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1-1.100 Purpose

The United States Attorneys' Manual is a looseleaf text designed as a quick and ready reference for United States Attorneys, Assistant United States Attorneys, and Department attorneys responsible for the prosecution of violations of federal law. It contains general policies and some procedures relevant to the work of the United States Attorneys' offices and to their relations with the legal divisions, investigative agencies, and other components within the Department of Justice. It is also available on line at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/.

The Manual provides only internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nor are any limitations hereby placed on otherwise lawful litigative prerogatives of the Department of Justice.

1-1.200 Authority

The United States Attorneys' Manual was prepared under the general supervision of the Attorney General and under the direction of the Deputy Attorney General, by the United States Attorneys, represented by the Attorney General's Advisory Committee of United States Attorneys, the Litigating Divisions, the Executive Office for United States Attorneys, and the Justice Management Division. See A.G. Order 665-76. The Executive Office for United States Attorneys coordinates the periodic revision of the Manual in consultation with the Attorney General, Deputy Attorney General and Associate Attorney General.

This Manual is intended to be a comprehensive collection of policies. When the contents of this Manual conflicts with earlier Department statements, except for Attorney General's statements, the Manual will control. Should a situation arise in which a Department policy statement predating the Manual relates to a subject not addressed in the Manual, the prior statement controls, but this situation should be brought to the attention of the Executive Office for United States Attorneys, Manual Staff, Department of Justice, 2262, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530.

1-1.300 Disclosure

The Manual is United States Government property. It is to be used in conjunction with official duties and must remain in the United States Attorney's Office or litigating component. All materials contained in the Manual, unless specifically designated to the contrary, are subject to the provisions of Title 5, U.S.C., Sec. 552(a)(2). Accordingly, this Manual must be made available for public inspection and copying pursuant to 28 C.F.R. Sec. 16. The Manual is available for public inspection at all depository libraries, law school libraries, the Library of Congress, and on line at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/.

1-1.400 Organization

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

Title 1—General

Title 2—Appeals

Title 3—Executive Office for United States Attorneys

Title 4—Civil

Title 5—Environment and Natural Resources

Title 6—Tax

Title 7—Antitrust

Title 8—Civil Rights

Title 9—Criminal

1-1.500 Distribution

The Manual is published by the Executive Office for United States Attorneys and is distributed to each United States Attorney's Office and Litigating Division of the Department of Justice by the Office of Legal Education, National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina 29201. It is also available on line at http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/.

1-1.600 Revisions -- Policy (Bluesheets)/Procedures

There are two types of revisions to the Manual: policy (bluesheets) and procedure. Policy changes are entitled bluesheets.

Policy changes are submitted by the Attorney General, Deputy Attorney General, Associate Attorney General, a litigating division or the Executive Office for United States Attorneys (EOUSA). Policy changes submitted by an Assistant Attorney General for a litigating division or the Director EOUSA must be reviewed by the Attorney General's Advisory Committee (AGAC) before being incorporated into the Manual. If the AGAC objects to the proposed policy change, it will meet with the litigating division or EOUSA to resolve. Unresolved issues will be resolved by the Deputy Attorney General or Attorney General. Policy changes issued by the Attorney General, Deputy Attorney General, and Associate Attorney General are effective upon issuance. For guidance in preparing a policy change (bluesheet), contact the Manual Staff at 202-514-4633.

Procedural changes to the Manual do not require review by the Advisory Committee and can be incorporated directly into the Manual. Procedural changes should be sent to the USAM staff through the Director, EOUSA.

1-1.700 Maintenance

The Manual is intended to function as do the commercial looseleaf services. Policy changes (bluesheets) are issued directly upon receipt and should be inserted in front of the affected section. Hard copy updates are issued annually. Each holder of the Manual is responsible for inserting the materials received. The on-line USAM is updated as policy/administrative changes are issued.

ORGANIZATIONS AND FUNCTIONS

A current Organization Chart for the Department of Justice is maintained at <http://www.usdoj.gov/dojorg.htm>. For information about the functions of the individual agencies, see http://www.usdoj.gov/O2organizations/O2_1.html.

ORGANIZATIONS AND FUNCTIONS

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1-2.101 Office of the Attorney General

The Attorney General serves as head of the Department of Justice (28 U.S.C. § 503) and as chief law enforcement officer of the federal government. *Marshall v. Gibson's Products, Inc. of Plano*, 584 F.2d 668 (5th Cir.1978). In this capacity, the Attorney General shall:

- A. Supervise the administration of the law enforcement operations of the Department of Justice which include the litigating divisions, the United States Attorneys, U.S. Marshals Service, Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service, Bureau of Prisons, Parole Commission and Office of the Pardon Attorney;
- B. Represent the United States in legal matters generally;
- C. Furnish advice and opinions, formal and informal, on legal matters to the President and the Cabinet and to the heads of the executive departments and agencies of the Government, as provided by law;
- D. Appear in person to represent the Government in the Supreme Court of the United States, or in any other court, in which he/she may deem it appropriate; and
- E. Designate, pursuant to Executive Orders No. 9788 of October 4, 1946 and No. 10254 of June 15, 1951, officers and agencies of the Department of Justice to act as disbursing officers for the Office of Alien Property.

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

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

- A. The Attorney General's Advisory Committee of United States Attorneys which consists of 15 United States Attorneys representing the geographic areas of the nation, (*see* 28 C.F.R. § 0.10; USAM 3-2.000).
- B. An Incentive Awards Board which consists of the Deputy Attorney General or his/her designee as Chairperson, and four members designated by the Attorney General from among the Assistant Attorneys General, bureau heads or persons of equivalent rank in the Department. *See* 28 C.F.R. § 0.11.
- C. A Young American Medals Committee, which is composed of four members, one of whom shall be the Director of Public Affairs. *See* 28 C.F.R. § 0.12.

1-2.102 Office of the Deputy Attorney General

The Deputy Attorney General is authorized to exercise all the power and authority of the Attorney General, unless any such power or authority is required by law to be exercised by the Attorney General personally.

The Deputy Attorney General shall advise and assist the Attorney General in formulating and implementing Department policies and programs and in providing overall supervision and direction to all organizational units of the Department of Justice. The major functions of the Deputy Attorney General are to:

- A. Exercise all the power and authority of the Attorney General unless any such power or authority is required by law to be exercised by the Attorney General personally or has been specifically delegated exclusively to another Department official.
- B. Except as assigned to the Associate Attorney General by 0.19(a)(1), exercise the power and authority vested in the Attorney General to take final action in matters pertaining to:
 1. The employment, separation, and general administration of personnel in the Senior Executive Service and in General Schedule grades GS-16 through GS-18, or the equivalent, and of attorneys and law students regardless of grade or pay in the Department;
 2. The appointment of special attorneys and special assistants to the Attorney General, (28 U.S.C.515(b));
 3. The appointment of Assistant United States Trustees and fixing of their compensation; and
 4. The approval of the appointment by United States Trustees of standing trustees and the fixing of their maximum annual compensation and percentage fees as provided in 28 U.S.C. Section 586(e).
- C. Administer the Attorney General's recruitment program for honor law graduates and judicial law clerks.
- D. Coordinate departmental liaison with White House staff and the Executive Office of the President.
- E. Coordinate and control the Department's reaction to civil disturbances and terrorism.
- F. Perform such other activities and functions as may be assigned from time to time by the Attorney General.

1-2.103 Office of the Associate Attorney General

The Office of the Associate Attorney General (ASG) of the United States was created by Attorney General Order No. 699-77 on March 10, 1977.

As the third-ranking official at the Department of Justice, the Associate Attorney General is a principal member of the Attorney General's senior management team, and advises and assists the Attorney General and Deputy Attorney General on the formulation and implementation of Department of Justice policies and programs.

In addition to these duties, the ASG oversees the work of the Civil, Civil Rights, Antitrust, Tax and Environment and Natural Resources Division. The ASG also has oversight responsibility for the Office of Justice Programs, the Office of Information and Privacy, the Community Relations Service, the Executive Office for United States Trustees, and the Foreign Claims Settlement Commission and for all aspects of the implementation of the Violent Crime Control and Enforcement Act of 1994, including the new Community Oriented Policing Services (COPS) Program.

1-2.104 Office of the Solicitor General

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

- A. The review and revision of, briefs on the merits in cases in which the government is a party or in which it participates as *amicus curiae* (either on its own motion or at the request of the court); petitions for certiorari; jurisdictional statements; briefs in opposition; and, *amicus curiae* filings at the petition stage.
- B. Preparation of miscellaneous papers filed in the Supreme Court such as, applications for and oppositions to stays; and, oppositions to bail, etc.;
- C. The arguing of cases in the Supreme Court; and
- D. The determination whether to seek Supreme Court review in cases that the government has lost in the lower courts.

Except for a few situations in which administrative agencies have statutory authority to take certain of their own cases to the Supreme Court, neither the United States nor its agencies may file a petition for certiorari or take a direct appeal to the Supreme Court unless the Solicitor General authorizes it. *See* 28 U.S.C. §§ 516, 518(a); 28 C.F.R. § 0.20(a). Although the Solicitor General reviews every case handled by the Department that the Department has lost in the appellate courts to decide whether to seek Supreme Court review, the Solicitor General reviews such cases handled by independent regulatory agencies only if requested to file a petition for certiorari.

Another major function of the office is to determine, in all cases where the United States loses in the trial courts, whether the government should appeal to the intermediate appellate courts. *See* 28 C.F.R. § 0.20(b). The office also must approve requests for the courts of appeals for mandamus, prohibition and other extraordinary writs, and requests for rehearing en banc. *Id.* The office also determines whether the government will file a brief *amicus curiae* or intervene in any appellate court. 28 C.F.R. 0.20(c). In cases handled by independent regulatory agencies rather than by the Department, however, the Solicitor General has no control over their appeal to intermediate appellate courts.

Finally, the Solicitor General may, in consultation with each agency or official concerned, authorize intervention by the government in cases involving the constitutionality of acts of Congress; and assist the Attorney General, the Deputy Attorney General, and the Associate Attorney General in the development of broad Department program policy. *See* 28 C.F.R. §§ 0.20(d), 0.21.

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

1-2.105 Office of the Inspector General

The Office of the Inspector General (OIG) conducts investigations of employee misconduct and performs audits and inspections of Department programs and operations. The OIG also investigates allegations of fraud by contractors, grantees, and recipients of Department benefits, and third parties improperly seeking to influence the Department or its employees.

The OIG investigates allegations of criminal and administrative misconduct involving Department employees except those against Department attorneys and investigators working with attorneys where the allegation involves the exercise of the attorney's authority to investigate, litigate, or provide legal advice. Those cases are handled by the Department of Justice Office of Professional Responsibility (see Section 1-2.114).

The Inspector General, appointed by the President, reports directly to the Attorney General. The OIG has offices in Atlanta, Boston, Chicago, Colorado Springs, Dallas, Denver, Detroit, El Centro, El Paso, Houston, Los Angeles, McAllen, Miami, New York, Philadelphia, San Diego, San Francisco, Seattle, Tucson, and Washington, D.C.

1-2.106 Office of Intelligence Policy and Review

The Office of Intelligence Policy and Review is headed by a Counsel for Intelligence Policy, appointed by the Attorney General.

The Office advises and assists the Attorney General on all matters relating to national security and in carrying out his/her responsibilities under Executive Order No. 12333, 46 *Fed.Reg.* 59,941 (1981), entitled "United States Intelligence Activities." Staff attorneys participate in development, implementation, and review of U.S. national security and intelligence policies, including procedures for the conduct of intelligence and counterintelligence activities. The Office maintains an Intelligence Analytic Unit (IAU) responsible for keeping the Attorney General and Deputy Attorney General current on national security matters pertaining to their responsibilities. In addition, the Office prepares certifications and applications for electronic surveillance under the Foreign Intelligence Surveillance Act, 50 U.S.C. § 1801 *et seq.*, and represents the United States before the United States Foreign Intelligence Surveillance Court. It processes requests for Attorney General authority to use FISA material in adjudicatory proceedings and assists in responding to challenges to the legality of FISA surveillances. *See* 28 C.F.R. § 0.33 a to c (1982).

1-2.107 Office of Information and Privacy

Managing Departmental responsibilities related to the Freedom of Information Act (FOIA) and the Privacy Act is the mission of the Office of Information and Privacy. The Office coordinates policy development and compliance government-wide for FOIA and by the Department for the Privacy Act. It also decides all appeals from denials by any Departmental unit of access to information under those Acts.

1-2.108 Office of Legal Counsel

The Assistant Attorney General in charge of the Office of Legal Counsel is responsible for:

- A. Preparing the formal opinions of the Attorney General, rendering opinions and legal advice to the various governmental agencies, and assisting the Attorney General in the performance of his/her functions as legal adviser to the President and as a member of the Cabinet;
- B. Preparing or making necessary revisions of Executive Orders and proclamations and advising the President with respect to their form and legality; performing the same functions with respect to regulations and similar matters that require the approval of the President or the Attorney General;
- C. Rendering opinions to the Attorney General and to the heads of the various organizational units of the Department on questions of law arising in the administration of the Department;
- D. Approving proposed orders of the Attorney General, and orders which require the approval of the Attorney General, as to form and legality and as to consistency and conformity with existing orders and memorandums;
- E. Resolving legal disputes between departments in the Executive branch;
- F. Coordinating the work of the Department in connection with United States participation in the United Nations and related international organizations;
- G. Advising the Attorney General, when requested, in connection with his/her review of decisions of the Board of Immigration Appeals and other organizational units of the Department;
- H. Consulting with the Director of the Office of Government Ethics regarding the development of policies, rules and regulations relating to ethics and conflicts of interest and approving certain blind trusts; and
- I. Performing special assignments from the Attorney General, Deputy Attorney General or Associate Attorney General. *See* 28 C.F.R. § 0.25; Executive Order No. 12146.

1-2.109 Office of Legislative Affairs

The following is a brief description of the Office of Legislative Affairs:

A. Origin. The Office of Legislative Affairs, (OLA), was established in the Department on February 2, 1973, by Attorney General Order No. 504-73 to be the coordinating center for all Department activity relating to legislation and Congress. This office was subsequently reorganized into Legislative and the Intergovernmental Affairs on January 24, 1984 by Attorney General Order No. 1054-84. Attorney General Order 1097-85 reestablished the Office of Legislative Affairs as an independent office on February 4, 1986.

B. Missions. The mission of the Office of Legislative Affairs is to advise appropriate components of the Department on the Congressional positions and preferences in the development of the Department's official policies with respect to legislation initiated inside the Department, by other parts of the Executive Branch, or by Members of Congress and to explain and advocate those policies with maximum effectiveness with the Congress. The Office also serves as the Attorney General's focal point for dealing with nominees, Congressional oversight, Congressional correspondence and Congressional requests for documents and access to Department employees.

C. Legislative Program. For each Congress, the Office of Policy Development contacts each component of the Department in the fall before the beginning of a Congress and requests recommendations and comments concerning legislative initiatives which should be undertaken. These inputs can take the form of specific legislative drafts with accompanying backup material or simply a description of the particular problem which needs a legislative solution. United States Attorneys are in excellent positions to make meaningful and helpful recommendations and their participation in the legislative program is encouraged. The Office of Legislative Affairs works closely with the Office of Policy Development in forming the Department's legislative program and is solely responsible for the articulation and enactment of that program by the Congress.

D. Congressional Appearances. The office coordinates the various appearances of Departmental witnesses before committees of the Congress. Often because of special knowledge or experience it will be desirable for a United States Attorney to be the Departmental witness on a particular subject. Such arrangements should be made through OLA. If any United States Attorney is contacted directly by a congressional committee or state or local legislative body concerning testimony, OLA should be immediately consulted. The office can be helpful, not only in dealing with the Congress, but also in obtaining coordination and clearance of formally prepared testimony. *See* 28 C.F.R. § 0.27.

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

1-2.110 Office of the Pardon Attorney

The Pardon Attorney assists the President in the exercise of his power under Article II, Section 2, clause 1 of the Constitution (the pardon clause). *See* Executive Order dated June 16, 1893 (transferring clemency petition processing and advisory functions to the Justice Department), the Rules Governing the Processing of Petitions for Executive Clemency (codified in 28 CFR Sections 1.1 *et seq.*), and 28 CFR Sections 0.35 and 0.36 (relating to the authority of the Pardon Attorney). The Pardon Attorney, under the direction of the Deputy Attorney General, receives and reviews all petitions for Executive Clemency (which includes pardon after completion of sentence, commutation of sentence, remission of fine and reprove), initiates and directs the necessary investigations, and prepares a report and recommendation for submission to the President in every case. In addition, the Office of the Pardon Attorney acts as a liaison with the public during the pendency of a clemency petition, responding to correspondence and answering inquiries about clemency cases and issues. The following sets forth guidance on clemency matters.

1-2.111 Role of the United States Attorney in Clemency Matters

The Pardon Attorney routinely requests the United States Attorney in the district of conviction to provide comments and recommendations on clemency cases that appear to have some merit, as well as on cases that raise issues of fact about which the United States Attorney may be in a position to provide information. Occasionally, the United States Attorney in the district in which a petitioner currently resides also may be contacted. In addition, in cases in which the petitioner seeks clemency based on cooperation with the government, the Pardon Attorney may solicit the views of the United States Attorney in the district(s) in which the petitioner cooperated, if different from the district of conviction. While the decision to grant clemency generally is driven by considerations that differ from those that dictate the decision to prosecute, the United States Attorney's prosecutive perspective lends valuable insights to the clemency process.

The views of the United States Attorney are given considerable weight in determining what recommendations the Department should make to the President. For this reason, and in order to ensure consistency, it is important that each request sent to the district receive the personal attention of the United States Attorney. Each petition is presented for action to the President with a report and recommendation from the Department, and the recommendation by the United States Attorney is included in this report.

The United States Attorney can contribute significantly to the clemency process by providing factual information and perspectives about the offense of conviction that may not be reflected in the presentence or background investigation reports or other sources, e.g., the extent of the petitioner's wrongdoing and the attendant circumstances, the amount of money involved or losses sustained, the petitioner's involvement in other criminal activity, the petitioner's reputation in the community and, when appropriate, the victim impact of the petitioner's crime. On occasion, the Pardon Attorney may request information from prosecution records that may not be readily available from other sources.

As a general matter, in clemency cases the correctness of the underlying conviction is assumed, and the question of guilt or innocence is not generally at issue. However, if a petitioner refuses to accept guilt, minimizes culpability, or raises a claim of innocence or miscarriage of justice, the United States Attorney should address these issues.

In cases involving pardon after completion of sentence, the United States Attorneys is expected to comment on the petitioner's post-conviction rehabilitation, particularly any actions that may evidence a desire to atone for the offense, in light of the standards generally applicable in pardon cases as discussed in the following section. Similarly, in commutation cases, comments may be sought on developments after sentencing that are relevant to the merits of a petitioner's request for mercy.

In pardon cases, the Pardon Attorney will forward to the United States Attorney copies of the pardon petition and relevant investigative reports. These records should be returned to the Pardon Attorney along with the response. In cases involving requests for other forms of executive clemency (i.e., commutation of sentence or remission of fine), copies of the clemency petition and such related records as may be useful (e.g., presentence report, judgment of conviction, prison progress reports, and completed statement of debtor forms) will be provided.

The Pardon Attorney also routinely requests the United States Attorney to solicit the views and recommendation of the sentencing judge. If the sentencing judge is retired, deceased, or otherwise unavailable for comment, the United States Attorney's report should so advise. In the event the United States Attorney does not wish to contact the sentencing judge, the Pardon Attorney should be advised accordingly so that the judge's views may be solicited directly. Absent an express request for confidentiality, the Pardon Attorney may share the comments of the United States Attorney with the sentencing judge or other concerned officials whose views are solicited.

The United States Attorney may support, oppose or take no position on a pardon request. In this regard, it is helpful to have a clear expression of the office's position. The Pardon Attorney generally asks for a response within 30 days. If an unusual delay is anticipated, the Pardon Attorney should be advised when a response may be expected. If desired, the official views of the United States Attorney may be supplemented by separate reports from present or former officials involved in the prosecution of the case. The United States Attorney may of course submit a recommendation for or against clemency even if the Pardon Attorney has not yet solicited comments from the district. The Pardon Attorney informs the United States Attorney of the final disposition of any clemency application on which he or she has commented.

1-2.112 Standards for Considering Pardon Petitions

In general, a pardon is granted on the basis of the petitioner's demonstrated good conduct for a substantial period of time after conviction and service of sentence. The Department's regulations require a petitioner to wait a period of at least five years after conviction or release from confinement (whichever is later) before filing a pardon application (28 CFR Section 1.2). In determining whether a particular petitioner should be recommended for a pardon, the following are the principal factors taken into account.

A. Post-conviction conduct, character, and reputation. An individual's demonstrated ability to lead a responsible and productive life for a significant period after conviction or release from confinement is strong evidence of rehabilitation and worthiness for pardon. The background investigation customarily conducted by the FBI in pardon cases focuses on the petitioner's financial and employment stability, responsibility toward family, reputation in the community, participation in community service, charitable or other meritorious activities and, if applicable, military record. In assessing post-conviction accomplishments, each petitioner's life circumstances are considered in their totality: it may not be appropriate or realistic to expect "extraordinary" post-conviction achievements from individuals who are less fortunately situated in terms of cultural, educational, or economic background.

B. Seriousness and relative recentness of the offense. When an offense is very serious, (e.g., a violent crime, major drug trafficking, breach of public trust, or white collar fraud involving substantial sums of money), a suitable length of time should have elapsed in order to avoid denigrating the seriousness of the offense or undermining the deterrent effect of the conviction. In the case of a prominent individual or notorious crime, the likely effect of a pardon on law enforcement interests or upon the general public should be taken into account. Victim impact may also be a relevant consideration. When an offense is very old and relatively minor, the equities may weigh more heavily in favor of forgiveness, provided the petitioner is otherwise a suitable candidate for pardon.

C. Acceptance of responsibility, remorse, and atonement. The extent to which a petitioner has accepted responsibility for his or her criminal conduct and made restitution to its victims are important considerations. A petitioner should be genuinely desirous of forgiveness rather than vindication. While the absence of expressions of remorse should not preclude favorable consideration, a petitioner's attempt to minimize or rationalize culpability does not advance the case for pardon. In this regard, statements made in mitigation (e.g., "everybody was doing it," or "I didn't realize it was illegal") should be judged in context. Persons seeking a pardon on grounds of innocence or miscarriage of justice bear a formidable burden of persuasion.

D. Need for Relief. The purpose for which pardon is sought may influence disposition of the petition. A felony conviction may result in a wide variety of legal disabilities under state or federal law, some of which can provide persuasive grounds for recommending a pardon. For example, a specific employment-related need for pardon, such as removal of a bar to licensure or bonding, may make an otherwise marginal case sufficiently compelling to warrant a grant in aid of the individual's continuing rehabilitation. On the other hand, the absence of a specific need should not be held against an otherwise deserving applicant, who may understandably be motivated solely by a strong personal desire for a sign of forgiveness.

E. Official recommendations and reports. The comments and recommendations of concerned and knowledgeable officials, particularly the United States Attorney whose office prosecuted the case and the sentencing judge, are carefully considered. The likely impact of favorable action in the district or nationally, particularly on current law enforcement priorities, will always be relevant to the President's decision. Apart from their significance to the individuals who seek them, pardons can play an important part in defining and furthering the rehabilitative goals of the criminal justice system.

1-2.113 Standards for Considering Commutation Petitions

A commutation of sentence reduces the period of incarceration; it does not imply forgiveness of the underlying offense, but simply remits a portion of the punishment. It has no effect upon the underlying conviction and does not necessarily reflect upon the fairness of the sentence originally imposed. Requests for commutation generally are not accepted unless and until a person has begun serving that sentence. Nor

are commutation requests generally accepted from persons who are presently challenging their convictions or sentences through appeal or other court proceeding.

The President may commute a sentence to time served or he may reduce a sentence, either merely for the purpose of advancing an inmate's parole eligibility or to achieve the inmate's release after a specified period of time. Commutation may be granted upon conditions similar to those imposed pursuant to parole or supervised release or, in the case of an alien, upon condition of deportation.

Generally, commutation of sentence is an extraordinary remedy that is rarely granted. Appropriate grounds for considering commutation have traditionally included disparity or undue severity of sentence, critical illness or old age, and meritorious service rendered to the government by the petitioner, e.g., cooperation with investigative or prosecutive efforts that has not been adequately rewarded by other official action. A combination of these and/or other equitable factors may also provide a basis for recommending commutation in the context of a particular case.

The amount of time already served and the availability of other remedies (such as parole) are taken into account in deciding whether to recommend clemency. The possibility that the Department itself could accomplish the same result by petitioning the sentencing court, through a motion to reward substantial assistance under Rule 35 of the Federal Rules of Criminal Procedure, a motion for modification or remission of fine under 18 U.S.C. Section 3573, or a request for compassionate relief under 18 U.S.C. Section 3582(c)(1), will also bear on the decision whether to recommend Presidential intervention in the form of clemency. When a commutation request is based on the serious illness of the petitioner, transmission of the United States Attorney's response by facsimile in advance of mailing the original is always appreciated.

When a petitioner seeks remission of fine or restitution, the ability to pay and any good faith efforts to discharge the obligation are important considerations. Petitioners for remission also should demonstrate satisfactory post-conviction conduct.

On January 21, 1977, the President by Proclamation 4483 granted pardon to persons who committed nonviolent violations of the Selective Service Act between August 4, 1964 and March 28, 1973 and who were not Selective Service employees. Although a person who comes within the described class was immediately pardoned by the proclamation, the Pardon Attorney issues certificates of pardon to those within the class who were actually convicted of a draft violation and who make written application to the Department on official forms. When these applications are received by the Pardon Attorney, they are forwarded to the United States Attorney for the district in which the applicant was convicted to verify the facts of the case. The verification should be returned to the Pardon Attorney promptly.

1-2.114 Office of Professional Responsibility

The Department's Office of Professional Responsibility (OPR) which reports directly to the Attorney General, is responsible for overseeing investigations of allegations of criminal and ethical misconduct by the Department's attorneys and criminal investigators. The Counsel of Professional Responsibility heads the office of 19 attorneys, whose primary role is to ensure that Departmental employees continue to perform their duties in accordance with the high professional standards expected of the nation's principal law enforcement agency.

Allegations against Departmental attorneys, including United States Attorneys and Assistant United States Attorneys, and criminal investigators involving violations of law, Departmental regulations, or Departmental standards of conduct are reported to the Office of Professional Responsibility. In the Counsel's discretion, the Office frequently conducts its own investigations into those allegations. The Office also may participate in or direct an investigation conducted by another component of the Department, or may simply monitor an investigation by an appropriate agency having jurisdiction over the matter. Allegations of misconduct against other types of employees are handled by the Office of the Inspector General.

The Counsel submits to the Attorney General an annual report reviewing and evaluating the Department's various internal inspection units. The Counsel makes recommendations to the Attorney General on the need for changes in policies or procedures that become evident during the course of the internal inquiries reviewed or initiated by the Office.

1-2.115 Office of Legal Policy

The Office of Legal Policy is responsible for planning, developing, and coordinating the implementation of major policy initiatives of the Attorney General and the Administration. The office assures consistency and coordination of internal and interdepartmental policy initiatives or activities; researches, develops and helps implement a wide range of Departmental and Administration policy initiatives; reviews and analyzes legislation and other policy proposals and supports departmental efforts to secure enactment of those of special interest to the Department and the Administration; coordinates regulatory development and review of proposed rules; serves as liaison to OMB on regulatory matters; evaluates potential nominees for Federal judicial and United States Attorney appointment, and assists in preparation of nominees for Senate confirmation.

1-2.116 Office of Public Affairs

The Office of Public Affairs (OPA) is the principal point of contact for the Department of Justice with the public and the news media.

The Office is responsible for ensuring that the public is informed about the Department's activities and about the priorities and policies of the Attorney General and the President with regard to law enforcement and legal affairs.

The Office advises the Attorney General and other Department officials on all aspects of media relations and communications issues. The Office also coordinates the public affairs units of all Department component organizations.

The Office of Public Affairs prepares and issues Department news releases and frequently reviews and approves those issued by component agencies. It serves reporters assigned to the Department by responding to queries, issuing news releases and statements, arranging interviews and conducting news conferences.

The Office ensures that information provided to the news media by the Department is current, complete and accurate. It also ensures that all applicable laws, regulations and policies involving the release of information to the public are followed so that maximum disclosure is made without jeopardizing investigations and prosecutions, violating rights of individuals, or compromising national security interests.

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

1-2.117 Office of Community Oriented Policing Service (COPS)

As a result of the Violent Crime Control and Law Enforcement Act of 1994, the Attorney General created the Office of Community Oriented Policing Services (COPS) to implement the Administration initiative to hire 100,000 additional police officers and other policing programs. The COPS Office is dedicated to the goal of significantly improving the quality of life in neighborhoods and communities throughout the country, through partnerships with communities, law enforcement and other public and private organizations. The Office administers discretionary grants for the hiring and redeployment of officers to participate in community policing and for innovative community policing programs, and offers training and technical assistance to assist grantees with the implementation of community policing in their communities.

1-2.118 Community Relations Service

The Community Relations Service (CRS), established within the Department of Commerce by Title X of the Civil Rights Act of 1964 (42 U.S.C. § 2000g), was transferred to the Department of Justice by Reorganization Plan No. 1 of 1966. (See Note, 42 U.S.C. § 2000g). The activities of CRS are conducted and supervised by a Director, under the general supervision of the Attorney General and the direction of the Deputy Attorney General (28 C.F.R. § 0.30).

CRS is decentralized, with most of its operations conducted by personnel in its 10 regional offices, each of which is headed by a Regional Director. The function of CRS is to "provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin. ("National origin" has been construed to include foreign *or* American born ethnic groups). The basic techniques used by CRS are those of conciliation and mediation, the latter being a structured negotiation process similar to labor mediation. CRS may enter a dispute by request of an interested official or party or upon its own motion. Its jurisdiction to enter is based upon the existence of a dispute involving an alleged discriminatory practice, and does not require independent federal "case or controversy" jurisdiction.

The services of CRS are frequently utilized by federal courts as an alternative to resolution of disputes by litigation. Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000a-3(d)) provides specific authority and procedures for the utilization of CRS' services in public accommodation suits, and its mediation services have been utilized a number of times by district courts. United States Attorneys' offices may wish to consider referral to CRS of disputes concerning alleged racial or ethnic discrimination which, for whatever reasons, are not appropriate for litigation.

CRS operates under a statutory requirement of confidentiality, and United States Attorneys' offices are required from time to time to defend this confidentiality from litigants seeking testimony or documents from CRS.

1-2.119 Executive Office for United States Attorneys

The Director of the Executive Office for United States Attorneys provides general executive assistance and supervision to the 94 Offices of the United States Attorneys. As such, the office is responsible for:

- A. Evaluating the performance of the United States Attorneys' offices (USAOs), making appropriate reports and inspections, and taking corrective action where indicated;
- B. Coordinating and directing the relationships of the USAOs with other organizational units of the Department;
- C. Publishing the *United States Attorneys' Manual* and the *United States Attorneys' Bulletin* for the internal guidance of the USAOs and other organizational units of the Department.
- D. Supervising the operations of the Office of Legal Education (comprised of the Attorney General's Advocacy Institute and the Legal Education Institute) which develops, conducts and authorizes the training of all federal legal personnel. *See* USAM 3-6.000.
- E. Coordinating and directing the LECC and Victim/Witness Program within each United States Attorney's Office, and providing speakers, materials, and any other technical assistance for LECC/VW related functions; *see* USAM 3-7.000.
- F. Providing the Attorney General's Advisory Committee of United States Attorneys with staff assistance and funds that are reasonably necessary to carry out the Committee's responsibilities. *See* 28 C.F.R. § 0.22, *and* USAM 3-2.000.
- G. Providing general direction and supervision of the management and policy activities of the United States Attorneys' financial litigation programs, including the establishment of policy and procedures for debt collection activities, affirmative civil enforcement and bankruptcy litigation, litigative and technical support, training, publication of a newsletter, coordination and implementation of legislative initiatives and the establishment of guidelines, advice, and other guidance;
- H. Establishing, coordinating and interpreting policy, guidelines, and procedures on criminal fine collection issues;
- I. Providing general legal interpretations, opinions, and advice to United States Attorneys in areas of recusals, cross-designations, outside activities, representation, allegations of misconduct, adverse actions, grievances, labor relations, and ethical and conflict of interest questions;

- J. Providing general support to the United States Attorneys in matters involving Assistant United States Attorney and Special Assistant United States Attorney appointments;
- K. Providing overall administrative management oversight, technical and direct support to the United States Attorneys in the program areas of facilities management and security programs;
- L. Providing technical, administrative, design and maintenance support in the area of video telecommunications to the USAOs;
- M. Analyzing, designing, and providing automated services and systems in support of the litigation missions and of selected administrative functions of the USAOs.
- N. Arranging for the acquisition and installation of integrated office automation systems in the Offices of the United States Attorneys;
- O. Providing centralized leadership, coordination, and evaluation of all equal employment efforts throughout the USAOs--administering both the Affirmative Action and Complaints Processing Programs; and
- P. Providing information and guidance to USAOs on pending legislation; preparing testimony and background for Congressional oversight and appropriations hearing; and responding to inquiries from member of Congress and private citizens.

A complete discussion on the offices within the Executive Office of United States Attorneys is set forth in Title 3 of this Manual.

1-2.120 Executive Office for United States Trustees/United States Trustee Program

The mission of the U.S. Trustees is to supervise the administration of bankruptcy cases, leaving traditional judicial functions as the sole concern of bankruptcy judges. Section 408 of the Bankruptcy Reform Act of 1978 (92 Stat. 2549, 2686-87), established the U.S. Trustee program as a pilot effort in 10 geographical areas, encompassing 18 federal judicial districts. In 1986 Congress expanded the Program nationwide as Public Law No. 99-554; 100 Stat. 3088 (October 27, 1986).

The U.S. Trustee has responsibility in four of the five types of bankruptcy proceedings defined under Title 11 of the U.S. Code (Bankruptcy Code). These are (1) proceedings under chapter 7 in which the assets of the debtor are liquidated; (2) reorganization proceedings under chapter 11 which provides a mechanism for rehabilitation of the business debtor; (3) adjustment of debts of a family farmer with regular annual income under chapter 12; and (4) adjustment of debts of an individual with regular income under chapter 13, pursuant to which an individual can discharge debts by arranging for payments over a period of time, usually three years.

The responsibilities of the U.S. Trustees are set forth in 28 U.S.C. § 586. They include appointing and supervising the performance of private trustees in individual cases; appointing and encouraging active participation by creditors' committees in chapter 11 reorganization cases; monitoring the operations of debtors in possession in chapter 11 cases to ensure that operating expenses, including taxes, are being paid on a current basis; appearing before the court to move for dismissal or conversion of cases, or the appointment of a trustee or an examiner, as appropriate; generally serving as watchdogs of the bankruptcy system to prevent abuses and, by referring criminal violations of federal bankruptcy laws to the United States Attorneys, enforcing those laws.

The Attorney General is responsible for appointment of U.S. Trustees and supervising the Program's efforts. The Program is headed by a Director. The 21 U.S. Trustees carry out the Program's responsibilities in their particular regions. In turn, suboffices are headed by an Assistant U.S. Trustee, who reports to the U.S. Trustee.

1-2.121 International Criminal Police Organization-United States National Central Bureau (INTERPOL-USNCB)

The INTERPOL-USNCB addresses the problem of international criminal activity and the movement of international criminals and individuals who are members of organized groups, such as terrorists, who have committed criminal acts across international borders affecting law enforcement capabilities within the United States and in the 175 other member countries of INTERPOL. The following sets forth guidance under INTERPOL-USNCB.

A. Authority. The INTERPOL-USNCB facilitates international law enforcement cooperation as the United States representative to the International Criminal Police Organization (INTERPOL or I.C.P.O.), on behalf of the Attorney General, who, pursuant to 22 U.S.C. § 263a, maintains the United States' membership in INTERPOL, which is an intergovernmental organization of 176 member countries, headquartered in Lyon, France.

B. Functions pursuant to 28 C.F.R. § 0.34. *See* DOJ Organization and Functions Manual at 1.

C. Other Limitations and Authorities. INTERPOL functions within the limits of the existing laws in each of the member countries and the INTERPOL Constitution, and in accord with the United Nations "Universal Declaration of Human Rights." A Headquarters Agreement between the INTERPOL General Secretariat and the French Government provides for a Supervisory Board of five international judges and experts to review any complaints concerning data contained within the organization's archives. The annual meetings of the INTERPOL General Assembly of all member countries also have approved written guidelines for handling of information by the General Secretariat and by the member countries' National Central Bureaus.

D. Law Enforcement Agency Representation. The INTERPOL-USNCB operates through well-established cooperative efforts with federal and state agencies. *See* DOJ Organization and Functions Manual at 2.

E. Types of Criminal Cases Handled by INTERPOL-USNCB. The INTERPOL-USNCB handles requests for investigations including serious and sophisticated crimes of murder, violent crimes, firearms and explosive violations, theft, large-scale narcotics violations, large-scale fraud and counterfeiting, immigration violations, and the location and apprehension of international fugitives, involving arrests and extraditions to the countries where the crimes were committed.

The requests for INTERPOL assistance also cover criminal record history information and identification checks; license checks; tracing weapons; identifying and tracing international stolen and forged art-works; completing investigations of an international nature concerning lost and stolen travelers checks and credit cards; tracing license plates and registrations on vehicles believed to be stolen or used in the commission of a crime; locating and interviewing witnesses in the United States and abroad; circulation of INTERPOL International Wanted Notices on fugitives to all U.S. border points; and humanitarian matters, including missing persons cases.

The INTERPOL-USNCB maintains a computerized data base of all investigative cases in the INTERPOL Case Tracking System (ICTS). The organization also maintains computerized records of all INTERPOL International Notices on wanted persons, fugitives and recidivists in the INTERPOL-USNCB portion of the Treasury Enforcement Communications Systems (TECS) data base, which is operated by the U.S. Department of the Treasury.

F. Provisional Arrests and International Extradition Requests. INTERPOL Wanted Notices on wanted persons and fugitives are circulated to all United States border points, through the U.S. Department of Treasury's Treasury Enforcement Communications Systems (TECS). Red, Blue, or Green Notices, which are discussed in the DOJ Organization and Functions Manual at 3, may serve as the basis for exclusion of the subject from entry into the United States.

The INTERPOL communications channel is a direct police-to-police link and, therefore, it is faster than diplomatic channels. The international law enforcement community will arrest a subject in a foreign country, based upon the receipt, through INTERPOL channels, of information that a provisional arrest warrant and/or extradition request has been initiated through diplomatic channels.

G. Divisions Within INTERPOL-USNCB. These are the Criminal Investigative Division, the Financial Fraud Division, the Alien/Fugitive Division, the Drug Investigations Division, the Drug Investigations Division, and the State Liaison Division. Further information on these divisions can be found the DOJ Organization and Functions Manual at 4.

H. Eligibility to use services of INTERPOL-USNCB. All United States federal, state and local law enforcement agencies, including investigation and prosecution authorities, are eligible to make requests for assistance from the INTERPOL-USNCB. However, specific guidelines have been established by the INTERPOL-USNCB before responding to requests for investigative information, so as to avoid any inappropriate release of information which may be in conflict with various federal laws. Use of the facilities of the INTERPOL-USNCB by approximately 20,000 state and local law enforcement agencies is essentially the only medium, in the absence of federal jurisdiction over the case, that state and local police have for securing the assistance of a foreign police force. Efforts to increase awareness among the state and local law enforcement communities of the service available through the INTERPOL-USNCB are an on-going activity of this organization.

I. Request for Enforcement Assistance or Information. Before the INTERPOL-USNCB may respond to a request for law enforcement assistance, all requests must include the type of offense and certain other information to reflect that it is a specific criminal investigation, including the type of criminal investigation or other law enforcement purpose, and the relationship of the subject to the investigation. For further information, see DOJ Organization and Functions Manual at 5.

1-2.122 Office of Intergovernmental Affairs

The Office of Intergovernmental Affairs serves as the Attorney General's representative to state and local governments and the advocacy groups which represent them. The Office also plays a key role in policymaking, as it provides guidance to the Attorney General and other Department officials on issues that impact state and local communities.

Currently staffed by five attorneys, the Office's Director reports to the Attorney General, Deputy Attorney General or Associate Attorney General as the case may be, and provides advice concerning many aspects of the decisions these officials makes. Intergovernmental Affairs staff serve as Justice Department representatives in Washington and around the country when issues arise concerning states, localities, or other groups. The Office also disseminates information to local prosecutors, law enforcement officials, and governmental bodies regarding Department issues of concern to them.

1-2.123 Professional Responsibility Advisory Office

The mission of the Professional Responsibility Advisory Office (PRAO) is to ensure prompt, consistent advice to Department attorneys and Assistant United States Attorneys on issues implicating professional responsibility and attorney conduct rules. PRAO, which is staffed with a Director, eight attorneys, non-attorney professionals (including a librarian and paralegals) and support personnel, has six core functions. Foremost among these is providing definitive advice and guidance to Department attorneys and Assistant U.S. Attorneys, as well as the leadership at the Department, on issues relating to professional responsibility and the rules of attorney conduct.

PRAO also assembles and maintains the rules and codes of attorney ethics, including all relevant interpretative decisions and bar opinions of each of the 50 states, the District of Columbia, and federal territories, and other reference materials and serves as a central repository for briefs and pleadings as cases arise. Another of PRAO's functions is to provide coordination with the litigating components of the Department and the United States Attorneys' offices to defend Department attorneys and Assistant U.S. Attorneys in any disciplinary or other hearing where it is alleged that they failed to meet their ethical obligations. PRAO serves as liaison with the state and federal bar associations in matters related to the implementation and interpretation of 28 U.S.C. 530B ("Ethical standards for attorneys for the Government") and any amendments and revisions to the various federal court and state professional responsibility rules and codes. In order to provide Department attorneys and Assistant U.S. Attorneys with the tools to make informed

judgments about the circumstances that require their compliance with attorney conduct rules or otherwise implicate professional responsibility concerns, PRAO conducts training on professional responsibility issues and the rules of professional conduct. Finally, PRAO performs such other duties and assignments as determined by the Attorney General or the Deputy Attorney General.

1-2.200 Divisions

The organization and functions of the Antitrust Division (Title 7), Civil Division (Title 4), Civil Rights Division (Title 8), Criminal Division (Title 9), Environment and Natural Resources Division (Title 5), and Tax Division (Title 6) are contained in separate titles of the United States Attorneys' Manual. A description of the organization and function of the Justice Management Division follows.

1-2.207 Justice Management Division

The Justice Management Division (JMD) is the principal organizational unit responsible for management and administrative support in the Department of Justice. Under the direction of the Assistant Attorney General for Administration (AAG/A), JMD provides Department-wide policy guidance for management, administration and organizational matters, and direct administrative services to the Department's offices, boards, divisions (OBDs) and, to a limited extent, its bureaus.

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

- A. Act as the Attorney General's principal management and administrative resource in support of Department goals and operations.
- B. Establish administrative policies, programs and procedures for the Department to ensure the effective and efficient achievement of the Department's mission.
- C. Review Department activities to ensure compliance with Federal laws and regulations and Department directives and policies.
- D. Provide management, financial and administrative assistance, including the operation of central administrative facilities and services.

As part of its responsibilities, JMD represents the offices of the Attorney General, and the Deputy Attorney General on organizational, management and administrative matters with the other principal components of the Department and other Federal agencies, including such central management agencies as the Office of Management and Budget, the Office of Personnel Management, the General Services Administration and the General Accounting Office.

For further information on the functions assigned to the AAG/A, see DOJ Organizations and Functions Manual at 6. For further information on JMD Individual Staff Responsibilities, see DOJ Organizations and Functions Manual at 7.

1-2.300 Bureaus

Sections 1-2.301 through 1-2.310 outline the organization and functions of the Bureau of Prisons, Drug Enforcement Administration, Federal Bureau of Investigation, Immigration and Naturalization Service, Office of Justice Programs, and the United States Marshals Service.

1-2.301 Bureau of Prisons

The mission of the Bureau of Prisons is to protect society by confining offenders in the controlled environments of prison and community based facilities that are safe, humane, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law abiding citizens. It has the responsibility for the management of federal penal, correctional and detention facilities.

The Director of the Bureau of Prisons directs its activities, reports directly to the Deputy Attorney General, and is under the general supervision of the Attorney General (18 U.S.C. § 4041, 28 C.F.R. §§ 0.95 to 0.99). The Director has the authority to promulgate rules governing the control and management of federal penal, correctional and detention facilities, and to provide for the classification, government, discipline, treatment, care, rehabilitation and reformation of inmates confined therein (A.G. Order No. 675-76, 41 *Fed.Reg.* 56802, (December 30, 1976)).

When it is necessary to call an inmate as a witness or defendant in a criminal matter, the Assistant United States Attorney may obtain the inmate's appearance in one of two ways: by written request to the U.S. Marshal, pursuant to 18 U.S.C. Section 1621(d), or by obtaining a writ of habeas corpus *ad testificandum* or *ad prosequendum* from the appropriate court. The U.S. Marshals Service will make the necessary arrangements to serve the writ and transport the inmate to court.

Occasionally, an Assistant United States Attorney involved in the investigation of a criminal matter may wish to use an inmate in an undercover operation. Prior to doing so, the Assistant must contact the Bureau of Prisons' Office of Intelligence and the Office of Enforcement Operations in the Criminal Division of the Department of Justice for authorization.

From time to time inmates or their counsel will seek a furlough or escorted trip away from custody for some situation that they feel warrants a release from custody. The BOP considers a furlough as an authorized absence from an institution by an inmate who is not under escort by a Bureau of Prisons staff member, a U.S. Marshal, or other Federal or State agent. 28 C.F.R. Section 570.30. The authority to approve furloughs has been delegated to the warden or acting warden of the facility in which the inmate is held, not to the Federal Courts or the Office of the United States Attorney. See 18 U.S.C. Sections 3622 and 28 CFR Section 570.32. The regulations governing escorted trips are found at 28 CFR Section 570.40 *et seq.*

The Bureau's legal authority to monitor inmate calls is found at 18 U.S.C. Section 2510(5)(a). During period review of monitored calls for institution security, Bureau staff may detect criminal activity by federal inmates. Staff may turn that initial information over to the appropriate federal or state authorities for law enforcement action. If a local investigation is begun by outside law enforcement authorities, any subsequent telephone monitoring information may only be disclosed with proper legal authorization, e.g., search warrant, grand jury subpoena, subpoena issued by the court, or intercept order as authorized by statute. In no case may prison officials honor requests for monitoring of future calls without a wiretap or communication intercept order. When an Assistant United States Attorney needs to subpoena these telephone conversations for evidentiary purposes, he or she should direct that subpoena to the Warden of the institution. The United States Attorney's Office or law enforcement agency investigating the case will be asked to furnish funds to replace the master reels that hold the recorded conversations.

For further information on the Bureau of Prisons, see the DOJ Organizations and Functions Manual at 8.

1-2.302 Drug Enforcement Administration

The mission of the DEA is to enforce the controlled substances laws and regulations of the United States and to bring to the criminal and civil justice system of the United States or any other competent jurisdiction, those organizations, and principal members of organizations, involved in the growing, manufacture, or distribution of controlled substances appearing in or destined for illicit traffic in the United States; and to recommend and support nonenforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets. In carrying out its mission, the DEA is the lead agency responsible for the development of overall federal drug enforcement strategy, programs, planning, and evaluation. The DEA's primary responsibilities include:

- A. Investigation and preparation for prosecution of major violators of controlled substances laws operating at interstate and international levels;
- B. Management of a national drug intelligence system in cooperation with Federal, State, local and foreign officials to collect, analyze, and disseminate strategic and operational drug intelligence information;
- C. Seizure and forfeiture of assets derived from, traceable to, or intended to be used for illicit drug trafficking.
- D. Enforcement of the provisions of the Controlled Substances Act as they pertain to the manufacture, distribution, and dispensing of legally produced controlled substances.
- E. Coordination and cooperation with federal, state and local law enforcement officials on mutual drug enforcement efforts and enhancement of such efforts through exploitation of potential interstate and international investigations beyond local or limited federal jurisdictions and resources.
- F. Coordination and cooperation with other federal, state and local agencies, and with foreign governments, in programs designed to reduce the availability of illicit abuse-type drugs on the United States market through non-enforcement methods such as crop eradication, crop substitution, and training of foreign officials.
- G. Responsibility under the policy guidance of the Secretary of State and U.S. Ambassadors, for all programs associated with drug law enforcement counterparts in foreign countries.
- H. Liaison with the United Nations, Interpol, and other organizations on matters relating to international drug control programs.

1-2.303 Federal Bureau of Investigation

The Federal Bureau of Investigation (FBI), was established in 1908. It is the principal investigative arm of the Department of Justice (DOJ). Title 28, U.S.C. Section 533, which authorizes the Attorney General to "appoint officials to detect...crimes against the United States," and other federal statutes give the FBI the authority and responsibility to investigate specific crimes.

At present, the FBI has investigative jurisdiction over violations of more than 200 categories of federal crimes. It is also authorized to investigate matters where no prosecution is contemplated. For example, under the authority of several Executive Orders, the FBI conducts background security checks concerning nominees to sensitive government positions. In addition, the FBI has been directed or authorized by Presidential statements or directives to obtain information about activities jeopardizing the security of the Nation.

Information obtained through an FBI investigation is presented to the appropriate United States Attorney or DOJ official, who decides if prosecution, or other action, is warranted. Top priority has been assigned to the five areas that affect society the most: counterterrorism, drugs/organized crime, foreign counterintelligence, violent crimes, and financial crimes.

The FBI is also authorized to provide other law enforcement agencies with cooperative services, such as fingerprint identification, laboratory examinations, police training, Uniform Crime Reports, and the National Crime Information Center.

The FBI conducts investigations under Executive Order No. 10450, effective May 28, 1953, *as amended*, which prescribes procedures for the administration of the federal employees security program covering all civilian employees and applicants in the Executive Branch of the government. The FBI also conducts applicant-type investigations for certain government agencies as authorized under Presidential Executive Orders, Departmental Orders, and statutes enacted by Congress.

Basic FBI Policies. The FBI is a career service; its employees are selected without regard to political affiliation and political considerations.

The FBI is a fact-finding and reporting agency only. The results of FBI investigations are furnished without recommendation or conclusion to the United States Attorney's Office or the Department for the determination of appropriate action. The decision for action to be taken is the sole responsibility of the United States Attorneys or the Department, and Special Agents are not authorized to express an opinion as

to such matters. This policy which prohibits the FBI from expressing an opinion, conclusion, or recommendation extends to investigations of applicants for governmental positions.

For further information on the FBI's organizational structure and services, see the DOJ Organizations and Functions Manual at 9. For a list of federal matters investigated by the FBI, see the DOJ Organizations and Functions Manual at 10. For further information on FBI cooperative and information services, see the DOJ Organizations and Functions Manual at 11.

Services of the FBI Laboratory. Examples of the types of examinations the Laboratory is equipped to make are as follows: Art, artists' conceptions, biochemical, chemical, biological (including DNA analysis), facial aging, skull reconstruction, video tape analysis, coins, crime scene diagrams, cryptanalytical, document, drug records analysis, explosives and their residues, extortionate credit records, fibers, firearms identification and ammunition, gambling records and paraphernalia, glass, graphics, gunpowder, handwriting and handprinting, hairs, latent fingerprints, metallurgical, mineralogical, neutron activation analysis, number restoration, paints, pharmacological, photographic, photography enhancements, photogrammetry, plastics, polygraph, printing, rare books, serological, shoe prints, rare stamps, tire treads, toolmarks, toxicological, trace evidence, two and three dimensional demonstrative evidence, visual aids, high resolution aerial photography, still and video image processing. Also the Laboratory has the capability of analyzing many commercial products.

Evidence should be sent directly to the FBI Laboratory in Washington, D.C., for examination. Ask the local office of the FBI for assistance in the proper method of packing and transmitting evidence, and obtain the services of FBI laboratory experts when testimony is needed in connection with the prosecution of a case in which the United States is a party in interest. A request to the Department for authority to obtain the services of such experts from other sources should not be submitted.

When a United States Attorney's Office requires the expert testimony of a fingerprint examiner, the request should be made for the *actual* day on which it is anticipated the testimony is required. Likewise, the CJIS Division should be promptly notified of any change in the examiner's court appearance to insure that his/her services may be fully utilized. Similarly, when a United States Attorney's Office requires identification records for trial, such requests should be made to the CJIS Division at the earliest possible date to insure their availability.

When expert lab testimony is desired for a trial, the court appearance of the FBI laboratory examiner should be requested for the actual date on which the anticipated testimony will be needed rather than for the date on which the trial is to begin. It is realized that the exact date on which the examiner's testimony will be desired cannot always be determined. However, if it can be expected that such testimony will not be needed on the first day of the trial but rather on some subsequent day of the trial, the Laboratory should be so advised in order that every effort may be made to insure that the examiner's absence from FBI Headquarters is held to a minimum. Requests for testimony are handled by the FBI laboratory in the order in which they are received. Therefore, to insure the presence of an expert at a trial, his/her appearance should be requested as far in advance as possible.

FBI Reports. In those criminal matters where decisions as to prosecution are made by the United States Attorney, the reports of investigations are submitted directly to the United States Attorney's Office by the local field office of the FBI. These reports are confidential. They are not to be furnished to persons outside the Department except pursuant to court order as authorized or as required by statute, regulations and Supplement No. 4 (Revised), Departmental Order No. 3464 dated January 13, 1953. The procedures for the production and/or disclosure of FBI material and/or information in response to demands for the same are set forth in Attorney General Order 501-73 dated January 18, 1973 (28 C.F.R. § 16.21 *et seq.*).

Under Departmental instructions, there is to be set forth in the reports submitted by FBI agents the specific reason of the United States Attorney or the Assistant United States Attorney as to why prosecution is declined. These reasons are set forth for the Department's information and copies of the reports containing such decisions and opinions of the United States Attorney and his/her staff are furnished to the office of the United States Attorney, as well as to the Department. For a list of abbreviations used in FBI reports, see the DOJ Organization and Functions Manual at 12.

1-2.304 Immigration and Naturalization Service

The Commissioner of the Immigration and Naturalization Service (INS) administers and enforces the Immigration and Nationality Act (INA) (8 U.S.C. § 1103) and all other laws relating to immigration (including admission, exclusion and deportation), naturalization and nationality, subject to the limitations of Section 103 of the INA Act. *See* 28 C.F.R. § 0.105(a).

The Commissioner exercises and performs any of the authority, functions, or duties conferred or imposed upon the Attorney General by any of the above-mentioned laws, including the authority to issue regulations. *See* 28 C.F.R. § 0.105(b).

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

The INS arrests, detains, and removes from the United States inadmissible and deportable aliens, including aliens convicted of criminal offenses and aliens involved in terrorism. *See* 8 U.S.C., Sections 1182, 1225, 1226, 1227, 1251, 1252, 1253.

The INS investigates and assesses civil money penalties against employers who knowingly hire aliens who are authorized to work. *See* 8 C.F.R. 274a *et seq.* The INS also assesses civil money penalties against individuals who create, use or traffic in fraudulent documents.

The INS patrols the borders of the United States to prevent the entry of aliens into the United States in violation of law. *See* 28 C.F.R. § 0.105(d). The INS also inspects arriving aliens at domestic ports-of-entry and investigates the smuggling of aliens into the United States. *See* 8 U.S.C., Sections 1103, 1225.

The INS supervises naturalization work in the specific courts designated by Section 310 of the INA to have jurisdiction in such matters, including the requiring of accountings from the clerks of such courts for naturalization fees collected, investigation through field officers of the qualifications of citizenship applicants, and representation of the government in all court hearings. *See* 28 C.F.R. § 0.105(e).

Other major functions of the INS include providing citizenship textbooks and other services for the preparation of candidates for naturalization; registering and fingerprinting aliens in the United States; preparing reports on private bills pertaining to immigration matters; and directing members of the INS assigned to commercial aircraft to perform the functions of a deputy marshal as a peach officer. *See* 28 C.F.R. § 0.105(f) *et seq.*

1-2.305 The Office of Justice Programs

The Office of Justice Programs (OJP) was created by the 1984 Amendments to the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. 3711, *et seq.*) to provide federal leadership in developing the nation's capacity to prevent and control crime and delinquency, improve the criminal and juvenile justice systems, increase knowledge about crime and related issues, and assist crime victims. OJP's senior management team -- comprised of the Assistant Attorney General (AAG), two Deputy Assistant Attorneys General (DAAG), and five Bureau Heads -- works together with dedicated line staff to carry out this mission and to meet the agency's four goals:

- A. To identify, define, and promote the understanding of critical crime, delinquency, and justice issues.
- B. To develop, support, and evaluate promising and innovative strategies for ensuring safe and just communities and assisting victims of crime.
- C. To build partnerships that strengthen federal, state, and local government and community capacities.
- D. To ensure a fair workplace that maximizes each employees's contribution to the overall mission and goals of OJP.

The Assistant Attorney General is responsible for setting policy, ensuring that OJP policies and programs reflect the priorities of the President, the Attorney General, and the Congress, and coordinating the work of OJP and its five program bureaus. Two Deputy Assistant Attorneys General assist the OJP/AAG in carrying out these responsibilities.

Each OJP Bureau is headed by a presidentially appointed Director or Administrator. The Director of the Bureau of Justice Assistance (BJA) is responsible for administering DOJ's primary criminal justice grant agency. BJA provides funding, training, and technical assistance to state and local governments to combat violent and drug-related crime and help improve the criminal justice system. It also administers the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3750). For further information on the BJA, see the DOJ Organization and Functions Manual at 13.

Other OJP Bureaus include the Bureau of Justice Statistics (BJS), the National Institute of Justice (NIJ), the Office of Juvenile Justice and Delinquency Prevention (OJJDP), and the Office for Victims of Crime (OVC). Further information on these bureaus can be found in the DOJ Organization and Functions Manual at 14. For information on OJP Crime Act Offices, see the DOJ Organization and Functions Manual at 15. For information on other OJP offices, see the DOJ Organization and Functions Manual at 16.

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

The Director of the U.S. Marshals Service directs and supervises all activities of the Service, including the following:

- A. The execution of federal arrest, parole violation, custodial and extradition warrants as directed; investigative responsibility for federal escapes, federal bond default, federal parole and probation violations, warrants, and mandatory release violation warrants, except for certain FBI cases.
- B. The service of all civil and criminal process emanating from the federal judicial system including the execution of lawful writs and court orders;
- C. The provision for the health, safety, and welfare of government witnesses and their dependents;
- D. The administration and implementation of courtroom security requirements for the federal judiciary;
- E. The protection of federal jurists, court officers, and other threatened persons in the interests of justice where criminal intimidation impedes the functioning of the federal judicial process or other official proceedings;
- F. The provision of assistance in the protection of federal property and buildings;
- G. The direction and supervision of a training school for U.S. Marshals Service personnel;
- H. The disbursement of appropriated funds, *including the Department of Justice Assets Forfeiture Fund*, to satisfy government obligations incurred in the administration of justice;
- I. The maintenance of custody and control of money and property seized pursuant to 18 U.S.C. § 1955(d), and all other money and property seized for forfeiture, except where the seizure was made by the Department of Treasury, when seized property is turned over to the U.S. Marshals Service, (*see USAM 1-2.308*).
- J. The receipt, processing and transportation of prisoners held in the custody of a marshal or transported by the U.S. Marshals Service under cooperative or intergovernmental agreements;
- K. The sustention of custody of federal prisoners from the time of their arrest by a marshal or their remand to a marshal by the court, until the prisoner is committed by order of the court to the custody of the Attorney General for the service of sentence, otherwise, released from custody by the court, or returned to the custody of the U.S. Parole Commission or the Bureau of Prisons. *See 28 C.F.R. § 0.111(a) to (k)*.
- L. The analysis of threats to United States Attorneys, federal judges, other officers of the court, court facilities, prisoners in Marshal's custody, and U.S. Marshals Service personnel, (*see USAM 1-2.309*).
- M. Contracting with the proper authorities of any state, territory or political subdivision thereof, for the imprisonment, subsistence and care of federal prisoners under the custody of the U.S. Marshals including providing funding for such physical improvements as may be required in exchange for guaranteed federal prisoner bed space.
- N. The deputation of selected officers or employees of the United States or local law enforcement officers in furtherance of federal law enforcement missions, (*see USAM 1-2.310*).

1-2.307 U.S. Marshals Service -- Responsibilities to United States Attorneys

A. Evidence. Many cases, both criminal and civil, involve large or substantial amounts of material held for evidence. It is the general policy of the U.S. Marshals Service not to accept other federal agencies' seized property which is to be used as evidence. However, in those situations where these items are turned over to the U.S. Marshals Service, they must be properly marked as evidence and accompanied by a memorandum.

B. Key Witness Protection. Under Department of Justice Order No. 2110-42, dated July 19, 1983, procedures are established for protecting witnesses to organized crime and other serious offenses in appropriate circumstances. Requests for protection are made by an Assistant United States Attorney through the United States Attorney to the Director of Enforcement Operations, Criminal Division, who will forward approved requests to the U.S. Marshals Service.

A person being considered for protections under the program must not be given representations or promises that cannot be met in accordance with established guidelines. For this reason, it is essential that immediate contact be made with the U.S. Marshal's Office when protection is being considered for a witness so that a witness security specialist may be present at any interviews in which details of protection are being considered. *See USAM 9-21.000 et seq.*

C. Writs of Habeas Corpus. When preparing a case for trial, it is often necessary to issue a writ of habeas corpus for a defendant or a witness who is in federal or state custody. The Assistant United States Attorney preparing the case for trial must give sufficient time for the marshal to execute these writs. Fourteen days is normally considered to be sufficient time. If there is not sufficient time before trial to move the required prisoner through usual channels, it is costly to the marshal to move a single prisoner for a long distance by air. The prisoner can be moved substantially less expensively and more securely if adequate notice is given than if such notice is not given.

The Marshal will honor a written request from the Assistant United States Attorney for the production of federal prisoners from federal institutions for prosecution or testimony without the need for a writ of habeas corpus. The Assistant United States Attorney's written request must be approved by a supervisory Assistant United States Attorney. A writ of habeas corpus must still be obtained for the production of federal prisoners serving sentences in state or local jails, for state prisoners in state or local institutions, and for state prisoners in federal institutions.

D. Criminal Subpoenas. After trial date has been set and while the Assistant United States Attorney is completing the case for trial, the marshal, in most cases, will serve subpoenas on all prospective witnesses. As much time as possible should be given in the event there is difficulty locating those persons subpoenaed. The Assistant United States Attorney should ensure that the case agents have updated addresses of witnesses to be subpoenaed. In many cases, a matter does not come to trial for a year or more after the investigation; if these matters are not updated, time is lost and a key witness may not be located in time for trial.

E. Sequestered Juries. If the Assistant United States Attorney expects to move for sequestration of a jury or has knowledge that opposing counsel intends to do so, he/she should make this fact known to the U.S. Marshal's Office as soon as possible so that all necessary arrangements for lodging and meals may be made in advance.

F. Court Security. The Marshal has the responsibility for security in federal courtrooms and immediate surrounding areas. If a threat to a federal prosecutor, judge, juror, or other court-related individual becomes known it should be immediately reported to the U.S. Marshal's Office so that a threat assessment and possible subsequent protective services can be implemented when appropriate. If a controversial, high risk or publicized trial is scheduled, the fact should be made known to the Marshal's Office so that the security problem may be assessed and proper security arrangements made for safely conducting the trial.

1-2.308 U.S. Marshals Service -- Asset Seizure and Forfeiture

Marshals Service responsibilities in the management of seized and forfeited property have expanded under the National Asset Seizure and Forfeiture (NASAF) Program. The program emphasizes pre-seizure planning to minimize post-seizure management problems. It is especially important that NASAF personnel

be consulted prior to major seizures of real property and businesses, and where the execution of a warrant *in rem* will be simultaneous with the seizure.

A. Seized Cash.

- All seized cash currently held by United States Attorneys as evidence is to be delivered to the United States Marshals Service for deposit into the Seized Asset Deposit Account (15X6874).
- The deposit of future cases must occur within 60 days after seizure or within 10 days following an indictment, whichever comes first.
- Exceptions to the requirement to deposit seized cash must be approved by the Assistant Attorney General, Criminal Division.
- Exceptions will be considered only when the cash would serve as a significant independent tangible evidentiary purpose such as the existence of fingerprints or drug residue.
- United States Attorneys may grant exceptions on the retention of cash for evidentiary purposes when the amount of the seizure is less than \$5,000.00.

B. Forfeited Cash. Forfeited cash after all appeals processes are completed, will be transferred to the Department of Justice Assets Forfeiture Fund. In addition, the proceeds from the sale of any other forfeited asset (except where the Department of Treasury seized the property) will be deposited to the Justice Assets Forfeiture Fund.

1-2.309 U.S. Marshals Service -- Procedures Relative to Threats Against United States Attorneys and other Officials

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

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

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

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

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

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

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

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

H. If there is disagreement with a Marshals Service determination that the subject is not in danger and is not in need of personal protection, a memorandum will be prepared by the Service for the Deputy Attorney General, indicating this and transmitting a Threat Assessment Report. A copy of the assessment will also be sent to the Director, FBI, with notification of the Marshals Service's intent not to initiate or continue protective services unless information indicating that there is danger is provided by the FBI or the Deputy Attorney General's Office. If no such information which would alter the assessment is received or developed from any source, the security detail will be terminated.

1-2.310 U.S. Marshals Service -- Procedures for Special Deputation and Deputation of Local Law Enforcement Officers

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

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

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

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

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

A. Requests for deputation of state and local officers to assist federal drug enforcement activities should be directed to the DEA or the FBI. Special deputation for all other (non-drug related) federal law enforcement purposes remains with the U.S. Marshals Service.

B. Special deputation is not required for access to federal grand jury information. Rule 6(e)(3)(A)(ii), Fed.R.Cr.P., provides that state and local officers can have access to grand jury material for purposes of assisting in federal law enforcement efforts. Moreover, with judicial approval, disclosure may be made to state officials for the separate purpose of an independent state investigation and state prosecution for violations of state criminal law. See Rule 6(e)(3)(C)(iv), Fed.R.Cv.P.

C. Special deputation of state or local officers, or translators, is not necessary for wiretaps interception or listening purposes. See 18 U.S.C. Section 2518(5).

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

E. The Federal Employees Compensation Act, 5 U.S.C. Section 8101, *et seq.* specifically extends benefits to state and local officers who are injured while engaged in the apprehension of persons committing federal crimes and generally extends benefits to "an individual rendering personal service to the United States." Thus, state officers may be covered by the federal workers' compensation statutes. There is no requirement

for special deputation. If applicable, this is the exclusive remedy the state officer has against the United States for injuries, *City of Whitier v. United States Department of Justice*, 598 F.2d 561 (9th Cir. 1979), and the officer must generally first seek state or local worker's compensation. Federal benefits can supplement state benefits.

1-2.400 Boards

Sections 1-2.401 through 1-2.403 outline the organization and functions of the Executive Office for Immigration Review, U.S. Parole Commission, and the Foreign Claims Settlement Commission.

1-2.401 Executive Office for Immigration Review

Background. On January 9, 1983, the Executive Office for Immigration Review (EOIR) was created through an internal Department of Justice (DOJ) reorganization which combined the immigration judge function previously performed by employees of the Immigration and Naturalization Service (INS), with the Board of Immigration Appeals (BIA). Originally, EOIR included the Office of the Director, the BIA, and the Office of the Chief Immigration Judge (OCIJ), which supervised the performance of the Immigration Judges located in courts throughout the nation. In March 1987, the Office of the Chief Administrative Hearing Officer (OCAHO), was established as an additional unit within EOIR. OCAHO is responsible for administering the hearing process issues arising under the employer sanctions, anti-discrimination, and document fraud provisions of the Immigration and Nationality Act (INA). EOIR is completely independent of both the INS, the organization charged with the enforcement of the immigration laws, and the Office of Special Counsel for Immigration Related Unfair Employment Practices, the entity charged with the enforcement of the anti-discrimination provisions of the INA.

Responsibilities. The Attorney General is charged with the administration and enforcement of the INA, and all other laws relating to the immigration and naturalization of aliens. The Attorney General has delegated to EOIR certain aspects of her authority to administer and interpret the immigration laws. Specifically:

1. Immigration Hearings
2. Review of Immigration Hearings
3. Employment Discrimination, Document Fraud, and Employer Sanctions Hearings

Essentially, EOIR's mission is to provide uniform interpretation and application of immigration law, ensuring fair treatment for all parties involved.

Organization. EOIR is one of the Offices, Boards, and Divisions (OBDs) of the U.S. Department of Justice. EOIR is comprised of four major entities reporting to the Director: the Board of Immigration Appeals; the Office of the Chief Immigration Judge, which includes a headquarters staff and all Immigration Courts located throughout the country; the Office of the Chief Administrative Hearing Officer; and the Office of the Associate Director. *See generally* DOJ Organization and Functions Manual at 17.

1-2.402 U.S. Parole Commission

The U.S. Parole Commission is an independent agency in the Department of Justice. The Department is responsible for providing administrative support for the Commission. The authority for the functions of the U.S. Parole Commission is found in Chapter 311, 18 U.S.C. §§ 4201 to 4218; 18 U.S.C. Sections 4106 and 4106A; and Public Law 104-232 (October 2, 1996). The Chairman of the three-member Commission is responsible for assigning other members of the Commission to serve as Vice Chairman, members of the National Appeals Board, and Regional Commissioner. However, the concurrence of the Attorney General is required for those assignments.

The functions entrusted to the Commission by these statutes, and described in 28 C.F.R. §§ 01.124 through 01.127 and 2.1 through 2.64, include the following: exclusive authority to grant, modify, or revoke paroles of U.S. prisoners convicted of crimes that were committed prior to November 1, 1987; to issue warrants for violations of parole or mandatory release, to re-parole or re-release mandatory releases; to determine the date on which a prisoner shall be released on parole in any case in which the committing court specifies that such date shall be determined by the Commission; and to promulgate rules and regulations for the supervision, discharge from supervision, or recommitment of paroled prisoners. The Commission also has responsibility for determining release duties for prisoners transferred to the United States pursuant to prisoner transfer treaties. The Commission's responsibility for the supervision of federal parolees and persons released upon expiration of their sentences by operation of law under good time statutes (so-called mandatory releases) is exercised through the Federal Probation Officers under the provisions of 18 U.S.C. §§ 3655 and 4203(b). The setting and modification of terms and conditions governing the prisoner's release on supervision is also the responsibility of the Commission.

Under Public Law 104-232, the Attorney General must report annually to Congress, beginning on May 1, 1998, as to whether the Parole Commission should continue in existence as an independent agency or have its functions transferred to the department of Justice by the self-executing order of the Attorney General, effective November 1 of the year in which such transfer is ordered.

1-2.403 Foreign Claims Settlement Commission

The Foreign Claims Settlement Commission has jurisdiction to determine claims of United States nationals against foreign governments for losses and injuries sustained by them, pursuant to programs which may be authorized under specific legislation. Available funds have their sources in international settlements, or liquidations of foreign assets in this country by the Departments of Justice or Treasury, and from public funds when provided by the Congress. *See* 28 C.F.R. § 0.128.

1-2.500 United States Attorneys

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

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

A complete discussion of United States Attorneys, Assistant United States Attorneys, Special Assistants, and the Attorney General's Advisory Committee of United States Attorneys, is set forth in Chapter 2, Title 3, Executive Office for United States Attorneys. Title 3 also sets forth administrative policy and financial litigation policy for the Offices of the United States Attorneys.

1-3.000

PRIOR APPROVAL REQUIREMENTS

- 1-2.104 Requests for the courts of appeals for mandamus, prohibition, and other extraordinary writs, and requests for rehearing en banc. Approval is required from the Solicitor General. See Title 2 of this Manual.
- 1-2.109 Congressional appearances require consultation with OLA. See 1-8.000.
- 1-2.301 Calling an inmate as a witness or defendant in a criminal matter. By written request from the U.S. Marshal, or by obtaining a writ of habeas corpus ad testificandum or ad prosequendum from the appropriate court.
- 1-2.301 Using an inmate in an undercover operations. Authorization is required by contacting BOP Office of Intelligence and the OEO, Criminal Division.
- 1-2.308 Taking exception to the requirement to deposit seized cash into the Marshals Service Seized Asset Deposit Account. Assistant Attorney General, Criminal Division
- 1-2.308 Prior to major seizures of real property and businesses, and where the execution of a warrant in rem will be simultaneous with the seizure, the National Asset Seizure and Forfeiture (NASAF) Program personnel should be consulted.
- 1-4.010; .320 Employees must seek approval from the Deputy Designated Agency Ethic Official (DDAEO) before engaging in certain outside activities.
- 1-4.130 A Department attorney who is found to have engaged in misconduct shall not represent the United States in litigation concerning the misconduct finding, unless approval is obtained from the responsible USA or AAG of the appropriate litigating division.
- 1-4.140 (E) DOJ OPR shall obtain approval of the DAG before declining to investigate or terminate an investigation on the ground that an employee has left the Department.
- 1-4.320 (E) Employees must obtain prior written approval from the EOUSA Legal Counsel for: 1) the outside practice of a of a profession, whether compensated or uncompensated; or 2) the outside practice of law. If an employee desires to practice law for compensation, approval must be obtained from the DAG through the EOUSA.
- 1-4.330 It is advisable for employees to seek approval from the DDAEO before undertaking a teaching or lecturing assignment.

- 1-4.340 Before serving in a leadership position in a bar association.
- 1-4.350 For approval requirements for pro bono and volunteer service, see 1-4.400 and 1-4.320E.
- 1-4.700 Approval is required to purchase from DOJ or its agent property forfeited to the United States. Written approval is required from Director, EOUSA.
- 1-5.000 28 CFR Sec. 50.19 requests the written approval of the AAG of the appropriate division prior to filing or supporting a motion to recuse or disqualify the judge, justice or magistrate.
- 1-6.100;
.111;
.120 No present or former employee of the DOJ may testify or produce Departmental records in response to subpoenas or demands of courts or other authorities issued in any state or federal proceeding without obtaining prior approval by an appropriate DOJ official. (AG Order Sec. 919-80 (dated Dec. 4, 1980) 45 Fed.Reg. 83,210(1980); 28 C.F.R. § 1621 et seq. Limited to subpoenas and demands issued for the testimony of Justice employees or records only.
- 1-6.230;
.260 After USA has clarified the scope of the demand or subpoena to produce Departmental records, they must notify the originating component. See notification procedure if the USA or originating component either disagree about the appropriateness of the disclosure or they agree that no disclosure should be made, they should then determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation that is supervised by a division of the Department. If so, the USA must notify the AAG in charge of the division responsible for such litigation or investigation.
- 1-6.270;
.380;
.400 Denial policies where United States is not a party are authorized only by the DAG or AAG. Denial of demands for the production or disclosure of any material contained in the files of the Department, any information relating to material contained in the files of the DOJ, or any information acquired by any person while such person was an employee of the Department as a part of the performance of that person's official duties or because of that person's official status. 28 CFR Sec. 1626 et seq.
- 1-6.340 No testimony or disclosure may be made without approval of AAG in charge of case when in the attorney's judgment any factors set forth in 28 CFR 16.26(b) exist which preclude testimony or disclosure.
- 1-6.420;
.440 To disclose information in violation of 28 C.F.R. Sec. 16.26(b) which sets out those interests that the Department of Justice must protect. Deputy Attorney General must approve. See 28 C.F.R. Sec. 16.26(b).
- 1-7.320;
330 - .335 Prior coordination is required with the Office of Public Affairs of news conference of national significance. OPA should be consulted for guidance prior to commenting on new policies and initiatives, legislative proposals or budgetary issues of the Department.

- 1-7.400 In instances where OPA or the headquarters of any division, component or agency of the Department issues a news release or conducts a news conference which may affect an office or the USA, such division, component, or agency will coordinate that effort with the appropriate USA.
- 1-7.400 Issuance of a press release, news conference or contact with a member of the media relating to any case or matter which may be prosecuted by the USAO, by any field officers of any division requires approval of the USA.
- 1-7.530 Disclosure of information concerning ongoing investigations requires approval from the USA or Department Division handling the matter prior to disseminating any information to the media.
- 1-7.600(B);
.600(E) Department personnel with the prior approval of the appropriate USA may assist the news media in photographing, taping, recording or televising a law enforcement activity. Employees who obtain what may be evidence in any criminal or civil case or who make or obtain any photographic, sound or similar image thereof, in connection with a search or arrest warrant, may not disclose such material to the news media without the prior specific approval of the USA or AAG, who shall consider applicable regulations and policy, or upon a court order directing such production.
- 1-8.030 Consultation with the Counsel to the Director, EOUSA is required when responding to Congressional requests for non public information or assistance.
- 1-8.040 Approval is required for congressional surveys. See USAM 3-18.000.
- 1-8.050 EOUSA's Legal Counsel should be consulted for guidance on ethical and legal standards re attendance or participation in political functions or fund raising activities. See USAM 1-4.000.
- 1-8.070 USAO personnel may respond to state and local legislative requests for public information -- any other type of information, assistance or testimony must be cleared with the Counsel to the Director, EOUSA. USAO personnel should obtain prior approval to comment on matters of state legislative responsibility, including local referenda or ballot initiatives (this does not apply to the U.S. Attorney for the District of Columbia).
- 1-8.080 Approval through the Counsel to the Director, EOUSA, is required for requests for official legislative action or changes to existing laws or new laws.

Standards of Conduct

- 1-4.010 Introduction
- 1-4.100 Allegations of Misconduct by Department of Justice Employees—Reporting Misconduct Allegations
- 1-4.120 Reporting Allegations in the Course of Judicial Proceedings
- 1-4.130 Litigation Concerning Misconduct Allegations
- 1-4.140 Office of Professional Responsibility Procedures
- 1-4.200 Public Finance Disclosure Reports
- 1-4.220 Confidential Financial Disclosure Reports
- 1-4.300 DOJ Employee Participation in Outside Activities—Termination Agreements/Contingency Fees
- 1-4.320 Outside Activities Generally
- 1-4.330 Teaching, Speaking, and Writing
- 1-4.340 Civic Organizations, Professional Boards and Committees, and State Grievance Committees
- 1-4.350 Pro Bono Work
- 1-4.400 Political Activity (the Hatch Act)
- 1-4.410 Restrictions on all Employees
- 1-4.420 Restrictions on Career SES, Criminal Division, and FBI Employees, and all Political Appointees
- 1-4.430 Permissible Activities
- 1-4.440 Political Referrals
- 1-4.500 Gifts Received From Foreign Governments
- 1-4.600 Post-Government Employment Restrictions
- 1-4.610 Permanent Prohibition Applicable to all Employees
- 1-4.620 Two-Year Restriction for Supervisors
- 1-4.630 One-Year "Cooling-Off" Period
- 1-4.640 Sanctions
- 1-4.650 Other Restrictions on Post-Employment Activities
- 1-4.660 Restrictions on Seeking Employment Outside the Government
- 1-4.700 Purchase or Use of Certain Forfeited and Other Property

1-4.010 Introduction

Under Executive Order 11222, each agency of the federal government is responsible for issuing regulations on the standards of conduct, including ethical conduct, for its employees. It is required that these standards be brought to the attention of each employee annually. The Department follows the government-wide standards of conduct promulgated by the Office of Government Ethics (OGE) at 5 C.F.R. Chapter XVI, especially Parts 2634, 2635, 2636, and 2637; and Department of Justice Order 1200.1. In addition, there are supplemental regulations for the Department of Justice which address, among other things, outside employment. *See* 5 C.F.R. § 3801.101-106. Every current employee should be reminded annually of the existence of the standards of conduct contained in 5 C.F.R. Chapter XVI and DOJ Order 1735.1A, and where to review a copy. All employees should review these standards carefully and bring any problems to the attention of their supervisors. Also, all employees are subject to the provisions of 18 U.S.C. § 201 et seq., making criminal certain activities by employees or former employees.

Any questions concerning the applicability of 5 C.F.R. § 2634 et seq., DOJ Order 1735.1A, the statutes upon which these regulations are based (see discussion below), or any other applicable professional standards should be addressed to the Ethics Advisors in the Districts. For example, an employee should contact his/her Ethics Advisor when he/she: (1) is offered a gift in connection with his/her job, including, in certain cases, from another employee, and especially when the offer involves an award, the payment of money, travel and/or lodging expenses, or free attendance at any event; (2) is assigned a matter where his/her official actions may affect his/her financial interest or the interest of any person with whom he/she is seeking or negotiating for future employment; (3) is asked to participate in a matter that might cause a reasonable person to question his/her impartiality; (4) might realize private gain through the use of his/her official position, non-public information, government property, and/or official time; or (5) pursues outside employment or other outside activity that may conflict with his/her official duties.

The Deputy Designated Agency Ethics Official (DDAEO) for the offices of the United States Attorneys and the Executive Office for United States Attorneys (EOUSA) is the Legal Counsel, EOUSA. Unless otherwise indicated in this chapter, "employee" means an employee of EOUSA or a United States Attorney's Office. The DDAEO is authorized to review requests to engage in outside activities employment or other matters which might appear inappropriate or improper under the various applicable standards of conduct. In many cases, employees should, and in some cases, must (*see, e.g.,* USAM 1-4.320), seek approval from the DDAEO before engaging in certain outside activities. Although the role of the DDAEO is to determine whether the activity violates any of the various standards of conduct mentioned in this chapter, the DDAEO will also consider, based on the representations of the requestor, whether engaging in the activity would cause a reasonable person with knowledge of the relevant facts to question the employees impartiality. Approvals are based solely on the information provided by the employee, and may be invalid if the employee provided incorrect or incomplete information.

Disciplinary action for violating a provision of 5 C.F.R. Part 2635 or any agency supplemental regulations will not be taken against an employee who has engaged in conduct in good faith reliance upon the advice of an agency ethics official, provided that the employee made full disclosure of all relevant circumstances. Reliance on any other individual, such as a private attorney, will not shield an employee from discipline. Further, when the employee's conduct violates a criminal statute, reliance on the advice of the DDAEO cannot ensure that the employee will not be prosecuted. Such reliance is, however, a factor considered by the Department in selection of such cases for prosecution.

1-4.100 Allegations of Misconduct by Department of Justice Employees— Reporting Misconduct Allegations

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

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

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

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

All employees have a duty to cooperate with internal investigations conducted by OPR, OIG or another internal agency official.

- A. Office of Professional Responsibility of the Department of Justice.** Evidence and non-frivolous allegations of serious misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice shall be reported to OPR.
- B. Offices of Professional Responsibility of the Federal Bureau of Investigation and the Drug Enforcement Administration.** Evidence and non-frivolous allegations of serious misconduct by FBI or DEA employees shall be reported to the Office of Professional Responsibility of the FBI or DEA. Employees of the FBI or DEA who wish to report an allegation outside of their component may report to the Deputy Attorney General.
- C. Office of the Inspector General.** Evidence and non-frivolous allegations of waste, fraud, abuse or other misconduct by and Department employee, except as set forth an (A) and (B) above shall be reported to OIG.
- D. Executive Office for United States Attorneys.** Any evidence or non-frivolous allegation involving an employee of a United States Attorney's office or EOUSA shall also be reported to the Legal Counsel, EOUSA.

1-4.120 Reporting Allegations in the Course of Judicial Proceedings

- A. Judicial Statements Concerning Misconduct.** Department attorneys shall report to their supervisors any statement by a judge or magistrate indicating a belief that misconduct by a Department employee has occurred, or taking under submission a claim of misconduct. Supervisors shall report to DOJ OPR immediately any evidence or non-frivolous allegation of serious misconduct.
- B. Judicial Findings of Misconduct and Requests for Review.** Whenever a judge or magistrate makes a finding of misconduct by a Department employee or requests an inquiry by the Department into possible misconduct, the finding or request shall be reported immediately to the employee's supervisor and to DOJ OPR, regardless whether the matter is regarded as serious or non-serious.

1-4.130 Litigation Concerning Misconduct Allegations

- A. Supervisory Review of Court Filings.** Before any pleading or other document concerning any non-frivolous allegation of serious misconduct is filed, whether in the district court or on appeal, it must be reviewed by a supervisor who is not implicated by the allegation.
- B. Recusal Upon Finding of Misconduct.** A Department attorney who is found to have engaged in misconduct shall not represent the United States in litigation concerning the misconduct finding, unless approval is obtained from the responsible United States Attorney or Assistant Attorney General.
- C. Consultation with DOJ OPR.** The supervisor may consult with DOJ OPR before filing any pleading relating to a misconduct allegation, and must apprise DOJ OPR of any significant developments after a matter has been reported to DOJ OPR pursuant to this section.

1-4.140 Office of Professional Responsibility Procedures

- A. Preliminary Review.** Upon receiving an allegation within its jurisdiction, DOJ OPR shall conduct an immediate preliminary review. DOJ OPR shall open an investigation only if it concludes that further investigation is warranted.
- B. Review of Judicial Findings.** If a judge makes a finding of misconduct by a Department employee or requests an inquiry by the Department into possible misconduct, DOJ OPR shall conduct an expedited inquiry without awaiting further judicial or appellate proceedings.
- C. Notification at Conclusion of Investigation.** Upon the completion of an investigation, DOJ OPR shall promptly notify the subject of the allegation, the employee's supervisor, and the complainant of the results.
- D. Bad Faith Complaints.** If DOJ OPR determines that an allegation made by an attorney was made in bad faith, as a result of gross negligence, or in reckless disregard for the truth, it shall report the complainant's misconduct to the appropriate entity established by the local authorities to handle attorney misconduct.
- E. Former Employees.** DOJ OPR shall obtain the approval of the Deputy Attorney General Before declining to investigate or terminate an investigation on the ground that an employee has left the Department. The decision whether to conduct an investigation under such circumstances will be made on a case-by-case basis.
- F. Public Disclosure of OPR Findings.** DOJ OPR will determine whether to publish a summary of one of its reports in accordance with a memorandum to OPR from the Deputy Attorney General dated December 13, 1993. For a copy, please contact the Legal Counsel staff at 202-514-4024.

1-4.200 Public Finance Disclosure Reports

The Ethics in Government Act of 1978, as amended (the "Act"), requires the filing of a Public Financial Disclosure Report (SF-278) by employees in statutorily-specified positions. In general, these positions require the exercise of significant policy-making and command discretion. In each agency the following employees, including Special Government employees, serve in "covered" positions:

- A. Employees in senior positions under a pay system other than the General Schedule must file when their positions' rate of basic pay is equivalent to or greater than 120% of the minimum rate of basic pay for GS-15. See 5 C.F.R § 2634.202(c). Currently, the minimum rate of basic pay for GS-15 is \$83,160.**

Assistant United States Attorneys who are in paid supervisory positions or serving as a Senior Litigation Counsel and Special Government Employees are required to file.

- B. Employees who serve in positions classified above GS-15 under the General Schedule. Senior Executive Service Employees are required to file.
- C. Uniformed officers paid at or above pay grade 0-7.
- D. Schedule C and other civilian employees, regardless of pay grade, whose positions are excepted from the competitive service because of their confidential or policy-making character.
- E. Each agency's primary Designated Agency Ethics Official, regardless of pay grade. Other ethics officials need file only if they are in another specified category.
- F. Presidential nominees requiring Senate confirmation. All United States Attorneys are required to file.
- G. All administrative law judges.

A covered employee must file a "new entrant report" within 30 days after assuming a covered position. Reports must be filed each May 15th for the preceding calendar year, and within 30 days after leaving his or her covered position for the period between the last annual report and the date employment is terminated. 5 C.F.R §§ 2634.201 and 202. Reports are not required from employees who serve less than 60 days. 5 C.F.R. § 2634.204. Anyone who files a Public Financial Disclosure Report more than 30 days after its due date, including any extensions which have been granted, shall pay a late filing fee of \$200. 5 C.F.R. § 2634.704.

The Attorney General may bring a civil action against any person who does not file, files a false report, or fails to report required information. Employees who file a false report may also be prosecuted. 5 C.F.R. § 2634.701.

This report may be disclosed upon request to any requesting person pursuant to 5 C.F.R. § 2634.603.

1-4.220 Confidential Financial Disclosure Reports

The Ethics in Government Act of 1978, as amended, requires the filing of a Confidential Financial Disclosure Report (OGE Form 450) by all special government employees, serving with or without compensation, including those who serve on federal advisory committees, who are not serving as a representative of an industry or another entity or who are not already Federal employees and who are not already required to file a public financial disclosure report. The Act also requires the filing of confidential financial disclosure reports by employees who occupy a position classified at GS-15 or below of the General Schedule, or whose basic rate of pay is less than 120% of the minimum rate of basic pay for GS-15 of the General Schedule, or employees in any other position determined by the designated agency ethics official to be of equal classification; if:

- A. Their duties and responsibilities require them to participate personally and substantially through decision or the exercise of significant judgement in taking a government action regarding:
 - contracting or procurement;
 - administering or monitoring a grant;
 - regulating or auditing any non-federal entity;
 - other activities in which the final decision or action will have a direct and substantial economic effect on the interests of any non-federal entity; or

- B.** The duties and responsibilities of the employee's position require the employee to file such a report to avoid involvement in a real or apparent conflict of interest, and to carry out the purposes behind any statute, Executive Order, rule, or regulation applicable to or administered by that employee.

Within EOUSA and the United States Attorneys' offices the following employees are required to file:

- Assistant United States Attorneys (line AUSAs) (currently, instead of filing an OGE Form 450, AUSAs are using an alternative method approved by the Office of Government Ethics. The chosen alternative method is the use of a "Conflict of Interest Certification" which requires all affected Assistants to certify that no conflict of interest exists in each matter they undertake);
- Special government employees (which includes special AUSAs);
- All Administrative Officers and employees with procurement/and or contracting authority, and
- Employees involved in reviewing grant applications. (Example: "Weed and Seed" grant matters).

Those employees who currently file the public financial disclosure report will not be required to file the confidential report. *See* 5 C.F.R. § 2634.904.

An employee may be excluded from filing if the duties of the position make remote the possibility of a conflict, if the duties involve such a low level of responsibility because there is a substantial degree of supervision and review; or the effect of any conflict on the integrity of the government would be insubstantial, or an alternative procedure is used. *See* 5 C.F.R. § 2634.905(c). An employee must file a new entrant report within 30 days after assuming a covered position and annually by October 31st. Employees who are expected to work 60 days or less need not file. Employees are not required to file a termination report upon leaving their covered positions. 5 C.F.R. § 2634.903.

The Attorney General may bring a civil action against any person who does not file, files a false report, or fails to report required information. Employees who file a false report may also be prosecuted. 5 C.F.R. § 2634.701.

The primary use of the information on this form is to determine compliance with applicable Federal conflict of interest laws and regulations.

Effective June 10, 1994, United States Attorneys were redelegated the authority to act as Deputy Designated Agency Ethics Officials for the review and certification of Confidential Financial Disclosure Reports filed by reporting individuals within their districts. If they have any questions with respect to this authority, they should contact the Legal Counsel, EOUSA.

1-4.300 DOJ Employee Participation in Outside Activities—Termination Agreements/Contingency Fees

Upon entering on duty, Department attorneys must, in general, withdraw from all cases they are currently handling. Interests in pending matters, such as contingency fees, should be addressed as part of the termination of their private practice. Experience indicates that "cashing out" the sometimes speculative nature of these interests has created problems for incoming employees. In negotiating a termination agreement with a former firm or business associates, an employee should be aware that federal criminal law prohibits Federal employees from participating in any matter, in their official capacity, in which they have a financial interest. 18 U.S.C. § 208, 5 C.F.R. § 2635.401. Federal law also prohibits Federal employees, other than in the proper discharge of their official duties, from representing anyone before a Federal agency or court in connection with a matter in which the United States is a party or has an interest. 18 U.S.C. § 205. In addition, please be

mindful of 18 U.S.C. § 209 which prohibits an employee from receiving a salary from any source other than the United States as compensation for his/her services.

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

1-4.320 Outside Activities Generally

Employees may not engage in outside activities, including employment, that conflict with their official duties. An activity conflicts with an employee's official duties if it would require him to disqualify himself from matters so critical that his ability to perform his official duties would be impaired. 5 C.F.R. § 2635.802. Employees are cautioned that even if an outside activity or employment is not prohibited under this regulation or by statute, it may violate other principles or standards set forth in 5 C.F.R. § 2635 et seq, or laws concerning other issues, such as those restricting certain political activities. *See* USAM 1-4.400.

- A. Use of Title.** With rare exceptions, employees engage in outside activities in their private rather than official capacities. Therefore, when engaging in outside activities in their private capacity, employees may not indicate or represent in any way that they are acting on behalf of the Department, or that they are acting in their official capacity. Thus, an employee may not use office letterhead, agency or office business cards, or other material or equipment that would disclose the employee's official title or position if they engage in an outside activity in their private capacity. The incidental identification of an employee's position or office is not prohibited, but if this information is incidentally released it becomes the responsibility of the employee to advise all individuals concerned that he or she is acting in his or her individual capacity and not as a representative of the Department. *See* 5 C.F.R. § 2635.807(b).
- B. Use of Official Time or Excused Absence.** With limited exceptions with respect to pro bono, community service, bar activities and uncompensated law-related teaching (*see* USAM 1-4.350), employees engaging in outside activities do so on their own time. *See* the DOJ Organization and Functions Manual at 30.
- C. Use of Office Resources.** As a general rule, employees may use government property only for official business or as authorized by the government. 5 C.F.R. §§ 2635.101(b)(9), 2635.704(a). However, employees are allowed to use equipment, for non-official purposes, which involves only negligible expense, such as electricity, ink, small amounts of paper, and ordinary wear and tear. In addition, they are allowed limited use of telephones and faxes for local calls, or if they are charged to non-government accounts. Employees may also make limited use of their computers to access the internet for non-official purposes. Finally, use of library equipment at negligible expense is also permitted. 5 C.F.R. § 3801.105. This policy does not authorize the use of commercial electronic databases when there is an extra cost to the government. It also does not override statutes, rules or regulations governing the use of specific types of government property, such as electronic mail, and 41 C.F.R. (FPMR) § 201-21.601 (governing the ordinary use of long-distance telephone services.)

- D. Clerical Support.** Under no circumstances may employees require others, including support staff, to provide assistance with respect to outside activities. Care should be taken in requesting their assistance on their own time even for compensation, since subordinates may believe that they really have no choice but to say yes. It is especially coercive to ask them to volunteer their outside time without compensation, but if support staff on their own volunteer to support a pro bono or other voluntary service outside activity, their offer may be accepted.
- E. Approval Requirements.** Employees must obtain prior written approval from the EOUSA Legal Counsel for outside employment which involves: (1) the outside practice of law; or (2) a subject matter, policy, or program that is in his or her component's area of responsibility. The EOUSA Legal Counsel can approve requests to engage in the outside practice of law only when it is uncompensated and in the nature of community service, or when the employee will be representing himself, his parents, his children or his spouse. If an employee desires to practice law for compensation, he must obtain approval from the Deputy Attorney General through the EOUSA. United States Attorneys and their Assistants should freely consult with EOUSA on these matters. See the DOJ Organization and Functions Manual at 29.
- F. Conflicts of Interest.** Employees may not engage in outside activities that create or appear to create a conflict of interest with their official duties. Such a conflict exists when the outside activity would: (1) require the recusal of the employee from significant aspects of his or her official duties (5 C.F.R. § 2635.802(b)); (2) create an appearance that the employee's official duties were performed in a biased or less than impartial manner (5 C.F.R. § 2635.502); or (3) create an appearance of official sanction or endorsement (5 C.F.R. § 2635.702(b)).

With limited exceptions, outside activities may not include the representation of third parties before the federal government. 18 U.S.C. § 205.

All employees are prohibited by statute from providing legal assistance—with or without compensation—in any case in which the United States is a party or has a direct and substantial interest. 18 U.S.C. §§ 203, 205.

All employees are prohibited from providing any outside professional services in criminal or habeas corpus matters in any court, whether with or without compensation.

1-4.330 Teaching, Speaking, and Writing

Employees who wish to undertake teaching or speaking engagements or who wish to write for publication are directed to consult 5 C.F.R. § 2635.807 which details the circumstances upon which compensation may be received and the extent to which an employee's title may be used. They should also consult with their United States Attorney. Employees should be cautious to avoid any conflict of interest with their position and to ensure that no interference with the performance of their official duties occurs. In some instances they may need to use a disclaimer. Assistant United States Attorneys must generally take annual leave or leave without pay for any time required for engaging in these activities during normal business hours. At the discretion of the United States Attorney, Assistants may receive administrative leave for uncompensated law-related teaching. See the DOJ Organization and Functions Manual at 30. It is highly advisable for employees to discuss these issues with the Ethics Advisor in their District before undertaking a teaching or lecturing assignment.

1-4.340 Civic Organizations, Professional Boards and Committees, and State Grievance Committees

While certain activities can be easily undertaken without creating problems, service on national and local bar committees, state and municipal commissions, corporate boards of directors, arbitration panels, state grievance committees, and similar organizations, with or without remuneration, could have the potential for creating a conflict of interest or an appearance of a conflict of interest. Employees should contact the EOUSA Legal Counsel's office whenever questions arise and should seek prior approval before serving in a leadership position in a bar association. Membership in certain boards of directors has been exempted from the prior approval requirement. See the DOJ Organization and Functions Manual at 29. United States Attorneys' involvement in crime prevention efforts is addressed in the DOJ publication entitled "Legal and Ethical Issues Surrounding United States Attorneys' Involvement in Crime Prevention Efforts" issued October 1994, which can be obtained from the EOUSA Office of Legal Counsel.

1-4.350 Pro Bono Work

Executive Order 12988, Section 2, provides that "All Federal agencies should develop appropriate programs to encourage and facilitate pro bono legal and other volunteer service by government employees to be performed on their own time, including attorneys, as permitted by statute, regulation or other rule or guideline." On March 8, 1996, the Attorney General signed the Department of Justice Policy Statement on Pro Bono Legal and Volunteer Services. This statement summarized existing Department of Justice policies and rules on issues such as leave, conflict of interest, and use of property. It also encourages all employees to set a voluntary personal goal of at least 50 hours per year of pro bono legal and non-legal volunteer service. The Department does not restrict the type of pro bono activities in which employees engage, provided that such activities do not violate any statutory or regulatory restrictions, and provided also that they genuinely are in the public interest. Such activities include, but are not limited to, the provision of legal service to:

- Persons of limited means or other disadvantaged persons;
- Charitable, religious, civic, community, governmental, health and educational organizations in matters which are designed primarily to address the needs of persons of limited means or other disadvantaged persons, or to further their organization purpose;
- Individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; or
- Activities for improving the law, the legal system, or the legal profession.

Similarly, with respect to other volunteer activities besides pro bono legal work, the Department does not seek to restrict the type of activity as long as it does not violate statutory or regulatory restrictions. All such activities, like any other outside activities, are subject to limitations, including compliance with all conflict of interest statutes and regulations, and compliance with all local unauthorized practice of law statutes and fee requirements. *See* USAM 1-4.320(F).

The approval requirements for pro bono and volunteer service are the same as for any other outside activities. *See* USAM 1-4.010 and 1-4.320(E). Since pro bono work by definition is the uncompensated outside practice of law, approval must be sought, but the DDAEO has the authority to approve such requests, as opposed to the outside practice of law for compensation, which only the Deputy Attorney General can approve. In some circumstances it may be possible for the uncompensated outside practice of law to be pre-approved. This could occur in connection with certain legal services or bar association programs. If a district

is interested in participating in such a program, it should contact the Legal Counsel, EOUSA, to have the program reviewed. If appropriate, participation in the program will be approved by the Director, EOUSA.

With respect to volunteer or community services other than pro bono legal work, approval may have to be obtained from the DDAEO, depending on the nature of the service, and in any case it is advisable for the employee to seek approval. *See* USAM 1-4.320. Some types of volunteer work have been pre-approved. *See* Memorandum of March 15, 1996, from Director, EOUSA, to all employees.

Department employees are encouraged to participate in pro bono and volunteer activities outside their regular working hours. Such excused absences should be limited to those situations in which the employee's volunteer/community service meets one or more of the following criteria: is at least indirectly related to the Department's mission; is officially sponsored or sanctioned by the Attorney General; or will enhance the professional development or skills of the employee in his or her current position. The Attorney General encourages employees to participate in the Department-sponsored mentoring programs and volunteer activities that further the Department's program priorities. For example, the strong leadership skills of many Department employees could be put to good use helping at-risk youth in classrooms, youth clubs, shelters, and midnight basketball programs. EOUSA's LECC/Victim Witness Staff has a Volunteer Services Program Coordinator who may be contacted for information about such programs. Limitations on the use of an employee's title or position and on the use of office equipment or personnel are the same as for any outside activity. *See* USAM 1-4.320A-D.

For additional information about performing pro bono and volunteer/community services, see the DOJ Organization and Functions Manual at 29-30.

1-4.400 Political Activity (the Hatch Act)

On February 3, 1994, the Hatch Act Reform Amendments of 1993 became effective. These Amendments made significant changes to 5 U.S.C. §§ 7321-7326, where the Hatch Act and its amendments are codified. Generally, the Amendments removed many restrictions on the participation of government employees in political activities. On September 23, 1994, the United States Office of Personnel Management published its regulations implementing the Amendments in the Federal Register. They are codified at 5 C.F.R. §§ 733.101 through 734.702. Detailed guidance to all Department employees on the relevant restrictions on political activity under the Hatch Act is provided in two memoranda from the Attorney General dated August 8, 2000. One memorandum is addressed to career employees (<http://www.usdoj.gov/jmd/ethics/docs/agpolactcar1.html>) and the other memorandum is addressed to non-career (political) appointees (<http://www.usdoj.gov/jmd/ethics/docs/agpolactpol.html>). Each memorandum is titled "Restrictions on Political Activities." Members of the Department's career Senior Executive Service, Administrative Law Judges, employees of the Criminal Division, employees of the National Security Division, employees of the Federal Bureau of Investigation, and all Criminal Investigators and Explosives Enforcement Officers in the Bureau of Alcohol, Tobacco, Firearms, and Explosives are subject to stricter rules under the pre-1994 law, whereby they are prohibited from participating actively in political management or political campaigns. As a matter of policy, the Attorney General has extended the restrictions of the pre-1994 law to all political appointees in the Department.

On January 30, 1998, 5 C.F.R. § 733.101 et seq. were amended to contain additional categories of permissible and prohibited political activities for employees in certain agencies and positions who reside in certain designated localities. In certain communities, including the suburbs of Washington D.C., an employee may run as an independent candidate in a local partisan election and solicit and receive contributions. An

election is partisan if any candidate for an elected public office is running as a representative of a political party whose presidential candidate received electoral votes in the last presidential election.

Questions regarding the Hatch Act may be directed to EOUSA's General Counsel's Office, the Office of Personnel Management, or the Office of Special Counsel.

1-4.410 Restrictions on all Employees

Employees in the Department of Justice may not:

- A. Use their official authority or influence to interfere with or affect the result of an election (5 U.S.C. § 7323(a)(1)).
- B. Solicit, accept or receive a political contribution (5 U.S.C. § 7323(a)(2), except for a political contribution to a multi-candidate political committee from a fellow member of a federal labor organization or certain other employee organizations, as long as the solicited employee is not a subordinate and the activity does not violate G below.
- C. Solicit, accept, or receive uncompensated volunteer services from an individual who is a subordinate (5 C.F.R. § 734.303(d)).
- D. Allow their official titles to be used in connection with fundraising activities (5 C.F.R. § 734.303(c)).
- E. Run for nomination or election to public office in a partisan election (5 U.S.C. § 7323(a)(3)), except that in certain designated communities an employee may run for office in a local partisan election but only as an independent candidate and may receive, but not solicit, contributions. 5 C.F.R. § 733.107 lists these communities.
- F. Solicit or discourage the political activity of any person who is a participant in any matter before the Department (5 U.S.C. § 7323(a)(4)).
- G. Engage in political activity (to include wearing political buttons), while on duty, while in a government occupied office or building, while wearing an official uniform or insignia, or while using a government vehicle (5 U.S.C. § 7324(a)).
- H. Make a political contribution to their employer or employing authority (18 U.S.C. 603).

1-4.420 Restrictions on Career SES, Criminal Division, and FBI Employees, and all Political Appointees

These employees may not:

- A. Distribute fliers printed by a candidate's campaign committee, a political party, or a partisan political group.
- B. Serve as an officer of a political party, a member of a national, state, or local committee of a political party, an officer or member of a committee of a partisan political group, or be a candidate for any of these positions.
- C. Organize or reorganize a political party organization or partisan political group.
- D. Serve as a delegate, alternate, or proxy to a political party convention.

- E. Address a convention, caucus, rally, or similar gathering of a political party or partisan political group in support of or in opposition to a candidate for partisan political office or political party office, if such address is done in concert with such a candidate, political party, or partisan political group.
- F. Organize, sell tickets to, promote, or actively participate in a fund-raising activity of a candidate for partisan political office or of a political party or partisan political group.
- G. Canvass for votes in support of or in opposition to a candidate for partisan political office or a candidate for political party office, if such canvassing is done in concert with such a candidate, political party, or partisan political group.
- H. Endorse or oppose a candidate for partisan political office or a candidate for political party office in a political advertisement, broadcast, campaign literature, or similar material if such endorsement or opposition is done in concert with a candidate, political party, or partisan political group.
- I. Initiate or circulate a partisan nominating petition.
- J. Act as a recorder, watcher, challenger, or similar officer at polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.
- K. Drive voters to polling places in consultation or coordination with a political party, partisan political group, or a candidate for partisan political office.
- L. Run as partisan candidates for local partisan political office even in those communities listed in 5 C.F.R. § 733.107 in which other Department of Justice employees may run for office. However, they may run as independent candidates in a partisan political election for a local office in the municipality or political subdivision, except for those appointed by the President with the advice and consent of the Senate. *See* 5 C.F.R. 733.105(b) and (c)(1).

The restrictions listed above A through L apply only to Career SES, Criminal Division, FBI Employees, and all Political Appointees, and are permissible activities for all other employees.

1-4.430 Permissible Activities

All employees may:

- A. Register and vote in any election.
- B. Express opinions as individuals on political subjects and candidates privately and, to the extent consistent with the restrictions above, publicly.
- C. Display a political picture, sticker, badge, or button in situations that are not connected to their official duties, but employees restricted as outlined in 1-4.420 may not distribute such material.
- D. Participate in the nonpartisan activities of a civic, community, social, labor, or professional organization, or of a similar organization.
- E. Be members of a political party or other political organization and participate in its activities to the extent consistent with the restrictions set forth above.
- F. Sign a political petition as individuals.
- G. Make a financial contribution to a political party or organization, except to one's federal employer.
- H. Take an active part, as a candidate or in support of a candidate, in a nonpartisan election.

- I. Be politically active in connection with a question which is not specifically identified with a political party, such as a constitutional amendment, referendum, approval of a municipal ordinance or any other question or issue of a similar character.
- J. Serve as an election judge or clerk, or in a similar position to perform nonpartisan duties as prescribed by state or local law, subject to the restrictions set forth above about certain employees not undertaking such activity in concert with political entities.
- K. Otherwise participate fully in public affairs, except as prohibited by law, in a manner which does not materially compromise their efficiency or integrity as employees or the neutrality, efficiency or integrity of their agency.

1-4.440 Political Referrals

In addition to restricting or limiting certain political activity, the Hatch Act also prohibits selecting officials or others involved in the examining or appointing process for competitive service positions from receiving or considering a recommendation of an applicant from a Senator or Representative, except as to the character or residence of the applicant, unless the recommendation is based on personal knowledge or records of the sender. In no case are USAOs required to return a letter to the sender even if it does not meet the requirement stated above. Additional guidance on this is available from the EOUSA Office of Legal Counsel.

1-4.500 Gifts Received From Foreign Governments

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

Under 5 U.S.C. § 7342(c)(1)(B), an employee may, in certain circumstances, accept gifts. Under (B)(i), however, if the gift is tangible and of more than minimal value, currently defined as \$245 (pursuant to regulation in effect until January 1, 1999), the gift becomes the property of the United States, and, under (c)(2) must be deposited for disposal or use by the government. Under (c)(1)(B)(ii), an employee may in certain circumstances accept an intangible gift of foreign travel or expenses for foreign travel entirely outside of the United States valued at more than \$225. Under (c)(3), an employee receiving such a gift must file a statement with the Department, except when acceptance of foreign travel has been authorized in accordance with specific instructions from the Department of Justice. Under § 7342(f), the Department of Justice must submit to the Secretary of State, by January 31 of each year, a list of all such statements filed by employees during the preceding year.

Federal Property Management Regulations (FPMR) Par. 101-41 and Justice Property Management Regulation (JPMR) Part 128-49, prescribe policies and procedures governing utilization, donation, and disposal of gifts and decorations from foreign governments.

In accordance with JPMR Sec. 128-49.201, each United States Attorney's Office is required each year to submit a list of all gifts and decorations valued at greater than \$50.00 received by employees, their spouses, or dependents from foreign governments during the preceding year. The list should be sent to the Executive Office, Attention: Facilities Management and Support Services Staff.

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

- A. For tangible gifts:
 - Name and title of recipient;
 - Gift, date of acceptance, estimated value, and current disposition or location;
 - Identity of foreign donor and government; and
 - Circumstances justifying acceptance.
- B. For travel or expenses for travel:
- C. Name and title of recipient;
- D. Brief description of travel or travel expenses occurring entirely outside the United States;
- E. Identity of foreign donor or governments; and
- F. Circumstances justifying acceptance.

Negative responses may be communicated by telephone to the Facilities Management and Support Services Staff, EOUSA.

1-4.600 Post-Government Employment Restrictions

The Ethics in Government Act, 18 U.S.C. § 207 and the regulations promulgated by the Office of Government Ethics and issued at 5 C.F.R. Parts 2637 and 2641, contain several post-employment conflict of interest restrictions. The Act covers former government employees (including all officers, employees, and special government employees, both attorney and non-attorney) which may actually make or reasonably give the appearance of making unfair use of prior government employment and affiliations. Criminal penalties and disciplinary action may be imposed for violations. The three major restrictions covered by § 207 which are applicable to the United States Attorneys' office are discussed seriatim below. These regulations do not incorporate or supplant restrictions that may be contained in other laws or professional codes of conduct. *See* USAM 1-4.650.

NOTE: The regulations at § 2637 are still considered to be in effect even though they refer to provisions of the Ethics in Government Act prior to its 1991 amendment. Specifically, § 2637.202 refers to 18 U.S.C. § 207(b)(1) when it should now refer to § 207(a)(2), and § 2637.203 should refer to § 207(c) rather than § 207(b)(ii).

1-4.610 Permanent Prohibition Applicable to all Employees

Under 18 U.S.C. § 207(a)(1), all employees, including special Government employees, are permanently prohibited from knowingly making, with the intent to influence, any communication to or appearance before the United States or the District of Columbia on behalf of someone other than him- or herself or the United States or the District of Columbia, in connection with a particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest, and in which the employee participated personally and substantially while a government employee.

This paragraph does not prohibit a former government employee from taking actions on his or her own behalf or from representing the United States or the District of Columbia when authorized. The matter has to have involved a specific party or parties at the time of the former employee's participation. Although the matter must have involved a party, the person on whose behalf the former employee seeks to make a communication or appearance does not have to be a party for the communication to be prohibited.

The prohibition is against making a communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or District of Columbia.

1-4.620 Two-Year Restriction for Supervisors

Under 18 U.S.C. § 207(a)(2), all employees, including special Government employees, are restricted for two years after leaving the government from knowingly making, with the intent to influence, any communication to or appearance before the United States or the District of Columbia on behalf of someone other than himself or herself or the United States or the District of Columbia, in connection with a particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest, and which the former employee knows or reasonably should know was pending under his or her official responsibility within a period of one year before the termination of his or her employment.

Sometimes employees lose responsibility over a matter before they leave Government employment. In spite of the plain language of the statute ("within 2 years after the termination of his or her service or employment" and "within a period of 1 year before the termination of his or her service or employment"), OGE regulations explicitly state that the two years run from the date of termination of responsibility if this occurs before separation from the government, and that the prohibition applies to matters pending under the employee's supervision in the one-year period before termination of such responsibility over the matter, not in the one-year period before termination of employment. 5 C.F.R. § 2637.202(e).

This provision applies to supervisors and managers who did not personally handle a matter, but over which they were responsible. It is designed not only to prevent post-employment conflicts of interest, but also, through the one-year "looking back" proviso, to regulate the conduct of current managers who are contemplating resignation or retirement. Specifically, it is designed to prevent them from making managerial decisions that will be to their benefit after they cease being federal employees. Thus, employees responsible for the supervision of a case are barred from representing anyone, not just a party, in connection with that case for two years after their supervisory responsibility ends, because they might otherwise be tempted to facilitate their post-employment practice by the decisions they make as a federal manager. It is designed not only to deal with actual managerial decisions, but also to prohibit even the appearance that a manager would use his or her federal office for future private gain by using his or her authority during his or her last year of service to his or her private advantage.

This paragraph does not prohibit a former government employee from taking actions on his or her own behalf or from representing the United States when authorized. Although the person represented does not have to be a party, as noted above, the matter has to have involved a specific party or parties at the time it was pending under the former supervisor's authority.

The prohibition is against making a communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the United States or District of Columbia.

1-4.630 One-Year "Cooling-Off" Period

Under 18 U.S.C. § 207(c), a senior employee may not make any communication to or appearance before his or her former agency on any matter in which the former employee seeks official action on behalf of any other person, except the United States, within one year after termination of his or her service or employment as such officer or employee.

According to 5 C.F.R. 2641.201(c), the one year runs from the time the individual ceases to be a senior employee, rather than from termination of government employment.

For the purposes of this section, only the United States Attorneys are considered to be "senior" employees.

The matter does not have to involve specific parties, and does not have to have been pending when the individual was the United States Attorney. The statute prohibits former United States Attorneys from contacting their former agency even on matters arising after they ceased being the United States Attorney, if they arise within one year of their departure. It was designed to prevent the use of personal influence based upon past Government affiliations. The prohibition applies even when the United States is not a party and even when it does not have a direct and substantial interest.

Unlike the other prohibitions, this one is limited to communications to or appearances before the employee's former agency. The statute, at § 207(h), allows OGE to designate components within a department to be separate agencies, thus allowing senior employees to make communications to or appearances before other components. At our request, OGE has issued regulations under which, for United States Attorneys, the agency consists only of his or her former district, the office of the United States Marshal for his or her former district, and EOUSA.

NOTE: In 1993, the Department asked OGE to eliminate the local Marshal's office from this definition, so that a former United States Attorney could make a communication or appearance before that entity within one year of no longer being the United States Attorney. The Department was orally advised that OGE would approve this request. However, it has never published a federal register notice amending Appendix B to 5 C.F.R. Part 2641 in this regard, and advises us that until it does so the prohibition still applies.

The other two restrictions allow a former employee to represent the United States or the District of Columbia, when properly authorized, regardless of earlier participation or supervision of the same matter. The one-year "cooling off" period restricts this to representation of the United States, and does not mention the District of Columbia. As with the other restrictions, this one does not preclude a former employee from taking actions on his or her own behalf.

1-4.640 Sanctions

Former employees willfully in violation of § 207 are subject to a sentence of imprisonment for up to five years. If not willful, the maximum sentence is one year. Substantial fines may also be imposed. In addition, offenders are subject to a civil penalty of up to \$50,000 per infraction.

1-4.650 Other Restrictions on Post-Employment Activities

In addition to 18 U.S.C. § 207, the American Bar Association (ABA) Code of Professional Responsibility, the ABA Model Rules of Professional Conduct, rules of state bar associations, and court decisions restrict the conduct of attorneys who are former government employees and their firms and affiliates. There is nothing in § 207 which prevents courts and bar associations from holding former government employees to standards more demanding than the minimal requirements of the criminal law. See 5 C.F.R. 2637.101(c)(9).

Presidential appointees were also asked to sign a "pledge" which subjects them to a 5 year ban on certain activities when they leave the government. All Presidential appointees should be mindful of this additional restriction when they leave the government.

1-4.660 Restrictions on Seeking Employment Outside the Government

Besides restricting certain post-employment activities, law and regulation require employees in certain circumstances to choose between participating in a particular matter and seeking employment. Specifically, 18 U.S.C. § 208 and 5 C.F.R. § 2625.601 preclude an employee from participating in an activity, absent a waiver, if the employee is seeking employment with persons who would be affected by the performance of lack of performance of the employee's official duties. For further information, see August 26, 1996, Agency Ethics Official Memorandum on Seeking Employment in the Private Sector.

1-4.700 Purchase or Use of Certain Forfeited and Other Property

Absent the approval of the Director, EOUSA, no employee shall purchase, directly or indirectly, from the Department of Justice or its agents property forfeited to the United States and no employee shall use property forfeited to the United States which has been purchased, directly or indirectly from the Department of Justice or its agents by his or her spouse or minor children. Approval may be granted only on the basis of a written determination by the Director, EOUSA, that in the mind of a reasonable person with knowledge of the circumstances, purchase or use by the employee of the asset will not raise a question as to whether the employee has used his or her official position or nonpublic information to obtain or assist in an advantageous purchase or create an appearance of loss of impartiality in the performance of the employee's duties. A copy of the written determination shall be filed with the Deputy Attorney General. 5 C.F.R. § 3801.104.

JUDICIAL DISQUALIFICATION

28 U.S.C. Sec. 445 deals with the disqualification of district court judges and it states in part:

Any justice, judge, or magistrate, of the United States shall disqualify himself/herself in any proceeding in which his/her impartiality might reasonably be questioned.

See also 28 U.S.C. Sec. 144; Code of Judicial Conduct, Canon 3.C(1)(a).

28 C.F.R. Sec. 50.19 establishes procedures to be followed by all government attorneys prior to filing a motion to recuse or disqualify a judge. The regulations require the written approval of the Assistant Attorney General of the appropriate division prior to filing or supporting a motion to recuse or disqualify the judge, justice or magistrate. In cases handled by a United States Attorney's Office, the views and recommendations of the client agency should be submitted with the request for approval.

Approval or denial of such requests will be in writing. Oral authorization will be given, and should only be sought, if the litigation does not allow sufficient time to seek prior written approval. In such cases the attorney in charge of the case is required subsequently to prepare and submit to the Assistant Attorney General a written record fully reflecting that authorization.

DEPARTMENT OF JUSTICE PERSONNEL AS WITNESSES

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1-6.100 Introduction

Subpart B of Part 16 of Title 28, Code of Federal Regulations, was amended by Attorney General Order No. 919-80, effective December 4, 1980, published at 45 Fed. Reg. 83,210 (1980). These regulations provide that no present or former employee of the Department of Justice may testify or produce Departmental records in response to subpoenas or demands of courts or other authorities issued in any state or federal proceeding without obtaining prior approval by an appropriate Department official. Information regulated by 28 C.F.R. 16.21 et seq., falls into the following categories:

- A. Any material contained in the files of the Department;
- B. Any information relating to material contained in the files of the Department; or
- C. Any information acquired by an employee of the Department as a part of the performance of that employee's official duties or because of the employee's official status.

The 1980 amendments to the regulations both decentralize the authorization power and establish different procedures to be followed in cases in which the United States is and those cases in which the United States is not a party. Additionally, alternate procedural steps are sometimes involved where the "originating component" is or is not a litigating division of the Department. A denial policy generally applicable to both situations exists.

As will be noted in Section 1-6.400, the regulations are not intended to create new privileges or to supersede existing discovery rules. They simply are intended to provide a procedure whereby the Department will have the opportunity to protect certain types of information from unwarranted and unconsidered disclosure. Specific questions should be referred to the appropriate litigating division of the Department.

1-6.111 Definitions -- "Employee"

The term "employee" is defined to include "all officers and employees of the United States appointed by, or subject to the supervision, jurisdiction, or control of the Attorney General of the United States, including United States Attorneys, U.S. Marshals, U.S. Trustees and members of the staffs of those officials." 28 C.F.R. 16.21(b). A state or local law enforcement officer assigned to a joint task force or other working group is included within this definition to the extent the subpoena or demand relates to his or her work on the task force. However, if authorization is sought for testimony by a federal employee employed by an agency other than the Department of Justice, Department policy requires that such authorization be obtained from the employing agency even if the employee is a member of a joint team such as an Organized Crime Strike Force. Also included in the definition are former Department employees in cases in which the subpoena or demand seeks testimony as to information acquired while the person was employed by the Department.

1-6.112 "Originating Component"

The term "originating component" means the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the materials demanded, or that, at the time the person whose testimony was demanded acquired the information in question, employed such person. 28 C.F.R. 16.24(a). See the DOJ Organizations and Functions Manual at 19 and 22 for examples of the concept of "originating component."

1-6.113 "Motion to Quash"

The term "motion to quash" includes a motion for a protective order and appropriate objections to testimony.

1-6.120 Inapplicability of 28 C.F.R., Section 16.21 et seq. in Certain Cases

The regulations are limited in their scope to subpoenas and demands issued for the testimony of Department of Justice employees or records only. The regulations do not apply to subpoenas received by an official of another government agency or to requests for that agency's documents, even if the Department of Justice is representing the agency in the litigation. Employees of another federal agency should be advised to contact the General Counsel's Office of their agency for appropriate instructions if they receive a subpoena.

In those cases in which a Department of Justice employee is required to testify in a matter unrelated to his/her official duties or to disclose information not contained in the Department's files nor acquired as part of his/her official duties, the regulations do not apply. For illustrative examples, see the DOJ Organizations and Functions Manual at 18.

1-6.200 Procedure Where United States is Not a Party

Sections 1-6.210 through 1-6.270 describe procedures to be followed when the United States is not a party.

1-6.210 Notification on Receipt of Request

Requests for authorization pursuant to the regulations are initiated when an employee of the Department informs the United States Attorney for the district in which the issuing authority for the demand is located of receipt of the demand. 28 C.F.R. 16.22(b). All employees are directed to notify the appropriate USAO immediately upon receipt of the subpoena or other demand. Unless the United States Attorney is made aware of the demand, the procedures prescribed in the regulations cannot be put into effect; thus, it is urgent that each USAO be notified promptly by the employee receiving the demand and that each USAO establish procedures to receive such notification and to take the appropriate steps under the regulations.

1-6.220 Required Affidavit for Oral Testimony

Section 16.22(c) requires that the party making a demand for oral testimony must provide the United States Attorney with an affidavit, or, if that is not feasible, with a statement setting forth a summary of the oral testimony sought by the demand and its relevance to the proceedings. If authorization for oral testimony is subsequently granted, it must be limited to the scope of the demand as summarized in such affidavit or statement. Section 16.22(d) imposes similar summary and relevancy requirements when information other than oral testimony is sought. It should be noted that the authorization granted by the appropriate Department

official for testimony is to be limited to the scope of the demand as summarized, although the recommended practice is to limit authorization for release of information other than oral testimony to the demanding party's request, as well, absent some special circumstances.

It should also be noted that a motion to quash based on applicable privileges and rules of evidence on relevancy is often appropriate. In such cases the United States Attorney or his/her designated assistant should take that action as soon as practicable. 28 C.F.R. 16.24(c).

In addition, negotiation with the party making the demand is, in many cases, quite appropriate. Often the issues can be narrowed so that authorization is possible or the demand may be withdrawn once the government's relevant concerns and supporting arguments are raised and discussed. Quite often a potentially lengthy litigative battle can be resolved without excess time or cost through negotiations; such negotiations are actively encouraged by the Department. 28 C.F.R. 16.24(c).

It has been held that it is not error for a court to refuse to order a United States Attorney to testify when the Department's regulations have been cited as to lack of authorization under circumstances in which the moving party has failed to submit the affidavit or statement summarizing the testimony desired so that the Department could consider the request and determine whether to grant permission for the testimony. *United States v. Allen*, 554 F.2d 398 (10th Cir. 1977), *cert. denied*, 434 U.S. 836 (1977).

1-6.230 Consultation With the Originating Component

After the United States Attorney has clarified the scope of the demand he/she must notify the official in charge of the bureau, division, office, or agency of the Department that was responsible for the collection, assembly, or other preparation of the material demanded or that, at the time the person whose testimony is demanded acquired the information in question, employed such person. These units are collectively referred to as the "originating component." 28 C.F.R. 16.24(a). For illustrative examples, see the DOJ Organizations and Functions Manual at 19.

1-6.240 Authorizing Disclosure in General

In cases in which the United States is not a party, the power to authorize the disclosure is initially vested in the United States Attorney for the district in which the demand originated. 28 C.F.R. 16.22. As a general policy, the Department favors cooperation in state and federal cases in which the testimony of one of its employees is sought or in which information obtained by the Department is sought. Authorization in one form or another is usually granted if it is appropriate under the rules of procedure governing the case or matter in which the demand arose, and if it is appropriate under the relevant substantive law concerning privilege. See 28 C.F.R. 16.26(a) and USAM 1-6.420. A denial is not usually approved unless one of the factors set forth in 28 C.F.R. 16.26(b) is present. These factors include such things as that the disclosure will cause a violation of a statute or regulation or the revelation of a confidential source, classified information, trade secrets, the existence of a criminal investigation, or investigative techniques. See USAM 1-6.430.

1-6.250 Procedure if the United States Attorney and the Originating Component Both Desire Disclosure

In cases in which the United States is not a party, the United States Attorney for the district in which the issuing authority for the demand is located may authorize disclosure if the originating component does not object and if disclosure is both appropriate under the rules of procedure and the law of privilege. 28 C.F.R. 16.26(a), and will not involve any of the provisions of 28 C.F.R. 16.26(b) on factors that justify a denial. 28 C.F.R. 16.24(b). For an illustrative example, see the DOJ Organizations and Functions Manual at 20.

1-6.260 Procedure if the United States Attorney and the Originating Component Either Disagree on Disclosure or Agree That No Disclosure Should be Made

These cases are discussed in sections 1-6.261 and 1-6.262 below.

1-6.261 Where Information Was Collected in Connection With a Matter Supervised by a Litigating Division

If the United States Attorney and the originating component either disagree about the appropriateness of the disclosure or they agree that no disclosure should be made, they should then determine if the demand involves information that was collected, assembled, or prepared in connection with litigation or an investigation that is supervised by a division of the Department. If so, the United States Attorney must notify the Assistant Attorney General in charge of the division responsible for such litigation or investigation.

The AAG may:

- A. Authorize disclosure;
- B. Request the filing by the United States Attorney of a motion to quash the demand, if that has not already been done; or
- C. Upon denial of a motion to quash, or where such motion is inappropriate, refer the matter to the Deputy Attorney General or the Associate Attorney General for final resolution. 28 C.F.R. 16.24(d)(1).

For an illustrative example, see the DOJ Organizations and Functions Manual at 21. It should again be noted that the filing of a motion to quash, if suitable grounds exist, is the obvious step to take at the start of the process. The United States Attorney is always authorized to take this step and is expected to do so and argue the motion vigorously whenever it is appropriate to file such a motion.

1-6.262 Where Information Was Collected in Connection With a Matter Not Supervised by a Litigating Division

If the demand does not involve information collected in connection with an investigation or litigation under the supervision of a division of the Department, and there is a disagreement between the United States Attorney and the originating component on disclosure, the originating component has the authority to decide whether the disclosure is appropriate, except that, when an especially significant issue is raised, the United States Attorney may refer the matter to the Deputy Attorney General for higher level review. 28 C.F.R. 16.24(d)(2). The term "especially significant issue" is not defined in the regulations. It would seem that the raising by either side of a factor set forth in 28 C.F.R. 16.26(b) would qualify as an "especially significant issue." In addition, as a matter of comity, each of the two parties should give due deference to the views of the other in determining whether to seek higher level review. For an illustrative example, see the DOJ Organizations and Functions Manual at 22.

1-6.270 Denial Policy -- United States Not a Party

See USAM 1-6.400 for a full discussion. Note here that denials may be authorized only by the Deputy Attorney General or the Associate Attorney General, depending upon which official supervises the component referring the demand.

1-6.300 Procedure Where United States is a Party

Sections 1-6.310 through 1-6.370 describe procedures to be followed when the United States is a party.

1-6.310 Notification on Receipt of Request

In cases in which the United States is a party, any employee of the Department receiving a subpoena is to immediately notify the attorney for the Department of Justice in charge of the case or matter. Occasionally information indicating the identity of such attorney will appear in the subpoena or demand that is served on the employee. In other cases, that information can be obtained by contacting the USAO for the district in which the demand arises or by contacting the appropriate division of the Department. It is essential that the specific attorney in charge of the case or matter be located and notified as soon as possible, as it is this attorney who is responsible for taking the appropriate actions under the regulations and who has the power to authorize testimony of the production of records in cases in which he/she deems such procedure to be appropriate.

1-6.320 Required Affidavit for Oral Testimony

In all cases in which a Department of Justice employee informs the appropriate Departmental trial attorney that he/she has been served with a demand for oral testimony, that attorney must clarify the demand by getting, where possible, an affidavit or, if that is not feasible, a statement setting forth a summary of the testimony or other information sought from the party making the demand. 28 C.F.R. 16.23(c). Note that unlike the situation in which the United States is not a party, in cases in which the United States is a party and the demand is for information other than oral testimony, no request may be required of the demanding party for a summary of the information sought or its relevance to the proceeding. The statements in USAM 1-6.220 on the use of appropriate motions to quash and the efficacy of negotiations to narrow a demand in cases in which the United States is not a party, are generally applicable as well to cases in which the United States is a party, bearing in mind the special considerations that are necessary in dealing directly with a litigative adversary. 28 C.F.R. 16.24(c). See also the discussion of *United States v. Allen* in USAM 1-6.220.

1-6.330 Consultation With the Originating Component

After the attorney in charge of the case or matter has clarified the scope of a demand for oral testimony, or in the case of a demand for non-oral testimony upon receipt of the notice of the demand, the attorney for the government must notify the official in charge of the originating component and consult with that component on the question of complying with the demand. See 28 C.F.R. 16.24(a). Consultation in this context requires obtaining the views of the originating component, especially in the presence or absence of the factors set forth in 28 C.F.R. 16.26.

1-6.340 Authorizing Disclosure in General

Section 16.23, 28 C.F.R. provides that every attorney in the Department of Justice in charge of any case or matter in which the United States is a party is authorized, after consultation with the originating component, to disclose relevant unclassified material deemed necessary or desirable to the discharge of that attorney's official duties, provided the disclosure is appropriate under the rules of procedure and the law of privilege (28 C.F.R. 16.26(a)), and further provided that disclosure would not violate statutes or regulations, or reveal confidential sources, classified information, trade secrets, ongoing investigations, or investigatory techniques. 28 C.F.R. 16.26(b). For illustrative examples, see the DOJ Organizations and Functions Manual at 23.

When, in the attorney's judgment, any of the factors set forth in Section 16.26(b) exist which preclude testimony or disclosure, no testimony or disclosure may be made without the express prior approval of the Assistant Attorney General in charge of the division responsible for supervising the case or matter or such person's designee. 28 C.F.R. 16.23(a). An attorney in charge of a case or matter in which the United States is a party may also, at any time, request that the supervisory Assistant Attorney General review his/her decision on complying with a demand. 28 C.F.R. 16.23(b).

1-6.350 Procedure if the Department Attorney in Charge of a Case and the Originating Component Both Agree on Disclosure

If, after consultation, the originating component does not object to disclosure and the attorney in charge of the case or matter determines that disclosure is appropriate under 28 C.F.R. 16.26(a) and not barred by any factor set forth in 28 C.F.R. 16.26(b), the attorney is empowered to authorize the disclosure without seeking any further approval. 28 C.F.R. 16.24(b).

1-6.360 Procedure if the Department Attorney in Charge of a Case and the Originating Component Either Disagree on Disclosure or Agree that the Demand Should be Denied

There are three possible situations that can arise after consultation when there is disagreement on release or agreement on the appropriateness of a denial.

A. If the attorney in charge of the case believes that denial is appropriate because of the factors set forth in 28 C.F.R. 16.26, but the originating component believes that disclosure is appropriate, the regulations provide for higher level review. This requires that the attorney in charge of the case refer the demand to the Assistant Attorney General in charge of the division responsible for the case or matter being litigated. See 28 C.F.R. 16.23(a). The options open to that division on referral will be discussed later in this section.

B. If the attorney for the government believes that disclosure is appropriate under the factors set forth in 28 C.F.R. 16.26, but, after consultation, the originating component takes the position that disclosure should not take place, a sensitive decision has to be made by the attorney in charge of the case. Clearly, under the regulations, 28 C.F.R. 16.23, he/she can authorize disclosure despite the views of the originating component and without higher level review. He/she can also refer the matter for higher level review and decision by the division that supervises the case or matter in litigation. See 28 C.F.R. 16.23(b). The decision will depend on many factors, a number of which may well be unique to the individual case. As a rule of thumb, attorneys ought to give some deference to the views of the originating component, especially if that component's decision is based on its belief that a factor set forth in 28 C.F.R. 16.26(b) is present. The attorney is also encouraged to seek guidance in such cases from his/her immediate supervisor. There are no hard and fast rules, and the attorney, as noted, does retain ultimate authority under the regulations to authorize disclosure despite the originating component's objections. It should also be noted that pursuant to 28 C.F.R. 16.26(d), the Assistant Attorney General in charge of each division is free to issue any instructions or to adopt any supervisory practices consistent with regulations that would help foster consistent application of the standards promulgated and the other requirements of the regulations. In the context of this type of disagreement, care should be taken before overruling an originating component that the division in question has not issued a contrary instruction in its supervisory capacity.

C. If both the attorney in charge of the case or matter and the component agree that a denial is appropriate, the matter is to be referred to the Assistant Attorney General in charge of the division that supervises the case or matter in litigation. See 28 C.F.R. 16.23(a).

Once a demand has been referred for higher level review, the Assistant Attorney General in charge of the division may then take the same actions as can be taken in cases in which the United States is not a party, i.e.:

A. Authorize disclosure based on the factors in 28 C.F.R. 16.26;

B. Authorize the attorney in charge of the case to file a motion to quash the demand if that has not already been done; or

C. Upon denial of a motion to quash, or where such motion is inappropriate, refer the matter to the Deputy Attorney General or Associate Attorney General for final resolution. 28 C.F.R. 16.24(e).

1-6.370 Procedure if on a Referral the Material Demanded Arose in a Case Supervised by a Division Other Than the Division Receiving the Referral

Once a case or matter is referred for higher level review, a problem can arise if the demanded disclosure involves information originally collected, assembled, or prepared in connection with litigation or an investigation supervised by a unit of the Department other than the one which supervises the case or matter in litigation, and to which the matter has been referred. The division receiving the referral must notify the other division concerning the demand and the anticipated response. If the two litigating units of the Department are unable to resolve a disagreement concerning disclosure, the Assistant Attorneys General in charge of the two divisions in disagreement may refer the matter to either the Deputy Attorney General or the Associate Attorney General for decision, depending upon who supervises the originating component or, in the case of an independent agency that, for administrative purposes, is within the Department, to the Deputy Attorney General. 28 C.F.R. 16.24(e). For an illustrative example, see the DOJ Organizations and Functions Manual at 24.

1-6.380 Denial Policy -- United States a Party

See USAM 1-6.400 for a full discussion. Note here that denials may be authorized only by the Deputy Attorney General or the Associate Attorney General depending upon which official supervises the component referring the demand.

1-6.400 Denial Policy in General

The regulations neither create new privileges nor supersede discovery obligations that exist under the Federal Rules of Civil Procedure. 28 C.F.R. 16.21(d). They merely serve as a procedural vehicle to allow the Department the opportunity to protect information from unwarranted and unconsidered disclosure. It is only in infrequent situations, after all possible alternatives have been exhausted, that the Deputy Attorney General or Associate Attorney General should be requested to issue a denial. Therefore, pursuant to 28 C.F.R. 16.24(d)(1), it is Departmental policy that all steps must be taken to limit the demand prior to referring the matter to the Deputy Attorney General for his/her decision. These steps include, most importantly, the filing of a motion to quash the demand. In addition, negotiations should also be undertaken with the person making the demand to limit its scope. *See* 28 C.F.R. 16.24(d)(1)(ii). Because each request for denial requires the personal review of the Deputy Attorney General or the Associate Attorney General, it is necessary to limit the number of such requests to those that are truly necessary; therefore, no memorandum requesting a denial should be submitted prior to the filing and denial of a motion to quash unless the filing of such motion is clearly inappropriate under the circumstances. 28 C.F.R. 16.24(d)(1)(iii).

Because the denial of a demand made by a court is an extraordinary act, denial authority is strictly limited, and no Department official below the level of the Deputy Attorney General or the Associate Attorney General may issue a denial under the regulations in any situation. 28 C.F.R. 16.25. Since there are cases in which the Attorney General may be personally involved, the regulations make it clear that his/her decision to authorize or deny disclosure in such cases is final. 28 C.F.R. 16.24(g).

1-6.420 Presence of Factors Set Forth in 28 C.F.R. Sec. 16.26(a), (b)

Subsection (a) of Section 16.26 identifies generally the areas of law that Department officials and attorneys should consider in deciding whether to make disclosures. Because the factors relevant to a particular demand vary widely with the nature of the demand, and to avoid any suggestion that, through this procedural regulation, the Department might be seeking to impose legal standards different from the ordinary rules of procedure and the substantive law concerning privilege, the regulation adopts a highly general approach in subsection (a), instead of attempting a detailed list of considerations.

The factors to be considered in whether to make a disclosure are twofold, and as noted, general in nature. First, the official making the decision is to consider whether the disclosure in question is appropriate under the rules of procedure governing the case or matter in which the demand arose. Second, he/she is to consider whether disclosure is appropriate under the relevant substantive law concerning privilege. These general factors are, of course, the same factors to be considered in filing the appropriate motions to quash. A failure on either ground-rules of procedure or substantive law of privilege-is one predicate for initiating the process leading to denial. At the initial stages, release cannot be authorized unless the official making the determination is assured, *inter alia*, that the demanded disclosure is appropriate under these general Section 16.26(a) factors. *See* 28 C.F.R. 16.24(b)(3).

Subsection (b) of Section 16.26 contains a number of very specific factors that set forth areas where disclosure should not be made. For a discussion of these factors, see the DOJ Organizations and Functions Manual at 25.

1-6.440 Decision by the Deputy Attorney General or the Associate Attorney General

The authority of the Deputy Attorney General or the Associate Attorney General to order disclosure despite the presence of one or more of these factors is delineated in Section 16.26(b). If any of the factors set forth in paragraphs 1 to 3 (violation of law, violation of specific regulation or disclosure of classified information) is present, the regulations state that neither official will authorize a disclosure. If any of the factors set forth in paragraphs 4 to 6 are present, the regulations state that disclosure will not be authorized unless either official determines that the administration of justice requires disclosure. Remember that under the regulations only these officials can order a denial. Of course, as head of the Department, the Attorney General also possesses the power to order a denial.

If a disclosure is to be ordered, despite the presence of a factor set forth in paragraphs 4-6, as being in the interest of the administration of justice because disclosure is deemed necessary to pursue a civil or criminal prosecution or affirmative relief, such as an injunction, the regulations direct that consideration be given to: (a) the seriousness of the violation or crime involved; (b) the past history or criminal record of the violator or accused; (c) the importance of the relief sought; (d) the importance of the legal issues presented; and (e) any other matters brought to the attention of the Deputy Attorney General or the Associate Attorney General.

Finally, in all cases that are referred to the Deputy Attorney General or the Associate Attorney General in which none of the factors set forth in paragraphs 1 to 6 are present, those officials are to authorize disclosure, unless, in their judgment, after considering the factors set forth in Section 16.26(a), disclosure is unwarranted. *See* 28 C.F.R. 16.26(c).

1-6.500 Procedure in the Event a Departmental Decision Has Not Been Made at the Time a Response is Required

It is the lack of authorization, rather than the issuance of a denial, that often precludes compliance with a demand at the proceeding. The subpoenaed official who has not received authorization by the date of the appearance must respectfully inform the court that he/she cannot comply. It is essential in cases in which the United States is not a party that the local United States Attorney provide representation. In cases in which the United States is a party, such representation by the attorney in charge of the case or matter is presumed.

28 C.F.R. 16.27 contains instructions on the procedures to be followed in this situation. The subpoenaed employee should provide the court with a copy of the applicable regulations and state that the demand has been referred for the prompt consideration of the appropriate Department official. In rare cases these measures may not satisfy the court; the United States Attorney should then cite *United States ex rel. Touhy v. Ragan*, 340 U.S. 462 (1951) in which the Supreme Court held that an employee may not be held in contempt for failing to produce the demanded information where appropriate authorization had not been given. 28 C.F.R. 16.27, .28.

1-6.520 Procedure in the Case of a Denial

In those cases in which either the Deputy Attorney General or the Associate Attorney General has issued a denial, the Department employee to whom the demand has been made should appear at the proceeding and respectfully decline to comply with the demand, citing the regulations and providing the court with a copy of the written denial determination if time has permitted one to be obtained. Here, too, it is essential that the United States Attorney in cases in which the United States is not a party provide representation for the Department employee. In cases in which the United States is a party, such representation by the Department attorney in charge of the case or matter is presumed. As with the preceding section, it may be necessary to cite the case of *United States ex rel. Touhy v. Ragan*, *id.* 28 C.F.R. 16.28.

1-6.530 Responding to a Contempt Citation for Failure to Respond to a Demand

As noted, it is essential that a United States Attorney or other Department attorney appear in court with the witness. In the event that the court orders the witness incarcerated for contempt, the Assistant United States Attorney should immediately petition for a writ of habeas corpus (28 U.S.C. 2254 if in state custody or 28 U.S.C. 2255 if in federal custody). If the employee is in state custody, an alternative to habeas corpus is removal of the matter to federal court pursuant to 28 U.S.C. 1442. It is expected that contempt citations will be extremely rare. Action by the United States Attorney or other Department attorney in such cases is expected to be quick and vigorous.

1-6.600 Special Drug Enforcement Authorization

The Drug Enforcement Administration receives unique treatment with respect to authorizing testimony under 28 C.F.R. 0.103(a), a section of the regulations unaffected by the 1980 amendment to 28 C.F.R. 16.21 et seq. Under Section 0.103(a), the Administrator of DEA may authorize the testimony of DEA officials in response to subpoenas issued by the prosecution in federal, state, or local criminal cases involving controlled substances. 28 C.F.R. 0.103(a)(3). In addition, the Administrator may release information obtained by DEA and DEA investigative reports to federal, state, and local prosecutors and to state licensing boards engaged in the institution and prosecution of cases before courts and licensing boards related to controlled substances. 28 C.F.R. 0.103(a)(2). Note that this section only authorizes release to the government side of the covered cases. Any other production of information or testimony by DEA officials is covered by 28 C.F.R. 16.21 et seq. For illustrative examples, see the DOJ Organizations and Functions Manual at 26.

1-6.620 Reimbursement of Travel Expenses

A Department of Justice employee who is summoned to appear and testify, or who is assigned to present testimony or to identify official documents in connection with a judicial or agency proceeding, is entitled to travel expenses if authorized by the Department of Justice to appear. Expenses are paid in accordance with normal government travel provisions, 5 U.S.C. §§ 5701 to 5708, unless reimbursed by the court or by the party summoning the witness. See 5 U.S.C. Sec. 5751. The appropriate amount chargeable for travel expenses is detailed in 28 C.F.R. Sec. 21.1.

1-6.630 Official Leave

A Department of Justice employee is entitled to official leave, not chargeable to annual leave, when appearing in his/her official capacity on behalf of the United States or when he/she has been summoned to appear on behalf of another party. *See* 5 U.S.C. 6322. However, no provision is made for official leave for an employee who appears voluntarily as a witness for a private party.

1-6.640 Witness Fees

When an employee appears on behalf of the United States, he/she is not entitled to a witness fee. 5 U.S.C. Sec. 5537. If the witness appears in an official capacity for a party other than the United States, any witness fee received is deducted from his/her pay. *See* 5 U.S.C. Sec. 5515.

MEDIA RELATIONS

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1-7.001 Purpose

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

1-7.110 Interests Must Be Balanced

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

1-7.111 Need for Confidentiality

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

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

1-7.112 Need for Free Press and Public Trial

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

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

1-7.210 General Responsibility

Final responsibility for all matters involving the news media and the Department of Justice is vested in the Director of the Office of Public Affairs (OPA). The Attorney General is to be kept fully informed of appropriate matters at all times.

Responsibility for all matters involving the local media is vested in the United States Attorney.

1-7.220 Designation of Media Representative

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

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

1-7.310 Department of Justice Components

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

1-7.320 United States Attorneys

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

1-7.330 Procedures to Coordinate with OPA

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

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

B. News Conferences. Prior coordination with OPA is required of news conferences of national significance.

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

D. Media Coverage Affecting DOJ. When available, press clippings and radio/television tapes involving matters of significance should be forwarded to OPA.

E. Comments on Specific Issues (i.e., New Policies, Legislative Proposals, Budget). OPA should be consulted for guidance prior to commenting on new policies and initiatives, legislative proposals or budgetary issues of the Department. This should not be interpreted to preclude recitation of existing well-established Departmental policies or approved budgets.

1-7.400 Coordination With United States Attorneys—Issuance of Press Releases

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

Issuance of Press Release by Field Officers of Any Division. In instances where local field officers of any division or component plans to issue a news release, schedule a news conference or make contact with a member of the media relating to any case or matter which may be prosecuted by the United States Attorney's office, such release, scheduling of a news conference or other media contact shall be approved by the United States Attorney. See the DOJ Organizations and Functions Manual at 28 for a discussion of press releases in cases involving the Internal Revenue Service.

1-7.401 Guidance for Press Conferences and Other Media Contacts

The following guidance should be followed when Department of Justice components or investigative agencies consider conducting a press conference or other media contact:

A. The use of a press release which conforms to the approval requirements of USAM 1-7.400 is the usual method to release public information to the media by Department of Justice components and investigative agencies. Press conferences should be held only for the most significant and newsworthy actions, or if a particularly important deterrent or law enforcement purpose would be served. Prudence and caution should be exercised in the conduct of any press conference or other media contact.

B. Press conferences about pending cases or investigations that may result in an indictment by all Department of Justice components and investigative agencies must be approved by the appropriate Assistant Attorney General or by the United States Attorney responsible for the case. In joint or multi-district cases the approving official should consult with other districts or divisions affected. If it is a national case, press conferences must be approved by the Director, Office of Public Affairs. See USAM 1-7.320 to 1-7.330.

C. There are exceptional circumstances when it may be appropriate to have press conferences or other media outreach about ongoing matters before indictment or other formal charge. These include cases where: 1) the heinous or extraordinary nature of the crime requires public reassurance that the matter is being promptly and properly handled by the appropriate authority; 2) the community needs to be told of an imminent threat to public safety; or 3) a request for public assistance or information is vital. See USAM 1-7.530 to 1-7.550 and 28 C.F.R. 50.2.

D. There are also circumstances involving substantial public interest when it may be appropriate to have media contact about matters after indictment or other formal charge but before conviction. In such cases, any communications with press or media representatives should be limited to the information contained in an indictment or other charging instrument, other public pleadings or proceedings, and any other related non-criminal information, within the limits of USAM 1-7.520, 540, 550, 500 and 28 C.F.R. 50.2.

E. Any public communication by any Department component or investigative agency or their employees about pending matters or investigations that may result in a case, or about pending cases or final dispositions, must be approved by the appropriate Assistant Attorney General, the United States Attorney, or other designate responsible for the case. In joint or multi-district cases, the approving official should consult with other districts or divisions affected. If it is a national case, press conferences must be approved by the Director, Office of Public Affairs.

F. The use of displays or handouts in either press conferences or other media outreach when it involves a pending case or an investigation that may lead to an indictment requires separate and specific approval by the officials authorizing approval as set forth in section B.

G. All Department personnel must avoid any public oral or written statements or presentations that may violate any Department guideline or regulation, or any legal requirement or prohibitions, including case law and local court rules.

H. Particular care must be taken to avoid any statement or presentation that would prejudice the fairness of any subsequent legal proceeding. See also 28 C.F.R. 16.26(b). In cases where information is based directly or indirectly on tax records, care should be taken to comply with any applicable disclosure provisions in the Tax Reform Act, section 6103 of the Internal Revenue Code of 1986. The fact of conviction, sentences and guilty pleas may be reported in a press release based on information uttered in court as opposed to waiting for the publicly filed documents relating to the fact of conviction, plea or sentence. If you have any questions please contact the Tax Division. Special rules apply and should be closely followed to ensure that the identity of minors directly or indirectly is not revealed in juvenile proceedings.

I. For press releases or other public comment concerning the filing of a request for commutation of a federal death sentence or whether such a sentence should be commuted, special rules apply. In clemency matters, the Department acts both as prosecutor and as advisor to the President on the issue of clemency. In order to ensure clarity about the role in which the Department is making a public comment and to ensure that there is no potential for infringement upon the President's prerogative in exercising his clemency powers or conflict in the Department's role in such matters, press releases or other comment to the press concerning the issue of clemency should be transmitted through the Office of Public Affairs to the Deputy Attorney General for final approval.

J. Prior to conducting a press conference or making comments on a pending investigation regarding another DOJ component, the U.S. Attorney shall coordinate any comments, including any written statements, with the affected component.

K. The Office of Inspector General is exempt from any approval requirement for media contacts. However, the Office of Inspector General should inform the Office of Public Affairs on public or other media issues.

1-7.500 Release of Information in Criminal and Civil Matters— Non-Disclosure

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

1-7.520 Release of Information in Criminal and Civil Matters—Disclosable Information

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

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

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

1-7.530 Disclosure of Information Concerning Ongoing Investigations

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

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

1-7.531 Comments on Requests for Investigations

Individuals, groups, or organizations often send letters to the Department of Justice or a Department component requesting that a person or entity be investigated for violations of law. Sometimes, the requestor then conducts a press conference or releases a statement leaving an implication that an investigation will result. This can cause media inquiries.

Receipt of a request to open an investigation may be publicly acknowledged. Care should be taken to avoid any implication that the referral will necessarily lead to an investigation. It should be pointed out that there is a distinction between "reviewing a request for an investigation" and "opening an investigation."

Any acknowledgment should state that such requests are referred to the proper investigative agency for review but that no decision has been made whether to proceed on the specific request received. Finally, it should be noted that all substantiated allegations are reviewed in light of The Principles of Federal Prosecution (see USAM 9-27.000), and the Department does not ordinarily confirm or deny the existence or status of an investigation.

The same considerations apply if there is an investigation already underway when such a request is received. If the existence of an investigation is not public the same procedure should be followed as outlined above.

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

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

1-7.550 Concerns of Prejudice

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

- A. Observations about a defendant's character;
- B. Statements, admissions, confessions, or alibis attributable to a defendant, or the refusal or failure of the accused to make a statement;
- C. Reference to investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or forensic services, including DNA testing, or to the refusal by the defendant to submit to such tests or examinations;
- D. Statements concerning the identity, testimony, or credibility of prospective witnesses;

E. Statements concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial;

F. Any opinion as to the defendant's guilt, or the possibility of a plea of guilty to the offense charged, or the possibility of a plea of a lesser offense.

1-7.600 Assisting the News Media

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

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

1. Unreasonably endanger any individual;
2. Prejudice the rights of any party or other person; and
3. Is not otherwise proscribed by law.

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

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

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

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

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

1-7.700 Freedom of Information Act (FOIA)

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

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

1-8.000

CONGRESSIONAL RELATIONS

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 - 1-8.010 Congressional Contacts With USAOs**
 - 1-8.020 Congressional Requests for Public Information**
 - 1-8.021 Requests on Behalf of Represented Parties**
 - 1-8.030 Reference of Other Requests to CTD**
 - 1-8.040 Congressional Questionnaires, Surveys and General Accounting Office (GAO) Contacts**
 - 1-8.050 Tours, Courtesy Visits, Social and Other Contacts With Congressional Members and Staff**
 - 1-8.060 CTD Requests for Assistance from USAOs -- Testimony and Document Production**
 - 1-8.070 State and Local Legislation**
 - 1-8.075 Comity Considerations**
 - 1-8.080 Legislative Requests or Proposals**
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1-8.001 Introduction

The Assistant Attorney General (AAG), Office of Legislative Affairs (OLA), is responsible for communications between Congress and the Department under the authority of the Attorney General and the direction of the Deputy Attorney General. *See* 28 C.F.R. Sec. 0.27. Communication between OLA and individual components of the Department are aided by designated Congressional Liaisons. The Director of the Executive Office for United States Attorneys (EOUSA) has currently designated the Counsel to the Director (CTD) as Congressional Liaison for the United States Attorneys' offices (USAOs) and EOUSA.

1-8.010 Congressional Contacts With USAOs

All Congressional staff or member contacts with USAOs or USAO staff including letters, phone calls, visits or other means must be reported promptly to the United States Attorney (USA), First Assistant United States Attorney (FAUSA) or other designated senior staff prior to making any response. All requests for information or assistance, except for public information, must also be promptly reported to CTD. These reports may be made by phone, EMAIL or faxed copies of letters.

Procedures relating to contacts with the White House appear at Organization and Functions Manual 32.

1-8.020 Congressional Requests for Public Information

The USA may respond or authorize USAO personnel to respond without contacting CTD to a routine Congressional request for public information including:

- A. Administrative information such as office locations, operational hours, address and phone information, the proper person to contact for different types of matters, and general personnel procedures.
- B. Documents that are already part of public court records and not under seal or otherwise restricted, such as filed indictments, briefs etc.
- C. News releases or other materials meant for public distribution.
- D. The time and place for the next public court hearing, if already announced.

If you are unsure if certain information should be released, or whether it is proper to give certain assistance requested, contact CTD.

1-8.021 Requests on Behalf of Represented Parties

A Congressional contact or request made on behalf of any individual (including their spouse and families) or entities who are involved in active litigation with the United States (US) or currently being prosecuted by the US, and who are represented by counsel should be referred to CTD.

1-8.030 Reference of Other Requests to CTD

All other Congressional requests for information or assistance should be immediately referred to CTD either by contacting CTD or politely informing the requestor that you are required to refer all such inquiries to CTD and providing them with information on how to contact CTD by phone, mail or fax.

Examples of requests that should be referred to CTD include but are not limited to requests for non-public documents or information, discussion of or briefings on case status (other than as set out in 1-8.020), attendance at settlement conferences, specific suggestions on case disposition or other treatment, discussion of or requests for information on problems under existing law or suggestions for changes in existing law, requests for interviews, statements or appearances to or before Congressional, members, staff and committees. Follow this standard in both open and closed cases and *never* provide information on pending investigations, closed investigations that did not become public, that involves Grand Jury, tax or other restricted information, that would reveal the identity of confidential informants, sensitive investigative techniques, deliberative process or the exercise of prosecutorial discretion, or the identity of individuals who may have been investigated but not indicted, without consulting CTD and obtaining authorization from the proper Department authorities. Any Congressional request that involves Privacy Act considerations should also be referred to CTD as special rules apply to Congress in this area.

1-8.040 Congressional Questionnaires, Surveys and General Accounting Office (GAO) Contacts

Congressional and GAO questionnaires and surveys must be approved in the same fashion as other surveys as provided in USAM 3-18.100. *See also* USAM 3-18.120. GAO is an oversight arm of Congress and most inquiries are general audits. However, from time to time, GAO is asked by Congressional

committees to pursue specific oversight inquiries, and these in effect become the same as any other Congressional inquiry. Such GAO contacts and inquiries that are made directly to a USAO or arise after referral of a GAO matter from EOUSA to a USAO should be immediately brought to the attention of CTD.

1-8.050 Tours, Courtesy Visits, Social and Other Contacts With Congressional Members and Staff

Courtesy visits, tours and similar activities can be authorized by the USA. More extensive social and personal contacts and relationships are to be considered in light of circumstances, including preexisting relationships and the requirements of ethical and legal standards and guidance. Attendance or participation in political functions or fund raising is subject to statutory, ethical and policy directives. EOUSA's Legal Counsel should be consulted for guidance on ethical and legal standards.

1-8.060 CTD Requests for Assistance from USAOs -- Testimony and Document Production

From time to time CTD will request assistance from USAOs in order to aid OLA or other components dealing with Congressional matters. Usually this will mean a phone call or written request asking for information or a request to help draft a response. On a matter requiring CTD involvement under these procedures, if a USAO desires to draft or make a particular response to a request, please notify CTD and submit the draft for prior Department review. The Department through CTD may also ask USAs to testify or provide information to Congress. Special procedures apply, and you will be briefed at the time you are authorized to do this.

From time to time the Department may ask you for case files or portions of case files or other written or electronically recorded information to respond to a Congressional request. You will be asked to flag sensitive portions, such as grand jury material, to assist review by the Department officials charged with making the response.

1-8.070 State and Local Legislation

USAO personnel may respond to state and local legislative requests for public information as described in 1-8.020 above. Requests for any other type of information, assistance or testimony must be cleared with the Department through CTD. USAO personnel should not advocate passage or defeat of state or local legislation, including state or local referenda or ballot initiatives, without prior approval to do so by the Department. Each separate written statement or proposed testimony on pending state or local legislation or referenda must be submitted to the Department through CTD for review and approval.

NOTE: The requirements incorporated in sections 1-8.070 and 1-8.075 regarding state and local legislative and other matters do not apply to the U.S. Attorney's Office for the District of Columbia, which has unique jurisdictional obligations as the local prosecutor for the District of Columbia.

1-8.075 Comity Considerations

Whenever you make any public communication on criminal justice or other policy matters that touch on local or state concerns, whether you are required to seek approval or not under USAM § 1-8.070, you should be sensitive to comity consideration. The substance and manner of such communications should be designed to enhance and not impede Federal, state, local law enforcement relations, be sensitive to the public appearance of the proper role and limits of Federal prosecutors, and give due deference to the separate constitutional powers and responsibilities of state and local officials. The substance of any such communication should be consistent with Department policy in that area, be distributed in an appropriate fashion, factual in nature and be based on general law enforcement concerns, views and experience. For example, in testifying to a state legislative committee on a pending state bill, the impact of the proposal on law enforcement considerations should be addressed without specifically urging the passage or defeat of the particular bill that may be under consideration. Please feel free to consult CTD on any questions you may have in this regard.

1-8.080 Legislative Requests or Proposals

All requests for official legislative action, changes to existing laws or new laws, should be submitted to the Department through CTD for review and approval. If any USAO personnel wish to make a purely personal proposal or offer personal views on a legislative proposal or referendum to Congress, a state legislature, local legislature, or the public that could appear to reflect on their official duties or Department responsibilities, they are encouraged to contact CTD for applicable considerations. For instance, it should be made clear that they are speaking in their personal capacity and not on behalf of the Department. In addition, they are prohibited from using their official title in connection with the testimony except as one of several biographical details, and they must comply with rules for the protection of confidential information.



U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

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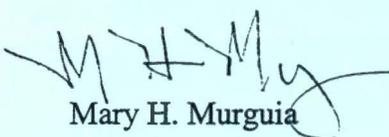
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To: Holders of United States Attorneys' Manual, Title 1

From: 
Mary H. Murguia
Director

Re: Advocating Passage or Defeat of State and Local Legislation and Comity Considerations

Affects: §§ 1-8.070, 1-8.075, and 1-8.080

The attached text revises USAM § 1-8.070 to reflect that prior approval is required from the Department before advocating passage or defeat of state or local legislation, including state or local referenda or ballot initiatives. It also adds a new section, USAM § 1-8.075, which discusses the need for sensitivity to comity considerations. USAM § 1-8.080, which allows statements of purely personal views outside of official responsibilities, is also amended to reflect these changes.

Before this revision, USAM § 1-8.070 required approval by the Department of testimony given before a state legislature on state legislation, but the issue arose about whether it was appropriate for a United States Attorney to take a public position on a state referendum, and what form of support or opposition was appropriate. The Attorney General's Advisory Committee reviewed this issue, and resolved it by adopting the attached text on April 26, 2000. USAM § 1-8.070 requires USAO personnel, including the United States Attorney, to get prior approval from the Department before advocating the passage or defeat of state or local legislation, including state or local referenda or ballot initiatives, and to submit proposed written statements or testimony on pending state or local legislation or referenda to the Department for review and approval. USAM § 1-8.075 discusses the need to be sensitive to comity considerations, such as the public appearance of the proper role and limits of Federal prosecutors, and giving due deference to the separate constitutional powers and responsibilities of state and local officials.

USAM § 1-8.000 Congressional Relations

- 1.8.001 Introduction
- 1-8.010 Congressional Contacts With USAOs
- 1-8.020 Congressional Requests for Public Information
- 1-8.021 Requests on Behalf of Represented Parties
- 1-8.030 Reference of Other Requests to CTD
- 1-8.040 Congressional Questionnaires, Surveys and General Accounting Office (GAO) Contacts
- 1-8.050 Tours, Courtesy Visits, Social and Other Contacts With Congressional Members and Staff
- 1-8.060 CTD Requests for Assistance from USAOs -- Testimony and Document Production
- 1-8.070 Testimony or Assistance to State and Local Legislative Bodies
- 1-8.075 Comity Considerations
- 1-8.080 Legislative Requests or Proposals

USAM § 1-8.001 Introduction

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1-10.000

**LITIGATION AGAINST STATE
GOVERNMENTS AND RELATIONSHIPS
WITH CLIENT AGENCIES**

- 1-10.100** Litigation Against State Governments, Agencies or Entities
 - 1-10.200** Relationships With Client Agencies
 - 1-10.210** Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents
 - 1-10.220** Case Processing by Teletype with Social Security Administration
 - 1-10.230** Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings
-

1-10.100 Litigation Against State Governments, Agencies or Entities

In order to enhance productive communications with state governments and to avoid inter-governmental litigation whenever possible, the Attorney General has advised the Assistant Attorneys General for the Antitrust, Civil, Civil Rights, Criminal, Environment and Natural Resources, and Tax Divisions that it shall be Department of Justice policy to give timely notifications to the Governor and Attorney General of a state prior to the filing of a suit or claim against a state government, agency or entity. United States Attorneys should observe the same policy for cases delegated to them by those divisions.

The foremost goal in applying this policy to individual cases shall be to provide fair warning to state Governors and Attorneys General and thus to afford these leaders the opportunity both to resolve matters prior to litigation and to prepare for inquiries from local officials and the news media if an action is commenced.

Specifically, each United States Attorney or the Assistant Attorney General in charge of such litigation shall:

- A. Prior to the filing of each action or claim against a state government, agency or entity;
 - Advise the Governor and the Attorney General of the affected state of the nature of the contemplated action or claim and terms of the remedy sought; and
 - Notify the Deputy Attorney General and, if appropriate, the Associate Attorney General of compliance with subsection (a).
- B. Ensure that such prior notice is given sufficiently in advance of the filing of the suit or claim to:
 - Permit the state government, agency or entity to bring to the Department's attention facts or issues relevant to whether the action or claim should be filed; or
 - Result in settlement of the action or claim in advance of its filing on terms acceptable to the United States.

C. Ensure that each attorney in his/her respective office or division reads, becomes familiar with, and complies with, this directive.

Exceptions to the notice requirements of this section are appropriate only when the United States Attorney or Assistant Attorney General determines that good cause for such an exception exists and notifies the Deputy Attorney General and, if appropriate, the Associate Attorney General of that determination.

1-10.200 Relationships With Client Agencies

Sections 1-10.210 through 1-10.230 discuss relationships with client agencies.

1-10.210 Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents

The Department of the Treasury and the Drug Enforcement Administration have requested that their appropriate Special Agent in Charge (or the equivalent) be notified by the United States Attorney's Office whenever the actions of one of their agents result in the granting of a motion for suppression of evidence, or are otherwise deemed illegal or improper in a judicial opinion. You should feel free to similarly notify Special Agents in Charge of other investigative agencies and/or the Criminal Division in appropriate situations.

Of course, all allegations of misconduct by Department employees should be brought to the attention of the Office of Professional Responsibility following the guidance set forth in 28 C.F.R. Sec. 0.39 et seq.

1-10.220 Case Processing by Teletype with Social Security Administration

There is a teletype receiver at the Social Security Administration's Office of Hearings and Appeals in Arlington, Virginia, which facilitates the processing of Social Security cases. Please include the routing signal address for the Office of Hearings and Appeals and the Office of General Counsel in Baltimore. The routing signal for both addresses is SSAGC. Each teletype on Social Security litigation (Social Security retirement, survivors and disability benefits; supplemental security income and medicare benefits, will include:

- A. Case name;
- B. Plaintiff's Social Security number;
- C. District court where case was filed;
- D. Date the complaint was filed;
- E. Date the United States Attorney was served;
- F. Name and FTS telephone number of the AUSA handling the case;
- G. Date petition in forma pauperis was filed if applicable; if not applicable, N/A.

The essential transmittal must be sent within 3 days upon receipt of notification of suit to insure a timely answer.

The teletype receives only. It cannot transmit messages. The proper routing signal will be "RR AA SSAGC."

Any questions may be directed to the Office of General Counsel in Baltimore, FTS 934-7543.

1-10.230 Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings

On February 12, 1975, an understanding was reached between the Department of Justice and the Social Security Administration (SSA) regarding the release of information from records of the SSA where such information is required to afford a defendant a fair trial in a criminal case pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963).

A. Whenever the defendant in a criminal proceeding moves on trial for disclosure of information from social security records about someone else, the Department of Justice will attempt to resist such disclosure arguing that such personal information in social security records is confidential by law. In no event will the Department of Justice request such personal information for prosecutive purposes.

B. Where the defendant in a criminal case moves in court that information about, or the appearance of, the holder of a given social security number is necessary to his/her defense, and the court seems inclined to grant the motion, the Department of Justice will attempt to satisfy the court by offering to provide identifying data about the social security number holder such as sex, date of birth and race, without divulging his/her name or whereabouts. In such a case a designated official of the Department of Justice will contact a designated official of the Office of the General Counsel, Health and Human Services (HHS) to arrange for the disclosure of such information. The information will be furnished by SSA as expeditiously as possible.

C. If the court considers such information insufficient and orders the appearance of the social security number holder on grounds of due process, a designated official of the Department of Justice will contact a designated official of the Office of the General Counsel, HHS. If the Department of Justice assures SSA that it will not use the appearance of the number holder or any information derived from his/her appearance, or any information otherwise received from the Social Security Administration, directly or as a lead in any prosecution of the number holder, the Commissioner of Social Security will, under his "ad hoc" authority in Section 401.1 of Regulation 1 (20 C.F.R. Sec. 401.1) provide the Department of Justice expeditiously with the information.

D. If in a specific case the Department of Justice is unable to provide assurance that it will not use the information or appearance of the social security number holder for prosecution purposes, the Commissioner will nevertheless review the specific order under his/her "ad hoc" authority, considering all circumstances in that case, provide an expeditious reply -pro or con- to the Department of Justice, and if necessary, discuss the matter further with the Department of Justice.

E. The proscription against the Department of Justice requests for such information for purposes of prosecution does not apply in the case of violations of the Social Security Act or fraud against the Social Security Administration, as disclosure in these cases is provided for in 42 U.S.C. Sec. 1306, 20 C.F.R. Sec. 401 et seq.

1-11.000 NONDISCRIMINATION ON THE BASIS OF DISABILITY

1-11.100	Background
1-11.200	Definition
1-11.300	Department Responsibilities
1-11.400	Consistency in Litigation

1-11.100 Background

Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in federally assisted programs and activities, was amended in 1978 to extend its application to programs and activities conducted by Federal Executive agencies, including this Department. The Department's regulation implementing section 504 with respect to its own federally conducted programs and activities is codified at 28 C.F.R. pt. 39. This Department is responsible, under Executive Order 12250, for coordinating implementation of section 504 with respect to both federally assisted and federally conducted programs and activities. Because of this Department's responsibility as lead agency for implementation and enforcement of section 504, it is important that the Department's own programs and activities be a model of compliance.

1-11.200 Definition

The regulation prohibits discrimination against qualified individuals with disabilities. An "individual with a disability" is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

1-11.300 Department Responsibilities

The Department is required to take appropriate steps to ensure that qualified individuals with disabilities are able to participate in and benefit from all programs and activities conducted by the Department. For example, such steps would include the following:

A. Ensuring *effective communication* with applicants, program participants, personnel of other Federal entities and members of the public.

1. **Sign Language Interpreters.** When necessary to ensure effective communication, the Department will provide sign language interpreters free of charge to applicants and participants in programs and activities of the Department of Justice, including, for example, parties or witnesses in litigation initiated by the United States (28 U.S.C. § 1827), members of the public who are meeting with Department officials, individuals involved in proceedings of the Immigration and Naturalization Service, Federal prison inmates, and Federal personnel receiving training conducted by the Department. See 28 C.F.R. § 39.160.

2. Effective Telephone Communications. The Department will provide for effective telephone communication with people who have speech or hearing impairments through use of telecommunications devices for deaf persons (TDD's) or other equally effective communications systems. See 28 C.F.R. § 39.160(a)(2). In addition to the TDD numbers listed in the "Services Section" of the Justice Department telephone directory, the U.S. Marshals Service has a nationwide toll-free TDD number: 1-800-423-0719. If a TDD user wishes to communicate with a Department office by telephone, that office is responsible for arranging to use one of the Department's TDD numbers for that purpose. Department employees may also communicate with people with hearing or speech impairments by using the telecommunications relay services operated by telephone companies nationwide.

3. Accessible format versions of printed or audio-visual materials. The Department must provide material to people with hearing or vision impairments in accessible formats if that material is ordinarily made available to other individuals in print or in an audio-visual format. Examples of formats that are accessible to people who are blind or visually impaired include Brailled or audiotaped versions of printed matter and visually-described versions of video-taped or filmed material. Examples of formats that are accessible to people who are deaf or hard of hearing include captioned video tapes (with either open or closed captions) and printed scripts of audio presentations.

B. Ensuring *program accessibility* for people with disabilities if a Department program or activity is conducted in a facility that is not fully accessible.

The Department will ensure that its programs and activities are physically accessible to people with disabilities, including persons with mobility impairments. See 28 C.F.R. §§ 39.149-.151. For example, if a person who uses a wheelchair wishes to meet with personnel from a Department office, and the office is located in a building that is not accessible to persons who use wheelchairs, that office is responsible for arranging to hold the meeting at an alternative accessible site or for removing the physical barriers to access. Responsibility for ensuring program accessibility lies with the Department component that operates the program, even if the facilities in which the program is conducted are managed by the General Services Administration.

C. Ensuring *equal employment opportunity* for people with disabilities.

The Department must ensure nondiscrimination in its employment practices in accordance with the standards established under title I of the Americans with Disabilities Act by the Equal Employment Opportunity Commission. See 29 U.S.C. 791(g), 794(d); 29 C.F.R. pt. 1630. For example, the Department must use nondiscriminatory testing and selection criteria, make reasonable accommodation to the known physical or mental limitations of otherwise qualified individuals with disabilities, and restrict pre-employment medical examinations and inquiries regarding disability. The Rehabilitation Act also requires Executive agencies, including the Department, to take affirmative action to promote the hiring, placement, and advancement of people with disabilities. See 29 U.S.C. 791(b).

1-11.400 Consistency in Litigation

The Department must also be consistent in its approach to both affirmative and defensive litigation under Federal Disability Rights statutes. In order to ensure consistency, attorneys defending Federal agencies against Rehabilitation Act employment claims must consult title I of the ADA and the EEOC title I regulations. See 29 U.S.C. 791(g), 794(d); 29 C.F.R. pt. 1630. When nonemployment claims are asserted against a Federal agency under the Rehabilitation Act, attorneys should consult the agency's section 504 regulation for federally conducted programs. These title I and section 504 regulations provide important guidance on the positions the Government may assert as a defendant and may even suggest that

a defense may not be permissible and that settlement should be entertained. They should always be considered when determining the scope of the Government's defensive posture.

Further information about the responsibilities of Departmental operating units under Section 504 may be obtained from the Disability Rights Section of the Civil Rights Division at (FTS) 307-0663 (voice or TDD).

1-12.000

Coordination of Parallel Criminal, Civil, and Administrative Proceedings

The Attorney General issued a Memorandum on July 28, 1997, requiring a system for coordinating the criminal, civil and administrative aspects of all white-collar crime matters within every United States Attorney's office and each Department Litigating Division. The system should contain management procedures to address issues of parallel proceedings including:

- timely assessment of the civil and administrative potential in all criminal case referrals, indictments, and declinations;
- timely assessment of the criminal potential in all civil case referrals and complaints;
- effective and timely communication with cognizant agency officials, including suspension and debarment authorities, to enable agencies to pursue available remedies;
- early and regular communication between civil and criminal attorneys regarding *qui tam* and other civil referrals, especially when the civil case is developing ahead of the criminal prosecution; and
- coordination, when appropriate, with state and local authorities.

The Attorney General has further directed that appropriate staff in each office receive comprehensive training regarding parallel proceedings utilizing a course of instruction and training materials to be developed by the Council on White-Collar Crime and the Office of Legal Education.

The full text of this Memorandum is in the DOJ Organization and Functions Manual at 27.