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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

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COMMENDATIONS

Assistant United States Attorney MICHAEL P. DiRAIMONDO Eastern District of New York, was commended by Mr. Thomas C. Halloran, Regional Counsel, Federal Aviation Administration, for his diligent work in Alvin Kushner v. Federal Aviation Agency, a case involving an air traffic controller who was fired during the strike of 1981.

Assistant United States Attorney ROSLYN O. MOORE, District of Arizonia, was commended by Mr. M. J. Hassell, Regional Forester, Department of Agriculture, for her dedication and extra effort in the successful prosecutions achieved under the Archaeological Resource Protection Act (ARPA).

Assistant United States Attorney JACK S. PENCA, Western District of New York, was commended by Mr. Alan C. Nelson, Commissioner, Immigration and Naturalization Service, for his successful efforts in the prosecution of United States v. Carron and Morrison, two Irish nationals linked with the Irish Republican Army who were convicted for felony violations of 18 U.S.C. 1001.

Assistant United States Attorney KENNETH I. WIRFEL, Eastern District of New York, was commended by Mr. Thomas V. Cash, Associate Special Agent In Charge, Drug Enforcement Administration, for his outstanding performance in all stages of the prosecution of United States v. Ambrogia Farina and Salvatore Farina, a narcotics case involving an informant who could not and would not take the stand in any proceedings against the Farinas, who were arrested in possession of approximately five kilograms of heroin.

Assistant United States Attorney WILLIAM C. TURNER, District of Nevada, was commended by Mr. Leonard Luke, Acting Resident Agent In Charge, Drug Enforcement Administration, for his exceptional effort in the prosecution of Manual Baker, a civil case involving $250,000 worth of assets seized.

Debt Collection Commendation

United States Attorney Frederick J. Hess and Assistant United States Attorney Ralph M. Friederich, Southern District of Illinois, have been commended by Mr. Thomas S. Martin, Jr., Chief, Headquarters Accounting Branch, National Aeronautics and Space Administration (NASA), for their exemplary representation in the collection of a debt owed to NASA by the City of East St. Louis, Illinois. In a situation pregnant with political sensitivity, United States Attorney Hess conducted settlement negotiations with officials of the City of East St. Louis and persuaded them that it was not in the best interest of the city to default on an obligation to the government. The city agreed to pay the full amount of the claim.

The Attorney General's 33rd Annual Awards Ceremony

The Attorney General's 33rd Annual Awards Ceremony was held on Monday, December 12, 1983, at 3:00 p.m., in the Great Hall, Main Justice Building.

The following recipients were presented the John Marshall Awards:

John Marshall Award For Preparation Of Litigation

Ms. Carol B. Amon
Assistant United States Attorney
Eastern District of New York

Mr. Herbert B. Hoffman
Assistant United States Attorney
Southern District of California

John Marshall Award For Support Of Litigation

Mr. E. Lawrence Barcella, Jr.
Assistant United States Attorney
District of Columbia

John Marshall Award For Trial Of Litigation

Mr. W. Ray Jahn
Assistant United States Attorney
Western District of Texas

Ms. Sharon A. Werner
Assistant United States Attorney
District of Kansas

John Marshall Award For Support Of Litigation

Mr. Theodore S. Greenberg
Eastern District of Virginia

The Attorney General's Distinguished Service Award

Mr. William M. Tendy
Chief Assistant United States Attorney
Southern District of New York

Second Annual Director's Awards Ceremony

The Executive Office for United States Attorneys Second Annual Director's Awards Ceremony was held on Friday, February 3, 1984, at 3:00 p.m., in the Great Hall, Main Justice Building.

The following recipients were presented the Director's Special Commendation Award:

Central District of California

Mr. William J. Landers
Mr. Arthur M. Greenwald
Mr. Charles H. Magnuson

Eastern District of California

Mr. Garland E. Burrell

Southern District of California

Mr. Charles F. Gorder, Jr.
Mr. William E. Grauer

District of Columbia

Mr. John Oliver Birch
Mr. R. Craig Lawrence

Executive Office for United States Attorneys

Ms. Wendy Jacobus
Mr. John Beal

Northern District of Georgia

Mr. Richard Dean
Mr. Steven Wisebram

Northern District of Illinois

Ms. Eileen M. Marutzky
Mr. Edward J. Moran
Mr. Daniel M. Purdom

Eastern District of Michigan

Mr. Michael J. Hluchaniuk
Ms. Gwendolyn A. Liggons
Mr. Stephen T. Robinson

District of New Jersey

Mr. Roger J. Bernstein
Mr. Ralph A. Jacobs
Mr. Thomas G. Roth

Eastern District of New York

Mr. James D. Harmon Jr.

Southern District of New York

Ms. Barbara Jones
Ms. Twila L. Perry
Ms. Leona Sharpe

District of North Dakota

Mr. Dennis D. Fisher

Eastern District of Pennsylvania

Mr. Michael L. Levy
Mr. Robert E. Welsh

Western District of Pennsylvania

Mr. John P. Panneton
Mr. William F. Ward

Western District of Texas

Mr. John C. Emerson
Mr. LeRoy M. Jahn
Mr. Wayne F. Speck

District of Utah

Mr. Richard N.W. Lambert

Eastern District of Virginia

Mr. John F. Kane

The following recipients were presented with the Director's Award for Superior Performance as an Assistant United States Attorney:

Central District of California

Mr. Percy Anderson
Mr. Peter R. Osinoff

Southern District of California

Mr. Yesmin S. Annen

District of Columbia

Mr. John D. Bates

Northern District of Georgia

Mr. Craig A. Gillen

District of Massachusetts

Mr. Richard G. Stearns

Eastern District of Michigan

Mr. Robert M. Morgan
Mr. Joel M. Shere

District of New Jersey

Mr. Robert J. Fettweis
Mr. John W. O'Farrell

Southern District of Mississippi

Mr. James B. Tucker

Eastern District of New York

Ms. Diane F. Giacalone
Mr. Brian E. Maas

Southern District of New York

Mr. Thomas D. Warren
Ms. Denise Cote
Mr. Morris Weinberg

District of North Dakota

Mr. Lynn E. Crooks

Northern District of Ohio

Mr. Patrick M. McLaughlin

Eastern District of Pennsylvania

Ms. Serena H. Dobson
Mr. William B. Lytton
Ms. Dawn MacPhee

Western District of Texas

Mr. J.W. Blagg
Ms. Helen M. Eversberg

Eastern District of Virginia

Ms. Karen P. Tandy

The following recipients were presented with the Director's Award for Outstanding Performance in a Litigation Support or Managerial Role:

Central District of California

Mr. John McEvoy
Mr. John L. Montano

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, Director

POINTS TO REMEMBER

Interest On Condemnation Deficiency Awards

The Fifth Amendment of the Constitution requires payment of just compensation for the taking of property, usually represented by the fair market value of the property on the date of taking. United States v. Miller, 317 U.S. 369, 373-375 (1943). "Just compensation in the constitutional sense has been held to include interest for delay in payment." Albrecht v. United States, 329 U.S. 599, 602 (1947).

The United States has acquiesced in decisions by various courts of appeals and district courts that the 6% per annum interest rate provided by Section 1 of the Declaration of Taking Act of 1931 (40 U.S.C. 258(a)), is a floor, not a ceiling, on the appropriate interest rate for condemnation deficiency awards. Stated differently, the government has conceded that the statutory 6% interest rate may be insufficient to provide just compensation. The decided cases approve a variety of approaches to determining the proper interest rate.

The government's approved position on determining the interest rate is as follows:

1. Congressional authority. The Department of Justice does not suggest that Congress may not enact a statutory formula to arrive at an interest yield which will satisfy the fifth amendment requirement of just compensation. To the contrary, if Congress reexamines the interest matter and specifies a reasonable and realistic interest formulation, the Department of Justice believes that the courts will defer to that formulation, in part because of uniformity and fairness.

2. Settlement preferred. In the absence of such a revised interest rate by Congress, a settlement of the interest rate should be sought. Rather than set forth settlement guidelines here, we request that prior to negotiations government counsel contact Mr. Gary Peterson (FTS 724-8434) of the Land Acquisition Section for advice on acceptable settlement. In the vast majority of cases, the government has been successful in negotiating an acceptable rate of interest.

3. District court determination. Settlement failing, the district court, not the jury or the three-member commission appointed pursuant to Rule 71A(h) of the Federal Rules of Civil Procedure, should determine the proper interest rate. This will promote uniformity and fairness, reduce the costs and complexity

of litigation, and facilitate decision as well as provide a predicate for future settlements. Since, except for the sole issue of the value of the property taken which is for resolution by the jury or commission, the trial judge decides all legal and factual issues, the trial judge should set the interest rate. See Fed. R. Civ. P. 71A(h); United States v. Reynolds, 397 U.S. 14, 19-20 (1970).

4. Litigation position. Except where foreclosed by applicable precedent, we urge the position that the standard for calculating the proper rate of interest in a condemnation case is the yield rates of three-month Treasury Bills, "rolled over" from the date interest first accrues until payment of judgment. The argument for this position, briefly stated, is that a condemnee owed interest by the United States bears no risk that the interest will not be paid, nor does he face any risk of default. The interest rate awarded the condemnee should not, therefore, compensate him for extra risk bearing. He should be paid only the risk-free rate his money could have earned if it had been invested without risk. Since short-term Treasury bills are usually viewed as being virtually without risk, the yield rates on such bills are the appropriate measure of interest. The interest differential on other types of investments over the riskless rate is a risk premium; it compensates the investor for bearing the risk inherent in the particular investment. Use by condemnees of other than risk-free investments as the measure of interest should therefore be opposed.

We request that before litigating this position, government counsel contact Mr. Gary Peterson (FTS 724-8434) of the Land Acquisition Section for advice and assistance. The Division has not yet had an opportunity to test this position in litigation and is looking for an appropriate test case.

5. Burden of proof. The landowner has the burden of proving entitlement to a rate above the statutory 6% rate, as part of the landowner's burden of proving just compensation. That burden embraces the establishment, by evidence, that the instruments and obligations relied upon by the landowner as generating the desired yield are truly comparable, as to safety and liquidity, to an appropriate obligation of the United States government. That burden embraces, further, the need in the particular case for compounding interest, since the district court must be convinced in each case that compounding is necessary to satisfy the constitutional mandate of paying just compensation.

6. Deposits of estimated compensation. When paying estimated compensation into the registry of the district court at the time the declaration of taking is filed, government counsel should give notice of the deposit and consider arranging for deposit of such amounts into a federally insured account which bears interest until withdrawal by the condemnee. Current local district court

rules and practices should be consulted. In cases involving exceedingly large deposits of estimated compensation, interest accruing even for only one day should not be forgone. Such accured interest might then be the basis for claiming a credit against the later deficiency award plus interest.

Questions should be directed to the Land Acquisition Section (FTS 724-8434).

(Lands Division)

Personnel Changes

Office of The Deputy Attorney General:

Effective Saturday, February 4, 1984, Associate Attorney General D. Lowell Jensen was appointed Acting Deputy Attorney General by Attorney General William French Smith. Mr. Jensen will continue his role as Associate Attorney General.

Justice Management Division:

Assistant Attorney General for Administration Kevin D. Rooney will be leaving the Department of Justice. Mr. Rooney's departure will coincide with that of Attorney General William French Smith.

Executive Office for United States Attorneys:

Ms. Bonnie Lewis Gay, joined the Executive Office for United States Attorneys as an Assistant Director for the Legal Education Institute, Office of Legal Education.

Teletypes To All United States Attorneys

A listing of the teletypes sent during the period from January 30 through February 10, 1984, is attached as an appendix to this issue of the Bulletin. If a United States Attorney's office has not received one or more of these teletypes, copies may be obtained by contacting Ms. Theresa Bertucci, Chief of the Communications Center, Executive Office for United States Attorneys, at FTS 633-1020.

(Executive Office)

OFFICE OF THE SOLICITOR GENERAL
Solicitor General Rex E. Lee

The Solicitor General has authorized the filing of:

A brief amicus curiae with the Supreme Court, on or before January 19, 1984, supporting the petitioner in Ohio v. Kovacs, No. 83-1020. The issue is whether the automatic stay and discharge provisions of the Bankruptcy Reform Act (11 U.S.C. 362, 524, 727) operate to excuse a bankrupt polluter from a state court injunction requiring him to remove hazardous wastes from a dumpsite and, due to his failure to comply, also ordering him to release his nonexempt assets and future earnings to a court-appointed receiver to apply to the cleanup.

A brief amicus curiae with the Supreme Court on or before January 28, 1984, in Reed v. Ross, No. 83-218. The issue is whether the court of appeals erred in holding that respondent, a federal habeas petitioner, had shown cause for his procedural default in state court because the constitutional claim he now wishes to asset--based on Mullaney v. Wilbur, 421 U.S. 684 (1975)--was "novel" at the time his conviction became final in 1969.

A petition for a writ of certiorari with the Supreme Court on or before February 6, 1984, in United States v. Dahlstrom. The issues are: (1) whether the court of appeals erred in determining, as a matter of law, that defendants could not be convicted of willfully aiding in the preparation of false tax returns, despite abundant evidence of their guilty knowledge, on the theory that the absence of a judicial decision invalidating the precise tax shelter scheme they advocated rendered the governing tax law "highly debatable;" and (2) whether the court of appeals erred in holding that the first amendment affords a defense to prosecutions for willfully assisting in the preparation of false tax returns, on the theory that the promotion of fraudulent tax shelters does not "incite or produce imminent lawless action" within the meaning of Brandenburg v. Ohio, 395 U.S. 444, 447 (1969).

A petition for a writ of certiorari with the Supreme Court on or before February 29, 1984, in Secretary of HHS v. Sammie Gail Blankenship. The issue is whether the time lapse between request for hearing and decision on claims for disability benefits violates the statutory requirements for reasonable notice and opportunity for hearing (42 U.S.C. 205(b) and 1631 (c)(1)), and, if so, whether judicial imposition of nationwide time limits is an appropriate remedy.

CIVIL DIVISION
Acting Assistant Attorney General Richard K. Willard

Sea-Land Service, Inc. v. Dole, No. 82-1712 (D.C. Cir. Dec. 23, 1983). D.J. # 61-16-145.

DISTRICT OF COLUMBIA CIRCUIT HOLDS THAT SECRETARY OF TRANSPORTATION IS NOT REQUIRED TO HOLD A HEARING BEFORE PERMITTING SUBSIDIZED VESSELS TO SERVE UNSUBSIDIZED ROUTES.

Sea-Land brought suit against the Secretary and Waterman Steamship Company, contending that the Secretary must provide a hearing to determine whether Waterman's subsidized vessels may call at certain ports off the subsidized routes. The vessel involved, owned by Waterman, had been subsidized by the Secretary for certain routes because the existing service provided by U.S. vessels was inadequate. Without diminishing its service on those subsidized routes, Waterman asked permission to use that vessel to call at certain ports which were not located along the subsidized route. The Secretary approved the request without holding a public hearing. We argued that a hearing is not required when, as here, the Secretary is not being asked to confer an additional subsidy, and the vessel involved is not employing its subsidy to underwrite its expenses on an unsubsidized operation. The court of appeals agreed with our construction of Section 605(c) of the Merchant Marine Act--the provision at issue in the case--and held that a hearing is not required.

Attorney: Charles Ossola
(Formerly of the
Appellate Staff)

Robert S. Greenspan
FTS 633-5428

CIVIL DIVISION
Acting Assistant Attorney General Richard K. Willard

Ramirez v. Weinberger, No. 83-1950(D.C. Cir. Dec. 22,1983).
D.J. # 145-15-1474.

DISTRICT OF COLUMBIA CIRCUIT UPHOLDS DISMISSAL OF ACTION SEEKING INJUNCTION AGAINST USE OF AN AMERICAN CITIZEN'S LAND IN HONDURAS FOR A REGIONAL MILITARY TRAINING CENTER.

In this case Honduran land owned by plaintiff, an American citizen, was allegedly used by the American and Honduran military as a Regional Military Training Center. Suit was brought in the Federal district court in D.C. to enjoin the Secretary of Defense and other Federal officials from permitting the use of the land without plaintiff's permission. Plaintiff alleged, inter alia, that military exercises on his land amounted to a seizure of property without statutory authorization. The district court dismissed the complaint on political question grounds. The court of appeals affirmed in a 2-1 decision, in an opinion by Judge Scalia. The court rejected the political question doctrine as inapplicable; the court also refrained from relying on the act of state doctrine. Instead, the court found that general principles of equity precluded this suit for injunctive relief in view of considerations (1) that the activity challenged was military in nature, (2) that compliance would have to be monitored on foreign soil, (3) that military activities of a foreign sovereign are involved, (4) that relief had not been sought in Honduran courts, and (5) that in any event alternative relief in the form of money damages, if warranted, was available in the Claims Court. Judge Wilkey filed a lengthy dissent.

Attorneys: Michael F. Hertz
FTS 633-3602

Marc Johnston
FTS 633-3305

John Rogers
FTS 633-1673

CIVIL DIVISION
Acting Assistant Attorney General Richard K. Willard

Carole Kozera, etc. v. Thomas S. Spirito, et al., No. 83-1250; Geraldine Bishop v. Thomas S. Spirito, (1st Cir. Dec. 16, 1983). D.J. # 137-36-571.

FIRST CIRCUIT HOLDS THAT SECRETARY OF HEALTH AND HUMAN SERVICES MAY BE IMPLEADED BY MASSACHUSETTS IN STATE COURT ACTION BY CLAIMANT WHOSE AFDC BENEFITS HAD BEEN REDUCED BY THE STATE UNDER STATE REGULATIONS PROMULGATED IN COMPLIANCE WITH FEDERAL AFDC STATUTE AND REGULATIONS.

Pursuant to the Omnibus Budget Reconciliation Act of 1981 and pertinent HHS regulations, Massachusetts promulgated regulations which deemed the income of step-parents living in the home with children seeking AFDC benefits, but not legally responsible for the support of those children, to be part of the income available to the children when calculating whether the children were eligible for benefits. Plaintiffs brought these separate actions in state court to challenge the denial by the state of AFDC benefits based upon the deeming of the step-parents' income. In their complaints plaintiffs challenged the state regulations on, inter alia, Federal consitutional grounds, as violations of their First and Fifth Amendment rights. The state impleaded the Secretary as a third-party defendant in each action. The Secretary removed to Federal court and moved to dismiss the third-party complaint on the ground of sovereign immunity. The district court granted the Secretary's motion, holding that the third party complaint advanced only a claim against the sovereignty of the United States.

The court of appeals reversed, holding that sovereign immunity does not bar a third-party complaint against the Secretary which challenges the constitutionality of Federal statutes and regulations, relying on the second exception to sovereign immunity of Larson v. Domestic & Foreign Commerce Corp., which establishes that the "doctrine of sovereignty * * * does not apply in suits where plaintiffs sue for specific relief against federal officers, alleging * * * that the statute conferring power upon the officers is unconstitutional."

Attorneys: Robert S. Greenspan
FTS 633-5428

Edward R. Cohen
FTS 633-4331

CIVIL DIVISION
Acting Assistant Attorney General Richard K. Willard

McDonald v. Schweiker, No. 83-1046 (7th Cir. Dec. 12, 1983). D.J. # 145-0-1170.

SEVENTH CIRCUIT REJECTS GOVERNMENT'S POSITION ON TIME FOR FILING EAJA APPLICTION, BUT REVERSES EAJA AWARD, HOLDING THAT HHS' RELIANCE ON DOCTRINE OF SCHWEIKER v. HANSEN, WAS "SUBSTANTIALLY JUSTIFIED."

Plaintiffs inquired at a local social security office about her eligibility for old age benefits beginning at age 62. She was informed, in writing, that she did not have enough work quarters to qualify. Thus, she did not apply for benefits upon reaching the age of 62 in November 1978.

In August 1979, the social security office discovered that it had erroneously computed plaintiff's time in the workforce, and that plaintiff had indeed been eligible for benefits in November 1978. Plaintiff immediately applied for benefits. The Secretary granted her application prospectively, but denied benefits for the period preceding her application, relying on the doctrine that the Government is not estopped by the negligent misrepresentation of its employees. Plaintiff then sought judicial review of this partial denial, which involved a total of $652.50 in benefits.

In the district court, the Secretary failed to file a motion for summary judgment because he never received the court's scheduling order. The court, therefore, granted summary judgment for plaintiff on October 5, 1981, purporting to distinguish Schweiker v. Hansen, 450 U.S. 785 (1981) and related cases. Sixty days later, the Secretary filed a protective notice of appeal. The Secretary thereafter obtained two extensions of briefing time from the court of appeals before a final decision was made not to appeal. On March 30, 1982, the case was dismissed with prejudice.

On April 24, 1982, plaintiff filed an application for an award of attorneys' fees under the EAJA, seeking an award of approximately $4,200. The Secretary opposed plaintiff's EAJA application, arguing both that plaintiff's failure to file a fee

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application within thirty days of the district court's final judgment barred an EAJA award, and that the Secretary's reliance on the estoppel doctrine was "substantially justified." The district court rejected both arguments and awarded plaintiff $3,000 in attorney's fees.

The Seventh Circuit has now vacated the fee award, holding that the Secretary's reliance on the estoppel doctrine was indeed "substantially justified" and that "it was not the purpose of the EAJA to penalize the Government for committing procedural defaults." The court of appeals also held, however, that plaintiff's time to file an EAJA application began to run when the Secretary's appeal on the merits was dismissed, not when the district court entered its final judgment.

Attorneys: William Kanter
FTS 633-1597

John S. Koppel
FTS 633-5459

CIVIL RIGHTS DIVISION
Assistant Attorney General Wm. Bradford Reynolds

United States v. Parker, et al., No. H-83-41 (S.D. Tex. Dec. 6, 1983). D.J. # 144-74-3535.

DEFENDANTS PLEAD GUILTY IN CASE INVOLVING STOPS AND ARRESTS OF PERSONS ON HIGHWAY BASED PRIMARILY ON THEIR APPEARANCES.

Defendants Gary Parker, a former deputy sheriff of San Jacinto County, James Browder, a bondsman, and Herb Atwood, a bondsman, tendered guilty pleas in the middle of trial in this case which involved stops on Highway 59 without probable cause by members of the San Jacinto County Sheriff's office and the arrest of persons based primarily on their appearance. The arrestees would post bond and the officers would then get kickbacks from the bonding agencies. Parker pled guilty to a violation of 18 U.S.C. 241; Browder pled to a violation of 18 U.S.C. 3 (accessory after the fact); and Atwood pled to a violation of 18 U.S.C. 4 (misprision of a felony). Another defendant in this matter, Sheriff James C. Parker, was convicted on September 13, 1983, for violating 18 U.S.C. 241 and 242 by coercing confessions from prisoners at the San Jacinto County Jail by "water torture." His trial in the Highway 59 matter has been severed from that of the other defendants since he is currently incarcerated and undergoing mental evaluation. This matter is being handled by the United States Attorney's office.

Attorney: Howard Feinstein (Civil Rights Division)
FTS 633-4147

United States v. Crawford, et al., No. L-83-6-CR (E.D. Tex. Dec. 7, 1983). D.J. # 50-75-27.

DEFENDANTS CONVICTED IN INVOLUNTARY SERVITUDE CASE.

Defendants Steven L. Crawford and Randall C. Waggoner were convicted on 19 counts involving violations of 18 U.S.C. 371 (conspiracy), 18 U.S.C. 1584 (involuntary servitude) and 18 U.S.C. 1324 (illegally transporting aliens). Nineteen illegal Mexican

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aliens were transported from Rock Springs, Texas, to a farm near Center, Texas, in an enclosed U-Haul trailer by one of the defendants. When they arrived at the farm, they were sent to work planting pine trees. At least one alien was threatened at gunpoint, one was physically threatened when he was not working fast enough, and all learned that they had to work two weeks without pay to reimburse the defendants for their transportation costs. When fourteen of the workers escaped, eleven were brought back at gunpoint, but they were able to escape again. A third defendant, Joe A. Gonzalez, previously pled guilty to conspiring to violate immigration laws (18 U.S.C. 371) and illegally transporting aliens (18 U.S.C. 1324), and testified as a witness for the government.

Attorneys: Susan King (Civil Rights Division)
FTS 633-2734

Criselda Ortiz (Civil Rights Division)
FTS 633-3837

United States v. Retford, No. 83-6044 (E.D. Mich. December 8, 1983). D.J. # 175-37-112.

DEFENDANT SENTENCED IN INTERFERENCE WITH HOUSING RIGHTS CASE.

The defendant, Timothy S. Retford, a white male, was sentenced to one year in prison after pleading guilty to violating 42 U.S.C. 3631 (interference with housing rights). Baldwin and Thelma Dyer, a black couple living in a predominantly white neighborhood in Brandon Township, Michigan, were the victims of a cross burning. A letter containing racially derogatory threats to the victims was found at the scene. The defendant told the local police department that he was responsible for the cross burning and the note.

Attorney: Heather Williams (Civil Rights Division)
FTS 633-4154

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Assistant Attorney General Wm. Bradford Reynolds

United States v. Parker, et al., No. H-83-154 (S.D. Tex. Dec. 8, 1983). D.J. # 144-74-3711.

DEFENDANT SENTENCED IN "WATER TORTURE" CASE.

Defendant Floyd Baker, a former San Jacinto County Deputy Sheriff, was sentenced to four-years imprisonment after he tendered a guilty plea to a one-count violation of 18 U.S.C. 241. In this same case, Sheriff James C. Parker and deputies John Glover and Carl Lee were convicted on September 13, 1983, of violating 18 U.S.C. 241 and 18 U.S.C. 242. The four defendants coerced confessions from prisoners at the San Jacinto County Jail by "water torture." The victims were handcuffed to a chair by an officer, towels were placed over their noses and mouths and water was poured on the towel until the victims began to indicate they were suffocating or drowning. This matter is being handled by the United States Attorney's office.

Attorney: Howard Feinstein (Civil Rights Division)
FTS 633-3837

United States v. Smith, et al., No. IP 83-112-CR (S.D. Ind. Dec. 12, 1983). D.J. # 175-26S-54.

DEFENDANTS PLEAD GUILTY IN INTERFERENCE WITH HOUSING RIGHTS CASE.

Defendant Duane McCurdy pled guilty to a violation of 18 U.S.C. 2 (aiding and abetting a violation of 42 U.S.C. 3631), and Joseph Smith and a juvenile defendant pled guilty to conspiring to violate 42 U.S.C. 3631. During the evening of September 14, 1982, the black victim, Sylvester Jones, and his girlfriend, who is white, awoke and saw flickering light outside their window. Jones opened the curtain slightly and saw three young men attempting to light a cross in his front yard. Local police identified two of the defendants but released them. The FBI interviewed the defendants and all three admitted their participation in the incident. The victim was the only black resident of Fortville, Indiana, at the time of the attempted cross burning.

Attorney: Susan King (Civil Rights Division)
FTS 633-2734

CIVIL RIGHTS DIVISION
Assistant Attorney General Wm. Bradford Reynolds

United States v. Ramon Garza, et al., No. DR-CR-66 (W.D. Tex. Dec. 12, 1983). D.J. # 144-76-2657.

SHERIFF AND SPECIAL INVESTIGATOR SENTENCED FOR ILLEGALLY ARRESTING, DETAINING AND INTERROGATING INDIVIDUAL.

Defendants Ramon Garza, Sheriff of Zavala County, Texas, and Alfredo Menchaca, Special Investigator for Zavala County, were sentenced to five-years probation after they were convicted of a one-count violation of 18 U.S.C. 242 for illegally arresting, detaining and interrogating an individual. At trial, the jury was unable to reach a verdict on one count of the indictment which charged both defendants with conspiring to deprive citizens and others of their rights not to be deprived of liberty without due process of law and not to be compelled to be witnesses against themselves in violation of 18 U.S.C. 241. The jury was also unable to reach a verdict on several substantive counts charging violations of 18 U.S.C. 242, and on one which charged defendant Menchaca with attempting to intimidate a deputy sheriff into lying to the FBI agent investigating the case in violation of 18 U.S.C. 1512(a)(3). Defense motions for judgment of acquittal on these counts and the convicted counts were denied by the court. We are considering whether to seek a retrial on these counts or a superseding indictment.

Attorney: Ross Connealy (Civil Rights Division)
FTS 633-4074

United States v. Whitman, No. 83-1031 (C.D. Calif. Dec. 15, 1983). D.J. # 144-12C-1385.

FEDERAL GRAND JURY RETURNS INDICTMENT AGAINST DEFENDANTS CHARGED WITH CONSPIRACY TO TAMPER WITH WITNESS.

A Federal grand jury returned a four-count indictment against defendants H. Daniel Whitman and Robert H. Cohen who were charged with violating 18 U.S.C. 241 (conspiracy against the right of a citizen), 371 (conspiracy), 1512 (tampering with a witness), 1513 (retaliating against a witness), and 18 U.S.C. 2 (aiding and abetting). The defendants are alleged to have conspired together

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to plan the death of victim Raymond Cohen in order to prevent him from communicating to law enforcement officers information relating to a pending criminal counterfeiting prosecution. This matter is being handled by the United States Attorney's office.

Attorney: Ross Connealy (Civil Rights Division)
FTS 633-4074

United States v. Snell, No. 83-00366; Peace, No. 83-00365; Yost, No. 83-00362; Bilinski, No. 83-00370 (E.D. Pa. Dec. 16, 19, 20 and 21, 1983). D.J. # 144-62-1085.

AIDES AT INSTITUTION FOR MENTALLY RETARDED PLEAD GUILTY TO CHARGES OF PHYSICALLY ABUSING CLIENTS.

Four defendants have pled guilty to violating 18 U.S.C. 242 by physically abusing clients at the Pennhurst Center, a state institution for the severely mentally retarded in Spring City, Pennsylvania. Cecil Snell, Jr., pled guilty to one count on December 19, 1983, and is scheduled for sentencing on February 7, 1984; Kevin Peace pled guilty to two counts on December 21, 1983, and is scheduled for sentencing on January 27, 1984; Harold Yost pled guilty to one count on December 16, 1983, but sentencing has not yet been scheduled; and Debbie Bilinski pled guilty to one count on December 20, 1983, and on December 29 was sentenced to a one-year prison term which was suspended to three-years probation. Snell and Peace agreed to testify against two other defendants, Hastings Dise and Steven G. Dise, and to cooperate in the continuing investigation. The defendants are all present or former mental retardation aides at Pennhurst Center, and are charged with beating, slapping, or punching patients in a series of incidents at the center during 1981 and 1982, in violation of 18 U.S.C. 242. This matter is being handled by the United States Attorney's office.

Attorney: Theodore Merritt (Civil Rights Division)
FTS 633-3858

CIVIL RIGHTS DIVISION
Assistant Attorney General Wm. Bradford Reynolds

Davis and United States v. Henderson, No. 77-423 (M.D. La. Dec. 2, 1983). D.J. # 168-32M-13.

SETTLEMENT AGREEMENT FILED IN SUIT INVOLVING INSTITUTION FOR THE CRIMINALLY INSANE.

A settlement agreement of all the parties was filed with and entered by the court in this suit which involves the Feliciana Forensic Facility, Louisiana's institution for the criminally insane. The agreement binds the defendants to substantially comply with Louisiana's own rules and regulations governing hospitals; with National Institute of Mental Health standards; with agency policies and procedures on seclusion and restraint and the use of psychotropic medications; and with patients' rights enumerated in Louisiana state law. The defendants are to submit, within 60 days, a specific implementation plan addressing staffing, treatment, medical care, mentally retarded patients, and the rights of patients, and are to submit quarterly status reports concerning implementation of the agreement beginning on April 1, 1984.

Attorneys: Daniel P. Butler (Civil Rights Division)
FTS 272-6065

Karen E. Holt (Civil Rights Division)
FTS 272-6075

Palmore v. Sidoti, No. 82-1734 (Dec. 9, 1983). D.J. # 144-17M-1933.

BRIEF FILED BY UNITED STATES SUPPORTS PETITIONER'S ARGUMENT OF DENIAL OF EQUAL PROTECTION IN CUSTODY CASE.

We filed a brief as amicus curiae in the Supreme Court supporting petitioner's argument that a Florida divorce court denied her equal protection of the laws by removing her white child from her custody because she had remarried a black man.

Attorney: Joan A. Magagna (Civil Rights Division)
FTS 633-3779

CIVIL RIGHTS DIVISION
Assistant Attorney General Wm. Bradford Reynolds

United States v. State of North Carolina, et al., No. 83-1574-CIV5 (E.D. N.C. Dec. 22, 1983). D.J. # 170-54-102.

COMPLAINT AND CONSENT ORDER AND AGREEMENT FILED IN EMPLOYMENT DISCRIMINATION CASE.

We filed a complaint and consent order and agreement charging the North Carolina State Bureau of Investigation (SBI) with discriminating against women in the hire, promotion and assignment of female sworn field agents, and with discriminating against Catherine Breeden, a female sworn agent, on the basis of sex. The agreement provides that the SBI will attempt to recruit women so that they constitute at least 25% of the qualified applicants for sworn field agent positions, that the SBI will take certain specified steps to assure that all agents have an equal opportunity to be considered for promotion, and that the SBI will assign and transfer female sworn agents on the same basis as male sworn agents. In addition, Catherine Breeden has been promoted to a lead-agent position with retroactive seniority, and awarded $20,000 in back pay, as provided for in the agreement.

Attorney: Kerri Weisel (Civil Rights Division)
FTS 533-3861

United States v. Griffin, et al., No. CR-83-53-01 thru 09 G (M.D. N.C. Jan. 9, 1984). D.J. # 144-54M-351.

TRIAL BEGINS FOR KLANSMEN AND NAZI PARTY MEMBERS CHARGED WITH CONSPIRACY TO INTERFERE WITH FEDERALLY PROTECTED RIGHTS.

On January 9, 1984, trial began in Winston-Salem, North Carolina. The defendants, six Ku Klux Klan members and three Nazi Party members, are charged with conspiring to interfere with the federally protected rights of participants in an anti-Klan parade authorized by the City of Greensboro, which resulted in the deaths of five members of the Communist Workers' Party and bodily injury to six other participants and a television cameraman on November 3, 1979. Trial may last up to three months. On January 16, we filed a response to and participated in oral argument on a petition for a writ of mandamus before the Fourth Circuit which was filed on January 12 after four days of jury selection. The Fourth Circuit

CIVIL RIGHTS DIVISION
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stayed jury selection pending argument of the matter. The petition, which was filed by four North Carolina newspaper companies, arises from jury selection in the case and challenges the district court's closing of much of the voir dire proceedings to the public and press, contending it is not justified by the district court's expressed concern about prejudicial pre-trial publicity. On January 17, we also filed in the Fourth Circuit a response to another mandamus petition arising from the same prosecution. In this matter, prospective witnessses challenge the district court's order prohibiting extra judicial statements by witnesses which concern the actions at issue in the prosecution if such statements are intended for dissemination by means of public communication.

Attorneys: James Clute (Civil Rights Division)
FTS 633-3727

Frank Allen (Civil Rights Division)
FTS 633-4381

Daniel Bell (Civil Rights Division)
FTS 633-4071

United States v. Wiemers, et al., No. EP-83-CR-161 (1, 2) (W.D. Tex. Jan. 12, 1984). D.J. # 144-76-2680.

INS BORDER PATROL AGENTS CONVICTED ON WITNESS INTIMIDATION CHARGE.

On January 12, 1984, defendants Charles Kerns and Lonnie Wiemers, two INS Border Patrol Agents, were convicted of violating 18 U.S.C. 1512 when they threatened a fellow border patrol officer who gave evidence against them to a federal grand jury. The defendants were acquitted on two counts relating to violations of 18 U.S.C. 371 and 242, charging a conspiracy to intimidate their fellow border patrol officer, and an alleged beating of a 12-year old.

Attorney: Enrique Romero (Civil Rights Division)
FTS 633-4148

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, Director

Manual Baker and Betty Jean Fowler v. United States, No. 83-1957 (9th Cir. Dec. 20, 1983).

NINTH CIRCUIT REFUSES TO ALLOW FIFTH AMENDMENT TO OVERRIDE CIVIL FORFEITURE RULES

Fowler and Baker filed statements indicating that they wished the personal property seized from them by the DEA, pursuant to 21 U.S.C. §§ 841(a)(1), 881(1)(6). Fowler and Baker refused to admit or deny that the property was theirs; asserting that it would be a violation of their fifth amendment rights as they were under investigation for tax evasion, welfare fraud, and narcotics violations. They filed petitions for remission or mitigation of the forfeiture, which were denied on the basis that specific ownership was not stated.

Fowler and Baker sued the United States and agents of the DEA, alleging wrongful seizure and detention of property. Their position was that the seizure from them was sufficient to indicate a possessory interest and that the fifth amendment privilege against self-incrimination protects them from having to allege a property interest. The district court granted the United States motion to dismiss for lack of standing and granted forfeiture to the United States, finding that no one had filed a claim.

The Ninth Circuit affirmed the district court's decision. The Ninth Circuit distinguished United States v. U.S. Coin and Currency, 401 U.S. 715 (1971), as it did not involve an assertion of fifth amendment privilege concerning ownership of the forfeited items and the court also pointed out that U.S. Coin and Currency, supra, limited the scope of the fifth amendment privilege to prevent undue restriction on the government's forfeiture laws. The court also stated that the fifth amendment privilege is weaker in a civil suit brought by parties seeking to obtain the seized property and it does not preclude the court from demanding more that hearsay allegations of interest in the forfeited property.

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General F. Henry Habicht, II

United States v. Stauffer Chemical Co., ____S.Ct.____ No. 82-1448. (Jan 10, 1984) D.J. # 90-5-2-3-1333.

ESTOPPEL PRECLUDES EPA FROM LITIGATING AN ISSUE AGAINST A PARTY IN ONE CIRCUIT WHERE THE SAME QUESTION INVOLVING THESE PARTIES WAS DECIDED BY ANOTHER CIRCUIT.

The Supreme Court held that EPA was precluded from litigating an issue against Stauffer Chemical Co. in the Sixth Circuit by a previous Tenth Circuit opinion on the same question in a separate case involving Stauffer. At issue in both cases was whether Section 114(a)(2) of the Clean Air Act, 42 U.S.C. (Supp. V) 7414(a)(2), permitted EPA to use private contractors to inspect manufacturing facilities. We had asserted that collateral estoppel did not apply because the statutory issue was an unmixed question of law which arose in successive actions involving unrelated subject matter. Supreme Court cases had established an exception from collateral estoppel in such instances. See Montana v. United States, 440 U.S. 149, 162 (1979); Commissioner v. Sunnen, 333 U.S. 591, 601-602 (1948); United States v. Moser, 266 U.S. 236, 242 (1924). The Court rejected our argument, finding that the successive actions in this case were too closely related to fall under the "unmixed question of law" exception. Because EPA can litigate the statutory issue with other parties, the Court found unpersuasive our contention that application of collateral estoppel doctrine would unduly freeze the law. The Court sidestepped our assertion that its ruling would force EPA to apply different rules to similarly situated parties. We had pointed to the anomoly created in the Ninth Circuit where the court had ruled in our favor on the statutory issue in Bunker Hill v. EPA, 658 F.2d 1280 (9th Cir. 1981). Because of the preclusive effect given the Tenth Circuit's opinion, EPA would, assumably, be unable to use its contractor representatives to inspect Stauffer's plants located within the Ninth Circuit notwithstanding the Ninth Circuit's approval of the practice. The Court "express[ed] no opinion on that application of collateral estoppel."

Justice White, concurring in the result, did address that issue. He agreed that collateral estoppel precluded relitigation of the statutory issue in the Tenth Circuit. Collateral estoppel also precluded consideration by the

Sixth Circuit, which had not yet ruled on the issue. Under his view, however, the Tenth Circuit's decision should not be given preclusive effect in circuits that have adopted or later adopt the contrary legal rule on the merits of the legal issue.

Because collateral estoppel precluded a consideration of the merits, the Supreme Court did not decide the statutory issue.

Attorney: Dirk D. Snel (Land and Natural Resources Division) FTS 633-4400

Attorney: Kathleen P. Dewey (Land and Natural Resources Division) FTS 633-4519

Secretary of the Interior v. California, ____S.Ct. ____. No. 82-1326 etc. Jan. 11, 1984) D.J. # 90-4-146.

OCS LEASE SALE IS NOT AN ACTIVITY "DIRECTLY AFFECTING" THE COASTAL ZONE WITHIN THE MEANING OF SECTION 307(c)(1) OF THE COASTAL ZONE MANAGEMENT ACT.

The Supreme Court reversed (5-4) a decision of the Ninth Circuit holding that an OCS lease sale was an activity "directly affecting" the coastal zone within the meaning of Section 307(c)(1) of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1456(c)(1). The Supreme Court ruled that Congress, in creating the statutory term "directly affecting the coastal zone" in 1972 "did not intend OCS lease sales to fall within the ambit of CZMA § 307(c)(1)." First, the Court reasoned that the directly affecting language was designed as a compromise measure concerning a dispute over the application of consistency to Federal lands located physically within the coastal zone. The Court also noted that Congress, in 1972, had rejected several attempts to extend the CZMA to the OCS explicitly. In light of these rejections, the Court was "impelled to conclude that the 1972 Congress did not intend § 307(c)(1) to reach OCS lease sales." The Court further suggested that OCS lease sales are "a type of federal agency activity not intended to be covered by § 307(c)(1) at all." Because the activities having a potential effect are not "conduct[ed] or support[ed]" by the Federal agency. Instead, those activities are conducted by "private parties authorized by a federal agency's issuance of licenses or

permits" which are subject to § 307(c)(3) of the CZMA. The Court found that Congress in 1976 expressly declined to make § 307(c)(3) consistency apply to OCS leases, and in the 1978 Amendments to the OCSLA, it codified the distinction between lease sales and later, exploration, development and production stages of the OCS process "with great care."

The Court concluded that Congress decided to defer consistency review until the later stages of the OCS process, and it was not for the Court to reverse this policy judgment. Four justices joined in a lengthy dissenting opinion authored by Justice Stevens.

Attorney: Anne S. Almy (Land and Natural Resources Division) FTS 633-4427

Attorney: Peter R. Steenland, Jr. (Land and Natural Resources Division) FTS 633-2748

Yuba Goldfields, Inc. v. United States, No. 83-913 (Fed. Cir., Dec. 14, 1983) D.J. # 90-1-23-2421.

TAKING CAN ARISE FROM A PROHIBITION OF MINING BY GOVERNMENT AGENCY.

The federal circuit reversed an order of the claims court granting summary judgment to the United States against a claimed taking. The landowner claimed that the United States, by claiming ownership of certain mineral interests, and by prohibiting the landowner from exploiting the minerals while the landowner pursued his (ultimately successful) title claim to the minerals, had "taken" the mineral interest for a period of six years. The claims court held that there was no taking because the United States did not physically bar the landowner from using the property, and because the United States did not act in its sovereign capacity but in its proprietary capacity in a good faith effort to protect what it believed was its property. The federal circuit held that summary judgment on the present record was inappropriate. The court held that the mere fact that the government did not physically prevent mining was immaterial. The court also characterized the distinction between the government's sovereign and proprietary capacities as being largely irrelevant. The court found significant the fact that the Corps of Engineers had told the landowner in a letter that mining was "prohibited." The court concluded that the landowner should have an opportunity at trial to establish that a

reasonable landowner cannot be expected to develop his property in light of such a statement.

Attorney: Glen R. Goodsell (Land and Natural Resources Division) FTS 633-2763

Attorney: David C. Shilton (Land and Natural Resources Division) FTS 633-5580

Wright v. Gregg, No. 83-3825 (9th Cir., Dec. 28, 1983) D.J. # 90-1-0-1628.

QUIET TITLE ACT PRECLUDES SUIT CLAIMING TITLE BY ADVERSE POSSESSION.

The Ninth Circuit, in an unpublished memorandum opinion, affirmed the district court's dismissal of Wright's quiet title action brought against the Bureau of Land Management. Wright claimed that he had acquired title to a bridge by adverse possession. The Ninth Circuit rejected that claim, noting that the Quiet Title Act, 28 U.S.C. 2409a(g), specifically eliminates adverse possession as a basis for a quiet title action.

Attorney: James L. Sutherland (Assistant United States Attorney, D. Ore.)

Attorney: Albert M. Ferlo, Jr. (Land and Natural Resources Division) FTS 633-2774

Attorney: Dirk D. Snel (Land and Natural Resources Division) FTS 633-4400

United States Marshals Service v. Means, No. 82-2489 (8th Cir., Dec. 29, 1983) D.J. # 90-2-4-761.

UNITED STATES MUST PAY FEES AND EXPENSES OF WITNESSES FOR INDIGENT INDIANS.

The United States brought action to eject Sioux Indians from Yellow Thunder Camp. The district court found the Indians to be indigent and ordered the United States to pay the fees and expenses of witnesses subpoenaed by the Indians. The Eight Circuit agreed with the United States that the in

forma pauperis statute, 28 U.S.C. 1915, does not authorize the government to pay such fees but held that 28 U.S.C. 1825 and Fed. R. Evidence 706 did authorize such payments. "Alternatively," the court suggested that the district court may "simply require the government to advance [the Indians' expert witnesses'] fees and expenses, which may later be taxed as costs" under 28 U.S.C. 2412(d).

Attorney: Nancy B. Firestone (Land and Natural Resources Division) FTS 633-2045

Attorney: Wendy B. Jacobs (Land and Natural Resources Division) FTS 633-4168

Attorney: David C. Shilton (Land and Natural Resources Division) FTS (633-5580)

Morris County Trust for Historic Preservation v. Pierce, No. 82-5656 (3d Cir., Dec. 29, 1983) D.J. # 90-1-4-2420.

ATTORNEYS' FEES IN COURT OF APPEALS AUTHORIZED BY SECTION 305 OF THE NATIONAL HISTORIC PRESERVATION ACT.

The Third Circuit had previously held (at 714 F.2d 271) in this case that the district court correctly enjoined the demolition of the Old Stone Academy in Dover, N.J., until HUD conducts reviews pursuant to Section 106 of the National Historic Preservation Act (NHPA) and NEPA. Plaintiffs subsequently moved in the court of appeals for attorneys' fees and costs incurred in the appeal pursuant to Section 305 of NHPA. We opposed the motion on several grounds, including: (1) Section 305 by its terms only authorizes the award of attorneys' fees incurred in district court, and does not permit the award of fees incurred in the court of appeals, and (2) plaintiffs have insufficiently documented their application. The Third Circuit rejected the former argument, holding that Section 305 permits the recovery of fees and costs for successful services rendered in the court of appeals, if otherwise reasonable. The court of appeals agreed that plaintiffs had not adequately documented their request, and

absent an agreement on a fee award, gave applicants 15 days to supply the requisite data.

Attorney: Thomas H. Pacheco (Land and Natural Resources Division) FTS 633-2767

Attorney: Dirk D. Snel (Land and Natural Resources Division) FTS 633-4400

OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Robert A. McConnell

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

JANUARY 17, 1984 - JANUARY 31, 1984

HIGHLIGHTS

Senate Passes Crime Bill. By a vote of 91-1 (Senator Mathias casting the only dissenting vote), the Senate approved S. 1762 on February 2, the Comprehensive Crime Control Act. As the Attorney General noted in a statement issued shortly after the vote, this is without doubt the most important and far-reaching anti-crime initiative in more than a decade. The bill would reform bail, sentencing, forfeiture, insanity defense and other criminal justice laws--more than 40 significant criminal law reforms taken all together. Despite the failure of our effort to secure unanimous consent to an agreement carefully restricting permissible floor amendments, S. 1762 emerged relatively free of amendments opposed by the Administration. Most of the amendments accepted were acceptable to us; others, although questionable, do not appear to pose any significant problems. The most objectionable floor amendment, the Bumpers-Metzenbaum wiretap amendment was defeated by a vote of 51-41. This hastily conceived wiretap amendment would have impeded legitimate law enforcement and intelligence operations.

Other Crime Bills. The Senate has now passed or begun consideration of the other crime legislation included in the understanding reached to handle the remaining bills. The bills include: three bills which are identical to the comparable titles of the President's "core" bill--bail, sentencing and forfeiture--sponsored by Biden (forfeiture) and Kennedy (bail and sentencing); they also include: habeas corpus reform, (passed on February 6), S. 1763; exclusionary rule reform, S. 1764; and the death penalty, S. 1765. We are concerned that the bail, sentencing and forfeiture bills of Senators Kennedy and Biden seriously undermine our "package" approach. In addition, the Senate will soon take up the Biden "drug tsar" bill, S. 1787. We are attempting to seek a compromise with Senator Biden on the "drug tsar" issue. The Senate is also expected to approve the Specter Career Criminal bill, S. 52, which we have reluctantly decided not to oppose.

OLA Contact: Any questions on the above mentioned crime bills should be directed to Cary H. Copeland, Department of Justice, Office of Legislative Affairs, Room 1142, Washington, D. C., or phone FTS 633-4117.

Immigration. The House Hispanic Caucus and other hispanic leaders announced their proposals for an alternative immigration reform package during a recent hispanic conference on immigration. Representative Edward Roybal has just introduced a bill which, unlike the immigration bill approved by the House Judiciary Committee and likely to come to the House floor in March, does not include sanctions against employers who hire illegal aliens. Instead, this hispanic version concentrates on beefed-up border patrol activities. Every knowledgeable observer of immigration reform in recent years concurs, as does the Administration, that employer sanctions are absolutely essential for immigration reform. Representative Roybal did not indicate how much his bill would cost although it is expected to be more expensive than either the House or Senate versions of the Simpson/Mazzoli bill. The Administration supports the Senate version of the Simpson/Mazzoli bill and will work to bring the House version in accord while continuing to work to defeat provisions and amendments not in accord with the Administration's policy and budget goals.

Meanwhile, Rules Committee action on H.R. 1510 has yet to be scheduled but is expected immediately after the February recess. Floor action is expected to follow immediately thereafter. It is expected that the Hispanic Caucus will look to the Rules Committee to structure a rule which will be so contentious that it will not be adopted on the House floor. We will work to secure a rule which will allow a time certain for debate.

OLA Contact: Any questions on immigration legislation should be directed to Donald T. Baker, Deputy Assistant Attorney General, Office of Legislative Affairs, Department of Justice, Washington, D. C., or phone FTS 633-4216.

Anti-Terrorism Legislation. Since the President indicated that he would be submitting such legislation to the Congress in the State of the Union message, we are actively working to secure Administration clearance on a package of five separate bills for submission to the Congress.

OLA Contact: Any questions on anti-terrorism legislation should be directed to Cary H. Copeland, Office of Legislative Affairs, Department of Justice, Washington, D. C., or phone FTS 633-4117.

National Security Information. On January 30, Congressman Jack Brooks introduced the proposed Federal Polygraph Limitation and Anti-Censorship Act of 1984, H.R. 4681. The bill is aimed at the provisions of the President's National Security Decision Directive 84 (NSDD 84). NSDD 84 was designed to safeguard national security information by essentially expanding the CIA's and NSA's prepublication review and polygraph examination requirements to cover all government employees and contractors with access to highly classified information. A preliminary review

of H.R. 4681 indicates that it would not only thoroughly negate NSDD 84, but would make efforts to prevent or determine the source of leaks of classified information even more futile than before the promulgation of NSDD 84.

Surprisingly, H.R. 4681 was referred to the Post Office and Civil Service Committee rather than Representative Brooks' Government Operations Committee. However, the bill is under the jurisdiction of a Brooks ally on this issue, Representative Patricia Schroeder. As Chairwoman of the Subcommittee on Civil Service, Ms. Schroeder plans one day of hearings on H.R. 4681 followed by prompt subcommittee action on the bill.

Antitrust Division Authorization. On February 2, J. Paul McGrath, Assistant Attorney General, Antitrust Division, appeared before the House Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary to discuss the Antitrust Division's authorization. Mr. McGrath reviewed the work of the Antitrust Division as well as its future direction.

Federal Medical Care Recovery Act. Congressman Hall, Chairman of the Subcommittee on Administrative Law and Governmental Relations of the House Judiciary Committee, has introduced H.R. 4666, a bill to amend the Federal Medical Care Recovery Act. Submitted to Congress by the Department, the bill would increase the ability of the United States to recover the costs of hospital and medical care and treatment which is furnished by the United States under certain circumstances.

Victims Compensation. As a result of the President's Victims Task Force report, Administration statements including the President's comments in the State of the Union, and an understanding (or knowledge) on the Hill that we have drafted a legislative proposal, we find very strong interest in Congress to act quickly. The Department of Justice has submitted a bill for OMB clearance. Hearings are scheduled for mid-February on this subject.

School Violence. On January 25, the Senate Judiciary's Subcommittee on Juvenile Justice held an oversight hearing on violence in the schools. Alfred Regnery, Administrator, Office of Juvenile Justice and Delinquency Prevention (OJJDP), cited various studies showing that "where discipline breaks down in public schools, where crime and drugs are rampant, the students who want to be educated cannot be, and students who may not even have a predisposition to be unruly not only fail to get an education, but get drawn into criminal activity themselves."

As a response to the problem, OJJDP has established a task force to monitor cases in both federal and state courts dealing with school discipline. OJJDP, as mentioned by the President in his radio address several weeks ago, will also grant $2-3 million for the establishment of a National School Safety Center and related research projects.

FOIA Reform for CIA. In the last session of the Congress, the Senate passed legislation to exempt certain CIA operational files from search, review and disclosure under the Freedom of Information Act. The Senate-passed bill, S. 1324, was the product of a compromise which is said to have blunted opposition by the ACLU while at the same time retaining language which would achieve the Administration's goal of eliminating costly and time-consuming searches of CIA files which never result in disclosures pursuant to the FOIA.

House consideration of the issue began with a February 8 hearing before the Subcommittee on Legislation of the Permanent Select Committee on Intelligence. The hearings focused on H.R. 3460, introduced by Mr. Mazzoli and H.R. 4431, introduced by Mr. Whitehurst. The latter is substantially similar to S. 1324. However, there are no indications that the House will act to concur with the Senate's action on the issue. Moreover, the House Government Operations Committee has concurrent jurisdiction over this legislation. Accordingly if any serious action is undertaken by the House, there will also be hearings before Congressman English's Subcommittee on Government Information, Justice, and Agriculture.

Counsel for Intelligence Policy, Mary Lawton, represented the Department at the February 8 hearing.

Coal Land Exchanges. On January 24, Deputy Assistant Attorney General Douglas H. Ginsburg, Antitrust Division, appeared before the Senate Select Committee on Indian Affairs concerning the impact coal-land exchanges between the Department of the Interior and western land-grant railroads may have on the value of indian-owned coal.

CUMULATIVE LIST OF CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

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

Effective Date	Annual Rate
10-01-82	10.41%
10-29-82	9.29%
11-25-82	9.07%
12-24-82	8.75%
01-21-83	8.65%
02-18-83	8.99%
03-18-83	9.16%
04-15-83	8.98%
05-13-83	8.72%
06-10-83	9.59%
07-08-83	10.25%
08-10-83	10.74%
09-02-83	10.58%
09-30-83	9.98%
11-02-83	9.86%
11-24-83	9.93%
12-23-83	10.10%
01-20-84	9.87%

NOTE: When computing interest at the daily rate, round (5/4) the product (i.e., the amount of interest computed) to the nearest whole cent.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, Director

Teletypes To All United States Attorneys

02/03/84--From William P. Tyson, Director, Executive Office For United States Attorneys, re: "United States Attorneys' Conference--1984."

02/03/84--From Susan A. Nellor, Assistant Director for Legal Services, Executive Office For United States Attorneys, re: "Senate Passes Administration Crime Bill."