



United States Attorneys' Bulletin

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Anthony C. Moscato, Director

Editor-in-Chief: Judith A. Beeman (202) 514-4633
Editor: Audrey J. Williams (202) 514-4633

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Please send name or
address changes to:

The Editor, United States Attorneys' Bulletin
Department of Justice, Room 1627
10th and Constitution Avenue, N.W., Washington, D.C. 20530
Telephone: (202) 514-4633 - Fax: (202) 514-5850

COMMENDATIONS

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

Nancy A. Abraham (Michigan, Eastern District), by Hal N. Helterhoff, Special Agent in Charge, FBI, Detroit, for her successful prosecution of four individuals from the Salt Lake City area involved in an undercover operation on numerous charges of conspiracy, interstate transportation of stolen motor vehicles and other property, and interstate transportation in aid of racketeering.

Melissa Annis (Texas, Southern District), by Michael D. Wilson, Special Agent in Charge, FBI, Houston, for her valuable assistance and cooperation during the past four years in a multitude of drug investigations that personify the FBI's National Drug Strategy.

J. David Bennett (Louisiana, Eastern District), by Anthony E. Daniels, Assistant Director, FBI Academy, Quantico, Virginia, for his outstanding presentation at a Bank Fraud Seminar held recently in Chicago for FBI agents, investigators, and bank examiners.

Kenneth Buck (District of Colorado), by Gerald F. Swanson, District Director, Internal Revenue Service, Denver, for his excellent presentation on trial preparation and testimony at a Special Enforcement Training class for revenue agents.

Rob Chesnut (Virginia, Eastern District), by Major Edward A. Stevens, Director, Public Safety Academy, Fairfax County Police Department, Fairfax, Virginia, for conducting a four-hour training program on warrantless search and seizure to members of the Fairfax County Police Department.

Beverly Cox (Texas, Western District), by Cary H. Copeland, Director and Chief Counsel, Executive Office for Asset Forfeiture, Department of Justice, for her valuable assistance to the Executive Office for Asset Forfeiture while serving on detail, and for her support of the national asset forfeiture program.

Gonzalo P. Curiel (California, Southern District), by Philip J. Donohue Jr., Special Agent in Charge, Bureau of Narcotic Enforcement, California Department of Justice, San Diego, for his outstanding leadership in the successful prosecution of twenty-two members of an organization involved in methamphetamine manufacturing/distribution activities.

Teresa Davenport (Florida, Southern District), by William A. Campbell, Jr., Chief Field Counsel, U.S. Postal Service, Atlanta, for her excellent representation and outstanding legal skills in the discovery and litigation of a complex civil case.

Vivian R. Donelson and Lawrence J. Laurenzi (Tennessee, Western District), by Emil J. Schuster, Regional Inspector General for Investigations, Office of the Inspector General, Department of Housing and Urban Development (HUD), Atlanta, Georgia, for their valuable assistance and representation in the prosecution of complex HUD fraud cases in the Western District of Tennessee.

Eric Evenson (North Carolina, Eastern District), by Richard B. Broughton, Resident Agent in Charge, Drug Enforcement Administration (DEA), Raleigh, for his outstanding efforts in the prosecution of numerous DEA investigations, especially a case involving two defendants who were recently sentenced to life in prison without parole.

Arthur Garcia (District of Arizona), by Robert J. Boitmann, United States Attorney for the Eastern District of Louisiana, New Orleans, for his participation in the Money Laundering/Financial Issues/Asset Forfeiture Seminar held recently in Albuquerque, New Mexico.

Kay Gardiner (New York, Southern District), by L. Robert Griffin, Director, Litigation Division, Comptroller of the Currency (OCC), Administrator of National Banks, Washington, D.C., for her professionalism and legal skill in preparing a brief and reply brief in a case of major significance to OCC.

Win Grant (Virginia, Eastern District), by Robert P. Crouch, Jr., United States Attorney for the Western District of Virginia, Roanoke, for his excellent presentation on the subject of debt collection at the recent Financial Litigation Unit Annual Joint Training Session.

Gaven P. Kammer (Louisiana, Eastern District), by K. D. Kell, Inspector in Charge, U.S. Postal Service, New Orleans, for his successful prosecution of a criminal case involving the purchase of thousands of dollars of postal stamps with checks drawn on fictitious accounts. (The defendant pled guilty and was sentenced to twenty-seven months.)

Sharon Kimball, Rose Romero, John P. Lydick, and Theodore St. Clair (Texas, Northern District), by Phillip E. Jordan, Special Agent in Charge, Drug Enforcement Administration, Dallas Field Division, for their outstanding accomplishments in the war on drugs, and for their demonstration of enthusiasm, skill and integrity as Assistant United States Attorneys in the Amarillo and Dallas area.

Mark J. Krum (Florida, Middle District), by Judge Richard J. Fowler, Sixteenth Judicial Circuit, Key West, and Gerald T. Bennett, Professor of Law, University of Florida, Gainesville, for his participation and major contribution to the success of the 1993 Prosecutor/Public Defender Trial Training Program.

Jeffrey Michelland (Florida, Middle District), by Edwin R. Pierce, Chief, Northern Criminal Enforcement Section, Tax Division, Department of Justice, for his prompt action and cooperative efforts in responding to requests for assistance on several occasions, thereby saving considerable travel time and expense for the Northern Criminal Enforcement Section.

James Mitchell and Edward Ewell (Michigan, Eastern District), by C. W. Wilson, Postal Inspector in Charge, U.S. Postal Service, Detroit, for their outstanding success in prosecuting fraudulent workers' compensation cases involving postal employees, and for their continued efforts in reducing fraud, waste, and abuse in this program.

John Murphy (Louisiana, Eastern District), by David R. Knowlton, Acting Special Agent in Charge, FBI, New Orleans, for his prosecutive efforts and for obtaining convictions in a number of violent crime cases during the past year, including bank robbery, kidnapping, and carjacking.

Ernest Peluso and Michael Rubenstein (Florida, Middle District), by Maurice L. Dettmer, Chief, Criminal Investigation Division, Internal Revenue Service, Tampa, for their outstanding efforts in a multi-million dollar fraud case, one of the first successful trials in the Tampa Division involving Title 18, U.S.C. § 1957.

Margaret E. Picking (Pennsylvania, Western District), by William F. Wells, Chief, Criminal Investigation Division, Internal Revenue Service, Pittsburgh, for her professionalism and legal skill in a complex money laundering, conspiracy, and drug violations case which led to plea agreements on the part of two prominent businessmen in the Monroeville area.

Robert D. Potter, Jr. (North Carolina, Eastern District), by Richard A. Easley, Special Agent in Charge, Office of Assistant Inspector General for Investigations, Department of Defense, Atlanta Field Office, for his prosecutive support and assistance in bringing a complex fraud case to a successful conclusion.

Elizabeth Price (California, Eastern District), by Lt. Colonel Hervey A. Hotchkiss, Chief, Tort Claims and Litigation Division, Air Force Legal Services Agency, U.S. Air Force, Arlington, Virginia, for her professionalism and legal skill in the trial of a recent case, and for bringing about a favorable judgment for the U.S. Government.

William R. Sawyer (Alabama, Southern District), by J.B. Sessions, III, Esq., Stockman, Bedsole & Sessions, Mobile, for his excellent representation and outstanding efforts in defending many complaints and allegations filed by an individual during his service as United States Attorney for the Southern District of Alabama.

William Schaefer (California, Northern District), by Rollin B. Klink, Special Agent in Charge, U.S. Customs Service, San Francisco, for his outstanding legal and professional skill in successfully prosecuting two significant criminal cases, and for his special efforts in resolving related civil forfeiture matters.

Cathy Tutty (Virginia, Eastern District), by Carolyn E. Ortwein, Chief, Pretrial Services Office, U.S. District Court, Eastern District of Virginia, Alexandria, for her valuable services before, during, and after the recent arrests of several corrections officers at the Lorton prison.

James R. Wilson (Pennsylvania, Western District), by Colonel Richard B. Polin, Army Corps of Engineers, Pittsburgh, for his professionalism and legal skill in the trial of a recent case which resulted in a 6-month sentence for the defendant and restitution in the amount of \$90,000.00.

Stephen G. Winerip (District of Arizona), by Timothy J. Lee, Chief, Criminal Investigation Division, Internal Revenue Service, Phoenix, for his outstanding efforts in the successful prosecution of a complex income tax evasion case.

Bill Yahner (Texas, Southern District), by Edmund A. Sargus, Jr., United States Attorney, Southern District of Ohio, for his excellent lecture at the district-wide conference on asset forfeiture for agents and Assistants.

Gordon Zubrod (Pennsylvania, Middle District), by Edmund A. Sargus, Jr., United States Attorney, Southern District of Ohio, for his significant contribution to the success of a district-wide asset forfeiture conference for agents and assistants.

SPECIAL COMMENDATION FOR THE WESTERN DISTRICT OF OKLAHOMA

Vicki Miles-LaGrange, United States Attorney for the Western District of Oklahoma, announced that a total of over \$14.9 million was collected in prosecutions of civil and criminal cases in the Western District during the past fiscal year. These collections consisted of \$8.4 million in cash, over \$5.9 million in property, and over \$513,000 in forfeited assets of convicted criminals. The \$513,000 in forfeited money and property used in criminal activity is shared with local, state and federal law enforcement agencies to fight crime.

A fiscal year report compiled by Assistant United States Attorney Ron Pyle in charge of the Financial Litigation Unit shows that collection of debts arising out of criminal prosecutions accounted for over \$1.4 million. Over \$900,000 was collected from criminal assessments and fines, which provides general assistance to witnesses and crime victims, and from court-ordered restitution which reimburses crime victims for actual monetary losses from criminal conduct. Civil lawsuits by the United States Attorney's office were responsible for collection of about \$13.5 million. Foreclosure actions produced a recovery of \$3.8 million in cash and \$5.9 million in real estate. Collection of monetary judgments on defaulted education, small business, agricultural and guaranteed home loans totalled over \$2.5 million, and over \$1.1 million in government debts was recovered in bankruptcy proceedings.

United States Attorney Miles-LaGrange said, "We collected almost 3½ times the amount of the entire operating budget of the United States Attorney's office. This successful effort reflects the high priority given by the Department of Justice and this office to the collection of debts owed to the United States."

HONORS AND AWARDS

DISTRICT OF OREGON

Claire Fay, Michael Mosman, Kent Robinson, Assistant United States Attorneys for the District of Oregon, and Legal Secretary Jeanie Berg, were presented plaques of appreciation by James Poland, Resident Agent in Charge, U.S. Customs Service, Portland, inscribed by John E. Hensley, Assistant Commissioner, Office of Enforcement, Washington, D.C., as follows: "In appreciation and recognition of your outstanding trial preparation efforts in the matter of United States v. Columbia Sportswear Company. You brought about the successful prosecution and civil resolution of this landmark case. Congratulations on a job well done."

On May 17, 1993, Columbia Sportswear Company pled guilty to a felony charge of conspiring to obstruct and defeat the customs laws, involving underpaying customs duties and importing merchandise in violation of quotas. Columbia paid \$850,000 in customs fines, and approximately \$120,000 in additional duties and restitution. The guilty pleas and sentencing conclude a five-year investigation which is of major importance to U.S. importers and the domestic textile industry.

WESTERN DISTRICT OF NEW YORK

Joseph Guerra, III, Assistant United States Attorney for the Western District of New York, was presented an award by the Hamilton-Wentworth Regional Police, Buffalo, New York, for his valuable assistance and cooperative efforts in the successful prosecution of a drug case involving both the United States and Canada. The Buffalo office of the Drug Enforcement Administration (DEA) was also recognized for their efforts in this case.

Six defendants were arrested in October, 1992, on an 8-count indictment arising out of their activities in purchasing approximately 2,000 pounds of marijuana in Texas for transportation to Western New York, with Canada as the ultimate destination for distribution between February and August of 1992. Subsequently, three other individuals involved in the drug trafficking organization were arrested, including the drug leader's right-hand man and the pilot who flew the bulk of the marijuana from the United States into Canada. The arrest culminated a six-month investigation by DEA's Buffalo area task force, along with the Hamilton-Wentworth Police and the Royal Canadian Mounted Police.

PERSONNEL

Environment And Natural Resources Division

On December 23, 1993, Attorney General Janet Reno recommended to the President that Acting Assistant Attorney General Lois Schiffer for the Environment and Natural Resources Division be nominated to the post when Congress returns in January. Ms. Schiffer has been the Acting Assistant Attorney General since September 27, 1993.

[NOTE: On December 16, 1993, Gerald Torres withdrew his name from consideration as Assistant Attorney General for the Environment and Natural Resources Division. Mr. Torres will serve as Counsel to the Attorney General on issues of environmental policy.]

United States Attorneys

The following United States Attorneys have been appointed by the President or are serving on an interim basis:

- Katrina C. Pflaumer** - Western District of Washington
- Nora M. Manella** - Central District of California
- Larry H. Colleton** - Middle District of Florida
- Stephen Lawrence Hill, Jr.** - Western District of Missouri
- John M. Roberts** - Middle District of Tennessee
- David Lee Lillehaug** - District of Minnesota
- Thomas J. Gezon** - Western District of Michigan
- Rebecca Aline Betts** - Southern District of West Virginia

A complete list of United States Attorneys as of January 10, 1994, appears at p. 35 of this Bulletin. If you have any questions, please call the Executive Office for United States Attorneys at (202) 514-2121.

Year-End Nominations Statistics

	<u>Nominations</u>	<u>Confirmations</u>	<u>Pending</u>	<u>Withdrawn</u>
Circuit Judges	5	3	2	
District Judges	42	24	18	
U.S. Attorneys	77	57	20	
U.S. Marshals	34	0	34	
Departmental	17	15	0	2
Totals	175	99	74	2

Mary Lawton, Counsel For Intelligence Policy

On December 14, 1993, Attorney General Janet Reno, Deputy Attorney General Philip Heymann, and Associate Attorney General Webster Hubbell conducted a memorial service in the Great Hall of the Department of Justice in honor of Mary Lawton, Counsel for Intelligence Policy since 1982. Ms. Lawton died of an apparent heart attack at her home in Bethesda, Maryland on October 25, 1993.

Among the distinguished guest speakers were: former Attorney General Richard Thornburgh; former Attorney General Edwin Meese; former Attorney General Griffin Bell; former Attorney General Ramsey Clark; Jack Fuller, representing former Attorney General William French Smith; Director Louis Freeh, FBI; Patricia M. Wald, former Assistant Attorney General, Office of Legislative Affairs, presently District of Columbia Circuit Judge; John Harmon, former Assistant Attorney General, Office of Legal Counsel, and many other Department of Justice officials associated with Ms. Lawton over the years.

ATTORNEY GENERAL HIGHLIGHTS

Message From Attorney General Janet Reno

In the December, 1993 issue of "Justice For All," Attorney General Janet Reno addressed the Department of Justice employees as follows:

" . . . As I reflect on the events of the past year and look forward to the next, I am humbled by the enormity and importance of our task. The sacrifices that our employees and their families make in service to others -- on the job and in the community -- are wonderful and generous gifts. I want to thank each of you for these gifts and to wish every member of the Justice family a very happy holiday."

* * * * *

DEPARTMENT OF JUSTICE HIGHLIGHTS

First Round Of Grants Awarded For Police Officers On The Beat

On December 20, 1993, President Clinton announced the first round of grants under the new Police Hiring Supplement Program. The grants, awarded to 74 local law enforcement agencies and totaling about \$50 million, will help to hire 658 police officers. During a conference call from the Oval Office, President Clinton, accompanied by Vice President Al Gore, Attorney General Janet Reno and Director of the Office of National Drug Control Policy, Dr. Lee Brown, personally informed the mayors of six cities that their communities would receive the grants. Over the next several months, about 150 additional police departments will receive awards, bringing the total number of additional officers funded under the program to approximately 2,000. The program is a forerunner of the policing and public safety section of the crime bill, which also provides for additional police officers for community policing. Attorney General Reno said, "The grants we have awarded today will help American cities, large and small, by not only increasing their police forces, but also by creating partnerships with communities to solve their unique crime problems."

The Police Hiring Supplement, signed into law by President Clinton in July, is a \$150 million competitive grant program in which local law enforcement agencies nationwide can apply for funds to hire police officers and to implement community policing. Community policing is designed to complement traditional policing by forging effective partnerships between law enforcement and the community. Together, they develop solutions to prevent crime and address specific neighborhood problems.

Seventy-four jurisdictions, located in 31 different states, received awards in the first round. They include 70 police departments, two sheriffs' departments, one Indian tribe, and one consortium of law enforcement agencies. Eleven awards were made to jurisdictions with populations of 150,000 or above. These included a \$4 million grant to the city of Los Angeles, a \$3 million grant to the city of San Antonio, and awards of \$2 million or less to seven cities and two counties. Sixty-three awards were made to jurisdictions with populations of less than 150,000. These included six grants to jurisdictions with populations of 100,000 to 150,000; 15 to jurisdictions of 50,000 to 99,999; 17 to jurisdictions between 25,000 and 49,999; and 25 to jurisdictions of under 25,000 population.

For further details, a Fact Sheet is attached at the Appendix of this Bulletin as Exhibit A.

* * * * *

National Prison Industries Task Force

On December 15, 1993, the Department of Justice announced that former FBI Director William H. Webster has agreed to join former Chief Justice Warren E. Burger in co-chairing the National Prison Industries Task Force. Attorney General Janet Reno noted that their combined expertise would contribute to the overall success of the Task Force.

Organized in 1981 by then-Chief Justice Burger, the Task Force includes representatives from private industry, colleges and universities, the media, Congress, and government who have joined together to promote the work done by the Federal Prison Industries (FPI). Today FPI employs approximately 15,000 inmates in 84 factories. The Attorney General noted that there are currently more than 80,000 inmates in federal prisons and that positive work programs to prepare them for their reintegration into the community are critical. While all federal prisoners who are medically able are required to perform a work assignment, the Bureau of Prisons voluntarily caps FPI employment at 25 percent of the able population to minimize competition with the private sector.

The Attorney General said, "We must find new tasks for our federal prison inmates, both as a means of teaching inmates job skills and a work ethic that will enable them to succeed when they are released and, just as important, as a way of ensuring order within our correctional facilities. I am confident this can be done without unduly displacing wage earners in the private sector or impinging on private business. I know former Chief Justice Burger and former Director Webster will carefully balance these concerns as they move FPI forward."

A Task Force meeting is scheduled for January, 1994, to discuss growth strategies for FPI. For further information, please contact Ira Kirschbaum, General Counsel, FPI, at (202) 508-8400.

* * * * *

New Procedures For The Department Of Justice And The Federal Trade Commission

On December 2, 1993, the Antitrust Division of the Department of Justice, and the Bureau of Competition of the Federal Trade Commission (FTC) announced a new agreement to expedite decisions as to which agency should investigate a matter that falls within the antitrust jurisdiction of both agencies. Since 1938, this determination was made under an interagency agreement that said neither agency could begin an antitrust-related investigation until the question of which agency would handle the matter was resolved. This new agreement will make more efficient use of limited governmental resources and assure that all parties are treated fairly by avoiding duplicate requests for information. Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, said, "These new procedures should enhance the ability of both agencies to enforce the antitrust laws by speeding up decisions about which agency will do the investigation."

Federal statutes limit the time for the reviewing agencies to investigate possible anticompetitive problems in merger transactions. In general, the agencies have thirty days after receipt of necessary filings to decide to issue second requests for additional information. Under the new procedures, the Department and FTC will seek to resolve clearance requests within ten days after receipt of filings, leaving twenty days for investigation. The agencies previously attempted to resolve clearance requests within twenty days of the filing, which, in some instances, left no more than ten days to determine whether to request additional information. Under the new procedures, the principal grounds for determining which agency will conduct an investigation is expertise in the product involved in the investigation gained through substantial antitrust investigation of the product within the last five years. The new procedures outline steps to determine whether an agency has had a substantial antitrust investigation of a product, and procedures to resolve matters in which both agencies have substantial expertise. Both agencies will attempt to resolve clearance requests within a specified number of days depending on the type of investigation.

If you have any questions, or require further information, please contact Connie Robinson, Assistant Chief of Operation, Antitrust Division, at (202) 514-3544.

* * * * *

CIVIL RIGHTS DIVISION

Discriminatory Lending Practices In The Mortgage Industry

On December 13, 1993, the Civil Rights Division of the Department of Justice filed a complaint and consent decree in United States v. Shawmut Mortgage Company in the District of Connecticut. The complaint stems from a year-long investigation that revealed that Shawmut, one of the largest home mortgage lenders in the New England area, had engaged in a pattern or practice of race and national origin discrimination in lending in violation of the Fair Housing Act and the Equal Credit Opportunity Act. Representatives from the Federal Trade Commission and the Department of Housing and Urban Development also participated in the investigation.

Data submitted by Shawmut pursuant to the Home Mortgage Disclosure Act (HMDA) indicate that the lender rejected black and Hispanic applicants at more than twice the rate it rejected white applicants for the period January, 1990 through October, 1992. The complaint alleges that these disparities were caused in part by discrimination in the way the lender processed and underwrote its loan applications. Specifically, the Department of Justice alleges that Shawmut required more documentation from minority borrowers, failed to make the same effort to obtain such information from minority borrowers, applied higher underwriting standards to minority borrowers, and used an exceptions policy that resulted in the application of discriminatory standards to minority applicants. In announcing the suit and settlement, Attorney General Janet Reno stressed that the Department would look favorably upon efforts by lenders to evaluate their lending procedures and to take immediate steps to eliminate any discrimination found.

The investigation showed that in late 1991 Shawmut began a series of steps to eliminate its discriminatory practices, and, by late 1992, had corrected its deficiencies. The lender's current HMDA data indicate only a small residual disparity in rejection rates by race and ethnicity. For this reason, the consent decree does not require punitive damages or detailed remedial action. The decree sets up a \$960,000 compensation fund from which the lender will pay identified black and Hispanic victims of discrimination from the period January, 1990 through October, 1992 an amount of \$10,000 each. The amount in the pool is based on the parties' estimates of the number of victims, and the decree provides that the defendant will supplement the fund if necessary to compensate all identified victims at this dollar level. Additionally, Shawmut has agreed to continue its fair lending compliance program to ensure black and Hispanic borrowers are treated in a non-discriminatory fashion. Elements of the program include: 1) training loan officers in principles of fair processing and fair underwriting; 2) changing the compensation of loan originators to encourage them to try to make the loan type fit the applicant's needs; 3) conducting random testing to ensure employees are not discouraging minorities from applying for loans; 4) extending its advertising and marketing to reach into predominantly minority communities; 5) opening a branch in the predominantly minority community of Roxbury, Massachusetts; and, 6) expanding the role of its Mortgage Review Committee to include reviewing all rejected minority applications as well as all other rejected applications of individuals whose incomes are 115 percent or less of the median for their metropolitan areas. These steps will help ensure that minority applicants are not subjected to underwriting standards disparate from those applied to whites; that loan officers will not exercise discretion to grant exceptions in a way that favors whites; and that loan officers will make adequate efforts to obtain minority applicants' qualifying information. The Attorney General stated, "This administration is committed to working together with all of the regulatory agencies to combat lending discrimination."

* * * * *

State Of Illinois Sued In First Employment Disability Discrimination Case

On December 28, 1993, the Department of Justice filed its first lawsuit to protect people with disabilities from employment discrimination. It sued the State of Illinois for denying pension and retirement benefits to police officers and firefighters with disabilities. The Civil Rights Division also named the city of Aurora, Illinois and its police pension fund as defendants because they played a role in excluding two Aurora officers with disabilities from joining the fund. The Division is reviewing the practices of other states to determine if they are similarly discriminating.

The complaint, filed in federal court in Chicago, asserted that a state-established fund excluded otherwise qualified employees who were disabled at the time they joined local police and fire departments. The Department said the policy violated the 1990 Americans with Disabilities Act (ADA). Title I of the ADA prohibits discrimination against qualified individuals with disabilities in all employment practices, including compensation and other privileges of employment, such as pension plans. The practice in Illinois could also have led to the denial of disability benefits even for on-the-job injuries. The Department's investigation in Illinois resulted from the complaint of one of the Aurora police officers -- an individual with diabetes. The lawsuit asks the Court to declare the state's police officer and firefighter pension laws unlawful under the ADA. It also seeks an order requiring Illinois and its communities to provide police officers and firefighters equal access to benefit plans, and a prohibition against discriminatory employment practices in the future. Additionally, it seeks relief for individuals who have been harmed by the challenged pension practices. James P. Turner, Acting Assistant Attorney General, Civil Rights Division, said, "Such unfair treatment will not be tolerated. It is unlawful for a qualified individual with a disability to be denied complete access to a benefit plan that is otherwise available to persons without a disability."

Illinois police officers and firefighters who believe they may have been victims of discriminatory practices should contact the Chief of the Employment Litigation Section of the Department of Justice at (202) 514-3831.

* * * * *

CIVIL DIVISION

Record Settlements And Recoveries

On December 15, 1993, the Department of Justice announced that the Civil Division, in conjunction with the United States Attorneys' offices, obtained more than \$372 million in settlements and judgments in civil fraud cases in the past fiscal year. Frank W. Hunger, Assistant Attorney General for the Civil Division, said the \$372 million was an increase of approximately \$100 million from the prior fiscal year and brought the Department's civil settlements and judgments for fraud, waste and abuse to more than \$1.6 billion in the past six years. Mr. Hunger said the \$372 million included record settlements in qui tam cases filed under the whistleblower provisions of the False Claims Act, which allow private citizens -- known as relators -- to file suit in the name of the government and share in any recovery. This year, \$180 million of the total of \$372 million in recoveries was obtained in qui tam cases. Private parties were paid more than \$38 million for cases resolved this year and in past year.

Health Care Fraud

Health care fraud produced a significant increase in recoveries this year. The single largest Medicare recovery in history was the \$100 million settlement with National Health Laboratories Inc. (NHL) which resolved claims that NHL, a major blood testing laboratory in LaJolla, California, defrauded Medicare by manipulating doctors into ordering medically unnecessary tests whenever doctors ordered a basic blood test series. In that qui tam case the relator received \$15 million. Other related health care matters were:

- Metpath, a division of Corning Lab Services, Inc., and Metwest paid a total of \$39.8 million to settle charges similar to those against NHL and brought by the same individual. Another lab, Medchek Laboratories Inc., paid a \$1.4 million settlement also for conducting unnecessary tests.
- The Medical University of South Carolina paid \$1,078,014 to settle charges that it submitted more than 1,000 false claims for payment to the Department of Defense Civilian Health and Medical Program. A portion of the settlement, \$130,000, will be shared with the Medicaid program of the state of South Carolina.
- Visual Health and Surgical Center settled allegations that it double billed for some services and over billed for others. The company agreed to pay \$2.5 million.

Defense Recoveries

The Defense Department continued to be the focus of much of the Division's efforts and substantial recoveries were obtained. Loral Corp. and its subsidiary, Goodyear Aerospace Inc., paid \$9.1 million in addition to an earlier payment of \$2.5 million to settle claims the subsidiary made false statements to the government when negotiating the price of parachutes attached to bombs. Irvin Industries Inc., a competitor, was the relator in that qui tam. Other large settlements were:

- A \$10 million settlement was paid by Teledyne Industries Inc. for allegedly selling electronic aircraft identification systems that failed testing procedures to the Army. A Teledyne subsidiary, Teledyne Controls Inc., also paid 1 \$2.15 million settlement for its failure to perform proper tests on a variety of military.
- A \$7 million agreement was part of a global civil, criminal and administrative resolution that the United States Attorney in Buffalo, New York entered into with Battenfeld Grease and Oil to resolve charges the company supplied used rather than new oil under contracts with the Defense Logistic Agency.
- A \$3.3 million settlement resolved claims that General Electric Company failed to disclose required cost and pricing data in negotiating a government contract and thereby caused the Air Force to overpay for aircraft parts.
- A \$3.85 million settlement was reached with Hughes Aircraft for that company's scheme to shift costs from a contract that had reached its limit to a Navy contract for the construction of a radar system. This settlement arose from Hughes disclosure of the wrongdoing to the Department of Defense.
- A \$1 million settlement was achieved with a consortium of Japanese construction companies for their bid-rigging actions on contracts at the U.S. Naval Base at Sasebo, Japan.
- SPS Technologies, Inc. paid \$1.5 million arising from its delivery of aerospace fasteners to the military. This case was handled with the United States Attorney's office in Philadelphia and began with the company's voluntary disclosure.

Other Government Activities

Other areas of government activity that produced recoveries were: \$22 million in a U.S. Postal Service case; \$9 million in a Department of Transportation case; \$7.5 million in an Agency for International Development case; \$6.9 million in a Department of Veterans Affairs and the Department of Housing and Urban Development case; \$1.6 million in a Department of Agriculture case; and \$2.4 million in an Environmental Protection Agency case.

ASSET FORFEITURE

Payment Of Costs And Attorney's Fees From The Asset Forfeiture Fund

On December 10, 1993, Cary H. Copeland, Director and Chief Counsel, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General, issued Directive No. 7 to all United States Attorneys and other Department of Justice and Agency officials concerning payment of costs and attorney's fees from the Asset Forfeiture Fund - Limited Authority.

Pursuant to a delegation of authority from the Attorney General, Mr. Copeland has concluded that the Department of Justice has the legal authority pursuant to 28 U.S.C. § 524(c)(1)(A) to permit the use of Asset Forfeiture Fund monies to pay Equal Access to Justice Act (EAJA) awards arising from actions related to the forfeiture, attempted forfeiture or seizure for forfeiture of property. Mr. Copeland discusses in detail the history of EAJA, the Assets Forfeiture Fund, policy and procedure, allocation of responsibility, and the Execution of Payment.

A copy of Mr. Copeland's Directive No. 7 is attached as Exhibit B at the Appendix of this Bulletin. If you have any questions, please call the Executive Office for Asset Forfeiture, at (202) 616-8007.

* * * * *

CRIME STATISTICS

Crime Fell More Than Five Percent Last Year

On November 14, 1993, the Bureau of Justice Statistics (BJS) of the Office of Justice Programs announced that crimes against U.S. residents and households fell by more than five percent last year, reaching a 20-year low. Acting Director Lawrence A. Greenfeld noted that there were almost two million fewer crimes than in 1991, and stated, "In fact, the total number -- approximately 34 million -- was several million lower than in 1973, the first year of the survey." Mr. Greenfeld pointed out, however, that the rate of violent crime (that is, the number of violent offenses per 1,000 inhabitants twelve years old and older) has fluctuated during the past two decades. Last year it was lower than in the peak years during the late 1970s and early 1980s. However, it is currently 32.1 per 1,000 U.S. residents, which is higher than at any time between 1985 and 1991. In 1973 it was 32.6 per 1,000 U.S. residents twelve years old and older.

For black residents the 1992 violent crime rate was the highest ever recorded. The violent crime rate against young people from 12 through 15 years old was 36 percent higher last year than it was among the same age group during 1973, and among those from 16 through 19 years old it was 27 percent higher in 1992 than two decades ago. On the other hand, among those 35 years of age and older the rates of victimization for crimes of violence declined during the 20-year period.

During 1992 both the theft rate and the rate of household crimes reached all-time survey lows. BJS attributed this to significant declines in personal thefts without contact as well as household larcenies and burglaries. Last year there were 12,211,000 personal thefts -- 674,000 fewer than in 1991 and 2,759,000 fewer than in 1973. There were 14,817,000 crimes against households last year -- 1,208,000 fewer than the year before and 523,000 fewer than during 1973. However, the number of violent crimes has increased. There were 6,621,000 violent offenses last year -- 34,000 more than the year before and 1,271,000 more than in 1973.

Except for theft and simple assault, blacks were significantly more likely than were whites or people of other races, such as Asians or Native Americans, to be crime victims. In 1992, for instance, there were 15.6 robberies against black victims for every 1,000 black residents, compared to 4.7 for every 1,000 whites and 5.1 for every 1,000 people of other races. People younger than 25 years old also had significantly higher victimization rates than did older people, and males sustained significantly higher rates than females. Hispanics and non-Hispanics had generally similar victimization rates except for robbery. Hispanics were robbed at twice the rate of non-Hispanics (10.6 vs. 5.4 per 1,000 inhabitants.)

Single copies of "Criminal Victimization 1992" (NCJ-144776), as well as other BJS Statistical bulletins and reports 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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New Study On Possession Of Firearms By Juveniles In High Crime Areas

On December 12, 1993, a Research in Brief, funded by the National Institute of Justice and the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice, was released indicating that more than one out of five male high school students surveyed in crime-ridden urban neighborhoods in four states reported owning a gun. The study also stated that 83 percent of male juveniles behind bars for serious crime surveyed in these states reported having a gun at home. The study was based on surveys of almost 1,600 young men in 1991 conducted in schools and correctional facilities in California, New Jersey, Louisiana and Illinois. The report cautioned that the results should not be considered typical because it focused on serious juvenile offenders and students from inner-city schools that had experienced firearm incidents in the recent past. The following are some of the key findings:

- 83 percent of inmates and 22 percent of the students possessed guns.
- 55 percent of inmates carried guns all or most of the time in the year or two before being incarcerated; 12 percent of the students did so, with another 23 percent carrying guns now and then.
- The firearms of choice were high-quality, powerful revolvers, closely followed by automatic and semiautomatic handguns and then shotguns.
- Most of those surveyed thought it would be easy to acquire a gun. Only 13 percent of inmates and 35 percent of students said it would be a lot of trouble or nearly impossible.
- When asked how they would get a gun, 45 percent of the inmates and 53 percent of the students would "borrow" one from family or friends; 54 percent of the inmates and 37 percent of the students said they would get one "off the street."
- Fewer inmates and students said they used hard drugs than expected (43 percent of inmates and 5 to 6 percent of students). Drug use was moderately related to gun activity.
- More inmates than students reported selling drugs (72 percent of inmates and 18 percent of students). Those who were involved in selling drugs had higher levels of gun ownership and use than those who were not.
- The main reason given for owning or carrying a gun was self-protection.

The Research in Brief entitled "Gun Acquisition and Possession in Selected Juvenile Samples," (NCJ-145326), by Joseph F. Sheley, Ph.D., Associate Professor, Department of Sociology, Tulane University, and James D. Wright, Ph.D., Favrot Professor of Human Relations at Tulane, may be obtained from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20850. The telephone number is: (301) 251-5500 or 800-851-3420.

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POINTS TO REMEMBER

Settlement Reached Over Flaws In Hubble Space Telescope

The Department of Justice announced that it reached a \$25 million settlement with the maker of the Hubble Space Telescope, the Perkin-Elmer Corporation, and with Hughes Danbury Optical System, a subsidiary of Hughes Aircraft Corp., which assumed certain liabilities of Perkin-Elmer when it bought the company in 1989. The \$25 million settlement is being paid with \$25 million in cash, \$3.5 million in waived fees under the telescope contract and \$6.5 million refunded costs in continuing and additional work related to the Hubble Space Technology. The government contended that the company knew or should have known of the defect in the telescope's main mirror which prevented the \$2 billion telescope from focusing sharply and achieving some of its planned observations.

In exchange for the payment, the government is releasing the companies from liability under the False Claims Act and various common law causes of action. This settlement was reached after a three-year investigation by the Department and the Inspector General of the National Aeronautics and Space Administration (NASA). The Department of Justice negotiated the agreement on behalf of the NASA.

* * * * *

New Transfer Program For Mexican Prisoners

On December 29, 1993, the Department of Justice announced the transfer of eighty-three Mexican nationals out of federal prisons as the result of an intensified effort by Attorney General Janet Reno following meetings with Mexican Attorney General Dr. Jorge Carpizo in October. (See, United States Attorneys' Bulletin, Vol. 41, No. 11, at p. 377.) At the meetings, Ms. Reno initiated an agreement to develop new procedures to expedite the transfers. Upon her return, she established a special task force to work with the Mexican government and to select appropriate individuals eligible for the transfer.

The Mexicans were transferred from the La Tuna Federal Correctional Institution in New Mexico to Mexican authorities to serve out the rest of their sentences in Mexican custody. Another 20 to 25 are awaiting approval from the Mexican government for transfer. Before being sent across the border, each prisoner was afforded defense counsel and an appearance before a U.S. magistrate to assure his willingness to return to Mexico. The Justice Department anticipates further transfers on a monthly basis. The cases of approximately 8,000 Mexicans in federal prisons are currently being reviewed for appropriateness for transfer. The transfer program will free prison space and save the United States government approximately \$21,000 a year per prisoner. The transfers that occurred on December 29 will save approximately \$250,000.

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United States v. John Demjanjuk

On December 29, 1993, Jo Ann Harris, Assistant Attorney General for the Criminal Division, filed a Motion to Reopen Judgment, and a Brief in Support of the Motion, in the United States District Court for the Northern District of Ohio. The question presented was whether the Court should reopen its denaturalization judgment and take whatever steps it deems appropriate, including receiving additional evidence from the parties, to determine that the judgment remains valid. If at the conclusion of the reopened denaturalization proceeding, the Court concludes that the judgment independently rests on an unimpeached finding that Demjanjuk served the SS at the Trawniki camp, the government asks the Court to enter an order reaffirming its judgment. Attorney General Janet Reno commented, "While our objective is still to bring about Mr. Demjanjuk's prompt removal from the United States, we want there to be no doubt in any reasonable person's mind that Mr. Demjanjuk served in Nazi death camps and concealed that fact when he applied to become a U.S. citizen."

For further information, please call Criminal Division attorneys, Joseph Douglas Wilson, or Patty Merkamp Stemler, at (202) 514-3740.

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AFFIRMATIVE CIVIL ENFORCEMENT PROGRAM (ACE)**ACE Executive Committee Meeting**

On December 1-2, 1993, the ACE Executive Committee met in Washington, D.C. In order to streamline the ACE program, better serve the Department's customers, and support regional training and other training conferences, the Committee established the following Regional Working Groups chaired by Assistant United States Attorneys:

<u>Regional Working Group</u>	<u>Contact</u>	<u>District</u>	<u>Telephone</u>
Northeastern Seaboard	Cathy Votaw John Bates	Pennsylvania, E.D. (Philadelphia) District of Columbia	(212) 451-5200 (202) 514-7151
Southeastern Seaboard	Barbara Bisno	Florida, S.D. (Miami)	(305) 536-4675
Midwest	Linda Wawzenski Clare Schenk	Illinois, N.D. (Chicago) Missouri, E.D. (St. Louis)	(312) 353-5300 (314) 539-2200
New England	Suzanne Durrell Helen Toor	District of Massachusetts (Boston) District of Vermont (Burlington)	(617) 223-9400 (802) 951-6725
Far West	Steve Sheffler	California, N.D. (San Francisco)	(415) 556-1126
South	Bill Campbell	Kentucky, W.D. (Louisville)	(502) 582-5911
Far South	Ken Dodd	Texas, E.D. (Beaumont)	(409) 839-2538

The ACE Executive Committee met with Assistant Attorney General Frank Hunger of the Civil Division, and Gerald Stern, Special Counsel to the Attorney General for Financial Institution Fraud. In attendance were Stuart Schiffer, Deputy Assistant Attorney General, Civil Division; George Phillips, Counsel to Mr. Hunger; and Michael Hertz, Director, Commercial Litigation Branch, Civil Division. The topics of discussion were: health care fraud and using the special expertise in the field, and improving communications between the Working Group, the Commercial Litigation Branch and the United States Attorneys' offices.

United States Attorney Edward Dowd, Eastern District of Missouri; Christopher Droney, District of Connecticut; and Steve Altman of the Commercial Litigation Branch; were designated to serve as ACE Program liaisons with Mr. Hunger.

[NOTE: Mr. Dowd is Chairman of the Financial Litigation Subcommittee and Mr. Droney is Chairman of the Civil Issues Subcommittee of the Attorney General's Advisory Committee of United States Attorneys. The ACE Working Group reports to the subcommittees that these men chair.]

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ACE DISTRICT ACTIVITY

Western District Of Texas

The United States Attorney's office in El Paso conducted a criminal/civil investigation into the failure of a local bank. Assistant United States Attorney Harold E. Brown, Jr. discovered that one of the principal targets, who was granted criminal immunity several years ago, had both failed to obtain civil immunity, and more importantly failed to cooperate fully as required by his grant of criminal immunity. The defendant was informed of his FIRREA civil liability and of the United States Attorney's intention to proceed with a penalty action based on independent evidence. After consultation with his lawyer, the defendant agreed to pay \$100,000. Thus, the defendant will pay an appropriate civil penalty and also testify, per his grant of criminal immunity, for the United States.

Assistant United States Attorney: Harold E. Brown, Jr. - (915) 534-6884.

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Northern District Of Ohio

The newsworthiness of ACE Programs which target fraud at the local level and increase a government program's ability to serve its intended customers was shown once again. A local Ohio TV station recently conducted a sting operation where their own reporter filmed food stamp trafficking with an undercover camera. The reporter highlighted how the United States Attorney's office in the Northern District of Ohio (Cleveland) is working with state prosecutors who are referring state criminal trafficking cases over to the United States Attorney after the state process has been concluded.

Food stamp fraud prosecution has been the subject of several ACE Conferences. By working closely with the Food and Nutrition Service and the State, the United States Attorney can effectively use the civil tools to both stem fraud and better serve the customer of the food stamp program.

Assistant United States Attorney: Alex Rokakis - (216) 622-3673.

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SUPREME COURT WATCH***An Update of Supreme Court Cases From The Office Of The Solicitor General*****Selected Cases Recently Decided****Civil Cases**

United States v. James Daniel Good Real Property, No 92-1180 (decided December 13)

In this case, the Court held that, absent exigent circumstances, the Due Process Clause requires that the government give a property owner notice and a hearing before seizing real property subject to forfeiture under 21 U.S.C. 881(a)(7). The Court also held that the government's failure to follow the internal notification and reporting requirements of 19 U.S.C. 1602-1604 did not bar its action for forfeiture.

Selected Cases Recently Argued**Civil Cases**

Turner Broadcasting v. FCC, No. 93-44 (argued January 12)

In this case, the government argues that the "must-carry" provisions of the Cable Television Consumer Protection Act of 1992, 47 U.S.C. 534 and 535, do not violate the First Amendment.

Farmer v. Brennan, No. 93-7247 (argued January 12)

In this case, the government argues that respondent prison officials were not deliberately indifferent to the risk to petitioner of attack by other inmates.

Department of Revenue of Montana v. Kurth Ranch, No. 93-144 (argued January 19)

In this case, the government argues, as amicus curiae, that the payment of a tax on marijuana imposed subsequent to a criminal conviction for possession does not violate the Double Jeopardy Clause.

Criminal Cases

Nichols v. United States, No. 92-8556 (argued January 10)

In this case, the government argues that the Constitution does not bar consideration of a prior uncounseled misdemeanor conviction in determining a defendant's criminal history score for a subsequent offense under the Sentencing Guidelines.

Victor v. Sandoval, No. 92-8894

Sandoval v. California, No. 92-9049

In these consolidated cases, the government argues, as amicus curiae, that the Due Process Clause does not require a trial court to define the meaning of reasonable doubt for a jury.

Questions Presented in Selected Cases in Which the Court Has Recently Granted Cert.

Civil Cases

Key Tronic Corp. v. United States No. 93-376 (granted December 13)

Whether the provision in Section 107(a) of CERCLA, 42 U.S.C. 9607(a), that allows a private party to recover the "costs of response" to pollution at designated sites, implicitly authorizes the recovery of attorney fees.

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CASE NOTES

CIVIL DIVISION

Fourth Circuit Upholds VA's Right To Collect Indemnification From Veteran Under Home Loan Guaranty Program

Under a program established in 1945, the VA guarantees home loans for qualified veterans. The agency's regulations require the veteran to indemnify the VA for any amounts paid by the VA on account of the veteran's obligations. Plaintiff in the present case purchased a home under the program; he subsequently sold the home and moved to another state. The subsequent purchaser defaulted on the loan, and the lender instituted foreclosure proceedings. Plaintiff was given actual notice of the foreclosure sale five days before that sale took place. A sizeable deficiency remained after the foreclosure sale. The VA paid the lender pursuant to the guaranty and sought indemnification from the veteran. The veteran contended that the VA's failure to provide him notice of foreclosure at the time required by state law precluded the agency from exercising its right to indemnification. He also argued the notice was constitutionally insufficient under the due process clause. The district court ruled in favor of the agency, holding that the VA's federal right to indemnification could not be impaired by contrary state law provisions, and that the notice given was sufficient to satisfy the agency's constitutional obligations.

The court of appeals has now affirmed. Consistent with decisions recently issued by the Seventh, Eighth, and Ninth Circuits, the court held that the VA's federal right to indemnification did not depend upon the agency's compliance with state-law prerequisites to obtaining a deficiency judgment. The court rejected plaintiff's due process claim as well. The court held that plaintiff had failed to identify any additional steps that he could have taken to protect his interests if he had been notified of the impending foreclosure at an earlier date.

Boley v. Brown, No. 93-1067 (Nov. 15, 1993) [4th Cir.; E.D.N.C.].
DJ # 151-54-435.

Attorneys: Mark B. Stern - (202) 514-5089
Malcolm L. Stewart - (202) 514-1633

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Eighth Circuit Holds That Discretionary Function Exception Bars Federal Tort Claims Act (FTCA) Suit Challenging Military's Response To The AIDS Epidemic

This is an action under the Federal Tort Claims Act (FTCA). Plaintiffs D.B.S., N.A.S., and C.R.S. alleged that they contracted the human immunodeficiency virus (HIV) -- the virus that causes AIDS -- as a result of the negligence of the United States. According to plaintiffs, D.B.S. contracted HIV from blood transfusions performed in August 1983 at a military hospital while he was performing training duties as a member of the Minnesota National Guard. D.B.S. transmitted HIV to his wife, N.A.S., who later passed the virus on to one of their three children, C.R.S. Plaintiffs alleged that the military was negligent in two respects: (1) by adopting the donor screening procedures recommended by the Food and Drug Administration and the American Association of Blood Banks for blood donor facilities in the civilian sector, instead of adopting more stringent procedures tailored to the special needs of the military; and (2) by failing to warn D.B.S. that he might have been infected with HIV as a result of the transfusions that he underwent in 1983. The district court entered summary judgment in favor of the United States on the ground that plaintiffs' claims are barred by the FTCA's discretionary function exception, 28 U.S.C. § 2680(a).

The court of appeals (Magill, Loken; John R. Gibson, concurring in part and dissenting in part) has now affirmed. The panel unanimously concluded that the military's decision to adopt the donor screening procedures applicable to private sector blood banks was protected by the discretionary function exception, holding that the decision was discretionary and susceptible to policy analysis. The majority further determined that the failure to warn transfusion recipients such as D.B.S. was similarly shielded from judicial review because the military had not adopted a specific and mandatory warning policy and the decision whether to provide warnings was susceptible to a balancing of safety and cost considerations. The court's opinion should prove helpful to the government's defense of other similar challenges to the military's response to the AIDS crisis.

C.R.S., et al. v. United States, No. 93-2294 (December 10, 1993) [8th Cir.; D. Minn.]. DJ # 157-39-954.

Attorneys: Robert S. Greenspan - (202) 514-5428
John F. Daly - (202) 514-2496
Michael S. Raab - (202) 514-4053

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Ninth Circuit, Sitting En Banc, Reaffirms That The Administrative Procedure Act Does Not Afford District Courts Jurisdiction Over Contract Claims Against The United States

The specific issue presented in this case is whether the district court had jurisdiction pursuant to the Administrative Procedure Act ("APA") over plaintiff's claim for reformation of a contract it has with the United States. The district court concluded that it lacked jurisdiction and dismissed. After oral argument, but before the panel issued a decision, the Ninth Circuit ordered that the case be reheard en banc to settle an intra-circuit conflict on whether district courts may hear contract claims.

The en banc court has now issued a favorable *per curiam* opinion in which it reaffirmed its prior decision in North Side Lumber Co. v. Block, 753 F.2d 1482 (9th Cir.), cert. denied, 474 U.S. 931 (1985), which had held that the APA does not afford district courts jurisdiction over equitable claims against the government based on contract rights, as opposed to statutory rights. The en banc court also ruled that Bowen v. Massachusetts, 487 U.S. 879 (1988), does not affect the analysis because Bowen involved another section of the APA and was not a contract case. The Court remanded the case to the panel for determination of whether plaintiff's claim is contractually or statutorily based. The Ninth Circuit's decisions on these jurisdictional issues were in disarray, and this en banc decision should be very helpful to us in other circuits.

North Star Alaska v. United States, No. 92-35082 (Nov. 23, 1993)
[9th Cir.; D. Alaska]. DJ # 78-6-36.

Attorneys: Barbara C. Biddle - (202) 514-2541
Mary K. Doyle - (202) 514-4826

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Tenth Circuit Holds District Court Has No Jurisdiction To Preliminarily Enjoin Allegedly Discriminatory Transfer Of Federal Employee Before Exhaustion Of Title VII's Administrative Remedies

This is an employment discrimination case in which the plaintiff, a white employee of the Bureau of Alcohol, Tobacco and Firearms (BATF), alleges that his transfer to another agency position was impermissibly based on race, in violation of Title VII of the Civil Rights Act of 1964. The plaintiff, who was supervisor of the BATF's Oklahoma City Office, was reprimanded and transferred after the agency received complaints that several employees under plaintiff's supervision had displayed on their office walls racist posters and other racially inflammatory material. Before exhausting his administrative remedies, plaintiff filed suit in district court and obtained a preliminary injunction barring his transfer. The Tenth Circuit (Ebel, Seth, Kelly), in a brief, published opinion, has now reversed. The court of appeals reasoned that pre-exhaustion judicial intervention would disrupt the remedial scheme fashioned by Congress. It therefore held that the district courts lack subject matter jurisdiction to issue preliminary injunctive relief in a Title VII employment discrimination case before exhaustion of administrative remedies.

Knopp v. Magaw, No. 92-6152 (Nov. 19, 1993) [10th Cir.; W.D. Okla.].
DJ # 35-60-200.

Attorneys: Robert S. Greenspan - (202) 514-5428
Jeffrey Clair - (202) 514-4028

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False Claims Act Cases

Bankruptcy Court For The District Of Columbia Holds That Debt Arising Out Of Compromise Of Claims Under The False Claims Act Is Not A Dischargeable Debt

The Bankruptcy Court for the District of Columbia granted the Government's motion for summary judgment, declaring that a debt arising out of the compromise of claims under the False Claims Act is a nondischargeable debt under 11 U.S.C. §523(a)(2)(A). The court followed the 11th Circuit and rejected 7th and 9th Circuit precedent that the settlement agreement was a novation, leaving only a dischargeable contract debt. The court also held that the settlement agreement fixed the amount of damages, and the Government therefore need not put on proof of causation.

In re Spicer, 155 B.R. 795 (Bankr D.D.C. 1993)

Attorney: David W. Long - (202) 307-0455

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District Courts For The Southern District Of Ohio And Middle District Of Pennsylvania Hold That The Government Is Entitled To Summary Enforcement Of Civil Investigative Demands Issued Pursuant To The False Claims Act

In a series of recent opinions, two district courts have held that actions to enforce civil investigative demands issued pursuant to the False Claims Act are subject to the same deferential, summary standard applied to the enforcement of administrative subpoenas. Both courts further held that recipients of the demands are not entitled to any discovery in the enforcement action, until and unless they can make a substantial and supported showing that enforcement would work an abuse of the Court's process. The courts also rejected the argument that civil investigative demands may only be used as a tool of last resort, holding that the Attorney General has the unreviewable discretion to determine when and if issuance of a demand is appropriate. The courts likewise rejected the argument that demands should not be enforced while a related grand jury investigation is under way. Finally, both courts denied the recipients' motions for stays pending appeal based, in part, on the Supreme Court's holding in Church of Scientology of California v. United States, 113 S.Ct. 447 (1992) (production of subpoenaed material does not moot appeal so long as appellate court can fashion some form of meaningful relief).

United States v. Seitz, Civ. No. MS-2-93-63 (S.D. Ohio, July 21, 1993);
United States v. Seitz, Civ. No. MS-2-93-63 (S.D. Ohio, August 25, 1993);
United States v. Witmer, Kelly and Harsco Corporation, Civ. No. 93-071
(M.D. Pa., Sep. 9, 1993);
United States v. Witmer, Kelly and Harsco Corporation, Civ. No. 93-071
(M.D. Pa., Oct. 8, 1993);
United States v. Witmer, Kelly and Harsco Corporation, Civ. No. 93-071
(M.D. Pa., Nov. 5, 1993).

Attorney: Dennis Phillips - (202) 307-1086

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Sixth Circuit Holds That 1986 Amendments To Qui Tam Provisions Of The False Claims Act Do Not Govern Pre-1986 Conduct

The Sixth Circuit has held that the 1986 qui tam provisions included in 31 U.S.C. § 3730 affect substantive rights and therefore do not apply to conduct occurring prior to the effective date of the 1986 amendments. The court then held that under the 1982 version of § 3730(c)(1) the relators were not entitled to a "reasonable informers fee" as a matter of law, because the relators' complaint was based on information that was already in the government's possession. The court noted that the evidence possessed by the Government need only be "sufficient to enable [the Government] adequately to investigate the case and to make a decision whether to prosecute."

United States v. TRW, Inc., 4 F.3d 417 (6th Cir. 1993).

Attorney: David Long - (202) 307-0455.

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District Court For The District Of Puerto Rico Holds That 1) 1986 Amendments To False Claims Act Govern Pre-1986 Conduct, And 2) False Claims Act Statute Of Limitations Begins To Run In Connection With Federally Insured Mortgage Loan When Mortgage Holder Seeks To Enforce Guarantee

Relying upon the analysis in Bradley v. Richmond School Board, 416- U.S. 696 (1974), a district court for the District of Puerto Rico has held that the 1986 amendments which enhanced the damages and civil penalties provisions of the False Claims Act govern pre-1986 conduct. The court also held that in a False Claims Act suit filed in connection with a federally insured mortgage loan the False Claims Act statute of limitations begins to run when the mortgage holder makes a claim for execution of the federal guarantee, rather than when the loan goes into default.

United States v. Stella, Civ. No 85-2197 (RLA) (D. P.R. Dec. 9, 1993)

Attorney: Marlene Gibbons (202) 307-0475

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TAX DIVISION

Court Of Appeals Cases

Second Circuit: On November 23, 1993, the Second Circuit reversed the adverse judgment of the District Court in Consolidated Edison Company of New York, Inc. v. United States. The taxpayer, after prepaying its property taxes to the City of New York City and receiving a discount on the amount of taxes owing as a result of that prepayment, claimed a deduction for the undiscounted amount of taxes owing and contended that the discount should be characterized as the receipt of tax-exempt interest. The District Court agreed, and the Government appealed.

On appeal, the Government contended that the taxpayer was only entitled to deduct the amount of tax actually paid. It then made the alternative argument that, if the taxpayer was entitled to a deduction for the undiscounted amount of tax, then the amount of the discount was taxable income. The court of appeals agreed with the Government's second argument, noting that the discount constituted interest income, but that, contrary to the conclusion of the District Court, this income was to tax-exempt interest on a municipal obligation because the City was exercising its taxing power and not its borrowing power in accepting the tax prepayments at a discount. As a result of this decision, the taxpayer was denied a refund of more than \$1.2 million in federal income taxes and interest for its 1975 and 1978 tax years.

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Fifth Circuit: On December 8, 1993, the Fifth Circuit reversed the unfavorable decision of the District Court in United States v. Park Towers, Inc., which involved a contest between the United States and the Archdiocese of New Orleans over the liquidated assets of a Louisiana partnership. The Archdiocese, which had advanced funds to the partnership's corporate general partner for the construction of a HUD-subsidized housing project in the City of New Orleans, argued that it was a partnership creditor and thus the amount owing to it was entitled to priority upon the liquidation of the partnership. The United States contended that the Archdiocese was not a creditor of the partnership, but rather a creditor only of the general partner, and that the perfected federal tax liens against the general partner were entitled to priority. The District Court determined that the Archdiocese was a partnership creditor, and that it was therefore entitled to be paid its debt before any funds were distributed to the general partner. On appeal, the Fifth Circuit reversed, finding that the Archdiocese was a credit of the general partner and not the partnership, and holding that the United States' lien had priority over the claims of the Archdiocese.

Fifth Circuit: On November 29, 1993, the Fifth Circuit affirmed the adverse decision of the Tax Court in Vinson & Elkins v. Commissioner. The question presented in this case was whether the actuarial assumptions used to compute contributions to defined benefit pension plans established for 132 of the firm's partners satisfied the requirements of Section 412(c)(3) of the Internal Revenue Code. Section 412(c)(3) provides that the actuarial assumptions used in determining funding for a defined benefit pension plan must be reasonable in the aggregate and must offer the actuaries' best estimate of anticipated experience under the plan. The Government asserted that the actuarial assumptions employed, e.g., an investment return of 5 percent in the mid-1980s, and a retirement age of 62 when the partnership agreement provided for retirement at age 65, were not reasonable in the aggregate, and that deductions for plan funding should be reduced accordingly. The Fifth Circuit rejected our legal argument that the assumptions chosen by the actuary must reflect his opinion as to the results that will actually be achieved by the plan, and held instead that, so long as the assumptions chosen fall within a broad range of reasonableness and are, in fact, chosen by the actuary, they pass muster under the statutory test. The court of appeals then concluded that the findings of the Tax Court that the assumptions employed by the actuary were reasonable were not clearly erroneous.

This case, which involved over \$11 million in deductions claimed by the partners of Vinson & Elkins, has substantial administrative importance because the IRS estimates that over \$200 million in revenue is at stake in similar cases. Appeals from similar rulings by the Tax Court are now pending in the Second, Sixth, and Ninth Circuits, several hundred cases raising this issue are currently docketed in the Tax Court, and thousands of other cases are pending at the administrative level as a result of a nationwide audit emphasis on this issue by the Internal Revenue Service.

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Fifth Circuit: On November 22, 1993, the Tax Division submitted a supplemental brief to the Fifth Circuit in Elvis E Johnson v. Robert Sawyer and United States. In this case, Johnson sued for damages under the Federal Tort Claims Act (FTCA) for injuries he claimed resulted from the wrongful disclosure of tax return information in an Internal Revenue Service press release. The press release reported that Johnson pled guilty to an information charging him with evasion of tax for two years (only one year was actually covered by the information) and set forth personal information about him which was not contained in the information. The District Court awarded Johnson over \$5 million in damages for economic loss and an additional \$5 million in damages for emotional distress and mental anguish.

On appeal, the Government contended that no recovery should lie because the suit here -- one seeking damages for the unauthorized disclosure of return information under Section 6103 of the Internal Revenue Code -- did not arise under state law as required by the FTCA. In a divided opinion, the Fifth Circuit initially held that this case presented a state law cause of action based on negligence per se, and then in a second divided opinion, held that the case presented a state law cause of action based on Texas' doctrine of tortious invasion of privacy. On October 28, 1993, the Fifth Circuit, sua sponte, ordered rehearing en banc.

* * * * *

Seventh Circuit: On December 10, 1993, the Seventh Circuit reversed the unfavorable judgment of the District Court in Jerrell Barnhill v. United States. This case, which involved over \$1 million, presented the question whether the District Court erred in dismissing the Government's claim for responsible person penalties for what it deemed to be "ethical violations" by Government counsel during the course of the litigation.

The taxpayer's attorney served a subpoena, by mail, on an Internal Revenue Service agent. The Government trial attorneys, after concluding that service-by-mail (as opposed to personal service) was ineffective, advised the agent that he need not appear as set forth in the subpoena, even though he had travelled to the place of trial and was willing to appear. After the agent did not appear when called to testify, the Court held a sidebar conference with counsel to inquire as to the agent's whereabouts. Although Government counsel answered all questions posed to him truthfully, the Court later found that the attorney had not been sufficiently forthcoming in explaining the circumstances surrounding the witness' failure to appear. Citing "lack of candor," the Court dismissed the Government's case as a sanction for "misconduct."

On appeal, we contended that the District Court's decision to award judgment to the taxpayer was an abuse of discretion. The Government trial attorneys, acting on their own behalf, filed a petition for a writ of mandamus, seeking to have the portions of the court opinion chastising them expunged. After exhaustively detailing the facts that led to the dismissal of the case by the District Court, the court of appeals concluded that the District Court had abused its discretion, observing that the taxpayers had suffered no real prejudice as a result of the Government attorneys' actions, and that, in such circumstances, the extreme sanction of dismissal was not warranted. Finding "no discrete examples of obviously wrong behavior," the Seventh Circuit also did not find Government counsels' behavior to constitute "misconduct" which showed "flagrant contempt for the court," such as is necessary to merit the sanction of dismissal in the absence of evidence that the behavior had "substantial adverse impact on the course of the proceedings."

With respect to the Government trial attorneys, the court of appeals noted that the District Court was "justifiably frustrated" by Government counsels' "stratagems," and observed that the District Court's finding that Government counsel exhibited a lack of candor was not clearly erroneous. Although recognizing that the Government counsels' behavior caused loss of time and aggravation to the trial court, the court of appeals ultimately concluded that such conduct, "while hardly exemplary, was not contumacious." The court of appeals then dismissed Government counsels' petition for a writ of mandamus, noting that they had not suffered a cognizable injury, and thus had no standing to seek such relief.

* * * * *

Ninth Circuit: On December 6, 1993, a divided panel of the Ninth Circuit affirmed the adverse decision of the Ninth Circuit's Bankruptcy Appellate Panel in In re Deer Park, Inc., a case involving the breadth of the Supreme Court's decision in United States v. Energy Resources Co., 495 U.S. 545 (1990). In Energy Resources, the Supreme Court held that a bankruptcy court has the power to direct the Internal Revenue Service to apply past due employment tax payments under a Chapter 11 plan to the debtor's "trust fraud" liability for withheld taxes (thereby relieving the debtor's responsible persons of their potential liability for such taxes under Section 6672 of the Internal Revenue Code) if such an allocation is "necessary to the success of the reorganization plan." The Court reasoned that once a plan is found feasible, the IRS is not entitled to the additional protection afforded by applying plan payments first to non-trust fund liabilities and thereby keeping responsible persons on the hook for the trust fund taxes. Rejecting our argument that the Supreme Court's decision does not apply to a bankruptcy in which the debtor is liquidating, rather than reorganizing, because the IRS lacks assurance that all taxes will be paid in full, the Ninth Circuit held here that the bankruptcy court could direct the IRS to allocate the payments it received to the debtor's trust fund liabilities. Judge Ferguson filed a dissent, noting that the allocation did not serve the interests of the debtor's bankruptcy estate, its employees, its creditors or its stockholders as the sole purpose and effect of the order was to relieve the debtor's president from liability as a responsible person.

* * * * *

Ninth Circuit: On November 22, 1993, the Ninth Circuit reversed the unfavorable judgment of the District Court in Richey v. United States. This case presented the question whether Richey, who was previously convicted under Section 7206(2) of the Internal Revenue Code for willfully aiding and assisting in the preparation of false and fraudulent tax returns, should be collaterally estopped in subsequent civil proceedings from relitigating the issue of willfulness.

The Internal Revenue Service imposed substantial return preparer penalties upon Richey with respect to the same returns that were the subject of this criminal conviction. Richey sought a refund of those penalties, which are imposed upon preparers of income tax returns who "willfully" understate the liabilities owed by their clients. The Government moved for summary judgment contending that Richey was collaterally estopped from relitigating the issue of "willfulness" by virtue of his criminal conviction. The District Court ruled that the Supreme Court's decision in Cheek v. United States, 111 S.Ct. 604 (1991), which had been handed down between the time of Richey's criminal conviction and this civil proceeding, constituted an intervening change in the law barring the application of collateral estoppel. A jury then returned a verdict for Richey concluding that he had not willfully understated the liability on the returns at issue.

On appeal, we contended that the Cheek decision did not mark a change in the law as applied to Richey's earlier conviction and that he should have been estopped from challenging the issue of willfulness. The Ninth Circuit agreed explaining that "Cheek did not constitute an intervening change in the law" in the Circuit, and that even an erroneous application of the law does not "defeat collateral estoppel."

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United States District Court Cases

Eastern District Of Pennsylvania: Five defendants have recently pled guilty in the United States District Court for the Eastern District of Pennsylvania to various charges arising from an 18-month long grand jury investigation into diesel fuel excise tax evasion in the Philadelphia - New Jersey area. On December 3, 1993, Robert and Russell Longo each pled guilty to charges of conspiracy and evasion of diesel fuel excise taxes. On December 6, 1993, David Savage and David Shuster each pled guilty to charges of conspiracy and violating the Racketeer Influenced and Corrupt Organizations Act (RICO), and Global Enterprises pled guilty to violating RICO.

The grand jury investigation resulted in the filing of a 97-count indictment against the Longos, Savage, Shuster and 14 others as a result of their alleged participation in an elaborate scheme to evade federal and state excise taxes on the sale of over 5 million gallons of diesel fuel. Approximately \$15 million in federal and state diesel fuel excise taxes were allegedly evaded by these individuals. The trial of the remaining defendants is scheduled for January 10, 1994.

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Western District Of Pennsylvania: On December 9, 1993, a grand jury in the Western District of Pennsylvania returned an indictment against several individuals charging them with engaging in a conspiracy to defraud the United States, the State of Ohio and the State of West Virginia of taxes due on the sale and distribution of diesel fuel. It is alleged that during the period from October 1, 1991, through December 31, 1991, one of the defendants used tanker trucks to deliver over 750,000 gallons of untaxed diesel fuel to truckstops operated by several of the defendants and other unindicted co-conspirators in Ohio and West Virginia. It is estimated that the distribution of this untaxed fuel resulted in the evasion of over \$300,000 in federal and state taxes.

* * * * *

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 November 16 - December 16, 1993. Persons listed below are AUSAs unless otherwise indicated:

Criminal Paralegal Course (Columbia, South Carolina)

From the District of South Carolina: **Nancy C. Wicker**, First Assistant United States Attorney, **John McIntosh**, Senior Litigation Counsel, **Terry Wooten**, **Kelly Shackelford** and **Dave Slattery**. From the Eastern District of Virginia: **Robert Chesnut**, **Mark Hulkower** and **John T. Martin**, and **Jan Purvis** and **Sabrina Black**, Paralegal Specialists. From the Southern District of West Virginia: **Pamela Hudson**, Paralegal Specialist, **Brandon Johnson**, **Michael Callaghan** and **John Parr**. From the Southern District of Florida: **Sue Johansen**, Paralegal Specialist, **Lynne Lamprecht**, Deputy Director of Training, and **Barbara Ward**. **Mary Jane Stewart**, Northern District of Georgia. **Theresa Bozak**, Paralegal Specialist, Asset Forfeiture Division, and **Steve Sozio**, Northern District of Ohio. **Patsy Silva**, Paralegal Specialist, Eastern District of California. **Elizabeth Regan**, Paralegal Specialist, Eastern District of North Carolina. **Peggy Martin**, Paralegal Specialist, and **Larry Montano**, Systems Manager, Central District of California.

Appellate Advocacy (Washington, D.C.)

Drew Days, Solicitor General. **Linda Boone**, District of Arizona; **Steve Mansfield**, Central District of California; **Harriet Galvin**, Southern District of Florida; **James Fleissner**, Northern District of Illinois; **Kathleen Nesi**, Eastern District of Michigan; **Eric Muller**, District of New Jersey; **Bonnie Schlueter**, Western District of Pennsylvania; **Ted McBride**, First Assistant United States Attorney, District of South Dakota; **Richard Durbin**, Appellate Chief, and **Robert Pitman**, Western District of Texas. **Richard Shiffrin**, Deputy Assistant Attorney General, Office of Legal Counsel. **Mervyn Hamburg**, Senior Counsel, Appellate Staff, and **Lena Mitchell**, Narcotics and Dangerous Drugs Section, Criminal Division. **Ann Reid**, Senior Trial Attorney, Civil Trial Section, Tax Division. From the Civil Division: **Mark Stern**, Appellate Litigation Counsel, and **Marleigh Dover**, **Mary Doyle**, **Freddi Lipstein**, **Michael Robinson**, **Susan Sleater**, Appellate Section, and **Charles Pazar**, Office of Immigration Litigation.

Criminal Tax Institute (St. Louis, Missouri)

Jay Weill, Chief, Tax Division, Northern District of California. **Mark Rotert**, Chief, Major Crimes Division, and **Joan Safford**, Deputy United States Attorney, Northern District of Illinois. **David Barger**, **James Crowe**, and **Rosemary Meyers**, Eastern District of Missouri. From the Tax Division: **Michael L. Paup**, Acting Assistant Attorney General. **David Brown**, Assistant Chief, and **Ron Cimino**, Chief, Western Criminal Enforcement Section; **Jerrold Kluger**, Assistant Chief, and **Ralph Pierce**, Chief, Northern Criminal Enforcement Section; **Robert Lindsay**, Chief, Criminal Appeals and Tax Enforcement Policy Section. **J. Randolph Maney**, Chief, and **Rosemary Paguni**, Assistant Chief, Southern Criminal Enforcement Section. **Cecilia Reid**, **James Rodio**, and **Tony Whittedge**, Trial Attorneys. **James Springer**, Senior Counsel for International Tax Matters.

Introduction to FOIA (Washington, D.C.)

Thomas J. McIntyre, **Carol S. Hebert**, and **Kirsten J. Moncada**, Attorneys, Office of Information and Privacy.

Ninth Circuit Asset Forfeiture Component Seminar, (Phoenix, Arizona)

Sean Robinson, District of Alaska; **Art Garcia** and **Reid Pixler**, District of Arizona; **Clare Neuchterlein**, Eastern District of California; **Eric Honig** and **Joanna Blythe**, Office Manager, Central District of California; **Jonathon Howden** and **Kay Hilliard**, Legal Technician, Northern District of California; **John Houston** and **Annabelle Grills**, Southern District of California; **Karon Johnson**, District of Guam; **Rachel Shimazu** and **Liane Akana**, Legal Secretary, District of Hawaii; **Anthony Hall** and **Barry McHugh**, District of Idaho; **Dan Hollingsworth**, District of Nevada; **David Wood**, Northern Mariana Islands; **Jack Collins**, District of Oregon; **Gregory Shogren** and **Thomas Rice**, Eastern District of Washington; **Richard Cohen** and **Paula Boggs**, Western District of Washington. **Cary H. Copeland**, Director, and **Candace Olds**, CATS Project Supervisor, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General. **Lee Radek**, Director, **Harry Harbin**, Assistant Director, **Alice Dery**, Special Counsel, and **Stefan Cassella**, Trial Attorney, Asset Forfeiture Office, Criminal Division. **Charles M. Ott**, Deputy Director, Executive Office for Asset Forfeiture, Department of the Treasury.

Ethics for Litigators (Washington, D.C.)

Connie Frogale and **Paula Newett**, Eastern District of Virginia. **Charles Gross**, Assistant Director, Torts Branch, Civil Division. **George Pruden**, Associate General Counsel for Employment Law and Information, Office of General Counsel, Federal Bureau of Prisons.

Federal Acquisition Regulations (Washington, D.C.)

Mike Adams, Assistant Chief Counsel for Procurement, and **William Richards**, Assistant Counsel for Procurement, Office of Chief Counsel, United States Army Corps of Engineers. **Bertram Berlin**, Assistant General Counsel, General Accounting Office. **George Brezna**, Associate Counsel for the Commandant, United States Marine Corps. **Elizabeth Grant**, Associate General Counsel, and **Carolyn Perry**, Associate General Counsel, Ethics and Personnel, Defense Logistics Agency. **Andrea Grimsley**, Contracting Officer, and **Paul Turnau**, Assistant Director, Procurement Services Staff, Justice Management Division. **R. Allen Miller**, Trial Attorney, Commercial Litigation Branch, Civil Division. **James Whetstone**, Deputy Assistant Administrator, Office of Procurement, Drug Enforcement Administration.

Basic Bankruptcy (Arlington, Virginia)

Jane Bondurant, Civil Chief, and **Tim Feeley**, Western District of Kentucky; **J. Philip Klingeberger**, Civil Chief, Northern District of Indiana; **Richard Clippard**, Middle District of Tennessee; **Lillian Lockary** and **Bernard Snell**, Middle District of Georgia; **Virginia Powel**, Eastern District of Pennsylvania; **David Schiller**, Eastern District of Virginia; **Kristin Tolvstad**, Northern District of Iowa; and **Marianne Tomecek**, Southern District of Texas. **Judith Benderson**, Assistant Director, Financial Litigation Staff, Executive Office for United States Attorneys. **Stephen Csontos**, Senior Legislative Counsel, Tax Division. **J. Christopher Kohn**, Director, **Tracy Whitaker**, Assistant Director, **John Stemplewicz**, Senior Trial Attorney, **Glenn D. Gillett**, Attorney, and **Sam Maizel**, Attorney, Commercial Litigation Branch, Civil Division.

Evidence Seminar for Experienced Criminal Litigators (Columbia, South Carolina)

John Dwyer, Assistant to the Associate Attorney General. **Lynn Crook**, First Assistant, District of North Dakota; **Mary Jude Darrow**, Eastern District of Louisiana; **Mark Dubester**, District of Columbia; **Michael MacDonald**, Western District of Michigan; **Steven Miller**, Chief, Special Prosecutions, Northern District of Illinois; **Dixie Morrow**, Middle District of Georgia; **William Richards** and **Craig Weier**, Eastern District of Michigan; **Ann C. Rowland**, Northern District of Ohio; **Barbara Sale**, Appellate Chief, District of Maryland; **Karla Spaulding**, Southern District of Texas; and **John Vaudreuil**, Western District of Wisconsin; **Michael Whisonant**, Northern District of Alabama.

Law Librarian's Seminar (Washington, D.C.)

From the Executive Office for United States Attorneys: **Michael Bailie**, Deputy Director, Administrative Services; **Charlotte Saunders**, Supervisory Budget Analyst, Financial Management Staff; **Carol Sloan**, Acting Assistant Director, Office Automation Staff; and **Ray Collado**, Technical Support Services. From the Justice Management Division: **Daphne B. Sampson**, Director, Library Staff; **Richard Shrout**, Assistant Director, Technical Services Library Staff; **Daire McCabe**, Chief, Acquisitions Library Staff; and **Patricia Makely**, Chief, Acquisitions Library Staff. **Barbara Zelenko**, Librarian, Southern District of New York; **Shannon Mitchell**, Librarian, Eastern District of Michigan; **John Pickett**, Librarian, Western District of Missouri; **Janice Kelly**, Librarian, Northern District of California; **Jay Farris**, Librarian, District of Columbia; **Mary Stack Reilly**, Librarian, Northern District of Illinois; **Maria Kidd**, Librarian, Southern District of Florida; **Sean Moore**, Librarian, District of Kansas; **Roberta Klotz**, Librarian, District of New Jersey.

Examination Techniques (Washington, D.C.)

Scott Glick, Senior Trial Attorney, Criminal Division. **David Deutsch**, Attorney, and **Suzanne Drouet**, Attorney, Civil Rights Division. **Richard Parker**, Deputy Chief, Civil Division. **Brian Miller** and **Winn Grant**, Eastern District of Virginia (Richmond); **Rhonda Fields**, District of Columbia; **Chuck Barth**, District of New Mexico; **Sam Langoria**, Southern District of Texas; **Gordon Zubrod**, Middle District of Pennsylvania. **Judge James Timony**, Federal Trade Commission. **James Richardson**, Attorney-Advisor, U.S. Court of Military Appeals. **Richard Foster**, Chief Attorney, Office of Civil Rights, Department of Education. **Captain Marshall Caggiano**, Assistant Staff Advocate Judge, Air Force Materiel Command Law Center. **Gary Fox**, Chief Counsel for Special Litigation, Small Business Administration. **Monte Buck**, **Henning Vent**, **Cary Pollock**, **Eugene Adams** and **Marceline Alexander**, Trial Attorneys, D.C. Corporation Counsel.

In-House Criminal Asset Forfeiture Training (Oklahoma City, Oklahoma)

Arthur W. Leach, Northern District of Georgia; and **Anthony G. Hall**, District of Idaho.

Attorney Supervisors Seminar (San Francisco, California)

Wayne A. Rich, Jr., Principal Deputy Director, **Michael Bailie**, Deputy Director, Administrative Services Staff, and **Brian Jackson**, Assistant Director, Evaluation and Review Staff, Executive Office for United States Attorneys.

Negotiations Skills (Washington, D.C.)

From the Department of Health and Human Services: **Thomas Parrett**, Director, Labor-Management Relations Division; **Ron Walczak**, Director, Negotiations Alternative Dispute Resolution Branch; **Neil Kaufmann**, Director, Mediation Services; **Doris Campos-Infantino**, and **Deborah Lesser**, Personnel Specialists. **Lawrence Klinger**, Assistant to the Director, Torts Branch, Civil Division. **Gail Padgett**, Associate Director, Community Relations Service. **Renelle Rae**, Director, EPA Institute Division, and **Winston Haythe**, Senior Advisor, Environmental Protection Agency. **Sandra Hicks**, Director, Personnel Management Division, Bureau of Public Debt, Department of the Treasury. **Bruce Mayor**, Assistant Director for Legal Affairs, Merit Systems Protection Board.

Federal Practice Seminar (San Antonio, Texas)

John Murphy, Criminal Chief, **Ronald Sievert**, Chief, Austin Branch, **Chris Gober**, **Wayne Speck**, **Mike McCrum**, and **Philip Police**, Western District of Texas; **Paul Billups**, Southern District of West Virginia; **Terry Derden**, District of Idaho; **Rhonda Fields**, Chief, Economic Crimes Section, District of Columbia; **Roger Haines**, Southern District of California; **Steve Liccione**, Eastern District of Wisconsin; **Rory Little**, Northern District of California; **Joyce McDonald**, District of Maryland; **Patrick Molloy**, Supervisory Assistant United States Attorney, Southern District of Texas; **Stuart Platt**, Criminal Chief, Eastern District of Texas. **John Steer**, General Counsel, **Victoria Major**, Special Assistant General Counsel, and **Rusty Burress**, Principal Training Advisor, all from the United States Sentencing Commission. **Andrea Simonton**, Deputy General Counsel, Office of the General Counsel, Federal Bureau of Investigation. **Deborah Smith**, Director, New England Bank Fraud Task Force. **Richard Scruggs**, Assistant to the Attorney General.

Advanced FOIA (Washington, D.C.)

Daniel J. Metcalfe, Co-Director, **Richard L. Huff**, Co-Director, and **Margaret Ann Irving**, Acting Deputy Director, Office of Information and Privacy. **Elizabeth A. Pugh**, Assistant Director, Federal Programs Branch, Civil Division. **Gayla Sessoms**, Assistant Director for Information Services, Securities and Exchange Commission. **Charlie Y. Talbott**, Freedom of Information Act Specialist, Office of the Secretary of Defense, Department of Defense.

Eminent Domain Seminar (San Antonio, Texas)

Raymond A. Nowak, First Assistant - Civil Division, Western District of Texas; **Chris Hagen**, Southern District of Iowa; **Paul Madgett**, District of Nebraska; **Ed Booth**, Southern District of Georgia; **Tom Carolan**, Eastern District of Texas; **Glen Schreiber**, Eastern District of Louisiana; **Robert Taylor**, Western District of Washington; **Claude Brown**, Northern District of Texas; **Frank Boone** and **Pat Bupara**, Northern District of California; **Tom Ong**, Central District of California; **Susan Klein**, District of Arizona; **Ed Brzezinski**, Eastern District of Missouri. From the Environment and Natural Resources Division: **Peter Steenland**, Chief, and **Edward J. Shawaker**, Assistant Chief, Appellate Section; **William J. Kollins**, Chief, **Virginia Butler**, Assistant Chief, **Eric G. Williams**, **Lewis M. Baylor**, **John O. Holm**, **Michael K. Baker**, **Donald F. Rosendorf**, and **Joy A. Ryan**, Trial Attorneys, **James D. Eaton**, Appraiser, and **Charles C. Haslet, Jr.**, Chief Appraiser, Land Acquisition Section. **Don Warnken**, Petroleum Engineer, United States Army Corps of Engineers.

Eminent Domain Seminar For Support Staff (San Antonio, Texas)

Raymond A. Nowak, First Assistant United States Attorney, Civil Division, Western District of Texas; **Chris Hagen**, Southern District of Iowa; **Caryl Privett**, Northern District of Alabama; **Susan Klein**, District of Arizona; **Edward Brzezinski**, Eastern District of Missouri; **Doris Ogletree**, Paralegal Specialist, Western District of Louisiana; **Pam Nelson**, Paralegal Specialist, Eastern District of Texas; **Judy Swanson**, Paralegal Specialist, District of North Dakota. From the Environment and Natural Resources Division, Land Acquisition Section: **William J. Kollins**, Chief; **Virginia Butler**, Deputy Chief; **Eric G. Williams** and **Lewis M. Baylor**, Trial Attorneys; **Leslie Rogers**, Secretary; **Brenda Rossi**, Case Management Specialist; **Charles C. Haslet, Jr.** Chief Appraiser; **Janice Bolt**, Legal Technician; **Betty Wilson** and **Sandra Elliott**, Paralegal Specialists. **Peter Steenland**, Appellate Section Chief, and **Beverly Schutte**, Director, Expert Witness Unit, Environment and Natural Resources Division; **Lucille Latta**, Director of Real Estate, Lower Mississippi Valley Division, United States Army Corps of Engineers.

Customs Fraud Seminar (Clearwater, Florida)

Allen Brudner, Southern District of New York; **Douglas N. Frazier**, Middle District of Florida; **Mel Johnson** and **Stephen Liccione**, Eastern District of Wisconsin; **Kent S. Robinson**, District of Oregon; **Peter Strasser**, Eastern District of Louisiana. From the United States Customs Service: **Judith Altman**, Deputy Regional Counsel (New York); **Samuel H. Banks**, Acting Deputy Commissioner; **Steve Basha**, Associate Chief Counsel, Office of Enforcement; **Wes Currier**, Senior Attorney, **James Dozier** and **William Saccone**, Senior Special Agents, United States Customs Service Academy; **William Docken**, **Sandra J. Francis**, **John Heyer**, **Joseph Macchiaroli**, **Keith Seagraves**, and **Gary White**, Senior Special Agents.

COURSE OFFERINGS

The staff of OLE is pleased to announce OLE's projected course offerings for the months of January through April 1994 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.

January 1994

<u>Date</u>	<u>Course</u>	<u>Participants</u>
10-14	Advanced Civil Trial Advocacy	AUSAs, DOJ Attorneys
11-13	Securities Fraud	AUSAs
11-13	Asset Forfeiture Eleventh Circuit Component	AUSAs, Support Staff, LECC Coordinators
25-28	Civil Federal Practice	AUSAs
26-28	Regional Attorney Supervisors	AUSAs

February 1994

7-10	Advanced Asset Forfeiture	AUSAs
7-11	Complex Prosecutions/ Advanced Grand Jury	AUSAs
7-11	Criminal Federal Practice	AUSAs
7-11	Appellate Advocacy	AUSAs

February 1994 (Cont'd.)

<u>Date</u>	<u>Course</u>	<u>Participants</u>
23-25	First Assistants	FAUSAs (Large Offices)
23-25	Advanced White Collar/ Financial Institution Fraud	AUSAs
23-25	Regional Environmental Issues/Base Closures	AUSAs and Agency Counsel
28-March 11	Civil Trial Advocacy	AUSAs

March 1994

1-4	Evidence for Experienced Litigators	AUSAs
7-9	Basic Asset Forfeiture/ Money Laundering	AUSAs
14-18	Complex Prosecutions/ Advanced Grand Jury	AUSAs
21-23	Asset Forfeiture Fourth Circuit Component	AUSAs
21-Apr 1	Criminal Trial Advocacy	AUSAs
22-24	Advanced FTCA	AUSAs

April 1994

5-7	Employment Discrimination	AUSAs
6-8	Attorney Supervisors	AUSAs
12-14	Asset Forfeiture/Criminal	AUSAs
12-15	Health Care Fraud	AUSAs
18-22	Advanced Criminal Trial Advocacy	AUSAs
19-21	Civil Chiefs	Civil Chiefs (Large Offices)
25-30	Asset Forfeiture Advocacy	AUSAs

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 each course, OLE will send an Email to all United States Attorneys' offices announcing the course and requesting nominations. The nominations are sent to OLE via FAX, and student selections are made. OLE funds all costs for paralegals and support staff personnel from United States Attorneys' offices who attend LEI courses.

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 C. 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 *).**

January 1994

<u>Date</u>	<u>Course</u>	<u>Participants</u>
6	Appellate Skills	Attorneys
10-14*	Support Staff	USAO Support Staff
19-20	FOIA for Attorneys and Access Professionals	Attorneys, Paralegals
28	Legal Writing	Attorneys
31-Feb. 4*	Civil Paralegal	USAO Paralegals
31-Feb. 2	Trial Preparation	Attorneys

February 1994

3-4	NEPA	Attorneys
7-8	Federal Administrative Process	Attorneys
14	Ethics for Litigators	Attorneys
14-18	Basic Paralegal	Agency Paralegals
15-17	Banking	Attorneys
18	FOIA Forum	Attorneys
23-24*	Bankruptcy	USAO Support Staff
25	Ethics and Professional Conduct	Attorneys

March 1994

<u>Date</u>	<u>Course</u>	<u>Participants</u>
1-3	Law of Federal Employment	Attorneys
7-11*	Experienced Paralegal	USAO Paralegals
14-15	Evidence	Attorneys
16	Introduction to FOIA	Attorneys, Paralegals
25	Legal Writing	Attorneys

April 1994

5-8	Examination Techniques	Attorneys
11-12	ADR for Agency Counsel	Attorneys
14-15	FOIA for Attorneys and Access Professionals	Attorneys, Paralegals, Legal Technicians
18-22*	Criminal Paralegal	USAO Paralegals
27-29	Attorney Supervisors	Attorneys

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

Address: Room 10332, Patrick Henry Bldg. Telephone: (202) 208-7574
 601 D Street, N.W., Washington, D.C. 20530 FAX: (202) 208-7235
 (202) 501-7334

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

ADMINISTRATIVE ISSUES**Career Opportunities****Immigration And Naturalization Service**

The Office of Attorney Personnel Management, Department of Justice, is seeking an experienced attorney for the Office of the General Counsel in the Immigration and Naturalization Service in Washington, D.C. Responsibilities include providing legal advice on a wide variety of subjects, such as government contracts, fiscal law, personnel law, and the Freedom of Information and Privacy Acts, and in litigating bid protests before the General Accounting Office and the General Services Board of Contract Appeals.

Applicants must possess a J.D. degree, have at least one year of legal experience, and be an active member of the bar in good standing (any jurisdiction). Outstanding academic credentials are essential, and litigation experience and familiarity with bankruptcy law and the principles of accounting are important. Applicants must submit a resume, two writing samples, and a law school transcript to: Immigration and Naturalization Service, Office of the General Counsel, 425 I Street, N.W., Rm. 6100, Washington, D.C. 20536, Attn: Michael J. Coter, Associate General Counsel.

Current salary and years of experience will determine the appropriate salary level. The possible range is GS-11 (\$33,623 - \$43,712) to GS-13 (\$47,920 - \$62,293). This position is open until filled. No telephone calls, please.

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U.S. Trustee's Office, Los Angeles And Phoenix

The Office of Attorney Personnel Management, Department of Justice, is seeking two experienced attorneys for the United States Trustee's office in Los Angeles, California, and one experienced attorney for the United States Trustee's office in Phoenix, Arizona. Responsibilities include assisting with the administration of cases filed under Chapters 7, 11, 12, and 13 of the Bankruptcy Code; drafting motions, pleadings, and briefs; and litigating cases in the Bankruptcy Court and the U.S. District Court.

Applicants must possess a J.D. degree, have at least two years of legal experience for the Los Angeles office, and at least one year of legal experience for the Phoenix office. Applicants must also be an active member of the bar in good standing (any jurisdiction). Outstanding academic credentials are essential, and litigation experience and familiarity with bankruptcy law and the principles of accounting are important. Applicants must submit a resume and law school transcript to:

Department of Justice
Office of the U.S. Trustee
221 North Figueroa St., Suite 800 - or -
Los Angeles, California 90012
Attn: Elizabeth Espinoza

Department of Justice
Office of the U.S. Trustee
320 N. Central Ave., Rm. 100
Phoenix, Arizona 85004
Attn: Adrienne Kalyna

Current salary and years of experience will determine the appropriate salary level. The possible range for the positions in Los Angeles is GS-12 (\$43,522 - \$56,576) to GS-14 (\$61,157 - \$79,509). For the position in Phoenix, the possible range is GS-11 (\$33,623 - \$43,712) to GS-13 (\$47,920 - \$62,293). These advertisements are open until filled. No telephone calls, please.

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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%	08-19-93	3.43%
10-20-89	7.90%	02-13-91	6.21%	05-29-92	4.26%	09-17-93	3.40%
11-17-89	7.69%	03-08-91	6.46%	06-26-92	4.11%	10-15-93	3.38%
12-15-89	7.66%	04-05-91	6.26%	07-24-92	3.51%	11-17-93	3.57%
01-12-90	7.74%	05-03-91	6.07%	08-21-92	3.41%	12-10-93	3.61%

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.

UNITED STATES ATTORNEYS

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
Alabama, N	Claude Harris, Jr.
Alabama, M	James Eldon Wilson
Alabama, S	Edward Vulevich, Jr.
Alaska	Joseph W. Bottini
Arizona	Janet Ann Napolitano
Arkansas, E	Paula Jean Casey
Arkansas, W	Paul K. Holmes, III
California, N	Michael J. Yamaguchi
California, E	Charles J. Stevens
California, C	Nora M. Manella
California, S	Alan D. Bersin
Colorado	Henry L. Solano
Connecticut	Christopher Droney
Delaware	Richard G. Andrews
District of Columbia	Eric H. Holder, Jr.
Florida, N	Patrick M. Patterson
Florida, M	Larry H. Colleton
Florida, S	Kendall B. Coffey
Georgia, N	Gerrilyn G. Brill
Georgia, M	Samuel A. Wilson, Jr.
Georgia, S	Jay D. Gardner
Guam	Frederick Black
Hawaii	Elliot Enoki
Idaho	Betty H. Richardson
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Illinois, S	Walter Charles Grace
Illinois, C	Frances C. Hulin
Indiana, N	Jon E. DeGuilio
Indiana, S	Judith A. Stewart
Iowa, N	Stephen J. Rapp
Iowa, S	Don Carlos Nickerson
Kansas	Randall K. Rathbun
Kentucky, E	Joseph L. Famularo
Kentucky, W	Walter Michael Troop
Louisiana, E	Robert J. Boitmann
Louisiana, M	P. Raymond Lamonica
Louisiana, W	Michael D. Skinner
Maine	Jay P. McCloskey
Maryland	Lynne Ann Battaglia
Massachusetts	Donald K. Stern
Michigan, E	Alan M. Gershel
Michigan, W	Thomas J. Gezon
Minnesota	David Lee Lillehaug
Mississippi, N	Alfred E. Moreton, III
Mississippi, S	George L. Phillips
Missouri, E	Edward L. Dowd, Jr.
Missouri, W	Stephen Lawrence Hill, Jr.

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
Montana	Sherry S. Matteucci
Nebraska	Thomas J. Monaghan
Nevada	Kathryn Landreth
New Hampshire	Paul M. Gagnon
New Jersey	Michael Chertoff
New Mexico	John J. Kelly
New York, N	Gary L. Sharpe
New York, S	Mary Jo White
New York, E	Zachary W. Carter
New York, W	Patrick H. McMoyer
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North Carolina, M	Benjamin H. White, Jr.
North Carolina, W	Jerry W. Miller
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Ohio, S	Edmund A. Sargus, Jr.
Oklahoma, N	Stephen Charles Lewis
Oklahoma, E	John W. Raley, Jr.
Oklahoma, W	Vicki Lynn Miles-LaGrange
Oregon	Jack C. Wong
Pennsylvania, E	Michael R. Stiles
Pennsylvania, M	David M. Barasch
Pennsylvania, W	Frederick W. Thieman
Puerto Rico	Guillermo Gill
Rhode Island	Edwin J. Gale
South Carolina	J. Preston Strom, Jr.
South Dakota	Karen E. Schreier
Tennessee, E	Carl K. Kirkpatrick
Tennessee, M	John M. Roberts
Tennessee, W	Veronica F. Coleman
Texas, N	Paul E. Coggins, Jr.
Texas, S	Gaynelle Griffin Jones
Texas, E	Ruth Yeager
Texas, W	James H. DeAtley
Utah	Scott M. Matheson, Jr.
Vermont	Charles R. Tetzlaff
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Virginia, E	Helen F. Fahey
Virginia, W	Robert P. Crouch, Jr.
Washington, E	James P. Connelly
Washington, W	Katrina C. Pflaumer
West Virginia, N	William D. Wilmoth
West Virginia, S	Rebecca Aline Betts
Wisconsin, E	Thomas Paul Schneider
Wisconsin, W	Peggy Ann Lautenschlager
Wyoming	Richard A. Stacy
North Mariana Islands	Frederick Black

POLICE HIRING SUPPLEMENT PROGRAM FACT SHEET

PROGRAM GOALS

- To increase the number of sworn law enforcement officers serving areas where they are needed most by hiring additional law enforcement officers or rehiring law enforcement officers who were laid off as a result of budget reductions.
- To improve the long-term ability of law enforcement agencies to engage in community policing to prevent crime, promote problem solving, and enhance public safety by deploying additional sworn law enforcement officers.
- To improve public safety through innovative crime prevention, including community policing.

FUNDING

- On July 2, 1993, President Clinton signed the 1993 Supplemental Appropriation Act, which provided \$150 million for this program.
- One-half (\$75 million) of the program funds will be awarded to jurisdictions with a population at or above 150,000; one-half (\$75 million) will go to jurisdictions with populations of less than 150,000.
- Grant funds can be used only for the salaries and fringe benefits of hired or rehired sworn law enforcement officers over a three-year period. Funding for overtime costs is prohibited.

AWARD AMOUNTS

- \$1 million maximum for jurisdictions below 150,000 population.
- \$2 million maximum for jurisdictions between 150,000 and 749,999.
- \$3 million maximum for jurisdictions between 750,000 and 2 million.
- \$4 million maximum for jurisdictions above 2 million population.

FEDERAL SHARE

- Federal share per officer may not exceed the greater of: (1) 75 percent of the total salary and benefits over the life of the grant, up to a maximum of \$75,000; or (2) 50 percent of the total salary and benefits over the life of the grant. Federal share per officer may be increased if a jurisdiction submits evidence of extraordinary economic hardship.

ELIGIBILITY REQUIREMENTS

- A law enforcement agency, or consortium of law enforcement agencies, is eligible to receive funding. A state law enforcement agency is eligible if it has law enforcement jurisdiction and provides local law enforcement services to communities within its state.

STATUS OF APPLICATIONS

- Applications are being considered competitively in three rounds. Funding will be distributed in three rounds. Applicants that do not receive awards in the first two rounds will be reconsidered during subsequent rounds.
- Overall, the Department received over 2,700 applications for grants to hire additional sworn law enforcement officers. These included 1,088 applications in Round One; 534 applications in Round Two; and over 1,100 applications in Round Three.
- Of the more than 2,700 applications received overall, more than 90 percent are from jurisdictions serving populations of 150,000 or less. Fifteen applications have been received from jurisdictions with populations of more than two million.
- Most applicants (79 percent) are municipal police departments, followed by county police and sheriffs (16 percent). The remaining five percent come from Indian tribes, consortia, special police (e.g., housing or transit authorities, universities), and state police.
- Law enforcement agencies from every state, the District of Columbia, and several U.S. territories submitted applications.
- The number of officers requested ranged from 1 to 54, with an average of 5. Jurisdictions with populations under 150,000 requested an average of 3 officers. Jurisdictions with populations above 150,000 requested an average of 21 officers.
- More than 100 applicants (4 percent) requested an increase in the federal share per officer.

REVIEW AND SELECTION PROCESS

- Applications are reviewed and scored using a consistent and fair process. Reviewers score each application according to the following Selection Criteria:

Public Safety Need. Applicants must demonstrate their need for additional sworn law enforcement officers in their jurisdiction, based on public safety and/or economic factors.

Community Policing Strategy. Applicants must specify how they will address their crime and related problems through community policing.

Implementation Plan. Applicants must specify how program funds will be used to deploy additional sworn police for community policing activities.

Continuation and Retention Plan. Applicants must describe how they intend to continue the project and retain the additional officers after the grant concludes.

Additional Resource Commitments. Applicants must describe non-program resources that will be provided from other organizations in support of the project.

- The Department of Justice may also consider geographic or other factors to ensure an equitable distribution of grants.

ROUND ONE AWARDS

- Seventy-four jurisdictions, located in 31 different states, received awards in Round One. These awards totaled approximately \$50 million and will help pay to hire or rehire 658 additional law enforcement officers. The recipients include 70 police departments, two sheriffs' departments, one Indian tribe, and one consortium.
 - California received the largest number of Round One awards, 13, which represents about 22 percent of the money distributed. Florida received 7 awards, which accounts for 8 percent of the funds; and Texas received 5 grants, which total to almost 10 percent of the funds.
 - Eleven awards were made to jurisdictions with populations of 150,000 or above. These included a \$4 million grant to the City of Los Angeles, a \$3 million grant to the City of San Antonio, and awards of \$2 million or less to seven cities and two counties.
 - Sixty-three awards were made to jurisdictions with populations of less than 150,000. These included 6 grants to jurisdictions of 100,000 to 150,000 population; 15 to jurisdictions of 50,000 to 99,999; 17 to jurisdictions between 25,000 and 49,999; and 25 to jurisdictions of under 25,000 population.
- Seven jurisdictions received an increase in the federal share per officer.



DIRECTIVE NO. 93-7

Washington, D.C. 20530

December 10, 1993

MEMORANDUM

TO: All United States Attorneys
Director, Executive Office for U.S. Attorneys
Assistant Attorney General, Criminal Division
Director, U.S. Marshals Service
Director, Federal Bureau of Investigation
Administrator, Drug Enforcement Administration
Commissioner, Immigration and Naturalization Service
Chief Postal Inspector, Postal Inspection Service

FROM: Cary H. Copeland *CHE*
Director and Chief Counsel

SUBJECT: Payment of Costs and Attorney's Fees From the Assets
Forfeiture Fund (the Fund) - Limited Authority

Generally, the Fund is not available to pay judgments arising from asset forfeiture cases, including costs and attorneys fees. This Office has reviewed the narrow legal question whether the Fund is available to pay judgments of expenses and attorney's fees under 28 U.S.C. § 2412(d). This provision is commonly referred to as the Equal Access to Justice Act (EAJA). Pursuant to a delegation of authority from the Attorney General, I conclude that the Department of Justice (the Department) has the legal authority pursuant to 28 U.S.C. § 524(c)(1)(A) to permit the use of Fund monies to pay EAJA awards arising from actions related to the forfeiture, attempted forfeiture or seizure for forfeiture of property.

¹ The relevant portions of 28 U.S.C. § 2412 follow:

"(d)(1)(A) Except as otherwise specifically provided by statute, a court shall award to a prevailing party other than the United States fees and other expenses, in addition to costs awarded pursuant to subsection (a), incurred by that party in any civil action (other than cases sounding in tort), including proceedings for judicial review of agency action, brought by or against the United States in any court having jurisdiction of that action, unless the court finds that the position of the United States was substantially justified

Discussion

EAJA

The history of EAJA indicates it was enacted to encourage private parties to pursue their legitimate claims against the government, and to deter inadvisable or inappropriate official action, including legal action, by the government, with its high cost ramifications for the non-government party. Prior to enactment of the EAJA, it was believed that many small businesses and individuals with legitimate claims or defenses failed to defend themselves against the government due to the high cost involved. Since the permanent judgment appropriation of the Treasury was available if the government ever suffered an adverse judgment, there did not appear to be any deterrent to overreaching by Executive Branch agencies. This imbalance in power was largely unavoidable. However, Congress concluded that certain changes could be made to mitigate this imbalance.

In EAJA, Congress provided that the non-government party could seek reimbursement of costs and legal fees if the government's position was not substantially justified. In addition, Congress decided that if the presiding court determined that the government position was not substantially justified, then requiring the agency that took the official action to pay the costs and legal fees from its own operating funds would serve as an effective deterrent to government overreaching. Thus, 28 U.S.C. § 2412(d)(4) states that the award will be paid "from any funds made available to the agency by appropriation or otherwise." (Emphasis added). The Assets Forfeiture Fund allocations represent funds that are "otherwise" available to an agency.

When the EAJA was enacted, the primary source of funds to pay judgments against the United States was the permanent judgment appropriation. Agency appropriations, and other funds available to each agency, were generally not available to pay these costs. As noted above, the EAJA expressly shifted responsibility for these costs from the permanent judgment appropriation to operating funds available to the individual agencies. In other words, payment of EAJA awards arising from agency program operations was a part of the operating costs with which each agency had to cope. This practice was well established by October 1984.

(4) Fees and other expenses awarded under this subsection to a party shall be paid by any agency over which the party prevails from any funds made available to the agency by appropriation or otherwise...."

Assets Forfeiture Fund

The legislative history of the Comprehensive Crime Control Act of 1984 lists several reasons for the various forfeiture provisions included in the Act. That history cites as a significant problem the financial burden an aggressive pursuit of forfeiture cases places on our law enforcement agencies. Where the sale of property does not realize more than the total expenses incurred in storing, maintaining, and selling the property, the net loss was carried by the law enforcement agency's budget. The solution proposed was the creation of the Assets Forfeiture Fund from which moneys could be appropriated to defray the mounting costs associated with forfeiture actions. While the legislative history does not mention EAJA awards, it is clear that (1) Congress wanted a more aggressive use of forfeiture, (2) the Fund was created to defray the costs associated with forfeiture actions that formerly were borne by law enforcement agency budgets, and (3) the occasional EAJA award was a known potential cost of forfeiture actions that would be borne by agency budgets.

Further, Congress crafted the Assets Forfeiture Fund statute to reach very widely with respect to agency costs associated with the forfeiture program. It not only permitted the payment of any expenses necessary to seize, maintain, sell, or dispose of property but also permitted payment of any other necessary expenses incident to the seizure, detention, forfeiture or disposal of the property. 28 U.S.C. § 524(c)(1)(A). Payment of an EAJA award is a predictable expense that is incident to an aggressive forfeiture program. Moreover, an EAJA award may be considered a necessary expense in that it is ordered by a court. Therefore, I conclude that the Fund is legally available to pay EAJA awards in forfeiture cases.

Policy

Notwithstanding the legal availability of the Assets Forfeiture Fund, the Department is limiting by policy the cases in which Fund monies may be used for EAJA awards. The Congress enacted the EAJA for specific public policy reasons. It would be inappropriate for the Fund to be used in a manner that completely ignored or negated the public policy basis for EAJA. In an attempt to balance the competing interests involved, the following three tier policy is established:

1. Actions Consistent With Existing Law and Policy: The Assets Forfeiture Fund will fund the EAJA award in any case in which the actions of the federal participants were clearly consistent with current law and Department

policy. This includes those cases in which (1) this Office is involved in planning a specific case or program initiative and the participating agency was executing the planned initiative in good faith, (2) the federal participants were executing their responsibilities in consonance with current law and Department policy but the court creates a novel reason or basis for overturning a case that could not be anticipated, and (3) similar "no fault" cases. Once approved, EAJA awards in these cases will be paid by the Fund against the case related expenses category.

2. Consistency With Existing Law and Policy Unclear: The Assets Forfeiture Fund allocations of the federal participant will be available to fund awards where the agency personnel were acting in good faith but it is not clear that their actions were consistent with existing law and Department policy. Once approved, the funds are to be taken from the case related expenses category. If there are insufficient funds available to cover the award, then the shortfall may be made up by funds available for other categories of expense. A request for reallocation will be approved for this purpose. Total allocations will not be increased to make up for the payment of the award.
3. Actions Inconsistent With Existing Law or Policy: In any case in which the court finds bad faith or an intentional disregard for existing law or Department policy by the federal participants, the Assets Forfeiture Fund will not be available, either directly or indirectly, to fund the EAJA award.

Procedure

No EAJA award may be charged against the Assets Forfeiture Fund or the federal participant's Fund allocations without the express written approval of this Office. Requests for approval to charge an EAJA award against the Fund or against Fund allocations must be submitted to this Office in writing.² If the government

² In non-forfeiture cases, the U.S. Attorney's Office should follow any procedures established by the Executive Office for U.S. Attorneys regarding notification of pending settlements or adverse judgments. The AFF and AFF allocations are not available to fund EAJA awards in non-forfeiture cases. Therefore, the Executive Office for Asset Forfeiture should not be notified of actions in non-forfeiture cases.

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has contested the case and incurred an adverse judgment, a copy of the court order should be provided to all involved agencies immediately to permit their participation in preparation of the request package. The request should be forwarded by the U.S. Attorney's Office to this Office by express mail within five (5) business days of the court order. The request should include, as appropriate:

1. a copy of the court order indicating that the award is being made under 28 U.S.C. § 2412(d) or that the government's position was not substantially justified;
2. a copy of the seizure warrant and associated affidavit or a copy of the probable cause statement supporting the seizure, if the seizure was cited as a basis for the award;
3. a copy of any pleadings or answers or a description of any litigative position that was cited as a basis for the award;
4. a description of any governmental action not referenced above that was cited as a basis for the award;
5. a description of any extenuating factors affecting the seizing agency and the U.S. Attorney's Office that should be considered;
6. a list of the agencies involved in the case; and
7. a joint proposal for allocation of responsibility for the EAJA award among the involved agencies.

If the U.S. Attorney's Office is proposing to settle an EAJA claim, the materials cited in items (2) through (7) above should be provided to this Office in advance of agreeing to any settlement. This Office will consult with the Asset Forfeiture Office, Criminal Division, on proposed settlements. This policy is in addition to any other policies governing settlements.

Proposed court orders drafted by the government should be silent as to the source of funds for paying any award. The identification of appropriate sources of funding to pay court judgments is an Executive Branch function and may vary from case to case depending on the facts of the particular case.

Allocation of Responsibility

In general, responsibility for an EAJA award in a forfeiture

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case will be allocated equally among the participants, including the U.S. Attorney's Office. However, this allocation may be modified by this Office depending on the specific findings made by the court and extenuating circumstances described by the participants. Availability of the Assets Forfeiture Fund to certain participants in a case must not be used to relieve other involved agencies of responsibility for a portion of the award.

Execution of Payment

Upon approval of the request for authority to pay an EAJA award directly from the Assets Forfeiture Fund, this Office will notify the appropriate U.S. Marshal's Office that the award may be paid. The U.S. Marshal will charge the award directly against the Assets Forfeiture Fund. If the request is to permit use of Fund allocations to pay an EAJA award, the participants will be notified directly by this Office of the action on the request. EAJA charges will be billed against the case related expenses category under subobject class code 4204. Questions concerning this policy may be referred to me or to Michael Perez, Assistant Director for Financial Management, at 202-616-8000.

Effective date

This policy is effective with respect to judgments entered on or after October 1, 1993.

³ In the case of awards to be paid by the U.S. Attorneys, the Financial Management Service in the Executive Office for U.S. Attorneys will also be notified and will be responsible for processing the payment.