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ATTORNEY GENERAL HIGHLIGHTS

VIOLENCE AT ABORTION CLINICS

On January 4, 1994, Attorney General Janet Reno issued a memorandum to all United States Attorneys concerning violence against providers of abortion services. Ms. Reno discussed President Clinton's order which directed the United States Attorneys to head task forces to formulate plans to address security for all providers of abortion services within their districts. The President also directed the U.S. Marshals to immediately consult with all clinics in their jurisdictions to ensure that they have all the information they need to efficiently communicate with appropriate Federal, State, and local law enforcement officials concerning threats of violence. **Appendix A** is a copy of the President's statement. **Appendix B** is a copy of the Attorney General's memorandum to all United States Attorneys.

The Attorney General requested that the Criminal Division, the Civil Rights Division, and the United States Attorneys work together to ensure that the Federal investigative and prosecutive response to violence is fully coordinated nationally and with their local counterparts.

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"COPS AHEAD" PROGRAM

On December 19, 1994, President Clinton and Attorney General Janet Reno announced that 631 jurisdictions from all 50 states may begin hiring up to 4,688 new officers while their police hiring grants are pending. The President also named Police Chief Joseph Brann of Hayward, California, to direct the Administration's police hiring program.

Under the Department of Justice's "Cops Ahead" program for cities larger than 50,000 people, the following jurisdictions may begin recruiting, hiring, and training police officers: Atlanta, Boston, Chicago, Detroit, Houston, Los Angeles County, Philadelphia, and 400 other police departments, 201 sheriffs' offices, 21 state police departments, and 2 Indian Tribes. Jurisdictions under 50,000 are eligible to apply for police hiring grants under the "Cops Fast" program. "Cops Fast" applications were due December 31, 1994. (See *United States Attorneys' Bulletin*, Vol. 42, No. 11, of December 6, 1994, p. 428.) Coupled with previous police hiring grants, full awards under "Cops Ahead" bring the total number of new officers funded under President Clinton to 9,547 in more than 1,200 communities across America. An announcement of final "Cops Ahead" awards is expected early this year, and up to 5,000 additional officers should be funded this year. The Crime Bill's community police hiring program, signed into law by the President last September, provides $8.8 billion in competitive grants for state and local law enforcement agencies to hire community police officers and to implement community policing.

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"COPS MORE"

On December 16, 1994, Attorney General Janet Reno announced the beginning of a new Department of Justice initiative entitled "Cops More," to assist state and local law enforcement agencies in their efforts to redeploy veteran officers into community policing. "Cops More" (Making Officer Redeployment Effective) is designed to expand the implementation of community policing by using existing law enforcement officers, rather than by hiring and rehiring additional law enforcement officers.

Grants will be made under "Cops More" to support the purchase of equipment and technology; to procure support resources, such as hiring civilian personnel or automated record keeping; and to pay overtime. Grants will be made for up to 75 percent of the cost of the equipment, technology, support systems, or overtime for 1 year; local agencies must provide a minimum of 25 percent of the costs. Completed applications must be postmarked no later than March 17, 1995.

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JOSEPH BRANN NAMED "TOP COP"

On December 19, 1994, Police Chief Joseph Brann was sworn in as "Top Cop" by President Clinton and Attorney General Janet Reno at a Department of Justice ceremony attended by Mayors, Chiefs of Police, Members of Congress, and other public officials from across America. Chief Brann has been with the Santa Ana, California, Police Department for 21 years, and the Chief of Police of Hayward, California, for nearly 5 years, where his success in implementing community policing has attracted national attention.

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DEPARTMENT OF JUSTICE RESPONSE CENTER

For information concerning the Cops Programs and the Crime Bill, please call the Department of Justice Response Center, 1-800-421-6770, or in Washington, D.C., (202)307-1480.

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DEPARTMENT OF JUSTICE CHILD SUPPORT ENFORCEMENT PROGRAM

On December 22, 1994, Attorney General Janet Reno announced a three-point plan to aggressively investigate and prosecute parents who are in default in making child support payments. Federal prosecutors targeted deadbeat parents in 13 states as part of a government effort to get parents to pay off an estimated $34 billion they owe for child support. Twenty-eight cases were filed, seeking almost $1 million in overdue payments. Thus far, cases have been brought in Arizona, California, Florida, Indiana, Kansas, Michigan, New Jersey, New Mexico, Ohio, South Dakota, Virginia, Washington, and West Virginia.

This action was taken under the 1992 Child Support Recovery Act, which makes it a Federal offense to willfully fail to pay more than $5,000 in court-ordered support for a child living in another state. First time offenders are charged as misdemeanants, subject to up to 6 months in prison and a $5,000 fine. Repeat offenders are subject to felony prosecutions, and up to 2 years in prison and a $250,000 fine.

The plan also calls for comprehensive training of Federal prosecutors and FBI agents to implement the program, and close coordination with state child support agencies who conduct the vast majority of enforcement activities. Each of the 94 U.S. Attorneys' offices has designated a child support enforcement coordinator. Prosecution guidelines to assist Federal prosecutors targeting the most egregious non-support cases in a uniform and fair manner have been developed.

A summary of the Attorney General's three-point plan and a synopsis of Child Support Recovery Act cases are available through the *United States Attorneys' Bulletin* staff, (202)514-3572.

MEMORIAL SERVICES FOR FEDERAL CORRECTIONS OFFICER

On December 28, 1994, Attorney General Janet Reno, Bureau of Prisons Director Kathleen Hawk, and more than 400 Bureau of Prisons officers attended the funeral and grave-side ceremony in Columbia, South Carolina, of a Federal correctional officer, Tony Washington, killed on duty at the Atlanta Federal Penitentiary. The case is under investigation, and no charges have been filed. Ms. Reno expressed a need for more support for those who guard the country's prisons, and recognized that anyone working in the area of corrections has one of the most difficult jobs in law enforcement.

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NATIONAL CRIMINAL HISTORY IMPROVEMENT PROGRAM

On December 1, 1994, Associate Attorney General John Schmidt announced the National Criminal History Improvement Program. This program implements the grant provisions of the Brady Handgun Violence Prevention Act and the National Child Protection Act of 1993, thereby fulfilling the Administration's commitment to assist states in implementing the Brady Bill. Recognizing that success of anti-crime laws may depend on quick access to criminal history records, the Department of Justice mailed out applications to all states for funding to assist them in achieving readily accessible, automated record keeping systems. The Department of Justice will award $88 million in grants to states this fiscal year, and another $6 million will be available to support the FBI's development of the national background check system. Funds will be given to each state criminal identification bureau, courts, and other agencies that provide information about arrests or disposition of criminals. The funds will also support technology advancements such as automated fingerprint identification systems and electronic telecommunications. States may apply for funding until July 1, 1995.

Under half of all states have fully automated criminal records systems, and four state systems are not even partially 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.

For information concerning this program, please call the Department of Justice Response Center, 1-800-421-6770, or in Washington, D.C., (202)307-1480.

UNITED STATES ATTORNEYS' OFFICES

COMMENDATIONS

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

Valli Baldassano (Pennsylvania, Eastern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for her outstanding efforts in the investigation and prosecution of several individuals involved in shipping cocaine and heroin across the country via Federal Express.

Christopher K. Barnes (Ohio, Southern District), was presented a plaque by George M. Rezny, Chief, Criminal Investigation Division, Internal Revenue Service, Cleveland, for his exceptional and dedicated efforts on the General Electric-Israel case from 1991-1994.

Robert K. Crowe (California, Northern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his successful prosecution of a fraud case involving loans made from investments totalling more than $7 million.

Frank DiGiammarino and **Lamar Walter** (Georgia, Southern District), by Carlton W. Fitzpatrick, Branch Chief, Financial Fraud Institute, Federal Law Enforcement Training Center, Glynco, for their valuable contributions to the Advanced Financial Fraud Training Program during the past year.

Bryan Farrell (Georgia, Northern District), by Richard C. Fox, Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, Atlanta, for serving as an instructor during the Metro Fire Investigative Task Force seminar concerning arson prosecutions and legal matters affecting arson investigations.

Kenneth Fimberg (District of Colorado), was presented the Chief Inspector's Award by K. J. Hunter, Chief Postal Inspector, U.S. Postal Service, Washington, D.C., for his outstanding efforts in a number of complex mail fraud cases, particularly a case involving five individuals who owned and operated a mail order adjustable bed company which defrauded $2.3 million from elderly victims.

James Harper (Georgia, Northern District), by D. Carroll Toohey, Special Agent in Charge, FBI, Atlanta, for his extraordinary efforts and assistance in a number of violent crime cases over the years.

Johnathan S. Haub (District of Oregon), by Milton E. Ahlerich, Assistant Director, Laboratory Division, FBI, Washington, D.C., for his professionalism and legal skill in the thorough preparation of an FBI examiner in a marijuana distribution case.

Stephen A. Higginson (Louisiana, Eastern District), by Billy O. Edgmon, CPA, New Orleans Chapter of Society of Louisiana Certified Public Accountants, Metairie, for his excellent presentation on financial irregularities and prosecution at the University of New Orleans with 89 CPA members in attendance.

Elizabeth Landes (Illinois, Northern District), by Kenneth G. Cloud, Special Agent in Charge, Drug Enforcement Administration, Chicago, for her valuable assistance and spirit of cooperation during several complex forfeiture investigations.

Mark A. Miller (Missouri, Western District), by Anthony R. Boochichio, Special Agent in Charge, Drug Enforcement Administration, St. Louis, for his outstanding success in the prosecution of an international cocaine distribution organization based in Santa Cruz, Bolivia, and Kansas City.

Kathleen E. Seabough provided valuable paralegal assistance. Also, by John P. Sutton, Special Agent in Charge, Drug Enforcement Administration, St. Louis, for Mr. Miller's valuable assistance in a number of complex cases which resulted in guilty verdicts.

Mitzi Dease Paige (Mississippi, Southern District), by Mary E. Barrett, District Counsel, Department of Veterans Affairs, Jackson, for her excellent representation in a Federal tort claim case, and for obtaining a judgment in favor of the United States.

Mark Parrent, Special Assistant United States Attorney (California, Northern District), by Dennis R. Hagberg, Inspector in Charge, U.S. Postal Inspection Service, San Francisco, for his excellent presentation on Federal sentencing guidelines at the annual training conference of the San Francisco Division.

Virginia R. Powel (Pennsylvania, Eastern District), by Carolyn Beth Lee, R.N., Acting Director, Division of Scholarships and Loan Repayments, Health Resources and Services Administration, Department of Health and Human Services, Bethesda, Maryland, for her successful litigation of approximately 20 National Health Service Corps Scholarship Program cases.

Caryl P. Privett (Alabama, Northern District), was presented a Certificate of Appreciation for her valuable group counseling sessions for students at the Jefferson County Counseling/Learning Center in Birmingham. Her work with the students grew out of a local "Drugs in the Schools" program.

Wayne Rogers and **Jennie Smith** (Alabama, Northern District), by Daniel Alpert, Trial Attorney, Office of Chief Counsel, Federal Railroad Administration (FRA), Department of Transportation, Washington, D.C., for their outstanding legal skill in quashing a subpoena issued to an FRA inspector.

Richard Schechter and **Renee Bumb** (District of New Jersey), were presented the Health and Human Services' Inspector General's Integrity Award by new York Regional Inspector General Mary Little for their substantial contributions to the mission of the Office of the Inspector General.

Robert Schroeder (Georgia, Northern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his outstanding efforts in the grand jury investigation, trial, and appeal of the founder and grand dragon of the White Knights, Knights of the Klu Klux Klan. (For a summary of this case, see p. 27 of this *Bulletin*.)

Jennie Smith (Alabama, Northern District), by Susan McGuire Smith, Chief Counsel, George C. Marshall Space Flight Center, Alabama, for her extraordinary efforts in obtaining a motion for summary judgment in a complicated Age Discrimination in Employment Act case.

Alan M. Soloway (District of Connecticut), by George C. Festa, Special Agent in Charge, Drug Enforcement Administration (DEA), Boston, for his invaluable efforts in the civil prosecution of DEA registrants acting outside the scope of the Controlled Substances Act.

Christian H. Stickan (Ohio, Northern District), by Donna Owens, Director, Ohio Department of Commerce, Columbus, for his outstanding success in the prosecution of a complex securities fraud case.

Jean Taylor (District of Oregon), by William J. Kollins, Chief, Land Acquisition Section, Environment and Natural Resources Division, Department of Justice, for providing valuable assistance and support during a complex and lengthy case known as "the Portland Courthouse taking."

Mary P. Thorstenson (District of South Dakota), by James C. Collingwood, Deputy U.S. Marshal, Sioux Falls, for her excellent seminar on the Crime Bill and its impact on the law enforcement community at the Tri-State Peace Officers Association.

Russell G. Vineyard (Georgia, Northern District), by Robert C. Joslin, Regional Forester, U.S. Forest Service, Department of Agriculture, Atlanta, for his successful efforts in a complex case involving the Cherokee Forest Plan in Tennessee.

Joseph Welty (District of Arizona), by David S. Wood, Special Agent in Charge, Drug Enforcement Administration, Phoenix, for his professionalism and outstanding legal skill which resulted in the settlement of a highly sensitive matter.

Richard Westling, Brett Dupuy, and **Nicola Tacla** (Louisiana, Eastern District), by Maria M. Yiannopoulos, Executive Director, Louisiana Center for Law and Civil Education, New Orleans, and Barbara B. Greenberg, Director of Guidance and Admissions, Ridgewood Preparatory School, Metairie, for their excellent presentation on the legal and medical consequences of substance abuse.

Gaynell Williams (Louisiana, Eastern District), was presented a Certificate of Appreciation from Christopher M. Nelson, Special Agent in Charge, U.S. Customs Service, New Orleans, for her outstanding assistance and support to the U.S. Customs Service River Interdiction Task Force, which has made significant arrests, seizures, and controlled deliveries in New Orleans.

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HONORS AND AWARDS

Society for American Archaeology

On December 5, 1994, the Society for American Archaeology (SAA) conducted a special ceremony in Washington, D.C., in recognition of the outstanding work by employees of the Department of Justice and the FBI to protect the nation's archaeological treasures. SAA is an international organization dedicated to the research, interpretation, and protection of the archaeological heritage of the Americas.

Public Service Awards were presented by Jo Ann Harris, Assistant Attorney General for the Criminal Division, and Bruce Smith, President of the Society, to: FBI Special Agent James Beck; Deborah Daniels, former United States Attorney; Larry Mackey, Chief of the Criminal Division and Assistant United States Attorney; and Scott Newman, former Assistant United States Attorney, all from the Southern District of Indiana; and Jeffrey Kent, Assistant United States Attorney for the District of Oregon. Mr. Kent wrote an appellate brief and argued for the United States in a case that established the constitutionality of one of the most important Federal laws establishing protections for archaeological sites: the Archeological Resources Protection Act. Ms. Daniels, Mr. Mackey, Mr. Newman, and Mr. Beck were instrumental in United States v. Gerber, another important precedent-setting case leading to the prosecution of five persons for interstate trafficking in looted artifacts.

1994 Executive Office for United States Attorneys Director's Awards (Correction)

Robert L. Ernst and **Terence P. Flynn** (District of New Jersey) were presented the 1994 Executive Office for United States Attorneys Director's Awards for Superior Performance as an Assistant United States Attorney. In the *United States Attorneys' Bulletin*, Vol. 42, No. 11, they were inadvertently listed as Assistant United States Attorneys for the District of Nevada.

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APPOINTMENT TO NINTH CIRCUIT TASK FORCE ON TRIBAL COURTS

District of Oregon

On November 23, 1994, United States Attorney Kristine Olson Rogers was appointed by the Honorable J. Clifford Wallace, Chief Judge, U.S. Court of Appeals for the Ninth Circuit, to serve on the Ninth Circuit Task Force on Tribal Courts. The Task Force is responsible for identifying and addressing problems faced by the court systems of the various Indian nations and the Ninth Circuit Court of Appeals.

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ATTORNEY GENERAL'S ADVISORY COMMITTEE OF UNITED STATES ATTORNEYS

On January 31, 1995, Attorney General Janet Reno announced the appointment of the following new members of the Advisory Committee of United States Attorneys for a two-year term to expire on January 31, 1997.

Alan D. Bersin, Southern District of California
Janice McKenzie Cole, Eastern District of North Carolina
Kathryn E. Landreth, District of Nevada
Sherry S. Matteucci, District of Montana
Thomas J. Monaghan, District of Nebraska
P. Michael Patterson, Northern District of Florida
Gregory Sleet, District of Delaware

The terms of the following members of the Advisory Committee have expired:

James B. Burns, Northern District of Illinois
Zachary Carter, Eastern District of New York
Paul Coggins, Northern District of Texas
Nora Manella, Central District of California
Jay P. McCloskey, District of Maine
Katrina C. Pflaumer, Western District of Washington
J. Preston Strom, Jr., District of South Carolina
Michael J. Yamagucci, Northern District of California

The Attorney General thanked the United States Attorneys for their outstanding service and significant contributions to the Department of Justice.

A complete list of the members of the 1995 Attorney General's Advisory Committee of United States Attorneys follows:

Michael R. Stiles, Chair, Eastern District of Pennsylvania
Lynne Battaglia, Vice Chair, District of Maryland
Kent Alexander, Northern District of Georgia
Janice McKenzie Cole, Eastern District of North Carolina
Gaynelle Griffin Jones, Southern District of Texas
Kathryn E. Landreth, District of Nevada
Sherry S. Matteucci, District of Montana
Thomas P. Monaghan, District of Nebraska
Janet Napolitano, District of Arizona
P. Michael Patterson, Northern District of Florida
Randall K. Rathbun, District of Kansas
Gregory Sleet, District of Delaware
Henry Solano, District of Colorado
Emily Sweeney, Northern District of Ohio
Michael Troop, Western District of Kentucky
Mary Jo White, Southern District of New York
Eric Holder, District of Columbia ex officio

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SIGNIFICANT EVENTS

Award of Forfeited Cash and Vehicle to State and Local Law Enforcement Agencies District of South Carolina

On December 5, 1994, United States Attorney J. Preston Strom, Jr., and other Federal officials awarded $291,159.11 in forfeited cash and a vehicle to five State and local law enforcement agencies under the Federal Equitable Sharing Program. Over $13.4 million from forfeited assets has been awarded to State and local law enforcement agencies in South Carolina since 1989.

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Stockbridge–Munsee Band Tribal Elections Eastern District of Wisconsin

For more than 6 months, the Stockbridge-Munsee Band of the Mohican Indians has been mired in controversy, including a takeover of the tribal office by one faction, property damage, threats of violence, and cancelled tribal elections. Because they are a Public Law 280 tribe, the Department of Justice had little, if any, legal authority in this situation. However, because the United States Attorney's office (USAO) worked with the neighboring Menominee Reservation, both tribal factions called the USAO seeking help. The USAO drafted a document under which all tribal factions agreed that if the USAO would monitor the nominating caucus and the election to ensure that they were run fairly, all would agree to abide by the results. A team was assembled and led by Criminal Division Chief Francis D. Schmitz, along with a team of monitors, including the DOJ Community Relations Service and the Wisconsin Chapter of the League of Women Voters. Without incident, a caucus was held in November and elections were held on December 17, 1994. A record number of voters turned out at the election and a new Tribal Council was elected.

SIGNIFICANT CASES

Unlawful Cutting of Timber on Kaibab National Forest
District of Arizona

United States Attorney Janet Napolitano announced a settlement of a major case involving unlawful cutting of timber on the Kaibab National Forest, north of the Grand Canyon. The case arose out of an extensive investigation by the U.S. Forest Service of the logging of 14 timber sale contracts by Kaibab Industries, Inc. The investigation concluded that Kaibab Industries' employees had cut and removed over 1,200 trees that had not been designated for harvesting by the Forest Service. Under the applicable sale contracts, the "liquidated" damages and penalties for the undesignated trees covered by the investigation would have amounted to approximately $50,000. Under the settlement agreement, Kaibab Industries accepted responsibility for the undesignated cutting. Assistant United States Attorneys Robert Bartels and Mike Morrissey were in charge of the case.

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Government Prevails in Appeals Case Against Klu Klux Klan Founder and Grand Dragon
Northern District of Georgia

David Wayne Holland, founder and grand dragon of the Southern White Knights, Knights of the Klu Klux Klan, was charged with perjury based on statements he made in an effort to avoid satisfying a $450,000.00 judgment entered against him in a civil action in U.S. District Court in Atlanta. Following indictment and during his criminal trial, the Government demonstrated that Holland owned substantial assets, had entered into a series of sham transactions to prevent the plaintiffs from satisfying their judgment, and had testified falsely. However, during sentencing, the district court rejected the Probation Office's recommendation that Holland should receive a role in the offense enhancement, ruling that "in committing perjury. . .[Holland] acted alone." Further, the district court, sua sponte, departed downward, ruling that Holland's perjury was an atypical situation falling outside the "heartland," and that the perjury guidelines did not apply.

The Government appealed these determinations and the Court of Appeals ruled in the Government's favor. With respect to the role in the offense argument, the court concluded that Holland would not have been able to commit perjury absent the action of individuals who assisted him in engaging in sham transactions, and that the district court failed to consider the assistance of these individuals in sentencing Holland. The Court also held that the district court based its departure on an improper factor, ruling that perjury, regardless of the setting, is a serious offense which results in incalculable harm to the legal system, and that the perjury guidelines apply without distinction to perjury committed in a civil proceeding and to perjury committed in a criminal proceeding. Assistant United States Attorney Robert Schroeder prosecuted this case.

Criminal Indictments Filed in Sting Operation Involving Over 30 Thefts of Freight Northern District of Illinois

On December 8, 1994, three related criminal indictments were filed charging 16 individuals with over 30 thefts of freight from the Chicago Ridge break bulk terminal of Yellow Freight Systems, Incorporated, from 1990 to 1992. The combined value of the freight stolen by the defendants is nearly $500,000. The indictments are a product of a sting operation involving thefts of various types of freight, such as handguns, televisions, video equipment, cameras, watches, and computers. Most of the members of the conspiracy worked for Yellow Freight at the Chicago Ridge facility.

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Theater Employee Convicted for Embezzlement of Federal Grant Funds District of Minnesota

A former accounts receivable clerk for the Guthrie Theater Foundation was convicted of embezzling more than $300,000 from the theater, primarily for gambling at Mystic Lake Casino. Defendant Hue Thi "Reva" Wilkinson covered up her theft by diverting charitable contributions, special events, and other miscellaneous checks. Casino employees testified at trial that during the time Wilkinson was employed at the theater, she played high stakes blackjack approximately three to four times a week and lost tens of thousands of dollars. Federal statutes prohibit embezzlement from an organization that receives more than $10,000 a year in Federal funds. The Guthrie Theater receives Federal grant money from the National Endowment for the Arts.

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Two Fugitives from Lompoc Prison Pled Guilty to Bank Robbery and Escape Charges District of Nevada

Two fugitives from Lompoc Federal prison were captured in Las Vegas following a bank robbery and double carjacking. After their arrest, they made threats to take a physician's aide hostage and killed a corrections officer. The U.S. Marshals Service, considering them to be the "highest level of threat to the community," made special security arrangements for their trial. As trial proceedings were to begin, the two men entered a plea of guilty to bank robbery and escape charges. The defendants will be kept in the nation's highest security prison in Marion, Illinois, for a minimum of 15 years beyond their scheduled release dates. Assistant United States Attorneys Tom O'Connell and Howard Zlotnick prosecuted the case.

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Narco-Terrorist Convicted of Mid-Air Bombing of Avianca Flight 203 in Colombia Eastern District of New York

On December 19, 1994, a Federal District Court jury convicted Dandeny Munoz Mosquera, also known as "La Quica," on 13 narco-terrorist charges, including the bombing of Avianca Flight 203, which exploded in mid-air in Colombia on November 27, 1989, killing all on board. This is believed to be the first conviction in the United States of an individual for the bombing of a civilian airliner and the first successful prosecution on charges of the extraterritorial murder of United States citizens abroad. The bombing was particularly reprehensible because it involved the death of over 100 innocent civilians, and was ordered by Pablo Escobar to silence informants against the Medellin drug cartel, who he believed to be aboard this ill-fated flight. Sentencing is scheduled for March 3, 1995, and the defendant faces up to life imprisonment on each of 12 counts of the indictment. This case was prosecuted by Assistant United States Attorneys Cheryl Pollak and Beth Wilkinson.

Organized Crime Figures Sentenced in $34 Million in Gasoline Excise Tax Evasion Scheme Eastern District of New York

On December 23, 1994, four men with ties to well known New York organized crime families were sentenced to 32 to 52 months of imprisonment, three years of supervised release, and various special assessments for their involvement in a $34 million gasoline excise tax evasion scheme. The charges stemmed from an elaborate scheme, referred to as a "daisy chain," in which gasoline is purportedly sold between a number of wholesale distributors before reaching the retail level. These sales, in fact, never occurred and were mere paper transactions designed to disguise the identity of the company responsible for remitting the taxes. These schemes allowed the defendants to pocket a substantial portion of the excise tax included in the price paid by motorists at the retail pump. Three additional defendants were previously sentenced to 51 months of imprisonment for their involvement in the same conspiracy, and three others are fugitives and known to be hiding in Israel. This case was prosecuted by Edward A. Rial, Deputy Chief of the Fraud Section, and Paulette Wunsch, Special Attorney, Tax Division, Department of Justice.

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Eight Defendants Indicted for Smuggling Illegal Alien from China to the United States Southern District of New York

On December 20, 1994, a 13-count indictment was unsealed in Manhattan Federal court charging eight defendants who were part of an extensive international organization which smuggled more than 100 illegal aliens from China to the East Coast of the United States, and then kidnapped and extorted them. According to the indictment, the illegal aliens were smuggled by ship and off-loaded onto a small fishing trawler which transported them to various safe houses in New Jersey, Maryland, and New York. The indictment also charges that the illegal aliens were held hostage at these safe houses and a ransom, often more than $30,000, was demanded by members of the organization in exchange for their release. U.S. Marshals seized the fishing trawler, believed to be valued at approximately $150,000. Assistant United States Attorney Allen D. Applbaum is in charge of this case.

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Largest Bank Fraud/Bankruptcy Fraud Case Ever Prosecuted in South Carolina District of South Carolina

On December 7, 1994, Robert L. Peeler, Sr., and Sandra M. Skeen, of Anderson, South Carolina, were sentenced in Federal court in what is believed to be the largest bank fraud/bankruptcy fraud case ever prosecuted in South Carolina. Peeler was sentenced to 63 months of imprisonment to be followed by 5 years of supervised release, and Skeen was sentenced to 40 months of imprisonment to be followed by 3 years of supervised release. Testimony during the 4-day trial revealed that the defendants made materially false representations while applying for loans. Further, the defendants concealed records from the court appointed Trustee, and altered documents in order to divert monies from one corporation to another. Assistant United States Attorneys William C. Lucius and Beattie B. Ashmore of the Greenville office prosecuted the case.

Owner of Immigration Services Pleads Guilty in Political Asylum Fraud Scheme
Eastern District of Virginia

On December 12, 1994, a Herndon, Virginia, resident, German Alberto Alvarez, pled guilty to a 4-count criminal information charging conspiracy, immigration fraud, tax fraud, and mail fraud, in connection with a large-scale political asylum fraud scheme. According to court documents, Alvarez, who operated Metropolitan Immigration Services, Inc., in Falls Church, Virginia, filed over 1,500 fraudulent political asylum applications with the Immigration and Naturalization Service (INS) on behalf of illegal aliens living in the United States. The purpose of filing the bogus political asylum applications was to obtain work authorization cards from INS. Special Assistant United States Attorney William P. Joyce handled the prosecution of this case.

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Federal Grand Jury Returns 13-Count Indictment for Mine Safety Standards Violations
Western District of Virginia

On December 7, 1994, a Federal grand jury returned a 13-count indictment charging a coal company and its mine operator and manager with willful violations of Federal mine safety standards, which contributed to a massive methane explosion in December 1992, killing eight miners. The investigation revealed that there were widespread safety violations which allowed methane and coal dust to build to explosive levels. If convicted, the coal company could be fined $5 million, and the operator and manager of the mine faces up to 38 years in prison and a $2.5 million fine. Assistant United States Attorney Thomas J. Bondurant, Jr. is in charge of this case.

* * * * *

First Civil Case Filed Under Freedom of Access to Clinic Entrances
Eastern District of Wisconsin

On December 20, 1994, the first civil case in the nation under the Freedom of Access to Clinic Entrances (FACE) law was filed in U.S. District Court against eight individuals who are alleged to have participated in the June 4, 1994, blockade of the Affiliated Medical Services Clinic in Milwaukee. Six of the defendants have already been charged and convicted of criminally violating the FACE law and are awaiting sentencing. (See *United States Attorneys' Bulletin*, Vol. 42, No. 7, July 15, 1994, p. 266.) The lawsuit asks for a court order requiring the defendants to pay for damages caused by their actions, including the costs incurred by the Milwaukee Police and Fire Departments. It further asks the court to prohibit the defendants from engaging in any further clinic obstructions or blockades. Pamela K. Chen, Trial Attorney with the Department of Justice, Civil Rights Division, Civil Litigation Section, and Assistant United States Attorney Monica Rimai are handling this case.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

EOUSA STAFF UPDATE

On January 9, 1995, Carol DiBattiste, Director, EOUSA, announced the following EOUSA staff update:

Assistant United States Attorney Richard Sponseller, Deputy Director for Programs, has accepted a position with the Eastern District of Virginia, effective February 5, 1994. Mr. Sponseller has been on detail with EOUSA from the Middle District of Pennsylvania for the past 4 years, and has made tremendous contributions to the Department of Justice, EOUSA, and the Offices of the United States Attorneys.

Assistant United States Attorney Iden Martyn, currently on detail in EOUSA from the Northern District of Ohio, assisting the Attorney General's Advisory Committee, will serve as Acting Deputy Director of Programs.

Assistant United States Attorney Linda Hoffa, Eastern District of Pennsylvania, has returned to the Eastern District of Pennsylvania following a 3-month detail working primarily with the Attorney General's Advisory Committee on the Allocation Working Group and on implementation of the Child Support Recovery Act.

Assistant United States Attorney Mary Aubry, Eastern District of Tennessee, has also completed her detail at EOUSA. Ms. Aubry assisted the Administrative Office of the United States Courts to establish the National Fine Center, a system designed to track and collect debts owed to the United States and victims of crime.

Assistant United States Attorney Kerry Kelly, Western District of Oklahoma, has joined the Legal Counsel Staff on a 6-month detail. Assistant United States Attorney Ronald Walutes, District of Columbia, also will join the Legal Counsel Staff on a 6-month detail beginning this month.

Assistant United States Attorney Kathy Stark, Southern District of Florida, joined the Office of Legal Education on a 1-year detail to serve as Assistant Director for Asset Forfeiture Programs, a position formerly held by Ms. Nancy Rider. Ms. Rider has accepted a position with the Criminal Division's Asset Forfeiture Office.

Assistant United States Attorney Beth Wilkinson, Eastern District of New York, will be joining the Director's office this month on a 6-month detail to assist the Attorney General's Advisory Committee and the Counsel to the Director.

Mr. Ted Rentz, Administrative Officer for the Southern District of Florida since November 1992, has joined the Evaluation and Review Staff of EOUSA in Fort Myers, Florida, on a 1-year detail. Mr. Rentz will assume responsibilities formerly held by Ms. Michele Tomsho. Ms. Tomsho has accepted a position as Administrative Officer in the Eastern District of Michigan.

Ms. Sue Haneca, Middle District of Florida (Tampa Office), will soon join EOUSA's Evaluation and Review Staff as an Administrative Assistant.

The Administrative Services Staff, EOUSA, has established a Data Analysis Group under the supervision of Deputy Director for Operations, Mr. Mike Bailie. Ms. Barbara Tone, a long-time EOUSA employee and valued member of the Evaluation and Review Staff, will lead the Group.

The newly-formed Publications and Correspondence Unit, staffed by Ms. Audrey Williams and Ms. Barbara Jackson, and under the direction of Ms. Wanda Morat, is responsible for the publication of the *United States Attorneys' Bulletin*; *United States Attorneys' Orientation Manual*; *For Your Information*; and correspondence, including commendation and retirement letters on behalf of the Attorney General.

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EQUAL EMPLOYMENT OPPORTUNITY POLICY

On December 13, 1994, Carol DiBattiste, Director, Executive Office for United States Attorneys (EOUSA), forwarded to all United States Attorneys a copy of the Equal Employment Opportunity (EEO) Policy Statement of the Offices of the United States Attorneys and EOUSA. In her accompanying memorandum, Ms. DiBattiste requested that the policy statement be discussed with members of the management staff, paying particular attention to the Attorney General's key EEO objectives that are enunciated in the policy: 1) valuing and understanding cultural diversity; 2) achieving diversity in the workplace by more fully integrating minorities, women, and persons with disabilities; 3) ensuring strict accountability of supervisors and managers for EEO implementation; and 4) providing discrimination-free work environments and ensuring that there be no retaliation against employees who use the EEO complaint process.

Ms. DiBattiste also discussed the collateral duty positions in support of the EEO program: the Special Emphasis Program Manager, the EEO counselor, the EEO investigator, and the establishment of an Alternative Dispute Resolution official.

If you would like a copy of this memorandum, or have questions or inquiries, please call Yvonne J. Makell, Equal Employment Opportunity Officer, (202)514-3982.

* * * * *

USE OF DOJ-ISSUED AMERICAN EXPRESS CARDS

A reminder that American Express cards are issued for official travel expenses incurred pursuant to a signed DOJ-501, "Official Travel Request and Authorization" form. This form should clearly state if an automatic teller machine (ATM) cash advance is authorized and the amount of the cash advance, if it exceeds the base amount authorized per day. ATM advances are to be obtained solely for authorized DOJ travel. It is important to note that misuse of the card has been cause for disciplinary action.

Permitted use of the cards include:

- Authorized business travel and related expenses.
- Authorized ATM cash withdrawals for business expenses.

Prohibited use of the cards or ATM cash advances include:

- Personal expenses including, but not limited to, goods or services purchased at department stores, drug stores, grocery stores, etc.
- Charging restaurant meals while not on authorized travel.
- Personal travel and related expenses including, but not limited to, airline tickets, accommodations, and rental cars. (The DOJ American Express card cannot be used to obtain discounts on airline tickets, rental cars, etc., for travel other than DOJ business.)

- ATM cash withdrawals not supported by a properly signed travel authorization or an "after the fact" supervisory approval of emergency withdrawals while on travel.
- ATM cash withdrawals that exceed those necessary for official travel.

Questions about the use of the cards should be directed to AUSA Juliet A. Eurich, EOUSA Legal Counsel, (202)514-4024. Cases involving misuse of the DOJ American Express Card should be referred to EOUSA Legal Counsel.

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VIDEO TELECONFERENCING UPDATE

To support the work of the United States Attorneys' offices (USAOs), EOUSA has undertaken a major initiative this fiscal year to test, evaluate, and begin installation of video teleconferencing in the Offices of the United States Attorneys. The Telecommunications and Technology Development Staff (TTD) of EOUSA is currently conducting a pilot evaluation project involving most major brands of "standards based" video teleconferencing (VTC) equipment. The primary goals of the EOUSA laboratory and pilot are to (1) determine the level of compatibility and interoperability of standards based systems, and (2) determine the best combinations of equipment and transmission services to provide the highest level of picture and sound quality at a reasonable cost. To date, findings support our concern that full compatibility does not yet exist within the industry and that various manufacturers apply the standards differently. We have determined that certain telecommunications services required for VTC transmission are not yet stable and, in most cases, are not available. Since video telecommunication is an emerging technology and standards are still new, TTD will continue to evaluate new equipment and transmission services in an attempt to ensure forward and backward compatibility.

EOUSA has received approval from Congress to reprogram existing funds to support the VTC installation by EOUSA in the United States Attorneys' offices, the headquarters offices of the six litigating divisions, and the Executive Offices of the Department of Justice. A two-phase installation of VTC systems is expected to begin in April 1995. Once all headquarters offices are equipped, currently projected to take approximately 1 year, installations will begin to link all staffed United States Attorneys' offices.

If you have questions, please call Harvey Press, Assistant Director, Telecommunications and Technology Development, (202)616-6439.

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EMAIL ADDRESSES

The Office Automation Staff of EOUSA has received several requests for Email addresses for EOUSA staff, as well as other Email users from the litigating organizations and Justice Management Division. For your convenience, the 126-page Washington-based master list of EAGLE and AMICUS Email users is available on the EOUSA Bulletin Board for downloading. Please contact your System Manager for assistance in obtaining a copy of the list.

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 February through May 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 (USAOs).

AGAI Courses

The courses listed below are tentative only. OLE will send E-mail announcements approximately 8 weeks prior to each course to all United States Attorneys' offices and DOJ divisions officially announcing each course and requesting nominations.

February 1995

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

March 1995

1-3	Computer Crimes	AUSAs, DOJ Attorneys
7-9	Financial Litigation for AUSAs	AUSAs
20-28	Criminal Trial Advocacy	AUSAs, DOJ Attorneys

April 1995

Date	Course	Participants
21-23	Affirmative Civil Enforcement	AUSAs, DOJ Attorneys
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
18-20	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

May 1995

1-5	Appellate Advocacy	AUSAs, DOJ Attorneys
9-12	Complex Prosecutions	AUSAs, DOJ Attorneys
16-19	Environmental Crimes	AUSAs, DOJ Attorneys
24-26	Prison Litigation	AUSAs, DOJ Attorneys
31-6/2	First Assistant United States Attorneys (Small and Medium Offices)	USAO First Assistants

June 1995

5-9	Advanced Civil Trial	AUSAs, DOJ Attorneys
6-9	Advanced Narcotics	AUSAs, DOJ Attorneys
13-15	Affirmative Civil Enforcement	AUSAs, DOJ Attorneys
19-23	Criminal Federal Practice	AUSAs, DOJ Attorneys
20-22	Ninth Circuit Asset Forfeiture Component	AUSAs, DOJ Attorneys
27-30	Public Corruption	AUSAs, DOJ Attorneys

LEI Courses

LEI offers courses designed specifically for paralegal and support personnel from USAOs **(indicated by an * below).** Approximately 8 weeks prior to each course, OLE sends an Email to all USAOs 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 USAOs.

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via mailings, sent every 4 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 C**. 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 3 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 *).

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

March 1995

Date	Course	Participants
21-23*	Bankruptcy for Support Staff	USAO Support Staff
24	Legal Writing	Attorneys
29-31	Attorney Supervisors	Attorneys
30-31	Evidence	Attorneys

April 1995

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
17-21*	Advanced Legal Secretary	USAO 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

May 1995

8-10	Law of Federal Employment	Attorneys
8-12	Research and Writing Refresher for Paralegals	Paralegals
11	Freedom of Information Act Forum	Attorneys, Paralegals
16-18	Negotiation Skills	Attorneys
22	Ethics for Litigators	Attorneys
25	Computer Assisted Legal Research	Attorneys, Paralegals
31-6/2	Natural Resources	Attorneys

June 1995

Date	Course	Participants
1-2	Agency Civil Practice	Attorneys
5	Statutes and Legislative Histories	Attorneys, Paralegals
6-7	Freedom of Information Act for Access Professionals	Attorneys, Paralegals
8	Privacy Act	Attorneys, Paralegals
6-8	Advanced Bankruptcy	Attorneys
12-16*	Civil Paralegal	USAO Paralegals
20-22	Discovery	Attorneys
23	Advanced Freedom of Information Act	Attorneys, Paralegals
26-30*	Advanced Legal Secretary	USAO Legal Secretaries
27	Legal Writing	Attorneys
28-30	Attorney Supervisors	Attorneys

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Office of Legal Education Contact Information

Address: Bicentennial Building, Room 7600
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Washington, D.C. 20530

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

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

DEPARTMENT OF JUSTICE HIGHLIGHTS

ANTITRUST DIVISION

Major Hospital Services Case

On December 5, 1994, the Department of Justice filed a lawsuit in U.S. District Court in Brooklyn, New York, accusing eight Long Island hospitals of establishing an organization to jointly resist cost-cutting efforts by health maintenance organizations and managed health care plans. A proposed settlement was also filed between the hospitals and the Government which, if approved by the court, would resolve the matter.

According to the Antitrust Division, the hospitals formed an organization, Classic Care Network, Inc., in 1991, when HMOs in Long Island began approaching individual hospitals to obtain discounts. Classic Care acted as the hospitals' exclusive bargaining agent. Among other things, the arrangement ensured that all HMO agreements were approved by other group members. Although characterized as merely assisting each member in negotiations with HMOs and managed care plans, Classic Care actually sought to deter discounting on inpatient hospital services and to coordinate the hospitals' responses to a variety of price negotiations, including discounts for outpatient services. In addition to their efforts to prevent discounting, the hospitals through Classic Care, agreed to prohibit per diem pricing in HMO contracts, a pricing mechanism the Department said can lower hospital costs through improved patient management and shorter hospitalization. The Classic Care hospitals also agreed to adopt one payer's "most favored nation" clause for the reimbursement of outpatient services, thus limiting any future discounts to that rate only. The proposed decree, if approved by the court, would be in effect for 5 years.

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Vision Care Insurance

On December 15, 1994, the Department of Justice filed a civil antitrust suit and proposed settlement in U.S. District Court in Washington, D.C., to stop illegal agreements used by a national vision care insurer that operates in about 42 states and the District of Columbia. Vision Service Plan, the nation's largest vision care insurance plan with annual revenues of more than $500 million, is accused of reducing discounting and price competition through a contract provision known as a "most favored nation" clause, which inhibited doctors from reducing their fees to competing vision care insurance plans and to individual patients. This is the first challenge of this type of agreement on a national scale by the Antitrust Division.

CIVIL DIVISION

New Supreme Court Decision Concerning "Protective" Notices of Appeal

The following memorandum was prepared by Robert E. Kopp, Director of the Appellate Staff of the Civil Division, for the benefit of Assistant United States Attorneys:

> As you are aware, Department of Justice regulations require the approval of the Solicitor General for the Government to pursue an appeal. 28 C.F.R. § 0.20(b). The *United States Attorneys' Manual* requires that Assistant United States Attorneys file "protective" notices of appeal to preserve the Government's right to appeal pending the Solicitor General's decision. See U.S. Attorneys' Manual, § 2-2.130.
>
> In FEC v. NRA Political Victory Fund, No. 93-1151 (Dec. 6, 1994), the Supreme Court held that the Solicitor General could not retroactively ratify the unauthorized filing of a petition for certiorari after expiration of the 9-day period for filing certiorari petitions. Since the filing of protective notices of appeal is authorized -- indeed, required -- by the Department, the FEC decision does not render invalid our standard practice of filing protective notices of appeal. See United States v. Hill, 19 F.3d 984, 991 n.6 (5th Cir.), cert. denied, 115 S.Ct. 320 (1994); Hogg v. United States, 428 F.2d 274 (6th Cir. 1970), cert. denied, 401 U.S. 910 (1971). Nevertheless, we expect that some opposing parties may move to dismiss our appeals in cases where a protective notice of appeal was filed before the Solicitor General authorized appellate review. In view of the importance of prevailing on this issue, the Appellate Staff of the Civil Division is preparing a model opposition to such a motion.

If you are served with a motion to dismiss an appeal on the ground that the notice of appeal was filed before the Solicitor General authorized appeal, please immediately notify one of the following attorneys on the Appellate Staff: Anthony J. Steinmeyer, (202)514-3388; FAX: (202)514-9405, or Matthew M. Collette, (202)514-4214; FAX: (202)514-9405.

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Settlements

Frank W. Hunger, Assistant Attorney General for the Civil Division, has announced the following settlements:

Two military contractors will pay the United States $8.1 million to settle allegations they mischarged the Government on several contracts and failed to provide the Air Force with information on equipment malfunctions under another contract. Fairchild Industries will pay the Government $5 million on behalf of its former division, Fairchild Control Systems Company. They already have repaid the Government $2,890,000 through contract adjustments. Fairchild Space will pay the United States $298,640 to settle allegations concerning a malfunctioning device called a "certifier" that tests the capacity of the fuel tank on the A10 airplane before take-off. Fairchild Space, after discovering that the part was not working properly, corrected the problem but did not tell the Air Force, then billed the Government for the replacement. As part of the settlement, Fairchild Space will give the Air Force replacement parts and warranties. The settlement resulted from an investigation by the Office of Inspector General for the National Aeronautics and Space Administration.

American Telephone and Telegraph Company (ATT) will pay the United States $13.9 million to settle an allegation the company failed to provide the Government with accurate and complete pricing information while negotiating a lease for unique electronic switches vital to the nation's air traffic control system. The switches, used at 21 of the nation's largest air traffic control centers, enable air traffic controllers to speak with each other and with pilots while a plane is enroute to its destination. The United States alleged that AT&T knowingly failed to provide Government negotiators with the so-called net book value of the equipment, WECO 300 switches, while negotiating the lease price. Under the settlement, AT&T will give the Government $5.5 million in cash and reduce contract payments a total of $8.4 million over the life of the contract. The contract for the switches expires February 29, 1996, if the United States exercises the last of the option years under the contract. The original lease totalled $23 million with interest. The Government's allegation was substantiated by an investigation by the Defense Criminal Investigative Service and the Office of Inspector General for the Department of Transportation.

* * * * *

Lockheed Corporation has paid the United States $6.2 million to settle allegations that it failed to provide Air Force negotiators material information regarding hours of labor required to fabricate the C-130 aircraft, while certifying to them that it had provided all material cost information. The Justice Department said that non-disclosure of labor cost information by Lockheed inflated the contract price which the Air Force agreed to pay and, thus, violated the Truth-in-Negotiations Act and the False Claims Act. The False Claims Act provides for up to treble damages against those who submit false claims to the United States. This case was handled jointly by the Civil Division and United States Attorney Kent Alexander from the Northern District of Georgia.

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Westinghouse Electric Corporation will pay the United States $1,883,030 for failing to tell the Air Force during contract negotiations of other sales of spare parts it made for the AWACS radar system, which would have lowered the $10.2 million the military paid for the equipment. Westinghouse failed to report that the company also had contracted to supply AWACS radar equipment as part of separate commercial sales of AWACS aircraft to the United Kingdom and France. By not disclosing the European sales, Westinghouse avoided giving the Air Force a lower price based on savings from the combined production under the contracts. In 1992, Westinghouse reported its conduct to the Inspector General of the Department of Defense under the Pentagon's Voluntary Disclosure Program. Shortly thereafter, Westinghouse paid $258,030 to the Air Force as a partial reimbursement for overpricing the 1987 contract.

* * * * *

Equipment & Supply Inc. (ESI), of Monroe, North Carolina, and the company's president and owner, will pay the United States a settlement valued up to $1.4 million to resolve allegations they sold aircraft parts and service equipment to the Department of Defense that failed to meet contract specifications. Under the settlement, ESI will pay the Government $750,000; withdraw its claim seeking $163,372.33 from the Navy in another contract dispute; pay a balloon interest payment at the Treasury rate on the settlement date; and pay the Government up to an additional $500,000--contingent upon ESI's gross sales in the next 5 years. According to the Justice Department, ESI manufactured and sold aviation parts to many Federal agencies and commercial customers. The Government alleged that during the past 10 years, ESI fraudulently delivered more than 300 separate aircraft parts and service equipment that did not meet contract specifications and provided falsified test results to the Government. The Criminal Investigative Services of the Defense Department, the Navy, and the Army handled the investigation of this case, as well as the Air Force Office of Special Investigations.

Case Summaries

Edwards v. Lujan, Nos. 91-1247, 91-1259 (Nov. 23, 1994) [10th Cir.; D.Colo.]

Jesse Edwards was a GS-12 employee of the Department of Interior. He applied for several GS-13 positions but did not get them. He brought suit under Title VII. The district court found that he had been discriminatorily denied promotion, and ordered that he be retroactively promoted to GS-13 as of June 1981 and to GS-14 as of June 1982. The court declined, however, to order Edwards promoted to GS-15, even though several years had passed before he got relief, because it found that he was not qualified for the GS-15 positions in question. The court awarded Edwards back pay and attorneys' fees with postjudgment interest but refused to award prejudgment interest. Plaintiff appealed the remedial issues; the Civil Division cross-appealed the award of postjudgment interest.

The court of appeals (Anderson, Reavley (of CA5), Henry) ruled that it "agree[s] with the Government in all respects." The court affirmed the denial of prejudgment interest and vacated the awards of postjudgment interest. The court held that Title VII did not provide for interest on back pay or attorneys' fees prior to its 1991 amendment, and that the 1991 amendment providing for interest was not retroactive. The court also held that the Back Pay Act can provide for interest only in cases where a Federal employee's pay was wrongfully reduced, not in cases where the employee was wrongfully denied a promotion that would have provided a pay increase. Finally, the court affirmed the denial of promotion to GS-15, holding that a court cannot order the promotion of an employee to a position for which he or she is not qualified.

Attorneys: Marleigh D. Dover, (202)514-3511
Jonathan R Siegel, (202)514-4821

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Jordan v. Doe, Nos. 91-3042, 92-2009 (Dec. 2, 1994) [11th Cir.; M.D. Fla.]

Plaintiff Jordan was a Federal pretrial detainee. Pursuant to contracts between the Federal Government and certain local Florida governments, he was housed at various county jails while awaiting trial. Defendant Enders worked for the Marshals Service in Washington; he signed the Federal-State contracts. The other defendants worked for the Marshals Service in Florida; they ministerially drove Jordan to and from the jails in accordance with their orders. Plaintiff claimed that the conditions in the jails were unconstitutional, and he brought a Bivens action against the defendants. The district court denied defendant's motion for summary judgment on qualified immunity, because (1) defendants had failed to show that their actions were within their discretionary authority, (2) the defendants had not explained what law and facts were known to them, (3) the defendants might win on the merits at trial, and (4) the defendants could be liable if the conditions in the jails were unconstitutional and defendants knew of them.

The Eleventh Circuit (Cox, Dubina, Clark, dissenting in part) reversed the district court decision. The court first rejected Jordan's contention that the district court had merely deferred a decision on immunity and that its order therefore was not subject to interlocutory review. The court also rejected the district court's belief that the defendants could not win on immunity if they might later win on the merits at trial, since immunity decisions should be made at the earliest possible stage. The court held for the defendants on the case's important doctrinal point, stating that defendants did not lose their entitlement to immunity simply because some of them acted ministerially; an action may be within an official's "discretionary authority," the court held, regardless of whether it is discretionary or ministerial. Finally, by comparing the conditions in the jails in question to conditions at other jails the court had previously held not to be unconstitutional, the court concluded that no reasonable official in the defendants' position would have understood the jails to be unconstitutional. The court agreed with the defendants that, in light of the great difficulty that even courts have in resolving litigation over prison conditions, a reasonable Government official could be expected to know that prison conditions were unconstitutional only in a truly extreme case.

Attorneys: Freddi Lipstein, (202)514-4815
Jonathan R. Siegel, (202)514-4821

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Southwest Marine, Inc. v. United States, No. 93-15165 (Dec. 12, 1994) [9th Cir.; N.D.Cal.]

This case involved the interplay of the Equal Access to Justice Act (EAJA), the Contract Disputes Act (CDA), and the admiralty statutes. A subcontractor under contract to refurbish a vessel for the Department of the Navy encountered cost overruns and filed an administrative claim under the CDA through its general contractor. This is an accepted procedure under the CDA because subcontractors are not in privity with the Government. The subcontractor prevailed before the Armed Services Board of Contract Appeals and then sought attorneys' fees under EAJA. The Board and, subsequently, the district court dismissed the fee application on the grounds that the subcontractor was not a "prevailing party" under EAJA.

The court of appeals has now affirmed. The court rejected the subcontractor's argument that it was entitled to fees under EAJA under the "real party in interest" test. The court found that because the subcontractor was "neither named nor admitted" in the action, it did not meet the statutory definition of "party" under EAJA. The court stated that an entity cannot be a "real party in interest" unless it is first a "party." The court also rejected the subcontractor's argument that it was entitled to EAJA fees under maritime law. The court pointed out that the basis of the subcontractor's claim was a contract claim under the CDA. The admiralty statutes, the court observed, only place appellate jurisdiction in the district court; they do not transform a contract claim under the CDA into an admiralty claim.

Attorneys: Michael Jay Singer , (202)514-5432
Steven I. Frank, (202)514-4820

Janicki Logging Co. v. Bruce Mateer, et al., No. 93-35871 (Dec. 13, 1994) [9th Cir.; D.Wash.]

When the Forest Service partially cancelled a timber contract due to the presence of a spotted owl, the logging company sought contract damages against the Government under the Contract Disputes Act (CDA) from the contracting officer and then the Court of Federal Claims. The Court of Federal Claims dismissed the claims as time barred. The company also sued two Forest Service officials (including the contracting officer) in their personal capacities under Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics, 403 U.S. 388 (1971), in district court. The company alleged that the officials had violated its due process rights and had illegally cancelled the contract. The district court dismissed for lack of jurisdiction, holding that the CDA was a comprehensive remedial scheme that precluded the company from asserting a Bivens claim. The court also refused to grant the company's post-judgment motion to substitute the United States and transfer the case to the Court of Federal Claims.

The Ninth Circuit has now affirmed. The court of appeals held that the district court did have jurisdiction over the Bivens claims but that, nonetheless, it was proper to dismiss these claims in light of the Contract Disputes Act. Relying upon Schweiker v. Chilicky, 487 U.S. 412 (1988), the court agreed with our argument that the Act's statutory remedies preclude the assertion of a Bivens action related to a contract dispute. The court said that the company's suit against the individuals came close to "bad faith." The court of appeals also affirmed the refusal to grant the post-judgment motion. The Ninth Circuit's decision represents the first appellate consideration of the interplay between Bivens and the CDA. The court's ruling should be helpful in avoiding Bivens suits in this area of the law.

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

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James Dorsey v. Department of Labor, et al. (Dec. 16, 1994) [D.C. Cir.; D.D.C.]

Plaintiff brought this suit alleging disability discrimination (AIDS) in the administration of the Job Corps program. He sought injunctive and monetary relief under section 504 of the Rehabilitation Act. All claims but the one for money damages mooted out. The district court dismissed the suit, holding that Congress had not waived sovereign immunity for suits for damages against the Government under section 504. The court of appeals affirmed. The D.C. Circuit held that there is no express waiver of sovereign immunity in the text of section 504 or its remedies section, 505, which incorporates the remedies of Title VI. It explained that whether or not there is an implied cause of action for damages against private persons under Title VI, there is no waiver for damages against the Federal Government under either Title VI or sections 504 & 505. This decision presents a conflict with two Ninth Circuit decisions.

Attorneys: Deborah R. Kant, (202)514-3518
Barbara C. Biddle, (202)514-2541

CIVIL RIGHTS DIVISION

Americans with Disabilities Act

Since January 26, 1992, the effective date of the Americans with Disabilities Act (ADA), the Civil Rights Division has received 3,236 complaints alleging possible violations of Title II of the Act (which prohibits discrimination on the basis of disability in activities provided by state and local governments) and 2,983 complaints alleging possible violations of Title III of the ADA (which prohibits discrimination on the basis of disability in places of public accommodation and commercial facilities). As the investigatory agency, the Civil Rights Division has retained 1,496 of the total Title II complaints received, and 1,650 Title III complaints have been opened for investigation.

On December 14, 1994, the Department of Justice filed a lawsuit in U.S. District Court in Detroit, alleging that the city of Pontiac violated the Americans with Disabilities Act (ADA) when it refused to hire a seasoned firefighter with 15 years of experience who has been blind in one eye since childhood. The complaint asserts that the firefighter has been able to perform the essential functions of the position despite his disability. Title I of the ADA prohibits discrimination against persons with disabilities by state or local governments, as well as private entities. While the Equal Employment Opportunity Commission handles all individual cases of discrimination, it refers to the Justice Department for litigation those unsettled cases alleging individual discrimination by a government. This is the first case stemming from a referral.

In December 1993, the Justice Department brought its first case alleging a pattern of discrimination by a government when it sued Aurora, Illinois, for denying benefits to police officers with pre-existing disabilities.

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CRIMINAL DIVISION

Double Jeopardy in Administrative Forfeiture Cases

On December 12, 1994, Carol DiBattiste, Director, Executive Office for United States Attorneys, forwarded a copy of a memorandum to all United States Attorneys and Attorney Supervisors regarding the application of recent adverse double jeopardy case law to administrative forfeitures. The memorandum, prepared by the Asset Forfeiture Office of the Criminal Division, is intended to assist United States Attorneys in determining when there is a risk of an administrative forfeiture action by a Federal law enforcement agency that may adversely affect the Government's ability to bring criminal charges against a person.

Appendix D is an update prepared by Stefan D. Cassella, Deputy Director, Asset Forfeiture Office, elaborating on the double jeopardy problems in light of the Ninth Circuit's decision. The Asset Forfeiture Office is available to assist United States Attorneys with double jeopardy challenges. For a copy of the memoranda, briefing materials, updates, case developments, or other legal assistance, please call the Asset Forfeiture Office, (202)514-1263.

Criminal Case Prosecutions Guide

In December 1994, the Pension and Welfare Benefits Administration (PWBA) of the U.S. Department of Labor (DOL) distributed a prosecutors' guide entitled, "Criminal Case Prosecutions Involving Employee Benefit Plans," to all United States Attorneys' offices. It contains an outline of Title I of the Employee Retirement Income Security Act (ERISA), which governs approximately 5.5 million employee pension and welfare (health care) benefit plans in the private sector. It also discusses DOL regulations as they affect criminal prosecutions involving the benefit plans.

The guide provides an overview of the applicable case law and elements of proof, as well as sample indictments and jury instructions regarding offenses for which jurisdiction is based on Title I of ERISA, namely, 18 U.S.C. Section 664 (theft and embezzlement), Section 1027 (false statements), Section 1954 (bribery and graft); and other crimes contained in ERISA at 29 U.S.C. Section 1111 (prohibited employment), Section 1131 (reporting and disclosure), and Section 1141 (interference with protected rights by fraud or violence).

The guide was prepared with assistance from the Labor-Management Unit of the Criminal Division's Organized Crime and Racketeering Section, (202)514-3666. Questions about obtaining the guide may be directed to the PWBA field offices in your area, or Frank Clisham, Criminal Enforcement Coordinator, PWBA National Office, (202)219-6849.

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Electronic Surveillance Bulletin

The 1994 Fall/Winter edition of the Office of Enforcement Operations' Electronic Surveillance Bulletin was published and distributed to all United States Attorneys' offices. This edition provides an analysis of the recently enacted Communications Assistance for Law Enforcement Act (the "Digital Telephony" bill), discusses the use of clone pagers, and summarizes recent caselaw concerning electronic surveillance matters.

Assistant United States Attorneys interested in receiving a copy should contact their administrative officer. Limited additional copies also may be obtained by calling the Office of Enforcement Operation's Electronic Surveillance Branch, (202)514-6809.

TAX DIVISION

Case Summaries

E.I. du Pont de Nemours & Co. v. Commissioner (Dec. 2, 1994) [3d Cir.]

On December 2, 1994, the Third Circuit affirmed the favorable decision of the Tax Court in E.I. du Pont de Nemours & Co. v. Commissioner, which involves an income tax liability of approximately $13 million. At issue was the validity of Treasury Regulation Section 1.58-9, which reduced the taxpayer's credit carryover by the amount of corporate minimum tax that would have been imposed on its tax preferences had those preferences conferred a tax benefit in the year they arose. The Third Circuit rejected the taxpayer's argument that Treasury Regulation Section 1.58-9 was invalid, concluding that the regulation accomplished the congressional goal that no minimum tax be imposed in any year in which preferences confer no tax benefit, and that the credit reduction mechanism established by the regulation was a reasonable means of accomplishing that goal.

* * * * *

Albertson's Inc. v. Commissioner (Dec. 5, 1994) [9th Cir.]

On December 5, 1994, the Ninth Circuit withdrew its prior adverse decision in Albertson's Inc. v. Commissioner and affirmed the favorable Tax Court decision. This case, according to the estimates of the Internal Revenue Service, represents an issue that may involve as much as $7 billion in Federal income tax revenue over the next 5 years. The question is whether the taxpayer is entitled to a current deduction for that component of its obligations under a "non-qualified" deferred compensation plan that represents "interest" on the underlying deferred compensation. The statutory scheme for such plans generally requires a matching of income and deduction; the employer (taxpayer) is not entitled to deduct the deferred compensation until such time as the employee includes it in his income, which may be many years in the future. Taxpayer maintained that the matching rule applied only to the "compensation" element of its obligations and not to the separately computed "interest" on that underlying compensation.

The Ninth Circuit had previously issued an opinion reversing the Tax Court's favorable ruling on this question, holding that taxpayer was entitled to accrue and deduct "interest" on its plan obligations. The Tax Division petitioned for rehearing and, in light of the administrative importance of the issue, filed a suggestion for rehearing en banc. The panel, however, granted panel rehearing. After further briefing and argument, the panel reversed itself, and held in favor of the Commissioner. The basis of the Court's new opinion was essentially its view that policy considerations outweighed the technical statutory language on which it had previously relied.

* * * * *

Xerox Corp. v. United States (Dec. 6, 1994) [Fed. Cir.]

On December 6, 1994, the Federal Circuit reversed the favorable decision of the Court of Federal Claims in Xerox Corp. v. United States. This case presents the question of whether Xerox properly claimed a foreign tax credit for an advance corporation tax (ACT) imposed on its United Kingdom subsidiary. The Federal Circuit held that the claim was permitted by the plain language of the United States-United Kingdom income tax treaty, which states that the ACT "shall be treated as an income tax on the United Kingdom corporation paying the dividend," in conjunction with the foreign tax credit rules of the Internal Revenue Code. The court thus rejected the Government's argument that Xerox should not be permitted to claim the tax because its subsidiary surrendered the ACT to its own U.K. subsidiary under British law.

American Mutual Life Insurance Co. v. United States (Dec. 15, 1994) [8th Cir.]

On December 15, 1994, the Eighth Circuit reversed the unfavorable decision of the District Court in American Mutual Life Insurance Co. v. United States. This case, which involved an industry-wide issue of first impression and approximately $4 billion in revenue through the end of 1993, concerns the taxation of mutual life insurance companies under Section 809 of the Internal Revenue Code. Section 809, which was enacted as part of the Deficit Reduction Act of 1984, attempts to reduce the deductions available to mutual companies from the payment of dividends to their policyholders through a complicated formula that involves a comparison between the earnings rates of the stock and mutual life insurance companies. The statutory formula, which is based on the "excess of" the stock rate "over" the mutual rate, is predicated on the assumption that the stock rate for the particular year will be greater than the mutual rate for that year. In 1986 (the taxable period at issue in this case) and several subsequent years, however, the mutual rate exceeded the stock rate. The mutual industry's position is that the "excess" for these periods is a negative number and, accordingly, mutual companies should be permitted to obtain total deductions for policyholder dividends in amounts greater than the actual policyholder dividends paid. The Eighth Circuit rejected this argument, and held that the taxpayer's position was at odds with the commonly accepted definition of excess, contravened the purpose of the statute and was not supported by the legislative history.

* * * * *

U.S. PAROLE COMMISSION

Plea Agreements

Although Federal parole was abolished under the Sentencing Reform Act of 1984 for all defendants who are convicted of crimes on or after November 1, 1987, there are still many parole-eligible prisoners and individuals on parole supervision who remain under the jurisdiction of the U.S. Parole Commission. When such individuals become defendants in new criminal cases, Assistant United States Attorneys (AUSAs) may be asked by defense counsel to enter into plea agreements promising leniency from the Parole Commission or limiting the scope of information that the Parole Commission is permitted to consider. AUSAs should be careful to avoid language in plea agreements that limit the length of the sentence and binds the Parole Commission. Pursuant to 18 U.S.C. §4210(b)(2), the Parole Commission "shall determine" if such sentences are to run concurrently or consecutively to the sentence that is imposed in the new criminal case. The Parole Commission can consider any relevant facts in determining eligibility for parole and AUSAs should be careful not to bind the Parole Commission in plea agreements.

See generally, Augustine v. Brewer, 821 F.2d 365 (7th Cir. 1987) and U.S. Ex Rel Goldberg v. Warden, Allenwood Fed., 622 F.2d 60 (3rd Cir. 1980), where the plea agreement was silent as to the Parole Commission and the court held that the Parole Commission was not bound by the plea agreement. But see, United States v. Anderson, 970 F.2d 602 (9th Cir. 1992), where the court enforced an ambiguous plea agreement against the United States because it arguably created, in the mind of the defendant, an expectation of leniency from the Parole Commission.

If you have any questions or inquiries, please call Michael A. Stover, General Counsel, U.S. Parole Commission, (301)492-5959.

SENTENCING GUIDELINES

GUIDELINE SENTENCING UPDATE

Appendix E is the Guideline Sentencing Update, Volume 7, No. 3, dated December 9, 1994. It is distributed periodically by the Federal Judicial Center, Washington, D.C., to inform judges and other judicial personnel of selected Federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Guidelines.

* * * * *

1994 SENTENCING GUIDELINES MANUAL

The latest version of the *1994 Sentencing Guidelines Manual,* dated November 1, 1994, and published by the U.S. Sentencing Commission, has been received in the Executive Office for United States Attorneys (EOUSA) in both disk and hardcopy. Copies of the program, including new instruction manuals, have been mailed to the United States Attorneys' offices by the Office Automation Staff, EOUSA, and ASSYST Version 2.0 is now posted in the EOUSA Bulletin Board. To have a copy downloaded to your PC, please contact your Systems Manager. Hard copies have also been mailed to each United States Attorneys office by the Legal Counsel, EOUSA.

* * * * *

CAREER OPPORTUNITIES

CIVIL RIGHTS DIVISION
COMPLAINT ADJUDICATION OFFICE

The Office of Attorney Personnel Management, U.S. Department of Justice, is seeking an experienced attorney to serve in the Complaint Adjudication Office (CAO) in the Civil Rights Division. The CAO is responsible for rendering the Department's final decisions in complaints of discrimination filed by employees of and applicants to the Department on the basis of race, color, religion, national origin, sex or age in hiring, promotion, discipline and other aspects of the employment process. These complaints have been processed through various steps of the Department's equal employment opportunity program, including counseling, investigation, and at the option of the complainant, a hearing.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year of post-J.D. experience. No telephone calls please. Applicants must submit a resume, writing sample, and current performance appraisal to:

U.S. Department of Justice
Civil Rights Division
10th and Pennsylvania Avenue, N.W.
Room 5718
Washington, D.C. 20530

This position is open until filled. Current salary and years of experience will determine the appropriate salary level from GS-12 ($43,356-$56,362) to GS-14 ($60,925-$79,200).

NOTE: This position is a temporary appointment not to exceed 14 months, with the possibility of renewal. However, health and life insurance benefits will be provided during this period.

ENVIRONMENT AND NATURAL RESOURCES DIVISION
LAND ACQUISITION SECTION

The Office of Attorney Personnel Management, U.S. Department of Justice, is seeking an experienced attorney for the Land Acquisition Section of the Environment and Natural Resources Division (ENRD), in its Washington, D.C., headquarters office. The section is responsible for the preparation and trial in United States district courts of land condemnation cases on behalf of the United States. A moderate amount of travel is involved.

Applicants should have a record of excellence in academic achievement, possess a J.D., be an active member of the bar in good standing (any jurisdiction), and have a minimum of 3 years of successful civil litigation experience. Experience in land condemnation litigation or real property valuation litigation (e.g., tax assessment litigation) is highly desirable. A background in real estate practice without significant civil litigation experience is not sufficient to qualify for this position.

To apply, please submit a cover letter and resume to:

U.S. Department of Justice
Environment & Natural Resources Division
P.O. Box 7754
Washington, D.C. 20044-7754
Attn: Executive Assistant

No telephone calls please. This position is open until filled. Current salary and years of experience will determine the appropriate salary level from the GS-13 ($51,557-$67,021) to GS-15 ($71,664-$93,166) range.

* * * * *

TAX DIVISION
CIVIL AND CRIMINAL SECTIONS

The Office of Attorney Personnel Management, U.S. Department of Justice, is seeking experienced attorneys to work in the Civil and Criminal Sections of the Tax Division, Washington, D.C.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least 1 year post-J.D. experience. Tax or business litigation experience is desirable. Applicants must submit a resume, law school transcript, and writing sample to: U.S. Department of Justice, Tax Division, Post Office Box 813, Ben Franklin Station, Washington, D.C. 20044. Current salary and years of experience will determine the appropriate salary level. The possible range is GS-11 ($36,174 - $47,025) to GS-13 ($51,557 - $67,021). These positions are open until filled. No telephone calls, please.

U.S. SENTENCING COMMISSION

The United States Sentencing Commission is seeking an experienced criminal Assistant United States Attorney (AUSA) for a 6-month detail to the Commission. Familiarity with sentencing issues is preferred. All expenses will be paid by the Sentencing Commission, but salary costs will be borne by the district without a backfill.

The AUSA will work directly on staff at the Sentencing Commission and will have an excellent opportunity to become familiar with a wide variety of ongoing sentencing issues. The front-line experience of an AUSA is invaluable to the work of the Commission.

The detail will run from approximately the end of January to the end of July 1995. The AUSA's calendar must be flexible enough to reasonably accommodate the beginning and ending of this period.

If you wish to nominate an AUSA, please send their resume with a letter outlining their sentencing experience, via facsimile to Louis DeFalaise on (202)514-8340, or via Email, on AEX03(LDEFALAI). This should be accompanied by a letter from the United States Attorney endorsing the detail. Please do not hesitate to call Mr. DeFalaise, (202) 616-2128, with questions.

* * * * *

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

APPENDIX
A

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release January 2, 1995

Statement of the President

In America, the heart of constitutional government is the rule of law. Today, our commitment to the rule of law is being tested by those who believe that their opposition to abortion gives them the right to commit acts of violence, even murder, against their fellow citizens who seek only to exercise their constitutional right to choose, or to assist others in exercising that right.

I recognize and respect the range of deeply-felt beliefs Americans hold on abortion. A continued vigorous debate over abortion is proper. Violence against those who hold differing opinions is not.

Last year Congress passed, and I signed, a law prohibiting violent interference with Americans who exercise their rights in this area. Because of continued violations of this law and the Constitution, I have today instructed the Department of Justice to: (1) direct each United States Attorney immediately to head a task force including federal, state, and local law enforcement officials to formulate plans to address clinic security for all clinics in their jurisdiction; and (2) direct each U.S. Marshal to consult with all clinics in their jurisdiction to ensure that the clinics have all the information they need to communicate with appropriate federal, state, and local law enforcement officials on a timely basis about potential threats. I have also asked the Attorney General to consult with law enforcement officials on any further steps that might be taken to address this serious problem.

I applaud Americans of conscience who differ in their convictions on abortion but who stand united in their opposition to violence. As we begin a new year, let us all reaffirm our devotion to the rule of law and our respect for the diversity of opinion that rule protects.

APPENDIX
B

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

January 4, 1995

MEMORANDUM FOR ALL UNITED STATES ATTORNEYS

FROM: The Attorney General

SUBJECT: Violence Against Providers of Abortion Services

On Monday, January 2, 1995, the President issued an order directing United States Attorneys to head a task force within their districts to formulate plans to address security for all providers of abortion services within their jurisdictions; and directing the United States Marshals Service (USMS) to immediately consult with all clinics in their jurisdiction to ensure that the clinics have all the information they need to communicate with appropriate federal, state, and local law enforcement officials on a timely basis about threats of violence.

In addition, I am directing the Criminal Division, the Civil Rights Division and the United States Attorneys to work together to ensure that the federal investigative and prosecutive response to violence is fully coordinated nationally and with your local counterparts. In this connection, I am asking each of you to ensure that there is a team focussed on these issues in your office, including not only a senior Assistant United States Attorney, but also your Victim Witness Coordinator and adequate paralegal and support services to organize our federal response to clinic security issues, prosecutive and investigative issues, and other issues of community concern.

The Criminal Division, Violent Crime Section, will continue to provide support and advice on a priority basis as needed; as will the Civil Rights Division in connection with enforcement of the FACE statute which was signed into law in May 1994. As you know, the Task Force On Violence Against Abortion Providers in the Criminal Division, is charged both with investigating whether there is a broad-based group of individuals planning and executing acts of violence against abortion providers, and coordinating the review of requests for federal protection. The work of the Task Force is intense and continuing.

Please bear in mind that violence against abortion providers is, in the first instance, a violation of state and local law and the duty to prevent such crime and investigate and prosecute it when it occurs falls primarily to state and local officials, where they are able to deal effectively with it. However, the federal government has an important role in assisting state and local authorities and bringing to bear federal tools and resources to demonstrate that violence by those who would try to deny federally protected access to reproductive health services will not be tolerated.

In each of the 94 districts there is an Anti-Violent Crime Initiative (AVCI) which includes federal, state and local prosecutors and investigative agencies. Violence against providers of abortion services clearly falls within the AVCI. In formulating and implementing your plan to address clinic security and community based enforcement strategies, you will want to use the structure of the AVCI and undertake the following:

- Bring together the appropriate components of your AVCI, including state, local and affected federal law enforcement agencies (FBI, ATF, USMS), to formulate the clinic security plan requested by the President. It is essential that in each district, the role of each agency and the way in which communications are shared is clear. In this connection you should be aware that representatives of the FBI, USMS and ATF in each district should have already formed a working group to assure that all information which is reported to one agency is shared with all agencies. The advice to clinics will be that in the case of a need for emergency assistance, they should contact their local police department emergency number; and that in the case of a violent threat or act of violence, they should contact their local police emergency number and then call the Federal Bureau of Investigation. The FBI is directing its field offices upon receipt of information relating to threats of violence or violent acts to inform immediately the local police, the ATF and the USMS. These agencies have pledged to work together to take all appropriate steps, including those relating to clinic security and investigative leads.

- Utilizing the existing structure for the AVCI, assign an experienced AUSA to coordinate these security concerns and, working with local prosecutors, to design an aggressive investigative and prosecutive effort against violence. Other members of your staff who should be involved are appropriate paralegal and secretarial resources, and your Victim/Witness and Law Enforcement Coordinators. The United States Attorney

should take personal control over the effort.

- Assess the level of the problem faced by providers of abortion services in your district and develop a strategy for addressing clinic security in your jurisdiction.

  - Assess whether existing state, local and/or private resources can cope with the problem. If not, determine what is needed and develop a plan. Bear in mind that round-the-clock protection of every clinic in the country would require a seven-fold increase in the strength of the USMS and would cost approximately $1 billion per year. The United States Marshals Service cannot take responsibility for all clinic protection without a massive restructuring of its mission and funding.

  - Determine whether existing problems are being dealt with appropriately, whether by federal or state response. There is no intention of the Department of Justice to override state and local authority by taking responsibility for all investigations and prosecutions. The idea is to devise a plan much as you have developed under your ACVI which utilizes all available resources, whether federal, state or local, to deal with the problem at hand.

  - Ensure that cases which could and should be appropriately brought under federal criminal law are being filed.

  - Develop a strategy for implementing FACE in your district, including the use of its civil provisions in response to threats of violence against abortion service providers or users. It may be useful to appoint a civil AUSA in your office to your team.

- Appeal for calm and condemn violence as a solution to any problem. Emphasize that this is not about abortion, but rather about the rule of law. The right to an abortion is secured by the Constitution. There is dissent on the issue and it may properly be expressed in many ways. The President has expressly noted that debate on the issue is healthy. However, we cannot tolerate violations of the law. We must focus the debate on this problem of violence, not on abortion.

- Determine whether there are additional resources which, if available, would result in a better approach to the problem.

It is critical that you contact the Criminal Division's Task Force on Violence Against Abortion Providers on all matters relating to abortion clinic enforcement and security issues. It may well be that subjects of a Task Force investigation are also witnesses or subjects of investigations handled by the United States Attorneys. Thus, it is essential that the Task Force be informed promptly of any abortion related threats or violence, or any significant investigative or prosecutive steps planned by any United States Attorney in connection with abortion violence.

By Monday, January 9, 1995, please provide to the Criminal Division the name of the AUSA you have designated to coordinate your efforts related to abortion clinic violence. You should e-mail that information to Mary Incontro at CRM04(INCONTRO).

Please provide a brief description of the steps you have taken to address this issue in your district to the attention of the Director of the Executive Office for United States Attorneys by January 20, 1995. Those plans will be shared with the Criminal Division which will provide to you a summary of the ideas and approaches that may to be utilized in the districts.

cc: Assistant Attorney General for the Criminal Division
Assistant Attorney General for the Civil Rights Division
Director, Federal Bureau of Investigation
Director, United States Marshals Service
Assistant Secretary For Enforcement, Department of Treasury

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

Nomination Form

APPENDIX C

...al Education Institute
...00 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 D

DOES FORFEITURE OF ASSETS CONSTITUTE "JEOPARDY?"

The Ninth Circuit says yes, creating enormous problems for prosecutors

by Stefan D. Cassella
Deputy Director, Asset Forfeiture Office

Ever since the Supreme Court held that civil forfeiture can be considered "punishment" for constitutional purposes,[1] defense attorneys have argued that the forfeiture of a person's assets in a civil case implicates the Double Jeopardy Clause of the Fifth Amendment. Generally, the argument is that if a defendant has previously been convicted in a criminal case, the subsequent forfeiture of his property in a civil case is a second punishment that is barred under United States v. Halper, 490 U.S. 435 (1989) (imposition of civil fine barred by previous criminal conviction).[2] But recently, there have been an equal number of double jeopardy challenges where the civil and criminal cases occurred in the reverse order -- i.e., cases where the defendant argues that the criminal prosecution is barred by the earlier forfeiture of his property.

Until September 1994, the government was winning virtually all such double jeopardy challenges. The Second and Eleventh Circuits, taking a tip from language in Halper, held that the Double Jeopardy Clause would be implicated only if the civil and criminal sanctions were imposed in separate proceedings. Because those courts viewed parallel civil forfeitures and criminal prosecutions arising out of the same criminal activity as two parts of a single, unified prosecution, they found no double jeopardy violation.[3]

Other courts declined to view certain forfeitures even as punitive in nature. The Supreme Court may have held that the forfeiture of property used to facilitate a drug offense constituted punishment,[4] but the Fifth, Eighth and D.C. Circuits

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[1] Austin v. United States, 113 S. Ct. 2801 (1993) (civil forfeiture is a punitive sanction subject to the Excessive Fines Clause of the 8th Amendment).

[2] See also Dept. of Revenue v. Kurth Ranch, 114 S. Ct. 1937 (1994) (imposition of marijuana tax barred by previous criminal conviction).

[3] United States v. Millan, 2 F.3d 17 (2d Cir. 1993) (civil forfeiture and criminal prosecution constitute same proceeding); United States v. One Single Family Residence Located at 18755 North Bay Road, 13 F.3d 1493, 1499 (11th Cir. 1994) (same). But see United States v. Torres, 28 F.3d 1463 (7th Cir. 1994) (expressing skepticism concerning viability of simultaneous proceeding rule after Kurth Ranch) (dicta), cert. denied, 1994 WL 650075 (Dec. 12, 1994).

[4] Austin v. United States, supra.

held that the forfeiture of the proceeds of the offense does not.[5] Forfeiting proceeds, the courts reasoned, merely puts the defendant back in the position he would have been in if he had not committed the crime. Therefore, the forfeiture of proceeds cannot implicate double jeopardy. The Second Circuit reached a similar conclusion with respect to the corpus delicti of a money laundering offense, holding that the forfeiture of the property being laundered was the kind of "rough remedial justice" that the Supreme Court in Halper said would not constitute punishment for double jeopardy purposes.[6]

All of this changed on September 6, 1994, when the Ninth Circuit issued its opinion in United States v. $405,089.23 U.S. Currency, 33 F.3d 1210 (9th Cir. 1994). In that case, a prisoner incarcerated in the federal penitentiary in Lompoc, California, filed a petition to vacate the judgment in a civil forfeiture case on the ground that the forfeiture, which involved nearly half a million dollars in drug proceeds, constituted a "punishment" imposed in a separate civil proceeding following his criminal conviction. The Ninth Circuit agreed, and ordered the government to return the drug proceeds to the prisoner.

The court first rejected the notion that separately docketed civil and criminal cases can ever be considered the "same proceeding" for double jeopardy purposes. In the court's view, if the government had truly wanted to bring the forfeiture case and the criminal case in the same proceeding, it could have done so by using the criminal forfeiture statute. By instituting a separate civil forfeiture proceeding, the government made a strategic choice to take advantage of the lower burdens and other benefits in the civil forfeiture statutes that, in the court's view, are inherently unfair to defendants. Having made that choice, the government could not later claim that the criminal and civil cases were all one proceeding.[7]

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[5] United States v. Tilley, 18 F.3d 295 (5th Cir. 1994) (forfeiture of proceeds is not punitive, so double jeopardy not implicated), cert. denied 63 U.S.L.W. 3414 (11/28/94); United States v. Alexander, 32 F.3d 1231 (8th Cir. 1994) (forfeiture of proceeds is never punishment and thus does not trigger 8th Amendment analysis); SEC v. Bilzerian, 29 F.3d 689 (D.C. Cir. 1994) (order requiring convicted defendant to disgorge profits of illegal securities trading did not constitute additional punishment barred by double jeopardy).

[6] United States v. United States Currency in the Amount of $145,139.00, 18 F.3d 73 (2d Cir.) (forfeiture of corpus delicti -- undeclared funds in § 5316 case -- does not trigger double jeopardy), cert. denied 115 S. Ct. 72 (1994); see also United States v. $196,601.00 in U.S. Currency, No. 92-3017 (JCL) (D.N.J. Apr. 27, 1993) (same) (unpublished), aff'd No. 93-5326 (3rd Cir. Dec. 20, 1993) (unpublished).

[7] The court did not suggest what the government should do if it wants both to prosecute a defendant and forfeit assets in connection with an offense for which Congress has provided only a civil forfeiture remedy. See e.g. 18 U.S.C. § 1955 (providing

Second, the court rejected the otherwise universally accepted notion that the forfeiture of criminal proceeds is remedial, not punitive, in nature. The court held that because the civil forfeiture statutes provide for the forfeiture of both proceeds and facilitating property, the fact that a given case might involve only proceeds is irrelevant; if a statute authorizes punitive forfeitures, then any forfeiture under that statute must be regarded as punitive for double jeopardy purposes.

The decision in $405,089.23 provoked an avalanche of double jeopardy litigation in the Ninth Circuit which even the panel in that case might not have foreseen. Almost immediately, district courts began to reopen closed cases to consider vacating forfeiture judgments, and had to entertain motions to dismiss pending indictments. More recently, there has been a flood of § 2255 motions to vacate convictions and require early release from incarceration because the conviction was obtained following a civil forfeiture. Initially, the district court decisions were adverse to the government, reflecting, no doubt, pent-up displeasure with the forfeiture statutes by some district court judges. As the courts and prosecutors have had time to react to $405,089.23, however, they have found ways to distinguish it, and the later cases are therefore breaking in favor of the government. Most important, as of this writing (late December, 1994) the taint of $405,089.23 has not yet spilled over into any other circuit.

$405,089.23 is itself the subject of a pending motion for en banc review in the Ninth Circuit. Moreover, there are now at least a half dozen other double jeopardy cases involving civil forfeiture issues that are before the Ninth Circuit. Thus, the result in $405,089.23 could be changed at any time. In the mean time, however, the following arguments may be used to respond to a double jeopardy motions based on the Ninth Circuit's decision.

Multiple punishments/Separate proceedings

First, there is a great deal of confusion in the courts as to what aspect of the Double Jeopardy Clause is implicated by a civil forfeiture. The Supreme Court made it clear in Halper that if a civil sanction implicates double jeopardy at all, it is because it violates the proscription against the imposition of multiple punishments in separate proceedings.[8] The Supreme Court has never referred to a civil forfeiture as a prosecution, and has never held that a forfeiture implicates the ban on successive prosecutions. In fact, the Court has several times upheld civil forfeitures that followed acquittals in criminal cases.[9] Therefore, prosecutors should not have to worry about the double

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for civil forfeiture but not criminal forfeiture in interstate gambling cases).

[8] Halper, 490 U.S. at 440.

[9] United States v. One Assortment of 89 Firearms, 465 U.S. 354 (1984); One Lot Emerald Cut Stones v. United States, 409 U.S. 232 (1972).

jeopardy implications when a forfeiture follows an acquittal, or when a prosecution follows a forfeiture that does not result in punishment.[10] Also, because a civil forfeiture is not a prosecution, the question underlying a double jeopardy challenge should not be when does jeopardy "attach" in a civil case, but when is punishment imposed -- an important issue when determining timing issues such as whether the forfeiture action has reached a stage where double jeopardy is implicated,[11] or whether it is the prosecution or the forfeiture that is barred as the "second" punishment.[12] But dicta in several recent Ninth Circuit cases has blurred the lines between the "successive prosecution" and "multiple punishment" analyses.[13]

Assuming the proper double jeopardy analysis under Halper applies, the defendant must establish five elements to sustain a double jeopardy challenge: there must be 1) two or more punishments, 2) imposed in separate proceedings, 3) for the same offense, 4) against the same defendant, 5) by the same sovereign. The government can block a double jeopardy challenge by showing that any one of these five elements is missing.

With respect to the first element, the Ninth Circuit's decision in $405,089.23 precludes the argument that the forfeiture of drug proceeds is not punishment in that circuit. The same is

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[10] See Kurth Ranch, 114 S. Ct. at 1953 (O'Connor, J., dissenting) ("a civil proceeding following a criminal prosecution simply is not a second 'jeopardy'"); id. at 1957 (Scalia, J., dissenting) (civil proceeding successive to a criminal prosecution is not barred, only imposition of a second punishment is barred).

[11] See United States v. Sanchez-Cobarruvias, Case No. 94-0732-IEG (S.D. Cal. Oct. 13, 1994) (double jeopardy not implicated until forfeiture decree is entered in an administrative forfeiture case).

[12] See United States v. Stanwood, ___ F. Supp. ___, No. CR 91-279-JO (D. Ore. Dec. 16, 1994) (civil forfeiture was the "second" punishment because double jeopardy is not implicated until the forfeiture judgment is entered and the punishment is imposed -- an event that occurred after the defendant's guilty plea).

[13] United States v. One 1978 Piper Cherokee Aircraft, 37 F.3d 489 (9th Cir. 1994) (civil forfeiture barred as a successive prosecution), pet. for reh. filed November 14, 1994; United States v. Unimex, Inc., CV 90-5941 KN (C.D. Cal. Oct. 27, 1994) (same); United States v. Stanwood, supra (holding that jeopardy attaches in a criminal case when a guilty plea is entered, not when sentence is imposed, because the successive prosecution analysis applies).

true for the forfeiture of corpus delicti property.[14] But that argument is alive and well in other circuits.[15]

As to the second element, $405,089.23 seemingly precludes the argument that a civil forfeiture and a criminal prosecution are the same proceeding in the Ninth Circuit, but a pending case raises the question whether the holding in $405,089.23 would apply where the defendant agreed to the civil forfeiture at the time he entered his guilty plea in a criminal case.[16] In any event, whatever the impact of $405,089.23 on this argument in the Ninth Circuit, it remains viable in other circuits.[17]

Separate offenses

One aspect of the double jeopardy analysis not addressed at all in $405,089.23 is the requirement that the two punishments be imposed for the same offense. Under the well-known Blockburger test, two statutes describe different offenses if each requires proof of an element that the other does not. Thus, it does not matter in double jeopardy jurisprudence if two statutory sanctions arise out of the same course of conduct; if the statutes describe separate offenses under the Blockburger test, cumulative punishments may be imposed.[18]

In many of the cases in which double jeopardy challenges are based on a related civil forfeiture judgment, it is evident that the challenge must fail because the forfeiture was based on an offense entirely unconnected to the offense alleged as the basis for the criminal conviction. For example, in United States v. Stanwood,[19] a district court held that the civil forfeiture of a parcel unrelated to the marijuana manufacturing offense for which

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[14] Quinones-Ruiz v. United States, 864 F. Supp. 983 (S.D. Cal. 1994) (forfeiture of undeclared funds in CMIR case is punishment); United States v. Sanchez-Cobarruvias, Case No. 94-0732-IEG (S.D. Cal. Oct. 13, 1994) (forfeiture of guns -- corpus delicti of arms smuggling offense -- is punishment).

[15] Note 5, supra.

[16] Oakes v. United States, No. CS-94-194-JLQ (E.D. Wash. Oct. 21, 1994) (unpublished) (civil forfeiture and criminal prosecution are separate proceedings even where defendant pleads guilty and agrees not to oppose civil forfeiture as part of his plea), notice of appeal filed.

[17] Note 3, supra.

[18] See United States v. Dixon, 113 S. Ct. 2849 (1993) (overturning "same conduct" test of Grady v. Corbin and reinstating Blockburger test).

[19] ___ F. Supp. ___, No. CR 91-279-JO (D. Ore. Dec. 16, 1994).

the defendant was convicted could not implicate double jeopardy.[20] A closer question was presented in United States v. Blue,[21] where the defendant whose property was previously forfeited as drug proceeds under § 881(a)(6), moved to dismiss his indictment for a § 846 conspiracy to distribute, and a § 371 conspiracy to launder money. But the court held that under Blockburger the forfeiture and the prosecution involved separate offenses: the forfeiture statute required proof of an exchange for a controlled substance which the conspiracy statutes did not; and the conspiracy statutes required proof of an agreement which the forfeiture statute did not.

The government, however, has urged a broader application of Blockburger. In short, the argument is that a civil forfeiture always requires proof that property was involved in an offense, while the underlying criminal statute contains no such requirement. At the same time, the criminal statute requires proof that the defendant committed the offense, while the in rem civil forfeiture statute contains no such requirement.[22] Thus, the government has argued in a number of pending cases that a civil forfeiture should never bar a criminal prosecution under the Double Jeopardy Clause.[23]

One court has held that a civil forfeiture must be considered a "greater offense" and the underlying crime a "lesser included offense" for double jeopardy purposes.[24] But even if that were so, it would not mean that the two statutes could not be used

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[20] See also Arizona v. Cook, 62 USLW 3863, 1994 WL 272927 (U.S. Oct. 3, 1994) (granting cert. and remanding for reconsideration of holding that prosecution for securities violations was barred by the prior imposition of a $150,000 administrative sanction in light of Dixon); United States v. One 1978 Piper Cherokee Aircraft, 37 F.3d 489 (9th Cir. 1994) (remanding to district court to determine if crimes on which prosecution and forfeiture were based, respectively, were the same).

[21] No. 93-1012-IEG (S.D. Cal. Dec. 7, 1994).

[22] United States v. Chandler, ___ F.3d ___, 1994 WL 523993, No. 93-2064 (4th Cir. Sept. 27, 1994) ("it is not an element of the government's case to prove the involvement of the property's owner in the commission of the offense giving rise to the forfeiture").

[23] But see United States v. McCaslin, 863 F. Supp. 1299 (W.D. Wash. 1994) (stating without analysis that a civil forfeiture based on the offense for which defendant was indicted is the same offense under the Blockburger test); Oakes v. United States, No. CS-94-194-JLQ (E.D. Wash. Oct. 21, 1994) (unpublished) (rejecting Blockburger analysis on the ground that criminal offense is necessary to establish forfeiture).

[24] United States v. One 1978 Piper Cherokee Aircraft, 37 F.3d 489 (9th Cir. 1994).

to impose cumulative punishments in separate proceedings if that were what Congress intended.[25]

Several excellent briefs on the separate offense issue are available from the Asset Forfeiture Office.

Same defendant

It is obvious that a defendant can assert a double jeopardy claim only if he or she was the person on whom punishment was imposed in the earlier proceeding. This point, however, has been the basis for much controversy over the double jeopardy implications of an uncontested civil forfeiture.

Several courts have held that a defendant can assert a double jeopardy bar to a criminal prosecution if his property was previously forfeited even though he did not contest the forfeiture or in any other way become a party to the civil action.[26] Thus, for example, a district court in Alaska dismissed a multi-count indictment against an alleged drug trafficker because his Rolex watch had been forfeited in an earlier uncontested DEA proceeding.[27]

Other courts, including the Seventh Circuit, however, hold that an uncontested civil forfeiture does not result in any punishment of a person who never asserted a claim to the forfeited property and whose culpability in the offense and ownership of the

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[25] See United States v. Felix, 112 S. Ct. 1377 (1991) (no double jeopardy violation where defendant convicted of conspiracy and substantive offense occurring within the conspiracy); Garrett v. United States, 471 U.S. 773 (1985) (no double jeopardy violation where defendant convicted of substantive drug offense and subsequently prosecuted for CCE offense for which substantive offense serves as predicate); United States v. Brown, 31 F.3d 484, 496 n.20 (7th Cir. 1994) (separate prosecutions for money laundering and underlying offense do not violate double jeopardy even though Blockburger test not satisfied because Congress clearly contemplated different types of offense conduct in enacting the two provisions); United States v. O'Connor, 953 F.2d 338 (7th Cir. 1992) (separate prosecution for RICO and predicate offenses).

[26] United States v. Sanchez-Cobarruvias, Case No. 94-0732-IEG (S.D. Cal. Oct. 13, 1994) (uncontested administrative forfeiture of defendant's property constitutes prior punishment; declining to follow Torres); United States v. Gerald Frank Plunk, No. A94-036 CR (JWS) (D. Alaska Nov. 4, 1994) (same); Quinones-Ruiz v. United States, 864 F. Supp. 983 (S.D. Cal. 1994) (uncontested administrative forfeiture is subsequent punishment).

[27] Plunk, supra, notice of appeal filed.

property were therefore never adjudicated.[28] This issue is surely headed for the Ninth Circuit, and perhaps to the Supreme Court if a split in the circuits develops.

Separate sovereign

Finally, separate civil forfeitures and criminal prosecutions will be sustained if each sanction was imposed by a separate sovereign. Typically, this means that a state civil forfeiture will not preclude a later federal criminal prosecution, and vice versa.[29]

Procedural issues: retroactivity, waiver and stay

In addition to these five substantive defenses to double jeopardy challenges, the government has raised a number of procedural defenses with some success. In the Ninth Circuit, for example, it has argued that $405,089.23, whatever its merit, does not apply retroactively, and therefore cannot be used as the basis for a § 2255 challenge to a criminal conviction. One court has agreed with this argument,[30] but most have not.[31]

The government has also argued that a defendant who pleads guilty to a criminal offense without raising any double jeopardy objection based on a previous civil forfeiture waives the right

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[28] United States v. Torres, 28 F.3d 1463 (7th Cir. 1994) (no double jeopardy violation where defendant filed no claim in administrative forfeiture), cert. denied 1994 WL 650075 (Dec. 12, 1994); United States v. Kemmish, ___ F. Supp. ___, 1994 WL 675205 (S.D. Cal. Nov. 14, 1994) (same); United States v. Branum, ___ F. Supp. ___, No. CR 94-94-JO (D. Ore. Dec. 20, 1994) (same).

[29] United States v. Certain Real Property (38 Whalers Cove Drive), 954 F.2d 29, 38 (2d Cir. 1992) (federal forfeiture not barred by state criminal prosecution); United States v. Branum, supra (federal prosecution not barred by earlier state civil forfeiture).

[30] Kahn v. United States, Civil No. 94-530K (RBB) (S.D. Cal. Nov. 15, 1994) ($405,089.23 does not apply retroactively to cases closed before Sept. 6, 1994).

[31] Oakes v. United States, No. CS-94-194-JLQ (E.D. Wash. Oct. 21, 1994) (unpublished) (application of double jeopardy to civil forfeiture is not a "new rule"); United States v. McCaslin, 863 F. Supp. 1299 (W.D. Wash. 1994) (same); United States v. Stanwood, ___ F. Supp. ___, No. CR 91-279-JO (D. Ore. Dec. 16, 1994) (same).

later to challenge the conviction in a § 2255 action. There is Supreme Court precedent for this argument,[32] but no court has yet followed it in light of $405,089.23.[33]

Finally, the government has succeeded in getting a district court simply to stay resolution of any double jeopardy issues until the Ninth Circuit decides what to do with the pending petition for a rehearing en banc in $405,089.23.[34]

Conclusion

By the time this article is published there will be a dozen more double jeopardy cases in the Ninth Circuit. The law is developing extremely fast. The Asset Forfeiture Office is available to assist U.S. Attorneys in all districts with handling double jeopardy challenges and should be contacted for briefing materials, updates and case developments, and other legal assistance.

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[32] United States v. Broce, 488 U.S. 563 (1989) (defendant who enters a guilty plea without raising any double jeopardy defenses waived the double jeopardy defense, even if he was not aware of the defense at the time the plea was entered).

[33] See Oakes v. United States, supra (no double jeopardy waiver despite guilty plea because 5th Amendment violation was apparent on the face of the indictment); United States v. Stanwood, supra (same).

[34] Ho v. United States, Civ. No. 94-0797 ACK (D. Haw. Dec. 6, 1994) (§ 2255 motion stayed).

APPENDIX E

Guideline Sentencing Update

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Departures

Substantial Assistance

Ninth Circuit holds that government's improper behavior authorized district court to grant §5K1.1 departure without government motion. Before and during defendant's plea proceedings his counsel attempted to negotiate a plea agreement, whereby defendant would testify against other defendants in exchange for a §5K1.1 departure. The government refused the offer, but then, without notifying defendant's counsel, subpoenaed defendant to testify at a grand jury hearing. Defendant contacted his attorney, who tried to contact the prosecutor, who did not return the phone calls. Counsel could not contact defendant, either, because the government had moved defendant to another prison. Assuming that his attorney had reached the prosecutor and struck a deal for a departure, defendant testified before the grand jury. At defendant's sentencing the government refused to file a §5K1.1 motion, although it did file one for a codefendant who testified before the same grand jury.

The appellate court remanded, rejecting the government's argument that "its potentially unconstitutional *behavior* (interfering with defendant's Sixth Amendment rights) is not an 'unconstitutional motive' within the meaning of [*Wade v. U.S.*, 112 S. Ct. 1840 (1992)], and that a downward departure is not an appropriate remedy for such misconduct." The court held that defendant "has shown that he provided substantial assistance, and that the government's improper conduct deprived him of an opportunity to negotiate a favorable bargain before testifying. Allowing such potentially unconstitutional behavior to go unremedied creates troubling incentives. Although no cases have squarely addressed Hier's situation, the government's behavior in this case authorizes the district court to grant Hier's request for a downward departure."

U.S. v. Treleaven, 35 F.3d 458, 461–62 (9th Cir. 1994).

See *Outline* at VI.F.1.b.iii.

Fifth Circuit holds that district court must make independent determination of extent of §5K1.1 departure. Defendants received downward departures under §5K1.1, but argued on appeal that the district court's comments indicated that, as a matter of policy, the court would not depart more than the ten months the government recommended. The appellate court remanded. "Although the court referred to its power and discretion in determining whether and to what extent to depart, the record leaves open the question whether the court also adequately recognized its duty to evaluate independently each defendant's case . . . . The court is charged with conducting a judicial inquiry into each individual case before independently determining the propriety and extent of any departure in the imposition of sentence. While giving appropriate weight to the government's assessment and recommendation, the court must consider all other factors relevant to this inquiry."

U.S. v. Johnson, 33 F.3d 8, 10 (5th Cir. 1994).

See *Outline* at VI.F.2.

Aggravating Circumstances

Second Circuit holds that likely fate of smuggled aliens after reaching U.S. may be considered in departure decision. Defendants were convicted of conspiring to bring 150 illegal aliens into the U.S. from China. The district court departed upward, partly based on the likelihood that, had the scheme succeeded, the illegal aliens would have been subject to "involuntary servitude" to pay off their debts to the smugglers. The appellate court affirmed. "Testimony at trial established that . . . each of the 150 aliens would be indebted to the smugglers in amounts ranging from $10,000 to nearly $30,000. A contract to pay smuggling fees, unenforceable at law or equity, necessarily contemplates other enforcement mechanisms, none of them savory. It requires no quantum leap in logic to infer from these established facts that these huge debts would be paid through years of labor under circumstances fairly characterized as involuntary servitude."

U.S. v. Fan, 36 F.3d 240, 245 (2d Cir. 1994).

See *Outline* generally at VI.B.1.j.

Offense Conduct

Mandatory Minimums

Eighth Circuit holds that quantity of LSD for mandatory minimums should be calculated under amended guideline method. Defendant pled guilty to conspiracy to distribute LSD and stipulated that the weight of the drug and carrier medium was over ten grams. This subjected him to a ten-year manda-

Guideline Sentencing Update is distributed periodically to inform judges and other judicial branch personnel of selected federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Guidelines. *Update* refers to the Sentencing Guidelines and policy statements of the U.S. Sentencing Commission, but is not intended to report Commission policies or activities. *Update* should not be considered a recommendation or official policy of the Center; any views expressed are those of the author.

tory minimum under 21 U.S.C. §841(b)(1)(A)(v), but with a substantial assistance departure he was sentenced to 72 months. Guideline Amendment 488 (Nov. 1, 1993) changed the method of calculating the weight of LSD and carrier media, *see* §2D1.1(c) at n.* and comment. (n.18 and backg'd), and made it retroactive under §1B1.10. Using the amendment would lower defendant's sentencing range to 33–41 months. The court declined to reduce the sentence, however, concluding that defendant was still subject to the mandatory minimum term and, although the sentence was below the minimum because of defendant's substantial assistance, it could not be reduced further based on the amended guideline.

The appellate court agreed that it would be improper to "piggyback" the amended calculation onto the substantial assistance reduction, but held that the calculation for the mandatory minimum quantity itself should be based on the amendment. "In *Chapman v. U.S.*, 500 U.S. 453, 468 . . . (1991), the Supreme Court construed 'mixture or substance' in [§841(b)(1)(A)(v)] as 'requir[ing] the weight of the carrier medium to be included.' . . . Amendment 488 merely provides a uniform methodology for calculating the weight of LSD and its carrier medium—the 'mixture' or 'substance' containing a detectable amount of LSD."

The court concluded that "Amendment 488 and Section 841 can and should be reconciled under *Chapman*. . . . To calculate mixture weights differently for mandatory minimum sentences on one hand and guideline sentences on the other would unnecessarily swallow up the guideline, which, itself, demands a very significant sentence. Applying two different measurements makes no sense. Accordingly, we find that Stoneking's sentence may be reduced under a retroactive application of Amendment 488." *Contra U.S. v. Boot*, 25 F.3d 52, 54–55 (1st Cir. 1994) [6 *GSU* #15]. Because retroactive application of an amendment is not mandatory, it remains for "the district court to determine, in its discretion, whether Amendment 488 should be applied retroactively to reduce Stoneking's sentence."

U.S. v. Stoneking, 34 F.3d 651, 652–55 (8th Cir. 1994).

See *Outline* at I.E, II.A.3, and II.B.1.

Loss

Third Circuit holds that loss from check kiting scheme is not reduced by amounts repaid after offense is discovered. Defendant pled guilty to bank fraud through check kiting. When the crime was detected the loss amounted to over $460,000. The district court reduced that sum to under $350,000, however, to reflect payments defendant made to some of the victim banks by the time he was sentenced. The appellate court remanded. "We believe that check kiting crimes, because of their particular nature, are crimes where the district court must calculate the victim's actual loss as it exists at the time the offense is detected rather than as it exists at the time of sentencing. . . . By its very nature, the crime of kiting checks ordinarily involves the borrowing of funds without authorization from the bank and without the offender providing any security to protect the bank against risk of loss. This distinction warrants treating perpetrators of check kiting loan frauds in most cases differently from perpetrators of secured loan frauds for sentencing purposes." Thus, "the gross amount of the kite at the time of detection, less any other collected funds the defendant has on deposit with the bank at that time and any other offsets that the bank can immediately apply against the overdraft (including immediate repayments), is the loss to the victim bank."

U.S. v. Shaffer, 35 F.3d 110, 113–14 (3d Cir. 1994). *See also U.S. v. Mummert*, 34 F.3d 201, 204 (3d Cir. 1994) (affirmed: where defendant arranged fraudulent unsecured loan to finance construction of house by third party, loss is not reduced by third party's offer to repay bank after sale of house or sign house over to bank—"A defendant in a fraud case should not be able to reduce the amount of loss for sentencing purposes by offering to make restitution after being caught"). Cf. *U.S. v. Bennett*, 37 F.3d 687, 695 (1st Cir. 1994) (remanded: error to reduce loss by amount repaid as part of civil settlement after fraudulent loan scheme was discovered).

See *Outline* at II.D.2.b and c.

Tenth Circuit holds that amount of loss is not reduced by fraud victims' tax benefits. Defendant defrauded dozens of investors of several million dollars. He argued that the amount of loss should be reduced by $2 million for tax benefits the victims obtained through their investments. The district court refused to do so and the appellate court affirmed: "Defendant cites no authority in support of his novel proposition, and we have found none. In previous cases where we have deducted the value of something the victim has received in computing actual loss, Defendant himself has been responsible for the victim's receipt of something of value. . . . Because the Sentencing Commission did not [allow for such a reduction], and because no Tenth Circuit or other precedent supports Defendant's argument to reduce the amount of loss by a victim's tax savings, we reject Defendant's argument."

U.S. v. McAlpine, 32 F.3d 484, 489 (10th Cir. 1994).

See *Outline* at II.D.2.d.

Adjustments

Acceptance of Responsibility

Seventh Circuit affirms denial of § 3E1.1 reduction for silence on "conduct comprising the offense of conviction." Defendant pled guilty to credit card offenses. The district court denied a reduction for acceptance of responsibility because defendant refused to answer questions concerning how she arrived in Wisconsin, where she obtained the counterfeit credit cards, and the source of money recovered at her arrest that exceeded the amounts she had obtained in the charged offenses. Defendant had invoked the Fifth Amendment on these issues and argued that § 3E1.1, comment. (n.1(a)), allowed her to do so without penalty ("A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection.").

The appellate court affirmed the denial, although it agreed with defendant that her silence regarding the money that exceeded the amount in the offenses of conviction was protected under Application Note 1(a). "There is, however, an important distinction between Hammick's silence concerning the source of the excess cash . . . and her silence concerning [her] means of travel to Wisconsin and the source of the counterfeit credit cards and other documents she used to commit the offenses to which she pleaded guilty." Note 1(a) also indicates that a defendant must "truthfully admit[] the conduct comprising the offenses of conviction." "The district judge's request that Hammick explain how she was able to carry out her crimes required no more than 'a candid and full unraveling' of the conduct comprising her offense of conviction, . . . and thus did not violate her right to remain silent concerning relevant conduct *beyond* the offense of conviction under the current version of the guideline."

U.S. v. Hammick, 36 F.3d 594, 600–01 (7th Cir. 1994) (Bauer, J., dissented).

See *Outline* at III.E.3.

Ninth Circuit indicates defendant should notify government of intent to plead guilty in order to secure §3E1.1(b) reduction for timely assistance. Defendant received the two-point reduction under §3E1.1(a), but was denied the extra point under §3E1.1(b) because he did not plead guilty until one week before trial and "after the government had begun seriously to prepare for trial." Defendant argued he had waited until the court ruled on his motion to dismiss on double jeopardy grounds, and should not be denied the extra reduction because the court did not decide the motion earlier or because he exercised his constitutional rights.

The appellate court affirmed. "While Narramore may well have intended to plead guilty in the event that his motion to dismiss was denied, he at no time approached the government with this information so the trial preparation could have been avoided. Nothing prevented him from doing so. Narramore's pretrial motion, if granted, would have completely obviated trial. Accordingly, if Narramore had earlier communicated his willingness to enter a plea, the government would have had no reason to prepare for trial. In such circumstances, his plea cannot be considered timely for purposes of §3E1.1(b)." As for defendant's constitutional argument, "[i]ncentives for plea bargaining are not unconstitutional merely because they are intended to encourage a defendant to forego constitutionally protected conduct. . . . [B]y advising the government of his intent to plead guilty if his trial motion were denied, Narramore could have enabled the government to avoid trial preparation" and qualified for §3E1.1(b).

U.S. v. Narramore, 36 F.3d 845, 846–47 (9th Cir. 1994).

See *Outline* at III.E.5.

Criminal History

Armed Career Criminal

Sixth Circuit holds that enhanced penalty in §4B1.4 for possessing firearm "in connection with a crime of violence" does not require conviction for that crime of violence. Defendant was convicted of being a felon in possession of a firearm and, because of prior convictions, was subject to sentencing as an armed career criminal under 18 U.S.C. §924(e) and §4B1.4. The district court found that defendant possessed the firearm "in connection with a crime of violence" (an assault) and increased the offense level and criminal history category under §4B1.4(b)(3)(A) & (c)(2). Defendant appealed, arguing that the increases did not apply because he was not *convicted* of the assault in connection with the unlawful possession.

The appellate court affirmed, concluding that "a conviction for a violent crime is not a prerequisite to application of this section. . . . Where the drafters of the guidelines intend that a defendant must have been convicted of a particular crime if a particular provision of the guidelines is to be applied, they generally say so explicitly. . . . No corresponding term appears in the definition of an 'armed career criminal,' the category at issue here."

U.S. v. Rutledge, 33 F.3d 671, 673–74 (6th Cir. 1994).

See *Outline* at IV.D.

Challenges to Prior Convictions

Ninth Circuit holds that *Custis* applies to challenges under Guidelines. The district court denied defendant's challenge to a prior conviction that increased his Guidelines sentence. Basing its decision on §4A1.2, comment. (n.6), and *Custis v. U.S.*, 114 S. Ct. 1732 (1994), the appellate court affirmed. "We conclude that Burrows had no right conferred by the Sentencing Guidelines to attack his prior convictions in his sentencing proceeding and no constitutional right to attack any prior convictions save those which were obtained in violation" of the right to counsel. Although *U.S. v. Vea-Gonzales*, 999 F.2d 1326 (9th Cir. 1993), held that defendants have a constitutional right to challenge prior sentences, "as far as its constitutional holding goes, *Vea-Gonzales* is no longer good law" in light of *Custis*.

U.S. v. Burrows, 36 F.3d 875, 885 (9th Cir. 1994).

See *Outline* at IV.A.3.

Determining the Sentence

Consecutive or Concurrent Sentences

Ninth Circuit holds that courts must consider, but are not strictly bound by, the methodology in §5G1.3(c), comment. (n.3). Defendant was serving a state sentence at the time he was to be sentenced for an unrelated federal offense. To determine the extent to which the federal sentence should be consecutive to the state sentence, the district court followed the procedure in §5G1.3(c), comment. (n.3), and approximated "the total punishment that would have been imposed under §5G1.2 . . . had all of the offenses been federal offenses for which sentences were being imposed at the same time." The resulting guideline range was less than defendant was to serve on the state sentence. As an alternative, the court departed downward from defendant's criminal history category by discounting the state conviction and arrived at a sentencing range of 18–24 months. The court sentenced defendant to 18 months, to run consecutively to the state term, making defendant's "incremental punishment" for the federal offense 18 months.

Although the district court neither strictly followed Note 3 nor specifically explained why it did not use the recommended calculation, the appellate court affirmed. A "review of the history of §5G1.3 supports the inference that its current language is intended to give sentencing courts leeway in deciding what method to use to determine what a reasonable incremental penalty is in a given case. . . . Although the district court no longer has complete discretion to employ any method it chooses when it decides upon a reasonable incremental penalty, neither is it required to use the commentary methodology or else depart from the Guideline. . . . True, the court must attempt to calculate the reasonable incremental punishment that would be imposed under the commentary methodology. If that calculation is not possible or if the court finds that there is a reason not to impose the suggested penalty, it may use another method to determine what sentence it will impose. The court must, however, state its reasons for abandoning the commentary methodology in such a way as to allow us to see that it has considered the methodology. . . . Applying these principles to the case at hand, it becomes clear that the district court did everything it was required to do. . . . It did need to consider the methodology and it did need to give its reasons for using an alternative method." Cf. *U.S. v. Coleman*, 15 F.3d 612–13 (6th Cir. 1994) (remanded: courts must consider §5G1.3(c) and, "to the extent practicable," utilize methodology in Note 3).

U.S. v. Redman, 35 F.3d 437, 440–42 (9th Cir. 1994).

See *Outline* at V.A.3.

APPENDIX
F

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
01-12-90	7.74%	06-28-91	6.39%	12-11-92	3.72%	05-27-94	5.28%
02-14-90	7.97%	07-26-91	6.26%	01-08-93	3.67%	06-24-94	5.31%
03-09-90	8.36%	08-23-91	5.68%	02-05-93	3.45%	07-22-94	5.49%
04-06-90	8.32%	09-20-91	5.57%	03-05-93	3.21%	08-19-94	5.67%
05-04-90	8.70%	10-18-91	5.42%	04-07-93	3.37%	09-16-94	5.69%
06-01-90	8.24%	11-15-91	4.98%	04-30-93	3.25%	10-14-94	6.06%
06-29-90	8.09%	12-13-91	4.41%	05-28-93	3.54%	11-11-94	6.48%
07-27-90	7.88%	01-10-92	4.02%	06-25-93	3.54%	12-09-94	7.22%
08-24-90	7.95%	02-07-92	4.21%	07-23-93	3.58%	01-06-95	7.34%
09-21-90	7.78%	03-06-92	4.58%	08-20-93	3.43%		
10-27-90	7.51%	04-03-92	4.55%	09-17-93	3.40%		
11-16-90	7.28%	05-01-92	4.40%	10-15-93	3.38%		
12-14-90	7.02%	05-29-92	4.26%	11-17-93	3.57%		
01-11-91	6.62%	06-26-92	4.11%	12-10-93	3.61%		
02-13-91	6.21%	07-24-92	3.51%	01-07-94	3.67%		
03-08-91	6.46%	08-21-92	3.41%	02-04-94	3.74%		
04-05-91	6.26%	09-18-92	3.13%	03-04-94	4.22%		
05-03-91	6.07%	10-16-92	3.24%	04-01-94	4.51%		
05-31-91	6.09%	11-18-92	3.76%	04-29-94	5.02%		

Note: For a cumulative list of Federal civil postjudgment interest rates effective October 1, 1982, through December 19, 1985, see Vol. 34, No. 1, p. 25, of the United States Attorneys' Bulletin, dated January 16, 1986. For a cumulative list of Federal civil postjudgment interest rates from January 17, 1986 to September 23, 1988, see Vol. 37, No. 2, p. 65, of the United States Attorneys' Bulletin, dated February 15, 1989. For a cumulative list of Federal civil postjudgment interest rates effective October 21, 1988 through December 15, 1989, see Appendix G of Vol. 43, No. 1, of the United States Attorneys' Bulletin, dated January 1, 1995.

APPENDIX G

UNITED STATES ATTORNEYS

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

DISTRICT	U.S. ATTORNEY
MARYLAND	LYNNE A. BATTAGLIA
MASSACHUSETTS	DONALD K. STERN
MICHIGAN, ED	SAUL A. GREEN
MICHIGAN, WD	MICHAEL H. DETTMER
MINNESOTA	DAVID L. LILLEHAUG
MISSISSIPPI, ND	ALFRED E. MORETON, III
MISSISSIPPI, SD	BRAD PIGOTT
MISSOURI, ED	EDWARD L. DOWD, JR.
MISSOURI, WD	STEPHEN L. HILL, JR.
MONTANA	SHERRY S. MATTEUCCI
NEBRASKA	THOMAS J. MONAGHAN
NEVADA	KATHRYN E. LANDRETH
NEW HAMPSHIRE	PAUL M. GAGNON
NEW JERSEY	FAITH S. HOCHBERG
NEW MEXICO	JOHN J. KELLY
NEW YORK, ND	THOMAS J. MARONEY
NEW YORK, SD	MARY JO WHITE
NEW YORK, ED	ZACHARY W. CARTER
NEW YORK, WD	PATRICK H. NeMOYER
NORTH CAROLINA, ED	JANICE MCKENZIE COLE
NORTH CAROLINA, MD	WALTER C. HOLTON, JR.
NORTH CAROLINA, WD	MARK T. CALLOWAY
NORTH DAKOTA	JOHN T. SCHNEIDER
OHIO, ND	EMILY M. SWEENEY
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OKLAHOMA, ND	STEPHEN C. LEWIS
OKLAHOMA, ED	JOHN W. RALEY, JR.
OKLAHOMA, WD	ROZIA McKINNEY-FOSTER
OREGON	KRISTINE OLSON ROGERS
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PENNSYLVANIA, WD	FREDERICK W. THIEMAN
PUERTO RICO	GUILLERMO GIL
RHODE ISLAND	SHELDON WHITEHOUSE
SOUTH CAROLINA	PRESTON STROM, JR.
SOUTH DAKOTA	KAREN E. SCHREIER

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TEXAS, SD	GAYNELLE GRIFFIN JONES
TEXAS, ED	J. MICHAEL BRADFORD
TEXAS, WD	JAMES H. DeATLEY
UTAH	SCOTT M. MATHESON, JR.
VERMONT	CHARLES R. TETZLAFF
VIRGIN ISLANDS	W. RONALD JENNINGS

DISTRICT	U.S. ATTORNEY
VIRGINIA, ED	HELEN F. FAHEY
VIRGINIA, WD	ROBERT P. CROUCH, JR.
WASHINGTON, ED	JAMES P. CONNELLY
WASHINGTON, WD	KATRINA C. PFLAUMER
WEST VIRGINIA, ND	WILLIAM D. WILMOTH
WEST VIRGINIA, SD	REBECCA A. BETTS
WISCONSIN, ED	THOMAS P. SCHNEIDER
WISCONSIN, WD	PEG LAUTENSCHLAGER
WYOMING	DAVID D. FREUDENTHAL