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Executive Office for United States Attorneys

UNITED STATES ATTORNEYS' BULLETIN

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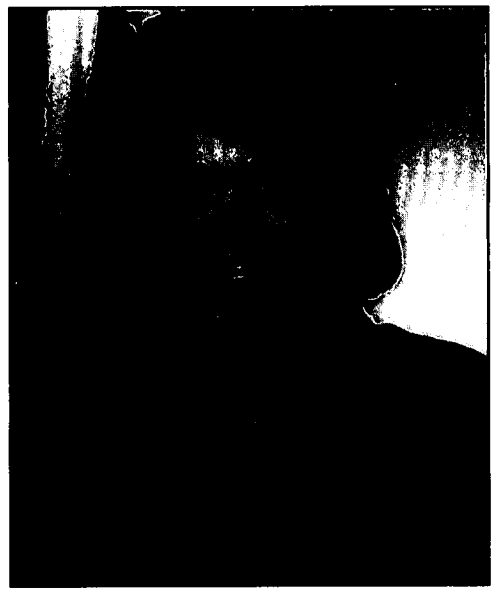
INTERVIEW WITH THE DEPUTY ATTORNEY GENERAL



Jamie S. Gorelick has been the Deputy Attorney General of the United States since March 28, 1994. She is the second ranking official in the Department, and the Chief Operating Officer. Before joining the Department, she was the General Counsel of the Department of Defense, Supervising 6,000 lawyers and acting as an advisor for the Secretary of Defense. This interview with her was conducted by Assistant United States Attorney David Nissman (referred to as DN), Editor-in-Chief of the United States Attorneys' Bulletin.

DN: How important is it to have a national perspective on issues that may affect different districts?

DAG: It is my job to ensure that as much authority, power, and autonomy remains in the field as possible, consistent with the overall institutional interests of the Department and the United States. Therefore, we've done two things in the Department. First, we have tried to cut way back on the number of prior approvals. In cases that once were cutting edge, but no longer are – because the law is adequately developed – there is ample expertise in the field. Those decisions should be and are being made in the United States Attorneys' offices. But this is an evolutionary process, and as new issues come to the fore that require management in level, we will be alerting the field to those issues.

One example is the growing area of national security law, where a seemingly innocuous action of an Assistant United States Attorney somewhere in the United States can have repercussions for our intelligence community and for our foreign relations. Another example would be in the area of searches of attorneys' offices, where we must ensure that we are not perceived to be going after those who sit across the table from us or otherwise undermining the attorney-client privilege.

I think one can see the dangers of a lack of coordination most clearly in what has happened in the asset forfeiture area, where prosecutorial decisions in two or three isolated cases have resulted in a very

(continued on page 223)

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From the Editor-in-Chief

In last month's issue of the Bulletin we foreshadowed some of the changes that you now see in this issue. In my informal survey of AUSAs around the country you have continuously asked for more information from the policy makers. The primary purpose of the Bulletin is to provide internal guidance for U.S. Attorneys' Offices. Our lead feature this month is an interview with Deputy Attorney General Jamie Gorelick. She candidly answers policy questions that many of you have asked me to pose. In addition, be sure to read AUSA Kurt Shernuk's article about "imaging," a form of document retrieval and presentation that may help you use computer visuals in jury trials. This month we've added a WordPerfect tips column where, each month, we'll demonstrate simple techniques that may increase your efficiency. You won't see the commendations section but we have kept the honors and awards section for significant accomplishments. The new approach to the Bulletin is to create a vehicle in which we share the wealth of our successful litigating techniques and experiences with our colleagues. You can help by volunteering to write a short article on a trial technique, investigative method, or the discovery of a new resource that you have used that may help your colleagues in other districts. Call me at (202)616-5210 or send me an Email at AEX02(DNISSMAN) or AEX02(BULLETIN).

David Marshall Nissman

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substantial cutback in our national authority. I have tried to take the opposite tack in our efforts with regard to Rule 4.2, Contacts with Represented Parties – to manage the development of the law, by ensuring that any case in which we act under the Attorney General's regulation but contrary to a state ethics rule, is a case with facts that best present our equities and concerns as a Department.

DN: Before you came to the Department, when you were the President of the D.C. bar, you had real trouble with the Department's approach to this issue. Did your view of this change after you came here, or are you much more satisfied with the C.F.R. as it is, versus the old policy?

DAG: My position has not changed. What I objected to when I was in private practice was the notion reflected in the Thornburgh Memorandum that attorneys working for the Government are free to ignore the rules of state supreme courts as a whole. I thought it was completely appropriate that different rules might be appropriate for prosecutors than for civil litigating attorneys. And I also realized, having been very much a part of the development of legal ethics rules, locally and nationally, that frequently the perspective of the prosecutor regarding how a particular rule peculiarly affects prosecutors had not been adequately addressed in that process. The rule that the Attorney General promulgated is very narrow. It does not say in any way that we, as Government prosecutors, are above the law. It does not say that state courts have no authority over us once they give us our licenses. Rather, it points to a very particularized conflict between the responsibilities of the prosecutor and the mandates of a local ethical rule, and addresses that very narrowly. I think that is wholly appropriate and consistent with my prior views.

". . we will support and defend someone who is in the position of facing a bar charge when that person has followed our rules."

Deputy Attorney General Jamie Gorelick

DN: What's your sense of how the defense bar and the courts have reacted to this so far?

DAG: I think very well. I have tried to explain to each of the relevant constituency groups – the bar associations, the disciplinary bodies, and the courts – why we needed the rule, and why the Attorney General made the decisions she did. I urged them to watch what we do, and I assured them that if they held their fire, they would find that the kinds of horror stories which were being suggested to them concerning our conduct would not be borne out, but that we would be very responsible and measured in using this authority. I think we have done what I said we would do, and they have done what I asked them to do. We have not had a lawsuit challenging the rule or any complaints filed against our litigators by bar counsel.

DN: What level of comfort do the judges have with our approach?

DAG: I think there's still a great wariness on their part, and a residual anger over the course of discussions since 1989. I think the bar and the courts felt that the Department would not listen to them, and we've tried to address that.

DN: What happens if AUSAs properly follow a rule, and a complaint is filed? Is the Department going to support us?

DAG: That's a very legitimate concern, one that I would certainly have as an Assistant United States Attorney and one that I thought the prior policy under the Thornburgh Memorandum did not address. It basically directed Assistant United States Attorneys to ignore the rule of their local bar, but offered no particular guidance, limitation, structure, or protection.

What we have done is the following: First, we have promulgated a detailed and limited rule. Second, we provide advice to anyone in the field who has a question about how something he or she is about to do comports with the rule. Third, in my office we have established a process by which any Assistant who does not want to approve a contact because of a legitimate fear of losing his or her license can come to us, and Associate Deputy Attorney General David Margolis will undertake that approval process. Finally, we have agreed and made very clear that we will support and defend someone who is in the position of facing a bar charge when that person has followed our rules.

DN: Let's turn to the Miami case. It's a very interesting case. We've been attacked by the defense bar for indicting lawyers. They claim we're targeting defense lawyers. I know this has upset a lot of people. Because of some of the bad press since Waco, does the Department feel a need to go out proactively to correct some misimpressions? How do we get the word out to the public? Is it necessary? Is this the proper time?

DAG: This is a good example of the need for coordination because of the sensitive policy considerations, between United States Attorney's offices and headquarters. The Miami office alerted the Criminal Division to this case and because they jointly discussed the implications, we ensured that the actions of the United States Attorney, which are attributable to the Department as a whole, are appropriate.

What we have tried to do is to get the word out that we are not in a war on defense counsel. To the contrary, we would like to ensure as much as we can that there is zealous advocacy on behalf of clients, that there is no chilling effect on legitimate representation of criminal defendants. I have given interviews to a dozen newspapers to that effect. We're a bit hamstrung because we can't talk about the case, and that is always a disadvantage. It is critically important that as we talk about the prosecution of defense counsel, as we talk about searching lawyers' offices, we make absolutely clear that we do respect the attorney-client privilege, that we do respect the right to counsel and to zealous representation, and that when we indict based on actions by defense counsel, it is for activities that are beyond the pale.

DN: Where are we with the legislative proposal to change Rule 16?

DAG: Though no final decision has been made, to date, the judiciary is proceeding with proposed changes to Rule 16 which would increase our obligations to provide discovery on witness identification, witness statements, etc. And here is an example where the individual actions of an Assistant – though completely lawful – can affect how we are perceived by the judiciary. What you hear about is the refusal of an Assistant to provide more discovery than is required by the rules where there's no reason not to. And if there are enough judges who are irritated by such conduct, you get a reaction against the conduct of prosecutors as a whole. We have tried to address this by asking each United States Attorney to visit with the judges in his or her jurisdiction to hear any complaints, and to ensure that in each office we are as open as we possibly can be,

consistent with our responsibilities to witnesses and victims. And, in that way, we not only do our jobs but we also avoid the imposition of rules which will make our jobs more difficult. Again, it's difficult for an Assistant making a decision in an individual case to see how it may affect the national perception of the Department. But it does happen. Individual actions have cumulative effects. And anecdotal evidence – often exaggerated – becomes a widespread perception. So, yes, we do ask our Assistants to take responsibility, to handle cases with as much authority and autonomy as possible, but we also ask that they bear in mind the broader implications of their decisions.

DN: Would it be helpful to the Department in defending its position here to have Assistants chronicle the situations where giving discovery has resulted in harm to witnesses or in efforts to change their testimony or otherwise obstruct justice?

DAG: Yes, it would be. In fact, we have developed such evidence that I have used in my presentation to the judiciary.

DN: What is your opinion on how Congress will react to that? It seems to me that Congress was very clear about not making us provide witness lists. There is legislative history to that effect.

DAG: There is a great deal of solicitude in Congress for victims and witnesses, and I think a decent level of understanding of the difficulties that we face as prosecutors. On the other hand, there is a sense in Congress, and you can see it as we discuss the Terrorism Bill, that there is too much power in law enforcement. So, predicting how Congress will react to this proposal is difficult. I know we will be very strong in defense of our need for flexibility to permit us to protect witnesses and victims.

DN: Let's discuss the future of office automation and litigation support. We're moving into the technological age. Have you thought about a plan to coordinate the different entities? For example, if we are going to progress on litigation support, we need to have computers and programs talk to each other in the Federal agencies and the United States Attorneys' offices. Where do we start?

DAG: I really applaud the innovation that we've seen among and within United States Attorneys' offices. As you know, I've been very excited by what I have seen. I was so excited by it that I brought all of the litigating divisions of the Department in to see what the United States Attorneys' offices around the country had done. We are trying to make available standardized packages for the United States Attorneys' offices and the litigating components so that each will have a base package available to accommodate their special needs and so that we will be compatible with each other.

DN: In dealing with the Federal law enforcement agencies, wouldn't it be helpful to bring them together, since they are generating a lot of the reports, exhibits, and presentation graphics that we use in cases?

DAG: We have already begun to move the FBI and DEA to a common computer system.

DN: Some of the courts have a "courtroom of the future" concept. If we coordinate with them, I think it's going to save the Department a lot of money and the offices a lot of time in setting up this equipment. Are there plans to coordinate the Department of Justice with the United States courts on technological advances in the courtrooms?

DAG: I chair a committee that looks at the plans for the courtrooms of the future. The

input from the Department of Justice into that planning process principally has been in the area of security, not technology. But there is absolutely no reason why we cannot share our knowledge about trials of the future to affect the architectural development of courtrooms in the future.

DN: What can we do, those of us in the field, to help you with that?

DAG: I would work with EOUSA to collect your best ideas and to ensure their communication to GSA which has responsibility for building courthouses. I can assure you of my full support for that.

DN: One problem we occasionally face, is the difference of priorities between Federal law enforcement agencies and the United States Attorneys' offices. The United States Attorneys' offices take the Department's priorities and try to put them into some type of prosecution plan in the District. Some United States Attorneys have gone to meetings with the regional SACs to coordinate. In other areas, we're told they have their own priorities. How can we smooth that out so that we're all marching together?

DAG: I know that the Attorney General and I, as well as Director Louis Freeh and Administrator Tom Constantine, would like to know where the discussion that you just described is not fruitful and does not result in a common set of priorities. It is our desire at the top of this Department to make sure that people are working together toward the same goals. The Attorney General sets the priorities of the Department, overall, and the leadership of the law enforcement agencies absolutely adheres to her priorities. If, in a particular district, the law enforcement agencies' understanding of those priorities and the United States Attorneys' understanding of those priorities differ, then it is our responsibility to make sure that those differences are resolved. The worst thing that can happen either for that SAC or for that United States Attorney, is to let such a disagreement lie, and to be working at cross purposes, when they should be working together.

DN: One of the things that career people say is that the Department's management changes too quickly. You're credited with making a lot of changes that have made the DAG's office much more efficient by streamlining and by reducing the need for prior approvals. Do you plan to stay at the Department?

DAG: Yes, I do. I have tried to squelch every rumor that I might be leaving. It is shocking to me that the average tenure of a Deputy Attorney General is 13 months. I think that there ought to be a minimum time commitment to an office like this. There are some causes for change that are unavoidable, like health problems, or someone being elevated to the bench or to a cabinet position. But, in general, I think these senior positions should require a significant time commitment, because it takes time to accomplish new initiatives and because Departments deserve consistent management and a steady guiding hand.

ATTORNEY GENERAL HIGHLIGHTS

AG Launches Tribal Court Initiative for Indian Country

At the Northwest Regional American Indian and Department Conference held during the first week in June, Attorney General Janet Reno announced a Tribal Courts Initiative to fight crime in Indian Country by encouraging the establishment of U.S. Magistrate Courts to prosecute crimes on reservations, and to develop Tribal Court Partnership Projects to strengthen Indian Country justice systems. The first U.S. Magistrate Court is to convene at the Warm Springs Reservation in Oregon this month. After an evaluation of this Court, the Department plans to encourage other U.S. courts to prosecute misdemeanor crimes that currently go unprosecuted due to lack of resources. Partnerships between the Department and tribal courts will find ways to improve tribal justice and will emphasize family violence and juvenile justice. The American Indian Conference also addressed law enforcement funding under the proposed changes to last year's Crime Act. Nine million dollars was granted to 128 tribes under the Community Oriented Policing grants this fiscal year. Attorney General Reno announced the creation of the Office of Justice Programs Indian Desk, lead by former owner of American Indian Development Associates consulting firm, Ada Pecos Melton, to ensure that programs meet the unique needs of tribal communities and to facilitate information and assistance on criminal justice funding opportunities.

Registration Increases Through National Voter Registration Act

On May 19, 1995, the Attorney General Reno issued a statement on the success of the National Voter Registration Act. She stated that after only five months, voter registration has increased by nearly two million citizens.

AG Announces Missing Children's Task Force

On Thursday, May 25, 1995, Attorney General Janet Reno announced the formation of a new cooperative, Federal Task Force on Missing and Exploited Children that will coordinate services for missing children and determine gaps or overlaps in related Federal activity. The Office of Juvenile Justice and Delinquency Prevention in the Office of Justice Programs will join with the FBI, the Drug Enforcement Administration, the Secret Service, the Customs Service, Family and Youth Services of the Department of Health and Human Services, the Department of Defense, the Office for Victims of Crime, and the National Center for Missing and Exploited Children in this new task force.

AG Announces Pilot Project to Speed Deportation Process

On May 22, 1995, Attorney General Reno announced the Clinton Administration's most recent initiatives to substantially enhance efforts to identify and remove criminal aliens from the United States. The Los Angeles County Jail is the site of a one-month pilot project begun in June that is expected to triple the number of criminal aliens being intercepted and deported following their release from incarceration. INS officers staff the release lines at the jail 24 hours a day, seven days a week to ensure that all deportable aliens being released from prison will be remanded to Federal custody rather than being freed. An immigration court set up specifically for this project will enable many of the aliens to have deportation hearings and receive final orders of deportation that same day. The County Jail pilot is just one facet of a comprehensive

national plan to speed the deportation process and increase the likelihood of capture for those who attempt to return. If you would like a copy of the Immigration and Naturalization Service press release on these initiatives, please call the *United States Attorneys' Bulletin* staff, (202)514-3572.

AG Addresses Department's FY 1996 Budget

March 15, 1995, Testimony

The following summarizes remarks made by Attorney General Janet Reno on March 15, 1995, in an address to a subcommittee of the Senate Committee on Appropriations regarding the Department's appropriations for fiscal year 1996.

The Department requested a 20 percent increase over its fiscal year 1995 budget, in fiscal year 1996, to imprison more violent offenders and to reduce the flow of illegal immigrants. The Department's additional priorities are to attack gang-related violent crime, drug trafficking, international organized crime, and to enhance court-house security.

- For the **DEA and FBI**: (1) 30 new DEA agents to address heroin trafficking; (2) establishment of an Eastern European Organized Crime International Training Facility in Hungary; (3) a DEA/FBI office in Beijing, China, to fight drug trafficking; (4) funding for the continuing development of the FBI's combined DNA Index System to better identify sex offenders and violent serial criminals; (5) merge FBI's DRUGFIRE system with ATF's Bulletproof program which will allow crime laboratories to exchange and compare images of fired ammunition casings; and (6) increase and improve the FBI's investigative and managerial training courses for State, Indian Tribal, and local law enforcement agencies. **(increase of six percent)**

- Increase **FOIA** resources to develop a document processing system to manage FOIA requests.

- Develop the state-of-the-art **digital telephony program**, including the necessary research, development, and acquisition of equipment required for the FBI and DEA to continue to perform court-authorized electronic interceptions. **($135 million)**

- Hire 40 additional **Assistant United States Attorneys** and 20 support staff to deal with organized crime, drug traffickers, and violent gangs. **($5 million)**

- Activate two new **Bureau of Prisons** facilities, expand five facilities, and purchase equipment for the Butner Medical Facility, adding 9,197 beds, an increase of 13 percent over current levels.

- Increase security requirements and construct 144 holding cells for the **United States Marshals Service. (increase of $44 million)**

- Increase the number of Border Patrol agents and inspectors; improve equipment, technology, and training; strengthen work site enforcement; and increase funding for the institutional hearing program, deportations, and detention facilities, in the area of **illegal immigration. ($1 billion)**

- Increase grants to help States, communities, law enforcement, and citizens fight crime in neighborhoods, including adding 20,000 **more police officers** and

promoting community policing. Increase prison construction grants to help states and localities put violent criminals, including juveniles, behind bars. **($4 million in grants)**

- Increasing the **Drug Court Program. ($150 million)**

- Increase grants to combat **violent crimes against women. ($165 million)**

The Attorney General described the Department's ongoing efforts to streamline operations, eliminate duplicative investigative efforts, enhance communications and information sharing, and cut spending where appropriate.

May 11, 1995, Testimony on Department's 1995 Supplemental Appropriation Totalling 570 Positions, 57 FTE, and $71,455,000

On May 11, 1995, the Attorney General again addressed the Subcommittee of the Senate Committee on Appropriations regarding President Clinton's 1995 request for supplemental appropriations for 1995 as the result of the tragic bombing in Oklahoma City, and also addressed the need for additional funds for 1996 related to the bombing.

For 1996, the Attorney General stated that the President would likely propose an amendment which would include 1,000 positions, 900 FTE, and $400,000,000 for the Department, "all dedicated to improving our ability to prevent further terrorist acts in the future and to resolving the Oklahoma City investigation and prosecution."

Personnel increases would include **155 additional Assistant United States Attorneys and 77 support staff,** 131 additional FBI agents and 656 support personnel, and **13 attorneys and 8 support staff for Departmental assistance for the Oklahoma investigation and prosecution.**

Other funding would be used for:

- The establishment of a **new Domestic Counterterrorism Center**, under the direction of the FBI, to bring together Federal, State, and local terrorism-related intelligence.

- Research and development for **court-authorized electronic intercepts in a digital telephony environment**. The FBI will also be given funds to develop and acquire the technology necessary to effectively address the use of encryption by criminal organizations.

- The establishment of a **Counter-terrorism and Counterintelligence Fund**, under the direction of the AG, which can be drawn upon for emergency expenses associated with any future terrorist act, or when security is needed for high-risk events.

- A **terrorism threat assessment** of all Federal agencies, as directed by the President.

- Extraordinary costs associated with the **Oklahoma City bombing.**

- **Counterterrorism reward payments. ($5 million)**

- Relocation of the FBI laboratory, state-of-the-art forensic laboratory equipment, and tools needed by the FBI's **Emergency Response Team.**

- **Construction of training facilities** that will support the FBI's Hostage Rescue Team.

- Development of an **automated database to collect and analyze information** regarding hostage/barricade situations to allow the FBI to develop and evaluate alternatives and options for resolving such situations.

- The Department's **Emergency Assistance Fund**. This will be used to assist State and local law enforcement efforts related to the Oklahoma City bombing. **($4 million)**

- The **enhancement of security** at United States Attorney and United States Marshal Service offices and Federal courthouses.

- The **creation of a new file dedicated to Terrorist Organizations** in the new NCIC 2000 system.

- The **replacement of outdated office automation equipment** with state-of-the-art equipment that will increase the efficiency and productivity of prosecutors in terrorism and violent crime cases. **Additional funding for automated litigation support** for the United States Attorneys.

- **Critical upgrades and maintenance of FBI aircraft**.

Legislative Proposals

In addition to funding requests, the Attorney General also outlined the President's Omnibus Counterterrorism legislation and the Antiterrorism Amendments Act of 1995. Together, under Senate Bill 761, this legislation is designed to improve the Government's ability to detect both foreign and domestic terrorism. The highlights of this legislation are contained in a recent memo from EOUSA entitled "Comparison of Antiterrorism Legislation."

Further information about the 1996 request, the 1995 supplemental request, or the 1996 amendments can be obtained by contacting Monte Stiles, Office of Counsel to the Director, EOUSA, at AEX03(MSTILES) or (202)616-9298.

AG Opposes Cuts to Crime Bill and Border Control Funds

Attorney General Janet Reno objected to the passage of the House Budget Resolution on May 18, 1995, which proposes a slash in the Crime Control Trust Fund by almost $5 billion over five years and $9 billion over seven years. This action would mean fewer police officers on the streets, fewer prison cells built, less assistance to states struggling to incarcerate criminal aliens, and less funding to fight violence against women. It would also jeopardize efforts to secure the borders, and prevent hiring additional Border Patrol agents.

ATTVIEW— MANAGING AND IMAGING DOCUMENTS FOR TRIAL

by Assistant United States Attorney Kurt Shernuk, District of Kansas

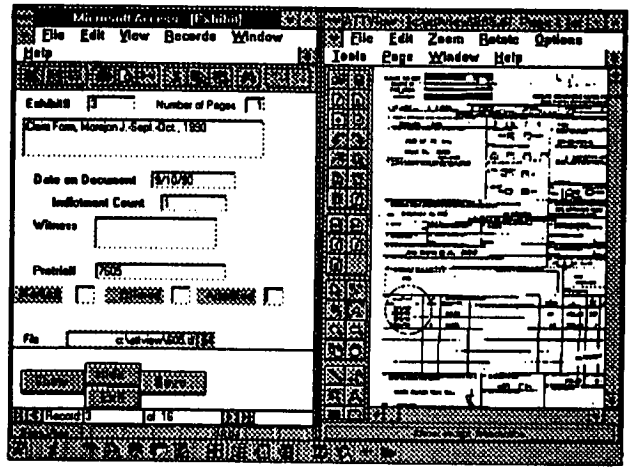
A recent development in complex litigation is the use of electronic imaging — physical trial exhibits are electronically converted into computer images using a scanner. These images are stored and catalogued using a computer database program. Until recently, this technology required an outside source; however, working with EOUSA's Office Automation Staff, we have developed inexpensive software that allows our offices to handle these projects in-house using equipment most offices already own. The software is called ATTVIEW, a combination of two programs: a database (Microsoft Access) and an image viewer (TMS View Director).

The result is a program that allows you to search, sort, and organize large numbers of trial exhibits, and print exhibit lists. During the trial, the exhibits can be displayed on TV monitors or screens, with the ability to enlarge, highlight, and circle areas of the document.To equip your office for electronic imaging you will need the following software and equipment:

- A 486 computer
- Windows 3.1 or higher
- Scanner with software
- Microsoft Access 2.0
- TMS-ATTVIEW (which includes View Director).

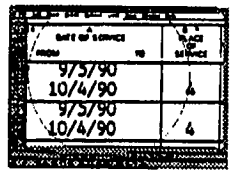
The three basic methods, priced least expensive to most expensive, to present the images in court are to:

(1) Convert the signal from your computer to a signal that can be connected to a TV.
(2) Use a form of projection like an LCD panel which is connected to the computer and placed on an overhead projector.
(3) Use one or more computer monitors in the court room.



The illustration shows the Microsoft Access ATTVIEW screen on the left, and the TMS View Director on the right.

ATTVIEW costs about $125 and can be purchased from TMS, Stillwater, Oklahoma. The sales representative is Brian Taylor and he can be reached on (405)377-0880. Microsoft Access can be purchased from almost any software retailer, and the "competitive upgrade" costs about $110. We are currently having TMS make some modifications to the software so make sure you request an update when you order.



Enlarged section from the first illustration.

Attention: Please Send Us Innovative Litigation Support Applications

All Assistant United States Attorneys who have been working on automated litigation support programs are asked to send copies of the programs to Victor Painter of the Executive Office for United States Attorneys' Office Automation staff. Vic can be reached at (202)616-6969. OLE's Research and Publications Unit is putting together a working group to design a program that both analyzes evidence (like Case-in-Chief) and helps in courtroom presentations by producing photographs, images (like Kurt Shernuk's program), charts, and other graphics. This will be an exciting project and one that will be of great benefit to all Assistant United States Attorneys. Assistant United States Attorneys who have identified a particular computer litigation feature to include in the program should contact Vic Painter or David Nissman, (202)616-6700.

Honors and Awards

Recipients of the 1995 Attorney General Awards

On June 22, 1995, at an awards ceremony held in the Andrew W. Mellon Auditorium in Washington, D.C., Attorney General Janet Reno congratulated and presented awards to the following Department employees for their outstanding and dedicated service to the Department.

Attorney General's Award for Exceptional Service

Cheryl L. Pollak
Beth A. Wilkinson
Assistant United States Attorneys
Eastern District of New York
and
Sam Trotman
Special Agent
Drug Enforcement Administration
Nominated by the Eastern District of New York

Attorney General's Award for Distinguished Service

Jeffrey W. Johnson
Assistant United States Attorney
Central District of California

John H. Durham
Assistant United States Attorney
District of Connecticut

Thomas J. Eicher
Assistant United States Attorney
Eastern District of Pennsylvania

Sarah N. Chapman
Andrew S. Dember
Michael E. Horowitz
Assistant United States Attorneys
Southern District of New York

Attorney General's Award
for Outstanding Service to the
Department of Justice
Disabled Employees
Carolyn Rodriguez
Paralegal Specialist
Southern District of California

John Marshall Award
for Trial of Litigation
Martin J. Weinstein
Nicolette S. Templer
Daniel A. Caldwell
Assistant United States Attorneys
Northern District of Georgia

John Marshall Award
for Participation in Litigation
Robert E. Courtney III
Mary E. Crawley
Pamela Foa
Assistant United States Attorneys
Eastern District of Pennsylvania
and
Karen Wehner
Trial Attorney
Tax Division
Nominated by the Eastern District of
Pennsylvania

John Marshall Award
for Providing Legal Advice
Jesse J. Figueroa
Assistant United States Attorney
District of Arizona

John Marshall Award
for Asset Forfeiture
Ellen Silverman Zimiles
Bart Van de Weghe
Assistant United States Attorneys
Southern District of New York

The William French Smith Award
for Outstanding Contribution
to Cooperative Law Enforcement
Michael R. Longmire
Captain, Field Operations Division
Raleigh Police Department
Raleigh, North Carolina
Nominated by the Eastern District of
North Carolina

Significant Issues/ Events

Independent Counsel Appointment

The Special Division for Appointing Independent Counsels has issued an order, effective July 3, 1995, naming Mr. Larry Thompson to succeed Mr. Arlin M. Adams as Independent Counsel for the investigation of the Secretary of the U.S. Department of Housing and Urban Development. Mr. Thompson is the former United States Attorney for the Northern District of Georgia.

Informant's Due Process Rights Violated
Central District of California

On May 23, 1990, Martinez, a California man, was sentenced for two cocaine convictions. Subsequent to the sentence, he agreed to provide substantial assistance in a civil asset forfeiture matter concerning a notorous drug lord. The Government agreed to file a Rule 35(b) motion for a reduced sentence. However, the motion was not filed because the AUSA, relying on *U.S. v. Sanchez* holding that an asset forfeiture did not qualify as a 5K1.1 departure, questioned whether aiding the Government in an asset forfeiture constituted substantial assistance.

The U.S.D.C. (Central District of California) granted a downward sentence departure holding that Martinez provided substantial assistance in accordance with the agreement. The court held that (1) failure of the Government to comply with the agreement was not rationally related to any legitimate Government end; (2) the Government's actions presented an egregious case, creating additional due process concerns because the Government was reneging on its agreement; and (3) the Government's refusal to file the Rule 35(b) motion constituted an unconstitutional motive as it violated Martinez's due process rights.

Former AUSA Steven Clymer

First Offenders Program
District of Puerto Rico

The United States Attorney's office in the District of Puerto Rico and the Bureau of Prisons are working on a joint effort to fight crime and drugs among Puerto Rican youth. The pilot First Offenders Program has the goal of dissuading high school students from using drugs by having them listen to inmates who have lived the consequences of a wrong choice. The conferences are strictly supervised, and the participating inmates are carefully selected and trained. For further information, please contact Orlando Rios Walker, District of Puerto Rico, (809)282-1821.

Operation "Sudden Impact"
Western District of Washington

On May 24, 1995, FBI Director Louis J. Freeh announced that FBI agents and other law enforcement personnel are making arrests as part of "Operation Sudden Impact," the most significant investigation of staged automobile accident criminal fraud in the history of the FBI.

Significant Cases

Indictment for Hiring Illegal Aliens
Central District of California

On May 26, 1995, AA Gonzalez, Inc., Arroyo Building Materials Inc., and four individuals were indicted on 11 counts of criminal conspiracy, and employing and sheltering illegal aliens in connection with residential and commercial construction sites.

SAUSA David Lavine

Arrests in Relief Fund Fraud
Central District of California

On May 25, 1995, 13 people were arrested on charges of falsely claiming more than $111,000 in property damage to cars, houses, and apartment buildings. These false claims were in connection with January's floods and the 1994 Los Angeles earthquake.

AUSA Nathan Hochman

Representative Tucker Indicted for Extortion
Central District of California

On June 1, 1995, Representative Walter R. Tucker III (D-Compton) was indicted on two counts of extortion for accepting $7,500 from a garbage collection firm in return for political favors while serving as the mayor of Compton. He was previously charged in an unrelated case with accepting $30,000 in bribes, and soliciting $250,000 from another company.

AUSA Steve Madison

Indictment Charges Lockheed Ex-Aide for Passing Arms Data
Central District of California

On May 25, 1995, a former Lockheed Corporation engineer was indicted on 10 counts of espionage for allegedly passing information about two of the Navy's classified weapons programs to an undercover FBI agent.

AUSA George B. Newhouse, Jr.

Conviction for Conspiracy to Defraud the U.S.
Eastern District of California

On May 17, 1995, Chung Li, Director of Laboratory Services at Eureka Labs, and Kuen Lee, Manager of the GC/MS laboratory at Eureka, pled guilty one week into trial. They were convicted of using computer software techniques to falsify test results to give the appearance that Eureka had satisfied contractually required quality control criteria.

AUSA Don Searles

Alleged Submission of False Medicare Claims for Payments
Middle District of Florida

On May 11, 1995, two licensed acupuncturists and one licensed doctor were charged with conspiracy to defraud the U.S., and to commit crimes through the submission of false claims for payments totalling over $1,800,000. They allegedly circumvented Medicare rules prohibiting reimbursement for acupuncture and acupuncture-related medical services.

AUSA Gary Montilla

Indictment for Bankruptcy Fraud Schemes
Northern District of Illinois

Seven multiple-count indictments were returned on May 18, 1995, charging nine individuals, including a Chicago lawyer, with bankruptcy fraud schemes. These indictments arose from a one-year undercover operation, "Chur-N-Burn," conducted by the FBI. The defendants allegedly defrauded approximately 100 individuals of $100,000, plus a larger loss to lending institutions and the Bankruptcy Court.

AUSA Brian P. Netols

Rostenkowski's Ex-Tenant Indicted for Perjury
Northern District of Illinois

On April 21, 1995, Robert Russo, an extenant of former U.S. Representative Dan Rostenkowski (D-Illinois), was indicted for allegedly lying to a grand jury as part of a cover-up of an alleged ghost payrolling job that he held with the former congressman.

AUSA David Rosenbloom
Larry Parkinson, Criminal Division, (202)514-9620
Thomas Motley, Criminal Division, (202)514-8321
John Campbell, Criminal Division, (202)514-7840

Gang Members Indicted in Narcotics Conspiracy
Northern District of Illinois

On April 20, 1995, 21 members of the Traveling Vice Lords street gang were charged in a 74-count indictment for conspiracy and distribution of crack cocaine and heroin. This case arose from a three and a half year undercover investigation, "Operation Flournoy," named for a one-block area of West Flournoy Street in Chicago known for high volume curbside drug trafficking. The defendants were also indicted for firearms and drug offenses.

AUSA Patricia Holmes

Former Police Officer Sentenced to 15 Years
Northern District of Illinois

Michael J. Randy, former Chicago "Red Squad" police officer, was sentenced to 15 years and 9 months on April 28, 1995, for defrauding at least 450 investors out of more than $14.4 million. He set up a bogus offshore bank to market sham high interest certificates, and created a church as a tax dodge.

AUSA David Glockner

Immigration Fraud
Northern District of Illinois

On May 4, 1995, 27 people, including Chicago immigration consultants Marshall and Harriet Schoeneman and a New Jersey attorney, were charged in a 23-count indictment for participating in a scheme to arrange sham marriages between aliens and United States citizens to obtain permanent resident visas or green cards. Marshall Schoeneman was indicted separately on 43 counts for immigration fraud involving false employment claims.

AUSA Jacqueline Ross

Ghost Payrolling Charges Filed
Northern District of Illinois

On May 3, 1995, six people were charged in four separate informations with arranging or holding ghost payroll jobs with either Chicago City Council committees or the Cook County Sheriff's Department.

AUSA Scott Levine
AUSA Kaarina Salovaara

Sentence in Terrorism Case Involving Two on Ten Most Wanted List
Northern District of Illinois

Claude Daniel Marks and Donna Jean Willmott surrendered in December 1994 after being on the Ten Most Wanted List since 1987. On May 23, 1995, they were sentenced to six years and three years imprisonment, respectively, for a conspiracy with members of the Puerto Rican independence group, FALN, to transport military explosives they knew would be used to commit terrorist acts.

AUSA Daniel Gillogly
AUSA Deborah Devaney

Guilty Verdict in Health Care Fraud Case
Southern District of Illinois

On May 23, 1995, Doctor Thomas Bruce Vest was found guilty of 34 counts of mail fraud for practices he engaged in to help finance a medical diagnostic clinic built for more than $10 million in Alton, Illinois. Unable to recruit physicians and sufficient physician referrals to meet his costs, Vest resorted to recording false symptoms in patients' medical records and authorizing unnecessary medical tests.

AUSA Tom Daly
FAUSA Robert L. Simpkins

Three Strikes Defendant Guilty
Northern District of Iowa

On May 22, 1995, in the first prosecution in the nation under the Federal "three strikes and you're out" law, Thomas Farmer was found guilty of interference with commerce by robbery, conspiracy to interfere with commerce by robbery, and being a felon in possession of a firearm. The defendant had three previous violent felony convictions.

AUSA Daniel Tvedt

Lab Pays U.S. $8.6 Million
Districts of Maryland and New Jersey

On May 17, 1995, Corning Clinical Laboratories, Inc., f/k/a Metpath, was ordered to pay the United States $8.6 million to settle allegations that during the period of January 1988 to December 1993, Metpath submitted false claims to Medicare and other Federally-assisted programs for laboratory tests that were not performed.

AUSA Kathleen McDermott, District of Maryland, and AUSA Janet Nolan, District of New Jersey

Former KKK Wizard Sentenced
District of Massachusetts

On May 16, 1995, defendant Roy Frankhause, a former Grand Wizard of the KKK, was sentenced to 25 months imprisonment and fined $1,000 for obstruction of justice.

AUSA S. Theodore Merritt
Steve Dettelbach, Civil Rights Division, (202)514-4540

Blackburn Indicted on FACE Charges
District of Montana

On May 23, 1995, a federal grand jury returned a 12-count indictment charging defendant Amy Cheryl Blackburn with violating the Freedom of Access to Clinic Entrances Act, and threatening to injure another person and damaging and destroying property with the use of an explosive and fire. It is alleged that this was a result of her May 23, 1995, phone calls to different clinics in Montana, during which she threatened to bomb them because they provided reproductive health services.

AUSA James Seykora
Tamara Kessler, Civil Rights Division, (202)616-3926

New York Attorney Pleads Guilty to Felony Charges
Eastern District of New York

New York attorney G. Harry Kapralos pled guilty on June 6, 1995, to conspiracy to commit mail, wire, and bank fraud after admitting that he participated in a "bust-out" scheme. He and others sought out and acquired financially troubled companies, and failed to pay their creditors while simultaneously skimming in excess of $5,000,000. Kapralos also pled guilty in an unrelated case for his participation in a $30,000,000 scheme involving fraudulent equipment leases.

AUSA Joseph R. Conway
AUSA Robert P. Larusso

Gang Leader Charged with Alleged Attempted Territorialization of Gangs
Eastern District of New York

Tsung Tsin Association's top leader, Kwok Fu Lai, was charged on June 1, 1995, with conspiring to carve Chinatown into gang territories. Lai was also charged with the February 1987 murder of two gang members, and directing a 1992 gang war that reached its climax in February 1992 when three gang members killed a high school student and wounded four others.

AUSA Leslie Caldwell
AUSA Melissa Murphy

Cross Burning Charge
Southern District of New York

Three defendants were charged on April 25, 1995, with conspiring to violate Federal civil rights laws by allegedly participating in a cross burning on the property of a family in Poughquag, New York, in August 1994. They already pled guilty to willfully conspiring to intimidate a schoolmate and members of his family.

AUSA Kerry A. Lawrence
AUSA James L. Cott
SAUSA Jeremy J. Scileppi

Leader of Bronx-Based Gang Convicted of Racketeering and Murder
Southern District of New York

On May 16, 1995, following a three-year Federal/State investigation, Angel Padilla, leader of the Bronx-based C&C Gang, was convicted on racketeering charges including eight murders, two attempted murders, and three kidnappings. Hitman Ivan Rodrigues was also convicted of three counts, including murder.

AUSA Jonathan D. Schwartz
AUSA James A. Goldston

Charges of Selling Military Bunker to Undercover Agent
District of Massachusetts

Walton W. McCarthy recently pled guilty at arraignment to charges that he sold an underground military bunker to an undercover Federal agent posing as an Iraqi military representative.

AUSA John M. Griffin

Medical Supply Company Employee Pleads Guilty to Medicare Fraud
District of Massachusetts

Geoffrey S. Bradley pled guilty on May 3, 1995, to conspiracy to defraud the U.S. in a multi-million dollar Medicare fraud case. Providers, Inc., a medical supply company, and Bradley billed Medicare at inflated rates for supplies they sold and did not sell, backdated their requests for payment, and withheld Medicare refunds owed for supplies ordered for deceased patients, including more than $4.4 million submitted in Massachusetts alone.

AUSA David Abelman
SAUSA Stephen Huggard

Former National President of League of United Latin American Citizens Guilty of Immigration Fraud
District of Nevada

Jose Velez was found guilty on May 8, 1995, of ten counts of immigration fraud for filing false legalization applications with INS on behalf of unqualified alien applicants. This investigation has resulted in 20 guilty pleas or convictions of those responsible for filing more than 11,000 false applications.

AUSA Mike Barr
Richard Shine, Criminal Division, (202)514-1114

Man Pleads Guilty to Murder
District of New Jersey

On June 8, 1995, Christopher Green pled guilty to all five counts of an indictment in connection with the robbery and execution of four men and the wounding of a fifth at the Montclair Post Office.

Executive AUSA Stuart Rabner
AUSA Carolyn Murray

Indictments for Investment Schemes
District of New Jersey

On Thursday, May 25, 1995, nationally syndicated talk radio host and financial advisor Irwin H. Bloch, a/k/a "Sonny" Bloch, and four others were charged in a 35-count indictment for allegedly using Bloch's broadcasts to solicit listeners to invest nearly $17 million in fraudulent wireless cable schemes.

AUSA Jayne K. Blumberg

Guilty Verdict in Medicare-Medicaid Fraud
District of New Mexico

On February 27, 1995, psychiatrist James D. Jaramillo was found guilty of 228 felony counts of Medicare-Medicaid fraud for submitting claims for performing services during periods that he was not in town or out of the country.

AUSA Paula G. Burnett
AUSA Mary L. Higgins

Arrests in Cellular Telephone Cloning Scheme
Southern District of New York

Five defendants were arrested on May 5, 1995, after a three-month investigation, for their alleged involvement in a large-scale cellular telephone cloning scheme.

AUSA John H. Hillebrecht

Guilty Plea in Federal Student Loan Program Scheme
Southern District of New York

On May 9, 1995, Erik Richards pled guilty to attempting to defraud the federal student loan program of approximately $1,000,000 by making fraudulent claims for nonexistent students purportedly enrolled in foreign medical schools.

AUSA Jonathan N. Halpern

Guilty Plea in Threat on President Clinton
Eastern District of Pennsylvania

On May, 24, 1995, Paul F. Walling pled guilty to threatening to kill the President, two counts of making a false statement in buying a firearm, and one count each of credit card fraud and transporting a stolen vehicle across state lines. Walling came under scrutiny by the Secret Service after a report that he told a friend that he would like to shoot the president and Janet Reno for "what they have done to the American people by trying to take guns away from them."

AUSA Robert K. Reed

Clean Water Act Indictment
District of Puerto Rico

On April 7, 1995, Bunker Group Puerto Rico and its general manager, Pedro Rivera; Bunker Group, Inc.; and New England Marine Services were indicted on violations of the Clean Water Act, the Ports and Waterway Safety Act, and for violating a statute prohibiting the sending of unseaworthy vessels to sea. The charges pertain to the grounding of the Morris J. Berman on January 7, 1994, off Escambron Beach, resulting in the discharge of 750,000 gallons of oil into the Atlantic Ocean.

AUSA Joe Frattallone
Environmental Crimes Section
Assistant Chief Charles A. DeMonaco, (202)272-9879
Environmental Crimes Section Trial Attorney Michael Woods, (202)272-9856

Guilty Plea in Drug and Firearms Case
District of Rhode Island

On May 11, 1995, four people pled guilty to possession of cocaine and using a firearm during drug trafficking. The suspects opened fire when agents announced themselves at the drug scene and, following the battle, one suspect was killed and two were injured.

AUSA Lawrence Gaynor
AUSA Charles Tamuleviz
AUSA Andrew Reich

Conviction in the Manufacture of Methcathinone
Eastern District of Texas

On May 19, 1995, Ricky Jo Shugart was convicted for the clandestine manufacture of CAT, or Super-Meth, and for possession of Ephedrine, with the intent to manufacture CAT. This conviction is the first CAT-laboratory case in Texas.

AUSA Randall L. Fluke

Complaint Filed in Counterfeit Documents Scheme
Northern District of Texas

As a result of operation "Bait Box," a two-year Federal, State, and local law enforcement effort, a complaint was filed on May 19, 1995, charging 17 individuals with participating in a multi-million dollar counterfeit document organization in the states of Texas, California, Colorado, Nevada, Georgia, and New York. The indictment alleges that counterfeit green cards, social security cards, and state drivers' licenses were involved.

AUSA Denise Williams

Houston Businesswoman Sentenced for Fraud
Southern District of Texas

Teresa Rodriguez was sentenced to 262 months in prison for bilking hundreds of investors out of approximately $67 million in a scheme in

which she claimed she was a certified minority contractor entitled to special consideration in the awarding of Government contracts.

AUSA Quincy Ollison
AUSA Larry Eastepp
AUSA Bill Yahner

Houston Resident Sentenced for Crimes Southern District of Texas

On June 8, 1995, Roger Pipkin III was convicted on 13 counts including conspiracy, wire fraud, money laundering, making a monetary transaction with criminally derived property, and structuring currency transactions to avoid reporting requirements.

AUSA Cynthia DeGabrielle
AUSA Mike Schwartz

"Meanest Man inAmerica" Sentenced to 87 Months Southern District of Texas

Michael Angel Socrates Makris, referred to by the ABC news program 20/20 as the "meanest man in America," was sentenced to 87 months in prison and ordered to pay $625,500 to several of his victims for various charges, including wire fraud, obstruction of justice, interstate transportation of counterfeit securities, obstruction of a Federal investigation, bribery, forgery, and money laundering.

AUSA George Kelt
AUSA Fred Dailey

Adult Bookstore Operators Guilty of Obscenity Charges Southern District of Texas

On June 19, 1995, Mary Jane Jenkins, Evan Peter Pigman, David Stubbs, and Rickie Ranney of Rochester, New York, pled guilty to interstate transportation of obscene material. Jenkins also entered a similar plea on behalf of her Texas corporation, SAXET Inc. Jenkins previously operated 17 adult bookstores. In a plea agreement with the Government, she agreed to close all the stores, cease operations in Texas, and to forfeit $500,000. Jenkins, Pigman, Stubbs, and Ranney were sentenced to serve one year of probation pursuant to the plea agreement. Jenkins' former attorneys, Robert Smith and Charles Boyle, were convicted in November 1992 of obstructing justice for concealing the identity of Jenkins as the true owner of the stores.

AUSA Mike Schultz,
Southern District of Texas
AUSA Susan Morgan,
Northern District of Oklahoma
AUSA Kevin Byrnes,
District of Columbia
Gene Malpas, Criminal Division,
(202)514-4043
Daniel Stark, Criminal Division,
(202)514-4043

Man Convicted for Assault of Abortion Clinic Doctor Southern District of Texas

On June 13, 1995, Frank LaFayette Bird was convicted of forcefully intimidating and interfering with Doctor Theodore Herring, a provider of reproductive health services, while he attempted to drive into the clinic parking lot in Houston. A security camera at the clinic recorded Bird throwing a bottle at Herring's car, shattering the windshield.

AUSA Richard Harris

Two Arrested in Alleged Loan-Fee Scam Western District of Texas

On June 1, 1995, RMI Services International, Inc.; Felipe Zaragoza; Ricardo Briblesc; and a third suspect, Manuel Pacheco, believed to be out of the country, were indicted on charges relating to an advance fee scheme from April 1991 through June 1995, that allegedly bilked at least 38 Mexican businesses of $3.4 million.

AUSA Solomon L. Wisenberg

Indictment for
Staged Auto Accident Ring
Eastern District of Virginia

On May 11, 1995, as part of Operation "Sudden Impact," an indictment was returned charging three men with multiple felony counts of conspiracy, mail fraud, and money laundering, stemming from their alleged participation in a staged automobile accident ring which generated numerous false insurance claims. The alleged scheme included the establishment of a medical clinic and law office used exclusively to process claims of the staged accidents. The indictment alleges that individuals were paid to act as drivers and passengers in staged accidents; individuals who had actual accidents were recruited to provide the basis for false claims of medical injuries; and attorneys, medical doctors, and office staff were recruited to conduct fraudulent settlement schemes.

AUSA Robert W. Wiechering

"Ice Man" Jae Shik Cha
Sentenced to Life
Western District of Washington

On May 22, 1995, Jae Shik Cha, head of a criminal organization responsible for importing the drug "ice" from Korea and distributing it in the United States, was sentenced to life imprisonment without release and fined $4 million. In addition, he will forfeit a shopping center and $4.5 million in drug proceeds for his ice trafficking and money laundering convictions.

AUSA James Lord

Sentence for
International Conspiracy
to Smuggle Aliens
Western District of Washington

On May 12, 1995, brothers Jit Singh and Mohan Singh Nagra were sentenced to eight years in prison for leading an international conspiracy to smuggle illegal aliens into the United States; for paying INS agents, who posed as corrupt officials, more than $1,400,000 in exchange for over 800 immigration documents; and for facilitating the entry of 43 aliens into the United States. Thirteen defendants have been arrested and pled guilty to related charges.

AUSA Lis Wiehl

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

EOUSA Staff Update

Assistant United States Attorney **Kirby Heller**, Eastern District of New York, will join the Legal Counsel's office on July 10, 1995, for a six-month detail.

Update on Streamlining

In response to the proposals that were presented at the United States Attorneys' Conference, and the performance goals that are under the direct control of EOUSA, Director Carol DiBattiste forwarded a memorandum updating all United States Attorneys, First Assistant United States Attorneys, and

Administrative Officers concerning the streamlining of the EEO Process, Adverse Actions and Grievances, and Performance Management. If you have streamlining suggestions or questions, please contact Theresa Bertucci for General Information, (202)514-4506; Yvonne Makell for EEO matters, (202)514-3982; Juliet Eurich for Adverse Actions and Grievances, (202)514-4204; or Pete McSwain for Performance Management, (202)616-6800.

Redelegation of Actual Subsistence

In a memorandum from EOUSA Director Carol DiBattiste to all Assistant United States Attorneys and all Administrative Officers, United States Attorneys were delegated authority to approve actual subsistence expenses for travel when the applicable maximum per diem rate is inadequate due to special or unusual circumstances. This delegation is effective June 5, 1995. In accordance with Federal Travel Regulations, this authority is redelegatable to the level below the United States Attorney, the First Assistants. This delegation gives the added fiscal responsibility to all United States Attorneys to manage their travel expenses within their authorized travel budget. Questions may be referred to Deputy Director Michael W. Bailie, Administrative Services, (202)616-6600; or Assistant Director Michael McDonough, Financial Management, (202)616-6886.

Delegation of Authority to Approve Incentive Awards

On May 15, 1995, Carol DiBattiste, Director, Executive Office for United States Attorneys (EOUSA) issued to United States Attorneys and Administrative Officers a memorandum stating that, effective immediately, United States Attorneys are delegated authority to approve incentive awards for their staffs in amounts up to $5,000. The prior delegation authority was limited to awards in amounts up to $1,000. The increase in approval authority is in direct response to recommendations received from United States Attorneys and the Office Management and Budget Subcommittee of the Attorney General's Advisory Committee. The only exception is that award nominations for Supervisory Assistant United States Attorneys and Senior Litigation Counsel must still be submitted to the Director's office for approval by the Deputy Attorney General. A copy of this memorandum is attached as **Appendix A**. Please contact Assistant Director Gail Williamson, Personnel Staff, EOUSA, (202)616-6873, for further information.

Revisions to Fact Witness Procedures

On May 18, 1995, Carol DiBattiste, Director, Executive Office for United States Attorneys (EOUSA), issued a memorandum from EOUSA and Director Eduardo Gonzalez, United States Marshals Service, concerning changes to procedures in the Fact Witness Program and a request for consideration of the full implementation of Government Transportation Account records in the districts. EOUSA and the United States Marshals Service met to discuss improvements in the Fact Witness Program. The meeting was in response to a General Accounting Report issued on July 12, 1984, which raised questions regarding the procedures used to process expert and fact witness payments. A copy of the memorandum is attached as **Appendix B**. Please contact Jamie Embrey, Financial Management Staff, EOUSA, (202) 616-6886, for additional information.

Update on Employee Leave Entitlements

On May 25, 1995, Carol DiBattiste, Director, Executive Office for United States Attorneys (EOUSA), issued a memorandum to all United States Attorneys concerning revised government-wide regulations that expand leave entitlements for Federal employees. These changes stem from the Federal Employees Family Friendly Leave Act (FEFFLA) and the Family and Medical Leave Act (FMLA). In response to requests for clarification on the changes to the leave programs, the Justice Management Division prepared summaries of the entitlements which highlight significant changes that have been made. A copy of these summaries is attached as **Appendix C**. Please contact Gary Wagoner, Chief of Programs, Personnel Staff, EOUSA, (202)616-6800, for further information.

Resolutions Passed by the National Association of Attorneys General

On May 18, 1995, Carol DiBattiste, Director, Executive Office for United States Attorneys (EOUSA), forwarded to all United States Attorneys a letter from the National Association of Attorneys General (NAAG) regarding three resolutions passed at their spring meeting. These resolutions are:

1. The NAAG adopted the NAAG/DOJ Memorandum of Understanding of Affirmative Civil Rights Enforcement.

2. The NAAG concluded that the national lottery proposed by the Coeur d'Alene Tribe in Idaho is illegal under both Federal and state law, and urged the National Indian Gaming Commission and the United States Attorney General to prevent it from occurring.

3. The NAAG adopted revised Vertical Restraint guidelines on state antitrust issues.

If you would like additional information, please contact Monte Stiles, Office of Counsel to the Director, EOUSA, (202)514-1023.

Office Automation Update— EOUSA Bulletin Board System

Several new conferences, dedicated to communicating information on-line with United States Attorneys' offices, will soon be available on the EOUSA Bulletin Board System (BBS). BBS conferences will include the following issues and publications:

Office Automation
The InterNet
Bankruptcy Brief Bank
Office of Legal Education Publications
Case Management Systems
Pacer Systems Usage
The United States Attorneys' Bulletin
For Your Information, an EOUSA Newsletter

Questions about BBS conferences should be directed to Carol Sloan, Assistant Director, Office Automation Staff, (202)616-6969.

Procedures for Use of Office and Library Equipment and Facilities

On May 16, 1995, Carol DiBattiste, Director, Executive Office for United States Attorneys (EOUSA) forwarded to

all United States Attorneys and EOUSA employees a memorandum issued by Stephen R. Colgate, Assistant Attorney General for Administration, concerning the Department's new policy on personal use of office and library equipment and facilities. The policy permits personal use of equipment and facilities only if it involves negligible additional expense to the Government, such as electricity, ink, small amounts of paper, etc. The policy also authorizes limited personal telephone/facsimile calls to locations within the office's commuting area, or that are charged to non-Government accounts. It also stresses that such use is authorized as long as it does not interfere with official business. A copy of Mr. Colgate's memo is attached as **Appendix D**. Please contact Ethics Program Manager Donna Henneman, Legal Counsel's office, EOUSA, (202)514-4024, for further information.

Photographs of United States Attorneys

EOUSA would appreciate news clippings or magazine articles which include United States Attorneys' photographs to be displayed in the EOUSA Attorney General's Advisory Committee (AGAC) Conference Room where AGAC meetings and its subcommittee and working group meetings are held. Please contact Judy Beeman, Department of Justice, Room 1627, 10th and Pennsylvania Avenue, Washington, D.C. 20530, Email AEX03(JBEEMAN), or (202)514-4633.

Office of Legal Education

OLE Publications' Project Update

USABook

The Research and Publications Branch of the Office of Legal Education has developed a new computer program, USABook, that enables users to easily locate useful legal documents, including memoranda, chapters of books, forms, and case notes. The documents can be browsed on the screen, and marked and saved as text files that can later be edited and printed using WordPerfect.

The USABook is so easy to use that people do not need training. All of the features of the program can be fully explored by computer novices running the program for the first time.

OLE Publications

OLE conducts almost 200 courses a year. Speakers at these classes generate written material to supplement the lectures. Much of their material is of excellent quality and deserves a wider audience. This is, of course, not all of the practical and useful material created by Federal attorneys across the nation. There are monographs, collections of case notes, forms, and brief banks in every office. There are experts in every legal field who either have written or are planning to write about their area of expertise.

The Research and Publications Branch of OLE is an Executive Office for United States Attorneys' project initiated last February by Carol DiBattiste, Director of EOUSA, and David Nissman, Criminal Chief of the Virgin Islands, as a clearing house for this wealth of material. OLE collects, edits, and puts the material in a uniform and indexed format to produce professional legal textbooks that are distributed to each United States Attorney's Office and requesting Department components. Soon there will be a comprehensive library of books covering most of the work done by Federal prosecutors.

The USABook Computer Program

These books are being published electronically, not simply in WordPerfect, but using an automated legal research program that offers a number of advantages. Disk versions of the books are inexpensive, compact, and easy to distribute. With the disk version of USABook, text and forms can be saved as WordPerfect files and integrated into court documents.

USABook works just like a book. You can instantly access the section you need, using either the table of contents or the index. If there is a section of text that you want to use in a court document, it can be saved to disk with a single keystroke. The text file generated by USABook is a WordPerfect 5.1 file and follows formatting conventions required for court documents.

Some of the current USABook projects include:

- Capital Litigation in the Federal Courts, a comprehensive book on death penalty litigation, was published in May.

- A manual on prosecuting firearms offenses is in the final editing stage, and will be published in July and distributed this summer.

- Three other books, Civil Rights, Violent Crimes, and Immigration Offenses, are in the planning stage and will be published later this year.

- A large number of forms used in Health Fraud prosecutions were distributed in April in USABook format. A working group is meeting soon to put together a comprehensive form book.

- Two collections of case notes–environmental crimes cases and briefs of Supreme Court death penalty cases–were converted to USABook format and distributed this spring.

- The Federal indictment form book (630 sample indictments) is being converted to USABook format, and will be ready for distribution this summer.

- A number of publications from the Federal Judicial Center–manuals on the sentencing guidelines, scientific evidence, and recurring problems in criminal trials–are being converted to USABook format, and will be available later this year.

Technical Notes

The USABook program is user friendly and creates no problems for network administrators or computer support people:

- It does not require changes to the AUTOEXEC.BAT or CONFIG.SYS files.

- It does not make any changes to the path or to any other environmental variables.

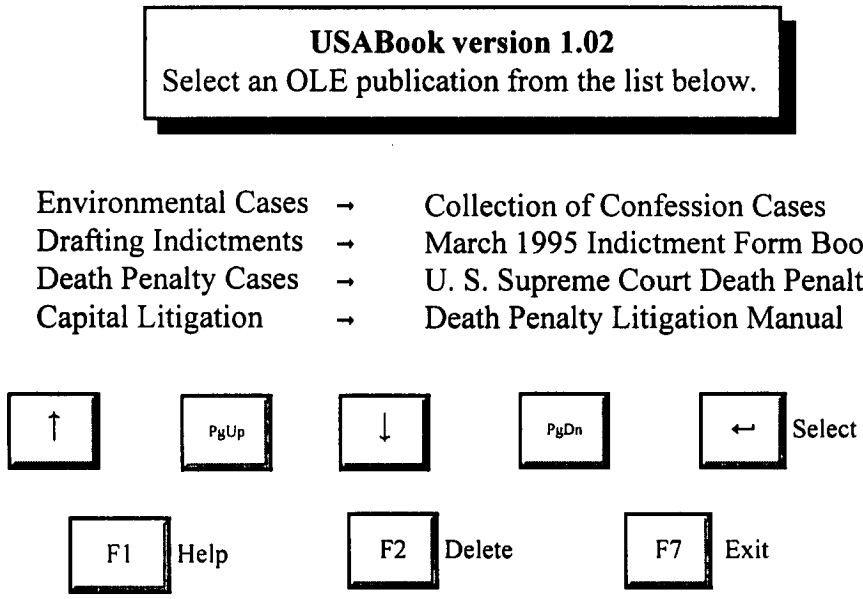
- It resides in one subdirectory and creates no others.

- It can be removed from a hard drive by simply deleting the files and removing the directory.

- The program does not print; instead, it creates a single WordPerfect file that can be printed using WordPerfect.
- It only needs 400K of free memory to run and, consequently, runs effectively on the Eagle network.
- The program and its data files can be distributed on a single disk, and installed with a simple DOS command.
- The program is a single 325K EXE file without overlays so no runtime or other program needs to be purchased.
- The program is simple to run so users do not have to be trained. There is online context sensitive help that is similar to the other programs on the Eagle network.
- The program can be installed on the Eagle menu, run as a standalone program, or run under Windows or OS/2.

Bulletin Board System Support

The latest copies of the USABook program and its data files are kept on the eight-line EOUSA Bulletin Board System (BBS), and can be downloaded using a telecommunications program like TELUS or PROCOMM. The numbers are (202)616-6668, 6669, 6670, 6671, 6672, 6673, 6674, and 6675. After logging in, type J, and then 28 to join the conference. Then select F from the main menu to view the files.



Conclusion

USABook is an inexpensive and powerful method of publishing manuals, books, forms, and case collections. If you receive requests from users for this program, it can be down-loaded from the EOUSA BBS. If you have any useful materials to add to our USABook library, contact David Nissman at (202)616-5210 [Email AEX02 (DNISSMAN)]. For technical questions and installation assistance, contact Ed Hagen at (202)616-3654 or FAX (202)616-1083 [Email AEX02 (EHAGEN)].

Office of Legal Education Projected Courses

James A. Hurd, Jr., Director, OLE, is pleased to announce projected course offerings for the months of June through September 1995 for the **Attorney General's Advocacy Institute (AGAI)** and the **Legal Education Institute (LEI)**. A list of these courses follows.

AGAI

AGAI provides legal education programs to Assistant United States Attorneys (AUSAs) and attorneys assigned to Department of Justice (DOJ) divisions. Courses listed on page 213 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 E**. 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 ..... James A. Hurd, Jr., AUSA, Virgin Islands
Deputy Director ..... David W. Downs
Assistant Director (AGAI-Criminal) ..... Dixie Morrow, AUSA, MDGA
Assistant Director (AGAI-Criminal) ..... Angel Moreno, AUSA, SDTX
Assistant Director (AGAI-Civil and Appellate) ..... Tom Majors, AUSA, WDOK
Assistant Director (AGAI-Civil and Appellate) ..... Janet Craig, AUSA, SDTX
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

AGAI COURSES

Date	Course	Participants
	July 1995	
11-14	Violent Crime	AUSAs, DOJ Attorneys
17-21	Advanced Criminal Trial	AUSAs, DOJ Attorneys
17-21	Ninth Circuit Asset Forfeiture Component	AUSAs, DOJ Attorneys
18-21	Advanced Evidence (Civil)	AUSAs, DOJ Attorneys
	August 1995	
1-4	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
7-15	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
15-17	Alternative Dispute Resolution	AUSAs, DOJ Attorneys
15-17	Third Circuit Asset Forfeiture Component	AUSAs, DOJ Attorneys
21-9/1	Civil Trial Advocacy	AUSAs, DOJ Attorneys
22-24	Criminal Chiefs	USAO Criminal Chiefs
29-31	First Assistant United States Attorneys	USAO First Assistants
	September 1995	
6-8	Financial Crimes	AUSAs, DOJ Attorneys
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

LEI COURSES

	July 1995	
6-7	Alternative Dispute Resolution	Attorneys
10-14	Basic Paralegal (USAOs) *	USAO Paralegals
11-12	Federal Acquisition Regulations	Attorneys
12-13	Freedom of Information Act for Attorneys and Access Professionals	Attorneys, Paralegals
14	Privacy Act	Attorneys, Paralegals
21	Legal Writing	Attorneys
24	Ethics and Professional Conduct	Attorneys
24-28	Appellate Paralegal *	USAO, DOJ Paralegals
31-8/8	Financial Litigation Paralegal Seminar *	USAO Paralegals
	August 1995	
14	Fraud, Debarment and Suspension	Attorneys
14-18	Legal Support Staff *	USAO Paralegals
17-18	Evidence	Attorneys
21-22	Federal Administrative Process	Attorneys
23	Introduction to Freedom of Information Act	Attorneys, Paralegals
28-9/1	Experienced Legal Secretary *	USAO Legal Secretaries
	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
18-21	Advanced Evidence (Civil)	AUSAs, DOJ Attorneys

Significant Issues/ Events

Criminal Division Chief Jo Ann Harris to Depart

Jo Ann Harris, Assistant Attorney General of the Criminal Division, announced her resignation on May 19, 1995, to keep a promise to her husband, Greg, to serve for no more than two years. Harris will leave the Justice Department this summer and intends to rejoin the faculty at Pace University School of Law in White Plains, New York. Attorney General Janet Reno said that Jo Ann Harris brought wit, judgment, and wisdom to the very difficult work of enforcing the nation's criminal statutes. Harris served as Chief of the Criminal Division's Fraud Section from 1979 to 1981, and served twice in the United States Attorney's office in the Southern District of New York, from 1974 to 1979 and 1981 to 1983.

Impact of the Supreme Court's Decision in *United States v. Gaudin*, No. 94-514 (June 19, 1995) on Prosecutions for Violations of 26 U.S.C., Secs. 7206(1) and 7206(2)

The Tax Division is currently analyzing the impact of *Gaudin* on pending prosecutions for violations of Section 7206(1) and/or Section 7206(2). In *Gaudin*, the Supreme Court held that "materiality" is an issue for the jury in a prosecution for a violation of 18 U.S.C., Sec. 1001. If you are handling any of these cases, please contact Robert E. Lindsay, Chief, Criminal Appeals and Tax Enforcement Policy Section at (202)514-3011, or Scott A. Schumacher at (202)514-2892

Stern Presents Medicaid Fraud and Abuse Statement

On June 15, 1995, Gerald M. Stern, Special Counsel, Health Care Fraud, presented a statement on Medicare and Medicaid Fraud and Abuse before the United States House of Representatives' Subcommittee on Human Resources and Intergovernmental Affairs Committee on Government Reform and Oversight. If you would like a copy of Mr. Stern's statement, please contact the *United States Attorney's Bulletin* staff, (202)514-3572.

Bureau of Justice Statistics' Crime Victimization Survey

On May 31, 1995, the Justice Department announced the results of a Bureau of Justice Statistics' (BJS) National Crime Victimization Survey, obtained from an ongoing annual national survey of almost 50,000 households and more than 100,000 individuals. Data in the study include both crimes reported to police and unreported crimes. According to the study, during 1993 the youngest age group surveyed – 12 through 15 year olds – were at greatest risk of being violent crime victims. Attorney General Janet Reno stated that it is appalling that so many young people have to live in fear of violence. Overall during the year, there were almost 11 million violent victimizations and over 32 million property crimes. There were 52 violent victimizations per 1,000 persons and 322 property crimes per 1,000 households. Single copies of the BJS survey bulletin, "Criminal Victimization 1993," (NCJ-151658) may be obtained from the BJS Clearinghouse, Box 179, Annapolis Junction, Maryland 20701-0179, by calling 1(800)732-3277, or faxing orders to (410)792-4358.

Department of Justice Special Authorizations Unit Relocates

The Department of Justice's Special Authorizations Unit has relocated, and the following telephone numbers have been disconnected: (202)307-1979, (202)307-1981, and (202)307-9182. Telephone numbers for Ernestine Medley, (202)307-1943; Harry White, (202)307-1942; and Telefax, (202)307-1932 will remain the same. The Unit's new mail and messenger addresses are:

Mail:
Special Authorizations Unit/Procurement Services Staff
NPB, Suite 1000
U.S. Department of Justice
Washington, D.C. 20530

Messenger:
Special Authorizations Unit/Procurement Services Staff
National Place, Suite 1000
F Street Entrance, North Office Building

Significant Cases

Antitrust Division

Court of Appeals Overturns District Court's Decision in Microsoft Cases (Nos. 95-5037 and 95-5039)

On Friday, June 16, 1995, the U.S. Court of Appeals for the District of Columbia Circuit ordered the entry of last July's antitrust consent decree negotiated by the Department and Microsoft Corporation. Attorney General Janet Reno stated that she was gratified by the U.S. Court of Appeal's decision, because it confirms the Department's understanding of the appropriate roles of the courts and the Department with respect to the enforcement of antitrust laws.

Civil Division

Firm Pays U.S. $4.7 Million in Settlement

On June 1, 1995, Richardson Electronics Ltd. was ordered to pay the U.S. $4.7 million to settle allegations that it falsely stated it could manufacture parts for military night vision equipment. The firm passed off another company's equipment as its own to get approval to manufacture the equipment.

Attorney: John Kolar
(202)307-0405

U.S. Sues Canadian Hospital for Cancer Research Fraud

The Department filed a suit in Canada on behalf of the National Cancer Institute on May 30, 1995, seeking $518,175 from St. Luc Hospital in Montreal for costs that the U.S. incurred to investigate and eliminate alleged false data submitted by Dr. Roger Poisson of the hospital in an international study of breast cancer. More than 450 hospitals in the United States and Canada participated in a NCI-sponsored project that awarded St. Luc $1 million for Poisson's work.

Attorney: Marie O'Connell
(202)514-6833

Caremark to Pay $161 Million in Fraud and Kickback Cases

On June 16, 1995, the Department reached a criminal and civil settlement with Caremark Inc., a subsidiary of Caremark International, an Illinois-based health care corporation. Caremark will plead guilty and pay approximately $161 million in criminal fines, civil restitution, and damages for kickbacks and fraud in its home infusion, oncology, hemophilia, and human growth hormone businesses, according to an announcement made by Attorney General Janet Reno. The Attorney General noted that the settlement amount is one of the largest ever obtained in a health care fraud case.

Civil Division Attorneys:
Sally Strauss, (202)616-1437
Joan Hartman, (202)307-6697
Criminal Division Attorneys:
Ann Arbor, (202)514-0663
William Bowne, (202)514-0662
Assistant United States Attorneys:
David Bosley, Southern District of Ohio
Janet Newburg, District of Minnesota

VA Contractor Settles Fraud Suit

On June 19, 1995, Becton Dickinson and Company, Inc., of Franklin Lakes, New Jersey, reached a settlement with the U.S.

to pay $3.3 million to settle allegations that it overcharged the Government for in vitro diagnostic substances, reagents, test kits, and test sets under a Federal supply contract awarded by the Department of Veterans Affairs.

Attorneys: Michael Thies,
(202)307-0497
AUSA Kathleen McDermott

U.S. Sues Louisiana Attorney for False Claims

On May 17, 1995, the Department sued William R. McKenzie, a Shreveport Attorney, who violated the Federal False Claims Act, causing the U.S. to lose more than $750,000 in insurance claims. He served as the closing attorney for a number of sham real estate transactions to obtain low-interest Federal loans for properties that later went into default, and assisted a Shreveport real estate developer to commit fraud against the Department of Housing and Urban Development.

Attorneys: Michael F. Hertz
(202)514-7179
Stephen D. Altman
(202)307-0188
James E. Ward
(202)307-0958
AUSA Sabrina A. Skeldon

Philip Morris to Remove Advertising from Sports Stadiums

On June 6, 1995, the Department reached an agreement with Philip Morris Incorporated to resolve allegations that it used strategically placed signs at sports stadiums to get around the ban on cigarette advertising on TV. Under the terms of the agreement, Philip Morris is prohibited from placing cigarette ads next to the playing grounds at televised baseball, basketball, football, and hockey games, and from placing cigarette ads in locations that are most likely to appear on TV during game broadcasts.

Attorneys:
Brian N. Eisen,
(202)616-0364
Jeffrey B. Chasnow,
(202)307-0101

Civil Rights Division

Dentist to Pay $120,000 for Refusing to Treat HIV-Positive Patients

On June 13, 1995, in a decision reached with the Justice Department, Dr. Drew Morvant was found in violation of the Americans with Disabilities Act and was ordered to pay $120,000 in damages for refusing to treat two HIV-positive patients.

Attorneys: Sheila Delaney
(202)307-6309
Sharon Perley
(202)514-6016
Allison Nichol
(202)514-8301

Appellate Court Ruling Upholding the Constitutionality of the "Motor-Voter" Law

On June 5, 1995, the U.S. Court of Appeals for the Seventh Circuit upheld the constitutionality of the National Voter Registration Act (the "motor-voter" law). This action affirms a decision earlier this year by the U.S. District Court in Chicago. Assistant Attorney General for Civil Rights Deval L. Patrick announced that the Department is extremely pleased with this favorable decision – he first by an appellate court.

Sentencing Guidelines/ Acceptance of Responsibility

On April 20, 1995, the Fourth Circuit issued a per curiam decision affirming the sentence in *United States v. Farley*, No. 94-5624. The court held that the district court did not err in refusing to grant a cross-burning defendant an adjustment

for acceptance of responsibility, where the defendant used cocaine pending sentence.

Attorney: Lisa Stark
(202)514-4491

Hammerskins Member Sentenced for Racial Violence

Defendant Brian Joseph Clayton, a member of The New Dawn Hammerskins, was sentenced to 46 months imprisonment for his guilty pleas to various acts of racial violence, including the desecration and spray painting of swastikas on headstones in a Jewish community, and vandalism of a car of an English teacher whose curriculum includes a lesson on the Holocaust. Two others await sentencing in the case.

Attorney: Steve Dettelbach
(202)514-4540

Office of Justice Programs—The Department's Primary Criminal Justice Grant Agency

As part of the ongoing effort to share information between United States Attorneys' Offices and OJP, the following is the second in a series of articles describing OJP and its bureaus. This article focuses on the Bureau of Justice Assistance (BJA) and its Director, Nancy Gist.

Nancy Gist was sworn in as BJA Director in October of 1994. Before joining the Department, she served as Director of the National Legal Aid and Defender Association, the Boston Museum of Afro-American History, and Teens as Community Resources in Boston. She also has been a member of the Association Advisory Committee of the Phillip Brooks House at Harvard College and the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants.

As BJA Director, Ms. Gist is responsible for administering the Department's primary criminal justice grant agency. BJA provides funding, training, and technical assistance to State and local governments to combat violent and drug-related crime and to help improve the criminal justice system. BJA provides assistance through the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs which includes both formula and discretionary grants. In fiscal year 1995, BJA was appropriated $450 million dollars in Formula funds; $50 million for discretionary spending; and $12 million for the Corrections Options Program.

BJA's Discretionary Grant Program provides state and local criminal justice agencies with state-of-the-art information on innovative and effective programs, practices, and techniques through demonstration projects, training, and technical assistance. For example, BJA is developing and implementing comprehensive crime control and prevention strategies for communities with high rates of violence and drug-related crime through the Comprehensive Communities Program. BJA also supports national or multistate programs such as Operation Weed and Seed, the Regional Information Sharing System, the National White-Collar Crime Center, and the National Crime Prevention (McGruff) Campaign. Discretionary Grant funds are awarded directly by the Bureau and do not require matching funds.

BJA also provides direct assistance through the Emergency Federal Law

Enforcement Assistance, Federal Surplus Property Transfer, Prison Industry Certification, Public Safety Officers' Death and Disability Benefits, and State Criminal Alien Assistance Programs.

Recently, BJA, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, and Office for Victims of Crime announced their 1995 Discretionary Grant Programs in the *Federal Register* (Vol. 60, No. 85, beginning on page 21852). BJA's fiscal year 1995 programs address two major goals: to assist state and local units of Government to reduce and prevent crime, violence, and drug abuse, and to improve the criminal justice system. BJA is committed to working with local communities to develop comprehensive strategies and expansive problem-solving partnerships. Special emphasis is placed on anti-violence initiatives, particularly those dedicated to reducing the availability of illegal firearms and providing young people with alternatives to gangs and criminal involvement.

BJA also will continue to work to enhance the capacity of state and local law enforcement to control crime and violence and expand community policing efforts; to improve the efficiency of the adjudication process and its responsiveness to the needs of victims; and to foster correctional options to hold offenders accountable while helping states address overcrowded prisons.

For additional information on BJA, please contact Marlene Beckman, Special Counsel to the OJP Assistant Attorney General, (202)307-5933, or OJP's Office of Congressional and Public Affairs, (202)307-0703.

ETHICS AND PROFESSIONAL RESPONSIBILITY

Overview of the Office of the Inspector General

The Office of the Inspector General (OIG) was established in the Department of Justice on April 14, 1989. The office was created by an Act of Congress; its authority and jurisdiction have been further set forth in a succession of Attorney General orders.

General Duties

In broad outline, the OIG has three principal duties: (1) to conduct audits, inspections, and investigations into fraud, waste, abuse, and misconduct matters involving Department employees and operations; (2) to provide leadership in the promotion of economy and efficiency and the detection and prevention of fraud and abuse in the Department's programs and operations and in activities that are financed by the Department, such as its grants and contracts; and (3) to keep the Attorney General and Congress informed about deficiencies in the administration of such programs and operations.

Independence and Authority

The Inspector General Act of 1978, as amended, see 5 U.S.C. app. §§ 4, 6, 8D, gives the Inspector General (IG) specific powers necessary to assure independence in OIG investigations, audits, and other reviews. The Inspector General is appointed "without regard to political affiliation and solely on the basis of integrity and demonstrated ability."

§ 3(a). The IG has a statutory right of access to the Attorney General and is answerable directly to the Attorney General or Deputy Attorney General; the IG may not by supervised by any subordinate official. At the same time, the Act limits even the Attorney General from preventing or stopping an IG audit or investigation that is, in the judgment of the Inspector General, "necessary and desirable," § 6(a)(2), except under carefully limited circumstances that must be reported to Congress. § 8D(a)(1). Further, the statute guarantees the IG access to virtually all records and data of the Department, § 6(a)(1) (including classified documents, where necessary, but excluding grand jury materials except by appropriate court order).

The OIG Organization

There are approximately 400 OIG employees, most of whom work in three operating divisions: Audit, Investigations, and Inspections. The Audit Division, with 150 employees, has offices in Atlanta; Chicago; Dallas; Denver; San Francisco; Philadelphia; and Washington, D.C.

The Investigations Division, also with a workforce of about 150, is located throughout the country but with many of its offices located along the Southwest Border. It has offices in Miami; El Paso; McAllen; Tucson; Colorado Springs; San Diego; Los Angeles; San Francisco; Seattle; Chicago; Atlanta; New York; and Washington, D.C. OIG special agents are deputized to exercise full law enforcement authority in the performance of their OIG duties.

In addition, located in Washington are the Inspections Division, with about 40 analysts and program evaluators trained in various disciplines, and the Special Investigations and Review Unit, a smaller, special unit assigned to particularly complex, sensitive, or high priority projects.

Misconduct Investigations

Under Attorney General's Order No. 1931-94, Nov. 8, 1994, see also Bluesheet replacing *United States Attorney's Manual* § 1-4.100 (Nov. 8, 1994), responsibility for misconduct investigations are distributed among four entities: the Office of Professional Responsibility for DEA (OPR/DEA), the similar office in the FBI (OPR/FBI), the Department's Office of Professional Responsibility (OPR), and the Office of the Inspector General. DEA/OPR and FBI/OPR investigate misconduct by their own employees, subject to some oversight and reporting requirements.

The division of responsibility between DOJ's OPR and the OIG was changed substantially by the recent Attorney General Order. The most important change is that a much larger category of matters involving misconduct by DOJ attorneys are now within the jurisdiction of the OIG. OPR is responsible for misconduct by Department attorneys "that relate to the exercise of their authority to investigate, litigate, or provide legal advice." Order No. 1931-94, I(A). Subject to the above exceptions, all other misconduct by any Department employee – including its lawyers – or of waste, fraud, or abuse by any contractor, grantee, or other person doing business with or receiving benefits from the Department of Justice, is to be referred to the Inspector General for investigation.

APPENDIX
C

U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

MAY 25 1995

MEMORANDUM

TO: ALL UNITED STATES ATTORNEYS

FROM: Carol DiBattiste
Director

SUBJECT: Updates on Employee Leave Entitlements

ACTION REQUIRED: None - Information Only

CONTACT PERSON: Gary Wagoner, Chief
Programs, Policy and Evaluations Branch
Personnel Staff
(202) 616-6800 AEX02(GWAGONER)

Within the past few months, the Office of Personnel Management (OPM) has issued revised government-wide regulations that expand leave entitlements for Federal employees. Regulatory changes stem from the Federal Employees Family Friendly Leave Act (FEFFLA) and the Family and Medical Leave Act (FMLA) to cite two major pieces of legislation affecting the leave program. In response to requests for clarification on the regulatory changes to the leave programs, the Justice Management Division (JMD) prepared summaries of entitlements which highlight the significant changes that have been made. I am pleased to forward a copy of JMD's summaries to you as an attachment.

If you or members of your staff have questions about these changes to the leave program administration, please contact Gary Wagoner on (202) 616-6800 or AEX02(GWAGONER).

Attachments

Federal Employees Family Friendly Leave Act

Policy

Family Care. Federal employees may use a limited amount of **sick** leave to provide care for a family member due to--

- o physical or mental illness,
- o injury,
- o pregnancy,
- o childbirth, or
- o medical, dental, or optical examination or treatment.

Death. Federal employees may use a limited amount of **sick** leave to--

- o make arrangements necessitated by the death of a family member, or
- o attend the funeral of a family member.

Effective date

Employees were eligible to begin using sick leave for these purposes as of December 2, 1994.

Family member

"Family member" means an employee's--

- o spouse (and parents thereof),
- o natural or adopted son or daughter (and spouses thereof),
- o parents,
- o brothers and sisters (and spouses thereof), and
- o any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Family Friendly Leave (continued)

Limits	Full-time employee. A full-time employee may use up to 40 hours of sick leave (including advance sick leave where appropriate) per leave year for these purposes. As long as he or she maintains a sick leave balance of at least 80 hours (which may not be advanced), a full-time employee may use up to an additional 64 hours of sick leave per leave year for these purposes. Part-time employee. A part-time employee may use a proportional amount of sick leave for these purposes. Example. A part-time employee who works 20 hours per week may use up to 20 hours of sick leave (including advance leave where appropriate) per leave year for these purposes. As long as he or she maintains a sick leave balance of at least 40 hours (which may not be advanced), the employee may use up to an additional 32 hours of sick leave per leave year for these purposes.
Documentation	Supervisors may require a medical certificate or other evidence of the reason for an absence for these purposes. For employees on the National Finance Center payroll system, sick leave used for these purposes should be tracked on an interim basis in the "Remarks" section of the Time and Attendance Report. (Components can also track all employees' leave use under this Act on the optional form developed by the Policy Group)
Relationship to leave sharing	Available sick leave for these purposes is considered available paid leave under the voluntary leave sharing program.

Family Friendly Leave (continued)

References	Law: Public Law 103-388 (the Federal Employees Family Friendly Leave Act, 10/22/94)
	Regulation: 5 CFR part 630, as amended on December 2, 1994

Family and Medical Leave Act (FMLA)

Policy

An employee with at least 12 months service may use up to 12 workweeks of unpaid leave during any 12-month period for the following purposes:

- o birth and care of the employee's son or daughter[1];
- o placing a son or daughter with the employee for adoption or foster care[1];
- o care of any of the following family members who suffer from a serious health condition: spouse, son, daughter, or parent[2]; or
- o a serious health condition that makes the employee unable to perform the essential functions of the job.

[1] limited to one 12-month period per child

[2] The law and regulations define these relationships in more detail. FMLA does <u>not</u> include care for certain family members who are covered by the Federal Employees Family Friendly Leave Act (FEFFLA)--e.g., certain in-laws and persons related by affinity.

Effective date

Employees began using leave for these purposes effective August 5, 1993.

Substituting paid time off

The employee may elect to substitute any or all of the following types of paid time off for family and medical leave:

- o annual leave (including shared leave),
- o credit hours,
- o compensatory time off, and
- o sick leave (but only for the employee's <u>own</u> serious medical condition).

Family and Medical Leave Act (continued)

How leave may be taken

Family and medical leave may be taken in a continuous block, or under certain conditions--

- on an intermittent basis,
- by working a reduced schedule, or
- can be taken <u>in addition to</u> other paid time off available to an employee, unless the employee specifically invokes the FMLA when leave is requested.

<u>Note</u>: After an absence on family and medical leave, an employee is normally <u>entitled</u> to return to the same or an equivalent position.

Relationship to sick leave for adoption

Sick leave for the care of an adopted child who becomes ill or requires medical examination or treatment (except examination or treatment that is part of the official adoption process which is covered under the regulations governing the use of sick leave for adoption) is subject to the limitations in the **FEFFLA** (See separate policy summary).

An employee may use family and medical leave to care for an adopted child during the initial 12-month period even if the child is not suffering from a serious medical condition.

An employee caring for an adopted child who is experiencing a medical emergency may apply to receive annual leave donations under the voluntary leave transfer and/or leave bank programs, if the employee has exhausted available paid leave and expects at least 24 hours unpaid absence.

Family and Medical Leave Act (continued)

Documentation

An employee must notify management of his or her intent to take family and medical leave at least 30 days in advance (or, when the need for leave is not foreseeable, as soon as practicable).

Management may require written medical certification for family and medical leave taken--1) to care for an employee's spouse, son, daughter, or parent who has a serious health condition, or 2) due to the employee's serious health condition.

Tracking

On a temporary basis, timekeepers are manually tracking family and medical leave usage in "Remarks" on the Time and Attendance Report. This data will be input into the NFC payroll system after payroll codes are issued.

The attached optional form may also be used, in addition to annotating employees' individual T&A records. Using the form will help organizations track the required data in a format that will satisfy OPM's reporting requirements.

References

Law: subchapter V of chapter 63, title 5, United States Code, (Public Law 103-3, 2/5/93)

Regulations: 5 CFR part 630, subpart L

a few employees--e.g., Presidential appointees--are covered by the Labor Department's regulations in 29 CFR part 825

Sick Leave for Adoption

Policy	An employee may use accrued or advanced **sick** leave for purposes necessary to allow the adoption of a child to proceed. "Necessary" generally means that the time off is sanctioned by the appropriate court or adoption agency.
Effective date	An employee may begin using sick leave for these purposes on September 30, 1994. An employee who used annual leave between September 30, 1991 and September 30, 1994, may substitute available sick leave for annual leave. Note: Sick leave may not be substituted for leave without pay prior to September 30, 1994.
Relationship to other leave programs	Sick leave for the care of an adopted child who becomes ill or requires medical examination or treatment (except examination or treatment that is part of the official adoption process) is subject to the limitations in the **Federal Employees Family Friendly Leave Act** (FEFFLA) **and Family and Medical Leave Act (FMLA).** See separate policy summaries. Under **FMLA,** an employee may use up to 12 workweeks of leave without pay during a 12-month period (or at the employee's **election** substitute paid time off) to care for an adopted child. An employee caring for an adopted child who is experiencing a medical emergency may apply to receive annual leave donations under the voluntary leave transfer and/or leave bank programs, if the employee has exhausted available sick and annual leave and expects at least 24 hours of unpaid absence.

Sick Leave for Adoption (continued)

Example

In 1995, an employee requests paid time off for the following 4 purposes--

- 80 hours to travel to a foreign country, complete necessary paperwork, obtain a court-ordered medical examination, and bring an adopted child back to the United States,
- 20 hours to attend court hearings and meet with court-ordered counselors,
- 88 hours to bond with the adopted child, and
- 24 hours to care for the adopted child during a period of illness.

The first two requests are documented by correspondence from the court. The court was not involved in the remaining two requests.

The employee's sick leave balance is over 500 hours. Prior to these requests, the employee used 104 hours of sick leave in 1995 to care for an elderly parent under FEFFLA.)

Resolution: The employee may use sick leave for the first 2 purposes, subject to sick leave balance availability. The employee may request annual leave or leave without pay for the period of bonding. The employee may not use additional sick leave in 1995 to care for the adopted child because the leave entitlement for the leave year under the FEFFLA has been exhausted. However, the employee may request annual leave or leave without pay for this purpose.

Tracking

Sick leave for adoption purposes will not be tracked in a separate payroll category. However, sick leave used under the provisions of FMLA or FEFFLA will be tracked in separate payroll categories.

Sick Leave for Adoption (continued)

References	Law: section 629 of Public Law 103-329 (9/30/94)
	Regulation: 5 CFR part 630, subpart D, as amended on December 2, 1994

APPENDIX
D

U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

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

(202) 514-2121

MAY 16 1995

MEMORANDUM FOR: All United States Attorneys' Offices' Employees
All Executive Office for United States Attorneys' Employees

FROM: Carol DiBattiste
Director

SUBJECT: Use of Office and Library Equipment and Facilities

Attached is a copy of a memorandum dated April 21, 1995, from Stephen R. Colgate, Assistant Attorney General for Administration, concerning the Department's new policy on personal use of office and library equipment and facilities.

The policy permits personal use of equipment and facilities only if it involves negligible additional expense to the government -- such as electricity, ink, small amounts of paper, and ordinary wear and tear. Such use is authorized as long as the use does not interfere with official business. Employees should consult with their supervisors if there is any question whether an intended use involves "negligible" expense or "small amounts" of paper.

The policy also authorizes limited personal telephone/facsimile calls to locations within the office's commuting area, or that are charged to non-government accounts (e.g. personal telephone credit cards). Again, such use must not interfere with official business, and supervisors should be consulted if there is any question as to whether such use is in fact "limited."

The policy does not authorize the personal use of commercial electronic databases when there is an extra cost to the government. In addition, this policy does not override statutes, rules, or regulations governing the use of specific types of government property such as electronic mail.

If you have any questions, please do not hesitate to contact me at (202) 514-2121 or Donna Henneman, Ethics Program Manager, at (202) 514-4024.

Attachment

Memorandum

Subject

Use of Office and Library Equipment and Facilities

Date

APR 21 1995

To

Heads of Department Components

From

Stephen R. Colgate
Assistant Attorney General
for Administration

After review and consideration of your comments, I have issued the attached policy on personal use of Departmental office and library equipment and facilities as a new section of the Justice Property Management Regulations, 41 C.F.R. (JPMR) pt. 128. The policy codifies what has been the Department's practice since 1989. Please circulate it to all of your employees.

The policy permits personal use of equipment and facilities only if it involves negligible additional expense to the government -- such as electricity, ink, small amounts of paper, and ordinary wear-and-tear. When office computers, printers and copiers are used in moderation, there is only negligible additional expense to the government for electricity, ink and wear-and-tear. Such use is authorized as long as only small amounts of paper are involved and as long as the use does not interfere with official business. Employees wishing to use more than a small amount of paper must provide their own or pay for its cost. Employees should contact their supervisor if there is any question whether an intended use involves "negligible" expense or "small amounts" of paper.

This policy would not authorize the personal use of commercial electronic databases when there is, as is usual, an extra cost to the government. On the other hand, research using the library's books or microfiche would be authorized, as it involves only negligible additional expense to the United States.

The policy also authorizes limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-government accounts (e.g., personal telephone credit cards). Again, such use must not interfere with official business, and supervisors should be consulted if there is any question over whether such use is in fact "limited."

The attached policy does not override statutes, rules or regulations governing the use of specific types of government property, such as electronic mail. It may be revoked or limited at any time by any supervisor or component for any business reason.

Attachment

§ 128-1.5006-4 Personal Use of Government Property.

(a) Employees may use government property only for official business or as authorized by the government. See 5 CFR 2635.101(b)(9), .704(a). The following uses of government office and library equipment and facilities are hereby authorized:

(1) personal uses that involve only negligible expense (such as electricity, ink, small amounts of paper, and ordinary wear and tear); and

(2) limited personal telephone/fax calls to locations within the office's commuting area, or that are charged to non-government accounts.

(b) The foregoing authorization does not override any statutes, rules, or regulations governing the use of specific types of government property (e.g., internal Departmental policies governing the use of electronic mail; and 41 CFR (FPMR) 201-21.601, governing the ordinary use of long-distance telephone services), and may be revoked or limited at any time by any supervisor or component for any business reason.

(c) In using government property, employees should be mindful of their responsibility to protect and conserve such property and to use official time in an honest effort to perform official duties. See 5 CFR 2635.101(b)(9), .704(a), .705(a).

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

Nomination Form

APPENDIX E

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

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

LEI COURSE CONTACT:

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

	LEI USE ONLY	
	ACCEPTED	NOT SELECTED

COURSE

Course Name	Course Date(s)	Course Location

NOMINEE

Name	Title

Office, Agency, or Department	Phone Number

QUESTIONNAIRE

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

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

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

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

   Novice Intermediate Advanced (please circle)

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

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

6. If necessary, please indicate any special considerations:

SUPERVISOR

Name	Title

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

APPENDIX
F

Guideline Sentencing Update

a publication of the Federal Judicial Center *volume 7, number 7, April 21, 1995*

Violation of Probation and Supervised Release

Seventh Circuit overrules *Lewis*, holds that Chapter 7 policy statements are not binding. In *U.S. v. Lewis*, 998 F.2d 497 (7th Cir. 1993), the Seventh Circuit held that all policy statements—including those in Chapter 7—are binding on district courts unless they contradict a statute or guideline. However, after reevaluating Supreme Court precedent and noting that every other circuit to decide the issue has held that Chapter 7 is not binding, the court overruled *Lewis*. "The policy statements in Chapter 7 . . . are neither Guidelines nor interpretations of Guidelines. They tell the district judge how to exercise his discretion in the area left open by the Guidelines and the interpretive commentary on the Guidelines. Such policy statements are entitled to great weight because the Sentencing Commission is the expert body on federal sentencing, but they do not bind the sentencing judge. Although they are an element in his exercise of discretion and it would be an abuse of discretion for him to ignore them, they do not replace that discretion by a rule."

U.S. v. Hill, 48 F.3d 228, 230–32 (7th Cir. 1995).

See *Outline* at VII.

Offense Conduct

Mandatory Minimums

Third, Sixth, and Seventh Circuits hold that amended guideline method for calculating the weight of LSD does not apply retroactively to calculation for mandatory minimums; Ninth Circuit holds that it does. The Third, Sixth, and en banc Seventh Circuits all affirmed district court refusals to apply retroactively the guideline amendments for calculating LSD weight, *see* §2D1.1(c) at n.* and comment. (n.18 and backg'd), to the calculation of LSD amounts for mandatory minimum sentences. The courts concluded that *Chapman v. U.S.*, 500 U.S. 453 (1991), still applies and the weight of the LSD and its carrier medium should be used for mandatory minimum purposes.

U.S. v. Hanlin, 48 F.3d 121, 124–25 (3d Cir. 1995); *U.S. v. Andress*, 47 F.3d 839, 841 (6th Cir. 1995) (per curiam); *U.S. v. Neal*, 46 F.3d 1405, 1408–11 (7th Cir. 1995) (en banc) (three judges dissenting). *See also* summary of *Pardue* in 7 *GSU* #4.

The Ninth Circuit, however, held that the amended guideline method should be used for mandatory minimum calculations. The court found persuasive the reasoning in *U.S. v. Stoneking*, 34 F.3d 651 (8th Cir. 1994) [7 *GSU* #3], although it acknowledged that *Stoneking* was vacated for rehearing en banc. "It is our belief that the assignment of a uniform and rational weight to LSD on a carrier medium does not conflict with *Chapman*. . . . Rather than 'overriding' *Chapman*'s interpretation of 'mixture or substance,' the formula set forth in Amendment 488 merely standardizes the amount of carrier medium that can be properly viewed as 'mixed' with the pure drug."

U.S. v. Muschik, No. 93-30461 (9th Cir. Feb. 28, 1995) (Wood, Sr. J.) (remanded).

See *Outline* at II.A.3 and II.B.1.

Calculating Weight of Drugs

Ninth Circuit holds that the one kilogram per plant conversion ratio for marijuana is not limited to seizures of live plants. Defendant pled guilty to manufacturing and possessing with intent to distribute "at least one hundred marijuana plants." She admitted growing and harvesting the marijuana, but argued that the sentence should be based on the 10–20 kilograms of dried marijuana that was actually harvested from the plants. The district court found that defendant had grown and harvested at least one hundred marijuana plants and based her offense level on the one plant equals one kilogram ratio in §2D1.1(c) at n.* ("In the case of an offense involving marijuana plants, if the offense involved (A) 50 or more marijuana plants, treat each plant as equivalent to 1 KG of marijuana . . . ").

The appellate court affirmed, holding that the kilogram conversion ratio may be applied to a grower when live plants were not actually seized but there is sufficient evidence to prove the number of plants involved. The court noted that its decision in *U.S. v. Corley*, 909 F.2d 359 (9th Cir. 1990), indicating that the ratio should be used only when live plants are seized, was based on earlier versions of the Guidelines and 21 U.S.C. §841(b). The Guidelines were changed in Nov. 1989 after §841(b) was amended to increase its ratio from 100 grams per plant to one kilogram per plant for more than fifty plants. The Ninth Circuit has "explained that Congress did not introduce the one kilogram conver-

sion ratio because that quantity provided any evidentiary 'estimate' of the potential yield of a marijuana plant . . . . Congress imposed that conversion ratio because it provided a degree of punishment determined appropriate for producers of 50 or more marijuana plants." Following this "underlying purpose behind the one kilogram conversion ratio," the court held "that the one kilogram conversion ratio applies even when live plants are not seized. . . . When sufficient evidence establishes that defendant actually grew and was in possession of live plants, then conviction and sentencing can be based on evidence of live plants. The fact that those plants were eventually harvested, processed, sold, and consumed does not transform the nature of the evidence upon which sentencing is based into processed marijuana."

U.S. v. Wegner, 46 F.3d 924, 925–28 (9th Cir. 1995). *Accord U.S. v. Haynes*, 969 F.2d 569, 571–72 (7th Cir. 1992). Other circuits have held that the kilogram equivalence is limited to live plants. *See U.S. v. Stevens*, 25 F.3d 318, 321–23 (6th Cir. 1994); *U.S. v. Blume*, 967 F.2d 45, 49–50 (2d Cir. 1992); *U.S. v. Osburn*, 955 F.2d 1500, 1509 (11th Cir. 1992).

See *Outline* at II.B.2.

General Application

Sentencing Factors

Second Circuit holds that Guidelines are mandatory. Without notice to the government or findings based on the Guidelines, the district court departed downward from defendants' guideline ranges, concluding that "the Guidelines are one of several factors to be considered in imposing sentence, and are not necessarily controlling. . . . [T]he court determined that, in the case before it, the Sentencing Guidelines did not govern because the 24 to 30 month range was 'greater than necessary' to achieve general punishment purposes as that phrase is used in 18 U.S.C. §3553(a). The court therefore imposed lesser sentences, noting without findings or particulars that the 'sentences imposed would be appropriate' even if the Guidelines were, in fact, binding."

The appellate court remanded. "Notwithstanding that the Guidelines appear to be but one of several factors to be considered by a sentencing court, the statute goes on to say that the court 'shall impose a sentence of the kind, and within the [Guidelines] range . . . unless the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission. . . .' 18 U.S.C. §3553(b). Thus, although subsection (a) fails to assign controlling weight to the Guidelines, subsection (b) does so. . . . We hold that section 3553 requires a court to sentence within the applicable Guidelines range unless a departure, as that term has come to be understood, is appropriate." The court remanded for consideration of whether "permissible bases for downward departure exist."

U.S. v. DeRiggi, 45 F.3d 713, 716–19 (2d Cir. 1995).

See *Outline* at I.C.

Departures

Substantial Assistance

Eighth Circuit holds that government may, within limits, apply substantial assistance motion to only some of defendants' multiple mandatory minimum sentences. Defendants were each subject to three mandatory minimum sentences for drug and weapons offenses. The government filed substantial assistance motions under §5K1.1 and 18 U.S.C. §3553(e), but limited the §3553(e) motions to only one of the mandatory minimums for each defendant. The district court accepted this limitation as valid and sentenced defendants accordingly.

The appellate court agreed that the government could so limit its §3553(e) motion. "The issue before us is whether the term 'a sentence' in §3553(e) refers to each offense of conviction when multiple mandatory minimums are involved, or to the total sentence imposed by reason of the conviction. Although the word 'sentence' is not defined in Chapter 227 of the Criminal Code (18 U.S.C. §§ 3551–3586) . . . numerous provisions in that Chapter make it clear that 'a sentence' is imposed for each offense of conviction. . . . Likewise, the Guidelines recognize that each offense in a multicount conviction receives a separate sentence, even though many counts may be grouped or sentenced concurrently in determining the total Guidelines prison sentence. . . . Thus, we conclude that the plain language of §3553(e) authorizes the government to make a separate substantial assistance motion decision for each mandatory minimum sentence to which a defendant is subject."

However, the government may not limit its motion for improper reasons, such as controlling the length of the sentence. "[T]he government's statements at the evidentiary hearing suggest that its motions were limited in scope at least in part . . . to reduce the district court's discretion to depart from the government's notion of the appropriate total sentences . . . . The prosecutor's role in this aspect of sentencing is limited to determining whether the defendant has provided substantial assistance with

respect to 'a sentence,' advising the sentencing court as to the extent of that assistance, and recommending a substantial assistance departure. . . . The desire to dictate the length of a defendant's sentence for reasons other than his or her substantial assistance is not a permissible basis for exercising the government's power under §3553(e)." The court remanded "to permit the government either to file new §3553(e) motions or to provide satisfactory assurance to the district court that its prior motions were based solely upon its evaluation of the Stockdalls' respective substantial assistance."

U.S. v. Stockdall, 45 F.3d 1257, 1260–61 (8th Cir. 1995).

See *Outline* generally at VI.F.3 and 4.

Second Circuit holds that Rule 35(b) motion cannot be denied without affording defendant an opportunity to be heard. Defendant received a §5K1.1 downward departure for substantial assistance. He continued to cooperate after sentencing and the government later made a motion under Fed. R. Crim. P. 35(b) for a further reduction. Before defendant even knew the motion had been filed the district court denied it, stating that defendant's criminal conduct was too serious to permit an even lower sentence. Defendant argued that summary dismissal of the motion without giving him an opportunity to be heard violated Rule 35(b), denied him due process, and was an abuse of discretion.

The appellate court agreed and remanded. The court reasoned that the same process for §5K1.1 motions should be applied to Rule 35(b) because the "only practical difference between" the two motions "is a matter of timing"—one is for substantial assistance before, the other after, sentencing. In §5K1.1 motions "the exercise of discretion requires that the court give the real party in interest an opportunity to be heard. A defendant must have an opportunity to respond to the government's characterization of his cooperation." In light of this, and a defendant's right to challenge the government's refusal to file a §5K1.1 motion in some instances, the court concluded "that just as a defendant may comment on the government's refusal to move under §5K1.1, a defendant should be able to comment on the inadequacy of the government's motion under that section or under Rule 35(b)."

The government argued that defendant's opportunity to be heard at the original sentencing was adequate, but the court disagreed: "The Rule 35(b) motion here concerned events that had not yet occurred at the time of the sentencing hearing in February 1993. Obviously, Gangi did not have an opportunity to be heard at that time as to those events. . . . [F]airness requires that a defendant at least be allowed to comment on the government's motion. . . . We therefore hold that a defendant must have an opportunity to respond to the government's characterization of his post-sentencing cooperation and to persuade the court of the merits of a reduction in sentence. While we rest our decision on the requirements of Rule 35, we recognize that failure to afford an opportunity to be heard would raise grave due process issues. Our holding does not mean that the defendant is entitled to a full evidentiary hearing, as distinguished from a written submission. Whether such a hearing is necessary is left to the discretion of the district court."

U.S. v. Gangi, 45 F.3d 28, 30–32 (2d Cir. 1995).

See *Outline* generally at VI.F.4.

Criminal History

Second Circuit holds that Guidelines do not authorize use of unrelated, uncharged foreign criminal conduct for criminal history departure. Defendant pled guilty to possessing fraudulent alien registration cards. The district court imposed an upward departure—from criminal history category I to IV—on the basis of the government's claims that defendant previously engaged in homicide, terrorism, and drug trafficking while working for the Medellin drug cartel in Colombia, conduct for which he was never charged or convicted.

The appellate court remanded, holding that the Guidelines authorize some consideration of foreign convictions or sentences, but not other alleged criminal conduct. Under §§4A1.1–1.3, the court reasoned, "not even foreign sentences may be used initially in determining the criminal history category, but they may be used, like a [domestic] pending charge, as the basis for an upward departure. In light of these precise provisions as to how charges and foreign sentences may be used, it is significant that nowhere do the Guidelines specifically authorize the use of unrelated, uncharged foreign criminal conduct, or even foreign arrests, for a departure in the criminal history category." The court also concluded that even if §4A1.3(e)'s consideration of "prior similar adult criminal conduct not resulting in a criminal conviction . . . might reasonably be extended to include criminal conduct in a foreign country, a court might properly consider that conduct only if it is 'similar' to the crime of conviction. Chunza's alleged prior acts of homicide, terrorism, and drug trafficking in Colombia are not 'similar' to his possession of false immigration documents in the United States."

U.S. v. Chunza-Plazas, 45 F.3d 51, 56–57 (2d Cir. 1995).

See *Outline* generally at VI.A.1.c.

Mitigating Circumstances

Ninth Circuit holds that whether offense level "overrepresents the defendant's culpability" under Note 16 of §2D1.1 is independent of qualification for §3B1.2 adjustment. Defendants were part of a large cocaine conspiracy and personally delivered 738 and 200 kilograms, respectively, from a stash house to various locations. They pled guilty and argued that they should receive departures under §2D1.1, comment. (n.16), because they had base offense levels above 36 and received §3B1.2 mitigating role adjustments. The district court refused to depart because defendants' offense levels did not overrepresent their culpability in the criminal activity. Defendants argued on appeal that "whether the base offense level referred to in [Note 16's] clause (A) 'overrepresents the defendant's culpability' is determined solely by whether or not the defendant qualifies for a mitigating role adjustment under §3B1.2. In their view, if the defendant qualifies for a minor role adjustment, he also qualifies for a downward departure."

The appellate court disagreed, concluding that "the defendants' reading of Note 16 would make clause (B) irrelevant. For if 'overrepresentation' were satisfied whenever a minor role adjustment was found, there would be no need for a distinct determination of 'overrepresentation.' . . . The issue is whether the original base offense level, set by the amount of the controlled substance the defendant is 'accountable' for under §1B1.3, is commensurate with the defendant's involvement in the crime. . . . In this case the defendants were only charged at a level reflecting drugs that they actually transported or handled. If that established a base level higher than their culpability, the district court could depart downward. We conclude that the district court properly considered various equities and degrees of involvement before it declined to depart downward. Because the district court did not err in its interpretation of Note 16, its discretionary denial of a downward departure is not reviewable."

U.S. v. Pinto, 48 F.3d 384, 387–88 (9th Cir. 1995).

See *Outline* generally at III.B.7 and VI.C.5.a.

Criminal History

Criminal Livelihood Provision

Seventh Circuit holds that proof showing defendant derived requisite amount of income from criminal activity may be indirect. Defendant pled guilty to possession of stolen mail and his criminal record showed a lengthy history of mail theft. He admitted to having a $100 to $150 per day heroin habit and that he stole mail to support his addiction. The government did not present direct evidence that defendant had stolen the equivalent of 2,000 times the hourly minimum wage (approximately $8,500 at the time), the threshold amount for application of §4B1.3, and defendant only admitted to possessing $2,741 worth of stolen mail for the year. However, the appellate court held that the district court properly applied §4B1.3 based on all of the evidence in context. Defendant's own estimates indicated that his "heroin habit required over $8,500 a year. The evidence also showed that Taylor had no legitimate income for the twelve months prior to his arrest, that he held a job for only three months in the prior eleven years, and that he had an extensive history in the mail theft business. This evidence is certainly relevant to the application of this enhancement and, after considering it all in context, the court had no difficulty concluding that Taylor stole the required amount from the mails that year in order to live and feed his drug habit."

U.S. v. Taylor, 45 F.3d 1104, 1106–07 (7th Cir. 1995).

See *Outline* generally at IV.B.3.

Guideline Sentencing Update, vol. 7, no. 7, April 21, 1995
Federal Judicial Center
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20002-8003

Guideline Sentencing Update

a publication of the Federal Judicial Center *volume 7, number 8, May 31, 1995*

Determining the Sentence

Restitution

Fourth Circuit holds that final decisions about amount of restitution and schedule and amounts of payments cannot be delegated to probation officer. The district court ordered that "defendant shall make restitution of not less than $6,000.00 but not more than $35,069.10, in such amounts and at such times as may be directed by the Bureau of Prisons and/or the probation officer. Restitution payments of not less than $100.00 per month shall be made during the period of supervised release and payments shall be greater if the probation officer determines the defendant is capable of paying more. . . . Restitution in this case, just like in any other case, can be adjusted appropriately by the probation officer or the Court, depending on the defendant's ability to pay, should that change either upwardly or downwardly."

The appellate court remanded. "The question presented in this case is whether the court may . . . delegate to a probation officer the authority to determine, within a range, the amount of restitution or the amount of installment payments of a restitution order. We hold that this delegation from a court to a probation officer would contravene Article III of the U.S. Constitution and is therefore impermissible. . . . Sections 3663 and 3664 of Title 18 clearly impose on the court the duty to fix terms of restitution. This statutory grant of authority to the court must be read as exclusive because the imposition of a sentence, including any terms for probation or supervised release, is a core judicial function. . . . In this case, the district court appears to have delegated to the probation officer the final authority to determine the amount of restitution and the amount of installment payments (albeit within a range), without retaining ultimate authority over such decisions (such as by requiring the probation officer to recommend restitutionary decisions for approval by the court). The order was understandably fashioned to address a situation where the defendant did not have assets to pay restitution immediately but had the capacity to earn money for payment in the future. . . . The problem is a difficult one, and we recognize that district courts, to remain efficient, must be able to rely as extensively as possible on the support services of probation officers. But making decisions about the amount of restitution, the amount of installments, and their timing is a judicial function and therefore is non-delegable."

U.S. v. Johnson, 48 F.3d 806, 807–09 (4th Cir. 1995). *Accord U.S. v. Porter*, 41 F.3d 68, 71 (2d Cir. 1994); *U.S. v. Albro*, 32 F.3d 173, 174 (5th Cir. 1994) (timing and amount of payments); *U.S. v. Gio*, 7 F.3d 1279, 1292–93 (7th Cir. 1994) (same). *But cf. U.S. v. Clack*, 957 F.2d 659, 661 (9th Cir. 1992) (indicating court may set upper limit of total restitution and delegate to probation officer timing and amount of payments).

See *Outline* at V.D.1.

Departures

Mitigating Circumstances

Second Circuit affirms downward departure based on small quantities of drugs distributed by defendants at any one time during conspiracy. Two defendants were low-level employees in a drug conspiracy. Although they handled only small amounts of drugs at any one time, they worked for several months and, under the Guidelines, were held responsible for 7 and 2–3 kilograms of crack cocaine, yielding minimum sentences of 235 and 188 months. However, the sentencing judge thought this result overstated defendants' culpability and looked at their conduct in terms of the "'quantity/time factor'—what the Judge explained as 'the relationship between the amount of narcotics distributed by a defendant and the length of time it took the defendant to accomplish the distribution.'" Reasoning that Congress authorized severe sentences mainly for "stereotypical drug dealers" who move large amounts of drugs and make lots of money, and that "those who deal in kilogram quantities of narcotics are more culpable than the street peddler who sells $10 bags," the court determined that "the 'quantity/time factor' was a factor that had not been 'adequately taken into consideration by the Sentencing Commission in formulating the Guidelines'" for those who deal in small quantities over a long period. In setting the extent of a departure for such defendants, the court concluded that "the appropriate time period that would correlate culpability (and hence punishment) with drug quantity should vary depending on the defendant's role, [and] the appropriate period for a sporadic street-level dealer might be one day, for a more regular distributor, one week, and for those involved at higher levels of a narcotics

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operation, one month." The court used the weekly figure for these defendants and based the departure sentences on the amount of drugs that the conspiracy distributed during the time they were actually working in an average week.

The appellate court affirmed. "[W]e are persuaded that, at least as to defendants whose attributable aggregate quantities place them at the high end of the drug-quantity table, where sentencing ranges *exceed* the significant mandatory minimum sentences established by Congress, Judge Martin properly concluded that the normal guideline sentence may, in some circumstances, overrepresent the culpability of a defendant and that the 'quantity/time factor,' which was not adequately considered by the Commission, was available as a basis for departure. . . . The quantities attributable to [defendants] subjected them to guideline sentences of more than nineteen and fifteen years, respectively, they worked for modest wages, and they were not shown to have any proprietary interest in the drug operation of their employers. Judge Martin reasonably concluded that guideline sentences of more than fifteen years, based on aggregate drug quantities reflecting sales of approximately 50 grams per day, overstated the culpability of these two defendants. And his selection of a one-week interval for application of the 'quantity/time factor' did not render the extent of his departure 'unreasonable,' *see* 18 U.S.C. §3742(e)(3) (1988), where it resulted in a ten-year sentence, not subject to parole." The court noted that it "need not decide whether the 'quantity/time factor' can be a basis for departure as to defendants whose base offense level is not at the high end of the drug-quantity table." Nor did it decide whether such a departure would be precluded by recently added Note 16 in §2D1.1, which authorizes departures in limited circumstances for certain low-level offenders with high offense levels: "The limitations of Note 16 can have no restrictive effect upon the appellants, since their offenses were committed prior to the November 1, 1993, effective date of Note 16."

The court did, however, remand a departure for a third defendant who had sold small amounts of heroin and was not subject to a long sentence. "It simply cannot be said that a guideline sentencing range of 51 to 63 months, indicated by his aggregate quantity of four ounces of heroin bought and resold during a four-month period, overstated his culpability. Application of the 'quantity/time factor' to a person in Abad's circumstances would precisely realize the Government's apprehension that the entire structure of the Commission's drug-quantity table was being abandoned."

U.S. v. Lara, 47 F.3d 60, 63–67 (2d Cir. 1995).

See *Outline* generally at VI.C.5.a.

Substantial Assistance

Seventh Circuit holds that denial of Rule 35(b) motion was improperly based on factors unrelated to defendant's cooperation. Defendant testified for the government in several trials and post-trial hearings in the three years after he was sentenced. The government filed a Fed. R. Crim. P. 35(b) motion to reduce defendant's sentence for his substantial assistance, but the district court denied it. The appellate court reversed, concluding that "the district court intermixed Lee's claims with its criticisms of procedures and conduct by the former U.S. attorneys [in related] cases thereby confusing the proceedings and depriving Lee a fair opportunity for consideration."

The court found that "[t]he prosecution, Lee's former counsel and Lee all testified to Lee's helpfulness and continuing cooperation which extended beyond one year, including some information not known by the defendant until one year or more after imposition of his sentence. The proof was not in dispute. The district court, however, focused its ire on perceived coverup motives from the prosecution." The decision to deny relief "did not relate to the proof offered during the hearing on Lee's cooperation," but rather to "the judge's dissatisfaction with the performance and conduct of the [government attorneys]. . . . Lee's rights were not adequately considered by the district judge who conducted a wide-ranging criticism and dialogue on the misconduct of government counsel in the [related] cases and seemed to charge Lee with complicity because he, as a witness in those cases, accepted favors from the government." While the district court's concerns may be legitimate, "such blame should [not] extend to Lee. . . . We think Lee has shown entitlement to relief of a reduced sentence, [and] conclude that the trial court abused its discretion in the manner in which it conducted the hearing which resulted in denial of relief to Lee on improper grounds."

U.S. v. Lee, 46 F.3d 674, 677–81 (7th Cir. 1995).

See *Outline* generally at VI.F.4.

Offense Conduct

Calculating Weight of Drugs

Eighth Circuit holds that kilogram conversion ratio for marijuana does not require seizure of live plants. Defendant was convicted on several charges related to a marijuana growing and distribution operation that ended in 1991 when the marijuana farms were seized. Using evidence of the number of plants that defendant was responsible for during the course of the operation, the district court followed §2D1.1(c) at n.* and converted each plant into one kilogram of marijuana to set the offense level. Defendant ap-

pealed, arguing that this conversion ratio should be applied only to live plants and that the marijuana attributed to him had already been harvested.

The appellate court affirmed, reasoning that a "legitimate goal of §2D1.1(c) is to punish those guilty of offenses involving marijuana plants more severely in order to get at the root of the drug problem. In the present case . . . there was considerable evidence of Wilson's participation in the planting and cultivation of marijuana plants. Thus, following the plain language of the guidelines, this must be an offense 'involving marijuana plants.' *See* U.S.S.G. §2D1.1(c). Accordingly, we hold that where, as here, the evidence demonstrates that an offender was involved in the planting, cultivation, and harvesting of marijuana plants, the application of the plant count to drug weight conversion of §2D1.1(c) is appropriate."

U.S. v. Wilson, 49 F.3d 406, 409–10 (8th Cir. 1995). See the summary of *Wegner* in 7 *GSU* #7 for other cases on this issue.

See *Outline* at II.B.2.

General Application

Relevant Conduct

D.C. Circuit holds that conduct must be related to offense of conviction, not merely to other relevant conduct, to be used under §1B1.3. Defendant pled guilty to one fraud count (count four) and had three other fraud counts dismissed. All three dismissed counts were used as relevant conduct in setting the offense level. The appellate court affirmed the use of counts one and two, holding that although they were "separately identifiable" from the offense of conviction they were "similar in nature"—all involved presenting a counterfeit check to obtain money or goods—and, at three months apart, close enough in time to reasonably conclude they were part of the "same course of conduct" under §1B1.3(a)(2). The third dismissed count, however, a credit card fraud, "is both separately identifiable from count four and of a different nature. That counts three and four both involved fraud to obtain money is not enough. While substantial similarities exist between count three and counts one and two—they all involved the same alias and occurred within two months—the government must demonstrate a connection between count three and the *offense of conviction*, not between count three and the other offenses offered as relevant conduct. The credit card fraud in count three is thus not part of the same course of conduct as the offense of conviction. The district court committed clear error in treating it as relevant conduct."

U.S. v. Pinnick, 47 F.3d 434, 438–39 (D.C. Cir. 1995).

See *Outline* at I.A.2.

Second Circuit holds that the Guidelines require a particularized finding of the scope of the criminal activity that defendant jointly undertook with others. Defendant was one of many sales representatives in a fraudulent loan telemarketing scheme. Although it was uncontested that defendant knew the scheme was fraudulent, no evidence was presented that his involvement extended beyond his own sales efforts or that he had any other role or participation in the scheme. However, the district court held defendant responsible for the entire loss caused by the fraud, finding that this was a jointly undertaken activity and the conduct of the other participants was reasonably foreseeable to him.

The appellate court remanded because there was no finding that the acts of other participants were within the scope of defendant's agreement. For relevant conduct involving others, the Guidelines "require the district court to make a particularized finding of the scope of the criminal activity agreed upon by the defendant. . . . [T]hat the defendant is aware of the scope of the overall operation is not enough to hold him accountable for the activities of the whole operation. The relevant inquiry is what role the defendant agreed to play in the operation, either by an explicit agreement or implicitly by his conduct." Here, the evidence shows that defendant's agreement "was limited to his own fraudulent activity and did not encompass the fraudulent activity of the other representatives. His objective was to make as much money in commissions as he could. He had no interest in the success of the operation as a whole, and took no steps to further the operation beyond executing his sales." The court noted that, because the government may not have had notice that it needed to show evidence of defendant's agreement as outlined in this opinion, it may try to do so on remand.

U.S. v. Studley, 47 F.3d 569, 574–76 (2d Cir. 1995).

See *Outline* at I.A.1.

Adjustments

Multiple Counts—Grouping

Sixth Circuit holds that multiple counts from different indictments may be grouped. Defendant was charged with multiple offenses in two different indictments and pled guilty to one count from each indictment. The district court determined the offense level for each count and then applied the multiple count adjustment under §3D1.4 to reach a combined adjusted offense level. Defendant argued that it was improper to apply §3D1.4 to counts from different indictments.

The appellate court affirmed. "Even though Part D of Chapter Three contains no explicit language ap-

plying §3D1.4 to multiple counts in separate indictments, the absence of such a statement is of no moment. First, there is no language in Part D of Chapter Three prohibiting the application of §3D1.4 to counts in separate indictments. Second, U.S.S.G. §3D1.5 states '[u]se the combined offense level to determine the appropriate sentence in accordance with the provisions of Chapter Five.' In order to apply a sentence to multiple counts in separate indictments pursuant to §5G1.2, a combined offense level must first have been determined which incorporates the counts from the separate indictments. Thus, in order to make sense, §3D1.4 must be read to apply to counts existing in separate indictments in which sentences are to be imposed at the same time or in a consolidated proceeding. . . . The only logical reading of U.S.S.G. §§3D1.1–5 and 5G1.2 requires that §3D1.4 apply to multiple counts in separate indictments."

U.S. v. Griggs, 47 F.3d 827, 831–32 (6th Cir. 1995). *See also U.S. v. Coplin*, 24 F.3d 312, 318 & n.6 (1st Cir. 1994) ("§5G1.2 would not make much sense unless we also assumed that the grouping rules under chapter 3, part D had previously been applied to counts 'contained in different indictments . . . for which sentences are to be imposed at the same time.' Accordingly, we read this concept into chapter 3, part D.").

See *Outline* generally at III.D.1.

Sentencing Procedure

Procedural Requirements—Notice

Seventh Circuit holds that testimony from co-defendants' sentencing hearings may not be used to increase defendant's offense level unless defendant has adequate notice. Defendant received an aggravating role adjustment under §3B1.1(c), despite the fact that a similarly situated codefendant did not and the government stated at the sentencing hearing that it would be inappropriate and did not present any evidence to support it. The court based the enhancement on testimony about defendant at the sentencing hearings of other defendants. Neither defendant nor the government had notice before the hearing that the court intended to use that testimony.

The appellate court remanded after applying "a two-prong inquiry: first, was the specific evidence considered by the court from the prior sentencing hearings previously undisclosed to [defendant], and second, if he had no prior knowledge, was he given a reasonable opportunity to respond to the information." The court first concluded that although most of the information used to justify the enhancement was in the presentence report, "certain significant evidence taken into account by the district court was not disclosed to [defendant] before the hearing."

On the second issue, the court found that defendant "was on notice of a dispute between himself and others and was given some opportunity to respond to the new evidence before he was sentenced. . . . On balance, however, we do not believe [he] was given sufficient notice to allow him meaningfully to rebut the prior testimony. Because the government backed away from a role increase, [defendant] knew that no new evidence would be introduced at the hearing to support such an increase. Additionally, . . . he knew that the same judge had found the evidence insufficient to support such an increase for [the co-defendant]. . . . Thus, when they arrived for the sentencing, [defendant] and his attorney reasonably would not have anticipated the need for evidence to rebut new, damaging information . . . . We therefore conclude that [defendant] did not receive sufficient notice, as required by Rule 32, so that he could comment meaningfully on the court's decision to impose a role increase."

U.S. v. Blackwell, 49 F.3d 1232, 1237–40 (7th Cir. 1995).

See *Outline* at IX.D.2 and E.

Guideline Sentencing Update, vol. 7, no. 8, May 31, 1995
Federal Judicial Center
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, N.E.
Washington, DC 20002-8003

APPENDIX
G

CUMULATIVE LIST OF
CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

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

Effective Date	Annual Rate	Effective Date	Annual Rate	Effective Date	Annual Rate	Effective Date	Annual Rate
01-12-90	7.74%	06-28-91	6.39%	12-11-92	3.72%	05-27-94	5.28%
02-14-90	7.97%	07-26-91	6.26%	01-08-93	3.67%	06-24-94	5.31%
03-09-90	8.36%	08-23-91	5.68%	02-05-93	3.45%	07-22-94	5.49%
04-06-90	8.32%	09-20-91	5.57%	03-05-93	3.21%	08-19-94	5.67%
05-04-90	8.70%	10-18-91	5.42%	04-07-93	3.37%	09-16-94	5.69%
06-01-90	8.24%	11-15-91	4.98%	04-30-93	3.25%	10-14-94	6.06%
06-29-90	8.09%	12-13-91	4.41%	05-28-93	3.54%	11-11-94	6.48%
07-27-90	7.88%	01-10-92	4.02%	06-25-93	3.54%	12-09-94	7.22%
08-24-90	7.95%	02-07-92	4.21%	07-23-93	3.58%	01-06-95	7.34%
09-21-90	7.78%	03-06-92	4.58%	08-20-93	3.43%	02-03-95	7.03%
10-27-90	7.51%	04-03-92	4.55%	09-17-93	3.40%	03-03-95	6.57%
11-16-90	7.28%	05-01-92	4.40%	10-15-93	3.38%	03-31-95	6.41%
12-14-90	7.02%	05-29-92	4.26%	11-17-93	3.57%	04-28-95	6.28%
01-11-91	6.62%	06-26-92	4.11%	12-10-93	3.61%	05-26-95	5.88%
02-13-91	6.21%	07-24-92	3.51%	01-07-94	3.67%	06-23-95	5.53%
03-08-91	6.46%	08-21-92	3.41%	02-04-94	3.74%		
04-05-91	6.26%	09-18-92	3.13%	03-04-94	4.22%		
05-03-91	6.07%	10-16-92	3.24%	04-01-94	4.51%		
05-31-91	6.09%	11-18-92	3.76%	04-29-94	5.02%		

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

APPENDIX
H

UNITED STATES ATTORNEYS

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GEORGIA, SD	HARRY D. DIXON, JR.
GUAM	FREDERICK A. BLACK
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VIRGINIA, WD	ROBERT P. CROUCH, JR.
WASHINGTON, ED	JAMES P. CONNELLY
WASHINGTON, WD	KATRINA C. PFLAUMER
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WEST VIRGINIA, SD	REBECCA A. BETTS
WISCONSIN, ED	THOMAS P. SCHNEIDER
WISCONSIN, WD	PEG LAUTENSCHLAGER
WYOMING	DAVID D. FREUDENTHAL

All the investigators, auditors, and other staff, as well as the OIG's other resources, are available to conduct investigations, audits, and inspections of Department of Justice programs and employees. Please report any allegation or evidence of misconduct, waste, fraud and abuse to the nearest OIG investigations office or call the headquarters office of the OIG at (202)514-3435. In the event that the allegation falls within the jurisdiction of another office, the OIG will make sure that the matter is forwarded to the correct office.

OPR Case Summaries

(Note: The following items are included for educational purposes and as a means of identifying potential professional responsibility problems that have arisen.)

Dismissal of Indictment

OPR received allegations that a Federal prosecutor helped the target of a multi-jurisdiction drug investigation by dismissing a federal indictment against the target, thereby allowing him to avoid being returned to the custody of local authorities. The prosecutor also reportedly made a deal with counsel for the target's associates so that they could provide fingerprints and handwriting exemplars to Federal officials without fear of arrest. OPR found that the dismissal of the indictment was justified because of inconsistent witness identifications and that the agreement with counsel was motivated solely by a desire to obtain evidence. OPR concluded that the prosecutor had not engaged in misconduct, but had exercised poor judgment in dismissing the indictment without first contacting local authorities, who he knew were interested in keeping the target in custody. No disciplinary action was taken and, under the policies in effect at the time, OPR's investigation was closed, as the subject had left the Department. Under new policies established by the Deputy Attorney General, OPR must now make a case-by-case decision as to whether to close an investigation when the subject resigns from the Department.

Conflict of Interest—Bias

An inmate who was convicted of fraud alleged that the prosecutor was biased against him because of the prosecutor's close relationship with the family of the inmate's former employer. The inmate also alleged that the prosecutor improperly provided the employer with a letter on Department stationery that was used in a civil case involving the inmate and the employer. OPR's inquiry disclosed that the prosecutor contacted the employer on numerous occasions for legitimate investigative purposes and that there was no close relationship between them. OPR also found that the prosecutor wrote a letter that was introduced in litigation involving the inmate and the employer. OPR concluded that the letter was a legitimate request for records and was not intended to assist the employer in litigation.

Communications with Congress–Redaction–Sensitive Information

OPR received allegations that a Federal prosecutor failed to follow Department procedures in releasing to Congress information concerning ongoing criminal and civil investigations. OPR found that the prosecutor sent to a congressional committee a copy of a letter he sent to the Federal Aviation Administration requesting its assistance in certain

forfeiture cases. The letter detailed the prosecutive merit of the cases and speculated on the criminal activity of the subjects of investigations. The prosecutor discussed the question of sending the letter to the committee with his supervisor, who approved the transmission. OPR determined that the failure to redact sensitive information was inadvertent and found no intentional misconduct. OPR recommended that the Federal prosecutor and supervisor be readvised of Department policies on communications with Congress, as well as the importance of protecting sensitive information from disclosure.

Other Developments in Professional Responsibility

Disciplinary Matters—Personal Jurisdiction

In *United States v. Ferrara*, No. 93-5233, 1995 LW 301679 (D.C. Cir. May 19, 1995), the D.C. Circuit upheld the District Court's dismissal for lack of personal jurisdiction of the federal government's Supremacy Clause action against the New Mexico Disciplinary Counsel. The Chief Disciplinary Counsel of the Disciplinary Board of the Supreme Court of New Mexico commenced disciplinary proceedings against a member of the New Mexico bar on the basis of authorized actions taken in 1988 by the lawyer in Washington, D.C., while a Federal prosecutor. The conduct at issue involved allegations that the attorney, a Federal prosecutor, made improper contacts with a represented defendant in a criminal case without the permission of the defendant's counsel. The United States filed an action in the District of Columbia to enjoin the state's disciplinary proceeding, alleging that it was barred by the Supremacy Clause. The district court dismissed the action on the ground that there was no basis for the exercise of personal jurisdiction over the defendant—New Mexico's Chief Disciplinary Counsel, named in her official capacity. A unanimous panel of the court of appeals (Judges Silberman, Buckley, and Sentelle) has now affirmed the trial judge's personal jurisdiction ruling. Significantly, the panel's decision does not reach the merits of the underlying Supremacy Clause issues and, therefore, does not call into question the validity of the Attorney General's recent regulations expressly addressing the question of contacts with represented parties by Federal attorneys. The Department continues to represent the attorney charged with the misconduct.

SENTENCING GUIDELINES

Guideline Sentencing Update

Appendix F is the *Guideline Sentencing Updates*, Volume 7, No. 7, and Volume 7, No. 8, dated April 21, 1995, and May 31, 1995, respectively. *Guideline Sentencing Update* 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

Executive Office for United States Attorneys—Equal Employment Opportunity Staff—Experienced Attorney GS-15

The Office of Attorney Personnel Management, U.S. Department of Justice, is seeking an experienced attorney for the Executive Office for United States Attorneys (EOUSA), Equal Employment Opportunity Staff. Incumbent serves as Assistant Director, Equal Employment Opportunity (EEO) Staff for EOUSA. Responsibilities include the development and implementation of the EEO/Affirmative Action Programs, including its coordination throughout the Offices of the United States Attorneys. The incumbent provides advice to the Director and other managers; directs and provides equal employment expertise in Special Emphasis program areas; conducts impartial investigations and facilitates settlement agreements; and provides comprehensive review and analysis of EEO concerns and makes recommendations to key management officials to achieve overall goals and to improve operations. The incumbent serves as supervisor to the EEO staff which consists of one attorney, four EEO specialists, and one support person.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least five years of post J.D. experience. Must have knowledge of the laws, rules, regulations, and case law relating to equal opportunity. General knowledge of Federal personnel administration, policies, and practices, including appeals and grievances, labor relations, recruitment, and selection are desirable. Applicants must submit, a resume or OF 612 (Optional Application for Federal Employment), writing sample, and current performance appraisal to the address below. The SF-171 (Application for Federal Employment) will still be accepted as well. This position is open until filled, but no later than September 1, 1995.

U.S. Department of Justice
Executive Office for U.S. Attorneys
Administrative Services, Personnel Staff
Attn: Carol D. Parnell
Personnel Management Specialist
Bicentennial Building
600 E Street, N.W., Room 8104
Washington, D.C. 20530

No telephone calls please. The salary range for GS-15 is $71,664 to $93,166. 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 will, therefore, be required to pass a urinalysis test to screen for illegal drug use prior to final appointment.

APPENDIX
A

U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Washington, D.C. 20530

MAY 15 1995

MEMORANDUM

TO: ALL UNITED STATES ATTORNEYS
ALL ADMINISTRATIVE OFFICERS

FROM: Carol DiBattiste
Director

SUBJECT: Delegation of Authority to Approve Incentive Awards

ACTION REQUIRED: None - Information Only

CONTACT PERSON: Gail C. Williamson
Assistant Director
Personnel Staff
(202) 616-6873

This is to advise that effective immediately United States Attorneys are delegated authority to approve incentive awards for their staffs in amounts up to $5,000. Prior to this delegation, United States Attorneys were delegated the authority to approve incentive awards in amounts up to $1,000. This increase in approval authority is in direct response to recommendations received from United States Attorneys and the Office Management and Budget Subcommittee of the Attorney General's Advisory Committee.

The only exception to this delegation is that award nominations for Supervisory Assistant United States Attorneys and Senior Litigation Counsel must still be submitted to this office for approval by the Deputy Attorney General.

Incentive award nominations must still be consistent with applicable Office of Personnel Management regulations and Department of Justice and Executive Office for United States Attorneys guidelines.

If you have any questions regarding this delegation of authority, please contact me on (202) 514-2121, or Gail C. Williamson on (202) 616-6873.

APPENDIX
B

U.S. Department of Justice

Executive Office for United States Attorneys
Office of the Director

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

(202) 514-2121

MAY 18 1995

MEMORANDUM

TO: All United States Attorneys
All First Assistant United States Attorneys
All Criminal Chiefs
All Administrative Officers
All LECC/VW Coordinators

FROM: Carol DiBattiste
Director

SUBJECT: Revisions to Fact Witness Procedures

ACTION REQUIRED: Consideration of Your Office's Participation in the Use of the GTA Accounts for Fact Witnesses
and
Implementation of New Procedures in the Fact Witness Program

RESPOND TO: Participation in GTA Mentor Program
Jamie Embrey, Budget Analyst aex02(JEMBREY)

CONTACT PERSON: Jamie Embrey on (202) 616-6886 or email aex02(JEMBRY) or
Theresa Bertucci on (202) 514-4506 or email aex03(tbertucc)

Attached is a joint memorandum from myself and Eduardo Gonzalez, Director of the United States Marshals Service, forwarding a directive issued to the Department of Justice by our offices and Justice Management Division regarding changes to procedures in the fact witness program. This memorandum requests your cooperation in implementing the new procedures of the Fact Witness Program and your serious consideration of the full implementation of Government Transportation Account accounts in your district.

The Executive Office for United States Attorneys was invited to participate in a working group with representatives of the United States Marshals Service in the fall of 1994 to improve the Fact Witness Program. The group was formed in response to a General Accounting Report (GAO) GCD-84-61, issued July 12, 1984. This report levied criticism at the Department of Justice, and in particular, the United States Marshals Service and the United States Attorneys' offices regarding the procedures used to process expert and fact witness payments. While many improvements have been made over the years to address the GAO report, other areas have gone unaddressed.

After several preliminary meetings between the Executive Office for United States Attorneys, members of United States Attorneys' offices, Justice Management Division, and the United States Marshals Service, it was decided that improvements to the current fact witness procedures could best be developed by employees in the field. Because employees involved in the Victim-Witness program were the most conversant with current procedures (and the problems inherent with those procedures), it was concluded that they were the most qualified to develop improvements and streamline the process.

Three working groups were formed to address the issues. The first two working groups consisted of employees from the United States Attorneys' offices and United States Marshals Service. Working Group A was assigned to address pre-appearance fact witness issues, and Working Group B post-appearance issues. The third group was composed mainly of headquarters personnel to support and facilitate the recommendations developed by Working Groups A and B. The roster of the working groups is attached to the joint memorandum for your information.

One of the recommendations agreed upon was the use of the Fact Witness (GTA). The majority of United States Attorneys' offices have Fact Witness GTAs and report that they are pleased with the performance. However, several offices still do not have these accounts in place. Other offices have Fact Witness GTAs in place but do not use them, or use them solely for airfare.

GTAs allow the fact witness to obtain airfare at the Government rate, which is often less than the rate a witness can obtain directly. Through the use of Memoranda of Understanding with hotels in your district, lodging may also be obtained at the Government rate. Therefore, not only does the use of the GTA result in cost savings to the government, it provides ease in travel arrangements for the fact witness, and reduces the requirement for out-of-pocket funds, both of which serve to produce a more cooperative witness.

The United States Attorneys' offices have first-hand knowledge of the dates of appearances, and scheduling and re-scheduling of court appearances. In addition, the United States Attorneys' offices wish to establish a relationship with witnesses that includes, among other things, a concern for hardships that the witness may associate with the litigative process. It is logical that an individual in the United States Attorney's office, or several individual in larger offices, coordinate fact witnesses' travel arrangements through the use of the Fact Witness GTA and the local Travel Management Center.

In order to assist those offices who do not currently have a Fact Witness GTA, or those offices who limit the use of the GTA, a Fact Witness GTA mentor program has been developed. Participants from the Working Groups, along with others selected independently of the Working Group, have enthusiastically agreed to act as mentors due to the success of the Fact Witness GTA in their districts. These mentors will assist your office in implementing the Fact Witness GTA, establishing MOUs with local hotels in your district, and reconciling the GTA. In addition, Justice Management Division, Finance Staff, has assured us that they will also be available to assist districts in their efforts to implement the Fact Witness GTAs. We applaud the dedication of these individuals in volunteering to serve in this effort. I am confident that with this network of talented employees, Fact Witness GTAs can be in place, and in use, by all United States Attorneys' offices by **July 1, 1995**. I strongly encourage that you consider the implementation of these accounts and their use by your office if not already in use.

If your office currently does not have a GTA, has an inactive GTA, or uses the GTA solely for airfare, please contact Jamie Embrey of the Financial Management Staff at (202) 616-6886 for your office's mentor assignment.

There were many other recommendations of the Working Groups and these are contained in the joint memorandum from Director Gonzalez and myself. Please join with me in supporting the efforts of our employees to reduce Government spending, and to improve the service that the Department of Justice provides to a crucial part of the litigation process--Fact Witnesses.

Attachment

U.S. Department of Justice

Executive Office for United States Attorneys

United States Marshals Service

MAY 18 1995

MEMORANDUM FOR: All Department of Justice Components

FROM: Eduardo Gonzalez
Director
Unites States
Marshals Service

Carol DiBattiste
Director
Executive Office for
United States Attorneys

Fact Witness Procedures

We would like to take this opportunity to inform the Department of Justice of meetings between employees of our organizations concerning the fact witness program, and changes to current practices which we believe will improve services and reduce spending.

Employees from field offices of both agencies have joined together to form two Fact Witness Working Groups. The Fact Witness Working Groups consist of front-line personnel who administer the fact witness program. A roster of the working groups is attached, and it is apparent from the list of participants that offices varying in size, structure, and location were represented. The participants succeeded in representing the views and concerns of their respective organizations while developing specific recommendations to improve procedures and services to the customer.

As we all know, fact witnesses play a crucial role in the litigation process. Improving services will ensure that we have the most cooperative witnesses for the Government. While many recommendations made by the working groups will result in improved services, the cost savings to the Government as a result of some of the changes is an added incentive. We ask that you incorporate these changes into your procedures concerning fact witnesses.

I. Advising Witnesses of Entitlements

A. Information provided to fact witnesses regarding specific entitlements should only be supplied by the individuals who are well versed in the fact witness program. It is perfectly permissible for agents and attorneys to advise a witness that they may be compensated for their appearance; however, we ask that all agents and attorneys (including those assigned to the Department of Justice Litigating Components) refrain from advising or promising specific entitlements to fact witnesses. Fact witnesses should be advised to contact the person indicated on the Notice to Fact Witnesses Appearing on Behalf of the U.S. Government (OBD-2) to determine reimbursement rules for transportation, lodging, appearance fees, and other incidental expenses. By deferring to the specialists in fact witness procedures, we hope to avoid situations where a witness becomes disgruntled and angry due to misinformation about promised entitlements.

B. Attorneys travelling to the United States Attorneys' offices from the Department of Justice Litigating Components are asked to coordinate fact witness procedures with the Victim-Witness Coordinator or designee for the district.

C. The United States Marshals Service will serve as the focal point for court-appointed or public defender witnesses.

D. Subpoenas issued to fact witnesses must have an OBD-2 attached. The OBD-2 must contain the name and phone number of the individual in the United States Attorney's office, preferably the Victim-Witness Coordinator or designee, who should be contacted regarding specific entitlements and travel arrangements.

An alternate point of contact should also be designated on the form in the event the primary point of contact is unavailable. The Working Group highly recommends that each district take the initiative to customize the OBD-2 to provide the witness with as much local or case specific information as possible to facilitate the court appearance.

E. In addition and where permitted by local court procedures, a statement in boldface type should be included on the subpoena which states:

YOU MAY BE ENTITLED TO REIMBURSEMENT FOR CERTAIN EXPENSES RESULTING FROM YOUR APPEARANCE.

PLEASE CONTACT: (Primary Contact) AT (Phone Number), OR (Alternate Contact) AT (Phone Number) UPON RECEIPT OF THIS SUBPOENA TO DETERMINE YOUR SPECIFIC ENTITLEMENTS.

F. Use of the Fact Witness Government Transportation Accounts (GTAs) by United States Attorneys' offices for both airfare and hotel accommodations is strongly encouraged.

II. PROCESSING FACT WITNESSES AFTER APPEARANCE

A. Part II (Allowances), Items C through F of the OBD-3 will be completed by an employee of the United States Attorney's office. The computation performed in the column on the right of the OBD-3, which contains the object class code and amount, will continue to be performed by the United States Marshals Service. The United States Attorneys' offices are responsible for completing the witness expense portion of Part II on the left side of the OBD-3. Part II should not be completed by the fact witness, with the exception of the witness certification in Item G. The fact witness should never be provided a blank OBD-3 for completion and delivery to the United States Marshals Service.

B. Any changes to Part II (Allowances) of the OBD-3 must be initialled by an employee in the United States Attorney's office. Changes made by the witness to the form will not be honored.

C. The OBD-3 will be retained by the United States Attorneys' offices until all receipts have been received from the witness. Once all receipts have been received, the OBD-3 is considered complete, and should be forwarded to the United States Marshals Service for processing.

D. The OBD-3 must not be handled by the fact witness other than for signature purposes and then only in the presence of an employee of the United States Attorney's office. In general, it should not be delivered by the fact witness to the United States Marshals Service with the exception of II.E. The OBD-3 should be delivered by a Federal Government employee to the United States Marshals Service.

E. In the case where the fact witness requires on-the-spot payment, it is preferred that the witness be escorted to the United States Marshals Service by an employee of the United States Attorney's office. Where this is not possible, the completed OBD-3 should be placed in a sealed envelope with the signature of the United States Attorney's office employee over the seal. The fact witness may then deliver the sealed envelope containing the signature of the United States Attorney's office employee to the United States Marshals Service for payment.

F. The individual who signs the attendance attestation on the OBD-3 must have a signature card on file with the United States Marshals Service.

G. The United States Marshals Service retains the responsibility of certifying the OBD-3 and dispersing funds for fact witness payments. In order to provide the most efficient service possible, when cases arise involving indigent witnesses, coordination between the United States Attorneys' offices and the United States Marshals Service is encouraged to ensure that there is adequate personnel available to process on-the-spot payments.

Additional recommendations were developed as a result of the meetings of the Fact Witness Working Groups. Among these recommendations are revisions to the OBD-2, OBD-3, and developing innovative ways of providing greater service to those districts with active branch office locations. While some of these recommendations may take longer to implement, we affirm that we will continue to pursue them.

We ask that you join with us in support of this worthwhile effort by implementing the changes contained in this memorandum which are aimed at improving services and increasing efficiency. Employees of the United States Marshals Service who have questions regarding the contents of this memorandum should contact Marty Freeman, Financial Management Policy, Analysis and Systems Division at (202) 307-5221. United States Attorneys' office personnel may contact Jamie Embrey, Financial Management Staff at (202) 616-6886.

Attachment

WORKING GROUP A
PRE-APPEARANCE FACT WITNESS ISSUES

GROUP COORDINATORS

Mike Considine, VW Coordinator, United States Attorney's office, Northern District of Illinois, Alternate Coordinator
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Paulette Womack, Lead Criminal Secretary, United States Attorney's office, Southern District of Mississippi

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POST-APPEARANCE FACT WITNESS ISSUES

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Pam Perry, Lead Criminal Secretary, United States Attorney's office, Northern District of Indiana
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Barbara Vanarsdall, VW Coordinator, United States Attorney's office, Southern District of Ohio
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WORKING GROUP C
RULES AND REGULATIONS

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