

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-07-2009 BY 65179 DMH/mjs

Caproni, Valerie E. (OGC) (FBI)

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Tuesday, October 12, 2004 9:02 AM
To: [redacted] (OGC) (FBI)
Subject: RE: battlefield advice

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UNCLASSIFIED
NON-RECORD

Thanks.

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

From: [redacted] (OGC) (FBI)
Sent: Tuesday, October 12, 2004 9:00 AM
To: Caproni, Valerie E. (OGC) (FBI)
Subject: RE: battlefield advice

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UNCLASSIFIED
NON-RECORD

Valerie, As per [redacted] is now working on these matters. I will call [redacted] and offer assistance if needed. I was out on Friday.

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

From: Caproni, Valerie E. (OGC) (FBI)
Sent: Friday, October 08, 2004 11:17 AM
To: [redacted] (OGC) (FBI)
Cc: [redacted] (OGC) (FBI); THOMAS, JULIE F. (OGC) (FBI)
Subject: battlefield advice

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NON-RECORD

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[redacted]

[Large redacted area]

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See what you can come up with, pls.

FBI024121CBT

VC

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**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 LAW, REGULATION, RULE, POLICY, PROCEDURE, MANUAL, GUIDELINE, MEMORANDUM, ELECTRONIC COMMUNICATION, OR SIMILAR ITEM REGARDING FBI EMPLOYEES' RESPONSIBILITY TO REPORT VIOLATIONS OR POSSIBLE VIOLATIONS OF LAW OR POLICY, OR MISTREATMENT OR ABUSE OF DETAINEES, INCLUDING ANY COMMUNICATION OF SUCH RESPONSIBILITY TO FBI EMPLOYEES SERVING IN VENUES CONTROLLED BY THE U. S. MILITARY SINCE SEPTEMBER 12, 2001. PLEASE INCLUDE ALL DOCUMENTS RELATED TO THE ATTACHED ELECTRONIC COMMUNICATIONS DATED MAY 12, 2004, AND MAY 5, 2004, INCLUDING EARLIER DRAFTS, COMMENTS ON DRAFTS, OR RELATED DOCUMENTS.

FBI TRACKING # OIG-REQ 02-18-05 -PART 11
[PACKET #2- FBI BATE STAMP 0000007-0000030]
{PREVIOUSLY PRODUCED within OGC PACKETS}

"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

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FBI TRACKING # : OIG -REQ 02/18/05 -PART 11
PACKET: #2
{PREVIOUSLY PRODUCED under OGC PACKETS}
{JUNE 1, 2005}

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
05/12/04	OGC EC	HUMANE TREATMENT OF PRISONERS	4	007-010
05/12/04	OGC EC	TREATMENT OF PRISONERS AND DETAINEES	3	011-013
05/19/04	OGC EC	TREATMENT OF PRISONERS AND DETAINEES	3	014-016
05/26/04	CTD EC	TREATMENT OF PRISONERS AND DETAINEES	3	017-019
07/14/04	TESTIMONY	TESTIMONY OF VALERIE CAPRONI, GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION	6	020-025
08/25/04	NOTES	COPY OF HANDWRITTEN NOTES FROM GEBHARDT'S NOTEBOOK	1	026
12/15/04	OGC EC	TREATMENT OF PRISONERS AND DETAINEES	4	027-030
TOTAL PAGES			24	

(Rev. 01-31-2003)

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DATE 12-07-2009 BY 65179 DMH/mjs

FEDERAL BUREAU OF INVESTIGATION

FBI024138CBT

OIG-REQ 02/18/05-PART 11

FBI0000007

To: All Divisions From: General Counsel
Re: (U) 66F-HQ-A1258990, 05/12/2004

Precedence: PRIORITY

Date: 05/12/2004

To: All Divisions

Attn: ADIC

From: General Counsel

Contact:

b2
b6
b7C

Approved By: Pistole John S
Bald Gary M
Harrington T J
Caproni Valerie E

Drafted By:

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b7C

Case ID #: (U) 66F-HQ-A1258990

Title: (U) Humane Treatment of Prisoners

Synopsis: (U) To provide guidance to all FBI personnel regarding humane treatment of prisoners and reporting requirements for observed prisoner abuse or mistreatment of persons being interrogated or human rights violations. These guidelines supplement existing FBI policy that has consistently provided for humane treatment during FBI interrogations.

Details: (U) FBI personnel come into contact with prisoners in a variety of situations, domestically and internationally, for the purposes of investigation, or interrogation. Detained persons with whom the FBI comes into contact are entitled to varying levels of procedural rights dependent upon their situation or category of detention. However, each person detained is entitled, without question, to humane treatment.

Applicability: (U) All FBI personnel and personnel under FBI supervision are to follow FBI and DOJ rules, regulations, and guidelines for the treatment of prisoners, detainees or persons being interrogated or questioned. This shall apply both in domestic or overseas situations; it shall apply whether or not the person is in custody, and shall apply to all situations when the person being detained or questioned is in FBI custody or in the custody or control of other U.S. government entities,

FBI024139CBT

To: All Divisions From: General Counsel
Re: (U) 66F-HQ-A125()0, 05/12/2004

Department of Defense personnel, U.S. civilians or in the custody or control of foreign nationals.

FBI Policy: (U) "It is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises." FBI Legal Handbook for Special Agents, 7-2.1 (1997)

Humane Treatment: (U) Persons detained by the U.S. Government may be held under different classifications or status, for example, enemy prisoner of war (EPW) or illegal enemy combatant (EC). The type of status a person is accorded will determine the type and extent of due process rights accorded, such as right to counsel or advisement of rights. Regardless of status, all persons detained by FBI personnel, or interrogated or interviewed by FBI personnel will be treated humanely at all times. It is the policy of the FBI that all FBI detentions, interrogations or questioning of persons conducted domestically or overseas, regardless of the status of the person detained, shall comply with standards for humane treatment as set forth by the Geneva Convention III, August 12, 1949, and annexes.

Geneva Convention III (GIII). (U) GIII provides that all detained persons shall be treated humanely, and prohibits "outrage upon personal dignity, in particular, humiliating and degrading treatment." Article 3. The use of coercion or physical and mental torture to secure information of any kind is prohibited. Article 17. Additionally, persons who refuse to answer questions may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind. *Id.* Moreover, persons detained must also be provided with proper food, water, clothing, showers, sanitary conditions and medical attention during their detention. See *id.* at Articles 25-30.

Illegal Enemy Combatant: (U) Presidential Order, November 13, 2001 requires that ECs be treated humanely, afforded adequate food, drinking water, shelter, clothing, and medical treatment. The fact that ECs similar to the detainees held at Guantanamo Bay, Cuba may not enjoy certain procedural rights does not provide a basis for inhumane treatment. Persons detained as illegal enemy combatants shall be treated humanely at all times.

Joint Custody or Interrogation: (U) FBI personnel who participate in interrogations with non-FBI personnel or who participate in interrogations of persons detained jointly by FBI and non-FBI persons or entities shall at all times comply with FBI policy for the humane treatment of persons detained. FBI personnel shall not participate in any treatment or interrogation that is in violation of these guidelines regardless of the fact that the co-interrogator may be in compliance with their own guidelines.

Reporting of Violations: (U) Any known violation of these guidelines must be reported to FBI headquarters, Office of the General Counsel.

LEADS:

Set Lead 1

To: All Divisions From: General Counsel
Re: (U) 66F-HQ-A125() 0, 05/12/2004

COUNTERTERRORISM

AT WASHINGTON, DC

(U) To be distributed to all CTD personnel

Set Lead 2

OFFICE OF THE GENERAL COUNSEL

AT WASHINGTON, DC

(U) OGC shall provide training with regard to the within policies.

**OFFICE of INSPECTOR GENERAL'S
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FBI TRACKING # OIG-REQ 02-18-05 -PART 11

[PACKET #3- FBI BATE STAMP 0000031-0000095]

{NEW RESEARCH & GC V. CAPRONI MATERIAL}

"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 LAW, REGULATION, RULE, POLICY, PROCEDURE, MANUAL, GUIDELINE, MEMORANDUM, ELECTRONIC COMMUNICATION, OR SIMILAR ITEM REGARDING FBI EMPLOYEES' RESPONSIBILITY TO REPORT VIOLATIONS OR POSSIBLE VIOLATIONS OF LAW OR POLICY, OR MISTREATMENT OR ABUSE OF DETAINEES, INCLUDING ANY COMMUNICATION OF SUCH RESPONSIBILITY TO FBI EMPLOYEES SERVING IN VENUES CONTROLLED BY THE U. S. MILITARY SINCE SEPTEMBER 12, 2001. PLEASE INCLUDE ALL DOCUMENTS RELATED TO THE ATTACHED ELECTRONIC COMMUNICATIONS DATED MAY 12, 2004, AND MAY 5, 2004, INCLUDING EARLIER DRAFTS, COMMENTS ON DRAFTS, OR RELATED DOCUMENTS.

FBI TRACKING # : OIG -REQ 02/18/05 -PART 11

PACKET: #3

{NEW RESEARCH & GC V. CAPRONI MATERIAL}

{JUNE 1, 2005}

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
NO DATE	LETTER {DRAFT}	DIRECTOR MUELLER to SENATORS ?	4	031-034
NO DATE	RESPONSES	RESPONSE to A THROUGH G	3	035-037
NO DATE	GUIDELINES	PENALTY GUIDELINES	16	038-053
1/03/94	DIRECTOR AT	STANDARDS OF CONDUCT; DISCIPLINARY MATTERS	3	054-056
11/18/99	MANUAL SECTION {MAOP}	DISCIPLINARY MATTERS {SECTION 13-1 thru 13-9}	10	057-066
05/13/03	MANUAL SECTION {MIOG}	INVESTIGATIVE AUTHORITY AND RESPONSIBILITY {SECTION 1-1 thru 1-4}	26	067-092
JUNE 1994	HANDBOOK	LEGAL HANDBOOK FOR SPECIAL AGENTS-SECTION 7 "CONFESSIONS AND INTERROGATIONS}	3	093-095
TOTAL PAGES			65	

FEDERAL BUREAU OF INVESTIGATION
PENALTY GUIDELINES

The Penalty Guidelines are used in assessing the appropriate penalties for common types of misconduct. While the Guidelines do not specifically name every possible offense, they do provide the general categories of misconduct for which employees may be disciplined. The absence of a specific regulation covering an act does not mean that such an act is condoned, permissible, or would not result in disciplinary action. These Guidelines supercede all previously published tables, listings, and applicable policies regarding disciplinary offenses.

Purpose and Progressive Nature of Discipline: Disciplinary penalties are imposed to correct behavior and teach the employee and others that certain actions are inappropriate for an employee of the FBI. Discipline also serves to enforce the expected high standards of conduct for the Bureau. Although not specifically reflected in the Guidelines, discipline is usually progressive in nature and, therefore, subsequent misconduct is treated with increasing severity. However, while the concept of progressive discipline is appropriate for most types of infractions, some offenses (such as theft or lack of candor) are so egregious that a single instance is sufficient to warrant removal.

Factors Considered When Determining a Penalty: Many factors are considered in determining the penalty to impose, including the nature of the misconduct and its consequences, as well as the position and record of the employee. Of particular importance are the mitigating and/or aggravating factors in each case. Aggravating factors which apply to all offense categories include supervisory or high-grade status, prior disciplinary record, prior warning/advisement not to commit the misconduct, media attention or public awareness, repetitive misconduct in a single case, and failure to report. Mitigating factors common to all categories include self reporting, efforts to remedy the wrongdoing, acknowledgment of wrongdoing, limited employee experience, and a long period of unblemished service. At times, a consideration that is mitigating in one case may be aggravating in another. For example, limited employee experience may tend to ameliorate an employee's conduct in many instances, but may aggravate it in cases involving multiple instances of misconduct during a short tenure. In some cases, the aggravating and mitigating factors will warrant selecting a penalty at the upper or lower range, or even outside the range of penalties provided.

Other matters formally considered by OPR prior to disciplinary action being imposed in serious cases of misconduct (those involving a likely penalty of dismissal, demotion, or suspension of more than 14 days) are the "Douglas Factors." Not all of these factors are pertinent in every case. Selection of an appropriate penalty must thus involve a balancing of the *relevant* considerations. The "Douglas Factors" are:

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2. the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3. the employee's past disciplinary record;
4. the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
6. consistency of the penalty with those imposed upon other employees for the same or similar offenses;
7. consistency of the penalty with any applicable agency table of penalties;
8. the notoriety of the offense or its impact upon the reputation of the agency;
9. the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10. potential for the employee's rehabilitation;
11. 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; and
12. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Explanation of the Penalty Guidelines

Offenses: The Penalty Guidelines are (like the Offense Table) arranged into five separate categories of offenses, which are *Investigative Misconduct*, *Integrity/Ethical Misconduct*, *Property Related Misconduct*, *Illegal/Criminal Conduct*, and *General Misconduct*. Within each category, the offenses are listed in alphabetical order.

Investigative Misconduct: Misconduct associated with the investigative process, to include misconduct involving assets, informants, and Cooperating Witnesses. Also includes investigative deficiencies, including the improper handling of documents and property; and misconduct during judicial proceedings.

Ethical/Integrity Misconduct: Includes falsification and lack of candor/lying. Also includes the misuse of position; failure to cooperate in, and obstruction of, an OPR inquiry; and the violation of ethics regulations and guidelines.

Property Related Misconduct: Offenses pertaining to the loss of government property, including thefts of property due to employee negligence in safeguarding the property; the damage, destruction, or improper disposal of government property; the misuse of government property, such as computers and motor vehicles; and the misuse of government credit cards. Also encompasses unauthorized access to government property, to include databases.

Illegal/Criminal Conduct: Offenses typically or frequently charged by law enforcement as violations of the criminal code (local, State, or Federal), to include: assault, drug offenses, DWI, fraud/theft, indecent/lascivious acts, other felony and misdemeanor offenses, and the unauthorized disclosure of information. These types of offenses fall within this category even if not charged by local authorities. For example, a failed drug urinalysis would fall under this category, even though no criminal charges are filed. Similarly, domestic violence and assaults are included in this category, even though a party may not be arrested or charged.

General Misconduct: The General Misconduct offenses include a broad range of offenses, such as: alcohol-related misconduct (w/the exception of DWIs); failure to report; dereliction; sexual misconduct; discrimination; disruptive behavior; failure to honor just debts; improper relationships; misuse of weapons; insubordination; retaliation; security violations; unprofessional conduct; and the violation of miscellaneous rules and regulations.

Levels of Discipline: The different levels of discipline are designated as follows: Mitigated Range; Normal Penalty; and Aggravated Range. Within each category, disciplinary penalties for the specified offenses are provided. Penalties expressed in terms of "days" (e.g., 3 days) refer to calendar days of suspension without pay. Although demotion is not specifically designated as a penalty in the Guidelines, demotion may be assessed in appropriate cases involving serious misconduct.

In adjudicating a case, one would begin at the Normal Penalty and, depending upon an assessment of the facts and circumstances of the case and whether mitigating/aggravating factors are present, the level of discipline could go up or down. Some of the more common aggravating and mitigating factors for each offense (by no means an exhaustive listing) are often listed in the grids depicting the aggravated and mitigated ranges. On certain occasions, the facts and circumstances of a case may call for the application of a penalty that is outside of the ranges indicated, and it is possible for any offense to rise to the level of dismissal under appropriate circumstances. Penalties below the Mitigated Range or above the Aggravated Range must be personally approved, for reasons specified in writing, by the Assistant Director, OPR, or the Assistant Director, Inspection Division (for delegated cases), or the Assistant Director, Administrative Services Division (for cases on appeal). Moreover, the Director, FBI, retains the discretion to review and correct disciplinary determinations within his authority, either in favor of or to the disadvantage of an employee, when the Director considers it necessary to correct an injustice or to prevent harm to the FBI. This power of correction is not intended as an additional level of appeal and will not be routinely exercised.

Combination of Penalties: In cases where more than one offense is substantiated against an employee, the penalties for the respective offenses will normally be added together. However, in adjudicating cases, OPR will exercise care in assessing multiple penalties where the substantiated charges are essentially restatements of the same act of misconduct. For example, where an Agent loses both his weapon and his laptop in one incident, penalties will not be separately assessed for the loss of the weapon and the loss of the laptop. Similarly, where an employee makes an unauthorized disclosure of classified information, penalties will not be separately assessed for the unauthorized disclosure and a security violation. In such cases, the greater of the two penalties will normally be applied, unless the facts of the case otherwise advise.

Senior Executive Service (SES) Suspensions: By federal regulation, members of the SES may not receive a disciplinary suspension of less than 15 days. Accordingly, where the Guidelines indicate a suspension of less than 15 days for an offense, that sanction cannot be imposed on an SES employee. When an

assessment of a case with reference to the Guidelines concludes that a non-SES employee would have received a punishment of more than a three-day suspension, but less than a 15-day suspension, an SES employee will receive a minimum of a 15-day suspension. If a non-SES employee would have received a three-day suspension in a given case, an SES employee may receive either a letter of censure or a minimum of a 15-day suspension, as determined by weighing the facts and circumstances of the case against the heightened behavioral and managerial expectations associated with SES personnel.

Revised 9/16/04, 9:25 a.m.

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Penalty Guidelines

1. INVESTIGATIVE MISCONDUCT

Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
1.1	Asset/CW/Informant (Source) - Failure to Report Criminal Activity	LOC - 5 Days (no actual knowledge, but should have known or suspected criminal activity)	7 Days	10 Days - Dismissal (compromise of case; or, seriousness of criminal activity)
1.2	Asset/CW/Informant (Source) - Improper Financial Relationship	LOC - 5 Days (no personal gain; or, good faith attempt to help source)	7 Days	10 Days - Dismissal (financial benefit to employee)
1.3	Asset/CW/Informant (Source) - Improper Intervention on Behalf Of	LOC - 5 Days (no personal gain; or, good faith attempt to help source)	7 Days	10 Days - Dismissal
1.4	Asset/CW/Informant (Source) - Improper Personal Relationship	LOC - 5 Days	7 Days	10 Days - Dismissal (non-disclosure to AUSA)
1.5	Asset/CW/Informant (Source) - Violation of Operational Guidelines and Policies, Other	OR - 3 Days (no personal gain; or, good faith attempt to help source)	5 Days	7 - 30 Days (jeopardizing safety of others)
1.6	Investigative Deficiency - Improper Handling of Document(s) or Property in the Care, Custody, or Control of the Government	OR - 3 Days (others contributed to improper handling)	5 Days	7 - 30 Days (significant loss of document(s)/property)

OR - Oral Reprimand

LOC - Letter of Censure

Page 5 of 16

9/16/2004

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OIG-REQ 02/18/05-PART 11

1.7	Investigative Deficiency - Misconduct Related to Judicial Proceedings	LOC - 5 Days (act in good/reasonable faith)	7 Days	10 Days - Dismissal (judicial criticism)
1.8	Investigative Deficiency - Violations of Operational Guidelines and Policies, Other	OR - 3 Days	5 Days	7 - 30 Days (jeopardizing safety of others)

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OIG-REQ 02/18/05-PART 11

OR - Oral Reprimand

LOC - Letter of Censure

Page 6 of 16

9/16/2004

2. INTEGRITY/ETHICAL MISCONDUCT

Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
2.1	False/Misleading Information - Employment/Security Document(s)	LOC - 5 Days (minor issues)	7 Days	10 Days - Dismissal (drugs or otherwise material to hiring)
2.2	False/Misleading Information - Fiscal Matter(s)	LOC - 7 Days (minor issues; little benefit to employee)	10 Days	15 Days - Dismissal (voucher fraud merits dismissal; serious T&A abuse)
2.3	False/Misleading Information - Investigative Activity	LOC - 21 Days (unintentional; minor issues; no material effect on agency/mission)	30 Days	45 Days - Dismissal (intentional and significant issues or material impact on investigations/case)
2.4	False/Misleading Information - Other Official Matter(s)	LOC - 5 Days (unintentional or immaterial)	7 Days	10 Days - Dismissal (intentional and particularly material; released to another govt. agency or Congress)
2.5	Lack of Candor/Lying - No Oath	OR - 5 Days (relatively insignificant matters)	7 Days	10 Days - Dismissal
2.6	Lack of Candor/Lying - Under Oath	N/A	Dismissal	N/A
2.7	Misuse of Position - Abuse of Authority	OR - 3 Days (doing so to prevent harm of another; or, to ensure safety of public/others)	5 Days	7 - 30 Days (uncooperative; confrontational; display of weapon; safety hazard; threat/aggressive behavior; or, a security issues)

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OIG-REQ 02/18/05-PART 11

2.8	Misuse of Position - Exploiting FBI Employment	OR - 3 Days (doing so to prevent harm of another; or, to ensure safety of public/others)	5 Days	7 - 30 Days (financial gain; threatening or aggressive behavior; or, a security issue)
2.9	Misuse of Position - Impersonating an Agent	LOC - 5 Days (doing so to prevent harm of another; or, to ensure safety of public/others)	7 Days	10 Days - Dismissal (financial gain; threatening or aggressive behavior; security issue; violation of law; or, engaging in investigative activity)
2.10	OPR Matter - Failure to Cooperate	None	Dismissal* *(Failure to take SOB polygraph = 5 Days)	None
2.11	OPR Matter - Obstruction	3 - 7 Days (insignificant comments to persons not associated w/ OPR; or, no attempt to influence)	10 Days	15 Days - Dismissal (threatening or aggressive behavior)
2.12	Violations of Ethical Guidelines	OR - 3 Days (no personal gain; or, genuine attempt to assist another in good faith)	5 Days	7 - 30 Days (financial gain; duration; direct/obvious conflict; or, impact on agency/mission)

OR - Oral Reprimand

LOC - Letter of Censure

Page 2 of 16

9/16/2004

FBI0000045

FBI024178CBT

OIG-REQ 02/18/05-PART 11

3. PROPERTY-RELATED MISCONDUCT

Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
3.1	Damage, Destruction, or Improper Disposal of Government Property	<i>OR - 3 Days</i> (minimal/insignificant value of property)	<i>5 Days</i>	<i>7 - 14 Days</i> (significant value of property; or, converted to personal use)
3.2	Loss of Badge and/or Credentials	<i>None</i>	<i>LOC</i>	<i>3 - 10 Days</i> (repeated loss)
3.3	Loss of Government Property or Document(s) of a Sensitive/Valuable Nature	<i>OR - 3 Days</i> (minimal/insignificant value; minimal impact on agency/mission; or, prompt reporting)	<i>5 Days</i>	<i>7 - 14 Days</i> (significant value of property; or, compromise of investigation)
3.4	Loss of Weapon	<i>None</i>	<i>5 Days</i>	<i>7 - 14 Days</i> (repeated loss; or, other violation of law, rule or regulation)
3.5	Misuse of FBI Database(s)/Unauthorized Access	<i>OR - 3 Days</i> (non-sensitive information)	<i>5 Days</i>	<i>7 - 14 Days</i> (duration/frequency; or, type of information obtained/accessed)
3.6	Misuse of Government Computer(s)	<i>OR - 3 Days</i> (minimal use)	<i>5 Days</i>	<i>7 - 14 Days</i> (duration/frequency; or, type of information obtained/accessed)

OR - Oral Reprimand

LOC - Letter of Censure

Page 9 of 16

9/16/2004

FBI024179CBT

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OIG-REQ 02/18/05-PART 11

3.7	Misuse of Government Credit Card (Theft) - Gasoline or Automotive-Related Expenses	15 - 30 Days (expeditious self-reporting of unintentional/emergency use)	Dismissal	None
3.8	Misuse of Government Credit Card - Personal Use	LOC - 5 Days (expeditious self-reporting of unintentional/emergency use; or, minimal dollar amount charged)	7 Days	10 Days - Dismissal (duration; frequency; or, high dollar amount of charges)
3.9	Misuse of Government Vehicle or Aircraft, Non-Title 31	OR - 3 Days	5 Days	7 - 14 Days (frequency; duration; accident; injury/harm to persons/property; or, citation/arrest)
3.10	Misuse of Government Vehicle or Aircraft, Title 31	None	30 Days	45 Days - Dismissal (frequency; duration; accident; injury/harm to persons/property; or, citation/arrest)
3.11	Misuse of Government Property, Other	OR (emergency)	LOC	3 - 10 Days (frequency; duration; or, high value amount)

FBI024180CBT

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OR - Oral Reprimand

LOC - Letter of Censure

Page 10 of 16

9/16/2004

OIG-REQ 02/18/05-PART 11

4. ILLEGAL/CRIMINAL CONDUCT

Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
4.1	Assault/Battery	LOC - 5 Days	7 Days	10 Days - Dismissal (child abuse; extent of injuries; or, alcohol-related)
4.2	Drugs - Use or Possession	None	Dismissal	None
4.3	DUI/DWI - Government Vehicle	None	45 Days	Dismissal (serious injury; death; or, second occurrence)
4.4	DUI/DWI - Privately Owned Vehicle	None	30 Days	45 Days - Dismissal (accident; injury; or death; second occurrence = dismissal)
4.5	Fraud/Theft	15 - 30 Days	Dismissal	None
4.6	Indecent/Lascivious Acts	3 - 7 Days	10 Days	15 Days - Dismissal (child victim)
4.7	Other Felonies	3 - 7 Days (provocation by other(s))	14 Days	30 Days - Dismissal (arrest/indictment, conviction; injury/harm to persons/property; or, child as victim)
4.8	Other Misdemeanors	OR - 5 Days (provocation by other(s))	7 Days	10 Days - Dismissal (arrest/conviction; injury/harm to persons/property; or, child as victim)

OR - Oral Reprimand

LOC - Letter of Censure

4.9	Unauthorized Disclosure - Classified/Law Enforcement Sensitive/Grand Jury Information	LOC - 7 Days (unintentional/inadvertent; or, minimal impact on agency/mission)	10 Days	15 Days - Dismissal (compromise of case; jeopardizes safety of others; sensitivity of information; or, security issues)
4.10	Unauthorized Disclosure - Sensitive Information	LOC - 5 Days (unintentional/inadvertent; or, minimal impact on agency/mission)	7 Days	10 Days - Dismissal (compromise of case; jeopardizes safety of others; sensitivity of information; or, security issues)

5. GENERAL MISCONDUCT

Code	Offense	Mitigated Range	Normal Penalty	Aggravated Range
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OR - Oral Reprimand

LOC - Letter of Censure

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OIG-REQ 02/18/05-PART 11

5.1	Alcohol/Substance Abuse - Under the Influence While On Duty	OR - 3 Days (consumption of alcohol on duty regardless of effect)	5 Days (being under the influence of alcohol/drugs on duty)	7 - 14 Days (training exercise; weapons involved; supervisory position; government involved; brought alcohol to workplace; or, extent of intoxication; or, injury/harm to persons/property)
5.2	Dereliction of Supervisory Responsibility	OR - 3 Days	5 Days	7 - 14 Days (jeopardizes safety of others; injury/harm to persons/property; or, impact on agency/mission)
5.3	Discrimination	3 - 5 Days	7 Days	10 Days - Dismissal (supervisory position; pervasiveness; duration; frequency; severity; multiple victim; violation of statute; or, previously warned)
5.4	Disruptive Behavior	OR	LOC	3 - 10 Days (racial/ethnic slurs; sexual comments; threats; police involvement; or, arrest)
5.5	Failure to Honor Just Debts/Regulatory Obligations	OR - 3 Days (steps to resolve matter)	5 Days	7 - 30 Days (amount of debt; violation of court order; pattern; duration; or, frequency)
5.6	Failure to Perform Prescribed Duties	OR (minimal mission/agency impact)	LOC	3 - 10 Days (extent of dereliction; jeopardize safety of others; duration; frequency; or, consequences of dereliction)

OR - Oral Reprimand LOC - Letter of Censure

5.7	Failure to Report - Administrative	OR (insignificant matters)	LOC	3 - 10 Days (significant security issues; or, impact on agency/mission)
5.8	Failure to Report - Criminal/Serious	LOC - 3 Days	5 Days	7 - 14 Days (seriousness of incident; significant security issues; or, impact on agency/mission)
5.9	Improper Relationship - Criminal Element	LOC - 5 Days	7 Days	10 Days - Dismissal (impact on agency/mission; or, compromise of case)
5.10	Improper Relationship - Superior/Subordinate	LOC - 5 Days	7 Days	10 Days - Dismissal (actual favoritism vice perceived; or, student/instructor relationship)
5.11	Insubordination	LOC - 5 Days (reasonable belief order was unlawful or in violation of rule, regulation or policy)	7 Days	10 Days - Dismissal (jeopardize safety to others; injury/harm to persons/property; impact on agency/mission; or, compromise of investigation)
5.12	Military Reserve Matters	OR	LOC	3 - 10 Days (recalled to active duty; or, impact on agency/mission)
5.13	Misuse of Weapon - Safety Violation	LOC - 5 Days	7 Days	10 Days - Dismissal (intentionality; level of safety risk; use to intimidate or threaten; or, altered weapon rendering more unsafe)

OR - Oral Reprimand

LOC - Letter of Censure

Page 14 of 16

9/16/2004

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OIG-REQ 02/18/05-PART 11

5.14	Misuse of Weapon - Accidental Discharge	None	3 Days	5 - 14 Days (injury/harm to persons/property; or, violation of weapons law, regulation or policy)
5.15	Misuse of Weapon - Intentional Discharge	5 - 14 Days	30 Days	45 Days - Dismissal (injury/harm to persons/property; violation of weapons law, regulation or policy)
5.16	Retaliation	3 - 5 Days	7 Days	10 Days - Dismissal (retaliation against whistleblowing or other protected activity)
5.17	Security Violation- Failure to Secure Space, Equipment/Materials	OR - 3 Days (minimal impact on agency/mission; insignificant/immaterial matter; or, expeditious self-reporting)	5 Days	7 - 14 Days (compromise of case; impact on agency/mission; duration/frequency; severity; injury/harm to persons/property; or, jeopardizes the safety of others)
5.18	Security Violation - Other	OR - 3 Days (minimal impact on agency/mission; insignificant/immaterial matter; or, expeditious self-reporting)	5 Days	7 - 14 Days (compromise of case; impact on agency/mission; duration/frequency; severity; or, injury/harm to persons/others)
5.19	Sexual Misconduct - Consensual	LOC - 5 Days	7 Days	10 Days - Dismissal (pervasiveness; or, impact on agency/mission)
5.20	Sexual Misconduct - Non-consensual	LOC - 5 Days	7 Days	10 Days - Dismissal (pervasiveness; impact on agency/mission; or, impact on victim)

OR - Oral Reprimand

LOC - Letter of Censure

9/16/2004

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OIG-REQ 02/18/05-PART 11

5.21	Unprofessional Conduct - Off Duty	OR - 3 Days (see Common Mitigators in Preamble)	5 Days	7 Days - Dismissal (see Common Aggravators in Preamble)
5.22	Unprofessional Conduct - On Duty	LOC - 5 Days (see Common Mitigators in Preamble)	7 Days	10 Days - Dismissal (see Common Aggravators in Preamble)
5.23	Violation of Miscellaneous Rules/Regulations	OR - 3 Days (see Common Mitigators in Preamble)	5 Days	7 - 30 Days (see Common Aggravators in Preamble)

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OIG-REQ 02/18/05-PART 11

TRANSMIT VIA: AIRTEL

CLASSIFICATION: _____

DATE: 1/3/94

A

FROM: Director, FBI

PERSONAL ATTENTION

TO: All SACs
All LEGATS
RCA, Northeast Regional Computer Support Center (NERCSC)
Western Regional Computer Support Center (WRCSC)
El Paso Intelligence Center (EPIC)
Butte Information Technology Center (BITC)
Savannah Information Technology Center (SITC)
Clarksburg Satellite Facility

STANDARDS OF CONDUCT
DISCIPLINARY MATTERS

Since becoming Director in September, I have examined the various administrative and operational processes of the Bureau, always with an eye towards improvement. From the beginning I have focused my attention on our disciplinary process. I have determined that while the quality of the adjudication has been of a high order, lack of timeliness has sapped the process of credibility and, to an extent, fairness. I have recently approved the delegation of significant additional authorities to SACs and Assistant Directors which should substantially solve this problem.

T-4

Airtel to All SACs, et. al., from Director, FBI
Re: Standards of Conduct
Disciplinary Matters

Secondly, I have determined that we have been too tolerant of certain types of behavior which are fundamentally inconsistent with continued FBI employment. I am, therefore, in this communication, drawing a "bright line" which should serve to put all employees on notice of my expectations. In doing so, I would like to share with you some of my vision of the FBI.

I believe that:

- The FBI is the finest investigative agency in the world and that, as such, we must continually strive to be a positive force in societal evolution;
- How we are perceived by the citizenry and how we view ourselves collectively are crucial to our continued success;
- In order to assure our being held in high esteem, we must acknowledge, uphold, indeed revere, core values, such as integrity, reliability, and trustworthiness; and
- An employee who is unable to identify with these values and whose consequent conduct is fundamentally at odds with them should forfeit his or her right to FBI employment.

In short, I believe in the simple truth that lying, cheating, or stealing is wholly inconsistent with everything the FBI stands for and cannot be tolerated. While I believe the promulgation of an elaborate table of offenses and penalties is generally not a good idea, I do wish to give some specificity to this message. With that in mind, I am setting forth the following examples of behavior, not meant to be all-inclusive, for which employees can expect to be dismissed:

Lying under oath, e.g., during an administrative inquiry;

Failure to cooperate during an administrative inquiry when required to do so by law or internal regulation;

Voucher fraud;

Airtel to All SACs, et. al., from Director, FBI
Re: Standards of Conduct
Disciplinary Matters

Theft or other unauthorized taking, using or diversion of Government funds or property;

Material falsification of investigative activity and/or reporting;

Falsification of documentation relating to the disbursement/expenditure of Government funds (case funds, imprest funds, etc.); and

Unauthorized disclosure of classified, sensitive, Grand Jury or Title III information.

I am also directing that increased levels of discipline be imposed for lesser, but comparable, incidents of misconduct. By way of illustration, bearing false witness to an informant payment has typically been addressed by a letter of censure. Henceforth, such misconduct will result in an appropriate period of suspension, and multiple infractions surfaced during an inquiry will result in either an extended period of suspension or dismissal. These new standards will govern the adjudication of all conduct which occurs after January 15, 1994. In the interests of fairness, the new standards will not be applied retroactively. Because the new standards will punish violations of our internal rules and regulations more severely, I urge everyone to suggest any appropriate revisions to applicable regulations which threaten to needlessly ensnare our employees.

While at first impression the standards I am setting may appear stringent, it is my belief that they are both necessary and appropriate. SACs and Division Heads must ensure all employees are clearly advised of my expectations. I am directing that a copy of this communication be made available to every employee and that the contents be the topic of discussion at conferences and meetings. Every employee must be placed on actual notice that trespassing the bright line articulated in this airtel will result in dismissal.

I am convinced that the imposition of these more stringent standards of self-discipline will result in enhancing the reputation, integrity, and independence of this extraordinary organization. I call upon all FBI employees to assist me in this important endeavor.

MAOP PART 1 SECTION 13. DISCIPLINARY MATTERS

SENSITIVE

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-07-2009 BY 65179 DMH/mjs

**EffDte: 02/28/1978 MCRT#: 0 Div: OP Cav: SecCls:

13-1 INTRODUCTION (See MAOP, Part 1, 1-4 (5), 1-15.2, 1-23, 5-4.6 (2), 10-6, 12-1.5 (1)(e), 12-2.5.2, 15-3.2(4), 21-2 (4); MIOG; Part 1, 62-1.1 (6), 62-1.3.1 (2).)

(1) As the government's primary investigative service with a wide range of jurisdictional responsibilities for which we are accountable to the public, it is imperative that a policy of tight discipline be applied in the FBI. It is the responsibility of Bureau supervisory personnel to make clear to employees under their supervision that the Bureau's disciplinary program is firm but fair.

(2) It is imperative that any information pertaining to allegations of misconduct or improper performance of duty coming to the attention of any Bureau employee be promptly and fully reported to FBIHQ, and it is the continuing responsibility of Bureau officials to see to it that the employees under their supervision are properly indoctrinated regarding this requirement so that they not only will fully understand it but will comply with it.

(3) The appropriate Assistant Director, SAC or Legal Attache is authorized to temporarily assign personnel to other duties during an administrative inquiry if the circumstances surrounding the allegation indicate that such action is warranted. Such a reassignment should not be made automatically. Rather, each case must be judged on the individual factors involved, including the credibility of the allegation and the sensitivity of the employee's current assignment. Temporary reassignments may be justified in order to enhance the security and/or protect the integrity of FBI investigations and files; to preserve order; for the safety of persons and property; or for other appropriate reasons. Any such action must be coordinated with the Office of Professional Responsibility; [Administrative Services Division;] and the appropriate substantive FBIHQ division and be fully supported by the facts. If an employee is temporarily reassigned during an administrative inquiry, Assistant Directors, SACs and Legal Attaches must continually monitor developments in the administrative inquiry in order to assess the employee's position. If, for example, facts are later developed which alter the basis for the employee's original reassignment, then he/she may be returned to previous duties, even prior to a final adjudication of the matter. Allegations regarding unauthorized access or attempted unauthorized access to national security information should continue to be promptly reported to the Security Programs Manager, FBIHQ (see MIOG, Part 2, 26-4).

(4) See Part 1, Section 1, of this manual regarding [Activities and Standards of Conduct of employees.]

(5) No statements in this section are to be construed so as to indicate that nonpreference eligible FBI employees in the excepted service have a property interest in their employment such as in the form of an expectation of continued employment with the FBI. (See MAOP, Part 1, 14-4.2(4) & 21-1.)

**EffDte: 11/18/1999 MCRT#: 935 Div: OP Cav: SecCls:

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13-2 NOTIFICATION OF FBIHQ UPON RECEIPT OF ALLEGATIONS OF MISCONDUCT OR IMPROPER PERFORMANCE OF DUTY (See MAOP, Part 1, 13-13 (1) & (3) & 14-4.2; MIOG, Part 1, 263-2 (1).)

(1) All allegations of employee misconduct must be reported to the Adjudication Unit, Office of Professional Responsibility (OPR). Allegations of criminality or serious misconduct must be reported simultaneously to the OPR. OPR supervises and/or investigates all allegations of criminality or serious misconduct on the part of FBI employees. Judicial criticism of an Agent's conduct in findings of fact, opinions, or court orders, whether oral or written, is to be considered an allegation of serious misconduct and reported to OPR as set forth below. (See MAOP, Part 1, 1-2.1 (6).)

(2) When an allegation is received concerning criminality or serious misconduct, the appropriate Assistant Director, SAC or Legal Attache will advise OPR of the allegation by telephone or teletype. OPR will, in turn, advise Adjudication Unit, OPR. A confirming electronic communication (EC), with a copy designated for the Adjudication Unit, OPR, should be directed, in a sealed envelope, to FBIHQ, Attention: OPR. OPR will then determine and advise who will conduct the investigation. In most instances, the Assistant Directors, SACs, or Legal Attaches will personally supervise and promptly investigate the vast majority of these matters. OPR normally investigates only those allegations involving FBIHQ officials, SACs, ASACs, and Legal Attaches and sometimes Headquarters and field supervisors or when circumstances dictate.

(3) If an allegation of misconduct within the responsibility of OPR arises out of a substantive case (pending or closed), the responsible FBIHQ Division will, more than likely, continue to supervise that investigation including the new allegation. However, FBIHQ divisions will immediately inform OPR of the alleged improprieties and forward that portion of the investigation to OPR for further processing. These allegations should be carried under the "Office of Professional Responsibility (OPR) Matter" caption and handled as a separate "263" classification investigation so that the substantive investigation and/or prosecution is not hindered.

(4) Other infractions, such as those involving minor personal misconduct are well defined and will continue to be handled by OPR except for the following offenses which have been delegated to SACs and Assistant Directors for handling: Absent Without Leave (AWOL); Violations of Availability Regulations; Sleeping on Duty; Loss of Government Property; Miscellaneous Traffic Violations; Disruption of Office; Abusive/Offensive Language/Behavior in Workplace; and Verbal Altercations. SACs and Assistant Directors are authorized to orally reprimand or censure employees under their supervision below the GS-14 level for the above-listed offenses. Recommendations for more severe disciplinary action must be submitted to the OPR for resolution. (See SAC Memorandum 11-90 dated April 20, 1990, for additional information regarding the handling of above-mentioned offenses.) Any question as to whether a matter is or is not within the responsibility of OPR must be referred to OPR for a determination in this regard. (See MAOP, Part 1, 13-13(1) & (3).)

**EffDte: 02/14/2000 MCRT#: 952 Div: OP Cav: SecClis:

[13-3 INVESTIGATION](See MIOG, Part 1, 263-3.)

(1) When investigation necessary to develop complete essential facts regarding any allegation against Bureau employees must be instituted promptly, and every logical lead which will establish the true facts should be completely run out unless such action might prejudice pending investigations or prosecutions in which event FBIHQ will weigh the facts, along with the recommendation of the division head.

(2) The record of the inquiry shall include the initial allegation; the investigative results; aggravating or mitigating circumstances; statement of specific charge(s) and the employee's answer(s) including defenses to the specific charge(s), if any.

(3) Requests to conduct audits of the computer systems activities of employees who are suspected of misconduct or improper performance of duty will be handled only with prior notification to FBIHQ. The term audit refers both to review and/or evaluation of prior transactions or activities of a user and procedures designed to monitor the ongoing activities of a user. The proper form for such a request is a formal written communication to FBIHQ with a request directed to the Information Resources Division's (IRD) Investigative Automation Support Section (IASS), to conduct the audit. In exigent circumstances, which dictate the need for immediate institution of an audit, requests may be made telephonically to ASU and/or OPR and subsequently confirmed in writing. In instances where telephonic requests are authorized, the level of authority is at the ASAC level or above in the field offices and at the Section Chief level or above at FBIHQ, with the exception of requests emanating from ASU or OPR. Telephonic requests for user activities audits made by ASU or OPR will be authorized at the Supervisory Special Agent level. (See MIOG, Part 1, 263-3 (4).)

(4) Approval to conduct the audits will be made at the Section Chief level in IASS, based on the technical feasibility and resource constraints. If the audit cannot be conducted or if additional information is needed to formulate the audit, IASS will contact the requestor. The results of each audit conducted will be reported on an FD-302 and disseminated to ASU or OPR and the requestor, should it be different from ASU or OPR. The original FD-302 will be forwarded to the office of origin. In those instances where exigent circumstances dictate that the results of the audit be telephonically disseminated, the results will be disseminated by IRD to ASU or OPR and to the requestor, should it be different from ASU or OPR, and the telephonic response subsequently confirmed in writing to ASU or OPR and the requestor. (See MIOG, Part 1, 263-3 (5).)

**EffDte: 06/01/1994 MCRT#: 248 Div: OPD4 Cav: SecCls:

13-4 INTERVIEWS OF EMPLOYEES INVOLVED

(1) Interviews of employees involved in allegations of criminality or serious misconduct should be conducted at the earliest logical time and in a forthright manner. There should be no evasiveness on the part of the Bureau official conducting the interview.

(2) The employee should be fully and specifically advised

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of the allegations which have been made against him/her in order that he/she may have an opportunity to fully answer and respond to them. The employee must be entirely frank and cooperative in answering inquiries of an administrative nature. If allegations are possibly criminal in nature, the employee has the right to seek counsel in the same vein as any other individual (see 13-6).

(3) Such interviews must be complete and thorough with all pertinent information obtained and recorded so that all phases of the allegations may be resolved. The interviews must not be unduly protracted and should be held to a reasonable length by proper preparation and recognition of the purpose of the interviews.

(4) The inquiry shall not be complete until the specific allegations that may justify disciplinary action are made known to the employee who may be disciplined and the employee is afforded reasonable time to answer the specific allegations. The employee's answers, explanations, defenses, etc., should be recorded in the form of a signed, sworn statement which should specifically include the allegations made against the employee in an introductory paragraph. The statement is to be prepared following an in-depth interview of the employee by the division head or designated supervisory representative. The employee is not merely to be asked to give a written response to the allegations, but is to be interviewed in an interrogatory fashion, and a signed, sworn statement prepared from the results by the interviewing official. Since the statement represents that which the employee is willing to sign and swear to, he/she retains the right to make corrections or changes before doing so. If those changes or corrections differ materially from what the employee stated during interview, that fact and the nature of the statements should be separately recorded. Should there be any question on the part of the interviewing official as to whether a particular allegation (set of facts) might justify disciplinary action, he/she should contact OPR, Inspection Division, in order to resolve this prior to the interview so the employee will be ensured of an opportunity to appropriately respond.

(5) When interviewing employees during administrative inquiries to solicit information about themselves or about their own activities, the employee should be provided the Privacy Act notice described in MIOG, Part I, 190-5(2), explaining the purpose of the inquiry and how the information will be used.

(6) When interviewing employees, or others, to solicit information about the subject of an administrative inquiry, the person interviewed as a source should be provided, if appropriate, the opportunity to request an express promise of confidentiality, as described in MIOG Part 1, 190-7, and SAC Memorandum 51-77(C), dated 11/15/77, in order to protect the source's identity should the subject of the inquiry submit a Privacy Act request for access to records of the inquiry. The source should be cautioned that if a formal adverse personnel action is taken against the subject of the inquiry pursuant to Chapter 75 of the Civil Service Reform Act, the information furnished, along with the source's identity must, by law, be provided to the subject, if any information provided in that statement is used in whole or in part to support that personnel action. In addition, pursuant to certain administrative inquiries and possible judicial proceedings, it may be necessary to furnish the source's identity if any information provided in the source's statement is used in whole or in part to support a personnel action. The principles discussed in 13-6, infra, are also applicable to an interview of an employee regarding the actions of others, to the extent such answers might reveal criminal misconduct on the part of

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the employee being interviewed.

**EffDte: 04/27/1990 MCRT#: 0 Div: OP Cav: SecCls:

||13-4.1 Polygraph Examinations of Bureau Employees|(See MIOG, Part 1, 263-6; Part 2, 13-22.14.)|

(1) All polygraph examinations of FBI employees and those who have made allegations against FBI employees must be approved by the Assistant Director, Inspection Division, or another person designated by the Director. In the case of polygraph examinations requested pursuant to a security clearance adjudication, the Director has delegated approval authority to the Assistant Director, National Security Division.

(2) Polygraph examinations of employees will be administered away from their own office of assignment. This procedure will help protect the confidentiality of the investigation/inquiry and lessen the outside pressure on the employee which could be associated with an examination conducted with knowledge of an employee's friends and associates.

(3) Polygraph examinations of Bureau employees are to be administered by an FBIHQ examiner. In the event an FBIHQ examiner is not available, the examination will be conducted by an examiner designated by FBIHQ.

See MIOG, Part 2, 13-22.13.1, 13-22.13.2, 13-22.13.3, and 13-22.14 for additional instructions and information regarding polygraph examinations of employees who are subject of a criminal investigation or administrative inquiry.

**EffDte: 07/19/1995 MCRT#: 428 Div: OPD0SY Cav: SecCls:

13-5 SIGNED SWORN STATEMENTS

Whenever there are circumstances in connection with investigations or inquiries indicating misconduct of personnel; harassment or intimidation of subjects, other individuals or groups, or derelictions of any kind by the Bureau, all Agents engaged in such investigations or inquiries must:

(1) Immediately prepare signed sworn statements of fact so that a clear record will be available should a question arise at a later date. These statements should:

- (a) Cover facts bearing directly upon charges made.
- (b) Be specific as to each allegation, if allegations are specific.
- (c) Be general in nature, if allegations are general in nature.

In matters relating to a pending investigation, no interviews should be conducted until it is determined by the USA's office, the Department of Justice and/or FBI Headquarters, that such action will not hinder the investigation and/or prosecution. The SAC or any Special Agent designated by SAC may administer the oath in these statements since, under existing regulations, Agents are authorized to administer

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oaths in cases involving irregularities or misconduct in office of a Government employee. This statement is comparable to an affidavit, but does not necessitate notarization.

(2) Forward the original and one copy of these statements to FBIHQ under the appropriate case caption and retain a copy in the field office or Headquarters file. If the allegations relate to a matter currently being investigated, prosecuted or on appeal, the USA's office (or in aggravated instances, Office of Professional Responsibility-Department of Justice) should be made aware and an opinion sought as to whether or not immediate preparation of the employee's statement would have a detrimental effect on the substantive investigation. Thereafter, if appropriate, a signed copy of any statement obtained can also be furnished to the appropriate USA so that the court records will clearly show the true facts and any false allegations made will not stand undisputed in the court record.

(3) If the matter, whether criminal or administrative in nature, is considered sufficiently serious, an attempt should be made to obtain the complainant's allegation in the form of an affidavit or sworn signed statement also.

**EffDte: 04/27/1990 MCRT#: 0 Div: OP Cav: SecClis:

||13-6 ADMINISTRATIVE OR CRIMINAL PROCEEDINGS - USE OF INTERVIEW FORMS|
(See MAOP, Part 1, 13-4; MIOG, Part 1, 263-5.)

(1) Prior to the interview of an employee against whom allegations of criminal misconduct have been leveled a decision should be made as to whether the goal of the interview is to obtain a statement admissible in subsequent criminal proceedings or whether the goal is to compel the employee to make a full statement of the facts in order to ascertain what administrative action, if any, is appropriate. This decision is to be made by OPR, FBIHQ.

(2) To ensure that employees being interviewed are fully and consistently made aware of their rights and obligations, two forms have been adopted for use in such interviews. The Office of Professional Responsibility, DOJ, has fully endorsed the use of these forms. These forms are only to be utilized during OFFICIAL administrative inquiries and only when authorized by FBIHQ (primarily those supervised by OPR).

(3) Neither of these two forms (FD-644 nor FD-645) which are described below are to be routinely used during the investigation of a shooting incident. They will be used only in those shooting inquiries when instructed to do so by FBIHQ as set forth in MIOG, Part [2, Section]12-11.7.]

The decision as to which form will be used in a particular inquiry will be made by OPR, FBIHQ, on a case-by-case basis, in accordance with the principles set forth below.

**EffDte: 10/17/1995 MCRT#: 457 Div: OP Cav: SecClis:

13-6.1 Criminal Proceeding Contemplated or Possible

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OIG REG 02/19/05 PAGE 11

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(1) Form A (FD-644) captioned "Warning and Assurance to Employee Requested to Provide Information on a Voluntary Basis," is to be utilized in situations where an employee is provided an opportunity to voluntarily respond to questions concerning allegations of job-related misconduct which have the potential for criminal prosecution, but wherein the employee is not being compelled to answer questions or provide a statement. Use of this form should assure that any statements obtained will be freely and voluntarily given and, hence, admissible in any future criminal proceeding.

(2) Full Miranda warnings will be given to employees only in situations where the employee to be interviewed is in custody or is significantly deprived of his/her freedom of action, an arrest is clearly intended at the conclusion of the interview, or whether in custody or not, the employee being interviewed has previously been arrested or formally charged and prosecution is pending on a Federal offense and the questioning concerns that offense or a related Federal offense.

(3) Whenever Form FD-644 is utilized, an interview log should be prepared in accordance with the Legal Handbook for Special Agents, Section 7-9.

**EffDte: 12/22/1986 MCRT#: 0 Div: OP Cav: SecCIs:

13-6.2 Inquiry Solely for Administrative Purposes

(1) In a situation where the allegation, if true, has the potential for criminal prosecution, but a decision has been made not to seek an admissible statement, (but rather, to compel the employee to fully and candidly answer all questions concerning the alleged incident), Form B (FD-645), captioned "Warning and Assurance to Employee Required to Provide Information," should be used.

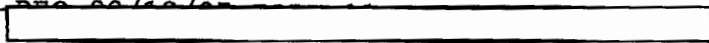
However, prior to the use of this form in any instance where the allegation, if true, would have potential for Federal criminal prosecution of the employee to be interviewed, OPR-Inspection Division must present the facts of the case to OPR-DOJ and obtain an initial opinion that the matter in question should be handled administratively rather than criminally. This is necessary because any incriminating statement obtained after use of Form FD-645 will not be admissible in a criminal prosecution of the employee.

(2) In a situation where the allegation, if true, has potential for non-Federal prosecution, and a decision has been made by FBIHQ to compel full answers from the employee regarding the matter under investigation, Form FD-645 should be used.

(3) In all other instances where an employee is being interviewed in connection with an official administrative inquiry, Form FD-645 should be used.

(4) There is no Sixth Amendment right to counsel in purely administrative interviews. Therefore, even if the employee specifically requests to have an attorney present during the course of the interview, the Bureau is not legally obliged to agree to this condition. Any administrative decision to allow the presence of counsel during an administrative interview is to be made by OPR, FBIHQ.

(5) An interview log is not required when Form FD-645 is utilized.



Those conducting such administrative interviews of employees should be alert, however, to circumstances where good judgment might warrant preparation of an interview log; for example, in those interviews of a particularly sensitive nature or in those concerning serious misconduct involving veterans which may ultimately be heard before a Merit Systems Protection Board.

**EffDte: 02/24/1988 MCRT#: 0 Div: OP Cav: SecClis:

13-7 REPORTING

(1) In most instances, after FBIHQ has been initially notified of the allegation, it will be satisfactory for the responsible official to report the facts pertaining to the misconduct or improper performance of duty, by letter setting forth a concise statement of the situation together with supporting documentation and statements. In all cases, whether or not it is felt administrative action is necessary, a statement that administrative action is, or is not, recommended must be made. There can be no deviation from this procedure.

(2) To prevent unauthorized disclosure of these allegations and the subsequent inquiry, a separate field office file should be opened and indexed under a "263" classification for each investigation and be maintained in the SAC's safe. This file number will be included on all communications between field divisions and FBIHQ; communication being directed to the personal attention of the SAC and/or enclosed in a sealed envelope to FBIHQ, Attention: OPR-Inspection Division.

(3) Copies of the allegations and subsequent investigation should not be placed in the accused's field office or FBIHQ personnel file. Only if some form of administrative action is taken will there be any need to address the allegation in one's personnel file. This is satisfactorily handled by a designated copy of the approved justification memorandum and/or addendum(s) being placed in the personnel file at FBIHQ as well as copies of the outgoing communication to the employee being placed in both the field office and FBIHQ personnel files.

**EffDte: 02/24/1988 MCRT#: 0 Div: OP Cav: SecClis:

13-7.1 Format

Certain factual situations may require the letters in which they are reported to exceed one page in length. In these instances, such letters should conform to the following format:

(1) Title—This should, when possible, relate only to the substance of the allegation regardless whether or not it originated out of a substantive investigation or is work related. The title should include the employee(s) name; general allegation (i.e., alleged professional misconduct, etc.); complainant, if appropriate; division and classification, i.e., OPR Matter.

(2) Synopsis—Here should be stated briefly, but clearly the pertinent facts relating to the situation. While brief, the synopsis should contain sufficient facts to give any reviewing official a clear picture of each allegation and whether they are true or false.

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(3) Action taken—Here should be clearly enumerated the action taken by the Bureau official pertaining to the employee in connection with the misconduct or improper performance of duty. For example, a statement as to the time and date an employee was suspended from active duty, or an explanation as to any investigation or information sought from other field offices in running out the allegation, or the like, should be set forth under this heading.

(4) Work record and any aggravating or mitigating factors — Under this heading should be reported pertinent comments regarding the general work performance record of the employee. In addition, any other factors of an aggravating nature or which might have a mitigating or balancing effect upon the dereliction should be set forth. For example, if an employee put a great deal of hard work and effort into a matter and was also responsible for certain shortcomings, the administrative action finally decided upon would be dependent upon a balancing and weighing of the good and bad aspects. However, any mitigating facts should not be restricted to the particular case or incident from which the dereliction arises. An employee may have performed creditably in other cases recently, on other occasions or displayed a commendable attitude which factors should be brought to FBIHQ's attention.

(5) Comments and conclusions—Under this heading should be set forth the observations of the Bureau official and the conclusions upon which the recommendations for administrative action are based.

(6) Recommendations—Under this heading should be set forth the recommendations as to what, if any, administrative action is necessary.

(7) Enclosures—Attach statements of the complainant, witnesses and employee(s), as well as any documentation relevant to the inquiry.

**EffDte: 02/24/1988 MCRT#: 0 Div: OP Cav: SecCl:

[13-7.2 Investigative Reports [(See MIOG, Part 1, 263-7.1.)]

(1) Matters involving criminality or serious misconduct [supervised/investigated by]OPR[should, for the most part, be submitted to FBIHQ by Investigative Report which should be thorough, precise and to the point. There may be instances where the extent of the inquiry is so minimal that an Investigative Report would not seem necessary. Any question concerning whether or not to submit an Investigative Report should be resolved by consulting with]OPR.[

(2) Synopses of OPR Matter Investigative Reports should be extremely complete to include all allegations, the results of investigation and the subject employee's responses to these allegations. Consideration should be given to including a table of contents in these Investigative Reports.

(3) Three copies of the Investigative Report (four copies if the matter involves a substantive case) should be submitted by [cover]electronic communication (EC),[in a sealed envelope, to FBIHQ, [Attention:]OPR.[The cover]EC[should contain the SAC's observations, comments, mitigating or aggravating circumstances, as well as SAC's recommendations for administrative action.

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(4) FBIHQ is to be the office of origin in OPR Matter investigations.

**EffDte: 02/14/2000 MCRT#: 952 Div: OP Cav: SecClis:

13-8 ALLEGATIONS MADE BY INDIVIDUALS OUTSIDE THE BUREAU

(1) In instances in which allegations are made by persons outside the Bureau against Bureau personnel or the Bureau itself and such charges are disproven, prompt action should be taken to refute such claims both with the source of the erroneous complaints and others having knowledge of the allegations, including news media carrying stories on the matter. Where possible, every effort should be made to have the refutation appear in the same article with the charges. Whenever the advisability of taking this action appears questionable, FBIHQ should be advised and a recommendation made on this point setting out clearly the reasons on which the conclusion is based.

(2) If allegations are made against Bureau personnel by subjects of Bureau cases during a court trial, it is the responsibility of the SAC with the concurrence of the USA and/or DOJ, to see that proper refutation is made and that such refutation appears in court records in accordance with the Manual of Investigative Operations and Guidelines, Part 2, Section 6. The purpose of this is to insure that in case of an appeal the Bureau's refutation is in the court's record. FBIHQ is to be advised promptly of all pertinent facts and circumstances relating to such allegations and refutations.

**EffDte: 02/28/1991 MCRT#: 0 Div: OP Cav: SecClis:

[13-9 SUSPENSION WITHOUT PAY](See MAOP, Part 1, 13-12 (2).)

(1) No Bureau employees are to be suspended without pay without prior FBIHQ approval. Where the seriousness of the situation warrants, the Assistant Director of the Personnel Division may be contacted telephonically. His instructions regarding suspension without pay or other immediate action to be taken pending a final determination of the matter may be secured.

(2) In cases involving disciplinary suspension without pay for seven or more consecutive calendar days, SF-8 will be sent to the employee by Personnel Management Section, FBIHQ, as an enclosure with the letter addressed to employee containing suspension notification. However, when telephonic or teletype instructions are issued by FBIHQ suspending the employee for seven or more consecutive calendar days, instructions will be issued and recorded that SF-8 be furnished.

(3) Employees who are under suspension without pay cannot legally be permitted to work during the period of suspension. If employees offer to work while under suspension, they should be informed it is illegal. FBIHQ decision in such instances is unnecessary, although FBIHQ should be informed of the employee's attitude in making the offer.

(4) Upon return to duty from suspension an SF-52 must be submitted to FBIHQ. The following items must be completed:

(a) Part A, Items 1, 3, 5, and 6

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MIOG INTRODUCTION SECTION 1. INVESTIGATIVE AUTHORITY AND RESPONSIBILITY

SENSITIVE

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 12-07-2009 BY 65179 DMH/mjs

**EffDte: MCRT#: 0 Div: D9D6 Cav: SecCls:

1-1 AUTHORITY OF A SPECIAL AGENT

(1) Investigate violations of the laws, including the criminal drug laws, of the United States (Title 21, USC, Section 871; Title 28, USC, Sections 533, 534, and 535; Title 28, CFR, Section 0.85).

(2) Collect evidence in cases in which the United States is or may be a party in interest (28, CFR, Section 0.85 (a) as redelegated through exercise of the authority contained in 28, CFR, Section 0.138) to direct personnel in the FBI).

(3) Make arrests (Title 18, USC, Sections 3052 and 3062).

(4) Serve and execute arrest warrants; serve and execute search warrants and seize property under warrant; issue and/or serve administrative subpoenas; serve subpoenas issued by other proper authority; and make civil investigative demands (Title 18, USC, Sections 3052, 3107; Title 21, USC, Section 876; Title 15, USC, Section 1312).

(5) Carry firearms (Title 18, USC, Section 3052).

(6) Administer oaths to witnesses attending to testify or depose in the course of investigations of frauds on or attempts to defraud the United States or irregularities or misconduct of employees or agents of the United States (Title 5, USC, Section 303).

(7) Seize property subject to seizure under the criminal and civil forfeiture laws of the United States (e.g., Title 18, USC, Sections 981 and 982).

(8) Perform other duties imposed by law.

**EffDte: 05/13/2003 MCRT#: 1272 Div: D9D6 Cav: SecCls:

1-2 INVESTIGATIVE RESPONSIBILITY

(1) The FBI is charged with the duty of investigating violations of the laws of the United States and collecting evidence in cases in which the United States is or may be a party in interest, except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. (Title 28, CFR, Section 0.85 (a))

(2) In addition to the FBI discharging those responsibilities with which it is charged by statutes, the FBI expeditiously carries out directives of the President and the

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OIG-REQ 02/19/05 PAGE 11

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3/24/2005

Attorney General.

(3) Unless otherwise prohibited by law, the FBI may initiate a general criminal investigation whenever facts and circumstances reasonably indicate that a federal crime has been or is being committed. When the factual predicate does not justify a full general crimes investigation, but does indicate criminal activity that warrants further inquiry, a preliminary inquiry may be opened to determine whether there is a sufficient factual basis to support a full investigation. Apart from the authority to open a general crimes investigation, the FBI may initiate a criminal intelligence investigation of enterprises whose members seek either to obtain monetary or commercial gains through racketeering or terrorist activities or to further political or social goals through violent activities. The conduct of general crimes and criminal intelligence investigations will be in strict compliance with, and conformity to, the United States Constitution, the laws of the United States and their implementing regulations, and the Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Terrorism Enterprise Investigations (effective May 30, 2002). (See MIOG, Introduction, 1-3.) Results of investigations are furnished to United States Attorneys and/or the Department of Justice.

(4) Requests for FBI investigations in selected civil matters in which the United States is or may be a party in interest may be received from the United States Attorneys and/or the Department of Justice. These are handled in strict conformity with guidelines furnished by the Department of Justice, as are also investigations of violations of the civil rights, antiriot, election laws, and antitrust laws.

(5) Under no circumstances may a Special Agent of the FBI acting within the scope of his/her employment seek to obtain the commitment of any individual for psychiatric evaluation or otherwise become involved in commitment proceedings. Special Agents subpoenaed to give testimony at commitment proceedings must first comply with the provisions of Part 2, Section 6 of this manual. Questions should be referred to Office of the General Counsel, FBIHQ.

**EffDte: 05/13/2003 MCRT#: 1272 Div: D9D6 Cav: SecCls:

| 1-3 THE ATTORNEY GENERAL'S GUIDELINES ON GENERAL CRIMES, RACKETEERING ENTERPRISE AND TERRORISM ENTERPRISE INVESTIGATIONS (See MIOG, Part 1, Section 92, 100-1.1, and 266-1.)

| PREAMBLE|

"As the primary criminal investigative agency in the federal government, the Federal Bureau of Investigation (FBI) has the authority and responsibility to investigate all criminal violations of federal law that are not exclusively assigned to another federal agency. The FBI thus plays a central role in the enforcement of federal laws and in the proper administration of justice in the United States. In discharging this function, the highest priority is to protect the security of the nation and the safety of the American people against the depredations of terrorists and foreign aggressors."

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"Investigations by the FBI are premised upon the fundamental duty of government to protect the public against general crimes, against organized criminal activity and against those who would threaten the fabric of our society through terrorism or mass destruction. That duty must be performed with care to protect individual rights and to insure that investigations are confined to matters of legitimate law enforcement interest. The purpose of these Guidelines, therefore, is to establish a consistent policy in such matters. The Guidelines will enable Agents of the FBI to perform their duties with greater certainty, confidence and effectiveness, and will provide the American people with a firm assurance that the FBI is acting properly under the law.

"These Guidelines provide guidance for general crimes and criminal intelligence investigations by the FBI. The standards and requirements set forth herein govern the circumstances under which such investigations may be begun, and the permissible scope, duration, subject matters, and objectives of these investigations. They do not limit activities carried out under other Attorney General guidelines addressing such matters as investigations and information collection relating to international terrorism, foreign counterintelligence, or foreign intelligence.

"The Introduction that follows explains the background of the reissuance of these Guidelines, their general approach and structure, and their specific application in furtherance of the FBI's central mission to protect the United States and its people from acts of terrorism. Part I sets forth general principles that apply to all investigations conducted under these Guidelines. Part II governs investigations undertaken to prevent, solve or prosecute specific violations of federal law. Subpart A of Part III governs criminal intelligence investigations undertaken to obtain information concerning enterprises which are engaged in racketeering activities. Subpart B of Part III governs criminal intelligence investigations undertaken to obtain information concerning enterprises which seek to further political or social goals through violence or which otherwise aim to engage in terrorism or the commission of terrorism-related crimes. Parts IV through VII discuss authorized investigative techniques, dissemination and maintenance of information, counterterrorism activities and other authorized law enforcement activities, and miscellaneous matters.

"These Guidelines are issued under the authority of the Attorney General, as provided in sections 509, 510, 533, and 534 of title 28, United States Code.

"TABLE OF CONTENTS

"INTRODUCTION

- "A. CHECKING OF LEADS AND PRELIMINARY INQUIRIES
- B. FULL INVESTIGATIONS
- C. AUTHORIZED INVESTIGATIVE TECHNIQUES
- D. OTHER AUTHORIZED ACTIVITIES

"I. GENERAL PRINCIPLES

"II. GENERAL CRIMES INVESTIGATIONS

"A. DEFINITIONS

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B. PRELIMINARY INQUIRIES
C. INVESTIGATIONS

"III. CRIMINAL INTELLIGENCE INVESTIGATIONS

"A. RACKETEERING ENTERPRISE INVESTIGATIONS

- "1. [Definition]
2. General Authority
3. Purpose
4. Scope
5. Authorization and Renewal

"B. [TERRORISM ENTERPRISE] INVESTIGATIONS

- "1. General Authority
2. Purpose
3. Scope
4. Authorization and Renewal

"IV. INVESTIGATIVE TECHNIQUES

"V. DISSEMINATION [AND MAINTENANCE] OF INFORMATION

"VI. [COUNTERTERRORISM ACTIVITIES AND OTHER AUTHORIZATIONS

"A. COUNTERTERRORISM ACTIVITIES

- "1. Information Systems
2. Visiting Public Places and Events

"B. OTHER AUTHORIZATIONS

- "1. General Topical Research
2. Use of Online Resources Generally
3. Reports and Assessments
4. Cooperation with Secret Service

"C. PROTECTION OF PRIVACY AND OTHER LIMITATIONS

- "1. General Limitations
2. Maintenance of Records Under the Privacy Act
3. Construction of Part

"VII. RESERVATION

"INTRODUCTION

"Following the September 11, 2001, terrorist attack on the United States, the Department of Justice carried out a general review of existing guidelines and procedures relating to national security and criminal matters. The reissuance of these Guidelines reflects the result of that review.

"These Guidelines follow previous guidelines in their classification of levels of investigative activity, in their classification of types of investigations, in their standards for initiating investigative activity, and in their identification of

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permitted investigative techniques. There are, however, a number of changes designed to enhance the general effectiveness of criminal investigation, to bring the Guidelines into conformity with recent changes in the law, and to facilitate the FBI's central mission of preventing the commission of terrorist acts against the United States and its people.

"In their general structure, these Guidelines provide graduated levels of investigative activity, allowing the FBI the necessary flexibility to act well in advance of the commission of planned terrorist acts or other federal crimes. The three levels of investigative activity are: (1) the prompt and extremely limited checking of initial leads, (2) preliminary inquiries, and (3) full investigations. Subject to these Guidelines and other guidelines and policies noted in Part IV below, any lawful investigative technique may be used in full investigations, and with some exceptions, in preliminary inquiries.

"A. CHECKING OF LEADS AND PRELIMINARY INQUIRIES

"The lowest level of investigative activity is the 'prompt and extremely limited checking out of initial leads,' which should be undertaken whenever information is received of such a nature that some follow-up as to the possibility of criminal activity is warranted. This limited activity should be conducted with an eye toward promptly determining whether further investigation (either a preliminary inquiry or a full investigation) should be conducted.

"The next level of investigative activity, a preliminary inquiry, should be undertaken when there is information or an allegation which indicates the possibility of criminal activity and whose responsible handling requires some further scrutiny beyond checking initial leads. This authority allows FBI agents to respond to information that is ambiguous or incomplete. Even where the available information meets only this threshold, the range of available investigative techniques is broad. These Guidelines categorically prohibit only mail opening and nonconsensual electronic surveillance at this stage. Other methods, including the development of sources and informants and undercover activities and operations, are permitted in preliminary inquiries. The tools available to develop information sufficient for the commencement of a full investigation, or determining that one is not merited - the purpose of a preliminary inquiry - should be fully employed, consistent with these Guidelines, with a view toward preventing terrorist activities.

"Whether it is appropriate to open a preliminary inquiry immediately, or instead to engage first in a limited checking out of leads, depends on the circumstances presented. If, for example, an agent receives an allegation that an individual or group has advocated the commission of criminal violence, and no other facts are available, an appropriate first step would be checking out of leads to determine whether the individual, group, or members of the audience have the apparent ability or intent to carry out the advocated crime. A similar response would be appropriate on the basis of non-verbal conduct of an ambiguous character - for example, where a report is received that an individual has accumulated explosives that could be used either in a legitimate business or to commit a terrorist act. Where the limited checking out of leads discloses a possibility or reasonable indication of criminal activity, a preliminary inquiry or full investigation may then be initiated. However, if the available information shows at the outset

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that the threshold standard for a preliminary inquiry or full investigation is satisfied, then the appropriate investigative activity may be initiated immediately, without progressing through more limited investigative stages.

"The application of these Guidelines' standards for inquiries merits special attention in cases that involve efforts by individuals or groups to obtain, for no apparent reason, biological, chemical, radiological, or nuclear materials whose use or possession is constrained by such statutes as 18 U.S.C. 175, 229, or 831. For example, FBI agents are not required to possess information relating to an individual's intended criminal use of dangerous biological agents or toxins prior to initiating investigative activity. On the contrary, if an individual or group has attempted to obtain such materials, or has indicated a desire to acquire them, and the reason is not apparent, investigative action, such as conducting a checking out of leads or initiating a preliminary inquiry, may be appropriate to determine whether there is a legitimate purpose for the possession of the materials by the individual or group. Likewise, where individuals or groups engage in efforts to acquire or show an interest in acquiring, without apparent reason, toxic chemicals or their precursors or radiological or nuclear materials, investigative action to determine whether there is a legitimate purpose may be justified.

"B. FULL INVESTIGATIONS

"These Guidelines provide for two types of full investigations: general crimes investigations (Part II below) and criminal intelligence investigations (Part III below). The choice of the type of investigation depends on the information and the investigative focus. A general crimes investigation may be initiated where facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. Preventing future criminal activity, as well as solving and prosecuting crimes that have already occurred, is an explicitly authorized objective of general crimes investigations. The 'reasonable indication' threshold for undertaking such an investigation is substantially lower than probable cause. In addition, preparation to commit a criminal act can itself be a current criminal violation under the conspiracy or attempt provisions of federal criminal law or other provisions defining preparatory crimes, such as 18 U.S.C. 373 (solicitation of a crime of violence) or 18 U.S.C. 2339A (including provision of material support in preparation for a terrorist crime). Under these Guidelines, a general crimes investigation is warranted where there is not yet a current substantive or preparatory crime, but where facts or circumstances reasonably indicate that such a crime will occur in the future.

"The second type of full investigation authorized under these Guidelines is the criminal intelligence investigation. The focus of criminal intelligence investigations is the group or enterprise, rather than just individual participants and specific acts. The immediate purpose of such an investigation is to obtain information concerning the nature and structure of the enterprise - including information relating to the group's membership, finances, geographical dimensions, past and future activities, and goals - with a view toward detecting, preventing, and prosecuting the enterprise's criminal activities. Criminal intelligence investigations, usually of a long-term nature, may provide vital intelligence to help prevent terrorist acts.

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"Authorized criminal intelligence investigations are of two types: racketeering enterprise investigations (Part III. A) and terrorism enterprise investigations (Part III. B). A racketeering enterprise investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in a pattern of racketeering activity as defined in the Racketeer Influenced and Corrupt Organizations Act (RICO). However, the USA PATRIOT ACT (Public Law 107-56) expanded the predicate acts for RICO to include the crimes most likely to be committed by terrorists and their supporters, as described in 18 U.S.C. 2332b(g)(5)(B). To maintain uniformity in the standards and procedures for criminal intelligence investigations relating to terrorism, investigations premised on racketeering activity involving offenses described in 18 U.S.C. 2332b(g)(5)(B) are subject to the provisions for terrorism enterprise investigations rather than those for racketeering enterprise investigations.

"A terrorism enterprise investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of: (1) furthering political or social goals wholly or in part through activities that involve force or violence and a federal crime, (2) engaging in terrorism as defined in 18 U.S.C. 2331(1) or (5) that involves a federal crime, or (3) committing any offense described in 18 U.S.C. 2332b(g)(5)(B). As noted above, criminal intelligence investigations premised on a pattern of racketeering activity involving an 18 U.S.C. 2332b(g)(5)(B) offense are also treated as terrorism enterprise investigations.

"As with the other types of full investigations authorized by these Guidelines, any lawful investigative technique may be used in terrorism enterprise investigations, including the development of sources and informants and undercover activities and operations. The 'reasonable indication' standard for commencing a terrorism enterprise investigation is the same as that for general crimes and racketeering enterprise investigations. As noted above, it is substantially lower than probable cause.

"In practical terms, the 'reasonable indication' standard for opening a criminal intelligence investigation of an enterprise in the terrorism context could be satisfied in a number of ways. In some cases satisfaction of the standard will be apparent on the basis of direct evidence of an enterprise's involvement in or planning for the commission of a federal offense involving the use of force or violence to further political or social goals, terrorism as defined in 18 U.S.C. 2331(1) or (5), or a crime described in 18 U.S.C. 2332b(g)(5)(B). For example, direct information may be available about statements made in furtherance of an enterprise's objectives which show a purpose of committing such crimes or securing their commission by others.

"In other cases, the nature of the conduct engaged in by an enterprise will justify an inference that the standard is satisfied, even if there are no known statements by participants that advocate or indicate planning for violence or other prohibited acts. For example, such activities as attempting to obtain dangerous biological agents, toxic chemicals, or nuclear materials, or stockpiling explosives or weapons, with no discernible lawful purpose, may be sufficient to reasonably indicate that an enterprise aims to engage in terrorism.

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"Moreover, a group's activities and the statements of its members may properly be considered in conjunction with each other. A combination of statements and activities may justify a determination that the threshold standard for a terrorism enterprise investigation is satisfied, even if the statements alone or the activities alone would not warrant such a determination.

"While no particular factor or combination of factors is required, considerations that will generally be relevant to the determination whether the threshold standard for a terrorism enterprise investigation is satisfied include, as noted, a group's statements, its activities, and the nature of potential federal criminal law violations suggested by its statements or activities. Thus, where there are grounds for inquiry concerning a group, it may be helpful to gather information about these matters, and then to consider whether these factors, either individually or in combination, reasonably indicate that the group is pursuing terrorist activities or objectives as defined in the threshold standard. Findings that would weigh in favor of such a conclusion include, for example, the following:

"(1) THREATS OR ADVOCACY OF VIOLENCE OR OTHER COVERED CRIMINAL ACTS:

Statements are made in relation to or in furtherance of an enterprise's political or social objectives that threaten or advocate the use of force or violence, or statements are made in furtherance of an enterprise that otherwise threaten or advocate criminal conduct within the scope of 18 U.S.C. 2331(1) or (5) or 2332b(g)(5)(B); which may concern such matters as (e.g.):

"(i) engaging in attacks involving or threatening massive loss of life or injury, mass destruction, or endangerment of the national security;

"(ii) killing or injuring federal personnel, destroying federal facilities, or defying lawful federal authority;

"(iii) killing, injuring or intimidating individuals because of their status as United States nationals or persons, or because of their national origin, race, color, religion, or sex; or

"(iv) depriving individuals of any rights secured by the Constitution or laws of the United States.

"(2) APPARENT ABILITY OR INTENT TO CARRY OUT VIOLENCE OR OTHER COVERED ACTIVITIES:

The enterprise manifests an apparent ability or intent to carry out violence or other activities within the scope of 18 U.S.C. 2331(1) or (5) or 2332b(g)(5)(B), e.g.

"(i) by acquiring, or taking steps towards acquiring, biological agents or toxins, toxic chemicals or their precursors, radiological or nuclear materials, explosives, or other destructive or dangerous materials (or plans or formulas for such materials), or weapons, under circumstances where, by reason of the quantity or character of the items, the lawful

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purpose of the acquisition is not apparent;

"(ii) by the creation, maintenance, or support of an armed paramilitary organization;

"(iii) by paramilitary training; or

"(iv) by other conduct demonstrating an apparent ability or intent to injure or intimidate individuals, or to interfere with the exercise of their constitutional or statutory rights.

"(3) POTENTIAL FEDERAL CRIME:

The group's statements or activities suggest potential federal criminal violations that may be relevant in applying the standard for initiating a terrorism enterprise investigation - such as crimes under the provisions of the U.S. Code that set forth specially defined terrorism or support-of-terrorism offenses, or that relate to such matters as aircraft hijacking or destruction, attacks on transportation, communications, or energy facilities or systems, biological or chemical weapons, nuclear or radiological materials, civil rights violations, assassinations or other violence against federal officials or facilities, or explosives (e.g., the offenses listed in 18 U.S.C. 2332b(g)(5)(B) or appearing in such provisions as 18 U.S.C. 111, 115, 231, 241, 245, or 247).

"C. AUTHORIZED INVESTIGATIVE TECHNIQUES

"All lawful investigative techniques may be used in general crimes, racketeering enterprise, and terrorism enterprise investigations. In preliminary inquiries, these Guidelines bar the use of mail openings and nonconsensual electronic surveillance (including all techniques covered by chapter 119 of title 18, United States Code), but do not categorically prohibit the use of any other lawful investigative technique at that stage. As set forth in Part IV below, authorized methods in investigations include, among others, use of confidential informants, undercover activities and operations, nonconsensual electronic surveillance, pen registers and trap and trace devices, accessing stored wire and electronic communications and transactional records, consensual electronic monitoring, and searches and seizures. All requirements for the use of such methods under the Constitution, applicable statutes, and Department regulations or policies must, of course, be observed.

"D. OTHER AUTHORIZED ACTIVITIES

"Current counterterrorism priorities and the advent of the Internet have raised a number of issues which did not exist in any comparable form when the last general revision of these Guidelines was carried out in 1989 - a time long preceding the September 11 attack's disclosure of the full magnitude of the terrorist threat to the United States, and a time in which the Internet was not available in any developed form as a source of information for counterterrorism and other anti-crime purposes. Part VI of these Guidelines is designed to provide clear authorizations and statements of governing principles for a number of important activities that affect these areas. Among other things, Part VI makes it clear that the authorized law enforcement activities of the FBI include: (i)

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operating and participating in counterterrorism information systems, such as the Foreign Terrorist Tracking Task Force (VI. A(1)); (ii) visiting places and events which are open to the public for the purpose or detecting or preventing terrorist activities (VI. A(2); (iii) carrying out general topical research, such as searching online under terms like 'anthrax' or 'smallpox' to obtain publicly available information about agents that may be used in bioterrorism attacks (VI. B(1)); (iv) surfing the Internet as any member of the public might do to identify, e.g., public websites, bulletin boards, and chat rooms in which bomb making instructions, child pornography, or stolen credit card information is openly traded or disseminated, and observing information open to public view in such forums to detect terrorist activities and other criminal activities (VI. B(2)); (v) preparing general reports and assessments relating to terrorism or other criminal activities in support of strategic planning and investigative operations (VI. B(3)); and (vi) providing investigative assistance to the Secret Service in support of its protective responsibilities (VI. B (4)).

"I. GENERAL PRINCIPLES (See MIOG, Part 1, 100-1.2.3.)

"Preliminary inquiries and investigations governed by these Guidelines are conducted for the purpose of preventing, detecting, or prosecuting violations of federal law. [The FBI shall fully utilize the methods authorized by these Guidelines to maximize the realization of these objectives.]

"The conduct of preliminary inquiries and investigations may present choices between the use of investigative methods which are more or less intrusive, considering such factors as the effect on the privacy of individuals and potential damage to reputation. Inquiries and investigations shall be conducted with as little intrusion as the needs of the situation permit. It is recognized, however, that the choice of techniques is a matter of judgment. The FBI shall not hesitate to use any lawful techniques consistent with these Guidelines, even if intrusive, where the intrusiveness is warranted in light of the seriousness of a crime or the strength of the information indicating its commission or potential future commission. This point is to be particularly observed in the investigation of terrorist crimes and in the investigation of enterprises that engage in terrorism. All preliminary inquiries shall be conducted pursuant to the General Crimes Guidelines [(i.e., Part II of these Guidelines).] There is no separate provision for preliminary inquiries under the Criminal Intelligence Guidelines [(i.e., Part III of these Guidelines) because preliminary inquiries under Part II may be carried out not only to determine whether the grounds exist to commence a general crimes investigation under Part II, but alternatively or in addition to determine whether the grounds exist to commence a racketeering enterprise investigation or terrorism enterprise investigation under Part III.] A preliminary inquiry shall be promptly terminated when it becomes apparent that a full investigation is not warranted. If, on the basis of information discovered in the course of a preliminary inquiry, an investigation is warranted, it may be conducted as a general crimes investigation, or a criminal intelligence investigation, or both. All such investigations, however, shall be based on a reasonable factual predicate and shall have a valid law enforcement purpose.

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"In its efforts to anticipate or prevent crime, the FBI must at times initiate investigations in advance of criminal conduct. It is important that such investigations not be based solely on activities protected by the First Amendment or on the lawful exercise of any other rights secured by the Constitution or laws of the United States. When, however, statements advocate criminal activity or indicate an apparent intent to engage in crime, particularly crimes of violence, an investigation under these Guidelines may be warranted unless it is apparent, from the circumstances or the context in which the statements are made, that there is no prospect of harm.

"General crimes investigations and criminal intelligence investigations shall be terminated when all logical leads have been exhausted and no legitimate law enforcement interest justifies their continuance.

"Nothing in these Guidelines prohibits the FBI from ascertaining the general scope and nature of criminal activity in a particular location or sector of the economy, or from collecting and maintaining publicly available information consistent with the Privacy Act.

"II. GENERAL CRIMES INVESTIGATIONS

"A. DEFINITIONS

"(1) 'Exigent circumstances' are circumstances requiring action before authorization otherwise necessary under these guidelines can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation.

"(2) 'Sensitive criminal matter' is any alleged criminal conduct involving corrupt action by a public official or political candidate, the activities of a foreign government, the activities of a religious organization or a primarily political organization or the related activities of any individual prominent in such an organization, or the activities of the news media; and any other matter which in the judgment of a Special Agent in Charge (SAC) should be brought to the attention of the United States Attorney or other appropriate official in the Department of Justice, as well as FBI Headquarters (FBIHQ).

"B. PRELIMINARY INQUIRIES

"(1) On some occasions the FBI may receive information or an allegation not warranting a full investigation – because there is not yet a 'reasonable indication' of criminal activities – but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads. In such circumstances, though the factual predicate for an investigation has not been met, the FBI may initiate an 'inquiry' in response to the allegation or information indicating the possibility of criminal activity.

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"This authority to conduct inquiries short of a full investigation allows the government to respond in a measured way to ambiguous or incomplete information with as little intrusion as the needs of the situation permit. This is especially important in such areas as white-collar crime where no complainant is involved or when an allegation or information is received from a source of unknown reliability. Such inquiries are subject to the limitations on duration under paragraph (3) below and are carried out to obtain the information necessary to make an informed judgement as to whether a full investigation is warranted.

"A preliminary inquiry is not a required step when facts or circumstances reasonably indicating criminal activity are already available; in such cases, a full investigation can be immediately opened.

"(2) The FBI supervisor authorizing an inquiry shall assure that the allegation or other information which warranted the inquiry has been recorded in writing. In sensitive criminal matters the United States Attorney or an appropriate Department of Justice official shall be notified of the basis for an inquiry as soon as practicable after the opening of the inquiry, and the fact of notification shall be recorded in writing.

"(3) Inquiries shall be completed within 180 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 90-day periods may be granted. SAC may grant up to two extensions based on a statement of the reasons why further investigative steps are warranted when there is no 'reasonable indication' of criminal activity. All extensions following the second extension may only be granted by FBI Headquarters upon receipt of a written request and such a statement of reasons.

"(4) The choice of investigative techniques in an inquiry is a matter of judgment; which should take account of: (i) the objectives of the inquiry and available investigative resources, (ii) the intrusiveness of a technique, considering such factors as the effect on the privacy of individuals and potential damage to reputation, (iii) the seriousness of the possible crime, and (iv) the strength of the information indicating its existence or future commission. Where the conduct of an inquiry presents a choice between the use of more or less intrusive methods, the FBI should consider whether the information could be obtained in a timely and effective way by the less intrusive means. The FBI should not hesitate to use any lawful techniques consistent with these Guidelines in an inquiry, even if intrusive, where the intrusiveness is warranted in light of the seriousness of the possible crime or the strength of the information indicating its existence or future commission. This point is to be particularly observed in inquiries relating to possible terrorist activities.

"(5) All lawful investigative techniques may be used in an inquiry except:

"(a) Mail openings; and

"(b) Nonconsensual electronic surveillance or any other investigative technique covered by chapter 119 of title 18, United States Code (18 U.S.C. 2510-2522).

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"(6) The following investigative techniques may be used in an inquiry without any prior authorization from a supervisory agent:

"(a) Examination of FBI indices and files;

"(b) Examination of records available to the public and other public sources of information;

"(c) Examination of available federal, state and local government records;

"(d) Interview of the complainant, previously established informants, and other sources of information;

"(e) Interview of the potential subject;

"(f) Interview of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or coworkers unless the interviewee was the complainant; and

"(g) Physical or photographic surveillance of any person.

"The use of any other lawful investigative technique that is permitted in an inquiry shall meet the requirements and limitations of Part IV and, except in exigent circumstances, requires prior approval by a supervisory agent.

"(7) Where a preliminary inquiry fails to disclose sufficient information to justify an investigation, the FBI shall terminate the inquiry and make a record of the closing. In a sensitive criminal matter, the FBI shall notify the United States Attorney of the closing and record the fact of notification in writing. Information on an inquiry which has been closed shall be available on request to a United States Attorney or his or her designee or an appropriate Department of Justice official.

"(8) All requirements regarding inquiries shall apply to reopened inquiries. In sensitive criminal matters, the United States Attorney or the appropriate Department of Justice official shall be notified as soon as practicable after the reopening of an inquiry.

"C. INVESTIGATIONS

"(1) A general crimes investigation may be initiated by the FBI when facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. The investigation may be conducted to prevent, solve or prosecute such criminal activity.

"The standard of 'reasonable indication' is substantially lower than probable cause. In determining whether there is reasonable indication of a federal criminal violation, a Special Agent may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current or future violation. There

must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.

"(2) Where a criminal act may be committed in the future, preparation for that act can be a current criminal violation under the conspiracy or attempt provisions of federal criminal law or other provisions defining preparatory crimes, such as 18 U.S.C. 373 (solicitation of a crime of violence) or 18 U.S.C. 2339A (including provision of material support in preparation for a terrorist crime). The standard for opening an investigation is satisfied where there is not yet a current substantive or preparatory crime, but facts or circumstances reasonably indicate that such a crime will occur in the future.

"(3) The FBI supervisor authorizing an investigation shall assure that the facts or circumstances meeting the standard of reasonable indication have been recorded in writing.

"In sensitive criminal matters, as defined in paragraph A(2), the United States Attorney or an appropriate Department of Justice official, as well as FBIHQ, shall be notified in writing of the basis for an investigation as soon as practicable after commencement of the investigation.

"(4) The Special Agent conducting an investigation shall maintain periodic written or oral contact with the appropriate federal prosecutor, as circumstances require and as requested by the prosecutor.

"When, during an investigation, a matter appears to arguably warrant prosecution, the Special Agent shall present the relevant facts to the appropriate federal prosecutor. In every sensitive criminal matter, the FBI shall notify the appropriate federal prosecutor of the termination of an investigation within 30 days of such termination. Information on investigations which have been closed shall be available on request to a United States Attorney or his or her designee or an appropriate Department of Justice official.

"(5) When a serious matter investigated by the FBI is referred to state or local authorities for prosecution, the FBI, insofar as resources permit, shall promptly advise the federal prosecutor in writing if the state or local authorities decline prosecution or fail to commence prosecutive action within 120 days. Where an FBI field office cannot provide this follow-up, the SAC shall so advise the federal prosecutor.

"(6) When credible information is received concerning serious criminal activity not within the FBI investigative jurisdiction, the FBI field office shall promptly transmit the information or refer the complainant to the law enforcement agencies having jurisdiction, except where disclosure would jeopardize an ongoing investigation, endanger the safety of an individual, disclose the identity of an informant, interfere with an informant's cooperation, or reveal legally privileged information. If full disclosure is not made for the reasons indicated, then whenever feasible the FBI field office shall make at least limited disclosure to the law enforcement agency having jurisdiction, and full disclosure shall be made as soon as the need for restricting dissemination is no longer present. Where full disclosure is not made to the appropriate law enforcement agencies within 180 days, the FBI field office shall promptly notify FBI

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Headquarters in writing of the facts and circumstances concerning the criminal activity. The FBI shall make a periodic report to the Deputy Attorney General on such nondisclosure and incomplete disclosures, in a form suitable to protect the identity of informants.]

"Whenever information is received concerning unauthorized criminal activity by a confidential informant, it shall be handled in accordance with the Attorney General's Guidelines Regarding the use of Confidential Informants.]

"(7) All requirements regarding investigations shall apply to reopened investigations. In sensitive criminal matters, the United States Attorney or the appropriate Department of Justice official shall be notified in writing as soon as practicable after the reopening of an investigation.

"III. CRIMINAL INTELLIGENCE INVESTIGATIONS

"This section authorizes the FBI to conduct criminal intelligence investigations of certain enterprises.] These investigations differ from general crimes investigations, authorized by Section II, in several important respects. As a general rule, an investigation of a completed criminal act is normally confined to determining who committed that act and with securing evidence to establish the elements of the particular offense. It is, in this respect, self-defining. An intelligence investigation of an ongoing criminal enterprise must determine the size and composition of the group involved, its geographic dimensions, its past acts and intended criminal goals, and its capacity for harm. While a standard criminal investigation terminates with the decision to prosecute or not to prosecute, the investigation of a criminal enterprise does not necessarily end, even though one or more of the participants may have been prosecuted.

"In addition, the organization provides a life and continuity of operation that are not normally found in a regular criminal activity. As a consequence, these investigations may continue for several years.]Furthermore, the]focus of such investigations 'may be less precise than that directed against more conventional types of crime.' United States v. United States District Court, 407 U.S. 297, 322 (1972). Unlike the usual criminal case, there may be no completed offense to provide a framework for the investigation. It often requires the fitting together of bits and pieces of information, many meaningless by themselves, to determine whether a pattern of criminal activity exists. For this reason, the investigation is broader and less discriminate than usual, involving 'the interrelation of various sources and types of information.' Id.

"Members of groups or organizations acting in concert to violate the law present a grave threat to society. An investigation of organizational activity, however, may present special problems, particularly where it deals with politically motivated acts. There is 'often ... a convergence of First and Fourth Amendment values,' in such matters that is 'not]present]in cases of 'ordinary' crime.']Id.] at 313.] Thus, special care must be exercised in sorting out protected activities from those which may lead to violence or serious disruption of society. As a consequence, the guidelines establish safeguards for group investigations of special sensitivity, including tighter

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management controls and higher levels of review.

"A. RACKETEERING ENTERPRISE INVESTIGATIONS (See MIOG, Part 1, 92-8, 194-3.7.)

"This section focuses on investigations of organized crime. It is concerned with the investigation of entire enterprises, rather than just individual participants and specific criminal acts, and authorizes investigations to determine the structure and scope of the enterprise, as well as the relationship of the members."

"1. Definition

Racketeering activity is any offense, including a violation of state law, encompassed by the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961(1).

"2. General Authority

"a. A racketeering enterprise investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in a pattern of racketeering activity as defined in the RICO statute, 18 U.S.C. 1961(5). However, if the pattern of racketeering activity involves an offense or offenses described in 18 U.S.C. 2332b(g)(5)(B), the investigation shall be deemed a terrorism enterprise investigation and shall be subject to the standards and procedures of Subpart B of this Part in lieu of those set forth in this Subpart. The standard of 'reasonable indication' is identical to that governing the initiation of a general crimes investigation under Part II."

"b. Authority to conduct racketeering enterprise investigations is in addition to general crimes investigative authority under Part II, terrorism enterprise investigative authority under Subpart B of this Part, and activities under other Attorney General guidelines addressing such matters as investigations and information collection relating to international terrorism, foreign counterintelligence, or foreign intelligence. Information warranting initiation of a racketeering enterprise investigation may be obtained during the course of a general crimes inquiry or investigation, a terrorism enterprise investigation, or an investigation under other Attorney General guidelines. Conversely, a racketeering enterprise investigation may yield information warranting a general crimes inquiry or investigation, a terrorism enterprise investigation, or an investigation under other Attorney General guidelines."

"3. Purpose

The immediate purpose of a racketeering enterprise investigation is to obtain information concerning the nature and structure of the enterprise, as specifically delineated in paragraph 4 below, with a view to the longer range objective of detection, prevention, and prosecution of the criminal activities of the enterprise.

"4. Scope

"a. A racketeering enterprise investigation

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properly initiated under these guidelines may collect such information as:

"(i) the members of the enterprise and other persons likely to be knowingly acting in the furtherance of racketeering activity, provided that the information concerns such persons' activities on behalf of or in furtherance of the enterprise;

"(ii) the finances of the enterprise;

"(iii) the geographical dimensions of the enterprise; and

"(iv) the past and future activities and goals of the enterprise.

"b. In obtaining the foregoing information, any lawful investigative technique may be used, in accordance with the requirements of Part IV.

"5. Authorization and Renewal

"a. A racketeering enterprise investigation may be authorized by the Special Agent in Charge, with notification to FBIHQ, upon a written recommendation setting forth the facts and circumstances reasonably indicating that the standard of paragraph 2.a. is satisfied.

"b. The FBI shall notify the Organized Crime and Racketeering Section of the Criminal Division and any affected United States Attorney's office of the opening of a racketeering enterprise investigation. On receipt of such notice, the Organized Crime and Racketeering Section shall immediately notify the Attorney General and the Deputy Attorney General. In all racketeering enterprise investigations, the Chief of the Organized Crime and Racketeering Section may, as he or she deems necessary, request the FBI to provide a report on the status of the investigation.

"c. A racketeering enterprise investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the SAC with notification to FBIHQ. The FBI shall notify the Organized Crime and Racketeering Section of any renewal, and the Organized Crime and Racketeering Section shall immediately notify the Attorney General and the Deputy Attorney General.

"d. Investigations shall be reviewed by the SAC on or before the expiration of the period for which the investigation and each renewal thereof is authorized.

"e. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

"f. In addition to the authority of Special Agents in Charge under this paragraph, the Director of the FBI, and any Assistant Director or senior Headquarters official designated by the Director, may authorize, renew, review, and reopen racketeering enterprise investigations in conformity with the standards of this

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3/24/2005

[paragraph.]

"B. [TERRORISM ENTERPRISE] INVESTIGATIONS (See MIOG, Part 1, 100-1.2.)

"This section focuses on investigations of enterprises that seek to further political or social goals through activities that involve force or violence, or that otherwise aim to engage in terrorism or terrorism-related crimes. Like the section addressing racketeering enterprise investigations, it is concerned with the investigation of entire enterprises, rather than just individual participants and specific criminal acts, and authorizes investigations to determine the structure and scope of the enterprise as well as the relationship of the members.

"1. General Authority (See MIOG, Part 1, 100-1.2.2.)

"a. A terrorism enterprise investigation may be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in an enterprise for the purpose of: (i) furthering political or social goals wholly or in part through activities that involve force or violence and a violation of federal criminal law, (ii) engaging in terrorism as defined in 18 U.S.C. 2331(1) or (5) that involves a violation of federal criminal law, or (iii) committing any offense described in 18 U.S.C. 2332b(g)(5)(B). A terrorism enterprise investigation may also be initiated when facts or circumstances reasonably indicate that two or more persons are engaged in a pattern of racketeering activity as defined in the RICO statute, 18 U.S.C. 1961(5), that involves an offense or offenses described in 18 U.S.C. 2332b(g)(5)(B). The standard of 'reasonable indication' is identical to that governing the initiation of a general crimes investigation under Part II. In determining whether an investigation should be conducted, the FBI shall consider all of the circumstances including: (i) the magnitude of the threatened harm; (ii) the likelihood it will occur; (iii) the immediacy of the threat; and (iv) any danger to privacy or free expression posed by an investigation.

"b. Authority to conduct terrorism enterprise investigations is in addition to general crimes investigative authority under Part II, racketeering enterprise investigative authority under Subpart A of this Part and activities under other Attorney General guidelines addressing such matters as investigations and information collection relating to international terrorism, foreign counterintelligence, or foreign intelligence. Information warranting initiation of a terrorism enterprise investigation may be obtained during the course of a general crimes inquiry or investigation, a racketeering enterprise investigation, or an investigation under other Attorney General guidelines. Conversely, a terrorism enterprise investigation may yield information warranting a general crimes inquiry or investigation, a racketeering enterprise investigation, or an investigation under other Attorney General guidelines.

"c. [Mere speculation] that force or violence might occur during the course of an otherwise peaceable demonstration is not sufficient grounds for initiation of an investigation under this Subpart, but where facts or circumstances reasonably indicate that a group or enterprise has engaged or aims to engage in activities involving force or violence or other criminal conduct described in paragraph 1.a. in a demonstration, an investigation may be initiated in conformity with the standards of that paragraph.

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For alternative authorities see Part II relating to General Crimes Investigations and the Attorney General's Guidelines on 'Reporting on Civil Disorders and Demonstrations Involving a Federal Interest.'

This does not limit the collection of information about public demonstrations by enterprises that are under active investigation pursuant to paragraph 1.a. above.

"2. Purpose (See MIOG, Part 1, 100-2.1.)

"The immediate purpose of a terrorism enterprise investigation is to obtain information concerning the nature and structure of the enterprise, as specifically delineated in paragraph 3. below, with a view to the longer range objectives of detection, prevention, and prosecution of the criminal activities of the enterprise.

"3. Scope (See MIOG, Part 1, 100-2.2.)

"a. A terrorism enterprise investigation initiated under these guidelines may collect such information as:

(i) the members of the enterprise and other persons likely to be knowingly acting in furtherance of its criminal objectives, provided that the information concerns such persons' activities on behalf of or in furtherance of the enterprise;

(ii) the finances of the enterprise;

(iii) the geographical dimensions of the enterprise;

and

(iv) past and future activities and goals of the enterprise.

"b. In obtaining the foregoing information, any lawful investigative technique may be used in accordance with the requirements of Part IV.

"4. Authorization and Renewal (See MIOG, Part 1, 100-2.3.)

"a. A terrorism enterprise investigation may be authorized by the Special Agent in Charge, with notification to FBIHQ, upon a written recommendation setting forth the facts or circumstances reasonably indicating the existence of an enterprise, as described in paragraph 1.a. The FBI shall notify the Terrorism and Violent Crime Section of the Criminal Division, the Office of the Intelligence Policy and Review, and affected United States Attorney's Office of the opening of a terrorism enterprise investigation. On receipt of such notice, the Terrorism and Violent Crime Section shall immediately notify the Attorney General and the Deputy Attorney General. In all such investigations, the Chief of the Terrorism and Violent Crime Section may, as he or she deems necessary, request the FBI to provide a report on the status of the investigation.

"b. A terrorism enterprise investigation may be initially authorized for a period of up to a year. An investigation may be continued upon renewed authorization for additional periods each not to exceed a year. Renewal authorization shall be obtained from the SAC with notification to FBIHQ. The FBI shall notify the Terrorism and Violent Crime Section and the Office of Intelligence Policy and Review of any renewal, and the Terrorism

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and Violent Crime Section shall immediately notify the Attorney General and the Deputy Attorney General.

"c. Investigations shall be reviewed by the SAC on or before the expiration of the period for which the investigation and each renewal thereof is authorized.

In some cases, the enterprise may meet the threshold standard but be temporarily inactive in the sense that it has not engaged in recent acts of violence or other criminal activities as described in paragraph 1. a., nor is there any immediate threat of harm - yet the composition, goals and prior history of the group suggest the need for continuing federal interest. The investigation may be continued in such cases with whatever scope is warranted in light of these considerations.

"d. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

"e. In addition to the authority of Special Agents in Charge under this paragraph, the Director of the FBI, and any Assistant Director or senior Headquarters official designated by the Director, may authorize, renew, review, and reopen terrorism enterprise investigations in conformity with the standards of this paragraph.

"f. The FBI shall report to the Terrorism and Violent Crime Section of the Criminal Division and the Office of Intelligence Policy and Review the progress of a terrorism enterprise investigation not later than 180 days after its initiation, and the results at the end of each year the investigation continues. The Terrorism and Violent Crime Section shall immediately transmit copies of these reports to the Attorney General and the Deputy Attorney General.

"IV. INVESTIGATIVE TECHNIQUES (See MIOG, Part 1, 100-2.2.)

"A. When conducting investigations under these guidelines the FBI may use any lawful investigative technique. The choice of investigative techniques is a matter of judgment, which should take account of: (i) the objectives of the investigation and available investigative resources, (ii) the intrusiveness of a technique, considering such factors as the effect on the privacy of individuals and potential damage to reputation, (iii) the seriousness of the crime, and (iv) the strength of the information indicating its existence or future commission. Where the conduct of an investigation presents a choice between the use of more or less intrusive methods, the FBI should consider whether the information could be obtained in a timely and effective way by the less intrusive means. The FBI should not hesitate to use any lawful techniques consistent with these Guidelines in an investigation, even if intrusive, where the intrusiveness is warranted in light of the seriousness of the crime or the strength of the information indicating its existence or future commission. This point is to be particularly observed in investigations relating to terrorist activities.

"B. All requirements for use of a technique set by

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statute, Department regulations and policies, and Attorney General Guidelines must be complied with. The investigative techniques listed below are subject to the noted restrictions:

"1. Confidential informants must be used in compliance with the Attorney General's Guidelines regarding the Use of Confidential Informants;

"2. Undercover activities and operations must be conducted in compliance with the Attorney General's Guidelines on FBI Undercover Operations;

"3. In situations involving undisclosed participation in the activities of an organization by an undercover employee or cooperating private individual any potential constitutional concerns relating to activities of the organization protected by the First Amendment must be addressed through full compliance with all applicable provisions of the Attorney General's Guidelines on FBI Undercover Operations and the Attorney General's Guidelines Regarding the Use of Confidential Informants;

"4. Nonconsensual electronic surveillance must be conducted pursuant to the warrant procedures and requirements of chapter 119 of title 18, United States Code (18 U.S.C. 2510, 2522);

"5. Pen registers and trap and trace devices must be installed and used pursuant to the procedures and requirements of chapter 206 of title 18, United States Code (18 U.S.C. 3121-3127);

"6. Access to stored wire and electronic communications and transactional records must be obtained pursuant to the procedures and requirements of chapter 121 of title 18, United States Code (18 U.S.C. 2701-2712);

"7. Consensual electronic monitoring must be authorized pursuant to Department policy. For consensual monitoring of conversations other than telephone conversations, advance authorization must be obtained in accordance with established guidelines. This applies both to devices carried by the cooperating participant and to devices installed on premises under the control of the participant. See U.S. Attorneys' Manual 9-7.301 and 9-7.302. For consensual monitoring of telephone conversations, advance authorization must be obtained from the SAC or Assistant Special Agent in Charge and the appropriate U.S. Attorney, Assistant Attorney General, or Deputy Assistant Attorney General, except in exigent circumstances. An Assistant Attorney General or Deputy Assistant Attorney General who provides such authorization shall notify the appropriate U.S. Attorney;

"8. Searches and seizures must be conducted under the authority of a valid warrant unless the search or seizure comes within a judicially recognized exception to the warrant requirement. See also, Attorney General's Guidelines on Methods of Obtaining Documentary Materials Held by Third Parties, 28 CFR Part 59;" (See MIOG, Part 2, Section 28.)

"9. Classified investigative technologies must be used in compliance with the Procedures for the Use of Classified Investigative Technologies in Criminal Cases; and

"10. Whenever an individual is known to be represented by counsel

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in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically on applicable law and Department procedure. [Where issues arise concerning the consistency of contacts with represented persons with applicable attorney conduct rules, the United States Attorney should consult with the Professional Responsibility Advisory Office.]

"V. DISSEMINATION AND MAINTENANCE OF INFORMATION

"A. The FBI may disseminate information during the checking of leads, preliminary inquiries, and investigations conducted pursuant to these Guidelines to United States Attorneys, the Criminal Division, and other components, officials, and officers of the Department of Justice. The FBI may disseminate information during the checking of leads, preliminary inquiries, and investigations conducted pursuant to these Guidelines to another Federal agency, or to a State or local criminal justice agency when such information:

"1. falls within the investigative or protective jurisdiction or mitigative responsibility of the agency;

"2. may assist in preventing a crime or the use of violence or any other conduct dangerous to human life;

"3. is required to be furnished to another Federal agency by Executive Order 10450, as amended, dated April 27, 1953, or

"4. is required to be disseminated by statute, interagency agreement approved by the Attorney General, or Presidential Directive; and to other persons and agencies as required by 5 U.S.C. 552 or as otherwise permitted by 5 U.S.C. 552a.

"B. The FBI shall maintain a database that identifies all preliminary inquiries and investigations conducted pursuant to these Guidelines and that permits the prompt retrieval of information concerning the status (open or closed) and subjects of all such inquiries and investigations.

"VI. COUNTERTERRORISM ACTIVITIES AND OTHER AUTHORIZATIONS

"In order to carry out its central mission of preventing the commission of terrorist acts against the United States and its people, the FBI must proactively draw on available sources of information to identify terrorist threats and activities. It cannot be content to wait for leads to come in through the actions of others, but rather must be vigilant in detecting terrorist activities to the full extent permitted by law, with an eye towards early intervention and prevention of acts of terrorism before they occur. This Part accordingly identifies a number of authorized activities which further this end, and which can be carried out even in the absence of a checking of leads, preliminary inquiry, or full investigation as described in Parts I-III of these Guidelines. The authorizations include both activities that are specifically focused on terrorism

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(Subpart A) and activities that are useful for law enforcement purposes in both terrorism and non-terrorism contexts (Subpart B).

"A. COUNTERTERRORISM ACTIVITIES

"1. Information Systems

"The FBI is authorized to operate and participate in identification, tracking, and information systems for the purpose of identifying and locating terrorists; excluding or removing from the United States alien terrorists and alien supporters of terrorist activity as authorized by law, assessing and responding to terrorist risks and threats, or otherwise detecting, prosecuting, or preventing terrorist activities. Systems within the scope of this paragraph may draw on and retain pertinent information from any source permitted by law, including information derived from past or ongoing investigative activities; other information collected or provided by governmental entities, such as foreign intelligence information and lookout list information; publicly available information, whether obtained directly or through services or resources (whether nonprofit or commercial) that compile or analyze such information; and information voluntarily provided by private entities. Any such system operated by the FBI shall be reviewed periodically for compliance with all applicable statutory provisions, Department regulations and policies, and Attorney General Guidelines.

"2. Visiting Public Places and Events

"For the purpose of detecting or preventing terrorist activities, the FBI is authorized to visit any place and attend any event that is open to the public, on the same terms and conditions as members of the public generally. No information obtained from such visits shall be retained unless it relates to potential criminal or terrorist activity.

"B. OTHER AUTHORIZATIONS

"In addition to the checking of leads, preliminary inquiries, and investigations as described in Parts I-III of these Guidelines, and counterterrorism activities as described in Part A above, the authorized law enforcement activities of the FBI include carrying out and retaining information resulting from the following activities:

"1. General Topical Research

"The FBI is authorized to carry out general topical research, including conducting online searches and accessing online sites and forums as part of such research on the same terms and conditions as members of the public generally. 'General topical research' under this paragraph means research concerning subject areas that are relevant for the purpose of facilitating or supporting the discharge of investigative responsibilities. It does not include online searches for information by individuals' names or other individual identifiers, except where such searches are incidental to topical research, such as searching to locate writings on a topic by searching under the names of authors who write on the topic, or searching by the name of a party to a case in conducting legal research.

"2. Use of Online Resources Generally

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"For the purpose of detecting or preventing terrorism or other criminal activities, the FBI is authorized to conduct online search activity and to access online sites and forums on the same terms and conditions as members of the public generally.

"3. Reports and Assessments

"The FBI is authorized to prepare general reports and assessments concerning terrorism or other criminal activities for purposes of strategic planning or in support of investigative activities.

"4. Cooperation with Secret Service

"The FBI is authorized to provide investigative assistance in support of the protective responsibilities of the Secret Service, provided that all preliminary inquiries or investigations are conducted in accordance with the provisions of these Guidelines.

"C. PROTECTION OF PRIVACY AND OTHER LIMITATIONS

"1. General Limitations

"The law enforcement activities authorized by this Part do not include maintaining files on individuals solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of any other rights secured by the Constitution or laws of the United States. Rather, all such law enforcement activities must have a valid law enforcement purpose as described in this Part, and must be carried out in conformity with all applicable statutes, Department regulations and policies, and Attorney General Guidelines. In particular, the provisions of this Part do not supersede any otherwise applicable provision or requirement of the Attorney General's Guidelines on FBI Undercover Operations or the Attorney General's Guidelines Regarding the Use of Confidential Informants.

"2. Maintenance of Records Under the Privacy Act

"Under the Privacy Act, the permissibility of maintaining records relating to certain activities of individuals depends in part on whether the collection of such information is 'pertinent to and within the scope of an authorized law enforcement activity.' 5 U.S.C. 552a(e)(7). By its terms, the limitation of 5 U.S.C. 552a(e)(7) is inapplicable to activities that do not involve the 'maintain[ing]' of a 'record' within the meaning of the Privacy Act, or that occur pertinent to and within the scope of an authorized law enforcement activity. 'Authorized law enforcement activities' for purposes of the Privacy Act include carrying out and retaining information resulting from the checking of leads, preliminary inquiries, or investigations as described in Parts I-III of these Guidelines, or from activities described in Subpart A or B of this Part. As noted in paragraph 3. below, however, this is not an exhaustive enumeration of 'authorized law enforcement activities.' Questions about the application of the Privacy Act to other activities should be addressed to the FBI Office of the General Counsel or the Office of Information and Privacy.

"3. Construction of Part

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"This Part does not limit any activities authorized by or carried out under other Parts of these Guidelines. The specification of authorized law enforcement activities under this Part is not exhaustive, and does not limit other authorized law enforcement activities, such as those relating to foreign counterintelligence or foreign intelligence."

"VII. RESERVATION

"A. Nothing in these Guidelines shall limit the general reviews or audits of papers, files, contracts or other records in the government's possession, or the performance of similar services at the specific request of a Department or agency of the United States. Such reviews, audits or similar services must be for the purpose of detecting or preventing violations of federal law which are within the investigative responsibility of the FBI.

"B. Nothing in these Guidelines is intended to limit the FBI's responsibilities to investigate certain applicants and employees under the federal personnel security program.

"C. These Guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any manner, civil or criminal, nor do they place any limitation on otherwise lawful investigative and mitigative prerogatives of the Department of Justice.

"Effective: 5/30/02 John Ashcroft
Attorney General"

**EffDte: 07/23/2002 MCRT#: 1216 Div: D6CT Cav: SecCls:

1-4 | INVESTIGATIVE AUTHORITY AND THE FIRST AMENDMENT |

(1) | The First Amendment to the United States Constitution guarantees the rights of free speech and peaceful assembly. Because of the importance of these rights in American society, acts by law enforcement agencies that could possibly chill the exercise of these rights have historically been reviewed by the legislative and judicial branches of government with careful scrutiny. Experience has shown that investigations by law enforcement into individuals, or the members of assembled groups, who advocate political or social goals through violent means, as well as investigations into the causes of civil or social disorder, have the greatest potential of exposure to such scrutiny. Therefore, it is important that these investigations be conducted according to strict guidelines and in a manner that respects the First Amendment rights of all persons, including those under investigation.

(2) | In particular, investigations that have this potential may only be initiated in strict compliance with the Attorney General's Guidelines and other applicable Department and FBIHQ directives. Information from private or public sources of possible violations of federal laws, which give rise to such

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investigations, must be carefully documented and particularized as to those persons suspected of such violations. Furthermore, the scope of each investigation must be carefully tailored to fit the circumstances giving rise to the investigation; although expansion in the scope of an investigation may be undertaken if justified by a change in these circumstances. Finally, the duration of the investigation must not be permitted to extend beyond the point at which its underlying justification no longer exists.

(3) Generally, an FBI investigation may employ any authorized investigative technique. In the case of those investigations with the potential to infringe upon First Amendment rights, consideration must be given to using those techniques that are less intrusive and less likely to adversely affect the exercise of those rights. For example, infiltrating private meetings of targeted groups should only be undertaken if attendance at public meetings is likely to produce critical investigative information.

(4) Furthermore, the collection of information concerning groups and individuals must be justified as reasonable and necessary for investigative purposes. Information concerning the exercise of First Amendment rights should be made a matter of record only if it is pertinent to and within the scope of the authorized law enforcement activity. When public-source printed material concerning the exercise of First Amendment rights is obtained and a decision made to retain such material, a notation must be placed on the material describing the reason(s) it was collected and retained. The notation must clearly indicate the specific investigative interest(s) which led to the decision to retain the item.

(5) Finally, if an individual, group, or activity has been characterized in a certain manner by the originators of information collected in the course of an investigation, FBI records, including transmitting documentation, should reflect that the characterization was made by another party, not the FBI. However, if the characterization comports in whole or in part with the results of independent FBI investigation, the transmitting communication may so state.

**EffDte: 04/05/2000 MCRT#: 986 Div: D9D6D5 Cav: SecCls:

Top of Page

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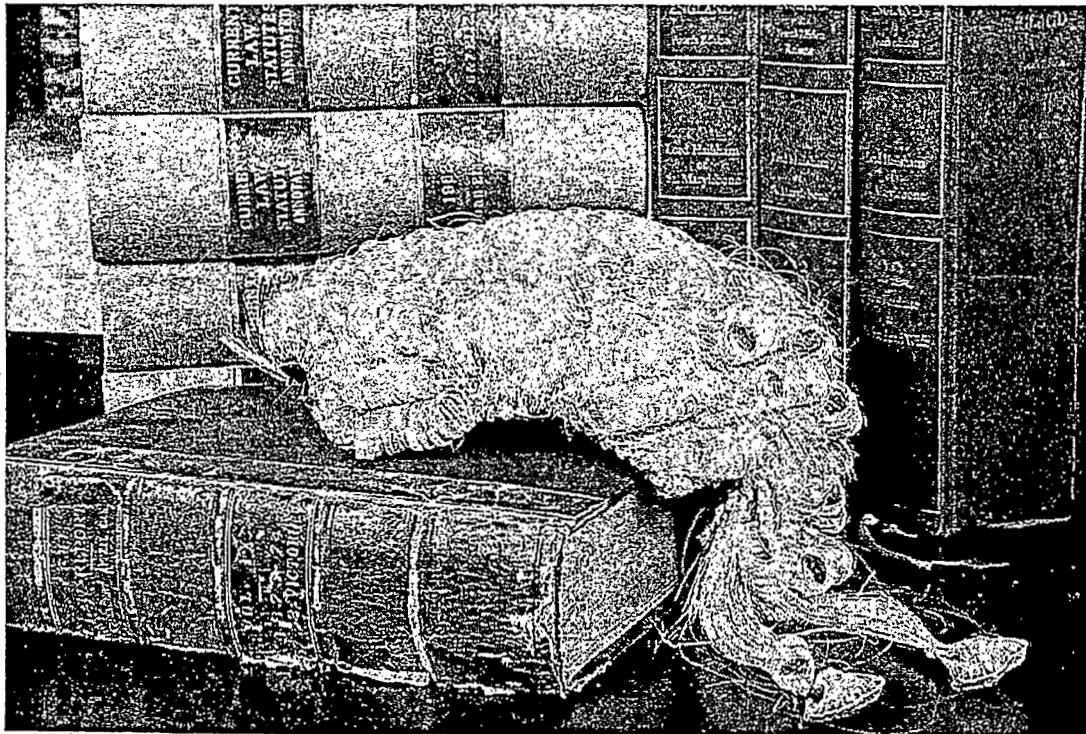
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FEDERAL BUREAU OF INVESTIGATION
United States Department of Justice

LEGAL HANDBOOK FOR SPECIAL AGENTS
(LHBSA)



Reissued June, 1994.
(Original issue April 28, 1978)

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SECTION 7. CONFESSIONS AND
INTERROGATIONS

**EffDte: 04/28/1978 MCRT#: 0 Div: D9 Cav: SecCls:

7-1 IN GENERAL (See MIOG, Part 2, Section 7.)

The most important limitations on the admissibility of an accused's incriminating statements are the requirements that they be voluntary; that they be obtained without the government resorting to outrageous behavior; and that they be obtained without violating the accused's right to remain silent or to have a lawyer present.

**EffDte: 07/26/1999 MCRT#: 915 Div: D9 Cav: SecCls:

7-2 VOLUNTARINESS

A conviction based on an involuntary statement, without regard to its truth or falsity, is a denial of the accused's right to due process of law. A coerced confession will undermine the legitimacy of a conviction.

**EffDte: 07/26/1999 MCRT#: 915 Div: D9 Cav: SecCls:

7-2.1 Policy (See MIOG, Part 2, 7-2.1.)

(1) It is the policy of the FBI that no attempt be made to obtain a statement by force, threats, or promises. Whether an accused or suspect will cooperate is left entirely to the individual. If after being advised of his/her rights, an in-custody suspect indicates that he/she wishes to remain silent or that he/she wishes an attorney, all interrogation must cease at that time. Agents are reminded, however, that certain questions, such as standard booking questions and public safety questions, do not amount to interrogation for purposes of Miranda. (See LHBSA, Part 1, 7-4.)

(2) During an interview with a witness, suspect, or subject, Agents should under no circumstances state or imply that public sentiment or hostility exists toward such person. If, during an interview with a witness, suspect, or subject, questions are raised by such persons or if anything transpires which gives reasonable grounds to believe that subsequently such questions or incident may be used by someone in an effort to place an Agent or the FBI in an unfavorable light, an electronic communication regarding such questions or incident should be immediately prepared for the SAC. The SAC is responsible for promptly advising FBIHQ and the USA of such questions or incident and FBIHQ must be promptly informed of all

developments.

**EffDte: 07/26/1999 MCRT#: 915 Div: D9 Cav: SecCls:

7-2.2 | Factors Affecting Voluntariness (Formerly 7-2.3)

(1) Courts use a "totality of circumstances" test when determining the voluntariness of an accused's statement. Although it is not possible to predict in every case whether a court will find, under all the circumstances presented, that the statement was a product of the accused's free will or a product of coercion, there are predictable factors that a court will examine in making its determination. Those factors include the following:

- (a) Notification of charges;
- (b) Age, intelligence, and experience of the accused;
- (c) Physical condition of the accused;
- (d) Physical abuse, threats of abuse, use of weapons, number of officers present;
- (e) Threats and psychological pressure;
- (f) Privation: food, sleep, medication;
- (g) Isolation, incommunicado interrogation;
- (h) Duration of questioning;
- (i) Trickery, ruse, deception;
- (j) Advice of rights; and
- (k) Promises of leniency or other inducements.

(2) It must be kept in mind that the above factors are merely illustrative. The presence of any one or more of the factors mentioned above will not necessarily make a statement involuntary.

**EffDte: 07/26/1999 MCRT#: 915 Div: D9 Cav: SecCls:

7-2.3 | Moved to 7-2.2 |

**EffDte: 07/26/1999 MCRT#: 915 Div: D9 Cav: SecCls:

7-3 WARNING OF RIGHTS

**EffDte: 04/28/1978 MCRT#: 0 Div: D9 Cav: SecCls:

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 WARNING, ASSURANCE, GRANT, OR PROMISE, CONCERNING DISCIPLINARY OR OTHER ADVERSE CONSEQUENCES, GIVEN TO ANY FBI EMPLOYEES WHO, SINCE SEPTEMBER 12, 2001, WAS ASKED OR REQUIRED TO PROVIDE INFORMATION TO THE FBI, THE U. S. MILITARY, OR OTHER U. S.

GOVERNMENT AGENCY CONCERNING TREATMENT OR INTERROGATION OF DETAINEES IN MILITARY ZONES. PLEASE INCLUDE COPIES OF ALL FD-645S OR OTHER FORMS THAT WERE OFFERED TO OR SIGNED BY SUCH FBI EMPLOYEES. PLEASE ALSO INCLUDE ALL RECORDS RELATED TO THE FBI'S DELIBERATION OR DETERMINATION WHETHER TO PROVIDE ANY SUCH WARNINGS, ASSURANCES, GRANTS, OR PROMISES TO AGENTS ASKED OR REQUIRED TO PROVIDE INFORMATION TO THE FBI, THE U. S. MILITARY, OR OTHER U. S. GOVERNMENT AGENCY CONCERNING TREATMENT OR INTERROGATION OF DETAINEES IN MILITARY ZONES.

FBI TRACKING # OIG-REQ 02-18-05 -PART 12

[PACKET #2- FBI BATE STAMP 0000025-0000187]

{NEW RESEARCH & OGC MATERIAL}

"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 WARNING, ASSURANCE, GRANT, OR PROMISE, CONCERNING DISCIPLINARY OR OTHER ADVERSE CONSEQUENCES, GIVEN TO ANY FBI EMPLOYEES WHO, SINCE SEPTEMBER 12, 2001, WAS ASKED OR REQUIRED TO PROVIDE INFORMATION TO THE FBI, THE U. S. MILITARY, OR OTHER U. S. GOVERNMENT AGENCY CONCERNING TREATMENT OR INTERROGATION OF DETAINEES IN MILITARY ZONES. PLEASE INCLUDE COPIES OF ALL FD-645S OR OTHER FORMS THAT WERE OFFERED TO OR SIGNED BY SUCH FBI EMPLOYEES. PLEASE ALSO INCLUDE ALL RECORDS RELATED TO THE FBI'S DELIBERATION OR DETERMINATION WHETHER TO PROVIDE ANY SUCH WARNINGS, ASSURANCES, GRANTS, OR PROMISES TO AGENTS ASKED OR REQUIRED TO PROVIDE INFORMATION TO THE FBI, THE U. S. MILITARY, OR OTHER U. S. GOVERNMENT AGENCY CONCERNING TREATMENT OR INTERROGATION OF DETAINEES IN MILITARY ZONES.

FBI TRACKING # : OIG -REQ 02/18/05 -PART 12
{NEW RESEARCH & GC V. CAPRONI MATERIAL}

PACKET: #2
{JUNE 1, 2005}

DATE	TYPE of DOCUMENT	SUBJECT	TOTAL PAGES	BATE STAMP #s
NO DATE	REPORT	A REPORT TO THE AMERICAN PEOPLE ON THE WORK OF THE FBI 1993-1998	6	025-030
04/21/94	MANUAL SECTION {MAOP}	PROCEDURAL RIGHTS OF PREFERENCE ELIGIBLE EMPLOYEES REGARDING ADVERSE ACTIONS {SECTION 13-10 thru 13-14.5}	13	031-043
7/09/94	MANUAL SECTION {MAOP}	ACTIVITIES AND STANDARDS OF CONDUCT {SECTION 1-1 thru 1-30.4}	114	044-157
09/10/02	GUIDELINES	GUIDELINES TO CONDUCTING OPR INVESTIGATIONS	26	158-183
09/22/04	<input type="text"/> v. CAPRONI E-MAIL	FW: PRISONER ABUSE	4	184-187
TOTAL PAGES			163	



U.S. Department of Justice Federal Bureau of Investigation

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A Report to the American People on the Work of the FBI 1993 - 1998

Louis J. Freeh
Director

Chapter 1: Law Enforcement Ethics and Fairness

Nothing is more important to the present and future success of the Federal Bureau of Investigation than the ethics and integrity of its Special Agents and other employees.

If the rule of law is to prevail, law enforcement must be fully supported by the public—and the public will ultimately support only those law enforcement officers who are completely law-abiding.

This is the reason that during the past five years I have placed a top priority on:

- The creation of a "Bright Line" that all FBI employees must follow in their professional and personal conduct.
- Development of a more effective ethics program through creation of an expanded Office of Professional Responsibility to investigate allegations of employee misconduct and provide appropriate sanctions against those who break FBI regulations.
- New, intensive ethics training for Special Agents.

At the same time, the FBI has taken steps to make certain that the disciplinary processes are fair and timely for all employees accused of misconduct. The FBI is dedicated to upholding the law and protecting the rights of all persons being investigated in any type of case. It is only fair and just that the full protections of due process also be extended to FBI employees who are being investigated for alleged wrongdoing.

The FBI also believes in the public's right to know as much about its operations as can be released consistent with the law and security considerations. In view of that, the decision was made to publicly release late in 1998 a report on the disciplinary actions taken by the expanded Office of Professional Responsibility. The report was made available to the news media for nationwide distribution to the public. Annual reports will be made public in the future.

Core Values

To accomplish the FBI's mission, we must identify and follow core values. They all relate to uncompromising integrity. The public expects the FBI to do its utmost to protect the people and their rights. The public also expects, and deserves, total honesty by FBI personnel.

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The FBI rejects the false notion that an FBI Agent can have two sets of core moral values—one for on the job and another for his or her personal life.

The FBI's core values have been plainly stated to its employees: rigorous obedience to the Constitution of the United States, respect for the dignity of all those we protect, compassion, fairness and uncompromising personal and institutional integrity.

As I have told FBI employees, observance of these core values is our guarantee of excellence and propriety in performing the Bureau's national security and criminal investigative functions, which touch the lives of all Americans.

Personal and institutional integrity reinforce each other. We must have such integrity. We owe it to the nation in exchange for the sacred trust and great authority conferred upon us.

Bright Line

In 1994, I created the "Bright Line" policy, designed to enhance the integrity and independence of the FBI. The "Bright Line" puts all employees on notice as to what is expected of them.

The FBI must constantly strive to be a positive force in our society. How the FBI is viewed by Americans—and how FBI employees view themselves—is a crucial factor to succeeding in our many difficult missions.

In addition, FBI employees must uphold and revere core values that include integrity, reliability, and trustworthiness. Any employee whose conduct is at odds with those core values forfeits his or her right to FBI employment.

While this list is not all-inclusive, there are clear examples of behavior for which employees can expect to be dismissed. They include:

- o Lying under oath.
- o Failure to cooperate during an administrative inquiry when required to do so by law or regulation.
- o Voucher fraud.
- o Theft or other unauthorized taking, using or diversion of government funds or property.
- o Material falsification of investigative activity and/or reporting.
- o Falsification of documentation relating to the disbursement/expenditure of government funds.
- o Unauthorized disclosure of classified, sensitive, Grand Jury, or Title III material.

At the same time, there is firm discipline for lesser incidents of misconduct.

I have always summed up the "Bright Line" concept in clear, simple terms:

I believe in the basic truth that lying, cheating, or stealing is wholly inconsistent with everything the FBI stands for and cannot be tolerated.

After creating the original "Bright Line," I later developed other important "Bright Lines" regarding employee conduct—one covering sexual harassment and the other alcohol abuse.

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Regarding sexual harassment, it is my belief that there is no place in the work environment for discrimination or harassment of any nature. Such conduct will simply not be tolerated in the FBI under any circumstances. Every employee is held to this standard.

Clear procedures have been created to process complaints and FBI management officials will promptly investigate such incidents. Disciplinary action will be taken against such misconduct, and the discipline can range from an oral reprimand to dismissal. FBI employees are assured they can seek redress without fear of reprisal from anyone.

Alcohol abuse is also a serious problem that must be met in two ways—FBI-sponsored treatment programs to aid those who abuse alcohol and discipline for those who violate FBI regulations.

FBI policy forbids use of alcohol for employees while on duty. Since Special Agents must be available for duty on a 24-hour basis, they must take affirmative steps to make certain they are fit for duty at all times. There is severe administrative action for alcohol-related misconduct. I take a particularly serious view of those who drive while under the influence of alcohol or while intoxicated, whether on or off-duty, and termination of employment may result.

Office of Professional Responsibility

To implement the new ethical standards most effectively, the FBI's disciplinary structure and procedures have been reorganized, streamlined, and expanded.

Previously, key functions on ethics matters were in different FBI divisions. It made sense to consolidate them, and in 1997 the disciplinary investigations program and the adjudications program were combined in a new and separate Office of Professional Responsibility (OPR). OPR was further upgraded by my appointment of an Assistant Director of the FBI as its head. To fill this important position, I went outside of the FBI and selected a distinguished career prosecutor and senior official of the Department of Justice. At the Department, he had extensive experience in extremely sensitive internal integrity investigations and achieved a national reputation for landmark achievements in the prosecution of organized crime cases.

With its resources doubled, the new OPR was able to significantly improve performance in all of its responsibilities and to create enhanced procedures for dealing with allegations of employee misconduct.

This consolidation trend continues, and I have placed staff and responsibilities of the Office of Law Enforcement Ethics in OPR. Among other things, the office conducts the ethics training program for the FBI's Special Agent Trainees. This change will ensure that the entire OPR program is strengthened. The OLEE training program compliments the FBI's standards-of-conduct training program, which is administered by the FBI's Office of the General Counsel (OGC). Together, the two programs ensure that all FBI Agents and support personnel are well versed in both the standards-of-conduct and the broader ethical precepts that govern law enforcement. OGC and OPR coordinate the OLEE ethics curriculum.

The OPR framework now provides great efficiency for all aspects of this complex area of allegations of misconduct by FBI employees and increases the attention given to both internal ethics and discipline. It provides the logistics and mechanisms to ensure application of the most forward-looking policies.

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At the same time, OPR brings greater rights and transparency to the important process of increasing objectivity and fairness for all employees, which are essential in any government dedicated to the rule of law.

For example, employees are now permitted counsel during disciplinary interviews. In addition, they have greater discovery and hearing rights as well as the right to appeal to a neutral board.

My goal is for the American public, as well as all employees, to have total confidence that the disciplinary system is fair and promptly identifies and punishes misconduct, without fear or favor. I am proud of the men and women of the FBI who carry out their work with total honesty and integrity. By erecting rigorous safeguards, we can reduce impropriety to the absolute minimum.

The only way to maintain the consistent excellence which has made the FBI a world-wide law enforcement model is to insist upon, to merit, and to relentlessly execute the responsibility to police ourselves.

A new public OPR report shows that, in Fiscal Year 1997, 212 FBI employees out of a work force of 28,000 persons, or 0.8 percent of the total staff, were fired or disciplined for serious misconduct. Three Special Agents and 16 support personnel were discharged, and 96 Special Agents and 97 support employees were disciplined for improper behavior. In addition, 38 employees were terminated during probationary employment, resigned, or retired while they were the subjects of pending OPR investigations. Such separations, however, may occur for nondisciplinary reasons.

The FBI must have uncompromising integrity, and I will do everything within my power to achieve that goal.

Ethics Training

One of the major training breakthroughs that has been achieved at the FBI is the addition of ethics and integrity training for the new Special Agent curriculum and management training at the FBI Academy at Quantico. Ethics is the golden thread which runs throughout our training. It often is the difference between correctly applying the awesome power of law enforcement and conduct that undermines the rule of law.

Since 1994, the FBI has trained more than 3,700 new Special Agents. Because they will serve through the first quarter of the next century, the education they receive as new Special Agent Trainees builds the foundation for the future success of the FBI and the safety of society. In the 16 weeks of Special Agent training at Quantico, the FBI teaches new Agents the tools, techniques, and skills which they will need to operate most effectively in enforcing hundreds of laws.

Their grave responsibilities will include investigation of violent crime, drug trafficking, terrorism, espionage, civil rights, public corruption, environmental crimes, and white-collar crimes that rob the public.

Among the most critical training they receive is law enforcement ethics. A strong foundation in ethics directs the choices and decisions that these agents will have to make every day for decades. Without this strong foundation, our criminal justice system can be easily exploited by law enforcement officers sworn to protect the public, thereby subverting the confidence of the people we serve.

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I believe so strongly in the importance of this training and its application to the law enforcement culture that I approved the creation of the Office of Law Enforcement Ethics in 1996. So far, this office has instructed more than 2,600 Special Agent Trainees, plus Special Agents in the field, FBI Headquarters personnel, and over 6,000 local, state, and foreign law enforcement officers.

The topics of the ethics training include the higher ethical standard required of FBI personnel due to jurisdictional responsibilities, the ethical basis of the Constitution, classic philosophy on ethics, and the nature of criminal and serious misconduct.

Other topics include causes and prevention of law enforcement corruption, use of deception by law enforcement officers, ethical problems unique to law enforcement, and the relationship of ethics to law enforcement. All personnel are also trained in the standards-of-conduct governing Executive Branch employees both upon initial employment and annually thereafter, as prescribed by the Office of Government Ethics. Standards-of-conduct training includes discussion of the rules governing the acceptance of gifts from outside sources, conflicts-of-interests, outside activity limitations, and other matters. Personnel who are eligible for retirement are also briefed on the laws governing post-government service employment restrictions.

As an indication of the subject's importance, the training program for all new Special Agent Trainees now includes a 16-hour intensive course in ethics, and ethics matters are stressed throughout the entire training curriculum.

At the conclusion of the training, the Special Agent Trainee must be able to demonstrate the application of newly-learned ethical tools to actual situations in the field, using both case studies and special scenarios. In addition, the Trainee must demonstrate an understanding of both moral philosophy and moral decision-making. Finally, each graduating class selects a member of the New Agents Class to receive the Fidelity, Bravery and Integrity Award. This is the highest award for a new Special Agent and recognizes the critical components of law enforcement ethics.

The Office of Law Enforcement Ethics also provides ethics instruction to foreign law enforcement officers who receive training at the FBI Academy. In addition, OLEE personnel provide instruction to Eastern European law enforcement officers attending the International Law Enforcement Academy at Budapest. The FBI role is one of partnership—designed to increase the ability of the FBI to effectively combat international crime.

The concept of high standards for law enforcement is not new but it is sometimes forgotten or ignored or given short shrift. We should ponder the words of Attorney General Charles Bonaparte, who founded the Bureau of Investigation—which grew into today's FBI. In 1909, Bonaparte wrote to President Theodore Roosevelt that he was determined "to establish a force of well educated investigators of good character; subject to extremely strict discipline and supervision."

Every person in law enforcement should take to heart those words written nearly a century ago.

And they lead us to the key question:

Would Attorney General Bonaparte be satisfied with the state of ethics and efficiency existing today in the FBI? I am confident that he would be, but that he would believe, as I do, that we can and will become even better.

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Compliance with the highest ethical standards is essential for all law enforcement officers because one of history's darkest lessons teaches us what happens when the law is subject to the most horrifying misuse by police. The place was Nazi Germany and the time was the 1930s. The Nazi terror began not by breaking the law but by using the law, as the Holocaust Memorial so graphically shows us.

Hitler persuaded the German president to invoke a section of the German constitution that in effect suspended all civil liberties, thus permitting warrantless searches and seizure of property without due process. These emergency decrees became the legal basis for the concentration camps in which millions of innocent persons perished.

The decrees were initially carried out not by the Gestapo but by the regular civilian police in many cases. This is a lesson that no one should forget. Democracy depends on law enforcement to protect the rights of all citizens and to rescue them from harm. When police fail in this great responsibility, suffering and death follow. This lesson must be foremost in the minds of all in the FBI.

The FBI is determined that the grim meaning of the Holocaust will not be forgotten by its Special Agents.

[OPCA Home Page](#) | [Table of Contents](#) | [Foreword](#) | [Executive Summary](#) |
[Chapter 1](#) | [Chapter 2](#) | [Chapter 3](#) | [Chapter 4](#) | [Chapter 5](#) | [Chapter 6](#) |

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(b) Part B, Items 1, 2, 3, and 22

**EffDte: 04/21/1994 MCRT#: 226 Div: OP Cav: SecCls:

13-10 PROCEDURAL RIGHTS OF PREFERENCE ELIGIBLE EMPLOYEES REGARDING ADVERSE ACTIONS (See MAOP, Part 1, 1-29, 1-30.3, 3-6.1, 8-1.11, 8-1.12.2, 10-6, 10-7, 13-11(2), 13-13, 14-4.1 & 14-4.2.)

(1) A "preference eligible" employee who has completed one year of current continuous service in the same or similar positions within an agency may have certain rights when an adverse action is proposed or taken against the employee. For the purposes of this manual, an "adverse action" involves removal, suspension for more than 14 days, reduction in grade or pay, or a furlough of 30 days or less. Such an action may only be taken for such cause as will promote the efficiency of the service. (See Title 5, United States Code (USC), Sections 7511-7513.) (See MAOP, Part 1, 21-1.)

(2) As a general matter, a preference eligible employee includes an honorably discharged veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized; during the period beginning on April 28, 1952 and ending on July 1, 1955; or for at least 180 days during a period occurring after January 31, 1955 and before October 15, 1976 (with exceptions applying to the National Guard and the Reserves). The term also includes certain disabled veterans. In addition, under certain limited circumstances "preference eligible" can include an unmarried widow/widower of a veteran, the spouse of a disabled veteran, or the mother of a deceased or disabled veteran. It does not include members of the FBI-DEA Senior Executive Service. (See Title 5, USC, Section 2108.)

(3) With respect to adverse actions, the procedural rights of a preference eligible employee who has completed one year of current continuous service are set forth at Title 5, USC, Section 7513. These rights include: (a) at least 30 days' advance written notice stating the specific reasons for the proposed action, unless there is a reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed; (b) a reasonable time of not less than seven days to answer orally and in writing and to furnish affidavits and other documentary evidence; (c) the right to be represented by an attorney or other representative; (d) a written decision which includes the specific reasons for the agency action; (e) the right to appeal the adverse action to the Merit Systems Protection Board (MSPB); and, (f) the right to inspect documents which the agency relied upon in arriving at its decision. As a general matter, appeals to the MSPB by preference eligible employees are to be filed within 30 days after the effective date of the adverse action.

(4) During the period of advance written notice, the employee may be retained on active duty, be placed on administrative leave, be placed on annual leave or leave without pay with the employee's consent, or be suspended without pay if the suspension does not exceed 14 days in length.

(5) Like nonpreference eligible employees, a preference eligible employee who has completed his/her one-year probationary period (see MAOP, Part 1, Section 21) may appeal an adverse action to the Assistant Director, Administrative Services Division, FBIHQ.

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(6) Any necessary notices to preference eligible employees will be handled by FBIHQ.

(7) Upon receiving an employee's reply to the notice of proposed disciplinary action, FBIHQ will consider the reply and advise the employee in writing of the final decision.

(8) A nonpreference eligible employee in an "excepted service" agency such as the FBI is not LEGALLY entitled to the same procedural rights afforded to a preference eligible employee in adverse action cases.

**EffDte: 05/31/2002 MCRT#: 1207 Div: OP Cav: SecClis:

||13-11 | USE OF AN INDEFINITE SUSPENSION IN PERSONNEL MATTERS (See MAOP, Part 1, 1-29.)

(1) Indefinite suspensions are defined by the FBI as the placing of an employee in a temporary status without duties and pay pending investigation, inquiry, or further agency action. The indefinite suspension continues for an indeterminate period of time and ends with the occurrence of the pending conditions set forth in the notice of action which may include the completion of any subsequent administrative action. An indefinite suspension may be imposed when it is determined that an employee's continued presence in the workplace will be injurious to the employee, to co-workers or the public, to the FBI's operations, or to national security interests pending additional investigation into the underlying conduct of the employee. Members of the FBI's Senior Executive Service (SES) are not covered by this policy. Rather, indefinite suspensions involving members of the FBI's SES are governed by the adverse action provisions set forth in the FBI's SES policy.

(2) An indefinite suspension for more than 14 days is considered an adverse action under 5 CFR, 752.401(a)(2). Preference eligible employees are, therefore, afforded statutory entitlements which are set forth in Title 5, USC, Section 7513 and MAOP, Part 1, 13-10.

(3) See MAOP, Part 1, 1-29 for further information concerning the use of an indefinite suspension in matters involving revocation of a security clearance.

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

||13-11.1 Use of an Indefinite Suspension in Matters Involving Criminal Conduct

(1) Each incident involving suspected criminal conduct will be considered from the viewpoint of whether the employee's continued presence in the workplace is detrimental to the FBI in accomplishing its mission. Each incident involving suspected criminal conduct will be analyzed by the Personnel Officer, FBI, on a case-by-case basis. In some situations involving a misdemeanor, such as some vehicular offenses, the continued presence of the employee in the workplace may not be detrimental and, therefore, indefinite suspension as an administrative action would not be appropriate. Certain criminal conduct such as fraud against the government may form the basis for an indefinite suspension. These examples are not intended

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[to limit the use of an indefinite suspension in matters involving criminal conduct.]

[(2) Preference eligible employees (e.g., certain veterans) may appeal indefinite suspensions to the Merit Systems Protection Board (MSPB). The MSPB has stated that an agency may take an action to indefinitely suspend an employee if it has reasonable cause to believe that a crime has been committed for which a sentence of imprisonment may be imposed. The reasonable cause may be established, for example, by an indictment or through a judicial determination of probable cause. The arrest of an employee may not be sufficient to establish reasonable cause as required by the MSPB absent additional facts to justify the suspension. Nonpreference eligible FBI employees do not have the right to appeal an indefinite suspension to the MSPB.]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

||13-11.2 Final Authority for Approval of Indefinite Suspensions

[All indefinite suspensions will be reviewed and approved by the Personnel Officer, FBI, Personnel Division, FBIHQ.]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

||13-11.3 Removal From Indefinite Suspension

[An indefinite suspension will be terminated upon completion of the FBI's inquiry and decision concerning the status of the employee (i.e., a decision to fully or partially allow the employee to return to the work place or to terminate employment with the FBI).]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

||13-11.4 Back Pay Matters

[An employee is NOT entitled to back pay for the period of the suspension.]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

|||13-12| RESIGNATION TENDERED DURING PERSONNEL ACTION INQUIRY|(FORMERLY 13-11) (See MAOP, Part 1, 17-1.1.)|

(1) It may be that an employee would rather submit his/her resignation than see the inquiry continue and face possible charges. Division heads, SACs and other supervisory employees may, upon conclusion of their findings, discuss with the employee what the intended recommendation to FBIHQ will be with respect to administrative action, being careful to point out at the same time that any formal action or charges will be made at FBIHQ. Accordingly, it is permissible to discuss the possibility of resignation with the employee.

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5/25/2005

Duress, deception, intimidation or anything similar will not be tolerated and must not be used to influence employee's decision nor may employee be denied adequate time, if requested, to make a decision between resigning or seeing the inquiry continued. Employee should be advised of the Bureau's procedures for employee discipline and that these procedures allow an employee the opportunity to rebut negative allegations and recommendations of his/her supervisors. Employee should also be advised that a voluntary resignation might preclude him/her from receiving unemployment compensation he/she may otherwise be entitled to.

(2) Should an employee involved in allegations submit his or her resignation from the Bureau's service, such resignation should be received and forwarded to FBIHQ.

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

13-13. SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES FOR FBI EMPLOYEES (FORMERLY 13-12) (See MAOP, Part 1, 1-30.3 and 21-7(4).)

(1) This schedule is to be used only as a guide in determining appropriate discipline based on the violation of regulations by Bureau employees. This schedule is not all inclusive, and final determination of the appropriate disciplinary action warranted in each case will be made by FBIHQ, except for those matters delegated to SACs and Assistant Directors (see 13-2(4) of this section for details). It should be noted that the decision-making process utilized in determining appropriate action in disciplinary matters is extensive in nature and involves input from every level of management in FBIHQ. In addition, consideration is given to Bureau policy and similar incidents previously resolved, as well as any aggravating or mitigating circumstances of the case in point. In some instances, discussions are held with the Department of Justice and the Office of Personnel Management before a final determination is made. In most instances, penalties for violations of regulations will fall within the range of penalties set forth in this schedule. In aggravated case, a penalty outside the range of penalties may be imposed. For example, supervisors and Bureau officials, because of their responsibility to demonstrate exemplary behavior, may be subject to a greater penalty than is provided in the range of penalties. The purpose of this schedule is not to remove the personnel management decisions made in all disciplinary matters but rather to provide an example and guide which is used at FBIHQ and in the field in connection with decisions made in regard to disciplinary matters.

(2) In regard to suspensions, it is noted that the Civil Service Reform Act (CSRA) of 1978 provides that days of suspension will be computed in terms of calendar days, not days worked. Therefore, recommendations for a period of suspension will only be made in terms of calendar days. A period of suspension will always commence at the close of business, Friday of any given week. For example, recommendation of seven (7) days' suspension, if approved, will result in a forfeiture of five days' pay whereas a recommendation of fourteen (14) days' suspension will result in a forfeiture of ten days' pay. A period of suspension in excess of 14 calendar days is an adverse action as defined in the CSRA of 1978 (see 13-10 of this section for details).

(3) A non-SES employee desiring to appeal any suspension from duty without pay and/or an adverse disciplinary sanction will be

FBI024240CBT

OIG-REQ 02/18/05-PART 12

FBI0000034
3/25/2005

b2

required to file an appeal stating the grounds relied upon in writing. Only employees who have completed the one-year (two years for Special Agents and forensic examiners) probationary period required by the FBI will be entitled to an appeal. This appeal must be filed within 30 days following notification of the disciplinary action to the employee. The Deputy Assistant Director (DAD), Inspection Division (INSD), will serve as the primary official responsible for the appellate review of disciplinary matters which have involved a non-SES employee's suspension from duty without pay for a period of 14 days or less (called a nonadverse action), unless that disciplinary sanction was issued by the AD, OPR. Whenever the AD, OPR, serves as the deciding official in the suspension of a non-SES employee in a nonadverse action, the AD, INSD, will serve as the deciding appellate official. The decision of the AD or DAD, INSD, in such matters will constitute the final authority within the FBI for appellate review.

When a matter under appeal involves a suspension of more than 14 days, demotion or dismissal of a non-SES employee (called an adverse action), the AD, INSD, will establish a Disciplinary Review Board (DRB) to review the action taken by OPR.

When disciplinary action is taken against SES members or ASACs, the Deputy Director is the action authority. The Director is the final appeal authority for disciplinary actions taken by the Deputy Director. Thereafter, nonpreference eligible FBI employees in the excepted service do NOT have a right to appeal a disciplinary action to the Merit Systems Protection Board (MSPB). A "preference eligible" employee who has completed one year of current continuous service in the same or similar positions in an agency, in addition to being able to appeal a disciplinary action as indicated above, may also appeal an "adverse action" (e.g., removal, suspension for more than 14 days, reduction in grade or pay) to the MSPB. As a general matter, appeals to the MSPB by preference eligible employees are to be filed within 30 days after the effective date of the adverse action. (See MAOP, Part 1, 13-2, 13-10, 14-4.1 and 14-4.2.)

(4) COMPOSITION OF A DISCIPLINARY REVIEW BOARD

(a) A DRB will be composed of three voting members, each of whom is a member of the FBI's Senior Executive Service (SES). After designation as members of a DRB, employees will be instructed to refrain from acquainting themselves with any facts or circumstances involving the subject of the appeal, except to review the record of the case.

(b) The DRB will be chaired by the AD, INSD, whenever the disciplinary sanction was imposed by the AD, OPR. In instances in which the disciplinary action under appeal is decided by the DAD, OPR, at the discretion of the AD, INSD, the Board may be chaired by the DAD, INSD.

(c) A non-SES employee who appeals a suspension of more than 14 days, demotion or dismissal will be permitted to select one member of the DRB from a list of all FBI SES participants except those serving at SES level 6, and those who, due to the nature or geographical location of their assignments, have been determined to pose conflicts with the objective and expeditious character of DRB proceedings. This list will be forwarded by the INSD to the employee's division head, and made available for the employee's review, upon request, by the division head or his/her designee (e.g.,

FBI024241CBT

the Chief Division Counsel), who will then report the employee's selection to the INSD. The third member of the DRB will be selected randomly from the same list. After serving on the DRB, this third member will be removed from the pool of SES participants eligible for random selection (but not employee selection) for DRBs for the remainder of the fiscal year.

(d) An SES member who serves (or last served, in the case of a dismissal) as an employee's rating or reviewing official will not be permitted to serve as a member of a DRB which decides that individual's appeal of an adverse disciplinary sanction.

(e) If, after selection, a member of a DRB feels constrained to disqualify himself/herself, a replacement will be chosen in the same manner the disqualified member was selected.

(5) INSD AND DRB AUTHORITY AND PROCEDURES

(a) INSD, in an appeal from a suspension of 14 days or less, and a DRB, in an appeal of a suspension of more than 14 days, demotion or dismissal, will review the issues presented in writing by the employee. The review will be of the employee's written appeal, any response submitted by OPR, and any documentary record. If the record of a disciplinary action taken under the auspices of OPR is insufficient to decide the merits of an appeal, INSD or the DRB may remand the case to OPR and direct such additional investigation and findings as may be necessary. Nothing shall preclude INSD or a DRB from requiring an oral presentation if considered helpful to a resolution of the appeal.

(b) An appeal of a suspension of 14 days or less will be decided by the designated INSD official. The decision of a DRB in an appeal of a suspension of more than 14 days, demotion or dismissal will be by majority vote.

(c) In exercising appellate authority, INSD and a DRB may independently redetermine the factual findings and/or the penalty imposed. However, in the event that a different disciplinary sanction is determined to be appropriate, that sanction must be consistent with applicable disciplinary precedent.

(d) After reaching a decision in the review of an appeal, INSD or a DRB will document its findings in writing and provide the employee a written decision.

(e) If INSD or a DRB finds that an employee has not received the procedural protections in the disciplinary process to which he/she is entitled, it may retain the matter for decision, e.g., when the matter involves harmless error, may refer the matter back to OPR for corrective action; or may reverse or modify the action of the deciding official.

(f) The decision of INSD or of a DRB concerning the merits of an appeal involving a non-SES employee will constitute the final decision of the FBI concerning the appropriateness of the disciplinary sanction in the matter under appeal.

(g) Decisions by the INSD or a DRB in the appeal of disciplinary sanctions will be implemented no later than 60 calendar days after the appellate decision is rendered in writing.

FBI024242CBT

OIG-REQ 02/18/05 PART 12

FBI0000036

5/25/2005

These procedures will not apply to matters involving an appeal of an adverse disciplinary action resulting from an employee's loss of a security clearance.

The expansion of procedural entitlements in the appeal of disciplinary actions will not include the right of appeal to the MSPB. The statutory right to appeal an adverse disciplinary action to the MSPB is preserved for preference eligible employees. Existing policies governing indefinite suspensions, administrative leave actions, fitness for duty determinations and nonadverse actions will not be affected by this expansion of appellate procedures.

[(6)] The following definitions are furnished for information. This schedule does not include discipline required by law or infractions which, in addition to being a violation of Bureau rules and regulations, are also a criminal offense.

(a) Oral reprimand—Employees are advised of deficiency or infraction of regulations and notation made in personnel file relating to the need for the official reprimand.

(b) Commented upon in annual performance rating—In this instance, the infraction warranted more than an oral reprimand but is not considered severe enough for official recognition in the form of a letter of censure. This refers to work-related matters only.

(c) Censure—Official written reprimand.

(d) Censure and probation—Official written reprimand which includes a minimum probationary period of 90 days for Special Agents and 60 days for other employees.

(e) Censure, probation and suspension—Official written reprimand which, in addition to a probationary period, includes a period of time in which the employee is removed from duty without pay.

(f) Demotion—Any reduction in grade or pay.

(g) Removal—Dropped from the rolls of the FBI.

[(7)] The standards by which all employees are held are set forth in greater detail in this manual. For further reference, these standards of conduct can be found in the Department of Justice Order 350-65 captioned "Standards of Conduct," Executive Order 12764, and the ETHICS HANDBOOK which is distributed to all personnel.

[(8)] An employee may be censured when the cause for administrative action is sufficiently aggravated as to require a written reprimand. At the time FBIHQ makes a promotional decision, all relevant information including the cause for a disciplinary matter, including probation, is considered. FBIHQ expects the employee's superior to provide a strong favorable recommendation when the employee has been the subject of disciplinary action within the preceding 12 months. Lack such a recommendation, FBIHQ may determine that a promotion from one GS or Wage level to another should be delayed for a period of up to 60 days for support employees or up to 90 days for Agents. (See MAOP, Part 1, 3-1.2.2(3) & (4).)

SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES FOR FBI EMPLOYEES

1. Unexcused or unauthorized absence of 8 hours or less

FBI024243CBT

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Applies to: All Personnel

First Offense - Oral Reprimand to 3-day suspension
Second Offense - Oral Reprimand to 5-day suspension
Third Offense - Oral Reprimand to removal

2. Excessive unauthorized absence (in excess of 8 hours)

Applies to: All Personnel

First Offense - Oral Reprimand to 5-day suspension
Second Offense - Oral Reprimand to 15-day suspension
Third Offense - Oral Reprimand to removal

3. Work deficiencies and/or inattention to duty (See MAOP, Part 1, 8-1.11.)

Applies to: Agent Personnel

First Offense - Oral reprimand to removal
Second Offense - 5-day suspension to removal
Third Offense - 15-day suspension to removal

Applies to: Non-Agent Personnel (Excluding Fingerprint Examiners, Information Services Section, Criminal Justice Information Services Division, for whom standards of production and accuracy, as well as minimum penalties, have been established.)

First Offense - Oral reprimand to removal
Second Offense - 3-day suspension to removal
Third Offense - 5-day suspension to removal

4. Insubordination (See MAOP, Part 1, 8-1.11.)

Applies: All Personnel

First Offense - Censure to removal
Second Offense - 5-day suspension to removal
Third Offense - 15-day suspension to removal

5. Unauthorized possession of, use of, or loss or damage to government property other than motor vehicle or aircraft

Applies to: All Personnel

First Offense - No action to removal
Second Offense - Oral reprimand to removal
Third Offense - Censure to removal

6. ***Unauthorized possession of, use of, loss of or damage to government-owned or -leased motor vehicle or aircraft

Applies to: All personnel

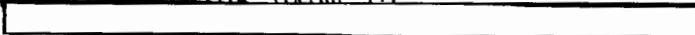
First Offense - Oral reprimand to removal
Second Offense - 3-day suspension to removal
Third Offense - 5-day suspension to removal

***Title 31, U.S. Code, Section 1349(b), provides a minimum of 30 days' suspension for employee who willfully uses or authorizes the use of any government-owned or -leased motor vehicle or aircraft for other than official purposes. (See MAOP, Part 1, 1-3.1.)

FBI024244CBT

FBI0000038

5/25/2005



7. Traffic violations

Applies to: All personnel

a. Aggravated (all types)

First Offense - Oral reprimand to removal
Second Offense - Oral reprimand to removal
Third Offense - Oral reprimand to removal

b. Driving Under the Influence or While Intoxicated (See MAOP, Part 1, 1-30.3 and 8-1.12.2.)

First Offense - 30-day suspension to removal
Second Offense - Removal

8. Illegal use of controlled substance (drugs and marijuana)

Applies to: All personnel

First Offense - Censure to Removal
Second Offense - Removal

9. Criminal, dishonest, immoral, infamous or notoriously disgraceful conduct

Applies to: All personnel

First Offense - Oral reprimand to removal
Second Offense - 5-day suspension to removal
Third Offense - 30-day suspension to removal

10. Failure to honor confirmed financial obligations

Applies to: All personnel

First Offense - Oral reprimand
Second Offense - Oral reprimand
Third Offense - Oral reprimand to removal

11. Unauthorized disclosure of information from Bureau records

Applies to: All personnel

First Offense - Oral reprimand to removal
Second Offense - Removal

12. Falsification of official documents and/or records

Applies to: All personnel

First Offense - Oral reprimand to removal
Second Offense - Removal

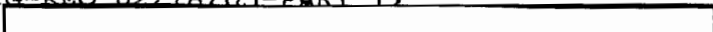
13. Availability

Applies to: All personnel

First Offense - Oral reprimand to removal
Second Offense - Oral reprimand to removal
Third Offense - Oral reprimand to removal

FBI024245CBT

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14. Fitness for duty (overweight)

Applies to: Agent Personnel

- First Offense - Oral reprimand
- Second Offense - Oral reprimand to 5-day suspension
- Third Offense - Oral reprimand to 15-day suspension

15. Smoking regulations (See MAOP, Part 2, 2-1.6.)

Applies to: All personnel

- First Offense - Oral reprimand to censure
- Second Offense - Oral reprimand to 5-day suspension
- Third Offense - Oral reprimand to 14-day suspension

16. Security violations for:

Applies to: All personnel

a. Loss of classified/sensitive information

- First Offense - Censure to removal
- Second Offense - Suspension to removal
- Third Offense - Suspension to removal

b. Mishandling classified/sensitive information by: improper removal, storage (to include unlocked/unsecure safes, vaults, or cabinets), disposal, transporting, reproduction, transmittal, or access.

Applies to: All personnel

- First Offense - Oral reprimand to removal
- Second Offense - Censure to removal
- Third Offense - Suspension to removal

c. Computers

Applies to: All personnel

Medium Risk

1. Failure to properly label ADP storage media
2. Unauthorized Software
3. Unlicensed Software
4. Nonofficial use of FBI computers
5. Introduction of malicious code

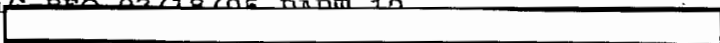
- First Offense - Oral reprimand to removal
- Second Offense - Censure to removal
- Third Offense - Suspension to removal

High Risk

1. Misuse of accessor IDs and passwords

FBI024246CBT

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- 2. Improper maintenance
- 3. Improper equipment and media disposal
- 4. Failure to maintain proper control of FBI microcomputers and ADP storage media
- 5. Unauthorized telecommunications
- 6. Unauthorized access to FBI computers or networks or exceeding authorized codes

First Offense - Censure to removal
 Second Offense - Suspension to removal
 Third Offense - Suspension to removal

d. Routing of "Top Secret" or SCI information by telelift system, mail-mobile, pneumatic tube, U.S. Postal Service, or other commercial mail service

Applies to: All personnel

First Offense - Oral reprimand to removal
 Second Offense - Oral reprimand to removal
 Third Offense - Censure to removal

**EffDte: 07/29/1999 MCRT#: 916 Div: OPDOSY Cav: SecCls:

[13-13.1 | Moved to 13-14.1]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

[13-13.2 | Moved to 13-14.2]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

[13-13.3 | Moved to 13-14.3]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

[13-13.4 | Moved to 13-14.4]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

[13-13.5 | Moved to 13-14.5]

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

[13-14 DISCIPLINARY PROBATION (FORMERLY 13-13) (See MAOP, Part 1, 1-30.3, 8-1.12.2.)]

FBI024247CBT

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Disciplinary probation is a corrective and/or punitive procedure (which may be imposed with censure and/or suspension when so dictated by the factual situation) to closely monitor an employee's performance with intent to provide counsel and correction during a specified period of time. During the disciplinary probation period, a denial of certain employee benefits may be imposed.

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

||13-14.1| Purpose of Disciplinary Probation|(Formerly 13-13.1)|

To provide the employee with notice that the particular area of inefficiency, delinquency, or poor judgment, etc., will be afforded close scrutiny for a specified period of time. During the period of disciplinary probation, the employee is expected to make a concerted effort to improve in the deficient area.

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

||13-14.2| Length of Disciplinary Probation|(Formerly 13-13.2.)|

The length of the disciplinary probation period is flexible and will be determined by the Director or Director's delegated representative. In most cases the original disciplinary probation period will be 90 days for Special Agents and 60 days for support employees.

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

|||13-14.3| Effects of Disciplinary Probation on Employee |(Formerly 13-13.3)|

During the period of disciplinary probation an employee:

- (1) Will not be promoted from one GS or Wage Board level to another;
- (2) Will not be considered for advancement within the Executive Development and Selection Program of the Bureau;
- (3) Will not be considered for a Personnel Resource List Transfer;
- (4) May have a promotion delayed for a period of time not to exceed the period of disciplinary probation if the action occurred during the preceding 12 months and has not been offset by a strong favorable recommendation for promotion from the employee's superior. The final determination will be made by the Personnel Officer at FBIHQ.

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

|||13-14.4| Application of Disciplinary Probation |(Formerly 13-13.4.)|

An employee will be placed on disciplinary probation only when the cause for administrative action is work performance related or work-related.

- (1) Work performance considers the technical competence aspect of an employee.

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5/25/2005

(2) Work-related action involves judgment, common sense, and the impact the cause has on the public's perception of the FBI.

**EffDte: 12/01/1994 MCRT#: 353 Div: OP Cav: SecCls:

[[[13-14.5] Removal from Disciplinary Probation [(Formerly 13-13.5)]]

(1) At the expiration of a disciplinary probation period, the Administrative Summary Unit, Personnel Division, will activate a computer entry into the Bureau's Personnel Management System to remove the employee from probation. No paperwork will be involved on the part of the SAC/AD or FBIHQ for this process to occur. However, should the SAC/AD choose to recommend that an employee remain in a probationary status due to continued deficiency in the area for which the employee was disciplined, the Administrative Summary Unit should be telephonically advised just prior to the end of the period, followed by an appropriate communication detailing the basis for same. It is important that a tickler be set in the respective divisions so this matter can be followed closely.

(2) As a guideline in recommending that an employee in a probationary status be continued in this status, the employee must continue to be deficient in the area for which they had been initially disciplined. If the employee is deficient in another area, this would not be sufficient justification to continue the initial probationary status. If additional problems are identified, the SAC/AD should seriously consider recommending an additional disciplinary action to address the other deficient areas, whether it be performance or conduct related.

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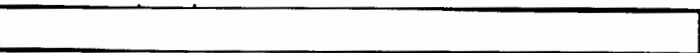
Top of Page

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3/25/2005