



# United States Attorneys' Bulletin

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## COMMENDATIONS

The following **Assistant United States Attorneys** have been commended:

**Bob Anderson** (Mississippi, Southern District), by William T. Ferrell, Jr., Adams County Sheriff, Natchez, for his outstanding contribution to the success of the Asset Forfeiture Training Program for law enforcement agencies in the southwest Mississippi area. **Cecil Ferrell, Paralegal, Asset Forfeiture Unit**, and **Derryle Smith, LECC Coordinator**, also provided valuable instruction.

**Sue Hendricks Bailey** (Indiana, Southern District), by Monica Gallagher, Associate Solicitor, Fair Labor Standards Division, Department of Labor, Washington, D.C., for her excellent legal skills in bringing about a favorable ruling in a district court litigation involving the debarment process under the McNamara-O'Hara Service Contract Act, and the personal integrity of a Department of Labor attorney.

**Stephen M. Biskupic, Rodney L. Cubbie, Charles A. Guadagnino, Matthew L. Jacobs, Susan M. Knepel, Christian R. Larsen, Matthew V. Richmond, James L. Santelle, and Francis D. Schmitz** (Wisconsin, Eastern District), by Toby M. Harding, Special Agent in Charge, FBI, Milwaukee, for serving as instructors at a Moot Court Training Session for FBI agents, and for providing valuable insight into the development and presentation of court cases.

**Carlton R. Bourne, Jr.** (Georgia, Southern District), by Ron Rohlfs, Special Agent in Charge, Georgia Bureau of Investigation, Savannah, for his outstanding success in obtaining convictions of two drug traffickers who, during a seemingly routine narcotics investigation, wounded an FBI agent using a .41 magnum and a .44 caliber revolver. (The FBI agent has since recovered from a head wound.)

**Sandra Bower** (Florida, Middle District), by Joseph V. Corless, Special Agent in Charge, FBI, Jacksonville, for her outstanding success in obtaining guilty pleas in a major financial institution fraud case, and for securing \$225,000 in restitution to the victim institution.

**James W. Brannigan, Jr., United States Attorney**, and **George Hardy, Assistant United States Attorney** (California, Southern District), by Gerald E. McDowell, Executive Director, Economic Crime Council, and Chief, Fraud Section, Criminal Division, for their valuable assistance and participation in the Economic Crime Council and the Economic Crime Enforcement Conferences.

**Michael Buckley** (Michigan, Eastern District), by Lawrence M. Gallina, Acting Special Agent in Charge, Drug Enforcement Administration, Detroit, for his professionalism and legal skill in obtaining the convictions of two major cocaine traffickers.

**Margaret T. Burns** (District of Minnesota), by Nicholas V. O'Hara, Special Agent in Charge, FBI, Minneapolis, for her outstanding professional efforts in obtaining a guilty verdict in an armed bank robbery case in which a police officer was critically wounded, and for her special efforts leading to a prison sentence for the defendant of twenty nine years and four months.

**Michael Cauley** (Florida, Middle District), by John R. Barker, Regional Counsel, Environmental Protection Agency (EPA), Atlanta, for his excellent litigation assistance in exercising EPA's inspection authority under the Federal Insecticide, Fungicide and Rodenticide Act.

**Shaun Clarke** (Louisiana, Eastern District), by K. D. Kell, Inspector in Charge, U.S. Postal Service, New Orleans, for his successful prosecution of a number of insurance company officials who concealed the company's insolvency from Louisiana Insurance Department examiners, while continuing to sell insurance and collect millions of dollars in premiums. (It is estimated that the failure of the company has resulted in total losses exceeding \$30 million.)

**Miriam Duke, Quintress Gilbert and Dixie Morrow** (Georgia, Northern District), by Lynn H. Duncan, United States Marshal, Atlanta, for their valuable assistance and cooperative efforts in successfully resolving a difficult assault case involving a local law enforcement official.

**Ernest Garcia** (Texas, Western District), by Leila J. Afzal, Attorney-in-Charge, National Oceanic and Atmospheric Administration, Department of Commerce, Washington, D.C., for his valuable assistance and legal support in a recent contract case.

**Janis Gordon** (Georgia, Northern District), was presented a plaque by Aljay B. Bowron, Special Agent in Charge, U.S. Secret Service, Atlanta, for her "outstanding assistance and support on behalf of the law enforcement responsibilities of the U.S. Secret Service" in connection with her successful prosecution of a multi-million dollar international credit card fraud case.

**Amy Hartmann** (Michigan, Eastern District), by Lawrence M. Gallina, Acting Special Agent in Charge, FBI, Detroit, for her success in obtaining convictions of two individuals charged with distributing narcotics in the vicinity of a local school.

**William Q. Hayes** (California, Southern District), by Wayne A. McEwan, Chief, Criminal Investigation Division, Internal Revenue Service, Laguna Niguel, for his excellent representation and successful prosecution of a \$1.5 million fraud case against the U.S. Air Force.

**Pete Jarosz** (District of Arizona), by Timothy J. Lee, Chief, Criminal Investigation Division, Internal Revenue Service, Phoenix, for his outstanding efforts in the trial of a complex narcotics case, and for successfully dismantling an entire drug organization.

**Mark C. Jones** (Michigan, Eastern District), by Charles R. Gillum, Acting Inspector General, Department of Agriculture, Washington, D.C., for his outstanding guidance, leadership, and legal skill leading to the successful conclusion of an investigation into allegations of borrower fraud in the Rural Rental Housing Program of the Farmers Home Administration.

**Arlene Joplin and Staff Members Nikki Winters, Betty Bryant and Joyce Webb** (Oklahoma, Western District), by James P. Turner, Acting Assistant Attorney General, Civil Rights Division, for their valuable assistance and support during a grand jury investigation and prosecution of several law enforcement officers, and for their contributions to the overall success of the prosecution.

**Ralph F. Keen** (Oklahoma, Eastern District), by Thomas M. Walsh, Assistant General Counsel, Marketing Division, Department of Agriculture, Washington, D.C., for his valuable assistance and successful efforts in responding to a request on short notice to quash a subpoena issued to a Department of Agriculture employee.

**James E. Lackner** (District of Minnesota), by J. Robert Switzer, Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, St. Paul, for his successful prosecution of two gangster disciple street gang members, sending a clear message that crimes committed by gang members will not go unchallenged.

**Carol Lam** (Texas, Southern District), by Gerald E. McDowell, Executive Director, Economic Crime Council, and Chief, Fraud Section, Criminal Division, for her participation at the Economic Crime Enforcement Conference and for her excellent presentation at recent health care fraud enforcement training programs on effective enforcement action against corporate health care providers.

**Maria R. Leslie, Special Assistant United States Attorney**, (District of Nebraska), by John R. Pankonin, Supervisory Special Agent, FBI, Omaha, for her outstanding success in the prosecution of a drug trafficking case involving a gang-related crack cocaine distribution organization operating from Portland, Oregon to Omaha.

**Stephen J. Liccione** (Wisconsin, Eastern District), by James E. Doyle, Attorney General, State of Wisconsin, for his exceptional efforts in the successful prosecution of a complex joint federal, state and local arson case based largely on circumstantial evidence.

**K. Roxanne McKee** (Texas, Western District), by Major General Sam C. Turk, Adjutant General, Texas Army National Guard, Austin, for her excellent representation and successful efforts in defending an action which resulted in a court ruling in the government's favor in all respects.

**James Martin** (District of New Mexico) by Doug Faris, Regional Director, Southwest Region, National Park Service, Department of the Interior, Santa Fe, for his outstanding success in obtaining a felony conviction in a criminal case brought against two individuals for damaging a sacred Indian ruin located on an archaeological site known as Tower Ruin in Tapia Canyon.

**James A. Metcalfe** (Virginia, Eastern District), by John L. Martin, Chief, Internal Security Section, Criminal Division, Department of Justice, for his successful prosecution of a complex conspiracy case involving the export of night vision equipment used on military aircraft and vehicles to the People's Republic of China.

**Stephen F. Miller** (California, Southern District), by R. E. Intriago, Inspector in Charge, U.S. Postal Service, San Diego, for his valuable assistance and cooperative efforts in successfully resolving a workman's compensation fraud case.

**Walter "Bud" Paulissen** (Texas, Southern District), by Ronald J. Eatinger, Chief, Criminal Investigation, Internal Revenue Service, Houston, for his outstanding legal representation and professional skill in bringing a complex tax trial to a successful conclusion.

**Stewart Platt** (Texas, Eastern District), by Todd K. Brown, Executive Director, Texas Workers' Compensation Commission, Austin, for his professionalism and legal skill in successfully prosecuting a complex case of fraud and abuse in the workers' compensation system. **Special Agent George Kieny, FBI**, provided valuable assistance.

**Barbara E. Poarch** (Oklahoma, Western District), by Gerald E. McDowell, Executive Director, Economic Crime Council, and Chief, Fraud Section, Criminal Division, Department of Justice, for her excellent presentation on the use of proactive investigative techniques in economic crime cases at the Economic Crime Enforcement Conference held recently in Phoenix.

**Deborah K. Rump and Joseph R. Wilson** (Ohio, Northern District), by William S. Sessions, Director, FBI, Washington, D.C., for their valuable assistance and guidance in successfully prosecuting members of a major drug trafficking organization, resulting in the seizure of \$360,000 in U.S. currency, and vehicles, property, jewelry and furs valued at approximately \$200,000.

**Anne C. Ryan** (New York, Southern District), by Attorney General Janet Reno, for her exceptional service in the United States Attorney's office, and for her compassion and understanding in a delicate situation involving a crime victim.

**Robert Schroeder** (Georgia, Northern District), by President Jimmy Carter for his outstanding efforts in the successful prosecution of a former employee of The Carter Center, who defrauded a wealthy contributor to the Center.

**Robert M. Small** (District of Minnesota), by Captain P.C. Wylie, Director, General Litigation Division, Office of the Judge Advocate General, Department of the Navy, Alexandria, Virginia, for his excellent representation of the government in a case involving military personnel law, and for his successful litigation strategy resulting in a dismissal of the case. Also, by Peter M. Carlson, Warden, Federal Medical Center, Federal Bureau of Prisons, Rochester, for his outstanding success in obtaining the dismissal of a lawsuit involving Mental Health Unit care and treatment for potentially suicidal inmates.

**Debra Stewart and Karl Knoche** (Georgia, Southern District), by Garfield Hammonds, Jr., Special Agent in Charge, Drug Enforcement Administration, Atlanta, for their successful prosecution and convictions of a crack cocaine organization.

**Mark D. Stuaan** (Indiana, Southern District), by Wayne R. Alford, Special Agent in Charge, FBI, Indianapolis, for his valuable assistance and guidance in an interstate transportation in aid of racketeering case, and for his cooperation with federal and state authorities to achieve a successful outcome.

**Diane E. Tebelius** (Washington, Western District), by Arno Reifenberg, Regional Attorney, Office of the General Counsel, Department of Agriculture, Portland, Oregon, for her valuable representation in a number of mortgage foreclosure and bankruptcy cases for the Farmers Home Administration.

**E.J. Walbourn** (Kentucky, Eastern District), by William S. Sessions, Director, FBI, Washington, D.C., for his successful prosecution of a top aide to the Governor of Kentucky for extorting a \$20,000 bribe, and for providing invaluable assistance during the investigative phase of the case.

**Joseph T. Walbran** (District of Minnesota), by Detective Sergeant Warren C. Breezee, Chaska Police Department, for his valuable assistance and professional skill in obtaining a guilty plea of an individual who was arrested for possession of five pipe bombs and a high powered revolver with the serial number ground off.

**Robert M. Williams, Jr.** (Tennessee, Western District), by Larry Lee Gregg, General Counsel, U.S. Marshals Service, Arlington, Virginia, for his outstanding legal skill in representing a Deputy U.S. Marshal in a lengthy jury trial on constitutional rights charges, and for obtaining a favorable jury verdict after fifteen minutes of deliberation.

**Deborah Yeoh** (New York, Southern District), by Ellen Harrison, Associate Chief Counsel, Civil Litigation Section, Drug Enforcement Administration, Washington, D.C., for her excellent representation in a case involving the use of a firearm, and for her success in obtaining a ruling in the Government's favor.

**Lynn Zentner** (District of Minnesota), by Attorney General Janet Reno, for her demonstration of outstanding skill and dedication in the successful prosecution of two crossburning cases, and for her strong commitment to civil rights.

#### **SPECIAL COMMENDATION FOR THE EASTERN DISTRICT OF WISCONSIN**

**Matthew L. Jacobs, Assistant United States Attorney for the Eastern District of Wisconsin**, was commended by Richard D. Robillard, Supervisory Special Agent, FBI, Milwaukee, for his professionalism and legal skill in the successful resolution of the first federal prosecution utilizing the environmental statutes in Wisconsin. This case involved the illegal storage and disposal of hazardous waste by an individual whose only defense was his lack of knowledge of his permit requirement. Mr. Jacobs persuaded the Judge that mere lack of knowledge is not a valid defense to the permit requirement, and as a result the individual was sentenced to five months in jail and \$5,000 in fines, and the corporation was fined \$10,000. This successful conclusion establishes favorable case law for future prosecutions in the Eastern District of Wisconsin, and sends a strong message that violations of environmental laws will be dealt with seriously.

\* \* \* \* \*

#### **SPECIAL COMMENDATION FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

**Laura Birkmeyer, Assistant United States Attorney for the Southern District of California**, was commended by Julius C. Beretta, Special Agent in Charge, Drug Enforcement Administration, National City, for her successful prosecution of several members of a drug organization which provided more than 10,000 pounds of ephedrine HCL (HCL) to illicit methamphetamine manufacturers in the San Diego area during 1989 through 1991. On April 2 and 6, 1993, ten defendants and Nationwide Purveyors, Inc. all pled guilty to various drug conspiracy and money laundering violations and are facing sentences ranging from eight to twenty years. More importantly, Nationwide Purveyors, through its owner, has agreed to immediately stop the distribution of any products containing HCL and other listed precursor chemicals. Mr. Beretta said this immediate ban on the sales of HCL is considered a significant victory in efforts to stop the flow of precursor chemicals to methamphetamine manufacturers, and will have a tremendous and positive impact, not only in the San Diego County area, but throughout the country. The success of this case is attributed to the outstanding efforts of Ms. Birkmeyer.

\* \* \* \* \*

**SPECIAL COMMENDATION FOR THE DISTRICT OF OREGON**

**Riley Atkins, Assistant United States Attorney for the District of Oregon**, recently negotiated a settlement on behalf of the United States Government whereby Pay Less Drug Stores, Northwest, Inc. (Pay Less) agreed to pay the United States \$1 million to settle claims the retailer overcharged the Oregon Medicaid program for the cost of drugs dispensed to State Medicaid recipients.

Between December, 1989 and February, 1992, Pay Less submitted over 400,000 claims for payment to the State for prescription drugs dispensed to Medicaid patients and falsely represented such drugs as "brand medically necessary." As a result, in approximately half the claims, Medicaid reimbursed Pay Less at a higher rate than it was otherwise entitled and Pay Less received more than \$500,000 because of the retailer's improper use of the generic override code. The Portland office of the U.S. Inspector General for the Department of Health and Human Services investigated the case after an audit by Oregon Medicaid officials discovered 93 percent of all prescription drug claims submitted by Pay Less contained the generic override code. The average for retailers statewide is approximately 3 percent.

Medicaid requires generic drug equivalents be dispensed to Medicaid patients in all cases unless the pharmacist writes on the prescription "brand medically necessary." In the absence of the generic override, reimbursement to providers such as Pay Less is limited to the lesser of the retail price, the average wholesale amount minus eleven percent, or a price set by the federal Health Care Financing Administration or the State. Medicaid is funded jointly by the states and the federal government to provide medical assistance to indigent persons who are aged, blind or disabled, or members of families with dependent children. Reimbursement for Medicaid eligible services, including prescription drugs, is made to the providers of such services directly. The Oregon Medicaid Program is administered by the Office of Medical Assistance Programs in the Department of Human Resources.

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**SPECIAL COMMENDATION FOR THE EASTERN DISTRICT OF CALIFORNIA**

**Michael A. Hirst, Assistant United States Attorney for the Eastern District of California**, was commended by Edward L. Knapp, former Deputy Chief of the Civil Division, for his ingenious contribution to Federal Tort Claims Act law. The U.S. is sued many times each year in Federal Tort Claims Act cases in which it is alleged that the U.S. was negligent in the manner in which it fought wildland forest fires, and the U.S. has incurred a huge cost in settlements and judgments in such cases, not to mention the enormous cost of the lawyer's time and expert fees that are expended in defending such cases.

When Mr. Knapp was Deputy Chief of the Civil Division, Michael Hirst was assigned to defend a particular fire case, Bennett v. U.S., in which the U.S. was sued for allegedly mishandling a 1988 fire known as the "Acorn" fire in Alpine County, which eventually burned down the entire town of Woodfords, causing many millions of dollars of personal injury and property damage. In the course of handling that case, Mr. Hirst created a novel theory of law that, to Mr. Knapp's knowledge, had never been used in any of the many similar fire cases handled by the many government lawyers in all the years that the U.S. has been defending such cases.

For a discussion of this case, please refer to the "Points To Remember" section of this Bulletin, at p. 275.

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## **HONORS AND AWARDS**

### **Western District Of Texas**

**Joseph W. Galenski, Assistant United States Attorney for the Western District of Texas**, was named "Prosecutor of the Year" by the Texas Narcotic Officers Association in recognition of his outstanding success in two recent narcotics cases. The first case resulted in the indictment of fifteen individuals on charges of conspiring from 1985 until 1992, to import into the United States from Mexico in excess of 260,000 pounds of marijuana. Certain defendants were also charged with bribery of a Border Patrol agent, who after being approached with the bribe, acted in an undercover capacity. This two-year investigation, conducted by various federal, state and local agencies, including the West Texas Multi-County Task Force and the Albuquerque Police Department, resulted in twelve convictions (three individuals are fugitives) and the seizure of approximately \$3,000,000.00 in assets.

The second prosecution involved another fifteen defendant indictment on charges of narcotics trafficking, kidnapping and money laundering. The defendants were charged with importing from Juarez, Mexico into El Paso, approximately 10,000 pounds of cocaine. The investigation entailed the use of court authorized Title III wire tap interception on nine telephones for over five months. The wire tap produced over 10,000 intercepted calls. A trial resulted in the convictions of eleven defendants (four are fugitives), and the seizure of several hundred thousand dollars of assets, including approximately \$200,000.00 in cash.

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### **Northern District Of Texas**

**Candina S. Heath, Assistant United States Attorney for the Northern District of Texas**, received the Inspector General's Integrity Award of the Department of Health and Human Services. Ms. Heath was recognized for her successful prosecution of a pharmacy, The Apothecary, and its main pharmacist on charges of conspiracy, wire fraud, mail fraud, theft from a federal program, major fraud, and theft of public funds. The facts elicited during the trial revealed that The Apothecary and the pharmacist participated from April, 1988 through November, 1989 in a federally funded program which provided free AZT to indigent AIDS patients. The Apothecary and the pharmacist ordered excessive amounts of this federally funded AZT, and instead of providing the same to the indigent AIDS patients, they billed insurance companies after dispensing the AZT to their insureds. Approximately \$600,000 worth of the federally funded AZT was diverted in this manner for which The Apothecary and the pharmacist received payments in excess of \$900,000. The Apothecary was sentenced to a concurrent five-year probated sentence on each count, a fine of \$1 million and restitution of \$581,702. The pharmacist was sentenced to 64 months imprisonment to be followed by three years of supervised release, and restitution of \$581,702, with the first \$100,000 to be paid immediately. The Court also ordered the pharmacist to divest herself of any ownership of any other pharmacy during the term of the supervised release.

**Don Baker, Assistant United States Attorney for the Northern District of Texas**, was presented the Texas Department of Public Safety Director's Citation Award, the highest award that may be awarded to a member of another agency who gives significant assistance in aiding or attempting to aid Department of Public Safety employees in the performance of their duties. Mr. Baker, an Organized Crime Drug Enforcement Task Force attorney in the Lubbock office, was recognized for his successful prosecution of numerous narcotics trafficking cases. In making the presentation, Captain Fred Jack said, "We are fortunate to have in the Lubbock Division of the Northern District of Texas, a United States Attorney's office who works so well with all law enforcement agencies. It is through this kind of cooperation with different law enforcement agencies working so closely together that the major cases of all agencies can receive the full effect of the judicial system."

\* \* \* \* \*

### DEPARTMENT OF JUSTICE LEADERSHIP

On June 17, 1993, **Anne K. Bingaman** was sworn in as Assistant Attorney General for the Antitrust Division.

On July 1, 1993, **Frank W. Hunger** was sworn in as Assistant Attorney General for the Civil Division.

On July 1, 1993, **Sheila Foster Anthony** was sworn in as Assistant Attorney General for the Office of Legislative Affairs.

Still waiting for Senate confirmation are Eleanor Dean Atcheson to serve as Assistant Attorney General for the Office of Policy Development, and Walter Dellinger to serve as Assistant Attorney General for the Office of Legal Counsel.

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### UNITED STATES ATTORNEYS

On July 27, 1993, **Charles R. Tetzlaff** was appointed by the President as the United States Attorney for the District of Vermont.

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### ATTORNEY GENERAL HIGHLIGHTS

#### Interim Attorney General's Advisory Committee Of United States Attorneys

**Mary Jo White, United States Attorney for the Southern District of New York**, has been appointed to serve as Chairman of the Interim Attorney General's Advisory Committee of United States Attorneys. Ms. White succeeds Thomas W. Corbett, Jr., United States Attorney for the Western District of Pennsylvania.

\* \* \* \* \*

#### Town Hall Meeting At The Department Of Justice

The Administration, under the auspices of Vice President Al Gore's National Performance Review, has given Department of Justice employees an historic opportunity to improve the way the Department serves the public. On July 14, 1993, the Vice President joined Attorney General Janet Reno at a Town Hall meeting in the Great Hall of the Department of Justice to discuss ideas and suggestions on ways to improve the Department.

Numerous government-wide issues were raised, such as personnel management, the government budget process, federal procurement, the work environment, as well as programs and team efforts that have been initiated and carried out successfully in various sections of the Department. The National Performance Review program will continue for several weeks.

\* \* \* \* \*

Youth Leadership Development Program, Washington, D.C.

On July 7, 1993, Attorney General Janet Reno delivered the keynote address at the Youth Leadership Development Program in Washington, D.C. The following are excerpts from that address:

On crime and drugs:

- The first thing we've got to do is understand in terms of the crime problem that we can't build our way out of the crime problem. We will never build enough prisons to house all the people who get convicted of a crime. Today in America we do not have truth in sentencing. We see dangerous offenders sentenced to 10 years in prison. In many states they're serving only 20 to 30 percent of the sentence because we don't have enough prison cells to house them for the length of time that judges are sentencing them. But then I find that probably 40 percent of the people who are in federal prisons are drug offenders who are non-violent. I find people who are non-violent first offenders serving 10 and 15 year minimum mandatory sentences. I don't see enough money in the fiscal years to come to house those people for the length of time the judges are sentencing them. I think we've got to establish clear priorities that say for the dangerous offender, for the career criminal, for the recidivist, let's put them away and keep them away, and let's make sure we have enough prison cells. Let's get state and federal prison resources together and make sure we use them the right way.

- Let's understand that there are a lot of people who are coming out of prisons sooner rather than later. If you sentence somebody to 5 years in prison and they have a drug problem and you let them serve 5 years without treatment and then you pick them up and put them back in the community where they came from, guess what they're going to be doing the day after they get back? Using again. Far better that we approach it from a carrot and stick approach that says: You've got a drug problem, everybody agrees, you agree, you can agree to treatment, you can serve 10 percent of your sentence and then we'll work with you in terms of drug treatment. We can get you detoxed when you first get in, get you stabilized, move you into residential non-secure facilities, then into day treatment and after-care. We'll work with you in job training and placement. You've got to agree to random drug testing along the way. And as you move out into the community, we'll help you. But if you mess up on the way, you're going to be facing some jail time. You're going to be coming back to prison. And if we monitor it and work with them carefully and give them a real opportunity, we can get people off on the right foot.

A national agenda for children:

- The key for all American policymakers is that I as a prosecutor and other prosecutors and police officers around the country are coming to recognize that, unless we invest in children zero to five, we will never have enough money to begin to build prisons 18 years from now for children who were so neglected. Unless we invest in children zero to 12, we are not going to begin to have a work force in 10, 15 years that can fill the jobs, that can maintain America as a first-rate Nation. Our health care institutions will be brought to their knees because we didn't provide good preventative medical care for our children. So as a prosecutor and now as an Attorney General, I think it's imperative not just that we develop firm, fair punishment that means what it says, but that we also develop prevention programs that look at the whole continuity of life and not just one particular point.

- I think it's time for America to develop a national agenda for children that looks at the whole continuity of life, that says we can do something about teen pregnancy so that parents will be old enough, wise enough, and financially able enough to take care of their children and that every pregnant woman in America will have prenatal care. . . . For every dollar invested in prenatal care you will save three dollars in taxpayers' dollars around this country at public health hospitals for health care associated with problems arising from low birth weight that was caused by lack of prenatal care. We've got to ensure good preventative medical care for all our children.

- We've got to provide educare in that age from zero to Head Start so that children whose families have neglected them will have supervision and the structure and the nurturing and the bonding that can help them grow as constructive human beings.

- We've got to free our teachers' time to teach. We've imposed so many social burdens on our teachers, and they have an extraordinary educational challenge. Let us develop teams around the schools of community-friendly, highly respected police officers, social workers, public health nurses, who go to the families who are served by the school to identify the problems and help these people become self-sufficient. Let's engage in truancy prevention programs that make sense. Let's start looking at a child's aptitude and interests, and design programs that fit that aptitude and interest that enable them, through summer jobs, work experience, and educational programs in the schools to know that they will graduate from high school with a skill that can enable them to earn a living wage.

- My whole approach is to build strong children who can become constructive parents, who will have a skill in which they can participate in the work force so that they can have a sense that there's a light at the end of the tunnel and that we can make a difference.

#### On immigration:

- I think immigration is going to be one of the single greatest problems we face in America in this decade. We are going to be faced as a Nation that has a tremendous tradition of immigrants-- a nation that is a citizen of immigrants, if you will -- balanced with the burden that immigration is placing on our public schools and on our public hospitals. It is an incredible balancing act. I think the first step that we've got to undertake is to upgrade the management and the resources of the Immigration and Naturalization Service. . . . There are so many areas where Immigration has got to be a partner with the State Department, with foreign intelligence sources, with law enforcement officials, and we're going to try to do that. I think it's imperative that we develop programs, to the extent we can, where we pre-clear people coming into the country so that they are cleared before they get on the plane to come in. We've got to develop expedited hearings that are still consistent with due process, and I think we can do that.

- We have got to understand that the Mexican border is going to have to be addressed, not only by procedures within our nation, but what we do to ensure a balance between the United States and Mexico. There are so many initiatives that are going to have to be undertaken. It is a terribly complex process.

#### On civil rights:

- I am committed in the Department of Justice to doing everything I can to vigorously enforce the civil rights laws of this nation. But more and more I see something that Martin Luther King said. He said: What good is being able to eat at the lunch counter if you can't afford the hamburger? What good is it to be free to go to the college that you want to if you're going to get killed in street violence at 13? What good is it to have the right to prosecute to avoid discrimination in housing if you end up homeless on the streets because you got into drug problems because there was not a support mechanism around you? So I think that it is imperative that we not only focus on vigorous enforcement of the civil rights of this nation, but it is important to focus on children and family to give children the opportunity to grow as strong, constructive human beings.

- I can't speak to the civil rights of gays and lesbians, especially those in the military, because that got started before I got involved in it. We are now on the Meinhold brief and we are trying to address those issues with Drew Days, the Solicitor General. But I don't think anybody should be discriminated against based on who they are.

On the death penalty:

• I am personally opposed to the death penalty. . . . I have researched the issue and I have not found any study that indicates that the death penalty has been a deterrent. . . . I think that all of law -- at least in a civilized society -- should be to promote human life and, therefore, to take it for having taken it I think is somewhat inconsistent.

In conclusion:

America has too often waited until the crisis happens before it dumps money into it when, with an expenditure of far less dollars up front, it could have had a far more satisfactory solution.

If you would like a copy of the transcript of this address, please contact the United States Attorneys' Bulletin, at (202) 501-6098.

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**Attorney General Janet Reno Visits The Southern District Of Ohio**

On July 20, 1993, Attorney General Janet Reno attended a meeting of the Southern District of Ohio Health Care Fraud Task Force at the United States Attorney's office in Columbus. Also in attendance was Ohio Attorney General Lee Fisher. The Task Force coordinates the investigation and criminal prosecution of health care fraud, and has aggressively sought to recover civil money penalties to punish those who have fraudulently billed for health care services. In the last twelve months, the Task Force has obtained eleven criminal convictions and has also recovered over \$2,000,000 in civil money recoveries and fines.

The Health Care Task Force was established by the United States Attorney's office and consists of representatives from the Medicaid Fraud Section of the Ohio Attorney General's office. Attorneys from the Ohio Attorney General's office have been designated as Special Assistant United States Attorneys so that both offices are able to jointly investigate and prosecute the same providers. The Task Force also includes agents from the FBI, the Office of the Inspector General of the Department of Health and Human Services, the U.S. Postal Service, the Office of Inspector General of the Department of Defense, the Defense Criminal Investigative Service, and the Railroad Retirement Board.

United States Attorney Edmund A. Sargus, Jr. noted, "As health care costs have risen, the public must be assured that their dollars go for medical services that have actually been rendered. Experts estimate that fraud in the health care system accounts for 3 percent to 7 percent of all dollars spent. Fraudulent billing wrongfully increases the costs of medical services and health insurance. We intend to make the prosecution of health care fraud a top priority." Mr. Sargus also pointed out that the vast majority of health care providers bill only for legitimate services rendered. A small minority of providers engage in such practices as double billing, billing for services not provided, or billing for a series of services when only one such service was rendered. While the number of medical providers that engage in fraud is small, the real dollar cost is very large."

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## **DEPARTMENT OF JUSTICE HIGHLIGHTS**

### **Department Of Justice Official Organization Chart**

Attached at the Appendix of this Bulletin as Exhibit A is a copy of the official signed and approved Department of Justice organization chart, dated May 14, 1993. The new chart, signed by Attorney General Janet Reno, reflects the realignment of the Department's civil functions and immigration under the Associate Attorney General, and the realignment of the criminal justice functions and administration under the Deputy Attorney General. Additionally, the Office of Policy and Communications has been divided into three offices: the Office of Policy Development, the Office of Information and Privacy, and the Office of Public Affairs.

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### **Child Support Recovery Act Of 1992**

On July 15, 1993, Anthony C. Moscato, Director, Executive Office for United States Attorneys, forwarded to all United States Attorneys, First Assistant United States Attorneys, and Criminal Supervisors, a copy of the Prosecutive Guidelines and Procedures for the Child Support Recovery Act of 1992 signed by Attorney General Janet Reno. The Child Support Recovery Act was enacted by Congress last year and became effective at the end of October, 1992. Basically, it is now a Federal crime for a parent in one state with a child in another to willfully be in arrearage of lawfully ordered child support payments in the amount of \$5,000 or more, or for more than one year in any amount.

Mr. Moscato further advised that it is anticipated that the guidelines will be incorporated into the United States Attorneys' Manual. In the meantime, he has requested that copies be disseminated to the appropriate Assistant United States Attorneys. If you would like a copy, please contact the United States Attorneys' Bulletin staff at (202) 501-6098.

Any questions concerning the Act or any suggestions regarding proposed sentencing guidelines may be directed to Deborah Sorkin or Phillip Talbert, General Litigation and Legal Advice Section of the Criminal Division, at (202) 514-1026.

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### **National Cooperative Production Amendments Of 1993**

On June 28, 1993, the Department of Justice released a statement by Assistant Attorney General Anne K. Bingaman of the Antitrust Division, regarding amendments that extend the provisions of the National Cooperative Research Act (NCRA) of 1984 to include joint ventures for production and redesignate the NCRA as the National Cooperative Research and Production Act of 1993. The NCRA permitted parties participating in joint research and development ventures to limit their possible antitrust damage exposure to actual -- as opposed to treble -- damages if they filed notifications with the Attorney General and the Federal Trade Commission (FTC). Under the National Cooperative Research and Production Act, parties to a joint venture for production also will be entitled to obtain the same protection by filing a notification with the Attorney General and the Commission. Ms. Bingaman's statement, in which the FTC concurs, identifies the offices to which notifications should be delivered, and advises parties on how to facilitate publication by the Department of the Federal Register notice the act requires.

A copy of the complete text of Assistant Attorney General Bingaman's statement is attached at the Appendix of this Bulletin as Exhibit B.

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**Indictment Announced In The Southern District Of New York**

On July 14, 1993, Mary Jo White, United States Attorney for the Southern District of New York, announced that a Manhattan federal grand jury indicted the following individuals on charges arising out of a scheme to bomb several buildings and other targets in New York City:

Ibrahim A. Elgabrownly; Siddig Ibrahim Siddig Ali; Clement Rodney Hampton-El, a/k/a "Abdul Rashid Abdullah," a/k/a "Doctor Rashid;" Amir Abdelgani, a/k/a "Abdou Zaid;" Fares Khallafalla; Tarig Elhassan; Fadil Abdelgani; Mohammed Saleh, a/k/a "Mohammed Ali;" Victor Alvarez, a/k/a "Mohammed;" Wahid Last Name Unknown; and Earl Gant, a/k/a "Abd Rashid," a/k/a "Abd Jalil."

The indictment charges that the defendants, as well as others unnamed, conspired to bomb buildings and real estate in interstate commerce, and transferred explosive materials in interstate commerce. Elgabrownly, who has been in custody since March 4, 1993, had been previously charged in several counts for offenses, including assault on a federal officer, arising out of Elgabrownly's alleged obstruction of the execution of a federal search warrant in connection with the investigation into the bombing on February 26, 1993 of the World Trade Center. Previously the other defendants had been separately charged with the attempted bombing of buildings and real estate in New York City.

On July 22, 1993, Matarawy Mohammad Said Saleh, a/k/a "Wahid," a fugitive named in the indictment, was arrested in North Wildwood, New Jersey. Also arrested was Ashraf Mohammed, who was charged in a criminal complaint with concealing Saleh from arrest. The case is pending before the Honorable Michael B. Mukasey, United States District Judge, Southern District of New York.

The Assistant United States Attorneys handling this matter are: **Andrew C. McCarthy, Robert S. Khuzami, and Lev Dassin.**

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**First Settlement Agreement With A Police Agency Under The Americans With Disabilities Act**

On July 2, 1993, the Department of Justice announced that it has resolved a complaint filed against a Florida police department for failing to provide an interpreter in the arrest of a deaf individual. This represents the first settlement agreement with a local police agency under the recently-enacted Americans with Disabilities Act (ADA), which prohibits discrimination against people with disabilities.

James P. Turner, Acting Assistant Attorney General for the Civil Rights Division, said the settlement with the Clearwater, Florida police department requires the city to provide an interpreter whenever necessary to ensure effective communication any time police interact with people who are deaf or hard of hearing. Under Title II of the ADA, public entities, such as police departments and municipal governments, must provide appropriate auxiliary aids and services whenever necessary to ensure effective communication with individuals with disabilities.

The agreement requires the Clearwater police to 1) establish a written policy on effective communication in police situations involving persons who are deaf or hard of hearing; 2) secure the services of a qualified interpreter whenever necessary to ensure effective communication during a police investigation, prior to an arrest or the issuance of a non-criminal citation, or during an interrogation; and 3) publicize the new policy through public notices in local newspapers. The agreement also permits the Justice Department to petition the U.S. District Court to seek specific performance of the agreement's terms if the police department fails to comply.

Mr. Turner said, "The enthusiastic cooperation of the Clearwater Police Department avoided litigation and led to the establishment of new policy guidance. This guidance serves as an excellent model for other police departments throughout the country which must comply with the ADA."

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## **CRIME/DRUG ISSUES**

### **International Drug Interdiction And Eradication**

On July 15, 1993, Deputy Attorney General Philip B. Heymann testified before the House Judiciary Subcommittee on Crime and Criminal Justice concerning drug interdiction efforts and policy within the Administration. Doug Wankel, Deputy Administrator for Operations of the Drug Enforcement Administration, also represented the Department. In addition, the Subcommittee heard testimony from Dr. Lee Brown, newly appointed Director of the Office of National Drug Control Policy, representatives of the Department of State, the Department of Defense, the Coast Guard, the Customs Service, and a panel of experts.

The focus of the hearing was the relative success/failure of interdiction efforts against illegal drugs, versus the level of funding to accomplish same. The seeming duplication of duties/missions was a concern of the Subcommittee. Representatives of the Customs Service, the Department of Defense and the Coast Guard responded with explanations of how the resources were used and the degree of coordination that takes place in conducting interdiction missions. Deputy Attorney General Heymann and Dr. Brown pointed out that the Administration is in the midst of a complete review of the anti-drug program, and policies directing those efforts. Until that review is completed, and new policy decisions are made, it is premature to come to any conclusions.

If you would like a copy of the Deputy Attorney General's testimony, please call the United States Attorneys' Bulletin, at (202) 501-6098.

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### **Mail Fraud**

On July 21, 1993, Larry A. Urgenson, Acting Deputy Assistant Attorney General of the Criminal Division, testified before the House Post Office and Civil Service Subcommittee on Postal Operations concerning the mail fraud statute, 18 U.S.C. §1341. He stated that the mail fraud statute is the core prosecutorial tool that is used against a wide range of criminal fraud activities which includes contracting fraud (both defense procurement and non-defense procurement), financial institution fraud, HUD fraud, insurance fraud, investment fraud, health care fraud, public corruption, securities fraud (including both insider trading and market manipulation), and telemarketing fraud. Mr. Urgenson also described how task forces have been formed among federal prosecutors and agents who investigate and prosecute a particular type of crime over an extended period of time. Finally, he described how ad hoc interagency working groups on mail frauds relating to health care, insurance, securities and commodities, and telemarketing have facilitated the federal enforcement efforts in these particular areas of consumer vulnerability.

Mr. Urgenson further stated, "According to statistics that the Department's Executive Office for United States Attorneys maintains, United States Attorneys' offices in recent years have routinely been using mail fraud in charging criminal cases. In the first seven months of FY 1993, for example, those offices had a total of 1,385 defendants in 732 cases who were charged by indictment or information with mail fraud charges, and a total of 979 defendants in 699 cases who were convicted by guilty plea or verdict after trial. Although many factors can affect the speed with which cases can be resolved by plea agreements or trials, at their current rate of productivity the United States Attorneys' offices would have, by the end of FY 1993, a total of 2,374 mail fraud defendants in 1,255 cases charged by indictment or information, and a total of 1,678 defendants in 1,198 cases who were convicted by guilty plea or verdict after trial."

If you would like a copy of Mr. Urgenson's testimony, please contact the United States Attorneys' Bulletin staff, at (202) 501-6098.

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#### **Crime Victim Compensation Awarded To The State Of Louisiana**

On July 8, 1993, Robert J. Boitmann, United States Attorney for the Eastern District of Louisiana, announced that the Office for Victims of Crime, a Department of Justice agency within the Office of Justice Programs, has awarded \$405,000 to the State of Louisiana to help support its crime victim compensation program. This federal grant supplements funds used to pay claims for medical costs, lost wages, mental health counseling, funeral expenses and other costs resulting from violent crimes committed against innocent victims.

The amount of the award represents approximately 37.5703 percent of compensation paid out in state dollars to crime victims in the preceding fiscal year, as prescribed by the Victims of Crime Act of 1984 (VOCA), as amended. VOCA established the Crime Victims Fund, which is financed with fines and penalties on convicted federal criminals. The fines are collected by the U.S. Courts and U.S. Attorneys' offices throughout the country.

The State of Louisiana has also received an award from the Office for Victims of Crime in the amount of \$1,153,000 to help support state and local agencies that provide direct services to crime victims and their families. These combined federal awards, totalling \$1,558,000, represent the federal government's efforts to insure that much needed financial assistance and services such as crisis counseling, shelter, transportation, criminal justice advocacy and support are provided to innocent crime victims.

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#### **Census Of State And Local Law Enforcement Agencies, 1992**

On July 2, 1993, the Bureau of Justice Statistics (BJS) announced that the nation's more than 17,000 state and local police and sheriff's departments had 840,647 full-time employees as of June 30, 1992. BJS also announced that 603,465 of these men and women (or 72 percent) were sworn officers with general arrest authority and 237,182 (28 percent) were non-sworn civilian employees. These same state and local law enforcement agencies also employed about 90,000 part-timers, including 39,200 part-time sworn officers. Acting BJS Director Lawrence A. Greenfeld said that during the last six years the number of civilian personnel in police and sheriff's departments has grown twice as fast as the number of sworn officers. Between 1986 and 1992, total full-time employment in police and sheriff's agencies grew by 17 percent. This included a 13 percent increase in the number of full-time sworn officers and a 28 percent increase in civilian personnel.

Among law enforcement agencies, sheriff's departments had the largest gains -- 28 percent more full-time officers and 48 percent more full-time civilians than in 1986. Such growth may have been the result of increases in local jail populations -- between 1986 and 1992 the number of local jail inmates increased more than 50 percent. Most sheriff's departments operate jails and provide courtroom security in addition to law enforcement functions. Last year 81 percent of the nation's sheriff's offices operated jails, compared to 4 percent of the local police departments and none of the state police agencies. Idaho and Louisiana were the only states in which at least half of all full-time law enforcement officers were in sheriff's departments.

As of June 30, 1992, there were 17,360 state and local law enforcement agencies, of which 12,504 were local general purpose, 49 state police (each state except Hawaii), 3,087 sheriff's departments, and 1,720 special police agencies. These special police agencies (60,926 full-time employees, of which 41,371 were sworn officers), included airport, park, transit, school, housing and public college and university police departments.

General purpose local police agencies had 476,193 full-time employees last year (373,024 or 78 percent sworn), sheriff's departments had 224,958 (136,090 or 61 percent sworn) and state police agencies had 78,570 (52,980 or 67 percent sworn).

Nationwide, there were 24 full-time officers for every 10,000 residents, of whom 15 were local police officers, 5 sheriff's officers, 2 state police officers and 2 special police officers. Excluding the nation's capital, which had 89 sworn officers per 10,000 residents, New York State had the highest per capita ratio of full-time sworn officers to residents among the states -- 38 per 10,000 inhabitants -- followed by Louisiana (34), New Jersey (34), Illinois (31) and Massachusetts (27).

Copies of the "Census of State and Local Law Enforcement Agencies, 1992" may be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850. The telephone number is 1-800-732-3277.

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#### Day Fines

The National Institute of Justice, the Department of Justice's principal research agency, has issued a report stating that day fines are a promising way for U.S. state courts to link an offender's ability to pay to the seriousness of the crime. The report shows that means-based sanctions seemed to be more fair without making collections more difficult. Moreover, average fine amounts are higher, thus bringing more money into the system. Day fines are cash penalties tied to an offender's daily earnings. They are rare in the U.S. but are common in some European and South American countries.

The NIJ report describes the first day-fine experiment in American courts. It was implemented in the Richmond County (Staten Island), New York, Criminal Court, a lower court of limited jurisdiction, as a joint project of NIJ, the court, and the Vera Institute of Justice. The research established that average fines rose from \$205 before the experiment to \$258 during the year in which the new system was introduced. However, the average would have been \$441 if the day fines had not been capped by statutory maximum fine limits. The pilot study demonstrated that by taking into account an offender's ability to pay when the fine amount is set, the fine is both collectible and proportionate to the severity of the offense. Only 6 percent of the day-fine cases resulted in no payment at all, compared to 22 percent of the pre-experiment cases and 26 percent of the control cases. On the whole, the report said, court systems stand to raise more money with day fines, particularly if statutory caps are removed.

Because the New York law requires the imposition of minimum fines for serious traffic offenses, such as driving while intoxicated, these cases were not included in the study. The report theorized, however, that it is likely that a significant number of drunk drivers would be fined more than the minimum under a day-fine system. The report pointed out that while fines are an ancient and widely used punishment worldwide, they have been viewed more skeptically in this country. Recently, however, American criminal justice officials have been exploring ways of incorporating intermediate sanctions into sentencing systems, primarily in response to the pressures of prison crowding and the expense of incarceration.

In a day-fine system judges determine how much punishment an offender deserves. This is then denominated into some unit other than money. These "punishment units" are then translated into monetary terms based on how much money the offender earns every day. In other words, the court establishes the penalty in day-fine units (for example, 15, 60 or 120 units) according to the gravity of the offense. The value of each unit is then set at a percentage of the offender's daily income, and the total fine is determined by multiplying the percentage of income by the number of units. Punishment units are typically developed by a panel of judges, prosecutors and defense attorneys.

NIJ's researchers concluded that the Staten Island experiment was a success. Judges were able to obtain the information needed about offender income without disrupting the rapid flow of cases. Once trained to use the day-fine workbook they helped develop, judges found the mechanics of computing the fines to be a simple process. Neither prosecutors nor defense attorneys voiced practical or ideological opposition to the system's principles. In the meantime, seven other jurisdictions have started day-fine programs. Maricopa County, Arizona was the first. The other six -- four sites in Oregon as well as one each in Iowa and Connecticut -- are taking part in a Bureau of Justice Assistance project.

The NIJ Research in Brief entitled "The Staten Island Day-Fine Project" was prepared by Laura Anne Winterfield, senior research associate at the Vera Institute in New York City, and Sally T. Hillsman, vice president for research at the National Center of State Courts in Williamsburg, Virginia. Copies can be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850. The telephone number is (301) 251-5500 or 1-800-851-3420.

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### **OFFICE OF INTERNATIONAL AFFAIRS**

#### **"OIA Connections" Newsletter**

In the United States Attorneys' Bulletin, Vol. 41, No. 7, dated July 15, 1993, an article entitled "OIA Connections" Newsletter appears at p. 234 which states that the Office of International Affairs of the Criminal Division publishes a monthly electronic newsletter entitled "OIA Connections."

Please note that "OIA Connections" is not issued monthly but rather is issued periodically. For further information concerning this newsletter, please contact Matt Bristol, Office of International Affairs, Criminal Division, at (202) 514-0031.

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#### **Detention of Foreign Nationals**

Whenever a foreign national is arrested or otherwise detained in the United States, there may be a legal obligation to notify diplomatic or consular representatives of that person's government in this country. The Department of State recently pointed out that compliance with this notification requirement is essential to ensure that similar notice is given to U.S. diplomatic and consular officers when U.S. citizens are arrested or detained abroad.

Whenever a foreign national is taken into custody, the arresting or other officer-in-charge should proceed to make a determination as to whether notification is mandatory. In an effort to assist in that important process, the Department of State periodically publishes a notice with a list of countries as to whose nationals notification is mandatory and the telephone and facsimile numbers of embassies and consulates.

If the detainee is a national of one of the countries on the list appearing at the Appendix of this Bulletin, as Exhibit C, there is a bilateral agreement in force with that country requiring notice in all cases. The nearest consulate or embassy must be notified without delay, and the detainee so informed. Such notification should be documented and preserved as part of the case file. If you have any questions, please contact the Office of International Affairs, at (202) 514-0000, or the Office of the Assistant Legal Adviser for Consular Affairs, U.S. Department of State, Washington, D.C. 20520; telephone (202) 647-4415. Telephone inquiries after duty hours may be directed to the Command Center of the Bureau of Diplomatic Security at (202) 663-0812.

If the detainee is a national of any country not on the referenced list, the Vienna Convention on Consular Relations and customary international law require that he/she be informed without delay of the right to have his/her government notified. If notification is requested, it must be given without delay to the nearest consulate or embassy, and should be documented.

Compliance with this simple but very important notification requirement cannot be overemphasized. There have been a number of cases where foreign nationals have made it all the way through the criminal justice system, from arrest through service of sentence, without any Consular notification having been made.

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### **POINTS TO REMEMBER**

#### **Department Of Justice Policy On Sexual Harassment**

On June 29, 1993, Attorney General Janet Reno issued a memorandum to all Department of Justice employees concerning prevention of sexual harassment in the workplace. A copy is attached at the Appendix of this Bulletin as Exhibit D.

The Attorney General is committed to taking all necessary steps to ensure that no employee of the Department is subjected to harassment. Any employee who believes that he or she has been subjected to sexual harassment should report such behavior immediately to the supervisor, or a higher level official. Employees can also seek assistance from the Office of Equal Employment Opportunity, the Office of Professional Responsibility, or the Office of the Inspector General.

The Equal Employment Opportunity Staff of the Executive Office for United States Attorneys, under the direction of Yvonne J. Makell, is available to respond to any questions or concerns regarding this or any other discrimination matters. The EEO staff is located in Room 1618, Department of Justice; the telephone number is (202) 514-3982.

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#### **Allegations Of Misconduct Against Assistant United States Attorneys**

On July 1, 1993, Anthony C. Moscato, Director, Executive Office for United States Attorneys, issued a memorandum to all employees of the Executive Office and the United States Attorneys' offices, concerning allegations of misconduct against Assistant United States Attorneys. United States Attorneys should be mindful of the requirement to report all allegations of misconduct concerning personnel of the United States Attorneys' offices, other Department attorneys and those in criminal investigative or law enforcement positions to the Office of Professional Responsibility (OPR), pursuant to the provisions of 28 C.F.R. §0.39a and the United States Attorneys' Manual 1-4.100 and 3-2.735B. This requirement extends to all complaints of misconduct, regardless of whether they appear to be without merit, are the subject of a state bar proceeding, or are part of an opinion or order issued by a judicial forum. Additionally, allegations of misconduct involving any other employees or allegations of waste, fraud, and abuse should be reported to the Office of the Inspector General (OIG).

In reporting allegations of misconduct, please send a written report to either Michael E. Shaheen, Jr., Counsel, OPR, or Richard J. Hankinson, Inspector General, OIG, which states the source of the allegation, the name and position of the federal employee involved and a summary of the circumstances surrounding the incident. A copy of the report should be forwarded at the same time to the Executive Office of United States Attorneys' Legal Counsel, Deborah C. Westbrook, the Deputy Designated Agency Ethics Official, with an appropriate notation that the allegation has been reported to OPR/OIG. OPR, OIG and the Executive Office must have timely notification of all allegations so that appropriate action can be taken. If you have any questions regarding this policy, do not hesitate to contact OPR directly at (202) 514-2236 or OIG at (202) 514-3435. OIG's hotline number for reporting waste, fraud and abuse is: 1-800-869-4499.

If you have any questions on the reporting requirement set forth herein, please contact Legal Counsel's office at (202) 514-4024.

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### **"The Money Laundering Monitor"**

The Money Laundering Section of the Criminal Division has recently introduced the inaugural issue of The Money Laundering Monitor, a newsletter dedicated exclusively to money laundering issues and recent cases. All United States Attorneys' offices are included in the distribution of this publication. If you would like a copy, please contact Susan Smith, Sarah Dunklin, or Liz Kopp, The Money Laundering Monitor, at (202) 514-1758.

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### **Federal Tort Claims Act Case In The Eastern District Of California**

As noted in the "Commendation" section of this Bulletin, at p. 262, **Michael A. Hirst, Assistant United States Attorney for the Eastern District of California**, was commended by former Deputy Chief of the Civil Division Edward L. Knapp, for his outstanding contribution to Federal Tort Claims Act (FTCA) law. The following is Mr. Knapp's summary of a particular fire case, Bennett v. U.S., in which the U.S. was sued for allegedly mishandling a 1988 fire:

Mr. Hirst's theory was that under California law, as a matter of public policy, the U.S. would be held to have no duty to protect those in danger of fires, and that the California statutory immunities which protect public firefighters would be applied by a California court to cover private firefighters. Under the FTCA, the U.S. would be treated as a private firefighter under California law, and hence under Mr. Hirst's argument, would be held to either have no duty or to be immune. No California case has ever so held, but Mr. Hirst was able to take a single California court of appeals case, Beauchine, and fashion an argument by analogy that was quite compelling.

Mr. Hirst filed a motion for summary judgment on this ground in the Bennett case, but his motion was denied, and therefore Mr. Hirst will not have the opportunity to present this argument to the Ninth Circuit for another year at least. However, through an ironic twist of fate, his argument has been used successfully in another case. Mr. Hirst's excellent summary judgment brief from the Bennett case was circulated by the General Counsel for the Forest Service to the Torts Branch and other Assistant United States Attorneys around the country involved in defending fire cases for their use. A Torts Branch lawyer filed a motion for summary judgment in a fire case in the Central District of California, Anderson v. U.S., utilizing the arguments developed in Mr. Hirst's brief. The district court has just ruled on March 29, 1993, that the U.S. is entitled to a summary judgment in its favor on precisely the grounds that Mr. Hirst first developed.

Presumably this first successful court ruling will establish a favorable precedent that can now be used in other similar cases, which means that, as a result of the theory first thought of by Mr. Hirst, and first developed into a well supported and persuasive argument by him, the U.S. should never have to pay any damages again in an FTCA case arising from a wildland fire in the State of California. The savings to the U.S. in defense costs, expert costs and settlements will probably amount to millions of dollars over the next decade.

Mr. Knapp noted that the Torts Branch lawyer in Anderson has graciously acknowledged Mr. Hirst's contribution to the successful motion and emphasized that he does not intend to devalue any one's contribution to the successful application of this new legal theory. He stated that there will be many future battles that will have to be fought before this ground becomes firm. Mr. Knapp is afraid, however, that since the case in which the theory was first successfully upheld was not Mr. Hirst's, it may be that his seminal contribution will become lost.

[Editor's Note: Jeffrey Axelrad, Director of the Torts Branch of the Civil Division, acknowledges that "the concept used by his office in the subsequent successful litigation is attributable to Mr. Hirst."]

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## **SENTENCING REFORM**

### **Guideline Sentencing Update**

A copy of the Guideline Sentencing Update, Volume 5, No. 13, dated June 3, 1993, is attached as Exhibit E at the Appendix of this Bulletin. The Guideline Sentencing Update is distributed periodically by the Federal Judicial Center, Washington, D.C. to inform judges and other judicial personnel of selected federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Commission.

[NOTE: Guideline Sentencing Update, Volume 5, No. 14, dated June 22, 1993, was included in the Appendix of the July issue of the United States Attorneys' Bulletin.]

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## **LEGISLATION**

### **National Child Protection Act**

On July 16, 1993, the House Judiciary Subcommittee on Civil and Constitutional Rights held a hearing on the "National Child Protection Act." The bill intends to establish a national criminal background check system for the reporting or indexing of child abuse crime information. The system - a cooperative effort among localities, the states, and the federal law enforcement authorities -- would be used in conjunction with the licensing of child care providers in the states. As the only Administration witness to appear before the Subcommittee, the FBI addressed the effect such a national background check system might have on the National Crime Information Center, the Bureau's online system that provides information to enable the immediate identification of fugitives, missing persons, and stolen property.

David Nemecek, Inspector/Deputy Assistant Director of the Criminal Justice Information Services Division, FBI, stated that the Administration strongly endorses the goals of the legislation and that the Department and the FBI are committed to its successful implementation.

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Telemarketing Fraud

On June 30, 1993, the Senate passed H.R. 868, a bill that would enhance the ability of the Federal Trade Commission (FTC) to combat telemarketing fraud. As passed by the Senate, the bill includes a provision that would authorize the FTC to bring criminal contempt actions against certain violators of the Commission's civil orders. The Department prepared a letter to the conferees expressing strong concern about this provision (which is not included in the House's version of the bill, as passed earlier this year) and discussing other, less problematic provisions of the legislation.

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CASE NOTES

CIVIL DIVISION

**Third Circuit Reinstates HHS's Decision Holding States Accountable For Interest Earned On The Federal Contribution To Self-Insurance Reserve Accounts**

The second sentence of §203(a) of the Intergovernmental Cooperation Act (ICA), 31 U.S.C. §6503(a), states: "A State shall not be held accountable for interest earned on grant money pending its disbursement for program purposes." HHS's Departmental Appeals Board, however, held that this prohibition did not apply to the federal funds managed by the states in self-insurance reserve accounts. The United States District Court for the Middle District of Pennsylvania set aside the HHS decision, citing the "plain language" of the Act, but a divided panel of the Third Circuit (Alito, Garth; Becker, dissenting) has reversed. The court of appeals agreed with our argument that the accountability prohibition in §203(a) was meant only to apply to the brief interval between the time a State draws upon U.S. Treasury funds and expends them to meet federal program liabilities and that the statute was not intended to apply to the funds held in permanently-maintained reserve accounts. The phrase -- "pending its disbursement for program purposes" -- was held to have created sufficient ambiguity for the court to follow this congressional intent.

The total amount in dispute in this is about \$10 million. Effective last October, Congress repaired the ICA and, among other things, imposed mandatory interest accountability prospectively. Nevertheless, the Third Circuit's decision should forestall potential lawsuits by the twenty-six other states that have invested billions in federal funds in self-insurance reserve accounts and could raise the same argument raised by Pennsylvania.

Commonwealth of Pennsylvania Office of the Budget v. HHS,  
92-7373 (June 11, 1993) [3d Cir.; M.D. Pa.]. DJ # 145-16-3482.

Attorneys: Leonard Schaitman - (202) 514-3441  
Bruce Forrest - (202) 514-3180

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**Ninth Circuit Holds Six-Year Statute Of Limitations Applies To Deficiency Judgment Proceedings But Not To Foreclosure Actions By The United States**

The FmHA made several loans to a corporation. The loans were secured by real estate and guaranteed by six individuals. The corporation failed to make timely payments and the government accelerated the loans. Thereafter, the corporation filed for bankruptcy and the bankruptcy court did not lift the automatic stay for 10 1/2 months. In addition, injunctions were entered in the nationwide class

action Coleman litigation enjoining FmHA from foreclosing on its loans. Subsequently, the government filed the present complaint seeking foreclosure of the deed of trust and a deficiency judgment against the individual guarantors.

The district court held that the government's action against the individual defendants was time-barred under the six-year statute of limitations contained in 28 U.S.C. §2415(a), governing actions for money damages on a contract. The court of appeals (Sneed, Alarcon, Canby) has affirmed, but upheld several critical government arguments that will prove useful in future litigation. The court agreed with us that Section 2415(a) is inapplicable to government foreclosure actions, an issue we are presently litigating in several circuits. However, the court held that the statute of limitations does apply to deficiency judgment actions, the obligation for which, the court believed, arises from contract. The court then addressed our alternative argument, that even if the statute applied, it did not run here. The court agreed with our argument that our cause of action did not arise until the loans had been accelerated, rejecting defendants' "at time of default," argument. The court also agreed that the Coleman injunction had tolled the statute for 21 1/2 months. The court, however, rejected our argument that the automatic stay tolled the statute for an additional 10 1/2 months, holding that the stay does not extend to actions against parties other than the debtor, such as the individual guarantors here. Finding no tolling under the Bankruptcy Code, the court held that the statute had run.

United States v. Dos Cabezas, No. 91-16324 (June 21, 1993)  
[9th Cir.; D. Ariz.]. DJ # 145-8-2406.

Attorneys: Robert S. Greenspan - (202) 514-5428  
Steve I. Frank - (202) 514-4820

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**Tenth Circuit Upholds Federal Crop Insurance Corporation's Regulations  
Preempting State Law**

The Federal Crop Insurance Corporation (FCIC) provides federally-subsidized crop insurance to farmers nationwide. Although some farmers obtain their insurance directly from the FCIC, most federal crop insurance is provided through private insurance companies whose policies are reinsured by the FCIC. Federal crop insurance is provided pursuant to form policies devised by the FCIC, and the same basic policy form is used regardless of whether the insurance is sold directly by the FCIC or indirectly through a private insurance company. This case involves the State of Kansas's challenge to regulations recently promulgated by the FCIC which make clear that the terms and conditions of FCIC-reinsured crop insurance policies are set by the FCIC itself and that states have no authority to require any deviation from those terms and conditions. The regulations also specify that states are prohibited from imposing a premium tax on private insurance companies as to premiums paid on FCIC-reinsured crop insurance policies. The district court upheld these broad preemptive regulations in their entirety, and a unanimous panel of the court of appeals (Moore, McWilliams, Wood (7th Cir., sitting by designation)), has now affirmed. The panel reasoned that the broad preemptive scope of the regulations is consistent with the text and overall purposes and structure of the governing statutory scheme. This first appellate decision addressing these regulations is a significant victory for the FCIC, whose authority in this area has in recent years been challenged by numerous state governments.

State of Kansas, etc. v. United States of America, et al.,  
No. 92-3203 (June 22, 1993) [10th Cir.; D. Kan.]. DJ # 145-8-2374.

Attorneys: Robert S. Greenspan - (202) 514-5428  
Thomas M. Bondy - (202) 514-4825

\* \* \* \* \*

**Tenth Circuit Holds That Federal Employees Compensation Act Precludes  
Federal Tort Claims Act Action Based On Claims Of Emotional Distress  
Incurred By Sexual Harassment**

A Postal Service worker alleged that she was sexually harassed by another postal employee and that the Postal Service failed to take appropriate steps to prevent or stop it. Plaintiff sought and received benefits under the Federal Employees Compensation Act ("FECA"), which is the exclusive remedy for any injuries that it covers. Nonetheless, plaintiff subsequently filed a suit for damages under the Federal Tort Claims Act. The district court granted summary judgment to the government on the ground that Title VII is the exclusive remedy for sex discrimination, including sexual harassment. On plaintiff's appeal, we argued that her claim was not only barred by Title VII, but was also barred by FECA and by the Civil Service Reform Act and the Postal Reorganization Act.

The court of appeals (Logan, Holloway, Brimmer) has affirmed. The court held that the Secretary's determination that plaintiff's injury was covered by FECA was conclusive and therefore FECA's exclusivity provision barred any Tort Claims Act suit. The court did not reach any of the other grounds asserted to bar plaintiff's claim. Joining the position taken by the Sixth Circuit in McDaniel v. U.S., 970 F.2d 194 (6th Cir. 1992), the court rejected the Ninth Circuit's decision in Sheehan v. U.S., 896 F.2d 1168, as amended, 917 F.2d 424 (9th Cir. 1990), that a claim for emotional distress is not covered by FECA, notwithstanding the Secretary's ruling to the contrary, and that therefore FECA does not prevent a Federal Tort Claims Act suit for emotional distress caused by on-the-job sexual harassment. The Tenth Circuit also distinguished Sheehan, saying that even if it were correctly decided, it would not cover this case because plaintiff actually received FECA benefits here whereas in Sheehan the Secretary determined that the injury was covered by FECA, but did not pay benefits because he determined that the injury was not causally related to her employment. While we do not agree with the court's distinction of Sheehan because it is FECA coverage, not payment of benefits, that precludes a Tort Claims Act suit, the part of the decision rejecting Sheehan should be very useful to us.

Swafford v. United States, No. 92-5067 (July 8, 1993) [10th Cir.; D. Okla.].  
DJ # 157-59N-198

Attorneys: Robert S. Greenspan - (202) 514-5428  
John C. Hoyle - (202) 514-3469

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**TAX DIVISION**

**Second Circuit Upholds The Government's Position On Work Incentive  
Program (IN) Tax Credits**

On June 29, 1993, the Second Circuit affirmed the decision of the District Court in Heublein, Inc., et al. v. United States. This case, which involved over \$1.8 million, presented the question whether, for purposes of the credit allowed for work incentive program expenses ("WIN credit") under Section 50B of the Internal Revenue Code, the statutory term "substantially full time" means employment of 30 hours or more per week. The District Court, rejecting the contrary holding of the Tax Court in Lucky Stores v. Commissioner, 92 T.C. 1151 (1989), held that Congress imposed a uniform national standard for the purpose of 30 hours or more per week which does not vary depending upon a particular industry's standard for full-time employment. The taxpayer, arguing that 20 hours per week constitutes substantially full time employment in the fast-food industry, appealed.

The Second Circuit, affirming the decision of the District Court, noted that Congress passed the WIN tax credit "to provide an incentive to private-sector employers to hire AFDC recipients, as a means of leading present welfare recipients to economic independence," and that permitting employers to take a tax credit for employment not likely to result in economic self-sufficiency would not further that purpose.

\* \* \* \* \*

**Court Of Federal Claims Denies The Government's Motion For A Judgment On The Pleadings In Percentage Depletion Case**

On June 29, 1993, the Court of Federal Claims denied the Government's motion for a judgment on the pleadings in Exxon Corporation and Subsidiaries v. United States, which presents the question whether Exxon is entitled to a percentage depletion deduction based on an amount which is in excess of its actual revenues. Section 613 of the Internal Revenue Code provides generally that a taxpayer owning oil and gas wells is allowed a depletion deduction based on a percentage of its "gross income from the property." Treasury Regulations under Section 613 provide that "gross income from the property" for this purpose, where oil or gas is manufactured or converted into a refined product prior to sale, or is transported from the premises prior to sale, is "assumed to be equivalent to the representative market or field price of the oil or gas before conversion or transportation."

Exxon entered into long-term fixed price contracts with respect to the sale of natural gas during the 1950s. By 1974, the price of natural gas had increased considerably, and Exxon contended that, pursuant to the Treasury regulations under Section 613, it was entitled to calculate its percentage depletion deduction based on the prevailing market price of natural gas, even though this far exceeded its actual revenues. The Government contended that Exxon was not entitled to a percentage depletion deduction based on amounts in excess of its actual revenues and that the regulation at issue merely provided a mechanism for allocating a taxpayer's gross revenue between extraction and subsequent processing and transportation. The Court of Federal Claims rejected the Government's position, holding that "if the language of the statute does not define key terms, . . . the plain language of the regulation should control," and that Exxon was entitled to prove a representative market or field price in excess of gross revenue.

Exxon has approximately \$1.5 billion at stake with respect to this issue through 1985. Subsequent tax years are currently pending in the Tax Court.

\* \* \* \* \*

**Fourth Circuit Overturns Adverse Judgment In Intergovernmental Immunity Case**

On June 10, 1993, the Fourth Circuit issued an unpublished opinion reversing the decision of the District Court in United States v. City of Huntington. This Government appeal presented the question whether real properties located in the City of Huntington, West Virginia, which are owned by the U.S. Postal Service and the General Services Administration, are liable for fire and flood protection charges assessed against the properties by the City. The District Court upheld the charges on the ground that they were more like a fee for services rendered than a tax. The Fourth Circuit reversed, observing that the fee was "a tax in the most classic sense of the term." Thus, liability for the fee arose from an entity's status as a property owner and not from its use of a municipal service and the fee financed core governmental services.

Because the Fourth Circuit's opinion could provide substantial guidance to the lower courts, as well as to local jurisdictions, regarding the limits of their authority to impose such fees against Federal property, the Tax Division has asked the court to publish its opinion.

\* \* \* \* \*

## OFFICE OF LEGAL EDUCATION

### COMMENDATIONS

Donna A. Bucella, Director of the Office of Legal Education (OLE), and the members of the OLE staff, thank the following Assistant United States Attorneys (AUSAs), Department of Justice officials and personnel, and Federal agency personnel for their outstanding teaching assistance and support during courses conducted from June 15 - July 16, 1993. Persons listed below are AUSAs unless otherwise indicated:

#### Legal Support Staff Training (Clearwater, Florida)

From the Middle District of Florida: **Terry Zitek**, Criminal Chief; **Gary Takacs**, Civil Chief; **Frank Hall**, Director of Administration; **Nena Myers**, Budget Officer; **Paul Gumpert**, Assistant Systems Manager; **Zina Sanches**, **Marie Miller**, **Chris Griffiths**, and **Marcia Martaus**, Paralegal Specialists; **Sue Haneca**, Administrative Secretary; and **Martha Worthington**, Office Manager. **Betsy Dewland**, Chief, Systems Support Service, Case Management Staff, Executive Office for United States Attorneys.

#### Ethics and Professional Conduct (Washington, D.C.)

**G. Sid Smith** and **Julia Loring Eirinberg**, Attorney-Advisors, Office of Government Ethics. From the Federal Bureau of Prisons: **George Pruden**, Associate General Counsel for Employment Law and Information; **Yvonne Hinkson**, Deputy Associate General Counsel; and **Wendy Lienesch**, Assistant General Counsel for Employment Law and Information. **Joseph Gangloff**, Director, Conflicts of Interest, Public Integrity Section, Criminal Division; and **Stephen J. Csontos**, Senior Legislative Counsel, Office of Legislation and Policy, Tax Division.

#### Automating Financial Litigation (Columbia, South Carolina)

**Nancy C. Wicker**, First Assistant United States Attorney, District of South Carolina; **Florence Arnoldy**, Eastern District of California; **Kathleen Connors**, District of New Jersey; **Debra Clark** and **Patricia Mahoney**, Northern District of Iowa; **Cindy Brooks**, Middle District of North Carolina; **Jason Bray**, District of Nebraska; **Stacy M. Ludwig**, District of Columbia; **Carol Statkus**, District of Wyoming; **Tim Murphy**, Deputy Associate Attorney General, Office of the Associate Attorney General. From the Executive Office for United States Attorneys: **Richard W. Sponseller**, Associate Director, and **Darrell Curtis**, Management Analyst, Financial Litigation Staff; **Betsy Dewland**, Chief, Systems Support Service; **Vern Bryant**, Chief, Central Systems Service; **Donna Johnson**, Supervisory Computer Specialist, and **Patti Ostrowski**, Management Analyst, Case Management Staff; **Judy Johnson**, Program Manager, Evaluation and Review Staff. **Dale Trott**, Acting Director, Debt Accounting Operations Group, and **Pat McAloon**, Program Manager, Central Intake Facility, Justice Management Division; and **Kim Whatley**, Administrative Office of United States Courts.

#### Financial Crimes Seminar (Phoenix, Arizona)

**Daniel G. Knauss**, then-United States Attorney, **Roslyn Moore-Silver**, Chief, Criminal Division, and **Peter M. Jarosz**, District of Arizona; **William Block**, **Blanche Bruce**, and **Judith Kozlowski**, District of Columbia; **Michael Emmick**, **Alice Hill**, and **Julie Werner-Simon**, Deputy Chief, Strike Force, Central District of California; **Terry Hart**, Northern District of Texas; **Caroline Heck**, Southern District of Florida; **Steve Liccione**, Eastern District of Wisconsin; **Robert E. Mydans**, District of Colorado; **Michael C. Olmsted**, Northern District of New York; **Steve Schroeder**, Western District of Washington; **Kurt J. Shernuk**, District of Kansas; **Ross Silverman**, Northern District of Illinois; **John Thrasher**, Special Agent, Internal Revenue Service; **Regina Barrett**, Assistant Chief Accountant, Securities and Exchange Commission; and **Stephen J. T'Kach**, Deputy Chief, Electronic Surveillance Unit, Criminal Division.

**In House Criminal Asset Forfeiture Training (Portland, Oregon)**

**John Hieronymus**, Western District of Michigan; and **Laurie Sartorio**, Assistant Director for Policy and Operations, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General.

**Gangs and Violent Crime Seminar (Chicago, Illinois)**

**Gary Shapiro**, Chief, Criminal Division, Northern District of Illinois; **Michael Brown**, District of Oregon; **Larry Burns**, Assistant Chief, Criminal Division, Southern District of California; **Terry Clark**, Chief, Special Prosecutions Section, Southern District of Texas; **Russell Duncan**, District of Columbia; **Wingate Grant** and **Toby Vick**, Eastern District of Virginia; **Patrick Hansen**, Northern District of Indiana; **Roslyn Moore-Silver**, Chief, Criminal Division, and **Dave Kern**, District of Arizona; **Allen J. Litchfield**, Northern District of Oklahoma; **Joe McLean**, Northern District of Alabama; **Catherine Palmer**, Eastern District of New York; **Michael Shelby**, Southern District of Texas; **John Stevens**, Executive Assistant United States Attorney, Eastern District of Texas; **Theresa Van Vliet**, Deputy Chief, Narcotics Section, Southern District of Florida; **James P. Walsh, Jr.**, Chief, Organized Crime Strike Force, Central District of California; **Mary Incontro**, Deputy Chief, Terrorism and Violent Crime Section, Criminal Division; **Honorable John Keenan**, United States District Judge, Southern District of New York; **Barry Kowalski**, Deputy Chief, Criminal Section, Civil Rights Division; **James Reynolds**, Chief, Terrorism and Violent Crime Section, Criminal Division; **Alan P. Robillard**, Scientific Analysis Section Federal Bureau of Investigation; **Sallie Saliba**, Senior Deputy Assistant Director, Office of Enforcement Operations, Criminal Division; **Joan Ward**, Senior Training Instructor, Justice Management Division; and **Michael Balle**, Deputy Director, Administrative Services Staff, Executive Office for United States Attorneys.

**Basic Narcotics Seminar (Phoenix, Arizona)**

**Daniel G. Knauss**, United States Attorney, **Roslyn Moore-Silver**, Chief, Criminal Division, and **Peter Jarosz**, District of Arizona; **Melissa Annis**, Southern District of Texas; **Linda Betzer** and **Kenneth S. McHargh**, Northern District of Ohio; **Laura Birkmeyer**, **Roger Haines**, **D. Thomas Ferraro**, and **Larry Burns**, Assistant Chief, Criminal Division, Southern District of California; **Alice Hill** and **Julie Werner-Simon**, Deputy Chief, Strike Force, Central District of California; **Robyn R. Jones**, Southern District of Ohio; **Malachy Mannion**, Middle District of Pennsylvania; **Robert E. Mydans**, District of Colorado; **Michael C. Olmsted**, Northern District of New York; **Wayne F. Pratt**, Eastern District of Michigan; **Kurt Shernuk**, District of Kansas; **Ross Silverman**, Northern District of Illinois; **Thomas J. Reuter**, Eastern District of Pennsylvania; **Monica Wheatley**, Western District of Kentucky; **Stephen J. T'Kach**, Deputy Chief, Electronic Surveillance Unit, Criminal Division; and **Ron D'Ullise**, Special Agent, Drug Enforcement Administration.

**Federal Acquisition Regulations (Washington, D.C.)**

**Elizabeth Grant**, Associate General Counsel, and **Carolyn Perry**, Associate General Counsel, Defense Logistics Agency; **Paul Turnau**, Assistant Director, and **Mark Selweski**, Contract Specialist, Procurement Services Staff; **Andrea Grimsley**, Contracting Officer, and **Stuart Frisch**, Deputy General Counsel, Justice Management Division; **George N. Brezna**, Associate Counsel for the Commandant, United States Marine Corps; **James Whetstone**, Deputy Assistant Administrator, Office of Procurement, Drug Enforcement Administration; **Bertram Berlin**, Assistant General Counsel, General Accounting Office; **Craig Schmauder**, Acting Deputy Chief Counsel, Army Corps of Engineers.

**Appellate Advocacy (Washington, D.C.)**

**Emily Sweeney**, United States Attorney, Northern District of Ohio; **John Roth**, Eastern District of Michigan; **Glenn Morramarco**, District of New Jersey; **David Allred**, Middle District of Alabama; **Stephen Peifer**, District of Oregon; **Jacqueline Chooljian**, Central District of California; **Eric Havian**, Northern District of California; **Carol Herman**, Southern District of Florida; **Mark Stern**, Assistant Chief, Appellate Staff, Civil Division; and **Mervyn Hamburg**, Senior Counsel, Appellate Staff, Criminal Division.

**Money Laundering/Asset Forfeiture Seminar (Minneapolis, Minnesota)**

**Don Clark**, Southern District of New York; **Claude Hippard** and **Sue Kempner**, Southern District of Texas; **Elizabeth Landes**, Chief, Asset Forfeiture, Northern District of Illinois; **Nathan P. Petterson**, District of Minnesota; **Stewart Robinson**, Northern District of Texas; **Laurie Sartorio**, Assistant Director for Policy and Operations, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General. From the Criminal Division: **Lee J. Ross, Jr.**, Deputy Chief, Money Laundering Section; **Mary Troland**, Associate Director, Office of International Affairs; **Stephen T. T'Kach**, Deputy Chief, Electronic Surveillance Unit, Office of Enforcement Operations, and **Jonathan J. Rusch**, Senior Litigation Counsel, Fraud Section, Criminal Division. **Patrice Scully**, Assistant Regional Counsel, and **Allan Doody**, Senior Special Agent, Financial Investigations Division, United States Customs Service; **Al Gillum**, Inspector, OAS/Postal, Drug Enforcement Administration; and **Linda Noonan**, Senior Counsel for Financial Enforcement, Office of the Assistant General Counsel for Enforcement, Department of the Treasury.

**Evidence For Experienced Criminal Litigators Seminar (San Antonio, Texas)**

**James H. DeAtley**, United States Attorney, Western District of Texas; **John Barton**, District of South Carolina; **Donald A. Davis**, Western District of Michigan; **Steve Miller**, Chief, Special Prosecutions Division, **Mark Rotert**, Chief, Major Crimes Division, and **Sheila Finnegan**, Northern District of Illinois; **Judith Lombardino**, Southern District of Texas; **Roger McRoberts**, Northern District of Texas; **Joseph F. Savage**, Senior Litigation Counsel District of Massachusetts; **Morgan Scott**, First Assistant United States Attorney, Western District of Virginia; **Stewart Walz**, Chief, Criminal Division, District of Utah; **Robert Westinghouse**, Western District of Washington; and **Craig Weier**, Eastern District of Michigan.

**Fraud, Debarment, And Suspension (Washington, D.C.)**

**Christine Poston**, Assistant Counsel, Fraud and Ethics, Defense Logistics Agency; **Ron Clark**, Senior Trial Counsel, Commercial Litigation Branch, Civil Division; **MaryAnn Lawrence Grodin**, Counsel to the Inspector General, Nuclear Regulatory Commission; **Laurence Froehlich**, Counsel to the Inspector General, Federal Deposit Insurance Corporation; **William L. Finch**, Trial Attorney, Defense Procurement Fraud, Criminal Division; **Lieutenant Colonel Julius Rothlein**, Chief, Remedies Branch, Procurement Fraud Division, Department of the Army; **James F. Drummond, Jr.**, Acting Branch Chief, Office of Grants and Debarment, Environmental Protection Agency; and **George N. Brezna**, Associate Counsel for the Commandant, United States Marine Corps.

**Federal Administrative Process (Washington, D.C.)**

**Marina Braswell**, District of Columbia; **Gary Edles**, General Counsel, and **David Pritzker**, Senior Attorney, Administrative Conference of the United States; **Don Arbuckle**, Deputy Branch Chief, Commerce and Lands Branch, Office of Information and Regulatory Affairs, Office of Management and Budget; **Neil Eisner**, Assistant General Counsel, Regulation and Enforcement, Office of the Secretary, Department of Transportation; **Honorable Royce C. Lamberth**, United States District Court Judge, District of Columbia; **Marilyn Glynn**, Attorney-Advisor, Office of Government Ethics; **John Golden**, Associate General Counsel, Department of Agriculture; and **Jerome Nelson**, Administrative Law Judge, Federal Energy Regulatory Commission.

**Computer Law (Washington, D.C.)**

**Mike Hughes**, Attorney-Advisor, Office of Information and Privacy; and **Steve Mitchell**, Trial Attorney, General Litigation Section, Criminal Division.

**Computer Assisted Legal Research (Washington, D.C.)**

**J. T. Tokarz**, Legal Counsel, Henrico County Attorney's Office, Richmond, Virginia; and **Kathleen Larson**, Program Specialist, Information Resources Management, Justice Management Division.

**Criminal Chiefs Seminar for Small and Medium Offices (Arlington, Virginia)**

**David Dake**, United States Attorney, Eastern District of Tennessee; **James Russ Dedrick**, United States Attorney, Eastern District of North Carolina; **Michael A. Jones**, United States Attorney, Western District of Missouri; **Gregory R. Miller**, United States Attorney, Northern District of Florida; **Ginny S. Granade**, Criminal Chief, Southern District of Alabama; **Linda Hertz**, Appellate Division Chief, Southern District of Florida; **H. Marshall Jarrett**, Criminal Chief, District of Columbia; **Larry A. Mackey**, Criminal Chief, Southern District of Indiana; **Richard L. Murphy**, Criminal Chief, Northern District of Iowa; **David Nissman**, Criminal Chief, District of the Virgin Islands; **Sheldon Sperling**, First Assistant United States Attorney, Eastern District of Oklahoma; **Harry Litman**, Deputy Associate Attorney General, Office of Policy Development; **Lyle Newton**, Deputy Director, Executive Office for Organized Crime and Drug Enforcement Task Force; **Linda Davis**, Chief, Criminal Section, Civil Rights Division; **Kevin DiGregory**, Special Assistant to the Attorney General; **Michael E. Shaheen, Jr.**, Counsel, and **Thomas Ezell**, Assistant Counsel, Office of Professional Responsibility. From the Criminal Division: **Mark Richards**, Deputy Assistant Attorney General; **Steven E. Zipperstein**, Associate Assistant Attorney General; **Les Joseph**, Deputy Chief, Money Laundering Section; **G. Allen Carver, Jr.**, Principal Deputy Chief, Fraud Section; **Mary Incontro**, Deputy Chief, Terrorism and Violent Crime Section; and **Joseph E. Gangloff**, Acting Chief, Public Integrity Section. From the Executive Office for United States Attorneys: **Wayne A. Rich, Jr.**, Principal Deputy Director; **Michael Baille**, Deputy Director, Administrative Services Staff; **Richard Sponseller**, Associate Director, Financial Litigation Staff; **Gloria Harbin**, Chief, Personnel Management Team GH, Personnel Staff; **Mary Ann Hoopes**, Deputy Legal Counsel; **Brian Jackson**, Assistant Director, Evaluation and Review Staff; and **Mike McDonough**, Assistant Director, Financial Management Staff.

**Environmental Law (Arlington, Virginia)**

**Mark Nagel**, District of Columbia; **Peter Hsiao**, Central District of California. From the Environment and Natural Resources Division: **Myles E. Flint**, Acting Assistant Attorney General; **Lois Schiffer**, Deputy Assistant Attorney General; **William Cohen**, Chief, **James Brookshire**, Deputy Chief, **Ellen Athas**, Attorney, and **Caroline Zander**, Attorney, General Litigation Section; **John Cruden**, Chief, **Bruce Gelber**, Assistant Director, and **Anna Wolgast**, Senior Counsel, Environmental Enforcement Section; **James C. Kilbourne**, Chief, Wildlife and Marine Resources Section; **Tom Pacheco**, Assistant Chief, and **Steve Rogers**, Assistant Chief, Environmental Defense Section; **Gregory Linsin**, Unit Chief, Environmental Crimes Section; **David Shilton**, Senior Attorney, Appellate Section; **Anne Shields**, Chief, and **Charles Sheehan**, Attorney, Policy, Legislation, and Special Litigation Section; **Michael Gheleta**, Attorney, Denver Field Office and **Marla Iizuka**, Attorney, Sacramento Field Office. **Anne Miller**, Director, Federal Agency Liaison Division, and **David Coursen**, Senior Takings Counsel, Environmental Protection Agency; **James Perry**, Assistant General Counsel, **Michael Gippert**, Deputy Assistant General Counsel, and **James Snow**, Deputy Assistant General Counsel, Department of Agriculture; **Martin Cohen**, Assistant Chief Counsel for Litigation, Corps of Engineers, Department of the Army; and **Nancy Stanley**, Director, Dispute Resolution for the District of Columbia Circuit.

**Medical Malpractice (Salt Lake City, Utah)**

**Gill P. Beck**, Middle District of North Carolina; **James Jennings**, **Mollie S. Nichols**, **John Paniszczyn**, Western District of Texas; **Solomon E. Robinson**, Eastern District of California; **Julie Zatz**, Central District of California; **James Hilbert** and **Whitney Schmidt**, Middle District of Florida; **John R. Halliburton**, Western District of Louisiana; **Carlie Christensen**, District of Utah; **Eileen Marutzky**, Northern District of Illinois; **Robert Taylor**, Western District of Washington; **M. Kent Anderson**, Western District of Oklahoma. From the Civil Division, Torts Branch: **Jeffrey Axelrad**, Director, **Paul Figley**, Deputy Director, **Roger Einerson**, Assistant Director, **Nikki Calvano**, Special Counsel, **Larry Klinger**, Assistant to the Director, **Mary Leach**, Senior Trial Attorney, **Patricia Reedy**, **Lisa Goldfluss**, **Michael Truscott**, and **Gail Johnson**, Trial Attorneys. **Phillip P. O'Connor, Jr.**, Office of District Counsel, Department of Veterans Affairs, **Lieutenant Colonel Phil Lynch** and **Lieutenant Colonel Denise Vowell**, United States Army.

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**Ed McGah**, Executive Assistant United States Attorney, Central District of California; **Michael Whisonant**, Northern District of Alabama; **Karla Spaulding**, Chief, Fraud and Economic Crime Unit, Southern District of Texas; **Mal Mannion**, Chief, Organized Crime and Drug Enforcement Task Force, Middle District of Pennsylvania; **Ann Rowland**, Northern District of Ohio; **Julia Paylor** and **Andres Rivero**, Southern District of Florida; **Peter Strasser**, Eastern District of Louisiana; **Barbara Sale**, Special Litigation Counsel, District of Maryland; **Ted Merritt**, District of Maine; **Lorretta Lynch**, Chief, Intake and Arraignments, Eastern District of New York; **Floyd Clardy**, Northern District of Texas; **William Redkey**, Supervisor, Intake Unit, Western District of Washington; **Quincy Ollison**, Eastern District of Virginia; **Michael Ringer**, Western District of Oklahoma; **Teresa Cesar**, Northern District of Illinois; **Ron Sievert**, Western District of Texas; **Janet Papenthien**, Northern District of Iowa; **David Bauer**, Northern District of Ohio; **Paul Kanter**, Eastern District of Wisconsin; **Susan Via**, District of the Virgin Islands; **Richard Moore**, Southern District of Alabama; **Les Osborne**, District of Hawaii; **Gerald Rafferty**, District of Colorado; and **Kenneth Bresler**, Trial Attorney, New England Bank Task Force, Fraud Section, Criminal Division.

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**COURSE OFFERINGS**

The staff of OLE is pleased to announce OLE's projected course offerings for the months of August through September 1993, for both the **Attorney General's Advocacy Institute (AGAI)** and the **Legal Education Institute (LEI)**. AGAI provides legal education programs to Assistant United States Attorneys (AUSAs) and attorneys assigned to Department of Justice divisions. LEI provides legal education programs to all Executive Branch attorneys, paralegals, and support personnel and to paralegal and support personnel in United States Attorneys' offices.

**AGAI Courses**

The courses listed below are tentative only. OLE will send an announcement via Email approximately eight weeks prior to the commencement of each course to all United States Attorneys' offices and DOJ divisions officially announcing each course and requesting nominations. Once a nominee is selected, OLE funds costs for Assistant United States Attorneys only.

August 1993

<u>Date</u>	<u>Course</u>	<u>Participants</u>
9-12	Complex Prosecutions	AUSAs, DOJ Attorneys
10-11	Ethics Seminar USAOs	Ethics Advisors (AUSAs, Support Staff)
11-12	Alternative Dispute Resolution-Civil	AUSAs, DOJ Attorneys
11-13	Criminal Chiefs - USAOs	Chiefs (Large USAOs)
17-19	Advanced Bankruptcy	AUSAs, DOJ Attorneys, Paralegals
17-20	Evidence Seminar for Experienced Criminal Litigators	AUSAs
18-19	Criminal Enforcement of Child Support	AUSA, DOJ Attorneys
24-26	Affirmative Civil Litigation	AUSAs, DOJ Attorneys
30-Sept 3	Appellate Advocacy	AUSAs, DOJ Attorneys

September 1993

1-2	Appellate Chiefs	Appellate Chiefs-USAOs
8-10	First Assistants USAOs	FAUSAs (Large USAOs)
14-16	USAO Attorney Management	Supervisory AUSAs
20-24	Federal Practice Seminar-Criminal	AUSAs, DOJ Attorneys
21-23	Asset Forfeiture Component Seminar	10th Circuit (AUSAs, Support Staff, LECC Coordinators)
21-23	Basic Bankruptcy	AUSAs, DOJ Attorneys, Paralegals
21-23	International Issues	AUSAs, DOJ Attorneys
27-29	Civil Rights (Criminal and Civil Enforcement)	AUSAs, DOJ Attorneys

September (continued)

<u>Date</u>	<u>Course</u>	<u>Participants</u>
28	Executive Session (Debt Collection)	U.S. Attorneys
28-30	Computer Crimes	AUSAs, DOJ Attorneys

LEI Courses

LEI offers courses designed specifically for paralegal and support personnel from United States Attorneys' offices (indicated by an \* below). Approximately eight weeks prior to the commencement of each course, OLE will send an announcement via Email to all United States Attorneys' offices officially announcing the course and requesting nominations. The nominations are sent to OLE via FAX. Once a nominee is selected, OLE funds all costs for paralegal and support staff from United States Attorneys' offices.

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via mailings, sent every four months to federal departments, agencies, and USAOs. Nomination forms must be received by OLE at least 30 days prior to the commencement of each course. A nomination form for LEI courses listed below (except those marked by an \*) is attached at the Appendix of this Bulletin as Exhibit F. Local reproduction is authorized and encouraged. Notice of acceptance or non-selection will be mailed to the address typed in the address box on the nomination form approximately three weeks before the course begins. **Please note: OLE does not fund travel or per diem costs for students attending LEI courses (except for paralegals and support staff from USAOs for courses marked by an \*).**

August 1993

<u>Date</u>	<u>Course</u>	<u>Participants</u>
3	FOIA Administrative Forum	Attorneys, Senior FOIA Processors and Unit Leaders
3-5	Discovery Techniques	Attorneys
4	Ethics and Professional Conduct	Attorneys, Ethics Officers
9-10	Evidence	Attorneys
11-13	Attorney Management	Supervisory Attorneys
17-19	Advanced Bankruptcy	AUSAs, Attorneys, Paralegals
17-20*	USAO Experienced Paralegal	Civil and Criminal Paralegals (5+ yrs. experience)

**August 1993 (continued)**

<b><u>Date</u></b>	<b><u>Course</u></b>	<b><u>Participants</u></b>
23-25	Basic Negotiations	Attorneys
26	Introduction to FOIA	Attorneys, Processors, Technicians
31	Appellate Skills	Attorneys

**September 1993**

1-2	Agency Civil Practice	Attorneys
7-10	Examination Techniques	Attorneys
13-24*	Financial Litigation for Paralegals	Financial Litigation Paralegals, USAOs
21-23	Law of Federal Employment	Attorneys, Paralegals
21-23	Basic Bankruptcy	AUSAs, Attorneys, Paralegals
24	Legal Writing	Attorneys
28-30	Discovery	Attorneys

**OFFICE OF LEGAL EDUCATION CONTACT INFORMATION**

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Deputy Director.....	David Downs
Assistant Director (AGAI-Criminal).....	Charysse Alexander
Assistant Director (AGAI-Civil & Appellate).....	Ron Silver
Assistant Director (AGAI-Asset Forfeiture).....	Suzanne Warner
Assistant Director (AGAI-Debt Collection).....	Nancy Rider
Assistant Director (LEI).....	Donna Preston
Assistant Director (LEI-Paralegal & Support).....	Donna Kennedy

\*\*\*\*\*

**APPENDIX****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>						
10-21-88	8.15%	02-14-90	7.97%	05-31-91	6.09%	09-18-92	3.13%
11-18-88	8.55%	03-09-90	8.36%	06-28-91	6.39%	10-16-92	3.24%
12-16-88	9.20%	04-06-90	8.32%	07-26-91	6.26%	11-18-92	3.76%
01-13-89	9.16%	05-04-90	8.70%	08-23-91	5.68%	12-11-92	3.72%
02-15-89	9.32%	06-01-90	8.24%	09-20-91	5.57%	01-08-93	3.67%
03-10-89	9.43%	06-29-90	8.09%	10-18-91	5.42%	02-05-93	3.45%
04-07-89	9.51%	07-27-90	7.88%	11-15-91	4.98%	03-05-93	3.21%
05-05-89	9.15%	08-24-90	7.95%	12-13-91	4.41%	04-07-93	3.37%
06-02-89	8.85%	09-21-90	7.78%	01-10-92	4.02%	04-30-93	3.25%
06-30-89	8.16%	10-27-90	7.51%	02-07-92	4.21%	05-28-93	3.54%
07-28-89	7.75%	11-16-90	7.28%	03-06-92	4.58%	06-25-93	3.54%
08-25-89	8.27%	12-14-90	7.02%	04-03-92	4.55%	07-23-93	3.58%
09-22-89	8.19%	01-11-91	6.62%	05-01-92	4.40%		
10-20-89	7.90%	02-13-91	6.21%	05-29-92	4.26%		
11-17-89	7.69%	03-08-91	6.46%	06-26-92	4.11%		
12-15-89	7.66%	04-05-91	6.26%	07-24-92	3.51%		
01-12-90	7.74%	05-03-91	6.07%	08-21-92	3.41%		

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

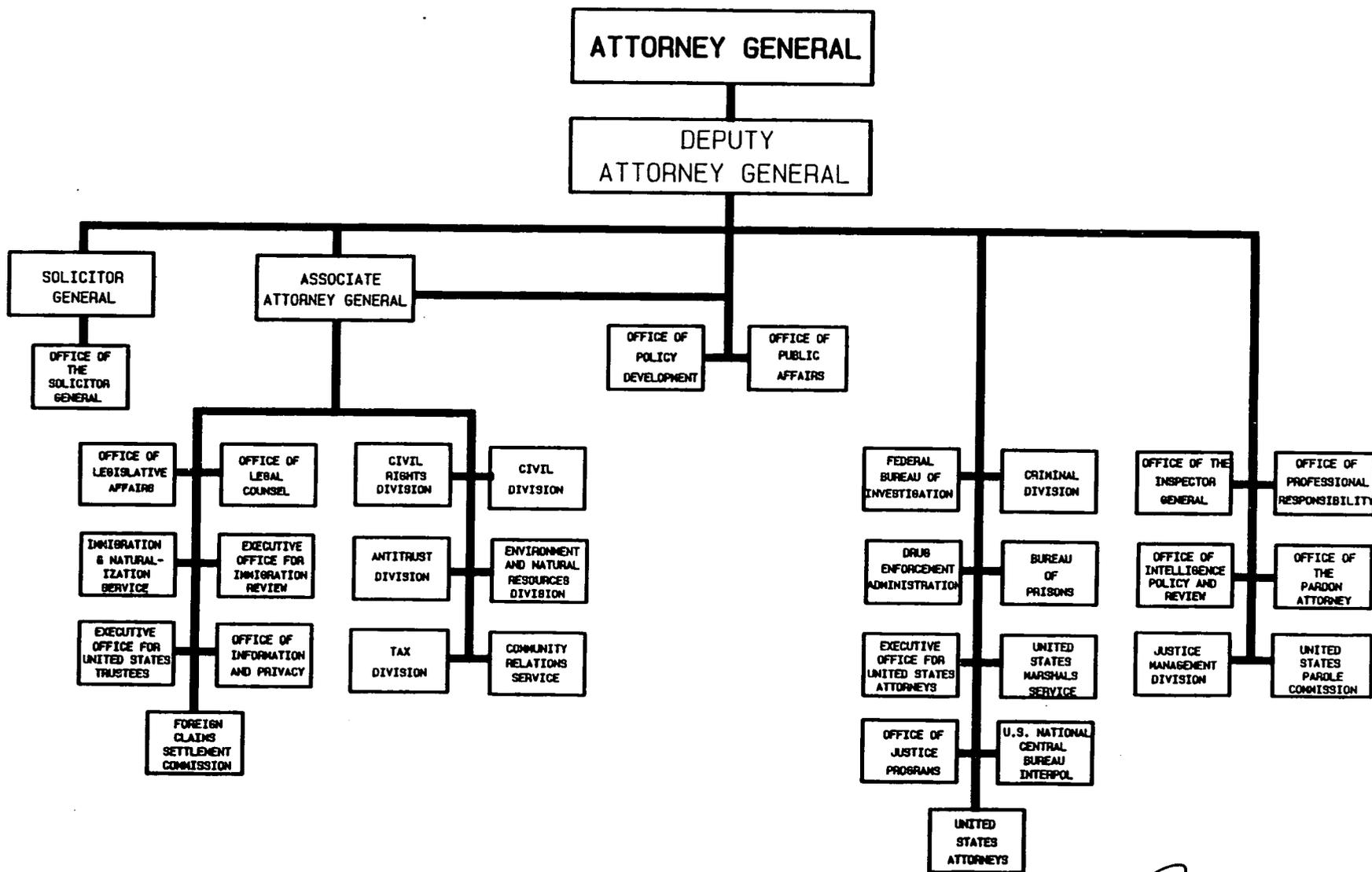
\* \* \* \* \*

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Alabama, M	James Eldon Wilson
Alabama, S	Edward Vulevich, Jr.
Alaska	Joseph W. Bottini
Arizona	Janet Ann Napolitano
Arkansas, E	Richard M. Pence, Jr.
Arkansas, W	J. Michael Fitzhugh
California, N	Michael J. Yamaguchi
California, E	Robert M. Twiss
California, C	Terree A. Bowers
California, S	James W. Brannigan, Jr.
Colorado	James R. Allison
Connecticut	Albert S. Dabrowski
Delaware	William C. Carpenter, Jr.
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Florida, S	Roberto Martinez
Georgia, N	Joe D. Whitley
Georgia, M	Edgar Wm. Ennis, Jr.
Georgia, S	Jay D. Gardner
Guam	Frederick A. Black
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Illinois, S	Clifford J. Proud
Illinois, C	Byron G. Cudmore
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Missouri, E	Stephen B. Higgins
Missouri, W	Michael A. Jones

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
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Nebraska	Ronald D. Lahners
Nevada	Monte Stewart
New Hampshire	Peter E. Papps
New Jersey	Michael Chertoff
New Mexico	Larry Gomez
New York, N	Gary L. Sharpe
New York, S	Mary Jo White
New York, E	Zachary W. Carter
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Oklahoma, E	John W. Raley, Jr.
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West Virginia, N	William D. Wilmoth
West Virginia, S	Michael W. Carey
Wisconsin, E	Nathan A. Fishbach
Wisconsin, W	Grant C. Johnson
Wyoming	Richard A. Stacy
North Mariana Islands	Frederick Black

# U.S. DEPARTMENT OF JUSTICE



Approved: *Janet Reno* Date: 5/14/93  
 JANET RENO  
 Attorney General

EXHIBIT  
A

"On June 10, 1993, President Clinton signed into law H.R. 1313, the National Cooperative Production Amendments of 1993 (Pub. L. No. 103-42). These amendments extend the provisions of the National Cooperative Research Act of 1984 (NCRA), which afford certain antitrust protections to joint research and development ventures, to joint ventures for production as well, and redesignate the NCRA as the National Cooperative Research and Production Act of 1993 (NCRPA). By improving the legal climate surrounding cooperative production activities, the NCRPA is intended to facilitate innovative and efficient joint ventures for production, as did the NCRA with respect to joint research and development ventures.

"The NCRPA clarifies the application of the antitrust rule of reason to research, development, and production joint ventures and provides special attorneys' fee rules in any antitrust case challenging such a joint venture. The act also provides parties to such ventures the opportunity to limit any possible monetary damages that might be sought from them in actions brought under the antitrust laws to actual--as opposed to treble--damages. However, under new Section 7 of the act, the damage limitation provision does not apply to a joint venture's production of a product, process, or service unless (1) the principal facilities for such production are located in the United States or its territories, and (2) each person who controls any party to such venture (including such party itself) is a United States person or a foreign person from a country whose law accords antitrust treatment no less favorable to United States persons than to such country's domestic persons with respect to participation in joint ventures for production.

"The legislative history of H.R. 1313 indicates that the phrase 'whose law' in Section 7(2) is intended to include 'not only a country's domestic antitrust law but also all international agreements and other binding obligations to which that country and the United States are parties. Accordingly, a country that is a party to an international agreement with the United States that provides national treatment satisfies the requirements of section 7(2). This would include treaties of Friendship, Commerce and Navigation (FCNs); Bilateral Investment Treaties (BITs); Free Trade Agreements; and various OECD instruments.' H.R. Rep. No. 103-94, 103rd Cong., 1st Sess. 20 (1993).

"The rule-of-reason and attorneys' fee provisions of the act automatically apply to all joint ventures covered by the act. However, the act's damage protection depends on the filing of a notification with the federal antitrust enforcement agencies. In order to obtain damage protection, any party to a joint venture covered by the act may, not later than 90 days after entering into a written agreement to form the venture, file simultaneously with the Attorney General and the Federal Trade Commission a written notification disclosing the identities of all parties to the venture and the nature and objectives of the venture. In the case of a joint venture one of whose purposes is the production of a product, process, or service, the notification must contain additional information: the nationality of all parties and the identity and nationality of all persons who control any party to the venture whether separately or with one or more other persons acting as a group for the purpose of controlling such party.

"All notifications filed under the act should make clear the identity of all parties to the venture. The legislative history of the NCRA indicates that the list of parties should include 'the real parties in interest,' see Joint Explanatory Statement of the Committee of Conference on S. 1841, H.R. Rep. No. 98-1044, 98th Cong., 2d Sess. 19 (1984). All notifications should also include a description of the nature and objectives of the venture, including a concise statement of its purposes.

"Parties filing notifications of joint ventures for production should state clearly that a purpose of their venture is production. They should also provide the nationality of all parties and the identity and nationality of all persons controlling such parties. The meaning of 'control' of any party is not defined by the act. The legislative history of the act indicates that 'control' is intended to mean having the power to direct the management or policies of a person. This controlling influence may be exercised either directly or indirectly and the means used can vary. For example, it may be exercised through the ownership of voting securities, through a contractual right, or through participation on the board of directors. See H.R. Rep. No. 103-94, supra, at 19; S. Rep. No. 103-51, 103rd Cong., 1st Sess. 11 (1993).

"In the case of a corporation, parties should provide the name, place of incorporation and location of principal executive offices. In the case of an unincorporated firm, comparable identifying information should be provided. See S. Rep. No. 103-51, supra, at 13.

"In general, the manner and extent of the notification is left to the parties; they are to exercise their own discretion in determining the quantity and form of the information required adequately to describe the nature and objectives of their venture, see H.R. Rep. No. 98-1044, supra, at 18-19. Parties should be aware, however, that the damage protection of the act is dependent on the adequacy of their notification. Such additional notifications as are appropriate to extend the act's protection to new or different activities undertaken by a joint venture also may be filed. In order to maintain the protection of the act, a joint venture must file a notification disclosing any change in its membership within 90 days of the change.

"Written notifications filed pursuant to the act should be delivered to each of the following offices:

Evaluation Office  
Bureau of Competition  
Room 392  
Federal Trade Commission  
Washington, D.C. 20580

and

Director of Operations  
Antitrust Division  
Room 3214  
Department of Justice  
Washington, D.C. 20530

"The act further provides that the Attorney General or the Commission shall, not later than 30 days after receiving notification of a joint venture, publish in the Federal Register a notice that identifies the parties to the venture and describes in general terms its area of planned activity. Prior to publication, the notice must be made available to the parties.

Any person who files a notification may withdraw it before notice is published in the Federal Register, but a notification so withdrawn will not confer the act's protection on the parties to the joint venture involved. The Department of Justice will publish all Federal Register notices under the act. Submission of the following, along with a notification, will facilitate prompt publication of a notice under the act:

"1. A draft Federal Register notice that identifies the parties to the venture and that describes in general terms the area of planned activity of the venture.

"2. Evidence that the party filing the notification has been authorized by each party to the joint venture to review on its behalf the notice that is to be published in the Federal Register, or, alternatively, the names and addresses of other persons to whom the notice should be made available prior to publication.

"3. An extra copy of the notification materials to the Antitrust Division.

"The Federal Trade Commission concurs in this statement."

####

## CONSULAR NOTIFICATION LIST

## Countries For Which Consular Notification is Mandatory

Albania *	Malta
Antigua	Mauritius
Bahamas	Mongolia *
Barbados	Nigeria
Belize	Philippines
Bulgaria	Poland
China (PRC) **	Romania
Costa Rica	St. Kitts/Nevis
Cyprus	St. Lucia
Czechoslovakia ***	St. Vincent/Grenadines
Dominica	Seychelles
Fiji	Sierra Leone
The Gambia	Singapore
Ghana	South Korea
Grenada	Tanzania
Guyana	Tonga
Hungary	Trinidad/Tobago
Jamaica	Tuvalu
Kiribati	U.S.S.R. ****
Kuwait	United Kingdom *****
Malaysia	Zambia

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\* Arrangements with these countries provide for notification within 72 hours of arrest or detention of one of their nationals.

\*\* When Taiwan nationals (who carry "Republic of China" passports) are detained, notification should be made to the nearest office of the Coordination Council for North American Affairs, the unofficial entity representing Taiwan's interests in the United States.

\*\*\* Both successor states are covered.

\*\*\*\* All U.S.S.R. successor states are covered. They are: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

\*\*\*\*\* British dependencies are also covered. They are: Anguilla, British Virgin Islands, Hong Kong, Bermuda, Montserrat, and the Turks and Caicos Islands. Their residents carry British passports.



Office of the Attorney General  
Washington, D. C. 20530

June 29, 1993

MEMORANDUM FOR DEPARTMENT OF JUSTICE EMPLOYEES

FROM: THE ATTORNEY GENERAL

*Janet Reno*

SUBJECT: Prevention of Sexual Harassment in the Workplace

Since joining the Department, I have had an opportunity to meet and work with many of the fine men and women who dedicate so much of their time and effort to upholding this agency's tradition of professionalism and excellence. I am proud to be a part of this great institution and to have the privilege of serving our country and its citizens. In order to preserve this great tradition, I believe that we must create and maintain an environment in which all employees can perform their work free of any improper conduct such as discrimination and harassment, including sexual harassment. Discrimination or harassment of any kind simply will not be tolerated in a Department charged with enforcing the law and protecting the rights of all Americans.

Sexual harassment -- subjecting employees to unwelcome sexual conduct as a condition of their employment -- is illegal. It is a form of sex discrimination prohibited by Title VII of the 1964 Civil Rights Act. It is also completely antithetical to the ideals of this great Department.

Sexual harassment occurs when employment decisions affecting an employee, such as hiring, firing, promotions, awards, transfers or disciplinary actions, result from submission to or rejection of unwelcome sexual conduct. Sexual harassment can also be any activity which creates an intimidating, hostile or offensive work environment for members of one sex, whether such activity is carried out by a supervisor or by a co-worker. This could include such workplace conduct as displaying "pinup" calendars or sexually demeaning pictures, telling sexually oriented jokes, making sexually offensive remarks, engaging in unwanted sexual teasing, subjecting another employee to pressure for dates, sexual advances, or unwelcome touching.

Sexual harassment continues to be one of the most troublesome human resource management issues facing us today. Despite all the information, regulations, policies, and training that have been made available to employees and managers on this

topic, we know that problems still persist. I firmly believe that it requires the cooperation of everyone in the workplace if we are to successfully deal with this critical problem. We must take a proactive approach to dealing with sexual harassment. We must educate our employees to ensure that everyone has a clear understanding of this issue.

I am committed to taking all necessary steps to ensure that no employee of the Department is subjected to such harassment. Any employee who believes that he or she has been subjected to sexual harassment should report such behavior immediately to the supervisor, or a higher level official. Employees can also seek assistance from their Office of Equal Employment Opportunity, the Office of Professional Responsibility, or the Office of the Inspector General. I assure you that the matter will be dealt with promptly and impartially and that employees will not suffer any form of reprisal or retaliation.

An employee who engages in improper conduct will be subject to appropriate disciplinary action. Supervisors who either condone or fail to act promptly to correct inappropriate conduct brought to their attention will be subject to disciplinary action.

I will hold supervisors and managers responsible for enforcing this policy. I expect each manager in the Department to set the example in his or her organization by ensuring that the workplace is free of such behavior. Every manager must be aware of his or her work environment and the potential for problems.

I expect the head of each component to conduct an extensive campaign to ensure that all employees and managers are aware of their responsibilities in this area, and that they understand the penalties that may be imposed if they fail to adhere to these policies. I have asked Stephen R. Colgate, Assistant Attorney General for Administration, to work with component heads to assist them in implementing this policy.

I ask each one of you to join me in this important effort. We must ensure that the Department is a model among public and private employers. Differences in gender, race, color, national origin or religion must be fully respected. Together, we can achieve this goal.

# Guideline Sentencing Update

*Guideline Sentencing Update* will be distributed periodically by the Center to inform judges and other judicial personnel of selected federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Guidelines. Although the publication may refer to the Sentencing Guidelines and policy statements of the U.S. Sentencing Commission in the context of reporting case holdings, it is not intended to report Sentencing Commission policies or activities. Readers should refer to the Guidelines, policy statements, commentary, and other materials issued by the Sentencing Commission for such information.

Publication of *Guideline Sentencing Update* signifies that the Center regards it as a responsible and valuable work. It should not be considered a recommendation or official policy of the Center. On matters of policy the Center speaks only through its Board.

VOLUME 5 • NUMBER 13 • JUNE 3, 1993

## General Application Principles

### RELEVANT CONDUCT

Second Circuit holds that Double Jeopardy Clause prohibits punishment for an offense when the same conduct was used to increase defendant's offense level in a prior proceeding. Defendant was convicted on several fraud charges in the District of Connecticut. Other fraudulent conduct that had occurred in Vermont, and for which defendant faced federal charges there, was used as relevant conduct to increase his offense level. After the Connecticut sentencing, defendant moved to have all of the charges in Vermont dismissed on double jeopardy grounds. The Vermont district court held that prosecution was barred only on the counts used by the Connecticut court to increase that offense level. Defendant appealed the order, and the government cross-appealed, arguing that there was no double jeopardy problem at all.

The appellate court affirmed, and followed the three-factor analysis set forth in *U.S. v. Koonce*, 945 F.2d 1145, 1149-54 (10th Cir. 1991) [4 *GSU* #9], in holding that prosecution of conduct already used to set a Guidelines offense level would violate the "multiple punishments prong of the Double Jeopardy Clause." First, the Connecticut sentence "reflects part of McCormick's Vermont conduct. Thus, any further prosecution . . . for this conduct would subject him to the possibility of multiple punishments for the same conduct." Second, "[a]n examination of the Guidelines," and the fraud guideline in particular, indicates that Congress and the Commission did not intend to allow a defendant "to be prosecuted for conduct already used to enhance his or her offense level." Third, "the availability of concurrent sentences does not eliminate this double jeopardy problem" because of the "potential adverse collateral consequences" of further convictions. On the other hand, "those counts of the [Vermont] indictment that did not affect the Connecticut court's Guidelines calculations are not similarly barred from use."

*U.S. v. McCormick*, No. 92-1470 (2d Cir. Apr. 28, 1993) (Oakes, J.) (Mahoney, J., dissenting from dismissal of Vermont counts).

See *Outline* at I.A.3.

### SENTENCING FACTORS

*U.S. v. Harris*, 990 F.2d 594 (11th Cir. 1993) (Remanded: In light of 28 U.S.C. § 994(k), "it is inappropriate to imprison or extend the term of imprisonment of a federal defendant for the purpose of providing him with rehabilitative treatment." Defendant was serving a state sentence for conduct taken into account in his offense level for the instant federal offense. Under § 5G1.3(b) (1991); his federal sentence should have been concurrent with the state term, but the district court made it consecutive so that the defendant would serve enough time in federal prison to undergo a full drug treatment program.). See *Outline* at I.C and V.A.3.

## AMENDMENTS

*U.S. v. Prezioso*, 989 F.2d 52 (1st Cir. 1993) (Affirmed: Two criminal history points under § 4A1.1(d) were properly added because defendant committed the instant offense while under a "criminal justice sentence"—an unpaid fine. Before defendant was sentenced, the commentary to § 4A1.1(d) was changed to "clarify" that a sentence to pay a fine was not a "criminal justice sentence." The appellate court held, however, that in light of clear circuit precedent to the contrary this amendment, although labeled as "clarifying," was actually "a change in the meaning of a clear and unambiguous guideline . . . [and] is not entitled to retroactive effect.")

See *Outline* at I.E and IV.A.6.

## Adjustments

### OBSTRUCTION OF JUSTICE

First Circuit holds that attempted escape from state custody before start of federal investigation may warrant obstruction enhancement. After his arrest by Maine police for a check-kiting scheme, defendant unsuccessfully attempted to escape from the county jail. Shortly thereafter a federal investigation of defendant's activities began and eventually led to federal charges and a plea of guilty to bank fraud and impersonating an IRS agent. Based on the escape attempt, the district court increased his offense level under § 3C1.1 for obstruction of justice. Defendant appealed, claiming that an attempted escape from state authorities before the federal investigation had begun was not a proper basis for the enhancement.

The appellate court affirmed: "The commentary to [§ 3C1.1] makes clear that 'escaping or attempting to escape from custody before trial or sentencing' falls within the definition of obstructive or impeding conduct. . . . The slightly more difficult task is defining when conduct can be said to have occurred 'during the investigation . . . of the instant offense.'" The court concluded that "the guidelines should be read in a common-sense way. Doing so here strongly suggests that the provision may be triggered if, notwithstanding the lack of an ongoing federal investigation, there is a close connection between the obstructive conduct and the offense of conviction. In this case the connection is skin tight: the behavior underlying appellant's arrest by local gendarmes . . . is the very essence of the offense for which the district court sentenced him."

The court also reasoned that the commentary to § 3C1.1 consistently refers to obstructive conduct "without any limitation to federal custody, federal officers, or official federal investigations." In sum, "we hold that so long as some official investigation is underway at the time of the obstructive conduct, the absence of a federal investigation is not an absolute bar to the imposition of a section 3C1.1 enhancement." See also *U.S. v. Lato*, 934 F.2d 1080, 1082-83 (9th Cir. 1991)

(affirmed enhancement for obstruction of state investigation prior to federal action) [4 *GSU* #7].

*U.S. v. Emery*, No. 92-1619 (1st Cir. Apr. 28, 1993) (Selya, J.).

See *Outline* at III.C.4.

## ACCEPTANCE OF RESPONSIBILITY

*U.S. v. Broussard*, 987 F.2d 215 (5th Cir. 1993) (Remanded: It was error to deny § 3E1.1 reduction to defendant who refused plea agreement and went to trial in order to contest whether the law applied to his conduct; he did not "den[y] the essential factual elements of guilt," see § 3E1.1, comment. (n.2)).

See *Outline* at III.E.4.

## Criminal History

### INVALID PRIOR CONVICTIONS

Whether Application Note 6 to § 4A1.2 (as amended Nov. 1990) limits challenges to prior convictions at sentencing continues to divide the circuits. Three recent opinions:

*U.S. v. Elliott*, No. 92-2434 (8th Cir. May 11, 1993) (Loken, J.) (Affirmed: Appellate court rejected challenge to *U.S. v. Hewitt*, 942 F.2d 1270 (8th Cir. 1991), which held that Note 6 requires that any prior conviction not invalidated prior to sentencing must be counted. The court also held "that Application Note 6 as construed in *Hewitt* passes constitutional muster" in limiting collateral attacks.) (Arnold, C.J., dissenting on constitutional issue).

*U.S. v. Roman*, 989 F.2d 1117 (11th Cir. 1993) (en banc) (per curiam) (Affirming district court, reversing panel opinion that held § 4A1.2 and accompanying commentary gave the district court discretion to review prior convictions, see 960 F.2d 130 (11th Cir. 1992) [4 *GSU* #22]. The en banc court held that "the amended text of Note 6 is plain: under § 4A1.2, district courts can exclude only convictions that have already been ruled invalid. Nothing in Note 6, much less the guidelines themselves, authorizes district courts to question state convictions for the first time at sentencing." The court also stated that the Constitution requires such collateral review only when a defendant "sufficiently asserts facts that show that an earlier conviction is 'presumptively void,'" a showing not made in this case.)

*U.S. v. Brown*, No. 92-7353 (3d Cir. Apr. 30, 1993) (Alito, J.) (Remanded: District court incorrectly ruled it did not have discretion to consider defendant's constitutional challenges to prior convictions. "We hold that under the current version of the Guidelines, a sentencing judge has authority to permit such constitutional challenges. . . . If the Commission did not intend this interpretation, it can very easily clarify its intent when it next promulgates Guidelines amendments." The court also stated that such challenges should be handled by following the procedures set forth in *U.S. v. Jones*, 977 F.2d 105, 110-11 (4th Cir. 1992)).

See *Outline* at IV.A.3, and summary of *U.S. v. Vea-Gonzales*, 986 F.2d 321 (9th Cir. 1993) in 5 *GSU* #10.

### CONSOLIDATED OR RELATED CASES

*U.S. v. Smith*, No. 91-50029 (9th Cir. Apr. 22, 1993) (Wiggins, J.) (Reversed in part: Opinion at 982 F.2d 354

withdrawn and reissued, the appellate court now holding that defendant's two prior assault convictions should be counted as one. Even though the two assaults involved different victims, dates, and locations, and were not part of a common scheme, the court held that they "must be considered related because they were 'consolidated for . . . sentencing.'" U.S.S.G. § 4A1.2(a)(2) & comment. (n.3). . . . There is no need for a formal consolidation order for cases to be 'related' under section 4A1.2. . . . The rule is 'all prosecutions combined for trial or sentencing [count] as a single conviction.' . . . Smith's prior convictions were sentenced in the same proceeding by the same judge under the same docket number. This satisfies section 4A1.2.")

See *Outline* at IV.A.1.c, and delete reference to *Smith* in paragraph 3.

### CAREER OFFENDER

*U.S. v. Carrillo*, No. 90-50704 (9th Cir. Apr. 19, 1993) (Wallace, C.J.) (Affirmed: Defendants were properly sentenced as career offenders even though one of their required prior violent felonies was committed at age 17 and they were committed to the California Youth Authority. Both defendants had been tried as adults and received sentences exceeding one year and one month. Thus, under the definitions in § 4A1.2(d)(1) & comment. (n.7) and § 4B1.2, comment. (n.3), each defendant had received an "adult sentence of imprisonment" for a "prior felony conviction.")

See *Outline* at IV.A.4 and generally at IV.B.2.

## Departures

### CRIMINAL HISTORY

*U.S. v. Henderson*, No. 92-1019 (9th Cir. May 17, 1993) (Beezer, J.) (Remanded: District court improperly departed upward on ground that defendant's criminal history score inadequately reflected the "extremely violent and serious" nature of his two previous convictions. Citing *U.S. v. Morrison*, 946 F.2d 484, 496 (7th Cir. 1991) [4 *GSU* #10], the appellate court concluded that the "district court did not believe that the Sentencing Commission overlooked anything in awarding criminal history points; the district court believed that the Sentencing Commission did not assign enough points for these particular offenses. That belief may be morally correct. However, the Sentencing Commission chose to award defendants three criminal history points for every conviction leading to a sentence of greater than one year, regardless of the nature of the underlying offense conduct," and thus defendant's prior offenses were "adequately considered.")

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

## Sentencing Procedure

### PROCEDURAL REQUIREMENTS

*U.S. v. Patrick*, 988 F.2d 641 (6th Cir. 1993) (Affirmed: District court is not obligated to notify defendant before sentencing hearing that it will disregard presentence report recommendation to allow acceptance of responsibility reduction: "the guidelines clearly put the burden of proof on the defendant to show acceptance of responsibility. The favorable recommendation of the probation department does not alter this, whether or not the government objects.")

See *Outline* at IX.E.

# Nomination Form

**EXHIBIT**  
**F**

Legal Education Institute  
 601 D Street, N.W.  
 Room 10332  
 Washington, D.C. 20530

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(Please Type)

<b>C</b> <b>C</b> <b>O</b> <b>U</b> <b>R</b> <b>S</b> <b>E</b>	Course Name	Course Date(s)	Course Location
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<b>N</b> <b>O</b> <b>M</b> <b>I</b> <b>N</b> <b>A</b> <b>T</b> <b>O</b> <b>R</b>	Name		Title
	Phone Number	Number of Nominees Submitted:	Order of Preference of this Nominee:

<b>N</b> <b>O</b> <b>M</b> <b>I</b> <b>N</b> <b>E</b>	Name		Title
	Office, Agency or Department Name		Phone Number

<b>Q</b> <b>U</b> <b>E</b> <b>S</b> <b>T</b> <b>I</b> <b>O</b> <b>N</b> <b>N</b> <b>A</b> <b>I</b> <b>R</b> <b>E</b>	1. Has the nominee applied for this course in the past and not been selected? Yes      No      (please circle)      If yes, how many times?
	2. What percentage of nominee's work involves the subject(s) of the course?
	3. Indicate the level of skill or knowledge nominee has in this area: Novice              Intermediate              Advanced      (please circle)
	4. How many years has the nominee worked in this area?
	5. What training has the nominee had in this area?
	6. If necessary, please indicate any special considerations:

<b>A</b> <b>D</b> <b>D</b> <b>R</b> <b>E</b> <b>S</b>	Return mailing Address: Must be Typed and fit into box	<b>LEI USE ONLY</b>	
	<div style="border: 1px solid black; height: 80px; width: 100%;"></div>	ACCEPTED	NOT SELECTED