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United States Attorneys' Bulletin

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TABLE OF CONTENTS

TABLE OF CONTENTS

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COMMENDATIONS

The following ***Assistant United States Attorneys*** have been commended:

Janet Bauerle-Anderson (Texas, Western District), by Quinton B. Smith, Chief, Special Procedures Branch, Internal Revenue Service, Austin, for her excellent representation in a Chapter 13 bankruptcy proceeding, and for bringing the matter to a successful conclusion after nearly two years of extensive litigation.

Walter Becker and ***Spencer Eig*** (Louisiana, Eastern District), by Johnny F. Phelps, Special Agent in Charge, Drug Enforcement Administration, Metairie, for their prompt response to a request for assistance in executing a search warrant to seize stolen controlled pharmaceutical drugs, weapons, and other property, and for their assistance in apprehending a violent criminal suspect.

Edwin B. Brzezinski (Missouri, Eastern District), by Kenneth A. Edwards, CA, IFA, Certified General Appraiser, U.S. Army Corps of Engineers, Cairo, Illinois, for his demonstration of professionalism, legal skill, and dedication in a number of condemnation matters over the past several years.

Peter Caplan, Pamela Thompson, Mary Rigdon (Michigan, Eastern District), by Paul F. Hancock, Chief, Housing and Civil Enforcement Section, Civil Rights Division, Department of Justice, for their valuable assistance and cooperative efforts during the course of several Fair Housing Act litigation cases in Detroit over the past year, some of which were filed under the new fair housing testing initiative. ***Lisa Kesek, Leana Mayberry,*** and ***Beryl Robbins*** provided substantial support services.

Ernie J. Disantis (Pennsylvania, Western District), by David Thompson and Samuel Plauche, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice, for his valuable assistance and professional advice during the course of a recent trial in the Western District of Pennsylvania. ***Tina Santiago*** provided outstanding clerical support.

Miriam W. Duke, Sharon T. Ratley, and ***Charles E. Cox, Jr.*** (Georgia, Middle District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their outstanding success in a joint FBI/IRS corruption case involving the Chief Magistrate of Baldwin County and his wife, also a Magistrate, who utilized their positions to misappropriate funds.

Suzanne Durrell (District of Massachusetts), by Dennis M. O'Callaghan, Acting Special Agent in Charge, FBI, Boston, for her excellent representation and valuable assistance in a wide variety of matters occurring over a long period of time.

Alan M. Gershel, United States Attorney (Michigan, Eastern District), by Hal N. Helterhoff, Special Agent in Charge, FBI, Detroit, for his outstanding success in bringing about the conviction of a government attorney who unlawfully released grand jury material to members of a Detroit organized crime family.

Charles F. Gorder (District of Oregon), by Louis J. Freeh, Director, FBI, Washington, D.C., for providing valuable assistance and support in the successful prosecution of a case involving attempts by the La Cosa Nostra to infiltrate casino gaming on a San Diego Indian Reservation.

Raymond R. Granger (New York, Eastern District), by Robert A. Bryden, Special Agent in Charge, Drug Enforcement Administration, New York City, for his outstanding prosecutive skill in a sophisticated smuggling operation originating out of Columbia which involved the discovery of large quantities of cocaine contained inside hundreds of fake automobile parts.

Jennifer Granholm (Michigan, Eastern District), by Jack R. Venus, Officer in Charge, Compliance Program, Food Safety and Inspection Service, Department of Agriculture, Des Moines, Iowa, for her successful prosecution of a company in violation of meat and poultry inspection laws, and for her assistance in maintaining a premier regulatory enforcement program.

Fernando Groene and ***Justin Williams*** (Virginia, Eastern District), by Peter F. Gruden, Special Agent in Charge, Drug Enforcement Administration, Washington, D.C., for their outstanding assistance and successful efforts in the prosecution of an organized gang of Colombian nationals trafficking in kilogram quantities of heroin.

Raymond Gruender (Missouri, Eastern District), by John L. Lopez, Assistant Inspector General for Investigations, U.S. Government Printing Office (GPO), Washington, D.C., for his successful prosecution of an individual who misrepresented fact certifying eligibility for participation in GPO's Small Disadvantaged Business program.

Charles Hamilton (North Carolina, Eastern District), by the Honorable Terrence W. Boyle, Judge, U.S. District Court, Elizabeth City, for his professionalism and excellent legal skill in representing the United States government in a number of cases over the course of the past year.

Robert Haviland (Michigan, Eastern District), by Charles Demski, Acting Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, Detroit, for his successful prosecution of a major federal firearms case involving the theft of approximately 200 guns from the Detroit Police Department by one of its own police officers.

Amy Hay (Pennsylvania, Western District), by John N. Murphy, Research Director, Bureau of Mines, Department of the Interior, Pittsburgh, for her successful efforts in obtaining dismissal in its entirety of a Title VII discrimination case based on charges of sex, age and retaliation.

William J. Hoffman (New York, Southern District), by James A. Friedman, Deputy Chief Field Counsel, Office of Field Legal Services, U.S. Postal Service, Windsor, Connecticut, for his success in bringing an employment discrimination case to a successful conclusion.

Joseph Hutchison and ***Sharon Jaffe*** (District of Connecticut), by Paul G. Keough, Acting Regional Administrator, Environmental Protection Agency, Boston, for their outstanding legal skill in obtaining a conviction in a complex case involving the Clean Air Act and asbestos regulations, and for their significant contribution to environmental enforcement in the District of Connecticut.

Barbara Bailey Jongbloed and ***Kari Pedersen*** (District of Connecticut), by Donald K. Vogel, Assistant Commissioner (Criminal Investigation), Internal Revenue Service, Washington, D.C., for their outstanding success in the prosecution of the largest criminal tax case in the history of Connecticut.

Richard C. Kaufman, Kathleen L. Torres and ***Robert D. Clark*** (District of Colorado), by Erica F. Cooper, Assistant General Counsel, and Thomas J. Sarisky, Senior Attorney, Resolution Trust Corporation, Washington, D.C., for their professionalism and legal skill in successfully prosecuting the first Title VII jury trial with the potential for compensatory damages. The jury deliberated for less than one hour after six days of testimony.

William Keane and ***Leland Altschuler*** (California, Northern District), by Rollin B. Klink, Special Agent in Charge, U.S. Customs Service, San Francisco, for their successful efforts in the first federal criminal prosecution in the United States involving smuggling, counterfeiting and trademark violations in the illegal importation of 900 CD-ROMs and 18,000 counterfeit user manuals.

Carol C. Lam and ***Paul Cook*** (California, Southern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their outstanding success in the prosecution of members of the Chicago La Cosa Nostra involved in money laundering, casino gaming on a San Diego Indian Reservation, and a variety of other crimes.

James B. Letten and ***Walter E. Becker, Jr.*** (Louisiana, Eastern District), by Charles J. Gutensohn, Special Agent in Charge, Drug Enforcement Administration (DEA), FBI Academy, Quantico, Virginia, for their excellent presentations on "AUSA/Agent Coordination and Use of the Investigative Grand Jury" at a Conspiracy Seminar for DEA Agents and Task Force Officers at the New Orleans Field Division in Metairie.

Barry McHugh (District of Idaho), by Craig Peterson, Special Agent in Charge, Department of Law Enforcement, Idaho Bureau of Narcotics, Idaho Falls, for his outstanding success in Operation Co-Op, a case involving two federal wiretaps and the arrest of twenty-seven people, all of whom were found guilty or pleaded guilty.

John Malcolm (Alabama, Northern District), by Robert E. Morrow, Deputy Attorney General, Alabama State House, Montgomery, for providing valuable assistance to the State of Alabama in the unsealing of search warrants and Title III matters in the case of Walter Moody, who was convicted for the murder of a U.S. District Judge.

Thomas J. Murphy and ***Deirdre Martini*** (District of Connecticut), by John E. Logan, Director, Executive Office for U.S. Trustees, and Joe B. Brown, Special Assistant U.S. Trustee, Nashville, for their outstanding prosecutive efforts in bringing about the conviction of a bankruptcy trustee for embezzling over $750,000.00, and resulting in a 27-month sentence.

Nancy A. Nungesser (Louisiana, Eastern District), by James R. Dudine, Director, Investigations, Resolution Trust Corporation, Washington, D.C., for her professionalism and dedicated efforts in the successful collection of assets of a failed savings and loan bank.

John F. Paniszczyn (Texas, Western District), by Logan A. Slaughter, District Counsel, Department of Veterans Affairs, Houston, for his professionalism and legal skill in the successful trial of a complex medical malpractice wrongful death case.

Margaret E. Picking (Pennsylvania, Western District), by William F. Wells, Chief, Criminal Investigation Division, Internal Revenue Service, Pittsburgh, for her outstanding representation and cooperative efforts in bringing a recent trial to a successful conclusion.

Richard L. Pomeroy (District of Alaska), by Regina Smith, Laboratory Supervisor, Alaska Native Medical Center, Department of Health and Human Services, Anchorage, for his successful prosecution of an employment discrimination case which involved evidence of a highly technical nature in the field of bacteriology.

John R. Roth and ***Jonathan Tukel*** (Michigan, Eastern District), by Hal N. Helterhoff, Special Agent in Charge, FBI, Detroit, for their excellent prosecutive support and cooperation in "Rainbow Wash," a complex investigation which culminated in the conviction of seventeen individuals involved in a major Detroit area cocaine trafficking operation.

Carl J. Schuman (District of Connecticut), by John P. Weiss, Officer in Charge, Immigration and Naturalization Service, Hartford, for his excellent representation of the interests of the government in a deportation case, including dismissal in the Second Circuit Court of Appeals.

Richard R. Southwick (New York, Northern District), by William Hebert, Resident Agent in Charge, Drug Enforcement Administration (DEA), Syracuse, for his valuable instruction on federal conspiracy laws at DEA's Basic Narcotics Investigator's School.

Jim Sullivan (Alabama, Northern District), by Robert L. Sligh, Acting Supervisory Senior Resident Agent, FBI, Birmingham, for his successful prosecution of a complicated criminal case, which resulted in guilty pleas after a week of presentation of the government's case.

Frederic N. Weinhouse (District of Oregon), by Louis J. Freeh, Director, FBI, Washington, D.C., for his outstanding legal advice and guidance during a long-term undercover operation, and the electronic interception of wire communications conducted during the course of the investigation of a major cocaine and heroin distribution organization.

Michael J. Yamaguchi and ***Staff*** (California, Northern District), by Scott G. Pearson, Senior Resident Agent, Division of Law Enforcement, Fish and Wildlife Service, Department of the Interior, Sacramento, for their outstanding support of efforts to prevent illegal poaching and smuggling of endangered animals and plants, and most recently the illegal taking and sale of various endangered species of butterflies.

Frank L. Zebot (Michigan, Eastern District), by Lewis Nixon, Regional Counsel, Department of Housing and Urban Development (HUD), Chicago, for his excellent representation and successful resolution of a case involving a cancelled HUD loan.

Warren A. Zimmerman (Florida, Middle District), by the Honorable Patricia C. Fawsett, Judge, U.S. District Court, Orlando, for his excellent representation and successful conclusion of a matter brought by a federal prisoner alleging violations of his constitutional rights.

SPECIAL COMMENDATION FOR THE WESTERN DISTRICT OF TEXAS

A number of Assistant United States Attorneys in the Western District of Texas, Austin office, were commended by Ruben Monzon, Special Agent in Charge, Drug Enforcement Administration, Houston, for their outstanding contributions in the war on drugs. They are:

Elizabeth Cottingham successfully prosecuted a case involving the seizure of eleven ounces of crack cocaine, four defendants and several weapons, including a fully automatic machine pistol. The resulting sentences contributed to the dissolution of this cocaine distribution organization; a significant reduction of the availability of crack cocaine in the Austin area, and a positive statement to the Austin community that drug traffickers will be dealt with in this area. Ms. Cottingham, co-counsel in another case, helped initiate a plea bargain, additional arrests and significant seizures. Another investigation resulted in the seizure of approximately $300,000.00 in assets, 1,000 pounds of marijuana and the successful prosecution of two defendants.

Kelly Loving successfully prosecuted the Vasquez family organization, a highly structured drug trafficking organization in Austin, responsible for the distribution of multi-thousand pound quantities of marijuana throughout areas of the United States. As the case progressed, Mr. Loving prosecuted two members of the organization on charges stemming from a shooting that occurred during the execution of a search warrant. The investigation became exceedingly complex as the case continued into this violent natured organization.

Mark Marshall has been involved in numerous investigations involving the arrests and prosecution of multiple defendants and the successful seizure and forfeiture of significant assets, such as the Williams case which resulted in the arrests of ten defendants, the seizure of 3,000 pounds of marijuana and assets totaling $250,000.00. The Israel Garcia case resulted in twenty arrests and convictions, including continuing criminal enterprise, money laundering and weapons charges and the seizure of in excess of $1 million of drug related proceeds. This organization was responsible for importing multi-ton quantities of marijuana from Mexico through Texas to the northern United States. The Pierece case has resulted to date in the seizure of ten clandestine methamphetamine labs and the successful prosecution of ten defendants.

Robert Pitman successfully prosecuted three defendants which has resulted to date in the seizure of 2,000 pounds of marijuana and approximately $500,000 in drug-related assets. Mr. Pitman was also involved in a case involving LSD trafficking which resulted in the first seizure since 1975 of an LSD conversion laboratory.

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SPECIAL COMMENDATION FOR THE DISTRICT OF ARIZONA

Joelyn D. Marlowe and ***Thomas L. Fink*** (District of Arizona), by Paul E. Coffey, Chief, Organized Crime and Racketeering Section, Criminal Division, Department of Justice, for their successful prosecution of two individuals who were convicted of RICO, conspiracy, and ERISA bribery on December 1, 1993, following a month-long trial. Mr. Coffey stated that his office has had a keen interest in this prosecution because the economic harm to the employee pension plans resulting from the defendants' activities, which has been conservatively estimated at $135 million, is believed to be the largest financial loss to employee benefit plans in any criminal prosecution under the ERISA bribery statute since 18 U.S.C. §1954 was enacted in 1962.

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HONORS AND AWARDS

Southern District Of Texas

Floyd J. Miller and ***William E. Fitzgerald,*** Trial Attorneys for the Western Criminal Enforcement Section of the Tax Division, and Special Attorneys for the Southern District of Texas, were presented appreciation award plaques by Ronald Eattinger, Chief, Criminal Investigation Division, Internal Revenue Service, Houston, for their excellent representation and professional legal skill in the prosecution of the largest electronic filing tax fraud conspiracy in the Nation during tax year 1990. Assistant United States Attorneys ***Walter Paulison*** and ***Don DeGabrielle*** provided valuable legal support and assistance throughout the course of five separate trials, two of which were conducted in the United States District Court in Houston, and three of which were conducted in the United States District Court in Galveston.

A total of twenty-four individuals, most of whom were Nigerian nationals, were indicted on one count of conspiracy, in violation of 18 U.S.C. §287, and fifty-one counts of filing false claims for refunds in violation of 18 U.S.C. §286 stemming from their filing 750 false 1990 federal income tax returns seeking refunds of approximately $1.8 million. Evidence gathered during the grand jury investigation established that the conspirators targeted low-income citizens, college students and Nigerian Nationals in Houston. Each group was given a different story regarding the tax filing scheme, and when the conspirators were successful in obtaining social security numbers, they then prepared false W-2 forms, which they used, in connection with a number of fictitious tax credits, to obtain tax refunds. At the present time, no other Federal district has prosecuted an electronic filing scheme of this magnitude.

Thirteen of the conspirators were convicted by trial juries, and two defendants pled guilty prior to trial. Other defendants, who were not arrested at the time that the sealed indictment was returned, are currently fugitives from justice. One of the fugitives, a Nigerian National, was recently apprehended and is scheduled to stand trial in March, 1994. The "kingpin" behind the scheme, a Nigerian National, is believed to be in Lagos, Nigeria. Mr. Miller and Mr. Fitzgerald will continue the prosecution of additional individuals believed to be involved in the conspiracy.

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District Of Maine

John S. Gleason III, Assistant United States Attorney for the District of Maine, was presented an NAACP Community Service Award by Portland Chapter President Janet Johnson and Vice President Moses Sebunya for his outstanding efforts over the past several years to increase law enforcement training and coordination in the area of civil rights law enforcement. Mr. Gleason was also commended for his recent successful efforts in bringing the first racially-motivated federal civil rights case ever prosecuted in the State of Maine. United States Attorney Jay P. McCloskey praised Mr. Gleason's efforts on behalf of civil rights enforcement in Maine, and added, "I am determined to commit the resources of my office to working effectively with other federal, state and local law enforcement officials to investigate, prosecute and incarcerate those who through violence would deny any Maine resident rights guaranteed by the Constitution or laws of the United States."

In a congratulatory letter, Attorney General Janet Reno said, "As you know, the Department places a high priority on combatting racially-motivated hate crimes. Your persistence in this area of law enforcement and civil rights training will encourage greater efforts in prosecuting hate crimes. On behalf of the Department of Justice, I extend my congratulations and commend you for your outstanding contributions to the Department and the people of Maine."

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DEPARTMENT OF JUSTICE LEADERSHIP

Deputy Attorney General Resigns

On January 27, 1994, ***Philip B. Heymann*** submitted his resignation as Deputy Attorney General effective upon the selection and availability of his successor. In a letter to the President, Mr. Heymann stated that the Attorney General concluded that "our operational and management styles are too different for us to function fully effectively as a management team at the Department of Justice."

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Civil Rights Division

On February 1, 1994, President Clinton announced his intention to appoint ***Deval Patrick*** to serve as Assistant Attorney General for the Civil Rights Division. Mr. Patrick is presently in private practice in Boston, Massachusetts.

* * * * *

Drug Enforcement Administration

On January 13, 1994, Vice President Al Gore announced the President's intention to nominate Thomas A. Constantine as Administrator of the Drug Enforcement Administration. As Superintendent of the New York State Police, Mr. Constantine has headed the 4,800-member state police force since 1987, is a 33-year veteran law enforcement officer and administrator with wide-ranging experience in investigating narcotics, major crimes and organized crime. As DEA Administrator, Mr. Constantine will oversee an administration with more than 7,000 employees with a nationwide network of 150 field offices. Attorney General Reno said, "Tom Constantine started as a deputy sheriff and rose through the ranks. He understands how absolutely vital it is that all of us -- federal, state and local law enforcement -- work as true partners in this cause."

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United States Attorneys

On January 18, 1994, ***Harry D. Dixon, Jr.*** was court appointed to serve as United States Attorney for the Southern District of Georgia.

On January 26, 1994, ***Kent B. Alexander*** was appointed by the Attorney General appointed to serve as United States Attorney for the Northern District of Georgia.

On February 1, 1994, ***James L. Wiggins*** was court appointed to serve as United States Attorney for the Middle District of Georgia.

On January 15, 1994, ***David D. Freudenthal*** was appointed by the Attorney General to serve as United States Attorney for the District of Wyoming.

On January 31, 1994, ***Michael H. Dettmer*** was appointed by the Attorney General to serve as United States Attorney for the Western District of Michigan.

A complete list of United States Attorneys as of February 1, 1994, appears at p. 75 of this Bulletin. If you have any questions, please call the Executive Office for United States Attorneys at (202) 514-2121.

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ATTORNEY GENERAL HIGHLIGHTS

Attorney General's Advisory Committee Of United States Attorneys

On January 27, 1994, Attorney General Janet Reno announced appointments to the 1994 Attorney General's Advisory Committee for United States Attorneys. The new members are:

Kent B. Alexander, Northern District of Georgia
Lynne Battaglia, District of Maryland
James B. Burns, Northern District of Illinois
Zachary Carter, Eastern District of New York
Michael Chertoff, District of New Jersey
Paul E. Coggins, Jr., Northern District of Texas
Claude Harris, Jr., Northern District of Alabama
Gaynelle Griffin Jones, Southern District of Texas
Vicki Miles-LaGrange, Western District of Oklahoma
Nora Manella, Central District of California
Jay P. McCloskey, District of Maine
Janet Napolitano, District of Arizona
Katrina Pflaumer, Western District of Washington
Randall Rathbun, District of Kansas
Henry Solano, District of Colorado
Michael R. Stiles, Eastern District of Pennsylvania
J. Preston Strom, Jr., District of South Carolina
Emily Sweeney, Northern District of Ohio
Michael Troop, Western District of Kentucky
Mary Jo White, Southern District of New York
Michael Yamaguchi, Northern District of California
Eric Holder, District of Columbia, ex officio
J. Russell Dedrick, Eastern District of North Carolina, ad hoc

The Chairman of the Committee is: ***Mary Jo White, United States Attorney for the Southern District of New York.***

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United States Attorneys' National Conference

The United States Attorneys' National Conference was held in Washington, D.C. on January 19-21, 1994. Attorney General Janet Reno delivered the opening remarks. The following is a brief excerpt:

> I can't tell you what an extraordinary experience these last ten months have been. It was almost a year now, February 7th, that I received a call that I would be called to Washington to talk about being Attorney General. Clearly, one of the greatest experiences of these months has been the opportunity to meet people from the Department of Justice across the country. I continue to be so impressed, so delighted, and so very proud of the dedicated men and women who work here in Main Justice, who work in investigative agencies around the country, and in the U.S. Attorneys' offices across this land.

> One of the great experiences. . .has been to meet with the new U.S. Attorneys before we nominated them. I am so impressed with you, with your vision, with your diversity, with your different backgrounds, different experiences. You bring common sense, you bring dreams, you bring ideals, you bring people understanding to the job and I just look forward to working with you. There are some unsung heroes and heroines who have served as interim U.S. Attorneys and I have such a profound respect for the whole democratic process. To see Government change so smoothly, even with the delays occasioned by the appointment of the Attorney General, has been a great tribute to the dedicated men and women who have been professional career prosecutors. And to you interim U.S. Attorneys who are here, you have my profound respect and my great gratitude, and a determination to let the people of the United States know how extraordinarily fortunate they are to have people of your caliber working with them and for them.
>
> And to those of you who were appointed in the previous administration, you have brought such wonderful experience and such dedication and such continuing commitment to the Department of Justice. I am deeply grateful to you for your fine, splendid efforts in ensuring a smooth transition and in maintaining the standards of the Department of Justice. . . .
>
> I want to have a true partnership with every United States Attorney throughout this country. I want to consult with you and hear your views on policy, procedures, problems. I want you to feel free to communicate those views to me. I don't want to say this is going to be our policy without making sure that you have had input, that you've had an opportunity to express your opinion in a full and fair manner.

The Attorney General discussed a variety of issues facing the Administration, the Department of Justice, and the Nation as a whole. Some of the highlights were:

- The Department of Justice and the United States Attorneys should form a team and work together, through the Office of Investigative Agency Policy. She said we can do so much around the country in working within the districts to achieve the same purpose.

- The Department and the United States Attorneys should coordinate closely with State and local law enforcement. The Attorney General expressed her gratitude for the efforts already undertaken in reaching out to local law enforcement. She stated that she has had sheriffs and prosecutors and others inform her that they haven't seen such cooperation in many years.

- Violence is the primary number one crime concern of the American people. The Attorney General asked the United States Attorneys to undertake a violent crime initiative in their district, and do everything possible, consistent with sound principles of Federalism, to focus on violence.

- There are some clear federal efforts that must be pursued with vigor, such as terrorism, gangs, hate crimes, and both foreign and domestic terrorism.

- The Department should restore and renew its effort to support and assist and understand the plight of victims whenever possible, working with the Office for Victims of Crime, Office of Justice Programs.

- Organized crime is an important responsibility for us, and we must work together in partnership in this effort.

• Health care reform is necessary, and vigorous enforcement against health care fraud will be one of the keys to a successful reform effort.

• Public corruption undermines public confidence in its government, and it is one of our most important priorities.

• The Department of Justice and its investigative agencies should be better prepared to respond to computer fraud and the new technology crime of the next century.

• The civil rights laws of this Nation should be enforced as vigorously as possible.

• Concerning lending discrimination, the Attorney General stated that she is amazed about the lack of understanding on the part of lenders as to their problems, and added that they are taking corrective action.

• The United States Attorneys and the Department of Justice should work together to protect this nation's fragile environment.

• Around this country, lawyers in the Civil Division have done so much in terms of collecting monies for the Government. We can do more by working together to develop better negotiation skills, by trying to build and form settlements, but all of us, whatever role we play in the Department of Justice, have got to do more, both in the civil and criminal area, to reduce the cost and delay involved in litigating a case and ensuring access to the courts on the part of all Americans.

• The Immigration and Naturalization Service is a remarkable organization that has done so much in very difficult circumstances. How we balance this nation's tradition as a nation of immigrants with the burdens placed by immigration on our people will be a great challenge.

• The Department of Justice is committed to doing everything it can to support the United States Attorneys who are already undertaking extraordinary efforts to address the issue of Native Americans throughout this country, to develop programs that give them the opportunity to be self-sufficient, to be respected, and to understand their tremendous heritage.

• We sometimes forget the single most important part of our lives and our community, and that's our own families. The Attorney General stated, "I want to make sure that we put families first in this Department."

If you would like a copy of the Attorney General's speech, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

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DEPARTMENT OF JUSTICE HIGHLIGHTS

FY 1995 Budget

On February 7, 1994, the Department of Justice announced that the 1995 budget provides a 24.4 percent increase to implement a series of crime fighting strategies, to initiate comprehensive programs to reduce illegal immigration, and to reinvigorate enforcement of civil rights, antitrust and environmental laws. The Department's $13.652 billion FY 95 budget is $2.679 billion over total fiscal year 1994 levels, which includes $2.423 billion from a Crime Control Fund the Administration is seeking through anti-crime legislation. The new funds will enable the Department to:

• **Put More Police on the Street:** $1.7 billion to promote community policing and for 50,000 new police officers -- a big step toward the Administration's goal of placing 100,000 police officers on the beat.

• **Implement the Brady Law to Help Prevent Criminal Access to Guns:** $100 million to help states improve their criminal history records and to develop a national instant check system.

• **Strengthen Control of Illegal Immigration:** $398 million to implement new border control and immigration reform strategies, including efforts to stop the flow of illegal immigrants, expedited deportation of criminal aliens, a crack down on trafficking in fraudulent documents; and efforts to protect legal aliens from discrimination, as well as provide education grants and outreach programs on naturalization for legal aliens.

• **Increased capacity of correctional facilities:** $450 million to activate 9,673 new beds and pay for the increased costs of operating existing facilities, and $83 million for construction (4,224 new beds) and leasing of new correctional facilities. $57 million will cover costs of housing a 10 percent increase in pre-trial detainees in state and local facilities.

• **Juvenile crime:** $69 million for juvenile justice programs to provide grants to state and local jurisdictions for combatting violent juvenile crime and gangs, and for the treatment of juvenile offenders.

• **Civil Rights, Environment and Antitrust:** Division increases of $12 million (20 percent), $8 million (15 percent) and $8.6 million (13 percent) respectively to reinvigorate enforcement of civil rights, environment and antitrust laws.

Attached at the Appendix of this Bulletin as Exhibit A is a copy of the FY 95 Budget Request Highlights.

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Independent Counsel

On January 20, 1994, Attorney General Janet Reno named Robert B. Fiske, Jr., a litigation partner in the New York law firm of Davis Polk & Wardwell, to serve as Independent Counsel in the Madison Bank investigation. Mr. Fiske was formerly the United States Attorney for the Southern District of New York from 1976 to 1980 where he handled a number of important cases personally, including the conviction of narcotics kingpin Leroy "Nicky" Barnes and the labor racketeering conviction of Anthony Scotto and Anthony Anastasio. Prior to the appointment, the Attorney General issued the following statement:

> I have received a letter from the President's Counsel asking me to appoint a person independent of the government to pursue all matters concerning the Madison bank investigation in Arkansas.
>
> As you know, from the beginning, I stated my preference to have an independent counsel -- where appropriate -- chosen by judges under the independent counsel law to ensure that the person appointed is truly independent. I have also expressed my confidence in the ability of the Justice Department's career prosecutors to conduct a fair, thorough and impartial investigation. However, it is equally clear that we must do everything we can to ensure public confidence in the investigation, and to separate fact from speculation as rapidly as possible.

The President has so many responsibilities. He must be able to focus on the problems that face America. It is important that public confidence be preserved and that the public knows we are doing everything we can. Thus, I do not think we can wait until the independent counsel statute is reenacted. Sometimes we have to go beyond what is generally appropriate simply to assure people that we have gone the extra mile. That is why I will begin today considering who to appoint as an independent counsel under Justice Department regulations. I hope to do so as soon as possible.

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§603.1 Jurisdiction Of The Independent Counsel

(a) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate to the maximum extent authorized by part 600 of this chapter whether any individuals or entities have committed a violation of any federal criminal law relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationships with (1) Madison Guaranty Savings & Loan Association, (2) Whitewater Development Corporation, or (3) Capital Management Services.

(b) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal law by any person or entity developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation.

(c) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate any violation of section 1826 of title 28 of the U.S. Code, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of the federal criminal laws, in connection with any investigation of the matters described in part (a) or (b) of this section.

(d) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to seek indictments and to prosecute any persons or entities involved in any of the matters referred to in part (a), (b), or (c) who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any criminal offense.

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Operation Weed And Seed

On January 25, 1994, Attorney General Janet Reno announced that twenty-one cities currently participating in the Weed and Seed program will be given the opportunity to have federal funding renewed and that approximately ten more cities will be chosen to take in the program. The Weed and Seed program supports comprehensive community-wide and neighborhood-based efforts to control crime and drug-related violence based on a comprehensive planning strategy. The federal funds are intended to stimulate comprehensive strategy development in high crime neighborhoods. The Weed and Seed strategy integrates federal, state and local law enforcement and criminal justice efforts with corresponding human service, private and community resources to maximize the impact of existing programs. It also recognizes the importance of community involvement. Residents must be involved in solving problems in their neighborhoods in a meaningful way.

Under the program, each site United States Attorney assumes a central role in coordinating law enforcement efforts, working with local leaders to leverage public and private resources in the targeted neighborhoods, and encouraging citizen involvement. The twenty-one funded pilot demonstration sites were invited to submit applications for continuation funding by March 7, 1994, and the Justice Department will issue a solicitation for approximately ten new funded sites. Each of the sites will receive as much as $750,000 for FY 1994 activities. The Executive Office for Weed and Seed and the Bureau of Justice Assistance will contribute $500,000, and up to $250,000 will come from reimbursement for specified state and local law enforcement activities from the Department's asset forfeiture funds. More than half of the $750,000 must be pledged to seeding activities. Some $30 million is currently available to support the new sites and to continue the existing Weed and Seed pilot demonstration projects.

As part of its application, each prospective grantee must provide specific information concerning the accomplishments and must address the design of a detailed strategy for immediate and long-term development of the Safe Haven initiative, including the identification of resources that would be redeployed to operate in the facility. Safe Havens are neighborhood centers that provide a broad range of referral, educational, recreations and other activities for residents. The Departments of Agriculture, Education, Health and Human Services, Housing and Urban Development, Labor, Transportation and Treasury and the Small Business Administration cooperate in the program.

The Attorney General said, "Weed and Seed provides a compelling opportunity to enhance the quality of life in some of our most challenged and most promising neighborhoods. It is an initiative which recognizes that communities know best their problems, strengths, resources, and needs and best situated to design realistic and successful strategies for change. This initiative -- a key component of our anti-violence program -- also is part of the Administration's larger comprehensive community revitalization strategy. It is a program that has stimulated a tremendous amount of interest within the communities and has my strong support." The following is a breakdown of Weed and Seed sites:

Pilot Demonstration Sites

Atlanta, Georgia
Charleston, S.C.
No. Charleston, S.C.
Chelsea, Mass.
Chicago
Denver
Fort Worth
Kansas City
Los Angeles
Madison, Wisc.
Omaha, Neb.
Philadelphia
Pittsburgh
Richmond, Va.
San Antonio
San Diego
Santa Ana, Calif.
Seattle
Trenton, N.J.
Washington, D.C.
Wilmington, Del.

Officially Recognized Sites

Akron, Ohio
Euclid, Ohio
Benton Harbor, Mich.
Indianapolis
Las Vegas
Milwaukee
Mobile, Ala.
Shreveport
Springfield, Ill.
Wichita, Kansas

Sites Applying For Official Recognition

California	Florida	
Fresno	Duval County/Jacksonville	Birmingham, Ala.
San Jose	Gainesville	
	Hialeah	Savannah, Georgia
Connecticut	Hillsborough County/Tampa	
Bridgeport	Lee County/Fort Myers	Austin, Ill. (Chicago)
Danbury	Manatee County/Bradenton	
Hartford	Marion County/Ocala	Baltimore, Md.
New Britain	Miami/Dade County	
Norwalk	Orlando/Orange County	Lima, Ohio
	Polk County	
New York	Riviera Beach	Dallas, Texas
Brooklyn	Sarasota	
Buffalo	Seminole/Brevard	Salt Lake City
Mott Haven (South Bronx)	Pinellas	
	Volusia County	

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Two-Year Strategy Announced To Curb Illegal Immigration

On February 3, 1994, Attorney General Janet Reno and Immigration and Naturalization Service Commissioner Doris Meissner outlined a comprehensive and innovative two-year strategy to strengthen enforcement of the nation's immigration laws. A summary entitled "Comprehensive Immigration Initiative" is attached at the Appendix of this Bulletin as Exhibit B. The new plan addresses five critical areas:

Strengthening Border Control: INS will stop the "revolving door" on the border by a strategy of "deterrence through prevention" successfully used in El Paso. By the end of 1995, INS will add 1,010 agents to the border line. This will be achieved by hiring and training 500 new agents and redeploying 510 agents freed from behind their desks as the result of automation and the redirection of existing resources. During the first year, these new agents and resources will be targeted in San Diego, California, and El Paso, Texas, where 65 percent of apprehensions occur. In 1994 alone, agent strength on the San Diego border will be increased by 40 percent. In addition, new technologies and equipment will multiply the effectiveness of the new border agents. These technologies include infrared scopes to monitor and track illegal entries and, in San Diego, the installation of five miles of lighting to expose aliens attempting night entries, the erection of secondary fencing to block entry onto highways, and fingerprinting all illegal crossers to determine recidivism.

Removing Criminal Aliens: INS will expedite the deportation of criminal aliens by expanding the use of fingerprint data to respond more rapidly and accurately to federal, state and local law enforcement officers' requests for information on the immigration status of criminal aliens. It also will expand its Institutional Hearing Program in five states, which is expected to double its capacity to deport criminal aliens upon the completion of their sentences in federal and state detention facilities.

Reforming the Asylum Process: By implementing new streamlined asylum application procedures and doubling the number of INS officers and immigration judges, the Justice Department will build a timely asylum process for providing legal status to bona fide refugees and reducing abuse of the system.

Improving Employer Sanctions Enforcement: INS will reduce the marketability of fraudulent documents and aggressively pursue sanctions against employers who hire unauthorized workers. It also will work to protect the rights of legal aliens. INS will improve the security of work authorization documents and add investigators and lawyers to identify and prosecute counterfeiters, and to enforce the anti-discrimination provisions of the law.

Promoting Naturalization: INS will encourage and promote naturalization efforts through public education and community outreach programs -- including an 800 "hot line" to disseminate information to the public on naturalization requirements. It also will augment staff to handle increased applications.

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Mutual Legal Assistance Treaty With The United Kingdom

On January 6, 1994, Attorney General Janet Reno and British Home Secretary Michael Howard signed a Mutual Legal Assistance Treaty between the United States and the United Kingdom. In her remarks prior to the signing ceremony, the Attorney General stressed the importance of the treaty to continued law enforcement cooperation, particularly in providing assistance in drug offenses and the pursuit of criminal assets. The treaty is the result of more than five years of intense negotiation by Criminal Division attorneys and will, once it enters into force, enable the United Kingdom authorities to assist the United States in a wide range of criminal matters, including narcotics, money laundering, terrorism, fraud, and tax cases.

Last year, the United Kingdom submitted sixty-four requests for assistance to the Criminal Division's Office of International Affairs. The United States sent forty-six requests to the UK Central Authority for Mutual Assistance in Criminal Matters at the Home Office in London. The Attorney General stated that despite the very good record that we have had in obtaining assistance under our domestic laws, we recognize that the increasing volume and complexity of our requests require a specialized mechanism to secure assistance even more quickly and efficiently than in the past.

The United States pioneered the use of modern mutual legal assistance treaties. These treaties, commonly referred to as MLATs, have replaced traditional methods, such as letters rogatory, as the preferred vehicle for securing assistance from foreign sovereigns. The first Mutual Legal Assistance Treaty, with Switzerland, was signed in 1973. We now have sixteen in force and the concept has been widely adopted in other instruments such as the Vienna Narcotics Convention.

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Office Of Investigative Agency Policies

On February 1, 1994, Louis J. Freeh, Director, Office of Investigative Agency Policies (OIAP), presented the first Resolution of OIAP to Attorney General Janet Reno. The Resolution addresses the use and sharing of drug intelligence within the Department of Justice, and states that a highly coordinated DEA and FBI common database for fighting drugs should be fully operational by June 1, 1994. Director Freeh advised that under the plan, three principal objectives will be achieved:

1) FBI and DEA drug intelligence files will be merged into a single system, an enhanced version of the DEA's NADDIS-X database. It will provide a "pointer system" to identify drug targets, and should be operational by June 1.

2) The FBI will undertake a full commitment to the El Paso Intelligence Center in which all states and most federal agencies participate and which is managed by DEA. EPIC provides intelligence on a real-time basis on the movement of drugs by land, sea and air throughout the world. The FBI will assign sufficient Special Agents and support personnel to contribute FBI intelligence to EPIC's law enforcement consumers on a continuous basis.

3) The National Drug Intelligence Center will be responsible for strategic intelligence relating to drug trafficking organizations. In addition, it may coordinate with the intelligence community, the Department of Defense, and components of the Treasury Department. It will provide advice on budgetary considerations. The Marshals Service and the Immigration and Naturalization Service will determine what data systems and personnel they can provide to assist the mission of NDIC. Assistance may also be drawn from the Bureau of Prisons. The NDIC Directorate will rotate between the FBI and DEA.

A copy of Director Freeh's Resolution is attached at the Appendix of this Bulletin as Exhibit C.

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Freedom Of Information Act Requests

On February 3, 1994, the Office of Public Affairs announced that Attorney General Janet Reno has authorized a change in Justice Department procedures to expedite the handling of Freedom of Information Act (FOIA) requests in certain cases of extraordinary interest to the news media. Current law permits only two exceptions to normal first-in, first-out processing: when information is needed to prevent a threat to life or safety, or when a delay would result in the loss of substantial due process rights, such as the chance to file a claim. The Justice Department's Office of Information and Privacy began studying whether a third category could be added after the Attorney General inquired in December and January why it was taking so long to process FOIA requests for the U.S. Park Service and FBI reports on the death of Vincent Foster. The reports were completed in August.

Under the new procedure, approved on February 1, FOIA requests can be moved to the head of the line whenever the Justice Department's Director of Public Affairs expressly finds 1) there exists widespread and exceptional media interest in the requested information; and 2) expedited processing is warranted because the information sought involves possible questions about the government's integrity which affect public confidence. A memorandum communicating the Attorney General's new policy said "The goal of such expedited processing is to permit the public to make a prompt and informed assessment of the propriety of the government's actions in exceptional cases." However, it also cautioned that in some situations, especially involving active law enforcement investigations, the law may still prevent immediate disclosure no matter how quickly the request is processed.

For further information, please call Co-Directors Richard L. Huff or Daniel J. Metcalfe, Office of Information and Privacy, Department of Justice, at (202) 514-4251.

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CIVIL RIGHTS ISSUES

National Fair Housing Summit

On January 21, 1994, Attorney General Janet Reno addressed the National Fair Housing Summit in Washington, D.C. The following is an excerpt of her remarks:

> I want to share with you today the ways in which the Justice Department is attempting to improve our housing and lending enforcement effort. We had a very productive and meaningful year in 1993 and we are hard at work and headed in a new direction. In addition to handling the growing number of individual discrimination cases that HUD refers to us, we are taking some critical new steps:
>
> First, we are working to initiate and litigate more broad pattern or practice fair housing and fair lending cases.
>
> Second, we are using random testing to root out housing discrimination that could otherwise go undetected.
>
> Third, we intend to employ the disparate impact theory, so that intent does not have to be shown.
>
> Fourth, we are beefing up the Civil Rights Division staff that handles housing and lending issues, and we will need your support as we continue to do whatever is necessary to make sure we've got the resources to do the job.
>
> Fifth, we are involving the U.S. Attorneys in litigation of fair housing cases.
>
> Sixth, we are embarking on a whole new effort to take on the issue of lending discrimination, a civil rights issue that has long gone unchecked, but one that will go unchecked no longer.

The Attorney General said that in 1993 our initiatives, along with an increasing number of HUD referrals, produced a 35 percent increase in the number of cases filed over the previous year. In the first three months of this year, we have already filed fifty suits. If the pace continues, we will set yet another record for 1994.

Ms. Reno also discussed the lending discrimination case against Shawmut Mortgage Company in the District of Connecticut (see, United States Attorneys' Bulletin, Vol. 42, No. 1, at p. 8), and two bank settlements involving discrimination against minorities -- the First National Bank of Vicksburg and Blackpipe State Bank, Martin, South Dakota. If you would like a copy of Ms. Reno's speech, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

* * * * *

Blackpipe State Bank, Martin, South Dakota

Blackpipe State Bank in Martin, South Dakota, will create a $125,000 compensatory fund for discriminating against Native Americans. In November, 1993, the Justice Department sued Blackpipe for allegedly refusing to make secured loans where the collateral was located on a reservation, and for placing credit requirements on Native Americans that it did not require of whites. The Justice Department also alleges that Blackpipe charged Native Americans greater interest rates and finance charges than those it charged to whites. According to the agreement, Blackpipe must advertise the existence of the fund to locate past rejected applicants who may be eligible for compensation. The consent decree also requires the bank to:

- Grant loans involving collateral located on the reservation;

- Reduce interest rates and finance charges on existing loans to Naive Americans that are higher than for similar loans to whites;

- Expand its services to the reservations which border the county where the bank is located;

- Market its products to Native Americans on the reservations through local media, instructional seminars on lending, and regular meetings with tribal representatives; and

- Offer loans guaranteed by the Bureau of Indian Affairs and the Federal Housing Administration, which are of particular interest to Native American borrowers.

The Attorney General described lending discrimination as one of the most important civil rights issues facing this country. Currently, the Department of Justice is investigating several banks throughout the nation for discriminatory lending practices, and in the last fifteen months has reached agreements with four financial institutions for alleged discriminatory lending.

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First National Bank Of Vicksburg

In a continuing effort to attack discriminatory lending, the First National Bank of Vicksburg has agreed to pay $50,000 in civil penalties and create a $750,000 fund to compensate blacks who were overcharged on interest rates. In reviewing Vicksburg's records for 1992, the Office of the Comptroller of the Currency (OCC) discovered that the bank was charging blacks higher interest rates than whites on unsecured home improvement loans. The bank charged nearly all of its black borrowers interest rates from 14 percent to 21 percent, while charging most of its white borrowers rates of only about 10 percent -- a difference ranging from 4 percent to 11 percent. In October, 1993, OCC referred the matter to the Justice Department which determined that Vicksburg had engaged in a pattern or practice of racial discrimination in violation of the Fair Housing Act and the Equal Credit Opportunity Act. Under the agreement, Vicksburg will pay about $4,400 to 170 blacks who, between January 1990 and July 30, 1993, were charged the higher interest rates on loans averaging about $2,000. The consent decree also requires Vicksburg to:

- Lower the interest rates of all blacks who have discriminatory loans;

- Use an application checklist to ensure the bank solicits and records all relevant information;

- Conduct second reviews of all individuals applying for home improvement loans;

- Establish a goal of funding at least $1 million in loans to low and moderate income borrowers;

- Offer customer assistance programs to ensure that applicants know about the various loans provided by the bank;

- Train its loan officers in principles of fair lending; and

- Conduct random testing to ensure employees are not treating minorities differently than non-minorities.

* * * * *

Involuntary Servitude And Peonage Statutes

Recent incidents involving the smuggling of Chinese nationals into the United States and their subsequent mistreatment to force payment of the debt incurred in their transport may involve scenarios that could be readily prosecuted under federal criminal statutes that are rarely used. For example, Title 18, U.S.C. §1581 prohibits peonage which has been defined as enforced labor to pay a real or perceived debt. Title 18, U.S.C. §1583 bans enticement into slavery and Title 18 U.S.C. §1584 outlaws holding any person in a condition of involuntary servitude. Title 18 U.S.C. §241 is the civil rights conspiracy statute which can be used to prosecute a conspiracy intended to violate the Thirteenth Amendment. Where death results from the conspirators' conduct, Section 241 carries a maximum penalty of life imprisonment.

The Supreme Court in United States v. Kozminski, 487 U.S. 931 (1988) held that the use or threatened use of physical or legal coercion must be used in order to hold a mentally competent adult in a condition of slavery. Kozminski is the leading case in this area and may be in conflict with portions of the reported decisions listed below. For example, Kozminski overruled the Ninth Circuit's conclusion in United States v. Mussry, 726 F.2d 1448 (9th Cir. 1984) that psychological coercion could be legally sufficient to hold a mentally competent adult in involuntary servitude. Likewise, Kozminski states that a threat to deport an immigrant could constitute a threat of legal coercion whereas the Second Circuit in United States v. Shackney, 333 F.2d 475 (2nd Cir. 1964) found that absent circumstances which would render deportation equivalent to or worse than imprisonment, that threats of deportation were not legally sufficient to hold an immigrant in slavery.

U.S. v. Kozminski, 487 U.S. 931 (1988
Kimes v. U.S., 939 F.2d 776 (9th Cir. 1991)
U.S. v. King, 840 F.2d 1276 (6th Cir. 1988)
U.S. v. Warren, 772 F.2d 827 (11th Cir. 1985)
U.S. v. Mussry, 726 F.2d 1448 (9th Cir. 1984)
U.S. v. Harris, 701 F.2d 1095 (4th Cir. 1983)
U.S. v. Booker, 655 F.2d 562 (4th Cir. 1981)
U.S. v. Broussard, 767 F.Supp. 1536 (D. OR 1991); 767 F.Supp. 1545
U.S. v. Lewis, 749 F.Supp. 1109 (W.D. MI 1986); 644 F.Supp. 1391; 638 F.Supp. 573
U.S. v. Bibbs, 564 F.2d 1165 (5th Cir. 1977) cert. denied, 435 U.S. 1007 (1978)
U.S. v. Shackney, 333 F.2d 475 (2d Cir. 1964)
Pierce v. U.S., 146 F.2d 84 (5th Cir. 1944) cert. denied, 324 U.S. 873 (1945)
The Peonage Cases, 123 F. 671 (M.D. Ala. 1903)
U.S. v. Ancarola, 1 F. 676 (C.C. SDNY, 1880)

If you have any questions about the applicability of these statutes to the investigations into the smuggling and holding of the Chinese nationals or with respect to other investigations, please contact Linda K. Davis, Chief, Criminal Section, Civil Rights Division, at (202) 514-3204.

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First Civil Penalty Under Americans With Disabilities Act

On January 6, 1993, the Department of Justice obtained an agreement for the payment of a $20,000 civil penalty from a Denver parking lot and garage company that failed to provide accessible parking. This is the first civil penalty imposed under the Americans with Disabilities Act (ADA). A Justice Department investigation of Allright Colorado, Inc., which owns or operates over 100 parking lots and garages in Denver, revealed that most of these parking locations had inadequate accessible parking. The government also determined that Allright was initially aware of its obligations under the ADA, yet failed to comply. Allright's parking facilities serve employers, hotels, restaurants, retail stores, health care providers, places of entertainment, schools and colleges, among other entities. The ADA's Standards for Accessible Design establishes the specifications for and the number of accessible parking spaces that must be located in a parking facility.

Under the agreement, in addition to paying the $20,000 penalty, Allright will add well over 400 accessible parking spaces. The consent order will require Allright to restripe its parking lots to provide a requisite number of accessible spaces and access aisles, install the appropriate signage for the accessible spaces, provide a local phone number for complaints about accessibility problems, and establish a policy for the prompt identification and removal of all cars that are improperly parked in those spaces. Acting Assistant Attorney General James P. Turner said, "Today's agreement sends a clear message that the law requires businesses to provide parking that meets the needs of persons with disabilities -- and we are enforcing it."

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CRIMINAL DIVISION

Investigative Jurisdiction In Indian Country

On November 22, 1993, Attorney General Janet Reno signed a Memorandum of Understanding (MOU) between the Department of the Interior, Bureau of Indian Affairs (BIA), and the Department of Justice, Federal Bureau of Investigation (FBI), concerning investigative jurisdiction in Indian country. The MOU, also signed by Secretary of the Interior Bruce Babbitt, is attached at the Appendix of this Bulletin as Exhibit D.

Jo Ann Harris, Assistant Attorney General for the Criminal Division, advised that, in implementing the policy to accept cases from BIA and tribal police, prescribed in USAM §9-20.220, we already have in place memoranda of understanding or guidelines delineating the responsibilities of the FBI, BIA and tribal police. This MOU, drafted by the FBI and BIA in consultation with the Criminal Division and the Attorney General's Advisory Subcommittee on Indian Affairs, requires that we address the allocation of investigative responsibility anew and issue or reissue guidelines for each District. The MOU is required by several provisions of the Indian Law Reform Act, 25 U.S.C. 2801-2809, which clarifies and expands the law enforcement responsibilities of the Department of the Interior in Indian country. United States Attorney guidelines are specifically addressed in §3(d)(1) of the Act, 25 U.S.C. 2802(d)(1).

If you have any questions, or require further information, please call the General Litigation and Legal Advice Section of the Criminal Division, at (202) 514-1026.

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International Parental Kidnaping Crime Act Of 1993

Attached at the Appendix of this Bulletin as Exhibit E is a copy of a memorandum issued by Jo Ann Harris, Assistant Attorney General for the Criminal Division, concerning the International Parental Kidnaping Crime Act of 1993 (Public Law 103-173, 107 Stat. 1998), which was enacted into law on December 1, 1993. This legislation adds a new 18 U.S.C. §1204 which makes it an offense to remove a child from the United States or to retain a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights. Such an offense is punishable by a fine under Title 18, imprisonment for not more than three years, or both.

If you have any questions, or require further information, please contact the General Litigation and Legal Advice Section of the Criminal Division, at (202) 514-1026. More detailed information may also be obtained by calling Linda L. Donahue, Chief, Child Custody Division, Office of Citizens Consular Services, Department of State, at (202) 647-2569.

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CIVIL DIVISION

Federal Rules Of Civil Procedure 26(a)(1) -- Initial Disclosure

Frank Hunger, Assistant Attorney General for the Civil Division, has advised that the most controversial change in the large package of Federal Rules of Civil Procedure (FRCP) amendments that became effective on December 1, 1993 is Rule 26(a)(1). This amendment provides for "mandatory disclosure" by the parties of core information such as identifying likely witnesses and relevant documents. After reviewing the Civil Rules amendments package promulgated by the Federal Judicial Conference, it was determined that the Department of Justice did not support the mandatory disclosure proposal. In testimony before a subcommittee of the Senate Judiciary Committee, Assistant Attorney General Hunger cited the widespread opposition by members of the bench and bar, including three Supreme Court Justices. Mr. Hunger also noted the practical difficulties for attorneys, in particular federal attorneys, to meet the disclosure requirement. He therefore recommended waiting for the results of the local rules experiments by federal district courts under the 1990 Civil Justice Reform Act before approving Rule 26(a)(1).

Legislative efforts in 1993 to eliminate or defer FRCP 26(a)(1) were unsuccessful, but the issue will arise again early in the 1994 congressional session. In the two months since the Civil Rules amendment package became effective, the fears of opponents to FRCP 26(a)(1) that there would be an odd quilt of applications of the rule have been realized. As of mid-January of 1994, 48 federal district courts have opted out of FRCP 26(a)(1), while 28 districts have implemented it. However, 28 of those 48 districts opting out have adopted their own form of disclosure (some in compliance with the demands for pilot districts under the CJRA). This means that there is a complete absence of uniformity in the federal judiciary, which, in the Civil Division's view, unnecessarily complicates modern civil practice in the federal court system, and hampers any meaningful evaluation of the initial disclosure mechanism as a possible tool to reduce civil litigation delay and expense. For these reasons, Assistant Attorney General Hunger continues to believe that it might be best if FRCP 26(a)(1) were deferred or eliminated.

Mr. Hunger would like the views of the United States Attorneys in the various districts, and welcomes any suggestions or recommendations on this critical issue. Please contact Cynthia C. Lebow, Senior Counsel for Policy, Civil Division, at (202) 514-3045 - Fax: (202) 514-8071 - E-Mail: SS01(LEBOW), or Richard Sponseller, Associate Director, Financial Litigation Staff, Executive Office for United States Attorneys, at (202) 501-7017 - Fax: (202) 501-7483 - E-Mail: AEX02(RSPONSEL).

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Radiation Testing

On February 2, 1994, Frank Hunger, Assistant Attorney General for the Civil Division, testified before the Subcommittee on Administrative Law and Governmental Relations, Committee on the Judiciary, House of Representatives, concerning government-sponsored radiation tests on humans and possible compensation for persons harmed in the tests. Mr. Hunger stated that the Department of Justice has been an active, full-time partner in the Human Radiation Interagency Working Group since the inception of that group on January 3, 1994. Together with the Departments of Energy, Defense, Health and Human Services, and Veterans Affairs, and the National Aeronautics and Space Administration, the Central Intelligence Agency, and the Office of Management and Budget, the Department of Justice shares a commitment to a full and public accounting of the government's human radiation experiments during the past fifty years.

The Interagency Working Group will conduct an investigation of human radiation experiments conducted by or on behalf of the government since 1944, with particular emphasis on experiments conducted prior to May 30, 1974, the date of issuance of the Department of Health, Education and Welfare Regulations for the Protection of Human Subjects (45 C.F.R. 46). The focus of the investigation will be on experiments on individuals involving intentional exposure to ionizing radiation (excluding common and routine clinical practices) and experiments involving intentional environmental releases of radiation that were designed to test human health effects of, or the extent of human exposure to, ionizing radiation. Further inquiry into other radiation experiments may be undertaken if warranted. Mr. Hunger described the functions of the Working Group, its subcommittees, the Radiation Exposure Compensation Act, and the Office of Redress Administration of the Civil Rights Division.

If you would like a copy of Mr. Hunger's testimony, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

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ANTITRUST DIVISION

Antitrust Division Celebrates Its 60th Anniversary

On January 10, 1994, Assistant Attorney General Anne K. Bingaman in charge of the Antitrust Division, held a symposium to commemorate the 60th anniversary of the Justice Department's Antitrust Division. Among those in attendance were Attorney General Janet Reno, Congressman Jack Brooks, Janet Steiger, Chairman, Federal Trade Commission, and former Antitrust Assistant Attorneys General, and other antitrust experts.

Ms. Bingaman pledged that the Division will use its available law enforcement tools to protect competition that fosters new and improved technologies. She also noted that antitrust policies will continue to play an important role in telecommunications, a high-tech industry subject to rapid change. She said the Division's role in the next telecommunications revolution is clear -- to promote innovation by eliminating both private and governmental restrictions on competition. Ms. Bingaman announced that she has established a task force to review and reformulate the Division's policies on intellectual property and antitrust in consultation with leading academics, practitioners, and industry experts.

In addition, the Antitrust Division has established a computer mail box system to receive comments from all over the world about possible antitrust violations. Ms. Bingaman stated that in an age where everyone uses a personal computer, it is essential for the Division to be accessible to the world electronically. The Internet mail box identification number is: ANTITRUST@JUSTICE.USDOJ.GOV.

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Department Of Justice Will Not Challenge Extension Of Program Addressing Television Violence

On January 25, 1994, the Department of Justice announced that it will not challenge a proposal by the Association of Independent Television Stations to continue a voluntary program of guidelines and viewer advisories for independent television stations in an effort to reduce the negative impact of violence on television. The proposal would allow the association to continue the effort it initiated with the enactment of the Television Program Improvement Act of 1990, which granted a three-year antitrust exemption for joint activities to develop and disseminate voluntary guidelines to address television violence. That exemption expired December 1, 1993.

Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, stated that the proposed activities are unlikely to be anticompetitive. The program will provide television viewers -- particularly parents -- and advertisers with valuable information that can enhance the demand for the industry's products. The proposal would allow the association, which is comprised of about 100 independent television stations throughout the country, and its members to discuss, collect and disseminate information on the effect of the guidelines program, and to coordinate the production of a series of antiviolence messages.

The Department's position was stated in a business review letter to the Association's president, which may be examined in the Legal Procedure Unit of the Antitrust Division, Room 3235, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file.

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Antitrust Division Will Allow Proposal To Create A Computer Database To Compare Prices

On January 25, 1994, the Antitrust Division of the Department of Justice will allow the nation's property and casualty insurers to create a computer database to permit users to compare the prices charged by insurers within a state for personal automobile and homeowners insurance. The Department said it would not challenge the proposal because of the McCarran-Ferguson Act which exempts the insurance industry from the antitrust laws.

Insurance Services Office, Inc., a nonprofit corporation of approximately 1,400 participating property and casualty insurers, proposes to develop and market a computer database with propriety software that could be loaded, via diskette, onto a personal computer and would enable a user to compare the premiums being charged by different insurers for personal automobile and homeowners insurance, taking into account various risk-depending surcharges and discounts. A user would be able to purchase data for either line of insurance and for any number of states or companies.

In a business review letter, Assistant Attorney General Anne K. Bingaman noted that Insurance Services Office, Inc.'s product would derive premiums being charged by insurance companies from rate data that is filed with state insurance regulators and is publicly available. The product would include premium information only for states in which insurance rates are subject to regulation. Insurance Services Office, Inc. intends to market its premium-comparison product to property and casualty insurers and to state regulators, but it will make its product available for purchase to any other interested party. Ms. Bingaman stated that, although the Department would be concerned about the anticompetitive impact on insurance rates of the creation by competitors of a database that permits the detailed comparison of current premiums for homeowners and personal automobile insurance, the Department concluded that it would not challenge Insurance Services Office, Inc.'s conduct in light of the McCarran-Ferguson Act. The McCarran-Ferguson Act provides an exemption from the antitrust laws to "the business of insurance law." The Department determined that, if the proposed conduct was found to be anticompetitive, it would fall within the McCarran-Ferguson Act exemption.

A file containing the business review request and the department's response may be examined in the Legal Procedure Unit of the Antitrust Division, Room 3235, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file.

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ASSET FORFEITURE

New Policy Concerning DynCorp Contract Employees

On January 10, 1994, Cary H. Copeland, Director and Chief Counsel, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General, issued Directive No. 94-1 to all United States Attorneys, and Department and Agency officials, concerning policy regarding work with DynCorp contract employees. This directive is effective immediately and supersedes Directive 91-8, Points to Remember Regarding Work with Ebon Contract Employees, dated May 20, 1991.

Mr. Copeland advised that effective July 21, 1993, the Department of Justice entered into a contract with DynCorp to provide administrative support services to our asset forfeiture efforts. Under this contract, DynCorp will provide administrative support services to the DOJ asset forfeiture program and other agency missions approved by the Executive Office to be supported by this contract. Data processing and linguistic services are excluded from the scope of this contract. If you would like a copy of the Directive, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

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POINTS TO REMEMBER

BCCI

On January 24, 1994, Gerald M. Stern, Special Counsel for Financial Institution Fraud, announced that the ruling family of Abu Dhabi has withdrawn its claims to more than $400 million in BCCI-related assets in the United States in compliance with one of the key elements of the non-prosecution agreement between Abu Dhabi and the United States. The agreement, which was worked out in three days of meetings in Geneva, Switzerland, in early January, required the Abu Dhabi parties to withdraw three separate sets of claims:

- The $91.3 million claim filed in 1992 in the criminal cases against BCCI in which the ruling family claimed that a portion of the money forfeited by BCCI to the United States actually belonged to Abu Dhabi.

- The debt, valued at approximately $220 million, owed by First American Bank to Abu Dhabi as the result of a series of loans made by Abu Dhabi to the bank.

- Abu Dhabi's 37 percent stock interest in the parent company of First American Bank.

In return, the Geneva agreement required First American Bank to dismiss the civil racketeering lawsuit that it had filed against the Abu Dhabi parties in 1993.

According to the settlement, the Abu Dhabi parties have now withdrawn the $91.3 million claim, transferred the debt interest to First American Bank, and transferred the stock interest to the Federal Reserve Bank of New York, and First American has moved to dismiss the lawsuit as to the Abu Dhabi parties. When the stock interest is liquidated by the court-appointed trustee for First American Bank, the Federal Reserve will transfer the resulting cash, estimated now to be approximately $167 million, in two parts: 450 million to First American and the balance to the fund managed by the BCCI. These transactions leave First American Bank holding assets worth approximately $334 million, all but a fraction of which represents the interest previously held by BCCI which is forfeitable to the United States as soon as the assets are liquidated.

* * * * *

Two Million Dollar Agreement Reached In The Eastern District Of Virginia

Helen F. Fahey, United States Attorney for the Eastern District of Virginia, recently announced that the Virginia Retirement System (VRS), a retired state employee pension program, has agreed to provide $2 million in restitution as part of an ongoing investigation. The VRS Board of Trustees approved the agreement at its regular Board meeting on December 15, 1993.

During the period May 1, 1990 through September 1, 1990, VRS purchased shares of Richmond, Fredericksburg, and Potomac Railroad dividend obligation stock (RF&P) in open market trades from individual sellers. In the investigation, the United States Attorney's office and the U.S. Postal Inspection Service determined that conduct in connection with those stock purchases violated various security fraud, mail fraud and other federal criminal statutes and resulted in the sellers receiving less than true market value for their shares. VRS has agreed to make restitution payments to the sellers of the RF&P stock based on the difference between the per share purchase price VRS paid the sellers and the price of $39.00 per share, which was determined to be the true market value, and was paid by VRS in its 1991 tender offer. In summary, the agreements provided:

1. That VRS establish a "Restitution Trust Fund";

2. That VRS will transfer the sum of two million dollars ($2,000,000) to the trustee to fund the Restitution Trust Fund to be available to pay restitution and costs;

3. That VRS will pay two hundred thousand dollars ($200,000) to the United States government as reimbursement for the cost of the investigation;

4. That VRS will continue to cooperate fully and truthfully with the United States Attorney for the Eastern District of Virginia and to provide all information known to the VRS regarding any criminal activity;

5. That upon full compliance with the agreement, the United States Attorney for the Eastern District of Virginia agrees not to prosecute VRS, as an entity, for criminal violations arising from the conduct of some of its trustees, directors, officers, employees and agents.

S. David Schiller, the Assistant United States Attorney who handled this matter for the Eastern District of Virginia, advised that all payments have been made to the Restitution Trust Fund. For further information, please call Mr. Schiller in the Richmond office: (804) 771-2186 - E-Mail: AVAER01.

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Career Opportunity - Office Of Information And Privacy, Washington, D.C.

The Office of Attorney Personnel Management, Department of Justice, is seeking an experienced attorney for the Department's Office of Information and Privacy in Washington, D.C. Responsibilities include the adjudication of administrative appeals under the Freedom of Information Act and the Privacy Act of 1974, the defense of litigation under both statutes at the district court and court of appeals levels, and the development of government-wide FOIA policy.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year post-J.D. experience. Civil litigation or administrative law experience is preferred. Applicants must submit a resume or SF-171 (Application for Federal Employment) to: Office of Information and Privacy, Room 7238, Department of Justice, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20530, Attn: Margaret A. Irving, Associate Director.

Current salary and years of experience will determine the appropriate grade and salary levels. The possible range is GS-11 ($35,045 - $45,561) to GS-12 ($42,003 - $54,601). This advertisement will remain open until the position is filled.

* * * * *

SENTENCING REFORM

Guideline Sentencing Updates

A copy of the Guideline Sentencing Update, Volume 6, No. 7, dated January 5, 1994, and Volume 6, No. 8, dated January 28, 1994, is attached as Exhibit F at the Appendix of this Bulletin. This publication is distributed periodically by the Federal Judicial Center, Washington, D.C. to inform judges and other judicial personnel of selected federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Commission.

* * * * *

AFFIRMATIVE CIVIL ENFORCEMENT PROGRAM (ACE)

Commercial Litigation Branch Joins ACE Efforts

Stephen D. Altman, Assistant Director of the Commercial Litigation Branch, Civil Division, has been designated by Assistant Attorney General Frank W. Hunger to participate and assist in the Affirmative Enforcement Program. The resources of the Commercial Litigation Branch have been helpful in the past, and Mr. Altman's assistance and guidance will produce more effective coordination and teamwork.

If you have any questions, or require information, please call Mr. Altman at: (202) 307-0188 - E-Mail - SS05(SALTMAN).

* * * * *

ACE Conferences

Two ACE conferences to be held on the East Coast (Clearwater, Florida) and the West Coast (Salt Lake City) are in the planning stages. The goal of the conferences is to bring together Assistant United States Attorneys, Department of Justice fraud attorneys, and investigative agency counsel to build the best fraud teams possible.

If you would like to attend either of these conferences, or have any questions, suggestions or recommendations, please contact Robert DeSousa, Financial Litigation Unit, Executive Office for United States Attorneys, at (202) 501-7017.

* * * * *

District Of Nevada

Blaine T. Welsh, Assistant United States Attorney for the District of Nevada, and ***Richard Vartain of the Commercial Litigation Branch of the Civil Division,*** have resolved three cases for a combined total of nearly $1,000,000.00. The cases involved theft of sand and gravel from public lands administered by the Bureau of Land Management (BLM), Department of the Interior. In the Las Vegas area, a purchaser must obtain a contract from BLM for a specific amount of sand and gravel, must pay for the material in advance, and must, upon completion of the contract, submit a monthly report specifying, among other things, the amount removed on a daily basis. In the three cases, a local union had filed a qui tam complaint alleging that the purchases were taking more sand and gravel than the amount purchased, and that they were submitting false reports. The BLM's subsequent investigation corroborated these allegations and provided evidence that other unnamed parties were committing the same violations. The United States intervened in the cases and filed an amended complaint alleging, among other things, that the purchasers' false reports constituted a reverse false claim and that they had violated the BLM trespass regulations. After lengthy settlement negotiations, two of the three defendants settled for at least double damages and the third defendant entered into a consent judgment for the full amount of the United States' claim.

The United States Attorneys' office is pursuing several similar cases. While these cases may not involve violations of the False Claims Act, the BLM trespass regulations give the United States a powerful remedy. The regulations adopt the State trespass case law and statutes, which can provide for enhanced recoveries. For example, in Nevada, a willful mineral trespasser must pay the full market value of the material removed without deduction for costs and expenses of extraction. Any District that has a BLM presence should be aware of these types of cases. If you have any questions, or would like copies of the pleadings in these cases, please call Blaine Welsh at: (702) 388-6336, or E-Mail: ANV01(BWELSH).

* * * * *

SUPREME COURT WATCH

An Update of Supreme Court Cases From The Office of the Solicitor General

Selected Cases Recently Decided

Civil Cases

National Organization for Women, Inc. v. Scheidler, No. 92-780 (decided January 24)

In this case, the Court held that the Racketeer Influenced and Corrupt Organizations (RICO) chapter of the Organized Crime Control Act of 1970, 18 U.S.C. 1961-1968, does not require proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose.

Albright v. Oliver, No. 92-833 (decided January 24)

In this case, Chief Justice Rehnquist, for himself and Justices O'Connor, Scalia, and Ginsburg, held that the Fourth Amendment, rather than substantive due process, provided the governing standard for deciding a claim of prosecution without probable cause under 42 U.S.C. 1983. Justice Kennedy, for himself and Justice Thomas, concurred in the judgment on the basis that due process requirements do not provide a standard for initiating criminal proceedings and that any claim for malicious prosecution was barred by the availability of an alternative state tort remedy. Justice Souter also concurred in the judgment on the ground that due process does not provide a cause of action when a cause of action already exists under a more specific constitutional provision.

Criminal Cases

Ratzlaf v. United States, No. 92-1196 (decided January 11)

In this case, the Court held that a defendant's purpose to circumvent the provisions of 31 U.S.C. 5313, which require financial institutions to report cash transactions of over $10,000, is not sufficient to sustain a conviction for "willfully violating," 31 U.S.C. 5322, the antistructuring provisions of the act. 31 U.S.C. 5324. Rather, the government must prove that the defendant acted with knowledge that his conduct was unlawful.

Questions Presented in Selected Cases in Which the Court has Recently Granted Cert.

Criminal Cases

Williamson v. United States, No. 93-5256 (granted January 10)

(1) Whether a post-arrest confession by an accomplice implicating a defendant, offered as an admission against penal interest of an unavailable declarant under Fed. R. Evid. 804(b)(3), bears adequate indicia of reliability to render it admissible under 804(b)(3) and the Sixth Amendment's Confrontation Clause; (2) whether such a confession constitutes a firmly rooted hearsay exception which is presumptively reliable for purposes of the Confrontation Clause; and (3) whether 804(b)(3)'s requirement that a statement must be corroborated by circumstances indicating its trustworthiness is limited to only those circumstances surrounding the making of the statement.

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CASE NOTES

CIVIL DIVISION

Eighth Circuit Holds That Discretionary Function Exception Bars FTCA Suit Challenging Military's Response To The AIDS Epidemic

This is an action under the Federal Tort Claims Act (FTCA). Plaintiffs D.B.S., N.A.S., and C.R.S. allege that they contracted the human immunodeficiency virus (HIV) -- the virus that causes AIDS -- as a result of the negligence of the United States. According to plaintiffs, D.B.S. contracted HIV from blood transfusions performed in August 1983 at a military hospital while he was performing training duties as a member of the Minnesota National Guard. D.B.S. transmitted HIV to his wife, N.A.S., who later passed the virus on to one of their three children, C.R.S. Plaintiffs alleged that the military was negligent in two respects: (1) by adopting the donor screening procedures recommended by the Food and Drug Administration and the American Association of Blood Banks for blood donor facilities in the civilian sector, instead of adopting more stringent procedures tailored to the special needs of the military; and (2) by failing to warn D.B.S. that he might have been infected with HIV as a result of the transfusions that he underwent in 1983. The district court entered summary judgment in favor of the United States on the ground that plaintiffs' claims are barred by the FTCA's discretionary function exception, 28 U.S.C. § 2680(a).

The court of appeals (Magill, Loken; John R. Gibson, concurring in part and dissenting in part) has now affirmed. The panel unanimously concluded that the military's decision to adopt the donor screening procedures applicable to private sector blood banks was protected by the discretionary function exception, holding that the decision was discretionary and susceptible to policy analysis. The majority further determined that the failure to warn transfusion recipients such as D.B.S. was similarly shielded from judicial review because the military had not adopted a specific and mandatory warning policy and the decision whether to provide warnings was susceptible to a balancing of safety and cost considerations. The court's opinion should prove helpful to the government's defense of other similar challenges to the military's response to the AIDS crisis.

C.R.S., et al. v. United States, No. 93-2294 (December 10, 1993) [8th Cir.; D. Minn.]. DJ # 157-39-954.

Attorneys: Robert S. Greenspan - (202) 514-5428
John F. Daly - (202) 514-2496
Michael S. Raab - (202) 514-4053

* * * * *

Ninth Circuit Upholds District Court Sanction Issued Against Private Attorney Who Had Without Foundation Accused A District Judge Of Criminal Conduct

Attorney Sandlin was handling a case before Federal District Judge McDonald and began asking questions concerning whether the judge should recuse himself from the case. Sandlin thought that Judge McDonald had made a statement showing his bias. When Sandlin obtained copies of the transcript and tape of the argument, the statement was not there. Sandlin called both the FBI and the local United States Attorney, and accused Judge McDonald of ordering his court reporter to delete the key statement from the transcript. A grand jury investigation was opened, and the FBI analyzed both the tape and the reporter's stenotype notes. The FBI concluded unequivocally that neither one had been altered in any way, thus showing that Judge McDonald had not ordered any change in the transcript (although the judge had made some irrelevant changes in other parts of the transcript).

After the criminal inquiry ended, Judge McDonald referred the matter to the other judges in the district for discipline against Sandlin. The district court charged Sandlin with attacking Judge McDonald's integrity falsely, or with reckless disregard for the truth. The court concluded that Sandlin had had no factual basis for making the charge that Judge McDonald had ordered that an important statement be deleted from the official transcript. It suspended Sandlin for six months. Sandlin appealed to the Ninth Circuit, contending that he had not violated the applicable attorney ethics rules, and that his speech was protected by the First Amendment. The district court requested our representation, which we provided. The Ninth Circuit (Leavy, Brunetti, Trott (concurring and dissenting)) has now affirmed the sanction. The court found that Sandlin lacked grounds for his accusations, and it did not matter that he merely made them to the FBI and the United States Attorney. Given the falsity of the statements and the reckless disregard with which they were made, the court held that they were not protected by the First Amendment. Judge Trott concurred and dissented. He strongly criticized the conduct of Judge McDonald in this affair, and also urged the district court to consider reducing the sanction to a written reprimand of Sandlin.

U.S. District Court for the Eastern Dist. of Washington v. Sandlin, No. 91-36251 (Dec. 20, 1993) [9th Cir.; E.D. Wash.]. DJ # 145-0-3530.

Attorneys: Douglas N. Letter - (202) 514-3602

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Ninth Circuit Holds That Regulation Discriminating Against Handicapped Persons May Not Be Challenged In A Damages Action Brought In District Court Under The Rehabilitation Act

Plaintiff is a truck driver with defective vision in one eye. As a result, he was not qualified to drive in interstate commerce under Federal Highway Administration (FHWA) regulations, despite a record of thirty-one years of safe driving. He brought this suit under the Rehabilitation Act to challenge FHWA's refusal to waive the regulation. A year later, FHWA granted the waiver, but plaintiff continued the suit, seeking damages for the year in which he was disqualified to drive. The district court held that it had no jurisdiction on the ground that the jurisdiction of the court of appeals under the Hobbs Act to review FHWA regulatory action is exclusive. The court of appeals affirmed, and went on to dismiss the case on the ground that suit had been filed past the 60-day time limit in the Hobbs Act. The court of appeals acknowledged that damages are not available under the Hobbs Act and that the effect of its holding is to deprive the plaintiff of a damages remedy.

Carpenter v. Department of Transportation, No. 92-70253 (Jan. 3, 1994) [9th Cir.; N.D. Cal.]. DJ # 145-18-2093.

Attorneys: Robert V. Zener - (202) 514-1597

* * * * *

Eleventh Circuit Holds That Order Adopting Magistrate's Report And Recommendation Is Not A Formal Final Judgment Within The Meaning Of Fed. R. Civ. P. 58 And 79(a) And Does Not Trigger The Time Limit For Filing An Equal Access to Justice Act (EAJA) Application

Carolyn Newsome sought review of the Secretary's denial of supplemental security income benefits in district court under 42 U.S.C. § 405(g). A magistrate judge issued a report and recommendation, concluding that the Secretary's determination was erroneous and recommending that the case be remanded. The district court adopted the report and recommendation as its opinion and remanded the case to the Secretary for further proceedings. On remand, the Secretary awarded benefits to the claimant and she filed a motion with the district court for entry of a final judgment apparently as a predicate for filing a petition for fees and expenses under the Equal Access to Justice Act (EAJA). The magistrate concluded that motion for entry of final judgment was moot because the district court's original remand order was issued pursuant to sentence four of 42 U.S.C. § 405(g) and constituted a final judgment "triggering the commencement of the time period of thirty days in which to file an EAJA fee petition." Again, the district court adopted the magistrate's recommendation and denied claimant's motion as moot.

Newsome appealed. The Eleventh Circuit has now reversed. Noting that Shalala v. Schaefer, 113 S. Ct. 2625 (1993), put to rest what is a final judgment in remand cases pursuant to sentence four of 42 U.S.C. § 405(g), and that Schaefer applies retroactively, the court nonetheless held that the district court's remand order in this case failed to comply with the requirements of Rules 58 and 79(a) of the Federal Rules of Civil Procedure. Rejecting our argument that a district court order that, without more, simply adopts a magistrate's report complies with the formalities of Rules 58 and 79(a), the court of appeals concluded that the order in this case was too similar to the order in Schaefer to be distinguished, even though that order contained the court's reasoning as well. Consequently, it remanded the case to the district court for entry of a formal judgment that would trigger the filing period for an EAJA application. The court went out of its way, however, to state that its holding was "limited to Social Security cases and to the narrow facts of this case."

Carolyn Newsome v. Donna E. Shalala, No. 91-8917 (Dec. 7, 1993) [11th Cir.; S.D. Ga.]. DJ # 137-39-538

Attorneys: William Kanter - (202) 514-4575
Michael E. Robinson - (202) 514-1371

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D.C. Circuit Reverses District Court Order Denying Enforcement Of Subpoenas For Bank Examination Reports And Related Workpapers And Remands For Further Proceedings To Determine Whether Documents Contain Purely Factual Information

Plaintiffs brought a shareholders class action against a bank in federal district court in Connecticut. Subsequently, they brought these subpoena enforcement proceedings in the District Court for the District of Columbia to obtain bank examination reports and related documents prepared by bank examiners from the Federal Reserve Board and the Federal Deposit Insurance Corporation. The agencies resisted the subpoenas on the grounds that the documents were privileged in their entirety as bank examination reports and under the deliberative process privilege. Without conducting an in camera examination of the documents, the district court held on the basis of an affidavit submitted by the Federal Reserve Board that these documents contained no segregable, purely factual information outside the scope of the bank examination privilege and that plaintiffs had failed to demonstrate good cause to override the privilege. Therefore, it denied the motion to enforce the subpoenas.

The D.C. Circuit (Ginsburg, Mikva, Buckley) reversed and remanded. The court reaffirmed the bank examination privilege it recognized in In re Subpoena, 967 F.2d 630 (D.C. Cir. 1992). It held, however, that the district court erred in relying upon the agency's affidavit that any factual information in the documents was inextricably intertwined with privileged information. It held that the district court failed to make findings whether the subpoenaed documents contained any segregable, purely factual information and by failing to examine the documents in camera in making that determination. It also held that the district court had erred in concluding that the documents lacked relevance to plaintiffs' action and in concluding that plaintiffs could obtain some of the documents from the bank. It remanded the action for further proceedings consistent with its opinion.

Schreiber v. Society for Savings Bancorp, Inc., Nos. 93-5100, 93-5102 (Dec. 28, 1993) [D.C. Cir.; D.D.C.]. DJ # 233279-3146.

Attorneys: Anthony J. Steinmeyer - (202) 514-3388
Peter R. Maier - (202) 514-3585

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TAX DIVISION

Interim Distribution Of $8 Million Received In Consolidated Chapter 7 Bankruptcy Cases

On January 25, 1994, the Tax Division received an interim distribution of $8 million in the consolidated Chapter 7 bankruptcy cases of Robert B. Sutton and Sutton Investments, Inc. Sutton, at one time named by Forbes as one of the fifty richest Americans, was previously convicted of various criminal violations for siphoning profits from his oil empire without the payment of energy taxes. Among the charges was conspiracy to obstruct justice by having a witness killed. After serving two years of a lengthy prison sentence, Sutton was released in 1987 for medical reasons.

* * * * *

Supreme Court Reverses Ninth Circuit Decision In Railroad Revitalization And Reform Act Case

On January 24, 1994, the Supreme Court reversed the decision of the Ninth Circuit in Department of Revenue of Oregon v. ACF Industries, Inc., et al. The respondents, carlines that lease railroad cars to railroads and shippers, argued that the Railroad Revitalization and Reform Act of 1976 (the "4-R Act") prohibited the State of Oregon from subjecting railroad cars to ad valorem property taxes, while exempting other major classes of commercial and industrial property from payment of these taxes. The 4-R Act expressly forbids the states from discriminating against rail transportation property by taxing that property at a higher rate than is imposed on other commercial and industrial property that is subject to tax, or by valuing it at a higher ratio of assessed value to market value that is used with respect to other taxable property. The Act further provides that the states may not impose "any other tax" that discriminates against rail carriers. In an amicus brief, the United States asserted that the mere fact that exemptions were allowed for certain classes of property does not necessarily render the taxing scheme discriminatory, and urged that the case be remanded to determine whether the effects of the various exemptions were actually discriminatory. The Supreme Court concluded that the "catch-all" provision does not apply to ad valorem property taxes, but only to other types of taxes, and, thus, that a state property tax that discriminates only through the use of exemptions (and not through the use of discriminatory rates or assessment ratios) is not violative of the statute.

* * * * *

Court Suspends Action In Case Involving Disclosure Of Client's Identity

On January 13, 1994, the Court suspended further action in United States v. Daniel E. Monnat, and Monnat & Spurier, in which the United States sought to enforce its subpoena seeking the disclosure of a client's identity by his attorney. The Government argued that the disclosure is required by the Internal Revenue Code's cash payment reporting statute because the client paid the attorney $16,000 in cash. The Court, troubled by what it viewed as the potential conflict between this requirement and an attorney's ethical responsibility to his client, requested that the Federal Court Committee on Attorney Conduct study the issues raised in this case and report back to the Court. The Court suspended action on this matter in the interim.

* * * * *

Second Circuit Affirms Adverse Decision Of The District Court In A Tax Refund Case

On January 6, 1994, the Second Circuit affirmed the adverse decision of the District Court in Leonard and Joyce Greene v. United States, a tax refund case. The Greenes were owners of futures contracts in various commodities. During the taxable year 1982, they donated to a charitable foundation "the long-term capital gains" portion of selected futures contracts, while retaining the short-term capital gains portion for themselves. An agent for the foundation sold the contracts the same day they were transferred by the Greenes, the foundation retained the portion of the proceeds that qualified as long-term capital gain, and the remainder of the proceeds were transferred to the Greenes. On their return for 1982, the Greenes claimed a charitable contribution deduction for the amount of the long-term capital gains paid to the foundation, but did not include the amount of such gain in their income. Rather, the Greenes reported only the amount of the short-term capital gain.

The District Court, and now the Court of Appeals, rejected our contention that the entire amount of the gain on the sale of the contracts was includable in the Greene's income. Holding that there had been no anticipatory assignment of income which they already had earned, and rejecting our related contention that, in substance, the Greenes had sold the contracts and then donated a portion of the proceeds to the foundation, the Second Circuit ruled that the form of the donations was consistent with the substance of the transactions.

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Fifth Circuit Court Of Appeals Reverses Unfavorable Judgment In A Tax Collection Action

On January 3, 1994, the Court of Appeals for the Fifth Circuit issued a published opinion reversing the unfavorable judgment of the District Court in United States v. Bernice H. Shanbaum, et al, a tax collection action. The United States brought this suit to reduce to judgment income tax and transferee liability assessments made against Mrs. Shanbaum and her former husband, Theodore B. Shanbaum, and to foreclose upon tax liens asserted against their real estate. The income tax and transferee liability assessments total more than $9 million and were made after the liability had been sustained by the Tax Court. The District Court granted the Government judgment on its assessments against Mr. Shanbaum, but ruled that Mrs. Shanbaum was relieved of liability for both the income tax and transferee liability assessments as an innocent spouse. The court held that Mrs. Shanbaum's innocent spouse claim was not barred by res judicata because the Government had failed to timely plead res judicata as a defense to that claim.

Agreeing with the Government's contentions, the Fifth Circuit reversed. The Court of Appeals held that the Government gave sufficient notice of its intention to raise res judicata as a defense and that res judicata barred Mrs. Shanbaum from asserting in the District Court the innocent spouse defense to her tax liability. The Court of Appeals went on to rule that Mrs. Shanbaum was not entitled to innocent spouse relief in any event and that the innocent spouse defense had no applicability to Mrs. Shanbaum's transferee liability.

* * * * *

OFFICE OF LEGAL EDUCATION

COMMENDATIONS

Donna A. Bucella, Director of the Office of Legal Education (OLE), and the members of the OLE staff, thank the following Assistant United States Attorneys (AUSAs), Department of Justice officials and personnel, and federal agency personnel for their outstanding teaching assistance and support during courses conducted from December 16, 1993 - January 16, 1994. Persons listed below are AUSAs unless otherwise indicated:

Evidence for Experienced Criminal Litigators (Columbia, South Carolina)

John Dwyer, Assistant Associate Attorney General. ***Michael Whisonant,*** Northern District of Alabama; ***Mark Dubester,*** District of Columbia; ***Dixie Morrow,*** Middle District of Georgia; ***Steven Miller,*** Chief, Special Prosecutions Section, Northern District of Illinois; ***Mary Jude Darrow,*** Eastern District of Louisiana; ***Barbara Sale,*** Senior Litigation Counsel/Appellate Chief, District of Maryland; ***William Richards*** and ***Craig Weier,*** Eastern District of Michigan; ***Michael MacDonald,*** Western District of Michigan; ***Lynn Crook,*** District of North Dakota; ***Ann C. Rowland,*** Northern District of Ohio; ***Karla Spaulding,*** Southern District of Texas; ***John Vaudreuil,*** Western District of Wisconsin.

Attorney Management Seminar (San Francisco, California)

Wayne A. Rich, Jr., Principal Deputy Director, ***Michael Bailie,*** Deputy Director, Administrative Staff, and ***Brian Jackson,*** Assistant Director, Evaluation and Review Staff, Executive Office for United States Attorneys.

Customs Fraud Seminar (Clearwater, Florida)

Douglas N. Frazier, Senior Litigation Counsel, Executive Office for United States Attorneys; ***Peter Strasser,*** Eastern District of Louisiana; ***Allen Brudner,*** Southern District of New York; ***Kent S. Robinson,*** District of Oregon; ***Mel Johnson*** and ***Stephen Liccione,*** Eastern District of Wisconsin.

Alternative Dispute Resolution for Agency Counsel (Washington, D.C.)

Lawrence A. Klinger, Assistant to the Director; and ***Debra Kossow,*** Senior Admiralty Counsel, Aviation and Admiralty Section, from the Torts Branch, Civil Division. ***Donald L. Greenstein,*** Volunteer Mediator, Tax Division.

Securities Fraud Seminar (New Orleans, Louisiana)

Michael Chertoff, United States Attorney, ***Michael Guadagno,*** Chief, Fraud and Public Protection Division, and ***John Fietkiewicz,*** Deputy Chief, Fraud and Public Protection Division, District of New Jersey. From the Central District of California: ***John Walsh,*** Chief, Major Frauds Section, ***Alice Hill, John Hill, John Libby, David Schindler,*** and ***David Sklansky. Ken Fimberg,*** Chief, Economic Crime Section, District of Colorado; ***Mark Rotert,*** Chief, Major Crimes Division, and ***James Fleissner,*** Northern District of Illinois; ***Howard Heiss,*** Chief, and ***Reid Figel,*** Deputy Chief, Securities and Commodities Fraud Task Force, and ***David Meister,*** Southern District of New York; ***Stewart Walz,*** Chief, Criminal Division, District of Utah. ***John Arterberry,*** Deputy Chief, Fraud Section, Criminal Division.

Eleventh Circuit Asset Forfeiture Component Seminar (Clearwater, Florida)

Virginia Covington, Asset Forfeiture Chief, and ***Beverly Williams,*** Paralegal, Middle District of Florida; ***Robert D. Ford,*** Paralegal, and ***Gloria McPherson,*** Legal Technician, Middle District of Alabama; ***Katherine Corley,*** and ***Mary Mims,*** Legal Secretary; Northern District of Alabama; ***Ronald Wise*** and ***Regina T. Dickerson,*** Asset Forfeiture Secretary, Southern District of Alabama; ***J. D. Roy Atchison*** and ***Maria McLaughlin,*** Paralegal Assistant, Northern District of Florida; ***Ana Barnett,*** Asset Forfeiture Chief, ***Diane M. Freeland,*** Victim-Witness Specialist, and ***Rubia Weeks,*** Supervisory Legal Technician, Southern District of Florida; ***John Lynch*** and ***Dale S. Huett,*** Paralegal Assistant, Middle District of Georgia; ***Joe Plummer*** and ***Paula S. Smith,*** Paralegal, Northern District of Georgia; ***James Coursey,*** Asset Forfeiture Chief, and ***Anita Stanford,*** Paralegal Assistant, Southern District of Georgia. ***Cary H. Copeland,*** Director, and ***Candace Olds,*** Consolidated Asset Tracking System Project Supervisor, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General. ***Lee Radek,*** Director, ***Harry Harbin,*** Assistant Director, ***Alice Dery,*** Special Counsel, ***Stefan Cassella*** and ***James Brown,*** Trial Attorneys, Asset Forfeiture Office, Criminal Division. From the Department of the Treasury: ***Charles M. Ott,*** Deputy Director, Executive Office for Asset Forfeiture; ***Richard Isen,*** Chief Counsel; ***John T. Seabrook,*** Asset Forfeiture Program Manager, Bureau of Alcohol, Tobacco, and Firearms; ***Charles P. Bartoldus,*** Seizures and Penalties Director, United States Customs Service; and ***Kevin T. Foley,*** Special Agent in Charge, United States Secret Service. ***William J. Snider,*** Forfeiture Counsel, Drug Enforcement Administration; ***William R. Schroeder,*** Legal Forfeiture Unit Chief, and ***Stuart Sturm,*** Supervisory Special Agent, Federal Bureau of Investigation; ***Joseph F. Travis,*** Field Management Branch Chief, Immigration and Naturalization Service; ***Tim Virtue,*** Financial and Information Services Chief, United States Marshals Service; ***Walt Ladick,*** Program Administrator, United States Postal Inspection Service.

Appellate Skills (Washington, D.C.)

Christopher J. Wright, Assistant to the Solicitor General, Office of the Solicitor General. From the Civil Division: ***Tarek Sawi,*** Trial Attorney, Torts Branch; ***Mark B. Stern,*** Appellate Litigation Counsel; ***Barbara Biddle*** and ***Michael J. Singer,*** Assistant Directors, Appellate Staff.

Advanced Civil Trial Advocacy (Washington, D.C.)

Sid Alexander, Western District of Tennessee; ***Susan Dein Bricklin,*** Eastern District of Pennsylvania; ***Monte Clausen,*** District of Arizona; ***Amy Hay,*** Chief, Civil Division, Western District of Pennsylvania; ***Winstanley Luke,*** Deputy Chief, Civil Division, Western District of Texas; ***Tom Majors,*** Western District of Oklahoma; ***Iden Martin,*** Northern District of Ohio; ***Roger McRoberts,*** Northern District of Texas; ***Sharon Pierce,*** Western District of Texas; ***Rudy Renfer,*** Chief, Civil Division, Eastern District of North Carolina; ***Paula Silsby,*** District of Maine; ***Jeff Senger,*** Trial Attorney, Civil Rights Division.

COURSE OFFERINGS

The staff of OLE is pleased to announce OLE's projected course offerings for the months of February through May 1994 for both the **Attorney General's Advocacy Institute (AGAI)** and the **Legal Education Institute (LEI)**. AGAI provides legal education programs to Assistant United States Attorneys (AUSAs) and attorneys assigned to Department of Justice divisions. LEI provides legal education programs to all Executive Branch attorneys, paralegals, and support personnel, and to paralegal and support personnel in United States Attorneys' offices.

AGAI Courses

The courses listed below are tentative only. OLE will send an announcement via Email approximately eight weeks prior to the commencement of each course to all United States Attorneys' offices and DOJ divisions officially announcing each course and requesting nominations. Once a nominee is selected, OLE funds costs for Assistant United States Attorneys only.

February 1994

Date	*Course*	*Participants*
7-11	Complex Prosecutions/ Advanced Grand Jury	AUSAs
7-11	Criminal Federal Practice	AUSAs
7-11	Appellate Advocacy	AUSAs
23-25	First Assistants	FAUSAs (Large Offices)
23-25	Advanced White Collar/ Financial Institution Fraud	AUSAs
24-25	Environmental Law/ Military Installation Closures	AUSAs and Agency Counsel
28-March 11	Civil Trial Advocacy	AUSAs

March 1994

1-4	Evidence for Experienced Litigators	AUSAs
7-9	Basic Asset Forfeiture/ Money Laundering	AUSAs
14-18	Complex Prosecutions/ Advanced Grand Jury	AUSAs
21-23	Asset Forfeiture Fourth Circuit Component	AUSAs
21-30	Criminal Trial Advocacy	AUSAs
22-24	Advanced FTCA	AUSAs

April 1994

5-7	Employment Discrimination	AUSAs
6-8	Attorney Supervisors	AUSAs
12-14	Asset Forfeiture/Criminal	AUSAs
12-15	Health Care Fraud	AUSAs
18-22	Advanced Criminal Trial Advocacy	AUSAs
19-21	Civil Chiefs	Civil Chiefs (Large Offices)
25-30	Asset Forfeiture Advocacy	AUSAs

May 1994

2-6	Appellate Advocacy	AUSAs
4-6	Public Corruption	AUSAs
17-20	Violent Crimes	AUSAs
24-26	Constitutional Torts	AUSAs

LEI Courses

LEI offers courses designed specifically for paralegal and support personnel from United States Attorneys' offices **(indicated by an * below).** Approximately eight weeks prior to each course, OLE will send an Email to all United States Attorneys' offices announcing the course and requesting nominations. The nominations are sent to OLE via FAX, and student selections are made. OLE funds all costs for paralegals and support staff personnel from United States Attorneys' offices who attend LEI courses.

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via mailings, sent every four months to federal departments, agencies, and USAOs. Nomination forms must be received by OLE at least 30 days prior to the commencement of each course. A nomination form for LEI courses listed below (except those marked by an *) is attached at the Appendix of this Bulletin as Exhibit G. Local reproduction is authorized and encouraged. Notice of acceptance or non-selection will be mailed to the address typed in the address box on the nomination form approximately three weeks before the course begins. **Please note: OLE does not fund travel or per diem costs for students attending LEI courses (except for paralegals and support staff from USAOs for courses marked by an *).**

February 1994

Date	***Course***	***Participants***
3-4	NEPA	Attorneys
7-8	Federal Administrative Process	Attorneys
14	Ethics for Litigators	Attorneys
14-18	Basic Paralegal	Agency Paralegals
15-17	Banking	Attorneys
18	FOIA Forum	Attorneys
23-24*	Bankruptcy	USAO Support Staff
24-25	Environmental Law/ Military Installation Closures	AUSAs and Agency Counsel
25	Ethics and Professional Conduct	Attorneys

March 1994

1-3	Law of Federal Employment	Attorneys
7-11*	Experienced Paralegal	USAO Paralegals
14-15	Evidence	Attorneys
16	Introduction to FOIA	Attorneys, Paralegals
25	Legal Writing	Attorneys

April 1994

5-8	Examination Techniques	Attorneys
11-12	ADR for Agency Counsel	Attorneys

April 1994 (Cont'd.)

Date	Course	Participants
14-15	FOIA for Attorneys and Access Professionals	Attorneys, Paralegals, Legal Technicians
18-22*	Criminal Paralegal	USAO Paralegals
27-29	Attorney Supervisors	Attorneys

May 1994

2-6*	Civil Paralegal	USAO Paralegals
3-5	Environmental Law	Attorneys
10	Computer Assisted Legal Research	Attorneys, Paralegals
10-12	Basic Bankruptcy	Attorneys
10-12	Discovery	Attorneys
13	Ethics for Litigators	Attorneys
16	Legislative Drafting	Attorneys
16-20*	Support Staff	USAO Support Staff
23-24	Agency Civil Practice	Attorneys
24-25	FOIA for Attorneys and Access Professionals	Attorneys, Paralegals
24-26	Special Problems in Bankruptcy	Attorneys
26	Privacy	Attorneys, Paralegals

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

Address: Room 10332, Patrick Henry Bldg.
601 D Street, N.W.
Washington, D.C. 20530

Telephone: (202) 208-7574
FAX: (202) 208-7235
(202) 501-7334

* * * * *

APPENDIX

CUMULATIVE LIST OF CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

(As provided for in the amendment to the Federal postjudgment interest statute, 28 U.S.C. §1961, effective October 1, 1982)

Effective Date	Annual Rate	Effective Date	Annual Rate	Effective Date	Annual Rate	Effective Date	Annual Rate
10-21-88	8.15%	03-09-90	8.36%	07-26-91	6.26%	12-11-92	3.72%
11-18-88	8.55%	04-06-90	8.32%	08-23-91	5.68%	01-08-93	3.67%
12-16-88	9.20%	05-04-90	8.70%	09-20-91	5.57%	02-05-93	3.45%
01-13-89	9.16%	06-01-90	8.24%	10-18-91	5.42%	03-05-93	3.21%
02-15-89	9.32%	06-29-90	8.09%	11-15-91	4.98%	04-07-93	3.37%
03-10-89	9.43%	07-27-90	7.88%	12-13-91	4.41%	04-30-93	3.25%
04-07-89	9.51%	08-24-90	7.95%	01-10-92	4.02%	05-28-83	3.54%
05-05-89	9.15%	09-21-90	7.78%	02-07-92	4.21%	06-25-93	3.54%
06-02-89	8.85%	10-27-90	7.51%	03-06-92	4.58%	07-23-93	3.58%
06-30-89	8.16%	11-16-90	7.28%	04-03-92	4.55%	08-19-93	3.43%
07-28-89	7.75%	12-14-90	7.02%	05-01-92	4.40%	09-17-93	3.40%
08-25-89	8.27%	01-11-91	6.62%	05-29-92	4.26%	10-15-93	3.38%
09-22-89	8.19%	02-13-91	6.21%	06-26-92	4.11%	11-17-93	3.57%
10-20-89	7.90%	03-08-91	6.46%	07-24-92	3.51%	12-10-93	3.61%
11-17-89	7.69%	04-05-91	6.26%	08-21-92	3.41%	01-07-94	3.67%
12-15-89	7.66%	05-03-91	6.07%	09-18-92	3.13%	02-04-94	3.74%
01-12-90	7.74%	05-31-91	6.09%	10-16-92	3.24%		
02-14-90	7.97%	06-28-91	6.39%	11-18-92	3.76%		

Note: For a cumulative list of Federal civil postjudgment interest rates effective October I, 1982 through December 19, 1985, see Vol. 34, No. 1, p. 25, of the United States Attorneys' Bulletin, dated January 16, 1986. For a cumulative list of Federal civil postjudgment interest rates from January 17, 1986 to September 23, 1988, see Vol. 37, No. 2, p. 65, of the United States Attorneys' Bulletin, dated February 15, 1989.

* * * * *

UNITED STATES ATTORNEYS

DISTRICT	U.S. ATTORNEY
Alabama, N	Claude Harris, Jr.
Alabama, M	James Eldon Wilson
Alabama, S	Edward Vulevich, Jr.
Alaska	John W. Bottini
Arizona	Janet Ann Napolitano
Arkansas, E	Paula Jean Casey
Arkansas, W	Paul K. Holmes, III
California, N	Michael J. Yamaguchi
California, E	Charles J. Stevens
California, C	Nora M. Manella
California, S	Alan D. Bersin
Colorado	Henry L. Solano
Connecticut	Christopher Droney
Delaware	Richard G. Andrews
District of Columbia	Eric H. Holder, Jr.
Florida, N	Patrick M. Patterson
Florida, M	Larry H. Colleton
Florida, S	Kendall B. Coffey
Georgia, N	Kent B. Alexander
Georgia, M	James L. Wiggins
Georgia, S	Harry D. Dixon, Jr.
Guam	Frederick Black
Hawaii	Elliot Enoki
Idaho	Betty H. Richardson
Illinois, N	James B. Burns
Illinois, S	Walter Charles Grace
Illinois, C	Frances C. Hulin
Indiana, N	Jon E. DeGuilio
Indiana, S	Judith A. Stewart
Iowa, N	Stephen J. Rapp
Iowa, S	Don Carlos Nickerson
Kansas	Randall k. Rathbun
Kentucky, E	Joseph L. Famularo
Kentucky, W	Walter Michael Troop
Louisiana, E	Robert J. Boitmann
Louisiana, M	P. Raymond Lamonica
Louisiana, W	Michael D. Skinner
Maine	Jay P. McCloskey
Maryland	Lynne Ann Battaglia
Massachusetts	Donald K. Stern
Michigan, E	Alan M. Gershel
Michigan, W	Michael H. Dettmer
Mississippi, N	Alfred E. Moreton, III
Mississippi, S	George L. Phillips
Missouri, E	Edward L. Dowd, Jr.
Missouri, W	Stephen Lawrence Hill, Jr.

DISTRICT	U.S. ATTORNEY
Montana	Sherry S. Matteucci
Nebraska	Thoams J. Monaghan
Nevada	Kathryn Landreth
New Hampshire	Paul M. Gagnon
New Jersey	Michael Chertoff
New Mexico	John J. Kelly
New York, N	Gary L. Sharpe
New York, S	Mary Jo White
New York, E	Zachary W. Carter
New York, W	Patrick H. NeMoyer
North Carolina, E	John D. McCollough
North Carolina, M	Benjamin H. White, Jr.
North Carolina, W	Jerry W. Miller
North Dakota	John Thomas Schneider
Ohio, N	Emily M. Sweeney
Ohio, S	Edmund A. Sargus, Jr.
Oklahoma, N	Stephen Charles Lewis
Oklahoma, E	John W. Raley, Jr.
Oklahoma, W	Vicki Lynn Miles-LaGranage
Oregon	Jack C. Wong
Pennsylvania, E	Michael R. Stiles
Pennsylvania, M	David M. Barasch
Pennsylvania, W	Frederick W. Thieman
Puerto Rico	Guillermo Gill
Rhode Island	Edwin J. Gale
South Carolina	J. Preston Strom, Jr.
South Dakota	Karen E. Schreier,
Tennessee, E	Carl K. Kirkpatrick
Tennessee, M	John M. Roberts
Tennessee, W	Veronica F. Coleman
Texas, N	Paul E. Coggins, Jr.
Texas, S	Gaynelle Griffin Jones
Texas, E	Ruth Yeager
Texas, W	James H. DeAtley
Utah	Scott M. Matheson, Jr.
Vermont	Charles R. Ttetzlaff
Virgin Islands	Hugh Prescott Mabe, III
Virginia, E	Helen F. Fahey
Virginia, W	Robert P. Crouch, Jr.
Washington, E	James P. Connelly
Washington, W	Katrina C. Pflaumer
West Virginia, N	William D. Wilmoth
West Virginia, S	Rebecca Aline Betts
Wisconsin, E	Thoams Paul Schneider
Wisconsin, W	Peggy Ann Lautenschlager
Wyoming	David D. Freudenthal
North Mariana Islands	Frederick Black

* * * * *

EXHIBIT
A

FY 95 BUDGET REQUEST HIGHLIGHTS

The Department of Justice's (DOJ) FY 1995 budget provides a 24.4 percent increase. DOJ's $13.62 billion budget, $2.679 billion over total fiscal year 1994 levels, includes a $2.423 billion from a Crime Control Fund (CCF) the Administration seeks through anti-crime legislation. Funding sources are noted at the end of each highlighted activity.

VIOLENT CRIME INITIATIVES

State and Local:

Community Policing

- **$1.703 billion** -- To provide grants to state and local governments for **50,000** police officers and to expand community policing programs. (CCF)

- **$6 billion** in additional funds will be provided for 1996 through 1999 to meet the goal of putting **100,000** law enforcement officers on the state and local police rolls. This program will ultimately increase the number of police officers in our communities by over 15 percent. (CCF)

Brady Law:

- **$100 million** in grants for states to improve their criminal history records and to develop a national instant check system for firearm purchasers. This system should eventually allow the immediate processing of criminal history records information throughout the nation. (CCF)

Additional State and Local Initiatives:

- **$69 million** increase requested for the Office of Justice Program's Juvenile Justice Program which will be used to provide grants to aid in the prevention and reduction of violent juvenile crime and the treatment of youthful offenders. (DOJ)

- **$100 million** for Edward Byrne discretionary grant funding. This is twice the amount requested in DOJ's 1994 budget. The Edward Byrne formula grant program will be eliminated as part of a reallocation of the Administration's crime-fighting resources (which includes a net increase of $1.9 billion in state and local law enforcement assistance). (DOJ)

(MORE)

- Other Crime Control Funds may be used for programs such as boot camps, drug court programs, police corps, and law enforcement technology initiatives.

Prisons & Detention:

- **$101 million** to activate prisons in Beckley, West Virginia; Coleman, Florida; Butner, North Carolina; Waseca, Minnesota; medical facilities in Carswell AFB, Texas and Ft. Devens, Massachusetts; a detention center in Oklahoma City, Oklahoma; detention units at FCI Sheridan, Oregon and FCI Seagoville, Texas; and a housing expansion in FCI Stafford, Arizona. These activations will provide 9,673 beds, which represents more than a 10 percent increase in available bed space. (DOJ)

- **$83 million** for construction of new prison facilities (4,224 new beds) in Louisiana, Texas and California, and leasing a facility in Oklahoma. (DOJ)

- **$28 million** increase to cover costs of projected increases in the average daily prison population to 92,667 in 1995, due to prosecution and conviction of violent offenders. This increase will provide funds to put more inmates in existing facilities. (DOJ)

- **$16 million** increase for contracting out for secure bed space. These funds will be used to support an increase in the Community Corrections population, provide housing of Mariel Cubans, aid in the management of the joint FPS/INS Southwest contract facility in Eloy, Arizona and fund federal inmates housed in state and local jails. (DOJ)

- **$57 million** to fund the costs associated with approximately 500,000 additional jail days in 1995 -- a projected increase in state and local jail days of 10 percent over the 1994 level. 1,370 more pre-trial detainees can be accommodated in state and local jails. Additional funds are included to cover inflation costs. (DOJ)

BORDER CONTROL AND IMMIGRATION REFORM INITIATIVES

- $398 million to strengthen efforts to stop the flow of illegal immigrants at the border, reduce alien smuggling/illegal migration, expedite the removal of criminal aliens, and initiate comprehensive asylum reform programs. Funds will also be used to enhance INS's employer sanctions and naturalization

related activities. Resources for these activities will be through CCF ($300 million) and DOJ appropriations ($98 million).

- $65 million to add more Border Patrol agents on the line through new agent hires, adding support personnel along the entire Southern border, increasing and redirecting agents on the line and improving their effectiveness in all sectors by providing automated booking processes and strengthened communications capabilities (1,010 agents added to the border by the end of FY 1995 using FY'94-FY'95 and CCF funds);

- $32 million to control admissions at ports-of-entry by strengthening inspection capabilities and linking the State Department visa information system with an enhanced Interagency Border Inspection System (CCF).

- $83 million to implement a proactive approach to investigations to prevent and dismantle illegal alien smuggling operations by linking data that INS collects for various functions (CCF).

- $56 million to expedite the deportation of criminal aliens by: (CCF)

  - rapid and accurate response to identify criminal aliens through improved data link with the FBI's National Crime Information Center ($28 million)

  - expansion of INS's Institutional Hearing Program in the five states that have the largest concentration of incarcerated aliens by adding investigators to identify deportable aliens in prisons. ($18.0 million)

  - $10 million for Executive Office for Immigration Review (EOIR) to complete the deportation orders of identified aliens before their sentences are complete.

- $38.3 million to streamline the INS asylum reform program. This will enable INS to make timely asylum decisions that give legal status to real refugees by eliminating work authorization during the review process; and adding staff to INS to become current with incoming receipts and to handle backlogged cases.

(MORE)

- $25.7 million for DOJ divisions and components whose workload will be impacted by the INS asylum reform program. (EOIR, U.S. Attorneys and the Civil Division.)

- Employer Sanctions -- ($39 million) (DOJ)

  - $10 million to increase security features of INS work authorization documents and expanding the Telephone Verification System, and adding investigators and lawyers to identify and prosecute counterfeiters;

  - $23 million to target increased investigations of employers to industries that historically employ illegal labor and to increase education of employers;

  - $5.7 million for the Executive Office for Immigration Review (EOIR) and the Office of Special Counsel (OSC) to ensure a comprehensive effort in enforcing employer sanction laws.

- Promotion of Naturalization -- ($30 million) (DOJ)

  - $15 million to establish cooperative agreements with community-based organizations, ethnic group networks and educational institutions to assist in preparation of applications for naturalization;

  - $2.5 million to provide an "800" hot-line number to disseminate information to the public on naturalization requirements; and

  - $12.5 million to expand application and fingerprint automation and adding 189 immigration examiners and support personnel in district offices where the naturalization workload is the greatest.

- $29 million for inflation and other costs.

(MORE)

PRIORITY ENFORCEMENT INITIATIVES

Health Care Fraud:

- In concert with the President's health care reform initiative, health care fraud is a top DOJ enforcement priority. The Attorney General has pledged a vigorous enforcement effort to pursue and prosecute anyone attempting to profit from illegal health care fraud schemes. The Department estimates it will devote over $54 million to health care fraud in FY 1995, an increase of almost 70 percent over those planned in 1994 In FY 1994, the Department expects to spend approximately $32 million to identify and prosecute health care fraud and may redirect more resources this year.

Civil Rights Division:

- **$12 million** increase. $11 million will be earmarked to continue the fight against housing and lending discrimination, to enhance enforcement of the Americans with Disabilities Act, and to implement recently-enacted voting rights laws, such as the Voting Rights Language Assistance Act of 1992 and the National Voter Registration Act of 1993. 65 staff will be added to aid in these initiatives.

Environment Division:

- **$8 million** increase. $4.7 million to complete implementation of the Division's four-attorney-team initiative to provide support to each of the 10 Environmental Protection Agency (EPA) regions as well as to the U.S. Attorney offices; to defend against an expected increase in the number of federal facility liability and Clean Air Act Amendments cases; and to staff enforcement activities in natural resource damage claim cases and federal facility cases where the government seeks to recover cleanup costs. It will also allow the Division to increase litigation efforts in takings, water rights and royalty matters; to handle an increase in the number of general stream adjudications; and to address more matters filed under the Endangered Species Act. 78 staff will be added to aid these initiatives.

Antitrust Division:

- **$8.6 million** increase. Over $6 million of these funds will be used to enable the Division to vigorously enforce the antitrust laws to protect competition and consumers in increasingly global and technology-driven markets.

(MORE)

Consistent with Clinton Administration priorities, the Division will continue to place significant focus on the areas of telecommunications, health care, defense and high-tech industries. 86 staff will be added to examine the continued increase in the number of proposed mergers, to investigate and prosecute nationwide criminal conspiracies, civil conduct cases, and to monitor international antitrust issues.

NEW INITIATIVES USING EXISTING RESOURCES

As a result of budgets getting tighter and the Attorney General's commitment to getting the most out of every dollar, the Department is developing cost-effective technological and personnel initiatives to improve productivity.

Federal Bureau of Investigation

- The Department's budget maintains virtually the same number of FBI agents as fiscal year 1994 levels. Six hundred FBI agents are being shifted to the field from administrative functions to criminal investigations focusing on violent crime and other high priority areas. This shift will effectively increase the FBI's crime-fighting capabilities without substantial new funding requests.

Joint FBI/DEA Office Automation

- Duplication and incompatibility of office automation equipment of DEA and the FBI are of concern to the Attorney General. Collaborative efforts in office automation will enhance communication and information sharing between the two agencies. The Department will make funds available from existing resources for the purpose of a study, and initial design and development of a joint DEA/FBI office automation study.

Integrated Automated Fingerprint Identification System

- The Department's budget includes $93 million to support continued development of the FBI's Integrated Automated Fingerprint Identification System (IAFIS). IAFIS will be a rapid response, paperless system that will receive and process electronic fingerprint images, criminal histories, and related data on convicted felons. The system will be a major new component of our national law enforcement information system. This system, coupled with the FBI's DNA identification program and improved

wiretap technology will provide the nation's law enforcement community with the most effective law enforcement technology available.

Leading Indicators Crime Information System

- In response to the Attorney General's concern that existing statistical programs were not being adequately utilized to provide information useful in combatting crime, particularly violent crime, the Department's Bureau of Justice Statistics (BJS) is developing a new indicators system to detect and measure chronic and emerging crime problems across the nation. Ultimately, national reports will be produced for distribution through the nation that will provide timely data that local law enforcement can use.

Automated Booking Station

- In order to put a halt to the tremendous duplication of effort and extensive processing time spent currently with regard to booking of federal prisoners, the Department will use existing resources to establish a joint automated booking station National Performance Review laboratory. This automated system will track the offender through the law enforcement system. The cost savings achieved in future years for the Department through the availability of a joint automated booking station are immeasurable.

Freedom of Information Act (FOIA) Policy

- To follow through with the Administration's commitment to making documents more easily accessed through FOIA, the Department will use existing resources to develop a document processing system to deal with the increasing backlog of Freedom of Information and Privacy Act (FOI/PA) requests. It is anticipated that this system will serve as a prototype for other Department requirements in this area. The new FOIA policy, which encourages disclosure of more information, as well as directs the reexamination of handling requests, would be dramatically aided by this system.

(MORE)

DEFICIT-REDUCTION INITIATIVES

In keeping with the Administration's commitment to reduce the federal workforce by 252,000 employees by 1999 and to control the federal deficit through reductions in administrative expenses, the Department's 1995 budget includes 647 full-time equivalent (FTE) reductions and $65 million related to those FTE reduction, and administrative savings totalling $33 million. All FTE reductions will occur through attrition.

EXHIBIT B

COMPREHENSIVE IMMIGRATION INITIATIVE

REINVENTING INS With new leadership on board and strategic planning well under way, INS is announcing a comprehensive and innovative immigration initiative to manage immigration processes in ways that ensure the most effective use of its human resources. INS will invest in technologies to free officers of repetitive and time consuming paperwork, capture and use positive identification to accurately identify illegal aliens for enforcement actions and create an information network that links with other federal, state and local agencies to verify eligibility for employment and services, develop cases, and analyze systematic weakness.

STRENGTHENING BORDER CONTROL ($180M) INS will stop the "revolving door" on the border by a strategy of "deterrence through prevention" successfully used in El Paso. INS will significantly increase its personnel and develop the infrastructure and technologies required for sustaining control. We will:

- Add 1,010 Border Patrol agents on the line by the end of 1995. This will be achieved by hiring and training 500 new agents and redeploying 510 agents freed from behind their desks as the result of automation and the redirection of existing resources.
    - As part of an innovative, focused strategy, during the first year all these new agent resources will be targeted in San Diego, California and El Paso, Texas, where 65% of apprehensions occur.
    - 400 additional agents will be on the line in San Diego by the end of 1994 -- increasing the strength on the line there by 40%.
    - Agents to be deployed in 1995 will be assigned to areas of greatest need and in response to changing border crossing patterns.
- Multiply the strength of the new border law enforcers by using new technologies including:
    - Putting in place mobile infrared scopes to monitor and track illegal entries. These scopes provide the tactical benefit of flagging individual entries, as well as the strategic ability to recognize shifting border crossing patterns within the San Diego area.
    - Installing approximately 5 miles of lighting east of the San Ysidro Port of Entry to expose aliens attempting night entries, reduce border violence and increase officer safety.
    - Erecting 5 miles of secondary fencing to block entry onto highways.
    - Upgrading sensor reporting and dispatch system to maximize the efficiency of agents responding to indicators of illegal entry.
    - Centralizing and automating booking procedures.
    - Fingerprinting all illegal crossers using the latest technology, to determine recidivism.

REMOVING CRIMINAL ALIENS ($55M) We will respond rapidly and accurately to law enforcement officers' requests to identify criminals and deport up to 20,000 additional criminal aliens

each year through an expanded Institutional Hearing Program in the five largest immigration-impacted states (CA, TX, NY, FL, IL) by:

- Capturing and relaying identifying information about aliens and linking the data to the FBI's NCIC 2000 and potentially to systems to check for handgun purchases ($28M).

- Adding investigators and judges to identify deportable aliens in state and federal prisons and obtaining deportation orders before sentences are completed ($27M).

REFORMING THE ASYLUM PROCESS ($64M) INS and the Executive Office of Immigration Review will build a timely asylum process to provide legal status to bona fide refugees and reduce the enforcement vulnerability posed by those who abuse the system, by:

- Implementing new streamlined procedures so that INS will be current with incoming receipts.

- Doubling the number of INS officers and immigration judges to handle claims.

- Delaying eligibility for Work Authorization for six months.

- Linking the Asylum Process to Judicial Deportation hearings.

IMPROVING EMPLOYER SANCTIONS ENFORCEMENT ($38M) INS will reduce the marketability of fraudulent documents and aggressively pursue sanctions against employers who hire unauthorized workers while protecting the rights of legal aliens by:

- Improving the security of work authorization documents, expanding the Telephone Verification System for employers and adding investigators and lawyers to identify and prosecute counterfeiters ($10M).

- Targeting investigations of employers to industries that historically employ illegal labor and increasing education of employers ($23M).

- Increasing education of discrimination provisions of the law and prosecution of employers that discriminate ($5M).

NATURALIZATION ($30M) INS will encourage and promote naturalizations by public education programs and by:

- Entering cooperative agreements with community-based organizations, ethnic group networks, and education institutions to assist in preparation of applications, educate and possibly test for civics and language proficiencies to lessen the intimidation of the current process and promote ease of applying ($15M).

- Providing an "800" hotline to disseminate information to the public on naturalization requirements ($2.5M).

- Augmenting staff to handle increased applications and streamlining the process, including a change to allow selective waiver of interviews and electronic filing ($12.5M).

Funding: FY' 94 DOJ budget and President's Proposed FY' 95 budget.

EXHIBIT C

U. S. Department of Justice

Office of Investigative Agency Policies

Washington, D.C. 20530

February 1, 1994

Honorable Janet Reno
The Attorney General
Washington, D.C.

Dear Madam Attorney General:

I am pleased to provide you with the first resolution of the Office of Investigative Agency Policies (OIAP). This resolution, which represents consensus recommendations of the OIAP Executive Advisory Board (EAB), addresses the use and sharing of drug intelligence within the Department of Justice.

As I note in the resolution, the spirit of cooperation among the members of the EAB has been extraordinary. Indeed, I am confident that, with such cooperation, any future issues can be resolved efficiently and amicably through the OIAP. In the end, such resolutions from the OIAP will benefit all law enforcement officers and allow them to focus their energies upon a common goal: arresting and incarcerating those persons responsible for the crimes plaguing our Nation.

Very truly yours,

Louis J. Freeh
Director

1 - Mr. Philip B. Heymann
Deputy Attorney General
Washington, D.C.

U. S. Department of Justice

Office of Investigative Agency Policies

Washington, D.C. 20530

RESOLUTION

Pursuant to the Attorney General's Order Number 1814-93, dated November 18, 1993, and in my capacity as Director of Investigative Agency Policies, I hereby issue the following resolution concerning the use and sharing of drug intelligence within the Department of Justice.

Background

With some minor exceptions, law enforcement agencies have not maximized the sharing of information and coordination of activities in the drug intelligence arena. Other reports have adequately documented those shortcomings and they need not be belabored here.

On December 6, 1993, the first meeting of the Executive Advisory Board ("EAB") of the Office of Investigative Agency Policies ("OIAP") was convened. Since then, in an effort to address various intelligence-related issues, numerous meetings of the EAB and working groups have been held. At the outset, I requested that the EAB provide me with consensus recommendations designed to promote and ensure an effective and efficient tactical and strategic drug intelligence effort for the good of all law enforcement.

This effort was undertaken in order to improve the sharing of drug-related information and to provide a consolidated drug intelligence product. It is envisioned, as we embark upon the partnership forged in the resolutions contained herein, that our ability to utilize limited resources more efficiently will be greatly enhanced. The dedicated and courageous men and women of law enforcement deserve the finest drug intelligence product, made available in a timely and accurate format.

The EAB is to be commended for the spirit of cooperation which has characterized its many meetings. Indeed, the EAB's cooperative efforts should be replicated throughout all levels of Government. After lengthy, frank discussions, the EAB has provided its consensus recommendations to me. This resolution ratifies them and orders their implementation.

Discussion

The following three distinct, yet interrelated, topics relative to the use and sharing of drug intelligence are addressed herein: (i) creation of a common drug intelligence database in order to coordinate the investigative activities of the Drug Enforcement Administration ("DEA") and the Federal Bureau of Investigation ("FBI"); (ii) the FBI's commitment to the El Paso Intelligence Center ("EPIC"); and, (iii) an unambiguous statement about the role and future of the National Drug Intelligence Center ("NDIC").

Common Database

The FBI and DEA each are vested with authority to investigate drug offenses under Title 21 of the United States Code. Nevertheless, those two agencies have minimally coordinated their drug intelligence activities. That lack of coordination has led to duplication of investigative efforts. Such duplication of efforts is untenable and cannot continue, especially in this time of fiscal austerity.

The DEA's drug investigative files are contained within its centralized NADDIS database. NADDIS-X is an abbreviated version of the NADDIS database which permits other law enforcement agencies to conduct a preliminary review of DEA's NADDIS files in order to determine whether DEA has any intelligence about an individual and whether DEA is conducting a specific investigation of that person. If DEA is conducting that investigation, then certain information about it is provided to the inquiring agent, including biographical data about the investigation's targets, as well as a point of contact at DEA if additional information about the investigation is desired.

The FBI's drug investigative files, on the other hand, are contained within several different databases. Moreover, the FBI does not have a segregated drug intelligence database analogous to NADDIS-X.

In order to promote the sharing of drug intelligence, the FBI and DEA shall create a common drug database to consist of information contained in those agencies' existing databases. The common database will be an enhancement of NADDIS-X, containing additional information that presently is not provided upon an inquiry to NADDIS-X. The primary goal of this database is to provide a "pointer system" which allows FBI and DEA agents to coordinate their investigative activities in a manner that maximizes law enforcement's impact upon drug targets and ensures the integrity of the agencies' investigative files. Such a database, by promoting the sharing of intelligence, enhances the safety of law enforcement personnel who conduct these inherently dangerous investigations. I am advised by technical experts from

the FBI and DEA that this common drug database will be fully operational by June 1, 1994.

EPIC

EPIC provides intelligence on a real-time basis concerning the movement of drugs by land, sea, and air throughout the world. To maximize EPIC's tactical intelligence capabilities, the FBI shall provide a complete commitment to EPIC. Specifically, the FBI will assign a sufficient complement of Special Agents and support personnel to EPIC in order to retrieve FBI data relative to EPIC's mission and provide FBI intelligence to EPIC's consumers on a continuous basis.

The EPIC Advisory Board shall consider, at its next meeting, the FBI's request for appointment of an FBI representative as a Deputy Director of EPIC.

NDIC

Since its inception, NDIC has lacked a clear mandate. As a result, the agencies of the Department of Justice have not fully contributed to NDIC which, in turn, has not been able to achieve its potential.

NDIC shall act independently, in the best interests of law enforcement, and be responsible for the Department of Justice's strategic organizational intelligence activities relating to drug trafficking organizations. To that end, NDIC's Director shall coordinate with the offices of all Department of Justice law enforcement agencies every strategic organizational drug intelligence initiative which would have a multi-agency benefit within the Department of Justice. Additionally, NDIC's Director shall be responsible to ensure Department of Justice coordination with the intelligence community and the Department of Defense concerning strategic organizational drug intelligence initiatives.[1]

NDIC's Director shall report to the Deputy Attorney General concerning the Department of Justice's strategic organizational drug intelligence efforts. NDIC's Director shall have the authority to consolidate those strategic organizational

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[1] I have had preliminary discussions with the Honorable Ronald K. Noble, Assistant Secretary of the Treasury for Enforcement, concerning the sharing of drug intelligence among the criminal investigative agencies of the Department of Justice and the Department of Treasury. We had agreed to address this issue, including the Department of Treasury's participation at NDIC, once it had been resolved within the Department of Justice. In light of this resolution, I welcome Assistant Secretary Noble's consideration of the principles discussed herein.

drug intelligence projects which are multi-agency in nature; this authority is limited, however, to those projects in which a Department of Justice agency provides a majority of resources. Further, the NDIC Director shall provide advice to the Deputy Attorney General on a wide variety of matters, including budgetary and resource considerations impacting upon the strategic organizational drug intelligence efforts.

NDIC's Director shall be selected by the Deputy Attorney General. The NDIC Directorate shall rotate between the FBI and the DEA, whose designees shall be members of the Senior Executive Service. The NDIC Director shall serve for a period of two years, which period may be extended for a period not to exceed one additional year upon the recommendation of a majority of the NDIC Advisory Board (see below) and the approval of the Deputy Attorney General. For a period of two years commencing on this date, the NDIC Director shall be designated by the FBI. In light of the FBI's occupation of the NDIC Directorate for more than the past eighteen months, this two year period shall not be subject to the possible one-year extension described above.

The Deputy Attorney General shall establish an NDIC Advisory Board comprised of members of NDIC's executive staff and representatives of the participating agencies, who shall be designated by the heads of those agencies. The Advisory Board shall assist in developing and establishing NDIC's priorities and ensure the appropriate execution of NDIC's mission. In addition, NDIC's Director shall establish an Intelligence Priorities Board, which shall assist NDIC's Director to establish procedures, structures, and mechanisms for coordinating the collection and dissemination of strategic organizational drug intelligence.

The FBI and DEA shall commit all appropriate data systems, as well as qualified personnel, to support NDIC's mission. The Marshals Service and the Immigration and Naturalization Service shall determine, in conjunction with NDIC's Director, which data systems and personnel those agencies can supply to assist in the mission of NDIC. NDIC's Director shall be responsible for ensuring compliance with these commitments. In addition, NDIC's Director shall contact officials of the Bureau of Prisons, a Department of Justice agency which is not a member of the OIAP, concerning potential Bureau of Prisons assistance to the NDIC mission.

In order to avoid duplication, NDIC shall maintain an index of all Department of Justice strategic organizational drug intelligence initiatives. This index shall describe the nature of the initiative, the agency or entity responsible for the initiative, and the date the initiative began. Each Department of Justice agency is responsible for ensuring the accuracy of this index.

NDIC's Director shall notify the Deputy Attorney General in writing concerning any unresolved issues or conflicts that may arise in the performance of the NDIC Director's duties, thereby requiring resolution by the Deputy Attorney General.

Conclusion

In order to ensure that the resolutions contained herein are implemented, a meeting of the Executive Advisory Board will be held on Monday, March 14, 1994, at 10:00 a.m. At that time, I will request the following oral briefings: (1) a status report on the creation of a common drug database from representatives of the DEA and FBI; (2) a status report on the FBI's fulfillment of its commitment to EPIC from an FBI representative; (3) a status report from the Director, NDIC, on the issues relating to NDIC which are identified above; and, (4) a status report from representatives of the Marshals Service and the Immigration and Naturalization Service concerning their agencies' assistance to NDIC. Within one month thereafter, the Director, NDIC, shall provide a written report identifying areas of possible consolidation, enhanced coordination, and potential savings in the strategic organizational drug intelligence arena.

As I noted above, this resolution ratifies consensus recommendations of the EAB. Nevertheless, if any agency wishes to appeal this resolution, or any portion thereof, it must provide written notice of its decision to appeal to James R. Bucknam, OIAP Chief of Staff, by 5:00 p.m. on February 4, 1993. That notice shall specify the nature of the appeal and the basis for it. Failure to provide such timely written notice shall constitute a waiver of the right to appeal.

Notwithstanding the need to document the EAB's recommendations and to establish the resolutions set forth herein, they are not intended to set limits. Indeed, these resolutions are merely the foundation upon which a renewed and continuing sense of cooperation and dedication to law enforcement objectives are achieved among the investigative agencies of the Department of Justice. Such a sense of cooperation and dedication is imperative if law enforcement shall have a serious impact upon the scourge confronting this Nation.

Dated: February 1, 1994
Washington, D.C.

LOUIS J. FREEH
Director of Investigative
Agency Policies

EXHIBIT D

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF INDIAN AFFAIRS AND THE UNITED STATES DEPARTMENT OF JUSTICE FEDERAL BUREAU OF INVESTIGATION

I. PURPOSE

This Memorandum of Understanding (MOU) is made by and between the United States Department of the Interior (DOI) and the Department of Justice (DOJ) pursuant to the Indian Law Enforcement Reform Act (Act), 25 U.S.C. 2801 et seq. The purpose of this MOU is to establish guidelines regarding the respective jurisdictions of the Bureau of Indian Affairs (BIA) and the Federal Bureau of Investigation (FBI) in certain investigative matters, and to provide for the effective and efficient administration of criminal investigative service in Indian country.

II. BUREAU OF INDIAN AFFAIRS JURISDICTION

The Act establishes a Branch of Criminal Investigations within the Division of Law Enforcement (DLE) of the BIA, which shall be responsible for providing, or for assisting in the provision of, law enforcement services in Indian country. The responsibilities of the DLE shall include, inter alia, the enforcement of federal law and, with the consent of the Indian Tribe, Tribal law; and in cooperation with appropriate federal and Tribal law enforcement agencies, the investigation and presentation for prosecution of cases involving violations of 18 U.S.C. 1152 and 1153 within Indian country (and other federal offenses for which the parties have jurisdiction). In addition, the Act authorizes the Secretary of the Interior to develop interagency agreements with the Attorney General and provides for the promulgation of prosecutorial jurisdictional guidelines by United States Attorneys (USA).

III. FEDERAL BUREAU OF INVESTIGATION JURISDICTION

The FBI derives its investigative jurisdiction in Indian country from 28 U.S.C. 533, pursuant to which the FBI was given investigative responsibility by the Attorney General. Except as provided in 18 U.S.C. 1162 (a) and (c), the jurisdiction of the FBI includes, but is not limited to, certain major crimes committed by Indians against the persons or property of Indians and non-Indians, all offenses committed by Indians against the persons or property of non-Indians and all offenses committed by non-Indians against the persons or property of Indians. See 18 U.S.C. 1152 and 1153.

IV. GENERAL PROVISIONS

1) Each USA whose criminal jurisdiction includes Indian country shall develop local written guidelines outlining responsibilities of the BIA, the FBI, and Tribal Criminal Investigators, if applicable. Local USA guidelines shall cover 18 U.S.C. 1152 and 1153 offenses and other federal offenses within the investigative jurisdiction of the parties to this MOU.

2) Any other agreements that the DOI, DOJ and Indian Tribes may enter into with or without reimbursement of personnel or facilities of another federal, Tribal, state, or other government agency to aid in the enforcement of criminal laws of the United States shall be in accord with this MOU and applicable federal laws and regulations.

3) The Secretary will ensure that law enforcement personnel of the BIA receive adequate training, with particular attention to report writing, interviewing techniques and witness statements, search and seizure techniques and preservation of evidence and the crime scene. Successful completion of the basic Criminal Investigator course provided by the Department of the Treasury at the Federal Law Enforcement Training Center or its equivalent shall constitute the minimum standard of acceptable training. The BIA may consult with the FBI and other training sources with respect to such additional specialized training as may be desirable. United States Attorneys may also require, and participate in, training at the field level.

4) Any contracts awarded under the Indian Self-Determination Act to perform the function of the BIA, Branch of Criminal Investigations, must comply with all standards applicable to the Branch of Criminal Investigations, including the following:

a) Local USA guidelines must be followed.

b) Criminal Investigators must be certified Peace Officers and must have satisfactorily completed the basic Criminal Investigator course provided by the Department of the Treasury at the Federal Law Enforcement Training Center, or an equivalent course approved by the Commissioner of Indian Affairs. Criminal Investigators will receive a minimum of 40 hours in-service training annually to keep abreast of developments in the field of criminal investigations.

c) Compensation for Criminal Investigators must be comparable to that of BIA Criminal Investigators.

d) Criminal Investigators must be United States citizens.

e) Criminal Investigators must possess a high school diploma or its equivalent.

f) No Criminal Investigator shall have been convicted of a felony offense or crime involving moral turpitude.

g) Criminal Investigators must have documentation of semi-annual weapons qualifications.

h) Criminal Investigators must be free from physical, emotional, or mental conditions which might adversely affect their performance as law enforcement officers.

i) Criminal Investigators must be certified by Tribal officials as having passed a comprehensive background investigation, including unannounced drug testing. Such examinations must be documented and available for inspection by the BIA.

j) Appropriate procedures shall be devised to provide adequate supervision of Criminal Investigators by qualified supervisory personnel to ensure that investigative tasks are properly completed.

k) When a Tribe is awarded a contract under the Indian Self-Determination Act, 25 U.S.C. 450 (a), there must be a "phase-in" period of not less than 180 days so as to ensure an orderly transition from one law enforcement agency to another. When a Tribe retrocedes its contract for the Criminal Investigator function, there must be a one-year time period from the date of request for retrocession, or a date mutually agreed upon by the BIA and the Tribe, for the BIA to prepare for re-assuming the Criminal Investigation responsibility. All case files, evidence, and related material and documents associated with active and closed investigations must be turned over to the receiving criminal investigative agency, whether it be the BIA or a Tribe.

l) Appropriate procedures shall be established with respect to the storage, transportation and destruction of, and access to, case files, evidence, and related documents and other material, with particular attention directed to the confidentiality requirements of 18 U.S.C. 3509(d) and Rule 6(e) of the Federal Rules of Criminal Procedure. Criminal Investigators shall follow these procedures at all times. Access to such material will be for official use only.

m) Before any Tribe contracts for the Criminal Investigator function, the BIA and the Tribe must ensure that there is sufficient funding to cover the costs of a Criminal

Investigator program including salary, equipment, travel, training, and other related expenses arising during both the investigation stage and the litigation stage of any case or matter covered by the contract.

n) Tribal contractors must agree, and the BIA shall ensure, that there is an audit and evaluation of the overall contracted Criminal Investigator program at least every two years. Continuation of the contract shall be contingent upon successful completion of each audit and evaluation.

o) Criminal Investigators are prohibited from striking, walking off the job, feigning illness, or otherwise taking any job action that would adversely affect their responsibility and obligation to provide law enforcement services in their capacity as Criminal Investigators.

5) Any individual who is a holder of a BIA Deputy Special Officer Commission and performing duties as a Criminal Investigator must comply with the standards applicable to Criminal Investigators set forth in the preceding paragraph.

6) When either the FBI or the BIA receives information indicating a violation of law falling within the investigative jurisdiction of the other agency, the agency receiving the information will notify the other agency. If either the FBI or the BIA declines to investigate a matter within the jurisdiction of both agencies, the other agency will be notified. The FBI and the BIA will attempt to resolve jurisdictional disputes at the field level. In the event the dispute cannot be resolved, it will be reviewed by each agency's respective headquarters for resolution.

7) With respect to the use of sensitive investigative techniques, such as the non-consensual interception of wire, oral or electronic communications and undercover operations involving any sensitive circumstance (as defined in the Attorney General's Guidelines for FBI Undercover Operations), and the investigation of organized crime matters, the FBI shall be the agency primarily responsible. Undercover operations involving sensitive circumstances shall be conducted in accordance with the Attorney General's Guidelines for FBI Undercover Operations. This paragraph is not intended to prohibit the BIA from conducting consensual eavesdropping or undercover operations not involving a sensitive circumstance or utilizing other nonsensitive investigative techniques after proper training and when authorized by the appropriate United States Attorney.

8) Nothing in this MOU is intended to change any existing cooperative relationships and responsibilities between the BIA and the FBI, and nothing in this MOU shall invalidate or diminish any law enforcement authority or responsibility of either agency.

9) Consistent with the availability of resources, the FBI will offer specialized training to the BIA.

10) Consistent with limitations regarding confidentiality, the requirements of the Privacy Act and any other applicable laws, and respective policies and procedures, the BIA and the FBI will cooperate on investigative matters of mutual interest, exchange intelligence, and investigative reports, as appropriate.

11) To the extent possible and in consideration of limited resources, the FBI will continue to assist the BIA in its investigative matters by providing investigative support services through the Identification Division, Training Division, Criminal Investigative Division and Laboratory Division.

This document constitutes the full and complete agreement between the BIA and the FBI. Modifications to this MOU will have no force and effect unless and until such modifications are reduced to writing and signed by an authorized representative of the parties thereto. This MOU will, at regular intervals, be subjected to a thorough review to determine if changes are appropriate.

The provisions set forth in this MOU are solely for the purpose of internal guidance of components of the Department of the Interior and the Department of Justice. This MOU does not, is not intended to, shall not be construed to, and may not be relied upon to, create any substantive or procedural rights enforceable at law by any party in any matter, civil or criminal. This MOU does not, is not intended to, and shall not be construed to, exclude, supplant or limit otherwise lawful activities of the Department of the Interior or the Department of Justice.

By subscription of their signatures below, the parties acknowledge that they have read, understand, and will abide by the foregoing statements.

Secretary
United States Department of the Interior

September 3, 1993
Date

Attorney General
United States Department of Justice

December 22, 1993
Date

EXHIBIT
E

International Parental Kidnaping Crime Act of 1993

On December 2, 1993, the International Parental Kidnaping Act of 1993 (Public Law 103-173, 107 Stat. 1998) was enacted into law. This legislation adds a new 18 U.S.C. § 1204 which makes it an offense to remove a child from the United States or to retain a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights. Such an offense is punishable by a fine under title 18, imprisonment for not more than three years, or both.

The term "child" is defined as a person who has not attained the age of 16 years. The term "parental rights" with respect to a child means the right to physical custody of the child whether joint or sole, and includes visitation rights. Such parental rights may arise by operation of law, court order, or by legally binding agreement of the parties.

The statute expressly provides for the following affirmative defenses: (1) the defendant acted within the provisions of a valid court order granting legal custody or visitation rights and such order was obtained pursuant to the Uniform Child Custody Jurisdiction Act, (2) the defendant was fleeing an incidence or pattern of domestic violence, or (3) the defendant had physical custody of the child pursuant to a court order granting legal custody or visitation rights and failed to return the child due to circumstances beyond the defendant's control, and the defendant notified or made reasonable attempts to notify the other parent or lawful custodian within 24 hours after the visitation expired, and returned the child as soon as possible.

The statute also contains a Sense of the Congress that inasmuch as the procedures set forth in the 1980 Hague Convention on the Civil Aspects of International Parental Child Abduction has resulted in the return of many children, those procedures, in circumstances where they are applicable, should be the option of first choice for a parent who seeks the return of a child who has been removed from the parent.

The 1980 Hague Convention on the Civil Aspects of International Child Abduction provides a parent who seeks the return of a child with certain civil remedies to effect the return of the child to the country of habitual residence. Our obligations under the Convention are handled by the Department of State.

Currently, the following 31 countries are parties to the Convention: Australia, Canada, France, Hungary, Luxembourg, Portugal, Spain, Switzerland, United Kingdom, United States, Austria, Norway, Sweden, Belize, Netherlands, Germany, Argentina, Denmark, New Zealand, Mexico, Ireland, Israel, Croatia, Ecuador,

Poland, Burkina Faso, Greece, Monaco, Romania, Mauritius, and the Bahamas.

It is the view of the State Department that the existence of pending criminal charges based on an abduction or wrongful retention may adversely affect the willingness of courts of the country where the child is located to order the return of the child, pursuant to the Hague Convention, to the country where the criminal charges are pending. In view of these concerns and in view of the Sense of the Congress set forth in the statute, prosecutions for violations of the new 18 U.S.C. § 1204 should not be initiated unless the parent who seeks the return of a child has exhausted all remedies, if applicable, under the Hague Convention.

Even in situations in which the child is taken to a country which is not a party to the Hague Convention, the State Department's Child Custody Division may be able to initiate efforts to locate the abducted child, inquire as to the welfare of the child, and possibly open communications between the parents with a view toward a resolution of the custody dispute.

More detailed information about procedures under the Hague Convention can be obtained from Linda L. Donahue, Chief, Child Custody Division, Office of Citizens Consular Services, Room 4817 U.S. Department of State, Washington, D.C. 20520, phone: (202) 647-2569, fax: (202) 647-2835.

Questions and inquiries about the International Parental Kidnaping Crime Act of 1993 should be directed to the General Litigation and Legal Advice Section, Criminal Division (202) 514-1026.

EXHIBIT F

Guideline Sentencing Update

FEDERAL JUDICIAL CENTER

Guideline Sentencing Update will be distributed periodically by the Center to inform judges and other judicial personnel of selected federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Guidelines. Although the publication may refer to the Sentencing Guidelines and policy statements of the U.S. Sentencing Commission in the context of reporting case holdings, it is not intended to report Sentencing Commission policies or activities. Readers should refer to the Guidelines, policy statements, commentary, and other materials issued by the Sentencing Commission for such information.

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed are those of the author and not necessarily those of the Federal Judicial Center.

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Offense Conduct

Second and Sixth Circuits split on whether drug quantity must be found by the jury or sentencing court when quantity determines whether a conviction for possession of crack is a felony or misdemeanor. Both defendants were acquitted of possession with intent to distribute crack cocaine but convicted of the lesser included offense of simple possession of crack cocaine—a misdemeanor for amounts under five grams if defendant has no prior drug convictions but a felony with a five-year minimum sentence for more than five grams. *See* 21 U.S.C. § 844(a). Neither jury verdict specified the amount of crack that defendants were guilty of possessing. Each district court found there was more than five grams involved and sentenced defendants under the Guidelines. Both defendants appealed, claiming that quantity is an element of the offense and must be found by the jury.

The Second Circuit rejected that claim, holding "that quantity is not an element of simple possession because § 844(a) prohibits the possession of any amount of a controlled substance, including crack. . . . The task of determining how much drugs Monk was carrying falls to the sentencing judge. He, therefore, had to find that Monk possessed more than 5 grams of crack in order to treat the crime as a felony." The appellate court noted that "it is beyond cavil" that more than five grams was involved, since defendant essentially admitted to possessing 340 grams, claiming only that he had no intent to distribute. In addition, the indictment specifically alleged possession of 50 grams and the jury returned a special verdict form of guilty "as charged in the indictment."

U.S. v. Monk, No. 93-1349 (2d Cir. Jan. 24, 1994) (McLaughlin, J.).

The Sixth Circuit, however, concluded that "the amount possessed constitutes an element of the offense." It would be "an impermissible usurpation of the historic role of the jury" to allow a defendant to "be convicted of a felony, as opposed to a misdemeanor, on the strength of a sentencing judge's factual finding on the amount of crack cocaine possessed by the defendant. . . . The felony of which Mr. Sharp was convicted . . . was a 'quantity dependant' crime, . . . and the facts relevant to guilt or innocence of that crime—including possession of a quantity of crack cocaine exceeding five grams—were for the jury to decide." *Accord U.S. v. Puryear*, 940 F.2d 602, 604 (10th Cir. 1991) ("We conclude that drug quantity constitutes an essential element of simple possession under section 844(a). . . . Absent a jury finding as to the amount of cocaine, the trial court may not decide of its own accord to enter a felony conviction and sentence, instead of a misdemeanor conviction and sentence, by resolving the crucial element of the amount of cocaine against the defendant").

U.S. v. Sharp, No. 93-5117 (6th Cir. Dec. 28, 1993) (Nelson, J.).

See *Outline* generally at II.A.3.

Adjustments

Acceptance of Responsibility

Fifth Circuit holds that where defendant met three-part test for additional one-level reduction under § 3E1.1(b), district court had no discretion to deny that reduction because defendant had also obstructed justice. Defendant lied about his prior criminal record in his presentence interview, and was assessed a two-point enhancement for obstruction of justice under § 3C1.1. Despite that, the district court awarded the two-point reduction for acceptance of responsibility. Because of the obstruction, however, the court refused the extra one-point reduction under § 3E1.1(b), which defendant otherwise qualified for because of his timely plea and cooperation.

The appellate court devised a three-step test to determine whether a defendant qualifies for the § 3E1.1(b) reduction. The first two steps, which were not in dispute here, are that a defendant qualifies for the two-point reduction under § 3E1.1(a) and has an offense level of 16 or greater before that reduction. The third step is met by "(1) timely providing complete information to the government concerning his own involvement in the offense, or (2) timely notifying authorities of his intention to enter into a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the court to allocate its resources efficiently." *See* § 3E1.1(b). The issue here was whether defendant satisfied (2).

Based on the language of § 3E1.1(b) and accompanying Application Note 6, the court concluded "that the timeliness required . . . applies specifically to the governmental efficiency to be realized in two—but only two—discrete areas: 1) the prosecution's not having to prepare for trial, and 2) the court's ability to manage its own calendar and docket, without taking the defendant's trial into consideration. Of equal importance in the instant case is that which the timeliness of step (b)(2) does not implicate: time efficiency for any other governmental function, including without limitation the length of time required for the probation office to conduct its presentence investigation, and the 'point in time' at which the defendant is turned over to the Bureau of Prisons to begin serving his sentence."

Therefore, it was error to deny the extra deduction because defendant's obstruction may have delayed the presentence report and the beginning of his incarceration: "[A]s long as obstruction does not cause the prosecution to prepare for trial or prevent the court (as distinguished from the probation office) from managing its calendar efficiently, obstruction of justice is not an element to be considered. . . . [A] defendant who has satisfied all three elements of subsection(b)'s tripartite test is entitled to—and shall be afforded—an additional 1-level reduction."

U.S. v. Tello, 9 F.3d 1119 (5th Cir. 1993).

In another case, the Fifth Circuit used "the *Tello* test" to reverse a denial of a § 3E1.1(b) reduction. The district court granted a two-level reduction but denied the additional reduction, apparently because it mistakenly thought defendant's offense level was not 16 or higher. The appellate court determined that defendant's offense level "indisputably was above 16" and concluded that defendant also met the third step of the *Tello* test: "Mills clearly took the step defined in subsection (b)(2) when . . . less than a month after his arraignment and only six weeks after he was charged . . . he notified authorities of his intention to enter a plea of guilty. . . . Having thus satisfied all three prongs, Mills was entitled—as a matter of right—to the third 1-level reduction in his offense level. . . . [T]he court was without any sentencing discretion whatsoever to deny Mills the third 1-level decrease." Because "the sentencing court left no doubt that, as far as it was concerned, Mills should be incarcerated for the maximum term permitted under the applicable Guidelines range," instead of remanding the appellate court chose to "reverse the term of incarceration imposed by the district court, modify that term to one of 30 months—the maximum within the correct sentencing range—and affirm Mills' sentence as thus modified."

U.S. v. Mills, 9 F.3d 1132 (5th Cir. 1993).

See *Outline* generally at III.E and X.D.

Departures

Mitigating Circumstances

U.S. v. Newby, No. 92-5711 (3d Cir. Nov. 30, 1993) (Cowen, J.) (Affirmed: The district court properly refused to consider downward departure for inmate-defendants who, in addition to the penalty for their instant offenses, would lose good time credits as an administrative penalty for the same conduct. "Loss of good time credits is not a factor that relates to the defendants' guilt for their conduct; the defendants' being sanctioned administratively does not show that they were morally less culpable of the charged crime. . . . [P]rison disciplinary sanctions through loss of good time credit do not constitute a proper basis for a downward departure." The appellate court refused to follow *U.S. v. Whitehorse*, 909 F.2d 316, 320 (8th Cir. 1990) ("District Court did not err in considering the loss of good time as one of the aggregate of mitigating factors justifying a downward departure in this case").

See *Outline* generally at VI.C.4.

U.S. v. Crook, 9 F.3d 1422 (9th Cir. 1993) (Remanded: Defendant pled guilty to manufacturing 751 marijuana plants. The district court departed downward two offense levels on the grounds that defendant had grown the marijuana for his personal use and the Guidelines did not take into account that a defendant could lose his home—which was not acquired with proceeds from drug sales—through civil forfeiture. (Note: On this issue the court cited *U.S. v. Shirk*, 981 F.2d 1382 (3d Cir. 1992), as support, but that case has been vacated. See last item.) The appellate court held that "the Guidelines do not allow for departure on account of civil forfeiture." Also, the district court clearly erred in finding that the marijuana was for defendant's personal use. Even using a conservative estimate, it was five times more than defendant could use at his admitted rate of smoking—"we are convinced by the size of Crook's marijuana crop that he must have been manufacturing marijuana, at least in part, for sale or distribution.").

See *Outline* at VI.C.1.i and 4.b.

U.S. v. One Star, 9 F.3d 60 (8th Cir. 1993) (Affirmed: Downward departure to five years' probation for defendant convicted of being a felon in possession of a firearm was properly based on combination of factors and "the unusual mitigating circumstances of life on an Indian reservation noted . . . in *U.S. v. Big Crow*, 898 F.2d 1326, 1331–32 (8th Cir. 1990)." Defendant did not appear to present a danger to the community, especially with a no-alcohol condition of probation. He had strong family ties and responsibilities—including the sole support of nine family members—and a good employment record. Defendant also "submitted a resolution by the Rosebud Sioux Tribe and numerous letters from tribal officers and others praising his work record and contributions to the community and urging that he not be incarcerated." The appellate court also rejected the government's contention "that the degree of departure was unreasonable because it requires a reduction from offense level twenty to offense level eight to make One Star eligible for a sentence of probation. . . . The maximum prison term for a violation of § 922(g)(1) is ten years. *See* 18 U.S.C. § 924(a)(2). Therefore, the district court had statutory authority to sentence One Star to probation. *See* 18 U.S.C. §§ 3559(a), 3561(a). That being so, and its findings being legally sufficient to warrant a departure, the court's decision to impose probation 'is quintessentially a judgment call.' . . . Though the district court's decision to depart and the extent of its departure no doubt approach the outer limits of its sentencing discretion under the Guidelines, we conclude that One Star's sentence was a reasonable exercise of that discretion.").

See *Outline* at VI.C.1.a and e, 3, and D.

Criminal History

Career Offender Provision

U.S. v. Calverley, No. 92-1175 (5th Cir. Dec. 29, 1993) (Garza, J.) (Affirmed: Defendant, convicted of possession of a listed chemical with intent to manufacture a controlled substance under 21 U.S.C. § 841(d)(1), was properly sentenced as a career offender. "[W]e hold that a sentencing court, in determining whether an offense is a controlled substance offense under § 4B1.2(2), may examine the elements of the offense—though not the underlying criminal conduct—to determine whether the offense is substantially equivalent to one of the offenses specifically enumerated in § 4B1.2 and its commentary. . . . [P]ossession of a listed chemical with intent to manufacture a controlled substance . . . is substantially similar to attempted manufacture of a controlled substance, and is therefore a controlled substance offense within the meaning of U.S.S.G. § 4B1.2." The court refused to follow *U.S. v. Wagner*, 994 F.2d 1467, 1474–75 (10th Cir. 1993) [*5 GSU* #14], which held that § 841(d) is not a controlled substance offense under § 4B1.2(2) and should not be treated as an attempt to manufacture a controlled substance.).

See *Outline* at IV.B.2.

Certiorari Granted and Judgment Vacated:

U.S. v. Shirk, 981 F.2d 1382 (3d Cir. 1992), certiorari granted and judgment vacated by *Shirk v. U.S.*, No. 92-1841 (U.S. Jan. 18, 1994), for rehearing in light of *Ratzlaf v. U.S.*, No. 92-1196 (U.S. Jan. 11, 1994). Please delete reference to *Shirk* in *Outline* at VI.C.4.b.

Guideline Sentencing Update

FEDERAL JUDICIAL CENTER

Guideline Sentencing Update will be distributed periodically by the Center to inform judges and other judicial personnel of selected federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Guidelines. Although the publication may refer to the Sentencing Guidelines and policy statements of the U.S. Sentencing Commission in the context of reporting case holdings, it is not intended to report Sentencing Commission policies or activities. Readers should refer to the Guidelines, policy statements, commentary, and other materials issued by the Sentencing Commission for such information.

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Probation and Supervised Release

REVOCATION OF SUPERVISED RELEASE

Ninth Circuit holds that mandatory minimum penalty in 18 U.S.C. § 3583(g)—revocation of supervised release for drug possession—may not be required when underlying offense was committed before effective date of that section. Defendant committed his offenses in April and May of 1988; he pled guilty and was sentenced in 1990. On Dec. 31, 1988, the supervised release statute was amended to provide that release must be revoked for possession of a controlled substance and the defendant sentenced "to serve in prison not less than one-third of the term of supervised release." 18 U.S.C. § 3583(g). Defendant began serving his supervised release term in Dec. 1990, had it revoked in Aug. 1992 for drug possession, and was sentenced under § 3583(g) to 12 months, one-third of his term of supervised release. The district court ruled that even though defendant's original offenses occurred before § 3553(g) became effective, the conduct that caused the revocation occurred thereafter and the ex post facto clause was not violated by imposing sentence after revocation under § 3553(g).

The appellate court reversed. "We find virtually dispositive the strong line of cases that decides this precise issue in connection with revocation of parole.... These cases hold that the ex post facto clause is violated when a parole violator is punished in a way that adversely affects his ultimate release date under a statute that was adopted after the violator committed the underlying offense but before he violated the terms of his parole. For purposes of an ex post facto analysis, there is absolutely no difference between parole and supervised release.... In both cases, the question is at what time the prisoner is to be released from prison. A delay in that date constitutes the same punishment whether it is imposed following a parole violation or a violation of supervised release." *Accord U.S. v. Parriett*, 974 F.2d 523, 526–27 (4th Cir. 1992).

U.S. v. Paskow, No. 92-50616 (9th Cir. Nov. 26, 1993) (Reinhardt, J.).

See *Outline* at VII.B.2.

U.S. v. O'Neil, No. 93-1325 (1st Cir. Dec. 15, 1993) (Selya, J.) (Remanded: "We hold that the [supervised release revocation] provision (SRR), 18 U.S.C. § 3583(e)(3), permits a district court, upon revocation of a term of supervised release, to impose a prison sentence or a sentence combining incarceration with a further term of supervised release, so long as (1) the incarcerative portion of the sentence does not exceed the time limit specified in the SRR provision itself, and (2) the combined length of the new prison sentence cum supervision term does not exceed the duration of the original term of supervised release." The district court here exceeded these limits by imposing a two-year prison term plus a new three-year term of supervised release after revoking defendant's original three-year term of release.

In remanding for recalculation of a new revocation sentence, the court added in a footnote that "we today join six other circuits in recognizing [Sentencing Guidelines] Chapter 7 policy statements as advisory rather than mandatory.... On remand, the lower court must consider, but need not necessarily follow, the Sentencing Commission's recommendations regarding post-revocation sentencing." The court reasoned that "although a policy statement ordinarily 'is an authoritative guide to the meaning of the applicable guideline,' *Williams v. U.S.*, 112 S. Ct. 1112, 1119 (1992), the policy statements of Chapter 7 are unaccompanied by guidelines, and are prefaced by a special discussion making manifest their tentative nature."). *But see U.S. v. Lewis*, 998 F.2d 497, 499 (7th Cir. 1993) (Chapter 7 policy statements are binding unless they contradict statute or guidelines) [6 *GSU* #1]. *Cf. U.S. v. Levi*, 2 F.3d 842, 845 (8th Cir. 1993) (finding, in context of ex post facto issue, that Chapter 7 is "a different breed" of policy statement and not binding law) [6 *GSU* #4].

See *Outline* at VII and VII.B.1, summaries of *Truss* and *Tatum* in 6 *GSU* #3.

Departures

CRIMINAL HISTORY

U.S. v. Clark, 8 F.3d 839 (D.C. Cir. 1993) (Remanded: District court departed downward to a sentence within the range that would have applied absent defendant's career offender status. Of the three grounds for departure, one was invalid and two were valid but required further findings. It was improper to depart based on the "unique status of the District of Columbia," wherein the U.S. Attorney controls whether prosecution is brought in local or federal court and defendant likely would have received a much lighter sentence in the local court. This is an exercise of prosecutorial discretion and "is not a mitigating factor within the meaning of 18 U.S.C. § 3553(b)."

Departure because career offender status overrepresents the seriousness of defendant's criminal history may be appropriate, but further findings are required here. Departure on the basis of defendant's lack of guidance as a youth and exposure to domestic violence may also warrant departure. Although the Nov. 1992 amendment to § 5H1.12, p.s., prohibits departure for lack of youthful guidance "and other similar factors," defendant's offense preceded the amendment and its application to his disadvantage would violate the ex post facto clause. *Accord U.S. v. Johns*, 5 F.3d 1267, 1269–72 (9th Cir. 1993). The appellate court cautioned, however, that "there must be

some plausible causal nexus between the lack of guidance and exposure to domestic violence and the offense for which the defendant is being sentenced."

The court further noted that the district court may "consider whether a nexus exists between the circumstances of Clark's childhood and his prior criminal offenses, for purposes of determining whether the seriousness of his criminal record is overrepresented under § 4A1.3." Additionally, "the district court may want to contemplate whether Clark's childhood exposure to domestic violence is sufficiently extraordinary to be weighed under U.S.S.G. § 5H1.3."

Finally, the court held that if the district court properly finds that career offender status overrepresents the seriousness of defendant's criminal history, it may depart to "the criminal history category and offense level that would have been applicable absent the career offender increases." *See also Reyes, infra.*).

See *Outline* at VI.A.2, VI.C.1.b and h.

U.S. v. Reyes, 8 F.3d 1379 (9th Cir. 1993) (Brunetti, J., dissenting) (Remanded: District court had authority to depart downward for career offender based on the overrepresentation of defendant's criminal history and offense compared to most career offenders. "His conduct was not at all of the magnitude of seriousness of most career offenders.... Convicted for selling .14 grams of cocaine, he was subject to the same base offense level and sentencing range as if he had sold almost 4000 times that much. 21 U.S.C. § 841(b)(1)(C). Under the career offender guideline a defendant convicted for a fraction of one gram of cocaine is accorded the harshest punishment due an offender trafficking in up to 500 grams. 21 U.S.C. § 841(b)(1)(C)."

The appellate court stressed, however, that the departure was not based on the small quantity of drugs per se: "Instead of emphasizing the absolute quantities of drugs involved, [the sentencing judge] cast the issue of quantity in comparative terms. Reyes' criminal history was 'comparatively minor.' His offenses were 'minor' as compared to others (not small on some absolute scale).... Quantity serves merely as the means to compare the similar treatment of defendants whose offenses differ by exceptional orders of magnitude.... While... the Commission did take into account varying penalties linked to different drug quantities ..., we conclude that the sentencing ranges resulting in exceptional discrepancies were not adequately considered."

However, the district court did not adequately explain the extent of departure, which was down to the range that would have applied absent career offender status. The appellate court stated that such a departure may be appropriate, but the reasons must be articulated.).

See *Outline* at VI.A.2.

Substantial Assistance

U.S. v. Baker, 4 F.3d 622 (8th Cir. 1993) (Remanded: Defendant pled guilty to a drug charge and agreed to assist the government by providing information about others' drug trafficking. Although she provided some information, the government did not file a § 5K1.1, p.s. motion. The district court departed anyway under § 5K2.0, finding as a mitigating circumstance that "defendant was required to inform the Government of circumstances involving a close relative," which exposed her to family problems and "made it most difficult for the defendant to believe that she had not fulfilled her obligations .... The Court finds that, subjectively, the defendant had fulfilled her obligations and was therefore entitled to the 5K1.1."

The appellate court held this was an invalid departure. "The repercussions Baker experienced are mild forms of" the "injury" or "danger or risk of injury" listed as a consideration in § 5K1.1(a)(4), p.s., and "thus were considered by the Sentencing Commission." Defendant's "subjective belief that she had complied with the terms of the cooperation agreement is relevant only to the question of whether she did comply, which is merely a factor a district court should consider when determining the extent of a departure under § 5K1.1, *see* U.S.S.G. § 5K1.1(a)(1)-(3), p.s." The court also held that cooperation with the prosecution "simply cannot be sufficiently extraordinary to warrant a departure under § 5K2.0." The court reasoned that because there are no limits on the extent of a departure under § 5K1.1, "a district court may depart all the way down to a sentence of no imprisonment under § 5K1.1 so long as that departure is 'reasonable' in light of the defendant's assistance. The availability of an unlimited departure proves that § 5K1.1, if it recognizes a defendant's assistance at all, cannot recognize it inadequately.").

See *Outline* at VI.C.1.i, VI.F.1.b.i.

Adjustments

Acceptance of Responsibility

U.S. v. Gonzalez, 6 F.3d 1415 (9th Cir. 1993) (Reversed: District court erred in denying § 3E1.1 reduction because it did not believe defendant's reason for committing the crime. "Under § 3E1.1, Gonzalez was required to recognize and affirmatively accept personal responsibility for his criminal conduct. The record shows he did.... Neither § 3E1.1 nor any cases we have found state or otherwise indicate that a defendant's reason or motivation for committing a crime is an appropriate factor to consider in determining whether to grant the adjustment. Even if it were established that Gonzalez at some point in the proceedings lied about why he committed the crimes, this lack of candor ... should play no part in the district court's § 3E1.1 determination.").

See *Outline* generally at III.E.

Determining the Sentence

Consecutive or Concurrent Sentences

U.S. v. Ballard, 6 F.3d 1502 (11th Cir. 1993) (Affirmed: District court had authority to order that sentence for federal offense—committed by defendant while he was in state jail awaiting trial on state charge—would be consecutive to whatever state sentence defendant received, would not begin until after defendant's release from state custody, and would not be reduced by any time served on the state charge. Although the statute and Guidelines "do not address Ballard's exact situation," see 18 U.S.C. § 3584(a), U.S.S.G. § 5G1.3(a) and (c), they do not preclude the district court's action and, in fact, "evince a preference for consecutive sentences when imprisonment terms are imposed at different times.").

See *Outline* at V.A.2.

U.S. Department of Justice
Executive Office for U.S. Attorneys
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Nomination Form

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NOMINEE

Name	Title	
Office, Agency or Department Name		Phone Number

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2. What percentage of nominee's work involves the subject(s) of the course?

3. Indicate the level of skill or knowledge nominee has in this area:

   Novice Intermediate Advanced (please circle)

4. How many years has the nominee worked in this area?

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