FEDERAL BUREAU OF INVESTIGATION

Precedence: PRIORITY

To: Director's Office

From: Counterterrorism
MDLU/ Fly Team/ Operational Response Section
Contact: UC

Approved By: Bald Gary M
Hulon Willie T
Harrington Thomas J
Cummings Arthur M
Battle Frankie

Drafted By:

Case ID #: (Pending)

Title: (U) CTORS/MDLU
FBIHQ-AFGHANISTAN

Synopsis: (U) To provide a mission overview of the FBI-
Afghanistan Detachment based on CTD Afghanistan Assessment Team
(AAT) finding and to set priorities and recommendations.

Reference: (U)

Enclosure(s): (U) Annex A, SSE Mission Approval Checklist;
Annex B, CT Intelligence Summary; Annex C, FBI convoy movement
and, emergency action plans for Afghanistan

Details:

Background of U.S. Role In Afghanistan

(U) Since the Fall 2001, the United States Government's
Global War on Terrorism (GWOT) has focused much of its attention
in Afghanistan. Operation Enduring Freedom which began by
uprooting the Taliban from power in Afghanistan and destroying Al
Qaeda's base of operations, continues to date. The role the
United States plays today in Afghanistan falls along two distinct
To: Director's Office  From: Counterterrorism  

Re:  

09/15/2004

lines: militarily to defeat the insurgents, and diplomatically to assist in the rebuilding of a democratic government in Afghanistan. Militarily, the U.S. led coalition, Combined Joint Task Force 76 (CJTF76), has a clearly defined role to defeat those insurgents who continue to wage war in Afghanistan and ensure the stability of the Afghan Government. CJTF76's operational theater is roughly the eastern portion of Afghanistan to the border of Pakistan. The U.S. military has approximately 18,000 personnel committed to this cause. Headquarters for CJTF76 is Bagram Air Field (BAF), which is approximately 50 miles north of the capital city of Kabul. CJTF76 elements include conventional and Special Operations Forces (SOF) from the U.S. and several other nations. The western portion of Afghanistan falls under the military control of the International Security Assistance Forces (ISAF), a multinational peace keeping force rarely involved in offensive operations. ISAF headquarters is based in Kabul.

CJTF76 has identified the enemy, collectively referred to as Anti-Coalition Militants (ACMs), as three groups, that is, Al Qaeda (AQ), Taliban (TB), and Hizbi-e-Gulbuddin (HIG). Though distinct groups with varying goals, these groups are united in their overriding focus to overthrow the current Afghan Government and rid Afghanistan of Western influence. While relatively small in number, ACMs continue to wage war and make Afghanistan a dangerous and volatile environment for civilians and coalition forces alike. In addition to ACMs, and often closely aligned with them, are various regional drug and war lords who continue to create instability for the central Afghanistan government and must also be dealt with by CJTF76 and coalition forces.

Historical FBI Presence in Afghanistan.
from human sources (HUMINT) and electronic sources (SIGINT) is crucial to this mission. U.S. Forces in the field are focused on identifying and developing this intelligence. Intelligence of a strategic nature, which is often located alongside battlefield or tactical intelligence, is often considered to be of secondary importance by U.S. Forces, if it is identified at all. Soldiers in combat rarely think as investigators. While this tactical focus is understandable it fails to recognize the importance of detecting and disrupting the terrorist threat to the U.S. Homeland. Bits of pocket litter, or seemingly irrelevant documents lying about Afghan homes and compounds, have produced a relative windfall of U.S. based actionable intelligence. However, FBI personnel must be in a position to identify this information, properly collect it, and ensure that it is expeditiously forwarded to the appropriate U.S. intelligence agency.

Specifically, the FBI Afghanistan Team (AT) accomplishes the goal of timely strategic intelligence collection by embedding agents with CJTF76 units during the execution of operational missions defined as Sensitive Site Exploitations (SSE) and/or forward staged interrogations. Present FBI CTD policy requires that the FBI Agent in Charge (AIC), AT, collect specific and articulate facts pertaining to any proposed SSE and provide this information to the AD CTD for approval prior to any FBI participation.

Both CJTF76 and the FBI recognize that Special Agents are not trained to be combat troops. Therefore, FBI SAs are not authorized to enter active combat areas until such time as the U.S. Military ground commander determines the location to be secure. FBI personnel are not to be utilized in offensive combat operations and are limited strictly to intelligence collection, interrogations, source development, and in an advisory capacity in regard to the processing of any site where intelligence (evidence) and/or PUCs that have a possible nexus to the Global War on Terrorism (GWOT) are located.

The only exception to the preapproval requirement for SSEs, applies to HRT personnel embedded with Task Force Omaha. and because of the time constraints associated with the mission,
HRT personnel are authorized to deploy without CTD preapproval. However, HRT personnel still follow the same SSE guidelines regarding participation in offensive operations and make every effort to report their status prior to departure or as soon as practical thereafter to the AIC AT.

(U) In order to track the results of efforts by the FBI AT, the following procedure has been implemented:

1) The daily situation report (SITREP) issued by the AIC lists the daily, weekly, and monthly total of approved SSE missions (20 since January, '04) and sets forth the initial result(s) of the most recently concluded mission, to include the collection of information of a possible strategic value (actionable Intel. has been collected during 11 SSE missions to date).

2) The Military Liaison Detainee Unit (MLDU), CTORS, tracks the number of investigative leads developed by the FBI AT which have been forwarded to ITOS 1 for action (over 100 CONUS related telephone numbers and addresses have been forwarded to ITOS 1).

3) The ITOS 1, ETIU desk, will, on a monthly basis, track the status of all FBI AT developed leads forwarded to the field for action.

4) The MLDU will publish a monthly report detailing the number of FBI AT missions monthly and year to date, the number of actionable leads developed as a result of these missions, and a brief summary of the current status of those leads set to the field by ITOS 1, ETIU.

3) The Establishment of Liaison With All Coalition Forces:

(U) The AAT determined that a number of ISAF military and governmental organizations are actively collecting intelligence throughout Afghanistan. There is a glaring lack of interchange between many of these collectors, as well as a lack of focus on the collection of information that may have a nexus to the terrorist threat beyond the Afghanistan theater, most notably with a U.S. nexus. It is therefore critical that the FBI make every effort to maintain contact with these different
organizations, most of which rotate their personnel out of Afghanistan annually or more frequently.

Specifically, the FBI AT has identified the following positions and/or individuals critical to the effective conduct of the FBI AT's mission, and has established a flexible schedule for contacting these persons on a regular basis:

- CG U.S. forces, Bagram (currently Lt. Gen. Olsen)
- Deputy CG/Operations, Bagram (currently Brig. Gen. Dan Jacoby)
- Deputy CG/Admin., Bagram (currently Brig. Gen. Bernard Chapeau)
- CO DOCEX, Bagram (currently Col. 
- CQ, 25th ID J2 (currently Lt. Col. 
- OIC, Bagram Collection Point (currently Maj. 
- Chief, Criminal Investigation Task Force (CITF), Bagram
- CENTCOM Liaison, Bagram
- COMTECH/DOCEX, Bagram (currently 
- Person Under Control (PUC) Officer, Navy Lt. 
- JTF 76, BCP, Bagram
- CJTF 76 Air Operations POC, Bagram
- Staff Judge Advocate, Bagram (currently Maj. 
- OIC, CEXEC-A, Bagram (currently USMC Capt. 
- CJTF 76, JOC Security Officer (currently Army Capt. 

SECRET
To: Director's Office  From: Counterterrorism  09/15/2004

a number of PUC detention facilities and the BAF based Document Exploitation Center (DOCEX). Sharing in the collection of intelligence throughout Afghanistan is a daunting task, particularly in a country where travel, in itself, is difficult and risky and the collectors are widely disbursed.

The BAF based DOCEX is designated by military order to be the principal collection/analysis point for all material collected in-theater. The FBI does not officially participate in the BAF DOCEX, however, efforts by the FBI AT to develop a relationship with BAF DOCEX have proven highly successfully. DOCEX officials have reprioritized their approach to reviewing collected material with a view toward identifying and relaying to the FBI AT any information that appears to have a nexus to the U.S. As an example of this improved relationship, while DOCEX is deemed to be the principal collector of in-theater material, DOCEX personnel willingly admit that they are vastly understaffed and would welcome whatever assistance the FBI could provide. In particular, this operation is in dire need of translation and analytical skills.

Recommendation - In order to improve the identification and flow of intelligence with a U.S. nexus the AAT recommends that an FBI analyst be assigned to FBI Bagram in order to assist the DOCEX facility.

Support of the Combined Explosive Exploitation Cell:
(U) FBI SABTs provide experience and advanced investigative skills not available within the DoD structure. These skills can be applied to the processing of post blast scenes, the collection and documentation of critical components and evidence, the location and the interview of suspected bomb makers, and the effective search of suspected bomb making locations while reducing the inherent risk.
located and dismantled. We must be where the terrorists are. Just as organized crime or drug smuggling investigations need to transcend borders to be successful so does the FBI's anti-terrorism efforts. The AAT believes that the methods employed in the collection of actionable intelligence from detainees, sources, and through physical evidence are the same proven methods used by Special Agents in all criminal investigations. No other national asset has the skill sets or experience that FBI Special Agents possess in this area. Therefore, the AAT believes the FBI is uniquely qualified for this mission and strongly recommends that the FBI remain a lead agency in the strategic intelligence collection process in Afghanistan.

**

**
ANNEX A

Mission Approval Checklist

TIER I MISSION

For FBI approval purposes a SENSITIVE SITE EXPLOITATION (SSE) will be defined as:

Whenever FBI personnel participate in an operational mission which has as its primary objective the capture of individuals determined to support or participate in anti-coalition activities or the recovery of items deemed to contain information of tactical or strategic intelligence value and where there exists the possibility of encountering hostilities.

Any mission falling within the above definition will require prior authorization from FBIHQ before any FBI personnel may participate.

In order to submit a request for SSE participation the following mission specifics will be required:

1. Date, time and location of the SSE.
2. The nature of the target i.e. Al Qaeda supporter, Taliban commander, foreign fighter, etc. If the target is of a material nature then the items likely to be recovered and their strategic intelligence value.
3. The military component conducting the SSE including the force protection elements (air assets, armored vehicles, etc).
4. The means of transportation and duration of the SSE. If SASs are to RON in the field, justification for the RON.
5. The FBI personnel involved in the SSE.
6. The purpose and other details to justify the need for FBI to participate in the SSE. In particular, articulable facts need to be presented which explain the CT nexus the FBI would like to exploit or the intelligence value of the mission.
TIER II MISSION

Whenever FBI personnel seek or have been requested to provide assistance of an investigative (to include interviews), forensic, or training nature to DOD, other USG agencies, or Afghan Government entities, at a location outside of a secure USG base or facility, prior authorization must first be obtained from the FBI-Afghanistan Agent In Charge (AIC).

Every effort should be made to provide the AIC with as much of the above SSE preapproval information as possible as set forth in the Tier I missions.

TIER III MISSION

Whenever FBI personnel seek or have been requested to provide assistance of an investigative (to include interviews), forensic, or training nature to DOD, other USG agencies, or Afghan Government entities at a location within a secure USG base of facility, FBI personnel will keep the FBI-Afghanistan AIC regularly briefed on developments and intelligence obtained.
Annex C

Ground Convoy Movement Checklist
Semi-Permissive Environments

Prior to any ground convoy or force protection mission taking place in a semi or non-permissive environment, essential pre-mission guidelines should be considered prior to executing the mission. The checklist guidelines set out below help the AIC/DAIC develop an operational plan for any type of ground movement.

Pre-Mission Planning:

Mission
a. What is the mission?
b. Mission worth the risk?

Personnel Available
a. Enough personnel to safely conduct the mission?
b. Are other unknown personnel entities involved? Capabilities? Military Escort Available?

Vehicles Available
a. What type of signature to be presented?
b. Armored? Low Visibility Vehicles, Indigenous?
c. Are non-FBI vehicles involved and what are there capabilities or limitations?

Command and Control
a. Who is over all in charge?
b. Individual Vehicle Commanders identified?
c. Communications capabilities? Intra-Team, SATCOM?
d. Emergency Response Contingencies?

Intelligence
a. New risks or enemy tactics? Current Threat Level?

Route Planning
a. Primary and secondary routes?
c. GPS, Maps, Falcon View? Each vehicle should be able to independently navigate if necessary.

Pre-Mission Checks:

Vehicle Checks - Fluid levels, Tire Pressure, Spare Tire and appropriate Jack, VS 17 Panel, American Flag Panel, spare vehicle equipment, Water/MRE’s, Glint Tape, spare ammunition and ordinance, smart cards.

Team Leader Brief - Mission, Vehicle order and pax position (Profile people based on skills and where they sit), ID vehicle commanders, Total Pax, Movement Tenets (Speed, Distance, Check Points, Formations), Weapons and Equipment
Checks.

Route Briefing and Alternates: Route to be taken, Choke Points and Areas of Concern.

Communications - Channels (primary, secondary, others), Intra Team radio and SAT Comm checks, Falcon View checks, Iridium Checks, loss comms plan, radio checks and commands.

Contingencies - Vehicle break down, Bump Plans, route blockage, medical and medivac procedures, IED or ambush Immediate Action Drill's, bump plans, Go/No Go criteria, Known U.S. Hard Points along route.
DOJ/IG 007144

SECRET


Page 8

Tests were made.

Looking for a week.

Possible overlap at his part.

Missing for three weeks.

41 told that it is good if

in a previous mission for 63.

Seemed unlikely.

Then he said, "OK, then not OK"

After we left. Heard that if #63 be ended

up in hospital.

Interviewed people at night.

Disappear off of list etc.

Camp X-ray was held where hard techniques

were used.

"If you think this is true, you should see

what happening in Afghanistan."

692 was the first man

in Afghanistan.

The went at very high

Latin. X-ray was used for health feedback.

Prisons other than #63 went through similar.
In GTMO when first prisoner arrived 1922-1905
Initially - taking introductions
- Miroada
- Prisoner Plocher
- Escapists
- No script, produce really IT was
FBI stayed at MOC - Miroada

FBI in a support capacity to help CITF
That screenplay off the same script
No deviation from normal (but not Miroada)

Real dollars to staffs was greatly TOY
- Some people c SSAs created themselves
- Other didn't
- Policy clean out thus would be little creep

 brief what MT was permitted risk directive

 technique
- SSU had list of restrictions 
- Efficiency thing to
- Get out of control to first 10 weeks

Stand clean policy devoted from leadership in guard
- Each SSA guarded that days.
Mistaded big these things

Gen. Milley was apprised many times about this.

Dec 9 2003 I became an issue of particular interest.

The FBI had been looking for a lead that could lead long term continuity of decline.

Military became impatient when FBI's proclaimed did not immediately deem fit.

Thought FBI in high gear. May have had gaps here or there.

May have been an agent (Tiger Team) that an agent participated in. Key standing cold.

Knowledge of abusive treatment:

- Ordered a military guy laughing
- Detained in a stress position
- Leg was cramped
- Fillled the interrogator with adrenaline

Spit it out. Care may be (AJC). Help.

I AC - didn't know

- Brocical appeal immediately

Why is FBI wasting time?

No, but want D. in my
Sexual humiliation?

No. Had a female cmb. 

in Baghdad: no alcohol.

- see they aren't doing the same things like the rules.

BAU - not effective but also state not abusing staff. Only guidance for their guidelines just got out of control.

SECRET
We will have no part. It's illegal.

The man changed but did nothing to his hair or any other change.

Ordered to play nice near the meeting ran prep briefing. Totally was the top FBI battle.

Eventually backs off.

She was supervisor. She stormed out after oral rep. He said he'd handle.

Same asks lawyer is awaiting in an interview & another guy comes in to an interview.

Then both SSA, Com. Sen.

Came busting into the middle room complaining about undemocratic treatment of defense has a manuscript tape that defendant

Pics himself in handcuffs & detains.
I was looking for guidance. Tell me if it is.

I don't just tell us like that. We can't just let it happen.

(Without answering) Thanks back.

Specifically, you're right. Something happened.

We have 500 people. It's not just a few.

We need to make sure the entire organization is aware of it.
Duct Taping:

he watched an interrogator:

- Civilian for military
- Look

head & mouth duct-taped: let's duct tape full beard & big hair.

mouth taped - singing about it.

What did he do? Spit

Chanting kuran: He wouldn't quit.

Beards getting duct-taped off.

Got refused up to that.

#63: had dogs outside barking

Marine captain doing bad guy.

Squatted on table, read kuran.

1:3 reached for kuran:

They grab him.

6:3 screams that they are hallucinating & will never talk.

JAG Attorney: ridiculous.

We won't at X-ray - thin than assassin.
We never changed our guidelines.

expressed concern about DoD methodology
doesn't set best practice.

DoD.

They all want to DoD to explain
about methodology.

We couldn't mandate.

met all of them.

His understanding was that they were using the
SERC techniques and that DoD approved.

Although some of it was a CIP.

Will also look for e-mail from Spil.

Continue down this path.

DOS spoke to DoD-G6C.

about 9:03.

Raised up.

that methods.
for access. And the techniques discussed are just don't concern about making an adjustment.
Gentlemen - I sent Spike Bowman all of the e-mails from this case. Attached is his response. My conclusion for Spike was that our Agents should decline involvement in these "techniques" unless authorized by the AG. When should we meet with the SAC?
From: MARION Bowman

To: [Blank]

Date: Tue, Dec 3, 2002 3:14 PM

Subject: Fwd: Re: LEGAL ISSUES RE: GITMO

I've read all this and remain concerned. It is irrelevant whether these detainees are considered prisoners of war, they are still entitled to minimal conditions of treatment — many of the techniques addressed appear to move well beyond the minimal requirements.

I do not feel that the FBI should be perceived to approve this and continue to believe that a BAP evaluation is needed — both to aid in documenting an FBI position and to help FBI policy-makers in evaluating this situation.

I concur that we can't control what the military is doing, but we need to stand well clear of it and get as much information as possible to D'Amuro, Gebhart and Mueller as soon as possible.

>>> 12/02/02 05:53PM >>>
#2 and a half (SSA final comment)
From: MARION Bowman
To: 
Date: Tue, Dec 17, 2002 9:35 AM
Subject: Fwd: Legal Issues re: Guantanamo Bay

I'd say that the JAGs pretty well nailed the issues. They've got the law right and the social issues right. I'm not sure I agree that this type of interrogation would properly be directed toward the Military Commission and law enforcement requirements, but that is not the major point. I was contacted about a month ago by our CIRG folks about this. I had asked them (behavioral science) to write a position paper that demonstrates the inutility of this type of interrogation and haven't received anything. However, I believe that if harsh interrogation is carried out there, FBI should stay away.

Spike Bowman

Pls comment.

12/12/02 10:27AM
MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE

RE: CONDUCTING FBI INVESTIGATIONS OVERSEAS

This memorandum reiterates guidelines for conducting FBI investigations overseas. It should be read and retained by all Special Agents as a guide for international investigations and international travel.

As our domestic investigative responsibilities become increasingly intertwined with criminality in other countries, we must continually enhance our ability to conduct complex investigations and to acquire evidence from abroad. To do so requires close coordination and a thorough understanding of the procedures to be followed.

Some of our most important and visible investigations are international and multinational in scope. They are putting greater demands on the FBI, especially in the field. More and more case Agents are being faced with the challenge of obtaining evidence from abroad. More Agents are traveling internationally than ever before in furtherance of domestic cases and extraterritorial investigations.

Given this explosion of international activity, it is incumbent on FBI employees whose responsibilities or assignments take them into the international arena to realize that carrying out our law enforcement mission overseas is different from doing so in the United States. Just as the laws of every country are different, so are the rules, protocols, and practices used to enforce them. Simply put, you cannot do the FBI's business internationally in the same way you do it in the United States.
The foundation of the FBI's international program is the Legal Attache (Legat). Each Legat is the Director's personal representative in the foreign countries in which he/she resides or has regional responsibilities. Their job is to respond to the FBI's domestic and extraterritorial investigative needs. They can accomplish this because they have developed partnerships and fostered cooperation with their foreign counterparts on every level and are familiar with investigative rules, protocols, and practices that differ from country to country. This is the Legat's primary responsibility.

Each agent must utilize the Legats in all of their overseas contacts. Although we are increasing our Legat ranks, the overall number of agents posted overseas will remain small, comprising less than one percent of the our total agent workforce. In instances where it is more expedient to have direct contact between domestic employees and foreign services, contact must be brokered through the appropriate Legat or conducted with his/her authorization and concurrence.

To best utilize our Legat system, investigators and managers in the United States must have a firm understanding of the Legat's role, the mission of the FBI overseas, and how that role and mission differ from that of agents and offices in the United States. FBI Agents abroad do not have the law enforcement authority they possess in the United States. FBI Agents do not have arrest powers, subpoena powers, or the authority to conduct investigations in other countries without the approval of the host government. The Legat's authority to conduct investigations, or secure approval for and coordinate agent investigations abroad, varies greatly, it must be determined by each Legat on a country-by-country, case-by-case basis. This means that all international investigation not specifically authorized is strictly prohibited, whether it be conducted in person or by telephone, over the Internet, or in other ways. The consequences of breaching agreements, treaties, or international laws can be counterproductive. It can cause evidence and cases to be lost, agents to be detained and expelled from countries, and long-standing international relationships to be negatively impacted or even ruined.

In addition to the Legat's responsibility to the host country, Legats are also responsible to U.S. Ambassadors overseas. The FBI is obligated by a Memorandum of Understanding between the Departments of Justice, State, and Treasury to keep the Chief of Mission "fully and currently informed" with respect to all activities and operations of FBI employees in that country. The Legats must be completely aware of all FBI activities in their territories so that they can meet their obligations to both the host country and the U.S. Ambassador.
The Legats continue to encounter inappropriate actions on the part of agents who are apparently unaware of international rules. There have been a number of areas where problems exist associated with investigative activity from the field or liaison travel on the part of managers from the field and FBIHQ. Most of the instances can be explained by inexperience or a lack of familiarity with international procedures. This memorandum sets out the areas of concern and procedures which must be followed by domestic employees.

**Travel**

All official, international travel must be approved by the substantive unit at FBIHQ and by the appropriate division head. Once these approvals are received, the traveler(s) must transmit an electronic communication (EC) to the appropriate Legat requesting "country clearance," which is granted by the Chief of Mission or his designee at the relevant American Embassy. In the case of travel in support of counterterrorism investigations, country clearance is obtained through the Office of the Coordinator for Counterterrorism, DOS, with concurrent notice provided to Office of International Operations and the appropriate Legat Office. Country clearance is necessary for an FBI employee to travel to any country as a representative of the executive branch of the U.S. government. The Chief of Mission, in most cases the Ambassador, is responsible for all American activities and operations occurring in the country to which he/she is accredited. Country clearance is the Chief of Mission's authority for the traveler to do U.S. business in that country. The Chief of Mission relies upon the recommendation and approval of the Legat in his/her decision-making process. The request must be submitted as far in advance as possible; as Legats must go through an approval process within their embassies.

Travelers must have an "official" passport when on FBI business in a foreign country. It is improper to travel abroad on FBI business on a tourist passport. Official passports can be obtained by contacting the Office of International Operations, Protocol Affairs Unit, at FBIHQ, but the acquisition procedure takes time. It is recommended that all appropriate Bureau employees, agent and support, apply for and maintain a valid official passport for possible international travel. Do not wait until shortly before departure to make the request for a passport. In some instances, countries may require an official visa if the travel is for official business. Travelers should make inquiry with the Legat and the Protocol Affairs Unit to determine whether an official visa will be necessary.

Prisoner transit through a third country presents unique issues, as does an agent stopover in a third country en route to another destination. These issues should be discussed with the Legat of the third country as soon as it is determined the FBI will be part of the escorting team and/or its itinerary calls for a stop in a third country.
The aforementioned guidelines apply to all foreign travel, including travel of FBI personnel detailed or seconded to other U.S. federal agencies, who travel overseas as part of their detail or secondment.

**Leads in Foreign Countries**

Investigation in foreign countries is conducted through host country liaison contacts developed and maintained by the Legat. Each host country determines the kinds of investigative activity which can be conducted independently by a Legat. For example, a country may allow some level of informal contact with its citizens with the concurrence of local police or judicial authority. Other countries forbid such contact. Many host governments permit the informal exchange of police-to-police information (e.g., record checks, public record acquisition) between Legat and local law enforcement, but forbid more involved investigation such as interviews of individuals.

Direct contact with host country citizens by telephone, mail, Internet, or in person by any FBI employee is strictly prohibited unless the contact is approved by FBIHQ and the Legat. Those types of direct contact are universally viewed as infringements on national sovereignty. The Office of International Operations is experiencing a significant number of instances where FBI Agents are placing telephone calls to foreign banks, businesses, and individuals, assuming that these are legitimate investigative techniques. In some instances, Legats have been threatened with expulsion over such sovereignty issues.

Agents who seek to conduct investigations that require joint, sustained, international coordination (including Mexico and Canada) must notify the Legat for the purpose of initiating and facilitating contact with foreign counterparts. This also enables the Legat to remain fully abreast of all FBI activities in that country and ensures that agents can be apprised of relevant issues related to that country, allowing them a full understanding of circumstances which could affect their case.

The increased travel of FBI investigative personnel to foreign countries and relationships with classmates at FBI National Academy sessions has boosted the contacts between FBI personnel and foreign law enforcement and intelligence service officials. In some instances, there has been direct contact from the foreign service officials to field office FBI personnel requesting record checks or other investigative assistance. FBI personnel are reminded to refer these officials to the respective Legat for action. Additionally, the FBI Agent contacted should notify the Legat of this contact for appropriate follow-up.
Except for a small number of recently opened offices, Legats are on-line in the FBI’s Automated Case Support (ACS) system. Overseas leads must be uploaded in ACS, which allows the Legat to retrieve it expeditiously. A lead must be set to the Legat on an EC for the Legat to be aware that the communication exists in ACS. Moreover, this is the means the Bureau employs to capture Legat work levels and ensure the Legat offices are adequately staffed to handle their caseload. Leads that are not uploaded are subject to delay, administrative-control problems, and return to the office seeking investigation. The paper copy of a communication containing a lead not uploaded will be transmitted to the Legat by diplomatic pouch. However, pouch-transit time can take up to two months.

**Collection of Evidence**

Evidence (including interviews, documents, or information provided by local law enforcement) may be obtained through letters rogatory or a mutual legal assistance treaty (MLAT) request. Letters rogatory are the customary method of obtaining assistance from overseas in the absence of a treaty or other agreement. A letter rogatory is a request from a judge in the United States to a judicial officer in a foreign country for assistance, which would constitute a violation of that country’s sovereignty if done without the sanction of the foreign court. Letters rogatory generally include background information, the facts of the case, an articulation of the assistance requested, the text of the statutes, and a promise of reciprocity. Such letters are prepared by the U.S. Attorney's Office and the U.S. Department of Justice’s Office of International Affairs in coordination with the FBI field office, FBI Headquarters, and the appropriate Legat. FBIHQ can assist you in understanding the letters rogatory process and can refer you to the Office of International Affairs at the Department of Justice to facilitate the effort. The United States has entered into an increasing number of MLATs with other countries which have the force of law and define the obligation to provide assistance, the scope of assistance, and the contents of the request with specific countries. The MLATs shorten the letter rogatory process and provide a direct, formal procedure for making and receiving requests between Justice Ministries. As a general rule, any type of investigative assistance which would require a compulsory process to accomplish in the United States (federal grand jury subpoena, search warrant, court order, etc.) must be sought employing a letter rogatory or MLAT request. Because MLATs and other treaties and agreements are negotiated with each country separately, each one differs from the next. The International Operations Section at FBIHQ can assist you in understanding these treaties and help you, working with the U.S. Attorney's Office and DOJ’s Office of International Affairs, to make a formal request utilizing this technique.
Evidence obtained through these legal channels can, if properly authenticated and otherwise obtained in a manner meeting U.S. requirements, be used in court proceedings in the United States.

In addition to the formal methods described above, a number of other methods for obtaining assistance have been used in certain situations in certain countries. They include informal police-to-police requests, joint investigations with foreign police agencies whereby evidence is shared, and requests through Interpol. The Legats will know in each instance what is the appropriate means of obtaining assistance and should be consulted prior to undertaking international action.

**Extradition**

International extradition is the formal process by which a person found in one country is surrendered to another country for trial or punishment. The process is regulated by treaty and conducted between the U.S. government and the government of a foreign country. It differs considerably from interstate extradition or interstate rendition. Extradition, in most instances, may be granted only pursuant to a treaty. Responsibility for extradition matters lies with the Department of Justice and the Department of State. A simple telephone call to a foreign police agency will not result in having a subject arrested and returned to the United States. Legats cannot execute arrests in foreign countries.

There are a number of circumstances which can complicate the return of a U.S. fugitive to the United States. Agents should be aware of these circumstances and the alternatives to extradition which exist. Some of these potential complications include: the subject is a citizen of the country of refuge, and that country does not extradite its nationals; the crime which is charged in the United States is not considered a crime in the country of refuge; although the American statute of limitations has not run out, that might not be the case in the foreign country; or, the crime charged in the United States might be considered a political offense in the country of refuge, providing a defense to extradition. Alternatives to the extradition process include deportation or informal rendition, "luring" the fugitive to the United States or a third country from which extradition is possible, or, in rare cases, foreign prosecution. Exploration of these alternatives can be pursued with the U.S. Attorney's Office, DOJ's Office of International Affairs, or FBIHQ.
Subpoenas

Technically, it is possible pursuant to U.S. law to have a subpoena issued for a national or resident of the United States in a foreign country, directing the witness to appear before a U.S. court. There are some practical considerations, however. The Legats cannot simply serve American process in other countries. It may be a violation of sovereignty. Foreign laws may restrict the serving of such subpoenas, especially when the witness is a dual national. U.S. Attorney's Offices work closely with the DOJ's Office of International Affairs to select a method of obtaining the witness's presence in the United States. In some cases this will be done in concert with an American consular official acting on a request by the Department of State. In other cases a formal MLAT or letter of request seeking service of the subpoena will be required.

Informants/Cooperating Witnesses

While the use of informants and cooperating witnesses is well-established and accepted in the federal criminal justice system, such techniques may not be acceptable in foreign countries. Having cooperating witnesses participate in undercover investigations is considered illegal in many countries, under the theory that they are provoking the criminal activity. The theory makes the operation of informants and cooperating witnesses overseas a sensitive area. The Legat must be consulted before any international direction or tasking of an informant is considered. The Legat must be aware each time an informant or cooperating witness travels to his/her territory, so that the Legat can fulfill the FBI's obligation to keep the Ambassador/Chief of Mission appropriately notified of certain investigative activities. This can be done without disclosing the informant's identity.

Other Investigative Techniques

Agents sometimes request such investigative techniques as physical surveillance, electronic surveillance, and consensual monitoring. Again, foreign countries generally are more restrictive in the use of such techniques. It is the rare occasion when Legats will be able to arrange for electronic surveillance and consensual monitoring to be conducted on behalf of domestic offices.

No one can reasonably be expected to have a working knowledge of laws, protocols, and practices related to conducting an investigation in every foreign country, nor is there a need. This is the role of each Legat, FBI Headquarters, U.S. Attorney's Offices, and the Department of Justice. But it is critical that FBI investigators and managers understand the distinctions between conducting investigations in the United States and in foreign countries.
In every case, the Legats must be made aware of official travel and operations within their territory. This serves to maximize an effective investigation and maintain their hard-earned standing as the permanent FBI presence in that territory. Legats are responsible for the conduct of all investigative matters overseas, including cases where domestic FBI Agents are deployed from the extraterritorial squads. That is, the Legat is there to ensure that the anticipated investigation proposed by the office of origin does not raise a sovereignty issue with the host government and that all matters have been coordinated with the embassy in accordance with the Chief of Mission mandate. The Legats must be part of the investigative planning and decision making in order to fulfill the Director’s expectations with respect to their role in overseas investigations.

Please consider the Legats as your greatest asset when you encounter a need to do business abroad. They are the FBI's experts for the region in which they work. I insist that agents and managers utilize the Legats whenever international contacts are required. The Office of International Operations is available to assist field and Headquarters agents with planned overseas travel and/or investigation.

Robert S. Mueller, III
Director

7-11-2002
MEMORANDUM 14-2002
Message

You have been identified as having conducted an assignment at GTMO, Cuba since 9/11/01. The Inspection Division has been tasked with contacting those employees who have served in any capacity at GTMO and obtain information regarding the treatment of detainees. Employees should immediately respond to the following:

1) Employees who observed aggressive treatment, interrogations or interview techniques on GTMO detainees which was not consistent with Bureau interview policy/guidelines, should respond via email for the purpose of a follow-up interview. Positive email responses should be directed to:

   Inspection Division

2) Employees who served at GTMO and observed no aggressive treatment of detainees, should respond via an EC documenting a negative response. The EC should include the employee's official Bureau name, title, and tenure of assignment at GTMO.

The EC should be titled "Counterterrorism Division, GTMO, Inspection Special Inquiry" file # 297-HQ-A1327769-A. The EC should not be uploaded, but only serialized, with a hard copy forwarded to:

   Inspection Division
   Office of Inspections
   Room 7637
From: (Div13) (FBI)
Sent: Thursday, May 06, 2004 9:54 AM
To: (CG) (FBI)
Cc: (EP) (FBI)
Subject: RE: reported incidents

Thanks:

As you know, #1 was brought to General Hood's attention by NAE.

I consider #2, as you have reported it, unfounded and arguably not credible, based on the source.

#3 was observed/supervised by competent JTF medical authority, and as you weren't moved at the time to label it abuse, I'm reluctant to do so now.

Per our meeting earlier today, the following information has been brought to my attention:

1) 757
Situation: I was told on or about Thursday, 22 April 2004 by (NAE) that 757, whom he debriefs, had provided the following: Sometime in the second or third week of February 2004, 757 was taken to reservation. (757 was on both FBI and NAE hold.) He did not recognize the interviewers and when he told them he didn't want to speak to anyone unless they were introduced by his regular interrogators, he was yelled at for 25 minutes. 757 was short-shackled, the room temperature was significantly lowered, strobe lights were used, and possibly loud music. There were two male interrogators; one stood behind him and the other in front. They yelled at him and told him he was never leaving there. The interrogator tried to get 757 to identify photos. After the initial 25 minutes of yelling, 757 was left alone in the room in this condition for approximately 12 hours. At one point, the interrogator came back in the afternoon to make sure he was still there. During the 12 hours, 757 was not permitted to eat, pray or use the bathroom. One of the interrogators was described as old/late 50's, grey and black hair, mustache with no beard, short, skinny, and wore a blue shirt.
My actions: verbally informed.

2) 110
Situation: The following information was provided to me by detainee 110 in approximately January or February 2004: 110 was being taken to reservation or medical (something inside Camp Delta; I don't recall what). While outside near the Brown building, he saw a young Filipino/Asian female with long dark hair, short tight pants, and a revealing top. When the female noticed him, she jumped, laughed, and ran around the building out of his sight. 110 believed that this was a prostitute.
My actions: verbally informed/advised this female fit the description of a prostitute who had previously been working out of the base beauty shop.
3) 661
Situation: I observed the following in early April 2004: 661 was being debriefed for several hours (approximately 15 hours) by NAE. Throughout the session, 661 periodically threw up in a trash can. At the time, I was told he had an ulcer and that the stress was irritating it. I was later advised he had a stomach virus. I was told he had been given a shot of Motrin (or something like that) by the medical staff.

My actions: Due in part to the fact that LTC____ was present and did not object to the situation, and I never heard 661 asked to be returned to his cell or request medical assistance, I took no action.

Thanks, LL
From: [Redacted]

Sent: Friday, May 07, 2004 10:45 AM

To: HARRINGTON, T. J. (CTD) (FBI); BATTLE, FRANKIE (CTD) (FBI); [Redacted] (CTD) (FBI); [Redacted] (CTD) (FBI); [Redacted] (CGC) (FBI)

Cc: [Redacted] (CTD) (FBI)

Subject: GTMO OSC 5/7/04 Discussion with Vice Admiral Church, Inspector General, United States Navy

Importance: High

I met with Vice Admiral Church for 45 minutes this morning within the context of the Inspector General review of detention/interrogation procedures at GTMO.

I provided him with an overview of the FBI's mission and organization in GTMO. At his request, I also explained to him how the FBI operates in close coordination with JTF-GTMO operationally; however our interviews are conducted in strict compliance with DOJ/FBI policy and training, with the exception of Miranda. He clearly understood the distinctions between our training and policies, as opposed to those of the DOD.

His main interest was in interagency interview coordination procedures, which I explained in detail. It was clear he wanted to be able to document that the FBI could not move, interview or otherwise interact with detainees unilaterally.

I believe he went away satisfied that FBI operations in GTMO are essentially transparent to our JTF-GTMO and inter-agency partners.

Members of Vice Admiral Church's staff will be randomly interviewing JTF and possibly FBI employees this afternoon. More to follow if any of my folks are interviewed.

Regards,
[Redacted]
FEDERAL BUREAU OF INVESTIGATION

Precedence: ROUTINE  Date: 09/30/2004

To: All Divisions

Attn: FADs
     ADs
     FBIHQ, Manuals Desk.

All Field Offices
Attn: ADICs
     SACs

All Legats

From: Director's Office

OPR

Approved By: Mueller Robert S III

Pistole John S

Drafted By: Will Candice M

Mershon Mark J

Case ID #: 66F-HQ-A1455078 (Pending)

66F-HQ-C1384970 (Pending)

Title: NEW OFFENSE TABLE AND PENALTY GUIDELINES RELATED TO THE DISCIPLINARY PROCESS.

Synopsis: To provide all Divisions, Field Offices, and Legats with the newly created Offense Table and Penalty Guidelines, effective 10/01/2004, related to the disciplinary process.

Enclosure(s): Offense Table; Preamble to the Penalty Guidelines; and Penalty Guidelines.

Details: Based upon recommendations of the Bell/Colwell Commission, implementation teams were established by the Inspection Division (INSD), the Office of Professional Responsibility (OPR), and the Office of General Counsel (OGC) to prepare the enclosed Table/Guidelines. The new Offense Table and Penalty Guidelines will become effective on 10/01/2004, and will apply to all internal disciplinary investigations opened or initiated on or after 10/01/2004. The new Table/Guidelines can be found on OPR's website.

The new Offense Table and Penalty Guidelines are intended to aid employees in determining the types of behavior that constitute misconduct and the range of penalties for engaging in such behavior. The OPR and the INSD intend for the Bureau's disciplinary process to be transparent, and will take every action to remove any perceived secrecy in the process, while ensuring the privacy of affected employees. Most
To: All Divisions  From: Director's Office
Re: 66F-HQ-A1455078, 09/30/2004

discipline will fall under the median penalty range. There will be times, however, when the attendant mitigating or aggravating circumstances result in the imposition of a penalty outside of the median range. Examples of mitigation and aggravation, although certainly not meant to be all inclusive, are identified in the Penalty Guidelines. It is important for employees to keep in mind that the Penalty Guidelines are exactly that -- guidelines. There may be instances where the misconduct is so egregious that the appropriate sanction falls outside of these parameters. In such circumstances, the AD of OPR will not be restricted to the penalties identified in the enclosed Penalty Guidelines, but will have the latitude to issue sanctions outside of those identified. The disciplinary process is inherently difficult; however, it is our intention to improve the transparency, predictability, efficiency and fairness of the process by providing employees with the attached Offense Table and Penalty Guidelines.

This policy statement supersedes any/all prior policy statements, manual provisions and instructions relative to the disciplinary process.

Any questions regarding the contents of this communication should be directed to OPR at 202-324-4993 or 202-324-5417, Room 11122 FBIHQ.
To: All Divisions  From: Director's Office  
Re: 66F-HQ-A1455078, 09/30/2004

LEAD(s):  
Set Lead 1: (Info)  

ALL RECEIVING OFFICES  

Please disseminate to all personnel.

**
To: All Divisions
From: Director's Office
Re: 66F-HQ-A1455078, 09/30/2004

---

### Offense Table

<table>
<thead>
<tr>
<th>Offense Description</th>
<th>Mitigation</th>
<th>Penalty</th>
<th>Aggravation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Asset/CW/Informant (Source) - Failure to Report Criminal Activity</td>
<td>Censure - 5 Days</td>
<td>7 Days</td>
<td>10 Days - Dismissal</td>
</tr>
<tr>
<td>1.2 Asset/CW/Informant (Source) - Improper Financial Relationship</td>
<td>Censure - 5 Days</td>
<td>7 Days</td>
<td>10 Days - Dismissal</td>
</tr>
<tr>
<td>1.3 Asset/CW/Informant (Source) - Improper Intervention on Behalf Of</td>
<td>Censure - 5 Days</td>
<td>7 Days</td>
<td>10 Days - Dismissal</td>
</tr>
</tbody>
</table>

---

Failing to timely inform the appropriate FBI official of a source's unauthorized criminal activity about which the employee knows, or reasonably should know, based upon all available information. Criminal activity includes all violations of the law.

Without authorization, directly or indirectly loaning money to or receiving money from a source; giving a favor/gift to or accepting a favor/gift from a source; paying a source for a favor, gift, or service; or, attempting to obtain any favor, gift, or service from a source. This includes financial benefits, favors, and gifts conferred upon an employee's relatives or associates due to the employee's relationship with the source.

Without authorization, aiding, protecting, harboring, or shielding a source, or any attempt to aid, protect, harbor, or shield a source from law enforcement or legal obligations.
To: All Divisions
From: Director's Office
Re: 66F-HQ-A455078, 09/30/2004

| 1.4 Asset/CW/Informant (Source) - Improper Personal Relationship | Engaging in a social, romantic, or intimate relationship or association with a source. Social relationships/associations involve any contact beyond that reasonably necessary for the completion of an investigative mission or beyond that which is authorized. An employee can be disciplined for: (1) engaging in an improper personal relationship, or (2) without authorization, engaging in conduct that would cause the reasonably prudent person to believe that there is an improper relationship.

***See 3/27/01 Memorandum to All Employees regarding "Personal Relationship Policy" for additional information.

<table>
<thead>
<tr>
<th>Mitigated: Censure - 5 Days</th>
<th>Penalty: 7 Days</th>
<th>Aggravated: 10 Days - Dismissal</th>
</tr>
</thead>
</table>

| 1.5 Asset/CW/Informant (Source) - Violation of Operational Guidelines and Policies, Other | Knowingly or recklessly failing to enforce or comply with an FBI or Department of Justice (DOJ) operational guideline or policy, not specifically delineated in any of the other "Asset/CW/Informant" offense codes provided herein, which falls outside the parameters of performance.

***See 2/02/04 Memorandum to All Special Agents in Charge regarding revisions to Manual of Investigative Operations and Guidelines (MIOG), Part II, § 270:

<table>
<thead>
<tr>
<th>Mitigated: Reprimand - 3 Days</th>
<th>Penalty: 5 Days</th>
<th>Aggravated: 7 - 30 Days</th>
</tr>
</thead>
</table>

| 1.6 Investigative Deficiency - Improper Handling of Document(s) or Property in the Care, Custody, or Control of the Government | Falling to properly seize, identify, package, inventory, verify, record, document, control, store, secure, or safeguard documents or property under the care, custody, or control of the government, to include evidence, non-evidentiary items, and seized property which is held by the government. This offense includes the unauthorized or improper use, loss, damage, destruction, or improper disposal of documents or property, to include ELSUR (electronic surveillance) materials.

<table>
<thead>
<tr>
<th>Mitigated: Reprimand - 3 Days</th>
<th>Penalty: 5 Days</th>
<th>Aggravated: 7 - 30 Days</th>
</tr>
</thead>
</table>

| 1.7 Investigative Deficiency - Misconduct Related to Judicial Proceedings | During the investigative or litigative phases of a criminal or civil case, engaging in conduct that dishonors, disgraces, discredits, or otherwise brings the integrity or reliability of the FBI into question. (This does not apply to conduct involving falsification issues covered under 2.1, "Lack of Candor/Lying.")

<table>
<thead>
<tr>
<th>Mitigated: Censure - 5 Days</th>
<th>Penalty: 7 Days</th>
<th>Aggravated: 10 Days - Dismissal</th>
</tr>
</thead>
</table>

| 1.8 Investigative Deficiency - Violation of Operational Guidelines and Policies, Other | Knowingly or recklessly failing to enforce or comply with an FBI or DOJ operational guideline or policy not specifically delineated in any of the other "Investigative Deficiency" offense codes provided herein, which falls outside the parameters of performance.

<table>
<thead>
<tr>
<th>Mitigated: Reprimand - 3 Days</th>
<th>Penalty: 5 Days</th>
<th>Aggravated: 7 - 30 Days</th>
</tr>
</thead>
</table>
To: All Divisions  From: Director's Office  
Re: 66F-HQ-A1455078, 09/30/2004

## 2. INTEGRITY/ETHICAL MISCONDUCT

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Mitigation</th>
<th>Penalty</th>
<th>Aggravation</th>
<th>Dismissal</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1</td>
<td>False/Misleading Information - Employment/Security Document(s)</td>
<td>Knowingly providing false or misleading information in an employment-related or security-related document; or, signing or attesting to the truthfulness of information provided in an employment-related or security-related document in reckless disregard of the accuracy or completeness of pertinent information contained therein. Employment/security documents include, but are not limited to, the Employment Application (FD-140); Security Reinvestigation Questionnaire (FD-814) and other security clearance forms; Government Employees Training Act (GETA) forms (SF-182); training records; Candidate Qualification form (FD-954); report of medical history; marriage, roommate, and foreign travel forms; and, other documents/forms which impact hiring, retention, transfer, promotion, and award decisions.</td>
<td>Censure - 5 Days</td>
<td>7 Days</td>
<td>10 Days - Dismissal</td>
</tr>
<tr>
<td>2.2</td>
<td>False/Misleading Information - Fiscal Matter(s)</td>
<td>Knowingly providing false or misleading information in a fiscal-related document; or, signing or attesting to the truthfulness of the information provided in a fiscal-related document in reckless disregard of the accuracy or completeness of the pertinent information contained therein. Documents involving fiscal matters include, but are not limited to, Time &amp; Attendance (T&amp;A) records, travel vouchers, disbursement/expenditure forms, draft requests, expense forms, supporting documentation for leave purposes, insurance forms, benefits forms, and transfer documents.</td>
<td>Censure - 7 Days</td>
<td>10 Days</td>
<td>15 Days - Dismissal</td>
</tr>
<tr>
<td>2.3</td>
<td>False/Misleading Information - Investigative Activity</td>
<td>Knowingly providing false or misleading information in an investigative document; or, signing or attesting to the truthfulness of information provided in an investigative document in reckless disregard of the accuracy or completeness of the pertinent information contained therein. Documents involving investigative activity include, but are not limited to, FD-302s, inserts, evidence control documents, LHM, ECs, and documentation of informant matters.</td>
<td>Censure - 21 Days</td>
<td>30 Days</td>
<td>45 Days - Dismissal</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---</td>
<td>---</td>
<td>---</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2.4 False/Misleading Information - Other Official Matter(s)</strong></td>
<td>Knowingly providing false or misleading information in an official FBI document or an official document of another governmental agency; or, signing or attesting to the truthfulness of information provided in an official FBI document or an official document of another governmental agency in reckless disregard of the accuracy or completeness of the pertinent information contained therein. This applies to documents executed either on-duty or off-duty.</td>
<td>Mitigation: Censure - 5 Days Penalty: 7 Days Aggravation: 10 Days - Dismissal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2.5 Lack of Candor/Lying - No Oath</strong></td>
<td>Knowingly providing false information when making a verbal or written statement, not under oath, to a supervisor, another Bureau employee in an authoritative position, or another governmental agency, when the employee is questioned about his conduct or the conduct of another person. &quot;False information&quot; includes false statements; misrepresentations; the failure to be fully forthright; or the concealment or omission of a material fact/information.</td>
<td>Mitigation: Reprimand - 5 Days Penalty: 7 Days Aggravation: 10 Days - Dismissal</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2.6 Lack of Candor/Lying - Under Oath</strong></td>
<td>Knowingly providing false information in a verbal or written statement made under oath. &quot;False information&quot; includes false statements; misrepresentations; the failure to be fully forthright; or the concealment or omission of a material fact/information.</td>
<td>Mitigation: N/A Penalty: Dismissal Aggravation: None</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2.7 Misuse of Position - Abuse of Authority</strong></td>
<td>Exceeding the limits of FBI authority to further a personal, unofficial, or unauthorized interest. ***See Title 5, Code of Federal Regulations (CFR), § 2635.702 for additional information.</td>
<td>Mitigated: Reprimand - 3 Days Penalty: 5 Days Aggravated: 7 - 30 Days</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>2.8 Misuse of Position - Exploiting FBI Employment</strong></td>
<td>Using FBI position or affiliation for private gain or advantage or for the gain or advantage of relatives or associates of the employee. ***See Title 5, CFR, § 2635.702 for additional information.</td>
<td>Mitigated: Reprimand - 3 Days Penalty: 5 Days Aggravated: 7 - 30 Days</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
To: All Divisions  From: Director's Office  
Re: 66F-HQ-A1455078, 09/30/2004

<table>
<thead>
<tr>
<th>2.9 Misuse of Position - Impersonating an Agent</th>
<th>Misrepresenting oneself as a Special Agent (in good standing) in order to conduct an unofficial inquiry, investigation, or database search, or to receive a benefit generally conferred only upon agents/law enforcement.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated: Censure - 5 Days</td>
<td>Penalty: 7 Days</td>
</tr>
</tbody>
</table>

| 2.10 OPR Matter - Failure to Cooperate | Failing or refusing to fully participate in an OPR inquiry.  
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated: N/A</td>
<td>Penalty: Dismissal</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>2.11 OPR Matter - Obstruction</th>
<th>Taking any action to influence, intimidate, impede or otherwise obstruct the OPR process.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated: 3 - 7 Days</td>
<td>Penalty: 10 Days</td>
</tr>
</tbody>
</table>

| 2.12 Violation of Ethical Guidelines | Engaging in any activity or conduct prohibited by the uniform Standards of Conduct of Employees of the Executive Branch (5 CFR Part 2635), the supplemental regulations (5 CFR Part 3801), DOJ or FBI policy. Prohibited conduct involves, but is not limited to, issues such as conflict of interest, favoritism, outside employment/activities, and gifts.  
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated: Reprimand - 3 Days</td>
<td>Penalty: 5 Days</td>
</tr>
</tbody>
</table>
To: All Divisions  From: Director's Office  
Re: 66F-HQ-AL455078, 09/30/2004

<table>
<thead>
<tr>
<th>3. PROPERTY-RELATED MISCONDUCT</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Damage, Destruction, or Improper Disposal of Government Property</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>3.2 Loss of Badge and/or Credentials</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>3.3 Loss of Government Property or Document(s) of a Sensitive/Valuable Nature</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td>3.4 Loss of Weapon</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>
### 3.5 Misuse of FBI Database(s)/Unauthorized Access

Without authorization, accessing an FBI or other government database or record. (This does not include the disclosure of such information to others, which is covered in 4.9, "Unauthorized Disclosure – Classified/Law-Enforcement Sensitive/Grand Jury Information" or 4.10, "Unauthorized Disclosure – Sensitive Information.")

<table>
<thead>
<tr>
<th>Level</th>
<th>Mitigation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated</td>
<td>Reprimand - 3 Days</td>
<td>Penalty: 5 Days</td>
</tr>
<tr>
<td>Aggravated</td>
<td>7 - 14 Days</td>
<td></td>
</tr>
</tbody>
</table>

### 3.6 Misuse of Government Computer(s)

Using a government computer for personal, unofficial, or unauthorized use. This does not apply to "de minimis" use, where the cost to the government is negligible, as long as the use is not otherwise objectionable (e.g., pornography).

***See 5 CFR §2635.704; 28 CFR §45.4;***

<table>
<thead>
<tr>
<th>Level</th>
<th>Mitigation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated</td>
<td>Reprimand - 3 Days</td>
<td>Penalty: 5 Days</td>
</tr>
<tr>
<td>Aggravated</td>
<td>7 - 14 Days</td>
<td></td>
</tr>
</tbody>
</table>

### 3.7 Misuse of Government Credit Card (Theft) - Gasoline or Automotive-Related Expenses

Using, or permitting the use of, a Government Credit Card (GCC) to purchase gasoline or an automotive-related part or service for personal use. This matter is treated as a theft since all of these purchases are direct billed to the FBI.

<table>
<thead>
<tr>
<th>Level</th>
<th>Mitigation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated</td>
<td>15 - 30 Days</td>
<td>Penalty: Dismissal</td>
</tr>
<tr>
<td>Aggravated</td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>

### 3.8 Misuse of Government Credit Card - Personal Use

Using, or permitting the use of, a Government Credit Card (GCC) for personal purchases, rentals, services, and/or cash advances; failing to pay the balance in a timely manner; or, failing to apply a voucher reimbursement to the corresponding GCC debt. (This does not apply to purchases covered under 3.7, "Misuse of GCC - Gasoline or Automotive-Related Expenses.")

<table>
<thead>
<tr>
<th>Level</th>
<th>Mitigation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated</td>
<td>Censure - 5 Days</td>
<td>Penalty: 7 Days</td>
</tr>
<tr>
<td>Aggravated</td>
<td>10 Days - Dismissal</td>
<td></td>
</tr>
</tbody>
</table>

### 3.9 Misuse of Government Vehicle or Aircraft, Non-Title 31

Using a government-owned or leased passenger motor vehicle or aircraft, or the equipment therein, regardless of the employee’s intent, for an unofficial purpose; or, transporting an unauthorized passenger in a motor vehicle or aircraft for an unofficial purpose.

***See 41 CFR §301-10.201; MAOP, Part I, §§1-3.1, 1-3.1.1, and 1-3.1.2; and, the May 15, 1997, Memorandum to all Special Agents In Charge re: Misuse of Bureau Vehicles Policy Clarification for additional information and exceptions to the general rule.***

<table>
<thead>
<tr>
<th>Level</th>
<th>Mitigation</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated</td>
<td>Reprimand - 3 Days</td>
<td>Penalty: 5 Days</td>
</tr>
<tr>
<td>Aggravated</td>
<td>7 - 14 Days</td>
<td></td>
</tr>
</tbody>
</table>
To: All Divisions
From: Director's Office
Re: 66F-HQ-A1455078, 09/30/2004

| 3.10 Misuse of Government Vehicle or Aircraft, Title 31 | Knowingly, or with reckless disregard, using a government-owned or leased passenger motor vehicle or aircraft for an unofficial or purely personal purpose, i.e., a purpose other than the facilitation of government work or the execution of the FBI's mission.***See 31 U.S.C. §§1344 and 1349(b); 41 CFR §301-10.201; MAOP, Part I, §§1-3.1, 1-3.1.1, and 1-3.1.2; or, the May 15, 1997, Memorandum to all Special Agents In Charge re: Misuse of Bureau Vehicles Policy Clarification for additional information and exceptions to the general rule. |
| Mitigated: N/A | Penalty: 30 Days | Aggravated: 45 Days - Dismissal |

| 3.11 Misuse of Government Property, Other | Using government property, not specifically delineated in another offense code, for personal, unofficial or unauthorized use, which falls outside the parameters of performance. This does not apply to "de minimis" use, where the cost to the government is negligible.***See 5 CFR §2635.704 and 28 CFR §45.4. |
| Mitigated: Reprimand | Penalty: Censure | Aggravated: 3 - 10 Days |
To: All Divisions From: Director's Office
Re: 66F-HQ-A1455078, 09/30/2004

### 4. ILLEGAL/CRIMINAL CONDUCT

<table>
<thead>
<tr>
<th>4.1 Assault/Battery</th>
<th>Attempting or offering to inflict bodily harm on another using unlawful force or violence; or, inflicting bodily harm on another using unlawful force or violence.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated:</td>
<td>Censure - 5 Days</td>
</tr>
<tr>
<td>Penalty:</td>
<td>7 Days</td>
</tr>
<tr>
<td>Aggravated:</td>
<td>10 Days - Dismissal</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4.2 Drugs - Use or Possession</th>
<th>Knowingly and consciously ingesting, injecting, inhaling, or possessing an illegal controlled substance or anabolic steroid, on or off duty, after entering on duty (EOD). (This does not apply to the possession of controlled substances for official purposes.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated:</td>
<td>N/A</td>
</tr>
<tr>
<td>Penalty:</td>
<td>Dismissal</td>
</tr>
<tr>
<td>Aggravated:</td>
<td>N/A</td>
</tr>
</tbody>
</table>

***See 21 U.S.C. §812 for a list of controlled substances.**

<table>
<thead>
<tr>
<th>4.3 DUI/DWI - Government Vehicle</th>
<th>Operating or being in actual physical control of any government vehicle while intoxicated or impaired by alcohol or a controlled substance. Impairment can be evidenced by a chemical analysis (breathalyzer and/or blood test), or credible observations of law enforcement personnel or other witnesses if no law enforcement personnel are present.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated:</td>
<td>N/A</td>
</tr>
<tr>
<td>Penalty:</td>
<td>45 Days</td>
</tr>
<tr>
<td>Aggravated:</td>
<td>Dismissal</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>4.4 DUI/DWI - Privately Owned Vehicle</th>
<th>Operating or being in actual physical control of any privately owned vehicle while intoxicated or impaired by alcohol or a controlled substance. Impairment can be evidenced by a chemical analysis (breathalyzer and/or blood test), or credible observations of law enforcement personnel or other witnesses if no law enforcement personnel are present.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mitigated:</td>
<td>N/A</td>
</tr>
<tr>
<td>Penalty:</td>
<td>30 Days</td>
</tr>
<tr>
<td>Aggravated:</td>
<td>45 Days - Dismissal</td>
</tr>
</tbody>
</table>
To: All Divisions  
From: Director's Office  
Re: 66F-HQ-AL455078, 09/30/2004

| 4.5 Fraud/Theft | Taking, obtaining, or withholding, by any means, from the possession of the government, or another owner, any money, property, or article of value of any kind, with the intent to deprive or defraud the government, or another owner, of the use and benefit of the property or with the intent to appropriate it for personal use or for the use of another entity or person other than the owner. (This does not include conduct covered under any of the offense codes included in Part 3.) Mitigated: 15 - 30 Days Penalty: Dismissal Aggravated: N/A |
|-----------------|--------------------------------------------------------------------------------------------------|----------------|
| 4.6 Indecent/Lascivious Acts | Inappropriately acting in a manner to appeal to or gratify the sexual desires of the employee, his victim, or both; or, indecently exposing a body part to public view. (This does not apply to sexual assault or any sexually-related conduct rising to the level of a felony offense, as determined by the jurisdiction in which the act occurred, which is covered under 4.7 "Other Felonies.") If a local, state, or foreign jurisdiction lawfully permits any type of indecent/lascivious act described herein, this offense code will nevertheless be applied if the act is contrary to a law the FBI is chartered to enforce. Mitigated: 3 - 7 Days Penalty: 10 Days Aggravated: 15 Days - Dismissal |
| 4.7 Other Felonies | Engaging in an act, other than one which has been specifically delineated in another offense code, which is considered a felony in the jurisdiction in which the act occurred. (This does not apply to perjury, which is covered under 2.1 "Lack of Candor/Lying.") Mitigated: 3 - 10 Days Penalty: 14 Days Aggravated: 30 Days - Dismissal |
| 4.8 Other Misdemeanors | Engaging in an act, other than one which has been specifically delineated in another offense code, which is considered a misdemeanor in the jurisdiction in which the act occurred. Mitigated: Reprimand - 5 Days Penalty: 7 Days Aggravated: 10 Days - Dismissal |
| 4.9 Unauthorized Disclosure - Classified/Law-Enforcement Sensitive/Grand Jury Information | Without authorization, disclosing or attempting to disclose classified or law enforcement sensitive material, or Grand Jury information. ***See the Federal Rules of Criminal Procedure, Rule 6(e), The Grand Jury - Recording and Disclosure of Proceedings for additional information regarding the Grand Jury. Mitigated: Censure - 7 Days Penalty: 10 Days Aggravated: 15 Days - Dismissal |
| 4.10 Unauthorized Disclosure - Sensitive Information | Without authorization, disclosing or attempting to disclose the FBI's, or another agency's, sensitive material. Mitigated: Censure - 5 Days Penalty: 7 Days Aggravated: 10 Days - Dismissal |
To: All Divisions  
From: Director's Office  
Re: 66F-HQ-A1455078, 09/30/2004

<table>
<thead>
<tr>
<th>5. GENERAL MISCONDUCT</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5.1 Alcohol/Substance Abuse - Under the Influence While On Duty</strong></td>
</tr>
<tr>
<td>Without authorization, consuming a beverage containing alcohol while on duty or during a break; consuming alcohol prior to reporting for duty to the extent that it has an effect on the employee's workplace or performance; or, using a prescribed medicine in a manner inconsistent with the prescribing physician's instructions, having an effect on the employee's workplace or performance.</td>
</tr>
</tbody>
</table>
| Mitigated: Reprimand - 3 Days  
Penalty: 5 Days  
Aggravated: 7 - 14 Days |

| **5.2 Dereliction of Supervisory Responsibility** |
| A supervisor (or employee acting in an authorized supervisory capacity) failing to exercise reasonable care in the execution of his duties or responsibilities, disregarding his duties or responsibilities, or significantly deviating from appropriate methods of supervision. |
| Mitigated: Reprimand - 3 Days  
Penalty: 5 Days  
Aggravated: 7 - 14 Days |

| **5.3 Discrimination** |
| Engaging in conduct for or against another person based on that person's protected status (race, color, religion, national origin, sex, disability, age, parental status or sexual orientation). |
| Mitigated: 3 - 5 Days  
Penalty: 7 Days  
Aggravated: 10 Days - Dismissal |

| **5.4 Disruptive Behavior** |
| Engaging in inappropriate verbal or physical conduct, while on official business or in an FBI space or vehicle, which is disruptive or negatively impacts the workplace. |
| Mitigated: Reprimand  
Penalty: Censure  
Aggravated: 3 - 10 Days |
To: All Divisions  From: Director's Office  
Re: 66F-HQ-A1455078, 09/30/2004

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5.5</strong> Failure to Honor Just</td>
<td>Without valid justification, failing to satisfy an uncontested, lawful debt or to fulfill a legal or regulatory</td>
</tr>
<tr>
<td>Debits/Regulatory Obligations</td>
<td>obligation. (This does not apply to debts involving government credit cards, which are covered under 3.7 &quot;Misuse of</td>
</tr>
<tr>
<td></td>
<td>Government Credit Card - Gasoline or Automotive-Related Expenses&quot; and 3.8 &quot;Misuse of Government Credit Card -</td>
</tr>
<tr>
<td></td>
<td>Personal Use.&quot;) The failure to satisfy the debt or fulfill the obligation must be characterized by deceit, evasion, false</td>
</tr>
<tr>
<td></td>
<td>promises or other indicators of a deliberate nonpayment or gross indifference towards the just debt/obligation.</td>
</tr>
<tr>
<td>Mitigated: Reprimand - 3 Days</td>
<td>Penalty: 5 Days</td>
</tr>
<tr>
<td>Aggravated: 7 - 30 Days</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5.6</strong> Failure to Perform</td>
<td>Disregarding, declining, or failing to perform a particular task or duty, after the employee was given a</td>
</tr>
<tr>
<td>Prescribed Duties</td>
<td>general or specific order/instruction.</td>
</tr>
<tr>
<td>Mitigated: Reprimand</td>
<td>Penalty: Censure</td>
</tr>
<tr>
<td>Aggravated: 3 - 10 Days</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5.7</strong> Failure to Report -</td>
<td>Failing to inform the appropriate FBI official or supervisor, in a timely manner, about an administrative</td>
</tr>
<tr>
<td>Administrative</td>
<td>matter which the employee knew, or should have known, was required by FBI or DOJ regulation or</td>
</tr>
<tr>
<td></td>
<td>policy to be reported.</td>
</tr>
<tr>
<td>Mitigated: Reprimand</td>
<td>Penalty: Censure</td>
</tr>
<tr>
<td>Aggravated: 3 - 10 Days</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5.8</strong> Failure to Report -</td>
<td>Failing to report to the appropriate FBI official or supervisor, in a timely manner, any serious</td>
</tr>
<tr>
<td>Criminal/Serious</td>
<td>misconduct the employee committed; any arrest, summons, contact with law enforcement, or</td>
</tr>
<tr>
<td></td>
<td>involvement in the court system by the employee; or, any serious misconduct or criminal conduct</td>
</tr>
<tr>
<td></td>
<td>committed by another employee of which the employee was aware.</td>
</tr>
<tr>
<td>Mitigated: Censure - 3 Days</td>
<td>Penalty: 5 Days</td>
</tr>
<tr>
<td>Aggravated: 7 - 14 Days</td>
<td></td>
</tr>
</tbody>
</table>

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>5.9</strong> Improper Relationship</td>
<td>Without authorization, engaging in an ongoing social, romantic, or intimate relationship or association</td>
</tr>
<tr>
<td>- Criminal Element</td>
<td>with a person the employee knew, or should have known, is involved in criminal activities. (This does not</td>
</tr>
<tr>
<td></td>
<td>apply to relationships and associations covered under 1.4 &quot;Asset/CIQ/Informant (Source) - Improper Personal</td>
</tr>
<tr>
<td></td>
<td>Relationship&quot; or an on-going relationship an employee maintains with his minor child's other parent.) Social</td>
</tr>
<tr>
<td></td>
<td>relationships or associations involve any contact beyond that reasonably necessary for the completion of an</td>
</tr>
<tr>
<td></td>
<td>investigative mission or beyond that which is authorized.</td>
</tr>
<tr>
<td></td>
<td>***See 03/27/2001, Memorandum to All Employees regarding &quot;Personal Relationship Policy&quot; for additional</td>
</tr>
<tr>
<td></td>
<td>information.</td>
</tr>
<tr>
<td>Mitigated: Censure - 5 Days</td>
<td>Penalty: 7 Days</td>
</tr>
<tr>
<td>Aggravated: 10 Days - Dismissal</td>
<td></td>
</tr>
</tbody>
</table>
To: All Divisions  From: Director's Office  
Re: 66F-HQ-AI455078, 09/30/2004

<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
<th>Penalties</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.10</td>
<td>Improper Relationship - Superior/Subordinate</td>
<td>Mitigated: Censure - 5 Days, Penalty: 7 Days, Aggravated: 10 Days - Dismissal</td>
</tr>
<tr>
<td>5.11</td>
<td>Insubordination</td>
<td>Mitigated: Censure - 5 Days, Penalty: 7 Days, Aggravated: 10 Days - Dismissal</td>
</tr>
<tr>
<td>5.12</td>
<td>Military Reserve Matter</td>
<td>Mitigated: Reprimand, Penalty: Censure, Aggravated: 3 - 10 Days</td>
</tr>
<tr>
<td>5.13</td>
<td>Misuse of Weapon/Safety Violation</td>
<td>Mitigated: Censure - 5 Days, Penalty: 7 Days, Aggravated: 10 Days - Dismissal</td>
</tr>
<tr>
<td>5.14</td>
<td>Misuse of Weapon - Accidental Discharge</td>
<td>Mitigated: N/A, Penalty: 3 Days, Aggravated: 5 - 14 Days</td>
</tr>
<tr>
<td>5.15</td>
<td>Misuse of Weapon - Intentional Discharge</td>
<td>Mitigated: 5 - 14 Days, Penalty: 30 Days, Aggravated: 45 Days - Dismissal</td>
</tr>
<tr>
<td>5.16</td>
<td>Retaliation</td>
<td>Mitigated: 3 - 5 Days, Penalty: 7 Days, Aggravated: 10 Days - Dismissal</td>
</tr>
</tbody>
</table>
To: All Divisions
From: Director’s Office
Re: 66F-HQ-A1455078, 09/30/2004

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
<th>Details</th>
<th>Mitigated</th>
<th>Penalty</th>
<th>Aggravated</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.17</td>
<td>Security Violation - Failure to Secure Space, Sensitive Equipment/Materials</td>
<td>Failing to safeguard or control access to non-public FBI space, to sensitive or classified material, or to the equipment or locations where such material is inputted, maintained, collected, stored, or preserved. (This does not apply to items covered in 1.6 “Investigative Deficiency - Improper Handling of Document(s) or Property in the Care, Custody, or Control of the Government.”)</td>
<td>Reprimand - 3 Days</td>
<td>5 Days</td>
<td>7 - 14 Days</td>
</tr>
<tr>
<td>5.18</td>
<td>Security Violation - Other</td>
<td>Engaging in an activity or conduct in violation of a regulation or policy promulgated by the FBI, DOJ, or another authoritative agency, which has not been specifically delineated in another offense code, outside the parameters of performance.</td>
<td>Reprimand - 3 Days</td>
<td>5 Days</td>
<td>7 - 14 Days</td>
</tr>
<tr>
<td>5.19</td>
<td>Sexual Misconduct - Consensual</td>
<td>Engaging in sexual, intimate, or romantic activity with a willing partner(s) in an inappropriate location (such as government spaces, government vehicles), or while on duty.</td>
<td>Censure - 5 Days</td>
<td>7 Days</td>
<td>10 Days - Dismissal</td>
</tr>
<tr>
<td>5.20</td>
<td>Sexual Misconduct - Non-consensual</td>
<td>Making unwelcome or unwanted sexual advances, requesting sexual favors, or engaging in other verbal or physical conduct of a sexual nature. <strong>See the Civil Rights Act of 1964, Title VII, § 703, for additional information.</strong></td>
<td>Censure - 5 Days</td>
<td>7 Days</td>
<td>10 Days - Dismissal</td>
</tr>
<tr>
<td>5.21</td>
<td>Unprofessional Conduct - Off Duty</td>
<td>Engaging in conduct, while off duty, which dishonors, disgraces, or discredits the FBI; seriously calls into question the judgement or character of the employee; or, compromises the standing of the employee among his peers or his community. (This applies to misconduct not otherwise delineated in a specific offense code.)</td>
<td>Reprimand - 3 Days</td>
<td>5 Days</td>
<td>7 Days - Dismissal</td>
</tr>
<tr>
<td>5.22</td>
<td>Unprofessional Conduct - On Duty</td>
<td>Engaging in conduct, while on duty, which dishonors, disgraces, or discredits the FBI; seriously calls into question the judgement or character of the employee; or, compromises the standing of the employee among his peers or his community. (This applies to misconduct not otherwise delineated in a specific offense code.)</td>
<td>Censure - 5 Days</td>
<td>7 Days</td>
<td>10 Days - Dismissal</td>
</tr>
</tbody>
</table>
To: All Divisions  From: Director's Office
Re: 66F-HQ-A1455078, 09/30/2004

<table>
<thead>
<tr>
<th>5.23 Violation of Miscellaneous Rules/Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Failing to enforce or comply with an FBI, DOJ, Office of Personnel Management, or other federal administrative or operational guideline or policy not specifically delineated in any offense code, which falls outside the parameters of performance.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Mitigated: Reprimand - 3 Days</th>
<th>Penalty: 5 Days</th>
<th>Aggravated: 7 - 30 Days</th>
<th>DIA/ DIO</th>
</tr>
</thead>
</table>
To: All Divisions  
From: Director's Office 
Re: 66F-HQ-A1455078, 09/30/2004

FEDERAL BUREAU OF INVESTIGATION
PENALTY GUIDELINES

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

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

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

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

9/16/2004
To: All Divisions  
From: Director's Office  
Re: 66F-HQ-A1455078, 09/30/2004

1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;

2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;

3. The employee's past disciplinary record;

4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;

5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;

6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;

7. Consistency of the penalty with any applicable agency table of penalties;

8. The notoriety of the offense or its impact upon the reputation of the agency;

9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

10. Potential for the employee's rehabilitation;

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

12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
Explanation of the Penalty Guidelines

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

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

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

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

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

General Misconduct: The General Misconduct offenses include a broad range of offenses, such as: alcohol-related misconduct (w/ the exception of DWIs); failure to report; dereliction; sexual misconduct; discrimination; disruptive behavior; failure to honor just debts; improper relationships; misuse of weapons; insubordination; retaliation; security violations; unprofessional conduct; and the violation of miscellaneous rules and regulations.
To: All Divisions From: Director's Office
Re: 56F-HQ-A145078, 09/30/2004

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

In adjudicating a case, one would begin at the Normal Penalty and, depending upon an assessment of the facts and circumstances of the case and whether mitigating/aggravating factors are present, the level of discipline could go up or down. Some of the more common aggravating and mitigating factors for each offense (by no means an exhaustive listing) are often listed in the grids depicting the aggravated and mitigated ranges. On certain occasions, the facts and circumstances of a case may call for the application of a penalty that is outside of the ranges indicated, and it is possible for any offense to rise to the level of dismissal under appropriate circumstances. Penalties below the Mitigated Range or above the Aggravated Range must be personally approved, for reasons specified in writing, by the Assistant Director, OPR, or the Assistant Director, Inspection Division (for delegated cases), or the Assistant Director, Administrative Services Division (for cases on appeal).

Moreover, the Director, FBI, retains the discretion to review and correct disciplinary determinations within his authority, either in favor of or to the disadvantage of an employee, when the Director considers it necessary to correct an injustice or to prevent harm to the FBI. This power of correction is not intended as an additional level of appeal and will not be routinely exercised.

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

Senior Executive Service (SES) Suspensions: By federal regulation, members of the SES may not receive a disciplinary suspension of less than 15 days. Accordingly, where the Guidelines indicate a suspension of less than 15 days for an offense, that sanction cannot be imposed on an SES employee. When an assessment of a case with reference to the Guidelines concludes that a non-SES employee would have received a punishment of more than a three-day suspension, but less than a 15-day suspension, an SES employee will receive a minimum of a 15-day suspension. If a non-SES employee would have received a three-day suspension in a given case, an SES employee may receive either a letter of
To: All Divisions From: Director's Office
Re: 66F-HQ-A1455078, 09/30/2004

censure or a minimum of a 15-day suspension, as determined by weighing the facts and circumstances of the case against the heightened behavioral and managerial expectations associated with SES personnel.

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