



CRIMINAL BUREAU

POLICIES AND PROCEDURES MANUAL

150725



**SCOTT HARSHBARGER
ATTORNEY GENERAL
COMMONWEALTH OF MASSACHUSETTS**

JULY 1, 1993

150725

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by
Massachusetts Office of the
Attorney General

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

150725

This policies and procedures manual includes only a brief description of some of the practices of the Attorney General's Criminal Bureau. It is designed to be a reference source for basic information.

These policies and procedures may be changed by the Attorney General at any time. The Attorney General reserves the exclusive right at all times unilaterally to modify, revoke, add to or change any and all provisions of this manual.

NCJRS

OCT 21 1994

ACQUISITIONS

CRIMINAL BUREAU MANUAL

Table Of Contents

	<u>Page</u>
A. Criminal Bureau Structure and Administration.....	1
1. Criminal Bureau Divisions.....	1
2. Criminal Bureau Management.....	3
3. Division Supervision and Management.....	4
4. Case Information Management System.....	5
5. Inter-Office Reports.....	7
6. Press Information.....	8
B. Criminal Bureau Personnel Policies and Procedures.....	10
1. Hours of Employment/Compensatory Time.....	10
2. Leave.....	12
3. Travel.....	13
4. Training/Education.....	14
5. Speaking Engagements/Publications.....	15
6. Political Activity.....	16
C. Complaints, Referrals and Investigations.....	18
1. Criminal Complaints, Referrals, Correspondence.....	18
2. Search Warrants/Wiretaps.....	19
3. Tax Returns/Filing Status.....	20
4. Telephone Toll Records.....	20
5. Special Grand Jury.....	22
6. Grand Jury Presentments.....	25
7. Summonses/Subpoenas.....	27
D. Case Prosecution and Disposition.....	29
1. Prosecution Memos.....	29
2. Immunity, Cooperation Agreements, Proffers.....	31
3. Plea Negotiations/Sentencing.....	33
4. Case-Related Expenditures.....	35
E. Post-Conviction, Appellate and Civil Litigation.....	37
1. Appellate Division - Sentence Appeals.....	37
2. Rendition Requests and Governor's Warrants.....	37
3. Conduct of Civil Litigation.....	38
4. Procedure for Appellate Brief Review.....	38
5. Procedure for Criminal Appeals/Motions for New Trial.....	38
6. Procedure for Appearance in Appellate Courts.....	39
7. Subpoenas for AAGs or for Attorney General's Files....	40

A. Criminal Bureau Structure and Administration

1. CRIMINAL BUREAU DIVISIONS

Appellate Division

Handles appeals from cases prosecuted by the Criminal Bureau. Handles federal habeas corpus petitions challenging state convictions; civil suits brought against prosecutors, judges and other law enforcement personnel which concern actions taken within the criminal justice system; appeals from petitions for annual review of inmates confined as sexually dangerous persons; and supervisory powers litigation under G.L. c. 211, § 3 in the Supreme Judicial Court.

Criminal Investigations Division

Comprised of State Police troopers, Environmental Police officers, and civilian financial investigators, this division investigates major crimes, including theft of significant value, bribery, extortion, public corruption and narcotics trafficking in conjunction with the various Criminal Bureau divisions. Assists District Attorneys and local police/law enforcement and State Police units with technical expertise on surveillance.

Division of Employment and Training

Investigates and prosecutes employers who fail to contribute to the unemployment fund and employees who make fraudulent claims, as well as others who perpetrate frauds upon the unemployment insurance fund.

Economic Crimes Division

Investigates and prosecutes all categories of white collar criminal offenses, including larcenies, securities fraud, tax evasion, schemes to defraud by professionals such as attorneys, accountants and investment advisors; and frauds related to automobile insurance and workers' compensation.

Environmental Crimes Strike Force

Works with the Executive Office of Environmental Affairs to investigate and prosecute environmental crimes.

Medicaid Fraud Control Unit (M.F.C.U.)

Investigates and prosecutes allegations of fraud on the part of medicaid providers, such as nursing homes, doctors, pharmacies, laboratories and other health care providers. Also investigates and prosecutes cases of patient abuse in long-term care facilities.

Narcotics and Organized Crimes Division

Investigates and prosecutes large-scale drug trafficking offenses, including multi-jurisdictional and long-term trafficking cases, and organized criminal enterprises which cross county lines. Pursues civil and criminal forfeiture actions related to narcotics offenses. Assists in the drafting of legislation relating to narcotics and weapons violations.

Public Integrity Division

Investigates and prosecutes public corruption cases: bribery, conflict of interest, procurement fraud, election law and campaign finance violations and related larcenies, tax

crimes, and other violations of the public trust by government officials and other state employees and by those dealing with public agencies.

Special Investigations Unit

Coordinates and prosecutes complex, multi-jurisdictional criminal cases including organized criminal enterprises.

Urban Violence Strike Force

Criminal Bureau AAGs prosecute crimes involving gang violence and other serious offenses committed in Boston, and supervise non-bureau AAGs during four-month rotations in the Lawrence, Brockton and Dorchester District Courts.

2. CRIMINAL BUREAU MANAGEMENT

The Criminal Bureau supervisory structure involves division chiefs reporting to the Bureau Chief through two Deputy Bureau Chiefs. The roles and responsibilities of the Bureau Chief and Deputy Chiefs are as follows:

Bureau Chief: Responsible for all Criminal Bureau activity. Supervisory responsibility for investigations and prosecutions conducted by Division of Employment and Training, Economic Crimes Division, Environmental Strike Force and Special Investigations Unit. Liaison to other bureaus, local district attorneys and government agencies.

Deputy Bureau Chief for Administration: Supervisory responsibility for administrative functions within the bureau: personnel issues, expenditures, case management and criminal complaint information systems and support staff. Supervises

the Attorney General's special grand jury for Suffolk County and serves as liaison to other county grand juries. Coordinates bureau hiring process. Supervisory responsibility for Urban Violence Strike Force and Dorchester Safe Neighborhood Initiative.

Deputy Bureau Chief for Litigation: Supervisory responsibility for prosecutions, investigations, appeals and civil litigation conducted by the Appellate Division, Medicaid Fraud Control Unit, Narcotics and Organized Crimes Division, and Public Integrity Division. Works with respective division chiefs on case assignments and prioritization/resource allocation. Reviews and approves for prosecution conflict cases referred by local district attorneys. Formulates internal training curriculum for assistant attorneys general.

Division Chief: Direct supervision of all investigations and prosecutions within the division. Responsible for case assignment, monitoring and resource allocation of AAGs, investigators and support staff.

3. DIVISION SUPERVISION AND MANAGEMENT

Individual Meetings: It is the policy of the Criminal Bureau that division chiefs will meet individually with each staff member (AAG, investigator, paralegal, secretary) on a regular basis. Meetings with individual AAGs should occur no less than once every three weeks and shall include meetings with non-division AAGs to whom division cases have been assigned. Individual meetings should be divided between a

report on the status of pending assignments and a discussion of topics raised by the staff member. Individual meetings should be the primary vehicle for case supervision and management, performance review and constructive critiques.

Courtroom Observation: It is the policy of the Criminal Bureau that division chiefs observe each AAG in a courtroom advocacy situation no less than once every six months. The observation should be followed by an individual meeting between the division chief and the AAG, during which the division chief discusses and critiques the appearance.

Division Meetings: Every division should meet as a whole no less than once each month. Division meetings should be attended by all division AAGs, non-division AAGs to whom division cases have been assigned, investigators, paralegals and secretaries. While the format and content of such meetings is left to the discretion of the division chief, each meeting should include status reports of major cases/investigations and discussions of issues raised by staff.

4. CASE INFORMATION MANAGEMENT SYSTEM

The Case Information Management System serves as the case tracking system for the Office of the Attorney General. The main objectives of this system are: 1) to track daily the case activity in the state and federal courts; 2) to report statistical information; and 3) to serve as an informational resource for routing of mail and directing of telephone calls to the proper division and staff member. Since the information

is available to all throughout the Attorney General's Office, the Criminal Bureau reports only cases entered on the docket of a state or federal court. No investigations are tracked on this system. (See Criminal Complaints, section C.1).

Immediately upon the indictment/arraignment of a defendant, the Assistant Attorney General will provide the information set forth below to the support staff member for entry into the system:

- Name of Defendant
- Title of Case (e.g., Commonwealth v. Defendant)
- Date of Indictment
- Court, County
- Docket Numbers, Charges
- Division
- AAG Assigned
- Investigator Assigned
- Type of Case
- Brief Case Narrative
- Opposing Counsel
- Witnesses
- Next scheduled Event and Date
- Special Interest of AG -- Urban Violence, Elderly, Health Care, Fraud

All court appearances are entered into the system. Court appearances are to be logged on the case tracking file folder for each defendant. (Form A-1). Immediately upon returning from all court appearances the Assistant Attorney General will report the following information to the support staff member by providing the staff member with the case tracking file folder:

- Next court event
- Next court date

Immediately upon the disposition of a case, the Assistant Attorney General will fill out a Case Disposition Report (Form

A-2) for each defendant and each charge, and copies of the form shall be sent to the division chief and the bureau chief. This form should be provided to the support staff member. The support staff member will refer to the form in entering the following information to the case information management system:

Verdict or plea information
AAG recommended sentence
Sentence imposed by Court
Judge
Date case closed

5. INTER-OFFICE REPORTS

Weekly Activities Log: Each Friday afternoon a log of all court appearances and grand jury appearances for the following week is prepared for the Attorney General, the First Assistant and the press office. (Form A-3). The list is compiled by the Bureau Chief's secretary from information provided by each division chief's secretary. Each division must maintain a calendar of such appearances for all matters within the division. It is the responsibility of each AAG to mark his/her division's calendar (as well as the calendar of any other division from which a case has been assigned) before Friday at noon so that the calendar will contain all scheduled appearances. Each division chief's secretary shall maintain the calendar and shall be responsible for forwarding the information to the Bureau Chief's secretary no later than noon each Friday.

Significant Activities Reports: Each division chief shall prepare a monthly significant activities report, listing all new indictments, case dispositions, personnel changes, conferences, and outreach efforts. The reports shall be due on first day of the following month (e.g., June report due July 1) and shall be forwarded to the Attorney General through the Deputy Bureau Chief for Administration. (A sample Significant Activities Report is attached below.)

90-Day Action Plans: Each division chief shall prepare a quarterly action plan summarizing the accomplishments of the preceding three months and setting the division's goals and agenda for the following three months. The reports shall be due on the first days of January, April, July and October and shall be forwarded to the Attorney General through the Deputy Bureau Chief for Administration. (A sample 90-day Action Plan is attached below.)

6. PRESS INFORMATION

The Office of the Attorney General is a public law office. The actions of the Criminal Bureau are undertaken in the name of the citizens of the Commonwealth, to whom we are accountable. It is the policy of the Criminal Bureau to publicly acknowledge our activities in accordance with state law, rules of procedure and disciplinary rules. The primary vehicle for public communication is the mass media: newspaper, radio and television. The Criminal Bureau publicizes its activity to ensure accountability to the citizens of the

Commonwealth, to reinforce the values inherent in our criminal statutes, and to further the general deterrence objectives inherent in the criminal justice system.

Press Contacts: The Attorney General coordinates all press information through the Executive Bureau's Press Office. All calls placed directly to an AAG or other staff member by a member of a press organization shall be referred first to the Press Office. Only after the Press Office has screened a press call and authorized the communication may an AAG speak with a reporter.

News Releases: All Criminal Bureau AAGs are responsible for drafting news releases and cooperating with the Press Office in advance of any action: indictment, plea or verdict, sentencing, or other court action. Attached is a copy of the Press Office policy and procedures for draft news releases. Note that it is the responsibility of the AAG (not the First Assistant) to notify the Press Office in advance of a pending indictment or disposition.

M E M O R A N D U M

TO: All Assistant Attorneys General
FROM: Tom Samoluk, Director of Communications
DATE: April 7, 1993
RE: Draft News Releases

I. The Policy

Continuing a long-standing policy in the office, we will request that Assistant Attorneys General draft news releases in advance of action on their cases, such as the filing of civil suits, the return of indictments, settlements and judgments -- when time and circumstances permit.

The press office is aware of your time constraints and committed to working with you to implement this policy in the most effective and least burdensome manner for all of you.

II. The Importance of News Releases

Issuing news releases is an important means to inform the media and the public about cases and matters of interest engaged in by this office. As the attorney on a case, you are in the best position to articulate the important facts. Obviously, writing news releases is not your primary function. But, draft releases are not expected to be perfect. They are, however, critical to our effort to ensure that final releases contain accurate information.

III. The Procedure

Our goal is to follow the procedure outlined below in sending out news releases:

- * AAG provides the press office directly with draft release (and AAG should also provide Bureau or Division Chief with copy of draft), as well as a copy of the Complaint, Judgment, Pros Memo, etc; (NOTE: Please provide the Press Office with draft press releases directly because indictment complaint requests made to Tom Green for approval do not go to the Press Office.)
- * Press office edits and puts release into final form;
- * Release goes back to the AAG for review;
- * Press office gets authorization from 1st Assistant Tom Green; and
- * Following a last check with the AAG to ensure that the legal action has occurred, final news release is distributed to the media,

IV. Timeliness

To follow the procedure outlined above, I would appreciate a draft news release a week in advance of a given action in a case -- when possible.

Time is always the critical factor when it comes to issuing news releases. It is critical to you because you are busy preparing the case substantively and probably not focusing on the news release. It is critical to the press office because we want to get a final news release out to the media before it becomes "stale," which can happen very quickly in the news business.

Advance notice of case developments, if possible, is critical. If you know that there will be some development in a case soon, the earlier you inform the press office and provide us with the draft release, the better the opportunity to get the information out on your case in a timely fashion. It is never too soon to give us advance notice.

Clearly, on many occasions things happen in a case quickly, and there is no opportunity to draft a news release. But, if there is going to be action over which we have some control, such as the return of an indictment or the filing of a suit, we should take advantage of the opportunity to get the news out in a timely fashion.

V. The Content of a News Release

As noted, your draft news releases are not expected to be perfect. Since some of you may never have written them before, a few basic tips are offered for your guidance.

The Lead. Every news release should begin with a "lead" paragraph. This is the paragraph which tells the reader why the case is important or of interest. That is, the first paragraph should state the most essential facts up front. And it should do all this in one or two short sentences that total no more than 30 to 40 words.

The Facts. The paragraphs following the "lead" should give reporters the details they need. You should always answer the questions: WHO, WHAT, WHEN, WHERE AND WHY, and, when appropriate, HOW. In a criminal case, for instance, the defendant's name, age and address, the specific charges against him or her, date of offense, bail, hearing date, name of judge, and maximum penalties should all be included.

A simple factual description of the case should also be included in the release. Please note that news releases are typically written in what's called "inverse pyramid" style -- that is, the most important facts should be in the beginning and the rest of the information should follow in descending order of importance.

The Style. A few suggestions on style:

- * use short, simple sentences;
- * attempt to strike a balance between conciseness and thoroughness;
- * avoid sophisticated legal language. When legal terms must be used, please explain their meaning.

The Length. Final news releases are approximately two pages long, double-spaced. This may vary, depending on the complexity of the case. For press office purposes, it is better if you provide us with more information in your draft than we may ultimately use in the final release.

The Theme/Message/Importance of the Case. A couple of sentences about what makes the particular case significant in a larger context will be helpful, if we want to put a quote from Scott into the news release.

The "Credits." The final paragraph should include your name, as the AAG assigned to the case, the name of the investigator and other government offices or agencies, if any, involved in the case.

VI. Accompanying Documents

Any other information you can provide the press office along with the draft press release will be extremely helpful. If appropriate, having documents to be filed with the court will probably save us having to contact you with some follow-up questions. The documents can also be provided to the media, if requested.

VII. A Sample News Release

Although every case is different, I have attached a recent news release to give you some idea of the general format.

VIII. A Final Note

Please do not hesitate to contact me in the Press Office at 7-2543, if you have a question about draft news releases. Kim Hinden, Elizabeth Hyman, Marsha Cohen and I are here to work with you to get the message out about the important work that you and this office are doing. The Press offices are located on the 20th Floor, to the left of the Personnel receptionist's desk.



The Commonwealth of Massachusetts
Office of the Attorney General
One Ashburton Place,
Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

NEWS RELEASE

FOR IMMEDIATE RELEASE
APRIL 15, 1993

CONTACT: ELIZABETH HYMAN
(617) 727-2543

REHOBOTH RECORDS CLERK INDICTED FOR EMBEZZLEMENT

Attorney General Scott Harshbarger announced that a Bristol County Grand Jury indicted a former records clerk for the Town of Rehoboth Selectman's Office late yesterday on charges relating to the misappropriation of funds from the Town Treasurer.

Bianca L. Procopio, 36, of 28 Sidney Avenue, Swansea, was indicted on two counts of larceny over \$250, two counts of false written reports by public employees or officers and two counts of fraud or embezzlement by town officers.

"Massachusetts citizens must be able to trust those individuals working in their state and local governments to serve their communities in good faith," said Attorney General Harshbarger. "Our office is committed to prosecuting white collar fraud, whether it occurs in a small community or a state agency."

The alleged larcenies, which took place during Procopio's tenure from 1986 until she was dismissed in December, 1992, involve over \$3,600 in fees that were collected for various electrical and plumbing permits that the Selectmen's office sells on a regular basis.

more-

If convicted, Procopio faces a maximum penalty of five years in state prison and a fine of \$25,000 for each count of larceny over \$250; one year in state prison for each count of false written reports; and 10 years in state prison for each count of fraud or embezzlement by a town officer.

Assistant Attorney General Carol A. Starkey is prosecuting the case. The Rehoboth Police Department worked with the Attorney General's office in successfully investigating the matter.



The Commonwealth of Massachusetts

Office of the Attorney General

One Ashburton Place,

Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

NEWS RELEASE

FOR IMMEDIATE RELEASE
APRIL 20, 1993

CONTACT: KIM HINDEN
(617) 727-2543

FORMER QUINCY CHAIR CAR COMPANY OWNER SENTENCED TO JAIL AFTER
PLEADING GUILTY TO LARCENY, MEDICAID FALSE CLAIMS AND
TAX OFFENSE CHARGES

Attorney General Scott Harshbarger announced today that the former owner of a Quincy chair car company pled guilty in Suffolk Superior Court to various criminal charges for the fraudulent billing of \$12,000 in rides to and from medical appointments for Medicaid recipients in the Greater Boston area.

John Peter Zuffante, 43, of 5 Edwards St., Quincy, the owner/operator of Freedom Transportation Company, located at 77 Baystate Rd., Quincy, pled guilty to two counts of larceny over \$250, five counts of failing to file income tax returns and two counts of filing false Medicaid claims. In addition, Zuffante admitted that he deliberately did not file individual income tax returns on the money he received from the Department of Public Welfare's Medicaid program.

"When someone in a position of trust steals public funds incarceration is appropriate," said Attorney General Harshbarger. "These sentences involving time to be served in the House of Correction punish those who have violated the

-more-

public trust and are critical to deterring the future theft of public funds."

Suffolk Superior Court Judge Barbara A. Dortch sentenced Zuffante to one year in the House of Correction, 30 days to be served, the remainder to be suspended for two years pending supervised probation. Zuffante was also ordered to pay \$12,000 in restitution to the Department of Public Welfare, if he obtains sufficient funds to repay the Commonwealth during the period of his probation. The execution of the jail term was stayed for one week to allow Zuffante to get his affairs in order.

Between May, 1992 and December, 1992, Zuffante billed the Department of Public Welfare for services which he never rendered to eligible Medicaid recipients. Zuffante also billed Department of Public Welfare repeatedly for the services of a second attendant, when he performed the trips alone.

In total, Zuffante stole approximately \$12,000 through these two scams. The defendant also deliberately failed to file individual income tax returns during the years 1987 and 1991. During that time period, Zuffante received over \$65,000 from the Medicaid program.

Assistant Attorney General Mark Muldoon, of Harshbarger's Medicaid Fraud Control Unit, prosecuted the case. Investigator Robert Russo investigated the matter.

M E M O R A N D U M

TO: EDWARD D. RAPACKI, CHIEF, CRIMINAL BUREAU
CC: SCOTT HARSHBARGER, ATTORNEY GENERAL
FROM: MARTIN LEVIN, CHIEF, ESP *ML*
DATE: MAY 19, 1992
RE: SIGNIFICANT ACTIVITIES REPORT, 4/15/92-5/15/92

CASE DEVELOPMENTS

Karl Avanecean: Defendant pled guilty to disposal of hazardous waste in a manner endangering human health or safety. He was sentenced to the maximum two year House term, 30 days to serve, and ordered to pay cleanup costs exceeding \$2100.

James Bounakes and Michael Reynolds: Evidentiary hearing commenced on defendants' motions to dismiss and suppress. Among other things, defendants are challenging the constitutionality of the forfeiture statute under which EPOs may search for and seize contaminated fish. Significant briefing and evidentiary showing under way to defend this statute.

John Lemieux, et al.: Evidentiary hearing took place on defendants' motions to dismiss and suppress in this prosecution for shellfishing in contaminated waters.

OUTREACH/TRAINING

Meeting with state Bureau of Health Statistics re possible coordination in the investigation of serious workplace accidents. Contacts with Western MassCOSH, Western Mass. Legal Services, UMass Amherst, UMass Lowell, Santa Clara, CA, DA's office, and OxFam re efforts to identify populations at risk of hazardous materials workplace exposures.

Assist preparation for Attorney General's discussion of charging/sentencing considerations at NAAG/NEEC meeting.

Continue draft of Lead Paint Subcommittee report.

LEGISLATION

Legislative hearing on Environmental Trust Fund and Forfeiture Act and Environmental Endangerment Act. Meetings with EOE re same. Redraft Forfeiture bill. Both bills reported favorably out of Joint Committee on Natural Resources.

ESF ADMINISTRATION

The past month has emphasized the significant resource constraints under which the ESF now operates. As we try to move from simpler cases to more complex, long term investigations, it has become apparent that such investigations require the attention and direction of attorneys to keep them moving. Furthermore, even simpler cases need to be adequately investigated and packaged by an attorney for referral to a DA. I have been discussing with Anne Kelly the possibility of getting additional funding from DEP for another attorney. It is unclear whether this is possible.

Additionally, my attempt to make use of available interpreters and volunteer experts has not been working out, and has resulted in delay in the progress of two investigations. I am now seeking a paid interpreter through Suffolk Superior Court and canvassing available experts to whom we will have to pay a fee.

6190J

April 5, 1993

TO: Susan Spurlock, Deputy Chief, Criminal Bureau
FROM: Mark Smith, Chief, Public Integrity Division *MS*
RE: Ninety-day Action Plan
CC: Ed Rapacki, Chief Criminal Bureau
R. Michael Cassidy, Deputy Chief, Criminal Bureau

In the ensuing days the Public Integrity Division will continue to add staff in filling vacancies left by last fall's reorganization. In the next ninety days I anticipate the level of the Public Integrity Division to consist of five staff attorneys. This will allow the division to reduce the response time in dealing with our referring agencies.

NEW CASES

1. We have received a referral from the Massachusetts Highway Department, which alleges that five employees engaged in a no show job scheme in one of the department's radio room.
2. We have reviewed a referral for MassPort, which alleges a double billing scheme by MassPort employees.

CONTINUING INVESTIGATION

1. Mansfield Police Chief - We are continuing to review the larceny allegation. I expect that we will complete the investigation within thirty days.
2. The investigation involving misuse of state funds at the [REDACTED] is continuing. Investigators from the Inspector General's office are conducting a financial analysis. The investigation involving construction of the [REDACTED] is continuing, but not leading towards indictments at this time. I anticipate completion of the [REDACTED] case within thirty days.

3. The investigation involving the [REDACTED] is continuing. We have paired the State Auditor's office with State Troopers to review similar allegations at the [REDACTED]. I anticipate concluding the [REDACTED] investigation within the next ninety days.

4. We are continuing to explore the allegation relating to the [REDACTED], and should conclude this investigation in the next thirty days.

5. The Inspector General's Office is continuing to review records in the [REDACTED] investigation. This investigation will take at least sixty days before a decision on prosecution can be made.

6. The [REDACTED] has referred a matter that was declined by the U.S. Attorney's office. I expect that a decision can be made on this case within thirty days.

7. We are continuing to investigate the [REDACTED] for larceny and procurement fraud charges. I expect the investigation to continue for sixty days.

8. We shall complete the [REDACTED] investigation within the next thirty days.

9. The investigation into [REDACTED] and allegations of witness tampering shall be completed within sixty days.

10. The review of the State Auditor's Report pertaining to [REDACTED] is continuing. If no criminal allegations are found within the next thirty days, the matter should be referred to the Civil Bureau.

11. The following matters shall be delegated to Jonathan Mishara on April 26, 1993 when he joins the P.I.D. unit:

(a). [REDACTED]

(b). [REDACTED]

(c). D.E.T. referrals (3)

(d). [REDACTED]

(e) [REDACTED]

PENDING INDICTMENTS

1. Commonwealth v. Machett, Valente - Our goal is to complete a trial of this matter within sixty days.

2. Commonwealth v. Quirk - the defendant's motion for a severance has been denied. A retrial should be concluded by July 1, 1993

CASE NO. _____

AAG ASSIGNED _____ DATE _____

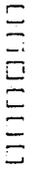
1 _____

2 _____

COURT _____

DEPARTMENT OF THE ATTORNEY GENERAL
CRIMINAL BUREAU

NARCOTICS
APPELLATE
PUBLIC INTEGRITY
SPECIAL INVESTIGATIONS



DEFENDANT'S NAME: _____
LAST, FIRST, MIDDLE

DEFENDANT'S NAME — LAST — FIRST — MIDDLE _____ DATE OF BIRTH _____ SOCIAL SECURITY NO. _____

AKA _____ CUSTODY STATUS LOCATION _____

ADDRESS (1) NUMBER STREET _____ CITY TOWN _____

ADDRESS (2) NUMBER STREET _____ CITY TOWN _____

INDICTMENT NUMBERS	CHARGES — M G L	PLACE OF OFFENSE	DATE	DISPOSITION

CO-DEFENDANTS

NAME	INDICTMENT NUMBERS	CHARGES — M G L	ATTORNEY

INVESTIGATORS

NAME	DEPARTMENT	TELEPHONE

DEFENSE COUNSEL

NAME	ADDRESS	TELEPHONE

CASE HISTORY

ARRAIGNMENT ACTION		REMARKS —	INITIAL BAIL
DATE OF ARREST	DATE ARRAIGNED		REC'D BAIL
CONTINUED <input type="checkbox"/>	DISPOSED <input type="checkbox"/>		BAIL
JUDGE	STENO		NEXT EVENT
AAG	DEF. ATTY		DATE
POST ARRAIGNMENT ACTION		REMARKS — REASON FOR CONTINUANCE, OTHER ACTION TAKEN, ETC.	
DATE	EVENT		
CONTINUED <input type="checkbox"/>	DISPOSED <input type="checkbox"/>		
JUDGE	STENO		
AAG	DEF. ATTY		
DATE	EVENT		
CONTINUED <input type="checkbox"/>	DISPOSED <input type="checkbox"/>		
JUDGE	STENO		
AAG	DEF. ATTY		
DATE	EVENT		
CONTINUED <input type="checkbox"/>	DISPOSED <input type="checkbox"/>		
JUDGE	STENO		
AAG	DEF. ATTY		
DATE	EVENT		
CONTINUED <input type="checkbox"/>	DISPOSED <input type="checkbox"/>		
JUDGE	STENO		
AAG	DEF. ATTY		

CASE # _____

CASE DISPOSITION REPORT

Form A-2

DEF. NAME: _____
 COURT: _____
 AAG: _____
 JUDGE: _____
 DEF.ATTY.: _____
 POLICE DEPT.: _____
 COURT STENO: _____

DISTRICT COURT
 ADULT _____ JUVENILE _____
 BOGJ _____ APPEALED _____
 WAIVED IND: YES _____ NO _____
SIX MAN
 ADULT _____ JUVENILE _____
 1ST INST. JURY _____
 DE NOVO _____

SUPERIOR COURT
 DIR. INC. _____ IND. (BOGJ) _____
 BOGJ DIST. CT. PAPERS _____
 DIST. CT. APPEAL _____
CASE HISTORY
 DATE OF INCIDENT _____
 DATE ENTERED _____
 ARRAIGN. DATE _____
 TRIAL/PLEA/PCH _____
 DATE OF DISP. _____
 LENGTH OF TRIAL _____

DOCKET NO./CHARGE	ACTION	DEFENSE RECOMMEND.	AAG RECOMMEND.	FINDING/SENTENCE

REMARKS:

WEEKLY ACTIVITY LOG

WEEK OF: _____

AAG: _____

The following lists all of my court appearances/grand jury presently scheduled for next week:

<u>DATE</u>	<u>DEFENDANT/SUBJECT</u>	<u>COURT</u>	<u>EVENT</u>
-------------	--------------------------	--------------	--------------

DESCRIPTION OF CASE:

<u>DATE</u>	<u>DEFENDANT/SUBJECT</u>	<u>COURT</u>	<u>EVENT</u>
-------------	--------------------------	--------------	--------------

DESCRIPTION OF CASE:

<u>DATE</u>	<u>DEFENDANT/SUBJECT</u>	<u>COURT</u>	<u>EVENT</u>
-------------	--------------------------	--------------	--------------

DESCRIPTION OF CASE:

<u>DATE</u>	<u>DEFENDANT/SUBJECT</u>	<u>COURT</u>	<u>EVENT</u>
-------------	--------------------------	--------------	--------------

DESCRIPTION OF CASE:

<u>DATE</u>	<u>DEFENDANT/SUBJECT</u>	<u>COURT</u>	<u>EVENT</u>
-------------	--------------------------	--------------	--------------

DESCRIPTION OF CASE:

This form must be completed and received by Nancy Tavilla no later than 12:00 noon on the Friday preceding.

B. Criminal Bureau Personnel Policies and Procedures

1. HOURS OF EMPLOYMENT/COMPENSATORY TIME

Section B.4 of the Personnel Manual for the Office of the Attorney General defines "Regular Hours" and "Compensatory Time" as follows:

a. Regular Hours

The standard work day is 7.5 hours, the standard work week is 37.5 hours. The 7.5 hours must be completed between 8:00 a.m. - 6:00 p.m. As the Commonwealth's business day is 9:00 a.m. - 5:00 p.m., Office of the Attorney General employees are expected to work this schedule. While every effort will be made to honor schedule requests in order to assist employees with special needs, departmental staffing needs will take precedence. The number of hours worked per day is exclusive of lunch break and absence from the office for personal reasons.

b. Compensatory Time

Compensatory time is authorized overtime in excess of 37 1/2 hours per week. Time worked over 37 1/2 hours in a week but less than 40 hours will be given equal time off. Hours worked in excess of 40 hours a week will be compensated with time off at the rate of one and one-half hours.

Eligibility: The Federal Fair Labor Standards Act defines who is eligible for compensatory time. Employees who serve in executive, supervisory, legal or policy-making positions, or are on the personal staff of the Attorney General, are not eligible for compensatory time (exempt employees). All other employees must be given compensatory time off (non-exempt employees).

Accrued compensatory time must be taken within the same fiscal year worked. Compensatory time cannot be carried over into the next fiscal year. There are no

fixed limits on the amount of compensatory time which may be earned during the fiscal year, but all division and bureau chiefs are encouraged to strictly limit its use.

Upon leaving the Office of the Attorney General, an employee is to be paid for all unused compensatory time accrued within the fiscal year.

No employee is eligible to earn compensatory time for work performed at home, unless approved by the First Assistant Attorney General.

Authorization: All compensatory time must be approved by the division and bureau chiefs. Employees must submit a record of their number of hours worked in excess of 37.5 hours to the Chief of Staff, after obtaining the authorization signatures of their division and bureau chiefs. No compensatory time will be granted without the approval of the Chief of Staff.

The Budget Department will have a record of the approved hours worked in excess of 37.5 hours of non-exempt employees.

As state above, all requests for compensatory time must be approved in advance. The procedure for such approval in the Criminal Bureau is as follows:

1. Support staff must obtain verbal approval in advance from the Division Chief or, in the division chief's absence, the Bureau Chief's secretary. Investigators must obtain verbal approval in advance from the Criminal Investigations Division Chief or, in his absence, from the division chief.

2. A "WEEKLY COMPENSATORY TIME REPORT" must be filed with the Budget Office no later than 12:00 noon on the Monday following the week in which the compensatory time was earned.

This form (Form B-1) must be initialed by the division chief ("Supervisor Approval") and signed by the Deputy Bureau Chief for Administration.

2. LEAVE

Section D.2 of the Attorney General Personnel Manual describes the accrual and use of vacation, holiday, personal, sick and other forms of leave. Relevant provisions include:

- Leave for one working day or less must be authorized by the division chief.

- Leave for more than one working day must be authorized by the bureau chief or First Assistant or Attorney General.

- Leave is granted at the discretion of the Attorney General based on the work requirements of the office and to the extent possible, the personal needs of the employee.

- Requests for vacation leave are to be made to the division chief and through the bureau chief as far in advance as possible. The bureau chief reserves the right to deny such requests if they will result in a disruption of the normal work flow.

- Requests for personal days must be submitted and approved by a supervisor 24 hours prior to taking any such days. Personal days may not be taken immediately before or after a vacation, may not be added to a holiday and must be taken in no less than 1/2 day increments.

- Sick leave is a privilege provided to protect an employee from economic loss due to illness and should not be

considered an employee's right to be used for reasons other than illness.

The procedure for leave approval in the Criminal Bureau is as follows:

A "Request for Leave" form (Form B-2) must be submitted to the Deputy Chief for Administration, through the division chief. Both the deputy bureau chief and the division chief must approve the request in writing for the request to be approved. Following both said approvals, copies of the form will be given to the bureau chief's secretary and the bureau receptionist. The original will be returned to the staff member requesting the leave.

3. TRAVEL

Sections F.1 through 6 of the Attorney General Personnel Manual set forth office policy on travel and reimbursement. All travel expenses must be approved by the bureau chief and travel expenses in excess of \$100 also must be approved in advance by the First Assistant.

Travel for Criminal Bureau staff, and the procedures for approval, are as follows:

1. Day Travel - Where a staff member (excluding DET division AAGs) must travel to a court or other location outside Boston, there is a presumption that a state-owned automobile will be used. If you need to travel to another location, contact Ted Goble at least three days in advance of travel. Ted will arrange, if possible, for a state-owned vehicle to be

made available. Only if Ted Goble is unable to secure a state vehicle should a personal vehicle be used. In the event a personal vehicle is used, a "TRAVEL VOUCHER INPUT FORM" (Form B-3) must be submitted for approval by the Deputy Bureau Chief for Administration. Travel voucher forms must be submitted by the end of each month. Once the voucher form is approved, it will be sent to the Budget Office for payment.

2. **Overnight Travel** - Where a staff member must travel overnight, it is almost certain that the expenses will exceed \$100. Accordingly, all such travel must be approved in advance by the Deputy Bureau Chief for Administration and the First Assistant. A "TRAVEL REQUEST FORM" (Form B-4) must be completed. Upon the approval of the Deputy Chief for Administration, it will be sent to the First Assistant for final approval. Once the travel request form has been approved by the First Assistant, it will be returned to the staff member, who must then contact Sheila Martin, ext. 2033, to make all travel arrangements.

4. TRAINING/EDUCATION

The Office of the Attorney General strives to provide comprehensive professional training for all staff members. Training sessions are conducted at the office-wide level as well as by individual bureaus and divisions. All staff members are invited to attend these programs, whether or not directed for a specific bureau or division. Both the Criminal Bureau and the office as a whole encourage suggestions for additional training/education programs.

The Office of the Attorney General maintains a limited budget account for training/education sponsored by other entities. If there is a specific program you wish to attend which bears relation to your position or job description, you may apply for funds to cover registration fees, travel, lodging, etc., by completing a "TRAINING EXPENDITURE APPROVAL REQUEST FORM" (Form B-5). The form must be approved by your division chief, then by the Deputy Bureau Chief for Administration. Given the limited funds available, preference may be given to requests to attend local programs or to requests from staff members who have not recently had the opportunity to attend other programs.

5. SPEAKING ENGAGEMENTS/PUBLICATIONS

Speaking Engagements: From time to time, assistant attorneys general, investigators or support staff are asked to speak at meetings or gatherings outside the office. When the subject matter of the speech involves the work of this office, or when the speaker's status as a member of the Attorney General's staff is relevant to the invitation, the speaker represents the Office of the Attorney General. To ensure consistency of message and accountability of his representatives, the Attorney General requires that notice of all speaking requests and events be compiled by the Speakers' Bureau Coordinator in the Executive Bureau.

Whenever you are asked to speak at a gathering, you must complete a "SPEAKING REQUEST NOTIFICATION FORM" (Form B-6)

and send the original to the Speakers' Bureau Coordinator, and copies to your division chief and the Deputy Bureau Chief for Administration. This notice must be sent in advance of your appearance.

After your appearance, you must complete a "SPEAKERS' BUREAU FOLLOW-UP MEMO" (Form B-7) and send it to the Coordinator.

Publications: The Office of the Attorney General encourages all staff members to participate in the intellectual discourse of the larger legal community and welcomes the publication of articles written by staff members. It is required, however, that every publication which identifies the author as a member of the Attorney General's staff also bear the disclaimer that "the views and opinions contained herein are those of the author and not of the Office of the Attorney General."

6. POLITICAL ACTIVITY

Section E.9. of the Attorney General Personnel Manual restricts the political activity of all employees as follows:

Employees are prohibited from using their offices to influence, interfere with, or affect the results of an election or nomination for office.

Employees are prohibited, pursuant to G.L. c. 55, § 13, from soliciting or receiving, directly or indirectly, "any gift, payment, contribution, assessment, subscription or promise of money or other things of value for the political campaign purpose of any candidate for public office or of any political committee or for any political purpose whatsoever." This prohibition

specifically includes hosting a testimonial reception or other function having the purpose of raising political contributions for any candidate or political committee.

By law, political fundraising by state employees, whether or not it is conducted on state property or on state time, is expressly prohibited. Because the Criminal Bureau enforces laws relating to campaign and political finance, conflict of interest and public integrity, the Bureau must avoid any appearance of conflict or favoritism. While non-fundraising related political activities (e.g., policy work, stuffing envelopes with literature, holding signs, etc.) is not expressly prohibited, it is imperative that the division chief and the Deputy Bureau Chief for Administration be advised in writing of any staff member's activity on behalf of any political candidate, referendum or ballot initiative, whether state, county or municipal.

WEEKLY COMPENSATORY TIME REPORT

Employee		Week of						
Day	Actual Time Began Work	Out	In	Out	In	Out	Total Hours Worked* (Excluding Lunch/Dinner)	Supervisor Approval (Initials)
		Lunch		Dinner				
MON								
TUES								
WED								
THUR								
FRI								
SAT								
SUN								

NOTE: Time is calculated in actual hours and minutes.

TOTAL

-37.50

Employee's Signature _____

TOTAL COMP HRS

This is to certify that the compensatory time earned was pre-approved by me based on need justification from the employee's supervisor.

Bureau Chief's Signature _____

This form is to be filled out in addition to the regular weekly timesheet. It must be filed with the Budget Director by 12:00 noon on the Monday following the week in which the compensatory time was earned. FAILURE TO MEET THIS SCHEDULE WILL RESULT IN THE LOSS OF COMPENSATORY TIME.

OFFICE USE ONLY

TOTAL COMP. HOURS _____ x 1 (If under 2.5 Hrs.) _____

(2.5) x 1 _____

_____ x 1.5 _____

Total Hours Credited _____

MEMORANDUM

TO:

THRU:

FROM:

DATE:

RE: Request for Leave

I request the following leave:

_____ Vacation

_____ Personal

_____ Compensatory Time

_____ Sick

My last working date will be: _____

I will return to work on: _____

Number of Days: _____

Approved By: _____

Date: _____

cc: Nancy Tavilla, Administrator
Reception

OFFICE OF THE ATTORNEY GENERAL
TRAVEL REQUEST FORM

DATE: _____

APPROVALS: _____
BUREAU CHIEF

FIRST ASSISTANT ATTORNEY GENERAL

NAME: _____ PHONE EXT. _____

DESTINATION: _____ HOME PH: _____

CASE: _____

PURPOSE: _____

I. DATES AND TIMES

DEPARTURE DATE: _____
DESIRED TIME: _____

RETURN DATE: _____
DESIRED TIME: _____

II. TRANSPORTATION:

_____ PLANE

_____ BUS

_____ TRAIN

III. OTHER ARRANGEMENTS

LODGING FROM: _____ TO: _____

RENTAL CAR FROM: _____ TO: _____

CREDIT CARD # _____

UPON RECEIPT OF THE SIGNED APPROVAL, PLEASE CONTACT SHEILA
MARTIN X2013 TO MAKE ALL ARRANGEMENTS.

TRAINING EXPENDITURE APPROVAL REQUEST FORM

Form B-5

TO: Diane S. Juliar, Director, Policy & Training

FROM:

THROUGH: _____
 Division Chief Bureau Chief

DATE:

RE: Outside Training

1. Program which I seek to attend (attach copy of brochure):

Program Description/Title:	Estimated expenses:
_____	Registration fee _____
_____	Flight/other transp'n _____
Program Sponsor: _____	Hotel _____
_____	Meals _____
Date: _____	Other (cabs, etc.) _____
Location: _____	TOTAL _____

2. Reasons for request:

3. Other training programs attended during the past two years, with those attended at office expense marked with an asterisk (use reverse side if necessary):

A completed copy of the registration form for the course should be attached to this form. This form is to be submitted to the Director of Policy and Training, with the approval of your Division and Bureau Chiefs noted on it, as early as possible and no later than 7 days in advance of the proposed training program. Upon approval, this form will be returned to you and a copy will be forwarded to the Budget Director's office. The budget office will issue a check for the registration fee for the program. You will be responsible for arranging your own registration. Any additional costs incurred will be reimbursed when a travel voucher with attached receipts has been submitted to the budget office, in accordance with the guidelines on the reverse of this form.

TRAVEL/TRAINING EXPENDITURE GUIDELINES

TRAVEL EXPENDITURES:

ALL TRAVEL ARRANGEMENTS MUST BE MADE THROUGH THE BUDGET OFFICE. Please contact Sheila Martin at X2013 to make arrangements.

Expenses incurred will be reimbursed after the trip. All receipts must be attached to the reimbursement request, which must be submitted to the budget office. This can be in memo form or a standard travel voucher may be used.

It is advisable that a major credit card be used when accommodations or a rental car are required.

Reimbursement for meals is limited to \$27.50 per day.

TRAINING EXPENDITURES:

Upon receipt of an approved training approval request form, the budget office will issue a check for the cost of the program. Any additional costs incurred will be reimbursed when a travel voucher with attached receipts has been submitted to the budget office.

0901j

TO: Nicole Payne, Speakers' Bureau Coordinator

FROM: _____, Ext.: _____

DATE: _____

RE: Speaking Request Notification

CC: Division/Bureau Chief

CC: Carrie Smotrich, Deputy Chief of Staff

EVENT: _____

DATE: _____

LOCATION: _____

ADDRESS: _____

CONTACT: _____

ORGANIZATION: _____

TELEPHONE: _____

SPEAKING PROGRAM

TOPIC: _____

TIME: _____

AUDIENCE: _____ SIZE: _____

COMMENTS: _____

SPEAKERS' BUREAU FOLLOW-UP MEMO

TO: _____
FROM: Nicole Payne, Coordinator Speakers' Bureau; Ext. 20 2
DATE: _____

* * * * *

As a follow-up to your recent speaking engagement as a representative of the Attorney General's Speakers' Bureau, please complete the following questionnaire. This information will be used to evaluate future requests from this organization. Thank you for your cooperation.

EVENT: _____ DATE OF EVENT: _____

ORGANIZATION: _____

LOCATION: _____

FORMAT (speech, panel): _____ TOPIC: _____

AUDIENCE: _____ SIZE: _____

AUDIENCE RESPONSE : _____

IS THIS THE TYPE OF GROUP THE ATTORNEY GENERAL SHOULD CONSIDER ADDRESSING? _____

SHOULD ANYONE FROM THE ATTORNEY GENERAL'S OFFICE ATTEND THIS TYPE OF EVENT AGAIN? _____

IS ANY FOLLOW-UP REQUIRED OF THIS OFFICE? _____

COMMENTS: _____

IN ORDER TO AVOID EACH SPEAKER HAVING TO WRITE HIS/HER OWN SPEECH ON A TOPIC WHICH HAS ALREADY BEEN COVERED AND TO MAINTAIN A CONSISTENT VOICE FROM THE OFFICE OF THE ATTORNEY GENERAL, PLEASE SHARE YOUR NOTES OR OUTLINE USED TO MAKE YOUR PRESENTATION.

C. Complaints, Referrals and Investigations

1. CRIMINAL COMPLAINTS, REFERRALS, CORRESPONDENCE

The Criminal Bureau maintains electronic and hard copy files of all referrals, requests for investigation, requests for information and other correspondence - whether received by mail, telephone or in person and from every source outside and within the Office of the Attorney General. All referrals and requests receive a response (except those which are anonymous in origin). Our ability to maintain this record of intelligence and action depends upon the application of a single rule: **ALL REFERRALS, REQUESTS AND CORRESPONDENCE MUST BE RECORDED** in our criminal complaint information system. The system works as follows:

1. Immediately upon receiving a referral, request or correspondence, a "CRIMINAL COMPLAINT INFORMATION SHEET" (Form C-1) must be filled out and given to Ted Goble, along with any documentation or correspondence received from the source. This applies even if the source of the information is anonymous.
2. The information is entered into an electronic database, where it is assigned an identification number.
3. If the request or correspondence can be handled without further action, Ted Goble closes the file and confirms the same in a letter to the source.
4. If the request or correspondence requires further action, it will be sent to the Criminal Investigations Division

Chief or the appropriate division chief for assignment. Notice of such assignment must be given to Ted Goble for entry into the database.

5. If upon further investigation the matter is closed or resolved without prosecution, a close-out letter must be sent to the source and a copy of the letter provided to Ted Goble for filing.

6. If upon further investigation the matter results in prosecution, notice of grand jury action must be provided to Ted Goble for entry into the system.

2. SEARCH WARRANTS/WIRETAPS

Search Warrant Approval: Search warrant applications and affidavits must be approved by the division chief prior to submission to a judge or magistrate.

Impoundment Orders: Unless otherwise warranted, the presumption is that all search warrant applications will include a motion for impoundment of the application, affidavit and return until such time as the investigation concludes and/or an indictment is returned.

Wiretap Warrant Approval: Wiretap applications and affidavits must be approved by the division and bureau chief/deputy bureau chief prior to submission to the Attorney General for designation/authorization.

Blood Warrant Approval: Consensual monitoring warrant (Blood warrant) applications and affidavits must be approved by the division chief prior to submission to a judge or magistrate.

3. TAX RETURNS/FILING STATUS

The Tax Prosecution Unit within the Economic Crimes Division prosecutes cases involving tax evasion or failure to collect and/or pay taxes. The TPU also serves as liaison to the Department of Revenue and may obtain access tax information for use in criminal prosecutions.

Filing Status: The Tax Prosecution Unit can obtain from the Department of Revenue general tax filing information (e.g., whether an individual or company has filed income or excise tax returns with the Commonwealth for the past several years). To obtain such general information, provide the TPU with the name of the individual or company and the social security number or tax identification number. Requests for such information usually receive a response within two to three days.

Tax Returns: The Department of Revenue is prohibited from releasing copies of tax returns for any purpose other than the investigative or prosecution of a criminal tax charge. Copies of state and federal tax returns may be obtained from the Department only upon the request of the Tax Prosecution Unit. To obtain such returns, a memo detailing the request and the factual basis for believing that a violation of the state tax laws has occurred must be submitted to the Tax Prosecution Unit through the Economic Crimes Division Chief.

4. TELEPHONE TOLL RECORDS

Pursuant to G.L. c. 271, § 17B, and 18 U.S.C. § 2703, the Attorney General may issue an administrative subpoena or grand

jury subpoena to a provider of electronic communication service (telephone messages, etc.) for all records in the possession of the provider if the communication service "is being or may be used for an unlawful purpose." The most common request for information is for telephone toll records, which may establish conversation between a target and a co-conspirator, a target and a victim, or a target and a witness, all in furtherance of the criminal venture. Toll records are not available for purposes of establishing identity or other information where there is no evidence to believe that the telephone is or may be used for an unlawful purpose.

The Attorney General has designated the following AAGs who may issue such administrative subpoenas: the Criminal Bureau Chief, Deputy Bureau Chiefs, and Chiefs of the Narcotics, Public Integrity, Economic Crimes and Special Investigations Divisions.

In order to ensure compliance with both state and federal law, all requests for telephone records must be made in writing to the Chief of the Criminal Investigations Division. A form REQUEST FOR TOLLS (Form C-2) must be completed which states the reasonable grounds for believing that the telephone service is being used for an illegal purpose. In the absence of any statement of the reasonable grounds, no toll request will be approved. An administrative subpoena (in the form of a standard letter to the service) will be prepared and sent to the appropriate division chief for signature. The original

request and a copy of the administrative subpoena will be maintained on file by the Criminal Investigations Division Chief.

5. SPECIAL GRAND JURY

Every six months the Office of the Attorney General convenes a special grand jury sitting for Suffolk County. This special grand jury has jurisdiction to hear evidence and return indictments for crimes occurring in Suffolk County. This special grand jury sits once or twice per week (as needed) and, in some circumstances, can be extended beyond the six-month term for investigations that have not been concluded. The procedures for use of this special grand jury are as follows:

Coordinator: Nadra Chase, Grand Jury Coordinator (ext. 2865) is responsible for scheduling presentments to and returns by the special grand jury.

Presentment Numbers: Prior to scheduling time before the special grand jury, an AAG must obtain a grand jury presentment number from the Suffolk County Clerk for Criminal Business. The presentment numbers are assigned by the clerk's staff in the witness fee room on the 7th floor of the Suffolk County Courthouse.

Scheduling Time: Once a presentment number has been obtained from the clerk's office, an AAG may schedule time before the grand jury by providing the Grand Jury Coordinator with a GRAND JURY FACE SHEET (Form C-3). This FACE SHEET enables the Criminal Bureau to keep track of all open

investigations. With the FACE SHEET on file, the Grand Jury Coordinator will schedule time before the special grand jury at its earliest convenience. (To assist in planning special grand jury presentments, the Grand Jury Coordinator sets a monthly calendar of special grand jury sittings which is distributed to all Criminal Bureau AAGs.)

Unlike some other county grand juries, the special grand jury does not hear testimony on a first-come, first-serve basis. Instead, the Grand Jury Coordinator will schedule times to minimize inconvenience to witnesses and AAGs. As a result, AAGs must be considerate of their colleagues: when you cancel a grand jury appearance at the last minute, or when your appearance lasts substantially longer (or shorter) than scheduled, you inconvenience your fellow AAGs and their witnesses. Accordingly, it is imperative that you plan your grand jury appearances carefully and that you confirm all witnesses' appearances before confirming the time with the Grand Jury Coordinator. If circumstances beyond your control require the cancellation of a grand jury appearance, you must notify the Grand Jury Coordinator immediately.

Return of Indictments: Assuming that a prosecution memo has been approved by the division chief, bureau chief/deputy bureau chief and First Assistant, an AAG may present letters to the special grand jury requesting the return of indictments. The Grand Jury Coordinator must be notified in advance when you seek the return of indictments in order to arrange the special

grand jury's return of the indictments to the first session judge. The Press Office should already have been made aware by the AAG that indictments are anticipated and, upon the return of indictments, the Press Office must be notified immediately. The case must then be entered in the Case Management Information System (see Section A.4.)

Warrants/Summonses: Upon the return of indictments by the special grand jury, the AAG must file a MOTION FOR ISSUANCE OF SUMMONS (Form C-4) if there is no reason to believe that the defendant will fail to appear for arraignment. If there is reason to believe that the defendant will not appear, a secret return may be made along with a MOTION FOR WARRANT OF ARREST TO ISSUE (Form C-5). Summonses are sent by the clerk's office. An arrest warrant shall be served by a state police trooper assigned to the Attorney General's Office.

Investigations Closed: If a grand jury investigation is closed without the return of indictments, the Grand Jury Coordinator must be notified immediately.

Extension: If a grand jury investigation is not concluded within the statutory six-month sitting of the special grand jury, the grand jury's sitting may be extended by order of the Superior Court. Do not assume that such extension is automatic; it is presumed that all investigations commenced during the regular sitting of the special grand jury will be completed within the regular sitting. If there is a

particular, compelling need to extend the sitting, an AAG must fill out a SPECIAL GRAND JURY CASE EXTENSION MEMO (Form C-6). After discussion with and approval by the division chief, the CASE EXTENSION MEMO must be given to the Grand Jury Coordinator.

6. GRAND JURY PRESENTMENTS

Record: G.L. c. 221, § 86, and Sup. Ct. R. 63 require the stenographic recording of all testimony given before the grand jury. This includes the answers provided by the witness as well as all questions put by either the AAG or a member of the grand jury. Instructions to the grand jury are not recorded. Before appearing before any county grand jury, an AAG must consult with the Grand Jury Coordinator to determine whether the particular county provides a stenographer or whether the AAG must provide the stenographer.

Subpoenas: The Supreme Judicial Court has stated that a prosecutor "should limit use of grand jury subpoenas to situations which further the grand jury's [as opposed to the prosecutor's] function." Commonwealth v. Cote, 407 Mass. 827, 832 (1990). The grand jury may not be used for the purpose of preparing an already pending indictment for trial, nor for the purpose of furthering the prosecution - as opposed to investigation - of the case under review. Accordingly, no grand jury subpoena shall be issued except for the purpose of presenting evidence before a sitting grand jury.

Documents: All documents received pursuant to a grand jury subpoena shall be marked as exhibits and presented for the grand jury's consideration. Documents may be marked individually, by file or by box. If a grand jury sitting is to expire without taking action on an investigation, and a subsequent or different grand jury is to consider the same evidence, an AAG must ask the present grand jury to authorize by vote the transfer of all exhibits to the successor grand jury.

Agreements: Whenever a witness testifies before a grand jury pursuant to a court order of immunity or letter of non-prosecution, that fact shall be made known to the grand jury by marking as an exhibit the immunity order, agreement or letter. In some cases, it may be appropriate to advise the grand jury that a witness is testifying pursuant to a cooperation agreement. An AAG must consult with the division chief to make this determination.

Grand Jury Secrecy: Mass. R. Crim. P. 5(d) provides that a "person performing an official function in relation to the grand jury may not disclose the matters occurring before the grand jury except in the performance of his official duties or when specifically directed to do so by the court." While this rule should be of common knowledge among AAGs, police officers and civilian investigators, it may not be known to investigators from other government agencies with whom an AAG may be working. Accordingly, in all cases in which non-AG

investigators (e.g., state auditors, DOR personnel, IG investigators, etc.) are involved in grand jury investigations conducted by this office, such investigators must review and sign an OBLIGATION OF SECRECY form (Form C-7). The original, signed form must be maintained in the AG case file.

7. SUMMONSES/SUBPOENAS

A summons may be served by any person who is not a party and is not less than 18 years old. That is, anybody in this office - attorney, investigator, support staff or police officer - is authorized to serve a summons. No special authorization or police power is required. See Mass. R. Crim. P. 17(d); Mass. R. Civ. P. 45(c); G.L. c. 233, § 2; 30A Mass. Practice Series, Smith, § 1572.

A summons may be served in hand, by leaving it at a witness's dwelling with a person of suitable age and discretion then residing therein, or (if it is a witness for the Commonwealth or an indigent defendant) by mailing to the witness's last known address. See Mass. R. Crim. P. 17(c), (d); G.L. c. 233, § 3. That is, service by dropping the summons at the witness's residence is not valid unless it is given to an adult resident of the dwelling. Service by facsimile is not valid. Service by mail does not require registered or certified mail; regular mail will suffice. See Mass. R. Crim. P. 2(b)(11).

Given the inherent flexibility of the rules and the caseload burden on our investigators and police officers, the

following guidelines apply to all summonses issued by the Criminal Bureau.

1. When issuing a summons to a friendly witness or to a business for records, service by mail (with a telephone alert) is sufficient.

2. Service in hand or at the dwelling should be reserved for hostile witnesses (those likely to claim that they did not receive the summons by mail) and witnesses who may provide information when encountered by a police officer or investigator (never turn down an opportunity for a free statement). In the case of the latter, make sure the serving officer or investigator is knowledgeable about the case or briefed as to relevant information.

3. All AAGs should maintain within their investigative case file or with their secretary a log of all subpoenas issued, served and returned (Form C-8). This information will aid in organizing document production and record-keeping, and will ensure compliance with the SJC's directive that every record produced by summons be produced to the grand jury (see Commonwealth v. Cote, 407 Mass. 827, 831-832 (1990)).

ATTORNEY GENERALS OFFICE Criminal Complaint Information Sheet

Control #: _____ State Police #: 92-034- - Date / / Time: _____

Duty Officer: _____ Duty A.A.G.: _____

Investigator: _____ A.A.G.: _____

Origin: Walk In: ___ Phone: ___ Mail: ___ Internal : ___ Referral: ___ - By: _____

Complainant: _____ Phone: _____
(Victim) (Last Name, First, Middle)

Address: _____ Work: _____

Subject of Complaint: _____ Phone: _____
(Defendant) (Last Name, First, Middle)

Summary of Complaint: _____

INITIAL ACTION SUMMARY

Action: _____ Authority: _____

Form Letter (Indicate Letter) A. () B. () C. () D. () E. () Date: / /

CC: _____ No Further Action: _____ Closed: _____

FOLLOW UP INVESTIGATION

Approved for investigation by: _____ Date: _____

Assigned to: _____ By: _____ Division : _____
(Investigator)

Date: _____ Status Report Due by: _____

Assigned To: _____ By: _____ Division: _____
(A.A.G.)

Date: _____ Status Report Due by: _____

Grand Jury Action

Approved for Grand Jury Action: _____ Date: _____

Grand Jury Time Alloted: _____ County: _____

Indictment Date: _____ Defendant: _____

Charges: (1) _____ (2) _____
(3) _____ (4) _____

MEMORANDUM

Form C-2

TO: Lieutenant John D. Kelly
FROM:
DATE:
RE: REQUESTS FOR TOLLS

As part of an investigation being conducted
by _____, I would like to request;

telephone toll records for the last _____ billing
periods on the following telephone number and listing:

Subscriber information on the following telephone number
or address

Type of Investigation: Narcotics

File Number: 93-034- -

Briefly describe reasonable grounds that the
service is being used for unlawful purposes:

APPROVED BY:

Lieutenant John D. Kelly
Unit Commander,
State Police Unit
Attorney Generals Office

FORWARDED TO:

GRAND JURY FACE SHEET

CASE NAME: COMMONWEALTH v. JOHN DOE

SUBJECT'S
NAME(S): _____

PRESENTMENT
NUMBER: _____

ASSISTANT ATTORNEY
GENERAL: _____

DIVISION: _____

DATE OF FIRST
PRESENTMENT: _____

****RETURN TO NADRA CHASE****

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT FOR THE
TRANSACTION OF CRIMINAL
BUSINESS

SITTING, 1991

(date)

MOTION OF COMMONWEALTH FOR ISSUANCE OF SUMMONS

Now comes the Commonwealth and moves that the Court order that a summons accompanied by a copy of the indictment, be issued for the appearance before the aforesaid Superior Court Department at 9:30 A.M., _____ of the defendant named in the following indictment which has been returned into Court by the Grand Jury herewith.

INDICTMENT NO.

DEFENDANT

CHARGE

The Commonwealth further moves that service of the summons be made by mailing an attested copy of it to the defendant at _____, which is the defendant's last known address.

For the Commonwealth,

By: _____
Assistant Attorney General

Criminal Bureau
(617) 727-2200, Ext.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT FOR THE
TRANSACTION OF CRIMINAL
BUSINESS

SITTING, 19

(date)

MOTION OF THE COMMONWEALTH FOR WARRANT OF ARREST TO ISSUE

Now comes the Commonwealth and moves that the Court order a warrant to issue for the arrest of the defendant named in the following indictment which has been returned into Court by the Grand Jury herewith:

The Commonwealth represents that the above-named defendant may not appear unless arrested.

For the Commonwealth,

By: _____

Assistant Attorney General

Approved: _____
Division Chief

SPECIAL GRAND JURY
CASE EXTENSION MEMO

CASE NAME: _____

PRESENTMENT
NUMBER: _____

ASST. ATTY.
GENERAL: _____

DIVISION: _____

DATE OF FIRST
PRESENTMENT: _____

STATUTE(S) UNDER
INVESTIGATION: _____

BRIEF FACTUAL
SUMMARY: _____

THE OBLIGATION OF SECRECY UNDER RULE 5(d) OF THE
MASSACHUSETTS RULES OF CRIMINAL PROCEDURE

Rules of the Commonwealth of Massachusetts impose secrecy requirements on grand jury proceedings. Under Rule 5(d) of the Massachusetts Rules of Criminal Procedure, no matter occurring before the grand jury may be disclosed to any person except the following:

1. an Assistant Attorney General or attorney employed by the Department of Attorney General who is involved in the criminal grand jury investigation.
2. government personnel who have been declared by the Assistant Attorney General or the Department of the Attorney General to be necessary to assist the attorney in the investigation.

Persons to whom grand jury material is disclosed may not use this material for any purpose other than to assist a government attorney in enforcing the criminal law, and in the performance of his or her official duties.

Disclosure beyond that described above may be permitted under some circumstances at the discretion of the court. Such disclosures should not be made unless the government attorney responsible for the grand jury investigation has requested the agent, in accordance with the court's direction, to disclose the material.

Disclosure to other persons, including supervisory personnel within your agency or department, may not be made except in accordance with the requirements set out above. If there is any question about whether disclosure of grand jury material to any other person is allowed under these rules, it should be brought to the attention of the appropriate Assistant Attorney General prior to the disclosure of material to such person(s).

Grand jury materials, for purposes of these secrecy requirements, include all testimony given by witnesses before a grand jury, and may include documents or records obtained by the grand jury through the issuance of subpoenas to individuals or custodians of records, and documents or records obtained from individuals or custodians of records through their voluntary compliance with grand jury subpoenas. Any questions about whether specific information or records constitute grand jury materials should be directed to the appropriate Assistant Attorney General.

The text of Rule 5(d) is provided below:

(d) **Secrecy of Proceedings and Disclosures.** The judge may direct that an indictment be kept secret until after arrest. In such an instance, the clerk shall seal the indictment and no person may disclose the finding of the indictment except as is necessary for the issuance and execution of a warrant. A person performing an official function in relation to the grand jury may not disclose matters occurring before the grand jury except in the performance of his official duties or when specifically directed to do so by the court. No obligation of secrecy may be imposed upon any person except in accordance with law.

I certify that I have read and understand the foregoing provisions relating to the obligation of secrecy under Rule 5(d) of the Massachusetts Rules of Criminal Procedure and understand the nature and scope of that obligation.

NAME

DATE

9382V

SUBPOENA LOG

NUMBER	CASE TITLE ATTY.	SERVED UPON (Name & Address)	REC'D	OFFICER	SERVED ON	RETURN

form C-8

D. Case Prosecution and Disposition

1. PROSECUTION MEMOS

The central difference between the Office of the Attorney General and the state's District Attorneys is the discretion this office has with respect to the use of its prosecution authority. We are not responsible for prosecuting the thousands of cases which result from police arrests each day in the Commonwealth; rather, our cases exist because we choose to charge them. This discretion carries with it the responsibility to choose our cases wisely and with good reason. A prosecution memo is the record of our exercise of discretion, and is the primary method of informing the Attorney General of how we enforce the Commonwealth's laws in his name.

WHAT IS A PROSECUTION MEMO?

A prosecution memo is a request for authorization to charge a person (or persons) by district court complaint or grand jury indictment.

WHAT MUST BE INCLUDED IN A PROSECUTION MEMO?

A prosecution memo must include a summary of the anticipated evidence, the relevant statutes and elements of the crimes, the proof as to each element, the anticipated defenses or problems of proof, the relevant sentencing considerations and your preliminary recommendation, the proposed indictment forms, the relevant grand jury instructions and a draft press release. (A model prosecution memo is attached as Form D-1.)

WHEN MUST A PROSECUTION MEMO BE PREPARED?

A prosecution memo must be drafted and approved prior the return of any indictment or the issuance of any complaint. It is not necessary to secure prosecution authorization prior to presenting evidence to a grand jury unless a single presentation and grand jury vote on the same day is expected.

WHO MUST REVIEW/APPROVE A PROSECUTION MEMO?

A prosecution memo must be reviewed and approved first by your division chief, then by the bureau chief or deputy bureau chief, and then by the First Assistant. The original prosecution memo should be provided to your division chief. If your division chief approves and signs the cover sheet, s/he will make two copies and forward them to either the Deputy Chief for Litigation (Appeals, MFCU, Narcotics, Public Integrity) or the Bureau Chief (DET, Economic Crimes, Environmental, Special Investigations). If either is unavailable, the division chief will forward the original and copies to the Deputy Chief for Administration. After approval, the original memo will be forwarded to the First Assistant for final approval.

Bear in mind that your division chief, deputy bureau chief, bureau chief and first assistant all have responsibilities other than reviewing your prosecution memos. You must submit your prosecution memo to your division chief in plenty of time for the review process, at least three working days prior to the indictment/charge date.

WHY MUST YOU PREPARE A PROSECUTION MEMO THIS WAY?

While the prosecution memo serves several purposes, the most important is to organize your case so that you maintain a strategic advantage throughout the course of the prosecution. While arrests are made on the basis of probable cause, indictments are secured by prosecutors that must convince a jury or judge beyond a reasonable doubt. Preparation of a prosecution memo enables you to organize your evidence and proof of each element and to identify and counter defense arguments and tactics. Ideally, you will begin writing a prosecution memo early in the investigation so that limited investigative resources are not squandered either on unnecessary makeweight points or on charges which legally cannot be proved.

The prosecution memo also provides your supervisor with an objective measure of your skills; how you prepare cases, how well you relate facts to the law, and how clearly and convincingly you write.

Finally, the prosecution memo ensures accountability to the Attorney General through your division chief to the First Assistant.

2. IMMUNITY, COOPERATION AGREEMENTS, PROFFERS

Immunity: In the event that a witness's testimony is essential to a prosecution and the witness has indicated an intention to invoke his/her constitutional privileges against self-incrimination, it may be appropriate to seek and obtain a

formal grant of immunity from a single justice of the SJC. See G.L. c. 233, §§ 20C-20E. Approval of an immunity application must be obtained from the division chief, the bureau chief/deputy bureau chief and the First Assistant Attorney General. The witness for whom you seek immunity must first appear before a grand jury and invoke his/her privilege to specific questions of relevance to the grand jury's investigation. Following this appearance, a transcript of this appearance must be attached to the petition for immunity, along with a draft immunity order. (Form D-2) A copy of the application materials and a memo describing the reasons for seeking immunity must then be sent to the First Assistant through the division chief and bureau chief/deputy bureau chief. No application hearing may be scheduled without these approvals.

Non-Prosecution Letters: Often a witness will agree to testify absent court-ordered immunity in return for a letter promising that this Office will not prosecute the witness for particular conduct. While such an agreement cannot be used to compel the witness's subsequent testimony at trial (as court-ordered immunity can), the non-prosecution letter has the advantage of speed. Nevertheless, because such a letter binds the Office of the Attorney General, the same approval process as for court-ordered immunity applies. A draft non-prosecution letter (Form D-3) and a memo describing the reasons for such agreement must be sent to the First Assistant through the

division chief and bureau chief/deputy bureau chief. All non-prosecution letters must be signed by the First Assistant.

Cooperation Agreements and Proffers: In the event that a witness's testimony is essential to a prosecution, but the witness has committed crimes for which we decline to offer immunity, the witness may agree to testify in return for a specific charging decision or sentence recommendation. Any such cooperation agreement must be reduced to writing and signed by the First Assistant. (Form D-4) Any cooperation must be approved by the division chief and bureau chief/deputy bureau chief before submission to the First Assistant. In the course of negotiating with counsel for a witness's testimony, it is essential that you obtain a "proffer" or summary of the witness's testimony before entering any agreement.

3. PLEA NEGOTIATIONS/SENTENCING

Sentence recommendations, whether after plea or trial, reflect the Commonwealth's judgment as to the appropriate penalty for a specific offense, committed by a specific individual. While necessarily individual, sentence recommendations must address both individual and general factors: specific deterrence (what sentence will deter this defendant from committing future crimes?); general deterrence (what sentence will deter others from committing similar crimes?); rehabilitation (what sentence will foster change in this defendant's anti-social behavior?); and retribution (what sentence will reinforce society's commonly-shared definition of

anti-social behavior?). Because every sentence recommendation is made in the name of the Commonwealth, this office must maintain uniformity and consistency among the recommendations of its many assistant attorneys general, as well as it must formulate recommendations which reinforce the principles informing our prosecutorial discretion.

Prosecution Memos: Every prosecution memo must contain a general, preliminary recommendation ("lengthy state prison sentence", "suspended sentence with the following conditions...", etc.) and the reasons for this recommendation. Approval of the prosecution memo is not approval of any particular recommendation contained therein.

Approvals: Prior to making any sentencing recommendation, either to the judge or to defense counsel during plea negotiations, you must discuss it with you division chief and with the bureau chief or deputy bureau chief. A sentence recommendation cannot be communicated to the judge or to defense counsel without the approval of the division chief and bureau chief/deputy bureau chief.

Victim Impact Statements: Before formulating any sentence recommendation, an assistant attorney general must solicit input from the victim, if any, of the crime as well as the investigating/referring agency (local police, DOR, etc.). G.L. c. 279, § 4B, provides that before disposition of any case involving conviction for a felony and which involves a known victim, "the district attorney shall give the victim actual

notice of the time and place of sentencing and of the victim's right to make a statement to the court, orally or in writing at the victim's option, as to the impact of the crime and as to a recommended sentence." It is the policy of the Attorney General that the provisions of c. 279, § 4B, as well as those appearing in G.L. c. 258B, shall apply to all prosecutions undertaken by this office.

Sentencing Memos: In all cases in which the Commonwealth's recommendation includes incarceration, the assistant attorney general shall file a sentencing memorandum, unless prior approval to do otherwise is obtained from the division chief. Such a memo shall include a summary of the evidence, the Commonwealth's recommendation(s), the reasons for the Commonwealth's recommendation(s), and a copy of the victim's impact statement(s). The sentencing memo shall be filed with the court at least one day prior to the date scheduled for disposition, with a copy served on defense counsel.

4. CASE-RELATED EXPENDITURES

If the effective investigation or prosecution of a case requires a special expenditure for services not provided by this office (e.g., expert testimony, graphic displays, out-of-state witness travel expenses, etc.), approval must be obtained prior to the commitment of any such expenditure.

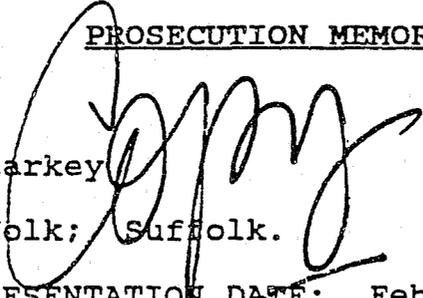
Experts/Consultants: In order to obtain the services of an expert witness or other consultant, an "AUTHORIZATION FORM FOR EXPERT WITNESS/CONSULTANT CONTRACTS" (Form D-5) must be

submitted to the Deputy Chief for Administration through the division chief. Following approval by the First Assistant, a Commonwealth of Massachusetts standard form contract must be prepared and signed by the expert/consultant, along with a tax reporting information form. These forms are available from the Deputy Chief for Administration.

Graphic Displays/Copies: In order to obtain approval for purchasing graphic displays or copying services, a memo explaining the need and the approximate cost must be submitted to the Deputy Chief for Administration through the division chief.

Out-of-State Witness Travel: In order to obtain approval for travel expenses for witnesses, a TRAVEL REQUEST FORM (the same form used for AG office travel, Form B-4) must be submitted to the Deputy Chief for Administration through the division chief. The First Assistant must also approve all such travel expenditures.

Copy Fees for Subpoena Compliance: All bills or invoices submitted to this office by banks, accountants or other custodians of records subpoenaed to the grand jury or a trial jury, must be given immediately to the Deputy Chief for Administration. The Commonwealth is obligated to pay for the production of documentary evidence only where the cost of compliance with the summons exceeds that which the custodian of the documents may reasonably be expected to bear as a cost of doing business. See In the Matter of a Grand Jury Subpoena, 411 Mass. 489, 501-502 (1992).

PROSECUTION MEMORANDUMAAG: Carol A. Starkey  DATE: February 5, 1993

1. COUNTY: Norfolk; Suffolk.
2. GRAND JURY PRESENTATION DATE: February 17, 1993 for Norfolk County; Not yet set for Suffolk County..
3. DEFENDANT: Charles R. Davis
50 Fenno Street
Quincy, MA
SSN: (Utilizes two #s)
214-86-4461 & 018-66-6113
d/o/b: 1/24/62
4. OFFENSES BY VICTIM:
 - A. Mr. Julio Ortiz and his wife, Le T. Ha - \$324.00
 - (1) Larceny Over \$250
 - B. Mr. Raymond Bass - \$429.00
 - (1) Larceny Over \$250
 - C. Mr. Harold Burnett and his wife Marcia Burnett - \$976.00
 - (1) Larceny Over \$250
 - (2) Larceny Over \$250
 - D. Mr. Sileshi Demisew - \$490.00
 - (1) Larceny Over \$250
 - E. Ms. Myrna Rodriguez - \$35,862.75
 - (1) Larceny Over \$250
 - (2) Larceny Over \$250
 - F. Mr. James McCaffrey - \$473.00
 - (1) Larceny Over \$250
 - G. Mr. Richard Rose - \$413.00
 - (1) Larceny Over \$250
 - H. Mr. Sandy Stillwell - \$4,000.00
 - (1) Larceny Over \$250

I. Introduction.

Laura K. Krauss, the General Counsel for The Insurance Fraud Bureau, referred this matter to the Office of the Attorney General on December 15, 1992. Attorney Krauss requested prosecution of Mr. Charles R. Davis for Larceny. Her request was the result of reviewing submitted documentation of Mr. Davis' alleged criminal activities from Insurance Fraud Investigator Marsha MacDougall.

Mr. Charles R. Davis, (hereafter 'Davis'), a former Metropolitan Life Insurance Sales Representative, is alleged to have diverted approximately \$43,000.00 from insureds for his own personal use. He accomplished this task by selling various insurance policies to prospective Metropolitan Life Insurance customers, and instead of establishing those policies, he placed the money into his own personal bank accounts.

Davis' larcenous conduct did not reveal itself to be overly complicated or well planned when it was discovered, following a similar pattern with each of his prospective victims. Simply stated, Davis received payments on policy premiums from eight victims which he then deposited into his own bank accounts at the Fleet and Shawmut Banks. Each victim, parting with their money in the belief that Davis was investing

it in annuities, or that they had purchased life, homeowners, or flood insurance policies, would never hear from Davis again. Concerned that they hadn't received their policies in the mail as promised, several of the Davis 'clients' called Metropolitan Life Insurance Company inquiring after their account. In doing so, they discovered that the Company had no record of their accounts ever having been established.

The following discussion will summarize the factual basis of Davis' larcenous conduct and outline relevant documentation necessary for proof. An overview of the applicable law and a recommendation for charges will follow this discussion. I have chosen to prepare this matter for presentation to the Norfolk County Grand Jury and subsequent prosecution in the Superior Court, a forum more equipped to handle this case due to its victim-intensive nature, the seriousness of the offenses and the amount of money that Davis stole in the aggregate.

II. Discussion.

A. Target Profile.

Charles R. Davis, believed to currently reside at 50 Fenno Street, Quincy, MA and use a Post Office Box 2581, in Jamaica Plain, is a 31 year old black male, with a date of birth of

1/24/62. He utilizes two social security numbers, one issued from Maryland as 214-86-4461, and the other issued in Massachusetts as 018-66-6113 on or around 1985. According to Laurette Carter from the Department of Health and Human Services, the latter SSN issued in MA was for Charles Davis, Jr., the target's son.

Davis claims on his application for employment with the Insurance Company that he graduated from 'Morgan St. University in Baltimore, Maryland in 1978,' obtaining a 'B.S. of Business Administration.' This is more than dubious, since he would have been a College graduate at age 16. In any event, Davis is originally from Maryland, spending at least 7 years in the city of Baltimore. After his graduation, he held a variety of jobs in Baltimore until December of 1981, when he came to Boston, MA and worked at Standard Oil as a Field Supervisor. He states on his application that he was also a Referee and Commissioner for community basketball leagues during this time, which he continued after being hired by Metropolitan Life Insurance Company. He claims that his work with basketball leagues gave him an additional \$200.00 weekly.

Davis was apparently very sociable, meeting people easily and gaining their trust. He is an articulate, presentable person with one minor matter on his criminal record for Failure

to Return Leased Property in 1986, which was dismissed out of East Boston District Court. His work through community basketball leagues introduced him to several of his prospective victims, and he was generally known as a "nice guy." He was also introduced to his victims through simple word of mouth. For example, Suffolk County Probation Officer Sandy Stillwell trusted Davis enough to hand him a cashier's check for \$4,000.00 to purchase an IRA, not even insisting on a receipt at the time of the transaction. Details of each larcenous transaction are to follow.

B. Background Information.

Charles Davis applied for a position with Century 21 Insurance Services, Inc. in 1987, and was appointed an Account Executive in the 33D Metro-South Branch Office on 6/6/88. Century 21 had become a part of Metropolitan Life Insurance at this time. A year and half later, this branch was abolished, and he was transferred to the D02 Dedham, MA Branch. In Dedham, he was employed by Metropolitan Life as a Sales Representative and managed by a Mr. Patrick Fitzgerald. During Davis' employment as a Sales Rep, he maintained an office at 49 Beale Street, in Quincy, MA. Davis called this office Annex Insurance Agency, apparently attempting to run his own insurance business on the side. This office was located in the

Century 21 Real Estate office, and used to effectuate a few of his fraudulent business schemes. For the purposes of maintaining his license with the Department of Insurance, Davis used the social security number of 214-86-4461.

Not surprisingly, Metropolitan Life did not appreciate Davis' extracurricular business venture, and in April of 1991, he was instructed in writing by the Company to cease doing business as Annex Insurance Agency. The following January, Mr. Fitzgerald requested that the Company place Davis on probation due to "lack of production." On January 24, 1992, two days after Fitzgerald made this request, he received the first call from victim Myrna Rodriguez.

Ms. Rodriguez had contacted the Dedham Branch office for Metropolitan Life and spoke with Fitzgerald, inquiring about the \$35,862.75 she had paid to Davis for investing in annuities. Mr. Fitzgerald, already disgruntled with Davis, discovered that no such account ever existed for Ms. Rodriguez. He then initiated an internal audit of all of the Davis accounts. Davis was subsequently terminated on February 7, 1992.

The full extent of Davis' activities became clear as his sales accounts were examined and investigated. Seven

additional victims were discovered to have lost money in a similar fashion to Davis, totalling \$42,967.75. Most of these individuals wrote checks to Davis, which have been traced throughout the course of the following investigation.

C. Investigative Facts Relating to Each Victim.

1. Myrna Rodriguez - \$35,862.75.

Myrna Rodriguez stated that she first met Charles Davis approximately 3 1/2 years ago in a night club in Boston while she was a teacher with the Boston School Department. Davis was with Attorney Angel Melendez and his partner, Mr. Williamson. After this initial meeting, she met Davis at various social functions, gathering confidence in Davis as she met others with which Davis was doing business. In fact, Rodriguez indicates that Davis was very sociable and friendly, and even her brother had dealings with him.

Treating Davis as her insurance agent form 1990 to 1992 while she lived in Boston, Rodriguez initially transferred her automobile insurance to Metropolitan Life Insurance through the efforts of Davis.

After determining that she would be leaving the city of Boston and relocating to Fairfax County in Virginia, she

contacted Davis in October of 1991 for the purpose of investing funds. She discussed the possibilities of investing monies through him in a Government Securities Fund. She told Davis that she did not want a risky investment but one that would pay more than the 5% her Credit Union was currently offering. Davis told Rodriguez that he was a licensed broker with Metropolitan, and that he knew just what she needed.

On October 14, 1991, Davis arrived at Rodriguez' house with some papers to sign, assuring her she would make 10% or more in interest with MetLife. She subsequently endorsed two checks, which were countersigned by Charles R. Davis, for the purposes of investing with MetLife. The first check was from the Massachusetts Federal Credit Union in the amount of \$18,102.47 and dated 8/5/91. The second check was from the State Boston Retirement System and was in the amount of \$17,760.28, and was dated 9/6/91. These checks were then deposited by Davis into his account at the Shawmut Bank, One Federal Street, Boston, MA on 10/15 and 10/22/91 respectively. Rodriguez also signed two IRA Direct Transfer Request Forms and an application for a Multifunded Annuity Contract.

At the conclusion of their meeting on October 14, Davis told Rodriguez that he had to send the paperwork to New York and she should not expect to hear anything for four weeks

regarding her investment. Four weeks passed, and Rodriguez became concerned that she hadn't received any bank statements recording her investment. She called Davis, and he told her that he had made a mistake and hadn't placed her apartment number on the paperwork. Therefore, because he was the broker, they were sending him the statements. Rodriguez waited another two weeks, and became very concerned. She called Davis and asked him to send her all of the paperwork from Metropolitan concerning her invested monies. Thanksgiving week, he gave Rodriguez a statement showing an account number on the bottom of it. She stated that the form looked similar to other forms she had seen in Davis' office.

Rodriguez became increasingly suspicious, and made several calls to MetLife Investment Services in Boston. She gave them the account number on the bottom of the statement that she had received from Davis, and was informed that this account was in the name of Charles Davis. She was further told that there was no account under her name showing an investment of \$35,862.75 with Metropolitan Life, and she should contact her sales representative. However, when she spoke with Davis, he insisted that her money had already been invested.

At this time, Rodriguez was already relocated in Virginia. She contacted her brother and asked him to look into

it for her. He contacted Attorney Angel Melendez, a friend and customer of Davis, who then determined that his funds had been mishandled by Davis as well. Finally, Ms. Rodriguez called Davis' supervisor, Patrick Fitzgerald, and issued her complaint. She was subsequently reimbursed for the misappropriated monies by Metropolitan Life.

Ms. Rodriguez currently resides with her parents at 300 East 158th Street in New York. The insurance Fraud Bureau has already stated their willingness to pay the expense for her to fly out to testify in this matter. Ms. Rodriguez has stated that she very much wants to cooperate and aid in the prosecution of Davis. She understands the necessity of travelling back to Massachusetts in the event it becomes necessary.

2. Mr. Julio Ortiz and his wife, Le T. Ha - \$324.00

On April 22, 1991, Mr. Julio Ortiz and his wife, Le T. Ha, provided Charles Davis with check number 824 in the amount of \$324.00 to Metropolitan in payment of a homeowners policy number 583-58-4406. The check was drawn on an account from Bank of New England, Boston, MA and deposited at Fleet Bank (BNE), 200 Exchange St., Malden, MA on or around 4/22/91.

Mr. Ortiz is employed at St. Francis House, 39 Boylston Street, Boston, MA, a homeless shelter, and his wife works as a manicurist. They purchased their home recently at 165 West Street, Quincy, MA 02169, and during the purchase, Ms. Ha was discussing her new home with one of her customers, Gail Pulley. Ms. Pulley informed Ha that her husband, Charles Davis, sells insurance. (Gail Pulley is Charles Davis' live-in girlfriend. They are not legally married. It is unclear whether Pulley suggested that Ha contact Davis, or merely told her he worked in insurance). Prior to the closing on their home, Ortiz and Ha went to the office of Charles Davis on Beale Street in Quincy and gave Davis the above described check for \$324.00 in payment of a homeowners policy. In addition, Davis convinced them to transfer their auto insurance so that Davis could handle that as well.

Mr. Ortiz and his wife were unaware of any improprieties with reference to their policy. They were contacted by Metropolitan and auditors, and reimbursed for this amount. The audit that had been completed by Metropolitan revealed that no money or application had ever been remitted to MetLife by Mr. Davis. A new application was provided for Ortiz and he was reimbursed by the company for the misappropriated funds.

3. Mr. Raymond Bass - \$429.00

On August 18, 1992, Investigator Marsha MacDougall conducted a taped interview of Mr. Raymond Bass. Mr. Bass lives at 33C Rockland Street in Canton, MA. Bass first met Davis at Bass' place of employment, called Junior's Automotive, at 1318 River Street in Hyde Park, MA. Davis came in to the automotive shop to have some repairs done on his car. He introduced himself as a MetLife agent and gave Bass his business card, telling him to call him so that they could do some business together.

Seven months later, Bass contacted Davis. During the course of several home visits by Davis, Bass transferred his auto insurance to Metropolitan, purchased homeowner's insurance and contemplated purchasing a life insurance policy through Davis also, which he never did in fact. However, the homeowners' policy omitted flood insurance, requiring Bass to retain flood insurance through another company, the Prudential. This was to be remedied by Davis sometime in the future.

Approximately a year later, Davis was to obtain the flood insurance through Met Life for Bass as well. Davis came to Bass' home on or around 6/6/91. At that time, Bass provided

Davis with a check from an escrow account through First New Hampshire Mortgage Corporation for \$429.00. The check describes payment of flood insurance and it is made out to Metropolitan at 270 Bridge Street in Dedham. Davis deposited the check at Fleet Bank (BNE), 200 Exchange Street in Malden, MA on or around 7/1/91.

Four months after Bass gave Davis this check for flood insurance, he contacted Davis. Every time Bass contacted Davis, he was told that Davis would get it to him, or send it to him. Bass finally contacted Met Life and was told that he didn't have any flood insurance with the company. He attempted to contact Davis, but Davis never returned any of his calls. After contacting MetLife, he was reimbursed \$429.00 plus interest.

4. Harold and Marcia Burnett - \$976.00

Harold Burnett first met Charles Davis at a Home Show at the Sheraton Tara in Braintree where Davis was stationed in a Century 21 booth. At that time, Burnett filled out applications for fire and liability insurance which would cover lead paint poisoning on seven pieces of property he owned with another person named Gene Spady.

Burnett determined there was a problem with Davis when he purchased an auto policy for his wife's car. He made several appointments to meet Davis, at which time Davis was to give him policies and make corrections that Burnett had requested of him. On one occasion, they met at a hotel in Auburn. Burnett states that he never went to Annex Insurance Agency. Two checks were written to Annex Insurance Agency by Burnett, one in the amount of \$476.00 dated September 1, 1991 and the other in the amount of \$500.00 dated September 25, 1991. Both checks were deposited at the Fleet Bank (BNE), 200 Exchange Street in Malden, MA. Davis told Burnett that he had opened his own agency and that he was going to sell insurance from other companies in addition to Metropolitan. Therefore, he asked that Burnett write out the check to Annex Insurance Agency. At the time of the transaction, Burnett was unaware that Metropolitan Life uses exclusive representatives. Burnett was reimbursed by Metropolitan Life for the amount of both checks.

5. Sileshi Demisew - \$490.00

On September 17, 1991, Sileshi Demisew provided Charles Davis with a check in the amount of \$490.00 for a premium on a life insurance policy. After waiting three or four months and receiving no policy from the company, Demisew contacted Metropolitan Life and was informed that in fact he had no

policy. He has been reimbursed by the company since this time.

Mr. Demisew is employed at the Boston City Hall in the Boston Rent Equity Board. He stated that he had a life insurance policy that had lapsed. Charles Davis was the agent sent from the company who proceeded to Demisew's office for the purpose of reinstatement. Davis informed Demisew that he needed to pay Metropolitan Life for the purpose of reinstating his life insurance policy. Therefore, Demisew wrote Davis a check for \$490.00, payable to Metropolitan Life on 9/17/91. Demisew states that Davis wanted more, but that was all that Demisew could afford to give him. The check was not remitted to Metropolitan by Davis and the policy was not reinstated. It was determined that the check was deposited at the Fleet Bank, 200 Exchange St., Malden, MA on or around 9/23/91.

Demisew waited three or four months and received no policy from Metropolitan life, Demisew contacted the company and discovered he in fact had no policy. He was reimbursed by the company.

6. Mr. James McCaffrey - \$473.00

James McCaffrey, on January 14, 1992, provided Davis a check in the amount of \$473.00 made out to Annex Insurance allegedly for the payment of a homeowners policy. The policy number was 009-48-2425.

Mr. McCaffrey indicates that he first met Charles Davis when he was playing Basketball in the Boston Men's League. After meeting Davis, he had purchased insurance policies from him for his home in Boston and his automobile (through Metropolitan Life Insurance).

In January of 1992, Mr. McCaffrey and his wife Gina were in the process of moving from Boston to Winchester and were purchasing a home. In the same month, McCaffrey wrote a check out to Annex Insurance for a homeowners policy and gave it to Davis. McCaffrey stated that he assumed that Annex was a recognized and authorized agent of Metropolitan Life. In addition, he stated that he received a binder for the policy, which he needed in order to purchase his property.

McCaffrey stated he never met Davis at his insurance office, instead, Davis would come to McCaffrey's home. Davis always gave him several telephone numbers where he could be reached, and provided him with an address of 49 Beale Street in Quincy. McCaffrey stated he never saw nor heard from Davis again after he wrote out the check in January of 1992 and gave it to Davis.

7) Richard Rose - \$413.00

On January 14, 1992, Mr. Richard Rose gave Davis a check in the amount of \$413.00 on a homeowner's policy numbered 015-32-1110. Mr. Rose was later contacted by Metropolitan Life and was reimbursed in this amount.

Richard Rose was introduced to Charles Davis through a Century 21 Realtor in Quincy. After having purchased the homeowner's policy from Davis, Mr. Rose later transferred his vehicle insurance to Charles Davis and MetLife. Subsequently, Rose contacted Metropolitan Insurance requesting information on his vehicle insurance and mentioned his homeowner's policy. At that time, he was informed that there was no record of any homeowner's policy in the name of Richard Rose. This was the first indication that there were any problems with his homeowner's policy.

Mr. Rose states that after Charles Davis came to his home to transfer the vehicle policies, he never saw or heard from Charles Davis again.

8) Mr. Sandy Stillwell - \$4,000.00

On January 15, 1992, Mr. Sandy Stillwell, a Suffolk County Probation Officer, withdrew \$4,000.00 from his savings account at the First National Bank of Boston to make a contribution to his IRA, policy number 060912881VM. Mr. Stillwell provided Davis with a cashiers check in the amount of \$4,000.00 made out to Metropolitan for this purpose. On the same day, this check was deposited by Davis at Fleet Bank, 200 Exchange Street, Malden, MA.

Mr. Stillwell stated that he met Davis four or five years prior to this transaction through a mutual friend. Together, Stillwell and Davis refereed basketball, both as members of the Association of Basketball Officials. Davis came by Stillwell's office and initially opened an account in which funds were transferred for the purpose of establishing an IRA. Those initial transfers of money were legitimate and credited to Stillwell's account. Stillwell stated that he became concerned when he did not receive acknowledgement from MetLife. He called Davis on several occasions asking for confirmation of his payment. Davis then gave Stillwell a provisional receipt, dated 1/20/91, for the \$4,000.00 IRA payment. When Stillwell questioned Davis about the receipt being dated in the year 1991 instead of 1992, Davis said that it was an error. The

Metropolitan audit revealed that these funds had never been credited to Mr. Stillwell and they contacted him with that information. Metropolitan Life later credited Mr. Stillwell's account in the amount of \$4,000.00.

Marsha MacDougall conducted a taped interview with Mr. Stillwell on Sept. 15, 1992. The above information was reiterated by Stillwell, and he stated further that he had just seen Davis a month ago. At that time, while refereeing a basketball game together, Davis made the statement to Stillwell that he planned to pay him back.

a) Summary of Investigative Facts and Itemization of Unauthorized Checking Activity.

Shawmut and Fleet Bank (BNE) records reveal that Davis deposited the above generated checks from perspective Metropolitan Life Insurance sales into his own personal accounts. Further, none of the monies were remitted to the Insurance company under the understanding from which they were given; namely, establishing legitimate insurance policies.

The following chart reflects an itemization of the unauthorized checking activity by Davis:

<u>DATE</u>	<u>CHECK #</u>	<u>AMOUNT</u>	<u>PAID TO</u>	<u>DEPOSITED TO</u>
4/22/91	824	\$324.00	Metropolitan	BNE 200 Exchg St
6/6/91	111480	\$429.00	Metropolitan	BNE 200 Exchg St
9/1/91	669	\$476.00	Annex Insur.	BNE 200 Exchg St
9/25/91	2442	\$500.00	Annex Insur.	BNE 200 Exchg St
9/17/91	381	\$490.00	Metropolitan Life	BNE 200 Exchg St
8/5/91	203430	\$18,102.47	Myrna Rodriguez	Shawmut 1 Fed St
9/6/91	17351	\$17,760.28	Myrna Rodriguez	Shawmut 1 Fed St
1/14/92	912	\$473.00	Annex Insur.	BNE 200 Exchg St
1/14/91	1459	\$413.00	Century 21 Services, Inc.	Shawmut 1 Fed St
1/15/92	3316101	\$4,000.00	Metropolitan	BNE 200 Exchg St
	TOTAL	\$42,967.75		

D. PROPOSED CHARGES.

- 1) M.G.L. c. 266, sec. 30.

M.G.L. c. 266, sec. 30 defines the elements of Larceny Over \$250.00 as follows:

"Whoever steals ... the property of another ... shall be guilty of larceny, and shall ... if the value of the property stolen exceeds two hundred and fifty dollars, be punished ..."

Therefore, in order to prove that Davis is guilty of larceny, the jury must be convinced beyond a reasonable doubt the following three things:

- 1) that Davis took and carried away;

- 2) the personal property of another;
- 3) with the specific intent to deprive that person of the property permanently.

M.G.L. c. 266, sec. 30 defines the elements of Larceny By False Pretenses as follows:

"Whoever, ... with the intent to defraud ... obtains by false pretense ... the property of another ... shall be guilty of larceny ..."

Therefore, in order to prove that Davis is guilty of larceny by false pretenses, the jury must be convinced beyond a reasonable doubt of the following elements:

- 1) that Davis made a false statement of fact;
- 2) that Davis knew or believed that the statement was false when he made it;
- 3) that Davis made the statement with the intent that the person to whom it was made should rely on it as true;
- 4) that such person did in fact rely on such statement as true; and
- 5) that such person parted with personal property as a result.

M.G.L. c. 266, sec. 30; Commonwealth v. Leonard, 352 Mass. 636, 644-45 (1967):

M.G.L. c. 266, section 30 has merged the offenses of Larceny, Larceny By False Pretenses and Embezzlement into this statute. According to M.G.L. c. 277, sec. 39, the definition of stealing includes all forms of larceny, criminal embezzlement and obtaining property by false pretenses. Therefore, I am recommending that Davis be charged with larceny over \$250.00 pursuant to a Larceny By False Pretenses theory. We need not charge Larceny By False Pretenses in the indictments, but would submit a charge on it should the case go to trial.

The above elements can be proven by the introduction of the insurance documents prepared for some of the victims by the defendant, clearly demonstrating his false statements of fact that he knew to be false at the time. Although Davis may argue that he merely made false promises to these victims to perform a future act, showing his deception as to his present intention to perform will be the basis of his conviction. Commonwealth v. True, 16 Mass. App. Ct. 709, 711 (1983). There are many instances of words and conduct that demonstrate his deceptions in order to fraudulently obtain monies from his prospective clients, people who relied on him as a valid insurance representative for Metropolitan Life. Davis used outright lies to obtain money from each victim, at times representing that

Annex Insurance Agency operated under the umbrella of Metropolitan Life. In the case of Mryna Rodriguez, for example, Davis used documentation from Metropolitan Life to convince her that her monies had been properly invested, when those documents had nothing to do with Rodriguez' investment.

The copies of checks made out by the victims and the subsequent deposit slips used by Davis demonstrate that Davis meant for those victims to rely on his representation of establishing, or adding to, their insurance policies. Additionally, the victims parted with their money in reliance on those representations. Finally, the defendant's bank records demonstrate the conversion.

Davis may attempt to argue that he did not have the specific intent to deprive the eight victims of their property permanently. Rather, he made a poor business judgment in starting his own business and intended to pay the money back as soon as he was able. He may assert that Metropolitan Life allowed its Insurance Reps to take money towards policies and annuities from clients, and place that money into a Rep's personal account. At a later date, the money would then be remitted to the insurance company. However, this argument will ultimately fail because depriving a person permanently of property may be inferred from Davis' words or conduct. The

Insurance practice demonstrates that upon remittance of money, the company immediately establishes a policy for the customer. In this case, Davis made no attempt to establish the policies with the company or attempt to pay the money back to the clients, even upon demand. Rather, Davis continued to lie about the existence of the policies to the clients, or they simply never heard from him again. Finally, this argument fails on the grounds that intending to return stolen property or the value thereof is NOT a defense to a charge of larceny. Marsha MacDougall will explain the chief responsibilities of an insurance representative for Metropolitan Life and the billing practices to the Grand Jury.

In view of the eight different victims involved in the larcenous schemes that Davis perpetrated at different times and places, I recommend that we charge Davis with separate counts of larceny for each theft. Therefore, I would be recommending 8 indictments, 10 counts charging larceny over \$250.00.

E. OTHER POTENTIAL CHARGES.

1) Fraudulent Filing.

There was insufficient evidence to support a claim for

fraudulent insurance claims practices under M.G.L. c. 266, sec. 111A. That statute requires the defendant to submit to the insurance company a fraudulent notice of loss or other document in support of a claim. In this case, Davis does the inverse by neglecting to submit valid claims to the insurance company from legitimate customers. There is no indication that any fraudulent insurance documents were ever submitted to Metropolitan Life Insurance, Inc..

2) False Entries.

Under M.G.L. c. 266, sec. 67, charging false entries in corporate books with intent to defraud, there is an argument that Davis failed to make a "true entry in a book of a corporation," that being Metropolitan Life, with the intent to defraud.

In order to find the Defendant guilty of violating G.L. c. 266, sec. 67, the Commonwealth must prove each of the following:

1. The Defendant was an agent, clerk or servant of a corporation;
2. The Defendant made false entries or omits to make true entries in the books of the corporation; and

3. The Defendant did so with the intent to defraud.
See G.L. c. 266, sec. 67.

The term "book" shall include any and all records containing the accounts of a corporation's official doings and the written evidence of its contracts and business transactions. See U.S. v. Louisville and U.R. Co., 236 U.S. 318, 334; 35 S.Ct. 363, 368; 59 L.ed. 598.

Davis' act of taking information and money for valid insurance applications and never submitting them to the company could fall within the definition of the criminal omission covered by the statute. This is a stretch under the current case law, which concentrates on situations where a corporation's books have been altered in some tangible manner. The spirit of the statute appears to cover protecting the existing books of a corporation from fraudulent tampering. Since Davis never submits any records from these victims, there have not been any records created from which to alter. I have therefore concluded that the present case consists of weak facts for charging under this statute.

3. Larceny by agent or broker.

M.G.L. c. 175, sec. 176 allows an insurance agent to be convicted under the Larceny statute if found guilty for this

crime. There is very little case law on this statute, which makes an agent's failure to pay an insurance company the money gained in "negotiating or renewing an insurance policy ... prima facie evidence that he has used or applied the money for a purpose other than paying the money over to the company..."

Although on point, this statute has been tested so little that I could find nothing on whether it is duplicitous with Larceny, which seems likely. In addition, the statute, allowing the burden to be shifted to the Defendant upon proof of failure to pay, would seem to run afoul of constitutional protections afforded a defendant in a criminal case. Therefore, I feel uncomfortable utilizing this statute when it is not clear to me that it would add much more to the case beyond establishing what I must already prove under G.L. c. 266, sec. 30.

F. VENUE.

M.G.L. c. 277, sec. 59 determines the venue for the crime of Larceny By False Pretenses as lying "where the false pretense was made, written or used, or in or through which any of the property obtained was carried, sent, transported or received by the defendant." In addition, G.L. c. 277, sec. 58

covers venue for Larceny and provides that the larceny may be prosecuted in "any county where the defendant had possession of the property alleged to have been stolen."

Venue becomes a difficult matter when all these cases are viewed together. At first blush, all the larcenous schemes appear to fall within the venue of Norfolk County. During the time period of the thefts, Davis worked out of the office for Metropolitan Life in Dedham, while maintaining the Annex Insurance Agency office housed in a building nearby. However, as discussed above, Davis went to several of his victims' homes after initially meeting them in diverse locations, and it is at these homes, also dispersed throughout the state, that he had each victim write out a check, or endorse money over to him for the alleged purchase of insurance policies. Other cases find Davis visiting a victim's place of employment, or meeting them at a hotel. Seven of the ten checks he received which he converted for his own personal use were deposited into an account he held at Fleet Bank (now BNE) at 200 Exchange Street in Malden, MA, placing the final act of conversion in Middlesex. The other three checks were deposited into an account at the Shawmut Bank in Boston.

To clear the murky waters a bit, I broke down Davis' words and conduct according to each victim in an attempt to find a

plausible argument to maintain venue in one place. To my dismay, I determined that venue must be bifurcated between Suffolk and Norfolk County. I considered the additional possibility of placing venue in Middlesex, the location of Davis' bank. Yet Middlesex was not the community that was affected by the criminal acts of Davis. He preyed upon people that were either from Suffolk or Norfolk County. Therefore, those communities are going to be more invested in the prosecution and punishment of Davis. Thus, my conclusion is that venue is most appropriately found in Suffolk for four of the cases, and Norfolk County for the other four cases. The following is a summary of that information:

1) Myrna Rodriguez:

- a) lived and worked in Suffolk County;
- b) signed over her checks in her home in Suffolk County;
- c) Davis deposited checks into account at Shawmut in Boston, Suffolk County.

Conclusion for Venue: Suffolk County.

2) Julio Ortiz and Le T. Ha:

- a) employed in Suffolk County;
- b) purchased home in Quincy, the subject of which initiated the fraudulent homeowner's policy;
- c) wrote out checks in Davis' office in Norfolk County.
- d) Davis deposited checks at Fleet Bank (BNE) in Middlesex County.

Conclusion for Venue: Norfolk County.

3) Raymond Bass:

- a) lives in Norfolk County;
- b) wrote out checks to Davis in Bass' home in Norfolk County;

c) Davis deposited checks at Fleet Bank (BNE) in Middlesex County.

Conclusion for Venue: Norfolk County.

4) Harold and Marcia Burnett:

- a) met Davis in Norfolk County, Braintree, and filled out initial insurance applications;
- b) met Davis at hotel in Auburn, Worcester County;
- c) both checks deposited in BNE, Middlesex County.

Conclusion for Venue: Norfolk County.

5) Sileshi Demisew:

- a) employed in Suffolk County;
- b) wrote Davis checks from place of employment in Suffolk County;
- c) checks deposited by Davis in Middlesex County.

Conclusion for Venue: Suffolk County.

6) James McCaffrey:

- a) met Davis at Boston Men's League in Suffolk County;
- b) purchased policy for new home in Middlesex at victim's current home in Boston, Suffolk County.

Conclusion for Venue: Suffolk County.

7) Richard Rose:

- a) lives in Randolph, Norfolk County;
- b) introduced in Norfolk County;
- c) wrote checks in Norfolk County;
- d) money deposited in Suffolk County at Shawmut Bank in Boston.

Conclusion for Venue: Norfolk County.

8) Sandy Stillwell:

- a) met Davis in Suffolk County;
- b) wrote check to Davis in Suffolk County;
- c) deposited check in Middlesex County.

Conclusion for Venue: Suffolk County.

In cases using an "elusive modus operandi" such as this one, there is authority for allowing venue to fall under the

broader venue definition of section 58. Therefore, my recommendation is to indict Davis in both Suffolk and Norfolk County.

DRAFT INDICTMENT

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT
CRIMINAL BUSINESS
February Sitting, 1993

COMMONWEALTH

V.

CHARLES R. DAVIS

INDICTMENT

General Laws, c. 266, s. 30

The Jurors for the Commonwealth on their Oath Present That
Charles R. Davis

on or about fifth day of August, in the year of our Lord one thousand nine hundred and ninety-one, at Boston, in the County of Suffolk, aforesaid, did steal property of the value of more than two hundred and fifty dollars, to wit: money, the property of Myrna Rodriguez in violation of G.L. c. 266, section 30.

Returned into said Superior Court by the Grand Jurors and ordered to be filed.

Attest:

Clerk.

COUNT ONE

DRAFT INDICTMENT

COMMONWEALTH OF MASSACHUSETTS

NORFOILK, SS. At the SUPERIOR COURT, begun and holden at DEDHAM, within and for the County of Norfolk

February Sitting, 1993

THE JURORS for the Commonwealth of Massachusetts, on their oath present that

CHARLES R. DAVIS

on or about the twenty-second day of April, in the year of our Lord, one thousand nine hundred and ninety-one, at Quincy in the County of Dedham did steal the property of the value of more than two hundred and fifty dollars, to wit: money, the property of Julio Ortiz and Le t. Ha in violation of G.L. c. 266, section 30.

COUNT ONE

DRAFT PRESS RELEASE

Attorney General Scott Harshbarger announced today that a former Metropolitan Life Insurance Representative, Charles R. Davis, has been indicted on multiple charges of larceny allegedly concerning funds from his former insurance clients.

Charles R. Davis, of 50 Fenno Street, Quincy, was indicted by a Norfolk County Grand Jury on February 17, 1993 on five counts of larceny over \$250.00. Davis was indicted today by a Suffolk County Grand Jury for five additional counts of larceny over \$250.00. The alleged larcenies in both counties involve former or prospective insurance clients of Davis during his tenure as an insurance salesman at Metropolitan Life Insurance Inc. since 1988. Each of the ten counts allow for a \$25,000.00 fine and a maximum of 5 years in prison.

"This case is a message to anyone who violates their position of trust in our communities that white collar crime will not be tolerated," said Attorney General Scott Harshbarger. "Our office is sending a clear message that law enforcement will work with other organizations, such as the Massachusetts Fraud Bureau, to root out crime."

The Massachusetts Fraud Bureau worked with the Attorney General's Office in successfully investigating this case. Assistant Attorney General Carol A. Starkey will be prosecuting the case.

DRAFT

JURY CHARGE - FALSE PRETENSES

I shall now instruct you on the elements of the crime of false pretenses. The defendant, _____ (name) _____, is charged with larceny by false pretenses.^{1/}

Larceny by false pretenses is described by our state legislature as follows:

"Whoever . . . with intent to defraud obtains by a false pretense . . . the property of another . . . shall be guilty of larceny and shall be punished[.]"^{2/} I shall read the statute again.

"Whoever . . . with intent to defraud obtains by a false pretense . . . the property of another . . . shall be guilty of larceny, and shall be punished[.]"

In order to prove the defendant guilty of larceny by false pretenses, the Commonwealth must prove beyond a reasonable doubt of each of these four elements:^{3/}

First, that the defendant made a false statement of fact;

Second, that the defendant knew that the false statement of fact was false;

Third, that the defendant made a false statement of fact with the intent that the victim rely upon it as true; and

Fourth, that the victim did in fact rely upon it as true and as a result of that reliance parted with his property.

I shall first repeat and then explain each element.

First, the Commonwealth must prove beyond a reasonable doubt that the defendant made a false statement of fact.^{4/}

That false statement of fact may have been made orally or in writing, or by acts^{5/}, or in whatever way "ideas may be communicated."^{6/} It is not necessary to have direct evidence that the statement made was false. It is enough if all the circumstances considered together would warrant you in concluding that it was false. Here, the Commonwealth must prove beyond a reasonable doubt that the defendant's statement regarding _____ (applicable facts) _____ was false.

Second, the Commonwealth must prove beyond a reasonable doubt that the defendant knew or believed that the statement he made was false. You may or may not infer the defendant's knowledge or belief of the falsity of the statement based upon the evidence at trial. It is enough if all the circumstances considered together would warrant you in concluding that he knew it was false.^{7/}

Third, the Commonwealth must prove beyond a reasonable doubt that the defendant made the false statement of fact with the intent that the victim rely upon it as true. //Again, you may or may not infer that the defendant intended that the victim rely upon the truth of the representation. It is enough if all the circumstances together would warrant you in concluding that he did so.

Fourth, the Commonwealth must prove beyond a reasonable doubt that the victim relied upon the false statement as true, and as a result of that reliance parted with his property.^{8/} There are two components to this fourth element. The first is the Commonwealth must prove beyond a reasonable doubt that the victim relied upon the false statement as true. The representations do not have to be the only reason or even the predominating motive that induced the victim to part with his property.^{9/} It is enough if the statements alone or with other causes materially influenced the victim to take the particular action.^{10/} It is enough if the false representation was a decisive although not a sole influence on the mind of the victim to induce him giving up the property.^{11/}

Second, the Commonwealth must prove beyond a reasonable doubt that the defendant took and carried away the victim's property^{12/} with the intent to deprive the victim of the property permanently. The carrying away is accomplished when the defendant transfers the property from the victim's control to his own.^{13/} The transfer of property does not have to be done by the defendant; the transfer may be done by another, even by the victim, so long as it is done under the defendant's direction.^{14/} The separation of the property from the victim's dominion and control, even if brief in time and space, is sufficient.^{15/} Here, the Commonwealth must show that the

defendant, (name), took and carried away the (applicable property) of the victim, (name). In other words, the Commonwealth must show that the (applicable property) passed out of the control of the victim and into the control of the defendant, if only for a moment.

Finally, in order to prove that the victim parted with personal property as a result of the reliance, the Commonwealth must prove beyond a reasonable doubt that the defendant took the property with the specific intent to deprive the victim of the property permanently.^{16/} The law recognizes two kinds of intent, general intent and specific intent.^{17/} In this case, the Commonwealth must show specific intent as opposed to general intent. General intent is when we do things more or less unconsciously. It is a reflex action, such as sitting down in a chair or walking up stairs. We would not take these actions unless our mind resolved to do them, but they do not require any concentration or focusing of the mind.

Specific intent, which is required in this case, means that the defendant must have it in his mind to do a particular act.^{18/} It involves concentrating or focusing the mind. Acts performed with specific intent are conscious acts done with the determination of the mind to do that act.^{19/} Specific intent

involves thought rather than reflex and must precede the act.^{20/} An act is specifically intended if the mind focuses upon accomplishment of that act, even though the intent arose only an instant before the act.

Here, the defendant must have specifically intended to deprive the victim of his/her property permanently.^{21/} The specific intent to deprive the victim of his/her property permanently can be inferred from a defendant's words or conduct. Such intent may be inferred if one takes the property without authority and uses or disposes of it in a manner which shows indifference as to whether or not the owner recovers possession of it.^{22/} However, if the defendant takes property for a short period of time, and returns it soon thereafter, it can be inferred that there is no intent to steal. Honest and reasonable mistakes of fact can negate larcenous intent. If the defendant took the victim's property under the honest and reasonable belief that it represented a debt due to him, or that he had title to the property and the right to its possession, then there is no intent to deprive permanently.^{23/} This rule also applies to the taking of property thought to be owed to or owned by a third person which the defendant takes with the intent to return it.^{24/}

Therefore, if after considering all of the evidence you find that the Commonwealth has proved beyond a reasonable doubt each and every one of these four elements, that is,

First, that the defendant made a false statement of fact;

Second, that the false statement of fact was known by the defendant to be false;

Third, that the false statement of fact was made by the defendant with the intent that the victim rely upon it as true; and

Fourth, that the victim did in fact rely upon it as true and as a result of that reliance parted with his property;

then you shall find the defendant guilty of larceny by false pretenses. If, however, after considering all of the evidence you find that the Commonwealth has not proved beyond a reasonable doubt each and every one of these four elements then you shall find the defendant not guilty.

FOOTNOTES

1/ The trial judge may instruct the jury on any of the three theories of larceny -- larceny, false pretenses, and embezzlement -- supported by proof at trial, notwithstanding the Commonwealth's specification of its theory in a bill of particulars. Commonwealth v. Corcoran, 348 Mass. 437, 440-442 (1965); Commonwealth v. King, 202 Mass. 379, 388-389 (1909); Commonwealth v. Kenneally, 10 Mass. App. Ct. 162, 176 (1980). Cf. G.L. c. 272, § 41.

2/ G.L. c. 266, § 30.

3/ Commonwealth v. Green, 326 Mass. 344, 348 (1950); Commonwealth v. Leonard, 352 Mass. 636, 644-645 (1967); Commonwealth v. Kenneally, 10 Mass. App. Ct. at 164; Commonwealth v. Stovall, 22 Mass. App. Ct. 737, 741 (1986).

4/ The false statement must be of an existing fact. Commonwealth v. Ancillo, 350 Mass. 427, 432 (1966). Generally, a false promise is insufficient to support a charge of false pretenses unless at the time of making that promise the defendant had a present intention not to perform. Commonwealth v. Althause, 207 Mass. 32, 47 (1910) ("[I]t would seem that a man's present intention as to a future act is a fact."). The law is careful to distinguish between the simple non-payment of a loan acquired and false pretenses. Cf. Commonwealth v. True, 16 Mass. App. Ct. 709, 711 (1983) ("While deception as to a person's present intention to perform a promise may be the basis of a conviction of larceny by false pretenses [citations omitted], such deception cannot be inferred from the mere non-performance of the promise[.]"); with Commonwealth v. Stovall, 22 Mass. App. Ct. at 742-743. ("The defendant suggests that in cases such as this the exclusive remedy should lie on the civil side of the court [citations omitted]. This is not a case, however, in which deception was inferred from the mere nonperformance of a promise to repay a loan. The wrong being punished is not merely a private one reflecting common practices in the business world. The Commonwealth's case, to the extent believed by the jury, involved the use of an outright lie to obtain at least for a time the use of the victim's savings.").

5/ Cf. G.L. c. 277, § 39.

6/ Commonwealth v. Morrison, 252 Mass. 116, 122 (1925).

7/ Commonwealth v. Schnackenberg, 356 Mass. 65, 73 (1969).

8/ The defendant need not know precisely what use another may make of his falsification or whom it might deceive. Commonwealth v. Hamblen, 352 Mass. 438, 443 (1967) ("[A man] is presumed to intend the probable consequences of his acts."); and Commonwealth v. Camilio, 1 Mass. App. Ct. 296, 299 (1973).

9/ National Shawmut Bank v. Johnson, 317 Mass. 485, 490 (1945); Commonwealth v. Iannello, 344 Mass. 723, 737 (1962); Commonwealth v. Edgerly, 6 Mass. App. Ct. 241, 263 (1978).

10/ Id.

11/ "It is enough to constitute the crime of obtaining money by false pretenses and thus of larceny under the statute if the fraudulent representation was a decisive although not the sole influence operating upon the mind of the person to induce the giving up of [property]. Other statements or considerations not amounting to false pretenses may cooperate to that result without impairing the force of the criminal act." Commonwealth v. Farmer, 218 Mass. 507, 513 (1914). As cited by Commonwealth v. Iannello, 344 Mass. at 737; Commonwealth v. Steinberg, 265 Mass. 45, 50 (1928); Commonwealth v. Morrison, 252 Mass 116, 125 (1925); and Commonwealth v. Camilio, 1 Mass. App. Ct. at 300.

12/ G.L. c. 266, § 30(2) defines property as "money, personal chattels, a bank note, bond, promissory note, bill of exchange or other bill, order or certificate, a book of accounts for or concerning money or goods due or to become due or to be delivered, a deed or writing containing a conveyance of land, any valuable contract in force, a receipt, release on defeasance, a writ, process, certificate of title or duplicate

21/ In light of recent developments in case law, a judge should at least consider instructing the jury, if requested, that they may consider evidence of the defendant's intoxication in determining whether the Commonwealth has proved specific criminal intent. "[The] rule that the voluntary consumption of alcohol itself cannot warrant a finding of the absence of specific criminal intent is of long standing." Commonwealth v. Sheehan, 376 Mass. 765, 774 (1978). But in a recent case of assault with intent to murder, the Supreme Judicial Court said it was "time to announce that where proof of a crime requires proof of a specific criminal intent. . . , the judge should instruct the jury, if requested, that they may consider evidence of the defendant's intoxication[.]" Commonwealth v. Henson, 394 Mass. 584, 593 (1985).

It remains unsettled whether Henson will apply narrowly, that is, only to cases of assault with intent to murder, or broadly, that is, to all cases where specific intent is an element of the crime charged. The language of the main opinion suggests a broad reading. But Chief Justice Hennessey in his concurring opinion confined the ruling to cases of assault with intent to murder. Id. at 574.

22/ Commonwealth v. Salerno, 356 Mass. 642, 648 (1970).

23/ Commonwealth v. Larmey, 14 Mass. App. Ct. 281, 283-285 (1982); Commonwealth v. Anslono, 9 Mass. App. Ct. 867 (1980).

24/ Commonwealth v. Larmey, 14 Mass. App. Ct. at 283-285.

LARCENY OVER \$250

If you determine that the Commonwealth has proved beyond a reasonable doubt that the defendant is guilty of larceny, you must also go on to determine whether all the property that was stolen was worth more than \$250 or less than \$250. You need to consider that question only if you find the defendant guilty of larceny.

So if your verdict is guilty, you must also indicate on your verdict slip whether or not the Commonwealth has also proved beyond a reasonable doubt that the property was worth more than \$250.

You may use your general knowledge in evaluating the value of a piece of property; it is not required that you have any expert evidence of its value.

Model Jury Instructions for the District Court, Instruction No. 5.415 - Supplementary Instruction 5 (1988).

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
NO.ORDER CONCERNING GRANT OF IMMUNITY TO
[_____] PURSUANT TO G. L. c. 233, secs. 20C-20E

This case came to be heard on the application for immunity pursuant to G. L. c. 233, secs. 20C-20E, filed by the District Attorney for [_____] County. The matter was heard before me on [_____,] 199[___]. On consideration of the application, grand jury minutes, and the hearing before me, I find the following:

1. On [date appearing before grand jury], [_____] was called as a witness before the [_____] County Grand Jury investigating [_____]. During the Grand Jury proceeding, the witness refused to respond to questions on the basis of the privilege not to give testimony or produce evidence that would tend to incriminate the witness.

2. I find that the witness did validly refuse to answer questions or produce evidence before the Grand Jury on the ground that such testimony or such evidence might tend to incriminate the witness.

3. The investigation before the Grand Jury involves an offense for which immunity may be granted under G. L. c. 233, sec. 20D.

WHEREFORE, I hereby Order that [_____] give testimony and produce evidence before the [_____]

County Grand Jury investigating [_____].

It is further Ordered that [_____] be granted immunity from prosecution, for or on account of any transaction, matter, or thing concerning which this witness is compelled to testify or produce evidence and that no testimony so compelled shall be used as evidence against the witness in any court of the Commonwealth, except in a prosecution for perjury or contempt committed while giving testimony or producing evidence under compulsion of this order.

A certified copy of the transcript of the hearing before this Court shall be transmitted to the Grand Jury.

This matter is impounded until further order of the Court.

Associate Justice

Entered:



Form D-3
The Commonwealth of Massachusetts

Office of the Attorney General

One Ashburton Place,

Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

August 18, 1992

BY HAND

c/o Christopher F. Long, Esquire
373 North Main Street
Fall River, MA 02720

Dear :

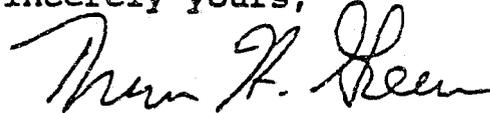
This letter sets forth the terms of the agreement you have made with the Office of the Attorney General under which you will cooperate with and provide information for an investigation which the Attorney General's Office is currently conducting regarding bank fraud by or at the

1. You have agreed to furnish a complete and truthful statement to this office and to any other law enforcement agencies or investigative bodies of the Commonwealth, including but not limited to investigator Peter Darling. You will provide complete and truthful testimony before the grand jury and at any subsequent court proceedings, if your testimony is requested. You will answer fully and truthfully all questions put to you by representatives of this office or any other law enforcement or investigative agency of the Commonwealth, and you will not withhold any information. You will neither attempt to protect any person by giving false information or by omission, nor will you falsely implicate any person. You will make yourself available for interviews with representatives of the Commonwealth upon request with reasonable notice. You will also provide any documents or things in your custody or possession or under your control which representatives of the Commonwealth deem relevant to the investigation.
2. In consideration of the above, the Attorney General will not prosecute you for any activities within the scope of the investigation on which you give full information and active cooperation.

3. If at any time prior to the termination of the investigation and related prosecutions, if any, the Office of the Attorney General determines that you have knowingly or willfully given false, incomplete, or misleading information or testimony, or have otherwise violated any provision of this agreement, this agreement shall be null and void upon written notice to your attorney. You will then be subject to indictment and prosecution for any criminal violation which the evidence supports. Such evidence may include statements, documents, testimony, or any other information you may provide, or may have provided, at any time.

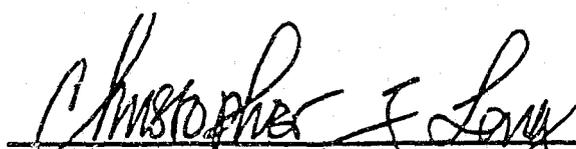
The Commonwealth has made no promises or agreements and has imposed no conditions other than those set forth in this letter. There will be no such additional promises, agreements, or conditions unless in writing and signed by all parties.

Sincerely yours,



Thomas H. Green
First Assistant Attorney General

Accepted and agreed to:



Christopher F. Long, Esquire
Counsel for

2835V



The Commonwealth of Massachusetts

Office of the Attorney General Form D-4

One Ashburton Place,

Boston, MA 02108-1698

SCOTT HARSHBARGER
ATTORNEY GENERAL

(617) 727-2200

January 5, 1993

c/o Roberta Sawyer Humphreys
Attorney at Law
164 Washington Street
Box 597
Norwell, MA 02061

RE: Grand Jury Investigation

Dear Mr. :

The Office of the Attorney General is pursuing an investigation into bank fraud at the Massachusetts. Included within the scope of this investigation are loans taken out in your name from this institution. You and your counsel have stated that you are in possession of information relevant to this investigation. Furthermore, you and your counsel have indicated that you are willing to cooperate with the Office of the Attorney General in the pursuit of the pending investigation and any prosecutions which may follow therefrom.

Based upon the representation outlined above, the Office of the Attorney General has determined that your cooperation is necessary to the successful prosecution of those individuals who have participated in the activities under investigation. Accordingly, the following agreement has been entered into between you and the Office of the Attorney General.

1. You agree to provide full, complete and truthful information and testimony to the best of your knowledge and ability regarding each and every aspect of the above-described investigation before any grand jury or court, as required by this office. In that regard, you agree to make yourself available for interviews by attorneys from this office and other law enforcement agents as required by this office and to make available all records and documents in your possession which are relevant to the foregoing investigation. You must provide truthful and complete

information, neither withholding any information nor falsely implicating any person.

2. A specific condition of this agreement is your representation to the Office of the Attorney General that you did not profit, either directly or indirectly, in an amount more than \$700, from each of the construction or home improvement loans issued in your name at _____ between 1986 and 1989. If at any time this representation by you is shown to be false or incorrect, then all terms of this agreement will become immediately null and void and of no effect against the Office of the Attorney General.
3. You agree to offer an unconditional plea of guilty to a Suffolk Superior Court indictment charging you with misapplication of a construction loan, G.L. c. 266 § 38A (two counts); further your guilty plea will be offered with the express understanding that the Commonwealth's sentencing recommendation to the Court at the time of your guilty plea will be one year probation and \$500 fine upon each of these counts, said probationary terms to run concurrently, with the terms of probation to be set by the Court. The Commonwealth will also recommend that the court impose fifty hours of community service as a condition of this probation. You agree to waive your rights under Rule 36 of the Massachusetts Rules of Criminal Procedure, in order to stay the disposition of the indictments against you until such time as you have fulfilled your responsibilities under this agreement by testifying, as needed, against each of your codefendants.

In exchange for these agreements, and provided you have, in the sole discretion of this office, fully and completely carried out each of the terms outlined above, and have, in the opinion of this office, testified truthfully and completely at any and all hearings and/or trials related to the above-described investigation, this office agrees not to use against you any statement or evidence you have furnished during this investigation to date and any statement or evidence you furnish during the pendency of this agreement regarding your involvement in criminal acts, except at sentencing upon a guilty plea on the charges as set forth in paragraph (3), above.

By entering into this agreement, you understand that you must at all times give complete, truthful and accurate information and testimony to the best of your knowledge and ability. This agreement may be deemed null and void by this office if: 1) it is determined that your cooperation, assistance, or testimony, is being withheld or is

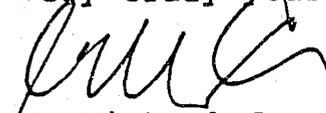
not complete, candid and truthful; or 2) you commit any criminal act during the pendency of this agreement. Further, this agreement may be deemed null and void upon a showing that you profited from the real estate loans other than as described in paragraph 2. You further understand that should this agreement be declared null and void, you may be prosecuted for contempt, obstruction of justice, perjury and/or your involvement in any other criminal activity about which you have provided information. In the event this agreement is declared null and void, any statements or evidence which you furnished may be used against you for any and all purposes including future prosecution and sentencing.

Finally, you understand that this agreement is limited to this office and cannot bind any other federal, state or local prosecuting authorities. Nevertheless, unless and until this agreement is rendered null and void by your conduct as provided above, this office agrees not to provide or disclose to any other prosecuting or law enforcement authority any statement or evidence which would incriminate you and which has been or is furnished by you pursuant to this agreement, and which specifically relates to the subject matter of this investigation, unless authorized by you in writing. The subject matter of this investigation, to which this promise not to disclose applies, includes insider lending practices and bank fraud at the . Furthermore, the terms of this agreement will not be disclosed to any other prosecuting or law enforcement agency without your written authorization.

No other promises, agreements or conditions have been entered into, and no amendments or modification of this agreement shall be effective, unless expressed in writing and signed by all parties.

If this letter accurately reflects the agreement entered into between you and the Office of the Attorney General, I request that you sign the statement and acknowledgement provided below.

Very truly yours,



R. Michael Cassidy
Deputy Chief, Criminal Bureau

I, _____, hereby state that I have read this letter and it fully sets forth my agreement with the Attorney General. I state that there have been no additional promises or representations made to me by any law enforcement officials, officers or agents.

I also acknowledge that I am represented by Roberta Sawyer Humphreys, Esquire, Norwell, Massachusetts and have fully discussed this agreement with her. I am well aware that I have the right to exercise my constitutional privileges against self-incrimination, and that I have the right to have a trial on any indictments proposed against me. With full understanding of this, I knowingly and voluntarily waive those rights in connection with this agreement.

Date: Jan 5, 1993

Date: Jan 5, 1993

Roberta Sawyer Humphreys
Roberta Sawyer Humphreys
Attorney for George E. Dunphy

7373J

OFFICE OF THE ATTORNEY GENERAL
AUTHORIZATION FORM FOR
EXPERT WITNESS / CONSULTANT CONTRACTS

DATE _____

CASE _____

ATTORNEY _____ BUREAU/DIVISION _____

DATES OF SERVICE (as per Attachment A):

FROM _____ THROUGH _____

FISCAL YEAR _____ AMOUNT \$ _____

APPROVED:

DIVISION CHIEF DATE

BUREAU CHIEF DATE

CONTRACT'S DIVISION AAG DATE

BUDGET DIRECTOR DATE

FIRST AAG DATE

EXPLANATION _____

E. Post-Conviction, Appellate and Civil Litigation

1. APPELLATE DIVISION - SENTENCE APPEALS

The AAG who handles a case in the trial court is responsible for representing the Commonwealth in proceedings before the Appellate Division of the Superior Court. This includes preparation of the written submission in the form required by the Court and appearance at any hearing that is scheduled on the case. If the AAG who prosecuted the case in Superior Court is no longer with the office, the chief of the appropriate division will assign an AAG to handle the sentence appeal.

2. RENDITION REQUESTS AND GOVERNOR'S WARRANTS

All AAGs in the Criminal Bureau, with the exception of the Medicaid Fraud Control Unit, participate in the review of governor's warrant requests sent to this office from the Governor's Office. An AAG who is assigned to review the legal sufficiency of the papers should ordinarily complete the review, and the designated paperwork, within one day. If, after arrest on a governor's warrant, a fugitive files a petition for writ of habeas corpus challenging rendition, the AAG who initially approved the papers will be responsible for the habeas proceeding. That AAG will handle the case in the trial court and any request for stay pending appeal in an appellate court, and is responsible for assisting the relevant officials in arranging the physical delivery of the fugitive.

3. CONDUCT OF CIVIL LITIGATION

Civil litigation handled within the Criminal Bureau shall be conducted according to the Civil Litigation Guidelines and Procedures in effect for such litigation in other bureaus within the Attorney General's Office, as it may be applicable. (A copy of the Civil Litigation Guidelines is available from the Appellate Division Chief.) Approval to settle any civil case must be obtained from the Appellate Division Chief and the Bureau Chief/Deputy Bureau Chief.

4. PROCEDURE FOR APPELLATE BRIEF REVIEW

All briefs filed in either the Appeals Court or Supreme Judicial Court (with the exception of appeals from decisions of the DET Board of Review) shall be reviewed prior to filing by the Chief of the Appellate Division. A copy of the brief, along with the opposing brief and the record appendix, should be provided to the Chief of the Appellate Division no fewer than three business days prior to the due date, unless other arrangements are made in advance.

5. PROCEDURE FOR CRIMINAL APPEALS/MOTIONS FOR NEW TRIAL

a. When a notice of appeal from a criminal conviction is received, the AAG should notify the Chief of the Appellate Division by a copy of the notice.

b. The trial attorney is responsible for retaining the case until the record is assembled in the trial court, which includes picking up the Commonwealth's copy of the transcripts of the trial when they are prepared. The trial attorney is

responsible for all proceedings in the trial court concerning preparation of the record, transcript corrections, etc.

c. The trial attorney is responsible for handling any hearing concerning a stay of execution of sentence pending appeal in either the trial court or the Appeals Court. The Chief of the Appellate Division should be notified prior to any hearing in the Appeals Court or Supreme Judicial Court. An appellate AAG may be assigned to assist in the defense of a request for stay.

d. Once notice has been received that the record for appeal has been assembled, the trial attorney should notify the Chief of the Appellate Division, who will assign an appellate AAG to handle the appeal. The trial attorney should "close" the case as a trial matter and organize the file as for archiving, and provide it to the appellate attorney. No part of the case should be sent to archives until all appeals are concluded.

e. Motions for new trial ordinarily will be handled by the trial attorney, unless the Appellate Division Chief and the chief of the relevant division determine that they should be handled by an appellate attorney, or jointly by the trial and appellate attorneys.

6. PROCEDURE FOR APPEARANCE IN APPELLATE COURTS

Prior to any appearance in the single justice session of the Supreme Judicial Court or Appeals Court, an AAG must notify his or her division chief and the Appellate Division Chief. It

shall be the responsibility of the trial attorney to handle all arguments concerning a stay of execution of sentence pending appeal, although the Appellate Division may provide assistance with such hearings in appropriate cases.

No application for interlocutory appeal, petition brought under G.L. c. 211, § 3, or immunity petition may be filed unless it is approved by the division chief. The appellate division will provide assistance in these matters where appropriate. No notice of appeal by the Commonwealth shall be filed without the prior approval of the division chief.

7. SUBPOENAS FOR AAGS OR FOR ATTORNEY GENERAL'S FILES

Subpoena of AAG: Any AAG who receives a subpoena to testify should immediately notify their division chief and the Chief of the Appellate Division.

Subpoena of AG File: This office is committed to protecting the integrity of prosecutorial discretion and the work product and investigative privileges against inappropriate disclosure. Any AAG who receives a subpoena or learns that a subpoena has been issued to a cooperating law enforcement agency which concerns either an open or closed case should notify the division chief and the chief of the appellate division, so that a motion for protective order or a motion to quash may be filed.

Suits Against Witnesses: As it is not uncommon for criminal defendants or potential defendants to file civil

lawsuits against our witnesses, or seek to enjoin the prosecution, any AAG who learns that a lawsuit has been filed against a potential witness or that the defendant or target has instituted collateral proceedings that may interfere with our prosecution should immediately notify the division chief and the appellate division chief so that the office can assess whether the Attorney General should intervene in that suit in order to protect the integrity of the prosecution, the spirit of criminal discovery rules, or the witness from harrassment.