

United States Attorneys' Bulletin

Volume 44, No. 4 August 1996

Published by

Executive Office for United States Attorneys Washington, D.C.

Carol DiBattiste, Director

United States Attorneys' Bulletin Staff, (202)514-3572

David Marshall Nissman, Editor-in-Chief

Wanda J. Morat, Editor

Ed Hagen, Editor

Barbara J. Jackson, Editor

Susan Dye Bartley, Graphic Designer

Patrice A. Floria, Editorial Assistant

Send distribution address and quantity corrections to:

Barbara Jackson, Executive Office for United States Attorneys, Bicentennial Building, Room 6011, 600 E Street, N.W., Washington, D.C. 20530 (202)616-8407 or fax (202)616-6653

From the Editor-in-Chief

The featured interview in this issue is with Deputy Solicitor General Michael Dreeben, who recently successfully argued the Ursery case, settling the asset forfeiture parallel proceeding question. As you approach the Solicitor General's suite of offices on the fifth floor of the Main Justice building, you are immediately struck by the majesty and sense of history that the Department has brought to the development of American law. This interview focuses on the development of a Supreme Court case and the important relationship between our trial and appellate prosecutors.

We have some terrific contributions from Assistant United States Attorneys and others throughout the country. Keep the letters and Emails coming. Remember that our next issue focuses on international legal issues, and we could use more articles. It is a fascinating area of our federal practice and I am constantly struck by how many of our cases have an international angle to them. This is your opportunity to share your experiences with your colleagues.

To all of you that sent me your thoughts and comments after you received the last issue, thank you. Don't hesitate to call me with your ideas, comments, or criticisms. You can contact me in St. Croix at (809)773-3920 or AVISC01(DNISSMAN).

DAVID MARSHALL NISSMAN

Letter to the Editor

Assistant United States Attorney/Senior Litigation Counsel James A. Metcalfe's response to July 1996 USAB article, Shortcuts: Easier, Faster, and More Interesting "Trials" (Mr. Metcalfe is from the Eastern District of Virginia.)

Assistant United States Attorney Jennings' article is excellent. I have used almost all his suggestions in complex cases and commend them to trial attorneys. I have a comment and suggestion on handling exhibits. I believe that marking bulky exhibits as a single exhibit has some limitations. In several of our most complex and exhibit-rich trials, we have given letter prefixes to exhibits. In some cases, the letters were readily decipherable as related to a specific part of the case. For example, in a mortgage fraud case, we identified each of the 36 victim savings and loans by a four-letter identifier: evidence of a policy of fraud as POL, advice from certified public accountants and others as ADV, and individual bankruptcy properties by letters such as PEP (The Peppertree Condo) and SPOT (Spotsylvania County property). In an Arms Export case involving a Chinese spy, we used apparently meaningless letter designators (there were only a few groups of documents, although the total number was about 1000). We identified evidence from a search of the spy's house as A, evidence from his office as B, and evidence from the arms material manufacturer by letters close to its name.

By giving groups of evidence letter identifiers, you allow your evidence to expand within each group, avoiding the confusion of having Gov't Ex. 5, 11, 723, and 1009 all related. Invariably you will continue to add exhibits up to the beginning of trial and beyond. We also tied the evidence in through charts that were introduced into evidence. In two trials, we were able to introduce 12 five-drawer file cabinets of documents without losing control but, more importantly, we never lost the interest of the juries.

Contents

Interview with Deputy Solicitor General Michael R. Dreeben
Ursery Case Summary
Questioning in the Supreme Court
Litigation and New Technology: Can the Two Mesh?
Prosecution Exhibits Presented to the Jury on Video
Visual Presenter
Transcript Presentation Manager
ATTVIEW - Managing and Imaging Documents for Trial
Preparing Trial Charts for Closing
Display of Evidence
"Operation Senior Sentinel" Assists Investigations and Prosecutions Maps and Other Graphics for Effective Presentations
The Expanded Role of the Microcomputer as a Criminal Instrument

Attorney General Highlights

- Honors and Awards
- President Signs Order to Create Commission to Develop Antiterrorism Measures
- AG Signs Critical Incident Response Plan
- Highlights of the Attorney General's Advisory Committee of United States Attorneys
- "The National Drug Control Strategy: 1996"
- Operation Gatekeeper Push into East San Diego County
- AG and Governor Lawton Chiles Announce Florida Immigration Initiative
- Attorney General Supports Military-Style Educational Opportunities for Women
- Department Commemorates 46th AG, Charles Bonaparte
- Off-Duty Conduct

United States Attorneys' Offices/Executive Office for United States Attorneys

- Appointments
- Honors and Awards
- Significant Issues/Events
- EOUSA Staff Update
- Telecommunications and Technology Development
- Personnel Staff
- Office of Legal Education
- WordPerfect 5.1 Tips

DOJ Highlights

- Appointments
- Antitrust Division
- Civil Division
- Criminal Division
- Solicitor General
- Office of Justice Programs

Bureau of Justice Statistics
Office of Juvenile Justice Delinquency Prevention
National Institute of Justice
Violence Against Women Office
Office of the Inspector General
Immigration and Naturalization Service

Ethics and Professional Responsibility

Gifts
Representations to Opposing Counsel
Unintentional Misstatement to Appellate Court

Career Opportunities

DOJ Legal Employment Programs on Internet
Vacancies on EOUSA Bulletin Board
National and Federal Legal Employment Report
Antitrust Division, Atlanta Office - Attorney
Antitrust Division, Telecommunications Task Force - Experienced Attorneys

Interview with Deputy Solicitor General Michael R. Dreeben

Mr. Dreeben has been a Deputy Solicitor General in charge of criminal matters since 1994. He prepares and reviews merits briefs in criminal cases and presents oral arguments in the Supreme Court. He also reviews adverse decisions in criminal cases in the lower courts. He has argued more than 20 cases, including *United States v. Ursery* and *United States v. \$405,089.23*, both civil forfeiture double jeopardy cases.

Mr. Dreeben graduated from Duke Law School in 1981, after which he clerked for Judge Jerre S. Williams on the United States Court of Appeals for the Fifth Circuit and worked in private practice in Washington, D.C., before joining the Department in 1988 as an Assistant to the Solicitor General and becoming a Deputy Solicitor General in 1994.

Mr. Dreeben was interviewed by Assistant United States Attorney David Nissman (DN), Editor-in-Chief of the *United States Attorneys' Bulletin*, and Assistant Director Suzanne Warner, Asset Forfeiture, EOUSA Legal Programs staff.

DN: Much of the Solicitor General's work involves reviewing adverse decisions. What are you looking for during your review?

MD: When we get a case that has been lost in District Court, in the criminal area, our first concern is were we right on the law. After close inspection, if we conclude that the district judge was right and we were wrong, then it would not be appropriate for the Government to appeal. Similarly, if we conclude that we might have a chance to win in a Court of Appeals, but that we could not successfully defend it in the Supreme Court, that would be reason not to appeal. We also consider whether a particular case is a good or bad vehicle for developing the laware the facts particularly good or particularly bad for considering an issue. We give strong deference to how important a prosecution is to the particular district in question. Our general aim is to see if we can find a successful argument that can reasonably be advanced on appeal by the Government. If we conclude there's not, after conferring with the Criminal Division and the United States Attorney's office, then approval to appeal will not be given.

DN: How many people do you have working on the staff of the Solicitor General?

MD: The Solicitor General's office has 15 Assistants to the Solicitor General and 4 Deputies. I am the only Deputy who specializes in the criminal area, so all criminal cases come through me. The Assistants are not specialized by subject matter. All of them do criminal work as well as civil work. The Assistants belong to one of the last domains of the true legal generalist in appellate law.

DN: How many briefs does the Solicitor General's office file every year?

MD: In criminal cases, we file roughly 300 briefs in opposition each year. That represents the full range of legal issues and constitutional issues that arise in criminal cases. We also file 15 to 20 briefs on the merits of cases that the Court will decide.

DN: The *Ursery* decision is one of those very rare cases around the country where both the civil assistants and the criminal assistants are affected. We are all very excited about this big victory for us after some bad decisions in some of the circuits. How do you coordinate the development of a Supreme Court case with the people that tried these cases?

MD: The first step in those cases goes back before either of the decisions. The question of how the double jeopardy clause applied to parallel civil and criminal cases was an issue the Department watched closely for some time. Since I argued the *Halper* decision as my first case in the Supreme Court and lost it 9-0, I became the person to ask about double jeopardy problems that arose in the wake of *Halper*. Shortly after *Halper* came down, questions were raised about the double jeopardy implications for civil forfeiture. Criminal Appellate and I consulted and determined that our best argument was that civil forfeiture had always been remedial. It had never been punitive and, therefore, it did not raise any double jeopardy problems. We were successful in presenting that argument to the Courts of Appeals until the Supreme Court decided *Austin v. United States*. That case held that civil forfeiture was punitive for purposes of the Eighth Amendment (excessive fines clause). At that point, we were simply waiting for the next shoe to drop and for a court to put *Halper* and *Austin* together, and conclude that there was a double jeopardy problem in the program that the Government had been pursuing very aggressively and successfully: seizing assets and prosecuting the owners. So it was no surprise to us when the Ninth Circuit ruled that, in fact, there was a double jeopardy violation in the \$405,000 case. We were attracted to that case as a vehicle for Supreme Court review from the outset because it involved the seizure of proceeds of crime. We felt that that was one of our stronger arguments for resisting the double jeopardy claim because the seizure of the proceeds of the crime did not seem like punishment. We initially decided to seek rehearing en banc in the Ninth Circuit after consulting with the United States Attorneys office and determining that there was reasonable hope that the Ninth Circuit itself might reverse the decision. The Ninth Circuit then sat on the en banc suggestion for nearly a year. During that time disaster struck. Motions were filed under the \$405,000 decision in every district in the Ninth Circuit and in other circuits. Many of them were being granted. We were authorizing appeals left and right, and fighting off emerging new issues, such as whether the \$405,000 case applied to attacks on criminal convictions on collateral review or whether old civil forfeiture judgments could be reopened. We found ourselves dealing with essentially a new cottage industry of forfeiture motions. Finally, the Ninth Circuit denied rehearing en banc and the obvious next step was to go to the Supreme Court. At that point we had actually improved our chances of getting Supreme Court review because we had won the issue in one other circuit—the Fifth—and we pointed to the huge backlog of cases that developed in the Ninth Circuit as evidence that this was a truly serious systemic problem. Shortly before we filed our certiorari petition in the Ninth Circuit case, the Sixth Circuit ruled against us in the *Ursery* case. This was an even harder factual context, namely the forfeiture of facilitating property—the very kind of forfeiture that had been involved in the *Austin* case and which the Supreme Court said was punitive. We decided to take the two cases up together so that the court would get the full menu of issues before it, and we could attempt to find out whether we could or could not continue civil forfeiture on that basis.

DN: Faced with the two adverse decisions of *Halper* and *Austin*, what made you so confident to stand behind us on these forfeitures so that we were not told, "quit doing this"?

MD: We never saw the issues in these cases as sure-fire winners in the Supreme Court. But we were convinced that something had gone terribly wrong in the law of double jeopardy--in the wake of *Halper* and as applied in the *\$405,000* and *Urserly* cases. We were willing to present to the Court the full range of arguments that were available to us to try to show the Court that it had gone on a wrong track. We were not ready to give up, although we recognized that the Court might tell us we had to. In addition, it wasn't a problem we could cure very well by stopping it, because there were too many convictions out there that would be jeopardized if the Court were to hold that there was a double jeopardy problem by both seizing assets and prosecuting the owners. There was too much water under the dam.

DN: How did you work with the prosecutors to develop the arguments?

MD: One of the things that occurs to someone who first hears about these cases is, Why is the Government doing this? Why is it going after assets in one proceeding and prosecuting the owners criminally in another proceeding? When the lay person learns that there is such a thing as criminal forfeiture, the question becomes all the more puzzling--Why not just do it in one case? I thought that was a good question and one I wanted to know the real answer to. I spent a lot of time on the phone with both current and former members of the United States Attorneys' offices who brought these cases to find out why they did that, what level of coordination there had been, and the reasons for the decisions. The process was informative on two levels: I was able to hear of a lot of good reasons why parallel proceedings were in the Government's interests, but not all those reasons were thought about in particular cases. Until the double jeopardy problem reared its head, there was considerably less thought given to why a particular procedure should be used. Based on my conversations, I felt comfortable conveying to the Court that there were perfectly valid reasons for the Government to use parallel proceedings without making the claim that all of those reasons were always present in every case.

DN: What were the best ones?

MD: The most significant factor in asset forfeiture, which justified it in my mind as a separate proceeding, is that the Government could move in when it found assets being used in illegal activity or resulting from illegal activity, seize the assets, and give notice to the world or to any possible owners that the assets were subject to forfeiture, and invite the owners to come in and contest it without waiting for the delays of the criminal process, or possibly losing the ability to remove these assets from the hands of narcotics traffickers, because the Government was not clear who was the actual owner. I think the Court was quite receptive to the general theme that the main feature of civil forfeiture that renders it an indispensable and separate tool for the criminal prosecution is just that. It allows the Government to remove the assets from the hands of drug dealers without waiting for the criminal process to run its course.

DN: How was that received?

MD: Judging by the Courts opinion, it was received very well.

DN: What was your sense at the time you made that argument?

MD: I feel the Court was listening, understood the logic, and accepted it. I can only judge by the fact that there were few follow-up questions that expressed hostility. I think one of the most important things an oral advocate can do is think out what the core of his position is and stick to it in the argument. If your position changes radically under pressure, you didn't think it through well enough and you're allowing the court to push you off the position you wanted. I spent an extremely long time with the attorneys from Asset Forfeiture in the Criminal Division and the lawyers in my office, working out our positions on the difficult issues and, come what may, I was going to stick to them. I did that even in the face of questions from Justice Souter suggesting that my fundamental position was intellectually incoherent.

DN: When you heard that, what was your reaction?

MD: It was not encouraging! But we knew going into the argument that the single most difficult conceptual problem was arguing that the Supreme Court had said that civil forfeiture is punishment for purposes of the Eighth Amendment, and we were telling the Supreme Court that civil forfeiture was not punishment for purposes of the Fifth Amendment's double jeopardy clause. Justice O'Connor, who characteristically frames what she views as the central question of the case and asks it right at the beginning, asked me that question two minutes into my argument and I gave her the best answer I could. After half an hour more of debating the question, Justice Souter informed me that he found our position intellectually incoherent. My response to him was that if one takes the courts holdings in *Halper* and *Austin* and extends them to their absolute logical limits and beyond, that may be true. But the *Halper* decision itself had been characterized as a decision for the rare case. The position that was being argued against us in the double jeopardy, civil forfeiture cases would convert *Halper* into the rule for the general case.

DN: How is it different to develop a Supreme Court case from an Appellate court case? The appellate court considers oral argument an opportunity to get questions answered. At OLE we sometimes teach people to prepare to make all the points that you think you need to make in a one-minute argument because you may not get more than one minute. You may not want to take more than one page to the podium. You want to focus on what you think the questions will be and, when the questions get asked, you can't think of the questions as an intrusion. Is it different in the Supreme Court?

MD: What you said is true of the Supreme Court as well, but by an order of magnitude greater. The current Court is composed of very active, well-prepared questioners who are not embarrassed about interrupting your argument--sometimes even before you have said, May it please the court. As a result, the challenge is to identify a few key points that you want the court to remember after it leaves the bench and to get them in up front or in response to questions. And otherwise, to listen to the court and attempt to respond to the concerns that emerge during the argument. It's fast-paced and there is not a lot of margin for error. It can be tense. But it also can be punctuated by humor, usually instigated by the Justices, not the lawyer who is arguing.

DN: Are Supreme Court justices tied into positions before oral argument? In the *Urserly* case, had opinions been formed?

MD: As a general matter, I think the court is probably closer to thinking it knows what it's going to do than most courts of appeals. It takes fewer cases, it selects them with a view to reaching the resolution of an important issue, and the Justices have rather well-defined and well-known judicial philosophies and they work hard before they get to the bench. There is room for the oral argument to make a difference, though, both in persuading the Justices that a position really makes sense in some real world way they may never have thought about, and in explaining the practical consequences of adopting a rationale or reaching a result. Oral argument is the only time when all nine Justices will be focusing on the case at the same time before they vote. As a result, oral argument can be extremely important in forming their impressions of what is really at stake or allowing them to clarify something that had not been clear to them from the briefs.

SW: Some people asked me if you have ever been interested in the asset forfeiture issue. Other than *Halper*, what was your interest?

MD: The civil forfeiture, criminal prosecution issue from the double jeopardy perspective was probably the single most important area of Government action that *Halper* seriously affected. Although I had been keeping my eye on the range of issues that arose from parallel civil and criminal actions, civil forfeiture clearly emerged as the most important and most challenging. I was also aware that civil forfeiture had been having a very rough time in the Supreme Court. We lost five cases several terms ago in the civil forfeiture area and several Justices expressed views that the Government engaged in some form of overreaching in its program. The possible perception of the Justices that there could be abuses of power in the civil forfeiture area was of great concern to us as we prepared to deal with this significant issue. As a result, we were extremely buoyed by the court's decision in *Bennis v. Michigan*, in which the court upheld a forfeiture by Michigan and rejected an innocent owner defense in a context where most observers expected the court to reject Michigan's position. When we saw that opinion and that the court had reverted to its historical view of civil forfeiture primarily as a remedial sanction, we were very encouraged that the *Ursery* case could be won on the same theory.

SW: Was there anything else that happened to change the court's philosophy or opinion that could have had an effect? It was a pretty significant shift.

MD: Stepping back from the jurisprudence of civil forfeiture, many of us thought that the court would be unwilling to open the jailhouse door for innumerable drug traffickers because the Government had seized property in other proceedings--sometimes property such as a Rolex watch or a few bars of gold. We did not think the court would have the inclination to take its precedent so far as to let that result stand.

DN: How does a person who works on so many different areas of the law and hasn't tried forfeiture cases get to be such an expert in such a short amount of time?

MD: To get ready for a Supreme Court case, I think it's vital not only to understand the law but to understand the flesh and blood that went into the case--the anatomy. So I got the original case files that were prepared in the civil forfeitures and the criminal prosecutions and I read them. I read the prosecutors' letters to opposing counsel, the notes on the inside of the jackets, and the

appraisals and evaluations of the property. When I had questions, I called the lawyers who handled the cases and had them tell me what they were thinking, what they were intending, what they were planning, what they relied on, what they thought they would prove, and why they argued what they did in the lower courts. I tried to get as good a factual feel as I possibly could for how these particular cases developed. Then I met with Harry Harbin and Stef Cassella, senior lawyers in Asset Forfeiture, and spent hours with them discussing why asset forfeiture had become an important part of the Department's program, the advantages of civil forfeiture over criminal forfeiture, and why we used parallel cases rather than criminal forfeiture. I kept probing for the simplest possible explanation of these things. Its one thing to have detailed case citations to answer every possible question that may arise, and its another to be able to give a concise, crisp, and persuasive answer to a Justice who doesn't understand a lot about the practicalities or doesn't want to understand details, but only to know why the Government is doing what its doing and that it is being done fairly. So I worked to distill to the essence what I was being told--the very few points I could communicate to the court. I was not an expert in the details of a civil forfeiture case from the point of view of a trial lawyer. My goal was to effectively communicate to those who were not experts, why the experts did what they did.

DN: Do you go back and pull up the oral arguments--the questions and answers that may have been asked in other cases. In *Halper*, you probably have a pretty good memory of that, having been the person that was there. But what about in some of these other cases? I assume you didn't argue all of the ones that were civil forfeiture.

MD: No, I didn't argue the earlier cases. Nor did I read the transcripts. It can be useful, though, to do that. A really good example of looking back on earlier transcripts is a series of cases I did when I was an Assistant. After the Supreme Courts decision in *Batson v. Kentucky* established that discrimination in the exercise of peremptory challenges was unconstitutional, there was a flood of litigation, and many unresolved issues reached the Supreme Court. I handled those cases and argued two of them: *Georgia v. McCallum*, in which the court extended the Batson rule to the defense, which was a popular decision among prosecutors, and *JEB v. TB*, which held that the Batson rule applies to peremptory challenges based on gender, which was not a popular decision among all prosecutors. To get ready for those arguments, I read the transcripts of all the cases that had been before the Court involving peremptory challenges and found that some of the Justices had asked the exact question in previous arguments that they later asked me. It helped me get better prepared for that question, having seen it, but there are always questions in oral argument that came as a surprise.

DN: How much consultation goes on with the Deputy Attorney General's office or the Attorney General in developing some of the Supreme Court arguments? Do they get involved?

MD: The responsibility for developing the Government's position in the Supreme Court resides with the Solicitor General. In a small number of particularly high-profile or important cases, the Attorney General has gotten involved fairly extensively. Ultimately, the Solicitor General speaks for the Department of Justice and for the Government, and thus works within the Department and with the rest of the Government, and doesn't operate solely as a free agent. Most Supreme Court cases, though, are handled exclusively through our office with coordination of course with the

litigating division and the United States Attorney's office from which the case originated.

DN: Was there any consultation with the Deputy Attorney General or Attorney General on the *Ursery* case, or was it not necessary because everyone was well-informed as it developed in the lower courts?

MD: The Department's objectives were clear and our office shared them. The process of developing the best legal arguments to achieve those objectives fell to our office, with strong assistance from Doug Wilson and Kathleen Felton of the Criminal Division. Miguel Estrada, who used to be an Assistant United States Attorney in the Southern District of New York, is especially deserving of commendation. He has been with our office for four years and has an amazing range in criminal cases. He was the principal architect of the legal theories in our brief. In the United States Attorneys' offices, I was greatly assisted by Miriam Krinsky of the Central District of California and Marlene Juhasz of the Eastern District of Michigan.

DN: I know a lot of times Assistants wish they knew what the Solicitor General's position was in the past, particularly in briefs in opposition. You probably wish we knew what they were too because, as issues are developed, they may not always be consistent with positions you have taken in adverse decisions or in briefs. What can we do about that?

MD: We are really excited about the possibility of including the Solicitor General's briefs in the USABook program. USABook makes available a huge amount of very useful information on a variety of areas and making our briefs accessible to the Department and to the United States Attorneys' offices would greatly improve the coordination and uniformity of the positions that the Government takes. Until now, it has been a coincidence if someone knew we had filed a brief or taken a position on a particular issue. With the advent of an easy-to-use computer program that contains our briefs, we hope people will have a much better degree of access to the legal positions that we have taken so that the Government can more effectively speak with one voice on legal issues. ❖

Litigation and New Technology: Can the Two Mesh?

*Assistant United States Attorney Michael K. Loucks
District of Massachusetts*

No one in your district has ever done it before, trying a paperless case. You know of only one or two other situations elsewhere. In one the prosecutor raved about it and, in the other, the experience was mixed. When veteran prosecutors heard you were thinking about it, they were very discouraging, urging with their body language if not their spoken words, "You've got to be kidding?" The case is truly high stakes. The corporation has already pled and paid \$61,000,000 and now you are chasing after the executives. Their lawyers are telling everyone they will win, your judge is the most pro-defense in the District, and all of your witnesses would rather undergo an extensive root canal than testify. One of your government witnesses, now a consultant, heard while on a business trip in Australia that the government was going to lose that big FDA criminal

trial in Boston. If you lose doing it the old fashioned way, well then you lost. But, if you lose trying the new method, some part of you, not to mention all the pre-game nay-sayers, will think it was because of the paperless method.

This was our real life dilemma. Our analysis follows. Our case had a very happy ending, in part because we took the risk and tried the high-profile case paperless. We finished in half the time we predicted, and when we rested, we caught the defense completely off guard. We were in complete control of the evidence throughout the trial. Some of the defense attorneys used the paperless presentation extremely well, and some clearly never made the easy effort to learn it. Because we finished so fast, their experts were unprepared to testify--one, we heard, was out of the country! Their decision was to put on no evidence.

Our analysis documents how we approached the issue, why we believe it worked, and under what circumstances it can work in other cases.

If you are like me, you approach the whole idea of a marriage between new computer technology and the tried and true, centuries old methods of litigation with a certain degree of skepticism. You've seen and accepted the arrival of computers and related paraphernalia in the office but you view its effect on litigation as a bane--in many respects, all it has done is create **more** paper. Your machine spits out routine motions, the opposition's machine responds with routine answers, and the Court rules with routine orders. Sometimes you wish the three machines were networked to eliminate the lawyers from the process! You've heard the stories about the paperless office of the future and, looking at your desk and down the halls of your office--with a monitor standing sentinel on each desk, copy machines tucked in every corner, and printers scattered about, but just as many files full of paper as there ever was--you snicker. *Paperless, yeah right.* You may even be a "techie" but have held off buying Windows 95 because once before you bought a new disk operating system that was supposed to have been better, faster, newer, smoother, sleeker, and "multi-tasking," but when you loaded it, your system crashed and never ran right again. You have occasional nightmares about system crashes and your spouse told you she heard you cursing Bill Gates in your sleep.

But you are a prosecutor who does the big cases, and you have heard that the computer can work wonders in the courtroom--that it has revolutionized how cases can be presented, is faster, more effective, and ultimately cheaper. Maybe you have even attended the ABA's annual Tech Show and seen some of the new products at work. Unless you were on a sabbatical in Tibet, you saw the technology in use in the OJ Simpson trial and, well . . . that is hardly a case from which to draw conclusions about whether the technology will work. You're curious but you remain largely skeptical. Indeed you wonder, is this like the original ad campaigns for the Corvair that was supposed to have been revolutionary but was unsafe at any speed? You know that the old method of handling paper in a trial, while sometimes cumbersome and awkward, and always slow, works quite well. When spiced up with enlargements, transparencies, and simply waving around and circulating the real paper to the jurors, how can playing with a computer improve all that? You wonder, if I try using the computer in my next trial, will it really improve the jury's understanding of the factual issues (or will I, not being much of a computer user, simply make a mess of things)?

Do you need to be an expert in computers?

Before answering the question, "Can using the computer in the courtroom really help?"

with a resounding "yes," you need some context about the related question, "Do you need to be an expert in computers to make it work for you?" I used computers to help with case and evidence management in six significant federal criminal investigations in Massachusetts, from which four 2- to 22-month trials resulted. Two were trials of members of a terrorist group charged with racketeering offenses and seditious conspiracy related to a series of bombings and bank robberies in which we had more than 2,000 pieces of evidence and thousands of pages of documents. One involved the prosecution of more than 20 individuals, including several former Digital Equipment Corporation executives (our evidence filled an entire office wall to wall, floor to ceiling); one involved the prosecution of three individuals for a series of schemes to defraud the Department of Mental Health in the operation of more than 12 group homes for the mentally handicapped (we seized about 100 boxes of records during a search of the defendants' offices); and one involved the trial of six former executives of C.R. Bard, Inc., a heart catheter manufacturer (in which the grand jury investigation included the sifting of more than 1,000,000 pieces of paper).

For each of these cases, while we had agents and a trial team who were dedicated, we didn't have an army of paralegals and associates to help control the evidence; we had limited resources. In the Digital prosecution, I was the only prosecutor and there were six highly capable defense attorneys. In the Bard prosecution, while there were three prosecutors, there were more than 15 defense attorneys (or the names of more than 15 attorneys appeared on the pleadings and more than 12 defense counsel attended each day of trial). We were out-numbered, out-financed, and buried in paper every step of the way. The pretrial motions in that case were at least one story high. During these cases, the use of the computer for evidence control and case management was *crucial*.

While I have used the computer since 1987, I have never attended computer training programs, either in law school or college. I graduated from law school when research was still done by reading books and, unfortunately, that is how I still do my legal research. My co-counsel in the Bard case, Assistant United States Attorney Stephen Higginson, is more modern--he does research on the computer. When I was in private practice, we owned no computers that were used by the lawyers. During the first three years, errors were corrected with correction tape and, in the last two, we had a cumbersome Wang word processing system. When I began at the United States Attorney's office in 1985, I took a technological step backward--everything was done on typewriters. More correction tape! Computers were placed in our offices in 1986 but we didn't use them regularly until 1987. I didn't purchase a computer for my home until September 1990, after the arrival of Windows, a software program that I could understand and operate without having to read a lengthy manual.

I began to use computers to assist in evidence control in 1987. In late 1985, I was handed the terrorist case described above with more than 2,000 pieces of evidence and thousands of pages of documents. Shortly after I got the case, it was transferred from Boston where I worked, to Springfield, 85 miles west. Coincidentally, the first good laptop computers were being commercially marketed at that time. While I had expressed an interest in purchasing one, I was told that if I wanted "such an expensive toy," I could return to private practice where I could afford one or I could ask the Government to buy me one. In a decision borne from desperation and my need to be in two locations every week, my co-counsel, Assistant United States Attorney David Douglass, and I asked for and received state-of-the-art laptop computers. We were the only DOJ attorneys who had laptops loaded with programs that no one knew how to run. (Of

course, my first goal with this new toy was to load a flight simulation program and grab a joy stick, but I was shocked to discover it had no "game board"!)

This past summer Assistant United States Attorney Stephen Higginson and I obtained court approval to use computers to present a complex paper case in an almost entirely paperless manner. It was a terrific success. The case was a significant high-profile and high-stakes trial. Stephen is not a "techie," but by the end of the first day of trial, he was using the system with aplomb and ease. Neither of us read the software program manual. We had an operator run the equipment and, during the eight-week trial, neither Higginson nor I ever touched the keyboard.

My point--you don't need to be a techie or have significant knowledge of computers to use them with great success. Current software programs are user friendly. If you are a prosecutor or a civil attorney who works on cases that involve the explanation of complex issues for which there are thick, confusing paper trails--even if you have never used a computer before you are remiss in the representation of the Government if you don't use the computer for case management before and during trial.

The Mechanics: What we did and how it worked.

In the Courtroom

Documents can be loaded "into" a computer in two ways: "scanned" so that the computer will recognize the typed (but not handwritten) words on the document (allowing for word searches through "optical character recognition" or "imaged," where the document is photographed and the image is stored on the computer's hard drive, a floppy disk, or a CD-ROM.* When a document is imaged, the computer does not recognize the words but if the document is displayed on the screen, the computer will replicate the document, including the handwritten portions.

Once the document image is retrievable, you can display a page or any portion of the page on the screen, as large as the screen. With a 40-inch monitor, you can read an entire page from 20 feet away. You can enlarge a critical portion so the letters are many inches tall, without changing the appearance and without distortion. With the so-called "John Madden pen" (one used on Monday night football to make x's and o's to track the movement of football players), you can highlight critical passages in red or yellow; circle crucial portions in red, yellow, green, or blue; and write words on the screen for emphasis. And you can put two documents on the screen at once, either side by side or top and bottom. If you have a case in which false statements were made or different things said to different people, you can display the conflicting documents on top of each other to make the conflict crystal clear. If you have a witness who was loose in his representations or whose version of events, according to the documents, tended to "drift" over time, you can do the same for cross-examination. You can do all this instantly, "on-the-fly" in the courtroom.

Coupled with the computer, you should use a visual presenter. Much like an overhead projector, but more flexible and effective, the presenter is in essence a fixed video camera attached to the computer. You can place a document in it and instantly project the document onto the computer screens. You can focus or zoom in on critical portions of importance to the jury.

*Optical character drives are also available.

For that late-surfacing document that you didn't image before trial, the presenter will provide added flexibility. In addition, you can place evidence that is not a document into the presenter and project it onto the computer screens. The presenter can instantly make positives of photograph negatives and enlarge them as big as the screen.

How is this different from "normal" charts and transparencies? Is this, you ask, really any different from the routine use of enlargements? At the core it is not, however, the difference is one of degree and ease of use and, as played out in a courtroom, those differences can be truly dramatic. Indeed, the difference is like that between a witness's memory of a conversation and a recording of the conversation. While the former may work and generally be accurate, the latter is so much better that, if it is available, you would not rely just upon the witness's memory.

First, the charts do not need to be created in advance. You have much greater flexibility with computer presentation. A chart comparing two documents or juxtaposing two different statements by a particular witness can be prepared and presented while you are examining the witness. Second, *every* document can be used in chart form when using the computer--something that cannot be done with 3- by 4-foot charts or with transparencies. Have you ever stood before the jury and fumbled among the dozen or more enlargements you planned to use at closing, suffering that moment of acute embarrassment that we all face when we cannot find the right chart that makes the point that needs to be made right then? Have you worried about how jurors react to this fumbling? With the computer, such moments don't happen--every chart can be instantly found and displayed. Third, you can make flawless, last minute changes on any chart. That last minute whine by your opposing counsel concerning your wonderful, most effective chart, that for reasons you can't fathom, suddenly got a receptive audience from the judge who ordered you to make time-consuming, big, ugly, and visible changes, becomes only a minor irritation. With all of your charts on the computer, the change can be made quickly and the jury will never be confronted with a chart with a correction.

During witness examination, we effectively covered five different documents in under 12 minutes including:

- presenting each document;
- asking all the authentication questions necessary for establishing admissibility;
- moving for admission of the document;
- passing each document among all defense counsel for their review;
- obtaining a ruling from the Court admitting the document; and
- displaying and explaining the document and its relevance to the jury, while displaying the document for the jury's review while the witness described it.

Could all this have been done without the computer? Sure, but not nearly as quickly. Could the presentation have been as effective? No. The jurors got to see each document while the witness was describing it, and they didn't have to look at any documents after the witness had testified. They were not distracted by circulating exhibits. Jurors could assess the witness's credibility while the witness testified about the document. Each juror was on the "right" page of a document during testimony, not flipping among pages or perusing irrelevant passages. Each juror knew immediately why the document was important because we could circulate or highlight the important passage. And the witnesses knew that everyone in the courtroom was on the same page--witnesses attempted to play fewer games with the documents.

In closing and rebuttal argument, we displayed more than 90 documents to the jury. For virtually every point made during closing, and while we were making the closing, we displayed for the jury that portion of an admitted exhibit that proved or demonstrated the point. Thus, closing was more effective. While still just "argument," it was argument with effective and instantaneous display of crucial documents that proved the point. Could the same thing have been done with charts? Certainly, but not nearly as many could have been used. Were too many used? The number displayed seems high but since the presentation was seamless--there were no interruptions while charts were being hunted down, no papers shuffled, no transparencies flipped--the presentation felt "right." While underway, the use of the computer to display 90 documents sure did not seem like too many.

In short, we felt that using the equipment was easy and made the presentation of evidence far more understandable for the jury and the Court than was possible with the traditional method.

Outside the Courtroom

In addition to using computers in the courtroom, we used them for two other tasks prior to trial. First, during interviews, we used them to review documents. Have you ever had a witness refer to a document during an interview that you didn't copy or have with you, and the document became something upon which the witness hinges a memory or lack of a memory? That doesn't happen when the computer is used at the interview; the witness learns that you have instant access to any document, and they *cannot take shelter among missing records*.

Second, we used the computer to assist us in putting together the case. The importance of this requires some understanding of the facts of the case and the trial dynamics. The crime occurred in an enormous corporate bureaucracy over a three-year period. During grand jury investigation, the company delivered more than a million pages of records. By hand, the agents whittled that number down to a mere 4,000 critical documents on 40,000 pages. All of the expected trial witnesses were colleagues and buddies of the defendants. None wanted to be there and many were hostile. How hostile? During a break in her testimony, we saw one crucial witness smooching with one of the lead defendants. We anticipated well in advance of the trial that our only hope of coaxing the truth from some of these witnesses was an outstanding demonstration using the documents.

We also knew we didn't have a lot of time. We could never use 500 documents at trial, much less 4,000. And we had difficult but not impossible concepts to present to a jury: a complex medical procedure, percutaneous transluminal coronary balloon angioplasty, and complex engineering issues in the design of a high-tech medical device. In my first meeting with our medical expert, someone who was *not* being evasive in answering my questions, I understood about every fifth word--"heart" and "artery"--and my eyes glazed over on many other terms. As I sat there confused and bewildered, I began to believe that "ejection fraction" was the rate at which the presiding Judge would be throwing our case out of the courtroom! When our expert handed me 1,000 pages on the heart and heart disease and kindly suggested that it would help if I read it before our next meeting, I groaned and thought, *yeah, right*.^{**}

In this arena, using the computer pre-trial became crucial. In your practice, there are two issues you should consider: Do you use the computer in the courtroom *and* do you use it to help

^{**} And at trial, we used a software simulation of balloon angioplasty. Doing so was crucial. The animation, coupled with the expert, prompted our Judge to state afterwards in front of the jury that even he could do one of these procedures now.

prepare your case for trial? Failure to do the latter could doom your effort long before you get to trial. By using the computer effectively during pretrial, you would be able to print out a list of documents by witness, by subject matter, in chronological order, in chronological order by subject matter, or in *reverse* chronological order. For each document, you could print out a list of the witnesses to whom you plan to show the document in pretrial preparation.

We used the computer to help us understand our case. Imagine Government civil litigation like our criminal case--with thousands of documents on interrelated subjects--documents produced by hundreds of people in dozens of departments. Throw in dozens of reluctant and evasive witnesses and add a complex regulatory and business environment. When evaluating the case, how do you understand how these threads fit together? How do you know when you are being told the truth or being deceived? How can you judge when you understand the facts well enough to argue them to a jury or cross-examine an expert? The best method investigators use is assembling the facts from all the different sources and reviewing them chronologically by subject. A Herculean, if not impossible, task with a great volume of material. The biggest firm in the country does not employ enough paralegals to copy and sort by hand, all the paper necessary to accomplish this task. (No client would ever foot the bill!) But this is necessary if you want to make an effective presentation to a jury and you want to make sure you understand the facts. By imaging the documents as a part of trial preparation, we used the computer to review the documents in chronological order by subject matter.

Reviewing the evidence in this fashion was crucial. Little pieces that seemed to have minor significance before this review became much more important when viewed in the full context of what had happened. Documents from diverse locations and different individuals, when reviewed chronologically, took on greater significance. We were able to recognize facts we had overlooked--facts at the core of the issues we had to present at trial. In a big complex case, it is often the little, seemingly minor details that make or break your presentation.

This review also gave us an unassailable familiarity with the facts and records. No factual issues were raised at trial that we had not previously reviewed, researched, and explored. We understood the events as they took place and we could quickly put our hands on a document to refresh a witness's memory or rebut a fanciful defense claim raised suddenly during cross-examination. In interviews with the witnesses, they understood that, as the lawyers representing the government, we had completely reviewed the paper and understood not just the broad issues but the details of what had happened and how.

This is routine lawyering for a trial lawyer. As the trial lawyer, you should understand and know the facts better than any witness. Accomplishing this in a complex, massive case is a daunting, time-consuming task that can be immeasurably easier if you use a computer.

Cost

The cost of presenting the evidence on the computer system for the eight-week trial was under \$30,000; the cost of imaging the documents was under \$24,000. As indicated above, imaging the records had a utility quite apart from the courtroom presentation. The final expense is the computer system to operate the equipment. A good computer system capable of running the necessary hardware and software is available for under \$2,000.

Ideally, the equipment to display documents in a paperless fashion would be owned by the Court and available for all litigants. Thus, the \$29,000 expense we incurred would have been a free ride. The principle cost would be for imaging the documents and the software programs necessary to view them during case preparation and present them at trial (two separate software programs). But since this is not an ideal situation, bank on supplying all the equipment.

Will this system work in your case?

If you have a complex case premised upon facts you have derived or expect to derive from more than 100 documents, and a couple of hundred thousand dollars hinges in part upon your ability to make a judge or a jury understand the facts as well as you do, then the answer should be yes. Certainly you will incur out-of-pocket expenses, potentially in excess of \$20,000. But, consider these factors:

- the time savings in case presentation;
- the dramatic increase in the effectiveness of your presentation; and
- when contrasted with the ultimate object of your litigation, just how small the out-of-pocket expense really is.

Is the system only suited to document cases? No. Demonstrative evidence--charts, enlargements, diagrams--can be presented directly over the computer monitor. Given the speed and usability, your presentation of facts in an opening or closing will be far more effective. Do you have a complex medical malpractice issue to present, stemming from alleged negligence in the operating room or a failure to diagnose? Hospital charts, photographs of the injured patient, videos, diagrams, graphs of lost earnings--all of these can be presented to the jurors on the computer screen.

Do you videotape depositions of potentially unavailable witnesses so they are more effective at trial than simply reading a transcript? Do you take photographs of a crucial scene or object for use at trial rather than rely on the memory of a witness to describe the location? Do you enlarge crucial documents for display to a jury because you want them to understand the important passages? Do you use diagrams so the jury more clearly understands either the sequence of an event or the physical layout in which it occurred, than they could through testimony? Do you prepare jury books so each juror will have a copy of the important records and can flip to them if they wish? Do you sometimes worry during a trial that the jurors are missing the important testimony because they are still looking at the last crucial document you circulated?

If you answered yes to any of these questions, you should consider going paperless. Your adversary may well be planning to go paperless and, if he does, you better be prepared to follow suit. Arguments that the method should not be used will fall on deaf ears. The method saves time and makes things easier for a jury to understand. For a generally overwhelmed court system, these two points as matters of persuasion are unassailable. As a Government representative, you have no persuasive argument to oppose the technology.

So, plan for it and use it now. You will be amazed how much fun it can be! ❖

Prosecution Exhibits Presented to the Jury on Video

*Assistant United States Attorneys Wayne T. Lamprey and
Stephen L. Schirle
Northern District of California*

The United States Attorney's office for the Northern District of California completed a successful prosecution of Jess A. Rodrigues, the former owner of a failed thrift Saratoga Savings and Loan. Jury selection began in late January 1996 and the jury returned its verdict on March 15, 1996.

The jury found Rodrigues guilty on all 19 counts. Fourteen of the criminal charges related to Rodrigues receiving interests in properties financed by the thrift, and then lying to federal regulators to conceal his interests. Rodrigues received more than \$2.3 million in connection with these real estate projects. He was convicted of violating 18 U.S.C. § 215 (the corrupt receipt of property), 18 U.S.C. § 1006 (the fraudulent receipt of property and false entries in Saratoga's records), and 18 U.S.C. § 1008 (false statements).

The jury also found Rodrigues guilty of five additional counts because he took a \$3.4 million tax refund that belonged to Saratoga Savings. One count charged that Rodrigues violated an order issued by the Office of Thrift Supervision removing him from Saratoga Savings and prohibiting him from participating in the affairs of Saratoga Savings and its parent company, in violation of 12 U.S.C. § 1818. Four other counts related to the misappropriation of the tax refund, including 18 U.S.C. § 1344 (bank fraud), 18 U.S.C. § 656 (embezzlement), 18 U.S.C. § 2113 (bank larceny), and 18 U.S.C. § 1032 (impeding the function of the Resolution Trust Corporation).

The case was predictably document intensive. The Government's exhibits filled eight large binders and included purchase and sale documents related to the financial transactions, the documents disclosing Rodrigues's interests such as tax returns and escrow documents, and evidence of the defendant's attempts to hide his interests from the regulators.

In order to aid the jury's comprehension of and interest in the complex transactions, a video display system was used. All prosecution exhibits were digitally scanned onto a computer hard drive and then displayed at trial on large computer monitors. Counsel called up exhibits by exhibit number at a podium that incorporated a touch screen.

The video display system allowed us to control and guide the jury's review of documentary evidence. The system highlighted, red lined, and magnified portions of documents through the use of the touch screen. The system even allowed counsel to digitally redact exhibits. For exhibits that were not scanned onto the hard disk, a fixed video camera and base (called an "ELMO") was used to display documents on the monitors.

We found the system to be a powerful tool. The persuasive power of displaying documents in this manner was amazing. Jurors paid rapt attention to all documents displayed on the monitors, and highlighting and enlarging key passages allowed us to guide their review of the evidence.

After completing a five-week trial with this system, we offer the following advice:

- Alert the judge and defense counsel at some point prior to trial, such as at the pretrial conference, that you intend to use the monitors to overcome any judicial or defense counsel resistance to their use. Advise the court that the system will only supplement and not replace the usual methods by which exhibits are authenticated and introduced, e.g.,

exhibits will not be displayed to the jury until they have been authenticated and admitted in the usual manner. Emphasize that displaying exhibits in this manner will speed up the presentation of evidence and, conceptually, is no different than displaying them by means of an overhead projector. (In our case, the prosecution and defense used the video system to call up prosecution documents and the ELMO for defense exhibits and other exhibits not on disk. Only prosecution exhibits were scanned onto disk.)

- Set up the system at least a day or two before trial so you can test it. The touch screen can be sensitive, especially when attempting to magnify portions of documents.

- Carefully consider how many and what size monitors you will use, and where they will be located in the courtroom. Be in the courtroom when the equipment is installed to assure that it will not obstruct anyone's view of the witness or jury, and that all jurors can see documents displayed. (In our case, two 37-inch monitors were placed at the ends of the jury box and 13-inch monitors were placed on counsel tables, next to the witness box and near the judge.)

- Authenticate and introduce exhibits as rapidly as possible and then display them on the screen before the witness testifies about the substance of the exhibit. It is awkward and annoying for the jury to see the exhibit on the monitors only after the witness has testified about it.

- The rules concerning publication of exhibits remain unchanged. Don't display a document on the monitors until the trial judge has admitted it in evidence; however, since the system may take approximately five seconds to display an exhibit, call up the exhibit while all monitors, except the podium monitor, are off. Turn the monitors on when it is time to publish the exhibit. The call up time of your system may limit its use during a fast-paced cross examination.

- Pay close attention to the length of time a document is displayed to the jury. Generally, display an exhibit only during the time a witness is testifying about it. A document on the monitor (or a bright, blank screen) will distract the jury from testimony when the witness moves on to another topic. Leaving a key document on the screen at the close of your examination is one obvious exception.

- Use the system to alert the jury and control how they and the witnesses review the evidence. (During trial, we observed that the jury's attention increased dramatically when documents were displayed on the monitors.) Highlighting and magnification are effective tools to draw the jury's attention to important segments of documents. Decide in advance what portions of a document you will highlight or magnify, then use the highlighting and magnification functions to guide the witnesses and the jury.

- Do not ignore other courtroom audiovisuals, such as blow-up charts. Variety in presentation aids jury comprehension and interest.

- Let co-counsel or the case agent call up the exhibits, especially during opening and closing statements.
- The system is not inexpensive so cost should be evaluated in light of the significance of the case and the number of documents to be shown to the jury. ❖

Visual Presenter

*System Manager Stacy Joannes
Western District of Wisconsin*

Smart trial lawyers have always recognized the crucial role that visual aids play at trial. Paper charts and maps, along with transparencies displayed using overhead projectors, help organize the evidence and aid in keeping the jury focused on it. In many modern courtrooms, overhead projectors are being replaced with visual presentation devices, which are best described as live video cameras attached to a display table. They can be used to display books, charts, transparencies, and even three-dimensional objects like models and pieces of demonstrative evidence.

A typical visual presenter has a number of advanced features. For example, it has a x10 zoom range which allows sharp closeups on small objects or small parts of larger objects. The angle of the camera head can be adjusted to allow views from any angle, and the object to be viewed does not have to be placed on the viewing stand. Films and transparencies can be viewed using a built-in backlight, with a switch that allows the image to be inverted from positive to negative. The photo below shows a typical visual aid used in EOUSA's Office of Legal Education.

Perhaps the most important feature for courtroom use is auto-focus. This allows witnesses unfamiliar with the device to manipulate objects during the examination, and can save time for the attorney using the equipment.

These devices can be used in court in the same fashion as traditional charts, diagrams, and projectors. Expert witnesses will find them particularly useful in displaying documents and zooming in on items of demonstrative evidence. Examples include handwriting exemplars, fingerprints, DNA charts, and important sections of maps or commercial instruments. They can also be used to project the charts lawyers traditionally use to illustrate arguments to the jury.

As with all new equipment research is the key. Not all courts are the same, not all judges allow use of equipment, and not all attorneys feel comfortable using it. Research into your specific needs and situations will go a long way in making visual aids work for you. ❖

Transcript Presentation Manager

Las Vegas Assistant United States Attorney Walt Ayers was involved in a case that had hundreds of recorded conversations and realized how difficult and inefficient traditional methods of transcript preparation and audio redaction were. He asked his Systems Manager, Rudy Ferrara, to develop a computer program that would provide instantaneous reduction capabilities and

display the transcript on a large screen while the tapes were being played for the jury.

The result of this inquiry is the Transcript Presentation Manager (TPM). It is available on the EOUSA Bulletin Board System (BBS) for download at no cost. Investigating agencies' stenographers can use TPM to transcribe conversations directly on the computer.

TPM allows a user to synchronize the text of a transcribed telephone conversation (transcript) with the recording (audio). The audio is recorded onto a hard disk using any 16-bit sound card compatible with Windows 3.1. After the transcript is synchronized, sections or all of the transcript and recording can be displayed and played for a jury. Transcripts can be typed directly into the application's editor. Sections of the text can be redacted very quickly. Copies of the transcript can be printed directly from the application. The files include a comprehensive manual and the application has a very good help file.

Please contact Carol Sloan at (202)616-6969 for further information. ❖

ATTVIEW--Managing and Imaging Documents for Trial

*Assistant United States Attorney Kurt Shernuk
District of Kansas
Kansas City Branch Office*

Until very recently, making electronic images of trial exhibits probably required that an outside source scan the documents. However, working with Assistant Director Carol Sloan, EOUSA Office Automation Staff, and Victor Painter of her staff, we developed inexpensive software that allows our offices to handle these projects in-house, using equipment that most offices already own. The software is called ATTVIEW. It combines 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 trial exhibits, including printing an exhibit list, and enlarge, highlight, circle, etc., user defined areas of the document.

The equipment and software needed are:

- a 486 or higher computer,
- Windows 3.1 or higher,
- a scanner with software (i.e., HP Scan Jet II/Desk Scan),
- Microsoft Access 2.0, and
- TMS-ATTVIEW (which includes View Director).

ATTVIEW costs about \$125 and may be purchased from TMS in Stillwater, Oklahoma. The sales representative is Bryan Taylor and his telephone number is (405)377-0880. Microsoft Access can be purchased at a software retailer, and the "competitive upgrade" cost is about \$110.

❖

Preparing Trial Charts for Closing

*Assistant United States Attorney David A. Brown
Western District of North Carolina*

I am very fond of summary charts, euphemistically referred to as demonstrative evidence. I use them in a variety of shapes, sizes, and colors in almost every case I try. I also strongly believe that charts, graphs, and other summary exhibits are indispensable for presenting complex and document-intensive cases.

Charts serve three critical purposes during trial. First, they provide an aid to the jury's understanding of the trial evidence.

Consider, for example, the presentation of evidence associated with a complex fraud prosecution which includes money laundering charges. The proof of a particular money laundering transaction may require the testimony of a number of witnesses and the introduction of numerous documents. Depending on such factors as stipulations; the number of charges in the indictment; witness availability; and, of course, the always indeterminable length of cross-examination, the jury may never appreciate the connection between various pieces of evidence and how, when considered as a whole, it establishes the particular money laundering transaction, until you tie the facts together in closing argument.

I have found no benefit in keeping the jury in suspense until closing about whether you have actually proved your case, but I can certainly envision several potential difficulties if the outcome of the case is rested entirely on the effectiveness of argument, especially in a long trial. Summary charts provide the opportunity to connect evidence as the trial progresses.

Second, charts keep the jury's attention during the often long and tedious trials of financial fraud cases. Jurors would much rather look at something, particularly something big and colorful, than listen to the drone of voices of lawyers and witnesses. The more you use charts throughout a trial, the more the jury will understand your case and, assuming the case should have been indicted in the first place, the less difficult it will be for the jury to reach the correct verdict.

The third purpose in using charts during the trial is to prepare the jury for closing argument. One technique I have used in many trials is to get various witnesses to agree to the accuracy of the chart. This technique can be illustrated in a simple money laundering transaction.

Assume that the defendant obtains a \$100,000 check, which I'll call Government Exhibit 1, from Bank One through bankruptcy fraud. Our defendant takes these "proceeds from a specified unlawful activity" and purchases a cashier's check, which I'll call Government Exhibit 2, at Bank Two. Finally, our defendant engages in a financial transaction by depositing the cashier's check in a nominee account at Bank Three. (Since this article is not about money laundering, I do not want to hear any squawking about whether my facts establish the hypothetical offense.)

My chart of this transaction will look something like this: a large depiction of the first check (probably in black so the jury can see all those zeros clearly); a large depiction of the cashier's check (probably in green to make clear that this check is as good as cash); and finally, a large depiction of the deposit ticket reflecting the ultimate disposition of the fraudulently obtained funds (my choice of color here is red but I have been told that red is too prejudicial--like small shrimp, that is an oxymoron).

As I said, I try to use charts as often as possible. After admitting the first check, presumably through an innocuous witness such as a bank records custodian, I will drag out my chart and ask the witness something like whether the chart's depiction of the check is an accurate representation of the document actually introduced in evidence as Government Exhibit 1.

Hopefully the answer is yes.

I also give the chart an exhibit number for identification purposes. After the accuracy of the depiction has been confirmed, I seek the Court's permission to write the exhibit number of the document depicted and the witness' initials on the chart.

I follow the same procedure with the other two documents depicted on the chart, each time placing both the exhibit number and witness' initials on the chart. When the accuracy of all three depictions on the chart has been confirmed, I move the chart itself in evidence.

In addition to using the chart with the witnesses who actually introduce the depicted documents, I also use the chart with other witnesses who testify about some aspect of the transaction. For example, during testimony I would bring out the chart with a representative of the bankruptcy court to establish that the taking of the \$100,000 check constitutes bankruptcy fraud.

This procedure, which may seem silly or at least repetitive, serves my stated purposes in using the chart in the first place: the jury starts to get into the rhythm of how these complicated financial transactions fit together, which leads to their understanding of the case; I get to be the good guy by giving the jury a little relief from the boredom of a documents case; and I am methodically preparing the chart for use in closing.

This latter purpose is really why I like to use charts. Each exhibit number and set of witness's initials is a vivid reminder to the jury that the transaction depicted on the chart was actually proven during the trial. Unless the jury chooses to disregard the evidence or disbelieve the witnesses, they have no trouble finding that the transactions depicted on the charts establish the crimes charged. For certain, they will not acquit because of confusion about how the evidence fits together.

During a recent trial involving a veritable garden salad of fraud offenses including bankruptcy fraud, money laundering and tax crimes, hundreds of complicated financial transactions, and more than 650 separate trial exhibits, I learned a new technique for using charts effectively in preparing for closing argument. I must confess, however, that the idea was forced on me and, therefore, a large measure of the credit for the technique must be given to the defense counsel. (Those of you who know me can appreciate that giving the defense credit for anything causes me great pain.)

In preparing for trial, I had a chart created to reflect the financial transaction charged in each of the 25 counts of the indictment. To make sure I did not get confused, I had a caption on each chart stating the count of the indictment and the particular offense charged. For example, my first chart was captioned: COUNT ONE--WIRE FRAUD. Obviously, I did not consider the ramifications of my actions.

As you probably guessed, the defense objected to my captions and the Court ordered me to mask them. Being ill-prepared for this task, we used sheets of notebook paper taped across the captions. The result was less than attractive and I spent a considerable amount of time bemoaning the unsightliness of my beautiful charts.

Somewhere in the middle of the defense's stimulating cross-examination of a records custodian, the idea of turning the proverbial sows ear into a silk purse struck me. I started to pay closer attention to the jury each time I brought out a chart. I sensed that they were, to say the least, curious about what was being hidden from them under the masking. I could almost see them slinking down in their chairs as they tried to peek under the paper.

During closing, I brought out the charts for one final appearance, leaving the masking in

place. In what I am certain was an otherwise spellbinding argument, I went back through the financial transactions reflected on each chart. I reminded the jurors of the testimony of the various witnesses and, for effect, picked up a couple of the actual exhibits which were depicted on the chart.

After thoroughly (those present might say exhaustively) covering the evidence which the chart was intended to establish, I ripped off the masking and presented the jury with the long-concealed caption identifying both the count in the indictment and the particular crime which this evidence established. I discerned from their knowing smiles that the jurors had instantly made the logical connection between the caption, the evidence depicted on the chart, and the guilt of the defendant.

Although not necessarily definitive proof of anything, the first exhibits requested by the jury were the charts and less than two hours of deliberations later, the defendant's guilt on all counts was confirmed. As a superstitious trial attorney, however, you can bet I will use this technique as often as possible in the future. As I have failed to patent this idea, you may do the same. ❖

Display of Evidence

*Assistant United States Attorney Don Johstono
Middle District of Georgia*

I recently prosecuted a bank robbery case in which the defendant, in addition to using a pistol, threatened the bank personnel with a bomb that appeared to have both a remote detonator and a mercury switch. During the course of the robbery, the defendant said that if his plan didn't work, if the police were called, or if he were delayed, a companion stationed down the road would detonate the bomb. Unfortunately for the defendant, the police had already been alerted by an alarm in the bank and had the place surrounded before he could escape. After the hostage situation that ensued was resolved, a bomb technician was called in to inspect and render the device safe. The technician removed and disassembled the bomb before realizing it was counterfeit.

The defendant pled not guilty by reason of insanity. To disprove this at the trial, the bomb technician created a replica of the bomb using wooden dowels, a small sand timer, some wiring, and electrical tape to simulate the original components. The robbery witnesses--even the judge and jury--were surprised that the replica looked so authentic. At one point, the judge asked whether the inert label on the device meant that it was not capable of exploding. When I told him that he was correct, it was only a replica, there was an audible sigh of relief from the jury box.

The agent constructed the replica in such a way that it could be Velcro-mounted on foam board along with parts of the original device, so the jury could see where each of the original components was located prior to the disassembly of the defendant's creation. With the Velcro mounting, I was able to remove the replica from the board and use it as an individual piece of evidence so the jury was able to see the original position of the components. The intricacy of the replica convinced the jury that the bomb could not have been the work of an insane individual. The claim of insanity was denied and the defendant was convicted of armed bank robbery and 18 U.S.C. § 924(c). ❖

"Operation Senior Sentinel" Assists Investigations and Prosecutions

*Assistant United States Attorney Julia Craig
Southern District of California*

On December 7, 1995, hundreds of fraudulent telemarketers were arrested and search warrants were executed in dozens of boiler rooms across the United States, when the FBI's continuing undercover initiative, "Operation Senior Sentinel," was unveiled. Senior Sentinel is an innovative approach to the investigation of fraudulent telemarketing in which senior citizens are striking back at fraudulent telemarketers, with the aid of the Department of Justice; the FBI; and a variety of other federal, state, and local authorities.

"Operation Senior Sentinel" is designed to tape-record telephone crooks in the act of lying to their elderly victims and then make the tape recordings available for investigations and prosecutions in any part of the country where victims are located or where the phone rooms are operating. These tape recordings are excellent evidence of the scheme to defraud, particularly because the failing memories of the elderly victims frequently preclude accurate and/or detailed testimony from such victims about what they were told that induced them to send money to the telemarketers. To the extent that victims can recall what they were told, the tape recordings corroborate their testimony.

The initiative's success in tape recording these fraudulent phone "pitches" by the thousands is based upon one of the cruelest features of the multi-billion dollar fraudulent telemarketing industry: the repeated victimization of elderly people who have fallen prey to telemarketers in the past. For countless senior citizens, once they send money to a telemarketer, they receive repeated follow-up calls from that telemarketer, and dozens of phone calls a week from other fraudulent telemarketers throughout the United States who have paid substantial money to purchase the victims' names.

"Operation Senior Sentinel" capitalizes on this principle by taking over the phone number of these repeat victims and tape recording every call received on their lines. Specifically, once law enforcement has identified a victim who is being inundated with boiler room calls, and the victim and family agree, their telephone number is turned over to the FBI who transfers it to the phone line of a trained volunteer from the American Association of Retired People (AARP) or, in some cases, a law enforcement agent who plays the role of the victim during the tape-recorded conversation. AARP volunteers, federal agents, and state investigators and prosecutors are using this undercover technique in numerous states and FBI divisions across the United States. Since 1993, more than 7,000 tape recordings of fraudulent pitches have been recorded using this technique.

All the tapes are sent to the National Tape Library in San Diego, California, where they are indexed and catalogued on a computer system. Interested federal, state, and local law enforcement can quickly (1) locate and access tape recordings of the fraudulent telemarketers that they are investigating; (2) determine which fraudulent telemarketers are operating in their city or state and what they tell their victims; and (3) make arrangements to receive tape recordings for use in prosecutions against fraudulent telemarketers. These tape recordings are valuable evidence

of fraud and are the cornerstone of federal and state Senior Sentinel prosecutions--they prove telemarketers' schemes against the elderly. Since December 1995, these tape recordings have aided in producing dozens of guilty pleas and have been used in several very successful trials. Many other cases are pending.

The Senior Sentinel initiative is dedicated to generating tape recordings across the United States to catch phone crooks in the act for eventual prosecution as part of law enforcement's efforts against illegal telemarketing.

Prosecutors and investigators interested in learning more about "Operation Senior Sentinel" should contact Assistant United States Attorney Julia Craig, (619)557-6243, or FBI Special Agent Michael Havertz, (619)557-5910. ❖

Maps and Other Graphics for Effective Presentations

*Systems Manager Thomas Moore
Northern District of Florida*

The "Map Project" was started to fulfill the needs of several districts for computerized maps to illustrate the district layout by divisions or counties within the state. As the new System Manager for the Middle District of Florida, which cuts a swath diagonally across the state from Jacksonville in the northeast to Naples in the southwest, I felt a detailed district map would help me to better visualize the district. So I produced a map depicting each of the five divisions within the district. After it was printed, others indicated they could use it also. Initially, the maps were used in various formats by the LECC/Victim Witness Coordinator, Administrative staff, and others to complement charts and graphs, newsletter articles, and other information. Then the word got out to other districts and agencies, and I began receiving occasional requests for maps and other illustrations. When I transferred to the Northern District of Florida, I completed the state by including the Southern District.

I then expanded the project to include all districts, and now have computerized maps for the majority of states, territories, and districts.

The maps have been used in information packets for newly empaneled grand juries; by LECC/VW Coordinators; to effectively illustrate information at conferences and in employee orientation materials; and, in some districts, as replacement for the EAGLE as a PC monitor graphic.

Spin-offs of the map project have been requests for special computer-generated drawings, such as one requested by the editors of the *United States Attorneys' Bulletin* for a map illustrating a certain portion of the Southern District of Texas to complement an article.

These graphics can be produced in various formats to be compatible with a particular presentation or software package. I use both DOS and Windows versions of graphics software.

Plans are to upload the graphic files that have been created to the Executive Office for United States Attorneys' Bulletin Board System so they can be downloaded for everyone's use. Positive feedback and special requests have kept the project going. If you have special graphic needs, please call Thomas Moore at (904)942-8430 or Email at AFLN01(TMOORE). ❖

The Expanded Role of the Microcomputer as a Criminal Instrument

Chief Michael Noblett

Computer Analysis and Response Team

FBI Laboratory (202)324-9314

Several years ago, Robert Morris, Jr., demonstrated the potential for loss and the frailty of our computer systems by placing a program called a worm onto the Internet. It ground portions of the system to a halt in hours. Computer fraud and abuse is well documented in both the criminal justice community and the public's mind. However, for every Robert Morris worm, criminal investigators and prosecutors face hundreds, perhaps thousands of cases where a computer is used incidentally in a crime. In many cases, records vital to the investigation and prosecution of a case are stored on a computer that has been seized. Just as the business world relies on computers to support daily operations, computers are used increasingly as criminal instruments or devices to store data associated with criminal enterprises.

Criminals are using computers to store records regarding drug deals, money laundering, child pornography, embezzlement, mail fraud, telemarketing fraud, prostitution, gambling matters, extortion, and a myriad of other criminal enterprises. In addition to the simple storage of records, they may also manipulate data, attack financial institutions' computers, illegally use telephone lines of unsuspecting businesses, and a host of other scams.

The use of computers in criminal matters continues to mirror the growth of the computer industry. In the past few years, the FBI Laboratory has seen the submission of computer evidence double and then double again. Currently, we receive and examine more than 1200 computers per year.

While many in the criminal justice community think of computer crime as "high-tech," a growing segment of our population looks at computer data as nothing more than electronic paper. They feel comfortable keeping their records, whether legal or illegal, electronically. Some of the statistics are staggering:

- Over four million new buyers purchased personal computers in 1995.
- One large international banking system electronically moves \$1.3 trillion every day.
- The Internet is home to at least one bank.
- Only 11 percent of computer crime is reported.

In order to address law enforcement's needs for access to computer information, the FBI Laboratory has developed a structured approach to examining computer evidence--an approach that provides investigative and intelligence information to the criminal justice community and, concurrently, preserves the information for admission in the courts.

As reported on page 10 of the *USAB* July issue, the FBI Laboratory's Computer Analysis and Response Team (CART) has a wide variety of computer-related expertise, and a sensitivity to

the needs of law enforcement. CART has a full range of hardware and unique utility software essential for the forensic examination of computer evidence.

CART realized that the growth in storage capacity could easily limit our success at data retrieval. A significant problem voiced by FBI Agents and echoed by investigators world-wide describes cases where information necessary to investigate and prosecute resides in storage media along with huge amounts of non-probative data. Reviewing every file and all the information would take many work years and unacceptably delay investigation and prosecution.

Unlike other forensic examinations where a laboratory attempts to generate as much information as possible from the evidence submitted, data recovery is most efficient when limited by the logic of the case and narrowly focussed on information which is probative and case-related. To provide this focus, it is usually necessary for the technician examining the computer and the investigator or prosecutor to work as a team. Generally, the investigator and the prosecutor are the ones who have the knowledge to properly evaluate the importance of the information and separate the wheat from the chaff.

To foster and expand this cooperative effort, CART established the Field Examiner Program. Currently, 40 specially trained and equipped Special Agents and Computer Specialists from the FBI are participating in the program. They are assigned to field offices so they can be close to investigations and prosecutions. These field examiners are able to handle all but the most complex cases. In addition to field examiners, CART also has 20 computer science specialists assigned to the Laboratory Division at FBI Headquarters. They support more difficult and time-consuming examinations and develop examination protocols and procedures, conduct research, identify and certify software utilities, provide training, and perform other related tasks.

A recent survey of law enforcement efforts to address the issue of computer examinations was conducted by Mr. Carlton Fitzpatrick of the Federal Law Enforcement Training Center. He sent questionnaires to 72 law enforcement agencies who conduct these types of examinations. A total of 29 completed and returned the questionnaires. Some of the salient points follow:

- 48 percent of the agencies stated they have a computer forensic laboratory.
- 65 percent of these computer forensic laboratories have five or less employees.
- 83 percent have encountered password protected or encrypted files.
- 70 percent are doing the work without a procedures manual.
- 72 percent of these agencies do not offer any type of certification for these examinations.
- 87 percent stated they need more training in new technologies, data retrieval, and rules of evidence
- 33 percent have caseloads exceeding 250 cases per year.

The impact of the computer is felt in every law enforcement investigative program. Clearly, it is important that the criminal justice community have the necessary expertise to

adequately address the examination of computer evidence and records. ❖

Attorney General Highlights

Honors and Awards

Recipients of the 1996 Attorney General Awards

On June 27, 1996, 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 employees for their outstanding and dedicated service to the Department.

Attorney General's Award for Exceptional Service

Andrew C. McCarthy

Senior Trial Counsel

Patrick J. Fitzgerald

Chief, Organized Crime and Terrorism Unit

Robert S. Khuzami

Assistant United States Attorney

Alexandra Rebay

Assistant United States Attorney

Jane Chu

Paralegal Specialist

Joseph E. Doherty

Paralegal

District of New York

David Schickendanz

Senior Special Agent

Drug Enforcement Administration

Regina Bonny

DEA Task Force Officer

Drug Enforcement Administration,
and Corporal Midwest City Police Department
Oklahoma City District Office

Attorney General's William French Smith Award for Outstanding Contribution to Cooperative Law Enforcement

Juan Arvizu

Karl G. Auerbach

Detective Sergeants
Salt River Pima-Maricopa
Indian Community Police Department
Scottsdale, Arizona

Attorney General's Award for Exceptional Heroism

Juanita Santana

Border Patrol Agent
Tucson Border Patrol
Tucson, Arizona
Immigration and Naturalization Service

Attorney General's Mary C. Lawton Lifetime Service Award

Michael J. Roper

Deputy Assistant Attorney General
Controller
Justice Management Division

Attorney General's Award for Distinguished Service

Linda J. McKay

Block Grant Program Manager
Bureau of Justice Assistance
Office of Justice Programs

Robert K. Bratt

Executive Officer Criminal Division

David M. Cohen

Director
Commercial Litigation Branch
Civil Division

K. Jack Haugrud

Assistant Chief

Margo Miller

Allison Rumsey

Caroline Zander

Trial Attorneys

Thomas Alderson
Paralegal Specialist
General Litigation Section
Environment and Natural Resources Division

Ronald E. Sanders
Chief
Border Patrol Agent
Tucson, Arizona
Immigration and Naturalization Service

Grover Hartt, III
Assistant Chief Civil Trial Section
Tax Division

Gloria Solano
Program Specialist
Miami Field Office
Community Relations Service

Anthony J. Antenucci
Operations Research Analyst
Operations Division
Drug Enforcement Administration

Philip D. Arnold
Correctional Program Specialist
Information, Policy and Public Affairs Division
Bureau of Prisons

Victor Fuentes
Computer Specialist
Office of the Associate Commissioner for Information
Enforcement Systems Branch
Immigration and Naturalization Service

Donald M. Johnson
Unit Chief
Program Development Section
Federal Bureau of Investigation

Julie A. Jones
Assistant Director
Information Management Security Staff
Justice Management Division

Charles V. Sangaline
Supervisory Computer Specialist
Information Technology Services
United States Marshals Service

A. Ralph Zurita
Assistant Chief Deputy
Southern District of Florida
United States Marshals Service

Peter M. Carlson
Assistant Director
Correctional Programs Division

Daniel Molerio
Assistant Director for Investigations

Dianne Weisheit
Section Chief

Kyle Hutchins

Bart Rodriques

Supervisory Criminal Investigators

Mona Forman

Karen Pace

Criminal Investigators

Anti-Smuggling Unit

New York District

Immigration and Naturalization Service

Philemina McNeill Jones

Assistant Director

Office of Immigration Litigation

Civil Division

Paul E. Pelletier

Madeleine Shirley

Assistant United States Attorneys

Southern District of Florida

Patricia A. Riley

Assistant United States Attorney

District of Columbia

Thomas Perez

Deputy Chief

Criminal Section

Civil Rights Division

James H. DeAtley

Senior Litigation Counsel
Office of the United States Attorney
Western District of Texas

Reid M. Figel

Chief
Securities and Commodities Fraud Unit

Andrea M. Likwornik

Michael A. Simons

Richard D. Owens

Assistant United States Attorneys
Southern District of New York

Attorney General's Award for Excellence in Management

Edward F. Cincinnati

Assistant Director for Administration
Executive Office for United States Trustees

Attorney General's Award for Excellence in Law Enforcement

James G. Brown

Special Agent
Gallup Field Office
Federal Bureau of Investigation

Thomas L. Carruthers

Deputy United States Marshal
District of Columbia
United States Marshals Service

John J. Liguori

Christopher T. Voss

Special Agents
New York Division
Federal Bureau of Investigation

Attorney Generals Award for Equal Employment Opportunity

Gary N. Silver
Director
Office of Personnel
Office of Justice Programs

Attorney Generals Award for Career Enhancement

Kenneth L. Pasquarell
Deputy District Director
El Paso Sector
Immigration and Naturalization Service

Attorney Generals Award for Outstanding Service to the Department of Justice Disabled Employees

John F. Clark
Supervisory Criminal Investigator
Enforcement Division
United States Marshals Service

Attorney Generals Award for Excellence in Legal Support

Paralegal Category

Linda M. Troup
Paralegal Specialist
Criminal Section
Civil Rights Division

Legal Secretary Category

Bette Bratlien
Legal Technician
Office of the United States Attorney
Northern District of California

Mary Jane Wood
Legal Assistant
Court of Federal Claims Section
Tax Division

Attorney Generals Award for Excellence in Administrative Support

Administrative Category

John Caraway

Personnel Management Specialist
Federal Medical Center
Fort Worth, Texas
Bureau of Prisons

Secretarial Category

Suzanne A. Frazier

Secretary
Office of the Inspector General

John Marshall Awards

Trial of Litigation

Steven P. Ward

Senior Trial Attorney
Criminal Enforcement Section
Western Region
Tax Division

Sandra Teters

Supervisory Assistant United States Attorney
Northern District of California

Thomas Carlucci

Assistant United States Attorney
Northern District of California

Michael J. Connolly

Assistant United States Attorney
District of New Hampshire

Participation in Litigation

Lawrence G. McDade

Deputy Director

Deborah S. Smolover

Trial Attorney
Office of Consumer Litigation
Civil Division

Anthony G. Hall
Monte J. Stiles
Assistant United States Attorneys
District of Idaho

Support of Litigation

Timothy Roberts
Attorney Advisor
United States Penitentiary
Leavenworth, Kansas
Bureau of Prisons

Bruce S. Gelber
Principal Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources Division

Handling of Appeals

Robert J. Erickson
Principal Deputy Chief
Appellate Section
Criminal Division

Miriam Aroni Krinsky
Assistant United States Attorney
Central District of California

Providing Legal Advice

Janis Sposato
Deputy Assistant Attorney General
Law and Policy

Mary Braden
Director

Janice Rodgers
Deputy Director

Donna O'Dowd
Ethics Specialist
Department Ethics Office
Justice Management Division

Charysse Alexander
Assistant United States Attorney

Middle District of Alabama, and
Special Assistant to the Director
Executive Office for United States Attorneys

Preparation or Handling of Legislation

Donald J. Russell

Chief
Telecommunications Task Force
Antitrust Division

Interagency Cooperation in Support of Litigation

Chris Couillou

Paul Davis

Andrea Foster

Ronald Laitsch

Cindy Liebes

Attorneys
Federal Trade Commission
Atlanta, Georgia

Elizabeth Grant

Larry Hodapp

Richard Quaresima

Attorneys
Division of Marketing Practices
Federal Trade Commission
Washington, D.C.

Asset Forfeiture

Reid C. Pixler

Assistant United States Attorney
District of Arizona

Alternative Dispute Resolution

Janice E. Hebert

Assistant United States Attorney
Western District of Louisiana

**Attorney Generals Award for Outstanding Service in Freedom of Information Act
Administration**

Leo D. Neshkes
Freedom of Information Officer
Antitrust Division

Cubby Dorsey Award for Outstanding Service by a Federal Wage Grade System Employee

David Donchess
William Shinn
Aircraft Mechanical Inspectors
Del Rio Sector
Del Rio, Texas
Immigration and Naturalization Service ❖

President Signs Order to Create Commission to Develop Antiterrorism Measures

On July 15, 1996, President Clinton signed an Executive Order to create a Presidential Commission to formulate measures to protect the nation's critical infrastructures from terrorism and other forms of attack. The action was recommended by a Cabinet Committee, headed by Attorney General Reno, that was formed in the aftermath of last year's bombing of the Oklahoma City federal building. The Committee said it was essential that the government and the private sector work together to assure the uninterrupted operation of critical infrastructures, including telecommunications, electrical power systems, gas and oil storage and transportation, banking and finance, transportation, water supply systems, emergency services (i.e., medical, police, fire, and rescue), and government operations. The President said in the Executive Order, "Certain national infrastructures are so vital that their incapacity or destruction would have a debilitating impact on the defense or economic security of the United States." The Order cites two sorts of potential threats to these infrastructures: bombings and other "physical" threats to tangible property, and computer-based "cyber" attacks on the information or communications components that connect and control the infrastructures. ❖

AG Signs Critical Incident Response Plan

On May 24, 1996, Attorney General Reno approved a Critical Incident Response Plan for DOJ, outlining the Department's procedures for responding to crisis situations. The Plan contains three exhibits, including a memo describing the formation and training of an Attorney Critical Incident Response Group, Resolution 12 of the Office of Investigative Agency Policies which describes the use of the FBI's crisis management resources in the field, and a Memorandum of Understanding between the Federal Bureau of Prisons and the FBI. On May 30, 1996, a copy of the Plan was forwarded to United States Attorneys via a memo from EOUSA Director Carol DiBattiste. For further information, contact Charysse L. Alexander, Special Assistant to the Director, EOUSA, (202)514-5326, or Email AEX15(CALEXAND). ❖

Highlights of the Attorney General's Advisory Committee of United States Attorneys

The publication, *Highlights of the Attorney Generals Advisory Committee of United States Attorneys, 1993-1995*, is a summary of issues the Advisory Committee addressed during Attorney General Janet Reno's tenure as Attorney General in furtherance of the goals set by the Administration. The document, published by the Executive Office for United States Attorneys, includes sections on Violent Crime, Juvenile Justice, White Collar Crime, Financial Litigation, Civil Issues, Civil Rights, Native American Issues, Border Law Enforcement, Environmental Issues, Other Law Enforcement Issues, DOJ Components/Outside Agencies, Security, Legislation, Ethics and Professional Responsibility, and Management Enhancements. It describes the Committee's accomplishments as they relate to the Attorney General's priorities and Vice President Gore's National Performance Review, and illustrates the cooperative spirit and true partnership that has evolved not only between the United States Attorneys and DOJ but with state and local agencies throughout the nation. A copy of the publication is available in each United States Attorney's office. ❖

The National Drug Control Strategy: 1996

On April 29, 1996, Director Barry R. McCaffrey, Office of National Drug Control Policy, forwarded to Congress the 1996 National Drug Control Strategy, a publication that organizes a collective American effort to achieve a common purpose and provides general guidance and specific direction to the efforts of the more than 50 federal agencies involved in the struggle against illegal drugs and substance abuse. The Strategy offers a framework for state and local government agencies, educators and health care professionals, law enforcement officials and community groups, religious organizations, mass media, and American businesses, to build a unified American counter drug effort. Copies of the publication were sent to each United States Attorney's office. If you would like a copy, call the National Drug Control Policy Clearinghouse at (800)666-3332, or download from the Internet at www.ncjrs.org. Questions concerning the publication should be directed to the Office of Programs, Budget, Data, and Research at (202)395-6736. ❖

Operation Gatekeeper Push into East San Diego County

On May 28, 1996, President Clinton announced that the Immigration and Naturalization Service will extend eastward into East San Diego County, the border control it has achieved in Imperial Beach and Chula Vista. Significantly enhanced technology and equipment and 185 additional agents have been deployed in a 16-mile area from Otay Mountain to the Tecate Port of Entry, establishing a control zone that spans 30 miles from the Pacific Ocean to Tecate. As part of Operation Gatekeeper, the East County initiative will also implement county-wide strategies to deter dangerous alien smuggling operations and improve public safety. Temporary checkpoints and heightened cooperation with the FBI and local law enforcement agencies are among the strategies being implemented. The success rate of Operation Gatekeeper and new resources, including McDonnell-Douglas 500E helicopters, ground sensors, night scopes, portable lighting equipment, and additional horse and canine units have now enabled the agency to strengthen enforcement efforts in San Diego's East County area. "Operation Gatekeeper has made the San Diego border harder to cross than at any time in history," INS Commissioner Doris Meissner said.

"By concentrating more agents and resources in East County, the Border Patrol will extend deterrence and border control east without losing any of the ground we have gained from Imperial Beach eastward through Brown Field." United States Attorney Alan Bersin, Southern District of California, announced that a team of 11 FBI agents has been assigned to the sector to support the Border Patrol's crackdown against illegal alien smuggling operations. "Intensifying our crackdown on alien smugglers is an essential element in this phase of Gatekeeper-East. An unprecedented cooperative effort is now in place here in San Diego among INS, the FBI, and federal prosecutors," said Bersin. ❖

AG and Governor Lawton Chiles Announce Florida Immigration Initiative

On May 29, 1996, the Attorney General and Governor Lawton Chiles announced a comprehensive immigration initiative for the State of Florida. The plan focuses on removing criminal aliens from Florida's prisons, streets, and jails; protecting Florida's ports and borders from illegal aliens and smugglers; safeguarding Florida jobs for legal workers; and improving immigration services. Attorney General Reno said, "We will work with Florida law enforcement to catch more criminal aliens and remove them from the United States, and we will aggressively prosecute and seek prison time for those who return here illegally. We are stepping up our enforcement of immigration laws in the workplace and encouraging lawful permanent residents to permanently join our nation's family as United States Citizens." The plan is designed to maximize federal, state, and local resources and includes new projects and enhancements to existing programs. For a copy of the press release, including a summary of the Florida immigration initiative, please contact the *United States Attorney's Bulletin* staff, (202)514-3572. ❖

Attorney General Supports Military-Style Educational Opportunities for Women

On June 26, 1996, after the Supreme Court ruled that Virginia must provide women with the same military-style educational opportunities that it already provides to men, Attorney General Reno said, "The Supreme Court overwhelmingly has given life to the promise in the Constitution that all of us deserve an equal shot at educational opportunity. The Justice Department has worked long and hard on this case to convey one message: We support opportunity for men and women, all men and women, to prove themselves as individuals. I congratulate the Solicitor General's office. I congratulate the Civil Rights Division. I am so very proud of what you have accomplished." Assistant Attorney General for Civil Rights Deval L. Patrick said, "From the beginning of this case, and we have been in it from the very beginning, we have maintained that women deserve the same educational opportunities as men, as a matter of law and good conscience. Today's decision affirms that view. As the court wrote, 'women seeking and fit for a VMI-quality education cannot be offered anything less, under the States obligation to afford them genuinely equal protection.' We are gratified by this decision because it rejects unfounded generalizations that women cannot compete on an equal basis as men in this or any other educational setting. This is a ruling of which all women and all Americans can and should be very proud." VMI is one of only two all-male public institutions of higher education in the country. The other is being challenged in a suit by DOJ and private plaintiffs. ❖

Department Commemorates 46th AG, Charles Bonaparte

On June 28, 1996, at the Department of Justice, a ceremony was held in commemoration of the achievements of Charles Bonaparte, the 46th Attorney General of the United States and founder of the FBI. Over the last three decades, he has been commemorated in June, the month of his birth, through the sponsorship of The Italian Historical Society of America. At the ceremony, Assistant Attorney General Andy Fois and Judge Edward Re, former Chief Judge of the International Trade Court, spoke about Bonapartes life, including a July 28, 1908, order which made his special investigative force a permanent subdivision of the Department of Justice. In 1935, what began as a 23-man unit under Bonapartes direction, was renamed the FBI. Representatives from the Italian Embassy, the National Italian American Foundation, and the Order of the Sons of Italy in America were among those who attended the ceremony. ❖

Off-Duty Conduct

On May 16, 1996, Attorney General Reno send a memo to Department of Justice Component Heads emphasizing the Inspector Generals final report on allegations of racial and criminal misconduct at the "Good O' Boys Roundup," a private annual gathering of law enforcement personnel in Southeastern Tennessee. The report concluded that DOJ employee involvement in the activities of the Roundup was relatively minor but voiced concern about the level of awareness of DOJ employees concerning their obligation to refrain from off-duty conduct that negatively affects their job performance. According to the report, "such off-duty responsibilities are generally not well-understood by many DOJ employees." The Attorney General directed Assistant Attorney General Stephen Colgate to convene and chair a committee of representatives from the FBI, DEA, INS, USMS, BOP, and other selected Department components to develop training materials emphasizing the principle that DOJ employees must abide by DOJ standards of conduct at all times. Ms. Reno's May 16 memo was forwarded to United States Attorneys via a May 30, 1996, memo from EOUSA Director Carol DiBattiste. ❖

United States Attorneys' Offices/ Executive Office for United States Attorneys

Appointments

District of South Carolina

On June 21, 1996, J. René Josey took the oath of office as the Presidentially appointed United States Attorney for the District of South Carolina. ❖

Southern District of Ohio

United States Attorney Edmund A. Sargus, Southern District of Ohio, was confirmed as District Court Judge and will be resigning from the United States Attorney's office on August 23,

1996. ❖

Honors and Awards

CATS Excellence Award Presented to Southern District of Texas Paralegals

On May 14-16, 1996, at the Consolidated Asset Tracking System (CATS) Users Conference in Clearwater, Florida, Paralegals Frances LeBlanc and Jeanie Fincher, from the Asset Forfeiture Unit in the United States Attorney's office for the Western District of Texas, received the CATS Excellence Award for outstanding contributions to the program. CATS will link both United States Attorneys offices (USAOs) and agency field offices and headquarters to provide a tracking system for seized and forfeited assets. The equipment and program are being installed in agencies responsible for asset forfeiture across the country. ❖

Significant Issues/Events

Attorney Generals Advisory Committee

The Attorney General's Advisory Committee met on June 25-27, 1996, in Washington, D.C. Items covered included the Violence Against Women Act, the Victim-Witness Program, Church Burning Task Forces, and anti-gang initiatives. A meeting was also held on July 25-26, 1996, in Washington, D.C., and items discussed were church burnings, development of an Emergency Witness Assistance Program for the USAOs, encryption concerns, Child Support, and the Southwest Border Title III Project. The next meeting is scheduled for September 24-25, 1996, in St. Louis, Missouri. ❖

Office of Inspector General/Office of Professional Responsibility

On June 28, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys clarifying the responsibilities of the Office of Professional Responsibility (OPR) and the Office of the Inspector General (OIG). In November 1994, Attorney General Reno issued a new Bluesheet and Memorandum to All Component Heads detailing the various responsibilities of OPR and OIG. See *United States Attorneys' Manual* § 1-4.100. The following is a general summary of the division of responsibility between the two components.

Office of Professional Responsibility has authority to investigate allegations of misconduct by Department attorneys that relate to the exercise of their authority to investigate, litigate, or provide legal advice. As a general proposition, OPR investigates primarily professional, case-related misconduct. For example, if there was an allegation or a finding that a federal prosecutor made an improper argument in court, OPR would investigate it. Similarly, allegations of discovery violations or grand jury abuse should be referred to OPR for review and investigation. In addition, allegations involving case-related misconduct by agents/criminal investigators working with Assistant United States Attorneys fall within OPR's jurisdiction.

Office of the Inspector General has authority to investigate all other allegations of misconduct by any Department employee, including Department attorneys, or allegations of fraud, waste, or abuse by any Department employee, contractor, grantee, or other person doing

business with or receiving benefits from the Department. The alleged misconduct may occur on or off duty, and may include such offenses as misuse of position by an Assistant United States Attorney, drug use, drunk driving, procurement fraud by a person charged with responsibility for awarding contracts, loss of money or misuse of money in a United States Attorney's office (USAO), or other crimes.

If you make referrals to either OIG or OPR and the other component should be investigating the matter, it will be referred to the appropriate organization. If there is an active, ongoing investigation of a USAO employee(s), the USAO should be recused from handling the investigation, except for their involvement in any administrative action relating to the employment status of the individual. To accomplish this recusal contact Juliet A. Eurich, EOUSA's Legal Counsel, (202)514-4024. For questions concerning procedures for referral of allegations of misconduct, please contact EOUSA's Legal Counsel's office, (202)514-4024. ❖

Tenth Circuit Decision in U.S. v. Colorado Supreme Court

The week of June 24, 1996, the Department received a significant victory in a case involving a challenge to the application of two Colorado professional ethics rules to federal prosecutors. A copy of the decision is available from the *United States Attorneys' Bulletin* staff, (202)514-3572. Colorado Rules of Professional Conduct contain versions of ABA Model Rules 3.3 and 3.8 that purport to regulate the conduct of federal prosecutors. Rule 3.3(d) requires, inter alia, that prosecutors disclose exculpatory evidence in grand jury proceedings. Rule 3.8(f) provides that a prosecutor may not subpoena a lawyer in a grand jury or other proceeding unless certain stringent requirements are met, and it requires judicial approval and an "adversarial proceeding" prior to the issuing of the subpoena.

After discussions with the Colorado Bar failed to resolve the matter to the Department's satisfaction, DOJ filed suit in Colorado District Court challenging the application of the rules to federal prosecutors. The District Court (Weinshienk, J.) dismissed the suit for lack of standing.

In a unanimous decision, the Tenth Circuit reversed. The Court noted that the Government alleged that the Colorado rules "interfere with federal prosecutors in their conduct of criminal proceedings and change the nature of the grand jury in Colorado." Slip Op. at 6. Such allegations, the Court held, are sufficient to withstand a motion to dismiss.

The Tenth Circuit explicitly declined to express an opinion on the merits of the litigation, noting that such an opinion was unnecessary to a consideration of standing. However, the Court made several statements that support the Department's position in this matter. For example, the Court noted: "By forcing federal prosecutors to submit exculpatory evidence to the grand jury, Rule 3.3(d) effectively alter[s] the grand jury's historical role, transforming it from an accusatory to an adjudicatory body." Slip Op. at 7 [quoting *United States v. Williams*, 112 S.Ct 1735, 1744 (1992)]. Similarly, the Tenth Circuit noted that "the Supreme Court has stated that 'requiring the Government to explain in too much detail the particular reasons underlying a subpoena threatens to compromise' grand jury secrecy." Slip Op. at 8 [quoting *United States v. R. Enterprises*, 498 U.S. 292, 299 (1991)]. Questions should be directed to Charysse Alexander, Senior Counsel to the Director, EOUSA, (202)514-5326 or AEX15(CALEXAND). ❖

Antiterrorism and Effective Death Penalty Act of 1996

On May 18, 1996, EOUSA Director Carol DiBattiste forwarded a memo containing an overview of the key provisions of the "Antiterrorism and Effective Death Penalty Act of 1996," to United States Attorneys, First Assistant United States Attorneys, and Criminal Chiefs. For questions concerning this legislation, please contact the following:

- For Criminal Provisions--Criminal Division, Terrorism and Violent Crime Section, (202)514-0849.
- For Changes to Immigration Laws--Office of the General Counsel, Immigration and Naturalization Service, (202)514-2895, or Civil Division, Office of Immigration Litigation, (202)616-4900.
- For Restitution Issues--EOUSA's Financial Litigation Staff, (202)616-6444. ❖

Sample Memo for Authority to Seek Death Penalty

On June 24, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys and Criminal Chiefs, a sample memorandum to be used as guidance for preparing requests for authorization to seek the death penalty under *United States Attorneys' Manual* 9-10.000. For further information, please contact Deputy Assistant Attorney General Kevin DiGregory, Criminal Division, (202)514-9725, or Trial Attorney Joe Uberman, Criminal Division, (202)616-0411. ❖

Anti-Gang and Youth Violence Control Act

On June 7, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, a copy of the Anti-Gang and Youth Violence Control Act of 1996 which the President submitted to Congress in May 1996. The Act, a brief summary of the proposed legislation, and a section-by-section synopsis were included with the memo. Questions should be directed to Bernie Delia, Senior Counsel to the Director, EOUSA, at (202)514-8500, fax (202)514-8340, or Email AEX15(BDELIA). ❖

National Strategy to Reduce Violent Crime

On June 6, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, the May 1996 report, "Reducing Violent Crime in America, a Five-Year Strategy." The report from the Office of Investigative Agency Policies was reviewed by the AGAC and prepared pursuant to the House Appropriations Report requirement [H.R. Rep. No. 196, 104th Congress, 1st Session, at 22 (1995)]. Questions should be directed to Charysse Alexander, Special Assistant to the Director, EOUSA, (202)514-5326 or AEX15(CALEXAND). ❖

Violence Against Women Act

In a June 28, 1996, memo to United States Attorneys, Janet Napolitano, United States

Attorney for the District of Arizona and Chair of the AGAC, and EOUSA Director Carol DiBattiste forwarded materials provided by the Violence Against Women (VAW) Office to assist United States Attorneys' offices in prosecuting offenders under the new provisions of the Violence Against Women Act (VAWA) and the Violent Crime Control and Law Enforcement Act, to which the Attorney General is very committed. During their June meeting, the AGAC met with Bonnie Campbell, Director of the Violence Against Women Office, and United States Attorney Ed Sargus, Southern District of Ohio, to discuss ways to successfully prosecute these cases. The handouts include information on the new federal offenses: Interstate Domestic Violence (Title 18, U.S.C. Sections 2261); Interstate Violation of a Protection Order (Title 18 USA 2262) and possession, transfer, or receipt of a firearm while subject to a valid restraining order (Title 18 U.S.C. 922(g)(8)); a chart of the Violence Against Women Act cases to date; state contacts for STOP Grants and current list of STOP Grants; and other useful information. The AGAC has created a VAWA Working Group headed by United States Attorney Mike Troop, Western District of Kentucky, and United States Attorney Karen Schreier, District of South Dakota. The Group will immediately address the training and educational needs of VAWA prosecutors, and will be developing training materials on reaching out to local counterparts through the training of state and locals, and working with the National District Attorneys Association (NDAA) to provide training. NDAA has included a segment on Domestic Violence in their 1996 course material. The Office of Legal Education offered a course on violence against women and children, and materials concerning how to prosecute these cases were provided at the Office of Legal Education's Criminal Federal Practice Course on July 22-26, 1996. If you would like copies of course materials, please contact Mary Jude Darrow or Jim Miles, EOUSA's Office of Legal Education, (202)616-6700. Violence against women issues will be highlighted at the October Joint LECC/VW Assistance Conference. The VAW Office would like to create a reference library of some case materials. For further information please contact Assistant Associate Attorney General Joan Silverstein, Office of the Associate Attorney General, (202)514-9645, Email SM002(SILVERST), or fax (202)307-3904. ❖

Expenses Associated with Sexually Transmitted Disease/HIV Testing

On June 5, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, Assistant United States Attorneys, Administrative Officers, and LECC/Victim-Witness Coordinators, forwarding the policies and procedures for payment of expenses related to the Sexually Transmitted Disease (HIV) Testing Provisions in the Violent Crime Control and Law Enforcement Act. As directed by the "Attorney General Guidelines on Victim and Witness Assistance, 1995," in accordance with the Violent Crime and Control and Law Enforcement Act of 1994, crime victims in sex offense cases are to be informed of their right to have DOJ provide for the payment of the cost of up to two anonymous and confidential tests of the victim for sexually transmitted diseases. See Notice and Payment for Testing and Counseling for Sexually Transmitted Diseases of the Victims of a Sexual Offense that Poses a Risk of Transmission, 42 U.S.C. § 10607(c)(7). DOJ is also to provide the appropriate mechanism for the payment of the cost of a counseling session by a medically trained professional regarding the accuracy of such test(s) and the risk of transmission of sexually transmitted diseases to the victim as the result of the assault. If you would like a copy of the June 5, 1996, memo containing the policies and procedures, please call the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Social Security Litigation

Newly Filed Cases

Over the years, the Social Security Administration and DOJ have worked together in the interest of managing the Social Security Litigation caseload as effectively and efficiently as possible. One important aspect of this coordination is the prompt, simultaneous notification to the Social Security Administration and the Office of the General Counsel of newly filed Social Security cases.

Timely notification of suit in new Social Security cases is a vital link in the preparation of a reply or answer. Please be sure that you fax notification of new Social Security suits to the Answer Staff of the Office of the General Counsel at (703)305-1271 and the Office of Hearing and Appeals, Social Security Administration, at (703)305-0623 (Fourth, Fifth, Sixth, Seventh, and Tenth Cir.), or (703)305-0739 (First, Second, Third, Eighth, Ninth, Eleventh, and D.C. Circuits). Please provide in the fax notification:

- (1) the case caption;
- (2) plaintiffs Social Security number;
- (3) district court where case was filed;
- (4) date complaint was filed;
- (5) date the United States Attorney was served;
- (6) name and telephone number of the Assistant United States Attorney handling the case; and
- (7) the date a petition in forma pauperis was filed, if applicable. ❖

Court Orders

Similarly, it is important that "critical" court orders be forwarded to the Office of the General Counsel in a very timely manner. Items considered "critical" include adverse court orders such as Magistrate and court reversals, remands, motions for or threats of contempt, default, and show cause or any court order which contains a time limit for action to be commenced or completed by the Commissioner of Social Security. Motions or threats of contempt, default, or show cause should be faxed to the Office of the General Counsel at (410)965-3213. Other "critical" documents should be forwarded promptly to:

Office of the General Counsel
Social Security Administration
P.O. Box 17054
Baltimore, Maryland 21203

All other non-critical items should be forwarded in a timely manner to:

Office of the General Counsel
Social Security Administration
6401 Security Boulevard
Room 611, Altmeyer Building

Baltimore, Maryland 21235

Please review the *United States Attorneys' Manual* (currently under revision) which provides more detailed information regarding Social Security cases. ❖

Cellular Phone Fraud

In a July 11, 1996, memo from EOUSA Director Carol DiBattiste to United States Attorneys, an article on cellular phone fraud that appeared in the June 1996 "Security Details" was highlighted. This increasing high-tech crime has soared fivefold in three years, growing faster than the cellular industry. Recognize signs of fraudulent use by being alert to frequent wrong numbers or hang-up calls, complaints from incoming callers of busy signals and wrong numbers, difficulty retrieving voice mail messages or placing outgoing calls, and bills for calls not made. Closely check phone bills for unusual calls, safely store subscriber agreements which include important serial and identification numbers, regularly use the PIN provided as a fraud prevention feature, trade mobile phones with telltale antennas for less conspicuous portable phones, and allow only authorized technicians to install or test your cellular phones. If you do not make international calls, have that capability blocked. When using a cellular phone or communicating with someone who is using one, always assume a third party is listening to your conversation. Do not use cellular phones to access voice mail systems. If you must discuss or transmit investigative or litigative information which is sensitive or classified, use a secure telephone (STU-III) or secure facsimile instead of a cellular phone. If you suspect fraudulent use of, or criminal activity involving, district cellular phones, report it to Acting Assistant Director Tommie Barnes, EOUSA Security Programs Staff, (202)616-6878. ❖

Changes in the Regional Financial Litigation Specialist Program

In a June 28, 1996, memo to United States Attorneys, EOUSA Director Carol DiBattiste and United States Attorney William D. Wilmoth, Northern District of West Virginia, and Chair, AGAC Civil Issues/Financial Litigation Subcommittee, noted changes in the Regional Financial Litigation Specialist Program. The program began in the early 1980's to provide assistance and on-site training to United States Attorneys' offices' financial litigation personnel. Under the supervision of EOUSA's Financial Litigation Staff (FLS) Associate Director, senior financial litigation paralegal specialists devote 50 percent of their time to helping Financial Litigation Units (FLUs) solve technical problems; training new FLU employees; and updating them on new financial litigation law, policies, and procedures. Despite the overwhelming success of this program, recently it has been severely understaffed and not able to operate to its full potential. The Collections Resource Allocation Board recently provided funding to revitalize the program and EOUSA is recruiting ten Financial Litigation Program Managers (PM, a new program title) from FLU personnel in United States Attorneys' offices who will devote one-half of their time to PM duties for EOUSA's FLS and the other to performing their usual debt collection duties in their offices. PMs will be highly trained in debt collection and will bring back to their districts innovative practices. The new program is scheduled to be underway by the beginning of next fiscal year. If you have any questions, please contact Associate Director Lynne Solien, EOUSA's FLS, (202)616-6444. ❖

Attorney General Charters an Electronic Document Exchange Lab

The Electronic Document Exchange (EDE) Lab was established as a result of a Department of Justice Access to Justice/Civil Justice Reform Initiative recommendation, approved by Attorney General Reno on January 21, 1995, that Department attorneys engage in electronic exchange of pleadings.

While the Department plans to establish the technical facilities to support EDE, many issues remain unaddressed, such as procedures, training, security, and capacity necessary for a process involving varying DOJ component interests and responsibilities. Other entities who would be interested, such as the courts and the private bar, are actively involved in developing systems and protocols for the electronic exchange of legal documents. As a result, a Justice Performance Review Lab Team was established to examine the issues, develop plans, and recommend Department of Justice policies in these areas.

The goal of the EDE Lab is to determine how existing technology can assist DOJ lawyers, paralegals, and other support staff working with them to perform their jobs more effectively. The EDE Lab Team will examine EDE issues such as:

1. Potential users.
2. Documents likely to be exchanged electronically.
3. Recipients of those documents.
4. Technologies that are available or may become available.
5. Problems that may arise as a result of this technology (e.g., security, timing).
6. Current entities or organizations who are involved in or planning EDE.
7. Reengineering DOJ processes to accommodate EDE.
8. Federal policies and procedures governing EDE that should be issued as guidelines.
9. Statutory or rule changes that may be necessary in order to implement EDE.
10. Mechanisms that can be used to review EDE technology to identify pros and cons.

After analyzing information gathered during implementation of the initial objectives, the Team will develop pilot projects to evaluate the feasibility of recommended technologies. The results of these projects will help the Team in recommending DOJ EDE policies and procedures.

Because EDE issues involve various DOJ components and areas of expertise, the EDE Lab Team is comprised of technical, administrative, and legal staffs of various DOJ components including EOUSA, United States Attorneys offices, the Justice Management Division, the Civil Division, INS, and FBI. To promote cooperation and facilitate implementation of Lab pilot projects and recommendations, the EDE Lab will develop liaisons with other DOJ components that may be effected by the Labs efforts.

The broad mission of the EDE Lab is to analyze the needs of DOJ attorneys in the area of EDE, to identify appropriate and available technology tools, and to develop appropriate EDE policies. More specifically, the EDE team will:

- Examine the nature and scope of desirable EDE by DOJ attorneys with other Government entities, private counsel, and the courts; and define and evaluate critical functional requirements within specific legal processes.

- Identify and determine the feasibility of systems to ensure efficient and secure transmission and storage of these documents, including developing suitable pilot projects.

- Develop recommended policies and procedures for EDE, assuming that the lab determines that EDE is an effective tool in assisting attorneys to more effectively perform their jobs.

If you are interested in more information about the EDE Lab or wish to recommend legal processes for consideration for EDE facilitation, please contact EDE Lab Team Leader Jeanette Plante, EOUSA's Legal Programs Office, AEX12(JPLANTE) or (202)616-6444; Associate Director Gail Williamson, EOUSA's Operations Staff, AEX11(GWILLIAM) or (202)616-6600; or Steve Roman, Assistant Director, Systems Development, Justice Management Division, JMD03(ROMAN) or (202)514-0390. ❖

Western District of Kentucky Drug Chief Carries Olympic Torch

Assistant United States Attorney M. Monica Wheatley was one of the torchbearers who carried the 1996 Olympic Flame across the United States. The flame was passed from torch to torch over more than 15,000 miles through 42 states and 29 capitols. Each torchbearer carried the flame up to one kilometer. AUSA Wheatley was chosen because of her outstanding contribution to the Louisville, Jefferson County, Kentucky community, especially her volunteer work relating to abused and neglected children. ❖

Phone Number Changes for USAOs

Western District of Oklahoma

New phone numbers are:

Main Number: (405)553-8700

Victim Assistance: (405)553-8898

Main Fax: (405)553-8888

Civil Fax: (405)553-8803

Criminal Fax: (405)553-8887

District of Oregon Eugene Branch Office

The District of Oregon's Eugene Branch office's new area code is 541. Telephone numbers did not change.

Eastern District of Texas Updated Phone Numbers

J. Michael Bradford
United States Attorney
350 Magnolia St., Suite 150
Beaumont, Texas 77701-2237

EAGLE: ATXE01

Phone: (409)839-2538

FAX: (409)839-2550
(409)839-2557

Key Personnel:

First AUSA - Wesley Rivers (Tyler)
Crim. Chief - John Stevens (Beaumont)
Civil Chief - Ruth Yeager (Tyler)
OCDETF Chief - Bill Baldwin (Tyler)
Fin. Lit. Unit Chief - Randi Russell (Tyler)
Asset Forf. - Gregg Marchessault (Tyler)
AUSA in Charge, Tyler - Bill Baldwin
AUSA in Charge, Sherman - Humberto Garcia
AUSA in Charge, Plano - Andy Williams
FOIA Contact Madeline Bowers (Beaumont)
LECC Coordinator - Tom Roberts (Tyler)
Victim Witness Coordinator - Becky Smith (Tyler)
Administrative Officer - Sandra Bridges (Beaumont)

Staffed Branch Offices:

* Ward R. Burke Federal Bldg.
104 N. 3rd St., Room 001
Lufkin, Texas 75901
EAGLE: ATXE01
Phone: (409)639-8671
FAX: (409)639-8683

* 660 North Central Expressway
Suite 400, Plano, Texas 75074-6749
EAGLE: ATXES01
Phone: (214)509-1201
FAX: (214)509-01209

* 1 Grand Ave., Sherman, Texas 75090-2656
EAGLE: ATXES01
Phone: (903)868-9454
FAX: (903)892-2792

* 110 N. College, Suite 700
Tyler, Texas 75702-7237
EAGLE: ATXET01
Phone: (903)597-8146
FAX: (903)592-3299

EOUSA Staff Update

Office of Counsel to the Director

On June 1, 1996, Assistant United States Attorney **Janis Innis-Thompson** joined the staff of the Office of Counsel to the Director.

On July 21, 1996, **Donna Enos** returned to EOUSA from her detail with the "Empowerment Zone, Enterprise Communities" Task Force, Office of the Vice President of the United States. Donna is working with the staff of the Office of Counsel to the Director.

On June 23, 1996, Attorney-Advisor **David Naimon** was reassigned from the Department's Office of Legislative Affairs to EOUSA's Office of Counsel to the Director. ❖

Office of Legal Education

On July 1, 1996, Assistant United States Attorney **Tony Hall**, District of Idaho, began a six-month detail as Assistant Director of the Attorney Generals Advocacy Institute, Asset Forfeiture and Financial Litigation, in EOUSA's Office of Legal Education. Assistant United States Attorney **Kathy Stark** who formerly held the Assistant Director position, accepted a position in the Eastern District of Pennsylvania.

Telecommunications and Technology Development

Video Teleconferencing

As of August 2, 1996, roll-about video teleconferencing systems have been installed and are fully operational in 50 United States Attorneys staffed locations. Equipment is on-site in another 11 locations with installations in progress.

Eighteen members of the AGAC have fully operational desktop video teleconferencing systems and systems for the remaining members are in the process of being installed or are awaiting the installation of transmission lines. ❖

Personnel Staff

New Fax Number

The EOUSA Personnel Staff has an additional fax number: (202)305-1430. The Personnel and Payroll Systems Analysis Branch can still receive faxes on (202)616-2867. ❖

Office of Legal Education

OLE Publications Corner

The Office of Legal Education's Publications staff works with a number of different types

of publications. In addition to working on the *United States Attorneys' Bulletin*, we are producing many other publications of interest to Assistant United States Attorneys and Department lawyers.

The OLE Litigation Series

We publish the OLEs Litigation Series books which are legal texts of practical skills that go out in hard copy to the districts. Copies of these books in distinctive blue binders are available in your office library. Books that have been published to date include: **Capital Litigation**, a death penalty litigation manual; **Civil Rights**, a manual on civil and criminal civil rights cases; the **Ethics and Professional Responsibility Manual**; **Firearms Offenses**, a Criminal Division manual for prosecuting federal firearms offenses; **Immigration Law**, a manual on civil and criminal immigration law; and **Violent Crimes**, a violent crime manual with emphasis on juveniles and gangs.

USABook

We also publish these books electronically, using the USABook computer program. USABook allows copies of our books to be put on the desktops of every lawyer in the Department. USABook versions of these books can be electronically searched and the results of the search can be converted into WordPerfect documents that can be edited, printed, or inserted into court documents. USABook allows us to publish other works originally published elsewhere, along with Department monographs and formbooks. In addition to the OLE Litigation volumes noted above, a complete installation of USABook includes the following works: **Advance Fee Fraud**, a monograph on prosecuting Nigerian advance fee fraud cases; **Civil Practice** (currently just a monograph on the statute of limitations under the Federal Tort Claims Act but future plans include expansion to a full civil practice manual); **Death Penalty Cases**, a collection of case summaries of United States Supreme Court death penalty cases; **Drafting Indictments**, the March 1995 Indictment Form Book; **Environmental Cases**, environmental crimes case summaries; **Ethics CFRs**, the text of all government ethics regulations; Harvey Handleys annotated **Fair Housing Act**; **Guideline Sentencing**, an outline of case law from the Federal Judicial Center; **Health Fraud Forms**, a collection of forms in health care fraud prosecutions; a Seventh Circuit manual on **Jury Management**; **Scientific Evidence**, a reference manual from the Federal Judicial Center; and an Assistant United States Attorneys telephone directory.

We have a number of other publications nearing completion, including a new OLE Litigation Series book, **Homicide Prosecutions**, and a USABook version of the **Asset Forfeiture Policy Manual**. We are also hard at work coordinating a revised and updated *United States Attorneys' Manual*.

If you have an idea for a *United States Attorneys' Bulletin* article, or if you have ideas for a new book, chapter, collection of forms, or other similar OLE Litigation or USABook project, contact David M. Nissman, (809)773-3920, AVISC01(DNISSMAN).

If you are interested in getting a full installation of USABook on your computer, contact your systems manager who can get the latest updates from the EOUSA Bulletin Board. Problems or questions concerning the USABook program should be directed to Ed Hagen, (202)616-6700, AEX12(EHAGEN), or on the Internet at ehagen@erols.com. ❖

OLE Projected Courses

OLE Director Janet Craig is pleased to announce projected course offerings for the months of August and September 1996 for the Attorney Generals' Advocacy Institute (AGAI) and the Legal Education Institute (LEI). Lists of these courses are on the following pages.

AGAI

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

LEI

LEI provides legal education programs to all Executive Branch attorneys, paralegals, and support personnel. LEI also offers courses designed specifically for paralegal and support personnel from USAOs. 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 quarterly mailings to Federal departments, agencies, and USAOs. Nomination forms are available in your Administrative Office or attached as Appendix A. 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 prior to the course. Please note that OLE does not fund travel or per diem costs for students attending LEI courses. ❖

Office of Legal Education Contact Information

Address:	Bicentennial Building, Room 7600 600 E Street, NW Washington, D.C. 20530	Telephone:	(202)616-6700
		Fax:	(202)616-7487

Director	Janet Craig, AUSA, SDTX
Deputy Director	David W. Downs
Assistant Director (AGAI-Criminal)	Dixie Morrow, AUSA, MDGA
Assistant Director (AGAI-Criminal)	Mary Jude Darrow, AUSA, EDLA
Assistant Director (AGAI-Civil and Appellate)	Jeff Senger, Civil Rights Division
Assistant Director (AGAI-Asset Forfeiture and Financial Litigation)	Tony Hall, AUSA, Idaho
Assistant Director (LEI)	Donna Preston
Assistant Director (LEI)	Eileen Gleason, AUSA, EDLA
Assistant Director (LEI-Paralegal and Support)	Donna Kennedy

AGAI Courses

Date	Course	Participants
August		
5-9	Advanced Criminal Trial	AUSAs, DOJ Attorneys
6-8	Advanced Computer Crimes	AUSAs, DOJ Attorneys
6-8	Financial Litigation Investigation/Enforcement West Coast	AUSAs, DOJ Attorneys
6-9	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
12-16	Advanced Civil Trial	AUSAs, DOJ Attorneys
13-16	International/National Security Coordinators	Security Coordinators
20-22	Selected Topics--Financial Litigation Agents	Financial Litigation Agents
27-29	Appellate Chiefs	Appellate Chiefs

September		
10-12	Sixth Circuit Component	AUSAs, DOJ Attorneys
10-13	Public Corruption	AUSAs, DOJ Attorneys
17-19	Financial Litigation Investigation/Enforcement East Coast	AUSAs, DOJ Attorneys
17-20	Criminal Civil Rights	AUSAs, DOJ Attorneys
25-27	Negotiations for Assistant United States Attorneys and DOJ Trial Attorneys	AUSAs, DOJ Attorneys
24-27	Homicide Investigations and Prosecution	AUSAs, DOJ Attorneys

LEI Courses

August		
5-8	Experienced Legal Secretaries	USAO Paralegals, DOJ Paralegals
12	Statutes & Legislative Histories	Agency Attorneys
13	Introduction to Freedom of Information Act	Agency Attorneys/Paralegals
14-16	Attorney Supervisors	Agency Attorneys
19-21	Discovery	Agency Attorneys
19-23	Civil Paralegal	USAO Paralegals, DOJ Paralegals
22-23	Freedom of Information Act for Attorneys Access Professionals	Agency Attorneys/Paralegals
26-28	Environmental Law	Agency Attorneys
30	Appellate Skills	Agency Attorneys

September		
9	Ethics for Litigators	Agency Attorneys
9-13	Legal Support	USAO/DOJ Legal Support
11-12	Evidence	Agency Attorneys
16-19	Examination Techniques	Agency Attorneys
17-20	Grand Jury Coordinators	USAO Grand Jury Clerks
20	Fraud, Debarment, and Suspension	Agency Attorneys
24	Ethics & Professional Conduct	Agency Attorneys
25-27	Advanced Negotiation Skills	Agency Attorneys
27	Legal Writing	Agency Attorneys/Paralegals
30	Computer Assisted Legal Research	Agency Attorneys/Support Staff

WordPerfect 5.1 Tips

Cleaning Up Your UDD

In WordPerfect for DOS, pressing the <F5> key (the list command) results in a prompt that looks something like this:

```
Dir N:\UDD\JSMITH\*.*
```

The name part of this prompt (JSMITH) is a system variable assigned to your computer that is loosely based on your name, and is also used by other programs like Email. Everyone is assigned a subdirectory on the central server hard drive using their user name. This is your default WP subdirectory, sometimes called your UDD (User Disk Directory).

The space allotted to individual UDDs is limited and your system may slow down as the number of files increases. You should periodically clean up the UDD and delete files that are no longer needed. Files that must be saved but are not needed daily should be archived.

1. **Deleting files:** Press <F5> and then <Enter> to bring up the list of files in your UDD. It is a good idea to sort the files by date, since the older files are more likely to be good candidates for deletion. This can be done by typing the letters **sod** (or if you prefer, the numbers **533**). Although files can be deleted individually, by highlighting them and selecting **2 Delete**, it is easier to mark each file for deletion first, using the * character, and then delete them as a group. NOTE: If you can't remember what's in a file, highlight it and press the <Enter> key to view its contents.

2. **Archiving files:** Files that need to be stored can be moved out of your UDD and saved in another place. Normally, this would be your local hard drive. Press <F5> and then <Enter> to bring up the list of files in your UDD. You will need to create a subdirectory on your C: drive for the files. Select **7 Other Directory** and type **C:\ARCHIVE** (or some similar name). Answer **Y** when asked if you want to create the new directory. Then use * to mark the files you want to place in the archive directory and select **3 Move/Rename** to move them there. When you are done, make your UDD the default subdirectory again by selecting **7 Other Directory**, and entering **N:.** ❖

DOJ Highlights

Appointments

Schroeder Acting Assistant Attorney General, Office of Legal Counsel

On July 1, 1996, Christopher H. Schroeder, former Deputy Assistant Attorney General and Special Counsel in the Office of Legal Counsel (OLC), became Acting Assistant Attorney General in charge of the OLC. Currently a professor of law and public policy at Duke University and co-chair of the Center for the Study of the Congress at Duke Law School, Schroeder had

served in the two OLC positions since 1993. ❖

Cañas Director of Drug Intelligence Center

On July 19, 1996, Richard L. Cañas, a career agent in the Drug Enforcement Administration, was named Director of the National Drug Intelligence Center in Johnstown, Pennsylvania. Cañas was the Special Agent in Charge of the DEA's Phoenix, Arizona, Division where he managed 240 employees, including 90 special agents in five districts. ❖

Antitrust Division

Joint Task Force to Examine How Analysis of Mergers Consider Cost Savings

On June 26, 1996, the Federal Trade Commission (FTC) and the Antitrust Division announced that they have established a joint task force to examine whether and, if so, how the antitrust analysis of mergers should take into account any probable cost savings from mergers. The task force will consider whether to recommend any change in the treatment of efficiencies in the agencies' joint 1992 Horizontal Merger Guidelines. Copies of the FTC Staff Report, "Anticipating the 21st Century: Competition Policy in the New High-Tech, Global Marketplace," are available from FTC's Public Reference Branch, Room 130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Reference Branch telephone number is (202)326-2222 or TDD (202)326-2502 for the hearing impaired. For further information, please contact Gina Talamona, DOJ Office of Public Affairs, (202)616-2771. ❖

Civil Division

Compensation Authorized for U.S. Survivors of Holocaust

On June 13, 1996, DOJ announced that Germany will pay reparations to certain United States survivors of Nazi persecution to be identified under a new Holocaust Claims Program. The program, based on a September 19, 1995, agreement between the United States and Germany, will be conducted by the Foreign Claims Settlement Commission of the United States. "It is essential that those who suffered at the hands of the Nazis receive reparations for what they lost," said Attorney General Janet Reno in announcing the program at the Simon Wiesenthal Center in Los Angeles. "We can't calculate their loss in mere money, but we can seek to redress their losses." In the U.S.-German agreement, Germany agreed to pay three million marks (about \$2.1 million) to certain Americans who survived Nazi concentration camps and pledged to provide funds for reparations to U.S. survivors of the Holocaust identified before September 1997. Congress passed legislation authorizing the Foreign Claims Settlement Commission to determine the validity of claims under the agreement. Their findings will be given to the Department of State, who will negotiate a final settlement with Germany. For further information, contact the Foreign Claims Settlement Commission, 600 E Street, N.W., Suite 6002, Washington, D.C., (202)616-6975, or fax (202)616-6993. ❖

Criminal Division

Application of *Staples v. United States* to Firearms Embraced by National Firearms Act

On June 3, 1996, Acting Assistant Attorney General John C. Keeney, Criminal Division, forwarded a memo to United States Attorneys and Criminal Division Section Chiefs concerning the application of *Staples v. United States*, 114 S.Ct. 1793 (1994), to firearms embraced by the National Firearms Act. In *Staples v. United States*, the Supreme Court held that, in order to obtain a conviction for possession of an unregistered automatic weapon, in violation of the National Firearms Act (NFA) (26 U.S.C. § 5861(d)), the Government must prove that the defendant knew of the features or characteristics that brought the weapon within the Act. *Id.* At 1804. In the wake of the *Staples* decision, the courts of appeals have disagreed as to whether its mens rea requirement applies to all NFA "firearms." Several courts have held that the reasoning of *Staples* applies not only to automatic weapons but to silencers and short-barreled weapons as well. See *United States v. Thompson*, No. 94-30104, 1996 WL 204095 at * 3 (9th Cir., Apr. 29, 1996) (silencer); *United States v. Rambo*, 74 F.3d 948, 955 (9th Cir. 1996) (same: *United States v. Starkes*, 32 F.3d 100, 101 (4th Cir. 1994) (short-barreled shotgun); and *United States v. Mains*, 22 F.3d 1222, 1229 (10th Cir. 1994) (same but holding that instruction adequate). In contrast, two other courts have held that the requirement of proving knowledge concerning the unlawful characteristics of certain firearms embraced by the NFA does not extend to those firearms whose unlawful characteristics are readily discernable from their appearance. See *United States v. Imes*, 1996 WL 157194 (9th Cir. Apr. 5, 1996) (short-barreled shotgun), petition for rehearing pending and *United States v. Barr*, 32 F.3d 1320, 1324 (8th Cir. 1994) (same). In *Pulido v. United States*, No. 95-7946, the Solicitor General addressed the question whether the silencer requirement of *Staples* applies to a homemade silencer. In doing so, he filed a brief on behalf of the United States taking the position that, **in all cases prosecuted under the NFA**, the Government must prove that the defendant knew the features of the firearm that brought it within the scope of the Act and that the defendant is entitled to an instruction to that effect.

Prosecutors should adhere to this position in all pending and future cases brought under the NFA. Consequently, in such cases, the Government should anticipate proving the defendant's knowledge of the NFA weapon's unlawful characteristics and request an appropriate instruction on knowledge. We suggest the following jury instruction:

In order to convict the defendant of a violation of the NFA, the Government must prove beyond a reasonable doubt that the defendant had knowledge of the characteristics of the weapon that brought it within the definition of a firearm under that Act. Thus, in this case, the Government must prove beyond a reasonable doubt that the defendant [knew the firearm was designed (or modified) to fire automatically] [knew he possessed a shotgun with a barrel length shorter than 18 inches or with an overall length less than 26 inches] [knew he possessed a silencer] [knew he possessed a grenade]. Such knowledge can be established through circumstantial evidence.

In pending appeals, the Government should, likewise, concede that knowledge of an NFA firearm's unlawful characteristics is an element of the offense and that the defendant was entitled to a knowledge instruction upon request. In some cases, where such an instruction was not given,

a plain error or a harmless error argument may be available. This guidance supersedes the suggestion in Federal Firearms Offenses (July 1995) at 7-10 that, for purposes of the silencer requirement of *Staples*, a distinction can be drawn between NFA firearms, such as sawed-off shotguns, whose unlawful characteristics are manifest, and those whose unlawful characteristics are not. This portion of the Firearms Manual will be revised to conform to the Solicitor General's position. ❖

Handling Documents Obtained by the Grand Jury

On May 17, 1996, Acting Assistant Attorney General John C. Keeney, Criminal Division, forwarded a memo to United States Attorneys that included *Guidelines for Handling Documents Obtained by the Grand Jury*. These *Guidelines*, approved by the Deputy Attorney General, address the need to establish and follow proper record keeping procedures regarding evidence obtained by the grand jury. DOJ routinely receives requests for access to documents from Congress, from individuals or entities filing requests pursuant to the Freedom of Information Act, and from private and Government lawyers engaged in civil litigation. Records retention practices can make it difficult to identify what evidence may properly be provided in response to a request and may hamper the proper use of non-grand jury information by Department civil attorneys. For example, if a file marked "Grand Jury" includes documents obtained by grand jury subpoena and documents otherwise obtained, it is difficult in some instances to determine whether the Rule 6 limitations on disclosure apply to certain documents in the file. The task is more difficult in those situations where the prosecutor who handled the grand jury matter is no longer in Government service. The *Guidelines* apply to the United States Attorneys and to the litigating Divisions of the Department and make it easier to determine those documents that reveal matters occurring before the grand jury and those that do not.

Although local practice, local rules, and case law varies to some extent among the Circuits, every effort should be made to apply a consistent procedure that will maintain the integrity of evidence obtained by the grand jury and, at the same time, assist in identifying what are "matters occurring before a grand jury." This will enable a clear and proper determination of what material can and should be released to a FOIA requester and what documents may be shared with attorneys for the Government engaged in civil litigation. Generally, Government attorneys who are handling only civil cases do not have automatic access to grand jury materials but may obtain access to such materials only upon court order issued pursuant to Fed. R. Crim. P. 6(e)(3)(C)(I). See *United States v. Sells Engineering, Inc.*, 463 U.S. 418, 427 (1983). A specific exception has been created for certain banking/ financial matters. See 18 U.S.C. § 3322.

Accordingly, whenever it is practicable to do so, prosecutors obtaining evidence in a criminal investigation should follow the procedures in the *Guidelines for Handling Documents Obtained by the Grand Jury*. The procedures, a supplement to those described in the Department's *Federal Grand Jury Practice Manual*, pp. 106-120, have been submitted for inclusion in the *United States Attorneys' Manual*, currently under revision. The procedures do not create any rights in third parties.

If you would like a copy of the *Guidelines for Handling Documents Obtained by the Grand Jury*, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Court Order Concerning Enforcement of 47 U.S.C. § 223

On May 2, 1996, Acting Assistant Attorney General John C. Keeney, Criminal Division, forwarded a memo to United States Attorneys regarding a May 15, 1996, Court Order that, until further notice, should govern the conduct of United States Attorneys' offices concerning the enforcement of the new statutes pertaining to the dissemination of certain materials on the Internet. The Order clarifies whether and when the Attorney General and her agents, including United States Attorneys and the Federal Bureau of Investigation, can "review" complaints about sexually oriented content on the Internet or an online service. The Order states:

1. Plaintiffs' Motion to Clarify and Restate the Courts Orders Concerning Defendants' Actions pending Resolution of Plaintiffs' Motions for Preliminary Relief is GRANTED;
2. Review by the Attorney General or her agents, including the Federal Bureau of Investigation, of sexually oriented Internet content falls within this Court's Temporary Restraining Order of February 15, 1996, and the Stipulation this Court approved by Order of February 26, 1996, when that "review" is triggered by (1) content that is neither obscene nor child pornography, or (2) complaints of Internet content that, as described, constitute neither obscenity nor child pornography;
3. The Attorney General and her agents are ENJOINED from engaging in "review" of a content provider if that review is triggered by either of the two circumstances described in paragraph two of this Order; and
4. The Attorney General and her agents retain their full power to "review" complaints regarding Internet content that constitutes obscenity or child pornography, provided that, if upon review, it appears that the material complained of is neither obscene nor child pornography, the "review" must then immediately cease.

If you would like a copy of Mr. Keeney's memo on further instructions on prosecutions under the Communications Decency Act, including earlier memos on additional instructions on prosecutions under the Communications Decency Act and a copy of the May 15, 1996, Court Order, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Questions in the Wake of *Bailey v. United States*, 116 S. Ct 501 (1995)

On June 13, 1996, Acting Assistant Attorney General John C. Keeney, Criminal Division, forwarded a memorandum to United States Attorneys and Criminal Division Section Chiefs, addressing questions concerning matters not addressed or only touched on in a December 13, 1995, memo to United States Attorneys and Criminal Division Section Chiefs, on *Bailey v. United States*. That memo set forth strategies for dealing with challenges to Section 924(c) convictions based on *Bailey*. See February 1996 *USAB*, Volume 44, No. 1, pp. 36-37. The issues addressed in Mr. Keeney's June 13, 1996, memo include (1) When the Jury is Charged with Respect to "Use" and "Carrying" in the Disjunctive; (2) Automobile Cases; (3) Resentencing; (4) Successive Habeas Motion Raising *Bailey* Claim; and (5) Credit Toward Supervised-Release Term of Prison Time Served Pursuant to Vacated Section 924(c) Conviction. If you would like a copy of Mr.

Keeney's June 13 memo, please contact Joel Gershowitz, (202)514-3742. ❖

Retroactivity of Title I of 1996 Antiterrorism and Effective Death Penalty Act

On June 28, 1996, Acting Assistant Attorney General John C. Keeney, Criminal Division, forwarded a memorandum to United States Attorneys which states the Department of Justice's official position on whether the amendments to the law governing 28 U.S.C. 2255 motions, included in Title I of Antiterrorism and Effective Death Penalty Act of 1996, are retroactive. If you have questions concerning Title I of the Act or its retroactivity, or if you would like a copy of Mr. Keeney's memorandum, please contact David S. Kris, Criminal Division, Appellate Section, (202)514-9111, Email CRM04(KRIS), or fax (202)514-8232. ❖

DOJ Submits 1994 Asset Forfeiture Report

The Department collected more than \$549.9 million in assets from criminals in fiscal year 1994 and shared \$234.6 million with state and local enforcement agencies, according to a report submitted to Congress on June 24, 1996. In her submission letter to Congress, Attorney General Janet Reno said, "Asset forfeiture has proven to be a powerful weapon in combating crime, as it strips criminals of the proceeds of their illegal activities. The asset forfeiture program shows the federal government is in full partnership with state and local crime fighting agencies." The asset forfeiture program not only destroys criminal organizations effectively by depriving drug traffickers, racketeers, and other criminal syndicates of ill-gotten gains, but enhances law enforcement and intergovernmental cooperation among federal, state, local, and foreign law enforcement agencies through equitable sharing of forfeiture proceeds. ❖

Obtaining Criminal Forfeiture Seizure Warrants for Property Located Outside Districts

In a May 22, 1996, memo from Asset Forfeiture and Money Laundering (AFML) Section Chief Gerald E. McDowell to United States Attorneys, EOUSA, USMS, FBI, DEA, INS, Postal Inspection Service, and FDA, he issued Policy Directive 96-5 addressing the question: Must a seizure warrant for property subject to criminal forfeiture be issued in the district where the property is located, or may it also be issued by the court in the district where the criminal indictment is pending? The Asset Forfeiture and Money Laundering Section has concluded that when property subject to criminal forfeiture is located in one district and the indictment is pending in another district, a seizure warrant may be obtained in either district. For a copy of Mr. McDowell's memo which substantiates the conclusion and discusses the policy and procedures, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Electronic Surveillance Bulletin

The Summer 1996 issue of the Criminal Divisions *Electronic Surveillance Bulletin*, published by the Electronic Surveillance Unit (ESU) of the Office of Enforcement Operations, covers information on emergency procedures (Title III Interceptions, pen register/trap and trace, and how to contact the ESU); the Antiterrorism and Effective Death Penalty Act of 1996; the use of Title III Interceptions at Detection Hearings; recent cases; and Electronic Surveillance Unit

personnel changes. For further information, please contact Attorney Carla Raney, Criminal Division, (202)514-6837. ❖

Solicitor General

***United States v. Virginia*, No 94-1941, Together with *Virginia v. United States*, No. 94-2107. Argued on January 17, 1996, by Deputy Solicitor General Paul Bender. (Decided June 26, 1996.)**

The United States sued the Virginia Military Institute (VMI), Virginia's sole single-sex public college, contending that its exclusion of women violated the Equal Protection Clause. The Fourth Circuit reversed the district court's holding of no constitutional violation. On remand, the district court approved a "remedial" plan that kept VMI's admission policy but created a "parallel" program for women, the Virginia Women's Institute for Leadership (VWIL), at a private women's liberal arts college. The Fourth Circuit affirmed, concluding that Virginia's separate programs for men and women were "substantively comparable" and constitutional.

The Supreme Court, per Ginsburg, J., reversed. The Court affirmed that heightened review applies, so that "[p]arties who seek to defend gender-based government action must demonstrate an exceedingly persuasive justification for that action"; this requires a showing "at least that the challenged classification serves important governmental objectives and that the discriminatory means employed are substantially related to the achievement of those objectives" (internal quotation marks omitted). Applying this test, the Court held that Virginia violated equal protection and that VWIL did not cure the violation by providing equal opportunity.

In finding an equal protection violation, the Court rejected Virginia's asserted interest in promoting a diversity of educational approaches, finding no persuasive evidence of record that VMI's male-only admission policy actually was in furtherance of such an interest, particularly where Virginia provided single-sex education only to men. The Court also rejected Virginia's argument that VMI's "adversative" training method provides educational benefits that could not be made available to women without modification. Noting that the district court's findings rested on generalizations about "most women" or "most men," the Court concluded that Virginia's justification for excluding all women where some were qualified cannot rank as "exceedingly persuasive." In rejecting VWIL as a remedy, the Court both emphasized the overbreadth of the gender generalizations on which Virginia relied and held that Virginia had not shown substantial equality in the separate educational opportunities at VMI and VWIL. The Court further held that the Fourth Circuit erred in applying deferential review and in devising a "substantive comparability" inquiry. Stating that "[w]omen seeking and fit for a VMI-quality education cannot be offered anything less," the Court remanded for further proceedings. (Justice Thomas took no part in the consideration or decision of the case.)

Chief Justice Rehnquist concurred in the judgment, arguing that use of the phrase "exceedingly persuasive justification" created uncertainty about the standard of review of gender classifications. He agreed that Virginia had not justified its position, but urged that VMI might not need to be made coeducational. Justice Scalia dissented, arguing that the intermediate scrutiny applied to gender classifications cannot invalidate longstanding traditions such as VMI's admission policy. He also argued that this standard, properly applied, would have upheld VMI's admission policy, and that the Court had in effect used strict scrutiny (where rational basis review would, in

his view, be more appropriate). He also contended that under the Court's principles, single-sex public education is unconstitutional, and that public support for private single-sex education may be unconstitutional. ❖

***Colorado Republican Federal Campaign Committee v. FEC*, No. 95-489. Argued April 15, 1996, by Solicitor General Drew S. Days, III. (Decided June 26, 1996.)**

Before the Colorado Republican Party selected its 1986 senatorial candidate, its Federal Campaign Committee, a petitioner here, bought radio advertisements attacking the Democratic Party's likely candidate. The FEC sued, charging the Party with violating the Party Expenditure Provision of the Federal Election Campaign Act of 1971, 2 U.S.C. 441a(d)(3), which imposes limits on political party "expenditure[s] in connection with the general election campaign of a [congressional] candidate." The Party argued that the expenditure limitations violated the First Amendment as applied here, and filed a counterclaim seeking to facially challenge the Provision as a whole. The district court held that the Provision did not cover the expenditure at issue, granted the Party summary judgment, and dismissed the counterclaim as moot. The Tenth Circuit reversed, holding that the Provision covered the expenditure and was constitutional.

The Supreme Court vacated the judgment and remanded for further proceedings. Justice Breyer, joined by Justices O'Connor and Souter, announcing the judgment of the Court, concluded that the First Amendment precludes the Provision from covering independent expenditures made by a political party independently, without coordination with any candidate, which the summary judgment record showed as a factual matter to be at issue here. Justice Breyer reasoned that cases such as *Buckley v. Valeo*, 424 U.S. 1 (1976), and *FEC v. National Conservative PAC*, 470 U.S. 480 (1985), precluded application of the Provision because the government pointed to no evidence or legislative findings suggesting any special corruption problem in respect to political parties' independent expenditures. Rejecting the government's claim for deference to FEC regulations deeming all party expenditures "coordinated" as not representing an empirical judgment, he also declined to consider the facial challenge at this stage of the litigation. Justice Kennedy, joined by the Chief Justice and Justice Scalia, concurred in the judgment and dissented in part, concluding that on its face the Act violates the First Amendment when it restricts as a "contribution" a political party's spending "in cooperation, consultation, or concert, with * * * a candidate." He concluded that, under *Buckley*, spending money on one's own speech must be permitted; that is what political parties do when they make the prohibited expenditures; and there is no constitutional distinction between expenditures by a candidate or his campaign committee and party spending "in cooperation, consultation, or concert with a candidate." Justice Thomas, joined by the Chief Justice and Justice Scalia, concurred in the judgment and dissented in part, concluding, because the question was squarely presented and out of concern that First Amendment expression may be chilled, that the Provision is unconstitutional on its face. Under *Buckley*, he concluded, the Provision is unconstitutional because the corruption rationale is not implicated in this context. Justice Thomas also concluded that *Buckley's* distinction between campaign contributions and expenditures should be rejected here because it is not a constitutionally significant distinction.

Justice Stevens, joined by Justice Ginsburg, dissented, arguing that "all money spent by a political party to secure the election of its [senatorial] candidate * * * should be considered a 'contribution' to his campaign," and that federal limits on spending by political parties are

constitutionally supported by interests in avoiding the appearance and the reality of a corrupt political process, precluding individuals from circumventing the statutory cap on contributions to candidates, and leveling the electoral playing field by constraining federal campaign costs. ❖

***Medtronic, Inc. v. Lohr*, No. 95-754, together with *Lohr v. Medtronic, Inc.*, No. 95-886. Argued April 23, 1996, by Deputy Solicitor General Edwin S. Kneeder. (Decided June 26, 1996.)**

Cross-petitioner Lora Lohr was injured when her Medtronic pacemaker failed. She and her husband filed a Florida state-court suit alleging negligence and strict liability claims, and Medtronic removed the case to federal district court, which ultimately dismissed the complaint, holding cross-petitioners claims preempted by 21 U.S.C. 360(k), which provides that "no State or political subdivision of a State may establish or continue in effect with respect to a device intended for human use any requirement (1) which is different from, or in addition to, any requirement applicable under [the Medical Device Amendments of 1976] to the device, and (2) which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under [the MDA]." The court of appeals reversed in part and affirmed in part, concluding that the negligent manufacturing and failure to warn claims were preempted but that the negligent design claims were not.

The Supreme Court, per Stevens, J., reversed in part, affirmed in part, and remanded for further proceedings. ❖

***Romer v. Evans*, No. 94-1039 [Decided May 20, 1996 (non-gov).]**

The Court held that "Amendment 2" to the Colorado Constitution, which repealed and precluded antidiscrimination laws and all other governmental action designed to protect persons based on their "homosexual, lesbian or bisexual orientation, conduct, practices or relationships," violated the Equal Protection Clause. The opinion for the Court by Justice Kennedy held that the provision both impermissibly imposed "a broad and undifferentiated disability on a single named group" and lacked a rational relationship to any legitimate state interest. Justice Scalia's dissent (joined by the Chief Justice and Justice Thomas) relied on *Bowers v. Hardwick*, 478 U.S. 186 (1986), and *Davis v. Beason*, 133 U.S. 333 (1890). ❖

***BMW of North America v. Gore*, No. 94-896 (Decided May 20, 1996.)**

In this case, the Supreme Court held 5 to 4 that a \$2 million punitive damages award was grossly excessive and, therefore, violated due process. In an opinion by Justice Stevens, the Supreme Court ruled that elementary notions of fairness require that a person receive fair notice of the severity of a penalty that a State may impose. The Court set forth three "guideposts" to be considered in determining whether a punitive damages award is unconstitutionally excessive: (1) the degree of reprehensibility of the conduct; (2) the disparity between the harm suffered by the plaintiff and the punitive damages award; and (3) the difference between the damages award and the civil penalties authorized or imposed in comparable cases. Justice Breyer filed a concurring opinion, which was joined by Justices O'Connor and Souter. Justice Scalia filed a dissenting

opinion, which was joined by Justice Thomas; Justice Ginsburg filed a dissenting opinion, which was joined by Chief Justice Rehnquist. Both dissenting opinions state that the Court's decision encroaches on territory traditionally within the domain of the States. ❖

Office of Justice Programs

OJP Responds to Concerns of United States Attorneys

Assistant Attorney General Laurie Robinson

Office of Justice Programs

I was pleased to be able to visit with so many of you at the recent United States Attorneys' Conference in Baltimore. Thank you for allowing OJP to participate. The roundtable sessions moderated by United States Attorneys Tom Monaghan and Fred Thieman provided an opportunity for a lively exchange of information. I was particularly pleased that so many of you expressed interest in becoming more involved in OJP's planning process, and look forward to working toward a continuing collaborative relationship.

By now, you should have received several computer printouts with information on active grants in your districts. This is the first time we've tried to provide such comprehensive lists of district-specific grants and I hope the information is helpful. If you have suggestions on how future documents of this kind could be more helpful, please contact Marlene Beckman of my office on (202)307-0703.

As a result of other concerns raised by your colleagues at the conference, we have taken the following steps:

- The Office of Juvenile Justice and Delinquency Prevention is preparing topical talking points on successful crime prevention strategies. They will be distributed to United States Attorneys in the near future;
- OJP is revising its entire application review and award procedures, and is moving to implement steps to notify United States Attorneys offices more quickly about grants in their districts; and
- The Bureau of Justice Assistance has written letters to each of the state agencies that administer the Edward Byrne Memorial State and Local Law Enforcement Assistance Formula grant, encouraging them to involve United States Attorneys on the Byrne agencies' policy boards. BJA has recommended that the 10 state agencies that do not have policy boards establish a liaison to the appropriate United States Attorney's office.

It was great to see so many representatives from United States Attorneys' offices join us at the recent Weed and Seed Regional Conference in New Orleans. Thanks to United States Attorneys Eddie Jones and Tom Monaghan for their participation. I look forward to working with all of you on Weed and Seed and the other community-based initiatives you have helped us craft and implement.

OJP Documents

OJP Updates Progress of Crime Law Programs

In response to increasing interest in the Crime Law programs funded in Fiscal Year 1996, OJP has recently published, "Crime Act Programs Fiscal Year 1996 At-A-Glance." Specifically, the document includes information on FY 1996 appropriations and the President's request for FY 1997; program information, including funding levels authorized by the Crime Act; who can apply for grants; and status of program regulations, guidelines, applications kits, or reports. This document will be continually updated as progress is made on these programs. Copies of the document were distributed at the United States Attorneys' Conference in Baltimore and through the OJP liaisons to United States Attorneys' offices. For additional copies, please contact Laura Lewis or Doug Johnson, OJP's Office of Congressional and Public Affairs, (202)307-0703.

The following recently released documents may be of interest to jurisdictions in your district:

Local Law Enforcement Block Grants Program presents a brief overview of the \$503 million program that will provide units of local government with funds to underwrite projects to reduce crime and public safety. The fact sheet includes eligibility requirements for applicants, information on the purposes for which funds can be spent, and information on how funds will be distributed. For additional copies of the fact sheet, please contact the Department of Justice Response Center at (800)421-6770.

To obtain free copies of any of the following recently released documents, contact the Juvenile Justice Clearinghouse at (800)638-8736.

Reducing Youth Gun Violence: An Overview of Programs and Initiatives was developed to assist United States Attorneys with violence prevention efforts and help states and jurisdictions respond more effectively to this crisis. The document includes an executive summary, a directory of youth gun violence reduction programs, a directory of youth gun violence prevention organizations, and a bibliography of research, evaluation, and publications on youth and guns.

Curfew: An Answer to Juvenile Delinquency and Victimization? provides an overview of the legal challenges to curfew and presents profiles of seven jurisdictions with comprehensive curfew enforcement programs that both address the factors that place these youth at risk for delinquency and victimization and promote the development of healthy behavior.

Juvenile Detention Training Needs Assessment provides information on the Juvenile Justice Personnel Improvement Project implemented by the Office of Juvenile Justice and Delinquency Prevention through the National Juvenile Detention Association. The document also addresses three objectives intended to improve juvenile detention practices; a review of the literature on job-related skills and related training needs; common training practices; and recommendations for assessing and improving training.

Department of Justice Programs for Missing and Exploited Children provides information

about DOJ programs and funded activities related to missing and exploited children and gives examples of OJJDP's role as coordinator of the overall federal response.

Federal Resources on Missing and Exploited Children: A Directory for Law Enforcement and Other Public and Private Agencies was prepared by the Federal Agency Task Force for Missing Children, and represents initial efforts to enhance the coordination of the delivery of federal services to missing and exploited children and their families. The directory provides information about the many services, programs, publications, and training that address issues of child sexual exploitation, child pornography, child abductions, and missing children cases.

For a free copy of either of the following recently released documents, please contact the National Criminal Justice Reference Service, (800)851-3420:

Convicted by Juries, Exonerated by Science: Case Studies in the Use of DNA Evidence to Establish Innocence After Trial, which was released at the NIJ-sponsored conference on current DNA technology in June, stresses the importance and utility of DNA evidence presenting the challenges to the scientific and justice communities. The document also includes commentaries on DNA testing from noted experts in the field. In a recent press release, Attorney General Reno said, "DNA is a powerful tool for convicting the guilty. Today's report shows that it is equally important for protecting the innocent. We must continue to use technology to serve justice." In conjunction with the release of this DNA study, the Justice Department awarded 37 grants totaling \$8.75 million to state and local governments to develop or improve DNA testing capabilities in state and local forensic laboratories. Montana Department of Justice was awarded \$150,000 to increase the capacity and improve the capability of its DNA testing system to collect and process DNA samples from convicted felons and crime scenes. Montana will establish a DNA laboratory to service the entire state. Inquiries regarding Montana's award should be directed to William Unger, Division Administrator, Montana Department of Justice, (406)728-4970. For a copy of the report, call (800)851-3420.

HIV/AIDS and STDs in Juvenile Facilities reports the findings of a 1994 survey by the National Institute of Justice and the Centers for Disease Control of policies, programs, and data regarding HIV/AIDS and sexually transmitted diseases in state and local juvenile justice detention centers and training schools. The document reports that although only about 1 percent of individuals diagnosed with AIDS between 1993 and 1994 were between the ages of 13 and 19, many youths engage in high-risk behavior that puts them in danger of contracting HIV and STDs.

❖

OJP Fiscal Year 1996 Program Plans

In a May 23, 1996, memo to United States Attorneys, Assistant Attorney General Laurie Robinson forwarded a copy of OJPs' FY 1996 Program Plans, including discretionary grant funding goals, priorities for the OJP components, how to apply for grant funds, and specific contacts and resources for additional information on programs. For a copy of the document, please contact OJP's Office of Congressional and Public Affairs, (202)307-0703. ❖

Research in Action

The National Institute of Justice's March 1996 issue of *Research in Action* highlights articles about the Internet, including, "How to Get to NCJRS Online," PAVNET: A model of Internet use," and a list of contact persons to answer questions about Internet services. For copies of the publication, please contact the National Criminal Justice Reference Service, (800)851-3420. ❖

Reminder

To facilitate communication between OJP and United States Attorneys' offices, we have designated OJP staff as liaisons to United States Attorneys' offices and asked that United States Attorneys name someone as a liaison to OJP. If you have not yet named a liaison, please do so. If you do not know the name of your OJP liaison, please contact Marlene Beckman, (202)307-5933. Each United States Attorney's office has been provided with a liaison whether or not it has named a liaison to OJP. ❖

Bureau of Justice Statistics

Probation and Parole Population Reaches Almost 3.8 Million

On June 30, 1996, DOJ announced that there were almost 3.8 million adult men and women on probation or parole at the end of 1995, an increase of about 119,000 during the year. The 3.2 percent increase was slightly lower than the 3.4 percent average annual growth rate since 1990. The number of adults in the United States under some form of correctional supervision, including those held in local jails and state and federal prisons, totaled more than 5.3 million. The number on probation rose by four percent during the year, the number on parole by one percent, and the number in jail or prison by six percent. Since 1980, the total number under correctional supervision has almost tripled, growing at an average annual rate of 7.4 percent. ❖

Office of Juvenile Justice and Delinquency Prevention

Efforts to Control Gang Violence

On June 20, 1996, at an anti-gang conference in Dallas, Attorney General Janet Reno announced that communities in all 50 states reported that approximately 652,000 gang members are part of 25,000 gangs. According to a 1995 National Youth Gang Survey, the first large-scale nationwide survey of gang activity, gang problems are reportedly worsening in 48 percent of the communities and improving in only 10 percent. The Attorney General said, Gang violence has spread to every corner of America. We are committed to putting these gangs out of business with a tough, smart mix of prosecutions, police, aid to communities, and common-sense programs to invest in young people before they take the wrong path. The survey and the conference are steps in the Administration's efforts to control gang violence. Recently, President Clinton submitted the Anti-Gang and Youth Violence Control Act of 1996 to Congress. The bill creates mandatory minimum sentences for possessing a firearm in the commission of a drug felony or violent crime

and for selling drugs to kids. It would also amend the Federal Code to give prosecutors the discretion to prosecute a serious juvenile offender, in certain cases, as an adult for violent or drug-related felonies. ❖

National Institute of Justice

Science and Technology Programs

The National Institute of Justice's (NIJ) Science and Technology programs are designed to develop tools that will improve the operational efficiency of all aspects of the criminal justice system. NIJ established the Office of Science and Technology (OST) to assist state and local law enforcement and corrections in using technology in support of the criminal justice system. OST supports the development of the latest technologies to support national needs served by federal law enforcement and corrections agencies. OST's central element of technology information collection and dissemination is the Justice Technology Information Network (JUSTNET) the World Wide Web home page that serves as the gateway to information and services of interest to law enforcement. JUSTNET provides access to interactive services such as "chat line and bulletin board" and a bulletin board with password protection for law enforcement or corrections practitioners. Access to commercially available law enforcement and corrections products and technologies is available through JUSTNET at <http://www.nlectc.org>. NIJ's National Law Enforcement and Corrections Technology Centers (NLECTC) based in Rockville, Maryland, provides criminal justice professionals with information on available technology, guidelines, and standards for these technologies, and technical assistance in implementing them. NLECTC is a component of a Technology Information Network (TIN) that allows law enforcement and criminal justice users easy access to information on an increasingly broad range of products and technologies applicable to their requirements. Five regional centers are strategically located across the United States to ensure that state and local agencies remain involved in keeping NIJ and NLECTC focused on current law enforcement and corrections problems and providing valuable critiques to solve problems. The regional centers assist in determining agency technology and research needs, identify and evaluate available technologies, facilitate partnerships among private and public organizations in developing new technologies, provide test bed demonstrations of these technologies, and determine innovative ways to leverage limited law enforcement funding.

NLECTC has developed databases and a bulletin board with 24-hour access to NLECTC. Information available includes:

- Manufacturer and product identification that will help agencies wanting to buy a particular product to access a comprehensive list of manufacturers of that product,
- User product data exchange to link agencies considering the purchase of a product with other users of that product to evaluate its effectiveness, and
- Technical assistance to help agencies locate or borrow equipment from other agencies or to locate experts in a particular field.

Any technology that can be of significant use to law enforcement, shows promise of improving important law enforcement capabilities, and can be made affordable is a candidate for development by NIJ. A few of the projects recommended by the Law Enforcement and Corrections Technology Advisory Council (LECTAC) (formerly the Technology Assessment Program Advisory Council) already underway or to be initiated under the regional centers include better, faster, cheaper methods of DNA identifications; Global Positioning Systems/Geographic Information Systems technologies; illicit substance detection systems; surveillance technologies; and tracking systems to use in tracking suspects or to keep close tabs on persons on probation or parole.

The names, addresses, contact representatives, and phone numbers for the NIJ Center Headquarters' office, the NLECTC base office, and the five regional offices are listed below.

NIJ Centers (Headquarters)
Office of Science and Technology
National Institute of Justice
633 Indiana Avenue, N.W., Room 917
Washington, D.C. 20531
Contact: Program Manager Kevin Jackson
Phone: (202)307-2956
Fax: (202)307-9907

National Law Enforcement and Corrections
Technology Center
1600 Research Boulevard
Rockville, Maryland 20850
Contact: Project Manager Marc H. Caplan
Phone: (800)248-2742 or (301)251-5260
Fax: (301)251-5149

NLECTC, Northeast Region
Rome Laboratories
26 Electronic Parkway
Griffis AFB, New York 13441
Contact: Director John Ritz
Phone: (315)330-3527
Fax: (315)330-3022

NLECTC, Southeast Region
7325 Peppermill Parkway
North Charleston, South Carolina 29418
Contact: Steve Bishop
Phone: (803)207-7770
Fax: (803)207-7776

NLECTC, Rocky Mountain Region

2050 East Iliff Avenue
Denver, Colorado 80208
Contact: Director James A. Keller
Phone: (303)871-2829
Fax: (303)871-2500

NLECTC, Western Region
P.O. Box 92957
Mail Station M8/224
Los Angeles, California 90009-2957
Contact: Director Robert Pentz
Phone: (310)336-2171
Fax: (310)336-2227

Border Research and Technology Center
United States Attorneys' Office
880 Front Street, Room 6293
San Diego, California 92101-8800
Contacts: Chris Aldridge
Phone: (619)685-1491, and
Phil Halpern Phone: (619)557-5610
(Halpern) Fax: (619)557-5782 ❖

Violence Against Women Office

Violence Against Women Act NEWS

In July, the first issue of the Violence Against Women Office's Newsletter, *Violence Against Women Act NEWS*, was published. The newsletter covers the Department's VAW efforts, including excerpts from Attorney General Reno's May 1996 testimony before the Senate Judiciary Committee, the STOP grant program, VAW Act (VAWA) news, prosecutions under the VAWA, full faith and credit provision of VAWA, and the Indian Tribal Grant Program. ❖

DOJ Announces Largest Grant to Native American Tribes

On June 24, 1996, DOJ announced that 68 Indian tribal governments will be able to prosecute more cases and provide better services for female Indian domestic violence victims as a result of the availability of \$5.2 million in Fiscal Year 1996 grant funds. These STOP Violence Against Indian Women Grants Program awards, authorized under the VAW provisions of the 1994 Crime Law, represent the most funding and largest number of grants the Department has ever provided to Indian tribes at one time. "We have come a long way since we first implemented the American Indian and Alaskan Native Desk (AI/AN)," said Assistant Attorney General Laurie Robinson, Office of Justice Programs. "AI/AN enhances OJP's response to tribes by coordinating funding, training, and technical assistance and providing information about available OJP resources." ❖

Office of the Inspector General

Since its establishment on April 14, 1989, the Office of the Inspector General (OIG) for the Department of Justice has worked hand-in-hand with United States Attorneys' Offices (USAOs) across the country. Of the OIG's four divisions--Audit, Inspections, Management and Planning, and Investigations--the Investigations Division works the closest with USAOs because it is responsible for conducting investigations into alleged violations of bribery, fraud, abuse, and integrity laws that govern the Department and the operations it finances. The overwhelming majority of the Investigation Divisions prosecutable cases are handled by USAOs, although a significant number are also handled by the Criminal Division's Public Integrity Section.

The Investigations Division currently employs 117 special agents in 10 field offices: Chicago; El Paso; Los Angeles; McAllen; Miami; New York; San Diego; San Francisco; Tucson; and Washington, D.C., and five area offices: Atlanta, Colorado Springs, Dallas, Seattle, and Boston. ❖

Inspector General

Michael R. Bromwich served for seven years as a Federal Prosecutor, spending five of those years as an Assistant United States Attorney for the Southern District of New York. He has encouraged a close working relationship between the OIG and the USAOs. In fact, the OIGs Boston Area Office is located in space provided by the USAO, and an agent from the OIGs New York Field Office has been provided office space in the Public Corruption Unit of the Southern District of New York.

Of particular interest to all USAOs is the OIG's broad jurisdiction to investigate allegations of misconduct by any DOJ employee, with the following exceptions: Both the FBI and DEA have Offices of Professional Responsibility that are authorized to investigate misconduct by employees within their respective agencies. Misconduct by Department attorneys that relates to their authority to investigate, litigate, or provide legal advice remains within the jurisdiction of the Office of Professional Responsibility. AG Order No. 1931-94, which was issued November 8, 1994, clarified the OIGs responsibilities, and also established procedures for the Deputy Attorney General to assign any employee misconduct case to the Inspector General when circumstances warrant.

OIG investigations are diverse. They include such offenses as assault, bribery, drugs, and civil rights violations by Department employees as well as serious misconduct cases. A majority of the OIGs investigations are intended for criminal prosecution, but OIG agents develop cases for civil and/or administrative action as well. In some cases, the effects of the crime can be far-reaching. One OIG investigation in the Eastern District of Virginia resulted in the closing of an Immigration and Naturalization Service (INS) sub-office and the arrest of 22 individuals, including seven INS employees. In a recent case in the Eastern District of New York, five INS employees and a document vendor were arrested on charges of bribery and conspiracy. Over a four-year period, five INS clerks from the same office illegally issued thousands of employment authorization cards and other benefits to illegal aliens. The clerks also provided the document vendors with sensitive INS computer printouts.

OIG agents must, and do, work very closely with USAOs to obtain successful

prosecutions and to respond to sensitive public issues. Under the leadership of the United States Attorney for the Southern District of California, for example, the OIG San Diego Field Office, the Civil Rights Division, and the FBI have used the team approach to civil rights enforcement along the southern California border. In that District, the OIG and the FBI jointly investigate civil rights matters involving DOJ employees.

During FY 1995, the OIG conducted a number of special investigations that generated significant public interest. An investigation into allegations of racist activities by off-duty DOJ employees at an annual gathering known as the Good O Boys Roundup was recently concluded. This investigation was led by an Assistant United States Attorney (AUSA) on detail from the United States Attorneys office for the District of Columbia. OIG is currently conducting three other sensitive investigations with the assistance of AUSAs on detail to OIG. One involves allegations that FBI laboratory experts fabricate laboratory results and slant their findings in favor of the prosecution; another concerns a review of the FBI's performance in the Aldrich Ames spy scandal; and the third concerns allegations that INS managers created a misleading appearance of conditions in the Miami INS District for a visiting delegation of the Congressional Task Force on Immigration Reform in June 1995.

The OIG's Investigations Division takes a proactive approach to deterring illegal behavior in the Department by conducting integrity awareness briefings. Over the years, OIG agents have conducted 297 sessions, including liaison visits, reaching more than 9,000 DOJ employees. Some OIG investigations have not only detected illegal activity but have been instrumental in preventing recurring behavior. Program deficiencies noted during investigations are brought to managements attention to help develop program reforms. The Division also manages the OIG telephone HOTLINE, at (800)869-4499.

The OIG is a multi-faceted component of DOJ with responsibility for maintaining the public's trust in the employees of the Department--a responsibility OIG shares with USAOs across the country. ❖

Immigration and Naturalization Service

Removal of Deportable Aliens Continues at Record Pace

On June 26, 1996, the Clinton Administration announced that removal of criminal and other deportable aliens from the United States continues at a record pace. During the first eight months of this fiscal year, INS has removed more than 43,200 criminal and other deportable aliens, 38 percent greater than the total of nearly 30,000 achieved during the same period last fiscal year. The Port Court Program and the Institutional Hearing Program continue to increase the record pace of removals, according to INS Commissioner Meissner. ❖

Ethics and Professional Responsibility

Gifts

OPR received a complaint alleging that a federal prosecutor improperly accepted a gratuity in the form of a ticket to a closed-circuit telecast of a sporting event. The prosecutor

allegedly knew that the source of the ticket had been involved in illegal narcotics activity. The prosecutor reportedly received the ticket through a special agent who obtained it from a confidential informant, who was an associate of the source and had pled guilty to drug charges. Largely through the cooperation and candor of the prosecutor, OPR confirmed that he had received the ticket and knew that it came from the source through the confidential informant. OPR concluded that the prosecutor had violated the Department's standards of conduct and had exercised poor judgment. ❖

Representations to Opposing Counsel

Defense counsel accused a federal prosecutor of having made multiple misrepresentations. OPR concluded that none of the accusations were correct with one exception--the prosecutor's assurance to defense counsel that the rendition of facts in a police report was true. The report was relevant to the determination that the police had probable cause to arrest counsel's client. The prosecutor told OPR that he learned three days before a probable-cause hearing that the version of the facts in the police report was incorrect and that he had not revealed this to defense counsel. ❖

Unintentional Misstatements to Appellate Court

OPR received allegations from a court of appeals that the government's brief contained several material misstatements about evidence introduced at trial. OPR confirmed these allegations and discovered that the federal prosecutor who handled the appeal had not prosecuted the case at trial. Nevertheless, the prosecutor who handled the appeal made a reasonable effort to determine what evidence was presented against the defendant at trial. OPR concluded that the prosecutor unintentionally made certain misrepresentations in the Government's brief. The inquiry resulted in the implementation of a policy in the prosecutor's office that the lawyer who handles a case at trial would be involved in the preparation of appellate briefs arising out of that trial. ❖

Career Opportunities

DOJ Legal Employment Programs on Internet

The Office of Attorney Personnel Management has posted information about the Department's legal employment programs on the Internet, including some current attorney vacancy announcements. The addresses are:

World Wide Web <http://www.usdoj.gov>
Gopher <gopher.usdoj.gov>

Once you get to the DOJ Gopher site (either through the World Wide Web or the Gopher), just select the following menu item: Attorney/Law Student Hiring and Career Information. Please note that this listing does not include all current attorney vacancies within the Department. Therefore, in addition to applying for specific vacancies, applicants are encouraged to apply directly to the Department organization(s) in which they have an interest. To assist

applicants, the Department's Legal Activities book (the LAB) is also available at the DOJ Internet site. The LAB describes the legal responsibilities of the Department and the work of each of its organizations, and contains a list of organizational contacts to which applicants can submit resumes.

In addition, the DOJ Internet site provides information on the Department's three recruitment programs: the Attorney General's Honor Program; the Summer Law Intern Program, and the Experienced Attorney Program.

The Office of Attorney Personnel Management also maintains a 24-hour recorded information message and voice-mail at (202)514-3396 (TDD number, (202)616-2113). ❖

Vacancies on EOUSA Bulletin Board

The Office of Attorney Personnel Management posts attorney vacancies on the Executive Office for United States Attorneys' Bulletin Board System. ❖

National and Federal Legal Employment Report

Subscription information for the National and Federal Legal Employment Report is available by calling Federal Reports, Inc., (202)393-3311. This Report may also be available at your local law library. ❖

GS-11 to GS-12 Attorney Antitrust Division Atlanta Office

DOJ's Office of Attorney Personnel Management is seeking an entry-level attorney for the Antitrust Division's Atlanta Office. They have a very active criminal investigation docket, including several matters with international implications and several other matters which are nationwide in scope. This position offers excellent opportunities for grand jury work and criminal litigation. Some travel is required.

Applicants must have a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and at least one year of post-J.D. experience. An educational or professional background in economics is desired. Applicants must submit a resume and a detailed description of relevant experience to:

Atlanta Office
Antitrust Division
U.S. Department of Justice
Suite 1176
Richard B. Russell Building
75 Spring Street, S.W.
Atlanta, GA 30303-3308

No telephone calls please. Grade and salary range is GS-11 (\$36,779 - \$47,812) to GS-12 (\$44,081 - \$57,310), depending on current salary and experience. This position is open until filled

but no later than September 13, 1996. ❖

Experienced Attorneys
GS-14 to GS-15
Antitrust Division
Telecommunications Task Force

DOJ's Office of Attorney Personnel Management is seeking several experienced attorneys for positions with the Telecommunications Task Force of the Antitrust Division in Washington, D.C. The attorneys will be primarily responsible for civil antitrust enforcement (including merger enforcement) and competition advocacy in the telecommunications industries. Some travel is required.

Applicants must have a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least three years post-J.D. legal experience, including extensive antitrust litigation and/or telecommunications industry experience. Applicants without this specialized experience need not apply. An educational or professional background in economics is desired.

Applicants must submit a resume and a detailed description of telecommunications experience to:

Telecommunications Task Force
Antitrust Division
U.S. Department of Justice
Room 8104, Attn: Box E
Judiciary Center Building
555 4th Street, N.W.
Washington, D.C. 20001

No telephone calls please. Grade and salary range is GS-14 (\$62,473 to \$81,217) to GS-15 (\$73,486 to \$95,531), depending on current salary and experience. These positions are open until filled but no later than August 30, 1996. ❖

The USABulletin Wants You

The theme for the next *Bulletin* will be International Legal Issues. Have you been involved in a case that had an international issue? Have you been involved in extradition issues? If so, please let us know so we can include the news or write an article for the next issue. Our deadline for submissions is September 1.

The themes for our next two issues are:

October:	International Legal Issues
December:	Civil Issues

Your ideas, suggestions, and articles for these two issues would be appreciated. Please contact David Nissman at AVISC01(DNISSMAN), (809)773-3920, or Wanda Morat at AEX12(WMORAT), (202)616-4619. One to three page submissions should be Emailed to AEX12(BULLETIN).