

# United States Attorneys' Bulletin

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## TO OUR READERS:

One of the major goals of the Executive Office for United States Attorneys (EOUSA) is to improve communications with the Offices of the United States Attorneys through the *United States Attorneys' Bulletin (USAB)*. One of the first steps taken was to expand the circulation to ensure that each United States Attorney's office (USAO) receives a sufficient number of copies for distribution to all Assistant United States Attorneys. The next step is to streamline the format to make it more readable and useful.

In this issue, we have reorganized the information in the *Bulletin* to assist you in locating items of interest. It has been divided into the following sections:

**Attorney General Highlights**--highlighting Department of Justice policies and procedures;  
**Honors and Awards**--highlighting commendations throughout the Offices of the United States Attorneys;

**United States Attorneys' Offices**--key personnel news, items of interest from the Attorney General's Advisory Committee, and highlights of significant cases;

**EOUSA**--items of interest for employees of the USAOs;

**Department of Justice Highlights**--items of interest from the Litigating Divisions and other components of the Department; and

**Career Opportunities**--within Main Justice and the Offices of the United States Attorneys.

We ask all readers to think of the *USAB* as a way to share useful and unique ideas with your colleagues. We would like to hear your comments about the *USAB* and any ideas or suggestions that you may have to improve it. Our continuing goal is to make the *USAB* responsive to your needs.

To further this objective, EOUSA has set up a special "EAGLE" EMAIL address. If you have suggestions, comments, or articles or news to contribute, please send them by EMAIL to AEX02(BULLETIN), or write to the Publications and Correspondence Unit, *United States Attorneys' Bulletin*, Executive Office for United States Attorneys, Suite 6012, 600 E Street, Washington, D.C. 20530. Questions or changes concerning the distribution of the *Bulletin* should be directed to Ms. Audrey Williams on (202)514-3572.

We look forward to hearing from you and working with you to further improve this publication.

Sincerely,

Carol DiBattiste

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## ATTORNEY GENERAL HIGHLIGHTS

### Proposed Changes to Rule 16 of the Federal Rules of Criminal Procedure

On November 23, 1994, Attorney General Janet Reno issued a memorandum providing further guidance to all Federal prosecutors concerning the Department's opposition to changes to Rule 16 of the Federal Rules of Criminal Procedure. A copy of that memo is attached as Appendix A.

\* \* \* \* \*

### Prosecutor Immunity Liability Working Group

**Paul E. Coggins, Chairman**  
**United States Attorney for the Northern District of Texas**

The Prosecutor Immunity Liability Working Group is looking at ways to address the effects of the Supreme Court's decision in Burns v. Reed. Burns denied Federal prosecutors absolute immunity in their rendering of advice to law enforcement agencies. The Working Group is Department-wide consisting of United States Attorneys; Assistant United States Attorneys (AUSAs); the Legal Counsel for the Executive Office for United States Attorneys; and representatives of the FBI, DEA, and other components of the Department of Justice.

At its initial meeting, the group discussed the possibility of a legislative fix to Burns. However, the consensus of the Group was that absolute immunity was unrealistic and not necessary if there was support for qualified immunity and interlocutory appeals were taken when motions raising qualified immunity were denied. The Committee suggests that the right of interlocutory appeal be used whenever possible and that the doctrine of qualified immunity be raised and pursued vigorously at all levels. The Group emphasized the need for training of Federal prosecutors in this area.

The Group is also looking at the difference between sanctions and Bivens, and expressed concern that District Courts were ordering AUSAs to pay sanctions personally.

\* \* \* \* \*

### Transforming the Department of Justice

To commemorate the one-year anniversary of the National Performance Review of the Department of Justice, Attorney General Janet Reno issued a monograph entitled, "Transforming the Department of Justice: A Progress Report." In response to the Vice President's call for a Government that "works better and costs less," during the past year the Department has tackled and conquered some of the toughest issues facing Federal law enforcement. Some of the accomplishments highlighted in the monograph are:

The Office of Investigative Agency Policies was established to coordinate the activities of Justice Department's criminal investigative agencies. One accomplishment is the

requirement that all Justice enforcement agencies in each judicial district work with the local U.S. attorney and submit a single investigative and prosecution strategy.

Justice has developed a close working relationship with the Treasury Department. Treasury's Custom Service and Bureau of Alcohol, Tobacco and Firearms are participating with local United States Attorneys' offices in Anti-Violent Crime Task Forces and these task forces have had notable successes.

International passengers are now processed in less than a minute at JFK Airport, thanks to INSPASS, a new state-of-the-art fingerprint identification system developed by the Immigration and Naturalization Service (INS).

As a result of the FBI's new Integrated Automatic Fingerprint Identification System, by 1997 the waiting time for getting prisoners' fingerprints identified will decrease from 21 days to 2 hours.

FBI and DEA agents now exchange intelligence information using a joint drug intelligence database called DRUGX. Soon to follow will be coordinated FBI and DEA wireless communications and office automation.

The FBI has reassigned 600 Special Agents from supervisory and administrative positions to field investigations.

The Justice Department is adding 1,710 Federal Agents to the Border Patrol in San Diego and El Paso, 510 of whom were redeployed from interior stations and clerical/administrative work. Last June, the new Enforcement Tracking System (ENFORCE) began automating 40 different INS forms, cutting alien-enforcement case paperwork by 60 percent. In San Diego alone, ENFORCE is expected to free up 48 agents for field work.

At most land border ports of entry, travelers now have their INS inspections completed within 20 minutes.

The automated booking station project, now underway, will transfer data and mug shots to any law enforcement staff in the country, allowing files to be updated as offenders move through the criminal justice system. In a DEA pilot project, the new booking system already has reduced the time for processing each prisoner from 75 minutes to 15 minutes and is expected to free up 44,000 staff hours.

Using new technology and a private counsel pilot project, the Department of Justice collected more than \$1.5 billion in defaulted Government loans in the first 11 months of FY 1994--already a one-year record that is 60 percent over the amount collected in FY 1993. New programs target other types of debtors, such as "Operation Hippocrates," a pilot program conducted jointly with the Department of Health and Human Services, which tracks down deadbeat doctors.

The Attorney General stated, "Our pledge is to deliver a Department of Justice in which the American people have full faith and confidence--a Department that uses the taxpayer's money wisely and enforces the law effectively and fairly."

For further information, please contact the Justice Performance Review Team, (202)307-1800.

\* \* \* \* \*

### **Special Assistant United States Attorneys to Prosecute Crimes in Southwest Border States**

On October 14, 1994, Attorney General Janet Reno announced that she will detail Special Assistant United States Attorneys from the Department of Justice and Assistant United States Attorneys from various Districts to four border states. Fifteen prosecutors will be detailed to United States Attorneys' offices in California, Texas, Arizona, and New Mexico, to help crack down on alien smuggling and fraudulent document trafficking, as well as to strengthen efforts to punish criminal aliens. The prosecutors will assume their new assignments in December 1994, and their progress will be assessed in six months.

The Attorney General also announced that the Department will increase by 50 the number of Federal prosecutors permanently assigned to the Southwest region of the United States to "beef up our ability to combat illegal immigration, crime, and drugs in these border states." In addition to the new prosecutors, the Department's law enforcement efforts will be bolstered by other new legislative authorities. New tools contained in the Crime Bill for enforcing and punishing those who violate our immigration and criminal laws are:

Enhanced penalties to punish alien smugglers--with sentences from up to 10 years for each alien they smuggle into the United States--and longer prison terms when individuals are injured in the smuggling operation; and

Enhanced penalties to punish fraudulent document traffickers with sentences of up to 15 years in prison.

\* \* \* \* \*

### **Knox v. United States (Child Pornography Conviction)**

On November 10, 1994, Attorney General Janet Reno advised that the United States is opposing Stephen Knox's request for Supreme Court review of a Third Circuit decision upholding his child pornography conviction. Ms. Reno stated:

In the Supreme Court brief the Solicitor General filed in this case last year, he construed the pornography statute in the manner he thought most faithful to Congress' intent. The Supreme Court then remanded the case for further consideration of the position taken by the United States. That position was briefed and argued before the

Third Circuit Court of Appeals. That court then further considered the language of the statute, its legislative history, and the underlying rationale for the Federal child pornography laws.

The Third Circuit disagreed with the position of the Solicitor General and adhered to its previous construction of the statute. The Court held that the statute covers all lascivious exhibitions of a minor's genitals--and not only those where the genitals are nude or discernible under clothing, as suggested by the Solicitor General. The Court also held, however, that the result would be the same under either construction of the statute; Mr. Knox's conviction would be sustained.

In light of the Third Circuit panel's unanimous decision, I have carefully reexamined this issue and have discussed it at length with the Solicitor General.

I agree with the Third Circuit's construction. The Solicitor General took a position in the Supreme Court which disagrees with that interpretation. This is an issue upon which reasonable people, applying the law in good faith, can and have, disagreed. It does not involve a constitutional principle but rather the construction of a statute. Under either construction, the statute is constitutional.

I believe that the Government must argue for that legitimate interpretation of the statute which prohibits the receipt and possession of child pornography to the maximum extent allowed under the Constitution. The Third Circuit's interpretation is sound and persuasive.

The Solicitor General and I have discussed this case in light of the evidence and the law, and with great attention to the institutional issues affecting the Department of Justice. As I am ultimately responsible for the positions taken by the United States, the brief filed today adopts the interpretation made by the Third Circuit, which I believe to be the correct one. For that reason, it bears my signature rather than that of the Solicitor General.

If you would like a copy of the Brief for the United States in Opposition filed by the Attorney General and Assistant Attorney General Jo Ann Harris of the Criminal Division, please call the United States Attorneys' Bulletin staff, (202)514-3572.

\* \* \* \* \*

### **Record \$3 Billion Collected from Criminal and Civil Defendants**

On November 1, 1994, the Department of Justice announced that the Government collected a record \$3 billion from criminal and civil defendants during Fiscal Year 1994. The figure, nearly double the previous high, included almost \$2 billion in cash and more than \$1 billion in property transfers and other non-cash payments. In meetings and in memos, Attorney General Janet Reno urged United States

Attorneys, Justice Department litigating divisions, and the FBI and U.S. Marshals to step up collection efforts. The following is a summary of other facts and figures included in the announcement:

One hundred eighty million dollars will be returned to victims through the Crime Victims' Fund, another record amount.

The figures do not include civil or criminal asset forfeitures, which total another \$500 million.

The 1994 collection was \$3.11 billion, compared to \$1.5 billion in 1993 and \$1.7 billion in 1992, the previous record high.

Cash collections totaled \$1.83 billion, the first time that category exceeded \$1 billion. Comparable figures were \$983 million in Fiscal 1993 and \$862 million in 1992.

United States Attorneys' cash collections alone totaled \$1.05 billion during Fiscal Year 1994.

Non-cash collections also exceeded \$1 billion for the first time. In Fiscal 1994, they reached \$1.283 billion. Collections totaled \$468 million in Fiscal 1993 and \$831 million in Fiscal Year 1992.

Civil and criminal cash collections include fines, restitution, special assessments, court costs, loan recoveries, and False Claims Act recoveries.

Non-cash collections include property transfers, payments made directly to courts or agencies other than the Justice Department, and offsets in which the Government withheld money it otherwise would have paid.

\* \* \* \* \*

### **Youth Handgun Violence Initiative**

On November 4, 1994, Attorney General Janet Reno unveiled 19 new Department of Justice youth and firearm grants worth more than \$5.3 million, including projects to disrupt illegal firearms markets, reduce young peoples' demand for guns, and make it safer for them to travel to school. The grants, to be distributed by the Department's Office of Justice Programs, also include funding for several task forces to prosecute firearms violations, a bootcamp program to instill discipline and values in wayward youths, anti-gun violence curriculum training for teachers, improved background checks on applicants for Federal firearms licenses, and a survey of gun violence among youth. A list of the grants is attached as Appendix B.

Later this year, the Attorney General will announce a Youth Handgun Violence Initiative designed to coordinate Federal, state, local, and private resources in the fight against youth gun violence. The Crime Bill, signed by President Clinton in September, includes a new Federal ban on youth handgun possession, new penalties for those who sell guns to youths, and new crime prevention programs to fight youth crime.



### **"Cops Ahead" Program**

On October 25, 1994, Attorney General Janet Reno announced that the Department of Justice will give more than 1,600 cities the option to immediately augment their police forces under a new crime bill initiative called "Accelerated Hiring, Education and Deployment Program" (COPS AHEAD). The COPS AHEAD program will provide funding to jurisdictions with populations over 50,000 to start hiring and training a limited number of officers while their application is pending. The funds may be used to enable each agency to hire new officers to increase its actual sworn force up to a maximum of 3 percent over the actual October 1, 1994, force level. Funding begins once the grant application has been approved and the new officers have been sworn in, but departments may begin hiring and training officers immediately.

The COPS AHEAD is designed to benefit communities that are prepared to move forward in their community policing programs. Applicants may not compromise the quality of their community policing strategies or reduce the scope of their officer screening and training procedures. The accelerated hiring program fulfills a pledge made by the Attorney General to the United States Conference of Mayors to develop a mechanism to expedite assistance to cities with immediate needs. It also underscores the Department's commitment under the Crime Bill to quickly put more police on the streets.

Up to \$250 million was made available to fund COPS AHEAD, out of a total of \$1.3 billion available for Federal police hiring assistance this fiscal year. If necessary, more money may be made available to accommodate the demand. Awards under COPS AHEAD will not affect a jurisdiction's eligibility for future police hiring grants under the Crime Bill, which authorized \$8.8 billion for police hiring through the year 2000. Applications for these future grants will be made available later this year. Applications for fast-track police hiring were sent to more than 1,600 jurisdictions whose populations exceed 50,000. For questions and additional information, please contact the Department of Justice's Response Center, (800)421-6770 or (202)307-1480.

\* \* \* \* \*

### **"Cops Fast" Program**

On November 1, 1994, Attorney General Janet Reno announced that more than 18,000 small cities and towns will be able to apply for money to help hire new police officers by filling out an unprecedented one-page application. They will receive an answer within three months. Under the program, COPS FAST, jurisdictions with fewer than 50,000 people can apply by the end of this year and find out how much aid they will receive by February 1, 1995.

The COPS FAST program is the third Administration announcement in three weeks to speed up the Crime Bill's provisions to help put 100,000 new police on America's streets. Besides the COPS AHEAD program, the Justice Department also announced \$200 million in hiring grants under the Crime Bill, signed by President Clinton on September 13. (See United States Attorneys' Bulletin, Vol. 42, No. 10, October 15, 1994, p. 383.)

Completed applications containing the hiring agency, the number of police officers on the force, the number sought by the Department, basic financial information, and an agreement to abide by legal standards,

are due December 31, 1994. In order to be eligible to receive funds, applicants also have to submit necessary budget information and a brief description of their community policing plans.

Participation is voluntary and the Department will assist applicants to ensure that applications, strategies, and training programs are properly qualified to take advantage of COPS FAST. Awards made under the program will not affect a jurisdiction's eligibility for future police hiring grants under the Crime Bill, which authorized \$8.8 billion for police hiring through the year 2000. Applications for future grants will be made available later this year, and every jurisdiction in America will be eligible to apply. For questions and additional information, please contact the Department of Justice's Response Center, (800)421-6770 or (202)307-1480.

\* \* \* \* \*

### **Communications with the White House**

On September 29, 1994, Attorney General Janet Reno forwarded a letter to Lloyd N. Cutler, Special Counsel to the President, concerning her views on communications between the Department of Justice and the White House on matters pending in the Department. A copy (attached as Appendix C) was sent to the Assistant Attorney General for the Criminal Division, Heads of other Components with criminal responsibilities, and all United States Attorneys.

Because of the sensitivity associated with contacts with criminal components of the Department, the narrower rule that should guide such components is as follows: If any employee of the White House calls an employee of a criminal component on any subject, the caller should simply be referred to the White House Counsel or the Deputy White House Counsel, who will direct the caller to the appropriate Department official.

\* \* \* \* \*

### **Official Portrait Presentation**

On November 14, 1994, at a ceremony in the Great Hall of the Department of Justice, Attorney General Janet Reno presented the official portrait of William P. Barr, 77th Attorney General of the United States. Also in attendance were former Attorneys General Edward Meese and Dick Thornburgh.

The Attorney General said, "The presentation of an Attorney General's official portrait is a special event for the Department. The portraits of former Attorneys General are part of the historical collection that the Department of Justice maintains. By tradition, these portraits have always occupied prominent places in the building . . . . Today's portrait unveiling brings the Department's collection up to date, with the portrait of Mr. Barr."

Mr. Barr said, "When I started here as an Assistant Attorney General, I remember I walked down the halls and would see all these imposing portraits along the way stretching all the way to Macon Randolph in 1789, and it impressed on me that I was not a free actor but really a link in the chain, and that I, and the institution as a whole, really had an obligation that was anchored in the past, that bonds each generation, and that we owe to future generations; that is, preserving this great heritage we have of the rule of law."

## HONORS AND AWARDS

### Executive Office for United States Attorneys Director's Awards

On November 17, 1994, at a ceremony in the Great Hall of the Department of Justice, Attorney General Janet Reno; Deputy Attorney General Jamie Gorelick, and Carol DiBattiste, Director, Executive Office for United States Attorneys (EOUSA), presented the 1994 Director's Awards honoring the men and women of the United States Attorneys' offices, EOUSA, and the Department of Justice for their outstanding efforts in the areas of drug-related cases, violent crime, financial institution fraud, civil enforcement, financial litigation, and other law enforcement activities. The Awards Ceremony was dedicated to the memory of William Barton Gray, former United States Attorney for the District of Vermont, Director of the Executive Office for United States Attorneys, and Associate Deputy Attorney General, Department of Justice. The Award recipients were:

#### Special Achievement Award

Donna A. Bucella, Principal Deputy Director, Executive Office for United States Attorneys and Assistant United States Attorney in the Southern District of Florida, for her outstanding service as former Acting and Interim United States Attorney for the Middle District of Florida.

#### Superior Performance as an Assistant United States Attorney

Joseph J. Allen	- Michigan (E.D.)	Dean G. Dunlavey	- California (C.D.)
Leland B. Altschuler	- California (N.D.)	Robert L. Ernst	- District of Nevada
Karen Lee Atkinson	- Florida (S.D.)	Michael K. Fagan	- Missouri (E.D.)
Monica Bachner	- California (C.D.)	Patrick J. Fitzgerald	- New York (S.D.)
Herbert A. Becker	- District of New Mexico	Terence P. Flynn	- District of Nevada
Cheryl A. Bell	- Florida (S.D.)	Andrea G. Foulkes	- Pennsylvania (E.D.)
Jayne K. Blumberg	- District of New Jersey	Eric Friedberg	- New York (E.D.)
Daniel G. Bogden	- District of Nevada	Joel M. Friedman	- Pennsylvania (E.D.)
Edmund A. Booth, Jr.	- Georgia (S.D.)	Walter E. Furr III	- Florida (M.D.)
John L. Burley	- Illinois (N.D.)	Nicholas M. Gess	- District of Maine
Allison D. Burroughs	- Pennsylvania (E.D.)	Margaret Giordano	- New York (E.D.)
Leslie R. Caldwell	- New York (E.D.)	David A. Glockner	- Illinois (N.D.)
Charles L. Calhoun	- Georgia (M.D.)	Marc S. Gromis	- New York (W.D.)
Robert P. Cares	- Michigan (E.D.)	Kimberly McFadden	
Anne Whatley Chain	- Pennsylvania (E.D.)	Guadagno	- District of New Jersey
Robert K. Coulter	- Virginia (E.D.)	Christopher R. Hall	- Pennsylvania (E.D.)
Patrick J. Crank	- District of Wyoming	Randall J. Hensel	- Florida (N.D.)
John F. Curran, Jr.	- New York (E.D.)	Candace G. Hill	- Kentucky (W.D.)
Margaret E. Curran	- District of Rhode Island	Jeffrey B. Isaacs	- California (C.D.)
David M. Curry	- Pennsylvania (W.D.)	Sharon Jackson	- Indiana (S.D.)
Maryanne T. Donaghy	- Pennsylvania (E.D.)	David C. James	- New York (E.D.)
Patricia A. Donahué	- California (C.D.)	David R. Jennings	- Florida (M.D.)
Robert C. Dopf	- Iowa (S.D.)	Gregory W. Jessner	- California (C.D.)

Eric Johnson	- District of Nevada	Susan Hill Ponzoli	- Florida (S.D.)
Debra P. Kanof	- Texas (W.D.)	Nancy Vorpe Quinlan	- Florida (S.D.)
Neil Karadbil	- Florida (S.D.)	Susan H. Raab	- Florida (M.D.)
Julie E. Katzman	- New York (E.D.)	Michael V. Rasmussen	- Alabama (N.D.)
Linda Kaufman	- District of Colorado	Mark P. Ressler	- New York (E.D.)
Gregory W. Kehoe	- Florida (M.D.)	Roland G. Riopelle	- New York (S.D.)
Thomas Kiehnhoff	- Texas (E.D.)	Thomas H. Roche	- New York (E.D.)
Donald T. Kinsella	- New York (N.D.)	David R. Rosado	- Texas (W.D.)
Mark A. Kirsch	- New York (E.D.)	Lisa Russell-Charles	- District of New Jersey
Carolyn J. Kubota	- California (C.D.)	Joan B. Safford	- Illinois (N.D.)
Joseph T. Labrum III	- Pennsylvania (E.D.)	William Paul Schaefer	- California (N.D.)
Carol C. Lam	- California (S.D.)	David J. Schindler	- California (C.D.)
Lawrence J. Laurenzi	- Tennessee (W.D.)	Whitney L. Schmidt	- Florida (M.D.)
Lisa E. Leschuck	- District of Wyoming	Zaldwaynaka Scott	- Illinois (N.D.)
Joseph J. Lodge	- District of Arizona	R. John Seibert	- District of Hawaii
Andrew C. Lourie	- District of New Jersey	Thomas P. Sleisenger	- California (C.D.)
Bruce C. Lubeck	- District of Utah	Dietrich L. Snell	- New York (S.D.)
Thomas G. Luedke	- District of Kansas	Sheldon J. Sperling	- Oklahoma (E.D.)
Larry A. Mackey	- Indiana (S.D.)	Peter G. Spivack	- California (C.D.)
Joanne Y. Maida	- Washington (W.D.)	George Stamboulidis	- New York (E.D.)
Pamela A. Mathy	- Texas (W.D.)	Stefan D. Stein	- California (C.D.)
Margaret D. McGaughey	- District of Maine	Allan J. Sullivan	- Florida (S.D.)
Marvelle McIntyre-Hall	- Florida (S.D.)	Michael L. Tabak	- New York (S.D.)
Gordon Mehler	- New York (E.D.)	Alicia Olivera Valle	- District of New Jersey
Sally L. Meloch	- California (C.D.)	Barbara A. Van Gelder	- District of Columbia
Scott Mendeloff	- Illinois (N.D.)	Paul J. Van de Graaf	- District of Vermont
Katherine B. Monahan	- Georgia (N.D.)	Alan B. Vickery	- New York (E.D.)
Jose Angel Moreno	- Texas (S.D.)	Bohdan Vitvitsky	- District of New Jersey
James B. Nobile	- District of New Jersey	Mark O. Wasserman	- New York (E.D.)
John E. Nordin II	- California (C.D.)	Andrew Weissmann	- New York (E.D.)
James Orenstein	- New York (E.D.)	Paul A. Weissman	- District of New Jersey
Wilmer (Buddy) Parker III	- Georgia (N.D.)	William M. Welch II	- District of Nevada
Stephen C. Peters	- District of Colorado	Roger E. West	- California (C.D.)
Barbara L. Petras	- Florida (S.D.)	Katherine Winfree	- District of Columbia
Stephenie P. Podolak	- New York (E.D.)	Solomon Wisenberg	- Texas (W.D.)
		William Xantopoulos	- Florida (S.D.)
		Richard B. Zabel	- New York (S.D.)

### Superior Performance as a Special Assistant United States Attorney

Francesco Catarisano - New York (E.D.)  
 James B. Comey, Jr. - New York (S.D.)  
 Douglas E. Crow - District of New Jersey  
 Jon M. DeVore - District of Alaska

Alberto Gonzalez - California (N.D.)  
 Blaine H. Hollis - District of Alaska  
 Terry J. Wolk - Ohio (N.D.)

### Superior Performance in a Managerial or Supervisory Role

Thorwald H. Anderson, Jr. - District of Minnesota      Alan M. Gershel - Michigan (E.D.)  
Robert L. Begleiter - New York (E.D.)                  James W. Hunter - Michigan (W.D.)  
Jonathan Chiel - District of Massachusetts              James A. Zerhusen - Kentucky (E.D.)

#### Executive Office for United States Attorneys:

Michael W. Bailie  
Theresa C. Bertucci

### Superior Performance in a Litigative Support Role

Timothy G. Babicke - District of Arizona                  Rosemarie Pece - New York (S.D.)  
Debra K. Berry - District of Arizona                      Jeffery C. Reily - District of Arizona  
Avril Fugger - New York (S.D.)                              Mary W. Riley - Georgia (N.D.)  
Lucinda E. Hill - District of New Mexico                  Ronald B. Rodgers - District of Arizona  
Dorla Kirkwood - New York (E.D.)                          Jeanie H. Schmitt - District of Arizona  
Karen S. Mannix - Washington (W.D.)                      RoseLyn Thompson - District of Arizona  
Karen E. Miskiewicz - District of Rhode Island              James H. Williams - New York (S.D.)

#### Executive Office for United States Attorneys

##### Office of Legal Education:

Sandra C. Cleveland  
David W. Downs  
Donna F. Kennedy  
Sadie M.A. Morsell

### Superior Performance in Furthering Equal Employment Opportunity

Jeffrey L. Bornstein - California (N.D.)                  Lorraine A. Rayca and  
Joy D. Wadleigh - Pennsylvania (E.D.)

### Mark Gallinghouse Memorial Award for Excellence in Financial Litigation

Mildred F. Alexander,  
Linda L. Lay,  
Katy A. Valdez,  
Patsy K. Ybarra, and  
Elsa D. Zamora - Texas (W.D.)                              Henry D. Knight, Jr. - District of South Carolina  
  
Executive Office for United States Attorneys:  
Darrell R. Curtis

**Superior Performance in Asset Forfeiture**

Gordon D. Kromberg - Virginia (E.D.)

B. Frederic Williams, Jr. - North Carolina (W.D.)

**Outstanding Performance in Assistance to Victims of Crime**

Francia A. Wendelborn - Wisconsin (E.D.)

**Outstanding Performance in Law Enforcement**

Robert L. Chaney, Jr. - District of Columbia  
John Duncan and Peter J. Laun - New York  
(N.D.)

Sgt. Marvin "Skip" Johnson - Trenton Police  
Department

**Appreciation Award for Contributions to  
the Executive Office for United States Attorneys and  
United States Attorneys' Offices**

Teresa J. Davenport - Florida (S.D.)

Office of Enforcement Operations,  
Criminal Division:  
Maureen Killion and  
Carla A. Raney

Executive Office for United States Attorneys:  
Attorney General's Advisory Committee  
Judith A. Beeman

Evaluation and Review Staff  
Judith A. Johnson  
Michele A. Tomsho  
Barbara A. Tone

Case Management Staff  
Patricia A. Ostrowski

Financial Management Staff  
Lydia J. Ransome

Financial Management Staff  
Michael T. McDonough, Director  
Deborah M. Battle  
Joanne Beckwith  
Steven Benda  
Keith F. Bratt  
Marny Cvrkel  
Jennifer R. Embry  
Sheila Grimes  
Robert J. Hardos  
Michelle Lymore-Whitted  
Gregory R. Marshall  
Gerri Perry  
Lydia J. Ransome  
Teresa Russell  
Charlotte Saunders  
Tod Shaffer  
Jennie D. Sightler

## Commendations

The following Assistant United States Attorneys have been commended:

**Fred Battista** (District of Arizona), by Joseph J. Vince, Jr., Acting Chief, Firearms Division, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C., for his excellent presentation on Federal prosecutive strategy for firearms trafficking investigations at a Firearms Trafficking Techniques Course for special agents, inspectors, and State and local law enforcement officials held recently in Scottsdale.

**Guy W. Blackwell** (Tennessee, Eastern District), by Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, for his valuable assistance and cooperative efforts in bringing an environmental crimes prosecution to a successful conclusion.

**William A. Brafford** (North Carolina, Western District), by Chief Postal Inspector Ken Hunter, U.S. Postal Inspection Service, for his exceptional performance of duty in the prosecution of criminal cases. He was awarded specifically for his successful prosecution of an individual charged with robbing postal employees at gun point. The defendant was convicted of robbery and assault, and was sentenced to one year, three months incarceration, and ordered to pay \$100 restitution.

**George W. Breitsameter** (District of Idaho), by David F. Dickson, Regional Inspector General for Investigations, Department of Agriculture, San Francisco, for his outstanding prosecutive efforts in several fraud cases involving the Animal and Plant Health Inspection Service and the Farmers Home Administration, both of which

administer programs of extreme importance to the health and welfare of the Idaho citizens.

**Earl Brown** (Missouri, Western District), by G. L. Hershberger, Warden, U.S. Medical Center for Federal Prisons, Federal Bureau of Prisons, Springfield, for his prompt action in responding to a request for assistance in securing a court order for an inmate who refused all forms of testing for the existence or non-existence of tuberculosis.

**Stephanie S. Browne** (District of Rhode Island), by Brigadier General M. Scott Magers, Assistant Judge Advocate General for Civil Law and Litigation, U.S. Army Legal Services Agency, Department of the Army, Arlington, Virginia, for her excellent representation in the prosecution of a medical malpractice case and for bringing this complex matter to a successful conclusion.

**Mary Beth Buchanan** (Pennsylvania, Western District), by Dawne S. Hickton, Assistant Clinical Professor of Law, University of Pittsburgh, for her excellent lecture to the Corporate Counsel class and for providing educational handouts to each of the students.

**John L. Burley, Ronald May, and Patrick King** (Illinois, Northern District), by Kenneth G. Cloud, Special Agent in Charge, Drug Enforcement Administration (DEA), Chicago, for their successful prosecution of 12 individuals with ties to The Chicago "Outfit" Organized Crime Family, most notably Joseph Di Fronzo. **Carolyn Dixon** provided valuable paralegal assistance. (Seven defendants were found guilty, four pled guilty, and one defendant remains a fugitive.)

**Robert S. Cessar** (Pennsylvania, Western District), by John J. Adair, Inspector General, Resolution Trust Corporation (RTC), Washington, D.C., for his outstanding prosecutive success in a complex bank and RTC fraud case that involved falsifying names of bidders and bid amounts for repossessed vehicles.

**Randy S. Chartash** (Georgia, Northern District), by June Gibbs Brown, Inspector General, Department of Health and Human Services, Washington, D.C., for his outstanding efforts in negotiating a precedent-setting settlement and consent judgment in a major health care fraud and abuse case.

**Robert Ciaffa and Carol DeGraffenreidt** (Florida, Southern District), by Sherrill A. Frew, Supervisory Special Agent, FBI, Miami, for their outstanding professional efforts in obtaining a guilty plea in a Medicare fraud case, as well as the forfeiture of illegally obtained assets. (This seizure represents the largest Medicare fraud forfeiture to date in the Southern District of Florida.)

**Robert J. Conrad and B. Frederic Williams** (North Carolina, Western District), by Chief Postal Inspector Ken Hunter, U.S. Postal Inspection Service, for their exceptional performance of duty in the prosecution of criminal cases. They were awarded specifically for their successful prosecution of "Capscam," an investment scheme which affected thousands of individuals and resulted in losses exceeding \$15 million. Six defendants involved in the scheme pled guilty and assets exceeding \$3 million were forfeited. Robert J. Conrad was also commended for his successful prosecution of 23 individuals charged in an Organized Crime Drug Enforcement Task Force investigation, known as the "Violent Gang Task Force" investigation, which involved controlled delivery of a parcel of mail containing 203 grams of crack cocaine and

6 pounds of marijuana. Assets seized as a result of this investigation totaled \$32,080 and included a local motel where the distribution network was headquartered.

**Patrick Corbett** (Michigan, Eastern District), by Dianne G. Van Riper, Associate Inspector General for Investigations, Department of Education, Chicago, for his successful prosecution of two individuals who conspired to defraud the Guaranteed Student Loan and Pell Grant programs of \$300,000 in Government funds.

**Barbara J. Cottrell** (New York, Northern District) was presented the Outstanding Young Alumnus Award of 1994 by the Albany Law School for her significant contribution to the community, the legal profession, and the Law School. After being admitted to the Bar in 1985, Ms. Cottrell clerked in the United States Attorney's office in Albany where she has since been named an Assistant United States Attorney.

**Jim Cowles** (Louisiana, Western District), by Eugene M. Thirolf, Director, Office of Consumer Litigation, Department of Justice, for his valuable assistance and guidance in the investigation and subsequent indictment of Luv n'care International, Inc., and related companies, selling pacifiers and rattles in violation of the Federal Hazardous Substances Act. **Bonnie Buras and Janet Moon** provided outstanding assistance and support.

**Jeanne Damirgian** (District of Maryland), by R. B. Cesa, Inspector in Charge, U.S. Postal Inspection Service, Miramar, Florida, for her valuable assistance and cooperative efforts in the successful prosecution of health care fraud cases over the past four years while in the Southern District of Florida.

**Kevin Darken** (Florida, Middle District), by Martyn I. Winston, District Director, Office of Labor-Management Standards, Department of Labor, Miami, for his outstanding assistance in a



case involving the Labor-Management Reporting and Disclosure Act of 1959, as amended, and for his success in securing a conviction in the case.

**Daniel Drake** (District of Arizona), by Robert E. Rogers, Special Agent in Charge, Bureau of Land Management, Department of the Interior, Phoenix, for his excellent presentation on various issues at the recent law enforcement training session for Special Agents and Law Enforcement Rangers.

**Margaret Embry** (Texas, Western District), by Rolando P. Soliz, Special Agent in Charge, U.S. Secret Service, San Antonio, for her outstanding prosecutive abilities in bringing a complex bank fraud case to a successful conclusion.

**Carolyn Greene and Edmund "Corky" Falgowski** (District of Delaware), by R. Dodge Frederick, Acting Special Agent in Charge, FBI, Philadelphia, for their successful prosecution of three members of an organized criminal group responsible for the armed robbery of the Delaware Trust Bank.

**Tom Hannis** (District of Arizona), by James P. Boland, Chief, Sensitive Information Unit, Criminal Investigative Division, FBI, Washington, D.C., for his excellent presentation at the Child Abuse Investigation In-Service for FBI Special Agents held recently at the FBI Academy.

**Robin Harris and Steve Freccero** (California, Northern District), by Jim R. Freeman, Special Agent in Charge, FBI, San Francisco, for their valuable assistance in the investigation and prosecution of a violent gang leader, and for their contribution to the safe return of a hostage who had been kidnapped by the gang.

**Ilna Holmes** (Florida, Southern District), by Tron W. Brekke, Chief, Public Corruption and Civil Rights Section, Criminal Investigative

Division, FBI, Quantico, Virginia, for her major contribution to the success of the 2-week Undercover Agent Training In-Service course at the FBI Academy in Quantico.

**Nina Hunt** (Georgia, Northern District), by David Satcher, M.D., Ph.D., Director, Centers for Disease Control and Prevention (CDC), Department of Health and Human Services, Atlanta, for her excellent representation and expeditious handling of a court matter on behalf of CDC, and for bringing the matter to a successful conclusion.

**Sheryl Jeans** (Missouri, Western District), by Don K. Pettus, Special Agent in Charge, FBI, Kansas City, for her valuable instruction to Gang Task Force members regarding Federal statutes available to address criminal gang activity, and for distributing a manual to each member which will prove to be most helpful.

**Jane Jolly** (North Carolina, Eastern District), for her outstanding prosecutorial skill by a number of Government officials regarding several cases in the Eastern District of North Carolina, as follows:

by Louis E. Alfaro, Acting Special Agent in Charge, U.S. Secret Service, Charlotte, for her outstanding leadership of a task force which was instrumental in the seizure of over \$631,000 in counterfeit \$20 Federal Reserve Notes, as well as the arrest and conviction of several individuals involved in cocaine trafficking in the Fayetteville/Greensboro areas;

by Chester Hill, Chief of Police, Goldsboro Police Department, for obtaining the conviction of a major narcotics trafficker, and her special efforts in three other drug cases involving the Goldsboro Police Department;

by William E. Godley, Jr., Special Agent in Charge, North Carolina State Bureau of Investigation, Department of Justice, Raleigh, for her outstanding legal skill leading to the indictment

of 11 members of one of the largest drug organizations in the Eastern District of North Carolina;

by L. M. Flippin, Resident Agent in Charge, U.S. Customs Service, Wilmington, North Carolina, for her valuable assistance and support in successfully resolving an OCDETF case involving the smuggling of multi-ton loads of Mexican marijuana through Arizona transfer points for subsequent sale and distribution in Eastern North Carolina; and

by Paul Lyon, Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, Charlotte, for successfully prosecuting a gang leader who used firearms to commit violent assaults as a means of enforcement within the drug organization.

**Jeff Kay and Paul Schwartz** (Florida, Southern District), by Gustave A. Schick, Assistant Inspector General for Labor Racketeering, Department of Labor, Washington, D.C., for their excellent instruction on prosecutive strategies at an in-service training session for the Office of Labor Racketeering in Jacksonville.

**Gregory W. Kehoe, Jack E. Fernandez, Walter E. Furr, and Ernest F. Peluso** (Florida, Middle District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their major contribution to the favorable outcome of an espionage case involving the passing of sensitive, classified U.S. military and NATO documents to the Hungarian and Czechoslovakian Governments, some of which were shared with the former Soviet Union.

**Richard K. Kornfeld** (Illinois, Northern District), by Kenneth G. Cloud, Special Agent in Charge, Drug Enforcement Administration (DEA), Chicago, for his outstanding contributions in prosecuting the DEA's narcotics investigations, and particularly a recent case

which resulted in the indictment and arrest of 25 major cocaine violators in the Chicago area.

**Mark J. Krum** (Florida, Middle District), for his outstanding success in two significant bank fraud cases--one by Attorney General Janet Reno regarding illegal activities of an employee of NationsBank of Florida, and another from Louis J. Freeh, Director, FBI, Washington, D.C., regarding illegal activities of an employee of NCNB National Bank of Florida. Also, by Joseph G. Jarret, Assistant State Attorney, Tenth Judicial Circuit, for his excellent lecture on trial techniques at the Prosecutor/Public Defender Trial Training Program.

**Katherine McGovern** (Texas, Northern District) was presented a Certificate of Appreciation by Phillip E. Jordan, Special Agent in Charge, Drug Enforcement Administration, Dallas Field Division, for her excellent representation in a case involving two physicians in the weight control business, and another case against a pharmaceutical wholesaler for violations of the Controlled Substances Act.

**K. Roxanne McKee** (Texas, Western District), by Major General Sam C. Turk, Adjutant General, Austin, for her excellent representation in a 5th Circuit Court of Appeals case against the Secretary of the Army and a former employee of the Adjutant General's office, which resulted in a court ruling in favor of the Government.

**Jerry W. Miller** (North Carolina, Western District), by Chief Postal Inspector Ken Hunter, U.S. Postal Inspection Service, for his exceptional performance of duty in the prosecution of criminal cases. He was awarded for his numerous criminal prosecutions and continuing assistance to the United States Postal Inspection Service.

**Anne Mosher** (District of Arizona), by Rosalie Simmonds Ballentine, Attorney General, Department of Justice, Charlotte Amalie, St. Thomas, Virgin Islands, for her excellent

presentations on a broad range of legal issues and technical aspects of criminal law at an intensive training program for criminal attorneys.

**Michael J. Mullaney, Drew Ostrobaum, William T. Shockley, and Allyson Fritz** (Florida, Southern District), by Kevin M. Comstock, Assistant United States Attorney, Eastern District of Virginia, Norfolk, for their valuable assistance in the successful prosecution of a multi-state cocaine distribution network responsible for distributing cocaine in Virginia, Ohio, North Carolina, Georgia, and Florida.

**Mary Murguia** (District of Arizona), by Bernard H. LaForest, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Phoenix, for her outstanding efforts in the successful prosecution of a case involving two individuals for cocaine trafficking and illegal use of a firearm while trafficking. (One defendant faces 15 years and the other faces 18 years to life.)

**Richard Murphy** (Iowa, Northern District), by Patricia A. Ikan, Prairie Junior High, Cedar Rapids, for his participation in a panel discussion on "What Drugs Can Cost You," and for his valuable assistance in making the program a success.

**Cynthia Oberg** (Michigan, Eastern District), by Robert A. Jogan, District Supervisor, Pension and Welfare Benefits Administration, Department of Labor, Detroit, for her successful prosecution of two individuals for embezzling funds from the Michigan Horsemen's Benevolent and Protective Association.

**Peter Ossorio and Tom Larson** (Missouri, Western District), by Stephanie Doolin Patterson, Program Coordinator, Chamber of Commerce, Kansas City, for their valuable assistance in developing an initiative to assist small and medium-sized businesses in implementing drug-free workplace policies and programs.

**Rodger Overholser** (Iowa, Northern District), by Steve Rendall, Program Chairman, Iowa Regional Health Care Anti-Fraud Association, Des Moines, for his excellent presentation at a recent workshop, and for his contribution to its success.

**Richard Parker** (Virginia, Eastern District), by Colonel Joseph L. Graves, Jr., Judge Advocate's School, Department of the Army, Charlottesville, for his outstanding presentation to the 1st Federal Courts and Boards Litigation Course on "Pleadings and Motions."

**Peter Prieto** (Florida, Southern District) was named "1994 Prosecutor of the Year" by the International Association of Credit Card Investigators, Novato, California, for his excellent prosecutorial skill in credit card fraud cases. James Greene, International President, stated, "Your outstanding efforts in the suppression of credit card fraud and prosecution of offenders have truly been remarkable and clearly led to your selection for this prestigious award."

**Sharon T. Ratley** (Georgia, Middle District), by Raisa Otero-Cesario, Deputy Assistant Inspector General for Investigations, Department of Transportation, for her outstanding success in the prosecution of aviation supply industry fraud investigations.

**Patrick J. Reinert** (Iowa, Northern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his excellent performance throughout the investigation and prosecution of numerous individuals trafficking in illicit drugs in the Fort Dodge area.

**Robert Rivkin** (Illinois, Northern District), by Kenneth G. Cloud, Special Agent in Charge, Drug Enforcement Administration, Chicago, for his outstanding efforts, professionalism, and dedication throughout the prosecution of the Undertaker Vice Lords Street Gang.

**Joanne Rodriguez** (District of Idaho), by James H. Benham, United States Marshal, Boise, for her successful prosecution of two individuals who aided in the October 1992 escape of a two-time murderer. Pam Brophy and Denise Price provided outstanding support and assistance.

**Alex Rokakis** (Ohio, Northern District), by Kathleen S. Tighe, Acting Counsel to the Inspector General, General Services Administration (GSA), Washington, D.C., for his excellent representation in negotiating a favorable settlement of a potential False Claims Act case, and for bringing the matter to a successful conclusion.

**Peggy Ronca** (Florida, Middle District), by Paula C. Offenhauser, Chief, Appellate Division, United States Attorney's office, Southern District of Texas, Houston, advising that Judge Jacques Wiener of the 5th Circuit Court of Appeals considers her to be "one of the finest appellate lawyers in this circuit."

**Chuck Rosenberg and Jan Reincke** (Virginia, Eastern District), by Ryland M. Saxby, Postal Inspector, U.S. Postal Service, Norfolk, for their professionalism and legal skill in the successful prosecution of two individuals for theft of mail and other related violations.

**Robert Schroeder** (Georgia, Northern District), by Thomas P. Fischer, District Director, Immigration and Naturalization Service, Atlanta, for his extraordinary efforts in the investigation of a Department of Health and Human Services employee and several others who were selling genuine social security cards to illegal aliens for purposes of remaining and working in the United States.

**James R. Schulz** (Georgia, Northern District), by Donald R. Kronenberger, Jr., Regional Attorney, Office of General Counsel, Department of Agriculture, Atlanta, for his excellent

representation in a Farmers Home Administration loan case, and for his successful efforts in recovering approximately \$677,000.00 for the United States Government.

**Albert W. Schollaert** (Pennsylvania, Western District), by Philip P. O'Connor, Jr., Senior Attorney, Department of Veterans Affairs, Pittsburgh, for his successful prosecution of a medical malpractice action involving the VA Medical Center, and for his excellent representation in other matters over the years.

**Charlie Spillers** (Mississippi, Northern District), by James D. Moore, Director of Training, Regional Counterdrug Training Academy, Meridian Naval Air Station, for his outstanding service as the primary legal instructor for several courses presented at the Academy, and for sharing his extensive experience as a local and state narcotics enforcement officer.

**Mary Jane Stewart** (Georgia, Northern District), by Bradley A. Blackington, Assistant District Attorney, County of Cambria, Ebensburg, Pennsylvania, for her valuable assistance and cooperative efforts in the successful prosecution of several drug traffickers involved in a major drug organization operation affiliated with the Outlaw Nation.

**Christian H. Stickan** (Ohio, Northern District), by James K. Gearhart, Acting Regional Director, Office of Labor Management Standards, Department of Labor, Cleveland, for his successful prosecution of a complex embezzlement case involving a Labor Union official, which will serve as a significant deterrent effect within the labor community.

**Monty Stiles** (District of Idaho), by Duane Sammons, President, Intermountain Chapter of the International Association of Law Enforcement Planners, Meridian, Idaho, for serving as a speaker at a recent conference, and for his educational and

informative presentation which helped to make the conference a success.

**Pat Stout** (Georgia, Northern District), by George G. Martin, Forest Supervisor, Chattahoochee-Oconee National Forests, Department of Agriculture, Gainesville, for her professionalism and legal skill in representing the Forest Service in a recent case, and for obtaining a judgment in favor of the United States on all counts.

**Michella Tapken** and **VW Coordinator Nancy Stoner-Lampy** (District of South Dakota), for their outstanding efforts in the successful prosecution of a multiple perpetrator child sexual abuse case arising on the Yankton Sioux Indian Reservation involving six victims between the ages of 1-1/2 and 7 years.

**Tanya J. Treadway** and **Richard L. Hathaway** (District of Kansas), by Donald C. MacLean, Special Agent in Charge, Office of Assistant Inspector General for Investigations, Defense Criminal Investigative Service, Des Plaines, Illinois, for their successful trial and conviction of several individuals related to the national investigation of National Medical Enterprises, Inc., which resulted in the largest health care fraud settlement in history on June 29, 1994. (See Vol. 42, No. 7, United States Attorneys' Bulletin, p. 258.)

**Robert Trusiak** (Ohio, Northern District), by Major M. E. Quinn, Commander, Office of Investigative Services, State Highway Patrol, Columbus, for his successful efforts in bringing numerous Federal adoptive forfeiture actions to a favorable conclusion, and for his contribution to the success of the drug interdiction program, which will help to curb the flow of illegal drug-related proceeds.

**John Valkovci** and **Patrick Noonan** (Pennsylvania, Western District), by John S. Pegula, District Director, Office of Labor-Management Standards, Department of Labor, Pittsburgh, for their outstanding success in four labor cases which collectively involved seven union officials and \$58,778.49 in misappropriated funds. **Patty Valentine** provided valuable secretarial support.

**Thomas P. Walsh** (New York, Northern District), by Donald M. Hoerl, District Administrator, Securities and Exchange Commission (SEC), Philadelphia, for his successful prosecution of a complex securities fraud case which involved false and fraudulent statements and representations to SEC concerning a stock value.

**Stephen A. West** (North Carolina, Eastern District), by John R. Eadie, Acting Regional Director, Fish and Wildlife Service, Department of the Interior, Atlanta, for his exceptional efforts in a conservation easement case in Nash County, North Carolina, that resulted in a \$10,000 settlement. Also, by Billy S. Hicks and Terry W. Holt, Naval Aviation Depot, Department of the Navy, Cherry Point, for his excellent representation and outstanding legal skill in a Federal court matter which resulted in a favorable outcome.

**Brian L. Whisler** (North Carolina, Western District), by Chief Postal Inspector Ken Hunter, U.S. Postal Inspection Service, for his exceptional performance of duty in the prosecution of criminal cases. One case involved an individual charged in a 22-count indictment, including charges of mail fraud, wire fraud, conspiracy, money laundering, and false statements. The defendant received a 30-month sentence, and was ordered to pay restitution in the amount of \$56,441.00.

**Albert J. Winters, Jr.** (Louisiana, Eastern District), by Theresa M.B. Van Vliet, Chief, Narcotic and Dangerous Drug Section, Criminal Division, Department of Justice, for his valuable

assistance and cooperative efforts in the "special investigation" of evidence for use in the Colombian prosecution of two Cali Cartel kingpins.

## UNITED STATES ATTORNEYS' OFFICES

### In Memoriam

**William Key, Jr.**  
**Northern District of California**

On November 17, 1994, William Key, Jr., Law Enforcement Liaison Officer for the Northern District of California, passed away at the age of 58. Mr. Key joined the United States Attorney's office after retiring as Hillsborough Police Chief in 1990 after 14 years of service. His major responsibility was to maintain relations between the United States Attorney's office and local law enforcement officials. United States Attorney Michael J. Yamaguchi considered him a tremendous asset in the office. He will be remembered as a friend and a great contributor to the United States Attorney's office and the community.

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### Appointment

On November 21, 1994, **Joe Bradley Pigott** was appointed by the Attorney General to serve as Interim United States Attorney for the Southern District of Mississippi.

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### Attorney General's Advisory Committee of United States Attorneys-- An Update

The Attorney General's Advisory Committee of United States Attorneys (AGAC) met September 21-23, 1994, in Washington, D.C., with Chairman Michael R. Stiles, United States Attorney for the Eastern District of Pennsylvania, presiding. Much of the meeting was devoted to the Crime Bill, particularly the Youth Handgun Safety Act.

Mr. Stiles thanked the Attorney General and the Associate Attorney General on behalf of the AGAC for their continued guidance and leadership as they work together to implement this critical piece of legislation. He also expressed appreciation to Jo Ann Harris, Assistant Attorney General for the Criminal Division, who has offered further guidance and assistance.

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### Legislative Proposals

On October 10, 1994, Attorney General's Advisory Committee Chair Michael Stiles issued a memorandum to all United States Attorneys concerning legislative proposals. A number of United States

Attorneys have expressed an interest in, or have actually recommended amendments to, and the enactment of, new Federal statutes. Because the United States Attorneys are responsible for the prosecution of approximately 95 percent of Federal civil cases, the everyday experiences of the United States Attorneys are invaluable.

In order to put forward a successful legislative agenda, Chairman Stiles has asked Carl Kirkpatrick, United States Attorney for the Eastern District of Tennessee, to chair a Subcommittee on Legislation and to work with the AGAC and all United States Attorneys to develop legislative priorities and to further these priorities within the Department, the Administration, and Congress. Chairman Stiles has asked each United States Attorney to determine if there are any statutes which require amendment, enactment, or repeal, and if so, to provide material for each proposal to the Executive Office for United States Attorneys by December 14, 1994. Submissions should be sent to Louis DeFalaise [(202)616-2128] or Nicholas Gess [(202)616-6484].

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### **Significant Cases**

#### **District of Arizona**

United States Attorney Janet Napolitano announced the seizure of approximately 6 tons of cocaine, 1300 pounds of marijuana, and over \$2 million from a Mexico-based narcotics smuggling organization. The cocaine has an estimated street value of over \$563 million.

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#### **Central District of California**

Stephen Earl Cook was sentenced to 8 years and 9 months for violating Federal wildlife laws after he smuggled into the United States 600 Mexican red-kneed tarantulas, a highly endangered species that could hold a key to curing Alzheimer's and Parkinson's diseases. The tarantulas were valued at a total of more than \$120,000. Cook bought the spiders for \$3.00 apiece from a tarantula hunter in Colima, Mexico, and concealed them inside a suitcase and drove them across the United States border without declaring them to any U.S. agency, as required by law. This case was successfully prosecuted with the assistance of the Environment and Natural Resources Division.

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#### **Northern District of California**

The Captain of the S.S. INDEPENDENCE, an 800-passenger cruise liner, and two corporate officers pled guilty in U.S. District Court to dumping tons of concrete, metal materials, and other debris into the



Pacific Ocean without Federal permits, a violation of the Marine Protection, Research and Sanctuaries Act of 1972, or the Ocean Dumping Ban Act. According to Environmental Protection Agency (EPA) officials, contractors working for the cruise liner dismantled the kitchen galley--which included concrete bulkheads, stainless steel fixtures, and flooring--on the S.S. INDEPENDENCE after it left Hawaii for the mainland in May 1992. The Captain then gave the orders to dump the debris overboard at about 400 miles from San Francisco.

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#### **District of Delaware**

A Federal court approved a settlement requiring Delaware to pay over \$3 million for refusing to hire or promote women at its correctional facilities. The settlement resolves a 1990 suit filed by the Department of Justice alleging that the State engaged in a pattern of discrimination. The suit challenged a 1980 State law that prohibited women from working in male housing units in its Department of Correction. In 1992, the Court ruled that the State statute violated Title VII of the Civil Rights Act of 1964 by severely limiting hiring and promotional opportunities for women.

The agreement, which was reached by the parties in May 1994, creates a \$3 million fund to compensate victims of the discriminatory practices from 1980 through 1992, when the Federal District Court struck down the statute. It also provides retroactive pension benefits to those women who receive priority employment or promotion based on past discrimination.

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#### **Middle District of Florida**

A Florida man has been sentenced to 21 months of imprisonment for smuggling Australian cockatoo eggs into the United States. The eggs, whose importation is prohibited under United States law, were worth \$603,000 after hatching into birds. During 1990, the defendant worked as an egg smuggler, or "mule," for a group of individuals charged in a California case with smuggling hundreds of cockatoo eggs into the United States over eight years. The smugglers hid the eggs in vests worn beneath outer clothing. When reared, the birds commanded prices from \$1,500 to \$12,500 per bird. Cockatoos are protected under the Convention on International Trade in Endangered Species of Fauna and Flora. Australian law also prohibits their exportation. The clandestine importation of the eggs also violates several U.S. statutes, including the Lacey Act and Endangered Species Act.

### **Middle District of Georgia**

James L. Wiggins, United States Attorney for the Middle District of Georgia, announced that Robert D. Krotzer agreed to the civil forfeiture of \$125,000 and a 1993 Chevrolet Blazer automobile valued at \$13,475. The forfeitures arose out of an incident that occurred at the Ocmulgee National Monument.

In November 1993, a National Park Service Assistant Chief Ranger discovered Krotzer digging on Ocmulgee National Monument land. The entire park contains numerous archeological sites ranging in date from the Mississippian Period (700-1500 A.D.) to the last century. Consequently, Krotzer's digging violated the Archeological Resources Protection Act (ARPA; 16 U.S.C. 470ee). In fact, he was caught in the act of burying \$1.6 million in gold, platinum, and currency in the Park. Subsequent investigation by the National Park Service, the FBI, and the Internal Revenue Service revealed that a business controlled by Krotzer in Buffalo, Kayak Manufacturing Corporation, one of the largest manufacturers of above-ground swimming pools in the northeastern United States, had filed for bankruptcy in 1990.

In July 1994, Krotzer pled guilty in U.S. District Court for the Western District of New York to a felony charge of bankruptcy fraud/concealment of assets. In the related civil forfeiture actions in the Middle District of Georgia, Krotzer agreed to forfeit \$125,000 in currency to the United States as property involved in bankruptcy fraud. He also agreed to forfeit a Chevrolet Blazer as property used to facilitate an ARPA violation. Through the facilitation of the U.S. Marshals Service, the seized Blazer will go to Ocmulgee National Monument.

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### **Northern District of Georgia**

The United States District Court in Atlanta has entered a judgment of forfeiture against \$3.6 million that had been seized by the United States Customs Service as part of an 18-month long undercover investigation dubbed "Operation Primero." The forfeited funds will be deposited into the U.S. Treasury Forfeiture Fund.

During 1993 and 1994, the United States Customs Service established an undercover business operating as a financial consulting firm in Atlanta. Six individuals alleged to be members of the Cali and Medellin Colombian drug cartels instructed the undercover business to collect drug proceeds from various locations in Paris, France; Madrid, Spain; Rome and Milan, Italy; and various cities in the United States. On June 27, 1994, a Federal grand jury returned an indictment charging the six individuals with assisting in the distribution of narcotics and conspiring to launder drug proceeds so that the money could be returned to Colombia, South America.

### Southern District of New York

United States Attorney Mary Jo White announced that a criminal complaint was filed on October 27, 1994, charging Prudential Securities Incorporated (PSI) with securities fraud in connection with its sale of certain oil and gas limited partnerships known as Prudential-Bache Energy Income Limited Partnerships (The Energy Income Fund). PSI (formerly known as Prudential-Bache Securities), a broker-dealer registered with the Securities and Exchange Commission (SEC) and headquartered in New York with offices in most major cities of the United States, has acknowledged its criminal wrongdoing.

Filed simultaneously was an agreement to defer the prosecution of the charges for a period of three years, if specified conditions are met, including the payment of an additional \$330 million into a special fund established by the SEC for investors who purchased PSI oil and gas limited partnerships, with any funds in excess of investor claims to be paid to the United States. In addition, the agreement requires (1) the installation of an independent "ombudsman" to receive allegations of misconduct by any PSI employee and to file quarterly reports with the United States Attorneys of any such allegations; (2) the retention of an independent law firm acceptable to the Government to review PSI's policies and procedures to determine the adequacy of its regulatory and compliance controls; and (3) full and truthful cooperation in any criminal investigations, including voluntarily providing any requested records and unlimited access to governmental authorities to PSI's facilities, documents, and employees. The agreement also obligates Prudential Securities Group and The Prudential Insurance Company, as parent companies, to take appropriate steps to further PSI's compliance. At the end of the three-year period specified in the agreement, if PSI has fully complied with all of the terms of the agreement, the Government will institute no further prosecution.

\* \* \* \* \*

### Southern District of New York

Consolidated Edison Company of New York (Con Edison) pled guilty in Manhattan Federal court to charges that it deliberately concealed the release of approximately 200 pounds of asbestos in the wake of a steam manhole explosion in the Gramercy Park section of Manhattan on August 19, 1989. Constantine J. Papakrasas, a former official of Con Edison, also pled guilty to a related charge. The guilty pleas came after four days of testimony in a trial that began on October 11, 1994, and was anticipated to last two to three months. Con Edison pled guilty before a United States District Court Judge to one count of conspiracy to defraud the Government (Count One), and three substantive counts (Counts Three, Five, and Seven). The charges included failing to timely report the asbestos release to state and local Government agencies pursuant to the Emergency Planning and Community Right to Know Act; falsely reporting to the Environmental Protection Agency that the Company did not believe that asbestos found in the street after the explosion was from the manhole; and falsely reporting to the National Response Center of the United States Coast Guard that Con Edison did not know whether the asbestos found in an apartment building was from its steam pipe or the building, even after residents of the building independently discovered asbestos four days after the explosion.

### **Eastern District of Oklahoma**

Randall Leon Craig of Talihina, Oklahoma, was found guilty of a felony violation of the Archaeological Resources Protection Act (ARPA; 16 U.S.C. 470ee). Craig was subsequently sentenced to three years probation and six months in a Federal halfway house. This is the first prosecution of a felony violation of ARPA in the Tulsa District, which encompasses all of Oklahoma and portions of Kansas and Texas.

The investigation revealed evidence of looting in the Lake Wister Locality Archeological District, listed in the National Register of Historic Places. Lake Wister Locality is federally-owned and under the jurisdictional authority of the U.S. Army Corps of Engineers. The United States presented evidence at trial that during September 1993, Craig excavated, removed, damaged, or otherwise altered or defaced the archeological site without a permit, and caused damage in excess of \$40,000. Disturbed artifacts observed on the surface of the site included chert bifaces and other tools, debitage, large and small animal bones, shell fish, and ceramics. Many burned rocks scattered across the site indicated that multiple features were destroyed as well. The Tulsa District Corps of Engineers is taking steps to stabilize the site.

\* \* \* \* \*

### **Eastern District of Wisconsin**

A Federal Court in Milwaukee convicted six individuals for physically obstructing the entrance to a medical clinic, in the first obstruction case brought by the Department of Justice under the Freedom of Access to Clinic Entrances Act. The incident took place on June 4, 1994, at a clinic that provides reproductive health services.

## EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Carol DiBattiste, Director, Executive Office for United States Attorneys, has issued the following announcements or memoranda concerning recent activity.

\* \* \* \* \*

### Telecommunications and Technology Development

The Video Teleconferencing Pilot and Laboratory of the Executive Office for United States Attorneys is in full operation. Various levels of equipment technologies are in place in each of the designated pilot locations.

Video connections have been established and validated between the laboratory in Washington, D.C., and the United States Attorneys' offices in Brooklyn, New York, and Cleveland, Ohio. Connections have also been made to the General Services Administration Regional Offices in San Francisco, and to the U.S. Army Technology Integration Center Video Laboratory at Fort Huachuca, Arizona. The connection to Fort Huachuca was their first experience with an inter-operable connection to a video teleconferencing site outside of the Arizona laboratory facility.

\* \* \* \* \*

### State Gun Laws

A survey of state gun laws was forwarded to all United States Attorneys and First Assistant United States Attorneys on November 14, 1994. The survey contains highlights of laws that have been enacted over the last few years, and is intended to assist the United States Attorneys' offices in implementing the Youth Handgun Safety Act initiative.

The material was pulled together from a variety of sources and, while there was no intention of reporting all provisions from every law that has been passed, there may be certain trends that are common to a number of jurisdictions. In some instances, these laws are the precursors of Federal enactments, such as the new Brady Handgun Law, and in other cases they follow Federal laws, such as the Gun Free School Zone Act of 1990 [18 U.S.C. 922]. These laws can be generally grouped into the following categories:

Assault-style weapons and ammunition bans,

Imposition of waiting periods before handguns can be purchased and penalties for violations of the waiting periods,

Licensing requirements,

Restrictions on juvenile possession of weapons,

Laws that require gun owners to keep firearms in their possession away from minors, and

Restrictions on the use and possession of firearms on or around school property.

If you have questions or require additional information, please contact Bernie Delia, Executive Office for United States Attorneys, (202)514-8500.

\* \* \* \* \*

### **New Procedures Concerning Allegations of Misconduct by Department of Justice Employees**

A copy of a memorandum issued by the Attorney General on November 15, 1994, was forwarded to all United States Attorneys and Assistant United States Attorneys, setting forth new procedures concerning allegations of misconduct by Department of Justice employees. Attached to the memorandum are two documents: (1) Attorney General Order No. 1931-94, which defines the respective jurisdictions of the Department's Office of Professional Responsibility and Office of Inspector General and (2) a United States Attorneys' Manual bluesheet affecting USAM 1-4.000, which establishes procedures for reporting and handling misconduct allegations.

If you would like a copy of these documents or have questions concerning the new procedures, please contact Juliet Eurich, Legal Counsel, Executive Office for United States Attorneys, (202)514-4024.

\* \* \* \* \*

### **Proposed Amendments to Rule 4.2 of the Model Rules of Professional Conduct**

The American Bar Association (ABA) is considering two amendments to Model Rule 4.2 of the Model Rules of Professional Conduct which addresses communications with represented parties. Speaking for the Department of Justice, Deputy Attorney General Jamie S. Gorelick opposed these amendments in a letter to Margaret C. Love, Chair, ABA Standing Committee on Ethics and Professional Responsibility.

On November 4, 1994, a copy of Ms. Gorelick's letter was forwarded to all United States Attorneys. David Margolis, Associate Deputy Attorney General and Chair of the Professional Responsibility Advisory Board, has also distributed copies to the Professional Responsibility Officer(s) in the Districts. If you have questions or require additional information, please contact Bernie Delia, Executive Office for United States Attorneys, (202)514-8500.

### **Evaluation and Review Staff**

One of the major responsibilities of the Evaluation and Review Staff (EARS) of the Executive Office for United States Attorneys (EOUSA) is to coordinate, direct, and supervise the legal management, administrative and personnel management, and financial litigation evaluations of the United States Attorneys' offices (USAOs) and to evaluate components of EOUSA. The evaluation process includes, among other things, the identification of specific problems or problem areas, and contact with people who can best assist the USAOs and EOUSA components in resolving these problems. In conjunction with the Office of Legal Education, EARS conducted its first training conference for all team leaders in November in Washington, D.C. Regional training conferences for team members will follow, with the first team member training session scheduled to be held in San Francisco in January 1995.

EARS is accepting nominations for Assistant United States Attorney evaluators and would welcome nominations from USAOs in the form of letters of recommendation from United States Attorneys. Letters should be sent to Douglas N. Frazier, Assistant Director, Evaluation and Review Staff, Barnett Bank Centre, Suite 701, 2000 Main Street, Fort Myers, Florida 33901. For further information, Mr. Frazier can be reached on (813)337-7700.

\* \* \* \* \*

### **Freedom of Information Act/Privacy Act**

The Attorney General has established a major management objective for all components of the Department for the coming fiscal year--compliance with the provisions of the Freedom of Information Act (FOIA) and the Privacy Act.

During the coming months, the Executive Office for United States Attorneys (EOUSA) intends to process all FOIA/Privacy Act requests now pending and beginning no later than October 1995, EOUSA will close as many cases per month as they receive. In short, by October 1995, EOUSA will eliminate its backlog. United States Attorneys have been asked to:

Remind their Supervisory Assistants and Administrative Officer of the Attorney General's commitment to full and timely compliance with FOIA and the Privacy Act.

Ensure that a FOIA/Privacy Act contact person is selected to assist in responding to requests for information and to provide support in photocopying and shipping materials to EOUSA for processing.

Determine if there are pending requests from EOUSA for records and, if there are such requests, ascertain how the records might expeditiously be forwarded to EOUSA.

Ensure that closed files are purged of extraneous or unnecessary materials.

If you have questions, please call C. Madison Brewer, Assistant Director, Information and Privacy, (202)616-6757.

\* \* \* \* \*

### Office of Legal Education

James A. Hurd, Jr., Director, Office of Legal Education (OLE), is pleased to announce OLE's projected course offerings for the months of December 1994 through February 1995 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 (DOJ) 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.

### Attorney General's Advocacy Institute (AGAI) Courses

The courses listed below are tentative only. OLE will send an announcement and request for nominations via Email approximately eight weeks prior to the commencement of each course, to all United States Attorneys' offices and DOJ Divisions.

#### December 1994

<u>Date</u>	<u>Course</u>	<u>Participants</u>
1-2	Criminal Enforcement of Child Support (West)	AUSAs, DOJ Attorneys
5-16	Civil Trial Advocacy	AUSAs, DOJ Attorneys
6-8	Basic Financial Institution Fraud	AUSAs, DOJ Attorneys
12-16	Criminal Federal Practice	AUSAs, DOJ Attorneys
13-15	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys

#### January 1995

9-13	Advanced Criminal Trial Advocacy	AUSAs, DOJ Attorneys
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<u>Date</u>	<u>Course</u>	<u>Participants</u>
10-13	Medical Malpractice	AUSAs, DOJ Attorneys
18-20	Attorney Supervisors	AUSAs
23-27	Civil Federal Practice	AUSAs, DOJ Attorneys
24-27	Child Sexual Abuse	AUSAs, DOJ Attorneys
31-2/3	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys

#### February 1995

7-9	Alternative Dispute Resolution	AUSAs, DOJ Attorneys
7-9	Advanced Asset Forfeiture	AUSAs, DOJ Attorneys
13-17	Appellate Advocacy	AUSAs, DOJ Attorneys
14-17	Complex Prosecutions	AUSAs, DOJ Attorneys
22-24	First Assistant United States Attorneys (Large)	FAUSAs, Large Offices
22-24	Special Problems in Bankruptcy	AUSAs, DOJ Attorneys
27-3/10	Civil Trial Advocacy	AUSAs, DOJ Attorneys
27-3/3	Computer Crimes	AUSAs, DOJ Attorneys

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#### 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 (USAOs) 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 as Appendix D. Local reproduction is authorized and encouraged. Notice of acceptance or non-selection will be mailed to the address typed in the address box on the nomination form approximately three weeks before the course begins. **Please note: OLE does not fund travel or per diem costs for students attending LEI courses (except for paralegals and support staff from USAOs for courses marked by an \* beside the dates).**

#### December 1994

<u>Date</u>	<u>Course</u>	<u>Participants</u>
5-9	Research and Writing Refresher for Paralegals	USAO, DOJ Paralegals
7	Advanced Freedom of Information Act	Attorneys, Paralegals
12	Appellate Skills	Attorneys
13-16	Examination Techniques	Attorneys

#### January 1995

4-6	Environmental Law	Attorneys
9-13*	Legal Support Staff	USAO Support Staff
9-13*	Basic Financial Litigation Support Staff	USAO FLU Support Staff
17	Legal Writing	Attorneys
17	Ethics for Litigators	Attorneys

<u>Date</u>	<u>Course</u>	<u>Participants</u>
18-19	Freedom of Information Act for Attorneys and Access Professionals	Attorneys, Paralegals
20	Privacy Act	Attorneys, Paralegals
23-27*	Civil Paralegal	USAO Paralegals
30-2/1	Negotiation Skills	Attorneys
<b>February 1995</b>		
6-10*	Appellate for Paralegals	USAO, DOJ
13-14	Federal Acquisition Regulations	Attorneys
21	Freedom of Information Act Forum	Attorneys, Paralegals
22-24	Discovery	Attorneys
23-24	National Environmental Protection Act	Attorneys
27-3/3*	Criminal Paralegal	USAO, DOJ Paralegals

\* \* \* \* \*

### Office of Legal Education Contact Information

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

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

Director .....	James A. Hurd, Jr.
Deputy Director .....	David Downs
Assistant Director (AGAI-Criminal) ...	Amy Lederer
Assistant Director (AGAI-Criminal) ...	Angel Moreno
Assistant Director (AGAI-Civil & Appellate) .....	Tom Majors
Assistant Director (AGAI-Asset Forfeiture & Financial Litigation) ...	Nancy Rider
Assistant Director (LEI) .....	Donna Preston
Assistant Director (LEI-Paralegal & Support) .....	Donna Kennedy
Assistant Director (LEI) .....	Chris Roe

## DEPARTMENT OF JUSTICE HIGHLIGHTS

### Supreme Court Watch

**Anthony S. Austin v. United States** (On Motion of Thomas N. Cochran for Leave to Withdraw as Counsel for Petitioner) (decided October 31, 1994)

Anthony Austin pled guilty to possession of crack cocaine with intent to distribute in violation of 21 U.S.C. 841 and was sentenced to 151 months of imprisonment. Thomas Cochran, an attorney appointed pursuant to the Criminal Justice Act of 1964, represented Austin on his appeal to the Fourth Circuit. Cochran submitted a brief in accordance with Anders v. California, 386 U.S. 738 (1967), raising the issue of sentence computation, but concluding that no meritorious issue existed for appeal. After the Fourth Circuit affirmed Austin's sentence, Cochran advised Austin of his right to petition for certiorari in accordance with the Fourth Circuit Rules. Austin requested that Cochran file that petition.

Prior to the deadline for filing the petition, Cochran applied to the Supreme Court for leave to withdraw as counsel, bringing to the attention of the Court the potentially conflicting obligations imposed by the Fourth Circuit's Rules and the Rules of the Supreme Court. The Fourth Circuit's rule requires the attorney to prepare and file a petition for a writ of certiorari if the defendant requests such a filing in writing. The Supreme Court's Rules provide, on the other hand, that attorneys shall not make frivolous filings. The Court acknowledged a defendant's constitutional right to a brief filed on his behalf in the context of an appeal as a right, but noted that that right does not extend to discretionary review. The Court granted Cochran's application to withdraw.

The Court's unanimous per curiam opinion notes that "the Circuit councils should, if necessary, revise their Criminal Justice Plans so that they do not create any conflict with our Rules. The plan should allow for relieving a lawyer of the duty to file a petition for certiorari if the petition would present only frivolous claims." Most circuits have rules similar to the Fourth Circuit's rule, while other circuits have rules that accommodate the Supreme Court's Rules in some fashion. In the First Circuit, an attorney must request leave from the Court to withdraw as counsel whereas the Sixth Circuit allows attorneys to rely on their best professional judgment. After discussing these two alternatives, the Court continued, "we think a plan requiring approval of the court of appeals is preferable, because attorneys are more likely to avail themselves of this avenue for relief if they have the endorsement of the court to back up their own judgment."

\* \* \* \* \*

**United States v. Shabani**, No. 93-981 (argued October 3, 1994 by Richard H. Seamon, Assistant to the Solicitor General) (decided November 1, 1994)

Reshat Shabani was arrested by undercover agents for participating in a narcotics distribution scheme, and charged with violating 21 U.S.C. 846, the drug conspiracy statute. Section 846 provides: "Any person who attempts or conspires to commit any offense defined in this subchapter shall be subject to the same penalties as those prescribed for the offense, the commission of which was the object of the attempt

or conspiracy." Shabani moved to dismiss the indictment because it failed to allege that he committed an overt act in furtherance of the conspiracy. He asserted that proof of an overt act is an essential element of the offense.

The United States District Court for the District of Alaska denied the motion. Shabani subsequently was found guilty of violating Section 846. The United States Court of Appeals for the Ninth Circuit reversed [993 F.2d 1419 (1993)]. The court held that while an indictment need not allege an overt act in furtherance of the conspiracy, such an act must be proved at trial. Although Chief Judge Wallace, in a separate concurrence, pointed out that the decision was in conflict with decisions in every other circuit, the Court of Appeals declined to grant en banc review. The Supreme Court granted certiorari [114 S. Ct. 1047 (1994)].

The Supreme Court reversed in a unanimous opinion by Justice O'Connor. The Court found that the language of Section 846 did not require the commission of an overt act. The Court held that it is a "settled principle of statutory construction that, absent contrary indications, Congress intends to adopt the common law definition of statutory terms." Shabani, slip. op. 4. Since the common law understanding of conspiracy, according to consistent Supreme Court precedent, did not require proof of an overt act, such a requirement should not be read into Section 846.

The Court also found support for its decision in the general conspiracy statute, 18 U.S.C. 371, which contains an explicit overt act requirement. "In light of this additional element . . . Congress' silence in §846 speaks volumes." *Id.* at 5. The Court recognized the law generally prohibits the punishment of criminal thoughts. The Court held that a conspiracy statute without an overt act requirement does implicate that principle, however, because the criminal agreement itself is the actus reus, and has been so viewed since Regina v. Bass, 11 Mod. 55, 88 Eng. Rep. 881, 882 (K.B. 1705).

Finally, the Court held that because the plain language of the statute and settled interpretive canons reveal that proof of an overt act is not required to establish a violation of Section 846, invocation of the rule of lenity would be inappropriate.

\* \* \* \* \*

### **Special Counsel for Health Care Fraud**

On October 12, 1994, Gerald M. Stern, Special Counsel for Health Care Fraud, Office of the Deputy Attorney General, testified before the Subcommittee on Regulation, Business Opportunities, and Technology of the House Committee on Small Business, concerning health care fraud and abuse. Mr. Stern stated that health care fraud imposes an enormous cost to the health care system and to our nation's economy as a whole. Currently, it may account for up to 10 percent of all health care expenditures. As much as \$100 billion could be lost annually to this fraud, which also undermines the quality of health care provided to patients. At times, this fraud has even placed patients at serious risk of physical harm.

The Attorney General made health care fraud her number two initiative after violent crime, and asked Mr. Stern to coordinate the Department's health care fraud enforcement program. Accordingly, Mr. Stern

established an Executive Level Health Care Fraud Policy Group and requested the Inspector General of the Department of Health and Human Services and senior members of the FBI, Department of Justice, and the United States Attorneys' offices to identify policy priorities and coordinate issues affecting health care fraud investigations and prosecutions. For the first time, there are criminal and civil health care fraud coordinators in each United States Attorney's office. By the end of the year, most offices will be sponsoring health care fraud working groups. Mr. Stern added that there are increased numbers of FBI agents investigating health care fraud. At present, the FBI is expending approximately 300 FBI agent workyears handling these cases, up from 163 FBI agent workyears at the end of the last fiscal year. The FBI anticipates that this number could rise to 450 by the end of the next year. As of June 1994, the FBI had 1,361 pending health care fraud cases, up from 657 in November 1992. The following are a few of the statements included in Mr. Stern's testimony:

The numbers of health care fraud investigations and cases handled by Federal prosecutors has also risen dramatically over the last few years.

The Department of Justice had 1,041 criminal health care fraud matters open in August 31, 1994, a 158 percent increase over the 621 matters pending in Fiscal Year 1993.

Eight hundred ninety nine civil health care fraud matters were pending as of August 31, 1994, a 199 percent increase over the 411 pending in Fiscal Year 1993.

The numbers of defendants charged and convicted similarly increased. Two hundred twenty four defendants were charged as of August 1994, a 67 percent increase over the 157 charged in Fiscal Year 1993.

The numbers of defendants convicted also increased during this time period, often with long sentences. For example, recently two men who had perpetrated a health care fraud in California involving millions of dollars and 1,400 insurance companies, each were sentenced to over 20 years of imprisonment, plus restitution and forfeiture orders.

Mr. Stern further discussed civil prosecutions, kickback schemes, prescription marketing schemes, criminal and civil enforcement of prescription marketing schemes, and needed statutory improvements to combatting kickbacks.

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

## **Antitrust Division**

### **Antitrust Enforcement Assistance Act of 1994**

On November 2, 1994, President Clinton signed the Antitrust Enforcement Assistance Act of 1994 into law. Anne K. Bingaman, Assistant Attorney General in charge of the Antitrust Division, issued the following statement:

This Act will allow the Department of Justice and the Federal Trade Commission (FTC) to cooperate with foreign antitrust authorities in international antitrust enforcement, under agreements authorized by the Act. The Department and the FTC have immediately begun to implement the law by agreeing to enter into exploratory discussions with the Canadian Government, for the purpose of developing an agreement allowing both countries to share and obtain otherwise confidential civil investigative information and evidence involving antitrust investigations.

This Act is an important step in allowing U.S. antitrust authorities to build upon our strong relationship with the Canadian Government. If an agreement with Canada is concluded, it will allow us to cooperate and exchange confidential information in civil antitrust investigations and prosecutions, just as we now do under our Mutual Legal Assistance Treaty (MLAT) with Canada for criminal matters. Under the MLAT, we have successfully conducted our joint fax paper and plastic dinnerware investigations and prosecutions with the Canadian officials over the next few months to develop an agreement that will enable both countries to further strengthen the enforcement of their respective antitrust laws. The agreement would be similar to a mutual legal assistance treaty.

This Act also will allow the U.S. agencies to negotiate agreements with other appropriate foreign antitrust authorities to exchange confidential information, with necessary safeguards in both criminal and civil matters. In the age of global commerce, international cartels and transnational anticompetitive conduct that injure our consumers and U.S. competitors, are key targets of the Antitrust Division's enforcement program. Until now, the most significant obstacle to our international enforcement efforts has been our limited ability to get information and documents from outside the United States in order to build a case that will stand up in court.

The new law has given the Division the firepower we need to obtain the evidence abroad which is necessary to crack down on international cartels, price fixing among U.S. firms at the direction of their foreign parent companies, and collusion among foreign firms that significantly affects U.S. foreign and export commerce. It will enable the Department and the FTC to obtain evidence from foreign antitrust agencies by authorizing the U.S. antitrust agencies to provide reciprocal assistance where it is in the

public interest to do so, and where foreign authorities will treat the information with the same confidentiality as the U.S. agencies.

I believe we will see an increase in the number of international cases brought by the Antitrust Division as a result of this law, which gives us the necessary tools to enforce our antitrust laws against international cartels which harm American consumers and businesses. In the upcoming months, the Department of Justice and the FTC will begin discussions with other foreign countries to develop and conclude additional agreements under the new law.

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### Civil Division

**Katia Gutierrez de Martinez v. Dirk A. Lamagno**, No. 94-167  
(November 14, 1994), S. Ct., 4th Cir., E.D. Virginia,  
DJ # 157-79-3169

Attorneys: Barbara Herwig - (202)514-5425  
Peter Maier - (202)514-3585

Plaintiffs, citizens of the Republic of Colombia, brought a tort action in the United States District Court for the Eastern District of Virginia based on diversity of citizenship against Dirk A. Lamagno, a Special Agent employed by the Drug Enforcement Administration, alleging that his negligence caused an automobile accident in Barranquilla, Colombia, in which they were injured. The United States Attorney certified on behalf of the Attorney General that the Special Agent was acting within the scope of his office or employment under the Westfall Act and moved to substitute the United States as the defendant. The District Court substituted the United States in place of the Special Agent, whom it dismissed from the action. The District Court then granted the Government's motion to dismiss the suit on the ground that the United States is immune from suits based on any claim arising in a foreign country. Plaintiffs appealed from the order dismissing the employee. On appeal, the Fourth Circuit (Hall, Wilkinson, Williams) in a per curiam opinion affirmed the District Court's order holding that a certification by the Attorney General that an employee was acting within the scope of his office or employment at the time of the incident that gave rise to the claim is conclusive and, therefore, not subject to judicial review.

Plaintiffs filed a petition for certiorari on the issue of whether the Attorney General's scope of employment certification is conclusive under the Westfall Act. In their petition, plaintiffs also asserted that they were entitled to judicial review under Section 709 of the Controlled Substances Act, which authorizes the Attorney General to pay tort claims arising from operations of the Drug Enforcement Administration abroad. Because there is a split among the circuits on the first question, the Civil Division urged the Court to grant certiorari to resolve it. The Supreme Court has now granted certiorari on both questions.



**U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership**, No. 93-714  
(November 8, 1994), 9th Cir., D. Idaho, DJ # 145-0-4010

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

U.S. Bancorp is the largest secured creditor of Bonner Mall. During its bankruptcy proceeding, Bonner Mall proposed a Reorganization Plan which permitted its equity owners to retain an ownership interest in the reorganized business, although U.S. Bancorp would not be paid immediately. The bankruptcy court rejected the Plan, holding that it violated the "absolute priority" rule, under which junior equity holders may not receive anything until senior creditors have been paid. Both the District Court and the Ninth Circuit upheld the Plan, holding that the equity holders' injection of "new value" permitted confirmation of the Plan. The Supreme Court granted U.S. Bancorp's petition for certiorari to resolve a conflict in the courts of appeals over this "new value exception" to the absolute priority rule. While the case was being briefed, the parties agreed to a consensual Reorganization Plan before the bankruptcy court which does not rely on the "new value" exception. In light of that "settlement," U.S. Bancorp requested that the court of appeals' judgment be vacated, which Bonner Mall opposed. The United States filed an amicus brief in support of U.S. Bancorp, noting our longstanding practice of seeking vacatur on settlement.

The Supreme Court (Scalia, J., for a unanimous Court) denied vacatur. The Court held that it had the authority to grant vacatur under 28 U.S.C. § 2106, which authorizes a reviewing court to take any action with respect to a lower court's decree "as may be just under the circumstances." The Court also noted that the parties agreed that vacatur would be appropriate if mootness resulted either from "happenstance" or the actions of the party which prevailed below. The Court rejected the proposition, however, that vacatur was appropriate where the parties settled the underlying litigation. Under those circumstances, "the losing party has voluntarily forfeited his legal remedy by the ordinary processes of appeal or certiorari, thereby surrendering his claim to the equitable remedy of vacatur." The Court also stated that its holding was supported by the public's interest in the value of precedent, which is not to be disturbed except by the "prescribed . . . route" of appeal or certiorari. While the Court noted that vacatur, as an equitable remedy, might be available either where "exceptional circumstances . . . counsel in favor of such a course" or where the court of appeals remands the case to the district court for the exercise of its discretion under Rule 60(b), it reiterated that in the ordinary course "mootness by reason of settlement does not justify vacatur of a judgment under review." This decision will make it more difficult for the Government to settle appellate cases where vacatur of the underlying judgment is an important consideration.

**Gasho v. United States; Gasho v. Ball, et al.**, Nos. 92-16988, 93-15727  
(November 2, 1994), 9th Cir., D. Arizona, DJ # 157-8-1425 and 157-8-1663

Attorneys: Barbara L. Herwig - (202)514-5425  
Wendy M. Keats - (202)514-0265

John and Sharon Gasho brought the first of these suits under the Federal Tort Claims Act alleging false arrest, intentional infliction of emotional distress, and abuse of process arising from the seizure by Customs agents of a DC-3 aircraft operated by them for displaying apparently unauthorized Canadian registration numbers, and from the arrest of the Gashos for refusing to turn over the aircraft's logbooks as demanded by the agents. The District Court granted summary judgment for the Government, holding that the agents had probable cause to arrest the Gashos for interfering with a Customs seizure; that the claims based on the referral of the case for prosecution were barred under the discretionary function exception to the FTCA, 28 U.S.C. § 2680(a), and that the remaining claims failed to state cognizable torts under Arizona law. The Gashos then filed a Bivens suit against the agents based on the same events, which was dismissed by the District Court pursuant to the judgment bar of 28 U.S.C. § 2676 (a "judgment" under the FTCA is a "complete bar" to any action by reason of the same subject matter against the Government employees whose actions gave rise to the FTCA claim).

On appeal, the Ninth Circuit (D. Nelson, Boochever, Beezer) affirmed in part and reversed in part. In two particularly useful holdings, the court (1) accepted our argument (rejected by the District Court) that all claims arising from the detention or seizure of goods by Customs agents, including claims of intentional tort otherwise actionable under 28 U.S.C. § 2680(h), are barred under the terms of the Customs exception to the FTCA, 28 U.S.C. § 2680(c); and (2) the court ruled that the judgment bar of 28 U.S.C. § 2676 precludes a suit against individual Government employees for the same subject matter regardless of whether the FTCA judgment was favorable to the plaintiffs. The court also upheld the application of the discretionary function exception to the referral for prosecution. However, with regard to the claims arising from the arrests in this case, the court held that because the Gashos had no notice of the seizure of the logbooks before they removed them from the aircraft, and only passively refused to turn them over later, the agents lacked probable cause to believe they had the specific intent to criminally interfere with a Customs seizure. Accordingly, the court reversed the dismissal of the FTCA and Bivens claims arising from the arrests, and remanded the cases for further proceedings.

\* \* \* \* \*

**Spragens v. Shalala**, No. 93-8067 (September 23, 1994), 10th Cir., D. Wyoming,  
DJ # 137-87-40

Attorneys: William Kanter - (202)514-4575  
Alfred R. Mollin - (202)514-0236

Disabled persons who cannot engage in substantial gainful activity are eligible to receive Federal benefits under the Social Security Act. During times relevant to this case, blind persons could earn up to \$650 per month without losing their eligibility for these benefits; sighted persons became ineligible if they earned more than \$300 per month. Plaintiff has a joint deformity. He began receiving disability benefits

in 1976 but, beginning in 1986, plaintiff's average monthly income reached \$360 per month. Therefore, the Secretary terminated his benefits. If plaintiff had been blind his benefits would not have been terminated. Applying heightened scrutiny, the District Court held that the preference for the blind is unconstitutional. The court held that the preference violated equal protection because, given the severity of plaintiff's condition, he is at least similarly situated to a blind person, yet not receiving the same benefits.

The Court of Appeals has reversed. It accepted the argument that no suspect categories were at issue and the proper standard of review was a rational basis test. The court held that under this test, it was rational to conclude that the blind as a class are less favorably situated than others, even though on a case-by-case basis there may be imprecision.

\* \* \* \* \*

## **Criminal Division**

### **Appointments**

Jo Ann Harris, Assistant Attorney General for the Criminal Division has announced the following appointments:

**Mary Spearing**, formerly the Chief of the General Litigation and Legal Advice Section, has been named Chief of the Fraud Section.

**Gerald E. McDowell**, formerly Chief of the Fraud Section, has been named Director of the Asset Forfeiture Office.

\* \* \* \* \*

## **Youth Handgun Safety Act**

On November 1, 1994, Assistant Attorney General Jo Ann Harris issued a memorandum to all United States Attorneys concerning developing a District plan to implement the Youth Handgun Safety Act. As part of the Anti-Violent Crime Initiative, the United States Attorneys have established a Violent Crime Task Force, or working group, to address the most serious violent crime problems in their communities. In the process, a majority of the United States Attorneys have identified gun violence committed by juveniles as one of the most serious problems in their Districts, or as a significant contributing factor to violent crime.

Ms. Harris has suggested that the United States Attorneys develop their Youth Handgun Safety Act plan in the context of the partnership already established through the Anti-Violent Crime Initiative with local, state, and other Federal authorities, and that they design a coordinated strategy focussed on the broader issue of juvenile violence. Because state and local law enforcement officials are principally responsible for administering juvenile justice throughout the country, efforts to address juvenile violence using Federal statutes and other Federal tools should complement, not supplant, those of state and local prosecutors.

In her memorandum, Ms. Harris also suggests enforcement, prevention, and long-term strategies, and discusses the Youth Handgun Safety Act in detail.

\* \* \* \* \*

### New Digital Telephony Bill Modifies Wiretap Laws

On October 25, the President signed the Communications Assistance for Law Enforcement Act of 1994 (the "Digital Telephony" bill). The bill amends Title III of the Omnibus Crime Control and Safe Streets Act of 1968 to require the assistance of telecommunications companies in intercepting wire communications over new technologies for law enforcement purposes. The bill also mandates the use of a Title III order when intercepting cordless phone conversations. A detailed analysis of the bill will be published in the Office of Enforcement Operations' Electronic Surveillance Bulletin. The provisions of the bill that have an immediate effect on the conduct of electronic surveillance and related matters are highlighted below.

Cordless telephones now require a Title III. The legislation strikes all language related to the warrantless interception of the "radio portion of a cordless telephone" and provides penalties for any such interception.

18 U.S.C. § 2511 (2)(a)(i) was amended by adding "or electronic communications" to "used in the transmission of a wire communication." This technical correction will now allow computer system operators to keystroke monitor hackers in their systems by keystroke detection.

The use of cloned cellular phones or tumbling electronic serial numbers is now covered by 18 U.S.C. § 1029 and the use of these devices is illegal, whether or not a fraud is committed against a valid account.

Title II was also amended. The Government may still obtain by subpoena [or 2903 (d) order, search warrant, or consent], the telephone subscriber or customer's name, address, toll and billing records, and length and type of services utilized. A subpoena cannot be used to go beyond that, i.e., to obtain on-line computer information or contents of accounts. At a minimum, to access this type of information, the Government must obtain a 2703(d) court order. The standard for a 2703(d) order has been raised to require that the Government offer "specific and articulable facts (added) showing that there are reasonable grounds to believe that the contents . . . are relevant and material (added) to an ongoing criminal investigation (formerly legitimate law enforcement inquiry)."

For more information, please contact Legal Counsel Stephen L. Harwood, (202)514-6809.

## Tax Division

### Lori (Rabin) Williams v. United States, S. Ct., Oct. 31, 1994

On October 31, 1994, the Supreme Court granted certiorari in Lori (Rabin) Williams v. United States. This case presents the question whether the District Court lacked jurisdiction to entertain a tax refund suit on the grounds that 28 U.S.C. Section 1346(a)(1) does not grant jurisdiction to bring refund suits for the purpose of obtaining the release of Federal tax liens arising out of the tax liabilities of a third person. While the majority of the courts to address the matter have concluded that the statute applies only when the party bringing the action is the "taxpayer" himself, i.e., the person against whom the tax was assessed, the Ninth Circuit disagreed, reasoning that Section 1346 "clearly allows one from whom taxes are erroneously or wrongfully collected to sue for a refund of those taxes." In so concluding, the Court followed the Fourth Circuit's reasoning in Martin v. United States, 895 F.2d 992 (4th Cir., 1990), and rejected the holdings of the Fifth [Snodgrass v. United States, 834 F.2d 537 (1987)] and Seventh Circuit (Busse v. United States, 542 F.2d 421 (1976)), on the grounds that those opinions "fail to give sufficient attention to the plain language of section 1346(a)(1)." The Government petitioned for certiorari in light of the square conflict among the courts of appeals on this question.

\* \* \* \* \*

### United States v. Wisconsin Power and Light Co., 7th Cir., Oct. 19, 1994

On October 19, 1994, the Seventh Circuit Court of Appeals issued a published opinion in United States v. Wisconsin Power and Light Co., reversing that portion of the judgment of the District Court that had denied the Government's claim for the recovery of an erroneous refund of \$322,245 for 1981, and affirming the portion of the judgment that had denied the taxpayer's counterclaim for a refund of more than \$4 million in taxes for 1975 through 1979. Both appeals turned on an issue involving the Asset Depreciation Range (ADR) system of depreciation, which permitted a "repair allowance" that was designed to resolve the disputes that had frequently arisen between taxpayers and the IRS over whether a given expenditure constituted a repair expense, deductible in full in the year of the expenditure, or a capital expenditure, deductible only over the life of the asset. Congress, on the theory that an expenditure for a new "identifiable unit of property" would be a "clearly" capital one, specifically excluded from "repair allowances" any expenditure for such new "identifiable units of property." The court of appeals found here that expenditures for customer service drops--the cables and connections necessary to extend electrical service from a neighborhood power line to a customer's house--were for the acquisition of new "identifiable units of property," and that the addition of such service-drops was the primary means through which the taxpayer expanded its system, thus underscoring the clearly capital nature of the expenditure. Accordingly, it concluded that the Government was entitled to prevail on both its claim and the taxpayer's counterclaim.

\* \* \* \* \*

### Houston Pipeline Co. v. United States, 5th Cir., Nov. 7, 1994

On November 7, 1994, the Fifth Circuit affirmed the District Court's grant of summary judgment in favor of the Government in Houston Pipeline Co. v. United States, thus denying the taxpayer's claim for

a tax refund of nearly \$48 million. The question presented was whether the taxpayer could deduct as a business expense the amount paid to buy shares of its stock to end a hostile takeover attempt. In rejecting the taxpayer's assertions that the deduction should be allowed, the Court of Appeals found, *inter alia*, that the facts of this case did not show that the taxpayer's redemption of its shares was necessary to its survival.

\* \* \* \* \*

**Milwaukee Corp. v. United States**, Fed. Cir., Nov. 8, 1994

On November 8, 1994, the United States Court of Appeals for the Federal Circuit reversed the favorable jurisdictional ruling of the Court of Federal Claims in Chicago Milwaukee Corp. v. United States. The question presented was whether the taxpayer's refund suit should be dismissed because the administrative claim for refund did not contain a statement required by Treas. Reg. Section 31.6402(a)-2(a)(2). This provision requires every claim filed by an employer for refund or credit of railroad retirement taxes collected from an employee to include a statement that the employer has either repaid the tax to the employee or has secured the written consent of the employee to allowance of the refund. The Federal Circuit held that the claims for refund were not jurisdictionally defective because the regulation does not impose a deadline for the required certification and, therefore, the taxpayer could comply with the regulation at a later time. The court noted that requiring the employer to compensate 8,000 former employees or secure their consent before filing a refund claim imposes a harsh burden without good reason.

\* \* \* \* \*

**State of Michigan and Michigan Education Trust v. United States**,  
6th Cir., Nov. 8, 1994

On November 8, 1994, the Sixth Circuit held that investment income earned by the Michigan Education Trust (MET) was exempt from Federal income taxation. MET, a "quasi corporation" created by an act of the Michigan legislature, entered into prepaid tuition contracts with Michigan citizens, wherein, in return for a lump sum payment, MET guaranteed to cover the cost of tuition at state colleges and universities for designated beneficiaries. MET invested these payments to secure funds to cover its guarantee. The question presented was whether the amounts earned by MET on investments are exempt from Federal taxation. In reversing the decision of the District Court, the Sixth Circuit held that MET possessed sufficient attributes of a governmental entity to qualify for the tax exemption accorded to the states and their political subdivisions.

\* \* \* \* \*

## IMMIGRATION AND NATURALIZATION

### Operation Gatekeeper

On September 17, 1994, Attorney General Janet Reno announced Operation Gatekeeper, a new initiative for controlling illegal immigration along the border of the San Diego sector. (See Vol. 42, No. 10,

United States Attorneys' Bulletin, p. 399.) The following is a one-month update summarizing the field activity:

Nightly sensor traffic "hits" which detect motion of aliens in the field continue to show less activity.

Scope operators continue to report back to their stations noting that there are fewer aliens in the field. It also appears that fewer illegal aliens are getting away. This, operators say, is due to the increase in agents, radios, cars, and technology that has enabled scope operators to identify aliens, then radio and direct agents to the site, and call additional back-up if necessary.

The Boat Patrol reported that illegal alien traffic has declined significantly in this area. During the first month of the Operation, the Patrol has apprehended 89 out of 90 illegal aliens sighted and called for back-up to successfully arrest the remaining person.

At a recent community relations meeting, the citizens group reported that they observed a large decrease in foot traffic in their neighborhood since Operation Gatekeeper began. They also said they were supportive and pleased with the early results of the Operation.

Many apprehended aliens interviewed about the time and manner in which they attempted to cross the border have said that they were having increasing difficulty trying to enter. Some had been arrested several times and were unable to get to their destination in the United States.

In addition to more than 200 existing sensors, 20 more sensors on loan from the Department of Defense (DOD) have been placed in the Imperial Beach area, and 20 more are being placed in Brown Field, since Operation Gatekeeper began.

Six infrared scopes on loan from DOD were retrofitted for Border Patrol field use, doubling the number of scopes in the field.

The DOD and other Federal agencies provided eight more radio communication frequencies, available for the next 5 years, to allow 300 more radios to be used. The frequencies also enable more infrared scopes to be used simultaneously without communication interference.

Eleven radio frequencies were authorized by the DOD to allow 80 radios, on loan from Defense and retrofitted for Border Patrol.

There are initial indications that the Gatekeeper strategy of increasing apprehensions at the western-most stations to push traffic east is working. Overall sector apprehensions decreased approximately 10 percent from October 1993, and about 10 percent from September 1994.

Operation Gatekeeper has pushed some frustrated alien smugglers to try moving their human cargo through the ports of entry.

The largest single smuggling interception involved 68 illegal aliens in three vans that were caught trying to enter through the San Ysidro Port of Entry on October 27, 1994.

In response to reports of increased activity on the Mexican side of the San Ysidro Port of Entry, the Border Patrol deploys resources to deter groups of potential lane-runners.

The INS' Immediate Response Team, a group of top inspectors from across the country, have been deployed at the San Ysidro Port of Entry to supplement INS inspections personnel in preventing false claims to U.S. citizenship, detecting document and visa fraud, and thwarting "port runner" and human pyramids--all have increased in frequency as a result of Operation Gatekeeper.

\* \* \* \* \*

### **Office of Justice Programs**

On October 27, 1994, at a ceremony in the Great Hall of the Department of Justice (DOJ), Supreme Court Justice Ruth Bader Ginsburg formally swore in six Presidential appointees to head the Office of Justice Programs (OJP). This occasion marks the first time since OJP's inception in 1984 that a full Presidentially appointed management team is on board. Justice Ginsburg administered the oath of office to the following OJP officials:

**Laurie O. Robinson**, Assistant Attorney General for OJP;  
**Nancy E. Gist**, Director, Bureau of Justice Assistance;  
**Jan M. Chaiken**, Director, Bureau of Justice Statistics;  
**Jeremy Travis**, Director, National Institute of Justice;  
**Shay Bilchik**, Administrator, Office of Juvenile Justice and Delinquency Prevention; and  
**Aileen Adams**, Director, Office for Victims of Crime.



## CAREER OPPORTUNITIES

### Environment and Natural Resources Division Indian Resources Section

The Office of Attorney Personnel, Department of Justice, is seeking an experienced attorney for the Indian Resources Section of the Environment and Natural Resources Division (ENRD) in its Denver, Colorado, field office. The ENRD represents the United States in litigation and counsels agencies concerning environmental laws, natural resources and Native American tribes. The Indian Resources Section litigates to represent the United States' trust responsibility on behalf of Indian tribes. Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least three years of professional legal experience. Experience in water law is required, and experience in litigation and/or natural resources and environmental law is preferred.

To apply, please submit a cover letter and resume to: U.S. Department of Justice, Environment and Natural Resources Division, P.O. Box 7754, Washington, D.C. 20044-7754, Attn: Executive Assistant.

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

\* \* \* \* \*

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



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

APPENDIX  
A

November 23, 1994

MEMORANDUM FOR ALL FEDERAL PROSECUTORS

FROM: THE ATTORNEY GENERAL

SUBJECT: Department's Response to Proposed Changes in Rule 16

I want to advise you of the Department's response to changes to Rule 16 of the Federal Rules of Criminal Procedure proposed by the Judicial Conference's Advisory Committee on the Rules of Criminal Procedure and Standing Committee on the Rules of Practice and Procedure. Certain members of each committee have raised concerns that some federal prosecutors withhold discovery of witness names and statements merely for strategic advantage and that justice thereby sometimes is being delayed and disserved. Based on these concerns, the Judicial Conference's Advisory Committee has proposed and the Standing Committee has issued for public comment a change to Rule 16 that would generally require disclosure of witness names and statements seven days before trial.

The Department, virtually alone, opposed this change to Rule 16, and we will continue to oppose it. I authorized the Department's opposition because I have confidence that, on the whole, federal prosecutors are appropriately weighing the relevant considerations relating to discovery of names and statements. We are mindful of our duties to protect the safety and cooperativeness of prospective witnesses and guard against any perversion of the judicial process. At the same time, we recognize that appropriate disclosure can further the interests of justice in many cases. See United States Attorneys' Manual 9-6.200. Indeed, the survey conducted by the Executive Office for United States Attorneys ("EOUSA") regarding your districts' discovery practices confirms that, generally, unless there is a belief that disclosure would harm the interests of justice in a particular case, prosecuting attorneys turn over names and statements in advance of the requirements of Rule 16 and the Jencks Act.

The Department also takes the position that no rule change is necessary because the Department itself is best able to monitor its discovery practices and to ensure that we are operating in a fair and appropriate manner. Finally, we have objected to wide-ranging changes to well-established rules based

only on anecdote. Thus, the Department has committed to studying its discovery practices in an effort to provide a rational basis for further debate and analysis.

To fulfill our promise to further study our discovery practices, and to maintain open communication on this issue with the judiciary, I ask each United States Attorney to communicate with all of the judges in his or her district about the issue of criminal discovery. In particular, each United States Attorney should ask that the judges contact him or her whenever the discovery practices in the district cause delay or other problems in the course of a trial, and United States Attorneys should report to the Director of EOUSA any problems so identified.

**KIDS/GUNS:**

Grant Title: **Firearms & Juveniles** -- The project will test whether juvenile gun violence can be prevented by disrupting the illicit market in firearms and by attempting to reduce the fears that drive juveniles to buy and carry firearms.

Harvard, Cambridge, MA  
\$369,297

Grant Title: **Safe Travel to and from School** -- The purpose of this initiative is to implement problem-oriented policing strategies to address the safety of school age children as they travel to and from school.

Temple U, Philadelphia, PA  
\$46,454

Grant Title: **High School Youth & Weapons** -- The project will conduct a national survey of weapon-related violence, victimization, and associated behavior of a random sample of 3,000 male high school students.

Tulane U, New Orleans, LA  
\$204,632

Grant Title: **Milwaukee Homicide Project** -- The goal of this project is to study the incidence of violence committed by or against juveniles in Milwaukee, Wisconsin and explain the increase in homicides from 1989 to 1993.

U of WI at Madison  
\$250,000

Grant Title: **Boot Camps for Juvenile Offenders** -- The purpose of the initiative is to develop and test a juvenile boot camp program that will focus on adjudicated, non-violent, juvenile offenders under 18 years of age.

Cuyahoga County, Cleveland, OH  
\$1,29,001

Grant Title: **Teens, Crime, & the Community** -- This initiative continues a national effort to reduce teen victimization, and actively engage teens in helping to make their schools and communities better.

Washington, D.C.  
\$1.5 million

Grant Title: **Evaluating Anti-Gang Legislation in Nevada** -- The purpose of this project is to examine two approaches toward increasing formal responses to gang activity: anti-gang statutes and specialized prosecution units.

U of NV at Las Vegas  
\$169,479

Grant Title: **Youth, Firearms and Violence in Atlanta** -- This project is designed to break the link between youth and guns by studying the scope of the gun violence by youth in metropolitan Atlanta and implementing an intervention program.

**Emory U**  
**\$499,846**

**FIREARMS:**

Grant Title: **Firearms Licensee Compliance** -- The grant continues joint efforts between the New York City Police Department and compliance inspectors of the Bureau of Alcohol, Tobacco and Firearms to reduce the number of Federal firearms license applications in New York City, allowing more thorough background investigations on those who do apply.

**NYCPD**  
**\$174,444**

Grant Title: **Federal Firearms Licensee Compliance** -- The project is designed to enhance the ability of the Oakland Police Department, in a joint effort with the Bureau of Alcohol, Tobacco, and Firearms, to conduct more complete and comprehensive background investigations on applicants for new or renewed federal firearms licenses and ensure dealer compliance with local, state, and Federal law.

**Oakland, CA**  
**\$287,815**

Grant Title: **CEASEFIRE** -- Innovative Firearms Programs -- Through this program, the Chicago Police Department, with the Chicago Housing Authority Police Department and the U.S. Bureau of Alcohol, Tobacco and Firearms, will increase the solution rate of firearm-related violent crime. Ceasefire is an automated projectile comparison system that stores the images of unique rifling marks found on bullet surfaces.

**Chicago PD**  
**\$200,000**

Grant Title: **WV Firearms Investigative Task Force** -- The purpose of this project is to aggressively identify, target, investigate, and prosecute those individuals who unlawfully use, sell, or acquire firearms.

**Charleston, WV**  
**\$232,898**

Grant Title: **VA Firearms Investigative Task Force** -- The project will continue the efforts of the initial grant award that was developed to identify, target, investigate, and prosecute individuals who unlawfully use, sell, or acquire firearms in violation of the Federal and/or State firearms laws. The special focus of the project will again be placed on individuals involved in the interstate trafficking of firearms.

**Richmond, VA**  
**\$490,914**

Grant Title: **Cooperative Federal/Local Violent Crime Task Force**  
-- This project targets gangs, organizations and individuals in the Gary, Lake County, and Portage, Indiana area who commit violent crimes with the use of firearms, providing new law enforcement strategies to ensure that targeted, violent predatory criminals are sentenced to long prison terms.

**Indianapolis, IN**  
**\$175,000**

Grant Title: **Drug and Violent Crime Control Initiative** -- Under this award, the North Carolina State Bureau of Investigation will target, arrest, and convict active violent predatory criminals throughout the State by utilizing the various investigative techniques developed by the Violent Career Criminal Task Force to disrupt the flow of weapons to armed violent offenders, ultimately developing a model program that can be duplicated in other states that targets violent predatory criminals for arrest and prosecution under Federal firearms statutes with pro-active strategies.

**Raleigh, NC**  
**\$270,255**

Grant Title: **Computerized Information System** -- The project will develop a state-of-the-art gun task force computerized information system connecting multiple Federal and local law enforcement police agencies.

**Pittsburgh, PA**  
**\$199,080**


#### **ADOLESCENTS:**

Grant Title: **Dynamics of Violence Among Inner-city Youth** -- This project will conduct interviews with 200 adolescents who have been involved in school violence to clarify the dynamics leading up to the violence. The information will be used to design a school curriculum that better addresses those situations.

**Clark Atlanta U**  
**Atlanta, GA**  
**\$44,293**

Grant Title: **Missing Child Homicide Case Management** -- The purpose of this 3-year project is two-fold: 1) to improve investigative procedures for murders of missing, abducted, and runaway children; and 2) to solve child murder and serial child murder cases more effectively.

**Seattle, WA**  
**\$149,000**



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

September 29, 1994

Lloyd N. Cutler, Esq.  
Special Counsel to the President  
The White House  
Washington, D.C. 20500

Dear Mr. Cutler:

You have asked for my views on the subject of communications between the Department of Justice and the White House concerning matters pending in the Department. These are the principles and procedures I think we should follow.

In order to ensure the President's ability to perform his constitutional obligation to "take care that the laws be faithfully executed," the Justice Department will advise the White House concerning pending civil or criminal law enforcement matters, where important for the performance of the President's duties and where appropriate from a law enforcement perspective.

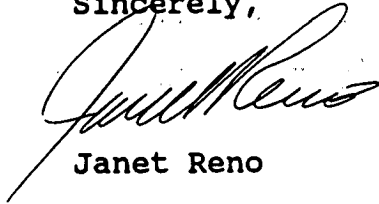
Consistent with this principle, since May 1993 the Department has followed procedural rules governing communications with the White House concerning pending Department investigations or criminal or civil cases. Initial communications between the White House and the Justice Department regarding any pending Department investigation or criminal or civil case should involve only the White House Counsel or Deputy Counsel (or the President or Vice President), and the Attorney General or Deputy or Associate Attorney General. If continuing contact is required on a particular matter, the White House Counsel's Office and the senior Department official with whom it is dealing design and monitor that continuing contact.

This process does not apply to communications regarding matters of policy, appointments, legislation, budgets, public relations and other similar matters, as to which the White House staff should deal with whomever is appropriate in the Department.

In addition, from time to time the Department establishes specific procedures for communications between particular entities. For example, the White House Counsel's Office deals directly with the Office of Legal Counsel on matters in which it is seeking the opinion of the Department, and directly with the Office of the Solicitor General regarding the status of Supreme

Court cases. Particularized procedures have also been applied to communications with the Pardon Attorney and the National Security Council.

Sincerely,

A handwritten signature in cursive script, appearing to read "Janet Reno".

Janet Reno



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

Telephone: (202) 616-6700

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

**LEI COURSE CONTACT:**

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

	<b>LEI USE ONLY</b>	
	<b>ACCEPTED</b>	<b>NOT SELECTED</b>

<b>C O U R S E</b>	Course Name	Course Date(s)	Course Location
	Name		Title
<b>N O M I N E E</b>	Office, Agency, or Department		Phone Number
	<p>1. Has the nominee applied for this course in the past and not been selected?</p> <p style="text-align: center;">Yes    No    (please circle)                      If yes, how many times?</p>		
<b>Q U E S T I O N N A I R E</b>	2. What percentage of nominee's work involves the subject(s) of the course?		
	3. Indicate the level of skill or knowledge nominee has in this area:		
	Novice                      Intermediate                      Advanced                      (please circle)		
	4. How many years has the nominee worked in this area?		
	5. What training/prerequisite courses has the nominee had in this area?		
	6. If necessary, please indicate any special considerations:		
<b>S U P E R V I S O R</b>	Name		Title
	Phone Number	Number of Nominees Submitted	Order of Preference of this Nominee

APPENDIX  
E

UNITED STATES ATTORNEYS

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
ALABAMA, MD ALABAMA, ND ALABAMA, SD	REDDING PITT WALTER BRASWELL EDWARD VULEVICH, JR.
ALASKA	ROBERT C. BUNDY
ARIZONA	JANET NAPOLITANO
ARKANSAS, ED ARKANSAS, WD	PAULA J. CASEY PAUL K. HOLMES III
CALIFORNIA, CD CALIFORNIA, ED CALIFORNIA, ND CALIFORNIA, SD	NORA M. MANELLA CHARLES J. STEVENS MICHAEL J. YAMAGUCHI ALAN D. BERSIN
COLORADO	HENRY L. SOLANO
CONNECTICUT	CHRISTOPHER F. DRONEY
DELAWARE	GREGORY M. SLEET
DISTRICT OF COLUMBIA	ERIC H. HOLDER, JR.
FLORIDA, ND FLORIDA, MD FLORIDA, SD	P. MICHAEL PATTERSON CHARLES R. WILSON KENDALL B. COFFEY
GEORGIA, ND GEORGIA, MD GEORGIA, SD	KENT B. ALEXANDER JAMES L. WIGGINS HARRY D. DIXON, JR.
GUAM	FREDERICK A. BLACK
HAWAII	STEVEN S. ALM
IDAHO	BETTY H. RICHARDSON
ILLINOIS, ND ILLINOIS, SD ILLINOIS, CD	JAMES B. BURNS W. CHARLES GRACE FRANCES C. HULIN
INDIANA, ND INDIANA, SD	JON E. DeGUILIO JUDITH A. STEWART
IOWA, ND IOWA, SD	STEPHEN J. RAPP DON C. NICKERSON

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MAINE	JAY P. McCLOSKEY
MARYLAND	LYNNE A. BATTAGLIA
MASSACHUSETTS	DONALD K. STERN
MICHIGAN, ED MICHIGAN, WD	SAUL A. GREEN MICHAEL H. DETTMER
MINNESOTA	DAVID L. LILLEHAUG
MISSISSIPPI, ND MISSISSIPPI, SD	ALFRED E. MORETON, III BRAD PIGOTT
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NEVADA	KATHRYN E. LANDRETH
NEW HAMPSHIRE	PAUL M. GAGNON
NEW JERSEY	FAITH S. HOCHBERG
NEW MEXICO	JOHN J. KELLY
NEW YORK, ND NEW YORK, SD NEW YORK, ED NEW YORK, WD	THOMAS J. MARONEY MARY JO WHITE ZACHARY W. CARTER PATRICK H. NeMOYER
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**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)

<u>Effective Date</u>	<u>Annual Rate</u>	<u>Effective Date</u>	<u>Annual Rate</u>	<u>Effective Date</u>	<u>Annual Rate</u>	<u>Effective Date</u>	<u>Annual Rate</u>
10-21-88	8.15%	05-04-90	8.70%	11-15-91	4.98%	05-28-93	3.54%
11-18-88	8.55%	06-01-90	8.24%	12-13-91	4.41%	06-25-93	3.54%
12-16-88	9.20%	06-29-90	8.09%	01-10-92	4.02%	07-23-93	3.58%
01-13-89	9.16%	07-27-90	7.88%	02-07-92	4.21%	08-19-93	3.43%
02-15-89	9.32%	08-24-90	7.95%	03-06-92	4.58%	09-17-93	3.40%
03-10-89	9.43%	09-21-90	7.78%	04-03-92	4.55%	10-15-93	3.38%
04-07-89	9.51%	10-27-90	7.51%	05-01-92	4.40%	11-17-93	3.57%
05-05-89	9.15%	11-16-90	7.28%	05-29-92	4.26%	12-10-93	3.61%
06-02-89	8.85%	12-14-90	7.02%	06-26-92	4.11%	01-07-94	3.67%
06-30-89	8.16%	01-11-91	6.62%	07-24-92	3.51%	02-04-94	3.74%
07-28-89	7.75%	02-13-91	6.21%	08-21-92	3.41%	03-04-94	4.22%
08-25-89	3.27%	03-08-91	6.46%	09-18-92	3.13%	04-01-94	4.51%
09-22-89	8.19%	04-05-91	6.26%	10-16-92	3.24%	05-27-94	5.28%
10-20-89	7.90%	05-03-91	6.07%	11-18-92	3.76%	06-24-94	5.31%
11-17-89	7.69%	05-31-91	6.09%	12-11-92	3.72%	07-22-94	5.49%
12-15-89	7.66%	06-28-91	6.39%	01-08-93	3.67%	08-19-94	5.67%
01-12-90	7.74%	07-26-91	6.26%	02-05-93	3.45%	09-16-94	5.69%
02-14-90	7.97%	08-23-91	5.68%	03-05-93	3.21%	10-14-94	6.06%
03-09-90	8.36%	09-20-91	5.57%	04-07-93	3.37%	11-11-94	6.48%
04-06-90	8.32%	10-18-91	5.42%	04-30-93	3.25%		

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