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Executive Office for United States Attorneys

United States Attorneys' Bulletin

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ATTORNEY GENERAL HIGHLIGHTS

Community Relations Service

From November 30 to December 1, 1994, the Community Relations Service sponsored a national symposium on race relations in Washington, D.C., to commemorate the 30th anniversary of the Civil Rights Act of 1964. Attorney General Janet Reno delivered the keynote address to approximately 400 attendees, including Director Lee Brown, Office of National Drug Control Policy; U.S. Representative Charles Rangel; U.S. Representative Don Edwards; and several other Members of Congress.

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Office of Professional Responsibility Reports

Deputy Attorney General Jamie S. Gorelick has issued procedures in an effort to ensure greater consistency and fairness in the way in which components respond to reports of investigations by the Office of Professional Responsibility (OPR) and to ensure the prompt disposition of issues raised by those reports. A copy of her memorandum is attached as Appendix A.

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Firearms in Federal Judicial Facilities

After consulting with members of the Office of Investigative Agency Policies, FBI Director Louis J. Freeh recommended that the Department of Justice adopt a policy which mandates that Federal law enforcement agencies requiring their personnel to carry firearms in a Federal courtroom must petition the relevant court's security committee. The Attorney General and the Deputy Attorney General concur.

Appendix B is a copy of Director Freeh's memorandum to the Deputy Attorney General, which includes his recommendation.

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Cuban Children

On December 2, 1994, Attorney General Janet Reno announced that, at the direction of President Clinton, she will consider for humanitarian parole, on a case-by-case basis, Cuban children for whom long-term presence in the safe havens at Guantanamo or Panama would constitute an extraordinary hardship, together with such immediate family members as humanitarian needs require.

UNITED STATES ATTORNEYS' OFFICES

Commendations

Paul T. Camilletti (West Virginia, Northern District), by Frank J. Frysiek, Special Agent in Charge, U.S. Customs Service, Washington, D.C., for his outstanding success in obtaining guilty pleas of three individuals in violation of Title 21 USC 863 (Drug Paraphernalia Statute), which was the result of an extensive investigation by the U.S. Customs Service, the West Virginia Bureau of Criminal Investigations, the Martinsburg Police Department, and the United States Attorney's office.

Alleen Castellani (Missouri, Western District), by Gretchen D. Huston, Regional Attorney, Equal Employment Opportunity Commission, St. Louis, for her valuable assistance and helpful support in preparing for trial. **Trudy Feldkamp** contributed valuable paralegal services and support during the trial.

Randy Chartash (Georgia, Northern District), by Robert W. Iverson, Chairman and CEO, KIWI International Air Lines, Newark, New Jersey, for his successful prosecution of a case involving an assault against a flight attendant, and for his diligence in law enforcement.

Mark S. Cohen and **Jonathan S. Sack** (New York, Eastern District), by Carlo A. Boccia, Special Agent in Charge, Drug Enforcement Administration, New York, New York, for their exceptional prosecutorial efforts in a complex drug investigation involving a significant cocaine/heroin/marijuana trafficking organization based in Brooklyn, New York, and Texas. **Jacqueline Golub** provided valuable paralegal assistance and support.

David DeTar-Newbert (Missouri, Western District), by Ron Glover, Chief, Protection Division, Missouri Department of Conservation, Jefferson City, for his outstanding efforts in bringing a major case to a successful conclusion, and for his continuing support of wildlife law enforcement. Also, by Kenneth M. Riche, Acting Chief, Criminal Investigation Division, Internal Revenue Service, Kansas City, for his successful resolution of a case involving the evasion of over $136,000 in fuel excise taxes.

Robert L. Eberhardt (Pennsylvania, Western District), by Philip P. O'Connnor, Jr., Senior Attorney, Department of Veterans Affairs, Pittsburgh, for his valuable assistance and successful efforts in resolving a medical malpractice action involving the Veteran Affairs Medical Center in Pittsburgh.

Kathy Geller and **Alleen Castellani** (Missouri, Western District), by W. G. Wright, Director, Medical Center, Department of Veterans Affairs (VA), Kansas City, for their excellent representation and high quality of assistance which led to the successful resolution of two recent VA cases.

Robert W. Gillespie, Jr., and **Larry Regan** (Louisiana, Western District), by Michael L. Underdown, Acting Chief Patrol Agent, U.S. Border Patrol, New Orleans, for their professionalism and outstanding prosecutorial success. **Pat Adcock** provided valuable secretarial assistance and support.

Edward J. Gonzales and **Richard B. Launey** (Louisiana, Middle District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their successful prosecution of individuals involved in fraud and corruption of public officials relating to the proposed Place Vendome mall project in Baton Rouge, and for their contributions to the FBI's success in combatting white-collar crime.

Steven F. Gruel (California, Northern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his outstanding efforts in the investigation of operation "Dragon Teeth," which resulted in multiple arrests and searches, and for bringing the matter to a successful conclusion.

Eric Havian (California, Northern District), by John F. West, Special Agent in Charge, Defense Criminal Investigative Service, San Francisco, for his exemplary efforts in the prosecution of two Department of Defense fraud cases, both resulting in successful plea agreements.

John Joseph (Pennsylvania, Eastern District), by Stephen N. Marchetta, Special Agent in Charge, Office of Inspector General, Small Business Administration (OIG/SBA), New York, New York, for his successful prosecution of two companies that falsely self-certified as small businesses to bid on and receive awards under procurements reserved for small and small disadvantaged businesses. (These cases are the first two Affirmative Civil Enforcement Program (ACE) prosecutions for the OIG/SBA in the Eastern Region.)

Al Kemp and **Bill Toliver** (Georgia, Northern District), by Robin A. Luers, Postal Inspector in Charge, U.S. Postal Service, Atlanta, for their excellent contribution to the success of the Basic Forfeiture Training Seminar.

Daniel LaVille and **Mike Schipper** (Michigan, Western District), by Mark S. Pendery, Assistant District Counsel, Internal Revenue Service (IRS), Grand Rapids, for their valuable assistance and cooperative efforts in successfully resolving a fraudulent bankruptcy filing. (This case involved a high profile tax protestor family that IRS has confronted for the past decade.)

Art Leach (Georgia, Northern District), by Henry J. Solano, United States Attorney for the District of Colorado, for his excellent presentation at the in-house asset forfeiture conference held recently in Denver.

Kim Lindquist (District of Idaho), by Craig Peterson, Special Agent in Charge, Idaho Bureau of Narcotics, Department of Law Enforcement, Idaho Falls, for his outstanding success in obtaining guilty pleas from eight defendants operating a methamphetamine laboratory in Idaho Falls, and for other valuable assistance over the years.

Joseph J. Lodge (District of Arizona), by Weldon L. Kennedy, Special Agent in Charge, FBI, Phoenix, for his valuable instruction at a Basic Legal Training program for 56 Tribal and Bureau of Indian Affairs officers held recently in Show Low, Arizona.

John R. Mayfield (District of Arizona), by CAPTAIN William H. J. Haffner, M.D., Chair of the Uniformed Services University of the Health Sciences, Bethesda, Maryland, for his professionalism and legal skill in the preparation of a recent case involving the Indian Health Service.

Roxanne McKee (Texas, Western District), by Robert P. Evans, Director, Department of Veterans Affairs, Austin, for her outstanding representation and professionalism in successfully resolving a recent Veterans Affairs case.

Bill Meiners and **Mike Green** (Missouri, Western District), by Kenneth M. Riche, Acting Chief, Criminal Investigation Division, Internal Revenue Service (IRS), Kansas City, for their successful efforts in the prosecution of several

individuals on charges of conspiracy to possess and distribute cocaine over a 5-year period, money laundering, and operating a continuing criminal enterprise.

Keith Morgan (District of Columbia), by Rear Admiral J. E. Shkor, Chief Counsel, U.S. Coast Guard, Washington, D.C., for his valuable assistance and extraordinary efforts in responding to a court ruling regarding the operation of the Chicago River draw-bridges, and for bringing the matter to a successful conclusion.

Susan A. Nellor (District of Columbia), by David C. Williams, Inspector General, U.S. Nuclear Regulatory Commission, Washington, D.C., for her excellent representation and professionalism in responding to a subpoena challenge under the Right to Financial Privacy Act.

Rodolfo Orjales (California, Northern District), by Bernard H. Meyers, Senior Counsel, First Interstate Bank of California, San Francisco, for his valuable assistance and outstanding success in the prosecution of a complex embezzlement case.

Timothy R. Rice (Pennsylvania, Eastern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his valuable contribution to the success of a joint FBI/Pennsylvania State Police investigation of a cross-burning, and for his major role in obtaining guilty pleas from all defendants.

Eduardo G. Roy and **Jonathan Howden** (California, Northern District), by Robert E. Bender, Special Agent in Charge, Drug Enforcement Administration, San Francisco, for their exceptional efforts and outstanding achievements in the prosecution of domestic marijuana cultivation cases in the Northern District of California.

Patrick J. Schneider (District of Arizona), by C.E. Floyd, Warden, Federal Correctional Institution, Department of Justice, Phoenix, for his aggressive and swift prosecution of an inmate for assaulting a correctional officer.

Christian Stickan (Ohio, Northern District), by Edmundo A. Gonzales, Deputy Assistant Secretary for Labor-Management Standards, Department of Labor, Washington, D.C., for his successful prosecution of a complex embezzlement case.

John J. Ulrich (District of South Dakota), by Robert J. Hillman, Regional Inspector General for Investigations, Department of Agriculture, Kansas City, for his outstanding representation in the successful prosecution of two recent conversion cases for the Department of Agriculture, and for maintaining an excellent working relationship between the Agriculture Department and the United States Attorney's office.

Mark W. Webb (Arkansas, Western District) was presented an appreciation award by John Cook, former Special Agent in Charge, Secret Service, Arkansas, for his continuing outstanding assistance in secret service matters.

Appointments

On November 28, 1994, Attorney General Janet Reno appointed **Rozia McKinney-Foster** to serve as Interim United States Attorney for the Western District of Oklahoma.

Vicki Lynn Miles-LaGrange, United States Attorney for the Western District of Oklahoma since September 1993, was appointed a U.S. District Court Judge in the Western District of Oklahoma.

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

The Attorney General's Advisory Committee (AGAC) met on November 29-30 and December 1, 1994, in Washington, D.C. Chairman Michael R. Stiles, United States Attorney, Eastern District of Pennsylvania, presided. The Advisory Committee continues to work on the implementation of the Crime Bill, the Anti-Violent Crime Initiative, and the Youth Handgun Initiative.

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Prosecutor Immunity

The Prosecutor Immunity Working Group offers an immunity and liability issues training video, "Litigator Immunity and Liability," dated April 15, 1993, which is available through the Executive Office for United States Attorneys. Please contact Judy Beeman, (202)514-4633, for more information or to get a copy of the video.

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Critical Incident Response Group and Crisis Response Team

A highlight of the November AGAC meeting was a presentation by FBI SAC Robin Montgomery, who is in charge of the Bureau's Critical Incident Response Group (CIRG), and Jo Ann Harris, Assistant Attorney General, Criminal Division, who heads the Department's Crisis Response Team (CRT). CIRG and CRT were created to address crisis hostage situations such as WACO. Within the next few months, United States Attorneys and their Assistant United States Attorneys will be hearing more about the CIRG and CRT as discussions continue on the United States Attorneys' role in these situations.

Multi-District (Global) Agreement Requests

It was brought to the AGAC's attention that some United States Attorneys may not be aware of the Department's policy on multi-district (global) agreement requests. This policy is documented in the United States Attorneys' Manual, 9-27, 641, dated October 1, 1990. The policy states:

> That no district or division shall make any agreement, including agreement not to prosecute, which purports to bind any other district(s) or division without the express written approval of the United States Attorney(s) in each affected district(s) and/or the Assistant Attorney General of the Criminal Division.
>
> The requesting District/Division shall make known to any other affected District(s)/Division:
>
> (1) The specific crimes allegedly committed in affected district(s) as disclosed by the defendant. (No prosecution agreement should be made to any crime not disclosed by the defendant.);
>
> (2) Identification of victims of crimes committed by the defendant in any affected district, insofar as possible; and
>
> (3) The proposed agreement to be made to the defendant and the applicable sentencing guideline range.

In essence, this policy makes clear that global agreements purporting to bind other United States Attorneys' offices cannot be made unless there is an express, written approval by such offices. Failure to object to an Email notification of a proposed global agreement does not amount to express, written approval.

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Juvenile Detainees

Housing Federal juvenile detainees is of major concern to law enforcement officials. As a result of the President's Youth Handgun Initiative, United States Marshals Service Director Eduardo Gonzalez has asked that he be contacted by those United States Attorneys who expect an exceptionally large increase in the number of juvenile detainees in their district. Otherwise, United States Attorneys should contact their local U.S. Marshal on individual juvenile pretrial detention needs.

Operation Safe Trails

Operation Safe Trails, a cooperative program among the United States Attorney's office for the District of Arizona, the FBI, and the Navajo Department of Public Safety, has formed a Violent Crime Task Force of 123 Navajo criminal investigators and five FBI agents. This Task Force, considered a role model for the rest of the United States, teams Navajo criminal investigators and FBI agents to investigate homicides, child sex abuse, and gang-related activity on the Navajo Reservation.

United States Attorney Janet Napolitano announced the first conviction under Operation Safe Trails. A 44-year old member of the Navajo Nation was found guilty by a Federal jury of two counts of aggravated sexual abuse of a child.

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Conference on Teen Violence and Gangs

In a continuing effort to coordinate with state and local agencies in fighting teen violence, a Conference on Teen Violence and Gangs was held in Louisville on November 2-3, 1994. The conference, attended by approximately 400, was co-sponsored by United States Attorney Michael Troop, Western District of Kentucky; United States Attorney Joseph L. Famularo, Eastern District of Kentucky; Secretary Paul Isaacs, Kentucky Justice Cabinet; and Dr. Stephen Daeschner, Superintendent, Jefferson County Board of Education.

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Significant Cases

Northern District of California
United States Attorney Nora M. Manella

Former owner of the Los Angeles Kings hockey team, Bruce P. McNall, was charged in a felony information with one count of conspiracy, two counts of bank fraud, and one count of wire fraud in connection with a scheme to defraud commercial lending institutions of hundreds of millions of dollars. McNall was charged with engaging in a wide-ranging scheme to defraud financial institutions of over $236 million in loan proceeds from 1984 through 1994.

District of Connecticut
United States Attorney Christopher Droney

Four indictments, charging eighteen members of the Los Solidos organization, also known as the "Solids," the "Solid Nation," and the "Family of LSN," were returned by a Federal grand jury sitting in New Haven, Connecticut. The charges include conspiring to commit and committing violent crimes in aid of racketeering activity, retaliating against an informant, conspiring to possess and possessing narcotics with the intent to distribute, and giving and receiving a bribe.

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Northern District of Georgia
United States Attorney Kent B. Alexander

James Marshall Todd, Woodstock, Georgia, was convicted in Atlanta on charges of embezzling more than $122,000 from the 401k pension plan of his corporation, Clinical Medical Equipment, Inc., a Roswell-based company which refurbished and serviced sophisticated hospital equipment. From September 1989 through January 1992, while the company was suffering from severe cash shortages, Todd used employee contributions, intended for a 401k pension plan, to defray corporate expense and pay back taxes.

* * * * *

Northern District of Illinois
United States Attorney James B. Burns

Twenty-two indictments and criminal informations have been filed charging over 20 defendants with crimes against Chicagoland banks, savings and loans, and an insurance company. Losses associated with the various fraud and theft charges exceed $8,300,000. Defendants include Vice Presidents, tellers, prominent business people, and attorneys, all of whom are charged with stealing and attempting to defraud financial institutions of millions of dollars.

* * * * *

Eastern District of Louisiana
United States Attorney Eddie J. Jordan, Jr.

Former Slidell Mayor and St. Tammany Parish Police Juror M. W. "Webb" Hart and insurance executive David Walters were sentenced in U.S. District Court following their convictions for mail fraud and money laundering. The prosecution stemmed from an FBI investigation which resulted in an indictment charging Hart and Walters with a scheme to defraud St. Tammany Parish of taxpayer funds through the false billing of insurance premiums by Walters' employer, A.J. Gallagher & Co., on behalf of Webb Hart.

Eastern District of Louisiana (Cont'd.)

Following a two-week trial, a Federal jury returned guilty verdicts on all ten counts of an indictment against former Gulf Federal Savings Bank board chairman John Mmahat, currently a practicing attorney, of New Orleans; Joseph Mmahat, Jr., former Gulf Federal president, of Kenner; and William Muldering, a law school graduate; and borrowers from Gulf Federal, Suffern, New York. The defendants were found guilty of a conspiracy to misapply funds of Gulf Federal, to make false entries in Gulf Federal's records, and to make false statements to the FSLIC. In addition, the jury returned a guilty verdict on nine counts of misapplication of Gulf Federal's funds, false entries in Gulf Federal's records, and a false statement for the purpose of influencing the Federal bank examiners.

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Southern District of New York
United States Attorney Mary Jo White

Thirty-three alleged members or associates of the Flying Dragons, a vicious gang operating principally in Chinatown Manhattan, were indicted in Federal court on November 21, 1994. These indictments, including murders, attempted murders, drug dealing, extortion, and robberies, represent the first racketeering prosecution of this major Chinatown gang.

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Middle District of North Carolina
United States Attorney Walter C. Holton, Jr.

A Federal grand jury returned an indictment charging nine individuals who allegedly conspired to steal and resell telephone calling card numbers. One of the defendants, an MCI technician in Greensboro, obtained calling card numbers as they were being transmitted through the MCI switch and arranged with the other defendants to sell and distribute the calling card numbers. By September 1993, approximately 500 fraudulently obtained calling card numbers were sent per week via interstate wire communications. Based on industry averages, the U.S. Secret Service estimates total losses from the conspiracy in excess of $50 million.

District of Nevada
United States Attorney Kathryn Landreth

A Federal jury convicted Fonda E. Snyder and James Edward Melvin of, in part, racketeering and racketeering conspiracy for their participation in a racketeering enterprise which sold fraudulent get-rich-quick schemes to nationwide victims. Numerous corporations and individuals, including David Fieler who previously pled guilty to racketeering conspiracy, were involved. As a result of various schemes, the enterprise received approximately $9 million in checks, money orders, and cash.

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A group of South Side Village Crips from Pomona, California, conducted a 2-year drug dealing operation in Las Vegas. After a lengthy investigation and wiretap, 24 members, considered to be the hierarchy of their crack distribution ring, were indicted. More than half of these defendants remain in jail pending trial.

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Arthur Schlichter, former Ohio State Buckeye, former Heisman Trophy hopeful, and 1981 Big Ten Most Valuable Player, pled guilty to defrauding eight banks out of approximately $175,000 over a period of four months by means of forged, unauthorized, and stolen checks. He also defrauded several Las Vegas casinos and businesses, as well as his own attorney.

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Eastern District of Virginia
United States Attorney Helen F. Fahey

Michael C. and Christopher A. Barson, both of Reston, pled guilty to multiple felony counts of fraud. The Barsons were indicted on August 11, 1994, for their participation in a fraudulent telemarketing travel scam. According to the Statement of Facts and the Indictment, Michael Barson obtained over half a million dollars from approximately 2,000 customers throughout the United States who responded by telephone to newspaper advertisements which offered vacation packages to Cancun and Caribbean destinations. Christopher Barson was responsible for obtaining over $100,000 from more than 200 victims for Michael Barson's companies. Each victim paid between $199 and $499 by certified check, money order, or credit card for the vacation packages. They later discovered that rather than tickets and confirmed reservations, they received third party promotional travel vouchers that contained numerous restrictive terms and conditions, which made it nearly impossible to obtain the trips and required them to send additional fees.

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Guideline Sentencing Update

Guideline Sentencing Updates of October 5, 1994, and November 17, 1994, are attached as Appendix C.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Carol DiBattiste, Director, Executive Office for United States Attorneys (EOUSA), has issued the following announcements and memoranda concerning recent activity:

Use of Company Aircraft and Accommodations

Appendix D is a White House memorandum regarding the use of company aircraft and accommodations by Presidential appointees. Guidelines in the memo prohibit Cabinet members and other full-time Executive Branch Presidential appointees from traveling on aircraft or using overnight accommodations owned, chartered, or maintained by a company, primarily for company use rather than commercial use, if the company is regulated by or doing business with their employing agency. This policy applies to personal or official travel, regardless of whether the agency intends to reimburse the company for the cost or value of the travel or accommodations.

Please contact Juliet A. Eurich, Legal Counsel, Executive Office for United States Attorneys, (202)514-4024, for further information.

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Weed and Seed Crime Statistics

On October 31, 1994, we sent a memorandum to each United States Attorney's office (USAO) involved with a funded Weed and Seed Demonstration Site to collect program data. This information will be used to document accomplishments and provide information to Congress, the General Accounting Office, and others. The data also will be used for the Government Performance and Results Act Pilot Project.

Each USAO contacted should designate a person: to collect data from state and local authorities and ensure that the requisite supporting records are maintained by state and local authorities; to collect data from Federal authorities and ensure that the records are maintained; and to complete and submit the required reports to EOUSA. Reporting forms have been forwarded to selected United States Attorneys. If you have questions or would like to discuss reporting requirements, please call Karen Clark, EOUSA, Priority Programs Team, (202)616-6776.

Hatch Act

Congress recently amended the Hatch Act, which prescribes permitted and prohibited activities for Federal employees participating in political campaigns, elections, and other activities. The Hatch Act Reform Amendments of 1993 (5 U.S.C. §§ 7321-7326) removed certain restrictions on political participation by most Government employees; however, certain Department of Justice employees continue to be subject to greater limitations. Those still restricted are career members of the Senior Executive Service (SES) and employees of the Department's Criminal Division and the Federal Bureau of Investigation. Also excluded as a matter of policy by the Attorney General are all political appointees: Presidential appointees, Senate-confirmed Presidential appointees, non-career SES members, and Schedule C appointees.

The following is a list of many, but not all, of the "mays" and "may-nots" for most Federal employees, with the more sensitive provisions in the area of political contributions. Additionally, reliable examples of permitted and prohibited activities are provided for throughout the Federal Register.

Employees may:

- •register and vote in any election;
- •take an active part, as a candidate or in support of a candidate, in a nonpartisan election;
- •attend a political convention, rally, fund-raiser, or other political gathering;
- •contribute money to political organizations;
- •solicit, accept, and receive political contributions for the multicandidate committee of a Federal labor or employee organization from an employee who is not a subordinate and who belongs to the same Federal group;
- •anonymously stuff envelopes with campaign literature which includes an appeal for political contributions;
- •participate in phone bank solicitations for uncompensated volunteer services;
- •give a speech at a fund-raiser as long as the speech does not include an appeal for political contributions;
- •be identified as a guest speaker on an invitation to a fund-raiser as long as the reference in no way suggests that the employee is soliciting or encouraging contributions and the employee does not use his/her title;
- •serve as treasurer of a campaign or political organization if the duties are limited to preparing financial disclosure forms, giving advice, and so on;
- •serve as an officer or chairperson of a political fund-raising organization or committee as long as the employee does not personally solicit, accept, or receive political contributions;
- •solicit, accept, or receive political contributions for their own campaigns for public office in a local, nonpartisan election;
- •solicit, accept, or receive political contributions on behalf of a nonpartisan group; and
- •solicit, accept, or receive political contributions on behalf of candidates for election to local public office in specific communities designated by the Office of Personnel Management. [In certain designated communities, including Washington, D.C., and its suburbs, an employee may run for office in a local partisan election but only as an independent candidate, and may receive but not solicit contributions (5 U.S.C. 7325).]

Employees may NOT:

- engage in political activity on their own time while wearing official uniforms or badges that identify a Federal agency, while in a Government room or building, or while using a Government owned or leased car;
- wear a button with a partisan political theme while on duty;
- solicit, accept, or receive political contributions from the general public, except that employees who are members of unions or other employee groups may ask a fellow employee who also is a member of the group to give money to the group's political action committee, as long as the person being solicited is not a subordinate of the person seeking the contribution;
- coerce another Federal or Postal employee to make a political contribution;
- become personally identified with fund-raising activities;
- solicit personal services, paid or unpaid, from a business or corporation or a subordinate;
- participate, even anonymously, in phone bank solicitations for political contributions;
- solicit political contributions in speeches given at fund-raisers;
- otherwise allow the use of their names on invitations to fund-raisers, as sponsors of fund-raisers, or as points of contact for fund-raisers; and
- serve as campaign treasurer if the duties include soliciting, accepting, or receiving political contributions.

Please contact your ethics official or the Executive Office for United States Attorneys, Legal Counsel, Juliet Eurich, (202)514-5692, for further information.

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Sexual Harassment

In accordance with the Attorney General's mandate of April 25, 1994, EOUSA has developed a Plan for the Prevention of Sexual Harassment which was sent to all United States Attorneys. The Plan addresses (1) training for all employees, (2) the commitment of management toward the prevention of sexual harassment, (3) the designation of a contact person in each of the 94 Offices of the United States Attorneys, and (4) the designation of an EOUSA Coordinator.

If you have any questions about the Plan or responsibilities delegated by the plan, please contact Yvonne J. Makell, Equal Employment Opportunity Officer, EOUSA, (202)514-3982.

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Computer Security Awareness

The Security Programs Staff, Executive Office for United States Attorneys, has developed a checklist for computer security awareness. If you would like a copy or if you have questions or concerns about computer security, please contact your District Office Security Manager or Paula Nasca, Director, Security Programs Staff, or Jim Hopson, Security Programs Staff. Paula and Jim can be reached on (202)616-6878.

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 January 1995 through April 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 the United States Attorneys' offices.

Attorney General's Advocacy Institute (AGAI) Courses

The courses listed below are tentative only. OLE will send Email announcements eight weeks prior to each course to all United States Attorneys' offices and DOJ divisions.

January 1995

Date	Course	Participants
9-13	Advanced Criminal Trial Advocacy	AUSAs, DOJ Attorneys
10-13	Medical Malpractice	AUSAs, DOJ Attorneys
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

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7-8	Alternative Dispute Resolution	AUSAs, DOJ Attorneys
7-9	Advanced Asset Forfeiture for Attorneys	AUSAs, DOJ Attorneys
13-17	Appellate Advocacy	AUSAs, DOJ Attorneys
14-17	Complex Prosecutions	AUSAs, DOJ Attorneys
15-17	Attorney Supervisors	Supervisory AUSAs

February 1995 (Cont'd.)

Date	Course	Participants
22-24	First Assistant United States Attorneys (Large Offices)	FAUSAs, Large Offices
22-24	Special Problems in Bankruptcy	AUSAs, DOJ Attorneys
27-3/10	Civil Trial Advocacy	AUSAs, DOJ Attorneys
28-3/3	Computer Crimes	AUSAs, DOJ Attorneys

March 1995

6-9	Death Penalty	AUSAs, DOJ Attorneys
7-9	Financial Litigation for AUSAs	AUSAs
20-28	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
21-23	Affirmative Civil Enforcement	AUSAs, DOJ Attorneys

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4-6	Civil Chiefs	USAO Civil Chiefs
4-6	Advanced Money Laundering	AUSAs, DOJ Attorneys
11-14	Health Care Fraud	AUSAs, DOJ Attorneys
12-14	Attorney Supervisors	AUSAs
17-20	Computer Assistance in Complex Litigation	AUSAs, DOJ Attorneys
24-28	Asset Forfeiture Advocacy	AUSAs, DOJ Attorneys
25-28	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
25-28	Financial Crimes	AUSAs, DOJ Attorneys

LEI Courses

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

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

January 1995

Date	Course	Participants
4-6	Environmental Law	Attorneys
9-13*	Legal Support Staff	USAO Support Staff
10-13*	Basic Financial Litigation for Support Staff	USAO FLU Support Staff
17	Ethics for Litigators	Attorneys
18-19	Freedom of Information Act for Attorneys and Access Professionals	Attorneys, Paralegals
20	Legal Writing	Attorneys
20	Privacy Act	Attorneys, Paralegals
23-27*	Civil Paralegal	USAO Paralegals
30-2/1	Negotiation Skills	Attorneys

February 1995

Date	Course	Participants
6-10*	Appellate for Paralegals	USAO, DOJ Paralegals
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

March 1995

6-8	Law of Federal Employment	Attorneys
8	Introduction to the Freedom of Information Act	Attorneys, Paralegals
9-10	Federal Administrative Process	Attorneys
13	Ethics and Professional Conduct	Attorneys
13-17*	Legal Support Staff	USAO Paralegals
14-17	Examination Techniques	Attorneys
21-23*	Bankruptcy for Support Staff	USAO Support Staff
24	Legal Writing	Attorneys
29-31	Attorney Supervisors	Attorneys
30-31	Evidence	Attorneys

April 1995

Date	Course	Participants
3-7*	Experienced Paralegal	USAO Paralegals
4-6	Trial Preparation	Attorneys
10-11	Legislative Drafting	Attorneys
12	Americans With Disabilities Act	Attorneys
12-13	Wetlands Regulation and Enforcement	Attorneys
18-21	Advanced Legal Secretary	Legal Secretaries
18-19	Freedom of Information Act for Attorneys and Access Professionals	Attorneys, Paralegals
20	Privacy Act	Attorneys, Paralegals
24-25	Federal Acquisition Regulations	Attorneys

* * * * *

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

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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

Office of Justice Programs

Automated Criminal History Records

On December 1, 1994, applications for funding were mailed from the Associate Attorney General's office to all states to assist them in achieving readily accessible, automated record keeping systems. Associate Attorney General John Schmidt announced that the Justice Department would make $88 million in grants available to states this fiscal year. Another $6 million will be available to support the FBI's development of the national background check system.

Less than half of all states have fully automated criminal records systems, and four state systems are not automated. The grants will help prosecutors and police enforce the Brady law by preventing felons from illegally purchasing firearms, determining who is subject to the "3 strikes" law, screening former sex offenders who seek to work with children or the elderly, and avoiding release of dangerous criminals before trial.

The National Criminal History Improvement Program (NCHIP) grant was published in the Federal Register on December 1, 1994, and is available electronically. Information on the NCHIP application kit is available from the Department of Justice Response Center, 1(800)421-6770 or (202)307-1480.

* * * * *

Gun-Related Crimes

An evaluation of the Kansas City "gun experiment" found that police in Kansas City, Missouri, have reduced gun crimes in one neighborhood by almost 50 percent in 6 months by deploying extra police patrol teams focused exclusively on gun detection. This decline did not appear to displace crime to adjoining neighborhoods. In the experiment, police patrols focused on gun detection in one high-crime neighborhood for 6 months and seized 65 percent more guns, and gun crime declined 49 percent. Researchers estimate that more than two gun crimes were prevented for every gun seized. This study is part of an evaluation of the Kansas City Police Department's "Weed and Seed" program, a comprehensive effort to revitalize high-crime neighborhoods. The National Institute of Justice (NIJ) sponsored the study which was conducted by a team of researchers led by University of Maryland Professor Lawrence Sherman.

The evaluation examined an 80-block neighborhood with a high homicide rate. Four officers patrolled gun crime "hot spots" between 7:00 pm and 1:00 am focusing exclusively on gun detection and not responding to calls for service. Another neighborhood that had a similar crime problem but did not have the enhanced patrol focusing on gun detection served as a control on the study. There was neither an increase in gun seizures nor a decrease in gun crimes in this community during the study period. Drive-by shootings declined from 7 to 1 in the target area, but doubled from 6 to 12 in the control neighborhood several miles away. Gun crimes showed no increase in the 7 beats adjoining the target area.

Researchers are now implementing a citywide version of this program in Indianapolis, Indiana, to determine if the results can be replicated in a larger area.

A copy of "The Kansas City Gun Experiment" can be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850, 1(800)851-3420, or in the Washington, D.C., metropolitan area, (301)251-5500.

* * * * *

Law Enforcement Guide for Investigating Missing Children Cases

The Department of Justice has released a handbook recommending new law enforcement guidelines for officers searching for missing children. The Office of Juvenile Justice and Delinquency Prevention commissioned the publication's development by the National Center for Missing and Exploited Children.

The guide, "Missing and Abducted Children: A Law Enforcement Guide to Case Investigation and Program Management," deals with family and non-family abductions, runaway children, management techniques, and crisis media relations. It includes forms, sample flyers, a model questionnaire, a state clearinghouse contact list, and model court testimony. For each type of missing child case, the handbook includes an investigative checklist designed to ensure that critical steps are not overlooked. Copies of the guide may be obtained by calling 1(800)THE-LOST.

APPENDIX
A

U. S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

November 23, 1994

MEMORANDUM FOR **ALL COMPONENT HEADS**
ALL UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL

SUBJECT: New Procedures for Responding to Office of Professional Responsibility Reports

In an effort to ensure greater consistency and fairness in the way in which components respond to reports of investigations by the Office of Professional Responsibility (OPR), and to ensure the prompt disposition of issues raised by those reports, I am directing that the following procedures be implemented:

1. If OPR concludes that its findings may warrant the imposition of discipline against a Department attorney, its report will recommend a range of appropriate disciplinary actions. That range will be based on OPR's evaluation of the way in which similar conduct has been sanctioned by the Department in the past.

2. The official with disciplinary responsibility over the Department attorney will continue to have the same responsibility he or she previously had for determining which disciplinary action, if any, is appropriate under the circumstances. However, if the disciplinary official decides to take an action that is outside the range recommended by OPR (whether it is harsher or more lenient), he or she must notify Associate Deputy Attorney General David Margolis in advance of implementing that decision.

3. The disciplinary official should reach a decision as to what disciplinary action, if any, should be taken as soon as possible. That decision should be made and reported to OPR not later than 45 days after receipt of the OPR report, unless an extension of time is approved by ADAG Margolis.

4. If the conduct at issue in an OPR report has been the subject of a judicial statement or finding, upon final disposition of the matter the relevant disciplinary official should consult immediately with ADAG Margolis and OPR as to the manner in which the court should be informed of that disposition.

U. S. Department of Justice

Office of Investigative Agency Policies

APPENDIX B

Washington, D.C. 20530

September 26, 1994

MEMORANDUM

TO: Jamie S. Gorelick
Deputy Attorney General

FROM: Louis J. Freeh, Director
Office of Investigative Agency Policies

At your request, the Office of Investigative Agency Policies ("OIAP") has considered whether to establish a policy prohibiting agents and officers of the Department of Justice -- other than officials of the United States Marshals Service -- from carrying firearms into federal judicial facilities. By way of background, I have been advised that some officials from the Administrative Office of United States Courts have expressed interest in the creation of a uniform Department of Justice policy that would limit the volume of firearms in federal judicial facilities.

After consulting with the members of the OIAP's Executive Advisory Board ("EAB"),[1] I make the recommendations contained herein.

Federal Courthouses

At the outset, the members of the EAB distinguished between: (1) agents and officers carrying firearms into federal courthouses; and, (2) their carrying firearms into federal courtrooms. The members of the EAB agreed that, absent a court order to the contrary, agents and officers should be permitted to carry firearms into federal courthouses.

The EAB members noted that many federal courthouses also contain federal law enforcement offices; thus, agents and officers must be able to carry their firearms to and from their offices and the offices of prosecutors. The EAB members added

[1]The EAB consists of representatives from the Drug Enforcement Administration ("DEA"), United States Marshals Service, Immigration and Naturalization Service ("INS"), Federal Bureau of Investigation ("FBI"), and the Department of Justice's Criminal Division.

that arrestees often are brought into federal courthouses by agents and officers from the investigating agencies. Likewise, agents and officers often must transport evidence, including firearms, drugs, and money, into federal courthouses. Accordingly, under those circumstances, the agents and officers must carry firearms for their own safety, the safety of others in the courthouse, and the security of evidence.[2]

I agree with the EAB and recommend that, absent a court order to the contrary, agents and officers should be permitted to carry firearms into federal courthouses.

Federal Courtrooms

The EAB members also assessed whether agents and officers should be permitted to carry firearms into federal courtrooms.[3]

Representatives from the Marshals Service stressed their responsibility for providing security within federal courtrooms. They also noted that each judicial district has a security committee which attends to court security issues in the district. Law enforcement agents' and officers' carrying of firearms into federal courtrooms falls within the purview of the security committees; thus, the Marshals Service recommended that the security committees be permitted to decide the issue in each judicial district. Any federal law enforcement agency with an interest in its personnel carrying firearms in a federal courtroom could petition that relative court's security committee. Further, the Marshals Service has agreed to abide by the final decisions of the court security committees.

The other members of the EAB agreed with the Marshals Service proposal and I endorse it.

Conclusion

I recommend that the Department of Justice not adopt a policy that strictly limits which federal law enforcement agents and officers can carry firearms in federal courtrooms. As a

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[2]In the Southern District of New York, agents and officers from investigating agencies often are responsible for escorting detainees from the cellblock (which is located in the courthouse) to the United States Attorney's Office in order to conduct proffers. In such situations, the agent or officer must likewise be armed.

[3]No agency disputed or sought to undermine the validity of any court order that prohibits the carrying of firearms into courtrooms. The discussions involved only the advisability of issuing a Department-wide policy prohibiting it.

former Assistant United States Attorney and United States District Judge, I recognize the need to promote and ensure safety within federal judicial facilities. I also recognize, however, that we pay our law enforcement agents and officers to perform a valuable function and, in return for the privilege of carrying a firearm, we properly demand professionalism from them with regard to the use of those firearms.

Accordingly, I recommend that the Department of Justice adopt a policy which mandates that any federal law enforcement agency with an interest in its personnel carrying firearms in a federal courtroom must petition the relative court's security committee. I note that, during the EAB's discussions about this matter, it was suggested that armed law enforcement personnel be readily identifiable inside federal courtrooms. Such a measure, it was argued, would diminish the possibilities of misidentifying armed law enforcement agents and officers. I agree with this suggestion and urge the court security committees to consider this alternative.

I am available to discuss this matter at your convenience.

cc: Thomas A. Constantine, Administrator, DEA
Doris Meissner, Commissioner, INS
Eduardo Gonzalez, Director, USMS
Jo Ann Harris, AAG, Criminal Division
Mary Jo White, Chairwoman, AGAC

U. S. Department of Justice

Office of the Deputy Attorney General

Principal Associate Deputy Attorney General

Washington, D.C. 20530

November 4, 1994

MEMORANDUM

TO: Louis J. Freeh, Director
Office of Investigative Agency Policies (OIAP)

FROM: Merrick B. Garland
Principal Associate
Deputy Attorney General

RE: OIAP Recommendation Regarding the Carrying of Firearms by Agents and Officers in Federal Judicial Facilities

The Attorney General and Deputy Attorney General have approved your recommendation that the Department of Justice adopt a policy mandating that any federal law enforcement agency with an interest in its personnel carrying firearms in a federal courtroom petition the relevant court's security committee. They would appreciate it if you would take the necessary steps to ensure that the federal law enforcement agencies are apprised of this policy, and made aware of the existence of the court security committees in each judicial district.

A copy of your original memorandum is attached.

cc: Thomas A. Constantine, Administrator, DEA
Doris Meissner, Commissioner, INS
Eduardo Gonzalez, Director, USMS
Jo Ann Harris, AAG, Criminal Division
Michael R. Stiles, Chair, AGAC

APPENDIX C

Guideline Sentencing Update

a publication of the Federal Judicial Center *volume 7, number 1, October 5, 1994*

Adjustments

Role in Offense

Fourth Circuit holds that abuse of trust enhancement cannot be based on a coconspirator's actions. Two defendants pled guilty to conspiracy and mail fraud and were given § 3B1.3 enhancements for abuse of trust. The appellate court held that the enhancements could not be given for abusing positions of trust in their own company because that company was not a victim of the fraud. "It is well-established that 'the question of whether an individual occupies a position of trust should be addressed from the perspective of the victim.'"

The government argued that the enhancements were warranted as relevant conduct under § 1B1.3—a third conspirator occupied a position of trust in the victimized company and the abuse of his position was both reasonably foreseeable to defendants and in furtherance of the conspiracy. The appellate court disagreed. "By its own terms, § 1B1.3 holds a defendant responsible only for reasonably foreseeable 'acts and omissions' of his co-conspirators . . . . [T]he abuse of trust enhancement is premised on the defendant's *status* of having a relationship of trust with the victim. . . . A co-conspirator's status cannot be attributed to other members of the conspiracy under § 1B1.3."

The court also concluded that "the abuse of trust provision falls under an exception to § 1B1.3," which states that § 1B1.3 does not apply if "[o]therwise specified." "It is clear that § 3B1.3 'specifie[s]' that abuse of trust enhancements be individualized, not based on the acts of co-conspirators. . . . [Section] 3B1.3 specifically states that the two-level enhancement will apply if '*the defendant* abused a position of public or private trust.' U.S.S.G. § 3B1.3 (emphasis added)."

U.S. v. Moore, 29 F.3d 175, 178–80 (4th Cir. 1994) (remanded).

See *Outline* at III.B.8.a.

Multiple Counts—Grouping

Ninth Circuit holds that rape and murder counts involving same victim and transaction should have been grouped. Defendant was convicted of aggravated sexual abuse and felony murder. Defendant struck the victim with his truck and raped her, and she died from her injuries soon after. He was sentenced to concurrent life sentences, but argued on appeal that the two offenses should have been grouped because the "counts involve the same victim and the same act or transaction," § 3D1.2(a). The government argued that rape is not "the same act or transaction" as being murdered.

The appellate court held that the language of § 3D1.2(a) and the commentary require grouping. Application Note 3 "states that 'double counting' should be avoided where two counts 'represent essentially a single injury or are part of a single criminal episode or transaction involving the same victim,' provided the counts arise from conduct occurring on the same day. . . . Example (2) to Note 3 . . . provides that where '[t]he defendant is convicted of kidnapping and assaulting the victim during the course of the kidnapping . . . [t]he counts are to be grouped together.' . . . [T]his illustration indicates that grouping is also appropriate for murder and aggravated sexual abuse, at least where they are inflicted contemporaneously on a single victim or result in an essentially single composite harm."

U.S. v. Chischilly, 30 F.3d 1144, 1160–61 (9th Cir. 1994).

See *Outline* at III.D.1.

Offense Conduct

Calculating Weight of Drugs

Tenth Circuit holds that government must prove that D- rather than L-methamphetamine was involved before sentence can be based on stricter calculation for D-methamphetamine. Defendant was convicted of methamphetamine offenses. Although the government presented no evidence as to what kind of methamphetamine was involved, defendant's offense level was based on the calculation for methamphetamine—which in the Guidelines means D-methamphetamine—rather than for L-methamphetamine, which is treated less severely. *See* § 2D1.1(c) at n.* and comment. (n.10.d).

The appellate court held that "[t]he government has the burden of proof and production during the sentencing hearing to establish the amounts and types of controlled substances related to the offense. . . . Since the criminal offense makes no distinction between the types of methamphetamine, it cannot be assumed that Deninno was convicted of possession of D-methamphetamine." *Accord U.S. v.*

Patrick, 983 F.2d 206, 208–10 (11th Cir. 1993) (remanded: government failed to prove D-methamphetamine was involved). The appellate court affirmed the sentence, however, because defendant had failed to object at sentencing. His claim is thus reviewed only for plain error, and because "factual disputes do not rise to the level of plain error," defendant "in effect waived the issue for appeal."

U.S. v. Deninno, 29 F.3d 572, 580 (10th Cir. 1994).

See *Outline* generally at II.B.1.

Estimating Drug Quantity

Eighth Circuit affirms use of purity of seized drugs to estimate purity of unrecovered drug amounts. Defendant sold two "eight-balls" of methamphetamine to an undercover agent and indicated that he had eight others to sell. "Using percentages of purity from the methamphetamine actually seized on November 24, 1992, the [district] court concluded that each eight-ball amounted to 1.2 grams of actual methamphetamine. Although appellant argues that the exact purity level of the [eight] unrecovered eight-balls is impermissibly uncertain, the guidelines do not require an exact computation of the drug quantity. Instead, the guidelines provide that where the amount seized does not reflect the scale of the offense, the court 'shall approximate the quantity of the controlled substance.' U.S.S.G. § 2D1.1, application note 12. The court may extrapolate drug quantity from the drugs and money actually seized . . . . In making its calculation of the purity level of the drugs in appellant's possession at the time of the November 24th purchase, the district court properly relied on the purity level of the drugs actually seized."

U.S. v. Newton, 31 F.3d 611, – (8th Cir. 1994).

See *Outline* at II.B.4.d.

General Application Principles

Amendments

First Circuit affirms use of "one book" rule. Defendant was sentenced in 1993 but was sentenced under the 1988 Guidelines—which were in effect when the offense was committed—because using later Guidelines would have caused ex post facto problems. Defendant argued that the district court should have considered whether to grant him a third offense level reduction for acceptance of responsibility, which was not available until Nov. 1, 1992. The appellate court affirmed: "The 1992 Guidelines set forth what has been referred to as the 'one book' rule. *See* U.S.S.G. § 1B1.11(b)(2) (Nov. 1992). This provision instructs the district court that when it looks to an earlier version of the Guidelines to calculate a sentence, it must apply *all* of the Guidelines in that earlier version. It provides that a court cannot 'apply . . . one section from one edition . . . and another guideline section from a different edition.'" The court noted that defendant received a lower sentence than he could have if the 1992 Guidelines had been used in their entirety.

U.S. v. Springer, 28 F.3d 236, 237–38 (1st Cir. 1994).

See *Outline* at I.E.

Appellate Review

Discretionary Refusal to Depart Downward

Tenth Circuit will only review a refusal to depart downward if the sentencing court clearly states that it has no authority to depart. After rejecting defendant's claim that the district court's statement at sentencing indicated the court did not believe it had authority to depart downward, the appellate court added that "we no longer are willing to assume that a judge's ambiguous language means that the judge erroneously concluded that he or she lacked authority to downward depart. We think that 'the district courts have become more experienced in applying the Guidelines and more familiar with their power to make discretionary departure decisions under the Guidelines.' . . . Accordingly, unless the judge's language unambiguously states that the judge does not believe he has authority to downward depart, we will not review his decision. Absent such a misunderstanding on the sentencing judge's part, illegality, or an incorrect application of the Guidelines, we will not review the denial of a downward departure."

U.S. v. Rodriguez, 30 F.3d 1318, 1319 (10th Cir. 1994).

See *Outline* at X.B.1.

Departures

Mitigating Circumstances

Fourth Circuit holds that definition of "non-violent offense" in § 5K2.13 is not the same as "crime of violence" in § 4B1.2. Defendant was convicted of sending threatening communications, but did not carry out the threats. The district court held that defendant was suffering from "a major depressive episode" that warranted departure under § 5K2.13 for "significantly reduced mental capacity." The government appealed, arguing that this was not a "non-violent offense" as required under § 5K2.13.

The appellate court affirmed. Although defendant's offense would be considered "violent" under § 4B1.2, the same definition should not be used for

§ 5K2.13 departures: "U.S.S.G. § 5K2.13 is intended to create lenity for those who cannot control their actions but are not actually dangerous; U.S.S.G. § 4B1.2 is intended to treat harshly the career criminal, whether or not their actual crime is in fact violent. Moreover, the choice of different phrasing, the absence of a cross-reference, and the careful definitions attached to one section but not the other, all suggest that the Sentencing Commission did not intend to import its definition from one section into another." Therefore, because defendant's offense was not actually violent, he was eligible for departure under § 5K2.13. *Accord U.S. v. Chatman*, 986 F.2d 1446, 1448–53 (D.C. Cir. 1993). *Contra U.S. v. Dailey*, 24 F.3d 1323, 1327 (11th Cir. 1994); *U.S. v. Poff*, 926 F.2d 588, 592 (7th Cir. 1991) (en banc).

U.S. v. Weddle, 30 F.3d 532, 540 (4th Cir. 1994).

See *Outline* at VI.C.1.b.

D.C. Circuit holds that departure might be permissible if a defendant's conditions of confinement will be more severe solely because of his status as a deportable alien. Defendant argued that his status as a deportable alien likely rendered him ineligible for certain benefits, such as being assigned to serve any part of his sentence in a minimum security prison or serving the last 10% of his sentence in some form of community confinement. The district court ruled that these were not grounds for departure. The appellate court remanded, even though it indicated that "circumstances justifying a downward departure on account of the deportable alien's severity of confinement may be quite rare. . . . For a departure on such a basis to be reasonable the difference in severity must be substantial and the sentencing court must have a high degree of confidence that it will in fact apply for a substantial portion of the defendant's sentence. . . . [E]ven a court confident that the status will lead to worse conditions should depart only when persuaded that the greater severity is undeserved." Other circuits have rejected similar arguments. *See, e.g., U.S. v. Mendoza-Lopez*, 7 F.3d 1483, 1487 (10th Cir. 1993); *U.S. v. Nnanna*, 7 F.3d 420, 422 (5th Cir. 1993); *U.S. v. Restrepo*, 999 F.2d 640, 644 (2d Cir. 1993).

U.S. v. Smith, 27 F.3d 649, 651–55 (D.C. Cir. 1994) (Sentelle, J., dissented).

See *Outline* at VI.C.5.b.

Sixth Circuit rejects "totality of circumstances" departure where individual circumstances did not warrant departure. "[W]e conclude that the district court erroneously aggregated factors in order to depart downward. Even if we were to adopt the totality of circumstances approach to downward departures, the district court erred by accumulating typical factors 'already taken into account' by the sentencing guidelines, in order to arrive at an atypical result. . . . Because the guidelines clearly contemplated all of the factors considered by the district court, no downward departure was justified."

U.S. v. Dalecke, 29 F.3d 1044, 1048 (6th Cir. 1994).

See *Outline* at VI.C.3.

Eleventh Circuit holds that § 5K2.10 downward departure based on victim's conduct was warranted. Defendant was convicted of an extortion offense after making a threat of harm to the victim. "[T]he evidence suggested that Dailey's victim had defrauded him out of tens of thousands of dollars. Dailey only threatened physical harm after he and his family came under financial distress. . . . We cannot say that the district court clearly erred in finding that the conduct of Dailey's victim contributed significantly to provoking his offense."

U.S. v. Dailey, 24 F.3d 1323, 1328 (11th Cir. 1994).

See *Outline* at VI.C.4.b.

Determining the Sentence

Consecutive or Concurrent Sentences

Ninth Circuit affirms refusal to change federal sentence to run concurrently with later, consecutive state sentence for same conduct. Defendant pled guilty in state court and federal court to firearms offenses arising out of a single incident. He was sentenced first in federal court, with no reference to the pending state sentence. His state sentence was then imposed to run consecutive to the federal sentence. Defendant claimed that the district court "should have changed the federal sentence to make it run concurrently with the state sentence once a state sentence was imposed, because the federal Sentencing Guidelines express a general policy against consecutive sentences for the same underlying conduct. *See* U.S.S.G. § 5G1.3."

The appellate court affirmed the district court's refusal to change the sentence. "The state court . . . specifically stated that its sentence would be consecutive to the existing federal sentence. . . . Had the state court not made its sentence consecutive to the federal sentence, it might have imposed a harsher sentence; changing the federal sentence in this case would undermine the state court's sentencing scheme. Therefore, as a matter of comity, we shall not order modification of Mun's federal sentence."

U.S. v. Mun, No. 93-30286 (9th Cir. July 18, 1994) (Boochever, J.).

See *Outline* at V.A.2 and 3.

Violent Crime Control and Law Enforcement Act of 1994

Following is a brief summary of selected changes in the 1994 crime bill related to sentencing under the Guidelines, listed in order of the relevant *Outline* section. Except as noted, the changes took effect Sept. 13, 1994. Some provisions may apply to defendants who committed offenses before the effective date, but ex post facto problems may arise. Crime bill section numbers are in parentheses.

II.A.3: New 18 U.S.C. § 3553(f) provides a limited exception to mandatory minimum sentences for certain nonviolent drug offenses. The amendment applies to defendants who are *sentenced* on or after Sept. 23, 1994. A new guideline, § 5C1.2, implements the change. (Sec. 80001)

IV.B: The "three strikes" provision that mandates life imprisonment for a third "serious violent felony," 18 U.S.C. § 3559(c), will have to be distinguished from the career offender provisions in the Guidelines. For example, "serious violent felony" and "serious drug offense" differ from "crime of violence" and "controlled substance offense." (Sec. 70001)

V.E.2: 18 U.S.C. § 3572(a) is amended by adding new paragraph (6) directing courts to consider "the expected costs to the government of any imprisonment, supervised release, or probation component of the sentence" in determining a fine. (Sec. 20403)

VII: 18 U.S.C. § 3553(a)(4) now states that courts "shall consider . . . (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission." (Sec. 280001) This provision, and the changes below, indicate that courts must follow the Chapter Seven policy statements when sentencing after revocation.

VII.A: For sentences imposed after revocation of probation, 18 U.S.C. § 3565(a)(2) has been amended by replacing the "available . . . at the time of the initial sentencing" language with "resentence the defendant under subchapter A" (18 U.S.C. §§ 3551–3559). Along with new § 3553(a)(4)(B) above, this indicates that courts are no longer limited to the guideline range that applied at defendant's original sentencing.

Along with drug possession, § 3565(a) now also mandates revocation of probation for possession of firearms or refusal of required drug testing. "A term of imprisonment" is required, but the "not less than one-third of the original sentence" language has been deleted. (Sec. 110506)

VII.B: 18 U.S.C. § 3583(g) now requires revocation of supervised release for firearm possession or drug test refusal, as well as drug possession. A term of imprisonment must be imposed, but the "not less than one-third of the term of supervised release" requirement was deleted.

Reimposition of supervised release after revocation is now authorized by new § 3583(h), if defendant is sentenced to less than the maximum prison term available. "The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation." (Sec. 110505)

Note to readers: The format of *Guideline Sentencing Update* has been revised to allow larger type for improved legibility. The larger size also allows more cases per issue and thus fewer issues per year, which will lower the Center's overall printing and mailing costs.

Guideline Sentencing Update, vol. 7, no. 1, Oct. 5, 1994
Federal Judicial Center
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20002-8003

Guideline Sentencing Update

a publication of the Federal Judicial Center *volume 7, number 2, November 17, 1994*

General Application

Amendments

Eighth Circuit affirms use of amended guideline for pre-amendment counts where other count for similar conduct occurred after amendment. Defendant pled guilty to two counts of being a felon in possession of a firearm and one count of possession of a short-barrelled shotgun. One of the felon in possession offenses occurred after the Nov. 1, 1991, amendments that increased the base offense level for that offense and changed the grouping rules for firearms offenses; the other two offenses occurred before the amendment. Defendant was sentenced under the amended guidelines on all three counts and, because his sentence was greater than it would have been under the pre-amendment guidelines, argued on appeal that this was an ex post facto violation.

The appellate court affirmed. "At the time Cooper elected to commit the third firearms violation he was clearly on notice of the 1991 amendments to the Sentencing Guidelines and the fact that they increased the offense levels for the firearm crimes in question and required the aggregation of firearms in Counts I, II and IV. In our view, Cooper had fair warning that commission of the January 23, 1992, firearm crime was governed by the 1991 amendments that provided for increased offense levels and new grouping rules that considered the aggregate amount of harm." The court also reasoned that defendant's offenses could be likened to a continuing offense or "same course of conduct," for which "the date the crimes are completed determines the version of the Sentencing Guidelines to be applied. . . . The offense conduct to which Cooper pled guilty involved a series of firearm offenses spanning from August 24, 1991, to January 23, 1992. As with the analogous cases referenced above, application of the Sentencing Guidelines in effect at the time Cooper completed the last offense does not violate the ex post facto clause."

Dissenting in part, Judge Wollman stated that the pre-amendment offense guidelines should be applied to the earlier counts, but agreed that the post-amendment grouping rules can be applied to all three counts.

U.S. v. Cooper, 35 F.3d 1248, 1250–52 (8th Cir. 1994).

See *Outline* at I.E.

Fifth Circuit affirms refusal to lower sentence following retroactive amendment. At her original sentencing for methamphetamine offenses defendant received a substantial §5K1.1 downward departure. After the method of calculating the weight of a methamphetamine mixture was amended in 1993 and made retroactive, defendant filed a motion under 18 U.S.C. §3582(c)(2). Using the amended guideline could have lowered defendant's guideline range, but not below the sentence she received after the original departure. The district court denied defendant's motion for a lower sentence, explaining that it had been "extremely lenient in its downward departure and would not resentence Movant below this."

The appellate court affirmed, while noting that "[i]t is not evident what the court is supposed to do, in a case such as this, when there has been a departure in the original sentencing decision." The court did not decide that issue, however, because the "application of §3582(c)(2) is discretionary," and in determining "it would not depart further under the circumstances presented, the district court did not abuse its discretion."

U.S. v. Shaw, 30 F.3d 26, 28–29 (5th Cir. 1994) (per curiam).

See *Outline* at I.E.

Adjustments

Obstruction of Justice

Eleventh Circuit holds en banc that obstruction enhancement does not apply to persons who "simply disappear to avoid arrest, without more." During plea negotiations but before indictment, a couple being investigated for fraud disappeared. The government eventually located them after getting an indictment, and the husband gave a false name to police when arrested. Their sentences were enhanced for obstruction of justice. Based on §3C1.1, comment. (n.4(d)) (no enhancement for "avoiding or fleeing from arrest"), the appellate court reversed: "We conclude that the §3C1.1 enhancement does not apply to persons engaged in criminal activity who learn of an investigation into that activity and simply disappear to avoid arrest, without more. Such persons do not face a two-level enhancement for failing to remain within the jurisdiction or for failing to keep the Government ap-

prised of their whereabouts during its pre-indictment investigation."

The appellate court also held that there were insufficient findings to support a §3C1.1 enhancement for giving a false name. Under Application Note 4(a), "a district court applying the enhancement because a defendant gave a false name at arrest must explain how that conduct significantly hindered the prosecution or investigation of the offense." Here, the district court simply inferred that the false name "slowed down the criminal process."

U.S. v. Alpert, 28 F.3d 1104, 1106–08 (11th Cir. 1994) (en banc) (two judges dissented) (superseding opinion at 989 F.2d 454).

See *Outline* at III.C.1, 2.b and e, and 3.

Seventh Circuit reverses §3C1.1 enhancement for refusal to testify at coconspirator's trial. Defendant and a coconspirator were indicted for conspiracy and substantive offenses. After defendant pled guilty to a possession charge, the government obtained a court order immunizing defendant and directing him to testify at the coconspirator's trial. Defendant refused to testify and was held in civil contempt. The coconspirator was convicted anyway, but defendant was given a §3C1.1 enhancement for refusing to testify.

The appellate court reversed because defendant's conduct did not affect "the instant offense" as required by §3C1.1. "This court has defined 'the instant offense' to refer 'solely to the offense of conviction.' . . . 'Offense of conviction' does not refer to a separate crime by someone else. . . . Here, Partee's 'offense of conviction' was possession of cocaine with intent to distribute. Partee's refusal to testify at Dismuke's trial had no impact on *his* possession conviction and, therefore, Partee did not attempt 'to avoid responsibility for the offense for which *he* was being tried.'" Although some circuits have read "instant offense" to include relevant conduct, this circuit "has instead defined it narrowly as 'offense of conviction,' . . . and 'offense of conviction' refers only to the '"offense conduct charged in the count of the indictment or information of which the defendant was convicted."' . . . We are bound by this definition, and applying it here we conclude that a defendant cannot receive an enhancement for obstruction of justice for refusing to testify at a coconspirator's trial. . . . This does not mean that a defendant's disregard for a court order to testify under a grant of immunity will go unpunished; a district court could sentence a defendant to imprisonment for criminal contempt of court."

U.S. v. Partee, 31 F.3d 529, 531–33 (7th Cir. 1994).

See *Outline* at III.C.2.d and 4.

Abuse of Trust and Vulnerable Victim

Seventh Circuit reverses failure to give abuse of trust and vulnerable victim enhancements. Defendant fraudulently sold annuities through funeral home directors to elderly clients who wanted to pre-pay funeral expenses. He paid for some funerals initially, but kept most of the money. The parties stipulated that defendant was a licensed insurance broker and that this license was necessary to purchase these annuities. The district court refused the government's request for a §3B1.3 enhancement for abuse of trust, but the appellate court reversed. "Stewart's position as a licensed insurance broker enabled him to induce his elderly clients to entrust him with funds for the purchase of annuities. By paying the funeral directors ten percent for their services as his agents in inducing the elderly to part with their funds for the purchase of annuities, the funeral directors were led to believe that Stewart would purchase the annuities in his capacity as an insurance agent to reimburse them for the cost of the funerals. Stewart abused that position to embezzle over one million dollars." Defendant's position of trust also "made it significantly easier for him to commit and conceal his fraudulent scheme."

The district court denied the government's request for a §3A1.1 vulnerable victim enhancement on the ground that the funeral directors were the only victims of defendant's fraud—the elderly clients suffered no losses because the directors provided the funeral services despite defendant's failure to purchase sufficient annuities. The appellate court reversed for clear error. "The district court appears to have succumbed to Stewart's argument that section 3A1.1 requires that the vulnerable victim suffer a financial loss. There is no requirement in section 3A1.1 that a target of the defendant's criminal activities must suffer financial loss. . . . [Defendant] made his elderly clients the innocent instruments of his scheme to defraud the funeral directors . . . . The evidence supports an inference that Stewart targeted the elderly [and that] they were especially vulnerable" to his promises.

U.S. v. Stewart, 33 F.3d 764, 768–71 (7th Cir. 1994).

See *Outline* at III.A.1.b and III.B.8.a.

Supervised Release

Revocation of Supervised Release

Sixth Circuit holds that restitution obligation does not end if supervised release is revoked. Defendant argued that restitution is a condition of supervised release under 18 U.S.C. §3663(g), and that when his release was revoked the duty to pay resti-

tution did not survive. The appellate court concluded that "Congress intended restitution to be an independent term of the sentence of conviction, without regard to whether incarceration, probation, or supervised release were ordered." Reading §3663(g) in the context of the whole statute shows that it is not meant to make restitution "merely a term of supervised release" but "is aimed at effectively using the court's jurisdiction over the defendant during supervised release and probation, not at modifying the obligation to make restitution. . . . Accordingly, we conclude that a district court's decision to revoke supervised release does not affect the obligation to pay restitution if such obligation was authorized under 18 U.S.C. §§3551, 3556."

U.S. v. Webb, 30 F.3d 687, 689–91 (6th Cir. 1994) (Jones, J., dissented).

See *Outline* generally at V.B.1.

Note: Reimposition of supervised release after revocation is now allowed under new 18 U.S.C. §3583(h) (effective Sept. 13, 1994).

Criminal History

Career Offender Provision

First and Fourth Circuits hold that a drug conspiracy conviction is a "controlled substance offense" for career offender purposes. In the First Circuit, defendant was sentenced as a career offender after his conviction for a marijuana conspiracy. He appealed, arguing that conspiracy was not listed in the career offender guideline or the enabling statute and that its inclusion in Application Note 1 of §4B1.2 is inconsistent with the guideline and exceeds the mandate in the enabling statute. The appellate court disagreed, holding that "the application note comports sufficiently with the letter, spirit, and aim of the guideline to bring it within the broad sphere of the Sentencing Commission's interpretive discretion."

U.S. v. Piper, 35 F.3d 611, 616–19 (1st Cir. 1994).

The Fourth Circuit defendant was convicted of conspiracy to distribute cocaine and was not sentenced as a career offender. In remanding, the appellate court concluded "that the career offender provision of the Sentencing Guidelines was promulgated pursuant to the Commission's general authority under [28 U.S.C.] §994(a) as well as its more specific authority under §994(h) . . . [and] it was reasonable for the Commission to interpret Congress' directive in §994(h) as permitting inclusion of drug-related offenses other than the offenses specifically enumerated in §994(h)."

The district court had also concluded that the career offender guideline did not apply because defendant was released from prison on one of his two predicate felonies just over fifteen years before the date charged in the indictment for the beginning of the instant conspiracy. However, the appellate court agreed with the government that the district court was not bound by the date in the indictment but should "consider all relevant conduct pertaining to the conspiracy in determining when that conspiracy began." *See also* §4B1.2, comment. (n.8) ("the term 'commencement of the instant offense' includes any relevant conduct").

U.S. v. Kennedy, 32 F.3d 876, 888–91 (4th Cir. 1994).

See *Outline* at IV.B.

Departures

Mitigating Circumstances

Ninth Circuit reverses departures based on "combination of factors" and victim misconduct. Two Los Angeles police officers were convicted of civil rights offenses in the Rodney King beating case. (Note: This summary assumes familiarity with the basic facts of this widely publicized case.) In sentencing defendants to thirty months each, the district court departed downward three offense levels for a combination of factors that individually would not warrant departure: the additional punishment defendants could receive from administrative sanctions and their susceptibility as police officers to prison abuse; "the extreme absence of a need to protect the public from future wrongdoing" by defendants; and "the unfairness of successive state and federal prosecutions for the same conduct."

The appellate court reversed, stating that "although a district court may grant a departure based on a combination of factors that do not individually justify a departure, this policy does not permit the district court to consider in the mix factors that should not be part of the consideration. . . . [O]ur purpose is not to determine whether each factor taken alone justifies a departure, but rather whether consideration of the particular factor at all as part of the decision to depart is consistent with the structure and purposes of the Guidelines and the federal sentencing statutes." As for the individual factors cited: "Personal and professional consequences that stem from a criminal conviction are not appropriate grounds for departing, nor are they appropriately considered as part of a larger complex of factors." A departure based on the vulnerability of a police officer in prison "would be inconsistent with the structure and policies of the Guide-

lines. . . . While a departure based on U.S.S.G. §5H1.4 involves the relatively objective question of whether an extraordinary physical impairment exists, the determination of whether an individual's membership in a group regarded with hostility leaves him vulnerable is both subjective and open-ended. Nothing would prevent this rationale from being applied to numerous groups . . . all of whom face an increased risk of abuse in prison."

The court also held that "the fact that appellants are neither dangerous nor likely to commit crimes in the future is not an appropriate basis for a departure in this case. Although it is true that some offenders who are classified in Criminal History Category I have a greater likelihood of recidivism than appellants, the Commission already took this factor into account when it drafted the Guidelines. . . . This is so even for defendants who may be unusually unlikely to commit crimes in the future." "Reliance on the 'spectre of unfairness' of dual prosecutions to support a departure is improper because it speaks neither to the culpability of the defendant, the severity of the offense, nor to some other legitimate sentencing concern. . . . We find nothing in the structure or policies of the Guidelines to support a departure on the grounds that successive prosecutions are burdensome."

The district court also departed five levels under §5K2.10 for victim misconduct, despite concluding that this factor was no longer present at the time that defendant's conduct changed from legitimate use of force to a criminal violation of civil rights. The appellate court again reversed, concluding that the victim's conduct and the appropriateness of the police response to it are taken into account in the statute of conviction and the relevant guideline.

U.S. v. Koon, 34 F.3d 1416, 1452–60 (9th Cir. 1994).

See *Outline* at VI.C.3, 4.b, and 5.b.

Tenth Circuit reverses downward departure based on post-arrest drug rehabilitation and religious activity. The district court departed downward based on a combination of "a very significant change in the defendant's conduct and attitudes towards life," resulting from participation in religious activities, and defendant's concomitant drug rehabilitation after "a long history of drug abuse and drug usage." The appellate court reversed, first noting that it has previously prohibited departure for drug rehabilitation. In addition, "post-offense rehabilitative efforts, including counseling, are a factor to consider in §3E1.1. *Id.*, Application Note 1(g). Chubbuck's religious guidance falls squarely into this category, and we therefore think that the guidelines have adequately considered Chubbuck's rehabilitation, both in kind and in degree."

U.S. v. Chubbuck, 32 F.3d 1458, 1461–62 (10th Cir. 1994).

See *Outline* at VI.C.2.a and c.

Aggravating Circumstances

Fifth Circuit affirms §5K2.1 departure for unintended death that resulted indirectly from offense conduct. When defendant robbed a gas station, the "traumatic event of the robbery" caused an employee to suffer a brain aneurysm that resulted in her death two days later. The district court departed upward under §5K2.1 because "death resulted" from the offense. The appellate court affirmed that this was proper under §5K2.1. "The court's conclusion that although Davis did not consciously intend to kill Overby his conduct was such that he should have anticipated that a serious injury or death could result from his conduct shows that relevant factors under §5K2.1 were thoroughly considered."

U.S. v. Davis, 30 F.3d 613, 615–16 (5th Cir. 1994).

See *Outline* at VI.B.1.e.

Guideline Sentencing Update, vol. 7, no. 2, Nov. 17, 1994
Federal Judicial Center
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20002-8003

APPENDIX
D

U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

Main Justice Building, Room 1619
10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

(202) 514-2121

NOV 21 1994

MEMORANDUM FOR: All United States Attorneys

FROM: Carol DiBattiste
Director

SUBJECT: Use of Company Aircraft and Accommodations

Attached is a copy of a memorandum regarding the use of company aircraft and accommodations by Presidential appointees. In general, the memorandum prohibits Cabinet members and other full-time Executive Branch Presidential appointees from traveling on aircraft or using overnight accommodations owned, chartered, or maintained by a company, primarily for company use rather than commercial use, if the company is regulated by or doing business with their employing agency. This policy applies to all travel, whether personal or official, and regardless of whether the agency intends to reimburse the company for the cost or value of the travel or accommodations.

For the purposes of this policy, "company" means a corporation and subsidiaries it controls, non-profit foundation of a company, association, firm, partnership, society, joint stock company, or union. It does not include independent non-profit or other organizations.

The only exceptions to this policy are: 1) travel and related expenses to attend official meetings or similar functions consistent with 41 C.F.R. § 304; 2) when no other travel arrangements or accommodations are practically available; and 3) when the offer results from the business or employment of a spouse and it is clear that such benefits have not been offered because of your official position. All exceptions to this policy must be approved in advance by the Executive Office's Legal Counsel.

If you have any questions, please contact Juliet A. Eurich, Legal Counsel, at (202) 514-4024.

Attachment

THE WHITE HOUSE

WASHINGTON

August 29, 1994

MEMORANDUM FOR CABINET MEMBERS AND FULL-TIME EXECUTIVE BRANCH PRESIDENTIAL APPOINTEES

FROM: LLOYD N. CUTLER LNC
SPECIAL COUNSEL TO THE PRESIDENT

SUBJECT: Use of Company Aircraft and Accommodations

As Presidential appointees, the actions we take reflect directly upon this Administration and on the President. We must therefore adhere strictly to the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), 5 C.F.R. Part 2635. In addition, we must meet the even higher standard of avoiding conduct, however lawful, that public opinion regards as inappropriate for a Presidential appointee.

In this spirit, the White House Chief of Staff has directed me to issue the following policy on the use, by Cabinet members and other full-time Executive Branch Presidential appointees, of aircraft and accommodations owned or maintained by certain companies. For the purposes of this policy, "company" means a corporation and subsidiaries it controls, non-profit foundation of a company, association, firm, partnership, society, joint stock company, or union; it does not include independent non-profit or other organizations.

1. With the exceptions noted below,

(a) Cabinet members and other full-time Executive Branch Presidential appointees may not travel on aircraft owned, chartered, or maintained by a company primarily for company use rather than commercial use if the company is regulated by or doing business with their employing agency. This policy applies to all travel -- personal, political and official travel -- and is in addition to the restrictions imposed by the Standards or by any other applicable law or regulation.

(b) Cabinet members and other full-time Executive Branch Presidential appointees may not stay in overnight accommodations owned or maintained primarily for company use rather than commercial use if the company is regulated by or doing business with their employing agency. This policy applies without regard to whether your use is related to personal, political or official purposes and is in addition to the restrictions imposed by the Standards or by any other applicable law or regulation.

(c) Because of the broad scope of matters handled by the White House, companies may be considered to be regulated by or doing business with the White House when a matter is pending in another agency subject to Presidential review. Therefore, appointees in the White House Office and Office of Policy Development shall consult with the White House Counsel's Office and obtain its approval for any use of company aircraft and accommodations.

(d) Paragraphs (a), (b), and (c) above apply regardless of whether the appointee or agency intends to reimburse the company for the cost or value of the travel or accommodations.

2. The only exceptions to this policy are:

(a) travel and related expenses for Cabinet members or other Executive Branch Presidential appointees to attend official meetings or similar functions consistent with 31 U.S.C. § 1353 and 41 C.F.R. Part 304 (before authorizing acceptance of such an offer without reimbursement, agencies should carefully apply the regulation's conflict of interest factors when a company is regulated by or does business with the agency);

(b) where no other travel arrangements or accommodations are practically available; or

(c) where the offer of an aircraft or accommodations owned or maintained by a company regulated by or doing business with your agency results from the business or employment activities of your spouse and it is clear that such benefits have not been offered or enhanced because of your official position. 5 C.F.R. § 2635.204(e).

In addition to any other required approval, reliance on any of the exceptions must be approved in advance by your agency's ethics official, who may consult the White House Counsel's Office before approval. Reliance on those exceptions authorizing the use of aircraft owned, chartered or maintained by a company for its own use must be approved in advance by the White House Counsel's Office.

This policy is effective immediately. If you have any questions regarding this policy, please direct them to your ethics officer or to Cheryl Mills, Associate Counsel to the President, at (202) 456-7900.

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

Nomination Form

APPENDIX E

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

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

LEI COURSE CONTACT:

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

	LEI USE ONLY	
	ACCEPTED	NOT SELECTED

COURSE

Course Name	Course Date(s)	Course Location

NOMINEE

Name	Title

Office, Agency, or Department	Phone Number

QUESTIONNAIRE

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

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

2. What percentage of nominee's work involves the subject(s) of the course?

3. Indicate the level of skill or knowledge nominee has in this area:

   Novice Intermediate Advanced (please circle)

4. How many years has the nominee worked in this area?

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

6. If necessary, please indicate any special considerations:

SUPERVISOR

Name	Title

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

APPENDIX
F

UNITED STATES ATTORNEYS

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APPENDIX G

CUMULATIVE LIST OF CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

(As provided for in the amendment to the Federal postjudgment interest statute, 28 U.S.C. §1961, effective October 1, 1982)

Effective Date	Annual Rate	Effective Date	Annual Rate	Effective Date	Annual Rate	Effective Date	Annual Rate
10-21-88	8.15%	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	8.27%	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%	12-09-94	7.22%

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