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Executive Office for United States Attorneys

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COMMENDATIONS

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

Lee B. Altschuler (California, Northern District), by Richard J. Bernes, Supervisory Special Agent, FBI, San Francisco, for presenting an excellent educational program for the High Tech Squad in San Jose on computer crime and federal search warrants in computer-related investigations.

Donna Barrow (Alabama, Southern District), by Deval L. Patrick, Assistant Attorney General, Civil Rights Division, Department of Justice, for her outstanding efforts in the criminal civil rights prosecution of a state Constable who pistol whipped a man who owed him money, and attempted to shoot him in the back.

George Bevan (California, Northern District), by Loren A. N. Buddress, Chief U.S. Probation Officer, U.S. District Court, San Francisco, for his successful efforts in obtaining the conviction of an individual on assault charges against a U.S. Probation Officer, and for his legal skill in handling the sensitive issues involved in this complex case.

Jeffrey Bornstein and ***Special Assistant United States Attorney Janet Loduca*** (California, Northern District), were presented Certificates of Appreciation by Robert E. Bender, Special Agent in Charge, Drug Enforcement Administration, San Francisco, for obtaining four convictions in a case involving a clandestine methamphetamine laboratory, nine weapons, three vehicles, and seizure of approximately seventeen pounds of methamphetamines. (Over $1 million in forfeitures are pending.)

Robert E. Bulford (Ohio, Northern District), by Frank B. Forgione, Special Agent in Charge, Office of Criminal Investigations, Food and Drug Administration, Calverton, Maryland, for his outstanding success in the trial of two individuals involved in tampering with consumer products, and for his assistance in bringing the nationwide tampering scare to an end.

Colm Connolly (District of Delaware), by Samuel D. Pratcher, Chief of Police, Wilmington, for his professionalism and cooperative efforts in the successful prosecution of three cases involving the Wilmington Department of Police, Drug, Organized Crime and Vice Division.

Robert J. DeSousa (Pennsylvania, Middle District), by Samuel J. Dubbin, Deputy Assistant Attorney General, Office of Policy Development, Department of Justice, for serving as a member of the Problem Solving Team, and for his assistance in carrying out the principles of the National Performance Review.

J. Eric Evenson II (North Carolina, Eastern District), by Cpl. Betty K. Boswell, Organized Crime Division, Durham Police Department, for his successful prosecution of the Chief of Detectives of the Oxford Police Department for conspiracy to violate cocaine distribution laws, extortion, tampering with a witness, and making false declarations before a federal grand jury.

Maria Fernandez (Alabama, Southern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for serving as a member of the Mobile Violent Crimes Joint Task Force, and for obtaining guilty verdicts of two individuals who shot a man to death during a robbery and carjacking attempt in Theodore, Alabama.

Brett L. Grayson and ***Richard W. Willis*** (Louisiana, Western District), by Johnny F. Phelps, Special Agent in Charge, Drug Enforcement Administration, Metairie, for their successful prosecution of two leaders of a major drug trafficking organization, and for obtaining an order for the forfeiture of $2,673,000.00 in drug proceeds.

Steven F. Gruel (California, Northern District), was presented a plaque by Donald R. Ortolan, Acting Assistant District Director for Investigations, Immigration and Naturalization Service, San Francisco, for serving on the Chinese Vessel Smuggling Task Force, which culminated in twenty-seven criminal convictions for various smuggling and conspiracy violations.

Thomas Gruscinski (Ohio, Northern District), by Malcolm W. Brady, Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, Middleburg Heights, for his outstanding success in the prosecution of an individual for robbery of a gun and tackle business, and for disposing of twelve firearms and jewelry taken during the robbery.

Tim Holtzen and ***Special Assistant United States Attorney Dan Stark*** (District of Arizona), by Louis J. Freeh, Director, FBI, Washington, D.C., and United States Attorney Janet Napolitano, for their successful prosecution of a sexual abuse case involving a boys' dormitory aide at the Teec Nos Pos Boarding School on the Navajo Indian Reservation. (The defendant faces life imprisonment.)

John Hughes (District of Connecticut), by Peregrine D. Russell-Hunter, Department Counsel and Directorate for Industrial Security Clearance Review, Defense Legal Services Agency, Department of Defense, Arlington, Virginia, for his successful resolution of a case brought by an employee of a defense contractor over the loss of the employee's security clearance.

William P. Keane (California, Northern District), by Bernard H. Meyers, Senior Counsel, First Interstate Bank of California, San Francisco, for his professionalism and outstanding legal skill in negotiating a plea agreement in a bank fraud case involving over $10 million in fraudulent loans, $2 million of which was obtained from the First Interstate Bank.

Terry M. Kinney (Illinois, Northern District), by Kenneth G. Cloud, Special Agent in Charge, Drug Enforcement Administration, Chicago, for his outstanding success in the prosecution of a Dilaudid trafficking organization, the largest criminal diversion in the Northern District of Illinois.

Karl Knoche (Georgia, Southern District), by Thomas C. Sprague, Commander, Chatham-Savannah Counter Narcotics Team, Savannah, for his valuable assistance rendered during a recent 4-day drug investigative seminar.

Joseph M. Landolt (Missouri, Eastern District), by James W. Nelson, Special Agent in Charge, FBI, St. Louis, for his exceptional legal skill in successfully prosecuting a carjacking case, and for his assistance in placing a dangerous and violent criminal behind bars for many years.

Charles E. Lewis (Texas, Southern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his successful prosecution of twelve members of a Colombian-based narcotics-trafficking organization, and for his special efforts in spearheading the prosecution team in this complex case.

Raymond Meyer, Daniel Muehleman, Richard L. Poehling, and ***Paralegal Assistant Kathleen Cook*** (Missouri, Eastern District), were presented Certificates of Appreciation by John P. Sutton, Special Agent in Charge, Drug Enforcement Administration (DEA), Clayton, Missouri, for their professionalism, dedication, and invaluable service over the past several years, particularly with regard to furthering the goals and objectives of the Justice Department's Asset Forfeiture Program.

Mary H. Murguia (District of Arizona), by Suzanne R. Sigona, Training Specialist, Federal Judicial Center, Washington, D.C., for her participation at a recent conference for federal officers in Denver and for her excellent presentation on multidisciplinary teams.

Bradley W. Murphy (Illinois, Central District), by Gerald F. Fitzgerald, Chairman of the Board, Suburban Bancorp, Palatine, for his outstanding success in the prosecution of a complex bank fraud case at the First National Bank in Blandinsville, Illinois.

Thomas J. Murphy (District of Connecticut), by Steven J. Arruda, Resident Agent in Charge, U.S. Customs Service, New Haven, for his valuable assistance and support of the Child Pornography Enforcement Program in the District of Connecticut, the success of which is well documented in numerous child pornography investigations over the past three years.

SuzAnne C. Nyland, Special Assistant United States Attorney (District of Columbia), by Daniel D. Campbell, General Counsel, National Transportation Safety Board, Washington, D.C., for her excellent representation and outstanding legal support in successfully resolving a Freedom of Information Act case concerning airman appeals documents.

David E. O'Meilia (Oklahoma, Northern District), by John E. Hensley, Special Agent in Charge, U.S. Customs Service, Oklahoma City, for his outstanding successful efforts in a continuing multi-state narcotics conspiracy case, and for obtaining a guilty verdict in the trial of the last of the twelve conspirators.

Thomas M. O'Rourke (District of Colorado), by Edward V. Lahey, Jr., Senior Vice President, General Counsel and Secretary, PepsiCo, Purchase, New York, for his professionalism and legal skill in successfully resolving a consumer product tampering case, the results of which are not only significant for the Pepsi-Cola Company but also for many other companies and consumers.

Glenn K. Schreiber (Louisiana, Eastern District), by Captain J. P. Wiese, Chief, Claims and Litigation Division, U.S. Coast Guard, Department of Transportation, Washington, D.C., for his excellent representation and successful defense of a complex civil case pending for the past eleven years, which resulted in dismissal of the case by the Fifth Circuit Court of Appeals.

Andrew Scoble (California, Northern District), by Rollin B. Klink, Special Agent in Charge, U.S. Customs Service, San Francisco, for his outstanding assistance in the successful prosecution of a case involving false declarations to the Customs Service for which the defendant was fined $30,964.00 and ordered to forfeit $51,450.00.

Ron Sievert, Liz Cottingham, and ***Gerald Carruth,*** (Texas, Western District), by Terry Keel, Travis County Sheriff, Austin, for their outstanding professional assistance in a kidnapping and capital murder case, and for other valuable services above and beyond the call of duty.

Monte Stiles (District of Idaho), by Robin M. Eckmann, Deputy Prosecuting Attorney, Latah County, Moscow, Idaho, for his participation in the Top Gun drug training program, and for his major contribution to the success of the program.

Benjamin Wagner and ***Thomas Hopkins*** (California, Eastern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their successful prosecution of members of the North Side Gangster Crips for bank robbery on two separate occasions in Stockton, California.

Edward C. Weiner and ***William V. Gallo*** (California, Southern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their major contribution to the success of "Olympic Snow," a multiagency drug trafficking case involving fourteen leaders of the Colombian Cali Cartel and a Mexican drug trafficking group.

Douglas Wickham (District of Columbia), by Peter G. Powers, General Counsel, Smithsonian Institution, and Stanwyn G. Shetler, Deputy Director, National Museum of Natural History, Smithsonian Institution, Washington, D.C., for his outstanding efforts in bringing an employment discrimination case of long standing to a successful conclusion.

SPECIAL COMMENDATION FOR THE WESTERN DISTRICT OF KENTUCKY

On June 14, 1994, Frank W. Hunger, Assistant Attorney General for the Civil Division, commended the United States Attorney and staff in the Western District of Kentucky for their outstanding efforts in the investigation and prosecution of United States v. James V. Mays, et al. In particular, Mr. Hunger commended ***Assistant United States Attorney William F. Campbell,*** who consistently displayed his considerable skills as a seasoned trial lawyer and served as an excellent advocate for the government, both in court and in his dealings with defense counsel.

On May 6, 1994, after a five-week trial, a jury returned felony guilty verdicts against three defendants who stood trial on conspiracy charges and twenty counts of violating the Federal Food, Drug, and Cosmetic Act (FDCA). In all, eight individuals associated with Sun Up Foods, Inc., of Louisville and Benton, Kentucky, were convicted by plea or verdict. These convictions capped the prosecution of those responsible for a massive consumer fraud involving the adulteration and misbranding of what was sold as $100,000,000 to $200,000,000 worth of pure unsweetened orange juice concentrate. This concentrate was in fact stretched by 10 to 20 per cent, and sometimes more, with inexpensive beet sugar over a six-year period. Sun Up acquired over 20,000,000 pounds of sugar, the vast majority of which was sold as orange juice concentrate. Success in this prosecution was significant not only to protect the public interest, but to vindicate the prosecution, which received widespread media coverage in the New York Times and the television program Dateline NBC. (For further details, please refer to Vol. 42, No. 6, of the United States Attorneys' Bulletin, dated June 15, 1994, at p. 225.)

Mr. Hunger commended other Assistant United States Attorneys, paralegals, and clerical assistants who provided valuable guidance and support throughout the trial: ***Jane Bondurant, Tim Feeley, Duane Schwartz, Dave Huber,*** and ***Brady Miller; Sandy Focken, Janene Hickerson, Lisa Goode, Becky Lakes, Ethel Judy, Patty Kidd,*** and ***June Kash.***

[NOTE: On June 9, 1994, a federal grand jury in the Southern District of Texas indicted five officials of a Houston, Texas, juice company for adulterating their products with sugar. A discussion of this matter appears at p. 268 of this Bulletin.]

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SPECIAL COMMENDATION FOR THE DISTRICT OF CONNECTICUT

H. Gordon Hall, Assistant United States Attorney for the District of Connecticut, was commended by Robert M. Fenner, General Counsel, National Credit Union Administration (NCUA), Alexandria, for his valuable assistance and cooperation in two companion cases involving credit union officials who were terminated after an NCUA examination revealed certain problems with their management. Both officials then sued the credit union, the credit union's board of directors and supervisory committee, NCUA and three NCUA employees. The plaintiffs filed virtually identical complaints in District Court for the District of Connecticut, alleging a variety of causes of action, including constitutional torts. Mr. Hall quickly fashioned motions to substitute the United States for the individual defendants and to dismiss the pending suits. Ultimately the District Court granted all of the motions.

Mr. Fenner noted even farther reaching implications for NCUA. While there are several similar pending cases around the United States, this is the first to have resulted in a favorable ruling for the agency. NCUA is especially hopeful that the court will choose to publish its opinion and thereby provide a precedent for other pending cases.

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SPECIAL COMMENDATION FOR THE WESTERN DISTRICT OF MISSOURI

Stephen L. Hill, Jr., United States Attorney for the Western District of Missouri, was commended by Governor Mel Carnahan, Jefferson City, for his outstanding efforts in the successful arrest of a major drug distributor in southwest Missouri. The Governor stated that it was clear from the recovery of the cache of weapons and explosives, as well as from the subject's use of electronic surveillance equipment, that this subject posed a serious and sophisticated threat to the public and to law enforcement officers.

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PERSONNEL

Executive Office For United States Attorneys

On June 15, 1994, Attorney General Janet Reno named ***Carol DiBattiste*** as Director of the Executive Office for United States Attorneys. Ms. DiBattiste, the first woman to head the Executive Office for United States Attorneys, replaces Anthony C. Moscato, who was named Director of the Executive Office for Immigration Review.

Ms. DiBattiste was appointed by President Clinton to serve as Principal Deputy General Counsel for the Department of the Navy in August, 1993. At the time of her appointment, she was the Director of the Office of Legal Education for the Executive Office for United States Attorneys. In that post, she administered the Attorney General's Advocacy Institute and the Legal Education Institute, which offers approximately 180 training courses and trains about 11,000 federal attorneys and support staff annually.

Ms. DiBattiste rose to the rank of major in the U.S. Air Force and, upon her retirement in 1991, she became an Assistant United States Attorney for the Southern District of Florida where she prosecuted felonies involving narcotics and violent crime. Attorney General Reno stated, "Carol DiBattiste has had an extraordinary military and legal career. She has worked as a prosecutor, a recruiter of attorneys and an administrator of training programs for attorneys. We are fortunate indeed that she has agreed to bring her remarkable talent, energy and enthusiasm to the Department of Justice."

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Executive Office For U.S. Trustees

Linda Ekstrom Stanley was appointed by Attorney General Janet Reno to serve as United States Trustee for Region 17, which includes the federal judicial districts of Eastern and Northern California and Nevada. Ms. Stanley will oversee the administration of bankruptcy cases out of the region's principal office in San Francisco, California.

William Clarkson McDow Jr. was appointed by Attorney General Janet Reno to serve as United States Trustee for Region 4, which includes the federal judicial districts of South Carolina, Virginia, West Virginia, Maryland and Washington, D.C. Mr. McDow will oversee the administration of bankruptcy cases out of the region's principal office in Columbia, South Carolina.

James M. Lynch was appointed by Attorney General Janet Reno to serve as United States Trustee for Region 1, which includes the federal judicial districts of Massachusetts, Maine, New Hampshire, and Rhode Island. Mr. Lynch will oversee the administration of bankruptcy cases out of the region's principal office in Boston, Massachusetts.

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United States Attorneys

On June 12, 1994, ***Gregory M. Sleet*** was appointed by the President to serve as United States Attorney for the District of Delaware.

On June 20, 1994, ***Thomas J. Maroney*** was appointed by the Court to serve as United States Attorney for the Northern District of New York.

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ATTORNEY GENERAL HIGHLIGHTS

National American Indian Conference

On June 8, 1994, in a speech at the American Indian Sovereignty Symposium in Tulsa, Oklahoma, Attorney General Janet Reno announced several initial steps she is taking concerning issues that were raised at the National American Indian Listening Conference sponsored by the Departments of Justice and Interior in Albuquerque, New Mexico in early May.

- The Attorney General announced the creation of a Department of Justice Task Force that will develop an American Indian Sovereignty policy and a process for working with tribal governments and courts in the future. The task force, to be chaired by Gerald Torres, Counsel to the Attorney General, will work closely with the Department of Interior.

- The Attorney General stated that the federal government has a unique obligation to help create the conditions for tribal self-management and she emphasized the need to reevaluate and strengthen law enforcement services in Indian country. Ms. Reno requested that her staff develop a plan that would bolster the Department of Justice's law enforcement and crime prevention efforts in Indian country.

- In order to centralize responsibility for Indian-related matters within those United States Attorney's offices with large American Indian populations, Ms. Reno has directed that the United States Attorneys appoint a special assistant for tribal relations to review issues and provide accountability on cases involving American Indians.

- Because the unique characteristics of American Indian culture should not be ignored, Ms. Reno asked the Subcommittee on Native American Issues of the Attorney General's Advisory Committee to propose specific guidelines authorizing Assistant United States Attorneys to contract with skilled, reservation-based, Indian social workers who can assist United States Attorneys and counsel Indian victims of crime involving child sex abuse and domestic violence.

- Ms. Reno has asked that Assistant United States Attorneys, through their annual continuing education programs, receive additional courses on Indian law, culture and history.

- Beginning in June, 1994, the FBI will train twelve Navajo police officers through its "Safe Trails" program. The training will help increase each officer's effectiveness in assisting the FBI with major violent crimes, such as murder, child sexual abuse and gang violence.

- In order to assist tribes in fighting crime, the Attorney General has asked the Office of Justice Programs of the Department of Justice to assist tribal communities in developing comprehensive anti-crime strategies. These systematic approaches to crime will draw upon federal, state and tribal resources. They will range from offering training programs for tribal police, to sponsoring initiatives for building and strengthening tribal courts, to developing treatment centers for substance and alcohol abuse.

- Ms. Reno noted that Indian tribes will be eligible for grant dollars through the crime bill to support community policing efforts. Two Indian tribes have already won grants to hire additional community police officers under President Clinton's Police Hiring Supplement program. In May, the Nisqually Indian Tribe in Washington was awarded $222,088 to hire three additional community police officers. In December, 1993, the Choctaw tribe received $590,260 to hire six additional community police officers.

- The Attorney General stated that a critical factor in bridging the gap between law enforcement and Indian country is bringing more American Indians into the justice system. She noted that President Clinton nominated Michael Burrage, a member of the Choctow Nation, to serve as U.S. District Court Judge, and that Robert D. Ecoffey, the first American Indian to serve as U.S. Marshal, was nominated by the President and sworn in February 11, 1994.

- Ms. Reno advised that a team of attorneys from the criminal, environment, legislative affairs, and solicitor general's offices have nearly completed a Department-wide gaming plan. At the heart of this action plan is the Department's interest in encouraging legal gaming which permits tribes the fullest economic benefit and at the same time keeping the industry adequately regulated and clear of criminal elements.

[NOTE: A transcript of the Attorney General's speech is not available.]

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The President's National Service Program

On June 20, 1994, President Clinton's National Service Program awarded the Department of Justice $1.55 million to support 210 young workers in community criminal justice programs in seven cities. The program, as set forth in the National and Community Service Trust Act of 1993, will, in its first year, enable up to 20,000 service participants to make an intense, long-term commitment to serving their country, and earn educational awards in return. Combined with matching funds from the Department, state and local governments and the private sector, the grant will enable the Department to field a $4.3 million National Service public safety program. In addition, the 210 participants will receive an educational grant of $4,725 from the National Service program, or a total of $992,250.

This initiative, known as AmeriCorps, builds upon the strong network of existing national service programs of not-for-profit organizations and states by supporting locally driven projects that meet high national standards of performance. The goal is to rebuild America's cities and communities through a corps of service workers. Under the program, anyone seventeen or older can earn a tuition stipend of $5,000 a year and a $4,725 living allowance that can be applied toward college or vocational training by working with nonprofit groups, the Civilian Community Corps or Volunteers in Service to America.

The 210 participants in the program will work in seven cities now receiving federal support under the Weed and Seed initiative -- Philadelphia; Trenton, New Jersey; Madison, Wisconsin; San Antonio, Fort Worth, Seattle, and Los Angeles. Participants will work with public safety officers in those cities to try to prevent crime, improve police protection and public safety programs, assist crime victims and improve police and community relations.

Attorney General Janet Reno stated, "The President's National Service Program is a new and exciting approach to enable young people to help their country and community and also help themselves by earning an education in return. The Department of Justice is honored to have been selected as one of the federal participants in the program."

For further information concerning this program, please contact Cathy Colbert, Executive Office for Weed and Seed, at (202) 616-1096.

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Midnight Basketball

On June 20, 1994, Attorney General Janet Reno observed "midnight basketball" first-hand at the Glen Arden Community Center in Maryland. The Prince George's County Midnight Basketball program, the first in the nation, has inspired many other successful leagues across the country. The crime bill, now before Congress, contains funding to help communities across America who wish to start midnight basketball leagues to help prevent crime and strengthen communities by giving young people an organized outlet for their energies.

At her weekly press briefing on June 23, 1994, the Attorney General commented, "The night before last, I attended a midnight basketball game, and apparently a number of the television channels picked it up. Yesterday as I walked back and forth to work and as I went to various places, people stopped me and said, 'I saw you at the midnight basketball game. That program really sounds like it can make a difference, like it can work. Why don't we have more?' The crime bill will provide for prevention programs such as that in an expanded way throughout America."

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DEPARTMENT OF JUSTICE HIGHLIGHTS

"Opportunity To Succeed"

On June 9, 1994, the Department of Justice announced that it was providing funding for the most intensive program ever undertaken to turn around the lives of drug and alcohol addicts released from prison. The program, dubbed "Opportunity to Succeed," is intended to capitalize on treatment dollars already spent in prison by providing post-incarceration treatment and care for forty to fifty ex-offenders a year in each of five cities upon their release from county, state or federal prisons -- Kansas City, Oakland, St. Louis, Tampa, and West Harlem in New York City. Individuals will be eligible to participate for one to two years, depending on the length of their probation or parole.

The program was designed by the Columbia University Center on Addiction and Substance Abuse (CASA) which is headed by former Secretary of Health, Education and Welfare, Joseph A. Califano, Jr. CASA selected the sites and the community organizations that will provide ex-offenders the support they need to make a successful transition back into their neighborhoods and family, and back to full time jobs. Funds to operate the program include nearly $1 million from the Bureau of Justice Assistance (BJA) of the Department of Justice, $3 million from the Robert Wood Johnson Foundation, and the National Institute of Justice (NIJ) of the Department of Justice, will fund an evaluation. BJA intends to provide $300,000 for FY 1994 and each of the following two years. The participating community groups have agreed to furnish local matching funds.

The lead sponsoring community organization in each city will bring together employment training, job placement, housing, family counseling, medical and mental health care and drug and alcohol treatment, and coordinate with law enforcement, parole and probation officials. The services may include halfway houses and shared apartments in drug-free environments, therapeutic support groups and family mentors. CASA will work with each community to assure that the services needed to comply with the conditions of the demonstration grants are provided and will also offer technical assistance to bring the pieces of this multi-service intervention together.

Mr. Califano explained that the majority of county, state and federal prisoners are incarcerated for drug and alcohol related crimes, and stated, "Unless we provide concentrated community services, with social workers, parole officers, police, job trainers and health and treatment providers working together, these individuals will just end up back in prison instead of being law-abiding, taxpaying, productive members of society." Attorney General Janet Reno added, "Programs like this are essential to the Administration's goal of ending the cycle of incarceration-without-rehabilitation. We can never build enough prisons if we don't find a way to treat addicts and reintegrate offenders into the community."

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Pollution Control And Environmental Enforcement Along The U.S.-Mexico Border

On June 20, 1994, Attorney General Janet Reno announced an agreement between the Department of Justice and the State of New Mexico to work together to enforce pollution and other environmental laws, including those along the border of Mexico. The New Mexico agreement calls for the creation of a Natural Resources Protection Coordinating Committee in which New Mexico State officials and the United States Attorney will work with environmental enforcement officials from the Justice Department and the Environmental Protection Agency (EPA) to identify pollution problems and undertake effective responses. The agreement was signed by the Attorney General; Lois Schiffer, Acting Assistant Attorney General of the Environment and Natural Resources Division; John Kelly, United States Attorney for the District of New Mexico; Tom Udall, State Attorney General for New Mexico; Carol Browner, Administrator, Environmental Protection Agency; and New Mexico Secretary of the Environment Department Judith Espinosa.

The Environment and Natural Resources Division, with assistance from United States Attorneys' offices, is leading the effort to establish Natural Resources Protection Coordinating Committees in United States Attorneys' offices, particularly in U.S.-Mexico border districts. A similar pact was signed with Arizona in January.

Acting Assistant Attorney General Schiffer explained, "The Committee is a vehicle for pulling together all levels of government to work in a coordinated fashion, and serves several important purposes. First, it will assist investigations into violations of state and federal environmental laws; second, it will seek to ensure that damaged natural resources are restored. Moreover, the kind of communication among federal, state and local environmental authorities resulting from the agreement will reach out, when appropriate for discussions of transboundary issues, to representatives from the government of Mexico, State of Chihuahua, and other governmental units within Mexico."

The Attorney General added, "We commend the efforts of the New Mexico U.S. Attorney's office, New Mexico state and EPA for making this agreement possible and we look forward to other border states joining us with similar agreements."

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Operation Golden Jet In The Northern District Of Illinois

On June 29, 1994, at a press conference hosted by James B. Burns, United States Attorney for the Northern District of Illinois, the Department of Justice announced the arrest of a Colombian narcotics trafficker who is accused of operating a fleet of cargo aircraft used to smuggle tons of cocaine into the United States, Canada, and Central America during the past twelve years. Mr. Burns stated that the trafficker, Luis Carlos Herrera-Lizcano, a citizen of Bogota, Colombia, was arrested in Aruba, Dutch Antilles, an island off the coast of South America. Herrera-Lizcano is alleged to be the primary owner and operator of two Colombian air cargo companies which functioned as the "air wing" for the Colombian narcotics trafficking cartels from at least as early as 1982. The "air wing" allegedly was responsible for transporting tons of narcotics out of Colombia for export to the United States. Federal authorities also announced the unsealing of a multi-count indictment which charges Herrera-Lizcano, eight other defendants, and seventeen corporations with narcotics importation conspiracy and money laundering.

The indictment, code named "Operation Golden Jet," describes tons of cocaine valued at billions of dollars which have been seized, the destruction of a mammoth cocaine processing factory in Colombia, and more than $22 million worth of airplanes used for the cartels' transport operations. Mr. Burns said, "'Operation Golden Jet' represents the first direct strike by U.S. prosecutors against the Colombian air cargo companies which service the Colombian drug cartels. These companies collectively have flown tons of illegal narcotics into the United States and into other countries for transshipment to the United States."

Mr. Burns further stated, "The remarkable results we see today would not have been possible without the tireless devotion of a highly talented, very well-coordinated team of agents and supervisors from DEA, IRS, FBI, and Customs Service who investigated this case." He also commended Assistant United States Attorneys Sean B. Martin, Victoria J. Peters, and Bennett Kaplan, who were responsible for the grand jury proceedings and will handle the case in federal court.

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HEALTH CARE REFORM

Record Fine For Health Care Fraud And Kickbacks

On June 29, 1994, the Department of Justice announced that a record $379 million in criminal fines, civil damages and penalties will be paid by National Medical Enterprises, Inc. (NME), a health care corporation in Santa Monica, California, for kickbacks and fraud at NME psychiatric and substance abuse hospitals in more than thirty states. The amount, the largest ever obtained in a health care case, is the result of one of the most extensive multi-agency enforcement operations ever undertaken by the U.S. government.

In papers filed in U.S. District Court in Washington, D.C., NME Psychiatric Hospitals Inc., a wholly owned subsidiary of NME, which manages more than sixty psychiatric hospitals and substance abuse centers nationwide, agreed to plead guilty to six counts of making unlawful payments to induce doctors and other professionals to refer Medicare and Medicaid patients to the hospitals (42 U.S.C. §1320a-7b(b)), and one count of conspiracy to defraud the United States and to make unlawful referrals (18 U.S.C. §371). The charges were based on NME Psychiatric Hospitals' payment of kickbacks to doctors, referral services, and other persons so that they would refer patients to NME's hospitals. The patients were insured under such federal government health programs as Medicare, Medicaid, the Civilian Health and Medical Program of the Uniformed Services and the Federal Employees Health Benefits Program.

NME Psychiatric Hospitals also agreed to pay $33 million, the largest criminal fine ever paid in a health care fraud case, and to contribute $2 million to the Center for Mental Health Services, a program administered by the Department of Health and Human Services for the treatment of children and adolescents with emotional and mental disorders.

In addition, Northshore Hospital Management Corp., another NME subsidiary, agreed to plead guilty in Washington, D.C. to one count of fraud and to pay a $1 million fine for making payments to a doctor to send patients to NME's Northshore Hospital, an acute care hospital in New Orleans, Louisiana, that received federal funds.

On the civil side of the case, NME agreed to pay $324.2 million in damages and penalties to the United States for losses it caused to government medical insurance programs. The agreement resolves claims resulting from various fraudulent practices at NME's psychiatric and substance abuse facilities, including admitting and treating patients unnecessarily, keeping patients hospitalized longer than was necessary in order to use up the available insurance coverage, billing insurance programs when no service was actually provided, and billing Medicare for payments made to doctors and others that were solely intended to induce referrals of patients to the facilities. As part of the settlement, NME agreed to divest itself of its psychiatric hospital and substance abuse business. The remaining hospitals and other NME health services will take part in a "corporate integrity plan," that spells out measures to assure better patient care and compliance with health care regulations. This plan, reflecting the government's emphasis on the need for corporations to make meaningful efforts to comply with all legal requirements, was negotiated by the Office of Inspector General of the Department of Health and Human Services. Part of the settlement negotiated by HHS includes:

- A contribution of at least $2.5 million and up to $5 million by NME to the Public Health Service's Agency for Health Care Policy and Research to perform studies and conduct research into the cost, quality and medical effectiveness of health care in substance abuse or mental health programs and facilities.

- NME agreed to pay $16.3 million to several states for harm caused the state-funded portion of Medicaid and other state health programs, after negotiations with the National Association of Medicaid Fraud Control Units, which represents most of the states.

- NME agreed to cooperate with ongoing criminal and civil investigations of other entities and individuals.

This settlement resolves the criminal and civil liability only of NME and its subsidiaries. The government is continuing to investigate other entities and individuals, including officers and employees of NME as well as doctors and others who were paid to refer business to NME.

This action was the result of an extraordinary effort that brought together the Criminal and Civil Divisions of the Justice Department, the FBI, Office of inspector General of HHS, the Defense Criminal Investigative Service, the U.S. Postal Inspection Service, the IRS, the Office of Inspector General of the Office of Personnel Management, the Securities and Exchange Commission, the United States Attorneys in twenty-three federal districts, and state law enforcement agencies in twenty-seven states and the District of Columbia.

Local investigations which helped achieve this agreement were conducted by United States Attorneys in Phoenix, Los Angeles, San Diego, Washington, D.C., Denver, Miami, Atlanta, Chicago, Indianapolis, Wichita, New Orleans, Detroit, Minneapolis, St. Louis, Kansas City, Newark, Oklahoma City, Philadelphia, Beaumont, Dallas, Houston, San Antonio, Alexandria, Virginia, and Madison, Wisconsin.

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Major Settlement In Florida Hospital Merger Case

On June 17, 1994, the Department of Justice announced a trend-setting settlement involving two central Florida hospitals that offers a model on the kinds of consolidations medical providers may do to lower prices while preserving competition. This action is the first settlement of a case in the health care industry since the issuance of the Statements of Antitrust Enforcement Policy in the Health Care Area, an initiative announced by First Lady Hillary Clinton and Attorney General Janet Reno in September, 1993. The Statements encourage cost-saving joint ventures and joint purchasing agreements while maintaining the benefits of competition. (See, United States Attorneys' Bulletin, Vol. 41, No. 10, dated October 15, 1993, at p. 338.)

The agreement bars the merger of the two largest hospitals in North Pinellas County, near St. Petersburg, while permitting them to jointly provide certain health care services in which competition is plentiful and to share some administrative costs. Under the agreement, announced jointly with representatives from the Florida Attorney General's office, the two hospitals may form a joint venture partnership for care in which there are numerous competitors or for which patients might seek attention far from home. The partnership will manage the joint services and will contract to provide them to each of the hospitals at cost. The hospitals would then compete on the price at which they sold those services to consumers which will result in keeping prices competitive. Such partnerships could include, for example, outpatient services which are provided by clinics and doctors' offices, or open-heart surgery, in which hospitals compete in a broad area. The settlement permits the two hospitals to merge procurement efforts, certain administrative services, telephone services, accounting, billing and collections, and medical records, while providing appropriate confidentiality measures. The two hospitals account for nearly 60 percent of the market. Morton Plant Hospital, located in Clearwater, Florida, is the largest in the area with 672 beds. Its major competitor is Mease Health Care, with 378 beds on two sites -- Dunedin and Safety Harbor, Florida.

The proposed consent decree settles the lawsuit filed on May 5, 1994, in U.S. District Court in Tampa, in which the Department of Justice and the Florida Attorney General alleged that the merger of the two hospitals was likely to lead to higher prices and poorer services for North Pinellas County consumers. For details concerning the lawsuit, please refer to the May issue of the United States Attorneys' Bulletin, at p. 181.

The proposed consent decree and competitive impact statement will appear in the Federal Register. Written comments may be sent to Gail Kursh, Chief, Professions and Intellectual Property Section, Antitrust Division, at (202) 307-5799.

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Other Action In The Health Care Field

Northern District Of Iowa

On June 10, 1994, the Antitrust Division of the Department of Justice, and the United States Attorney's office for the Northern District of Iowa filed suit to block the creation of a hospital monopoly in the Dubuque, Iowa area on the grounds that such a merger would likely lead to higher prices and lower quality services for consumers. The civil antitrust suit was filed against Mercy Health Services and Finley Tri-States Health Group, Inc., to prevent them from merging Mercy Health Center and The Finley Hospital.

United States Attorney Stephen J. Rapp stated, "If the proposed consolidation were to occur, the combined hospitals would have a monopoly over acute care inpatient hospital services in and around Dubuque. Mercy and Finley are each other's only competitors for those services within the county of Dubuque and are the two largest hospitals within a 70-mile driving distance of Dubuque." Anne K. Bingaman, Assistant Attorney General for the Antitrust Division added, "The merger would create a monopoly provider of general acute care hospital services, reducing competition among hospitals. Such competition has been instrumental in enabling managed care plans to fight the war on escalating hospital costs. Competition is the best way to ensure that we contain spiraling health care costs."

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Northern District Of Alabama

On June 20, 1994, the Antitrust Division of the Department of Justice, authorized businesses and health care providers in Birmingham, Alabama to develop a demonstration project to evaluate certain health care services provided by hospitals in their area. This action is part of the Administration's effort to encourage innovative arrangements between purchasers of medical services and health care providers to improve health care delivery at a reasonable cost. In a business review letter signed by Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, this collaboration will promote efficiency and effectiveness and could lower costs to consumers.

The Cooperative Clinical Benchmarking Demonstration Project was initiated by the Alabama Healthcare Council, which represents businesses that provide health care benefits to employees and the Alabama Hospital Association. Twenty-four Alabama businesses and ten Birmingham-area hospitals will participate in the project. The project calls for the hospitals to submit data about the clinical effectiveness and cost of three types of health care services: obstetrical delivery, pneumonia, and acute myocardial infarction. The information will be collected by an independent corporation and evaluated to provide purchasers and the hospitals comparisons of the cost, effectiveness and efficiency of the participating hospitals. Averaged patient outcomes and costs for each hospital will be compared with Birmingham averages, national averages, and national "benchmark" averages. National "benchmark" hospitals are the leaders in a particular category.

Under the Department's business review procedure, an organization may submit a proposed action to the Antitrust Division and receive a statement as to whether the Division will challenge the action under the antitrust laws. A file containing the business review request and the Department's response may be examined in the Legal Procedure Unit of the Antitrust Division, Room 3233, Department of Justice, Washington, D.C. 20530. After a 30-day waiting period, the documents supporting the business review will be added to the file.

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IMMIGRATION ISSUES

Immigration Reform

On June 15, 1994, Attorney General Janet Reno testified before the Senate Judiciary Committee concerning progress on immigration reform. The Attorney General discussed her five-point, two-year strategy which she and Commissioner Doris Meissner launched on February 3, 1994 -- strengthening border control; removing criminal aliens; reforming the asylum process; improving employer sanctions enforcement; and promoting naturalization. (See, United States Attorneys' Bulletin, Vol. 42, No. 2, dated February 15, 1994, at p. 49.)

The Attorney General stressed that complete implementation of the first three initiatives -- border control, removing criminal aliens, and asylum reform -- requires $300 million from the Crime Control Fund for FY 1995. Without these funds, our ability to continue immigration reform will be severely threatened. The following is a summary of Ms. Reno's testimony:

Strengthening Border Control: Building on our plans to add 350 new and 270 redeployed agents to the line in the next few months, principally in San Diego and El Paso, we proposed using $180 million in Crime Control Funds in FY 1995 to hire 150 new Border Patrol agents and redeploy 240 more agents to provide a visible presence at high-risk border areas to deter illegal entry. As we hire additional support staff to perform the administrative duties currently being performed by the agents, we will redeploy these agents back to the border. Forty newly trained agents already have begun work in San Diego.

- By the end of 1995, we will have added 1,010 agents to the line, thus stabilizing El Paso and bringing similar levels of control to San Diego, which together have historically accounted for 65 percent of border apprehensions.

- We are planning to introduce effective mobile responses to changing illegal crossing patterns.

- We are providing the Border Patrol with technology enhancements, such as new computer systems for documents and fingerprints that will help Border Patrol agents work smarter. The agents will spend more time apprehending undocumented aliens and identifying repeat crossers. These and other enhancements will enable INS to obtain better intelligence, dismantle alien smuggling operations, and reduce illegal immigration.

- INS estimates that the resident unauthorized immigrant population in the United States is approximately 3.8 million and growing at a rate of about 300,000 annually. About one-half of the unauthorized immigrant population initially entered as visitors, but did not leave. The remaining portion entered illegally across land borders. (Less than 50 percent of the unauthorized immigrant population are nationals of our border countries, Mexico and Canada.)

• In response to congressional mandate, INS will recommend to the Attorney General members for the Citizens Advisory Panel (CAP), which will accept and review civilian complaints of abuse against employees of the INS. The CAP will also review procedures for responding to such complaints and recommend ways to eliminate the causes of legitimate complaints.

Removing Criminal Aliens: Expediting the deportation of criminal aliens is a top Administration priority. Through the institutional hearing program (IHP), a cooperative effort among INS, the Executive Office for Immigration Review, and various state and federal correctional agencies, we initiate and complete deportation proceedings of convicted aliens while they are serving their prison sentences. The goal of the program is to ensure that criminal aliens are released to INS custody and immediately deported upon completion of their sentences. IHP currently operates in approximately 60 State prisons, two county jails, and six federal facilities in 45 states in all regions of the country.

• Through the IHP and regular deportation hearings, we deported 22,217 criminals in FY 1993.

• We proposed using $55 million in Crime Control Funds to expand the IHP. We will use these funds to develop the automated fingerprint system for positive identification of criminal aliens and to add 50 immigration judges; 25 Board of Immigration Appeals staff attorneys; and 211 investigators, attorneys, and related support staff positions.

• We will improve our processing of requests by law enforcement organizations on criminal aliens by utilizing state-of-the-art fingerprint technology to facilitate their identification. We will link this data to the FBI's NCIC 2000 system, which police officers currently use to make inquiries about individuals wanted for committing crimes.

• We are on the verge of field testing the National Criminal Alien Tracking Center -- renamed the INS Law Enforcement Support Center. This program will be a powerful tool for identifying and processing suspected criminal aliens.

• The Violent Gang Task Force has worked diligently with Federal and state law enforcement agencies to disrupt and dismantle alien gangs in the United States. Since 1993, 2,843 alien gang members have been arrested and over $156 million worth of narcotics and currency, firearms and other property valued at over $8 million have been seized.

Reforming The Asylum Process: Our current asylum system represents the weakest link in the chain of challenges we face today. The system must be timely in accomplishing twin objectives -- delivering protection for genuine refugees and denying the claims of those who are ineligible. Currently, neither of our objectives are being met as only one-third of asylum cases even reach the interview stage.

• The volume of asylum cases filed per year has increased from 56,000 in FY 1991 to over 144,000 in FY 1993. As of May 1, there were 150 asylum officers working on a backlog of 384,000 pending applications.

• We propose using $64 million in Crime Control Funds to double the size of the asylum officer corps from 150 to 300 officers. INS has begun hiring new asylum officers and is prepared to begin their training in late summer, so that the new system can become operational on October 1 if funds have been appropriated. We also plan to hire 50 additional immigration judges and about 50 more INS trial attorneys.

• When our new procedures are fully in place, we expect to be able to reduce application processing times from the current 18-24 months to no more than six months. Bona fide asylum applicants will be approved faster; asylum abusers will be denied sooner; and those not otherwise in the United States legally will be deported.

Improving Employer Sanctions Enforcement: We have included a budget request of $38 million that will help reduce the magnet of illegal job opportunities by, among other things, targeting high-risk industries and aggressively pursuing sanctions against employers who repeatedly hire unauthorized workers.

- During FY 1993, INS "employers sanctions" agents arrested 11,989 individuals, up from about 22,400 the previous year.

- We plan to publish a final rule this summer reducing the number of acceptable documents for employment authorization verification from 29 to 13. In FY 1995, INS will add 249 investigators and 20 attorneys to identify and prosecute counterfeiters and employers who repeatedly hire unauthorized workers. It will also incorporate fingerprint data into work authorization documents, thus improving document security and laying the basis for expanding our capability to verify work eligibility electronically.

Promoting Naturalization: Our $30 million budget request will provide sufficient personnel to adjudicate the increased number of applications for naturalization and break the cycle of growing backlogs. INS will enter into cooperative agreements with voluntary agencies to 1) conduct public education programs on eligibility requirements and naturalization applications procedures, and 2) assist legal permanent residents to prepare applications. INS will also establish a hotline for the public on naturalization requirements and other information.

The Attorney General also discussed the protection of civil rights, reimbursement of states, prisoner transfer treaties, alien smuggling and legal immigration. In conclusion, she stated that the issue of global movement of people is one of the emerging challenges of our time. The Administration is working systematically to shape solutions adequate to the task and build the administrative capacity to manage migration pressures effectively.

If you would like a copy of the Attorney General's testimony, please call the United States Attorneys' Bulletin staff, at (202) 514-3572.

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Immigration Emergency Fund Regulations

On June 14, 1994, the Department of Justice published final regulations in the Federal Register detailing procedures for using the Immigration Emergency Fund to reimburse state and local governments that provide emergency assistance as requested by the Attorney General in the event of a massive influx of aliens into the United States. The $35 million Immigration Emergency Fund was established in 1990, but the Department had not published written regulations determining how funds could be accessed.

The regulations say that the President must declare that an immigration emergency exists in order to access the Fund. In the absence of a Presidential declaration and under certain circumstances, the Attorney General can reimburse states and localities for up to $20 million from the fund for assistance requested by the Attorney General relating to the administration of the immigration laws and in meeting urgent demands arising from the presence of aliens in a jurisdiction. The reimbursement can be initiated by the Attorney General or in response to an application from the chief executive of the state or local government. The Attorney General stated, "We recognize that states like Florida have been extremely concerned about how and when they can legally receive reimbursement for the assistance they provide in handling an immigration emergency. We are pleased to have put a mechanism in place so that states now know the parameters for how to apply for federal dollars to pay for emergencies."

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ANTITRUST ISSUES

New Proposal To Strengthen International Antitrust Efforts

On June 13, 1994, Attorney General Janet Reno announced a legislative proposal that will help the United States obtain evidence from foreign countries for antitrust investigations in an age of global commerce. The new legislation, entitled the International Antitrust Enforcement Act of 1994, will --

- Enable the Justice Department and the Federal Trade Commission to obtain evidence from foreign antitrust agencies by authorizing the U.S. antitrust agencies to provide reciprocal assistance where it is in the public interest to do so and where foreign authorities will treat the information with the same confidentiality as the U.S. agencies.

- Enable U.S. investigators to obtain information from foreign countries and persons within their jurisdictions in appropriate circumstances. Assistance would be available in both civil and criminal antitrust investigations and cases. Its use would be similar to the mutual legal assistance treaties that are negotiated and implemented by the Criminal Division, and to the arrangements that have been negotiated by our securities and tax law enforcement agencies.

- Authorize the Justice Department to assist foreign antitrust authorities to obtain evidence in this country by issuing civil investigative demands to a person in the United States, or seeking a court's assistance in obtaining evidence.

- Authorize the Department or the Federal Trade Commission to disclose to a foreign antitrust authority antitrust investigative information that is otherwise confidential under the Antitrust Civil Process Act of the Hart-Scott-Rodino Antitrust Act and permit the Department, subject to court approval, to disclose grand jury information to a foreign antitrust authority.

The Attorney General noted that transnational conduct is growing in volume and importance as a focus of the Antitrust Division's enforcement activities. International cartels, transnational mergers with anticompetitive potential, price fixing among U.S. firms at the direction of their foreign parent companies and collusion among foreign firms to keep U.S. companies out of their markets, are key elements of the Division's enforcement efforts.

Ms. Reno stated, "We welcome this invigoration of antitrust enforcement. As more countries utilize laws to preserve competition and to stamp out cartels, the playing field is leveled and U.S. consumers and industries are the beneficiaries. Unfortunately, our antitrust enforcement tools have not kept pace with the internationalization of the marketplace."

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Price Fixing Conspiracy In The Disposable Plastic Dinnerware Industry

On June 9, 1994, the Department of Justice announced it had broken up a conspiracy to drive up the price of plastic cups and glasses and other products in the $100 million a year disposable plastic dinnerware industry. The Antitrust Division charged that executives of Plastics, Inc. of St. Paul, Minnesota, Polar Plastics Mfg. Ltd. of Allentown, Pennsylvania, and Comet Products Inc. of Chelmsford, Massachusetts secretly telephoned and met with each other to further a conspiracy that lasted from December, 1991 to December, 1992. One meeting took place in Montreal near the headquarters of the parent company of Polar Plastics. The companies produce well over ninety percent of the plastic dinnerware used in the United States.

Two executives of Polar Plastics, one from Comet and one from Plastics, Inc., agreed to plead guilty to a price fixing conspiracy in violation of the Sherman Antitrust Act. Comet agreed to a fine of $4.2 million, and Plastics, Inc. agreed to $4.16 million. Polar Plastics, which was additionally charged with conspiring to fix prices in the disposable plastic cutlery industry, agreed to plead guilty to all the charges, but the amount of a fine was not determined. All the executives face possible imprisonment.

In a separate action, a grand jury charged the President of Comet, and the President and Vice President of Plastics, Inc. with one count of conspiracy to fix prices. In a second count, the two Presidents were accused of conspiracy to defraud Delta Air Lines, and the Bunzl Corporation, both large purchasers of disposable plastic dinnerware, by scheming to raise the price of certain disposable plastic dinnerware products sold to them.

The maximum penalty for an individual convicted of conspiracy or conspiring to violate the wire fraud statutes is five years imprisonment and a fine that is the greatest of $250,000, twice the pecuniary gain the individual derived from the crime, or twice the pecuniary loss caused to the victims of the crime. The maximum penalty for an individual convicted under the Sherman Act is three years in prison and a fine of the greatest of $350,000, twice the pecuniary gain the individual derived form the crime, or twice the pecuniary loss caused to the victims. The maximum penalty for a corporation convicted under the Sherman Act is a fine of the greatest of $10 million, twice the pecuniary gain the corporation derived from the crime, or twice the pecuniary loss caused to the victims of the crime.

Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, stated, "The days when corporate executives could regard antitrust penalties solely as a business cost are over. Last year, the Antitrust Division brought criminal charges against fifty-one individuals, and sentences were handed out totalling almost eighteen years."

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Price Fixing Conspiracy In The Residential Door Manufacturing Business

On June 14, 1994, the Department of Justice announced that one of the two largest residential door manufacturers in the United States has agreed to pay $6 million in criminal fines for conspiring to fix the prices of doors. Premdor Corporation, which is headquartered in Tampa, Florida, and is a subsidiary of Premdor Inc., a Toronto, Canada corporation, was charged with fixing the price of residential flush doors from January to December, 1993. The conspiracy charged that Premdor and its co-conspirators agreed to increase residential door prices and refrain from offering lower prices of doors to certain customers in violation of the Sherman Act. The agreement to pay a $6 million fine is subject to court approval.

The doors are made of flat wood that can be covered with various types of door facings and are used primarily in residential basements, bedrooms and bathrooms. They are sold to U.S. door distributors and wholesalers, home improvement centers and residential construction companies. This is the first case filed as a result of the government's ongoing investigation into collusive practices in the $600 million residential door industry. The Antitrust Division is expected to file related cases in this industry.

Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, stated, "This case is an example of the Division's determination to shut down criminal price fixing conspiracies that could potentially affect every household across the country."

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CIVIL RIGHTS DIVISION

30th Anniversary Of The 1964 Civil Rights Act

On July 2, 1994, Deval L. Patrick, Assistant Attorney General for the Civil Rights Division, issued the following statement commemorating the 30th anniversary of the 1964 Civil Rights Act:

> As the nation spends this Independence Day weekend reflecting on our proud history, Americans should also remember that today is the 30th anniversary of the historic Civil Rights Act of 1964. Thirty years ago, a courageous Congress and an inspired president, Lyndon Johnson, produced this nation's most sweeping law to ensure equality for all Americans. The Act, signed on July 2, 1964, outlawed discrimination in public accommodations, education and employment.
>
> I am proud of my colleagues at the Justice Department who strive daily to make the law work recognizing that its vigorous enforcement must always be the cornerstone of our civil rights policy. The nation has made important strides in thirty years, but our mission has not been wholly achieved. On this important anniversary date, I hope that we can recommit ourselves as a nation to meeting the challenge set out for us in 1964. To do so, we must restore the moral imperative that civil rights is all about. We must resolve to recommit ourselves to the fundamental principles of the law. Excluding anyone from full participation in society because of race, ethnic origin, gender, religion or disability is simply wrong, and only when we invest in each other's civil rights can we end discrimination.

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Eastern District Of Wisconsin

On June 6, 1994, Thomas P. Schneider, United States Attorney for the Eastern District of Wisconsin, announced that six persons have been charged with violation of 18 U.S. §248(a)(1) for Obstruction of Freedom of Access to a Medical Clinic. The criminal complaint states:

- Two vehicles were parked directly in front of and blocking the entrance to Affiliated Medical Services, a reproductive health clinic, including services relating to the termination of a pregnancy.

- The floor of one vehicle had been removed and one of the defendants was sitting on the ground with his right hand inside a pipe which was attached to the vehicle by concrete and chains.

- Another defendant was in the rear of one of the vehicles with his hands handcuffed inside a concrete-filled pipe, bolted and welded to the car frame.

- Another defendant was handcuffed to concrete reinforcing rods welded to one of the automobiles and his leg was extended outside the automobile and attached by a metal pipe to another defendant.

- Another defendant was attached by a pipe to the leg of another defendant and his right hand was attached to a 55-gallon drum filled with concrete and metal reinforcing rods.

- One defendant was lying across the hood of one of the vehicles with his hands through the grill of the automobile and his other hand through the hole in the hood of the station wagon.

- Two defendants were seated immediately in front of the door to Affiliated Medical Services.

Deval L. Patrick, Assistant Attorney General for the Civil Rights Division, stated, "Congress carefully drew a line between lawful protest and the rights of others. When that line is crossed we will enforce the law as Congress wrote it."

Assistant United States Attorney Matthew L. Jacobs prosecuted the case.

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Largest Housing Discrimination Settlement Ever In The District Of Montana

On June 21, 1994, as part of its stepped up effort to eliminate discrimination against American Indians, the Department of Justice announced the largest settlement ever reached in a Montana housing discrimination suit. Under the settlement, the owners of the Lee Apartments in Billings will pay $65,000 in fines and damages for allegedly refusing to rent to American Indians, applying stricter standards to them than whites, and unfairly evicting them. The agreement, filed in U.S. District Court in Billings, requires Donald and Richard Lee to pay an amount that is more than nine times greater than any previous Fair Housing Act award in Montana.

The Department of Justice sued the owners of the apartment complex in October, 1992, alleging that the Lees engaged in a pattern of intentional discrimination against American Indians in violation of the federal Fair Housing Act. The complaint alleged that the defendants refused to show available units to American Indians and lied about their availability when American Indians inquired; required American Indian applicants to meet stringent rental terms which were not applied to white applicants, and; evicted American Indians who became tenants in circumstances in which white tenants were permitted to remain. Evidence of the discrimination was obtained from a Justice Department investigation and through testing conducted by the Concerned Citizens Coalition, a Montana organization dedicated to ensuring fair housing throughout Montana. Under the testing, whites and American Indians trained to pose as prospective tenants inquired about renting units at the Lee Apartments. The Justice Department has been conducting similar testing on a nationwide basis to detect housing discrimination.

Under the agreement, approved by the Court, the Lees will pay $31,500 to nine American Indian households who applied for or rented apartments from the Lees, $7,000 to two American Indian testers who participated in the Coalition tests, and $16,500 to the Coalition. In addition, the Lees will pay $10,000 in civil penalties to the United States. Finally, the Lees must take steps to ensure that they rent their apartments in a non-discriminatory fashion, including adopting uniform eligibility standards and training their staff.

Deval L. Patrick, Assistant Attorney General for the Civil Rights Division, stated, "I understand the continuing legacy of discrimination that affects American Indians in this country. This settlement should send a clear message throughout the country that the Justice Department will root out discrimination against American Indians wherever we find it."

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Americans With Disabilities Act (ADA)

On June 8, 1994, the Department of Justice announced the settlement of a complaint alleging that Anthony's Pier 4, one of the nation's largest restaurants, violated the Americans with Disabilities Act (ADA). The complaint sparked a Justice Department investigation of the restaurant, as well as three other Massachusetts restaurants under the same ownership -- Anthony's Hawthorne-by-the-Sea and the General Glover House in Swampscott, and Anthony's Cummaquid Inn in Yarmouthport on Cape Cod.

In the complaint, a Boston resident who uses a wheelchair, claimed that Anthony's Pier 4 failed to make its establishment accessible to patrons with disabilities. Under the settlement, Anthony's Pier 4 and the other restaurants will provide fully accessible parking at each restaurant; make the main entrance at each restaurant fully accessible; provide access to seating areas; and modify restrooms at each restaurant to make them accessible to individuals with disabilities. In addition, Anthony's Pier 4 will install a visual fire alarm system to insure the safety of individuals who are deaf or hard of hearing; and add a mechanical wheelchair lift, to provide access up the restaurant's grand stairway to the second floor, where there are banquet and reception rooms. Title III of the ADA prohibits discrimination against persons with disabilities by public accommodations, such as restaurants. Under the law, such facilities must remove architectural barriers where it is readily achievable, or where it can be done without much difficulty or expense.

Deval L. Patrick, Assistant Attorney General for the Civil Rights Division, stated, "The law provides opportunities to persons with disabilities that many others take for granted -- something as simple as eating at a restaurant. When a landmark establishment complies with a landmark law, opportunities abound."

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CIVIL DIVISION

Consumer Fraud In The Southern District Of Texas

On June 9, 1994, Frank W. Hunger, Assistant Attorney General for the Civil Division, and Gaynelle Griffin Jones, United States Attorney for the Southern District of Texas, announced that a federal grand jury has indicted five officials of a Houston, Texas, juice company for adulterating their products with sugar. The indictment charged that the company, Cal-Tex Citrus Juice Inc., labeled and sold its adulterated products as 100 percent pure juice from concentrate under its "Vita-Fresh" brand name and under private brand names. The juices were sold to school districts and food service firms that were suppliers to restaurants, hospitals, schools and other institutions, among others. According to the indictment, Cal-Tex did business in Houston and engaged in the interstate production and distribution of various products.

The indictment alleges that, beginning not later than 1985 and continuing through at least January 1991, the defendants conspired to defraud customers by selling them products falsely labeled as 100 percent pure juice from concentrate, including the flavors of orange, apple, grape, grapefruit and pineapple. The indictment also alleges that the defendants routinely substituted less expensive sugar for fruit juice concentrate to reduce production costs. As a result, the defendants were able to sell products labeled as 100 percent pure juice from concentrate at fraudulently inflated prices. The charges against Cal-Tex and its employees are part of a continuing investigation into fraudulent practices in the juice industry by the Office of Consumer Litigation of the Department of Justice, and the U.S. Food and Drug Administration.

[NOTE: In recent months, the investigation has yielded convictions in the Western District of Kentucky and the Western District of Michigan. See, United States Attorneys' Bulletin, Vol. 42, No. 6, dated June 15, 1994, at pp. 208 and 225.]

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PROJECT TRIGGERLOCK

Summary Report

Significant Activity - April 10, 1991 through May 31, 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 May 31, 1994:

Description	Count	Description	Count
Defendants Charged	18,680	Prison Sentences	83,562 years
Defendants Convicted	12,124	Sentenced to Prison	10,049
Defendants Acquitted	675	Sentenced w/o prison or suspended	754
Defendants Dismissed	1,973	Average Prison Sentence	100 months
Defendants Sentenced	10,803		

Defendants Charged Under 922(g) w/o enhanced penalty	3,085
Defendants Charged Under 922(g) with enhanced penalty under 924(e)	880
Defendants Charged Under 924(c)	5,873
Defendants Charged Under Both 922(g) and 924(c)	846
Defendants Charged Under 922(g) and 924(c) and (e)	172
Subtotal Charged Under 922(g), 924(c) +(e)	10,856
Defendants Charged With Other Firearms Violations (Includes 279 "carjacking"-18 U.S.C. §2119 defendants).	7,824
Grand Total (With Firearms)	18,680

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.)

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CRIME STATISTICS

Child Rape Victims, 1992

On June 22, 1994, the Bureau of Justice Statistics (BJS), Department of Justice, released a Crime Data Brief indicating that half of the women who reported they had been raped during 1992 were juveniles under eighteen years old, and 16 percent were younger than twelve. The information from eleven states and the District of Columbia was from police data and accounted for 20 percent of the 109,000 rapes of females that were reported to law enforcement agencies during 1992. BJS stated that this was the first multi-state study that documents the high frequency of child rape, and added that nationwide 17,000 girls under the age of twelve were raped during 1992. BJS pointed out that this is a conservative estimate, because it included only reported rapes.

A separate study in 1991 in three states -- Alabama, North Dakota, and South Carolina -- found that 96 percent of the female rape victims younger than twelve years old knew their attackers. Twenty percent were victimized by their fathers. In this study police investigators determined that only four percent of the rape victims younger than twelve years old were attacked by strangers during 1991. All the other assailants were either family members (46 percent) or acquaintances or friends (50 percent). Twenty percent were raped by their fathers. Among 12- to 17-year old victims, 20 percent were raped by family members, 65 percent by an acquaintance or friend, and 33 percent by a stranger. Among those 18 years old or older, 12 percent were raped by a family member, 55 percent by an acquaintance or friend, and 33 percent by a stranger.

State	Rape Victims Younger Than	Percentage of State Total
Alabama	15 years old	24%
Arkansas	14	24
Delaware	10	22
D.C.	16	22
Florida	18	46
Idaho	16	24
Kansas	15	12
Michigan	10	25
Nebraska	16	31
North Carolina	16	20
North Dakota	11	25
Pennsylvania	15	25
Rhode Island	14	49
South Carolina	17	40
Wisconsin	15	22

A 1991 BJS survey of state prisoners confined for child rape (the rape of girls under 12) revealed that 94 percent of the offenders said their victim was either a family member, acquaintance or friend, an estimate almost identical to that found in the 1991 law enforcement data from the three states.

Single copies of the BJS Crime Data Brief, "Child Rape Victims, 1992" (NCJ-147001), 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.

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Crime And Neighborhoods

On June 19, 1994, the Bureau of Justice Statistics (BJS), Office of Justice Programs, Department of Justice, issued a Crime Data Brief entitled "Crime and Neighborhoods." BJS utilized biennial household survey data from the Department of Housing and Urban Development concerning residents' views of neighborhood problems. The findings were similar to BJS's National Crime Victimization Surveys, which show violent crime is highest among black households and those in central cities. The BJS report noted:

- In 1991 black households were about three times more likely than were white households to cite neighborhood crime as a serious concern.

- During the 1985-1991 period, the percentage of white households expressing concern about crime near their homes grew from 4 percent to 6 percent, whereas among black households it almost doubled -- growing from 9 percent to almost 17 percent.

- Black households in central cities that cited crime as a neighborhood problem rose from 12 percent to 23 percent.

- In 1991 crime was the number one neighborhood concern of black central city households.

- Less frequently mentioned neighborhood problems were noise (12 percent), litter or housing deterioration (8), traffic (6), poor public services (3), undesirable commercial property (2), and other problems (9 percent). Half the households identified no problem in their neighborhood.

Many convicted offenders report committing crimes near where they lived. For example, BJS's 1991 survey of state prison inmates disclosed that 43 percent of prisoners were serving time for offenses committed in their own neighborhoods. This included 45 percent of violent offenders and 52 percent of drug offenders.

Single copies of the BJS Crime Data Brief, "Crime and Neighborhoods" (NCJ-147005), 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.

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POINTS TO REMEMBER

Calculation And Processing Of Back Pay Awards; Employee Benefits

The Civil Division and the Office of Personnel Management have issued a notice to alert you to a significant issue in the calculation and processing of back pay awards that has complicated the resolution of several recent cases. This issue arises in cases in which a former federal employee who has received money from a federal retirement or disability fund (in an annuity or a lump-sum payment) receives back pay either through judgment or settlement. In such cases, you need to be aware that, when the amount of those benefits is offset against the back pay award, that amount must also be returned to the appropriate fund. See 5 U.S.C. §5596 (b); 5 C.F.R. § 550.805(e).

A copy of the notice is attached at the Appendix of this Bulletin as Exhibit A.

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Acceptance Of Donated Property And Services From Non-Government Sources

On June 10, 1994, the Executive Office for United States Attorneys, issued a memorandum to all United States Attorneys providing clarification regarding the impropriety of accepting donated property and services from non-governmental sources for use in furtherance of the law enforcement mission of the United States Attorneys' offices. A copy is attached at the Appendix of this Bulletin as Exhibit B.

The acceptance by a United States Attorney's office of free property or services from a non-governmental source violates several well established principles of federal appropriations law. First, an agency may not augment its appropriation from outside sources without specific statutory authority. Second, a government agency may not accept for its own use gifts of property or services from outside sources absent specific statutory authority. Finally, a federal entity cannot receive grant funds from for-profit, non-profit, state or federal entities unless expressly authorized by statute.

If you have any questions or concerns regarding a specific case, please contact Frank Fina, Office of Legal Counsel, at (202) 514-4024.

* * * * *

Federal Prison Industries

On June 6, 1994, Attorney General Janet Reno issued a memorandum to the Heads of the Department Components, concerning Federal Prison Industries (FPI) and the purchase of goods and services from FPI. A copy is attached, together with a list of products and services, at the Appendix of this Bulletin as Exhibit C.

Recent research results clearly demonstrate that inmates who work in FPI while incarcerated learn specific job skills and the basic work ethic, and have appreciably better chances of getting a job and not returning to a criminal life style. The FPI program also reduces inmate idleness and contributes directly to the Bureau of Prisons' (BOP) successful management of very crowded correctional facilities. As the number of inmates in BOP custody continues to increase, so too must the number of inmates employed by FPI. By law, FPI can sell only to the Federal government and must fund all operating costs, such as staff salaries, raw materials and equipment out of sales, with no appropriated funds.

A recent analysis of Federal purchasing patterns indicates that many agencies, including some Department of Justice components, do not contact FPI to determine whether they can provide the necessary product or service. The Attorney General is asking the Department components to consistently support FPI and contact them for the goods and services they provide.

* * * * *

SENTENCING REFORM

Guideline Sentencing Update

A copy of the Guideline Sentencing Update, Volume 6, No. 14, dated June 29, 1994, is attached as Exhibit D 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

The Crime Bill

On July 6, 1994, Attorney General Janet Reno began a cross-country tour of six cities in support of the crime bill: Columbus, Ohio; Chillicothe, Ohio; Petaluma, California; Oakland, California; Houston, and other cities and small towns across Texas; and Lafayette, Louisiana. The Attorney General participated in various events emphasizing the President's three-pronged approach to fighting crime -- police, punishment and prevention.

Action on the crime bill is anticipated sometime after the July 4th holiday recess and before the August summer break, scheduled for August 12, 1994.

* * * * *

Independent Counsel Act

On June 30, 1994, President Clinton signed into law S. 24, the reauthorization of the Independent Counsel Act. The President stated as follows:

> . . .This law, originally passed in 1978, is a foundation stone for the trust between the Government and our citizens. It ensures that no matter what party controls the Congress or the executive branch, an independent, nonpartisan process will be in place to guarantee the integrity of public officials and ensure that no one is above the law.
>
> Regrettably, this statute was permitted to lapse when its reauthorization became mired in a partisan dispute in the Congress. Opponents called it a tool of partisan attack against Republican Presidents and a waste of taxpayer funds. It was neither. In fact, the independent counsel statute has been in the past and is today a force for Government integrity and public confidence.
>
> This new statute enables the great work of Government to go forward -- the work of reforming the Nation's health care system, freeing our streets from the grip of crime, restoring investment in the people who make our economy more productive, and the hard work of guaranteeing this Nation's security -- with the trust of its citizens assured.
>
> It is my hope that both political parties would stand behind those great objectives. This is a good bill that I sign into law today -- good for the American people and good for their confidence in our democracy.

* * * * *

Debt Collection And The National Fine Center

On June 28, 1994, Gerald Stern, Special Counsel for Financial Institution Fraud, Office of the Deputy Attorney General, testified before the Senate Committee on Governmental Affairs, concerning the National Fine Center and its impact on debt collection.

Mr. Stern stated that collection of debt is a task with which the Department of Justice is most familiar. The 93 United States Attorneys in the 94 Federal districts in criminal and civil debt collection recovered 1.63 times the cost of their operating budgets in Fiscal Year 1993. That is 163 percent of what it cost to run the offices of the United States Attorneys.

As of May 31, 1994, we have convicted 4,658 major financial institution fraud defendants and sent 3,197 of them to jail. There is a 96.2 percent conviction rate for all major financial institution fraud cases; a 97.4 percent conviction rate for directors and officers of banks; and a 95.2 percent conviction rate for chief executive officers, chairpersons of the boards and bank presidents. The Department has been highly successful in obtaining court orders for heavy fines and mammoth restitution orders -- in fact, almost half of the present $4 billion total criminal debt inventory -- $1.9 billion -- was added in Fiscal Year 1993 alone. In major financial institution fraud prosecutions, since October 1, 1988, we have recorded restitution of $1,933,956,000 and fines of $32,792,646 ordered.

In March, 1994, the Department collected information on cases in which the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC) were owed restitution of over $1 million. The balance of all restitution orders which had been imposed and were owed to both the RTC and the FDIC was $785,541,243. The amount of all recoveries on restitution orders alone paid on those cases was $25,169,271. The other recoveries, from forfeiture, civil judgments, etc., were $219,066,642. The sum of all recoveries to satisfy these $1 million-dollars-and-over cases' criminal restitution orders was $244,235,913 at that time. When you calculate these sucessful actions to recover the money lost against the restitution orders, the percentage collected is 31 percent in the cases which have the largest restitution orders of $1 million and more. The Committee will note that the figure of $244,235,913 in recoveries includes ancillary jdugment enforcement actions. Not all of the collection reports are that inclusive of recoveries.

In response to a question raised by the Committee concerning the current status of the National Fine Center, Mr. Stern explained that the Administrative Office of the United States Courts -- not the Department of Justice -- is charged by Congress with the responsibility to establish an automated criminal debt-processing entity to receive criminal debt payments and to provide current information on the payment and collection of fines and penalties. Once implemented nationwide, the National Fine Center will also include information on the payment of restitution and should eventually be able to provide the needed information on restitution paid to private individuals and entities. The Department has a vital interest in seeing the Administrative Office of the United States Courts achieve the realization of the task that Congress imposed upon it in 1987 of building and maintaining a National Fine Center, and continues to stand ready to provide whatever assistance the courts require. As for collection of the financial institution fraud criminal debt, the Department is committed to continuing its aggressive and determined efforts.

If you would like a copy of Mr. Stern's testimony, please call the United States Attorneys' Bulletin, at (202) 514-3572.

* * * * *

American Indian Religious Freedom

On June 19, 1994, Gerald Torres, Counsel to the Attorney General, and Gene R. Haislip, Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, testified before the Subcommittee on Native American Affairs, House Committee on Natural Resources, concerning H.R. 4155 and H.R. 4230 of the American Indian Religious Freedom Act Amendments of 1994. The recently enacted Religious Freedom Restoration Act ("RFRA"), Pub. L. 103-141, helps to ensure the religious liberty of all Americans.

Mr. Torres discussed the primary goal of H.R. 4155 -- a goal strongly supported by the Administration -- which specifies how government should address federal land use decisions that burden the exercise of Indian religion. H.R. 4230 provides statutory protections for the traditional use of peyote by Indians. The Department believes that the special relationship with federally recognized tribes empowers Congress to protect the traditional religious use of peyote. Mr. Haislip explained the regulations concerning the use of peyote, and advised that DEA could support the bill if amended to: 1) restrict the use, possession, or transportation of peyote to bona fide traditional ceremonial purposes only; and 2) to make clarifying amendments to address public safety concerns.

If you would like a copy of this testimony, please call the United States Attorneys' Bulletin at (202) 514-3572.

* * * * *

SUPREME COURT WATCH

Selected Cases Recently Decided

Civil Cases

Digital Equipment Corp. v. Desktop Direct, Inc., No. 93-405 (decided June 6)

In this case, the Court held that an order denying effect to a settlement agreement is not appealable as a "final decision" under 28 U.S.C. 1291.

Madsen v. Women's Health Center, Inc., No. 93-880 (decided June 30)

In this case, the Court held that the First Amendment standard for assessing a content-neutral injunction is whether the injunction's challenged provisions "burden no more speech than necessary to serve a significant government interest."

International Union, United Mine Workers of America v. Bagwell, No. 92-1625 (decided June 30)

In this case, the Court held that a criminal jury trial was required for contempt sanctions intended to punish wide-spread, ongoing, out-of-court violations of a complex injunction.

Criminal Cases

Nichols v. United States , No. 92-8556 (decided June 6)

In this case, the Court overruled Baldasar v. Illinois, 446 U.S. 22 (1980), and held that a sentencing court may consider a prior uncounseled misdemeanor conviction in sentencing a repeat offender.

Shannon v. United States, No. 92-8346 (decided June 24)

In this case, the Court held that the Insanity Defense Reform Act of 1984 does not require that a jury be instructed on the consequences of finding a defendant not guilty by reason of insanity.

Davis v. United States, No. 92-1949 (decided June 24)

In this case, the Court held that officers interrogating a suspect who has waived his Miranda rights may continue questioning until the suspect has clearly requested an attorney.

Williamson v. United States, No. 93-5256 (decided June 27)

In this case, the Court held that the hearsay exception for statements against penal interest, Fed. R. Evid. 804(b)(3), does not extend to portions of a declarant's confession that are self-exculpatory or neutral.

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CASE NOTES

CIVIL DIVISION

D.C. Circuit Affirms Dismissal Of Employee And Rejects Employee's Rehabilitation Act Arguments

Carr challenged her removal from her position as a coding clerk at the United States Attorney's Office based on claims under the Rehabilitation Act, 29 U.S.C. 791, 794, and the Civil Service Reform Act, 5 U.S.C. 7511 et seq. Carr claimed that she is a "qualified handicapped person" under the Rehabilitation Act because of her condition, which is a dysfunction of the inner ear causing dizziness, vomiting, and blackouts. She asserted that the United States Attorney's Office failed to reasonably accommodate her condition and discriminated against her on the basis of that handicap. Carr also challenged the determination of the MSPB sustaining the decision to remove her. The district court granted the government's motion for summary judgment, and the court of appeals (Mikva, Edwards, Silberman) affirmed. The court of appeals agreed with our position that the ability to report for work on a regular basis -- wherever the work site is -- is an essential element of any job. The court found that Carr's condition not only caused her to be late or absent for substantial periods of time but that her condition also often left her unable to contact her employer to indicate that she could not work. Thus, the court concluded, Carr was not "otherwise qualified" for her former position, and no reasonable accommodation could be found to address Carr's condition. Her condition left her unable to report to work with any regularity whether or not the work was part-time or full time, she was provided with a flexible schedule of arrival and departure, or a flexible work place (where she could work at the office or the home or other location). The court emphasized that "it is the unusual case that, like this one, can be resolved against the plaintiff without extensive fact finding." But, said the court, "to require an employer to accept an open-ended 'work when able' schedule for a time-sensitive job would stretch 'reasonable accommodation' to absurd proportions and imperil the effectiveness of the employer's public enterprise."

Carr v. Reno, No. 92-5115 (May 20, 1994) [D.C. Cir.; D.D.C.].
DJ # 35-16-3266.

Attorneys: Robert V. Zener - (202) 514-1597
Howard S. Scher - (202) 514-4814

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Second Circuit Declares That Government's Delay In Paying Judgment Is Not Proper Basis For Awarding Interest

Interest on a judgment entered against the United States begins to run only from the date of filing of the transcript with the Comptroller General through the day before the appellate court issues its mandate of affirmance. This statutory rule, which often comes as an unpleasant surprise to litigants against the government, was recently challenged in the Second Circuit by a successful FTCA plaintiff. The appellate court upheld our view that no additional award of interest against the United States may be permitted. Citing our earlier win on this issue, Desart v. United States, 947 F.2d 871 (9th Cir. 1991), the Second Circuit rejected the plaintiff's invitation to disregard the plain meaning of the statute and noted that "we will not construe [a waiver of the 'no-interest' rule] beyond what the language of the statute requires."

Andrulonis v. United States, Nos. 93-6228, 93-6272, and 93-6274 (June 1, 1994) [2d Cir.; N.D.N.Y.]. DJ # 157-50-647.

Attorneys: Robert S. Greenspan - (202) 514-5428
William G. Cole - (202) 514-4549

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Fifth Circuit Holds That Removal Under The Westfall Act Removes The Entire Case, Including All Claims And All Parties

Chet May was killed and Ronald Kelly was rendered a quadriplegic when, as members of the Mississippi National Guard, they participated in a "helocasting" exercise during training. Helocasting involves jumping into a body of water from a helicopter flying at low altitude and slow speed -- here the helicopter was flying too high and too fast for safe performance of the procedure. May's survivors and Kelly's representative sued the State of Mississippi and the individual officers in command during the exercise in state court. Following the Attorney General's Certification that the officers were federal employees acting within the scope of their employment at the time of the incident, we removed the case to federal court under the Westfall Act and the United States was substituted for the individual defendants. The district court subsequently denied plaintiffs' motion to remand the case to state court and granted our motion to dismiss on the ground that liability was barred by the Feres doctrine.

Plaintiffs appealed, conceding that if the case had been properly removed, Feres barred their claims, but asserting that the district court had erroneously refused to grant them discovery and a hearing on the scope-of-employment issue underlying the Attorney General's Westfall Act certification. Before rebutting this merits argument, we urged that the court of appeals lacked jurisdiction because the district court had dismissed only the United States, leaving plaintiffs' claims against Mississippi still pending in the district court. Plaintiffs contended that the district court's order dismissing all claims against the United States was final and appealable because, under the Westfall Act, only the claims against the defendants covered by the Attorney General's certification are removed to federal court. The Fifth Circuit, in a case of first impression, held that removal under the Westfall Act operates as to the entire case. The court concluded that the plain language of the Westfall Act, which refers to removal of the "action or proceeding" (28 U.S.C. 2679(d)(2)), dictates that all claims against all parties are removed. Accordingly, the court dismissed the appeal for lack of jurisdiction.

Dillon v. Mississippi, No. 93-7408 (June 13, 1994) [5th Cir.; S.D. Miss.].
DJ # 157-41-795.

Attorneys: Barbara L. Herwig - (202) 514-5425
Irene M. Solet - (202) 514-3542

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Sixth Circuit Reverses Most Of An Order Requiring Reopening Of All Denials Of Social Security Disability Benefits In Ohio Since 1984

Plaintiffs in this Ohio-wide class action challenge the way in which the Ohio Bureau of Disability Determination (BDD) adjudicated claims for social security disability benefits (state agencies like the Ohio BDD make the decisions on behalf of the U.S. Secretary of Health and Human Services at the first two levels of review; we thus assumed the principal burden of defending this case). The district court upheld us on the most important challenges, but it nevertheless ordered that we offer to reopen all disability denials in Ohio since 1984 because of four narrow violations. The court also tolled the 60-day statute of limitations, thus including denials from 1984 to 1987, and waived exhaustion of administrative remedies.

The Sixth Circuit (Milburn, Batchelder, and Cohn, D.J.) reversed on most of these grounds and affirmed on a fifth narrow ground on which plaintiffs cross-appealed. On the first two issues, concerning whether a form letter adequately requested certain information from a claimant's treating physician and whether Ohio made adequate efforts to choose treating physicians to provide new medical examinations, the court held that the procedures were adequate after 1988, and that while they were inadequate prior to 1988, reopening thousands of claims years after the fact would not remedy the violation and thus should not be ordered. The court held that some, but only some, class members received notices of the denial of benefits that may have been misleading in suggesting that a new application would be as effective as appeal of the initial application. It also held that the state was not required to publish certain guidelines for notice and comment under the federal Administrative Procedure Act because the APA does not apply to state agencies. Finally, the court upheld Ohio's decision not to directly request medical information from treating physicians who work at teaching hospitals. Looking only at the issue on which we partially lost, the court held that because the notice practice was not clandestine, the 60-day statute of limitations should not be tolled, but that exhaustion should be waived. In a partial dissent, Judge Batchelder concluded that she would not have waived exhaustion for any claimants and thus would have allowed no relief. The decision thus allows us to largely avoid providing enormously expensive remedies for relatively trivial flaws in the administrative process.

Day v. Shalala, Nos. 92-3963, 92-4208, and 92-4209 (May 12, 1994) [6th Cir.; S.D. Ohio]. DJ # 137-58-1773.

Attorneys: William Kanter - (202) 514-4575
Frank A. Rosenfeld - (202) 514-0168

* * * * *

Eighth Circuit Holds That HUD Official Is Entitled To Qualified Immunity For His Role In Assessing An Administrative Sanction

This action arises out of the decision of the Department of Housing and Urban Development ("HUD") to impose an administrative sanction on Rev. W. G. Howard that prohibited Rev. Howard from engaging in certain housing assistance transactions with HUD. Rev. Howard contended that the sanction was imposed on the basis of his race, and he sought an award of damages against John T. Suskie, the manager of HUD's Little Rock, Arkansas office, in his individual capacity for his role in assessing the sanction. Mr. Suskie filed a motion for summary judgment, asserting defenses of absolute and qualified immunity. After the district court denied the request for immunity with respect to some of Rev. Howard's claims, Mr. Suskie appealed.

The court of appeals reversed. A majority (Loken and Kyle) rejected Mr. Suskie's absolute immunity defense, but held that Mr. Suskie is entitled to qualified immunity. The majority noted that Mr. Suskie had introduced affidavits from several HUD officials establishing the legitimate grounds on which the decision to impose sanctions was based and that Rev. Howard had failed to introduce evidence establishing a triable issue of fact regarding Mr. Suskie's motives. Judge John R. Gibson concurred in the judgment, expressing his view that Mr. Suskie was entitled to absolute immunity.

Reverend W. G. Howard v. Suskie, No. 93-2769 (June 15, 1994) [8th Cir.; E.D. Ark.]. DJ # 145-17-4766.

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

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Tenth Circuit Holds That Bivens Complaint Against Customs Service Agents Arising Out Of Helicopter Chase Following A Prison Escape Must Be Dismissed For Failure To State Claim Under Fourth Or Fifth Amendment

Charles "Cheater" Bella, a helicopter pilot, brought a Bivens action against Chamberlain and Meyers, two Customs Service agents, alleging the use of excessive force in violation of his Fourth and Fifth Amendment rights. The complaint alleged that Bella was skyjacked at gunpoint by Beverly Shoemaker and ordered to assist in the escape of three inmates from the New Mexico State Penitentiary. Bella flew Shoemaker and the inmates to the Mid-Valley Airpark, where the inmates and Shoemaker disembarked, leaving Bella handcuffed to the Gazelle helicopter. A Customs Service Blackhawk helicopter landed at Mid-Valley, and when one agent approached the Gazelle, one of the inmates returned to the Gazelle and held a gun to Bella's head, ordering him to take off. Chamberlain, with Meyers on board, hovered the Blackhawk directly in front of the Gazelle in an unsuccessful effort to prevent its takeoff. As Bella was leaving the airpark, Meyers fired three rounds at the Gazelle, one of which hit the helicopter. For forty to fifty minutes, the Blackhawk chased the Gazelle, joined at one point by a State Police helicopter, which flew to the right of the Gazelle as the Blackhawk flew to the left, thereby "boxing in" the Gazelle. Bella claimed that the Blackhawk flew dangerously close to the Gazelle. He finally landed at Albuquerque International Airport, where he and the inmate were taken into custody. Bella claimed damage to his helicopter and emotional distress. Both defendants moved to dismiss for failure to state a constitutional claim and on the basis of qualified immunity. The district court denied the motions, on the theory that the complaint alleged that the agents had directed potentially deadly force at an innocent hostage. We took an immediate appeal.

The court of appeals (Byron White, Tacha, Brorby), in an opinion adopting virtually all of our arguments, reversed and remanded with instructions to dismiss the complaint. The court held that the complaint did not state a claim under the Fourth Amendment since there was no seizure of Bella until he was taken into custody at the end of the chase, well after the exercise of force occurred. The shots fired at the helicopter did not amount to a seizure because they did not strike Bella or succeed in stopping him. The complaint also did not state a claim under the Fifth Amendment since Bella alleged only a minimal injury with no physical injury at all, conceded that the agents did not act out of malice, and failed to allege a grossly disproportionate use of force. Because the complaint failed to state a constitutional claim, the court did not have to reach the issue of qualified immunity.

Bella v. Chamberlain and Meyers, No. 93-2092 (May 20, 1994) [10th Cir.; D.N.M.]. DJ # 157-49-891.

Attorneys: Barbara L. Herwig - (202) 514-5425
Edward Himmelfarb - (202) 514-3547

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TAX DIVISION

Supreme Court Reverses Judgment Of The Ninth Circuit And Holds That The Retroactive Amendment Of Section 2057 Of The Internal Revenue Code Does Not Violate The Due Process Clause

On June 13, 1995, in United States v. Carlton, the Supreme Court reversed the judgment of the Ninth Circuit, and held (9-0) that the retroactive amendment of Section 2057 of the Internal Revenue Code did not violate the Due Process Clause. Section 2057, enacted in 1986, allowed a deduction from the gross estate in the amount of one-half of the proceeds of a sale of employer securities to an employee

stock ownership plan (ESOP). As originally enacted, the statute did not specify that only securities owned by the decedent at the time of death qualified for the deduction. In late 1986, the estate here, attempting to take advantage of an apparent loophole in the estate tax laws, purchased over $11 million in stock after the decedent's death, immediately sold that stock to an ESOP, and then claimed a deduction for half the value of the stock it sold. In 1987, however, Congress had amended Section 2057 to permit the deduction only for sales of stock that had been owned by the decedent at the time of death, and had made this amendment retroactive to all returns filed in 1986. In reliance upon this amendment, the IRS denied the deduction claimed by the estate here. The Ninth Circuit, however, refused to apply the statute retroactively, holding that such treatment was barred by the Fifth Amendment of the Constitution.

In reversing, Justice Blackmun, writing for the Court, concluded that the amendment's retroactive application met the requirements of due process. Reasoning that the amendment was "rationally related to a legitimate legislative purpose," the Court noted that "Congress acted to correct what it reasonably viewed as a mistake in the original 1986 provision that would have created a significant and unanticipated revenue loss." Congress' decision "to prevent the loss by denying the deduction to those who had made purely tax-motivated stock transfers" was not "unreasonable." The Court also observed that "Congress acted promptly and established only a modest period of retroactivity." The Court went on to reject the estate's argument that the amendment violated due process because it specifically and detrimentally relied on the statute as originally enacted, stating that "[t]ax legislation is not a promise, and a taxpayer has no vested right in the Internal Revenue Code."

* * * * *

Second Circuit Affirms Adverse Tax Court Decision In Matter Concerning Validity Of Deductions Claimed Under Individual Defined Benefit Pension Plans

On June 6, 1994, the Second Circuit affirmed the adverse Tax Court decision in Wachtell, Lipton, Rosen & Katz v. Commissioners. In this matter, the Internal Revenue Service challenged the validity of deductions claimed by certain lawyers under individual defined benefit pension plans. The plans allow maximum deductions to participants in the plans' early years. The issue was whether the deductions claimed were based on "reasonable" actuarial assumptions that were the actuary's "best estimate of anticipated experience," as required by the Internal Revenue Code. The Second Circuit concluded that the Tax Court findings that the assumptions chosen by the plans' actuary complied with the statutory requirement were not clearly erroneous. In November, 1993, the Fifth Circuit ruled against the Government in a virtually identical case, Vinson & Elkins v. Commissioner. Appeals presenting similar issues are pending in the Sixth and Ninth Circuits.

* * * * *

Fourth Circuit Issues Ruling, In An Unpublished Opinion, Relating To The Retroactive Application Of The Federal Debt Collection Procedures Act (28 U.S.C. §§ 3001-3308)

On June 6, 1994, in Alfred W. Ford et al v. United States, the Fourth Circuit issued a ruling, in an unpublished opinion, relating to the retroactive application of the Federal Debt Collection Procedures Act (28 U.S.C. §§ 3001-3308). The court held that retroactive application of the Act to a fraudulent conveyance action pending on the date of enactment of the Act is justified by the rational legislative purpose of creating a comprehensive statutory framework for the collection of debts due the United States. Accordingly, the Fourth Circuit rejected the taxpayers' due process challenge to the retroactive application. This decision is believed to be the first by a court of appeals to address such a challenge. The Tax Division filed a motion to publish the opinion; however, the motion was denied.

* * * * *

Eighth Circuit Holds That Cash Distributions Were "Wages" For Purposes Of Social Security (FICA) And Unemployment (FUTA) Taxes

On May 31, 1994, the Eighth Circuit Court of Appeals, held, in The Lane Processing Trust, et al. v. United States, that cash distributions received by the employees of the former Lane Companies constituted "wages" for purposes of social security (FICA) and unemployment (FUTA) taxes. Approximately $1.5 million in FICA and FUTA taxes were in issue. To avoid liquidation, ownership of the Lane Companies had been transferred to the Lane Processing Trust, established for the benefit of the employees of the Lane Companies. The trustees swiftly turned around the fortunes of the Companies, and sold their stock to Tysons Foods for $35 million. After the sale was negotiated, the sales proceeds were distributed according to the terms of a court-approved plan under which one-half of the sales proceeds were paid to the trustees and top management, and the remaining one-half was paid to workers and lower-level management. The Eighth Circuit held that these distributions were "wages" subject to withholding because the payments made to each employee were based on factors traditionally used to determine employee compensation.

* * * * *

U.S. District Court For The District Of Kansas Dismisses Government's Petition To Enforce An IRS Summons Sought To Require An Attorney Who Refused To Identify Cash-Paying Clients To Provide Information Required By 26 U.S.C. §6050I

On May 27, 1994, the District Court for the District of Kansas dismissed the enforcement action in United States v. Daniel E. Monnat, et al. as moot. The court dismissed the Government's petition to enforce an IRS summons, which was sought to require an attorney who refused to identify his cash-paying clients to provide the information required by 26 U.S.C. §6050I. The court had asked the federal court's Committee on Attorney Conduct for a report of its views concerning whether it is ethical for an attorney to reveal the identities of cash-paying clients on Forms 8300. in April, 1994, the Committee tendered a report that concluded that it is not unethical for an attorney to reveal the identities of such clients when they are required to do so by law, in this case 26 U.S.C. §6050I. After receiving a copy of the report with a letter from the court saying it was prepared to enforce the summons, Monnat filed a complete Form 8300, which the IRS accepted as compliance with the summons. However, in light of the national interest generated by its January order, the court agreed to make the report of the Committee on Attorney Conduct part of the record and attached it to the order dismissing the Government's petition.

* * * * *

OFFICE OF LEGAL EDUCATION

COMMENDATIONS

Acting Director David Downs and the members of the OLE staff thank the following Assistant United States Attorneys (AUSAs) and Department of Justice officials and personnel for their outstanding teaching assistance and support during courses conducted from May 15 - June 15, 1994. Persons listed below are AUSAs unless otherwise indicated:

Legislative Drafting (Washington, D.C.)

Brian Miller, Eastern District of Virginia.

Legal Support Staff Training (Salt Lake City, Utah)

From the District of Utah: ***Joseph Anderson,*** Chief, Civil Division; ***Stewart Walz,*** Chief, Criminal Division; ***Kathy Clark,*** Lead Criminal Secretary; ***Linda Engle,*** Lead Civil Secretary; ***Deanna Grant, Debbie Koga, Debra Parker,*** and ***MelloDee Stewart,*** Paralegal Specialists; ***Linda McFarlane,*** Administrative Officer; ***Danna Reichert,*** Deputy Administrative Officer.

National Seminar On Violent Crime (Clearwater, Florida)

From the Criminal Division: ***Jo Ann Harris,*** Assistant Attorney General; ***Kevin V. Di Gregory,*** Deputy Assistant Attorney General; ***Mary Incontro,*** Acting Chief, Terrorism and Violent Crime Section; ***Doug Crow,*** Chief, RICO Unit, Organized Crime and Racketeering Section; ***Vicki Portney,*** Attorney. ***Anthony Kaplan,*** District of Connecticut; ***Larry Burns,*** Deputy United States Attorney, Southern District of California; ***Gil Childers,*** Senior Trial Counsel, Southern District of New York; ***James Allison,*** Chief, Criminal Division, District of Colorado; ***Miriam Duke,*** Middle District of Georgia; ***Elizabeth Glazer,*** Southern District of New York; ***Ray Jahn,*** Senior Litigation Counsel, and ***LeRoy Jahn,*** Western District of Texas; ***Elizabeth Lee,*** Northern District of California; ***John David Lenoir,*** Executive Assistant United States Attorney, and ***Jose Angel Moreno,*** Southern District of Texas; ***Kendra McNally,*** Central District of California; ***Karen Moore,*** Southern District of Florida; ***Ruth Plagenhoef,*** First Assistant, Western District of Virginia; ***Steven Roman*** and ***Victor Stone,*** District of Columbia; ***Mark Rush,*** Western District of Pennsylvania; ***Francis Schmitz,*** Chief, Criminal Division, Eastern District of Wisconsin; ***Zaldawaynaka Scott,*** Deputy Chief, General Crimes Section, Northern District of Illinois; ***Michael Shelby,*** Executive Assistant United States Attorney, Eastern District of Texas; ***Susan Via,*** District of the Virgin Islands; ***Stephen Von Riesen,*** District of Nebraska; ***James Wooley,*** Northern District of Ohio.

Agency Civil Practice (Washington, D.C.)

James A. Feldman, Assistant to the Solicitor General, Office of the Solicitor General; ***Mark Nagle,*** Deputy Chief, Civil Division, District of Columbia; ***Jeanette Plante,*** District of Maryland; ***Margaret A. Smith,*** Eastern District of Virginia. From the Civil Division: ***Polly A. Dammann*** and ***Robert M. Hollis,*** Assistant Directors, Commercial Litigation Branch; ***John Euler,*** Deputy Director, and ***Lawrence A. Klinger,*** Assistant to the Director, Torts Branch; ***Vincent Garvey,*** Deputy Director, and ***Thomas Millet,*** Assistant Director, Federal Programs Branch.

Constitutional Torts (Austin, Texas)

David Allred, Middle District of Alabama; ***Monte C. Clausen,*** District of Arizona; ***Joan Garner,*** Deputy Chief, Civil Division, Eastern District of Pennsylvania; ***Ellen Lockwood,*** Western District of Texas; ***Ted Meeker,*** District of Hawaii; ***Paula Newett,*** Eastern District of Virginia; ***Christopher Pickrell,*** Western District of Washington; ***Ronald K. Silver,*** District of Oregon; ***Richard Tolles,*** Southern District of California; ***Mary Beth Uitti,*** Chief, Civil Division, Northern District of California; ***Thomas P. Walsh,*** Chief, Civil Division, and ***Linda Wawzenski,*** Deputy Chief, Civil Division, Northern District of Illinois; ***Roger West,*** Central District of California; ***William Woodard,*** Eastern District of Michigan. From the Civil Division, Torts Branch: ***Helene Goldberg,*** Director; ***Gordon W. Daiger*** and ***Joseph Sher,*** Senior Trial Counsels; ***Paul M. Brown, Sal D'Alessio, Timothy Garren, Richard C. Mahler, Richard Montague, Nina Pelletier,*** and ***Pierre St. Hilaire,*** Trial Attorneys. ***Barbara Herwig,*** Assistant Director, Appellate Staff, Civil Division.

Freedom Of Information For Attorneys And Access Professionals (Denver, Colorado)

From the Office of Information and Privacy: ***Margaret Irving,*** Deputy Director; ***Melanie Ann Pustay,*** Senior Counsel; ***Paul-Noel Chretien, Michael H. Hughes, Kirsten J. Moncada,*** and ***Ann D. Work,*** Attorney-Advisors. ***Elizabeth A. Pugh,*** Assistant Director, Federal Programs Branch, Civil Division; ***William E. Bordley,*** Attorney-Advisor, Freedom of Information Section, Drug Enforcement Administration.

Special Problems In Bankruptcy (Washington, D.C.)

Robert Coulter, Eastern District of Virginia; ***Tim Feeley,*** Western District of Kentucky; ***Richard French*** and ***Arthur I. Harris,*** Northern District of Ohio; ***Virginia R. Powel,*** Eastern District of Pennsylvania; ***Edward A. Smith,*** Southern District of New York; ***Leslie Westphal,*** District of Oregon. From the Environment and Natural Resources Division: ***Lois Schiffer,*** Acting Assistant Attorney General; ***Joel Gross,*** Deputy Chief; ***Ellen Mahan,*** Assistant Chief; ***Henry Friedman,*** Senior Attorney; ***Catherine McCabe,*** Senior Counsel; ***Alan Tenenbaum,*** Senior Attorney; ***Anna Wolgast,*** Senior Attorney, Environmental Enforcement Section; ***Vicki L. Plaut,*** Attorney, Appellate Section. From the Civil Division, Commercial Litigation Branch: ***Tracy Whitaker,*** Assistant Director; ***Allen Lear*** and ***John Stemplewicz,*** Senior Trial Attorneys; and ***Sam Maizel,*** Attorney. ***James Brown,*** Trial Attorney, Asset Forfeiture Office, Criminal Division; ***Stephen Csontos,*** Senior Legislative Counsel, Tax Division.

First Assistant United States Attorneys (Annapolis, Maryland)

Janet Reno, Attorney General; ***Jamie S. Gorelick,*** Deputy Attorney General; ***William C. Bryson,*** Acting Associate Attorney General; ***Jo Ann Harris,*** Assistant Attorney General, ***Kevin V. Di Gregory,*** Deputy Assistant Attorney General, and ***David Margolis,*** Associate Deputy Attorney General, Criminal Division; ***Michael Shaheen,*** Counsel, Office of Professional Responsibility; ***Carl Stern,*** Director, Office of Public Affairs; ***J. Russell Dedrick,*** First Assistant, Eastern District of Tennessee; ***Tom Gezon,*** First Assistant, Western District of Michigan; ***Kent McDaniel,*** First Assistant, Southern District of Mississippi; ***Wayne A. Rich, Jr.,*** First Assistant, Eastern District of North Carolina; ***Brian Jackson,*** Middle District of Louisiana. From the Executive Office for United States Attorneys: ***Anthony C. Moscato,*** Director; ***Louis De Falaise,*** Counsel to the Director; ***Yvonne Makell,*** Equal Employment Officer; ***Paula Nasca,*** Director, Security Programs Staff; ***Paul Ross,*** Chief, Labor and Employee Relations Branch; ***Deborah Westbrook,*** Legal Counsel; ***Gail Williamson,*** Assistant Director, Personnel Staff.

Privacy Act (Denver, Colorado)

Kirsten J. Moncada, Attorney-Advisor, Office of Information and Privacy.

Criminal Federal Practice Seminar (San Antonio, Texas)

Wayne Speck, Senior Litigation Counsel; ***Ronald Sievert,*** Chief, Austin Branch; ***Solomon L. Wisenberg, Richard Durbin, Mike Hardy, Phil Police,*** and ***Bill Harris,*** Western District of Texas; ***Richard Glaser,*** Criminal Chief, Middle District of North Carolina; ***Miriam Krinsky,*** Chief, Appeals Section, Central District of California; ***Stuart Platt,*** Criminal Chief, Eastern District of Texas; ***Joseph Savage,*** Chief, Public Corruption, District of Massachusetts; ***Stewart Walz,*** Criminal Chief, District of Utah; ***Sergio Acosta,*** Northern District of Illinois; ***Melissa Annis,*** Southern District of Texas; ***Lynn Hastings,*** Northern District of Texas; ***Michael Johnson,*** First Assistant United States Attorney, Eastern District of Arkansas; ***Victoria B. Major,*** Southern District of West Virginia; ***Wayne A. Rich, Jr.,*** First Assistant, Eastern District of North Carolina; ***Ann Rowland,*** Northern District of Ohio; ***Alec B. Stevenson,*** Northern District of Texas; ***L. C. Wright,*** Eastern District of Pennsylvania.

Advanced Freedom Of Information Act (Washington, D.C.)

Richard L. Huff, Co-Director, ***Daniel J. Metcalfe,*** Co-Director, and ***Margaret Irving,*** Deputy Director, Office of Information and Privacy; ***Elizabeth A. Pugh,*** Assistant Director, Federal Programs Branch, Civil Division.

Federal Acquisition Regulations (Washington, D.C.)

R. Alan Miller, Trial Attorney, Commercial Litigation Branch, Civil Division; ***Andrea Grimsley,*** Contracting Officer, and ***Paul Turnau,*** Assistant Director, Procurement Services Staff, Justice Management Division.

Complex Prosecutions And Advanced Grand Jury (Columbia, South Carolina)

Kenneth Melson, First Assistant, ***Wingate Grant,*** Asset Forfeiture Coordinator, and ***Jack Hanly,*** Eastern District of Virginia; ***John Ott,*** Executive Assistant, Northern District of Alabama; ***Alice Hill,*** Deputy Chief, Major Fraud Section, Central District of California; ***Angelo Calfo,*** Western District of Washington; ***Phillip Halpern,*** Senior Counsel, Southern District of California; ***Caroline Heck,*** Senior Litigation Counsel, Southern District of Florida; ***Gloria Bedwell,*** Lead Organized Crime and Drug Enforcement Task Force Attorney, Southern District of Alabama; ***Carol C. Lam,*** Southern District of California; ***Anthony Bruce,*** Western District of New York; ***Thomas Swaim,*** Eastern District of North Carolina; ***Lawrence Lincoln,*** Western District of Washington; ***Lisa Leschuck,*** District of Wyoming. From the Criminal Division: ***Stephen T'Kach,*** Deputy Chief, Electronic Surveillance Branch, and ***Manuel A. Rodriguez,*** Senior Trial Attorney, Office of International Affairs.

Evidence For Experienced Criminal Litigators (San Antonio, Texas)

John M. Barton, District of South Carolina; ***John R. Braddock,*** Chief, FIRREA-Unit 1, Southern District of Texas; ***Mary Jude Darrow,*** Eastern District of Louisiana; ***Michael A. MacDonald,*** Western District of Michigan; ***Joanne Y. Maida*** and ***Robert H. Westinghouse,*** Western District of Washington; ***Steven A. Miller,*** Chief of Special Prosecutions, Northern District of Illinois; ***Dixie A. Morrow,*** Middle District of Georgia; ***George B. Newhouse,*** Central District of California; ***Victoria J. Peters,*** Senior Trial Counsel, General Crime Section, Criminal Division, Northern District of Illinois; ***John P. Pierce,*** Southern District of California; ***William J. Richards,*** Eastern District of Michigan; ***Ann C. Rowland,*** Northern District of Ohio; ***John W. Vaudreuil,*** Senior Litigation Counsel, Western District of Wisconsin; ***Stewart C. Walz,*** Criminal Chief, District of Utah.

Affirmative Civil Litigation (Clearwater, Florida)

James Bickett, Northern District of Ohio; ***Barbara Bisno,*** Southern District of Florida; ***Suzanne Durrell,*** Chief, Civil Division, District of Massachusetts; ***John Broadwell,*** Chief, Civil Division, Western District of Louisiana; ***Gerald M. Burke,*** Southern District of Illinois; ***William Campbell,*** Western District of Kentucky; ***Susan Cassell,*** Deputy Chief, Civil Division, ***Suzanne Dyer*** and ***Susan Steele,*** District of New Jersey; ***Howard Daniels,*** Central District of California; ***Kenneth Dodd,*** Eastern District of Texas; ***Connie Frogale,*** Eastern District of Virginia; ***Paul Johns,*** District of Colorado; ***Eugene Seidel,*** Southern District of Alabama; ***James Sheehan,*** Chief, Civil Division, and ***Catherine Votaw,*** Deputy Chief, Civil Division, Eastern District of Pennsylvania; ***Deborah A. Solove,*** Southern District of Ohio; ***Joanne Swanson,*** Northern District of California; ***Kristin Tolvstad,*** Northern District of Iowa. From the Civil Division, Commercial Litigation Branch: ***Michael Hertz,*** Director; ***Steve Altman,*** Assistant Director; ***Joyce Branda,*** Deputy Director; ***Ronald Clark*** and ***Vincent Terlep,*** Senior Trial Counsels; ***Patricia R. Davis*** and ***David Long,*** Trial Attorneys.

Course Offerings

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.

August 1994

Date	Course	Participants
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
10	In-House Criminal Asset Forfeiture	AUSAs
11-12	Overview of the Archeological Resources Protection Act	AUSAs
16-17	Executive Session United States Attorneys	USAs
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
20-22	Criminal Chiefs (Large Offices)	USAO Criminal Chiefs
27-29	Civil Environmental Enforcement	AUSAs, DOJ Attorneys

September 1994 (Cont'd.)

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

October 1994

18-19	Ethics	AUSAs, DOJ Attorneys
18-21	Asset Forfeiture Multi-Level Training	AUSAs
25-28'	Complex Prosecutions	AUSAs, DOJ Attorneys

LEI Courses

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

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via mailings, sent every four months to federal departments, agencies, and USAOs. Nomination forms must be received by OLE at least 30 days prior to the commencement of each course. A nomination form for LEI courses listed below (except those marked by an *) is attached at the Appendix of this Bulletin as Exhibit E. 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 *).**

August 1994

Date	***Course***	***Participants***
1-5*	Support Staff Training	USAO Paralegals
15	Ethics for Litigators	Attorneys
18-19	Evidence	Attorneys
22-31*	Enhanced Paralegal Skills in Financial Litigation	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

October 1994

6-7	Alternative Dispute Resolution	Attorneys
12-13	Freedom of Information for Attorneys and Access Professionals	Attorneys, Paralegals
17	Ethics for Litigators	Attorneys
17-21*	Criminal Paralegal Training	USAO Paralegals
19-21	Attorney Supervisors	Attorneys
25	Introduction to the Freedom of Information Act	Attorneys, Paralegals
25-27	Discovery	Attorneys
31-Nov. 4	Basic Paralegal (Agency)	Agency Paralegals

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

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

* * * * *

ADMINISTRATIVE ISSUES

CAREER OPPORTUNITIES

Executive Office For United States Attorneys

The Office of Attorney Personnel Management is seeking an experienced attorney for the Executive Office for United States Attorneys (EOUSA), Legal Counsel's Office, in Washington, D.C. Incumbent will function as the Legal Counsel and will report directly to the Director and/or Deputy Director of EOUSA. He/she is responsible for providing advice and guidance to the Director and EOUSA in Standards of Conduct, Ethics Statutes, Equal Employment Opportunity, Personnel and Administrative Law, policy matters, legislation, and many other areas. The Legal Counsel works on behalf of the Attorney General's Advisory Committee, representing the United States Attorneys and EOUSA in various Departmental matters. He/She serves as the liaison with the Office of Legislative Affairs and other divisions and offices throughout the Department of Justice. Applicants should be familiar with the workings of the Department of Justice and the offices of the United States Attorneys. Previous supervisory and Assistant United States Attorney experience is desirable.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least 6 1/2 years post-J.D. experience. Applicants must submit a SF-171 (Application for Federal Employment), writing sample, and current performance appraisal to: Executive Office for U.S. Attorneys, Administrative and Personnel Services Staff, Bicentennial Building, Room 8104, 600 E Street, N.W., Washington, D. C. 20530 - Attn: B. Marie Blackmon, Personnel Management Specialist.

The position is a GS-15 with a salary range of $69,427 to $90,252. This advertisement is conducted in anticipation of a future vacancy, and will remain open until the position is filled.

* * * * *

Tax Division

The Office of Attorney Personnel Management, U.S. Department of Justice, is seeking an experienced attorney for the position of Director, Office of Training, in the Office of the Assistant Attorney General, Tax Division, in Washington, D.C. The Director will develop and manage a comprehensive training program for Tax Division attorneys, paralegal specialists, and nonlegal staff, using in-house and non-government lecturers. The Director will also promote management acceptance of, and active cooperation in, the training and development of employees; develop guidelines for evaluating results of training programs; arrange for and conduct reenactment of actual courtroom proceedings and mock courtroom proceedings; develop and manage orientation programs for new attorneys; develop and manage career enhancement training programs for nonlegal staff; and manage and coordinate the Division's Summer Law Intern Program and law student extern program.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), have effective written and oral communication skills, have litigation experience, and have a working knowledge of the Federal Rules of Civil Procedure. Prior teaching/training or clinical experience is desirable, but not essential. Knowledge of bankruptcy and/or tax issues is helpful, but not necessary. Applicants should submit a cover letter, resume, statement explaining qualifications and/or interest, and writing sample to: Tax Division, U.S. Department of Justice, P.O. Box 813, Ben Franklin Station, Washington, D.C. 20044.

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. This position is open until August 30, 1994. No telephone calls please.

* * * * *

Criminal Division

The Office of Attorney Personnel Management, Department of Justice, is seeking an experienced attorney for the Computer Crime Unit of the Criminal Division's General Litigation and Legal Advice Section in Washington, D.C. This Unit is responsible for implementing the Justice Department's Computer Crime Initiative, a comprehensive program designed to address the growing global computer crime problem. As part of this Initiative, Unit attorneys are responsible for resolving unique issues raised by emerging computer and telecommunications technologies. Attorney responsibilities include litigating cases, providing litigation support to other prosecutors, training federal law enforcement personnel, commenting upon and proposing legislation, and coordinating international efforts to combat computer crime. The Unit also publishes monographs addressing significant information technology issues.

Applicants must possess a J.D. Degree, be an active member of the bar in good standing (any jurisdiction), and have at least two and one-half years of legal experience. Applicants should have a strong academic background as well as excellent research and writing skills. An interest in and knowledge of computers and emerging technologies is highly desirable, and some criminal trial experience is preferred. Domestic travel is required, and some international travel is possible. Applicants should submit a resume and writing sample to: Scott Charney, Chief, Computer Crime Unit, General Litigation and Legal Advice Section, Criminal Division, U.S. Department of Justice, 1001 G St NW, Room 223, Washington, D.C. 20001.

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. This position is open until filled. No telephone calls, please.

* * * * *

United States Attorney's Office, District Of Puerto Rico

The United States Attorney's Office for the District of Puerto Rico is seeking experienced trial attorneys for the Civil and/or Criminal Sections. Applicants should indicate appropriate Section for consideration.

Applicants must possess a J.D. Degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year post-J.D. experience. Applicants must submit a current SF-171 (application for federal employment) or resume, writing sample, and current performance appraisal to: United States Attorney's Office, Federal Building, Room 452, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918. ATTN: Personnel Department.

Current salary and years of experience will determine the appropriate salary level. The possible range is $33,500 to $87,900 plus a 10 percent cost of living allowance. These positions are advertised for present and future vacancies, and are open until filled. No telephone calls, please.

* * * * *

[NOTE: The U.S. Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. It is the policy of the U.S. Department of Justice to achieve a drug-free workplace and persons selected will be required to pass a urinalysis test to screen for illegal drug use prior to final appointment.]

* * * * *

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%	06-24-94	5.31%
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 Attorneys' Bulletin, dated January 16, 1986. For a cumulative list of Federal civil postjudgment interest rates from January 17, 1986 to September 23, 1988, see Vol. 37, No. 2, p. 65, of the United States Attorneys' Bulletin, dated February 15, 1989.

* * * * *

UNITED STATES ATTORNEYS

DISTRICT	U.S. ATTORNEY
Alabama, N	Claude Harris, Jr.
Alabama, M	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	Gregory M. Sleet
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	Thomas J. Maroney
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

Calculation and Processing of Back Pay Awards; Employee Benefits

This notice is to alert you to a significant issue in the calculation and processing of back pay awards that has complicated the resolution of several recent cases.

This issue arises in cases in which a former federal employee who has received money from a federal retirement or disability fund (in an annuity or a lump-sum payment) receives back pay either through judgment or settlement. In such cases, you need to be aware that, when the amount of those benefits is offset against the back pay award, that amount must also be returned to the appropriate fund. See 5 U.S.C. § 5596(b); 5 C.F.R. § 550.805(e).

Returning money to the benefits funds can be accomplished quite easily. When negotiating a settlement or litigating damages in a case in which the plaintiff has received money from a federal benefits fund -- such as the fund maintained under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) -- please take the following steps. First, make sure that the relevant court order or settlement agreement clearly reflects (1) the amount of back pay awarded and (2) the amount of benefits to be offset against the back pay award. Please note that the total amount to be offset should include amounts that have been deducted from the plaintiff's retirement or disability benefits for fringe benefit coverage, such as coverage under the Federal Employees Health Benefits Act (FEHBA) and the Federal Employees Group Life Insurance Act (FEGLI). Second, when forwarding the judgment or settlement to the General Accounting Office (GAO) for payment, clearly indicate that GAO should credit the relevant fund with the amount of benefits offset against the award and issue a check for the remainder to the plaintiff. Please note that GAO has emphasized that this approach will work only if there is a clear indication in the judgment or settlement of the amount of benefits due the benefits fund.

You also need to be aware of other common problems in processing back pay awards in cases involving former federal employee plaintiffs. For example, where a settlement or judgment extends the period in which the plaintiff is deemed to have been employed (e.g., by altering the effective date of the employee's retirement), you will need to provide for payment to the benefits funds of amounts that, by law, must be deducted from the plaintiff's pay (as well as the amounts that the agency must contribute) for the period in which the plaintiff is newly declared to have been employed. To learn how to deal with this and other issues, contact the General Counsel's Office at OPM (202-606-1920, ask for Earl Sanders or Murray Meeker) as early as possible when you are handling this type of case. OPM has assured us that it will quickly provide advice as to how to

proceed and that it will be flexible in designing solutions to case-specific problems. OPM can also provide you with additional material relevant to these matters. If, after consulting with OPM, you have further questions, please contact the Civil Division of Main Justice (for trial-stage issues, please call Robert Van Kirk at 202-514-9834; for appellate questions and general information, call Sean Lev, at 202-514-1278).

U.S. Department of Justice

Executive Office for United States Attorneys
Office of Legal Counsel

Main Justice Building, Room 1643
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-4024

EXHIBIT B

JUN 10 1994

MEMORANDUM FOR: All United States Attorneys' offices

FROM: Deborah C. Westbrook
Legal Counsel

SUBJECT: Impropriety of Acceptance of Donated Property and Services from Non-Government Sources

This memorandum provides clarification regarding the impropriety of accepting property and services from non-governmental sources for use in furtherance of the law enforcement mission of the United States Attorneys' offices. It will also directly address the frequently asked questions on this topic.

Opinion:

The acceptance by a United States Attorney's office of free property or services from a non-governmental source violates several well established principles of federal appropriations law. First, an agency may not augment its appropriation from outside sources without specific statutory authority. Second, a government agency may not accept for its own use gifts of property or services from outside sources absent specific statutory authority. Finally, a federal entity cannot receive grant funds from for-profit, non-profit, state or federal entities unless expressly authorized by statute.

Analysis:

The augmentation of appropriations principle generally holds that an agency may not augment its congressional appropriations with funds from other sources without specific statutory authority. This principle against augmentation exists to prevent a government agency from undermining congressional authority to appropriate funds for specific purposes by circuitously exceeding the amount Congress has appropriated for that activity. Although there is no express statutory prohibition against the augmentation of appropriated funds, the principle does have a statutory basis and

has been recognized by the Comptroller General. See 31 U.S.C. § 1301(a), restricting the use of appropriated funds to their intended purposes; 65 Comp. Gen. 635 (1986); 64 Comp. Gen. 370 (1985). An improper augmentation of United States Attorney's office appropriations will therefore result from the acceptance of free or discounted property or services for use by the Department of Justice.

Donations or gifts of property to a United States Attorney's office cannot be retained by that office. Donations of property must be turned over to the General Services Administration. Monetary gifts must be sent to the general fund of the Treasury. Absent statutory authority to accept gifts, the acceptance of donated property or services constitutes an improper augmentation. 16 Comp. Gen. 911 (1937); B-139992, August 31, 1959; see also 5 C.F.R. §§ 2635.201-205. The use of donated funds, property or services by Federal agencies dilutes congressional oversight because the expenditures are not reflected in the appropriation process.

United States Attorneys' offices are not eligible grantees for grant funds from any source, absent statutory authorization, and cannot share the funds with a legitimate grantee. The voluntary nature of any transfer of funds from a grantee to a United States Attorney's office is irrelevant. See 23 Comp. Gen. 694 (1944); 57 Comp. Gen. 662 (1978).

Frequently Asked Questions:

May the United States Attorney's office accept the use of office space, office equipment, or office supplies from a non-government source?

No United States Attorney's office can accept the free use of office space, office equipment, or office supplies. A number of non-governmental entities interested in working with the government on various matters, most notably the National Insurance Crime Bureau, have offered office space, computers and other resources to United States Attorneys' offices. These offers are often proposed as a means of establishing or promoting cooperative task forces between the government and the private entity. While such cooperation may prove desirable, its form cannot include the donation of property or use of property without charge to the government.

What if the property or service is not free, but provided at a discounted rate? May the United States Attorney's office accept property, or services at a discounted rate from a non-government entity?

A United States Attorney's office may not accept a monetary advantage afforded on the basis of considerations other than those legitimately bargained for. A discount provided only to a United States Attorney's office, and not afforded to other customers or entities, is indicative of an unfair advantage afforded to the Government by a private entity. Often private entities will offer discounted services to United States Attorneys' offices in an attempt to assist, in a charitable fashion, that office's law enforcement mission. This type of discount constitutes a gift, since the United States Attorneys' offices are benefiting from the discount offered with donative intent. Outside sources have also offered to provide free or discounted services or materials in exchange for approval to advertise an endorsement by a United States Attorney's office. Such a gift in exchange for an endorsement is strictly prohibited. Of course, advantageous prices which result from bona fide bargaining and procurement are in no way discouraged by the above prohibitions.

May an individual expert or private entity donate information and efforts to discover information assisting a United States Attorney's office?

Individuals or private entities properly may provide information and evidence in criminal and civil cases. Information that is ascertained in a private capacity and offered pretrial and outside of formal discovery, at no cost to the Government, is not restricted by the general principle against augmentation. Thus, an expert may donate the time taken to reach a particular opinion. However, experts cannot waive fees for their time testifying during a trial or in depositions. If an expert offered to testify for up to three hours at no cost in a matter that would otherwise cost the government $100 per hour for an acceptable expert, the expert would be donating the equivalent of $300 to the United States Attorney's office. Such a gift cannot be accepted.

Another example may involve insurance companies, financial institutions or other private entities with their own private security and investigatory components. These entities frequently provide valuable assistance and information to United States Attorneys' offices and other law enforcement agencies. They are free to do so. However, a United States Attorney's office cannot ask such an entity to perform services that will provide cost savings for that office. United States Attorneys' offices should not be directing the efforts of private investigatory services or utilizing them in a manner which creates the appearance of a federally controlled yet private law enforcement entity. Moreover, the Department of Justice cannot provide such entities with grand jury information. Grand jury information is secret and may be shared only with "Government personnel" assisting a Government attorney. It can be reversible error to share grand

jury information with entities not specifically excepted by Federal Rule of Criminal Procedure 6(e)(3). See United States v. Tager, 638 F.2d 167, 171 (10th Cir. 1980); In re November 1992 Special Grand Jury for the N.D. of Indiana, 836 F. Supp. 615, 617 (N.D. Ind. 1993). Further, it is Department of Justice policy not to provide office space for private entities within United States Attorneys' offices.

May the United States Attorney's office accept or share grant monies from non-profit entities?

There are a number of private non-profit organizations devoted to assisting the government in a variety of law enforcement related efforts. The Weed and Seed program is an example of an officially recognized effort to promote cooperation between Federal law enforcement and such private organizations. Cooperation with these organizations is encouraged, but it cannot include the acceptance of funds or property by United States Attorneys' offices.

Conclusion:

There are a vast number of specific relationships between United States Attorneys' offices and private entities which may be affected by the restrictions outlined above. This memorandum cannot provide, and does not attempt to provide, absolute guidance for each case. If you have any questions or concerns regarding a specific case, please contact me, or Frank Fina of my staff, at (202) 514-4024.

EXHIBIT C

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

June 6, 1994

MEMORANDUM FOR HEADS OF DEPARTMENT COMPONENTS

FROM: THE ATTORNEY GENERAL

SUBJECT: Federal Prison Industries

I want to share with you my views about Federal Prison Industries (FPI) and to reiterate the Department's policy regarding the purchase of goods and services from FPI.

Recent research results clearly demonstrate that inmates who work in FPI while incarcerated have appreciably better chances of getting a job and not returning to a criminal lifestyle. Inmates in FPI learn both specific job skills and the basic work ethic. In fact, I recently have had several employers tell me that former Federal inmates they have hired who had worked in FPI displayed excellent work habits.

The FPI program also reduces inmate idleness and contributes directly to the Bureau of Prisons' successful management of very crowded correctional facilities. I recently visited a BOP institution and had the opportunity to observe the operation of the FPI factory. I was very impressed with the positive influence this program has on the inmates themselves and on the climate of the prison. Without exception, the inmates I spoke with took pride in their work and appreciated the opportunity to work in the production environment offered by FPI. Likewise, the Warden and his staff were unanimous in their praise for the contributions FPI makes to the safe and orderly operation of the institution.

As the number of inmates in BOP custody continues to increase, so too must the number of inmates employed by FPI. By law, FPI can sell only to the Federal government and must fund all operating costs, such as staff salaries, raw materials and equipment out of sales, with no appropriated funds. In order to provide a steady flow of business to FPI, Federal agencies are required to buy products produced by FPI provided the customer's quality, price and delivery requirements can be met.

A recent analysis of Federal purchasing patterns indicates that many agencies, including some Department of Justice (DOJ) components, do not contact FPI to determine whether they can provide the necessary product or service. FPI is addressing this problem separately with other Departments. However, as an integral part of the nation's effort to combat crime and violence, and as an invaluable part of the Bureau of Prisons' successful management of its burgeoning inmate population, FPI deserves the full and unequivocal support of the entire DOJ. Therefore, I am asking that each of you ensure that your program and procurement staff consistently support FPI and contact them for the goods or services they provide. For the convenience of you and your staff, attached is a listing of the goods and services FPI currently provides.

Thank you very much for your personal support of this important program.

Attachment

U.S. Department of Justice

UNICOR

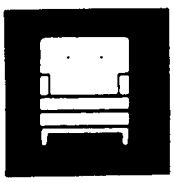
Federal Prison Industries, Inc.

Product Lines

320 First Street, N.W.
Washington, DC 20534

For Information Call or Write:
(800) 827-3168

Office Furniture
- ADP Furniture & Accessories
- Cabinets
- Clocks
- Conference Tables
- Credenzas
- Desks
- Lamps
- Systems Furniture
- File Cabinets

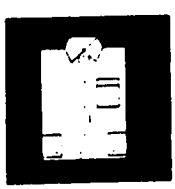


Seating
- Conference Chairs
- Ergonomic Chairs
- Executive Chairs
- Lounge Chairs
- Secretarial Chairs
- Sofas: 2 & 3 place
- Stacking Chairs
- Side Chairs

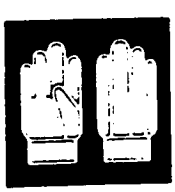
Dormitory Furniture
- Beds
- Bookcases
- Desks
- Dressers
- Night Stands
- Tables
- TV Cabinets
- Wall Lockers
- Wardrobe Lockers

Bedding
- Box Springs
- Hospital Mattresses
- Innerspring Mattresses
- Cotton-Felt Mattresses
- VIP & Guest Quarters Mattresses
- Rollaway Beds

Textiles
- Bags
- Basket Inserts
- Blankets
- Drop Cloths
- Draperies
- Sheets & Pillow Cases
- Tablecloths & Napkins
- Towels
- Wiping Cloths
- Terry Cloth



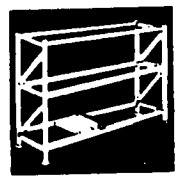
Clothing
- Pajamas
- Shirts
- Shorts
- T-Shirts
- Surgical Shirts
- Work Clothing
- Uniforms
- Protective Clothing
- Body Armor
- Swim Trunks



Gloves
- Flannel Work Gloves
- Leather Work Gloves
- Cotton/Leather Gloves

Brushes/Brooms
- Dust Brushes
- Hearth Brushes
- Paint Brushes
- Parlor Brushes
- Scrubbing Brushes
- Warehouse Brooms

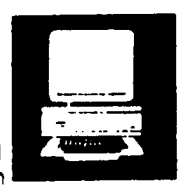
Steel Storage Equipment & Industrial Products
- Cabinets & Lockers
- Cantilever Racks
- Catwalk Systems
- Mezzanines
- Stainless Wire Shelving
- Storage Containers
- Pallet Racks
- Shelving
- Stacking Racks
- Stainless Food Service & Equipment



Optics
- Prescription Eyewear
- Safety Eyewear-Prescription & Non-Prescription
- Safety Goggles
- Tinted and Coated Lenses

Electronics
- Cable Assemblies
- Environmental Testing
- Drop Lights
- Extension Cords
- Connectors
- Power Distribution Systems
- Fiber Optic Assemblies
- Wiring Harnesses
- Radio Mounts
- Circuit Cards

Data Conversion Services
- Data Entry Capture
- Text Processing Conversion
- Text Mark Up/Editing
- Image Processing Digitization
- OCR Scanning
- Database Input
- Mail List Management
- Zip + 4 & NCOA Updating
- CD Rom Data Preparation

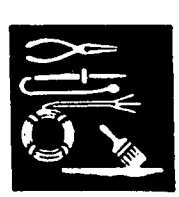


Printing
- Single & Multicolor Printing
- Annual Reports
- Award Plaques
- Brochures/Pamphlets
- Catalogs
- Forms: Continuous & Snap-set
- Letterhead/Envelopes

Signs
- Architectural: Interior/Exterior
- Decals
- Delineators
- Multiple Substrates
- ADA Signs
- Engraved
- Name Tags
- Reflective
- Regulatory, Safety & Warning
- Recreational Symbols

Labor & Support Services
- Telephone & Transcription Services
- Distribution Services
- Mail Preparation
- Tool Kit Assembly & Packaging

Remanufactured Products & Repair Services
- Wiring Harnesses
- Laser Cartridges
- Vehicular Components
- Fork Lifts
- Textile Products
- Personal Computers
- Furniture Refinishing



Total Customer Satisfaction

'94

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 14 • JUNE 29, 1994

Criminal History

OTHER SENTENCES OR CONVICTIONS

Supreme Court affirms use of prior uncounseled misdemeanor convictions in criminal history score. Defendant challenged the addition of one criminal history point for a prior state misdemeanor conviction—driving under the influence—for which he was fined $250 but not incarcerated. He was not represented by counsel and claimed that use of an uncounseled misdemeanor conviction to increase his guideline sentence violated his Sixth Amendment rights as construed in *Baldasar v. Illinois*, 446 U.S. 222 (1980). The appellate court affirmed, concluding that *Baldasar* limits the use of a prior uncounseled misdemeanor conviction only when it would convert a later misdemeanor into a felony, and thus its use in the criminal history score was proper. *See U.S. v. Nichols*, 979 F.2d 402, 415–18 (6th Cir. 1992).

The Supreme Court affirmed while overruling *Baldasar*. "[A]n uncounseled conviction valid under *Scott [v. Illinois*, 440 U.S. 367 (1979),] may be relied upon to enhance the sentence for a subsequent offense, even though that sentence entails imprisonment. Enhancement statutes, whether in the nature of criminal history provisions such as those contained in the Sentencing Guidelines, or recidivist statutes which are commonplace in state criminal laws, do not change the penalty imposed for the earlier conviction. . . . Today we adhere to *Scott v. Illinois, supra*, and overrule *Baldasar*. Accordingly we hold, consistent with the Sixth and Fourteenth Amendments of the Constitution, that an uncounseled misdemeanor conviction, valid under *Scott* because no prison term was imposed, is also valid when used to enhance punishment at a subsequent conviction."

Nichols v. U.S., 114 S. Ct. 1921 (1994) (three justices dissented).

Outline at IV.A.5.

CAREER OFFENDER PROVISION

Circuits continue to split on whether career offender guideline covers drug conspiracies. Two circuits recently agreed with *U.S. v. Price*, 990 F.2d 1367 (D.C. Cir. 1993), that § 4B1.1 does not apply to drug conspiracy defendants despite the inclusion of conspiracy as a predicate offense in § 4B1.2, comment. (n.1). The Sentencing Commission "mistakenly interpreted [28 U.S.C. §] 994(h) to include convictions for drug conspiracies. . . . Because the Commission promulgated section 4B1.1 under the authority of 28 U.S.C. § 994(h), it is invalid to the extent that its scope exceeds the reach of that section of the statute. The guideline should not have been applied to the [drug conspiracy] defendants herein." *U.S. v. Bellazerius*, No. 93-3157 (5th Cir. June 17, 1994) (Politz, C.J.) (remanded). *See also U.S. v. Mendoza-Figueroa*, No. 93-2867 (8th Cir. June 27, 1994) (Gibson, Sr. J.) (remanded: "There is no indication that the Commission intended to rely on its discretionary authority under section 994(a) to extend the section 994(h) mandate. Rather, it is evident that the Commission simply exceeded the language of section 994(h)." (Bartlett, Dist. J., dissented).

Conversely, three circuits recently disagreed with *Price* and agreed with *U.S. v. Heim*, 15 F.3d 830 (9th Cir. 1994), that the Commission had the authority to include conspiracy pursuant to its general authority under 28 U.S.C. § 994(a). *See U.S. v. Damerville*, No. 93-3235 (7th Cir. June 14, 1994) (Pell, J.) (affirmed: "Commission properly exercised its authority in including conspiracy to violate [21 U.S.C.] § 841 among the [controlled substance] offenses that qualify a defendant for career offender status"); *U.S. v. Hightower*, No. 93-5117 (3d Cir. May 31, 1994) (Nygaard, J.) (affirmed: "Reference in the commentary to § 994(h) as a specific source of authority does not preclude the authority of § 994(a). . . . [T]he commentary's expansion of the definition of a controlled substance offense to include inchoate offenses is not 'inconsistent with, or a plainly erroneous reading of' section 4B1.2(2) . . . [and] it does not 'violate[ ] the Constitution or a federal statute'"); *U.S. v. Allen*, No. 92-1225 (10th Cir. May 5, 1994) (Seymour, J.) (affirmed: "Commission could rely on the broader language of section 994(a) . . . to include conspiracy-related offenses in the career offender guideline").

See *Outline* at IV.B.2 and summary of *Heim* in 6 *GSU* #11.

ARMED CAREER CRIMINAL

U.S. v. Oliver, 20 F.3d 415 (11th Cir. 1994) (Remanded: "[P]ossession of a firearm by a convicted felon does not constitute a 'violent felony' within the meaning of [18 U.S.C.] § 924(e), and thus cannot be considered a predicate prior conviction for purposes of sentence enhancement under § 4B1.4." Although, as § 4B1.4, comment. (n.1) states, the definition of "violent felony" in § 924(e) is "not identical to the definition of 'crime of violence'" in § 4B1.1, "we conclude that the two expressions are not conceptually distinguishable for purposes of the narrow question raised in this appeal." Under § 4B1.2, comment. (n.2), "crime of violence" does not include possession of a firearm by a felon, and "[i]t is reasonable to suggest that conduct which does not pose a 'serious potential risk of physical injury to another' for purposes of §§ 4B1.1 and 4B1.2 similarly cannot pose such a risk with respect to § 924(e) and § 4B1.4.").

Outline at IV.D.

Offense Conduct

MANDATORY MINIMUM SENTENCES

U.S. v. Rodriguez-Sanchez, No. 93-50198 (9th Cir. May 3, 1994) (Reed, Sr. Dist. J.) (Remanded: In determining drug amounts for mandatory minimum sentence under 21 U.S.C. § 841(b)(1)(A) for defendant convicted of possessing methamphetamine with intent to distribute, § 841(a)(1), district

court may not include amounts possessed for personal use, only the amount defendant intended to distribute. In *U.S. v. Kipp*, 10 F.3d 1463, 1465–66 (9th Cir. 1993), the court held that, under the Guidelines, "[d]rugs possessed for mere personal use are not relevant to the crime of possession with intent to distribute because they are not 'part of the same course of conduct' or 'common scheme' as drugs intended for distribution." The court here stated that, "[a]lthough the specific holding of *Kipp* is not technically binding upon us, the principle behind that decision guides our decision. We are dealing with the same crime, possession with intent to distribute. The legislative intent behind the mandatory minimum sentencing provisions of § 841(b) are not necessarily identical with those behind the Sentencing Guidelines but they are similar. . . . [Section] 841(a)(1) does not criminalize mere possession of drugs, only possession with intent to distribute. . . . Other statutes deal with the crime of possession. . . . Thus, the crime of possession with intent to distribute focuses on the intent to distribute, not the simple possession.").
See *Outline* at II.A.1 and 3.

Departures

Substantial Assistance

U.S. v. Martin, No. 93-6477 (4th Cir. May 25, 1994) (Hamilton, J.) (Remanded: "[I]f at the time of sentencing, the government deems the defendant's assistance substantial, the government cannot defer its decision to make a U.S.S.G. § 5K1.1 motion on the ground that it will make a Fed. R. Crim. P. 35(b) motion after sentencing. Instead, the government at that time must determine—yes or no—whether it will make a U.S.S.G. § 5K1.1 motion. If the government defers making a U.S.S.G. § 5K1.1 motion on the premise that it will make a [Rule] 35(b) motion after sentencing, the sentence that follows deprives a defendant of due process, and is therefore 'in violation of law.'" *Accord U.S. v. Drown*, 942 F.2d 55, 58–60 (1st Cir. 1991). The remedy for such a violation is normally a remand to give the government "the opportunity to consider afresh the substantiality of the defendant's assistance at the time of sentencing." Here, however, during the sentencing hearing the government agreed defendant had rendered substantial assistance and effectively promised to make a substantial assistance motion "within the next year," which was "tantamount to and the equivalent of a modification of the plea agreement." On remand, then, defendant "is entitled to specific performance of the government's promise to reward him for his presentence substantial assistance." Note that the government did make a Rule 35(b) motion within a year, but the district court ruled that under the terms of Rule 35(b) it had no power to grant the motion because defendant did not actually provide any *post*-sentencing assistance.).
Outline at VII.F.1.b.ii, 3, and 4.

Criminal History

U.S. v. Rosogie, 21 F.3d 632 (5th Cir. 1994) (Affirmed: Extent of upward departure for defendant in criminal history category VI was proper. The court departed from defendant's offense level 12 and 23 criminal history points, a guideline range of 30–37 months, "by adding one offense level for each criminal history point above the thirteen points required to reach category VI, and assessing four additional levels for [other] reasons." The appellate court found that the reasons for departure "are adequate and the extent of departure is reasonable and not an abuse of discretion.").
Outline at VI.A.4.

Mitigating Circumstances

U.S. v. Pacheco-Osuna, No. 93-50199 (9th Cir. May 2, 1994) (Remanded: It was error to depart downward for immigration defendant because his arrest might have been invalid. Although defendant did not challenge his arrest, the district court found "he may have been stopped because he was Mexican looking, rather than [for] good cause." The appellate court held that whether defendant's arrest was illegal was "a factor entirely unrelated to [his] crime (entry after deportation) or to his criminal history . . . . Even if the stop . . . had not been proper, that was not related to his culpability or to the severity of his offense. Sentencing is not designed to punish, deter or educate errant government officials.").
Outline at VI.C.4.b.

U.S. v. Haversat, 22 F.3d 790 (8th Cir. 1994) (Remanded: Downward departure for antitrust defendant was proper for "truly exceptional family circumstances." Defendant's wife "suffered severe psychiatric problems, which have been potentially life threatening," his presence was crucial to her treatment, and there was testimony that even a short separation could threaten her health. *Accord U.S. v. Gastill*, 991 F.2d 82, 84–86 (3d Cir. 1993). However, the court abused its discretion by departing five levels and declining to impose any kind of confinement or even probation, imposing only a fine. The court should "craft a sentence that imposes some form of confinement to meet the expressed goal of § 2R1.1 and that still takes into consideration [defendant's] need to be available to render care to his wife," such as intermittent confinement or home detention.).
Outline at VI.C.1.a.

General Application Principles

Relevant Conduct—Other Issues

U.S. v. Rosogie, 21 F.3d 632 (5th Cir. 1994) (Affirmed: "Appellant argues that the district court erred in including a stolen U.S. Treasury check . . . as relevant conduct under § 1B1.3(a)(1)(A) and (B) . . . . Appellant argues that because the check is the basis of a pending state prosecution against him, it should not be included as relevant conduct in the current federal proceeding. We disagree. . . . The Second Circuit has considered the issue . . . and has ruled that information from a pending state prosecution on a related offense may be used as relevant conduct. *U.S. v. Caceda*, 990 F.2d 707, 709 (2d Cir. 1993). We agree.").
Outline at I.A.4.

Adjustments

Acceptance of Responsibility

U.S. v. Colussi, 22 F.3d 218 (9th Cir. 1994) (Remanded: Agreeing with *U.S. v. Tello*, 9 F.3d 1119 (5th Cir. 1993), that if a defendant meets the test for the extra one-level reduction under § 3E1.1(b), it must be granted: "The language mandates a one point reduction where the requirements of § 3E1.1(b) are met." Here, defendant satisfied the first two parts of the test, but the district court apparently "believed it had discretion whether to consider th[e] third step. This was error.").
Outline at III.E.5.

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

Nomination Form

EXHIBIT E

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