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COMMENDATIONS

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

Arnold T. Aikens (Florida, Southern District), by R. B. Cesa, Inspector in Charge, U.S. Postal Service, Miramar, for his outstanding efforts in the difficult and sensitive trial of a civil case of major importance to the U.S. Postal Service.

Riley J. Atkins (District of Oregon), by Judge Tim Murphy, Deputy Associate Attorney General, Department of Justice, for successfully negotiating a favorable settlement of a case involving 44 pharmacies that overcharged the Government by substituting less expensive, generic drugs for prescribed brand name drugs. (This is the second case successfully negotiated by Mr. Atkins concerning Medicaid claims. See, United States Attorneys' Bulletin, Vol. 41, No. 8, dated August 15, 1993, at p. 262.)

Ronald Bakeman and ***James Wooley*** (Ohio, Northern District), by Richard P. Siegel, Special Agent in Charge, U.S. Customs Service, Cleveland, for their outstanding success in the prosecution of a significant narcotics distribution and money laundering organization stretching from the Dominican Republic to Houston to New York City.

Chris Cardani and ***Sean Hoar*** (District of Oregon), by Detective Rod Dailey, Klamath County Interagency Drug Team, Klamath Falls, for their professionalism and outstanding legal skill in successfully prosecuting seven defendants who operated a complex drug distribution network.

Robert Ciaffa and ***Karen Moore*** (Florida, Southern District), by Nancy L. Savage, Special Agent, FBI, Miami, for their excellent presentation on continuing criminal enterprise investigations and drug intelligence at the Drug/Organized Crime Conference in Plantation, Florida.

Michael C. Colville (Pennsylvania, Western District), by Philip P. O'Connor, Jr., Senior Attorney, Office of District Counsel, Department of Veterans Affairs, Pittsburgh, for his successful efforts in resolving a complicated "slip and fall" case which required extensive medical knowledge concerning a number of autoimmune diseases, such as polymyositis, lupus erythematosus, and lupus fracture.

Melanie C. Conour (Ohio, Southern District), by Craig N. Chretien, Assistant Special Agent in Charge, Drug Enforcement Administration, Baltimore, for her outstanding prosecutive skill in bringing a complex drug conspiracy case to a successful conclusion.

Frederick J. Dana (Missouri, Eastern District), by Professor Jean Scott, Faculty Advisor, Washington University in St. Louis School of Law, for his participation in the client counseling competition, and for his valuable contribution to the quality of education for law students.

Phillip DiRosa (Florida, Southern District), by Randolph G. Prillaman, Special Agent in Charge, FBI, Las Vegas, for his outstanding prosecutive skill and successful efforts in a case involving large-scale production and distribution of obscene matter throughout the United States.

Daniel Drake (District of Arizona), by Timothy J. Lee, Chief, Criminal Investigation Division, Internal Revenue Service, Phoenix, for his valuable assistance in presenting a financial investigations course at Arizona State University.

Bryan J. Farrell (Georgia, Northern District), by John C. Decker, Special Agent, Fish and Wildlife Service, Division of Law Enforcement, Department of the Interior, Rosemont, Illinois, for his outstanding leadership in the successful prosecution of two defendants for violations of federal wildlife protection statutes.

Allyson Fritz and ***David Cora*** (Florida, Southern District), by Fred Taylor, Director, Metro-Dade Police Department, Miami, for their invaluable assistance in the indictment and arrest of a number of individuals involved in narcotics and robberies of jewelry stores throughout the Southeastern United States.

Lawrence D. Gaynor (District of Rhode Island), by Captain G. R. Abbate, Naval Justice School, Department of the Navy, Newport, for his excellent presentation to a visiting delegation from Senegal regarding the several jurisdictions in the United States and the civilian justice system.

Gregory Graf (District of Colorado), by Richard F. Miklic, Chief Probation Officer, U.S. District Court, Denver, for his outstanding assistance and support in the prosecution and probation violations of several serious offenders, especially the kingpin of a large prostitution/narcotics organization operating in Denver, and a federal narcotics offender who was found guilty of securities fraud, theft by deception, false statements, and unlawful use of social security numbers.

Marc S. Harris and ***Nathan Hochman*** (California, Central District), by Tron W. Brekke, Chief, Public Corruption and Civil Rights Section, Criminal Investigative Division, FBI, Washington, D.C., for participating in the Undercover Agent Training In-Service course at the FBI Academy in Quantico.

Amy Hartman (Michigan, Eastern District), by Dale W. Schuitema, Special Agent in Charge, Drug Enforcement Administration, Detroit, for her professionalism and legal skill in the successful prosecution of two complex narcotics cases, one involving guilty pleas of eighteen defendants, and the other a precedent-setting appellate matter involving evidentiary issues.

Steve Holtshouser (Missouri, Eastern District), by Daniel B. Hoggatt, Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, St. Louis, and Robert J. Zavaglia, Chief, Criminal Investigation Division, Internal Revenue Service, Denver, for successfully prosecuting thirteen members and associates of the Los Angeles-based "Watergate Crips" street gang on numerous narcotics trafficking and money structuring charges.

Gregory K. Johnson (Missouri, Western District), by Fred M. Mills, Superintendent, Department of Public Safety, Missouri State Highway Patrol, Jefferson City, for his successful prosecution of several individuals involved in a large drug ring operation in several states, and for his significant accomplishments in the criminal justice community of Southwest Missouri.

James T. Lacey (District of Arizona), by David S. Wood, Special Agent in Charge, Drug Enforcement Administration, Phoenix, for his outstanding success in the prosecution of a difficult drug case which evolved into two separate trials. (The drug kingpin was convicted in both cases, and was sentenced to thirty years to life imprisonment and a fine of $200,000.)

Jack Lacy (Mississippi, Southern District), by James P. Turner, Acting Assistant Attorney General, Civil Rights Division, Department of Justice, for his professionalism and outstanding legal skill in obtaining the conviction of a former Captain of the Narcotics Unit of the Hinds County Sheriff's Department on a constitutional rights violation. The entire staff, especially ***Peggy Stogner,*** also contributed valuable legal advice, administrative support, and office accommodations.

Richard A. Lloret (Virginia, Western District), by George W. Kelley, Forest Supervisor, George Washington National Forest, Harrisonburg, Virginia, for his valuable assistance and success in resolving a major dispute over the Forest Service's decision to permit logging on 110 acres of the forest under the National Environmental Procedures Act and the National Forest Management Act.

Barry McHugh (District of Idaho), by Eugene F. Glenn, Special Agent in Charge, FBI, Salt Lake City, for his outstanding efforts in an investigation targeting two drug distribution organizations operating in the Idaho Falls area, and resulting in nine federal convictions and eleven local convictions. Federal indictments were recently returned for six additional subjects.

Karen McDonald and ***Investigative Accountant Gary Gard*** (District of Arizona), by Michael Troop, United States Attorney, Western District of Kentucky, Louisville, for their assistance, hospitality, and cooperation while coordinating a multi-district investigation in Phoenix.

Emily Metzger (District of Kansas), by Ron Sanders, District Director, Immigration and Naturalization Service, Kansas City, for her successful resolution of a case involving Vietnamese nationals who filed petitions in U.S. District Court to change their birth dates in order to accelerate their social security and other retirement benefits to which they did not appear to be entitled.

Marion J. Mittet (Washington, Western District), by John H. VanderMolen, Regional Counsel, Department of Housing and Urban Development, Seattle, for her professionalism and legal skill in the successful resolution of a difficult and sensitive case of first impression arising under the Fair Housing Act.

George B. Newhouse (California, Central District), by Gerald L. DeSalvo, Special Agent in Charge, Bureau of Diplomatic Security, Department of State, Los Angeles, for his excellent lecture on search and seizure, confidential informants, and laws of arrest and detention to members of the Los Angeles Field Office.

Kendall J. Newman (California, Southern District), by Lorraine P. Lewis, General Counsel, Office of Personnel Management, Washington, D.C., for his excellent representation and successful efforts in obtaining a favorable settlement in a Federal Tort Claims Act case.

Steven Petri (Florida, Southern District), by Jack E. Kippenberger, Special Agent in Charge, U.S. Secret Service, Miami, for his valuable assistance and support in the investigation of a group of individuals who conspired to defraud a bank and numerous businesses of $1 million using counterfeit cashier's checks.

Debra Prillaman (Virginia, Eastern District), by Captain K. W. Lippert, Commander, Defense General Supply Center, Defense Logistics Agency, Richmond, for her successful prosecution of one of the first jury trials in the Eastern District of Virginia of a federal complaint of discrimination under the 1991 amendments to the Civil Rights Act of 1964.

Ronda R. Reems (Missouri, Western District), by Eugene L. Schram, Special Agent in Charge, Office of Labor Racketeering, Department of Labor, Kansas City, for her professionalism and legal skill in bringing a high profile complex white collar crime prosecution to a successful conclusion.

John J. Robinson (California, Southern District), by Frank W. Hunger, Assistant Attorney General, Civil Division, Department of Justice, for his outstanding litigative efforts in a bad faith case against an insurance company, and for his substantial recovery of $1.9 million in punitive damages in favor of the United States.

Julie Robinson (District of Kansas), by John P. Sutton, Special Agent in Charge, Drug Enforcement Administration (DEA), St. Louis, for her successful prosecution of a major Organized Crime Drug Enforcement Task Force case, and for her valuable support of the mission of DEA and the efforts of the DEA agents.

Lynn D. Rosenthal (Florida, Southern District), by R. B. Cesa, Inspector in Charge, U.S. Postal Service, Miramar, for her outstanding success in obtaining guilty verdicts of U.S. Postal Service employees involved in a scheme to defraud government subsidized health insurance carriers.

David Schiller (Virginia, Eastern District), by Daniel W. Teehan, Regional Solicitor, Department of Labor, San Francisco, for providing valuable assistance and advice on bankruptcy matters on numerous occasions, and for his excellent example of cooperation between government attorneys and the departments.

Sarah R. Shults (Tennessee, Eastern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for her outstanding prosecutive efforts in a case involving misuse of public funds and violation of the public's trust by the former city recorder for the City of Sevierville.

Nancy Simpson (California, Eastern District), by Kenneth W. Davidson, Assistant Regional Inspector, Internal Security, Internal Revenue Service, Walnut Creek, for her excellent presentation on recent court decisions on video monitoring at a training session for Western Region Inspectors held recently in Santa Cruz.

Michael Smythers (Virginia, Eastern District), by Gary L. Pierce, Director, Investigations Branch, Public Health Service, Food and Drug Administration, Baltimore, for his invaluable guidance and assistance in successfully resolving two Pepsi tampering cases against two Tidewater, Virginia area consumers.

Christina Y. Tabor (Missouri, Western District), by Robert J. Hillman, Regional Inspector General for Investigations, Department of Agriculture, Kansas City, for her prompt and swift action in a robbery at gunpoint case, and for her thorough preparation of the government's case which resulted in a jury conviction on all counts.

Barbara Tanase and ***Terrence Berg*** (Michigan, Eastern District), by Hal N. Helterhoff, Special Agent in Charge, FBI, Detroit, for their outstanding prosecutive support and direction of a difficult FBI drug and money laundering investigation entitled "Ibrahim Hourani, Abbas Aldirani heroin trafficking organization."

Terrence J. Thompson (Florida, Southern District), by William T. Biossat, Resident Agent in Charge, U.S. Customs Service, Fort Lauderdale; Leonard D. Freedman, Regional Director (Internal Affairs), U.S. Customs Service, Miami; and Daniel M. Dockum, Chief, Criminal Investigation Division, Internal Revenue Service, Fort Lauderdale; for his outstanding success in the prosecution of a case involving the smuggling of tons of cocaine into Fort Lauderdale and laundering millions of dollars from narcotics profits.

Tanya J. Treadway (District of Kansas), by Don K. Pettus, Special Agent in Charge, FBI, Kansas City, for her outstanding success in obtaining the conviction of an individual who defrauded a local businessman of $1.1 million through a variety of schemes, including bank fraud, mail fraud, fraud by wire, money laundering, and interstate transportation of stolen property. (The defendant received a maximum 57-month sentence without parole and court ordered restitution of $1.1 million.)

Robert Waters (Florida, Southern District), by Chief Judge James Lawrence King, U.S. District Court, Miami, for his excellent prosecutive skill in the trial of a recent case which the judge stated was "thoroughly prepared and presented most effectively."

Barbara Ward (Florida, Southern District), by Colonel Ronald H. Grimming, Director, Florida Highway Patrol, Department of Highway Safety and Motor Vehicles, Tallahassee, for her outstanding lecture on police corruption at the Investigators Training Program, and for her contribution to a better trained and effective team of investigators.

Matt Whitworth and ***Marietta Parker*** (Missouri, Western District), by Don K. Pettus, Special Agent in Charge, FBI, Kansas City, for their outstanding efforts in bringing a fraudulent banking and real estate case to a successful conclusion following a complicated eight-day trial.

SPECIAL COMMENDATION FOR THE NORTHERN DISTRICT OF GEORGIA; SOUTHERN DISTRICT OF FLORIDA; AND THE NORTHERN DISTRICT OF NEW YORK

Randy Chartash, Assistant United States Attorney for the Northern District of Georgia; ***James McAdams,*** Assistant United States Attorney for the Southern District of Florida; and ***Michael G. Olmsted,*** Assistant United States Attorney for the Northern District of New York, were commended by Director R. James Woolsey of the Central Intelligence Agency for their extraordinary victory in the BNL appeal case, and specifically for the successful efforts achieved through cooperation and teamwork between the Department's legal team and the CIA organization. Attorney General Janet Reno also commended the Assistant United States Attorneys, and stated: "I am pleased to hear of your exceptional efforts, both individually and as a member of the legal team. As you know, the Department is involved in many coordinated efforts between local, state, and federal agencies. Your contribution toward the successful conclusion of this appeal will promote greater cooperation in future cases. Thanks for a job well done."

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SPECIAL COMMENDATION FOR THE WESTERN DISTRICT OF WASHINGTON

Diane E. Tebelius, Assistant United States Attorney for the Western District of Washington, was commended by Annette C. Hamburger, Attorney, Office of General Counsel, Public Health Division, Department of Health and Human Services, Rockville, Maryland, for her outstanding success in a complex bankruptcy case. This case was important to the Center for Mental Health Services' Clinical Training program in that Ms. Tebelius obtained a ruling that the debt was an educational loan that was not dischargeable in bankruptcy. Although the principle of nondischargeability had been established with regard to certain similar Public Health Service programs, this is the first time this principle has been established with regard to the Clinical Training Program. In addition, the Judge in this case ruled that the treble damages provision of the loan was an enforceable liquidated damages clause and therefore not a penalty dischargeable in bankruptcy. Ms. Hamburger stated that to her knowledge this position has not been taken by a court in this or other similar Public Health Service programs.

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SPECIAL COMMENDATION FOR THE CENTRAL DISTRICT OF CALIFORNIA

Nora M. Manella, United States Attorney for the Central District of California, advised that within hours of the recent earthquake in Los Angeles, John McEvoy, Administrative Officer, was in contact with the General Services Administration to ascertain the condition of the courthouse structure and the Orange County offices and authorized any clean-up or repair to any damaged areas. Mr. McEvoy also established a disaster relief fund for the employees of the United States Attorney's office, and arranged for Employee Assistance Program staff to provide assistance to those employees undergoing stress as a result of the earthquake. Other administrative staff gathered information to identify employees who had suffered personal property and/or structural property damage. Monica Fernandez initiated a communications network to keep employees apprised of any up-to-date information available, including alternate transportation to and from work. On the first business day after the earthquake, Darryl Musick and Rene Cendejas of the Support Services Unit, physically inspected each room, floor by floor, for any damages, and assisted the attorneys and support staff with the necessary clean-up. The Computer Group acted immediately to bring the servers back on line in order to continue with day-to-day operations. Ms. Manella stated that the contributions of the Administrative Office are sometimes overlooked, and the special efforts and accomplishments of these individuals should be formally recognized.

* * * * *

HONORS AND AWARDS

Operation Illwind, Eastern District Of Virginia

In January, 1994, ***Joseph J. Aronica,*** Senior Litigation Counsel, and the attorney-in-charge of the Illwind investigation, and ***Jack I. Hanly,*** Assistant United States Attorneys for the Eastern District of Virginia, brought Operation Illwind to a successful (and final) conclusion when Litton Systems, Inc., a major defense contractor, became the tenth corporation to plead guilty to procurement fraud and public corruption charges. This plea marks the 64th conviction as a result of Operation Illwind and involves 54 high-level corporate executives, consultants, and high government officials, including a former Assistant Secretary of the Navy, a Deputy Assistant Secretary of the Navy, and a Deputy Assistant Secretary of the Air Force. Litton Systems, Inc. agreed to pay a criminal fine of $1.5 million, civil claims of $1.3 million, and $1.1 million for the cost of the investigation, bringing the total criminal penalties, civil recoveries and cost savings to over $250 million.

Attorney General Janet Reno applauded the federal prosecutors and investigators "for their determined and innovative pursuit of those individuals and corporations who sought to defraud the American taxpayer in such a vital matter as our Nation's security." The Attorney General further stated, "Operation Illwind has been one of the most successful investigations and prosecutions ever undertaken by the Department of Justice against white collar crime. Illwind fundamentally changed how white collar crimes are investigated and prosecuted. In the past, investigative tools, such as wiretaps and search warrants, were used almost exclusively in investigations of organized crime and drug trafficking. Because of the imagination and initiative of the prosecutors and investigators in this probe, however, these tools were put to a new and creative use. By doing so, the Illwind investigation serves as a prototype for future investigations into environmental crimes, health care fraud, insurance fraud and consumer fraud, as well as government contract fraud."

The case began when a small defense contractor in northern Virginia called the FBI and the Naval Criminal Investigative Service (NCIS) and reported that a defense consultant offered to sell him information about his competitors' bids on a multi-million dollar Marine Corps procurement which the contractor knew was not available to the public. In cooperation with the FBI and NCIS, the contractor agreed to make consensually monitored phone calls and wear a body recorder during meetings with the

consultant. As a result, enough information was gathered to confront the consultant. The consultant agreed to cooperate. After a period of consensually monitored conversations using the consultant, court-ordered wiretaps were instituted over an 18-month period on thirteen individuals. Virtually every investigative tool available to prosecutors during the covert stage of the investigation was used -- use of informants, consensually monitored telephone conversations, body recorders, pen registers, trap and traces, wiretaps, office bugs, and surveillance of meetings. Operation Illwind began in June, 1988, with the execution of 44 search warrants nationwide and the service of over 500 grand jury subpoenas were served. During the course of the investigation, hundreds of agents worked closely with as many as fifteen attorneys assigned to the Illwind team, including Assistant United States Attorneys, attorneys from the Appellate, Fraud, and Public Integrity Sections of the Criminal Division, the Tax Division, the Defense Logistics Agency, and the Army, Navy and Air Force.

The impact of Operation Illwind on the defense procurement field has resulted in tighter laws being passed, including the Procurement Integrity Act. In addition, a premium was placed by the government on corporations having ethics programs, compliance programs, and self-policing through internal investigation to uncover misconduct by corporate officials and employees. Assistant United States Attorney Aronica added that once corporations and individuals are aware that the government has the wherewithal to investigate and prosecute these kinds of cases successfully, they are going to be reluctant to get involved.

On March 2, 1994, Roy D. Nedrow, Director, Naval Criminal Investigative Service Headquarters in Washington, D.C., observed the successful conclusion of Operation Illwind by presenting awards to Assistant United States Attorneys Aronica and Hanley for their leadership, extraordinary support, and dedication. Director Nedrow stated that strong professional working relationships were developed between the NCIS case agents and the prosecuting attorneys and added that it is that kind of teamwork that ensures that good investigations produce successful prosecutions.

[NOTE: In February, 1991, Joseph J. Aronica received the Attorney General's Award for Distinguished Service as the attorney-in-charge and lead prosecutor, and Jack Hanly received the Director's Award for Superior Performance, for their roles in the investigation. In August, 1992, FBI Director William S. Sessions hosted an award ceremony in his office to honor a number of attorneys who participated in the investigation, including Assistant United States Attorneys Aronica and Hanly.]

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U.S. Postal Inspection Service Awards For The Northern District Of Illinois

Jerome Krulewitch, Gillum Ferguson and ***Stephen Heinze, Assistant United States Attorneys for the Northern District of Illinois,*** were presented Chief Postal Inspector's Special Awards by Chief Postal Inspector Kenneth J. Hunter, for their outstanding prosecutorial efforts in two separate actions. This award is the highest honor bestowed by the U.S. Postal Inspection Service.

Jerome Krulewitch was recognized for his successful prosecution of a post office employee in Bedford, Illinois, who shot and wounded his supervisor following a work-related confrontation. A jury subsequently found the postal employee guilty of assaulting a federal employee and using a firearm during a crime of violence. The postal employee was sentenced to 131 months in prison and ordered to pay $10,000 in restitution to the victim. In December, 1993, the Seventh Circuit Court of Appeals affirmed the conviction.

Gillum Ferguson and ***Stephen Heinze*** were recognized for their outstanding efforts in the investigation and prosecution of various individuals involved in the marketing of counterfeit fine art limited edition prints attributed to the world famous artists Pablo Picasso, Salvador Dali, Marc Chagall, and Joan Miro. In presenting the awards, Chief Inspector Hunter noted that the prints had been counterfeited on a massive scale, resulting in losses exceeding $500 million to art purchasers in the United States, Western Europe, and Japan. He further stated that the prosecutions in Chicago and elsewhere in the United States have virtually eliminated the trafficking of counterfeit fine art prints in this country. Also attending the awards presentation was Helyn Goldenberg of Sotheby's auction house, who thanked the Assistant United States Attorneys and the Postal Inspection Service for their success in improving the integrity of the fine art prints market.

* * * * *

Archeology Awards For The Southern District Of Indiana And The District Of Oregon

The following Assistant United States Attorneys have been nominated for the Society for American Archeology Public Service Awards by Francis P. McManamon, Ph.D., Departmental Consulting Archeologist, National Park Service, Department of the Interior, Washington, D.C.:

Larry Mackey and ***Scott Newman, Assistant United States Attorneys for the Southern District of Indiana,*** for their successful prosecution of five individuals who looted a rare, intact Hopewell mound, one of the five largest mounds known in North America, in violation of state trespass law, government contracting law, and interstate trafficking of archeological resources. Much of this case revolved around the illegal activities of a well known collector and promoter of Indian "relic shows," particularly the Owensboro, Kentucky, Show of Shows, who, together with four others, stole artifacts from the Hopewell mound, transported the artifacts across state lines, and later sold some of the artifacts in Kentucky. The five defendants pleaded guilty to the facts of the case, and were sentenced as a result of their plea bargains.

Jeffrey Kent, United States Attorney for the District of Oregon, for his successful prosecution of an individual who looted a Native American archeological site in Oregon and stole 2,800 Native American artifacts, digging tools, photographs, and documents. The defendant was convicted but appealed to the U.S. Court of Appeals for the Ninth Circuit on the grounds that the Archaeological Resources Protection Act (ARPA) was unconstitutional. The defendant argued that curiosity motivated him, his activity was academic, and that academic freedom therefore protected him. Because academic freedom has been viewed as a special concern of the First Amendment, the defendant claimed he could challenge ARPA as overbroad. The Court held that ARPA was not too broad or vague, and refused to recognize the defendant's activities as academic curiosity (he was not affiliated with any academic institution), and furthermore, the court found that the defendant had fair notice that his conduct was prohibited.

Dr. McManamon stated that Mr. Mackey, Mr. Newman, and Mr. Kent have distinguished themselves in the ongoing interagency effort to improve stewardship of the Nation's non-renewable archeological resources on behalf of all our citizens, and, therefore, are deserving of the Society for American Archeology Public Service Award. He added that, through their energy and commitment, they have helped establish a baseline for archeological protection in jurisprudence that contributes directly and substantially to preservation of the archeological record.

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DEPARTMENT OF JUSTICE LEADERSHIP

Deputy Attorney General

On March 23, 1994, ***Jamie S. Gorelick*** was confirmed by the United States Senate to serve as Deputy Attorney General. Ms. Gorelick, formerly General Counsel at the Department of Defense, took the oath of office on April 13, 1994.

Associate Attorney General

On March 14, 1994, Associate Attorney General ***Webster L. Hubbell*** resigned. Mr. Hubbell said, "I will leave the Department of Justice with great admiration for the Attorney General, high regard for the professionalism and dedication of its employees, and with great pride in the Department's accomplishments during the past year."

On March 17, 1994, Attorney General Janet Reno designated Deputy Solicitor General ***William C. Bryson*** to serve as Acting Associate Attorney General. Mr. Bryson joined the Solicitor General's office in 1978. He subsequently served as Chief of the Appellate Section of the Criminal Division and Special Counsel to the Criminal Division's Organized Crime and Racketeering Section. Mr. Bryson became Deputy Solicitor General in 1986. As one of four Deputies, he specialized in supervising and arguing criminal cases. In 1989, and again in 1993, Mr. Bryson served as Acting Solicitor General during the several occasions when the post was vacant.

Assistant Attorney General, Civil Rights Division

On March 23, 1994, ***Deval L. Patrick*** was confirmed by the United States Senate to serve as Assistant Attorney General for the Civil Rights Division. Mr. Patrick, an attorney from the law firm of Hill & Barlow in Boston, took the oath of office on April 14, 1994.

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Drug Enforcement Administration

On March 10, 1994, ***Thomas A. Constantine*** was confirmed by the United States Senate to serve as Administrator of the Drug Enforcement Administration. Mr. Constantine took the oath of office on April 15, 1994.

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United States Attorneys

On March 10, 1994, the following United States Attorneys were confirmed by the United States Senate:

Walter C. Holten	-	Middle District of North Carolina
Kristine Olson Rogers	-	District of Oregon
Lezin J. Hymel, Jr.	-	Middle District of Louisiana
John M. Roberts	-	Middle District of Tennessee

On March 23, 1994, ***Saul A. Green*** was court appointed as United States Attorney for the Eastern District of Michigan.

On April 18, 1994, ***Charles R. Pitt*** was appointed by the Attorney General to serve as United States Attorney for the Middle District of Alabama.

A complete list of United States Attorneys as of April 6, 1994 appears at p. 163 of this Bulletin. If you have any questions, please call the Executive Office for United States Attorneys, (202) 514-2121.

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ATTORNEY GENERAL HIGHLIGHTS

President Clinton And Attorney General Reno At Work On The Crime Bill

On April 11, 1994, President Clinton joined Attorney General Janet Reno at the Department of Justice to urge Congress to move swiftly to pass the crime bill. In an address before approximately 300 law enforcement officials in the Great Hall, the President stressed three themes about the crime legislation -- additional police officers, punishment and prevention. Both the President and the Attorney General traveled throughout the nation to promote the crime bill. The Attorney General's five-day tour included several walking tours of neighborhoods with community policing programs in place -- Trenton; Los Angeles; Oklahoma City; Memphis; and Nashville. Following a two-week spring recess, Congress is scheduled to consider the crime bill package, including the President's proposal to add community police officers.

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The Crime Bill

On March 11, 1994, Attorney General Janet Reno issued the following statement regarding passage of several crime bill measures by the House Subcommittee on Crime and Criminal Justice:

> We are pleased with the progress made today in passing the President's Crime Bill and grateful for the efforts of Congressman Schumer and his subcommittee. Today, the subcommittee passed several key aspects of the President's proposal, including,
>
> - Three Strikes and You're Out legislation to permanently incapacitate the most dangerous, repeat violent felons.
>
> - Several important crime prevention initiatives that reduce crime by giving young people something to say "yes" to by expanding education, job and recreational opportunities for youth living in high crime areas.
>
> - Drug courts and other supervisory release programs for substance abuse offenders that address the critical need to break the crime cycle.
>
> - An enforceable federal death penalty for the most heinous of crimes.
>
> Coupled with the action yesterday by Congressmen Hughes' and Edwards' subcommittees, there has been significant progress made this week toward enactment of this important legislation. We look forward to continuing our work with the members of the Judiciary Committee in their effort to adopt the President's legislation.

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Historic Meetings Scheduled With Native Americans

On March 21, 1994, President Clinton announced that he and top Cabinet officials will hold two separate meetings with American Indian tribal leaders as part of an ongoing effort to work with tribal nations in developing a sound and responsive domestic policy. The President will host 545 federally recognized tribes in Washington at a first-of-its-kind meeting. The meeting will provide an opportunity for tribal leaders to hear directly from the President about his Administration's overall commitment to ensuring American Indian sovereignty and about how his domestic agenda impacts American Indians.

The White House meeting will be followed by the "National American Indian Listening Conference" on May 5-6, 1994 in Albuquerque, New Mexico. Attorney General Janet Reno and Secretary of Interior Bruce Babbitt will convene this historic two-day conference as an important step in the development of both the Administration's American Indian policy and laws administered by the two departments. Never in the history of American Indian/federal relations has the Attorney General and the Secretary of the Interior joined in a partnership committed to listening to American Indian concerns on issues in their Departments. Representatives from the Federal government, relevant United States Attorneys, legal service providers, judges, state officials and State Attorneys General will hear first-hand from tribes about particular issues, such as crime, the environment, the tribal justice system, and other issues which are shared between the Departments of Justice and Interior. Attorney General Janet Reno stated, "Our goal at the Listening Conference is to. . .hear the independent thinking of tribal leaders on crucial issues facing American Indians today. We also hope to affirm our commitment to strengthen the Nation-to-Nation relationship we have with tribal governments."

* * * * *

Three-Branch Roundtable On State And Federal Jurisdiction

On March 7, 1994, Attorney General Janet Reno, Chief Justice Rehnquist, and leaders of the Congressional Judiciary Committees sponsored a conference entitled "Overlapping and Separate Spheres: A Three-Branch Roundtable on State and Federal Jurisdiction" in Washington, D.C. Conference participants included representatives from the Department of Justice, the federal judiciary, Congress, the state judiciary, state attorneys general, state legislators, corrections officials, and local prosecutors. The moderators at the day-long conference were: Eleanor Acheson, Assistant Attorney General, Office of Policy Development; L. Scott Harshbarger, Massachusetts Attorney General; Professor Sara Beale, Duke University School of Law; Justice Shirley Abrahamson, Wisconsin Supreme Court; Professor Erwin Chemerinsky, University of Southern California Law Center; and Mary Jo White, United States Attorney for the Southern District of New York.

The conference began with remarks by Stanford Law Professor Kathleen Sullivan, who described the current trend to federalize criminal law and civil remedies, and suggested some principled bases for allocating state and federal responsibility to respond to social concerns. In the afternoon session, the participants were asked to consider the appropriate mission of the federal judiciary, to develop a set of principles to guide decisions about whether to federalize areas of state law, and to consider mechanisms for cooperation among the three branches of the state and federal governments. The conference participants identified legal and practical concerns arising from federalization of traditionally state spheres for criminal and civil law, and will endeavor, via working groups, to resolve some of these concerns in the succeeding months.

* * * * *

1995 Budget

On March 9, 1994, Attorney General Janet Reno appeared before the House Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, Committee on Appropriations, concerning the 1995 budget. In her testimony, the Attorney General requested $13.653 billion, an increase of $2.729 billion, or 24 percent, over the 1994 funding level of $10.924 billion. The 1995 budget reflects the Administration's commitment to address violent crime as its number one priority. Included in this request is $2.423 billion associated with the Crime Control Fund the Administration is seeking through legislation. Through this Fund, the Department will step up its efforts to prevent crime and fight against violent crime, drugs, and illegal immigration. Several important crime prevention and control initiatives are requested, contingent, in part, upon enactment of a strong crime bill. The Attorney General discussed the following anticipated funding initiatives under the Crime Control Fund:

Community policing - $1.7 billion to provide state and local grants to hire at least 50,000 police officers. An additional $6 billion will be provided for 1996-1998 to ensure that 100,000 police officers are added to the state and local police rolls.

Brady Law - $100 million for grants to states to improve their criminal history records and to develop a national instant record check system for firearm purchasers. This system will provide an effective and efficient system to check the backgrounds of firearms purchasers.

Immigration - $300 million for critical immigration control initiatives, such as the Border Patrol, the naturalization of legal immigrants; and employer sanctions.

Other funds in the Crime Control Fund may be used for such initiatives as the police corps; drug court programs to provide treatment and counseling and avoid incarceration; boot camps for first-time non-violent offenders; and law enforcement technology. Other elements not related to the Crime Control Fund, but reflect the Administration's and the Department's priorities are: violent crime; health care fraud (the Department's second enforcement priority); juvenile justice; civil rights; environment; antitrust; prisons; and the U.S. Marshals Service. The Attorney General also discussed more efficient use of existing resources, such as debt collection and the development of a joint FBI/DEA automated system.

In keeping with the Administration's commitment to reduce the federal workforce by 252,000 employees by 1999 and control the federal deficit through reductions wherever feasible, the Department's 1995 budget includes total reductions of 922 positions and $554 million, including the Byrne formula grant reduction. The Attorney General stated that these reductions are the result of administrative savings, absorbing the 1994 locality pay increase and other personnel savings and reductions.

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

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DEPARTMENT OF JUSTICE HIGHLIGHTS

Private Counsel Pilot Project To Be Expanded

On March 21, 1994, the Department of Justice announced that, because of its success in obtaining millions of dollars that people owed the United States, it is expanding the experimental debt collection program to two more cities -- Chicago and Philadelphia. Deputy Assistant Attorney General Robert N. Ford of the Justice Management Division, who is in charge of the program, stated that about

$13 million, or 14 percent, of the $99 million owed to the government has been collected under the program by referring more than 28,000 delinquent debts to 24 private law firms for collection. The program began in Detroit in 1988. Recent legislation authorized expansion of the program from ten to fifteen federal districts and also extended it through September 30, 1996. The pilot project currently operates in Detroit, Brooklyn, Houston, Miami, Los Angeles, San Francisco, Washington, D.C., Newark, Tampa and Shreveport.

Under the program, private lawyers and law firms bid for contracts to help the government collect delinquent federal debts, such as defaulted student loans, overpayment to veterans, defaulted Small Business Administration loans, and debts secured by real estate and chattels under programs administered by the Department of Housing and Urban Development and the Farmers Home Administration of the Department of Agriculture. Private counsel who win contracts will be authorized to sue federal debtors on behalf of the United States to collect unsecured debts and will be paid on a contingency fee basis. Foreclosure actions to recover the collateral for secured debts, may be brought in the federal or state courts in different districts depending upon the advantages to the government of suing in one forum or the other.

The Department will pay private counsel handling foreclosure cases a flat rate per case, plus reimbursements for certain costs. Interested private counsel must be engaged in debt collection litigation, have an office in the district for which they seek a contract and be admitted to practice before the U.S. District Court in their district. The bid proposal will contain instructions on how to prepare bids and as much information as possible on the number and dollar amount of the debts it intends to refer to the private counsel in each district. Lawyers and law firms in Philadelphia and Chicago will be asked to submit bids in the spring.

For those lawyers and law firms interested in bidding on the government collection work, please contact Robert N. Ford, Deputy Assistant Attorney General, Room 1334, Department of Justice, Washington, D.C. 20530. The telephone number is: (202) 514-5343.

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Agreement Reached In Major Airlines Price Fixing Suit

On March 17, 1994, the Department of Justice announced that six of the Nation's largest airlines agreed to changes in a price information system that was used to increase the cost of airplane tickets by perhaps more than a billion dollars between 1988 and 1992. The settlement involves American Airlines, Delta, Northwest, Continental, Trans World Airlines, Alaska Airlines, and a computerized fare information system owned by the airlines, the Airline Tariff Publishing Company (ATP). Two other participants, United Air Lines and USAir, entered into a consent decree in December, 1992, after the Justice Department filed a suit against the eight major carriers for using the information system to conduct a detailed electronic dialogue to raise prices and eliminate discounts.

The Antitrust Division has identified over fifty separate price fixing agreements covering hundreds of routes. By supplying or withdrawing changes in fares, the airlines told each other what fares they wanted to charge in which markets, what competitors' fares were acceptable to them, and what deals they were willing to make. The Justice Department said ATP allowed the airlines to float "trial balloon" price increases, make and receive counterproposals, and reach consensus on the amount and timing of price increases or the removal of discounts. The settlement allows the airlines to continue to use ATP for legitimate purposes. However, the settlement eliminates the information exchange features that let the airlines negotiate prices with each other. The airlines may no longer file fares with a "first ticket

date," a future date on which a fare may first be offered for sale. This gave competitors time to signal their intentions either to challenge or accept the fare increase, or propose modifications and linkages. It was not uncommon for airlines to link fares and attach first ticket dates, saying, in essence, "If you raise your fare in market A, where I prefer a higher price, I will raise my fare in market B, where you prefer a higher price." Under the decree, all fares in the system must be available for immediate purchase by consumers. The settlement also strictly limits the communication of "last ticket dates," except when used to say when sales end. It prohibits the use of last ticket dates to convey messages to competitors about removal of discounts, or removing discounts fares on a specific date. The decree also prohibits the use of other methods to communicate future pricing intentions.

Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, said, "The airlines used the ATP fare dissemination system to carry on conversations just as direct and detailed as those traditionally conducted by conspirators over the telephone or in hotel rooms. Although their method was novel, their conduct amounted to price fixing, plain and simple."

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Immigration And Naturalization Service Proposes New System For Asylum Claims

On March 29, 1994, the Immigration and Naturalization Service (INS) of the Department of Justice, proposed a fast-track method of reviewing claims for asylum. By timely adjudication of recent arrivals, INS hopes to speed up the process of welcoming legitimate refugees and discouraging ineligible asylum claimants. A proposed regulation, to be published in the Federal Register, proposes granting meritorious claims within sixty days, and referring non-granted claims to immigration judges (IJs) for disposition within 180 days of filing. When a claim seems clearly unsubstantiated, asylum officers would have the discretion to refer it directly to an IJ without interviewing the applicant. INS is more than doubling the number of asylum officers from 150 to 334, and the Department of Justice is adding IJs in order to accomplish these objectives, and thus fulfill the President's July 1993 mandate to reform the Nation's asylum system. Attached at the Appendix of this Bulletin as Exhibit A is a Summary of Proposed Asylum Reform Regulations and a Fact Sheet.

Asylum applications nearly tripled from 56,000 in 1991 to 150,000 last year. The backlog of unprocessed cases has grown to more than 370,000. Many are "boilerplate" applications containing virtually identical information and purchased by claimants in order to obtain a work permit. Most then melt into the population, awaiting processing which, without these reforms, could take years. By focusing on promptly adjudicating claims as they are filed, INS expects to have sufficient resources to admit genuine claimants and remove undeserving ones promptly. As it becomes increasingly known that new claims are not going into the backlog, but are being promptly adjudicated, the volume of spurious new claims is expected to drop, freeing asylum officers to concentrate on good claims and turn to the backlog as well. Other important changes are also being made. Work authorization would be limited to applicants whose claims are granted. Other applicants will only receive work authorization if their claim is not ruled upon within the 180-day maximum time period estimated to complete the process. INS also intends to seek prosecution of persons selling "boilerplate" applications, or who knowingly and intentionally assist individuals to file spurious claims. The proposal contains a $130 fee for applicants who are able to pay. Waivers will be available for applicants who can establish they are unable to pay. The current cost to the government of processing an asylum application is approximately $615.00.

INS Commissioner Doris Meissner said, "The reforms seek to re-establish a balance between compassion and control. Our intent is to process meritorious claims promptly, granting asylum to those refugees who need protection and to hold expeditious deportation or exclusion hearings so that non-meritorious applicants can be removed from the country."

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1994 Freedom Of Information Program

On March 16, 1994, Attorney General Janet Reno addressed the National Press Club concerning the Administration's Freedom of Information (FOIA) policy and its implementation. The new policy's focus is to presume that responsive records are disclosable. This reverses the previous standard which presumed that records were non-disclosable. The Attorney General discussed the enormous fiscal and resource burden that the prior policy imposed, and recounted President Clinton's October 4, 1993, memorandum commencing the process of this policy reversal. The following steps have been, or will be, taken to implement the President's instructions:

1. The Department's "1981 Guidelines for the Defense of Agency Actions in Freedom of Information Litigation" were rescinded. A presumption of disclosure standard has replaced the substantial legal basis standard.

2. FOIA exemptions will only be defended where the Agency reasonably foresees harm to the Government or private interest to be protected from disclosure.

3. Discretionary disclosures should be made whenever possible without undercutting legitimate legal defenses.

4. Department of Justice attorneys are to review all pending cases to ensure conformity with the new policy.

5. A complete review of all DOJ/FOIA regulations, forms, and correspondence is being undertaken to implement the goal of treating FOIA requesters as respected customers. In conjunction with this, the requester community has been called upon to make suggestions for streamlining the administrative side of the FOIA process, eliminating the backlog, and being more responsive.

6. A Government-wide review has been initiated of the backlog of FOIA requests, and new resources and personnel will be devoted to eliminating the problems associated with this backlog.

7. An additional procedure has been established to expedite FOIA requests in cases of extraordinary media interest where the information sought involves issues of Government integrity and public confidence. (The substance of this effort was summarized in the United States Attorneys' Bulletin, Vol. 42, No. 2, Feb. 15, 1994, at p. 51.)

8. A new policy has been initiated requiring the quick handling and appropriate public disclosure of Office of Professional Responsibility investigations of complaints of misconduct by Department of Justice attorneys and investigators.

9. The Attorney General committed to holding regular weekly news sessions, open to all of the media. The purpose of these sessions is to increase government responsiveness to the press.

Ms. Reno stated that responsiveness is related to accountability, and she intends to compile productivity statistics and other measures of accountability in an effort to focus on the backlogs. Included in the February/March, 1994, issue of the Department of Justice Newsletter, "Justice For All," Ms. Reno issued a directive to all employees regarding FOIA reforms, relating the new openness policies, and stated that "everyone in the Department must make timely FOIA compliance a greater priority in the future."

An effort is also being made to develop an automated system that categorizes the information as it is received, in order to more quickly access documents for the media. A new policy is also being instituted to make public as much material as possible without the need for FOIA requests. A survey of procedures used in the districts is presently ongoing. Under the new policy, even cases won will be revisited and properly withheld documents under the previous standard may be disclosed. The Attorney General addressed several remarks to the media in an effort to enlist their cooperation: 1) the Department and the media should approach the issue of access non-confrontationally where access to records requested conflicts with legitimate, protectable interests of national security, appropriate law enforcement, and the right to a fair trial; and 2) the media should narrow the scope of very broad requests to reduce the backlog. All of the above is designed to reduce the expense, streamline the process, and enable the public to obtain information from the Government without incurring any costs.

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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Environmental Crimes Report

On March 14, 1994, the Department of Justice reported the completion of an internal review into the operations of the Environmental Crimes Section of the Environment and Natural Resources Division, and its handling of six specific cases that had been the subject of Congressional inquiry. The Department of Justice review panel reported that prosecutors acted "properly" and "reasonably" in the handling of the environmental pollution cases and "there was no shortage of competence or good faith in any aspect of the program." The report, reviewed by Attorney General Janet Reno and Associate Attorney General Webster Hubbell, noted the following:

- The Environmental Crimes Section had attracted highly qualified individuals, and there was no credible evidence that decisions were influenced by improper criteria.

- The Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce was mistaken in several instances, and that the controversies over the six cases "stand as examples of how misleading or incomplete testimony before a congressional subcommittee can wrongly impugn the professional judgment and conduct of career government attorneys."

- The report cited distrust and organizational deficiencies within the Section which led to unfounded or overstated accusations and suspicions by some of the attorneys in the Section. It said the decision-making process "could be improved" through better relations with the United States Attorneys and with other agencies, investigators and legislators concerned about enforcing the anti-pollution laws.
- The Division should identify litigation priorities for the Section and consider directing more of the Section's resources to policy development.

- The Division should also consider strengthening its mechanism for coordinating policy decisions by providing written policy guidance to the Environmental Protection Agency, the United States Attorneys, and the Division's other litigating sections.

- The Section and the United States Attorney's offices should adopt a policy of informing federal investigative agencies of declination decisions in writing.

- The report affirmed the propriety of the way changes were made to the United States Attorneys' Manual in 1988 and 1993 that sought to make some prosecutorial judgments uniform nationwide and free from local pressure by requiring approval from Washington.

The 325-page report was prepared by four senior attorneys in the Justice Department: Jeffrey Minear of the Solicitor General's office; Daniel Seikaly, United States Attorney's office, District of Columbia; and Mary Incontro and William Corcoran of the Criminal Division. The preparation of the report was coordinated by John Rogovin, Deputy Assistant Attorney General, Civil Division.

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HIV-Positive Foreigners Authorized To Attend Gay Games IV In New York City

On March 22, 1994, Attorney General Janet Reno authorized the admission of HIV-positive individuals to the United States for up to ten days to attend the Gay Games IV in New York City in June. The Attorney General gave her approval after the Centers for Disease Control and Prevention advised her there was no public health reason to prohibit the brief stay in the United States, and the Department of Health and Human Services said exclusion of foreign competitors and spectators would be inconsistent with the policy of combatting discrimination against individuals who have the HIV infection. The Gay Games take place over eight days. Two more days have been allotted for travel.

Attorney General Reno acted after receiving a recommendation to admit individuals attending the Games from Doris Meissner, Commissioner of the Immigration and Naturalization Service, who said HHS had determined that visits up to ninety days would not materially harm the public health. Commissioner Meissner said waivers had been granted in the past to permit foreigners with HIV to attend academic and scientific conferences, obtain medical treatment, visit close family members and complete temporary business. In a recommendation to admit the athletes, Dr. Philip R. Lee, Assistant Secretary for Health, stated that "denying entry to persons with this disability would be directly contrary to public health policies of supporting participation by individuals with disabilities in our society, of acknowledging their achievements, and of avoiding the stigmatization of persons with a particular disease."

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HEALTH CARE FRAUD

Fraud And Abuse Provisions Of The Health Security Act

On March 17, 1994, Gerald M. Stern, Special Counsel for Financial Institution Fraud and Health Care Fraud, appeared before the Subcommittee on Legislation and National Security and the Subcommittee on Human Resources and Intergovernmental Relations, Committee on Government Operations, House of Representatives, concerning the fraud and abuse provisions of the Health Security Act, H.R. 3600. Mr. Stern testified that ensuring that all Americans have access to quality health care at a reasonable cost for them and for the Nation is a fundamental principle of the Health Security Act. This goal, however, cannot be reached if health care fraud goes unaddressed; fraud can undermine both the cost and quality of health care. For this reason, the Health Security Act contains a comprehensive program for health care fraud control.

Mr. Stern stated that the Department of Justice is responding to the health care fraud crisis to the full extent possible given existing resources and legal remedies. The numbers of health care fraud matters investigated and the numbers of cases prosecuted have risen dramatically over the last few years. In fiscal year 1992, there were 343 criminal health care fraud matters pending; as of December 31, 1993, this number had more than doubled to 711. Civil health care fraud matters also more than doubled in the same time period. In fiscal year 1992, the Department obtained fifty-nine convictions for health care fraud, involving ninety defendants. In fiscal year 1993, these numbers increased to seventy-three convictions with ninety-six defendants. Mr. Stern further stated that not only is the Department of

Justice bringing increased numbers of health care fraud cases each year but the cases brought reflect the full range of health care fraud schemes. The Department now investigates and prosecutes cases involving false billings for unnecessary medical services, services which were never rendered, or services rendered by others. The Department also investigates and prosecutes health care providers who pay kick backs or bribes or who impermissibly make referrals to benefit themselves.

The Department of Justice has established several structures to facilitate communication and coordination among law enforcement entities, which includes an Executive Level Working Group, established last November and chaired by Mr. Stern, to develop national health care fraud enforcement policy. The members of the Working Group include Assistant Attorneys General for the Criminal Division and Civil Division, the Department of Health and Human Service (HHS) Inspector General, and a senior FBI official. The Chair or Vice Chair of the United States Attorneys' Health Care Fraud Subcommittee of the Attorney General's Advisory Committee also attends. This forum permits policy development and coordination at the highest levels of the Department of Justice and the Department of Health and Human Services. It already has tackled issues such as identification of emerging fraudulent schemes, development of national priorities, and sharing of data and investigative techniques. There are other health care fraud working groups at the national, regional, and local levels, many of which include federal and state prosecutors and investigators from the FBI, the Inspector General's office of HHS, and other federal agencies, as well as state Medicaid Fraud Control Units. Where appropriate, state prosecutors and investigators are specially designated to work on health care fraud cases brought in federal court.

Mr. Stern further discussed the provisions of the Health Security Act, and concluded that our chances to prevent, detect, and control fraud would be improved dramatically because the Health Security Act includes a comprehensive fraud control program not as an afterthought but as a fundamental feature of the new health care system.

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

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CRIMINAL DIVISION

Indian Gaming Regulatory Act

On March 25, 1994, in response to a number of inquiries from United States Attorneys about the Department's current policy towards illegal gaming in Indian country, Attorney General Janet Reno issued a policy statement concerning the enforcement of the Indian Gaming Regulatory Act. A copy is attached at the Appendix of this Bulletin as Exhibit B.

The reference to the submission of Urgent Reports for any significant enforcement action at the end of Ms. Reno's memorandum is to the standard sensitive or urgent matter report. This is to be forwarded to Department leadership through Deborah Westbrook, Legal Counsel, Executive Office for United States Attorneys, as set forth in section 1-10.230 of the United States Attorneys' Manual. The telephone number is: (202) 514-4024.

If you have any questions, or would like clarification, please call Mary Spearing, Chief, General Litigation and Legal Advice Section, Criminal Division, at (202) 514-1026.

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Computer Crime

The Criminal Division's Computer Crime Unit (CCU) has developed several litigation support materials for use with the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. These include model jury instructions, model indictment forms, and a model search warrant affidavit insert for use in cases where computers will be searched. If you would like to receive E-mail copies of any of these materials, please E-mail CCU Attorney Stevan Mitchell at CRM11(MITCHELS), or call him at (202) 514-1026.

CCU attorneys remain available to assist in all facets of investigations and prosecutions involving computers and other high-tech issues. Unit attorneys regularly provide litigation support in cases charging computer fraud and abuse, copyright and trademark infringement of computer software or other digital media, and certain offenses involving cellular and telecommunications abuse. CCU attorneys are available to review indictments charging any of these offenses. Unit attorneys also provide legal advice on the full range of issues arising from searches in electronic environments (including search and seizure of electronic mail communications), and are available to review search warrant affidavits contemplating seizure of computers, computer equipment, or electronic communications. Unit attorneys can also work with the Criminal Division's Office of International Affairs (OIA) to obtain international assistance in computer crime cases.

The CCU is also developing monographs that will provide uniform guidance in these developing areas. Work continues on the Unit's Federal Guidelines for Searching and Seizing Computers, which will address the myriad of legal issues that arise in planning searches of electronic environments, in executing these searches, and in analyzing and putting to use the evidence and contraband so obtained. Unit attorneys are also revising the General Litigation and Legal Advice Section's copyright prosecution manual to address recent statutory changes to the criminal copyright statute and the legal issues that arise from the increased use of computers in intellectual property offenses.

In addition, the CCU regularly publishes Newsbits, the Computer Crime Unit's electronic newsletter. Newsbits provides Assistants with information on ongoing prosecutions, legislative developments, international issues, and emerging technologies. If you are seeking assistance from the Unit, or are interested in becoming a subscriber to Newsbits, please contact Unit Chief Scott Charney on (202) 514-1026, or send an E-mail message to CRM11(CHARNEY).

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CIVIL RIGHTS DIVISION

Americans With Disabilities Act Settlements

Philadelphia, Pennsylvania

On March 21, 1994, the Department of Justice announced that settlement has been reached that will ensure that Philadelphia's Emergency Medical Services' personnel will no longer refuse to render aid to persons with HIV/AIDS. This is the first formal Justice Department settlement of an AIDS discrimination case under the Americans with Disabilities Act (ADA).

The agreement resolves a complaint alleging that Philadelphia's Emergency Medical Services violated the ADA by refusing to assist a man after they learned he was HIV-positive. According to the complaint filed by the AIDS Law Project of Pennsylvania, an emergency medical technician asked the man, who was lying on the ground and experiencing chest pains, if he was taking any medication. When the man whispered that he was taking AZT, a drug used to treat persons with HIV, the technician

backed away and refused to render aid. The complaint alleged that the technicians then told the man to place himself on the stretcher even though he was unable to do so. A bystander finally helped the individual onto the stretcher and placed him in the ambulance. Title II of the ADA prohibits State and local governments from discriminating against qualified individuals with disabilities on the basis of their disability in providing services to the public.

The new agreement requires the city to develop an AIDS awareness training program which can serve as a model for other cities across the country. Under the program, the city will train 2,300 Fire Department employees, including 1,400 fire fighters and 900 emergency medical technicians, on how to prevent the transmission of HIV, respect one's right to privacy while rendering medical care, and be sensitive to the needs of persons with HIV/AIDS. In addition to training its employees, the agreement requires the city to: develop and publicize a written policy that prohibits emergency medical technicians from discriminating against individuals with HIV/AIDS; discipline any employee who fails to comply with the city's nondiscrimination guidelines; and pay the individual who was denied services $10,000 in compensatory damages and provide him with a formal written apology. Acting Assistant Attorney General James P. Turner, Civil Rights Division, stated, "We are pleased with the city's cooperation in resolving this matter. The city voluntarily entered into this settlement under our alternative dispute resolution procedures shortly after we brought the problem to the city's attention."

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Omaha, Nebraska

On March 22, 1994, the Department of Justice announced that an agreement has been reached allowing people with disabilities to have an easier time visiting the "world's largest" indoor rainforest in Omaha, Nebraska. The settlement resolves a complaint filed with the Justice Department alleging that the Omaha Zoological Society failed to make its facilities accessible to persons with disabilities in violation of the Americans with Disabilities Act (ADA). The Omaha Zoological Society is a private non-profit corporation that operates and manages the Henry Doorly Zoo, Lied Jungle, and Treetops Restaurant, a 400-seat restaurant that overlooks the rainforest. Under Title III of the ADA, existing places of public accommodation must remove architectural barriers where it is readily achievable to do so, and must provide auxiliary aids and services unless an undue burden or "fundamental alteration" would result.

The Jungle, which opened in April 1992, is designed to replicate the experience of travelling through the rainforests of Asia, Africa, and America. It features a narrow, winding jungle trail, steep cliffs, a swinging bridge, caves, waterfalls, and dense tropical vegetation. Under the agreement, the Society agreed to: install a wheelchair lift in the restaurant; continue to make electric scooters available to persons with mobility impairments so that they may have access to the Jungle floor path; remove barriers on the Jungle's path; make modifications to restrooms; provide a variety of auxiliary aids and services, including audiotape recordings of the Lied Jungle Trail Guide and of information about the rainforest contained on signs located throughout the Jungle, and ensure that staff are available to serve upon request as guides to visitors with visual impairments. Acting Attorney General James P. Turner, Civil Rights Division, said, "People with disabilities have too long been denied access to this country's rich educational resources and recreational facilities. Today's agreement, which resulted from cooperation between the federal government and the private sector, will open new vistas and experiences for persons with disabilities."

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Phoenix, Arizona

On March 23, 1994, the Department of Justice announced that a Phoenix trade school that refused to admit a man with a visual impairment to its motorcycle mechanics course has agreed to pay $16,000 in damages. In the winter of 1992, Brent Reed applied and was accepted to Motorcycle Mechanics Institute (MMI), a division of Clinton Technical Institute. However, according to a complaint filed by Reed with the Justice Department under the Americans with Disabilities Act (ADA), MMI withdrew its acceptance once it learned of the extent of his vision disability. MMI then allegedly asked Reed to provide additional documentation, not required of other applicants, including a letter from a motorcycle dealer indicating that he would be considered employable, a physician's letter indicating he could safely complete the course, and a personal statement describing his goals and reasons why he thought he would benefit from the course. Title III of the ADA prohibits public accommodations, including places of education, from having eligibility requirements that discriminate on the basis of disability.

Under the agreement, there is no finding that MMI violated the ADA; however, MMI will pay Reed $16,000 and no longer require additional documentation of persons with disabilities, except where specific information is necessary to determine whether a particular individual poses a direct threat to the health or safety of others or the safe operation of the program. Acting Assistant Attorney General James P. Turner, Civil Rights Division, said, "The ADA seeks to ensure that individuals with disabilities have equal access to the training and educational opportunities offered in the community. This agreement highlights our efforts to counter misconceptions about the capabilities of persons with disabilities."

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[NOTE: In its budget proposal for 1995, the Justice Department plans to add 22 new positions to the sections that deal with the ADA. It also seeks to increase by 50 percent the amount of grants that the Justice Department provides to groups that help educate people about the law. Finally, training has begun for twelve new staff people at ADA.]

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Redress Payments For Japanese Americans

On March 25, 1994, the Department of Justice announced that 209 Japanese Americans who either were evacuated, relocated or interned during World War II, will be receiving $20,000 in redress payments. The recipients were found to be eligible for the payments under the Civil Liberties Act of 1988 by the Office of Redress Administration (ORA).

Under the 1988 Act, and its 1992 amendments, Congress allocated a maximum of $500 million each fiscal year in redress funding, up to $1.65 billion. After these 209 payments have been made, a total of $1.58 billion, representing 79,342 payments of $20,000 each, will have been disbursed by ORA. ORA has sent notification letters to all the individuals who can expect to receive payment. Any potentially eligible recipient who has not yet contacted ORA or who has not returned documents requested by ORA, should do so as soon as possible so that the case can be readied for the next group of payments which is expected to be mailed in July, 1994.

If you have any questions, please call the ORA Help Line at (202) 219-6900, or (202) 219-4710 (for the hearing impaired). The Help Line operates Monday through Friday, 9:30am to 4:30pm, Eastern Standard Time.

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ENVIRONMENT AND NATURAL RESOURCES

Major Progress In The State Of New Jersey

On March 16, 1994, the Department of Justice announced that one of the worst hazardous waste sites in the nation will be cleaned up by a chemical manufacturing company. The Lipari Landfill in southern New Jersey was placed at the top of the Superfund list in 1983. A Philadelphia company made arrangements with a transporter to dump millions of gallons of hazardous chemicals into a gravel pit near the towns of Mantua and Pitman in the 1960s. The company, Rohm and Haas, is expected to spend about $50 million to clean up the pollution that spread into a marsh, two streams and an 18-acre lake. Under the agreement, Rohm and Haas will excavate contaminated soils and sediments and will remove the pollutants by heating the soil and sediments and trapping the vapors. The marsh, streams and lake will be restored in compliance with strict technical and biological specifications.

In two earlier cleanup phases by the Environmental Protection Agency (EPA), beginning in 1984, a 16-acre containment system was built around the landfill and a collection treatment system was constructed to remove the source of contamination inside the containment system. Rohm and Haas and two other major polluters of the landfill previously agreed to pay over $52 million to the state and federal governments as a result of a settlement signed in 1993. Ten companies that contributed relatively small amounts of hazardous waste also paid $3 million to the state and federal governments under a separate agreement signed in 1989. The settlement partially resolves a Superfund enforcement action brought against the polluters of the landfill by the Department of Justice on behalf of EPA in the U.S. District Court in Newark, as well as a related action brought by the state of New Jersey under Superfund and the New Jersey Spill Act in the same court.

Lois Schiffer, Acting Assistant Attorney General for the Environment and Natural Resources Division, stated, "The settlement represents a significant step toward the final cleanup of the Lipari Landfill, the Number One site on the National Priorities List. By obtaining Rohm and Haas's commitment to perform this part of the cleanup, the United States has demonstrated its commitment to aggressive enforcement of environmental laws.

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On March 20, 1990, Exxon Corporation agreed to pay $15 million to the Federal government, the states of New Jersey and New York, Elizabeth, New Jersey, and New York City to settle criminal and civil claims for negligently discharging 567,000 gallons of heating oil into the Arthur Kill that connected Exxon's Bayway Refinery in Linden to its Bayonne plant and terminal. Heating oil that spilled from that pipeline reached the shorelines of both states and property owned by both states and cities, according to court documents. The criminal settlement created a $1.5 million Arthur Kill Trust Fund, which is aimed specifically at restoring the Arthur Kill and the surrounding area.

On March 24, 1994, Michael Chertoff, United States Attorney for the District of New Jersey, announced that the U.S. District Court authorized a $15,000 payment from the Arthur Kill Trust Fund to cover final acquisition of environmental easements for "Shooters Island" off Staten Island. Shooters, Prall's Island and the Isle of Meadows, commonly referred to as the "Harbor Herons Complex," provides fifty acres of breeding habitat for herons, egrets and other migratory birds, and is now a wildlife preserve managed by the New York City Parks Commission.

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CRIME/DRUG ISSUES

Federal Assistance Program In The District Of Columbia

In accordance with Attorney General Janet Reno's mandate to develop creative methods to combat violent crime, Eric H. Holder, Jr., United States Attorney for the District of Columbia, announced the development of a Federal Assistance Program to assist the local police department through the transfer of substantial amounts of federal resources. Eighteen agencies have pledged their resources, and the Metropolitan Police Department (MPD) will now be strengthened through the transfer of the following federal resources:

- Fifty U.S. Park Police officers and at least twenty-four officers from the Uniformed Division of the Secret Service will patrol the streets of Washington, D.C.

- One hundred fifteen vehicles are being contributed by the FBI, the U.S. Marshals Service, the U.S. Customs Service, the General Services Administration, and the Postal Service.

- A Joint Fugitive Task Force will assist the D.C. Department of Corrections and the MPD in apprehending violent offenders wanted on D.C. warrants. Twenty-nine federal agents will supplement MPD officers and Department of Corrections officers on the Task Force.

- The District of Columbia will be receiving nearly $2 million in cash for law enforcement purposes from Asset Forfeiture and Bureau of Justice Assistance Funds. Funds are also being provided to MPD to pay for clearing up the backlog of 1,700 seized guns that have not been examined. The FBI has agreed to assist in examining these weapons.

- The Federal Law Enforcement Training Center, operated by the Department of Justice in Glynco, Georgia, is being made available, and the FBI, the Secret Service, Customs, IRS, the Postal Inspection Service, Park Police, ATF, INS and DEA have offered to assist in training its police officers.

- The Federal Protective Service will assist MPD in conducting the necessary field work during background checks of police recruits. Also, the FBI is streamlining its process of conducting computerized background checks of police recruits. Additionally, the Department of Defense will provide the MPD registers of those soldiers, sailors, air force personnel, and Marines who are leaving the service and who would make solid candidates for the MPD.

- The U.S. Marshals Service has agreed to augment their long-term witness protection program by providing short-term protection to witnesses and victims in the District of Columbia. The Marshals Service will also make special entry teams available for serving warrants under particularly dangerous circumstances.

- A Safe Streets Initiative, composed of various violent crime and drug task forces, is being staffed and funded primarily by the FBI, DEA, and ATF in conjunction with the MPD.

- Other logistical, technical, and administrative support will be provided, such as helicopter surveillance, canine support, translating foreign-language documents, computers and computer programming assistance, evidence collection technicians, and crime scene search technicians. In addition, the General Services Administration is providing building facilities.

United States Attorney Holder said, ". . . The Federal Assistance Program reflects the Clinton Administration's strong and unwavering commitment to combat violent crime in our cities, in our streets, and in our neighborhoods. It also reflects the Administration's special commitment to Washington, D.C. We must do all within our power to make the Nation's capital a safer place in which to live, work, and visit." Mr. Holder added that the Federal Assistance Program does not represent the federalization of local law enforcement in the District of Columbia. Rather, it is intended to provide the MPD with the tools by which it can continue to become even more effective in combatting violent crime.

* * * * *

Undertaker Vice Lords Indicted In The Northern District of Illinois

On March 24, 1994, James B. Burns, United States Attorney for the Northern District of Illinois, and a number of federal, state and local law enforcement officials, announced that a federal grand jury returned a three-count indictment which charges twenty-one members of the Undertaker Vice Lords street gang and their associates with conspiring to distribute cocaine, cocaine base, and heroin in an area of the west side of Chicago.

The indictment charges that since 1984, defendants Eddie Richardson, also known as "Hi Neef" and "Chief," and Carmen Tate, also known as "Red" and "Redman," controlled and directed the Undertaker Vice Lords. According to the indictment, the Undertakers were divided into "generations" of members. A generation consisted of a group of persons who were about the same age and became Undertakers at about the same time. Each generation had its own King, Prince, and other officers who were answerable to Richardson and Tate. Another defendant, William Johnson, was the King of the second generation of Undertakers; defendant Kerry Dockery was the King of the third generation of Undertakers; and defendant Joseph Westmoreland was the King of the fourth generation of Undertakers. The indictment further states that the sale of cocaine, cocaine base, and heroin in the Undertakers' territory was allegedly subject to the approval of Richardson and Tate, who also established and enforced rules relating to the sale of the narcotics through a system of punishment known as "violations." As part of the conspiracy, the indictment alleges, Richardson and Tate bought real estate, cars (including numerous BMWs and Cadillacs), and other assets, which they concealed from IRS and DEA by avoiding the filing of tax returns, making cash payments in amounts under $10,000.00 and using nominees to purchase and hold their assets. Tate is also charged in the indictment with conspiring to defraud the United States by concealing his cash and assets from IRS and DEA. A forfeiture allegation seeks $2 million in cash jointly and severally from the Undertaker defendants as proceeds from their illegal narcotics trafficking.

United States Attorney Burns applauded the cooperative efforts of the federal and state law enforcement agencies, and stated that these charges are the result of hundreds of hours of investigation by the Chicago Police Department and federal law enforcement officers working together in a demonstration of team commitment to destroy entrenched criminal organizations. Mr. Burns also cited the work of Assistant United States Attorneys Robert S. Rivkin and Jerome N. Krulewitch, who supervised the grand jury investigation and will prosecute the case in federal district court.

* * * * *

Carjacking

A National Crime Victimization Survey, issued in March, 1994 by the Bureau of Justice Statistics, Office of Justice Programs, indicates the following:

• An average of 35,000 completed and attempted carjackings took place each year in the United States between 1987 and 1992. In 52 percent of the carjackings, the offender succeeded in stealing the victim's motor vehicle.

• Each year on average between 1987 and 1992, .2 per 1,000 Americans age 12 or older (or .2 per 10,000) were victims of a completed or attempted carjacking.

• Men were more likely than women (.3 per 1,000 compared to .1 per 1,000) and blacks were more likely than whites (.4 and .2 respectively) to be victimized by carjacking. Persons age 35 or older were less likely than younger people to become carjacking victims.

• Nine in ten completed carjackings were reported to the police, compared to 6 in 10 attempts.

• Most carjacking victims escaped without injury. Victims were injured in 24 percent of the completed carjackings and 18 percent of attempted carjackings. Four percent of all victims of attempted or completed carjackings suffered a serious injury -- gunshot or knife wounds, broken bones, loss of teeth, internal injuries, loss of consciousness, or undetermined injuries requiring two or more days of hospitalization.

• Offenders used a weapon in 77 percent of all attempted and completed carjackings. The offender was armed in 82 percent of completed carjackings and 71 percent of all attempted carjackings. Handguns were the most common weapon used in the completed offenses, but not in the attempts. Offenders were armed with handguns in 59 percent of completed carjackings and in 17 percent of attempted carjackings.

• Carjackings were more likely to occur in the evening or at night. About two-thirds of all carjackings occurred after dark. Fifty-eight percent of carjackings that occurred at night and 45 percent of those during the day were completed.

• Most carjackings occurred away from the victim's home. Twenty-nine percent took place in a parking lot or garage, and 45 percent occurred in an open area, such as on the street. Eighteen percent occurred at or near the victim's home.

• Offenders between ages 21 and 29 committed about half of all completed carjackings. An additional 12 percent were committed by offenders 18-20 years of age.

• Victims identified the offenders' race as white in 32 percent of all carjackings, black in 49 percent, and Asian or American Indian in 6 percent. Multiple offenders of more than one race committed 5 percent of all carjackings. In 8 percent of all carjackings the victim was unable to identify the offender's race.

• Men committed 87 percent of all carjackings. Six percent were committed by males and females together. Only 1 percent of all carjackings were committed by women alone. In 6 percent of the cases, the victim could not identify the offenders' sex.

• The median value of automobiles stolen in carjacking was $4,000. Forty-six percent were valued at over $5,000; 13 percent, at $2,500-$4,999; and 41 percent, at $2,499 or less.

• About half (54 percent) of all completed or attempted carjackings were committed by groups of two or more offenders. Forty-one percent were committed by lone offenders. In 5 percent of all carjackings, the number of offenders was not known. The number of offenders did not appear to affect the probability that the crime would be completed. About half of both lone-offender and multiple-offender carjackings were completed.

- The risks of carjacking were different in different types of residential areas, similar to the risks of robbery and motor vehicle theft. Suburbanites were less likely than residents of a central city and more likely than rural residents to be victims of a completed or attempted carjacking.

- Completed and attempted carjackings accounted for 3 percent of all robberies. Carjackings involving property loss of at least $1,000 represented 22 percent of robberies with losses of $1,000 or more.

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POINTS TO REMEMBER

In Memoriam: William B. Gray
United States Attorney For The District Of Vermont - 1977-1981

On March 22, 1994, William B. Gray, United States Attorney for the District of Vermont from 1977 -1981, died of leukemia at the age of 52. Prior to his appointment by President Carter, Mr. Gray served as Associate Deputy Attorney General, Department of Justice, and Director of the Executive Office for United States Attorneys. At the time of his death, he was under consideration for appointment as a judge to the U.S. Court of Appeals for the Second Circuit.

* * * * *

Undercover Securities Fraud Investigations

In order to assure effective cooperation with the Department of Justice, William R. McLucas, Director, Securities and Exchange Commission (SEC), Washington, D.C., has requested that they be notified at the beginning of any proposed undercover securities fraud investigation. These investigations may involve the use of a registration statement or some other vehicle to offer securities for sale, or other securities transactions that may place investors at risk. SEC has had experience in assisting various United States Attorneys' offices and the FBI in designing these operations in a way that protects investors and in a way that avoids harm to public investors.

Before beginning any such operation, please contact Joan E. McKown, Chief Counsel, Division of Enforcement, (202) 272-2214), or Gary N. Sundick, Associate Director, Division of Enforcement, (202) 504-2886. The address is: Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 4-1, Washington, D.C. 20549. The Fax number is: (202) 272-3636.

* * * * *

Mexican Prisoner Transfer Program

On March 18, 1994, eighty-six Mexican nationals convicted of committing crimes in the United States were transferred out of federal prisons and into Mexican custody as part of a stepped up effort by Attorney General Janet Reno. The increased efforts in the international prisoner transfer program were the result of the Attorney General's visit to Mexico last October when she met with Jorge Carpizo, the Attorney General of Mexico. (See, United States Attorneys' Bulletin, Vol. 41, No. 11, at p. 377.) Last December, eighty three Mexican alien criminals were sent back to their native country. (See, United States Attorneys' Bulletin, Vol. 42, No. 1, at p. 13.) The Mexicans were transferred from the La Tuna Federal Correctional Institution which is on the New Mexico-Texas border.

This prisoner transfer includes the exchange of eleven American citizens who were being held in Mexican prisons. The prisoners all volunteered to serve their sentences in their native country. The offender's transfer is voluntary and is subject to the approval of both the sending and receiving countries. Generally, prisoners may not transfer if they have less than six months remaining to serve on their sentence. All American citizens returning here will serve their sentences in federal prisons. Some 334 Americans are currently in Mexico prisons. Attorney General Janet Reno explained that the program makes more prison space available in the United States and permits prisoners to be near their families and friends in both the United States and Mexico. Additionally, the program will save taxpayers millions of dollars. This exchange, for example, will save the United States more than $250,000 a year. The cost of each federal prisoner is $20,895 a year in tax dollars, or $57.22 a day.

* * * * *

Immigration-Related Unfair Employment Practices Hotline

On March 14, 1994, the Department of Justice announced that a 24-hour, toll-free "Employer Hotline" is now in operation at the Office of Special Counsel for Immigration-Related Unfair Employment Practices to respond to questions concerning fair hiring practices and documents needed to comply with the Immigration Reform and Control Act of 1986 (IRCA). The number is 1-800-255-8155 or (TDD) 1-800-362-2735.

Special Counsel William Ho-Gonzalez said this service is being offered to reduce the incidents of discrimination against work-authorized persons by guiding employers through the hiring process with prompt and accurate information. The Special Counsel's office discovered during investigations that employers were often confused about the Immigration and Naturalization Services' Employment Eligibility Verification requirements and IRCA's anti-discrimination provisions. The confusion resulted in unintentional, yet widespread, discrimination against work-authorized aliens and even U.S. citizens as many employers shied away from hiring anyone who looked or sounded "foreign." IRCA requires employers to complete an INS Employment Eligibility Verification Form, or I-9, for each new hire in order to verify that the employee is authorized to work in the United States. But, IRCA also requires that citizens and work-authorized non-citizens be treated equally throughout the hiring process. There are a number of documents that establish work eligibility and workers have the right to choose which legally acceptable ones to present. Callers can obtain up-to-date information on completing the Form I-9, guidelines for fair hiring practices, penalties for discrimination, and which documents are acceptable for I-9 purposes. The hotline also offers a "fax-back" feature which allows callers to receive a hard-copy list of acceptable documents for completing the I-9 Form and more detailed information on IRCA's antidiscrimination provision. For additional information, an Office of Special Counsel representative is available from 9:00 a.m. to 5:00 p.m. The address is: Office of Special Counsel for Immigration-Related Unfair Employment Practices, P.O. Box 27728, Washington, D.C. 20038-7728.

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Settlement Reached In Case Favoring Foreign Workers Over U.S. Citizens

On March 16, 1994, the Department of Justice announced that a large apple grower in the Hudson Valley, New York, S & A Chaissan & Sons, will pay almost $10,000 in civil penalties and back pay to settle a complaint alleging it fired ten U.S. citizens from their jobs as migrant farmworkers so it could replace them with foreign workers. The Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) said the company argued the foreign laborers had special skills and that

it could not locate qualified domestic workers. Farmworker Legal Services of New York Inc. (FLSNY) said in its complaint with the Special Counsel that the foreign workers were favored partially because their visas prohibited them from changing employers, making it unlikely they would complain about poor working conditions, or assert their rights. The complaint said the grower's actions violated the anti-discrimination provision of the Immigration Reform and Control Act (IRCA), which prohibits employers from using a person's citizenship status as a factor in a hiring or firing decision.

Chaissan will pay $8,470 in backpay to the displaced workers, a $1,500 civil penalty, and $5,000 in attorneys' fees to FLSNY. In addition, Chaissan will initiate an apprenticeship program to instruct domestic workers on picking apples while the quality and quantity standards are gradually phased in. Special Counsel William Ho-Gonzalez stated that the apprenticeship program which this company will implement this fall could be a model solution for others, and might be a significant tool in mitigating citizenship status discrimination faced by domestic migrant farmworkers.

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SENTENCING REFORM

Guideline Sentencing Update

A copy of the Guideline Sentencing Update, Volume 6, No. 10, dated March 18, 1994, is attached as Exhibit C 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.

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SUPREME COURT WATCH

An Update Of Supreme Court Cases From The Office Of The Solicitor General

Selected Cases Recently Decided

Criminal Cases

Liteky v. United States, No. 92-6921 (decided March 7)

In this case, the Court addressed the standards for recusal of a judge under 28 U.S.C. 455(a), which requires a federal judge to "disqualify himself in any proceeding in which his impartiality might reasonably be questioned." The Court held (1) that judicial rulings "can only in the rarest circumstances evidence the degree of favoritism or antagonism required [for recusal] when no extrajudicial source is involved"; and (2) that "opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible."

Victor v. Nebraska, No. 92-8894 and Sandoval v. California, No. 92-9049 (decided March 22)

In these combined cases, the Court held that jury instructions defining reasonable doubt are neither required nor forbidden by the Constitution, and that the Constitution does not require any particular formulation of the reasonable doubt instruction itself, as long as the instruction taken as a whole correctly conveys the government's burden of proof.

Selected Cases Recently Argued

Civil Cases

Dolan v. City of Tigard, No. 93-518 (argued March 23)

The government, as amicus curiae, argues in this case that the City's requirement that a storeowner dedicate a portion of her property for a bike trail was not a compensable taking under Nollan v. California Coastal Comm'n, 483 U.S. 825 (1987), because the City could have banned her proposed store expansion altogether, and the dedication served the same purpose as the hypothetical ban.

Criminal Cases

Beecham v. United States, No. 93-445 (argued March 21)

The government argues in this case that a federal felon, who has had his civil rights restored under state law, remains a convicted felon for purposes of 18 U.S.C. 922(g)(1), which makes it a federal offense for a convicted felon to possess a firearm.

Davis v. United States, No. 92-1949 (argued March 29)

The government argues in this case that a law enforcement officer may ask clarifying questions when a suspect makes an ambiguous comment regarding counsel during a custodial interrogation.

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CASE NOTES

CIVIL DIVISION

North Dakota Supreme Court Answers Tort Questions Certified By The Eighth Circuit By Adopting Government's Position On Legal Responsibility Of A Suicide

Following the suicide of their son, plaintiffs filed a wrongful death suit against the United States under the Federal Tort Claims Act (FTCA), alleging medical malpractice under North Dakota law. The district court concluded that North Dakota comparative fault law barred plaintiffs from recovering for their son's suicide because the fault attributable to the decedent and the plaintiffs exceeded the fault attributable to the government. Plaintiffs appealed. After briefing and oral argument, the Eighth Circuit certified two issues to the North Dakota Supreme Court: (1) whether a suicide victim's fault is to be considered under North Dakota's comparative fault statutes, and (2) whether any fault of the suicide victim is attributable to the plaintiffs who are suing in wrongful death.

The North Dakota Supreme Court has now answered "yes" to both certified questions. Adopting virtually all of our arguments, the court held that comparison of fault depends on the factual extent of the suicide victim's mental capacity. The court concluded that it was appropriate to consider the decedent's fault here because the district court's findings imply that the decedent retained enough mental capacity to be responsible for his own well-being. The court further concluded that the plain language of North Dakota's wrongful death statute requires the attribution of the decedent's fault to the plaintiffs. This case now returns to the Eighth Circuit. This decision should prove valuable in other FTCA suicide cases by undercutting the implication in some state court cases that a suicide victim per se lacks mental capacity.

Champagne v. United States, No. 930215 (Mar. 8, 1994) [N.D. S. Ct.; 8th Cir.; D.N.D.]. DJ # 157-56-207.

Attorneys: Mark B. Stern - (202) 514-5089
Sushma Soni - (202) 514-4331

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Third Circuit Denies A Discharge In Bankruptcy Of A Physician's Obligation Either To Serve In A Needy Area Designated By The Secretary Or To Repay Three Times The Scholarship Funds Received From HHS

The government funded Susan Matthews' medical education under the National Health Service Corps Scholarship (NHSC) Program. In exchange, Dr. Matthews agreed to provide medical services for three years in a needy location designated by the Secretary of the Department of Health and Human Services (HHS) or to repay three times the scholarship amount, plus interest. When Dr. Matthews refused to fulfill her service obligation, the government brought suit and obtained a judgment for treble damages. Instead of paying, Dr. Matthews filed for bankruptcy and sought to discharge her loan obligations. The bankruptcy court discharged half of the debt owed to NHSC, concluding that because of the size of the judgment -- approximately $400,000 -- it would be "unconscionable" to require Dr. Matthews to repay the full amount. The bankruptcy court also rejected our argument that Dr. Matthews could fulfill her service obligation by practicing for three years in an underserved area, stating that such relocation would be "outside the limits of what is reasonable." The district court affirmed without opinion.

The Third Circuit has now reversed, holding that Dr. Matthews' entire debt to NHSC is nondischargeable. The court concluded that the facts did not rise to the level of "unconscionability," the statutory standard for discharge. The court first determined that it is not "unconscionable" to require Matthews to satisfy her debt by practicing in a needy area, since this option would create nothing more than "the ordinary difficulties of relocation." Even if Dr. Matthews was unable to fulfill her obligation through service, the court went on to hold, she would not be entitled to a discharge because it was not "unconscionable" to ask her to increase her income or decrease her expenses. Elaborating on this standard, the court determined that it was reasonable to require doctors "who flout their service commitments to live like average taxpayers." This opinion is one of the first court of appeals' decisions construing the discharge provision of the NHSC program. It closes a potential loophole for defaulting doctors and should encourage NHSC scholarship recipients to fulfill their service obligations.

Matthews v. Pineo, No. 93-3401 (Mar. 15, 1994) (Bankr. W.D. Pa.; W.D. Pa.). DJ # 77-64-1119.

Attorneys: Mark B. Stern - (202) 514-5089
Jennifer Zacks - (202) 514-1265

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Ninth Circuit Holds That Bivens Suit Against Military Members And FTCA Suit Against United States Should Be Dismissed Pursuant To Feres Doctrine

Lieutenant Colonel Jackson, an Air Force officer, brought a Bivens suit against military law enforcement officers and an FTCA action against the United States. He alleged that his rights were violated when the defendants, in cooperation with local police who had a warrant to search his off-base house for evidence of child molestation by his house-mate, arrested him, searched his house, seized his personal property, and then used the unlawfully seized property as evidence in proceedings

that led to his discharge based on the commission of homosexual acts. The Government moved for dismissal pursuant to Feres, arguing that the alleged injuries were incident to military service. The district court denied the motion, concluding that there was no connection between Jackson's private, off-base, sexual activity and his military service. Further, relying on recent Ninth Circuit decisions involving substantive challenges to the military's homosexual policy, the district court held that the Government would be required to submit objective evidence demonstrating a rational basis for its policy.

We filed an interlocutory appeal on behalf of the Bivens defendants, and the Ninth Circuit has now reversed. The court first noted that the "unmistakable" trend is to construe the Feres doctrine "broadly" to immunize the United States and military members from any damage suit that "may intrude in military affairs, second-guess military decisions, or impair military discipline." Feres also bars suits in cases where it is ambiguous whether the challenged military actions are incident to military service, because under Feres, courts may not attempt to disentangle conduct that is both incident and not incident to service. Applying these principles, the court held that the injuries alleged by Jackson were "clearly" incident to military service. The defendants acted within their scope of authority as military law enforcement officers and, more important, they acted pursuant to an order from their military superior, who was concerned about Jackson's possible involvement in criminal activities. Additionally, it was irrelevant whether the military's homosexual policy was unconstitutional; once it was concluded that Jackson's injuries were incident to military service, Feres mandated dismissal of his suit. The court therefore remanded with instructions to dismiss the Bivens claims, stating that "the resolution of this issue in the Bivens action controls the future course of the FTCA action."

Jackson v. Brigle, No. 92-15219 (Feb. 25, 1994) [9th Cir.; N.D. Cal.].
DJ # 157-11-4162.

Attorneys: Anthony J. Steinmeyer - (202) 514-3388
E. Roy Hawkens - (202) 514-5714

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Ninth Circuit Holds District Court Did Not Abuse Its Discretion In Denying The Government's Motion To Extend The Time For Filing An Appeal

In the initial round of proceedings in this Title VII action, the district court awarded the plaintiff about $29,000, finding that the Army had improperly classified his job. We appealed, and the Ninth Circuit, in an unpublished opinion, remanded the case for further factual findings on whether the conduct at issue occurred within the statute of limitations. On remand, the district court again found for the plaintiff, without making the specific findings mandated by the Ninth Circuit. However, the U.S. Attorney did not receive notice of the adverse decision until after the 60-day appeal period had run. The district court denied our motion to reopen the appeal period under Fed. R. App. P. 4(a)(6), which allows the district court to extend the time for noticing an appeal when a party does not receive notice of an adverse decision within the normal time for taking an appeal.

We appealed the denial of our Rule 4 motion to the Ninth Circuit, which has now affirmed in an unpublished memorandum decision. The Ninth Circuit concluded that the district court's refusal to reopen the appeal time was not an abuse of its discretion. The Court relied on its determination that the AUSA "was aware" that the district court was drafting findings, "yet chose to take no action to ascertain the status of the case."

Cain v. Sullivan, No. 93-35580 (Mar. 11, 1993) [9th Cir.; W.D. Wash.].
DJ # 157-82-1509.

Attorneys: Marleigh Dover - (202) 514-3511
Jennifer Zacks - (202) 514-1265

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Tenth Circuit Finds Federal Employee's FTCA Claims Preempted By The Civil Service Reform Act

Colin Steele, a civilian employee of the Department of the Air Force, received a notice of proposed removal because his medical limitations resulted in an "inability to perform the duties of [his] position." Steele filed suit against the government alleging wrongful termination, breach of the covenant of good faith and fair dealing, and intentional or reckless infliction of emotional distress in connection with his Air Force employment. Steele argued that the government committed these torts because of his whistleblowing activities and his exercise of EEO rights. The district court dismissed the complaint on the grounds that Steele's claims were both barred for failure to exhaust his administrative remedies under the Federal Tort Claims Act and preempted by the Civil Service Reform Act (CSRA).

The Tenth Circuit has now affirmed. In a short published opinion, the court concluded that Steele's claims complain of actions prohibited by the CSRA and are therefore preempted by that statute. The court therefore declined to reach the issue of whether Steele had satisfied the administrative exhaustion requirement of the FTCA.

Steele v. United States, No. 92-2180 (Mar. 17, 1994) [10th Cir.; D.N.M.]. DJ # 157-49-851

Attorneys: Barbara L. Herwig - (202) 514-5425
Sushma Soni - (202) 514-4331

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TAX DIVISION

Third Circuit Affirms Favorable Decision Of The District Court Concerning Outstanding Tax Liability

On March 15, 1994, the Third Circuit affirmed a favorable decision of the district court in United States v. American Insurance Company. American Insurance was a surety for payment of Wheeling-Pittsburgh Steel Corporation's outstanding tax liability. After Wheeling-Pittsburgh filed a bankruptcy petition, American refused to pay the outstanding tax liability. The district court ruled that American was not liable for Wheeling-Pittsburgh's unpaid taxes, but the Third Circuit reversed and remanded for entry of judgment in favor of the Government. On remand, the Government contended that prejudgment interest should be computed at the rate established by the Internal Revenue Code, which would result in payment of approximately $1 million more than if the interest was computed at the much lower rate, established by the Debt Collection Act, that American advocated. The Third Circuit, in affirming the district court's ruling in favor of the Government, reasoned that under well-established principles of surety law, the liability of a surety is coextensive with that of the principal.

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Fourth Circuit Affirms Favorable Decision Of Tax Court In Case Presenting First Major Appellate Test Of The Scope Of The Supreme Court's 1993 Ruling In Newark Morning Ledger Co. v. United States

On February 23, 1949, the Court Circuit affirmed the favorable decision of the Tax Court in Ithaca Industries, Inc. v. Commissioner, presenting the first major appellate test of the scope of the Supreme Court's 1993 ruling in Newark Morning Ledger Co. v. United States. At issue was whether the taxpayer was entitled to amortization deductions for the value it assigned to an assembled workforce acquired during the liquidation of a predecessor corporation.

The Fourth Circuit rejected the taxpayer's contention that Newark Morning Ledger, in which the Supreme Court held that the taxpayer was entitled to amortization deductions for the value assigned to a list of newspaper subscribers obtained as part of an acquisition of another newspaper, compelled the reversal of the Tax Court's decision. Rather, the Court of Appeals found that the useful life of the workforce could not be accurately estimated, and therefore denied the amortization deduction claimed by the taxpayer.

* * * * *

Seventh Circuit Reverses Unfavorable Judgment Of District Court Concerning Lump-Sum Retirement Payments That Taxpayer Elected To Receive As Part Of A Statutory "Alternative Form Of Annuity"

On March 10, 1994, the Seventh Circuit reversed the District Court's unfavorable judgment in Montgomery v. United States. In Montgomery, the Seventh Circuit held that a lump-sum retirement payment that taxpayer, a retired federal employee, elected to receive as part of a statutory "alternative form of annuity" is not a tax-free return of contributions but is subject to taxation as an annuity pursuant to the Internal Revenue Code. The Seventh Circuit joins the Federal and Fifth Circuits in reaching this conclusion. While Congress repealed the "alternative form of annuity" election for employees retiring after November 30, 1990, this case has substantial administrative importance because thousands of federal employees received such distributions upon retirement in earlier years that remain open under the tax laws.

* * * * *

Seventh Circuit Holds That Interpleader Action Should Be Dismissed For Lack Of Jurisdiction

On March 10, 1994, in Commercial National Bank v. Demos, the Seventh Circuit held that this interpleader action, which was brought by a bank to resolve competing claims asserted by the Internal Revenue Service, the account holders, and an attorney who had earlier represented some of the account holders to funds on deposit, should be dismissed for lack of jurisdiction. Following the approach adopted by the Sixth Circuit, the Seventh Circuit held that the existence of interpleader jurisdiction in federal court turns upon whether a federal question would be dispositive of the defendants' claims to the funds. The court concluded that only state law questions were presented here, where the attorney's lien filed by one of the claimants was created by state law, and the validity of the federal tax lien was not disputed. The fact that the case here might have presented questions regarding the priority of lien claims asserted by the Internal Revenue Service and the attorney did not support federal question jurisdiction. That potential dispute had been settled by the parties. Nor did the cross-claim filed by the Government to foreclose upon the tax lien support the lower court's exercise of jurisdiction in the interpleader action. This ruling is of considerable importance because stakeholders, such as the bank here, frequently bring interpleader suits to resolve multiple claims where a tax lien is involved.

* * * * *

Ninth Circuit Holds That Taxpayer's Appeal From Decision Of The Tax Court

On March 9, 1994, in Delpit v. Commissioner, the Ninth Circuit held that a taxpayer's appeal from a decision of the Tax Court is stayed upon the filing of a bankruptcy petition. The Bankruptcy Code stays, inter alia, the continuation of any "action or proceeding against the debtor. . ., or to recover a claim against the debtor. . . ." The Ninth Circuit reached its conclusion by reasoning that a tax audit constitutes a proceeding to recover a claim against the debtor, and that Tax Court proceedings and subsequent appeals are continuations of this proceeding. Although this conclusion, if narrowly construed, is not likely to present a problem to the Government, the rationale of the decision suggests that the automatic stay also applies to bar auditing activity by the Internal Revenue Service subsequent to the filing of a petition.

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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 February 14 - March 15, 1994. Persons listed below are AUSAs unless otherwise indicated:

Ethics For Litigators (Washington, D.C.)

Connie Frogale and ***Paula Newett,*** Eastern District of Virginia. ***Stephen J. Csontos,*** Senior Legislative Counsel, Tax Division. ***George Pruden,*** Associate General Counsel for Employment Law and Information, Office of General Counsel, Federal Bureau of Prisons.

Basic Paralegal Course (Washington, D.C.)

Heather Jacobs, Program Manager, Priority Programs Team, Executive Office for United States Attorneys; ***Sue Hoadley,*** Paralegal Specialist, District of Maryland; ***Sabrina Black,*** Paralegal Specialist, Eastern District of Virginia; ***Mary Padgett*** and ***Dana Overton,*** Paralegal Specialists, Public Integrity Section, Criminal Division.

Evidence (Washington, D.C.)

Richard Parker, Deputy Chief, Civil Division, Eastern District of Virginia; ***Richard Roberts,*** District of Columbia; ***Eleanor Darden Thompson,*** Deputy Civil Chief, Western District of Oklahoma; ***Richard S. Berman,*** Trial Attorney, Housing and Civil Enforcement Section, Civil Rights Division; ***Douglas Coleman*** and ***Steven B. Snyder,*** Trial Attorneys, Torts Branch, Civil Division; ***Scott Glick,*** Trial Attorney, Terrorism and Violent Crimes Section, Criminal Division.

Financial Institution Litigation Seminar (Washington, D.C.)

Frank Hunger, Assistant Attorney General, and ***Eva Plaza,*** Deputy Assistant Attorney General, Civil Division. From the Torts Branch, Civil Division: ***Jeffrey Axelrad,*** Director, ***Paul Figley,*** Deputy Director, ***Roger D. Einerson,*** Assistant Director, and Trial Attorneys ***Lisa Goldfluss, Bridgett Gauntlett, Jeffrey Karlin, Diana L. Gordon, Martin Banks, Jeffrey Nadaner, Jill Martindell,*** and ***Paul Boudreaux.***

Bankruptcy for Support Staff Seminar (Washington, D.C.)

Mary Dooley, Northern District of California; ***Lillian Lockary*** and ***Bernard Snell,*** Middle District of Georgia; ***Lawrence B. Lee,*** Southern District of Georgia; ***Jane Bondurant,*** Civil Chief, and ***Tim Feeley,*** Western District of Kentucky; ***Angela Meadows,*** Legal Technician, District of Maryland; ***Virginia Powel,*** Eastern District of Pennsylvania; ***Richard Clippard,*** Middle District of Tennessee; ***Randi Russell,*** Eastern District of Texas. ***Judith Benderson,*** Assistant Director, Financial Litigation Staff, Executive Office for United States Attorneys. ***Pamela Linquist,*** Bankruptcy Analyst, Office of the United States Trustee, Tampa, Florida.

FOIA Forum (Washington, D.C.)

Richard L. Huff, Co-Director, ***Charlene Wright-Thomas,*** Deputy Chief, Initial Request Unit, ***Melanie Ann Pustay,*** Senior Counsel, ***Michael H. Hughes, Anne D. Work,*** and ***Carol Hebert,*** Attorney-Advisors, Office of Information and Privacy.

Environmental Crimes In The Military Context (San Diego, California)

Thomas N. Kiehnhoff, Eastern District of Texas; ***Martin J. Littlefield,*** Senior Litigation Counsel, Western District of New York; ***Melanie K. Pierson,*** Southern District of California. ***Herbert G. Johnson,*** Environmental Crimes Section, Environmnent and Natural Resources Division.

Advanced Financial Institution Fraud Seminar (Clearwater, Florida)

Leon Weidman, Chief, Civil Division, Central District of California; ***Caroline Heck,*** Senior Litigation Counsel, Southern District of Florida; ***James Hurd,*** First Assistant United States Attorney, District of the Virgin Islands; ***Michael Emmick,*** Central District of California; ***Robert Mosakowski,*** Middle District of Florida; ***David Schindler,*** Central District of California; ***Robert Westinghouse,*** Western District of Washington; ***Deborah Smith,*** Director, New England Bank Fraud Task Force; ***Gerald M. Stern,*** Special Counsel for Financial Institution Fraud, Office of the Deputy Attorney General. From the Criminal Division: ***John Arterberry,*** Deputy Chief, ***Jonathan J. Rusch*** and ***Wayne Williams,*** Senior Litigation Counsel, Fraud Section; ***Lester M. Joseph,*** Deputy Chief, Money Laundering Section; ***Stefan Cassella,*** Trial Attorney, Asset Forfeiture Section.

First Assistant United States Attorneys Seminar (Arlington, Virginia)

Jo Ann Harris, Acting Deputy Attorney General; ***Webster L. Hubbell,*** Associate Attorney General; ***David Margolis,*** Associate Deputy Attorney General; ***Richard Scruggs,*** Assistant to the Attorney General. ***Carl Stern,*** Director, Office of Public Affairs. From the Executive Office for United States Attorneys: ***Anthony C. Moscato,*** Director; ***Wayne A. Rich, Jr.,*** Principal Deputy Director; ***Michael Baille,*** Deputy Director, Administrative Services; ***Deborah Westbrook,*** Legal Counsel; ***Mary Anne Hoopes,*** Deputy Legal Counsel; ***Brian Jackson,*** Assistant Director, Evaluation and Review Staff; ***Gail Williamson,*** Assistant Director, Personnel Staff; ***Yvonne Makell,*** Equal Employment Opportunity Officer, Equal Employment Opportunity Staff; ***Paula Nasca,*** Director, Security Programs Staff. ***Terrence Donahue,*** Assistant Director, Executive Office for Weed and Seed. ***Michael Shaheen,*** Counsel, Office of Professional Responsibility. ***Emily Sweeney,*** United States Attorney, Northern District of Ohio; ***Mary Jo White,*** United States Attorney, Southern District of New York; ***Ruth Yeager,*** United States Attorney, Eastern District of Texas; ***William Edwards,*** First Assistant United States Attorney, Northern District of Ohio; ***Daniel Knauss,*** First Assistant United States Attorney, District of Arizona; ***Kenneth Melson,*** First Assistant United States Attorney, Eastern District of Virginia; ***Richard Stephens,*** First Assistant United States Attorney, Northern District of Texas; ***Mary Lou Leary,*** Executive Assistant for Operations, District of Columbia.

Ethics and Professional Conduct Seminar (Washington, D.C.)

Laura A. Ingersoll, Trial Attorney, Public Integrity Section, Criminal Division; ***Yvonne Hinkson,*** Deputy Associate General Counsel/Acting FOIA Administrator, and ***George Pruden,*** Associate General Counsel for Employment Law and Information, Office of General Counsel, Federal Bureau of Prisons.

Civil Trial Advocacy (Washington, DC)

Steve Bennett, Chief, Tax Unit, Southern District of New York; ***Earl Brown,*** Western District of Missouri; ***Irene Dowdy,*** Attorney-in-Charge, Trenton Office, District of New Jersey; ***David Grise,*** Eastern District of Kentucky; ***Christopher D. Hagen,*** Southern District of Iowa; ***Jack Halliburton,*** Western District of Louisiana; ***Jim Hilbert,*** Middle District of Florida; ***Nina Hunt,*** Deputy Chief, Civil Division, Northern District of Georgia; ***Nancy Koenig,*** Northern District of Texas; ***Hays Jenkins,*** Chief, Civil Division, Southern District of Texas; ***Michael Anne Johnson,*** Northern District of Ohio; ***Elizabeth Larin,*** Eastern District of Michigan; ***Tom Majors*** and ***Steve Mullins,*** Western District of Oklahoma; ***Fred Martin,*** Eastern District of Pennsylvania; ***Steve Mason,*** Eastern District of Texas; ***Tomson Ong*** and ***Edward Robbins,*** Central District of California; ***Jill Ondrejko,*** Eastern District of Louisiana; ***Charlie Pinnell,*** Western District of Washington; ***Steven Sorenson,*** District of Utah; ***Pam Thompson,*** Assistant Chief, Defensive Litigation Section, Civil Division, Eastern District of Michigan; ***Jamie Woods,*** Northern District of New York.

Evidence for Experienced Criminal Litigators (Clearwater, Florida)

Alan Gershel, Criminal Chief, Eastern District of Michigan; ***Denis O'Donnell,*** Criminal Chief, Western District of New York; ***Stewart Walz,*** Criminal Chief, District of Utah; ***Judy Lombardino,*** Section B Chief, Drug Task Force, Southern District of Texas; ***Roger McRoberts,*** Criminal Deputy Chief, Northern District of Texas; ***Charles Miller,*** First Assistant United States Attorney, Southern District of West Virginia; ***John Barton,*** District of South Carolina; ***Steven Clymer*** and ***Jeffrey Johnson,*** Central District of California; ***Jeff Lawrence*** and ***Mary Pougiates,*** Northern District of California; ***Michael MacDonald,*** Senior Litigation Counsel, Western District of Michigan; ***Steven Miller,*** Northern District of Illinois; ***Eric Sitarchuk,*** Eastern District of Pennsylvania; ***Eleanor Thompson*** and ***John Vaudreuil,*** Western District of Wisconsin.

Money Laundering/Asset Forfeiture Seminar (Kansas City, Missouri)

Stephen L. Hill, United States Attorney, Western District of Missouri; ***Elizabeth M. Landes,*** Northern District of Illinois; ***Nathan P. Petterson,*** District of Minnesota; ***Stewart Robinson,*** Northern District of Texas. From the Criminal Division: ***Theodore S. Greenberg,*** Chief, and ***Lee J. Ross,*** Deputy Chief, Money Laundering Section; ***James I. K. Knapp,*** Deputy Director, Asset Forfeiture Office; ***Jonathan J. Rusch,*** Fraud Section; ***Stephen J. T'Kach,*** Deputy Chief, Electronic Surveillance Unit, Office of Enforcement Operations; and ***Mary B. Troland,*** Associate Director, Office of International Affairs. ***Laurie Sartorio,*** Assistant Director for Policy and Operations, Executive Office for Asset Forfeiture; ***Ralph Diaz,*** Supervisory Special Agent, Economic Crimes Unit, Criminal Investigation Division, Federal Bureau of Investigation; ***Al Gilium,*** Inspector, and ***George Harkin,*** Acting Chief, Strategic Intelligence, Drug Enforcement Administration.

In-House Criminal Asset Forfeiture Training (Kansas City, Missouri)

Frances Reddis, Western District of Missouri; ***Steve Sozio,*** Northern District of Ohio; ***Robert Kent,*** Northern District of Illinois.

In-House Criminal Asset Forfeiture Training (Brooklyn, New York)

Art Leach, Northern District of Georgia; ***Gordon Zubrod,*** Middle District of Pennsylvania.

In-House Criminal Asset Forfeiture Training (Boise, Idaho)

Laurie Sartorio, Assistant Director for Policy and Operations, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General; ***Terry Derden,*** Criminal Chief, and ***Anthony Hall,*** District of Idaho; **Bob Mydans**, District of Colorado.

Experienced Paralegals Seminar (Washington, DC)

Michael Kane, Robert DeSousa, Joseph Terz and ***Robert Long,*** Middle District of Pennsylvania; ***Guy Blackwell,*** Eastern District of Tennessee; ***Steve Liccione,*** Eastern District of Wisconsin; ***Victoria Major,*** Southern District of West Virginia; ***Ronald Bakeman,*** Northern District of Ohio; ***William Pease,*** Chief, Civil Division, Northern District of New York; ***Virginia Passmore,*** Paralegal Specialist, Eastern District of Tennessee; ***Michelle Lincalis,*** Paralegal Specialist, Middle District of Pennsylvania; ***Moni Henderson,*** Paralegal Specialist, Middle District of Pennsylvania; ***Christopher VanHine,*** Assistant Systems Manager, Middle District of Pennsylvania; ***Elisabeth Regan,*** Paralegal Specialist, Eastern District of North Carolina; ***Sharon Parish,*** Paralegal Specialist, Northern District of Ohio; ***Jacque Bartlett,*** Paralegal Specialist, Middle District of Pennsylvania; ***Patricia Erusha,*** Systems Manager, Northern District of Iowa; ***Maureen Oviatt,*** Paralegal Specialist, Northern District of Iowa. From the Executive Office for United States Attorneys: ***Michael Bailie,*** Deputy Director, Administrative Services, ***Carol Sloan,*** Assistant Director, Office Automation Staff, ***Gale Deutsch, Victor Painter*** and ***Ray Collado,*** Technical Support Services Staff.

Law of Federal Employment (Washington, D.C.)

Mary Anne Hoopes, Deputy Legal Counsel, Executive Office for United States Attorneys, and ***Paul M. Brown,*** Attorney, Constitutional and Specialized Torts Staff, Civil Division.

Complex Prosecutions And Advanced Grand Jury Seminar (Clearwater, Florida)

Michael O'Leary, Chief, Fraud Section, Northern District of Georgia; ***Joseph Aronica, Jack Hanly,*** and ***Michael Smythers,*** Executive Assistant United States Attorney, Eastern District of Virginia; ***Gloria Bedwell,*** Lead OCDETF Attorney, Southern District Alabama; ***David Jennings, Walter Furr, Joseph K. Ruddy,*** and ***Terry Zitek,*** Middle District of Florida; ***Carol Lam,*** Southern District California; ***John Lenoir*** and ***Charles Lewis,*** Southern District Texas; ***Rory Little,*** Northern District of California; ***Kurt Shernuk,*** District of Kansas; ***David Sklansky,*** Central District of California; ***Thomas Swaim,*** Eastern District of North Carolina; ***Robert Westinghouse,*** Western District of Washington; ***Michael E. Winck,*** Eastern District of Tennessee; ***Caroline Heck,*** Senior Litigation Counsel, Southern District of Florida. ***Matt C.C. Bristol III,*** Senior Counsel, Office of International Affairs, Criminal Division. ***David Farnham,*** Senior Trial Attorney, Tax Division. ***Ted Cummins,*** Special Agent, Drug Enforcement Administration. ***David Lemoine,*** Special Agent, Federal Bureau of Investigation.

COURSE OFFERINGS

The staff of OLE is pleased to announce OLE's projected course offerings for the months of May through July 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.

May 1994

Date	*Course*	*Participants*
2-6	Appellate Advocacy	AUSAs, DOJ Attorneys
3-6	Public Corruption	AUSAs, DOJ Attorneys
17-20	Violent Crimes	AUSAs, DOJ Attorneys
24-26	Constitutional Torts	AUSAs, DOJ Attorneys

June 1994

1-3	First Assistants	FAUSAs (Small and Medium Offices)
6-10	Criminal Federal Practice	AUSAs, DOJ Attorneys
7-10	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
7-10	Asset Forfeiture Financial Investigations	AUSAs, DOJ Attorneys
7-10	Asset Forfeiture Multi-Level Staff Training	USAO Support Staff
13-17	Complex Prosecutions/ Advanced Grand Jury	AUSAs, DOJ Attorneys
14-16	Affirmative Civil Litigation	AUSAs, IG Counsel
28-30	Attorney Supervisors	AUSAs

July 1994

6-8	Civil Chiefs	Civil Chiefs (Small/Medium Offices)
12-14	Environmental Law (Civil)	AUSAs, DOJ Attorneys
12-15	Asset Forfeiture Multi-Level Staff Training	AUSAs, Paralegals

July 1994 (Cont'd.)

Date	Course	Participants
13-15	Environmental Crimes	AUSAs, DOJ Attorneys
26-28	Affirmative Civil Litigation	AUSAs, IG Counsel
26-28	Money Laundering/Financial Issues/Asset Forfeiture	AUSAs, DOJ Attorneys
26-29	Basic Narcotics	AUSAs, DOJ Attorneys
26-29	Basic White Collar/ Financial Crimes	AUSAs, DOJ Attorneys

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 D. 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 *).

May 1994

Date	Course	Participants
2-6*	Civil Paralegal	USAO and DOJ Paralegals
3-5	Environmental Law	Attorneys
10	Computer Assisted Legal Research	Attorneys, Paralegals
10-12	Discovery	Attorneys
10-12	Basic Bankruptcy	Attorneys
13	Ethics for Litigators	Attorneys

May 1994 (Cont'd.)

Date	*Course*	*Participants*
16	Legislative Drafting	Attorneys, Legislative Assistants
16-20*	Support Staff Training	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 Act	Attorneys, Paralegals
	June 1994	
9	Advanced FOIA	Attorneys
13-14	Federal Acquisition Regulations	Attorneys
15	Fraud, Debarment, and Suspension	Attorneys
16	FOIA Forum	Attorneys
20	Statutes and Legislative Histories	Attorneys
20-22	Negotiation Skills	Attorneys
21-23	Advanced Bankruptcy	Attorneys
24	Legal Writing	Attorneys, Paralegals
	July 1994	
6-7	FOIA for Attorneys and Access Professionals	Attorneys, Paralegals
8	Privacy Act	Attorneys, Paralegals
11-15*	Basic Paralegal	USAO Paralegals
19-21	Discovery	Attorneys
25	Ethics and Professional Conduct	Attorneys
25-27	Attorney Supervisors	Attorneys

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

Address: Room 7600, Bicentennial Building
600 E Street, N.W.,
Washington, D.C. 20530

Telephone: (202) 616-6700
Fax: (202) 616-6476
(202) 616-6477

Director	Donna A. Bucella
Deputy Director	David Downs
Assistant Directors:	
(AGAI-Criminal)	Charysse Alexander
(AGAI-Civil & Appellate)	Mollie Nichols
(AGAI-Asset Forfeiture and Debt Collection)	Nancy Rider
(LEI)	Donna Preston
(LEI)	Chris Roe
(LEI-Paralegal & Support)	Donna Kennedy

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ADMINISTRATIVE ISSUES

Dallas Bank Fraud Task Force

The Dallas Bank Fraud Task Force is winding down its operation. In the next several months, many of its attorneys, both supervisory and trial, will be available for relocation/reassignment. Any district needing an experienced fraud prosecutor or supervisor should contact Tom Hamilton, Director, Dallas Bank Fraud Task Force, at (214) 767-7821.

* * * * *

Career Opportunities

Deputy Chief, Public Integrity Section, Criminal Division

The Criminal Division of the Department of Justice, is recruiting a Deputy Chief for the Public Integrity Section. This Section prosecutes federal corruption cases nationwide against public officials at all levels of government, and handles all matters involving allegations of criminal misconduct by the judicial branch. It handles bribery, extortion, criminal conflict of interest and official misconduct cases. The Section also prosecutes election crimes cases. It is responsible for preliminary investigations under the Independent Counsel Act (should the Act be reauthorized as expected), and serves as a center for advice and guidance to senior-level Departmental officials on matters involving official corruption.

Responsibilities of the Deputy Chief will include: supervising the conduct of investigations and litigation carried on by the lawyers and support staff of the Section (approximately 39); directly supervising prosecutions conducted by Section attorneys and coordinating the prosecution by United States Attorneys of criminal cases involving abuse of the public trust by elected or appointed public officials at all levels of government, election crimes, and criminal conflicts of interest; conducting litigation of highly significant public corruption cases; supervising the preparation and review of indictments; supervising the drafting of Congressional testimony for pertinent hearings; and coordinating Department of Justice relations with Federal Agency Inspectors General and other interested and involved Agencies and departments on related matters.

Qualifications for this position include: 1) Experience in developing and litigating Federal criminal cases; 2) Experience dealing with complex legal and policy issues; 3) Familiarity with Federal regulatory and investigatory agencies; 4) Significant experience in supervising the development and prosecution of criminal cases and reviewing the work product of attorneys; 5) Ability to establish and maintain harmonious relationships with the public, Members of Congress, and Federal officials involved in public corruption related matters; 6) Ability to formulate and implement Departmental policies on all matters pertaining to assigned areas; 7) Ability to serve as a spokesperson for one's organization; and 8) Bar membership. Significant experience in supervising the investigation and prosecution of Federal corruption matters or Election Crimes cases is desired.

Applicants will be evaluated on the basis of the quality of experience and supervisory appraisal of performance. The pay range will be $69,427 - $90,252. Applicants must submit a resume or current Application for Federal Employment (SF-171) and a supervisory performance appraisal to: Lee J. Radek, Chief, Public Integrity Section, Department of Justice, P.O. Box 27518, Central Station, Washington, D.C. 20038.

* * * * *

Two Senior Prosecutors, Public Integrity Section, Criminal Division

The Public Integrity Section, Criminal Division is also seeking two senior prosecutors (GS-15) to augment its staff of trial lawyers specializing in the investigation and prosecution of federal corruption cases. Candidates should have a number of years of experience in the prosecution of federal cases, and substantial experience handling corruption cases or similarly complex and sensitive white-collar crimes prosecutions. Strong writing and legal analysis skills are required. For further information, please contact Lee J. Radek, Chief, Public Integrity Section, at the address noted above.

* * * * *

Appellate Section, Civil Rights Division

The Office of Attorney Personnel Management, Department of Justice, is seeking an experienced attorney for the Appellate Section of the Civil Rights Division in Washington, D.C. The Appellate Section is responsible for all appellate, legislative, and legal counsel matters within the Civil Rights Division. The incumbent of this position will represent the United States in the federal courts of appeals and the Supreme Court, either as party or as a friend of the court; prepare legal memoranda setting forth legal opinions on unusual, difficult and complex questions of law; and draft/prepare testimony, written responses and proposals to submit to the Congress on pending legislation.

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 of post-J.D. experience. Applicants should submit a current resume or an SF-171 (Application for Federal Employment), writing sample, and current performance appraisal to: Civil Rights Division, Appellate Section, Department of Justice, P.O. Box 66078, Washington, D.C. 20035-6078. No telephone calls, please.

Current salary and years of experience will determine the appropriate grade and salary levels from the GS-12 ($42,003 - $54,601) to GS-15 ($69,427 - $90,252). This position is open until May 6, 1994.

* * * * *

Legal Counsel Division, Federal Bureau Of Investigation (FBI)

The Office of Attorney Personnel Management, Department of Justice, is seeking attorney advisors, employment litigation attorneys, and litigation support attorneys for the FBI's Legal Counsel Division. These non-agent attorney positions will be located at the FBI's Headquarters in Washington, D.C.

The **Attorney Advisors** will be primarily responsible for providing legal advice and assistance to FBI managers with respect to both investigative and administrative matters. Some of the issues will relate to intelligence and counterintelligence activities; forfeiture; ethics; appropriations; rules relating to administration of the personnel activities; and contracting and other similar activities. Responsibilities will also include the interpretation of constitutional and substantive/procedural federal criminal law issues and associated Department of Justice and internal FBI guidelines.

The **Employment Litigation Attorneys** will be primarily responsible for the defense of litigation before the Equal Employment Opportunity Commission and the Merit Systems Protection Board, including preparation, examination and cross examination of witnesses, pre and post hearing motions and appellate practice. Frequent travel will be required.

The **Litigation Support Attorneys** will be primarily responsible, in conjunction with the Department of Justice, for coordinating the defense of litigation brought against the FBI and its employees, including the preparation of requests for representation, litigation reports, motions, affidavits, and supervising and coordinating discovery and other similar activities.

Applicants must possess a J.D. degree from an accredited law school, be an active member of the bar in good standing (any jurisdiction) and have at least one year of post-J.D. experience for the GS-12 positions. Demonstrated experience, knowledge or interest in related areas is highly desirable. Applicants should submit a resume describing the applicant's legal education, experience and areas of interest to: Federal Bureau of Investigation, Attn: Attorney Selection Committee, Room 7358, 9th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20035. No telephone calls, please.

The likely grade/salary range for these positions is GS-12 ($42,003 - $54,601) to GS-15 ($69,427 - $90,252), with the appropriate level determined by experience and qualifications.

[NOTE: Selectees who are not currently employed by the Offices, Boards, and Divisions of the Department of Justice, will be required to submit to urinalysis to screen for illegal drug use prior to appointment. For the positions in the Public Integrity Section of the Criminal Division, managerial qualifications of the selectee must be approved by the Office of Personnel Management before appointment. For the positions at the FBI, all selectees will be subjected to a rigorous background investigation, including polygraph, in connection with the issuance of a required top secret security clearance.]

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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%	05-28-93	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%	03-04-94	4.22%
02-14-90	7.97%	06-28-91	6.39%	11-18-92	3.76%	04-01-94	4.51%

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 Attorney's 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	Charles R. Pitt
Alabama, S	Edward Vulevich, Jr.
Alaska	Robert C. Bundy
Arizona	Janet A. Napolitano
Arkansas, E	Paula J. 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 A. Black
Hawaii	Elliot Enoki
Idaho	Betty H. Richardson
Illinois, N	James B. Burns
Illinois, S	Walter C. Grace
Illinois, C	Frances C. Hulin
Indiana, N	Jon R. 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	Michael Troop
Louisiana, E	Robert J. Boitmann
Louisiana, M	L. J. Hymel
Louisiana, W	Michael D. Skinner
Maine	Jay P. McCloskey
Maryland	Lynne Ann Battaglia
Massachusetts	Donald K. Stern
Michigan, E	Saul A. Green
Michigan, W	Michael H. Dettmer
Minnesota	David Lee Lillehaug
Mississippi, N	Alfred E. Moreton, III
Mississippi, S	George L. Phillips
Missouri, E	Edward L. Dowd, Jr.
Missouri, W	Stephen L. Hill, Jr.

DISTRICT	U.S. ATTORNEY
Montana	Sherry S. Matteucci
Nebraska	Thomas J. Monaghan
Nevada	Kathryn E. 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	Janice McKenzie Cole
North Carolina, M	Walter C. Holton, Jr.
North Carolina, W	Mark T. Calloway
North Dakota	John T. Schneider
Ohio, N	Emily M. Sweeney
Ohio, S	Edmund A. Sargus, Jr.
Oklahoma, N	Stephen C. Lewis
Oklahoma, E	John W. Raley, Jr.
Oklahoma, W	Vicki Miles-LaGrange
Oregon	Kristine Olson Rogers
Pennsylvania, E	Michael R. Stiles
Pennsylvania, M	David M. Barasch
Pennsylvania, W	Frederick W. Thieman
Puerto Rico	Guillermo Gil
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. Tetzlaff
Virgin Islands	Hugh Precott 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 A. Betts
Wisconsin, E	Thomas P. Schneider
Wisconsin, W	Peggy Ann Lautenschlager
Wyoming	David D. Freudenthal
North Mariana Islands	Frederick Black

* * * * *

EXHIBIT
A

SUMMARY OF PROPOSED ASYLUM REFORM REGULATIONS

Comprehensive new regulations have been proposed that will reform the political asylum system, as directed by President Clinton in July 1993. The centerpiece of the proposed regulations is to grant protection to legitimate refugees quickly and to refer claims that cannot be granted to an Immigration Judge (IJ). If the Immigration Judge does not grant the claim, and no other relief is appropriate, the hearing will result in an exclusion or deportation order.

The proposed system, coupled with substantial additional resources in FY 94 and requested in FY 95, will reduce application processing times from an average 18-24 months to six months or less. It will deter non-meritorious applications by reviewing all cases and deciding them quickly. The proposal was developed through extensive consultation within the Administration, among key congressional offices, and with a representative range of non-governmental immigration organizations. The essential elements are as follows:

Establishes a Streamlined, Timely Asylum System. Currently, an alien may pursue his asylum application before the INS Asylum Officer Corps (AOC) until receiving a decision, but if denied, he may restart the whole process before an IJ during the removal proceedings. This lack of integration contributes to duplication of effort, increasing backlog of cases and delays in reaching final decisions. Affirmative asylum processing - including INS processing and de novo adjudication by an IJ - now takes a minimum of 18 to 24 months. Under reform, INS and IJ procedures are expected to be completed in 180 days or less for all newly filed applications. The proposed regulations streamline the process by:

- Granting asylum and work authorization within 60 days to meritorious cases and referring cases that cannot be granted to IJs;
- Eliminating the preparation of detailed, time-consuming denials by asylum officers in cases where they do not grant asylum to applicants who have no legal immigration status. Instead, asylum applications from these individuals will be referred automatically, and mandatorily, to IJs for adjudication as part of exclusion or deportation proceedings;
- Giving asylum officers discretion in conducting personal interviews. Certain cases lacking any merit will not be interviewed;
- Eliminating the requirement that an asylum officer send the applicant a Notice of Intent to Deny (NOID), thereby eliminating the 30 day rebuttal period for challenges to the NOID;
- Requiring the asylum officer, in cases where he has not granted asylum and the applicant lacks lawful status, to refer the application to an IJ at the same time the applicant is served with the charging document that initiates removal proceedings;

- o Eliminating the need in virtually all cases for asylum officers to determine whether "withholding of deportation" is an appropriate benefit after the denial of an asylum application. Under the proposed rule, asylum officers, in most cases, will not need to reach this issue because they will not be issuing asylum denials in exclusion or deportation cases. IJs will continue to determine whether withholding of deportation is appropriate in those cases;

- o Specifying that information contained in an asylum application may be used as a basis for removal proceedings before an IJ against otherwise deportable aliens;

- o Authorizing asylum officers and IJs to deny otherwise approvable claims on the ground that the applicant can be deported or returned to a country in which the alien would not face harm or persecution and would have access to full and fair procedures for determining the asylum claim in that country, in accordance with appropriate international agreements;

- o Discouraging applicants from filing claims before IJs that differ from the claims they filed before asylum officers by requiring that the original asylum application be forwarded to the IJ at the time the case is referred by the asylum officer.

Reduces Incentives to File for Asylum Solely to Obtain Work Authorization. Currently, an asylum applicant may apply for an Employment Authorization Document (EAD) at the time of filing. INS must grant work authorization if the asylum application is not frivolous or has not been adjudicated within 90 days of filing. Our analysis shows that many applicants are filing claims solely to obtain an EAD. Such filings increase both the backlog of cases to be adjudicated and the time before deserving applicants are granted asylum. The proposed regulations provide that work authorization will not be granted unless the original asylum application has been granted or is not decided within 180 days. This is a 90-day increase over the current waiting period for an interim EAD. The reforms place the burden upon INS and the IJs to adjudicate claims promptly within the 180-day period, since, by doing so, the need to adjudicate work authorization separately is avoided. Well-founded asylum applications are anticipated to be granted within 60 days of filing and employment authorized immediately for those applicants. An applicant who has been convicted of an aggravated felony will not be granted employment authorization. An applicant who previously obtained work authorization, but whose application for asylum or withholding of deportation is denied because of the conviction, shall have his work authorization terminated automatically as of the date of the denial.

Improves Communication With Department of State on Country Conditions. Asylum officers and the IJs will have access electronically to State Department information on detailed country conditions to assist them in making asylum decisions. INS and the IJs also may request specific information from the State Department on individual cases or specific country conditions. The State Department may, in its discretion, provide information available to it concerning individual cases. Under the proposed regulations, INS will not be required to wait 60 days, as now mandated, for the Department of State's discretionary advisory opinion before issuing a decision on each asylum application.

Immigration and Naturalization Service

Fact Sheet

ASYLUM REFORM: PROPOSED REGULATIONS

Background.

The President has directed the reform of the asylum system.

The United States is faced with a growing number of aliens already in the United States requesting asylum. In 1991, there were 56,000 applications. In 1993, asylum applications increased to 150,000.

The existing system and resources for adjudicating asylum claims cannot keep pace with incoming applications and does not permit providing protection for legitimate refugees nor removal from the United States of those persons whose claims fail.

Presently, cases are adjudicated annually. The current backlog is about 370,000 cases.

Abuses of the existing system also cause delays in the approval of meritorious claims. Many applications are motivated primarily by the hope of obtaining immediate work authorization while the case is processed (currently averaging between 18 to 24 months) or during its pendency in the backlog.

The Immigration and Naturalization Service (INS) is proposing new regulations in the processing of asylum cases to expedite approval of meritorious claims and deter abuse.

Proposed Actions.

The proposed reforms call for a system of "grant-refer":

- o Grant meritorious claims in approximately 60 days from filing.
- o Withhold work authorization until meritorious claims are granted, or not longer than 180 days.
- o Refer cases not approved to Immigration Judges (IJs) for exclusion or deportation proceedings when asylum claim fails before the IJ.
- o Prosecute preparers of "boilerplate" applications.
- o Reduce the overall processing time for final decisions to 180 days.
- o Set a fee of $130 for filing asylum applications.

Resources.

INS is doubling the Asylum Officer Corps from 150 to 334 by the end of 1994, with the new officers being fully operational in early 1995. Additional IJs and other staff will be added to the Executive Office for Immigration Review (EOIR). These measures will permit INS to become current with incoming applications and then to handle backlogged cases.

March 29, 1994

Requires A Filing Fee for Asylum and Initial Work Authorization Applications to Alleviate Increasing Costs. The proposed regulations institute a fee of $130 for filing an asylum application. The proposed fee for initial applications for an EAD is $60. Consistent with fees for non-asylum applications, these filing fees will be waived if the applicant is able to demonstrate that he is unable to pay. The estimated cost of adjudicating each asylum application is $615. INS has avoided charging fees for asylum in the past by funding the program through a surcharge assessed on other immigration benefits. Funds collected through this surcharge are no longer sufficient to cover the asylum program and will be supplemented with funds collected through the fee.

Reduces Paperwork. The proposed regulations reduce asylum application paperwork in two primary ways. First, the Biographical Information Form (Form G-325A) is eliminated because the main asylum application (Form I-589) will be redesigned to request necessary information that is now sought in separate Form G-325A. Second, an applicant must submit only three, not the currently required four, copies of the asylum application, and any supporting material.

March 29, 1994

EXHIBIT B

Office of the Attorney General
Washington, D. C. 20530

March 25, 1994

MEMORANDUM FOR UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

SUBJECT: ENFORCEMENT OF THE INDIAN GAMING REGULATORY ACT

A number of United States Attorneys have inquired about the Department's current policy towards illegal gaming in the Indian country. Because of the sensitivity of the issue and because there have been recent significant developments, I think that it is appropriate that I address this subject.

In dealing with Indian tribes we must always be mindful of two components of federal-tribal relations. One is the government-to-government relationship we maintain with these quasi-sovereign entities, and the other is the responsibility the federal government has to the tribes for their well-being and protection. It is against this background that Congress enacted the Indian Gaming Regulatory Act (IGRA) in 1988. The Act provides a complex system of regulation and oversight that is designed to allow tribal governments to raise needed revenue and to shield those operations from criminal infiltration.

I turn now to the truly sensitive issue of what should be done about illegal gaming conducted by tribal authorities. When the IGRA was enacted, Congress, recognizing that neither the tribes nor the federal government had the expertise to regulate more sophisticated forms of gaming, provided that Class III games should be conducted by the tribes pursuant to a state-tribal compact. It further provided that a tribe could sue a state to compel it to negotiate a compact in good faith. This aspect of the act has recently been put into question by the Eleventh Circuit opinion in Seminole Tribe v. State of Florida, Dkt. Nos. 92-4652, 92-6244.

Although a number of states and tribes have successfully concluded compacts, many tribes are operating casinos or video gaming machines without a compact, in violation of the IGRA, 18 U.S.C. 1166(a), and the Johnson Gambling Devices Act, 15 U.S.C. 1175, as well as the Organized Crime Control Act, 18 U.S.C. 1955. I appreciate that the road to agreement between the states and the tribes has not always been a smooth one,

however, at this writing, I believe that most of the legal uncertainty concerning Class III gaming without a compact has been exhausted. The overall constitutionality of the Act has been upheld, the classifying regulations of the NIGC have been sustained, and arguably ambiguous terms of the Act have been clarified by litigation. Of particular importance is the recent decision of the Court of Appeals for the District of Columbia Circuit in Cabazon Band of Mission Indians v. NIGC, Dkt. No. 93-5255, decided January 28, 1994, which held that electronic pull-tab devices are Class III games and therefore require a compact to be legally played in Indian country. In view of this decision, I encourage each of you to review the status of gaming that may be operating in your district. If you find any illegal gaming, the peaceful termination of those illegal operations should be negotiated with the Tribes within a brief but reasonable time.

While uniformity of enforcement is desirable, we recognize that conditions vary from state to state, district to district and reservation to reservation. In determining when to act and what action to take, due consideration should be given to the provisions of state gaming law, the history and status of tribal-state negotiations -- in particular whether there is currently or has been good faith negotiating by both parties, the relationship of your office to tribal and state authorities, and other factors of importance in your community.

The tribes and their members have shown themselves to be law abiding citizens and their compliance is anticipated. Each of you should be assured that your judgment on whether and how to proceed will be respected and your efforts will be supported by all the resources available to us.

In view of the sensitive nature of these matters, I would appreciate your notifying me in advance with an Urgent Report of significant enforcement action.

Guideline Sentencing Update

FEDERAL JUDICIAL CENTER

EXHIBIT C

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.

VOLUME 6 • NUMBER 10 • MARCH 18, 1994

Departures

MITIGATING CIRCUMSTANCES

U.S. v. Tsosie, No. 93-2145 (10th Cir. Jan. 14, 1994) (Godbold, Sr. J.) (Remanded: Downward departure is permissible for voluntary manslaughter defendant where the victim was having an affair with defendant's wife and died after a fight with defendant. First, the district court properly found, under the totality of the circumstances, that defendant's behavior was an aberration—he had "a long history of continuous employment with the Navajo Tribe, . . . a reputation for being economically supportive of his family, [and he] has not been engaged in any prior criminal activity." Second, the victim's conduct "contributed significantly to provoking Tsosie's offense behavior," having "consisted not merely of having an affair with Tsosie's wife but also of being in a vehicle with Tsosie's wife the day after she took her children away and gave a false excuse about her whereabouts. . . . Further, in the ensuing fight, [the victim] took off his belt and hit Tsosie on the nose with it and actively participated in the affray" that led to his death. Thus, it was proper to consider under § 5K2.10(a) that "the victim was of a greater physical size and strength than the defendant," and the facts distinguish this case from *U.S. v. Desormeaux*, 952 F.2d 182 (8th Cir. 1991), and *U.S. v. Shortt*, 919 F.2d 1325 (8th Cir. 1990). Finally, when defendant saw the victim was seriously injured he went for help, then returned and tried to stop the bleeding. "Rendering aid to a victim is a factor that is not considered by the Guidelines." Remand is required, however, because the district court did not adequately explain the departure from the 41–51-month range to a four-month term in a halfway house.).
See *Outline* at VI.C.1.c and g, 3, and 4.a.

U.S. v. Marcello, 13 F.3d 752 (3d Cir. 1994) (Affirmed: Defendant convicted of structuring bank deposits in order to evade reporting requirements was not eligible for downward departure based on aberrant behavior. "Aberrant behavior must involve a lack of planning; it must be a single act that is spontaneous and thoughtless, and no consideration is given to whether the defendant is a first-time offender. . . . The district court correctly applied this standard and found that some pre-planning was required to deposit $9,000.00 each day over a one-week period of time.").
See *Outline* at VI.C.1.c.

AGGRAVATING CIRCUMSTANCES

U.S. v. Torres-Lopez, 13 F.3d 1308 (9th Cir. 1994) (Remanded: Upward departure for high-speed car chase while transporting illegal aliens was improper. Defendant's flight "was only a few minutes and less than five miles long, . . . was not unusually fast or reckless," and was "within the boundaries of 3C1.2." Also, defendant did not treat the alien passengers in a dangerous or inhumane manner so as to warrant departure under § 2L1.1, comment. (n.8). "In sum, there is nothing here, aside from the bare presence of illegal aliens, to suggest that Torres-Lopez's flight from authority was in any way extraordinary.").
See *Outline* at VI.B.1.b and j.

Offense Conduct

OTHER DEFENDANTS' DRUG QUANTITIES

U.S. v. Carreon, 11 F.3d 1225 (5th Cir. 1994) (Remanded: "We hold today that relevant conduct as defined in § 1B1.3(a)(1)(B) is prospective only, and consequently relevant conduct under § 1B1.3(a)(1)(B) cannot include conduct occurring before the defendant joins a conspiracy." It was therefore improper to count drug quantities trafficked by the conspiracy before defendant joined it. On remand the district court must determine: "1) when Carreon joined the conspiracy . . . , 2) what drug quantities were within the scope of Carreon's conspiratorial agreement . . . , and 3) of these drug quantities, which were reasonably foreseeable—prospectively only—by Carreon." Defendant's knowledge of the conspiracy's prior conduct may be used, but only as "evidence of what Carreon agreed to and what he reasonably foresaw when he joined the conspiracy.").
See *Outline* at II.A.2.

POSSESSION OF WEAPON BY DRUG DEFENDANT

U.S. v. Zimmer, 14 F.3d 286 (6th Cir. 1994) (Remanded: It was error to give drug defendant § 2D1.1(d)(1) enhancement for rifles found in his home. Defendant presented "unrefuted testimony that these rifles were for hunting and were unconnected with the marijuana. . . . The District Court failed to consider that the defendant was charged with a marijuana manufacturing operation. There are no allegations that Zimmer was actively selling the substance from his home. We do not have a situation in which 'drug dealing' was occurring on the premises, during which a weapon might be utilized. None of the weapons were found anywhere near the marijuana." Further, one rifle was disassembled and inoperable, supporting defendant's claim that he was repairing it for a friend, and there was no ammunition in the house for an unloaded second rifle, supporting defendant's assertion that the rifle did not belong to him. "Given the nature of the operation (manufacturing, not dealing), the setting (rural), and the location of the contraband (in basement) away from the weapons, 'it is clearly improbable that the weapon(s) [were] connected with the offense.' U.S.S.G. § 2D1.1, comment.(n.3).").
See *Outline* at II.C.1 and 3.

DRUG QUANTITY

U.S. v. Zimmer, 14 F.3d 286 (6th Cir. 1994) (Remanded: In determining relevant conduct, the district court could not assume defendant produced a certain number of plants in the past based only on defendant's admission that he had grown

marijuana before. "The court's determination that the defendant grew an additional 200 plants is not supported anywhere in the record. The District Court may not 'create' a quantity when there is absolutely no evidence to support that amount. An estimate can suffice, but 'a preponderance of the evidence must support the estimate.' . . . The information and equipment seized in the case clearly demonstrates that the 'sophisticated' indoor growing operation was but a few months old. Thus, the size of defendant's operation at the time of arrest cannot be manipulated to infer a certain amount of past 'success' (25 plants per year) when there exists not a scintilla of evidence to support such a finding. That the defendant grew marijuana during the years prior to his arrest is not in question; he admitted as much. The amount attributed to him by the District Court, however, was created from whole cloth. It is improper . . . to simply 'guess.' The relevant conduct enhancement is therefore reversed and the District Court is directed to resentence defendant based on the actual amount of marijuana seized.").
See *Outline* at II.B.4.d and generally at II.A.1.

Adjustments

Official Victim

U.S. v. Ortiz-Granados, 12 F.3d 39 (5th Cir. 1994) (Affirmed: Enhancement under § 3A1.2(b) for assault on law enforcement officer by a coconspirator was properly given to defendant convicted of drug offenses. Although Application Note 1 to § 3A1.2 indicates there must be a specified "victim" of the offense of conviction, Note 1 should not be applied to subsection (b) because it conflicts with the guideline and accompanying Note 5, both of which were added later.). *Accord U.S. v. Powell*, 6 F.3d 611, 613–14 (9th Cir. 1993) (same, for defendant who assaulted officer during unlawful possession of weapon offense). *See also U.S. v. Gonzales*, 996 F.2d 88, 93 (5th Cir. 1993) (affirmed enhancement where codefendant shot officer).
See *Outline* at I.F and III.A.2.

Obstruction of Justice

U.S. v. Cotts, 14 F.3d 300 (7th Cir. 1994) (Affirmed: Section 3C1.1 enhancement was properly given to defendant who planned to murder a nonexistent informant that undercover agents had blamed for the failure of a drug deal. "The obstruction enhancement is applicable not just to defendants who have actually obstructed justice but also to those who have attempted to do so, . . . and the district court explicitly based [defendant's] enhancement on his attempt, not his success, in obstructing justice. That [defendant] and his coplotters ultimately could not have murdered the fictitious informant does not diminish the sincerity of any efforts to accomplish that end. Futile attempts because of factual impossibility are attempts still the same.").
See *Outline* at III.C.1.

U.S. v. Washington, 12 F.3d 1128 (D.C. Cir. 1994) (Affirmed: Section 3C1.2 enhancement was properly given to defendant who led police on a car chase in an urban area. "In his attempt to escape the police, [defendant] drove in a fast and reckless manner through a series of neighborhood alleys and ended up flipping his car. It was not clearly erroneous for the district court to find that this behavior constituted reckless endangerment during flight.").
See *Outline* at III.C.3.

Violation of Probation

Revocation for Drug Possession

U.S. v. Penn, No. 93-5190 (4th Cir. Feb. 17, 1994) (Ervin, C.J.) (Remanded: Defendant's probation was revoked for drug possession under 18 U.S.C. § 3565(a), subjecting him to imprisonment for "not less than one-third of the original sentence." The district court construed "original sentence" to mean defendant's three-year probation term rather than his 6–12-month guideline range, and sentenced him to 12 months. The appellate court remanded, holding "that the most reasonable interpretation of § 3565(a) is that a person found to have committed a narcotics related violation is to be resentenced to a term of incarceration that is at least one-third but does not exceed the maximum prison term to which the person could have been sentenced" under the Guidelines. Therefore, although defendant could still be sentenced to 12 months, the minimum term required is only 4 months.).
See *Outline* at VII.A.2, summary of *Alese* in 6 *GSU* #5.

Revocation of Probation

U.S. v. Forrester, 14 F.3d 34 (9th Cir. 1994) (Affirmed: Defendant, originally subject to 33–41-month guideline range but given a five-year term of probation after departure, was properly sentenced after revocation to 33 months instead of the 3–9 months called for by § 7B1.4, p.s. "[T]he policy statements of Chapter 7 are not binding, [although] Forrester is correct in arguing that the sentencing court must consider them. . . . Here, the district court considered Chapter 7. In footnote 1 of its order revoking probation it stated that 'even if [it] sentenced Defendant under Chapter 7, the court would not be bound by the 3–9 month range suggested by Defendant. Commentary note 4 to § 7B1.4 provides that, "[w]here the original sentence was the result of a downward departure (*e.g.*, as a reward for substantial assistance) . . . , an upward departure may be warranted.'" Having considered the policy statements of Chapter 7, the court was free to reject the suggested sentence range of 3 to 9 months.").
See *Outline* at VII.

Criminal History

Invalid Prior Convictions

U.S. v. Isaacs, No. 92-2068 (1st Cir. Jan. 25, 1994) (Oakes, Sr. J.) (Remanded: The Guidelines, in § 4A1.2, comment. (n.6 & backg'd) (Nov. 1990), do not provide a sentencing court with independent authority to review the validity of a prior conviction. The Constitution may require such review, but "only where the prior conviction is 'presumptively void.' . . . [A] prior conviction is 'presumptively void' if a constitutional violation can be found on the face of the prior conviction, without further factual investigation. . . . Under limited circumstances, however, a conviction may be 'presumptively void' even if a constitutional violation cannot be found on the face of the prior conviction. . . . Where an offender challenges the validity of a prior conviction on 'structural' grounds"—such as deprivation of certain trial rights or judicial bias—"a district court should entertain the challenge whether or not the error appears on the face of the prior conviction." Here, defendant's challenge should not have been heard because there was no facial invalidity and he did not allege a "structural error" in the prior conviction.) (replacing opinion originally issued June 22, 1993, and reported in 5 *GSU* #15).
See *Outline* at IV.A.3, summary of *McGlocklin* in 6 *GSU* #3.

U. S. Department of Justice

Executive Office for United States Attorneys

Office of Legal Education

Nomination Form

EXHIBIT D

Legal Education Institute
600 E Street, NW
Room 7600
Washington, D.C. 20530

Telephone: (202) 616-6700

FAX: (202) 616-6476
(202) 616-6477

LEI COURSE CONTACT:

Return Mailing Address: Must be typed and fit into the box below

	LEI USE ONLY	
	ACCEPTED	NOT SELECTED

COURSE

Course Name	Course Date(s)	Course Location

NOMINEE

Name	Title

Office, Agency, or Department	Phone Number

QUESTIONNAIRE

1. Has the nominee applied for this course in the past and not been selected?

   Yes No (please circle) If yes, how many times?

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?

5. What training/prerequisite courses has the nominee had in this area?

6. If necessary, please indicate any special considerations:

SUPERVISOR

Name	Title

Phone Number	Number of Nominees Submitted	Order of Preference of this Nominee