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Executive Office for United States Attorneys

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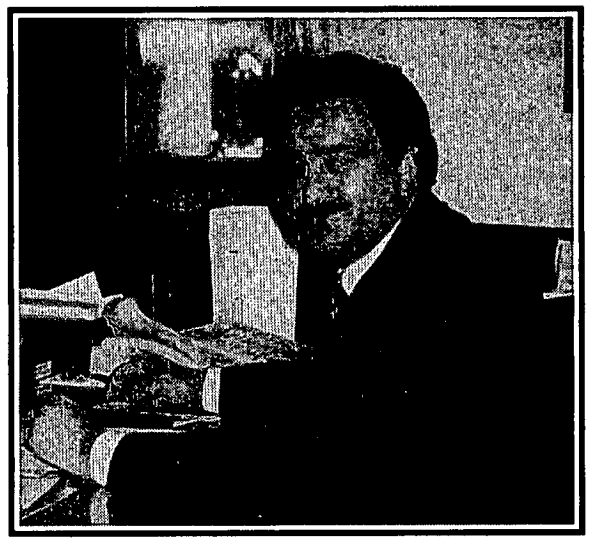
Interview with Andrew Fois, Assistant Attorney General for the Office of Legislative Affairs

Andrew Fois is the Assistant Attorney General (AAG) for the Office of Legislative Affairs (OLA). He has a broad range of experience in criminal justice policy and legislative matters, and is currently an adjunct professor at the Georgetown University Law Center. After graduating from there in 1983, he began his career as an Assistant State Attorney in Dade County, Florida, and shortly thereafter, joined the United States Attorney's office for the District of Columbia, where he served more than four years including one year as a supervisor. He left the office in 1989 to serve as Chief Counsel for the House Judiciary Committee's Subcommittee on Crime and Criminal Justice where he worked on several major criminal justice initiatives including the Brady Law and the Crime Bills of 1990, 1991, and 1993. Before being nominated for the position of AAG of OLA, he served for 14 months as an advisor to the Attorney General and as Associate Deputy Attorney General.

Andrew was interviewed by Assistant United States Attorney David Nissman (referred to as DN), Editor-in-Chief of the United States Attorneys' Bulletin.



Andrew Fois
Assistant Attorney General for the Office of Legislative Affairs

DN: What pieces of legislation are floating around Congress concerning revisions to Title 18 or other criminal provisions that are of interest to the Department?

AF: There are probably hundreds of bills that would amend Title 18 in one form or another. Let me talk about some of the major pieces of legislation in which the Department is particularly involved. The first is the Terrorism Bill. It initially went up to the Hill from the Administration in two parts: one part before the Oklahoma City bombing and the second part shortly after. They were subsequently merged and treated as one bill. The first part dealt primarily with international terrorism, immigration issues, and terrorist fundraising. The second one dealt more with resources; additional funding and authorization for U.S. Attorneys; for a Counter-terrorism Center; for FBI, U.S. Attorney, and other law enforcement personnel; and several more provisions for additional and enhanced investigative and prosecutive authority. We had a good deal of success in moving that bill through the Senate. In the House, although we did substantively even better in the House Judiciary committee, the bill has not yet made its

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IN THIS ISSUE . . .

FROM THE EDITOR-IN-CHIEF

This month's issue features an interview with the Assistant Attorney General for Legislative Affairs, Andy Fois. Since many of you asked to be kept up to date on legislative affairs, we thought it would be a good idea to get you the information directly. We also have included a table that lists recent hearings announced by the Office of Legislative Affairs. Our WordPerfect Tips column will teach you how to create simple macros to save time. When you master this easy lesson, we will teach you how to create more powerful tools to save time. The OLE Publication Corner tells you about new books and how to get all of our publications. Solicitor General cases in the DOJ Highlights section include a summary of Kyles v. Whitley, an important Brady case that squarely places the responsibility on prosecutors to review relevant information assembled by law enforcement agencies, with an eye toward disclosure. Kyles is yet another strong indication of the close scrutiny imposed on prosecutors for the non-disclosure of information. To those of you that answered our readers survey, we thank you for taking the time to respond. We will consider your comments in making further changes to the ***Bulletin.***

David Marshall Nissman

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way to the floor. We are working for that to happen in the fall. We'll be following that closely and pushing that.

Let me discuss some of the other legislative issues of interest to AUSAs. We have a bill that we sent up in June, just after the Supreme Court came down with the *Lopez* decision. The bill would reinstate or attempt to reinstate, in a constitutional way, the Gun-Free School Zones Act which was passed in 1990 as part of the 1990 Crime Bill and is something that I know a number of U.S. Attorneys' offices use. It's one of those kind of interesting federalism issues that we're all increasingly sensitive to as more and more crimes are federalized, and as more and more of these types of prosecutions happen at the Federal level. Basically, this bill would add a requirement that the prosecutor prove that the gun in question moved in or affected interstate commerce. We think that will address both the *Lopez* Court's concern and be something that prosecutors can readily prove, as they do in other contexts, and would not affect the ability to bring most of these cases that we would be interested in bringing. The other bill that might be of interest is the Crack/Powder Cocaine Bill. This was prompted by the Sentencing Commission in May, sending to the Hill Sentencing Guideline amendments which, if Congress does not reject by November 1, will become law and become the binding Sentencing Guidelines. The Commission recommended that the so-called "hundred-to-one" weight ratio that applies at certain points between crack and powder cocaine sentences be reduced to a one-to-one ratio. So now, in order to get a five year, mandatory minimum sentence under present law, you get that if you've got one gram of crack, but you'd have to have a hundred grams of powder cocaine. The Commission's recommendation would equalize that by raising the amount of crack to the equal amount of powder to get that sentence. The Department feels the one-to-one ratio would result in insufficient sentences to vindicate our law enforcement interest and that there are significant differences in the quality of the substances and particularly in the nature of the distribution scheme and the effects on people, the effects on neighborhoods, and the corollary crime, that some variance in the ratio is needed—certainly that one-to-one is not sufficient for prosecution purposes. So we sent up a bill to encourage the Congress to reject that change. That bill also would reject changes the Commission would make to money laundering sentencing guidelines.

There's always, of course, the appropriations process. Right now, because of everything that's going on with appropriations and the Hill, they're a little bit behind schedule. Usually by this time both the House and Senate have acted. But as of this early August date, only the House has acted. Overall, the Department has done pretty well, which in this congressional climate is encouraging. There are some things that we need to work on. There is an effort to move 200 lawyers from the general legal activities account, basically Tax and Environment Divisions, into U.S. Attorneys' offices with the goal being that they will continue to do tax and environmental cases, but how practical that is, is another question. That's something we're working hard to reverse in the Senate. U.S. Attorneys' offices did pretty well in the House account and we hope to continue that.

> *"Both in the House and the Senate, members understand that the United States Attorneys and Assistant United States Attorneys are the front line of Federal law enforcement and Federal prosecution."*
>
> Andrew Fois
> Assistant Attorney General for the
> Office of Legislative Affairs

DN: Let me go back to *Lopez* for just a second. *Lopez,* of course, is a big issue for us in that we're unclear how many other statutes it may affect. Has any effort been made by OLA to look at other potential problems and do a legislative fix on other criminal statutes that may not specify an interstate commerce element?

AF: Yes, there has been. We worked closely with the Office of Legal Counsel, the Office of Policy Development, and the Solicitor General's Office and we came to two conclusions: one, the view is that the *Lopez* opinion itself is relatively narrow. It seems to be addressing a particularly unique legislative posture—while sending signals for other future statutes—where the legislative history is abnormally devoid of any kind of findings, any kind of discussion of an effect on interstate commerce. The hearing record was sparse and the floor debate record was sparse and, from being there at the time, I remember it was the sort of thing that had bipartisan support, was very popular, and went

through quickly. So, there were insufficient findings in the legislation and the language itself didn't include the interstate commerce element. Looking at some similarly situated statutes—the Assault Weapons Ban, the Brady Bill, the Drug Free Schools Zone Act, the Youth Handgun Safety Act—the conclusion was reached that they were probably not threatened by the *Lopez* case, at least not to the extent that required a preemptive fix. But, the caveat to everything I've said is that each statute, each legislative history needs to be examined individually on a case-by-case basis before you can really come to a reasonable conclusion.

DN: In your relations with Congress, do you feel there is a great deal of support for the U.S. Attorneys' offices and the work we're doing?

AF: Absolutely. Both in the House and the Senate, members understand that the United States Attorneys and the Assistant United States Attorneys are the front line of Federal law enforcement and Federal prosecution. In addition, being out of Washington and back home and local is always a plus. So I think there's a great deal of respect for U.S. Attorneys' offices. I know that the opinions of U.S. Attorneys on criminal justice matters are held in high esteem by Members of Congress. OLA works closely with the Executive Office and the vast majority of U.S. Attorneys across the country to give them a voice on the Hill, both with individual members and Senators and collectively, to make sure that their voice is heard.

DN: The U.S. Attorneys' Manual spells out how relations with Congress are supposed to be handled and that, except in routine matters, they're all supposed to go through the Office of Legislative Affairs. How can the U.S. Attorneys and Assistants with significant experience help you in the process of representing the Department's interests in various matters before Congress?

AF: Well, in a number of ways. First, I think it's important that your experiences, your problems, your successes in U.S. Attorneys' offices and prosecuting individual cases make their way to us so that we know what's going on, what you're experiencing, and how we can help. If there's something that one office is experiencing, that probably means that a number of offices are experiencing it, and it may be conducive to a legislative solution. So, one way you can help is to maintain the information flow from the field to Main Justice and OLA.

Second, I think the U.S. Attorneys' Manual is wise, and the practice works well that, except for the routine matters, when you are contacted, or if the U.S. Attorneys' offices feel the need to contact the Hill, that they work together with OLA to accomplish that in the best way. The best way will likely be the most effective way, but will also maintain the integrity and the apolitical nature of Federal prosecution.

DN: Are there pocketbook issues in Congress that could potentially affect Federal employees or Department employees? In your assessment, is there anything for Department employees to be concerned about or fear at this point?

AF: Frankly, I don't think there's much activity on that front that's actually going to go real far. I'm not sure there's much of interest to talk about or anything to worry about, other than appropriations of course. And this might be a good time to point out that we all are following closely, and working on issues associated with, a possible Government shutdown that may occur sometime after the beginning of October.

DN: Can you tell us a little bit about some of the environmental legislation in Congress?

AF: There is a lot of legislative activity on the environmental front and much broader than just criminal. It is regulatory, to a large extent, and most of it is affecting the EPA perhaps more than us. It's one of the many basic philosophical debates going on in Congress. I think everyone shares a generally similar goal. I don't think anybody says they're for a bad environment. But, what is the best Government role, how much Government role is needed to get there, is the hub of the philosophical dispute. And it's manifesting itself in forms across the board—the Clean Water Act, the Clean Air Act, Endangered Species, Wetlands protection, and, as I mentioned on the appropriations bill, the notion of changing the Environment and Natural Resources Division significantly by sending out a large number of individual lawyers to U.S. Attorneys' offices. When you're using this as a way to prosecute environmental crimes and uphold the environmental protection laws, as a practical matter—it's wrought with problems. You can't tell from time-to-time, from year-to-year, where a particularly big case is going to come up so you put your resources in one U.S. Attorney's office but they're not needed there but then they're needed on the other side of the country. Also, as we face with so many issues, and in

Environmental ones it's particularly important, that there be a uniform national standard. That's probably the first issue that comes to mind as potentially affecting the way we do our business and, in every one of these cases, all the statutes that are being looked at, and in the regulatory reform area this notion of cost-benefit analysis and judicial review of regulatory decisions, there really is an on-going debate that may wind up in some fundamental, structural, or even institutional changes in how we go about protecting the environment.

DN: How does the Department feel about the efforts to change the regulatory schematic?

AF: The Administration has been working with the Hill to try to make what we consider reasonable reforms and reasonable streamlining and kind of lift some of the more onerous and less defensible regulations and regulatory schemes but, by the same token have felt so far at least, the present climate in Congress has been going too far and too extreme. So we're trying to moderate it and see how it turns out.

DN: I noticed in some of the weekly updates from OLA to the Attorney General that there's a great deal of activity in Congress concerning immigration reform. What can we expect?

AF: You're absolutely right. There's a lot going on in immigration. It has been a very hot issue in the public and in the press and in the minds of a number of people for a couple of years, and will continue to be for the foreseeable future. That has been prompting a large number of legislative initiatives in overlapping areas: in legal immigration, in illegal immigration, in immigration-related terrorism, and in resources for immigration enforcement. The Department has a bill that we've sent to the Hill. It addresses additional resources for Border Patrol and INS inspectors and other resource issues. It would also establish work site enforcement pilot projects, and a couple of other things in the illegal immigration side. We're also looking carefully at the question of legal immigration, some historical policies and laws that people may disagree with now. Whether the amount of immigration is proper, whether the way it's regulated country by country is appropriate these days and the whole range of issues under the guidance of the Barbara Jordan Commission that recently reported after its review of legal immigration. Judicial deportation has a lot of attraction and appeal. As you know, you're at the sentencing, you deal with it right then. But, given the rich immigrant history of this country—and a number of people in Congress have close personal experiences in that regard, and others also support it very strongly—there's a whole range of issues that need to be reviewed carefully.

DN: Judicial deportation and criminal sentencing—is there division on these issues?

AF: I think that a majority would support that in some form. But there's concern for maximizing the due process implications. It's the same feeling on summary exclusion, same feeling on some of the terrorist provisions about excluding or deporting people based on national security information that isn't totally provided to the defendant. I think there's a lot of support for judicial deportation but there's an equal amount of concern that the procedures be equitable. There's also a lot of support for notions of criminal aliens that are pre-deportation stage who are serving time in American prisons—Federal or State—that somehow we work out with the home country that those people get taken back to serve their sentences in the home countries.

DN: What's the status of civil asset forfeiture?

AF: I'm glad you raised that because that's another legislative priority, along with immigration, the Crime Bill, and the Terrorism Bill. Asset forfeiture is one of the big legislative initiatives on the Department's plate. We have not yet gotten to the position of sending a bill to the Hill, but we have spent a lot of time working within the Department, working with other agencies, and now working with selected members on the Hill in preparation for getting a bill up and introduced. The big picture goals are to: number one, maintain the integrity and the viability of asset forfeiture, particularly civil forfeiture, as a crucial law enforcement tool, while at the same time addressing some of the perceived and, in some cases, very real procedural and practical issues associated with those laws. What the bill, when it's totally finished and up, would do is, in the civil side, make a small adjustment to the burden of proof. Put the burden of proof on the Government—raise it to a preponderance of the evidence standard. And address the procedures in civil forfeiture while, at the same time, extending the scope of it and have it available for a much larger universe of offenses. It would also address the issue of double jeopardy that a number of circuits are addressing, and try to fix that in a way that allows forfeiture to be used when it doesn't implicate double jeopardy concerns.

DN: Is there anything that you would like to say to AUSAs?

AF: From the perspective of the Department, as well as from the perspective of people on Capital Hill, everyone realizes what a tough job Assistant United States Attorneys in the trenches have prosecuting individual crimes. We at the policy making level and on the Hill are committed to trying to do everything we can to make that job easier and give you the tools, both in terms of resources and legal authority, that you need. We want to hear from you when we can help you do your jobs better. ❖

Attorney General Highlights

AG Calls on Congress to Support COPS Program

On July 25, 1995, following language in the House Commerce, Justice, State Appropriations Bill to end the COPS Program and replace it with a block grant that would not guarantee that new officers would be deployed on America's streets, Attorney General Janet Reno and Director Joe Brann, Office of Community Oriented Policing Services (COPS), called upon Congress to join national and local law enforcement officials to support the COPS program. Attorney General Reno said, "The COPS Program is working. In less than a year, nearly half of the law enforcement agencies in the country have been authorized to hire or redeploy more than 20,000 new officers for community policing." At a news conference the same day, leaders of five law enforcement organizations and House Representatives Bart Stupak (D-MI), Charles Schumer (D-NY), Steny Hoyer (D-MD), and other House members, raised concerns that the block grant approach was not accountable or efficient, and also called on the House Republican leadership to leave the COPS program alone.❖

DAG Supports Upgrading Security Standards

On June 28, 1995, DOJ made public their study of the vulnerability of Federal buildings to terrorist attack. President Clinton directed that the study take place after the April 19 Oklahoma City bombing. Deputy Attorney General Jamie Gorelick referred to the minimum security standards proposed in the study as "sensible steps" to protect the safety of Federal workers and citizens who visit Federal offices. As part of the study, a standards committee developed 52 security standards that address such items as perimeter parking, lighting, physical barriers, and closed circuit television monitoring. The study recommended that each Federal facility be upgraded to meet those standards, and it notes that when many Federal buildings were constructed, the potential risk of terrorist and similar violence was not as great as it is today; in the last two months, 200 Federal buildings have received bomb threats. In the study, Federal sites were divided into five security levels ranging from Level 1 with minimum security needs (typically, leased space with ten or fewer employees such as a military recruiting office or small post office), to Level 5 (a building such as the Pentagon or CIA headquarters with a critical national security mission and a large number of employees). The destroyed Alfred Murrah Federal Building was a Level 4 building. Since the bombing, steps have been taken to limit public access and to escort visitors at a number of key locations; particular attention is being paid to parking lots and garages and a number of restrictions have been placed on street-level parking next to buildings. In addition, the DOJ report recommends that tenant Building Security Committees be established in each Federal facility. ❖

United States Attorneys' Offices

Brach Heiress's Murder

"Prove the fraud
and the murder will fall in place."

AUSA Steven Miller
Northern District of Illinois

Helen Vorhees Brach was the heiress to the Brach Candy Co. fortune when she disappeared in February 1977. Sixty-five years old and listed as the "richest woman in America," she was last seen on February 17, 1977.

After legions of local investigators tried to solve her mysterious disappearance, the investigation was terminated. No body was ever found. Brach was declared dead in 1984.

In 1989, Assistant United States Attorney Steven Miller decided to look into the Brach disappearance. The multi-agency task force that investigated the matter uncovered murders, frauds, and swindles galore in the horse-racing business in Illinois. Twenty nine people have been indicted in the investigation. Among the crimes solved were the disappearance of Helen Brach, the triple homicide of three boys in 1954, and a series of horse stable arsons in the '70s and '80s resulting in the deaths of approximately 75 horses.

In July 1993, Richard Bailey was indicted on 29 counts of conspiracy, mail and wire fraud, money laundering, and two RICO counts which charged a series of mail and wire frauds and murder. Bailey, a horse stable operator, sold horses at grossly inflated prices over the years to wealthy, divorced, or widowed women, including Brach.

Shortly before trial, Bailey entered a blind plea to most counts of the indictment, including the two RICO counts. He denied responsibility for the murder of Helen Brach, and did not plead guilty to the substantive charges relative to Helen Brach's disappearance. His gamble: that the court would not treat his actions relative to Brach as relevant conduct.

The AUSAs felt sure that they had sufficient proof that Bailey had, at the very least, solicited the murder of Brach. During sentencing hearings which began on May 22, 1995, witnesses testified that Brach knew that Bailey was defrauding her. Brach was advised to go to the authorities about Bailey, and agreed to do so. One witness testified that Bailey solicited him and another individual to murder "the Candy Lady" for $5,000, but they turned him down. She disappeared a week later.

Judge Milton Shadur ruled that the Government proved Bailey solicited Brach's murder by a preponderance of the evidence, and that the solicitation led to Brach's murder. Shadur announced he intended to sentence Bailey to life in prison. The defense objected, arguing that the sentencing guidelines did not exist in 1977, and therefore were inapplicable.

On June 15, 1995, Shadur ruled that the sentencing guidelines did apply, since the RICO conspiracy continued through 1993, and sentenced Bailey to 30 years in prison. Shadur noted that the sentence would cause Bailey, 65, to effectively serve a life sentence.

Thanks to the efforts of AUSAs Steven Miller and Ron Safer, Bailey's gamble failed. ❖

Significant Issues/Events

Appointments

District of the Virgin Islands

On August 7, 1995, James A. Hurd, Jr., Assistant United States Attorney for the District of the Virgin Islands, was court appointed to serve as the United States Attorney for the District of the Virgin Islands. ❖

AUSA Appointed as District Court Judge in Grand Rapids, Michigan

Former Western District of Michigan Assistant United States Attorney Jeanine Nemesi LaVille assumed duties as a Grand Rapids District Court judge for the Grand Rapids' State Court system on August 14, 1995. ❖

Revised Decision *United States v. Martinez*

The July 1, 1995, issue of the *Bulletin* reported a decision that was published in an article appearing in the *Daily Journal*, sent to the *Bulletin* staff by the United States Attorney's office for the Central District of California. The decision was later revised by District of California Judge Robert M. Takasugi in favor of the Government in the case of *United States v. Martinez*. In its final form, the under seal and unpublished opinion did not hold that former AUSA Steven Clymer (now a professor at Cornell Law School) acted in bad faith or with an unconstitutional motive in failing to file a Rule 35 motion on behalf of defendant Martinez. Instead, the Court simply ordered specific performance of an agreement, which the Court found existed between the Government and Martinez, that the Government would file a Rule 35 motion on Martinez's behalf. In fact, at a hearing on the matter, Judge Takasugi acknowledged former AUSA Clymer's outstanding reputation as a prosecutor.

The USAB extends congratulations and best wishes to Steven Clymer for his recent appointment as a Professor at Cornell University. Mr. Clymer was an exceptional Federal prosecutor and may be most recently remembered as one of the prosecutors in the Rodney King civil rights case against four police officers. ❖

Urgent Report Revisions to *United States Attorneys' Manual*

On July 27, 1995, Attorney General Janet Reno signed a Bluesheet concerning revisions to the *United States Attorneys' Manual*, Sections 1-10.210 through 1-10.231 which were distributed to holders of *United States Attorneys' Manual*, Title 1. The Bluesheet clarifies Urgent Report procedures and transmittal methods for communicating major developments to the Department of Justice in new or pending important cases. On July 31, 1995, EOUSA Director Carol DiBattiste forwarded a memorandum to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, Civil Chiefs, and Administrative Officers, supplementing and reiterating Urgent Report procedures. Please contact the *United States Attorneys' Bulletin* staff, (202)514-3572, if you would like a copy of this memorandum. ❖

Updated Information on Urgent Reports Including Classified National Security Information

On August 11, 1995, EOUSA Director Carol DiBattiste forwarded a memorandum to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, Civil Chiefs, and Administrative Officers outlining correct procedures to be used for sending classified national security information, and requesting that Districts file Urgent Reports regarding domestic terrorism activities outlined in Attorney General Janet Reno's memorandum of August 3, 1995. If you would like a copy of these memoranda, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Special Deputations

On July 27, 1995, EOUSA Director Carol DiBattiste announced that DOJ entered into a Memoranda of Understanding (MOU) with five of the Offices of the Inspectors General (OIGs) authorizing them to obtain status as Special Deputy U.S. Marshals for all of their investigators in all cases that they investigate. This one-year pilot project was developed based on input from representatives of the Office of the Deputy Attorney General, the Criminal Division, the United States Attorneys' offices (USAO), EOUSA, FBI, and DOJ's OIG, to test the feasibility of handling this form of special deputation through an MOU. Under the former case-by-case system, deputations could only be obtained if, among other requirements, the endorsement of the relevant USAO was obtained. Under the MOU, the OIG must consult with a Federal prosecutor at an early stage of an investigation to ensure that allegations, if proven, are prosecuted. For further information, please contact Frederick Hess, Criminal Division, (202)514-3684, or Donna Henneman, EOUSA, (202)514-4024. ❖

New Evidentiary Rules in Sexual Assault Cases

Congress issued three new evidentiary rules in sexual assault cases that went into effect on July 10, 1995, and apply to proceedings commenced on or after that date. The rules were enacted by § 320935 of the Violent Crime Control and Law Enforcement Act of 1994. A July 12, 1995, memorandum from EOUSA Director Carol DiBattiste

to United States Attorneys, Assistant United States Attorneys, and Paralegal Specialists, outlines guidance from Office of Policy Development Senior Counsel David J. Karp concerning the interpretation, validity, and application of the rules. If you would like a copy of the memorandum, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Treasury Policy Governing Notification of U.S. Attorneys' Offices Concerning Significant Intelligence Community Involvement in Criminal Matters

On July 28, 1995, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, and National Security Coordinators, a Department of Treasury memorandum describing the procedures to be followed when a Treasury enforcement agency refers a criminal matter to a U.S. Attorney's office in which an intelligence agency has provided significant assistance to law enforcement. If you would like a copy of these memoranda, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Successful Transfer of Seized Property

Creation of the Treasury Asset Forfeiture Fund under the Treasury Forfeiture Fund Act required that the property in the custody of the United States Marshals Service (USMS) that had been seized by Department of the Treasury (Treasury) agencies was to be transferred to Treasury. Combined efforts of the United States Attorneys' offices, the U.S. Marshal Service (USMS), and the Department of the Treasury Asset Forfeiture Office have resulted in the successful transfer of seized property in judicial cases throughout the country. The responsibility for 1,072 line items in the custody of the USMS had been shifted to the Department of the Treasury when the Internal Revenue Service; Bureau of Alcohol, Tobacco and Firearms; and Secret Service became members of the Treasury Asset Forfeiture Fund. Throughout the project, open channels of communication between agencies in both district offices and headquarters produced the desired result. Lynn Harris, a DynCorp employee supporting asset forfeiture programs at EOUSA, worked with USAOs to complete the project. AUSAs and staff in 55 districts obtained Orders for Substitute Custodians and/or provided documents or information to facilitate the transfer of property from USMS to Treasury. In appropriate cases, transfer was delayed or suspended for litigation considerations. Completion of the joint project has been an exercise in cooperation and coordination between the Departments of Justice and Treasury. ❖

NIJ Publishes an Evaluation Review of Boot Camp Drug Treatment and After Care Intervention

The first comprehensive study of adult boot camp drug treatment and after care intervention has been published by the National Institute of Justice (NIJ). The study supports the conclusion that boot camps seem to show promise as a cost-effective and encouraging alternative to traditional incarceration, when effective drug treatment programs are rationally integrated into a boot camp regimen, and there is a continuity of such boot camp programming from incarceration through post release after care. To receive a copy of the publication, please contact NIJ at (800)851-3420. ❖

Prevention of Sexual Harassment

On June 27, 1995, a Bluesheet requesting that each district establish a Prevention of Sexual Harassment contact person was distributed to Holders of the United States Attorneys' Manual, Title 3. If you would like a copy of this Bluesheet, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Significant Cases

Computer Fraud
Eastern District of California

On July 24, 1995, Mark E. Johnson was indicted for allegedly developing a scheme to defraud Prodigy, an online computer services provider, by creating false credit card numbers, and using names and addresses other than his own to obtain services. He is also charged with wire fraud and an unrelated sexual abuse charge. ❖

AUSA Jonathan B. Conklin

Important Decision Concerning Statues of Limitation Southern District of California

Title 18 U.S.C. 3292 allows the Government to request that the court suspend the statute of limitations when evidence is in a foreign country. The suspension ends when the foreign court or authority takes "final action." In *U.S. v. Bischel*, ___ F.3d ___, No. 94-50328 (9th Cir., Aug 4, 1995), the Ninth Circuit defined "final action" in a way very favorable to the Government, and held that the suspension begins from the date the foreign evidence is requested, even though that precedes the date of the court order. ❖

AUSA Stephen Peterson

District Court Enjoins Native American Group from Class III Gaming Southern District of California

Class III gaming (including slot machines) is not permitted under the Indian Gaming Regulatory Act, 25 U.S.C. 2701 et. seq., unless a tribe has negotiated a state-tribal compact with the Government of the State in which the tribe is located. Whether the State has to enter into such negotiations is an issue waiting resolution by the appellate court. In June 1994, United States Attorney Alan Bersin entered into a "standstill" agreement with three local Native American tribes, providing that the Government would not challenge currently existing slot machines on reservations in the District, but would not allow any new machines unless the appellate cases were resolved in favor of allowing them. In April 1995, the Rincon Band of Mission Indians announced plans to open a casino with slot machines. After a series of hearings in August, the district court granted the Government's motion for a preliminary injunction barring the Band from engaging in Class III gaming. ❖

AUSA Robert Plaxico
AUSA John Scherling
AUSA Paul Cook

Conviction for Money Laundering District of Connecticut

On July 17, 1995, the president of an automobile dealership, the dealership itself, a sales manager, and a salesman were convicted of conspiracy, money laundering, and failure to file cash reporting forms, after selling dozens of luxury cars to drug dealers who paid in cash, substituting checks for the cash, and recording the transactions as "check" transactions in the company's records. ❖

AUSA John A. Danaher III
AUSA David Ring

Ku Klux Klan Members' Convictions and Sentences Affirmed District of Connecticut

On July 25, 1995, the U.S. Court of Appeals for the Second Circuit unanimously affirmed the conviction and sentence of William E. Dodge, former Grand Dragon of the Ku Klux Klan in charge of Connecticut, Massachusetts, and Rhode Island, and the conviction of Klan member Edmund S. Borkoski. Dodge pled guilty to possessing an unregistered pipe bomb and was sentenced to 63 months, and Borkoski was convicted of conspiracy to possess an unregistered silencer and was sentenced to 54 months. On appeal, both defendants challenged the constitutionality of their convictions under the National Firearms Act. Three other Klan members involved in the case were convicted on Federal firearms charges. ❖

Deputy USA John H. Durham
AUSA Anthony E. Kaplan

Two Allegedly Attempt to Transfer M57 Bonds Middle District of Florida

On July 13, 1995, Francis Cheung, Hong Kong businessman, and Ian Yorkshire, a resident from England, were indicted for allegedly attempting to transfer eight fraudulent Japanese Series M57 bonds purportedly worth $50 billion U.S. dollars to Federally insured banks in the U.S. ❖

AUSA Gary Montilla

Former Assistant United States Attorney Pleads Guilty to Conspiracy to Obstruct Justice and Money Laundering Southern District of Florida

On July 3, 1995, Donald L. Ferguson pled guilty to charges of conspiracy to obstruct justice and launder money for the Cali Drug Cartel. In exchange for his plea of guilty, he has agreed to plead guilty to a superseding information charging that he obstructed justice and laundered money. ❖

AUSA William Pearson
AUSA Edward Ryan
AUSA Lisa Hirsch

International Fugitive Guilty of Bribery
Northern District of Georgia

On July 31, 1995, Suleiman A. Nassar of Geneva, Switzerland, pled guilty to violating the bribery portion of the Foreign Corrupt Practices Act while he was Vice President of International Marketing for the Middle East at Lockheed. Nassar facilitated illegal payments to a member of the Egyptian Parliament, so that Lockheed would get a $79 million contract for C-130 planes. The company paid a $24.8 million fine. ❖

AUSA Martin Weinstein
AUSA Nicolette Templer

Grand Jury Returns Superseding Indictment for Criminal Tax Violations
Northern District of Georgia

On July 17, 1995, a Federal Grand Jury returned a superseding indictment against William G. Mosher, a city of Atlanta police officer; Judy Ann Mosher, his wife; and Ruth Pittman. The indictment adds two counts to the original indictment charging the Moshers with criminal tax violations. On May 18, 1995, the three defendants were indicted on alleged food stamp fraud and conspiracy to engage in money laundering. ❖

AUSA William L. McKinnon, Jr.

Guilty Plea for Health Care Fraud
Southern District of Georgia

On July 26, 1995, Jeanette G. Garrison, founder, CEO, and major stockholder of Healthmaster, Inc., the largest home health care agency in Georgia, pled guilty to 10 counts of an indictment charging conspiracy to defraud the U.S. and false statements in connection with the Medicare and Medicaid programs. She will pay $10,000,000 in restitution to the Federal Medicare program and $1,500,000 to Medicaid; will divest herself of all interest in Healthmaster Home Health Care, Inc.; and is barred from participation in Medicare-related business for 10 years. ❖

AUSA Richard Goolsby
AUSA Fred Kramer
SAUSA Harrison Kohler

Ex-Deputy Police Chief Sentenced for Corruption
Northern District of Illinois

On July 5, 1995, Sam Mangialardi, ex-deputy police chief of Chicago Heights, was sentenced to 10 years and 5 months imprisonment; fined $10,000; and ordered to pay $10,000 restitution on 13 counts of corruption, including racketeering, extortion, and allowing a drug ring to flourish. Mangialardi was paid $10,000 a month for several years in the 1980s by a drug kingpin to keep police from interfering with a cocaine-trafficking operation. Mangialardi was named 1993 Law Enforcement Officer of the Year by the American Police Hall of Fame. ❖

AUSA John Gallo

Ex-School Board President Guilty of Tax Evasion
Northern District of Illinois

On July 6, 1995, D. Sharon Daggett-Grant pled guilty to tax evasion for 1993 when she failed to file a Federal income tax return, despite having an income of $452,695 and owing $169,868 in taxes. Grant admitted as relevant conduct that she had not filed an income tax return since 1977. Between 1988 and 1993, her income exceeded $1 million. Grant resigned as president of the Chicago Board of Education after she was charged. ❖

AUSA James M. Conway

Gang Gun Supplier Sentenced
Northern District of Illinois

On July 18, James J. Bush, a former federally licensed firearms dealer, was sentenced to 57 months imprisonment and fined $2,000 for conspiring to illegally sell and deliver handguns to gang members in Chicago. Bush was arrested after illegally selling 62 handguns to an undercover ATF agent. More than half the guns were linked to crimes committed by gang members. ❖ *AUSA John Newman*

"Operation Goldenjet" Key Figure Sentenced
Northern District of Illinois

On June 16, 1995, Luis Carlos Herrera-Lizcano, a Colombian national who operated a fleet of cargo aircraft that functioned as the "air wing" of the Colombian cartels, was sentenced to eight years in prison for narcotics importation conspiracy. ❖ *AUSA Sean Martin*

Sentence for Threatening the President
Northern District of Illinois

On June 14, 1995, John S. Jackubowski was sentenced to four years in prison for threatening the life of President Clinton and selling two silencers to an undercover agent. ❖

AUSA Jonathan Bunge

Sentence for Conspiring to Bribe INS Official Northern District of Illinois

Ambalal Patel was sentenced on May 31, 1995, to a year in prison and fined $1,000 for conspiring to bribe an INS official for phony work authorization cards after he and two family members conspired to pay $36,000 for 12 cards. ❖ *AUSA Madeleine Murphy*

"Bugged" Drug Ring Leader Sentenced Northern District of Illinois

On July 19, 1995, Mukglis Toma was sentenced to 30 years imprisonment for directing a conspiracy to possess and distribute 1,000 kilograms of cocaine and marijuana in Chicago. FBI and DEA agents successfully planted a bugged cellular telephone with Toma, a resident alien from Iraq and the operation's ringleader. He and seven codefendants were convicted in April and the jury later ordered forfeiture of two houses, four cars, and $200,000. Eight other codefendants pled guilty. ❖ *AUSA Ronald May*
AUSA Patrick Layng
AUSA Jonathan King

Members of "Street Crew" Indicted Northern District of Illinois

On July 28, 1995, Frank J. Calabrese, Sr., and eight other members of the Chicago Outfit's "Calabrese Street Crew" were indicted for racketeering, conspiracy, extortion, mail fraud, witness tampering, and impeding the IRS. These defendants are charged with operating an extensive loansharking racket between 1978 and 1992 in which victims paid up to 10 percent interest per week on "juice loans." ❖ *AUSA Rocco deGrasse*
AUSA John Scully

Womack Brothers Sentenced on Drug and Money Laundering Charges Southern District of Illinois

On July 13, 1995, Darryl and Edward Womack were sentenced to 360 months and 264 months incarceration, respectively, and each fined $3000, for their roles in a crack cocaine distribution and money laundering conspiracy. Real and personal property was also forfeited, including two residences that will become part of a Habitat for Humanity project. ❖ *AUSA Randy G. Massey*

Armed Career Criminal Sentenced Southern District of Indiana

On July 20, 1995, Derrick Smoote was sentenced to 17 years in prison as an armed career criminal. He was sought on state warrants for cocaine trafficking and also faces armed bank robbery charges in Ohio and murder charges in Indiana. ❖ *AUSA Timothy M. Morrison*

Indictment for Mail and Securities Fraud and Money Laundering Charges Western District of Kentucky

On July 12, 1995, David and Martha Crowe, and Gold Unlimited, Inc., were charged in an indictment with mail fraud, securities fraud, money laundering, and conspiracy. The indictment charges that the defendants operated a pyramid scheme which paid commissions to earlier investors, not from profits from company sales but from fees from new investors, and failed to disclose to investors that they previously operated an identical scheme in North Carolina which collapsed in 1991; that the scheme violated Kentucky law; and that Cease and Desist Orders were entered against Gold Unlimited, or its predecessors in Minnesota, South Dakota, North Dakota, Massachusetts, and Montana. ❖ *AUSA James R. Lesolusky*
AUSA Stephen G. Frye
AUSA J. Kent Wicker
AUSA Catherine R. Meng

Battered Woman Defense District of Maine

On July 27, 1995, Michele Marenghi was charged with conspiracy and possession with intent to distribute crack cocaine. At the trial, Marenghi claimed she suffered years of abuse from her boyfriend which made her unable to refuse when he asked her to carry and sell drugs. Expert witnesses testified on the issue of the battered woman syndrome. The jury nevertheless found her guilty of the charges. ❖ *AUSA Helene Kazanjian*

Indictment for Conspiracy/Wire and TV Fraud District of Maryland

On August 15, 1995, Frank Lussier, Michael Downing, John Dinos, and William Downing, a/k/a Radio, were indicted on charges of conspiracy and wire and television fraud by allegedly using different means to manipulate the betting odds on horse races. ❖
AUSAs Joyce McDonald
AUSA Rob Harding

Conrail Pleds Guilty to Polluting Charles River District of Massachusetts

On August 2, 1995, the Consolidated Rail Corporation (Conrail) pled guilty to violations of the Clean Water Act and the Oil Pollution Act. They discharged oil and grease into the Charles River from the Beacon Park Rail Yard. ❖

AUSA Jonathan L. Kotlier
Richard Udell, Environment and Natural Resources Division, (202)272-4456

Sentencing for Bank Fraud District of Massachusetts

On August 8, 1995, Patricia C. Harrison of Philadelphia, Pennsylvania, and formerly of Osterville, Massachusetts, and Hollywood, Florida, was sentenced to two years of incarceration and to pay $3,850 in special assessments and $10,998,072.67 in restitution to Recoll Management Corporation, as the successor to the Bank of New England. Harrison had pled guilty to 77 counts of bank fraud. From 1985 through 1989, Harrison and her husband, Stephen Harrison, obtained $10 million and $28 million loans from banks for the development of a luxury residential community in Massachusetts. ❖

AUSA Carolyn Stafford Stein
AUSA Peter A. Mullin

Sentence for Illegally Distributing Prescription Drug Controlled Substances Eastern District of Michigan

On July 11, 1995, Dr. Glen Andrews, a physician who treated drug addicts, was sentenced to 37 months in prison for illegally distributing prescription drug controlled substances between June and November 1994. ❖

AUSA Wayne F. Pratt

Asset Forfeiture Eastern District of Michigan

On July 13, 1995, the Sixth Circuit Court of Appeals joined the Ninth Circuit in holding that a civil forfeiture action constitutes punishment for the purposes of the Double Jeopardy Clause. In *United States v. Ursery*, the court vacated the felony conviction of a defendant for manufacturing marijuana because he previously forfeited his house by consent decree. The Solicitor General has decided to petition for certiorari. ❖

AUSA Marlene Juhasz

Real Estate Syndicator Convicted for Masterminding Scheme to Defraud IRS and Investors District of Minnesota

Gary Lefkowitz was convicted on July 21, 1995, for masterminding a scheme to defraud the IRS and 7,000 investors in low-income housing projects. Among other things, he was convicted under 18 U.S.C. 225, the rarely used "financial kingpin" statute, for orchestrating a financial crimes enterprise. ❖

AUSA Andrew M. Luger
AUSA Beth L. Golden

Gang Members Sentenced for Armed Robbery District of Nevada

On July 14, 1995, two Los Angeles gang members were sentenced to 30 years for an armed takeover bank robbery in Las Vegas. Following the conviction of four defendants, the District Court ordered a new trial based on nondisclosure by a juror of his previous experience as a robbery victim. The Government appealed that order, and the Ninth Circuit reversed and remanded for sentencing. The Court departed upward on several grounds—multiple injured victims, multiple restrained victims, multiple firearms, extreme conduct, and extreme psychological injury—and imposed the maximum statutory punishment for armed bank robbery and use of firearms during and in relation to a violent crime. Two codefendants await sentencing. ❖

AUSA Thomas M. O'Connell
AUSA Daniel R. Schiess

Motor Fuel Excise Tax Indictment District of New Jersey

On August 3, 1995, in the biggest criminal motor fuel excise tax indictment in U.S. history, 25 persons, including 15 Russian immigrants, were charged with roles in a massive scheme that allegedly defrauded the Federal Government and New Jersey of more than $140 million in tax revenues on approximately one half-billion dollars of

motor fuel. The indictment follows the earlier successful prosection of 15 persons in "Operation Red Daisy." ❖

AUSA Robert G. Stahl
Thomas P. Ott, Tax Division, (202)514-5172
Stephen Ponticiello, Tax Division, (202)514-2475

Sentence for Fraud District of New Jersey

On July 14, 1995, Bobby Joe Keesee, a/k/a James M. Murphy, was sentenced to 57 months incarceration for causing a New Jersey company to deliver a $500,000 aircraft to him in Mexico, by falsely stating that he was stationed at the American Embassy in Mexico City and associated with the U.S. State Department and the CIA. He pled guilty to the charges and to an indictment in the District of Columbia which charged him with using fraudulent identification documents to obtain U.S. passports in various names in Europe in 1993 following his theft of the aircraft. ❖ *AUSA Alain Leibman*

Long Island Attorney Indicted on Racketeering and Other Charges Eastern District of New York

On July 20, 1995, Long Island attorney Dennis J. Pappas was arrested on a 19-count indictment charging him with racketeering and other crimes stemming from his alleged operation of a conglomerate of financial service, insurance, real estate, investment, and legal service firms for the benefit of the Colombo Crime Family of La Cosa Nostra. Pappas and his wife are also charged with income tax evasion. Pappas is charged with allegedly orchestrating multiple extortions, mail frauds, insurance frauds, pension fund frauds, embezzlements, and bank frauds over a 20-year period. Organized crime members and associates allegedly used Pappas' companies and law office as a safe haven where they met and planned illegal activities, to provide legal cover and documentation for loansharking activities, for access to pension fund monies, for "no show" jobs, to fraudulently obtain health and life insurance, as a conduit to launder illegally obtained funds, to falsely document income for tax purposes, and otherwise act as their front in areas of traditional white collar crime. ❖

AUSA Burton Ryan

Ten Indicted for Participation in Racketeering Enterprise Southern District of New York

On July 20, 1995, 10 defendants were charged in an 86-count indictment for their alleged participation in a racketeering enterprise, the 142nd Street Lynchmob, which is charged with 15 murders, armed robberies, and the distribution of cocaine and crack in New York, Delaware, Maryland, Virginia, North Carolina, Alabama, and Louisiana. ❖ *AUSA Robert W. Ray*

Guilty Plea for Conspiracy to Manufacture Illegal Wiretapping and Bugging Equipment Southern District of New York

On July 12, 1995, an executive with Micro Electronics Ind. Company (Micro) of Tokyo, Japan, pled guilty to conspiring to manufacture illegal wiretapping and bugging equipment, and to smuggle and sell the equipment in the U.S. He admitted that he and others conspired to smuggle the devices from Japan into the U.S., and to falsely describe and undervalue the devices on invoices submitted to the U.S. Customs Service. Brian Dunne, a retired NYC Police Department detective, and Anthony Palma, a retired NYC Police Department officer, also pled guilty to possession and sale of illegal wiretapping and bugging devices. Both Dunne and Palma are licensed private investigators affiliated with The Spy Store in Manhattan. ❖

AUSA Daniel J. Fetterman
AUSA Thomas C. Rubin

Charge for Filing Fraudulent Applications for Political Asylum with INS Southern District of New York

On July 13, 1995, Paul I. Freedman, an immigration attorney until his disbarment earlier this year, was arrested for running a law firm that routinely filed fraudulent applications for political asylum with INS. Freedman allegedly held "dictation sessions" in his office, during which he dictated fictional accounts of political persecution that were typed on pre-signed applications and then filed them with INS. ❖ *AUSA Jeffrey M. Zimmerman*

Medicaid Fraud Indictment
Southern District of New York

Dr. Remedios Dulalas was indicted on 28 counts on August 4, 1995, in connection with an alleged scheme to defraud Medicaid of over $2,250,000. The indictment charges that Medicaid-eligible individuals posing as patients (mock patients) flooded the Medicaid Clinics daily, seeking prescriptions for expensive medications they could obtain at Medicaid's expense, and then sold them on the street. Currently, Dulalas is a fugitive. ❖

AUSA Robin E. Abrams

Alleged World Trade Center Bomber Apprehended in Jordan
Southern District of New York

Eyad Ismoil was apprehended in Jordan and brought to New York on August 2, 1995, to face charges of his alleged participation in the February 26, 1993, bombing of the World Trade Center that killed six people, injured over a thousand people, and caused hundreds of millions of dollars in property damage. He fled the U.S. on the night of the 1993 bombing, and on September 12, 1994, was named as a defendant in a 10-count indictment relating to the World Trade Center bombing. Ismoil is expected to face trial on the indictment with Ramzi Yousef, who was extradited earlier this year from Pakistan. Abdul Rahman Yasin, also named in the indictment, remains a fugitive. ❖

AUSA Gilmore Childers
AUSA Dietrich Snell
AUSA Michael Garcia
AUSA Lev Dassin

Attorneys Pled Guilty to Tax Conspiracy
Northern District of Ohio

On July 25, 1995, attorneys David Brown and Robert Depiano pled guilty to charges of tax conspiracy. Five lawyers have been convicted of felony tax charges for assisting former porn czar, Reuben Sturman, to obstruct the IRS in its efforts to collect over $28 million in back taxes. Horatio Alfaro, the Assistant Attorney General of Panama at the time of his December 1994 arrest, was indicted but allowed to return to Panama after the Court determined that he was unable to stand trial because he was suffering from advanced stages of an illness. ❖

AUSA Craig S. Morford
AUSA James R. Wooley

Food Stamp Trafficking and Money Laundering Conviction
Northern District of Ohio

On June 14, 1995, Mohammad Hmeidan, Ronald Bennett, and Max Food, Inc., were convicted of conspiracy to traffick $2.5 million in food stamps and of money laundering. The conspirators bought large amounts of food stamps at grocery stores for discounted sums of cash. ❖

AUSA Gregory C. Sasse

Businessmen Charged for Expensive Loans for Risky Development Deals in 1980s
Southern District of Ohio

On July 13, 1995, seven businessmen, including four attorneys, were charged with 49 counts alleging that they illegally obtained $28.6 million in loans to finance risky development deals in the 1980s. Attorneys Keith Brunner, William Seall, David Bart, and Arthur Millonig; accountant David Shafer; real estate manager Richard D. Tipton; and former bank officer John Brauer allegedly lied to banks, investors, and the RTC about their finances, paid kickbacks to bank officials, used straw borrowers, and overvalued assets pledged as collateral on loans. ❖

AUSA John DiPuccio

Sentences for Public Corruption
Western District of Oklahoma

On July 24, 1995, ex-chief trader Patricia Whitehead and former Deputy Treasurer William Pretty were sentenced on various charges, including bribery and money laundering. Whitehead was sentenced to nine years and Pretty was sentenced to eight years incarceration for their roles in a $6.7 million kickback and bribery scheme funded by Oklahoma tax funds. Both defendants received enhanced sentences because they perjured themselves at the trial. Whitehead steered over $1.6 billion in state investments to San Diego securities broker Patrick Kuhse, who remains a fugitive. ❖

AUSA Vicki Behenna
AUSA Lee Schmidt
AUSA Mary Smith

Life Sentence for Drug Conspiracy
Middle District of Tennessee

On July 24, 1995, Herman Orange Wilson was sentenced to life in prison in an aggravated drug conspiracy

case. Wilson and other co-conspirators selected Nashville as their southeastern cocaine market and distribution outlet after doing market research similar to MBA graduates. The sophisticated organization shipped kilogram quantities of cocaine from Belize, South America, to the U.S., secreted within hermetically sealed cans identical in size and shape to coffee cans, and sealed with "party" labels to further conceal their contents. Numerous shipments evaded the detection of drug dogs. The Nashville, Tennessee, base of this organization has been eliminated, although other unknown co-conspirators are believed to be operating from Los Angeles, California. ❖ *AUSA Robert C. Anderson*

Public Corruption Conviction Western District of Tennessee

Lauderdale County Commissioner Wesley Jennings was convicted of conspiracy and extortion on July 10, 1995. Two other County Commissioners, Gus Hargett and Carmon Garrison, pled guilty to extortion charges prior to trial. Carroll participated in a plot to extort money from a man awaiting county commission approval to build a landfill and recycling center. An incriminating videotape of the exchange of money was arranged after the man contacted the Tennessee Bureau of Investigation. ❖

AUSA Fred Godwin

Life Sentences for Brothers for Murder and Robbery Western District of Tennessee

On July 17, 1995, Jerry and Robert Bruce were sentenced to life in prison plus 10 years for their roles in a robbery and double murder, and the three-year coverup and intimidation of witnesses. Their mother, Mary Bruce Ryion, was sentenced to 97 months in prison for obstructing justice and perjury, and another defendant, William Riales, was sentenced to life plus 10 years for his participation. Charles Bruce was also indicted but escaped from prison and remains at large. ❖ *AUSA Stephen Parker*
AUSA Jennifer Webber

Trade Embargo Violation Southern District of Texas

On July 14, 1995, Halliburton Company pled guilty and agreed to pay $1.2 million in criminal fines to DOJ and $2.6 million in civil penalties to the Department of Commerce to settle parallel administrative charges arising from the unauthorized shipments of six pulse neutron generators through Italy to Libya. ❖ *AUSA Richard Berry*

Businessman Sentenced for Environmental Violations Southern District of Texas

On July 24, 1995, Attique Ahmad was sentenced to 21 months imprisonment and ordered to pay $27,487 to the city of Conroe for violating the Clean Water Act by illegally dumping thousands of gallons of gasoline into the city's sewage system. ❖ *AUSA Mike Shelby*
AUSA Claude Hippard

Public Corruption Southern District of Texas

On July 14, 1995, Hidalgo County Judge J. Edgar Ruiz and two members of the Hidalgo County Commissioners Court were among eight current and former officials charged with racketeering, mail fraud, bribery, extortion, and money laundering in a purchasing scandal. The indictment alleges that the officials conspired with former county purchasing agent Ramiro Gonzalez to use their positions to rig bids and award contracts in exchange for kickbacks. ❖ *AUSA Greg Survoic*

Public Corruption Western District of Texas

On July 19, 1995, Maverick County Sheriff's office Chief Deputy, Maverick County Jail Administrator, and others were charged in a superseding indictment with drug charges, conspiracy to commit theft from a program receiving Federal funds, and other charges. They allegedly conspired to distribute drugs that previously had been seized by law enforcement, and offered to provide security for drug shipments. ❖ *AUSA Charlie Strauss*

Narcotics Distributor Sentenced to Life Eastern District of Virginia

On July 31, 1995, Elan Lewis, a violent narcotics distributor in Virginia; Washington, D.C.; and Maryland, was sentenced to life in prison plus five years on drug, firearms, and money laundering charges. Lewis had

ordered the execution of an important witness in the case in 1992, but the person miraculously survived. ❖

AUSA David T. Maguire

Charges for Illegal Prostitution Business Eastern District of Wisconsin

Hanafi Monem, Karla Monem, Rashell Stahl, Edward Stahl, and John Hephner were indicted on July 17, 1995, for allegedly participating in a nationwide conspiracy to operate an illegal prostitution business, using interstate facilities to promote the prostitution business, and money laundering. The defendants operated an "escort service" which engaged in prostitution in at least 26 cities and 12 states. ❖ *AUSA Matt Jacobs*

Sentence for Assault/Firearms Conviction District of Wyoming

On July 7, 1995, Darrell Lee Montoya was sentenced to 171 years in prison for aggravated assault of Federal and local law enforcement officers, and five counts of injury to Government property. Montoya fired numerous shots at a police department building and at several law enforcement officers who pursued him on a high-speed chase. The sentence included a mandatory consecutive sentence of 165 years because he used a firearm during a crime of violence. ❖ *AUSA Christopher A. Crofts*

Executive Office for United States Attorneys

EOUSA Staff Update

Sandra Bower, an Assistant United States Attorney from the Middle District of Florida, has recently joined the Office of Legal Counsel and will be focusing on personnel actions and recusals, and working with the Attorney General's Advisory Committee Subcommittee on Civil Rights.

Jimmie Lynn Ramsaur, an Assistant United States Attorney from the Middle District of Tennessee, has recently joined the Evaluation and Review Staff (EARS) for a one-year detail. Jimmie has been with the Middle District of Tennessee office since 1987 prosecuting mainly white collar fraud cases, and has served as an evaluator with EARS for approximately five years. ❖

Case Management Update

Reminder of Deadlines of September 30, 1995, for Case Management System, and October 15, 1995, for USA-5 for FY 1995

On July 31, 1995, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys, First Assistant United States Attorneys, Civil Chiefs, Criminal Chiefs, and Administrative Officers outlining requirements for submitting accurate 1995 case management data to EOUSA's Case Management Staff. The data is used to demonstrate United States Attorney workload for current and prior years, as well as the impact of new legislation, new or reduced resources, initiatives, or trends in litigation. With data entered by personnel in your office, the information produced enables EOUSA to accurately demonstrate your workload.

The deadline for entering information into local case management systems (PROMIS, USACTS-II, TALON, or PC-USACTS) and receiving credit in Fiscal Year 1995 is September 30, 1995. You will receive credit in Fiscal Year 1996 for information entered after September 30. This is necessary so that the Annual Statistical Report and any report requests for "eternity" can be produced from the Fiscal Year 1995 master file. In addition to ensuring that all cases and matters have been entered, please ensure that the information that is reported is accurate. For criminal cases, the following information, which is used as the criteria for numerous reports, is especially important:

- Program Category
- Investigative Agency
- Charges, including subsections
- Dispositions and Disposition Reasons

It is also important that civil and debt collection information be reviewed for accuracy. The following information is especially important because it is used as the criteria for reports:

- Civil Cause of Action
- Agency
- Disposition
- Amount of relief requested and granted (Civil)
- Designation (Civil)
- Debt balances (Collections)
- Collection type (Collections)

Please ensure that the Criminal Debt Suspense policy has been fully implemented.

The deadline for submitting your district's USA-5 and USA-5A reports is October 15, 1995. Please review the USA-5s that have been submitted during the past year and, if necessary, submit corrections to the Case Management Staff. For further information, please contact Eileen Menton, Assistant Director, Case Management Staff, AEX02(EMENTON), (202)616-6918. ❖

Reporting Life and Death Sentence Cases

It is important to report defendants receiving life and death sentences through EOUSA's case management systems. When a defendant is sentenced to death or to life in prison, the case management sentencing data should contain that information. There is a priority for sentencing information if only one sentence record is entered (TALON districts/optional for PROMIS/USACTS-II districts). If the defendant receives a sentence with multiple remedies, e.g., LIFE on one count, DEATH on another, plus 25 years in prison, the correct docketing priority is DEATH, then LIFE, then the actual incarceration time. Please follow the procedures in your users' manual for entering this information, and ensure that all employees involved in reporting sentencing information are aware of the procedures. If you have any questions, please contact Sharon Hopson (PROMIS/USACTS-II) at AEX11(SHOPSON), or Patti Ostrowski (TALON/PCUSACTS) at AEX11(POSTROWS); both can be reached on (202)616-6919. ❖

Revised Tax Check Waiver Form

Effective immediately, the Office of Attorney Personnel Management (OAPM) has requested that **Appendix A,** revised "Tax Check Waiver" form, be used with all Assistant United States Attorney (AUSA) and Special Assistant United States Attorney (SAUSA) applications. Additionally, the Security and Emergency Planning Staff (SEPS), Justice Management Division, has requested that the form be used to initiate tax checks of individuals undergoing reinvestigation. Please note that the Internal Revenue Service (IRS) requires that the form be signed and dated using the same color ink or pen and that they receive the form within 60 days of the date signed. To ensure that the IRS releases information to the correct office, place a "✓" or an "x" next to:

- Linda Cinciotta, Director, OAPM, for AUSA applications;
- Carol DiBattiste, Director, EOUSA, for SAUSA applications; and
- D. Jerry Rubino, Director, SEPS, for individuals undergoing reinvestigation. ❖

Freedom of Information Act/Privacy Act

A reminder from the Freedom of Information Act/Privacy Act (FOIA/PA) Unit: we are here to help you. Several Assistant United States Attorneys (AUSAs) have recently expressed concern that their Prosecution Memos or Litigation Memos will be turned over to persons making FOIA requests. We are now having to turn over more documents and in recent months we have been forced to disclose some memos. However, we do not release such documents without first checking with the AUSA. If we can show that harm will result from the release of any document, we do not have to disclose it and we will not. We need AUSAs to tell us if releasing a document would cause harm. Please regularly purge files of materials which are duplicates and not essential to litigation. For further information, call Assistant Director Brick Brewer, EOUSA's FOIA office, (202)616-6757. ❖

Office of Legal Education

OLE Publication Corner

The OLE Publications Branch has just released a USABook version of the Federal Judicial Center's 1995 edition of Guideline Sentencing. It is available through the EOUSA Bulletin Board. At the First Assistant's Conference in August, they were given a copy of the latest USABook disk to install and distribute in each district. Publications included on the disk are: Guideline Sentencing, Draft Indictment Form Book, Federal Firearms Offenses, Health Care Fraud Sample Pleadings, and Capital Litigation in the Federal Courts. WordPerfect versions of these books are available through the EOUSA Bulletin Board. To have USABook installed on your computers, consult your systems manager. Three districts have installed USABook and made the program accessible from the Eagle menu.

The First Assistants were also given copies of the proposed tables of contents for upcoming books on Violent Crime, Federal Practice, and Federal Evidence. We are soliciting authors as well as input from the field on the proposed organization of the books. Anyone desirous of writing for publication, please contact David Nissman, (202)616-5210 or AEX02(DNISSMAN). ❖

Transcript Presentation Manager

EOUSA's Office Automation Staff regrets that the Transcript Presentation Manager application has been delayed pending availability of the user's manual. ❖

Office of Legal Education Projected Courses

Tom Majors, Director, OLE, is pleased to announce projected course offerings for the months of September 1995 through January 1996 for the Attorney General's Advocacy Institute (AGAI) and the Legal Education Institute (LEI). Lists of these courses are on pages 313 and 314.

AGAI

AGAI provides legal education programs to Assistant United States Attorneys (AUSAs) and attorneys assigned to Department of Justice (DOJ) divisions. The courses listed are tentative; however, OLE sends Email announcements to all United States Attorneys' offices (USAOs) and DOJ divisions approximately eight weeks prior to the courses.

LEI

LEI provides legal education programs to all Executive Branch attorneys, paralegals, and support personnel. LEI also offers courses designed specifically for paralegal and support personnel from USAOs (indicated by an *). OLE funds all costs for paralegals and support staff personnel from USAOs who attend LEI courses. Approximately eight weeks prior to each course, OLE sends Email announcements to all USAOs and DOJ divisions requesting nominations for each course. Nominations are to be returned to OLE via FAX, and then student selections are made.

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via mailings to Federal departments, agencies, and USAOs every four months. Nomination forms are available in your Administrative Office or attached as **Appendix B.** They must be received by OLE at least 30 days prior to the commencement of each course. Notice of acceptance or non-selection will be mailed to the address typed in the address box on the nomination form approximately three weeks before the course begins. **Please note that 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 *).** ❖

Office of Legal Education Contact Information

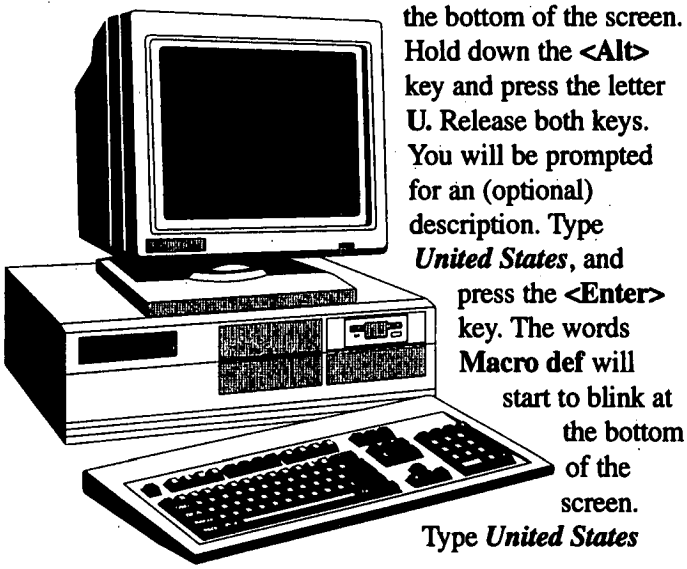
Address: Bicentennial Building, Room 7600
600 E Street, N.W.
Washington, D.C. 20530

Telephone: (202) 616-6700
FAX: (202) 616-7487

Director	Tom Majors, AUSA, WDOK
Deputy Director	David W. Downs
Assistant Director (AGAI-Criminal)	Dixie Morrow, AUSA, MDGA
Assistant Director (AGAI-Criminal)	Mary Jude Darrow, AUSA, EDLA
Assistant Director (AGAI-Civil and Appellate)	Eileen Gleason, AUSA, EDLA
Assistant Director (AGAI-Asset Forfeiture and Financial Litigation)	Kathy Stark, AUSA, SDFL
Assistant Director (LEI)	Donna Preston
Assistant Director (LEI)	Eileen Gleason, AUSA, EDLA
Assistant Director (LEI)	Mary Jude Darrow, AUSA, EDLA
Assistant Director (LEI-Paralegal and Support)	Donna Kennedy

WordPerfect 5.1 Tips
"ALT Key" Macros

WordPerfect has built in "macro" capabilities that allow users to store a number of key strokes or operations into one key stroke. The simplest WordPerfect macros are "alt key" macros. Here's one that you will use every day. First, turn on the macro recorder by pressing **<Ctrl><F10>**. The words **Define macro:** will appear at the bottom of the screen. Hold down the **<Alt>** key and press the letter **U**. Release both keys. You will be prompted for an (optional) description. Type ***United States***, and press the **<Enter>** key. The words **Macro def** will start to blink at the bottom of the screen. Type ***United States*** again, and then press **<Ctrl><F10>**. You have successfully created a macro that will type out the words ***United States*** every time you press <Alt>U.



You can create a macro for every letter key. For example, **<Alt>A** could be a macro for ***Assistant United States Attorney***, and so on through the alphabet.

All kinds of keystrokes can be used in macros. For example, you can turn **<Alt>I** into an italics key that works in the same fashion as the bold and underline function keys. Start recording the macro with **<Ctrl><F10>**, and then press **<Alt>I**. After giving it a description, type **<Ctrl><F8>**, **2**, and **4**. Then save the macro with **<Ctrl><F10>**. You can then use **<Alt>I** to start or end italics, or to turn a marked block into italics.

You should feel free to experiment with macros. It's easy to change or replace them. As long as you stick to words or tasks that you perform regularly, they will be easy to remember, and a great time saver.

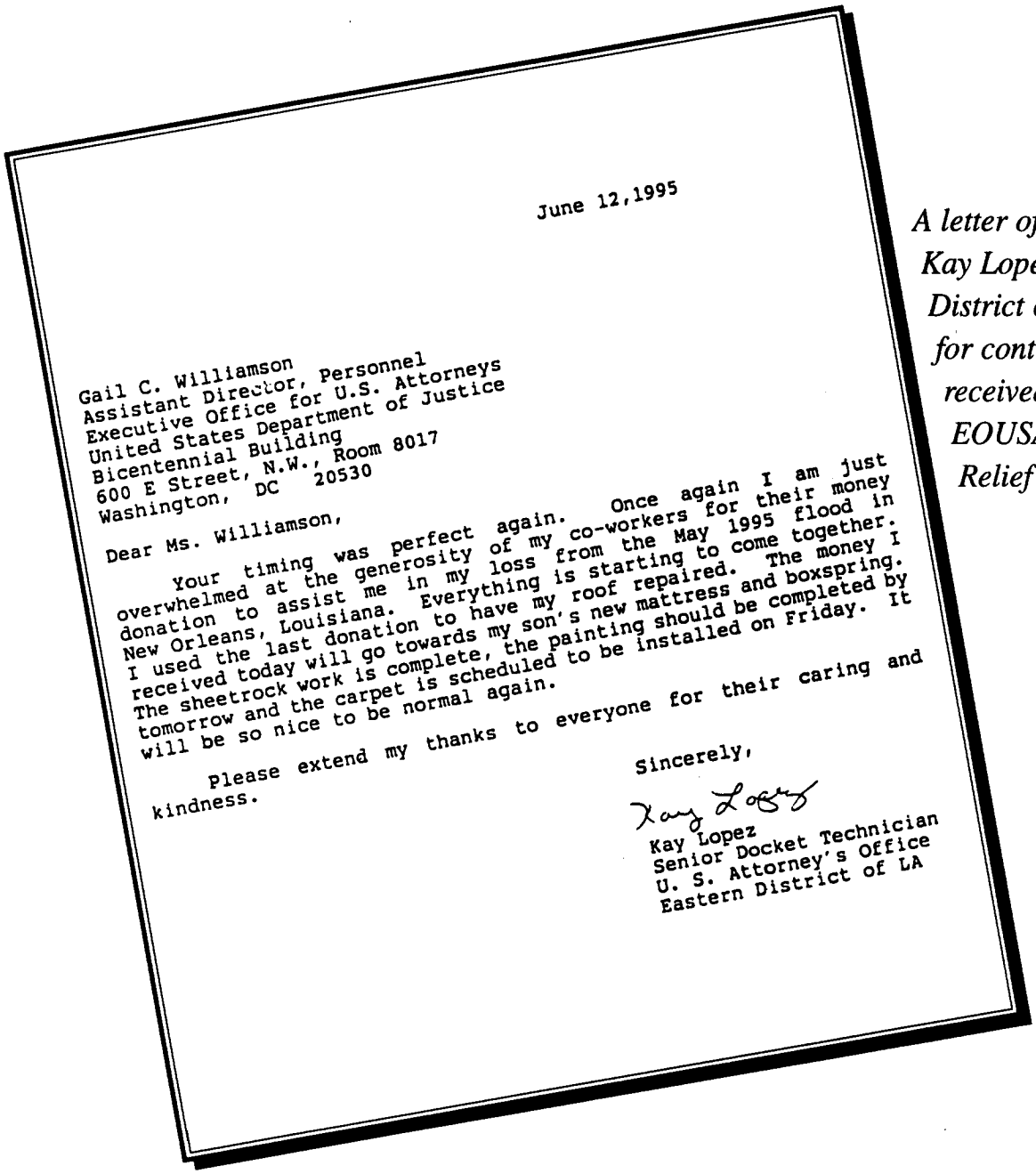
WordPerfect's macro language is a complete programming language that can be used to write complex and powerful routines for automating document production. "Alt key" macros are just a small part of WordPerfect's macro capabilities. We'll explore more of them in future columns. ❖

AGAI COURSES

Date	Course	Participants
	September 1995	
6-8	Civil Rights	AUSAs, DOJ Attorneys
7-8	ARPA - Asset Forfeiture	AUSAs, DOJ Attorneys
11-19	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
12-15	Civil Federal Practice	AUSAs, DOJ Attorneys
26-29	Basic Asset Forfeiture	AUSAs, DOJ Attorneys
	October	
16-27	Civil Trial Advocacy	AUSAs, DOJ Attorneys
17-19	Basic Money Laundering	AUSAs, DOJ Attorneys
17-20	Immigration Litigation	AUSAs, DOJ Attorneys
30-11/3	Criminal Federal Practice	AUSAs, DOJ Attorneys
30-11/3	Asset Forfeiture Advocacy	AUSAs, DOJ Attorneys
31-11/3	Employment Discrimination	AUSAs, DOJ Attorneys
	November	
6-9	Second Annual Conference for Professional Responsibility Officers	Professional Responsibility Officers
6-9	Criminal Tax Institute	AUSAs, DOJ Attorneys
14-16	Basic ACE	AUSAs, DOJ Attorneys
14-17	Native American Issues	AUSAs, DOJ Attorneys
28-12/1	Constitutional Torts	AUSAs (Civil Division)
29-12/1	Criminal Chiefs	USAO Criminal Chiefs
	December	
4-13	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
5-8	Basic Asset Forfeiture	AUSAs, DOJ Attorneys
	January 1996	
8-12	Criminal Federal Practice	AUSAs, DOJ Attorneys
9-11	Appellate Chiefs	USAO Appellate Chiefs
9-12	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys
16-19	Evaluator Training	USAO Attorneys and Support Staff
23-25	Financial Litigation Investigation and Enforcement	AUSAs, Paralegals
23-26	Attorney Supervisors	AUSAs
30-2/2	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys

LEI COURSES

Date	Course	Participants
	September 1995	
6	Appellate Skills	Attorneys
11	Statutes and Legislative Histories	Attorneys
12-14	Environmental Law	Attorneys
13-15	Attorney Supervisors	Attorneys
12-14	Bankruptcy for Support Staff *	USAO Paralegals
26	Computer Assisted Legal Research	Attorneys, Paralegals
27	Computer Acquisitions	Attorneys, Paralegals
28	Ethics and Professional Conduct	Attorneys
28	Computer Law	Attorneys
29	Legal Writing	Attorneys
	October	
12-13	Freedom of Information Act for Attorneys and Access Professionals	Attorneys, Paralegals
16-20	Civil Paralegal *	USAO Paralegals
24	Introduction to the Freedom of Information Act	Attorneys, Paralegals
30-31	Federal Administrative Process	Attorneys
30-11/3	Legal Support Staff *	USAO Support Staff
	November	
6-7	Alternative Dispute Resolution	Attorneys
8	Ethics and Professional Conduct	Attorneys
14-16	ACE for Paralegals *	USAO Paralegals
14-16	Bankruptcy Fraud	Attorneys
14-16	Attorney Supervisors	Attorneys
17	Ethics for Litigators	Attorneys
17	Legal Writing	Attorneys
20-21	Evidence	Attorneys
28-30	Docketing Clerks	Docketing Clerks
28-12/1	Examination Techniques	Attorneys
	December	
4-8	Criminal Paralegal *	USAO Paralegals
11-15	Experienced Legal Secretaries *	USAO Support Staff
	January 1996	
8	Ethics for Litigators	Attorneys
8-12	Legal Support Staff *	USAO Paralegals
9-11	Environmental Law	Attorneys
10	Advanced Freedom of Information Act	Attorneys, Paralegals
12	Appellate Skills	Attorneys
17-18	Freedom of Information Act for Attorneys and Access Professionals	Attorneys, Paralegals
18-19	Law of Federal Employment	Attorneys
19	Privacy Act	Attorneys, Paralegals
22-23	Federal Acquisition Regulations	Attorneys
26	Legal Writing	Attorneys
30-2/1	Grand Jury Clerks *	USAO Grand Jury Clerks



June 12,1995

Gail C. Williamson
Assistant Director, Personnel
Executive Office for U.S. Attorneys
United States Department of Justice
Bicentennial Building
600 E Street, N.W., Room 8017
Washington, DC 20530

Dear Ms. Williamson,

Your timing was perfect again. Once again I am just overwhelmed at the generosity of my co-workers for their money donation to assist me in my loss from the May 1995 flood in New Orleans, Louisiana. Everything is starting to come together. I used the last donation to have my roof repaired. The money I received today will go towards my son's new mattress and boxspring. The sheetrock work is complete, the painting should be completed by tomorrow and the carpet is scheduled to be installed on Friday. It will be so nice to be normal again.

Please extend my thanks to everyone for their caring and kindness.

Sincerely,

Kay Lopez

Kay Lopez
Senior Docket Technician
U. S. Attorney's Office
Eastern District of LA

A letter of gratitude from Kay Lopez, Eastern District of Louisiana, for contributions she received from the EOUSA Disaster Relief Fund.

DOJ Highlights

Significant Issues/Events

Appointment

On August 8, 1995, FBI Director Louis J. Freeh announced the appointment of Weldon L. Kennedy as the new Deputy Director of the FBI. Kennedy, a senior FBI official who is in charge of the Oklahoma City bombing investigation, "is a career Special Agent who is superbly qualified to be the Bureau's No. 2 official because of more than 30 years of outstanding FBI performance and dedication to the safety of the American people," Freeh said. ❖

Federal Juvenile Delinquency Act

On July 20, 1995, Assistant Attorney General Jo Ann Harris sent a memorandum to United States Attorneys to redelegate to them the authority of the Assistant Attorney General in charge of the Criminal Division pursuant to 18 U.S.C. 5032, 5036, and 28 C.F.R. 0.57 to: (1) prosecute juveniles for violent, delinquent acts; (2) certify to district court that (a) the juvenile court or appropriate court does not have jurisdiction or refuses to assume jurisdiction over a juvenile alleged to have committed an act of juvenile delinquency, (b) the state does not have available programs and services adequate for the needs of juveniles, or (c) the offense charged is a violent crime (felony or offense noted in the first paragraph of 18 U.S.C. 5032) and that there is substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction; (3) make the proper showing to the court in a case where a juvenile delinquent is not brought to trial within 30 days from the date detention began; and (4) move to transfer to adult status for criminal prosecution a juvenile alleged to have committed a violent crime (felony or offense noted in the first paragraph of 18 U.S.C. 5032). The order is effective as of June 19, 1995. If you would like a copy of the memorandum, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Innocent Images Project

In a memorandum dated August 11, 1995, Assistant Attorney General Jo Ann Harris announced the establishment of a project to address the problem of national on-line computer service providers who traffic and distribute child pornography. The project is designed to develop new enforcement tools against advancing technologies used to commit crimes, and to apply existing statutory law to these offenses. The project supports Attorney General Janet Reno's priority of protecting children, and will send a strong message to those who use new technologies to exploit children. If you would like more information, please contact George C. Burgasser, Acting Chief of the Child Exploitation and Obscenity Section, or J. Robert Flores, Acting Deputy Chief, who is coordinating this project; both can be reached on (202)514-5780. ❖

Harris Speaks on Powder and Crack Cocaine Sentencing

On June 29, 1995, Assistant Attorney General Jo Ann Harris, Criminal Division, spoke before the Subcommittee on Crime, Committee on the Judiciary, U.S. House of Representatives concerning powder cocaine and crack cocaine sentencing. She commended the U.S. Sentencing Commission for its special report to Congress on cocaine and Federal sentencing policy which documents the substantial differences between crack and cocaine powder and that crack is associated with more societal harms than cocaine powder. She spoke about the Department's conclusions concerning the harmful effects of crack as compared to cocaine powder. The Department's conclusions are virtually the same as those reached by the Sentencing Commission, which concluded that "the higher addictive qualities associated with crack combined with its inherent ease of use can support a higher ratio for crack over powder." If you would like a copy of Ms. Harris' statement, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Di Gregory Speaks on Indian Gaming Regulatory Act Amendments Act of 1995

On June 22, 1995, Deputy Assistant Attorney General Kevin V. Di Gregory, Criminal Division, spoke before the Senate Committee on Indian Affairs and Subcommittee on Native American and Insular Affairs on the Department of Justice's views on Senate Bill 487, the Indian Gaming Regulatory Act Amendments. Di Gregory stated that the Bill demonstrates the Committee's vital commitment to protecting Indian gaming as a means of building strong tribal Government and economic self-sufficiency within a regulatory system that preserves long-term viability of Indian gaming and shields Indian tribes and the public from organized crime and corrupting influences.
If you would like a copy of Mr. Di Gregory's statement, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

L.A. Pilot Project Triples Interception of Deportable Criminal Aliens

On July 11, 1995, Immigration and Naturalization Service (INS) Commissioner Doris Meissner announced plans to extend a historic L.A. pilot project to get criminal aliens off our streets and out of the country. The project involves a 24-hour a day, 7-day-a-week effort to identify, apprehend, and process for deportation all deportable aliens about to be released from county jails. Meissner, joined by United States Attorney Nora Manella, Central District of California, said that 2,416 deportable aliens had been identified during the one-month project from June 1-30. Of those, 1,504 were immediately taken into INS custody and processed for deportation; 535 scheduled for transfer to state prisons had "detainers" placed on them, preventing their release to the street by the state; and 377 were released on bond pending local charges. For further information, contact the INS Public Affairs Office, (213)894-5071. ❖

Office of Legislative Affairs

Appendix C lists recent hearings announced by the Office of Legislative Affairs. ❖

Bureau of Justice Statistics—DOJ Makes First Awards under Program to Improve State Criminal History Record Systems

On July 12, 1995, DOJ announced that 12 states will receive a total of more than $20 million to improve their criminal history record systems as part of the first awards made under the $88 million National Criminal History Improvement Project (NCHIP). Attorney General Janet Reno said, "Complete accessible records can help law enforcement prevent crimes before they occur. We are a long way from a national system, but today's grants help us get there." NCHIP grants will help states speed up their participation in the FBI's National Instant Criminal Background Check System (NICS), which will enable all states to have immediate access to full interstate records. States receiving awards are: Arkansas, California, Georgia, Iowa, Missouri, Nebraska, New York, North Dakota, Pennsylvania, South Carolina, Utah, and Vermont. Washington, D.C., is also receiving funds for technical assistance. ❖

BJS Report on Guns Used in Crimes

On July 9, 1995, DOJ announced that the Bureau of Justice Statistics (BJS) released a report on guns used in crimes that summarizes information from a number of different sources, such as BJS's National Crime Victimization Survey; the FBI's Uniform Crime Reports; and Bureau of Alcohol, Tobacco and Firearms (ATF) files. The report states that in 1993, about 1.3 million U.S. residents faced an assailant armed with a firearm; 86 percent of the time (in 1.1 million violent crimes) the weapons were handguns; 70 percent of the 24,526 murders in 1993 were with a handgun; and that there were 4.4 million murders, rapes, robberies, and aggravated assaults in the U.S.—more than one-quarter involving a gun. ❖

Significant Cases

Antitrust Division

Competition Preserved in International Telephone Service

On July 13, 1995, the Department's Antitrust Division filed suit and proposed a consent decree to keep international telephone service competitive by requiring three of the world's major telecommunications firms to change their more than $4.5 billion joint business deal to provide global telecommunications services. The deal as originally proposed—a combination of foreign monopoly firms with a U.S. long distance firm—could reduce competition in international telecommunications by placing other U.S. telecommunications firms at a competitive disadvantage. The proposed settlement involves a plan by France Telecom and Deutsche Telkom A.G. to purchase $4 billion of stock in Sprint Corporation, and form a joint venture with Sprint to provide global telecommunications services, including the transmission of data, voice, and enhanced telecommunications services. ❖

Carl Wilner, (202)514-5813
Phillip Warren, (415)556-6300
Susanna Zwerling, (202)514-5817
Deborah Maisel, (202)514-5803
Howard Parker, (415)556-6300
Pauline Wan, (415)445-6300
John Cove, (415)445-6300
Steve Holtzman, (415)445-6300
Joyce Hundley, (202)514-2570
Michael Hirrel, (202)514-5645

Civil Division

GTE Government Systems Corporation and Canadian Macroni Corporation to Pay $3.2 Million in False Claims Settlement

On July 7, 1995, GTE Government Systems Corp. and Canadian Macroni Corp. agreed to pay $3.2 million to settle allegations that the firms violated the False Claims Act by selling Army radios that did not meet the high temperature conditions stipulated in the contract. The Corporations will also conduct, at their expense, a retesting and repair program. ❖ *Dennis Phillips, (202)307-1086*

Israeli Firm to Pay U.S. $8.5 Million

On July 17, 1995, Civil Division Assistant Attorney General Frank Hunger announced that Israel Aircraft Industries Ltd. (IAL) will pay the U.S. $8.5 Million plus interest computed from the first of the year to settle allegations that the firm knowingly submitted false cost data in negotiating several contracts to maintain and provide support for Israeli Kfir aircraft leased to the US. Navy. ❖

Shelley Slade, (202)307-0264

U.S. Settles with Rockwell International for $27 Million in B1-B Bomber Overcharging

On July 31, 1995, DOJ announced that Rockwell International will pay the U.S. $27 million to settle allegations that the company knowingly failed to provide the U.S. with accurate, complete, and current information in negotiating multi-billion dollar contracts in 1981 to develop the Bl-B bomber. ❖

Civil Rights Division

Illinois Police Officers and Firefighters with Disabilities Get Access to Benefit Plans

A lawsuit filed in December 1993 accused Illinois, the city of Aurora, and the Board of Trustees of the Aurora Police Pension Fund with violations of the Americans with Disabilities Act, because the Fund prevented police officers and firefighters who had a disability at the time they were hired from participating in retirement and disability plans. A settlement has been reached between DOJ and the State of Illinois. Upon approval by the District Court, police officers and firefighters with disabilities will be able to join their local pension fund and obtain membership retroactive to the date that they were originally denied entry into the fund. ❖

Village of Addison Allegedly Violates Federal Fair Housing Act

On July 7, 1995, a suit was filed in U.S. District Court in Chicago alleging that the Village of Addison, a Chicago suburb, violated the Federal Fair Housing Act by employing a scheme to reduce the number of Hispanic families through a state financing program. Under the program,

commonly referred to as a Tax Increment Financing (TIF) Plan, municipalities can use eminent domain proceedings to acquire private property, such as apartment complexes, that they designate as "blighted." The municipality can then tear down the property and turn it over to private builders to redevelop to increase the tax base. According to the complaint, the village targeted six of the eight census blocks in Addison in which Hispanics comprise at least 50 percent of the population, and that the census blocks in Addison with the highest Hispanic population are included in the TIF districts. ❖

Jeff Senger, (202)514-4749
Elizabeth A. Singer, (202)514-6164
AUSA Joan Laser, Northern District of Illinois

Ninth Circuit Upholds NVRA

On July 24, 1995, the Ninth Circuit upheld the National Voter Registration Act (NVRA) against California's Tenth Amendment challenge in *Voting Rights Coalition v. Wilson*, No. 95-15449 (9th Cir., July 24, 1995). The state had sued the U.S. seeking an injunction against the enforcement of the NVRA; our counterclaim seeking injunctive relief was consolidated with an enforcement action brought by private plaintiffs. In an opinion authored by Judge Sneed, the court of appeals agreed with the district court that the NVRA is a constitutional exercise of Congress's powers to regulate elections for Federal office, and it remanded for implementation of the Act. "Congress may conscript state agencies to carry out voter registration for the election of Representatives and Senators." Rejecting California's claim that the NVRA unconstitutionally imposed an "unfunded mandate," the court concluded that the state's duty to carry out Federal election regulations "is by its terms intended to be borne by the states without compensation." However, the court noted that specific disputes governing the particulars of implementing the Act might raise more substantial questions of Federal power to displace states prerogatives—particularly the state's power to administer elections for state and local office. Should such disputes arise in the future, the district court was directed to resolve them "with an informed understanding of the duality of sovereignty imbedded within the Constitution." ❖

Sam Bagenstos, (202)514-2174

Northern Trust Corp. Settles Bias Suit

In a consent decree filed on June 1, 1995, Northern Trust Corporation's four Illinois banks agreed to pay $700,000 in damages to victims of lending discrimination after the banks illegally rejected home loan applications from blacks and Hispanics in 1992 and 1993. ❖

Special Litigation Counsel
Alexander C. Ross, (202)514-2303
Sharon Bradford Franklin, (202)514-4736
Elizabeth A. Singer, (202)514-6164
AUSA Joan Laser, Northern District of Illinois

Criminal Division

Denaturalization Case Against Pro-Nazi, Anti-Semitic Propagandist Ferenc Koreh

On July 6, 1995, the Third Circuit Court of Appeals unanimously affirmed a New Jersey District Judge's decision that granted summary judgment for the Government in its denaturalization case against Ferenc Koreh, an Englewood, N.J., resident, who was a pro-Nazi, anti-Semitic propagandist in Nazi-allied Hungary during World War II. The district court's decision was based on savagely anti-Semitic articles that Koreh admitted publishing while serving as "Responsible Editor" of Szekely Nep, one of Axis Hungary's largest newspapers. Rejecting Koreh's argument that his newspaper's incitements against the Jews did not "assist in persecution," the panel found "ample basis in the undisputed facts" for the district court to conclude that Koreh's activities as a Nazi propagandist "fostered a climate of anti-Semitism in Northern Transylvania which conditioned the Hungarian public to acquiesce, encourage, and carry out the anti-Semitic policies of the Hungarian government in the early 1940s." Koreh's argument, the court added, "runs counter to generations of history that attest to the fact that the pen is at least as mighty, if not mightier, than the sword." The court cited the Nuremberg conviction of Nazi propagandist Julius Streicher as recognizing "the nexus between propaganda and persecution." ❖

Senior Trial Attorney
Susan Siegal, OSI, (202)616-2530
Senior Trial Attorney
Susan Masling, OSI, (202)616-2557
AUSA Jim Clark, District of New Jersey

Conviction for Fraud in Connection with DOD's Foreign Military Financing Program

On August 11, 1995, Yechiel Bart, Arthur Stewart, Gary Aerospace Corporation, and Medina Technology Corporation were convicted of fraud in connection with a scheme to defraud DOD in the operation of its Foreign Military Financing Program. Bart, a buyer for the Government of Israel's Ministry of Defense Mission to the U.S., accepted more than $43,000 in bribes from Stewart, vice president of Gary and owner of Medina, in return for awarding $2.9 million in purchase orders to Stewart's companies. ❖

Christopher L. Varner, (202)514-0248
James A. Baker, (202)514-0248

Conviction for Financial Institution Fraud

On July 20, 1995, Charles S. Christopher, former Vice President of Resolute Holdings, Inc. (Resolute), was convicted of 11 counts of wire fraud and 10 counts of interstate transportation of stolen property in connection with his role in a scheme to deceive insurance regulators in Rhode Island, Arizona, and California into granting permission for Resolute to acquire insurance companies. After acquiring the companies, he defrauded them and their policyholders by causing approximately $25 million of the insurance companies' funds to be used to pay off the loans and discharge the liens on those properties. The case against Christopher's codefendant, George Wayne Reeder, was severed and he will be tried later. ❖

Patrick M. Donley, (202)514-0626
AUSA Craig Moore, District of Rhode Island
AUSA Charles Tamuleviz, District of Rhode Island

Union Fraud Conviction

On July 5, 1995, C. Eugene DeFries, former president of the Marine Engineers Beneficial Association (MEBA); Clyde Dodson, former MEBA executive vice president; former MEBA vice presidents Reinhold Schamann and Claude Daulley; and Alexander C. Cullison, former MEBA branch agent, were convicted of RICO conspiracy, mail fraud, extortion, and embezzlement after conducting and conspiring with other union officers to conduct the affairs of MEBA through racketeering activity from 1984 to 1991. This case represents the first successful prosecution of an entire governing body of a union for racketeering, as well as the first prosecution of a nationwide election fraud scheme carried out by union officials. ❖

Sotiris Planzos, (202)514-9115
Richard Convertino, (202)616-8383
Thomas Zaccaro, (202)616-8373

Narcotics Convictions

On July 19, 1995, car dealers Germán Montalvo and Honorio González-Maldonado were convicted of money laundering and conspiracy to distribute more than five kilograms of cocaine. These defendants were members of an organization which exported multi-kilogram quantities of cocaine from Colombia to Puerto Rico for distribution in Puerto Rico and Southern Florida, and laundered millions of dollars in drug proceeds for the Colombian drug suppliers. ❖

Corbin A. Weiss, (202)616-0595
AUSA Mark A. Irish, District of Puerto Rico

Environment and Natural Resources Division

Conviction Under Clean Water Act

On July 18, 1995, El Paso Plating Works Corporation and corporate president William Grueling, Jr., were convicted of conspiracy to violate the Clean Water Act and discharging electroplating wastes into the local sewer without a local permit. ❖

Farleigh Earhart, Environmental Crimes Section, (202)272-6993
AUSA Donna S. Miller, Western District of Texas
AUSA Carlos G. Hermosillo, Western District of Texas

U.S. Asks Court to Reaffirm Ownership of Public Lands

On July 28, 1995, citing an "unbroken line" of legal precedent, the U.S. asked a District Court in Las Vegas, Nevada, to strike down a controversial county resolution that has challenged U.S. ownership and management of public lands and threatened the ability of Government employees to do their jobs. In 1993, Nye County Commissioners approved a resolution that claims that the State of Nevada, not the U.S., owns national forests and other Federal lands. Under this claim, Nye County would, therefore, have the authority to manage these lands.

Another resolution claimed ownership of virtually every road and trail on Federal lands within the county boundaries. Using these resolutions, the county has threatened U.S. employees with criminal prosecution and other legal action for implementing Federal laws, has bulldozed open National Forest roads closed by the Forest Service, and has damaged natural and archaeological resources. ❖

Jack Haugrud, (202)272-4134
Caroline Zander, (202)272-6211
Margo Miller, (202)272-6566
Allison Rumsey, (202)272-6854
AUSA Baline Welsh, District of Nevada

Solicitor General

Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co. et al., 115 S. Ct. 1043 (February 22, 1995)

Pursuant to a contract with the City of Chicago, Great Lakes extracted and replaced the wooden pilings clustered around the piers of several bridges spanning the Chicago River, a navigable waterway. About seven months after the work was completed, a freight tunnel running under the river began to collapse causing an eddy in the river near the Kinzie Street Bridge. The river water flowed into the tunnel and eventually flooded several buildings located in the downtown Loop. Many victims brought tort actions in state court, but Great Lakes brought suit in U.S. District Court, invoking Federal admiralty jurisdiction and seeking the protection of the Limitation of Vessel Owner's Liability Act, 46 U.S.C. App. § 181 et seq. The district court dismissed Great Lakes' suit for lack of admiralty jurisdiction, and the Seventh Circuit reversed. The Supreme Court addressed the issue of whether a court of the U.S. has admiralty jurisdiction to determine and limit the extent of the tort liability of the Great Lakes Dredge and Dock Company, and affirmed the Seventh Circuit, holding the Limitation Act case to be within Federal admiralty jurisdiction.

Justice Souter, writing for the Court, explained that a party seeking to invoke admiralty jurisdiction over a tort claim pursuant to 28 U.S.C. 1333(1) must satisfy conditions both of location and of connection with maritime activity. Great Lakes satisfied the location test because the injuries suffered by Grubart and the other flood victims were caused by a vessel on navigable water. Great Lakes weakened the structure of the freight tunnel while it drove in new pilings and removed old ones around the piers. Great Lakes also satisfied the connection test. The Court concluded that the incident involved was of a sort with the potential to disrupt maritime commerce. Describing the "general features" of the incident at issue as "damage by a vessel in navigable water to an underwater structure," the Court concluded that there was little question such an incident had a "potentially disruptive impact on maritime commerce." The Court also determined that the activity giving rise to the incident; i.e., repair or maintenance work on a navigable waterway performed from a vessel, was substantially related to traditional maritime activity. The Court went on to say that the existence of a joint tortfeasor who was not engaged in traditional maritime activity, such as the City of Chicago, would not defeat admiralty jurisdiction: "The substantial relationship test is satisfied when at least one alleged tortfeasor was engaging in activity substantially related to traditional maritime activity and such activity is claimed to have been a proximate cause of the incident." 115 S. Ct. at 1052. ❖

McIntyre, Executor of Estate of McIntyre, Deceased v. Ohio Elections Commission, 115 S. Ct. 1511 (April 19, 1995)

In 1988, at a public meeting held at a middle school in Westerville, Ohio, Margaret McIntyre distributed leaflets stating her opposition to a proposed school tax levy. While some of the handbills identified her as the author, others purported to express the views of "Concerned Parents and Taxpayers." Responding to a complaint made by a school official, the Ohio Elections Commission found that Mrs. McIntyre's distribution of unsigned leaflets violated Ohio Rev. Code Ann. § 3599.09(A), and imposed a fine of $100.

The Supreme Court granted certiorari to address the question of whether an Ohio statute that prohibits the distribution of anonymous campaign literature is a "law * * * abridging the freedom of speech" within the meaning of the First Amendment. Justice Stevens, writing for the majority, acknowledged that the case was not controlled by *Talley v. California*, 362 U.S. 60 (1960) in which the Court invalidated a city ordinance prohibiting all anonymous leafletting, and stated that the Court had to decide "whether and to what extent the First Amendment's protection of anonymity encompasses documents intended to influence the electoral process." 115 S. Ct. at 1518.

The Court determined that the statute at issue affected a category of documents defined by their content—"only those publications containing speech designed to influence the voters in an election need bear the required markings." Consequently, the statute's limitation on political expression must be subjected to exacting scrutiny and must be narrowly tailored to serve an overriding state interest to survive that scrutiny. Ohio argued that two important and legitimate state interests justified its law: (1) preventing fraudulent and libelous statements; and (2) providing the electorate with relevant information. The Court rejected both of the asserted interests, specifically finding Ohio's prohibition overbroad. The Court held Ohio's content-based prohibition of political speech abridges the freedom of speech in violation of the First Amendment, concluding that "anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and dissent." Id. at 1524. ❖

Kyles v. Whitley, Warden, 115 S. Ct. 1555 (April 19, 1995)

Following a mistrial that resulted from a deadlocked jury, Curtis Lee Kyles was convicted of first-degree murder and sentenced to death by a Louisiana jury. Both his conviction and sentence were affirmed on direct appeal. On state collateral review, it was revealed that the state had failed to disclose certain evidence favorable to Kyles during the trial including: contradictory contemporaneous eyewitness statements taken by the police after the murder; inconsistent statements made to the police by an important informant named "Beanie" who was never called to testify; and a print-out of the license numbers of cars parked at the crime scene the night of the murder, which did not include Kyles' license number.

The Supreme Court concluded that the net effect of the evidence withheld by the State in Kyles' case raised a reasonable probability that its disclosure would have produced a different result, and the Court granted Kyles a new trial. Justice Souter, writing a majority opinion joined by Justices Stevens, O'Connor, Ginsburg, and Breyer, emphasized four aspects of materiality under *United States v. Bagley*, 473 U.S. 667 (1985). The touchstone for materiality under *Bagley* is a "reasonable probability" of a different result and the appropriate question is whether, in the absence of the evidence withheld by the prosecution, the defendant received a fair trial, "understood as a trial resulting in a verdict worthy of confidence." 115 S. Ct. at 1566. Secondly, the materiality inquiry is not a sufficiency of evidence test. "One does not show a *Brady* violation by demonstrating that some of the inculpatory evidence should have been excluded, but by showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." Ibid. Third, once a court has found a constitutional error under *Bagley*, that error cannot subsequently be found harmless. Id. at 1566-1567. Finally, in the context of the *Bagley* materiality inquiry, the suppressed evidence must be considered collectively, not item-by-item. Id. at 1567. Showing that the prosecution knew of an item of favorable evidence unknown to the defense does not, without more, establish a *Brady* violation. The prosecution has the responsibility "to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached. This in turn means that the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Ibid. See 115 S. Ct. at 1556-1559 for further description of prosecutorial responsibilities.

Applying the *Bagley* principles to an examination of the entirety of the evidence that the prosecution failed to disclose, the Court determined that Kyles had not received a fair trial. "[Confidence that the verdict would have been unaffected cannot survive when suppressed evidence would have entitled a jury to find that the eyewitnesses were not consistent in describing the killer, that two out of the four eyewitnesses testifying were unreliable, that the most damning physical evidence was subject to suspicion, that the investigation that produced it was insufficiently probing, and that the principal police witness was insufficiently informed or candid." Id. at 1575. ❖

Tax Division

U.S. v. F. Patrick Kavanaugh DJ: 5-79-6074; CMN: 9123104

On July 18, 1995, in the District Court for the Eastern District of Virginia, F. Patrick Kavanaugh pled guilty to evading the payment of his income taxes from 1974

through 1987. Kavanaugh was convicted in April 1985 of willfully failing to file his individual income tax returns for 1979 and 1980. Kavanaugh admitted that immediately following his sentencing in May 1985, he contacted an accountant for the purpose of creating shell corporations to conceal his assets and place them beyond the reach of the IRS. ❖

Susan Vrahoretis, (202)616-3868

Ethics and Professional Responsibility

Closing Arguments—Improper Statements

A Federal prosecutor reported to the Office of Professional Responsibility (OPR) that a Court of Appeals had reversed a defendant's drug conviction because of improper remarks by the prosecutor. OPR's investigation determined that the prosecutor had indeed made a number of improper remarks during his rebuttal in a prosecution of a conspiracy to distribute cocaine and marijuana. The prosecutor repeatedly characterized defense counsel's opening statement as unsworn "witness" testimony. The prosecutor also told the jury that some people investigate and prosecute drug dealers, while others "defend them [and] try to get them off, perhaps even for high fees." The inquiry also disclosed that, in a previous drug prosecution, the prosecutor had been harshly admonished by the court for similar improper remarks. The prosecutor resigned after being served with a notice of proposed removal. ❖

Immunity—Grand Jury Target—Change of Status

A defense attorney alleged that a prosecutor handling a grand jury investigation involving a tax deduction taken by a major corporation improperly named his client a target after having obtained the client's immunized testimony. The client, who was the head of the corporation's tax department, had earlier been told that he was not a target. OPR's investigation concluded that the client's change in status was the result of the logical progression of the grand jury investigation and involved no prosecutorial misconduct. ❖

Fraud—Truthfulness in Statements to Others

OPR received information that a Federal prosecutor provided false information to a lending institution in connection with an application for a home mortgage. OPR's investigation determined that the copy of the prosecutor's pay statement submitted with the application had been altered to show an annual salary of $102,000, some $40,000 greater than the lawyer's actual compensation. The Public Integrity Section declined prosecution because of evidentiary problems, the fact that the prosecutor had made all mortgage payments, there had been no loss to the bank, and the fact that the employee had resigned from the Department. ❖

Sentencing Guidelines

Guideline Sentencing Update

Appendix D is the *Guideline Sentencing Update*, Vol. 7, No. 9, dated July 7, 1995. 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. ❖

Career Opportunities

The U. S. 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 for the above positions will, therefore, be required to pass a urinalysis test to screen for illegal drug use prior to final appointment.

Civil Division
Commercial Litigation Branch
Experienced Attorney, GS-12/15
(Promotion Potential to GS-15)

This position is open only to current Department of Justice attorneys.

Department of Justice's Office of Attorney Personnel Management is recruiting for one experienced trial attorney for the Claims Court group of the Commercial Litigation Branch, Civil Division. This Branch, the largest branch in the Division, handles cases that involve billions of dollars in claims both by and against the Government. The Branch prosecutes claims for the recovery of monies fraudulently secured or improperly diverted from the United States Treasury, defends the country's international trade policy, and defends and asserts the Government's contract and patent rights. In addition, the Branch protects the Government's financial and commercial interests under foreign treaties and collects monies owed the United States as a result of civil judgments and compromises.

Applicants must possess a J.D. Degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year post J.D. experience. Applicants should have a strong interest in trial work and an exceptional academic background; a judicial clerkship or comparable experience is highly desirable. No telephone calls please. Applicants must submit a current OF-612 (Optional Application for Federal Employment) or resume and writing sample to:

U.S. Department of Justice
Civil Division
Personnel Management Branch
P. O. Box 27808
Washington, D.C. 20077-0038

A current SF-171 (Application for Federal Employment) will still be accepted as well. Current salary and years of experience will determine the appropriate grade and salary levels. (If hired at the GS-12 through GS-14 level, there is promotion potential to the GS-15.) The possible range is GS-12 ($43,356 - $56,362) to GS-15 ($71,664 - $93,166). **This position is open until filled, but no later than September 8, 1995.**

Civil Division
Office of Immigration Litigation
One or More Experienced
Trial Attorneys

Note: These positions are 14-month term appointments renewable for up to 4 years and are only open to current Department of Justice attorneys.

The Department of Justice Office of Attorney Personnel Management is recruiting for one or more experienced trial attorneys for the Civil Division's Office of Immigration Litigation. This Office, established in 1983, conducts civil trial and appellate litigation under the immigration and nationality laws, and has both affirmative and defensive litigation responsibilities, representing the

Immigration and Naturalization Service, the Department of State, and other Federal agencies that regulate the movement of aliens across and within the Nation's borders. The Office also is responsible for passport and naturalization law suits and for litigation arising under the Immigration Reform and Control Act of 1986 and recent reforms, including the employment authorization provisions that affect citizens as well as aliens.

Applicants must possess a J.D. Degree, be an active member of the bar in good standing (any jurisdiction) and have at least one year post J.D. experience. Applicants should have a strong interest in trial work and an exceptional academic background; a judicial clerkship or comparable experience is highly desirable. Applicants may submit a resume (SF-171s will still be accepted) and writing sample to:

Civil Division
Personnel Management Branch
U.S. Department of Justice
P. O. Box 27808
Washington, D. C. 20038-7808

This announcement is open until filled, but no later than September 15, 1995. Current salary and years of experience will determine the appropriate grade and salary levels. The possible range is GS-12 ($43,356 -$56,362) to GS-15 ($71,664 - $93,166). For further information, please call (202)307-0261.

Immigration and Naturalization Service Experienced Attorney, GS-11/14

The Department of Justice Office of Attorney Personnel Management is seeking an experienced attorney for the position of Assistant District Counsel with the Immigration and Naturalization Service (INS) at the Ulster Correctional Facility, near Napanoch, New York. Responsibilities include representing the INS in exclusion, deportation, and rescission proceedings before Immigration Judges, providing legal advice to INS's operating units, and providing litigation support to U.S. Attorney's Offices on immigration-related cases.

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. legal experience. A resume, a law school transcript (if the J.D. degree was received within the past five years), and a writing sample must be submitted to:

Lloyd Sherman
Acting District Counsel
Immigration and Naturalization Service
26 Federal Plaza, Room 14-110
New York, New York 10278

The position is at the GS-11 through GS-14 level, with a salary range between $35,578 and $77,893. **The position is open until filled but no later than October 13, 1995.** No telephones calls please.

FBI-SES Vacancy Announcement Office of the General Counsel

Area of Consideration: Department of Justice
Closing Date: September 12, 1995
Promotion Potential: None
Contact: Mrs. Dana Sauer, (202)324-6829

Deputy General Counsel, Federal Bureau of Investigation, Washington, D.C. ***Pay Range:** SES-4 ($113,180). Relocation expenses will be paid. Duties: The Deputy General Counsel works under the direct supervision of the General Counsel and is responsible for providing legal and ethical advice to the Director and various other senior FBI officials on the FBI's most complex and sensitive issues. Additionally, the Deputy General Counsel serves as a liaison with other components of DOJ and other Government agencies in connection with a wide variety of issues related to the criminal and intelligence missions of the FBI. The Deputy General Counsel participates in the determination of a wide range of policies affecting the FBI. **Mandatory Qualifications:** 1) Law Degree and current membership in a State Bar; 2) Minimum of 4 years of experience in the prosecution of Federal criminal cases; 3) Effective management and communication skills and demonstrated leadership qualities; 4) Experience in participation at high-level meetings or conferences with officials of Federal and State agencies on legal and/or regulatory issues, thereby demonstrating an ability to effectively represent the FBI at such meetings. **Other Desirable Qualifications:** 1) Previous supervisory experience; 2) Experience in administrative law, including familiarity with

ethics statutes and regulations and procurement procedures; 3) Familiarity with FBI policies and procedures. **How to Apply:** All applicants must submit a resume, the Optional Application for Federal Employment (OF-612), or any other written format, including an SF-171. In addition, applicants must submit a supervisory appraisal of performance issued within the last 12 months, and a narrative statement specifically addressing each of the mandatory qualifications listed above to:

Federal Bureau of Investigation
Office of the General Counsel
ATTN: Mrs. Dana Sauer, Room 7427
9th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Note: Any selectee not currently employed by the FBI will be subjected to a rigorous background investigation, including polygraph, in connection with the issuance of a required top secret security clearance.

APPENDIX
A

U.S. Department of Justice

Tax Check Waiver

I am signing this waiver to permit the Internal Revenue Service to release information about me which would otherwise be confidential. This information will be used in connection with my appointment or employment by the United States Government. This waiver is made pursuant to 26 U.S.C. § 6103(c).

I request that the Internal Revenue Service release the following information to:

_____ Linda A. Cinciotta, Director, Office of Attorney Personnel Management, U.S. Department of Justice (or designee)

_____ Carol A. DiBattiste, Director, Executive Office of United States Attorneys, U.S. Department of Justice (or designee) (for Special Assistant United States Attorneys and Special Attorneys)

_____ D. Jerry Rubino, Director, Security and Emergency Planning Staff, U.S. Department of Justice (or designee)

_____ Sheila C. Joy, Staff Assistant for Judicial Appointments, U.S. Department of Justice (or designee) (for judicial appointments and certain presidential appointments only)

_____ Sifty Frost, Federal Bureau of Investigation, U.S. Department of Justice (or designee) (for Federal Bureau of Investigation non-agent attorneys only)

_____ Other (please specify) _____

1. Have I failed to file any Federal income tax return for any of the last three years for which filing of a return might have been required? (If the filing date without regard to extensions and normal processing period for most recent year's return has not yet elapsed on the date IRS receives this waiver, and the IRS records do not indicate a return for the most recent year, the "last three years" will mean the three years preceding the year for which returns are currently being filed and processed.)

2. Were any of the returns in #1 filed more than 45 days after the due date for filing (determined with regard to any extension(s) of time for filing)?

3. Have I failed to pay any tax, penalty or interest during the current or last three calendar years within 45 days of the date on which the IRS gave notice of the amount due and requested payment?

4. Am I now or have I ever been under investigation by the IRS for possible criminal offenses?

5. Has any civil penalty for fraud been assessed against me during the current or last three calendar years?

I authorize the IRS to release any additional relevant information necessary to respond to the questions above.

To help the IRS find my tax records, I am voluntarily giving the following information:

MY NAME: _____ MY SSN: _____
(Please print or type)

CURRENT ADDRESS: _____

_____

TELEPHONE NUMBERS: (HOME) _____ (WORK) _____
(Please include area codes)

IF MARRIED AND FILED A JOINT RETURN:

SPOUSE'S NAME: _____ SPOUSE'S SSN _____

NAMES AND ADDRESSES SHOWN ON RETURNS (IF DIFFERENT FROM ABOVE)

YEAR	NAME	ADDRESS

If a return for any of the last three years was not filed, please explain why. If there was insufficient income to meet filing requirements or filing requirements were met by filing with a foreign tax agency (e.g., Puerto Rico or the Virgin Islands), please describe the circumstances.

_____

_____

_____

_____

DATE: _____
(Waiver Invalid Unless Received
By the IRS Within 60 Days of This Date)

_____
(Signature of Taxpayer Authorizing
the Disclosure of Return Information)

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

Nomination Form

APPENDIX B

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

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

LEI COURSE CONTACT:

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

	LEI USE ONLY	
	ACCEPTED	NOT SELECTED

COURSE

Course Name	Course Date(s)	Course Location

NOMINEE

Name	Title

Office, Agency, or Department	Phone Number

QUESTIONNAIRE

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

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

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

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

   Novice Intermediate Advanced (please circle)

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

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

6. If necessary, please indicate any special considerations:

SUPERVISOR

Name	Title

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

APPENDIX
C

Office of Legislative Affairs
Recent Hearings

Issue (Date)	Hearing Before (Committee Chair)	DOJ Representative Who Testified
Drug Trade in Mexico (8/8/95)	Senate Foreign Relations Committee (Helms)	DEA Administrator Tom Constantine
Certain Crimes Committed in Guatemala (Closed Session) (8/8/95)	Senate Select Committee on Intelligence (Spector)	DAG Jamie Gorelick
Certain Crimes Committed in Guatemala (8/2/95)	House Permanent Select Committee on Intelligence (Combest)	DAG Jamie Gorelick and IG Bromwich responded to questions
Health Care Fraud—Medicare fraud and efforts to combat health care fraud (7/31/95)	Senate Finance Committee (Packwood)	Chief Charles Owens, FBI's Financial Crimes Section
Inspector General Act Oversight—Esposito explained the Integrity Committee process for responding to allegations of misconduct by Inspectors General and their senior staff (8/1/95)*	House Government Reform and Oversight Subcommittee on Government Mgt, Info, and Technology	Acting FBI Director William Esposito (Chair, Integrity Committee of the President's Council on Integrity and Efficiency)
U. S. Sentencing Commission and Cocaine Sentencing Policy (8/10/95)	Senate Judiciary Committee (Hatch)	Assistant Attorney General Jo Ann Harris
Maritime Trade in Illegal Drugs—Drugs and the Relationship between addiction and the Maritime trade in illegal drugs (8/1/95)	House Transportation and Infrastructure Coast Guard and Maritime Transportation Subcommittee (Coble)	Robert Nieves, Foreign Operations Chief of DEA
Immigration Hearings—Refugee admissions and executive consultation (8/1/95)	Senate Judiciary Subcommittee on Immigration (Simpson)	Phyllis Coven, INS Director of International Affairs submitted testimony on the INS' refugee resettlement admissions program
Indian Tribal Justice Act—Implementation of the Indian Tribal Justice Act (8/2/95)	Senate Indian Affairs Committee (McCain)	Deputy Assistant Attorney General Mary Morgan, Office of Policy Development
White Color Crime in American Samoa (8/3/95). Problem assessed last year by a team sponsored by Depts of Interior and Justice	House Resources Subcommittee on Native American and Insular Affairs (McCain)	Deputy Assistant Attorney General Mark Richard

APPENDIX D

Guideline Sentencing Update

a publication of the Federal Judicial Center *volume 7, number 9, July 7, 1995*

General Application

Double Jeopardy

Supreme Court holds that use of relevant conduct to increase guideline sentence for one offense does not preclude later prosecution for that conduct. When defendant was sentenced on a marijuana charge his offense level was increased under § 1B1.3 for related conduct involving cocaine. This increased his guideline range (from approximately 78–97 months to 292–365 months), although he then received a § 5K1.1 departure to 144 months. Defendant was later indicted for conspiring and attempting to import cocaine, but the district court dismissed the charges on the ground that punishing defendant for conduct that was used to increase his sentence for the marijuana offense would violate the Double Jeopardy Clause's prohibition against multiple punishments. However, the Fifth Circuit reversed, holding that "the use of relevant conduct to increase the punishment of a charged offense does not punish the offender for the relevant conduct," and therefore prosecution for the cocaine offenses was not prohibited by the Double Jeopardy Clause. *U.S. v. Wittie,** 25 F.3d 250, 258 (5th Cir. 1994) [6 *GSU* #16].

The Supreme Court agreed with the appellate court that there is no double jeopardy bar to the second prosecution. "We find this case to be governed by *Williams [v. Oklahoma,]*" 358 U.S. 576 (1959), in which the Court "made clear that use of evidence of related criminal conduct to enhance a defendant's sentence for a separate crime within the authorized statutory limits does not constitute punishment for that conduct within the meaning of the Double Jeopardy Clause. . . . We are not persuaded by petitioner's suggestion that the Sentencing Guidelines somehow change the constitutional analysis. A defendant has not been 'punished' any more for double jeopardy purposes when relevant conduct is included in the calculation of his offense level under the Guidelines than when a pre-Guidelines court, in its discretion, took similar uncharged conduct into account. . . . As the Government argues, '[t]he fact that the sentencing process has become more transparent under the Guidelines ... does not mean that the defendant is now being "punished" for uncharged relevant conduct as though it were a distinct criminal "offense."' . . . The relevant conduct provisions are designed to channel the sentencing discretion of the district courts and to make mandatory the consideration of factors that previously would have been optional. . . . Regardless of whether particular conduct is taken into account by rule or as an act of discretion, the defendant is still being punished only for the offense of conviction."

The Court also addressed petitioner's "contention that he should not receive a second sentence under the Guidelines for the cocaine activities that were considered as relevant conduct for the marijuana sentence. As an examination of the pertinent sections should make clear, however, the Guidelines take into account the potential unfairness with which petitioner is concerned. . . . There are often valid reasons why related crimes committed by the same defendant are not prosecuted in the same proceeding, and § 5G1.3 of the Guidelines attempts to achieve some coordination of sentences imposed in such situations with an eye toward having such punishments approximate the total penalty that would have been imposed had the sentences for the different offenses been imposed at the same time (i.e., had all of the offenses been prosecuted in a single proceeding). *See* USSG § 5G1.3, comment., n. 3." Along with the protections in § 5G1.3, the Court noted that a district court retains discretion to depart "to protect against petitioner's second major practical concern: that a second sentence for the same relevant conduct may deprive him of the effect of the downward departure under § 5K1.1 of the Guidelines for substantial assistance to the Government, which reduced his first sentence significantly. Should petitioner be convicted of the cocaine charges, he will be free to put his argument concerning the unusual facts of this case to the sentencing judge as a basis for discretionary downward departure."

Witte v. U.S., 115 S. Ct. 2199, 2206–09 (1995) (Stevens, J., dissenting in part).

*Note: Spelling of defendant's name was incorrect in the appellate court case title.

See *Outline* at I.A.4.

Determining the Sentence

Consecutive or Concurrent Sentences

Seventh Circuit concludes departure may be warranted when § 5G1.3(b) does not apply because a prison term for related conduct has already been served. Defendant was convicted of conspiracy to commit bank fraud. At sentencing the government and defendant requested a downward departure of

fourteen months to account for a sentence defendant served in prison for related conduct that was considered in setting the offense level for the instant offense. Had defendant still been serving the prior sentence, § 5G1.3(b) would have effected the same result by requiring concurrent sentences. The district court refused to depart, based on a belief that defendant's prior sentence was mistakenly too lenient.

The appellate court concluded that the district court acted within its discretion in refusing to depart and that its decision was, "like any other refusal to depart, unreviewable." However, the sentence was remanded on another matter and the court "encouraged" the district court to reconsider. "Section 5G1.3 on its face does not apply to [defendant] because, by the time of his sentencing in Milwaukee, he had completed his term for the related conduct in Kansas and therefore had no relevant 'undischarged term of imprisonment.' The probation office in this case apparently recognized that the rationale underlying § 5G1.3—to avoid double punishment—nevertheless was applicable to a defendant . . . who had fully discharged his prior term. It sought guidance from the Sentencing Commission, which suggested that a downward departure would be the appropriate way to recognize such a defendant's prior time in prison. . . . We recognize that distinguishing between two defendants merely by virtue of their sentencing dates appears contrary to the Guidelines 'goal of eliminating unwarranted sentence disparities.' . . . Although we may not directly review the district court's rejection of a departure, we do encourage the court upon remand to reconsider its decision. . . . Assuming [defendant] would have been eligible for the 14-month credit if he still were serving the prior terms at issue, we think it would be fair and appropriate to deduct that amount from the new sentence imposed on the instant offense."

U.S. v. Blackwell, 49 F.3d 1232, 1241–42 (7th Cir. 1995).

See *Outline* generally at V.A.3.

Ninth Circuit holds that sentence under 18 U.S.C. § 924(e)(1) may be reduced below mandatory minimum to give credit for time served on related charge. Defendant was serving a state sentence for armed robbery when he pled guilty to being a felon in possession of the same weapon used in the robbery. Because he had three prior violent felony convictions, 18 U.S.C. § 924(e)(1) required that he be "imprisoned not less than fifteen years," and the government and defendant agreed to a guideline sentence of 188 months. The district court agreed with defendant that, under § 5G1.3(b) and comment. (n.2), the state sentence had been "fully taken into account" in determining the federal sentence and the two sentences should be made concurrent with credit for the twelve months defendant had served on the state charge, i.e., the federal sentence should be 176 months. However, the district court concluded it could not go below the mandatory 180 months and imposed the agreed-on guideline sentence of 188 months.

The appellate court remanded, following the holding in *U.S. v. Kiefer*, 20 F.3d 874 (8th Cir. 1994) [6 *GSU* #12], that "in appropriate circumstances time served in custody prior to the commencement of the mandatory minimum sentence is time 'imprisoned' for purposes of § 924(e)(1)." The court concluded that time served in state prison on a related charge is "an appropriate circumstance," and that in order to harmonize § 924(e) with the guideline sentencing scheme and the rest of the Sentencing Reform Act of 1984, "we construe 18 U.S.C. § 924(e)(1) to require the court to credit Drake with time served in state prison. To hold otherwise would 'frustrate the concurrent sentencing principles mandated by other statutes.' . . . [T]he district court indeed was required to reduce Drake's mandatory minimum sentence for the time Drake served in Oregon prison."

U.S. v. Drake, 49 F.3d 1438, 1440–41 (9th Cir. 1995).

See *Outline* at V.A.3.

Adjustments

Obstruction of Justice

Tenth Circuit holds that obstruction enhancement does not apply if defendant did not know that an investigation of the offense of conviction had begun. Defendant was part of a conspiracy to manufacture explosives without a license. One of the conspirators was arrested on an unrelated weapons charge, and while he was being questioned at the police station the police received a tip about the explosives. In the meantime, without knowing that the police had begun to investigate the explosives manufacture, defendant and others attempted to hide the explosive materials. The police ultimately recovered the explosives and defendant pled guilty to conspiracy. She received a § 3C1.1 enhancement for obstructing the investigation by hiding the explosives, but argued on appeal that she should not have received the enhancement for obstructing an investigation of which she was unaware.

The appellate court agreed and remanded. "A plain reading of U.S.S.G. § 3C1.1 compels the conclusion that this provision should be read only to cover willful conduct that obstructs or attempts to obstruct '*the* investigation . . . of *the* instant offense.' (emphasis added) . . . To our mind, the clear language of

§ 3C1.1 enunciates a nexus requirement that must be met to warrant an adjustment. This requirement is that the obstructive conduct, which must relate to the offense of conviction, must be undertaken during the investigation, prosecution, or sentencing. Obstructive conduct undertaken prior to an investigation, prosecution, or sentencing; prior to any indication of an impending investigation, prosecution, or sentencing; or as regards a completely unrelated offense, does not fulfill this nexus requirement. . . . There is simply no evidence that Ms. Gacnik undertook to hide the explosive materials with any knowledge of an impending investigation or during any investigation of the conspiracy for which she was ultimately convicted. We disagree with the district court that the very act of concealment, standing alone, is sufficient evidence of Ms. Gacnik's awareness of an investigation pointed at her offense of conviction. The record reveals only that Ms. Gacnik was aware that the police had taken Mr. Gade into custody for having discharged a gun, but this knowledge of police interest in a completely unrelated offense, not involving her, simply does not meet the requirements of § 3C1.1."

U.S. v. Gacnik, 50 F.3d 848, 852–53 (10th Cir. 1995).

See *Outline* at III.C.4.

Seventh Circuit holds that obstruction of related state prosecution does not warrant enhancement unless it actually obstructed federal prosecution of the "instant offense." Defendant was arrested in April 1992 on a state drug charge. After release on bond in June he fled the country but returned in November. He was rearrested by the state in December, at which time a federal investigation into defendant's drug activities began. After defendant was convicted and began serving his sentence on the state charge, he was indicted on federal charges and pled guilty to conspiracy to distribute cocaine. Concluding that the criminal conduct underlying the state prosecution from which defendant fled constituted part of the criminal conduct underlying the instant federal offense, and that defendant's flight impeded the state prosecution and investigation, the district court applied the § 3C1.1 obstruction enhancement. "In short, the district court considered the state and federal offenses to be one and the same and, for purposes of section 3C1.1, the 'instant offense' included the state prosecution."

The appellate court remanded because there was no evidence that defendant's flight obstructed the federal investigation or prosecution. The court acknowledged that "because the state offense was an overt act of the federal conspiracy charge, arguably the state offense is part of the 'instant offense' for purposes of section 3C1.1. Consequently, there is a basis for the district judge to say as she did that 'it's the same offense you look at and not the particular entity that was prosecuting it at the time the obstruction occurred.' Although we agree that the factual basis for the state charges are encompassed within the federal offense, the inclusiveness of the federal offense does not necessarily dictate the conclusion that any obstruction of the prior state prosecution automatically compels a finding that the federal prosecution was also obstructed. This is too long a stretch and ignores the temporal requirement of [§] 3C1.1 that the obstructive conduct occur 'during' the investigation, prosecution, or sentencing of the instant offense. In other words, section 3C1.1 intends that the obstructive conduct have some discernible impact on the investigation, prosecution, or sentencing of the federal offense which may or may not encompass the state offense. . . . Obstructive conduct having no impact on the investigation or prosecution of the federal offense falls outside the ambit of section 3C1.1 no matter when the obstruction occurs; i.e., whether it occurs during a state or federal investigation or prosecution. Even if the state and federal offenses are the same, under section 3C1.1 it is the federal investigation, prosecution, or sentencing which must be obstructed by the defendant's conduct no matter the timing of the obstruction."

U.S. v. Perez, 50 F.3d 396, 398–400 (7th Cir. 1995).

See *Outline* at III.C.4.

Sixth Circuit holds that § 3C1.2 enhancement for reckless endangerment does not apply if defendant did not know a law enforcement officer was in pursuit. Defendant was driving away from a drug delivery site when detectives in an unmarked police van attempted to block the car and arrest the occupants. Defendant swerved around the van, striking the leg of a detective who had jumped out of the van, and was eventually arrested. Without making a finding that defendant knew that police officers were in pursuit at the time he swerved around the van, the district court imposed a § 3C1.2 enhancement. The appellate court remanded "for the district court to make a specific finding regarding defendant's knowledge," holding that "a § 3C1.2 enhancement is inapplicable if the defendant did not know it was a law enforcement officer from whom he was fleeing."

The appellate court also held that the sentence was appealable even though defendant had received a downward departure under § 5K1.1 to a sentence below the ranges suggested by both the government and defendant. "A defendant may appeal his sentence even when the sentence imposed fell within the range advocated by him so long as he can iden-

tify a specific legal error," which defendant did with his claim of a misapplication of § 3C1.2. Thus, this decision is consistent with cases that have held that the guideline range is the point of reference for a departure and must be correctly calculated. See cases in *Outline* at VI.D.

U.S. v. Hayes, 49 F.3d 178, 182–84 (6th Cir. 1995).

See *Outline* at III.C.3.

Offense Conduct

Marijuana

Eleventh Circuit holds that "dead, harvested root systems are not 'plants' within the meaning of" the statute or Guidelines. When defendant was arrested police found 27 live marijuana plants and, in a trash can, "26 dead, crumbling roots, each attached to a small portion of the stalk ('root systems'), remaining from previously-harvested plants." The district court counted all 53 plants and sentenced defendant under § 2D1.1(c), n.*, which treats each plant as one kilogram of marijuana for offenses involving 50 or more plants.

The appellate court remanded, concluding "that *clearly dead* vegetable matter is not a plant." The court reasoned that its decision in *U.S. v. Foree*, 43 F.3d 1572 (11th Cir. 1995), holding that marijuana cuttings and seedlings are not "plants" until they develop root systems, "treats evidence of life as a necessary (but alone insufficient) prerequisite of 'planthood,' and its reasoning counsels rejection of the government's converse contention here that dead marijuana remains are plants simply because they have roots."

The court also noted that it has held that once plants are harvested the actual weight must be used, not the kilogram-per-plant equivalency, and specifically disagreed with circuits that have held that the number of plants may be used even after harvesting. See cases summarized in 7 *GSU* nos. 7 & 8. "Our decisions . . . contemplate the use of actual post-harvest weight of consumable marijuana, rather than presumed weight derived from the number of harvested plants, for sentencing in manufacturing and conspiracy to manufacture, as well as possession, cases. . . . The fact that [21 U.S.C.] § 841(b) creates *alternative* plant number and marijuana weight sentencing regimes implies that growers should not continue to be punished for plants when those plants cease to exist. . . . We therefore reaffirm that dead, harvested root systems are not marijuana plants for sentencing purposes irrespective of whether the defendant is convicted of possession, manufacturing, or conspiracy to manufacture marijuana plants. We leave it to the district court to decide, in the first instance, how the 26 dead root systems should be accounted for in sentencing in this case (as they cannot be counted as plants)."

U.S. v. Shields, 49 F.3d 707, 710–13 (11th Cir. 1995).

See *Outline* at II.B.2.

Certiorari Granted:

U.S. v. Neal, 46 F.3d 1405 (7th Cir. 1995) (en banc), *cert. granted*, No. 94-9088 (June 19, 1995). Question presented: Does amendment to Sentencing Guidelines establishing presumptive weight of LSD for purposes of establishing base offense level for violations involving LSD change manner of computing weight of LSD for purposes of statute imposing mandatory minimum sentence for possession or distribution?

See *Outline* at II.B.1 and summary of *Neal* in 7 *GSU* #7.

Judgment Vacated:

U.S. v. Porat, 17 F.3d 660 (3d Cir. 1994), *vacated on other grounds*, No. 94-140 (U.S. June 26, 1995), and remanded for reconsideration in light of *U.S. v. Gaudin*, No. 94-514 (U.S. June 19, 1995).

See *Outline* at V.C and summary of *Porat* in 6 *GSU* #11.

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