

UNITED STATES ATTORNEYS' MANUAL

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U.S. ATTORNEYS MANUAL 1988

October 1, 1988

(1)

9-1.000 POLICY

9-1.100 DEPARTMENT OF JUSTICE POLICY AND RESPONSIBILITIES

The Criminal Division supervises the enforcement of all federal criminal laws except those that are specifically assigned to other divisions. However, the scope of the Criminal Division's jurisdiction is not limited to criminal matters but extends to civil matters as well. The statutes currently administered by the Criminal Division are set forth at USAM 9-4.000. A summary of civil responsibilities within the Division is located at USAM 9-3.600.

The Criminal Division will provide assistance to a U.S. Attorney in any matter within the jurisdiction of the Division. The Division will also attempt to assist a U.S. Attorney in any matter related to the Federal Rules of Criminal Procedure or Speedy Trial problems. Finally, the Division will serve as a conduit for a U.S. Attorney to a higher authority within or without the Department on matters within its jurisdiction.



U.S. Department of Justice

Criminal Division

Office of the Assistant Attorney General

Washington, D.C. 20530

June 19, 1995

TO: Holders of Title 9, United States Attorneys' Manual

FROM: United States Attorneys' Manual Staff
Executive Office for United States Attorneys
Jo Ann Harris
Assistant Attorney General
Criminal Division

SUBJECT: Changes in Prior Approval and Consultation Requirements in Title 9

NOTE:

1. This is issued pursuant to USAM 1-1.550.
2. Distribute to holders of Title 9.
3. Insert in front of affected section.

AFFECTS: USAM 9-2.000 et seq. and other listed sections.

PURPOSE: The Criminal Division has reviewed the approval and consultation provisions in Title 9 and has determined the following changes should be made.

No change is intended as to the substantive policies and guidance set forth in affected sections of Title 9. Additionally, prosecuting attorneys are reminded that Criminal Division attorneys remain available for advice and consultation on all of the following issues or matters.

APPROVALS AND CONSULTATIONS NO LONGER REQUIRED:

1. 9-2.022 Approval for pretrial diversion for offenses listed in 9-22.100.
2. 9-2.111 Approval to decline to prosecute for failure to register with the Selective Service.

In place of approval, notification to the Criminal Division, General Litigation and Legal Advice Section, prior to declination will be required.

Notification is necessitated by the statutory requirement that the Department of Justice "advise the [Congress] in writing the reasons for its failure" to bring such prosecutions. 50 U.S.C. App. § 462(c).

3. 9-2.133

Consultation prior to instituting grand jury proceedings, filing an information or seeking an indictment if the violation to be charged involves:

- ▶ CFTC Act, 7 U.S.C. § 2 et seq.
- ▶ Counterfeit Substance, 21 U.S.C. § 841(a),(2)
- ▶ Draft Board Depredations, 50 U.S.C. App. § 462
- ▶ False statements to federal investigators, 18 U.S.C. § 1001 involving an "exculpatory no"
- ▶ Hobbs Act cases, 18 U.S.C. § 1951 involving (a) "extortion under color of official right" and (c) robbery if local prosecutor objects to federal prosecution.
- ▶ Imitation of coins, 18 U.S.C. § 489, or obligations on securities of the United States, 18 U.S.C. § 475
- ▶ Securities Act, Securities Exchange Act, Investment Advisors Act of 1940
- ▶ Strikebreakers statute, 18 U.S.C. § 1231
- ▶ Harboring, 18 U.S.C. §§ 1071, 1072, 1381
- ▶ Trade Secrets Act, 18 U.S.C. § 1905
- ▶ Structured Financial Transactions, 31 U.S.C. § 5324
- ▶ Mail Order Drug Paraphernalia Control Act, 21 U.S.C. § 863
- ▶ Murder for Hire, 18 U.S.C. § 1958, if local prosecutor objects

4. 9-2.134 ▶ Consultation for pre-trial diversion of certain individuals and cases involving certain statutes.
- ▶ Prior approval to file a motion to transfer a juvenile proceeding to an adult prosecution.
- In place of approval, notification to the Criminal Division is required prior to filing any motion to transfer.**
5. 9-2.141 Consultation if adding counts after guilty plea set aside.
6. 9-2.143 Approval to seek to proceed against juvenile as an adult.
- In place of approval, notification to the Criminal Division is required prior to filing any motion to transfer a juvenile to adult proceeding.**
7. 9-2.152 Consult with GLLA whenever served with complaint or summons within GLLA's jurisdiction.
8. 9-2.156 Approval for plea bargains or immunity agreements which prejudice civil or tax liability.
- In place of approval, United States Attorneys are directed not to make agreements which prejudice civil or tax liability without the express agreement of all affected Divisions and/or agencies.**
9. 9-2.157 Approval for FBI investigation of prospective petit jury panels.
10. 9-2.158 Approval for participation of non-Department of Justice attorneys in court proceedings.
11. 9-2.172 Approval to compromise or close appearance bond forfeiture judgments valued over \$100,000.

12. 9-7.302 Written authorization for consensual monitoring of verbal communications in the following two of the "seven sensitive circumstances":

(2) The interception relates to the investigation of any public official and the offense investigated is one involving bribery, conflict of interest, or extortion relating to the performance of his or her official duties;

The authorization requirement remains if the investigation relates to the Governor, Lieutenant Governor or Attorney General of any State or Territory, or a judge or justice of the highest court of any State or Territory.

(3) The interception relates to the investigation of a federal law enforcement official.

The authorization requirement remains for the other "sensitive circumstances" listed at 9-7.302.

13. 9-7.510 Approval to use communications intercepted under Title III in civil litigation.

Note that there are statutory requirements regarding the disclosure and use of the intercepted communications. See 18 U.S.C. §§ 2517, 2518.

14. 9-11.120 Approval before resubmission to grand jury after no bill.

In place of approval by an Assistant Attorney General, the approval of the responsible United States Attorney is required before a matter may be resubmitted to a grand jury after a no bill.

15. 9-11.242 Appoint non-DOJ Attorneys as Special AUSAs.

16. 9-13.620 Approval to use hypnosis on a witness.

17. 9-22.100 Approval for waiver of eligibility criteria for pretrial diversion.

18. 9-42.451 Approval for plea bargains involving HHS programs that include commitment to forego or restrict administrative remedies of HHS.

In place of approval, United States Attorneys are directed not to make agreements which prejudice HHS's pursuit of administrative remedies without the express agreement of HHS.

19. 9-76.110 1) Prior approval if the difference between the total amount of the penalties for violations of the civil penalty provisions of the Federal Aviation Act of 1958 and the amount of a proposed settlement exceeds \$750,000 or 10%, whichever is greater; or, 2) If the USA believes that a compromise settlement should be effectuated in a figure less than is acceptable to the Federal Aviation Administration or the Civil Aeronautics Board.

In place of approval, United States Attorneys are directed to consult with the FAA or Civil Aeronautics Board, as appropriate, regarding settlement proposals. The FAA or Civil Aeronautics Board may seek Criminal Division review if it believes such review would be helpful to the settlement of the case.

20. 9-100.150 Consultation prior to presenting 21 U.S.C § 802(32), § 813 indictment to grand jury; "Controlled Substance Analogue Enforcement Act."
21. 9-100.210 Consultation prior to initiation of prosecution of counterfeit substance.
22. 9-100.280 Consultation prior to charging defendant with continuing criminal enterprise statute's mandatory life sentence provision.
23. 9-100.290 Approval for use of dangerous special drug offender statute, 21 U.S.C. § 849 and to request appellate review of a dangerous special drug offender sentence.
24. 9-103.132 Instituting grand jury proceedings, seeking an indictment, or filing an information for any offense under the Controlled Substance Registrant Protection Act of 1984, if a state or local prosecutor objects to a federal prosecution.
25. 9-103.380 Consultation prior to charging "head shop" violation of Mail Order Drug Paraphernalia Control Act.
26. 9-110.801 Approval to initiate Murder-for-Hire prosecution if local D.A. objects to federal prosecution.
27. 9-131.030 Consultation on cases involving extortion under color of official right or extortion by a public official through misuse of office.
28. 9-131.030 Approval to initiate Hobbs Act robbery prosecution if local D.A. objects to prosecution.



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

December 14, 1994

TO: Holders of Title 9, United States Attorneys' Manual

FROM: Janet Reno
Attorney General

RE: **DUAL AND SUCCESSIVE PROSECUTION POLICY ("PETITE
POLICY")**

NOTE: 1. This is issued pursuant to USAM 1-1.520.
2. Distribute to Holders of Volume I, USAM.
3. Insert in front of affected section.

AFFECTS: USAM 9-2.142

PURPOSE: This policy establishes guidelines for the exercise of discretion by appropriate officers of the Department of Justice in determining whether to bring a federal prosecution based on substantially the same act(s) or transaction(s) involved in a prior state or federal proceeding. The purpose of this policy is to vindicate substantial federal interests through appropriate federal prosecutions; to protect persons charged with criminal conduct from the burdens associated with multiple prosecutions and punishments for substantially the same act(s) or transaction(s); to promote efficient utilization of Department resources; and to promote coordination and cooperation between federal and state prosecutions.

The following represents a complete revision of USAM 9-2.142. It supersedes all prior Department guidelines and policy statements on the same subject:

9-2.142 DUAL AND SUCCESSIVE PROSECUTION POLICY ("PETITE POLICY")

I. STATEMENT OF POLICY

- A. This policy establishes guidelines for the exercise of discretion by appropriate officers of the Department of Justice in determining whether to bring a federal prosecution based on substantially the same act(s) or transaction(s) involved in a prior state or federal proceeding.¹
- B. The purpose of this policy is to vindicate substantial federal interests through appropriate federal prosecutions; to protect persons charged with criminal conduct from the burdens associated with multiple prosecutions and punishments for substantially the same act(s) or transaction(s); to promote efficient utilization of Department resources; and to promote coordination and cooperation between federal and state prosecutors.
- C. This policy precludes the initiation or continuation of a federal prosecution following a prior state or federal prosecution based on substantially the same act(s) or transaction(s), unless:
1. The following three substantive prerequisites are satisfied:
 - a. the matter must involve a substantial federal interest;
 - b. the prior prosecution must have left that interest demonstrably unvindicated; and
 - c. applying the same test applicable to all federal prosecutions, the government must believe that the defendant(s)' conduct constitutes a federal offense, and that the

¹ See *Rinaldi v. United States*, 434 U.S. 22, 27 (1977); *Petite v. United States*, 361 U.S. 529 (1960). Although there is no general statutory bar to a federal prosecution where the defendant's conduct already has formed the basis for a state prosecution, Congress expressly has provided that, as to certain specific offenses, a state judgment of conviction or acquittal on the merits shall be a bar to any subsequent federal prosecution for the same act or acts. See 18 U.S.C. 659, 660, 1992, 2101, 2117; 15 U.S.C. 80a-36, 1282.

² See Part IV *infra*.

admissible evidence probably will be sufficient to obtain and sustain a conviction by an unbiased trier of fact; and

2. The following procedural prerequisite is satisfied: the prosecution must be approved by the appropriate Assistant Attorney General.³
- D. Satisfaction of the substantive prerequisites in ¶ I.C.1 does not mean that a proposed prosecution must be approved or brought. The traditional elements of federal prosecutorial discretion continue to apply. See *Principles of Federal Prosecution*, USAM 9-27.110, *et seq.*
- E. In order to ensure the most efficient use of law enforcement resources, whenever a matter involves overlapping federal and state jurisdiction, federal prosecutors should at the earliest possible time coordinate with their state counterparts to determine the most appropriate single forum in which to proceed to satisfy the substantial federal and state interests involved, and to resolve all criminal liability for the acts in question if possible.

II. TYPES OF PROSECUTIONS AS TO WHICH THIS POLICY APPLIES⁴

- A. This policy applies whenever the contemplated federal prosecution is based on substantially the same act(s) or transaction(s) involved in a prior state or federal prosecution.
- B. This policy constitutes an exercise of the Department's prosecutorial discretion, and applies even where:
 1. a prior state prosecution would not legally bar a subsequent federal prosecution under the Double Jeopardy Clause, due to the doctrine of dual sovereignty, see *Abbate v. United States*, 359 U.S. 187 (1959); or

³ See Part V *infra*.

⁴ This policy applies only to charging decisions, and does not apply to (and prior approval therefore is not required with respect to) pre-charge investigations. However, where a prior prosecution has been brought based on substantially the same act(s) or transaction(s), generally a subsequent federal investigation should focus initially on evidence relevant to determining whether a subsequent federal prosecution would be warranted in light of the prerequisites listed in ¶ I.C.1 *supra*.

2. a prior prosecution would not legally bar a subsequent state or federal prosecution under the Double Jeopardy Clause, because each offense requires proof of an element not contained in the other, see *United States v. Dixon*, 113 S.Ct. 2849 (1993); *Blockburger v. United States*, 284 U.S. 299 (1932).
- C. This policy does not apply (and prior approval therefore is not required pursuant to it⁵) where the prior prosecution involved only a minor part of the contemplated federal charges. For example, a federal conspiracy or RICO prosecution may allege overt acts or predicate offenses previously prosecuted as long as those acts or offenses do not represent substantially the whole of the contemplated federal charge, and (in a RICO prosecution) as long as there are a sufficient number of predicate offenses to sustain the RICO charge if the previously prosecuted offenses were excluded.
- D. This policy does not apply (and prior approval therefore is not required pursuant to it) where the contemplated federal prosecution could not have been brought in the initial federal prosecution, for example, because of venue restrictions or joinder or proof problems.
- E. Notwithstanding anything contained within this policy, no prosecution may be brought where it would be barred by the Double Jeopardy Clause.

III. STAGES OF PROSECUTION AT WHICH POLICY APPLIES

- A. This policy applies whenever there has been a prior state or federal prosecution resulting in an acquittal, a conviction (including one resulting from a plea agreement), or a dismissal or other termination of the case on the merits after jeopardy has attached.
- B. Once a prior prosecution reaches one of the above-listed stages, this policy applies (and approval therefore is required) before a federal prosecution can be initiated or continued, even if an indictment or

⁵ Other prior approval requirements remain in force, however, even if approval is not required under the provisions of the Dual and Successive Prosecution Policy. See, e.g., USAM 9-110.101 (Criminal Division approval required for all RICO indictments).

information has already been filed in the federal prosecution at issue.

- C. Exception: This policy does not apply if a prior prosecution reaches one of the above-listed stages after trial commences on the federal prosecution at issue; however, it does apply when a federal trial results in a mistrial, dismissal or reversal on appeal, and when, in the interim, a prior prosecution has reached one of the above-listed stages.

**IV. SUBSTANTIVE PREREQUISITES FOR APPROVAL
OF A PROSECUTION AS TO WHICH THIS POLICY APPLIES**

The following three substantive prerequisites must be satisfied before approval may be granted for initiation or continuation of a prosecution as to which this policy applies.

A. The Matter Must Involve A Substantial Federal Interest

1. This determination will be made on a case-by-case basis, applying the considerations applicable to all federal prosecutions. See *Principles of Federal Prosecution*, USAM 9-27.230
2. Matters that come within the national investigative or prosecutorial priorities established by the Department are more likely than others to satisfy this requirement.

B. The Prior Prosecution Must Have Left That Substantial Federal Interest Demonstrably Unvindicated

In general, the Department will presume that a prior prosecution, regardless of result, has vindicated the relevant federal interest. There may be an unvindicated federal interest, however, in the following circumstances:

1. When a conviction was not achieved in the prior prosecution because of factors of the following kinds:
 - a. incompetence, corruption, intimidation, or undue influence;
 - b. court or jury nullification, in clear disregard of the evidence or the law;

- c. the unavailability of significant evidence, either because it was not timely discovered or known by the prosecution, or because it was kept from the trier of fact's consideration on an erroneous view of the law;
 - d. the failure in a prior state prosecution to prove an element of a state offense which is not an element of the contemplated federal offense; or
 - e. the exclusion of charges in a prior federal prosecution out of concern for fairness to other defendants or for significant resource considerations that favored separate federal prosecutions.
2. *When a conviction was achieved in the prior prosecution, if:*
- a. the prior sentence was manifestly inadequate in light of the federal interest involved, and a substantially enhanced sentence (which may include elements such as forfeiture and restitution, as well as imprisonment and fines) is available through the contemplated federal prosecution; or
 - b. the choice of charges, or the determination of guilt or severity of sentence in the prior prosecution, was affected by a factor of the kind listed in ¶ IV.B.1 above.⁶
3. *Irrespective of the result in a prior state prosecution, in the rare case where (a) the alleged violation involves a compelling federal interest, particularly one implicating an enduring national priority; (b) the alleged violation involves egregious conduct, including that which threatens or causes loss of life, severe economic or physical harm, or the impairment of the functioning of an agency of the federal government or the due administration of justice; and (c) the result in the prior prosecution was manifestly*

⁶ An example might be a case in which the charges in the initial prosecution trivialized the seriousness of the contemplated federal offense: e.g., a state prosecution for assault and battery in a case involving the murder of a federal official.

inadequate in light of the federal interest involved.

C. **Applying The Same Test Applicable To All Federal Prosecutions, The Government Must Believe That The Defendant(s)' Conduct Constitutes A Federal Offense And That The Admissible Evidence Probably Will Be Sufficient To Obtain And Sustain A Conviction By An Unbiased Trier Of Fact**

1. This is the same test applied to all federal prosecutions, see *Principles of Federal Prosecution*, USAM 9-27.220, et seq.
2. This requirement turns on an evaluation of the admissible evidence that will be available at the time of trial. The potential that -- despite the law and the facts -- the fact-finder may acquit the defendant because of the unpopularity of some factor involved in the prosecution, or because of the overwhelming popularity of the defendant or his or her cause, is not a factor inhibiting prosecution.
3. When (in the case of a prior conviction), the unvindicated federal interest in the matter arises because of the availability of a substantially enhanced sentence, the government also must believe that the admissible evidence meets the legal requirements for such sentence.

V. **PROCEDURAL PREREQUISITE TO BRINGING A PROSECUTION AS TO WHICH THIS POLICY APPLIES**

- A. Whenever a substantial question exists as to whether this policy applies to a prosecution, the matter should be submitted to the appropriate Assistant Attorney General for resolution.
- B. Prior approval from the appropriate Assistant Attorney General must be obtained before bringing a prosecution as to which this policy applies.
- C. The United States will move to dismiss any prosecution as to which this policy applies, and as to which prior approval was not obtained, unless the Assistant Attorney General retroactively approves it on the grounds that: (1) there are unusual or overriding circumstances justifying retroactive approval, and (2) the prosecution would have been approved had approval

been sought in a timely fashion. Appropriate administrative action may be initiated against prosecutors who violate this policy.

VI. RESERVATION AND SUPERSEDING EFFECT

- A. This policy is set forth solely for the purpose of internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party in any matter, civil or criminal, nor does it place any limitations on otherwise lawful litigative prerogatives of the Department of Justice.⁷
- B. This policy statement supersedes all prior Department guidelines and policy statements on the subject.

7. All of the Courts of Appeals that have considered the question have held that a criminal defendant cannot invoke the Department's policy as a bar to federal prosecution. See, e.g., *United States v. Snell*, 592 F.2d 1083 (9th Cir. 1979); *United States v. Howard*, 590 F.2d 564 (4th Cir. 1979); *United States v. Frederick*, 583 F.2d 273 (6th Cir. 1978); *United States v. Thompson*, 579 F.2d 1184 (10th Cir. 1978) (*en banc*); *United States v. Wallace*, 578 F.2d 735 (8th Cir. 1978); *United States v. Nelligan*, 573 F.2d 251 (5th Cir. 1978); *United States v. Hutul*, 416 F.2d 607 (7th Cir. 1969). The Supreme Court, in analogous contexts, has concluded that Department policies governing its internal operations do not create rights which may be enforced by defendants against the Department. See *United States v. Caceres*, 440 U.S. 741 (1979); *Sullivan v. United States*, 348 U.S. 170 (1954).



Office of the Deputy Attorney General

Washington, D.C. 20530

October 11, 1995

TO: Holders of United States Attorneys' Manual
Title 9

FROM: Jamie S. Gorelick *JSG*
Deputy Attorney General

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

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

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

CREATES: 9-2.161(b)

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

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

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

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

Alternatives to Search Warrants

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

Authorization by United States Attorney or Assistant Attorney General

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

Prior Consultation

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

² Prior approval must be obtained from the Assistant Attorney General for the Criminal Division to issue a subpoena to an attorney relating to the representation of a client. See USAM 9-2.161(a).

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

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

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

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

Safeguarding Procedures and Contents of the Affidavit

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

Conducting the Search

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

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

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

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

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

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

Review Procedures

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

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

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

U.S. ATTORNEYS MANUAL 1988

UNITED STATES ATTORNEYS' MANUAL

DETAILED
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October 1, 1990

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9-2.000 AUTHORITY OF THE U.S. ATTORNEY IN CRIMINAL DIVISION MATTERS/PRIOR APPROVALS

The U.S. Attorney, within his/her district, has plenary authority with regard to federal criminal matters. This authority is exercised under the supervision and direction of the Attorney General and his/her delegates.

The statutory duty to prosecute for all offenses against the United States carries with it the authority necessary to perform this duty. The U.S. Attorney is invested by statute and delegation from the Attorney General with the broadest discretion in the exercise of such authority.

The authority, discretionary power, and responsibilities of the U.S. Attorney with relation to criminal matters encompass without limitation by enumeration the following:

A. Investigating suspected or alleged offenses against the United States, *see* USAM 9-2.010, *infra*;

B. Causing investigations to be conducted by the appropriate federal law enforcement agencies, *see id.*;

C. Declining prosecution, *see* USAM 9-2.020, *infra*;

D. Authorizing prosecution, *see* USAM 9-2.030, *infra*;

E. Determining the manner of prosecuting and deciding trial related questions;

F. Recommending to appeal or not to appeal from an adverse ruling or decision, *see* USAM 9-2.040, *infra*;

G. Dismissing prosecutions, *see* USAM 9-2.050, *infra*; and

H. Handling civil matters related thereto which are under the supervision of the Criminal Division.

9-2.010 Investigations

The U.S. Attorney, as the chief federal law enforcement officer in his/her district, is authorized to request the appropriate federal investigative agency to investigate alleged or suspected violations of federal law. The federal investigators operate under the hierarchical supervision of their bureau or agency and consequently are not ordinarily subject to direct supervision by the U.S. Attorney. If the U.S. Attorney requests an investigation and does not receive a timely preliminary report, he/she may wish to consider requesting the assistance of the Criminal Division.

In certain matters the U.S. Attorney may wish to request the formation of a team of agents representing the agencies having investigative jurisdiction of the suspected violations.

The grand jury may be utilized by the U.S. Attorney to investigate alleged or suspected violations of federal law. Unless circumstances dictate otherwise, a grand jury investigation should not be opened without consultation with the investigative agency or agencies having investigative jurisdiction of the alleged or suspected offense.

9-2.020 Declining Prosecution

The U.S. Attorney is authorized to decline prosecution in any case referred directly to him/her by an agency unless a statute provides otherwise. See USAM 9-2.111, *infra*. Whenever a case is closed without prosecution, the U.S. Attorney's files should reflect the action taken and the reason for it.

9-2.021 Armed Forces Enlistment as an Alternative to Federal Prosecution

Present regulations of the Armed Services prohibit the enlistment of an individual against whom criminal or juvenile charges are pending or against whom the charges have been dismissed to facilitate the individual's enlistment. This policy is based, in part, on the premise that the individual who enlists under such conditions is not properly motivated to become an effective member of the Armed Forces.

Determination as to whether prosecution should be instituted or pending criminal charges dismissed in any case should be made on the basis of whether the public interest would thereby best be served and without reference to possible military service on the part of the subject. The Armed Forces are not to be regarded as correctional institutions and U.S. Attorneys are urged to give full cooperation to the Department of Defense in the latter's efforts to ensure a highly motivated all-volunteer Armed Forces and to bolster public confidence in military service as a respectable and honorable profession.

There may be exceptional cases in which imminent military service, together with other factors, may be considered in deciding to decline prosecution if the offense is trivial or insubstantial, the offender is generally of good character, has no record or habits of anti-social behavior, and does not require rehabilitation through existing criminal institutional methods, and failure to prosecute will not seriously impair observance of the law in question or respect for law generally. In no case, however, should the U.S. Attorney be a party to, or encourage, an agreement respecting foregoing criminal prosecution in exchange for enlistment in the Armed Services.

9-2.022 Pre-trial Diversion as an Alternative to Federal Prosecution

A U.S. Attorney may consider Pre-trial Diversion as an alternative to federal criminal prosecution. Details of the operation of the Pre-trial

Diversion program are set forth at USAM 9-22.000. Authorization from the Criminal Division is required to utilize Pre-trial Diversion if the offense is one listed in USAM 9-22.100.

9-2.023 Controlled Substance Prosecution—Referral to State or Local Prosecutors

General guidelines for prosecuting Controlled Substance violations have been established. See USAM 9-101.400.

9-2.024 Prosecution Under 18 U.S.C. § 641 for Theft of Government Information

Section 641 of Title 18 prohibits theft of government information as well as theft of the documents which contain the information. See *United States v. Girard*, 601 F.2d 69 (2d Cir.), cert. denied, 444 U.S. 871 (1979); *United States v. DiGilio*, 538 F.2d 972 (3d Cir. 1976), cert. denied, 429 U.S. 1038 (1977). Nevertheless, for the reasons set forth below, the Criminal Division believes that it is inappropriate to bring a prosecution under 18 U.S.C. § 641 when:

A. The subject of the theft is intangible property, i.e., government information owned by, or under the care, custody, or control of the United States;

B. The defendant obtained or used the property primarily for the purpose of disseminating it to the public; and

C. The property was not obtained as a result of wiretapping, 18 U.S.C. § 2511, interception of correspondence, 18 U.S.C. §§ 1702, 1708, criminal entry, or criminal or civil trespass.

There are two reasons for the policy. First, it protects "whistle-blowers." Thus, under this policy, a government employee who, for the primary purpose of public exposure of the material, reveals a government document to which he/she gained access lawfully or by non-trespassory means would not be subject to criminal prosecution for the theft. Second, the policy is designed to protect members of the press from the threat of being prosecuted for theft or receipt of stolen property when, motivated primarily by the interest in public dissemination thereof, they publish information owned by or under the custody of the government after they obtained such information by other than trespassory means.

The Criminal Division does not intend, in promulgating this policy, to prevent or discourage prosecutions under any other applicable statutes, such as those prohibiting the unauthorized dissemination or possession of government information, e.g., 18 U.S.C. §§ 793, 794, 1905, or 50 U.S.C. § 783. Instead, the Division's purpose is to require that, in the circum-

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stances enumerated above, such cases are prosecuted under these other applicable statutes rather than under 18 U.S.C. § 641.

The adoption of this policy does not alter the responsibility of government employees to maintain the confidentiality of sensitive government information disclosed to them in the course of their employment.

9-2.025 Prosecution Under 18 U.S.C. § 1905—Trade Secrets Act

Section 1905 of Title 18 prohibits the disclosure of various forms of confidential information. There are no reported annotations dealing with prosecution under this statute and a wide divergence of views exist as to the proper scope of this section and its interplay with the Freedom of Information Act. The problems have been exacerbated by the decision of the Supreme Court in *Chrysler Corporation v. Brown*, 441 U.S. 281 (1979), and the confusion engendered as to the propriety of releases made pursuant to the Freedom of Information Act of material that arguably could fall within the meaning of 18 U.S.C. § 1905. Accordingly, it is the policy of the Criminal Division not to prosecute government employees for a violation of 18 U.S.C. § 1905 if the release of information in question was made in a good faith effort to comply with the Freedom of Information Act and the appropriate applicable regulations. Prior to initiating an action involving a potential violation of 18 U.S.C. § 1905, the U.S. Attorney shall consult with the Public Integrity Section as set forth in USAM 9-2.133, *infra*.

9-2.030 Authorizing Prosecution

The U.S. Attorney is authorized to initiate prosecution by filing a complaint, requesting an indictment from the grand jury, and, when permitted by law, by filing an information in any case which, in his/her judgment, warrants such action, other than those instances enumerated in USAM 9-2.120 *infra*.

In arriving at his/her decision, the U.S. Attorney should consider the recommendations for prosecution of the specific offense involved set forth in the chapters discussing substantive offenses. See USAM 9-40.000. The recommendations are instructive only and not mandatory.

9-2.031 Prosecution of Phencyclidine (PCP) Users

U.S. Attorneys should consider prosecuting any significant cases of illicit PCP manufacture to the full extent of available resources. Medical evidence indicates that for certain users, PCP can cause a schizophrenia-like psychosis characterized by violent behavior. The effect can last for two to three weeks and during that period patients require isolation and treatment by mental health professionals.

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The problem of PCP is compounded by the ease with which it can be illicitly manufactured using the most elementary chemical processes. There is no approved human use of PCP; rather, its sole legitimate use is as a tranquilizer for large animals. There is very little diversion from this licit use; the problem is predominantly illicit manufacture. PCP is clearly dangerous to anyone who uses it and those who manufacture and sell this drug for easy profit should be prosecuted.

9-2.040 Dismissal of Complaints

The U.S. Attorney may dismiss a criminal complaint without prior authorization from the Criminal Division except in the instances enumerated in USAM 9-2.134, *infra*, and 9-2.145, *infra*. However, Rule 48(a), Fed.R.Cr. Proc., requires leave of court for dismissal of a complaint, as discussed *infra*. See also Principles of Federal Prosecution, available on JURIS.

If the person charged in a complaint has been bound over for grand jury action, the complaint may be dismissed by the U.S. Attorney only by leave of court. Leave of court may be given by a blanket authorization to dismiss complaints. If such authorization has not been given, leave of court must be obtained in each particular case.

Whether leave of court is required to dismiss a complaint prior to the defendant being bound over for grand jury action has not been judicially settled. The U.S. Attorney must be governed by the interpretation of Fed.R.Cr.Proc. 48(a) by the court in his/her district. The view that leave of court is not required to dismiss a complaint prior to the person charged being bound over is supported by the control over complaints given to judicial officers by Rules 4 and 5, Federal Rules of Criminal Procedure. Under those rules, a judicial officer may issue a warrant, may discharge a defendant, and may cancel an unexecuted warrant of arrest. It would seem, therefore, that the judicial officer can exercise a like control over a complaint prior to his/her decision to bind over the defendant and that leave of the court is not required.

9-2.041 Cancellation of Unexecuted Arrest Warrants

Care should be taken that the Marshal of the district is promptly informed by the U.S. Attorney of the dismissal of a complaint, whether by the court or a judicial officer, in order to facilitate cancellations of unexecuted arrest warrants as provided in Rule 4(d)(4), Fed.R.Cr.Proc. Such notification is also important when a warrant of arrest is outstanding in connection with a detainer lodged against a defendant who is confined in another district. Since the warrant will have been forwarded by the Marshal of the district where it was issued to the Marshal in the district of detention, the warrant will have to be returned to the Marshal of the issuing district for cancellation by the judicial officer after the complaint has been dismissed.

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9-2.050 Dismissal of Indictments and Informations

The U.S. Attorney may move for leave of court to dismiss an indictment or information, in whole or in part, without prior authorization from the Criminal Division except in the instances enumerated in USAM 9-2.13, *infra*, and 9-2.145, *infra*. The U.S. Attorney may in any case request the views of the Criminal Division as to the dismissal of any indictment or information. Prior to dismissing an indictment the U.S. Attorney should consult with the referring department or agency, and also seek to obtain the views of the investigative agency involved in the matter.

Whenever the U.S. Attorney concludes that dismissal is warranted, he/she should take prompt action to dismiss. However, an indictment should not be dismissed merely because the defendant is a fugitive.

Rule 48(a), Fed.R.Cr.Proc., requires leave of court for dismissal of an indictment or information by the U.S. Attorney. A dismissal by the U.S. Attorney may not be filed during the trial without the consent of the defendant. See Fed.R.Cr.P. 48(a). The court may decline leave to dismiss if the manifest public interest requires it. See *Rinaldi v. United States*, 434 U.S. 22 (1977); *United States v. Hamu*, 659 F.2d 624 (5th Cir.1981) (and cases cited therein).

In moving for leave to dismiss, the local practice should be followed. However, in cases of considerable public interest or importance where dismissal of the entire indictment or information is sought because of an inability to establish a *prima facie* case, a written motion for leave to dismiss should be filed explaining fully the reason for the request. The importance of the case is not to be measured simply by the punishment prescribed for the offense. If the case involves fraud against the government, bribery, or a similarly important matter, or if any other department or branch of the government is specially interested, it is recommended that the written form of motion be used. See USAM 9-2.051, *infra*.

Often it is desirable to dismiss actions against defendants committed to federal custody for psychiatric examination to determine competency to stand trial pursuant to 18 U.S.C. § 4241(d) and 18 U.S.C. § 4247(b), and against defendants found incompetent to stand trial until their competency is restored. The Bureau of Prisons and the Medical Center for Federal Prisoners, Springfield, Missouri, should be given notice well in advance of such dismissals and the provisions of Chapter 313 of Title 18 complied with. In cases involving dismissals of prosecution under 18 U.S.C. § 871, the Secret Service should be notified.

In every case of a dismissal, the file should reflect the reasons for the dismissal.

See also Principles of Federal Prosecution, available on JURIS.

9-2.060 Appeals

The authority of the U.S. Attorney with relation to appeals is set forth at USAM 9-2.171, *infra*. See also USAM Title 2.

9-2.100 LIMITATIONS ON U.S. ATTORNEYS

Limitations on actions of the U.S. Attorney in criminal matters assigned to the Criminal Division are imposed by statutes and by policies of the Department. The statutory limitations are listed at USAM 9-2.110, *infra*. The policy limitations are listed at USAM 9-2.120, *infra*.

9-2.101 American Bar Association Standards for Criminal Justice

The American Bar Association Standards for Criminal Justice have not been adopted as official policy by the Department; however, since the courts utilize the Standards in determining issues covered by them, it is recommended that all U.S. Attorneys familiarize themselves with them. A table of those Standards cited appears in each issue of the Advance Sheets of the Federal Reporter, Second Series.

9-2.102 Omnibus and Other Pre-Trial Standards

The Justice Department is committed to the nationwide and uniform procedure for the disposition of criminal cases as is provided for in the Federal Rules of Criminal Procedure and applicable federal statutes. In view of this commitment, it necessarily follows that we have been and continue to be opposed to local rules, or the establishment of standards such as the ABA Omnibus Standards and other pre-trial standards, which are inconsistent with, or contrary to, the provisions of the Federal Rules of Criminal Procedure and applicable federal law, e.g., 18 U.S.C. § 3500. Reasons for the Department's position in these matters have been stated from time to time, most notably during the 1974-75 Congressional Hearings on the amendments to the Fed.R.Cr.Proc., and have resulted in our position being sustained. See USAM 9-2.103, *infra*.

Any disclosures by the executive branch in excess of those required by the Fed.R.Cr.Proc. and law are within the sole discretion of the executive. Such disclosures are exercised on a case-by-case, or individual, basis after giving due consideration to the interests of the United States protected by the Fed.R.Cr.Proc., statutes, regulations, and to the policies of the Department of Justice. In our opinion, judicial supervision of the executive branch in the exercise of such discretionary discovery is improper, not only as a legal proposition, but as a needless and impractical burden upon the already overtaxed judiciary.

We believe that adherence to the Federal Rules of Criminal Procedure and applicable statutes provides for the balanced, expeditious, fair, orderly, and proper means for disposition of criminal cases in the federal

system. Proposals for changes in the federal criminal system should be made in accordance with the federal statutory rule-making process, 18 U.S.C. §§ 3771, 3772, and not by adoption of standards or local rules inconsistent with, or contrary to, the Fed.R.Cr.Proc. and applicable federal statutes. The Department cannot accept as appropriate or helpful a local rule establishing omnibus pre-trial procedures.

9-2.110 Statutory Limitations

Certain statutes impose limitations on the authority of the U.S. Attorney to decline prosecution, to prosecute, and to take certain actions relating to the prosecution of criminal cases.

9-2.111 Declinations

If a judge, receiver, or trustee in a case under Title 11, United States Code, has reported to the U.S. Attorney that he/she believes a violation of Chapter 9, Title 11, United States Code, or other laws of the United States relating to insolvent debtors, receiverships, or reorganization plans has been committed, or that an investigation should be had in connection therewith, 18 U.S.C. § 3057(a), the U.S. Attorney, if he/she decides upon inquiry and examination that the ends of public justice do not require investigation or prosecution, must report the facts to the Attorney General for his/her direction, 18 U.S.C. § 3057(b). The report of the U.S. Attorney should be sent to the Criminal Division, Fraud Section.

Although 18 U.S.C. § 2101 (Riots) does not impose a limitation on the authority to decline prosecution, it does provide that, if it is the opinion of the Attorney General or of the appropriate officer of the Department of Justice charged by law or under the instructions of the Attorney General with authority to act, that a person has violated 18 U.S.C. § 2101 and if prosecution is not instituted, a report in writing must be submitted to both Houses of Congress setting forth the Department's reasons for not proceeding. See 18 U.S.C. § 2101(d).

Only the Assistant Attorney General, Criminal Division, the Deputy Attorney General, or the Attorney General can authorize a declination of a prosecution for national security reasons. Classified Information Procedures Act, 18 U.S.C. App. (Supp. V 1981). Accordingly, the Internal Security Section, Criminal Division, is to be consulted in any case in which there is a possibility that prosecution may be declined for national security reasons.

United States Attorneys may not decline to prosecute violations of 50 U.S.C. App. 462(a) involving the failure to register with the Selective Service System without prior authorization of the Criminal Division (General Litigation and Legal Advice Section).

9-2.112 Prosecutions

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

Prosecutions under 42 U.S.C. §§ 2272 to 2276 (Atomic Energy Act) may be brought only on the express direction of the Attorney General. See 42 U.S.C. § 2271(c).

Violations of 18 U.S.C. § 1073 (Flight to Avoid Prosecution or Giving Testimony) may be prosecuted only upon formal approval in writing by the Attorney General or an Assistant Attorney General. Accordingly, under no circumstances should an indictment under the Act be sought, nor an information be filed, nor should criminal proceedings under Rule 40, Federal Rules of Criminal Procedure, be instituted without the written approval of the Assistant Attorney General, Criminal Division. See USAM 9-69.450. No complaint should be authorized in cases involving custody disputes without the express prior approval of the Criminal Division. See USAM 9-69.421.

Prosecution for violations of 18 U.S.C. § 659 (Theft from Interstate Shipments) and of 18 U.S.C. § 2101 (Riots) are barred if there has been a judgment of conviction or acquittal on the merits under the law of any state for the same act or acts. See 18 U.S.C. §§ 659, 2101(c). That a federal prosecution for violation of 18 U.S.C. § 659 was initiated prior to the commencement of the state prosecution did not prevent dismissal of the federal indictment where state trial on larceny charge resulted in acquittal before defendant was retried on the federal indictment following a remand from the Court of Appeals. See *United States v. Evans* (D.N.J. November 19, 1968) (D.J. 15-48-368). Solicitor General decided no appeal should be taken not because of 18 U.S.C. § 659 but because of the policy against dual prosecution. See USAM 9-2.142, *infra*.

9-2.120 Policy Limitations Generally

Department and Division policies impose limitations on the authority of the U.S. Attorney to decline prosecution, to prosecute, and to take certain actions relating to the prosecution of criminal cases. These are identified at USAM 9-2.131, *infra*.

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With regard to policy limitations, if in the opinion of the U.S. Attorney the exigencies of the situation prevent compliance with a policy, he/she shall take the action deemed appropriate. He/she shall promptly report to the Criminal Division the deviation from policy, or if the policy is established by a higher authority, report to that authority and be guided by the instructions furnished him/her. A written report of the deviation should be promptly made. Approval of the action of the U.S. Attorney or his/her taking action as instructed shall be deemed, for all purposes, to be compliance with the policy. Among the purposes of this language is to ensure that criminals do not escape prosecution by inaction on the part of a U.S. Attorney immobilized by policy; to require a report of deviation from policy in order that the policy may be evaluated; and to express confidence in the judgment, and to reaffirm the authority, of the U.S. Attorney in such a situation.

If the U.S. Attorney discovers that a policy of the Criminal Division or of a higher authority has not been followed because of inadvertance, he/she shall promptly notify the Criminal Division or higher authority of the deviation from policy by the most expeditious means and subsequently in writing. He/she shall be guided by the instructions furnished him/her. Approval of the action of the U.S. Attorney, or his/her taking action as instructed shall be deemed, for all purposes, to be compliance with the policy.

In the instances when the U.S. Attorney is directed to consult with the Criminal Division prior to taking an action, such consultation will typically be by an Assistant U.S. Attorney with an attorney of the section assigned responsibility for the statute or matter involved. See USAM 9-4.000. If there is a disagreement at this level, the matter should be resolved by appropriate higher authority before the disputed action is taken.

9-2.130 Policy Limitations on Institution of Proceedings

9-2.131 Matters Assumed by Criminal Division or Higher Authority

If primary prosecutorial responsibility for a matter has been assumed by the Criminal Division or higher authority, the U.S. Attorney shall consult with the persons having primary responsibility before conducting grand jury proceedings, seeking indictment, or filing an information.

9-2.132 National Security Matters

National security includes matters relating to national defense, foreign intelligence or foreign counterintelligence, foreign relations, and internal security.

A. Authority to Conduct Prosecutions Relating to the National Security

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The enforcement of all criminal laws relating to the national security, and the responsibility for prosecuting criminal offenses, such as perjury and false statements, arising out of offenses related to national security, is assigned to the Assistant Attorney General, Criminal Division.

All prosecutions relating to the national security shall be conducted, handled, or supervised by the Assistant Attorney General, Criminal Division, on higher authority. 28 C.F.R. § 0.61. The Internal Security Section of the Criminal Division, under the supervision of the Assistant Attorney General or a higher authority, conducts, handles, or supervises prosecutions affecting national security.

Prosecution of a case involving national security shall not be instituted without the express authorization of the Criminal Division or higher authority. The Criminal Division should be consulted before an arrest is made, a search warrant is obtained, a grand jury investigation is commenced, immunity is offered, an indictment is presented, a prosecution is declined, or an adverse ruling or decision is appealed in cases affecting the national security.

Criminal provisions relating to the national security include the following:

- | | |
|---|---|
| 1. 2 U.S.C. § 192 | Contempts of Congress Related to National Security |
| 2. 2 U.S.C. § 261 <i>et seq.</i> | Federal Regulation of Lobbying Act |
| 3. 8 U.S.C. § 1185(b) | Travel Controls of Citizens |
| 4. 18 U.S.C. § 219 <i>et seq.</i> | Officers and Employees of the United States Acting as Foreign Agents |
| 5. 18 U.S.C. § 791 <i>et seq.</i> | Espionage; Unauthorized Disclosure of Classified Information |
| 6. 18 U.S.C. § 951 <i>et seq.</i> | Neutrality Laws |
| 7. 18 U.S.C. § 1030(a)(1) | Computer Espionage |
| 8. 18 U.S.C. § 1542 <i>et seq.</i> | Passport Violations Related to National Security |
| 9. 18 U.S.C. § 2151 <i>et seq.</i> | Sabotage |
| 10. 18 U.S.C. § 2381 <i>et seq.</i> | Treason, Sedition and Subversive Activities |
| 11. 22 U.S.C. § 611 <i>et seq.</i> | Foreign Agents Registration Act |
| 12. 22 U.S.C. § 2778 | Arms Export Control Act |
| 13. 42 U.S.C. §§ 2274 to 2278, 2284, and other Atomic Energy Violations that Affect National Security | Atomic Energy Act |
| 14. 50 U.S.C. § 421 | Intelligence Identities Protection Act |
| 15. 50 U.S.C. § 782 <i>et seq.</i> | Communication of Classified Information by Government Officer or Employee |
| 16. 50 U.S.C. § 851 <i>et seq.</i> | Registration of Person Who Has Knowledge Concerning Espionage Activities |
| 17. 50 U.S.C. § 1701 <i>et seq.</i> | International Emergency Economic Powers Act |
| 18. 50 U.S.C. § 2401 <i>et seq.</i> | Export Administration Act |
| 19. 50 U.S.C. App. § 5(b) | Trading With the Enemy Act |

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B. Consultation Requirements: National Security Matters

Consultation with the Criminal Division, Internal Security Section, is also required in cases in which classified information may be disclosed at trial or will play a role in the prosecutive decision, and for use of the Classified Information Procedures Act.

Before initiating a prosecution under the following statutes, the Registration Unit of the Internal Security Section FTS 786-4930, should be consulted:

1. 2 U.S.C. § 441e Campaign Contributions by Foreign Nationals
2. 46 U.S.C. App. § 1225 Registration of Persons Lobbying on Behalf of Shipbuilders or Ship Operators

C. Miscellaneous

USAM 9-90.000 *et seq.* should be consulted for additional discussion of the policies relating to prosecutions that affect the national security.

9-2.133 Other

The U.S. Attorney shall consult, as set forth at USAM 9-2.120, *supra*, with the appropriate section of the Criminal Division prior to instituting grand jury proceedings, filing an information, or seeking an indictment if the violation to be charged involves any of the statutes or situations listed below.

1. Acts of Air Piracy Outside the Special Aircraft Jurisdiction of the United States, 49 U.S.C. § 1472(n). See USAM 9-63.180;
2. Commodity Futures Trading Commission Act of 1974, 7 U.S.C. § 2 *et seq.*;
3. Contempt of Congress, 2 U.S.C. § 192;
4. Counterfeit Substance and Continuing Criminal Enterprise Violations Under the Controlled Substance Act, 21 U.S.C. §§ 841(a)(2), 848;
5. Desecration of the Flag, 18 U.S.C. § 700;
6. Draft Board Depredations and Aiding, Abetting, and Counseling Draft Evasion, 50 U.S.C. App. 462;
7. False Statements to Federal Criminal Investigators, 18 U.S.C. § 1001;
8. Federal Election Laws, 18 U.S.C. §§ 241 to 242, 591 to 617; 42 U.S.C. § 1973i(c); 2 U.S.C. §§ 431 to 455;
9. Federal Regulation of Lobbying Act, 2 U.S.C. §§ 261 to 270;

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10. Hobbs Act cases, 18 U.S.C. § 1951, brought with respect to extortion "under color of official right" by public official's misuse of his/her office; cases arising out of labor disputes; and cases involving robbery if local prosecutor objects to federal prosecution;
11. Imitation of Coins, 18 U.S.C. § 489, or Obligations or Securities of the United States, 18 U.S.C. § 475;
12. An immunized person who has been given "use immunity" if prosecuted for crime as to which he/she has testified;
13. Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 504 (Willful Violations of Bonding Requirements), 1111;
14. Lobbying with Appropriated Funds, 18 U.S.C. § 1913;
15. Mail Fraud, 18 U.S.C. § 1343, or Fraud by Wire Statute, 18 U.S.C. § 1343, if the fraud to be charged involves election law frauds;
16. Obscenity;
17. Perjury (committed during a trial resulting in an acquittal);
18. Purchase and Sale of Public Office, 18 U.S.C. §§ 210, 211;
19. Racketeer Influenced and Corrupt Organizations, 18 U.S.C. §§ 1961 to 1968;
20. Railway Labor Act, 45 U.S.C. §§ 112, Tenth;
21. Riots, 18 U.S.C. §§ 231 to 233, 2101, 2102;
22. Security Act, Securities Exchange Act, Investment Advisers Act of 1940, 15 U.S.C. §§ 77a *et seq.*, 78a *et seq.*, 80b-1 *et seq.*;
23. Strikebreakers Statute, 18 U.S.C. § 1231;
24. White Slave Traffic Act, 18 U.S.C. § 2421 *et seq.*, in personal escapade cases;
25. Tax Reform Act of 1976 (Disclosure Violations), 26 U.S.C. § 7213;
26. Harboring, 18 U.S.C. §§ 1071, 1072, 1381;
27. Trade Secrets Act, 18 U.S.C. § 1905;
28. Federal Regulation of Lobbying Act, 2 U.S.C. §§ 261 to 270;
29. Forfeiture of Substitute Assets, 18 U.S.C. § 1963(n) and 21 U.S.C. § 853(p);
30. Structured Financial Transactions, 31 U.S.C. § 5324;
31. Mail Order Drug Paraphernalia Control Act, 21 U.S.C. § 857; and

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32. Forfeiture of Proceeds of Foreign Controlled Substance Violations, 18 U.S.C. § 981(a)(1)(B); and

33. Murder-for-hire, 18 U.S.C. § 1958, if local prosecution objects to federal prosecution.

9-2.134 Consultation in Other Situations

The U.S. Attorney shall consult (as set forth in USAM 9-2.120, *supra* the designated section or office of the Criminal Division in any of the following additional situations:

1. Regarding all offers in compromise in an asset forfeiture proceeding (criminal or civil) where the difference between the offer and the value of the property exceeds \$60,000 (Criminal Division Directive No. 116, 1983). (Settlements in cases involving differences exceeding \$750,000 must be approved by the Deputy Attorney General (28 C.F.R. § 0.161, as amended in 1983) but requests for approval must be processed through the Asset Forfeiture Office.)

2. Regarding pre-trial diversion of certain individuals and cases involving certain statutes (see USAM 9-2.000) (Office of Enforcement Operations—Witness Records Unit);

3. Prior to dismissing a count involving, or entering into any sentence commitment or other case settlement in a case involving, one or more counts of:

a. Any Act of Air Piracy violation (49 U.S.C. App. § 1472(i) or (n)) (see USAM 9-63.15 and 9-63.180) (Terrorism and Violent Crime Section);

b. A Contempt of Congress violation (2 U.S.C. § 192) (General Litigation and Legal Advice Section);

c. A Threat Against the President violation (18 U.S.C. § 871) (USAM 9-65.200) (Terrorism and Violent Crime Section); and

d. A Failure to Register with the Selective Service System violation (50 U.S.C. App. 462(a)) (General Litigation and Legal Advice Section);

(See also USAM 9-2.146);

4. Filing of a Motion to Transfer (Motion to Proceed Against a Juvenile as an Adult) under 18 U.S.C. § 5032 (see USAM 9-8.000 *et seq.*) (General Litigation and Legal Advice Section).

9-2.135 Foreign Corrupt Practices Act Matters

No investigation or prosecution of cases involving alleged violations of Sections 103 and 104, and related violations of Section 102, of the

Foreign Corrupt Practices Act of 1977 (15 U.S.C. §§ 78m(b), 78dd-1, and 78dd-2) shall be instituted without the *express authorization* of the Criminal Division. See USAM 9-47.120.

9-2.136 Investigative and Prosecutive Policy for International Terrorism Matters

Faced with the growing threat of international terrorism and in order to implement this nation's obligations under various international conventions designed to prevent and punish acts of terrorism, Congress has enacted significant new legislation to expand the jurisdiction of the United States to investigate and prosecute terrorist activities occurring outside the territorial jurisdiction of the United States. In view of the greatly expanding federal criminal jurisdiction over international terrorist incidents and the obvious need to ensure a well-coordinated federal response to such incidents, the following policy is established in regard to terrorist acts committed outside the territorial jurisdiction of the United States over which federal criminal jurisdiction exists. *No United States Attorney is to initiate a criminal investigation, commence grand jury proceedings, file an information or complaint, or seek the return of an indictment in matters involving overseas terrorism without the express authorization of the Assistant Attorney General of the Criminal Division.* Overseas terrorist situations will undoubtedly entail coordination with one or more foreign governments and such coordination is best accomplished by and through the Department in consultation with the Department of State. Moreover, the uncertainty of venue for federal crimes committed overseas (see 18 U.S.C. § 3238) requires a coordinated prosecutive response.

Communications from the U.S. Attorney requesting the necessary authorization for international terrorism matters shall be directed to the Terrorism and Violent Crime Section (FTS 368-0849). After business hours, the Chief of the Section, James Reynolds, can be reached by calling the main Department of Justice operator at FTS 368-2000. If there is any question about whether the matter involves international terrorism, all doubt should be resolved in favor of consultation with the Terrorism and Violent Crime Section. If the substantive offense is within the area of responsibility of another Section of the Criminal Division (e.g., Arms Export Control Act—Internal Security Section), the Terrorism and Violent Crime Section will coordinate the matter with that Section.

Listed below are the key statutes which represent the intent of Congress to expand the jurisdiction of the United States to investigate and prosecute terrorist activities outside the territory of the United States and describe the various federal criminal offenses (including conspiracy, 18 U.S.C. §§ 371, 1117) that overseas terrorists may commit:

1. *Aircraft Piracy and Related Offenses* (49 U.S.C. App. § 1472(i-n)): Pursuant to The Hague Convention, the Federal Aviation Act of 1958

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prohibits the seizure, by force or violence, of any aircraft within the special aircraft jurisdiction of the United States,¹ interference with flight crew members while aboard such aircraft, the carrying of concealed weapons or explosives aboard such aircraft, and the commission of certain crimes, including murder (18 U.S.C. § 1111), manslaughter (18 U.S.C. § 1112), maiming (18 U.S.C. § 114), rape (18 U.S.C. § 2031), assault (18 U.S.C. § 113) and robbery (18 U.S.C. § 2111), while aboard such aircraft. The Act also empowers the United States to prosecute aircraft piracy outside the special aircraft jurisdiction of the United States if the foreign civil aircraft was in flight at the time of its hijacking and if the hijacker is subsequently found in the United States after the air piracy. The Federal Aviation Act authorizes the Government to seek the death penalty if the death of another person results from aircraft piracy as defined in this statute. Aircraft piracy is currently the only federal offense for which there is a constitutional mechanism for imposing the death penalty. See 49 U.S.C. App. § 1473(c). See also, USAM 9-63.100, *infra*.

2. *Aircraft Sabotage* (18 U.S.C. § 32): Amendments to 18 U.S.C. § 32 enacted in 1984 expand United States jurisdiction over aircraft sabotage to include destruction of any aircraft in the special aircraft jurisdiction of the United States or any civil aircraft used, operated or employed in interstate, overseas, or foreign air commerce. This statute now also makes it a federal offense to commit an act of violence against any person on the aircraft, not simply crew members, if the act is likely to endanger the safety of the aircraft. In addition, the United States is now obliged under the statute to prosecute any person who destroys a foreign civil aircraft outside of the United States if the offender is later found in the United States. See USAM 9-63.200, *infra*.
3. *Crimes Against Immediate Family of a High Ranking Federal Official* (18 U.S.C. § 115): The United States now has jurisdiction to prosecute the murder, kidnaping or assault of a member of the immediate family of certain federal officials where such crimes are committed with the intent to interfere with those federal officials in the performance of their duties or are committed to retaliate against those officials for the performance of their duties. The immediate family members of the President, Vice President, Members of Congress, all federal judges, the heads of Executive agencies, the

¹ The definition of "special aircraft jurisdiction of the United States" is found at 49 U.S.C.App. § 1301(38). To be within the "special aircraft jurisdiction of the United States" the aircraft must be "in flight." Among the aircraft covered are all United States civilian and military aircraft (anywhere in the world as long as they are "in flight"), foreign aircraft within the territorial jurisdiction of the United States, and certain foreign civil aircraft that land in the United States after certain crimes have been committed aboard the aircraft while it was in flight outside of the United States.

Director of the CIA and federal law enforcement officials are covered by this statute. See USAM 9-65.900, *infra*.

4. *Crimes Against Internationally Protected Persons* (18 U.S.C. §§ 112, 878, 1116, 1201(a)(4)): Enacted to implement United States treaty obligations under two international conventions concerning terrorist acts that threaten the maintenance of normal international relations, federal statutes specifically protect any Chief of State, head of government or Foreign Minister and their families *when they are out of their own country*. As a general rule, they also protect diplomatic personnel protected by the Vienna Conventions *while they are out of their own country*. Whoever murders, kidnaps, assaults or threatens internationally protected persons can be prosecuted by the United States, whether or not the offense was committed in the United States and regardless of the nationality of either the victim or the offender, if the United States is able to obtain personal jurisdiction over the offender. See USAM 9-65.900, *infra*.
5. *Crimes Against Select United States Officials* (18 U.S.C. §§ 111, 351, 1114, 1201(a)(5), 1751): The United States has jurisdiction to prosecute the murder, kidnaping or assault of its major Government officials: the President and his staff, the Vice President and his staff (§ 1751), Members of Congress, Supreme Court Justices, the heads of Executive Departments and their second in command, the Director and Deputy Director of the CIA (§ 351), and designated law enforcement officials (§§ 111, 1114, 1201). In 1984, 18 U.S.C. § 1114 was amended to expand the group of protected federal officials to include intelligence officials and additional law enforcement personnel. The Attorney General was also empowered by this amendment to promulgate regulations to add other federal employees to the group of protected employees. See USAM 9-65.100, .300, .600, and .700, *infra*.
6. *Crimes Committed Within the Special Maritime Jurisdiction of the United States* (18 U.S.C. §§ 7, 113, 114, 1111, 1112, 1201, 2031, 2111): The "special maritime and territorial jurisdiction of the United States" has been expanded to include any place outside the jurisdiction of any nation when the offense is committed by or against a national of the United States (see 18 U.S.C. § 7(7)). Among the offenses within the special maritime and territorial jurisdiction of the United States are the crimes of murder, manslaughter, maiming, kidnapping, rape, assault, and robbery. Pursuant to 18 U.S.C. § 7(1) there is also jurisdiction over such offenses when they are committed on the *high seas* or any other waters within the admiralty and maritime jurisdiction of the United States that is out of the jurisdiction of any particular state. Arguably, this prosecutive authority exists regardless of the nationality of the person

committing the enumerated crimes on the high seas if the crimes are committed against United States citizens or are committed on United States civil or military vessels. See USAM 9-20.100, *infra*.

7. *Hostage Taking* (18 U.S.C. § 1203): In 1984, Congress enacted the hostage taking statute to implement the International Convention Against the Taking of Hostages. The statute became effective on January 6, 1985. Hostage taking is defined as the seizing or detention of an individual coupled with a threat to kill, injure or continue to detain such individual in order to compel a third person or governmental organization to take some action. The United States has jurisdiction over the taking of hostages outside the United States (a) if the perpetrator or a hostage is a United States national, (b) if the perpetrator is found in the United States regardless of his nationality, or (c) if the United States is the Government coerced by the hostage taker. See USAM 9-60.700, *infra*.
8. *International Traffic in Arms Regulations*: under the authority of the Arms Export Control Act (22 U.S.C. § 2773), the United States has long required under the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Part 120—Part 130) that a license be obtained from the Department of State to export any item on the Munitions List (22 C.F.R. 121.1—.15) (*i.e.*, certain firearms, military aircraft, military explosives, etc.). Since January 1, 1985, however, the ITAR has been modified to require a license for anyone in the United States to train any foreign national (who is not a permanent resident alien of the United States) in the use, maintenance, repair or construction of an item on the Munitions List. Moreover, if the service relating to an item on the Munitions List is to be provided overseas, an American national is likewise required to obtain a license before providing any training to foreign nationals regarding such item or before actually operating, repairing, or constructing such item on behalf of any foreign entity. See USAM 9-90.620, *infra*.
9. *Murder for Hire* (18 U.S.C. § 1952A): The United States may now prosecute anyone who travels or uses facilities in foreign commerce with the intent to murder for pecuniary compensation. See USAM 9-110.800, *infra*.
10. *Piracy* (18 U.S.C. § 1651): Since 1819, the United States has had jurisdiction to prosecute anyone who commits the crime of piracy, as defined by the law of nations, on the high seas and is later brought to or found in the United States.
11. *Terrorist Acts Abroad Against United States Nationals* (18 U.S.C. § 2331):

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On August 28, 1986, the President signed Pub.L. 99-399, the Omnibus Diplomatic Security and Antiterrorism Act of 1986. Section 1202 of the Act created a new Section 2331 of Title 18, U.S.C. that makes it a federal crime for a terrorist overseas to kill a United States national, attempt to murder a United States national, conspire to murder a United States national, or to engage in physical violence with the intent to cause serious bodily injury to a United States national or with the result that serious bodily injury is caused to a United States national. Prosecution for any offense under Section 2331 requires the written certification of the Attorney General or the highest ranking subordinate of the Attorney General with responsibility for criminal prosecutions.

9-2.140 Policy Limitations—Prosecutorial and Other Matters

9-2.141 Addition of Counts to Superseding Indictment

When a conviction is vacated (e.g. guilty plea is set aside) and the defendant is thereafter reindicted, the superseding indictment ordinarily should not contain more counts than the original indictment without consultation with the Criminal Division. (See USAM 9-2.120, *supra*). See *United States v. Robison*, 307 F.Supp. 403, 408 (N.D. Cal. 1968).

9-2.142 Dual Prosecution and Successive Federal Prosecution Policies

The scope of the Department of Justice's dual and successive federal prosecution policy is discussed below. Following the specific substantive provisions of this policy, procedural provisions applicable to both situations are set forth.

A. Statement of Policy

The Department of Justice's policy on dual prosecution and successive federal prosecution precludes the initiation or continuation of a federal prosecution following a state prosecution or a prior federal prosecution based on substantially the same act, acts or transaction unless there is compelling federal interest supporting the dual or successive federal prosecution. The policy is intended to regulate prosecutorial discretion in order to promote efficient utilization of the Department's resources and to protect persons charged with criminal conduct from the unfairness associated with multiple prosecutions and multiple punishments for substantially the same act or acts. See *Rinaldi v. United States*, 434 U.S. 22, 27 (1977); *Petite v. United States*, 361 U.S. 529 (1960).²

² Although there is no general statutory bar to a federal prosecution where the defendant's conduct has already formed the basis for a state prosecution, Congress has expressly provided that, as to certain specific offenses, a state judgment of conviction or acquittal on the merits shall be a bar to any subsequent federal prosecution for the same act or acts. See 18 U.S.C. §§ 659, 660, 1992, 2101, 2117; 15 U.S.C. §§ 80a-36, 1282.

In order to prevent unwarranted dual or successive prosecutions, the policy requires that authorization be obtained from the appropriate Assistant Attorney General prior to initiating or continuing the federal prosecution. A failure to obtain prior authorization of a dual or successive federal prosecution will result in a loss of any conviction through a dismissal of the charges unless it is later determined that there was in fact a compelling federal interest supporting the prosecution and a compelling reason to explain the failure to obtain prior authorization.

1. *Types of Prior Proceedings Resulting in Application of the Dual or Successive Federal Prosecution Policy*

The policy applies and authorization must be obtained from the appropriate Assistant Attorney General whenever there has been a prior state proceeding or a prior federal prosecution (including a plea bargain) resulting in (1) an acquittal, (2) a conviction, or (3) a dismissal or other termination of case on the merits.

Whenever a state or prior federal proceeding reaches one of the aforementioned stages, whether before or after the return of a subsequent federal indictment or the filing of a federal information, authorization from the appropriate Assistant Attorney General must be obtained before a trial may be commenced or a guilty plea accepted on federal charges based on substantially the same act, acts or transaction.⁴

In order to avoid the unnecessary expenditure of federal resources whenever the initiation of a state proceeding is anticipated in a matter involving overlapping federal jurisdiction, federal prosecutors should not only coordinate their activities with their state counterparts, but also carefully consider whether there is a federal interest warranting a separate federal prosecution. Similarly, they should make a reasonable effort to determine whether there are related federal proceedings pending before initiating new federal proceedings. Therefore, whenever a federal criminal case proceeds to trial or results in the entry of a guilty plea after another federal indictment or information has been filed, a voluntary dismissal should be entered on the indictment or

³ The dual or successive federal prosecution policy does not apply—and thus authorization is not required—where the state proceeding or the prior federal prosecution did not progress to the stages at which jeopardy attached or was terminated in a manner that would not, under the Double Jeopardy Clause, preclude a further state or federal prosecution for the same offense.

⁴ Once a trial on the federal charges has commenced, however, the policy does not apply, and authorization need not be sought, even if the state proceeding terminates prior to the completion of the federal proceeding. Where the federal trial results in a mistrial, a dismissal, or a reversal on appeal, the policy applies to prevent a further federal trial after an intervening state proceeding has reached one of the three stages delineated above unless authorization is obtained from the appropriate Assistant Attorney General. Where authorization is not sought or is not granted by the appropriate Assistant Attorney General, the federal prosecutor should seek a voluntary dismissal of the charges.

information unless authorization is obtained for a successive federal prosecution.

2. Relationship Between the Act(s) on Which the State or Prior Federal Prosecution was Based and the Act(s) on Which the Proposed Prosecution Would Rest

The policy on dual or prior federal prosecution is intended to reach federal prosecutions based on substantially the same act or acts that were involved in a prior state prosecution⁵ or series of acts which were part of the same transaction and which already resulted in a prior federal prosecution. The application of the Department's policy has posed difficult questions in cases where the proposed federal charges encompass, but are not limited to, acts that have previously been prosecuted by the states or previously prosecuted in federal court.

(a) Dual Prosecution

Consistent with the Department's common sense, non-technical approach to the scope of the policy, it has been concluded that the policy does not apply where the prior state prosecution involved only a minor part of the federal offense charged. This limitation on the scope of the policy is particularly important for conspiracy prosecutions and for prosecutions under substantive statutes focusing on a continuing course or pattern of criminal conduct, such as 18 U.S.C. § 1961 *et seq.* (Racketeer Influenced and Corrupt Organizations) and 21 U.S.C. § 848 (Continuing Criminal Enterprise). A federal conspiracy indictment, for example, may allege that a defendant engaged in a number of overt acts in furtherance of the conspiracy and may set forth a number of objectives of the conspiracy. The fact that one, or even several, of the acts or objectives of the conspiracy have been the subject of previous state prosecution does not necessarily render the dual prosecution policy applicable.⁶ The dual prosecution policy would apply and authorization would be required where the prior state substantive prosecution(s) covered most or all of the acts of a defendant in furtherance of the conspiracy alleged in the federal indictment. Similarly, the policy does not apply and authorization

⁵ The policy applies even where a prospective federal prosecution requires proof of different elements than the state offense. Thus, although a state prosecution for a substantive offense could not—under strict Double Jeopardy principles—bar a subsequent state prosecution for conspiracy to commit the offense, the policy requires prior authorization before a federal conspiracy prosecution successive to such a related state proceeding may be initiated.

⁶ The nature of the conduct involved in the state prosecution(s) and the state sentence(s) imposed would, of course, constitute important factors in determining whether, as a matter of prosecutorial discretion, a federal prosecution based in part on the previously prosecuted conduct should be brought.

would not be required for a RICO prosecution involving a single previously prosecuted extortion as one of a number of alleged acts of racketeering. However, where there would be an insufficient number of acts of racketeering to sustain the RICO charge if the previously prosecuted acts were excluded or where the proposed federal prosecution rests substantially on acts previously prosecuted by the state, the dual prosecution policy applies and authorization must be obtained.

(b) *Successive Prosecution*

The Department has also sought to apply the successive federal prosecution policy in common sense, non-technical fashion in order to effectuate its salutary objectives. Hence, even when a prospective prosecution is, technically speaking, for an act different from the prior prosecution or requires proof of different elements, the subsequent prosecution will not generally be authorized if, as a practical matter, the two acts were part of the same transaction and there is no compelling interest supporting a subsequent federal prosecution. The successive federal prosecution policy does not generally permit the dividing of a single criminal transaction for separate prosecution within the same or different judicial districts.

The successive federal prosecution policy does not apply and authorization need not be obtained where the second or subsequent prosecution could not have been brought together with the initial federal prosecution of the defendant. For example, where venue restrictions preclude joining two or more offenses for trial in any single federal judicial district, the policy is not triggered even if the offenses were part of the same transaction. Similarly, the policy does not apply where the defendant opposes a single trial on charges arising out of a single transaction. Practical rather than legal constraints may also render the policy inapplicable. Thus, the policy does not apply if the evidence of another crime that is part of the same transaction is not obtained until after commencement of the initial federal prosecution. (See: Note 5, *supra*.)

3. *Factors Governing the Authorization of Dual or Successive Federal Prosecutions*

Requests for the authorization of dual or successive federal prosecutions will be evaluated on a case-by-case basis by the appropriate Assistant Attorney General. Applications for authority to undertake dual or successive federal prosecutions should be addressed to the factors set forth and their relative weight. The application will be analyzed to determine whether the overall factors favoring authoriza-

tion of a dual or successive prosecution outweigh the general policy against multiple prosecutions based on substantially the same act or acts.⁷

A federal prosecution will not be authorized unless the state/prior federal proceeding left substantial federal interests demonstrably unvindicated.⁸ Even so, a dual or successive prosecution is not warranted unless a conviction is anticipated and—if the state/prior federal proceeding resulted in a conviction—normally will not be authorized unless an enhanced sentence in the subsequent federal prosecution is anticipated.⁹

Where the prior state proceedings result in a conviction, a subsequent prosecution may be warranted if the defendant in the state proceeding was charged with a state offense carrying a maximum penalty substantially below the maximum penalty of the federal offense(s) with which the defendant may be charged.

A subsequent prosecution may also be warranted where there is a substantial basis for believing that the choice by either the prosecutor or grand jury of the state or prior federal charges which were filed or the determination regarding guilt or severity of sentence was affected by any of the following factors:

- a. Infection of the proceeding by incompetence, corruption, intimidation, or undue influence (State/Prior Federal);
- b. Court or jury nullification involving an important federal interest, in blatant disregard of the evidence (State/Prior Federal);
- c. The failure of the state to prove an element of the state offense which is not an element of the federal offense (State);

⁷ Where a defendant who has previously been prosecuted in a state or prior federal proceeding based on the same or substantially the same criminal acts or transaction consents to a federal prosecution after being informed of the Department's policy against dual or successive prosecutions, a subsequent federal prosecution may be warranted even if the factors set forth are not satisfied.

⁸ The reference in the policy to a "compelling federal interest" or "substantial federal interest" is intended to indicate that a significant federal prosecutorial interest must be present to justify authorization of a dual or successive prosecution. Whether such an interest is present must be evaluated on the basis of the facts and circumstances of each case. However, cases coming within priority areas of the Department—such as civil rights cases, organized crime cases, tax cases, firearms cases, and cases involving crimes against federal officials, witnesses or informants—are, of course, more likely to meet the compelling federal interest requirement. Any determination whether such an interest exists should include the consideration given in the previous proceeding to victim restitution. The inadequate attention to this factor is inconsistent with the rationale of the restitution provisions of the Victim and Witness Protection Act of 1982.

⁹ This factor may be satisfied where the state or prior federal prosecution resulted in a conviction for a misdemeanor and a conviction for a federal felony is anticipated.

d. The unavailability of significant evidence in the proceeding either because it was not timely discovered or because it was suppressed on an erroneous view of the law (State/Prior Federal);

e. Fairness to other defendants or significant resource considerations favor separate prosecutions (Federal); or

f. The original indictment was held insufficient as a matter of law or there was a fatal variance between the offenses charged and the proof at trial (Federal).

B. *General Provisions*

1. *Application for Authorization*

The initial determination whether a proposed prosecution comes within the dual prosecution policy or the successive federal prosecution policy is the responsibility of the U.S. Attorney in those cases under his/her control. Whenever the U.S. Attorney concludes that the policy is applicable, an authorization request should be submitted to the appropriate Assistant Attorney General. In cases where there is a substantial question as to the applicability of the policy and the U.S. Attorney concludes that the policy does not apply, the U.S. Attorney shall provide the appropriate Assistant Attorney General with a brief written statement summarizing the underlying facts and the reasons for the determination. These statements are to be forwarded within ten working days after the determination has been made.

In cases handled by other Department attorneys, an authorization request should be submitted to the appropriate Assistant Attorney General whenever there is a question as to whether the dual or successive federal prosecution policy applies. These authorization requests and statements from U.S. Attorneys explaining their decisions that the policy is inapplicable shall be brought to the attention of the Associate Attorney General. The Associate Attorney General shall be responsible for supervising the review of these authorization requests and statements in order to promote uniformity in the Department's determinations regarding the scope of the policy.

2. *Enforcement of the Policies*

In the event of violations of the dual prosecution policy or successive federal prosecution policy, the appropriate Assistant Attorney General shall either authorize the prosecution retroactively, if such authorization is warranted, or direct that the prosecutors move for the dismissal of the indictment or information. Absent unusual circumstances, an Assistant Attorney General will be reluctant to issue authorization retroactively and will direct that charges be dismissed when necessary to correct a violation of the policy. In addition, appropri-

ate administrative action may be initiated against prosecutors who violate the policy.

3. Reservation

The dual prosecution and successive federal prosecution policy statements are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful litigative prerogatives of the Department of Justice.¹⁰

4. Prior Guidelines and Policy Statements

These general procedural provisions and the dual/successive federal prosecution policy statement supersede all prior Department of Justice guidelines and policy statements on this subject.

9-2.143 Juvenile Prosecutions

Prior approval from the Criminal Division is required before the U.S. Attorney may file a Motion to Transfer, *i. e.*, a Motion to Proceed Against a Juvenile as an Adult under 18 U.S.C. § 5032. See USAM 9-2.134, *supra*.

9-2.144 Interstate Agreement on Detainers

A. General Overview

By virtue of the Interstate Agreement on Detainers Act, Pub.L. No. 91-538, 84 Stat. 1397 to 1401 (1970), the United States (and the District of Columbia) entered into the Interstate Agreement on Detainers, 18 U.S.C.App. III, hereinafter referred to as the Agreement.

The Agreement applies to interstate transfers of prisoners for trial and to transfers from the federal government to the states and from the states to the federal government. It does not apply to transfers of federal prisoners between the several judicial districts for trial on federal charges. See *United States v. Stoner*, 799 F.2d 1253 (9th Cir.), *cert. denied*, 479 U.S. 1021, 107 S.Ct. 678 (1986).

¹⁰ All of the Courts of Appeals that have considered the question have held that a criminal defendant cannot invoke the Department's policy as a bar to federal prosecution. See, *e.g.*, *United States v. Snell*, 592 F.2d 1083 (9th Cir.1979); *United States v. Howard*, 590 F.2d 564 (4th Cir.1979); *United States v. Frederick*, 583 F.2d 273 (6th Cir.1978); *United States v. Thompson*, 579 F.2d 1184 (10th Cir.1978) (en banc); *United States v. Wallace*, 578 F.2d 735 (8th Cir.1978); *United States v. Nelligan*, 573 F.2d 251 (5th Cir.1978); *United States v. Hutul*, 416 F.2d 607 (7th Cir.1969). The Supreme Court, in analogous contexts, has concluded that Department policies governing its internal operations do not create rights which may be enforced by defendants against the Department. See *United States v. Caceres*, 440 U.S. 741 (1979); *Sullivan v. United States*, 348 U.S. 170 (1954).

Article III of the Agreement permits a prisoner to initiate final disposition of any untried indictment, information, or complaint against him/her in another state on the basis of which a detainer has been lodged against him/her. Article IV permits the prosecuting authority of a state in which an untried indictment, information, or complaint is pending to obtain temporary custody of a prisoner against whom it has lodged a detainer by filing a "written request" for custody with the incarcerating state. Accordingly, both prisoners and prosecutors have the power to initiate trials under the Agreement. Article V provides a detailed procedure for obtaining temporary custody.

The Agreement also provides that when a prisoner requests disposition of one matter upon which a detainer has been filed, it constitutes a request for disposition of all matters on which detainers have been filed by the same "state." Article III(d). The several federal districts have been held to constitute separate "states" in this context. See *United States v. Bryant*, 612 F.2d 806 (4th Cir.1979), cert. denied, 446 U.S. 920 (1980). Prosecution on other charges upon which detainers have not been lodged is not authorized by the Agreement unless they arise from the same transaction. Article V(d). Whether trial of the latter is compulsory is not clear.

When the U.S. Attorney initiates the request under Article IV, the charge upon which the request is based must be disposed of prior to returning the prisoner or the charge will be dismissed with prejudice. Article IV(e). The several federal districts have also been treated as separate states in this context. See *United States v. Woods*, 621 F.2d 844 (6th Cir.), cert. denied, 447 U.S. 877 (1980). Other charges may not be prosecuted unless they arise from the same transaction. Article V(d). Again, whether trial of the latter is compulsory or only permissible is not clear.

B. *Applicability of the Agreement*

The Agreement applies only to "a person [who] has entered upon a term of imprisonment in a penal or correctional institution," Articles III(a), IV(a), and is therefore inapplicable to one incarcerated awaiting trial. See *United States v. Reed*, 620 F.2d 709, 711-12 (9th Cir.), cert. denied, 449 U.S. 880 (1980); *United States v. Evans*, 423 F.Supp. 528, 531 (S.D.N.Y. 1976), aff'd, 556 F.2d 561 (2d Cir.1977). Since the Agreement applies only to a detainer based upon a pending "indictment, information, or complaint" which requires a "trial," Articles III(a), IV(a), the Agreement does not apply to a detainer based upon a parole violator warrant. See *Reed, supra*. The procedure for disposition of parole violation detainers is set out in 18 U.S.C. § 4214(b). The Agreement is likewise inapplicable to probation violation detainers. See *Carchman v. Nash*, 473 U.S. 716 (1985).

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Standing alone, a writ of habeas corpus *ad prosequendum* authorized by 28 U.S.C. § 2241(c)(5) is not a "detainer" for purposes of the act and does not trigger application of the Agreement. However, if a detainer has been filed, use of a writ of habeas corpus *ad prosequendum* to obtain custody does constitute a "written request" within the meaning of the Agreement, activating its provisions. See *United States v. Mauro*, 436 U.S. 340 (1978). Nor is application of the Agreement triggered by a writ of habeas corpus *ad testificandum*, at least where no charges are then pending against the prisoner in the issuing jurisdiction. See *Carmona v. Warden*, 541 F.Supp. 621 (S.D.N.Y.1982).

C. Transfer of Prisoners: Anti-Shuttling Provisions

Article III(d) and Article IV(e) contain similar provisions that should be noted:

If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

Article IV(e) (emphasis added). Thus, the Agreement expressly requires the dismissal with prejudice of a pending indictment if a prisoner is returned to his/her original place of imprisonment without first being tried on the indictment underlying the detainer by which the temporary custody of the prisoner was secured. It has been held that "trial" in this context includes sentencing. See *Walker v. King*, 448 F.Supp. 580 (S.D.N.Y.1978). The Department has not accepted this decision as a correct interpretation of the act. Nevertheless, in order to avoid litigation and the risk of invalidating prosecutions, the return of prisoners should be deferred until after the imposition of sentence. Where, however, dismissal of an indictment is sought on the basis of this ruling it should be resisted.

Courts are divided on whether the anti-shuttling provisions of the Agreement are violated by a short duration removal from custody of less than one day which does not interrupt the prisoner's rehabilitation program. *United States v. Roy*, 830 F.2d 628, 635-636 (7th Cir.1987); *Sassoon v. Stynchcombe* 654 F.2d 371 (5th Cir.1981). Also, the return of a federal defendant to a state facility where he/she is to be held under contract as a federal prisoner may not violate the "anti-shuttling" provisions. See *United States v. Sorrell*, 562 F.2d 227, 229 n. 3 (en banc), cert. denied, 436 U.S. 949 (1978); *United States v. Thompson*, 562 F.2d 232, 234 (3d Cir.1977) (en banc), cert. denied, 436 U.S. 949 (1978). However, in view of the severe sanction imposed for violation of the anti-shuttling provi-

sions, extreme caution should be exercised before deviating in any way whatsoever from the strict dictates of Article IV(e) of the Agreement.

The protection of the Agreement's "anti-shuttling" provisions may be waived by the defendant's request for a retransfer prior to disposition of the outstanding charges. Articles III(d) and IV(e). See *Webb v. Krome*, 804 F.2d 413 (7th Cir.1986); *United States v. Scallion*, 548 F.2d 1158, 1170 (5th Cir.), cert. denied, 436 U.S. 943 (1978). As these rights are not guaranteed by the Constitution to preserve a fair criminal trial, there is no requirement that such a waiver be "knowingly and intelligently made." See *United States v. Black*, 609 F.2d 1330, 1334 (9th Cir.1979), cert. denied, 449 U.S. 847 (1980); *United States v. Eaddy*, 595 F.2d 341, 344 (6th Cir.1979). Upon like reasoning, it is generally held that the rights will be waived or forfeited through "procedural default" by failure to make timely objection in the trial court so that violations cannot be complained of for the first time on appeal, *id.* at 346; *Scallion*, *supra*, at 1174, or in collateral proceedings under 28 U.S.C. § 2255; *Greathouse v. United States*, 655 F.2d 1032, 1034 (10th Cir.1981), cert. denied, 455 U.S. 926 (1982); or under 28 U.S.C. § 2254, *Fasano v. Hall*, 615 F.2d 555 (1st Cir.), cert. denied, 449 U.S. 867 (1980); *Bush v. Muncy*, 659 F.2d 402 (4th Cir. 1981), cert. denied, 455 U.S. 910 (1982). See, however, *Cody v. Morris*, 623 F.2d 101 (9th Cir.1980). Because violation of the Agreement is not a "jurisdictional" defect, an unconditional plea of guilty forecloses direct appeal and collateral review of alleged violations. See *United States v. Palmer*, 574 F.2d 164 (3d Cir.), cert. denied, 437 U.S. 907 (1978); *United States v. Hach*, 615 F.2d 1203, 1204 (8th Cir.), cert. denied, 446 U.S. 912 (1980).

D. Time Limitations

Article IV(c) provides that, subject to continuances granted for good cause in open court in the presence of the prisoner or his/her attorney, "trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving state," otherwise the indictment shall be dismissed with prejudice, Article V(c). "[D]elay that is lawful under the Speedy Trial Act generally will comply with the mandate of the Detainer Act." See *United States v. Odom*, 674 F.2d 228, 231 (4th Cir.), cert. denied, 457 U.S. 1125 (1982). See also Article III(a) (trial must commence within 180 days of receipt by prosecuting state of prisoner's request for final disposition of charges underlying detainer).

In addition, the Speedy Trial Act of 1974, 18 U.S.C. § 3161(j), requires that a U.S. Attorney who knows that a defendant is serving a sentence in a penal institution must promptly obtain the defendant's presence for trial or cause a detainer to be lodged. If the prisoner demands trial and is made available for prosecution, the time limits of the Speedy Trial Act apply, but do not commence to run "until the defendant is actually present for purposes of pleading." See H.R.Rep. No. 93-1508, 93d Cong., 2d Sess. 36.

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In the event of conflict between the time limitation prescribed by the Agreement and the Speedy Trial Act, the more stringent should be applied. *United States v. Mauro*, 436 U.S. 340, 356-57 n. 24 (1978). See *Odom, supra*, at 231 (''The Detainer Act and the Speedy Trial Act deal with the same subject matter... Whenever possible, the interpretation of the Acts should not be discordant'').

E. Extradition Rights Under State Law

In *Cuyler v. Adams*, 449 U.S. 433 (1981), the Supreme Court held that Article IV(d) preserved a prisoner's extradition rights under the laws of the state of incarceration, so that he was entitled to a hearing before he could be transferred from the custody of the State of Pennsylvania to the State of New Jersey. This ruling has no application, however, to prisoners serving federal sentences because the United States has neither adopted the Uniform Extradition Act nor enacted any other statute providing the right of hearing. See *Mann v. Warden, Eglin Air Force Base*, 771 F.2d 1453 (11th Cir.1985) (per curiam), cert. denied, 475 U.S. 1017 (1986). It is the Criminal Division's position that state prisoners serving sentences in federal facilities under contracts pursuant to 18 U.S.C. § 5003 are also not entitled to pretransfer hearings even if the state whose sentence they are serving provides for such hearings under its extradition laws.

Section IV(a) allows a governor 30 days in which to disapprove a request for transfer on his/her own motion or that of the prisoner. It has been held, however, that a state governor does not have the right to disapprove a request issued in the form of a writ of habeas corpus *ad prosequendum* by a federal court even when a detainer has been previously lodged. See *United States v. Graham*, 622 F.2d 57 (3d Cir.), cert. denied, 449 U.S. 904 (1980). See, however, *United States v. Scheer*, 29 F.2d 164, 170 (2d Cir.1984). The Attorney General has delegated his authority to pass upon state requests under the Agreement to the Bureau of Prisons. See 28 C.F.R. § 0.96(n); see also, 29 C.F.R. § 527.31(a).

9-2.145 Dismissals

Criminal Division approval is required before dismissing, in whole or in part, an indictment, information, or complaint as set forth in USAM 9-2.134, *supra*.

The above-mentioned approval is not a direction but rather an authorization to dismiss if, in the opinion of the U.S. Attorney, this course is advisable. U.S. Attorneys must satisfy themselves that the conditions upon which dismissals are authorized have been complied with.

In the instances in which Division approval is required for dismissal, the U.S. Attorney should submit a Form No. USA 900 (Authorization for Dismissal of Indictment and Information) setting forth the reasons for recommending dismissal. If the exigencies of the situation require imme-

mediate action, telephonic approval to dismiss may be obtained and the Form 900 thereafter sent to the appropriate section of the Division.

9-2.146 Pleas by Corporations

Charges against an individual defendant should not be dismissed on the basis of a plea of guilty by a corporate defendant unless there are special circumstances justifying the dismissal.

9-2.147 Extradition and Deportation

No agreement shall be made by a U.S. Attorney that an individual will not be extradited or deported or that his/her extradition or deportation will be delayed, altered, or restricted to certain nations without the prior approval of the Criminal Division in criminal cases and in cases involving extradition or the Civil Division in civil cases.

9-2.148 Recommendation of Death Penalty

The death penalty shall not be recommended without the approval of the Attorney General. Requests for such approval should be processed through the Criminal Division section or office having jurisdiction over the violation for which defendant is being prosecuted.

9-2.149 Revocation of Naturalization

No suit to revoke naturalization under 8 U.S.C. § 1451 shall be instituted by the U.S. Attorney without prior consultation with the Office of Immigration Litigation in the Civil Division. However, Attorney General's Order No. 851-79 (9/4/79) confers upon the Office of Special Investigations (OSI) the authority to prepare, initiate, and conduct denaturalization proceedings in all Federal districts against former participants in Nazi persecution. The Office of Immigration Litigation's approval is not required in instituting OSI denaturalization cases.

9-2.150 Policy Limitations—Prosecutorial and Other Matters (cont.)

9-2.151 International Matters

The Criminal Division's Office of International Affairs (786-3500) should be consulted before contacting any foreign or State Department official in matters relating to extradition of a fugitive or the obtaining of evidence in a criminal investigation or prosecution.

Any proposed contact with persons, other than United States investigative agents, in a foreign country for the purpose of obtaining the extradition of a fugitive or evidence should first be discussed with the Office of International Affairs, Criminal Division. See USAM 9-13.500.

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Before attempting to do any act in Switzerland or other continental European countries relating to a criminal investigation or prosecution, including contacting a witness by telephone or mail, prior approval should be obtained from the Office of International Affairs. See USAM 9-13.500.

Before issuing any subpoena to obtain records located in a foreign country, and before seeking the enforcement of any such subpoena, approval must be obtained from the Office of International Affairs. See USAM 9-13.500. Similarly, prior approval from the Office of International Affairs must be obtained with respect to serving a subpoena on an officer of, or attorney for, a foreign bank or corporation, who is temporarily in, or passing through the United States, when the testimony sought relates to the officer's or attorney's duties in connection with the operation of the bank or corporation.

9-2.152 Special Instructions—General Litigation and Legal Advice Section Matters

Upon being served with the summons and complaint in a case within the General Litigation and Legal Advice Section's jurisdiction, see USAM 9-3.603, the U.S. Attorney should immediately send two copies of the pleadings and other papers to the Section with a letter of transmittal setting out any background information known to him/her about the action. Pending instructions from the Section, he/she should take all action appropriate to protect the interests of the government. Because of the sensitive nature of these cases and the necessity of a uniform response to the issues presented, it is important that the U.S. Attorney take no action going to the merits of the case until after advice from or consultation with the Section. If the U.S. Attorney has any doubt whether a particular case is within the Section's jurisdiction, he/she should promptly inquire of the Section. No case within the Section's jurisdiction may be compromised or settled without prior approval by the Section.

U.S. Attorneys should also immediately advise the Section of the filing in any court, state or federal, in their districts of any case in which the issues relate to the Section's jurisdiction, so that the Section may advise him/her of whatever action the Attorney General desires to take under 28 U.S.C. § 517.

9-2.153 Report by Grand Jury

The U.S. Attorney should consult with the Criminal Division prior to requesting a grand jury to make a report. When a U.S. Attorney learns that a grand jury is preparing a report which he/she has not requested, he/she should advise the Criminal Division.

9-2.154 Legislative Proposals by U.S. Attorneys

Please refer to USAM 1-8.000 (Relations with the Congress).

The Criminal Division is interested in obtaining the benefit of any suggestions by U.S. Attorneys or their Assistants for changes in federal statutory law, or rules, affecting criminal prosecutions. Accordingly, U.S. Attorneys and Assistants are encouraged to develop such proposals and to forward them for initial consideration to the Office of Legislation, Room 2244-A, Main Justice Building. The suggestions for changes in rules and legislation may also be submitted concurrently to the Legislation and Court Rules Subcommittee of the Attorney General's Advisory Committee of U.S. Attorneys. Suggested legislative changes should be submitted concurrently to the Office of Legislative Affairs.

U.S. Attorneys and their staffs are reminded that all suggestions for changes in federal criminal statutes must be communicated to the Department of Justice and not to Congress directly. Unsolicited communication to Congress of individual proposals for legislation, outside proper official channels, has the potential to cause grave embarrassment to the Department and, however well motivated, is contrary to Department policy. See also 18 U.S.C. § 1913.

9-2.155 Sensitive Matters

The U.S. Attorney should keep the Criminal Division apprised of all developments in sensitive criminal matters, particularly those which may generate questions to the Criminal Division or higher authority.

9-2.156 Compromises of Civil or Tax Liability

No agreement shall be made by a U.S. Attorney, by plea bargain with a defendant or in discussion designed to secure a witness's testimony or otherwise, which may prejudice or foreclose an action by the United States to impose civil or tax liability upon that party without prior approval of the appropriate Division of the Department except as expressly authorized by USAM 4-3.000. See especially USAM 4-2.120, 4-2.140. Any release, settlement, or other disposition contrary to those provisions is not binding on the United States.

In computing the amount of a claim which may be compromised without prior authorization pursuant to USAM 4-3.120, the U.S. Attorney must consider the entire amount of civil damages, not merely that amount to which the criminal case relates. See USAM 4-2.140(c). Where the U.S. Attorney is not authorized to compromise the claim, he/she must exercise extreme care to avoid giving a false impression or making any representation suggesting that, as a result of any plea agreement or commitment to cooperate, a civil or tax suit will be compromised, foreclosed, or somehow merged into the disposition of the criminal case.

Questions concerning the foregoing may be referred to the Commercial Litigation Branch of the Civil Division (FTS 724-7179) or the Criminal Section of the Tax Division (FTS 633-2973).

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9-2.157 Investigation of Jury Panels

When it is deemed essential, the Federal Bureau of Investigation may be requested to investigate prospective petit jurors in federal criminal cases. However, an investigation should not be requested or undertaken unless there are exceptional circumstances involved in the case and then only with the approval of the Assistant Attorney General. Such investigations as may be authorized shall be limited to examining any criminal records, including arrest records, and checking field office indices.

Requests for such investigations should be submitted to the Assistant Attorney General sufficiently in advance of trial so as not to place an unnecessary time burden on the FBI.

9-2.158 Participation of Attorneys not Employed by the Department of Justice in Litigation (Special Attorneys and Special Assistants)

Special approval and appointment must be obtained for the participation in court proceedings by attorneys not employed by the Department of Justice. Requests for appointments for such attorneys to assist U.S. Attorneys should be directed to the Executive Office for U.S. Attorneys. Requests for appointments for such attorneys to assist Criminal Division attorneys should be directed to the Criminal Division's Office of Enforcement Operations.

It has long been the policy of the Department that only in rare cases will requests for special appointment be granted. The substantial assistance we receive from the attorneys of the investigative and referring agencies is appreciated and required. However, the responsibility for the conduct of the trial rests on the Department of Justice and should not be delegated.

Special circumstances may require that a blanket approval for the participation in litigation of attorneys employed by a federal agency or department other than the Department of Justice be obtained; if so, the U.S. Attorney in his/her request for the issuance of a blanket approval should explain fully the necessity for it. In such instances, the control and responsibility for the litigation remain with the U.S. Attorney.

9-2.159 Refusal of Government Departments and Agencies to Produce Evidence

It is the responsibility of the Department of Justice to enforce the law vigorously and it cannot abdicate this duty because of possible embarrassment to other agencies of the government. Situations may arise where substantial reasons of national security, foreign policy or the like may require the Department to abandon an investigation, forego litigation, or seek dismissal of a case. However, such action should be taken only after the most careful consideration of all of the relevant facts and then only

with the personal approval of the Assistant Attorney General in charge of the Division having responsibility for the case.

Accordingly, all U.S. Attorneys handling cases in which another government agency refuses to produce records or witnesses necessary for successful litigation of the case are directed to proceed in the following manner:

A. In no event should the U.S. Attorney accept the opinion or representation of the agency that such records or witnesses cannot be made available without determining all of the specific facts upon which the agency relies to support its refusal.

B. If the U.S. Attorney is not satisfied that the facts justify the refusal, he/she should so advise the agency and seek to procure the evidence requested of the agency.

C. If the U.S. Attorney concurs that there are sufficient and valid reasons to support the agency's refusal to produce the necessary evidence, he/she should advise the Assistant Attorney General in charge of the division having jurisdiction over the subject matter of the case of his/her conclusion. That Assistant Attorney General, after consultation with the Deputy Attorney General, will authorize the U.S. Attorney, if necessary and appropriate, to terminate the investigation, forego the litigation, or dismiss the case. A full statement of the facts supporting the conclusion of the U.S. Attorney should be set forth in the correspondence to the appropriate Assistant Attorney General.

The U.S. Attorney should also apprise the appropriate Assistant Attorney General of any incidents coming to his/her attention where he/she believes any agency of the federal government is not cooperating in his/her efforts to obtain the full disclosure of the facts to enable him/her to make an intelligent judgment as to whether the agency's refusal to produce requested evidence is justified.

9-2.160 Policy Limitations—Prosecutorial and Other Matters (cont.)

9-2.161 Policy and Procedure with Regard to the Issuance of Subpoenas to Members of the News Media, Subpoenas for Telephone Toll Records of Members of the News Media, and the Interrogation, Indictment, or Arrest of Members of the News Media

Procedures and standards regarding the issuance of subpoenas to members of the news media, subpoenas for the telephone toll records of members of the news media, and the interrogation, indictment, or arrest of members of the news media are set forth in 28 C.F.R. § 50.10.

It is the Department's policy to protect freedom of the press, the news gathering function, and news media sources. Therefore all attorneys contemplating the issuance of such subpoenas or the initiation of criminal

proceedings against a member of the news media should be aware of the requirements of 28 C.F.R. § 50.10.

Except in cases involving exigent circumstances, the express approval of the Attorney General is necessary prior to the interrogation, indictment, or arrest of a member of the news media for an offense which he is suspected of having committed during the course of, or arising out of, the coverage or investigation of a news story, or committed while engaged in the performance of his official duties as a member of the news media. The Attorney General's authorization is also required before issuance of any subpoena to a member of the news media except in those cases where both a media representative agrees to provide the material sought and that material has been published or broadcast. In addition, the Attorney General's permission is required before the issuance of a subpoena for the telephone toll records of a member of the news media. Failure to obtain the prior approval of the Attorney General, where required, may constitute grounds for disciplinary action.

Whenever the government seeks the Attorney General's authorization pursuant to 28 C.F.R. § 50.10 in a case or matter under the supervision of the Criminal Division, the Legal Support Unit of the Office of Enforcement Operations should be contacted at FTS 786-4987. In cases or matters under the supervision of other divisions of the Department of Justice, the appropriate division should be contacted.

9-2.161(a) Policy With Regard to the Issuance of Grand Jury or Trial Subpoenas to Attorneys for Information Relating to the Representation of Clients

Because of the potential effects upon an attorney-client relationship that may result from the issuance of a subpoena to an attorney for information relating to the representation of a client, it is important that the Department exercise close control over the issuance of such subpoenas. Therefore, the following guidelines shall be adhered to by all members of the Department in any matter involving a grand jury or trial subpoena:

A. In determining whether to issue a subpoena in any matter to an attorney for information relating to the representation of a client, the approach must be to strike the proper balance between the public's interest in the fair administration of justice and effective law enforcement and individual's right to the effective assistance of counsel.

B. All reasonable attempts shall be made to obtain information from alternative sources before issuing a subpoena to an attorney for information relating to the representation of a client, unless such efforts would compromise a criminal investigation or prosecution or would impair the ability to obtain such information from an attorney if such attempts prove unsuccessful.

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C. All reasonable attempts shall be made to voluntarily obtain information from an attorney before issuing a subpoena to an attorney for information relating to the representation of a client, unless such efforts would compromise a criminal investigation or prosecution or would impair the ability to subpoena such information from the attorney if such attempts prove unsuccessful.

D. No subpoena may be issued in any matter to an attorney for information relating to the representation of a client without the express authorization of the Assistant Attorney General of the Criminal Division.

E. In approving the issuance of a subpoena in any matter to an attorney for information relating to the representation of a client, the Assistant Attorney General of the Criminal Division shall apply the following principles:

(1) In a criminal investigation or prosecution, there must be reasonable grounds to believe that a crime has been or is being committed and that the information sought is reasonably needed for the successful completion of the investigation or prosecution. The subpoena must not be used to obtain peripheral or speculative information;

(2) In a civil case, there must be reasonable grounds to believe that the information sought is reasonably necessary to the successful completion of the litigation.

(3) All reasonable attempts to obtain the information from alternative sources shall have proved to be unsuccessful;

(4) The reasonable need for the information must outweigh the potential adverse effects upon the attorney-client relationship. In particular, the need for the information must outweigh the risk that the attorney will be disqualified from representation of the client as a result of having to testify against the client;

(5) Subpoenas shall be narrowly drawn and directed at material information regarding a limited subject matter and shall cover a reasonably limited period of time; and

(6) The information sought shall not be protected by a valid claim of privilege.

These guidelines on the issuance of grand jury or trial subpoenas to attorneys for information relating to the representation of clients are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on other-

wise lawful investigative or litigative prerogatives of the Department of Justice.

9-2.162 Grand Jury Subpoenas for Financial Records

The Supreme Court held in *United States v. Miller*, 425 U.S. 435 (1976), that a bank depositor lacks the necessary Fourth Amendment interest to challenge a *subpoena duces tecum* issued to a bank for its records of its depositor's transactions. It is important, nevertheless, that U.S. Attorneys exercise a close control over the obtaining for law enforcement purposes of the business records of banks and other financial institutions. There is a danger that the Congress will curtail the government's access to such financial records unless past abuses and putative abuses of grand jury process are completely avoided.

It is required that:

A. U.S. Attorney or Assistant U.S. Attorney shall personally authorize the issuance of a *subpoena duces tecum* to obtain financial records in such a way as to avoid any appearance that the matter was left to the discretion of an investigative agent serving the subpoena;

B. Every such subpoena shall be returnable only on a date when the grand jury is in session and the subpoenaed records shall be produced before the grand jury unless the grand jury itself has previously agreed upon some different course, see *United States v. Milton*, 534 F.2d 556, 564, 565 (3d Cir.1976); and

C. If, for the sake of convenience and economy, the subpoenaed party is permitted voluntarily to relinquish the records to the government agent serving the subpoena, a report shall be made in due course to the grand jury as to the nature and contents of the records.

While these three requirements may seem to involve simply an observance of the fundamentals of grand jury practice, there is the broader intention of avoiding any semblance of abuse of the grand jury.

9-2.164 Number of Counts in Indictments

In order to promote the fair administration of justice, as well as the perception of justice, all U.S. Attorneys should charge in indictments and informations as few separate counts as are reasonably necessary to prosecute fully and successfully and to provide for a fair sentence on conviction. To the extent reasonable, indictments and informations should be limited to fifteen counts or less, so long as such a limitation does not jeopardize successful prosecution or preclude a sentence appropriate to the nature and extent of the offenses involved.

9-2.165 State and Territorial Prisoners Incarcerated in Federal Institutions

Section 5003(a) of Title 18 authorizes the United States Bureau of Prisons to incarcerate persons who have been convicted in state and territorial courts. In 1978, the United States Court of Appeals for the Seventh Circuit held that a state prisoner could be held in a federal penal facility pursuant to 18 U.S.C. § 5003 only where "specialized treatment" was available to the state prisoner which was not available in a state facility. See *Lono v. Fenton*, 581 F.2d 645 (7th Cir.1978) (en banc). This decision generated a number of suits by state prisoners incarcerated in federal facilities which sought to compel their return to the states in which they were convicted.

In 1981, the Supreme Court settled a circuit split on this issue, holding that 18 U.S.C. § 5003 does not restrict the use of federal prison facilities to those state prisoners who are in need of some particular treatment available in the federal prison system. See *Howe v. Smith*, 452 U.S. 473 (1981). In the event that state or territorial prisoners confined in federal penal institutions initiate actions seeking to compel their transfers to the states or territories in which they were convicted on the basis of *Lono v. Fenton*, 581 F.2d 645 (7th Cir.1978) (en banc), such efforts should be resisted on the grounds that *Lono* has been overruled by *Howe v. Smith*, 452 U.S. 473 (1981).

9-2.166 Testimony of FBI Laboratory Examiners

In situations where FBI laboratory examinations have resulted in findings having no apparent probative value, yet defense counsel intends to subpoena the examiner to testify the U.S. Attorney should inform defense counsel of the FBI's policy requiring payment of the examiner's travel expenses by defense counsel. The U.S. Attorney should also attempt to secure a stipulation concerning this testimony. This will avoid needless expenditures of time and money attendant to the appearance of the examiner in court.

9-2.170 Policy Limitations—Miscellaneous

9-2.171 Decision to Appeal and File Petitions in Appellate Courts

Prior authorization of the Solicitor General (through the Appellate Section of the Criminal Division) must be obtained for all appeals by the government to all appellate courts (including petitions for rehearing *en banc*, but not for rehearing by the panel) and for all petitions to such courts for the issuance of extraordinary writs (including stays). However, a petition for panel rehearing should not be filed until the Solicitor

General has been given the opportunity to decide whether the case merits *en banc* review. All review in the Supreme Court is handled by the Department. The Appellate Section of the Criminal Division should be notified immediately (within a day or two) of all decisions which may be adverse to the government and should be sent copies of all adverse district court and court of appeals rulings.

Notices of appeal should not be filed prior to Solicitor General authorization unless it is absolutely necessary to preserve the government's right to appeal.

The time to petition for rehearing should be protected in those instances in which the Department has not been advised of an adverse decision of the court of appeals in a timely fashion by the filing of a motion for extension of 30 days to petition for rehearing.

See Title 2 of this Manual dealing with Appeals.

9-2.172 Appearance Bond Forfeiture Judgments

The U.S. Attorney may compromise or close appearance bond forfeiture judgments that are for \$100,000 or less. Authorization from the Criminal Division must be secured prior to entering into negotiations for compromising or closing as uncollectible such a judgment which is for more than \$100,000.

9-2.173 Arrest of Foreign Nationals

Where nationals of foreign countries are arrested on charges of federal criminal violations, the U.S. Attorney has the responsibility to ensure that the treaty obligations of the United States concerning notification of the consular officer of the country of which the arrested person is a national are observed. The procedure to be followed when the arrest is by an officer of the Department of Justice is specified in 28 C.F.R. § 50.5.

Certain treaties require that the consular official be notified of the arrest of one of his/her nationals only upon the demand or request of the foreign national. Other treaties require notifying the consul of the arrest of a national of his/her country whether or not the arrested person requests such notification. If the foreign national arrested on federal criminal charges is a member of the consular staff or the consul himself/herself, special obligations are imposed by certain treaties.

Information concerning the treaty obligations of the United States in the event of the arrest of a foreign national, a consul, or member of the consular staff may be obtained from the Criminal Division by calling (786-3500).

9-2.200 RELEASE OF INFORMATION

Please refer to USAM 1-7.000.

9-2.210 Press Information and Privacy

See USAM 1-7.100 dealing with release of information to the news media or public relating to criminal or civil proceedings.

9-2.211 Press Information Guidelines for Criminal Cases

The guidelines for release of information to the media by press release or in any other way are found in 28 C.F.R. § 50.2. The criminal guidelines are reprinted in USAM 1-7.400.

The instructions concerning release of information apply from the time "a person is the subject of a criminal investigation;" accordingly, no statements should be made concerning the subject matter of a grand jury nor should prospective defendants be identified.

No information concerning cases relating to internal security should be given to the news media or to anyone else not officially participating in the matter except through the Department's Office of Public Affairs.

9-2.300 AUTHORIZATION TO CLOSE JUDICIAL PROCEEDINGS TO MEMBERS OF THE PRESS AND PUBLIC

Procedures and standards regarding the closure of judicial proceedings to members of the press and public are set forth in 28 C.F.R. § 50.9. No motion for such a closure or consent to the closure of criminal proceedings may be sought or agreed to by a Department employee without the express authorization of the Deputy Attorney General or Associate Attorney General.

All attorneys seeking authority to move for or consent to the closure of a case should be aware of the requirements of 28 C.F.R. § 50.9. There is a strong presumption against closing proceedings and the Department foresees very few cases in which closure would be warranted. Only when a closed proceeding is plainly essential to the interests of justice should a government attorney seek authorization from the Deputy Attorney General or Associate Attorney General to move for or consent to closure of a judicial proceeding. See, *Judicial Proceedings*, available on JURIS.

◆ Whenever authorization to close a judicial proceeding is being sought pursuant to 28 C.F.R. § 50.9 in a case or matter under the supervision of the Criminal Division, the Legal Support Unit, Office of Enforcement Operations, should be contacted at FTS 786-4987. In cases or matters under the supervision of other divisions of the Department of Justice, the appropriate division should be contacted.

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9-2.400 PRIOR APPROVALS

PRIOR APPROVAL REQUIREMENTS

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-2.022	Utilize pre-trial diversion if the offense is one listed in USAM 9-22.100.	Criminal Division	See USAM 9-22.100.
9-2.111	Must report facts to the Attorney General for direction before declining prosecution of a violation under Title 11, Chapter 9, or laws relating to insolvent debtors.	Attorney General	Written request required.
9-2.111	Declinations for prosecution for national security reasons.	Assistant Attorney General, Criminal Division; Deputy Attorney General or Attorney General	Initial consultation with Internal Security Section, Criminal Division.
9-2.111	Decline to prosecute violations of 150 U.S.C.App. 462(a) involving failure to register with the Selective Service System.	General Litigation, Legal Advice Section, Criminal Division	
9-2.112	Prosecution of offenses under 18 U.S.C. § 245, Federally Protected Activities.	Attorney General or Deputy Attorney General	Written approval required.
9-2.132	Prosecution of the following offenses under the supervision of the Internal Security Section.	Assistant Attorney General, Criminal Division or higher authority	28 C.F.R. §§ 0.55; 0.61; 10.1.
	1) 2 U.S.C. § 192, Contempt of Congress Related to National Security		See U.S.C. 18 § 799; USAM 9-90.550.
	2) 2 U.S.C. § 261 et seq., Federal Regulation of Lobbying Act		See USAM 9-90.730.
	3) 8 U.S.C. § 1185 (b), and 18 U.S.C. §§ 1542-1544, Travel Controls of Citizens		See USAM 9-90.327.
	4) 18 U.S.C. § 239 et seq., Officers and Employees of the U.S. Acting as Foreign Agents; and Conflicts of Interest		See USAM 9-90.712; .720; 22 U.S.C. §§ 611 to 621.
	5) 18 U.S.C. § 791 et seq., Espionage; Unauthorized Disclosure of Classified Information		See USAM 9-90.310; 18 U.S.C. § 441(e).
	6) 18 U.S.C. § 952 et seq., Neutrality Laws		See USAM 9-90.326.
	7) 18 U.S.C. § 1001, False Statements concerning membership in organizations advocating violent overthrow of government		See USAM 9-90.560.
	8) 18 U.S.C. § 1030(a)(1), Computer Espionage	AAG, Criminal Division or Higher Authority	See USAM 9-90.322.

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
	9) 18 U.S.C. § 1071 <i>et seq.</i> , Harboring		See USAM 9-70.000.
	10) 18 U.S.C. § 1073, Flight to Avoid Prosecution or Giving Testimony		See USAM 9-69.460.
	11) 18 U.S.C. § 1501 <i>et seq.</i> , Obstruction of Justice		See USAM 9-69.000.
	12) 18 U.S.C. § 1542 <i>et seq.</i> , Passport Violations Related to National Security		See USAM 9-90.327; 18 U.S.C. § 1542 <i>et seq.</i> ; 8 U.S.C. § 185(b).
	13) 18 U.S.C. § 2151 <i>et seq.</i> , Sabotage		See USAM 9-90.510; 18 U.S.C. § 1362.
	14) 18 U.S.C. § 2381 <i>et seq.</i> , Treason, Sedition and Subversive Activities		See USAM 9-90.321, 9-90.530; 18 U.S.C. § 1362.
	15) 18 U.S.C. § 2383, Inciting, Assisting or Engaging in Rebellion or Insurrection		See USAM 9-90.520; .600.
	16) 18 U.S.C. § 2385, Smith Act		See USAM 9-90.540.
	17) 18 U.S.C. § 2386, Voorhis Act		See USAM 9-90.740.
	18) 18 U.S.C. § 3150, Jumping Bail		See USAM 9-90.800.
	19) 22 U.S.C. § 611 <i>et seq.</i> , Foreign Agents Registration Act		See USAM 9-90.710; 22 U.S.C. § 621.
	20) 42 U.S.C. § 2173 <i>et seq.</i> , Atomic Energy Act		See USAM 9-90.420.
	21) 50 U.S.C. § 783 <i>et seq.</i> , Communication of Classified Information by Government Officer or Employee		See USAM 9-90.323.
	22) 50 U.S.C. §§ 851-857, Registration of persons who have knowledge and received training in espionage		See USAM 9-90.750.
	23) 50 U.S.C. § 421, Intelligence Identities Protection Act		See USAM 9-90.324.
	24) 50 U.S.C. § 1701 <i>et seq.</i> , International Emergency Economic Powers Act		See USAM 9-90.640.
	25) 50 U.S.C. § 2401 <i>et seq.</i> , Violations of the Export Administration Act, Arms Export Control Act, Trading with the Enemy Act, and International Economic Powers Act		See USAM 9-90.610.
	26) 50 U.S.C.App. § 5(b), Trading with the Enemy Act		See USAM 9-90.630.
9-2.134	Settlement in asset forfeiture proceedings where the difference between the offer in compromise and the value of the property exceeds \$750,000.	Deputy Attorney General	28 C.F.R. § 0.161; Requests should be processed through the Asset Forfeiture Office.

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-2.135	Investigation or prosecution of violations of the Foreign Corrupt Practices Act.	Criminal Division	See USAM 9-47.120; 15 U.S.C. §§ 78m(b)(2), (3); 15 U.S.C. § 78dd-1; 15 U.S.C. § 78dd-2.
9-2.136	Initiate a criminal investigation, commence grand jury proceedings, file an information or complaint, or seek the return of an indictment in matters involving overseas terrorism.	Assistant Attorney General, Criminal Division	
9-2.142	Continue and/or initiate a federal prosecution after a state prosecution for the same act against the same defendant, and to initiate a successive federal prosecution based on the same transaction.	Assistant Attorney General, Appropriate Division	Written request required. See USAM 9-63.512.
9-2.143	Proceeding against a juvenile as an adult.	General Litigation and Legal Advice Section, Criminal Division	See USAM 9-2.134; 28 C.F.R. § 0.57.
9-2.145	Dismiss an indictment, information or complaint involving any act of air piracy, contempt of Congress, threat against the President, or failure to register for the Selective Service.	Criminal Division	49 U.S.C. § 1472(i). In exigent situations approval may be obtained verbally.
9-2.147	Agreement or decision involving extradition and deportation to or from foreign countries.	Criminal Division	See USAM 9-16.020; 9-73.510.
9-2.148	Death penalty.	Attorney General	Request is processed through Criminal Division. See USAM 9-2.151; 9-10.000.
9-2.151	Attempting to carry out an act in Switzerland, even the making of a telephone call to that country, related to any present or possible future criminal prosecution.	Office of Int'l. Affairs, Criminal Division	See USAM 9-13.500.
9-2.151	Issuing any subpoena to obtain records located in a foreign country, and before seeking the enforcement of any such subpoena.	Office of Int'l. Affairs, Criminal Division	See USAM 9-13.500.
9-2.156	Plea bargains or immunity agreements which prejudice civil or tax liability.	Commercial Litigation Branch, Civil Division or Criminal Section, Tax Division	
9-2.157	FBI investigation of prospective petit jurors.	Assistant Attorney General, Criminal Division	
9-2.158	Participation of non-Department of Justice attorneys in court proceedings.	Director, EOUSA	

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-2.160	Issuance of a grand jury or trial subpoena to an attorney for information relating to the representation of a client.	Assistant Attorney General, Criminal Div.	
9-2.161	1) Interrogate, arrest, subpoena or indict members of the news media; and, 2) delay notification for a subpoena for the telephone toll records of members of the news media for no more than 45 additional days.	1) Attorney General 2) Assistant Attorney General	1) 28 C.F.R. § 50.10; 2) 28 C.F.R. § 50.10(g)(1); 28 C.F.R. § 50.10(f)(3).
9-2.161(a)	Before the issuance of grand jury or trial subpoenas to attorneys for information relating to the representation of clients.	AAG, Criminal Division	
9-2.172	Compromise or close appearance-bond-forfeiture judgments valued over \$5,000.	Criminal Division	
9-2.300	Move for or consent to closure of a judicial proceeding.	Deputy Attorney General	See 28 C.F.R. § 50.9; AG Order No. 914-80 (10/20/80) Amended AG Order No. 960-80 (10/27/81).
9-3.537	After indictment, any reduction of charges in organized crime cases.	Assistant Attorney General, Criminal Div.	28 C.F.R. § 0.55(g).
9-7.000	Video surveillance in non-public places. See 9-7.114.	Director, Office of Enforcement Operations, Criminal Div.	Written request and written approval required. In emergency, verbal approval.
9-7.110	Application for a court order under 18 U.S.C. § 2518 permitting the interception of an oral or wire communication.	Attorney General or Assistant Attorneys General, Appropriate Division	Written request required. AG Order No. 931-81 and 934-81; See USAM 9-7.910; 9-65.770.
9-7.112	Emergency interceptions under 18 U.S.C. § 2518(7) without a court order.	Attorney General	Written request required.
9-7.302	The monitoring of verbal communications when the investigation is of a federal judge, member of Congress, or a high level executive branch official, any public official that is investigated for bribery, extortion or conflict of interest; a federal law enforcement official, diplomat, a person who is a member of the Witness Security Program, or a person in the custody of the Bureau of Prisons or U.S. Marshals Service.	Assistant Attorney General, Deputy Assistant Attorneys General, or Director Office of Enforcement Operations, Criminal Division	Written request and written approval.
9-7.333	Application for an extension of an interception.	Attorney General or Assistant Attorneys General, Appropriate Division	Written request required.
9-7.510	Use of intercepted communications under Title III in civil litigation.	Assistant Attorney General,	Written request required.

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-11.120	Resubmission of matter to grand jury after a no bill.	Criminal Division Assistant Attorney General, Criminal Division	See USAM 9-11.120, Subsection A.
9-11.120	Use of grand jury subpoenas to locate a fugitive.	Assistant Attorney General, Criminal Division	Written request required. Proposed grand jury subpoena and records should be submitted to General Litigation and Legal Advice Section, Criminal Division. See USAM 9-11.120, Subsect. B.
9-11.130	Applications to court for an order compelling testimony, immunity, or the production of information by a witness in any proceeding before or ancillary to a court or grand jury of the United States, and the authority to approve the issuance by an agency of the United States of an order compelling testimony or the production of information by a witness in a proceeding before the agency.	Assistant Attorney General, Appropriate Division	Written approval required; 28 C.F.R. § 0.175; subject to the provision that no such authorization may be given unless the Criminal Division has first indicated that it has no objection to the proposed order.
9-11.160	Resubpoena a contumacious witness before successive grand juries and to seek civil contempt sanctions if the witness refuses to testify.	Assistant Attorney General, Criminal Division	
9-11.242	Appoint non-Department of Justice attorneys as special Assistant U.S. Attorneys.	Director, Executive Office for U.S. Attorneys	
9-11.260	Requests for permission to seek a disclosure order for grand jury materials under Rule 6(e)(3)(C)(iv).	Assistant Attorney General, Appropriate Division	Written request and written approval required.
9-13.510	Letters rogatory.	Office of International Affairs, Criminal Division	Written request required.
9-13.525	Before issuing any subpoenas to persons or entities in the United States for records located abroad.	Office of International Affairs, Criminal Division	
9-13.534	Before a prosecutor can travel to a foreign country.	Office of International Affairs, Criminal Division; Executive Office for U.S. Attorneys	
9-13.540	Any proposed contact with the Department of State, U.S. Embassies or any	Office of International Af-	

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
	embassy, ministry, consulate, officer, or agency of a foreign government or any international organization concerning a criminal matter, other than the notification of a foreign counsel in case of an arrest of a foreign national.	fairs, Criminal Division	
9-13.620	Before using hypnosis on any witness.	Director, or Associate Director, Office of Enforcement Operations, Criminal Division	Written request and written approval required. In emergency, verbal request may be approved.
9-15.210	To seek a formal request for international extradition based on federal criminal charges.	Office of International Affairs, Criminal Division	Submit the formal request to OIA; forwarding by OIA to the Dept. of State constitutes approval.
9-15.230	Request for a provisional arrest of a fugitive.	Office of International Affairs, Criminal Division	Verbal request from U.S. Attorney to section of Criminal Division supervising prosecution. Written request from Criminal Division section to Office of International Affairs. State request must include certificate of willingness to pay all expenses. Written request and written approval required.
9-15.720	Participation by U.S. Attorneys in any extradition matter on behalf of a foreign government.	Office of International Affairs, Criminal Division	
9-15.800	Any action with respect to a foreign fugitive who is or may be a witness for the government that would prevent, impede, or delay extradition or deportation.	Assistant Attorney General, Criminal Division	
9-16.010	To consent to an <i>Alford</i> plea.	AAG, CD.	
9-16.020	A recommendation to consent to a plea of <i>nolo contendere</i> or to accept an <i>Alford</i> plea.	Assistant Attorney General, Criminal Division	See USAM 6-4.320; See also Principles of Federal Prosecution, 9-27.000.
9-16.020	To forego an air piracy prosecution in return for a guilty plea for a lesser offense or to decide to not fully prosecute an act of air piracy.	Criminal Division	See USAM 9-63.134; 9-63.181; 49 U.S.C.

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
			§§ 1472(i), 1472.
9-16.110	Plea agreements are made concerning defendants who are members of Congress, candidates for Congress or federal judges.	Public Integrity Section, Criminal Division	
9-19.220; .221	Search warrant for confidential material in possession of third parties, such as physician-patient or attorney client files.	Deputy Assistant Attorney General, Appropriate Division	In emergency, USA may approve but must notify Deputy Assistant Attorney General within 72 hours or authorization.
9-19.600; .700	In criminal tax offenses where the warrant application involves a search for evidence under the jurisdiction of the Tax Division.	Assistant Attorney General, Tax Division	Written request required. See also USAM 6-4.130.
9-21.121	Utilization of federal prisoners in investigations.	Director, Office of Enforcement Operations, Criminal Division and Bureau of Prisons	Approval can be verbal in exigent circumstances.
9-21.200; .210	Protection of witnesses.	Director, Enforcement Operations, Criminal Division	DOJ Order No. 2110.42 (7/19/83). Immediate contact with the U.S. Marshals Office is essential so that a witness security specialist may be present at any interviews in which details are being considered.
9-21.400	Public disclosure of the identity of a witness in the Witness Security Program.	Director, Office of Enforcement Operations, Criminal Division	
9-21.700	Attorney's request for the appearance of a protected witness in the danger area.	U.S. Marshals Service	Written request required. 10-day prior notification.
9-22.100	Waive eligibility criteria in pre-trial diversion cases.	Assistant Attorney General, Criminal Division	Written approval required. See USAM 9-2.022.
9-23.400	Prosecution of a person who has provided information or given testimony pursuant to a compulsion order—except where immunity is approved for the limited purpose of obtaining records pursuant to <i>United States v. Doe</i> , 465 U.S. 605 (1984)—for an offense disclosed in, or closely related to, the testimony or information given.	Attorney General	Written approval. See also USAM 9-23.000; 28 C.F.R. §§ 0.175, 0.177.

USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-27.440	Government attorneys should not enter into Alford plea agreements without approval.		
9-27.640	When entering into a non-prosecution agreement in exchange for a person's cooperation when approval is required by a statute or Department policy for a declination of prosecution or dismissal of a charge with regard to which the agreement is to be made, or the person is a high-level federal, state, or local official; an official or agent of a federal investigative or law enforcement agency; or a person who otherwise is, or is likely to become, of major public interest.	Assistant Attorney General with supervisory responsibility over the subject matter, or designee.	
9-27.641	When entering into a non-prosecution agreement including any agreement not to prosecute, which purports to bind any other district(s) or division.	United States Attorney in each affected district(s) and/or the Assistant Attorney General in the Criminal Division.	Written approval required.
9-38.000	Petitions for remissions of forfeiture.	Deputy Attorney General; Assistant Attorney General, Criminal Division; Asset Forfeiture Office Criminal Division	28 C.F.R. §§ 0.160, .161; 28 C.F.R. §§ 9.3, 9.4, AG Order No. 1034-83; See 9-111.000.
9-42.451	No commitments to forgo administrative remedies of the Department of Health and Human Services should be made for Medicare-Medicaid fraud cases.	Criminal Division	
9-60.710	Prosecutions involving hostage taking.	Criminal Division	18 U.S.C. § 1203; See USAM 9-2.136.
9-63.221	Indictments alleging a violation of 18 U.S.C. § 32(b).	Assistant Attorney General, Criminal Division	
9-69.250	Perjury before Congress and contempt of Congress.	General Litigation and Legal Advice Section, Criminal Division	18 U.S.C. § 799; See USAM 9-90.550; 9-2.132.
9-75.300	Prosecution for mailing or transporting obscene material in the jurisdiction through which the material passes.	National Obscenity Enforcement Unit, Criminal Division	
9-75.310	Obtaining or filing any indictment or entering into any plea agreement in multi-prosecution cases.	National Obscenity Enforcement Unit, Criminal Division	

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-76.100	1) If the difference between the total amount of the penalties for violations of the civil penalty provisions of the Federal Aviation Act of 1958 and the amount of a proposed settlement exceeds \$750,000; or, 2) If the U.S. Attorney believes that a compromise settlement should be effectuated in a figure less than is acceptable to the Federal Aviation Administration or the Civil Aeronautics Board.	1) Deputy Attorney General; 2) General Litigation and Legal Advice Section, Criminal Division	28 C.F.R. §§ 0.160, 0.161.
9-100.150	Return of an indictment or filing of complaint under the Controlled Substances Analogue Enforcement Act.	Assistant Attorney General, Criminal Division	21 U.S.C. §§ 803(32), 813. Requests should be processed through the Marc. and Dang. Drg. Sec.
9-100.280	Indictment or prosecution of criminal charges under the Continuing Criminal Enterprise Statute.	Assistant Attorney General, Criminal Division	21 U.S.C. § 881.
9-100.290	Use the dangerous special drug offender statute, 21 U.S.C. § 849 and to request appellate review of a dangerous special drug offender sentence.	Narcotics and Dangerous Drug Section, Criminal Division	
9-103.132; .140	Instituting grand jury proceedings seeking an indictment, or filing an information for any offense under the Controlled Substance Registration Act of 1984.	Narcotics and Dangerous Drugs Section, Criminal Division	18 U.S.C. § 2118.
9-103.132	Where a local prosecutor objects to a federal prosecution.	Assistant Attorney General, Criminal Division	
9-105.000	Violation of 18 U.S.C. § 1956(a)(2), money laundering involving extra-territorial jurisdiction; and, if a defendant is an attorney and proceeds represent attorneys' fees.	Assistant Attorney General, Criminal Division	Written request and written approval required.
9-105.110	The use of specific intent language set forth in 18 U.S.C. § 1956(a)(1)(A)(ii) in proposed indictment when 1) indictment contains charges for which Tax Division authorization is required and 2) the intent to engage in conduct constituting a violation of 26 U.S.C. § 7201 or 26 U.S.C. § 7206 is the sole or principal purpose of the financial transaction which is the subject of the money laundering count.	AAG, Tax Division	See 6-4.125, 6-4.127.
9-105.500	Before an indictment charging a violation of 18 U.S.C. § 1957 is presented if the potential defendant is an attorney and the criminally derived property is or purports to be attorneys' fees paid to the attorney for providing representation to a client in a criminal or credit matter.	Assistant Attorney General, Criminal Division	

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USAM SECTION	TYPE & SCOPE OF APPROVAL	WHO MUST APPROVE	COMMENTS
9-110.101; 210; 320	No RICO civil or criminal prosecutions or civil investigative demands.	Organized Crime and Racketeering Section	Written approval required. 18 U.S.C. § 1961 et seq.; 28 C.F.R. § 0.55(g).
9-110.414	Prior to filing a motion for a temporary restraining order under 18 U.S.C. § 1963(d) in connection with a case involving RICO forfeiture.	Organized Crime & Racketeering section	See 6-4.111(1).
9-110.801	Criminal prosecutions under Section 1952A if a state or local prosecutor with jurisdiction over the offense objects to federal prosecution, or if the views of the appropriate state or local authorities have not been solicited.	Assistant Attorney General, Criminal Division	
9-110.801	A criminal prosecution under Section 1952B.	Assistant Attorney General, Criminal Division	
9-111.300	Forfeiture of assets which have been transferred to attorneys as fees for legal services.	Assistant Attorney General, Criminal Division	
9-121.330	Closing of criminal fines involving corporations which have forfeited the corporate charter, the right to do business, or any corporate power which has an effect less than complete dissolution.	Criminal Division	Written approval required. See 9-111.000.
9-121.500	Close an appearance bond forfeiture judgment of a foreign national.	Collection Unit, Criminal Division	See 9-111.000.

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(1)

9-3.000 ORGANIZATION OF THE CRIMINAL DIVISION

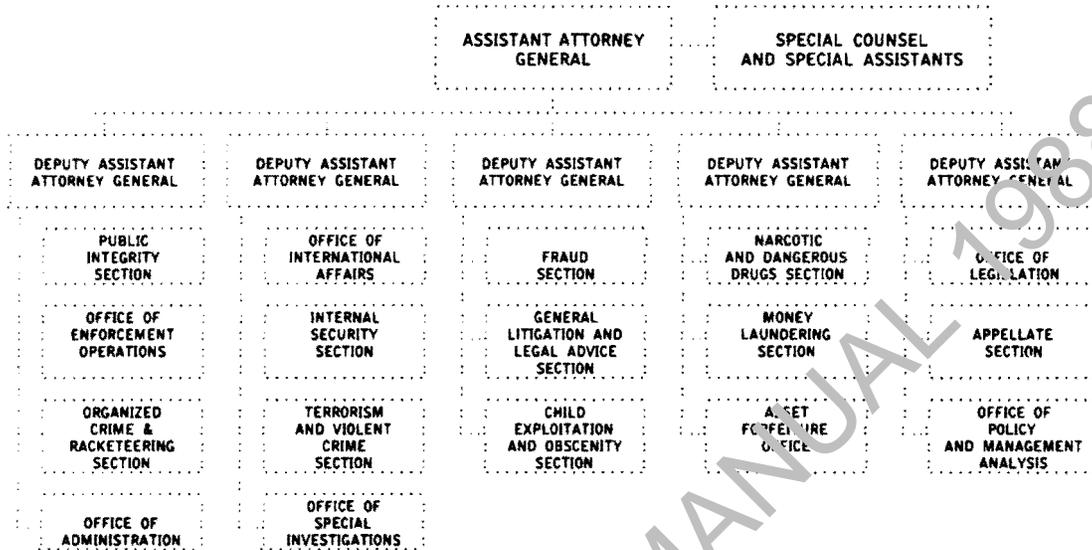
9-3.100 OFFICE OF THE ASSISTANT ATTORNEY GENERAL

The Assistant Attorney General is appointed by the President by and with the advice and consent of the Senate to assist the Attorney General in the performance of his duties. See 28 U.S.C. § 506. For a comprehensive list of the Assistant Attorney General's responsibilities, see 28 C.F.R. § 0.55 and § 0.61.

The Assistant Attorney General may select Deputy Assistant Attorneys General, Special Assistants and Special Counsels to assist him/her personally in the performance of his/her duties. Senior Counsel may also be selected to perform functions in the areas assigned to them.

9-3.200 ORGANIZATIONAL CHART

CRIMINAL DIVISION



Approved: /s/ Dick Thornburgh Date: 1-12-91
 DICK THORNBURGH
 Attorney General

9-3.300 ORGANIZATIONAL UNITS/ADDRESSES AND TELEPHONE NUMBERS

Assistant Attorney General

Assistant Attorney General
 Main Justice Building—Room 2107
 Telephone: 514-2601

Deputy Assistant Attorney General

Deputy Assistant Attorney General
 (Organized Crime and Racketeering, Public Integrity, Office of Enforcement Operations)
 Main Justice Building—Room 2107
 Telephone: 514-2621

Deputy Assistant Attorney General
 (Internal Security, Office of International Affairs, Office of Special Investigations)
 Main Justice Building—Room 2113
 Telephone: 633-2333

Deputy Assistant Attorney General
 (Fraud, Appellate, General Litigation and Legal Advice)

 July 1, 1992

Main Justice Building—Room 2112
Telephone: 514-3729

Deputy Assistant Attorney General
(Narcotic and Dangerous Drug, Office of Legislation, Office of Administration, Office of Policy and Management Analysis)
Main Justice Building—Room 2113
Telephone: 514-2636

Sections, Offices, and Units

Appellate Section
Main Justice Building—Room 2268
Telephone: 514-2611

Fraud Section
Bond Building, 2nd Floor
Telephone: 786-4377

Defense Procurement Fraud Unit
Bond Building, 3rd Floor
Telephone: 786-4605

General Litigation and Legal Advice Section
Bond Building, 6th Floor
Telephone: 786-4805

Terrorism and Violent Crime Section
Main Justice Building Room 2515
Telephone: 368-0849 (FTS)

Internal Security Section
Bond Building—Room 9100
Telephone: 786-4909

Registration Unit

To register or review registrations
Bond Building—Room 7120
Telephone: 786-4870

Other matters
Bond Building—Room 9300
Telephone: 786-4923

Espionage Unit
Bond Building—Room 9414
Telephone: 786-4943

Graymail Unit
Bond Building—Room 9400
Telephone: 786-4938

Export Control Enforcement Unit
Bond Building--Room 9126
Telephone: 786-4915

Narcotic and Dangerous Drug Section
Bond Building, 4th Floor
Telephone: 786-4700

Organized Crime and Racketeering Section
Main Justice Building--Room 2515
Telephone: 633-3516

Public Integrity Section
Bond Building, 12th Floor
Telephone: 786-5056

Office of Administration
Main Justice Building--Room 2119
Telephone: 633-5749

Asset Forfeiture Office
Bond Building, 10th Floor
Telephone: 786-4950

Office of Enforcement Operations
Main Justice Building--Room 2229
Telephone: 633-3684

Electronic Surveillance Unit
Main Justice Building--Room 2229
Telephone: 633-3684

Legal Resources Unit
Bond Building, 10th Floor
Telephone: 786-4998

Legal Support Unit
Bond Building, 10th Floor
Telephone: 786-4987

FOI/PA Unit
Bond Building, 3rd Floor
Telephone: 786-4637

Witness Records
Main Justice Building--Room 2744
Telephone: 633-5541

Witness Security Unit
Main Justice Building--Room 2229
Telephone: 633-3684

Office of International Affairs
Bond Building, 5th Floor
Telephone: 786-3500

Office of Legislation
Main Justice Building—Room 2244-A
Telephone: 633-3202

Office of Policy and Management Analysis
Main Justice Building—Room 2317
Telephone: 633-3153

Office of Special Investigations
Bond Building, 11th Floor
Telephone: 786-5005

National Obscenity Enforcement Unit
Main Justice Building—Room 2216
Telephone: 633-5780

9-3.400 DESCRIPTION OF SECTIONS AND OFFICES

A. Appellate Section

The function of the Appellate Section is to secure judicial decisions favorable to the government in cases on review in the courts of appeals and the Supreme Court. The primary duties of the Section attorneys are to:

1. Prepare draft briefs, certiorari petitions and jurisdictional statements for the Solicitor General for filing in the Supreme Court;
2. Review adverse decisions in the district courts and courts of appeals and recommend to the Solicitor General whether further review is warranted;
3. Prepare briefs and argue cases in the courts of appeals;
4. Assist the U.S. Attorneys and other sections and offices in the Criminal Division in preparing briefs in the courts of appeals;
5. Give advice on legal questions to the Assistant Attorney General, to other sections and offices in the Criminal Division, and to the U.S. Attorneys;
6. Give advice on Speedy Trial Act problems; and
7. Give advice on issues generally within the jurisdiction of the Criminal Division to other components of the Department of Justice.

B. Fraud Section

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The Fraud Section is charged with leading the federal law enforcement effort against fraud and white collar crime. It fashions and implements white collar crime policy and provides support to the Criminal Division, the Department, and other federal agencies on white collar crime issues. It supports the U.S. Attorneys with legal and investigative guidance, and, when required, because of local lack of expertise or resources, provides staffing for U.S. Attorney-originated criminal fraud cases. It initiates, staffs, and conducts grand jury investigations and trials involving types of criminal activity which require centralized treatment because of the complexity of the scheme, the multi-district nature of the criminal activity, the sensitivity of the issues, or the necessity of demonstrating with model prosecutions the viability of a particular statute, theory, or technique. The Section also provides training to and sharing of information with other members of the federal, state, and local law enforcement community in order to enhance the federal government's overall effort to combat white collar crime.

Organizationally, the work of the Section is divided by substantive subject matter into four major areas:

1. Government Program and Procurement Fraud—Focused exclusively on fraud, waste, and abuse in connection with federal government programs and contracts;
2. Consumer and Institutional Fraud—Directed at fraud committed against individuals, businesses, and private institutions;
3. Government Regulatory Fraud—Focused on criminal cases arising within the jurisdiction of various federal regulatory agencies, e.g., the Securities and Exchange Commission, Federal Trade Commission, and Department of Energy; and
4. Multinational Fraud—Focused on cases involving significant overseas and off-shore connections.

On policy and case-related matters, the Section works closely with the Federal Bureau of Investigation, the Offices of the Inspectors General in federal departments and agencies and with other major federal investigative agencies having jurisdiction over fraud-related matters. The Section actively supports efforts to identify emerging or recurring problems and to devise new practices and procedures to reduce the incidence of white collar crimes. The Section's management participates in numerous Department and interagency groups affecting law enforcement policy and operations. These groups include but are not limited to: the Department's Undercover Review Committee, the Department's Economic Crime Council, the Department's Executive Working Group of federal, state, and local prosecutors, the Criminal Division's Law Enforcement Coordinating Committee Review Panel, the President's Council on Integrity and Efficiency, and a large number of interagency task forces on government fraud, waste, and

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abuse. In addition, the Section's management team and the senior prosecution staff are actively involved in providing training and in arranging opportunities for program attorneys to give and receive training. The Section also assists the Criminal Division's Office of Legislation in evaluating pending legislation and making appropriate comment on adverse court opinions.

C. General Litigation and Legal Advice Section

The General Litigation and Legal Advice Section has broad criminal jurisdiction which encompasses approximately 75% of all federal criminal statutes. It also has a variety of civil responsibilities. The Section's jurisdiction is divisible into five major areas:

1. Crimes Against Government Operations—This includes the following statutory areas: violations of the Selective Service Act, theft or destruction of government property, counterfeiting, postal depredations, obstruction of justice (except §§ 1512 or 1513 when violence (including a threat thereof) is directed at a person or property, in which case the Terrorism Violent Crime Section has supervisory responsibility), perjury, prison offenses, false personation, escape, and customs and immigration offenses;

2. Crimes Against the Public—This includes the following statutory areas: riot, fugitive felons, copyright, obscenity, illegal electronic surveillance, false identification, motor vehicle theft, interstate transportation of stolen property, and offenses on federal or Indian reservations;

3. Regulatory Enforcement—This area relates to violations of statutes and regulations which pertain to the protection of health, safety, and welfare in mining and other occupations, nuclear materials handling, marketing of agricultural products, and disposition of hazardous and toxic wastes.

4. Special Civil Matters—This area includes the defense of civil actions to obtain information on or to interfere with criminal justice and national security operations;

5. Prison/Parole Matters—This area includes the defense of suits challenging actions by or procedures of the Bureau of Prisons or the United States Parole Commission. It also encompasses the administering of federal statutes pertaining to juveniles, youth offenders, mental competence, sentencing, prisoner transfer treaties, and detainees.

The Section's functions are equally broad as indicated by the following summary of discrete responsibilities:

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a. It serves as an enforcement section in certain key areas where special requirements dictate centralization. In these areas, the Section is directly involved in case development and litigation;

b. The Section performs a general litigation function, handling litigation under any of its vast range of statutes when appropriate due to recusal, lack of resources, or pertinent expertise in that particular U.S. Attorney's office, etc.; and

c. It provides legal advice on any of its statutes, or issues emanating from action taken thereunder, to U.S. Attorneys' offices as well as to investigative and client agencies.

Further, attorneys in the Section provide coordination of prosecutions on both policy and operational levels with other divisions, departments, and agencies, respond to Congressional and private inquiries, and initiate or review recommendations for proposed legislation relating to the assigned areas of statutory responsibility. They also advise and assist U.S. Attorneys and other federal attorneys on Departmental policy matters and make prosecutive determinations.

D. Internal Security Section

The Internal Security Section handles matters relating to the national security, including the prosecution of cases involving treason, espionage, sedition, sabotage, and violations of the Neutrality, Trading With the Enemy, Export Administration, Arms Export Control, and Atomic Energy Acts. The Section also administers and enforces the following statutes:

1. The Foreign Agents Registration Act of 1938, as amended (22 U.S.C. § 611 et seq.);
2. Registration of certain persons trained in foreign espionage systems (see 50 U.S.C. § 851);
3. The Vothhis Act (see 18 U.S.C. § 2386);
4. The Federal Regulation of Lobbying Act (see 2 U.S.C. § 261);
5. Employment of persons to appear before Congress or governmental agency (see 46 U.S.C. § 1225); and
6. Prohibition against government employees acting as agents of foreign principals (see 18 U.S.C. § 219); and prohibition against political contribution by a foreign national (see 2 U.S.C. § 441(e)).

Organizationally, the work of the Internal Security Section is divided into four units, the Espionage Unit, the Export Control Enforcement Unit, the Graymail Unit, and the Registration Unit. Espionage Unit attorneys supervise the investigation and prosecution of violations involving treason, sabotage, espionage, and related statutes. Export Control Enforce-

ment Unit attorneys supervise the investigation and prosecution of violations of the Arms Export Control Act (see 22 U.S.C. § 2778), the Export Administration Act (See 50 U.S.C.App. § 2401 et seq.), and other statutes that contain export control provisions. Both units work closely with the U.S. Attorneys in such cases. Section attorneys involved in these and other national security cases may take part directly in grand jury, trial, or appellate work. The Graymail Unit coordinates the implementation of the Classified Information Procedures Act.

Registration Unit attorneys are directly responsible for the investigation and trial of both civil and criminal cases under the Foreign Agents Registration Act, including grand jury, trial and appellate work. They also supervise investigations and participate in cases under other similar registration statutes.

E. Narcotic and Dangerous Drug Section

The Narcotic and Dangerous Drug Section supervises cases and matters relating to the Controlled Substance Act (21 U.S.C. § 801 et seq.), the Controlled Substance Import and Export Act (21 U.S.C. § 951 et seq.), and certain other statutes such as the Narcotic Addict Rehabilitation Act of 1966. The Section's mission can generally be described as supervision of litigation, both criminal and civil, arising under federal laws relating to narcotics and controlled substances.

The Section primarily services the U.S. Attorneys and the Drug Enforcement Administration, and also maintains a close working relationship with the United States Customs Service, United States Coast Guard, Federal Bureau of Investigation, Internal Revenue Service, Immigration and Naturalization Service, and the Departments of State and Treasury.

The Section also supervises the implementation of Department policies in the area of drug prosecution.

In addition to maintaining a litigation support capability to assist U.S. Attorneys' offices, the Section assumes direct litigation responsibilities in major multi-district and international conspiracy cases, reviews electronic surveillance requests, secures witnesses from foreign jurisdictions, and publishes a monthly Narcotic Newsletter. It also maintains task force operations in the Southern District of Florida, San Juan, Puerto Rico, and the Northern District of Illinois to conduct grand jury investigations and prosecute money launderers facilitating major drug trafficking organizations.

The Section reviews all adverse decisions to the government in the drug area and makes recommendations on whether the cases should be reviewed by higher courts. The Section also reviews proposed legislation on drug abuse and makes recommendations as to its effectiveness and prepares proposals

for new legislation in areas appropriate to effective drug law enforcement.

F. Organized Crime and Racketeering Section

The Organized Crime and Racketeering Section supervises the Department's prosecutive efforts against racketeers and syndicated criminal operations, and approves all indictments under the Racketeer Influenced and Corrupt Organizations statutes. The Section also supervises all violations involving organized crime figures. In addition, the Section has supervisory responsibility for enforcement of the extortionate credit transaction provisions of the Consumers Credit Protection Act of 1968, the Gambling Devices Act of 1962, and laws pertaining to gambling, extortion, infiltration of legitimate business, prostitution, and liquor and cigarette violations.

Most of the attorneys in the Section are assigned to one of the Organized Crime Strike Forces or Field Offices that are maintained in major metropolitan areas throughout the country. Since 1967, when it was first initiated, the Strike Force concept has been used to bring together the efforts of various federal investigative agencies under the legal guidance of U.S. Attorneys and Section attorneys. The result is a team approach to the challenge of organized crime in a particular area. (See USAM 9-3.530, *infra*.)

The Section supervises and directly participates in the enforcement of federal criminal statutes relating to employee-employer relationships and the internal operations of labor unions, including statutes prohibiting interference with interstate commerce by extortion, embezzlement of union assets, improper payments by employers to union officials, embezzlement of the assets of pension and welfare funds, and the payment of kickbacks to influence the acts of trustees or agents of pension or welfare funds. The Section also has jurisdiction of offenses involving the use of explosives in connection with labor disputes and violations of the reporting requirements of the Welfare and Pension Plans Disclosure Act and the Labor Management Reporting and Disclosure Act. Labor activities are coordinated by the Labor Management Unit of the Strike Force in Washington, D.C.

Section attorneys work closely with the Federal Bureau of Investigation, Drug Enforcement Administration; Bureau of Alcohol, Tobacco, and Firearms; United States Secret Service; United States Customs Service; Internal Revenue Service; the Strike Force Unit of the U.S. Attorney's office in the Southern District of New York; and with state and local law enforcement officers. The attorneys prepare for and conduct grand jury proceedings, give continuing legal advice to agents working organized crime cases, prepare for and conduct Title III electronic surveillance, and litigate cases resulting from these activities. The Section maintains

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close liaison with both the Bureau of Prisons and the United States Parole Commission in matters concerning organized crime inmates.

G. Public Integrity Section

The Public Integrity Section is responsible for overseeing the investigation and prosecution of federal crimes involving abuse of the public trust by elected or appointed public officials at all levels of government and election crimes. Included within the Section are two formally established units, the Election Crimes Branch and the Conflicts of Interest Crimes Branch. The Section prosecutes selected cases against federal, state, and local officials and is available as a source of advice and expertise to law enforcement officials and prosecutors at all levels of government. It provides the resources both of a team of litigators trained to prosecute cases under the criminal statutes that govern the conduct of public officials, and of a center for planning, coordination, and implementation of nationwide programs focused against public corruption.

The Section is responsible for reviewing and processing all matters arising under the Special Prosecutor's Act, see 28 U.S.C. § 591 *et seq.* Because of the sensitivity of many of these cases and the extremely strict time limitations built into the legislation, the Section should be notified immediately should an allegation against an individual covered by the Act be received.

Most of the Section's resources are devoted to operational responsibility for litigation and providing support, advice, and assistance to the U.S. Attorneys. The Section may be called upon for assistance in the following situations:

1. **Recusals**—Most government corruption cases are both sensitive and of intense public interest. It is particularly important that the appearance of fairness and impartiality always be present in the conduct of such investigations. In situations where the local U.S. Attorney has had a significant business, social, political, or other relationship with any subject or principal witness in a corruption case, it is generally inappropriate for that U.S. Attorney to conduct the investigation and prosecution. Where the conflict is substantial, such cases are frequently transferred to the Public Integrity Section for prosecution or direct supervision. For example, all cases involving federal judges pose obvious conflict of interest problems for the U.S. Attorney, and should be referred to the Public Integrity Section for investigation.

2. **Provision of Manpower and Expertise**—In situations where the available manpower or expertise in a U.S. Attorney's Office is insufficient to undertake a significant corruption case, the Public Integrity Section often provides attorneys to serve as either lead counsel or co-counsel. Section attorneys are also available to provide advice on

substantive questions, investigatory methods, indictment drafting, and motions;

3. Sensitive or Multi-District Cases—In addition to formal recusals and cases where manpower is requested or needed, the Public Integrity Section will become involved in sensitive matters and in matters which extend over district lines. Sensitive cases would include those which, because of their importance, require close coordination with high departmental officials, require a significant amount of coordination with other federal agencies in Washington, D.C., involve classified materials, or are so politically controversial on a local level that they are more appropriately handled from Washington, D.C. The Section also is involved when an investigation crosses district lines. In such cases, the Public Integrity Section can provide coordination among various U.S. Attorneys' offices, or, where appropriate, can assume operational responsibility for the entire investigation; and

4. Authorization for Election and Corruption Cases Under the Hobbs Act—Statutory schemes governing the conduct of public officials and candidates for public office are often complex and sometimes very broad. In order to achieve some degree of national control and uniformity, the Section reviews investigations and indictments in such cases as directed by the Assistant Attorney General. At present, authorization from the Section is required in all election-related cases and in corruption cases brought under the Hobbs Act.

H. Terrorism and Violent Crime Section

The Terrorism and Violent Crime Section is responsible for the investigation and prosecution of federal offenses relating to international terrorism incidents which impact on United States interests. Additionally, the Section oversees the prosecution of domestic violent crime offenses over which federal jurisdiction exists as well as the prosecution of firearms and explosives violations.

In light of greatly expanded federal criminal jurisdiction over international terrorist incidents, the Section is actively involved in developing and prosecuting terrorism cases. Section attorneys also assist in the investigation and prosecution of a wide range of domestic violent crimes, including offenses committed by chronic offenders and organized gangs, using a full range of federal statutes to maximize the effectiveness of prosecutive efforts. The Section may take a lead role in litigating violent crime offenses in particular cases, such as cases where a U.S. Attorney has recused himself or where there is insufficient manpower or expertise in a U.S. Attorney's Office to undertake a significant case, as well as in sensitive cases and those matters which require interdistrict coordination.

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Section attorneys provide legal advice to U.S. Attorneys' Offices concerning federal statutes relating to murder, assault, kidnapping, threats, robbery, weapons and explosives control, malicious destruction of property, and aircraft and sea piracy. The Section also is involved in the formulation of legislative initiatives and Department policies relating to international terrorism and violent crime, and in the coordination of initiatives and strategies relating to international terrorism with other government agencies.

The Section's statutory jurisdiction represents a consolidation of most federal offenses relating to terrorism and violent crime. In summary, the Section's jurisdiction encompasses the following categories of criminal activity:

1. Violence Directed Against a Person—solicitation of a violent crime, threats, assaults, kidnappings, and murders;
2. Violence Directed Against Both a Person and Property—for example, aircraft piracy and robbery;
3. Violence Directed Against Property—for example, destruction of an aircraft and arson;
4. Instrumentalities of Violence—for example, firearms and explosives violations.

I. Money Laundering Section

The Money Laundering Section is charged with prosecuting complex, national and international money laundering cases and participating in prosecutions initiated by United States Attorneys' Offices. In addition, the Section is charged with nationwide anti-money laundering training, and with the review of certain prosecutions. The Section provides legal advice to U.S. Attorneys' Offices and investigative agencies on money laundering matters. The Section is a source for litigation advice, sample briefs, indictments, pleadings and jury instructions.

The Section provides legal advice and assistance in money laundering matters that arise within the U.S. Attorneys' Offices, the Division and other law enforcement agencies, and the Section assists the Appellate Section in the formulation of positions to be taken in money laundering appeals. The Section's policy development and coordination role includes legislative review and comment.

The Section's mission also embraces coordination of money laundering training and conferences. Working with the Attorney General's Advocacy Institute and all relevant Division components, the Section ensures that Assistant U.S. Attorneys and Department attorneys receive training in investigating and prosecuting money laundering matters. Further, the Section participates in the formulation of the training programs provided

by the investigative agencies, and generates training manuals, case updates, and other materials to meet the needs of the field.

In addition, the Section, in cooperation with other components and agencies, assists in coordinating international money laundering matters. The Section currently is active in several efforts directed toward combating international money laundering. Current initiatives include: a statutory directive to engage specified nations in negotiations directed toward bilateral anti-FATF trust money laundering agreements; the multilateral anti-money laundering activities of the Financial Action Task Force (FATF); the formulation of policy to ensure the consistent application of the money laundering statutes nationwide; the Caribbean Financial Action Task Force (CFATF); and the Organization of American States (OAS) initiative to develop model anti-money laundering legislation.

Main Objectives

- (1) Litigates particularly complex, sensitive and multi-district money laundering prosecutions, and provides litigative assistance to the U.S. Attorneys' Offices.
- (2) Assists in the planning and coordination of national and international money laundering investigations and prosecutions.
- (3) Provides guidance, legal advice and assistance with respect to money laundering investigations and prosecutions to U.S. Attorneys' Offices, other Division Offices and Sections, and all federal law enforcement agencies involved in investigating money laundering offenses.
- (4) Develops national policy and strategy with respect to new and emerging trends in money laundering, and provides leadership and coordination in implementing responses to these new trends.
- (5) Participates in international efforts to combat money laundering, including the FATF, the CFATF, the negotiation of bi-lateral, United Nations initiatives, and additional international initiatives, as they arise.
- (6) Develops legislative initiatives with respect to the money laundering statutes to ensure that Departmental concerns are raised and addressed in Congress.
- (7) Generates instructional materials, including updates to the recently published Federal Prosecution Money Laundering Manual and the Money Laundering Directory of Contacts, and publishing other training materials as needed.
- (8) Provides and coordinates money laundering conferences for U.S. Attorneys' Offices, other Department attorneys and law enforcement agencies.

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- (9) Assists the Appellate Section in the formulation of positions to be taken in appeals involving money laundering issues.
- (10) Reviews indictments and provides guidance as appropriate, and in limited circumstances, consults and approves proposed money laundering prosecutions.

J. [Reserved]

K. Office of Administration

The mission of the Office of Administration is to provide effective and efficient administrative and management support services to the Division's senior officials, sections, offices, and field offices. Coordinated through the Office of the Director, the following operational units perform the delivery of those services: Personnel Unit; Fiscal Unit; Mail, File and Records Service Unit; Procurement, Security, Safety and Space Unit; and the Statistical Unit.

This office provides the following services, among others:

1. Develops administrative policies;
2. Formulates annual and supplemental appropriation budget estimates and authorization requests;
3. Establishes and executes fiscal operating plans;
4. Manages and controls funds;
5. Administers programs regarding federal records, files, and correspondence;
6. Coordinates personnel actions;
7. Operates ADP systems for caseload/resource management and for direct support to investigations and litigation;
8. Maintains and procures supplies and equipment;
9. Processes requests for office space, renovations, modifications, repairs and telephones;
10. Administers travel support services including authorizations, fund obligation, advances, vouchers, reimbursements, and relocations;
11. Administers programs for parking permits, credentials, and identification cards;
12. Administers duplicating services, and printing and distributing of handbooks and manuals;

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13. Administers security programs for documents, files, work space, and personnel;
14. Inspects workspace for OSHA compliance;
15. Approves and processes requests for litigation support services such as court reporters, interpreters, physician witnesses, etc., and
16. Approves and implements word processing services.

The variety of administrative support services handled by this office requires close liaison with all of the Division's components, the Justice Management Division, the General Services Administration, and contractor personnel associated with the Criminal Division.

L. Asset Forfeiture Office

The Asset Forfeiture Office is a focal point of the Department's efforts to make more effective use of civil and criminal forfeiture proceedings to deprive criminals of the proceeds of their crimes.

The office participates directly in major forfeiture cases, either alone or with attorneys from a U.S. Attorney's Office or from another section or office of the Criminal Division.

The office provides legal advice and training to Department attorneys and law enforcement agents on such questions as how to determine when to pursue a forfeiture case, how to identify and locate forfeitable property, how to protect the government's interest in forfeitable property pending completion of forfeiture proceedings, what litigation strategy might be most effective, and what steps should be taken to improve management of seized property and disposition of forfeited property. These questions are handled through responses to individual legal questions, preparation of manuals concerning forfeiture issues, and dissemination of model briefs and pleadings and of information concerning important forfeiture decisions and effective innovative case strategies.

The office is also responsible for deciding petitions for remission or litigation of judicial forfeitures pursuant to Part 9 of Title 28, Code of Federal Regulations.

The office coordinates the collection of criminal fines and bond forfeiture judgments by the U.S. Attorneys' offices, including assisting in the location of judgment debtors for such fines and forfeitures.

Finally, the U.S. Attorneys are required to consult with the office before accepting an offer in compromise in a forfeiture case in which the difference between the amount of the offer and the amount of the original claim is between \$60,000 and \$750,000 and before closing or dismissing a forfeiture case in which the amount of the original claim is between \$60,000 and \$750,000.

M. Office of Enforcement Operations

The Office of Enforcement Operations oversees, within the constraints of law and Departmental policy, the effective use of the most sophisticated investigative tools at the Department's disposal—including electronic surveillance, the witness immunity statute, hypnosis in the interrogation of federal witnesses, and witness relocation. The office continuously monitors each of these, and serves as liaison to investigative agencies, prosecutors, the United States Marshals Service, the Bureau of Prisons, and others involved in the implementation of these investigative tools. It also provides various components of the Criminal Division with a wide range of services related to litigative assistance and prosecutive support which entails close liaison with all of the federal investigative agencies, the U.S. Attorneys' offices, the Executive Office for U.S. Attorneys, and the administrative staff of the Division and the Department.

The duties and responsibilities of the Office are as follows:

1. Supervises all aspects of the Witness Security Program for the Criminal Division and responds to Congressional, White House, press, and public inquiries regarding the Witness Security Program. See USAM 9-21.000;
2. Receives and adjudicates all applications for electronic surveillance under Chapter 119 of Title 18 of the United States Code, and oversees all electronic and consensual monitoring efforts being pursued within the federal justice system and the loan of Federal Bureau of Investigation electronic surveillance equipment, and prepares special analyses and evaluation reports relating to such activities. See USAM 9-7.000;
3. Receives and approves requests for authorization to use hypnosis. See USAM 9-13.000;
4. Reviews and processes all requests for authorization to compel testimony (immunities) in federal prosecutions and Congressional inquiries or to prosecute formerly immunized witnesses, and makes the final recommendations to the Assistant Attorney General on granting or denying such requests. See USAM 9-23.000;
5. Reviews and approves requests to resubpoena contumacious witnesses before a successive grand jury. See USAM 9-11.160;
6. Reviews and processes certain requests made to the Internal Revenue Service for access to tax returns or taxpayer return information pursuant to 26 U.S.C. § 6103(i)(1), (2), and (3), and makes final recommendations to the Assistant Attorney General on whether such requests to the Internal Revenue Service should be made, or where required, whether court orders should be authorized. See USAM 9-13.900;

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7. Receives and processes all requests to interrogate, arrest, indict, or subpoena members of the news media. See USAM 9-2.161;

8. Responds to requests made pursuant to 28 C.F.R. § 16.21 for authorization of Departmental personnel to testify at federal, state, and local civil and criminal proceedings, and makes final recommendations, where appropriate, to the Assistant Attorney General on granting or denying such requests. See USAM 1-13.000;

9. Reviews and processes requests for searches for documentary materials held by third parties, pursuant to 28 C.F.R. § 59.1 et seq. See USAM 9-19.000;

10. Reviews and processes requests for authorization to close judicial proceedings to members of the press and public pursuant to 28 C.F.R. § 50.9. See USAM 9-2.300;

11. Receives, processes, and adjudicates all requests received from the public for access to Criminal Division records pursuant to the Freedom of Information Act and the Privacy Act, and other matters relating to these Acts within the Criminal Division. See USAM 1-9.000;

12. Processes requests for, and conducts, all inquiries made to the several federal investigative agencies on the occurrence of electronic surveillance of specific defendants and their attorneys pursuant to 18 U.S.C. § 3504. See USAM 9-7.000;

13. Processes requests from U.S. Attorneys for access to information filed with the Secretary of the Treasury under the Currency and Foreign Transactions Act, pursuant to 31 U.S.C. § 1061. See USAM 9-79.260;

14. Compiles, indexes, and maintains the Criminal Division Brief/Memo Bank containing Division legal briefs and memoranda and other related materials that involve policy matters or extensive legal research, making these resources available to Division and other Department attorneys, as well as U.S. Attorneys, for research purposes. See USAM 9-5.101;

15. Prepares a complete legislative history of all legislation enacted by Congress that affects the responsibilities of the Criminal Division, maintains the existing legislative history library, and makes these resources available to Division and Department attorneys for research purposes. See USAM 9-5.102;

16. Responds to all correspondence submitted on general criminal matters, whether sent by individual citizens to the Department or referred to the Department by the White House or by members of Congress;

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17. Coordinates, in conjunction with other Division components, the preparation of the Criminal Division's portion of the *United States Attorneys' Manual*, including periodic revisions and updates;

18. Coordinates the Criminal Division's contributions to the *United States Attorneys' Bulletin* and prepares notes on significant cases dealing with the Federal Rules of Criminal Procedure and Evidence for publication therein;

19. Prepares grand jury authorization letters authorizing Division attorneys to conduct and attend grand jury sessions. See USAM 9-3.531;

20. Prepares letters authorizing attorneys outside of the Department to assist Department attorneys in the conduct of grand jury or trial proceedings as special attorneys. See USAM 9-2.158;

21. Processes requests for permission to disclose evidence of violations of state criminal law to an appropriate official of a state or subdivision of a state for the purpose of enforcing such law, pursuant to Fed.R.Cr.P. 6(e)(3)(C)(iv). See USAM 9-11.260;

22. Receives and reviews reports filed pursuant to the Pre-Trial Diversion Program and handles inquiries relating to that Program. See USAM 9-2.022 and 9-22.000;

23. Implements the registration provisions of the Gambling Devices Act, 15 U.S.C. § 1171 *et seq.*;

24. Responds to questions that arise with respect to the Privacy Protection Act of 1980. See USAM 9-19.000; and

25. Provides advice and guidance on matters relating to the Right to Financial Privacy Act of 1977, 92 Stat. 3697 (12 U.S.C. §§ 3401 to 3422). See USAM 9-13.800.

N. Office of International Affairs

The Office of International Affairs supports the Division in the formulation and execution of international criminal justice enforcement policies and procedures. Its functions include: participating in the negotiation of international agreements and treaties on subjects relating to criminal law enforcement such as extradition, mutual assistance in criminal matters, and the transfer of prisoners; representing the Division in Executive Branch policy planning sessions in the consideration of issues of international criminal justice; implementing, and overseeing the implementation of extradition, judicial assistance, and prisoner transfer treaties and agreements, processing and litigating, or supervising the litigation of, requests for extradition by foreign countries before federal courts; preparing requests for international extradition and obtaining evidence from foreign countries in criminal matters; providing advice to

U.S. Attorneys, state attorneys general; and district attorneys on preparing extradition requests and on foreign criminal practice and procedure; coordinating and reviewing requests to and from foreign countries to obtain evidence in connection with criminal investigations and prosecutions in the United States and foreign countries, drafting legislation in its areas of responsibility; and developing Division policy on those aspects of federal criminal law enforcement having transnational aspects.

O. Office of Legislation

The Office of Legislation is responsible for development and support of the Criminal Division's legislative program. In fulfilling its mission, the Office of Legislation develops legislative proposals, legal memorandum, and testimony to be presented to the Congress and drafts responses to requests from Congressional committees and government agencies for Division comment upon pending and proposed legislation. The office also maintains liaison with members of Congress and Congressional staff to track legislative activities and to provide the Congress with information relating to criminal justice issues.

The office provides legal support to the Assistant Attorney General in the discharge of his/her duties as a member of the Advisory Committee on Criminal Rules of the Judicial Conference which develops proposed amendments to the Federal Rules of Criminal Procedure. The office also prepares legal memoranda and assists in development of guidelines and operating manuals relating to the implementation of recently enacted statutes.

Because of its activities, the Office of Legislation is able to furnish information to U.S. Attorneys' offices regarding the status and substance of legislation affecting the federal criminal justice system and can respond to questions that arise with respect to the Federal Rules of Criminal Procedure.

P. Office of Policy and Management Analysis

The Office of Policy and Management Analysis is responsible for analyzing and recommending positions on policy and management issues of concern to top-level decision makers in the Division and the Department. It also assists Division managers in dealing with various management issues, including budget policy, personnel development, and information systems. Most of the office's work is concentrated in the areas of organized crime, government program fraud, and drug trafficking.

The major functions performed by this office are as follows:

1. Analyzes and develops responses to significant policy issues affecting the roles, functions, and missions of the Division;

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2. Advises the Assistant Attorney General on the establishment of priorities and objectives for the Division and for federal law enforcement generally;
3. Develops plans for enforcement programs in conjunction with the Division's litigating sections;
4. Conducts systematic evaluations of existing law enforcement programs and policies;
5. Advises the Assistant Attorney General on issues of budget policy and resource allocation;
6. Evaluates and develops improvements in the Division's management systems and practices; and
7. Provides for the exchange of information and the coordination of policies, programs, and research with other public agencies and private institutions in the field of law enforcement.

The office uses an interdisciplinary approach to decision making and problem solving. Its professional staff includes attorneys, program analysts, and management analysts with expertise in public administration, economics, organization behavior, program evaluation, data processing, financial analysis, and operations research.

Examples of projects in which the office has played a major role include the preparation of a major study of law enforcement-related asset seizure and forfeiture operations, the development of essays on strategy for the Department's priority enforcement areas for use by the U.S. Attorneys in developing their law enforcement plans, the design of a review process to assist Organized Crime and Racketeering Section managers in assessing the nature and extent of organized crime and the impact of Strike Force offices, the implementation of a case management information system for the Division's cases, the development of national priorities for the investigation and prosecution of white collar crime, and the development of a government-wide information system to track referrals made to the Department by the Inspectors General.

Q. Office of Special Investigations

The mission of the Office of Special Investigations is to investigate and prosecute cases seeking denaturalization, deportation, or other legal action against alleged Nazi war criminals in the United States. The office investigates allegations against Nazi war criminals—more accurately defined as those who took part in, assisted, incited, or encouraged persecution of innocent people based on race, religion, national origin, or political belief in collaboration with the Nazi regimes of Europe from 1933 to 1945—to determine if the allegations are well-founded and if the individuals entered the United States (or obtained United States citizenship)

illegally or fraudulently. Upon approval by the Assistant Attorney General, the Office of Special Investigations files a denaturalization action in district court (see 8 U.S.C. § 1451(a)), deportation proceedings before an immigration judge, or other proceedings as necessary.

R. National Obscenity Enforcement Unit

The National Obscenity Enforcement Unit coordinates federal obscenity and child pornography prosecutions. In addition, the Unit collects and disseminates instructional and reference materials, provides legal advice and opinions, prosecutes cases, and works with state and local law enforcement organizations to ensure effective enforcement of relevant statutes. The Unit is divided into two groups: the Federal Obscenity Task Force and the Obscenity Law Center.

The *Federal Obscenity Task Force* includes attorneys based in Washington who prosecute cases involving child pornography and the organized criminal production and distribution of obscene materials. These attorneys provide advice on investigative and prosecutorial strategies and other relevant assistance to Federal prosecutors and also supply expertise and legal advice to state and local law enforcement agencies on request. An attorney in each U.S. Attorney's Office and in each Organized Crime Strike Force has been designated to work with the Task Force and provide assistance and coordination in the field.

The *Obscenity Law Center* collects and disseminates a wide variety of informational materials related to the enforcement of child pornography and obscenity laws at all levels of government. These materials are available, as appropriate, to prosecutors, investigators, community groups and the public-at-large and include: sample briefs and forms, trial transcripts, model sentencing memoranda, statistical information, social science research reports, and information on state and Federal statutes and court opinions. In addition, the Center organizes training seminars and maintains a public information program, including a Speakers Bureau.

9-3.500 ORGANIZATION

The Criminal Division is presently organized into seven Sections and seven Offices specializing in particular areas of criminal law. In addition, the Division houses the National Obscenity Enforcement Unit. The Division's organizational structure is altered to respond to changing needs and priorities.

The Division is supervised by an Assistant Attorney General. Each Section is headed by a Section Chief, each Office is headed by an Office Director, and the National Obscenity Enforcement Unit is headed by an Executive Director. The Division is staffed by attorneys, and the Associate Attorney General exercises the power and authority vested in the

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Attorney General to take final action in matters pertaining to their employment, separation, and general administration. (Order No. 998-83).

9-3.510 Section Chiefs

Section Chiefs and Office Directors are selected by an Assistant Attorney General to assist him/her in the performance of his/her duties. See 5 C.F.R. §§ 9.1 to 9.5. The Assistant Attorney General assigns to each Section Chief and Office Director the responsibility of conducting, handling or supervising the Division's business in an area designated by the Assistant Attorney General. Current statutory assignments are listed at USA 9-4.000 *et seq.* Each Section Chief and Office Director operates under the general supervision of a Deputy Assistant Attorney General.

9-3.511 Authority

Each Section Chief and Office Director acts in the stead of the Assistant Attorney General in all matters assigned to him/her and exercises all the powers of the Assistant Attorney General which are expressly delegated where express delegation is required by law or which are delegated by implication where express delegation is not required by law and delegation has not been specifically withheld. See 28 C.F.R. § 0.132(e).

The following responsibilities have been delegated to Section Chiefs and Office Directors:

A. Authorization of investigations and prosecutions by Departmental attorneys.

B. Authority to perform functions set forth in 28 C.F.R. §§ 0.160, 0.162, 0.164, and 0.171 not falling within the limitations of paragraph (a) of Directive 116, except that relating to conducting, handling, or supervising civil and criminal forfeiture litigation (other than bail bond forfeiture) including acceptance or denial of petitions for remission or mitigation of forfeiture, and matters described in paragraph (c) of Directive 116 which should receive the personal attention of a Deputy Assistant Attorney General or the Assistant Attorney General because they involve questions of law or policy, and matters which must be resolved by the Assistant Attorney General because the agency or agencies involved have objected in writing to proposed closing or dismissal of a case or acceptance or rejection of an offer in compromise, when the matter cannot be resolved below that level. See Order No. 1034-83. Directive No. 116.

C. Authority to issue formal written requests for financial records pursuant to 12 U.S.C. § 3408. See 28 C.F.R. § 47.3(c). Directive No. 59.

D. Authority to approve application for a search warrant in an emergency situation in a case not being handled by a U.S. Attorney's office when the immediacy of the need to seize material does not permit an opportunity

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to secure the authorization of a Deputy Assistant Attorney General, to obtain documentary material held by third parties pursuant to 28 C.F.R. § 59.1 *et seq.* See 28 C.F.R. § 59.4(b)(2).

E. Authority to obtain emergency access to financial records pursuant to Section 1114(b) of the Right To Financial Privacy Act of 1978, 12 U.S.C. § 3414(b). See Order No. 821-79. Directive No. 60.

F. Authorization to respond to Congressional inquiries of a non-controversial nature.

G. Authorization to respond to routine correspondence dealing with matters not exclusively reserved to the Assistant Attorney General.

H. Authorization to respond to inquiries from U.S. Attorneys on matters within their assigned jurisdiction.

I. Authorization to answer inquiries concerning prior oral and wire interceptions relating to motions under 18 U.S.C. § 3504.

J. Authorization to transmit to the Bureau of Prisons and United States Parole Commission information concerning the background of convicted felons.

9-3.512 Special Responsibilities

A Section Chief or Office Director assigned responsibility for an area hereinafter referred to is authorized to do the following:

A. To authorize U.S. Attorneys to petition the appropriate United States District Court for a motion to transfer juvenile offenders to adult prosecution. See 28 C.F.R. § 0.57. Memorandum of Assistant Attorney General dated June 7, 1980 (Chief of the General Litigation and Legal Advice Section).

B. To exercise all of the power and authority vested in the Attorney General under mutual assistance treaties in criminal matters. See 28 C.F.R. § 0.64-1. Directive No. 81 (Director of the Office of International Affairs).

C. To exercise all of the power and authority vested in the Attorney General under 18 U.S.C. § 4102, which has not been delegated to the Director of the Bureau of Prisons, including specifically the authority to find the transfer of offenders to or from a foreign country under a treaty as referred to in Pub.L. No. 95-44 appropriate or inappropriate. See 28 C.F.R. § 0.64-2. Directive No. 73 (Director of the Office of International Affairs).

D. To conduct, handle, or supervise civil and criminal forfeiture litigation (other than bail bond forfeiture), including acceptance or denial

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of petitions for remission or mitigation of forfeiture, which are assigned to the Criminal Division. See 28 C.F.R. §§ 0.160, 0.162, 0.164, and 0.171. Order No. 1034-84. Directive No. 116 (Director of the Asset Forfeiture Office).

E. To authorize remission or mitigation of seizure or forfeiture of gambling devices under the Act of January 2, 1951, 64 Stat. 1134, as amended by the Gambling Devices Act of 1962, 76 Stat. 1075, 15 U.S.C. § 1171 *et seq.* See 28 C.F.R. § 3.6. Order No. 1034-83. (Director of Asset Forfeiture Office).

F. To handle inquiries under the Foreign Agents Registration Act of 1938, as amended. See 28 C.F.R. § 5.1 *et seq.* (Registration Unit of the Internal Security Section).

G. To take final action under 18 U.S.C. § 2513 on claims for remission or mitigation of forfeitures, offers of payment for release of property, offers in compromise, and matters relating to bonds or other security. See 28 C.F.R. § 8.2. Order No. 1034-83 (Director of the Asset Forfeiture Office).

H. To grant or deny petitions for remission or mitigation of forfeiture of certain property as set out in 19 U.S.C. § 1618, and applicable only to those civil and criminal forfeitures which arise under statutes in relation to which the Attorney General has assigned the remission or mitigation function to the Criminal Division, the Federal Bureau of Investigation, or the Drug Enforcement Administration. See 28 C.F.R. §§ 9.1, 9.3. Order No. 1034-83 (Director of the Asset Forfeiture Office).

I. To perform duties comparable to those of the Chief Counsel or Deputy Chief Counsel, Drug Enforcement Administration, imposed under 28 C.F.R. § 9.4 with respect to petitions for the remission or mitigation of administrative forfeiture of property of an appraised value of \$10,000 or less resulting from the application of 18 U.S.C. § 1955(d). See 28 C.F.R. § 9a.7. Order No. 1034-83 (Director of the Asset Forfeiture Office).

J. To deny a request for information under 5 U.S.C. § 552(a) or 5 U.S.C. § 552a, see 28 C.F.R. § 16.4(b) *et seq.*; 28 C.F.R. § 16.42(b) *et seq.*; Order No. 1055-84. Directive No. 58 (Director of the Office of Enforcement Operations).

K. To approve production of material and disclosure of information contained in the Department of Justice files in response to a subpoena, order, or other demand of a court or other authority. See 28 C.F.R. § 16.29. Directive No. 71 (Director of the Office of Enforcement Operations).

L. To authorize the monitoring of private conversations with the consent of a party. See Order No. 824-79 and Memorandum entitled "Procedures

for Lawful, Warrantless Interceptions of Verbal Communications'' dated November 7, 1983 (Director of the Office of Enforcement Operations).

M. To enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens as they relate to individuals who allegedly, during March 23, 1933, to May 8, 1945, ordered, incited, or otherwise participated in the persecution of any person because of race, religion, national origin, or political opinion. See Order No. 851-79 (Director of the Office of Special Investigations).

N. To review and evaluate all requests to conduct television surveillance for law enforcement purposes within the Department of Justice. See Order No. 985-82 (Director of the Office of Enforcement Operations).

O. To serve as Executive Director of the Economic Crime Council and be a member thereof. See Order No. 1015-83 (Chief of the Fraud Section).

P. To certify that any action authorized by subparagraphs (A), (B), (C) and (D) of paragraph (b)(1) of Section 205 of Pub. L. No. 98-166, is necessary for the conduct of an undercover operation by the Federal Bureau of Investigation, and to be a member of the Undercover Operations Review Committee. See Order No. 1046-84 (Chief of the Public Integrity Section).

Q. To give any advice and assistance to the Secretary of Labor which may be needed in resolving any questions arising out of claims filed under 5 U.S.C. §§ 8191-8193, the Act to Compensate Law Enforcement Officers not Employed by the United States Who Are Killed or Injured While in the Process of Apprehending Persons Suspected of Committing Federal Crimes. See 28 C.F.R. § 0.58. Memorandum of Assistant Attorney General dated April 21, 1983 (Chief of the General Litigation and Legal Advice Section).

R. To determine which persons meet the criteria for witness protection, to approve requests, and to request protection and maintenance in emergencies (Director of the Office of Enforcement Operations). See USAM 9-21.000 *et seq.*

9-3.520 Division Attorneys

Attorneys of the Division assist the Assistant Attorney General by conducting, handling, or supervising the Division's routine business under the direction and general supervision of a particular Section Chief or Office Director or Executive Director or his/her designate (*e.g.*, Deputy Chief, Associate Director, or Unit Chief). With the exception of Strike Force attorneys, see USAM 9-3.530, *infra*, Division attorneys are primarily responsible for providing litigation support to U.S. Attorneys by rendering advice and counsel with reference to questions of law and procedure concerning investigations, grand jury proceedings, and the preparation of indictments and other pleadings. Division attorneys may participate directly in case litigation in the following instances:

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A. Where the U.S. Attorney has requested assistance in litigating a case for which his/her office will maintain primary responsibility;

B. Where the U.S. Attorney has requested that the Division assume primary litigation responsibility for a case;

C. Where the U.S. Attorney has requested that the Division assume sole litigation responsibility for a case;

D. Where the Assistant Attorney General has assigned primary litigation responsibility for a certain category of cases to a particular Section or Office; and

E. Where the Assistant Attorney General has removed litigation responsibility for a particular case from the U.S. Attorney and assigned that responsibility to a Division attorney.

9-3.530 Strike Forces

Strike Forces from the Criminal Division have been established in various districts to combat organized crime. The interrelationship between Strike Forces and U.S. Attorneys' offices is regulated by the Guidelines established by the Attorney General in Orders Nos. 72-76 and 754-77. The Guidelines provide:

9-3.531 Purpose

Organized crime is a serious national problem requiring special concentration and coordination of federal investigative and prosecutive activities in geographic areas where the problem is most severe. Federal efforts against organized crime are supervised and directed by the Criminal Division and carried out by Strike Forces. The major purpose of the Strike Force is to conduct extensive investigations of organized crime activities within their areas.

Strike Forces, being task oriented, are organized and deployed as organized crime conditions in an area require. To the extent possible, the configuration and operation of a Strike Force shall be adapted to the particular conditions, needs, and priorities in the districts it serves. As the need in an area subsides or ends, the Strike Force's activity may be appropriately altered, including the recall or redeployment of the Strike Force for other tasks or duties.

9-3.532 Definition of Organized Crime

The term "organized crime," for purposes of the USAM, includes all illegal activities engaged in by members of the criminal syndicates operative within the United States.

9-3.533 General Responsibilities—Executive Committee—Personnel

The Strike Force assigned to a particular geographic area by the Criminal Division shall be responsible for supervising all federal investigations of organized crime matters within such area, and for coordinating such investigations with state and local efforts against organized crime. However, the U.S. Attorney shall supervise federal investigations of illegal drug enterprises, in coordination with the Narcotic and Dangerous Drug Section of the Criminal Division, unless there is direct and substantial control of the illegal drug operation by major organized crime figures, or the operation is integrally interrelated to other criminal conduct under investigation by a Strike Force pursuant to these guidelines. The Chief of the Strike Force and the U.S. Attorney in such area shall have the responsibility of keeping each other fully advised of all organized criminal matters. See USAM 9-3.535, *infra*. The Chief of the Strike Force shall on a continuing basis advise the U.S. Attorney of all investigations being conducted of which he/she has knowledge.

Where the area assigned to the Strike Force encompasses more than one judicial district, the Chief of the Strike Force shall work with each U.S. Attorney having jurisdiction of a portion of such assigned area.

An attorney shall be appointed as Chief of each Strike Force by the Assistant Attorney General in charge of the Criminal Division with the advice of the U.S. Attorney of the district where the Strike Force is located.

There shall be established at each Strike Force an Executive Committee composed of the following persons or representatives:

- A. The U.S. Attorney for the district where the Strike Force is headquartered, who shall serve as Chairperson;
- B. The Attorney-in-Charge of the Strike Force;
- C. The Special-Agent-in-Charge, Federal Bureau of Investigation, local Field Office;
- D. District Chief of Intelligence, Internal Revenue Service;
- E. District Chief of Audit, Internal Revenue Service;
- F. District Senior ATF Enforcement Officer (either Area Supervisor or Chief Special Investigator), Bureau of Alcohol, Tobacco and Firearms; and
- G. The principal enforcement officer (Resident Special Agent, Special Agent-in-Charge, or Director of the New York Metro Region) of the Office of Inspector General, Department of Labor.

The Executive Committee shall meet at least semi-annually. The meetings shall be called and chaired by the U.S. Attorney. The members of the

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Committee shall review the progress of the organized crime program in the District and at the request of any member address any problems in cooperation or coordination which have arisen among the agencies involved in that program. In addition, the Committee may propose local organized crime problems which the members believe of sufficient impact for inclusion in the organized crime program in that District as a local priority. Such proposals shall be made in writing to the Assistant Attorney General, Criminal Division, or his/her designee. Nothing in this paragraph shall relieve the Attorney-in-Charge of the Strike Force of his/her obligation to keep the U.S. Attorney fully advised of organized crime matters and investigations.

9-3.534 Investigative Matters

The federal investigative agencies operating within the judicial district shall submit to the U.S. Attorney all cases concerning violations of federal law except those concerning an organized crime subject or activity which require extensive investigation or utilization of significant resources and facilities of the Strike Force. In cases of the latter sort, the investigative agency, including the Tax Division of the Department of Justice, shall submit the matter in the first instance to the Strike Force. However, supervisory jurisdiction of tax cases will remain in the Tax Division. In the event that either the U.S. Attorneys' office or the Strike Force receives an investigative report of a matter of primary concern to the other, a prompt referral shall be made so that the case may proceed without delay.

In the case of a difference of opinion between the U.S. Attorney and the Chief of the Strike Force as to the assignment of an investigative matter, the U.S. Attorney shall make the initial assignment, but the Chief of the Strike Force may refer the matter to the Chief of the Organized Crime and Racketeering Section (OCRS) of the Criminal Division who will review the decision of the U.S. Attorney. In the event the Chief, OCRS, disagrees with the determination of the U.S. Attorney, the matter shall be referred to the Assistant Attorney General, Criminal Division, to make a determination which shall be final. All concerned investigative agencies shall be advised of the assignment made with regard to an investigative matter.

The chain of command for pre-indictment investigative efforts within the field of organized crime shall be from the Attorney General, to the Assistant Attorney General, Criminal Division, to the Chief of the Strike Force, to the investigatory personnel assigned to the Strike Force. U.S. Attorneys shall be kept fully advised of organized crime developments within their districts. When a specific investigation has progressed to the point where there is to be a presentation for an indictment or any court proceeding, the Chief of the Strike Force shall then for this purpose operate under the direction of the U.S. Attorney who shall oversee the

judicial phase of the development of the case. The matter shall be handled by an attorney or attorneys designated by the U.S. Attorney, at least one of whom shall be a Strike Force attorney. In the event of a difference of opinion between the U.S. Attorney and the Chief of the Strike Force as to the assignment of an attorney to handle litigation, the Chief of the Strike Force may refer the matter to the Chief, OCRS, for determination. If the Chief, OCRS, disagrees with the determination of the U.S. Attorney, the matter shall be referred to the Assistant Attorney General, Criminal Division, for final determination.

Arrest warrants and search warrants sought in connection with a matter assigned to the Strike Force shall be sought with the concurrence of the U.S. Attorney.

9-3.535 Case Initiation Reports

No investigation shall be opened by a Strike Force without the submission of a case initiation report. Moreover, within a reasonable time, a report should be completed and forwarded as to each pending investigation which was opened prior to the issuance of the requirement to submit case initiation reports.

The form of the report is as follows:

To: _____
 Chief, OCRS
 Criminal Division

From: _____
 Attorney-in-Charge
 Strike Force

Subject: Name: _____
 Identification (e.g. DOB., F.B.I.#, S.S.#, P.D.#): _____
 We have this case opened an investigation of the above subject and the following individuals:

Name	Identification
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____
4. _____	4. _____
5. _____	5. _____

Attorney assigned: _____ Agency _____ Agent _____
 Possible violations: _____
 Summary of facts: _____
 Organized crime connection: _____
 Source of information establishing connection: _____
 Objective: _____
 Profile open: _____
 _____ District of _____
 cc: _____, United States Attorney

The Case Initiation Report is designed to be a one-page description of an investigative or prosecutive matter which, in the judgment of the Attorney-in-Charge, merits the attention of the Strike Force and the assignment of attorney personnel resources. Investigations which are being conducted by agencies without any participation by Strike Force attorneys need not be reported thereon.

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The subject of the report should be the name of the principal prospective defendant and should set forth that person's identifying information in the form of date of birth, FBI, Social Security, and police department numbers. Additional possible subjects may be listed in the space provided and should be listed in subsequent supplemental reports if they become known thereafter. Possible violations may be listed by name and, preferably, title and section of the United States Code. The summary of facts should be brief but sufficient for the reader to determine the basis upon which the investigation is being undertaken. The organized crime connection should reflect the careful judgment of the Attorney-in-Charge as to why the Strike Force is concerned with the investigation. The source of the information establishing the connection is, of course, related to the preceding item, but is intended to set out somewhat more precisely the actual source (without identifying particular informants). The objective could also be called the investigative or prosecutive goal and is not normally to be answered "Conviction of Defendant." Rather, it should set forth what goal is intended to be achieved by this particular investigative or prosecutive effort. The last item is designed to be a key to open the appropriate Profile or, if already open, to record the additional data, e.g., attorney assignment. It should be answered by a yes and a date or no.

Upon completion, a copy of this report should be sent immediately to the Organized Crime and Racketeering Section and the appropriate U.S. Attorney, as indicated. The routing of this report in the Organized Crime and Racketeering Section will be to the Chief and the appropriate Deputy Chief.

9-3.536 Requests for Authorization for Electronic Surveillance Applications

Requests to the Criminal Division for authorization to apply to a court for an electronic surveillance order pursuant to 18 U.S.C. Chapter 119, Title III of Pub.L. No. 90-351, June 19, 1968, in the course of an investigation assigned to the Strike Force, shall be made by the Chief of the Strike Force with the concurrence of the U.S. Attorney. If the U.S. Attorney concurs in the request initiated by the Chief of the Strike Force, the request shall be forwarded to the Criminal Division for a final decision as to whether the request should be submitted to the Assistant Attorney General for his/her approval. If the U.S. Attorney does not concur in the request of the Chief of the Strike Force, the Chief of the Strike Force shall be advised of the reasons for not concurring. The Chief of the Strike Force, upon receipt of the U.S. Attorney's reasons for not concurring, may elect either to accede to the views of the U.S. Attorney or to submit the question to the Chief, OCRS, Criminal Division, who shall review the matter and make a decision as to whether the request should be submitted to the Assistant Attorney General for his/her approval. Any difference between the Chief, OCRS, and the U.S. Attorney shall be submitted to the Assistant Attorney General for final resolution.

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A Strike Force attorney whose request for an electronic surveillance application has been approved by the Assistant Attorney General shall be authorized to present the application to the appropriate court. The Strike Force attorneys shall advise the U.S. Attorney when the application will be presented to the court in order that the U.S. Attorney may be present if so desired.

9-3.537 Authorizations to Proceed With Prosecutions

Where the Chief of the Strike Force concludes that indictment is warranted on a matter assigned to the Strike Force, he/she shall set forth his/her recommendation in a prosecution memorandum to the U.S. Attorney. If the U.S. Attorney agrees with the recommendation, the matter shall be submitted to the Criminal Division for review prior to indictment. If the U.S. Attorney disagrees with the recommendation, the Chief of the Strike Force shall be advised of the reasons for disagreement. The Chief of the Strike Force, upon receipt of the U.S. Attorney's reasons for disagreement, may elect either to accede to the views of the U.S. Attorney or to submit the question to the Chief, OCRS, who shall review the matter and make a determination.

All indictments and informations shall be signed by the U.S. Attorney.

After indictment, any reduction of charges or other negotiated concessions to a defendant in an organized crime case must be approved by the Assistant Attorney General, Criminal Division.

If at any time during the pendency of a criminal matter it appears that an organized crime figure is involved as a subject or a potential subject, but the potential charge does not and will not require extensive investigation or utilization of significant resources and facilities of the Strike Force, the matter shall be promptly transferred to the U.S. Attorney for processing by the U.S. Attorney, the U.S. Attorney to keep the Strike Force informed of the progress of the case or matter.

9-3.538 Litigation

The chain of command in all proceedings shall be from the Attorney General to the Associate Attorney General to the Assistant Attorney General, Criminal Division, to the U.S. Attorney, to the Chief of the Strike Force. The composition and duties of the litigation team shall be the responsibility of the U.S. Attorney.

The U.S. Attorney shall compile, supervise, and dispose of all court calendar listings of Strike Force cases, including hearings, arraignments, trials, sentences, arguments, convenings of the grand jury, and any other proceeding or hearing, directed by the court. The U.S. Attorney shall consult with the Chief of the Strike Force for the purpose of assign-

ing appropriate priority in the scheduling of such Strike Force cases as are mutually agreed upon between them.

In all Strike Force cases, documents which are to be filed with a clerk of a court, with a court, or with a United States Magistrate or Commissioner—including subpoenas, briefs, motions, legal memoranda, points for charge, stipulations, and petitions—shall be signed by both the U.S. Attorney and a Strike Force attorney in the following manner:

(Signature)

(Typed Name)
United States Attorney

(Signature)

(Typed Name)
Special Attorney

9-3.539 Files and Exhibits

The principal files and exhibits involving Strike Force matters shall be maintained by the Strike Force in its offices. The function of maintaining traditional status cards, mark-sense cards, and cards on organized crime cases, shall remain with the U.S. Attorney. The U.S. Attorney and the Chief of the Strike Force shall adopt appropriate administrative procedures to maintain records of organized crime matters in keeping with normal Department of Justice practices applicable to matters other than organized crime matters.

9-3.540 Strike Forces (cont.)

9-3.541 Sentence Recommendations

If the Chief of a Strike Force believes that a recommendation should be made to a court in regard to a sentence for an organized crime offender, he/she shall submit his/her views in a memorandum to the U.S. Attorney. If the U.S. Attorney disagrees with those views, the Chief of the Strike Force shall be advised of the reasons for disagreement. The Chief of the Strike Force, upon receipt of the U.S. Attorney's reasons for disagreement, may elect either to accede to the views of the U.S. Attorney or to submit the question to the Chief, OCRS, who shall review the matter and make a determination. If the Chief, OCRS, disagrees with the determination of the U.S. Attorney, the matter shall be referred to the Assistant Attorney General, Criminal Division, for final determination.

9-3.542 Publicity Releases and Public Statements

Because the efforts against organized crime are national in scope and require national support, and because premature publicity releases or public statements can severely damage enforcement efforts, all publicity

releases and public statements on the subject of organized crime by persons assigned to the Strike Force shall first be submitted for clearance to the Department's Office of Public Affairs and shall in all respects conform to the requirements of 28 C.F.R. § 50.2. See USAM 9-2.211. In these matters, as in other matters involving public relations, the U.S. Attorney shall act as principal representative of the Department of Justice in the district, and publicity releases authorized by the Office of Public Affairs to be issued locally shall generally be issued in the name of the U.S. Attorney. The Office of Public Affairs has been directed to make special effort to give appropriate credit in approved releases to the individuals or agencies involved.

9-3.543 Supplementary Procedures

Supplementary procedures which are not inconsistent with those contained herein may be adopted in any district upon the mutual agreement of the Chief of the Strike Force and the U.S. Attorney.

9-3.600 CIVIL RESPONSIBILITIES

The Criminal Division, in addition to supervising the enforcement of federal criminal laws, has the following civil responsibilities, listed by section in USAM 9-3.601 through 9-3.606, *infra*.

9-3.601 Asset Forfeiture Office

The Asset Forfeiture Office has responsibility for all civil forfeiture proceedings assigned to the Criminal Division. See Criminal Division Directive No. 116 (1983). This responsibility includes advice and assistance in the handling of forfeiture cases and deciding petitions for remission or mitigation of forfeiture. In addition, U.S. Attorneys are required to consult with the Asset Forfeiture Office before accepting an offer in compromise in a forfeiture case in which the difference between the amount offered and the original amount claimed is between \$60,000 and \$750,000. Similarly U.S. Attorneys are required to consult with the Asset Forfeiture Office before closing or dismissing a forfeiture case in which the amount of the original claim is between \$60,000 and \$750,000. See *id.* Acceptance of offers in compromise and decisions to close or dismiss larger forfeiture cases are in the jurisdiction of the Associate Attorney General. See 28 CFR § 0.161(b), as amended in 1983.

The civil forfeiture statutes assigned to the Asset Forfeiture Office are listed in USAM 9-4.000.

9-3.602 Fraud Section

The Fraud Section is responsible for all civil injunction actions against domestic concerns as defined in the Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-2(c) to (d).

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9-3.603 General Litigation and Legal Advice Section

The General Litigation and Legal Advice Section is responsible for miscellaneous motions and civil litigation in eighteen areas:

A. Suits primarily seeking to enjoin government officers and employees from engaging in criminal investigative or national security intelligence gathering activity taken by them in connection with their employment, which acts are alleged to be in violation of the United States Constitution or prohibited by statute or regulation (e.g., allegedly illegal searches, seizures, physical surveillance, photographing, and monitoring of the activities of organizations and individuals; improper use of informants; wrongful maintenance of files and reports; unlawful inspection of records; harassment by investigating agents; abuse of the grand jury process; malicious prosecution; improper communications to unauthorized personnel of the results of investigations; improper dissemination to other investigative agencies of information from government files and records; and violations of the postal laws in the course of a criminal investigation).

B. Suits primarily seeking injunctive relief to test the constitutionality of an established federal security program, either facially or as applied to a particular applicant for government employment, etc. These suits usually involve the denial of security clearances for access to classified defense information or atomic secrets; the denial of appointment to sensitive federal or federally funded positions; the denial of access to restricted areas, such as military or naval bases, the White House, or port areas; the denial of passports and visas; and the denial of Treasury licenses for the transfer of blocked funds. Among the programs involved in this area are the Department of Defense Industrial Security Clearance Program (ISCRO), the Federal Employees Loyalty and Security Program administered by the United States Office of Personnel Management, the Coast Guard Port Security Program, the protective activities of the United States Secret Service, and the Foreign Assets Control Program.

C. Suits seeking to quash grand jury subpoenas or to enjoin grand jury proceedings, or which appear to have been filed in an attempt to use the broader and more liberal civil discovery rules during a criminal trial to obtain information denied criminal defendants under the more restrictive rules of criminal discovery. These suits are limited to those directly related to pending criminal proceedings and involve substantially the same matters as those contained in motions normally filed in a criminal proceeding.

D. Suits primarily seeking to enjoin prosecutions involving statutes assigned to the Criminal Division.

E. Suits primarily seeking declaratory or mandamus relief in connection with law enforcement or national security activity under the jurisdiction of the Criminal Division.

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F. Suits seeking *coram nobis* relief.

G. All motions under 18 U.S.C. § 3504 for the disclosure and suppression of allegedly illegally intercepted wire and oral communications obtained from national security electronic surveillances.

H. All requests under Rule 6(e), Fed.R.Cr.P., for disclosure of grand jury matters or materials.

I. All motions or actions seeking the expungement or sealing of arrest and conviction records.

J. All motions under Rule 41(e), Fed.R.Cr.P., or civil suits seeking the return of property seized as evidence.

K. The coordination of all litigation in which Criminal Division personnel are involved as witnesses or defendants.

L. Suits to stay discovery to prevent interference with ongoing law enforcement or national security investigation or prosecutions under the jurisdiction of the Criminal Division.

M. The coordination of all Freedom of Information Act/Privacy Act litigation involving the files and records of the Criminal Division.

N. Suits to enforce compliance with administrative subpoenas or other orders of administrative officials in matters under the jurisdiction of the Criminal Division (such as compliance with an administrative order requiring the respondent to allow inspection of his/her books and records).

O. Civil contempt.

P. Coordinating and supporting the activities of U.S. Attorneys in the defense of civil actions brought against Bureau of Prisons or Parole Commission officials which attack the Bureau's or Commission's rules, policies, administrative decisions, or conditions of confinement. (Some of the actions involving money damages for constitutional deprivations are defended by the Civil Division).

Q. Injunction actions under the Jenkins Tobacco Act, 15 U.S.C. § 378, and the postal laws relating to sexually oriented advertisements, 39 U.S.C. § 3011.

R. Civil penalties under all Criminal Division statutes not assigned to other components of the Criminal Division.

9-3.604 Internal Security Section

The Internal Security Section is responsible for the Foreign Agents Registration Act, 22 U.S.C. § 611 *et seq.*, and the regulations thereunder,

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28 C.F.R. §§ 5.1 to 5.801. As a result of certain amendments to the Act in 1966, the civil injunctive remedy was added to what had been a purely criminal statute. This remedy is available whenever, in the judgment of the Attorney General, any person is engaged in or about to engage in any acts which constitute or will constitute a violation of any provision of the Act or regulations thereunder. The district court shall have jurisdiction and authorization to issue a temporary or permanent injunction, restraining order, or other order which it may deem proper. The proceedings shall be made a preferred cause and expedited in every way.

9-3.605 Narcotic and Dangerous Drug Section

The following areas are those in which the Narcotic and Dangerous Drug Section exercises civil responsibility. When private persons under Section 507 of the Controlled Substances Act, 21 U.S.C. § 877, seek judicial review of various administrative actions taken by the Drug Enforcement Administration, see 28 C.F.R. § 0.100, the Section is responsible for representing the government's interests, e.g., responding to motions, writing briefs. The types of Drug Enforcement Administration action in which judicial review is ordinarily sought are: placement of drugs in controlled substance schedules, 21 U.S.C. § 811; denial, revocation, or suspension of registrations, 21 U.S.C. § 824; and establishment of production quotas, 21 U.S.C. § 826. The Section also acts in a civil capacity when it seeks civil penalties for minor violations of the Controlled Substances Act, e.g., negligent record keeping by pharmacists, 21 U.S.C. § 842(c). The Section also has jurisdiction over injunctive actions to restrain violations of the Controlled Substances Act, e.g., improper distribution of controlled substances by pharmacists, 21 U.S.C. § 882. Jurisdiction over forfeiture litigation under 21 U.S.C. § 881 has been formally transferred to the Asset Forfeiture Office.

9-3.606 Organized Crime and Racketeering Section

The Organized Crime and Racketeering Section has responsibility for the following civil statutes, except that the Asset Forfeiture Office has responsibility for the remission and mitigation of any forfeitures adjudicated under these statutes:

- A. 18 U.S.C. § 1983(b) (Transportation of passengers between shore and gambling ships);
- B. 18 U.S.C. § 1964 (Civil remedies in relation to racketeer influenced and corrupt organizations);
- C. Penalties under 26 U.S.C. Subtitle F, relative to the collection of taxes related to gambling or liquor; and
- D. Penalties under 26 U.S.C. Subtitle E, Chapter 51, Subchapter J, relating to taxes on liquor, wine, and beer.

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9-4.000 STATUTES ASSIGNED BY CITATION

The statutes currently administered by the Criminal Division have been assigned to the following Sections and Offices:

Asset Forfeiture Office	AFO
Fraud	Fraud
General Litigation and Legal Advice	GenL
Public Integrity	PInt
Internal Security	ISec
Organized Crime and Racketeering	OC & R
Organized Crime and Racketeering (Labor Unit)	OC & R(L)
Narcotic and Dangerous Drug	N & DD
National Obscenity Enforcement Unit	NOEU
Office of Enforcement Operations	OEO
Office of International Affairs	OIA
Office of Legislation	Leg

The statutes are arranged by the United States Code Titles. Listed under each Title are: (1) the statutory designation in the left column, (2) the administering Section, as abbreviated above, with telephone number in the center column, and (3) the investigating agency in the right column. Where no particular Section has primary responsibility for a statute, the designation "All" will appear. Whenever a single asterisk (*) appears after the statutory designation, consultation with the Criminal Division is required in accordance with USAM 9-2.120. Whenever a double asterisk (**) appears after the statutory designation, special approval from the Criminal Division must be obtained in accordance with USAM 9-2.110.

A. The Section to be contacted with respect to the violation of a particular statute will be that section listed except in the following cases:

1. Whenever it is determined that known organized crime figures are involved in any case, supervision of such case is assigned to the Organized Crime and Racketeering Section regardless of the statute involved.
2. Whenever it is determined that a public official is involved in any case involving misuse of office, supervision of such case is assigned to the Public Integrity Section regardless of the statute involved.
3. Whenever any case involves a criminal activity affecting national defense or foreign relations, the Internal Security Section must be consulted regardless of the statute involved.
4. Whenever any case involves a statute in the jurisdiction of the Criminal Division that authorizes civil or criminal forfeiture, questions concerning forfeiture should be referred to the Asset Forfeiture Office (786-4950), while questions concerning the underlying substan-

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tive offense should be referred to the Section with responsibility for the criminal statute.

B. The Appellate Section should be contacted with respect to questions or problems concerning the Speedy Trial Act (633-2611).

C. The Office of Legislation should be contacted with respect to questions or problems concerning the following:

1. Bail (633-3949);
2. The grand jury (633-3119).

D. The Office of Enforcement Operations should be contacted with respect to questions or problems concerning the following:

1. Grand jury and special attorney authorizations (786-4998);
2. Pre-trial diversion (633-5541);
3. Witness immunity (633-5541);
4. Subpoenas issued to Department of Justice employees under 28 C.F.R. § 16.21 (786-4987);
5. Closure of judicial proceedings under 28 C.F.R. § 50.9 (786-4987);
6. Subpoenas issued to members of the news media under 28 C.F.R. § 50.10 (786-4987);
7. Processing of tax disclosure requests under 26 U.S.C. § 6103 (786-4987);
8. Authorization of electronic surveillance (633-3684);
9. Witness protection (633-3684);
10. Rule 6(e)(3)(C)(iv) disclosures (786-4987);
11. Right to Financial Privacy under 12 U.S.C. §§ 3401 to 3422 (786-4987);
12. Searches for documentary evidence held by disinterested third parties e.g., lawyers, doctors, clergymen, under 28 C.F.R. part 59 (786-4987); and
13. Electronic surveillance checks under 18 U.S.C. § 3504 (786-4987).

E. The Office of International Affairs (786-3500) must be contacted:

1. Before contacting any foreign or State Department official in matters relating to criminal investigations or prosecutions;

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- a. Except when notifying a foreign consul of the arrest of a national of the consul's country;
- 2. Before any proposed contact with persons, other than United States investigative agents, in a foreign country;
- 3. Before attempting to do any act in Switzerland or other continental European countries relating to a criminal investigation or prosecution, including contacting a witness by telephone or mail;
- 4. Before issuing any subpoena to obtain records located in a foreign country, and before seeking the enforcement of any such subpoena; and
- 5. Before serving a subpoena on an officer of, or attorney for, a foreign bank or corporation, who is temporarily in, or passing through the United States, when the testimony sought relates to the officers or attorney's duties in connection with the operation of the bank or corporation.

9-4.110 1 to 9 U.S.C.

9-4.111 1 U.S.C.: General Provisions

9-4.112 2 U.S.C.: The Congress

§ 167a-g	GenL	786-4813	F.B.I.
§ 192	GenL*	786-4813	F.B.I.
§§ 193, 194	All		None
§§ 261 to 270	ISec*	786-4936	F.B.I.
§§ 381 to 396	PInt	786-5057	F.B.I.
§§ 431 to 455	PInt*	786-5057	F.B.I.
<i>Except</i>			
§ 441e	ISec*	786-4936	F.B.I.
		(Only in cases involving foreign agents or those who should be registered as foreign agents)	

9-4.113 3 U.S.C.: The President

9-4.114 4 U.S.C.: Flag and Seal

§ 3	GenL	786-4813	F.B.I.
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9-4.115 5 U.S.C.: Executive Departments

§ 552	All		None
§ 552(a)(i)	PInt	786-5057	F.B.I.
§ 3333	GenL**	786-4827	F.B.I.
§ 7311	GenL**	786-4827	F.B.I.
§ 8193(d)	GenL	786-4827	Labor

9-4.116 6 U.S.C.: Surety Bonds

9-4.117 7 U.S.C.: Agriculture

§§ 2 to 26	Fraud*	786-4377	Agriculture (Off. of Investigations)
§§ 51 to 65	GenL	786-4827	Agriculture (Off. of Investigations)
§§ 71 to 85	GenL	786-4827	Agriculture (Off. of Investigations)
§ 86	GenL	786-4813	F.B.I.
§ 87b(a)(1) to (5), (10), (11)	GenL	786-4827	Agriculture (Off. of Investigations)
§ 87b(a)(8)	GenL	786-4827	Agriculture (Off. of Investigations)
§ 87c	GenL	786-4827	Agriculture (Off. of Investigations)
§ 87f(e)	GenL	786-4827	Agriculture (Off. of Investigations)
§ 87f(g)	PInt	786-5057	F.B.I.
§§ 95, 96	GenL	786-4827	Agriculture (Off. of Investigations)
§ 149	GenL	786-4827	Agriculture (Off. of Investigations)
§§ 150bb, 150ee, 150gg	GenL	786-4827	Agriculture (Off. of Investigations)
§ 154	GenL	786-4827	Agriculture (Off. of Investigations)
§§ 156 to 163	GenL	786-4827	Agriculture (Off. of Investigations)
§ 164a	GenL	786-4827	Agriculture (Off. of Investigations)
§ 166	GenL	786-4827	Agriculture (Off. of Investigations)
§ 167	GenL	786-4827	Agriculture (Off. of Investigations)
§§ 181 to 231	GenL	786-4827	Agriculture (Off. of Investigations)
§ 250	GenL	786-4827	Agriculture (Off. of Investigations)
§ 270	GenL	786-4827	Agriculture (Off. of Investigations)
§§ 281 to 282	GenL	786-4827	Agriculture (Off. of Investigations)
§ 472	PInt	786-5057	F.B.I.
§ 473	GenL	786-4827	Agriculture (Off. of Investigations)
§§ 473c-1, 473c-2	GenL	786-4827	Agriculture (Off. of Investigations)
§ 491	GenL	786-4827	Agriculture (Off. of Investigations)
§ 499a-r	GenL	786-4827	Agriculture (Off. of Investigations)
§ 503	GenL	786-4827	Agriculture (Off. of Investigations)
§§ 511i, 511k	GenL	786-4827	Agriculture (Off. of Investigations)
§§ 516, 517	GenL	786-4827	Agriculture (Off. of Investigations)
§ 581	GenL	786-4827	Agriculture

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			(Off. of Investigations)
§ 586	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 591	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 596	GenL	786-4827	Agriculture
			(Off. of Investigations)
§§ 607 to 608a	GenL	786-4827	Agriculture
			(Off. of Investigations)
<i>Except</i>			
§ 608a	AFO	786-4950	Agriculture
			(forfeiture only)
			(Off. of Investigations)
§ 608c(14)	GenL	786-4827	Agriculture
			(Off. of Investigations)
§§ 608d to 624	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 855	GenL	786-4827	Agriculture
			(Off. of Investigations)
§§ 952, 953	GenL	786-4827	Agriculture
			(Off. of Investigations)
§§ 1010 to 1011	GenL	786-4827	Agriculture
			(Off. of Investigations)
§§ 1153 to 1157	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 1373	Fraud	786-4377	Agriculture
			(Off. of Investigations)
§ 1379i(b), (d)	Fraud	786-4377	Agriculture
			(Off. of Investigations)
§ 1380o	Fraud	786-4377	Agriculture
			(Off. of Investigations)
§ 1427 note	Fraud	786-4377	Agriculture
			(Off. of Investigations)
§ 1433	Fraud	786-4377	Agriculture
			(Off. of Investigations)
§§ 1551 to 1611	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 1622(h)	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 1642(c)	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 1986	Print	786-5057	F.B.I.
§ 2023(a), (b)	Fraud	786-4377	Agriculture
			(Off. of Investigations)
§ 2024(b), (c)	Fraud	786-4377	Agriculture
			(Off. of Investigations)
§ 2024(g)	AFO*	786-4950	Agriculture
			(Off. of Investigations)
§§ 2114, 2115	GenL	786-4827	Agriculture
			(Off. of Investigations)
§§ 2131 to 2147	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 2149	GenL	786-4827	Agriculture
			(Off. of Investigations)
§§ 2151 to 2156	GenL	786-4827	Agriculture
			(Off. of Investigations)
<i>Except</i>			
§ 2156	AFO	786-4950	Agriculture
			(forfeiture only)
			(Off. of Investigations)

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§ 2270	GenL	786-4813	Agriculture (Off. of Investigations)
§ 2274	GenL	786-4813	None
§ 2619(c)	PInt	786-5057	F.B.I.
§ 2621(b)	GenL	786-4827	Agriculture (Off. of Investigations)
§ 2623	PInt	786-5057	F.B.I.
§ 2706	PInt	786-5057	F.B.I.
§ 2807	GenL	786-4827	Agriculture (Off. of Investigations)
§ 3806	GenL	786-4827	Agriculture (Animal and Plant Health Inspection Ser- vice)

9-4.118 8 U.S.C.: Aliens and Nationality

§ 1182(a)(23)	N & DD	786-4701	I.N.S.
§ 1182(a)(28)	GenL	786-4828	I.N.S.
§ 1185	GenL	786-4813	I.N.S.
§ 1185(b)	ISec**	786-4813	I.N.S.
§ 1223	GenL	786-4813	I.N.S.
§ 1226	GenL	786-4813	I.N.S.
§ 1251(a)	N & DD	786-4701	I.N.S.
§ 1252	GenL	786-4813	I.N.S.
§ 1256	GenL	786-4813	I.N.S.
§§ 1281 to 1287	GenL	786-4813	I.N.S.
§§ 1301 to 1306	GenL	786-4813	I.N.S.
§§ 1321 to 1330	GenL	786-4813	I.N.S.
Except			
§ 1324(b)(1)	AFO*	786-4950	I.N.S.
§ 1357(a), (b)	GenL	786-4813	I.N.S.

9-4.119 9 U.S.C.: Arbitration

9-4.120 10 to 18 U.S.C.

9-4.121 10 U.S.C.: Armed Forces

§§ 331 to 336	GenL	786-4827	None
§§ 371 to 378	N & DD	786-4704	Defense
§ 808	GenL	786-4813	None
§ 847	GenL	786-4813	F.B.I.
§ 976	GenL	786-4813	Defense
§ 2397(f)	PInt	786-5057	F.B.I.
§ 7678	GenL	786-4813	F.B.I.

9-4.122 11 U.S.C.: Bankruptcy

9-4.123 12 U.S.C.: Banks and Banking

§ 25a	OC & R	633-3758	F.B.I.
§ 22a(1)	Fraud	786-4400	F.B.I.
§§ 95 to 95b	GenL	786-4813	Treasury
§ 209	All		None
§ 211	All		None
§ 324	All		None
§ 339	OC & R	633-3758	F.B.I.
§ 374a	Fraud	786-4400	F.B.I.
§ 378	GenL	786-4813	F.B.I.
§ 582	GenL	786-4813	F.B.I.

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§ 617	GenL	786-4813	F.B.I.
§ 630	Fraud	786-4400	F.B.I.
§ 631	GenL	786-4813	F.B.I.
§ 1141j(b) to (d)	Fraud	786-4400	F.B.I.
§ 1457(a)	GenL	786-4813	F.B.I.
§ 1464d(12)	Fraud	786-4400	F.B.I.
§ 1709-2	Fraud	786-4400	F.B.I.
§ 1715z-4	Fraud	786-4400	F.B.I.
§ 1723a(e)	GenL	786-4813	F.B.I.
§ 1725(g)	GenL	786-4813	F.B.I.
§ 1730(p)	Fraud	786-4400	F.B.I.
§ 1730a(d), (i), (j)	Fraud	786-4400	F.B.I.
§ 1730c	OC & R	633-3758	F.B.I.
§ 1738(a)	Fraud	786-4400	F.B.I.
§ 1750b(a)	Fraud	786-4400	F.B.I.
§ 1786(k)	Fraud	786-4400	F.B.I.
§ 1818(j)	Fraud	786-4400	F.B.I.
§ 1829a	OC & R	633-3758	F.B.I.
§ 1829b	Fraud	786-4400	None
§ 1832	Fraud	786-4400	F.B.I.
§ 1847	Fraud	786-4400	F.B.I.
§§ 1881 to 1884	GenL	786-4805	F.B.I.
§ 1909	Fraud	786-4400	F.B.I.
§§ 1956, 1957	Fraud	786-4400	F.B.I.
§ 2607	Fraud	786-4400	F.B.I.
§ 3401 to 3422(d)	OEO	786-4987	Agency Involved

9-4.124 13 U.S.C.: Census

§§ 211 to 214	PInt	786-5057	F.B.I.
§§ 221 to 225	GenL	786-4813	F.B.I.
§§ 304, 305	GenL	786-4827	F.B.I.

9-4.125 14 U.S.C.: Coast Guard

§§ 83 to 85	GenL	786-4827	Transportation (Coast Guard)
§ 431(c)	Fraud	786-4377	F.B.I.
§ 638(b)	GenL	786-4813	Transportation (Coast Guard)
§ 639	GenL	786-4813	Transportation (Coast Guard)
§ 892	GenL	786-4813	Transportation (Coast Guard)

9-4.126 15 U.S.C.: Commerce and Trade

§ 6	AFO	786-4950	F.B.I.
§ 50 (last #)	PInt	786-5057	F.B.I.
§ 77	AFO	786-4950	S.E.C.
§§ 77a to 77bbbb	Fraud*	786-4400	S.E.C.
§§ 78a to 78kk	Fraud*	786-4400	S.E.C.
Except			
§ 78n(b)	Fraud**	786-4400	S.E.C.
§ 78oi-1, dd-2	Fraud**	786-4400	S.E.C.
§§ 78aaa to 78111	Fraud	786-4400	S.E.C.
§§ 79 to 79z6	Fraud	786-4400	S.E.C.
§ 80a-1	Fraud	786-4400	S.E.C.
§ 80b-1	Fraud*	786-4400	S.E.C.
§ 158	GenL	786-4827	Commerce

§§ 231 to 235	GenL	786-4827	(China Trade Act Registrar) Commerce (National Bureau of Standards)
§ 241	GenL	786-4827	Commerce (National Bureau of Standards)
§§ 291 to 300	GenL	786-4805	None
§ 330d	GenL	786-4827	Commerce (National Oceanic and Atmospheric Administration)
§§ 375 to 378	GenL	786-4827	F.B.I.
§ 645(a) to (c)	Fraud	786-4377	F.B.I.
§ 714m(a) to (f)	Fraud	786-4377	Agriculture (Off. of Investigations)
§§ 715a to 715m	GenL	786-4827	Interior
§§ 717 to 717w	GenL	786-4827	Fed. Power Comm.
§ 1004	Fraud	786-4400	F.B.I.
§ 1007	Fraud	786-4400	F.B.I.
§§ 1171 to 1178	OC & R	633-3758	F.B.I.
Except § 1173	OEO	786-4998	None
	(Registration only)		
§ 1177	AFO	786-4950	F.B.I.
§ 1195	AFO	786-4950	F.T.C.
§§ 1242 to 1244	GenL	786-4805	F.B.I.
§ 1265	AFO	786-4950	F.B.I.
§§ 1281, 1282	GenL	786-4805	F.B.I.
	OC & R(L)	633-3660	F.B.I.
	(labor dispute)		
§ 1644	Fraud	786-4377	U.S.P.S. (Postal Inspection Service)
§ 1681b(1)	Leg	633-3049	None
	(Only re: treatment of grand jury subpoenas)		
§ 1693(n)	GenL	786-4805	F.B.I.
§ 1717	Fraud	786-4377	HUD (Office of Interstate Land Sales)
§§ 1821 to 1825	GenL	786-4827	Agriculture (Off. of Investigations)
§ 2071(b)	AFO	786-4950	None
§ 2101	AFO	786-4950	F.T.C.
§ 2104	AFO	786-4950	Treasury (Customs)
§ 2615	GenL	786-4827	E.P.A.—F.B.I. if major investigation is required
§ 3414(c)	GenL	786-4827	Federal Regulatory Commission

9-4.127 16 U.S.C.: Conservation

§ 3	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 9a	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 26	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
	AFO	786-4950	

	(forfeiture only)		Interior—F.B.I. if major investigation is required
§ 45(e)	GenL 786-4813 (Hunting and fishing violations)		Interior
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 60	GenL 786-4813		Interior
§ 63	GenL 786-4813 (Hunting and fishing violations)		Interior
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 65	GenL 786-4813		Interior
§ 92	GenL 786-4813 (Hunting and fishing violations)		Interior
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 98	GenL 786-4813 (Hunting and fishing violations)		Interior
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 99	GenL 786-4813		Interior
§ 114	GenL 786-4813		Interior—F.B.I. if major investigation is required
§ 117c	GenL 786-4813 (Hunting and fishing violations)		Interior
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 117d	AFO 786-4950		Interior
§ 123	GenL 786-4813		Interior—F.B.I. if major investigation is required
§ 127	GenL 786-4813 (Hunting and fishing violations)		Interior
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 128	GenL 786-4813		Interior
§ 146	GenL 786-4813		Interior—F.B.I. if major investigation is required
§ 152	GenL 786-4813		Interior—F.B.I. if major investigation is required
§ 170	GenL 786-4813 (Hunting and fishing violations)		Interior
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 171	GenL 786-4813		Interior
§ 198c	GenL 786-4813 (Hunting and fishing violations)		Interior
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 198d	AFO 786-4950		Interior
§ 204c	GenL 786-4813 (Hunting and fishing violations)		Interior

	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 204d	AFO	786-4950	Interior
§ 256b	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 256c	AFO	786-4950	Interior
§ 351	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§§ 352, 353	GenL	786-4813	Interior
§ 354	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 364	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 371	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 373	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 374	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 395c	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 395d	AFO	786-4950	Interior
§ 403c-3	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 403c-4	AFO	786-4950	Interior
§ 403h-3	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 403h-4	AFO	786-4950	Interior
§ 404c-3	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 404c-4	AFO	786-4950	Interior
§ 408k	GenL	786-4813	Interior
	(Hunting and fishing violations)		
	(Injury to property)	786-4813	Interior—F.B.I. if major investigation is required
§ 408l	AFO	786-4952	Interior
§ 413	GenL	786-4813	Interior—F.B.I. if major investigation is required

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§ 414	GenL	786-4813	Defense (Superintendent of Military Park)
§ 422d	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 423f	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 423g	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 425g	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 426i	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 428i	GenL	786-4813	Interior—F.B.I. if major investigation is required
§§ 430h, 430i	GenL	786-4813	Interior—F.B.I. if major investigation is required
430q			
§ 430v	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 433	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 460d	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 460k-3	GenL	786-4813	Interior
§§ 460l to 4606a	GenL	786-4813	Interior
§ 460n-5	GenL	786-4813	Interior
			(Hunting and fishing violations)
		786-4813	(Injury to property)
§ 462(k)	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 470ee	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 470gg	AFO	786-4952	Treasury—Customs
§ 551	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 552a-d	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 559	GenL	786-4813	Interior—F.B.I. if major investigation is required
§§ 604 to 606	GenL	786-4813	Interior—F.B.I. if major investigation is required
§ 668b(b)	AFO	786-4952	Interior—F.B.I. if major investigation is required
§ 668dd(c), (e), (f)	GenL	786-4813	Interior
Except			
§ 668dd(f)	AFO	786-4952	Interior
			(forfeiture only)
§ 670j	GenL	786-4813	Agriculture (Off. of Investigations); Interior
§ 670j(c)	AFO	786-4952	Interior
§ 676	GenL	786-4813	Interior
§ 683	GenL	786-4813	Interior
§ 685	GenL	786-4813	Interior
§ 689b	GenL	786-4813	Interior
§ 690d-g	GenL	786-4813	Interior

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	(Hunting and fishing violations)		
	(Injury to 786-4813 property)	Interior—F.B.I. if major investigation is required	
<i>Except</i>			
§ 690e	AFO 786-4950 (forfeiture only)	Interior—F.B.I. if major investigation is required	
§ 692a	GenL 786-4813	Interior	
§ 693a	GenL 786-4813	Interior	
§ 694a	GenL 786-4813	Interior	
§ 707	AFO 786-4950	Interior	
§ 718e-g	GenL 786-4813 (Misuse of stamps)	Interior	
	(Alteration or counterfeiting of stamps)	Interior—F.B.I. if major investigation is required	
§§ 726, 727	GenL 786-4813 (Hunting and fishing violations)	Interior	
	(Injury to 786-4813 property)	Interior—F.B.I. if major investigation is required	
<i>Except</i>			
§ 727(c)	AFO 786-4950	Interior	
§ 730	GenL 786-4813 (Hunting and fishing violations)	Interior	
	(Injury to 786-4813 property)	Interior—F.B.I. if major investigation is required	
§§ 742j-1	AFO 786-4950	Interior	
§ 773h	AFO 786-4950	Interior	
§ 776c(b)	AFO 786-4950	Interior	
§§ 791 to 825(e)	GenL 786-4827	Transportation (Coast Guard)	
§ 825(f)	GenL 786-4813	Interior—F.B.I. if major investigation is required	
§ 825o	GenL 786-4827	Fed. Power Comm.; Defense	
§ 831t	GenL 786-4813 (Emergency and embezzlement)	F.B.I.	
	Fraud	F.B.I.	
	(Other offenses)		
§ 916f	AFO 786-4950	Commerce	
§ 957	GenL 786-4813	Commerce; Interior; Transportation (Coast Guard)	
§ 959	GenL 786-4813	Commerce; Interior; Transportation (Coast Guard)	
§§ 1029, 1030	GenL 786-4813	Commerce; Interior; Transportation (Coast Guard)	
<i>Except</i>			
§ 1030	AFO 786-4950 (forfeiture only)	Commerce; Interior; Transportation (Coast Guard)	
§ 1167	GenL 786-4813	Interior	
§ 1172(e), (f)	AFO 786-4950	Commerce; Interior	
§§ 1181, 1182	GenL 786-4813	Interior	
<i>Except</i>			
§ 1181	AFO 786-4950 (forfeiture only)	Interior	
§ 1184	GenL 786-4813	Interior	

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§ 1246(i)	GenL	786-4813	Agriculture (Off. of Investigations); Interior
§ 1372	GenL	786-4813	Interior
	AFO	786-4950	(forfeiture only)
§ 1540	GenL	786-4813	Commerce
	AFO	786-4950	(National Oceanic and Atmospheric Admin.); Interior; Transportation (Coast Guard); Treasury (Customs)
§ 1860	AFO	786-4950	Interior
§ 2409	AFO	786-4950	Commerce (National Oceanic and Atmo- spheric Admin.); Interior; Transportation (Coast Guard); Treasury (Customs)
§§ 2438, 2439	GenL	786-4813	Transportation (Coast Guard)
§§ 3372, 3373	GenL	786-4813	Interior
§ 3374	AFO	786-4950	Interior
§ 3606	AFO	786-4950	Interior

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§ 116(d)	GenL	786-4827	F.B.I.
§§ 506(a), 507	GenL	786-4827	F.B.I.
<i>Except</i>			
§ 506(b)	AFO*	786-4950	F.B.I.
§ 509	AFO*	786-4950	F.B.I.
§ 603(a), (b)	GenL	786-4827	F.B.I.
§ 603(c)	AFO*	786-4950	Treasury (Customs)

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§§ 1 to 6	All		None
§ 7	GenL	786-4805	F.B.I.
§ 8	GenL	786-4827	Treasury (Secret Service)
§ 9	GenL	786-4805	F.B.I.
§ 10	All		None
§ 11	GenL	786-4827	F.B.I.
§ 12	GenL	786-4827	U.S.P.S.
§ 13	GenL	786-4805	F.B.I.
§ 14	All		None
§ 15	GenL	786-4827	Treasury (Secret Service)
§ 17	GenL	786-4827	None
§§ 31 to 34	GenL	786-4805	F.B.I.
<i>Except</i>			
§ 32(b)	GenL**	786-4805	F.B.I.
§ 33	OC & R(L)	633-3666	F.B.I.
			(labor dispute)
§ 35(a), (b)	GenL	786-4805	F.B.I.
§ 45	ISec**	786-4913	F.B.I.
§ 46	GenL	786-4827	Interior; Agriculture (Off. of Investigations)
§ 81	GenL	786-4805	F.B.I.
§§ 111, 112	GenL	786-4813	F.B.I.
§§ 113, 114	GenL	786-4805	F.B.I.
§ 115	GenL	786-4813	F.B.I.
§§ 152 to 155	Fraud	786-4377	F.B.I.
§§ 201 to 213	PInt*	786-5057	F.B.I.
<i>Except</i>			

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§ 201(d), (e), (h), (i)	GenL	786-4813	F.B.I.
§§ 214 to 216	Fraud	786-4400	F.B.I.
§ 217	PInt	786-5057	F.B.I.
§ 219	ISec**	786-4936	F.B.I.
§ 224	OC & R	633-3758	F.B.I.
§§ 231 to 233	GenL*	786-4805	F.B.I.
§§ 241, 242	PInt*	786-5057	F.B.I.
	(Only federal election issue, and then only if no racial or religious issue involved; all other issues assigned to Civil Rights Division)		
§ 245(b)(1)	GenL**	786-4813	F.B.I.
	(Only if no racial or religious issue)		
§ 245(b)(1)(A)	PInt**	786-5057	Federal Election Commission
	(attempts by force or threat to interfere with the electoral process)		
	GenL**	786-4813	F.B.I.
	(all other attempts or threats directed at public officials at any level or candidates for public office)		
§ 245(b)(3)	GenL**	786-4813	F.B.I.
§ 246	PInt*	786-5057	F.B.I.
§ 281	PInt	786-5057	F.B.I.
§ 283	PInt	786-5057	F.B.I.
§ 285	GenL	786-4813	F.B.I.
§§ 286, 287	Fraud	786-4377	F.B.I.
§ 288	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§§ 289, 290	Fraud	786-4377	F.B.I.
§ 291	PInt*	786-5057	F.B.I.
§ 292	Fraud	786-4377	F.B.I.
§ 331	GenL	786-4813	Treasury (Secret Service)
§ 332	PInt	786-5057	F.B.I.
§ 333	GenL	786-4813	Treasury (Secret Service)
§ 334	PInt	786-5057	F.B.I.
§§ 335 to 337	GenL	786-4813	Federal Reserve
§ 351	GenL	786-4813	F.B.I.
§ 371	All		None
§ 372	GenL	786-4813	F.B.I.
§ 373	GenL	786-4805	F.B.I.
§§ 401, 402	All		None
§§ 411 to 433	PInt	786-5057	F.B.I.
§§ 435 to 437	PInt	786-5057	F.B.I.
§§ 438, 439	GenL	786-4813	F.B.I.
§§ 440 to 442	PInt	786-5057	F.B.I.
§ 443	Fraud	786-4377	F.B.I.
§§ 471 to 491	GenL	786-4813	Treasury (Secret Service)
Except			
§ 475	GenL*	786-4813	Treasury (Secret Service)
§ 489	GenL*	786-4813	Treasury (Secret Service)

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§ 492	AFO*	786-4950	Treasury (Secret Service)
	(Forfeiture only)		
§§ 492 to 495	GenL	786-4813	Treasury (Secret Service)
§ 496	GenL	786-4827	Treasury (Customs)
§§ 497 to 499	GenL	786-4813	Agency involved; F.B.I. or Secret Service if major investigation involved
§ 500	GenL	786-4813	U.S.P.S.
§§ 501, 502	GenL	786-4813	Treasury (Secret Service)
§ 503	GenL	786-4813	U.S.P.S.
§ 504	GenL	786-4813	Treasury (Secret Service)
§ 505	GenL	786-4813	F.B.I.
§ 506	GenL	786-4813	F.B.I.
§ 507	GenL	786-4805	F.B.I.
§§ 508, 509	GenL	786-4813	F.B.I.
§ 510	GenL	786-4813	Treasury (Secret Service)
§ 511	GenL	786-4805	F.B.I.
§ 512	AFO	786-4950	F.B.I.
§§ 541 to 548	GenL	786-4827	Treasury (Customs)
Except			
§§ 542, 544, 545, 548	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 549	GenL	786-4827	F.B.I.
§ 550	GenL	786-4827	Treasury (Customs)
	AFO*	786-4950	
	(forfeiture only)		
§ 551	GenL	786-4827	Treasury (Customs)
§ 552	GenL	786-4805	Treasury (Customs)
§ 553	GenL	786-4827	Treasury (Customs)
§§ 591 to 617	PInt*	786-5057	F.B.I.
§§ 641, 642	GenL	786-4813	F.B.I.
§§ 643 to 655	PInt	786-5057	F.B.I.
§§ 656 to 658	Fraud	786-4400	F.B.I.
§§ 659, 660	GenL	786-4805	F.B.I.
§§ 661, 662	GenL	786-4805	F.B.I.
§ 663	GenL	786-4813	F.B.I.
§ 664	OC & R(L)	786-2666	F.B.I., Labor (Pension & Welfare Benefits Administration & Office of Labor Racketeering)
§ 665(a), (b)	Fraud	786-4400	F.B.I.
§ 665(c)	GenL	786-4813	F.B.I.
§ 666(a), (b)	Fraud	786-4400	F.B.I.
§ 666(c)	PInt	786-5057	F.B.I.
§ 667	GenL	786-4805	F.B.I.
§ 700	GenL*	786-4813	F.B.I.
§§ 701 to 712	GenL	786-4813	F.B.I.
§ 713(a)	PInt	786-5057	F.B.I.
	(Matters involving fundraising and/or public officials)		
	GenL	786-4827	F.B.I.
	(All others)		
§ 713(b)	GenL	786-4827	F.B.I.
§ 715	GenL	786-4813	F.B.I.
§§ 751 to 755	GenL	786-4827	F.B.I.
§§ 756, 757	ISec**	786-4913	F.B.I.
§§ 791 to 799	ISec**	786-4943	F.B.I.
§ 831	GenL	786-4805	F.B.I.
§ 836	GenL	786-4805	Transportation (Federal

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			Highway Administration)
§§ 841 to 843	GenL	786-4805	Treasury (AT & F)
§ 844(a), (b), (d) to (h), (j)	GenL	786-4805	Treasury (AT & F); F.B.I.; U.S.P.S. (Postal Inspection Service)
§ 844(c)	AFO	786-4950	Treasury (AT & F); F.B.I.; U.S.P.S. (Postal Inspection Service)
§ 844(i)	OC & R(L) (labor dispute)	633-3666	Treasury (AT & F)
§§ 845 to 848	GenL	786-4805	Treasury (AT & F)
§ 871	GenL*	786-4813	Treasury (Secret Service)
§ 872	PInt	786-5057	F.B.I.
§ 873	GenL	786-4805	F.B.I.
§ 874	Fraud	786-4377	G.S.A.; F.B.I.
§ 875	GenL	786-4805	F.B.I.
§ 876(a) to (c)	GenL	786-4805	F.B.I.
§ 876(d)	GenL	786-4805	F.B.I.; U.S.P.S. (Postal Inspection Service)
§ 877(a) to (c)	GenL	786-4805	F.B.I.
§ 877(d)	GenL	786-4805	F.B.I., U.S.P.S.
§ 879	GenL	786-4805	F.B.I.
§§ 891 to 894	OC & R	633-3758	F.B.I.
§ 911	GenL	786-4813	I.N.S.
	PInt	786-5057	I.N.S.
			(election matters)
§§ 912 to 917	GenL	786-4813	F.B.I.
§§ 921 to 928 Except	GenL	786-4805	Treasury (AT & F)
§ 924(d)	AFO*	786-4950	Treasury (AT & F)
			(forfeiture only)
§ 924(e)	N & DD	786-4707	Treasury (AT & F); D.E.A.
§ 929	GenL	786-4805	F.B.I.
§§ 951 to 969 Except	ISec**	786-4913	F.B.I.
§§ 962 to 969	AFO	786-4950	F.B.I.
			(forfeiture only)
§ 970	GenL	786-4813	F.B.I.
§ 981(a)(1)(B)	AFO*	786-4950	F.B.I./Treasury
			(forfeiture only)
§ 982	N & DD	786-4704	Treasury (Customs); D.E.A.; I.R.S.; F.B.I.
§ 1001	Fraud*	786-4400	F.B.I.
§§ 1002 to 1014	Fraud	786-4400	F.B.I.
§ 1015	GenL	786-4813	I.N.S.
§ 1016	Fraud	786-4400	F.B.I.
§ 1017	GenL	786-4813	F.B.I.
§§ 1018 to 1026	Fraud	786-4400	F.B.I.
§ 1027	OC & R(L)	633-3666	F.B.I.; Labor (Pension & Welfare Benefits Administra- tion & Office of Labor Racke- teering)
§ 1028	GenL	786-4805	F.B.I.
§ 1029	Fraud	786-4400	Secret Service
§ 1030(a)(1)	ISec**	786-4943	F.B.I.; Secret Service
§ 1030(a)(2) to (c)	Fraud	786-4400	Secret Service
§§ 1071, 1072	GenL*	786-4813	F.B.I.
§ 1073	GenL**	786-4805	F.B.I.
§ 1074	GenL	786-4805	F.B.I.

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§§ 1081 to 1083 <i>Except</i>	OC & R	633-3758	Treasury (Customs)
§ 1082(c)	AFO*	786-4950	Treasury (Customs)
§ 1084	(forfeiture only)		
§ 1084	OC & R	633-3758	F.B.I.
§§ 1111 to 1113	GenL	786-4805	F.B.I.
§ 1114	GenL	786-4813	F.B.I.
§ 1115	GenL	786-4827	F.B.I.
§§ 1116, 1117	GenL	786-4813	F.B.I.
§§ 1151 to 1153	GenL	786-4805	F.B.I.
§§ 1154 to 1156	OC & R	633-3758	Interior
§ 1158	GenL	786-4813	F.B.I.
§§ 1159, 1160	GenL	786-4805	F.B.I.
§ 1161	GenL	786-4805	No Offense
§§ 1162 to 1165 <i>Except</i>	GenL	786-4805	F.B.I.; Interior (BIA)
§ 1165	AFO*	786-4950	F.B.I.; Interior (BIA)
	(forfeiture only)		
§ 1201	GenL	786-4805	F.B.I.
§ 1202	GenL	786-4805	F.B.I.
§ 1203	GenL**	786-4805	F.B.I.
§ 1231	OC & R(L)*	633-3666	F.B.I.
§§ 1262 to 1265	OC & R	633-3758	Treasury (T & F)
§ 1301	OC & R	633-3758	Treasury (Customs)
§§ 1302, 1303	OC & R	633-3758	U.S.P.S. (Postal Inspection Service)
§ 1304	OC & R	633-3758	F.B.I.
§ 1305	OC & R	633-3758	Treasury (Customs)
§ 1306	OC & R	633-3758	F.B.I.
§ 1307	OC & R	633-3758	No Offense
§§ 1341 to 1343	Fraud	786-4377	U.S.P.S. (Postal Inspection Service)
	PInt*	786-5057	
	(election law fraud)		
§§ 1344, 1345	Fraud	786-4377	F.B.I.
§§ 1361 to 1363	GenL	786-4813	F.B.I.
§ 1364	GenL	786-4827	F.B.I.
§ 1365	GenL	786-4805	F.B.I.
§ 1381	GenL*	786-4813	F.B.I.
§ 1382	GenL	786-4813	F.B.I.
§§ 1384, 1385	GenL	786-4805	F.B.I.
§§ 1421 to 1429	GenL	786-4813	I.N.S.
§ 1461	NOEU*	633-5780	U.S.P.S.
§ 1462	NOEU*	633-5780	F.B.I.
§ 1463	NOEU*	633-5780	U.S.P.S.
§ 1464	NOEU*	633-5780	F.C.C./F.B.I.
§ 1465	NOEU*	633-5780	F.B.I.
	AFO*	786-4950	U.S.P.S. (Postal Inspection Service); F.B.I.
	(forfeiture only)		
§ 1501	GenL	786-4813	F.B.I.
§ 1502	GenL	786-4813	None
§§ 1503 to 1510	GenL	786-4813	F.B.I.
§ 1511	OC & R	633-3758	F.B.I.
§§ 1512, 1513	GenL	786-4813	F.B.I.
§ 1514	GenL	786-4827	None
§ 1515	GenL	786-4813	F.B.I.
§§ 1541 to 1546 <i>Except</i>	GenL	786-4813	F.B.I.
§§ 1542 to 1544	ISS**	786-4913	F.B.I.

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	(national security violations)		
§§ 1621 to 1623	GenL	786-4813	F.B.I.
§§ 1651 to 1661	GenL	786-4805	F.B.I.
§§ 1691 to 1699	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§ 1700	PInt	786-5057	None
§§ 1701, 1702	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§ 1703	PInt	786-5057	None
§§ 1704 to 1708	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§§ 1709 to 1713	PInt	786-5057	F.B.I.
§§ 1714, 1715	GenL	786-4805	U.S.P.S. (Postal Inspection Service)
§ 1716	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§ 1716A	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§ 1717	ISec**	786-4913	F.B.I.
	GenL	786-4813	
§ 1718	GenL	786-4805	U.S.P.S. (Postal Inspection Service)
§§ 1719, 1720	GenL	786-4805	U.S.P.S. (Postal Inspection Service)
§ 1721	PInt	786-5057	F.B.I.
§§ 1722 to 1725	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§ 1726	PInt	786-5057	F.B.I.
§§ 1728 to 1731	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§ 1732	PInt	786-5057	F.B.I.
§§ 1733, 1734	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§§ 1735 to 1737	NOEU	633-5780	U.S.P.S. (Postal Inspection Service)
§ 1738	GenL	786-4805	F.B.I.
§§ 1751, 1752	GenL	786-4813	F.B.I.
§§ 1761, 1762	GenL	786-4827	F.B.I.
<i>Except</i>			
§ 1762(b)	NO	786-4950	F.B.I.
	(Forfeiture only)		
§§ 1791, 1792	GenL	786-4827	F.B.I.
§ 1821	GenL	786-4805	F.B.I.
§§ 1851 to 1861	GenL	786-4813	F.B.I.
§§ 1901, 1902	PInt	786-5057	F.B.I.
§ 1903	Fraud	786-4377	F.B.I.
§ 1904	PInt	786-5057	F.B.I.
§ 1905	PInt*	786-5057	F.B.I.
§§ 1906 to 1910	PInt	786-5057	F.B.I.
§ 1911	GenL	786-4813	F.B.I.
§§ 1912, 1913	PInt*	786-5057	F.B.I.
§§ 1915 to 1917	PInt	786-5057	F.B.I.
§ 1918(1), (2)	ISec**	786-4913	F.B.I.
§ 1918(3), (4)	GenL	786-4813	F.B.I.
§§ 1919 to 1923	Fraud	786-4377	F.B.I.
§ 1951	PInt*	786-5057	F.B.I.
	(Extortion under color of official right)		
	GenL*	786-4805	F.B.I.

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	(Kidnapping; extortion directed at airlines; labor disputes; extortion of banks; robbery**)		
§§ 1952 to 1953	OC & R(L)*	633-3666	F.B.I.
<i>Except</i>	OC & R	633-3758	F.B.I.
§ 1952(b)(2)	PInt	786-5057	F.B.I.
	(Bribery involving public servants)		
§ 1952A-B	OC & R**	633-3594	F.B.I.
§ 1954	OC & R(L)	633-3666	F.B.I.
§ 1955	OC & R	633-3758	F.B.I.; Labor (Pension and Welfare Benefits Administration and Office of Labor Racketeering)
<i>Except</i>			
§ 1955(d)	AFO	786-4950	F.B.I.
	(forfeiture only)		
§§ 1956, 1957	N & DD**	786-4704	Treasury; I.R.S.; D.E.A.; F.B.I.
§§ 1961 to 1968	OC & R*	633-1214	F.B.I.
	NOEU*	633-5780	F.B.I.
	(obscenity only)		
<i>Except</i>			
§ 1963(n)	AFO*	786-4950	F.B.I.
	(forfeiture only)		
§§ 1991, 1992	GenL	786-4805	F.B.I.
§ 2071(a)	GenL	786-4813	F.B.I.
§§ 2071(b) to 2073	PInt	786-5057	F.B.I.
§ 2074	Fraud	786-4377	F.B.I.
§§ 2075, 2076	PInt	786-5057	F.B.I.
§§ 2101, 2102	GenL*	786-4805	F.B.I.
§ 2111	GenL	786-4805	F.B.I.
§ 2112	GenL	786-4813	F.B.I.
§ 2113	GenL	786-4805	F.B.I.
§§ 2114 to 2116	GenL	786-4813	F.B.I.
§ 2117	GenL	786-4805	F.B.I.
§ 2118	N & DD**	786-4732	F.B.I.
§§ 2151 to 2157	IS**	786-4922	F.B.I.
§ 2197	GenL	786-4813	F.B.I.
§ 2198	GenL	786-4805	F.B.I.
§ 2199	GenL	786-4805	F.B.I.
§§ 2231 to 2233	GenL	786-4813	F.B.I.
§§ 2241 to 2243	GenL	786-4805	F.B.I.
	NOEU*	633-5780	F.B.I.
§§ 2251, 2252	NOEU*	633-5780	F.B.I.; U.S.P.S. (Postal Inspection Service); Treasury (Customs)
§§ 2253, 2254	AFO	786-4950	F.B.I.; U.S.P.S. (Postal Inspection Service); Treasury (Customs)
§§ 2271 to 2279	GenL	786-4805	F.B.I.
<i>Except</i>			
§ 2274	AFO	786-4950	F.B.I.
	(forfeiture only)		
§§ 2311 to 2319	GenL	786-4805	F.B.I.
<i>Except</i>			

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§ 2318(d)	AFO	786-4950	F.B.I.
	(forfeiture only)		
§ 2320	GenL	786-4827	F.B.I.
	(motor vehicle parts)		
	OC & R	633-3594	F.B.I.
	(RICO prosecution involving motor vehicle parts only)		
§§ 2341 to 2346 Except	OC & R	633-3758	F.B.I.; Treasury (AT & F)
§ 2344(c)	AFO	786-4950	F.B.I.; Treasury (AT & F)
	(forfeiture only)		
§§ 2381 to 2391	ISec**	786-4913	F.B.I.
§§ 2421 to 2424	GenL*	786-4805	F.B.I.
	NOEU*	633-5780	F.B.I.
§§ 2510 to 2512	GenL	786-4813	F.B.I.
§ 2513	AFO	786-4950	F.B.I.
§ 2515	GenL	786-4813	F.B.I.
§ 2516	OEO**	633-2869	No Offense
§ 2517	OEO	633-2869	No Offense
§ 2518	OEO**	633-2869	No Offense
§ 2519	OEO	633-2869	No Offense
§§ 2701, 2702	GenL	786-4813	F.B.I.
§§ 2703 to 2710	OEO	633-2869	None
§§ 3041 to 3044	All		None
§§ 3046 to 3050	All		None
§§ 3052 to 3053	All		None
§ 3055	GenL	786-4805	None
§ 3056	All		None
§ 3056(b)	GenL	786-4813	None
§ 3057	Fraud	786-4377	F.B.I.
§ 3058	ISec**	786-4913	I.N.S.; F.B.I.
§§ 3059 to 3061	All		None
§§ 3071 to 3077	GenL	786-4805	None
§ 3103a	All		None
§ 3105	All		None
§ 3107	All		None
§ 3113	AFO	786-4950	None
§ 3121	GenL	786-4813	F.B.I.
§§ 3122 to 3126	OEO	633-2869	None
§§ 3146 to 3152	All		None
§§ 3161 to 3173	App	633-2611	None
§§ 3181 to 3195	OIA	786-3500	None
§ 3236	GenL	786-4805	None
§§ 3237, 3239	All		None
§§ 3242, 3243	GenL	786-4805	None
§§ 3281, 3282	All		None
§ 3283	GenL	786-4827	None
§ 3284	Fraud	786-4377	None
§ 3285	All		None
§ 3286	GenL	786-4805	None
§§ 3287 to 3290	All		None
§ 3291	GenL	786-4827	None
§ 3292	OIA	786-3500	None
§§ 3401, 3402	GenL	786-4805	None
§ 3432	All		None
§ 3435	GenL	786-4805	F.B.I.
§ 3481	All		None
§ 3487	PInt	786-5057	F.B.I.
§ 3488	OC & R	633-3758	None

§§ 3491 to 3495	OIA	786-3500	None
§ 3497	PInt	786-5057	F.B.I.
§§ 3500 to 3502	All		None
§ 3504	OEO	786-4987	F.B.I.
	(criminal overhears)		
	GenL	786-4827	
	(all other matters)		
§§ 3505, 3506	OIA	786-3500	None
§ 3507	OIA*	786-3500	None
§§ 3521 to 3528	OEO	633-3684	U.S. Marshals Service
§ 3553	N & DD	786-5325	None
§§ 3561 to 3564	GenL	786-4827	Bureau of Prisons
§§ 3566 to 3570	GenL	786-4827	Bureau of Prisons
§§ 3576 to 3578	All		None
§§ 3581 to 3586	GenL	786-4827	None
§§ 3606, 3607	GenL	786-4827	Commerce; Transportation (Coast Guard)
§ 3611	All		None
§ 3612	PInt	786-5057	F.B.I.
§ 3613	GenL	786-4813	F.B.I.
§ 3614	GenL	786-4805	F.B.I.
§ 3615	AFO	786-4950	Treasury (AT & F)
§ 3617	AFO	786-4950	Treasury (AT & F)
§ 3618	AFO	786-4950	Treasury (AT & F)
§ 3619	AFO	786-4950	Treasury (AT & F)
§ 3651	GenL	786-4827	F.B.I.
§ 3653	GenL	786-4827	F.B.I.
§§ 3661, 3662	GenL	786-4827	F.B.I.
§ 3671	GenL	786-4827	F.B.I.
	AFO	786-4950	F.B.I.
	(forfeiture only)		
§§ 3681, 3682	GenL	786-4827	None
§§ 3691, 3692	All		None
§ 3731	App	633-2641	None
§ 4001	GenL	786-4827	Bureau of Prisons
§ 4004	GenL	786-4827	Bureau of Prisons
§ 4012	GenL	786-4827	Bureau of Prisons
§§ 4081 to 4086	GenL	786-4827	Bureau of Prisons
§§ 4100 to 4115	OEO	633-3684	Bureau of Prisons
§§ 4161 to 4166	GenL	786-4827	Bureau of Prisons
§§ 4201 to 4218	GenL	786-4827	Bureau of Prisons; Parole Commission
§§ 4241 to 4248	GenL	786-4827	Bureau of Prisons
§§ 4251 to 4255	N & DD	786-4713	Bureau of Prisons; Parole Commission
§§ 4281 to 4284	GenL	786-4827	Bureau of Prisons; U.S. Mar- shals Service
§ 5001	GenL	786-4827	F.B.I.; U.S. Marshals Ser- vice
§ 5002	GenL	786-4827	Bureau of Prisons
§§ 5005 to 5026	GenL	786-4827	Bureau of Prisons; Parole Commission
§ 5031	GenL	786-4827	Bureau of Prisons; F.B.I.
§ 5032	GenL*	786-4827	Bureau of Prisons; F.B.I.
§§ 5033 to 5042	GenL	786-4827	Bureau of Prisons; F.B.I.
§§ 6001 to 6005	OEO	633-5541	None

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9-4.131 18 U.S.C.: Appendix

§§ 1202 to 1203	GenL	786-4805	F.B.I.
Interstate	GenL	786-4827	F.B.I.
Agreement on			
Detainers			
F.R.Cr.P.	App	633-2641	None
Except			
F.R.Cr.P. 6	Leg	633-3202	None
F.R.Cr.P. 41	Leg	633-3202	None

9-4.132 19 U.S.C.: Customs Duties

§ 60	PInt	786-5057	F.B.I.
§ 70	GenL	786-4813	Treasury (Customs)
§ 81s	GenL	786-4827	Treasury
§ 130	AFO	786-4950	Treasury (Customs)
§ 282	AFO	786-4950	Treasury (Customs)
§ 467	AFO	786-4950	Treasury (Customs)
§ 468	AFO	786-4950	I.R.S.
§ 469	AFO	786-4950	F.B.I.
§ 482	GenL	786-4827	None
§ 507	GenL	786-4827	Treasury (Customs)
§§ 1304, 1305	N & DD	786-4704	
	ISec	786-4913	F.B.I.; Treasury (Customs)
	(treasonous literature)		
	NOEU	633-5780	
	(obscene materials)		
	GenL	786-4827	F.B.I.; Treasury (Customs)
	(all other material)		
	AFO	786-4950	F.B.I.; Treasury (Customs)
	(forfeiture only)		
§ 1322	AFO	786-4950	Treasury (Customs)
§ 1338(f)	AFO	786-4950	Treasury (Customs)
§ 1341	GenL	786-4813	F.B.I.
§ 1401	N & DD	786-4704	Treasury (Customs)
§ 1401(j)	AFO	786-4950	None
§ 1432	AFO	786-4950	Treasury (Customs)
§§ 1433 to 1435	N & DD	786-4704	Treasury (Customs)
§ 1436	GenL	786-4827	Treasury (Customs)
	AFO	786-4950	
	(forfeiture only)		
§ 1438	GenL	786-4827	Treasury (Customs)
§§ 1449 to 1455	GenL	786-4827	Treasury (Customs)
Except			
§ 1453	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1454	N & DD	786-4707	Treasury (Customs)
§ 1459	N & DD	786-4704	Treasury (Customs)
§ 1460	GenL	786-4827	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1462	GenL	786-4827	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§§ 1464, 1465	GenL	786-4827	Treasury (Customs)
Except			

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§ 1464	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1466	AFO	786-4950	Treasury (Customs)
§ 1474	NDD	786-4704	Treasury (Customs)
§ 1497	GenL	786-4827	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1509	N & DD	786-4704	Treasury (Customs)
§ 1510	GenL	786-4813	Treasury (Customs)
§ 1510(b)	AFO	786-4950	Treasury (Customs)
§ 1526	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1527	GenL	786-4827	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§§ 1581, 1582	GenL	786-4827	Treasury (Customs)
§§ 1584 to 1587	GenL	786-4827	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1588	AFO	786-4950	Treasury (Customs)
§ 1589	GenL	786-4813	Treasury (Customs)
§ 1590	N & DD	786-4704	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1592(c)(5)	AFO	786-4950	Treasury (Customs)
§ 1594	N & DD	786-4704	Treasury (Customs)
	AFO*	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1595(a)	N & DD	786-4704	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
§ 1595a	GenL	786-4827	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
§ 1599	PInt	786-5057	Treasury (Customs)
§§ 1602 to 1615	GenL	786-4827	Treasury (Customs)
Except			
§ 1613	N & DD	786-4704	Treasury (Customs)
§§ 1617, 1618	GenL	786-4827	Treasury (Customs)
§ 1619	N & DD	786-4704	Treasury (Customs)
§ 1620	PInt	786-5057	F.B.I.
§ 1621	GenL	786-4827	Treasury (Customs)
§ 1622	N & DD	786-4704	Treasury (Customs)
§ 1627	GenL	786-4827	Treasury (Customs)
§§ 1628 to 1630	N & DD	786-4704	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1703	GenL	786-4827	Treasury (Customs)
Except			
§ 1703(a)	AFO	786-4950	Treasury (Customs)
§§ 1706 to 1708	GenL	786-4827	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 1919	Fraud	786-4377	F.B.I.
§§ 2091 to 2095	AFO	786-4950	Treasury (Customs)
	(forfeiture only)		
§ 2311	Fraud	786-4377	F.B.I.
§ 2319	Fraud	786-4377	F.B.I.

9-4.133 20 U.S.C.: Education

§ 581(f), (g)	Fraud	786-4377	F.B.I.
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9-4.134 21 U.S.C.: Food and Drug

§§ 101 to 105	GenL	786-4827	Agriculture (Office of Investigations)
§§ 111 to 131	GenL	786-4827	Agriculture (Office of Investigations)
§§ 134a to 134e	GenL	786-4827	Agriculture (Office of Investigations)
§ 135a	GenL	786-4827	Agriculture (Office of Investigation)
§§ 151 to 158	GenL	786-4827	Agriculture (Office of Investigations)
§ 334	AFO	786-4950	Agriculture (Office of Investigations)
§§ 458 to 461(b)	GenL	786-4827	Agriculture (Office of Investigations)
§ 461(c)	GenL	786-4813	F.B.I.
§§ 463 to 467	GenL	786-4827	Agriculture (Office of Investigations)
<i>Except</i>			
§ 467(b)	AFO (forfeiture only)	786-4950	Agriculture (Office of Investigations)
§§ 606 to 676	GenL	786-4827	Agriculture (Office of Investigations); F.B.I.
<i>Except</i>			
§ 673	AFO (forfeiture only)	786-4950	Agriculture (Office of Investigations); F.B.I.
§§ 801 to 966	N & DD AFO* (forfeiture only)	786-4704 786-4950	D.E.A.; F.B.I. D.E.A.; F.B.I.
<i>Except</i>			
§ 802(32)	N & DD**	786-5325	D.E.A.; F.B.I.
§ 813	N & DD*	786-5325	D.E.A.; F.B.I.
§ 841(a)(2)	N & DD*	786-5325	D.E.A.; F.B.I.
§ 848	N & DD*	786-4726	D.E.A.; F.B.I.
§ 849	N & DD* AFO (forfeiture only)	786-4704 786-4950	D.E.A.; F.B.I. D.E.A.; F.B.I.
§ 853(p)	AFO* (forfeiture only)	786-4950	D.E.A.; F.B.I.
§ 875	N & DD*	786-4726	Postal Service; D.E.A.
§ 967	AFO	786-4950	Related agency; D.E.A.
§ 967 to 969	GenL	786-4813	None
§ 981(a)(1)(B)	AFO	786-4950	None
§ 1037	GenL	786-4827	Agriculture (Office of Investigations)
§ 1041	GenL	786-4827	Agriculture (Office of Investigations)
§ 1049	GenL	786-4827	Agriculture (Office of Investigations)
	AFO (forfeiture only)	786-4950	
§ 1175	N & DD	786-4704	National Institute on Drug Abuse

9-4.135 22 U.S.C.: Foreign Relations and Intercourse

§ 211(a)	GenL	786-4827	
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§ 253	GenL	786-4805	F.B.I.
§ 286f(b)	GenL	786-4813	F.B.I.
§ 286f(c)	PInt	786-5057	F.B.I.
§ 287c	ISec**	786-4922	F.B.I.
§ 401	GenL	786-4827	Treasury (Customs); State (civil penalties)
	AFO	786-4950	Treasury (Customs); State (forfeiture only)
	ISec	786-4922	Treasury (Customs); State
§ 455	ISec**	786-4922	F.B.I.
§§ 611 to 621	ISec**	786-4922	F.B.I.
§§ 622 to 624	ISec	786-4936	F.B.I.
§ 1179	PInt	786-5057	F.B.I.
§ 1182	PInt	786-5057	F.B.I.
§§ 1198 to 1200	PInt	786-5057	F.B.I.
§ 1623(e), (f)	GenL	786-4827	Foreign Claims Settlement Comm.
§ 1631j to n	GenL	786-4827	F.B.I.
§ 1641p	GenL	786-4827	Foreign Claims Settlement Comm.
§ 1642m	GenL	786-4827	Foreign Claims Settlement Comm.
§ 1643k	GenL	786-4827	Foreign Claims Settlement Comm.
§§ 1731, 1732	GenL	786-4813	State
§ 1978	AFO	786-4950	Treasury (Customs)
§ 2291(c)	N & DD	786-4704	State, Transportation
§ 2518	GenL	786-4813	F.B.I.
§ 2667	All		None
§ 2708	GenL	786-4805	State
§§ 2774 to 2777	ISec	786-4922	Treasury (Customs); State
	AFO	786-4950	Treasury (Customs); State (forfeiture only)
§ 2778	ISec**	786-4922	Treasury (Customs); State
§ 4221	GenL	786-4813	F.B.I.
9-4.136 23 U.S.C.: Highways			
9-4.137 24 U.S.C.: Hospitals and Asylums			
§ 154	GenL	786-4813	F.B.I.
9-4.138 25 U.S.C.: Indians			
§ 68	PInt	786-5057	F.B.I.
§ 202	GenL	786-4805	F.B.I.
§ 251	GenL	786-4805	Interior
§ 399	GenL	786-4813	F.B.I.
§ 450d	Fraud	786-4377	F.B.I.
9-4.139 26 U.S.C.: Internal Revenue Code			
§ 452	Fraud	786-4377	F.B.I.
§ 3121(b)(17)	ISec	786-4913	Treasury
§§ 4181, 4182	GenL	786-4805	Treasury (AT & F)
§§ 4411 to 4405	OC & R	633-3758	Treasury; I.R.S.
§§ 4411 to 4414	OC & R	633-3758	Treasury; I.R.S.
§§ 4421 to 4423	OC & R	633-3758	Treasury; I.R.S.
§§ 5001 to 5687	OC & R	633-3758	Treasury (AT & F)
Except			
§§ 5607, 5608	AFO	786-4950	Treasury (AT & F)

	(forfeiture only)		
§§ 5612, 5613	AFO	786-4950	Treasury (AT & F)
	(forfeiture only)		
§ 5615	AFO	786-4950	Treasury (AT & F)
	(forfeiture only)		
§ 5661(a)	AFO	786-4950	Treasury (AT & F)
	(forfeiture only)		
§ 5671	AFO	786-4950	Treasury (AT & F)
	(forfeiture only)		
§ 5673	AFO	786-4950	Treasury (AT & F)
	(forfeiture only)		
§ 5681(c)	AFO	786-4950	Treasury (AT & F)
	(forfeiture only)		
§ 5683	AFO	786-4950	Treasury (AT & F)
	(forfeiture only)		
§ 5685(c)	AFO	786-4950	Treasury (AT & F)
	(forfeiture only)		
§ 5688	AFO	786-4950	Treasury (AT & F)
§ 5691	OC & R	633-3758	Treasury (AT & F)
§ 5723(c), (d)	GenL	786-4827	Treasury (AT & F)
§ 5763	AFO	786-4950	Treasury (AT & F)
§§ 5801 to 5803	GenL	786-4805	Treasury (AT & F)
§§ 5811, 5812	GenL	786-4805	Treasury (AT & F)
§§ 5821, 5822	GenL	786-4805	Treasury (AT & F)
§§ 5841 to 5848	GenL	786-4805	Treasury (AT & F)
§§ 5851 to 5854	GenL	786-4805	Treasury (AT & F)
§ 5861	GenL	786-4805	Treasury (AT & F)
§ 5871	GenL	786-4805	Treasury (AT & F)
§ 5872	AFO	786-4950	Treasury (AT & F)
§ 6050I	N & DD	786-4704	Treasury; I.R.S.
§ 6103	OEO**	786-4887	Treasury; I.R.S.
§ 7122	GenL	786-4827	Treasury (AT & F) Customs, (Secret Service) (Secret Service)
	(statutes administered by Criminal Division)		
§§ 7201 to 7203	All		None
§§ 7206 to 7209	All		None
§ 7212	GenL	786-4813	F.B.I.
§ 7213	PInt*	786-5057	Treasury; I.R.S.
§ 7214	PInt	786-5057	F.B.I.
§ 7262	OC & R	633-3758	Treasury; I.R.S.
§ 7272	GenL	786-4827	Treasury; I.R.S.
§§ 7301 to 7303	AFO	786-4950	Treasury (AT & F)
§§ 7321 to 7327	AFO	786-4950	Treasury (AT & F)
§ 7601	GenL	786-4813	Treasury (IRS)
§ 7607(2)	N & DD	786-7713	Treasury (Customs)
§ 9012	PInt	786-5057	F.B.I.; Federal Election Commission
§ 9042	PInt	786-5057	F.B.I.; Federal Election Commission

9-4.140 27 to 34 U.S.C.

9-4.141 27 U.S.C.: Intoxicating Liquors

§ 203	OC & R	633-3758	Treasury (AT & F)
§§ 205 to 207	OC & R	633-3758	Treasury (AT & F)
Except			

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§ 206 AFO 786-4950 Treasury (AT & F)
(forfeiture only)

9-4.142 28 U.S.C.: Judiciary and Judicial Procedure

§ 455 All None
 § 522nt GenL 786-4805 F.B.I.
 (child pornography)
 N & DD 786-4704 F.B.I.
 (drug violations)
 § 524 AFO 786-4950 Related agency; D.E.A.;
 F.B.I.; I.N.S.; and
 U.S. Marshals Service
 §§ 591, 592 PInt 786-5057 F.B.I. or other agency
 involved
 § 1746 GenL 786-4813 F.B.I.
 §§ 1781 to 1784 OIA 786-3500 None
 § 1822 All None
 § 1826 GenL 786-4813 U.S. Marshals Service
 §§ 2241 to 2250 GenL 786-4827
 (Aliens) I.N.S.;
 (All others) Bureau of Prisons
 § 2253 GenL 786-4827
 (Aliens) I.N.S.
 (All others) Bureau of Prisons
 § 2255 All None
 § 2514 AFO 786-4950 U.S. Claims Court
 § 2678 Fraud 786-4377 F.B.I.
 §§ 2901 to 2906 N & DD 786-4704 National Institute of
 Mental Health

9-4.143 28 U.S.C.: Appendix

F.R.E. App 633-3641 None

9-4.144 29 U.S.C.: Labor

§ 162 OC & R(L) 633-3666 F.B.I.
 § 186 OC & R(L) 633-3666 F.B.I.
 § 216a OC & R(L) 633-3666 Labor (Wage & Hour Division)
 §§ 431 to 439 OC & R(L) 633-3666 Labor (Office of Labor
 Management Standards)
 §§ 461 & 463 OC & R(L) 633-3666 Labor (Office of Labor
 Management Standards)
 § 501(c) OC & R(L) 633-3666 F.B.I.; Labor (Office of
 Labor Management Standards
 & Office of Labor
 Racketeering)
 § 502 OC & R(L) 633-3666 Labor (Office of Labor
 Management Standards)
 § 503(a) OC & R(L) 633-3666 Labor (Office of Labor
 Management Standards)
 § 503(b) OC & R(L) 633-3666 F.B.I. (employers payments);
 Labor (Office of Labor
 Management Standards)
 (union payments)
 § 504 OC & R(L)* 633-3666 F.B.I.
 § 521 GenL 724-7144 F.B.I.
 OC & R(L) 633-3666 F.B.I.
 § 522 OC & R(L) 633-3666 F.B.I.
 § 528 OC & R(L) 633-3666 F.B.I.

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§ 530	OC & R(L)	633-3666	F.B.I.
§ 629	GenL	786-4813	F.B.I.
§ 666(e), (f)	GenL	786-4827	Occupational Safety and Health Administration
§ 666(g)	Fraud	786-4377	F.B.I.
	GenL	786-4827	
	(When accompanying violation of (e), (f))		
§ 666(h)	GenL	786-4827	Labor
§ 928	PInt	786-5057	F.B.I.
§ 1111	OC & R(L)*	633-3666	F.B.I.
§ 1131	OC & R(L)	633-3666	Labor (Pension & Welfare Benefit Administration)
§ 1141	OC & R(L)	633-3666	F.B.I.
§ 1851	GenL	786-4827	Labor

9-4.145 30 U.S.C.: Mineral Lands and Mining

§ 184	AFO	786-4950	Interior
§ 689	Fraud	786-4377	F.B.I.
§§ 801 to 878	GenL	786-4827	Interior (MESA)
§ 933	GenL	786-4827	Interior (MESA)
§ 942	GenL	786-4827	Interior (MESA)
§ 1211(f)	PInt	786-5057	F.B.I.
§ 1267(g)	PInt	786-5057	F.B.I.
§ 1294	GenL	786-4813	F.B.I.
§ 1463	GenL	786-4813	Commerce (National Oceanic and Atmospheric Administration)
§ 1466	AFO	786-4950	Interior
§ 1720	GenL	786-4827	Interior

9-4.146 31 U.S.C.: Money and Finance

§§ 1341, 1342	PInt	786-5057	F.B.I.
§ 1350	PInt	786-5057	F.B.I.
§ 1517	PInt	786-5057	F.B.I.
§ 1519	PInt	786-5057	F.B.I.
§ 3721	GenL	786-4827	Defense; Transportation
§ 5111	GenL	786-4813	Treasury (Secret Service)
Except			
§ 5111(d)(1)	AFO	786-4950	Treasury (Secret Service)
§§ 5311 to 5322	N & DD	786-4704	Treasury
	(drug violations only)		
§§ 5313 to 5315	Fraud	786-4400	Treasury (Customs)
§§ 5316, 5317	GenL	786-4827	Treasury (Customs)
	OC & R	633-3594	F.B.I.
	(RICO prosecution only)		
§ 5317(b)	AFO*	786-4950	Treasury
	(forfeiture only)		
§ 5318(2)	Fraud	786-4400	Treasury (Customs)
§ 5321(a)(1), (a)(3)	Fraud	786-4400	F.B.I.
§ 5321(a)(2)	GenL	786-4827	Treasury (Customs)
§ 5322	Fraud	786-4400	Treasury (Customs)
§ 5323	N & DD	786-4704	Treasury
§ 5324	N & DD*	786-4704	Treasury (Customs)
	AFO	786-4950	Treasury (Customs)

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9-4.147 32 U.S.C.: National Guard

9-4.148 33 U.S.C.: Navigation and Navigable Waters

§§ 1 to 3	GenL	786-4827	Defense (Army Corps of Engineers)
§§ 401 to 533	GenL	724-6893	Transportation; Defense (Army Corps of Engineers)
§§ 554, 555	GenL	786-4827	Defense (Army Corps of Engineers)
§ 601	GenL	786-4827	Defense (Army Corps of Engineers)
§ 682	GenL	786-4827	Interior (Solicitor's Office— —Energy & Resources Division)
§ 928	Fraud	786-4377	F.B.I.
§ 931	Fraud	786-4377	F.B.I.
§ 937	GenL	786-4827	Labor (Solicitor's Office— Employees' Benefit Division)
§ 938	Fraud	786-4377	F.B.I.
§ 941	GenL	786-4827	Labor
§ 990(a) to (c)	Fraud	786-4377	F.B.I.
§ 1227	GenL	786-4827	Transportation (Coast Guard)
§ 1319(c)	GenL	786-4827	Agency involved; F.B.I. if major investigation is re- quired
§ 1908	GenL	786-4827	Transportation (Coast Guard —contact local Coast Guard District Commander)

9-4.149 34 U.S.C.: Navy

9-4.150 35 to 42 U.S.C.

9-4.151 35 U.S.C.: Patents

§ 33	GenL	786-4813	F.B.I.
§§ 181 to 185	ISec**	786-4913	F.B.I.
§ 186	GenL	786-4813	F.B.I.
§§ 187, 188	ISec**	786-4913	F.B.I.
§ 289	GenL	786-4827	F.B.I.
§ 292	Fraud	786-4377	F.B.I.

9-4.152 36 U.S.C.: Patriotic Societies and Observances

§§ 179 to 181	GenL	786-4813	F.B.I.
§ 379	GenL	786-4813	F.B.I.
§ 728	GenL	786-4813	F.B.I.

9-4.153 37 U.S.C.: Pay and Allowances of the Uniformed Services

9-4.154 38 U.S.C.: Veterans' Benefits

§ 218	GenL	786-4813	VA Special Police; F.B.I.
§ 787	Fraud	786-4377	F.B.I.
§ 1770	Fraud	786-4377	F.B.I.
§ 3301	PInt	786-5057	F.B.I.
§ 3313	Fraud	786-4377	F.B.I.
§ 3405	Fraud	786-4377	F.B.I.
§§ 3501, 3502	Fraud	786-4377	F.B.I.

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9-4.155 39 U.S.C.: Postal Service

§ 606	AFO	786-4950	U.S.P.S. (Postal Inspection Service)
§ 3001	GenL	786-4813	U.S.P.S. (Postal Inspection Service)
§ 3005	Fraud	786-4377	U.S.P.S. (Postal Inspection Service)
§ 3008	NOEU	633-5780	U.S.P.S. (Postal Inspection Service)
§§ 3010, 3011	NOEU	633-5780	U.S.P.S. (Postal Inspection Service)

9-4.156 40 U.S.C.: Public Buildings, Property, and Works

§ 13f-p	GenL	786-4813	Marshal of Supreme Court
§ 56	GenL	786-4813	F.B.I.
§ 101	GenL	786-4813	Federal Police Forces
§ 193b to h n to s	GenL	786-4813	Capitol Police, Special Police, U.S. Park Police
§ 212a	GenL	786-4813	Capitol Police
§ 212b	GenL	786-4813	Capitol Police
§ 255	GenL	786-4805	Non
§ 276a	Fraud	786-4377	Labor; F.B.I.
§ 318a-c	GenL	786-4813	F.B.I.
§ 318d	GenL	786-4813	G.S.A.
§ 328	Fraud	786-4377	Labor; F.B.I.
§ 332	Fraud	786-4377	Labor; F.B.I.
§ 883	GenL	786-4813	Labor; F.B.I.

9-4.157 40 U.S.C.: Appendix

§ 108	PInt	786-5057	F.B.I.
§ 402	Fraud	786-4377	Labor; F.B.I.

9-4.158 41 U.S.C.: Public Contracts

§§ 35, 36	Fraud	786-4377	F.B.I.
§ 51	Fraud	786-4377	F.B.I.
§ 54	Fraud	786-4377	F.B.I.
§ 119	Fraud	786-4377	F.B.I.

9-4.159 42 U.S.C.: The Public Health and Welfare

§ 261(b), (c)	GenL	786-4827	F.B.I.
§ 262	GenL	786-4827	H.H.S.
§ 263a	GenL	786-4827	H.H.S.
§§ 264 to 272	GenL	786-4827	H.H.S.
§ 274e	GenL	786-4805	F.B.I.
§ 290dd-3	N & DD*	786-4704	H.H.S.; National Institute on Drug Abuse
§ 290ee to 293	N & DD*	786-4704	H.H.S.; National Institute on Drug Abuse
§ 406	Fraud	786-4377	H.H.S.
§ 408	Fraud	786-4377	H.H.S.
§ 410(a)(17)	ISec	786-4922	H.H.S.
§§ 1306 to 1307	Fraud	786-4377	H.H.S.
§ 1320c-15	PInt	786-5057	F.B.I.
§ 1395nn	Fraud	786-4377	H.H.S.
§ 1396h	Fraud	786-4377	H.H.S.

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§ 1973i(c)	PInt*	786-5057	F.B.I.
§ 1973i(e)	PInt*	786-5057	F.B.I.
§ 2271	GenL	786-4827	F.B.I.
§§ 2272, 2273	GenL**	786-4827	F.B.I.
§§ 2274 to 2278	ISec**	786-4922	F.B.I.
§ 2278a	GenL	786-4813	F.B.I.
§ 2278b	ISec	786-4922	F.B.I.
§ 2280	GenL**	786-4827	F.B.I.
§ 2281	GenL	786-4813	F.B.I.
§ 2282	GenL	786-4827	F.B.I.
§ 2283	GenL	786-4813	F.B.I.
§ 2284	ISec**	786-4922	F.B.I.
§§ 2285 to 2293	GenL	786-4813	F.B.I.
§ 2971f	PInt	786-5057	F.B.I.
§ 3188	PInt	786-5057	F.B.I.
§ 3220(a), (b)	Fraud	786-4377	F.B.I.
§ 3222	Fraud	786-4377	Labor
§§ 3411 to 3423	N & DD	786-4704	H.H.S.
§ 3425	GenL	786-4827	F.B.I.
§ 3426	N & DD	786-4704	H.H.S.
§ 3524	PInt	786-5057	None
§ 3771	PInt	786-5057	F.B.I.
§§ 3791 to 3793	Fraud	786-4377	F.B.I.
§§ 3795 to 3795b	Fraud	786-4377	F.B.I.
§ 5157	Fraud	786-4377	F.B.I.
§§ 5410(b) to 5420	Fraud	786-4377	F.B.I.
§ 7413	GenL	786-4827	F.B.I.
§§ 8431 to 8435	GenL	786-4827	F.B.I.
§ 8611	Fraud	786-4377	H.H.S.; F.B.I.

9-4.160 43 to 50 U.S.C.

9-4.161 43 U.S.C.: Public Lands

§ 104	GenL	786-4813	F.B.I.
§ 254	GenL	786-4813	F.B.I.
§ 315a	GenL	786-4813	F.B.I.
§ 316k	GenL	786-4813	F.B.I.
§ 362	GenL	786-4813	F.B.I.
§§ 1061 to 1064	GenL	786-4813	F.B.I.
§ 1212	Fraud	786-4379	F.B.I.
§§ 1331 to 1343	GenL	786-4827	Labor (MSHA)
§ 1605(b)	PInt	786-5057	F.B.I.
§ 1619(f)(20)	Fraud	786-4379	F.B.I.

9-4.162 44 U.S.C.: Public Printing and Documents

9-4.163 45 U.S.C.: Railroads

§§ 1 to 18	GenL	786-4827	Transportation (Federal Railway Admin.)
§ 23	GenL	786-4827	Transportation (Federal Railway Admin.)
§§ 21, 29	GenL	786-4827	Transportation (Federal Railway Admin.)
§ 32	GenL	786-4827	Transportation (Federal Railway Admin.)
§ 34	GenL	786-4827	Transportation
§§ 38, 39	GenL	786-4827	Transportation

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			(Federal Railway Admin.)
§ 60	GenL	786-4827	F.B.I.
§§ 62, 63	GenL	786-4827	Transportation
			(Federal Railway Admin.)
§ 64a(a)	GenL	786-4827	Transportation
			(Federal Railway Admin.)
§§ 65, 66	GenL	786-4827	Transportation
			(Federal Railway Admin.)
§§ 71 to 73	GenL	786-4827	Agriculture
			(Off. of Investigations)
§ 81	GenL	786-4827	Treasury (Fiscal Service)
§ 83	GenL	786-4827	None
§ 152, Tenth	OC & R(L) *	633-3666	F.B.I.
§§ 181, 182	OC & R(L)	633-3666	F.B.I.
§ 2311	Fraud	786-4379	F.B.I.
§ 355(i)	Fraud	786-4379	F.B.I.
§ 359	Fraud	786-4379	F.B.I.
§ 438	GenL	786-4827	Transportation
			(Federal Railway Admin.)
§ 546(b)	GenL	786-4827	Transportation
			(Federal Railway Admin.)

9-4.164 46 U.S.C.: Shipping

§ 1333(e)	GenL	786-4827	Transportation (Coast Guard)
§ 2101(12)	GenL	786-4813	Transportation (Coast Guard)
§ 2101(22)	GenL	786-4813	Transportation (Coast Guard)
§ 2101(45)	GenL	786-4827	Transportation (Coast Guard)
§§ 2106, 2107	GenL	786-4827	Transportation (Coast Guard)
§ 2302	GenL	786-4827	Transportation (Coast Guard)
§ 2304	GenL	786-4813	Transportation (Coast Guard)
§ 3305	GenL	786-4827	Transportation
§ 3306(a)(5)	GenL	786-4827	Transportation
§ 3318	GenL	786-4827	F.B.I.
§ 3501	GenL	786-4813	Transportation
§ 3713	GenL	786-4827	Transportation (Coast Guard)
§ 3718	GenL	786-4827	Transportation
§ 4307	GenL	786-4827	Transportation
§ 4311	GenL	786-4827	Transportation
§ 6306	GenL	786-4813	F.B.I.
§ 7101	GenL	786-4813	F.B.I.
§ 7106	GenL	786-4813	F.B.I.
§ 7703	GenL	786-4813	F.B.I.
§ 8102	GenL	786-4827	F.B.I.
§ 8302	GenL	786-4827	F.B.I.
§ 8903	GenL	786-4827	Transportation
§ 8905	GenL	786-4827	Transportation
§§ 10314 to 10316	GenL	786-4827	F.B.I.
§§ 10505, 10506	GenL	786-4827	F.B.I.
§ 11501	GenL	786-4827	Transportation
§ 11504	AFO*	786-4950	Transportation
§ 12109(b)	N & DD	786-4707	Treasury (Customs)
§ 12309(a)	GenL	786-4827	Transportation
§ 12122	AFO	786-4950	Transportation
§ 12309	GenL	786-4827	Transportation

9-4.165 46 U.S.C. Appendix

§ 41	AFO	786-4950	F.B.I.
§§ 58, 59	GenL	786-4827	Transportation (Coast Guard)
§§ 142, 143	GenL	786-4827	Treasury (Customs)

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§ 277	GenL	786-4813	Treasury (Customs)
§ 292	AFO	786-4950	Transportation (Coast Guard)
§ 316	GenL	786-4827	Transportation (Coast Guard)
	AFO	786-4950	Transportation (Coast Guard)
			(forfeiture only)
§ 319	GenL	786-4827	Treasury
§ 325	AFO	786-4950	F.B.I.
§ 676	GenL	786-4827	Transportation (Coast Guard)
§ 738	GenL	786-4827	Transportation (Coast Guard)
§§ 801 to 842	GenL	786-4827	Federal Maritime Comm.
Except			
§ 808	AFO	786-4950	Transportation
			(forfeiture only)
§ 835	AFO	786-4950	Transportation
			(forfeiture only)
§ 883	AFO	786-4950	Transportation
			(forfeiture only)
§ 883-1	AFO	786-4950	Transportation
			(forfeiture only)
§ 883a	AFO	786-4950	Transportation
			(forfeiture only)
§ 941	GenL	786-4827	Transportation
§ 1171(b)	GenL	786-4827	Transportation (Coast Guard)
§ 1223	GenL	786-4827	Transportation (Coast Guard)
§ 1224	GenL	786-4827	Commerce; Federal Maritime Comm.
§ 1225	ISec*	786-4922	F.B.I.
§ 1226	GenL	786-4827	Federal Maritime Comm.
§ 1228	GenL	786-4827	Federal Maritime Comm.; Commerce
§ 1276	GenL	786-4827	F.B.I.
§ 1295f(d)	GenL	786-4827	Transportation
			(Maritime Admin.)
§§ 1901 to 1903	N & DD	786-4707	Transportation (Coast Guard)

9-4.166 47 U.S.C.: Telegraphs, Telephones, and Radiotelegraphs

§ 13	GenL	786-4827	F.C.C.
§§ 21 to 34	GenL	786-4827	F.C.C.
§ 37	GenL	786-4827	F.C.C.
§ 220(e)	GenL	786-4827	F.C.C.
§ 223	GenL	786-4827	F.B.I.
	NOEU	633-5780	F.B.I.
			(obscene comments)
§§ 301 to 416	GenL	786-4827	F.C.C.
§§ 501 to 503	GenL	786-4827	F.C.C.
§§ 507, 508	GenL	786-4827	F.C.C.
§ 510	AFO	786-4950	F.C.C.
§ 553	GenL	786-4813	F.B.I.
§ 559	GenL	786-4805	F.B.I.
§ 605	GenL	786-4813	F.B.I.
§ 606	GenL	786-4827	F.C.C.; Defense; G.S.A.

9-4.167 48 U.S.C.: Territories and Insular Possessions

9-4.168 49 U.S.C.: Transportation

§§ 521 to 529	GenL	786-4827	Transportation
§ 11109	GenL	786-4827	I.C.C.
§§ 11901 to 11904	GenL	786-4827	I.C.C.

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<i>Except</i>			
§ 11902a	GenL	786-4827	I.C.C.
	OC & R(L)	633-1567	I.C.C.
	(labor dispute)		
§§ 11906 to 11907	GenL	786-4827	I.C.C.
§§ 11909 to 11910	GenL	786-4827	I.C.C.
§§ 11912 to 11916	GenL	786-4827	I.C.C.

9-4.169 49 U.S.C.: Appendix

§§ 781 to 784	GenL	786-4827	DEA; Treasury (Customs, AT & F)
<i>Except</i>			
§ 782	AFO	786-4950	DEA; Treasury (Customs, AT & F)
	(forfeiture only)		
§ 1159(a)	GenL	786-4827	Transportation
§ 1401(g)	N & DD	786-4707	F.A.A.
§ 1471	GenL	786-4827	Transportation
§ 1472(a) to (h)	GenL	786-4827	Transportation (CAB)
<i>Except</i>			
§ 1472(b)(3)	N & DD	786-4707	F.A.A.
§ 1472(i)	GenL**	786-4805	F.B.I.
§ 1472(j) to (m)	GenL	786-4805	F.B.I.
§ 1472(n)	GenL**	786-4805	F.B.I.
§ 1472(o)	GenL	786-4805	F.B.I.
§ 1472(p)	GenL	786-4805	F.B.I.
§ 1472(q)	N & DD	786-4707	F.A.A.
	AFO	786-4950	F.A.A.
	(forfeiture only)		
§ 1474	GenL	786-4827	Treasury; F.B.I.
	AFO	786-4950	Treasury; F.B.I.
	(forfeiture only)		
§ 1474(a)	N & DD	786-4707	F.A.A.
§ 1484(d)	GenL	786-4813	Treasury; F.B.I.
§ 1509	AFO	786-4950	Treasury; F.B.I.
§ 1509(f)	N & DD	786-4707	F.A.A.
§§ 1522, 1523	ISec	786-4922	F.A.A.
§ 1679a	GenL	786-4827	F.B.I.
§ 1809	GenL	786-4827	Transportation
§ 2007	GenL	786-4827	Transportation
§ 2214	Fraud	786-4377	F.B.I.
§ 2216	Fraud	786-4377	F.B.I.

9-4.170 50 U.S.C.: WAR AND NATIONAL DEFENSE

§§ 21 to 24	ISec**	786-4943	F.B.I.
§ 167k	GenL	786-4827	Interior
§§ 191 to 192	ISec**	786-4913	Transportation (Coast Guard)
§ 217	PInt	786-5057	F.B.I.
§ 421	ISec**	786-4913	F.B.I.
§§ 422 to 426	ISec	786-4913	F.B.I.
§ 422(a)	GenL	786-4827	F.B.I.
§ 781	ISec*	786-4913	F.B.I.
§§ 782 to 798	ISec	786-4913	F.B.I.
§§ 841 to 844	ISec**	786-4913	F.B.I.
§§ 851 to 857	ISec**	786-4913	F.B.I.
§ 857	ISec	786-4913	F.B.I.
§ 1436(g)	Fraud	786-4377	F.B.I.
§§ 1701 to 1706	ISec**	786-4913	Treasury (Customs)

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§ 1809	GenL	786-4813	None
§§ 2401 to 2404	ISec**	786-4913	F.B.I.

9-4.171 50 U.S.C.: Appendix

§ 3	ISec**	786-4922	Treasury
§ 5	GenL	786-4827	Treasury (Customs)
§ 5(b)	ISec**	786-4922	Treasury
§ 12	AFO	786-4950	Treasury
§ 16	ISec**	786-4922	Treasury
	AFO	786-4950	Treasury
		(forfeiture only)	
§ 403f, m	GenL	786-4813	F.B.I.
§ 462	GenL*	786-4813	F.B.I.
§ 462(a)	GenL*	786-4813	F.B.I.
§ 473	OC & R	633-3758	Treasury (AT & F)
§ 510	GenL	786-4813	Defense; F.B.I.
§ 513	GenL	786-4813	Defense
§ 520	GenL	786-4813	Defense
§§ 530 to 532	GenL	786-4813	Defense
§§ 534, 535	GenL	786-4813	Defense
§§ 781 to 785	ISec**	786-4943	F.B.I.
§ 1191(c)(5)(A)	Fraud	786-4377	F.B.I.
§ 1193(h)	Fraud	786-4377	F.B.I.
§ 1215(e)(1)	Fraud	786-4377	F.B.I.
§ 1941d(b)	PInt	786-5057	F.B.I.
§ 1985	GenL	786-4827	None
§ 2009	GenL	786-4827	None
§ 2017m	GenL	786-4847	None
§ 2071	GenL	786-4827	Commerce
§ 2073	GenL	786-4827	
§ 2155(d)	GenL	786-4827	F.B.I.
§ 2155(e)	PInt	786-5057	F.B.I.
§ 2166	GenL	786-4827	None
§ 2284	GenL	786-4827	F.B.I.
§§ 2401 to 2420	ISec**	786-4943	F.B.I.
Except			
§ 2410(c), (q)	GenL	786-4827	F.B.I.

9-4.172 Uncodified

76 Stat. 907	GenL	786-4813	F.B.I.
5 Canal	GenL	786-4827	F.B.I.
22 D.C.	GenL	786-4805	Metropolitan P.D.

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9-5.000 RESOURCES AVAILABLE IN THE CRIMINAL DIVISION

9-5.100 [RESERVED]

9-5.200 LEGISLATIVE HISTORIES

Legislative histories of statutes assigned to the Criminal Division are maintained by the Legislative Reference Unit, Office of Enforcement Operations. Information concerning legislative histories may be obtained by writing to the Office of Enforcement Operations or by calling FTS 706-4998. When requesting a specific legislative history, considerable time will be saved by referring to the Public Law as it is set forth in the following list which includes the legislative history of each statute assigned to the Criminal Division since 1946 and many enacted prior thereto.

1st Congress

Public Law of September 24, 1789—Courts

Public Law of April 15, 1790—Treason

Public Law of April 30, 1790—Statute of Limitations

8th Congress

Public Law of March 26, 1804—Statute of Limitations

14th Congress

Public Law of March 3, 1817—Neutrality—Chapter 58

15th Congress

Public Law of April 20, 1818—Neutrality

18th Congress

Public Law of March 3, 1825—Assimilative Crimes Act

21st Congress

Public Law of March 2, 1831—Contempt of Court

32nd Congress

Public Law of February 26, 1853—Frauds upon Treasury of U.S.

34th Congress

Public Law of January 24, 1857—Immunity of Witnesses

37th Congress

Public Law of January 24, 1862—Immunity of Witnesses

Public Law of July 17, 1862—Treason

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Public Law of March 2, 1863—Frauds upon the Government

Public Law of March 2, 1863—Conflict of Interest

Public Law of March 3, 1863—Frauds upon the Revenue

38th Congress

Public Law of June 11, 1864—Officers

39th Congress

Public Law of April 5, 1866—Assimilative Crimes Act

Public Law of April 5, 1866—Forging and Uttering of Bonds, etc.

Public Law of July 18, 1866—Smuggling

40th Congress

Public Law of February 25, 1868—Immunity of Witnesses

41st Congress

Public Law of June 22, 1870—Department of Justice

Public Law of February 25, 1871—Saving Clause

42nd Congress

Public Law of May 23, 1872—Indictment and Information—Demurrer

Public Law of June 1, 1872—Fines—Nonpayment of Indigent Convicts

Public Law of June 8, 1872—Mail Fraud Act

43rd Congress

Public Law of March 3, 1875—Larceny

46th Congress

Public Law of May 17, 1879—Conspiracy Statute

48th Congress

Public Law of April 18, 1884—False Impersonation of a Government Officer

50th Congress

Public Law of February 9, 1889—Assimilative Crimes Act

Public Law of March 2, 1889—Mail Fraud Act

52nd Congress

Public Law of February 11, 1893—Immunity of Witnesses

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53rd Congress

Public Law of March 2, 1895—Lotteries

54th Congress

54-12 Trial—Verdict

Public Law of May 25, 1896—District of Columbia Physicians' Testimony

55th Congress

Public Law of July 7, 1898—Assimilative Crimes Act

56th Congress

Public Law of June 6, 1900—Extradition—Cuba

56-159 District of Columbia Code

59th Congress

59-36 Corrupt Practices Act, Federal

59-66 District of Columbia Non-Support Statute

59-223 Criminal Appeals Act

59-294 Puerto Rico—Qualifications of Jurors

59-338 Immigration and Naturalizations—Bureau to Establish

59-340 Live Stock Transportation Act

59-389 Immunity of Witnesses

59-403 China—United States Court

59-404 Department of Justice

60th Congress

60-221 Narcotics

60-350 Penal Code

61st Congress

61-269 Parole Act

61-274 Corrupt Practices Act, Federal

61-277 White Slave Traffic Act

61-470 Defense Secrets Act of 1911

61-475 Judicial Code

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62nd Congress

- 62-32 Corrupt Practices Act, Federal
- 62-298 Corrupt Practices Act, Federal
- 62-377 Theft from Interstate Shipment
- 62-430 Officers—Expenses of Lectures

63rd Congress

- 63-43 Federal Reserve Act
- 63-223 Narcotic Act

64th Congress

- 64-57 Officers—Prohibiting Use of Name of Members of Congress
- 64-68 House of Service—Railroads
- 64-239 Bills of Lading Act
- 64-301 Immigration Act of 1917
- 64-305 Flag Desecration—D.C.
- 64-368 Puerto Rico—Organic Act

65th Congress

- 65-24 Espionage Act
- 65-68 Explosives Act of 1917
- 65-222 Corrupt Practices Act, Federal
- 65-228 False Claims Against the Government
- 65-281 Judicial Code, to Amend

66th Congress

- 66-5 Officers—Members of Congress—Influence
- 66-47 American Legion, to Incorporate
- 66-70 Motor Vehicle Theft Act

67th Congress

- 67-92 Statute of Limitations

68th Congress

- 68-341 Thefts from Interstate Shipment, Amendment

68-415 Judicial Code, to Amend

68-506 Corrupt Practices Act, Federal

68-544 Helium Gas Act

68-596 Probation Act

69th Congress

69-254 Air Commerce Act of 1926 (REPEALED)

69-525 Sale of Public Office

69-658 Jurors—Qualifications D.C.

69-758 Helium Gas Act, as Amended

70th Congress

70-3 Statute of Limitations

70-10 Criminal Appeals Act, Amendment

71st Congress

71-133 Department of Justice—Appointment of Special Attorneys

71-202 Parole Act, to Amend

71-218 Prisons—to Reorganize the Administration of Federal Prisons

71-310 Probation Act, to Amend

71-548 Criminal Code, to Amend

72nd Congress

72-20 Puerto Rico—Changing Name

72-96 Logan Act

72-15 Statute of Limitations

72-189 Kidnapping Statute

72-275 Firearms D.C.

72-316 Thefts from Interstate Shipment, Amendment

73rd Congress

73-1 Bank Conservation Act

73-22 Securities Act of 1933

73-62 Assimilative Crimes Act

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- 73-74 Probation Act, to Amend
- 73-126 Extradition
- 73-151 Foreign Governments—Financial Transactions with
- 73-180 Statute of Limitations
- 73-217 Statute of Limitations
- 73-230 Killing or Assaulting Federal Officers
- 73-232 Kidnapping Statute, to Amend
- 73-233 Fugitive Felon Act
- 73-235 Bank Robbery Act of 1934
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- 73-291 Securities Exchange Act of 1934
- 73-324 Kickback Act
- 73-376 Anti-Racketeering Act
- 73-394 Frauds Against the Government
- 73-402 Arrests
- 73-416 Communications Act of 1934
- 73-474 Firearms Act, National
- 74th Congress
- 74-14 Hot Oil Act (Connally Act)
- 74-34 Assimilative Crimes Act
- 74-215 Convicts—Disposition of Products of Convict Labor
- 74-347 Liquor Law Repeal and Enforcement Act
- 74-424 Kidnapping Act, to Amend
- 74-729 Swiss Confederation Coat of Arms—Prohibiting Commercial Use
- 74-734 Evidence Bill
- 74-779 Strikebreakers Act
- 74-807 Liquor Enforcement Act of 1936
- 75th Congress
- 75-79 Officers—Diplomatic and Consular

- 75-123 Officers--Relating to Congressional Investigations
- 75-145 Hot Oil Act, as Extended
- 75-238 Marihuana Tax Act of 1937
- 75-268 District of Columbia--Offenses Against Property
- 75-352 Appeal and Error
- 75-418 Photographs, Sketches or Maps
- 75-571 Juvenile Court Act of the District of Columbia, as Amended
- 75-583 Foreign Agents Registration Act of 1938
- 75-666 Juvenile Delinquency Act, Federal
- 75-717 Food, Drug, and Cosmetic Act
- 75-718 Fair Labor Standards Act
- 75-779 Strikebreakers Act, Amendment
- 75-785 Firearms Act, Federal
- 76th Congress
- 76-54 Neutrality Act of 1939
- 76-76 Extortion, Amendment
- 76-158 Hot Oil Act, as Extended
- 76-252 Hatch Act
- 75-255 Stolen Property Act, as Amended
- 76-319 Foreign Agents Registration Act of 1938, as Amended
- 76-357 Seizure and Forfeiture of Carriers
- 76-366 Foreign Divorces--Prohibition of Solicitation by Mail
- 76-379 Social Security Act Amendments of 1939
- 76-401 Obstructing Justice
- 76-443 Espionage Act, to Amend
- 76-484 Motor Boat Act of 1940
- 76-548 Assimilative Crimes Act
- 76-575 Sabotage--Train Wrecking
- 76-598 Assimilative Crimes Act

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- 76-670 Alien Registration Act of 1940
- 76-675 Supreme Court—Proscribe Rules
- 76-703 Export Control
- 76-736 Statute of Limitations
- 76-753 Hatch Act, Amendment
- 76-762 Jurisdiction—U.S. District Court—Hawaii
- 76-783 Selective Training and Service Act of 1940
- 76-805 Officers—Retired Officers of Army, Navy, etc.
- 76-817 United States Commissioners—Jurisdiction—Petty Offenses
- 76-851 Convicts—Disposition of Products of Convict Labor
- 76-853 Nationality Act of 1940
- 76-861 Soldiers and Sailors Civil Relief Act of 1940
- 76-870 Voorhis Anti-Propaganda Act
- 77th Congress
- 77-5 Appropriation—Emergency Cargo Ship Construction
- 77-75 Export Control
- 77-89 War—Priorities and Allocation of Materiel
- 77-112 Confinement of Persons Convicted of Federal Offenses
- 77-160 Convicts—Disposition of Products of Convict Labor
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- 77-217 Cattle Theft Act
- 77-354 War—First War Powers Act, 1941
- 77-366 Food, Drug and Cosmetic Act, as Amended (Insulin)
- 77-381 Explosives Act, to Amend
- 77-390 Explosives on Board Certain Vessels
- 77-414 Neutrality Act of 1939, to Amend
- 77-421 Price Control (Original Act)

- 77-507 War—Second War Powers Act, 1942
- 77-532 Foreign Agents Registration Act of 1938, to Amend
- 77-543 Criminal Appeals Act, Amendment
- 77-624 Hot Oil Act, as Made Permanent
- 77-627 Photographs, Sketches, or Maps
- 77-638 Export Control
- 77-706 Statute of Limitations
- 77-729 Price Control, to Amend
- 77-732 Soldiers' and Sailors' Civil Relief Act of 1940, to Amend
- 77-750 Seal, Arms, Flag, and Other Insignia—Standard Service Flag
- 77-775 Explosives Act, to Amend
- 77-797 Opium Poppy Control Act of 1942
- 77-843 Denture Act

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- 78-2 Department of Justice—Additional Assistant Attorney General
- 78-52 Seal, Arms, Flag, and Other Insignia—Merchant Sailors
- 78-89 War—Labor Disputes Act
- 78-89 Corrupt Practices Act, Federal
- 78-127 Naval Zone and Waterfront Act
- 78-141 Alien Seaman Deportation Act
- 78-188 Sabotage—Amendment of Criminal Code
- 78-197 Selective Training and Service Act of 1940, to Amend
- 78-213 Informers Act
- 78-222 Court Reporters Bill
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- 78-247 Stowaway on Aircraft
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- 78-278 Currency and Coinage—Illegal Manufacture
- 78-286 Stowaway on Vessels

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- 78-395 Contract Settlement Act of 1944—Statute of Limitations
- 78-397 Export Control
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- 78-457 Surplus Property Act of 1944
- 78-458 War Mobilization and Reconversion Act
- 78-471 Pensions—Widows of Civil War Veterans
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- 78-503 Immigration Act of 1917, as Amended
- 78-509 War—Second War Powers Act, 1942, to Amend and Extend
- 79th Congress
- 79-47 Escapes of Prisoners of War and Interned Enemy Aliens
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- 79-58 May Act, to Amend
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- 79-99 Export Control
- 79-104 Renegotiation Act, Extension of Termination Date
- 79-108 Price Control, Extension
- 79-130 Tariff Act of 1930, as Amended
- 79-139 Food, Drug and Cosmetic Act, as Amended—Penicillin Drugs
- 79-169 Seal, Arms, Flag, and Other Insignia, Amendment—for Recognition of Services of Merchant Sailors
- 79-184 Motor Vehicle Theft Act, Amendment
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- 79-208 D.C.—Virginia Line to Establish a Boundary Line Between the D.C. and the Commonwealth of Virginia
- 79-245 Army and Navy—Courts Martial

- 79-264 United Nations Organization—Appointment of Representatives
- 79-270 War—Second War Powers Act of 1942, to Amend
- 79-271 Aliens—Admission to U.S. of Alien Spouses and Alien Minor Children of Citizen Members of U.S. Armed Forces
- 79-291 United Nations Organization—Extending Privileges
- 79-319 Kickback Act
- 79-322 War—First War Powers Act of 1941, to Amend
- 79-339 Army and Navy—Property Loss—Fire Damages
- 79-344 Communications Act of 1934, to Amend (Peterson Bill)
- 79-354 Army and Navy—Property Loss—Water Damages
- 79-379 Selective Training and Service Act of 1940, to Extend
- 79-388 Veterans' Emergency Housing Act of 1946
- 79-394 Indians—Devils Lake Indian Reservation
- 79-404 Administrative Procedures Act
- 79-419 Appropriations Act of 1946—Third Urgent Deficiency
- 79-427 Food—Renovated Butter Act
- 79-442 Atomic Energy—Weapons
- 79-473 Selective Training and Service Act of 1940, to Extend
- 79-475 War—Second War Powers Act of 1942, to Amend
- 79-480 Housing Act, to Amend
- 79-486 Anti-Racketeering Act (Hobbs Bill)
- 79-487 Mental Health Act, National
- 79-496 Mines—Discharge of Indigent Convicts for Nonpayment
- 79-534 Larceny
- 79-548 Price Control, Extension
- 79-570 Capitol Grounds
- 79-575 Overtime, Leave, and Holiday Compensation
- 79-585 Atomic Energy Act of 1946
- 79-591 Fugitive Felon Act, Amendment

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- 79-601 Legislative Reorganization Act of 1946
- 79-631 Seal, Arms, Flag, and Other Insignia, Amendment—Merchant Sailors
- 79-657 War Contract Hardship Claims
- 79-704 Armed Forces Leave Act of 1946
- 79-719 Social Security Act, to Amend
- 79-731 Farmers' Home Administration Act of 1946
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- 80-15 Firearms Act, to Amend
- 80-16 Food, Drug, and Cosmetic Act, to Amend—Streptomycin
- 80-24 Rubber Industry
- 80-26 Selective Service Records—Office
- 80-29 Decontrol Act, First of 1947
- 80-30 Sugar Control Extension Act of 1947
- 80-37 Larceny
- 80-49 Portal-To-Portal Act of 1947
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- 80-86 Officers—Counsel Employees
- 80-93 Officers—Extending Time for Service
- 80-97 Escapes of Prisoners—Liability of Prison Guards
- 80-101 Labor Management Relations Act, 1947
- 80-101 Corrupt Practices Act, to Amend (Sec. 304)
- 80-104 Insecticide, Fungicide, and Rodenticide Act
- 80-120 Housing Act, National, as Amended
- 80-120 Housing and Rent Act of 1947
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- 80-132 Reconstruction Finance Corporation Act, as Amended
- 80-145 War—Second War Powers Act of 1942, to Extend
- 80-179 Bribery—D.C.

- 80-181 Army and Navy—Property Loss—Navy Personnel
- 80-188 Decontrol Act, Second, of 1947
- 80-198 District of Columbia—Parole—Reorganization
- 80-199 Presidential Succession
- 80-239 War—Terminating Certain Emergency War Powers
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- 80-254 Armed Forces Leave Act of 1946, to Amend
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- 80-258 Fish—Black Bass
- 80-271 Appropriations, Supplemental, 1948 (CPA Liquidation)
- 80-278 General Provision—Title I, United States Code
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- 80-280 Bonds—Official and Penal
- 80-281 Copyrights
- 80-306 Seal, Arms, Flag, and Other Insignia—Widows
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- 80-394 Housing Act, National, as Amended, to Amend
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- 80-469 Rubber Act of 1948
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- 80-566 Arrest—FWA
- 80-567 Nationality Act of 1940, to Amend
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- 80-774 Displaced Persons Act of 1948
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- 80-783 Nationality Act of 1940, to Amend
- 80-806 Commodity Credit Corporation Charter Act
- 80-808 Canal Zone Code, to Amend

- 80-818 Animals—Humane Conditions
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- 80-881 Indians
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- 81-11 Export Control Act of 1949
- 81-31 Housing and Rent Act of 1949
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- 81-85 Commodity Credit Corporation Charter Act, to Amend
- 81-137 Officers—18 U.S.C. § 283
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- 81-164 Food, Drug and Cosmetic Act, to Amend—Aueromycin
- 81-171 Housing Act of 1949
- 81-186 Civil Aeronautics Act of 1936, to Amend—Explosives
- 81-207 Coast Guard
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- 81-285 Insanity, Inmate Persons—Provide Care and Custody
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- 81-360 Food, Drug, and Cosmetic Act, to Amend
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- 81-507 National Science Foundation Act of 1950
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- 81-513 Records—Preventing Disclosure—Cryptographic Systems, etc.
- 81-531 Obscenity
- 81-553 Jurisdiction—U.S. District Court—Hawaii
- 81-555 Displaced Persons Act of 1948, to Amend
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- 81-634 Bank Robbery—18 U.S.C. § 2113
- 81-635 Civil Aeronautics Act of 1938, to Amend
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- 81-733 Officers and Employees of Government—National Security
- 81-734 Social Security Act Amendments of 1950
- 81-762 Airport—District of Columbia—Authority to Arrest
- 81-764 Tuna Conventions Act of 1950
- 81-774 Defense Production Act of 1950
- 81-778 Civil Aeronautics Act of 1938, to Amend
- 81-779 Selective Service Act of 1948, to Amend
- 81-797 Federal Deposit Insurance Act
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- 81-845 Northwest Atlantic Fisheries Act of 1950
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- 81-906 Gambling—Interstate Transportation of Slot Machines
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- 82-14 Aliens—Immigration
- 82-33 Export Control Act of 1949, as Amended
- 82-51 Universal Military Training and Service Act
- 82-60 Displaced Persons Act of 1948, as Amended
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- 82-69 Defense Production Act of 1950, as Amended
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- 82-99 District of Columbia—Insanity Act, as Amended
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- 82-206 Smithsonian Institution—Policing of Building and Grounds
- 82-215 Food, Drug, and Cosmetic Act, as Amended

- 82-235 Atomic Energy Act of 1946, as Amended
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- 82-260 Firearms—D.C.—Disposition of Dangerous Weapons
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- 82-393 Emergency Powers Interim Continuation Act
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- 83-123 R.F.C. Liquidation Act and Small Business Act of 1953
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- 83-203 Refugee Relief Act of 1953
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- 83-256 Weather Modification Experiments—Committee to Study.
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- 83-287 Technical Changes Act of 1953
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- 83-427 D.C.—Employment of Parolees
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- 83-579 North Pacific Fisheries Act of 1954
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- 83-591 Internal Revenue Code of 1954
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- 83-740 Census—Title 13, Codification and Enactment into Law
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84-126 Customs—Importation of Personal Effects

84-165 Atomic Weapons Reward Act of 1955

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84-295 Defense Production Act Amendments of 1955

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84-330 Officers—Government Employment—Disloyalty Prohibition

84-335 Tobacco Tax Act, as Amended

84-345 Housing Amendments of 1955

84-362 Narcotics—Enforcement of Narcotic Laws

- 84-376 District of Columbia—Delegates to Political Conventions—Regulation of Election
- 84-378 Texas City Disaster—Claims Settlement
- 84-430 Immigration and Nationality Act, as Amended
- 84-474 Fugitive Felon Act, as Amended
- 84-511 Bank Holding Company Act of 1956
- 84-544 Escape Act, as Amended
- 84-557 Great Lakes Fishery Act of 1956
- 84-634 War Orphans' Educational Assistance Act of 1956
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- 84-662 Seed Act, Federal, as Amended
- 84-672 Food, Drug, and Cosmetic Act, as Amended—Coloring of Oranges
- 84-674 Canal Zone Code, as Amended
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- 84-709 Aircraft and Motor Vehicles—Destruction
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- 84-830 Alaska Mental Health Enabling Act
- 84-831 Banks and Banking—Savings and Loan Association—Embezzlement
- 84-834 Pay Act of 1956—Federal Executive
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- 84-861 Grain Standards Act, as Amended—Penalty for Violation
- 84-864 Commodity Credit Corporation Charter Act, as Amended
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- 84-870 Renegotiation Amendments Act of 1956
- 84-871 Indians—Theft of Tribal Property
- 84-874 Plants—Prohibit Transportation of Water Hyacinths
- 84-880 Social Security Act of 1956
- 84-896 Guam Organic Act—Application of Federal Laws
- 84-898 Servicemen's Readjustment Act of 1944, as Amended—Loans
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- 85-334 District of Columbia Insurance Acts, Amendments
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- 85-375 Power or Train Brakes Safety Appliance Act of 1958
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- 85-441 Temporary Unemployment Compensation Act of 1958
- 85-444 Guam Organic Act, as Amended
- 85-506 Automobile Information Disclosure Act
- 85-508 Alaska—Admission into Union
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- 85-577 Firearms—Civilian Personnel—Department of Defense
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- 85-699 Small Business Investment Act of 1958
- 85-700 Immigration and Nationality Act, as Amended
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- 85-836 Labor Welfare and Pension Plan Disclosure Act
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- 85-851 Virgin Islands—Revised Organic Act, as Amended
- 85-857 Veterans' Benefits
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- 86-219 District of Columbia—Fire and Closing-Out Sales
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- 86-234 Animal—Horses and Burros—Methods of Hunting
- 86-244 Coast Guard—Lifesaving Equipment—Regulation
- 86-256 Penitentiary Imprisonment—Consent
- 86-257 Labor-Management Report and Disclosure Act of 1959
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- 86-286 Penal Institutions—Acquisition of Land
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- 86-429 Narcotics Manufacturing Act of 1960
- 86-513 Post Office—Disclosure on Circulation
- 86-519 Bankruptcy—Claims
- 86-531 District of Columbia Legal Aid Act
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- 86-547 Animals—Humane Slaughter of Livestock
- 86-588 Cotton Statistics and Estimates Act, as Amended—Cotton Sampling
- 86-613 Hazardous Substances Labeling Act
- 86-618 Food—Color Additive Amendments of 1960
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- 86-695 Kickback Act, as Amended
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- 87-347 Mines and Minerals—Lead and Zinc Mining—Stabilization
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- 87-368 Fugitive Felon Act, as Amended
- 87-371 Stolen Property Act, as Amended—Counterfeiting—Tax Stamps
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- 87-423 D.C. Abolition of Mandatory Capital Punishment
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- 87-667 Counterfeiting—Tokens, Slugs
- 87-669 Appeals—Supreme Court
- 87-703 Food and Agriculture Act of 1962
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- 87-781 Drug Amendments of 1962
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- 88-353 Credit Union Act, Federal, as Amended—Organization and Operations
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- 88-597 District of Columbia Hospitalization of the Mentally Ill Act
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- 89-68 Anti-Racketeering—Interstate and Foreign Travel or Transportation in Aid of Racketeering Enterprises—Include Arson
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- 89-554 Government Organization and Employees—Enactment of 5 U.S.C.
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- 89-578 District of Columbia Certified Public Accountancy Act of 1966
- 89-590 Habeas Corpus—Jurisdiction and Venue
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- 89-775 District of Columbia—Child Abuse—Reporting Requirements
- 89-776 District of Columbia—Reporting of Injuries Caused by Firearms
- 89-793 Narcotic Addict Rehabilitation Act of 1966
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- 90-23 Administrative Procedure Act—Public Information—Codification of Pub.L. No. 89-417
- 90-40 Military Selective Service Act of 1967
- 90-83 Government Organization and Employees—Amendment of 5, 14, 37 U.S.C.
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- 90-174 Partnership for Health Amendments of 1967
- 90-201 Wholesome Meat Act
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- 90-258 Commodity Exchange Act, Amendment
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- 90-291 Law Enforcement Officers—Injury or Death Benefits—Eligibility
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- 90-321 Consumer Credit Protection Act
- 90-331 Presidential Candidates—Secret Service Protection
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- 90-353 Post Office—Postage Stamps—Reproductions
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- 90-381 Seal, Arms, Flag, and Other Insignia—Flag Desecration
- 90-384 Post Office—Employees—Prosecution for Embezzlement
- 90-389 Bank Protection Act of 1968
- 90-399 Animal Drug Amendments of 1968
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- 90-560 Motor Vehicle Master Keys—Mailing—Regulation
- 90-578 Federal Magistrates Act
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- 90-618 Gun Control Act of 1968
- 90-632 Military Justice Act of 1968
- 90-639 Food, Drug, and Cosmetic Act, as Amended—LSD and Other Depressant and Stimulant Drugs—Possession, Restriction
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- 91-138 Federal Contested Election Act
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- 91-184 Export Administration Act of 1969
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9-6.000 RELEASE AND DETENTION PENDING JUDICIAL PROCEEDINGS9-6.100 ANALYSIS OF THE BAIL REFORM ACT OF 1984—18 U.S.C. §§ 3141 to 31509-6.101 Background of the Bail Reform Act

Early federal bail policy tended to be quite favorable toward defendants, particularly those who could afford to post some monetary bond. Federal bail policy became even more favorable toward defendants with the passage of the Bail Reform Act of 1966. The aim of the Bail Reform Act of 1966 was to reduce or eliminate economic status as a factor in admission to bail. Without repudiating that approach, *per se*, the Bail Reform Act of 1984 moved sharply away from the notion that all or most defendants should be admitted to bail without regard to dangerousness. The current bail provisions—*i.e.*, those of the 1984 act—establish a forthright means of detaining a dangerous offender, as well as an offender who is likely to flee, pending trial and during appeal. Specifically, current bail law: (1) allows judges and magistrates to consider danger to the community or individuals; (2) permits the imposition of additional types of release conditions, including probationary-type supervision, and permits the rejection of bail money if its source is illegal; (3) allows pretrial detention of a defendant if no condition of release will assure his/her appearance or the safety of the community or specific individuals; (4) provides procedures for revoking the release of a defendant who has violated a condition of his/her release; (5) bars post-sentence release unless a defendant proves that (a) such release would not pose flight or safety risks, and (b) that the case is likely to be reversed on appeal; and (6) raises penalties for bail jumping and provides mandatory penalties for crimes committed while on pretrial release.

9-6.110 Offenses

The provisions of the Bail Reform Act cover all federal criminal offenses except those triable by military tribunal. 18 U.S.C. § 3156(a)(2). Although an offense under the District of Columbia Code is in violation of an Act of Congress, specific bail provisions in that code govern offenses in Washington, D.C. See District of Columbia Code §§ 23.1321 to 1332. However, the Bail Reform Act of 1984 was largely modeled after the District of Columbia's law on bail, so that District of Columbia case law may be helpful in analyzing issues that arise in federal bail laws. See pp. 16-17, *infra*.

9-6.120 Judicial Officers

The term "judicial officer" within the Bail Reform Act means, unless otherwise indicated, any person or court authorized under 18 U.S.C. § 3041 or the Federal Rules of Criminal Procedure to detain or release a person

before trial or sentencing or pending appeal, and any judge of the Superior Court of the District of Columbia. See 18 U.S.C. § 3156(a)(1).

9-6.130 Release and Detention Authority

Federal Rule of Criminal Procedure 5(a) requires that an arresting officer take the defendant without unnecessary delay before the nearest available federal magistrate or, in the event that no federal magistrate is available, before a state or local judicial officer described in 18 U.S.C. § 3041. Any such judicial officer may order release or detention pending trial. 18 U.S.C. § 3141.

Release authority for offenders awaiting sentencing or pending appeal, however, is confined to judges of courts of original jurisdiction over the offense and to judges of the federal appellate courts. State court judges and United States Magistrates (who derive their jurisdiction from the district court) are not authorized to set conditions of release after conviction. See 18 U.S.C. § 3141(b). United States Magistrates are apparently precluded from acting on bail motions after any finding of guilt, even where the magistrate presided over the trial under 18 U.S.C. § 3401. See also Federal Rules of Appellate Procedure 4(b), which directs that applications for release pending appeal shall be made in the first instance in the district court.

9-6.140 Release and Detention Prior to Trial

Section 3142 of Title 18 is the heart of the Bail Reform Act. It provides in subsection (a) that when a defendant is brought before a judicial officer for the setting of bail the officer shall do one of four things.

The first two alternatives provide that the judicial officer may release the person on personal recognizance or upon the execution of an unsecured appearance bond subject to conditions set forth in subsection (b), or may release the person subject to one or more of the specified conditions set forth in subsection (c). In releasing a person on conditions under subsection (c), (or under any provision of § 3142), the judicial officer must impose a condition that the person not commit a federal, state, or local crime during the period of release. In addition, the judicial officer may impose one or more of the conditions set forth in Section 3142(c)(2)(A) to (N). These include such conditions as the execution of a bail bond with solvent sureties, probationary-type supervision, and partial custody. Moreover, there is a catch-all provision that allows the judicial officer to impose any other condition reasonably necessary to assure the defendant's appearance and the safety of any other person and the community. It should be noted that Section 3142(g)(4) specifically permits inquiry into the source of property to be used to secure a bond, and requires the judicial officer to decline to accept the use of any property that, because of its source, will not reasonably assure the appearance of the person as

required; this provision was designed to address the problem of defendants who regarded the forfeiture of bond as simply a cost of doing business.

Two other courses of action are possible. The first applies only in those situations in which the defendant is already on a form of conditional release, such as probation, parole, or pretrial release for another federal or state offense, or is subject to being deported, and in which the judicial officer determines that the person may flee or pose a danger to another person or to the community. In that situation the judicial officer must order the defendant temporarily detained for up to ten days—not counting Saturdays, Sundays, and holidays—and must direct the attorney for the government to notify the appropriate probation or parole officer or the Immigration and Naturalization Service (INS). If the probation or parole officer or the INS fails to take the defendant into custody within ten days, he/she is to be treated in accordance with the other provisions of the chapter; that is, the judicial officer must consider what, if any, release conditions are necessary to ensure his/her presence and the safety of the community (subsection (d)).

The final option open to the judicial officer is detention under subsection (e). Under this provision, he/she may order the defendant detained prior to trial if, after a hearing pursuant to subsection (f), he/she finds that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of any other person and the community.

It should be emphasized that, without a detention hearing, a defendant may not be detained as a result of the imposition of a high money bond or another financial condition of release which he/she is unable to meet. The act expressly states in subsection (c) that "[t]he judicial officer may not impose a financial condition that results in the pretrial detention of the person." This does not mean, however, that in a case in which a magistrate believes that a cash bond is necessary he/she must set the amount at a low figure which the defendant plainly will be able to meet. See S.Rept. No. 98-225 on S. 1762, Senate Committee on the Judiciary, 98th Cong., 1st Sess. (September 14, 1983) at 16 (hereinafter referred to as S.Rept. 98-225). It does mean that after a cash bond amount is set, a subsection (e) hearing, even if it had been unanticipated, may nonetheless have to be held.

In situations in which the judicial officer orders the defendant released on a specified condition, however, the defendant may be detained until he/she is able to satisfy the imposed condition. The fulfilling of the condition is, of course, a requisite to such release. For example, if the judicial officer determines that release on substantial bond would be appropriate, and that the defendant in light of his/her apparent means will probably be able to secure a bond in that amount, the defendant may be detained until the necessary bond can be arranged.

Of course, if the judicial officer sets an appropriate money bond and the defendant simply proves unwilling to comply with its provisions, the defendant would remain detained without a detention hearing. In such a case, the detention would result from the defendant's unwillingness to comply with the financial condition—not from the financial condition itself. Thus, the judicial officer can set a money bond at an amount which is reasonable in relation to the financial condition of the defendant, or release the accused on another condition or combination of conditions that will assure his/her appearance and the safety of the community, or hold a detention hearing.

9-6.141 Grounds for a Pretrial Detention Hearing

Subsection (f) of Section 3412 provides that the judicial officer *must* hold a hearing to determine whether any condition or combination of conditions will reasonably assure the person's appearance and the safety of any other person and the community *if the attorney for the government moves for such a hearing* and if the case involves one of the following categories of offenses:

A. A crime of violence, a term defined in 18 U.S.C. § 3156 to include either: (1) an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another (e.g., assault, robbery, and loansharking); or (2) any other offense that is a felony and by its nature involves a substantial risk that physical force against the person or property of another *may* be used in the course of its commission (e.g., burglary, but not possession of a firearm);

B. An offense for which the maximum sentence is life imprisonment or death;

C. A narcotics offense under Title 21 of the United States Code for which imprisonment for ten years or more is prescribed; or

D. Any felony, even a nonviolent felony not involving drugs, if the person already has two or more federal convictions for a crime of violence, a crime punishable by life imprisonment, or a 10-year drug felony, or equivalent state convictions.

Note that if a pretrial detention hearing is to be based on any one of these four situations, it *must* be sought by the attorney for the government. The magistrate cannot order a detention hearing on his/her own initiative just because the person is accused of having committed a crime of violence, a capital offense, or a 10-year drug felony.

On the other hand, there are two other situations which allow for a detention hearing on motion *either* of the attorney for the government or of the judicial officer. They are:

A. When there is a serious risk that the person will flee; or

B. When there is a serious risk that the person will "obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror." See 18 U.S.C. § 3142(f)(2).

9-6.142 Time for Holding a Pretrial Detention Hearing—the "First Appearance" Rule

Section 3142(f) of Title 18 requires that any detention hearing be held immediately upon the defendant's first appearance before the judicial officer unless the defendant or the government seeks a continuance. The defendant may seek a continuance of up to five days, but the government is limited to a continuance of up to three days. It is the government's position that these continuances are a matter of right. Either side can seek a longer period for good cause. For example, it would be appropriate for the government to seek an extended or indefinite continuance if the defendant is to be evaluated for competency or insanity. The defendant is to be confined during any continuance, and during such custody may be ordered to undergo a medical examination to determine whether he/she is an addict.

Application of the "first appearance" rule has posed considerable difficulties. Because Section 3142(c) allows amendment of conditions of release at any time, it is the Department's position that a detention motion can be made at any time, and that the hearing must be held at the first practicable opportunity after the motion is made. Some of the cases are consistent with this approach; others have read the "first appearance" rule to mean that the motion is banned if the motion is not made and no hearing held the first time the defendant appears in court in connection with the case. Compare *United States v. Payden*, 759 F.2d 202 (2d Cir.1985) (the rule is to be strictly applied) with *United States v. Maull*, 773 F.2d 1479 (8th Cir.1985) (*en banc*) (the fact that the district court has the authority to conduct a de novo review of a magistrate's decision, with all the options open to it that the magistrate had, means that pretrial detention can be ordered after the "first appearance" has occurred). See also *United States v. Medina*, 775 F.2d 1398 (11th Cir.1985). A motion for pretrial detention can be made in conjunction with a motion for a 10-day hold under Section 3142(d), or as that time is about to expire. *United States v. Alatishe*, 768 F.2d 364 (D.C.Cir.1985).

In order to minimize problems, the decision to seek pretrial detention should be made before the defendant's first appearance before any judicial officer if at all possible. A 3-day continuance should be requested if the prosecutor finds that the first appearance is about to conclude and no decision has been made about seeking pretrial detention. In cases where pretrial detention must be sought after the first appearance the detention

motion, whenever possible, should be framed in the light of new circumstances which have altered the government's earlier position on bail and which are being brought immediately to the court's attention. Cf. *United States v. Resek*, 602 F.Supp. 1126 (S.D.N.Y.1985). Prosecutors must be mindful of the necessity of making the best possible record on what the courts are likely to view as an out-of-time motion.

9-6.143 Defendant's Rights at a Pretrial Detention Hearing

At a pretrial detention hearing a defendant has a right to be represented by counsel—court-appointed if he/she cannot afford to pay—and has the right to testify, to present witnesses and other evidence on his/her behalf, and to cross-examine witnesses for the government. As was the case under prior law on bail hearings, the presentation and consideration of information does not have to conform to the rules of evidence. The defense may present testimony by proffer at a detention hearing. 18 U.S.C. § 3142(f); *United States v. Frappier*, 615 F.Supp. 51 (D.C.Mass.1985).

The defendant's right to call witnesses does not include a right to subpoena government investigators or other witnesses as a vehicle for discovery. Nor does the defendant have a right to obtain documents in the possession of the government. Discovery is governed by the Federal Rules of Criminal Procedure; the Bail Reform Act and its legislative history evince no intent to change these discovery procedures.

9-6.144 Factors to be Considered at a Pretrial Detention Hearing

There must be a sufficient evidentiary basis for the judicial officer's determination that detention is necessary. In making this determination the judicial officer is required to consider: (1) the nature and circumstance of the offense; (2) the weight of the evidence against the defendant; (3) the history and characteristics of the defendant, including his/her character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, past conduct, criminal history, abuse of alcohol or drugs, appearance record, and whether he/she is on probation, parole, or other release pending trial, sentencing, or appeal; and (4) the nature and seriousness of any alleged danger to a person or to the community if the defendant were to be released.

If the criminal history of the defendant is to be relied upon, arrest and conviction records should be presented. It should be noted that the legislative history makes clear that the validity of past convictions may not be challenged at the pretrial detention hearing. See S.Rept. No. 98-225, *supra*, at 22. Any attempt on the part of a defendant to do so should be resisted vigorously.

If detention is sought because of the nature of the current offense, i.e., because it is a crime of violence, a capital offense, or a 10-year

drug felony, the prosecutor should introduce evidence of the specific elements or circumstances of the offense. Similarly, if detention is sought because the defendant has threatened a witness, evidence of the threat should be introduced. This burden can be satisfied by police reports, police testimony, or proffer of the testimony of civilian witnesses.

If a defendant is to be detained on grounds of dangerousness, as opposed to risk of flight, the judicial officer must find, by clear and convincing evidence, that no condition or combination of conditions will assure the safety of other persons and the community. However, if detention is to be based on risk of flight, that risk need only be proved by a preponderance of the evidence.

Danger to the community may be demonstrated by the defendant's leadership position in a criminal enterprise, even if he/she performs no violent act himself/herself. See *United States v. Colombo*, 777 F.2d 96 (2d Cir. 1985). Moreover, releasing a defendant because of the anticipated length of the pretrial period may be an abuse of discretion. *Colombo, supra*.

9-6.145 Presumptions

The Bail Reform Act sets forth presumptions that aid the government at the detention hearing in two different ways. First, there is a rebuttable presumption that no conditions of release can reasonably assure the safety of another person or the community when the defendant is charged with a crime of violence, a capital offense, a 10-year drug felony, or any felony if the defendant has the sort of criminal record described at Section 3142(f)(1)(D), if the judicial officer finds that (1) the person has been convicted of a federal or state crime which was also a crime in one of these same categories (2) the offense which led to that earlier conviction took place while the defendant was on pretrial release for any federal, state or local offense, and (3) no more than five years have elapsed since the previous conviction or release from prison for that conviction.

Second, there is a rebuttable presumption that no conditions of release can reasonably assure the appearance of the defendant or the safety of the community when the judicial officer finds that there is probable cause to believe that the defendant has committed (1) a 10-year drug offense or (2) a federal crime of violence in violation of 18 U.S.C. § 924(c).

The early case law under the act discussed several issues raised by the presumptions. The constitutionality of the presumptions has been upheld. A recurring issue concerns the burden placed on the defendant by the statutory presumptions of Section 3142 (pretrial detention hearings) and Section 3148 (violations of conditions of release). Specifically, do the presumptions contained in these sections shift the burden of *persuasion* to the defendant to show why he/she should not be detained before trial, or

does triggering the presumption only shift the burden of production to the defendant, requiring the defendant to produce evidence justifying pretrial release, but keeping the ultimate burden of persuasion on the government?

The Department has maintained in court when the issue has arisen that, once the presumption has been triggered, the burden lies on the defendant to persuade the court by a preponderance of the evidence that there are conditions justifying release. The government's position is based on the legislative history of the act set forth in S.Rept. 98-225 at pp. 19-20.

Section 3148 states that a rebuttable presumption requiring detention arises when there is probable cause to believe that a defendant has committed a felony while on pretrial release. The legislative history of Section 3148, taken in context, indicates that Congress expected that detention would be the rule, and not the exception, in these cases. See S.Rept. at 34-36. The Department maintains that this expectation by Congress indicates a congressional intent to impose a burden of persuasion on the defendant. Prosecutors should be prepared to argue that the Senate Report's reference to Section 3147's imposing a "burden ... to come forward with evidence," *ibid.* at 36, must be read in the context of the Report's entire analysis of Section 3148, see *ibid.* at 34-36, and does not indicate a desire to merely shift the production burden.

The Department's position has found only limited judicial support. See *Alatishe, supra*; *United States v. Hazime*, 762 F.2d 34 (6th Cir.1985); *United States v. Chimurenga*, 700 F.2d 400 (2d Cir.1985); *United States v. Jessup*, 757 F.2d 378 (1st Cir.1985); *United States v. Moore*, 607 F.Supp. 489 (N.D.Cal.1985); *United States v. Freitas*, 602 F.Supp. 1283 (N.D.Cal.1985); *United States v. Cepere*, 599 F.Supp. 1322 (D.Mass.1984), modified 603 F.Supp. 375 (1985); *United States v. Aiello*, 598 F.Supp. 740 (S.D.N.Y.1984).

Prosecutors should continue to argue that the burden to persuade the court, by a preponderance of the evidence, is shifted to the defendant in those circuits which have not taken a position yet on this issue. However, in order to avoid unnecessary remand, detention arguments involving presumptions should be framed in such a way that the court can order detention regardless of which view the circuit court might take. Detention orders should specify the court's ruling under both standards. Further, if a court has decided that only the burden of production is affected, it should be argued that the presumption does not burst upon introduction by the defendant of some scintilla of evidence in rebuttal. Rather, the presumption should continue to be a factor to be considered by the court in deciding whether to order release. See *Jessup, supra*.

Another recurring question about the Bail Reform Act is whether the indictment alone establishes probable cause to believe that a crime trig-

gering a Section 3142(e) presumption has been committed or whether the judicial officer must make an independent determination of probable cause. The Department's position is that the indictment alone suffices. See *United States v. Contreras*, 776 F.2d 51 (2d Cir.1985); *Hazime, supra*; *United States v. Vargas*, 804 F.2d 157 (1986).

In *United States v. Allen*, 605 F.Supp. 864 (W.D.Pa.1985), the court held that the judicial officer must make an independent determination of probable cause; however, the court noted that the indictment could be admitted as evidence "along with all the inferences and presumptions which flow therefrom." In *United States v. Maktabi*, 602 F.Supp. 607 (S.D.N.Y.1985), the court held that the indictment alone was not sufficient.

To avoid problems, especially in light of the "hearing at first appearance" situations discussed elsewhere in this chapter, prosecutors may want to call the case agent as a witness to establish the relevant facts of the crime at the detention hearing where no harm would result to the government's later prosecution of the case.

9-6.146 Contents of a Pretrial Release Order

Subsection (h) of Section 3142 sets forth specific requirements concerning a release order that apply whenever a defendant is released either because a detention hearing was not sought or, if a hearing was held, the judicial officer declined to order the defendant confined. All of the conditions of release must be set out in writing and, in addition, the judicial officer must advise the person of three things:

A. The judicial officer must advise the person of the penalties for violating a condition of release, including the penalty for committing an offense while on pretrial release. This provision refers to Section 3147 which provides that a person convicted of an offense while on pretrial release may be imprisoned for up to ten years if the new offense is a felony, or for one year if the new offense is a misdemeanor. These penalties are, of course, in addition to any other penalty for the offense in connection with which the person was released, and the term of imprisonment shall be consecutive.

B. The judicial officer must advise the person of the consequences of violating a condition of release, including the immediate issuance of a warrant for the defendant's arrest. See Section 3146 which sets out a grading system to provide for more severe punishment depending on the severity of the offense for which the defendant is on pretrial release. This provision also refers by implication to the provisions in Section 3148 which provide that a person on pretrial release who violates a release condition is subject to revocation of the release, to an order of detention, and to prosecution for contempt of court.

C. The judicial officer must advise the person of the provisions of the statutes relating to witness and jury tampering and intimidation and obstruction of criminal investigations (see 18 U.S.C. §§ 1503, 1510, 1512, and 1513).

All conditions of release must bear upon appearance and dangerousness. See *Cf. United States v. Auriemma*, 773 F.2d 1520 (11th Cir.1985), and *United States v. Frazier*, 772 F.2d 1451 (9th Cir.1985).

9-6.147 Contents of a Detention Order

Subsection (i) of Section 3142 provides that a detention order must:

A. Contain written findings of fact and a written statement of reasons for detention;

B. Direct that the person be committed to the custody of the Attorney General for confinement, which to the extent practicable, should be separate from convicted or sentenced persons;

C. Direct that the person be afforded reasonable opportunity for private consultation with counsel; and

D. Direct that on a subsequent court order or a request from an attorney for the government, the person in charge of the defendant's place of confinement deliver him/her to a United States Marshal for purposes of a court appearance.

By subsequent order the judicial officer can order the temporary release of the defendant in the custody of a United States Marshal or other person if such release is necessary to prepare his/her defense or for some other compelling reason.

9-6.148 Material Witnesses

A material witness also may be detained. Section 3144 provides specific authority for a judicial officer to order the arrest of a material witness if, by affidavit, it appears that it may become impracticable to secure the presence of the person by subpoena. An arrested material witness may be detained in accordance with the provisions of 18 U.S.C. § 3142. However, no material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be assured by deposition, and if further detention is not necessary to prevent a failure of justice.

9-6.150 Review and Appeal of a Release or Detention Order

Section 3145 provides that if a defendant is released by a magistrate, the government may file a motion for revocation of the order or amendment of the conditions. Similarly, the defendant may move for a modification of

release conditions set by a magistrate. In both instances, the review of the magistrate's order is made by the district court, and the review by the district court is de novo. See *Mauil, supra*; *United States v. Delker*, 757 F.2d 1390 (3d Cir.1985). Although the district court should conduct a de novo review of the bail/detention decision, it is not necessary that the district court conduct a new hearing. It is permissible simply to introduce the record of proceedings before the magistrate for the district court's de novo review. Where appropriate, this record can be supplemented with additional proffers or live testimony.

Both the government and the defendant can appeal a release or detention order after it has been entered or reviewed by the district court. Appeal by the government is governed by 18 U.S.C. § 3731, which provides specific authority for such an appeal. This is an important change from prior law, under which the government's right to appeal was implicit at best. Current law further allows a defendant to appeal any release condition; prior law allowed a defense appeal only if the defendant had been detained, or released subject to the requirement that he/she return to custody after certain hours.

The standard of review in the court of appeals as to factual findings by the district court is "clearly erroneous"; de novo consideration is given conclusions of law and mixed questions of law and fact. *Mauil, supra*, at 1487. See also *United States v. Coleman*, 777 F.2d 888 (3d Cir.1985) (district court must clearly set forth the reasons for its actions for its views to be accorded "respectful consideration").

9-6.160 Release or Detention Pending Sentencing or Appeal

Section 3143 is designed to ensure against the inappropriate release of a defendant after his/her guilt has been determined. In effect, it creates a presumption against post-conviction release.

First, it provides that a person who has been found guilty of an offense, and who is awaiting sentencing or awaiting the execution of a sentence, must be retained unless the judicial officer finds by clear and convincing evidence that the person is not likely to flee or pose a danger if released on personal recognizance or under specified conditions. The legislative history makes it clear that the defendant has the burden of proof. See S.Rept. No. 98-225, *supra*, at 29. If the judicial officer makes a finding that the defendant has met his/her burden, the judicial officer must release the defendant—on specified conditions or on personal recognizance if appropriate—until the sentence is imposed and executed.

Just as there is generally a greater risk of flight by a defendant once guilt has been found, there is an even greater risk once a term of imprisonment has been imposed. Consequently, in some cases in which a defendant has been able to meet his burden of demonstrating that he/she was not likely to

flee between the finding of guilty and the imposition of sentence, once the sentence is imposed he/she may no longer be able to show a lack of risk.

Second, with respect to a defendant who has been sentenced to imprisonment and who has filed an appeal (or a petition for a writ of certiorari), Section 3143 provides that the judicial officer must order detention unless he/she finds by clear and convincing evidence that the defendant is not likely to flee or pose a danger and that the appeal is not for the purpose of delay and raises a substantial question of law or fact likely to result in a reversal or an order for a new trial. This is a change from prior law, under which release could be denied only if it appeared that the appeal was frivolous or taken for delay. An affirmative finding is now required that the chance for a reversal is substantial. The legislative history of this provision makes it clear that the burden is on the defendant to show both that he/she will not flee or pose a danger and that his/her appeal raises a substantial question likely to result in a reversal or new trial. See S.Rept. 98-225, *supra*, at 27.

The circuits have adopted somewhat different approaches to deciding what is a "substantial question of law or fact" likely to result in reversal. The approach favored by the department is that taken in *United States v. Giancola*, 754 F.2d 898, 901 (11th Cir.1985) (the issue appealed must be a "'close' question or one that very well could be decided the other way"). The *Giancola* test has been adopted, sometimes with slight modifications, by the First, Second, Fifth, Sixth, Seventh, Eighth, and Tenth Circuits. See *United States v. Bayko*, 774 F.2d 516 (1st Cir.1985); *United States v. Randell*, 761 F.2d 121, 123 (2d Cir.1985); *United States v. Valera-Elizondo*, 761 F.2d 102 (5th Cir.1985); *United States v. Pollard*, 778 F.2d 1177 (6th Cir.1985); *United States v. Bilanzich*, 771 F.2d 292 (7th Cir.1985); *United States v. Powell*, 761 F.2d 1227 (8th Cir.1985); *United States v. Affleck*, 761 F.2d 944 (10th Cir.1985) (*en banc*). The Third Circuit follows the rule set in *United States v. Miller*, 753 F.2d 19 (3d Cir.1985) (a substantial question is one that is "novel," "undecided," or "fairly doubtful"). The Ninth Circuit has decided that a question is substantial if it is "fairly debatable." *United States v. Handy*, 761 F.2d 1279, 1282-83 (9th Cir.1985).

Third, in situations in which the government has taken an appeal from a dismissal of an indictment or from a suppression of evidence, Section 3143 provides that the defendant is to be treated as any other defendant still awaiting trial. There is no presumption in favor of his/her detention, and he/she is to be treated under the basic provisions of Section 3142.

The provisions of Section 3143 are important. Although the pretrial detention provisions of the act are those that receive the greatest attention, the ability to secure the confinement of defendants during the course of their appeals is of equal significance. Attorneys for the government should assure that the provisions of Section 3143 are applied in all

appropriate cases. Unless circumstances clearly dictate otherwise, a defendant sentenced to imprisonment should begin serving his/her sentence promptly. In a case in which release is denied because the defendant may flee or pose a danger, immediate incarceration obviously is warranted. In a case in which release is denied only because the appeal is not likely to result in a reversal, the judicial officer may conclude that the facts warrant a brief delay to permit the defendant to put his/her affairs in order.

9-6.170 Penal Provisions

The Bail Reform Act of 1984 created three sections which are essentially penal in nature: Section 3146 (penalty for failure to appear), Section 3147 (penalty for an offense committed while on release), and Section 3148 (sanctions for violations of release conditions).

A. 18 U.S.C. § 3146: The purpose of this section is to deter those who would obstruct law enforcement efforts by knowingly failing to appear for trial, for another required judicial appearance, or for service of sentence, and to punish those who do fail to appear.

Section 3146 replaces the bail jumping offense which formerly was found at 18 U.S.C. § 3150. Section 3146 enhances the grading of the offense so that the penalty is more nearly parallel to that for the underlying offense. In addition, failure to surrender for service of sentence is specifically included as a form of bail jumping. This section also provides that a prison sentence for bail jumping shall be consecutive to a sentence of imprisonment for any other offense.

The penalties provided by Section 3146 vary depending on the severity of the penalty for the underlying offense. Failure to appear in connection with an offense punishable by death, life imprisonment, or imprisonment for a term of 15 years or more is punishable by imprisonment for up to ten years. Failure to appear in connection with an offense punishable by imprisonment for a term of five years or more, but less than 15 years, is punishable by imprisonment for five years. Failure to appear in connection with any other felony is punishable by imprisonment for two years. Failure to appear for a misdemeanor is punishable by imprisonment for one year. Fines can be imposed under 18 U.S.C. § 3571. The penalty structure is designed to eliminate the incentive for defendants to go into hiding until the government's proof of a serious felony grows stale and then surface at a later date with criminal liability limited to a less serious bail jumping charge.

It is unclear whether the maximum penalty for failure to appear can be imposed if the aggregate of the penalties for underlying offenses totals 15 years or more, even though no single offense carries a 15 year penalty. The

Department's position is that penalties for the underlying offenses may be aggregated so long as those offenses represent distinct criminal episodes.

It should be noted that Fed.R.Cr.P. 46(h) makes it clear that, when authorized by statute or regulation, minor charges may be disposed of by ordering the forfeiture of collateral. This procedure under the former 18 U.S.C. § 3146(g) was used to dispose of minor offenses, such as traffic violations, and permits those charged with such offenses to forego appearing at an official proceeding if they so wish. See 129 Cong.Rec. S11692 (daily ed. Aug. 4, 1983).

B. 18 U.S.C. § 3147: This section is intended to enforce the requirement that any release ordered by a court include a condition that the defendant not commit an additional federal, state, or local crime while released. This section provides for a sentence independent of, and consecutive to, any sentence imposed for the offense for which the defendant was on release. If the offense committed while on release is a federal felony, the defendant is subject to additional imprisonment for up to ten years. If the offense is a federal misdemeanor, the defendant is subject to additional imprisonment for up to one year. (The mandatory minimums which appear in some editions of the statute have been repealed effective November 1, 1987, in favor of utilizing sentencing guidelines.)

In the ordinary situation, the sanction should be added to the sentence imposed for the crime committed by the defendant while on release. Under unusual circumstances, however, such as where the sentence for the crime committed on release is less than, yet concurrent with, the sentence for the bailed offense, the argument should be presented that the enhanced penalty should be added to the sentence for the bailed offense. In such circumstances, it is not the first sentence of Section 3147 which should govern, but the second sentence, where Congress made clear its intent to make the penalty "consecutive to any other sentence of imprisonment." [Emphasis added.] Notice that the government will seek an enhanced penalty should be served on the defendant prior to trial or guilty plea.

C. 18 U.S.C. § 3148: This section provides for the imposition of sanctions against a defendant who has violated a condition of his/her release. The sanctions include revocation of release and prosecution for contempt of court.

Revocation is based upon a betrayal of trust by the person released on conditions that were to assure both his/her appearance and the safety of the community. Note that Section 3148 places certain responsibilities on the attorney for the government to initiate release revocation proceedings. He/she can initiate a revocation proceeding by filing a motion with the district court, after which a judicial officer may issue a warrant and have the defendant brought before the court for a revocation hearing. If at the hearing the judicial officer finds that there is probable cause to

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believe that the person has committed a federal or state crime, including a misdemeanor, or finds clear and convincing evidence that the person has violated any other release condition, and also finds that there are no conditions of release that will assure his/her presence and individual or community safety, or that the person is unlikely to abide by any set of release conditions, the judicial officer must enter an order of revocation and detention. If there is probable cause to believe that the person on release has committed a state or federal felony, the government's burden of showing dangerousness is made easier by a rebuttable presumption that no combination of conditions will assure the safety of the community or of another person. While the burden is on the government to show a violation of any condition of release by clear and convincing evidence, once this fact is established, the burden shifts to the defendant to come forward with evidence that revocation is not merited because other conditions can be set which will assure his/her appearance and the safety of the community.

Contempt sanctions are also available if the defendant violates a condition of his/her release.

9-6.180 Constitutional Arguments Regarding Pretrial Detention

The Supreme Court has upheld the facial validity of the act. *United States v. Salerno*, 41 Cr L 3207 (S.Ct., May 27, 1987).

Prior to the Bail Reform Act of 1984, there was no precedent in federal law for pretrial detention based on danger to the community. However, in 1970 Congress enacted a pretrial detention statute for the District of Columbia, upon which 18 U.S.C. § 3142 is largely modeled. The constitutionality of the District of Columbia's pretrial detention statute, 23 D.C.Code 1322, was upheld in *United States v. Edwards*, 430 A.2d 1321 (D.C.Ct.App.1981) (*en banc*), cert. denied, 455 U.S. 1022 (1982).

The provisions of the Bail Reform Act of 1984 had immediate application on the date of its passage—October 12, 1984. Accordingly, the government was authorized to move for revocation of bond and for pretrial detention in cases in which bond had been set under the prior law. Case law supported the argument that there were no ex post facto problems in enforcing most of the provisions of the new bail law because most of the changes were procedural rather than substantive. See, e.g., *United States v. Molt*, 758 F.2d 1198 (7th Cir.1985); and *United States v. Miller*, 753 F.2d 12, 21 (3d Cir.1985) (bail pending appeal). However, the Department's policy was to abstain from seeking pretrial detention in such cases unless significant new information was developed.

Ex post facto arguments may continue to be raised when defendants win new trials after lengthy appeals, or reappear after a period of fugitivity. These defendants should be treated in accordance with the 1984 law.

9-6.190 Conduct of the Pretrial Detention Hearing

The principal difficulties in the conduct of the pretrial detention hearing relate to the necessity of being thoroughly prepared, (when the time to prepare may be very, short), and the efforts of the defense to turn what is merely a bail hearing into a mini-trial.

9-6.191 Preparation for the Pretrial Detention Hearing

The attorney for the government responsible for a pretrial detention hearing must be thoroughly prepared on the facts of the case and conversant in the law prior to the hearing. In many cases, the prosecutor and investigators will have substantial knowledge about a putative defendant long before his/her arrest. In such cases, prior to arrest, all background investigations should be completed on facts material to the issue of dangerousness, the specifics of which will be considered below. Each United States Attorney's Office should have standard motions for pretrial detention, to be filed at the time of appearance, so that the government's position on the procedure to be followed at the hearing, as well as the basis for a dangerousness finding, will be effectively articulated at the outset of the litigation. Even when all the adverse evidence against the prospective pretrial detainee has not been developed, a motion should be filed at the time of his/her initial appearance.

9-6.192 Potential Issues at the Pretrial Detention Hearing

As stated above, the Department's position is that the pretrial detention hearing is simply a bail hearing. Consequently, it should be conducted as one. Effective advocacy at the pretrial detention hearing may require attention to six considerations.

A. Amount of Proof

Essentially, there are two different amounts of proof required at a pretrial detention hearing—one applicable to safety and one applicable to flight. The statute specifically provides that a finding that no condition or combination of conditions will reasonably assure the safety of any other person and the community must be supported by clear and convincing evidence (Section 3142(f)(2)(B)). The amount of proof with regard to risk of flight is not changed by the statute, nor is any intent to effect such a change suggested by the legislative history. Accordingly, proof by a preponderance of the evidence—the standard usually applied in pretrial proceedings—applies in establishing risk of flight. See *United States v. Fortna*, 769 F.2d 243 (5th Cir.1985); *United States v. Motamedi*, 767 F.2d 1403 (9th Cir.1985); *United States v. Chimurenga*, 760 F.2d 400 (2d Cir.1985).

The wording of the statute at Section 3142(f), in which risk of flight is joined by the conjunctive with risk of danger has caused some confusion. The government does not have to show that the defendant is a flight risk and

a danger. Rather, conditions of release must assure appearance and safety. If such assurances are not present, the defendant can be detained.

It also should be noted that if the government intends to rely on the rebuttable presumption that no conditions of release will assure the defendant's appearance and the safety of the community in a 10-year narcotic case or a prosecution for using or carrying a firearm in a federal crime of violence, the defendant must actually be charged with the offense, and the judicial officer must find probable cause to believe that the accused committed the offense. See *Chimurenga, supra*.

B. Meeting the Government's Burden by Hearsay and Proffer

Section 3142(f)(2)(b) provides that the rules concerning admissibility of evidence at criminal trials do not apply at detention hearings. Therefore, absent extraordinary circumstances, the only government witness at the hearing should be a law enforcement officer who is to give hearsay testimony to allow the court to evaluate the weight of the evidence. See, e.g., Fed.R.Crim.P. 5.1(a). *United States v. Acevedo-Ramos*, 755 F.2d 203 (1st Cir.1985); *United States v. McMichael*, No. Cr. 85-50 (N.D. Ohio, May 7, 1985) (government's burden may be met with hearsay evidence); *United States v. Payden*, 598 F.Supp. 1388, 1388 n. 14 (S.D.N.Y.1984), rev'd on other grounds, 759 F.2d 202 (2d Cir.1985) (proffer made by prosecutor is sufficient).

C. Jencks Act Material

The defense may attempt routinely to obtain Jencks Act material in the course of a pretrial detention hearing under 18 U.S.C. § 3500. While these materials normally are not disclosed at a preliminary hearing or a bail determination, the defense may offer a due process argument that the defendant's liberty interest is significantly implicated in a pretrial detention hearing and that he/she cannot meet the government's allegations without the Jencks material. This effort should be vigorously resisted, since the hearing is not a trial, nor, as the Supreme Court concluded in *Solerno, supra*, are there any issues before the court or magistrate that bear on the defendant's ultimate guilt or innocence.

D. Defense Efforts to Call Government Witnesses

Defense efforts to subpoena a civilian eyewitness or complaining witness should be strongly opposed. The government has a significant interest in protecting the physical and emotional well-being of its witnesses. Although the statute specifically gives a defendant the opportunity to present witnesses on his/her own behalf, to cross examine witnesses who appear at the hearing, and to present information by proffer or otherwise, it does not confer on him/her the right to subpoena adverse witnesses. When the defense attempts to subpoena an adverse witness, the attorney for the government should request that the court require a proffer as to how the

testimony of the witness will negate probable cause or dangerousness before issuing a subpoena. See, *Edwards, supra*, at 1338.

E. Discovery

Discovery of the government's case should be vigorously resisted. The court should not allow the defense to turn a detention hearing into a fishing expedition into the government's case. See, e.g., *Edwards, supra*, at 1334, 1338. Once again, it should be emphasized to the court that the pretrial detention hearing is at its core bail determination, not a trial. The fact that Congress authorized courts to hold defendants without bond pending trials does not transform the hearings into trials. A defendant can adequately meet the government's allegations without access to the government's witness list, scientific tests, etc. It should be noted in this regard that federal courts have unanimously held that Federal Rule of Criminal Procedure 16 does not require that discovery be provided prior to the filing of an indictment. See, e.g., *Bast v. United States*, 542 F.2d 893, 897 (4th Cir.1976); *In re Possible Violations of 18 U.S.C. 201, 371, 491 F.Supp.* 211, 214 (D.D.C.1980); *In re Grand Jury Proceedings Involving Berkeley and Company*, 466 F.Supp. 863 (D.Min. 1979).

F. Findings of Fact and Conclusions of Law

Upon the court's decision to detain the defendant pretrial without bond, the attorney for the government should prepare and submit to the court proposed findings of fact and conclusions of law to assist the court in complying with the requirements of 18 U.S.C. § 3142(h).

9-6.193 Demonstration of the Defendant's Dangerousness

The evidence necessary to show dangerousness obviously will vary on a case by case basis. The following are suggestions on how to make a showing that there is no condition or combination of conditions or release that will reasonably assure the safety of any person and the community.

A. Rebuttal Presumptions

The pretrial detention statute creates a unique method for assisting courts in assessing the issue of a defendant's dangerousness. 18 U.S.C. § 3142(e) permits the use of two presumptions either of which, if not rebutted, establishes that there is no condition or combination of conditions that will reasonably assure the safety of any other person or the community.

The first presumption concerns bail violators. It arises if: (a) the defendant is charged with a crime of violence, a capital offense, or a drug violation with a penalty of at least ten years; (b) he/she was convicted of, or released from a sentence he/she was serving for such a crime within

the last five years; and (c) the offense for which he/she was convicted was committed while he/she was on pretrial release.

The second presumption concerns drug offenders and gun users. It is less complicated and will apply more frequently. It arises when the court finds there is probable cause to believe the defendant committed a 10-year drug felony or a federal "crime of violence" in which a firearm was used or carried. The drafters were careful to designate the presumptions as rebuttable in order to avoid the problem identified in *Hunter v. Roth*, 648 F.2d 1148, 1164 (8th Cir.1981), where the Nebraska legislature enacted an irrebuttable presumption of dangerousness for anyone charged with a sex offense involving penetration by force or against the will of the victim. For guidance on the use of these presumptions, refer to the discussion under USAM 9-6.145, *supra*. Typically, there will be more evidence than simply the presumptions—such as specific threats, a likelihood of a long sentence, or a prior pattern of violations while on release—before a pretrial detention request is made.

B. Relevant Considerations

Section 3142(g) identifies the particular factors which the court must consider in assessing risk of flight and dangerousness. They include the factors traditionally considered in setting bail: the nature and circumstances of the offense charged; the weight of the evidence against the accused; and the accused's history and characteristics, including his/her physical and mental condition, family ties, employment, length of residence in the community, community ties, criminal history, and record of appearance at court proceedings. In addition, the statute included in the category of factors information bearing upon the safety of the community. These dangerousness factors include a general consideration of the nature and seriousness of the danger posed by the person's release, whether the offense charged is a crime of violence or involves drugs or drug or alcohol abuse, and whether the defendant was on pretrial release, probation, or parole at the time of the instant offense. If any of these additional factors exist they should be stressed, since their presence allows the court to draw obvious inferences as to a defendant's dangerousness.

C. The Defendant's Prior Criminal History

The defendant's criminal history will usually provide the single most effective indication of his/her dangerousness. The prosecutor should not, however, rely merely on a recitation of the defendant's record. Rather, he/she should obtain factual information on all prior offenses and, ideally, should present docket entries to the court. Prosecution or investigative reports should be gathered with an eye toward establishing patterns of criminality. In other words, a profile of the defendant's criminal life, including convictions, arrests, and other bad acts not resulting in arrests, should be presented.

D. The New Offense

The attorney for the government should stress the inherent danger to the victim caused by the defendant in committing the instant offense, as well as the actual physical injuries and emotional distress to the victim. Aggravating circumstances such as the use of a weapon, subsequent threats against the victim or witnesses, and violence at the time of arrest should be important, and may be persuasive in close situations.

9-6.200 PRETRIAL DISCLOSURE OF WITNESS IDENTITY

Because of the Jencks Act, 18 U.S.C. 3500, and other provisions of law, federal prosecutors are under no legal obligation to reveal pretrial the identities of prospective government witnesses to the defendant or his counsel, and indeed mandamus will lie from an order of a district court seeking to compel such disclosure. See, e.g., *In re United States*, 834 F.2d 283 (2d Cir. 1987); *United States v. Algie*, 667 F.2d 552 (6th Cir. 1982). Moreover, insuring the safety and cooperativeness of prospective witnesses, and safeguarding the judicial process from undue influence, are among the highest priorities of federal prosecutors. See the Victim and Witness Protection Act of 1982, P.L. 97-291, § 2, 96 Stat. 1248-9.

Therefore, it is the Department's position that pretrial disclosure of a witness' identity should not be made if there is, in the judgment of the prosecutor, any reason to believe that such disclosure would endanger the safety of the witness or any other person, or lead to efforts to obstruct justice. Factors relevant to the possibility of witness intimidation or obstruction of justice include, but are not limited to, the types of charges pending against the defendant, any record or information about the propensity of the defendant or the defendant's confederates to engage in witness intimidation or obstruction of justice, and any threats directed by the defendant or others against the witness. In addition, pretrial disclosure of a witness' identity should not ordinarily be made against the known wishes of any witness.

However, pretrial disclosure of the identity of a government witness may often promote the prompt and just resolution of the case. Such disclosure may enhance the prospects that the defendant will plead guilty or lead to the initiation of plea negotiations; in the event the defendant goes to trial, such disclosure may expedite the conduct of the trial by eliminating the need for a continuance.

Accordingly, with respect to prosecutions in federal court, a prosecutor should give careful consideration, as to each prospective witness, whether—absent any indication of potential adverse consequences of the kind mentioned above—reason exists to disclose such witness' identity prior to trial. It should be borne in mind that a decision by the prosecutor to disclose pretrial the identity of potential government witnesses

may be conditioned upon the defendant's making reciprocal disclosure as to the identity of the potential defense witnesses. Similarly, where appropriate in light of the facts and circumstances of the case, a prosecutor may determine to disclose only the identity, but not the current address or whereabouts, of a witness.

In sum, whether or not to disclose the identity of a witness prior to trial is committed to the discretion of the federal prosecutor and that discretion should be exercised on a case-by-case, and witness-by-witness basis. Considerations of witness safety and willingness to cooperate, and the integrity of the judicial process, are paramount.

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