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International Extradition

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From the Editor-in-Chief

As we prepare for the 21st century, with our myriad of new techniques, new technology, and new ideas, the area of international law provides us with a different kind of challenge. In the words of Deputy Assistant Attorney General Mark Richard, we have inherited a "19th century process that's tedious, cumbersome, and unpredictable." In addition, the very real possibility of creating a serious international issue by our prosecutorial decisions, explored in our history article, is ever present. This *USAB* focuses on extradition but there is a great deal of fascinating information on other international topics contained in the magazine. We thank our contributors who have produced some truly useful and excellent articles.

With this issue we are crossing over to new territory. Not only are we attempting to disseminate important "how to" information, but we want to provoke discussions on important legal topics, like whether our international parental kidnapping statute can help us return kidnapped children to the custodial parent. Assistant United States Attorney Tim Macht wrote a stimulating discussion of this issue on page 27.

During our visits to United States Attorneys' offices to conduct USABook training and to solicit suggestions for future publications, many of you asked for more information on Department

components. So, in this issue, we include two interviews of DOJ officials whose offices are involved in international litigation. A third interview with the Director of the Office of Foreign Litigation will appear in our February *USAB* on civil issues.

Former Assistant United States Attorney Jacques Semmelman proved to be a fountain of knowledge. Mr. Semmelman, now a partner in the New York law firm of Curtis, Mallet-Prevost, Colt, and Mosle, and formerly an Assistant United States Attorney from the Eastern District of New York, developed a keen intellectual interest in extradition law through his caseload. Since then he has authored a number of law review articles on the Rule of Specialty, the Ker-Frisbee doctrine, and the Rule of Non Inquiry. One of the articles, "The Doctrine of Specialty in the Federal Courts: Making Sense of *United States v. Rauscher*," 34, *Va. J. Int'l L.*, 71 (Fall 1993), was key to the development of our history article.

On the inside back cover of the magazine is the publication schedule for the *USAB* for the first six months of 1997. These topics were chosen by Assistant United States Attorneys in California, Nevada, Arizona, and Oregon, during a West Coast training tour on USABook. Our goal is to make the *USAB* a magazine of, by, and for Federal prosecutors. We look forward to your contributions and suggestions. I can be reached in St. Croix at (809) 773-3920 or AVISC01(DNISSMAN).

DAVID MARSHALL NISSMAN

Contents

Interview with Deputy Assistant Attorney General Mark Richard, Criminal Division
Weaving Through the Extradition Maze: Developing Relationships with the Decision Makers
A Brief Primer on International Extradition Practice
Threats of War, Suspension of a Treaty, Impeachment, and Other Unpleasantries: A Historical
Look at Extradition and the Prosecution of Foreign Nationals
Status of Constitutional "Separation of Powers" Challenge to the Statutory Basis for the
Extradition of Fugitives from the United States
Provisional Arrests in Extradition Cases: Pros and Cons
The International Fugitive
A Dilemma: Obtaining Testimony from Foreign Witnesses
International Kidnappers: Are We at Their Mercy?
Protecting the United States Case When a Defendant Flees Abroad: Complying with Foreign
Statutes of Limitation
International Kidnapping by Inveiglement and Hostage Taking: Potential Weapons in the
Prosecutor's Arsenal Against Alien Smuggling?
Interview with Janice Mathews Stromsem, Director of the International Criminal Investigative
Training Assistance Program
More on Trial Techniques . . . Camcorder and Mounting Platform: An Alternative to Commercial
Visual Presenters

Attorney General Highlights

AG Presents Criminal Child Support Enforcement Progress Report to President
Contacts with Represented Parties
AG Announces Efficient Use of Affirmative Civil Enforcement Resources from Three Percent Fund

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

Honors and Awards
Significant Issues/Events
EOUSA Staff Update
Office of Legal Education
Computer Tips

DOJ Highlights

Appointments/Resignation
Honors and Awards
Civil Division
Civil Rights Division
Office of Justice Programs
Immigration and Naturalization Service

Ethics and Professional Responsibility

Grand Jury—Witnesses
Pro Bono Legal Work—Identification as Department Attorney
Litigation Tactics

Career Opportunities

Antitrust Division—GS-12 to GS-15 Attorneys
Criminal Division, Office of Special Investigations—GS-13 to GS-15 Experienced Attorneys
Office of Policy Development—GS-12 to GS-14 Experienced Attorney
Office of the Pardon Attorney—GS-12 to GS-14 Experienced Attorney
U.S. Trustee's Office—GS-13 to GS-14 Part-time Attorney

Interview with Deputy Assistant Attorney General Mark Richard, Criminal Division

Since June 1991, Mr. Richard has been the Deputy Assistant Attorney General overseeing the Office of International Affairs, Internal Security, Terrorism and Violent Crime Sections, and the Office of Special Investigations. His extensive background, including two years as Special Assistant United States Attorney in the District of Columbia, includes experience with white collar crime enforcement, anti-narcotics efforts, money laundering, asset forfeiture, espionage, export control and neutrality laws, and mutual legal assistance treaties. Mr. Richard graduated

from Brooklyn Law School in 1967, after which he joined the Department's Criminal Division.

Mr. Richard (MR) was interviewed by Assistant United States Attorney David Nissman (DN), Editor-in-Chief of the *United States Attorneys' Bulletin*.

DN: What is the National Security Coordinators Program and what prompted its development?

MR: It's an attempt to accomplish a variety of objectives. The first is to upgrade the expertise and familiarity that United States Attorneys have regarding issues that arise in the national security area. Not just questions regarding intelligence and national defense, but also foreign affairs relations—issues that arise in any office, at any time, and in any case. You cannot build expertise solely in larger offices or offices on the coast. We need to ensure that each office has a level of expertise to address these issues. The second objective is to integrate the United States Attorneys' perspective into the Department's policy response to national security aspects of investigations and prosecutions. There are many critical issues involved in doing that because of the expertise in United States Attorneys' offices (USAOs) and because they are the recipients of the benefits or burdens of actions taken in this area by people like myself. They must have a mechanism for participating in that policy process. We hope to accomplish this objective through the National Security Coordinators Program. The Program began several years ago because, inter alia, our response to the integration of United States Attorneys into this field was less than satisfactory.

DN: How is it working so far?

MR: It needs to be energized and I think that's what the Deputy has in mind. We're trying to develop a variety of ways to do that. I'm not sure we have adequately articulated the role of the Coordinators in the past—how they should relate to ongoing cases within their office. We failed to clearly articulate what possible communication networks within a USAO should be established and to ensure that the Coordinator can play a role in cases that require the expertise that we hope the Coordinator would have. It's working in certain areas better than others but we recognize that it needs a home within Justice. Part of the problem is a Main Justice problem, because this is an area that is not focused in any single component within the Criminal Division or within the Department.

DN: One of your goals has been to select an Assistant United States Attorney (AUSA) to come here as the National Coordinator of the Coordinators.

MR: That's correct. We want that person to serve as a bridge between what's going on in Justice and the Coordinators. The person would work directly with me, only because there isn't a single component that has all aspects relevant to this program where the individual could be placed. Working with me directly will ensure that the National Coordinator has access to the kind of information he or she needs, and has the clout to open the doors necessary to play the role we have in mind. This is an extremely exciting area, and I think it's at the cutting edge of law enforcement, a new frontier if you will. We need fresh ideas. We envision this to be a rotating

position.*

DN: Why do you want this to be a rotational position?

MR: We want to get new insights into what is important to United States Attorneys. For example, when we negotiate mutual legal assistance treaties, we want to get the kinds of provisions that facilitate the introduction of evidence rather than make it more difficult. We want to make sure we're not overlooking helpful provisions that could be included in treaties. The Coordinator must be sensitive to all these issues. We also need to identify priority countries where our enforcement interests are most acute. Treaties help the United States Attorneys in their dealings with other countries. We're looking for an individual to serve as the focal point.

DN: How do you get that information now?

MR: On the international level, the traditional response to cooperation is an extremely cumbersome, tedious, and unpredictable process which we're trying to streamline. Right now, our ability to collect information from people in the field who give us the kind of feedback we need is very ad hoc, not formalized. Original efforts began when we started a process for developing annual treaty priorities with the State Department. We tasked OIA to solicit important areas to focus on—both country-wise and specific divisions and selected USAOs. Nothing very systematic or well-structured. When the Attorney General's Advisory Committee established the Subcommittee on International Issues, we looked to that committee for input but it never worked out. I think that looking to the Coordinators, through this individual, to establish a regular process of input from the USAOs—not just on training priorities but on a variety of issues—that we hope to address the situation in a more systematic way.

DN: Is AUSA Ron Sievert's article on export control (that appears on page 36 of the October *USAB*) an example of one of the types of cases that impact national security issues?

MR: It certainly is. The difficulty of prosecuting export control cases is notorious because they tend to be using statutes that are political compromises. When these statutes are passed on the hill, there are tremendous forces trying to scale them back. Frequently, the end result is a lot of ambiguity. The problems need to be identified at a time when we can do something about this. A lot of these statutes come up for renewal. They are often subject to renewal every three years. So we have opportunities to change them. We need feedback from the field; for example, what are the impediments to more effective enforcement?

We hope this individual, through newsletters, regional and national conferences, and other mechanisms will establish communication from Washington to the offices, and vice versa. I would like some of the Coordinators to participate in some of the negotiating sessions, especially when we're dealing with articles of interest to the USAOs. I see no reason why AUSAs shouldn't be participating in that process.

*Since this interview, Assistant United States Attorney Suzanne C. Hayden, Western District of Washington, has been selected as the Program's National Coordinator.

DN: Is this a different kind of career opportunity for AUSAs?

MR: Not only is it a different opportunity but it's one in which they would deal first-hand with the issues and communicate to others the practical problems they are encountering. I would like to develop a better mechanism for having the United States Attorneys participate in the negotiating process. We don't have the resources to do it alone. Developing the expertise is a major issue. We have to field the best negotiating team we can and the United States Attorneys' offices are a vital component currently missing in many of the negotiating sessions. It's a wide-open area and one that must be urgently addressed.

DN: Issues affecting international relations require us to develop some additional sensitivities, don't they?

MR: That's true. If a USAO is going to stumble, more often than not it will be in this area—dealing with these issues and not recognizing their sensitivity, or recognizing their sensitivity and not knowing how to respond. This is a potential problem area where the sharks are swimming in the sea. With a well-structured Coordinators Program, the risk to the national interest and to the interest of the USAO can be addressed.

DN: What are the international legal issues we will experience in the next few years?

MR: The most troublesome problem facing law enforcement rests, not necessarily in the acquisition of evidence from abroad, but in the apprehension of fugitives. A variety of processes in the international community have developed over the years which inhibit our ability to obtain custody of a defendant. They tend to frustrate our ability to quickly and effectively locate international fugitives and ensure that they are returned for prosecution. One of the most significant barriers is the traditional view of civil law countries—that they will not extradite their nationals. That is a concept we constantly come in contact with. We are making slow progress, and the trend to change this is apparent. Even the civil law countries recognize that the traditional response of saying that they will prosecute their own nationals is unrealistic. It's unrealistic for a variety of reasons. Moreover, even in the abstract, it doesn't result in justice being done. It's predicated on the erroneous concept that a national cannot receive a fair trial except in his or her own country. We have persuaded countries to abandon this concept. We've had success with Italy, for example, and we now have achieved success in Bolivia. We're making progress in other areas where countries are willing to reevaluate the notion of prohibiting the extradition of nationals. Mexico has now agreed, at least in selected cases, to extradite nationals. We hope to be able to convince people of the appropriateness of abandoning this traditional view. In my own view, I think countries, as an attribute of their sovereignty, have an international obligation to address the issue of fugitivity, and countries cannot merely say they will prosecute their own nationals for crimes committed all over the world because, as a practical matter, they cannot and will not do that—either because they don't have the political will, they don't have any way of getting the evidence, or they're dealing with systems that aren't capable of responding to the volume of cases involved.

DN: It's unfair to make the victims go that far too. Isn't that one of the Attorney General's views

on this?

MR: Yes, except in civil law countries, frequently you can use hearsay so that witness travel in some cases is a problem but in other cases it may not be. However, these countries could not handle the volume of cases that they would be required to prosecute. Whether it be Mexico, El Salvador, or the Dominican Republic, their systems would not be capable of absorbing all the additional cases that would be required for them to prosecute these fugitives. Unfortunately, now many countries don't generally prosecute nor do they extradite their nationals. So these criminals, in effect, find safe haven in their own countries and we have to change that. We also have to abandon and somehow devise a more effective substitute for cooperation than in the rogatory system. It is a 19th century process that's tedious, cumbersome, and unpredictable. We need a system that can respond more effectively. We have made progress in the mutual legal assistance treaty area by setting up central authorities within the Justice ministries to deal directly with each other. We have to go one step further. At the prosecutorial level, we don't make sufficient use of the capabilities of INTERPOL, because a lot of the United States Attorneys don't know how INTERPOL can assist them. We need to make sure International Coordinators are sensitive to capabilities that exist and know there is a spectrum of approaches for gathering usable information and evidence. They need to work with people who know the nuances of each system in order to choose the best approach to get the prosecutor the necessary evidence. Our biggest impediment is knowing how to deal with developing countries permeated with corruption. We must deal with them if we're going to effectively respond to the crime problem. Whether it be Russian or Asian organized crime, we have to deal with regimes that are suspect in terms of integrity and competence. Devising strategies to enable us to function in this environment is a tremendous challenge. There is significant international pressure to endorse the establishment of an international criminal court.

DN: Where is the pressure coming from?

MR: The international community sees this as a potential panacea for many of the problems facing nations, including the difficulty of responding to international narcotics trafficking. A lot of countries see it as a way to deal with the problem of prosecution of nationals and incarceration: set up an international prison so we don't have to worry about constructing secure prisons. The same goes for international terrorism. There's a momentum that's been building over the years to create such an institution.

DN: What is the United States' position on this concept?

MR: We endorse the creation of an international court under certain jurisdictional prerequisites for certain types of offenses. That's reflected in our support for the Yugoslavian and Rwandan tribunals. We believe it's inappropriate for the court to have jurisdiction over the narcotics trafficking and international terrorism. We have articulated this view at the UN, but there is a substantial number of nations that takes a contrary view. In the next couple of years this will be brought to a head.

DN: Do we conduct a lot of international training with the Office of Professional Development

and Training (OPDAT)?

MR: With OPDAT and the International Criminal Investigative Training Assistance Program (ICITAP) as well. These two structures within the Criminal Division work toward building institutions—police, prosecutorial, and judicial—training personnel, and setting up systems that are viable and that we can work with in the future.

DN: Doesn't it help with international relations? Doesn't having a prosecutor in a foreign country training prosecutors and law enforcement go a long way to eliminate misconceptions?

MR: We have two thrusts abroad. We believe that it's important to have prosecutors stationed abroad at critical embassies for operational purposes—to assist with extradition issues and mutual legal assistance case-related issues. We also station attorneys abroad to assist in training. At times these two merge and we may have an attorney, for example, in Moscow that wears both hats. They're charged with facilitating the training of their counterparts and, at the same time, they're available to assist in operational matters—collecting information for use in a particular trial or facilitating a fugitive's deportation. We find ourselves more interested in stationing people abroad, because the ones we've sent have proven their worth. That's an area where the National Coordinator will play a role, because the repository of a large amount of expertise in the Department tends to be in the USAOs.

DN: Would these be rotational positions or will they be permanent?

MR: They would be two- or three-year tours of duty. And it may vary where the individual comes back to their respective USAO or goes elsewhere in the Department. There has been some consideration of establishing a law enforcement foreign service that would create a new career ladder for prosecutors and investigators interested in international activities. That foreign service would establish a training system to better equip people to function in this environment and establish the processes for selection and tenure.

DN: In terms of negotiating treaties and the area of extraditions, the rule of specialty presents a series of problems. The rule of specialty seems to be a major impediment in cases. What is happening with specialty?

MR: What you have to appreciate is that everything you do is presumed to be reciprocal. The rule of specialty is often a great impediment. It is at times misused and misconstrued by foreign governments. On the other hand, the abolition of the rule would result in a system we could not tolerate, and I don't think Congress would tolerate. We want predictability. Remember, we do extradite our nationals and we expect that when we do, they will be tried for what they are extradited for.

DN: That's the situation I'm thinking of—not so much of adding on charges when we get the person here but in losing counts of an existing indictment because the other country may not recognize some of our crimes.

MR: I think it's a good point and one we should bring to the table. This area is not simply a question of foreign relations. Some of the more tricky areas deal with intelligence issues and that is part of the mix of issues that we all are confronted with. Your example of the export case is a good one in the sense that, in these cases, there are frequently three national security issues in the same case: the foreign relations aspect, our national defense, and protection of intelligence sources and methods. These equities are then found in a single investigation and prosecution. Being able to navigate through this sea requires expertise. Our concern is that there aren't many AUSAs who have expertise in these issues. If an AUSA has one or two of these cases in their career, they are pretty good. No matter how experienced you are in the courtroom, these cases present unfamiliar issues. We must ensure that the prosecutor working on them has the backup, the depth, the ability to respond to these issues—that they can recognize them, know what the equities are, and know how to deal with them. History has shown in the last 20 years that we can prosecute these cases and still protect the national interest. It just takes an unusual amount of resources, sensitivity, and cooperation.

Weaving Through the Extradition Maze: Developing Relationships with the Decision Makers

**United States Attorney J. Don Foster
Southern District of Alabama**

All Dressed Up and No Place To Go

As two Federal agents approached the massive door of Steve Coker's upscale Mobile residence with arrest warrants and a RICO indictment in hand, they were sure within minutes they would have Coker in the back seat of their car and on the way to the Federal courthouse for an initial appearance. They were wrong. After years of investigation and the return of a complex indictment that charged Stephen Coker with siphoning off \$31 million in insurance premiums through the use of bogus insurance companies the result was: no defendant. We had been snookered. Instead of an initial appearance and a much anticipated trial to follow, both the agents and lead prosecutor, Assistant United States Attorney Richard Moore, were now looking at years of evidence gathered for nothing.

The prospect of not being able to bring Stephen Coker to trial was unthinkable. He was a prodigy of British fraudster Alan Teale, renown for duping the likes of NFL quarterbacks Joe Montana and Jim Kelly into buying bogus sports liability insurance. Coker diverted millions of illegally obtained insurance premiums through Mobile, Alabama. He was believed to have nominee bank accounts around the world holding money that, if obtained by the Government, could be returned to thousands of victims. Coker's prosecution was key to breaking the back of the Teale empire—the subject of a 1992 subcommittee investigation by the United States Senate. The subcommittee concluded that offshore insurance and reinsurance companies such as those created by Teale and Coker were draining the U.S. economy and creating chaos in the insurance industry.

Because Coker's operation was centered in Mobile, Alabama, our office had venue to prosecute both Teale and Coker. Prior to Coker's flight, Teale was indicted and, within two months of

beginning a 17-year sentence, died in prison. When our investigation turned to Coker after the Teale prosecution, Coker gave the appearance of setting his heels in for a long fight. He hired a contingent of skilled lawyers to ward off grand jury subpoenas aimed at piercing his corporate infrastructure. He was considered an unlikely flight risk because of his wife, six children, and extensive financial and social ties to the Mobile area.

From September 1993 to June 1996, the FBI and IRS worked tirelessly following leads to Coker's whereabouts. With the help of INTERPOL and Portuguese authorities, Coker was finally located on a beach in Lagos, Portugal. He purchased a seagoing catamaran and was traveling under a false name with a counterfeit passport. Coker was arrested on a provisional arrest warrant facilitated by the Office of International Affairs (OIA).

Beginning the Extradition Process

Working with OIA was a relatively new experience for our office. I had worked with OIA's Beverly Hadley last year on the successful recovery of over \$3.5 million out of the Bahamas. This time I worked with Deputy Director Rex Young and Senior Legal Adviser Randy Toledo. Upon Coker's arrest on the provisional warrant, we began working on an extradition package that required the efforts of the United States Attorney's office, OIA, and the State Department.

The extradition package for Portugal had to be completed within 45 days of Coker's arrest. It included a formal extradition request from the State Department; certified affidavits describing the investigation; criminal conduct and indictment from an Assistant United States Attorney and FBI and IRS agents working on the case; a certified copy of the indictment; copies of the pertinent statutes; a photo of Mr. Coker; and a certified copy of the arrest warrant. Of course, when the entire package was completed, it had to be translated into Portuguese by the State Department.

Once the extradition package was completed, our office (working with OIA) informally contacted the Portuguese prosecutor and the Portuguese Magistrate Judge handling the case. After several phone calls, it was determined that because of the nature of the criminal charges (i.e., white collar crime) the Portuguese were concerned about having the authority to extradite Mr. Coker.

Making it Personal

In May of this year while I was in Washington for an Attorney General's Advisory Committee's Civil Rights Subcommittee meeting, I dropped by OIA to discuss the progress of the Coker extradition.

Deputy Director Rex Young sat in on the meeting with Senior Legal Adviser Randy Toledo and me. I inquired about the status and was told it was in progress but, due to a recent Portuguese Constitutional Court case involving Brazilian drug dealer Armando Varitzo, we could expect some problems. The court had refused to extradite him because the charges could result in a life sentence in the U.S. The Portuguese constitution prohibits life in prison and the death penalty. Portugal also statutorily limits sentences to 25 years in prison; e.g., a mass murderer could only get 25 years. Randy Toledo expressed grave concern that Coker might not be extradited even

with his consent because of one of the charges in the indictment. He was charged under the “white-collar kingpin” statute (18 U.S.C. § 225) which carries a mandatory 10-year sentence. That charge, also known as the continuing financial crimes enterprise charge (CFCE), provides for the possibility of a life sentence in prison.

I was told about the formal assurances given in the Varitzo case by a Federal judge and the Department of Justice. They were insufficient to persuade the Portuguese Constitutional Court even though they promised to limit the sentence to the Portuguese range. There was no English version of this decision available (and still isn't) to evaluate the court's reasoning but it bothered me that they apparently rejected our assurances or found them inadequate.

I asked if we had ever met our counterparts in Portugal and was told “no,” that we had routinely done business by telephone and fax through the American Embassy. I suggested that efforts be made to establish a personal relationship for more credibility. Rex thought this was a good idea and, to my surprise, suggested I go over to do it. I had a full schedule and some personal reservations which caused me to hedge but, ultimately, I worked these out and was able to schedule the trip. I insisted the trip was worthwhile only if we met with top people in the Ministry of Justice. OIA agreed and, with the outstanding assistance of Margarida Gomes of the American Embassy in Lisbon, lined up meetings with the top legal adviser to the Attorney General and the top Assistant Attorney General in charge of the Evora District. After some rescheduling, the meeting was set for June 18 in Lisbon at the Ministry of Justice.

The Ministry of Justice is downtown in an old mansion along a narrow, winding street. Margarida met my weather delayed flight (sans luggage) at the Lisbon airport about 3:00 p.m. and, after whisking me through customs, hurriedly negotiated the rush hour traffic in her small Fiat to our meeting.

Accompanied by Margarida, Assistant United States Attorney Greg Bordenkircher, Special Agent Susan Shipman, and Randy Toledo, I met with Dra. Margarida Frias of the Attorney General's Office and Dr. Luis Verao of the Evora Court of Appeals.

Although our hosts spoke some English, we depended largely on Margarida as our two-way interpreter. Our purpose was twofold—to get Coker extradited quickly and to develop a personal relationship to enhance future credibility with the hope of facilitating future extraditions. Dra. Frias explained that they had a problem with our extradition request because our CFCE charge statutorily allows a sentence of life in prison and they were concerned with the length of Coker's potential sentence. She also said they did not like the Varitzo decision but had to live with it. Since a discussion of our sentencing guidelines is not required in the extradition package, it came as no surprise to discover that they had no knowledge of the critical role the guidelines play in our criminal justice system. Knowing the guidelines would control the sentence rather than the statutory maximum seemed to make a difference to them.

We felt Coker's relevant conduct was such that our CFCE count could be sacrificed without giving up anything substantial under the guidelines. They finally understood that without that count the indictment would not challenge their constitution and seemed satisfied that we would

not suffer the same fate as in the Varitzo case.

After discussing the Coker case, we turned our attention to facilitating future extraditions to avoid another Varitzo case result. They expressed a keen desire to work with us and suggested that to progress, the existing 1908 treaty should be amended. We adjourned the meeting feeling happy with the outcome—both from a substantive and social basis. We had virtual assurance that the extradition would proceed quickly and we developed a personal relationship that hopefully will endure.

The next morning, we visited Coker at the district pretrial detainee facility in Evora. After a two-hour trip across the beautiful, clean Portuguese countryside, we arrived at the jail. I met with the personable female warden, Maria Malta, while the others talked with Coker pursuant to a written proffer agreement signed previously by his U.S. lawyer. Coker confirmed that he had voluntarily consented to extradition and did not want a Portuguese lawyer to contest the extradition. He later obtained a Portuguese lawyer but, ultimately, consented to the extradition.

The Portuguese procedure, even with consent of the detainee, requires administrative review to determine compliance with Portuguese law. In Portugal, consent is not a legal factor at this stage but is important because it eliminates the necessity of judicial review and appeal. It is important to note that an extradition may be denied even with consent, if the charges against the detainee are not allowed under the Portuguese constitution or statutory law. As a result of our meetings, the administrative review process took about 30 days and Coker was extradited. He is in local custody awaiting trial.

What We Learned

Our Portuguese experience was extraordinary. It confirmed my belief in the benefits of establishing personal relationships with counterparts who are making policy and other important decisions. There is no substitute for eye-to-eye contact and personal interaction. You can't do it on the phone or by fax. If it is really important it needs your presence. As a result of our trip, we got Coker back quickly and OIA is now starting the process to amend the treaty. One recommendation is that you get a good interpreter (Margarida was a great one for us). Even if you do, you can't be sure you are communicating precisely. Another recommendation is to include (after checking with OIA) a discussion of the applicable sentencing guidelines in the extradition package, even though it may not be required.

In short, the effort was well worth it—and it could not have gotten underway or succeeded without the enormous contributions of OIA and the American Embassy in Lisbon.

A Brief Primer on International Extradition Practice **Assistant United States Attorney Glenn W. MacTaggart*** **Western District of Texas**

* Glenn is also a Lieutenant Colonel in the U.S. Army Reserve Judge Advocate General's Corps.

Due to the rapid growth in the international scope of crime, Federal courts in the United States and countless other nations are experiencing increased requests for the extradition of fugitives in foreign countries. Assistant United States Attorneys are more frequently becoming involved in extradition litigation involving U.S. citizens and foreign nationals in the U.S. who are fugitives from foreign felony arrest warrants for a variety of white-collar and/or violent criminal accusations. Federal prosecutors facing an extradition proceeding for the first time will encounter a variety of unique aspects of case law and procedures uncommon to most proceedings in a Federal courtroom.

Extraditions may be initiated by a formal request for extradition or, in appropriate cases, by a request for provisional arrest. International extradition is simply the procedure by which one nation, the “requested state,” surrenders to a second country, the “requesting state,” a person who stands accused or convicted of an offense within the territorial jurisdiction in the requesting state. See *Terlinden v. Ames*, 184 U.S. 270, 289, 22 S.Ct. 484, 46 L.Ed. 534 (1902). An Assistant United States Attorney normally represents the foreign government seeking the fugitive in all extradition litigation in U.S. courts. The legal right of a foreign country to demand the return of a fugitive, as well as the legal duty of the U.S. to comply, depends on the existence of an extradition treaty. *Factor v. Laubenheimer*, 290 U.S. 276, 287, 54 S.Ct. 191, 78 L.Ed. 315 (1933).

Extradition is sui generis. See *Jhirad v. Ferrandina*, 536 F.2d 478, 482 (2d Cir. 1976). It is not a criminal proceeding, *McDonald v. Burrows*, 731 F.2d 294, 297 and n.6 (5th Cir.), cert. denied, 469 U.S. 852 (1984), and the Federal Rules of Criminal Procedure do not apply, Fed. R. Crim. P. 54(b)(5); *Eain v. Wilkes*, 641 F.2d 504, 508 (7th Cir.), cert. denied, 454 U.S. 894 (1981); *Sabatier*. Instead, governing procedures are prescribed in the relevant extradition treaty, in Title 18 U.S.C. § 3181 et seq., and in case law. Moreover, except with respect to privileges, the Federal Rules of Evidence do not govern in extradition proceedings. Fed.R.Evid. 1101(d)(3). Instead, “unique rules of wide latitude. . . govern reception of evidence in Section 3184 hearings.” *Sayne v. Shipley*, 418 F.2d 679 (5th Cir. 1970).

With regard to the jurisdiction of a court to sit as an “extradition magistrate,” 18 U.S.C. § 3184 provides that “any justice or judge of the United States, or any magistrate authorized to do so by a court of the United States” may order the arrest of a foreign fugitive for the purpose of securing his presence for an extradition hearing before “such justice, judge, or magistrate.” For example, the Local Court Rules of the United States District Court for the Western District of Texas [Appendix C, Rule 1(a)(3)] expressly authorize Federal magistrate judges to serve as extradition magistrates. Assistant United States Attorneys should check their local court rules to ensure that they authorize magistrates to conduct extradition proceedings.

An extradition hearing is not a criminal trial, nor an adjudication of the charges pending in the requesting state. *Benson v. McMahon*, 127 U.S. 457, 463, 8 S.Ct. 1240, 32 L.Ed. 234 (1888). Rather, a hearing under § 3184 is analogous to a preliminary hearing. *Sayne v. Shipley*, 418 F.2d 679, 685 (5th Cir. 1969), cert. denied, 398 U.S. 903 (1970). The central function of the extradition magistrate is to determine neither guilt nor innocence but whether there is probable cause to hold the extraditee for trial in the requesting state. *Escobedo v. United States*, 623 F.2d

1098, 1102 n.5 (5th Cir.), cert. denied, 449 U.S. 1036 (1980). In addition to determining whether probable cause exists, the extradition magistrate must decide whether the offense charged is “extraditable” and whether the person held is, in fact, the one accused in the requesting state.

Although a probable cause determination is the principal focus of extradition proceedings, several other elements must be satisfied for an extradition magistrate to certify a fugitive for extradition. The court must: (1) have personal and subject matter jurisdiction; (2) determine that an extradition treaty is in force between the U.S. and the requesting state; (3) determine that criminal charges are pending in the requesting state; (4) determine that the crimes charged are encompassed within the extradition treaty; (5) determine that the respondent is, in fact, the person accused of committing the crimes charged; and (6) determine that probable cause exists to believe that the respondent committed the crimes charged.

The existence of a treaty and the pendency of charges in the requesting state are usually matters of ready determination. The identity determination, for international extradition purposes, largely rests on photographs of the fugitive provided by the requesting state. See *Glucksman v. Henkel*, 221 U.S. 508, 512-13, 31 S.Ct. 704, 55 L.Ed. 830 (1911). Finally, the probable cause determination, which uses a Federal standard, *United States v. Wiebe*, 733 F.2d 549, 553 (8th Cir. 1984), requires only that sufficient evidence exists to show reasonable ground to believe the accused guilty, *Garcia-Guillern v. United States*, 450 F.2d 1189, 1192 (5th Cir. 1971).

Another important qualification to consider is the doctrine of “dual criminality,” which holds that for a crime to be extraditable, the conduct alleged must be criminal under the laws of both the requested and requesting states [e.g., *Quinn v. Robinson*, 783 F.2d 776, 783 (9th Cir.), cert. denied, 479 U.S. 882 (1986)]. In the early 1900s, the Supreme Court announced as a “general principle of international law” that “in all cases of extradition the act done on account of which extradition is demanded must be considered a crime by both parties.” [*Wright v. Henkel*, 190 U.S. 40, 58, 23 S.Ct. 781, 47 L.Ed. 948 (1903).] Subsequently, however, in the case of *Factor v. Laubenheimer*, 290 U.S. 276, 299-300, 54 S.Ct. 191, 78 L.Ed. 315 (1933), the court repudiated the view that the dual criminality doctrine, whether expressed or not, is a principle implicit in all extradition treaties. In *Factor*, the court held that the dual criminality doctrine applied to classes of offenses enumerated in the 1889 convention to the extradition treaty with Great Britain only to the extent that treaty language expressly conditioned extraditability on a showing that the offenses were made criminal “by the laws of both countries.” (*Id.*, 290 U.S. at 287-301.) Nevertheless, more than 60 years after *Factor*, some courts continue to address the dual criminality doctrine as if it were a requisite, regardless of the specific treaty [e.g., *In re Extradition of Russell*, 789 F.2d 801, 803 (9th Cir. 1986)] (“under the principle of ‘dual criminality,’ no offense is extraditable unless it is criminal in both countries”); *Quinn*, 783 F.2d at 783; *Demjanjuk*, 776 F.2d at 579; *Caplan v. Vokes*, 649 F.2d 1336, 1342 (9th Cir. 1981); *United States ex rel. Bloomfield v. Gengler*, 507 F.2d 925, 927 n.2 (2d Cir. 1974).

For example, the Treaty between the U.S. and Mexico does apply the doctrine of dual criminality to all offenses listed as extraditable. Article 2 and the Appendix of the Treaty specifically identify 31 crimes as extraditable offenses provided they are punishable by not less than one year of confinement in both countries. In addition, it allows for extradition of persons accused of offenses

“. . . which, although not being included in the Appendix, are punishable, in accordance with the Federal laws of both Contracting Parties, by a deprivation of liberty the maximum of which shall not be less than one year.” (Extradition Treaty, Art. 2, § 3.) According to the terms of the Treaty, extradition shall also be granted for participating in an attempt or conspiracy to commit one of the aforesaid offenses or participation in the execution of an aforesaid offense subject again to an explicit dual criminality limitation; i.e., participation must be punishable by imprisonment by the laws of both the U.S. and Mexico for a term of not less than one year.

If the principle of dual criminality is somehow implicit as to all enumerated offenses in a particular extradition treaty, then certain rules apply. In order to establish dual criminality, the name given the crime by the treaty parties need not be the same, nor must the scope of liability be identical in each country. [*Oen Yin-Choy v. Robinson*, 858 F.2d 1400, 1404 (9th Cir. 1988), cert. denied, 490 U.S. 1106 (1989).] Likewise, the elements of the foreign crime for which extradition is demanded need not be identical to the elements of a similar offense in the U.S. (*In re Extradition of Russell*, 789 F.2d at 803.) Instead, “dual criminality exists if the essential character of the acts criminalized by the law of each country are the same and if the laws are substantially analogous.” *Theron v. United States Marshal*, 832 F.2d 492, 496 (9th Cir.) (internal citation omitted), cert. denied, 486 U.S. 1059 (1987). It is enough that the **conduct** involved is criminal in both countries. [*Kelly v. Griffin*, 241 U.S. 6, 14, 36 S.Ct. 487, 60 L.Ed. 861 (1916); *Oen Yin-Choy*, 858 F.2d at 1404-05.] In assessing dual criminality, the extradition magistrate may examine, in order of preference, analogous Federal statutes, similar laws of the state within the U.S. where the fugitive is found, and the consensus law of the various states within the U.S. [*Theron*, 832 F.2d at 496; *Messina v. United States*, 728 F.2d 77, 79 (2d Cir. 1984).]

Assistant United States Attorneys must carefully ensure that the court’s certification of extraditability includes specific findings as to the extraditability of each crime charged. *Caplan v. Vokes*, 649 F.2d 1336, 1343 (9th Cir. 1981). Separate findings are necessary because the doctrine of “specialty” (which some treaties incorporate) limits prosecution in the requesting state to extraditable charges. *Caplan*, 649 F.2d at 1343-44; see *Emami*, 834 F.2d at 1453. (“Specialty is a doctrine based on international comity that prevents the country requesting the extradition of a fugitive from prosecuting the fugitive for crimes other than those for which he was extradited unless the country from which the fugitive was extradited consents to the prosecution.”)

If the magistrate certifies that the fugitive is extraditable, then the court forwards its findings to the Secretary of State who makes the final decision whether to sign a surrender warrant allowing agents from the requesting state to take custody of the fugitive from the U.S. Marshal. A magistrate court’s extradition certification is not directly appealable, however, the fugitive may obtain collateral review by applying to the district court for a writ of habeas corpus.

Finally, it is crucial to note that extradition requests are submitted by foreign governments through diplomatic channels and are often monitored by the foreign ministry of the requesting state as well as the U.S. State Department. Therefore, Assistant United States Attorneys must be sensitive to potential repercussions that may result from irregularities in their representation of the foreign government and litigation of the request in court. The best policy is to consult with the Office of International Affairs concerning unusual questions or problems. In fact, OIA must first

approve every request for extradition of a fugitive, and United States Attorneys are prohibited from representing foreign governments in extradition matters without prior approval of OIA.

While Assistant United States Attorneys will encounter other significant legal and procedural factors in attempting to represent foreign governments in extradition proceedings, this brief primer provides a general discussion of the major elements to be considered in the early stages of extradition litigation.

Threats of War, Suspension of a Treaty, Impeachment, and Other Unpleasantries: A Historical Look at Extradition and the Prosecution of Foreign Nationals

**Assistant United States Attorney David Marshall Nissman
District of the Virgin Islands**

December 22, 1875

For grave political reasons, Lawrence must first be tried upon the charge upon which he was extradited, and upon no other, until that trial is ended, and whether subsequent proceedings for other crimes shall or shall not be taken, must await the order of the President This is a matter of great importance, and you must not blunder in it. There are consequences involved in it of a serious nature, as I have already told you, and we want to proceed in strict conformity with international law and international courtesy.

Attorney General Pierrepont to United States Attorney George Bliss
re: *United States v. Lawrence*, 26 F. Cas. 879 (C.C.S.D.N.Y. 1876)

The rule of specialty in international extradition cases holds that a person may only be prosecuted for the crime[s] for which he or she has been extradited. Coupled with the rule of dual criminality, requiring that the charged act be a crime in both nations, the rule of specialty frequently raises significant problems for state and Federal prosecutors. For example, some nations don't recognize conspiracy as a separate crime. In others, felony murder is not a part of the criminal justice system. The breadth of firearms, money-laundering, and anti-terrorist offenses, to name just a few, also are not always replicated in many of the nations that are partners to our extradition treaties. On the other hand, nations naturally want to know what their citizens will be facing in a foreign courtroom and, without the rule of specialty, there would be no way to guarantee that a fugitive would face only charges contained in the extradition order.

The practice of extraditions began cautiously at the turn of the 19th century as nations began entering into treaties obliging them to surrender fugitives under specified conditions. A short list of extraditable crimes was enumerated in the early treaties and political prosecutions were disfavored. In fact, political asylum was very popular in Europe during the 19th century.

The United States was also concerned with the extradition of political prisoners. In 1799, England requested that the United States extradite Jonathan Robbins for his role in a mutiny aboard a British vessel. There was an extradition provision in the Jay Treaty of 1794. At his hearing, Robbins claimed that he was a U.S. citizen who had been impressed into British service. When the

mutiny occurred, he said he was not a part of it but used that opportunity to escape from involuntary service. At the request of President John Adams, a U.S. court ordered his extradition. Robbins was taken to Jamaica, tried, convicted, and bound in chains—hung. The whole Robbins’ affair was very unpopular in the United States. Thomas Jefferson said, “. . . no one circumstance since the establishment of our government has affected the popular mind more.” Matters got so heated that there was a movement in the House of Representatives to impeach Adams, who was saved only by an impassioned speech by Congressman John Marshall. President Adams’ defeat in the election of 1800 is said to have resulted, in part, from the Robbins’ affair. When the Jay Treaty’s extradition provision expired in 1807, the Robbins’ case caused a lack of interest on the part of the United States in negotiating another extradition treaty. It wasn’t until larger issues arose, like settling the northern border dispute, that the United States signed another treaty with England to extradite fugitives. See the Webster-Ashburton Treaty (1842).

Matters of international diplomacy became more complicated with our federalist form of government. Unlike other countries, our Federal Government had no authority to restrict an individual state’s right to prosecute a criminal case. Federalism, as a diplomatic obstacle, burst on the scene, not in an extradition case, but in an 1840 New York murder prosecution of British national Alexander McLeod.

In 1837, a group of Canadians rebelled against the British. Things went badly for the rebels and they retreated to a Canadian island along the Niagara River. Aided by New Yorkers sympathetic to their cause, the rebels chartered a steamboat, the *Caroline*, to ferry supplies from the town of Schlosser, New York, to the island. Seeking to prevent another attack by the rebels, the British decided to destroy the *Caroline*. On December 29, 1837, the British sent a group of commandos to Schlosser, set the *Caroline* ablaze, towed it into the current, and celebrated as the fiery hull went over Niagara Falls. Two people were killed in the incident, including one American shiphand.

The United States vigorously protested the incident. The British attempted to justify their actions by blaming the United States for failing to control the rebels and called the *Caroline* a pirate vessel.

In 1840, New York authorities arrested Alexander McLeod, who bragged that he had been part of the commando team involved, and charged him with murder, which carried a mandatory death penalty. The British were outraged, viewing this prosecution of an individual acting on orders of his government as a violation of international law.¹ Their foreign secretary stated: “McLeod’s execution would produce war; war immediate and frightful in its character, because it would be a war of retaliation and vengeance.”

President Van Buren’s Secretary of State, John Forsyth, tried to explain to the British Minister to

¹ While the British claim under 19th century international law may have been correct, it has been clear since the Nurnberg trials that acting pursuant to a governmental order does not relieve the individual from responsibility provided a moral choice was possible. *Principles of International Law Recognized in the Charter of the Nurnberg Tribunal and in the Judgment of the Tribunal, principle IV*, reprinted in 2 Y.B. Int’l L. Comm’N (1950).

the United States (their equivalent to an ambassador) that, based on the principal of federalism, the Federal Government was powerless to stop New York from pursuing the prosecution. The British were incredulous. They would not “[a]dmit for a moment the validity of the doctrine advanced by Mr. Forsyth, that the Federal Government of the United States has no power to interfere in the matter in question, and that the decision thereof must rest solely and entirely with the State of New York.” The British never accepted this notion of federalism and it later became a major factor in extradition negotiations in the 1870s.

As the case proceeded, Van Buren’s term ended and President Harrison’s Secretary of State, Daniel Webster, inherited the delicate situation. The British informed Webster that if McLeod was executed, the British fleet would position themselves for an attack on the United States and fire the first salvos upon New York.

Webster told Attorney General John Crittenden that England’s legal interpretation under international law was correct. Webster also wrote to New York Governor William Seward suggesting that a *nolle prosequi* of McLeod would resolve a difficult foreign relations issue. Seward refused to direct a dismissal of the case. McLeod filed a habeas petition in state court asserting that he was acting within the scope of his Government’s orders. The New York court ruled against him on the grounds that the act did not occur during a declared state of war.

Both the British and the Federal Government wanted McLeod released. Daniel Webster, seeking to avoid a war, encouraged Attorney General Crittenden to find an able lawyer for McLeod. In a curious arrangement, United States Attorney Joshua Spencer, Northern District of New York, acting in a private capacity, became one of McLeod’s lawyers.

The war with England was only averted because, at trial, McLeod, in contrast to his earlier statements, advanced a successful alibi defense and was acquitted.

Following the McLeod trial, England and the United States began negotiating a new treaty that contained an extradition clause. The Webster-Ashburton treaty, as it was called, was ratified in 1842. Under the treaty, extraditable crimes were listed but there was no explicit rule of specialty.

In 1870, the British parliament enacted a law that unilaterally prohibited the British from extraditing fugitives unless the requesting nation agreed to abide by the rule of specialty. This led to immediate friction with the United States.

The United States state courts were split on the issue of whether specialty was implicit in the treaty with England. The issue came to a head in a Federal case, *United States v. Lawrence*, 26 F. Case. 879 (C.C.S.D.N.Y. 1876) (No. 15,573). Lawrence, a fugitive in Ireland, then part of the British Empire, was charged with multiple forgeries in the United States. Despite the fact that the evidentiary documents supporting the extradition request established that Lawrence committed a minimum of 10 forgeries, the British extradition order surrendered Lawrence on only one.

New York United States Attorney George Bliss prepared an indictment with all of the forgery counts and prepared to take Lawrence to trial on all of them. Lawrence petitioned Attorney

General Pierrepont for a dismissal of all of the other charges. This request initially fell on deaf ears. The British government then pressured the United States to abide by the rule of specialty.

Initially, there was an impasse on this issue, and the resulting furor culminated in Britain's refusal to honor several other extradition requests involving charges from a state case in Massachusetts. Since the United States could not order Massachusetts to abide by the rule of specialty, and since England felt that the federalist argument was ridiculous, England refused to extradite the individuals wanted in that case. The United States reacted by briefly suspending the extradition provision of the treaty.

In the meantime, President Grant decided to intervene and ordered United States Attorney Bliss to proceed initially only on the single forgery. United States Attorney Bliss actually helped resolve tensions between the United States and England through a prosecutorial tool with which we are all familiar. Lawrence became a "flipper." In exchange for his guilty plea and agreement to cooperate against others, the Government dismissed the remaining charges, and extraditions between the two countries resumed.

During the next decade, the problems created by the tension between the rule of specialty and the inability of the Federal Government to control state prosecutions continued to surface. Ultimately, the United States Supreme Court decided to resolve this uniquely political dilemma by issuing two controversial decisions on the same day in 1886, *United States v. Rauscher*, 119 U.S. 407, and *Ker v. Illinois*, 119 U.S. 436. These two decisions still determine the fate of challenges to the personal jurisdiction of United States courts over international fugitives.

Judgment in the two cases were authored by Justice Samuel F. Miller, appointed to the Supreme Court by President Lincoln in 1862. Miller was familiar with all of the cases chronicled here, and had been a vociferous opponent of the notion that a state had any business conducting foreign relations. He sought a vehicle to relieve the international tensions associated with extraditions and the peculiar role federalism played in exacerbating the problem.

Rauscher involved yet another New York case in which the defendant allegedly committed a murder on the high seas. Rauscher was arrested in England. Murder was a specified crime under the 1842 treaty, and he was extradited to face the murder charge. In New York, Rauscher was indicted for assault and for inflicting cruel and unusual punishment on the victim. The defendant claimed that this violated the rule of specialty. The trial court denied his challenge and he was convicted. On appeal to the Supreme Court, Justice Miller found the vehicle he was looking for to settle the political problem that extraditions had been causing. In creating his solution, Miller had to scale two logical hurdles. First, he had to find that the rule of specialty existed implicitly in the Webster-Ashburton treaty. Second, he had to create an individual right to raise the rule of specialty—a unique concept since extraditions up to this point were arranged by the executive branches of the two governments, and the recourse had been previously limited to diplomatic solutions between the two nations. Miller had no trouble overcoming either logical obstacle. While the first issue is moot because explicit conditions of specialty are now standard in our extradition treaties, the latter continues to pose difficult problems for prosecutors.

As justification for the creation of the individual right, Miller wrote that it would relieve “[t]he relations between the executive department of the United States government and the courts of a state before whom such case may be pending of a tension that has more than once become very delicate and very troublesome.” 119 U.S. at 430. In dicta, the opinion also says that treaties are the law of the land and that the states are bound by them. But this view was not firmly established at that time, and Miller left nothing to chance by creating an individual’s right to raise specialty. A later case, *Missouri v. Holland*, 252 U.S. 416 (1920), made it clear that treaties were binding on the states, thus eliminating the federalism problem in criminal prosecutions.

The second case decided that day made it clear that the Court’s purpose in creating the right had nothing to do with the individual and everything to do with international relations. In *Ker*, a bounty hunter went to Peru and kidnapped Frederick Ker, a fugitive, and returned him to the United States to stand trial in Illinois. The defendant moved to dismiss the case for a variety of reasons, including the manner in which he had been illegally brought into the country. The Supreme Court had no problem ruling against Ker because he did not affect foreign relations. Peru did not object to the kidnapping and Ker’s delivery to the United States did not impact the existing treaty with Peru.

Even in 1886, the *Rauscher* decision was perceived as legally “all wrong.” In a letter to a Supreme Court reporter, Secretary of State Hamilton Fish wrote, “What the Court wanted, was not so much, large legal knowledge (& they have none too much of that) but practical political knowledge, & experience in public affairs.”

The two decisions are very much alive today and have produced a host of issues for Federal prosecutors. The *Ker* doctrine resurfaced most famously in *United States v. Alvarez-Machain*, 112 S. Ct. 2188 (1992), the case in which United States agents forcibly abducted a doctor in Mexico for his alleged role in the torture murder of a DEA agent. Unlike the facts in *Ker*, Mexico protested the kidnapping. The Supreme Court extended the *Ker* doctrine and ruled for the Government.

Federal courts have held that while the rule of specialty under *Rauscher* creates an individual right, that right is derivative because it actually belongs to the asylum nation. In other words, if the nation that surrenders the fugitive either does not object, *United States v. Rossi*, 545 F.2d 814 (2d Cir. 1976); *United States v. Kaufman*, 858 F.2d 994 (5th Cir. 1988), or affirmatively waives the right of specialty, *United States v. Riviere*, 924 F.2d 1289, 1300-01 (3d Cir. 1991); *United States v. Thirion*, 813 F.2d 146 (8th Cir. 1987), the individual has no right to enforce the rule. There is a split in the circuits as to whether mere silence on the part of the “offended” nation acts as a waiver of the rule, or whether an explicit waiver is needed.

In summary, international extradition law began as a cumbersome process at a time when nations were particularly wary of obliging themselves to act at the behest of another country. As we approach the 21st century, the international community has much more experience with treaties and a host of international compacts that bring nations into daily contact on a multitude of issues. It is time to forge new relationships based on the universal problems that crime creates in all societies. For example, when we begin to see a murderer as a threat not only to the community

where he or she committed the crime, but to the community to which the suspect has fled, nations will more readily seek to aid each other in the apprehension and deportation of fugitives. In the meantime, a word to the wise: it is best to contact the Office of International Affairs at the earliest possible juncture to weave your way through the thorny issues of extradition and the prosecution of foreign nationals. Thus we can avoid the perils of unnecessary attacks on New York harbor and the prospect of unpleasant international incidents.

Bibliography

The Cautionary Tale of Alexander McLeod: Superior Orders and the American Writ of Habeas Corpus, 41, Emory L.J., 515 (1992).

“The Doctrine of Specialty in the Federal Courts: Making Sense of *United States v. Rauscher*,” 34, *Va. J. Int’l L.*, 71 (Fall 1993).

The Revolutionary Martyrdom of Jonathan Robbins, 100, *Yale L.J.*, 229 (November 1990).

The Rule of Specialty

The rule of specialty was developed in France in 1840. The Canton of Geneva (Switzerland) surrendered a fugitive to France to face the equivalent of a single bankruptcy fraud charge, a felony. The fugitive was acquitted and French authorities decided to charge him with a new offense, a misdemeanor. The French Minister of Justice would not let the case go forward and the fugitive was returned to Switzerland. The rationale for the Minister’s ruling was that the treaty did not authorize extradition for misdemeanors and, since the fugitive had not been surrendered to face the additional charge, he could not be required to face a trial on the second charge. The French were concerned with protecting people from political prosecutions. In addition, under the French criminal justice system, the inquiring magistrate had the authority to examine defendants on a wide range of issues. Defendants did not possess the equivalent of a Fifth Amendment right against compulsory examination, and it was common for defendants to face additional charges based on what they said to the magistrates.

In recognition of this, the French created the rule of specialty and imposed it on themselves. In the next few years, the rule began appearing as an explicit provision in European extradition treaties. By the 1870s, the rule of specialty, whether or not contained in treaties, was recognized as a part of international law by most nations. The United States, however, did not recognize the rule unless it was contained in a treaty.

Prosecutor’s Opposition

In a curious twist of fate in the McLeod case, the Federal Government was willing to accede to Britain’s demands even though Britain had sent a hostile military mission into New York. Conversely, it was the New York prosecutors who took the position that the United States

Government had a right to prosecute those that trifled with American citizenship.

The following excerpt from the prosecutor's opposition to McLeod's habeas petition illuminates the irony:

"In my early days in reading the records of Roman greatness, it was not her palaces, nor her temples, nor the extent of her dominions, nor the power of her armies, that thrilled me, but it was the magic power of the exclamation, even amongst the remote and barbarous nations, 'I am a Roman citizen!' And in modern times, the exclamation, 'I am an Englishman,' has become an almost equal passport and protection throughout the world. When will the time arrive when the exclamation, 'I am an American citizen!' claim an equal respect? Never until we learn with equal scrupulousness to protect the lives, liberty and property of the humblest citizen of our Republic. Never while we disarrange the decent folds of the drapery of our judiciary with undignified haste to obey the irregular and illegal demands of a foreign nation."

New York Attorney General Willis Hall

People v. McLeod, 25 Wend. 483, 528-33 (N.Y. Sup. Ct. 1841)

Right to Recourse

Rauscher brought a new concept into play in extraditions. By granting individuals the right to recourse under an extradition treaty, Justice Miller had to find that the treaty was self-executing. In other words, no enabling legislation was needed to give an individual the right to raise issues under the treaty. But unlike other self-executing treaties, the *Rauscher* doctrine granted to foreign nations the right to essentially veto the self-executing feature by agreeing to waive the rule of specialty. If, for example, a foreign nation signs a waiver of the rule in a specific extradition request, the individual has no right under the treaty to raise specialty as a bar to prosecution.

Status of Constitutional "Separation of Powers" Challenge to the Statutory Basis for the Extradition of Fugitives from the United States

Assistant Director Sara Criscitelli

Office of International Affairs

Criminal Division

In *Lobue v. Christopher*, 839 F. Supp. 65 (DDC Aug 31, 1995), two plaintiffs filed a civil action in the District of Columbia seeking an injunction against their surrender and a declaratory judgment that 18 USC 3184 is unconstitutional. The purported constitutional flaw lay in the ability of the Secretary of State to decline to surrender a fugitive whom the extradition judge had certified extraditable. The assignment of discretion to the Secretary of State to override the determination of an Article III judge, they argued, intruded on separation of powers. Because the Article III judge who decided the extradition matter was assigned a non-Article III task, they further argued, the extradition scheme also violated the Appointments Clause of the Constitution.

The district court agreed, declaring the statute unconstitutional, certifying all fugitives facing

extradition as a class, and enjoining the surrender though not any extradition proceedings of any class member.

On the Government's emergency application, the court of appeals stayed the class-wide injunction. Thereafter, it vacated the district court's declaratory judgment on jurisdictional grounds, holding that a fugitive facing extradition in another district (in this case, the NDIL) could challenge the lawfulness of this extradition through a habeas petition in that district and not in a separate lawsuit against the Secretary of State in the District of Columbia. See *Lobue v. Christopher*, 82 F.3d 1081.

Subsequent to the appellate decision in *Lobue*, the Second Circuit addressed the merits of the various constitutional claims and rejected them in their entirety. In *Lo Duca v. United States*, 1996 WL 490738 (2d Cir. Aug. 29, 1996), the court of appeals followed an earlier decision of that court, that extradition judges do not exercise Article III judicial powers. Thus, it concluded that the Secretary of State's discretion whether to surrender the fugitive after the extradition judge certified extraditability is not an unconstitutional exercise of Executive Branch authority to revise a final Article III judgment. The court also held that the extradition statute does not assign a non-Article III or extrajudicial function to an Article III officer. Finally, it rejected the claim that the conduct of an extradition hearing by an Article III officer somehow undermines the integrity of the Judicial Branch.

The constitutional issue is still being argued by persons facing extradition. In addition to *Lo Duca*, every extradition and habeas court since *Lobue* has rejected the various constitutional arguments. See, for example, *In re Extradition of Abu Marzook*, 924 F. Supp. 565 (SDNY May 7, 1996); *Sutton v. Kimbrough*, 905 F. Supp. 631 (EDMO Oct 30, 1995); *Matter of Extradition of Lang*, 905 F. Supp. 1385 (CDCA Nov 20, 1995).

In an analysis not reached by the Second Circuit in *Lo Duca*, these courts have variously recognized that the extradition scheme is functionally equivalent to all other preliminary criminal proceedings. The extradition judge's certification that an extradition is supported by probable cause and is otherwise lawful, is no different than a judge's issuance of a search or arrest warrant, or a finding of probable cause at a preliminary hearing. In all these instances, a judge makes a finding on legality and then the Executive Branch exercises its discretion to determine whether to proceed to search, arrest, or prosecute. Courts have also noted that this executive discretion can only be exercised to a fugitive's benefit if the extraditing judge declines to certify extraditability. The government cannot proceed on that request.

The *Lobue* issues, though rejected by every court to date, are still being raised. However, the arguments in opposition to *Lobue* are compelling and, thus far, have persuaded every judge since the case to reject its analysis. If a *Lobue* motion is made in your extradition case, please inform the Office of International Affairs immediately.

Provisional Arrests in Extradition Cases: Pros and Cons
Deputy Director Thomas G. Snow

Office of International Affairs Criminal Division

United States and foreign prosecutors are increasingly interested in having international fugitives “provisionally arrested” at the start of the formal extradition process. A provisional arrest may be requested without much effort under most U.S. extradition treaties—usually pursuant to a diplomatic note containing the personal particulars of the charged person and information on the crimes he allegedly committed. Documents to support the formal extradition request can then be prepared after the provisional arrest, usually within a period of 45 to 60 days, and often while the fugitive is safely in custody. Moreover, in the U.S. and many other countries, a person provisionally arrested may “waive” formal extradition altogether. In most cases, a waiver of extradition obviates the time consuming process of compiling formal extradition documents—a process which often painstakingly sets out the Government’s case prior to trial. Given all this, a reasonable question of prosecutors worldwide is, “Why not seek provisional arrest in every case of foreign flight?”

In fact, there are considerable legal or practical reasons not to seek provisional arrest. The Office of International Affairs (OIA), through which all international requests for extradition both to and from the U.S. must pass, is responsible for evaluating whether a request for provisional arrest is appropriate. We look carefully not only at the many advantages of arranging for a speedy provisional arrest but at the disadvantages also.

When a U.S. prosecutor asks OIA to arrange for a provisional arrest in a foreign country, the OIA attorney considers a number of factors. For example, since many U.S. extradition treaties require it, a determination of the “urgency” for obtaining a provisional arrest is normally made. If the fugitive is on the run, living under an assumed name, and not expected to stay in the foreign location long, the urgency test is easily met. However, if he has been living and working under his own name in the foreign country for months or years, it may be more difficult to argue the urgency for provisional arrest.

Urgency is not the sole consideration. Some countries routinely grant bond in provisional arrest cases. And some of those same countries hold fugitives in custody throughout the extradition process once an arrest is made on a full set of extradition documents. In such instances, does it really make sense to arrange for an immediate provisional arrest, only to have the now “spooked” fugitive released on bond pending the submission of the formal U.S. extradition request?

In addition, some countries may not, as a matter of law or policy, permit a provisionally arrested fugitive to waive formal extradition. A prosecutor who is convinced that an accused criminal will decide, after a night or two in a foreign jail, not to fight extradition and to come home voluntarily, may be shocked and disappointed that the country may not permit the expedited return of even the most cooperative fugitive. Sometimes the submission of a full set of extradition documents and a full blown extradition hearing in the foreign court are necessary. Even when waivers are possible, it is not unusual for a provisionally arrested fugitive to change his mind about waiving after receiving a pep talk from a defense lawyer who claims he can “beat” the extradition.

The fact that usually a person may be prosecuted only for those crimes on which his extradition was actually granted (i.e., the “rule of specialty”) may also have an impact on the provisional arrest decision. If a person charged in the U.S. is under further investigation for other crimes, it may be shortsighted to obtain his provisional arrest on the existing counts, only to be frustrated by the inability to proceed on other, perhaps more serious counts developed after he has been extradited.

A provisional arrest also creates a “race against the calendar.” As mentioned, most treaties allow a couple of months after provisional arrest for submission of a full set of extradition documents. Experience has shown that, particularly in complex cases which require numerous evidentiary affidavits or in which the documents must be translated, this time passes quickly. Extradition documents that are carefully and thoroughly prepared in draft and submitted to OIA for review and comment often produce a stronger final package that is more likely to result in a successful extradition.

The flip side of this concerns foreign requests for provisional arrests in the U.S. These requests also must come through OIA, and we must determine whether to forward them to the relevant United States Attorneys’ offices for execution. Naturally, some of the same considerations apply. For example, while great deference is given to a foreign country’s determination that a matter is urgent enough to seek provisional arrest (the same sort of deference we expect when making such requests abroad), OIA will go back to the foreign country and discuss a request prior to proceeding if it appears to be entirely inappropriate for provisional arrest.

Although there is a general presumption against bail in U.S. extradition cases, courts may release extraditees on bond if they establish certain jurisprudentially defined “special circumstances.” If OIA believes that special circumstances exist and a fugitive from foreign justice is likely to be freed on bail during the course of his U.S. extradition proceedings, we may discuss this with the state seeking provisional arrest to ensure the state is willing to assume this risk.

However, there are at least two additional matters to be considered by OIA prior to forwarding a foreign request for provisional arrest to a United States Attorney’s office. First, does the provisional arrest request, usually presented in the form of a diplomatic note and often without any supporting documentation, contain sufficient information to justify obtaining an arrest warrant in the U.S.? The case law is somewhat ambiguous as to exactly what is required to obtain a provisional arrest warrant in an extradition case. Clearly, much more information is provided at the extradition hearing than is available at the provisional arrest. However, one may argue that the Fourth Amendment always requires probable cause in order to obtain a warrant; therefore, OIA avoids forwarding provisional arrest requests that are not accompanied by at least some information outlining a reasonable basis for believing that the fugitive committed an extraditable offense. Even if there is no legal requirement that the requesting country’s diplomatic note go into great detail about the nature of the crime and the evidence linking the fugitive to it, if the note is completely deficient in this regard, we prefer to request additional information.

The second matter is of a policy concern rather than a legal one. Unfortunately, OIA has learned the hard way that some countries are quick to seek provisional arrest but slow to follow through

with a formal extradition package containing the show of probable cause. We have even had some instances—thankfully quite rare—in which a country has had us provisionally arrest a fugitive, and then tells us well into the extradition process that, due to some domestic legal problem, the fugitive is no longer wanted for prosecution.

OIA is reluctant to arrange for the provisional arrest of fugitives if our experience has shown that due to a lack of resources, inexperience in international extradition, or domestic legal constraints, the foreign state will be unlikely to produce the documents required for extradition within the deadline imposed by the treaty. When OIA anticipates these types of problems, we work with the requesting state to overcome them. In important cases and when attorneys are available, we proceed with the provisional arrest and then assist the foreign law enforcement authorities in the proper presentation of their evidence. However, on occasion we must insist that a requesting state make a formal, fully documented request for the extradition of a fugitive located in the U.S. before we will ask a United States Attorney's office to arrange for his arrest.

In short, while provisional arrest is an extremely valuable tool in the fight against international crime, it is not appropriate in every extradition case. Should you have any questions or suggestions concerning the pros and cons of pursuing a provisional arrest, please call OIA.

The International Fugitive

Martin J. Weinstein*

**Assistant United States Attorney Daniel A. Caldwell
Northern District of Georgia**

In the summer of 1994, the United States Attorney's office for the Northern District of Georgia embarked on an expensive Foreign Corrupt Practices Act case. The schedule called for the June indictment of Lockheed Corporation and two of its executives for violations of the Foreign Corrupt Practices Act and other Federal statutes. Among those to be indicted was a Lockheed executive by the name of Suleiman Nassar, an American national born in Syria.

Suleiman Nassar, although a Lockheed employee and an American citizen, resided just outside of Geneva, Switzerland, in the French suburb, Divonne. As plans were made to indict Nassar, we were assured by his American lawyer that he would appear in Atlanta to face the charges the grand jury was expected to hand down against him. Assuming that Nassar intended to appear in Atlanta, we agreed not to have him arrested in Europe to avoid the lengthy extradition process.

Our assumptions were incorrect. On June 22, 1994, when the grand jury indicted Lockheed, Nassar, and Alan Love, instead of Nassar coming west to face the charges, he fled to Syria. Nassar telephoned his former driver at Lockheed's office in Amman, Jordan, and asked him to meet him in Damascus with clothes that he had stored in Jordan. Once in Damascus, Nassar seemed untouchable by American authorities.

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Yet, as of this writing, Nassar is in the custody of the Bureau of Prisons, after pleading guilty to violating the Foreign Corrupt Practices Act by paying off a member of the Egyptian parliament. He is serving an 18-month sentence and agreed to pay a \$125,000 fine.

This article provides prosecutors with tips concerning fugitive defendants. In this case, Nassar not only fled the jurisdiction of the court but he fled to a country without an extradition treaty and, for that matter, no treaty with regard to law enforcement issues. How Nassar was returned to the United States as part of a deal where he pled guilty, paid three times the Sentencing Guidelines range in fines, and became the first man ever incarcerated under the Foreign Corrupt Practices Act is a guide for prosecutors concerning fugitive defendants.

We were disappointed and frustrated with Nassar's disappearance in the Lockheed case. At first his whereabouts were unknown. His disappearance to Damascus was determined through the assistance of French and Swiss law enforcement authorities. Nonetheless, during early July 1994, our requests to the French and Swiss police to determine whether or not Nassar had fled there were met with very little response. By August, Swiss law enforcement authorities told us that Nassar's wife, Madeline, was receiving mail from Damascus, confirming our opinion that he was there. Our problem was how to get him back from Syria, a country whose relationship with the U.S. is notoriously tenuous.

One method of securing Nassar's return was to stop his efforts to move his assets overseas. After the indictment against Nassar was filed, two condominiums in Washington, D.C., owned by Nassar and his family were listed for sale. In July 1994, Federal agents determined that one of the condominiums owned by Nassar's wife and daughter was scheduled for closing in August. The agents were advised that the proceeds from that sale were to be transferred to an overseas account maintained by Madeline Nassar in Switzerland.

Federal agents determined that although Madeline and Nassar's daughter were listed as the owners of the condominium set for closing, it was purchased in February 1992 with assets controlled by Nassar. The purchase was made only two weeks after Lockheed was notified that the Defense Control Audit Agency would be auditing the contract for the sale of C-130 aircraft, which resulted in the indictment of Lockheed and Nassar.

Through the Federal Debt Collection Procedures Act (FDCPA), 28 U.S.C. § 3001, et seq., the U.S. halted Nassar and his family's efforts to sell the property and transfer the proceeds beyond the reach of the U.S. On August 12, 1994, with the assistance of Assistant United States Attorney Keith Morgan of the United States Attorney's office for the District of Columbia, the Government filed a multi-count civil Complaint in the U.S. District Court for the District of Columbia against Nassar, his wife, and his daughter, charging that the condominium purchased in February 1992 by Nassar's wife and daughter, with assets controlled by Nassar, was a fraudulent conveyance of his property. Accordingly, pursuant to the fraudulent conveyance provisions of the FDCPA, the U.S. sought transfer of the title of the condominium from Nassar's wife and daughter to Nassar.

The U.S. simultaneously sought entry of prejudgment Writ of Attachment, pursuant to 28 U.S.C.

§ 3101 of the FDCPA, against the condominium unit that Nassar's wife and daughter were planning to sell and a second unit owned by Nassar and his wife that was listed for sale. The Writ of Attachment was issued immediately before the scheduled closing of the condominium owned by Nassar's wife and daughter. It halted that closing and precluded the sale of the other condominium owned by Nassar and his wife.

In September 1994, the prejudgment Writ was modified to allow the bona fide purchasers of the unit owned by Nassar's wife and daughter to purchase it with the U.S. holding the lien. The modification transferred the title of the condominium owned by Nassar's wife and daughter to the purchasers, and the \$195,000 in proceeds remained in the escrow account of the closing agent until further Court Order.

In July 1995, the U.S. District Court for the District of Columbia entered another modification to the Writ so the sales proceeds held by the closing agent could be deposited into the registry of the U.S. District Court for the Northern District of Georgia. The closing agent then paid the closing proceeds and accrued interest to the registry of the U.S. District Court for the Northern District of Georgia. The \$200,541 in proceeds were used to partially satisfy an appearance bond for Nassar.

In addition to the FDCPA, we found assistance in, of all places, the ancient All Writs Act, which provides a variety of remedies. It was the basis of our request to have the Court freeze all of Nassar's worldwide assets. The Court granted our request and froze Nassar's assets, including his half-million dollar pension, which had been transferred recently from one brokerage house to another and was caught in mid-transfer by the Order. The Government also threatened to freeze an inheritance that Madeline Nassar was about to receive, which we believed she would use to help Nassar. The Court Order was so effective that in August 1994, and for many months thereafter, Lockheed paid Nassar's monthly retirement (Nassar had been dismissed by Lockheed on the eve of the indictment) to the Government, which then was deposited in the court registry. By the time Nassar agreed to return to the U.S., the Government had deposited \$749,308.73 in frozen funds in the registry.

Despite having frozen a substantial sum of money, Nassar still refused to leave Syria. Ultimately, the Government had to deal directly with Syrian authorities to put pressure on him to return to the U.S.

In January 1995, in preparation for the Lockheed trial, we traveled to Amman, Jordan, and Cairo, Egypt, to interview witnesses. We also went to Damascus to meet with law enforcement officials to determine Nassar's whereabouts and what, if any, information he had provided to Syrian authorities. It was during that trip that the Government learned that an INTERPOL warrant the U.S. had sent worldwide had been executed by Syrian law enforcement authorities. From late September through November 1994, Nassar was in a Syrian prison at the request of INTERPOL. He was released in November after posting bond but, as of our visit to Damascus, the Syrian Government had his travel papers so he could not leave the country legally. Obviously, our concern was that Nassar would leave Syria and disappear.

Nonetheless, during our first visit to Syria, Syrian authorities and U.S. Embassy officials were very helpful and cooperative in our efforts to locate Nassar. After Lockheed pled guilty on January 27, 1995, the Government began to accelerate pressure on Nassar by continually communicating with the Syrian Government via the U.S. Embassy. Consular officials of the Embassy provided tremendous assistance and, coupled with the court order freezing Nassar's assets, it appeared that his resolve to remain a fugitive was slowly wearing down. Although continual discussions with Nassar's new attorney in the U.S. indicated that he was willing to return, no agreement had been reached. In the end, it was the actions of the Syrian Government that broke the logjam.

In March 1995, we met with Hassan Hussein, the Syrian Minister for Justice. At the meeting, he announced that at the request of the U.S., Nassar had been arrested on charges of violating the Foreign Corrupt Practices Act, and that under the doctrine of extraterritoriality, the Syrian Government intended to try him in Damascus. While this was not a trial that we preferred, Nassar's arrest for the second time in six months and his incarceration in a Syrian prison provided us hope that, ultimately, he would opt to return voluntarily. Within several weeks, Nassar decided to return to the U.S. We then worked through the Syrian Government to reach a commonality for all parties to ensure that once he was released from prison, he would come to the U.S., not go off to some third country.

With the assistance of Ambassador Christopher Ross of the U.S. Embassy in Syria, in July 1995, Nassar was released from Adra Prison in Syria and escorted to the Damascus Airport where he boarded a plane for Frankfurt, Germany. There he was met by Special Agent Chris Amato of the Defense Criminal Investigation Service, taken to Atlanta, and placed under arrest. As part of the prearranged deal, Nassar agreed in a joint recommendation with the U.S., to plead guilty to violating the Foreign Corrupt Practices Act, to serve 18 months in prison, and to pay a \$125,000 fine, three times the Sentencing Guidelines' maximum. This money was paid from that seized as part of the court order under the All Writs Act. Nassar currently resides at a halfway house in Washington, D.C., after serving the custody portion of his sentence.

For prosecutors who have had defendants escape, run away, or simply disappear, this article should serve as hope and provide weapons in the arsenal of detection and ultimate apprehension. During the process of this case, Nassar seemed out of reach and we were frustrated. Yet with the assistance of the State Department, INTERPOL, the Office of International Affairs, and the United States Attorney's office for the District of Columbia, in addition to the commitment of substantial resources by the United States Attorney's office for the Northern District of Georgia, Suleiman Nassar was brought to justice and the Lockheed prosecution was closed with all defendants pleading guilty and the recovery of over \$25 million.

A Dilemma: Obtaining Testimony from Foreign Witnesses
Assistant United States Attorney Andrew R. Hamilton
Major Crimes Unit
Western District of Washington

Approximately a year ago, I became involved in a violent-crime prosecution in which all of the perpetrators, all of the victims, and several important witnesses were from the People's Republic of China (PRC). This article illustrates some of the logistical and legal problems my trial partner and I faced when the defense attempted to obtain testimony from residents of that country.

On August 24, 1995, three Chinese aliens (two young men and a young woman) were abducted from their foster homes in Tacoma, Washington. Several months before the abductions, these aliens attempted to enter the U.S. with forged passports and because they claimed to be juveniles, they were placed in foster homes by the Immigration and Naturalization Service (INS) while their petitions for political refugee status were processed.*

The FBI took over the investigation of these abductions and established a task force of over 60 agents to work on the case.

Within several days of the abductions, the victims' family members in the PRC began to receive ransom demand calls from the kidnappers. They demanded over \$30,000 in U.S. currency for each victim. These demands were staggering amounts for these families who resided in one of the poorest regions of China. The kidnappers told the family members that if they failed to meet these demands, the female would be raped and mutilated and the two males would be murdered and dismembered. They also threatened to mail the victims' body parts back to the families in China.

The FBI determined that several of the ransom calls to China were made using a cellular telephone purchased several weeks earlier in Seattle, Washington. FBI agents from the surveillance squad in Seattle staked out the home of the purchaser, a Chinese alien who applied earlier for refugee status.

On the third day of surveillance, the purchaser and three occupants drove up to the home. The car was stopped and the driver and occupants were questioned by agents. During a consent search of the vehicle, the cellular telephone used to make the ransom calls was found in the glove compartment. The purchaser was arrested and taken into custody. The three occupants were found to be illegal Chinese aliens and were placed in administrative custody by an INS agent.

These arrests were made on the ninth day of the victims' captivity but the victims still had not been found. When the agents found the cellular telephone in the glove compartment, they also recovered a rental agreement for an apartment in Tukwila, Washington. The FBI sent two agents to the residence to "check it out."

When the agents approached the duplex residence, it appeared to be empty. They walked around the residence, interviewed several neighbors, and attempted to contact the landlord, all without learning much about the occupants.

* NOTE: Largely as a result of this case, INS has stopped using the foster-care program for juvenile aliens. They have now created several new national facilities for the sole purpose of housing juvenile aliens who attempt to illegally enter the country.

The agents finally decided to knock on the front door. Nobody answered but the agents could see what appeared to be furtive movement through an opaque glass partition in the door. The agents ran around the residence and, on the other side of the duplex, discovered an open sliding glass door that moments earlier was closed.

Believing the victims to be inside and hurt or dying, the agents decided to enter and conduct a protective sweep. Armed with just handguns, they entered the residence and found the victims in a bedroom. The two young men were lying on the floor with their arms and legs wrapped in duct-tape, and the young woman was inside a closet. The victims indicated through gestures and sign language that three of the kidnapers had been in the residence and were armed with guns.

An FBI SWAT team was called to the residence. Inside one of the bedrooms, the SWAT team found a man hiding inside a closet with a sawed-off shotgun nearby. The victims identified the man in the closet, the four men arrested in the vehicle stopped in Seattle, and the two individuals who fled the residence when the agents knocked on the door, as their kidnapers. The individuals who fled remain at large and are being sought by the FBI.

During the victims' nine days of captivity, the two males had been repeatedly beaten, clubbed, and tortured with burning cigarettes, and the woman had been raped by one of the fugitives. On the morning of the rescue, the kidnapers told the victims that the oldest male would be executed that night because his family had not met their ransom demands.

The five suspects in custody were indicted for crimes of criminal conspiracy (18 U.S.C. § 371), making ransom demands (18 U.S.C. § 875(a)), and hostage taking (18 U.S.C. § 1203). Defense counsel indicated that the main defense at trial would be a claim of duress.

In pretrial pleadings, the defense attorneys stated that the defendants themselves had been kidnapped by organized crime members who, in turn, had forced them to take part in the Tacoma kidnappings. The defense attorneys argued that the defendants had no choice but to participate in these kidnappings, or risk their own deaths and the deaths of their families in the PRC at the hands of this organization.

To bolster this claim of duress, the defense requested authority from the trial judge to go to the PRC to take depositions from the defendants' parents, claiming that these witnesses could offer crucial testimony to support the defense.

Ethically, we did not want to unfairly resist the acquisition of evidence deemed crucial by the defense. We did not believe, however, that the duress claim was valid factually or as a matter of law.

Factually, we believed the claim of duress was a sham. Our agents concluded that the defendants were members of the "Fukinese Flying Dragons," a notorious, New York City-based street gang. Recently, over 30 members of that organization were indicted in the Southern District of New York for racketeering charges, including multiple counts of kidnappings and making ransom demands. In addition, one of our Seattle defendants was also indicted by the Eastern District of

New York and the New York City District Attorney's Office for crimes more heinous than those charged in our indictment.

Legally, we believed that the defense of duress was not available to these defendants because they had ample opportunities to "escape" from their "kidnappers" and to warn their families of this "danger." Our position was that the defense of duress is a very limited defense and cannot excuse a lifetime of crime.

Our first legal battle dealt with the defense's request to travel to the PRC to take depositions. It was apparent that the PRC would never allow the parents of the defendants to travel to the U.S. to testify in court.

We were also interested in the possibility of PRC witnesses testifying. Testimony of the victims' parents, for example, could be compelling evidence at trial. We contacted the Department's Office of International Affairs to obtain permission for this trip but we were advised by a senior attorney that the PRC Government would likely deny our request, as representatives of the U.S. Government, to participate in a formal deposition of witnesses in China. To further complicate matters, the PRC Government would probably take months to make the formal refusal of our request.

The response of the defense attorneys to our dilemma was simple: if the prosecutors could not travel to China, the defense attorneys should be permitted to travel alone and videotape the statements of their witnesses for trial.

Unlike in civil cases where depositions may be taken as a matter of right without permission of the court, Rule 15(a) of the Federal Rules of Criminal Procedure permits depositions in criminal cases to be taken only by order of the court, and then only in "exceptional circumstances." Furthermore, taking depositions in criminal cases, particularly foreign depositions, is generally disfavored because the fact finder does not have an opportunity to observe the witnesses' demeanor. [See *United States v. Wilson*, 601 F.2d 95, 97 (3rd Cir. 1979).]

In analyzing whether circumstances are sufficiently exceptional to warrant a deposition, three factors must be considered by the trial court:

- (1) Whether the witness is unavailable;
- (2) Whether injustice will result without the material testimony that the deposition could provide; and
- (3) Whether countervailing factors would make the deposition unjust to the nonmoving party.

[See *United States v. Ramos*, 45 F.3d 1519, 1522 (11th Cir. 1995).]

The trial judge ultimately denied the request of defense counsel to take Rule 15 depositions in the

PRC, concluding that the defendants had failed to show that the requested testimony was “material.” After examining the proffers submitted by defense counsel, it was apparent that the expected testimony of these family members would be cumulative to the testimony of the defendants.

Furthermore, the trial judge concluded that none of the family members would be able to testify about the events that occurred during the Tacoma kidnappings. None of these family members had personal knowledge of any facts that could establish whether the defense of duress was available to the defendants. Because the testimony of these witnesses could not “negate the crux of the charges in the indictment,” their testimony was not material. [See *United States v. Ismaili*, 828 F.2d 153, 160 (3rd Cir. 1987), cert. denied, 485 U.S. 935 (1988).]

The second battle on this front dealt with the defense’s request to permit these witnesses to testify at trial via a telephone hook-up from the PRC. Despite obvious problems inherent with this suggestion, the trial judge initially seemed inclined to grant this request.

Our argument to the court was that Rule 26 of the Federal Rules of Criminal Procedure does not permit telephone testimony in a criminal case. This rule states:

“In all trials the testimony of witnesses shall be taken orally in open court, unless otherwise provided by an Act of Congress or by these rules, the Federal Rules of Evidence, or other rules adopted by the Supreme Court.”

The Ninth Circuit stated in an unpublished memorandum that telephonic testimony may be prohibited by Rule 26 because of its requirement that testimony be taken in open court. [*United States v. Mahaffey*, 76 F.3d 389 (9th Cir. 1996) (unpublished).] The Ninth Circuit held that it was not necessary to reach this issue in *Mahaffey* because the defense had agreed to the use of the telephone testimony at the trial in question.

Only one other Circuit Court of Appeals has considered this issue. In a civil case, *Murphy v. Tivoli Enterprises*, 953 F.2d 354 (8th Cir. 1992), the Eighth Circuit held that telephone testimony was not admissible at trial. The Eighth Circuit noted that the federal rules “strongly favor” the testimony of live witnesses wherever possible so the jury may observe the demeanor of the witnesses in order to determine the witnesses’ veracity.

Telephone testimony, the Eighth Circuit stated, was actually nothing more than hearsay because telephonic statements of the witness are actually made out-of-court, and are nevertheless offered for the truth of the matter asserted. This hearsay fits under none of the hearsay exceptions in the Federal Rules of Evidence.

The Eighth Circuit strongly criticized the case of *Official Airline Guides, Inc. v. Churchfield Publications, Inc.*, 756 F.Supp. 1393, 1399 n. 2 (D.Or. 1990), a district court opinion in which a trial judge permitted telephone testimony in a civil case. The Eighth Circuit concluded that it knew of no exception in the acts of Congress, the Rules of Civil Procedure, or the Rules of Evidence that would permit telephone testimony in a trial.

The reasons why the Eighth Circuit condemned this form of testimony are apparent—with such a procedure, there can be no verification of the actual identity of the witness who is testifying, none of the parties has an opportunity to view the witness’s demeanor during their questioning of the witness, and the jury has no basis to judge the veracity and credibility of the witness as he or she testifies.

Our trial judge concluded that this procedure was not permitted by Rule 26 and denied the defense’s request for telephone testimony.

The defendants in this case were permitted to advance the defense of duress at trial. After a four-week trial, the jury rejected this defense and returned verdicts of guilty on all charges. The defendants were recently sentenced to 20- to 30- year prison terms.

The denial of the defense requests for depositions in the PRC and telephone testimony during trial are among two of the issues that will be litigated on appeal before the Ninth Circuit.

A practical lesson we learned from the case is that no matter how crucial the testimony of certain witnesses may be to either side in a trial, if the witnesses reside in a foreign country, their testimony will likely remain unattainable.

International Kidnappers: Are We at Their Mercy?

Assistant United States Attorney Timothy A. Macht
Eastern District of New York

On January 27, 1995, Ahmed Amer, a dual citizen of America and Egypt who had recently separated from his wife, Mona Amer, kidnapped their three children from Mona’s home in Queens, New York, and took them to Egypt. It has been almost a year since a jury convicted Ahmed Amer of abducting the children. Yet Amer’s Case—the first in the nation to go to trial under the 1993 International Parental Kidnapping Act, 18 U.S.C. § 1204—has brought no relief for Mona, who was the Government’s principal witness at the three-day trial. The three children remain in Egypt with Ahmed’s family, while Mona continues to hope for their return.

It is a complex question whether a successful prosecution under the Act can help effect the return of abducted children to the United States. Since 1988, the prime mechanism for return of abducted children to the United States has been an international treaty, the Hague Convention on the Civil Aspects of International Child Abduction. As its name suggests, the Hague Convention does not impose criminal punishment upon the abductor. It authorizes an aggrieved parent to apply for the return of the child to the judicial or administrative authority of the country in which the child is wrongly held. Through its first years of operation, the Hague Convention was considered remarkably successful at facilitating the return of abducted children. A problem, however, was that many countries, including Egypt, had not signed onto the Hague Convention, and the Convention cannot be implemented unless both the country in which the child is held and the country in which the aggrieved parent resides are signatories. Thus, abducting parents can escape the Convention’s reach by taking their children to nonsignatory countries.

In part to deter parental abductions to nonsignatory countries, Congress passed the International Parental Kidnapping Act in 1993, making it a Federal criminal offense for a parent to wrongfully remove or retain a child anywhere outside the United States' borders. The Act exposes the parental kidnapper to a maximum three-year prison term. Beyond imprisonment, the Federal courts have begun to consider whether the Act, in conjunction with other Federal criminal statutes, empowers the courts to do something more: to order the return of the children to the United States.

By its terms, the Act creates no such remedy. Moreover, Congress intended for the Hague Convention to remain the primary mechanism for bringing children back to the United States, stating in a "Sense of Congress" resolution accompanying the Act that "where applicable, the procedures under the Hague Convention should be the option of first choice of a [left-behind] parent." But prosecution under the Act makes it possible that abducted children might be returned when the Hague Convention fails or cannot be implemented, as in Amer's case. Once a child has been abducted, a threatened prosecution may pressure the abducting parent to return the child, either in an effort to avoid the charges or to decrease the possibility of conviction. Second, after a conviction a court might order the return of the children under the restitution provision of the Victim Witness Protection Act, 18 U.S.C. §§ 3663 and 3664, on the theory that a child is "property" within the meaning of that provision. Third, a court might order the return of the children as a condition of supervised release.

In sentencing Amer, U.S. District Judge Carol B. Amon rejected the Government's argument that the court should "make Mona Amer whole" by ordering the return of her children under a restitution theory. However, after sentencing Amer to two years in prison and one year of supervised release, Judge Amon ordered Amer to return the children to the United States as a condition of his supervised release. Judge Amon found that the return of the children was an appropriate discretionary condition of supervised release because it was related to the nature and circumstances of the kidnapping offense. Under Judge Amon's ruling, Amer's obligation to return the children applies only once he completes his two-year term of imprisonment and commences his supervised-release term. If Amer does not return the children upon his release from prison, he could be sent back to prison for another year.

Amer has appealed the district court's order that he return the children, and the issue is currently before the Second Circuit. Amer has also challenged the constitutionality of the International Parental Kidnapping Act. Briefs have been submitted. Oral argument was held on October 16, 1996, and the Court of Appeals has not yet issued an opinion in the case.

Protecting the United States Case When a Defendant Flees Abroad: Complying with Foreign Statutes of Limitation

Sarah McKee, Senior Legal Advisor, Office of International Affairs

Rosemary Curtin, Columbus School of Law, Catholic University of America (OIA intern)

Title 18 U.S.C. § 3290 provides, "No statute of limitations shall extend to any person fleeing from justice." Practical problems aside, there's no bar to federal prosecution of a defendant who flees

before trial in Denver and turns up 12 years later in Dubuque.

If the defendant turns up in Dusseldorf, though, the German statute of limitations (S/L) also applies. To obtain a fugitive's extradition from a foreign country, the U.S. must generally show that both the U.S. S/L and the applicable foreign S/L have not expired. Unlike the open-ended provision of Section 3290, many foreign S/Ls, also known as periods of prescription, run only for a stated number of years. For instance, France's S/L is generally three years after commission of the crime—the shortest in Europe and the shortest of which OIA knows. France also has a 10-year S/L exclusively for murder, rape, and drug kingpin offenses.

Many countries have changed or are currently changing their S/Ls. There is no U.S. compilation of all foreign S/Ls. Making one would be virtually impossible. To be safe, U.S. prosecutors who need to extradite fugitives from abroad should assume that a S/L as short as three years could apply.

Surprisingly, countries with the French type of S/L also apply it to reincarcerating an escaped convict. As far as OIA is aware, in these countries the S/L for the escape is the same as for the offense. Thus, a French prison escapee who eludes the police for three or ten years, depending on the applicable S/L, is home free for life. S/Ls are generally longer in Germany, Hungary, Italy, and many other countries, but the principle is the same.

Fortunately, authorities can “interrupt” the French type of S/L before trial or after conviction if there is continued official interest in prosecuting or reincarcerating the fugitive. Each “interruption” resets the clock to the date of the offense or escape and starts a new S/L of the same length as the first. Theoretically, there is no limit to the number of successive interruptive acts that can restart the S/L.

How then does one protect the U.S. case when the defendant or escapee has fled abroad? At least every three years, the prosecutor should make and document efforts to find and recover the fugitive. Thus, wherever and whenever the fugitive turns up, the U.S. will be able to meet the applicable foreign S/L requirement.

What is an “interruptive act?” They can include (1) requesting an INTERPOL “diffusion” (immediate radioed request to stated area(s) of the world for information or for the fugitive's detention); (2) requesting an INTERPOL “Red Notice” to more than 170 member countries for the fugitive's arrest (has red upper right corner, photograph, and fingerprints; text is in Arabic, English, French, and Spanish; takes at least four months to issue); (3) requesting a U.S. Customs border watch or an Immigration and Naturalization Service lookout for a fugitive who might try to sneak back into the U.S.; (4) inquiring through INTERPOL or by any other means in the U.S. or abroad about the fugitive's whereabouts; (5) requesting provisional arrest or extradition requests to a foreign country or countries for the fugitive; (6) requesting evidence from foreign countries; and (7) having the agent confirm that the fugitive is still entered in the National Crime Information Center (NCIC) for the relevant offense(s) or that the INTERPOL Red Notice is still effective.

OIA's Fugitive Unit searches for particularly high-priority U.S. fugitives. If yours is among them, OIA can perform and document such "interruptive acts" as INTERPOL and NCIC inquiries, and feature the fugitive on *Voice of America*, the Internet, and other media. (See article on page 3 of the October 1996 *United States Attorneys' Bulletin*.)

There are many types of "interruptive acts." OIA can advise prosecutors about "interruptive acts" that foreign countries have accepted in previous extradition cases.

If a defendant or offender flees, therefore, protect the U.S. case. Use the following resources to search for the fugitive and to document "interruptive acts" in cases where your fugitive may need to be extradited from abroad.

1. INTERPOL "diffusion" or "Red Notice":

INTERPOL-U.S. National Central Bureau
Notices Section
600 E Street, N.W.
Washington, D.C. 20530
Telephone (202) 616-9000
Fax (202) 616-8400

2. U.S. Customs Border Watch:

Contact U.S. Customs agent at INTERPOL phone and fax numbers above.

3. INS Lookout:

Contact INS agent at INTERPOL phone and fax numbers above.

4. OIA Fugitive Unit:

OIA Associate Director Mary Jo Grotenrath
Telephone (202) 514-0000 or 514-0041
Fax (202) 514-0080

International Kidnapping by Inveiglement and Hostage Taking: Potential Weapons in the Prosecutor's Arsenal Against Alien Smuggling?
Assistant United States Attorney Michael J. Gennaco and
Assistant United States Attorney Thomas D. Warren, Central District of California, and
Attorney Steve Dettelbach, Civil Rights Division

On August 1, 1995, the nation was shocked to learn that an unassuming condominium complex in El Monte, California, had been transformed into a garment making compound in which over 70 Thai nationals were being enslaved, some for periods of up to seven years, while being forced to

work 18-hour days. The ten defendants responsible for the enslavement of the workers used posted guards, multiple coils of razor wire, beatings, and continuous threats to their captives and their families to hold the workers in a condition of involuntary servitude.

As the story of the workers' plight unfolded in the ensuing days, it was soon learned that the workers had been duped by their captors into coming to America. While recruiting the workers in Thailand, the criminal defendants made false promises of a life in America replete with trips to Disneyland; financial prosperity; reasonable work hours; and, most importantly, the ability to come and go from the work site as one pleased.

At the conclusion of the criminal investigation it was decided that, in addition to the filing of Federal slavery charges, the trickery used by the captors in luring the workers to come to the sweatshop, followed by the act of confining the workers against their will, could support a charge of "kidnapping by inveiglement" against the slavemasters. While the defendants eventually pled guilty to the involuntary servitude charges, the availability of kidnapping by inveiglement charges in that case and hostage taking charges in others warrants serious attention by prosecutors who have the appropriate fact pattern, not only in the relatively rare international slavery cases but in the more frequent alien smuggling context.

The Hostage Taking Act, 18 U.S.C. § 1203, makes it a crime to seize, detain, threaten to kill or injure, or continue to detain another person in order to compel a third person or governmental entity to act or not act in some fashion. The Act requires that at least one of the perpetrators or the victims of the crime not be a national of the U.S., unless the Federal Government is the target of the hostage taking.

While the Hostage Taking Act was designed with terrorism in mind, two circuits have found that the Act is applicable to certain alien smuggling operations. A frequent modus operandi of alien smugglers is to bring persons into the U.S. illegally, hold them at a drop house, and release them to family members upon payment of a smuggling fee. If a smuggler lies to a smugglee about the size of the smuggling fee he will have to pay when reaching the U.S., and the smugglee is then held in the U.S. against his will until the higher fee is paid by a relative, a hostage taking charge may be appropriate. In fact, two circuit courts confronted with similar situations upheld convictions of smugglers under the Hostage Taking Act.¹ Hostage-taking carries a much greater guideline sentencing range than standard alien smuggling offenses, and prosecutors should consider using the Act whenever smugglers demand an increased fee from a relative in exchange for the smugglee's release.

Another tool for prosecutors confronted with alien smuggling operations is the Federal kidnapping statute, 18 U.S.C. § 1201, which makes it a crime to seize, confine, inveigle, decoy, kidnap, abduct, or carry away and hold any person when the person is willfully transported in interstate or foreign commerce. While the traditional kidnapping fact pattern involves an involuntary seizing and spiriting away of an individual, the language of the statute and interpretive

¹See *United States v. Lopez-Flores*, 63 F.3d 1468 (9th Cir. 1995), cert. denied, 116 S. Ct. 794, 795 (1996); *United States v. Carrion-Caliz*, 944 F.2d 220 (5th Cir. 1991), cert. denied, 503 U.S. 965 (1992).

case law teaches that the fact that a victim crosses the interstate line or international border willingly does not preclude a Federal prosecution under the kidnapping statute, provided that the victim was duped or lured into crossing the border by the kidnapper, and force is later used to seize or confine the victim.

For example, one court found that where a victim accepted a ride across state lines from someone who misled her into believing that she would be taken to her desired destination, the victim was “inveigled” or “decoyed” within the meaning of the Federal kidnapping statute. See *United States v. Hughes*, 716 F.2d 234 (4th Cir. 1983). While the Federal kidnapping statute requires that the kidnapping occur prior to international or interstate travel, the moment that the victim is first deceived into traveling interstate has been found to be the point at which the victim can be considered “kidnapped.” *Id.*¹

In the Thai slaveshop case, under the Government’s theory of prosecution, the inveiglement occurred during their recruitment in Thailand when the slavemasters duped the workers into believing that they would not be physically restrained, held them against their will upon arrival in the U.S., and prevented them from communicating with their families. In addition, misrepresentations were made by the slavemasters concerning the workers’ pay, work hours, and other working conditions.

Present case law in the majority of the circuits suggests that the same theory that formed the basis of the kidnapping charges in the Thai slaveshop case could also be adapted to certain alien smuggling cases, with the possibility of increased sentences.³ Just as hostage-taking charges may be appropriate when alien smugglers demand more money from a smugglee’s relatives in the U.S. than was originally agreed upon, so may kidnapping by inveiglement charges be appropriate in this case. Kidnapping by inveiglement charges may be available in situations where hostage taking cannot be charged, most notably (1) where no third party is involved; e.g., when the smugglee is required to work off her smuggling debt in exchange for her passage and (2) where misrepresentations or omissions are made by the smuggler about nonmonetary conditions; e.g., when a smugglee recruited in his country is told that upon arrival in the U.S. he will be free to leave the smugglers’ control but then is held in a “drop house” until the smuggling fee is paid.

¹Kidnapping by inveiglement cases from other circuits include: *United States v. Macklin*, 671 F.2d 60 (2nd Cir. 1982); *United States v. Carrion-Caliz*, 944 F.2d 220 (5th Cir. 1991), cert. denied, 503 U.S. 965 (1992); *United States v. McInnis*, 601 F.2d 1319, 1323-27 (5th Cir.), cert. denied, 445 U.S. 962 (1980); *United States v. Eagle Thunder*, 893 F.2d 950 (8th Cir. 1990); *United States v. Hoog*, 504 F.2d 45 (8th Cir. 1974), cert. denied, 420 U.S. 961 (1975); *United States v. Redmond*, 803 F.2d 438 (9th Cir. 1986), cert. denied, 481 U.S. 1032 (1987); *United States v. Wesson*, 779 F.2d 1443 (9th Cir. 1986); *United States v. Denny-Shaffer*, 2 F.3d 999 (10th Cir. 1993); *United States v. Boone*, 959 F.2d 1550 (11th Cir. 1992).

³In the Fifth and Eleventh Circuits, the viability of effective kidnapping by inveiglement prosecutions in alien smuggling cases is less likely. Courts in those circuits have held that inveiglement only constitutes kidnapping under the federal kidnapping statute if the alleged kidnapper was willing to use force to bring his victim across interstate or international boundaries if his deception failed. See *United States v. Boone*, 959 F.2d 1550 (11th Cir. 1992); *United States v. McInnis*, 601 F.2d 1319, 1323-27 (5th Cir.), cert. denied, 445 U.S. 962 (1980). That factual scenario does not exist in most alien smuggling cases and would be difficult to prove in any event.

Factual wrinkles that make the analysis somewhat more complicated often exist in alien smuggling cases. For example, what if the smugglee reports that there was no discussion in his native country of his disposition if the smuggling fee was not paid? Would simple omission of that contingency be sufficient to constitute “inveiglement” under the statute? In a similar vein, what if—as is usually the case—the smuggler only plans to seize and hold the smugglee if no smuggling payment is made promptly? Would the conditional intent to kidnap be sufficient to support a Federal kidnapping conviction? Finally, how material does the false representation or omission have to be to constitute an “inveiglement”?

While there are no cases that directly address these issues in the alien smuggling context, an analogy to the *Hughes* case may be illuminating. In that case, the kidnapper induced the victim to get into his car by falsely representing that he would give her a ride to her friend’s house across the state line. Once she got in the car, he transported her across state lines to a secluded spot and beat her. The *Hughes* court determined that even though the victim willingly accompanied the defendant across state lines, that did not preclude a prosecution for kidnapping by inveiglement because she had been duped, and was seized against her will after crossing state lines. In addition, while the *Hughes* court found that the defendant’s intent to kidnap the victim had to be formulated prior to the crossing of state lines, it found that the defendant’s false representations to the victim of his true intent were sufficient to establish such an intent.

Would the Federal kidnapping statute have been violated in *Hughes* if the victim had agreed to pay \$100 to the defendant for a ride to her friend’s house across state lines, the victim was driven to her friend’s house but didn’t give the defendant the money, and the defendant then seized the victim and drove off with her? Such a scenario would then be analogous to certain alien smuggling cases. The deception in this instance would have been entirely by omission—the failure to mention that if the victim did not fulfill her end of the bargain for the ride, she would be seized against her will. Moreover, the driver’s intent to seize the victim would have been conditioned on whether the victim came up with the money.

One could argue that the policy considerations of an inveiglement by commission and an inveiglement by omission are no different provided that the omission was material and caused the victim to enter into the relationship with her future captor. And, while a much stickier question, one could also argue that policy considerations suggest the same result for an individual who formulates a conditional intent to kidnap if the victim “does not come across with the goods” at the end of the destination. Of course, the counter argument is that such a scenario could not support a Federal kidnapping charge because the requisite intent was not “perfected” until the transport across state lines had already been accomplished—and, thus, a state kidnapping charge is more appropriate.

In any event, given that the penalties provided by the Federal kidnapping and hostage taking statutes are significantly more substantial than those typically provided by the alien smuggling laws, prosecutors should examine closely the viability of application of these statutes to alien smuggling rings in appropriate situations. These statutes could be effective tools to counter alien smuggling operations and to target the more heinous aspects of these operations—namely the seizure and mistreatment of persons who find themselves unable to pay illegal smuggling fees.

Interview with Janice Mathews Stromsem, Director of the International Criminal Investigative Training Assistance Program

Ms. Stromsem has been the Director of the International Criminal Investigative Training Assistance Program (ICITAP), since October 1995. She graduated from the Universite de Paris, Paris, France, with a Master of Arts in 1970, and began her career in 1972 with INTERPOL—United States National Central Bureau. She was Deputy Chief from 1983 to 1992, at which time she became the Associate Director for Field Operations of ICITAP. She established new policing services in Panama, El Salvador, and Haiti. She has also established major training and development programs throughout Central America and the Caribbean; Eastern Europe, including the former Soviet Republics, Bosnia, Albania, and Eastern Slavonia; and Africa, including Somalia, Rwanda, Burundi, Liberia, and South Africa. Ms. Stromsem (JS) was interviewed by Assistant United States Attorney David Nissman (DN), Editor-in-Chief of the *United States Attorneys' Bulletin*.

DN: What is ICITAP?

JS: ICITAP is DOJ's International Criminal Investigative Training Assistance Program. We reside in the Criminal Division but are funded by the State Department and the U.S. Agency for International Development (AID) on a program-by-program basis. We work in countries in which the U.S. has strategic or foreign policy interests. We train and develop police, with a heavy emphasis on development.

DN: What do you mean by development?

JS: We were created about 10 years ago in the Office of the Deputy Attorney General to provide training on a course-by-course basis and were working only in the western hemisphere. We found that the value of our training and the skills imparted to the trainee dissipate very quickly—if you return within as little as six months to that same country and look for the people you trained, they're gone. They have either left the unit, been promoted, or changed jobs. Another problem is that training from the U.S. tends to be focused on the trainer's legal system as opposed to the trainee's. We needed to research the legal relevancy of the training we were going to give before we gave it, and make the necessary adjustments. The third thing we have tried to address is to fit the training within the institutional context of the recipient's agency. If we're training in specialized skills, such as forensic skills or narcotics investigation skills, and the police institution doesn't fully understand how to use them, they won't be used. We've found that we also need to address the legal, cultural, and social contexts and make the necessary adjustments. We need to look at the institution, the context into which the training would be used.

DN: What prompts a training mission in a particular country?

JS: It varies. Sometimes the country itself asks for the training and other times the international community imposes itself upon the country, or it's a strategic foreign policy concern to the U.S. It usually starts from the outside. Most of the time, it starts from the State Department because they

and U.S. AID are the supporters. If there's a problem in a foreign country, we usually know we're going to get called because the policy makers in Washington understand the role of the police and the overall stability of a government. That's how it starts—it's a political, foreign policy, or strategic interest to the U.S.—and then they'll make monies available for one of our programs.

DN: What U.S. goals does ICITAP further? I understand it is to provide training but what is the U.S.'s interest behind that?

JS: The U.S.'s interest is to leave the country where we were working with an able civilian base that is professionally trained in democratic principles. In a new government, particularly a fairly radical one, if there is no basic security for the citizenry, there will be no economic growth or development. The citizens will have no faith in their government and it will not take root. If that happens, it can become a severe foreign policy issue for this country, hence the interest.

DN: What we're doing here is trying to enhance the rule of law in various foreign societies. Does this promote concepts of stability and peace in various potentially troublesome, unstable regions?

JS: Absolutely. Keep in mind that the first and most frequent contact of a citizen and his government is going to be the police and the judicial system. That is the face of the government the citizen sees most often and first. If they can rely on that, if they believe in the professional comportment of the police and judicial system, they tend to believe in and support the government. If the police are abusive to the citizens or if the judicial system simply dismisses criminals or throws them into prison without trying them, there's going to be very little confidence in the government.

DN: How do you deal with issues of police corruption? If there are training missions instituted in places where there is suspicion of wide-spread police corruption, how is that dealt with? Are low police salaries a problem you frequently encounter?

JS: This is a frequently encountered problem and a very difficult one. There's probably not a country in this hemisphere in which the salary issue is not significant. It's difficult to get around it. We strongly urge countries to pay their police, prosecutors, and magistrates an adequate salary. To the degree that they do not, one must expect a certain amount of petty corruption. A cornerstone of every program we have set up is an Office of Professional Responsibility (OPR) or an Inspector General's (IG) Office that focuses on the issue of police official accountability to the public and how to investigate it objectively and appropriately. Anti-corruption work will only be as successful as the local government wants it to be. We try to take a holistic approach. We go after the most damaging types of corruption first, which is the narco-corruption. Then we try to bring about more stability in the government to enhance the level of economic growth. Then we go after the issue of salaries.

DN: How often do you re-visit the creation of OPR or IG offices?

JS: We have on-going programs. We have staff in a number of countries. In others, we visit them

at least a couple of times a month. We don't just go in and out and not go back. We work very few countries regionally, meaning where the person in charge resides in Washington and only visits. We work regionally only in the Caribbean because there are so many islands—we can't station a person in each one because of funding. A lot of other countries such as Honduras or Guatemala, where we started working only regionally, are now what we call “in-country” offices where we have someone full-time.

DN: Let's talk about forensics. If you train people in the importance of taking fingerprints or using different kinds of laboratory analysis and they don't have a lab, then obviously the training will not be useful. When you say development, are you talking about helping foreign law enforcement agencies develop a laboratory?

JS: Yes, that is part of it. Why do ballistics training if they don't have any equipment to investigate ballistics? It's a waste of time. We have helped build labs in a number of countries, sometimes with other Federal agency partners, international partners, or even an international organization's partners, particularly throughout the western hemisphere.

DN: In the last decade, the Department has trained police and prosecutors separately. Should we view the judicial system in foreign countries as needing training for judges, prosecutors, and police together, or should we let ICITAP train the police, OPDAT train the prosecutors, and someone else train the judges?

JS: We've stopped talking about it now and are doing it. It's crazy not to train everyone together. For example, in Haiti or any Civil Law country, the prosecutors direct the investigations. If they don't know what the police do or how they do it, they can't direct them. If the police don't understand what the prosecutors want, then they're not going to investigate correctly, evidence won't be gathered, nothing will be appropriately presented in court, and cases will be thrown out. Take Panama for example. After U.S. forces invaded there in late 1989, it became necessary to rebuild a police force. We were brought in and told to create a security force overnight, if possible. We're far into the process now of course, six years later. About a year and a half into the process, we had police out on the street making arrests but there was no one to give the arrestees to. The judicial system was broken. We recognized the need for interaction between the police and prosecutors. In a Civil Law Society they're so intertwined—you cannot deal with one without dealing with the other.

DN: Describe the current ICITAP/OPDAT program in Haiti.

JS: ICITAP and OPDAT have had a permanent staff in Haiti since the American intervention in 1994. There are about 600 to 700 people in their judicial system. There has been some remedial training in Haitian law for the judges and prosecutors because many of them have no legal training. What we're talking about now is a lot more expansive. We look at who the judges and prosecutors are, apply some basic criteria for competency skills, then continue with remedial training. We also encourage new staff who would be confident into those jobs. We're providing training for them and working in pilot sites on investigative case management. ICITAP is building the judicial police or the detectives or investigators. We've finished training the basic street

officer. We intend to form teams so they will be jointly trained with the prosecutors and some of the Examining Magistrates. We'll put them into pilot sites working together and document the procedures. This is not an overnight process; it could and should take years. In Colombia, for example, there is a track record in the formation of police-prosecutor-magistrate task forces that is functioning extremely well.

DN: Are ICITAP and OPDAT working together on this program in Colombia? Are the AUSAs assigned to Colombia also involved in police training?

JS: It's all done together, so yes. Our person is involved in the prosecutor and magistrate training. They used to not work together but now they do. The same thing is happening in Bolivia—ICITAP's approach has changed. Not only from training to development but also in the development of the whole judicial system—not just the police. We're trying to change the whole focus. In Bosnia, for example, the police advisors and the judicial advisor work together from the beginning of the project.

DN: How do our adversary system and the civil law system in the countries in which you have missions mesh?

JS: It's been easier for ICITAP to deal with them on the police side than it has on the judicial system side. We have to become extremely familiar with the local system and their laws. It is a challenge to find people who can interact in a very different environment than the one they are used to. We work in places like Uzbekistan where we cannot find people who speak the language who are also police officers, or who hold a law degree, have experience, and want to live and work there. We're not so interested in finding people who have experience in civil law countries but if they have an understanding of it, that certainly helps. We look for people who are comfortable working in different legal environments that they can adapt to.

DN: The U.S. has certain constitutional rights and protections, and recognizes privacy rights that may or may not be cultural priorities in other countries. What do we do in situations such as teaching police procedures in obtaining evidence?

JS: One reason forensics is a component of all of our programs in every country is that we want to teach reliance on objective scientific evidence. Privacy laws of the U.S. are much more restrictive than those of countries in which we work, with the exception of Europe. We are trying to teach them basic human rights and human dignity of other individuals. We're not at the level of protecting the privacy rights that the U.S. citizen expects. We remain with them in the field for a long time to reinforce and practice what we teach. If we go into a country and create a new police force with mostly new people, that works a lot better for us. It's more difficult to go into a country and train existing members of a police force because they may fall back into their old habits.

DN: How do USAO personnel detailed to other countries enhance the mission of the USAOs and the Department?

JS: Our people learn the local system's laws and cultures, and sometimes become the right hand of the Minister of Justice, the police, or the Director General. These skills and relationships are not quickly developed. AUSA Kim Lindquist has been extremely successful in Colombia. The Colombians love him. He has entrees at the highest levels of the Colombian Government, which is of extraordinary value to our Government. Any of our ICITAP managers could pick up the phone and not only talk to the head of the police, but also the Minister of Justice and sometimes the President of the country. They do this routinely. This interaction is of extreme strategic significance for our country. When you're building a new police or justice system, not only are you helping the recipient country but you're helping develop a system that will be extremely useful to the U.S. If the police can conduct an investigation and arrest a person wanted in the U.S., that's helpful.

DN: What effect does our training in these countries have on the development of treaties, MLATs, extradition requests, letters rogatory, or other foreign evidence requests?

JS: Treaties and MLAT's are negotiated by the State Department with the assistance of other agencies. Our people can facilitate this process by developing trusting relationships with key people. The ICITAP manager is viewed as the confidant of whomever they work with, usually the Director General's police and/or the Minister of the Interior or the Minister of Justice. When a new Director General takes over the police, he picks up the phone, calls our ICITAP manager, and asks what to do. Our person makes a recommendation. The Director General knows our recommendation is in his country's best interest. When that person needs to discuss the value of an extradition treaty or an MLAT, a lot of trust already has been established between those two individuals.

DN: What role do you see AUSAs playing in the future of ICITAP projects?

JS: Our training must become fully integrated and AUSAs can assist with these programs. When we teach investigation in foreign countries, we have to become legal experts. Conversely, when OPDAT teaches prosecutors, they need to become investigative experts. I see a very close interaction between the United States Attorneys and our police program. This will enhance cooperation back home between the United States Attorneys and the local police.

More on Trial Techniques . . .

Camcorder and Mounting Platform: An Alternative to Commercial Visual Presenters

**Assistant United States Attorney Walt Ayers
District of Nevada**

Assistant United States Attorney Walt Ayers, District of Nevada, temporarily put on his engineering hat to inexpensively keep his district on top of technology in the courtroom. If you read the "Visual Presenter" article by System Manager Stacy Joannes in our August 1996 *United States Attorneys' Bulletin*, you know that lawyers who are keeping up with state-of-the-art

courtroom technology are using visual presenters with advanced features like various zoom ranges and auto-focus to display evidence for the judge and jury during trial. Walt Ayers recognizes the crucial role that visual aids play during trial, and he used his innovative talents to create a camcorder mounting platform that can be used as an alternative to a commercial visual presenter.

Walt knew that in the courtroom, camcorders could serve the same purpose as visual presenters in displaying evidence from photographs or other objects to keep the jury's interest and to keep them on track during testimony. All he needed in addition to the camcorder was a platform mounting device to hold it and a direct light source. Because camcorders have a standard mounting screw in their base that fits any tripod, building the mounting platform device was relatively uncomplicated. Walt used some materials he had on hand and had to purchase less than \$15 worth of materials, including the under-the-counter light. His design creativity resulted in a visual presenter that was ready to use within a week from the time he conceived the idea.

There are several advantages to using Walt's mounting platform with a camcorder rather than commercial visual presenters. His mounting platform is more flexible than some of the visualizers and visual presenters on the market today because it works with any camcorder with a macro lens. The camcorder can, in turn, be connected to all televisions in multiple combinations. The camcorder also eliminates the need for a separate VCR in court, since it has one built in. And the zoom range on a typical visual presenter is 10x where on the newer camcorders, the zoom range is 20x. Newer camcorders also can be operated with a wireless remote. But most importantly, using the camcorder with the mounting platform is less expensive than a commercial visual presenter.

Although camcorders are probably not available in most United States Attorneys' offices, Assistants can borrow them from most of the Department's investigative agencies. Talk to the agents on some of your cases—it is likely that they are familiar with camcorder connections and could assist you in getting the system set up in the courtroom.

Walt estimates that if you can't make the platform yourself, it would only cost about \$100 to have it made by a professional with some wood and metal working skills—a big savings as opposed to the \$3,000 to \$5,000 for most commercial visual presenters. Walt recommends having it made by a local welding shop. He put together the one shown below for less than \$15, including the cost of an under-the-counter (kitchen) light that is mounted behind the camcorder on the 19-inch high, one-inch tubing.

If you are interested in building a mounting platform, contact Walt at (702) 388-6050. He recommends that you have it made by a professional but if you want to make it yourself, the illustration below, along with the equipment and materials listed here—and perhaps a call to Walt—should get you started in building one.

Equipment:

A drill

A screwdriver

Materials:

One ¼-inch machine thread screw
One ¼-inch machine thread bolt
Two ¼-inch machine thread nuts
Three ¾ x ¾-inch wood screws
One 6-inch long piece of ¼-inch (internal diameter) square tubing
1-inch square tube
7-inch long piece of ¼-inch solid steel bar (square)
19-inches of 1-inch square tubing
18-inch under-the-counter (kitchen) light
⅛-inch thick, 5-inch x 5-inch steel platform
22-inch x 24-inch wood platform
Camera flash mounting bar with camera mounting screw

Attorney General Highlights

AG Presents Criminal Child Support Enforcement Progress Report to President

On October 25, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, and Child Support Enforcement Coordinators, Attorney General Reno's Criminal Child Support Enforcement Progress Report to the President. The report describes the Department's actions in response to the President's July 21, 1996, directive on this topic. For personnel in USAOs, your office should have a copy of this report. If not, you may call (202) 616-1681.

Contacts with Represented Parties

On October 23, 1996, Associate Deputy Attorney General David Margolis sent a memo to United States Attorneys and Assistant Attorneys General concerning the Second Circuit's decision in *United States v. Ming He*. The court addressed post-guilty plea debriefings of a defendant who had counsel, where the debriefings were conducted by the Government without counsel present. Because the plea agreement, executed with the advice and consent of counsel, contemplated cooperation and debriefings, the Government believed it had consent for such debriefings. The Second Circuit reversed, holding that "cooperating witnesses are entitled to have counsel present at debriefings, unless they explicitly waive such assistance." 94 F.3d at 793. The Department's regulation on communications with represented persons encourages obtaining a waiver from counsel and/or the defendant in some situations. 28 C.F.R. Sections 77.5 and 77.6. If you have questions concerning the opinion, please contact Assistant United States Attorney Charysse Alexander, EOUSA's Office of Counsel to the Director, (202) 514-5326, or J. Douglas Wilson, Appellate Section, Criminal Division, (202) 514-3740. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

AG Announces Efficient Use of Affirmative Civil Enforcement Resources from Three Percent Fund

On September 23, 1996, Attorney General Reno sent a memo to United States Attorneys discussing the importance of the ACE program and the Department's commitment to its expansion. For personnel in USAOs, your office should have a copy of this memorandum. If not, you may call (202) 616-1681.

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

Honors and Awards

1996 Director's Awards—Executive Office for United States Attorneys

On November 22, 1996, at a ceremony in the Great Hall of the DOJ, Attorney General Janet Reno, Deputy Attorney General Jamie Gorelick, EOUSA Director Carol DiBattiste, and EOUSA Principal Associate Director Donna Bucella presented the 1996 Director's Awards honoring the men and women of the United States Attorneys' offices, EOUSA, and DOJ for their outstanding efforts in the areas of drug-related cases, violent crime, financial institution fraud, civil enforcement, financial litigation, and other law enforcement activities. The award recipients were:

Special Recognition and Appreciation Award

Attorney General Janet Reno and Deputy Attorney General Jamie Gorelick

Superior Performance as an Assistant United States Attorney

Robert J. McLean (Northern District of Alabama)

Thomas L. Fink (District of Arizona)

Matthew F. Heffron (District of Arizona)

Joseph E. Koehler (District of Arizona)

Patrick C. Harris (Eastern District of Arkansas)

Pamela L. Johnston (Central District of California)

Stephen G. Larson (Central District of California)

Daniel J. O'Brien (Central District of California)

John M. Potter and Steven G. Madison (Central District of California)

Alka Sagar (Central District of California)

Barbara M. Scheper and George S. Cardona (Central District of California)

Julianne Zatz (Central District of California)

Geoffrey A. Goodman and Benjamin B. Wagner (Eastern District of California)

Albert S. Glenn (Northern District of California)

Steven F. Gruel (Northern District of California)

Patrick K. O'Toole (Southern District of California)

Peter Dean Markle and Anthony E. Kaplan (District of Connecticut)

Edmond Falgowski (District of Delaware)

John M. Campbell, Thomas John Motley, Wendy L. Wysong, and Randall Dean Eliason (District of Columbia)

Madelyn E. Johnson (District of Columbia)
Michael J. Ryan (District of Columbia)
Michael L. Volkov (District of Columbia)
Gregory N. Miller (Middle District of Florida)
Ellen Cohen and John C. McMillan, Jr. (Southern District of Florida)
Martin Goldberg and Julia Paylor (Southern District of Florida)
Lawrence D. LaVecchio, John J. O'Sullivan, and Anne Ruth Schultz (Southern District of Florida)
Eduardo Palmer and Frank H. Tamen (Southern District of Florida)
Lawrence Rosen (Southern District of Florida)
David E. Troyer, Yvette Rhodes Prescott, and Richard E. Byrne (Southern District of Florida)
Thomas Watts-FitzGerald (Southern District of Florida)
James T. Martin and Dahil D. Goss (Northern District of Georgia)
William L. McKinnon, Jr., and David C. Nutter (Northern District of Georgia)
Mark A. Flessner and Gil M. Soffer (Northern District of Illinois)
Scott D. Levine (Northern District of Illinois)
Kathleen T. Murdock, Diane L. Saltoun, and Ralph Ryan Stoll (Northern District of Illinois)
William T. Grimmer (Northern District of Indiana)
Richard L. Murphy and Kandice Ann Wilcox (Northern District of Iowa)
Lester A. Paff (Southern District of Iowa)
Emily Bennett Metzger (District of Kansas)
Stephen A. Higginson (District of Louisiana) and Michael K. Loucks, Stephen P. Heymann, Suzanne E. Durrell, and Roberta T. Brown (District of Massachusetts)
Susan G. Winkler (District of Massachusetts)
E. James King, III, and F. William Soisson (Eastern District of Michigan)
Michael J. Stern (Eastern District of Michigan)
Lloyd K. Meyer (Western District of Michigan)
Jeffrey S. Paulsen (District of Minnesota)
James G. Martin (Eastern District of Missouri)
Charles E. Ambrose, Jr. (Western District of Missouri)
Howard Jacob Zlotnick, John Ernest Ham, and Colette Louise Rausch (District of Nevada)
Perry Anthony Carbone, Stuart Jeff Rabner, and Kimberly McFadden Guadagno (District of New Jersey)
Jeremy Daniel Frey and John Peter Suarez (District of New Jersey)
George Stanley Leone (District of New Jersey)
Stanley N. Alpert, Richard K. Hayes, and Charles S. Kleinberg (Eastern District of New York)
Jodi Levine Avergun, Margaret M. Giordano, Mark P. Ressler, and Ruth Ann Nordenbrook (Eastern District of New York)
Eric Owen Corngold and Jason S. Brown (Eastern District of New York)
John F. Curran, Jr. (Eastern District of New York)
Cecilia L. Gardner (Eastern District of New York)
Faith E. Gay and Leslie Cornfeld Urfirer (Eastern District of New York)
Cynthia Keefe Dunne (Southern District of New York)
Kay K. Gardiner (Southern District of New York)
Diogenes P. Kekatos and Marla F. Alhadeff (Southern District of New York)

Deborah E. Landis and Matthew E. Fishbein (Southern District of New York)
Bruce G. Ohr and Thomas A. Arena (Southern District of New York)
Tai H. Park and Sharon L. McCarthy (Southern District of New York)
Karen Patton Seymour and Michael E. Gertzman (Southern District of New York)
Phillip J. Tripi (Northern District of Ohio)
David Michael Littlefield and Douglas Adam Horn (Eastern District of Oklahoma)
Michael C. James (Western District of Oklahoma)
Kirk A. Engdall (District of Oregon)
Joel M. Friedman, Robert E. Courtney, III, Barry Gross, and Paul Mansfield (Eastern District of Pennsylvania)
David R. Hoffman (Eastern District of Pennsylvania)
William A. Behe (Middle District of Pennsylvania)
Bonnie R. Schlueter (Western District of Pennsylvania)
José M. Pizarro-Zayas (District of Puerto Rico)
Ira Belkin (District of Rhode Island)
Eric William Ruschky (District of South Carolina)
Robert A. Mandel (District of South Dakota)
John J. Ulrich (District of South Dakota)
David G. Dake and David P. Folmar, Jr. (Eastern District of Tennessee)
Gary S. Humble (Eastern District of Tennessee)
Robert James Middleton (Eastern District of Texas)
Mattie Peterson Compton (Northern District of Texas)
Kathlyn G. Snyder (Southern District of Texas)
James K. Blankinship (Western District of Texas)
Kevin M. Comstock (Eastern District of Virginia)
Larry Lee Gregg and Brian D. Miller (Eastern District of Virginia)
Laura Pellatiro Tayman (Eastern District of Virginia)
James L. Trump (Eastern District of Virginia)
Helen J. Brunner (Western District of Washington)
Christopher Lee Pickrell (Western District of Washington)
Douglas B. Whalley (Western District of Washington)
Mario Francisco Gonzales and Karine Moreno-Taxman (Eastern District of Wisconsin)
Eric J. Klumb (Eastern District of Wisconsin)
John C. Parr (Southern District of West Virginia)

Superior Performance as a Special Assistant United States Attorney

Kathleen M. Kenney (Northern District of Alabama)
Robert Knabe (Southern District of Florida)
D. Scott Smith (Northern District of Georgia)
Edward J. Lynch (District of Guam)
James G. Hoofnagle, Jr. (Northern District of Illinois)

Executive Achievement Award

Charles G. LaBella (Southern District of California)
Elliot Enoki (District of Hawaii)
Paula D. Silsby (District of Maine)
Rita M. Della Rocco (District of New Hampshire)
Sandra M. Bridges (Eastern District of Texas)
Janet S. Craig (Southern District of Texas, Executive Office for United States Attorneys)

Outstanding Performance in Law Enforcement Coordination

James M. Mesterharm (Northern District of Indiana)
Rebecca C. Plyler (District of South Carolina)

Outstanding Performance in Victim-Witness Assistance

Debra L. Deem (Northern District of California)
Kathryn M. Turman (District of Columbia)

Mark Gallinghouse Memorial Award for Excellence in Financial Litigation

Jill E. Zengler and Sue Anne Ross (Southern District of Indiana)
Debbie N. Koga (District of Utah)

Superior Performance in Affirmative Civil Enforcement

Edwin G. Winstead (District of New Mexico)

Superior Performance in Asset Forfeiture

Thomas P. Swaim (Eastern District of North Carolina)
Gregg A. Marchessault (Eastern District of Texas)
Lisa L. McGuire (Western District of Virginia)

Superior Achievement in Furthering Equal Employment Opportunity

Laverne Anita Parks (Executive Office for United States Attorneys)
Blondell L. Morey (Eastern District of Michigan)

Superior Performance in a Litigative Support Role

Elsie F. Sato (Northern District of California)
Joel B. Casey (District of Connecticut)
Idona S. Patton (Northern District of Iowa)
Debra A. Walker (Eastern District of Michigan)
Sharon L. Hutsler and Susie G. Smith (Western District of Missouri)
Linda H. Hayes (Eastern District of North Carolina)

Patrick Cicchetti (District of New Jersey)
Joseph E. Doherty (Southern District of New York)
Elizabeth F. Sanford and Gail M. Baker (District of South Carolina)
Janice R. Eason (Eastern District of Tennessee)
Wesley Ann Flaherty (Western District of Tennessee)
Jeanine Blais (District of Vermont)
Diane M. Ghanbari (Western District of Washington)

Superior Performance in a Managerial or Supervisory Role

Jacqueline Chooljian (Central District of California)
Jan L. Luymes (Central District of California)
Laura J. Birkmeyer (Southern District of California)
Lynne M. Solien (Executive Office for United States Attorneys)
Joseph F. Savage, Jr. (District of Massachusetts)
Robert Joseph Gorence (District of New Mexico)
Richard S. Glaser (Middle District of North Carolina)
Iden Grant Martyn (Northern District of Ohio, Executive Office for United States Attorneys)
James Russell Dedrick (Eastern District of Tennessee)

Appreciation Award for Contributions to the Executive Office for United States Attorneys and the United States Attorneys' Offices

Leon W. Weidman (Central District of California)
Constance W. Kozlusky (Executive Office for United States Attorneys)
Stephanie Kennedy-Smith (Executive Office for United States Attorneys)
Victor N. Painter and Gale M. Deutsch (Executive Office for United States Attorneys)
Charles T. Pertino (Executive Office for United States Attorneys)
Harvey Press (Executive Office for United States Attorneys)
David Marshall Nissman (District of Virgin Islands) and Edward I. Hagen, Susan Dye Bartley, Wanda J. Morat, Barbara J. Jackson, Patrice A. Floria, and Stephanie L. Bragg-Lucas (Executive Office for United States Attorneys)
William Campbell (Western District of Kentucky)

Appreciation Award for Enhancing the Missions of the Executive Office for United States Attorneys and the United States Attorneys' Offices

Geralyn M. Dowling (Executive Office for United States Attorneys)
Warren A. Zimmerman (Middle District of Florida)
Suzanne M. Warner (Western District of Kentucky, Executive Office for United States Attorneys)
Michael A. MacDonald (Western District of Michigan)
Theresa M. Bozak (Northern District of Ohio), Nancy Edgar (Eastern District of Texas), Jeanette Fincher and Frances Le Blanc (Western District of Texas), Jacqueline Peltier (District of Nevada), and R. Frances Snyder (Western District of Missouri)

National Performance Review “Hammer Awards”

On October 22, 1996, Attorney General Reno presented “Hammer Awards” to three working groups from Department components. The Award is Vice President Gore’s special recognition of teams that have made significant contributions in support of the President’s National Performance Review (NPR) principles—putting customers first, cutting red tape, empowering employees, and getting back to basics. The teams who received the award were the SENTRI Reinvention Lab, for developing a secure, high-tech, automated border inspection system at Otay Mesa, California; the Joint Automated Booking System (JABS) Lab, a multi-component effort that significantly improved the prisoner booking process; and the Justice Prisoner Alien Transportation System (JPATS), which combines resources of several DOJ components to schedule and transport prisoners more quickly, safely, and economically. Assistant United States Attorney Robert Waldren, Southern District of California, was one of the recipients of the award for the SENTRI Reinvention Lab. The ceremony was part of DOJ Reinvention Lab Day, an event which showcased the Department’s 16 reinvention labs.

On November 15, 1996, for contributions to the Government Blue Pages Project, the Department was one of 24 Federal agencies recognized at a Hammer Award Ceremony held at the General Services Administration. NPR representative Greg Woods, Coordinator for Information Technology and Customer Service, and GSA Administrator David Barram, presented the awards to each agency. The Department’s award was accepted by Assistant Attorney General for Administration, Stephen Colegate. The Blue Pages Project is making it easier for the public to find services provided by the Federal Government via public telephone listings which define and arrange services functionally. The Department will continue to participate in the project which will provide similar changes to all telephone directories across the country. Sixteen representatives from the Department, including Gail C. Williamson, EOUSA’s Associate Director of Operations, were awarded for the project.

Hispanic Employment Program Achievement Award

On September 18, 1996, Attorney General Reno presented the Department’s Hispanic Employment Program Achievement Award to Personnel Management Specialist Sylvia Rojas-Frazier, Southern District of California. She was one of only nine recipients Department wide and was accompanied at the ceremony by United States Attorney Alan Bersin. Sylvia’s work in promoting education and job opportunities for Hispanics in the United States Attorney’s office and the greater San Diego area reflect her commitment to the Hispanic Employment Program.

Significant Issues/Events

New Chair for Attorney General’s Advisory Committee

On November 18, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys announcing that United States Attorney Donald K. Stern, District of Massachusetts, was appointed by the Attorney General as the new Chair for the Attorney General’s Advisory Committee. He will serve a one-year term effective December 1, 1996. Mr. Stern replaces Janet

Napolitano, United States Attorney for the District of Arizona, whose AGAC term as Chair expired November 30, 1996. In her announcement, Attorney General Reno said, "Don has had an impressive tenure as the United States Attorney for the District of Massachusetts, particularly in the prosecution of such areas as gun trafficking, violent crime, health care fraud, public corruption, and computer crime." Other members of the AGAC of United States Attorneys are:

- *Gregory Sleet, Vice Chair, District of Delaware
- *Alan Bersin, Southern District of California
J. Michael Bradford, Eastern District of Texas
- *Janice McKenzie Cole, Eastern District of North Carolina
Christopher F. Droney, District of Connecticut
- *Kathryn E. Landreth, District of Nevada
Peg Lautenschlager, Western District of Wisconsin
Stephen C. Lewis, Northern District of Oklahoma
- *Sherry S. Matteucci, District of Montana
- *Thomas J. Monaghan, District of Nebraska
Don C. Nickerson, Southern District of Iowa
- *P. Michael Patterson, Northern District of Florida
Charles J. Stevens, Eastern District of California
Eric H. Holder, Jr., District of Columbia, ex officio
Janet Napolitano, District of Arizona, ex officio
Terry Derden, District of Idaho, ad hoc
Shirah Neiman, Southern District of New York, ad hoc

The asterisk indicates those members whose terms will expire on January 31, 1997. United States Attorney Michael R. Stiles' term as ex officio member expired on October 31, 1996.

Attorney General's Advisory Committee Meetings

The Attorney General's Advisory Committee met on October 22-23, 1996, in Panama City, Florida. Members focused on reviewing the draft report, *Functional Review of the Department of Justice Litigating Components*, which analyzes current functions and practices of the Litigating Divisions and the USAOs, and is designed to determine if functions are appropriately located. Other highlights of the meeting included discussions on multi-district conflicts as witnesses/defendants; serving grand jury subpoenas to DOJ personnel; working groups on domestic safety, health care fraud, child exploitation and obscenity; and a one-year detail to the French Ministry.

The November meeting was held in Washington, D.C., on the 20th and 21st. The committee discussed the Violent Crimes Against Children Task Forces; proposed legislation for the 107th Congress; encouraging pro bono programs in the United States Attorneys' offices; working with the Community Relations Service to address its resource needs; and resolving FOIA issues concerning requests from the militia.

The next meeting will be held on December 17-18, 1996, in Washington, D.C. The January

meeting is tentatively scheduled for January 29-30, 1997, in Washington, D.C.

Midwest Methamphetamine Strategy

On September 30, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, First Assistant United States Attorneys, and Criminal Chiefs, the Midwest Methamphetamine Regional Strategy, a press release, Attorney General Reno's statement, a list of participating United States Attorneys, and a drug use forecasting map showing the significant methamphetamine problem in the Midwest. For personnel in USAOs, your office should have a copy of this material. If not, you may call (202) 616-1681.

Methamphetamine Control Act of 1996

On November 19, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, Criminal Chiefs, and Assistant United States Attorneys handling drug cases concerning the Comprehensive Methamphetamine Control Act of 1996. President Clinton signed the bill on October 3, 1996, and it became effective immediately, with the exception of some regulatory provisions of Title IV regarding the sale of FDA-approved drug products, which will become effective in 12 months. The bill includes many provisions initially proposed by the Department to Congress as part of the National Methamphetamine Strategy. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Hatch Act Amendments

On October 31, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys concerning the 1997 legislative branch spending bill signed by the President, which revised § 3303. It now reads as it did before the 1993 amendments. An executive branch employee examining an applicant for or appointing him in the competitive service may not receive or consider a recommendation from a member of Congress, except as to character or residence. However, it is no longer a requirement to return the recommendation to the Senator or Representative. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Statutory Change in Tax Treatment of Compensatory Damages

On September 27, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, First Assistant United States Attorneys, and Civil Chiefs, a memo from Civil Division Assistant Attorney General Frank Hunger concerning a statutory change in the tax treatment of damages awarded for non-physical personal injuries, such as emotional distress. This change became effective on August 20, 1996, and may affect efforts to settle employment discrimination cases. If you have questions, please contact Anne Gulyassy, Federal Programs Branch, on (202) 514-3527. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Vice President Gore Reveals "The Best Kept Secrets in Government"

On November 10, 1996, Financial Management Staff Assistant Director Theresa Bertucci sent a memo to First Assistant United States Attorneys, Administrative Officers, and Budget Officers/Analysts which included information about Vice President Gore's annual report on the National Performance Review—"The Best Kept Secrets in Government," presented to the President on September 20, 1996. The book highlights internal reforms (such as procurement); customer service; partnerships with businesses and communities; and appendices about savings, NPR recommendations, reinvention initiatives, and downsizing. Victim-Witness Coordinator Gail Mirsky, Southern District of Texas, was featured in the book for piloting the use of the GTA account for Government fact witnesses which has saved an estimated \$150,000. To purchase the book (Stock #040-000-00676-1), contact the Government Printing Office, (202) 512-1800. Random House has published a version (without the appendices) that will be in book stores soon.

Unofficial Relations with Taiwan

On October 31, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys a memo from Stephen Colgate, Assistant Attorney General for Administration, containing guidance from the State Department on unofficial relations with Taiwan. These guidelines are provided for meetings and contacts, travel, official correspondence, personal correspondence, "Double Ten" celebrations, Twin Oaks, gifts, and terminology. Policy matters related to the guidelines should be directed to the Taiwan Coordination Staff, Department of State, (202) 647-7711. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Violence in U.S. Cities

On October 10, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys concerning a Violence in U.S. Cities study, an initiative of the Violent Crime Statistics Working Group. The memo provided follow-up information concerning the initiative and enclosed a copy of the information that the National Institute of Justice (NIJ) representatives presented to the Attorney General during a preliminary results briefing in September, which illustrates the preliminary study findings. A December 1, 1995, memo from Ms. DiBattiste to United States Attorneys provided information on the Violent Crime Statistics Working Group that the Department's Office of Justice Programs (OJP) established to respond to the Attorney General's inquiries on national violent crime data and trends, and provided preliminary information on the Violence in U.S. Cities study that was being conducted by NIJ. The briefing information indicates that the United States Attorneys received favorable comments overall from state and local law enforcement and other officials on their work and cooperation in the violent crime area. Questions should be directed to Barbara Tone, EOUSA's Data Analysis Group, (202) 616-6779. For personnel in USAOs, your office should have a copy of these memos. If not, you may call (202) 616-1681.

Church Burnings

On September 20, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys additional materials related to recent church burnings and the work of the National Church Arson Task Force, including a memorandum describing procedures for dealing with media inquiries and

a “Best Practices” guide. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Office of Professional Responsibility FY 1995 Report

On November 1, 1996, EOUSA Director Carol DiBattiste forwarded OPR’s FY1995 annual report on investigations and disposition of professional conduct complaints to United States Attorneys. For personnel in USAOs, your office should have a copy of this report. If not, you may call (202) 616-1681.

Criminal Caseload Graphs

On October 10, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, and Criminal Chiefs forwarding additional graphs that display nationwide criminal caseload data by individual program category, or case type, for Fiscal Years 1992 through 1996. The graphs reflect case information that the USAOs report and EOUSA maintains in the United States Attorneys’ case management system, and provide an overview of nationwide statistics and trends for case types over an extended period. If you have any questions regarding the graphs or would like the Data Analysis Group to prepare graphs reflecting data from your district, contact Barbara Tone, Data Analysis Group, (202) 616-6779. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

New Categories for USA-5 and USA-5A

On October 7, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, and Administrative Officers concerning new categories for the USA-5 (Foreign Law/Judicial Assistance) and USA-5A (Domestic Terrorism and International Terrorism), United States Attorneys’ Monthly Resource Summary Report. If you have any questions, please call Eileen Menton, EOUSA’s Case Management Staff, (202) 616-6919.

National Disability Employment Awareness Month

On October 8, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys announcing that the Department was observing October as National Disability Employment Awareness Month (NDEAM). NDEAM was first introduced in 1945 when Congress passed Resolution No. 176, designating the first week in October of each year for this purpose. The observance of NDEAM was established to show appreciation to those employers who have established outstanding programs and records for hiring people with disabilities; to encourage other employers to look at the knowledge and skills of people with disabilities, not their disabilities; and to recognize and salute the contributions made by persons with disabilities to society and their communities through their jobs. The theme for the observance of NDEAM for 1996 was “Ability for Hire.”

Violence Against Women Act One-Day Conference

On November 12, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, and Violence Against Women Act (VAWA) points of contact, an announcement of a one-day conference for VAWA points of contact on January 10, 1997, in Washington, D.C. The conference will initiate critical prosecutorial partnerships and facilitate the transfer of violence against women information. In September 1996, the Attorney General requested that a point of contact for VAWA cases be appointed in each USAO, stating that they “should serve as a reference for the office on domestic violence matters and should be kept abreast of continuing developments in the law and in ongoing prosecutions.” For further information, please contact Lisa Cashion, VAWA Office, (202) 514-2456 or fax (202) 307-3901. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 514-8500.

Use of American Express Card

On September 28, 1996, EOUSA Deputy Director of Operations Michael Bailie sent a memo to United States Attorneys, First Assistant United States Attorneys, and Administrative Officers clarifying the Department’s policy on the use of Government-contractor issued American Express cards for official travel. Employees on official travel must use the Government-issued American Express card for official travel expenses including cash advances for components that participate in the ATM program, common carrier transportation tickets, lodging, rental cars, and other expenses to the extent the card is accepted. Benefits obtained from the use of the card (e.g., frequent flyer miles, hotels, rental cars, etc.) must be used for official travel. In accordance with the Attorney General’s July 2, 1993, memorandum, benefits are to be used for free or reduced official travel costs, not for premium class upgrades. If you have any questions, please contact Travel Specialist Lydia J. Ransome or Budget Assistant Michelle Whitted, Financial Management Staff, (202) 616-6886.

Office of Legal Education Procedures

On October 4, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys and Administrative Officers regarding OLE’s Procedures for Approval of Training, Related Travel Authorizations, and Vouchers. The memo sets forth procedures for Fiscal Year 1997 that will affect the processing of training forms (SF-182), related travel authorizations (DOJ-501), and travel vouchers (DOJ-534). These procedures supersede all previous instructions. For personnel in USAOs, your office should have a copy of this memorandum. If not, you may call (202) 616-1681.

Thrift Savings Plan Open Season

The Thrift Savings Plan (TSP) Open Season is November 15, 1996, through January 31, 1997.

EOUSA Staff Update

Effective May 1997, **Mike Bailie** has been selected to be the Director of OLE in Columbia, South Carolina, and **David Downs** has been selected to be EOUSA's Deputy Director for Operations.

On November 4, 1996, **Brick Brewer**, Assistant Director of FOIA and Privacy Staff, began a one-year detail with the Office of the Corporation Counsel, District of Columbia Government. During his detail, Mr. Brewer will focus on management/systems improvements and the development of a major case prosecution unit. Attorney-in-Charge **Bonnie Gay** is now the Acting Assistant Director of EOUSA's FOIA and Privacy Staff.

Effective November 12, 1996, **Debra Brown**, Personnel Staff, began extended leave. **Pete McSwain**, Chief of the Personnel and Payroll Systems Analysis Branch, will serve as Acting Assistant Director until March 1997.

On November 1, 1996, Assistant United States Attorney **Jackie Chooljian**, Central District of California, began a detail with OLE as the Assistant Director for Criminal Programs. Ms. Chooljian replaces Assistant United States Attorney **Dixie Morrow**, Middle District of Georgia, who returned to her district on October 31.

Edward Hagen, previously a Special Assistant United States Attorney from the District of Oregon, is now a permanent member of OLE as the Assistant Director of Research and Publications. Mr. Hagen is responsible for research, editing, and formulation of materials related to the USABook project and other OLE publications.

Assistant United States Attorney **Kirby Heller**, Eastern District of New York, completed her detail to EOUSA's Office of Legal Counsel and is currently on detail to the Criminal Division.

On September 1, 1996, Assistant United States Attorney **Leslie Herje**, on detail from the Western District of Wisconsin, joined the Financial Litigation Staff of Legal Programs. Ms. Herje is working on civil and criminal financial litigation issues. She replaced **Jane Bondurant**, formerly an AUSA from the Western District of Kentucky, who is now a member of EOUSA's Evaluation and Review Staff.

Office of Legal Education

USABook Corner

USABook is a computer program that puts a complete library of useful publications on every DOJ attorney's and paralegal's desktop. A single keystroke converts displayed documents from this giant indexed collection of books, monographs, and forms into a WordPerfect file that can be printed or incorporated into court documents.

A complete installation of USABook contains:

Advance Fee Fraud, a monograph on prosecuting Nigerian advance fee fraud cases;
1996 Assets Forfeiture Policy Manual;

Civil Practice, a monograph on the statute of limitations under the Federal Tort Claims Act;
Capital Litigation, a death penalty litigation manual;
Civil Rights, a manual on civil and criminal civil rights cases;
Death Penalty Cases, a collection of briefs of U.S. Supreme Court death penalty cases;
Debtbeat magazine, a financial litigation newsletter;
Drafting Indictments, the March 1995 Indictment Form Book;
Environmental Cases, briefs of environmental law cases;
Ethics and Professional Responsibility Manual;
Ethics CFRs, the text of all government ethics regulations;
Fair Housing Act and related source materials;
Firearms Offenses, a manual for prosecuting Federal firearms offenses;
Guideline Sentencing, an outline of case law from the Federal Judicial Center;
Health Forms, a collection of forms in health care fraud prosecutions;
Immigration Law, a manual on civil and criminal immigration law;
Jury Handbook, a 7th Circuit manual on jury management;
Scientific Evidence, a reference manual from the Federal Judicial Center;
Violent Crimes, violent crime manual with emphasis on juveniles and gangs;
AUSA Directory, a list of office phone numbers for every AUSA;
Federal Homicide Prosecutions, a manual for prosecuting homicide cases, featuring the “Gang Homicide Checklist”;
Solicitor General Briefs in Opposition, July 1996 - present

The volumes in **bold** are published in hard cover as part of the OLE Litigation Series, and the others are available in USABook computer format only.

Coming in December 1996—*The Criminal Tax Manual* and *The Prosecutors’ Guide to the Bureau of Prisons*.

To get USABook installed on your computer, ask your systems manager who can download the latest version and new publications from the EOUSA Bulletin Board.

If you have ideas for a new book, chapter, collection of forms, or other USABook project, contact David M. Nissman, (809) 773-3920 or AVISC01(DNISSMAN). If you have questions about the USABook computer program, contact Ed Hagen, (202) 616-3654, AEX12(EHAGEN), or Internet ehagen@erols.com.

OLE Projected Courses

OLE Director Janet Craig is pleased to announce projected course offerings for the months of January through March 1997 for the Attorney Generals’ Advocacy Institute (AGAI) and the Legal Education Institute (LEI). Lists of these courses are on page 49.

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, DC 20530

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

Director Janet Craig, AUSA, SDTX
Deputy Director David W. Downs
Assistant Director (AGAI-Criminal) Jackie Chooljian, AUSA, CDCA
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
January		
7-9	Computer Crimes	AUSAs, DOJ Attorneys
7-9	Basic Money Laundering	AUSAs, DOJ Attorneys
7-10	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
13-17	Advanced Civil Trial Advocacy	AUSAs, DOJ Attorneys
14-17	Special Assistant United States Attorney/SBA Seminar	SAUSAs
27-31	Methamphetamine and Precursor Investigations and Prosecutions	AUSAs, DOJ Attorneys
28-31	Attorney Supervisors	AUSAs, DOJ Attorneys
February		
3-12	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
4-6	Fundamentals of Asset Forfeiture	AUSAs, DOJ Attorneys
4-7	Crisis Response (East)	AUSAs, DOJ Attorneys
12-14	Dispute Resolution/Enhanced Negotiations	AUSAs, DOJ Attorneys
24-3/7	Civil Trial Advocacy	AUSAs, DOJ Attorneys
25-27	Asset Forfeiture Component Seminar	AUSAs, DOJ Attorneys
26-28	Qui Tam	AUSAs, DOJ Attorneys
March		
4-7	Complex Prosecutions	AUSAs, DOJ Attorneys
11-13	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys
12-14	Dispute Resolution/Enhanced Negotiations	AUSAs, DOJ Attorneys
12-14	Violence Against Women and Children	AUSAs, DOJ Attorneys
17-21	Advanced Criminal Trial	AUSAs, DOJ Attorneys

LEI COURSES

Date	Course	Participants
January		
6-9	Examination Techniques	Agency Attorneys
6-10	Legal Support Staff	Agency Attorneys
22-23	Freedom of Information Act for Attorneys and Access Professionals	Agency Attorneys
24	Ethics for Litigators	Agency Attorneys
27-31	Experienced Paralegal	USAO/DOJ Paralegals
February		
3-4	Federal Acquisition Regulations	Agency Attorneys
7	Legal Writing	Agency Attorneys/Paralegals
10-11	National Environmental Policy Act	Agency Attorneys
12-14	Discovery Skills	Agency Attorneys
19	Introduction to Freedom of Information Act	Agency Attorneys
21	Ethics and Professional Conduct	Agency Attorneys
24-28	Criminal Paralegal	USAO/DOJ Paralegals
March		
3-4	Law of Federal Employment	Agency Attorneys
10-11	Federal Administrative Process	Agency Attorneys
10-14	Legal Research and Writing Refresher	Agency Attorneys/Paralegals
14	Legal Writing	Agency Attorneys/Paralegals
17-19	Public Lands and Natural Resources	Agency Attorneys
24-26	Attorney Supervisors	Agency Attorneys
24-28	Legal Support Staff	USAO Paralegals

Computer Tips

Using Windows Cut and Paste with the GroupWise Calendar

In last month's column, we walked through the process of marking text on the screen and pasting it into another application. To illustrate the power of this technique, let's use some real world examples.

Let's say, for example, you get an Email concerning an upcoming meeting. The Email contains not just the time and place of the meeting, but directions, an agenda, and a list of persons attending the meeting. All of this can be dropped right into your calendar without retyping or note taking. Move your mouse cursor to the start of the section in the Email that you wish to save. Mark the block by pressing and holding the left mouse button while moving to the end of the section, and then release the button. Press <Ctrl>C ("copy") to save the text.

Next, open your GroupWise Calendar and double click on the date and time of the meeting. Click the mouse cursor in the Message box, and then press <Ctrl>V ("insert"). This will insert the text that you marked earlier into the box. Fill in the other boxes in the normal fashion, and click on OK when you are done. Now, whenever you double click on this appointment, the details of the meeting will be displayed.

Here's another example: You get an Email about yearly flu shots, with information on times and places you can get it done. You are too busy to get the shot right now but want to do it soon. Mark and copy the text of the Email message, and then double click on an empty spot in the Task box of the GroupWise Calendar. This will bring up a dialog box similar to the appointment dialog box. Type "flu shot" in the subject box and then click your mouse cursor in the Message box, and press <Ctrl>V to insert the text. Click on OK. An item called "flu shot" will appear on the task list on your GroupWise Calendar, with an empty check box. When the task is completed, use your mouse to click on the check box.

DOJ Highlights

Appointments/Resignation

Douglas Melamed Named Principal Deputy Assistant Attorney General

On October 10, 1996, A. Douglas Melamed, a partner in the Washington, D.C., law firm of Wilmer, Cutler and Pickering, was named Deputy Assistant Attorney General of the Antitrust Division for Civil, Appellate, and International matters. Melamed succeeds Joel Klein, who became the Acting Assistant Attorney General in charge of the Antitrust Division when Anne Bingaman departed on October 18. Melamed will oversee the Division's civil enforcement program and appellate activities, and the implementation of the Division's international efforts, including cooperation with foreign authorities to ensure effective law enforcement in a global economy, and participation in international organizations who promote world-wide market access, and free and fair competition.

New Deputy Assistant Attorney General for Economic Analysis Group

On October 16, 1996, the Antitrust Division announced the appointment of Andrew Joskow as Deputy Assistant Attorney General for the Economic Analysis Group. He will direct the Group, including providing advice on merger and civil non-merger investigations. Joskow has been Acting Deputy Assistant Attorney General for Economic Analysis since May 1996.

Civil Rights Division Resignation

Assistant Attorney General Deval L. Patrick announced that he will resign effective January 20, 1997. He has served as Assistant Attorney General since April 14, 1994.

Honors and Awards

Former Antitrust Division Chiefs Receive DOJ's 1996 John Sherman Award

On October 3, 1996, former Antitrust Division Chiefs Thomas E. Kauper and William F. Baxter received the Department's John Sherman Award for their roles in the Department's historic case that led to the break-up of AT&T. Kauper, as Assistant Attorney General in charge of the Antitrust Division during the Ford Administration, filed the initial complaint against AT&T in 1974, seeking to end the telecommunications giant's monopoly in the markets for telephone service and equipment. Baxter, as head of the Antitrust Division during the Reagan Administration, spearheaded the negotiations with AT&T that produced the consent decree that led to the break-up of AT&T and ended its monopoly over the telecommunications industry.

Civil Division

Retaliation Claims Actionable Under Title VII, ADEA, and Rehabilitation Act

On October 2, 1996, Assistant Attorney General Frank Hunger, Civil Division, sent a memo to United States Attorneys, Civil Chiefs, and Civil Assistant United States Attorneys concerning the argument recently brought to his attention that, in some employment discrimination cases, Congress has not waived sovereign immunity for claims of retaliation by Federal employees in complaints brought under Title VII of the Civil Rights Act, 42 U.S.C. 2000e *et seq.*; the Age Discrimination in Employment Act (ADEA), 29 U.S.C. 633a; and the Rehabilitation Act, 42 U.S.C. 791. Mr. Hunger stated that regulations issued by the Equal Employment Opportunity Commission expressly provide that claims of retaliation by Federal employees are actionable under Title VII, the ADEA, and the Rehabilitation Act. See 29 C.F.R. 1614.101; 1614.103(a). Moreover, he stated that the Solicitor General has argued in the Supreme Court that such claims are actionable. After careful consideration and consultation with other Department components, Mr. Hunger decided that the United States should not oppose retaliation claims made by Federal employees under Title VII, the ADEA, or the Rehabilitation Act on sovereign immunity grounds. Accordingly, USAO and Civil Division attorneys should withdraw such pending arguments and refrain from making such arguments in the future. Questions should be directed to Civil Division attorneys Anne Gulyassy, (202) 514-3527, or Marleigh Dover, (202) 514-3511. For personnel in

USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Congress Enacts Comprehensive Revision of Immigration Laws

President Clinton recently signed into law the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (September 30, 1996). The IIRIRA represents the second time Congress has amended the Immigration and Nationality Act in the past several months. In the first revision on April 24, 1996, Congress enacted the immigration-related provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA), Pub. L. 104-132, 110 Stat 1214 (April 24, 1996). The IIRIRA revises the immigration statute more comprehensively than the AEDPA, and IIRIRA will have a significant impact on immigration litigation in the United States.

Most IIRIRA provisions will be effective on April 1, 1997. However, the IIRIRA contains a number of specific effective date provisions, and many of the amendments are now in effect. Under IIRIRA, legal recourse for aliens generally is limited to challenges of final orders of deportation or exclusion (now termed "removal" orders) by review petitions in the courts of appeals. The statute eliminates statutory habeas corpus and other district court remedies, and district courts no longer may stay an alien's deportation while the alien pursues motions to reopen proceedings or other administrative avenues of relief. Additionally, district courts will not have jurisdiction to review discretionary decisions by the Attorney General regarding immigration bond and immigration parole.

In addition to IIRIRA, Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (1996), significantly changes the treatment of aliens for purposes of receiving many Federal and state-administered benefits, and has placed additional, enforceable responsibilities on sponsors of immigrants. Litigation challenging portions of this statute may arise over the next few months.

The Civil Division's Office of Immigration Litigation can assist you with IIRIRA and other immigration-related matters. For further information, please contact David M. McConnell, Civil Division, (202) 616-4881.

Civil Rights Division

Department Awards Grants to State Organizations

On October 9, 1996, the Department announced that organizations in 10 states across the country were awarded \$450,000 in grants to help teach local businesses and governments how to comply with the Americans with Disabilities Act (ADA). The grants will be given to state-based organizations who will reach out to businesses through regularly scheduled meetings and state-wide conferences on the ADA for state and local government officials.

Office of Justice Programs

Tapping into OJP's Technical Assistance Resources

*Assistant Attorney General Laurie Robinson
Office of Justice Programs*

In our role of providing Federal leadership to the crime fighting efforts of state and local governments and law enforcement agencies, the Office of Justice Programs (OJP) is working hand-in-hand with United States Attorneys' offices to encourage innovative measures in the criminal justice field to combat crime. To further this mission, we are constantly looking for ways to provide training and technical assistance resources to enhance the effectiveness of our services.

An overview of some of the technical assistance opportunities available through OJP follows. While many of these programs are primarily for state and local officials, you and your staff are invited to take advantage of these opportunities, as well as link these resources to criminal justice agencies in your districts.

If you are interested in learning of other United States Attorneys who have taken advantage of specific programs, or if you wish to learn more about the programs listed below, please call the contact person for each agency.

The Executive Office for Weed and Seed (EOWS)

Contact: Steve Rickman or Nancy McWhorter, (202) 616-1152

EOWS has established a United States Attorneys' Weed and Seed Fund exclusively for United States Attorneys to use in implementing Weed and Seed in their districts. The fund has been used to pay for travel between existing Weed and Seed sites and new sites, the production and distribution of local Weed and Seed newsletters and other promotional materials, and sending staff to regional and national conferences.

United States Attorneys and their personnel involved with the Weed and Seed program may participate in training and technical assistance in areas such as gun abatement initiatives, safe havens, community mobilization, economic development, using the asset forfeiture fund, and drug demand reduction.

Each month, EOWS sends each United States Attorney and LECC Coordinator a copy of the *Weed and Seed In-Sites* newsletter.

Bureau of Justice Assistance (BJA)

Contact: Rich Greenough, (202) 616-2197

The BJA-funded SEARCH program provides training and technical assistance to justice agencies to improve their understanding of information systems and criminal justice information management technologies. Although the thrust of the training is on state and local investigators, Federal agencies are also invited to participate. The training is accomplished through course presentations at SEARCH's National Training Laboratory in Sacramento; the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia; and the National White Collar Crime

Center in West Virginia. More specialized training and technical assistance in this area are available on a reactive basis and can be tailored to the requesting agency's need.

A central training focus for the SEARCH program over the past several years has been on enhancing state and local skills in identifying and investigating computer crime. Training to date has been on such topics as "The Investigation of Computer Crime" and "Search and Examination of Computers." This year, new programs will look at "Internet Investigations" and "Internet Resources for Law Enforcement." Over the last 12 months, the BJA/SEARCH program has provided 24 training sessions to more than 700 law enforcement officials in the area of computer crime. SEARCH projects will offer 30 training sessions over the next 12 months using the same approach and logistics, and will include regional outreach training sessions in Ashburn, Virginia; Cincinnati, Ohio; Nashville, Tennessee; and Phoenix, Arizona.

The Office of Juvenile Justice and Delinquency Prevention
Contact: Emily Martin, (202) 616-3633

Funding more than 50 projects annually, OJJDP provides training in such areas as improving prosecutors' responses to child abuse, domestic violence, and other public safety issues; using OJJDP Crime Prevention (Title V) discretionary funds to enable communities to implement risk-focused delinquency prevention plans; improving law enforcement's capacity to respond to serious juvenile crime and increasing their capability to contribute to the prevention of delinquency; and heightening awareness of prosecutors and law enforcement agents regarding the complexity and severity of parental kidnaping, and strengthening criminal justice responses. United States Attorneys and their staffs are welcome to take advantage of technical assistance opportunities which will improve their effectiveness in confronting these issues in their districts.

The National Training and Technical Assistance Center (NTTAC), operated by OJJDP, seeks to upgrade and expand the professional skills of juvenile justice and delinquency prevention practitioners and increase their capacity to reduce youth crime and improve the juvenile justice system. Part of this mission involves expanding the availability of training and technical assistance opportunities to state and local agencies. United States Attorneys and their staffs can take advantage of these services to improve their responsiveness to juvenile justice issues at the Federal level. For more information about the NTTAC, call (800) 830-4031, or fax (217) 398-3132.

The Office for Victims of Crime (OVC)
Contact: Laura Federline, (202) 307-5983

OVC provides funding for conferences and workshops that are planned and designed by the districts to meet their unique needs, as well as scholarships for conference participants. These conferences assist United States Attorneys to comply with Federal crime victims' legislation and improve the responses of Federal criminal justice, tribal, military, and other personnel within their districts to the needs of Federal crime victims.

OVC sponsors teams nominated by United States Attorneys' offices to attend the National Symposium on Child Sexual Abuse in Huntsville, Alabama, where they receive multidisciplinary training on handling child sexual abuse cases. The 1997 symposium will take place March 17-22.

The OVC Trainers Bureau funds trainers and experts to travel to districts to offer training and technical assistance on victim-related topics, including the trauma of victimization, advocacy for victims in the criminal justice system, legal rights of victims, crime victim compensation, and program standards for victim services.

Under the Immediate Responses to Emerging Problems (IREP) program, OVC funds emergency training and technical assistance for communities following large scale crime victimizations. Emergency services, often provided by crisis response teams, can be mobilized within 24 to 48 hours after a district's request.

OVC has helped produce a number of information resources, including videotapes, brochures, and resource packages. Some of these include three videos: Financial Assistance for Crime Victims, Inside Federal Court, Bitter Earth—Child Sexual Assault in Indian Country, as well as resource packages for children required to testify in Federal court and for White Collar Crime/Fraud Victims.

Drug Courts Program Office (DCPO)

Contact: Marilyn Roberts, (202) 616-5001

The Drug Court Clearinghouse and Technical Assistance Project is operated through American University. A database has been created that provides information on the status and current activity of drug courts throughout the country. Training and technical assistance programs are available to DCPO grantees through the Justice Management Institute in collaboration with the National Association of Drug Court Professionals. The Clearinghouse can be accessed through the World Wide Web at <http://www.american.edu/academic.depts/spa/justice> and by phone, (202) 885-2875.

The National Criminal Justice Reference Service (NCJRS)

See contact numbers listed below.

NCJRS is one of the most extensive sources of information on criminal justice in the world. Through specialized information centers, NCJRS provides access to the publications of OJP agencies and the Office of National Drug Control Policy, as well as specialized research services by NCJRS information analysts. Each component has its own toll free number.

National Institute of Justice,
(800) 851-3420
Office of Juvenile Justice and Delinquency Prevention,
(800) 638-8736

Office for Victims of Crime,
(800) 627-6872
Bureau of Justice Statistics,
(800) 732-3277
Bureau of Justice Assistance,
(800) 688-4252
Office of National Drug Control Policy,
(800) 666-3332

Publications and a wealth of information are also available through NCJRS' site on the World Wide Web. From the NCJRS Web site, you can access and download publications, search for information by keyword, link with other Web sites related to the topic you are researching, and learn about upcoming conferences in the field of criminal justice. Access this Page at <http://www.ncjrs.org>

The Office of Justice Programs Web site provides general information about OJP, as well as links to other relevant sites. Access OJP's Page at <http://www.ojp.usdoj.gov>.

OJP Documents

Bureau of Justice Statistics Documents

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

Sourcebook of Criminal Justice Statistics, 1995, is the 23rd annual edition that presents a broad spectrum of criminal justice data from more than 100 sources in six sections: (1) characteristics of the criminal justice system, (2) public attitudes toward crime and criminal justice topics, (3) the nature and distribution of known offenses, (4) characteristics and distribution of persons arrested, (5) judicial processing of defendants, and (6) persons under correctional supervision. The report includes a comprehensive subject index, an annotated bibliography, technical appendixes with definitions and methodology, and a list of source publishers and their addresses.

Compendium of Federal Justice Statistics, 1992, is the seventh in an annual series. It describes all aspects of processing in the Federal justice system, including numbers of persons prosecuted, convicted, incarcerated, sentenced to probation, released pretrial, and under parole or other supervision. Data are presented both nationally and by Federal judicial district and describe events completed in 1992.

Compendium of Federal Justice Statistics, 1993, is the eighth in an annual series. It describes the same information for 1993 as the 1992 report does.

Prosecutors in State Courts, 1994, presents findings from the 1994 National Survey of

Prosecutors, the most recent in a series of biennial sample surveys of the Nation's 2,300 state court prosecutors. The survey found that in 1994, State court prosecutors employed about 65,000 attorneys, investigators, and support staff. Almost 90 percent of the offices prosecuted domestic violence and child abuse cases. Half of the offices reported that a staff member received a work-related threat or assault. More than half the offices in large metropolitan areas had specialized units to handle juvenile cases in adult criminal court. Other data from the survey include the annual office budget for prosecutorial functions, number of felony cases closed, and number of felony convictions. New topic areas covered in this report include juvenile cases waived to criminal court, the cross-designation of prosecutors to litigate in Federal court, procedures for handling civil actions against prosecutors and other professional staff, and types of community involvement by prosecutors.

For additional information regarding these documents, contact the Bureau of Justice Statistics at (202) 307-0765. For copies of these documents, contact the BJS Clearinghouse at (800) 732-3277.

Bureau of Justice Statistics Special Report

The August 1996 Bureau of Justice Statistics Special Report, NCJ-160934, is now available. BJS Special Reports address topics in depth. This Special Report covers articles concerning non-citizens in the Federal Criminal Justice System from 1984 to 1994. For copies of this report, contact the BJS Clearinghouse, P.O. Box 179, Dept. BJS, Annapolis Junction, Maryland 20701-0179.

Bureau of Justice Assistance Documents

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

Bureau of Justice Assistance Publications List is a complete list of BJA publications that highlights new materials and provides information for ordering documents.

The Emergency Federal Law Enforcement Assistance Program is a fact sheet that provides an overview of the Emergency Federal Law Enforcement Assistance Program. The program was created to assist state and local governments in extraordinary circumstances that have the potential to result in serious threats to public safety. Information regarding the program scope and purpose, eligibility for program assistance, key determining factors for assistance, application requirements, program limitations, and examples of recent awards is provided. Sources for additional information about the program are listed at the end of the fact sheet.

For additional information regarding these documents, contact the Bureau of Justice Assistance at (202) 514-6278. For copies of these documents, contact the BJA Clearinghouse at (800) 688-4252.

Drug Court Program

On October 18, 1996, OJP announced the release of the application kit for the Fiscal Year 1996 Drug Court Program, which makes \$5.7 million available for jurisdictions to establish new drug courts or enhance existing ones. The program is authorized by the President's 1994 Crime Law and allows governments to use innovative methods to deal with nonviolent, drug-abusing offenders. The Omnibus Appropriations Act of 1996 permitted the reprogramming of \$15 million from the Local Law Enforcement Block Grants Program for the Drug Court Program. This year's solicitation includes \$5.7 million for new grants to help jurisdictions plan drug courts, enhance existing drug courts, and implement drug courts evolving from previous planning efforts. FY 1996 implementation grants will be divided among jurisdictions that received FY 1995 Department of Justice drug court planning grants and others that have strong proposals to develop new drug courts. The Department also intends to use a substantial portion of the recently approved \$30 million FY 1997 drug court program appropriation to make grants to strong applications that were not funded because of the limited FY 1996 appropriation. A study sponsored by the Justice Department's National Institute of Justice of the nation's first drug court in Miami, Florida, revealed a 33 percent reduction in rearrests for drug court graduates compared with non-drug court offenders.

Executive Office for Weed and Seed

Communities Receive Department Grants

On October 25, 1996, the Executive Office for Weed and Seed (EOWS), announced that 79 communities are receiving a total of \$25.1 million to continue to "weed out" violent crime, gang activity, drug trafficking, and drug use, and "seed in" neighborhood revitalization. For the first time, 43 additional neighborhoods now receive funding under the Weed and Seed program, joining the 36 currently funded sites. This marks the largest increase of funded Weed and Seed sites in the program's five-year history.

Bureau of Justice Assistance

DOJ Awards Over \$405 Million for Local Law Enforcement Efforts

On October 4, 1996, the Department announced that over 2,600 local jurisdictions, every state, and several eligible territories are receiving grants totaling approximately \$405 million that will help them reduce crime and improve public safety. The grants, administered by the Bureau of Justice Assistance (BJA), were made under the Local Law Enforcement Block Grants Program authorized by the Omnibus Fiscal Year 1996 Appropriations Act. Local jurisdictions can use their grants to fund drug courts; hire police officers or pay existing officers for overtime; establish multi-jurisdictional task forces; purchase equipment directly related to basic law enforcement functions; prosecute violent offenders, particularly youthful violent offenders; or implement crime prevention measures. For additional information about BJA and its programs, contact the

Department of Justice Response Center, (800) 421-6770, or visit BJA's Home Page at <http://www.ojp.usdoj.gov/bja>.

Office of Juvenile Justice and Delinquency Prevention

Changing Laws to Respond to Violent Juvenile Crime

The Department issued a state-by-state, comprehensive report on responses to violent juvenile crime and delinquency entitled, *State Responses to Serious and Violent Juvenile Crime*. It lists state laws enacted from 1992 to 1995 and shows that 47 of the 50 legislatures and the District of Columbia have made substantive changes to their laws targeting juveniles. Several trends emerge from the report's analysis of legislative and executive actions. Most states are increasing their prosecution of juveniles as adults for those who have committed serious or violent crimes and whom traditional juvenile training schools and rehabilitation programs were ineffective. Many legislatures have lowered the age for which juveniles who commit serious or violent crimes can be tried as adults in criminal court and have added offenses to those that are considered serious. Also, prosecutors have more power to exercise discretion in whether to prosecute in juvenile or criminal court. To obtain a copy of this report, contact the Juvenile Justice Clearinghouse, P.O. Box 6000, Rockville, Maryland 20849-6000; call (800) 638-8736; or contact OJJDP's Home Page at <http://www.ncjrs.org/ojjhome.htm>.

Child Abuse Guides

On October 22, 1996, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys from Administrator Shay Bilchik, Office of Juvenile Justice and Delinquency Prevention (OJJDP), providing advance notice regarding the availability of three publications—*Battered Child Syndrome: Investigating Physical Abuse and Homicide*, *Interviewing Child Witnesses and Victims of Sexual Abuse*, and *Child Neglect and Munchausen Syndrome by Proxy*. These are the fifth, sixth, and seventh titles in OJJDP's *Portable Guides to Investigating Child Abuse* series. The first four guides were released as a group, and these three are being issued as the second wave of the series. The remaining four guides—*Burn Injuries in Child Abuse*, *Criminal Investigation of Child Sexual Abuse*, *Law Enforcement Response to Child Abuse*, and *Predator Pedophiles: Investigating Serial Molestation*, currently in production, will make up the final set in the series and will be distributed soon.

Hate Crime Study

On October 4, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys the Report to Congress on Juvenile Hate Crimes, which responds to a Congressional request for information on the extent and nature of hate crimes committed by juveniles. The report describes the National Juvenile Hate Crime Study, provides information on FBI and OJJDP initiatives involving juvenile hate crimes, and sets forth an action plan to expand knowledge of juvenile hate crime and improve the nation's ability to monitor and respond effectively to these crimes.

Questions should be directed to OJJDP Administrator Shay Bilchik, (202) 307-5911. For personnel in USAOs, your office should have a copy of this report. If not, you may call (202) 616-1681.

Office for Victims of Crime

OVC Special Report

On November 1, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys, First Assistant United States Attorneys, LECC Coordinators, and Victim-Witness Coordinators concerning the OVC Special Report, "Victims of Gang Violence: A New Frontier in Victim Services." The report represents the collective knowledge, expertise, and real life experiences of diverse professionals, victims, and volunteers who respond daily to the devastating aftermath of gang activity around the country, and provides a road map of needed services and suggests mechanisms for implementing comprehensive new programs to assist gang violence victims. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Violence Against Women Office

New Recommendations to Combat Domestic Violence and Sexual Assault

On October 1, 1996, Attorney General Reno and Department of Health and Human Services Secretary Donna Shalala released a booklet containing new recommendations to help individuals and communities combat domestic violence and sexual assault. The booklet is entitled, "A Community Checklist—Important Steps to End Violence Against Women." "This checklist will help communities reach battered women where they work, learn, worship, and live. Together, we are creating a seamless system of protection, so that no woman falls through the cracks," stated Secretary Shalala. The Community Checklist is available at the Violence Against Women Office Home Page on the Internet at <http://www.usdoj.gov/vawo>.

ABA Interdisciplinary Commission Focuses on Domestic Violence*

by the American Bar Association

In November 1994, the American Bar Association (ABA) established a national commission to look at the problem of domestic violence and develop effective, multidisciplinary responses that communities can adopt. The commission brought together doctors, lawyers, judges, police officers, psychologists, and victim advocates from around the country. Following are summaries of commission projects:

- *The Impact of Domestic Violence on Your Legal Practice* is a 53-chapter lawyer's manual

* Reprinted from *Violence Against Women Act News*, Vol IV, Oct 1996.

discussing the broad effects of domestic violence on various legal specialities, including family, criminal, tax, real property, and tort law. Copies are available by calling the ABA Service Center at (800) 285-2221.

- *It's Not O.K.: Let's Talk About Domestic Violence* videotape was developed in partnership with the Walt Disney Company for professionals working with children who witness domestic violence. The 25-minute videotape is available from the ABA Service Center, (800) 285-2221 and may be useful for advocates, judges, law enforcement, social workers, psychologist, and others working with children witnesses.
- *A multidisciplinary guide for developing coordinated community responses* is currently under production. Intended for corporations, lawyers, doctors, religious community members, and nonprofit organizations, the document will be introduced to the public on the World Wide Web at the 1996 Annual Meeting.
- *A technical assistance and continuing legal education video* is being developed by the Commission in conjunction with the ABA Center for Pro Bono work, the ABA Center for Continuing Legal Education, and the USDOJ Office of Justice Programs. Designed for attorneys, law enforcement, prosecutors, and victims advocates, the video will highlight significant new provisions under the Violence Against Women Act.
- *Regional Conferences on family violence* cosponsored by the United States Departments of Justice and Health and Human Services and the American Medical Association will examine child abuse issues, sexual assault, domestic violence, and elder abuse.

Other issues of national scope under study include insurance discrimination against victims of domestic violence, interstate enforcement of protection orders, domestic violence in the sports community and in the workplace, and domestic violence curricula for law schools.

Legislative Wrap Up*

by Kathleen O'Connell

Violence Against Women Office

The 104th Congress adjourned October 1, but not without passing, and the President signing, several key pieces of legislation to broaden Federal legal protection for women and children.

Among the bills passed this summer is the Interstate Stalking Punishment Act of 1996, which amends the Defense Department's spending authorization, making it a Federal crime to stalk or harass someone across State lines or within special maritime and territorial jurisdictions of the United States regardless of whether the stalker has committed an act of violence, is the spouse or intimate of the victim, or is under a court order of protection.

* Reprinted from *Violence Against Women Act News*, Vol IV, Oct 1996.

The new law sets penalties from up to five years in prison for harassment to life in prison for certain bodily injury.

Another bill to come through Congress this session also provides a corrective amendment to existing law. The Carjacking Correction Act amends the Federal carjacking statute to include rape in the legal definition of serious bodily injury.

The House and Senate also moved to strengthen protection from convicted sexual abusers. An amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act now requires States to notify local law enforcement and citizens when a sex offender is released into the community. The new provision is referred to as Megan's Law after a seven-year-old New Jersey girl who had been raped and murdered by a convicted sex offender who had moved in across the street from her family. The Jacob Wetterling Act provides States financial incentives to adopt registration systems for convicted child molesters and other offenders.

A related measure passed by the 104th Congress requires the Attorney General to set up a national registry of sex offenders in the FBI. The Pam Lychner Sexual Offender Tracking and Registration Act will give law enforcement access to information about such offenders from any State or U.S. territory. (For more information about the registry, see *Violence Against Women Act News*, September 1996.)

The President also signed into law legislation prohibiting anyone convicted of a misdemeanor domestic violence charge from owning or possessing a gun; a bill to enhance penalties for using the drug, Rohypnol, with criminal intent; and the Health Insurance Portability Act to restrict certain insurers from denying coverage for preexisting conditions, including conditions linked to domestic violence.

Immigration and Naturalization Service

On November 1, 1996, INS announced that they have entered into an agreement with the state of Virginia to immediately notify Virginia Department of Social Services (DSS) officials when unauthorized workers are removed from an employer's workplace in the state. This early notification will give the Virginia Employment Commission (VEC) an opportunity to refer qualified workers who are currently receiving state welfare benefits or who are unemployed to employers found by INS to have hired unauthorized workers. INS' enforcement actions will open job opportunities for people who are currently unemployed and reduce illegal employment. During fiscal year 96, INS agents from the District Office conducted 51 worksite enforcement operations, resulting in the removal of 333 unauthorized workers with annual wages totaling more than \$4.6 million. Also during fiscal year 96, INS conducted more than 4,900 worksite operations and removed more than 14,000 unauthorized workers nationally.

Ethics and Professional Responsibility

Grand Jury—Witnesses

OPR investigated allegations that a Federal prosecutor mistreated two witnesses while questioning them and made inappropriate comments about them to the grand jury when the witnesses were not present. It was also alleged that the prosecutor acted unprofessionally by criticizing his support personnel in front of the grand jury and by being consistently late, without excuse or apology. OPR concluded that the Federal prosecutor's questioning of the two witnesses, who were clearly hostile to the Government, was competent and professional. OPR also found that the prosecutor had made some gratuitous, plainly inadvisable comments to the grand jury about witnesses and support personnel. However, OPR concluded that the remarks were not intended to inflame or prejudice the grand jury in matters before them and did not constitute misconduct.

Pro Bono Legal Work—Identification as Department Attorney

OPR received a complaint that a Federal prosecutor prepared another person's application for an immigration visa with a cover memorandum on DOJ stationery. The prosecutor also included a business card in a submission on behalf of a foreigner attempting to enter the country to perform certain functions for a non-profit organization. The prosecutor told OPR that he did not intend to gain preferential treatment for the visa applicant by identifying himself as a Department of Justice attorney, but believed his actions were consistent with what DOJ employees are permitted to do on behalf of non-profit organizations. OPR concluded that the actions of the DOJ attorney were improper, but not intentionally so.

Litigation Tactics

A Federal prosecutor was reprimanded by his supervisors after they concluded that he had made an offensive, discriminatory comment to opposing counsel. Opposing counsel later claimed that the Department was "covering up" this incident and other charges of misconduct that had been made about the Federal prosecutor. During OPR's investigation of this alleged cover-up, a supervisor asserted that the prosecutor had lied in telling OPR that he reported the discriminatory remark to his supervisors immediately after the incident. OPR found that opposing counsel's additional assertion—that the Federal prosecutor had engaged in prohibited political activities—were unsubstantiated. Further, the claim that the prosecutor had engaged in abusive litigation tactics could not be supported because counsel was unable to provide evidence of these charges. OPR also found the prosecutor entirely credible during his interview with OPR and concluded that the charge that he lied to OPR was unsubstantiated.

Career Opportunities

The U.S. Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. It is the policy of the Department of Justice to achieve a drug-free workplace and persons selected for the following positions will be required to pass a urinalysis test to screen for illegal drug use prior to final appointment.

**GS-12 to GS-15 Attorney Positions
Antitrust Division**

DOJ's Antitrust Division is seeking attorneys at all experience levels to work in several sections in Washington, D.C. Responsibilities include reviewing mergers and acquisitions and conducting civil investigations and litigation. Some travel is required.

Applicants must have a J.D. degree, be an active member of the bar in good standing (any jurisdiction), have at least one year of post J.D. experience, and possess superior academic and professional qualifications. Experience in antitrust litigation, civil litigation, and/or white collar crime is strongly preferred for some of the available positions. An educational or professional background in economics is desirable. Applicants should send a resume to:

U.S. Department of Justice
Antitrust Division
Attn: Hiring Committee
950 Pennsylvania Avenue, N.W.
Room 3234
Washington, DC 20530

Grade and salary range is GS-12 (\$44,458 - \$57,800) to GS-15 (\$73,486 - \$95,531), depending on current salary and experience. Applications must be received no later than Friday, December 27, 1996. Individuals who previously submitted applications to the Division must resubmit them to be considered for these positions. No telephone inquiries will be accepted. Applicants will be notified in writing to verify receipt of their application.

**GS-13 to GS-15 Experienced Attorneys
Criminal Division
Office of Special Investigations**

DOJ's Office of Attorney Personnel Management is seeking two experienced attorneys for the Office of Special Investigations (OSI), Criminal Division in Washington, D.C. **This is a two-year term appointment with opportunity for one two-year term renewal.** OSI is responsible for detecting, investigating, and prosecuting individuals who took part in Nazi-sponsored acts of persecution abroad during the period 1933 to 1945, and who subsequently entered or who seek to enter the United States illegally and/or fraudulently. OSI takes appropriate legal action seeking their exclusion, denaturalization, and/or deportation. Attorney responsibilities include litigating deportation and denaturalization cases in Federal district court and immigration (administrative)

court; conducting investigations in conjunction with historians and other staff; conducting negotiations, discovery and trials; and handling appeals.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least two and one-half years of post J.D. legal experience. Applicants must also have a strong academic background as well as excellent research and writing skills, and litigation experience, including experience with the Federal Rules of Civil Procedure. Some travel is required.

Term appointees receive full benefits. Current salary and years of experience will determine the appropriate salary level from the GS-13 (\$52,867 - \$68,729) to the GS-15 (\$73,486 - \$95,531) range. Applicants must submit a resume or OF-612 (Optional Application for Federal Employment), writing sample, and a current performance appraisal to the address below. A current SF-171 (Application for Federal Employment) will still be accepted as well. Please submit application to:

U.S. Department of Justice
Criminal Division
Office of Administration
Attn: Ms. Gail Hunter
1001 G Street, N.W., Suite 800
Washington, DC 20001

No telephone calls please. Applications must be postmarked by January 15, 1997.

**GS-12 to GS-14 Experienced Attorney
Office of Policy Development**

DOJ's Office of Attorney Personnel Management is seeking an experienced attorney for the Office of Policy Development in Washington, D.C.

The selected attorney will share in tracking, reviewing, and coordinating a wide variety of statutory and regulatory civil obligations of the Department of Justice. The statutory responsibilities include reviewing draft bills and bill reports and identifying policy issues implicated in those proposals. The regulatory responsibilities include reviewing draft regulations proposed by components of the Department to ensure compliance with Department policies, statutory requirements, and Presidential directives.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year of post-J.D. experience. Applicants should be able to work effectively both on assignments requiring independent judgment and those requiring close cooperation with multiple parties. Experience in working with the legislative and rulemaking processes, in general, and with the Administrative Procedures Act and the Freedom of Information Act, in particular, would assist the applicant to successfully perform the duties of this

position. To apply, applicants must submit a resume and writing sample to:

U.S. Department of Justice
Office of Policy Development
Attn: Nancy Navarro
Room 4235
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

No telephone calls please. Current salary and years of experience will determine the appropriate salary level ranging from the GS-12 (\$44,458 - \$57,800) to GS-14 (\$62,473 - \$81,217). This announcement is open until filled, but no later than December 20, 1996.

**GS-12 to GS-14 Experienced Attorney
Office of the Pardon Attorney**

DOJ's Office of Attorney Personnel Management is seeking an experienced attorney for the Office of the Pardon Attorney in Washington, D.C. The office processes petitions addressed to the President for all forms of executive clemency, including pardon and commutation of sentence, and prepares the Justice Department's recommendations to the President in clemency cases.

Applicants must possess a J.D. degree, have excellent academic credentials, be an active member of the bar in good standing (any jurisdiction), and have at least two years of post-J.D. experience. A judicial clerkship and/or practical experience in criminal cases is desirable, and excellent writing and analytical skills are essential. Applicants must submit a current OF-612 (Optional Application for Federal Employment) or resume, writing sample, and current performance appraisal to:

U.S. Department of Justice
Office of the Pardon Attorney
500 First Street, N.W., Fourth Floor
Washington, DC 20530

(Individuals who submitted applications for this position with a prior closing date of October 18, 1996, need not reapply.) No telephone calls please. This position is open until filled but no later than January 3, 1997. Current salary and years of experience will determine the appropriate salary level. The possible range is GS-12 (\$44,458-\$57,800) to GS-14 (\$62,473 - \$81,217).

**GS-13 to GS-14 Part-time Attorney
U.S. Trustee's Office
Denver, Colorado**

DOJ's Office of Attorney Personnel Management is seeking an experienced attorney for a part-

time (job-share) position in the United States Trustee's Office in Denver, Colorado. Responsibilities include assisting with the administration of cases filed under Chapters 7, 11, 12, and 13 of the Bankruptcy Code; drafting motions, pleadings, and briefs; and litigating cases in the Bankruptcy Court and the U.S. District Court.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least two years of post J.D. experience. Outstanding academic credentials and litigation experience are essential, and familiarity with bankruptcy law and the principles of accounting is preferred. Applicants must submit an OF-612 (Optional Application for Federal Employment) or a resume and law school transcripts to:

U.S. Department of Justice
Office of the U.S. Trustee
Attn: Joanne C. Speirs
721 19th Street
Suite 408
Denver, CO 80202

A current SF-171 (Application for Federal Employment) will be accepted as well. No telephone calls please. Current salary and years of experience will determine the appropriate salary level. The possible range is GS-13 (\$53,017 - \$68,923) to GS-14 (\$62,650 - \$81,447). The position is open until filled, but no later than December 13, 1996.

The USABulletin Wants You

The *USAB* staff thanks you for your generous support in 1996 and looks forward to publishing more of your great articles and stories next year. Our readership grew substantially in 1996. Our 1997 goal is to cover more topics of interest to you. Below is our schedule for the first half of 1997, representing three topics you requested. In order for us to continue to bring you the latest, most interesting, and useful information, please contact us with your ideas or suggestions for future issues. If there is specific information you would like us to include in the *USABs* below, please contact David Nissman at AVISC01(DNISSMAN) or (809) 773-3920. Articles, stories, or other significant issues and events should be Emailed to Wanda Morat at AEX12(BULLETIN).

February 1997	Civil Issues
April 1997	Electronic Investigative Techniques
June 1997	Law Enforcement Retrieval Services