



**U.S. Department of Justice**

**Federal Bureau of Investigation**

Washington, D.C. 20535

July 11, 2002

MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE

RE: CONDUCTING FBI INVESTIGATIONS OVERSEAS

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

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

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

Given this explosion of international activity, it is incumbent on FBI employees whose responsibilities or assignments take them into the international arena to realize that carrying out our law enforcement mission overseas is different from doing so in the United States. Just as the laws of every country are different, so are the rules, protocols, and practices used to enforce them. Simply put, you cannot do the FBI's business internationally in the same way you do it in the United States.

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The foundation of the FBI's international program is the Legal Attache (Legat). Each Legat is the Director's personal representative in the foreign countries in which he/she resides or has regional responsibilities. Their job is to respond to the FBI's domestic and extraterritorial investigative needs. They can accomplish this because they have developed partnerships and fostered cooperation with their foreign counterparts on every level and are familiar with investigative rules, protocols, and practices that differ from country to country. This is the Legat's primary responsibility.

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

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

In addition to the Legat's responsibility to the host country, Legats are also responsible to U.S. Ambassadors overseas. The FBI is obligated by a Memorandum of Understanding between the Departments of Justice, State, and Treasury to keep the Chief of Mission "fully and currently informed" with respect to all activities and operations of FBI employees in that country. The Legats must be completely aware of all FBI activities in their territories so that they can meet their obligations to both the host country and the U.S. Ambassador.

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The Legats continue to encounter inappropriate actions on the part of agents who are apparently unaware of international rules. There have been a number of areas where problems exist associated with investigative activity from the field or liaison travel on the part of managers from the field and FBIHQ. Most of the instances can be explained by inexperience or a lack of familiarity with international procedures. This memorandum sets out the areas of concern and procedures which must be followed by domestic employees.

### Travel

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

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

Prisoner transit through a third country presents unique issues, as does an agent stopover in a third country en route to another destination. These issues should be discussed with the Legat of the third country as soon as it is determined the FBI will be part of the escorting team and/or its itinerary calls for a stop in a third country.

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The aforementioned guidelines apply to all foreign travel, including travel of FBI personnel detailed or seconded to other U.S. federal agencies, who travel overseas as part of their detail or secondment.

### Leads in Foreign Countries

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

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

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

The increased travel of FBI investigative personnel to foreign countries and relationships with classmates at FBI National Academy sessions has boosted the contacts between FBI personnel and foreign law enforcement and intelligence service officials. In some instances, there has been direct contact from the foreign service officials to field office FBI personnel requesting record checks or other investigative assistance. FBI personnel are reminded to refer these officials to the respective Legat for action. Additionally, the FBI Agent contacted should notify the Legat of this contact for appropriate follow-up.

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Except for a small number of recently opened offices, Legats are on-line in the FBI's Automated Case Support (ACS) system. Overseas leads must be uploaded in ACS, which allows the Legat to retrieve it expeditiously. A lead must be set to the Legat on an EC for the Legat to be aware that the communication exists in ACS. Moreover, this is the means the Bureau employs to capture Legat work levels and ensure the Legat offices are adequately staffed to handle their caseload. Leads that are not uploaded are subject to delay, administrative-control problems, and return to the office seeking investigation. The paper copy of a communication containing a lead not uploaded will be transmitted to the Legat by diplomatic pouch. However, pouch-transit time can take up to two months.

#### Collection of Evidence

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

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Evidence obtained through these legal channels can, if properly authenticated and otherwise obtained in a manner meeting U.S. requirements, be used in court proceedings in the United States.

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

### Extradition

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

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

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## Subpoenas

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

## Informants/Cooperating Witnesses

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

## Other Investigative Techniques

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

No one can reasonably be expected to have a working knowledge of laws, protocols, and practices related to conducting an investigation in every foreign country, nor is there a need. This is the role of each Legat, FBI Headquarters, U.S. Attorney's Offices, and the Department of Justice. But it is critical that FBI investigators and managers understand the distinctions between conducting investigations in the United States and in foreign countries.

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In every case, the Legats must be made aware of official travel and operations within their territory. This serves to maximize an effective investigation and maintain their hard-earned standing as the permanent FBI presence in that territory. Legats are responsible for the conduct of all investigative matters overseas, including cases where domestic FBI Agents are deployed from the extraterritorial squads. That is, the Legat is there to ensure that the anticipated investigation proposed by the office of origin does not raise a sovereignty issue with the host government and that all matters have been coordinated with the embassy in accordance with the Chief of Mission mandate. The Legats must be part of the investigative planning and decision making in order to fulfill the Director's expectations with respect to their role in overseas investigations.

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

Robert S. Mueller, III  
Director

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