



United States Attorneys' Bulletin



**EXECUTIVE
OFFICE FOR
UNITED
STATES
ATTORNEYS**

Published by:

*Executive Office for United States Attorneys, Washington, D.C.
For the use of all U.S. Department of Justice Attorneys*

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COMMENDATIONS

The following Assistant United States Attorneys have been commended:

Richard Banks and Leslie Banks (Texas, Southern District) by Phillip J. Chopinski, Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, Houston, Texas, for their success in the conviction of a felon for possession of a firearm.

R. Daniel Boyce, (North Carolina, Eastern District) by R.M. Hazelwood, III, Inspector in Charge, U.S. Postal Service, Charlotte, North Carolina, for his guidance and legal expertise in prosecuting an embezzlement case.

Lance A. Caldwell, (District of Oregon) by Theodore M. Gardner, Special Agent in Charge, Federal Bureau of Investigation, Portland, Oregon, for his successful prosecution of a complicated criminal case.

Ellen Carpenter, (District of Massachusetts) by Gerard R. Esposito, District Director, Internal Revenue Service, Boston, Massachusetts, for her participation in the annual Continuing Professional Education for Revenue Officers in Hyannis on February 24, 1988.

Robert Ciaffa, (Florida, Southern District) by J. J. DuPilka, Postal Inspector in Charge, U.S. Postal Service, Miami, Florida, for his professional skill in arguing a motion which led to a guilty plea in a drug case.

Elliot Enoki, (District of Hawaii) by John C. Lawn, Administrator, Drug Enforcement Administration, Washington, D.C., for his excellent presentation at the Asset Forfeiture/Money-Laundering Conference of the Association of Southeast Asian Nations, February 22, 1988, in Manila, Philippines.

Nathan A. Fishbach, (Wisconsin, Eastern District) by William S. Sessions, Director, Federal Bureau of Investigation, and Elliott E. Lieb, Chief, Criminal Investigation Division, Internal Revenue Service, Milwaukee, Wisconsin, for his victory in the trial of the first conspiracy case in Wisconsin as a result of an FBI undercover program focusing on illegal prostitution.

Thomas A.W. Fitzgerald, (Florida, Southern District) by **William S. Sessions**, Director, Federal Bureau of Investigation, Washington, D. C., for his noteworthy efforts in the prosecution of a complex fraud case.

Jane E. Graham, (Kentucky, Eastern District) by **F. Dale Robertson**, Chief, U.S. Forest Service, Department of Agriculture, Washington, D. C., for her outstanding representation of the Federal Government in a case relating to real property, mining and mineral rights.

Geneva Halliday, (Michigan, Eastern District) by **Teresa J. Watmore**, CPT, JA, Judge Advocate, Department of the Army, Warren, Michigan, for her success in a slip and fall action filed under the Federal Tort Claims Act.

Ruth Harris, (Mississippi, Southern District) by **Robert J. Gofus**, Chief, Criminal Investigation Division, Internal Revenue Service, Jackson, Mississippi, for her success in a tax trial case.

Michael Anne Johnson, (Ohio, Northern District) by **Joseph R. Davis**, Assistant Director, Legal Counsel, Federal Bureau of Investigation, Washington, D. C., for her outstanding representation of the Government's interests in a civil action.

Allan Kaiser and David DeMaio, (Florida, Southern District) by Chief Judge **James Lawrence King**, U.S. District Court, Miami, Florida, for their expert handling of a criminal case in Key West, Florida.

Linda K. Lager and Dennis M. King, (District of Connecticut) by **Paul C. Salute**, Resident Agent in Charge, Drug Enforcement Administration, Bridgeport, Connecticut, for their successful prosecution of a drug case and their outstanding contribution to drug law enforcement in Connecticut.

Stephen J. Liccione, (Wisconsin, Eastern District) by **Keith Gatz**, Special Agent in Charge, Office of Inspector General, Organized Crime and Racketeering Section, Department of Labor, Washington, D.C., for his successful prosecution in an embezzlement case.

Frederick R. Mann, (Florida, Southern District) by **William Sessions**, Director, Federal Bureau of Investigation, Washington, D.C., for his contribution to the first RICO indictment of a Department of Defense contractor in the southeastern United States.

Mark Miller, (Michigan, Eastern District), by Captain Richard Meloche, Department of State Police, Livonia, Michigan, for his instruction in federal court procedure at a DEA Conspiracy Seminar conducted by the Michigan Department of State Police.

Robert S. Mueller, III and F. Dennis Saylor, (District of Massachusetts) by Kenneth J. Claunch, Chief, Criminal Investigation Division, Internal Revenue Service, Boston, Massachusetts, for their success in the trial of a money laundering case.

Jeanne Mullenhoff, (Florida, Southern District) by Janice Lee Jarrett, Officer in Charge, U.S. Customs Service, Nassau, Bahamas, for her performance in a case which resulted in the forfeiture of \$75,472.00 in undeclared U.S. currency to the United States Government.

Ellen G. Ritteman, (Michigan, Eastern District) by Teresa J. Watmore, CPT, JA, Judge Advocate, Department of the Army, Warren, Michigan, for achieving dismissal of a wrongful death suit brought against the Army under the Federal Tort Claims Act.

Robert B. Ross, (District of Oregon) by Harvard P. Spigal, General Counsel, Department of Energy, Portland, Oregon, for his excellent representation of the Bonneville Power Administration before the Ninth Circuit Court of Appeals.

Richard Starrett, (Mississippi, Southern District) by William Doyle, III, Inspector General, Railroad Retirement Board, Chicago, Illinois, for his expert handling and prompt resolution of three cases on behalf of the Railroad Retirement Board.

J. Daniel Stewart and John R. Osgood, (Missouri, Western District) by Joseph R. Davis, Assistant Director, Legal Counsel, Federal Bureau of Investigation, Washington, D.C. for their participation in the New Agents' Moot Court held in February at the FBI Academy.

D. Paul Vernier and Ellen Lockwood, (District of Guam) by Philip A. Berns, Attorney in Charge, Torts Branch, Civil Division, San Francisco, California, for their valuable assistance in a ship mortgage foreclosure case.

Frank J. Violanti, (Mississippi, Southern District) by William P. Tompkins, District Director, Office of Labor-Management Standards, Department of Labor, New Orleans, Louisiana, for his successful prosecution of a labor union embezzlement case.

Frank Zebot, (Michigan, Eastern District) by John J. Kelleher, Chief Counsel, U.S. Secret Service, Washington, D.C., for achieving dismissal of a complicated Bivens action brought against the Secret Service.

POINTS TO REMEMBERFEDERAL DRUG FORFEITURE PROGRAM

The House Subcommittee on Crime, led by Congressman Bill Hughes (D-NJ), held a hearing on the federal drug forfeiture program in Florida in early March. The purpose of the hearing was to examine the effectiveness of the forfeiture program and determine if additional legislation or administrative changes are needed. A number of Department of Justice officials testified on such issues as seizure and forfeiture of real property, forfeiture of attorneys' fees in drug-related cases, and the Federal Government's care and disposal of assets.

Joe D. Whitley, Deputy Assistant Attorney General, Criminal Division, testified on the equitable sharing program and title company concerns, among other issues. He explained that the distribution of over \$117 million to state and local agencies since its inception, is proof of the equitable sharing program's great success. Presently, sharing applications are being processed more expeditiously than ever before. The processing time for a judicial equitable sharing request is directly dependent on the judicial forfeiture proceeding, since a sharing distribution cannot be obtained until a forfeiture order is issued. The average time to complete a civil forfeiture action is 18 months. Upon receipt of the forfeiture order from the United States Attorney, the Asset Forfeiture Office processes the associated paperwork and forwards it to the U.S. Marshals Service so the property can be disbursed. If the forfeiture involves currency, the sharing generally takes place within 4 to 6 weeks after forfeiture. When other property is involved, however, the actual disbursement may take longer, since the property often needs to be disposed of or sold.

Administrative sharings are also dependent upon the issuance of a forfeiture order. The FBI processes administrative forfeitures and the related sharing requests in an average of 150 days. This is a significant improvement from its 1987 statistics in which the FBI took 340 days to process an administrative forfeiture. The FBI currently has 480 sharing cases on its backlog list. This "backlog" is defined as cases in which the forfeiture proceedings have been initiated and have been pending for more than 150 days. Currently DEA completes an administrative forfeiture and sharing in an average of 160 days. They have 3,300 cases waiting for processing. This, too, is a vast improvement over 1987 figures where DEA took 350 days on average to process a forfeiture action and had a backlog of 9,500 cases.

Because this program is growing at an exponential rate, contract employees will soon be hired to process sharing applications and administrative forfeitures. These workers will be paid from the Assets Forfeiture Fund which receives 10 per cent of all property forfeited and is used to cover administrative costs associated with forfeiture. The added manpower will further expedite processing of sharing requests by eliminating the backlog of pending administrative forfeiture actions.

Additionally, the Department of Justice is working to resolve concerns of title insurance companies by addressing three real property issues. First, as a matter of policy, the Department of Justice no longer sanctions the use of the administrative forfeiture where real property is being forfeited. Secondly, on September 25, 1987, the Asset Forfeiture Office promulgated forfeiture notice procedures to all United States Attorneys, Strike Forces and Task Force Offices to ensure proper notification of all potential parties-in-interest in forfeiture actions. Finally, the Department has provided guidelines to clarify the wording of federal court orders to address all known parties having an interest in the property.

FORFEITURE TRAINING

The Department of Justice has made great progress in training personnel in the area of forfeiture due in large part to the availability of money from the Asset Forfeiture Fund to pay for training programs. The Asset Forfeiture Office and the Attorney General's Advocacy Institute now sponsor bi-annual national conferences aimed at increasing the expertise of Assistant United States Attorneys in both forfeiture law and collateral property issues. The most recent of these was a basic training conference conducted in Tucson, Arizona in mid-February. The Advocacy Institute also holds regional conferences approximately every three months, focusing on property management issues in particular areas of the country. In addition, the Asset Forfeiture Office has produced two forfeiture manuals for prosecutors, Asset Forfeiture: Law, Practice, and Policy, which includes Forfeiture Practice and Procedure, and Asset Forfeiture: Compilation of Civil Statutes, which details over 140 Civil Forfeiture statutes contained in the United States Code. An update to Law, Practice and Policy was recently sent out to each United States Attorney's Office, branch office and strike force office.

(Asset Forfeiture Office)

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FINANCIAL DISCLOSURE

The Ethics in Government Act of 1978 (Pub. L. No. 95-521) requires that certain Federal employees file annual financial disclosure reports, which will be reviewed for possible conflicts of interest and made available to the public. The financial information required to be reported in each annual report is for the preceding calendar year. See also C.F.R. § 45.735-27.

The Executive Office for United States Attorneys is in the process of preparing the annual report. Please make sure your financial disclosure is submitted in a timely manner. If you have any questions regarding the completion of the form, or whether or not you are required to file, please contact N. Lee Cumberland, FTS 633-4024.

(Executive Office)

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PERSONNEL

Effective March 18, 1988, Charles A. Banks took the oath of office as the Presidentially appointed United States Attorney for the Eastern District of Arkansas.

Effective March 14, 1988, John R. Bolton is the Assistant Attorney General for the Civil Division.

Effective March 14, 1988, Thomas M. Boyd is the Acting Assistant Attorney General for the Office of Legislative Affairs.

(Executive Office)

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SENTENCING GUIDELINES

On December 15, 1987 and January 5, 1988, the United States Sentencing Commission adopted a number of amendments to the sentencing guidelines and official commentary. Their purpose is to clarify and to make technical and clerical corrections to the guidelines, and to make them conform to recently-enacted legislation. Accompanying the amendments are Supplementary Illustrations of the operation of the sentencing guidelines for multiple counts and criminal history. These documents explain how the guidelines are intended to work in specific circumstances and may be useful for training or reference.

The Commission has distributed these guidelines to all United States Attorneys' Offices. If you need additional copies, a limited supply is available by contacting the Executive Office for United States Attorneys (FTS 673-6348). Also, copies are on sale at the U.S. Government Printing Office, Washington, D. C. 20402, at a cost of \$7.00, (Order # 052-070-06400-5).

(Executive Office)

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SKILLS BANK

The Executive Office for United States Attorneys is currently updating the Skills Bank for JURIS. On March 1, 1988, a new survey form was sent to all districts to be completed by each Assistant United States Attorney by the end of April. To date, 1,000 replies have been received.

The success of the Skills Bank depends on your participation. If you have not completed your survey form, please do so immediately. If you have any questions, or would like a set of instructions on how to access the Skills Bank, please contact:

Margaret A. Smith, Attorney-in-Charge,
FOIA/PA Unit, Executive Office for
United States Attorneys
Room 6320, Patrick Henry Building
601 D Street, N.W., Washington, D. C. 20530
Phone: FTS 272-9826

(Executive Office)

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LEGISLATIONAmnesty Extension

On March 30, 1988, INS Commissioner Alan Nelson testified before the Subcommittee on Immigration, Refugees, and International Law of the House Judiciary Committee at an oversight hearing involving the implementation of the Immigration Reform and Control Act of 1986. One of the principal issues under consideration was the proposal to extend for six months or one year the period within which certain illegal aliens may apply for legalization of their status. The Department of Justice opposes an extension as unnecessary, citing the more than 1.4 million applications that have been filed in the approximately 11 months since the amnesty period began in May, 1987, as clear evidence that the program has been a success and the corresponding lack of evidence that significant numbers of eligible illegal aliens will not have applied by the May 4, 1988, deadline. Currently, it is estimated that a total of 1.5 to 1.7 million applications will have been filed by May 4. In addition, the INS has begun to allow applicants a 60-day period within which to file the necessary documentation after submitting their applications; this change to the system will, in effect, add an additional 60 days to the legalization application period. Finally, the Department has pointed out that the program is likely to cost more money for administrative expenses than will be generated by the application fees unless large numbers of additional aliens apply during an extension period.

H.R. 4222, which would extend the legalization application period for an additional six months, was marked up by both the Subcommittee and the Judiciary Committee on March 31. The bill was amended by voice vote in the Committee to extend its November 4 deadline to November 30 in order to coincide with the last day of the seasonal agricultural workers (SAW) legalization program.

The bill was reported out of the full Committee on a 22-12 vote. Republicans supporting the measure included Reps. Hamilton Fish, Jr. (NY), Dan Lungren (Calif.), and Michael DeWine (Ohio).

* * * * *

Antitrust Remedies Reform

On March 31, Assistant Attorney General Charles F. Rule, of the Antitrust Division, testified before the Subcommittee on Antitrust, Monopolies and Business Rights of the Senate Judiciary Committee on S. 539, S. 635, and S. 1407, Antitrust Remedies legislation. Mr. Rule testified in favor of S. 539 and S. 635, the Administration's antitrust remedies proposals. S. 539 would reduce the claim against a non-settling defendant by the amount fairly allocable to each settling defendant, rather than reducing the claim by only the amount actually received by the plaintiff from any settling defendant. S. 635 correlates the trebling of antitrust damages to the type of injury caused by an antitrust violation. Mr. Rule testified in support of portions of S. 1407, particularly a provision granting treble damages for the United States, and in opposition to the majority of the remaining provisions.

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Omnibus Drug Legislation

Congressional recognition of drugs as a good political issue was memorialized on March 23 when Senators DeConcini, D'Amato and 38 other Senators introduced S. 2205, the "Omnibus Antidrug Abuse Act of 1988." Most significantly, the bill purports to increase federal anti-drug expenditures in FY 1989 by about \$2.5 billion over the President's budget request. It also contains a host of substantive provisions ranging from a version of the Administration's Drug Precursor and Essential Chemical Act to some proposals which appear either unnecessary or, in some instances, counter-productive. To ensure that we have ample Legislative Branch bureaucracies to address the drug problem, the bill proposes creation of a new Senate Select Committee on Narcotics Abuse and Control. The funding mechanism is a classic Washington example of blue smoke and mirrors: these new drug efforts would be funded by enhancing federal debt collection by \$2 billion in FY 1989 over what the President's budget projected. To increase collections by one-tenth of that amount would be a spectacular achievement.

Inspired by the new Senate bill, a version of which has been introduced in the House by Rep. Glenn English, others are at work on alternative drug bills. Chairman Biden's staff is reportedly working on a Senate alternative. In the House, Speaker Wright has reportedly directed the appropriate Committee Chairmen to produce drug proposals in their areas of jurisdiction for incorporation into a comprehensive House leadership drug bill. Finally,

Minority Leader Michael and others are reportedly planning a House Republican drug package. When faced with a similar situation in 1986, the Administration put together the President's "Drug-Free America Act." Whether the Department will submit its own proposal remains to be seen as most of the items on the drug legislation "wish list" were enacted in 1986.

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S. 1516, FIFRA Markup

The Senate Agriculture Committee continued its markup of legislation to amend the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) on March 30, 1988. The Committee began by adopting an amendment by Senator Lugar which was designed to generate enough additional revenue to fund the acceleration of "old" chemical testing and analysis. (Adherence to the present schedule would delay program completion until the year 2024.) The amendment maintains the bill's fee schedule with exemptions for "minor use" products but imposes a maintenance fee and authorizes the appropriation of \$2 million to eradicate the testing backlog while declaring a 9-year moratorium on new fees. Senator Melcher next won approval of an amendment which would compel EPA to complete action on registration applications for "me too" chemicals (those virtually identical to others already approved) within 90 days of receipt.

After lengthy consideration of Senator Bond's amendment to indemnify farmers and other "end users" of chemicals banned by this statute, the Committee acceded to Senator Heflin's request that further study be devoted to the "fundamental fairness" of the amendment's exclusion of indemnification for manufacturers, distributors and retailers of the same chemical except by special appropriation of Congress. Opponents of broader indemnification argued that it would discourage EPA from banning certain dangerous chemicals but the Chairman agreed to take up the amendment as the first order of business at the next markup session. Pending amendments are expected to deal with the relationship of state and federal EPA testing requirements.

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International Child Abduction Act

The House passed this bill on March 28, 1988, without remedying the jurisdiction section to provide for exclusive original state court jurisdiction. The Department is working closely with the Senate to try to have this section amended on the floor.

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Oil Pipeline Deregulation

On March 30, Assistant Attorney General Charles F. Rule of the Antitrust Division testified before the House Energy and Commerce Subcommittee on Energy and Power. The subject of the hearing was H.R. 1155 (Subtitle D of Title IV) and H.R. 2734, legislation regarding oil pipeline deregulation. Assistant Attorney General Rule testified in support of the Administration's bill, H.R. 1155, which would eliminate all economic regulation of oil pipelines that are currently regulated by the Federal Energy Regulatory Commission when it is found that sufficient competition exists in the market to make regulation of that pipeline unnecessary. Mr. Rule testified in opposition of H.R. 2734, which would eliminate rate regulation of all oil pipelines, on the assumption that they all face effective competition sufficient to make rate regulation unnecessary.

(Office of Legislative Affairs)

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CASENOTES

OFFICE OF THE SOLICITOR GENERAL

The Solicitor General has authorized the filing of:

A petition for certiorari in Long v. IRS, 825 F.2d 225 (9th Cir. 1987). The issue is whether Section 6103 of the Internal Revenue Code precludes the release, pursuant to a FOIA request, of "check sheets" containing taxpayer information.

A petition for certiorari in Shidaker v. Tisch, 833 F.2d 627 (7th Cir. 1987). The issue, presently pending before the Court in another case (Watson v. Fort Worth Bank & Trust), is whether a Title VII plaintiff can state a cause of action based on the alleged disparate impact resulting from a subjective promotion practice or procedure.

A brief amicus curiae in Argentine Republic v. Amanda Hess Shipping Corp., 830 F.2d 421 (2d Cir. 1987). The issue is whether the court of appeals erred in opening United States courts to suits against foreign sovereigns over matters not substantially connected to the United States.

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CIVIL DIVISIONSupreme Court Strikes "Sign or Banner" Clause of
District of Columbia's Embassy Picketing Statute
on First Amendment Grounds While Upholding
"Congregation" Clause.

In 1938 Congress enacted a statute governing only the District of Columbia, which made it unlawful, within 500 feet of a foreign embassy, to (1) display a sign designed to bring the foreign government into "public odium," or (2) congregate and refuse to disperse upon police order. Later Congress passed a separate statute, governing everywhere except the District of Columbia, which made it unlawful to intimidate a foreign official or congregate within 100 feet of a foreign government building with the intent to do so. The plaintiffs in this case were young conservatives who wanted peacefully to stand in front of the Soviet and Nicaraguan Embassies holding signs critical of those governments' policies. The district court found the D.C. statute constitutional and the D.C. Circuit affirmed in an opinion by Judge Bork over Chief Judge Wald's vigorous dissent. After the Supreme Court granted certiorari, the federal government participated as amicus arguing in favor of the statute's constitutionality.

In an opinion by Justice O'Connor, the Supreme Court has now struck the "sign or banner" restriction of the D.C. statute, but upheld the "congregation" prohibition. The Court found that even assuming the content-based "sign or banner" restriction was justified by a compelling state interest, the restriction was not narrowly tailored, as demonstrated by the significantly less restrictive alternative statute governing the rest of the country. In upholding the "congregation" clause, the Court embraced the narrowing construction placed on the statute by Judge Bork, *i.e.*, that the police may disperse only those congregations that threaten to disrupt the embassy's normal activities. Justices Rehnquist, White, and Blackmun dissented, indicating that they would uphold the statute in toto.

Boos v. Berry, (No. 86-803, March 22, 1988).
D.J. # 145-12-5979.

Attorneys: Anthony J. Steinmeyer, FTS 633-3388
Barbara C. Biddle, FTS 633-4214

* * * * *

Post-Judgment Motion for Costs Under Rule 54(d)
Does Not Constitute Rule 59(e) Motion for Purposes
of Timeliness of Notice of Appeal.

FRAP 4(a)(4) provides that if a party files a timely motion under Rule 59 to "alter or amend the judgment," the time for filing a notice of appeal runs from the entry of the order granting or denying the motion and any notice of appeal filed before the entry of that order "shall have no effect." In this case, the Fifth Circuit held that a post-judgment motion for costs by the prevailing party constitutes a Rule 59 motion to alter or amend the judgment, so that: (1) the time for filing a notice of appeal does not begin to run until after the district court rules on the cost motion; and (2) any notice of appeal filed before the disposition of the cost motion is a nullity.

On petition for certiorari, the Supreme Court requested the views of the Solicitor General as amicus curiae. We advised the Court that the Fifth Circuit's decision was inconsistent with the Court's reasoning in White v. New Hampshire Dept. of Employment Security, 455 U.S. 445 (1982), which holds that a post-judgment motion for attorney's fees under 42 U.S.C. §1988 does not constitute a Rule 59(e) motion, and that the decision was also inconsistent with the general provisions of the Federal Rules of Civil Procedure governing costs. We therefore recommended that the Court consider summary reversal. The Supreme Court has agreed with our recommendation, summarily reversing the Fifth Circuit and holding that "a motion for costs filed pursuant to Rule 54(d) does not seek 'to alter or amend the judgment' within the meaning of Rule 59(e)."

Buchanan v. Stanships, Inc., (No. 87-133,
March 21, 1988). D.J. # 145-0-2467.

Attorneys: Douglas N. Letter, FTS 633-3602
Scott R. McIntosh, FTS 633-4052

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D.C. Circuit Reverses District Court and Holds
That 1971 Defense Department Memoranda Do Not
Require Mandatory Upgrading By Navy of Undesirable
Discharges Issued for Drug Offenses.

In 1971 two Defense Department Memoranda were issued authorizing review for recharacterization of cases of discharges under other than honorable conditions, finalized or in process before July 7, 1971, based on personal use of drugs or possession of drugs for the purpose of such use. In 1985 two former naval personnel, and the Vietnam Veterans of America, individually and on behalf of a class, brought this action seeking a determination that the Memoranda required automatic upgrade of such discharges. The district court, interpreting the Memoranda to find such a mandatory upgrade effect, enjoined the Secretary from denying the named plaintiffs' upgrades, certified a class, and required promulgation of regulations effectuating the court's determinations. The district court denied, however, plaintiffs' motion for summary judgment on statutory and equal protection grounds. Because one of the named plaintiffs, and presumably an indeterminate number of class members, would be entitled to automatic payment of money for accumulated leave upon upgrade of the discharge, on Little Tucker Act grounds we appealed to both the Federal and regional circuit; plaintiffs cross-appealed the denial of summary judgment.

The D.C. Circuit has now reversed the district court's holding that automatic upgrading is required by the Memoranda. The court of appeals found that the Memoranda did not contain "language . . . specific or prescriptive enough to create rights or to bind agency discretion." Accordingly, the court held the Memoranda "to be without binding effect," and reversed the order of the district court granting relief of plaintiffs' claims under the Memoranda.

Vietnam Veterans of America, et al v. Secretary
of the Navy, (Nos. 86-5547, 86-5577, 86-5676,
March 29, 1988). D.J. #145-6-2789.

Attorneys: Douglas N. Letter, FTS 633-3602
Edward R. Cohen, FTS 633-5089

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First Circuit Vacates District Court's
Preliminary Injunction Enjoining The Use
Of An Economic Mix Scheme In The Selection
of Tenants To Fill Public Housing Units
Under the U.S. Housing Act.

In this case, a divided panel of the First Circuit vacated the district court's preliminary injunction enjoining the use of a controversial tenant selection scheme in the leasing of apartments in a Rhode Island public housing project. The scheme, adopted by the project manager and approved by HUD, seeks to provide for an economic mix of tenants by allowing certain higher income families (but still low income) to skip over "very low income" families that are senior to them on the waiting list.

The court of appeals concluded that the statute and HUD's regulations permit such a limited preference to achieve a tenant body with a broad income range. Although there was some language in a contemporaneous and a subsequent conference report disapproving "skipping," the court held that the legislative history cannot override the statute. The dissent would have relied on the legislative history to give "content" to the statutory language.

Paris v. HUD, (No. 87-1217, March 23, 1988).
D.J. # 145-17-4182.

Attorneys: Anthony J. Steinmeyer, FTS 633-3388
Marleigh D. Dover, FTS 633-2495

* * * * *

Ninth Circuit Upholds Stay Provisions of
Competition In Contracting Act and Imposes
Attorney's Fees Against The Government Under
The Bad Faith Exception.

In this case, the Ninth Circuit (Fletcher, Farris, Quackenbush) rejected the Executive Branch's contention that the stay provisions of the Competition in Contracting Act are unconstitutional because they vest in the Comptroller General authority that violates separation of powers. This ruling is consistent with the Third Circuit's decision in the Ameron case, in which the Supreme Court recently granted our certiorari petition. Though the court upheld the merits of the government's contract award decision, the court nevertheless affirmed the district court's award of attorney's fees against the government

under EAJA's "bad faith" provision (28 U.S.C. 2412(b)). The court held that the plaintiff was a prevailing party because it prevailed on the constitutional issue, and that the Executive Branch's refusal to abide by the stay provisions based on the belief that they were unconstitutional constituted bad faith. We are considering both aspects of the decision for further review.

Lear Siegler, Inc., Energy Products Division,
et al v. John Lehman, Secretary of the Navy,
et al, (Nos. 85-5670, 86-6496, 87-5698,
March 23, 1988). D.J. # 145-6-2729.

Attorneys: William Kanter, FTS 633-1597
Douglas N. Letter, FTS 633-3602
Harold J. Krent (Formerly of the
Appellate Staff)

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Third Circuit Holds Rehabilitation Act Does
Not Protect Drug-Using Policeman.

A Philadelphia policeman discharged because of a positive result on a urine drug test sued the City and various city officials claiming, among other things, that his discharge violated the Rehabilitation Act (applicable because of the Department's receipt of federal financial assistance). We submitted an amicus brief on the Rehabilitation Act point. The Act prohibits discrimination against "otherwise qualified" handicapped persons. The Court agreed with our position that, while a drug addict may be "handicapped," he is not "qualified" to be a policeman, because drug use involves a violation of law. Thus the City could fire him rather than offering rehabilitation. The Court stated: "No rehabilitation program can alter the fact that a police officer violates the laws he is sworn to enforce by the very act of using illegal drugs."

Copeland v. Philadelphia Police Department,
et al, No. 87-1256, March 7, 1988).
D.J. # 145-0-2399.

Attorneys: Leonard Schaitman, FTS 633-3441
Robert Zener, FTS 633-3425

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evidence of testimony by the probation officer who had prepared the PSI and debriefed one of the agents, the district court attached defendants' version of the taped meeting to the PSI, found that defendants were integral members of the drug deal, and sentenced them accordingly. Defendants appealed their hearing and sentencing, alleging that the district court, in violation of Rule 32(c)(3)(D), incorrectly placed the burden to advance clear and convincing evidence to support allegations of the PSI. Rule 32 requires that once factual inaccuracies of the PSI are challenged, the government support its statements by "some reliable proof" by which the sentencing court can conclude that it is not unlikely that the government statements are true.

The United States Court of Appeals for the Eleventh Circuit held that the "some reliable proof" standard does not require that the government establish the PSI statements by a preponderance of evidence. A PSI statement may be accepted as true even in situations where the sentencing judge might find a balance of probabilities. The government met its obligation as to the challenged statements of the PSI through the evidence offered by its witness, the probation officer. The district court fulfilled its duty under Rule 32(c)(3)(D) by making findings of fact as to the disputed contentions.

(Affirmed.)

United States v. Restrepo, 832 F.2d 146 (11th Cir. 1987)

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APPENDIXTELETYPE TO ALL UNITED STATES ATTORNEYS
FROM THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

- 3/4/88 From James M. Spears, Acting Assistant Attorney General, Civil Division, to All United States Attorneys, re: Update Concerning Impact of Agricultural Credit Act of 1987 Upon Nationwide Injunction Issued June 2, 1987, Against the Farmers Home Administration in Coleman v. Lyng, Civil No. A1-83-47 (D.N.Dak).
- 3/21/88 From Pete Dunbar, United States Attorney, District of Montana, to All U.S. Attorney's Offices, re: Upcoming OCDETF case.
- 3/23/88 From William F. Weld, Assistant Attorney General, Criminal Division, to All United States Attorneys' Offices, re: New Executive Agreement with the United Kingdom on Drug Trafficking and Asset Forfeiture.
- 3/23/88 From Laurence S. McWhorter, Director, Executive Office for United States Attorneys, to All United States Attorneys, re: Antitrust Primer for Federal Prosecutors.

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CUMULATIVE LIST OF CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

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

<u>Effective Date</u>	<u>Annual Rate</u>	<u>Effective Date</u>	<u>Annual Rate</u>
12-20-85	7.57%	04-10-87	6.30%
01-17-86	7.85%	05-13-87	7.02%
02-14-86	7.71%	06-05-87	7.00%
03-14-86	7.06%	07-03-87	6.64%
04-11-86	6.31%	08-05-87	6.98%
05-14-86	6.56%	09-02-87	7.22%
06-06-86	7.03%	10-01-87	7.88%
07-09-86	6.35%	10-23-87	6.90%
08-01-86	6.18%	11-20-87	6.93%
08-29-86	5.63%	12-18-87	7.22%
09-26-86	5.79%	01-15-88	7.14%
10-24-86	5.75%	02-12-88	6.59%
11-21-86	5.77%	03-11-88	6.71%
12-24-86	5.93%		
01-16-87	5.75%		
02-13-87	6.09%		
03-13-87	6.04%		

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

For a cumulative list of those Federal civil postjudgment interest rates effective October 1, 1982, through December 19, 1985, see United States Attorney's Bulletin, Vol. 34, No. 1, Page 25, January 17, 1986.

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& EXPLOITED**
CHILDREN

1835 K Street, N.W. • Suite 700 • Washington, D.C. 20006
202/634-9836
TDD: 1-800-826-7653

KIMBERLY JANISE BOYD

Abducted by an unknown individual



Date Missing: 4/3/87	Missing From: Orangeburg County, S.C.
Date of Birth: 10/30/84	Age at Disappearance: 2 years old
Sex: Female	Race: Black
Height: 3 ft. 4 in.	Weight: 25 lbs
Hair: Brown	Eyes: Black

Identifying Information: The vehicle that Kimberly and her companions were traveling in was found abandoned at Wells Crossroads in Orangeburg County, South Carolina.

Circumstances: Child last seen with mother Sarah W. Boyd (32 years of age) and a companion Linda McCord (32 years of age), driving through Dorchester County 1 mile north of Colleton County after attending a gospel singing in Walterboro, South Carolina.

ANYONE HAVING INFORMATION SHOULD CONTACT

**The National Center for Missing and Exploited Children
1-800-843-5678**

OR

**Dorchester County Sheriff's Office (South Carolina)
Missing Persons Unit
1-803-563-3181**