

68 LAW AND ORDER

TABLE OF CONTENTS1 ORGANIZATIONAL RELATIONSHIPS AND FUNCTIONS

- 1.1 Objectives
- 1.2 Policy
- 1.3 Authority
- 1.4 Central Office Organization and Functions
- 1.5 Area Office Organization and Functions
- 1.6 Agency Office Organization and Functions

68 BIAM Supp. 1 Rel. 6
9-15-76

2 REQUIREMENTS AND PROCEDURES

- 2.1 Introduction
- 2.2 Authority of Special Officers
- 2.3 Authority of Indian Police
- 2.4 Authority of Indian Judges
- 2.5 Department
- 2.6 Observation of Civil Rights
- 2.7 Public Relations
- 2.8 Law of Arrest
- 2.9 Searches and Seizures
- 2.10 Care of Prisoners

~~2.11 Juvenile Affairs~~ 68 BIAM Supp. 1 Rel. 4, 7-28-76

- 2.12 Sick and Injured Persons
- 2.13 Mental Patients
- 2.14 Dead Human Bodies

~~2.15 Issuance of Deputy Special Officer Commissions~~ 68 BIAM Supp. 1 Rel. 10, dated 9-27-78

~~2.16 Records and Testimony~~

~~2.17 Training~~ 68 BIAM Supp. 1 Rel. 1, 8-7-74

2.18 Bibliography

~~2.19 Juvenile Officers~~ 68 BIAM Supp. 1 Rel. 4, 7-28-76

3 RELATIONS WITH OTHER SERVICES AND AGENCIES

- 3.1 Introduction
- 3.2 Welfare Agencies
- 3.3 Public Health Service, Indian Division
- 3.4 Education
- 3.5 Tribal Governing Bodies
- 3.6 Field Solicitors
- 3.7 United States District Courts
- 3.8 United States Probation and Parole Officers
- 3.9 United States Attorneys
- 3.10 United States Marshals
- 3.11 United States Commissioners
- 3.12 United States Park Commissioners
- 3.13 Federal Bureau of Investigation, Department of Justice
- 3.14 Alcohol and Tobacco Tax Division, United States Treasury

2.21 DOMESTIC VIOLENCE POLICY

3 RELATIONS WITH OTHER SERVICES AND AGENCIES (Cont.)

- 3.15 Bureau of Narcotics, United States Treasury
- 3.16 United States Secret Service, United States Treasury
- 3.17 Assistant Regional Commissioners (Intelligence), Internal Revenue Service, United States Treasury
- 3.18 Inspectors, United States Post Office Department
- 3.19 Military Services
- 3.20 State District Attorneys
- 3.21 County Sheriffs, State and City Police
- 3.22 State and Municipal Courts
- 3.23 State Probation and Parole Services
- 3.24 State Fish and Game Officials

4 APPLICATION OF CRIMINAL LAWS

- 4.1 Introduction
- 4.2 General Provisions
- 4.3 Crimes and Offenses Reportable to the FBI
- 4.4 Federal Offenses Reportable to Other Agencies
- 4.5 State Jurisdiction Over Crimes and Offenses in Indian Country
- 4.6 Federal Laws Specially Enforceable by Bureau Officers

5 REPORTS AND REPORT WRITING

- 5.1 Introduction
- 5.2 ~~Memorandum~~ Reports
- 5.3 ~~Final Disposition~~ Reports
- 5.4 ~~Final Disposition~~ Reports
- 5.5 Special Reports
- 5.6 ~~Weekly~~ Reports
- 5.7 ~~Monthly~~ Reports
- 5.8 ~~Annual Statistical~~ Reports
- 5.9 ~~Other~~ Reports
- 5.10 ~~Writing of Depredation of Govt. Property~~ Reports
- 5.11 ~~Writing Case~~ Reports
- 5.12 Reporting Policy and Procedure - Child Abuse Cases

- Illustration No. 1
- Illustration No. 1a
- Illustration No. 1b
- Illustration No. 1c

Illustration No. 2

Illustration No. 3

Illustration No. 4

- Illustration No. 5, 6-9
- Illustration No. 6
- Illustration No. 6a
- Illustration No. 6b

68-2, dated 3-28-62

Illustration No. 7, 68-4, 6-25-65

68 BIAM Supp. 1 Rel. 8, dated 12-20-76.

Release 68-1, 9-23-60

*Put in 67 BIAM
Supp. 3*

68 LAW AND ORDER

TABLE OF CONTENTS

~~1 ORGANIZATIONAL RELATIONSHIPS AND FUNCTIONS~~

- ~~1.1 Objectives~~
- ~~1.2 Policy~~
- ~~1.3 Authority~~
- ~~1.4 Central Office Organization and Functions~~
- ~~1.5 Area Office Organization and Functions~~
- ~~1.6 Agency Office Organization and Functions~~

68 BIAM Supp. 1 Rel. 6,
9-15-76

2 REQUIREMENTS AND PROCEDURES

- 2.1 Introduction
- 2.2 Authority of Special Officers
- 2.3 Authority of Indian Police
- 2.4 Authority of Indian Judges
- 2.5 Deportment
- 2.6 Observation of Civil Rights
- 2.7 Public Relations
- 2.8 Law of Arrest
- 2.9 Searches and Seizures
- 2.10 Care of Prisoners
- ~~2.11 Juvenile Affairs~~
- 2.12 Sick and Injured Persons
- 2.13 Mental Patients
- 2.14 Dead Human Bodies
- ~~2.15 Issuance of Deputy Special Officer Commissions~~
- 2.16 Records and Testimony
- ~~2.17 Training~~
- 2.18 Bibliography

68 BIAM Supp. 1 Rel. 4, 7-28-76

68 BIAM Supp. 1 Rel. 10,
dated 9-27-78

68 BIAM Supp. 1 Rel. 1, 8-7-74

68 BIAM Supp. 1 Rel. 4, 7-28-76

3 ~~RELATIONS WITH OTHER SERVICES AND AGENCIES~~

- ~~2.19 Juvenile Officers~~
- ~~2.20 Probation and Parole Officers~~
- 3.1 Introduction
- 3.2 Welfare Agencies
- 3.3 Public Health Service, Indian Division
- 3.4 Education
- 3.5 Tribal Governing Bodies
- 3.6 Field Solicitors
- 3.7 United States District Courts
- 3.8 United States Probation and Parole Officers
- 3.9 United States Attorneys
- 3.10 United States Marshals
- 3.11 United States Commissioners
- 3.12 United States Park Commissioners
- 3.13 Federal Bureau of Investigation, Department of Justice
- 3.14 Alcohol and Tobacco Tax Division, United States Treasury

2.21 Domestic Violence
Policy

1357

Front

3. RELATIONS WITH OTHER SERVICES AND AGENCIES (Cont.)

- 3.15 Bureau of Narcotics, United States Treasury
- 3.16 United States Secret Service, United States Treasury
- 3.17 Assistant Regional Commissioners (Intelligence), Internal Revenue Service, United States Treasury
- 3.18 Inspectors, United States Post Office Department
- 3.19 Military Services
- 3.20 State District Attorneys
- 3.21 County Sheriffs, State and City Police
- 3.22 State and Municipal Courts
- 3.23 State Probation and Parole Services
- 3.24 State Fish and Game Officials

4. APPLICATION OF CRIMINAL LAWS

- 4.1 Introduction *Services to Juveniles & see Supplement*
- 4.2 General Provisions
- 4.3 Crimes and Offenses Reportable to the FBI
- 4.4 Federal Offenses Reportable to Other Agencies
- 4.5 State Jurisdiction Over Crimes and Offenses in Indian Country
- 4.6 Federal Laws Specially Enforceable by Bureau Officers

5. REPORTS AND REPORT WRITING

- 5.1 Introduction
- 5.2 Memorandum Reports
- 5.3 ~~Final Disposition~~ Reports
- 5.4 ~~Final Disposition~~ Reports
- 5.5 Special Reports
- 5.6 ~~Weekly Activity~~ Reports
- 5.7 ~~Monthly~~ Reports
- 5.8 ~~Annual Statistical~~ Reports *and Narrative - 68-4, 6-25-65*
- 5.9 ~~Other~~ Reports *68-4, 6-25-65*
- 5.10 ~~Writing of Deposition of Court Property~~
- 5.11 ~~Writing Case Reports~~, 68-4, 6-25-65
- 5.12 Reporting Policy and Procedure - Child Abuse Cases

- Illustration No. 1
- Illustration No. 1a
- Illustration No. 1b
- Illustration No. 1c

Illustration No. 2

Illustration No. 3

Illustration No. 4

- Illustration No. 5, 4-9
- Illustration No. 6
- Illustration No. 6a
- Illustration No. 6b

68-2, dated 3-28-62

~~Illustration No. 7, 68-4, 6-25-65~~

68 BIAM Supp. 1 Rel. 8, dated 12-20-76.

Release 68-1, 9-23-60

BIAM REISSUE
FEBRUARY 1984

1356 - Back

Put in
67 BIAM Supp. 3

2 REQUIREMENTS AND PROCEDURES

2.1 Introduction. This part of the Indian Affairs Manual is designed for the guidance of all officers and employees engaged in law enforcement in Indian affairs. It is to serve as general rules and a basic training outline for officers and employees of the Bureau of Indian Affairs with the understanding that rules cannot be arbitrarily established to cover all situations that arise in law enforcement. Some things must be left to the intelligence, experience, initiative and judgment of individual officers and employees. Enforcement personnel, employed by the Bureau of Indian Affairs, are public officers and they have a responsibility to see that law and order is maintained on Indian reservations and lands.

The primary functions of law enforcement are:

- (1) The preservation of the public peace and order
- (2) The prevention and detection of crime
- (3) The apprehension of offenders
- (4) The protection of persons and property
- (5) The enforcement of laws applicable to the Indian country

For these purposes they are clothed with a vital legal authority. In the exercise of this power, and to achieve true success, it is imperative that all police officials know the law, its precepts and functions

The success of the whole Indian law and order program depends in a larger measure upon the active interest and participation of the tribal governing bodies and the Indian people, as well as upon the development of efficiently organized and modern Indian police departments. This is true whether they function under Federal or State jurisdiction. Such achievement can only be developed through the intelligent selection, instruction and training of police and judicial personnel.

Where local circumstances require additional manual material, this part may be supplemented by Area or Agency instructions. Copies of such instructions, in triplicate, must be furnished the Central Office.

2.2 Authority of Special Officers It is important that officers understand the basic source of their authority to act as enforcement officers or as agents of the government. They are often required to testify in court or otherwise show such authority.

REQUIREMENTS AND PROCEDURES

Section 3055, Title 18, United States Code Annotated provides:

"The chief special officer for the suppression of the liquor traffic among Indians and duly authorized officers working under his supervision whose appointments are made or affirmed by the Commissioner of Indian Affairs or the Secretary of the Interior may execute all warrants of arrest and other lawful precepts issued under the authority of the United States and in the execution of his duty he may command all necessary assistance."

Section 13, Title 25, United States Code Annotated provides:

"The Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise, and expend such moneys as Congress may from time to time appropriate, for the benefit, care, and assistance of the Indians throughout the United States for the following purposes: * * * For the suppression of traffic in intoxicating liquor and deleterious drugs."

The Interior Department Appropriation Act of 1939 and succeeding appropriation acts have contained the following or similar language:

"For maintaining law and order on Indian reservations * * *."

Bureau Special Officers and Indian Police are employed and paid from funds provided under that heading. An Opinion of the Acting Solicitor of the Interior Department, numbered M.29669 Supp., dated August 1, 1938, on this subject, concludes pursuant to the language in the appropriation act, "that there may be included in the prescribed duties of the Chief Special Officer, the Special Officers and the Deputy Special Officers the duty of enforcing generally the laws of the United States for the purpose of maintaining law and order on Indian reservations." The special officers are now called Criminal Investigators under Civil Service Classification. The language in the appropriation act was drafted specifically to accomplish this result and was brought to the attention of Congress and so passed:

- .1 Federal Law Enforcement. In the enforcement of Federal law relating to maintaining law and order on Indian reservations, officers whose appointments are made by the Commissioner of Indian Affairs are clothed with a police authority sufficient

REQUIREMENTS AND PROCEDURES

to investigate Federal crimes and offenses, to apprehend offenders, and to prevent offenses when such acts occur on Indian reservations or other lands under Federal criminal jurisdiction. They are permitted to pursue investigations and make apprehensions beyond reservation boundaries, if necessary, where the cases originate within their jurisdictions. Bureau officers should not usurp the duties of other Federal officials as outlined under "Relations with Other Services and Agencies" in this part.

The authority of the Commissioner of Indian Affairs to make appointments in the law and order service has been delegated to the Area Directors, General Superintendents and Superintendents.

- .2 Tribal Law Enforcement. Special and Deputy Special Officers enforcing tribal law or departmental regulations are restricted to the limitations, powers and authorities prescribed in such tribal laws or departmental regulations. The Opinion of the Solicitor of the Department of the Interior, M.60616, dated April 27, 1939, defines the jurisdiction of Indian courts and officers working under such authority.
- .3 State Law Enforcement. Special and Deputy Special Officers are public officers and have the duty and responsibility of maintaining law and order on Indian reservations and lands. Preserving order or investigating crime incident to this responsibility often requires that such officers assist in maintaining the State law with respect to non-Indians who may be violating or may have violated State law. Bureau officers are often required to apprehend persons or to investigate matters on reservations concerning Indians or non-Indians who have violated State law outside of Indian reservations. They may often be required to recover stolen or contraband property or to obtain evidence involved in violations of the State law which occur on or off the reservations.

When such events require, Bureau officers are permitted to take the action necessary or to cooperate with State officers where such events overlap Federal and State jurisdictional lines to the extent necessary to preserve order, to prevent and investigate crime, or to apprehend criminal offenders. Apprehension and delivery of Indian prisoners must follow locally applicable rules. In order to better facilitate this cooperative action Bureau officers should be covered with commissions as deputy sheriffs where possible.

REQUIREMENTS AND PROCEDURES

- 2.3 Authority of Indian Police. Section 13, Title 25, United States Code Annotated provides that the Bureau of Indian Affairs, under the supervision of the Secretary of the Interior, shall direct, supervise and expend moneys as Congress appropriates for the benefit, care and assistance of the Indians for (among other things) the employment of Indian Police.

Their operating jurisdiction is restricted to the reservation or reservations to which assigned and to the limitations, powers and authorities prescribed in tribal laws or departmental regulations. The Opinion of the Solicitor of the Department of the Interior, M.60616, dated April 27, 1939, defines the legal jurisdiction of Indian Police which they must observe. (Not to be confused with "Indian country" as that term is defined in 18 U.S.C. 1151)

Bureau Indian Police are appointed subject to United States Civil Service regulations and the Classification Act of 1949, and are paid from an appropriation for the "maintenance of law and order * * * on Indian reservations and lands." They are held to be agents of the United States and are governed in their operations by the restrictions of the United States Constitution as other Federal officers are governed.

In order that Indian Police may properly function in all emergencies which they encounter they should be commissioned as Deputy Special Officers and as Deputy Sheriffs in the counties in which they are required to function. They should be administratively restricted in the latitude of their operations, both as to independent decision and land area, until they have achieved and exhibited adequate knowledge and experience. Superintendents in charge shall be responsible for this determination.

- 2.4 Authority of Indian Judges. The authority of Judges of Courts of Indian Offenses is governed and limited by Part 11, Title 25, Code of Federal Regulations, and any amendments or additional ordinances adopted by tribal governing bodies and approved by the Secretary of the Interior or his duly authorized representative pursuant to Section 11.1(e) of the same Title.

Their area of jurisdiction is limited to the lands defined in Section 11.2(c) and includes "all territory within reservation boundaries, including fee patented land, roads, waters, bridges, and lands used for agency purposes" and such other lands as have been included by special resolution or ordinance of the tribal governing body and approved by the Secretary of the Interior or his duly authorized representative.

REQUIREMENTS AND PROCEDURES

As to persons, the authority of the Courts of Indian Offenses is limited to persons "of Indian descent who are members of any recognized tribe now under Federal jurisdiction." Courts of Indian Offenses do not have jurisdiction over the persons of non-Indians. Offenses by non-Indians occurring on Indian lands must be referred to appropriate Federal or State courts.

Courts of Indian Offenses are instrumentalities of the United States, and as such they are governed by and must observe the rights of all citizens set forth in the Constitution of the United States to the same extent as other courts.

The opinion, M. 60616, dated April 27, 1939, of the Solicitor of the Interior Department defines the jurisdiction of Courts of Indian Offenses and Tribal Courts, and must be observed by Judges of the Courts of Indian Offenses.

- 2.5 Department. No organization can function without discipline, or without loyalty. This is particularly true in law enforcement. Discipline requires that an officer will at all times accept his assignments and responsibilities and function willingly and expeditiously. Loyalty is the quiet, unpretentious, everyday adherence to duty that an employee owes to his superiors and to his government, whether that be Federal, State or tribal. On and off duty he must conduct himself in an exemplary manner and must refrain from anything that will adversely reflect upon the service or himself. When one has failed to do so his true usefulness to the public and his government is lost. He represents the law to the public and therefore must represent everything that is proper, legal and considerate. Brutality, favoritism, fear, passion, prejudice, over-officious conduct, extreme dress, lack of self-control and special privilege by virtue of position breed discontent and have no place in law enforcement. Police officers represent the dignity and authority of their government. They can, by virtue of their office, compel submission to its laws. They must function within the law and abide by all its precepts.

Supervisors are required to carry out instructions contained in 44 IAM C2.

REQUIREMENTS AND PROCEDURES

2.6 Observation of Civil Rights. The Constitution of the United States is the basic and supreme law of the United States. All rights guaranteed to citizens by the Constitution are known as civil rights. Such rights must be especially and strictly observed by all enforcement officers and employees concerned with the maintenance of law and order. There is no alternative to this rule. Cases are often lost in court because officers fail to observe the civil rights of the persons accused. The strict observance of civil rights by police officers in their daily operations soon becomes public knowledge and develops a healthy respect for law and law enforcement programs and cannot be overemphasized. People of all classes are entitled to the same consideration and it is incumbent upon all officers always to bear that in mind.

The 4th amendment to the United States Constitution reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The 5th amendment of the Constitution reads:

"No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law."

Other provisions of the Constitution guarantee the right to a speedy trial, to counsel, to know the charge against a person, to have witnesses produced in his defense, to trial by an impartial jury, that excessive bail or cruel or unusual punishment be not imposed and that a person shall not be tried more than *once* for the same offense. The right to religious freedom and the right to suffrage are other guarantees.

The 14th amendment of the Constitution guarantees the right to equal protection under the law to all persons. Police officers are required, as a matter of trust therefore, to serve all people impartially.

Sections 241 and 242, Title 18, USCA, provide that officers and other persons can be prosecuted and severely punished in the Federal courts for the willful violation or infringement upon the civil rights of persons.

REQUIREMENTS AND PROCEDURES

Officers cannot arrest and detain persons without lawful cause or without due process of the law, they cannot compel them to make incriminating statements against themselves in any manner, they cannot deny them the right to counsel, they cannot inflict unusual or cruel punishment, they cannot search without proper cause, they cannot seize property in an unlawful manner (See Section 2.9), and they must give protection to all people.

- 2.7 Public Relations. The attitude of the public and the community toward government whether it be Federal, State, city or tribal is very often determined to a large extent by the attitude of the police, who are in daily contact with all people. The police are in a prime position to mold public and community attitudes. If the actions of the police are proper in themselves, they can withstand unfair attack, criticism or implications without creating local community or personal problems. A proper police point of view at all times exhibits a willingness to serve, manifested by a courteous and patient attention to all people and a promptness in attending to their needs. When complaints or requests cannot be served the officer should offer such assistance as he can give as a matter of service; i.e., such as finding out or directing the caller to the proper agency.

The story of an individual police officer's efficiency, tact, courage, and especially his regard for others, regardless of their station in life, spreads fast and is often the subject of local discussion. He alone can assure what the nature of it will be. His manner of speech is always noted. Slang, sarcasm, cusswords and an over-bearing attitude should be avoided. The day of strong-arm rule, the bawling out, the scowl and the threat has long since passed in American police practice. The civil rights of citizens are always to be zealously guarded. This responsibility rests squarely upon the modern police official. His recognition of this duty will tend toward betterment of public relations. On the other hand, officers are not required to bow and scrape. They need not and should not ever apologize for taking proper action. It is often said that a police officer's strength lies in his sincerity, truthfulness and confidence - and not in the force of his stick or arms.

In the dispatch of business, officers should not take up other people's time unnecessarily. The other person may be polite but busy, and he will appreciate getting to the point. Business should always be conducted with a full respect for other people's points of view and on an absolutely full and truthful basis. If the other

REQUIREMENTS AND PROCEDURES

party is not entitled to information he may request, politely tell him so. Transaction of business in a matter of fact, quick and courteous manner always reflects to the credit of the officer and his organization.

Modern police problems cannot be contained within single areas and often spread across several jurisdictional lines and beyond any one officer's control. Bureau officers must willingly cooperate with officers of other jurisdictions and actively seek the cooperation of such other officers or governmental organizations. Bureau officers are encouraged to participate in conferences, seminars, training sessions and other meetings designed to improve law enforcement services to general areas, and to keep other agencies, both public and private, advised of the objectives and problems of the service in order that the Bureau program is understood. Such relations develop good morale with the public.

Congenial relations must be maintained with the press and its requests for information should be honored insofar as practicable. However, if a particular request concerns another agency, or a case that has been assigned to another official or agency, it is improper for Bureau officers to release such information without proper clearance.

- 2.8 Law of Arrest. The Federal statutes do not set forth specific rules on the law of arrest, except that authority of agents of the several Federal establishments are made clear or limited in specific statutes relating to the operations of those agencies. The general rule on the law of arrest is that State law determines the validity of arrest by Federal enforcement officers. Bureau officers are required to make arrests under all conditions normally confronting a peace officer.

The authority of an officer to make an arrest is governed by the following general rules:

- (1) Arrests with warrants,
- (2) Arrests without warrants for felonies, and
- (3) Arrests without warrants for misdemeanors and petty offenses.

It is important that police officers learn to distinguish the different situations and their authority related thereto. For distinction between the types of offenses see Application of Criminal Laws, General Provisions, Section 4.2 in this part.

REQUIREMENTS AND PROCEDURES

A warrant is a command in writing, by a court, directed to an officer or class of officers to apprehend and deliver a person or persons before the court to answer specific charges. An officer receiving a warrant for execution has no alternative but to execute the order contained in the warrant, whether the offense charged is a felony or a misdemeanor. The person being arrested is entitled to know the identity of the officer making the arrest and to know the contents of the warrant. The warrant need not be given to the person being arrested. The officer need not have the warrant in his possession but need only know that the warrant exists and the contents thereof.

An officer may arrest without a warrant for felony offenses:

- (a) where a felony has been committed in the presence or view of the officer,
- (b) on a reasonable charge by another that a felony has been committed by the person to be arrested,
- (c) on the officer's own reasonable suspicion (probable cause) that a felony has been committed and that the person arrested is guilty thereof, even though it develops later that no felony has been committed,
- (d) for the purpose of preventing the commission of a felony,
- (e) by verbal direction of a judge for a felony committed in the presence of the judge,
- (f) to recapture a felon who has escaped from lawful custody before or after conviction.

An officer may arrest without a warrant for misdemeanors and petty offenses:

- (a) where such an offense is committed in the presence or view of the officer, providing the arrest is made either during or immediately after the commission of the offense. If the officer permits the offender to go free or he gets away, he must then procure a warrant in order to arrest the person for the same offense at a later time.
- (b) where a judge issues a verbal order to the officer to arrest a person for a breach of the peace committed in the judge's presence.

The people are always entitled to know the identity of the officer making the arrest and the purpose of the arrest. The officer must inform the person why he is being arrested. The officer must

REQUIREMENTS AND PROCEDURES

at all times be as courteous and considerate as possible under the circumstances. He may only resort to force when it is necessary, and then he can only use so much force as is necessary to effect the arrest. The officer should never make a joke of an arrest. It is not a joke to the person being arrested.

Persons arrested should be searched immediately for evidence and for the protection of the public, the officer, and the person arrested. Female prisoners should only be searched by a female person, and they are also entitled to female chaperones and they should be provided when possible.

Homes of persons subject to arrest can be entered to effect an arrest pursuant to a warrant or to arrest for a felony, or in extreme cases for a serious misdemeanor. A "serious misdemeanor" is one that, if allowed to continue, would result in bodily harm to persons involved. The officer must identify himself and state the purpose of his presence. If resisted he may break into the premises to complete the arrest. Ordinarily, an officer will not enter a person's home to make an arrest for a common misdemeanor or petty offense, particularly without a warrant, unless permitted or requested to do so by the occupant of the household. This restrictive rule does not apply to public places.

Indian Bureau officers will not arrest Indians on Indian reservations pursuant to warrants issued by State courts, unless local ordinances and/or policy have been established relating thereto. The procedure in such cases should be developed through the tribal councils and made a supplement to this part.

Officers are cautioned that the use of "billys", gas guns, and handcuffs are for safety and self-protection and should not be used except when necessary. Firearms are to be used only as a means of self-defense or in protection of other persons and property and should be used only in extreme situations.

2.9 Searches and Seizures. Indian Bureau officers may make searches and seizures in accordance with Federal, tribal, and occasionally State laws. It is their duty to observe all the Constitutional and statutory laws in all such actions. The general Federal rules are set forth below as a guide in the conduct of searches and seizures.

.1 Searches With Warrants. Searches and seizures under the Federal law are governed by Rule 41, Federal Rules of Criminal Procedure,

REQUIREMENTS AND PROCEDURES

Title 18, USCA, which provides that a search warrant may be issued by a judge of the United States, or of a State, commonwealth or territorial court of record or by a United States Commissioner within the district wherein the property sought is located. Ordinarily, Bureau officers will procure such warrants from a United States Commissioner. Prior approval and advice should be obtained from the United States Attorney if possible. Often, time or circumstances will not permit a referral to the United States Attorney. In that event, he should be advised as soon as possible. If a United States Commissioner is available Bureau officers will not seek such warrants from a judge of a State court of record.

Under Rule 41 (b) search warrants may be issued "to search for and seize any property,

- (1) Stolen or embezzled in violation of the laws of the United States; or
- (2) Designed or intended for use or which is or has been used as the means of committing a criminal offense."

The scope of such authority is broad enough to cover any purpose for which a Bureau officer might need to make a search and seizure.

The officer seeking the search warrant must swear to a complaint requesting a search warrant before one of the proper issuing officers defined above. If the officer does not have sufficient basis in his own knowledge he should produce witnesses who can make an affidavit that will substantiate his belief. Ordinarily the affidavit of the witness, without his presence and sworn testimony before the issuing officer, is not sufficient for the issuance of a warrant. The affidavit or complaint used in the application for a search warrant must:

- (1) set forth the reasons for its issuance,
- (2) set forth the property or thing to be searched for, and
- (3) set forth the person or place to be searched.

The officer must set forth facts to establish probable cause for the issuance of a warrant. Mere belief is not sufficient. The place must be definitely described so that any normal person could follow the description and find the premises. The issuing judge or commissioner has the responsibility to refuse the issuance of a warrant if he deems the affidavit insufficient or

REQUIREMENTS AND PROCEDURES

the reason unwarranted. The warrant must be served by the officer to whom it is directed. It must be served in the day time unless sufficient reason is given and the judge or commissioner includes in the warrant a direction that it may be served in the night time. It must be served within ten days of its issuance. It must be served in a reasonable manner. An officer is not authorized recklessly to upset the household or to treat an individual unreasonably. He can use all necessary force to put down resistance to the service of the warrant, and no more. If he is denied entrance to the premises after identifying himself he can break in doors or windows to gain entrance. If property is seized in the search the officer must give the person from whom or on whose premises it was seized an itemized receipt for such property. He must also give such person a copy of the warrant. If no one is at home a copy of each must be left on the premises. After the search is completed the officer must make the return of the warrant to the issuing officer, or to such other judge or commissioner as the warrant directs, whether or not any property was found and seized. A copy of the inventory of property seized must be returned with the warrant. The inventory must be made out on the premises and in the presence of the householder if possible.

2. Searches Without Warrants. Section 2236, Title 18, USCA, provides: "Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than \$1,000; and, for a subsequent offense, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. This section shall not apply to any person - (a) serving a warrant of arrest, or (b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or (c) making a search at the request or invitation or with the consent of the occupant of the premises."

It will be seen, therefore, that searches without a search warrant are permissible. Since they are permissible only incident to a lawful arrest or with the person's consent, in writing if possible,

REQUIREMENTS AND PROCEDURES

and since such searches more often are made without a search warrant in normal police work, officers must understand the law of arrest.

The general rule is that an officer making a lawful arrest has the authority to search the person of his prisoner, even against his will, and may take from him any dangerous weapons or anything else that he reasonably may deem necessary to his own or the public safety or for safekeeping of the prisoner, as well as the instruments of the crime and such other articles as may be of use as evidence in the trial, or which might enable the prisoner to escape. Books, papers, letters, etc., are not immune from seizure as an incident of the arrest in proper cases. Since a search is justifiable only as an incident to lawful arrest, if the arrest is unlawful the search is also unlawful. An officer acting without a warrant for an arrest and without attempting to make an arrest is not permitted to make a search of a person upon mere suspicion that he has committed a crime. So-called exploratory searches are not permissible. Whenever a felony has been committed, either in the presence of an officer or which the officer has a belief, based on reasonable grounds, is being committed, or a misdemeanor has been committed in the presence of the officer or which he has reasonable ground, from the evidence of his senses, to believe is being committed, he may make an arrest without a warrant and seize instruments and evidence of crime. Items that may be seized are:

- (1) Fruits of a crime
- (2) Instrumentalities of a crime (i.e. burglary tools)
- (3) Weapons with which the person may effect his escape
- (4) Contraband (anything which it is illegal to possess)

An officer may arrest a person on suspicion of having committed a felony, but he must show that he had probable cause for such arrest. If this can be shown, and the person is searched after the arrest, the search is legal. An officer need not return contraband material to a person arrested and searched, even though the arrest and search later prove to be illegal.

Officers are permitted to search persons and premises when given permission to do so by the persons or the lawful tenant or occupant of the premises. By lawful tenant or occupant of the premises is meant the head of the household occupying the premises, and not someone merely living there with the householder. Officers

REQUIREMENTS AND PROCEDURES

must be extremely careful not to gain such permission to search by placing the person in fear, or by use of threats, coercion, promises, or subterfuge. The permission must be intelligently and willingly given after the person has been advised that he is not required to give consent. Evidence must show at the time of the trial that such consent was voluntarily and knowingly given.

Where prosecutions are based on evidence seized in searches of persons or premises, officers must make a detailed report of the circumstances and manner under which the searches were made, so that the prosecuting attorney can properly show to the court that the evidence was legally procured. Many times, prior to the trial the defendant's attorney will move the court to dismiss the charge on the plea that the evidence was unlawfully obtained and ask to quash the evidence, which means that it cannot be used against the defendant. Unless the prosecuting attorney is prepared to defend against such a move by the defendant, the case can easily be lost.

- 2.10 Care of Prisoners. Superintendents, Special Officers and Chiefs of Police in charge of agency law and order programs are responsible for all prisoners confined in facilities under their jurisdiction and will be held strictly accountable for their safety and proper treatment. Where prisoners are confined in facilities not under their jurisdiction they must do all possible to assure their proper treatment and safety. They must see that prisoners are promptly arraigned in court and that records of commitment and release are properly maintained.

Officers are strictly forbidden to bandy words and remarks, to engage in arguments, to use profane or obscene language, or to offer violence and mistreatment to persons under custody, or to engage in any conduct offensive or harmful to them.

Prisoners are to be made as comfortable as practicable, and are entitled to sufficient, edible and sanitary food, sanitary living conditions, an opportunity to contact family, friends or counsel when committed, an opportunity to post bail according to law, and to have visitors at proper times.

Area Special Officers must make periodic inspections of detention facilities, records and treatment of prisoners and make reports and recommendations to Superintendents for correction of conditions when necessary.

REQUIREMENTS AND PROCEDURES

2.12 Sick and Injured Persons. The protection and conservation of human life is a distinct responsibility of law enforcement officers. Whenever a Bureau officer finds, or his attention is called to, a sick, unconscious or seriously injured person, in public or in a private place where an emergency exists, he shall respond by giving or arranging for first aid, if necessary and practicable, and by procuring full medical attention in the most practicable manner. The officer must make every effort to locate relatives and notify them of the circumstances as soon as possible. In case injuries were inflicted with intent or through gross negligence, or other suspicious conditions exist, a complete investigation and report must be made, as in other cases, including the taking of dying declarations of victims if necessary. In taking dying declarations it must be understood that the victim or patient must know that he is about to die. Such statements should be reduced to writing if possible, duly witnessed, and preserved as other evidence for possible later use in court.

Training in first aid and handling of injured persons must be an integral part of police training. Wherever possible officers should take advantage of Red Cross training and secure certificates for proficiency in giving first aid. It may be possible to secure such training from other agencies of the Department or Government.

2.13 Mental Patients. The investigation, apprehension and temporary detention of insane or mentally afflicted persons requiring detention are an essential responsibility of law enforcement officers. Whenever an officer of the Bureau finds, or is called upon to take into custody or investigate any alleged insane or mentally afflicted person, he shall as soon as possible submit a detailed written report to his immediate superior, and, if necessary, to the officer in charge of the Public Health Service, Indian Division.

Bureau officers must familiarize themselves with State law and Federal regulations with respect to the commitment of mental patients and render such assistance in the investigation, apprehension and commitment of such patients as is necessary. In no case shall Bureau officers obligate the funds of another agency or service without prior approval. Officers should be prepared to give testimony in court as to the behavior, acts, statements, home conditions, etc., of these patients, and to certify to the court, which Federal agency or tribe is responsible for the payment of the treatment and care of such patients if committed.

REQUIREMENTS AND PROCEDURES

Persons who are alleged to be insane or mentally afflicted and are found to be non-Indians must be referred to the appropriate State agency or court. This shall not be construed to mean that Bureau officers may not take such patients into custody when necessary, or to cooperate with State officials in such cases.

Extreme care must be taken to prevent injury to mental patients. Officers should provide themselves with sufficient assistance when possible and should have a matron present when handling female patients. The inhumane treatment of mental patients will subject the Bureau to severe criticism. Steel handcuffs should never be used in violent cases. If straightjackets are not available, blankets or turkish towels can be fashioned for such use as binders. If steel handcuffs are used in apparently non-violent cases, the patient's belt should be reversed and the cuffs engaged in the belt.

- 8.14 Dead Human Bodies. When an officer finds, or is called upon to attend, a dead human body, he should at once make an examination of the body, always being careful not to disturb conditions surrounding the immediate area. He should not assume that such body is actually dead, except when it is positively obvious to him, nor should he make any official pronouncement that a body is dead. In the absence of an available physician, if there is a possibility of remaining life in the body, the officer must apply first aid. If members of the family are present or can be promptly consulted the officer must seek their advice before removing the body to medical attention, otherwise the officer must take such appropriate action as will best conserve life.

When a body has been pronounced dead by competent medical advice, or when it is positively obvious to the officer that a body is dead, the officer shall properly cover same and keep guard until a proper police investigation has been made. If he is not an investigative officer, he should promptly notify such an officer and report all known facts to such other officer who is then responsible for all further action.

There is no specific Federal law requiring that inquests be held over dead human bodies which have died without medical attention on Indian reservations. Ordinarily, a death certificate completed by a qualified physician, either without or after an autopsy examination, is sufficient to determine death and cause. Bureau officers should insure that such certificates are appropriately filed so that the State Bureau of Vital Statistics receives same for record.

REQUIREMENTS AND PROCEDURES

In the absence of a qualified physician the death certificate should be signed by some other qualified person. In order to make a proper record for vital statistics, social security, veterans and insurance benefits, etc., and, more important, to insure that a death away from medical attention is sufficiently cleared, Bureau officers must notify and cooperate with county coroners, where they will act on Indian reservations in cases involving Indians. Where non-Indian bodies are found the case should be turned over to the county coroner and/or the sheriff.

When criminal homicide is suspected, involving Indians on Indian reservations or lands under Federal criminal jurisdiction, it should be understood that the Federal courts have exclusive jurisdiction over the case and that the United States Attorney has charge of the investigation. A complete report of the known facts should be made to him and his orders followed. This does not mean that the necessary investigation should not begin immediately upon the finding of the body, nor that the FBI should not be first notified of the circumstances, nor that a county coroner may not act in such cases.

Before autopsy examinations are performed upon bodies, permission must be given by appropriate members of the family, except that where the United States Attorney orders such examination, in homicide cases, or upon an order from a court of competent jurisdiction, the autopsy may be performed without such permission. For payment of expenses incidental to autopsy examinations see "Relations with the FBI" in this part.

For burial of unclaimed bodies or indigent Indians on Indian reservations, see Welfare, section 3.1 in this part.

2.15 Issuance of Deputy Special Officer Commissions.

~~1. Policy and Purpose. It shall be the policy of the Bureau of Indian Affairs to issue Deputy Special Officer Commissions to persons who serve without compensation for the purpose of obtaining the cooperation and assistance of State, County and local law enforcement officers who may be in a position to render assistance in the maintenance of law and order on Indian reservations and in the suppression of traffic in intoxicants and narcotics among Indians. These Commissions should be issued only in those instances where active assistance is obtained. Ordinarily, no employee of the Indian Bureau, unless he is~~

REQUIREMENTS AND PROCEDURES

2.15 removed per
68 BIA M, Supp. 1, Rel. 10 - 9/27/78.
BIA

- 1. Employed for law enforcement work, shall be issued a Deputy Special Officer Commission. However, when circumstances make it necessary such Commissions may be issued to other employees at the discretion of the Area Director.
- .2 Authority. Authority for the issuance of Deputy Special Officer Commissions is contained in 18 U.S.C. 3055.
- .3 Applications. Applications for Deputy Special Officer Commissions shall be submitted in writing to the Area Director and shall be accompanied by fingerprint charts of the applicant.
- .4 Clearance. Upon receipt of an application for a Deputy Special Officer Commission, an examination thereof will be made by the Area Director for the purpose of determining the applicant's eligibility. Before the commission is issued, the fingerprint chart shall be submitted by the Area Director to the Federal Bureau of Investigation, Department of Justice, Washington, D.C., for examination to determine whether the applicant has any criminal record. If such examination discloses conviction for a misdemeanor within the past year or a conviction for a felony at any time, the commission shall not be issued.
- .5 Exceptions to Procedure. An exception to the requirement that fingerprint charts be examined by the Federal Bureau of Investigation before the issuance of a Deputy Special Officer Commission may be made in the case of an application submitted by a State or County law enforcement officer or other person where an assurance of prior clearance by the Federal Bureau of Investigation can be obtained.
- .6 Appointment. Applicants shall be commissioned as Deputy Special Officers by Area Directors. Forms prescribed for that purpose may be obtained from the Area Offices of the Bureau of Indian Affairs.

2.16 Records and Testimony. Bureau personnel, other than enforcement officers, are often called upon to testify to or produce government records. In this connection attention is directed to 43 CFR, Part 2, Records and Testimony, pertinent excerpts from which are as follows:

"Sec. 2.2. Determination as to availability of records. (a) In the first instance, the person whose general duties include

REQUIREMENTS AND PROCEDURES

the responsibility for the custody of a record shall determine whether the disclosure of the record would be prejudicial to the interests of the government and whether the person making the request is properly and directly concerned with the subject matter. If a request for permission to inspect records or for copies is denied, the applicant may submit his request to the head of the bureau or office."

"Sec. 2.6. Compulsory process. (a) If the production of any record of the Department is sought by compulsory process, the record shall not be disclosed unless the person whose general duties include the responsibility for the custody of the record or the Secretary determines that such disclosure will not be prejudicial to the interests of the government. If the person responsible for the custody of the record concludes that the record should not be produced, he shall immediately report the matter to the Secretary for a determination, and he shall appear in answer to the process and respectfully decline to produce the record on the ground that the disclosure, pending the receipt of instructions from the Secretary, is prohibited by this part."

"Sec. 2.20. Testimony of employees. An officer or employee of the Department shall not testify in any judicial or administrative proceeding concerning matters related to the business of the government or the contents of official records without the written permission of the head of the bureau or office, or his designee, or of the Secretary. If the head of the bureau or office, or his designee, concludes that permission should be withheld, he shall report the matter immediately to the Secretary for a determination, and the officer or employee shall appear in answer to process and respectfully decline to testify, pending receipt of instruction from the Secretary, on the ground that testimony is prohibited by this part. (b) Any person (including a public agency) wishing an officer or employee of the Department to testify in a judicial or administrative proceeding concerning a matter related to the business of the government or the contents of official records must submit a statement in writing, setting forth the interest of the litigant and the information with respect to which the testimony of the officer or employee of the Department is desired, before permission will be granted under this section. In the case of a private litigant, this written statement must be in the form of an affidavit. Permission to testify will be limited to the

REQUIREMENTS AND PROCEDURES

information mentioned in the written statement, or such portions thereof as the official granting the permission deems proper."

Authority hereunder has been delegated to Area Directors (14 IAM 3.1.354).

In the ordinary course of business and in connection with the prosecution of criminal cases, Bureau enforcement officers are not required to seek the permission of the Bureau. Occasionally, however, records, exhibits, or evidence contained in the files of the Bureau under the control of the Bureau officers may relate to automotive accidents, tort or other claims in which the government has a direct interest. In such cases Bureau officers must clear requests for such information with the Bureau officer in charge, the Field Solicitor, or the United States Attorney, whichever is appropriate.

~~2.17 Training. The fundamental elements of Area police training programs should consist of courses in subjects listed below. When participating personnel have completed courses in the various subjects, a statement to that effect should be included in his personnel folder. The statement should indicate a satisfactory, fair or superior passing grade. Training in non-Federal facilities may be requested pursuant to 44 IAM TL.~~

1. Duty of An Officer - Civil Rights and Protection of the Public.
2. Public Relations and Crime Prevention.
3. Understanding Race and Human Relations Problems.
4. Criminal Law as Distinguished from Civil Procedures.
5. Laws of Arrest and Search and Seizure.
6. Departmental Regulations, Including Personnel Actions and Appeal Rights, and Accounting for Funds and Property.
7. Tribal Rules and Regulations on Law and Order, Accounting, Fish and Game, and Treaties Prevailing, if any.

Release 68-1, 9-23-60

BIAM REISSUE
FEBRUARY 1984

See 68 BIAM
App 1 Rel 1,
-7-74

 REQUIREMENTS AND PROCEDURES

- ~~8. Federal Laws Specially Applicable, and Others Available ---
History and Application.~~
 9. Nature and Incidence of Crime Among Indians.
 10. Crime Scene Search and Preservation of Evidence.
Use of Photography.
Use of Plaster Casts.
Importance of Measurements and Descriptions.
Fingerprint Procedures and Lifting.
 11. Techniques of Interrogation and Interview.
 12. Accident Investigation and Tort Claims.
 13. Map Reading, Rudiments of Survey, and Land Description, and
Source of Records.
 14. Report Writing.
 15. Testifying in Court, Direct Evidence, Hearsay, Allowable
Admissions and Statements, Disclosure to Defense Attorneys.
 16. Defensive Tactics, Use of Firearms, and Police Equipment.
 17. First Aid. (Bureau of Mines or American Red Cross Training
and Material optional)
 - ~~18. Special Problems in Different States and Jurisdictions,
Court Decisions, Attorneys General Opinions, Treaties, etc. ---~~
- 2.18 Bibliography. Bureau Law and Order facilities should have the material listed below available as basic guideline information for law enforcement personnel and tribal judicial officers. It should be used for working information only. Employees are not expected or required to interpret law or give legal advice. When legal opinions are necessary, advice should be requested from attorneys with responsibility for the particular subject matter.
1. A specially bound copy of 68 IAM.
 2. A complete set of Title 18, United States Code Annotated.
(Six volumes)

REQUIREMENTS AND PROCEDURES

3. Title 25, United States Code Annotated.
4. Title 25, Code of Federal Regulations.
5. A complete set of applicable State statutes.
6. An up-to-date applicable tribal law and order code.
7. A copy of the applicable tribal constitution.
8. A copy of the Federal Indian Law.
9. Opinion of the Solicitor, M 60616, dated April 27, 1939.
10. Opinion of the Solicitor, M 29669, dated August 1, 1938.
11. The best available copy of the tribal enrollment census.
12. The best available map of the reservation area, color legended so far as possible to show classification of lands involved.
13. A compiled volume of Area and Agency training documents and materials.
14. A compiled volume of Area and Agency administrative orders and directives.

Area and Agency offices are authorized to purchase special training books and publications on police administration, criminal investigation, techniques of specialized police investigation and related subjects. All agency offices should subscribe to the FBI, and local sheriffs, and police association bulletins.

REQUIREMENTS AND PROCEDURES

2.20 Probation and Parole Officers. As with juvenile affairs, it is necessary to provide, in many instances, additional special services, to bolster the prevention program. At many reservations, therefore, a staff specialist in the Probation and Parole field is available. In the absence of Juvenile Officers, these specialists may be called upon to perform the functions outlined in Section 2.19, Juvenile Officers, thus, familiarity with that section of 68 IAM is desirable.

- .1 Purposes. Probation is a systematic and constructive method of correctional treatment applied to certain offenders who are considered potentially capable of being restored to social usefulness without the stigma of imprisonment and the antisocial behavior which generally follows a separation from normal relationships.

A dual responsibility attaches to an effective probation program. In the first instance is the need to restore offenders to social normality and secondly, the long-range protection of society from further transgressions of law. It is the policy of the Bureau to provide an effective probation and parole program for the Indian people that will accomplish these broad responsibilities.

- .2 Duties. Bureau Probation and Parole Officers function as specialists in this field and are under the direction and supervision of the Agency Special Officer in order to coordinate the over-all prevention and enforcement program.

As the term indicates, Probation and Parole Officers have duty responsibilities in two major areas. These are:

- (A) pre-sentence investigations, and
- (B) supervision.

REQUIREMENTS AND PROCEDURES

The pre-sentence investigation is a study and interpretation of the facts, conditions and circumstances in the life of the offender, usually done on direction of an appropriate court authority, to enable those concerned in arriving at a disposition of the case compatible with the best interests of society and the offender.

Supervision is the medium through which the Probation Officer is able to aid the probationer in developing the capacity to readjust his habit patterns to conform more nearly to acceptable social patterns.

Parole functions consist of pre-release investigations designed to assist offenders in making readjustments to normal activities following release and the supervision of those placed on parole.

Both Probation and Parole duties are regarded as being of equal importance.

- .3 Authority. Probation and Parole Officers do not normally exercise police authority as set out in section 2.1, Authority of Special Officers. They will not, therefore, under any circumstances, be commissioned with such authority. It may be necessary, due to absence of the Agency Special Officer, for them to function in a purely administrative capacity to ensure the orderly progress of the program. In those cases, it would be appropriate for them to perform the attendant duties.

A manual chapter setting out detailed procedures to be followed by Probation and Parole Officers will be issued when completed. Pending issuance of these instructions, all such personnel are expected to follow the generally accepted practices associated with operations in this field.

3 RELATIONS WITH OTHER SERVICES AND AGENCIESTABLE OF CONTENTS

- 3.1 Introduction
- 3.2 Welfare Agencies
- 3.3 Public Health Service, Indian Division
 - .1 Mental Patients
 - .2 Quarantine
 - .3 Autopsies
- 3.4 Education
- 3.5 Tribal Governing Bodies
- 3.6 Field Solicitors
 - .1 Tort Claims
 - .2 Trespass and Depredations
- 3.7 United States District Courts
- 3.8 United States Probation and Parole Officers
- 3.9 United States Attorneys
- 3.10 United States Marshals
- 3.11 United States Commissioners
- 3.12 United States Park Commissioners
- 3.13 Federal Bureau of Investigation, Department of Justice
 - .1 Autopsy Service
 - .2 Land Surveys
 - .3 Enrollment or Census Records
- 3.14 Alcohol and Tobacco Tax Division, United States Treasury
- 3.15 Bureau of Narcotics, United States Treasury
- 3.16 United States Secret Service, United States Treasury
 - .1 Seizure Authority of U. S. Treasury Agents

- 3.17 Assistant Regional Commissioners (Intelligence), Internal Revenue Service, United States Treasury
- 3.18 Inspectors, United States Post Office Department
- 3.19 Military Services
- 3.20 State District Attorneys
- 3.21 County Sheriffs and State and City Police
- 3.22 State and Municipal Courts
- 3.23 State Probation and Parole Services
- 3.24 State Fish and Game Officials

3 RELATIONS WITH OTHER SERVICES AND AGENCIES

3.1 Introduction. Bureau officers often encounter cases which fall within the investigative jurisdiction of another agency, or which require cooperative action. Bureau officers must cooperate with, but should not usurp the prerogatives of such agencies. The list below points out most, but not necessarily all, of those with whom they will have considerable official contact.

3.2 Welfare Agencies. When Bureau officers encounter situations demanding welfare or protective service for families or individuals, particularly children, because of difficulty with the law, delinquency, nonsupport, abandonment, illegitimacy, or a variety of other reasons, appropriate reports should be made to Bureau or other available welfare or child welfare agencies if such other services exist. Officers must give assistance in such cases and not usurp the prerogatives of the respective welfare agencies. In some cases Bureau officers are required to pursue a criminal action. Bureau officers will cooperate with allied State or municipal police and welfare agencies where necessary to care for runaway, delinquent, abandoned or otherwise helpless Indian children in the absence of other services. Where such problems become acutely continuing, working agreements should be developed in cooperation with State, county and municipal officials. Bureau officers must familiarize themselves with State child welfare codes and services and must maintain investigative and final disposition reports when action is taken by them.

Bureau welfare services, Public Health Service, some State welfare agencies, and some tribes have funds available for the burial of indigent Indians. Officers should familiarize themselves with the availability or use of these funds. Being helpful to the bereaved is an excellent measure of police service, in addition to the responsibility police often have for the disposition of dead human bodies found in their jurisdictions.

3.3 Public Health Service, Indian Division.

.1 Mental Patients. See Section 2.13 in this part for treatment and care of mentally ill patients. Officers are required to cooperate fully with the PHS-ID in the apprehension, investigation and commitment of Indian mentally ill patients. In some cases PHS-ID will arrange for mental or psychiatric examinations and will assume the cost of treatment and care of such patients. In other cases the latter responsibility is assumed by the

RELATIONS WITH OTHER SERVICES AND AGENCIES

Branch of Welfare, BIA. Responsibility for custody and commitment procedures must be assumed by Bureau or tribal law and order employees as a police service.

- .2 Quarantine. Where the Public Health Service, Indian Division, has established rules and regulations and has worked out methods and procedures with particular tribes for the quarantine or other control of communicable diseases, Bureau officers and Courts of Indian Offenses will render all necessary assistance in the enforcement of quarantine or other control of such diseases consistent with law.
- .3 Autopsies and Other Examinations. Ordinarily Public Health Service-ID medical officers will assist in the determination of the cause of death of dead human bodies found in Indian country, or in the examination of victims of rape or assault. In some cases the services of registered pathologists or gynecologists may be required in the investigation of serious criminal cases and for presentation of evidence in court. Bureau officers must familiarize themselves with the local installations and facilities of the Public Health Service-ID and reach such working relationships as circumstances will permit. For expenditure of BIA funds see "Relations with the Federal Bureau of Investigation," Section 3.13 in this part.
- 3.4 Education. When Indian students in reservation and nonreservation schools are involved in offenses by or against them, Bureau officers may investigate or cooperate in the investigation of such offenses and may process such cases through court when necessary. They may assist in the enforcement of school attendance on reservations where proper provisions are in effect for the enforcement of such attendance. They may also assist in the protection of reservation school property, or investigate depredations against nonreservation school property when specifically requested. Bureau officers will not participate in the internal discipline of school problems. They are encouraged to participate in student group discussions on safety, civic precepts of law and order work, tribal government and Federal Indian law, control of juvenile affairs, the responsibility of citizenship and like topics of civic interest, including recreational programs.

In case work, investigative and final disposition reports must be maintained by Bureau officers and distributed as local conditions require.

RELATIONS WITH OTHER SERVICES AND AGENCIES

- 3.5 Tribal Governing Bodies. Bureau officers are responsible for assisting tribal councils and officers in the establishment and continued maintenance of sound law and order programs in the Indian communities; the development of programs and ordinances for the control and prevention of crime and delinquency; and the instruction and training of tribal police officers. Bureau officers must avoid identification with any tribal faction and must not participate in tribal politics. As conditions require officers will report statistics, conditions of the law and order program, make estimates, recommendations, or provide such other information needful in the planning and improvement of reservation law enforcement. In this connection relations should be maintained on the highest level of cooperation and with a proper respect for the positions of the tribal officials. When requested, Bureau officers will assist in the drafting of ordinances and resolutions designed for law enforcement services and will secure appropriate legal advice required therein, as a service to law enforcement improvement.
- 3.6 Field Solicitors. Representatives of the Solicitor's Office of the Department of the Interior are the field legal advisors to the Bureau of Indian Affairs. Officers should not hesitate to consult with Field Solicitors on legal problems affecting Indian affairs within their responsibility. When a specific legal opinion is desired, officers must submit a written recital of the problem and transmit same through the proper channels. It must be borne in mind that Field Solicitors do not have the authority to make final decisions on the processing of criminal cases that properly come within the purview of the United States Attorneys.
- .1 Tort Claims. Bureau officers may be required to investigate matters that involve tort claims against the Government. Bureau officers should be familiar with Tort Claims procedure. None but experienced officers should be assigned to accident or tort claims investigation. The facilities of the Federal Bureau of Investigation are available in tort claim cases and should be used when necessary in field investigations. Officers must make no commitments, nor express any opinion as to the liability of a Bureau facility except to Department officials.
- .2 Trespass and Depredations. Trespass and depredations on Indian property often result in criminal action or in civil claims. Bureau officers may be required to investigate such matters.

RELATIONS WITH OTHER SERVICES AND AGENCIES

Investigative reports must be made in writing. The responsibility of making referrals to the Department of Justice for further action, if necessary, lies within the authority of the Field Solicitor. Special Officers will not refer such matters directly to the United States Attorneys except when expressly requested to do so.

- 3.7 United States District Courts. Generally, Bureau Special Officers will have no direct official contact with United States District Judges, except to appear in their courts as witnesses and to respond to their special requests. They should not attempt to address the court except when requested. If the officer feels that the court should have some information not contained in a report or developed in the case, he should address it to the United States Attorney or the Probation and Parole Officer. When needed, copies of official documents should be obtained from the Clerk of the Court. Presumptuous conduct in court will tend to lessen the confidence of the court in the officer and the Bureau. Maintaining the confidence of the court is essential in courtroom duty.
- 3.8 United States Probation and Parole Officers. These are officers of the Federal courts. They report directly to the court on matters involving pre-sentence investigation, reports and recommendations on the conduct of persons on probation, or on other matters in which the court requires additional information. They also report on the conduct and make recommendations to the Federal Parole Board concerning persons on parole or about to be paroled from Federal penal institutions. Persons on probation or parole have been given a legal opportunity to rehabilitate themselves. Many things parolees and probationers do which might be considered normal conduct by others may be a violation of the conditions of their probation or parole. Officers should keep in mind the requirements and help to keep such persons out of trouble, if possible. On the other hand, officers are not to judge when and how such releases are to be revoked for alleged violations and should report any misconduct by parolees and probationers to the proper Probation and Parole Officers. Bureau officers are instructed to render service and cooperation to Probation and Parole Officers.

As a general rule persons who are on probation or parole can be arrested before the expiration of the period of conditional release without a warrant for a violation of release conditions. If they are to be arrested after such expiration a warrant is required.

RELATIONS WITH OTHER SERVICES AND AGENCIES

Bureau officers should not arrest such persons for violations of conditions except when expressly requested by a proper authority, or when such violations constitute a new offense for which any other person would be arrested.

In the absence of a probation and parole service on Indian reservations, Bureau officers may be requested to serve in that capacity by the United States District Courts.

- 3.9 United States Attorneys. The United States Attorney is the chief Federal law enforcement officer for his judicial district. He is charged with the responsibility of prosecuting all Federal offenses occurring in his district. In that connection he has a wide latitude of decision as to whether or not prosecution shall be undertaken in Federal cases. He is always governed by the rule that a case must be proven beyond a reasonable doubt. Bureau officers are bound by his decisions.

Bureau officers shall clear all cases of violations of Federal law over which they have enforcement responsibility with the United States Attorney before filing a complaint for the arrest of any person. They shall promptly report to the U. S. Attorney, in person or by telephone, when they have arrested or jailed any person for a violation of Federal law. Officers should give a preliminary review of the facts and request instructions on the further conduct of the case. They will promptly respond to his requests for information or service. When Bureau officers conduct and complete an investigation, case reports, properly completed, must be promptly filed with the United States Attorney.

In those cases where another Federal agency has the investigative jurisdiction, Bureau officers must leave the above responsibilities to the respective agency. An informational memorandum report on Form 64 should be kept at the local level for administrative purposes.

- 3.10 United States Marshals. United States Marshals and their deputies are officers of the United States District Court. They have the power and the duty to make arrests in Federal cases with or without warrants and to serve any other legal process of the Federal courts. They also make arrests and serve warrants and legal process issuing from a United States Commissioner. After authorized complaints have been filed and a warrant for the arrest of a person is issued, such warrants should be directed to the United States

RELATIONS WITH OTHER SERVICES AND AGENCIES

Marshal for service, except in unusual cases.

Bureau officers will many times have persons in custody after arrests without warrants.

In any case where persons are in custody and jailed for violations of the Federal law, Bureau officers shall immediately notify the United States Marshal's office, in person, by telephone or by mail. Arrest cards returnable to the United States Marshal are usually kept at jail offices in those jails which are approved for Federal prisoners or they can be obtained from the United States Marshal's office. They must be completed and delivered to the Marshal's office. The Marshal is responsible for the payment of feeding and care of Federal prisoners and requires this information for his records. In cases where it is not feasible to lodge a prisoner in a jail approved for Federal prisoners, the Bureau officer will pay the jailer for such care and feeding and charge the expense on his travel expense voucher, or collect through an imprest fund cashier, if other arrangements do not exist.

Bureau officers will cooperate with the Marshal and his deputies in the apprehension of persons wanted for Federal offenses and will assist in the serving of subpoenas or other process when necessary.

3.11 United States Commissioners. United States Commissioners are officers of the United States District Courts. Commissioners have the authority

- (1) to receive criminal complaints from duly authorized officers;
- (2) to issue warrants for the arrest of persons alleged to have violated the Federal law;
- (3) to issue warrants of search and seizure;
- (4) to set bail in cases not capital;
- (5) to issue subpoenas for the appearance of witnesses;
- (6) to conduct preliminary hearings and
- (7) to determine probable cause for holding a person for further action of the Federal courts.

He may commit such person to jail if necessary or cause his release if circumstances so warrant.

Some commissioners have been given the authority by a Federal judge of the district to hear, try, determine and dispose of petty

RELATIONS WITH OTHER SERVICES AND AGENCIES

offenses where the defendant agrees to be so tried. This authority is limited to offenses where the penalty does not exceed a fine of \$500 or imprisonment of more than six (6) months.

Federal law requires of all Federal officers that any person arrested for a Federal offense shall be taken before the nearest United States Commissioner without unreasonable delay for arraignment. Arraignment simply means taking a person charged with a crime before an official clothed with the authority to (1) hear answers to charges made against the accused and (2) to make such further disposition of the case as the evidence and circumstances require. Bureau officers should be familiar with the identity and location of all such commissioners and determine whether or not they have authority to hear petty cases. The rule on relations with United States Attorneys must be observed on filing of complaints, and the results of proceedings before commissioners must be reported to the U. S. Attorneys.

In proceedings before United States Commissioners the Federal Rules of Criminal Procedure, Preliminary Proceedings, Title 18, U.S.C.A., provide:

"Rule 3. The Complaint

The complaint is a written statement of the essential facts constituting the offense charged. It shall be made upon oath before a commissioner or other officer empowered to commit persons charged with offenses against the United States."

"Rule 4. Warrant or Summons upon Complaint

(a) Issuance. If it appears from the complaint that there is probable cause to believe that an offense has been committed and the defendant has committed it, a warrant for the arrest of the defendant shall issue to any officer authorized by law to execute it. Upon the request of the attorney for the government a summons instead of a warrant shall issue. More than one warrant or summons may issue on the same complaint. If a defendant fails to appear in response to the summons, a warrant shall issue."

RELATIONS WITH OTHER SERVICES AND AGENCIES"Rule 5. Proceedings Before the Commissioner

(a) Appearance before the Commissioner. An officer making an arrest under a warrant issued upon a complaint or any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest available commissioner or before any other nearby officer empowered to commit persons charged with offenses against the laws of the United States. When a person arrested without a warrant is brought before a commissioner or other officer, a complaint shall be filed forthwith.

(b) Statement by the Commissioner. The commissioner shall inform the defendant of the complaint against him, of his right to retain counsel and of his right to have a preliminary examination. He shall also inform the defendant that he is not required to make a statement and that any statement made by him may be used against him. The commissioner shall allow the defendant reasonable time and opportunity to consult counsel and shall admit the defendant to bail as provided in these rules.

(c) Preliminary Examination. The defendant shall not be called upon to plead. If the defendant waives preliminary examination, the commissioner shall forthwith hold him to answer in the district court. If the defendant does not waive examination, the commissioner shall hear the evidence within a reasonable time. The defendant may cross-examine witnesses against him and may introduce evidence in his own behalf. If from the evidence it appears to the commissioner that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the commissioner shall forthwith hold him to answer in the district court; otherwise the commissioner shall discharge him. The commissioner shall admit the defendant to bail as provided in these rules. After concluding the proceeding the commissioner shall transmit forthwith to the clerk of the district court all papers in the proceeding and any bail taken by him."

Special Note: With reference to the provision in Rule 5 (a) "or before any other nearby officer empowered to commit persons charged with offense against the laws of the United States," Section 3041, Title 18, U.S.C.A., provides that any "judge of a superior court, first judge of common pleas, mayor of a city,

RELATIONS WITH OTHER SERVICES AND AGENCIES

justice of the peace or other magistrate of any State where the offender may be found, and at the expense of the United States," may arrest and imprison, or bail, as the case may require. This provision should only be used as an alternative when a commissioner is absent or unavailable and it would be a great inconvenience to the offender to take him a long distance to the next commissioner. When an officer is confronted with a situation requiring the use of such other magistrates, he should first consult with the United States Attorney to apprise him of the facts and to gain his consent to such procedure.

In connection with arrests without warrants, with the concurrence of the United States Attorney, it is good practice to permit an offender to go free with a request that he appear at the United States Commissioner's office at an appointed time with his counsel and bondsmen for arraignment, or until a warrant is served. In such cases the officer must consider whether he has real knowledge of the identity, home address, and property ownership of the offender, and the severity of the offense. Such consideration in lesser offenses develops good public relations and reflects reasonable conduct on the part of officers. Offenders not deserving of such consideration, or who might otherwise flee the jurisdiction, need not be so treated.

In addition to the authority of United States Commissioners to hear arraignments of Federal offenders, some are covered with authority to hear, try and determine petty Federal offenses.

Sections 3401 and 3402, Title 18, U.S.C.A., provide that any United States Commissioner pecially designated for that purpose by the court by which he was appointed has jurisdiction to try and sentence persons committing petty offenses against the United States. The person arrested has the right to elect whether or not he wants to be so tried and he has the right of appealing from such judgment to the District Court.

Rules of Procedure for Trials Before Commissioners are set out in Title 18, U.S.C.A., Federal Rules of Criminal Procedure.

- 3.12 U. S. Park Commissioners. Authority of U. S. Park Commissioners is generally the same as that of U. S. Commissioners. However, one basic difference should be noted. That is that their jurisdiction to hear, try and determine causes is limited to the minute area

RELATIONS WITH OTHER SERVICES AND AGENCIES

for which they are specifically appointed. This authority is also confined to the trial of petty offenses in which the penalty, upon conviction, does not exceed a fine of \$500 or a term of more than six (6) months imprisonment.

- 3.13 Federal Bureau of Investigation, Department of Justice. In the discharge of the Bureau responsibility for maintaining law and order on Indian reservations, which includes the enforcement of applicable Federal laws, it is important that Bureau relations and cooperative arrangements with the FBI be of the highest order. It has long been the policy of the Bureau to notify the appropriate FBI agents when one of the Federal laws over which it has investigative jurisdiction has been violated and to cooperate with the FBI agents in the investigation of such crimes and in the apprehension of persons involved. For crimes and offenses reportable to the FBI see Section 4.3 of this part.

When it becomes necessary to investigate a violation of such laws, the matter should be immediately reported to the appropriate field office of the FBI and the Bureau officers should cooperate closely with the FBI agent assigned. Undoubtedly there will be instances where Bureau officers will find it necessary to make preliminary investigation before the nature of an alleged violation of the Federal law can be ascertained, or immediate police action is necessary to protect persons or property, or to preserve evidence, or to apprehend subjects and when agents of the FBI are not immediately available. Under these circumstances no rigid rules can be laid down to govern all actions and the Bureau officer must complete the immediate action required. It shall be the duty of each Bureau officer in charge of an area to establish with the FBI field office or offices in his area such cooperative working relationships as will best meet the conditions in the area. Such arrangements will enable both Bureaus better to discharge their responsibilities. Such arrangements should not preclude the submission to the United States Attorney of such reports as he may desire or request, or the reporting and discussion of crimes and offenses directly with him.

- .1 Autopsy Service. The policy is that where the United States Attorney requests a post mortem autopsy on a human body and the case comes within the purview of the Federal courts, the FBI will pay the expenses for the transportation of the corpse, the use

RELATIONS WITH OTHER SERVICES AND AGENCIES

of an operating room (usually a morticians facility), and the fees of the medical officer performing the examination. The expenses incident to autopsy service prior to referral to the U. S. Attorney may not be the responsibility of the FBI. The FBI will not pay burial expenses incident to such cases.

- .2 Land Surveys. In substantially all cases where the FBI investigates a crime on an Indian reservation pursuant to special laws applicable to Indian reservations, it is necessary to establish legal jurisdiction by determining the locus and status of the land on which the crime occurred. The Bureau of Indian Affairs has the responsibility to determine this requirement and for the payment of any land surveys incident thereto. Bureau officers should familiarize themselves with the location, custody, and availability of land records and the identity of Indian Bureau or Bureau of Land Management personnel who are qualified to testify thereto. Working arrangements should be established within Indian Bureau facilities to provide for these surveys and to provide personnel qualified to make and testify to land surveys in court. This is an important prerequisite in Federal, and State prosecutions and cannot be overlooked. This information shall be made available to the FBI and the United States Attorney. It will also be furnished to State Prosecuting Attorneys where such surveys develop that crimes being investigated occurred on non-Federal jurisdiction lands.
- .3 Enrollment or Census Records. Bureau officers should familiarize themselves with the location, custody and condition of Indian enrollment or census records so that the identity and status of Indians involved in crime can be readily determined and verified. Such information must be furnished to the FBI and the prosecuting attorneys.
- 3.14 Alcohol and Tobacco Tax Division, United States Treasury. The responsibility of this agency of interest to Bureau officers is the enforcement of Federal laws relating to the illegal manufacture, concealment or transportation of intoxicating liquors or materials and equipment used in their illegal manufacture, concealment or transportation. It also has investigative jurisdiction over violations of the retail sale of tax-paid liquors without the payment of a special tax required by the Revenue Laws. Section 3321, Title 26, and Section 3615, Title 18, USCA, provide for the seizure

RELATIONS WITH OTHER SERVICES AND AGENCIES

and forfeiture of vehicles, equipment, supplies and utensils used in such liquor violations. These laws are in addition to the Indian liquor laws and in some case are more effective. Where a question arises as to which set of laws should be applied, Bureau officers should seek the advice of the United States Attorney. This agency also administers the National Firearms Act. (Sections 2700-2734, Title 26, U.S.C.)

- 3.15 Bureau of Narcotics, United States Treasury. The agents of the Bureau of Narcotics have the responsibility for the suppression of the illegal use, possession or sale of narcotic drugs, including marijuana. They are charged with the investigation, detection, arrest and prevention of violations of the Federal narcotics laws.

The Bureau of Narcotics has stated that peyote does not come within the provisions of the Federal narcotics laws which are administered by that Bureau. There is no Federal statute that prohibits the sale of peyote to Indians or its introduction into Indian reservations.

In this connection, but not a part of the responsibility of the Bureau of Narcotics, narcotic addicts may apply to the Public Health Service for voluntary admission to a Public Health Service hospital for treatment, or they may be committed thereto after conviction for a Federal violation by a United States court. The United States Attorney is responsible for notifying the proper officer of the Public Health Service in the latter case. Bureau officers should inform the United States Attorney accordingly if they have information that indicates a subject should be so committed.

- 3.16 United States Secret Service, United States Treasury. The United States Secret Service has the responsibility for the investigation, detection and arrest of persons who commit offenses connected with counterfeiting of coin or other legal tender of the United States or foreign countries; forging, alteration or falsely making of obligations of the United States or foreign countries, including Government checks, money orders and transportation requests. It also investigates tort claims involving personnel or property of the Department of the Treasury.

- .1 Seizure Authority of U. S. Treasury Agents. Sections 781 and 782, Title 49, USCA, provide for the seizure and forfeiture

RELATIONS WITH OTHER SERVICES AND AGENCIES

of vessels, vehicles and aircraft used in violation of the National Firearms Act, the Narcotics Laws, or laws pertaining to the false making, forging, alteration, or counterfeiting of United States or foreign coins or obligations.

3.17 Assistant Regional Commissioners (Intelligence), Internal Revenue Service, United States Treasury. They are responsible for the investigation of tax frauds against the United States. Information encountered in this respect should be referred to local divisions of that office. Bureau officers will not conduct any investigations or make arrests in such cases.

3.18 Inspectors, United States Post Office Department. When Bureau officers encounter burglaries of buildings involving postal facilities or funds, larceny from rural mail services, or sending of extortionary, threatening or obscene material through the mails they must refer such matters to the local inspectors of the Postal Service. If a threat to kidnap or injure any person is made through the mails, the FBI must also be notified.

3.19 Military Services. Military officials often request assistance in locating or apprehending deserters or persons who are absent without leave from one of the armed services. Bureau officers are expected to give full cooperation in such matters. Bureau officers may not, however, claim or accept rewards from the military services for the apprehension, detention and delivery of military prisoners.

Off-base military personnel, whether or not they are on leave, who commit offenses against the civil laws are subject to arrest, detention and trial the same as any other person. However, in cases where no serious circumstances exist justice may well be served by turning such offenders over to the military officials for prosecution with a report concerning their offense. In any case the subject's military unit Commanding Officer should be notified.

Local Indians who are subject to registration for military service should be advised of their responsibility and the consequences for failure so to register when they are found not to have complied with Selective Service requirements.

RELATIONS WITH OTHER SERVICES AND AGENCIES

- 3.20 State District Attorneys. The enforcement of law on Indian reservations and lands adjacent thereto demands that Bureau officers maintain the best of relations with local county District Attorneys. It will be found that their responsibilities and those of Bureau officers many times overlap or join together. Many times they will be found to conflict. Cooperative working relationships must be developed with State courts and enforcement personnel. The District Attorneys of the several counties or judicial districts within a State are the chief law enforcement officers thereof. They have the responsibility for the prosecution of crimes and offenses against the State law arising in their respective districts. As such they exercise a wide latitude of decision in the handling of criminal prosecutions under State law. Bureau officers should become familiar with the special conditions that exist in the various State court districts in which they must work, such as peculiar land status patterns, pertinent decisions of the Federal and State courts, opinions of the Attorney's general, Indian treaties and facilities of the local county governments. Bureau officers should not hesitate to cooperate with State or county officials when overlapping or joint investigations are necessary. Pertinent information and reports should be furnished to such State officials.
- 3.21 County Sheriffs and State and City Police. Bureau officers are likewise expected to develop cooperative working relationships with county sheriffs, State police where they exist, and city police. In the interest of promoting effective law enforcement in areas where jurisdiction cannot always be clearly or immediately known or determined, because of so-called checkerboarded land situations, Bureau officers are permitted to accept commissions as deputy sheriffs and State municipal officers may be deputized as deputy special officers. (See Section 2.15 of this part) In those areas where county sheriffs and State police are issued commissions as Deputy Special Officers for Indian Bureau (without compensation), such officers should be cautioned that such commissions only facilitate their operation on Indian reservations in the enforcement of Federal and Indian law and that they do not cover them in the enforcement of State law or authorize them to serve State court process, or make arrests or removal of Indians from reservations in connection with violations of State law, except where the Congress has extended State court jurisdiction over the Indian country.

RELATIONS WITH OTHER SERVICES AND AGENCIES

- 3.22 State and Municipal Courts. Bureau officers are often called upon to appear as witnesses in State or municipal courts. They must respond to such requests or subpoenas and produce such evidence that is required in the prosecution of criminal matters. This obligation is essentially in line with the officers duty.

See also Section 2.16 of this part, on Records and Testimony.

- 3.23 State Probation and Parole Services. Bureau officers may cooperate with State probation and parole officers in the supervision of persons on probation or parole from State courts or penal institutions. As in the case of Federal probation and parole releases, such persons have been granted a legal opportunity to rehabilitate as useful citizens. Officers are expected to help such persons make a proper readjustment, but should promptly report any misconduct or violations of the probation or parole conditions to the proper authorities. Bureau officers may apprehend such persons for violations of conditions only when requested by the proper State authorities, or where such violations constitute a new offense for which any other person would be arrested.

In this connection, Indian persons convicted of crime in the State courts and released on probation or parole from State courts or penal institutions are still under the lawful jurisdiction of the respective State authorities, even though such Indian persons may be permitted to return to an Indian reservation. They are not presumed to be covered with the same immunity from arrest and removal under State court process from Indian reservations as are other Indians not under the disability of probation or parole. Probation and parole under State law may be differently administered in the different States. In order that there be no misunderstanding, tribal governing bodies should be advised in the premises and requested to fix and implement a policy thereon. The State authorities should be notified of such policy.

- 3.24 State Fish and Game Officials. No general formula for cooperation with State fish and game officials can be established for the entire service. Treaties with particular tribes, special ordinances established by some tribes, agreements with State fish and game divisions, conflicting claims over water or land areas, and whether tribal rules permit fishing or hunting on Indian lands by non-Indians must be considered. Bureau officers should familiarize themselves with such conditions and operate accordingly. Where no

RELATIONS WITH OTHER SERVICES AND AGENCIES

policy or ordinances exist and they appear necessary, the tribal governing body should be encouraged to fix a policy by proper ordinances.

4 APPLICATION OF FEDERAL CRIMINAL LAWSTABLE OF CONTENTS

- 4.1 Introduction
- 4.2 General Provisions
- 4.3 Crimes and Offenses Reportable to the FBI
 - .1 The so-called Ten Major Crimes, Section 1153, Title 18, USCA.
 - .2 General Laws of the United States, Section 1152, Title 18, USCA.
- 4.4 Federal Offenses Reportable to Other Agencies
 - .1 Alcohol and Tobacco Tax Division, United States Treasury.
 - .2 Bureau of Narcotics, United States Treasury
 - .3 Secret Service, United States Treasury
 - .4 Postal Inspectors, United States Post Office
 - .5 Military Services
- 4.5 State Jurisdiction over Crimes and Offenses in Indian Country
- 4.6 Federal Law Specially Enforceable by Bureau Officers
 - .1 Indian Liquor Laws
 - .2 Protection of Property
 - .3 Trading With Indians
 - .4 Health and Education

4 APPLICATION OF FEDERAL CRIMINAL LAWS

- 4.1 Introduction. Offenses involving Indians or other persons within Indian reservations may be triable in the Federal, State or Indian courts. The determination depends upon the facts pertaining in each individual case. It rests upon the status of the land involved, the identity and racial status of the offender, or the identity and racial status of the victim, and upon the particular type of offense. As to the assumption of jurisdiction in a case by the Federal or State courts, the determination is the responsibility and prerogative of the respective prosecuting attorneys. It is the responsibility of the investigator to secure all the available information surrounding a case for submission to them.
- 4.2 General Provisions. Several general provisions of interest to officers in the enforcement of Federal law are set out in Title 18, United States Code as follows:

Section 1. Offenses classified

Notwithstanding any Act of Congress to the contrary:

- (1) Any offense punishable by death or imprisonment for a term exceeding one year is a felony.
- (2) Any other offense is a misdemeanor.
- (3) Any misdemeanor, the penalty for which does not exceed imprisonment for a period of six months or a fine of not more than \$500, or both, is a petty offense.

Section 2. Principals

- (a) Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal.
- (b) Whoever wilfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal.

APPLICATION OF FEDERAL CRIMINAL LAWSSection 3. Accessory after the fact.

Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one half the maximum fine prescribed for the punishment of the principal, or both, or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

Section 4. Misprision of felony.

Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than \$500 or imprisoned not more than three years, or both.

Section 371. Conspiracy to commit offense or to defraud United States.

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons does any act to effect the object of the conspiracy, each shall be fined not more than \$10,000 or imprisoned not more than five years, or both. If however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

.3 Crimes and Offenses Reportable to the FBI.1 The so-called Ten Major Crimes, Section 1153, Title 18, USCA.

BIAM REISSUE
FEBRUARY 1984

APPLICATION OF FEDERAL CRIMINAL LAWS

"Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

"As used in this section, the offense of rape shall be defined in accordance with the laws of the State in which the offense was committed, and any Indian who commits the offense of rape upon any female Indian within the Indian country, shall be imprisoned at the discretion of the court.

"As used in this section, the offense of burglary shall be defined and punished in accordance with the laws of the State in which such offense was committed. (June 25, 1948, ch. 645, § 1, 62 Stat. 758; May 24, 1949, ch. 139, § 26, 63 Stat. 94.)"

Special Note: This act covers those offenses only when committed by Indians and not by other persons. If the investigating officer finds that the offender is of Indian descent, he will determine if such person is enrolled with any particular tribe under the jurisdiction of the Federal Government, or if he has an allotment of or interest in land which is still held in trust by the Government, or if his parents are so enrolled or hold such land, even though he may not be enrolled himself or have such land, or if he maintains tribal relations with any particular tribe or is considered a member of such tribe, or any other information which tends to show that he maintains a racial status as an Indian under Federal guardianship. Such information must be verified by the records maintained by the Indian agency having administrative jurisdiction over the Indian tribe or land. It must be furnished the prosecuting attorney. He should be advised of what the records consist, their location and the identity, title, and address of the official custodian, so that the custodian may be subpoenaed to testify in court if necessary.

APPLICATION OF FEDERAL CRIMINAL LAWS

Section 1151, Title 18, USCA, sufficiently describes what land is to be considered Indian country for the purpose of Section 1153 (The 10 Major Crimes). Section 1151 has been construed to mean all land within the exterior bounds of an Indian reservation, whether they are fee-patented or otherwise unrestricted. It is the investigators duty to (1) determine the legal ownership of the land involved; (2) secure the accurate legal description of it; (3) verify from appropriate Indian agency records, or in some cases from those of the Bureau of Land Management, the authenticity of such ownership, description and status of such land; (4) verify whether the land is under Federal trust or restriction as Indian land or not; and (5) advise the prosecuting attorney of what the records consist, their location and the identity, title and address of the official custodian so that he may be subpoenaed to testify to the records in court if necessary. This is particularly true in those areas where Indian land is interspersed with non-Indian lands, or where allotments are situated outside of Indian reservations. For record purposes it ought also to be done within reservations where allotments have been made. The Bureau of Land Management of the Department of the Interior can issue certified copies of patents or other documentary evidence of title to Indian lands. Requests should be directed to that agency when a prosecuting attorney requests such certification.

It must be remembered that the matter of jurisdiction in a criminal proceeding is never presumed, it must be proven. The consent of the accused cannot confer jurisdiction where it does not exist. The importance of gathering all the information possible cannot be overemphasized. In this connection it must be noted that there are conflicting views and local policy exceptions held by Federal or State prosecuting attorneys, which are too many to list here. It is the duty of the investigating officer to ascertain what those different policies are and to operate accordingly.

.2 General Laws of the United States, Section 1152, Title 18, USCA.

"Sec. 1152. Laws governing, except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian Country.

APPLICATION OF FEDERAL CRIMINAL LAWS

"This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively. June 25, 1948, c. 645, 62 Stat. 757."

A. Procedure and Exceptions under Use of Section 1152

This section of Federal law extends to Indian country all the general laws of the United States which would apply to any other person or land area in the United States without regard to special Indian status of the persons or lands involved. It is to be noted that such general laws usually pertain to offenses against the Government or public policy. (However, where this section is used in connection with Sections 7 (a) and 13 of Title 18, USCA, in the absence of other law on a particular crime that affects Indian persons or property, the same identification of persons and land required in proceedings under Section 1153 must be accomplished.)

Of interest to Bureau officers, the general laws applicable under Section 1152 consist of those covering:

- (1) The protection of the money and obligations of the United States,
- (2) The protection of the mails,
- (3) The protection of Federal officers and employees, including witnesses in Federal actions,
- (4) The protection of Government and Indian property,
- (5) The illegal use of narcotics,
- (6) The illegal manufacture, possession and transportation or sale of intoxicating liquors under the Internal Revenue laws,
- (7) The interstate transportation of motor vehicles,

APPLICATION OF FEDERAL CRIMINAL LAWS

- (8) The interstate transportation or possession of gambling equipment on Indian reservations,
- (9) The possession and sale of switchblade knives and,
- (10) Violations of civil rights.

The exceptions in Section 1152 are of special interest and should be well noted. The exception that "This section shall not extend to offenses committed by one Indian against the person or property of another Indian" does not apply to offenses enumerated in Section 1153 of Title 18, U. S. Code.

Under the first exception in Section 1152 many offenses committed by one Indian against the person or property of another Indian on an Indian reservation cannot be prosecuted in the Federal courts. These include, but are not limited to, such offenses as:

- (1) Assault with intent to rape,
- (2) Aggravated assault where intent to kill or use of a weapon cannot be proven,
- (3) Negligent homicide where murder or manslaughter cannot be proven,
- (4) Adultery,
- (5) Abandonment,
- (6) Nonsupport of dependents,
- (7) Embezzlement of unrestricted personal property or money,
- (8) Forgery of personal checks or obligations,
- (9) Willful killing but not stealing of another's livestock, and
- (10) Operating another's motor vehicle where larceny cannot be proven.

The second and third exceptions in Section 1152 do not present as serious problem as the first. Officers and Indian court officials should exercise extreme care to assure that Indian courts do not try cases which because of their serious or special nature should be tried in the Federal courts. For instance, the narcotics laws, forgery of Government checks, or interstate transportation of stolen motor vehicles, etc. except where the U. S.

APPLICATION OF FEDERAL CRIMINAL LAWS

Attorney has declined prosecution or referred the cases to the tribal court. It could well develop that such cases, if tried in Indian courts, could not then be tried in the Federal courts. Bureau officers must be governed by treaty stipulations if there are any applicable.

B. Federal Criminal Laws Adaptable to Indian Country under Section 1152:

(1) Malicious Destruction of Property

Section 1361, Title 18, USCA, prohibits the willful injury or depredation against any property belonging to the United States.

Section 1362, Title 18, USCA, prohibits willful or malicious destruction of radio, telegraph or telephone property operated or under the control of the United States.

Section 1363, Title 18, USCA, prohibits the willful or malicious destruction of any property within the territorial jurisdiction of the United States.

(Applying this section with reference to Sections 1152, and 7 (3) of Title 18, USCA, an Indian was arrested and convicted in the Federal District Court of Arizona for dynamiting a gasoline shovel owned by a non-Indian contractor located on an Indian reservation.)

Section 81, Title 18, USCA, prohibiting arson of any building or structure would apply where such offense is committed by a non-Indian in Indian country.

All the above offenses are felonies.

(2) Embezzlement, Theft, Purloining of Government Property

Section 641, Title 18, USCA, prohibits the embezzlement, theft, purloining or converting to ones own use or that of another any record, voucher, money, or thing of value of the United States or of any agency or department thereof. It also prohibits the receiving,

APPLICATION OF FEDERAL CRIMINAL LAWS

concealment or retention of same. An offense under this section is a felony.

(3) Protection of Timber land, Range on Indian Lands

Section 1853, Title 18, USCA, prohibits the wanton cutting, injury or destruction of any tree growing, standing or being upon any Indian reservation or allotment while it is held in trust by the Government. An offense under this section is a misdemeanor.

Sections 1855 and 1856, Title 18, USCA, prohibit willfull and unauthorized setting of fires on any timber, underbrush, or grass or other inflammable material upon the same types of lands and leaving such fires unattended or unextinguished. An offense under Section 1855 is a felony under Section 1856 a misdemeanor.

(4) Embezzlement of Tribal Funds or Property

Section 1163, Title 18, USCA, (Public Law 871, 84th Cong.) prohibits the embezzlement, stealing, or conversion of any moneys, funds, credits, goods, assets or other property belonging to any Indian tribal organization under federal jurisdiction. It also prohibits the receiving, concealment or retention of any such property. An offense under this section is a felony except where the value of the property does not exceed \$100.

A. Procedure (Embezzlement). When evidence indicates to Bureau employees or tribal council members or officials that a violation of 18 U.S.C.A. 1163 has occurred, the appropriate office of the FBI should be notified immediately in the usual manner and the Bureau's personnel should cooperate closely with the special agent of the FBI assigned to investigate the violation.

Undoubtedly there will be instances when Bureau special officers will have to make an investigation to ascertain when a violation of the law has occurred before the FBI can be notified. When evidence of violation has been established, the

APPLICATION OF FEDERAL CRIMINAL LAWS

FBI should be notified before the investigation is continued unless the gathering or preservation of evidence is jeopardized, in which case continuation of the investigation should be cleared with the FBI.

A report of referrals of violations of 18 U.S.C.A. 1163 to the FBI should be forwarded here for transmittal to the Director of Inspection of the Department for information purposes.

Exception. When a violation of 18 U.S.C.A. 1163 involves misconduct, irregularity or some other action on the part of a Bureau employee, the instructions as contained in 44 IAM C2 are applicable and should be followed.

(5) Protection of Livestock

Section 2316, Title 18, USCA, provides against the transportation of stolen cattle in interstate commerce. An offense under this section is a felony. (Section 1153, Title 18, USCA is used where an Indian steals stock belonging to another person.)

(Many states have statutes that make it a special offense to kill or sell stock not one's own. Such statutes are useful where it is difficult to prove theft or removal from Indian reservations with prosecutions being sought in state courts).

Section 661, Title 18, USCA, with reference to Section 1152 (the so-called Assimilative Crimes Statute), and 7 (3), Title 18, USCA, would apply where a non-Indian steals stock belonging to an Indian and the act takes place in Indian country.

Section 662, Title 18, USCA, prohibits the buying, receiving or concealment of livestock. Offenses under Sections 661 and 662 are felonies, except where the value of the property is under \$100. These same sections may be used also where other property is involved.

APPLICATION OF FEDERAL CRIMINAL LAWS

(In New Mexico where two non-Indians had killed beef cattle on an Indian reservation but had not been able to carry same away, such cattle being the property of an Indian, and where no federal statute provided against the shooting or killing of another's livestock, were tried and convicted in federal court by applying Sections 1152, 7 (3) and 13 of Title 18, USCA. Section 13 was used to adopt State law in the absence of Federal law on the subject.)

(6) Larceny of Motor Vehicles

Section 2312, Title 18, USCA, prohibits the transportation in interstate commerce of any motor vehicle, knowing the same to have been stolen. An offense under this section is a felony.

Sections 661 and 662, Title 18, USCA, would apply where a non-Indian takes the property of an Indian on an Indian reservation. (Section 1153, Title 18, USCA, would apply where an Indian steals the vehicle of another person). In the two above cases the Bureau officer should proceed as in a felony offense.

To sustain larceny under this type of offense it has been found necessary to show that the offender acted so as to deny the owner of the benefit of ownership of the vehicle. The taking of a motor vehicle for short time use and then abandoning it without a clear intent to deny the owner the benefit thereof constitutes "operating without owner's consent" and generally cannot be prosecuted in the Federal courts. Therefore care should be taken in the investigation to establish the intent. The acts of the one taking the vehicle should be clearly detailed so far as possible because the prosecuting attorney will have to rely on them to show the intent in most cases.

APPLICATION OF FEDERAL CRIMINAL LAWS

(7) Interstate Transportation and Possession of Gambling Equipment

Section 1175, Title 15, USCA, makes it an offense to manufacture, recondition, repair, sell, transport, possess or use any gambling device in interstate commerce, or in the Indian country as defined in Section 1151, Title 18, USCA. An offense under this section is a felony. (The legislative history of this section and the decisions make it clear that the law is aimed at slot machines.)

Section 1177, Title 15, USCA, provides that such equipment and vehicles used in violation of the act are subject to seizure and forfeiture to the United States.

(8) Protection of Federal Officers and Employees

Section 1114, Title 18, USCA, makes it a special offense to kill enforcement and penal officers of the United States and in addition specifically includes any officer or employee of the Indian field service, while engaged in the performance of official duties or on account of the performance of them.

Section 111, Title 18, USCA, makes it a special offense to forcibly assault, resist, oppose, impede, intimidate, or interfere with any person designated in Section 1114 in or on account of the performance of his duties.

Offenses under both sections are felonies.

Note: It is an essential point of proof in such cases that such officers or employees are duly appointed and commissioned according to law and that they were actually performing official duties, or on account of such performance. Official records pertaining to such appointments or commissions and, if available, records specifically detailing such duties to such officers or employees should be produced for use of the prosecuting attorney.

APPLICATION OF FEDERAL CRIMINAL LAWS

Section 912, Title 18, USCA, makes it an offense for any person to falsely assume or pretend to be an officer or employee of the United States or any agency or department thereof in order to obtain something of value. An offense under this section is a felony.

Section 701, Title 18, USCA, makes it an offense to unlawfully manufacture, sell or possess any badge, identification card or other insignia of the design prescribed by the head of any department or agency of the United States for use by any officer or employee thereof.

(9) Obstruction of Justice

Section 1503, Title 18, USCA, makes it an offense corruptly, by threats or force, or by any threatening letter or communication, to endeavor to influence, intimidate or impede any witness in any court of the United States or before any United States Commissioner or other committing magistrate, or to injure any witness in his person or property on account of his attending or testifying in such court or examination. An offense under this section is a felony.

Section 1621, Title 18, USCA, makes it an offense falsely to testify under oath or falsely to subscribe to any material matter before a competent tribunal, officer or person in any case in which law of the United States authorizes an oath to be administered. An offense under this section is a felony.

Section 1622, Title 18, USCA, makes it an offense to procure another to commit any such perjury. An offense under this section is a felony.

Section 752, Title 18, USCA, makes it an offense to rescue or attempt to rescue, or instigate, aid or assist the escape of any person arrested upon a warrant or other process issued under any law of the United States. An offense under this section is a felony except where the offense for which the warrant was issued is a misdemeanor.

APPLICATION OF FEDERAL CRIMINAL LAWS

Section 1071, Title 18, USCA, makes it an offense to harbor or conceal any person for whose arrest a warrant or process has been issued under any law of the United States, so as to prevent his discovery and arrest after notice or knowledge that a warrant or process has been issued. The offense under this section is a misdemeanor.

Section 1072, Title 18, USCA, makes it an offense willfully to harbor or conceal any prisoner after his escape from the custody of the Attorney General or from a federal penal institution. An offense under this section is a felony.

Section 1073, Title 18, USCA, makes it an offense for a person to travel in interstate commerce in order to avoid prosecution, custody or confinement after conviction, under the laws of the place from which he flees for murder, kidnaping, burglary, robbery, mayhem, rape, assault with a dangerous weapon, extortion accompanied by threats of violence, arson or attempt to commit any of the foregoing offenses as they are defined in the place from which he flees, or to avoid giving testimony in any criminal proceeding in such place in which the commission of an offense is punishable by imprisonment in a penitentiary. An offense under this section is a felony. (This is the so-called "Unlawful Flight" statute.)

(10.) Whiteslave Traffic

Section 2421, Title 18, USCA, makes it an offense knowingly to transport in interstate commerce, or in the District of Columbia or in any territory or possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with intent and purpose to induce, entice, or compel the same. It is also an offense under this section to provide tickets or some right of transportation in such cases.

APPLICATION OF FEDERAL CRIMINAL LAWS

Section 2422, Title 18, USCA, makes it a like offense to knowingly persuade, induce, entice or coerce any woman or girl with or without her consent.

Offenses under these sections are felonies.

(11) Civil Rights

Section 241, Title 18, USCA, makes it an offense for two or more persons to conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having exercised the same. An offense under this section is a felony.

Section 242, Title 18, USCA, makes it an offense under color of any law, statute, ordinance, regulations or custom willfully to subject any inhabitant of any state, territory or district to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains or penalties on account of color or race than are prescribed for punishment of citizens. An offense under this section is a misdemeanor.

(12) Public Law 623, 85th Congress

Public Law 623, approved August 12, 1958, (Sec. 1241, 1242, 1243 Title 15, USCA) makes it a felony to introduce in interstate commerce, or to manufacture, sell or possess any switchblade knife on Indian reservations, among other places, and provides a penalty of a fine of not more than \$2,000 or imprisonment of not more than 5 years, or both, for violation. The same act prohibits the mailing of such knives pursuant to section 1716, Title 18, USCA. Persons with only one arm are excepted from application of this section.

APPLICATION OF FEDERAL CRIMINAL LAWS(13) Other Uses of Section 1152, Title 18, USCAA. Adoption of State Law

Section 13, Title 18, USCA (The so-called Assimilative Crimes Statute) provides for the use of state law in Federal prosecutions where no specific Federal law is available. This section is only applicable where non-Indians against Indians or their property are involved, or vice versa. It is not applicable to cases wherein only Indians are involved against each other pursuant to the first exception set out in Section 1152. Where it is necessary to resort to this procedure reference is made to Sections 1152, 7 (3) and 13 of Title 18, USCA, in that order, and adopting by reference an applicable section of State law. (For judicial construction of this procedure reference is made to *Guith v. U. S.*, C. A. Mont. 1956. (230 F 2d 481); *U. S. v. Sosseur*, (181 F 2d 873; and *Williams v. U. S.*, Ariz 1946 (66 S. Ct. 778) (327 U. S. 711). As in other cases permission of the United States Attorney must be sought before proceeding under this construction.

B. Assaults in Federal Jurisdictions

Sections 113 and 114, Title 18, USCA set out various degrees of assault covered and defined by Federal law. These sections can be used where such assaults occur between Indians and non-Indians. In such event, reference is made to only Section 7 (3) as the source of jurisdictional authority. No reference need be made to Section 13, Title 18, because Federal law is here available.

C. Federal Peace Bonds

Section 3043, Title 18, USCA, provides that justices and judges of the United States, United States Commissioners, and the judges and magistrates of the several states can hold persons to the security of the peace and for good behavior, in

APPLICATION OF FEDERAL CRIMINAL LAWS

other words placing them on a peace bond. This section can be used to good advantage with respect to troublesome persons on reservations, either Indian or non-Indian, in lieu of prosecuting to convict. For instance where an Indian continually intimidates, threatens or assaults non-Indian Federal employees or other non-Indian persons who reside on Indian reservations, or where non-Indian persons who reside on Indian reservations are continual aggressors against Indians on a reservation, or to prevent recurring gang fights between teen-age groups or others.

In such cases the usual complaint is filed with the United States Commissioner, preferably, after getting the prior approval of the United States Attorney. The defendant is entitled to a hearing on the issue, after which, if the evidence warrants, the defendant is required to post a bond to keep the peace. The Commissioner may commit the defendant to jail until the bond is posted. There are no special forms for this type of bond. The usual Federal appearance bond form may be used by inserting at the appropriate place language to this effect "to keep the peace and for good behavior and more particularly to refrain from any violence or threat of violence to the person or property of (name of victim)." A bond commensurate with the penalty provided in the statute used in the complaint should be requested.

4.4 Federal Offenses Reportable to Other Agencies

Other Federal crimes and offenses which may occur in Indian country are too numerous to list. The nature of such offenses and the respective agency to which they are referable are listed below. (See also Relations With Other Agencies.)

.1 Alcohol and Tobacco Tax Division, United States Treasury

Possession of unregistered distilling apparatus.

Manufacture, possession, transportation and sale of untaxpaid liquors.

Sale of taxpaid liquor without procuring special tax permit.

APPLICATION OF FEDERAL CRIMINAL LAWS

Violations of the National Firearms Act.

.2 Bureau of Narcotics, United States Treasury

Illegal use, sale, possession or traffic in narcotic drugs. Includes marihuana. Does not include peyote.

.3 Secret Service, United States Treasury

Counterfeiting coinage or legal tender of the United States and foreign countries.
Forging, altering and falsely making checks, drafts, transportation requests or other obligations of the United States.

.4 Postal Inspectors, United States Post Office

Depredations against the mails or postal service property. Sending obscene, threatening or extortionary material and demands through the mails.
Burglaries of postal facilities or larceny of postal funds.
Frauds through the mails.

.5 Military Services

Deserters, draft dodgers, persons AWOL, offenders against civil law who are in military service. Draft evaders and deserters are also reportable to the FBI.

4.5 State Jurisdiction over Crimes and Offenses in Indian Country.

Section 1162, Title 18, USCA, State jurisdiction over offenses committed by or against Indians in the Indian country provides as follows:

"Section 1162. State jurisdiction over offenses committed by or against Indians in the Indian country. (a) Each of the States or Territories listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State or Territory to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal

 APPLICATION OF FEDERAL CRIMINAL LAWS

laws of such State or Territory shall have the same force and effect within such Indian country, as they have elsewhere within the State or Territory:

State or Territory of	Indian country affected
Alaska	All Indian country within the State
California	All Indian country within the State
Minnesota.	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin.	All Indian country within the State.

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section. Added Aug. 15, 1953, c. 505, Sec. 2, 67 Stat. 588, amended Aug. 24, 1954, c. 910, Sec. 1, 68 Stat. 795; Aug. 8, 1958, Pub.L. 85-615, Sec. 1, 72 Stat. 545."

Other reservations which are under State jurisdiction are on the following page.

BIAM REISSUE
FEBRUARY 1984

 APPLICATION OF FEDERAL CRIMINAL LAWS

THE OTHER RESERVATIONS UNDER STATE JURISDICTION

Nevada:	Winnemucca	Humbolt County
	Battle Mountain	" "
	Elko Colony	Elko County
	Ruby Valley	" "
	South Fork	" "
	Ely Colony	White Pine County
	Goshute	" " "
	Reno-Sparks	Washoe County
	Washoe	Douglas County
	Dresslerville	" "
	Carson	" "
	Duckwater	Nye County
	Yomba	" "
Washington:	Chehalis	Grays Harbor, County
	Quinault	" " "
	Lower Elwha	Clallam County
	Quilleute (Quillayute)	" "
	Muckleshoot	King County
	Nisqually	Pierce County
	Skokomish	Mason County
	Port Gamble	Kitsap County
	Suquamish	" "
	Tulalip	Snohomish County

4.6 Federal Law Specially Enforceable by Bureau Officers.1 Indian Liquor Laws

A. Section 1154, Title 18, USCA:

"1154. Intoxicants dispensed in Indian country

"(a) Whoever sells, gives away, disposes of, exchanges, or barter any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or other intoxicating liquor of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian to whom an allotment of land has been made while the title to the same shall be held in trust by the

APPLICATION OF FEDERAL CRIMINAL LAWS

Government, or to any Indian who is a ward of the Government under charge of any Indian superintendent, or to any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship, and whoever introduces or attempts to introduce any malt, spirituous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall, for the first offense, be fined not more than \$2,000 or imprisoned not more than five years, or both.

"(b) It shall be a sufficient defense to any charge of introducing or attempting to introduce ardent spirits, ale, beer, wine, or intoxicating liquors into the Indian country that the acts charged were done under authority, in writing, from the Department of the Army or any officer duly authorized thereunto by the Department of the Army, but this subsection shall not bar the prosecution of any officer, soldier, sutler or storekeeper, attache, or employee of the Army of the United States who barter, donates, or furnishes in any manner whatsoever liquors, beer, or any intoxicating beverage whatsoever to any Indian.

"(c) The term 'Indian country' as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservations, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto."

(1) Amendments to Application.

Section 1161, Title 18, USCA, below provides that this section does not apply to the sale of intoxicating liquors to any Indian outside of Indian country. It also provides against the application of this section in Indian country where the respective tribe, conforming to State law, has legalized the sale, introduction or possession of intoxicating liquors by appropriate ordinance certified by the Secretary of the Interior and published in the Federal Register.

APPLICATION OF FEDERAL CRIMINAL LAWS

(2) Points of Proof.

When proceeding under Section 1154 to prove sale in the Indian country it is necessary to identify the Indian to whom liquor is sold and to verify that he comes within one of the three definitions provided in the body of subsection (a) of Section 1154. It is not sufficient just to say that liquor was sold to "an Indian." It must be proven also that the sale or other disposition was made in Indian country and, therefore, the land must be identified accurately and the restricted Indian status verified. (See sample case report for proper reporting.)

When proceeding under Section 1154 to prove introduction and possession (not sale), reference should also be made to Section 1156. In this case, only the land need be identified and its status verified. The status of the offender, if he is an Indian, need not be verified for legal purpose, but should be noted for information of the United States Attorney. Officers must note that Section 1154 contains exceptions to the definition of Indian country described in Section 1151. Where there is no treaty or special Federal statute extending the Indian liquor laws to rights-of-way or fee-patented lands as provided in subsection (c) no offense would be committed when liquor is introduced or possessed thereon.

In 1956 the United States District Court for Arizona, in a case where liquor was sold, introduced and possessed on fee-patented lands within the Navajo Reservation in an area where the large preponderance of the people living in the immediate five-mile radius were Indians, held that it was not a non-Indian community within the meaning of this statute and the defendants were convicted. (U. S. V. Lee & Crone.)

If intoxicating liquors are found in possession of a person on roadways within a reservation it is necessary to show whether or not such roadways are actual rights-of-way.

APPLICATION OF FEDERAL CRIMINAL LAWS

Additionally, because it has been found to be a practical defense before a jury to show that the offender was merely passing through the reservation, it should be shown that such roads are not commonly used public roadways traversing reservation lands. There must be some proof that the offender's destination or intention is focused on a place within the reservation. It is important to show that he had contact off the right-of-way or attempted to sell or make some other disposition of his liquor in the Indian country. Often his own statement at the time of the arrest will prove ridiculous when the offender is asked what he is doing in the area with liquor. It may be used at a later time to rebut a later developed plea. Such statements should be made a matter of record. Anything to indicate that his intentions in the area are unlawful should be noted and reported.

(3) Disposition of Minor Cases

Most of the tribes who have not legalized the sale, introduction or possession of intoxicating liquors in their respective lands have ordinances against the traffic in liquor. Prosecutions in Federal court should only be requested (1) where large amounts of liquor are found; (2) where it can be shown the offender is illegally trafficking in liquor for profit; or (3) where such sale, disposition or introduction is connected with some other serious crime. As a practical matter, where a person has liquor presumably for his own consumption, it should be reported to the Indian courts if the offender is an Indian.

Non-Indians can often be tried in U. S. Commissioner's or justice courts on a commensurate charge, such as disorderly conduct or drinking in public under State law in many States. Before the U. S. Commissioner, if he has petty offense trial authority, the State laws are adopted by reference to Sections 1152, 7(3), and 13, Title 18, USCA.

APPLICATION OF FEDERAL CRIMINAL LAWS

It should be noted that U. S. Commissioners cannot try and dispose of violations of Sections 1154 or 1156 because the penalties provided therein are beyond the trial authority of such commissioners.

B. Section 1155, Title 18, USCA:

"1155. Intoxicants dispensed on school site

"Whoever, on any tract of land in the former Indian country upon which is located any Indian school maintained by or under the supervision of the United States, manufactures, sells, gives away, or in any manner, or by any means furnished to anyone, either for himself or another, any vinous, malt, or fermented liquors, or any other intoxicating drinks of any kind whatsoever, except for scientific, sacramental, medicinal or mechanical purposes, whether medicated or not, or who carries, or in any manner has carried, into such area any such liquors or drinks, or who shall be interested in such manufacture, sale, giving away, furnishing to anyone, or carrying into such area any of such liquors or drinks, shall be fined not more than \$500 or imprisoned not more than five years or both. June 25, 1948, c. 645, 62 Stat. 758."

As provided in the statute, it must be shown that the land constituting the school site is "in the former Indian country." That element must be proven and verified from pertinent records and cannot be assumed just because an Indian school is located on the land. Officers who are concerned with the problem should determine as an operating policy whether or not lands on which Indian schools are located come within the meaning of the statute.

C. Section 1156, Title 18, USCA:

"1156. Intoxicants possessed unlawfully

"Whoever, except for scientific, sacramental, medicinal or mechanical purposes, possesses intoxicating liquors in the Indian country or where the introduction is prohibited by treaty or an Act of Congress, shall, for the first offense, be fined not more than \$500 or imprisoned

APPLICATION OF FEDERAL CRIMINAL LAWS

not more than one year, or both; and, for each subsequent offense, be fined not more than \$2,000, or imprisoned not more than five years, or both.

"The term 'Indian country' as used in this section does not include fee-patented lands in non-Indian communities or rights-of-way through Indian reservation, and this section does not apply to such lands or rights-of-way in the absence of a treaty or statute extending the Indian liquor laws thereto. June 25, 1948, c. 645, 62 Stat. 759, amended May 24, 1949, c. 139, § 28, 63 Stat. 94."

As indicated in discussion under Section 1154, Section 1156 is joined with Section 1154 when reporting the possession of liquor in Indian country. The land must be identified and the restricted status within the definition of the statute verified by pertinent land records. Often the current holding document, such as the restricted title, or certificate of title, when certified by the head of the bureau or department is sufficient, in lieu of producing all the records, to prove jurisdiction. In the case of closed reservations where it can be substantially proven that the offense took place well within the exterior boundaries, the court will often take judicial notice that the land is restricted within the meaning of the statute. The United States Attorney's views should govern however.

D. Section 3113, Title 18, USCA:

"3113. Liquor violations in Indian country

"If any superintendent of Indian affairs, or commanding officer of a military post, or special agent of the Office of Indian Affairs for the suppression of liquor traffic among Indians and in the Indian country and any authorized deputies under his supervision has probable cause to believe that any person is about to introduce or has introduced any spirituous liquor, beer, wine or other intoxicating liquors named in sections 1154 and 1156 of this title into the Indian country in violation of law, he may cause the places, conveyances, and packages of such person to be searched. If any such intoxicating liquor is found therein, the same, together with such

APPLICATION OF FEDERAL CRIMINAL LAWS

conveyances and packages of such person, shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the informer and one-half to the use of the United States. If such person be a trader, his license shall be revoked and his bond put in suit.

"Any person in the service of the United States authorized by this section to make searches and seizures, or any Indian may take and destroy any ardent spirits or wine found in the Indian country, except such as are kept or used for scientific, sacramental, medicinal, or mechanical purposes or such as may be introduced therein by the Department of the Army.

"In all cases arising under this section and sections 1154 and 1156 of this title, Indians shall be competent witnesses. As amended Oct. 31, 1951, c. 655, § 30, 65 Stat. 721."

(1) Application of Statute

A reading of this statute indicates that a search warrant is not required to search for and seize intoxicating liquors in Indian country by appropriate officers. The courts have held that it does require that such searches and seizures be made on probable cause. This requirement clearly does not permit so-called "exploratory searches", and it does not permit unreasonable searches and seizures. This search and seizure authority is directed at things, in this case intoxicating liquor, and conveyances, and not at persons. Bureau officers can not make roadblock type searches of all vehicles entering Indian reservations, but are restricted to searches of definite places or conveyances based on probable cause. In order that Bureau practices be carried on within proper legal precepts, the same rules as pertain to other searches will apply. It must be noted that where illegal searches and seizures are made successful prosecutions can not be had against persons in whose possession liquors are found. However, intoxicating liquors or other contraband articles need not be returned to the owner or person in whose possession they are found, even where the

APPLICATION OF FEDERAL CRIMINAL LAWS

search proves to be illegal. Officers will note the provision that such liquors can be seized and destroyed where they are about to be introduced or are introduced in Indian country.

(2) Forfeitures of Articles and Conveyances

When proceeding to libel and forfeit articles or conveyances under this section and Section 3618 below, a separate report other than that against any person involved must be made to the United States Attorney titled: United States Government v. (description of articles or conveyance). (See Sample case report - vehicles.) The report must contain a complete description of the articles or conveyance, the ownership, the amount, approximate value, condition, in whose custody and where they are located. If the articles or conveyance are owned by some other person than in whose possession they were seized, or if some other person has a legal lien upon such property, it should be verified and reported to the United States Attorney. Section 3619, Title 18, USCA, provides that owners or lienholders are entitled to recover seized legal property if they can prove that they are innocent in the case. Copies of all such seizure reports will be mailed to the Central Office.

In some cases prior or subsequent to filing a case report for libel and forfeiture, the United States Attorney, after considering all the facts, may instruct the investigating officer to return vehicles to the rightful owner. In such cases officers should procure a receipt with a statement from the owner that the vehicle was returned in a satisfactory condition and that he will not make a claim against the officer or the Government for seizure or detention of the vehicle.

Section 1355, Title 28, USCA, and Section 2465 of same title, provide that the Federal district courts have original jurisdiction to enforce forfeitures incurred under any Act of Congress; they may enter judgment for the owner to reclaim property;

APPLICATION OF FEDERAL CRIMINAL LAWS

and they can certify that neither the officer who made the seizure, nor the prosecutor, shall be liable to suit where the seizure was made on reasonable cause.

Property seized by Federal officers pursuant to Federal statutes need not be surrendered to State court order. Such orders or requests for return of seized property must be referred to the United States Attorney for advice.

If an offender under the Indian liquor laws is a trader on an Indian reservation, licensed and bonded as required under regulations pursuant to sections 261 and 262, Title 25, USCA., officers must report the matter to the superintendent.

E. Section 3488, Title 18, USCA:

"3488. Intoxicating liquor in Indian country as evidence of unlawful introduction

"The possession by a person of intoxicating liquors in Indian country where the introduction is prohibited by treaty or Federal statute shall be prima facie evidence of unlawful introduction. June 25, 1948, c. 645, 62 Stat. 834."

Although it has been held in many cases that the possession of intoxicating liquor in Indian country is prima facie evidence of introduction, and that any conveyances are subject to seizure, libel, and forfeiture under Section 3618 below, it is incumbent on the officer to prove that there was some intent on the part of the offender to introduce it in Indian country, that his destination with the liquor was not some place beyond the limits of the reservation, or that he had more than a mere amount for his own consumption. Courts have said that forfeitures are odious and should be declared only where evidence is clear that the offender had an unlawful intent.

APPLICATION OF FEDERAL CRIMINAL LAWS

F. Section 3618, Title 18, USCA:

"3618. Conveyances carrying liquor

"Any conveyance, whether used by the owner or another in introducing or attempting to introduce intoxicants into the Indian country, or into other places where the introduction is prohibited by treaty or enactment of Congress, shall be subject to seizure, libel, and forfeiture. June 25, 1948, c. 645, 62 Stat. 841."

Reference to this section should be made in the report to the U. S. Attorney, in addition to Sections 1154 and 1156 of the same title, when proceeding to seek libel and forfeiture of conveyances. Notes under preceding sections should be observed.

G. Section 3619, Title 18, USCA:

"3619. Disposition of conveyances seized for violation of the Indian liquor laws

"The provisions of section 3617 of this title shall apply to any conveyances seized, proceeded against by libel, or forfeited under the provisions of section 3113 or 3618 of this title for having been used in introducing or attempting to introduce intoxicants into the Indian country or into other places where such introduction is prohibited by treaty or enactment of Congress. Added Oct. 24, 1951, c. 546, § 2, 65 Stat. 609."

This section makes it mandatory that the provisions of Section 3617 apply to seizures, libels and forfeitures of vehicles seized under the preceding sections. Section 3617 provides that owners, or persons with lawful liens, of vehicles may apply to the district courts for recovery of the vehicles or mitigation of the forfeiture and that such claims may be granted if the claimant can prove that he is innocent of the violation in all respects. It is therefore incumbent upon the investigating officer to determine ownership of such vehicles and whether or not the owner or lienholder, if he is other than the offender, had any knowledge or intent with respect to the unlawful use in which the vehicle may have been used. Such findings must be reported to the U. S. Attorney promptly.

APPLICATION OF FEDERAL CRIMINAL LAWS

H. Section 1161, Title 18, USCA:

"116. Application of Indian liquor laws

"The provisions of section 1154, 1156, 13113, 3488, and 3618, of this title, shall not apply within any area that is not Indian country, nor to any act or transaction within any area of Indian country provided such act or transaction is in conformity both with the laws of the State in which such act or transaction occurs and with an ordinance duly adopted by the tribe having jurisdiction over such area of Indian country, certified by the Secretary of the Interior, and published in the Federal Register. Added Aug. 15, 1953, c. 502, § 2, 67 Stat. 586."

(1) Tribal Liquor Ordinances by States

<u>Arizona</u>	<u>Fed. Reg. No.</u>	<u>Effective Date</u>
San Carlos Apache White Mountain Apache	22 F. R. 6442	8-10-57
	23 F. R. 364	1-21-58
 <u>California</u>		
Los Coyotes Band of Mission Indians	20 F. R. 7232	9-28-55
Tule River	19 F. R. 2065	4-9-54
Colorado River	19 F. R. 3630	6-18-54
Guideville Band of Pomo Indians	19 F. R. 432	1-26-54
Graton Rancheria	19 F. R. 3339	6-5-54
Upper Lake Pomo	18 F. R. 8514	12-18-53
Quartz Valley	18 F. R. 8514	12-18-53
Aqua Caliente (Palm Springs)	18 F. R. 7827	12-4-53
Pala Band of Indians	25 F. R. 3343	4-16-60
Sycuan Band of Mission Indians	25 F. R. 6887	7-20-60

APPLICATION OF FEDERAL CRIMINAL LAWS

<u>Michigan</u>	<u>Fed. Reg. No.</u>	<u>Effective Date</u>
Keweenaw Bay	19 F. R. 4739	7-31-54
 <u>Minnesota</u>		
Minnesota Chippewa Tribe	20 F. R. 5556	8- 3-55
Prairie Island Community	19 F. R. 1778	3-31-54
New Upper Sioux Community	19 F. R. 4738	7-31-54
Lower Sioux Indian Community	19 F. R. 2573	5- 4-54
 <u>Montana</u>		
Blackfeet	19 F. R. 1049	2-24-54
Amended	19 F. R. 6721	10-19-54
Supp.	25 F. R. 7469	8- 6-60
Chippewa Cree of Rocky Boy's	19 F. R. 2572	5- 4-54
Fort Belknap	18 F. R. 7478	11-21-53
Conf. Salish and Kootenai	25 F. R. 8151	8-25-60
 <u>Nevada</u>		
Walker River	20 F. R. 3517	5-19-55
Pyramid Lake	24 F. R. 8120	10- 7-59

APPLICATION OF FEDERAL CRIMINAL LAWS

<u>New Mexico</u>	<u>Fed. Reg. No.</u>	<u>Effective Date</u>
Jicarilla Apache	23 F. R. 5018	7- 1-58
Sandia Pueblo	23 F. R. 1742	3-13-58
 <u>North Dakota</u>		
Turtle Mountain	20 F. R. 4272	6-17-55
Fort Berthold	21 F. R. 1076	2-16-56
Standing Rock	18 F. R. 8623	12-22-53
 <u>Oregon</u>		
Klamath	18 F. R. 7178	11-11-53
 <u>South Dakota</u>		
Lower Brule	19 F. R. 2573	5- 4-54
Cheyenne River	18 F. R. 7479	11-21-53
Standing Rock	18 F. R. 8623	12-22-53
 <u>Utah</u>		
Ute Tribe of Uintah and Ouray	20 F. R. 3517	5-19-55

APPLICATION OF FEDERAL CRIMINAL LAWS

<u>Washington</u>	<u>Fed. Reg. No.</u>	<u>Effective Date</u>
Spokane	20 F. R. 3517	5-19-55
Colville	18-F. R. 7518	11-25-53
Quileute	19 F. R. 4738	7-31-54
Tulalip	24 F. R. 6656	8-15-59

Wisconsin

Red Cliff	19 F. R. 2572	5- 4-54
Bad River	19 F. R. 274	1-15-54
Menominee	24 F. R. 818	2- 4-59

Wyoming

Wind River	18 F. R. 8514	12-18-53
------------	---------------	----------

Officers will note the provision that traffic in intoxicating liquor in Indian country where permitted by appropriate ordinance must be in conformance with State and tribal laws. Violations such as sales to minors, sales to intoxicated persons, sales on prohibited days or hours, and any violation of State or tribal laws are also Federal offenses.

I. Section 251, Title 25, USCA:

"251. Setting up distillery.

"Every person who shall, within the Indian country, set up or continue any distillery for manufacturing ardent spirits, shall be liable to a penalty of \$1,000; and the

APPLICATION OF FEDERAL CRIMINAL LAWS

superintendent of Indian affairs, Indian agent, or subagent, within the limits of whose agency any distillery of ardent spirits is set up or continued, shall forthwith destroy and break up the same. (R. S. § 2141.)"

This section, although not transferred to Title 18 with the other liquor law sections in 1940 is still in effect. Indian Bureau officers have the responsibility of enforcing this statute. If ownership can be proven the materials constituting the distillery should be seized and held for evidence rather than destroyed. If ownership cannot be proven they may be destroyed on the spot.

J. Use of Revenue Laws

Officers will often find it more feasible of prosecution to proceed under the Revenue Laws when liquor offenses are encountered. One of the more common violations is the resale of tax-paid liquor. Where it is found that the offender does not possess a special permit from the Bureau of Internal Revenue for retail sale of intoxicating liquor, he may also be proceeded against under the Revenue Laws and any conveyance used in the violation is subject to seizure. See Alcohol and Tobacco Tax Division.

.2 Protection of Property

The following Federal statutes on protection of property by their nature indicate that offenders should not be taken into custody until full reports are made, and warrants are issued. Because in most of these cases reparable damages may be sought, or alternative measures taken to remedy grievances or wrongs, reports should be made to official superiors. This is not meant to preclude procedural discussions with Field Solicitors and U. S. Attorneys.

Physical or viewable evidence should be identified, counted, photographed, and recovered and preserved if possible.

This does not preclude immediate arrest of persons in cases of malicious destruction or theft or embezzlement of government or private property where the officer has probable cause to arrest.

APPLICATION OF FEDERAL CRIMINAL LAWS

A. Section 177, Title 25, USCA:

"177. Purchases or grants of lands from Indians.

"No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution. Every person who, not being employed under the authority of the United States, attempts to negotiate such treaty or convention, directly or indirectly, or to treat with any such nation or tribe of Indians for the title or purchase of any lands by them held or claimed, is liable to a penalty of \$1,000. The agent of any State who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner of the United States appointed to hold the same, may, however, propose to, and adjust with, the Indians the compensation to be made for their claim to lands within such State, which shall be extinguished by treaty. (R. S. § 2116.)"

B. Section 179, Title 25, USCA:

"179. Driving stock to feed on lands.

"Every person who drives or otherwise conveys any stock of horses, mules, or cattle, to range and feed them on any land belonging to any Indian or Indian tribe, without the consent of such tribe, is liable to a penalty of \$1 for each animal of such stock. This section shall not apply to Creek lands. (R. S. s 2117; Mar. 1, 1901, c. 676, § 37, 31 Stat. 871)"

C. Section 180, Title 25, USCA:

"180. Settling on or surveying lands belonging to Indians by treaty.

"Every person who makes a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or surveys or attempts to survey such lands, or to designate any of the boundaries by marking trees, or

APPLICATION OF FEDERAL CRIMINAL LAWS

otherwise, is liable to a penalty of \$1,000. The President may, moreover, take such measures and employ such military force as he may judge necessary to remove any such person from the lands. (R.S. § 2118.)"

D. Section 202, Title 25, USCA:

"202. Inducing conveyances by Indians of trust interests in lands.

"It shall be unlawful for any person to induce any Indian to execute any contract, deed, mortgage, or other instrument purporting to convey any land or any interest therein held by the United States in trust for such Indian, or to offer any such contract, deed, mortgage, or other instrument for record in the office of any recorder of deeds. Any person violating this provision shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding \$500 for the first offense, and if convicted for a second offense may be punishable by a fine not exceeding \$500 or imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the court. This section shall not apply to any lease or other contract authorized by law to be made. (June 25, 1910, ch. 431, § 5, 36 Stat. 857)."

E. Section 216, Title 25, USCA:

"216. Hunting on Indian Lands.

"Every person, other than an Indian, who, within the limits of any tribe with whom the United States has existing treaties, hunts, or traps, or takes and destroys any peltries or game, except for subsistence in the Indian country, shall forfeit all the traps, guns and ammunition in his possession, used or procured to be used for that purpose, and all peltries so taken; and shall be liable in addition to a penalty of \$500. (R. S. § 2137.)"

(1) Other Provisions:

In the absence of contrary legislation by Congress, State fish and game conservation laws and regulations are inapplicable to Indians who hunt and fish on

APPLICATION OF FEDERAL CRIMINAL LAWS

trust or restricted lands within Indian reservations. Except where limited by Federal statute or treaty, the regulation of hunting and fishing within Indian reservations is generally under the jurisdiction and control of the Indian tribes. The term "hunting" as used herein means any game or wild fowl taking activity; and the term "fishing" is considered to mean the taking of any fish or other aquatic life by any means.

(a) Indians Fishing and Hunting on their Reservation.

With the exception of such inclusive legislation as the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755) and the Act of June 8, 1940 (54 Stat. 250) for the protection of the American Bald Eagle (50 CFR 7), Congress has not authorized the issuance of general regulations for fish and wildlife conservation and control of hunting and fishing activities among Indians on Indian Reservations. Generally speaking, Indians enjoy the exclusive right to hunt and fish on their trust or restricted lands within their reservation. In some cases this right has been provided by treaty with the Indians; and in others it has been upheld by the Federal courts as impliedly reserved by the Indians. In these circumstances Indians may hunt or fish on such lands without infringing State fish and game laws. In view of the many treaties entered into with Indians, it is essential that the treaty or treaties with a particular tribe and the court decisions relating thereto be carefully studied to determine the fishing or hunting rights of the members of that tribe. Where lands have been allotted to individual members of the tribe, Indians other than the particular allottee have no right to hunt or fish upon the land without the consent of the allottee.

(b) Indians Fishing and Hunting Off Their Reservation.

Indians, except where their treaties otherwise provide, who hunt or fish outside their reservation

APPLICATION OF FEDERAL CRIMINAL LAWS

or on lands which are no longer restricted or held in trust are subject to the State fish and game conservation laws. Treaties with certain tribes reserve to tribal members, however, a right to hunt and fish on ceded lands outside their reservation, or to "fish at all usual and accustomed places, in common with the citizens of the Territory" (now State). The right provided by treaty for Indians to hunt outside their reservation is usually limited by such phrases as "so long as the same (ceded lands) shall remain property of the United States" or "during the pleasure of the President," or to "open and unclaimed land." A State cannot by legislation or otherwise deny the Indians these rights guaranteed by treaty but the State may enforce reasonable conservation laws applicable alike to all citizens of the State. See Tulee v. State of Washington, 315 U.S.C. 681 (1942).

(c) Hunting and Fishing by Non-Indians on an Indian Reservation.

Non-Indians and Indians who are not members of the particular tribe have no right to hunt or fish on the trust or restricted lands within a reservation without the consent of the tribe. Non-Indians and Indian non-tribal members who have the consent of the tribe to hunt or fish within the reservation do not have a right to hunt or fish on trust or restricted allotted land without the consent of the particular allottee. Non-Indians who have received tribal consent to hunt or fish must not only comply with special tribal rules and regulations as may be in force on the reservation, but are also subject to State and Federal laws.

(d) Hunting and Fishing Regulations on Indian Reservations.

An Indian tribe may regulate and control game and fishtaking activities of Indians and non-Indians by enacting a suitable ordinance.

APPLICATION OF FEDERAL CRIMINAL LAWS

F. Section 1158, Title 18, USCA:

"1158. Counterfeiting Indian Arts and Crafts Board trade-mark.

"Whoever counterfeits or colorably imitates any Government trade mark used or devised by the Indian Arts and Crafts Board in the Department of the Interior as provided in section 305a of Title 25, or, except as authorized by the Board, affixes any such Government trade mark, or knowingly, willfully, and corruptly affixes any reproduction, counterfeit, copy, or colorable imitation thereof upon any products, or to any labels, signs, prints, packages, wrappers, or receptacles intended to be used upon or in connection with the sale of such products; or

"Whoever knowingly makes any false statement for the purpose of obtaining the use of any such Government trade mark -

"Shall be fined not more than \$500 or imprisoned not more than six months, or both; and shall be enjoined from further carrying on the act or acts complained of. June 25, 1948, c. 645, 62. Stat. 758."

G. Section 1159, Title 18, USCA:

"1159. Misrepresentation in sale of products.

"Whoever willfully offers or displays for sale any goods, with or without any Government trade mark, as Indian products or Indian products of a particular Indian tribe or group, resident within the United States or the Territory of Alaska (State), when such person knows such goods are not Indian products or are not Indian products of the particular Indian tribe or group, shall be fined not more than \$500 or imprisoned not more than six months, or both. June 25, 1948, c. 645, 62 Stat. 759."

H. Section 1160, Title 18, USCA:

"1160. Property damaged in committing offense.

"Whenever a white person, in the commission of an offense within the Indian country takes, injures or

APPLICATION OF FEDERAL CRIMINAL LAWS

destroys the property of any friendly Indian the judgment of conviction shall include a sentence that the defendant pay to the Indian owner a sum equal to twice the just value of the property so taken, injured, or destroyed.

"If such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States. If such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury. But no Indian shall be entitled to any payment out of the Treasury of the United States, for any such property, if he, or any of the nation to which he belongs, have sought private revenge, or have attempted to obtain satisfaction by any force or violence. June 25, 1948, c. 645, 62 Stat. 759."

I. Section 1853, Title 18, USCA:

"1853. Trees cut or injured.

"Whoever unlawfully cuts, or wantonly injures or destroys any tree growing, standing, or being upon any land of the United States which, in pursuance of law, has been reserved or purchased by the United States for any public use, or upon any Indian reservation, or lands belonging to or occupied by any tribe of Indians under the authority of the United States, or any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than \$1,000 or imprisoned not more than one year, or both. June 25, 1948, c. 645, 62 Stat. 787."

J. Section 1855, Title 18, USCA:

"1855. Timber set afire.

"Whoever, willfully and without authority, sets on fire any timber, underbrush, or grass or other inflammable material upon the public domain or upon any lands owned or leased by or under the partial, concurrent, or exclusive

APPLICATION OF FEDERAL CRIMINAL LAWS

jurisdiction of the United States, or under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, or upon any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under authority of the United States, or upon any Indian allotment while the title to the same shall be held in trust by the Government, or while the same shall remain inalienable by the allottee without the consent of the United States, shall be fined not more than \$5,000 or imprisoned not more than five years, or both.

"This section shall not apply in the case of a fire set by an allottee in the reasonable exercise of his proprietary rights in the allotment. June 25, 1948, c. 645, 62 Stat. 788."

K. Section 1856, Title 18, USCA:

"1856. Fires left unattended and unextinguished.

"Whoever, having kindled or caused to be kindled, a fire in or near any forest, timber, or other inflammable material upon any lands owned, controlled or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States, including lands under contract for purchase or for the acquisition of which condemnation proceedings have been instituted, and including any Indian reservation or lands belonging to or occupied by any tribe or group of Indians under the authority of the United States, or any Indian allotment while the title to the same is held in trust by the United States, or while the same shall remain inalienable by the allottee without the consent of the United States, leaves said fire without totally extinguishing the same, or permits or suffers said fire to burn or spread beyond his control, or leaves or suffers said fire to burn unattended, shall be fined not more than \$500 or imprisoned not more than six months, or both. June 25, 1948, c. 645, 62 Stat. 788."

BIAM REISSUE
FEBRUARY 1984

APPLICATION OF FEDERAL CRIMINAL LAWS

Sections 1853, 1855 and 1856, have been incorporated in 25 CFR 141.22 as part of the General Forest Regulations of the Department. Violations under these sections should be reported to Bureau forestry officials and cooperation given in the investigation thereof. (See 53 IAM 10. Timber Trespass)

.3 Trading With Indians

A. Section 68, Title 25, USCA:

"68. Employees not to trade with Indians.

"No person employed in Indian affairs shall have any interest or concern in any trade with the Indians, except for, and on account of, the United States; and any person offending herein, shall be liable to a penalty of \$5,000, and shall be removed from his office. (R. S. § 2078.)"

B. Section 68a, Title 25, USCA:

"68a. Same; purchases from Indians by employees.

"Anything contained in sections 68 and 87 of this title to the contrary notwithstanding, employees of the United States Government, including those in the Indian Service, may, under such rules and regulations as the Secretary of the Interior shall prescribe, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service, or commodity, produced, rendered, owned, controlled, or furnished by any Indian or Indian organization: Provided, however, that no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee. June 19, 1939, c. 210, 53 Stat. 840."

C. Section 87a, Title 25, USCA:

"87a. Purchases from Indians by employees.

Anything contained in sections 68 and 87 of this title to the contrary notwithstanding, employees of the United

APPLICATION OF FEDERAL CRIMINAL LAWS

States Government, including those in the Indian Service, may, under such rules and regulations as the Secretary of the Interior shall prescribe, be permitted to purchase from any Indian or Indian organization any arts and crafts or any other product, service, or commodity, produced, rendered, owned, controlled, or furnished by any Indian or Indian organization: Provided, however, that no employee of the United States Government shall be permitted to make any such purchases for the purpose of engaging directly or indirectly in the commercial selling, reselling, trading, or bartering of said purchases by the said employee. June 19, 1939, c. 210, 53 Stat. 840."

D. Section 437, Title 18, USCA:

"437. Indian contracts for goods and supplies.

"Whoever, being an officer, employee, or agent of the United States or any department or agency thereof, has any interest, direct or indirect, in any contract made or under negotiation, with the Government or with the Indians, for the purchase or transportation or delivery of goods or supplies for the Indians, or for the removal of the Indians, or colludes with any person attempting to obtain such contract, shall be fined not more than \$5,000 or imprisoned not more than six months, or both; and removed from office. June 25, 1948, c. 645, 62 Stat. 703."

E. Section 441, Title 25, USCA:

"441. Indian employees of Government; entitlement to Indian benefits.

"Nothing contained in sections 68 and 87 of this title shall be construed as preventing Indian employees of the United States Government, of whatever degree of Indian blood, during their term of employment or otherwise, from obtaining or receiving any benefit or benefits made available to the Indians generally or to the members of any particular tribe, under any Act of Congress, nor to prevent such employees having Indian blood from being members of or receiving benefits by reason of their membership in Indian tribes, corporations, or cooperative associations organized by the Indians, when authorized by the

APPLICATION OF FEDERAL CRIMINAL LAWS

Secretary of the Interior under appropriate regulations to be promulgated by him. June 19, 1939, c. 210, 53 Stat. 840."

F. Section 264, Title 25, USCA:

"264. Trading without license; white persons as clerks.

"Any person other than an Indian of the full blood who shall attempt to reside in the Indian country, or on any Indian reservations, as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians or found in his possession, and shall moreover be liable to a penalty of \$500: Provided, that this section shall not apply to any person residing among or trading with the Choctaws, Cherokees, Chickasaws, Creeks, or Seminoles, commonly called the Five Civilized Tribes, residing in said Indian country, and belonging to the Union Agency therein: And provided further, that no white person shall be employed as a clerk by any Indian trader, except such as trade with said Five Civilized Tribes, unless first licensed so to do by the Commissioner of Indian Affairs, under and in conformity to regulations to be established by the Secretary of the Interior. (R. S. § 2133; July 31, 1882, c. 360, 22 Stat. 179.)"

.4 Health and Education

A. Section 198, Title 25, USCA:

"198. Contagious and infectious diseases; quarantine.

"Whenever the Secretary of the Interior shall find any Indian afflicted with tuberculosis, trachoma, or other contagious or infectious diseases, he may, if in his judgment the health of the afflicted Indian or that of other persons require it, isolate or quarantine such afflicted Indian in a hospital or other place for treatment. The Secretary of the Interior, may employ such means as may be necessary in the isolation, or quarantine, of such Indian, and it shall be the duty of such Indian so afflicted to obey any order or regulation made by the Secretary of the Interior in carrying out this provision. (Aug. 1, 1914, ch. 222, § 1, 38 Stat. 584)

APPLICATION OF FEDERAL CRIMINAL LAWS

Special Note: Effective July 1, 1955, pursuant to Public Law 568, 83rd Congress (68 Stat. 674), all functions, responsibilities, authorities and duties of the Department of the Interior, the Bureau of Indian Affairs, the Secretary of the Interior, and the Commissioner of Indian Affairs relating to the maintenance and operation of hospital and health facilities for Indians and conservation of the health of Indians were transferred to the Surgeon General of the Public Health Service. The regulations under former Parts 84 and 85 of Title 25, Code of Federal Regulations, were revoked and are now set out as Part 36, Title 42, CFR, Public Health. See also Relations with Public Health Service.

B. Section 231, Title 25, USCA:

"231. Enforcement of state laws affecting health and education; entry of state employees on Indian lands.

"The Secretary of the Interior, under such rules and regulations as he may prescribe, shall permit the agents and employees of any State to enter upon Indian tribal lands, reservations, or allotments therein (1) for the purpose of making inspection of health and educational conditions and enforcing sanitation and quarantine regulations or (2) to enforce the penalties of State compulsory school attendance laws against Indian children, and parents, or other persons in loco parentis except that this subparagraph (2) shall not apply to Indians of any tribe in which a duly constituted governing body exists until such body has adopted a resolution consenting to such application. Feb. 15, 1929, c. 216, 45 Stat. 1185, as amended Aug. 9, 1946, c. 930, 60 Stat. 962."

This section may be modified by action of local tribal governing bodies. See Relations with Education and PHS-ID.

5 REPORTS AND REPORT WRITING

TABLE OF CONTENTS

5.1 Introduction

5.2 Case Reports

5.3 Final Disposition Reports

5.4 Memorandum Reports

5.5 Special Reports

5.6 Marking of Reports

5.7 Officer's Weekly Activity Reports

5.8 ~~Monthly Statistical and Narrative Reports~~ } 68 BIA M Supp. 1
Release 8,
12-20-76

5.9 ~~Annual Statistical Reports~~
~~Monthly Narrative Reports~~

5.10 Theft or Depredation of Government Property Reports

5.11 Writing Case Reports

- Illustration No. 1
- Illustration No. 1a
- Illustration No. 1b
- Illustration No. 1c

Illustration No. 2

Illustration No. 3

Illustration No. 4

Illustration No. 5 (5 sheets)

Illustration No. 6

Illustration No. 7

} 68 BIA M Supp. + Ref. 8,
12-20-76

Release 68-4, 6-25-65

5 REPORTS AND REPORT WRITING

5.1 Introduction. Reports and report writing are indispensable elements of law enforcement work. Preparation of the required Bureau reports set out in this chapter should be consistent and follow generally accepted standards of report writing in order to provide adequate control and administration. The principal objectives of law and order reports are:

- (1) to maintain a necessary flow of factual information required to record, carry out and complete an investigation which may lead to prosecution for a criminal offense and/or establish information which will result in an effective preventative program, and
- (2) to keep administrative and operational officials fully informed of conditions and serve as an important management tool for the control and improvement of overall operations.

Operational reports will be made on the various forms designated in this chapter. Illustrations of the required forms and detailed explanations of their use are found at the end of this chapter. Required Bureau law and order reports are as follows:

1. Case Reports (Form 5-324)
2. Final Disposition Reports (Form 5-324A)
3. Memorandum Reports (Optional Form 10)
4. Special Reports on Bureau letterhead
5. Officer's Weekly Activity Report (Local form)
6. Monthly Statistical Report (Form 5-327, Parts I and II)
7. Annual Statistical Report (Form 5-327, Parts I and II)
8. Theft and/or Depredation of Government Property Report

5.2 Case Reports.

Whenever a violation of Federal law involving criminal activity takes place, a case report, using Form 5-324 as a face sheet, will be made by the officer conducting the investigation. Plain bond paper is to be used for the second and subsequent pages as necessary.

REPORTS AND REPORT WRITING

All case reports will be assigned a control number for identification and reporting purposes. Officers preparing case reports will retain the original in the file of the reporting unit. A minimum of three copies are to be submitted to the Area Office for distribution by that office. No final case reports are to be submitted to the Central Office unless a specific request is made for an individual report.

Agency Special Officers are responsible for the content and format of case reports submitted to higher headquarters. They will review all case reports for full compliance with established reporting procedures prior to transmittal as required herein. Reports that do not meet accepted standards will be returned to the originating office for action as indicated by the reviewing officer.

Area Special Officers, after determining that a case report has met all the requirements, will transmit, with an appropriate letter, one copy to the local United States District Attorney and one copy to the Special Agent in Charge of the local office of the Federal Bureau of Investigation. Reporting officers are responsible for the proper preservation of all original documents used in preparation of the completed case report. See Illustrations Nos. 1, 1a, 1b and 1c for detailed instructions on the preparation of these reports.

5.3 Final Disposition Reports.

When the final disposition has been made of a case reported under Section 5.2, Form 5-324A will be completed by the originating office. The report will reflect sufficient information so that any novel or special conditions that might have resulted in an unsuccessful prosecution may be noted. If a dismissal or acquittal is noted on the form, the reasons for such action must be reported. Copies and distribution of this form will be made as for case reports under Section 5.2. See Illustration No. 2 for an example of a completed Form 5-324A.

REPORTS AND REPORT WRITING

5.4 Memorandum Reports.

For memorandum type reports, Optional Form No. 10 will be used as a face sheet. Reporting officers should properly identify these reports by subject matter. Generally, this type report is used for internal operating control.

5.5 Special Reports.

In some instances, Special Reports will be required. These will be made on Bureau letterhead paper. The heading will read "Special Report - Matter of (subject matter)". These reports will be made for, but not limited to, internal Bureau field visits and inquiries, administrative inquiries in response to requests from higher headquarters and other reports to non-Bureau agencies. See Illustration No. 3 for an example.

5.6 Marking of Reports.

All reports listed above will be marked "U.S. GOVERNMENT USE ONLY", thus limiting access to such reports to appropriate officials. Furnishing of case reports to other than appropriate Federal officials must be cleared prior to release with the United States District Attorney.

When a co-operative investigation is made with a non-Federal agency, Bureau officers participating will furnish the Area Office with a Memorandum Report (See Section 5.4) detailing the extent of participation by Bureau personnel. Requests for copies of Bureau reports by non-Federal enforcement agencies are subject to existing Area controls.

5.7 Officer's Weekly Activity Report.

Every field enforcement officer of the Bureau is required to submit a Weekly Activity Report to the officer in charge of the reservation law and order program. Agency Special Officers will be responsible for reviewing these reports. The design and format of the report will be developed by the appropriate Area Office.

REPORTS AND REPORT WRITING

It is suggested that such reports contain (1) a clear and concise statement of the officer's activities for each day of duty, (2) the time of entering on and leaving duty, (3) assignments during duty hours, (4) identification of cases worked and results obtained, if known, (5) special assignments, (6) miles traveled, (7) work or travel with other officers, (8) attendance at court sessions other than routine tribal court, (9) community meetings or training sessions, and (10) other related activities. Officers will retain a copy of their Weekly Activity Report. See Illustration No. 4 for an example of a typical report.

Special attention is directed to 44 IAM Pl.10, Premium Compensation, and Illustrations No. 3 and 4 at the end of 44 IAM Pl, Pay Administration, which explain in detail the recording of irregular, unscheduled, administratively uncontrolled overtime. Special emphasis will be placed on the completeness and accuracy of the forms required thereunder for establishing the qualification of officers, on an individual basis, for receipt of Premium Compensation.

Area Special Officers are required to make a semi-annual review of all documents required under these sections and furnish the Superintendent and Area Personnel Officer with a report of his findings. Any discrepancies must be cleared with appropriate Bureau personnel concerned, usually the Branch of Personnel in the Area Office.

~~5.8 Monthly Statistical and Narrative Reports.~~

~~A monthly statistical report on Form 5-327, Parts I and II, will be made for each reservation and/or community where law and order is maintained for Indians by application of Federal and/or tribal laws.~~

~~In addition to the monthly statistical report, a narrative summation on Optional Form 10, giving an account of the general condition of the local law and order program is required. The narrative report will be submitted to the Area Office for informational purposes and for inclusion, as required, in the Area Monthly Narrative Report.~~

*68 Suppl Rel. 8,
12-20-76*

JF 12-29-83

REPORTS AND REPORT WRITING

~~See Illustrations Nos. 5, 6 and 7 and the instructions for preparation of the Annual Statistical Report.~~

68 Supp 1 Ref. 8,
12-20-76

-M 12/29/83

5.10 Theft or Depredation of Government Property Reports.

Whenever a theft or depredation to Federal property occurs, the Agency Special Officer will prepare a Special Report (See Section 5.5) outlining the circumstances involved. An original and two copies will be furnished the Area Office for transmittal to the Central Office. One copy will be retained at the Area Office.

If an employee is involved in such incidents, the instructions contained in 44 IAM C2 are applicable and must be followed.

5.11 Writing Case Reports.

The efficiency of the reporting organization is at once reflected by the style and content of its reports. Officers must be report writing conscious both during the investigative process and when preparing reports of all classes. An investigator is a fact finder. His report determines, in many instances, the success or failure of the proper handling of cases in or out of court. The final report should contain only the factual material determined during the course of the investigation. If information reported is questionable in nature, the report should so indicate and state why it is questionable. Reports should show the source of information in all cases. They should be prepared in a concise, clean-cut and simple style and written in the third person. Supervisory personnel are required to review all reports to ensure accuracy, completeness and clarity. Any reports not meeting accepted law enforcement standards will be returned for correction of deficiencies noted by review officers.

Form 5-324, Case Report (See Section 5.2, Case Reports), was cleared by many prosecuting officials handling Indian cases before it was adopted. If properly completed it will serve as a guideline from which officials may prepare indictments or criminal complaints.

REPORTS AND REPORT WRITING

The report of the investigator must contain sufficient information essential to determine the chronology of events as well as the results of those events. The report must show (1) WHO as follows: WHO was injured, was he an Indian or non-Indian, enrolled or unenrolled, did he have other tribal connections. WHO committed the offense (naming all if more than one), was he an Indian or non-Indian, enrolled or unenrolled, did he have other tribal connections. WHO discovered and reported the offense. WHO took part in the investigation. WHO are the witnesses. WHO wrote the report and WHO holds the evidence.

The report must also show (2) WHAT CRIME was committed. (3) WHAT WEAPON, if any, was used. (4) WHERE the offense took place, giving a complete legal description of the site and status of the land to properly determine jurisdiction in the matter. (5) WHEN the offense took place. (6) HOW it was accomplished. (7) WHY was the offense committed to show motive and degree and (8) ARREST STATUS of the subject(s) so that prosecuting officials know what was done with them.

Illustrations Nos. 1, 1a, 1b and 1c should be reviewed prior to preparation of final case reports to assure compliance with the instructions contained therein.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

CASE REPORT

Report made by: John J. Jones, Special Officer, Ft. Peck Agency
Date July 10 1959 Address: Poplar, Montana

Officer's Case
No. JFP-59-26

Title of case: United States v. DAVID TALLPIPE, Indian, Crow Tribe, Hardin, Montana, & John Tallpipe.

HOMICIDE ON INDIAN LAND

Witnesses: William J. Muskrat, w/a Billie Joe, Indian, P. O. Box 10, Poplar, Montana

Dr. Thomas Knight, M. D., Public Health Service, Poplar, Montana
(Performed autopsy - report attached)

Fred Blackbird, Indian Police, Fort Peck Agency, Poplar, Montana
(Recovered weapon - participated in investigation)

Howard K. Smith, Forester, Fort Peck Agency, Poplar, Montana.
(Ran survey lines - can certify land site.)

See next sheet for additional witnesses.

Statute and section involved in violation:

Reference is made to SECTION 1153, Title 18, USCA - Murder

Place of offense and status of land:

The home of JOHN CASH located on his restricted Indian allotment No. 44, described as W/2 of the SW/4, Section 25, Township 16 North, Range 15 East, Fort Peck Indian Reservation, Roosevelt County, Montana. Land records in custody of Wm. B. Reed, Realty Officer, Fort Peck Agency, Poplar, Montana.

Specific offense:

MURDER - Subject David Tallpipe, during a burglary and flight, shot John Cash in the chest two times with a 32 caliber automatic pistol. Cash is an enrolled Sioux Indian of the Fort Peck Tribes. Died in hospital 11:30 p.m.

Date of offense:

July 3, 1959 - 11 P.M. (Friday)

Evidence seized, date, disposition:

1. One 32 cal. Colt automatic pistol, Serial No. 2311, owned by William J. Muskrat, seized July 3 from Subject Tallpipe by Indian Police Blackbird, marked for identification by him on base of handle.
 2. One black leather wallet, owned by deceased John Cash, found in possession of Subject Tallpipe after arrest by Indian Police Blackbird.
 3. Original of a signed confession given by Subject Tallpipe to Officers Blackbird and Jones, copy attached hereto. (See next sheet for other items.)
- All items in custody of Special Officer Jones at Fort Peck Agency.

Facts of the case and

Personal history of defendant (use separate sheet):

Copies furnished to:

Area-District Director (one copy for each defendant).

Indian Agency (one copy for each defendant).

United States

County

Attorney at Billings, Montana

BIAM REISSUE
FEBRUARY 1984

Also when case is finally disposed of and involves sentence of more than one year, two copies, with copy of Final Report (Form 5-324A), to Federal Penal Institution to which defendant is committed. If defendant is placed on probation, send copies to Federal Probation Officer for the Federal Judicial district in which sentence is passed.

UNITED STATES
DEPARTMENT OF THE INTERIOR Illustration No. 1a
BUREAU OF INDIAN AFFAIRS

68 IAM 5

CASE REPORT

Report made by: John J. Jones, Special Officer, Fort Peck Agency Officer's Case
Date July 10 1959 Address: Poplar, Montana No. JFP-59-27

Title of case: United States v. One 1959 model Ford sedan, Motor No. N1959-710
Montana 1959 registration No. 59-107, owned by
John Henry Jackson, Frazer, Montana

SEIZURE OF MOTOR VEHICLE

Indian Liquor Laws

Witnesses:

List witnesses, same as in Illustration No. 1

Statute and section involved in violation:

Reference is made to Sections 1154, 1156, and 3618, Title 18, USCA.

Place of offense and status of land:

Use same general type of description of land involved as in Illustration No. 1.
Show status and source of land records to sustain status, and identify custodian
of records.

Specific offense:

This vehicle was used in the transportation of four 24 pint cases of wine onto
the above described land. It was driven by and under the control of Subject
Jackson at the time of arrest. The roadway at point of seizure is not a legal
Date of offense: July 3, 1959 - 11 PM (Friday) right-of-way.

Date of offense:

Evidence seized, date, disposition:

Show by identification and amount the substance of the seizure, that it has been
marked for identification and by whom, and also show in whose custody the
evidence is retained.

The second sheet of the report will follow generally that shown in Illustration
No. 1. Be sure to show the value of the vehicle seized, general condition of
mechanical parts, any liens or conditional sales contracts pertaining to it and
by whom held. Show where the vehicle is stored and under whose custody. Show
whether or not lienholder had knowledge of illegal use of vehicle. Show
facts of the case and

Personal history of defendant (use separate sheet):

Same as in Illustration 1, except that copies should also

Copies furnished to: be sent to the Central Office, with a recommendation as to
the disposition of the vehicle.

District Director (one copy for each defendant).

Indian Agency (one copy for each defendant).

United States

County

Attorney at _____

BIAM REISSUE

FEBRUARY 1984

Also when case is finally disposed of and involves sentence of more than one year,
two copies, with copy of Final Report (Form 5-324A), to Federal Penal Institu-
tion to which defendant is committed. If defendant is placed on probation, send
copies to Federal Probation Officer for the Federal Judicial district in which
sentence is passed.

United States v. DAVID TALLPIPE 7/10/59

SUMMARY: This report relates to a violation of Section 1153, Title 18, USCA - MURDER, by DAVID TALLPIPE, an enrolled member of the Crow Tribe of Indians, who on July 3, 1959, on the restricted allotment of JOHN CASH on the Fort Peck Indian Reservation, Roosevelt County, Montana, shot and killed the same JOHN CASH during a burglary and fight in the Cash home. John Cash is an enrolled member of the Sioux Tribe of the Fort Peck Reservation.

ARREST: Subject Tallpipe was arrested at 12 midnight on July 3 by Indian Police Blackbird on the streets in Poplar, Montana. Subject was placed in the county jail at Wolfpoint, Montana, at 1 a.m., July 4, by Officers Blackbird and Jones. At 9 a.m., July 4, he was arraigned before U. S. Court Commissioner Brown at Wolfpoint on authorization of Assistant United States Attorney _____ at Billings. He waived preliminary hearing and was remanded to jail without bail bond. The United States Marshall was advised and subject was transferred to the county jail at Billings where he is still held.

FACTS: About 11:20 p.m., July 3, William J. Muskrat informed Indian Police Blackbird that DAVID TALLPIPE "shot John Cash at his home and he needs help." Officer Blackbird radioed the information to Officer Jones and proceeded to the Cash home. Cash was still alive and bleeding and Officer Blackbird took him to the hospital at Poplar, where he died on the operating table. Before he died Officer Blackbird told him that he was not expected to live and to state who shot him. In the presence of nurses Brown and Boyd, he said "That Tallpipe boy shot me when I caught him in the house." The body was left at the hospital where on July 4, Dr. Thomas Knight performed an autopsy.

Dr. Knight removed a slug from the body of Cash and turned it over to Officer Jones, who attended the autopsy. Jones marked it for identification and still has it in his custody at Fort Peck Agency. The autopsy was performed at the request of the Assistant United States Attorney _____ at Billings.

On receipt of the radio call from Officer Blackbird, Officer Jones proceeded to the John Cash home and took over the investigation. He observed that the front door had been broken in, the lock was torn from the door. About four feet from front door he observed a pool of blood about 20 inches in diameter, from that pool he observed blood drops leading to the front of a chest of drawers. The bottom drawer was pulled out and papers were strewn on the floor in front of the chest. To the right side of the chest on the floor Officer Jones observed an empty 32 caliber cartridge. Officer Jones did not disturb the room until Officer Blackbird returned, who then had subject Tallpipe in custody. Officer Blackbird observed the room and remained while Officer Jones photographed it and picked up the empty 32 caliber cartridge, which is a Remington make. Both Officers marked it and it is now in custody of Officer Jones.

United States v. DAVID TALLPIPE 7/10/59 JFP-59-26

FACTS: Officer Blackbird had searched subject Tallpipe after arrest and found a black leather wallet containing a sales slip made out to John Cash in his shirt front. He also found a 32 caliber pistol in Tallpipe's right rear pocket. After marking for identification by both officers, both items were turned over to Officer Jones. Officers locked up the room and proceeded to Wolfpoint with subject Tallpipe. On the way he volunteered the information that he had shot Cash. A full confession was later taken from him and it is made a part of this report. See Page ____.

The 32 caliber pistol, the slug taken from the Cash body, and the empty 32 caliber cartridge are held in custody by Officer Jones and will be submitted to the FBI for comparison purposes if necessary.

On July 4, 1959, Officers Blackbird and Jones questioned William J. Muskrat. He is 27 years of age, single, and is a close friend of subject Tallpipe. He and subject Tallpipe had been riding around together and drinking before the burglary at the Cash home. Muskrat was still slightly intoxicated when he made his report to Officer Blackbird on the night of July 3. He gave officers the following signed statement. The original is in the possession of Officer Jones at Fort Peck Agency.

(Here copy in the whole Muskrat statement, including the names of the witnesses to his signature.)

(Following give similar treatment to statements of all other witnesses interviewed.)

(If at the making of the first report, additional witnesses or checks remain to be interviewed or made, indicate at the end of the report.)

- PERSONAL HISTORY:
1. The deceased victim.
 2. The subject of the investigation.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
BRANCH OF LAW AND ORDER

FINAL DISPOSITION REPORT

DATE: June 15, 1965

A. CASE REPORT NO.: FB-66-17 AREA: Aberdeen AGENCY: Fort Berthold

B. DEFENDANT'S NAME: John Doe

C. DEFENDANT'S ADDRESS: Route 1, Box 233, Mandaree, North Dakota

D. OFFENSE CHARGED: Burglary

E. PRESENTED TO GRAND JURY AT: Grand Forks, North Dakota ON: May 10, 1965

F. INFORMATION FILED AT: Grand Forks, North Dakota ON: May 12, 1965

G. (TRUE BILL) (NO BILL) ON: May 10, 1965 NO. OF COUNTS: One (1)

H. PLEA: (GUILTY) (NOT GUILTY) (NO PLEA) ON: May 25, 1965

TRIED ON: _____ AT: Grand Forks, North Dakota

I. VERDICT AND SENTENCE: Based on plea of GUILTY and following a report from the Federal Probation Office, subject sentenced to one (1) year in Federal penitentiary, and following completion of sentence, subject is placed on probation for three (3) years.

J. SENTENCED ON: June 14, 1965 SPECIAL CONDITIONS: None

K. PLACE OF CONFINEMENT: U. S. Prison at Fort Leavenworth, Kansas

L. COMMENTS: Subject has been convicted on twelve (12) occasions by the tribal court. All convictions pertained to misdemeanors involving the excessive use of intoxicants.

REPORT SUBMITTED BY: s/Richard Roe, Agency Special Officer
(SIGNATURE AND TITLE)



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Case No. _____

~~WASHINGTON, D.C. 20540~~
(Identify Reporting Agency)
and Date the Report

SPECIAL REPORT - Matter of Mr. John J. Jones, 1828 Poplar Street,
Havre, Montana

(A tort claim filed at the Billings Area Office
on January 5, 1960)

BRIEF OF CASE: This report relates to a motor vehicle accident on
DECEMBER 10, 1959 on U. S. Highway 10, about 10
miles west of BOZEMAN, Montana, which involved a 1958 Chevrolet sedan,
Vehicle No. _____, owned (or assigned) to the Billings Area Office
and operated by _____, an employee of the Bureau of Indian Affairs,
and a 1960 Buick stationwagon, License No. _____, owned and operated
by claimant Jones. Mr. Jones sustained bodily injury and damages
to his stationwagon estimated at \$250.00. (Indicate amount involved
in the total claim, if known, so that the Field Solicitor can
determine if this qualifies as a tort claim, or is a case that must
be sued in the courts.) See accident report form _____ and claim
for damages attached to this report as exhibits 1 and 2, etc.

FACTS: This matter was assigned to Officer _____ on
by _____. If more than one officer participated in
the investigation, indicate part played by each officer. Fully
describe vehicles, liens, and attachments, if any. In the body of
the report list and report substance of interviews with witnesses,
including verbatim statement acquired. Copy in or attach police or
sheriff's office accident report. If possible get a statement of
examining physician's findings as to injuries sustained by all parties,
including total expenses for medical and hospital bills. Make a
detailed report of all other information gleaned from other sources
in the investigation.

Spell out the findings of investigating officers assigned on behalf
of the Government, including such things as independent measurements made
at scene of accident, extent of damages observed and photographed by
officers, where to find pertinent records if originals needed in court,
discrepancies between police report and findings of investigating team.

CONCLUSIONS: If unable or inappropriate to make a conclusion so state.
If possible, indicate liability for damages and the amount
thereof chargeable to either party involved. If offers of settlement
or compromise have been made so indicate. Based on responses of persons
interviewed and investigating officers' independent findings, indicate
probability of proofs that can be made or discredited. Follow this
general format when preparing all other special reports. Investigating
officers never make commitments or offers in settlement of cases.

BIAM REISSUE
FEBRUARY 1984

Indicate distribution

Sign the report

