suspension of an employee's privilege to operate a government motor vehicle will continue until an administrative determination has been reached regarding the employee's guilt or innocence of the alleged misconduct. In such matters, renewal of an employee's privilege to operate a government motor vehicle will be resolved by an administrative determination of the Bureau made in association with adjudication of employee's alleged misconduct. While the result of a judicial review of the employee's actions, his/her plea bargaining, or entry into a diversion or substance abuse program as a result of his/her arrest will be considered in reaching this administrative determination, such factor(s) will NOT, in and of themselves, determine the appropriateness of the Bureau's renewal of an employee's privilege to operate a government motor vehicle. That decision will be made on the merits of each case and the government's responsibility to ensure the public's safety through proper licensing of the operator of official motor vehicles.

(3) An employee's arrest for driving while under the influence or while intoxicated MUST be reported to the Office of Professional Responsibility (OPR) as an issue of serious misconduct. An administrative inquiry will be conducted by the division/office head under the direction of OPR regarding the employee's alleged misconduct. Sufficient information/evidence must be obtained in this inquiry to facilitate an administrative determination of the employee's guilt or innocence of the noted charge. Such information should include, but not be limited to, the result of the adjudication of the employee's arrest by the judicial system in which charges were filed against the employee.

(4) In those instances in which an employee is found guilty in an administrative inquiry of alcohol-related misconduct while operating a motor vehicle, his/her privilege to operate a government motor vehicle will continue to be suspended following such determination of guilt. This suspension will occur REGARDLESS whether the nature of the employee's motor vehicle offense has been reduced as a result of judicial review, plea bargaining, or the employee's entry into a diversion or substance abuse program. A presumption will exist that there is a necessity to suspend the employee's privilege to operate a government motor vehicle for a period of not less than ONE YEAR following his/her offense. During the period of a Special Agent's suspension of his/her privilege to operate a government motor vehicle, and following a determination of his/her alcohol-related

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misconduct by the Bureau, he/she will NOT be considered eligible to earn premium compensation, such as Sunday pay, holiday pay, night differential, and Availability Pay. Prior to discontinuing eligibility for Availability Pay, the employee will be afforded appropriate adverse action proceedings. (See MAOP, Part I, 1-3.1 and 1-8-1.12.2.)

(5) As the suspension of a Special Agent's entitlement to earn Availability Pay compensation is an adverse personnel action, it is dependent upon completion of adverse action procedures set forth in MAOP, Part I, 13-14. These procedures are designed to afford employees due process as well as procedural entitlements which arise from an employee's personnel status. For example, a preference-eligible veteran has specific procedural entitlements which are set forth in MAOP, Part I, 13-10.

(6) When suspension of an employee's privilege to operate a government motor vehicle is continued as a result of an adverse personnel action, it will be the responsibility of a division/office head to determine the extent to which the employee's privilege to operate a government motor vehicle will be suspended. In reaching that determination in alcohol misconduct cases involving the use of a motor vehicle, a presumption will exist that there is a necessity to suspend the employee's privilege to operate a government motor vehicle for a PERIOD OF NOT LESS THAN ONE YEAR following the occurrence of the offense. Any reduction of that period must be fully justified by the division/office head on the merits of the case involved. Such a determination must be documented in the employee's official personnel file. Any continuation of the period of suspension of a Special Agent's privilege to operate a government motor vehicle beyond one year from date of the offense, which has predicated suspension of his/her entitlement to Availability Pay, will require the initiation of a SEPARATE adverse personnel action. Such an action may be requisite in situations in which a Special Agent fails to comply with a program of rehabilitation determined necessary by his/her fitness for duty examination, or other appropriate cause.

(7) When an FBI employee is involved in alcohol-related misconduct, REGARDLESS WHETHER THAT MISCONDUCT IS ASSOCIATED WITH OPERATION OF A MOTOR VEHICLE, his/her division head, in addition to notifying OPR, will conduct an inquiry specifically focused on whether the employee suffers from alcohol-related problems. The result of that inquiry will be documented in the employee's official personnel file.

(a) If the inquiry determines that the employee is experiencing an alcohol-related problem, the division/office head will instruct the employee to seek counseling and/or assistance through the EAP or some outside source.

(b) Employees subject to a medical standard for fitness for duty - such as Special Agents - who are suspected to have an alcohol abuse problem, will be referred for a fitness for duty exam. This examination will confirm whether the problem exists, and, if appropriate, will enable management to refer the employee through EAP for professional treatment and assistance. In addition, it will facilitate the Bureau's issuance of a notice to employees with alcohol abuse problems to avoid misconduct/performance deficiencies arising from alcohol abuse which are contrary to the efficiency of the Bureau's operations. Such a "firm choice" notice may be required for the Bureau to finalize adverse personnel action against the employee

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if he/she fails to correct his/her misconduct/performance which arises from alcohol abuse.

(c) In all such matters, it will be the responsibility of the division/office head to determine whether there is a necessity to suspend the employee's privilege to operate a motor vehicle. Such a determination will consider the merits of each case and the government's responsibility to ensure the public's safety through proper licensing of the operator of official motor vehicles.

**EffDte: 04/02/1996 MCRT#: 525 Div: OP Cav: SecCls:

1-30.4 Manager and Supervisor Responsibilities (See MAOP, Part I, 1-2, 1-30.1, and 15-3.3.)

Since sensitivity to employee problems and support of the EAP are integral to good leadership, FBI managers are expected to facilitate employee assistance and outreach efforts. To underscore the importance of these efforts, all management and supervisory personnel will be held directly accountable for any inaction on their part under circumstances which reasonably require their intervention. Such intervention would include:

(1) Encouraging any employee who experiences problems with substance abuse to seek professional assistance on an immediate basis.

(2) Assertively reaching out to co-workers in need of EAP services and take steps to ensure those in need are promptly afforded whatever counseling, treatment or assistance may be necessary. Managers, in particular, are to facilitate employee assistance and outreach efforts.

**EffDte: 03/16/1995 MCRT#: 387 Div: OP Cav: SecCls:

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SENSITIVE

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Guidelines to Conducting OPR Investigations

Delegated Investigation/Adjudication

Delegated Investigation

Non-Delegated Investigation

Preliminary Inquiries

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**GUIDELINES FOR CONDUCTING OFFICE OF PROFESSIONAL RESPONSIBILITY
(OPR) INVESTIGATIONS: Delegated Investigation/ Adjudication Cases (DIAs);
Delegated Investigations (DIs); and Non-delegated Cases (NDs)**

An EC has been sent to your division to investigate an OPR matter. This enclosure contains OPR procedural, investigative, and documentation guidelines and should be reviewed prior to commencing the investigation, and adhered to during the investigation.

BACKGROUND

The Director, by OPR EC to All Divisions dated 07/18/2002, entitled *Delegation of Disciplinary Action Authorities to EADs, ADICs, SACs, and FBIHQ Division Heads*, established new disciplinary authorities and policy for the conduct of OPR investigations associated with allegations of employee misconduct. There are now three methods for the conduct of these investigations. First, in certain articulated violation codes, OPR investigations will be delegated to Division Heads for both investigation and adjudication (DIAs). (Investigative information specific to DIAs is set forth under that heading in these guidelines below.) Second, although some OPR investigations will be delegated to Division Heads, they are required to be adjudicated at OPR because of the complexity or seriousness of the matter. These cases are delegated for investigation only (DIs). Third, some investigations are conducted and adjudicated solely by OPR personnel; these are non-delegated matters (NDs).

Division Heads receiving OPR cases delegated for investigation only (DIs) as well as non-delegated investigations conducted by OPR, are not affected by the new policy guidelines set forth in OPR EC to All Divisions dated 07/18/2002. These matters will continue to be investigated in accordance with MIOG, Part I, Section 263, and the Director's airtels to all ADICs, *et al.*, entitled "Delegations of Disciplinary Action Authorities to ADICs and FBIHQ Division Heads," dated 2/23/94 and 1/30/95. Division Heads are reminded of guidance set forth in these airtels in which it is noted that no administrative action may be taken with respect to employees under your supervision in OPR investigations unless expressly authorized by OPR, upon OPR's receipt and review of the investigative results of the inquiry.

OPR Notification Form - Once an allegation of misconduct is brought to the attention of FBI OPR, the allegation is reviewed by the Department of Justice-Office of Inspector General (DOJ/OIG) and a determination is made regarding investigative responsibility for the alleged misconduct. If the DOJ/OIG defers the matter to FBI OPR for investigation, and the matter is suitable for delegation, OPR will forward to the Division Head two copies of an OPR Notification Form containing information for the employee. The OPR case supervisor will be identified at the bottom of the Notification Form. The Division Head or his representative should present the employee with the OPR

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Notification Form, and enclosed information, upon receipt. The division representative presenting the employee with the OPR Notification Form should sign and date both forms, have the employee sign and date both forms, read the allegation of misconduct to the employee, provide the employee with the enclosed OPR forms, "*The FBI's Disciplinary Process*," "*OPR Disciplinary Process: Disclosure of Information to Attorneys*," and "*Non-Disclosure Agreement*;" review the information on the Notification Form with the employee and emphasize two points 1) the availability of counseling to the employee from the Employee Assistance Program (EAP) and 2) the employee has the opportunity, prior to being interviewed, to voluntarily provide documentation, information, or explanation, to OPR that may assist in the resolution of the investigation.

One of the signed, original Notification Forms will be returned to OPR along with the original executed disclosure forms **if the employee has chosen to be represented by a privately retained attorney**. The other original Notification Form will be given to the employee. The Division Head should make copies of these forms for the office file and for the assistance of the Agent assigned to conduct the investigation. Prior to commencing the investigation, the Agent assigned to conduct the investigation should confirm that the Notification Form has been presented to the employee and if the employee is represented by an attorney. If the employee to be interviewed has retained an attorney, the Agent assigned to conduct the OPR investigation should review those sections of the OPR form entitled "*The FBI's Disciplinary Process*," pertaining to attorney representation prior to interviewing the employee.

The Notification Form title will be styled to include identification of the employee who is the subject of the investigation as well as OPR's determination that the investigative case is a DIA, DI, or ND matter. The Notification Form for DIAs will advise the subject employee that the matter has been delegated to the Division Head for both investigation and adjudication; otherwise, adjudication responsibility will be retained by OPR. **Upon receipt of the Notification Form, the Division Head should not conduct any investigation of the alleged misconduct until advised by OPR.** OPR will delegate the investigative matter to a Division Head by an EC that may contain specific FBI policy and/or investigative matters to be addressed in the investigation.

After presentation of the notification form to the subject(s), the employee should be given a sufficient amount of time to refresh their memory before information is requested from them. A reasonable amount of time, not to exceed (10) ten days, is suggested between the subject employee's receipt of the Notification Form and the employee's interview. The employee may opt to waive this time period and agree to be interviewed immediately or otherwise within the suggested waiting period. This time period will permit the employee time to decide if they want legal representation, to retain an attorney, and/or

to collect whatever documents or information they want to voluntarily provide to OPR, or to prepare a statement for OPR concerning their alleged misconduct.

CONDUCTING THE INVESTIGATION

The following information applies to all OPR investigative matters:

The term "investigation," for the purpose of these guidelines, is inclusive of both the investigation and adjudication of the DIA OPR matter.

The Division Head will not begin the investigation of the delegated OPR matter (DIA and DI) until advised by EC from OPR.

Investigative EC - Upon receipt of the OPR EC initiating the investigation, and review of any referenced policy matters set forth in the EC, the investigation should specifically address each allegation of misconduct and the elements that constitute the policy/procedure that has allegedly been violated. All logical areas of inquiry should be pursued. Interview areas of inquiry should be developed from review of information collected during the investigation. Derivative, logical follow-up questions should be asked during interviews to fully address the alleged misconduct of the subject employee(s). Persons interviewed should be reminded to be forthcoming with information and, in furtherance of candid disclosure, not limit their response specifically to the strictest meaning of a word or phrase within a question but rather to focus upon the intent of the question.

Investigative Quality Control - It is the Division Head's responsibility, or the responsibility of other members of the division's executive management staff to whom this OPR matter has been delegated, to review the investigation conducted and to ensure the investigation is complete, that all logical investigation has been conducted, and that the signed, sworn statements (SSSs) and unsworn statements conform to both FBI policy and OPR procedures, that reporting Bureau Deadlines (BUDEDs) are met, and reports are completed in accordance with procedures and instructions contained in OPR EC to All Divisions dated 07/18/2002, prior to submission of the completed investigation to OPR.

Investigative Personnel Assignment - The investigation is to be conducted in accordance with MIOG, Part I, Section 263, except where superseded by OPR EC to All Divisions dated 07/18/2002. The investigation of this matter, except as noted below, will be assigned to senior, mature, Supervisory Special Agents (paygrade GS-14 or higher) having no direct investigative or performance responsibility with regard to the subject employee or with witnesses in this inquiry. In exceptional circumstance, to be decided by the Division Head, a senior paygrade GS-13 Special Agent may be assigned to conduct the investigation with the approval of the OPR case supervisor. The Division EC to OPR forwarding the investigative results of the OPR matter should set forth the exceptional circumstance for the investigation being conducted by a senior paygrade GS-13 employee and the name and date of the OPR case supervisor approving the request. FBIHQ Divisions, in the absence of an SSA at the paygrade GS-14, may assign paygrade GS-13 and higher Agent or Support Employee Program Managers to

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conduct the OPR investigation. Employees who are under OPR investigation, or have been the subject of disciplinary action within the last three years, are not to be assigned to conduct OPR investigations. Questions regarding the investigation of this case should be referred to the OPR case supervisor listed on either the employee's OPR Notification Form or the OPR EC to which this document is an enclosure.

Bureau Deadline (BUDED) - This investigation should be completed by the **BUDED**. Extensions to the **BUDED** may be granted, under extenuating circumstances, by contacting the OPR case supervisor for approval. This investigative matter must be completed in a timely manner to conform with the terms of civil litigation to which the FBI is a party, (Johnson, et al. v. Reno, Civ. No. 93-0206 TFH (BADGE)). Failure to comply with the **BUDED** will require OPR to submit a report to the AD, OPR, and to advise the Inspection Division of delayed reporting practices by the division for further review during the next division inspection. Delayed investigation evidenced by failure to meet the **BUDED** will be reported to the Director as a performance issue for consideration in the Division Head's annual performance report.

Record Documentation - All record reviews, with positive or negative results, and analysis conducted, should be documented by form FD-302. All documents and other material objects collected pertinent to the OPR investigation will be recorded on a form FD-302 to show the date and place of acquisition and to fully describe the document, or material object, retained.

Employee Admissions (non-criminal misconduct) - If in the course of conducting the OPR investigation, the subject employee makes voluntary admissions to additional non-criminal misconduct outside of the issued Notification Form, the Division Head should notify the OPR case supervisor. The employee will subsequently receive a new Notification Form from the AD, OPR, delineating the new allegations. The new notification may result in further investigation and interviews. If the employee's admissions occur during the employee's interview, the interview can continue, provided the employee stipulates to their awareness that they will receive a new Notification Form delineating the new allegations of misconduct. This advisory statement and the employee's affirmative response acknowledging the statement and their desire to continue the interview will be included in the employee's SSS. The employee's SSS will thereafter contain information provided by the employee concerning his/her self-admitted misconduct. If the employee will not stipulate, the advisory statement and the employee's negative response acknowledging the statement and their desire not to be interviewed on the new self-admitted allegations of misconduct will be included in the employee's SSS, and the

interview will continue within the scope of the alleged misconduct in the employee's Notification Form.

Employee Criminal Activity or Misconduct - If the investigation determines that the subject employee has participated in, or is making admissions of, criminal

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activity or misconduct, then the investigation and/or interview of the employee regarding the alleged criminal activity or misconduct cannot be pursued until so authorized by AD, OPR. The scope of the investigation and/or interview may proceed in accordance with the notification or the guidance contained in the previous paragraph. The interviewers are to immediately contact the OPR case supervisor, followed by an EC with the known information, and are to conduct no additional investigation. In turn, OPR will consult with the Department of Justice (DOJ), Office of Professional Responsibility (DOJ/OPR), or other DOJ entity as appropriate, for a prosecutive opinion. Based upon these consultations, OPR will forward the appropriate notification and guidance to the concerned division. This guidance is to ensure compliance with the parameters and spirit of the Director's March 1997 "Brightline" communication.

Automated Case Support (ACS) System - Documents and/or reports prepared during the course of this investigation **must not be uploaded** into the ACS System until advised to the contrary by OPR. Should the division find it necessary to set forth leads to other divisions, in furtherance of this OPR investigation, those divisions should be advised of this restriction in the Administrative Section of the transmitted EC.

INVESTIGATIVE ISSUES

Electronic Surveillance - AD, OPR, authorization must be obtained prior to the initiation of physical or electronic surveillance (to include consensual body/telephone monitoring, closed circuit TV coverage, pen registers) targeting an FBI employee. Some of these techniques may also require DOJ authority.

Polygraphs - If a Division Head believes a polygraph examination is necessary to resolve an issue in the OPR investigation, AD, OPR, authorization pursuant to MIOG, Part I, Section 263-6 is required, for subject and witness employees, in both voluntary examination requests and compelled polygraph examinations conducted on a Substantial Objective Basis (SOB), as set forth in the MIOG, Part II, Section 13-22.13.1. A polygraph is an investigative tool only. As an investigative tool, the results of a polygraph examination must be considered with other evidence and should not be considered alone. Disciplinary action will not be predicated solely upon the results of a polygraph examination or upon the refusal to submit to a polygraph examination. If an employee refuses to take an SOB polygraph under an OPR inquiry, OPR or the Division Head can only make an adverse inference during the adjudication process. The request for authorization to conduct these examinations, accompanied by sufficient justification to support the request, should be submitted to OPR by EC.

Drug Testing - The authority to grant a request for an employee to take a reasonable suspicion drug test rests with the AD, OPR. The request must be communicated in writing with a factual summary substantiating the basis for the employee's suspected illegal drug use. Once the AD, OPR, has approved the reasonable suspicion drug test, the OPR case supervisor will contact the Drug Deterrence Program (DDP) to request a drug test for the employee. The DDP representative will contact the requesting division and make the necessary

arrangements for the drug test. The DDP will notify OPR of the results of the drug test, and then OPR will notify the division.

Alcohol Policy - Division Heads are reminded of the requirement set forth in the MAOP, Part I, Section 1-30.3(7), that in the matter of alleged alcohol-related employee misconduct, the Division Head, "... in addition to notifying OPR, will conduct an inquiry specifically focused on whether the employee suffers from alcohol-related problems. The results of that inquiry will be documented in the employee's official personnel file." Division Heads will report the results of the employee alcohol-related misconduct inquiry (MAOP Part I, Section 1-30.3(7)) as a part of the Division's response to Douglas Factor question #7, "Mitigating circumstances..." in their investigative summary EC to OPR.

Administrative Leave - A Division Head may request to place an employee on Administrative Leave for disciplinary reasons. In this instance, the Division Head must submit justification in writing to the AD, OPR. After the AD, OPR, approves the request, a response will be promptly returned to the division.

Personal Relationships Policy - Division Heads should be cognizant of the Director's PERSONAL RELATIONSHIPS POLICY as set forth in his Memorandum to All Employees dated 03/27/2002 (Memo 5-2001) and the policy's relationship to OPR investigations:

First, the private lives of FBI employees, and their relationships with others, are subject to inquiry by OPR only when the conduct may: (1) negatively impact upon the ability of the Bureau to perform its responsibilities; (2) violate the law; or (3) violate an internal regulation. The investigative approach will be in accordance with the MAOP, Part I, Section 1-12.2. "Whenever feasible, OPR inquiries will be structured to avoid exploring romantic or intimate relationships if other factual issues will resolve the inquiry or if a general acknowledgment of the relationship sufficiently establishes the offense. Although OPR investigators need not negotiate with a witness or subject over the information to be provided, they should explain the relevancy of the information being sought. OPR's ability to compel responses, even when the questions may be personal or embarrassing, carries with it an obligation to ensure that the questioning and the documentation of the employee's statement are respectful, discreet, and dignified as is consistent with establishing all the relevant facts impacting upon FBI operations and the performance of the FBI's mission." Contact OPR for additional guidelines for conducting investigations associated with personal relationships.

Second, Division Heads should consider the policy's five defined areas of relationships and the policy's discussion of the "appearance of impropriety" and their application to persons assigned to investigate and adjudicate OPR matters as well as the Division Head's personal relationship with subordinate personnel. If necessary, OPR should be advised as soon as possible of a Division Head's recusal from an OPR matter.

Outside Agency Liaison - If investigation requires the interview of employees of another law enforcement agency, the investigator conducting the investigation should make the Division Head aware of the need for that contact and thereafter a liaison contact with an officer of appropriate rank should be made to request permission to interview the officer/Agent. If allegations of misconduct are developed against officers of local/state law enforcement departments/agencies associated with the investigation of the FBI OPR investigation, the Division Head should be advised and the information transmitted to the appropriate officer of the local/state law enforcement department/agency. If information involving misconduct by a Federal Law Enforcement Officer is developed during the course of an FBI OPR investigation, the OPR case supervisor should be notified and the information provided to OPR by EC. OPR will transmit the information to the Federal Agency involved.

Douglas Factors - Upon completion of the investigative portion of the OPR investigation, Douglas Factor information concerning the subject employee must be collected by the employee conducting the investigation. In DIAs, this data collection will be conducted by the person assigned by the Division Head to conduct the adjudication phase of the investigation. The requested information is required pursuant to a legal decision by the Merit Systems Protection Board in the matter of Curtis Douglas v. Veterans Administration, et al.; 5 MSPB 313 and 5 MSPR 280. The Douglas Factor information is set forth below and should be presented in a question and answer format in the summary EC submitted to OPR. The Douglas Factor information should be provided to OPR in all circumstances, to include the circumstance of a Division Head recommending that there be no disciplinary action and/or that a matter be closed.

It is requested that the following be addressed in your response (Douglas Factors):

1. The relationship of the alleged offense to the employee's duties and position and its impact on management's confidence in the employee's ability to perform;
2. The employee's past disciplinary record;
3. The employee's recent performance record and reputation within the workplace;
4. The notoriety of the offense within and outside the FBI or its impact upon the reputation of the FBI;
5. The clarity with which the employee was on notice of any rules that were violated or had been warned about the conduct in question;
6. The potential for the employee's rehabilitation;

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7. Mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment or bad faith, malice or provocation on the part of others involved in the matter.

WHISTLEBLOWER PROTECTIONS FOR EMPLOYEES

The Director has established policy concerning his firm commitment to the protection of employees who report organizational wrongdoing. This Memorandum to All Employees dated 11/07/2001, number 12-2001, entitled *WHISTLEBLOWER PROTECTIONS FOR FEDERAL BUREAU OF INVESTIGATION EMPLOYEES* should be reviewed for further information concerning the Director's policy statement. This policy statement is available on the ASD Intranet Website.

CONDUCTING THE INTERVIEW

The following information applies to all OPR investigative matters, unless otherwise noted or specifically set forth elsewhere in these guidelines:

Non-FBI employees - Interviews must be reported utilizing a form FD-302. Interviews may be conducted telephonically by one person.

FBI employees - Interviews must be reported in the form of a **typed, double spaced, signed, sworn statement (SSS)**. The SSS should be prepared in compliance with the standard FBI format for Statements Taken Under Oath as set forth in the Legal Handbook for Special Agents (LHBSA), Section 7-12-15, and include the several declarations required by OPR that are set forth below. A formatted SSS for administrative investigations using the *ACKNOWLEDGMENT OF EMPLOYEE REQUIRED TO PROVIDE INFORMATION* form (*ACKNOWLEDGMENT* form) (**ATTACHMENT A**) and incorporating all the requisite language in standard FBI format is attached to this document for use by recipients. (**ATTACHMENT B**) (**NOTE: The Acknowledgment form is an interim replacement form pending revisions to the form FD-645. The revised form FD-645, when issued, will replace the Acknowledgment form.**)

SSS Interview Protocol - All employee interviews will be conducted and witnessed by two personnel in person with the subject employee or witness, unless instructed otherwise by the OPR case supervisor. An interview log will be maintained during the interview, noting persons present for the interview, logging the time the interview is initiated and completed, the time the *ACKNOWLEDGMENT* form is signed, the time the employee is administered the oath, etc. The log should also note when any breaks were offered the interviewee. At least one investigator conducting the interview will maintain notes of the interview. In preparing a draft of the employee's statement, both investigators must agree on the content of the statement, e.g. what the employee said during the interview, prior to presenting the statement to the employee

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for signature. Disagreement concerning the content of the employee's statement will be resolved by re-interviewing the employee regarding the salient point(s). In re-interviewing an employee under the same *ACKNOWLEDGMENT* form allegation of misconduct, it is not necessary to re-present the form for employee signature and acknowledgment. The employee should be advised of the purpose of the interview and reminded that he/she is still under oath. The information obtained in this re-interview may be incorporated into the initial statement, noting the date and circumstance it was obtained, and thereafter presented to the employee for signature.

Unless authorized by OPR, neither the subject employee nor employee witnesses will be shown or read the content of any OPR communication. The SSS will be prepared by the investigator based upon oral statements made by the employee during the interview. Under no circumstance is the employee to write his/her own statement from the interview. The employee is to be given the opportunity to review for accuracy the information contained in his/her statement and to make corrections to the statement. The employee will review the statement in the presence of the investigator. Under no circumstance will the employee be permitted to make corrections to the statement outside the presence of the investigator, take their statement home overnight, transmit (facsimile) the statement to an attorney or other third party, or to permit another person to make corrections to the statement. An attorney retained by the employee may advise the employee regarding language in the statement but the attorney cannot write or edit the statement for the employee. After the employee has signed a statement in an administrative inquiry, the employee should be provided a copy of the unsigned statement and advised that it is a Bureau document and must be afforded appropriate security. A SSS in a criminal matter should not be provided to the employee.

SSS Employee Interview with Administrative Warning (*ACKNOWLEDGMENT* form)

Before conducting the interview and placing the employee under oath, the employee must be advised of the following information by the Agent conducting the interview and this information will be set forth in the SSS:

1) Present the employee with the *ACKNOWLEDGMENT* form, and obtain the employee's signature acknowledging understanding of their rights and responsibilities in this OPR investigation. (NOTE: Prior to presenting the *ACKNOWLEDGMENT* form to the employee being interviewed, the Agent conducting the investigation will complete the *ACKNOWLEDGMENT* form by writing or typing the purpose of the inquiry onto the form. The purpose of the inquiry is the allegation of misconduct that appears on the subject employee's OPR Notification Form, and should be set forth specifically in the *ACKNOWLEDGMENT* form space allotted for "This inquiry pertains to....").

2) The employee must be advised of the Director's "Bright Line Policy," that if they lie during an inquiry, they can expect to be dismissed from the rolls of the FBI. This information is incorporated in the language set forth in the *Acknowledgment* form,

but not expressly stated as the Director's policy;

The information contained in paragraphs one and two will be set forth in the employee's SSS by including the following sentence toward the outset of the statement: **"I understand from my review of the Acknowledgment form that should I refuse to answer or fail to reply fully and truthfully during this interview, which I further understand would place me in violation of the Director's 'Bright Line' policy, I can expect to be dismissed from the FBI."**

Placing Employee under Oath - Prior to conducting the interview, the employee must be sworn-in by the investigator conducting the interview. The employee will raise his/her right hand and the Agent will administer the oath by stating **"Do you swear or affirm that the information you are about to provide is true, accurate, and complete, to the best of your knowledge."** The employee must respond in the affirmative before proceeding with the interview. If the employee does not, end the interview and notify the OPR case supervisor.

If the employee refuses to sign the *ACKNOWLEDGMENT* form, or refuses to swear or affirm to the oath, or once placed under oath the employee refuses to participate in the interview, the interview will be terminated. The investigator conducting the interview will prepare a report of the matter on a form FD-302 to specifically describe the employee's receipt and review of the *ACKNOWLEDGMENT* form and any reason given by the employee for refusing to sign the *ACKNOWLEDGMENT* form, swear the oath, or participate in the interview. It should be specifically noted in the report that the employee was aware, as set forth on the *ACKNOWLEDGMENT* form, that the employee had a duty to reply to questions and refusal to answer or failure to reply fully and truthfully could result in agency disciplinary action, including dismissal. The form FD-302 should be initialed by the two FBI personnel witnessing the interview. The OPR case supervisor should be contacted immediately and advised of the matter.

In concluding the interview, with the employee still under oath, the employee will be advised of the following and it will be documented in the employee's SSS:

1) As a matter of FBI policy, employees will be asked to take a voluntary polygraph examination regarding the information reported in their SSS. This request and response will be recorded in the SSS as **"I (will/will not) take a voluntary polygraph examination concerning the truthfulness of the information contained in this signed, sworn statement."**

2) The employee should be told that should any additional information come to their attention, or if they wish to provide information which the interviewers consider inappropriate for inclusion in the SSS, they may voluntarily provide that information to OPR in writing. This will be documented in the SSS as **"I have no other pertinent**

information regarding the aforementioned allegation. I have been advised that I may and should submit any additional information of which I may become aware, regarding this inquiry, to the Office of Professional Responsibility."

3) The employee should be advised that they are restricted in discussing the OPR investigation and the contents of the interview. The following advisory statement will be set forth in the concluding paragraph of the employee's SSS: "I have been instructed not to discuss this matter with anyone other than the person(s) conducting this interview, representatives from the OPR, FBIHQ, an FBI Employee Assistance Program (EAP) Counselor, my attorney (providing I have submitted the appropriate forms), and a representative of the Ombudsman's office. I have been told that should I decide to discuss this matter with anyone else, I must first obtain authorization from the interviewer(s)."

The final sentence in the SSS, prior to the employee's signature, should read, "I have read this statement, consisting of this and X other pages, and it is true and correct to the best of my knowledge." (The total amount of pages of the SSS, other than the signatory page, should be substituted for the X.)

Signing the Statement Protocol - Before the employee signs the statement, the Agent will again swear-in the employee. The employee will raise his/her right hand and the Agent will administer the oath by stating "Do you swear or affirm that the information you have provided in the statement before you is true, accurate, and complete, to the best of your knowledge." The employee must respond in the affirmative before proceeding with the employee signing the statement. If the employee does not, end the meeting and notify the OPR case supervisor. The investigators will document the employee's refusal to swear or affirm the oath prior to signing their statement and any reason provided by the employee for not swearing or affirming the oath in a form FD-302 and attach a copy of the unsigned sworn statement attesting that the information provided in the statement was obtained under oath by the investigators conducting the interview.

After signing the statement, the employee should initial the beginning and the end of the text on each page of the SSS. This process will be witnessed by two investigators and attested to by their signatures at the end of the SSS. When the completed statement is presented to the employee for signature, the personnel presenting the statement for the employee's signature, administering the oath to the employee swearing or affirming to the truth of the statement, and witnessing the employee initialing each page, do not necessarily have to be the same two persons who conducted the employee interview and placed the employee under oath. These employees are only administering an oath to the employee, and attesting by their signatures that the employee swore or affirmed the oath, signed the statement, and initialed the pages of the statement in their presence.

Recanted Employee Statements - While taking a SSS, an employee is placed under oath at the initiation of the interview; therefore, they are required to tell the truth. If an employee originally recalls something incorrectly but arrives at the truth before signing the statement, the initial misstatement is considered to have been recanted, or corrected. Even a deliberate lie may be so corrected, although the statement itself or a separate FD-302 will reflect that a factual assertion or denial was made and then changed, as that change of recollection is relevant to credibility. So long as the employee corrects a false assertion prior to signing the SSS, the original falsehood by itself will not be punished with dismissal for lying under oath. Should a lack of candor issue arise at any time during the investigation, or a non-delegated matter be evidenced, notify the OPR case supervisor for further direction.

All copies of an employee's statement presented to the employee, upon which the employee makes changes prior to swearing/affirming to and signing their statement, are to be retained by the Agent, marked sequentially as "DRAFT #1," etc., and retained in a 1A envelope (FD-340) for submission to OPR in the Division's summary EC. If the employee makes substantive material changes in his/her statement between the time of the interview and the obtaining of the employee's SSS, the interviewing Agent will prepare a FD-302 documenting those changes in a comparative method and forward that report to OPR in the Division's summary EC. As set forth in the preceding paragraph, the employee's "change of recollection" is relevant to the employee's credibility and will be included in deliberations for disciplinary action during the adjudication phase of this investigation.

SSS Document Referrals - All documents presented to the employee during the interview for comment or provided by the employee and commented upon during the interview, will be made a part of the SSS by either reference or incorporation as desired by the employee. If the document is included by reference, the document will be specifically identified in the SSS and the document included in the Division's summary EC to OPR. (The source of the document, e.g. how and when it was acquired, will be recorded on a FD-302.) If the document is included by incorporation into the SSS, the document will be specifically identified in the SSS and thereafter attached to the end of the employee's SSS. The employee, after swearing or affirming the oath as to the truthfulness of his/her statement and signing the statement, will initial and date each page of any document attached to the SSS.

SSS Administration - The original SSS and two copies of the SSS will be forwarded to OPR in the Division's summary EC. All original interview notes for each employee interviewed as well as the associated interview log, the original *ACKNOWLEDGMENT* form executed by the employee, and all draft copies of the employee's statement, will be retained in a 1A envelope (FD-340) for transmittal to OPR by the summary EC.

SSS Employee Interview with Criminal Warning (FD-644)

If an OPR investigative matter requires that an FBI employee be interviewed under Criminal Advice of Rights, a form FD-644 entitled *WARNING AND ASSURANCE TO EMPLOYEE REQUESTED TO PROVIDE INFORMATION ON A VOLUNTARY BASIS* will be used, and OPR will provide the Division Head with appropriate guidance in OPR's investigative EC delegating this matter to the Division Head. OPR will investigate most allegations of an FBI employee's criminal activity.

SSS, UNSWORN SIGNED STATEMENTS (USS) AND FD-302 INTERVIEWS

Privacy Act -- Prior to conducting any OPR-related interview, the person being interviewed will be advised that this OPR investigation is governed by provisions of the **Privacy Act** (Title 5, U.S. Code, Section 552a (k)(5)). The interviewee should be cautioned that his/her identity and the information provided may, pursuant to certain administrative inquiries or judicial proceedings, be made available to the subject of the inquiry if the information is used, in whole or in part, to support an adverse personnel action, (an action resulting in a minimum disciplinary action suspending an employee from work for more than 14 days, up to and including dismissal from the roles of the FBI). No promise of confidentiality should be made to FBI management officials or Agent or non-Agent supervisory personnel who are asked to furnish information concerning an employee under their supervision. If an employee requests confidentiality, this must be noted immediately after the interviewee's name, i.e. John Doe (Protect Identity). The SSS, USS, or form FD-302 interview must contain the following statement: **"I am requesting confidentiality under the Freedom of Information and Privacy Acts. I have been cautioned that if adverse administrative action is taken against the subject of the investigation based on my information, my identity will most likely be disclosed, as required by law."**

Conversely, if the interviewee, upon being made aware of their privacy rights, declines to protect their identity, the following statement should be included in their SSS, USS, or form FD-302 interview: **"I have been advised of my confidentiality rights under the Freedom of Information and Privacy Acts and the application of those rights in this OPR investigation. I do not want my identity protected."**

DELEGATED INVESTIGATION/ADJUDICATION CASES (DIAS)

The Director, by OPR EC to All Divisions dated 07/18/2002, entitled *Delegation of Disciplinary Action Authorities to EADs; ADICs, SACs; and FBIHQ Division Heads*, established new disciplinary authorities and policy for the conduct of OPR investigations associated with allegations of employee misconduct. Set forth below is investigative information pertinent to OPR investigations delegated to Division Heads for both investigation and adjudication (DIAs)

The *SCHEDULE OF DELEGATED DISCIPLINARY ACTIONS*, an enclosure to the OPR EC to All Divisions dated 07/18/2002, creates four disciplinary levels

containing articulated offenses and set disciplinary actions. Level One (ORAL REPRIMAND) and Level Two (LETTER OF CENSURE) DIAs do not require SSSs from the subject employee and witness employees, if the subject employee has submitted a communication (EC, e-mail or informal memorandum) providing sufficient factual details to persuasively resolve all pertinent issues and acknowledging responsibility for the disciplinary offense(s). Alternatively, a SSS is required of the subject employee and employee witness(es) for these two levels if the employee fails to provide sufficient background details, if the details provided by the employee are subject to question, or if the subject employee does not acknowledge responsibility for the disciplinary offense. **The Division Head is responsible for determining if the subject employee's voluntary statement is sufficient to not warrant the taking of SSSs.**

Level Three (Three to Seven Days Suspension) and Level Four (Ten to Fourteen Days Suspension) DIAs require SSSs of subject employee(s) and all employee witness(es).

As stated more substantively in the Background Section of these Guidelines, after receipt, OIG review, and OPR evaluation of the alleged misconduct complaint, OPR will create a case file and provide the Division Head with a Notification Form to be provided to the employee. The Notification Form for DIAs will advise the subject employee that the matter has been delegated to the Division Head for both investigation and adjudication. The case will be delegated for investigation and adjudication by the Division Head (DIAs) by an EC from OPR. **The BUDED for DiA matters will be 60 days.** The OPR EC will forward the Notification Form to the Division and will contain information designating the violation code offense level as defined by the *SCHEDULE OF DELEGATED DISCIPLINARY ACTIONS* (an enclosure to OPR EC to All Divisions dated 07/18/2002). This designation is based upon OPR's preliminary review of the information presented initiating the investigation and may be changed by the Division Head based upon investigative results. The OPR EC may contain policy and/or investigative matters to be addressed during the investigation.

If SSSs are to be taken, information previously set forth in these guidelines for the taking of SSSs should be followed.

If the subject employee and witness employees are to provide unsworn signed statements (USS), rather than a SSS, the attached format for an USS should be followed. **(ATTACHMENT C)** All FBI employees must be advised before the interview that if they lie during an inquiry, they can expect to be dismissed from the rolls of the FBI. Prior to being interviewed or providing a written statement, all FBI employees must execute the *ACKNOWLEDGMENT* form which contains, among other things, the alleged misconduct being investigated and language that advises the employee that he/she can expect to be dismissed from the rolls of the FBI if they lie during the inquiry.

If an employee refuses to sign the *ACKNOWLEDGMENT* form or is otherwise

not participating in this compelled interview, the investigator should document the matter as set forth in the SSS Section of these guidelines and immediately notify the OPR case supervisor.

The employee's USS will contain all of the OPR required statements for SSSs, except of course, the administering of the oath.

ADJUDICATION:

OPR will adjudicate all cases delegated to Division Heads for investigation only (DI) and all non-delegated (ND) cases investigated by OPR. Information required for the adjudication of these matters will be transmitted by EC to Division Heads by OPR. In non-delegated cases (ND) investigated by OPR, Division Heads will receive an EC forwarding the entire investigation to their attention for review and submission of Douglas Factor information pertaining to the subject employee. In cases delegated to Division Heads for investigation only (DI), OPR will request by EC, submission of Douglas Factor information pertaining to the subject employee.

The information set forth below applies only to OPR cases delegated to Division Heads for investigation and adjudication (DIAs):

Once the investigative portion is completed, the case should be assigned for adjudication to a senior, mature individual not connected with the investigative portion and having no performance responsibilities over the subject employee or with witnesses in the inquiry. Adjudicators must maintain impartiality, and no personal animus should be reflected.

The adjudicator, after reviewing the investigation, will determine if each allegation is supported by a preponderance of the evidence and, if so, what discipline is warranted. In making a recommendation for discipline, the adjudicator should take into account the Douglas Factors relating to the employee's past disciplinary record, work performance, the notoriety of the offense inside and outside the FBI, and mitigating and aggravating factors. Each of these factors is to be addressed individually and reported to OPR.

No Disciplinary Action Recommended

If no discipline is warranted, you are to provide an EC which contains a synopsis of the case to OPR. If that recommendation is approved by OPR, the employee should be furnished with a No Action Letter (**ATTACHMENT D**). A copy of this letter should be filed in the 263 file but not in the employee's official personnel file or Squad/ Unit drop files.

Level One - Oral Reprimand

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The penalty for a Level One infraction is an Oral Reprimand. You are to provide an EC which contains a synopsis of the case (**ATTACHMENT E**). If approved by OPR, a copy of this EC is to be designated to the subject employee's official personnel file.

Level Two - Letter of Censure

Letters of Censure must contain the allegation and a finding that the allegation is substantiated. The letter will state the facts and an analysis of the facts, and the policy which the employee violated. The letter also contains a paragraph which advises the employee that a copy is being forwarded to the Security Division (**ATTACHMENT F**). If approved by OPR, a copy of this Letter of Censure is to be designated to the subject employee's official personnel file and the 263 file.

Levels Three and Four - Suspensions

Level Three and Level Four cases should have a case summary to include the employee subject's personnel history, summary of facts, analysis of the facts for each allegation, a review of Bureau policy, a conclusion and recommendation. Policy can be located in MAOP, MIOG, the Employee Handbook, various Memoranda to Division Heads, etc. The letter also advises the subject employee of his/her appeal rights and, as with oral reprimands and Letters of Censure, contains the paragraph that advises the employee that a copy of the letter is being forwarded to the Security Division (**ATTACHMENT G**). If approved by OPR, a copy of this letter is to be designated to the subject employee's official personnel file and the 263 file.

Once approved by OPR, suspensions are held in abeyance if the employee appeals. If the employee signs a waiver of his/her appeal rights, the suspension can be imposed immediately, and it can be imposed if the employee does not timely exercise his/her right to appeal (ten days after receipt of the letter imposing discipline).

FORWARDING THE COMPLETED CASE:

The following information applies to cases delegated to Division Heads for investigation only (DI), and all non-delegated (ND) cases investigated by OPR: The OPR EC forwarding this matter to your division for investigation will contain reporting requirements. Absent specific reporting requirements, the results of the investigation should be reported to OPR in the form of a summary EC (original and three copies), in accordance with OPR's EC to All Field Offices and FBIHQ Divisions, dated 1/22/98, and forwarded to OPR, to the attention of the case supervisor on the enclosed EC. An original and two copies of each SSS or FD-302 should be forwarded as enclosures to the summary EC (**ATTACHMENT H**). The original notes, interview log, and draft copies of the employee's statement, supporting each SSS or FD-302, should be placed in a 1A Envelope (FD-340) along with the corresponding **ACKNOWLEDGMENT** form. Any other original documentation should be forwarded to

OPR as an enclosure to the summary EC.

The information set forth below applies only to OPR cases delegated to Division Heads for investigation and adjudication (DIAs):

After the Division Head determines an appropriate penalty, an EC and one copy is to be submitted to OPR summarizing the results of the investigation. Enclosed with the EC will be the proposed sanction in the format applicable to the offense level (see **Attachments D, E, F or G**). The EC will contain the **names of the division's investigator and adjudicator** as well as all original case file documents and 1A exhibits, original SSSs, USSs, and FD-302s with two copies, the disposition of any physical evidence acquired during the inquiry, and a copy of the communication intended to be used to communicate the discipline to the employee, including the memorialization of an oral reprimand. An additional copy of the EC and each disciplinary letter is to be designated for dissemination by OPR to the Security Division, FBIHQ, where applicable. This hard copy EC with its enclosures should be mailed to OPR, Attention Adjudication Unit-1 or Adjudication Unit-2, as applicable.

A copy of the summary EC should be e-mailed to "OPR Delegation Reports AU-1 or AU-2", with the understanding that OPR has seven working days from date of receipt of the EC/e-mail to alter the penalty.

OTHER GUIDANCE:

Employee Assistance Program (EAP) - Division management should be cognizant of the significant stress often placed on an employee who becomes the subject of an OPR inquiry and be sensitive to the mental/emotional state of that employee. Upon presentation of the OPR Notification Form, the subject of the inquiry should be provided with an Employee Assistance Program (EAP) informational brochure with the name(s) and contact number(s) of their division's EAP Representative(s) listed. If the facts of a specific case reasonably indicate that such measures are prudent, appropriate steps should be taken to afford counseling for the employee under the provisions of the EAP, or other means, to ensure that the employee's concerns are appropriately handled. In especially sensitive or obviously stressful situations, consideration should be given to having an EAP counselor present immediately following employee notification, interview and/or receipt of disciplinary action.

Fitness For Duty (FFD) Evaluation - A Division Head may request a Fitness For Duty (FFD) evaluation regarding an employee, subject to Title 5 CFR Part 339.3001. The criteria which must be met to warrant such an examination are the employee's conduct or behavior adversely impacts his/her ability to suitably perform the essential functions of the job, or his/her trustworthiness is questioned, and therefore, his/her security clearance could be withdrawn. The Division Head should contact the Administrative Services Division for additional information regarding this matter.

Security Division Referrals - Contemporaneous to referring an employee's disciplinary matter to OPR, a Division Head can refer the same information to the Security Division for an assessment of the employee's ability to maintain a security clearance. The Security Division's independent determination of the employee's ability to maintain a security clearance may result in the suspension of the employee's security clearance and the employee's removal from FBI space on paid administrative leave pending resolution of the security issue(s).

Ombudsman Program - The FBI's Ombudsman provides a mechanism by which employees can obtain answers to questions involving work-related issues. As a neutral party, the Ombudsman also provides informal and impartial assistance to employees and managers while attempting to resolve work-related concerns.

NOTE

OPR is in the process of developing a Website that will contain the information contained in these guidelines, as well as down-loadable forms that are referenced in these guidelines.

ACKNOWLEDGMENT FORM

ACKNOWLEDGMENT OF EMPLOYEE REQUIRED TO PROVIDE INFORMATION

This is an official administrative inquiry regarding possible misconduct or the improper performance of official duties. In accordance with the Privacy Act of 1974, you are advised that the authority to conduct this interview is contained in Title 28, Code of Federal Regulations, Section 0.85(c).

This inquiry specifically pertains to _____

(State the general nature of the inquiry)

For purposes of this inquiry, you may be interviewed, asked to provide a written statement, or both, and the information you provide will assist in determining whether administrative action is warranted. You have a duty to participate in an interview or to provide written statements, and you can expect to be dismissed from the rolls of the FBI if you refuse to do so, or if you fail to respond fully and truthfully in any answers or written account you provide.

Neither your statements nor any information or evidence gained by reason of your statements can be used against you in any criminal proceeding, except that if you knowingly and wilfully provide false statements or information, you may be subject to criminal prosecution for that action. Pursuant to the Privacy Act, this

information is being sought for the purposes of an agency disciplinary proceeding. The information itself and any information or evidence resulting therefrom may be used in the course of this proceeding, which could result in disciplinary action, including dismissal. Information may be disclosed to other federal agencies for a law enforcement purpose; to employees of the Department of Justice in the performance of official duties; to the Judicial Branch of the Federal Government in response to a specific request or otherwise where disclosure appears relevant to the authorized function of the recipient judicial office or court system; and to an adjudicative body, such as the Equal Employment Opportunity Commission and the Merit Systems Protection Board when the United States, the FBI, or its employees, in an official capacity, are parties to or have an interest in the litigation, and such records are determined by the FBI to be relevant to the litigation. Disclosure may also be made in accordance with all other routine uses of the FBI's Central Records System.

ACKNOWLEDGMENT

I have read and understand my rights and obligations as set forth above

Signature of Official Conducting Inquiry

Employee's Signature

Witness

Date

ATTACHMENT A

SIGNED, SWORN STATEMENT (SSS) FORMAT W/ACKNOWLEDGMENT FORM

Prior to conducting the interview, the employee must be sworn in by the investigator. The employee will raise his/her right hand and the investigator will administer the oath by stating "do you swear or affirm that the information you are about to provide is true, accurate, and complete to the best of your knowledge?" The SSS pages should be numbered as set forth below. (SSS should use Times New Roman typeface with 12 point font) (This example is in 10 point font)

Month, Day, Year (such as July 9, 2002)
City, State (DATE AND PLACE WHERE
INTERVIEW WAS CONDUCTED)

I, NAME INTERVIEWEE, having been duly sworn by Supervisory Special Agent (SSA) NAME, hereby make the following statement to SSA NAME and SSA NAME, whom I know to be SSAs of the Federal Bureau of Investigation (FBI), assigned to the NAME Division.

(IF INTERVIEWEE IS AN AGENT WITH PRIOR SERVICE AS A SUPPORT EMPLOYEE, ADJUST STATEMENT TO RECORD SUPPORT EOD AND AGENT EOD) (ADJUST STATEMENT IF INTERVIEWEE IS A SUPPORT EMPLOYEE) I entered on duty (EOD) on DATE, as a Special Agent (SA). Upon completion of my training at the FBI Academy, Quantico, Virginia, I was assigned to the NAME Division from DATE to DATE (MONTH and/or YEAR). I was transferred to the NAME Division and served in that division until transferred to NAME Division. I am currently assigned to the NAME Division, and (supervise) the ALFA-NUMBER squad with program responsibility for the _____ Programs or work on squad ALFA-NUMBER with program responsibility. My collateral duties are _____.

I understand this is an administrative inquiry regarding an allegation that (NAME OF EMPLOYEE) COPY ALLEGATION FROM SUBJECT'S "OPR NOTIFICATION FORM," SHOULD BE IDENTICAL WITH ACKNOWLEDGMENT FORM ALLEGATION. I have further been advised of my rights and responsibilities in connection with this inquiry as set forth on the form entitled "Acknowledgment of Employee Required to Provide Information" (Acknowledgment form), which I have read and signed. I understand from my review of the Acknowledgment form that should I "refuse to answer or fail to reply fully and truthfully" during this interview, which I further understand would place me in violation of the Director's "Bright Line" pronouncement, I can expect to be dismissed from the rolls of the FBI.

ATTACHMENT B

(TEXT OF STATEMENT)

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I have no other pertinent information regarding the aforementioned allegation. I have been advised that I may and should submit any additional information of which I may become aware, regarding this inquiry, to the FBI's Office of Professional Responsibility (OPR).

I will (will not) take a voluntary polygraph examination concerning the truthfulness of the information contained in this signed, sworn statement.

I have been instructed not to discuss this matter with anyone other than the person(s) conducting this interview, FBIHQ representatives from the OPR, the Ombudsman's office, and/or an FBI Employee Assistance Program (EAP) Counselor, or my attorney. I have been told that should I decide to discuss this matter with anyone else, I must first obtain authorization from the interviewer(s).

I have read this statement, consisting of this and NUMBER SPELLED OUT (NUMBER) (such as FOUR (4)) other pages, and it is true and correct to the best of my knowledge.

(Interviewee NAME)

Sworn to and subscribed before me on the DATE day of MONTH, YEAR (such as 11th day of JULY, 2002), in the city of CITY, STATE. (DATE AND PLACE WHEN EMPLOYEE SIGNS STATEMENT, NOT NECESSARILY THE INTERVIEW DATE)

(NAME)
Supervisory Special Agent
(NOT NECESSARILY THE PERSON WHO
CONDUCTED THE INTERVIEW)

Witness:

(NAME)
Supervisory Special Agent
(NOT NECESSARILY THE PERSON WHO CONDUCTED THE INTERVIEW)

The signed, sworn statement (SSS) format is a typed, double spaced document. Prior to the interviewee signing the SSS, the interviewee will be placed under oath (sworn-in). After signing the SSS, the interviewee should initial the beginning and the end of the text of the SSS, on each page. This process will be witnessed by the two persons present when the interviewee swears the oath prior to initialing and signing the statement.

UNSWORN, SIGNED, STATEMENT (SSS) FORMAT W/ACKNOWLEDGMENT FORM
(SSS should use Times New Roman typeface with 12 point font) (This example is in 10 point font)

(Month; Day, Year)

I, _____, hereby make the following statement:

I understand this is an administrative inquiry regarding the allegation that _____

I have further been advised of my rights and responsibilities in connection with this inquiry as set forth on the *Acknowledgment of Employee Required to Provide Information*, which I have read and signed. I understand from my review of the *Acknowledgment* that should my following statement not be complete and truthful, I can expect to be dismissed from the rolls of the FBI.

(Statement follows)

I have no other pertinent information regarding the aforementioned allegation(s). I have been advised that I may and should submit any additional information of which I may become aware, regarding this inquiry, to the investigator.

I have been instructed not to discuss this matter with anyone other than the person conducting this investigation, representatives from the Office of Professional Responsibility (OPR), FBIHQ, FBI Employee Assistance Program (EAP) Counselors, my attorney (provided I have submitted the appropriate forms), or representatives of the Ombudsman's office. I have been told that should I decide to discuss this matter with anyone else, I must first obtain authorization from the investigator.

I will/will not take a voluntary polygraph examination concerning the truthfulness of the information provided in this statement.

I have read this statement, consisting of this and X other pages, and it is true, complete, and correct.

Employee's Signature/Date

Typed or Printed Name of Witness

Signature of Witness to Employee's Signature/Date

ATTACHMENT C

NO ACTION LETTER

-iv-

FBI024388CBT

Date _____

PERSONAL

Mr. xxxxxx
Federal Bureau of Investigation
xxxxxxx

Dear Mr. xxxxx

This is to advise you of the conclusion of an administrative inquiry regarding allegations that you

*** (see below for variation to second paragraph)

I have reviewed the results of that inquiry and determined that it developed no facts warranting any administrative action pertaining to you. Accordingly, this inquiry is considered closed.

As you are aware, administrative inquiries are conducted to determine whether the actions of FBI personnel were proper and in accordance with the duties and responsibilities applicable to all FBI employees. In that respect, an objective and equitable administrative inquiry process benefits all FBI employees by safeguarding the Bureau's integrity and high standards.

I appreciate your patience and cooperation in this matter.

Sincerely yours,

SAC Name
Special Agent in Charge

Division

263-file number

1 - OPR/IIU-I or II [whichever applies]
1 - OPR/AU-I or II [whichever applies]
1 - OPR-Administrative Unit

***I have reviewed the results of that inquiry and determined that the preponderance of the evidence does not establish that you committed the alleged misconduct. Accordingly, this inquiry is considered closed.

ATTACHMENT D
ORAL REPRIMAND - EC

FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE

Date: 10/26/2001

-v-

FBI024389CBT

OIG-REQ 02/18/05-PART 12

FBI0000183

**OFFICE of INSPECTOR GENERAL'S
REVIEW of
DETAINEE ISSUES**

***FBI RESPONSE MATERIAL
DOJ'S OIG REQUEST of FEBRUARY 18, 2005***

ALL DOCUMENTS RELATED TO ANY COMMUNICATION BETWEEN ANY FBI EMPLOYEE AND THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF DEFENSE, OR ANY OTHER U. S. GOVERNMENT ENTITY REGARDING CONCERNS BY EMPLOYEES ABOUT THE TREATMENT OF DETAINEES, OR THE INTERROGATION METHODS BEING USED, AT ANY OVERSEAS VENUE CONTROLLED BY THE U. S. MILITARY SINCE SEPTEMBER 12, 2001, INCLUDING ISSUES RELATED TO THE EFFICACY OR LEGALITY OF SUCH METHODS, PROBLEMS PURSUING CASES USING INFORMATION OBTAINED BY SUCH METHODS, OBSERVATIONS BY FBI EMPLOYEES OF POSSIBLE DETAINEE MISTREATMENT, OR OTHER CONCERNS, INCLUDING COMMUNICATIONS INVOLVING OGC, CTD OR THE OFFICE OF THE DIRECTOR.

FBI TRACKING # OIG-REQ 02-18-05 -PART 13
[PACKET #3- FBI BATE STAMP 0000094-0000212]
{MATERIAL from GC V. CAPRONI}

"DESIGNATED SENSITIVE MATERIAL"

**DOJ'S OFFICE OF INSPECTOR GENERAL'S
COPY**

OIG'S REVIEW of FBI DETAINEE ISSUES PROJECT

DOJ'S OIG REQUEST of FEBRUARY 18, 2005

SUBJECT: ALL DOCUMENTS RELATED TO ANY COMMUNICATION BETWEEN ANY FBI EMPLOYEE AND THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF DEFENSE, OR ANY OTHER U. S. GOVERNMENT ENTITY REGARDING CONCERNS BY EMPLOYEES ABOUT THE TREATMENT OF DETAINEES, OR THE INTERROGATION METHODS BEING USED, AT ANY OVERSEAS VENUE CONTROLLED BY THE U. S. MILITARY SINCE SEPTEMBER 12, 2001, INCLUDING ISSUES RELATED TO THE EFFICACY OR LEGALITY OF SUCH METHODS, PROBLEMS PURSUING CASES USING INFORMATION OBTAINED BY SUCH METHODS, OBSERVATIONS BY FBI EMPLOYEES OF POSSIBLE DETAINEE MISTREATMENT, OR OTHER CONCERNS, INCLUDING COMMUNICATIONS INVOLVING OGC, CTD OR THE OFFICE OF THE DIRECTOR.

FBI TRACKING #: OIG -REQ 02/18/05 -PART 13

PACKET: #3

{MATERIAL from GC V. CAPRONI}

{JUNE 6, 2005}

b6
b7c

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
NO DATE	DOA MEMO	POSITIVE BEHAVIOR REWARD PROGRAM AND DETAINEE CLASSIFICATION STANDARD OPERATING PROCEDURE	5	094-098
NO DATE	RESPONSES	RESPONSE to A THROUGH G	3	099-101
11/16/02	M. BOWMAN to [REDACTED] E-MAIL	RE GITMO	1	102
11/19/02	[REDACTED] to [REDACTED] E-MAIL	GTMO INTERVIEWS	1	103
02/17/04	REPORT	[REDACTED] FW: URGENT REPORT ON GITMO	2	104-105

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
08/02/04	P. KELLEY to V. CAPRONI E-MAIL	TRIM DOCUMENTS: DOJ/EXECSEC/04/DO/3737: (REC'D FROM ODAG [REDACTED] WITH ASSIGNMENT INSTRUCTIONS) MEMO REGARDING THE TRANSFER OF GUANTANAMO DETAINEES WITH HABEAS CORPUS PROCEEDINGS PENDING. (BW)	2	106-107
08/02/04	P. KELLEY to [REDACTED] E-MAIL	TRIM DOCUMENTS: DOJ/EXECSEC/04/DO/3737: (REC'D FROM ODAG [REDACTED] WITH ASSIGNMENT INSTRUCTIONS) MEMO REGARDING THE TRANSFER OF GUANTANAMO DETAINEES WITH HABEAS CORPUS PROCEEDINGS PENDING. (BW)	2	108-109
08/17/04	V. CAPRONI to [REDACTED] E-MAIL	RE: FYI GTMO	2	110-111
08/17/04	V. CAPRONI to [REDACTED] E-MAIL	RE: FYI GTMO	1	112
08/17/04	V. CAPRONI to [REDACTED] E-MAIL	RE: COMBATANT STATUS REVIEW TRIBUNAL	2	113-114
08/17/04	[REDACTED] to V. CAPRONI E-MAIL	RE: FYI GTMO	1	115
08/17/04	[REDACTED] to [REDACTED] E-MAIL	FW: COMBATANT STATUS REVIEW TRIBUNAL	2	116-117
08/18/04	V. CAPRONI to [REDACTED] E-MAIL	RE: COMBATANT STATUS REVIEW TRIBUNAL	5	118-122
08/18/04	[REDACTED] to V. CAPRONI E-MAIL	RE: COMBATANT STATUS REVIEW TRIBUNAL	5	123-127
08/18/04	[REDACTED] to [REDACTED] E-MAIL	RE: COMBATANT STATUS REVIEW TRIBUNAL	4	128-131
08/26/04	[REDACTED] to V. CAPRONI E-MAIL	NCIS INVESTIGATION	1	132
08/31/04	V. CAPRONI to T. HARRINGTON E-MAIL	DETAINEES	1	133
09/01/04	V. CAPRONI to T. HARRINGTON E-MAIL	RE: DETAINEES	2	134-135
09/01/04	V. CAPRONI to [REDACTED] E-MAIL	RE: DETAINEES	2	136-137
09/01/04	T. HARRINGTON to V. CAPRONI E-MAIL	RE: DETAINEES	1	138

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
09/01/04	T. HARRINGTON to V. CAPRONI E-MAIL	RE: DETAINEES	1	139
09/01/04	[REDACTED] to V. CAPRONI E-MAIL	FW: DETAINEES	2	140-141
09/02/04	[REDACTED] to V. CAPRONI E-MAIL	GITMO	1	142
09/16/04	[REDACTED] to V. CAPRONI E-MAIL	RE: NCIS	1	143
09/22/04	[REDACTED] to V. CAPRONI E-MAIL	FW: PRISONER ABUSE	4	144-147
10/04/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REVIEW OF QFR RESPONSE re: TREATMENT OF DETAINEES	2	148-149
10/06/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REVIEW OF QFR RESPONSE re: TREATMENT OF DETAINEES	3	150-152
10/06/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REVIEW OF QFR RESPONSE re: TREATMENT OF DETAINEES	6	153-158
10/06/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REVIEW OF QFR RESPONSE re: TREATMENT OF DETAINEES	5	159-163
10/06/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REPATRIATION ISSUES	2	164-165
10/06/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REPATRIATION ISSUES	4	166-169
10/06/04	[REDACTED] to V. CAPRONI E-MAIL	RE: REPATRIATION ISSUES	4	170-173
10/07/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REVIEW OF QFR RESPONSE re: TREATMENT OF DETAINEES	8	174-181
10/18/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REVIEW OF QFR RESPONSE re: TREATMENT OF DETAINEES	13	182-194
10/19/04	V. CAPRONI to [REDACTED] E-MAIL	RE: REPORT re: TREATMENT OF GITMO DETAINEES	2	195-196
12/13/04	[REDACTED] to V. CAPRONI E-MAIL	RE: HARRINGTON LETTER	2	197-198
12/22/04	LHM	DISSEMINATION TO CITF-RFA295-04 [REDACTED] ISN [REDACTED] EG-0000661DP	1	199
01/06/05	V. CAPRONI to [REDACTED] E-MAIL	RE: DOD GITMO INVESTIGATION	3	200-202

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
01/06/05	V. CAPRONI to [] E-MAIL	RE: DOD GTMO INVESTIGATION	1	203
01/06/05	V. CAPRONI to [] E-MAIL	RE: DOD GTMO INVESTIGATION	2	204-205
01/06/05	[] to V. CAPRONI E-MAIL	RE: DOD GTMO INVESTIGATION	3	206-208
01/06/05	[] to V. CAPRONI E-MAIL	RE: DOD GTMO INVESTIGATION	3	209-211
01/06/05	[] to [] E-MAIL	DOD GTMO INVESTIGATION	1	212
TOTAL PAGES			119	

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-10-2009 BY 65179 DMH/mjs

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b7C

From: MARION Bowman
To: [redacted]
Date: Sat, Nov 16, 2002 1:15 PM
Subject: Re: GITMO

E-mail went down before I could reply. My best guess is that we'd like to have a professional assessment prepared. I don't think that would be a waste of your time.

I'll be back in touch Monday, I hope.

Spike Bowman

>>> [redacted] 11/15/02 04:08PM >>>

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Spike,

Thanks for moving ahead on this. It's my understanding that the Judge Advocate assigned to the CITF has already documented and forwarded these issues up his DOD chain. I have not seen the documents, but our people on the ground say that he hasn't received any written response to his concerns.

You're right that from a behavioral perspective, it is our professional opinion that the DHS interrogation tactics we discussed have been, and will likely continue to be, counterproductive. We have not at our level documented this to DOD; but have raised these issues with GTMO management. We could include our opinion in an FBIHQ document to DOD if that is how this will be addressed. I fully agree that this issue raises larger policy issues that go beyond the behavioral assessment support function that our SSA's here provide at GTMO.

[redacted]

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>>> MARION Bowman 11/15 3:02 PM >>>

I've talked with Ken Wainstein about the issue you pose. I think we need to raise this up a bit as there are significant policy concerns here, including the ability to obtain information. It's Friday afternoon and everyone is getting the end-of-the-week stuff dumped on them so I probably won't be able to get to Mefford until late and probably not D'Amuro at all today but will as soon as possible -- likely Monday.

Meanwhile, let me pose a question to you. You guys are invited to be there for a purpose and the purpose is to help determine how best to get information from the individual detainee. You're telling me, and I agree, that the tactics being employed by DHS (is it only DHS or other military as well?) are dysfunctional. Might it be useful if you were to pen a professional opinion to that effect and provide it to an appropriate military manager? It could be to a GITMO manager or at any level up the food chain (I have lots of military contacts including into JCS) depending on what our guys think is most useful.

Time-wise, I'm concerned because I know there are lots of visitors to the site, including media. And, if memory serves, Red Cross has a permanent apartment there. All it would take would be a short press article about the jack-booted interrogators -- of which FBI is a part -- to irritate our European partners and launch Congressional hearings. My concern is not for individual actions, at least as you've described them to me, but for cumulative ones that demonstrate systemic behavior.

I'd be interested in learning, if anyone hears, of the judge advocate's success or lack thereof in his attempts to dissuade this behavior.

Spike Bowman

CC: [redacted] BATTLE, FRANK; [redacted]

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DATE: 01-12-2010
CLASSIFIED BY 65179 DMH/mjs
REASON: 1.4 (c)
DECLASSIFY ON: 01-12-2035

b6
b7C

From: [redacted]
To: [redacted]
Date: Tue, Nov 19, 2002 1:05 PM
Subject: GTMO Interviews

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

(S)

[redacted] b1

I spoke with [redacted] this morning and they advised that the interview strategy of #63 scheduled to begin late last week was put on hold. The concerns raised by the JAG officer, [redacted] and NCIS psychologist [redacted] have prevailed. Apparently as off 6:00am this morning [redacted] of DHS advised the SAC CITF and the FBI SSA that # 63 was being returned to law enforcement. As a result, the SAC CITF and the FBI SSA directed [redacted] to develop interview strategies for use against #63. They are formulating these strategies with input from investigators who have interviewed #63, intelligence information, and the military psychologists working with the DHS, who are part of [redacted] group. [redacted] will send their recommendations to us for review and approval before they are submitted officially. We are having a conference call at 4:00PM today to further explore the development of the interview plan.

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On a couple of other matters:

After checking out the bonafides of [redacted] who had contacted FBIHQ with an offer to help us in GTMO with interviews, he does not come recommended through a variety of sources. I can go into details if you desire.

b6
b7C

At your request, I contacted [redacted] who advised that Senate Staffer [redacted] who works for Sen. Gregg is interested in gaining background info in preparation for a briefing from us. He [redacted] is interested in a summary paper detailing the scope of what we do and the capabilities of our staff. [redacted] asked that I email or fax her the summary in a couple of weeks.

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[redacted]

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CC: FRANK BATTLE, [redacted]

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FBI024408CBT

URGENT REPORT

Date: 02/17/2004
TO: AD Chris Swecker
CC: DAD James H. Burrus, Jr.
SC WK Williams
ASC [REDACTED]
General Counsel Valerie Caproni
FROM: Indian Country/Special Jurisdiction Unit (ICSJU)
Unit Chief [REDACTED]

b6
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b6
b7C

PREPARER OF URGENT REPORT:

SSA [REDACTED]

SUBJECT: SPECIAL JURISDICTION MATTERS;
GUANTANAMO BAY, CUBA

DESCRIPTION OF MATTER:

On February 2, 2005, the Criminal Investigative Division (CID) received from the Washington Field Office (WFO), via secure fax, a letter dated July 14, 2004, from Deputy Assistant Director (DAD) T. J. Harrington of the Counterterrorism Division (CTD) to Major General Donald J. Ryder, Department of the Army, Criminal Investigative Command.

The letter advised of three situations in which Federal Bureau of Investigation (FBI) Special Agents had observed highly aggressive interrogation techniques being used against detainees in Guantanamo (GITMO). One of the situations involved only U.S. military personnel in the treatment of a detainee. Another situation involved a canine being used in an aggressive manner to intimidate a detainee and that same detainee being subjected to isolation for over three months. A third situation involved a civilian contractor. This civilian contractor showed an FBI agent a detainee who had been gagged with duct tape that covered much of his head. The contractor indicated to the agent that the detainee had been chanting the Koran and would not stop. When the agent asked the civilian contractor how the duct tape would be removed, the contractor did not answer.

CID has reviewed the letter and is directing WFO to open an investigation into the actions of the civilian contractor. WFO will investigate the matter and present the facts gathered to the United States Attorney's Office, Eastern District of Virginia.

CID will coordinate with WFO to notify the Department of Defense (DOD) of the

FBI024409CBT

FBI's investigation in accordance with the, "Memorandum of Understanding between the Department of Justice and DOD Relating to the Investigation and Prosecution of Certain Crimes," as found in the Manual of Investigative Operations and Guidelines, Part 2, 18-2.

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Message

Page 2 of 2

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~~SENSITIVE BUT UNCLASSIFIED~~

~~SENSITIVE BUT UNCLASSIFIED~~

~~SECRET~~

Message

~~SECRET~~

DATE: 01-12-2010
CLASSIFIED BY 65179 DMH/mjs
REASON: 1.4 (c)
DECLASSIFY ON: 01-12-2035

Page 1 of 2

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HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

Caproni, Valerie E. (OGC) (FBI)

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Tuesday, August 17, 2004 5:12 PM
To: [redacted] (OGC) (FBI); [redacted] (OGC) (FBI)
Cc: [redacted]
Subject: RE: Combatant Status Review Tribunal

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(S)

~~UNCLASSIFIED~~
~~NON-RECORD~~

I am not sure what they are asking for. I don't know that it requires a "high level" person to work through logistics with them. What kind of issues does the admiral expect will need "high level" resolution.

In the mean time, [redacted] keep up the good work!

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Tuesday, August 17, 2004 4:20 PM
To: [redacted] (OGC) (FBI)
Cc: [redacted] Caproni, Valerie E. (OGC) (FBI)
Subject: FW: Combatant Status Review Tribunal

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(S)

Suggestions?

[redacted]
Assistant General Counsel
Counterterrorism Law Unit 1
FBI-GTMO
Guantanamo Bay, Cuba
[redacted]

b6
b7C

-----Original Message-----

From: [redacted] (CTD) (FBI)
Sent: Tuesday, August 17, 2004 10:46 AM
To: [redacted] (OGC) (FBI); [redacted] (CTD) (FBI)
Cc: [redacted] (CTD) (FBI); [redacted] (CTD) (FBI)
Subject: Combatant Status Review Tribunal

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b7C

~~UNCLASSIFIED~~
~~NON-RECORD~~

[redacted] just called with a request from RADM James McGarrah. The Admiral wanted to know the personnel structure the FBI had in place handling the CSRT procedures and who would be the logical person to represent FBI's interests during meetings between the Secretary of the Navy and the Solicitor General's office.

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I confirmed his understanding that:

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~~SECRET~~

Message

Page 2 of 2

- 1) [] was our Legal representative at GTMO regarding this and many other issues, b6
- 2) I was handling all repatriation matters and the CSRT / ARB matters, and b7C
- 3) [] was still handling CITF and the OMC Tribunals.

As to the Admiral wanting to know who would be in a position to know our established procedures regarding the CSRT / ARB and also at a high enough level to make decisions while representing the FBI during meetings between the SecNav and the Solicitor General's office, I told him I would check with [] and [] for suggestions. I do not think there is going to be a regularly scheduled meeting, however they do anticipate meetings to discuss issues as they arise. Although [] stated the FBI's response was tremendous, I got the impression that one would be soon to discuss how the CSRT process can be sped up. [] added that there has been a total of 73 Unclass Summaries completed, of which 48 have contained FBI information and were provided to [] for review. Per [] out of the 48, 40 have been completed. (for what it's worth...Great Job [] and [] Team!!) b6
b7C

[] was going to forward an email from the Admiral regarding this issue. I believe he was going to send it to our Unclass email. I will not be able to get mine until I get home tonight.

Any suggestions on who would best represent our interests at the meetings (that is if anyone goes at all)?

SSA []
Counterterrorism Division
Military Liaison and Detainee Unit
IX-1 Room 3S208
[]

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FBI024419CBT

Caproni, Valerie E. (OGC) (FBI)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

From: [redacted] (OGC) (FBI)
Sent: Tuesday, August 17, 2004 4:20 PM
To: [redacted] (OGC) (FBI)
Cc: [redacted] Caproni, Valerie E. (OGC) (FBI)
Subject: FW: Combatant Status Review Tribunal

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b7C

(S)

Suggestions?

[redacted]

Assistant General Counsel
Counterterrorism Law Unit 1
FBI-GTMO
Guantanamo Bay, Cuba

b2
b6
b7C

[redacted]

-----Original Message-----

From: [redacted] (CTD) (FBI)
Sent: Tuesday, August 17, 2004 10:46 AM
To: [redacted] (OGC) (FBI); [redacted] (CTD) (FBI)
Cc: [redacted] (CTD) (FBI); [redacted] (CTD) (FBI)
Subject: Combatant Status Review Tribunal

b6
b7C

~~UNCLASSIFIED~~
~~NON-RECORD~~

[redacted] just called with a request from RADM James McGarrah. The Admiral wanted to know the personnel structure the FBI had in place handling the CSRT procedures and who would be the logical person to represent FBI's interests during meetings between the Secretary of the Navy and the Solicitor General's office.

b6
b7C

I confirmed his understanding that:

- 1) [redacted] was our Legal representative at GTMO regarding this and many other issues,
- 2) I was handling all repatriation matters and the CSRT / ARB matters, and
- 3) [redacted] was still handling CITF and the OMC Tribunals.

b6
b7C

As to the Admiral wanting to know who would be in a position to know our established procedures regarding the CSRT / ARB and also at a high enough level to make decisions while representing the FBI during meetings between the SecNav and the Solicitor General's office, I told him I would check with [redacted] for suggestions. I do not think there is going to be a regularly scheduled meeting, however they do anticipate meetings to discuss issues as they arise. Although [redacted] stated the FBI's response was tremendous, I got the impression that one would be soon to discuss how the CSRT process can be sped up. [redacted] added that there has been a total of 73 Unclass Summaries completed, of which 48 have contained FBI information and were provided to [redacted] for review. Per [redacted] out of the 48, 40 have been completed. (for what it's worth....Great Job [redacted] and [redacted] Team" !!)

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b7C

~~SECRET~~

Message

Page 2 of 2

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b6
b7c

Any suggestions on who would best represent our interests at the meetings (that is if anyone goes at all)?

SSA [redacted]
Counterterrorism Division
Military Liaison and Detainee Unit
LX-1, Room 3S208

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~~SECRET~~

Caproni, Valerie E. (OGC) (FBI)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Wednesday, August 18, 2004 10:19 AM
To: [redacted] (CTD) (FBI)
Subject: RE: Combatant Status Review Tribunal

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~~UNCLASSIFIED~~
~~NON-RECORD~~

Is Tom Harrington SES?

-----Original Message-----

From: [redacted] (CTD) (FBI)
Sent: Wednesday, August 18, 2004 10:08 AM
To: [redacted] (OGC) (FBI); Caproni, Valerie E. (OGC) (FBI); [redacted] (CTD) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (CTD) (FBI); BATTLE, FRANKIE (CTD) (FBI)
Subject: RE: Combatant Status Review Tribunal

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~~UNCLASSIFIED~~
~~NON-RECORD~~

FBI needs to have a SES representative for this.

I am open for suggestions...

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Wednesday, August 18, 2004 10:02 AM
To: Caproni, Valerie E. (OGC) (FBI); [redacted] (CTD) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted] (CTD) (FBI); [redacted] (CTD) (FBI); BATTLE, FRANKIE (CTD) (FBI)
Subject: FW: Combatant Status Review Tribunal

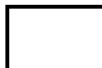
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I spoke to the Admiral's assistant and he is in the process of clarifying the request. He did indicate that the high level person would be an operational person. I expect MLDU will pass this up their chain for the most appropriate person. I will be happy to brief whomever on what information I have on the pertinent issues. Admiral McGarran and the Solicitor General will be here tomorrow.

Thanks

b6
b7C



~~SECRET~~

[Redacted]

b6
b7C

Assistant General Counsel
Counterterrorism Law Unit 1
Office of General Counsel
FBI-GTMO
Guantanamo Bay, Cuba

[Redacted]

b2

-----Original Message-----

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Tuesday, August 17, 2004 5:12 PM
To: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Cc: [Redacted]
Subject: RE: Combatant Status Review Tribunal

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(S)

~~UNCLASSIFIED~~
~~NON-RECORD~~

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In the mean time, [Redacted] keep up the good work!

-----Original Message-----

From: [Redacted] (OGC) (FBI)
Sent: Tuesday, August 17, 2004 4:20 PM
To: [Redacted] (OGC) (FBI)
Cc: [Redacted] Caproni, Valerie E. (OGC) (FBI)
Subject: FW: Combatant Status Review Tribunal

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b7C

(S)

Suggestions?

[Redacted]

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b7C

~~SECRET~~

~~SECRET~~

Assistant General Counsel

Counterterrorism Law Unit 1

FBI-GTMO

Guantanamo Bay, Cuba

[REDACTED]

b2

-----Original Message-----

From: [REDACTED] (CTD) (FBI)

Sent: Tuesday, August 17, 2004 10:46 AM

To: [REDACTED] (OGC) (FBI); [REDACTED] (CTD) (FBI)

Cc: [REDACTED] (CTD) (FBI); [REDACTED] (CTD) (FBI)

Subject: Combatant Status Review Tribunal

b6
b7C

~~UNCLASSIFIED~~
~~NON-RECORD~~

[REDACTED] just called with a request from RADM James McGarrah. The Admiral wanted to know the personnel structure the FBI had in place handling the CSRT procedures and who would be the logical person to represent FBI's interests during meetings between the Secretary of the Navy and the Solicitor General's office.

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I confirmed his understanding that:

- 1) [REDACTED] was our Legal representative at GTMO regarding this and many other issues,
- 2) I was handling all repatriation matters and the CSRT / ARB matters, and
- 3) [REDACTED] was still handling CITF and the OMC Tribunals.

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As to the Admiral wanting to know who would be in a position to know our established procedures regarding the CSRT / ARB and also at a high enough level to make decisions while representing the FBI during meetings between the SecNav and the Solicitor General's office, I told

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him I would check with [redacted] for suggestions. I do not think there is going to be a regularly scheduled meeting, however they do anticipate meetings to discuss issues as they arise. Although [redacted] stated the FBI's response was tremendous, I got the impression that one would be soon to discuss how the CSRT process can be sped up. [redacted] added that there has been a total of 73 Unclass Summaries completed, of which 48 have contained FBI information and were provided to [redacted] for review. Per [redacted] out of the 48, 40 have been completed. (for what it's worth.... Great Job [redacted] and [redacted] Team" !!)

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[redacted] was going to forward an email from the Admiral regarding this issue. I believe he was going to send it to our Unclass email. I will not be able to get mine until I get home tonight.

b6
b7C

Any suggestions on who would best represent our interests at the meetings (that is if anyone goes at all)?

SSA [redacted]

Counterterrorism Division

Military Liaison and Detainee Unit

LX-1, Room 3S208

[redacted]

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Caproni, Valerie E. (OGC) (FBI)

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED EXCEPT
WHERE SHOWN OTHERWISE

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From: [redacted] (CTD) (FBI)
Sent: Wednesday, August 18, 2004 10:25 AM
To: Caproni, Valerie E. (OGC) (FBI)
Subject: RE: Combatant Status Review Tribunal

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~~NON-RECORD~~

yes...

-----Original Message-----

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Wednesday, August 18, 2004 10:19 AM
To: [redacted] (CTD) (FBI)
Subject: RE: Combatant Status Review Tribunal

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~~UNCLASSIFIED~~
~~NON-RECORD~~

Is Tom Harrington SES?

-----Original Message-----

From: [redacted] (CTD) (FBI)
Sent: Wednesday, August 18, 2004 10:08 AM
To: [redacted] (OGC) (FBI); Caproni, Valerie E. (OGC) (FBI); [redacted]
(CTD) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted]
[redacted] (CTD) (FBI); BATTLE, FRANKIE (CTD) (FBI)
Subject: RE: Combatant Status Review Tribunal

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~~UNCLASSIFIED~~
~~NON-RECORD~~

FBI needs to have a SES representative for this.

I am open for suggestions...

-----Original Message-----

From: [redacted] (OGC) (FBI)
Sent: Wednesday, August 18, 2004 10:02 AM
To: Caproni, Valerie E. (OGC) (FBI); [redacted] (CTD) (FBI)
Cc: [redacted] (OGC) (FBI); [redacted]
[redacted] (CTD) (FBI); [redacted] (CTD) (FBI); BATTLE, FRANKIE
(CTD) (FBI)
Subject: FW: Combatant Status Review Tribunal

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I spoke to the Admiral's assistant and he is in the process of clarifying the request. He did indicate that the high level person would be an operational person. I expect MLDU will pass this up their chain for the most appropriate person. I will be happy to brief whomever on what information I have on the pertinent issues. Admiral McGarrah and the Solicitor General will be here tomorrow

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Thanks

[Redacted]

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[Redacted]

Assistant General Counsel
Counterterrorism Law Unit 1
Office of General Counsel
FBI-GTMO
Guantanamo Bay, Cuba

[Redacted]

b2

-----Original Message-----

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Tuesday, August 17, 2004 5:12 PM
To: [Redacted] (OGC) (FBI); [Redacted] (OGC) (FBI)
Cc: [Redacted]
Subject: RE: Combatant Status Review Tribunal

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I am not sure what they are asking for. I don't know that it requires a "high level" person to work through logistics with them. What kind of issues does the admiral expect will need "high level" resolution.

In the mean time [Redacted] keep up the good work!

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-----Original Message-----

From: [Redacted] (OGC) (FBI)

~~SECRET~~

Sent: Tuesday, August 17, 2004 4:20 PM

To: [redacted] (OGC) (FBI)

Cc: [redacted] Caproni, Valerie E. (OGC) (FBI)

Subject: FW: Combatant Status Review Tribunal

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Suggestions?

[redacted]

Assistant General Counsel

Counterterrorism Law Unit 1

FBI-GTMO

Guantanamo Bay, Cuba

[redacted]

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-----Original Message-----

From: [redacted] (CTD) (FBI)

Sent: Tuesday, August 17, 2004 10:46 AM

To: [redacted] (OGC) (FBI); [redacted] (CTD) (FBI)

Cc: [redacted] (CTD) (FBI); [redacted] (CTD) (FBI)

Subject: Combatant Status Review Tribunal

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~~UNCLASSIFIED~~
~~NON-RECORD~~

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SSA [redacted]

Counterterrorism Division

Military Liaison and Detainee Unit

LX-1, Room 3S208

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Caproni, Valerie E. (OGC) (FBI)

ALL INFORMATION CONTAINED
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WHERE SHOWN OTHERWISE

From: [redacted] (CTD) (FBI)

Sent: Wednesday, August 18, 2004 10:08 AM

To: [redacted] (OGC) (FBI); Caproni, Valerie E. (OGC) (FBI); [redacted] (CTD) (FBI)

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Cc: [redacted] (OGC) (FBI); [redacted] (CTD) (FBI); BATTLE, FRANKIE (CTD) (FBI)

Subject: RE: Combatant Status Review Tribunal

~~UNCLASSIFIED~~
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Subject: FW: Combatant Status Review Tribunal

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Thanks

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[redacted]

Assistant General Counsel

Counterterrorism Law Unit 1

Office of General Counsel

FBI024433CBT

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FBI-GTMO

Guantanamo Bay, Cuba

[Redacted]

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-----Original Message-----

From: Caproni, Valerie E. (OGC) (FBI)

Sent: Tuesday, August 17, 2004 5:12 PM

To: [Redacted] (OGC) (FBI) [Redacted] (OGC) (FBI)

Cc: [Redacted]

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Sent: Tuesday, August 17, 2004 4:20 PM

To: [Redacted] (OGC) (FBI)

Cc: [Redacted] Caproni, Valerie E. (OGC) (FBI)

Subject: FW: Combatant Status Review Tribunal

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Suggestions?

[Redacted]

Assistant General Counsel

Counterterrorism Law Unit 1

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FBI-GTMO

Guantanamo Bay, Cuba

[Redacted]

FBI024434CBT

~~SECRET~~

~~SECRET~~

-----Original Message-----

From: [REDACTED] (CTD) (FBI)
 Sent: Tuesday, August 17, 2004 10:46 AM
 To: [REDACTED] (OGC) (FBI); [REDACTED] (CTD) (FBI)
 Cc: [REDACTED] (CTD) (FBI); [REDACTED] (CTD) (FBI)
 Subject: Combatant Status Review Tribunal

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SSA [redacted]

Counterterrorism Division

Military Liaison and Detainee Unit

LX-1, Room 3S208

[redacted]

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-10-2009 BY 65179 DMH/mjs

Caproni, Valerie E. (OGC) (FBI)

From: [redacted] (CTD) (FBI)
Sent: Thursday, August 26, 2004 1:23 PM
To: Caproni, Valerie E. (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (OGC) (FBI); [redacted] (CTD) (FBI)
Cc: [redacted] (CTD) (FBI)
Subject: NCIS investigation

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UNCLASSIFIED
NON-RECORD

FYI: I received a call from NCIS Supervisor [redacted] regarding NCIS investigations into alleged detainee abuse re: GTMO detainees. According to Sec Def, NCIS has the lead on the detainee abuse cases. I referred him to FBI OGC for all requests since he had gone through OGC and OIG for other agencies. Once the requests come in, if there is anything MLDU can help with in facilitating appropriate responses, please forward requests to UC [redacted] Thanks

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SSA [redacted]
CTD/ORS/MLDU
LX-1, Room 3S-200
[redacted]

UNCLASSIFIED

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ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-18-2009 BY 65179 DMH/mjs

Caproni, Valerie E. (OGC) (FBI)

From: [redacted] (OGC) (FBI)
Sent: Thursday, September 02, 2004 4:06 PM
To: Caproni, Valerie E. (OGC) (FBI)
Cc: KELLEY, PATRICK W. (OGC) (FBI)
Subject: Gitmo

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SENSITIVE BUT UNCLASSIFIED
NON-RECORD

Well, I don't think I embarrassed you as your personal representative in the Secretary of the Navy entourage. I heard the briefing for the Secretary on the status of the Combat Status Review Tribunal process in which the DOD is trying hard to get all affected agencies to review and concur on the unclassified summaries provided to the detainees and used to justify their designation as enemy combatants before the military tribunals (not to be confused with the military commissions which are trying them for criminal activity). Time crunch on the tribunals (by the end of October) all 580 of which have to be done before the habeas hearings before the federal judiciary kick-off this fall. Secretary was very unhappy with some agencies [redacted] for holding up the process and the admiral in charge of the operation praised the FBI as the model of cooperation. FBI senior agent was in the room (I know him well from his HQ time); he said that FBI on-scene presence and dedicated assets--primarily him and [redacted] were the reasons FBI was able to turn them around quickly.

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Got a tour of Delta like you and, despite the fine ocean view, agree that it is not the place to vacation. Saw about one half of a tribunal hearing and was disappointed when the Taliban combatant was docile and cooperative--I was hoping for some action.

got back 7:30 last night--12 hour evolution. Thanks for letting me go..

[redacted]
Office of the General Counsel
[redacted]

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SENSITIVE BUT UNCLASSIFIED

FBI024447CBT

Message

DATE: 01-12-2010
CLASSIFIED BY 65179 DMH/mjs
REASON: 1.4 (c)
DECLASSIFY ON: 01-12-2035

Page 1 of 1

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Caproni, Valerie E. (OGC) (FBI)

From: [redacted] (OGC) (FBI)
Sent: Thursday, September 16, 2004 4:53 PM
To: Caproni, Valerie E. (OGC) (FBI)
Cc: [redacted]
Subject: RE: NCIS

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I just talked to [redacted] from NCIS, I now have the corrected dates and the request has been further narrowed. NCIS has a broken chain of custody on the two detainees as they passed from location to location and they are looking for 4 two month blocks to fill in the blanks. The Military Liason & Detainee Unit is already pulling all the documents regarding the first detainee and will begin on the second in the near future because both are going to have hearings in Gitmo and the documents are needed for discovery. They expect to have all the documents catalogued and in hard copy on the first detainee in the next month or so. (Their estimate is that they have thousands of pages which refer to the first detainee as he was the subject & source for ongoing investigations) I am going to start by checking the list of documents generated by Records Management to determine what we have and whether any of it refers to the dates that NCIS has requested or the information they have requested (allegations of abuse). [redacted] now has my pager number and telephone number in VA and should be calling me directly. I will keep everyone updated on my progress.

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b7C

[redacted]
LX1 -
pager [redacted]

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-----Original Message-----

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Thursday, September 16, 2004 4:05 PM
To: [redacted] (OGC) (FBI)
Cc: [redacted]
Subject: NCIS
Importance: High

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~~UNCLASSIFIED~~
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I have a call from NCIS that I haven't returned. Before I do, where are we on getting him the docs he needs?

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FEDERAL BUREAU OF INVESTIGATION
FOIPA
DELETED PAGE INFORMATION SHEET

No Duplication Fees are charged for Deleted Page Information Sheet(s).

Total Deleted Page(s) ~ 22

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Page 142 ~ Duplicate Part8/Sect.2/Pg.2
Page 143 ~ Duplicate Part8/Sect.2/Pg.3
Page 144 ~ Duplicate Part8/Sect.2/Pg.4
Page 155 ~ Duplicate Part4/Sect.1/Pg.152
Page 156 ~ Duplicate Part4/Sect.1/Pg.153
Page 157 ~ Duplicate Part4/Sect.1/pg.154
Page 162 ~ Referral/Consult
Page 164 ~ Referral/Consult
Page 165 ~ Referral/Consult
Page 166 ~ Referral/Consult
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