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

United States Attorneys' Bulletin

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

Editor-in-Chief: *Judith A. Beeman* *(202) 514-4633*
Editor: *Audrey J. Williams* *(202) 514-5850*

VOLUME 41, NO. 11 ***FORTIETH YEAR*** ***NOVEMBER 15, 1993***

TABLE OF CONTENTS ***Page***

TABLE OF CONTENTS

Please send name or address changes to:

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

COMMENDATIONS

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

Joe Allen, Robert Donaldson, Michael Lang, Michael Leibson, Donald Scheer, and ***Barbara Tanase*** (Michigan, Eastern, District), by John A. Smietanka, United States Attorney for the Western District of Michigan, for their excellent cooperation in responding to an overwhelming increase in drug cases involving a new designer drug known as CAT (Methcathadone), and for volunteering their valuable time and effort to the prompt disposition of the large volume of cases.

Lawrence S. Beaumont (Illinois, Central District), by Stephen N. Marica, Assistant Inspector General for Investigations, Small Business Administration, Washington, D.C., for his successful prosecution of a complicated bank fraud case, and for maintaining a good working relationship between the two agencies.

Peter A. Caplan (Michigan, Eastern District), by Lloyd A. Jacobs, M.D., Chief of Staff, Department of Veterans Affairs Medical Center, Ann Arbor, for his outstanding legal skill in the successful defense of a suit brought by a medical student following dismissal from the internship program.

Robert Crowe, Carlos Singh, and ***Leland Altschuler*** (California, Northern District), by Rollin B. Klink, Special Agent in Charge, U.S. Customs Service, San Francisco, for their outstanding success in the prosecution of fifty one persons involved in the importation of twelve tons of Thai marijuana near Santa Cruz.

Brian K. Delaney (Michigan, Western District), by Frank W. Hunger, Assistant Attorney General, Civil Division, Department of Justice, for his excellent prosecutive skills in "one of the most successful enforcement actions that the government has ever brought against firms and individuals who defraud the public through the sale of adulterated food."

John DiPuccio (Ohio, Southern District), by John Kotch, Acting Deputy Assistant Secretary for Labor-Management Standards, Department of Labor, Washington, D.C., for his successful prosecution of a former Union official involved in a varied and complex embezzlement scheme.

Kenneth R. Fimberg (District of Colorado), by Robert H. Davenport, Regional Director, Securities and Exchange Commission, Denver, for his success in obtaining a jury conviction, following a 7-day trial, on two counts of mail fraud, two counts of false statements, two counts of money laundering, and one count of interstate transportation of stolen property.

Jennifer Gorland (Michigan, Eastern District), by J. B. Bogan, Warden, Federal Correctional Institution, Bureau of Prisons, Milan, for her excellent representation and willingness to be of assistance in various matters of crucial importance to the Bureau.

Thomas J. Gruscinski (Ohio, Northern District), by James Popovich, Chief of Police, Macedonia Police Department, for his valuable assistance and outstanding success in obtaining the convictions of two individuals on various charges, including armed robbery.

John Haried (District of Colorado), by Cindy Nelson, Training Coordinator, Colorado District Attorneys Council, Denver, for his valuable contribution to the success of the 22nd Annual Training Conference for state prosecutors held recently in Steamboat Springs.

Yoshinori H.T. Himel (California, Eastern District), by Richard H. Ross, Special Agent in Charge, FBI, Sacramento, for his successful efforts in preventing public disclosure of sensitive surveillance techniques and equipment during the six-week capital murder trial of four innocent victims in Napa, California. Also, by Major Susan Parker-Hotchkiss, Chief, Special Litigation Branch, General Litigation Division, Air Force Legal Services Agency, Headquarters U.S. Air Force, Washington, D.C., for his valuable assistance in bringing about the successful resolution of a case arising from a Freedom of Information Act request for Davis-Bacon Act certified payroll records.

Jack B. Lacy, Jr. and ***Kent McDaniel*** (Mississippi, Southern District), by Dunn Lampton, District Attorney, Fourteenth Circuit Court District, Magnolia, for their valuable assistance to the people of southwest Mississippi in a case involving the burning of two rural all-black churches, and for their outstanding efforts in bringing the case to a successful conclusion.

Michael Leibson (Michigan, Eastern District), by Kenneth V. Vicchio, Acting Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, Detroit, for his outstanding efforts in the successful OCDETF investigation and prosecution of a narcotics organization that controlled the sale and distribution of hundreds of kilograms of cocaine in Detroit's 12th Precinct area and Royal Oak Township, Michigan.

Jim Letten and ***Steve Irwin*** (Louisiana, Eastern District), by Paul E. Coffey, Chief, Organized Crime and Racketeering Section, Criminal Division, Department of Justice, for their successful prosecution of two individuals who developed a complicated mail fraud scheme that victimized numerous insurance companies, government agencies, and individuals.

Beth Levine (California, Southern District), by James N. Boggs, Staff Attorney, Office of District Counsel, Department of Veterans Affairs, Los Angeles, for her professionalism and legal skill in obtaining a court ruling in favor of the government despite the absence of vital medical records.

Kent McDaniel (Mississippi, Southern District), by Anthony C. Moscato, Director, Executive Office for United States Attorneys, Department of Justice, for his valuable assistance to the Office of Legal Education in developing and conducting the Criminal Enforcement of Child Support Seminar in Columbia, South Carolina, and for his outstanding contribution to the overwhelming success of the seminar.

Paul M. Newby (North Carolina, Eastern District), by Daniel K. Martin, Chief U.S. Probation Officer, U.S. Probation Office, Raleigh, for his prompt and invaluable assistance in recovering $30,000 in court indebtedness following a bank robbery conviction, and for his cooperative efforts in a number of other collection matters in the past.

Peter G. O'Malley, Special Assistant United States Attorney, (District of New Jersey), by Robert T. Richardson, Acting Chief Counsel, Drug Enforcement Administration (DEA), Washington, D.C., for his excellent representation and successful settlement negotiations in a series of civil actions arising out of a fatal automobile accident involving a DEA employee, thus closing a painful chapter in DEA's history.

Salvador Perricone (Louisiana, Eastern District), by Anthony E. Daniels, Assistant Director, FBI Academy, Quantico, Virginia, for his excellent presentation on hearsay, authentication and identification at an in-service training session, and for his valuable participation in a moot court practical exercise.

Frances E. Reddis (Missouri, Western District), by Colonel Larry Whitten, Commissioner, Missouri State Water Patrol, Department of Public Safety, Jefferson City, for her valuable assistance and cooperative efforts in a civil forfeiture action, and for her success in recovering $150,000 in drug money and crippling a major drug vein leading into the mid-United States.

Jan Reincke (Virginia, Eastern District), by Congressman Frank R. Wolf, U.S. House of Representatives, Washington, D.C., for her participation in a meeting at Manassas National Battlefield Park to discuss crime problems at the Park. As a result, the National Park Service will increase park patrols and security.

William Schaffer (California, Northern District), by Robert E. Bender, Special Agent in Charge, Drug Enforcement Administration, San Francisco, for his excellent organizational skill in coordinating various instructional training sessions for the investigative staff and other state and local law enforcement officers.

Maria F. Stieber (Alabama, Southern District), by Charles W. Archer, Special Agent in Charge, FBI, Mobile, for her valuable support of the Mobile Violent Crimes Joint Task Force, and for her outstanding success in a number of complex cases, including a kidnapping case, two carjacking cases, and theft of a government vehicle, all of which resulted in the convictions of ten defendants and two guilty pleas.

Kathleen Torres (District of Colorado), by Gerald F. Swanson, District Director, Internal Revenue Service, Denver, for her outstanding professional skill in prosecuting a civil suit filed by a tax protester, and for her success in obtaining a court ruling in the government's favor on all counts.

Fred Weinhouse (District of Oregon), by Robin L. Montgomery, Special Agent in Charge, FBI, Portland, for his exceptional legal skill in successfully prosecuting a major federal drug case.

George A. Yanthis (New York, Northern District), by J. W. Tippy, Warden, Federal Correctional Institution, Bureau of Prisons, Ray Brook, New York, for his successful prosecution of two Ray Brook inmates, one for arson and the other for assault.

Francis L. Zebot (Michigan, Eastern District), by William R. Gilligan, Jr., Chief Counsel, Claims Division, U.S. Postal Service, Washington, D.C., for successfully resolving a Federal Tort Claims Act question raised by a Postal Service craft employee, and for saving the government the high costs normally associated with discovery and trial of a case of this nature.

* * * * *

SPECIAL COMMENDATION FOR THE SOUTHERN DISTRICT OF NEW YORK AND THE DISTRICT OF NEW JERSEY

Mary Jo White, United States Attorney for the Southern District of New York, and Michael Chertoff, United States Attorney for the District of New Jersey, received letters of appreciation from Margaret Jane Porter, Chief Counsel, Office of General Counsel, Food and Drug Administration (FDA), Department of Health and Human Services, Rockville, Maryland, for the excellent cooperation, meticulous preparation and vigorous representation their offices provided in preparing and presenting the injunction case in United States v. Barr Laboratories. In particular, ***Beth Kaswan, Steve Froot,*** and ***Deborah Yeoh, Assistant United States Attorneys for the Southern District of New York,*** were commended for their expert, energetic, long-lasting and aggressive trial strength. ***Paralegal Nancee Adams-Taylor*** provided enduring and well-organized trial support. ***Michael Chagares, Assistant United States Attorney for the District of New Jersey,*** was commended for providing sensitive tactical advice and patient procedural expertise. Ms. Porter advised that when the case was tranferred to New Jersey, FDA was fortunate to receive the support of both the Southern District of New York and the District of New Jersey.

In a complaint filed in June 1992, the government alleged that between 1989 and 1992, Barr Laboratories made and distributed adulterated drugs that did not comply with the statutory requirements for current good manufacturing practice. The court conducted evidentiary hearings form August to October, 1992, and has now issued a 79-page opinion. The court ruled that the government was likely to succeed on the merits of the lawsuit, that the company failed to follow the drug manufacturing requirements in the past, and that there was a risk that the violations would recur in the future. While the court refused to order a temporary shut-down of the company's operations because the company had made some effort to remedy the manufacturing violations, it did require the company to do the following: 1) cease distribution of 24 of the 60 drug products currently marketed. (Before the lawsuit was filed, the company had voluntarily suspended the production and distribution of 115 other drug products pending further order of the court); 2) conduct validation studies for these 24 drug products, and for another 15 products which can continue to be marketed; and 3) recall 12 batches of 9 different drug products.

* * * * *

HONORS AND AWARDS

Environment And Natural Resources Division

On October 13, 1993, the Environment and Natural Resources Division conducted a Special Awards ceremony at the Department of Justice. The following Assistant United States Attorneys were recognized for their valuable contributions to the mission of the Division:

Constance M. Bowden, Assistant United States Attorney for the Western District of Pennsylvania, for her successful prosecution of the Assistant Director of the Water Pollution Control Department in Penn Hills, Pennsylvania, for falsification of Discharge Monitoring Reports.

Gordon Campbell, Assistant United States Attorney for the District of Utah, for his success in two environmental cases, both in partnership with attorneys in the Environmental Crimes Section. One of the cases involved the president of an oil recycling facility for violations of the Resources Conservation Recovery Act, and the other case involved the president of a manufacturing company for illegal abandonment of five hundred drums of arsenic waste.

Gordon Young, Assistant United States Attorney for the Southern District of Texas, for his valuable teamwork effort with attorney Steve Herm in the successful prosecution of three environmental cases.

Richard Andrews, Assistant United States Attorney for the District of Delaware, for his valuable participation in a group effort leading to the successful prosecution of a perjury and ocean dumping case.

Floyd Clardy, Assistant United States Attorney for the Northern District of Texas, for his valuable participation in a group effort leading to the successful prosecution of a case involving illegal transportation and disposal of hazardous waste.

Two other Assistant United States Attorneys who received Special Commendation Awards are noted in the October issue of the United States Attorneys' Bulletin, Vol. 41, No. 10, at p. 335.

* * * * *

DEPARTMENT OF JUSTICE LEADERSHIP

Immigration And Naturalization Service

On October 14, 1993, the nomination of ***Doris Meissner*** to serve as Commissioner of the Immigration and Naturalization Service was confirmed by the United States Senate.

Office Of Legal Counsel

On October 13, 1993, the nomination of ***Walter Dellinger*** to serve as Assistant Attorney General for the Office of Legal Counsel was approved by the United States Senate.

Environment And Natural Resources Division

On September 27, 1993, ***Lois J. Schiffer*** became the Acting Assistant Attorney General for the Environment and Natural Resources Division.

United States Attorneys

On October 18, 1993, the following United States Attorneys were confirmed by the United States Senate:

Paul E. Coggins	-	Northern District of Texas
Henry L. Solano	-	District of Colorado
Jon E. DeGuilio	-	Northern District of Indiana
Christopher Droney	-	District of Connecticut
Peggy A. Lautenschlager	-	Western District of Wisconsin
Thomas P. Schneider	-	Eastern District of Wisconsin
Emily M. Sweeney	-	Northern District of Ohio
Michael R. Stiles	-	Eastern District of Pennsylvania

On October 2, 1993, ***Kendall B. Coffey*** became the Interim United States Attorney for the Southern District of Florida.

On October 15, 1993, ***Frances C. Hulin*** became the Interim United States Attorney for the Central District of Illinois.

On October 8, 1993, ***Carl K. Kirkpatrick*** became the Interim United States Attorney for the Eastern District of Tennessee.

For information concerning other United States Attorneys who have received Senate confirmation, please refer to Vol. 41, No. 10, United States Attorneys' Bulletin, dated October 15, 1993, at p. 337. If you have any questions, please call the Executive Office for United States Attorneys at: (202) 514-2121.

* * * * *

ATTORNEY GENERAL HIGHLIGHTS

Attorney General Visits Mexico

On October 11, 1993, in her first official trip to a foreign country, Attorney General Janet Reno met with Mexican President Carlos Salinas de Gortari in Mexico City, and also attended a series of meetings with the Attorney General of Mexico Dr. Jorge Carpizo Macgregor. Discussions covered a wide range of topics related to the impact of NAFTA, illegal drug trafficking, organized crime, extradition, border issues, and law enforcement in general. The visit renewed a relationship for cooperation and mutual respect between the United States and Mexico, and reinforced the positive relationship between the chief law enforcement officers of the two countries.

Attached at the Appendix of this Bulletin as Exhibit A is a Joint Communique which provides complete details concerning the trip and the position of the United States and Mexico with respect to a variety of issues.

* * * * *

Attorney General Addresses Nation's Immigration Problems

On October 7, 1993, in an address at the Graduate School of International Relations and Pacific Studies at the University of San Diego, Attorney General Janet Reno discussed the importance of the North American Free Trade Agreement (NAFTA) and the nation's immigration problems.

Ms. Reno stated that NAFTA will create jobs in the United States and ease the problems of illegal immigration from Mexico, while strengthening the nation's fight against illegal drugs. The United States is taking other strong steps to stem the flow of illegal immigration, including increasing the size of the Border Patrol. The United States also will close legal loopholes in immigration laws, improve inspection and communications systems and implement new technologies such as integrated sensors. The Attorney General said, "People come to America illegally because they seek better jobs. Our best chance to reduce illegal immigration is sustained and robust economic growth in Mexico and elsewhere in Latin America. NAFTA will create jobs in Mexico -- jobs for Mexican workers who would otherwise cross illegally into America. These jobs will help us stem the tide of illegal immigration." Ms. Reno further stated that passage of NAFTA will help Mexico internally by enabling Mexican cities to provide jobs for workers dislocated by agricultural reforms now underway in that country. If NAFTA fails, Mexican urban centers will not be able to absorb the influx of farm workers. Ms. Reno said, "That could mean even greater pressures on our borders." Approval of NAFTA would enhance and improve the joint effort by Mexico and the United States to staunch the flood of illegal drugs crossing the Mexican border into the United States. Ms. Reno concluded, "The trade agreement will make cooperation between our two countries the rule instead of the exception. With NAFTA in place, I can work more effectively with my Mexican counterparts to measure tough, honest enforcement of our antidrug laws."

* * * * *

DEPARTMENT OF JUSTICE HIGHLIGHTS

Director For Investigative Agency Policies

On October 21, 1993, Attorney General Janet Reno announced that she has settled on a plan to implement the recommendations of the National Performance Review, directed by Vice President Al Gore, which called for improved coordination by all Justice Department components in the war on drugs. The Vice President's task force recommended "major structural changes to integrate drug enforcement efforts of the DEA and FBI." After numerous discussions with the Vice President and his staff, as well as the component agencies of the Justice Department, the Attorney General proposed, after appropriate consultation with Congress, to establish a new position in the Department of Justice -- Director for Investigative Agency Policies.

In this position, the Director would:

- Have decision-making authority, subject to review by the Attorney General and the Deputy Attorney General, to resolve operational issues where there is overlapping jurisdiction among law enforcement agencies of the Department of Justice -- FBI, DEA, U.S. Marshals and the Border Patrol. This would include such matters as drug trafficking, violence and apprehension of fugitives.

- Advise the Attorney General and the Deputy Attorney General with respect to administrative, budgetary and personnel issues involving those agencies.

- Be appointed from among Presidential appointees, have a staff of senior personnel chosen from the existing resources of investigative agencies, and be housed in the Justice Department.

- Establish and implement uniform standards for investigations, including targeting, intelligence gathering and dissemination, training and procurement.

The Attorney General has asked FBI Director Louis J. Freeh to serve as the first Director for Investigative Agency Policies when the position is constituted. Director Freeh would continue as FBI Director.

The Drug Enforcement Administration would remain a specialized, single mission agency conducting investigations of matters involving illicit trafficking in drugs. It would be headed by its own Administrator, as it is now. DEA will continue to choose, promote and supervise its own personnel. However, where overlap occurs among Department of Justice investigative agencies, the Director for Investigative Agency Policies would make the decisions and implement strategies and objectives necessary to maximize the effective use of Justice Department resources.

* * * * *

FBI Reorganization

On October 3, 1993, Attorney General Janet Reno joined FBI Director Louis Freeh at a news conference to announce a series of high level appointments at the FBI which the Director stated are "significant steps toward my commitment to further diversity and excellence in the executive ranks of the FBI." The new appointments are based on the recommendations of a commission which studied the FBI Headquarters and field operations over the past eighteen months, conducted hundreds of interviews throughout the field, and evaluated a series of changes calculated to make the FBI "more responsive and more efficient in carrying out our responsibilities." Some of the new appointments that were announced are:

• Burdena G. Pasenelli, Assistant Director of the Finance Division -- the FBI's chief financial officer and the first woman to serve as an Assistant Director. Ms. Pasenelli formerly served as Special Agent in Charge of the Anchorage field office.

• Manuel J. Gonzalez, Assistant Director of the Personnel Division -- the FBI's first Hispanic Assistant Director. Mr. Gonzalez worked with Director Freeh in New York as a street agent years ago.

• Paul R. Philip, Assistant Director of the Training Division -- the second African American to ever serve as an Assistant FBI Director. Mr. Philip was formerly Deputy Assistant Director of the Inspection Division.

• Bob Bryant, Assistant Director in charge of the National Security Division -- formerly known as the Intelligence Division. The Director said the responsibilities of the National sEcurity Division, which include terrorism and counter-intelligence, are exceedingly complex, ever-changing, and demanding, and this is a broader name for a broader perspective.

• Al Bayse, Chief Scientist of the FBi, a newly created position which Director Freeh described as "a position of tremendous importance, and one that reflects the changing technological revolution as it is impacting on law enforcement." Mr. Bayse was formerly Assistant Director of the Technical Services Division.

Attorney General Janet Reno said, "These appointments today continue to reflect that excellence that we prize, that professionalism, that integrity. They also reflect the diversity which is the strength of America. They reflect the fact that whoever you are, no matter where you come from, you can have opportunity to be part and parcel of our government and to make a difference where it counts. The fact that these appointments have been recommended by a career board, that they come from the ranks I thinks speaks for the direction that the FBI will take. Much remains to be done. But I think we've made a good start."

* * * * *

Waco Report

On October 8, 1993, Deputy Attorney General Philip Heymann and Edward S.G. Dennis, Jr., conducted a news briefing in the Great Hall of the Department of Justice, regarding the Branch Davidian stand-off in Waco, Texas. Also attending were Ronald K. Noble, Assistant Secretary of the Treasury for Law Enforcement, and Richard Scruggs, Assistant to the Attorney General. The stand-off was the result of a failed attempt by the Bureau of Alcohol, Tobacco and Firearms (BATF), Department of the Treasury, to serve and execute a search warrant on the compound and to arrest Vernon Howell, a/k/a David Koresh, the charismatic leader of the Branch Davidians. Four BATF agents were shot to death and twenty BATF agents were wounded in the attempt to serve the warrants on February 28, 1993. BATF requested the deployment of FBI negotiators and the FBI's Hostage Rescue Team to resolve the stand-off. The Deputy Attorney General had asked Mr. Dennis to prepare an independent review of the procedures, decisions and actions of the Department of Justice in the Waco matter. Mr. Dennis, currently in private practice in Philadelphia, formerly served as United States Attorney for the Eastern District of Pennsylvania, Assistant Attorney General for the Criminal Division, and Acting Deputy Attorney General.

At the briefing Mr. Dennis submitted a critical retrospective evaluation of the activities of the Department of Justice and the FBI. To make the evaluation, Mr. Dennis reviewed the procedures followed by the Department and the FBI, giving particular attention to the means employed, the alternatives considered and the decisions made in attempting to resolve the stand-off. Other documents that were made available at the briefing were:

- A factual account of the confrontation with the Branch Davidians from the arrival of the FBI on February 28, 1993 through the fire that destroyed the compound on April 19. This report, based on evidence and more than 900 interviews, contains some excisions required by law. An unexpurgated copy has been deposited with the federal court in Waco where eleven defendants are scheduled to be tried in January.

- A report by the Deputy Attorney General concerning the lessons of Waco and proposals to improve the capacity of federal law enforcement to resolve complex hostage and barricade situations.

- Recommendations of nine experts for improvements in federal law enforcement after Waco. The reports of the nine experts are based on written materials provided to them since July, 1993, and periodic briefings at the Department of Justice and the Department of the Treasury.

The Department of the Treasury has released a separate report of its findings on the actions of BATF at the compound.

A limited supply of reports are available. If you would like a copy, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

* * * * *

CRIME ISSUES

Attorney General Discusses Violent Crime

On October 15, 1993, Attorney General Janet Reno delivered an address in the Great Hall of the Department of Justice on the Administration's efforts to combat violent crime. The Attorney General noted, "We have some new U.S. Attorneys here today. We have a new leadership team in the Federal Bureau of Investigation. And it seems like a very appropriate time to start talking about what the Clinton Administration can and is going to do about the issue of violence in America." Ms. Reno said one of the highest priorities of this Administration is to get the crime bill passed. The following are some of her observations:

On the subject of guns: "I am amazed that in 1993, in the civilized world, truly dangerous people can walk into a gun store, buy a gun, and walk out instantly. It doesn't make sense. We must give the police time they need to check the background of the gun buyers. The Brady bill will do that. Right now some states have waiting periods but others don't, so handguns go from state to state. We have got to make a national statement. America has waited long enough for the Brady bill. It's time to get it passed."

On assault weapons: "We must ban assault weapons. There is absolutely no reason in the world why somebody in America should be able to purchase an assault weapon that has no sporting purpose to it whatsoever. We need for law enforcement to speak out. The time has come when we have got to galvanize our efforts together and speak out. . .This is one of the highest priorities of the President, and I ask you to join with me in this effort."

On children and guns: "It should be illegal for minors to possess guns without adult supervision. These are all sensible proposals. They will save lives, they will make a difference, but we need your support in this effort."

On boot camps: "I am dedicated to doing everything I can to make sure there is money to back up those boot camps so that we start sending a message across America that when a 13-year-old puts a gun up beside somebody's head, they know that they're going to be punished, and that there is no excuse -- not poverty, not broken homes, not where you came from -- from hurting other people with guns, or killing them, or robbing them, and that there has got to be a consequence for their action."

On juvenile offenders: "We have got to understand that it doesn't make any sense to take a person who's got a drug problem who commits a serious crime and put them in prison, let them serve only 20 to 30 percent of their sentence, and then dump them back in the community without real punishment and without doing anything to address the first cause of the crime. . .We have got to understand that most of these people that we send away to prison are coming back sooner rather than later, and unless we take them back with programs and procedures that can give them a chance of success, they're going to be right back in the courts, right back in our courts, every step of the way."

On violent crime: "Everyone has got to understand that Americans put violence first on their agenda for something that they want action on. They don't want rhetoric any more. They don't want promises any more. They want hard work from people willing to make a difference, make a commitment to work together. They don't want people taking credit for solving the problem. They just want somebody to do something about it. It's time for us to do something about it, to join together to make sure that we don't let the dangerous offender out, that we join together to make sure that that young, violent teenager knows he's going to get punished, but that he has a chance of coming back into the community with a chance of success."

* * * * *

Violent Crime Control And Law Enforcement Act Of 1993

On October 21, 1993, Deputy Attorney General Philip B. Heymann testified before the Subcommittee on Crime and Criminal Justice, House Judiciary Committee, concerning the Violent Crime Control and Law Enforcement Act of 1993. The Deputy Attorney General discussed three important issues in the crime bill: 1) policing and public safety; 2) drug treatment in prisons; and 3) the death penalty.

On policing and public safety: Title I of H.R. 3131, the Public Safety and Community Policing: Cops on the Beat program is the cornerstone of the President's plan to put more police on the street. It authorizes $3.45 billion over the next six years to increase police presence and expand community policing to reduce and prevent crime. It is grounded on the premise that it is not enough merely to add numbers to the nation's law enforcement forces. Increasing the number of police is a first step, but alone will do little to improve public safety. He added, "In fact, no matter how great their numbers, police and law enforcement alone cannot solve America's crime problems. We must challenge communities to reinvent and reorient police efforts towards building partnerships that really can achieve lasting results and make long-term progress against crime." Mr. Heymann concluded by saying that enactment of this legislation will go a long way towards implementing effective community policing and crime prevention throughout America's many diverse neighborhoods. A Section-by-Section analysis of this legislation is attached at the Appendix of this Bulletin as Exhibit B.

On drug treatment: The Clinton Administration is strongly committed to substance abuse treatment and prevention. The President has asked the Director of the Office of National Drug Control Policy to work with the Attorney General and the Secretary of Health and Human Services (HHS) to convene an interagency working group that will assess the current situation and recommend steps the Federal government can take to promote such treatment at the federal, state, and local levels. The Deputy Attorney General testified that the bill might be strengthened by 1) referring to "substance abuse" rather than "drug abuse," to ensure a comprehensive approach to treatment that encompasses alcohol and other drugs: 2) by adding more emphasis on treatment services for non-incarcerated populations, and perhaps most importantly, by eliminating time restrictions on the proposed treatment services for incarcerated populations; and 3) by emphasizing more clearly the need for treatment for juvenile offenders. Mr. Heymann also discussed substance abuse treatment programs provided by the Bureau of Prisons.

On the death penalty: Mr. Heymann explained the position of the Department of Justice as it relates to the death penalty, and informed the Committee that the Justice Department is currently engaged in a careful review of the factors that bear on whether or not to authorize the government to seek the death penalty in particular cases.

* * * * *

Violent Programming On Television

On October 20, 1993, Attorney General Janet Reno testified before the Senate Committee on Commerce, Science and Transportation concerning violent programming on television. She stated that as Attorney General, she is dedicated to fighting violence wherever it is found: in the streets, in our neighborhoods, in our schools and in our homes. Ms. Reno talked about the challenges we face in trying to prevent crime in the first place, and in particular, addressed the role of television in our culture of violence, and what it will take to achieve real change. She added that the Administration stands ready to work with the industry to try to help them resolve any uncertainties they may have.

In conclusion, the Attorney General said, "I belive in an open society and a strong First Amendment. My instincts militate against governmental involvement in this area. But I also believe that television violence and the development of our youth are not just another set of public policy problems. Rather, they go to the heart of our society's values. The best solutions lie with industry officials, parents and educators, and I don't relish the prospect of government action. But if further voluntary steps are not taken, public pressure for more intrusive measures will grow more intense -- and more difficult to resist. I want to use this forum to challenge television to reduce substantially its violent programming in one year's time. Cold turkey would be better, but I want to allow a time period for a reasonable transition. In the coming months, I want to work with everyone concerned with this problem, to reach out to parents and children and teachers and people in the entertainment industry. We need to proceed soberly and rationally, and not succumb to hysteria or slogans on any side. But we must move forward."

A complete text of the Attorney General's testimony is available by calling the United States Attorneys' Bulletin staff, at (202) 514-4633.

* * * * *

CIVIL RIGHTS ISSUES

Discrimination In The Mortgage Lending Industry

On October 21, 1993, Associate Attorney General Webster L. Hubbell testified before the Subcommittee on Consumer Credit and Insurance, House Committee on Banking, Finance and Urban Affairs, concerning enforcement of federal fair lending laws. Mr. Hubbell stated that recent reports and studies have highlighted the pervasiveness of racial discrimination in mortgage lending. The pernicious evil of denying minorities equal credit opportunity disadvantages minority communities and must be eliminated. The Civil Rights Division has authority to address the problem under the Fair Housing Act, 42 U.S.C. 3601 et seq., and the Equal Credit Opportunity Act, 15 U.S.C. 1691-1691f. Recent efforts have included the assignment of lawyers to develop expertise in the mortgage lending field, the development of litigation to address the issue, and meeting with the major federal financial regulatory agencies in an attempt to develop an enforcement structure for the future. Mr. Hubbell summarized the lessons learned thus far:

1. Mortgage lending discrimination on the basis of race can exist in spite of the fact that management of the lending institution has adopted clear policies against such discrimination. Branching, marketing, advertising, hiring, appraising, underwriting, and compensation schemes for loan originators, all must be assessed in an analysis of whether an institution is denying credit needs on the basis of race.

2. Statistical methods are available to reveal whether institutions that reject minority applicants at higher rates than white applicants have discriminated on the basis of race. The statistical analysis is expensive and requires examination of a large number of application files.

3. Given the sampling methodology of their prior fair lending reviews, it is understandable that the federal regulatory agencies have failed to discover the type of discrimination that we have found. We hope for revisions in the methodology that would allow these front line detectors of discrimination in the lending industry to identify impermissible practice. We understand that agencies are working diligently on developing new examination procedures which we hope will incorporate our views with respect to the importance of statistical analysis.

The Associate Attorney General discussed the Decatur Federal Savings and Loan based in Atlanta, Georgia, the history of Decatur's operation, the fact that black persons who sought mortgage loan products from Decatur Federal were not treated fairly, the remedy in the Decatur lawsuit, and the enforcement activities after Decatur. In conclusion, Mr. Hubbell said we will continue to devote significant resources to this important civil rights issue. A copy of Mr. Hubbell's testimony is available by calling the United States Attorneys' Bulletin staff, at (202) 514-4633.

* * * * *

Major Settlement Agreement Under The Americans With Disabilities Act

On October 6, 1993, the Department of Justice announced a settlement agreement with the Utah Administrative Office of the Courts to ensure deaf individuals may serve as jurors. This agreement resolves a complaint filed with the Justice Department alleging that the Salt Lake City district court required individuals who are deaf to provide their own interpreters in order to serve on jury duty. This

is the first settlement agreement with a state court agency under Title II of the Americans with Disabilities Act (ADA). Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability by state and local governments.

The agreement, which affects all courts throughout Utah, incorporates the requirements of Title II which obligate courts to provide appropriate auxiliary aids and services, including qualified interpreters, whenever necessary to give an individual with a disability an equal opportunity to participate in the court's programs. The settlement agreement requires the Utah court agency to 1) establish a written policy on the provision of interpreters for jurors who are deaf or hard of hearing; 2) secure, at the court's expense, the services of a qualified interpreter whenever necessary to ensure effective communication; 3) publicize the policy through public notices in local newspapers; 4) inform and instruct all appropriate district court officials responsible for conducting proceedings to comply with the policy; and 5) conduct at least four regional training seminars on how the Americans with Disabilities Act applies to jury trials and other court proceedings. The agreement also permits the Justice Department to petition the U.S. District Court to seek specific performance of the agreement's terms if the court fails to comply. James P. Turner, Acting Assistant Attorney General for the Civil Rights Division, stated, "Through their cooperation with the Department in resolving this complaint, the Utah Administrative Office of the Court avoided costly litigation. It is in the spirit of the ADA for local agencies to use scarce resources to comply with the law rather than to combat it."

* * * * *

Lawsuits Filed For Failure To Treat HIV And AIDS Patients

On October 4, 1993, the Department of Justice announced the filing of its first lawsuits to stop discrimination against people infected with the AIDS virus. The suits were brought under Title III of the Americans with Disabilities Act which prohibits discrimination on the basis of disability in places that do business with the public. The actions were filed against Castle Dental Center, a chain of dental and orthodontic facilities in Houston, Texas, and a dentist who practices in New Orleans. The Justice Department seeks an order requiring the dental offices to change their policies and provide complete and equal services to persons with HIV and AIDS. It also seeks civil penalties in each action, as well as compensatory damages for three men who were refused treatment.

The complaint against Castle Dental Center asserted that in 1992 it refused to continue treating a patient once it became aware that he was HIV-positive. The patient, who had received orthodontic treatment for eight months, received a letter which read: "Due to the recent discovery of your health problems, Castle Dental Center has decided to cease providing you with orthodontic treatment." In the other case in New Orleans, the Justice Department alleged that a dentist denied dental services to two men, both of whom were informed that the office does not treat HIV-positive patients. One of the men recently died of AIDS.

The American Dental Association has indicated that there is no medical or scientific justification for excluding persons with HIV or AIDS from dental treatment, solely on the basis of their HIV-positive status. The federal government's Centers for Disease Control and Prevention (CDC) has consistently stated that HIV infected patients must not be denied medical care. Both the American Dental Association and the CDC recommend the use of infection control procedures known as "Universal Precautions" to prevent the transmission of bloodborne diseases, including HIV, in the health care setting. The Occupational Health and Safety Administration requires that Universal Precautions be used in all dental facilities. According to the American Dental Association, the use of the Universal Precautions reduces the risk of HIV transmissions to an "infinitesimal" degree. Attorney General Janet Reno said such discrimination is based on unfounded fear and factual misunderstandings and there is no medical or legal justification for discrimination against HIV-positive individuals, especially in health care.

* * * * *

HEALTH CARE REFORM

Health Care Network

On October 13, 1993, the Antitrust Division of the Department of Justice approved a proposal by a health care trade association that is expected to help keep down health care costs to consumers by providing a voluntary data exchange program for transporting drugs, toiletries and other products commonly sold in drug stores. The proposal would allow the Health and Personal Care Distribution Conference, Inc. (HPCDC), a national trade association, to undertake a voluntary data exchange program regarding the transportation of its members' health care products. Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, said the program will provide HPCDC members with information on other members' experience with transportation services that they can use individually to bargain with transportation companies, which should ultimately benefit consumers through reduced prices for products sold by HPCDC's members. The Department's position was stated in a business review letter from Ms. Bingaman to counsel for HPCDC, a trade association comprised of companies that distribute health care products using general freight trucking companies.

The proposal would allow HPCDC to undertake a voluntary data exchange program regarding its members' use of motor transportation services. Under the program, HPCDC will contract with a third party to compile and publish periodically aggregated averages of the data, which include public tariffs paid by its members for the transportation. Ms. Bingaman also stated that the data exchange was not likely to be significantly anticompetitive, and is unlikely to enable HPCDC members collectively to exercise market power of transportation services. In addition, it is unlikely to facilitate coordination among HPCDC members in the prices of their competing products.

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.

* * * * *

Heart Device Fraud In The District Of Massachusetts

On October 15, 1993, A. John Papparlardo, United States Attorney for the District of Massachusetts, and David A. Kessler, M.D., Commissioner, Food and Drug Administration (FDA), announced that a New Jersey heart catheter manufacturer will pay the highest criminal penalty ever imposed in a medical case -- $30.5 million -- plus another $30.5 million in a civil settlement for marketing an unapproved heart device that caused at least twenty patients to undergo emergency heart surgery and at least one death.

A federal grand jury in Boston returned a 393-count indictment charging the chief executive officer of C.R. Bard, Inc., one of the world's largest health care products companies based in Murray Hill, New Jersey, and five past and present employees for illegal violations involving the sale and distribution of heart catheters. C.R. Bard, Inc., in a signed plea agreement, agreed to plead guilty to a 391-count criminal information and pay $61 million -- one half as a criminal fine and the other half as a settlement of its civil liability arising out of the sale and distribution of its heart catheters for use on Medicare patients and others. The fine imposed in this case is several times larger than any in the history of FDA enforcement cases. The core of the criminal conduct in which all defendants are charged involved the unlawful use from 1986 through early 1990 in patients with heart problems of catheters not approved by the FDA for human use.

Specific types of conduct alleged in the Indictment, and set forth in the criminal information, to which C.R. Bard, Inc. has agreed to plead guilty, include: 2) illegal experimentation on people with unapproved catheters, including illegal testing of catheters on people or the purpose of determining whether the catheters were safe and effective; 2) changing the designs of catheters without seeking approval from the FDA for the changes; 3) concealing from the FDA malfunctions of the catheters, including balloon ruptures, deflation problems, tips breaking off during use, and balloon wrapping problems; 4) lying to the FDA in documents about the design of catheters, among other things; and 5) concealing from the FDA the illegal human experimentation of catheters not yet approved for human use.

The Assistant United States Attorneys from the District of Massachusetts in charge of the prosecution of this case are: ***Michael K. Loucks*** and ***Stephen Higginson*** of the Criminal Division, and ***Suzanne E. Durrell*** and ***Roberta T. Brown.*** Other Department of Justice attorneys who provided assistance are: ***Eugene M. Thirolf,*** Director of Consumer Litigation, ***Ronald H. Clark*** and ***John A. Kolar.***

* * * * *

Medicare And Medicaid Fraud In The Southern District Of Florida

On October 12, 1993, Kendall Coffey, United States Attorney for the Southern District of Florida, announced the unsealing of an indictment charging twelve former or present residents of Dade County with an attempted $5 million fraud against the Medicare and Medicaid programs. According to the indictment, two of the defendants ran a number of health care businesses in Miami, including a health care clinic and a diagnostic testing company. The two defendants paid persons, generally referred to as "recruiters," distributors," or "transporters," between $30.00 and $150.00 for each Medicare- or Medicaid-eligible individual they referred to the diagnostic center for medical services. Those individuals were then referred to a test and diagnostic center and a group of medical specialists, for further medical tests, the costs of which were also billed to Medicare and Medicaid. The grand jury found that it was the defendants' objective "to obtain money from the United States by providing to Medicare and Medicaid recipients massive numbers of medical services, primarily testing, regardless of medical need or appropriateness." The grand jury further found that the defendants filed "false and fraudulent Medicare and Medicaid claims in excess of $5 million" for their services.

The indictment resulted from an investigation by the Health Care Fraud Task Force, a joint state-federal project whose members are actively engaged in investigating allegations of fraud in the delivery and/or billing of medical services in South Florida. The Task Force is comprised of federal agents from the Department of Health and Human Services, FBI, DEA, IRS, and the Postal Service, as well as state agents from the Medicaid Fraud Control Unit, and the Division of Insurance Fraud. In addition, the Task Force receives considerable support from local police departments, including the Metropolitan Dade Police Department, Miami Beach Police Department, and the Miami Police Department.

* * * * *

ASSET FORFEITURE

Treasury Forfeiture Fund

On September 24, 1993, Cary H. Copeland, Director and Chief Counsel, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General, advised all forfeiture components that on October 1, 1993, the Internal Revenue Service, the U.S. Secret Service, and the Bureau of Alcohol, Tobacco and Firearms will join the U.S. Customs Service and the Coast Guard as full members of the Department of the Treasury Forfeiture Fund. The memorandum provides information on the establishment of the Treasury Fund and describes how this transition will affect current operations in forfeiture cases.

A copy of Mr. Copeland's memorandum is attached as Exhibit C at the Appendix of this Bulletin.

* * * * *

Record Breaking Collection Efforts In The Eastern District Of Kentucky

On October 13, 1993, Karen Caldwell, United States Attorney for the Eastern District of Kentucky, announced that the Financial Litigation Unit experienced the most successful year in the history of the office by collecting over $12.3 million during the 1993 fiscal year which ended on September 30, 1993. Included in the total was over $1.8 million obtained through the forfeiture of criminals' assets. The monies collected include recoveries on criminal fines, defaulted federal loans, asset distributions from bankruptcy cases, civil penalties, as well as the proceeds of property seized in connection with criminal prosecutions. Ms. Caldwell indicated that the total recovery figure, which was even greater than last year's record breaking effort, was again largely the result of collections of a large number of relatively modest cases. Ms. Caldwell further indicated that the $12.3 million collected exceeded the total operating budget of her office by over $8.4 million.

The largest asset forfeiture recovery came in the Camarena and Olivas cases which were the product of a two-year investigation by the FBI and Kentucky State Police resulting in three separate indictments charging a total of twenty one defendants. The drug-related charges involved a conspiracy to import large quantities of marijuana from Mexico for distribution in Eastern Kentucky during 1989 and 1992. Sixteen of the defendants pleaded guilty, four are fugitives and the charges against the remaining defendants were dismissed. Forfeitures from the case included: two parcels of real estate which sold for $124,500.00 (two additional parcels valued at $111,600.00 are currently listed for sale); two vehicles sold for $4,550.00; three vehicles appraised at $27,175.00 were placed in official law enforcement use; $169,312.13 in currency; and jewelry valued at $1,500.00.

* * * * *

OFFICE OF INTERNATIONAL AFFAIRS

"OIA Connections"

Since a number of Assistant United States Attorneys are handling cases with international dimensions, the Office of International Affairs (OIA) began publishing "OIA Connections" in March, 1993. "OIA Connections" is an E-mailed, cumulatively indexed newsletter highlighting developments in international criminal law and practice from the prosecutors' and investigators' point of view. Each United States Attorney's Office has designated an International/National Security Contact to receive and disseminate "OIA Connections" via E-mail to all attorneys and investigators expressing an interest. The articles include criminal fines, assets, forfeitures, depositions in foreign countries, and a wide variety of topics related to international law.

The following article appeared in "OIA Connections," Bulletin No. 93-9, dated September 19, 1993, concerning offices in the Department of Justice that assist in obtaining foreign evidence, assets, forfeiture, and related developments:

Office of Foreign Litigation, Civil Division (OFL): OFL is the official contact point at the Department of Justice (DOJ) for foreign asset searches in savings and loan and bank cases under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and subsequent legislation (FIRREA). OFL may also assist prosecutors in other types of cases.

OFL can retain counsel in foreign countries worldwide to represent the United States. If the United States is the victim of an offense, counsel retained by OFL can initiate litigation in foreign courts for civil freezes and recovery of U.S. assets, including assets diverted from U.S. financial institutions. OFL generally cannot pierce foreign bank secrecy laws. In some cases, it can obtain evidence for use in FIRREA cases. OFL consults with the Office of International Affairs (OIA) in the Criminal Division to determine what international criminal procedures would apply in FIRREA cases.

To discuss how OFL can assist in a given case, please contact David Epstein, Director, Office of Foreign Litigation, Civil Division, Department of Justice, 550 - 11th Street, N.W., Room 8102, Washington, D.C. 20530. The telephone number is: (202) 514-7455; the fax number is: (202) 514-6584.

Office of International Affairs, Criminal Division (OIA): OIA works with OFL or independently to assist federal prosecutors in obtaining evidence from abroad when compulsory process is required to obtain it and related matters. OIA also handles all international extraditions. Many countries require U.S. prosecutors to go through an official channel rather than an informal one even to interview witnesses. To obtain foreign bank, business, official or other documents in admissible form, as well as to obtain testimony under Rule 15, F. R. Crim. P. for use at trial, prosecutors must go through OIA (or, on occasion, OFL). INTERPOL, the FBI Legal Attaches stationed abroad, and other informal channels cannot provide this assistance.

OIA makes requests to foreign countries under bilateral and multilateral agreements for documents, interviews, testimony, and real evidence for use in U.S. criminal investigations and prosecutions. Bilateral agreements include treaties of mutual legal assistance in criminal matters (MLATs), the U.S. - United Kingdom Drug Agreement, and the U.S. - Hong Kong Forfeiture Agreement. Multilateral agreements include the U.N. Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Drug Convention). Eighty nations, including the United States, have now ratified the Vienna Drug Convention.

To obtain similar assistance from a country with which the United States does not have an MLAT, or, in drug cases, a country that has not ratified the Vienna Convention, OIA also transmits letters rogatory, or, if appropriate, letters of request. A U.S. judge must sign a letter rogatory. The Director of OIA may sign a letter of request.

OIA generally can pierce foreign bank secrecy laws. In some countries and some cases, OIA can obtain freezes and eventual repatriation of assets that represent the proceeds of crime.

When proceeds of a non-drug crime whose victim is a private party are found abroad, OIA generally cannot recover them. Depending on the country and the facts, however, OIA can sometimes get the assets frozen temporarily. The victim may then retain counsel in the foreign jurisdiction and bring a civil suit there to recover them. When proceeds of a crime are frozen abroad and repatriated to the United States for forfeiture and sharing, the Asset Forfeiture Office (AFO) of the Criminal Division is responsible for their transfer to foreign countries.

All requests to non-English speaking countries and the materials resulting from execution of your request must be translated. If the FBI or other investigative agency cannot translate your request, your office is responsible for translation, including all other materials received.

International procedures through OIA can take as long as two years. If the prosecutor has made an official request for foreign evidence, two federal statutes permit extra time to receive it:

- Before indictment, 18 U.S.C. § 3292 allows the statute of limitations to be suspended for up to three years.

- After indictment, 18 U.S.C. § 3161(h)(9) allows up to a year to be excluded from the computation of time under the Speedy Trial Act.

International requests should be made as early in the investigation as possible. International assistance through MLATs, letters rogatory, and letters of request is almost always unavailable after sentencing and for the recovery of criminal fines.

At or after trial, there may be reason to believe that the defendant has concealed foreign assets from the court, committed perjury concerning his or her foreign assets, or committed some similar offense. By opening a new investigation into such offenses, the prosecutor may be able to obtain bank and other records and testimony from foreign countries even after sentencing.

For filing a civil forfeiture action pursuant to 28 U.S.C. §1355 (b)(2) against foreign property that is forfeitable under U.S. law, please notify OIA in writing, or via E-mail. (See, USAM Bluesheet 9-13.526, dated June 23, 1993). Upon receipt, OIA and AFO will review the notification, consult as appropriate with foreign authorities, and advise within ten days whether this would be regarded as an infringement of foreign sovereignty, or provide any other advice deemed appropriate.

For assistance in any given case, please call the Office of International Affairs, at (202) 514-0000 or (202) 514-0041. The Fax number is (202) 514-0080. OIA attorneys specialize by country or geographic area, and can provide instructions via E-mail for preparing MLAT requests, letters rogatory, and letters of request that meet applicable requirements.

INTERPOL: INTERPOL is a communications system through which U.S. authorities can request law enforcement investigative assistance from police of INTERPOL's 169 member countries. Such assistance might include getting copies of foreign hotel or car registration records, verifying addresses, or other matters constituting public information under the law of the requested country. INTERPOL also has data bases of information from previous investigations and can indicate other countries interested in a given target or subject.

Each country belonging to INTERPOL has a National Central Bureau (USNCB) through which it communicates requests and responses, usually by cable, with other members. INTERPOL communications may be in Arabic, English, French, or Spanish, and makes any translations necessary.

The USNCB, staffed 24 hours per day, is comprised of agents, analysts, and translators on detail from seventeen federal and state agencies, including the FBI, DEA, and U.S. Treasury. The USNCB also has liaison offices in American Samoa, New York City, Puerto Rico, Washington, D.C., and each of the 50 states.

Assistance provided through INTERPOL is on a voluntary basis. Police of a member nation can execute requests transmitted through INTERPOL to the extent authorized by their domestic legislation. Investigators should follow their agency procedures for making requests through INTERPOL. (Some U.S. investigative agencies prefer to have their attaches in various locations abroad handle requests for foreign police assistance.)

For information concerning INTERPOL, please contact: Chief, INTERPOL, U.S. National Central Bureau, Room 600, Bicentennial Building, U.S. Department of Justice, Washington, DC 20530. The telephone number is: (202) 272-8383. The Fax number is: (202) 272-5941.

* * * * *

POINTS TO REMEMBER

Principles Of Federal Prosecution

Attached at the Appendix of this Bulletin as Exhibit D is a copy of a bluesheet issued to all United States Attorneys and Litigating Divisions, concerning Principles of Federal Prosecution. The bluesheet further clarifies the Department's policy concerning the principles that should guide federal prosecutors in their charging decisions and plea negotiations. It is intended to provide interpretative guidance with respect to 9-27.130; 9-27,140; 9-27.300; and 9-27.400, Principles of Federal Prosecution, dated January 14, 1993, in the United States Attorneys' Manual.

* * * * *

Gifts To Superior Officers

On October 8, 1993, Stephen R. Colgate, Assistant Attorney General for Administration, Department of Justice, issued a memorandum to the Heads of Department components advising that the Attorney General's office has asked that the Department discourage components from presenting gifts of value to visiting Departmental officials. The giving of gifts by employees to superior officers is prohibited by law in most situations. See, 5 USC §7351 and 5 CFR 2635.302. While using Departmental funds to make presentations to visiting officials may not fall within the letter of this prohibition, it does fall within the spirit of the restriction. Moreover, in these tight fiscal times, Department appropriations should be used for matters more directly tied to our mission. For these reasons, and to spare the officials embarrassment, please refrain from presenting visiting officials with gifts when they visit your component.

* * * * *

SENTENCING REFORM

Guideline Sentencing Update

A copy of Guideline Sentencing Update, Volume 6, No. 4, dated October 14, 1993, is attached as Exhibit E at the Appendix of this Bulletin. The Guideline Sentencing Update 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

Affirmative Asylum Reform

On October 5, 1993, representatives of the Department of Justice and the Immigration and Naturalization Service briefed White House staff, including the Office of the Vice President, the Domestic Policy Council, the National Security Council, White House Legislative Affairs, and the Office of Management and Budget, on the Department's proposal to streamline the affirmative asylum process. INS Commissioner Doris Meissner described the principal reforms, and explained that while most of the reforms would be regulatory, some of the reforms could be statutory if Congress insisted.

* * * * *

Occupational Safety And Health Amendments

On October 5, 1993, Acting Assistant Attorney General John C. Keeney testified before the Senate Labor and Human Resources Subcommittee on Labor regarding the criminal provisions of S. 575, the Comprehensive Occupational Safety and Health Reform Act. This legislation would increase the penalties for criminal offenses under the Occupational Safety and Health Act (OSHA) and add a new criminal offense for a willful violation of OSHA that causes serious bodily injury short of death. The bill also would extend potential criminal liability to individual managers and supervisors who are responsible for such willful violations. Mr. Keeney expressed the Department's support for increasing the penalties and indicated that, from an enforcement standpoint, the serious bodily injury provision is workable. He deferred to the Department of Labor with regard to how it would affect Labor's safety and health program.

* * * * *

Indian Gaming Oversight

On October 5, 1993, the House Natural Resources Subcommittee on Native American Affairs held an oversight hearing on the Indian Gaming Regulatory Act. Larry Urgenson, Acting Deputy Assistant Attorney General for the Criminal Division, testified on behalf of the Department of Justice, and Jim Moody, Chief of the FBI's Organized Crime Section, testified on behalf of the Bureau. Both stated that, while there has not been widespread infiltration of Indian gaming by organized crime, we must be vigilant against any such future infiltration efforts.

* * * * *

Illegal Textile Trans-shipments

On October 5, 1993, the House Government Operations Committee's Subcommittee on Commerce, Consumer and Monetary Affairs held a hearing on illegal textile trans-shipments, or the practice of falsely documenting the country of origin of goods entering the United States in order to circumvent quota restrictions. Mark Richard, Deputy Assistant Attorney General, Criminal Division, testified on behalf of the Department of Justice, along with representatives of the U.S. Customs Service, the Department of Commerce, and the U.S. Trade Representative. The Subcommittee's main concern was how the Executive Branch could effectively deter the importation of textile goods in violation of established quotas.

* * * * *

SUPREME COURT WATCH

Selected Cases Recently Argued

Civil Cases:

FDIC v. Meyer, No. 92-741 (argued October 4)

The government argues in this case that the limited waiver of sovereign immunity which has been read not to include *Bivens* claims under the Federal Tort Claims Act bars such claims against the Federal Savings and Loan Insurance Corp., notwithstanding legislation authorizing FSLIC to sue and be sued. In addition, the government argues that plaintiff's termination by the receiver did not violate the Due Process Clause.

United States v. James Daniel Good Real Property, No. 92-1180 (argued October 6)

The government argues in this case that Fourth Amendment probable cause, rather than notice and a hearing under the Fifth Amendment's due process clause, suffices to permit the seizure for civil forfeiture of real property used in the commission of a drug offense. In addition, the government argues that a forfeiture proceeding brought within the five-year statute of limitations of 19 U.S.C. 1621 is not otherwise time-barred despite not having been brought within the internal time limits set forth in 19 U.S.C. 1602-1604.

Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Phillips Corp., No. 92-1123 (argued October 12)

The government argues, as amicus curiae, that courts of appeals should, upon request, vacate district court judgments in civil cases when the parties settle those cases while appeal is pending.

Landgraf v. USI Film Products No. 92-757; and Rivers v. Roadway Express Inc., No. 92-938 (argued October 13)

The government argues, as amicus curiae, that the Civil Rights Act of 1991 applies retroactively to cases pending at the time the Act became law, because the provisions at issue in these cases were procedural and remedial rather than substantive.

Harris v. Forklift Systems Inc., No. 92-1168 (argued October 13)

The government argues, as amicus curiae, that a plaintiff in a Title VII case need not show psychological injury in order to prove a hostile environment amounting to sexual harassment.

Criminal Cases:

Posters 'N' Things v. United States, No. 92-903 (argued October 5)

The government argues in this case that Mail Order Drug Paraphernalia Control Act, 21 U.S.C. 857, contains a scienter requirement, but that the district court adequately explained the requirement to the jury, and that defendant in this case, a vendor of equipment "designed for use" in drug sales, was properly convicted.

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

Civil Cases:

Farmer v. Brennan, No. 92-7247 (granted October 4)

Whether the district court properly granted summary judgment to the defendant prison officials on the ground that petitioner, a prison inmate, did not show that the officials were deliberately indifferent to his safety in placing him in a high-security male prison despite his transsexuality.

Criminal Cases:

Nichols v. United States, No. 92-8556 (granted September 28)

Whether the district court erred in considering defendant's previous uncounseled misdemeanor conviction in calculating defendant's criminal history score.

Custis v. United States, No. 93-5209 (granted October 12)

Whether the Constitution requires that a defendant be allowed to challenge in federal sentencing proceedings the constitutional validity of prior convictions offered by the government for sentencing enhancement under the Armed Career Criminal Act.

* * * * *

CASE NOTES

CIVIL DIVISION

D.C. Circuit Holds That An Inmate's Claims -- That Government Officials Punished Him And Denied Him Access To The Press Because Of His Allegations About The Former Vice-President -- Were Based Upon Weak Circumstantial Evidence And Therefore Could Not Overcome The Government Officials' Qualified Immunity From Suit

Plaintiff, Brett Kimberlin, is a federal prison inmate serving a 51-year sentence. Prior to the 1988 presidential election, Kimberlin contacted several journalists. He claimed to have sold marijuana to former Vice-President Dan Quayle during the early 1970s. Kimberlin alleges that when the Former Director of the Bureau of Prisons, J. Michael Quinlan, heard that Kimberlin was about to hold a press conference to discuss his claims regarding Quayle, Quinlan ordered the warden to cancel the press conference and then later ordered the prison to place Kimberlin in detention. Kimberlin also alleges that he was again placed in detention before the election, when the prison found that he was attempting to set-up a phone press conference. Kimberlin filed a civil action against Quinlan, Loye Miller, former Director of Public Affairs at the Department of Justice, and the United States. Specifically, Kimberlin asserted Bivens claims against Quinlan and Miller, individually, claiming that they violated his First and Fifth Amendment rights. We filed a motion to dismiss and in the alternative for summary judgment as to the claims against the government officials, contending that the evidence relied upon by Kimberlin was insufficient to overcome the officials' qualified immunity from suit. The district court granted our motion as to Kimberlin's Fifth Amendment claim, but denied our motion as to the remaining claims.

We appealed the district court's interlocutory ruling regarding the individual defendants to the D.C. Circuit. The court of appeals (Henderson, Williams concurring, Edwards dissenting) has now reversed, ordering the district court to grant our motion for summary judgment. The court held that, because Kimberlin's Bivens claims turn upon the motive of the officials, he must proffer some direct evidence of improper motive to overcome the officials' qualified immunity. After thoroughly examining the evidence relied upon by Kimberlin, the court concluded, "Kimberlin relied only on inference and weak circumstantial evidence, notably the timing of events, to support his claim[s]." The court explained, "[s]uch unsubstantiated claims * * * are precisely the sort that both qualified immunity and our circuit's heightened standard are intended to cut short." Judge Williams concurred in the opinion, but suggested that the Circuit's "direct evidence" rule may require en banc review. Judge Edwards dissented, stating that the court's result here is "misguided and unfair," and that the court's "direct evidence rule" has "no foundation in reason or in the case law.

Brett C. Kimberlin v. Michael J. Quinlan, et al, No. 91-5315 (Oct. 8, 1993) [D.C. Cir.; D.D.C.]. DJ# 157-16-12106.

Attorneys: Barbara L. Herwig - (202) 514-5425
Robert M. Loeb - (202) 514-4332

* * * * *

Third Circuit Upholds FBI Withholding Of Sixty-Year-Old Investigatory Files Under The Freedom Of Information Act

This Freedom of Information Act (FOIA) suit arises out of the FBI's investigation of the Morro Castle disaster (ocean-liner fire) on September 8, 1934. On cross-appeals, the Third Circuit has now issued a comprehensive opinion largely in the FBI's favor on a broad range of issues that typically arise out of a FOIA request for FBI investigatory files, including exhaustion of remedies, classified files, privacy, confidential sources and grand jury information.

McDonnell v. United States, No. 91-5916 (September 21, 1993) [3d Cir.; D.N.J.]. DJ# 145-6-3016.

Attorneys: Leonard Schaitman - (202) 514-3441
John F. Daly - (202) 514-2496
John P. Schnitker - (202) 514-4116

* * * * *

Eighth Circuit Dismisses Six Of Eleven Department Of Agriculture Officials From A Bivens Suit On Immunity Grounds

After being dismissed from his job with the Department of Agriculture, Robert Krueger filed a Bivens action against eleven of the Department's officials, alleging that he had been fired for his whistle-blowing activities. The defendants moved for summary judgment, alleging that their decision to fire Krueger was protected by absolute and qualified immunity. The district court denied the motion as to all eleven officials. The Eighth Circuit has now reversed in part, dismissing six of the defendants on immunity grounds. The court concluded that "there is no evidence to suggest [that five of the officials] played any role in the discharge." The court also determined that the Department of Agriculture official who approved Krueger's discharge acted in an "exclusively adjudicatory" role, and was entitled to absolute immunity. However, the court concluded that the five officials who made the initial decision to fire Krueger acted in an administrative capacity and were not entitled to immunity.

Krueger v. Lyng, et al., No. 92-3850 (September 13, 1993) [8th Cir.; E.D. Mo.]. DJ# 35-42-203.

Attorneys: Barbara L. Herwig - (202) 514-5425
Jennifer Zacks - (202) 514-1265

* * * * *

Ninth Circuit Holds That A Civilian Doctor Working For A Private Pediatric Clinic In A Military Hospital Under Contract With The Army Is Not A Government Employee, Under The Federal Tort Claims Act

In November 1989, the plaintiff, Army Specialist Amy Carrillo, took her four-month-old son to the pediatrics clinic at Madigan Army Medical Center. The clinic was operated under contract with Pediatric Providers, P.S., under the authority of the military-civilian health services partnership program, 10 U.S.C. § 1096. The partnership program is a resource-sharing program designed to give CHAMPUS beneficiaries equivalent or better care at a lower cost to the government. Carrillo signed a consent form declaring that the clinic was a CHAMPUS clinic and that her child would be seen by a civilian doctor paid by CHAMPUS at no cost to her. The civilian doctor, Carl Ozimek, examined Carrillo's son and noted a "knot on the ribs" and "nasal congestion." Carrillo claimed to have twice asked Dr. Ozimek to take rib x-rays, but Dr. Ozimek declined to do so. He diagnosed an upper respiratory infection, prescribed Dimetapp, and sent the baby home with Carrillo.

Two days later, the baby died from a severe blow to the head caused by child abuse inflicted by the boy's father. An autopsy revealed that the boy had a healing rib fracture at the time of his death. Carrillo brought suit against the United States, charging that Dr. Ozimek's failure to diagnose the earlier child abuse was a proximate cause of the boy's death. The district court granted the government's motion for summary judgment on the ground that Dr. Ozimek was an independent contractor, not an employee of the government, under the Federal Tort Claims Act.

The Ninth Circuit (Beezer, Hall, Conti, D.J.) has now affirmed. The court adopted a strict reading of the Supreme Court's "control" test, requiring a plaintiff to show that the government controlled the detailed physical performance and the day-to-day operations of the contractor. It declined to rely on dicta in decisions of two other circuits suggesting that a lesser degree of control was appropriate for physicians on the theory that strict control of physicians, who are bound to exercise independent medical judgment, can never occur. The court also rejected Carrillo's estoppel theory, finding that there was no showing of affirmative misconduct or detrimental reliance.

Carrillo v. United States, No. 95-35029 (Sept. 27, 1993) [9th Cir.; W.D. Wash.].
DJ# 157-82-1595.

Attorneys: Mark B. Stern - (202) 514-5089
Edward Himmelfarb - (202) 514-3547

* * * * *

False Claims Act

District of New Jersey Issues Opinion Regarding 1) "Public Disclosure", "Original Source", And "Good Cause" To Intervene In Qui Tam Suit; 2) Whether Relator Can Sue Government Agency Or Its Employees In Their Official Capacity; And 3) Whether Complaint Must Be Dismissed If Relator Fails To Provide Government Any Evidence

The District Court of New Jersey held that the Government has "good cause" to intervene in qui tam suit where it argues lack of subject matter jurisdiction. Concluding that a False Claims Act suit against a Federal agency is, in effect, an action by the U.S. against the U.S., the court also granted the Government's motion to dismiss the complaint as to EEOC and EEOC employees named in their official capacity. The court further held that although an EEOC investigative report was confidential, the report had been publicly disclosed within the meaning of the False Claims Act because its contents had been disclosed to the relator, a stranger to the fraud. The court declared that a relator who would not have learned of the information but for the public disclosure does not have "independent" or "direct" knowledge of the information and therefore is not an original source. In light of the statutory requirement to serve a statement of material evidence, the court also dismissed the complaint as to defendants against whom relator had failed to provide any evidence to the Government.

United States ex rel. Atkin v. EEOC, Civ. No. 92-143
(D. N.J., Aug. 7, 1993).

Attorneys: Carol Bennett - (202) 514-0132.
Robert Hanna, Assistant United States Attorney,
District of New Jersey - (201) 645-2846.

* * * * *

TAX DIVISION

Supreme Court Grants Government Petition for Writ Of Certiorari In Case Involving Approximately $2.5 Million In Estate Taxes

On October 4, 1993, the Supreme Court granted the Government's petition for a writ of certiorari in Carlton v. United States. This case involves approximately $2.5 million in estate taxes and presents the question whether the retroactive repeal of the estate tax deduction for certain stock sales to an employee stock ownership plan (ESOP) was constitutional. Section 2057 of the Internal Revenue Code, enacted as part of the Tax Reform act of 1986, permitted an estate tax deduction for 50 percent of the proceeds resulting from the sale of employer securities to an ESOP. In 1987, Congress retroactively amended Section 2057 to eliminate an unintended loophole. Under the amended Section 2057, a deduction for sales of stock to ESOPs was allowed only for stock that had been owned by the decedent at the time of his death.

Here, the executor purchased stock of MCI Corporation after the death of the decedent and then sold the stock to MCI's ESOP. The estate claimed a deduction under Section 2057 of over $5 million. After the IRS disallowed this deduction based on the retroactive amendment to Section 2057, the estate filed a suit for refund in the District Court, contending that the retroactive amendment to Section 2057 violated due process. The District Court determined that the 1987 amendment to Section 2057 could be applied retroactively. In a split decision, the Ninth Circuit reversed, holding that the state had "reasonably and detrimentally relied on section 2057 as enacted," and that "[t]he very act that [the executor] engaged in a costly transaction for no other reason than the inducement provided by the new section 2057 makes this case significantly different from those rejecting a due process challenge to a retroactively applied revenue law."

* * * * *

Fifth Circuit Affirms, In Part, Adverse Decision of the District Court In Case Concerning Wrongful Disclosure Of Tax Return Information

On October 15, 1993, a divided panel of the Fifth Circuit again affirmed, in part, the adverse decision of the District Court in Elvis E. Johnson v. Robert Sawyer and United States, which awarded Johnson damages under the Federal Tort Claims Act (FTCA) for the wrongful disclosure of tax return information. The Government had filed a petition for rehearing and a suggestion for a rehearing en banc after the same divided panel issued an opinion in this case on December 29, 1992, which reached the same result.

The District Court awarded Johnson damages under the Federal Tort Claims Act (FTCA) for the wrongful disclosure of tax return information. The Fifth Circuit upheld the District Court's award of over $5 million in damages to Johnson for his economic losses, but remanded the case with respect to the remaining $5 million award for emotional distress and mental anguish for further explanation as to how the District Court determined that amount. Johnson had sought damages from various Internal Revenue Service employees, officials in the office of the United States Attorney, and the United States, for injuries he claimed resulted from disclosures contained in an IRS press release. The press release reported that Johnson had pled guilty to an information charging him with evasion of tax for two years (only one year was actually covered by the information) and set forth personal information about him which was not contained in the information. The District Court found that the United States had agreed in the plea bargain that it would issue no press release and that the press release contained information that was not in the public record. It went on to hold that the discretionary function exception to the FTCA did not shield the United States from liability.

On appeal, the Government contended that under the FTCA, the plaintiff must sue under a state law cause of action, and that a suit for the unauthorized disclosure of return information under Section 6103 of the Internal Revenue Code is a federal cause of action. The Fifth Circuit initially held that this case presented a state law cause of action based on negligence per se. In its second opinion, it held that the case presented a state law cause of action based on Texas' doctrine of tortious invasion of privacy. In both opinions, the court of appeals refused to adopt the position of the Ninth Circuit that once tax return information is disclosed in a judicial proceeding the IRS may release that information to the press. Judge Garwood filed a dissent to both opinions. The first opinion has not been withdrawn, but rather "the original panel opinion. . .pertains except to the extent expressly modified' by the second opinion.

The Tax Division is currently discussing their options for further review with the Appellate Staff of the Civil Division which joined in their petition for rehearing and suggestion for a rehearing en banc.

* * * * *

Ninth Circuit Issues Opinion In A Summons Enforcement Case Involving Church Audit Provisions Of Section 7611 Of The Internal Revenue Code

On October 12, 1993, the Ninth Circuit issued an opinion, which reversed the adverse decision of the District Court in United States, et al. v. C.E. Hobbs Foundation for Religious Training and Education, Inc., a summons enforcement case involving the church-audit provisions of Section 7611 of the Internal Revenue Code. The Internal Revenue Service commenced an audit of the C.E. Hobbs Foundation for Religious Training and Education, Inc. (the "Foundation") following news reports suggesting that the Foundation might not be eligible for tax-exempt status as a church or, in the alternative, that it might be liable for tax on income from business unrelated to its exempt function. The news reports contained allegations that the church's pastor and some of its members engaged in illicit sexual activity with minors, that beer and wine were sold on the church premises without a license, and that beer and wine were dispensed to minors. Pursuant to its audit, the IRS issued summonses to the Foundation and to the Foundation's bank, seeking all records of church assets, all organizational and religious records, and al tax-related records. The District Court refused to enforce either summons, concluding that the records sought by the summonses were not "necessary" to the IRS's investigation.

On appeal, the Ninth Circuit reversed, holding that the summoned records were "necessary" to the IRS's investigation within the meaning of Section 7611, and stating that "the principal, and proper, purpose of the IRS investigation is to determine whether the foundation is in fact a church, rather than a private social club organized to foster illicit sexual conduct. This legitimate purpose is so broad in scope that we will be unable to find that any category of documents requested by the IRS will not help significantly to further the investigation nor that any category of requested documents is not directly and logistically within the proper scope of the examination."

* * * * *

OFFICE OF LEGAL EDUCATION

COMMENDATIONS

Donna A. Bucella, Director of the Office of Legal Education (OLE), and the members of the OLE staff, thank the following Assistant United States Attorneys (AUSAs), Department of Justice officials and personnel, and federal agency personnel for their outstanding teaching assistance and support during courses conducted from September 14 - October 15, 1993. Persons listed below are AUSAs unless otherwise indicated:

Enhanced Paralegal Skills in Financial Litigation (Washington, D.C.)

Barbara Brouner, Western District of Washington; ***Kathleen Connors,*** District of New Jersey; ***Mary Dooley,*** Northern District of California; ***Patricia Gober,*** Northern District of Ohio; ***Brenda Hinkson,*** Eastern District of New York; ***Henry Knight,*** District of South Carolina; ***Virginia Passmore,*** Eastern District of Tennessee; ***Debra Prillaman,*** Eastern District of Virginia; ***Randi Russell,*** Eastern District of Texas. From the Executive Office for United States Attorneys: ***Richard W. Sponseller,*** Associate Director; ***Kathleen Haggerty,*** Assistant Director; ***Leslie Bournes,*** Management Analyst; ***Joel Doolin,*** Legal Intern; and ***Dan Villegas,*** Legal Intern, all from the Financial Litigation Staff; ***Gary Padgett,*** Program Manager, and ***Heather Jacobs,*** Management Analyst, Evaluation and Review Staff; ***Yvonne Makell,*** Equal Employment Opportunity Officer, and ***Linda Schwartz,*** Chief, Personnel Management Team. From the Justice Management Division: ***Winifred Hart,*** Chief, Collections Services; ***Ben Elliott,*** Acting Director, Employee Assistance Program; ***Cathy Colbert,*** Attorney-Advisor, and ***Bernie Guerrero,*** Attorney-Advisor, JURIS Office. ***Susan Rudy,*** Assistant Director, Federal Programs Branch, Civil Division. ***Yvonne Hinkson,*** Deputy Associate General Counsel, Federal Bureau of Prisons. ***Pamela Linquist,*** Bankruptcy Analyst, Office of the United States Trustee. ***Johanna Bonnelycke,*** Privacy Act Officer, Department of Health and Human Services.

Basic Bankruptcy (Evanston, Illinois)

Jane Bondurant, Western District of Kentucky; ***J. Philip Klingeberger,*** Northern District of Indiana; ***Larry Lee,*** Southern District of Georgia; ***Lillian Lockary,*** Middle District of Georgia; ***Virginia Powel,*** Eastern District of Pennsylvania; ***Rudy Renfer,*** Eastern District of North Carolina; ***David Schiller,*** Eastern District of Virginia; ***Kristin Tolvstad,*** Northern District of Iowa; and ***Marianne Tomecek,*** Southern District of Texas. From the Commercial Litigation Branch, Civil Division: ***J. Christopher Kohn,*** Director; ***Tracy Whitaker,*** Assistant Director; and ***John Stemplewicz,*** Senior Trial Attorney. ***Stephen Csontos,*** Senior Legislative Counsel, Tax Division. ***Judith Benderson,*** Assistant Director, Financial Litigation Staff, Executive Office for United States Attorneys.

In-House Criminal Asset Forfeiture Training (Memphis, Tennessee)

Terry Derden, Senior Litigation Counsel, Eastern District of Arkansas; and ***Bob Mydans,*** District of Colorado.

In House Criminal Asset Forfeiture Training (Columbia, South Carolina)

Doug Barnett, District of South Carolina; ***Gill P. Beck,*** Middle District of North Carolina; and ***Bob Mydans,*** District of Colorado.

Civil Rights Seminar (Annapolis, Maryland)

Janet Reno, Attorney General of the United States. ***Webster Hubbell,*** Associate Attorney General of the United States. ***Steven Zipperstein,*** Counsel to the Assistant Attorney General, Criminal Division. From the Civil Rights Division: ***James Turner,*** Acting Assistant Attorney General; ***Linda Davis,*** Chief, ***Barry Kowalski,*** Deputy Chief, ***Norajean Flannagan,*** Deputy Chief, ***Albert Moskowitz,*** Deputy Chief, ***Suzanne Drouet, Kevin Forder, Thomas Perez, Cathleen Mahoney, Francesca Freccero, Jessica Ginsburg, Cynthia Alksne, Alan Tieger, Michael Gennaco,*** Trial Attorneys, Criminal Section. ***James Eisenhower, III,*** Eastern District of Pennsylvania; ***David Allred,*** Middle District of Alabama; ***Steven Clymer,*** Central District of California; ***Candace Hill,*** Western District of Kentucky; ***James Cott,*** Southern District of New York; ***Floyd Clardy,*** Northern District of Texas; ***Ted Merritt,*** District of Massachusetts; ***John Gleason, III,*** District of Maine; ***John Hailman,*** Northern District of Mississippi; and ***June Jeffries,*** District of Columbia.

International Issues Seminar (Arlington, Virginia)

Joe Whitley, United States Attorney, Northern District of Georgia. ***Ken Melson,*** First Assistant United States Attorney, ***James Metcalfe,*** and ***Mark Hulkower,*** Eastern District of Virginia. ***Don DeGabrielle,*** Southern District of Texas; ***Eric Dubelier*** and ***Brian Murtagh,*** District of Columbia; ***Susan Tarbe,*** Chief, Special Investigations, ***James G. McAdams III,*** Managing Assistant, and ***Diana Fernandez,*** Southern District of Florida; ***Rick Kaufman,*** Western District of New York; ***Daniel G. Knauss,*** First Assistant United States Attorney, District of Arizona; ***Steve Mansfield,*** Central District of California; ***David McGee,*** Northern District of Florida; ***Christopher Nuechterlein,*** Deputy Chief, Criminal Division, Eastern District of California; ***Mike Olmsted,*** Northern District of New York; ***Charles W. Stuckey,*** District of Oregon; ***Victor Wild,*** District of Massachusetts; ***Albert Winters,*** Eastern District of Louisiana. From the Criminal Division: ***Mark Richard,*** Deputy Assistant Attorney General; and ***Mary Lee Warren,*** Acting Deputy Assistant Attorney General. From the Office of International Affairs, Criminal Division: ***George Proctor,*** Director; ***Tom Snow,*** Deputy Director; ***Molly Warlow,*** Deputy Director; ***John Harris,*** Deputy Director; ***Rex Young,*** Deputy Director; ***Mary Jo Grotenrath,*** Associate Director; ***Linda Candler,*** Associate Director, ***Richard Owens,*** Associate Director; ***Lisa Cacheris Burnett,*** Associate Director; ***Mary Troland,*** Associate Director; ***Laurie Barsella,*** Trial Attorney; ***David Ford,*** Trial Attorney; ***Manuel Antonio Rodriguez,*** Trial Attorney; ***Tressa Borland,*** Trial Attorney; ***Matt Bristol,*** Senior Counsel; and ***Paul Vaky,*** Senior Counsel; ***Gerald Shur,*** Senior Associate Director, Office of Enforcement Operations; ***Linda Samuel,*** Special Counsel, and ***Juan Marrero,*** Special Counsel, Asset Forfeiture Office. From the Internal Security Section, Criminal Division: ***John Martin,*** Chief; ***Joe Clarkson,*** Chief, Registration Unit; ***John Dion,*** Chief, Espionage Unit; ***Kevin Connolly,*** Trial Attorney; ***Ronald Roos,*** Senior Litigation Counsel; ***Joe Tafe,*** Chief, Export Enforcement Control Unit; ***Ed Walsh,*** Chief, Graymail Unit. ***Robert J. Boylan,*** Deputy Director, Office of International Programs. ***Jerry Rubino,*** Director, Security and Emergency Planning, Justice Management Division. ***Charles W. Saphos,*** General Counsel, INTERPOL. ***Mary Lawton,*** Director, Office of Intelligence Policy and Review.

Federal Practice Seminar (San Antonio, Texas)

J. Russell Dedrick, United States Attorney, Eastern District of North Carolina. ***Richard Glaser,*** Criminal Chief, Middle District of North Carolina; ***Jay Angelo,*** District of Nevada; ***Lynne Lamprecht,*** Deputy Director of Professional Development, and ***Jeanne Damirgian,*** Southern District of Florida; ***John Murphy,*** Criminal Chief, ***Ronald Sievert,*** Criminal Chief, Austin Branch, ***Mike Hardy, Kelly Loving, Philip Police,*** and ***Chris Gober,*** Western District of Texas; ***Roger Haines*** and ***John Houston,*** Southern District of California; ***Roslyn Moore-Silver,*** Criminal Chief, District of Arizona; ***L. Stuart Platt,*** Criminal Chief, Eastern District of Texas; ***Michael Smythers,*** Executive Assistant United States Attorney, Eastern District of Virginia; ***Stewart C. Walz,*** Criminal Chief, District of Utah. ***Wayne A. Rich, Jr.,*** Principal Deputy Director, Executive Office for United States Attorneys.

Computer Crimes Seminar (Milwaukee, Wisconsin)

Geoffrey Berman, Southern District of New York; ***Colleen D. Coughlin, Daniel W. Gillogly,*** and ***David Glockner,*** Northern District of Illinois; ***David Schindler,*** Central District of California; ***Scott Charney,*** Chief, and ***Josh Silverman,*** Trial Attorney, Computer Crime Unit, Criminal Division; ***Hal Henderschott,*** Supervisory Special Agent, Criminal Division, Federal Bureau of Investigation; ***Sarah McKee,*** Trial Attorney, Office of International Affairs.

Examination Techniques (Washington, D.C.)

Captain Marshall Caggiano, Assistant Staff Judge Advocate, Directorate of Environmental Law, Air Force Materiel Command Law Center; ***James Richardson,*** Attorney-Advisor, United States Court of Military Appeals; ***David Deutsch,*** Attorney, Special Litigation Section, and ***Steven Talson,*** Trial Attorney, Torts Branch, Civil Division; ***Richard Foster,*** Chief Attorney, Office of Civil Rights, Department of Education; ***Gary Fox,*** Chief Counsel for Special Litigation, Office of Litigation, Small Business Administration. ***Debra Prillaman*** and ***Richard Parker,*** Eastern District of Virginia; ***Michael Hardy,*** Western District of Texas; ***Bertram Isaacs,*** Southern District of Texas; ***Eleanor Thompson,*** Western District of Oklahoma.

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

James O'Sullivan, Associate General Counsel, and ***Jane Ley,*** Deputy General Counsel, Office of Government Ethics; ***Roger McNamara,*** Senior Ethics Officer, Office of General Counsel, Department of the Air Force; ***Mary Bell,*** Associate Counsel, Office of Naval Research, Department of the Navy; ***George Pruden,*** Associate General Counsel for Employment Law and Information, and ***Yvonne Hinkson,*** Deputy Associate General Counsel and Acting Freedom of Information Act Administrator, Office of General Counsel, Federal Bureau of Prisons.

COURSE OFFERINGS

The staff of OLE is pleased to announce OLE's projected course offerings for the months of November 1993 through February 1994, for both the **Attorney General's Advocacy Institute (AGAI)** and the **Legal Education Institute (LEI)**. AGAI provides legal education programs to Assistant United States Attorneys (AUSAs) and attorneys assigned to Department of Justice divisions. LEI provides legal education programs to all Executive Branch attorneys, paralegals, and support personnel, and to paralegal and support personnel in United States Attorneys' offices.

AGAI Courses

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

November 1993

Date	*Course*	*Participants*
4-5	Asset Forfeiture, ARPA Attorneys	AUSAs, DOJ Attorneys,
15-19	Appellate Advocacy	AUSAs, DOJ Attorneys
15-18	Criminal Tax Institute	AUSAs, DOJ Attorneys
17-19	Asset Forfeiture	Ninth Circuit (AUSAs, Component Support Staff, LECC Coordinators)

December 1993

Date	***Course***	***Participants***
1-3	First Assistants, USAOs	FAUSAs (Large Offices)
6-11	Asset Forfeiture Advocacy	AUSAs
7-10	Evidence for Experienced Litigators	AUSAs
8-10	Attorney Supervisors	Supervisory AUSAs
13-17	Criminal Federal Practice	AUSAs
14-16	Eminent Domain	AUSAs, DOJ Attorneys
14-16	Customs Fraud	AUSAs, DOJ Attorneys, Attorneys

January 1994

10-14	Advanced Civil Trial Advocacy	AUSAs, DOJ Attorneys
11-13	Securities Fraud	AUSAs
11-13	Asset Forfeiture	Eleventh Circuit (AUSAs, Component Support Staff, LECC Coordinators)
24-28	Complex Prosecutions/ Advanced Grand Jury	AUSAs
25-27	Civil Federal Practice	AUSAs

February 1994

7-10	Advanced Asset Forfeiture	AUSAs
7-11	Criminal Federal Practice	AUSAs
7-11	Appellate Advocacy	AUSAs
23-25	Advanced White Collar/ Financial Institution Fraud	AUSAs
28-March 11	Civil Trial Advocacy	AUSAs

LEI Courses

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

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

November 1993

Date	*Course*	*Participants*
1-5*	Support Staff	Support Staff, USAOs
2-3	Agency Civil Practice	Attorneys
8-10	Discovery	Attorneys
15-19*	Criminal Paralegal	Paralegals
17	Introduction to FOIA	Attorneys, Paralegals
22	Ethics for Litigators	Attorneys
22	Legal Writing	Attorneys
29-30	Federal Acquisition Regulations	Attorneys
30-Dec. 2	Basic Bankruptcy	Attorneys
30-Dec. 3*	Librarians Conference	Librarians
30-Dec. 3	Examination Techniques	Attorneys

December 1993

13-15	Negotiation Skills	Attorneys
14	Advanced FOIA	Attorneys
14-16*	Eminent Domain for Support Staff	USAO Paralegals and Support Staff

December 1993 (Cont'd.)

Date	Course	Participants
16-17	Alternative Dispute Resolution	Agency Counsel
20	Statutes and Legislative Histories	Paralegals, Support Staff
	January 1994	
6	Appellate Skills	Attorneys
10-14*	Support Staff	USAO Support Staff
19-20	FOIA for Attorneys and Access Professionals	Attorneys, Paralegals
28	Legal Writing	Attorneys
31-Feb. 4*	Civil Paralegal	USAO Paralegals
31-Feb. 2	Trial Preparation	Attorneys
	February 1994	
3-4	NEPA	Attorneys
7-8	Federal Administrative Process	Attorneys
14	Ethics for Litigators	Attorneys
14-18	Basic Paralegal	Agency Paralegals
15-17	Banking	Attorneys
18	FOIA Forum	Attorneys
23-24*	Bankruptcy	Support Staff
25	Ethics and Professional Conduct	Attorneys

* * * * *

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

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

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

Director	Donna Bucella
Deputy Director	David Downs
Assistant Director (AGAI-Criminal)	Charysse Alexander
Assistant Director (AGAI-Civil & Appellate)	Ron Silver
Assistant Director (AGAI-Asset Forfeiture)	Suzanne Warner
Assistant Director (AGAI-Debt Collection)	Nancy Rider
Assistant Director (LEI)	Donna Preston
Assistant Director (LEI)	Chris Roe
Assistant Director (LEI-Paralegal & Support)	Donna Kennedy

* * * * *

ADMINISTRATIVE ISSUES

American Express Travel Charge Cards

The General Services Administration has awarded the travel charge card contract to American Express, to take effect November 30, 1993. Diners Club cards are valid up to and including November 29, 1993. American Express cards will be sent to Diners Club cardholders together with a cardholder agreement form which should be signed and returned to American Express in order to be activated by November 30th. All cardholders will also receive, in a separate envelope, an Automatic Teller Machine (ATM) personal identification number (PIN) to participate in the ATM Cash Advance program.

Employees who are not current Diners Club cardholders, and who wish to enroll in the charge card program, should contact their administrative office. Further information concerning the American Express implementation will also be available through your administrative office.

* * * * *

Voluntary Leave Transfer Program And Maternity Situations

Guidance on maternity situations under the Voluntary Leave Transfer Program (VLTP) has been revised. Formerly, rules published by the Office of Personnel Management (OPM) stated that a "normal" maternity situation (i.e., a maternity situation without unusual medical complications) should not be considered a "medical emergency" under the Federal leave sharing program. In response to several comments from agencies, OPM has determined that continuation of this policy would be inappropriate in light of the Pregnancy Discrimination Act.

VLTP applications are now being accepted for maternity situations that involve a normal pregnancy, delivery (which includes, caesarean section) and recovery period. Physician statements will still be required for the maternity time necessary for an employee to remain away from duty. This ensures that when the Executive Office for United States Attorneys' VLTP Committee solicits for leave donations, the number of hours listed as being needed cover all the maternity time that is medically necessary for the approved VLTP recipient.

For further information, please call Judy B. Fields, Programs, Policy, and Evaluation Branch, Executive Office for United States Attorneys, at (202) 501-6899.

* * * * *

Career Opportunities

Antitrust Division

The Antitrust Division, Department of Justice, is seeking attorneys for several positions in Washington, D.C., to review mergers and acquisitions, conduct investigations, and handle civil and criminal litigation. Some travel is required.

Applicants must possess a J.D. degree, be an active member of the bar in good standing, have three or more years of legal experience, and have superior academic and professional qualifications. Experience in antitrust litigation, civil litigation, or white collar crime is strongly preferred. An educational or professional background in economics is desirable. Applicants should submit a resume and/or SF-171 (Application for Federal Employment) and a description of their litigation experience to:

Personnel Unit, Antitrust Division
Department of Justice, Room 3239
10th and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Grade and salary range is GS-12 to GS-15 ($40,298 to $86,589), depending on current salary and experience.

The Department of Justice is an Equal Opportunity Employer. It is the policy of the Department to achieve a drug-free workplace, and persons selected may be required to pass a urinalysis test to screen for illegal drug use prior to final appointment.

* * * * *

U.S. Trustees Office
Oakland, California

The Office of Attorney Personnel Management, Department of Justice, is seeking an experienced attorney for the U.S. Trustee's office in Oakland, California. Responsibilities include assisting with the administration of cases filed under Chapters 7, 11, 12, or 13 of the Bankruptcy Code; drafting motions, pleadings, and briefs; and litigating cases in the Bankruptcy Court and the U.S. District Court. Applicants must possess a J.D. degree, have at least two years of legal experience and be an active member of the bar in good standing (any jurisdiction). Outstanding academic credentials are essential, and litigation experience and familiarity with bankruptcy law and the principles of accounting are important. Applicants must submit a resume and law school transcript to: Office of U.S. Trustee, Department of Justice, 250 Montgomery St., Suite 910, San Francisco, California 94104-3401, Attn: Mark St. Angelo.

Current salary and years of experience will determine the appropriate salary level. The possible range is GS-11 ($36,313 - $47,209) to GS-13 ($51,754 - $67,276). This position is open until filled. No telephone calls, please.

* * * * *

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

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

* * * * *

UNITED STATES ATTORNEYS

DISTRICT	U.S. ATTORNEY
Alabama, N	Claude Harris, Jr.
Alabama, M	James Eldon Wilson
Alabama, S	Edward Vulevich, Jr.
Alaska	Joseph W. Bottini
Arizona	Janet Ann Napolitano
Arkansas, E	Paula Jean Casey
Arkansas, W	Paul Kinloch Holmes, III
California, N	Michael J. Yamaguchi
California, E	Robert M. Twiss
California, C	Terree A. Bowers
California, S	James W. Brannigan, Jr.
Colorado	Henry L. Solano
Connecticut	Christopher Droney
Delaware	Richard G. Andrews
District of Columbia	Eric H. Holder, Jr.
Florida, N	Gregory R. Miller
Florida, M	Douglas N. Frazier
Florida, S	Kendall B. Coffey
Georgia, N	Joe D. Whitley
Georgia, M	Edgar Wm. Ennis, Jr.
Georgia, S	Jay D. Gardner
Guam	Frederick A. Black
Hawaii	Elliot Enoki
Idaho	Betty H. Richardson
Illinois, N	Michael J. Shepard
Illinois, S	Clifford J. Proud
Illinois, C	Frances C. Hulin
Indiana, N	Jon E. DeGuilo
Indiana, S	Judith A. Stewart
Iowa, N	Robert L. Teig
Iowa, S	Christopher D. Hagen
Kansas	Randall K. Rathbun
Kentucky, E	Karen K. Caldwell
Kentucky, W	Walter Michael Troop
Louisiana, E	Robert J. Boitmann
Louisiana, M	P. Raymond Lamonica
Louisiana, W	William J. Flanagan
Maine	Jay P. McCloskey
Maryland	Lynne Ann Battaglia
Massachusetts	A. John Pappalardo
Michigan, E	Alan M. Gershel
Michigan, W	John A. Smietanka
Minnesota	Francis X. Hermann
Mississippi, N	Alfred E. Moreton, III
Mississippi, S	George L. Phillips
Missouri, E	Edward L. Dowd, Jr.
Missouri, W	Marietta Parker

DISTRICT	U.S. ATTORNEY
Montana	Lorraine I. Gallinger
Nebraska	Thomas J. Monaghan
Nevada	Kathryn Landreth
New Hampshire	Peter E. Papps
New Jersey	Michael Chertoff
New Mexico	Larry Gomez
New York, N	Gary L. Sharpe
New York, S	Mary Jo White
New York, E	Zachary W. Carter
New York, W	Patrick H. NeMoyer
North Carolina, E	James R. Dedrick
North Carolina, M	Benjamin H. White, Jr.
North Carolina, W	Jerry W. Miller
North Dakota	John Thomas Schneider
Ohio, N	Emily M. Sweeney
Ohio, S	Edmund A. Sargus, Jr.
Oklahoma, N	Stephen Charles Lewis
Oklahoma, E	John W. Raley, Jr.
Oklahoma, W	Vicki Lynn Miles-LaGrange
Oregon	Jack C. Wong
Pennsylvania, E	Michael R. Stiles
Pennsylvania, M	David M. Barasch
Pennsylvania, W	Frederick W. Thieman
Puerto Rico	Guillermo Gill
Rhode Island	Edwin J. Gale
South Carolina	J. Preston Strom, Jr.
South Dakota	Karen E. Schreier
Tennessee, E	Carl K. Kirkpatrick
Tennessee, M	Ernest W. Williams
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	Hugh Prescott Mabe, III
Virginia, E	Helen F. Fahey
Virginia, W	Robert P. Crouch, Jr.
Washington, E	James P. Connelly
Washington, W	Susan L. Barnes
West Virginia, N	William D. Wilmoth
West Virginia, S	Charles T. Miller
Wisconsin, E	Thomas Paul Schneider
Wisconsin, W	Peggy Ann Lautenschlager
Wyoming	Richard A. Stacy
North Mariana Islands	Frederick Black

* * * * *

EXHIBIT
A

Department of Justice

FOR IMMEDIATE RELEASE
MONDAY, OCTOBER 11, 1993

AG
(202) 616-2765
TDD (202) 514-1888

JOINT COMMUNIQUÉ

The Attorney General of the Republic, Dr. Jorge Carpizo, extended an invitation, which I accepted, to pay a working visit to Mexico City. I was received by President Carlos Salinas de Gortari, to whom I conveyed a greeting and message from President William Clinton.

Attorney General Carpizo and I discussed the repercussions the adoption of the North America Free Trade Agreement will have on the pursuit of justice and law enforcement in general, concurring that without a doubt its approval will translate into closer and more intense cooperation.

We believe that the strengthening of mutual respect and shared responsibility which will come about with the Treaty, will increase the ability of the United States and Mexico to fight drug trafficking and other crimes, such as organized crime, money laundering, arms trafficking, intellectual property piracy and environmental crimes.

(MORE)

In order to achieve this, after discussing the characteristics and trends of the drug phenomena, we reiterated our decision to maintain, with due respect for the sovereignty of the two countries, the necessary spirit of cooperation, bilateral as well as regional and worldwide, to join forces in specific areas in the fight against the abuse, production and illegal traffic of narcotics.

Within the framework of the new policies being formulated by the government of the United States regarding this matter and in accordance with the new structures being established by the Mexican State for this purpose, we discussed future measures to initiate actions which will give priority to the dismantling of criminal organizations similar to the methods used in Sinaloa and Chiapas last week, where approximately 9 tons of cocaine were seized. We will also work together to forfeit the assets and financial resources of the traffickers, as has occurred during the past several months with the forfeiture of more than 120 properties from the Arellano-Felix organization.

I conveyed to Attorney General Carpizo my special recognition of the progress made in this field as represented by the recent creation of the National Anti-Drug Institute, which I visited.

We exchanged ideas about how, bearing in mind the precepts of International Law and the Domestic Law of each country, we can promote and prompt among our colleagues of the western hemisphere

the possibility of establishing systems of criminal justice which will clearly and efficiently contribute to combatting impunity and corruption. We reiterate pledge to protect the human rights of all the citizens of our countries. Concerning the negotiations related to the Extradition Treaty currently being held between Mexico and the United States in order to explicitly establish the prohibition of transborder abductions, we noted with satisfaction the constructive atmosphere and the significant progress made with regard to this matter.

Attorney General Carpizo informed me of the decision of the Mexican government to create a unit which will guarantee and speed up the action taken by the courts in proceedings dealing with crimes committed abroad by Mexican nationals located in Mexico. I assured Dr. Carpizo that the Department of Justice is in the process of identifying, on a federal as well as state and local level, the cases which may be referred to this new unit; in addition to appointing a Judicial Attache to the Embassy of the United States in Mexico in order to promote legal cooperation.

President Salinas asked us to explore the legality and feasibility of a new pilot program for the return to Mexico, in appropriate cases, of Mexican citizens currently incarcerated in prisons in the United States who are able to participate in programs for rehabilitation and reintegration into their Mexican community. We look forward to working together on this project in the next few weeks.

(MORE)

Finally, even though we did not address specific immigration topics, since, in Mexico this falls within the purview of other government agencies, we expressed our willingness to intensify communication between federal, state and local authorities in their pursuit of justice so as to prevent and solve border problems. To this end, we agreed to instruct our officials along the border to stimulate cooperation and to act accordingly.

MEXICO, D.F.

OCTOBER 11, 1993

####

EXHIBIT
B

TITLE I -- PUBLIC SAFETY AND POLICING

SECTION-BY-SECTION ANALYSIS

SECTION 101 -- COMMUNITY POLICING; "COPS ON THE BEAT".

This section adds a new part to the Omnibus Crime Control and Safe Streets Act of 1968. The part would establish a program of grants and technical assistance (including training) to increase the overall number of police officers, and particularly to increase the number of police officers in community policing. The sections in the new part are as follows:

Section 1701 -- Authority to make grants and to provide technical assistance. Subsection (a) of this section authorizes the Attorney General to make grants to units of state and local government, and to other public and private entities. The purposes of the grants would be to increase police presence, to enhance police-community cooperation in addressing crime and disorder, and otherwise to enhance public safety.

Subsection (b) of section 1701 identifies two specific funding objectives that directly increase police resources -- hiring additional career law enforcement officers for deployment in community-oriented policing, and rehiring officers who have been laid off for budgetary reasons for deployment in community-oriented policing. At least 85% of the grant money available under the title would be utilized for these purposes. In determining the amounts allowed for hiring or rehiring of officers, the Attorney General could take account of local needs and costs and other factors.

Subsection (c) of section 1701 sets out other funding objectives. These include increasing the number of officers involved in community policing or comparable crime control and prevention functions through redeployment, support of training for skills pertinent to police-community interaction, increased police participation in multidisciplinary early intervention teams, new technologies facilitating an increased emphasis on crime prevention, innovative programs permitting community members to assist police in crime prevention, reducing the time police must be away from the community while awaiting court appearances, innovative crime control and prevention programs involving police and youth, and new administrative and managerial systems to facilitate the adoption of community policing as an organization-wide philosophy.

Subsection (d) provides that preferential consideration may be given to applications for grants for police hiring involving a non-Federal contribution exceeding 25%.

Subsection (e) of section 1701 authorizes the Attorney General to provide technical assistance to state and local governments, and

other public and private entities, in furtherance of the purposes of title I. In addition to the general grant of authority to provide technical assistance, two specific types of appropriate technical assistance are identified. First, paragraph (2) states that the technical assistance may include the development of a flexible model defining community or problem-oriented policing and related strategies and methodologies for implementation. It is contemplated that the Attorney General would consult with appropriate experts in public safety and the criminal justice system in developing such a model. Second, paragraph (3) states that the technical assistance may include establishing or making arrangements for the operation of training centers. The functions of the centers would include training police executives, managers, trainers, and supervisors concerning community or problem-oriented policing and improvements in police-community interaction that further the purposes of title I.

Subsection (f) of section 1701 states that the Attorney General may utilize any component or components of the Department of Justice in carrying out title I.

Subsection (g) of section 1701 entitles each qualifying state, together with grantees within the state, to a minimum of at least 0.25% of the grant funding available under title I in each fiscal year.

Subsection (h) of section 1701 specifies the matching funds requirement for the grant program. A non-federal contribution of at least 25% would be required, subject to possible waiver by the Attorney General.

Even in the absence of a waiver, the general 25% match requirement would not necessarily mean that the grantee would have to contribute this amount in any particular year. For example, in relation to a multi-year grant, the federal contribution could exceed 75% in the first year, but be progressively lower in subsequent years of the grant, producing a net federal contribution over the life of the grant which is below 75%.

In relation to multi-year grants for hiring and rehiring career law enforcement officers, subsection (h) explicitly requires a sliding-scale approach. For example, the duration of a grant of this type might be set at three years, with a federal contribution to hiring costs of 75% in the first year, 50% in the second year, and 25% in the third and final year. Applicants for hiring and rehiring grants would be required to propose a plan for the eventual assumption by the grantee of the full cost of increased hires following a limited period of federal assistance. Specifically, proposed § 1702(c)(8)(A) requires applicants for such grants to provide "plans for the assumption by the grantee of a progressively larger share of the cost in the course of time, looking towards the continuation of the increased hiring level using State or local sources of funding following the conclusion of Federal support."

Subsection (i) of section 1701 cross-references a later provision governing the allocation of available funding under the title for different purposes and classes of grantees.

Subsection (j) of section 1701 terminates the authority to make grants for hiring or rehiring additional career law enforcement officers after six years.

Section 1702 -- Applications for grants. This section provides for the submission of applications for grants to the Attorney General. Applications would have to include various specified information, including a detailed implementation plan reflecting consultation with community groups and appropriate public and private agencies, demonstration of need for federal assistance, information concerning coordination with other governmental and community efforts and community support and involvement, and plans for obtaining necessary support and continuing the proposed program or activity following the conclusion of federal support.

Section 1703 -- Alternative application routes for classes of potential grantees. This section establishes alternative application routes for certain applicants.

Subsections (a) and (b) provide that applicants generally are to submit their applications in the first instance to the state office that is responsible for applying for and administering formula grant funding under the Byrne Grant program. The state office would review the applications, prioritize them on the basis of their likelihood of achieving the purposes of title I, make any recommendations for giving special priority to particular applications, and forward the applications to the Attorney General. Section 102 of the bill allocates 60% of the grant funding for grants pursuant to applications submitted in this manner (together with grants pursuant to applications under subsection (d), discussed below).

Subsection (c) allows municipalities whose population exceeds 150,000 to submit applications directly to the Attorney General. The purpose of this option is to enable larger municipalities to deal directly with the federal government in making applications. This avoids the potential delay involved in routing applications through a central state office, and in receiving funds that are likely to be passed through the central state office on the way to municipalities or other grantees under a centralized state application process. Section 102 of the bill allocates 40% of the grant funding for grants pursuant to applications under this subsection.

Subsection (d) allows applicants in a State to submit applications directly to the Attorney General if the State chooses not to carry out the centralized application process described in subsection (b).

Section 1704 -- Renewal of grants. This section limits the maximum duration of grants (including renewals) to three years, except that grants for hiring and rehiring additional career law enforcement officers could be made for up to six years (including renewals).

Section 1705 -- Limitations on use of funds. This section states that grants to state and local governments are to be used to supplement, and not to supplant, state and local funds. It also states that no more than 5% of available funds may be used for administrative costs. State and local governments could apply assets received through equitable sharing under the asset forfeiture program to cover the non-federal portion of programs funded under the title.

A further limitation under section 1705 is that the amount provided for hiring or rehiring a particular career law enforcement officer could not exceed $75,000, unless the Attorney General granted a waiver. This sets a presumptive limit on funding of hiring costs per officer, while providing flexibility to adjust the amount to achieve equitable effects among areas with different costs. In an area with low hiring costs the amount provided might be substantially below the $75,000 ceiling, while a waiver might be granted to provide in excess of $75,000 in an area with unusually high hiring costs.

Section 1706 -- Performance evaluations. This section states that each funded program must include an evaluation component (including outcome measures), and that the performance of each grant recipient is to be reviewed by the Attorney General.

Section 1707 -- Revocation or suspension of funding. This section states that the Attorney General may revoke or suspend funding of a grant if the recipient is not in compliance with the terms and requirements of the grant application.

Section 1708 -- Access to documents. This section gives the Attorney General and the General Accounting Office access to pertinent books, documents, papers, and records for purposes of audits and examinations.

Section 1709 -- Regulations. This section authorizes the Attorney General to promulgate regulations and guidelines to carry out title I.

Section 1710 -- Definition and technical amendment. This section provides a definition of "career law enforcement officer" and makes a technical amendment to the Omnibus Crime Control and Safe Streets Act which adds a table of sections for the new part.

SECTION 102 -- AUTHORIZATION OF APPROPRIATIONS

This section of the bill contains authorization language and provisions concerning the allocation of funding under the program

EXHIBIT C

U.S. Department of Justice

Office of the Deputy Attorney General

Executive Office for Asset Forfeiture

Washington, D.C. 20530

SEP 24 1993

MEMORANDUM FOR FORFEITURE COMPONENTS

FROM: Cary H. Copeland CHC
Director and Chief Counsel

SUBJECT: TRANSITION OF TREASURY AGENCIES FROM THE DEPARTMENT OF JUSTICE ASSETS FORFEITURE FUND TO THE TREASURY FORFEITURE FUND

Background

On October 1, 1993, the Internal Revenue Service (IRS), United States Secret Service (USSS), and Bureau of Alcohol, Tobacco and Firearms (ATF), will join the U.S. Customs Service (Customs) and Coast Guard as full members of the Department of the Treasury Forfeiture Fund (Treasury Fund). This letter provides information on the establishment of the Treasury Fund and describes how this transition will affect current operations in forfeiture cases. We anticipate that further memoranda will be issued to supplement these interim procedures as new issues arise in connection with this transition.

Establishment of Fund

Prior to enactment of the Treasury Fund, the proceeds of judicial forfeitures in IRS, USSS, and ATF cases were deposited into the Department of Justice Assets Forfeiture Fund ("Justice Fund") and the proceeds of administrative forfeitures in their cases were deposited into the General Fund of the Treasury. The IRS, USSS and ATF received allocations from the Justice Fund on the same basis as Justice agencies. Proceeds from Customs and Coast Guard cases were deposited into the Customs Forfeiture Fund.

The Treasury Forfeiture Fund Act of 1992 (See § 638 of Public Law 102-393, October 6, 1992) established the Treasury Forfeiture Fund at 31 U.S.C. § 9703. For 1993, the Treasury Fund simply replaced the Customs Forfeiture Fund. However, beginning on October 1, 1993, all Treasury agencies will join Customs and Coast Guard in the Treasury Fund. The proceeds of all forfeitures occurring on or after October 1, 1993, which are forfeited pursuant to a law enforced or administered by a Department of the Treasury law enforcement organization are to be deposited into the Treasury

Fund.[1] In addition, the Act provides for sharing between the Justice and Treasury Funds to reflect the relative participation of agencies in joint cases. Further, Treasury agencies will no longer receive allocations from the Justice Fund. The Act also alters other areas relating to the asset forfeiture program conducted by Treasury agencies.

Property Under Seizure as of October 1, 1993

In general, the United States Marshals Service (USMS) will retain custody of assets, seized in Treasury judicial forfeiture cases, that are on hand as of October 1, 1993, until the assets are forfeited. The date of forfeiture is the critical factor in determining whether, upon forfeiture, these assets will be deposited into the Treasury Fund. If the asset is forfeited prior to October 1, 1993, the USMS will be responsible for disposition and the asset or the proceeds from sale of the asset will be deposited into the Justice Fund.

If the asset is forfeited on or after October 1, 1993, the USMS will transfer custody of the asset to Treasury upon forfeiture. The USMS will also make available any information and documents relating to the status of the property (e.g., title reports, deeds, liens) and any final decisions that have been made as of October 1, 1993, with regard to equitable sharing requests. Treasury will be responsible for asset management during the pendency of any appeal and for asset disposition. Any deposit will be directed to the Treasury Fund. In judicial cases in which the proceeds of forfeiture will be deposited in the Treasury Fund, the United States Attorney's Office (USAO) shall notify the Treasury seizing agency field office responsible for the case of the conclusion of the forfeiture action in District Court and will relate any information regarding appeals.

With respect to seized cash forfeited on or after October 1, 1993, upon forfeiture, the USMS will make a transfer to Treasury, by check or other agreed means, representing the principal amount seized plus any interest earned by Justice on the principal from October 1, 1993, until the date of forfeiture. In addition, the USMS will provide to Treasury the seizure number, the amount of the interest earned, the seizing agency that was responsible for the

---

[1] A forfeiture is deemed to be made pursuant to a law enforced or administered by a Department of the Treasury law enforcement organization if it is made pursuant to a judicial forfeiture proceeding when the underlying seizure was made by an officer of a Department of the Treasury law enforcement organization or the property was maintained by a Department of the Treasury law enforcement organization; or a civil administrative forfeiture proceeding conducted by a Department of the Treasury law enforcement organization.

seizure, and the forfeiture date. The USMS shall mail any check to:

Asset Forfeiture Financial Management
999 E Street, NW, Suite 215
Washington, D.C. 20220
Attention: Forfeiture Coordinator

With respect to non-cash property forfeited on or after October 1, 1993, upon forfeiture, the USMS will transfer custody to the Treasury seizing agency. The Treasury seizing agency will be responsible for subsequent transfer of the asset to any property custodian it elects. The USMS shall bill the Treasury Fund for all valid asset management expenses incurred by the Justice Fund with respect to the transferred asset during the period it was managed by the USMS. The Treasury Fund shall reimburse the Justice Fund for these expenses, even if these expenses exceed the value of the asset.

Property Seized On and After October 1, 1993

As of October 1, 1993, any cash that is seized by a Treasury agency will be deposited into a Treasury Suspense Account maintained for the Treasury Fund. To the extent that seized cash must be held as evidence for criminal proceedings, Treasury agencies will maintain such cash in accordance with established Justice Department policy.

For the present, the USMS will continue to execute and serve arrest in rem warrants after October 1, 1993, for seizures in ATF, IRS, and USSS cases. The Treasury seizing agency will be named the substitute custodian of property in lieu of the USMS, in cases where Treasury is the lead or sole seizing agency. The Treasury seizing agency will be responsible for subsequent transfer of the asset to any property custodian it elects. It is anticipated that the property custodian used by Customs will perform property management functions for the other Treasury agencies, including pre-seizure functions, and support for the sale of property (e.g., title searches). Treasury agencies will be responsible for coordinating with their contractor and ensuring that it is represented in pre-seizure planning meetings.

Assistant United States Attorneys should be aware that the Treasury contractor is not a federal agency, rather it is an independent contractor. Therefore, sensitive and confidential information (e.g., grand jury information) must be limited accordingly. This may be achieved by excusing the contractor from those parts of pre-seizure planning meetings at which such matters are discussed.

The USAO will be responsible for publishing the notice of forfeiture in judicial cases.

Equitable Sharing

The Treasury and Justice Funds contain similar provisions for

achieving equitable sharing between Justice and Treasury investigative bureaus involved in joint cases. For assets forfeited on or after October 1, 1993, Justice and Treasury agencies will submit sharing requests in joint cases to the seizing agency. Upon approval, an appropriate amount will be transferred between Funds. With respect to the participation of the USAOs, at a minimum, Treasury will reimburse the Justice Fund for a pro rata share of the USAOs costs in judicial forfeiture cases.

In any case for which a final sharing decision has been made by October 1, 1993, under existing policy, the decision will be honored. Beginning on October 1, 1993, in cases in which a Treasury agency is the lead or sole agency seizing the property, the Treasury agency will receive any equitable sharing requests and will make the decision as to sharing. As of October 1, 1993, any outstanding sharing requests in cases in which a Treasury agency is the lead or sole seizing agency shall be forwarded to the Treasury agency that is responsible for the seizure.

The Treasury Executive Office for Asset Forfeiture is developing a policy which will provide that in judicial cases the Treasury seizing agency will not make a final decision on any request for equitable sharing until the applicable USAO has been given ten (10) business days to make its recommendation. Should the seizing agency not receive a recommendation during this time frame, it will proceed with processing of the request. Specific procedures implemented within Treasury for carrying out this process will follow this memorandum when the policy is finalized. Any recommendation of the USAO will be given serious consideration by Treasury, and the recommendation will be reflected in the file. In addition, the USAO will receive copies of Treasury agency/State and local equitable sharing agreements and copies of any required audits.

Decisions on Petitions for Remission or Mitigation

Petitions for remission or mitigation in Treasury judicial cases will continue to be adjudicated by the Asset Forfeiture Office in the Criminal Division on the same basis as Justice cases. Petitions received by U.S. Attorneys will continue to be referred to the Asset Forfeiture Office after a recommendation has been received from the seizing agency. After a decision is made, the Asset Forfeiture Office will notify the Treasury seizing agency field office responsible for the case of its determination, rather than the Marshals Service.

We recognize that the transition to the Treasury fund will require an effort by all parties involved. This memorandum was jointly written by the Justice Executive Office for Asset Forfeiture and the Treasury Executive Office for Asset Forfeiture and reflects the cooperative efforts of all agencies involved in the asset forfeiture program. Both offices desire a smooth transition and look forward to a future collaborative working relationship in our respective wars on crime. To this end, both offices are available to provide assistance in this

transition. If specific issues arise that you believe need to be addressed at the Departmental level, please feel free to bring them to the attention of this Office.

We ask that a copy of this memorandum be distributed to all asset forfeiture field personnel as soon as possible.

EXHIBIT D

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

October 12, 1993

MEMORANDUM

TO: Holders of the United States Attorneys' Manual, Title 9

FROM: Office of the Attorney General
Janet Reno
Attorney General

RE: Principles of Federal Prosecution

NOTE:
1. This is issued pursuant to USAM 1-1.550
2. Distribute to Holders of Title 9
3. Insert in front of affected section

AFFECTS: 9-27.000

PURPOSE: The purpose of this bluesheet is to clarify the Department's policy concerning the principles that should guide federal prosecutors in their charging decisions and plea negotiations.

As first stated in the preface to the original 1980 edition of the Principles of Federal Prosecution, "they have been cast in general terms with a view to providing guidance rather than to mandating results. The intent is to assure regularity without regimentation, to prevent unwarranted disparity without sacrificing flexibility."

It should be emphasized that charging decisions and plea agreements should reflect adherence to the Sentencing Guidelines. However, a faithful and honest application of the Sentencing Guidelines is not incompatible with selecting charges or entering into plea agreements on the basis of an individualized assessment of the extent to which particular charges fit the specific circumstances of the case, are consistent with the purposes of the federal criminal code,

and maximize the impact of federal resources on crime. Thus, for example, in determining "the most serious offense that is consistent with the nature of the defendant's conduct, that is likely to result in a sustainable conviction," [as set forth in 9-27.310], it is appropriate that the attorney for the government consider, inter alia, such factors as the sentencing guideline range yielded by the charge, whether the penalty yielded by such sentencing range (or potential mandatory minimum charge, if applicable) is proportional to the seriousness of the defendant's conduct, and whether the charge achieves such purposes of the criminal law as punishment, protection of the public, specific and general deterrence, and rehabilitation. Note that these factors may also be considered by the attorney for the government when entering into plea agreements [9-27.400].

To ensure consistency and accountability, charging and plea agreement decisions must be made at an appropriate level of responsibility and documented with an appropriate record of the factors applied.

This bluesheet is intended to provide interpretative guidance with respect to 9-27.130; 9-27.140; 9-27.300; and 9-27.400, Principles of Federal Prosecution, dated January 14, 1993, in your United States Attorneys' Manual.

Guideline Sentencing Update

FEDERAL JUDICIAL CENTER

EXHIBIT E

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 4 • OCTOBER 14, 1993

Offense Conduct

DRUG QUANTITY—MANDATORY MINIMUMS

Second Circuit vacates mandatory minimum sentence that was based on inclusion of relevant conduct that was not part of the offense of conviction. Defendant was arrested in November 1991 and charged with possession of a firearm in connection with a drug trafficking offense and possession of cocaine with intent to sell. In February 1992, defendant was arrested again and charged with conspiracy to possess with intent to distribute and conspiracy to distribute cocaine. Pursuant to a plea agreement, he was convicted of the November weapons charge and the February charges; the November drug charge was dropped. In sentencing defendant on the February drug charges, which involved .431 grams of cocaine base, the district court included the 12.86 grams of cocaine base involved in the November transaction and sentenced defendant to the mandatory minimum five-year sentence for a conspiracy involving more than five grams of cocaine base, 21 U.S.C. §§ 841(b)(1) and 846.

The appellate court remanded, holding that the November drug amount could be included as relevant conduct in computing the guideline sentence, if appropriate, but could not be counted toward the mandatory minimum. "Unlike the Guidelines, which require a sentencing court to consider similar conduct in setting a sentence, the statutory mandatory minimum sentences of 21 U.S.C. § 841(b)(1) apply only to the conduct which actually resulted in a conviction under that statute. Thus, the district court erred in concluding that it should include the cocaine from the November episode not only as related conduct relevant to the base offense level for the February episode, but also in determining whether the mandatory minimum for the February offense applied. . . . [Section 841(b)(1)] indicates that the minimum applies to the quantity involved in the charged, and proven, violation of § 841(a). In this case, Darmand's violation of § 841(a) was found to involve only .431 grams. Consequently, the mandatory minimum should not have been imposed."

U.S. v. Darmand, No. 93-1009 (2d Cir. Sept. 8, 1993) (Oakes, J.).

See *Outline* at II.A.3.

DRUG QUANTITY—RELEVANT CONDUCT

U.S. v. Adams, 1 F.3d 1566 (11th Cir. 1993) (Remanded: In determining what drug amounts were reasonably foreseeable to conspiracy defendant who had participated in only one abortive flight to pick up marijuana, it was error to attribute to him "a hypothetical second load that [he] never attempted to transport." While it may sometimes be appropriate to hold a defendant liable for other flights, "[a] sentencing court may not speculate on the extent of a defendant's involvement in a conspiracy; instead, such a finding must be supported by a preponderance of the evidence.... There was no evidence that Adams intended to be involved with another flight or that it was foreseeable to him that there would be another flight."). See *Outline* at II.A.1.

Criminal History

CONSOLIDATED OR RELATED CASES

Seventh Circuit holds that there must have been a formal consolidation order or other judicial determination for prior convictions to be "consolidated for sentencing." The district court sentenced defendant as a career offender after finding that two of defendant's prior convictions for bank robbery—which had been charged in the same indictment—were related, but that a third, separately indicted robbery was not. Defendant argued that the convictions had been "consolidated for sentencing," § 4A1.2, comment. (n.3). "Both indictments were returned by the same grand jury at the same time. The cases, which had separate docket numbers, were assigned to the same judge and identical bonds were set. The charges proceeded together through arraignment, motions, motion hearing, plea agreement, plea hearing, sentence hearing, and subsequent sentence modification. All three offenses . . . were the subject of Russell's plea agreement. Russell received 15-year concurrent sentences for each of the three offenses, in separate orders, but one order referring to the separate cases by number modified the sentences to ten years on each count." The district judge determined that the separate offenses, indictments, minute sheets, judgments, and convictions "do not suggest consolidation." Also, there was no formal consolidation order, and the two robberies in the first indictment were committed by defendant alone while the third was by defendant and his brother.

The appellate court affirmed, noting initially that Application Note 3 is binding and thus consolidated sentences must be treated as related, but that "the commentary does not answer the question of when sentences should be deemed to have been 'consolidated' for sentencing." The court concluded that "the purpose of the guideline would best be implemented by requiring either a formal order of consolidation or a record that shows the sentencing court considered the cases sufficiently related for consolidation and effectively entered one sentence for the multiple convictions. . . . In other words, there must be a judicial determination by the sentencing judge that the cases are to be consolidated, treated as one, for sentencing purposes. Consolidation should not occur by accident through the happenstance of the scheduling of a court hearing or the kind of papers filed in the case or the administrative handling of the case."

In this case, although there were "many characteristics of a consolidated sentencing," the district court "did not err in treating the two separate indictments as 'unrelated.'" The appellate court found that "there was no showing that there

was a request in the plea agreement that the cases be consolidated for sentencing purposes. The cases were continually treated as separate except for the various court proceedings being held at the same time before the same judge. . . . There is nothing in the record to indicate that the district court considered or made a determination that the cases were so related that they should be consolidated for sentencing purposes because one overall sentence would be appropriate for the three crimes, or that, except for the concurrent provision, the sentence for one conviction was somehow affected by the conduct under the other charge. At each hearing the two indictments were treated as separate cases, and there is nothing to show that the sentence for any charge would have been different if the cases had been heard on different days before different judges at entirely separate sentencing hearings."

U.S. v. Russell, 2 F.3d 200 (7th Cir. 1993).

See *Outline* at IV.A.1.c.

Career Offender Provision

U.S. v. Hayes, No. 91-30432 (9th Cir. Oct. 8, 1993) (Order amending original opinion at 994 F.2d 714, to remove holding that the offense of felon in possession of a sawed-off shotgun is a crime of violence: "Because we hold that possession of an unregistered sawed-off shotgun is a crime of violence, we need not decide whether being a felon in possession of a sawed-off shotgun is a crime of violence." Defendant's status as career offender is reaffirmed.).

Note to readers: This affects the entries for *Hayes* in 5 *GSU* #14 and *Outline* at IV.B.1.b.

General Application Principles

Relevant Conduct

U.S. v. Carrozza, No. 92-1798 (1st Cir. Sept. 16, 1993) (Campbell, Sr. J.) (Remanded: In sentencing RICO defendant, district court erred in "conclud[ing] that relevant conduct in a RICO case was, as a matter of law, limited to the specific predicate acts charged against the defendant . . . and conduct relating to the charged predicates. . . . We hold that relevant conduct in a RICO case includes all conduct reasonably foreseeable to the particular defendant in furtherance of the RICO enterprise to which he belongs." Also, "the term 'underlying racketeering activity' in §2E1.1(a)(2) means simply any act, whether or not charged against the defendant personally, that qualifies as a RICO predicate act under 18 U.S.C. §1961(1) and is otherwise relevant conduct under §1B1.3." However, the statutory maximum sentence, which for RICO can be increased depending on the seriousness of the underlying racketeering activity, "must be determined by the conduct alleged within the four corners of the indictment," and uncharged relevant conduct affects only where defendant is sentenced within the statutory range.).

See *Outline* generally at I.A.4.

Departures

Mitigating Circumstances

U.S. v. Benish, No. 92-3311 (3d Cir. Sept. 16, 1993) (Sloviter, C.J.) (Affirmed: "The exclusive focus [in §2D1.1] on the number of marijuana plants leads us to conclude that the Commission considered and rejected any other factors. Thus, we see no basis on which a district court could conclude that the age or sex of particular marijuana plants are factors that have not 'adequately' been considered by the Commission. . . . We see nothing atypical or unusual in the fact that the particular plants here were male, old, and possibly weak."). *Cf. U.S. v. Upthegrove*, 974 F.2d 55, 56 (7th Cir. 1992) (poor quality of marijuana is not ground for downward departure).

See *Outline* at II.B.2 and VI.C.4.b.

U.S. v. Hadaway, 998 F.2d 917 (11th Cir. 1993) (Remanded: Defendant, who pled guilty to possession of an unregistered sawed-off shotgun, claimed the district court erred by refusing to consider a downward departure on the grounds that his conduct was "outside the heartland" of such cases, did not cause the harm the law was intended to prevent (he averred that he acquired the gun on a whim, meant to keep it as a curiosity or for parts, and did not even know if it worked), and the rural community in which he lives considers the sentence to be excessive. The appellate court remanded because "it is clear that the district court had the authority to depart downward if it were persuaded that Hadaway's case truly was 'atypical . . . where conduct significantly differs from the norm,' U.S.S.G. Ch. 1, Pt. A, n.4(b), or that Hadaway's conduct threatened lesser harms, U.S.S.G. §5K2.11," p.s. However, departure cannot be based on the community's view of the crime: "[W]e join the First and Fifth Circuits in holding that departures based on 'community standards' are not permitted." *See U.S. v. Barbontin*, 907 F.2d 1494 (5th Cir. 1990) (rejecting upward departure for community standards); *U.S. v. Aguilar-Pena*, 887 F.2d 347 (1st Cir. 1989) (same).).

See *Outline* at VI.B.2 and VI.C.4.b.

Probation and Supervised Release

Revocation of Supervised Release

U.S. v. Levi, 2 F.3d 842 (8th Cir. 1993) (Affirmed: Ex Post Facto Clause is not violated by application of amended revocation policy statements, §7B1 (Nov. 1990), to defendant who committed the underlying offense before the amendments but violated his supervised release afterwards: "This court has found that the sentencing court is required only to 'consider' Chapter 7 policy statements. . . . Being merely advisory, a Chapter 7 policy statement is not a law within the meaning of the Ex Post Facto Clause. . . . Consequently, the fact that the district court considered a Chapter 7 policy statement that had been amended subsequent to Levi's initial sentencing does not implicate the Ex Post Facto Clause."). *See also U.S. v. Schram*, No. 92-30023 (9th Cir. July 22, 1993) (Farris, J.) (Affirmed: District court correctly applied Nov. 1990 version of §7B1 even though defendant's underlying offense occurred before then: "Sections 7B1.3 and 7B1.4 were amended before Schram violated the terms of his supervised release. They were not applied 'retroactively' because they were not applied to conduct completed prior to their enactment."). *Cf. U.S. v. Bermudez*, 974 F.2d 12, 13–14 (2d Cir. 1992) (per curiam) (consider Chapter 7 policy statements after revocation of supervised release even though defendant was originally sentenced before effective date of Guidelines).

See *Outline* generally at VII.

Certiorari Granted:

U.S. v. Nichols, 979 F.2d 402 (6th Cir. 1992), *cert. granted*, No. 92-8556 (Sept. 28, 1993). Issue: Whether a prior uncounseled misdemeanor conviction can be used in calculating defendant's criminal history score.

See *Outline* at IV.A.5.

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

Nomination Form

EXHIBIT F

Legal Education Institute
601 D Street, N.W.
Room 10332
Washington, D.C. 20530

(202) 501-7467
FAX (202) 501-7334
(202) 208-7235

(Please Type)

COURSE

Course Name	Course Date(s)	Course Location

NOMINATOR

Name	Title	
Phone Number	**Number of Nominees Submitted:**	**Order of Preference of this Nominee:**

NOMINEE

Name	Title	
Office, Agency or Department Name		**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 has the nominee had in this area?

6. If necessary, please indicate any special considerations:

ADDRESS

Return mailing Address: Must be Typed and fit into box

LEI USE ONLY	
ACCEPTED	**NOT SELECTED**