U.S. Department of Justice
Executive Office for United States Attorneys

United States Attorneys' Bulletin

Published by:
Executive Office for United States Attorneys, Washington, D.C.
Anthony C. Moscato, Director

Editor-in-Chief:	*Judith A. Beeman*	*(202) 514-4633*
Editor:	*Audrey J. Williams*	*(202) 514-4633*

VOLUME 42, NO. 6 **FORTY FIRST YEAR** **JUNE 15, 1994**

TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF CONTENTS

Please send name or address change to:

The Editor, United States Attorneys' Bulletin
Department of Justice, Room 1627
10th and Constitution Avenue, N.W., Washington, D.C. 20530
Telephone: (202) 514-4633 - Fax: (202) 524-5850

COMMENDATIONS

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

J. David Bennett (Louisiana, Eastern District), by John E. Carrell, Jr., Special Agent in Charge, U.S. Secret Service, New Orleans, for his excellent presentation to the Special Agents and supervisors of the New Orleans Field Office concerning bank fraud and its various components.

Constance M. Bowden (Pennsylvania, Western District), by Deval L. Patrick, Assistant Attorney General, Civil Rights Division, Department of Justice, for her successful prosecution of a cross burning case, and for her significant contribution to enforcing the criminal civil rights laws of the United States.

Patrick Corbett (Michigan, Eastern District), by Richard J. Hoglund, Special Agent in Charge, U.S. Customs Service, Detroit, for his professionalism and legal skill in bringing about a significant criminal/civil resolution of a long-standing Customs fraud case.

Frank DiGiammarino and ***Thomas A. Withers*** (Georgia, Southern District), by Ben C. DeVane, Resident Agent in Charge, U.S. Customs Service, Savannah, for their outstanding prosecutive efforts in a Customs fraud case involving two corporations and two corporate officers, and payment of over $708,000 in duties and penalties.

Joan Evans (Virginia, Eastern District), by John C. Poerstel, Supervisory Special Agent, FBI, Richmond, for her valuable assistance and cooperative efforts in halting a drug ring responsible for providing heroin and crack to the Highland Park community of Richmond.

Elizabeth W. Fleming (Michigan, Eastern District), by Michael H. Traison, Esq., on behalf of the Federal Bar Association, Detroit Chapter, Bankruptcy Section, for her significant contribution to the success of the first Bankruptcy Trial Advocacy Workshop held recently in Detroit.

Joseph Florio (Texas, Western District), by Ronald K. Noble, Assistant Secretary, Enforcement, Department of the Treasury, Washington, D.C., for his valuable assistance to the Departments of the Treasury and Justice in the development of asset forfeiture legislation.

David M. Gaouette (District of Colorado), by Philip W. Perry, Special Agent in Charge, Drug Enforcement Administration (DEA), Rocky Mountain Division, Englewood, for his outstanding legal skill in numerous investigations conducted by DEA, and for developing a strong working relationship with the Rocky Mountain Division.

Patrick C. Harris (Arkansas, Eastern District), by Robert N. Havens, Resident Agent in Charge, Drug Enforcement Administration, Little Rock, for his successful efforts in prosecuting a complex narcotics case, resulting in guilty pleas of six defendants thus far with additional indictments anticipated.

Carlos G. Hermosillo and ***Stanley M. Serwatka*** (Texas, Western District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their contributions to the successful prosecution of an Immigration and Naturalization Service Inspector for accepting payoffs from Mexican drug traffickers in exchange for allowing illegal drugs to be brought into El Paso.

Michael A. Hirst (California, Eastern District), by Raul F. Barbara, Associate Chief, General Litigation Division, U.S. Air Force, Washington, D.C., for his excellent representation and litigation strategy in bringing a complex employment discrimination case to a successful conclusion.

Charles Hyder (District of Arizona), by David S. Wood, Special Agent in Charge, Drug Enforcement Administration, Phoenix, for his outstanding efforts in responding to a late evening emergency call for assistance concerning the preparation and execution of a search warrant for drug contraband, which yielded ledgers indicating drug transfers on a weekly basis of $140,000 to $640,000. ***Kathy Kolarik*** provided valuable secretarial assistance and clerical support.

Kyra Jenner (District of Colorado), by Joseph D. Martinolich, Jr., Special Agent in Charge, FBI, Denver, for her professionalism and legal skill in the management of an identity and detention hearing for an individual with a long criminal history who was arrested for bank fraud based on a warrant issued in Michigan.

James W. Jennings, Jr. (Texas, Western District), by Logan A. Slaughter, District Counsel, Department of Veterans Affairs, Houston, for his excellent representation in a sensitive tort-medical malpractice case, and for his legal skill in obtaining a settlement after extensive discovery and legal briefing.

Jane Jolly (North Carolina, Eastern District), by Joseph V. Brown, Chief of Police, Rocky Mount Police Department, for her outstanding assistance, cooperative efforts, and organizational skills in the investigation of a large drug operation encompassing eastern North Carolina and extending outside the continental United States.

Peter Jongbloed and ***Thomas Murphy*** (District of Connecticut), by Carlo A. Boccia, Special Agent in Charge, Drug Enforcement Administration, Boston, for their successful prosecution of a drug trafficker who was the principal target in a plot to execute an undercover Statewide Narcotics Task Force officer and a cooperating individual.

Thomas A. Karol (Ohio, Northern District), by John J. Adair, Inspector General, Resolution Trust Corporation, Washington, D.C., for his outstanding prosecutive efforts in obtaining guilty pleas of two individuals for making false statements to a savings and loan association in connection with their boat brokerage services.

Nancy M. Koenig (Texas, Northern District), by Lt. Col. Hervey A. Hotchkiss, Chief, Tort Claims and Litigation Division, Air Force Legal Services Agency, Arlington, Virginia, for her outstanding efforts in bringing a medical malpractice case to a successful conclusion.

Elizabeth J. Larin (Michigan, Eastern District), by John P. Mayer, Court Administrator, U.S. District Court, Detroit, for her excellent representation of the government's interests in a civil suit filed against the Clerk of the Court.

Stephen Learned (Virginia, Eastern District), by Cecil W. Underwood, Assistant General Counsel, Professional Liability Section, and Robert W. Russell, Senior Counsel, Criminal Unit, Federal Deposit Insurance Corporation, Washington, D.C., for their valuable contribution to the success of the Third Annual National Criminal Coordinator Seminar held recently in Dallas.

David T. Maguire (Virginia, Eastern District), by James E. Childs, Special Agent in Charge, Defense Criminal Investigative Service, Department of Defense (DOD), Arlington, for his successful prosecution of a complex procurement fraud case, and for his assistance in protecting the integrity of DOD's procurement system.

Steve Matheny (North Carolina, Eastern District), by Joseph S. Tanner, Resource Manager, Army Corps of Engineers, Wilmington District, Wake Forest, for his valuable assistance in obtaining the conviction of a repeat violator of dumping on government property, and for his contribution to the protection of the citizens and resources of Falls Lake.

James A. Metcalfe and ***Kent Porter*** (Virginia, Eastern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their successful efforts in obtaining the guilty plea of a former U.S. Navy chief petty officer who defrauded the Military Sealift Command Atlantic of more than $3 million through invoices for services and supplies for decommissioned U.S. Navy ships.

Nina Pala (District of Delaware), by James P. Perry, Assistant General Counsel, Natural Resources Division, Department of Agriculture, Washington, D.C., for her valuable assistance and cooperative efforts in an emergency injunction hearing involving complex jurisdictional issues.

David Portelli (Michigan, Eastern District), by Michael Bertha, Deputy Chief of Police, Garden City Police Department, for his outstanding legal support in successfully completing the forfeiture of a residence being used for narcotics trafficking.

Debra J. Prillaman (Virginia, Eastern District), by R. F. McCoy, Resident Agent in Charge, Drug Enforcement Administration, Cincinnati, for her professionalism and legal skill in defending a Federal Tort Claims Act case alleging false arrest and assault and battery arising out of an incident that occurred at the Airport.

Rudolph A. Renfer, Jr. (North Carolina, Eastern District), by Walter C. Holton, Jr., United States Attorney for the Middle District of North Carolina, Greensboro, for his outstanding prosecutive efforts in bringing about the settlement of a Federal Tort Claims Act case in a manner highly advantageous to the United States.

Mark A. Rush (Pennsylvania, Western District), by Masayuki Kinjo, Prosecutor in Charge of Foreign Affairs, NAHA District Public Prosecutors' Office, Okinawa, for his valuable assistance and support during a visit to the United States to conduct depositions in a criminal case, and for his contribution to the successful outcome of the case.

Paul D. Silver (New York, Northern District), was presented a Certificate of Appreciation by Joseph J. Yarrish, Regional Inspector General for Investigations, Department of Agriculture, for his successful prosecution of an attorney for extortion and fraud regarding the Farmers Home Administration Rural Rental Housing Program.

H. David Sledd (Kentucky, Eastern District), by Clarence A. Goode, Chief, Mine Safety and Health Administration, Department of Labor, Arlington, Virginia, for his outstanding assistance and guidance in the past several years in the prosecution of widespread respirable coal dust sampling fraud, one of the major life-threatening issues facing the lives of miners today.

Charles Smith and ***David Blackorby*** (Arkansas, Western District), by Steve Johnson, Fire Marshall, Texarkana, Arkansas Fire Department, for their professionalism and legal skill in bringing an arson case to a successful conclusion.

Paul Solon (California, Northern District), by Clifton M. Hasegawa, Legal Counsel, Defense Commercial Communications Office, Defense Information Systems Agency, Scott Air Force Base, Illinois, for his outstanding representation and successful resolution of a case critical to the future of electronic contracting for the Federal Government.

Stephen A. West (South Carolina, Eastern District), by D. Michael Royston, Chief of Police, Elizabethtown, for his valuable assistance in the removal of a serious drug and alcohol problem existing in the community, and for his contribution to a better and safer place for the Elizabethtown residents.

Scott L. Wilkinson (North Carolina, Eastern District), was presented a plaque by Mike Mitchell, Regional Inspector General, Resolution Trust Corporation, Atlanta, for his successful prosecution of a complex financial institution fraud case which resulted in the conviction of four individuals and one corporate defendant.

Samuel A. Yannucci (Ohio, Northern District), by G. L. Ingram, Regional Director, Federal Bureau of Prisons, Annapolis Junction, Maryland, for his sensitivity and responsiveness in the prompt resolution of a conflict involving the separation needs of a prisoner, and for his assistance in managing the distribution of the inmate population.

SPECIAL COMMENDATION FOR THE DISTRICT OF COLORADO

Stephen D. Taylor, Assistant United States Attorney for the District of Colorado, was commended by Daniel D. Campbell, General Counsel, National Transportation Safety Board (NTSB), Washington, D.C., for his excellent representation and outstanding legal skill in a litigation stemming from the United Airlines Flight 585 accident on March 3, 1991, at Colorado Springs. One of the claimants sought from NTSB a copy of the cockpit voice recorder (CVR) tape pursuant to the Freedom of Information Act. This is the first suit challenging the NTSB's denial of access to a CVR tape under the 1990 amendments to the Independent Safety Board Act which imposed additional limitations on the disclosure of CVR information. 49 U.S.C. App. §1905. Based on Mr. Taylor's well-researched, thorough Motion for Summary Judgment, the court agreed with the position that the NTSB must deny a request to make the CVR tape available to the public and that the NTSB remains free to provide participants in its investigations with access to the CVR tape. Mr. Campbell advised that this case is especially important to NTSB because the CVR tape is a vital investigative tool, and public release of the tape could jeopardize the future availability of oral communications among crewmembers for purposes of accident inquiries.

* * * * *

SPECIAL COMMENDATION FOR THE NORTHERN DISTRICT OF NEW YORK

Donald T. Kinsella and ***David R. Homer, Assistant United States Attorneys for the Northern District of New York,*** and ***Criminal Paralegal Specialist Linda A. Gagnon*** were commended by Gary L. Hale, Officer in Charge, Immigration and Naturalization Service, Albany, for their outstanding contributions to the success of "Operation Green Card," a joint investigation undertaken by the FBI, DEA, INS, and the New York State Police into allegations of narcotics dealing, bribery and immigration violations. The investigation concluded on or about November 30, 1993, with the indictment of 160 individuals and the seizure of large quantities of cocaine, heroin, weapons, vehicles and more than $2 million in cash. In addition, forty-six search warrants were executed in seven states. Mr. Hale advised that "Operation Green Card" is one of the more successful investigations of this type ever undertaken by the Immigration and Naturalization Service.

* * * * *

HONORS AND AWARDS

Southern District Of Alabama

Ginny S. Granade, Assistant United States Attorney for the Southern District of Alabama, was named a Fellow by the American College of Trial Lawyers. Ms. Granade is the first woman attorney in Alabama to achieve this honor. United States Attorney Edward J. Vulevich stated, "The selection of Ginny Granade. . .is a very high honor that reflects her dedication, ethical standards and hard work. This recognition speaks highly of Ginny's abilities and reflects the enthusiasm and practical application of the law that she has so very well demonstrated over the course of her years in this office."

* * * * *

Middle District Of Louisiana

Richard B. Launey, Assistant United States Attorney for the Middle District of Louisiana, was presented an Honorary Internal Revenue Service Special Agent Award by Thomas E. Grace, District Director, Internal Revenue Service, New Orleans, for his outstanding initiative and dedicated efforts in the successful prosecution of several high profile political figures charged with tax, conspiracy, and public trust violations, and for his significant contributions to the enforcement efforts of the Criminal Investigation Division of the Internal Revenue Service. Mr. Launey is the first Assistant United States Attorney in the Middle District of Louisiana to receive this award.

* * * * *

Western District Of Michigan

Brian K. Delaney, Assistant United States Attorney for the Western District of Michigan, was presented a Group Recognition Award by David A. Kessler, M.D., Public Health Service, Food and Drug Administration, Rockville, Maryland, "for exceptional performance, tenacity and leadership during the successful investigation and prosecution of firms and individuals involved in an international conspiracy to adulterate orange juice." Mr. Delaney was also commended by Ronald G. Chesemore, Associate Commissioner for Regulatory Affairs.

The main goal of the conspiracy was to achieve illegal profits through the substitution of orange juice concentrate solids in 100 percent orange juice with invert beet sugar, an inferior and significantly less expensive commodity. Between 1979 and 1991, Flavor Fresh Foods Corporation in Chicago, shipped adulterated, concentrated orange juice for manufacturing to Peninsular Products in Lansing, Michigan. Peninsular Products would reconstitute this concentrate and sell it to schools, grocery stores, convenience outlets, airlines, brokers and hospitals as 100 percent orange juice from concentrate. The adulterated concentrates from Flavor Fresh contained anywhere from 55 percent to 75 percent invert beet sugar. During the course of the conspiracy, Peninsular Products sold well over 40 million gallons of significantly adulterated orange juice to approximately twenty five states under its own Orchard Grove label and under various private labels including Bordens, Land O'Lakes, and McDonalds. This fraud amounted to a loss upon the consumer, as computed by a federal district judge, in excess of $45 million. It was also part of the conspiracy to illegally import and use an unlawful preservative in Peninsular Products' and Flavor Fresh's juices. The preservative was imported from Germany and later Switzerland into the United States, and fraudulently declared as a cleansing compound. The preservative contained an unapproved antibiotic known as natamycin and made its way into all juice produced by Peninsular Products between 1983 and 1991.

This case represented one of the largest and most complex fraud prosecutions ever prosecuted by the United States Attorney's office for the Western District of Michigan. Approximately three-quarters of a million documents were subpoenaed and reviewed in this matter. Over 100 interviews were conducted and over a year of grand jury time was expended in preparing this case for indictment. The case was further complicated by the wide ranging scope of the conspiracy, lasting over ten years and extending to five foreign countries and twenty-five states.

[NOTE: Please refer to the Civil Division section of this Bulletin, at p. 225 for a discussion of a similar case in the Western District of Kentucky.]

* * * * *

Southern District Of Illinois

Seven Assistant United States Attorneys for the Southern District of Illinois were presented awards by the Criminal Investigation Division of the Internal Revenue Service in East St. Louis for exceptional performance of duty in the prosecution of criminal cases. They are:

Thomas M. Daly - for his successful prosecution of a drug ringleader and forty other individuals on money laundering charges and trafficking 70,000 pounds of marihuana in Illinois and four other states. The case also led to the forfeiture of narcotics trafficking proceeds, which included $400,000 in cash, plus real estate and luxury automobiles.

Ralph M. Friederich - for his successful prosecution of four separate cases, resulting in the conviction and incarceration of over twenty-five criminal defendants. In one of the cases, one of the defendants faces no less than thirty years in federal confinement for marihuana trafficking, money laundering, and related offenses, and Federal agents seized over $600,000 in cash, and other assets.

Robert L. Garrison - for his successful prosecution of a cocaine distribution network centered in Alton, Illinois. Eleven defendants were convicted, including cocaine distributors from Los Angeles and New York City. During the investigation, police seized nine pounds of nearly pure cocaine, valued at approximately $1,000,000.

Randy G. Massey - for his successful prosecution of two separate cases. One of the cases involved a multi-state "crack" cocaine distribution network that distributed over twenty pounds of cocaine per month in southern Illinois alone. The defendants were convicted of narcotics trafficking, money laundering, and other offenses; all received lengthy federal prison terms; and police seized over $320,000 in narcotics proceeds during the investigation.

Kit R. Morrissey and ***Michael J. Quinley*** - for their successful prosecution of a cocaine and marihuana ring which was started with the proceeds of loot obtained in a multi-state burglary operation. The ring leader was convicted of conducting a continuing criminal enterprise and sentenced to thirty-five years in federal prison. Five other defendants were also convicted of various charges, including narcotics trafficking and filing false tax returns.

James L. Porter - for his successful prosecution of six major narcotics cases and one arson case. One of the cases involved a self-styled East St. Louis "street preacher," who operated a cocaine distribution network using a church as a front. Another case involved a one-time Cairo, Illinois minister, who was convicted of arson, embezzlement of federal funds, and filing false tax resturns. Mr. Porter was also cited for his prosecution of a 27-member cocaine trafficking network which resulted in a sentence in excess of forty-eight years for one member.

United States Attorney W. Charles Grace stated, "These awards are one indication of the close and successful partnership we have formed with the IRS. Working together, we will continue to pursue and eliminate major criminal enterprises throughout the Southern District of Illinois."

* * * * *

PERSONNEL

Executive Office For United States Attorneys

On May 27, 1994, ***Anthony C. Moscato*** was appointed by Attorney General Janet Reno to serve as Director of the Executive Office for Immigration Review. This office, with approximately 500 employees, is separate from the Immigration and Naturalization Service. Among its responsibilities, it supervises the operation of more than 100 immigration judges at twenty three field offices. Last year, they heard 142,000 cases including deportations, exclusions and bond hearings. A pending Administration proposal to expedite the adjudication of asylum claims and the cases of criminal aliens would add as many as one hundred new judges. Mr. Moscato has served as Director of the Executive Office for United States Attorneys since December, 1992.

* * * * *

Civil Rights Division

On May 25, 1994, ***James P. Turner, Deputy Assistant Attorney General for the Civil Rights Division,*** was honored at a farewell ceremony in the Great Hall of the Department of Justice. Mr. Turner has served in the Civil Rights Division since 1965 when he conducted a federal grand jury investigation concerning the civil rights march that was interrupted on the Edmund Pettus Bridge in Selma, Alabama. He also assisted in the state and federal prosecutions of Klansmen charged with the killing of Viola Liuzzo after the Selma-Montgomery march. Mr. Turner has supervised the implementation of the Voting Rights Act of 1965 since it became effective, and has represented the United States before the Supreme Court on several occasions, including two voting rights matters, one of which involved the election system in Mobile.

* * * * *

ATTORNEY GENERAL HIGHLIGHTS

Attorney General Continues Efforts To Pass The Crime Bill

On May 17, 1994, Attorney General Janet Reno testified before the Committee on Labor and Human Resources of the United States Senate concerning prevention programs in the crime bill. The Attorney General expressed the hope that in the near future the Conference Committee will reconcile the Senate and House crime bills and send the President the most comprehensive crime control bills in years.

Attorney General Reno stated that the cornerstone of the President's crime plan is his commitment to putting 100,000 more cops on the beat in American cities and towns over the next five years. The Department of Justice has received in excess of 2700 applications from communities around the country to help hire approximately 2,023 officers. The Department also recently announced the third and fourth round of grant awards. It was a very competitive process because so many jurisdictions across the country presented such a compelling need for more officers and such good plans for deploying them to work in partnership with their communities to prevent and reduce crime. Ms. Reno also discussed the need for swift and severe punishment for violent, chronic offenders, as well as certain and appropriate punishment for all who commit crimes. The pending crime bills provide many of the necessary elements of improved punishment--creation of a targeted "three strikes you're out" provision; helping the states to expand correctional and detention space necessary to insure that no violent offender is ever released early for lack of a prison or jail cell; reestablishment of a workable, constitutional death penalty for the most heinous crime; and fostering creative intermediate sanctions, such as boot camps. Ms. Reno highlighted some of the prevention programs in the crime bill--the President's Youth Employment Skills Program ("Y.E.S."); the Ounce of Prevention Programs; the Police Partnerships for Children Program; Drug Court Programs; and the Gang Resistance Education and Training Program ("G.R.E.A.T.").

The Attorney General specifically emphasized the importance of the Ounce of Prevention Programs, noting that the Administration strongly supports the creation of an Ounce of Prevention Council. One of the goals of this Administration in its anti-crime agenda is to eliminate the turf wars among the Federal agencies. A strong Ounce of Prevention Council will reduce duplication, waste and bureaucratic infighting by coordinating the various youth development and crime prevention programs in the bills. This Council is also essential to insure that money we spend on crime prevention is spent well. The Administration recommends that the President be authorized to designate the chair of a slightly reformulated cabinet-level Council. The membership of the Ounce of Prevention Council should include the Attorney General, the Secretaries of the Departments of Health and Human Services, Housing and Urban Development, Labor, Education, Agriculture, Interior, and the Director of the Office of National Drug Control Policy, and one or more other officials as the President may deem appropriate. The inter-departmental Council should be authorized to help maximize the impact of the crime bill's youth-oriented crime prevention initiatives through collaboration and consultation with other agencies and entities, coordinated planning, development of a computer-based catalog, technical assistance, and other program integration and grant simplification strategies.

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

* * * * *

National Missing Children's Day And Missing Children's Assistance Act Of 1984

On May 25, 1994, Attorney General Janet Reno marked the eleventh anniversary of National Missing Children's Day and the tenth anniversary of the Missing Children's Assistance Act of 1984 by calling for increased efforts to protect and assist innocent young victims. The Attorney General stated, "Our children have no vote and cannot speak for themselves. We must be their voice and be unwavering in our message that in America victimization of children simply will not be tolerated."

The Missing Children's Assistance Act of 1984 established the Missing and Exploited Children Program in the Office of Juvenile Justice and Delinquency Prevention (OJJDP) of the Department of Justice. The National Child Search Assistance Act of 1990 required law enforcement agencies to enter missing children information into the NCIC system without delay, and subsequent legislation made international parental abduction a federal crime. During the 1980s, all fifty states passed new legislation concerning the abduction or sexual exploitation of children, and at this time there are more than forty state missing children clearinghouses in operation. Major accomplishments that have been achieved under the Missing Children's Assistance Act include the following:

- The establishment of a national clearinghouse operated by the National Center for Missing and Exploited Children, which provides help to thousands of parents and law enforcement officers every year.

- The funding of extensive research, especially including the National Incidence Studies for Missing, Abducted, Runaway and Thrownaway Children in America, which was the first national study of these children.

- The training of 25,000 law enforcement officers in the investigation of child abuse.

- The provision of training and technical assistance to local multi-disciplinary teams that address their communities' needs through the Missing and Exploited Children Comprehensive Action Program.

- The training of more than 2,000 prosecutors in criminal justice issues affecting young people by the National Center for Prosecution of Child Abuse.

- The provision of training and technical assistance through the National Victim Center and other providers.

John J. Wilson, Acting Administrator of OJJDP, commented, "In the decade since the passage of the federal law to help missing and abused children, we have accomplished much, but we still have major tasks ahead."

* * * * *

International Heroin Conference, Washington, D.C.

On May 17-19, 1994, INTERPOL, in cooperation with the Drug Enforcement Administration (DEA), conducted an International Heroin Conference at the Department of State in Washington, D.C. to examine the ramifications of the increased importation of morphine/heroin by sea, overland, and by commercial air from source regions to the international market. The Conference was attended by Attorney General Janet Reno and approximately 120 senior drug enforcement officials from around the world.

In her opening remarks, Attorney General Janet Reno discussed the global nature of heroin, and stated, "We -- all of us -- have a problem, and that problem is heroin. It is an evil that traverses the globe and perniciously permeates every society that it touches. And for that reason, we -- the community of law enforcement -- must work together as never before."

Thomas Constantine, DEA Administrator, added, "The global threat posed by heroin has never been greater than in this century. Worldwide opium production has increased substantially in just the past five years. Aggressive new heroin traffickers, like the West Africans, have joined the traditional Asian, Turkish, Middle Eastern, and Mexican traffickers in the heroin trade. Colombians have also begun producing and trafficking heroin. The United States is seeing a resurgence in heroin consumption. Purity levels of heroin being sold on U.S. streets now average 37 percent, compared to under 5 percent a decade ago."

Mr. Constantine emphasized that the only way to break the power of the heroin trafficking organizations is by developing strong and effective partnerships worldwide. "We must build strategic alliances with our law enforcement partners. At the same time, while we all work together cooperatively to address the larger issue of international heroin trafficking, we must also focus on the domestic problems of our individual countries and take independent actions against the traffickers within our own borders."

* * * * *

DEPARTMENT OF JUSTICE HIGHLIGHTS

Pilot Police Grant Program

On May 12, 1994, President Clinton announced the final round of grants to law enforcement agencies around the country through a competitive program that will add a total of more than 2,000 police on our nation's streets. The grants, totaling about $74 million, will go to 142 jurisdictions to hire 1,001 officers and marks the conclusion of the Police Hiring Supplement Program (PHSP). A total of 250 PHSP grants are being distributed that will help pay for hiring or rehiring 2,023 additional law enforcement officers in all fifty states. Grants were awarded in three rounds and were funded with $150 million contained in the President's FY 1993 Supplemental Appropriation. The PHSP funds are divided evenly between jurisdictions serving populations of 150,000 or more and those that are smaller. A total of 45 large jurisdictions will receive $75 million, and the remaining $75 million will be shared among 205 smaller jurisdictions. Overall, 226 police departments, including three county police departments, received police hiring grants. Nineteen county sheriffs' departments will receive funds directly or indirectly as part of a consortia of law enforcement agencies or by providing law enforcement services to cities that received police hiring grants. Grants were also given to two state police agencies, three consortia of law enforcement agencies, two American Indian tribes, and one transit police agency.

With these additional officers, some departments will begin community policing activities, others will expand current efforts, and some will make the transition to implementing community policing as a department-wide practice. Three communities will be able to at least hire one officer to actually establish a department or bring police service back to their jurisdiction. In many departments, the newly hired officers will allow experienced veterans to conduct foot or bicycle patrols, serve as school resource officers, develop programs targeting gangs and at-risk youth, or establish police mini-stations in high-crime neighborhoods. Many departments will build and expand upon Neighborhood and Business Watches and help coordinate multi-agency responses to resolve community safety and other problems.

This program received a total of 2,760 applications from all fifty states and the territories. Applications were scored on five criteria: public safety and economic need, community policing strategy, implementation plan, continuation and retention plan for after the grant expires in three years, and additional resources to be applied to the program. To ensure equitable distribution of the grants, the Justice Department also considered geography, population size, and severity of need based on violent crime, poverty, and unemployment. A special emphasis was placed on high violent crime rates. Grants were awarded to 46 cities that are among the most violent in the nation.

The Police Hiring Supplement Program was managed in three rounds. All applications received by mid-October 1993 were considered in the first round. On December 20, 1993, President Clinton announced Round One grants to 74 jurisdictions. Those not funded in the first round, plus all those applying by November 1st were considered in the second round. The President announced the 34 Round Two grants on February 9, 1994. In Round Three, 142 jurisdictions in 46 different states are receiving awards. Twenty-seven large and 115 small jurisdictions will receive funding to hire police officers.

The Round Three pool had 2,652 applicants, which included all of those not funded through the first two rounds, as well as applications received by the final deadline of December 1, 1993. Grant recipients include 126 police departments, including two county police departments, 10 sheriffs' departments, two state police agencies, one American Indian tribe, one transit police department, and two consortia of law enforcement agencies, each of which includes a sheriff. Forty percent (57 grants) are for cities and towns with less than 25,000 residents. The smallest grant ($21,127) is going to Duncan, Mississippi (population 416), which will establish police service.

* * * * *

Other Community Policing Grants

On May 12, 1994, the Bureau of Justice Assistance (BJA), Department of Justice, announced other community policing awards to four cities to hire additional police officers -- San Diego, Boston, Philadelphia, and Knoxville. Each of these cities will receive $1 million to hire law enforcement officers as part of their overall strategies to address crime and related problems through community policing. These grants are funded through the Edward Byrne Memorial State and Local Enforcement Assistance Discretionary Grant Program administered by BJA.

The President also announced that the Department of Justice will award $1 million toward a joint anti-violence initiative with the City of Fresno and the Bureau of Alcohol, Tobacco and Firearms (BATF). The city has been working with the United States Attorney's office on the development of a comprehensive and coordinated approach to fighting violent crime. BATF will provide agents to help train Fresno law enforcement authorities in anti-gang and youth outreach programs.

If you have any questions concerning the grant program, please call the Office of Public Liaison and Intergovernmental Affairs, Office of Policy Development, at (202) 514-3465. For congressional inquiries, please call the Office of Legislative Affairs, at (202) 514-2141.

* * * * *

New Border Enforcement Technology To Combat Illegal Immigration

On June 2, 1994, Attorney General Janet Reno and Doris Meissner, Commissioner, Immigration and Naturalization Service, unveiled new technologies designed to help combat illegal immigration in San Diego and along America's borders -- the prototype Enforcement Tracking System (ENFORCE) and the Automated Fingerprinting Identification System (AFIS). The first phase of ENFORCE will automate the processing of illegal aliens. The second phase will create an entire case tracking system that will link all INS enforcement and deportation functions.

At midnight on June 1, 1994, the Border Patrol switched on phase one of the ENFORCE prototype system for a one-month line of tests at three border patrol sites. This fiscal year's budget includes enough money to fund the San Diego pilot program for six months. Phase one of ENFORCE will cut time spent on alien-enforcement case-processing paperwork by 60 percent. It will automate forty forms and allow agents to spend much more time in the field stopping aliens from crossing -- the equivalent of redeploying forty-eight agents to the line in the San Diego sector alone. In earlier field tests of the automation in McAllen, Texas, ENFORCE reduced the amount of time spent on paperwork processing illegal aliens without criminal records: from 20 minutes to 3-4 minutes in the case of Mexican nationals, and from an hour and fifteen minutes to 15 minutes in the case of other aliens. These savings will allow agents to spend much more time in the field stopping aliens from crossing -- the equivalent of

adding forty-five agents in the San Diego sector alone. If the testing is successful, ENFORCE will be implemented full-time July 1 in three San Diego border patrol offices and the San Diego district office, which includes the Investigations office, the employer sanctions unit, the anti-smuggling division, criminal detention programs and detention facilities.

The AFIS system holds great promise for using fingerprints to quickly identify criminal aliens at our borders. This system, which is in the late stages of development, will enable border patrol agents to identify an alien from a fingerprint in 3-5 minutes and access criminal records, photographs and other important information that may be on file.

Under the leadership of the Attorney General and the INS Commissioner, other relief is being provided to San Diego. By year's end, 400 additional border patrol agents will be placed on the San Diego border; 40 of those are already in place and 92 more are currently in training. New lights and radios have been delivered, and infra-scopes and 222 vehicles are on their way. The ultimate success of these technologies is tied to funding from the crime bill now before Congress. Ms. Reno said, "In the short term, this will be a boost for the San Diego sector. But if we are going to deploy these technologies all along our border and develop others, Congress needs to pass the crime bill and appropriate funds."

* * * * *

Third Mexican Prisoner Transfer

On June 2, 1994, Attorney General Janet Reno announced that fifty-three Mexican citizens imprisoned in the United States for committing crimes in the United States will be sent back across the border to Mexican prisons. This is the third transfer under an accelerated program which resulted from the Attorney General's visit to Mexico in October, 1993, when she met with Jorge Carpizo, then Attorney General of Mexico. Some 186 criminal aliens were returned to Mexico in the previous transfers, which began last December. This transfer includes the exchange of seven Americans, including one woman, currently held in Mexican prisons. They will serve their remaining sentences in federal prisons in the United States. The Attorney General pointed out that the transfer program saves U.S. taxpayers millions of dollars each year. The cost for each federal prisoner is $20,895 a year in tax dollars, or $57.22 a day. The estimated savings from this transfer is $1.5 million.

The Department of Justice anticipates further transfers on a regular basis. Bureau of Prisons personnel are currently reviewing the status of 8,000 Mexican nationals now serving time in federal prisons. There are approximately 330 Americans currently serving time in Mexican prisons. Each transfer is voluntary and subject to the approval of both the sending and receiving countries. Generally, prisoners may not obtain a transfer if they have less than six months remaining to serve on their sentence.

* * * * *

World Trade Center

On May 25, 1994, Mary Jo White, United States Attorney for the Southern District of New York, announced that four men were each sentenced to 240 years in prison for their participation in the terrorist bombing of the World Trade Center on February 26, 1993. Each defendant was also fined $250,000 and ordered to make $250,000,000 in restitution. The four defendants -- Mohammed Salameh, Nidal Ayyad, Mahmoud Abouhalima, and Ahmad Ajaj -- were convicted on March 4, 1994, after a six-month trial, by a jury in Federal court on all thirty eight counts against them, including conspiracy to bomb targets in the United States, the bombing of the World Trade Center, and the use of explosive devices. The evidence at trial, which included over 200 witnesses and 1,000 exhibits, established that in carrying out their plan, the four defendants caused the death of six people, injury to over 1,000 persons and hundreds of millions of dollars in property damage.

United States Attorney White said, ". . .Federal, state and local law enforcement, working together, sifted through the bombing rubble and uncovered powerful evidence of the defendants' guilt. Within weeks of the explosion, the four defendants were in federal custody. Their trial was conducted under the exacting standards of fairness embodied in our Constitution. Although we focus today on the sentencing of the defendants, we must never forget that six innocent people died and countless others were injured in the World Trade Center bombing and that our democratic society must be ever vigilant against the threat of international terrorism."

* * * * *

U.S. Congressman Indicted In The District Of Columbia

On May 31, 1994, Eric H. Holder, Jr., United States Attorney for the District of Columbia, announced that U.S. Congressman Rostenkowski was indicted by a federal grand jury on seventeen felony counts, including mail and wire fraud, embezzlement, concealing material facts, conspiracy, and witness tampering. The indictment charges Congressman Rostenkowski with embezzling hundreds of thousands of dollars from his congressional allowances in order to benefit himself, his family, and his friends. The indictment also charges him with obstruction of justice and with the false reporting of campaign expenditures. According to the indictment, Congressman Rostenkowski, who has been a Member of the House of Representatives since 1959 and the Chairman of the House Ways and Means Committee since 1981, engaged in a pattern of corrupt activities for over twenty years.

United States Attorney Holder stated, ". . . Today's indictment of Congressman Rostenkowski should stand as a firm and solemn reminder that the Department of Justice has an unwavering commitment to hold accountable all those who engage in corruption, regardless of their political position, regardless of their political party, regardless of their political power." Mr. Holder praised the outstanding investigative work performed by the agents and officers of the U.S. Postal Service, the U.S. Capitol Police, and the Federal Bureau of Investigation. Mr. Holder also commended the Chief of the Office's Public Corruption Section, John Campbell, and Assistant United States Attorneys Thomas Motley, Larry Parkinson, Wendy Wysong, and Randall Eliason who are prosecuting the case.

If you would like a copy of the press release and the Indictment, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

* * * * *

Department Of Justice Settles Landmark Discrimination Case

On May 24, 1994, the Department of Justice announced that Denny's Restaurants, which was accused of discriminating against black patrons, has agreed to pay a record $46 million in damages and launch a nationwide program to avert future discrimination. The settlement contains the most sweeping preventive measures and the largest monetary damages ever in a public accommodations case. The agreement, in the form of two consent decrees filed in U.S. District Courts in San Jose and Baltimore, resolves two suits that accused Denny's of failing to serve blacks, requiring blacks to pre-pay, and forcing them to pay a cover charge. In one instance, black Secret Service officers who accompanied President Clinton were denied service at a Denny's in Annapolis, Maryland. Forty blacks alleged discrimination in the California case.

In March, 1993, after receiving several complaints about racially-motivated incidents in California, the Justice Department and a group of African-Americans sued Denny's for engaging in a pattern of discrimination in violation of Title II of the Civil Rights Act of 1964, also known as the Public Accommodations Act. On April 1, 1993, Denny's entered into a consent decree which required it to implement programs that would prohibit future discrimination in California. However, on that same day

employees at a Denny's in Annapolis, Maryland, refused to serve six black Secret Service officers. The officers, as well as a group of African-Americans from across the country then sued. One of the consent decrees settles the action stemming from the Maryland incident. The other substantially amends the April, 1993 decree so that it applies to all of its 1,500 restaurants and franchises.

Under the California decree, Denny's will pay $28 million in damages and $6.8 million in attorneys' fees. Each of the forty plaintiffs will receive $25,000 and the remainder will be divided to any victims of the discriminatory conduct that can be identified. In the Maryland decree, Denny's will pay $17,725 million in damages and $1.9 million in attorneys' fees. The six Secret Service officers each will receive $35,000 and the twelve other named plaintiffs will receive $15,000 each. The remainder will be divided to any victims that are identified later. The otherwise identical decrees also require Denny's to:

- Retain an independent Civil Rights Monitor, with broad responsibilities, to monitor and enforce compliance with the decrees;

- Educate and train current and new employees in racial sensitivity and of their obligations under the Public Accommodations Act;'

- Implement a testing program to monitor the practices of its company and franchise-owned restaurants, including conducting 625 nationwide tests in the first year of the decree;

- Feature African-American and members of other racial minority groups as customers and employees in advertising to convey to the public that all potential customers, regardless of their race or color, are welcome at Denny's; and

- Include a nondiscrimination statement in all advertisements on television, radio and print media.

The decrees, which are subject to court approval, will remain in effect for at least five years.

* * * * *

CIVIL RIGHTS DIVISION

National Voter Registration Act

On May 19, 1994, marking the one-year anniversary of its signing, Attorney General Janet Reno urged the states to comply with the National Voter Registration Act (NVRA). The NVRA, otherwise known as the motor-voter law, requires states to provide voter registration through the driver licensing process, through the mail and through various state agencies. It also prohibits states from removing voters from registration lists for not voting. Most states are required to have their new voter registration in place by January 1, 1995.

As a result of the NVRA, state legislatures are drafting bills to create plans that conform with the law's requirements. Several state legislatures, however, have not yet adapted their voting systems to meet the requirements of the law. Addressing those states that have not yet complied, the Attorney General said, "I want to work with the states to ensure full compliance with the law. But for those who don't comply, I fully intend to use the authority of the Department to enforce the law. This administration fought for a law which promised to bring new voices to the political process by making it easier for all Americans to exercise their fundamental right to vote. We must fulfill the promise of the law, by ensuring that all states live up to their responsibilities."

States that have not yet passed legislation: California, District of Columbia, Illinois, Louisiana, Michigan, Montana, Nevada, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina and Texas. New Mexico and Indiana have adjourned their legislatures without adopting new legislation and do not plan to reconvene until after the January 1 deadline. Arkansas, Virginia and Vermont may be allowed additional time to comply in order to amend their state constitutions.

States that have passed legislation: Alabama, Alaska, Arizona, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Iowa, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Oregon, South Dakota, Tennessee, Utah, Washington, and West Virginia.

States that are exempt under the law: Minnesota, North Dakota, Wisconsin and Wyoming -- because they had same-day voter registration or no voter registration laws passed prior to the enactment of the law.

States that are trying to claim exemption: Idaho and New Hampshire -- by passing legislation that retroactively adopts same-day voter registration. Kansas -- by trying to pass a bill to retroactively eliminate voter registration.

Attached at the Appendix of this Bulletin as Exhibit A is a letter from Assistant Attorney General for Civil Rights Deval L. Patrick to state election officials reminding them of their responsibility, offering assistance, and letting them know of the Department's firm commitment to enforcing the law.

* * * * *

Department Of Justice Intervenes In Florida Voting Case

On May 27, 1994, the Department of Justice moved to preserve a majority-black Congressional district in Florida. This is the fifth case in which the Department has defended districting plans that ensure minorities of a voice in Congress.

The Civil Rights Division of the Department of Justice sought to enter a lawsuit by several Florida voters who challenged that state's 3rd Congressional District, currently represented by Corrine Brown. The District, which includes portions of Jacksonville, Gainsville, Orlando, and Daytona Beach, was established by a three-judge panel in May, 1992. The U.S. District Court for the Northern District of Florida must decide whether to grant the Department's request.

The Department had previously participated in cases in Texas, Georgia, North Carolina and Louisiana where districts designed to protect the rights of minority voters had been attacked in lawsuits as "racial gerrymandering." Assistant Attorney General for Civil Rights Deval L. Patrick, who made the decision to seek intervention, stated, "In some jurisdictions, where politics is still deeply influenced by race, states have drawn majority-minority districts to ensure that the voting opportunities of minorities are not diluted. The result has been the creation of the most integrated Congressional districts in the country, and a meaningful opportunity for all to participate equally in the political process. We intend to defend that goal by participating in this action." Mr. Patrick also advised that the Justice Department will soon launch other affirmative voting rights cases aimed at breaking down barriers to full electoral participation by minority voters.

* * * * *

Voting Rights Protection Task Force

On May 27, 1994, Deval L. Patrick, Assistant Attorney General for the Civil Rights Division, announced that he has created a Voting Rights Protection Task Force that will intercede in cases which challenge the voting rights of minorities. The task force, comprised of attorneys specializing in voting rights, will focus on similar future court challenges, as well as pending court cases challenging Congressional districting plans in Texas, Georgia, North Carolina, and Louisiana.

Through the plans adopted in 1992, these states created African-American or Hispanic majority congressional districts to fairly reflect minority voting strength. During the Bush Administration, the Department approved the plans for those states before they were implemented, as required by Section 5 of the Voting Rights Act. In 1993, following a challenge to a voting plan used by North Carolina, the Supreme Court set forth new districting standards. In that case, Shaw v. Reno, the Court found that a redistricting plan that was "gerrymandered" by race and was "irregular on its face" was subject to strict constitutional scrutiny. The Court's decision spawned the recent challenges. In an effort to ensure that the Voting Rights Act was not undermined by a misinterpretation of the Shaw case, the Justice Department became involved in that case and the Louisiana case as well. In March, the Department also intervened as a defendant in the Georgia case, and in mid-May was granted permission to intervene in the Texas case. With the move to intervene in the Florida case, the Justice Department now has interceded in every case challenging a Congressional districting plan. In addition, the Department was named as a defendant in a case raising similar claims challenging state senate redistricting in Florida.

* * * * *

Virginia Military Institute (VMI)

On May 16, 1994, Deval L. Patrick, Assistant Attorney General of the Civil Rights Division, vowing to continue a new round in the fight to open the doors of VMI to women, filed an appeal with the U.S. Court of Appeals for the Fourth Circuit. By filing the appeal, the Department seeks a court order rejecting Virginia's proposal to provide a separate all-female program at Mary Baldwin College as an alternative to the all-male program at VMI.

In 1991, the Justice Department sued Virginia for failing to offer women the educational experience provided at the all-male institute. Last year, the U.S. Court of Appeals for the Fourth Circuit ordered the state to formulate a plan that would "conform to the principles of equal protection" by providing "the unique benefits of a VMI-type education to women." The Commonwealth of Virginia then submitted a plan that called for the creation of the "Virginia Women's Institute for Leadership" at Mary Baldwin College. The Justice Department objected to the plan arguing that the plan did not provide the full benefits of a VMI education to women. Instead, the Department asked the court to order VMI to admit women and adopt procedures for the school's full integration. On April 29, the U.S. District Court in Roanoke accepted Virginia's plan for a separate program for women. Assistant Attorney General Patrick stated, "We have maintained from the outset that the Commonwealth's plan perpetuates sex discrimination. We will continue to fight for the constitutional rights of women."

* * * * *

Americans With Disabilities Act (ADA)

The Department of Justice has recently announced two major settlements under the Americans with Disabilities Act -- the nation's largest bar examination review course and the nation's largest CPA review course have agreed to provide sign language interpreters, braille material, and other appropriate auxiliary aids and services to students with disabilities.

ADA Assistance To Law Students

In the complaint filed in U.S. District Court in Chicago, the Department alleged that Harcourt Brace Legal and Professional Publications, Inc., owner of the Bar/Bri bar review course, violated the Americans with Disabilities Act (ADA) by failing to provide sign language interpreters to two California students who are deaf, and failing to provide braille copies of its written course materials to a student from New York who is blind. In addition, the lawsuit alleges that Harcourt regularly denied requests for interpreters and braille materials and, instead, offered transcripts of the course lectures to students with hearing impairments and audio-recordings of the written course materials to students with vision impairments. Under the agreement, the company will provide appropriate auxiliary aids and services, including qualified interpreters, computer-aided transcription services, assistive listening devices, notetakers, braille materials, large print materials, audiotapes and other similar aids and services; adopt and implement a formal written policy ensuring that aids and services are promptly and properly provided; educate its staff about the needs of students with disabilities and the availability of auxiliary aids and services for those students; and include information regarding the availability of auxiliary aids and services in its advertising materials. It will also pay compensatory damages and $25,000 in civil penalties.

ADA Assistance To CPA Students

This settlement resolves the first suit ever filed by the Justice Department under the Americans with Disabilities Act. In the suit, the Justice Department alleged that Becker CPA Review, Inc. violated the ADA by refusing to provide interpreters and other necessary auxiliary aids to students who are deaf or have hearing impairments. After unsuccessfully attempting to resolve the complaint with Becker, the Justice Department sued the accounting course in federal court.

Under the proposed consent decree, submitted for approval to the U.S. District Court in Washington, D.C., Becker will provide sign language and a variety of other auxiliary aids to students who need them for full participation in the course; pay $20,000 to the Department of Justice to be distributed to deaf and hearing impaired students who provide recommendations for further improvements in Becker's use of auxiliary aids; establish a $25,000 scholarship fund for accounting students who have hearing impairments and who attend California State University, Northridge; train its 800-person staff on its new policy; include information about the policy in advertising and registration materials; and appoint a national coordinator to respond to requests for auxiliary aids.

Deval L. Patrick, Assistant Attorney General for the Civil Rights Division, stated, "The door to learning should never be closed to persons with disabilities. These agreements should serve as a model to all the other review courses this nation has to offer. The gateways to the legal and accounting professions have now been opened wider for persons with disabilities."

* * * * *

ENVIRONMENT AND NATURAL RESOURCES DIVISION

Oil Pollution Act Enforcement Initiative

On May 26, 1994, in a concerted drive against contamination of the nation's water, the government announced law enforcement action against twenty-eight commercial polluters who discharged oil and other hazardous substances into water and adjoining shoreline. Twenty-six of the cases involved administrative complaints and proposed fines by the Environmental Protection Agency (EPA) in thirteen states. Two other judicial cases were brought by the Department of Justice on behalf of the EPA and the U.S. Coast Guard.

The complaints charged that oil and hazardous substances were discharged from a ship at sea, trains, pipelines, oil drilling operations, oil refineries, and other ventures in Maine, New Jersey, West Virginia, Pennsylvania, Virginia, Tennessee, Kentucky, Mississippi, Georgia, Oklahoma, Texas, Kansas, Utah, and California. The following are examples of some of the actions that are being taken:

• One Justice Department case involved the discharge of bilge water and waste oil from the cruise ship Viking Princess that left a two-and-half mile oil slick off the coast of Florida.

• Another involved three separate Burlington Northern Railroad Co. derailments in Wisconsin and Wyoming, one of which spilled hazardous substances into the Nemadji River and required the evacuation of 50,000 residents of Wisconsin and Minnesota.

• One of the administrative complaints involved Tosco Refinery, a refiner and marketer of wholesale petroleum products in Martinez, California, for spilling over 2,500 gallons of oil on October 7, 1993, into a drainage ditch that emptied into Hastings Slough which flows into the Carquinez Straits.

• Another involved Burlington Asphalt Corporation in Mt. Holly, New Jersey, a producer of asphalt for paving roads, which spilled over 7,500 gallons of fuel oil, on January 3, 1994, onto county property and a storm drain that emptied into the Rancocas Creek.

• On April 26, 1994, the United States filed an action under the Oil Pollution Act and the Clean Water Act against the Southern Pacific Transportation Co. arising out of a derailment and spill near Yoncalla, Oregon. The action seeks injunctive relief to prevent further spills as well as both civil penalties and cost recovery.

Other referrals of oil spills currently are in negotiations which will culminate in further judicial filings, either as part of settlements or litigated cases. These actions reinforce the clear Congressional intent to punish violators of the Clean Water Act provisions which prohibit and require prevention of oil and hazardous substance spills. The Oil Pollution Act, unanimously enacted by Congress in 1990, amended the Clean Water Act and provided the government with expanded enforcement authority and enhanced its ability to obtain large settlements or seek substantial penalties through civil litigation or criminal prosecution. Lois Schiffer, Acting Assistant Attorney General for the Environment and Natural Resources Division, stated, "These cases are a signal that oil polluters will be punished, and that this Administration is committed to using the full range of enforcement tools to assure clean water and land for all Americans."

* * * * *

"Operation Overboard" In The Southern District Of Florida

On May 19, 1994, the Department of Justice announced that the owner of a Panamanian flag cruise ship that was caught by a multi-federal agency surveillance team deliberately dumping waste oil in the Florida Straits has agreed to plead guilty to two felony criminal charges and pay a $500,000 fine subject to court approval. The criminal charges, which resulted in a 2.5 mile long oil slick three and a half miles from the Palm Beach shore, will be the first filed under the Oil Pollution Act of 1990, a law enacted by Congress after the Exxon Valdez oil spill in Alaska.

The M/V Princess, which was operating out of the Port of Palm Beach, was recorded on videotape on February 21, 1993, by AIREYE, a U.S. Coast Guard Falcon jet equipped with special sensors including Side Looking Airborne Radar, a remote sensing device capable of detecting the suppression of ocean waves that can be caused by an oil slick. The discharge from the ship was also observed and reported to the Coast Guard by a private fishing boat. The surveillance, planned by the Coast Guard and carried out with FBI and EPA assistance, and named "Operation Overboard," was designed to detect and prosecute "operational discharges" of waste oil by commercial ships off the coast of South Florida.

The United States Attorney's office for the Southern District of Florida and the Environmental Crime Section of the Department of Justice worked jointly on the operation and prosecution of the case. The fine, to be paid by the owner of the ship, Palm Beach Cruises, S.A., would be the first criminal fine ever paid to the Oil Spill Liability Trust Fund established by Congress in 1990 to respond to future spills. Upon acceptance of the plea agreement by the court, Palm Beach Cruises will be required to use an independent expert approved by the court and to establish an environmental compliance program to ensure that the Viking Princess does not pollute in the future. The company would also be required to submit quarterly reports to the court regarding the implementation of this program.

* * * * *

TAX DIVISION

Gasoline Excise Tax Evasion In The Eastern District Of New York

On May 25, 1994, the Department of Justice announced the guilty pleas of fifteen defendants indicted on criminal charges stemming from the evasion of more than $34 million in gasoline excise taxes over a three-year period. The defendants, among them members of the New York organized crime families, were scheduled to go to trial on June 3, 1994 on conspiracy and tax evasion charges. They face maximum sentences ranging from five to 30 years imprisonment, and fines ranging from $250,000 to $1 million. Three defendants fled to Israel prior to the return of the indictment and remain fugitives. One of the defendants, however, has been arrested in Israel and is awaiting trial there for the murder of his former colleague in the gasoline bootleg industry.

The charges stem from an elaborate scheme, referred to as a "daisy chain," in which gasoline is purportedly sold between a number of wholesale distributors before reaching the retail level. These sales, in fact, never occur and are mere paper transactions designed to disguise the identity of the company responsible for remitting the taxes. These schemes enabled the defendants to pocket a substantial portion of the 14.1 cents in federal excise taxes included in the price paid by motorists at the retail pump. In an effort to infiltrate the bootleg gasoline industry, a government undercover business called Rossi Associates was established to compete directly with the defendants' bootleg operation. Rossi Associates, which was run in a joint effort by the Internal Revenue Service and the FBI, successfully attracted the attention of the defendants and resulted in their bringing Rossi Associates into the daisy chain schemes. On November 24, 1992, at the conclusion of the undercover operation, federal agents seized assets of the defendants, including approximately $1.7 million in cash from various safe deposit boxes, nearly $1.2 million in bank accounts, and $1 million in gasoline stored at various terminals and barges. Also seized was a yacht valued at approximately $500,000. As part of the scheme, the Colombo, Gambino, Lucchese and Genovese crime families collected what was termed "tribute" payments of at least one and one-half cents per gallon from the proceeds of these transactions.

This case, which is part of a nationwide motor fuel excise tax enforcement effort, was investigated jointly by the Long Island Motor Fuel Task Force and the United States Attorney's office in Brooklyn, New York. The task force includes attorneys from the Tax Division of the Department of Justice, and agents from the Criminal Investigation and Examination Divisions of the Internal Revenue Service, the FBI, the Department of Transportation, and the New York State Department of Taxation and Finance. The case was prosecuted by Assistant United States Attorney Edward A. Rial and Paulette Wunsch, Special Attorney, Tax Division, Department of Justice.

* * * * *

Motor Fuel Tax Evasions In The Eastern District Of Pennsylvania

On June 3, 1994, the Department of Justice announced that three fuel oil company officials and a fuel oil company were found guilty on May 23, 1994, after a four-week trial in U.S. District Court in Philadelphia, on charges of evading more than $14 million in federal and state excise taxes on diesel fuel.

According to the indictment, this scheme also involved the use of a series of sham companies, referred to as a "daisy chain." Title to millions of gallons of No. 2 fuel oil was passed, on paper, through these companies. The oil never moved from the terminals in New Jersey and Pennsyvlania. One of the companies in the chain, the "burn company" or "butterfly company," appeared on paper to have paid the federal and state excise taxes. However, the taxes (approximately 30 cents per gallon) were never paid. The conspirators thereby enjoyed a significant price advantage over companies who were paying their excise taxes, according to the charges. The indictment included charges of conspiracy, wire fraud, tax evasion, structuring financial transactions to avoid the filing of currency transaction reports, and RICO.

Evidence presented during the course of the trial and entry of the guilty pleas established that this "daisy chain" was run from New York City by a group of Russian organized crime members with ties to the Brighton Beach area of Brooklyn, New York. The organizers of the scheme utilized their ties in the Russian immigrant community to recruit other immigrants to run sham oil companies through which these oil deals were conducted. More than $38 million passed through the "daisy chain" operation in a 14-month period. From October 1991 up to and including December 1, 1992, 51,005,470 gallons of No. 2 fuel oil were sold in 279 separate transactions through the "daisy chain" operation set up by the participants in this conspiracy. As a result of this scheme, some $10,252,099.47 in federal diesel fuel excise taxes were evaded; approximately $2,329,328.41 in New Jersey motor fuel and gross receipts taxes were evaded; and some $2,270,626.57 in Pennsylvania oil company franchise taxes were evaded.

* * * * *

ANTITRUST DIVISION

Major Antitrust Suit Filed Against A Foreign Company

On May 26, 1994, the Department of Justice filed a lawsuit and proposed consent decree to break a licensing stranglehold on glass manufacturing that kept American companies from designing and building glass-making plants overseas. The lawsuit involves a British company, Pilkington plc, and its U.S. subsidiary, and is the first under a 1992 policy change that permits the Department to challenge foreign business conduct that harms U.S. export trade. Pilkington, which dominates the world's $15 billion a year flat glass industry, was accused of closing off foreign markets to U.S. companies and costing Americans jobs by strictly limiting the use of commercial float glass technology, only a portion of which it developed and patented more than thirty years ago. Glass produced by this process is used in most of the world's cars and buildings.

The complaint asserted that even though Pilkington's patents expired long ago and the technology is now largely in the public domain, the company used its licensing arrangements to keep American glass producers from using the technology outside the United States and to restrain competition. It also stated that Pilkington, of St. Helen's, Merseyside, had intellectual property rights in the manufacturing technology that were of insufficient value to justify territorial allocations and other restraints of trade that limited the ability of U.S. firms to design, build or operate float glass plants in other countries. The complaint also alleged that, by restricting the territory in which its licensees could use float glass technology, Pilkington reduced the potential reward that licensees could expect to reap from their own further innovations, thus reducing their incentive to invest in research and development projects that would benefit glass consumers.

As a result of the proposed settlement, U.S. firms will be able to compete for the fifty new float glass plants expected to be built. This will result in an estimated increase in export revenues of between $150 million and $1.25 billion over the next six years. In the settlement, Pilkington agreed to end its restraints on U.S. companies, both in the U.S. and overseas, and to end its restraints on foreign companies who would sell the technology in the United States. Pilkington also agreed not to engage in unlawful monopolistic conduct in the future. The proposed consent decree also prohibits, except in specific narrow circumstances, Pilkington from asserting claims of proprietary rights to float glass technology against non-licensees that are domiciled or incorporated in the United States. Specifically exempted from the proposed consent decree's injunctive provisions is Pilkington's lawful use of any current or future patent rights. Also, the company would not be prevented from asserting claims of confidentiality to specific float glass technology that qualifies under applicable law as trade secrets.

In the past, the Justice Department asserted the power to bring antitrust suits against foreign companies whose conduct adversely affected U.S. domestic commerce and export trade. The Foreign Trade Antitrust Improvement Act of 1982 specifically applied to activities outside the United States. However, in 1988, the so-called "footnote 159," enforcement policy was modified to prohibit challenges to anticompetitive conduct in foreign markets unless there was direct harm to U.S. consumers. The modification was withdrawn in 1992, and this complaint and proposed consent decree, filed in federal court in Tucson, Arizona, mark the first implementation of that reversal.

The 1992 policy change came about after a Department review of antitrust enforcement policy on export restraints. The policy change superseded "footnote 159" in the Department's 1988 Antitrust Enforcement Guidelines for International Operations that said that the Department would pursue a policy of refraining from challenges to anticompetitive conduct in foreign markets unless there was direct harm to U.S. consumers regardless of the impact on U.S. export trade. The Department said in 1992 that it would return to enforcement policy that had been followed for many years prior to 1988.

As required by the Tunney Act, the proposed consent decree will be published in the Federal Register, together with the Department's competitive impact statement, and any person may comment on the proposed decree. Written comments may be submitted to Gail Kursh, Chief, Professions and Intellectual Property Section, Antitrust Division, Department of Justice, Room 9903, 555 Fourth Street, N.W., Washington, D.C. 20001 - (202) 307-5799).

* * * * *

CIVIL DIVISION

Major Insurance Scam In The Eastern District Of Missouri

On May 10, 1994, the Civil Division of the Department of Justice and the United States Attorney's office in the Eastern District of Missouri filed a civil suit on behalf of the Department of Housing and Urban Development (HUD), seeking damages and penalties of more than $17 million from First Union Mortgage Corporation for its role in an alleged mortgage insurance scam involving properties in the St. Louis area. The lawsuit was filed in the U.S. District Court in St. Louis under the False Claims Act and the common law. The suit asserts that Cameron-Brown Mortgage Co., now First Union, knowingly submitted false information to HUD to induce its commitment to insure 43 mortgage loans in the event of default. According to the lawsuit, Cameron-Brown falsely certified to HUD that the buyers of the properties had made the HUD-required minimum equity investment, when in fact, the buyers' down payments had been extinguished at the closings by prior arrangement with Cameron-Brown and the seller, Richard Powelson.

The National Housing Act, under which HUD will insure lenders against losses on mortgage loans to qualified home buyers, requires buyers to make a minimum down payment from their own funds as an incentive for them to make their mortgage payments. HUD relies on the information and certifications provided by the lender to determine whether to insure a given loan. Each of the loans involved in St. Louis went into default, causing HUD to pay more than $6 million in insurance claims by First Union.

The use of illusory down payments was part of a more elaborate scheme orchestrated by Powelson, a Kansas City real estate developer, who has since filed for personal bankruptcy. The scheme also included "straw buyers," individuals who were paid $2,000 each by Powelson to qualify for the HUD-insured loans and then "resell" the properties to Powelson at the closing. The suit alleges that Cameron-Brown employees actively solicited investors for these properties and assured the buyers that the transactions complied with HUD regulations. According to the complaint, most of the buyers were novice real estate investors culled from "no money down" real estate seminars given by Powelson.

Under the False Claims Act, the government is entitled to treble the amount of damages plus civil penalties.

* * * * *

Massive Nationwide Consumer Fraud In The Western District Of Kentucky

On May 6, 1994, Frank W. Hunger, Assistant Attorney General for the Civil Division, and Michael Troop, United States Attorney for the Western District of Kentucky, announced that a jury in Louisville, Kentucky, returned verdicts of guilty against three defendants for conspiracy and twenty counts of violating the Federal Food, Drug, and Cosmetic Act. In addition, two of the defendants were convicted on mail fraud charges.

The case involved a massive nationwide consumer fraud involving stretching orange juice concentrate with up to 20,000,000 pounds of sugar. United States Attorney Troop said, "Because sugar is cheaper than orange concentrate, this amounts to at least a $20,000,000 fraud on the public." According to the evidence, well over $100,000,000 worth of product sold as "unsweetened" orange juice concentrate actually had sugar in it.

The defendants were the chief officers and owners of Sun Up Foods, Inc., a company that did business in Louisville until 1989 when it moved its facility to Benton, Kentucky. James V. Mays, was the firm's President; Patsy Mays was its Secretary/Treasurer; and Samuel Mays was its Vice President of Operations. Sun Up's sales were $57,000,000 in 1989. The evidence presented at trial showed that Sun Up told its customers that almost all of the $57 million in sales was unsweetened orange juice concentrate. The evidence, however, showed that practically all the concentrate Sun Up sold from 1985 to 1990 actually contained 10 percent to 20 percent beet sugar. Sun Up had sales throughout the forty-eight states, according to trial testimony. The evidence in the case included an electric control panel seized from Sun Up's plant in Benton that was used as a secret door into a room where liquid sugar was stored. According to evidence presented at trial, the defendants designed their plants so that sugar could be added to the concentrate Sun Up sold without government inspectors being able to see it was happening. Trial evidence also established that the defendants orchestrated a scheme in which sugar was brought to the plant that night and the secret tanks filled. Pipes connecting the sugar tanks to the orange concentrate lines were also hidden from view. This scheme began in 1985 and lasted until at least the end of 1990.

According to trial evidence, James V. Mays was in charge of Sun Up, and was the leader of the conspiracy. Samuel Mays designed and supervised the construction of the secret rooms and secret pipes to hide sugar in the plant. Patsy Mays was in charge of making sure Sun Up's records hid the fact that Sun Up used sugar. The jury convicted James V. Mays on a total of twenty-eight felony counts, acquitting him on five counts. He faces potential incarceration under the conviction counts of 100 years. Patsy Mays was convicted of twenty-six felony counts, and acquitted of seven others. She faces up to 90 years in prison. Samuel Mays was convicted of twenty-one felonies, and acquitted of twelve counts. His potential prison sentence is up to 65 years.

Assistant Attorney General Frank Hunger commended the prosecutors on the successful result, and recognized the significance of the verdict in deterring consumer fraud. The prosecutors were: Assistant United States Attorney William F. Campbell, and Kenneth Jost and James Arnold of the Office of Consumer Litigation.

* * * * *

CRIME STATISTICS

Handgun Crimes

On May 15, 1994, the Bureau of Justice Statistics (BJS), Department of Justice, announced that the number of non-fatal crimes committed with a handgun rose to a record level during 1992. This data is from the federal government's second largest household survey, which interviews people twelve years old and older throughout the country about their experiences with crime and criminal offenders. Because it includes only information obtained from victims' responses to questions, it obtains no homicide data. BJS estimated that more than 340,000 crimes annually involved firearm thefts. During this period almost two-thirds of such losses occurred during household burglaries and almost one-third in larcenies. The survey does not report on thefts or burglaries from stores or other businesses. A copy of the BJS Crime Data Brief, "Guns and Crime, Handgun Crime Victimization and Firearm Self-Defense and Firearm Theft," is attached at the Appendix of this Bulletin as Exhibit B. Some of the findings included in the Crime Data Brief are:

- Handguns were used in an estimated 917,500 non-fatal crimes, almost 50 percent more than the average for the previous five years. The FBI reported an additional 13,200 handgun homicides during the same year, a 24 percent increase over the five-year average.

- Offenders armed with handguns committed one in every eight violent crimes -- rape, robbery and assault -- measured by BJS's National Crime Victimization Survey. The other violent crime victims were attacked or threatened by offenders who were either unarmed or were armed with such weapons as rocks, sticks, knives or other types of firearms. The most common violent crime -- simple assault -- by definition does not involve the use of a weapon.

- In contrast to the record high handgun crime rate (4.5 per 1,000 inhabitants twelve years old or older), the 1992 rate for all non-fatal violent crime (35 per 1,000) was below the 1981 peak for the past two decades (39 per 1,000 residents), which means that a growing percentage of violent crimes involves handguns.

- Young black males are the most vulnerable to handgun crime. Among 16-to-19 year-olds, the most victimized age group, the rate for black males was four times higher than the rate for white males.

• During the 1987-1992 period, offenders fired their weapons in 17 percent of all non-fatal handgun crimes, missing the victim four out of five times. In three percent of the non-fatal crimes committed with handguns, about 21,000 annually, the victim was wounded. In addition, an average 11,100 were killed each year.

• During the same period an estimated annual average of 62,000 violent crime victims (approximately 1 percent of all violent crime victims) used a firearm in an effort to defend themselves. In addition, an annual average of about 20,000 victims of theft, household burglary or motor vehicle theft attempted to defend their property with guns.

• In most cases victims defending themselves with firearms were confronted by unarmed offenders or those armed with weapons other than firearms. During the six-year period, about one in three armed victims faced an armed offender.

• The average annual rates of non-fatal crimes committed with handguns per 1,000 persons during the years 1987 through 1992 by race and age were:

	Males		Females	
Victim's age	White	Black	White	Black
12-15	3.1	14.1	2.1	4.7
16-19	9.5	39.7	3.6	13.4
20-24	9.2	29.4	3.5	9.1
25-34	4.9	12.3	2.1	9.0
35-49	2.7	8.7	1.4	3.3
50-64	1.2	3.5	0.7	1.6
65 or older	0.6	3.7	0.2	2.3

* * * * *

Record Number Of Prisoners In 1993

On June 1, 1994, the Bureau of Justice Statistics (BJS), Department of Justice, announced that the number of state and federal prisoners at the end of last year reached a new record number -- 948,881 inmates, an almost two-fold increase since 1980. In 1980 the nation's prisons held 329,821 men and women. The average annual increase since then has been 8.5 percent. Other BJS statistics are:

• Last year's growth -- 65,225 inmates, or 7.4 percent -- was equal to a weekly average gain of about 1,250 prisoners. As of last December 31, state prisons were estimated to be operating between 18 percent and 29 percent above capacity, while the federal system was estimated to be operating at 36 percent over capacity.

• The federal system at the end of last year had 89,586 prisoners, which was almost 12 percent more than at the end of 1992. Among the states, California had the largest number of inmates (119,941), followed by Texas (71,103) and New York (64,569). Texas also had 29,546 inmates backed up in local jails awaiting transfer to state prisons.

• The incarceration rate for prisoners sentenced to more than a year was 351 per 100,000 U.S. residents -- also a new record. The states with the highest incarceration rates were Texas (553, including the state prisoners in jails), Oklahoma (506) and Louisiana (499) per 100,000 residents of their respective states.

• Between 1988 and 1993, the number of sentenced prisoners grew 51 percent, an increase of more than 306,000 prisoners. All regions of the country have shown approximately equal growth rates during the 5-year period.

• Almost half of the growth since 1980 was linked to increases in the number of drug offenders entering prison. In 1992, the latest year for which the data are available, the number of new prison commitments for drug offenses reached an estimated 102,000, or 30 percent of the new commitments for that year. In 1980, 8,900 (7 percent) of the new commitments were for drug offenses. During this period, the number of adult arrests for drug law violations more than doubled (from 471,200 to 980,700), and the likelihood of going to prison increased five-fold, from 19 admissions per 1,000 adult arrests to 104.

• During the 1980-1992 period, in addition to drug offenders, more people were arrested for sexual assault, robbery, and aggravated assault. An increasingly higher percentage of these defendants, as well as burglary defendants, were sent to prison. This combination of more arrests and higher imprisonment rates resulted in almost 50,000 more people entering prison in 1992 for these offenses.

• Inmate growth was also linked to increases in the number of parole and probation violators returned to prison. In 1980, 82 percent of state prisoners were admitted to prison directly after sentencing by a court and 17 percent were admitted for parole violations. By 1992 the percentage of admissions for parole violations had increased to 30.

• The rise in the prison population was greatest among black males. Between 1980 and 1992, the black prison population increased by 186 percent (261,100 inmates), compared to 143 percent (228,500) for white males. During the same years, the number of white females increased 275 percent (16,200), and the number of black females grew by a nearly identical 278 percent (17,500).

• In 1992, the incarceration rate of black males was 2,678 per 100,000 black residents. The rate of white males was 372 per 100,000. The incarceration rate among black females was 143 per 100,000, compared to 20 per 100,000 for white females.

• At the end of last year there were 55,365 female state and federal prisoners -- 5.8 percent of the total inmate population. During the year Texas had the largest increase among the states (62 percent), going from 2,487 to 4,015.

The BJS Bulletin entitled "Prisoners in 1993" (NCJ-147036) as well as other BJS statistical reports may be obtained from the BJS Clearinghouse, Box 179, Annapolis Junction, Maryland 20701-0179. The telephone number is: 1-800-732-3277.

* * * * *

PROJECT TRIGGERLOCK

Summary Report

(In Cases Indicted Since April 10, 1991)
Significant Activity - April 10, 1991 through April 30, 1994

Project Triggerlock focuses law enforcement attention at local, state and federal levels on those serious offenders who violate the nation's gun laws. The following is a summary report of significant activity from April 10, 1991 through April 30, 1994:

Description	Count	Description	Count
Defendants Charged.....	18,319	Prison Sentences.....	80,205 years
Defendants Convicted.....	11,837	Sentenced to Prison.....	9,762
Defendants Acquitted.....	656	Sentenced w/o prison or suspended.....	746
Defendants Dismissed.....	1,898	Average Prison Sentence..	99 months
Defendants Sentenced.....	10,508		

Defendants Charged Under 922(g) w/o enhanced penalty.....	3,045
Defendants Charged Under 922(g) with enhanced penalty under 924(e).....	864
Defendants Charged Under 924(c).....	5,784
Defendants Charged Under Both 922(g) and 924(c).....	835
Defendants Charged Under 922(g) and 924(c) and (e).....	172
Subtotal Charged Under 922(g), 924(c) +(e).....	10,700
Defendants Charged With Other Firearms Violations (Includes 279 "carjacking" - 18 U.S.C. §2119 defendants)....	7,619
Grand Total (With Firearms).....	18,319

NOTE: Section 924(e) is a sentence enhancement applied to a defendant, prosecuted under 922(g), and has three or more prior state or federal felony convictions for violent offenses or serious drug offenses. It carries a 15-year mandatory minimum sentence. (These figures do not reflect D.C. Superior Court prosecutions.)

* * * * *

POINTS TO REMEMBER

Department Of Justice Organization Chart

Attached at the Appendix of this Bulletin as Exhibit C is the official signed and approved Department of Justice organization chart, dated April 16, 1994. The new chart reflects the realignmnet of the Office of Legislative Affairs and the Office of Legal Counsel reporting to the Deputy Attorney General and the Associate Attorney General. This organizational change will improve and enhance the coordination of all Department of Justice activities relating to legislation, Congress, and legal matters.

* * * * *

Equitable Sharing Program

Cary Copeland, Director of the Executive Office for Asset Forfeiture, Office of the Deputy Attorney General, has distributed a Guide to Equitable Sharing of Federally Forfeited Property For State and Local Law Enforcement Agencies dated March 1994. The purpose of this Guide is to enhance the integrity of the sharing program so that it will continue to merit public confidence and support. For this reason, a National Code of Professional Conduct for Asset Forfeiture was appended to the Guide, a copy of which is attached at the Appendix of this Bulletin as Exhibit D. Also attached is a list of significant changes to the Equitable Sharing Program as detailed in the Guide.

If you have any questions, please call the Executive Office for Asset Forfeiture. The telephone number is: (202) 616-8007.

* * * * *

SENTENCING REFORM

Guideline Sentencing Updates

Copies of the Guideline Sentencing Update, Volume 6, No. 12, dated May 12, 1994, and Volume 6, No. 13, dated May 27, 1994, are attached as Exhibit E 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.

* * * * *

LEGISLATION

Freedom Of Access To Clinic Entrances Act

On May 26, 1994, President Clinton signed into law the Freedom of Access to Clinic Entrances Act, which bars conduct, including violence, that would obstruct access to an abortion clinic. At least one lawsuit has been filed that challenges the validity of the statute.

* * * * *

Indian Gaming Regulatory Act

On May 17, 1994, Kevin V. Di Gregory, Deputy Assistant Attorney General, Criminal Division, testified before the Senate Committee on Indian Affairs concerning the Indian Gaming Regulatory Act. Mr. Di Gregory stated that at the recent American Indian Listening Conference sponsored by the Departments of Justice and Interior in Albuquerque, the tribes expressed their concerns for the economic boost that gaming gives them, and the difficulties with the present statutory scheme, particularly the litigation it inevitably encourages. He further stated that the Department of Justice has been in contact with the National Association of Attorneys General and has heard their legitimate concerns about the spread of unregulated gaming around the country and the problems it raises.

Other topics of discussion were the role and interest of the Department of Justice in Indian gaming, the need for amendment of the Indian Gaming Regulatory Act, and a variety of other concerns that Congress needs to address when amending the Act in order to reduce litigation, give clarity and finality to the law, and provide adequate regulation.

Mr. Di Gregory also testified on oversight of Indian gaming on April 20, 1994. (See, Vol. 42, No. 5, dated May 15, 1994, at p. 185.) Copies of the testimony are available by calling the United States Attorneys' Bulletin staff, at (202) 514-4633.

* * * * *

Health Care Fraud

On May 25, 1994, Gerald M. Stern, Special Counsel for Financial Institution Fraud and Health Care Fraud, testified before the Senate Committee on the Judiciary concerning health care fraud and the Health Security Act. 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. In 1992, the FBI launched a health care fraud initiative which included new training, new agents and task forces dedicated to health care fraud. The FBI's caseload has increased dramatically. As of October 1, 1991, the FBI had 365 pending health care fraud investigations. By October 1993, this number had grown to 1,051 pending investigations. It now exceeds 1,300.

Health care fraud matters and cases handled by United States Attorneys and other Department of Justice attorneys similarly 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.

Mr. Stern also testified on March 17, 1994 before the Subcommittee on Legislation and National Security and the Subcommittee on Human Resources and Intergovernmental Relations of the House Committee on Government Operations concerning the fraud and abuse provisions of the Health Security Act. If you would like a copy of the testimony, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

* * * * *

Medical Malpractice Issues In Health Care Reform

On May 24, 1994, Cynthia C. Lebow, Senior Counsel for Policy, Civil Division, testified before the Subcommittee on Courts and Administrative Practice of the Senate Committee on the Judiciary concerning medical malpractice issues in the Administration's health care reform bill.

Ms. Lebow stated that the President's proposal provides two new mechanisms for a more sensible and cost-effective approach to resolving medical malpractice disputes. First, it encourages consumers and providers to settle malpractice claims outside of court. Every health plan will be required to develop and have in place at least one alternative dispute resolution (ADR) mechanism, such as arbitration or mediation, and every claim against a doctor or other provider must first be referred for ADR before it can be litigated. Ms. Lebow further stated that although ADR is not binding, meaning that consumers dissatisfied with the outcome can go to court, it is mandatory. Attempting to settle malpractice claims before they get to court has rewards for both patients and providers. Parties suffering real injuries will be compensated sooner and claimants with smaller claims will have increased access to a dispute resolution mechanism, avoiding the costs of extended litigation. Both sides may be spared the substantial stress of full-scale litigation. This arrangement will alert plan administrators to providers with a track record of claims against them, and physicians may be saved the expense and distraction of defending meritless claims in court.

Second, the Health Security Act provides that the National Practitioner Data Bank will make available to the public the names of practitioners who have a pattern of malpractice payouts or sanctions. Under the Health Care Quality Improvement Act, malpractice payouts and sanctions are reported to the National Practitioner Data Bank and are made available to states or licensing authorities, but not to the general public. For the first time, the names of licensed health care practitioners with repeated numbers of malpractice payouts or sanctions will be available to the public. Ms. Lebow further discussed other proposed reforms in the Health Security Act to discourage the filing of frivolous lawsuits and to provide fair, uniform national rules for malpractice awards. If you would like a copy of this testimony, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

* * * * *

SUPREME COURT WATCH

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

Selected Cases Recently Decided

Civil Cases

Dalton v. Specter, No. 93-289 (decided May 23)

In this case, the Court held that judicial review is not available for alleged violations of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. 2687 note.

Waters v. Churchill, No. 92-1450 (decided May 31)

In this case, the Court held that in assessing a public employee's First Amendment protection against discharge for speech on a matter of public concern, the appropriate inquiry under Connick v. Myers, 461 U.S. 138, is what the employer reasonably thought that the employee said.

Criminal Cases

Beecham v. United States, No. 93-445 (decided May 16)

In this case, the Court held that state restoration of a felon's civil rights could not undo the federal disability from a federal conviction. Thus, petitioner was properly convicted under 18 U.S.C. 922(g), which makes it a crime for a felon to possess a firearm.

Custis v. United States, No. 93-5209 (decided May 23)

In this case, the Court held that in a sentencing proceeding under the Armed Career Criminal Act, the Constitution does not require that a defendant be allowed to challenge the constitutional validity of prior convictions offered by the government for sentencing enhancement. The only exception to this rule is that Gideon violations can be shown in the sentencing proceeding.

Posters 'N' Things v. United States, No. 92-903 (decided May 23)

In this case, the Court held that the Mail Order Drug Paraphernalia Control Act, 21 U.S.C. 857, requires proof that the defendant knowingly sold items that he knew were likely to be used with illegal drugs. The Court rejected petitioner's contention that the Act was void for vagueness.

Staples v. United States, No. 92-1441 (decided May 23)

In this case, the Court held that under the National Firearms Act, 26 U.S.C. 5861(d), the government must prove that the defendant knew that the rifle had the characteristics that brought it within the statutory definition of a machinegun.

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

Civil Cases

Lebron v. National Railroad Passenger Corp., No. 93-1525 (granted May 23)

Whether a higher degree of state involvement with private entity must be shown to establish state action for First Amendment claims than for sex and race discrimination claims.

Stone v. INS, No. 93-1199 (granted May 23)

Whether a motion for reconsideration tolls the limitations period for a petition for review.

Criminal Cases

Arizona v. Evans, No. 93-1660 (granted May 31)

Whether the exclusionary rule requires suppression of evidence seized incident to arrest where the arrest was based upon a police computer record of an open warrant that had actually been quashed.

* * * * *

CASE NOTES

NORTHERN DISTRICT OF OHIO

District Court Grants Summary Judgment Against Attorney And His Law Firm For Paying Other Creditors Ahead Of The United States In Violation Of The Federal Priority Statute, 31 U.S.C. §3713

This case was filed under the federal priority statute, 31 U.S.C. §3713, which makes the representative of an insolvent company personally liable to the extent that the representative pays other creditors ahead of the United States. In 1986, Moriarty, an attorney and officer of an insolvent defense contractor, distributed over $165,000 to creditors of the insolvent company, with none of the money going to the United States. The district court initially held that the United States' case was barred by the statute of limitations, but the Sixth Circuit reversed. United States v. Moriarty, 8 F.3d 329 (6th Cir. 1993). On remand, the district court granted the United States' motion for summary judgment, rejecting Moriarty's argument that he should not be liable because he made the payments at the direction of others. The district court awarded the United States all of the relief requested, including prejudgment interest from 1986. The district court also held the attorney's law firm jointly liable, because the attorney was acting as an agent for the partnership when he distributed the funds to creditors other than the United States. On May 16, 1994, the district court denied the defendants' motion to alter or amend the judgment.

United States v. Moriarty, No. 1:91CV2540 (N.D. Ohio Mar. 31 and May 16, 1994) DJ # 46-57-1179

Attorney: Arthur I. Harris - (216) 622-3711

* * * * *

CENTRAL DISTRICT OF CALIFORNIA

Central District Of California Grants Motions For Partial Summary Judgment Regarding (1) Falsity Of Time Cards And (2) Contractor's Affirmative Defenses

The government moved for partial summary judgment on the issue of whether time cards that General Dynamics (GD) submitted to the government were false under the False Claims Act. The government also moved for summary judgment regarding GD unclean hands, estoppel, and failure to mitigate defenses, which were based on allegations that the government knew that GD employees were sometime idle, and that the government destroyed certain documents that might have shown that the government knew that GD employees were leaving work early. The Court held that "any claim by General Dynamics that includes a request for reimbursement for labor hours during which the relevant employees were neither actually working nor present and available for work is indisputably false." The Court also held that estoppel and "unclean hands" arising from government knowledge are not valid affirmative defenses to a False Claims Act action, that GD contentions regarding discovery abuse did not allege the type of misconduct that would give rise to an affirmative defense, and that to allow mitigation as a defense to an action brought under the qui tam provisions of the False Claims Act would be inconsistent with the function of those provisions.

United States ex rel. Ferguson v. General Dynamics Corp., No. CV 90-4703 MRP (C.D.Cal. April 28, 1994) (DJ # 46-12C-3464)

Attorney: Frank D. Kortum, Assistant U.S. Attorney - (213) 894-5710

* * * * *

CIVIL DIVISION

Fourth Circuit Approves FEMA's Determination That Federal Flood Insurance Coverage May Not Be Provided For Relocated Beach Home

Plaintiffs own a beach house in Nags Head, North Carolina, that was covered by federal flood insurance. In the Spring of 1990, plaintiffs decided to move their home further away from the Atlantic Ocean to avoid the possibility of flood damage. Plaintiffs applied for reimbursement of the costs of relocating the home under the Upton-Jones Amendment to the National Flood Insurance Act of 1968, 42 U.S.C. § 4013(c). On the basis of its conclusion that plaintiffs' property was eroding at an average rate of six feet per year, FEMA determined that plaintiffs had failed to move their home sufficiently far back from the ocean to qualify for insurance coverage for the home in its present location. Plaintiffs then commenced this action for reinstatement of their insurance coverage. The district court granted summary judgment in favor of plaintiffs, holding that FEMA had failed to apply the same erosion rate in calculating the minimum distance that plaintiffs' beach home was required to be moved to remain eligible for federal flood insurance as it had applied in determining that plaintiffs were entitled to relocation benefits. The court further held that FEMA was required under its own regulations to apply an erosion rate of three feet per year in making those determinations.

The court of appeals (Widener, Wilkinson, and Brinkema) has now reversed in a published decision. The court held that FEMA retains final authority to determine whether property owners qualify for federal relocation benefits and whether they have moved their structures a sufficient distance to remain eligible for federal flood insurance. The court further held that FEMA in fact applied the same erosion rate in making those related determinations and that substantial evidence supports FEMA's conclusion that plaintiffs' property is eroding at an average rate of six feet per year.

Burch v. Federal Ins. Adm'n, No. 93-1749 (May 5, 1994) [4th Cir.; E.D.N.C.]. DJ # 145-193-1375

Attorneys: Barbara L. Herwig - (202) 514-5425
Michael S. Raab - (202) 514-4053

* * * * *

Sixth Circuit Affirms Dismissal On Absolute Immunity Grounds Of Bivens Action Against Assistant United States Attorneys And ATF Agent Who Assisted In Prosecution

Brian Tackett, who was convicted on federal arson charges, brought this Bivens action against the Assistant United States Attorneys who prosecuted him and an ATF Agent who assisted in the prosecution. Tackett alleged that, during his criminal trial and while post-trial evidentiary proceedings were pending, the defendants intimidated his potential witnesses, resulting in denial of his Sixth Amendment rights. The district court rejected Tackett's claims and dismissed his suit. The court held that, because all the alleged misconduct related to actions that were intimately associated with the judicial phase of the criminal process, the defendants were absolutely immune from damages liability under Imbler v. Pachtman, 424 U.S. 409, 430 (1976). The district court also denied Tackett's request for injunctive relief. In a brief, unpublished opinion, the court of appeals has now affirmed the district court's judgment in all respects.

Tackett v. Wilt, No. 94-5035 (May 19, 1994) [6th Cir.; W.D. Ky.]. DJ # 157-31-553

Attorneys: Barbara L. Herwig - (202) 514-5425
Sean A. Lev - (202) 514-1278

* * * * *

Ninth Circuit Affirms District Court Ruling That Discretionary Function Exception Bars Negligence Action Against United States In Connection With Accident On Indian Land

In this Federal Tort Claims Act case, plaintiff sought damages from the government for the wrongful death of his wife, who was killed by a runaway vehicle while watching a stock car race at a Montana speedway. The privately operated racetrack was located on land leased from the Flathead Indian Reservation, with the approval of the Secretary of the Interior (as required by statute). Plaintiff claimed that the Secretary was negligent in approving the lease and allowing the Reservation's land to be used for a racetrack when the facility was not safely designed, constructed, and barricaded. The district court, however, granted the government's motion for summary judgment. In a published opinion, it concluded that the suit was barred by the discretionary function exception to the FTCA because the Secretary's action (or decision not to act) regarding the lease of Indian land was a matter of choice, grounded in the government's long established policy of Native American self-determination. In a brief order that will be published, the Ninth Circuit (Hug, Hall, and Thompson) has affirmed the district court's "well-reasoned opinion."

Webster v. United States, No. 92-36847 (Apr. 19, 1994) [9th Cir.; D. Mont.]. DJ # 157-44-618

Attorneys: Mark B. Stern - (202) 514-5089
Christine N. Kohl - (202) 514-4027

* * * * *

False Claims Act

Ninth Circuit Holds That Even When Government Declines To Intervene In Qui Tam Suit, It Retains The Right, On A Showing Of Good Cause, To Object To The Manner In Which Funds Are Allocated In A Proposed Settlement, And That Relator And Defendant Can Not Structure A Settlement To Artificially Reduce The Government's Share Of Recovery

Following the Government's decision to decline to intervene in the qui tam action filed by relator, relator and defendant eventually decided to settle the matter, with part of the settlement allocated to the False Claims Act case and the remainder allocated to relator's wrongful termination claim. The Government objected to the settlement, but declined to intervene. The trial court dismissed the action with prejudice. The Ninth Circuit ruled that the Government was the real party in interest and that it could intervene solely for the purpose of appealing the manner of allocation of settlement funds. Rejecting the Government's assertion that 31 U.S.C. §3730(b)(1) gives the Government an absolute right to object to a settlement in a qui tam case in which the Government has declined to intervene, the Ninth Circuit nonetheless held that the Government retained its right, upon a showing of good cause, to object to a proposed settlement. The court further held that relator and defendant could not artificially structure a settlement to deny the Government its proper share of the settlement proceeds.

The case has been reargued and we are awaiting the court's decision.

United States ex rel. Killingsworth v. Northrop Corp., No. 92-55863 (Jan. 19, 1994) [9th Cir.; C.D. Calif.]

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

* * * * *

Ninth Circuit Reaffirms Government's Right To Object To Proposed Allocation Of Settlement Proceeds But Holds That Government Must Intervene To Object To Other Aspects Of The Settlement

As in the Killingsworth case, following the Government's decision to not intervene in a qui tam action filed by relator, relator and defendant negotiated a settlement. Without intervening, the Government expressed concerns about 4 aspects of the settlement: whether attorney's fees under the settlement were actually compensatory payments which should, in part, be allocated to the Government; whether dismissal should be without prejudice to the Government; whether the dismissal should expressly prohibit defendant from recouping its fees and expenses as overhead on Government contracts; and whether the dismissal should include the stipulation, unauthorized by the Government, that states the deficiencies were remedied to the Government's satisfaction. Following Killingsworth, the Ninth Circuit held that the Government could not both refuse to intervene and withhold its consent to settle. Nonetheless, the court held that the Government, on a showing of good cause, could object to the allocation of settlement proceeds. The court further stated that in order to object to the remaining provisions, the Government must intervene.

The case has been reargued and we are awaiting the court's decision.

United States ex rel. Gibeault v. Texas Instruments Corp., No. 92-55760 (Jan. 19, 1994) [9th Cir. C.D. Calif.]

Attorney: Dara Corrigan - (202) 514-9473

* * * * *

TAX DIVISION

Supreme Court Unanimously Reverses Eighth Circuit On Whether A 1979 Disclaimer Of An Interest In A Trust Created In 1917 Constituted A Taxable Gift

On April 20, 1994, the Supreme Court unanimously reversed the Eighth Circuit and held for the government in United States v. Irvine. The question presented was whether a 1979 disclaimer of an interest in a trust created in 1917 constituted a taxable gift. The Eighth Circuit, sitting en banc, had held that the taxpayer's disclaimer created no gift tax liability because the interest disclaimed had been created prior to the enactment of the gift tax. Finding that the taxpayer had delayed her disclaimer for an unreasonably long period (47 years), the Court held that the disclaimer constituted a taxable transfer. In so holding, the Court rejected the taxpayer's argument that the disclaimer should escape taxation because the transfer creating the taxpayer's interest took place before the enactment of the gift tax, and that subjecting the taxpayer's 1979 disclaimer to taxation violated a provision in the 1932 gift tax act that limited application of the tax to transfers after the date of enactment. This decision involves more than $23 million in tax and interest.

* * * * *

Fifth Circuit Upholds Right Of IRS To Issue A Summons To Obtain Documents On Behalf Of Mexico Under The U.S.-Mexico Tax Information Exchange Agreement

On April 20, 1994, the Fifth Circuit affirmed the District Court's order enforcing an IRS summons that was issued at the request of Mexican Tax Authorities under a Tax Information Exchange Agreement (TIEA) entered into with Mexico. The Court of Appeals ruled that the Executive Branch has statutory authority to conclude a TIEA with any country in the world and that the IRS had the authority to issue the

summons under the TIEA to obtain information for Mexico. It further ruled that the summons here had been issued in good faith, in compliance with the Right to Financial Privacy Act, and that it sought information relevant to the determination of the taxpayer's Mexican tax liability. Finally, the Court ruled that the summons properly could require production of documents and records relating to transactions that had occurred prior to execution of the TIEA. The case arose from a summons issued by the IRS to the International Bank of Commerce in Brownsville, Texas, calling for bank records requested by Mexico under the TIEA.

* * * * *

Seventh Circuit Reverses Adverse Judgment Of District Court In Case Involving Embezzlement Of Funds And Ordered The Suit Be Dismissed For Lack Of Jurisdiction

On April 27, 1994, the Seventh Circuit reversed the adverse judgment of the district court in Pershing Division of Donaldson, Lukfin & Jenrette Securities Corp. v. United States, and ordered that the suit be dismissed for lack of jurisdiction. An employee of the Pershing Division embezzled funds from the company via a partnership he formed with accomplices to facilitate the embezzlement. The partnership actually paid over $340,000 in taxes to the Internal Revenue Service. When the scheme was uncovered, Pershing brought this suit against the Government for the return of the taxes, which Pershing asserted were paid with embezzled funds. The district court ruled in favor of Pershing, holding that the Government's failure to return the money constituted a "taking" in violation of the Fifth Amendment.

The court of appeals reversed. The court first held that a "takings" claim seeking more than $10,000 in damages could only be brought in the Court of Federal Claims. The court then rejected Pershing's alternative contention that, as the party to bring a tax had been "wrongfully collected," it had standing to bring a refund suit pursuant to 28 U.S.C. §1346(a)(1). The court held that only the person legally liable for paying a tax could bring a refund suit, thereby declining Pershing's invitation to interpret Section 1346 more broadly. The court reasoned that this provision constitutes a waiver of sovereign immunity, which should be "narrowly construed."

* * * * *

Ninth Circuit Reverses District Court Order In Case Brought By A Nontaxpayer To Recover Amounts Paid To The IRS In Order To Obtain Release Of Federal Tax Liens Arising Out Of The Tax Liabilities Of A Third Person

On May 19, 1994, the Ninth Circuit reversed the favorable order of the District Court in Williams v. United States. The case presented the issue whether the District Court has jurisdiction under 28 U.S.C. §1346(a)(1) (original jurisdiction of district courts in civil actions against the United States) to entertain a refund suit brought by a nontaxpayer to recover amounts paid to the IRS in order to obtain the release of federal tax liens arising out of the tax liabilities of a third person.

The District Court dismissed the suit on the grounds that one who is not asserted to be liable for a tax, but who pays it in order to remove a lien against property, may not sue for a refund under 28 U.S.C. §1346(a)(1). The Ninth Circuit reversed, reasoning that §1346 "clearly allows one from whom taxes are erroneously or wrongfully collected to sue for a refund of those taxes." In so concluding, the Court followed the Fourth Circuit's decision in Martin v. United States, 895 F.2d 992 (4th Cir. 1990) and rejected the contrary holdings of the Fifth (Snodgrass v. United States, 834 F.2d 537 (1987)), and Seventh (Busse v. United States, 542 F.2d 421 (1976)), Circuits on the ground that those opinions "fail to give sufficient attention to the plain language of Section 1346(a)(1)." The Seventh Circuit has recently reaffirmed its Busse holding in Pershing Division v. United States (decided April 27, 1994). In light of this conflict, the Tax Division is evaluating whether to recommend the filing of a petition for writ of certiorari.

* * * * *

OFFICE OF LEGAL EDUCATION

COMMENDATIONS

David Downs, Acting Director, 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 Department of Justice and Federal agency personnel for their outstanding teaching assistance and support during courses conducted from April 15 - May 15, 1994. Persons listed below are AUSAs unless otherwise indicated:

Criminal Paralegal Course (Washington, D.C.)

Paralegal Specialists: ***Sabrina Black,*** Eastern District of Virginia; ***Theresa Bozak,*** Asset Forfeiture Division, Northern District of Ohio; ***Linda Cole,*** Western District of North Carolina; ***Pamela Hudson,*** Southern District of West Virginia; ***Mamie Johnson,*** District of Minnesota; ***Elisabeth Regan,*** Eastern District of North Carolina; ***Dennis Roane,*** Central District of California; ***Ann M. Roberts,*** Western District of Oklahoma. Assistant United States Attorneys: ***Robert Chesnut, John T. Martin,*** and ***Nash Schott,*** Eastern District of Virginia; ***Victoria Major,*** Southern District of West Virginia; ***Gentry Shelnutt,*** Northern District of Georgia; ***Kurt Shernuk,*** District of Kansas; ***Julie Werner Simon,*** Central District of California; ***Robert Sims,*** District of Maryland; ***Jeanne Tebo,*** Southern District of California; ***Barbara Ward,*** Southern District of Florida; ***Paige Winck,*** Eastern District of Tennessee. ***Mark Adler,*** Trial Attorney, Criminal Division.

Civil Chiefs Seminar (Large Offices) (Annapolis, Maryland)

From the Civil Division: ***Frank Hunger,*** Assistant Attorney General, Civil Division; ***Michael Hertz,*** Director, Commercial Litigation Branch; ***Jeffrey Axelrad,*** Director, Torts Branch; ***Helene M. Goldberg,*** Director, Torts Branch; and ***Robert Kopp,*** Director, Appellate Staff. ***Lynne A. Battaglia,*** United States Attorney, and ***Juliet Eurich,*** Chief, Civil Division, District of Maryland. ***Michael R. Stiles,*** United States Attorney, ***James Sheehan,*** Chief, Civil Division, and ***Catherine Votaw,*** Deputy Chief, Civil Division, Eastern District of Pennsylvania. ***Ruth Yeager,*** United States Attorney, Eastern District of Texas. Civil Division Chiefs: ***John Bates,*** District of Columbia; ***Roger W. Griffith,*** Western District of Oklahoma; ***Amy Hay,*** Western District of Pennsylvania; ***Robert Jaspen,*** Eastern District of Virginia; ***Marcia Johnson,*** Northern District of Ohio; ***Rudy Renfer,*** Eastern District of North Carolina; ***Bette Uhrmacher,*** District of New Jersey; ***Mary Beth Uitti,*** Northern District of California; ***Leon Weidman,*** Central District of California; and ***Thomas Walsh,*** Northern District of Illinois. ***Paul Newby,*** Chief, Financial Litigation Unit, Eastern District of North Carolina; ***Raymond A. Nowak,*** First Assistant, Civil Division, Western District of Texas. ***Debra Cohn,*** Deputy Special Counsel for Health Care Fraud, Office of the Deputy Attorney General. ***Paul Hancock,*** Chief, and ***Barbara Kammerman,*** Trial Attorney, Housing and Enforcement Section, Civil Rights Division. From the Executive Office for United States Attorneys: ***Anthony C. Moscato,*** Director; ***Michael McDonough,*** Assistant Director, Financial Management Staff; ***Eileen Menton,*** Assistant Director, Case Management Staff; ***Deborah Westbrook,*** Legal Counsel; ***Gail Williamson,*** Assistant Director, Personnel Staff; and ***Paul Ross,*** Manager, Labor and Employee Relations Branch.

Discovery Skills (Washington, D.C.)

Paula Newett, Richard Parker, and ***Debra Prillaman,*** Eastern District of Virginia; ***Sally Rider,*** District of Columbia. From the Civil Division: ***Vincent Garvey*** and ***Sheila M. Lieber,*** Deputy Directors, ***Anne L. Weisman, Elizabeth Pugh, Thomas Millet,*** and ***Arthur Goldberg,*** Assistant Directors, Federal Programs Branch; ***Mary Leach,*** Senior Trial Counsel, Torts Branch; and ***Barbara Kammerman,*** Senior Trial Attorney, Housing and Civil Enforcement Section.

Asset Forfeiture Trial Advocacy (Washington, D.C.)

Sonia Jaipaul, Chief, Asset Forfeiture Unit, and ***Mary Ann Donaghy,*** Eastern District of Pennsylvania; ***Robert Eaton,*** District of Columbia; ***Donna Elde,*** Southern District of Indiana; ***Anthony Hall,*** District of Idaho; ***Claude Hippard,*** Southern District of Texas; ***Eric Honig,*** Chief, Asset Forfeiture Unit, Central District of California; ***Michael Iannotti,*** District of Rhode Island; ***Gordon Kromberg,*** Eastern District of Virginia; ***Patricia Kerwin,*** Middle District of Florida; ***Gregg Marchessault,*** Eastern District of Texas; ***Kathy Stark,*** Southern District of Florida; ***Nancy Svoboda,*** District of Nebraska; ***Tom Swaim,*** Eastern District of North Carolina; ***Ellen Zimiles,*** Southern District of New York; and ***Laurie Sartorio,*** Assistant Director for Policy and Operations, Executive Office for Asset Forfeiture.

Civil Paralegal Course (Washington, D.C).

Janet Anderson, Western District of Texas; ***Glenda Foster,*** Paralegal Specialist, Eastern District of California; ***Joan Garner,*** Eastern District of Pennsylvania; ***Jim Layton*** and ***Mark Nagel,*** District of Columbia; ***Angela Meadows,*** Legal Technician, District of Maryland; ***Doris Ogeltree,*** Paralegal Specialist, Western District of Louisiana; ***Richard Parker,*** Eastern District of Virginia; ***Elizabeth Price,*** Eastern District of California; ***Verda Redman,*** Systems Manager, Southern District of Indiana; ***Donna Sanger,*** District of Maryland; ***William L. Schlich, Jr.,*** Systems Manager, Northern District of West Virginia; ***Denise H. Teal,*** Paralegal Specialist, Northern District of Ohio; ***Marianne Tomecek,*** Southern District of Texas; ***Christopher VanHine,*** Assistant Systems Manager, Middle District of Pennsylvania; ***Laurie West,*** Paralegal Specialist, Western District of Texas. ***Scott Bomson,*** Deputy Associate General Counsel, Federal Bureau of Prisons. ***Carrick Brooke-Davidson,*** Trial Attorney, and ***Susan Ross,*** Paralegal Specialist, Environmental Enforcement Section, Environment and Natural Resources Division. ***Ray Collado*** and ***Gail Deutsch,*** Technical Support Services, and ***Bonnie Gay,*** Director, Freedom of Information/Privacy Act Unit, Executive Office for United States Attorneys. ***Stephen D. Gladis,*** Special Agent and Chief, Publications Unit, Law Enforcement Unit, Federal Bureau of Investigation Academy, Quantico, Virginia. From the Civil Division, Torts Branch: ***Lawrence Klinger,*** Assistant to the Director; ***Jane Mahoney,*** Attorney; ***Patricia Dragonuk,*** Supervisory Paralegal Specialist; and ***Larry Lange,*** Paralegal Specialist.

Appellate Advocacy Course (Washington, D.C.)

Joel Bertocchi, Northern District of Illinois; ***Dawn Bowen,*** Southern District of Florida; ***Jackie Chooljian,*** Central District of California; ***Mike Clark,*** Southern District of Texas; ***Barbara Grewe,*** District of Columbia; ***Eric Havian,*** Northern District of California; ***Ben Hagood,*** District of South Carolina; ***Diane Kirstein,*** Western District of Texas; ***Glenn Moramarco,*** District of New Jersey; ***Kathleen Moro Nesi,*** Eastern District of Michigan; ***Lisa Rubio,*** Southern District of Florida. ***Richard Shiffrin,*** Deputy Assistant Attorney General, and ***Chris Yates,*** Attorney-Advisor, Office of Legal Counsel. ***Mervyn Hamburg,*** Senior Counsel, Appellate Staff, Criminal Division. From the Civil Division, Appellate Staff: ***Mark Stern,*** Appellate Litigation Counsel; ***Bill Cole, Katie Gruenheck, Patricia Millet, Michael Raab, Michael Robinson,*** and ***Ed Swaine,*** Trial Attorneys; and ***Marleigh Dover,*** Special Counsel. ***Charles Pazar,*** Attorney, Office of Immigration Litigation, Civil Division.

Basic Bankruptcy (San Francisco, California)

Bernard Snell and ***Lillian Lockary,*** Middle District of Georgia; ***Lawrence B. Lee,*** Southern District of Georgia; ***Philip Klingeberger,*** Chief, Civil Division, Northern District of Indiana; ***Jane Bondurant,*** Chief, Civil Division, and ***Tim Feeley,*** Western District of Kentucky; ***Rudy Renfer,*** Chief, Civil Division, Eastern District of North Carolina; ***Richard Clippard,*** Middle District of Tennessee; ***Marianne Tomecek,*** Southern District of Texas; ***David Schiller,*** Eastern District of Virginia. ***Judith Benderson,*** Assistant Director, and ***Kristin Tolvstad,*** Financial Litigation Staff, Executive Office for United States Attorneys. ***Christopher Kohn,*** Director, and ***Sam Maizel,*** Attorney, Commercial Litigation Branch, Civil Division; ***Gary Gray,*** Reviewer, Appellate Section, Tax Division.

Environmental Law Course (Washington, D.C.)

Peter Hsaio, Assistant United States Attorney, Central District of California. From the Environment and Natural Resources Division: ***Lois Schiffer,*** Assistant Attorney General; ***Peter Coppelman,*** Deputy Assistant Attorney General; ***William M. Cohen,*** Chief, ***K. Jack Haugrud*** and ***Ellen Athas,*** Assistant Chiefs, and ***Nadira Clarke,*** Trial Attorney, General Litigation Section; ***John Cruden,*** Chief, Environmental Enforcement; ***James C. Kilbourne,*** Chief, Wildlife Marine Resources Section; ***Pauline Millus,*** Chief, Policy, Legislation and Special Litigation Section; ***Gregory F. Linsin,*** Unit Chief, Environmental Crimes Section; ***James E. Brookshire,*** Deputy Chief, General Litigation Section; ***Thomas H. Pacheco,*** Assistant Chief, Environmental Defense Section; ***Bruce Gelber,*** Assistant Chief, Environmental Enforcement; ***Annie Petsonk*** and ***Catherine Sheafor,*** Attorneys, Policy, Legislation and Special Litigation; ***Albert Ferlo,*** Senior Attorney, Appellate Section; ***Maria Iizuka,*** Trial Attorney (Sacramento).

Public Corruption Seminar (Clearwater, Florida)

Scott Lassar, First Assistant, Northern District of Illinois; ***Steve Pence,*** First Assistant, Western District of Kentucky; ***Edwin J. Walbourn,*** Supervisory Assistant, Eastern District of Kentucky; ***Michael Emmick,*** Chief, Public Corruption/Government Fraud Section, Central District of California; ***John O'Sullivan,*** Chief, Criminal Division, Southern District of Florida; ***Joseph Savage,*** Chief, Public Corruption Section, District of Massachusetts; ***Larry Ellis,*** Chief, Criminal Division, Southern District of West Virginia; ***Michael P. Sullivan,*** Senior Litigation Counsel, Southern District of Florida; ***Scott Levine,*** Northern District of Illinois; ***Scott Mendeloff,*** Northern District of Illinois; ***David Jones,*** Western District of Missouri; ***William Carr, Jr.,*** Eastern District of Pennsylvania; ***John Barton,*** District of South Carolina. From the Criminal Divsion, Public Integrity Section: ***Lee Radek,*** Chief; ***Joseph Gangloff,*** Principal Deputy Chief; ***Craig Donsanto,*** Director, Election Crimes Branch; ***David Green,*** Senior Litigation Counsel; ***Bruce Reinhart,*** Trial Attorney.

Ethics for Litigators (Washington, D.C.)

George E. Pruden, II, Associate General Counsel for Employment Law and Information, Office of General Counsel, Federal Bureau of Prisons. ***Anne Weisman,*** Assistant Director, Federal Programs Branch, Civil Division. ***Constance H. Frogale,*** Eastern District of Virginia.

COURSE OFFERINGS

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

July 1994

Date	***Course***	***Participants***
6-8	Civil Chiefs (Small/Medium Offices)	USAO Civil Chiefs
12-15	Asset Forfeiture Multi-Level Support Staff	USAO Paralegals
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
	August 1994	
1-5	Advanced Criminal Trial Advocacy	AUSAs, DOJ Attorneys
2-5	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
8-12	Appellate Advocacy	AUSAs, DOJ Attorneys
11-12	Overview of the Archeological Resources Protection Act	AUSAs
16-18	Criminal Tax Institute	AUSAs, DOJ Attorneys
17-19	Attorney Supervisors	AUSAs
23-25	Alternative Dispute Resolution	AUSAs, DOJ Attorneys
29-Sept. 2	Criminal Federal Practice	AUSAs, DOJ Attorneys
	September 1994	
8-9	Medical Malpractice	AUSAs, DOJ Attorneys
12-15	Civil Federal Practice	AUSAs, DOJ Attorneys
19-27	Criminal Trial Advocacy	AUSAs, DOJ Attorneys

September 1994

Date	***Course***	***Participants***
20-22	Criminal Chiefs (Large Offices)	USAO Criminal Chiefs
27-29	Environmental Law (Civil)	AUSAs, DOJ Attorneys
27-29	Civil Rights	AUSAs, DOJ Attorneys
27-29	Criminal Chiefs (Small Offices)	USAO Criminal Chiefs

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 F. 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 *).**

July 1994

Date	***Course***	***Participants***
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

August 1994

Date	*Course*	*Participants*
1-5*	Support Staff Training	USAO Paralegals
15	Ethics for Litigators	Attorneys
18-19	Evidence	Attorneys
22-31*	Financial Litigation for Paralegals	USAO Paralegals
23	Introduction to FOIA	Attorneys, Paralegals

September 1994

7-9	Law of Federal Employment	Attorneys
19	Appellate Skills	Attorneys
20-23	Examination Techniques	Attorneys
27-29*	Advanced Financial Litigation for Support Staff	USAO Support Staff
30	Legal Writing	Attorneys

* * * * *

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

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

Telephone: (202) 616-6700
FAX: (202) 616-6476

Director	David Downs
Assistant Directors:	
AGAI-Criminal	Charysse Alexander
AGAI-Civil & Appellate	Mollie Nichols
AGAI-Asset Forfeiture and Financial Litigation	Nancy Rider
LEI	Donna Preston
LEI	Chris Roe
LEI-Paralegal & Support	Donna Kennedy

* * * * *

ADMINISTRATIVE ISSUES

CAREER OPPORTUNITIES

ENVIRONMENT AND NATURAL RESOURCES DIVISION

Assistant Chief, Environmental Defense Section

The Office of Attorney Personnel Management, Department of Justice, is seeking an experienced attorney for the position of Assistant Chief of the Environmental Defense Section, Environment and Natural Resources Division (ENRD), in Washington, D.C. The ENRD represents the United States in litigation and counsels agencies concerning environmental laws, natural resources, and Native American tribes.

The Environmental Defense Section consists of fifty-seven attorneys defending EPA's administrative actions; defending federal agencies in litigation under pollution control laws; and enforcing wetlands laws. The Assistant Chief of the Section supervises attorneys and is part of the Section's management team. The Section has a diverse practice in district and appellate courts throughout the country, including complex trials, appeals from district court judgments, and petitions for review of agency action filed in the D.C. Circuit Court and in other circuit courts. Its attorneys also work with the Solicitor General in cases before the Supreme Court. The Section also works on cases interpreting the wetlands provisions of the Clean Water Act; the pollution-control provisions of that Act; the Clean Air Act; the Superfund Act; pesticide statutes; toxic and hazardous substance statutes; and others.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least eight years of professional legal experience. They also must have significant experience in litigation and/or natural resources and environmental law, leadership qualities, effective management skills demonstrated by management experience or otherwise, and sound judgment. Current salary and years of experience will determine the appropriate salary level from the GS-14 ($59,022 - $76,733) to the GS-15 $69,427 - $90,252) range.

Other Sections Of The Environment And Natural Resources Division

The Office of Attorney Personnel Management, Department of Justice, is seeking experienced attorneys for other sections of the Environment and Natural Resources Division (ENRD). Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least three years of professional legal experience. Experience in litigation and/or natural resources and environmental law is preferred. The ENRD has one or more openings in each of the following sections:

Appellate Section: Represents the United States in appeals within the ENRD's jurisdiction.

Environmental Crimes Section: Prosecutes environmental crimes; provides backup and training to United States Attorneys and agencies; and establishes national policy for environmental prosecution.

Environmental Defense Section: Defends EPA's administrative actions; defends federal agencies in litigation under pollution control laws; and enforces wetlands laws.

Environmental Enforcement Section: Enforces pollution-control laws in civil judicial actions.

General Litigation Section: Litigates issues involving national parks and forests, and other public lands and resources, as well as such issues as NEPA and regulatory takings claims, and defends claims filed by Indian tribes against the United States.

Indian Resources Section: Litigates to represent the United States' trust responsibility on behalf of Indian tribes.

Policy, Legislation, and Special Litigation Section: Works on formulating policy, legislation, and international agreements; participates on behalf of the ENRD on interagency working groups; participates as amicus curiae on environmental issues; and litigates in district and appellate courts in special cases.

Current salary and years of experience will determine the appropriate salary level from the GS-12 ($42,003 - $54,601) to the GS-15 ($69,427 - $90,252) range.

* * * * *

To apply, please submit a cover letter and resume to: Environmental and Natural Resources Division, Department of Justice, P.O. Box 7754, Washington, D.C. 20044-7754 - Attn: Executive Assistant. All of the above positions are open until filled. No telephone calls, please.

[NOTE: The Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. The ENRD is committed to diversity in hiring. It is the policy of the Department to achieve a drug-free workplace and persons selected may therefore be required to pass a urinalysis test to screen for illegal drug use prior to final approval.]

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%	04-06-90	8.32%	09-20-91	5.57%	03-05-93	3.21%
11-18-88	8.55%	05-04-90	8.70%	10-18-91	5.42%	04-07-93	3.37%
12-16-88	9.20%	06-01-90	8.24%	11-15-91	4.98%	04-30-93	3.25%
01-13-89	9.16%	06-29-90	8.09%	12-13-91	4.41%	05-28-93	3.54%
02-15-89	9.32%	07-27-90	7.88%	01-10-92	4.02%	06-25-93	3.54%
03-10-89	9.43%	08-24-90	7.95%	02-07-92	4.21%	07-23-93	3.58%
04-07-89	9.51%	09-21-90	7.78%	03-06-92	4.58%	08-19-93	3.43%
05-05-89	9.15%	10-27-90	7.51%	04-03-92	4.55%	09-17-93	3.40%
06-02-89	8.85%	11-16-90	7.28%	05-01-92	4.40%	10-15-93	3.38%
06-30-89	8.16%	12-14-90	7.02%	05-29-92	4.26%	11-17-93	3.57%
07-28-89	7.75%	01-11-91	6.62%	06-26-92	4.11%	12-10-93	3.61%
08-25-89	8.27%	02-13-91	6.21%	07-24-92	3.51%	01-07-94	3.67%
09-22-89	8.19%	03-08-91	6.46%	08-21-92	3.41%	02-04-94	3.74%
10-20-89	7.90%	04-05-91	6.26%	09-18-92	3.13%	03-04-94	4.22%
11-17-89	7.69%	05-03-91	6.07%	10-16-92	3.24%	04-01-94	4.51%
12-15-89	7.66%	05-31-91	6.09%	11-18-92	3.76%	04-29-94	5.02%
01-12-90	7.74%	06-28-91	6.39%	12-11-92	3.72%	05-27-94	5.28%
02-14-90	7.97%	07-26-91	6.26%	01-08-93	3.67%		
03-09-90	8.36%	08-23-91	5.68%	02-05-93	3.45%		

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	Redding 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	Faith S. Hochberg
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	Sheldon Whitehouse
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
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	W. Ronald Jennings
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

Letter from Deval L. Patrick
Assistant Attorney General for Civil Rights

Dear State Official:

As you know, voting is a right of citizenship in this country. Free and easy access to the exercise of this most fundamental right must therefore be a central objective of this or any Administration. Accordingly, the enforcement of the National Voter Registration Act (NVRA) will be one of our highest priorities at the Department of Justice.

The NVRA requires all states to provide voter registration opportunities for federal elections through the driver licensing process, through the mail, and at state agencies, and to incorporate important safeguards into the voter purge process. In most states, the date on which these procedures must be in place is January 1, 1995.

Several state legislatures have passed legislation to conform their procedures with the NVRA. I congratulate those states in this group, and wish them success in administering the new procedures. As more states join this group, I remind those that are subject to the preclearance requirement of Section 5 of the Voting Rights Act that preclearance should be requested as soon as possible for such changes so we can conclude the review process with plenty of time left for implementation.

Other state legislatures, however, have adjourned for the year without adopting legislation that conforms the state's election system with the procedures required by the NVRA. Still others have passed or are considering legislation that attempts to take advantage of exemption characteristics that were written into the NVRA for other states, under other circumstances. We are paying very close attention to these developments.

Although we are authorized under Section 11 of the NVRA to file litigation in federal court when necessary to carry out the Act, it is our view that voter registration procedures work best when they are designed by state officials in a manner that is most easily carried out at the state and local level -- provided those procedures satisfy all of the requirements of the Act. Thus, it is our hope that compliance with the NVRA will be forthcoming from those states that have not yet done so, without the need for court action. In those circumstances where court action is warranted, however, we will proceed swiftly.

In this spirit, we have talked with people in many states to determine the steps that are being taken toward compliance with the NVRA, and we look forward to learning of the efforts of the remaining states. Please keep us apprised of the steps your state will take, or has already taken, to achieve compliance with the NVRA. You may contact Mr. Barry H. Weinberg, Deputy Chief of our Voting Section, (202) 307-3266, if you have questions.

EXHIBIT B

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Crime Data Brief

April 1994, NCJ-147003

Handgun Victimization, Firearm Self-Defense, and Firearm Theft

Guns and Crime

By Michael R. Rand, BJS Statistician

In 1992 offenders armed with handguns committed a record 931,000 violent crimes. Handgun crimes accounted for about 13% of all violent crimes. As measured by the National Crime Victimization Survey (NCVS), the rate of nonfatal handgun victimizations in 1992 — 4.5 crimes per 1,000 people age 12 or older – supplanted the record of 4.0 per 1,000 in 1982.

Handguns and crime, 1987-92

	1992	Annual average, 1987-91
Handgun crimes	930,700	667,000
Homicide	13,200	10,600
Rape	11,800	14,000
Robbery	339,000	225,100
Assault	566,800	417,300

Note: Detail may not add to total because of rounding. Data for homicide come from the FBI's Uniform Crime Reports.

On average per year in 1987-92, about 62,200 victims of violent crime, about 1% of all victims of violence, used a firearm to defend themselves. Another 20,300 used a firearm to defend their property during a theft, household burglary, or motor vehicle theft.

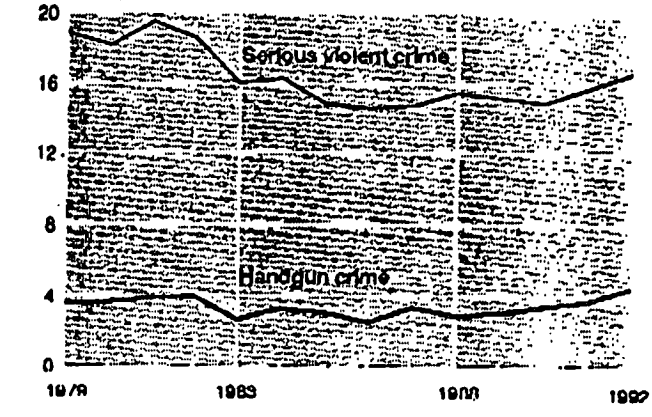
For 1987-92 victims reported an annual average of about 341,000 incidents of firearm theft. Because the NCVS asks for types but not a count of items stolen, the annual total of firearms stolen probably exceeded the number of incidents.

Males, blacks, and the young had the highest rates of handgun crime victimization, 1987-92

Age of Victim	Average annual rate of crimes committed with handguns (per 1,000 persons)* Male victims Total	White	Black	Female victims Total	White	Black
All ages	4.9	3.7	14.2	2.1	1.6	5.8
12-15	5.0	3.1	14.1	2.5	2.1	4.7
16-19	14.2	9.5	39.7	5.1	3.6	13.4
20-24	11.8	9.2	29.4	4.3	3.5	9.1
25-34	5.7	4.9	12.3	3.1	2.1	9.0
35-49	3.3	2.7	8.7	1.7	1.4	3.3
50-64	1.5	1.2	3.5	0.8	0.7	1.6
65 or older	0.8	0.6	3.7	0.3	0.2	2.3

*Rate per 1,000 persons age 12 or older in each age category. Rates do not include murder or nonnegligent manslaughter committed with handguns. The totals include persons of other races not shown separately.

The 1992 handgun victimization rate was the highest on record



Source: BJS National Crime Victimization Survey, 1979-92.
Note: Serious violent crime includes rape, robbery, and aggravated assault.

Violent crime rates

Unlike the record rate of handgun crimes in 1992, the overall rates for violent crimes were well below the 1981 peaks.[1] The total 1992 rate for rape, robbery, and aggravated and simple assault was 35 per 1,000 persons, compared to 39 per 1,000 in 1981. The 1992 rate of 17 per 1,000 for the more serious violent crimes (rape, robbery, and aggravated assault) was also less than the 20 per 1,000 in 1981.

Most likely victims of handgun crime

- Males were twice as likely as females to be victims of handgun crimes, and blacks 3 times as likely as whites.
- Young black males continued to be the population subgroup most vulnerable to handgun crime victimization.

For males age 16-19 –
The rate for blacks (40 per 1,000 persons) was *4 times* that of whites (10 per 1,000).

For males age 20-24 —
The rate for blacks (29 per 1,000) was *3 times* that of whites (9 per 1,000).

[1] Except where noted, this brief excludes homicides, which NCVS does not measure.

When offenders fired at victims

• Offenders fired their weapon in 17% of all nonfatal handgun crimes (or about 2% of all violent crimes). In 3% of handgun crimes, about 21,000 a year, the victim was wounded. (An additional annual average of 11,100 were victims of homicide by handgun.) The offender shot at but missed the victim in 14% of handgun crimes.

Self-defense with firearms

• 38% of the victims defending themselves with a firearm attacked the offender, and the others threatened the offender with the weapon.

• A fifth of the victims defending themselves with a firearm suffered an injury, compared to almost half of those who defended themselves with weapons other than a firearm or who had no weapon. Care should be used in interpreting these data because many aspects of crimes -- including victim and offender characteristics, crime circumstances, and offender intent -- contribute to the victims' injury outcomes.

• In most cases victims who used firearms to defend themselves or their property were confronted by offenders who were either unarmed or armed with weapons other than firearms. On average between 1987 and 1992, about 35% (or 22,000 per year) of the violent crime victims defending themselves with a firearm faced an offender who also had a firearm.[2]

About three-fourths of the victims who used firearms for self-defense did so during a crime of violence, 1987-92

	Average annual number of victimizations in which victims used firearms to defend themselves or their property		
	Total	Attacked offender	Threatened offender
All crimes	82,500	30,600	51,900
Total violent crime	62,200	25,500	36,700
With injury	12,100	7,300	4,900
Without injury	50,000	18,200	31,800
Theft, burglary, motor vehicle theft	20,300	5,100	15,200

Note. Detail may not add to total because of rounding. Includes victimizations in which offenders were unarmed. Excludes homicides.

Offenders shot at victims in 17% of handgun crimes, 1987-92

	Percent
Shot at victim	16.6%
Hit victim	3.0
Missed victim	13.6
Nongunshot injury	1.6
No physical injury	12.0
Did not shoot at victim	83.4%
Other attack/attempt	19.9
Verbal threat of attack	15.4
Weapon present	46.8
Other threat	.8
Unknown action	.5
Average annual number	699,900

Note: Excludes homicides.

Theft of firearms

• Although most thefts of firearms (64%) occurred during household burglaries, a significant percentage (32%) occurred during larcenies. Loss of firearms through larceny was as likely to occur away from the victim's home as at or near the home. In 53% of the firearm thefts, handguns were stolen.

341,000 incidents of firearm theft occurred per year, 1987-92

Crime in which firearm was stolen	Average annual number of victimizations in which firearms were stolen		
	Total	Handgun	Other gun
Total	340,700	180,500	160,200
Violent crime	7,900	5,300	2,600
Personal theft	56,200	33,900	22,300
Household theft	52,600	31,700	20,900
Household burglary	217,200	105,300	112,000
Motor vehicle theft	6,700	4,400	2,400

Note: Detail may not add to total because of rounding. The table measures theft incidents, not numbers of guns stolen. See text on page 1.

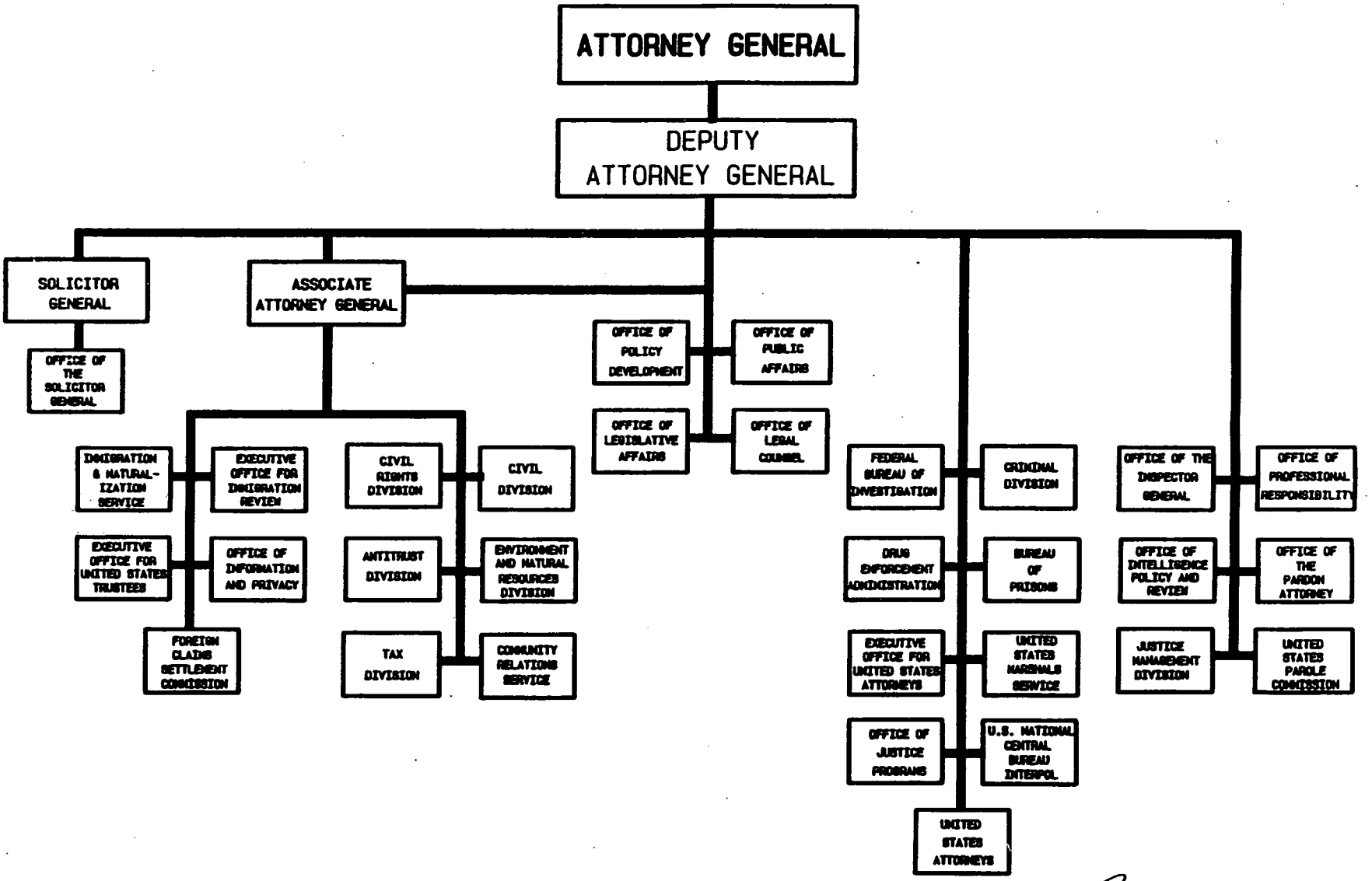
[2]Because the NCVS collects victimization data on police officers, its estimates of the use of firearms for self-defense are likely to include police use of firearms. Questionnaire revisions introduced in January 1993 will permit separate consideration of police and civilian firearm cases.

U.S. Department of Justice
Office of Justice Programs
Bureau of Justice Statistics

Official Business
Penalty for Private Use $300

EXHIBIT C

U.S. DEPARTMENT OF JUSTICE



Approved: Janet Reno Date: 4/16/94

JANET RENO
Attorney General

EXHIBIT
D

NATIONAL CODE OF PROFESSIONAL CONDUCT FOR ASSET FORFEITURE

I. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens.

II. No prosecutor's or sworn law enforcement officer's employment or salary shall be made to depend upon the level of seizures or forfeitures he or she achieves.

III. Whenever practicable, and in all cases involving real property, a judicial finding of probable cause shall be secured when property is seized for forfeiture. Seizing agencies shall strictly comply with all applicable legal requirements governing seizure practice and procedure.[1]

IV. If no judicial finding of probable cause is secured, the seizure shall be approved in writing by a prosecuting or agency attorney or by a supervisory-level official.

V. Seizing entities shall have a manual detailing the statutory grounds for forfeiture and all applicable policies and procedures.

VI. The manual shall include procedures for prompt notice to interest holders, the expeditious release of seized property where appropriate, and the prompt resolution of claims of innocent ownership.

VII. Seizing entities retaining forfeited property for official law enforcement use shall ensure that the property is subject to internal controls consistent with those applicable to property acquired through the normal appropriations processes of that entity.

VIII. Unless otherwise provided by law, forfeiture proceeds shall be maintained in a separate fund or account subject to appropriate accounting controls and annual financial audits of all deposits and expenditures.

IX. Seizing agencies shall strive to ensure that seized property is protected and its value preserved.

X. Seizing entities shall avoid any appearance of impropriety in the sale or acquisition of forfeited property.

---

[1] Generally, real property can only be seized following an adversarial pre-seizure hearing. See United States v. James Daniel Good Real Property, 114 S. Ct. 492 (1993).

U.S. Department of Justice

Office of the Deputy Attorney General

Executive Office for Asset Forfeiture

Washington, D.C. 20530

SIGNIFICANT CHANGES TO THE EQUITABLE SHARING PROGRAM

AS DETAILED IN

A GUIDE TO EQUITABLE SHARING OF FEDERALLY FORFEITED PROPERTY FOR STATE AND LOCAL LAW ENFORCEMENT AGENCIES (MARCH 1994)

- **MINIMUM MONETARY THRESHOLDS:** The general minimum monetary thresholds for cases involving vehicles, $5,000; for vessels and aircraft, $10,000; for real property, $20,000 or 20% of the appraised value; for all other property, monetary instruments, and currency, $5,000. Exceptions are noted in Section VI.

- **FEDERAL SHARE:** The federal share in all adoptive cases is 20 percent of the net proceeds.

- **USES OF EQUITABLY SHARED PROPERTY:** Permissible and impermissible uses of sharing proceeds are discussed in detail in Section X.

  State and local law enforcement agencies may now transfer up to fifteen percent of any shared cash to governmental agencies or departments to support drug abuse treatment, drug and crime prevention and education, housing and job skills programs, or other community-based programs. Real and tangible property may also be transferred to government agencies and departments for the purposes stated above. These agencies may, in turn, transfer any monies, real or tangible properties to private, non-profit community organizations. See Section X.A.3.

- **ACCOUNTING FOR SHARED PROPERTY:** All participating state and local law enforcement agencies must implement standard accounting procedures and internal controls to track shared monies and property. An annual financial audit is also required for agencies receiving over $100,000 per year. No sharing checks will be made out to individuals.

- **CERTIFICATION REQUIREMENT:** All participating agencies receiving forfeited property and proceeds must execute an annual certification reporting fund balances, sharing received, interest accrued, and total spent by the law enforcement agency. Certifications are due within 30 days of the start of the receiving agency's fiscal year.

- **COMPLIANCE SANCTIONS:** Both civil and criminal sanctions are detailed in the event a state or local law enforcement agency does not comply with the Guide.

Guideline Sentencing Update

FEDERAL JUDICIAL CENTER

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

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

VOLUME 6 • NUMBER 13 • MAY 27, 1994

Criminal History

CHALLENGES TO PRIOR CONVICTIONS

Supreme Court holds that defendant has no right to challenge prior conviction used to enhance sentence under 18 U.S.C. § 924(e) unless right to counsel was denied. Defendant was convicted of possession of a firearm by a felon and subject to a mandatory minimum sentence of fifteen years under the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), because he had three prior state convictions for violent felonies. He challenged two of the convictions, claiming ineffective assistance of counsel and that his guilty pleas were not knowing and voluntary. The district court held there was no statutory right to challenge the prior convictions and no constitutional right to challenge except for complete denial of counsel. The Fourth Circuit affirmed, adding that constitutional challenges may be allowed "when prejudice can be presumed from the alleged violation," but not, as here, when the violation "necessarily entails a fact-intensive inquiry." *U.S. v. Custis*, 988 F.2d 1355, 1363–64 (4th Cir. 1993).

The Supreme Court also affirmed, finding first that nothing in § 924(e) authorizes collateral attacks. "The statute focuses on the fact of the conviction and nothing suggests that the prior final conviction may be subject to collateral attack for potential constitutional errors before it may be counted." The Court also held that the Constitution requires that challenges be allowed only for a complete denial of counsel, not for claims such as defendant's. "Ease of administration" and an "interest in promoting the finality of judgments" were also cited by the Court. The Court recognized, however, "that Custis, who was still 'in custody' for purposes of his state convictions at the time of his federal sentencing under § 924(e), may attack his state sentences in Maryland or through federal habeas review. . . . If Custis is successful in attacking these state sentences, he may then apply for reopening of any federal sentence enhanced by the state sentences."

U.S. v. Custis, No. 93-5209 (U.S. May 23, 1994) (Rehnquist, C.J.) (three justices dissenting).

Note: Although this case concerns § 924(e) rather than the Guidelines use of prior convictions, some circuits have not distinguished between the two. *See, e.g., U.S. v. Medlock*, 12 F.3d 185, 187–88 n.4 (11th Cir. 1994) ("The rationale underlying our decision is equally applicable to both Sentencing Guidelines cases and those originating in . . . § 924(e)"); *U.S. v. Byrd*, 995 F.2d 536, 540 (4th Cir. 1993) (holding earlier decision in *Custis* "is controlling of our disposition" in challenge under Guidelines). *But cf. U.S. v. Paleo*, 9 F.3d 988, 989 (1st Cir. 1992) (in rejecting challenge under § 924(e), finding Guidelines cases inapposite because "Guideline provision arises in a different legal context and uses language critically different from" § 924(e)). This decision will also affect application of the Guidelines Armed Career Criminal provision, § 4B1.4, which applies to defendants "subject to an enhanced sentence under the provisions of 18 U.S.C. § 924(e)."

Outline at IV.A.3.

JUVENILE CONVICTIONS AND SENTENCES

U.S. v. Ashburn, No. 93-1067 (5th Cir. May 10, 1994) (Goldberg, J.) (Affirmed: District court properly held that prior conviction under Youth Corrections Act was not "expunged" for Guidelines purposes. The conviction had been "set aside" under the YCA, but "the 'set aside' provision should not be interpreted to be an expungement under § 4A1.2(j) in calculating a defendant's criminal history category. The Commentary to § 4A1.2(j) explains that convictions which are set aside for 'reasons unrelated to innocence or errors of law, e.g., in order to restore civil rights or to remove the stigma associated with a criminal conviction,' are not expunged for purposes of this Guideline and can be included in Criminal History Category determinations. Because the YCA conviction here was set aside for 'reasons unrelated to innocence or errors of law,' it was properly utilized in the criminal history calculation."). *See also U.S. v. McDonald*, 991 F.2d 866, 871–72 (D.C. Cir. 1993) ("set aside" in D.C. statute similar to YCA is not "expunged" under Guidelines). *Contra U.S. v. Kammerdiener*, 945 F.2d 300, 301 (9th Cir. 1991) (conviction "set aside" under YCA was "expunged" under § 4A1.2(j)). *Cf. U.S. v. Doe*, 980 F.2d 876, 881–82 (3d Cir. 1992) (reversing denial of motion for expungement, holding "set aside" in YCA means "a complete expungement").

Outline at IV.A.4.

Sentencing Procedure

PLEA BARGAINING—DISMISSED COUNTS

U.S. v. Ashburn, No. 93-1067 (5th Cir. May 10, 1994) (Goldberg, J.) (Remanded: "Counts which have been dismissed pursuant to a plea bargain should not be considered in effecting an upward departure. . . . To allow consideration of dismissed counts in an upward departure eviscerates the plea bargain. Such consideration allows the prosecutor to drop charges against a defendant in return for a guilty plea and then turn around and seek a sentence enhancement against that defendant for the very same charges in the sentencing hearing. . . . We adopt the reasoning outlined by the Ninth Circuit that a sentencing court should not be allowed to violate the bargain worked out between the defendant and the government. . . . Consideration of dismissed counts as relevant conduct is explicitly allowed by the Guidelines. However, the bar to considering dismissed counts in making upward departures remains an important limitation in the modified real-offense sentencing approach of our current sentencing program. Allowing consideration of dismissed offenses would bring us much closer to the type of pure real-offense sentencing system explicitly rejected by the Guidelines.") (Davis, J., dissenting).

Outline at VI.B.2.b and IX.A.1.

Departures

Mitigating Circumstances

Third Circuit approves departure based on defendant's anguish at involving his son in fraud offense. Defendant tried to solve his company's cash-flow problems through false progress reports to receive accelerated payments from the government, and later did not return unearned payments that had resulted from mistaken double billing. In the first instance he had his son prepare reports to aid the scheme, apparently without the son's knowledge of the fraud. Defendant's efforts notwithstanding, the company eventually went bankrupt and the frauds were discovered. Defendant pled guilty to conspiracy to defraud the government, his son to aiding and abetting a false statement. The district court departed downward one level for defendant (allowing home confinement and probation instead of imprisonment), finding that the amount of loss calculated under § 2F1.1 overstated defendant's criminality and that the Guidelines did not account for the effect on defendant of having unintentionally caused his son to be convicted of a crime.

The appellate court remanded because the district court clearly erred by not imposing a more than minimal planning enhancement and failed to adequately explain the departure, but affirmed the grounds of the departure. While the government did suffer a large loss, the loss overstated defendant's criminality because defendant intended not to steal money but rather to expedite payments that would have eventually been due the company. And, without the takeover of his company and subsequent bankruptcy, "it is quite possible that the loss to the United States would have been far less."

"The other reason for the district court's departure was the mental anguish Monaco felt seeing his son, otherwise a law-abiding citizen with an excellent future, convicted of a crime because of his father's fraudulent scheme . . . [and thereby] stigmatized, not for deliberately committing a criminal act, but for dutifully and unquestioningly honoring his father's request. . . . In at least some cases, such as the district court found here, a defendant who unwittingly makes a criminal of his child might suffer greater moral anguish and remorse than is typical. . . . [W]e think the Sentencing Commission did not consider this issue when it promulgated the Guidelines.

"Moreover, we do not believe that by promulgating U.S.S.G. § 5H1.6, the Sentencing Commission foreclosed the possibility of a downward departure in this extraordinary situation. That section specifically states that family ties and responsibilities are 'not ordinarily relevant' for departure purposes. 'Not ordinarily relevant' is not synonymous with 'never relevant' or 'not relevant.' . . . In the unusual facts and circumstances of this extraordinary case, . . . it is entirely probable that Monaco never intended to criminalize his son and was deeply and legitimately shocked and remorseful when it happened. This is not something that is likely to occur frequently, and when it does, the interests of justice weigh more heavily against overpunishing the defendant than they do in favor of rigidly enforcing the Guidelines without regard for legitimate penological bases of sentencing." The court also noted that "the defendant is a productive, non-violent offender and a small downward departure would eliminate the need for incarceration entirely."

U.S. v. Monaco, No. 93-5261 (3d Cir. May 10, 1994) (Nygaard, J.).

Outline at VI.C.1.a and 4.a, VI.B.1.k.

U.S. v. Munoz-Realpe, No. 92-4039 (11th Cir. May 5, 1994) (Anderson, J.) (Remanded: For defendant who otherwise did not qualify for substantial assistance departure under § 5K1.1, it was error to depart downward under § 5K2.13 on the basis that his diminished capacity rendered him incapable of providing substantial assistance to the government. "[T]he Guidelines consider diminished capacity, but limit its relevance to the effect on the defendant's commission of the offense. Guidelines § 5K2.13 does not authorize consideration of the effect of a defendant's diminished capacity on his ability to provide substantial assistance." The case was remanded "for a determination whether Munoz-Realpe's mental incapacity contributed to the commission of his offense" sufficiently to warrant departure under § 5K2.13.).

Outline at VI.C.1.b, generally at VI.F.1.b.i

U.S. v. O'Brien, 18 F.3d 301 (5th Cir. 1994) (Remanded: Defendant's post-conviction community service, including musical performances and benefit shows, did not justify a downward departure. Defendant's activities reflect skills he developed as a professional musician, and educational and vocational skills and employment record do not support departure under §§ 5H1.2, 5H1.5, p.s.).

Outline generally at VI.C.4.b.

Substantial Assistance

U.S. v. Gerber, No. 93-5057 (10th May 9, 1994) (Ebel, J.) (Affirmed: It was not a violation of the Ex Post Facto Clause to apply stricter version of § 5K1.1 that was in effect when defendant attempted to provide substantial assistance, after Nov. 1, 1989, rather than the earlier version in effect when defendant committed her offenses. "Section 5K1.1 speaks to the assistance a defendant provides to the government, rather than the criminal conduct for which the defendant was convicted. Thus, the retroactivity analysis turns on which version of 5K1.1 was in effect when she participated in the numerous briefings with federal agents—not when she committed the unlawful conduct to which she pled guilty.").

Outline at I.E and VI.F.3.

Offense Conduct

Calculating Weight of Drugs

U.S. v. Munoz-Realpe, No. 92-4039 (11th Cir. May 5, 1994) (Anderson, J.) (Remanded: Defendant guilty of importing six liquor bottles containing a liquid that tested positive for cocaine base must be sentenced under guideline for cocaine hydrochloride rather than that for cocaine base. The Nov. 1993 amendment to § 2D1.1(c) (n.*) states: "'Cocaine base,' for the purposes of this guideline, means 'crack.'" Thus, the appellate court held, "forms of cocaine base other than crack are treated as cocaine hydrochloride." The court also held that it would use the new Guidelines definition in determining whether to apply a mandatory minimum sentence under 21 U.S.C. § 960(b), contrary to an earlier decision that all forms of cocaine base were included in § 960(b): "[W]e think it is proper for us to look to the Guidelines in the mandatory minimum statute, especially since both provisions seek to address the same problem. . . . There is no reason for us to assume that Congress meant for 'cocaine base' to have more than one definition." *But cf. U.S. v. Palacio*, 4 F.3d 150, 154 (2d Cir. 1993) (recognizing narrower definition of cocaine base for Guidelines, but stating amendment would not affect broader definition used for mandatory minimum sentences under 21 U.S.C. § 841(b)).).

Outline at II.B.3.

Guideline Sentencing Update

FEDERAL JUDICIAL CENTER

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

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

VOLUME 6 • NUMBER 12 • MAY 12, 1994

Determining the Sentence

FINES

Third Circuit holds that a fine—including a departure to a larger fine—may be based on potential future earnings from sale of rights to story of the crime, but the value of those rights must be supported by evidence. Defendants, husband and wife, kidnapped a business executive to hold for ransom. Although the victim died within four days from a wound suffered during the kidnapping, defendants continued their attempts to receive ransom for six weeks, during which time the case generated extensive media coverage. The husband pled guilty to seven felony counts, the wife to two, and both were given lengthy prison terms. They were also subject to fines up to $250,000 under § 5E1.2(c); however, the district court departed and imposed the maximum fines allowed under 18 U.S.C. § 3571—$250,000 for each felony conviction—equaling $1.75 million for the husband and $500,000 for the wife. Both defendants had received offers for the rights to their stories, and the court determined that their potential gains required a departure to "ensure both the disgorgement of any gain from the offense . . . and an adequate punitive fine." *See* U.S.S.G. § 5E1.2, comment. (n.4).

The appellate court remanded because there was no evidence that defendants' rights were worth those amounts, but approved the use of future story rights as a basis for fines and, in an appropriate case, for upward departure. "Future earning capacity is obviously an appropriate factor to consider. . . . At least in cases such as this, when it is a near certainty that the literary and other media rights to the story of a crime are marketable, possible future sales of those rights may be considered when determining whether a defendant is able to pay a fine. . . . [W]e are convinced that, given the facts and circumstances surrounding this highly publicized crime, the district court was realistic in finding that [defendants] might become able to pay a fine in the future."

However, "while it is entirely proper in cases such as this for district courts to look to potential sales of literary and other media rights as a source of future income . . ., the value of those rights must be supported by more than hypothesis or speculation to justify departures from the applicable Guidelines fine range. This is especially so where Congress has chosen to permit only the government to initiate a petition for modification of a fine if circumstances change so that a defendant is truly unable to pay it." The evidence that the husband had the potential ability to pay a $1.75 million fine did not meet the clear and convincing standard of proof the appellate court held was required for a sevenfold departure from the maximum Guidelines fine. *See U.S. v. Kikumura*, 918 F.2d 1084, 1100–02 (3d Cir. 1990) (extreme departures must meet clear and convincing standard). The court also held that, even under the preponderance standard, the facts did not support the finding that the wife could pay a larger fine. *Cf. U.S. v. Wilder*, 15 F.3d 1292, 1300–01 (5th Cir. 1994) (affirming upward departure to $4 million fine because defendant gained at least $2 million and caused losses exceeding $5 million).

U.S. v. Seale, No. 92-5686 (3d Cir. Apr. 7, 1994) (Lewis, J.).

Outline at V.E.1, VI.B.1.a and h, and IX.B.

U.S. v. Robinson, No. 92-10196 (9th Cir. Apr. 4, 1994) (Brunetti, J.) (Remanded: District court must determine defendant's ability to pay fine at the time of sentencing and cannot impose community service as an alternative sanction should defendant prove unable to pay fine after release from prison. "The Guidelines do not state explicitly that the district court must make the [ability to pay] determination at the time of sentencing, but they strongly imply such a requirement. . . . [T]he structure of § 5E1.2 indicates that the district court, before imposing any fine, must determine whether the defendant has established [the] inability" to pay. As to the community service, 18 U.S.C. § 3572(e) states that "the court may not impose an alternative sentence to be carried out if the fine is not paid." The appellate court also noted that, under Guidelines § 5E1.2(f), an alternative sanction such as community service "must be imposed 'in lieu of all or a portion of [a] fine'; community service cannot be imposed as a fallback punishment to be served if the defendant cannot later pay the fine."). *Outline* at V.E.1.

CONSECUTIVE OR CONCURRENT SENTENCES

U.S. v. Kiefer, No. 93-2247 (8th Cir. Apr. 1, 1994) (Loken, J.) (Remanded: Defendant was convicted on a federal firearms charge and, under § 5G1.3(b) and comment. (n.2), was to receive a sentence that was concurrent to his state sentence on related charges, with credit for the 14 ½ months served on the state sentence. However, he was also subject to a mandatory minimum fifteen-year sentence under 18 U.S.C. § 924(e), and the district court determined that it could not make the sentences completely concurrent by giving full credit for time served because that would effectively put the federal sentence below the mandatory minimum. The appellate court remanded, holding that "§ 924(e)(1) does not forbid concurrent sentencing for separate offenses that were part of the same course of conduct. In these circumstances, although the issue is not free from doubt, we conclude that time previously served under concurrent sentences may be considered time 'imprisoned' under § 924(e)(1) if the Guidelines so provide."). *Outline* generally at V.A.3.

Sentencing Procedure

EVIDENTIARY ISSUES

U.S. v. Beler, No. 92-3970 (7th Cir. Mar. 31, 1994) (Rovner, J.) (Remanded: Agreeing with *U.S. v. Miele*, 989 F.2d 659, 664 (3d Cir. 1993), that "section 6A1.3(a)'s reliability standard must be rigorously applied" to evidence used in

sentencing. Here, a witness made contradictory statements regarding cocaine amounts that were not in the offenses of conviction. The district court included as relevant conduct amounts from one of the witness's higher estimates, but did not "directly address the contradiction and explain why it credit[ed] one statement rather than the other. . . . Before the court relies on the higher estimate, it must provide some explanation for its failure to credit the inconsistent statement. . . . [Defendant] simply has too much at stake for us to be satisfied with a conclusory factual finding based on potentially unreliable evidence." The appellate court also agreed with other circuits that have held that addict-witness testimony should be closely scrutinized: "[T]he district court should have subjected any information provided by [that witness] to special scrutiny in light of his dual status as a cocaine addict and government informant.").
Outline at IX.D.1.

Fed. R. Crim. P. 35(c)

U.S. v. Portin, No. 93-10397 (9th Cir. Apr. 1, 1994) (per curiam) (Remanded: District court exceeded its authority by increasing defendants' fines when it granted their Rule 35(c) motion to reduce their prison sentences to conform to the Rule 11(e)(1)(C) plea agreement. Rule 35(c) "authorizes the district court to correct obvious sentencing errors, but not to reconsider, to change its mind, or to reopen issues previously resolved under the Guidelines, where there is no error." Here, the original fines were properly imposed, and neither defendants nor the government challenged them on appeal.).
Outline at IX.F.

Adjustments

Obstruction of Justice

U.S. v. Fredette, 15 F.3d 272 (2d Cir. 1994) (Affirmed: Defendants, convicted of witness retaliation offenses and sentenced under the "Obstruction of Justice" guideline, § 2J1.2, were properly given § 3C1.1 enhancements for additional attempt to obstruct justice. "We conclude that Application Note 6 (to § 3C1.1) applies to cases in which a defendant attempts to further obstruct justice, provided that the obstructive conduct is significant and there is no risk of double counting. Regardless of whether the defendants in this case were successful in their efforts to obstruct justice, the fact remains that they used a false affidavit in an effort to derail the investigation and prosecution of their respective cases.").
Outline at III.C.4.

Violation of Supervised Release

Sentencing

U.S. v. Sparks, No. 93-3677 (6th Cir. Mar. 22, 1994) (Guy, J.) (Remanded: District court erred in concluding that, under § 7B1.3(f), revocation sentence *must* be consecutive to state sentences imposed earlier for the conduct that caused revocation. Appellate court reaffirmed its holding before *Stinson v. U.S.*, 113 S. Ct. 1913 (1993), that "the lower court must consider, but need not necessarily follow, the Sentencing Commission's recommendations regarding post-revocation sentencing" in Chapter 7.).
Outline at VII and VII.B.1.

U.S. v. Malesic, 18 F.3d 205 (3d Cir. 1994) (Remanded: Supervised release may not be reimposed after revocation and imprisonment. Thus it was error to revoke defendant's three-year term of release and sentence him to eighteen months' imprisonment to be followed by a three-year term of supervised release.).
Outline at VII.B.1.

Offense Conduct

Calculating Weight of Drugs

U.S. v. Vincent, No. 93-1910 (6th Cir. Mar. 31, 1994) (Milburn, J.) (Affirmed: Because evidence showed that the stalks and seeds of marijuana plants contain "a detectable amount of the controlled substance," § 2D1.1(c)(n.*), "the stalks and seeds need not be separated before the controlled substance can be used. Accordingly, the stalks and seeds are to be used in calculating the weight of a controlled substance.").
Outline at II.B.2.

U.S. v. Tucker, No. 93-2806 (7th Cir. Mar. 23, 1994) (Wood, J.) (Affirmed: District court correctly used weight of cocaine base at time of arrest for Guidelines and mandatory minimum sentence purposes, rather than the smaller weight when reweighed several months later. It was undisputed that the weight loss was due to the evaporation of water, and water is part of the drug "mixture," not an excludable carrier medium or waste product.).
Outline at II.B.1.

More Than Minimal Planning

U.S. v. Bridges, No. 93-3175 (10th Cir. Mar. 17, 1994) (McKay, J.) (Remanded: Defendant participated in two burglaries and pled guilty to theft of government property from the second burglary. The district court enhanced the sentence for more than minimal planning under § 2B1.1(b)(5), solely on the ground that defendant's conduct "involv[ed] repeated acts over a period of time," § 1B1.1, comment. (n. 1(f)). The appellate court remanded, finding that the examples given in Note 1(f) "demonstrate that the Guidelines equate 'repeated' with 'several,'" meaning "more than two." Thus, when a district court "bases the two-point increase solely on the 'repeated acts' language of the Guidelines, there must have been more than two instances of the behavior in question.").
Outline at II.E.

Departures

Substantial Assistance

U.S. v. Chavarria-Herrara, 15 F.3d 1033 (11th Cir. 1994) (Remanded: In reducing defendant's sentence under Fed. R. Crim. P. 35(b) for substantial assistance, the district court erred in considering defendant's "status as a first time offender, his lack of knowledge of the conspiracy until just prior to arrest, his relative culpability, and his prison behavior. . . . The plain language of Rule 35(b) indicates that the reduction shall reflect the assistance of the defendant; it does not mention any other factor that may be considered.").
Outline at VI.F.4.

Changes to previously reported cases:

U.S. v. Forrester, 14 F.3d 34 (9th Cir. 1994), *withdrawn* and revised opinion filed Mar. 25, 1994. Holding is essentially the same as reported in 6 *GSU* #10.

U.S. v. Calverley, 11 F.3d 505 (5th Cir. 1993), *reh'g en banc granted* Feb. 18, 1994. See 6 *GSU* #8 and *Outline* at IV.B.2.

U. S. Department of Justice
Executive Office for United States Attorneys
Office of Legal Education

Nomination Form

EXHIBIT F

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