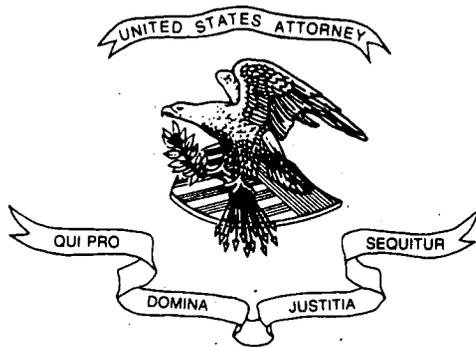




United States Attorneys' Bulletin



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COMMENDATIONS

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

Grisel Alonso (Florida, Southern District), by Donald R. McCoy, Associate Regional Solicitor, Department of Labor (DOL), Fort Lauderdale, for her valuable assistance and prompt action in bringing a bankruptcy court case to a satisfactory conclusion with a minimal expenditure of DOL's resources.

Antonia Barnes (Florida, Southern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for her skillful management of the forfeiture aspects of the Organized Crime Drug Enforcement Task Force investigation of a major drug trafficking organization, which resulted in the seizure of property valued at more than \$4 million.

Pshon Barrett (Mississippi, Southern District), by Attorney General Janet Reno, Department of Justice, for her excellent presentation on the Americans with Disabilities Act at the Mississippi State University, and for working with young people interested in our legal system.

Barbara M. Carlin (Pennsylvania, Western District), by K.W. Newman, Inspector in Charge, U.S. Postal Service, Pittsburgh, for her consistent high level of support and cooperation over the years, particularly in a number of mail fraud investigations that have been successfully prosecuted, either civilly or criminally, in the Western District.

William Clabault and **Mike Littlefield** (Oklahoma, Eastern District), by Bob A. Ricks, Special Agent in Charge, FBI, Oklahoma City, for their outstanding professional efforts in obtaining seven convictions in a complex savings and loan fraud case involving losses in excess of \$40 million.

James H. DeAtley, **United States Attorney**, and **Ronald J. Sievert**, **Assistant United States Attorney** (Texas, Western District), by Major General Kenneth A. Minihan, Commander, Air Intelligence Agency, U.S. Air Force, San Antonio, for their valuable assistance in bringing an extremely sensitive matter to a successful conclusion, and for making it possible for an important mission to go forward.

Frank Digiammarino (Georgia, Southern District), by Billy G. Salter, Director, Enforcement Training, Federal Law Enforcement Training Center, U.S. Customs Service Academy, Glynco, for his participation in several Customs fraud investigations courses, and for his major contribution to the success of the program.

Ray Fitzgerald (Virginia, Western District), by Craig N. Chretien, Assistant Special Agent in Charge, Drug Enforcement Administration, Baltimore, for his outstanding prosecutorial skill in obtaining the conviction of over thirty defendants and seizure of over \$1 million in assets in a continuing criminal enterprise, and for bringing the 5-year investigation to a successful conclusion.

Randall L. Fluke (Texas, Eastern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his outstanding legal skill in successfully prosecuting several individuals in a conspiracy and racketeering case which involved a drug-related murder.

Linda C. Groves (Texas, Northern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for obtaining a conviction on all ten counts of a bankruptcy fraud indictment involving fraudulent activity at Sunchase Village in Irving, Texas, and for obtaining an order to forfeit approximately \$333,000.00.

Veronica Harrell-James (Florida, Southern District), by Andrew J. Duffin, Special Agent in Charge, FBI, Miami, for her outstanding legal skill in obtaining final judgment in favor of the U.S. Government in the forfeiture case of a 1987 Hatteras Yacht valued in excess of \$1 million.

Arthur Harris and **Nancy Stoner** (Ohio, Northern District), by Pauline H. Milius, Chief, Policy, Legislation, and Special Litigation Section, Environment and Natural Resources Division, Department of Justice, for their outstanding assistance and successful efforts in the settlement of a combined tort class action and citizen suit under the Clean Water Act, which recovered approximately \$5 million in damages for the plaintiff class, and no civil penalty or other relief.

David Hoff (Illinois, Central District), by Lynne Adams-Whitaker, General Attorney, Federal Aviation Administration (FAA), Department of Transportation, Des Plaines, for his valuable assistance and successful efforts in obtaining the dismissal of a case brought against an FAA employee.

Michael Anne Johnson (Ohio, Northern District), by Dale L. Cayot, Assistant Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Cincinnati, for her professionalism and legal skill in the litigation of two firearms license revocation matters, resulting in rulings in favor of the U.S. Government.

Cindy Jorgensen and Reid Pixler (District of Arizona), by K.J. Hunter, Chief Postal Inspector, U.S. Postal Service, Washington, D.C., for their excellent presentation on the role and relationship between civil, criminal, and forfeiture Assistant United States Attorneys at the Forfeiture Specialist Paralegal Training Seminar in Phoenix.

Allan B. Kaiser (Florida, Southern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his outstanding prosecutive efforts in a drug trafficking and money laundering case, which involved numerous monetary transactions outside the United States.

Stephen R. Kaufman (Pennsylvania, Western District), by William E. Perry, Special Agent in Charge, FBI, Pittsburgh, for his successful prosecution of a bank fraud case involving the former vice president and trust officer at Century National Bank in Rochester, Pennsylvania.

H. Lloyd King (Florida, Southern District), by Robert J. Creighton, Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, Miami, for his professionalism and dedicated efforts in the successful prosecution of an armed career criminal for federal firearms violations.

Joe Koehler (District of Arizona), by William L. King, Jr., Special Agent in Charge, Office of the Inspector General, Department of Justice, for his extraordinary efforts in negotiating a plea agreement of forty-six months (as opposed to eighteen months under the sentencing guidelines) for an individual who attempted to bribe U.S. Border Patrol agents near the U.S. Mexico border to allow the safe passage of drug loads into the United States.

Jack Lacy (Mississippi, Southern District), by Deval L. Patrick, Assistant Attorney General, Civil Rights Division, Department of Justice, for his outstanding success in a case involving two incidents of racial violence--a shooting in October, 1993, and a cross-burning in January, 1994. Also, by Attorney General Janet Reno, Department of Justice, for his valuable assistance to the Atlanta Field Office of the Antitrust Division during the "Mississippi Milk" investigation.

Kendall J. Newman (California, Southern District), by Neil H. Koslowe, Special Litigation Counsel, Civil Division, Department of Justice, for his valuable assistance and cooperative efforts in one of eight cases across the country challenging the constitutionality and validity of the Freedom of Access to Clinic Entrances Act.

John J. O'Sullivan (Florida, Southern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his outstanding service as lead prosecutor in a major case involving judicial corruption of three Dade County judges, one former judge, and several defense attorneys for violating the RICO and Hobbs Acts.

Richard G. Patrick (District of Arizona), by Lt. Col. Hervey A. Hotchkiss, Chief, Tort Claims and Litigation Division, Air Force Legal Services Agency, U.S. Air Force, Washington, D.C., for his outstanding defense of a medical malpractice case of long standing, and for obtaining a favorable judgment for the U.S. Government.

William H. Pease (New York, Northern District), by Ann Teeter, Branch Counsel, Small Business Administration, Elmira, and Special Assistant United States Attorney, Northern District of New York, for his valuable assistance in utilizing the provisions of the postjudgment remedies under the Federal Debt Collection Procedures Act which resulted in a recovery of \$150,000.00 after six years of litigation in the Northern District of New York and the District of Massachusetts.

Orlando Prescott (Florida, Southern District), by Roy L. Tubergen, Supervisory Special Agent, FBI, Miami, for his successful prosecution of a Metropolitan Correctional Center inmate who was convicted of assault on a federal officer. **Betty Hicks** provided outstanding clerical assistance.

Peter Prieto (Florida, Southern District), by D. M. Hodson, Assistant Commissioner of Police, Crime Wing, Royal Hong Kong Police Force, for his outstanding efforts in the successful prosecution of a major international criminal syndicate involved in the manufacture and use of counterfeit credit cards.

Nancy Quinlan (Florida, Southern District), by Jack E. Kippenberger, Special Agent in Charge, U.S. Secret Service, Miami, for her excellent presentation at a training class for Secret Service agents on preparing a cellular fraud case in federal court.

Andrew J. Reich, Bruce L. Udoff, and Frank H. Sherman (Florida, Southern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for their outstanding legal skill in the successful prosecution of a public corruption case against the former Mayor of Miami Beach on bribery and other related charges.

Stephen Schirle (California, Northern District), by Francis J. Martin, Acting General Counsel, U.S. Marshals Service, Arlington, Virginia, for his outstanding professional efforts in successfully representing the interests of the U.S. Marshals Service in a Bivens-type lawsuit against a Supervisory Deputy U.S. Marshal for allegedly improperly entering a residence during a search for an international fugitive.

Glenn K. Schreiber (Louisiana, Eastern District), by Louis J. Freeh, Director, FBI, Washington, D.C., for his excellent representation in a complex case involving Title VII, the Privacy Act, the Whistleblowers Protection Act, and common law tort causes of action, which resulted in the motion to dismiss being granted, and judgment entered in favor of the FBI and individual FBI employees.

Robin Seeley (California, Northern District), by F. M. Broadaway, Assistant Inspector General for Investigations, Department of Labor, Washington, D.C., for her participation and major contribution to the success of the Federal Employees' Compensation Act training program held recently for Special Agents in Alameda.

Robert E. Skiver and Thomas Swain (North Carolina, Eastern District), by Judge Malcolm J. Howard, U.S. District Court, Greenville, and Joseph P. Schulte, Jr., Special Agent in Charge, FBI, Charlotte, for their outstanding success in obtaining five guilty verdicts on charges ranging from continuing criminal enterprise, conspiracy to distribute marijuana, cocaine and hashish, and money laundering, and netting over \$1 million in seized and forfeited assets. **Linda Hayes** provided valuable paralegal assistance.

Jean Sporleder and Katie Cook (Missouri, Eastern District), by Sam C. Bertolet, Assistant United States Attorney and Coordinator-South Central Region, Organized Crime Drug Enforcement Task Force, St. Louis, for their outstanding efforts at the 1994 South Central Regional Conference attended by more than 250 top level agency officials, state and local personnel, and senior management. Secretary **Jan Diltz** also provided valuable assistance.

Richard Starrett and Bob Anderson (Mississippi, Southern District), by Jay Moore, Director of Training, Regional Counterdrug Training Academy, Meridian Naval Air Station, for their valuable instruction at the Marijuana Eradication School and the Drug Team Commanders Course on legal considerations and financial and asset seizure.

J. Daniel Stewart (Missouri, Western District), by Don K. Pettus, Special Agent in Charge, FBI, Washington, D.C., for his professionalism and legal skill in the successful prosecution of an individual on all thirteen counts of wire fraud. **Janice Sheridan** contributed valuable paralegal assistance.

Chris Stickan (Ohio, Northern District), by Dieter H. Harper, Special Agent in Charge, Office of Inspector General, Department of Transportation, Chicago, for his outstanding assistance in resolving a complex fraud case involving the issuance of airline tickets by a former president of several airlines and travel agencies in Ohio and Illinois.

Shaun E. Sweeney (Pennsylvania, Western District), by Eugene L. Coon, Jr., Chief, Witness Security, U.S. Marshals Service, Arlington, Virginia, for his professionalism and expert handling of a government witness who threatened a U.S. Marshals Service Inspector.

Bruce Udolf and Mary Butler (Florida, Southern District), by Stephen H. Greene, Acting Administrator of Drug Enforcement, Drug Enforcement Administration, Washington, D.C., for their valuable assistance and cooperative efforts in a money laundering case involving a former DEA Special Agent who pled guilty to theft of government funds and the restitution of \$716,000.00.

Joe H. Vaughn (Florida, Southern District), by Paul A. Teresi, Senior Inspector in Charge, Drug Enforcement Administration, Plantation, Florida, for his professionalism and legal skill in bringing a corruption case of long standing to a final conclusion while maintaining a strong working relationship between the two agencies.

Don Wolhuis, Joe Mott, Tom Bondurant, and Steve Baer (Virginia, Western District), by Glen E. Knight, Criminal Investigator, Shenandoah National Park, National Park Service, Luray, for their excellent Legal Review presentations at the Regional In-Service training sessions held recently for ninety Commissioned Rangers stationed throughout the Mid-Atlantic region.

Kimberly Zimmer (New York, Northern District), by Walter R. Hageman, Chief, Criminal Investigation Division, Internal Revenue Service (IRS), Buffalo, for her excellent lecture on civil liability issues and for conducting a mock trial for agents in attendance at the Continued Professional Education program.

SPECIAL COMMENDATION FOR THE DISTRICT OF COLUMBIA

William C. Blier, Virginia Cheatham, Sharon A. Sprague, and Katherine Winfree, Assistant United States Attorneys, and **Christine E. Sykes**, Special Assistant United States Attorney, District of Columbia, were commended by Louis J. Freeh, Director, FBI, Washington, D.C., for their outstanding success in the prosecution of the Money Magic case, an extensive investigation of numerous Washington area car dealerships suspected of violating federal money-laundering for drug traffickers and IRS reporting statutes. The lengthy investigation resulted in the conviction of sixteen individuals involved in the illegal car sales, after a series of guilty pleas and convictions in four separate indictments. The investigation also netted approximately \$4.2 million in assets (\$3.2 million in cash and \$1 million worth of vehicles) forfeited to the United States. Director Freeh stated, "The strength of the government's case. . . should have a chilling effect on the conduct of this type of criminal activity here and throughout the United States."

* * * * *

SPECIAL COMMENDATION FOR THE DISTRICT OF ARIZONA

Don Overall, Assistant United States Attorney for the District of Arizona, was commended by Douglas K. Morris, Superintendent, Saguaro National Monument, National Park Service, Tucson, for his outstanding support of the Saguaro National Monument in numerous civil cases during the last year, and for his success in securing cost recovery funds for three significant resource damage cases. In particular, Mr. Overall obtained monies to cover some of the suppression costs from a human-caused fire last May that burned 200 acres in the Rincon Mountain District. This action should set a precedent for land management agencies in the Tucson area to obtain at least partial recovery in cases where citizens are found negligent. (Mr. Overall is currently working on three civil cases involving damage to saguaros and other native plants.)

* * * * *

DEPARTMENT OF JUSTICE LEADERSHIP

Associate Attorney General

On August 9, 1994, **John R. Schmidt** was sworn in as Associate Attorney General for the Department of Justice. The Associate Attorney General is responsible for civil policy and litigation, including supervision of the Civil Rights, Antitrust, Environment and Natural Resources, Tax and Civil Divisions, and the Immigration and Naturalization Service.

United States Attorneys

On August 1, 1994, **Donna A. Bucella** was appointed by the Attorney General to serve as Interim United States Attorney for the Middle District of Florida. Following the completion of this assignment, Ms. Bucella will return to her duties as Principal Deputy Director of the Executive Office for United States Attorneys at the Department of Justice in Washington, D.C.

On June 22, 1994, **J. Michael Bradford** became the Interim United States Attorney for the Eastern District of Texas.

* * * * *

Special Message From The Director, Executive Office For United States Attorneys

On July 19, 1994, Carol DiBattiste, Director, Executive Office for United States Attorneys, issued the following message to all United States Attorneys:

I thank each of you for your support upon my arrival and transition at the Executive Office for United States Attorneys. It is great to be back at EOUSA and I look forward to working with you and all of your personnel. I have the greatest respect and admiration for the tremendously talented and dedicated people of EOUSA and I am committed to the continuation of our mission -- "support of the men and women of the Offices of the United States Attorneys."

* * * * *

HONORS AND AWARDS

Attorney General's 42nd Annual Awards

On July 28, 1994, at a ceremony at the Andrew W. Mellon (Departmental) Auditorium in Washington, D.C., Attorney General Janet Reno presented awards to the men and women of the Department of Justice, the United States Attorneys' offices, and several individuals outside the Department for their outstanding efforts and personal sacrifices in carrying out the Department's vital law enforcement missions and objectives. In her introductory remarks, Ms. Reno stated, "The outstanding contributions and achievements recognized by the Attorney General's Awards represent the highest level of professionalism, competence, and dedication to duty. The exemplary efforts and personal sacrifices made by the Award recipients are deeply appreciated by their colleagues, the Department and the Nation." The following are some of the award recipients:

Attorney General's Award For Exceptional Service

J. Gilmore Childers, Lev L. Dassin, Henry J. DePippo, and Michael J. Garcia, Assistant United States Attorneys, and Paralegal Specialist Lillie A. Grant, Southern District of New York, for their dedicated and outstanding performance in the successful investigation and prosecution of the terrorist bombing of the World Trade Center. This case was built from shards of metal, bits of seemingly disparate testimony, a plethora of records, and various forensic evidence. From 207 witnesses and over 1,000 exhibits, this prosecution team reconstructed how the defendants planned and carried out the terrorist attack.

Attorney General's Award For Distinguished Service

Howard E. Heiss and Reid M. Figel, Assistant United States Attorneys for the Southern District of New York, for their outstanding efforts in the prosecution of United States v. Christopher Drogoul. This prosecution arose out of a corrupt banking relationship involving Drogoul, the manager of the Atlanta branch of the Banca Nazionale del Lavoro ("BNL"), the largest bank in Italy, the Republic of Iraq, and corporations throughout the world that conducted business with Iraq. These corrupt relationships resulted in the unauthorized extension of more than \$5 billion in loans and credit from the Atlanta office of BNL to Iraq in literally thousands of separate banking transactions. A 4-year investigation resulted in the return of a 347-count indictment against numerous individuals, including Drogoul.

Glenda G. Gordon, Assistant United States Attorney for the Western District of Michigan, for her role in the investigation and prosecution of Methacathinone cases. Ms. Gordon successfully prosecuted thirty felony offenders, fought for adequate investigative and prosecutorial resources, and for prevention education. Ms. Gordon also guided and trained law enforcement officers in the investigation of these cases, identified treatment programs for addicted defendants, and sought legislative solutions to curb the availability of this new designer drug.

James H. Leavey and Michael E. Davitt, Assistant United States Attorneys for the District of Rhode Island, for their investigation of the Saccoccia money laundering operation, an international enterprise that laundered in excess of a quarter of a billion dollars in cocaine trafficking proceeds over several years. The attorneys completed four trials resulting in the convictions of twelve defendants, eleven on RICO charges. Saccoccia was sentenced to 660 years and ordered to forfeit \$137 million.

Steven D. Clymer and Lawrence S. Middleton, Assistant United States Attorneys for the Central District of California; Barry F. Kowalski, Deputy Chief, Criminal Section, Civil Rights Division, and Alan W. Tieger, Trial Attorney, Civil Rights Division, for their outstanding representation of the United States in the investigation and litigation of United States v. Koon, et al, the case that arose from the videotaped beating of Rodney King in violation of his Fourth and Fourteenth Amendment rights. The attorneys presented a compelling and persuasive case to the jury and undermined a defense that had earlier prevailed in the state court proceedings.

Distinguished Service Awards were also presented to: **William T. Bonk**, Deputy U.S. Marshal, U.S. Marshals Service; **James R. Bucknam**, Senior Advisor and Project Manager, Office of the Director, FBI; **Robert K. Cassidy**, Special Agent, Miami Field Division, FBI; **Gustavo De La Vina**, Chief Patrol Agent, U.S. Border Patrol, San Diego; **Lauri Steven Filppu**, Deputy Director, Office of Immigration Litigation, Civil Division; **Norman J. Hylton**, Supervisory Inspector, Seized Assets Division, Eastern Regional Office, U.S. Marshals Service; **Patrick W. Keohane**, Warden, U.S. Penitentiary, Lompoc, California; **Antonio Loya**, Group Supervisor, Carlsbad Resident office, San Diego Divisional Office, Drug Enforcement Administration; **Sandra Taliani Rasnak**, Assistant U.S. Trustee, Office of U.S. Trustees, Region 11, Chicago; **Ozell Sutton**, Regional Director, Southeast Regional Office, Community Relations Service; **Richard H. Ward**, Acting Director, Discretionary Grant Programs Division, Bureau of Justice Assistance, Office of Justice Programs; and **Mary Lee Warren**, Deputy Assistant Attorney General, Office of the Assistant Attorney General, Criminal Division.

Attorney General's Award For Exceptional Heroism

James A. McGee, Special Agent, FBI, Quantico, Virginia, for his demonstration of heroism during the Branch Davidian standoff in Waco, Texas.

Samuel Soto, Special Agent, Tegicigalpa, Honduras County Office, Drug Enforcement Administration, for extraordinary heroism and dedication to duty while participating in a narcotic investigation with the Honduran police.

Attorney General's Mary C. Lawton Lifetime Or Career Achievement Award

Gerald Shur, Senior Associate Director, Office of Enforcement Operations, Criminal Division, for his thirty-three year career with the Criminal Division during which he distinguished himself by developing, managing and coordinating all of the various components of the Federal Witness Security Program since its inception.

Attorney General's Meritorious Public Service Award

Ronald V. Blais, Charlotte, North Carolina, for his extraordinary assistance to the FBI in a long-standing, bifurcated foreign counterintelligence and criminal investigation of Chinese subjects seeking to illegally export controlled U.S. military technology.

John Marshall Awards

Trial Of
Litigation:

Matthew W. Frank, Alice C. Hill, David A. Sklansky, Assistant United States Attorneys, Central District of California, and **Barbara L. Gunn**, Special Assistant United States Attorney, Securities and Exchange Commission, for their successful investigation and prosecution in United States v. Charles H. Keating, Jr., et al., one of the most significant financial fraud prosecutions ever mounted by the Department of Justice.

Michael A. Attanasio, Trial Attorney, and **Jackie M. Bennett**, Senior Trial Attorney, Public Integrity Section, Criminal Division, for their extraordinary achievement in combatting corruption in high offices, and their successful prosecution of former Congressman Albert Bustamante on charges of bribery and racketeering.

Seth G. Heald, Assistant Chief, Central Trial Section, Tax Division, for his successful litigation in National Commodity and Barter Association v. United States.

Participation
in Litigation:

Sherryl E. Michaelson and **Mark S. Hardiman**, Assistant United States Attorneys, Central of California, for their investigation of United States v. Michael Smushkevich, et al., the largest health care fraud case ever prosecuted.

Ellen Athas, Assistant Chief, General Litigation Section, Environment and Natural Resources Division, for her extraordinary contributions in litigation surrounding management of federal old-growth forests in the Pacific Northwest and northern California, with special emphasis on cases involving the Northern Spotted Owl.

- Support of Litigation: **Sharon Y. Eubanks**, Assistant Branch Director, Commercial Litigation Branch, Civil Division, for her successful negotiation of a unique and precedent-setting agreement in which the parties in Boeing Co. v. United States exchanged their microfilmed library of relevant documents and computer-accessed data bases.
- Mark C. Schechter**, Office of Operations, Antitrust Division, for his exemplary work in United States v. Airline Tariff Publishing Co., et al.
- Handling of Appeals: **Jeffrey P. Minear**, Assistant to the Solicitor General.
- Patty Merkamp Stemler**, Chief, Appellate Section, Criminal Division.
- Providing Legal Advice: **J. Brian Ferrel**, Assistant Chief, Eastern Trial Section, Tax Division.
- Susan M. Kuzma**, Senior Attorney-Advisor, Office of the Pardon Attorney.
- Asset Forfeiture: **Stefan D. Cassella**, Trial Attorney, Asset Forfeiture Office, Criminal Division.
- Preparation of Handling of Legislation: **Bradley Campbell**, Attorney, Policy, Legislation and Special Litigation Section, Environment and Natural Resources Division.
- Interagency Cooperation in Support of Litigation: **Daniel E. O'Connell, Jr.**, Senior Trial Attorney, Navy Litigation Office, General Counsel of the Navy.

* * * * *

Western District of Wisconsin

Jeffrey M. Anderson, Assistant United States Attorney for the Western District of Wisconsin, was presented a Group Recognition Award from David A. Kessler, M.D., Commissioner of Food and Drugs, Food and Drug Administration (FDA), Department of Health and Human Services, Washington, D.C., for his valuable service as a member of the "Operation Pill Scam" group, and "for exemplary service to FDA in the investigation and prosecution of individuals involved in an illegal prescription drug diversion scheme."

The "Operation Pill Scam" group conducted an extremely difficult investigation over five months and two states to uncover a well concealed ring of pharmaceutical sales representatives and pharmacists that were stealing and illegally selling prescription drug samples. The investigation was made more difficult by uncooperative manufacturers, involvement of a large institution with non-responsive management, and a large, multiple-jurisdictional area. The group was successful in developing one of the co-conspirators as an informant and using that person to identify over a half dozen people involved in multiple states. Their work was accomplished through undercover purchases, surveillance and other covert operations under extremely guarded conditions and arduous situations that led to informational indictments and plea agreements and stopped the illegal distribution of thousands of dollars of prescription drug samples.

* * * * *

Southern District Of Mississippi

Ruth Morgan, Assistant United States Attorney for the Southern District of Mississippi, received an award from the Mississippi Bureau of Narcotics, Department of Public Safety, for her valuable service to the agency as the prosecutor in a criminal case against Jimmy D. McGuire, a practicing criminal defense attorney on the Mississippi Gulf Coast. The case, designated as the "Outstanding Case of the Year, Southern Region," is the first of its kind in the entire United States involving the prosecution of an attorney for laundering drug money received from clients in his law practice.

During an undercover operation by the Internal Revenue Service (IRS), the undercover agents, posing as drug dealers in possession of \$280,000.00 in cash seized by the Mississippi Highway Patrol, hired Mr. Maguire to recover the \$280,000.00. Mr. McGuire was later indicted for various money laundering violations, and, following a jury trial, was convicted of filing a false IRS Form 8300 in violation of 26 U.S.C. §60501 and 26 U.S.C. §7206(1).

* * * * *

ATTORNEY GENERAL HIGHLIGHTS

Law Enforcement Crime Bill Rally

On July 28, 1994, President Clinton joined Attorney General Janet Reno at a law enforcement crime bill rally in the Great Hall of the Department of Justice. In attendance were: Secretary Lloyd Bentsen, Department of the Treasury; Lee Brown, Director, Office of National Drug Control Policy; Joseph R. Biden, Jr., Chairman, Senate Judiciary Committee; Jack Brooks, Chairman, House Judiciary Committee; other Congressional leaders; and more than 200 police officers from across the country. Senate and House conferees reached agreement on a compromise crime bill after a negotiating session that lasted until 2:30 a.m. the previous night. Congressional leaders hope they can win final approval of the bill before the August recess (August 12).

The President stated, "Now after nearly six years, congressional leaders and people in both parties have agreed on what will be the toughest, largest and smartest federal attack on crime in the history of the United States of America. . . Senator Biden and Chairman Brooks assure me this bill will be on my desk within days, and I assure you I will sign it into law without delay."

Secretary Bentsen added, "For four years, I've watched Joe Biden and Jack Brooks work diligently to pass a crime bill. Mr. President, with your leadership, we're a big step closer. And Mr. President, I plan to work with Janet Reno, to work with Chairmen Biden and Brooks, to produce a bill you'll be proud to sign. And the sooner, the better."

* * * * *

The Attorney General At Work On The Crime Bill

Attorney General Janet Reno has been conducting an extensive campaign across America calling for swift passage of the Administration's crime package. Ms. Reno has traveled to large cities as well as rural communities coast-to-coast in a continuing dialogue with the American people on how to reclaim our neighborhoods, parks, streets, and schools from crime and violence. The following are some of her special events:

July 6 - Columbus, Ohio. Ms. Reno attended an open-air event with state and local law enforcement leaders. She later addressed small-town and rural crime problems in Chillicothe, Ohio.

July 7 - Petaluma, California. Ms. Reno visited the Polly Klaas Foundation, and addressed the thousands of volunteers who assisted law enforcement officials when Polly was kidnapped. In her address, she discussed the "three strikes" proposal and other initiatives that the Foundation supports.

Later that evening, she walked through an Oakland neighborhood with community police officers and citizen public safety leaders, and addressed community leaders.

July 8 - Houston, Texas. Ms. Reno utilized video technology to conduct a town hall meeting with cities and small towns across Texas. Broadcasting on Texas A&M's Trans-Texas Videoconference Network, she discussed crime in Texas and the Administration's crime bill with law enforcement officials, elected officials and citizens gathered at eight sites across the state -- Houston, Corpus Christi, San Antonio, Dallas, Austin, Weslaco, El Paso and Temple.

July 8 - Lafayette, Louisiana. Ms. Reno attended an open-air Cajun barbecue in Lafayette, Louisiana. Also in attendance were U.S. Representatives Cleo Fields and William J. Jefferson, United States Attorneys Mike Skinner and L. J. Hymel, a host committee of Louisiana Sheriffs, and other law enforcement and elected officials.

July 11 - New York City. Ms. Reno met with Governor Mario Cuomo, Mayor Rudolph Giuliani, U. S. Representatives Charles Schumer, Benjamin Gilman, and Carolyn B. Maloney, Mary Jo White, United States Attorney for the Southern District of New York, and other state and local officials. Following the meeting, the group toured the Kenmore Hotel, a 22-story building that had previously been a virtual supermarket for drugs. As a result of the initiative of an NYPD community police officer working in the neighborhood, as well as the efforts of local and federal law enforcement agencies, the hotel was seized by federal authorities on June 8, 1994. It is now under new management, supervised by the U.S. Marshals Service, and is in the process of being restored. The Attorney General noted that the hotel is a prime example of how an individual police officer, devoted to addressing a neighborhood's specific problems, can have a tremendous impact. She further discussed one of the main features of the crime bill -- putting 100,000 additional police on the street.

July 14 - Washington, D.C. At the weekly press briefing at the Department of Justice, the Attorney General discussed the provision in the crime bill for 100,000 community police officers and the local impact on cities across America. Ms. Reno explained that in terms of a small city -- Provo, Utah; Paducah, Kentucky; Florence, South Carolina; Bay City, Michigan -- each have approximately seventy police officers. With the crime bill, they could receive up to fifteen new police officers in each city. In medium-size cities -- St. Louis, Missouri; Atlanta, Georgia; Columbus, Ohio; and Las Vegas, Nevada -- each have approximately 1,400 or 1,500 police officers. With the crime bill, they could be eligible for up to three hundred new police officers. For large cities -- Chicago, with 12,000 police officers; Los Angeles, with 7,000 police officers; and Philadelphia, with 6,000 police officers -- each city could have more than 1,000 new police officers.

July 19 - Washington, D.C. The Attorney General participated in a press conference on the Violence Against Women Act included in the crime bill. Also in attendance were Senators Joseph Biden and Barbara Boxer, as well as U.S. Representatives Charles Schumer, Patricia Schroeder and Louise Slaughter. The Violence Against Women Act and other domestic violence provisions include a federal cause of action for gender-motivated violence and a federal bar on interstate flight to commit abuse. In addition, there are new programs and increased funding to reduce and prevent violence against women through grants for victims services, law enforcement and judicial training, aggressive prosecutions, victim counselors and a national domestic violence hotline to help victims in need of assistance.

Fourth Anniversary Of The Americans With Disabilities Act

On July 25, 1994, at a ceremony at the Martin Luther King Library in Washington, D.C., Attorney General Janet Reno marked the fourth anniversary of the Americans with Disabilities Act (ADA) by unveiling a public service campaign to encourage businesses and individuals to learn what the law requires. The ADA, signed on July 26, 1990, prohibits discrimination against Americans with disabilities in employment, transportation, public accommodations, telecommunications, and state and local government.

As part of its intensified effort to educate Americans about the law, the Attorney General stated that the Department is funding a program to place ADA information materials in 15,000 libraries across the country. The Department has also requested an additional \$2 million increase in funding in next year's budget to help businesses and government agencies learn how to become accessible. In addition, Ms. Reno advised that the Department of Justice will distribute television and radio public service announcements that provide a toll-free number to call to learn how to comply with the law and how to file complaints. The ADA Information Line is: 1-800-514-0301 or (TDD) 1-800-514-0383.

Ms. Reno noted that the need to provide businesses with technical assistance is vital to achieving voluntary compliance. To underscore the ease with which small and large businesses can voluntarily comply, Ms. Reno highlighted the efforts of several businesses across the country who took steps to make their establishments accessible to persons with disabilities. The businesses, which received technical assistance through programs funded by the Justice Department, included: Dollywood Theme Park, Pigeon Forge, Tennessee; Independence Arena, Charlotte, North Carolina; Graysher Shopping Center, Hibbing, Minnesota; Bishop's Pharmacy, Albertville, Alabama; Virginia Zoological Park and Society, Norfolk, Virginia; Alta Vista Animal Clinic, Las Cruces, New Mexico; The King & I Restaurant, St. Louis, Missouri; Dairy Queen Brazier, Ellsworth, Kansas; and Pope Theater Company, Palm Beach County, Florida. The Attorney General stated, "Over the past four years the ADA has opened doors for persons with disabilities that have long remained locked. All businesses must take steps to ensure access to persons with disabilities. It's not just the way things should be, it's the law."

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New Acts Of Violence In The Northern District Of Florida

On July 29, 1994, Attorney General Janet Reno issued the following statement concerning the tragic killings at a clinic in Pensacola, Florida:

The tragic killings in Pensacola this morning are the subject of an investigation by the Pensacola Police Department, the Federal Bureau of Investigation, the Florida Department of Law Enforcement, and the Bureau of Alcohol, Tobacco and Firearms. The suspect of the case is in custody thanks to prompt and effective police work at the scene. The United States Attorney's office for the Northern District of Florida, the FBI, and the Bureau of Alcohol, Tobacco and Firearms, are providing every assistance possible for that investigation, and will continue to support it in every way possible.

Today's tragedy sharply underscores the importance of law enforcement's continuing efforts to determine whether there is any organized criminal element that is directing these horrible acts of violence. We will pursue every investigative lead and use every federal tool at our disposal to make that determination consistent with the Constitution.

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DEPARTMENT OF JUSTICE HIGHLIGHTS

Major Settlement With the World's Largest Computer Software Company

On July 16, 1994, Microsoft, the world's largest and dominant computer software company, agreed to end its illegal monopolistic practices after the Department of Justice charged that the company used unfair contracts that choked off competition and preserved its monopoly position. The company agreed to settle the charges with a consent decree that will prohibit Microsoft from engaging in these monopolistic practices in the future. Microsoft, which makes the MS-DOS and Windows operating systems used in more than 120 million personal computers, was accused of building a barricade of exclusionary and unreasonably restrictive licensing agreements to deny others an opportunity to develop and market competing products. The Department alleged that Microsoft used the following unfair practices:

Exclusionary Per Processor Licenses -- Microsoft makes its MS-DOS and Windows technology available on a "per processor" basis, which requires PC manufacturers to pay a fee to Microsoft for each computer shipped, whether or not the computer contains Microsoft operating system software. The complaint alleges that this arrangement gives Microsoft an unfair advantage by causing a manufacturer selling a non-Microsoft operating system to pay at least two royalties -- one to Microsoft and one to its competitor -- thereby making a non-Microsoft unit more expensive.

Unreasonably Long Licenses -- The Department further alleged that Microsoft's contracts are unreasonably long. By binding manufacturers to the purchase of Microsoft products for an excessive period of time, beyond the lifetime of most operating system products, the agreements foreclose new entrants from gaining a sufficient toe-hold in the market.

Restrictive Non-Disclosure Agreements -- The Department also charged that Microsoft introduced overly restrictive non-disclosure agreements to unreasonably restrict the ability of independent software companies to work with developers of non-Microsoft operating systems. Microsoft sought the agreements from companies participating in trial testing of the new version of Windows, to be released later this year. The terms of these agreements preclude applications developers from working with Microsoft's competitors for an unreasonable amount of time.

The settlement ends these practices and will help to rectify the effects of Microsoft's past unlawful conduct. In particular, the settlement prohibits Microsoft from:

- Entering into per processor licenses;
- Obligating licensees (manufacturers of personal computers) to purchase any minimum number of Microsoft's operating systems;
- Entering into any licenses with terms longer than one year (although licensees may renew for another year on the same terms);
- Requiring licensees to pay Microsoft on a "lump sum" basis;
- Requiring licensees to purchase any other Microsoft product as a condition for licensing a particular Microsoft operating system;
- Requiring developers of applications software to sign unlawfully restrictive non-disclosure agreements.

The settlement is the result of close coordination between the Department of Justice and the competition enforcement authorities of the European Commission, which has been investigating Microsoft since mid-1993, and which also initiated an undertaking containing essentially the same terms. This complaint and settlement marks the first coordinated effort of the two enforcement bodies in initiating and settling an antitrust enforcement action. The settlement is effective immediately and will be in effect for six and a half years.

Attorney General Janet Reno stated, "Microsoft's unfair contracting practices have denied other U.S. companies a fair chance to compete, deprived consumers of an effective choice among competing PC operating systems, and slowed innovation. Today's settlement levels the playing field and opens the door for competition." Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, added, "Microsoft is an American success story but there is no excuse for any company to try to cement its success through unlawful means, as Microsoft has done with its contracting practices."

A Competitive Impact Statement was filed by the United States in the U.S. District Court for the District of Columbia pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §16(b)-(h). If you would like a copy, please call the United States Attorneys' Bulletin staff, at (202) 514-3572.

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International Price Fixing Conspiracy In The Fax Industry

On July 14, 1994, Attorney General Janet Reno announced the break-up of a \$120 million a year international cartel in the fax paper market after a two-year coordinated effort between the United States and Canadian antitrust investigators. Charges were filed in the United States and in Canada against Kanzaki Specialty Papers Inc. of Ware, Massachusetts, and its former President, Kazuhiko Watanabe, a Japanese national, the Mitsubishi Corporation of Tokyo, Japan and the Mitsubishi International Corporation of New York, as well as others, for their involvement in a price fixing conspiracy to fix and raise prices of thermal facsimile paper sold in North America in 1991 and 1992. The defendants agreed to plead guilty and to pay criminal fines of more than \$6 million.

Kanzaki Specialty Papers Inc., a wholly owned subsidiary of the New Oji Paper Co. of Japan, made about \$40 million in sales of jumbo roll thermal facsimile paper to customers in North America in 1991. Mr. Watanabe, its former President, and a Japanese citizen, currently lives and works in Japan for the New Oji Paper Co. Mr. Kanzaki agreed to pay \$4.5 million and Mr. Watanabe agreed to pay \$165,000 in criminal fines. Mitsubishi Corporation is a Japanese trading house that distributes goods worldwide with total 1991 sales of over \$130 billion. Its fax paper sales shipped to the U.S. market were about \$5 million in 1991. It has agreed to pay a \$1.26 million dollar criminal fine. Mitsubishi International Corporation, headquartered in New York, distributes a variety of Japanese manufactured products in the United States. In 1991 it had about \$5 million in U.S. sales of fax paper. It has agreed to pay a \$540,000 criminal fine. According to the Information filed in U.S. District Court in Boston, the defendants and co-conspirators, for the purpose of forming and carrying out the charged combination and conspiracy, did the following:

a) Discussed and agreed to increase the price of jumbo roll thermal facsimile paper sold in North America;

b) Met in Tarrytown, New York in July 1991 and agreed to increase the price of jumbo roll thermal facsimile paper sold in North America;

c) Met on other occasions and participated in telephone conversations to determine the price of jumbo roll thermal facsimile paper sold in North America;

- d) Issued price increase announcements to customers in accordance with their agreement; and
- e) Charged higher prices to jumbo roll thermal facsimile paper customers in North America.

Anne K. Bingaman, Assistant Attorney General in charge of the Antitrust Division, stated, "This conspiracy primarily affected small businesses and home fax machine owners since thermal paper is the most affordable for those users. The Department will continue to break up international conspiracy rings that increase prices for consumers and make it difficult for hard working Americans to survive in the business world." The Attorney General added, "Foreign firms that want to do business in the U.S. must take our antitrust laws seriously and must play by our rules of fair competition when setting prices to be paid by U.S. consumers."

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International Gemstone Scheme In The Middle District Of Pennsylvania

On July 20, 1994, United States Attorney David M. Barasch announced that a federal grand jury in Harrisburg, Pennsylvania, indicted forty-four defendants involved in an international gemstone investment scheme that swindled American investors out of some \$35 million. The announcement was made jointly with the Government of Canada which, for more than a year, worked closely with the United States on the investigation pursuant to a Mutual Legal Assistance Treaty. The grand jury returned two indictments.

The scheme involved American investors who had purchased gems as an investment opportunity but could not interest anyone in purchasing the gems. The Canadian and American defendants, armed with a list of these investors, contacted the targeted victims and asked them if they were interested in selling their gems at a huge profit. The defendants identified themselves as "brokers" and offered to negotiate for the sale of the victim's portfolio with nonexistent "overseas buyers" who had visited the purported exchange. Usually, the victims readily agreed to have the defendants "sell" their gems for them. The defendants would advise the victims that they had reached a tentative agreement to sell the victim's gems at a large profit to the victim. The victim's "portfolio," however, did not satisfy the "overseas buyer's" requirements and, for the sale to go through, the victims were told they needed to buy one or more gems. The defendants would offer to help arrange for the purchase of the extra gems from a purportedly independent gemstone cutting house and supplier. After the victim had purchased the purported "deal closing" gemstone, the defendants would contact the victim and advise that due to any one of a dozen reasons (bankruptcy, divorce, death, etc.), the sale had fallen through. The defendants would then report they had negotiated a more lucrative agreement with another "overseas buyer" if the victim would acquire additional gems to round out the portfolio. This cycle would repeat itself until the victims finally caught on or became insolvent. One individual in central Pennsylvania acquired loans of \$1.2 million to buy gems that since then have been appraised at \$78,000. All told, defendants defrauded the victims of more than \$35 million.

United States Attorney Barasch emphasized the high level of international cooperation between the United States and Canada in investigating the scheme. The case was investigated by the U.S. Postal Inspection Service, the Royal Canadian Mounted Police, the Toronto Metropolitan Police, with the assistance of the FTC. Mr. Barasch also noted that the Federal Trade Commission (FTC) has estimated that telemarketing fraud costs U.S. consumers up to \$40 billion each year. The Canadian gemstone "scams" are generally recognized as one of the more widely prevalent and lucrative international schemes for victimizing U.S. consumers. Based on information contained in the National Association of Attorney General-FTC telemarketing complaint system, a nationwide electronic database maintained by the FTC, the reported dollar losses of the U.S. victims of Canadian gemstone fraud exceed by far those of any other telemarketing fraud reported in the database.

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Major Political Figure Convicted In The District Of Puerto Rico

On July 18, 1994, Guillermo Gill, United States Attorney for the District of Puerto Rico, announced that, through the efforts of Assistant United States Attorneys Miguel A. Pereira and Epifanio Morales, Franklin Delano Lopez, an influential member of local and national politics, was successfully prosecuted on five counts of falsifying documents and two counts of wire fraud. Mr. Lopez had been a member of the National Democratic Party since 1976, when he was active in the presidential campaign of then-President Carter. He was later appointed by President Clinton to the economic transition team after the President's November 1992 victory. Mr. Lopez is a consultant to the Governor of the Commonwealth of Puerto Rico for federal programs and appointments as well as an advisor to the Puerto Rican Senate.

The jury found that from November 1988 until September, 1989, Mr. Lopez made false and material statements to the First Federal Savings Bank, the Chase Manhattan Bank, and the Royal Bank of Canada, by submitting accounts receivable assignment documents and insurance claims assignments which were false and forged. The statements were used to obtain loans which exceeded \$5 million. The jury also concluded that Mr. Lopez, who held an ownership interest in federally subsidized apartment homes ranging from approximately 2.49 percent to 4.99 percent, developed a scheme to defraud his stateside partners who held an ownership interest of the remainder of money, by means of false and fraudulent representations and false claims. Mr. Lopez would cause the withdrawal and conversion of monies from partnership reserve accounts, required to be maintained by the Farmers Home Administration and entrusted to his care. He would then justify the withdrawals from partnership reserve accounts to his partners by generating false and fictitious invoices of repairs in the name of Constructora Bella Vista, Inc., a shell company. Using this scheme, he defrauded his partners of more than \$300,000.00.

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CIVIL DIVISION

Landmark Health Care Settlement

On June 30, 1994, the Department of Justice announced that a company that made false statements to obtain federal approval to market a potentially fatal mechanical heart valve will pay the United States \$10.75 million and likely millions more for medical expenses to settle government claims against it. Frank Hunger, Assistant Attorney General of the Civil Division, advised that Shiley Incorporated and its parent, Pfizer Inc. will pay the government \$10.75 million initially and also pay for certain medical costs that federal agencies would otherwise incur in connection with the fracture or elective replacement of certain valves. The total value of the agreement is estimated up to \$20 million.

Shiley Incorporated made false statements to the Food and Drug Administration to obtain approval to market and, later, to keep on the market the Bjork-Shiley Convexo-Concave mechanical heart valve (C/C valve). The C/C valve, marketed by Shiley between 1979 and 1986, is subject to fracture after implantation. The life-threatening fractures have occurred in 196 of the estimated 31,368 C/C valves implanted in the United States. On average, two of every three fractures are fatal. The government said that Shiley, to obtain FDA approval to market the C/C valve, made unsubstantiated claims during the application process that the C/C valve caused less blood-clotting than other valves on the market. In addition, Shiley failed to provide the FDA with all the information it possessed concerning fractures of valves during life-testing. After the fracture problem became evident, Shiley made further questionable representations to the FDA to keep the C/C valve on the market. In particular, Shiley argued that the valve's purported blood-clotting advantage outweighed the threat to people's lives posed by the risk of fracture. The blood-clotting advantage, however, ultimately did not prove to be as significant as represented to the FDA.

Finally, the government contends that Shiley's manufacturing process was considerably flawed. On numerous occasions, scrap valves were rebuilt, valves were rewelded an excessive number of times, and cracked valve struts were polished, rather than rewelded. In addition, the employee identification numbers listed on cards attached to the bags containing the reworked valves were in many instances falsified. An analysis of these cards showed that more than 3,000 "baggie cards" inaccurately reflected the identity of the person who purportedly worked on the valves. In some instances, the employee number represented an employee no longer with Shiley. In other cases, several separate operations, which should have been completed by different personnel, were marked as completed in the same handwriting.

The \$10.75 million Shiley will pay the United States settles the government's claims under the False Claims Act and the common law. Shiley and Pfizer also will pay for all qualifying medical costs that federal agencies, such as the Department of Health and Human Services and the Department of Veterans Affairs could incur in the elective replacement or fracture of certain C/C valves. Assistant Attorney General Hunger stated, "This agreement represents a landmark health care settlement. It is significant that a company accused of making false representations to the government has been held accountable not only for its statements but also for medical costs the government incurs as a result of complications associated with its falsely represented product. It is particularly important in this era of health care reform for the government to hold businesses in the medical industry strictly accountable for any misconduct."

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Major Settlement In The Nation's Space Flight Program

On July 6, 1994, the Department of Justice announced that Grumman Data Systems Corporation (GDS), a wholly owned subsidiary of Grumman Corporation, paid the United States \$2.2 million to settle allegations against GDS that a former GDS executive knowingly overstated the cost of installing a supercomputer used in the Nation's space flight program. Frank Hunger, Assistant Attorney General for the Civil Division, said that GDS which contracted with NASA in 1989 to install, integrate, and maintain a supercomputer system at NASA's Johnson's Space Center in Houston, obtained financing to acquire the supercomputer at an interest rate of 10.5 percent, but falsely and fraudulently certified to NASA that its financing cost was 13.77 percent. Mr. Hunger added that the government overpaid GDS more than \$1 million before discovering the existence of the 10.5 percent financing rate. GDS has previously repaid NASA \$1.1 million, plus interest. GDS's payment of an additional \$2.2 million represents the recovery of treble damages under the False Claims Act, 31 U.S.C. §3729 *et seq.*, which provides for up to treble damages against those who submit false claims to the United States.

The settlement was negotiated by the Commercial Litigation Branch of the Civil Division, following a criminal investigation by the Defense Procurement Fraud Unit of the Criminal Division and NASAs' Office of Inspector General.

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Major Defense Fraud Settlement

On July 14, 1994, the Department of Justice announced that Litton Systems, Inc., a subsidiary of Litton Industries, has paid the United States \$82 million to settle allegations the company defrauded the government of millions of dollars by shifting commercial data processing costs to hundreds of defense contracts. The government said Litton's Computer Services Division transferred the costs from the firm's commercial customers to three other divisions: Guidance and Control Systems, Data Systems and Applied Technology. Those Divisions, which primarily handled Department of Defense contracts, passed on the inflated costs to the United States in hundreds of contracts with the Army, Navy, Air Force and Marines. The initial cost shifting occurred at Litton's Computer Services Division in Woodland Hills, California, from 1983 through 1992. Similar activities occurred at the firm's data processing facility in Reston, Virginia, from 1990 through 1992.

Frank Hunger, Assistant Attorney General of the Civil Division, stated, "One of the Department's top priorities is the investigation and prosecution of defense fraud. We will not tolerate betrayal of the public trust, especially in this vital area."

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Medicare Fraud Settlement In The Eastern District Of Louisiana

On July 27, 1994, the Department of Justice announced that a Louisiana ambulance company has agreed to pay nearly \$2 million for falsely billing the Medicare program for the transportation of kidney patients in need of dialysis treatment. In its False Claims Act lawsuit, the United States alleged that Medic One Ambulance Company, of New Orleans, submitted false claims to Medicare seeking reimbursement for transporting patients for dialysis who did not qualify for Medicare coverage. The company has agreed to pay \$1,862,500.

Frank W. Hunger, Assistant Attorney General for the Civil Division, explained that under the Medicare program the government will reimburse for the cost of an ambulance trip only when it is medically necessary and reasonable. The government will pay to transport patients who are receiving out-patient renal dialysis treatment only under certain circumstances. Two such instances are when the patient is bed confined or can be moved only by stretcher.

The government sued Medic One and its individual owners, and the company's president for misrepresenting the condition of the patients being transported in order to get paid. In a complaint filed in November, 1993, the United States alleged that Medic One, in thousands of claims for Medicare reimbursement, automatically and mechanically represented that patients being transported for dialysis were either "bed confined" or "stretcher" patients, regardless of their actual condition. During a four-year period, Medic One was paid, on the average, in excess of \$255 for each round trip transport. Mr. Hunger stated, "This case is typical of a pattern of ambulance cases we have been investigating and bringing suit around the country. Today's settlement reflects the commitment of law enforcement to recoup the substantial dollars that are lost each year due to health care fraud."

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CIVIL RIGHTS DIVISION

The Citadel Ruling

On July 22, 1994, the U.S. District Court for the District of South Carolina ordered that Shannon Faulkner be admitted to the Citadel immediately. Attorney General Janet Reno and Assistant Attorney General Deval L. Patrick of the Civil Rights Division, issued the following statement:

In ordering the immediate admission of Shannon Faulkner to the Citadel's Corps of Cadets, the District Court in Charleston, South Carolina recognized today that the right to the unique educational benefits of a public institution cannot be denied solely on the basis of one's gender. In ruling that the Citadel's refusal to admit Ms. Faulkner violates her constitutional rights as guaranteed by the Equal Protection Clause of the Fourteenth Amendment, the Court rejected the stale argument of discrimination based on tradition.

Ms. Faulkner sought only what her male counterparts have had for the past 152 years at the Citadel, namely, the opportunity to be judged on the basis of one's merits and not on the immutable characteristic of gender. The Court correctly held that the defendants were unable to justify the denial of that opportunity to women.

Notwithstanding the Citadel's efforts to resist change and cling to tired stereotypes that women in all walks of life refute on a daily basis, the State of South Carolina simply cannot deny half its citizens the unique opportunity and benefits that it affords the other half; nor can change be legitimately resisted when it vindicates the constitutional rights of those for whom tradition has meant exclusion. As in the VMI case, we will seek to vindicate the rights of all women to have educational opportunities equal to those of men.

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Americans With Disabilities Act In Los Angeles

On July 12, 1994, under a settlement reached between the City of Los Angeles and the Department of Justice, calls to 9-1-1 by people who are deaf, hard of hearing, or who have speech impairments will no longer go unanswered. The agreement resolves a complaint filed with the Justice Department alleging that the city violated the Americans with Disabilities Act (ADA) by failing to respond to a 9-1-1 call made by a mother who is deaf. After her 2 1/2 year-old son suffered a head injury, the mother called 9-1-1 on a telecommunication device for the deaf, or TDD. After three tries to reach the 9-1-1 center by TDD, she gave up and took her son to the hospital herself. The ADA prohibits discrimination against persons with disabilities. Title II of the ADA requires cities to ensure that their telephone emergency services, including 9-1-1 services, provide direct access to individuals who use TDD's.

Under the settlement, Los Angeles will modify its current practices to ensure that the services provided to individuals who use TDD's are as effective as those provided to others. The city will also: install TDD-compatible equipment at each of the 27 individual answering stations; properly maintain the system and provide backup systems in the event that the equipment becomes inoperable; provide training for emergency dispatchers in the proper operation of TDD's; and, develop and implement a public education program to promote the use of 9-1-1 by individuals who use TDD's.

Assistant Attorney General Patrick stated, "This agreement should serve as guidance for other large cities that are working to comply with the ADA. Individuals with disabilities have been paying for access to these services for many years, and it is time that this access is now provided."

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CRIME STATISTICS

Juvenile Violent Crime Victims

On July 17, 1994, the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice released a report entitled "Juvenile Victimization: 1987-1992," a copy of which is attached at the Appendix of this Bulletin as Exhibit A. The data, derived from the Bureau of Justice Statistics' National Crime Victimization Survey, indicates the following:

- Juveniles were raped, robbed or assaulted at five times the rate of adults 35 years old or older during 1992.
- One of every 13 juveniles was a violent crime victim that year, compared to one of every 72 adults.
- The 1992 rate marked a 23 percent increase over that recorded in 1987, when one of every 17 juveniles was a violent crime victim. Among adults the 1987 rate was one in 81.
- Juvenile victimization rose steeply even though the population of that age group grew by less than 2 percent from 1987 through 1992. The report defined juveniles as people from 12 through 17 years of age.
- In 1992 juveniles 12 through 17 years old accounted for approximately 23 percent of the estimated 6.62 million violent victimizations throughout the United States, and the rate for this age group was 74.2 such victimizations per 1,000 juveniles, compared to 13.9 such victimizations per 1,000 people 35 years old and older.
- About 83 percent of the violent juvenile victimizations during 1992 were assaults, and approximately 56 percent were simple assaults, that is, assaults not involving weapons or serious injury.
- There were an estimated 420,000 aggravated assault victimizations in 1992 against those 12-17 years old.

Attorney General Janet Reno stated, "These statistics are disturbing, and they are compelling proof that we must get the crime bill to President Clinton's desk. One out of thirteen young people is a victim of violent crime. For America's children and for America's future, we need the crime bill. The crime bill's combination of policing, punishment and prevention will give us the tools we need to help reduce this grim toll."

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Workplace Violence

On July 24, 1994, the Bureau of Justice Statistics of the Department of Justice released a report entitled "Violence and Theft in the Workplace," a copy of which is attached at the Appendix of this Bulletin as Exhibit B. The data are from an analysis of workplace crime from 1987 through 1992 gathered through the National Criminal Victimization Survey of U.S. households. The report indicates the following:

- One in six violent crimes occurs in the workplace.
- An estimated 7 percent of all rapes, 8 percent of all robberies and 16 percent of all assaults occur at work.
- The workplace is the scene of almost 1 million violent crimes every year. About 10 percent -- or 100,000 -- of these violent workplace crimes involve offenders armed with handguns.
- Of the approximately 3.2 million violent crimes and thefts in the workplace, about 500,000 victims lose an estimated 1.8 million workdays each year and \$55 million in lost wages, not including days covered by sick and annual leave.

- Among the women who experience crime at work, 40 percent are attacked by a stranger, 35 percent by a casual acquaintance, 19 percent by a well known acquaintance and 2 percent by a relative. About 5 percent are attacked by a husband, former husband, boyfriend or former boyfriend.

- The average annual number of workplace victimizations from 1987 through 1992 are:

	<u>No. of Victimizations</u>	<u>No. with Injuries</u>
Rape	13,068	3,438
Robbery	79,109	17,904
Aggravated Assault	264,174	48,180
Simple Assault	615,160	89,572

- Federal, state and local government workers, who make up about 18 percent of the total U.S. workforce, account for 30 percent of all workplace victims. The report noted, "Several factors may be responsible for this overrepresentation, including a potentially high risk of victimization for particular government occupations such as public safety personnel."

- In addition to the violent crimes, there was an annual average of more than 2 million personal thefts in the workplace during the period, as well as more than 200,000 motor vehicle thefts.

- More than half of all workplace victimizations were not reported to police -- among those not reporting, 40 percent said they believed the matter was minor or too personal, and 27 percent said they reported the incident to another official, such as a company security guard.

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Delinquency Cases In Juvenile Court, 1992

On July 24, 1994, the Office of Juvenile Justice and Delinquency Prevention of the Department of Justice released a report entitled "Delinquency Cases in Juvenile Court, 1992," a copy of which is attached at the Appendix of this Bulletin as Exhibit C. The report indicates the following:

- The nation's juvenile court case load grew 26 percent from 1987 through 1992, although cases involving drug offenses fell 12 percent.

- The courts handled about 118,600 murders, rapes, robberies and aggravated assaults during 1992 -- a 68 percent increase over 1988.

- During the five-year period, juvenile court cases involving crimes against people grew 56 percent, property crimes 23 percent and public order offenses 21 percent.

- Males were involved in 81 percent of all delinquency cases. White juveniles were the offenders 65 percent of the time, black juveniles 31 percent. In 296,100 cases, or 20 percent of the total, the juvenile was held in a detention facility during at least some period in the process -- a 25 percent increase over the 1988 number.

- Among the almost 1.5 million juvenile court cases handled during 1992, an estimated 11,700 juvenile cases were judicially transferred to an adult criminal court during 1992 -- a 68 percent increase over the 1988 number.

- Juvenile courts dealt with the following number of cases during 1992:

<u>Crimes Against People</u>	301,000	<u>Property Crimes</u>	842,200	<u>Public Order Offenses</u>	255,900
Criminal Homicide	2,500	Burglary	156,400	Obstruction of Justice	87,100
Forcible Rape	5,400	Larceny-Theft	361,600	Disorderly Conduct	69,300
Robbery	32,900	Motor Vehicle Theft	73,000	Weapons Offenses	41,000
Aggravated Assault	77,900	Arson	8,300	Liquor Law Violations	12,500
Simple Assault	152,800	Vandalism	121,700	Non-Violent Sex Offenses	12,900
Other Violent Sex Offenses	9,900	Trespassing	58,500	Other Public Order Offenses	33,000
Other Crimes Against People	19,800	Stolen Property Offenses	28,900	<u>Drug Law Violations</u>	72,100
		Other Property Offenses	33,700		

Murder In Families

On July 10, 1994, the Bureau of Justice Statistics of the Department of Justice, released a report entitled "Murder in Families," a copy of which is attached at the Appendix of this Bulletin as Exhibit D. The report, a study of more than 8,000 homicides in large urban counties, indicates as follows:

- Wives are the most frequent victims of fatal family violence.
- Sixteen percent involved murder inside the family; four out of ten of them killed a spouse; and offspring were killed by their parents at twice that offspring killed their parents.
- A male was the assailant in about two-thirds of family murders. However, among black marital partners, wives killed their husbands at about the same rate as husbands killed their wives -- 47 percent of the black spouse victims were husbands and 53 percent were wives. Among white victims murdered by their spouses, 38 percent of the victims were husbands and 62 percent were wives.
- Most murders inside the family happened at night -- 63 percent. Alcohol was often part of the fatal scenario. Nearly half of the killers and a third of their victims had been drinking at the time of the family homicide.
- Six percent of family murderers killed more than one person. Among spouse murders, 2 percent committed multiple murders and among persons who murdered their own mother or father (or both parents), it was 13 percent.
- Fourteen percent of family murderers had a history of mental illness. Among spouse murderers, 12 percent had such a history, and 25 percent of persons who murdered their mother or father had a history of mental illness.
- Fifty-six percent of family killers had a history of arrests or convictions. Among those who killed a spouse, 51 percent had a prior criminal record (not necessarily for spouse abuse), and among defendants who killed one or both of their parents, 67 percent had been previously arrested or convicted.

- Seventy-six percent of the family murderers were convicted of murder or some other crime, 6 percent were acquitted, 9 percent were not prosecuted, 4 percent were dismissed by the court, 3 percent were found not guilty by reason of insanity and the remainder were still pending.
- Eighty percent of the spouse murderers were convicted of murder or some other crime, 6 percent were acquitted, 7 percent were not prosecuted, 4 percent were dismissed by the court, 1 percent were found not guilty by reason of insanity, and the remainder were pending.
- Seventy percent of defendants charged with killing their parents were convicted of murder or some other crime, 6 percent were acquitted, 6 percent were not prosecuted, 5 percent were dismissed by the court, 9 percent were found not guilty by reason of insanity, and the remainder were pending.
- Eight-eight percent of convicted family murderers were sentenced to prison with an average sentence of 23 years. Corresponding figures for convicted spouse murderers were 89 percent prison and an average sentence of 13 years, for convicted parent murderers, 95 percent prison and a sentence average of 13 years.
- Thirteen percent of convicted family murderers received a sentence to life imprisonment. For convicted spouse murderers, it was 23 percent and for convicted parent murderers, 18 percent.
- Seventy-nine percent of those younger than 12 years old who had been killed by a parent had been previously abused by their assailant.
- Eleven percent of all victims who were 60 years old or older were killed by a son or a daughter.

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POINTS TO REMEMBER

Alleged Professional Misconduct By Department Of Justice Attorneys

In December of 1993, the Deputy Attorney General adopted a new policy regarding the disclosure of the results of investigation of alleged professional misconduct by Department attorneys. On July 21, 1994, Carol DiBattiste, Director of the Executive Office for United States Attorneys, reissued the policy to all United States Attorneys and Assistant United States Attorneys. A copy is attached at the Appendix of this Bulletin as Exhibit E.

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Civil Aircraft Involved In Drug Trafficking

On July 14, 1994, Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, issued a memorandum to Jamie S. Gorelick, Deputy Attorney General, concerning United States assistance to countries that shoot down civil aircraft involved in drug trafficking. The memorandum summarizes earlier advice concerning whether and in what circumstances United States Government officers and employees may lawfully provide flight tracking information and other forms of technical assistance to the Republics of Colombia and Peru. The information and other assistance at issue have been provided to the aerial interdiction programs of those two countries for the purpose of enabling them to locate and intercept aircraft suspected of engaging in illegal drug trafficking.

Concern over the in-flight destruction of civil aircraft as a component of the counternarcotics programs of foreign governments is not novel. In 1990, soon after the inception of the U.S. Government assistance program, the United States made an oral demarche to the Colombian government informing that government that Colombian use of U.S. Government intelligence information to effect shootdowns could result in the suspension of that assistance. More recently, we understand that the government of Peru has used weapons against aircraft suspected of transporting drugs and that the government of Colombia announced its intention to destroy in-flight civil aircraft suspected of involvement in drug trafficking. The possibility that these governments might use the information or other assistance furnished by the United States to shoot down civil aircraft raises the question of the extent to which the United States and its governmental personnel may lawfully continue to provide assistance to such programs.

If you would like a copy of the Legal Counsel memorandum, please call the United States Attorneys' Bulletin staff, at (202) 514-3572.

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LEGISLATION

Indian Gaming Regulatory Act Amendments

On July 25, 1994, Gerald Torres, Counsel to the Attorney General, testified before the Senate Committee on Indian Affairs concerning S. 2230, Indian Gaming Regulatory Act Amendments (IGRA). Mr. Torres stated that in enacting the IGRA, Congress affirmed the tribes' authority to game. Since the enactment of the IGRA, gaming has become an important source of revenue and economic development for many tribes. The Administration strongly supports the continued ability of tribes to engage in gaming as provided in the IGRA. There is agreement between the Administration, the states and the tribes, however, that the IGRA requires repair, and any attempt to amend the IGRA must preserve tribal sovereignty, which this Administration is committed to supporting. The central failing of the IGRA is that it has generated protracted litigation between the tribes and the states over the scope of Class III gaming. During the pendency of litigation, tribes have been denied the ability to engage fully in the sort of gaming activities contemplated by IGRA and -- in part because of the problems associated with the compacting process -- much of the gaming on reservations remains inadequately regulated. The proposed IGRA Amendments seek to correct these and other problems. Mr. Torres applauded the Committee for proposing this much-needed legislation, the goals of which we support.

Mr. Torres further discussed the need for amendment of the IGRA and the resolution of problems arising under IGRA. He concluded by stating that the Department's attorneys are available to work with the Committee, the tribes, and the states to assist in refining these long-awaited amendments. If you would like a copy of the testimony, please call the United States Attorneys' Bulletin staff, at (202) 514-3572.

* * * * *

Employment Non-Discrimination Act

On July 29, 1994, Deval Patrick, Assistant Attorney General for the Civil Rights Division, testified before the Senate Committee on Labor and Human Resources concerning S. 2238, the Employment Non-Discrimination Act. Mr. Patrick commended the Chairman (Edward M. Kennedy), and the more than 130 cosponsors in both chambers for introducing the bill, and added that it is a serious and thoughtful approach to address the problem of discrimination against gay men and lesbians. Because the President strongly supports the principle of non-discrimination based on sexual orientation, he will sign into law legislation passed by Congress that prohibits discrimination in employment based on sexual orientation.

Thirty years ago, Congress enacted the Civil Rights Act of 1964, including Title VII which prohibits discrimination in employment based on race, color, religion, sex and national origin. In 1967, the Age Discrimination in Employment Act was enacted to protect older Americans. Most recently, in 1990, Congress enacted the Americans with Disabilities Act to extend full civil rights protections to persons with disabilities. All of these are legislative markers on the road to full and productive participation in our free society. These laws reflect Congress' deepening understanding of the notion that characteristics such as race, religion, sex, age and disability have no relevance to the ability of an individual to perform required functions of a job. Quite often, unfortunately, prejudice and stereotypes held by some employers still limit a gay or lesbian person's ability to obtain and keep a job. This Administration believes the principle of non-discrimination in employment should be extended to include sexual orientation. The Administration wants to work with Congress to enact such a bill to make this principle a reality.

If you would like a copy of the testimony, please call the United States Attorneys' Bulletin staff, at (202) 514-3572.

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SENTENCING REFORM

Guideline Sentencing Update

A copy of the Guideline Sentencing Update, Volume 6, No. 15, dated July 20, 1994, is attached as Exhibit F at the Appendix of this Bulletin. This publication is distributed periodically by the Federal Judicial Center, Washington, D.C. to inform judges and other judicial personnel of selected federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Commission.

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CASE NOTES

CIVIL DIVISION

Third Circuit Rejects Our Position That States May Limit Reimbursement To Medical Providers For Services Rendered Certain Medicare Beneficiaries Known As "QMBs"

The Secretary of Health and Human Services determined that when a state, through its Medicaid program, pays the premiums for the enrollment in Medicare Part B of certain elderly poor and other individuals, known collectively as Qualified Medicare Beneficiaries or "QMBs", the state may limit the reimbursement paid to providers of medical services to the amount allowed under the state's Medicaid program. Plaintiff physicians sued the state and federal governments, contending that individuals enrolled in Medicare Part B by virtue of Medicaid payments were subject to the more generous payment provisions of Medicare Part B and that the Secretary's interpretation of the statutory provisions relevant to this dispute, as well as Pennsylvania's state statute, were "null and void."

The district court upheld the Secretary's position. The Third Circuit has just reversed. Adhering to the reasoning of a 1992 decision of the Second Circuit raising the same issue (New York Health & Hosp. Corp. v. Perales, 954 F.2d 854 (2d Cir. 1992), the court of appeals ruled that the Secretary's position violated the terms of both the Medicare and Medicaid statutes, and was entitled to no deference. The same issue is presently pending in two other circuits.

Pennsylvania Medical Society v. Snider, et al. No. 93-775. (July 20, 1994)
[3d Cir.; M.D. Pa.]. DJ # 137-63-582.

Attorneys: Barbara C. Biddle - (202) 514-5425
Richard A. Olderman - (202) 514-1838

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Fourth Circuit Affirms District Court's Dismissal Of Army Doctor's Suit For Violation Of Constitutional Rights Arising From Army's Action Limiting Her Staff Privileges At Army Hospital And Report Of That Action To National Practitioner Data Bank

Plaintiff brought this suit challenging the Army's 1991 action limiting her privileges as a doctor at Womack Army Community Hospital at Fort Bragg. She alleged that, in refusing to grant her privileges to perform as anesthesiologist without supervision in complex cases and in reporting that action to the National Practitioner Data Bank administered by the Secretary of Health and Human Services as required by agreement between HHS and DOD, the Army deprived her of due process in violation of the Fifth Amendment. Plaintiff also sued individually several Army officers involved in the determination. The district court granted the government's motion to dismiss the complaint against the government and the individual defendants on the grounds that plaintiff failed to establish a Constitutional violation by the Army and that the individual defendants were therefore entitled to qualified immunity and were also entitled to immunity on two other grounds.

The Fourth Circuit (Chapman, Ellis, Knapp) has affirmed. With respect to plaintiff's substantive due process claims, the Court held that the Army's action did not implicate any protected property or liberty interest plaintiff had. It also held that plaintiff's failure to participate in the Army's hearing process precluded her substantive due process challenge to the privileging action as arbitrary action. With respect to her procedural due process claims, the Court concluded that plaintiff had adequate notice of the grounds for the proposed action by virtue of her participation at a prior hearing involving substantially the same allegations. In addition, it concluded that plaintiff's failure to participate in the hearing that led to the Army's action precluded her challenge to the procedures used in connection with the hearing. Finally, the Court rejected plaintiff's challenge to the Army's hearing procedure, which permits parties to have counsel present but prohibits such counsel from questioning witnesses or presenting arguments at the Army's informal hearings.

Shirley Randall v. United States, No. 93-1792, (July 26, 1994) [4th Cir.].
DJ # 145-4-7049.

Attorneys: Barbara Herwig - (202) 514-5425
Peter Maier - (202) 514-3585

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Eighth Circuit Holds Park Service Rangers Entitled To Qualified Immunity Against Bivens Claims That They Violated Substantive Due Process Rights Of Decedent By Releasing Him From Custody While He Was Allegedly Intoxicated

Decedent was arrested by Park Rangers for offensive public behavior at a fairgrounds, and taken from the fairgrounds. He was released near the closest police station, apparently without any money. About 1 1/2 hours later decedent was struck and killed by a car on an interstate highway, about 1 1/2 miles from where released. Plaintiffs sought damages from the three Park Rangers involved under Bivens for alleged violation of decedent's substantive due process rights. After multiple determinations, the district court denied defendants' motion for summary judgment on the ground of qualified immunity.

The court of appeals has now reversed, holding that reasonable police officers would not have understood that their conduct violated decedent's substantive due process rights, and that their actions did not violate any constitutional principles clearly established both at the time they acted and under current law. The court of appeals directed the district court to enter summary judgment in defendants' favor on the ground of qualified immunity.

Sellers, et al. v. Vecera, et al., Nos. 93-2261, 2686 (July 8, 1993)
[8th Cir.; E.D. Mo.]. DJ # 157-42-697.

Attorneys: Barbara L. Herwig - (202) 514-5425
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* * * * *

**Ninth Circuit Holds That HHS Approval Of California Welfare Experiment Violated
The Administrative Procedures Act**

In 1992 the California legislature undertook a five-year public benefits experimentation project, consisting primarily of a prior residency requirement for recipients and a work-incentive program. The residency component has been enjoined on constitutional grounds. Green v. Anderson, 811 F. Supp. 516 (E.D. Cal. 1993), aff'd, No. 93-15306 (9th Cir. Apr. 29, 1994). The work-incentive component, which was the subject of this appeal, was designed to encourage AFDC recipients to find work by decreasing benefits while allowing recipients to keep more of their earned income. Prior to implementing the project, California sought and received permission from HHS, which possesses statutory authority to waive statutory and regulatory requirements for pilot projects. See 42 U.S.C. § 1315(a). Of particular note, the Secretary of HHS waived a statutory requirement that made federal funding of California's Medicaid program contingent on the state's maintenance of AFDC benefits at the level in effect in 1988. The plaintiffs, a class of AFDC recipients, brought an action objecting to the duration and geographic scope of the Secretary's waivers, and to the inclusion of disabled recipients and child-only AFDC units within the work experiment. In addition to invoking the APA, the plaintiffs relied on a statutory restriction on the use of federal funds for human experimentation, see 42 U.S.C. § 3515b, and separately argued that the state's experiment violated the Americans With Disabilities Act. The district court denied the motion for a preliminary injunction, rejecting our jurisdictional defenses, but finding that the administrative record implicitly indicated that the Secretary had considered and rejected the plaintiffs' arguments. An expedited appeal followed.

The Ninth Circuit (Goodwin & Norris, JJ.; O'Scannlain, J., dissenting) has now reversed. After holding that the plaintiffs' injury was redressable, the panel agreed with the district court that the Secretary's decision to approve a welfare experiment under 42 U.S.C. § 1315(a) was reviewable. In determining that the Secretary's approval was arbitrary and capricious, the panel cited "a rather stunning lack of evidence" that the Secretary considered any of the plaintiff's objections, which had been submitted for review prior to the approval of California's project, and ordered remand of the cases to the Secretary for consideration of the objections. In light of that disposition, the panel did not reach the human experimentation or ADA claims. Judge O'Scannlain, dissenting, would have held that under an extremely deferential standard of review, the Secretary's path of decision was discernible.

Beno v. Shalala, No. 93-16411 (July 13, 1994) [9th Cir.;
E.D. Cal.]. DJ # 137-11E-510.

Attorneys: Robert V. Zener - (202) 514-1597
Edward T. Swaine - (202) 514-4814

* * * * *

District Of Columbia Circuit Dismisses For Lack Of Standing Challenge To Regulations On Humane Treatment Of Research Animals

Plaintiffs sued to set aside regulations promulgated by the Secretary of Agriculture for the humane treatment of research animals on the grounds the safeguards were inadequate to comply with the Federal Laboratory Animal Welfare Act. The district court invalidated the regulations. On our appeal, the court of appeals vacated the judgment and remanded with directions to dismiss the complaint for lack of standing. The court held that the plaintiff who was a member of a statutory oversight committee had no standing to compel executive enforcement of the law. The two organizational plaintiffs had no particularized claim to monitoring compliance with the statute, nor did general informational and educative interests in animal welfare give them standing. Two merchants of primate housing lacked standing because the statute's purpose is to promote the humane treatment of animal, not the sale of primate housing. Finally, a research scientist lacked standing because he had not shown that he, as opposed to his employer, had a cognizable interest.

Animal Legal Defense Fund v. Espy, No. 93-5127, (July 22, 1994)
[D.C. Cir.; D.D.C.]. DJ # 145-8-2398.

Attorneys: Robert V. Zener - (202) 514-1597

* * * * *

TAX DIVISION

Sixth Circuit Reverses Favorable District Court Decision On Whether Modified Computer Software Programs Sold On Tapes And Disks Were Tangible Or Intangible Property

On June 27, 1994, the Sixth Circuit reversed the favorable district court decision in Comshare, Inc. v. United States. The question presented was whether modified computer software programs sold on tapes and disks were tangible or intangible property, for purposes of claiming Internal Revenue Code investment tax credits. These credits are applicable only to tangible personal property. The taxpayer, a software merchandiser, claimed investment credits with respect to its cost credits on the ground that the software was intangible property. The district court agreed, finding that the intrinsic value of the programs was in their intangible elements, and that the tapes and disks merely were a means of delivering that intangible property. The Sixth Circuit disagreed, holding that "[w]here the value of information is dependent upon its having been embodied in a tangible medium, . . . acquisition of the medium at a price that includes the value of the information encoded on it constitutes acquisition of 'tangible' property the full cost of which qualifies for the tax benefits associated with such property." This decision has limited future importance because the investment tax credits were repealed in 1986.

* * * * *

Eighth Circuit Affirms Tax Court's Unfavorable Decision Setting Aside Proposed Tax Deficiencies

In an unpublished opinion filed on June 22, 1994, in Honeywell, Inc. and Subsidiaries v. Commissioner, the Eighth Circuit affirmed the Tax Court's unfavorable decision which set aside proposed tax deficiencies in excess of \$50 million for tax years 1980 and 1981. This case centered on the taxpayer's practice of exchanging working computer parts with the broken parts from its customers' computers. The taxpayer would then recondition the broken parts and use these parts in future repairs. The Tax Court determined that the transaction was solely composed of the rendering of a service and that the taxpayer's supply of reconditioned parts was a depreciable capital asset, rather than inventory. The Eighth Circuit, in a two-sentence per curiam opinion, affirmed the Tax Court's adverse decision.

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ENVIRONMENT AND NATURAL RESOURCES DIVISION

The following is an update of recently decided cases worked on jointly by the Environmental Crimes Section of the Environment and Natural Resources Division and the United States Attorneys' offices:

U.S. v. Wade Jones Co., Inc. (Cr. 94-50023, W.D. Arkansas) (RCRA) (7/19/94)

On July 19, 1994, pursuant to a plea agreement, the Wade Jones Company (WJC) pled guilty to a one-count felony information under the Resource Conservation and Recovery Act (RCRA), which charged the unlawful disposal of hazardous waste, and was sentenced to a \$50,000 fine. WJC, a Texas corporation, which maintains its primary offices in Lowell, Arkansas, is a manufacturer and wholesale distributor of poultry health products including vitamins, disinfectants, pharmaceuticals, and feed additives. The RCRA plea stems from the September 24, 1992, disposal of approximately 2,500 gallons of hazardous waste from the company's pretreatment holding tanks onto company grounds. Employees of the company intentionally pumped the waste from the tanks because the pretreatment system was out of service and the waste could not be properly treated and discharged into the city sewer. The waste, which included mainly rinse water from product blending operations, was determined to be TCLP hazardous waste due to the presence of cresol above the regulatory threshold.

Attorneys: Rick Filkins - (202) 272-5799
AUSA Mark Webb - (501) 783-5125

U.S. v. Daniel Rodriguez-Castro, (D. Colorado) (PCB Export) (6/29/94)

Daniel Rodriguez was sentenced to a year of incarceration, as required by the court's final acceptance of his binding plea agreement, and a year of supervised release. On June 7, 1994, Rodriguez entered a guilty plea to a charge of conspiracy to illegally export PCBs to Mexico. He was charged on December 16, 1993, in a four-count indictment with illegal storage of PCBs, perjury and the conspiracy (to which he pled guilty). Rodriguez was involved in a scheme to move 175 drums of oil containing PCBs into Mexico via El Paso. The drums of oil were generated by Weaver Electric and illegally stored by Martha Slusser at her horse ranch near Denver. The drums were illegally stored in several locations after being shipped to El Paso in January 1989 and were discovered by the local fire department in October 1989, prior to any of the drums being moved into Mexico. Rodriguez subsequently denied his involvement in the plot before the grand jury in Denver. Rodriguez is the sixth defendant connected with the Weaver Electric case to be sentenced to a term of imprisonment. The Weaver case is the second to result in the incarceration of six individuals, which is the largest number of individuals ever to be imprisoned in one case. In December 1992, Weaver Electric, which buys, refurbishes and sells used electrical equipment and is located in Denver, was sentenced to a fine of \$200,000 and is required, as a term of probation, to spend an additional \$300,000 on EPA-approved environmental compliance activities at its two sites while remaining responsible for all cleanup costs caused by its illegal activities.

Attorneys: Peter Murtha - (202) 272-9860
AUSA John Haried - (303) 844-2081

U.S. v. Robert H. Hopkins, (D. Connecticut) (CWA) (7/20/94)

Robert H. Hopkins, the former vice president of manufacturing at Spirol International Corporation, was sentenced to 21 months in prison, three years of supervised release and a \$7,500 fine. On May 5, 1994, following a two-day trial, a jury convicted Hopkins on all three counts charged in a Clean Water

Act (CWA) felony indictment. Trial began on May 4. He was found guilty of illegal discharges of pollutants, tampering with a monitoring device and conspiracy to violate the CWA. Spirol International manufactures metal shims and fasteners. The indictment, filed on December 21, 1993, charged that from March 1989 through September 1990, Hopkins directed employees to dilute and filter samples of discharges from Spirol's process wastewater and to submit unrepresentative samples of the discharges in Spirol's monitoring reports. Further, Hopkins caused discharges of pollutants to the Five Mile River in violation of a permit issued to Spirol by the state of Connecticut. The violations were uncovered by the company through self-auditing and were voluntarily disclosed to authorities. The investigation is continuing.

Attorneys: David Uhlmann - (202) 272-9854
AUSA Joe Hutcheson - (203) 773-2108
SAUSA Peter Kenyon - (617) 565-3349

U.S. v. William Whitman and Duane Whitman, and the William Recht Co., Inc.
(M.D. Florida) (RCRA Knowing Endangerment) (7/13/94)

On July 28, 1994, the jury convicted the two individual defendants who opted for trial on Count One of the indictment, which charged illegal treatment, storage and disposal of a hazardous waste, and the lesser included offense of illegal treatment, storage and disposal on Count Two. Both defendants, William Whitman, plant manager of the William Recht Co., and Duane Whitman, the shop foreman, were acquitted of knowing endangerment on Count Two. The jury retired on the afternoon of July 27 and returned its verdict at 1:45 on July 28. On July 13, the day trial began, the corporate defendant, William Recht Co., Inc. (d/b/a Durex Industries, Inc.), entered a guilty plea to the same two-count indictment. Over the Government's objection, the Court permitted the corporate defendant to enter an Alford plea. This is the first case in which a corporation ever pled guilty to a knowing endangerment count under any environmental statute. This case stems from an incident that resulted in the death of two nine-year-old boys in June 1992 when they climbed into a dumpster and were overcome by the toxic fumes from the toluene wastes which the company had been unlawfully disposing in the dumpster. The deaths were found to have been caused by toluene intoxication. The indictment, filed on April 19, 1994, charges the Whitman brothers and the company with one count of illegal treatment, storage and disposal of toluene from June 1991 up until the time of the boys' deaths, and with one count of knowing endangerment based on the illegal treatment dumpster on June 12 and 13, 1992.

Attorneys: W. Bruce Pasfield - (202) 272-9853
AUSA Dennis Moore - (813) 274-6000

U.S. v. Donald Gaston (District Of Kansas) (CERCLA) (7/21/94)

Donald Gaston, Highway Administrator for Montgomery County, pled guilty to Count Four of a four-count indictment, a charge under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), for failure to report to the appropriate government agency of the release of a hazardous substance into the environment. Gaston was indicted on March 9, 1994, in Wichita, on charges that he ordered Highway Department employees to take waste road paint and bury it at an inactive county landfill during the Spring of 1991. The indictment charged Gaston with unlawful transportation of hazardous waste to an unpermitted facility, transportation of hazardous waste without a manifest, illegal disposal of hazardous waste and failure to inform the appropriate government agencies of the release of a hazardous substance into the environment.

Attorneys: Marty Woelfle - (202) 272-9891
USA Randall K. Rathbun - (316) 269-6481

U.S. v. Cherokee Resources, Inc., et al., (W.D. North Carolina) (CWA) (6/29/94)

Following an eight-day trial and only one hour of deliberation, the jury convicted Cherokee Resources, its president and CEO, Keith Eidson, and its vice president, Gabe Hartsell, on all seven counts of the indictment -- conspiracy, five substantive CWA counts and a CWA tampering count. The indictment was filed on August 5, 1993. The initial trial in this case resulted in a hung jury and the declaration of a mistrial on April 22, 1994. The retrial began on June 17 and lasted for eight days. False statement and conspiracy charges against the company's comptroller, Theodore Karl Glauser, were dismissed by the Government before the retrial began. Cherokee and its officers, in the business of reclaiming waste oil and treating and disposing of oil-contaminated wastewater and industrial wastewaters, were found guilty of violations of their state water discharge permit, the National Pretreatment Standards and tampering with monitoring devices relating to the sampling of wastewater. It was found that Cherokee Resources routinely discharged wastewater containing toxic heavy metal wastes such as cadmium, chromium, copper, lead, nickel and zinc far in excess of its pretreatment permit limits into the Charlotte-Mecklenburg Utility District sewer system.

Attorneys:	Anna Matheson	-	(202) 272-4472
	Peter Anderson	-	(202) 272-9869
	AUSA William Bradford-		(704) 271-4661

U.S. v. Ore-Ida Foods (Cr. 94-14G-RE (D.Oregon))

Ore-Ida Food, Inc. entered a plea of guilty to five misdemeanor CWA counts in violation of its National Pollutant Discharge Elimination System (NPDES) permit -- one count of negligent false reports, one count of negligent discharges, one count of negligent failure to comply with testing requirements and one count of negligent creation of sludge deposits. Pursuant to the terms of the plea agreement, Ore-Ida was sentenced to a \$1 million fine (\$250,000 paid immediately and \$750,000 suspended) and placed on three years of probation. Also, pursuant to the plea agreement, Ore-Ida agreed to update its current wastewater treatment facility and complete the reconstruction of its water recycling and treatment system during the period of probation. Ore-Ida also agreed to construct an additional wastewater recycling system. For every one dollar expended on improving and constructing the water treatment system, the suspended portion of the fine will be reduced by one dollar. The offenses arose from Ore-Ida's failure to keep pace with its increased production, and the resultant wastewater was generated. Ore-Ida also failed to improve its wastewater treatment facility to better handle the increased flow of wastewater. Between 1988-1990, Ore-Ida exceeded the discharge limits of its NPDES permit at its Ontario, Oregon plant. The illegal discharges went into the Snake River.

Attorneys:	Howard Stewart	-	(202) 272-9849
	AUSA Kent Robinson	-	(503) 727-1000

U.S. v. Municipality of Penn Hills (W.D.Pennsylvania) (CWA) (7/8/94)

A guilty plea was entered on behalf of the Municipality of Penn Hills by the current Mayor, William DiSantis, to three felony counts under the Clean Water Act for knowing violations of conditions contained in its National Pollutant Discharge Elimination System (NPDES) permit for each of three of its publicly owned sewage treatment plants. The charges resulted from the failure to remove sludge from the plants, as required under the permits, for approximately one year. Mayor DiSantis was not in office at the time of the offenses. Sentencing is set for September 9, 1994. The municipality faces a maximum penalty of \$1,500,000. Former Assistant Directors of the Municipality's Water Pollution Control Department, Matthew Girdich and Walter Baker, received convictions for filing false discharge monitoring reports which indicated that the three sewage treatment plants were operating within their permit limitations, when in fact, they were not. Girdich, as a result of a guilty plea, was sentenced to probation. Baker, convicted by a jury at trial, was sentenced to a year in prison.

Attorneys: Herb Johnson - (202) 272-9846
 AUSA Constance Bowden- (412) 644-3500

U.S. v. Recticel (94 CR 212) (E.D.Tennessee) (RCRA) (7/12/94)

Guilty pleas were entered by the Recticel Foam Corporation to a federal Resource Conservation and Recovery Act (RCRA) felony for failing to maintain records and a criminal violation of the state hazardous waste statute. Pursuant to the plea agreement, the company was sentenced to penalties totalling \$750,000. Recticel has spent approximately \$8.25 million bringing its company into compliance with environmental regulations, including but not limited to -- site assessments, cleanups and implementation of groundwater monitoring devices. At the time of the acceptance of the plea by the court, charges were dismissed against remaining individual defendants. On May 26, 1993, Steve Cansler, a maintenance supervisor for Recticel, entered a guilty plea to one count of conspiracy to violate RCRA, a substantive count under RCRA for illegally operating a hazardous waste landfill and one count of making a false statement to employees of the Tennessee Department of Environment and Conservation, 18 USC §1001. A sentencing date is not yet set for Cansler.

Attorney: Marty Woelfle - (202) 272-9891
 AUSA Guy Blackwell - (615) 545-4167

U.S. v. Mitchell Barnett (N.D. Texas) (FIFRA) (7/21/94)

Mitchell Barnett signed a Rule 11(e)(1)(C) plea agreement under which he has indicated his intention to plead guilty to a FIFRA misdemeanor, for the distribution of the unregistered pesticides methoxychlor, warfarin, and sulfaquinoxaline. These pesticides were among other wastes that Barnett instructed his employees to remove from a warehouse he owns in Dallas. The pesticides (abandoned at the warehouse by a former tenant) and other wastes were trucked by Barnett's employees from the warehouse and abandoned at a roadside dump site. The plea agreement provides for a fine of \$10,000 and \$40,000 in restitution to the Environmental Protection Agency for cleanup costs. A date has not been set for the entry of the plea and sentencing.

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 Farleigh Earhart - (202) 272-6993
 AUSA Floyd Clardy - (817) 334-3291

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OFFICE OF LEGAL EDUCATION

COMMENDATIONS

Acting Director David W. Downs and the members of the OLE staff thank the following Assistant United States Attorneys (AUSAs) and Department of Justice officials and personnel for their outstanding teaching assistance and support during courses conducted from June 15 - July 15, 1994. Persons listed below are AUSAs unless otherwise indicated:

Evidence For Experienced Criminal Litigators (San Antonio, Texas)

John M. Barton, District of South Carolina; **John R. Braddock**, Chief, FIRREA-Unit, Southern District of Texas; **Mary Jude Darrow**, Eastern District of Louisiana; **Gary L. Anderson**, Executive Assistant United States Attorney, Western District of Texas; **Michael A. MacDonald**, Western District of Michigan; **Joanne Y. Maida** and **Robert H. Westinghouse**, Western District of Washington; **Steven A. Miller**, Chief of Special Prosecutions, Northern District of Illinois; **Dixie A. Morrow**, Middle District of Georgia; **George B. Newhouse**, Central District of California; **John P. Pierce**, Southern District of California; **William J. Richards**, Eastern District of Michigan; **Ann C. Rowland**, Northern District of Ohio; **John W. Vaudreuil**, Senior Litigation Counsel, Western District of Wisconsin; **Stewart C. Walz**, Criminal Chief, District of Utah; **Victoria J. Peters**, Senior Trial Counsel, Criminal Division.

Advanced Freedom Of Information (Washington, D.C.)

Daniel J. Metcalfe and **Richard L. Huff**, Co-Directors, and **Margaret Ann Irving**, Acting Deputy Director, Office of Information and Privacy; **Elizabeth A. Pugh**, Assistant Director, Federal Programs Branch, Civil Division.

Freedom Of Information Act Forum (Washington, D.C.)

Richard L. Huff, Co-Director, **Charlene Wright-Thomas**, Deputy Chief, Initial Request Unit, **Michael H. Hughes**, **Anne D. Work**, and **Carol Hebert**, Attorney-Advisors, Office of Information and Privacy.

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

Alan E. Kleinburd, Assistant Director, Commercial Litigation Branch, Civil Division; **Marie A. O'Rourke**, Senior Counsel, Fraud Section, Criminal Division.

Advanced Bankruptcy (Alexandria, Virginia)

Robert Coulter, Eastern District of Virginia; **Lawrence B. Lee**, Southern District of Georgia; **Virginia R. Powell**, Eastern District of Pennsylvania; **Rudolph A. Renfer, Jr.**, Chief, Civil Division, Eastern District of North Carolina; **Kristin Tolvstad**, Northern District of Iowa; **J. Christopher Kohn**, Director, **Tracy Whitaker**, Assistant Director, and **John Stemplewicz**, Senior Trial Attorney, Commercial Litigation Branch, Civil Division; **Stephen Csontos**, Senior Legislative Counsel, Tax Division.

In-House Criminal Asset Forfeiture (Jackson, Mississippi)

Terry Derden, Criminal Chief, District of Idaho; and **Virginia Covington**, Asset Forfeiture Chief, Middle District of Florida.

Attorney Supervisors (Annapolis, Maryland)

J. Russell Dedrick, First Assistant United States Attorney, Eastern District of Tennessee. From the Executive Office for United States Attorneys: **Michael Bailie**, Deputy Director, Administrative Services Staff; **Gloria Harbin**, Chief, Personnel Management Team GH; **Linda Schwartz**, Chief, Personnel Management Team LS; **Tracey Lankler**, Attorney-Advisor, and **Paul Ross**, Chief, Labor and Employee Relations Branch; **Michael McDonough**, Assistant Director, Financial Management Staff; **Paula Nasca**, Director, Security Programs Staff; **Richard Sponseller**, Deputy Director of Programs.

In-House Criminal Asset Forfeiture (Greensboro, North Carolina)

Steven Sozio, Northern District of Ohio; **Thomas P. Swaim**, Eastern District of North Carolina; **Gill Beck**, Middle District of North Carolina; **Fred Williams**, Western District of North Carolina.

Freedom Of Information Act For Attorneys And Access Professionals (Washington, D.C.)

Marina Utgoff Braswell, District of Columbia; **Margaret A. Smith**, Eastern District of Virginia. From the Office of Information and Privacy: **Richard L. Huff** and **Daniel J. Metcalfe**, Co-Directors; **Margaret Ann Irving**, Acting Deputy Director; **Melanie Ann Pustay**, Senior Counsel; **Gerald B. Roemer**, **Scott A. Hodes**, **Michael H. Hughes**, **Paul-Noel Chretien**, **Janice Gall McLeod**, **Kirsten J. Moncada**, and **Anne D. Work**, Attorney-Advisors; **Carmen L. Mallon**, Paralegal Specialist. **Stuart Frisch**, General Counsel, Justice Management Division; **Gerald A. Schroeder**, Senior Attorney, Office of Intelligence Policy and Review; **Frank R. Newett**, Assistant Director, Office of Enforcement Operations, Criminal Division; **Matthew M. Collette**, Attorney, Appellate Staff, and **Elizabeth A. Pugh**, Assistant Director, Federal Programs Branch, Civil Division; **William E. Bordley**, Drug Enforcement Administration.

Civil Chiefs (Small and Medium Offices) (Annapolis, Maryland)

Frank Hunger, Assistant United States Attorney, Civil Division; **Christopher Droney**, United States Attorney, District of Connecticut; **John Broadwell**, Chief, Civil Division, Western District of Louisiana; **Peter Bernhardt**, Chief, Civil Division, Northern District of Oklahoma; **Sally R. Johnson**, Chief, Civil Division, District of Nebraska; **Rudolph A. Renfer, Jr.**, Chief, Civil Division, and **Paul Newby**, Chief, Financial Litigation Unit, Eastern District of North Carolina; **William H. Pease**, Chief, Civil Division, Northern District of New York; **Helen M. Toor**, Chief, Civil Division, District of Vermont; **Kristin Tolvstad**, Northern District of Iowa. From the Executive Office for United States Attorneys: **Douglas N. Frazier**, Acting Deputy Director; **Michael Bailie**, Deputy Director, Administrative Services; **Michael McDonough**, Assistant Director, Financial Management Staff; **Eileen Menton**, Assistant Director, Case Management Staff; **Paul V. Ross**, Chief, Labor and Employee Relations Staff; **Richard Sponseller**, Deputy Director for Programs; **Deborah Westbrook**, Legal Counsel; **Gail Williamson**, Assistant Director, Personnel Staff. **Paul F. Hancock**, Chief, Housing and Enforcement Section, Civil Rights Division; **Richard L. Huff**, Co-Director, Office of Information and Privacy; **Jeffrey Axelrad**, Director, Torts Branch, Civil Division.

Privacy Act (Washington, DC)

Kirsten J. Moncada, Attorney- Advisor, Office of Information and Privacy.

Basic Paralegal Course (Washington, DC)

From the District of Columbia: **Rhonda C. Fields**, Chief, and **Michele L. Neverdon**, Paralegal Supervisor, Economic Crime Section, Criminal Division; **Thomas Zeno**, Senior Assistant United States Attorney; and **Sue Hoadley**, Paralegal Specialist. **Deborah Duvall**, Paralegal Specialist, Criminal Division; **Michael Bailie**, Deputy Director, Administrative Services, and **Shirley Botts**, Program Assistant, Office of Legal Education, Executive Office for United States Attorneys.

In-House Criminal Asset Forfeiture (Tyler and Beaumont, Texas)

Greg Marchessault, Eastern District of Texas; **Janet C. Hudson**, Central District of California; **Thomas P. Swaim**, Eastern District of North Carolina.

Asset Forfeiture Multi-Level Support Staff (Milwaukee, Wisconsin)

Mary Kay McSherry, Paralegal Specialist, Eastern District of Wisconsin; **Roy Atchison**, Northern District of Florida; **Ellen Christenson** and **Graham Teall**, Eastern District of Michigan; **Anthony G. Hall**, District of Idaho; **John Harmon**, Middle District of Alabama; **John Hieronymus**, Western District of Michigan; **Eric Honig**, Central District of California; **James Russell** and **Patricia Smith**, Paralegal Specialists, District of Colorado; **Kathy Stark**, Southern District of Florida; **Suzanne Warner**, Assistant Director for Asset Forfeiture, Financial Litigation Staff, and **Patti Ostrowski**, Management Analyst, Case Management Staff, Executive Office for United States Attorneys; **Laurie Sartorio**, Assistant Director for Policy and Operations, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General; **Robert Sharp**, Acting Director, **Stefan D. Cassella**, Acting Deputy Director, **Karen Tandy**, Acting Deputy Director, **Mary Ann DeToro**, Management Analyst, and **Mariclaire Driscoll**, Management Analyst, Asset Forfeiture Office, Criminal Division; **Ben Elliott**, Director, and **Heather Kocher**, Counselor, Employee Assistance Program, Justice Management Division; **Dorothy Floyd**, Unit Chief, Processing and Analysis Unit, Asset Forfeiture Section, Drug Enforcement Administration; **Kelly Tirik**, Assistant General Counsel, Bureau of Prisons; **Susan Terranova**, Customs Attorney, Penalties Branch, Office of Regulation and Ruling, United States Customs Service.

Environmental Crimes (Milwaukee, Wisconsin)

Randall K. Rathbun, United States Attorney, District of Kansas; **Jane Barrett**, District of Maryland; **Micki Brunner**, Western District of Washington; **Ben Hagood**, District of South Carolina; **Thomas Kiehnhoff**, Eastern District of Texas; **Roslyn Moore-Silver**, Chief, Criminal Division, and **Frederick Petti**, District of Arizona; **Melanie Pierson**, Southern District of California; **Ron Sarachan**, Eastern District of Pennsylvania; **Gordon Speights Young**, Southern District of Texas; **David Nissman**, Criminal Chief, District of Virgin Islands. From the Environment and Natural Resources Division: **Lois J. Schiffer**, Acting Assistant Attorney General; **James F. Simon**, Counsel to the Assistant Attorney General; **Walker B. Smith**, Assistant Chief, Environmental Enforcement Section; **Charles W. Brooks**, Senior Trial Attorney, Wildlife and Marine Resources Section. From the Criminal Division, Environmental Crimes Section: **Charles DeMonaco**, Assistant Chief; **Herbert Johnson**, **Jeremy Korzenik**, **W. Bruce Pasfield**, **Marty Woelfle**, and **Deborah K. Woitte**, Trial Attorneys. Special Agents from the Federal Bureau of Investigation: **Greg Groves**, Supervisor, **Paul Lazzari**, **Larry Fon**, **Pat Dietz**, **Alfred Johnson**, **Larry Owens**, and **Norman I. Wight**.

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.

September 1994

<u>Date</u>	<u>Course</u>	<u>Participants</u>
8-9	Medical Malpractice	AUSAs, DOJ Attorneys
12-15	Civil Federal Practice	AUSAs, DOJ Attorneys
19-27	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
20-22	Criminal Chiefs (Large Offices)	USAO Criminal Chiefs

September 1994 (Cont'd.)

<u>Date</u>	<u>Course</u>	<u>Participants</u>
27-29	Civil Environmental Enforcement	AUSAs, DOJ Attorneys
27-29	Civil Rights	AUSAs, DOJ Attorneys
27-29	Criminal Chiefs (Small Offices)	USAO Criminal Chiefs

October 1994

18-19	Ethics	AUSAs, DOJ Attorneys
18-21	Asset Forfeiture Multi-Level Training	AUSAs, Paralegals
25-28	Complex Prosecutions	AUSAs, DOJ Attorneys

November 1994

1-3	Appellate Chiefs	USAO Appellate Chiefs
1-4	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
14-16	Native American Issues	AUSAs, DOJ Attorneys
14-18	Appellate Advocacy	AUSAs, DOJ Attorneys
15-16	Environmental Law\ Military Base Closures	AUSAs, DOJ Attorneys
29-Dec. 1	Attorney Supervisors	USAO Supervisors

December 1994

5-16	Civil Trial Advocacy	AUSAs, DOJ Attorneys
6-8	Basic Financial Institution Fraud	AUSAs, DOJ Attorneys
12-16	Criminal Federal Practice	AUSAs, DOJ Attorneys
13-15	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys

LEI Courses

LEI offers courses designed specifically for paralegal and support personnel from United States Attorneys' offices (indicated by an * below). Approximately eight weeks prior to 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 G. 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 *).

September 1994

<u>Date</u>	<u>Course</u>	<u>Participants</u>
7-9	Law of Federal Employment	Attorneys
19	Appellate Skills	Attorneys
20-23	Examination Techniques	Attorneys
27-29*	Advanced Financial Litigation for Support Staff	USAO Support Staff
30	Legal Writing	Attorneys

October 1994

6-7	Alternative Dispute Resolution	Attorneys
12-13	Freedom of Information for Attorneys and Access Professionals	Attorneys, Paralegals
14	Privacy Act	Attorneys, Paralegals
17	Ethics for Litigators	Attorneys
17-21*	Criminal Paralegal	USAO Paralegals
19-21	Attorney Supervisors	Attorneys

October 1994 (Cont'd.)

<u>Date</u>	<u>Course</u>	<u>Participants</u>
25	Introduction to the Freedom of Information Act	Attorneys, Paralegals
25-27	Discovery	Attorneys
31-Nov. 4	Basic Paralegal	Agency Paralegals

November 1994

1-3	Basic Bankruptcy	Attorneys
8-9	Freedom of Information for Attorneys and Access Professionals	Attorneys, Paralegals
14-18	Experienced Paralegal	Agency Paralegals
21	Legal Writing	Attorneys
29-Dec. 1	Agency Civil Practice	Attorneys
29-Dec. 1	Bankruptcy Fraud	Attorneys

December 1994

5-9	Research and Writing Refresher for Paralegals	USAO and DOJ Paralegals
7	Advanced Freedom of Information Act	Attorneys and Paralegals
12	Appellate Skills	Attorneys
13-16	Examination Techniques	Attorneys

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

Address: Room 7600, Bicentennial Bldg.
600 E Street, N.W., Washington, D.C. 20530

Telephone: (202) 208-7574
FAX: (202) 208-7235

Director.....	David Downs
Assistant Director (AGAI-Criminal).....	Amy Lederer
Assistant Director (AGAI-Civil & Appellate).....	Tom Majors
Assistant Director (AGAI-Asset Forfeiture and Financial Litigation).....	Nancy Rider
Assistant Director (LEI).....	Donna Preston
Assistant Director (LEI-Paralegal & Support).....	Donna Kennedy
Assistant Director (LEI).....	Chris Roe

ADMINISTRATIVE ISSUES

Career Opportunities

Office Of Attorney Personnel Management

The Office of Attorney Personnel Management, Department of Justice, is seeking an attorney to assist with its responsibilities in attorney personnel management and recruiting. The office is responsible for personnel management (e.g., recruitment/hiring, promotions/incentive awards, disciplinary actions/terminations) for the Department's 8,000 attorneys. Please note that, while this position will entail some legal work, its primary functions are managerial rather than legal. Responsibilities will include, but are not limited to, assisting in the planning, implementation, and evaluation of the Department's recruitment/retention programs for experienced attorneys, including efforts to recruit and retain a diverse workforce. The attorney also will undertake a variety of other assignments, as needed for the office's various legal and managerial demands. The position requires some travel, public speaking, familiarity with computers, and much interpersonal contact.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year of post-J.D. experience. A background which includes recruitment/retention/placement is highly desirable. Applicants should submit a resume, writing sample, and short description of relevant experience/background and interest to: U.S. Department of Justice, Office of Attorney Personnel Management, Room 6150, Main Building, 10th & Pennsylvania Avenue, N.W., Washington, D.C. 20530 - Attn: Box #2.

Current salary and years of experience will determine the appropriate salary level from the GS-11 (\$35,045 - \$45,561) to GS-12 (\$42,003 - \$54,601) range. Please submit resume as soon as possible and in any event no later than September 2, 1994. Job-sharing pairs (which together cover the full week) are invited. No telephone calls please.

* * * * *

Executive Office For United States Attorneys

Labor And Employee Relations Branch, Office Of Legal Counsel

The Office of Attorney Personnel Management, U.S. Department of Justice, is seeking an experienced attorney for the Executive Office for United States Attorneys, Office of Legal Counsel, in Washington, D.C. Incumbent will function as the Attorney-In-Charge for the Labor and Employee Relations Branch. Incumbent must have primary legal expertise in the areas of Employment and Administrative Law and Equal Employment Opportunity. In addition, familiarity with the workings of the Department of Justice is desired. Previous supervisory experience along with work experience in a Chief Counsel's/General Counsel's Office is preferred.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least five years post-J.D. experience. Applicants must submit a SF-171 (Application for Federal Employment), writing sample, and current performance appraisal to: U.S. Department of Justice, Executive Office for U.S. Attorneys, Administrative and Personnel Services Staff, Room 8104, Bicentennial Building, 600 E Street, N.W., Washington, D.C. 20530 - Attn: Marie Blackmon, Personnel Management Specialist.

The position is a GS-14 with a salary range of \$59,022 to \$76,733. This advertisement will remain open until the position is filled. No telephone calls, please.

* * * * *

Child Exploitation and Obscenity Section, Criminal Division

The Office of Attorney Personnel Management, U.S. Department of Justice, is seeking experienced attorneys for the position of trial attorney in the Child Exploitation and Obscenity Section, Criminal Division, in Washington, D.C.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), have effective written and oral communication skills, and have at least two years' litigation experience. Prior background in child sex abuse, child exploitation, child prostitution, child pornography or obscenity cases is desirable. Applicants should submit a cover letter, resume, and statement explaining qualifications and/or interest to: George C. Burgasser, Acting Chief, Child Exploitation and Obscenity Section, Criminal Division, U.S. Department of Justice, 310 Washington Center, 1001 G Street N.W., Washington, D.C. 20530. Current salary and years of experience will determine the appropriate salary level from GS-12 (\$42,003 - \$54,601) to the GS-15 (\$69,427 - \$90,252) range. This position is open until September 15, 1994. No telephone calls please.

* * * * *

U.S. Attorney's Office, District Of Idaho

The United States Attorney for the District of Idaho invites applications for the position of Assistant United States Attorney in Boise, Idaho. Applicants should have no less than five years experience in criminal and/or civil litigation, a strong interest in public service law, excellent legal research and writing skills, the ability to work well with other staff attorneys, the judiciary, opposing counsel and support staff, and the ability to efficiently and effectively manage a large, complex and diverse caseload.

Attorneys wishing to be considered for the position of Assistant United States Attorney should submit a resume, two writing samples and three letters of recommendation, **by close of business on Friday, September 30, 1994**, to: Betty Richardson, United States Attorney, District of Idaho, Box 32, Boise, Idaho 83707.

Salary is commensurate with experience. Writing samples cannot be returned. No faxed applications will be considered. No telephone calls, please.

Appointment is subject to the successful completion of a background investigation and applicants will be subject to drug testing by urinalysis to screen for illegal drug use prior to appointment.

* * * * *

[NOTE: The Department of Justice is an Equal Opportunity/Reasonable Accommodation Employer. It is the policy of the Department to achieve a drug-free workplace and persons selected will therefore be required to pass a urinalysis test to screen for illegal drug use prior to final approval.]

* * * * *

APPENDIXCUMULATIVE 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%	04-06-90	8.32%	09-20-91	5.57%	03-05-93	3.21%
11-18-88	8.55%	05-04-90	8.70%	10-18-91	5.42%	04-07-93	3.37%
12-16-88	9.20%	06-01-90	8.24%	11-15-91	4.98%	04-30-93	3.25%
01-13-89	9.16%	06-29-90	8.09%	12-13-91	4.41%	05-28-93	3.54%
02-15-89	9.32%	07-27-90	7.88%	01-10-92	4.02%	06-25-93	3.54%
03-10-89	9.43%	08-24-90	7.95%	02-07-92	4.21%	07-23-93	3.58%
04-07-89	9.51%	09-21-90	7.78%	03-06-92	4.58%	08-19-93	3.43%
05-05-89	9.15%	10-27-90	7.51%	04-03-92	4.55%	09-17-93	3.40%
06-02-89	8.85%	11-16-90	7.28%	05-01-92	4.40%	10-15-93	3.38%
06-30-89	8.16%	12-14-90	7.02%	05-29-92	4.26%	11-17-93	3.57%
07-28-89	7.75%	01-11-91	6.62%	06-26-92	4.11%	12-10-93	3.61%
08-25-89	8.27%	02-13-91	6.21%	07-24-92	3.51%	01-07-94	3.67%
09-22-89	8.19%	03-08-91	6.46%	08-21-92	3.41%	02-04-94	3.74%
10-20-89	7.90%	04-05-91	6.26%	09-18-92	3.13%	03-04-94	4.22%
11-17-89	7.69%	05-03-91	6.07%	10-16-92	3.24%	04-01-94	4.51%
12-15-89	7.66%	05-31-91	6.09%	11-18-92	3.76%	04-29-94	5.02%
01-12-90	7.74%	06-28-91	6.39%	12-11-92	3.72%	05-27-94	5.28%
02-14-90	7.97%	07-26-91	6.26%	01-08-93	3.67%	06-24-94	5.31%
03-09-90	8.36%	08-23-91	5.68%	02-05-93	3.45%	07-22-94	5.49%

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 Attorneys' 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	Redding Pitt
Alabama, S	Edward Vulevich, Jr.
Alaska	Robert C. Bundy
Arizona	Janet A. Napolitano
Arkansas, E	Paula J. 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 Droncy
Delaware	Gregory M. Sleet
District of Columbia	Eric H. Holder, Jr.
Florida, N	Patrick M. Patterson
Florida, M	Donna A. Bucella
Florida, S	Kendall B. Coffey
Georgia, N	Kent B. Alexander
Georgia, M	James L. Wiggins
Georgia, S	Harry D. Dixon, Jr.
Guam	Frederick A. Black
Hawaii	Elliot Enoki
Idaho	Betty H. Richardson
Illinois, N	James B. Burns
Illinois, S	Walter C. Grace
Illinois, C	Frances C. Hulin
Indiana, N	Jon R. DeGuillo
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	Michael Troop
Louisiana, E	Robert J. Boitmann
Louisiana, M	L. J. Hymel
Louisiana, W	Michael D. Skinner
Maine	Jay P. McCloskey
Maryland	Lynne Ann Battaglia
Massachusetts	Donald K. Stern
Michigan, E	Saul A. Green
Michigan, W	Michael H. Dettmer
Minnesota	David Lee Lillehaug
Mississippi, N	Alfred E. Moreton, III
Mississippi, S	George L. Phillips
Missouri, E	Edward L. Dowd, Jr.
Missouri, W	Stephen L. Hill, Jr.

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
Montana	Sherry S. Matteucci
Nebraska	Thomas J. Monaghan
Nevada	Kathryn E. Landreth
New Hampshire	Paul M. Gagnon
New Jersey	Faith S. Hochberg
New Mexico	John J. Kelly
New York, N	Thomas J. Maroney
New York, S	Mary Jo White
New York, E	Zachary W. Carter
New York, W	Patrick H. NeMoyer
North Carolina, E	Janice McKenzie Cole
North Carolina, M	Walter C. Holton, Jr.
North Carolina, W	Mark T. Calloway
North Dakota	John T. Schneider
Ohio, N	Emily M. Sweeney
Ohio, S	Edmund A. Sargus, Jr.
Oklahoma, N	Stephen C. Lewis
Oklahoma, E	John W. Raley, Jr.
Oklahoma, W	Vicki Miles-LaGrange
Oregon	Kristine Olson Rogers
Pennsylvania, E	Michael R. Stiles
Pennsylvania, M	David M. Barasch
Pennsylvania, W	Frederick W. Thieman
Puerto Rico	Guillermo Gil
Rhode Island	Sheldon Whitehouse
South Carolina	J. Preston Strom, Jr.
South Dakota	Karen E. Schreier
Tennessee, E	Carl K. Kirkpatrick
Tennessee, M	John M. Roberts
Tennessee, S	Veronica F. Coleman
Texas, N	Paul E. Coggins
Texas, S	Gaynelle Griffin Jones
Texas, E	J. Michael Bradford
Texas, W	James H. DeAtley
Utah	Scott M. Matheson, Jr.
Vermont	Charles R. Tetzlaff
Virgin Islands	W. Ronald Jennings
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 A. Betts
Wisconsin, E	Thomas P. Schneider
Wisconsin, W	Peggy Ann Lautenschlager
Wyoming	David D. Freudenthal
North Mariana Islands	Frederick Black

OJJDP Office of Juvenile Justice and Delinquency Prevention

John J. Wilson, Acting Administrator

Fact Sheet #17 June 1994

Juvenile Victimization: 1987-1992

Joseph Moone

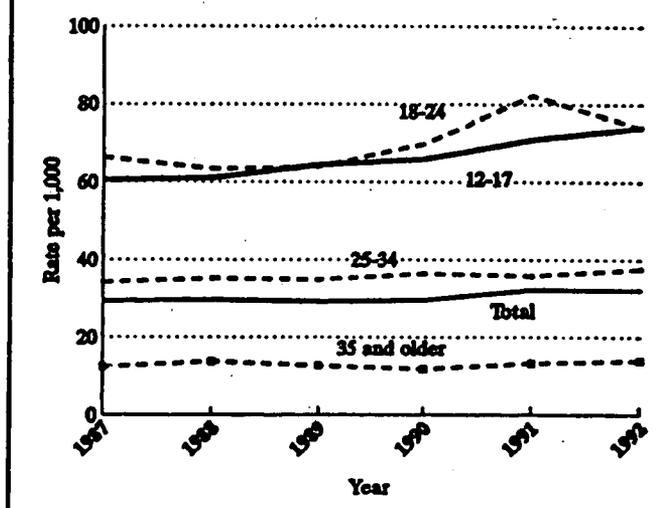
Violence trends

In 1992, 1.55 million violent crimes were committed against juveniles (ages 12-17) — a 23.4% rise over the 1.26 million committed in 1987. Although juveniles accounted for one tenth of the population age 12 and over, nearly 1 in 4 violent crimes involved a juvenile victim in 1992 — up from 1 in 5 in 1987. During this period, the overall number of violent crime victimizations increased 14%, from an estimated 5.8 million in 1987 to more than 6.2 million in 1992. The total violent crime victimization rate increased 9.4% from 29.3 per 1,000 in 1987 to 32.1 per 1,000 in 1992 (from about 1 violent crime for every 33 persons to about 1 in 31¹). These statistics are drawn from the annual National Crime Victimization Survey conducted by the Bureau of Justice Statistics (see shaded box).

In 1987, almost 1 in 17 (61 per 1,000) juveniles were victims of violent crime. By 1992, this ratio had increased to more than 1 in 13 (74 per 1,000; Table 2)². The 12-17 age group and the 18-24 age group followed the same general increase. The rate differences between these age groups are not significant for any year or crime category. For persons 35 years and older, the crime rate did not significantly fluctuate: about 1 in 81 (12.3 per 1,000) in 1987 compared to 1 in 72 (13.9 per 1,000) in 1992 (Figure 1).

An examination of the growth in violent crime for the whole population can obscure trends within specific age groups.

Figure 1. The rates of violent crime against juveniles and young adults increased between 1987 and 1992.



While the number of violent crimes against juveniles rose 23.4% from 1987 to 1992, the juvenile population grew less than 1%, resulting in a significantly higher rate of violent juvenile victimization (Table 1). The number of such crimes against persons over 35 showed comparable growth (24.5%), yet that population grew about 10.2%, a steeper increase than the juvenile population. As a result, the victimization rate for

Table 1. Changes in violent crime victimization rates per 1,000 from 1987 to 1992 for persons aged 12 to 17

	1987	1988	1989	1990	1991	1992	Percent Change	
							'87-'92	'91-'92
Population	20,756,000	20,346,000	20,049,000	20,102,000	20,370,000	20,909,000	0.7%	2.6%
Total victimizations	1,258,000	1,245,000	1,294,000	1,328,000	1,448,000	1,552,000	23.4	6.7
Crimes of Violence ^a	60.6	61.2	64.6	66.0	71.1	74.2	22.5%*	4.3%
Completed	24.3	22.8	24.3	26.1	26.5	25.0	2.7	-6.1
Attempted	36.3	38.4	40.2	39.9	44.6	49.3	35.8*	9.5
Robbery	8.1	8.7	10.3	11.3	10.3	10.9	35.3	6.1
Completed	4.4	5.9	6.9	7.9	6.4	6.4	46.6	0.6
Attempted	3.7	2.7	3.5	3.5	3.9	4.5	21.9	13.8
Assault	51.0	52.0	52.9	53.2	59.1	61.8	21.2*	4.4
Aggravated	15.4	16.4	14.2	16.0	15.2	20.1	30.5	24.2
Simple	35.6	35.6	38.7	37.2	43.9	41.8	17.2	-5.2

^aThe difference is statistically significant at the 95% confidence level.

^bIncludes data on rape not displayed as a separate category.

this group increased more slowly from 12.3 per 1,000 to 13.9 per 1,000 in 1992 (an increase of 13%). The larger population of the older age groups dominates the calculation of total victimization rates, dampening the effects of the increased juvenile victimization rate (Figure 1).

Juvenile victimization in 1992

Compared with persons aged 25 to 34, juveniles in 1992 had almost twice the victimization rate: 74.2 per 1,000 for juveniles versus 37.6 for 25-34 year olds. Compared to persons 35 and over, juveniles had more than five times the victimization rate (Table 2).

Comparing rates for specific crime categories also shows significant differences between juveniles and those over 25. The rate differences are significant at the 95% confidence level in virtually all crime categories. In 1992, the rate of assault (simple and aggravated) among juveniles was more than twice that of those aged 25 to 34 and almost 6 times that for those over 35.

Table 2. Violent crime victimization rates per 1,000 in 1992 by age

	12-17	18-24	25-34	35+	Total
Crimes of Violence ^a	74.2	74.0	37.6 ^b	13.9 ^b	32.1
Completed	25.0	28.2	14.7 ^b	4.8 ^b	11.7
Attempted	49.3	45.7	22.9 ^b	9.1 ^b	20.4
Robbery	10.9	13.0	7.7	2.9 ^b	5.9
Completed	6.4	8.0	5.1	2.2 ^b	3.9
Attempted	4.5	5.1	2.7	0.7 ^b	2.0
Assault	61.8	58.8	29.4 ^b	10.7 ^b	25.5
Aggravated	20.1	22.0	9.3 ^b	4.1 ^b	9.0
Simple	41.8	36.8	20.1 ^b	6.5 ^b	16.5

^aIncludes data on rape not displayed as a separate category.

^bThe difference from the 12-17 age group is statistically significant at the 95% confidence level.

The juvenile experience of violent crime differed somewhat from the general pattern of victimization. Only about 1 in 7 victimizations against juveniles was a robbery compared to more than 1 in 5 victimizations against those 35 and older. Six out of 10 victimizations against juveniles were simple assaults

Crime victimization measured annually by the Bureau of Justice Statistics

Each year the Bureau of Justice Statistics (BJS) conducts a national household survey of crime victimization, the National Crime Victimization Survey (NCVS). This survey interviews persons age 12 or older requesting information on all incidents of crime. The NCVS collects information on personal crimes such as assault, robbery, and larceny. This Fact Sheet focuses only on personal crimes: robbery, assault, and rape (although rape is not reported as a separate category). The crimes of violence selected for this Fact Sheet include those crimes which physically threaten or harm the victim. These offenses include attempted as well as completed crimes. The definitions of these crimes are provided in the BJS publication *Criminal Victimization in the United States, 1992*. This volume is available from the Juvenile Justice Clearinghouse. Call (800) 638-8736 to receive a copy.

Table 3. Total victimizations in 1992

	Total Victimizations	Juvenile Victimizations	
		Total	Percent of Total Juvenile
Crimes of Violence	6,621,000	1,552,000	23.4%
Completed	2,410,000	523,000	21.7
Attempted	4,212,000	1,030,000	24.5
Rape	141,000	•	•
Robbery	1,226,000	229,000	18.7
Completed	806,000	134,000	16.6
Attempted	419,000	95,000	22.6
Assault	5,255,000	1,293,000	24.6
Aggravated	1,849,000	420,000	22.7
Simple	3,406,000	873,000	25.6

*Too few sample cases to report accurate estimate.

compared to 5 out of 10 against persons 18 and older (Table 3). Across all age categories, 1 of every 3 violent victimizations was completed while 2 out of 3 were attempts.

Violent victimizations against juveniles accounted for 23% of the estimated 6.62 million victimizations in 1992. Juvenile victims accounted for almost one fourth of the estimated 5.26 million assaults (24.6%). Also, one fifth (18%) of the estimated 1.23 million robberies were against juvenile victims (Table 3).

Of violent crimes against juveniles, roughly five out of (83.3%) were assaults. The majority of violent juvenile victimizations (56.2%) were simple assaults, those that do not involve a weapon and result in at most minor injury. More serious aggravated assaults amounted to roughly half the number of simple assaults or 27.1% of all violent juvenile victimizations. Robberies, both completed and attempted account for only 14.7% (about 1 in 7) of all violent juvenile victimizations. Juveniles experience robberies at only one sixth the rate of assaults (10.9 compared to 61.8; Table 2).

¹The NCVS counts victimization incidents per year rather than the number of victims. However, the number of multiple victimizations to one person in a year is relatively small (about 5% of all persons victimized per year). These ratios, and others reported in this Fact Sheet, represent only a rough estimate of the number of persons victimized in a year.

²All comparisons reported in this Fact Sheet are statistically significant at the 95% confidence level unless otherwise noted. For a full description of how the confidence intervals are calculated, see the BJS report *Criminal Victimization in the United States, 1992*.

This Fact Sheet was prepared by Joseph Moone, a Social Science Analyst with the Office of Juvenile Justice and Delinquency Prevention. OJJDP wishes to acknowledge the support and assistance of the Bureau of Justice Statistics, particularly Lisa Bastian and Marshall DeBerry, who provided statistical support and consultation in the production of this Fact Sheet.

Crime Data Brief

National Crime Victimization Survey

July 1994, NCJ-148199

Violence and Theft in the Workplace

By Ronet Bachman, Ph.D.
BJS Statistician

- Each year nearly 1 million individuals become victims of violent crime while working or on duty. These victimizations account for 15% of the over 6½ million acts of violence experienced by Americans age 12 or older. In addition, over 2 million personal thefts and over 200,000 car thefts occur annually while persons are at work. This report analyzes data from the National Crime Victimization Survey (NCVS) for 1987-92 to describe these crimes. (See the NCVS box on page 2.)

- Crime victimizations occurring in the workplace cost about half a million employees 1,751,100 days of work each year; an average of 3.5 days per crime. This missed work resulted in over \$55 million in lost wages annually, not including days covered by sick and annual leave.

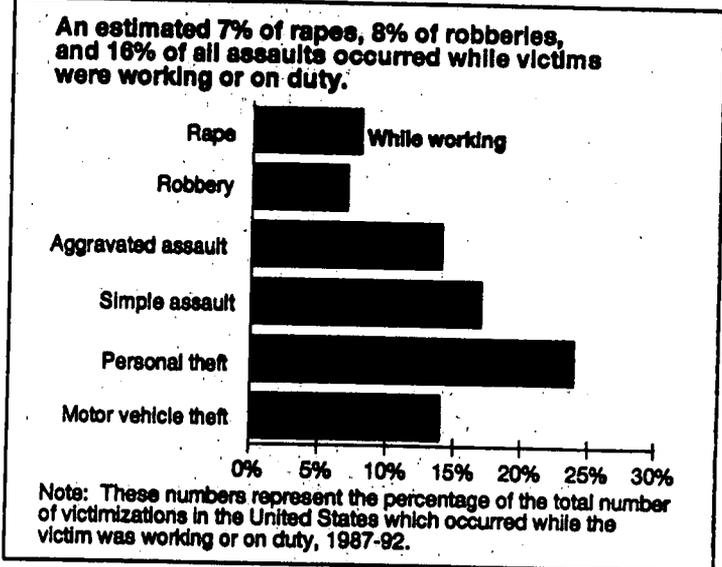
Annually, 1987-92 —

- Nearly 1 million violent victimizations occurred while victims were working or on duty
- These victimizations resulted in almost 160,000 injuries

Type of crime	Average annual number of	
	Victimizations	Injuries
Crimes of violence	971,517	159,094
Rape	13,068	3,438
Robbery	79,109	17,904
Aggravated assault	264,174	48,180
Simple assault	615,160	89,572

- Among people victimized while working, men were more likely than women to experience a violent crime. However, women were just as likely as men to become the victims of theft while working.

- Victims who were working were as likely to face armed offenders as those victimized while not working. Over 30% of victims who were working during a violent victimization faced armed offenders. Almost a third of these offenders had a handgun.



- Victims of violence at work were less likely to be injured than victims of violence that occurred away from work. 16% of violent victimizations which occurred while the victim was working resulted in physical injuries; 10% of these injuries required medical care.

- Among only those persons injured by a crime victimization at work, an estimated 876,800 work days were lost annually, costing employees over \$16 million in wages, not including days covered by sick and annual leave.

- 6 out of 10 incidents of workplace violence occurred in private companies. While government employees make up approximately 18% of the total U.S. workforce, 30% of the victims of violence in this sample were Federal, State, or local government employees. Several factors may be responsible for this overrepresentation, including a potentially high risk of victimization for particular government occupations such as public safety personnel.

• Although men who were victimized while working were more likely to be attacked by a stranger, women were more likely to be attacked by someone known to them than by a

Victim-offender relationship	Percent of victimizations	
	Female	Male
Stranger	40%	58%
Casual acquaintance	35	30
Well known	19	10
Relative	1	1
Intimate	5	1

stranger. 5% of the women victimized at work were attacked by a husband, exhusband, boyfriend, or exboyfriend.

• Over half of all victimizations sustained at work were not reported to the police. When individuals were asked why they did

not report, 40% said they believed the incident to be a minor or a private matter. An additional 27% did not report to police because they reported the victimization to another official such as a company security guard.

According to victims of violent crime at work who identified more precisely the location, over a third of the crimes occurred in commercial establishments.

Place where victimization occurred	Percent of victimizations occurring at work where victim identified location
Total	100%
Type of work setting	
Private company	61%
Government employee, (Federal, State or local)	30
Self-employed	8
Working without pay	1
Location where victimization occurred	
Restaurant, bar, or nightclub	13%
Office, factory, or warehouse	14
Other commercial establishment	23
On school property	9
Parking lot/garage	11
On public property (such as streets and parks)	22
Other	8

Victims of violence at work were less likely to be injured than persons victimized while not working, 1987-92

Characteristics	Percent of violent victimizations, by activity of victim	
	Working	Not working
Offender was armed		
No	62%	56%
Yes	32	35
Not ascertained	6	9
Sustained injuries		
No	84%	69%
Yes	16	31
Required medical care	10	16
Lost work time because of injuries	6	5
Incident reported to police		
No	56%	52%
Yes	43	47
Not ascertained	1	1

The National Crime Victimization Survey conducts interviews with over 100,000 individuals age 12 or older annually. Respondents who reported a violent victimization and said they were either working or on duty when asked, "What were you doing when the incident happened?" represent the sample for this report. This does not include those victims who said they were on their way to or from work. For more information about the NCVS methodology, see *Criminal Victimization in the United States, 1992*, March 1994, NCJ-145125.

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Violence and Theft in the Workplace

OJJDP Office of Juvenile Justice and Delinquency Prevention

John J. Wilson, Acting Administrator

Fact Sheet #18 July 1994

Delinquency Cases in Juvenile Court, 1992

Jeffrey A. Butts, Ph.D.

Counts and trends

Juvenile courts in the United States processed an estimated 1,471,200 delinquency cases in 1992. Delinquency cases involve juveniles charged with criminal law violations. The number of delinquency cases handled by juvenile courts increased 26% between 1988 and 1992. Since 1988, cases involving offenses against persons increased 56% while property offense cases increased 23%. During this 5-year period, cases involving charges of robbery and aggravated assault grew 52% and 80%, respectively. Although the number of drug law violation cases was down 12% compared with 1988, the number of drug cases increased 15% between 1991 and 1992.

These national estimates of the cases handled by juvenile courts in 1992 are based on data from more than 1,500 courts that had jurisdiction over 57% of the U.S. juvenile population in 1992. The unit of count in this Fact Sheet is a case disposed during the calendar year by a court with juvenile jurisdiction. Each case represents one youth processed by a juvenile court on a new referral, regardless of the number of individual offenses contained in that referral. An individual youth can be involved in more than one case during the calendar year. For a full description of the methodology used in collecting the data and making the national estimates, see *Juvenile Court Statistics 1992* (OJJDP, forthcoming).

Detention

One of the first decisions made in processing juvenile delinquency cases is whether or not the juvenile should be detained in a secure facility to await the next court appearance. Juveniles are sometimes detained to protect the community from their behavior, sometimes to protect the juveniles themselves, or to ensure their appearance at court hearings. Juveniles were securely detained in 20% of the delinquency cases processed in 1992. Detention was used in 35% of drug law violations, 24% of person offense cases, and 17% of property offense cases. Partly because of the large volume of property offenses handled by juvenile courts, 47% of cases involving detention in 1992 were property offense cases.

Most Serious Offense in Delinquency Cases, 1992

Offense	Number of Cases	Percent Change	
		'91-92	'88-92
Total	1,471,200	7%	26%
Person Offense	301,000	13	56
Criminal Homicide	2,500	-9	55
Forcible Rape	5,400	10	27
Robbery	32,900	9	52
Aggravated Assault	77,900	16	80
Simple Assault	152,800	14	47
Other Violent Sex Offense	9,900	13	60
Other Person Offense	19,800	11	63
Property Offense	842,200	3	23
Burglary	156,400	4	22
Larceny-Theft	361,600	1	16
Motor Vehicle Theft	73,000	2	34
Arson	8,300	10	24
Vandalism	121,700	12	50
Trespassing	58,500	2	17
Stolen Property Offense	28,900	7	-7
Other Property Offense	33,700	6	57
Drug Law Violation	72,100	15	-12
Public Order Offense	255,900	11	21
Obstruction of Justice	87,100	8	10
Disorderly Conduct	69,300	13	50
Weapons Offense	41,000	26	86
Liquor Law Violation	12,500	-7	-26
Nonviolent Sex Offense	12,900	22	19
Other Public Order	33,000	3	-8
Violent Crime Index *	118,600	13	68
Property Crime Index *	599,400	2	20

* Violent Crime Index includes criminal homicide, forcible rape, robbery, and aggravated assault.

** Property Crime Index includes burglary, larceny-theft, motor vehicle theft, and arson.

Note: Detail may not add to totals because of rounding. Percent change calculations are based on unrounded numbers

Intake Decision

After reviewing the details of a case, a decision is made either to dismiss it, handle it informally, or formally process the case by taking the matter before a judge. More than one-fifth (23%) of 1992 delinquency cases were dismissed at intake, often for lack of legal sufficiency. Another 26% were processed informally, with the juvenile agreeing to a voluntary disposition (e.g. probation). Half (51%) of the delinquency cases handled in 1992 were processed formally, and involved either an adjudicatory hearing or a hearing to consider transferring jurisdiction to the adult court.

Transfer to criminal court

During a transfer (or waiver) hearing, the juvenile court judge is asked to waive jurisdiction over a matter and transfer the case to criminal court so that the juvenile may be tried as an adult. Transfer decisions are usually based on the seriousness of the offense, the juvenile's prior record, and the juvenile's amenability to treatment. In 1992, 11,700 delinquency cases were transferred by a juvenile court judge. Transfers increased 68% between 1988 and 1992. Of the cases transferred in 1992, 34% involved a person offense, 45% involved a property offense, and 12% involved a drug law violation. The cases most likely to be transferred in 1992 were those involving drug law violation; 3.1% of formally processed drug law violations were transferred in 1992, compared with 2.4% of person offense cases, and 1.3% of property offense cases.

Adjudication and disposition

Adjudicatory hearings are used to establish the facts in a delinquency case (analogous to determining guilt or innocence) and to decide whether to place the juvenile under the supervision of the court. In 1992 juveniles were adjudicated in more than half (57%) of the 743,700 cases brought before a judge. Once adjudicated, the majority of cases (57%) were placed on formal probation, while in 28% the juvenile was placed out of the home in a residential facility, and 11% resulted in other dispositions (referral to an outside agency, community service, restitution, etc.). In most delinquency cases where the juvenile was not adjudicated, the case was dismissed by the court.

Between 1988 and 1992, the number of cases in which an adjudicated delinquent was ordered by the court to be placed in a residential facility increased 19%, while the number of formal

probation cases increased 24%. In 1992, 57% of probation cases involved property offenses and 20% involved person offenses. Out-of-home placement cases, on the other hand, were slightly more likely to involve person offenses (23%) and slightly less likely to involve property offenses (48%).

Gender

In 1992, four out of five delinquency cases involved a male juvenile (81%). This was the same proportion found in 1988. Males accounted for 79% of person offense cases, 81% of property cases, and 88% of drug law violation cases.

Age

Compared with 1988, the delinquency cases handled by juvenile courts in 1992 involved slightly younger youth. Sixty percent of the juvenile delinquency cases processed in 1992 involved a juvenile under 16 years of age, compared with 57% in 1988. In 1992, juveniles younger than age 16 were responsible for 62% of all person offense cases, 64% of all property offense cases, and 39% of drug law violation cases.

Race

In 1992, 80% of the juvenile population was white and 15% was black. White juveniles, however, were involved in 65% of the delinquency cases handled by juvenile courts. Black juveniles were involved in 31% of delinquency cases -- 27% of property offense cases and 40% of person offense cases.

For more information

This fact sheet is based on the forthcoming report, *Juvenile Court Statistics 1992*. Copies of the report will be available from the Juvenile Justice Clearinghouse. Call (800) 638-8736 to obtain a copy. OJJDP also supports the distribution of a PC-compatible software package that contains the data from *Juvenile Court Statistics 1992*. The software is easy to use and can supplement educational and research programs. For a copy of the software, contact the National Juvenile Court Data Archive Project at the National Center for Juvenile Justice, 701 Forbes Avenue, Pittsburgh, PA 15219, (412/227-6950).

This fact sheet was prepared by Jeffrey Butts, Project Manager of the National Juvenile Court Data Archive. The work was supported by OJJDP grant #92-JN-CX-0001. Joseph Moone, a Social Science Program Specialist in OJJDP's Research and Program Development Division, served as the Program Manager.

Bureau of Justice Statistics Special Report

Murder in Families

By John M. Dawson
and Patrick A. Langan, Ph.D.
BJS Statisticians

A survey of murder cases disposed in 1988 in the courts of large urban counties indicated that 16% of murder victims were members of the defendant's family. The remainder were murdered by friends or acquaintances (64%) or by strangers (20%). These findings are drawn from a representative sample survey of State and county prosecutors' records. The survey covered disposed charges against nearly 10,000 murder defendants, whose murder cases accounted for over 8,000 victims.

Other findings include:

- Among murder victims 6.5% were killed by their spouses, 3.5% by their parents, 1.9% by their own children, 1.5% by their siblings, and 2.6% by some other family member.
- A third of family murders involved a female as the killer. In sibling murders, females were 15% of killers, and in murders of parents, 18%. But in spouse murders, women represented 41% of killers. In murders of their offspring, women predominated, accounting for 55% of killers.
- Among black marital partners, wives were just about as likely to kill their husbands as husbands were to kill their wives: 47% of the black victims of a spouse were husbands and 53% were wives. Among white victims murdered by their spouse, wives were much less likely to be the killers: 38%

July 1994

The United States has over 3,000 counties, but more than half of all murders occur in just 75 of them, the Nation's most populous jurisdictions. This report taps a rich source of murder data — prosecutors' files in a sample of these large urban places — for detailed information on the nature and extent of a particular type of murder: those that occur within families. In addition the report uses these files to document how urban criminal justice systems respond to family murder.

This study was possible as a result of the generous cooperation of urban prosecutors and their staffs in jurisdictions throughout the Nation. On behalf of BJS, I want to express my sincere appreciation.

Lawrence A. Greenfeld
Acting Director

of the victims were husbands and 62% were wives.

• Forty-five percent of family murder victims were female, compared to 18% of nonfamily murder victims.

• When a mother killed her own child, the offspring she killed was more likely to be a son than a daughter: 64% sons versus 36% daughters. But when a father killed his own child, the offspring he killed was about as likely to be a daughter as a son: 52% daughters versus 48% sons.

• When a son killed a parent, his victim was about as likely to be the mother as the father: 47% mothers versus 53% fathers. But when a daughter killed a parent, her victim was more likely to be the father than the mother: 81% fathers versus 19% mothers.

• In murders of persons under age 12, the victims' parents accounted for 57% of the murderers.

• Eleven percent of all victims age 60 or over were killed by a son or daughter.

• No significant difference in conviction rate separated family murder defendants (76%) from nonfamily murder defendants (72%).

• Convicted family murder defendants (88%) were as likely to receive a prison sentence as convicted nonfamily murder defendants (91%).

• Firearms were used in the killing of 42% of all family murder victims, compared to 63% of all nonfamily murder victims.

• Seventy-four percent of murder defendants had a prior criminal record of arrest or conviction for a crime. A substantial percentage of murder victims, 44%, also had a prior criminal record. However, 19% of family murder victims had a prior record, compared to 51% of nonfamily murder victims. Also, 56% of family murder defendants, compared to 77% of other murder defendants, had a prior record.

**Compared to other murder victims
family murder victims were —**

More often

- female than male:
45% versus 18% (table 2)
- under age 12:
19% versus 2% (table 2)
- age 60 or older:
12% versus 6% (table 2)
- killed during the daytime:
39% versus 25% (table 5)
- killed in the victim's own home:
82% versus 22% (table 5)

Less often

- identified alcohol users:
33% versus 51% (table 3)
- unemployed:
7% versus 16% (table 3)
- identified as involved in criminal activity such as drug offenses about the time of the murder:
2% versus 26% (table 5)
- killed by a firearm:
42% versus 63% (table 5)
- armed: 15% versus 20% (page 5)
- killed by multiple assailants:
9% versus 19% (table 6)
- identified as having a past record of arrest or conviction:
19% versus 51% (table 7)
- were involved in murders in which both the defendant and the victim had a prior criminal record:
14% versus 43% (table 8)

**Compared to other murder defendants,
defendants in family murders —
More often**

- were age 30 or older:
57% versus 32% (table 2)
- had a history of mental illness:
14% versus 3% (table 3)
- committed a daytime murder:
38% versus 24% (table 5)
- committed the murder in the defendant's own home:
64% versus 10% (table 5)

Less often

- were under age 30:
43% versus 68% (table 2)
- were identified as alcohol users:
48% versus 68% (table 3)
- were unemployed:
29% versus 37% (table 3)
- had a victim of the same sex:
34% versus 80% (table 4)
- were identified as involved in criminal activity such as drug offenses at the time of the murder:
11% versus 46% (table 5)
- used a firearm:
43% versus 64% (table 5)
- had a record of arrest or conviction:
56% versus 77% (table 7)
- were involved in murders in which both the defendant and victim had a prior criminal record:
15% versus 44% (table 8)

The survey

Survey data were compiled from State prosecutor files and were based on a representative sample of all murder cases disposed in large urban counties in 1988. The murders were committed in 1988 or earlier. The Nation's 75 largest counties (as defined by number of arrests and population size) formed the population from which 33 counties were systematically sampled for the survey.

Within each of the 33 sampled counties, a criminal case was eligible for sampling if (a) one or more defendants in the case were charged with murder, and (b) at least one murder defendant in the case was disposed by a court in 1988. The sample ultimately drawn consisted of 2,539 sample murder cases against 3,119 defendants and involving 2,655 victims. When statistically weighted, the 3,119 defendants in the sampled cases represented 9,576 murder defendants in the Nation's 75 largest counties, and the 2,655 victims represented 8,063 victims in the 75 largest counties. To put the sample size into perspective, the estimated 8,063 victims accounted for 39% of the nationwide total of 20,860 murder victims in 1988.

Murder includes (1) intentionally causing the death of another person without extreme provocation or legal justification, (2) causing the death of another while committing or attempting to commit another crime, and (3) nonnegligent or voluntary manslaughter. Murder excludes negligent or involuntary manslaughter, and attempted murder, which is classified as aggravated assault. Murder also includes accessory to murder, aiding and abetting a murder, and facilitating a murder. When the term *murder* is used in this report without qualification, it includes nonnegligent manslaughter. *Defendant* in this report refers to a person arrested for murder and presented by the police for prosecution.

Victims

Murder cases disposed in the 75 largest counties in 1988 involved an estimated 8,063 victims (table 1). Sixteen percent of victims had a family relationship to at least one defendant in the case. The most frequent specific relationship was that of spouse; the least frequent, sibling. Nonfamily victim-offender relationships

**Table 1. Murder victims and defendants in the 75 largest urban counties,
by victim-assailant family relationship, 1988**

Relationship of victim to assailant	Murder victims		Murder defendants	
	Number	Percent	Number	Percent
All	8,063	100.0%	9,576	100.0%
Nonfamily	6,755	83.8%	8,292	86.6%
Family	1,308	16.2	1,284	13.4
Spouse	528	6.5	531	5.5
Offspring	285	3.5	258	2.7
Parent	154	1.9	150	1.6
Sibling	123	1.5	121	1.3
Other	218	2.8	224	2.3

Note: *Sibling* includes step-sibling.
Parent includes grandparent and step-parent.
Offspring includes grandchild and step-child.
Spouse includes common-law spouse.

Other includes cousin, in-law, extended family, and other family.
Detail percentages may not add to total because of rounding.

Table 2. Sex, race, and age, by the family relationship of murder victims and defendants, 1988

Relationship of victim to assailant	All	Sex		Race			Age				
		Male	Female	White	Black	Other	Under 12	12-19	20-29	30-59	60 or over
Victims											
All	100%	77.8%	22.2%	43.5%	54.2%	2.3%	4.8%	10.9%	35.6%	41.8%	7.0%
Nonfamily	100	82.2	17.8	44.4	53.3	2.3	2.1	12.2	38.5	41.1	6.1
Family	100	55.5	44.5	39.0	58.8	2.4	18.8	3.9	20.3	45.3	11.6
Spouse	100	40.2	59.8	41.2	58.4	2.4	0	0	27.9	65.0	7.1
Offspring	100	55.8	44.2	32.8	65.8	1.8	78.5	10.9	7.7	3.0	0
Parent	100	57.2	42.8	54.8	45.2	0	0	0	.9	56.7	42.4
Sibling	100	73.0	27.0	33.5	64.5	2.0	8.7	2.0	43.3	42.6	3.3
Other	100	74.9	25.1	34.1	61.0	4.9	4.6	8.2	19.1	47.5	20.8
Defendants											
All	100%	89.5%	10.5%	36.2%	61.8%	1.8%	.1%	21.8%	42.5%	31.4%	4.2%
Nonfamily	100	93.2	6.8	35.7	62.8	1.8	.1	23.1	44.5	28.4	3.8
Family	100	65.5	34.5	39.7	58.0	2.3	0	13.0	29.7	50.5	6.8
Spouse	100	59.3	40.7	41.8	58.1	2.2	0	.9	21.9	66.1	11.1
Offspring	100	45.4	54.6	34.5	64.5	1.0	0	17.2	36.4	40.3	6.0
Parent	100	81.8	18.4	49.8	50.2	0	0	38.2	30.7	29.4	1.7
Sibling	100	84.9	15.1	32.2	65.8	2.0	0	16.9	36.7	46.4	0
Other	100	83.5	16.5	38.1	58.1	5.9	0	18.0	35.9	41.3	4.9

Note: See table 1 note for definitions of the family relationships.

characterized 84% of the victims, who were a stranger, acquaintance, or friend to the defendant or defendants.

Defendants

Murder cases disposed in the 75 largest counties in 1988 involved an estimated 9,576 defendants. Thirteen percent had a family relationship to at least one of the victims in the case. Nonfamily victim-offender relationships characterized 87% of defendants who were a stranger, acquaintance, or friend to the victim.

Family murder defendants and their victims comprised almost 15% of all victims and defendants recorded in the murder cases in 1988. Husbands and wives were the most likely to be involved in family murders. Spouses were 4 in 10 of all defendants and victims involved in a family murder:

Relationship of victim to assailant	Family murder victims and defendants	
	Number	Percent
All	2,582	100.0%
Spouse	1,059	40.9
Offspring	543	20.9
Parent	304	11.7
Sibling	244	9.4
Other	442	17.1

The second most frequent type of family murder, with offspring as victims and parents as assailants, were 21% of the total. (See the box on page 6 describing murders by parents of their children.) Those cases in which offspring were assailants and parents were the victims comprised 12% of all family murder victims.

As among victims, most of the nonfamily murder defendants (93%) and most of the family murder defendants (66%) were male (table 2). Offspring murder was the only murder category in which females predominated as killers. In offspring murders, the mother accounted for 55% of the defendants.

Sons, more often than daughters, were the defendants in the murders of parents: 82% versus 18%. Compared to defendants in other types of family murder, offspring accused of killing their parents were the youngest of the assailants, two-thirds being under age 30.

Husbands killed wives more frequently than wives killed husbands. Overall, husbands comprised about 60% of the assailants in spouse killings. The predominance of husbands as the defendant, however, varied by race. In black murders, wives were about as likely as husbands to be charged with the murder of their spouse. Of the 283 black-on-black spouse killings, 53% of the assailants were husbands, compared to 62% of the 218 white-on-white spouse killings. For Asian, Native

Table 3. Alcohol use at the time of the murder, history of mental illness, unemployment, and homelessness, by the family relationship of murder victims and defendants, 1988

Relationship of victim to assailant	Alcohol use at the time of the murder	History of mental illness	Unemployed	Homeless
Victims				
All	47.4%	.5%	13.8%	1.1%
Nonfamily	50.9%	.4%	15.8%	1.3%
Family	32.7	.9	7.4	.2
Spouse	49.8	1.5	12.8	.5
Offspring	5.7	1.3	0	0
Parent	25.4	0	4.4	0
Sibling	34.9	0	17.7	0
Defendants				
All	64.4%	4.3%	35.3%	1.6%
Nonfamily	68.0%	2.7%	36.6%	1.7%
Family	47.8	14.3	29.1	1.2
Spouse	54.4	12.3	25.0	1.6
Offspring	29.8	15.8	28.9	0
Parent	28.4	25.1	33.6	2.3
Sibling	53.9	17.3	34.9	3.3

Note: See table 1 note for definitions of the family relationships. "Alcohol" is coded only if present in the person.

American, Pacific Islander, or Alaska Native spouses, in all 11 spouse murders, the husband killed the wife.

Drinking, unemployment, and mental illness

About half of the nonfamily murder victims and a third of the family murder victims consumed alcoholic drinks before the crime (table 3). Compared to victims in other types of family murder, victims in spouse murders were the most likely to have been drinking (49.6%). Sixty-eight percent of nonfamily defendants and 48% of family murder defendants were drinking at about the time of the murder.

Parents who were murdered were, apart from offspring murder victims, the least likely to be unemployed.

Family murderers were more likely than nonfamily murderers to have a history of mental illness (14%). Those who killed their parents were particularly likely to have such a history (25%).

Sex of offender and victim

Defendants in family murder cases were much less likely to be accused of murdering someone of the same sex (34% of defendants) than were defendants in murder cases not involving family members (80%) (table 4). When the sex of the victim and offender is considered, spousal murder, which by definition includes a man and a woman, provides the primary source of the difference between family and nonfamily murder. If spousal murder is excluded from consideration, murderers and victims were of the same sex in 65% of family murders.

Table 4. Murder defendants with a victim of the same sex, by their family relationship, 1988

Relationship of victim to assailant	Percent of defendants with a victim of the same sex		
	All	Male	Female
All	73.7%	79.5%	21.9%
Nonfamily	79.9	84.1	25.9
Family	34.3	40.8	17.8
Spouse	0	0	0
Offspring	41.7	48.1	38.3
Parent	48.4	52.8	19.1
Sibling	69.3	73.8	45.1

See table 1 note for definitions of the family relationships.

Female defendants were more likely than male defendants to have murdered a person of the opposite sex. When a mother murdered her own child, the offspring she killed was more often a son (64%) than a daughter (36%). Among fathers who murdered, 48% of their victims were a son and 52% were a daughter. When a daughter killed a parent, the victim was more likely to be a father (81%) than a mother (19%). Among sons who murdered a parent, 53% of the victims were a father. When a sister murdered a sibling, 55% of the victims were a brother. Among brothers who killed a sibling, 74% of the victims were a brother.

Guns used as the murder weapon

Over 60% of the nonfamily murders and over 40% family murders were committed with a gun. Compared to victims in other types of family murder, victims in spouse murders were the most likely to have died from a gunshot (53%). Offspring were the least likely to be shot to death: 1 in 5 offspring murdered by a parent died from a bullet wound.

Armed victims and victim-precipitated murders

Nineteen percent of murder victims were armed with a gun, knife, or other deadly weapon. A smaller percentage of family

murder victims (15%) than nonfamily murder victims (20%) were armed.

Relationship of victim to assailant	Percent of victims	
	Armed	Precipitated the incident
All	19.4%	19.1%
Nonfamily	20.4	19.5
Family	14.9	17.1
Spouse	15.2	22.6
Offspring	7.9	8.1
Parent	23.0	18.8
Sibling	11.7	20.3

Some armed victims used the deadly weapon to provoke the defendant. Others provoked the defendant with a nonlethal weapon or their fists or by pushing the defendant. Altogether, 19% of the victims in some way provoked the defendant. The provocation did not vary significantly between family (17%) and nonfamily murders (20%).

Multiple victims and assailants

Victims in murders of family members were about half as likely as nonfamily murder victims to have had multiple assailants (table 6). However, similar percentages of defendants in both types of murder (family murders, 6% and other murders, 5%) were charged with killing more than one person. Compared to defendants in other types of family murder, defendants accused of killing their offspring or their parents were the most likely to have multiple victims. These murders were also the most likely to involve multiple assailants.

Table 5. Murder committed with a firearm, during daytime, or at home, by victim-assailant family relationship, 1988

Relationship of victim to assailant	Percent of murder cases		
	Firearm as murder weapon	Time and place of murder	
		Daytime	Home
Victims			
All	59.8%	27.1%	32.0%
Nonfamily	63.3	24.9	21.7
Family	41.6	38.5	81.5
Spouse	53.3	38.8	88.5
Offspring	19.6	43.4	88.0
Parent	34.8	38.4	95.8
Sibling	37.1	46.8	71.9
Defendants			
All	61.0	25.6	17.5
Nonfamily	63.9	23.7	10.0
Family	42.6	37.5	63.8
Spouse	52.5	38.8	76.1
Offspring	20.6	46.3	75.4
Parent	33.9	33.8	58.8
Sibling	38.3	45.3	62.0

Note: See table 1 note for definitions of the family relationships.

Table 6. Multiple victims and assailants, by their family relationship, 1988

Relationship of victim to assailant	Percent	
	Victims with multiple assailants	Defendants with multiple victims
All	17.5%	5.0%
Nonfamily	19.1	4.8
Family	8.7	8.0
Spouse	4.8	1.7
Offspring	13.0	11.7
Parent	13.9	12.7
Sibling	8.1	5.7

Note: See table 1 note for definitions of the family relationships.

Criminal history

A little over half of the defendants in family murders, but over three-quarters of defendants in nonfamily murders, had been arrested in the past (table 7). Defendants were more likely to have a criminal history than their victims. Nevertheless, 44% of murder victims (51% nonfamily and 19% family murders) had a prior history of arrest or conviction.

Whether the victim had a criminal history, the killer had such a history in most cases. The likelihood of the killer's having a prior record was greater when the victim also had a record (table 8). Victims with a prior criminal record accounted for 44% of all victims; 83% of these victims were killed by someone with a prior criminal history. (See note in *Methodology* for calculation of percentage of defendants with a prior record.) For family murder victims the percentages were lower: 21% had a criminal record and 69% of these victims were killed by someone with a prior record. Among the murderers of family victims without a criminal record, 42% had such a history.

Age of victim and victim-assailant family relationship

When a person under age 12 is murdered, a family member is the best suspect, according to survey results; family members accounted for 63% of child murder victims.

Table 7. Criminal history of murder victims and defendants, by their family relationship

Relationship of victim to assailant	Percent with any prior arrest or conviction
Victims	
All	43.7%
Nonfamily	51.2
Family	19.3
Spouse	34.5
Offspring	2.1
Parent	11.7
Sibling	27.4
Defendants	
All	73.8%
Nonfamily	76.7
Family	58.0
Spouse	51.4
Offspring	45.4
Parent	67.2
Sibling	71.0

Note: See table 1 note for definitions of the family relationships.

Table 8. Criminal history of murder victims and offenders within the same case, by their family relationship, 1988

Relationship of victim to assailant	Percent of victims and defendants with a criminal history			
	Neither	Both	Victim only	Defendant only
Victims				
All	23.2%	38.9%	7.5%	32.2%
Nonfamily	18.9	43.4	7.9	31.8
Family member	45.7	14.3	6.4	33.6
Defendants				
All	23.1%	35.2%	8.8%	29.9%
Nonfamily	18.3	43.9	9.2	30.5
Family member	50.5	15	7.1	27.3

Note: See table 1 note for definitions of the family relationships. Percentages of victims or defendants with a criminal history differ slightly from table 7 because of missing data.

Age of victim	Percent of murder victims	
	All	With a family relationship to assailant
All	100%	16%
Under 12	5	63
12-19	11	6
20-29	35	9
30-59	42	18
60 or older	7	27

However, a family member is an unlikely suspect in murders of persons in their teens. Among victims age 20 or older, the likelihood increased that a family member was the killer as the victim's age increased.

A family member was involved in the murder of 27% of the murder victims age 60 years or older. Among all murders of persons in the oldest group, offspring as the killer accounted for 11%. Among murders of family members age 60 or older, the most frequent assailant category was not the spouse, as for younger adult victims, but the victim's offspring. The assailant was an offspring in 42% of family member victims age 60 or over and a spouse in 24%. The most frequent family member category varied by victim age:

Age of family victim	If family murder victim, most likely assailant	Percent of family murder victims with most likely assailant
All	spouse	40%
Under 12	parent	91
12-19	parent	59
20-29	spouse	55
30-59	spouse	57
60+	offspring	42

Murder weapons used against young children and elderly parents

When parents killed their offspring under age 12, they rarely used a firearm or knife. Firearms or knives were responsible for the deaths of 7% of offspring victims under 12. When sons and daughters killed their parents age 60 or older, in most cases they did not use a firearm or knife. Firearms or knives accounted for 44% of family murder victims age 60 or over.

Victims who were children under age 12

A parent was the assailant in the majority (57%) of family murders involving victims under 12.

For all murder victims under age 12, death was often preceded by child abuse. In 57% of cases, the assailant had abused the murder victim under age 12. Among offspring murder victims who were under age 12, before their death 79% had suffered abuse by the assailant.

Rape or sexual assault preceded the death of 6% of murder victims under age 12. These crimes occurred less often when the assailant was a parent, accounting for 1% of offspring murder victims under age 12.

Circumstance	Among all victims	Offspring victims		All victims under 12
		Any age	Under age 12	
Included felony sexual assault	2%	1%	1%	6%
Assailant had abused the victim	3%	62%	79%	57%

Strangulation, blunt instrument, and pounding by fists or feet were among the more frequent methods of death when firearms or knives were not used.

Age of offspring	Percent of offspring victims	
	All	Those killed with firearm or knife
All ages	100%	28%
Under 12	78	7
12-19	11	93
20-29	8	100
30-59	3	100

Age of parent victims	Percent of parent victims	
	All	Those killed with firearm or knife
All ages	100%	72%
30-59 years	58	91
60 or older	42	44

Table 9. Level of murder charges filed against persons arrested for murder, by victim-assailant family relationship, 1988

Relationship of victim to assailant	Percent of murder defendants whose most serious conviction charge was:		
	First-degree murder	Other murder	Voluntary or nonnegligent manslaughter
All	73.5%	24.2%	2.3%
Nonfamily	73.7	24.8	1.8
Family member	72.8	21.5	5.9
Spouse	69.4	24.2	6.4
Offspring	83.1	22.8	14.1
Parent	75.2	24.8	0
Sibling	82.4	15.5	2.0

Note: See table 1 note for definitions of the family relationships. "First degree murder" refers to premeditated murder or felony murder; "other murder" refers to nonpremeditated murder; "voluntary or nonnegligent manslaughter" refers to intentional killing without malice.

Table 10. Time to arrest and disposition for murder cases, by victim-assailant family relationship, 1988

Relationship of victim to assailant	Percent of murder defendants:	
	Arrested on the day of the crime	Whose prosecution ended within 6 months of crime
All	34.8%	29.1%
Nonfamily	31.7	28.8
Family member	54.2	33.7
Spouse	62.3	35.8
Offspring	49.3	23.5
Parent	37.2	42.1
Sibling	55.3	34.0

See table 1 note for definitions of the family relationships.

Arrested for murder or manslaughter

The family relationship of the defendant to the murder victim made little difference in whether the defendant was charged with first-degree murder or a less serious type of homicide (table 9). When a family member was victim, 73% of the defendants were charged with first degree murder, compared to 74% of the defendants charged with murdering a stranger or acquaintance. Compared to defendants in other types of family murder, defendants in offspring murders were the most likely to have had voluntary or nonnegligent manslaughter as the most serious arrest charge.

Time to arrest and disposition

In more than half of the family murder cases but about a third of the cases of other types of victims, the arrest occurred on the day of the crime (table 10). Spouses and siblings were identified as the murderer more quickly than parents or offspring. Overall, family murder cases required less time to disposition than other types of murder cases: prosecution was completed within 6 months for 34% of family murder defendants versus 29% of nonfamily murder defendants.

Parental murder of offspring under age 12

Prosecutors' files contained information on reasons a parent murdered an offspring under age 12. One or more reasons were given for 62 of the total 84 offspring murder victims under age 12. The following presents reasons and the number of victims:

- Unspecified forms of child abuse (18)
- Victim's behavior such as crying or misbehavior (15)
- Parent's emotional instability or retardation (9)
- Unwanted newborn baby (8)
- Unintended consequence of the commission of another crime (lethal conflict between the parents) (6)
- Neglect (5)
- Difficulty handling responsibility of child rearing (3)
- Child held hostage (1)

Examination of the details concerning the method of killing covered all but 3 of the victims. By far the most frequent method of murder was beating: punching with fists, kicking, throwing, pushing, slapping, hitting with belts, hammers, and wooden brushes, striking body against furniture (shower head, walls).

With five of the victims counted under two or three methods, specific methods and the number of victims were as follows:

- Beating (35)
- "Shaking baby syndrome" (10)
- Arson (8)
- Newborn disposed of in toilet or trash can (6)
- Drowning in bathtub (6)
- Firearm (5)
- Suffocation/strangulation (5)
- Neglect (dehydration, starvation, and failure to use infant heart monitor) (4)
- Stabbing (3)
- Starvation (2)
- Other methods, including poisoning with carbon monoxide, lethal doses of drugs, running over with a car, boiling, and putting in freezer (5)

Of the five victims who were shot to death, three died because the assailant accidentally fired his gun while committing another crime; therefore, two offspring victims under age 12 were intentionally killed with a firearm.

Justice system response to family murder

The criticism is sometimes made that police, prosecutors, and judges treat family violence less seriously than violence between strangers and other unrelated persons.* The urban county data provide

*Delbert S. Elliott, "Criminal Justice Procedures in Family Violence Crimes," in Lloyd Ohlin and Michael Tonry (eds), *Family Violence* (Chicago: University of Chicago Press, 1989), p. 428.

little support for such criticism. In several important respects, the criminal justice outcomes of family-murder defendants were about the same overall as those of other murder defendants. Where differences in the overall case outcome existed, the more detailed statistical testing of data removed the characteristic of nonfamily-family as a possible source of those differences.

Compared to other murder defendants, those in family-murder cases —

- Were as likely to be charged with first-degree murder (table 9)
- Were no more likely to have their cases diverted, rejected for prosecution; or to be acquitted, and were less likely to be dismissed by the court (table 11)
- Were as likely to have their cases result in a conviction for some crime, and specifically, as likely to be convicted of murder (table 12).

At sentencing, as compared to other defendants, convicted family murder defendants, including those initially charged with murder of a family member but convicted of some other offense, were not significantly less likely to receive —

- a prison sentence: 88% versus 91% or
- a sentence to life imprisonment: 13% versus 16% (table 13).

Compared to nonfamily murder defendants, however, convicted family murderers were —

- more likely to receive a less severe sentence, probation: 7.1% versus 2.7%
- given shorter prison sentences: 12.8 years, on average, versus 14.7.

Analyzing differences between sentences for family murder and other types of murder

These findings of more probation sentences and shorter prison terms do not necessarily reflect greater tolerance of family violence by justice system officials. Numerous differences between family murder and other murder might possibly account for less severe sentencing for family murder. To test that possibility, regression analysis was applied to the data.

Table 11. Outcome of prosecution of murder defendants, by victim-assailant family relationship, 1988

Relationship of victim to assailant	Percent of murder defendants by type of outcome of prosecution							
	Diverted	Rejected	Dismissed	Acquitted	Convicted at trial	Pleaded guilty	Insanity acquittal	Other ^a
All	.8%	8.4%	7.0%	7.3%	33.9%	38.8%	.5%	3.2%
Nonfamily	.7	8.4	7.5	7.6	33.9	38.2	.2	3.4
Family member	.9	7.9	3.8	5.8	33.5	42.8	2.8	2.4
Spouse ^b	.8	6.5	3.5	6.1	37.4	42.1	1.2	2.5
Offspring	1.0	11.3	3.0	5.8	37.4	35.8	3.9	2.3
Parent	.8	4.8	5.5	5.9	22.8	47.6	9.0	3.7
Sibling	2.2	10.4	0	8.1	21.7	51.9	4.7	1.0

Note: See table 1 note for definitions of the family relationships.

^aIncludes murder defendants who died or whose individual cases had not been disposed.

Table 12. The most serious conviction offense of murder defendants, by victim-assailant family relationship, 1988

Relationship of victim to assailant	Percent of murder defendants convicted of:		Percent of convicted defendants, by the most serious conviction offense						Percent of convictions for less than the most serious arrest charge
			Any crime	Murder	Voluntary/nonnegligent manslaughter/Other violent/Other				
	All	First degree murder			Other murder	Other violent	Other		
All	72.6%	82.8%	100%	25.6%	30.9%	29.9%	9.9%	3.7%	61.8%
Nonfamily	72.1	82.4	100	25.9	32.0	28.7	9.4	3.9	61.3
Family member	78.3	84.8	100	23.8	24.3	37.1	12.4	2.6	64.8
Spouse	79.5	71.2	100	21.4	25.6	42.6	8.0	2.4	62.0
Offspring	72.9	52.4	100	18.5	27.8	27.5	28.2	0	77.7
Parent	70.4	65.4	100	35.8	17.2	40.2	4.7	2.3	55.4
Sibling	73.7	66.7	100	10.6	28.0	52.0	6.5	2.9	77.3

Note: See table 1 note for definitions of the family relationships.

Table 13. Sentences received by murder defendants convicted of murder or other crime, by victim-assailant family relationship, 1988

Relationship of victim to assailant	Percent of convicted murder defendants sentenced to:					Mean prison term ^c
	Prison		Jail	Probation ^b	Other ^d	
	Total	Life				
All	90.7%	15.6%	6.0	3.3%	14.4 years	
Nonfamily	91.1	16.0	6.2	2.7	14.7	
Family member	89.4	12.8	4.5	7.1	12.8	
Spouse	88.9	12.7	1.8	9.3	13.0	
Offspring	85.1	8.1	10.8	4.1	12.8	
Parent	95.2	17.8	4.8	0	12.9	
Sibling	82.0	6.5	5.9	12.1	9.3	

Note: See table 1 note for definitions of the family relationships.

^aIncludes those sentenced to life or death.

^bIncludes straight probation only. Probation with incarceration is reported as a sentence to prison or jail.

^cExcludes sentences to life or death.

This analysis accounts for the simultaneous effects on sentencing of the following factors:

- offense seriousness (degree of murder)
- nature of conviction (trial or guilty plea)
- defendant criminal history
- age of defendant
- number of victims
- victim precipitation
- county (place-to-place variability in sentencing can be substantial)
- race and sex of both victim and defendant.

Results showed that sentencing differences are not statistically significant (.05-level) once differences in case characteristics are taken into account.

Regression analysis did not confirm differences in sentencing severity between family and nonfamily murders because defendants in family murders less often had characteristics that are associated with the more severe sentences.

As indicated in the discussion and tables describing family murders, for example —

— Voluntary or nonvoluntary manslaughter is the least severely punished category of murder. A greater percentage of the family-murder defendants had voluntary or nonnegligent manslaughter as their most serious conviction offense.

— Having a prior arrest or conviction is associated with receiving a prison sentence and with longer terms of confinement. A smaller percentage of family-murder defendants had such a criminal history.

— Convicted murder defendants under age 30 were less likely to be sentenced to probation. A smaller percentage of family-murder defendants were younger than 30.

— Family murder convictions were less likely than nonfamily murder convictions to have resulted from a trial. Conviction based on trial rather than guilty plea increases the likelihood of any of the more severe sentences (life or long prison term).

Methodology

Sample selection

The 33 counties in the sample were selected to be representative of the nation's 75 largest counties. The ranking of counties in which the 75 largest were identified was based on a combination of crime data (1980 and 1984 Uniform Crime Report Part I arrests) and population data (1980 population from the Census Bureau's City County Data Book). Rankings reflected the size of the prosecutors' offices. The original sample plan identified 34 counties, one of which ultimately declined to participate.

The following are the 33 counties whose prosecutors' offices participated in the study reported here:

Arizona
Pima
California
Los Angeles
Orange
Kern
San Diego
Riverside
Colorado
Denver
Arapahoe
Connecticut
New Haven
Florida
Dade
Orange
Broward
Illinois
Cook
Louisiana
Orleans
Massachusetts
Middlesex
Maryland
Prince Georges
Michigan
Wayne

Missouri
St. Louis
New Mexico
Bernalillo
New York
Kings
Monroe
New York
Queens
Ohio
Franklin
Montgomery
Oklahoma
Oklahoma
Pennsylvania
Philadelphia
Allegheny
Tennessee
Shelby
Texas
Dallas
Tarrant
Travis
Washington
King

A total of 2,539 murder cases were sampled. These cases were a sample of about half of all murder charge cases disposed in the sampled 33 counties in 1988. Not eligible for sample selection were nonmurder defendants or any whose most serious charge was attempted murder, negligent or involuntary manslaughter, or vehicular homicide. In counties with 200 or fewer disposed murder cases in 1988, all were selected for inclusion in the sample. In counties with more than 200, a systematic sample of 200 was chosen. Only 6 of the 33 counties had more than 200 murder cases.

Virtually all cases meeting the 1988-disposition criterion were disposed for all defendants in the case. Of the more than 3,100 defendants on whom data were obtained, only 13 had not yet had their cases adjudicated at the time the survey was carried out in 1990. Another 25 defendants had died of suicide or other causes.

Nonavailability of cases

The survey goal to track murder cases across justice system stages was not met in nine counties. In one of the nine, legal restrictions barred access to cases rejected by the prosecutor. In the remaining eight counties some of the sampled cases could not be located.

To an unknown degree, these data access problems help explain why no case from the nine was coded as "rejected by prosecutor." Though there is no reason for all of the unavailable cases to be rejections in all nine counties, assuming that all such cases were rejections results in an estimated rejection rate of 12%, instead of 8%, as shown in table 11. Other outcomes would have been similarly affected. The percentage of defendants tried and convicted would have been 33% instead of 34%; the percentage pleading guilty would have been 37% instead of 39%; and the percentage receiving an incarceration sentence of more than 1 year would have been 62% instead of 65%.

Computation of estimates from sample data

Case weights were applied to statistics on the sampled cases to expand them to estimates for the universe of the 75 largest counties, the key assumption being that cases not sampled were similar to the cases sampled. A case weight was the inverse of the probability that a case would be in the survey. That probability was the product of the probability that a given county would be chosen and the probability of selection of that case in that county. Case weights were adjusted to compensate for the loss of one nonparticipating county.

Statistically weighted, the 3,119 defendants in the sample cases represented 9,576 murder defendants in the Nation's 75 largest counties. The 2,655 victims represented 8,063 victims in the 75 largest counties.

Coding of circumstances and victim/killer relationships

Information about a murder case usually included details about the relationship between the victim and the defendant, and the circumstances that existed at the time of the murder. The rules for describing relationships and circumstances were those used by local police in reporting murder cases to the FBI. These rules were developed by the FBI for publication of its Supplemental Homicide Reports. The reporting rules include a set of codes to describe the principal victim-assailant relationship and the circumstances in which they were involved at the time the murder occurred.

In the survey reported here, however, provision was made for coding as many as three kinds of relationships and three kinds of circumstances. For example, if the victim was the assailant's brother and was also the assailant's drug supplier, both a family relationship and a drug relationship would be recorded. Likewise more than one type of circumstance might have existed at the time of the murder. Altogether, 79 separate relationship codes and 85 circumstance codes were available for coding cases.

Among all pairs of victims and assailants found in the prosecutor's murder files, a majority required only a single relationship or circumstance code. The percentages requiring more are shown below:

Number of codes used	Percent of victim and assailant pairs in coding of:	
	Relationships	Circumstances
2	8.4%	40.0%
3 or more	.3	8.6

Response rates

Except as noted below, this report focused exclusively on characteristics that were successfully obtained in a high percentage of sample cases ("response rate").

The case records identified age, race, sex and ethnicity for nearly all defendants (approximately 98%). The same was true of victims, except that victim age was available in only 16% of cases.

Also obtained in nearly all cases were the relationships between victims and defendants and the circumstances preceding the homicide, as well as the arrest or indictment charge, and whether the defendant was convicted, and if so, the conviction offense. In incarceration or probation cases, the length of the term of sentence was usually known.

Defendant criminal history was available in three-quarters of the cases, but victim criminal history was obtained in only a third of the cases. The juvenile portion of the criminal history information was probably less complete than the adult portion.

Victim and offender information compiled both on drug use at the time of the offense and on drug use history were not presented in the report because of concerns about data credibility. Drug use, for example, was far below what previous surveys have documented. Also, the data show drug use to have been more common among victims than defendants, a finding that did not seem believable. Consequently, survey data on drug consumption and type of drug consumed were not used.

Source of percentages of defendants who had a criminal record and whose victim also had a criminal record

Overall

44% of victims had a criminal record (from table 8: 36.9%+7.5%).
83% of these victims were killed by someone with a prior record (36.9/44.4)

Family murders

21% of victims had a criminal record (14.3%+6.4%)
69% of these victims were killed by someone with a prior record (14.3/20.7)

78% of victims had no criminal record (45.7%+33.6%)

43% of these victims were killed by someone with a prior record (33.6/78.3)

Comparison with other BJS murder data collections

Selected data reported here can be compared with other BJS publications that contain information on murder cases.

Conviction rate

The 73%-rate of conviction reported in table 12 is higher than the 66% reported for murder defendants in the National Pretrial Reporting Program (NPRP). See Table 13 in *Felony Defendants in Large Urban Counties, 1988*, BJS, NCJ-122385, April 1990. The NPRP studied a sample of felony cases obtained from court records in 40 of the 75 largest counties in the Nation. Those cases were followed to disposition or for up to a maximum 1 year.

The following two reports give data for cases accepted by the prosecutor. The comparable conviction rate in this report would be 79%, rather than 73%, after deducting the cases rejected for prosecution (table 11).

The Offender-Based Transaction Statistics (OBTS) program reported a 76%-conviction rate among murder cases that were prosecuted in 14 States. See table 4 in *Tracking Offenders, 1988*, BJS, NCJ-129861, June 1991. The OBTS uses arrest records, disposition information, and data from fingerprint cards that are submitted by local law enforcement agencies to State criminal information repositories. This 76%-conviction rate is not measurably different than the 79% estimate in this report.

Conviction rates of murder cases filed in court are reported for a selection of 10 counties in table 2 in *The Prosecution of Felony Arrests, 1988*, BJS, NCJ-130914, February 1992. The local prosecutors in those 10 counties provided the data. The rates in those counties, among murder cases disposed during 1988, ranged from 57% to 84%. Four of ten had rates higher than the 79% reported here.

Number of murder convictions

Table 12 showed 63% of murder defendants convicted of murder, for a total of approximately 6,000 convictions. The comparable number in the National Judicial Reporting Program for the 75 largest counties in the United States during 1988 is approximately 5,000, which is not measurably different than the 6,000 estimate reported here. See table 2.1a in *National Judicial Reporting Program, 1988*, BJS, NCJ-135945, December 1992. However, the 63% of defendants convicted of murder is higher than the comparable 48% reported by the NPRP.

Sentences to prison, jail or probation

The NJRP and NPRP reports include the sentences received by those convicted of murder, comparable to table 14 of this report. All three studies show that of such defendants, more than 90% were sentenced to a prison term, fewer than 5% were sentenced to jail, and about 3% were sentenced to probation without any incarceration. The OBTS, however, reported these percentages as 81%, 11%, and 5% respectively. Table 11 above shows 18% receiving a life sentence, while NJRP showed 26%.

Standard errors

Data collected in this murder study were collected from a sample rather than a complete enumeration. Because counties and cases were sampled, a sampling error (standard error) is associated with each number in the report. In general, if the difference between two numbers is greater than twice the standard error for that difference, we can say that we are at least 95 percent confident that the two numbers are in fact different; that is, the apparent difference is not simply the result of surveying a sample rather than the entire population.

Similarly, if the difference between two numbers is greater than 1.6 standard errors, we are at least 90 percent confident that the two numbers are different. In this report, the term "statistically significant" was used to denote a difference in which we have at least 90 percent confidence. Except where explicitly indicated otherwise, all differences discussed in this report had a confidence level at or above 90 percent.

Typical reasons why a standard error may be large relative to the difference it pertains to include: (1) the measurements or observations being compared (a sex difference in average prison sentence length) is highly variable from one case to another, and (2) a small sample size.

Standard errors for selected key variables in the report are presented below.

Related reading

Data used in this report were previously used in the John M. Dawson and Barbara Boland, *Murder in Large Urban Counties, 1988*, BJS Special Report, NCJ-140614, May 1993.

The data presented in this report may be obtained from the National Archive of Criminal Justice Data at the University of Michigan, 1-800-999-0960. The name of the dataset is Murder in Large Urban Counties, 1988 (ICPSR 9907). The data are available in either dBASE or SAS format.

John M. Dawson and Patrick A. Langan wrote this report. Tom Hester edited and produced it, assisted by Priscilla Middleton. Marilyn Marbrook, assisted by Jayne Robinson, administered the final production.

July 1994, NCJ-143498

Estimates of 1 standard error for text table column 2 page 3

Relationship of victim to assailant	Family murder victims and defendants	
	Victims	Defendants
All	724.0	880.5
Nonfamily	105.0	109.4
Family	634.9	788.8
Spouse	68.1	85.1
Offspring	31.2	26.7
Parent	23.1	22.6
Sibling	21.8	21.1
Other	23.8	24.8

Estimates of 1 standard error for table 2

Relationship of victim to assailant	Sex		Race			Age				
	Male	Female	White	Black	Other	Under 12	12-19	20-29	30-59	60 or over
Victims										
All	0.7%	0.7%	2.8%	3.0%	0.3%	0.5%	0.7%	1.0%	1.2%	0.4%
Nonfamily	0.8	0.8	2.8	3.0	0.4	0.2	0.8	1.1	1.2	0.4
Family	2.1	2.1	3.4	3.8	0.6	2.6	0.7	2.1	2.7	1.4
Spouse	3.2%	3.2%	5.3%	--	0.8%	0	0	2.7%	2.6%	1.9%
Offspring	5.2	5.2	5.0	--	1.4	4.0	2.1	2.8	2.3	0
Parent	6.4	6.4	5.7	--	0	0	0	0.4	6.2	6.3
Sibling	6.2	6.2	7.7	--	1.5	4.4	1.8	7.9	7.5	2.8
Other	4.3	4.3	5.1	--	2.6	2.2	3.0	4.0	5.7	4.2
Defendants										
All	0.6%	0.6%	2.6%	2.8%	0.3%	0.3%	0.9%	0.7%	0.9%	0.3
Nonfamily	0.5	0.5	2.7	2.9	0.3	--	1.0	0.8	0.9	0.4
Family	2.1	2.1	3.1	3.2	0.6	0	1.7	1.8	2.0	1.0
Spouse	3.3%	3.3%	5.0%	5.1%	0.8%	0	0.5%	--	3.2%	1.6%
Offspring	3.9	3.9	4.9	5.2	0.8	0	4.0	4.2	4.5	3.0
Parent	4.7	4.7	5.2	5.2	0	0	6.3	4.7	5.4	1.4
Sibling	6.0	6.0	7.8	7.5	1.6	0	5.4	7.4	7.8	0
Other	3.6	3.6	4.8	4.9	2.8	0	4.0	4.7	4.7	1.8

--Standard error was not calculated.

Estimates of 1 standard error for table 3

Relationship of victim to assailant	Alcohol use at the time of the murder	History of mental illness	Unemployed	Homeless
Victims				
All	1.8%	0.1%	--	0.3%
Nonfamily	1.9	0.1	--	0.3
Family	2.6	0.3	--	0.2
Spouse	3.2%	0.7%	7.7%	0.4%
Offspring	1.7	0.7	0	0
Parent	7.4	0	2.5	0
Sibling	9.4	0	1.8	0
Defendants				
All	1.9%	0.4%	3.0%	0.3%
Nonfamily	1.9	0.3	3.2	0.4
Family	3.5	1.6	3.2	0.5
Spouse	5.7%	2.5%	4.1%	1.0%
Offspring	7.1	3.7	7.0	0
Parent	8.9	5.2	9.9	1.7
Sibling	9.6	5.2	10.4	2.7

--Standard error was not calculated.

Estimates of 1 standard error for table 4

Relationship of victim to assailant	Percent of defendants with a victim of the same sex	
	Male	Female
All	0.8%	1.9%
Nonfamily	0.8	2.5
Family	2.2	3.5
Spouse	0	0
Offspring	6.3%	7.7%
Parent	7.5	8.0
Sibling	8.1	21.3

Estimates of 1 standard error for table 6

Relationship of victim to assailant	Percent	
	Victims with multiple assailants	Defendants with multiple victims
All	0.8%	0.4%
Nonfamily	0.9	0.4
Family	1.3	1.0
Spouse	1.4%	0.6%
Offspring	3.3	3.1
Parent	4.6	3.4
Sibling	4.7	2.4

Estimates of 1 standard error for table 7

Relationship of victim to assailant	Percent with any prior arrest or conviction
Victims	
All	2.4%
Nonfamily	2.7
Family	2.4
Spouse	5.2%
Offspring	1.2
Parent	7.2
Sibling	10.8
Defendants	
All	1.0%
Nonfamily	1.1
Family	2.5
Spouse	3.3%
Offspring	4.5
Parent	6.6
Sibling	7.7

Estimates of 1 standard error for table 5

Relationship of victim to assailant	Percent of murder cases		
	Firearm as murder weapon	Time and place of murder	
		Daytime	Home
Victims			
All	1.6%	1.2%	0.8%
Nonfamily	1.6	1.3	0.8
Family	3.0	2.4	1.8
Spouse	4.3%	3.1%	2.1%
Offspring	3.7	5.2	2.9
Parent	6.2	5.7	1.5
Sibling	7.3	8.6	6.4
Defendants			
All	1.5%	1.2%	0.7%
Nonfamily	1.5	1.4	0.5
Family	3.0	2.4	1.7
Spouse	4.4%	2.8%	2.1%
Offspring	3.6	5.8	4.0
Parent	5.9	5.2	5.7
Sibling	7.3	8.5	6.7

Estimates of 1 standard error for text table column 2 page 5

Age of victim	Percent of murder victims with a family relationship to assailant
All	0.7%
Under 12	4.6
12-19	1.1
20-29	1.0
30-59	1.0
60 or older	2.8

Estimates of 1 standard error for table 8

Relationship of victim to assailant	Percent of victims and defendants with a criminal history			
	Neither	Both	Victim only	Defendant only
Victims				
All	2.0%	2.2%	0.8%	2.2%
Nonfamily	2.1	2.5	0.9	2.6
Family	3.8	2.2	1.6	3.8
Defendants				
All	1.9%	2.2%	0.9%	2.0%
Nonfamily	1.9	2.4	1.0	2.3
Family	3.6	2.3	1.8	3.4

Estimates of 1 standard error for text table page 4

Relationship of victim to assailant	Percent of victims	
	Armed	Precipitated the incident
All	0.7%	0.8%
Nonfamily	0.8	0.8
Family	1.8	1.9
Spouse	2.7%	3.0%
Offspring	1.5	1.5
Parent	5.7	5.9
Sibling	4.8	6.9

Estimates of 1 standard error for text table column 2 page 5

Age of family victim	If family murder victim, most likely assailant	Percent of family murder victims with most likely assailant
All	spouse	3.3%
Under 12	parent	3.1
12-19	parent	9.7
20-29	spouse	6.0
30-59	spouse	3.4
60+	offspring	7.0

Estimates of 1 standard error for text table column 3 page 5

Circumstance	Among all victims	Offspring victims		All Under 12 victims under 12
		Any age	Under 12	
Included felony sexual assault	0.2%	0.8%	1.0%	1.7%
Assailant had abused the victim	0.4%	4.8%	5.2%	5.4%

Estimates of 1 standard error for text table column 1 page 6

Age of offspring	Percent of offspring victims	
	All	Those killed with firearm or knife
All	0	4.1%
Under 12	4.0	2.6
12-19	2.1	4.7
20-29	2.8	0
30-59	2.3	0

Age of parent victims	Percent of parent victims	
	All	Those killed with firearm or knife
All	0	6.8%
30-59 years	6.2	4.0
60 or older	6.3	10.9

Estimates of 1 standard error for table 9

Relationship of victim to assailant	Percent of murder defendants whose most serious conviction charge was:		
	First-degree murder	Other murder	Voluntary or nonnegligent manslaughter
All	4.5%	4.4%	0.3%
Nonfamily	4.6	4.6	0.3
Family	3.9	3.6	1.1
Spouse	3.8%	3.8%	1.8%
Offspring	6.5	5.3	3.9
Parent	6.6	6.6	0
Sibling	6.2	6.1	1.6

Estimates of 1 standard error for table 10

Relationship of victim to assailant	Percent of murder defendants:	
	Arrested on the day of the crime	Whose prosecution ended within 6 months of crime
All	1.1%	2.3%
Nonfamily	1.0	2.3
Family	2.1	3.1
Spouse	2.8%	4.2%
Offspring	6.0	4.7
Parent	6.4	5.3
Sibling	7.3	7.6

Estimates of 1 standard error for table 11

Relationship of victim to assailant	Percent of murder defendants by type of outcome of prosecution							
	Diverted	Rejected	Dismissed	Acquitted	Convicted at trial	Pleaded guilty	Insanity acquittal	Other
All	0.2%	2.2%	0.6%	0.6%	1.9%	2.4%	0.1%	0.4%
Nonfamily	0.2	2.1	0.6	0.6	1.9	2.4	0.1	0.3
Family	0.4	2.6	1.0	1.1	2.7	3.5	0.8	1.5
Spouse	0.4%	3.3%	1.2%	1.6%	3.9%	4.5%	0.6%	1.6%
Offspring	0.8	3.7	1.3	2.0	4.4	5.3	2.3	1.7
Parent	0.3	2.1	3.5	2.2	4.9	7.0	3.0	3.1
Sibling	1.7	5.4	0	3.3	5.8	8.0	2.1	0.4

Estimates of 1 standard error for table 12

Relationship of victim to assailant	Percent of murder defendants convicted of:		Percent of convicted defendants, by the most serious conviction offense			Percent of convictions for less than the most serious arrest charge
	Any crime	Murder	First degree murder	Other murder	Voluntary/nonnegligent manslaughter	
All	2.7%	2.1%	2.4%	1.7%	1.7%	1.4%
Nonfamily	2.7	2.1	2.4	1.7	1.7	1.4
Family	3.2	2.8	3.0	2.3	2.6	2.6
Spouse	4.3%	3.7%	3.6%	3.3%	3.8%	3.7%
Offspring	4.8	4.1	4.0	5.0	4.4	4.2
Parent	6.0	5.9	7.9	4.8	7.7	7.4
Sibling	6.5	7.1	5.2	9.3	9.1	7.3

Estimates of 1 standard error for table 13

Relationship of victim to assailant	Percent of convicted murder defendants defendants sentenced to:			Mean prison term
	Prison		Probation	
	Total	Life		
All	0.7%	0.7%	0.4%	0.5 years
Nonfamily	0.8	0.6	0.4	0.5
Family	1.4	1.4	1.2	0.9
Spouse	2.0%	1.7%	1.8%	1.3
Offspring	2.9	3.5	1.4	1.8
Parent	2.5	1.1	0	1.1
Sibling	6.4	6.4	5.9	1.3



The Deputy Attorney General

Washington, D.C. 20530

December 13, 1993

MEMORANDUM

TO: Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility

FROM: Philip B. Heymann
Deputy Attorney General *P. H.*

SUBJECT: Disclosure of the Results of Investigation of
Alleged Professional Misconduct by Department
Attorneys

I understand that the Department in the past has publicly disclosed the results of investigations conducted by the Office of Professional Responsibility only in rare cases in which OPR found knowing and intentional misconduct by senior officials. Upon reviewing that policy, I have concluded that more frequent disclosure of the results of OPR's findings concerning professional misconduct by attorneys will promote public accountability and further the fair administration of justice and the law enforcement process. Accordingly, I hereby adopt a policy that will result in the disclosure of findings in a larger number of cases.

While we must respect legitimate privacy interests of Department employees, we must also recognize that serving as an attorney with the Department of Justice carries with it a responsibility to observe high ethical standards. The public's interest in knowing whether all of our attorneys are consistently satisfying those standards should be weighed in the balance when making the determination about whether disclosure is appropriate.

Accordingly, in the future the Department will disclose the final disposition, after all available administrative reviews have been completed, of any matter in the following categories:

1. Any finding by the Department of intentional or knowing professional misconduct by a Department attorney in the course of an investigation or litigation conducted under the authority of the Department of Justice, where the Attorney General or Deputy Attorney General finds that the public interest in

disclosure outweighs the privacy interest of the attorney and any law enforcement interests.

2. Any case involving an allegation of serious professional misconduct where there has been a demonstration of public interest in the disposition of the allegation, including matters where there has been a public referral to the Department by a court or bar association, where the Attorney General or Deputy Attorney General finds that the public interest in disclosure outweighs the privacy interest of the attorney and any law enforcement interests.
3. Any case in which the attorney requests disclosure, where law enforcement interests are not compromised by the disclosure.

Prior to any disclosure in category (1) or (2), the attorney whose name is to be released will receive notice of the planned disclosure and will be given an opportunity to object in writing to the public disclosure. The Deputy Attorney General shall resolve any such objections.

In each disclosed case, the Department will disclose the name of the employee, sufficient facts to explain the context of the allegation, and the disposition of the allegation, including any final action taken by the Department.

Please ensure that procedures are implemented in your office so that each matter falling within one of the above categories is forwarded to the Deputy Attorney General after resolution by your office. Your referral should include your recommendation about whether disclosure is appropriate. If you believe that disclosure is appropriate, please include a brief summary of the matter appropriate for public release.

Depending upon the degree of public interest in the matter, we may release the information when the matter is resolved or include it in OPR's annual report.

PROCEDURES FOR PUBLIC DISCLOSURE OF OPR FINDINGS

1. OPR concludes its investigation and submits its final report to the appropriate supervisor;
2. The supervisor reviews the OPR report, makes any additional inquiry, consults with the employee and makes a disciplinary recommendation, if appropriate;
3. The decision-maker endorses the disciplinary action and notifies OPR of any action taken;
4. If OPR decides that the case fits one of the categories in which disclosure may be appropriate, OPR prepares a brief summary of the matter including (a) the employee's name; (b) sufficient facts to explain the context of the allegation; and (c) the final disposition of the allegation, which it submits to the Office of Information and Privacy ("OIP");
5. OIP reviews the proposed statement to determine if the Privacy Act permits disclosure, and whether revisions should be made to the statement prior to disclosure;
6. If OIP advises that the statement (in original or revised form) is appropriate for disclosure, OPR circulates the proposed statement to the affected employee, and to the presidential appointee or other appropriate official who supervises the employee, giving them the opportunity to object in writing to the proposed disclosure on the grounds of a privacy or law enforcement concern.
7. If the affected employee or the supervising official objects to disclosure of the proposed statement, OPR submits the objections to OIP for review;
8. OIP advised OPR of its conclusions regarding the objections;
9. OPR forwards the proposed statement to the Deputy Attorney General with its recommendation regarding release and attaches all comments that were received;
10. If the Deputy Attorney General decides that disclosure is appropriate, she forwards the statement to the Office of Public Affairs for release.

Guideline Sentencing Update



EXHIBIT

FEDERAL JUDICIAL CENTER F

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

This Federal Judicial Center publication was undertaken in furtherance of the Center's statutory mission to conduct and stimulate research and development for the improvement of judicial administration. The views expressed are those of the author and not necessarily those of the Federal Judicial Center.

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Offense Conduct

CALCULATING WEIGHT OF DRUGS—MIXTURES

U.S. v. Boot, No. 93-2317 (1st Cir. June 7, 1994) (Cyr, J.) (Affirmed: Nov. 1993 amendment to § 2D1.1(c) that changed method of calculating weight of LSD controls for guideline calculations, but for mandatory minimum sentences the calculation is still controlled by the holding in *Chapman v. U.S.*, 500 U.S. 453, 468 (1991), that the weight of the carrier medium is included. Therefore, defendant resentenced under § 1B1.10(a) could not have his sentence reduced below the applicable five-year mandatory minimum, based on the weight of the LSD plus the carrier medium, even though his guideline range was reduced from 121–151 months to 27–33 months.) Cf. *U.S. v. Mueller*, No. 93-1481 (10th Cir. June 22, 1994) (Moore, J.) (Affirmed: Defendant, originally sentenced to five-year mandatory minimum that was later reduced to 39 months after Fed. R. Crim. P. 35(b) departure, was not entitled to resentencing under amended LSD calculation in § 2D1.1(c). Under § 1B1.10(b), the district court "should consider the sentence that it would have originally imposed had the guidelines, *as amended*, been in effect at that time." Here, even though amended § 2D1.1(c) would result in a range of 18–24 months, defendant was still subject to five-year minimum term, and the "subsequent reduction upon the government's Rule 35 motion, which occurred at a later date, has no concomitant retrospective applicability.").

Outline at II.A.3 and II.B.1.

U.S. v. Telman, No. 93-3324 (10th Cir. June 30, 1994) (Baldock, J.) (Affirmed: Defendant pled guilty to an LSD offense and, following a § 5K1.1 motion by the government, had his offense level reduced from 29 to 15 and was sentenced below the five-year statutory minimum to 18 months. Following § 1B1.10(a), he later sought resentencing under the Nov. 1993 amendment on calculating weight of LSD in § 2D1.1(c), claiming that his offense level would be 15 following the amended guideline, that the district court would have departed downward from level 15 instead of ending there, and that his sentence would therefore be lower. The district court denied the motion and was affirmed. "[I]t is apparent from the language of 1B1.10(a)—*i.e.*, 'may consider'—that a reduction is not mandatory but is instead committed to the sound discretion of the trial court. . . . [T]he district court considered a number of [the factors in 18 U.S.C. § 3582(c)], including Defendant's post-amendment guideline range, and decided that due to Defendant's personal and offense characteristics, Defendant did not merit a sentence reduction. After reviewing the record, we cannot say the district court abused its discretion.").

Outline at I.E and II.B.1.

Adjustments

ACCEPTANCE OF RESPONSIBILITY (§ 3E1.1(b))

U.S. v. Kimple, No. 92-10735 (9th Cir. June 24, 1994) (Nelson, J.) (Remanded: It was error to deny reduction under § 3E1.1(b)(2) on the grounds that over a year passed before defendant's guilty plea and he filed a pretrial motion to suppress evidence. "Because constitutionally protected conduct should not be considered against the defendant for purposes of an acceptance of responsibility reduction, . . . a defendant's exercise of those rights at the pretrial stage should not in and of itself preclude a reduction for timely acceptance. . . . If the Government establishes that it prepared for trial in conjunction with responding to pretrial motions, denial of the reduction may be justified. However, where the record reflects only the Government's efforts in responding to such motions, as [here], then the trial court may not deny the additional reduction for timely acceptance simply because a defendant vigorously defended a motion to suppress or simply because a given length of time has elapsed prior to the defendant noticing his intent to plead guilty. . . . [W]e do not consider the length of time that has passed in isolation," and here, in what the trial court called a complex case, there were several continuances, the government filed two superseding indictments, defendant's pretrial motions were not frivolous or filed for purposes of delay, and no trial date had been set.).

U.S. v. Stoops, No. 93-10244 (9th Cir. June 1, 1994) (Beezer, J.) (Remanded: Defendant's multiple confessions on day of robbery and leading police to evidence qualified him for the extra reduction under § 3E1.1(b)(1), despite the government's claim that these actions did not "assist[] authorities in the investigation or prosecution" of his offense because the information was readily available to police. "[S]ubsection (b) does not require that the defendant timely provide information that authorities would not otherwise discover or would discover only with difficulty; it requires merely that the defendant 'assist' the authorities by timely providing complete information or by timely notifying them of his intent to plead guilty. . . . Multiple consistent confessions on the day of arrest ordinarily serve such a purpose.").

"The government also argues that Stoops does not qualify for . . . § 3E1.1(b) because Stoops challenged the admissibility of his confessions in pretrial motions to suppress[, reasoning] that a confession does not qualify a defendant for the reduction unless its admissibility goes unchallenged. This theory conflates subsections (b)(1) and (b)(2). These subsections are separated by the connective 'or,' not 'and.' A defendant qualifies under subsection (b)(1) if he timely provides complete information, whether or not he moves to suppress or timely notifies the government of his intent to plead guilty.

... Although the motions may have delayed his notice of intent to plead guilty, they could not have delayed his confessions, which had already occurred.”).

U.S. v. McConaghy, 23 F.3d 351 (11th Cir. 1994) (per curiam) (Remanded: “Section 3E1.1(b)(2) is not facially unconstitutional.” However, to avoid an unconstitutional application of § 3E1.1(b)(2), the district court must determine whether defendant’s notification was timely in light of the circumstances, not simply whether the government had already engaged in trial preparation: “Avoiding trial preparation and the efficient allocation of the court’s resources are descriptions of the desirable consequences and objectives of the guideline. They are not of themselves precise lines in the sand that solely determine whether notification was timely. . . . Application must bear in mind the extent of trial preparation, the burden on the court’s ability to allocate its resources efficiently, and reasonable opportunity to defense counsel to properly investigate.”).

Outline at III.E.5.

Departures

MITIGATING CIRCUMSTANCES

U.S. v. Minicone, No. 93-1594 (2d Cir. June 8, 1994) (Miner, C.J.) (Remanded: “[W]e hold that where independent factors have been adequately considered by the Sentencing Commission and each factor considered individually fails to warrant a downward departure, the sentencing court may not aggregate the factors in an effort to justify a downward departure” under a “totality of circumstances” test.).

Outline at VI.C.3.

CRIMINAL HISTORY

U.S. v. Rodriguez-Martinez, No. 91-10220 (9th Cir. June 1, 1994) (O’Scannlain, J.) (Remanded: In departing upward to 136 months for defendant subject to 120-month statutory minimum, the district court did not indicate how it calculated the departure above defendant’s guideline range of 63–78 months and then above the mandatory minimum. The “existence of a mandatory minimum sentence does not alter the manner in which a district court determines the appropriate extent of a departure: a court must determine a defendant’s offense level and appropriate criminal history category, including departures from the recommended criminal history category, just as it would in an ordinary case. If the resulting sentencing range is under the statutory minimum, the district court must give the mandatory minimum sentence; if the sentencing range includes the statutory minimum, the district court may impose a sentence above the mandatory minimum.”). *But cf. U.S. v. Carpenter*, 963 F.2d 736, 745–46 (5th Cir. 1992) (affirming as reasonable under the circumstances departure to 230 months where district court used 180-month mandatory minimum sentence as starting point for departure calculation, rather than guideline range of 33–41 months).

Outline at VI.A.3.a.

U.S. v. Thomas, No. 93-5514 (6th Cir. May 23, 1994) (Merritt, C.J.) (Affirmed: Upward departure based on “inordinately high criminal history score of 43” was proper. “Thomas’s score of 43, one of the highest we could find in reported cases, is clearly sufficiently unusual to warrant

departure from the guidelines.” The extent of departure was also proper even though the district court did not “consider and reject each of the six intermediate gridblocks between the original guideline range . . . and the range in which the actual sentence fell . . .,” as defendant argued it must do for departures above CHC VI. “Neither the Guidelines nor the law of this circuit require the district court to provide a mechanistic recitation of its rejection of the intervening, lower guideline ranges. Section 4A1.3 . . . indicates quite clearly that the court should continue to consider ranges ‘until it finds’ an appropriate sentence for the defendant before it, but nothing in § 4A1.3 calls for a more detailed, gridblock-by-gridblock approach advocated by the defendant. . . . The approach required of the sentencing court when departing beyond Criminal History Category VI, as we see it, is to consider carefully all of the facts and circumstances surrounding the case which affect the departure, and from them determine an appropriate sentence for the particular defendant.”).

Outline at VI.A.4.

Determining the Sentence

RESTITUTION

U.S. v. Meacham, No. 93-1692 (6th Cir. June 15, 1993) (Martin, J.) (Remanded: The Victim Witness and Protection Act “does not authorize a district court to order restitution for the government’s costs of purchasing contraband while investigating a crime, even if the defendant explicitly agreed to such an order in a plea agreement. . . . While the Act provides that a ‘court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement,’ 18 U.S.C. § 3663(a)(3), this Court has held that the repayment of the cost of investigation is not ‘restitution’ within the meaning of the Act.” *See Gall v. U.S.*, 21 F.3d 107, 111–12 (6th Cir. 1994) (“such investigative costs are not losses, but voluntary expenditures by the government for the procurement of evidence”; also holding that restitution imposed as a condition of supervised release is still subject to VWPA)). *But cf. U.S. v. Daddato*, 996 F.2d 903, 904–06 (7th Cir. 1993) (affirming “a condition in the nature of restitution on a sentence of supervised release” that defendant repay government’s cost of purchasing drugs from defendant, including drugs from charges that were dismissed or never charged, reasoning that this payment is valid under supervised release statute’s “catch-all provision,” 18 U.S.C. § 3583(d), and not subject to VWPA).

Outline at V.D.2.

Violation of Supervised Release

REVOCAION FOR DRUG POSSESSION

U.S. v. Meeks, No. 93-1708 (2d Cir. June 2, 1994) (Kearse, J.) (Remanded: Defendant whose supervised release was revoked for drug possession should not have been sentenced under the mandatory provision of 18 U.S.C. § 3583(g) when his original offense occurred before that section’s effective date (Dec. 31, 1988): “[A]ny provision for punishment for a violation of supervised release is an increased punishment for the underlying offense. Thus, where the underlying offense was committed prior to the effective date of § 3583(g), application of that section violates the Ex Post Facto Clause.”).

Outline at VII.B.2.

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