

UNITED STATES ATTORNEYS' **BULLETIN**

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Interview with Janet Reno Attorney General of the United States

Attorney General Janet Reno's ultimate goal in leading the Department of Justice is to seek justice for everyone. The Attorney General was interviewed by Assistant United States Attorney David Nissman (DN), Editor-in-Chief of the *United States Attorneys' Bulletin*. The Attorney General told AUSA David Nissman that she has been impressed with the quality of lawyering in the Department and with the dedication to public service that she has seen in Federal prosecutors. The focus of this interview is on the Attorney General's priorities and her view of the role that Assistant United States Attorneys should play in accomplishing these objectives.

DN: How do you develop priorities?

AG: I came from a perspective where I was on the front line in terms of the fight against violence. In my district, in some measure it was different than other districts because we were at the end of the line. There was no other state line nearby in multi-jurisdictional matters. But we tried to work in a close partnership with the United States Attorneys. So I came to Washington wanting to do everything I could to develop a true partnership based on solid principles of federalism. What could be handled better in state and local government should be handled there and we should support them with intelligence, background, and support of information from other districts—whatever we can do to be helpful. Whatever is better handled according to principles of federalism in the best interest of the district and federal court should be handled there. It was adherence to those principles of federalism that was one of the benchmarks for what I was trying to do in establishing priorities.



Janet Reno
Attorney General of the United States

Domestic and Foreign Terrorism

With that in mind, I then tried to think of what can the Federal Government do, what is it peculiarly able to do, and obviously the whole issue of terrorism—both domestic and foreign—has to be one of our highest priorities. And, certainly after the tragedy of Oklahoma City, that has been confirmed again and again, and the ability of the FBI and

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From the Editor-in-Chief

We received approximately 200 replies to our survey and we have analyzed the results. Most readers were happy with the changes made to the USAB and would like to see an even more substantive magazine in the future. It is clear that with the advent of email and the USA Overnight service, the Bulletin does not have to send the same information to you in printed form. We are considering going to a bi-monthly format that will feature USAO generated articles about significant cases with a section on practical tips to be shared with all of our colleagues. So instead of sending us short news articles, consider writing a two or three page feature article about a significant case, novel area of the law, or new evidentiary technique. With your input, the Bulletin can become a place to exchange legal theories and to promote more efficient uses of our resources to accomplish the overall mission of the Department. This month's issue features an interview with Attorney General Janet Reno who sets the Department's priorities. Keep the phone calls and emails coming—we want to hear from you.



David Marshall Nissman

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the other federal agencies, and the U.S. Attorneys' office and the lawyers involved to respond in such an effective way, I think has been a great tribute to everyone in the Department. You have no idea what it was like to be in Oklahoma City the Sunday following the blast and then to go out again and to visit with the people who had been involved in putting the case together. To see agents working with each other, to see lawyers working together. It was just inspiring. It made me so proud to be a part of the Department. That has to be one of the great priorities.

Violent Crime

Violence also is taking its toll in other forms and violence is basically a state and local responsibility. But, where it involves state lines and multi-jurisdictions, where it involves gangs that go back and forth, where it involves drug trafficking organizations that inflict violence, there may be a peculiar and federal perspective. I don't want us taking that case just for the glory of it or for the credit. I want us to work with the local prosecutor and reach a mutually acceptable decision as to what is in the best interest of that district and that case, and where it should be handled. And so our anti-violence initiative is important to me, but it is important not only for taking the case to federal court but, in many instances, it will be in supplying information to local prosecutors so that they can more effectively prosecute it in local jurisdictions. And that is an important priority but it may not be reflected in a case statistic. It may be reflected in what I hope has become much better information sharing on the federal side than existed previously.

Civil Rights

Civil Rights enforcement is very important to me. We still see, and as Justice O'Connor pointed out in the *Adarand* Decision, that there are still vestiges of discrimination in this country and it is so important that we do everything we can to eliminate those vestiges of discrimination and to see that the laws are enforced. Again, there may be state and local efforts that can be undertaken that can be just as effective as federal efforts and, to that end, we have worked closely with the National Association of Attorneys General to form a partnership with them to say, "Look, we don't want to come in if you want to take responsibility for it and we'll work with you in that regard."

Organized Crime

Organized crime is a high priority, particularly as we look at not only the traditional LCN but Russian organized crime and, to a significant extent, Asian organized crime and the impact it has on the country—that is something that we are peculiarly equipped to do better than state and local authorities. So, that's got to be an important priority.

White Collar Crime

Most local law enforcement agencies don't have the sophistication or the expertise to make some of these major white collar crime cases. These types of cases can have as great an impact on an industry or a group of people—particularly in instances where it's people are preying on fragile people who cannot properly protect themselves—so I think we have a responsibility in that area.

Protection of the Environment

Of considerable importance to me is the protection of the environment. I think all Americans understand just how fragile our environment is and what we need to do to protect it. But, again, it requires not only that we come in with enforcement, but that we explain why, that we explain to a person why a wetlands is so valuable. They think, "Why can't I build on that?" The communities of America are becoming more and more to understand that that place that looks like a bog is a vital part of our ecosystem. But we've got to put it in terms that people can understand. We've got to let them know that in certain aquifers as you pour a can of paint onto the ground thinking you won't need it anymore, you don't know what you're doing to the ultimate water supply. The law is based on human acceptance and again we've got a responsibility to let people know the basis of the law and why that regulation or law exists.

Computer Assisted Crimes

One of the areas that I've tried to focus on a great deal is the whole problem we will face with emerging technology. When a man can sit in his kitchen in Ireland and get \$2 million transferred out of the bank in the United States or Paris, we can see what can be done both in terms of financial fraud and in terms of extortion and just closing down major nerve centers of countries through high tech crime that will make pistols and weapons seem like sticks and stones. I think it is imperative that we have an ability in this



Department on the part of prosecutors to speak the technology language, to understand the technology, and to work with agents to develop that capacity. I think it's incumbent on the Department to pursue, in conjunction with

other federal agencies, high tech initiatives that can give us the ability to match wits with the sophisticated criminal of the next century. So, that has been something that we've tried to focus on. Those are some of the priorities.

DN: I want to ask you about immigration. Your memo on deportation gives us some ideas and some tools. Isn't immigration an area where the state and local governments look to us to lead the way?

AG: Clearly, and again it's a partnership because it is so frustrating, not just the processes of judicial deportation but what happens up front. My dream is to develop a link with state and local authorities at jails and police departments across the country so that we recognize, as the people are coming into the system, what their status is and that we take appropriate steps. There are going to be some people that we want to imprison and some that we want to deport immediately. It is important that we develop a partnership with state and local authorities to undertake that from the beginning. That's with respect to state and local apprehensions. Again, we can do so much if we get the resources to do the job in immigration, to do everything we can to protect against illegal immigration, and to promote legal immigration. You were mentioning the wonderful feeling one has participating in a naturalization ceremony. It is of concern to me as I address Department concerns that there is now a tremendous backlog of those seeking to be naturalized in

Miami, New York, Chicago, Los Angeles, and other major cities in this country, and I think that we need to focus on that effort as well.

DN: Don't we have to both prosecute illegal aliens and, at the same time, protect the rights of those people from civil rights violations from people who are unhappy about the influx?

AG: That is a major issue of concern to me. My father was born in Denmark and came to this country when he was 12 years old. He didn't speak any English and people teased him about his funny language and his funny clothes, and he never forgot it. I think we all have to recognize from whence we came, how we got here, the opportunities that were given to us, and what major contributions immigrants have made to this nation, not just in our past history but in recent history, including my own home community of Miami, which has become a great, vital, dynamic, international city because of the Cuban influence.

DN: One of the things Assistants spend a lot of time on in the field is mediating disputes between federal law enforcement agencies, and trying to encourage them to work together. I know that you've been very active in that area. Can you give us an update on that and are you happy with the progress that's being made?

AG: I wish that everything would happen overnight. But I am very gratified to have people tell me just out of the

blue—and these are Republican and Democrat sheriffs and prosecutors—that they have not seen federal, state, and local law enforcement cooperating as well in their professional history.

What we've tried to do there, we've created the Office of Investigative Agency Policy, and I think that's been effective. Law enforcement meetings with myself and the heads of other law enforcement agencies—not just the

Department of Justice agencies but Customs, ATF, the Secret Service—I think those are working well too.

DN: What advice would you give us when we encounter a problem of some friction or tension between several federal agencies not wanting to work together?

"I think it's incumbent on the Department to pursue, in conjunction with other federal agencies, high tech initiatives that can give us the ability to match wits with the sophisticated criminal of the next century."

Janet Reno
Attorney General of the United States

AG: I think what you do is try to bring the people together. Sit down and try to talk it out and just see if you can't get them to talk out the problems. There are going to continue to be some personality conflicts but I think that working together we can make such a difference. One of the initiatives that I think is another example of federal priorities is the whole issue of drug trafficking. This has got to be an important federal priority because again, in terms of international consequences, in terms of patterns of trafficking that cut across state lines, the feds are far better equipped to handle it. To see the cooperation between the DEA and the FBI has been gratifying. To see DEA reach out and develop an MOU with Customs has been extremely gratifying. We just don't need to have the turf battles. I think they are disappearing. Again, if you look at drug trafficking as the king pin—and this little street guy as one—too often we'll do ten, nine, and eight at the federal level and the local law enforcement will do one, two, and three, and leave a big middle group that just reorganizes itself and attaches to another king pin and to some other street people. So, it becomes important that we not only focus with other federal agencies and state and locals as they have other information on the king pins, but that we develop an organized effort based on regional impact, so that we take out the entire linkage.

DN: How are we doing implementing your priorities and goals?

AG: I am so impressed with what I see. I think I've been to 47 U.S. Attorneys' offices now and when I have a chance to talk with AUSAs and other staff in the offices and hear what they are doing in terms of major cases, in terms of the impact they are having on the community, and then when I turn from that office and go out into the community and talk with the local sheriff or the chief of police, I'm very, very proud of the work that U.S. Attorneys' offices are doing across this country. It makes me very proud. One of the things that I think is important is some people say, "Well you're not filing as many cases as you used to." When I go to an oversight hearing in Congress, I'll immediately get asked about case filings and my response is I'm more interested in the quality of work that's being done by prosecutors and agents across the country and the impact it's going to have on their community. I'm not interested in numbers built on just one little case after another. When I look at the work that's been done, when I go to communities, when I hear directly from the people in

the community themselves as to the difference in the rate of violence after a combined federal-state effort aimed at local traffickers, when I hear what has been undertaken in an Indian reservation with an initiative from a U.S. Attorney who travels long distances to make sure tribal concerns are addressed, when I read what people in the community think about an environmental prosecution undertaken by an Assistant United States Attorney working with the Environment and Natural Resources Division in a real partnership, it is really gratifying because we're hearing the result and not just numbers.

DN: Our Civil colleagues are doing a lot of new, affirmative litigation work. What is your view of the civil work being done by AUSAs?

AG: I am so proud of the work that they have done. They are, in many instances, the unsung heroes and heroines—in affirmative and defensive civil litigation and in our financial litigation units. There is exciting work going on, and one of the things that I've tried to do is to work with the EOUSA and with the U.S. Attorneys around the country to let people know how important that work is to the Department and to this nation. The recoveries last year were astounding—just in terms of civil recoveries. But the work being done in terms of defensive litigation is equally as important. And again, I am so proud of the lawyers, the quality of lawyering I see. The litigation ability is just extraordinary. One of the things that we're trying to do is to make sure that we develop programs that will ensure that everybody is trained in negotiation skills and that we understand, considering the cost and delay that is involved in litigating today, what our alternatives are in terms of negotiation, in terms of alternative dispute resolution and neutral mediators. The work that has been undertaken in terms of Civil efforts is just great.

DN: Can you tell us how you have utilized Assistant U.S. Attorneys in your administration?

AG: Well, one of the perspectives I had when I came to Washington is that many of my local prosecutors had been cross-designated as Assistant United States Attorneys. And so, I had worked closely with our U.S. Attorneys over the years and understood their perspective. But, I didn't understand Main Justice's perspective because often times, sitting from my vantage point, I saw a "them versus us" attitude that I resolved to try to eliminate and to create a real partnership between Main Justice and U.S. Attorneys'

offices across the country, recognizing that AUSAs were on the front line. They knew their judges, they knew their community, they knew the pressures, they knew what they have to face, and that Washington may have the particular expertise that we should use to back them up. As a consequence, I tried to do whatever I could to encourage people from Main Justice to work with and spend time in U.S. Attorneys' offices so that they began to get a flavor for the court that they might be appearing before so that they could effectively contribute as a full member of the team. And I think it has been very useful to the Department for Assistant United States Attorneys to do details in Washington. It gives us a sense of what's happening around the country—of what it's like for somebody who's on the front line day-in and day-out. And AUSAs get the Washington perspective of what we have to do in terms of national security issues, in terms of intelligence issues, in terms of diplomatic issues, because one of the things that I think is happening across the world, really, is that crime is becoming global in its consequence; environmental issues are becoming global in their consequences, and we can't just solve the problem from a local perspective. We've got to consider—when we look at drug trafficking initiatives—a whole range of diplomatic and national security issues. When we litigate, we've got to consider the implications of discovery in terms of national security and intelligence information. There are so many issues that require the local, the national, and the international perspectives to come together. Having these AUSAs on detail has given the Department great strength. I think it's given us an insight and I think they are able to go back to their district with new insight that they might not have had.

DN: You have spoken from time to time about a method of communicating legal concepts to the public. Could you tell us what you would like us to do?

AG: I think it is so important for us to talk in what Winston Churchill called "the small old words." To stop using shorthand. You have no idea what it's like to come from a local setting where you would read the papers and try to keep up on what was happening in Washington but you didn't understand all the alphabets, you didn't understand all the Roman numerals, you didn't understand the shorthand labels for things, and to try to make Government and all its functions understandable. What is a recision,

what is reconciliation, what is authorization, what is appropriation, what is a petition for writ of mandamus. I think it's important for all of us as lawyers to talk in a manner that people can understand and to say, "This is the reason for this law, this is what it was designed to protect against, and this is the right it was designed to afford." If we can explain the law in words that people can understand, if we can give them the reason for the moral imperative of complying with the law, it makes it so much simpler.

DN: What final message would you like to send out to U.S. Attorneys and Assistant United States Attorneys?

AG: The final message is one that I have told them as I have travelled around the country and met with them. I enjoy these meetings because I ask them one question: "If you were the Attorney General of the United States what would you do to improve your office or to improve the

Department of Justice?" And the answers I get back are very gratifying. Donna Bucella and Carol DiBattiste are always saying, "Oh my goodness, here comes Janet with another get back list." It's really good to have that give and take. What I tell them, and I mean it from the bottom of my heart, **I've got a special mis-**

sion—both during my time in office and when I leave this office—and that's to let the people of the united States know how fortunate they are to have so many dedicated men and women working with them and for them in the Department of Justice, and that includes the United States Attorneys' offices across this country. Lawyers, support staff, and administrators just do a magnificent job for the people of this country in their districts. ❖



"... I'm very, very proud of the work that U.S. Attorneys are doing across this country."

Janet Reno
Attorney General of the United States

Attorney General Highlights

First Anniversary of the 1994 Crime Act

On September 13, 1995, President Clinton and Attorney General Janet Reno visited Elkridge, Maryland, to mark the one-year anniversary of the 1994 Crime Act with middle school students who took a drug-free pledge and police chiefs who will receive Federal crime funds to fight what the President said is the number one national crime problem—youth violence. COPS youth violence grants were awarded to Baltimore, Maryland; Birmingham, Alabama; Bridgeport, Connecticut; Cleveland, Ohio; Inglewood, California; Milwaukee, Wisconsin; Richmond, Virginia; Salinas, California; San Antonio, Texas; and Seattle, Washington. ❖

ABA Opinion on Communications with Represented Persons

On July 24, 1995, Professional Responsibility Advisory Board Chief David Margolis forwarded to Professional Responsibility Officers the American Bar Association's (ABA's) 52-page Formal Opinion 95-396 on communications with represented persons. It addresses a broad range of questions about the circumstances in which Rule 4.2 of the Model Rules of Professional Conduct (1983, as amended) prohibits communication with represented persons. The Department is studying this opinion and offers the following information to United States Attorneys and Assistant United States Attorneys in light of the recent ABA actions.

Associate Deputy Attorney General Seth Waxman attended the meeting of the ABA House of Delegates on August 8, 1995, and voiced the Department's objection to the amendment to Model Rule 4.2. Unfortunately, the House of Delegates amended the rule. The ABA opinion supports the Department of Justice's position in some respects and conflicts with it in others. Although neither the Model Rules nor the Ethics Committee opinion have any force and effect in their own right, states may begin amending their rules to con-

form them to the Model Rules. United States Attorneys and Assistant United States Attorneys are asked to be alert to any action in their state to amend the rule on contacts with represented persons, assuring that the information is passed to the Department through a United States Attorney.

The Deputy Attorney General's office is preparing a package of information for United States Attorneys which explain these developments and provide materials to oppose conforming amendments to the ethics rules in the states.

The ABA's actions do not affect the validity of 28 C.F.R. Part 77. A year has passed without a lawsuit being filed that challenges the validity of the regulation. Additionally, no attorney has been disciplined or charged for making contacts or authorizing contacts that are permissible under the regulation. This is due, in large measure, to the fact that the Department has done what it told the bar it would do when operating under the regulation: exercise our authority prudently and cautiously.

If you would like a copy of the Opinion, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Drug Court Grants

On September 11, 1995, Attorney General Reno announced \$6 million in grants for 13 communities under the new Drug Court Grant Program so that they can bring together judges, prosecutors, defenders, law enforcement, drug treatment professionals, community leaders, and others interested in breaking the cycle of addiction and crime to plan programs to deal with nonviolent offenders. On August 17, 1995, the Attorney General announced that a total of 52 communities across the country will receive grants totalling \$1.6 million in the first awards under this new Drug Court Grant Program. With the passage of the Rescission Bill in July, funding for the Drug Court Program was cut by Congress to \$11.9 million from the originally appropriated \$29 million for fiscal year 1995. Funding for Drug Courts suffered a further blow with the House passage of the Department of Justice's FY 96 Appropriations Bill, H.R. 2076. Despite the President's request for \$150 million for this program and an evaluation of the nation's first drug court in

Miami that showed a 33 percent reduction in rearrests for drug court graduates, the House, accepting the recommendation of the Appropriations Committee, voted for zero dollars in funding. If you would like a list of grantees and the amounts that will be awarded in the Drug Courts Program, please call the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

AG Announces \$21 Million in Grants for Boot Camp Programs

On August 7, 1995, during a speech at the American Correctional Association's Annual Conference in Cincinnati, Attorney General Janet Reno announced that grants totaling more than \$21 million to support boot camp programs would be awarded to New York, Ohio, Wisconsin, and other states for establishing new boot camp programs. Both Illinois and Texas will expand existing boot camps. Congress appropriated \$24.5 million for the boot camp grant program for 1995, and these awards are another step forward in implementing this important program created by the 1994 Crime Bill. Attorney General Reno said that "These programs will free up prison space for violent and chronic offenders," and, "at the same time, they'll help young, nonviolent offenders get the intensive supervision and drug treatment they need to kick their drug habits and break the cycle of drug use and crime." For further information about the program, please contact the Corrections Program Office, (202)307-6022. ❖

Community Relations Service

On September 14, 1995, Attorney General Janet Reno urged Congress not to abolish the Community Relations Service (CRS). The Senate is expected to vote on a Justice Department appropriations bill which would abolish CRS. For more than 30 years the CRS has helped to calm racial flare-ups, mediate disputes, and avert hostilities and riots. The Attorney General stated that even a temporary cessation in their work would dismantle years of trust and experience. ❖

AG Releases IACP Report

On August 17, 1995, Attorney General Janet Reno forwarded a report to United States Attorneys published by the International Association of Chiefs of Police (IACP) on the rapidly increasing incidence of murder. The report examines recent homicide trends and their causes, and identifies a number of practical responses to these crimes. The AG has asked Office of Justice Programs Assistant Attorney General Laurie Robinson to spearhead Department efforts to implement recommendations in the report and has asked for United States Attorneys to send Ms. Robinson recommendations on approaches that the Department could be taking to implement IACP recommendations. If you would like a copy of the report, please contact John R. Firman, Coordinator for Research and Analysis, (800)THE-IACP, or if you have recommendations on approaches that the Department could take to implement IACP recommendations, please contact Laurie Robinson, (202)307-5933. ❖

President's Oklahoma Scholarship Fund

On August 29, 1995, Attorney General Janet Reno announced the establishment of a scholarship fund under the Federal Employee Education and Assistance Fund (FEEA), set up solely for the educational needs of children whose parent or parents died or were severely disabled as a result of the Oklahoma City bombing. The fund will accept donations from all sources and 100 percent of all contributions will be distributed for the benefit of the eligible children. Those who wish to make tax-deductible contributions to the Scholarship Fund should send their donations to FEEA, Suite 200, 8441 West Bowles, Littleton, Colorado 80123. Checks should be made payable to: The President's OKC Scholarship Fund. ❖

United States Attorneys' Offices

Honors and Awards

Federal Law Enforcement Officers' Association Prosecutorial Awards

On August 31, 1995, National President Victor Oboyski, Jr., of the Federal Law Enforcement Officers' Association announced that the following Assistant United States Attorneys were selected to receive the Federal Law Enforcement Officers Association Prosecutorial Award: Martin J. Weinstein, Northern District of Georgia; Roger W. Frydrychowski, Eastern District of Virginia; Thomas R. Green, District of Nevada; John F. Curran and Margaret M. Giordano, Eastern District of New York; William Johnston, John Phinizy, and John Lancaster, Northern District of Texas; and Katherine Choo and Treby Williams, Southern District of New York. These recipients were recognized for their superior achievements in the investigation and prosecution of cases involving fraud, substantial asset forfeiture, and organized crime. ❖

International Narcotic Enforcement Officers' Association Awards

On September 5, 1995, Executive Director John J. Bellizzi of the International Narcotic Enforcement Officers Association announced that Assistant United States Attorneys Michael A. Schwartz and Judy Smith, Eastern District of Pennsylvania, were selected to receive the Association's U.S. Department of Justice Award for their outstanding service and dedication to their duties in the area of law enforcement. Presentation of the awards will take place at the International Drug Conference on November 13, 1995, in West Palm Beach, Florida. ❖

Significant Issues/Events

New Chair and Vice Chair of the Attorney General's Advisory Committee

Effective November 1, 1995, United States Attorney Janet Napolitano, District of Arizona, will become the new chair of the Attorney General's Advisory Committee (AGAC) and United States Attorney Gregory Sleet, District of Delaware, will become the new vice chair. They replace United States Attorneys Michael R. Stiles, Eastern District of Pennsylvania, and Lynne A. Battaglia, District of Maryland, who's terms as chair and vice chair expire on October 31. ❖

Three-Strikes Law

Tommy Lee Farmer and Craig B. Boone both expected to be up against state charges for robbery. But instead, as a result of the "Three Strikes and You're Out" provision of the 1994 Crime Bill, signed by President Clinton in October 1994, Farmer was put behind bars for life in May 1995 and, if convicted, Boone will face the same sentence. "Tommy Farmer is the perfect poster child, or man, for the three strikes law," said United States Attorney Stephen J. Rapp, Northern District of Iowa. Farmer has spent a great deal of his life behind bars for crimes including murder, conspiracy to murder, and armed robbery—and was continually released for good behavior, work release, and parole. A violent repeat offender, Farmer's record includes three earlier strikes as defined by the Federal law. In response to concerns regarding double jeopardy and ex post facto enforcement, courts have said that a criminal's previous record can be used when giving a tougher sentence without constituting double jeopardy or ex post facto. Farmer was the first person to be charged under the law and there have been 17 others charged since. President Clinton used his weekly radio address to announce the success of the Department of Justice in the Farmer case, stating, "Thomas Farmer was the very first career criminal we put away

under the 'three strikes and you're out.' But he will not be the last." ❖

Military Wants Support Role Only in Border Efforts

A Department of Defense (DOD) source says the military will not take a front-line position in guarding the United States-Mexico border. Speaking at a September 7, 1995, Conference on Border States, Deputy Assistant Secretary of Defense for Drug Enforcement, Brian Sheridan, made clear the defense department's position on proposals that they take a more active role in the fight against drugs and immigration. According to Sheridan, the military's mission on the border should be "behind the scenes." Of the 2,000 requests that the California National Guard receives each year for counter-drug assistance, less than half are filled, according to Major General Robert Brandt, commander of that National Guard. Requests include searching vehicles for contraband at entry ports, building roads and fences along parts of the border, translating foreign languages and interpreting surveillance photographs, operating laser devices and X-ray machines developed by DOD, and carrying out reconnaissance. Only \$120 million of the Defense Department's \$800 million budget for anti-drug efforts next year will go to aid law enforcement agencies on the southwest border. Representative James A. Traficant, Jr., of Ohio has introduced legislation to give the Attorney General the authority to ask for up to 10,000 military troops to meet criminal threats along the border. ❖

United States Attorneys' FY 1997 Budget

On August 30, 1995, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys outlining progress made regarding the FY 1997 United States Attorneys' budget request. Attorney General Reno recognized the importance of USAO efforts by supporting a significant portion of the request and approving increases. These increases will be included in the Department's budget submission to the Office of Management and Budget (OMB), who, from now until the end of the calendar year,

will review the budget and make recommendations on funding levels based on the President's priorities and the spending targets established by the President when developing its recommendations. Budget questions should be directed to Michael W. Bailie, Deputy Director, EOUSA Operations, (202)616-6600 or AEX02(MBAILIE), or Michael T. McDonough, Assistant Director of Financial Management, (202)616-6886 or AEX02(MMCDONOU). ❖

Victim-Witness Responsibilities of Federal Prosecutors

Attorney General Janet Reno is placing more emphasis on and stressing compliance with the Victim and Witness Protection Act of 1982, the Comprehensive Crime Control Act of 1990, and the Violent Crime Control and Law Enforcement Act of 1994. The need for victim assistance was never more prevalent than in the recent Oklahoma City bombing.

In view of this emphasis, the following is a summary of the responsibilities of United States Attorneys and Assistant United States Attorneys as identified in the Attorney General's Guidelines for Victim and Witness Assistance (revised 1995).

Best Efforts to Accord Rights

Title 42 U.S.C. Section 10606(a) provides that officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that victims of crime are accorded the rights described under Federal Law.

Rights of Crime Victims

A crime victim has the following rights [42 U.S.C. Section 10606(b)]:

- (1) The right to be treated with fairness and with respect for the victim's dignity and privacy.
- (2) The right to be reasonably protected from the accused offender.
- (3) The right to be notified of court proceedings.
- (4) The right to be present at all public court proceedings related to the offense, unless the court determines that

testimony by the victim would be materially affected if the victim heard other testimony at trial.

- (5) The right to confer with an attorney for the Government in the case.
- (6) The right to restitution.
- (7) The right to information about the conviction, sentencing, imprisonment, and release of the offender.

Special Incentives to Prosecutors for Child Victims and Child Witnesses

- Certain professionals, including prosecutors, are required to report suspected child abuse to an investigative agency designated to receive and investigate such reports.
- Use of multidisciplinary methods of interviewing victims of child abuse and sexual child abuse.
- Prosecutor shall work with established multidisciplinary child abuse teams designed to assist child victims and witnesses.
- Prosecutors are allowed to use certain alternatives (i.e., closed-circuit television and videotape depositions) to live, in-court testimony in cases involving offenses against children where the court finds that the child is unable to testify in open court.
- Procedures for protecting the privacy of a child victim or witness include, *inter alia*: filing under seal all documents which disclose the names or identifying information concerning child victims and child witnesses, and redacting such names and identifying information from any publicly disclosed documents.

Additional Rights and Enhanced Services

Victim Impact Statements. The opportunity to present to the court in the presentence report, a Victim Impact Statement containing information concerning any harm, including financial, social, psychological, and physical harm, done to or loss suffered by the victim of the crime.

The Government is required to provide notice of its intention to seek the death penalty with the court. Victim impact evidence is specifically authorized in Federal death penalty cases.

Allocution. With respect to victims of violent crime and sexual abuse, the date set for sentencing and the victim's opportunity to make a statement or present any information to the court in relation to the sentence. The right to address the court extends to the victim's parent or legal guardian if the victim is deceased or incapacitated.

HIV/STD Testing. Notice and Payment for Testing and Counseling for Sexually Transmitted Diseases of the Victim of a Sexual Offense that Poses a Risk of Transmission [Title 42 U.S.C. Section 10607 (c)(7)]. The prosecutor shall advise the victim of a sexual assault that poses a "risk of transmission" of the AIDS virus of the circumstances and conditions under which the court may order that the defendant be tested for this condition.

Mandatory Restitution. Victims of Federal domestic violence crimes, sexual abuse, sexual exploitation, and other abuse of children offenses and of telemarketing fraud have the right to mandatory restitution. If the court finds that the defendant has the ability to pay, he must pay the full amount of the victim's losses, including costs incurred for medical services relating to physical, psychiatric, or psychological care; lost income; and attorneys' fees.

For a complete description of victim-witness responsibilities for prosecutors, consult the Attorney General's Guidelines on Victim-Witness Assistance (revised 1995). The LECC/Victim-Witness Staff has forwarded the updated version of the Guidelines, by email, to Victim-Witness Coordinators in each district. ❖

New Staffed Branch Office in Middle District of Georgia

The Middle District of Georgia has a new staffed branch office at the following address:

Mailing Address:
P. O. Box 366
Albany, GA 31702-0366

Shipping Address:
U.S. Post Office and Courthouse
345 Broad Avenue
Albany, GA 31702
❖

Updated Addresses for the United States Attorney's Offices for the Southern District of Texas

Appendix A is an updated list of mailing and shipping addresses for the United States Attorney's office for the Southern District of Texas.

Significant Cases

Supplier of Guns Sentenced Southern District of Alabama

On August 21, 1995, Rodney Finklea was sentenced to 15 years imprisonment for his part in a gunrunning organization. One of the weapons was delivered to a D.C. gang member who used it in November 1994 to murder two FBI agents and a police detective at Washington, D.C., police headquarters. The court granted an upward departure based on Finklea's criminal record and the fact that he knew the guns he sold would be used to commit crimes. ❖

AUSA Gregory A. Bordenkircher
AUSA Maria E. Murphy

Former AAG Sentenced for Conspiracy and Securities Fraud Middle District of Florida

On August 4, 1995, Norbert A. Schlei, former Assistant Attorney General, advisor to Presidents Kennedy and Johnson, and law clerk to Supreme Court Justice Harlan, was sentenced to five years imprisonment without parole for conspiracy to possess and deliver counterfeit foreign bank notes and securities fraud. Three codefendants were also sentenced for participation with Schlei in a worldwide scheme of attempting to sell counterfeit Japanese yen bonds. Money recovered totaled \$99,000,000. Codefendant Toshio Takahashi, also named in the indictment, remains a fugitive. ❖

AUSA Mark J. Krum
AUSA Gary H. Montilla

Life Sentence for Murder-for-Hire Scheme Middle District of Florida

On August 1, 1995, Henry Francis was sentenced to life imprisonment for planning to murder an AUSA and a

DEA task force agent in retaliation for their role in prosecuting him on Federal drug charges and using facilities of interstate commerce in connection with the murder-for-hire scheme. He planned the scheme while incarcerated. ❖

AUSA Teri L. Donaldson

Conviction for Insurance Scam Middle District of Florida

On August 15, 1995, Glenn H. Martin, President and Chief Executive Officer of Twentieth Century Life Insurance Company, and his sister, Candace L. Cooper, Executive Vice President, were convicted of conspiracy, mail fraud, and money laundering for diverting \$9.7 million in annuity premiums into secret bank accounts and issuing annuity policies without recording them on the company's books. ❖

AUSA Thomas W. Turner
AUSA James G. Glazebrook

Doctor Ordered to Pay \$76,974.97 in Child Support Middle District of Florida

On August 12, 1995, Dr. Daniel Williams, Jr., a physician who specialized in pathology before quitting the job and moving to Arizona to work as a hotel clerk, was sentenced to five years probation and ordered to pay child support of \$76,974.97 in support of two minor children who reside in Florida. ❖

AUSA Wanda K. Heard

Motorcycle Club Members Guilty of Racketeering Middle District of Florida

On August 30, 1995, 14 Outlaws Motorcycle Club members and associates were convicted of racketeering and related offenses. Two clubhouses and another property were ordered forfeited. Four other defendants were found guilty of participating in a racketeering enterprise through a pattern of violent criminal acts, including the bombing of a clubhouse. The other defendants were found guilty of controlled substance conspiracy and distribution charges, and being a felon in possession of a firearm. Two former Outlaws members were found not guilty of all charges. ❖

AUSA Stephen Kunz
AUSA Walter Furr

Guilty Verdict on Smuggling of Ozone Depleting Chemical Southern District of Florida

On August 29, 1995, shipping agent Irma Henneberg was found guilty on 34 counts of making false statements to the U.S. Customs Service on manifests to conceal the smuggling of large quantities of the ozone depleting chemical CFC-12 into the U.S. Commerce. Henneberg was convicted of causing 34 false manifests to be filed with Customs, totaling almost 3,750 tons of CFC-12 with a retail value of approximately \$52 million. ❖

AUSA Thomas Watts-FitzGerald

Largest Settlement Ever Obtained by DOJ in Rental Housing Discrimination Case Southern District of Florida

On August 31, 1995, Jose Milton, owner of a 694-unit North Miami Beach apartment complex who refused to rent to minorities, was ordered to pay \$1.2 million in damages and penalties under an agreement reached with the Justice Department, a local fair housing organization, and a group of minorities. This is the second minorities discrimination charge against Milton. ❖

AUSA Veronica Harrell-James

Sentence in Train Wreck Case Northern District of Georgia

On August 24, 1995, Ronald Jarvis Woods was sentenced to 57 months in prison and ordered to pay \$485,792.99 in restitution to CSX Transportation, Inc., following his conviction of intentionally derailing a train operating in interstate commerce. ❖

AUSA John S. Davis
AUSA Sheila Tyler

Guilty Plea for False Bomb Threat Central District of Illinois

On August 28, 1995, Maurice Horton, previously a fringe candidate for mayor, governor, and president, pled guilty to using a pay phone to make a false bomb threat to a Federal building in Springfield. ❖

AUSA Gregory M. Gilmore

Former Chicago Police Officer Sentenced for Robbery Spree Northern District of Illinois

On August 3, 1995, Rick R. Runnels, Sr., former Chicago police officer, was sentenced for a 1988 on-duty robbery spree in which he and his partner, Leonard Kurz, terrorized minorities. In one instance, they robbed a victim at gunpoint and, after learning of his complaint to authorities, they robbed the man again and severely beat him. Then they created an alibi by falsely arresting another person who spent a month in jail before the charges were dropped. Runnels and Kurz each received 102-month sentences of imprisonment. ❖

AUSA Helene Greenwald
AUSA Scott Levine

National Guard Pilot and Two Spotters Absolved from Liability Charges District of Maine

On August 8, 1995, a jury absolved a Maine Army National Guard pilot and two Maine law enforcement "spotters" from civil liability for their role in a helicopter overflight search for home-grown marijuana. Two families claimed violation of their Fourth Amendment rights against unreasonable searches, alleging that the helicopter hovered close over their residences, terrorized their children, knocked down tree limbs, caused the death of a steer, and traumatized a dog. The National Guard acknowledged that the helicopter could have dropped below the 400-foot limit given the hilly terrain and barometric altimeter readings that vary because of weather. No contraband was found. ❖

AUSA David R. Collins

Former Executives Guilty of Illegally Testing Heart Devices District of Massachusetts

Three former senior executives of one of the world's largest health care products companies, C. R. Bard, Inc., were convicted on August 24, 1995, of conspiring to defraud the FDA in connection with the sale and distribution of heart catheters. The company previously pled guilty to a 391-count Information and paid \$61 million to the Government—the largest fine ever imposed nationwide in a Food and Drug prosecution. ❖

AUSA Michael K. Loucks
AUSA Stephen A. Higginson

**Former Law Firm Partner
Ordered to Disgorge \$7.66M in Profits
District of Minnesota**

On August 8, 1995, James O'Hagan, former partner of a Minnesota law firm, who was convicted in January 1994 for fraud for trading in the securities of the Pillsbury Company immediately before a tender offer, was ordered to disgorge profits totalling \$7.66 million, which will be distributed to victims of the fraud scheme. ❖

AUSA Christopher Bebel
AUSA Robert Small

**Interior and National Indian Gaming
Commission Enter Summary Judgment
District of Minnesota**

A summary judgment has been entered for the Secretary of the Interior, the Chair of the National Indian Gaming Commission (NIGC), and the Acting Area Director of the Minneapolis Area Office of the Bureau of Indian Affairs. Tribe members alleged that these Federal officials were obligated to intervene in a dispute involving tribal membership rules and the distribution of gambling revenues. ❖

AUSA Robert Small

**Ismoil to Face Charges in
World Trade Center Bombing
Southern District of New York**

On August 3, 1995 Eyad Ismoil was apprehended in Jordan and brought to New York to face an indictment charging him with participating in the February 26, 1993, terrorist bombing of the World Trade Center that killed six people, injured over a thousand people, and caused hundreds of millions of dollars in property damage. An indictment was filed September 12, 1994, naming him as a defendant in 10 counts relating to the World Trade Center bombing. Ismoil was taken into custody in Jordan and turned over to U.S. law enforcement authorities August 2, 1995, pursuant to an extradition treaty between the U.S. and Jordan. He is expected to face trial on the indictment with Ramzi Yousef, who was extradited earlier this year from Pakistan. Abdul Rahman Yasin, also named in the indictment, remains a fugitive, with a \$2 million reward offered for information leading to his apprehension and prosecution. On March 4, 1993, Mohammad Salameh,

Nidal Ayyad, Mahmud Abouhalima, and Ahmad Mohammad Ajaj were convicted for their participation in the bombing and were each sentenced to 240 years in jail. ❖

AUSA Gilmore Childers
AUSA Dietrich Snell
AUSA Michael Garcia
AUSA Lev Dassin

**Criminal Indictment Under the
Oil Provisions of the Ocean Pollution Act
District of Oregon**

On August 16, 1995, Max Lott and Anthony Schaeffer, captain and chief mate of an oil tanker, were indicted for violating the Marine Protection, Research, and Sanctuaries Act of 1972 and conspiring to violate the Act to Prevent Pollution from Ships. In July 1990, under the direction of Lott and Schaeffer, the ship's crew and outside companies cleaned out thick oil residues from the cargo tanks, filling over 113 55-gallon drums, and then in September 1990, dumped the drums into the ocean off the Oregon coast. ❖

AUSA Bob Ross
Neil McAliley, Environment and
Natural Resources Division
Noreen McCarthy, Environment and
Natural Resources Division

**Sentence for Conspiracy
to Kill DOJ Employees
District of South Carolina**

On August 25, 1995, Jimmy Ray Gartman, Sr., was sentenced to 405 months incarceration for conspiring to kill an AUSA and an FBI Special Agent. He was also convicted of trying to kill a private insurance investigator and his son's ex-girlfriend. His son, Jimmy Ray Gartman, Jr., was prosecuted for insurance fraud and sentenced to 68 months incarceration, which resulted in his father's attempted conspiracy to kill the AUSA and Federal agents involved. ❖

AUSA John Barton

**Two Men Convicted of Cross-Burning
District of South Carolina**

On August 17, 1995, Carl "Tony" Wildes and Harry "Bubba" Cameron were found guilty of violating the civil rights of a black family by burning a cross in the front yard

of their home. Evidence at trial showed that the cross burning was undertaken to intimidate and frighten the black family and other black residents in an effort to rid them from the neighborhood. ❖ **Special AUSA Lee H. Rubin**
AUSA Bruce H. Hendricks

Conviction for Public Corruption Southern District of Texas

On August 11, 1995, former INS Inspector Salome A. Palomo and former Immigration Inspector Diana M. Alaniz were convicted of unlawful disclosure of confidential information after they divulged information relating to an investigation, including the subject of the investigation. ❖

AUSA Richard Smith
AUSA Rick Lara

Sentence for Murder, Attempted Murder, and Use of a Firearm in a Crime of Violence District of the Virgin Islands

On August 23, 1995, Ansel Cielto and Netfa Petersen were sentenced to 300 months on Federal counts and 25 years on Virgin Islands counts after pleading guilty to the murder of a Navy Lieutenant, the attempted murder of a member of the Coast Guard and a Navy Petty Officer, and possession of a firearm during a violent crime. The victims were attacked in daylight aboard the USS YORKTOWN by the defendants and a juvenile coconspirator during a failed robbery attempt. ❖

AUSA Susan R. Via
AUSA Kim L. Chisholm



Personnel from United States Attorney's office for the Western District of Tennessee celebrate achievements while enjoying a retreat and camaraderie at their recent Second Annual Awards Picnic at the Naval Air Station Lake and Pavilion, Memphis

Executive Office for United States Attorneys

Are you aware that you can access the *United States Attorneys' Bulletin* through EOUSA's Bulletin Board System? Please contact the System Manager in your district for more information.

Criminal Caseload Statistics

On August 28, 1995, EOUSA Director Carol DiBattiste forwarded a memorandum to United States Attorneys enclosing charts that provide Fiscal Year 1991 to 1995 district data for all criminal cases and for each of the major criminal program categories. The charts display year-to-year data and percentages of change for criminal matters received, pending and terminated; cases filed, pending and terminated; an average number of defendants in cases filed, pending and terminated; cases and defendants tried; guilty defendants and conviction rates; and defendants sentenced to prison. Future charts will display year-to-year data and percentages of change for the differing lengths of prison sentences imposed. If you have questions or would like a copy of the statistics, please contact Barbara Tone, (202)616-6779. ❖

Input from United States Attorneys in OPR Investigations

On August 22, 1995, EOUSA Director Carol DiBattiste forwarded to United States Attorneys and First Assistant United States Attorneys a memorandum clarifying the procedures regarding when and how United States Attorneys may provide the Office of Professional Responsibility (OPR) with information relevant to investigations involving AUSAs, and how United States Attorneys may receive and review OPR reports and provide comments to OPR on the findings and conclusions. If you would like a copy of this memorandum, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

New Background Investigation Forms

On September 8, 1995, EOUSA Director Carol DiBattiste forwarded a memorandum to United States Attorneys, First Assistant United States Attorneys, Security Managers, Administrative Officers, and EOUSA Managers enclosing revised Standard Form (SF) 86, Questionnaire for National Security Positions; SF 85P, Questionnaire for Public Trust Positions; and SF 85P-S, Supplemental Questionnaire for Selected Positions, all used for background investigations, reinvestigations, and adjudicate employment suitability and security clearances. Attorney General Reno and the Attorney General's Advisory Committee determined that new Assistant United States Attorneys are required to complete SF-86s. It is important that security clearances be able to be quickly processed for AUSAs who may need to work on classified cases. The new forms with detailed procedures will be forwarded to the districts as soon as they become available and should be used upon receipt. Questions concerning the use of the new forms should be directed to Assistant Director Gail Williamson, EOUSA's Personnel Staff, (202)616-6873. Questions concerning background investigations should be directed to Assistant Director Paula Nasca, EOUSA's Security Staff, (202)616-6878. ❖

Executive Order 12958

On September 8, 1995, EOUSA Director Carol DiBattiste forwarded a memorandum to United States Attorneys, District Office Security Managers, Administrative Officers, and EOUSA Managers enclosing Executive Order 12958, Classified National Security Information. Although the impact of this executive order on United States Attorneys' offices (USAOs) will be minimal, JMD's guidance for implementing it will be forwarded to USAOs when it is received. ❖

Changes in Email Servers in EOUSA

The following staffs were switched to different servers on the EAGLE system (AEX11 or AEXFLM01) recently. Please check with your System Manager or Assistant Director Carol Sloan, EOUSA's Office Automation Staff, (202)616-6969, for a list of the personnel who were affected by the switch.

- Case Management Staff (AEX11)
- Evaluation and Review Staff (AEXFLM01 and AEX11)
- Office Automation Staff (AEX11)
- Telecommunications and Technology Development Staff (AEX11) ❖

Security Managers' Conference

The District Office Security Managers' Conference is scheduled for January 8 through 12, 1995, in San Antonio, Texas. For further information, please contact Assistant Director Paula Nasca, EOUSA's Security Office, (202)616-6878. ❖

Hispanic National Bar Association Convention

The Hispanic National Bar Association (HNBA) Convention will be held October 11 through 14, 1995, at the Hyatt Regency Cerromar Hotel in Dorado, Puerto Rico. For further information, please contact Janet Craig, Acting Assistant Director, EOUSA's EEO Staff, via email on AEX03(JCRAIG). ❖

Freedom of Information and Privacy Act Requests and Litigation

EOUSA's FOIA/PA Staff continues to exceed goals that its members and EOUSA Director Carol DiBattiste established last year to reduce the backlog of FOIA requests. The Staff is one of three in the Department that have made substantial backlog reductions as part of Attorney General Reno's FOIA backlog reduction initiative.

In the August 1 issue of the United States Attorneys' Bulletin, the FOIA/PA Staff distributed their annual *Freedom of Information Act Guide and Privacy Act Overview* to all United States Attorneys. This restatement of the law should be consulted by Assistants or SAUSAs handling or litigating FOIA or Privacy Act cases. Extra copies can be obtained by writing, calling, or emailing Assistant Director Brick Brewer of EOUSA's Information and Privacy Staff, Bicentennial Building, Room 7100, 600 E Street, N.W., Washington, D.C. 20530, (202)616-6757, or AEX02(BBREWER), or Bonnie Gay, Attorney-in-Charge, (202)616-6757 or email AEX02(BGAY). ❖

Office of Legal Education

OLE Publication Corner

The OLE Publications Branch has published a new book, *Civil Rights*, that was written by the Civil Rights Division and distributed at the Civil Rights Seminar in early September. This is a comprehensive manual on civil and criminal civil rights litigation, including chapters on ADA, Fair Housing, Excessive Force, FACE, and Hate Crimes.

Civil Rights is one of a number of new publications that is available in USABook format. USABook is an easy to use, resourceful legal research program that can be installed on EAGLE menus. Additional USABook titles include *Guideline Sentencing*, the *Draft Indictment Form Book*, *Federal Firearms Offenses*, *Health Care Fraud Forms*, and *Capital Litigation in the Federal Courts*. Many more books are in the planning stages and existing books will be updated regularly.

The newest version of USABook, Version 1.04, has a number of new features. Text searches can now be made on more than one word at a time, and the program can be set up to highlight cases from your circuit on the screen. When you first access USABook you will see the word **Circuit** next to **F3** signifying the F3 function key. Press the F3 key and the computer will prompt you for the number of your circuit. For the rest of that search session your circuit's cases will be highlighted in yellow letters.

Our fall publication schedule includes *Immigration Law* and *Ethics*. Our winter/spring schedule consists of *Federal Practice*, *Violent Crime*, and *Evidence*. Assistant United States Attorneys interested in writing for publication please contact David Nissman at (202)616-5210 or AEX02(DNISSMAN).

The USABook program and all of the USABook titles can be downloaded from the EOUSA Bulletin Board system by Systems Managers. Many Systems Managers have already done full installations so that the program appears on every AUSA's desktop in those offices. Offices interested in obtaining this important research tool should have their Systems Managers contact Ed Hagen at (202)616-3654 or AEX02(EHAGEN). ❖

Office of Legal Education Projected Courses

Tom Majors, Director, OLE, is pleased to announce projected course offerings for the months of October 1995 through February 1996 for the Attorney General's Advocacy Institute (AGAI) and the Legal Education Institute (LEI). Lists of these courses are on pages 345 and 346.

AGAI

AGAI provides legal education programs to Assistant United States Attorneys (AUSAs) and attorneys assigned to Department of Justice (DOJ) divisions. The courses listed are tentative; however, OLE sends email announcements to all United States Attorneys' offices (USAOs) and DOJ divisions approximately eight weeks prior to the courses.

LEI

LEI provides legal education programs to all Executive Branch attorneys, paralegals, and support personnel. LEI also offers courses designed specifically for paralegal and support personnel from USAOs (indicated by an *). OLE funds all costs for paralegals and support staff personnel from USAOs who attend LEI courses. Approximately eight weeks prior to each course, OLE sends email announcements to all USAOs and DOJ divisions requesting nominations for each course. Nominations are to be returned to OLE via FAX, and then student selections are made.

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via mailings to Federal departments, agencies, and USAOs every four months. Nomination forms are available in your Administrative Office or attached as **Appendix B**. They must be received by OLE at least 30 days prior to the commencement of each course. Notice of acceptance or non-selection will be mailed to the address typed in the address box on the nomination form approximately three weeks before the course begins. Please note that 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 *). ❖

AGAI COURSES

<u>Date</u>	<u>Course</u>	<u>Participants</u>
October		
17-19	Basic Money Laundering	AUSAs, DOJ Attorneys
17-20	Immigration Litigation	AUSAs, DOJ Attorneys
30-11/3	Asset Forfeiture Advocacy	AUSAs, DOJ Attorneys
November		
6-7	Second Annual Conference for Professional Responsibility Officers	Professional Responsibility Officers
6-9	Criminal Tax Institute	AUSAs, DOJ Attorneys
7-8	Ethics Officers Training	Ethics Officers
14-17	Native American Issues	AUSAs, DOJ Attorneys
28-12/1	Constitutional Torts	AUSAs (Civil Division)
29-12/1	Criminal Chiefs	USAO Criminal Chiefs
December		
4-13	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
11-14	Basic Asset Forfeiture	AUSAs, DOJ Attorneys
January 1996		
8-12	Criminal Federal Practice	AUSAs, DOJ Attorneys
9-11	Appellate Chiefs	USAO Appellate Chiefs
9-12	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys
16-19	Evaluator Training	USAO Attorneys and Support Staff
22-2/2	Civil Trial Advocacy	AUSAs, DOJ Attorneys
23-25	Financial Litigation Investigation and Enforcement	AUSAs, Paralegals
23-26	Attorney Supervisors	AUSAs
30-2/1	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
February		
5-14	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
12-15	Federal Tort Claims Act	AUSAs, DOJ Attorneys
12-15	Use of Computers in Litigation	AUSAs, DOJ Attorneys
20-23	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys
26-3/1	Appellate Advocacy	AUSAs, DOJ Attorneys

LEI COURSES

<u>Date</u>	<u>Course</u>	<u>Participants</u>
October		
12-13	Freedom of Information Act for Attorneys and Access Professionals	Attorneys, Paralegals
16-20	Civil Paralegal *	USAO Paralegals
24	Introduction to the Freedom of Information Act	Attorneys, Paralegals
30-11/3	Legal Support Staff *	USAO Support Staff
November		
6-7	Alternative Dispute Resolution	Attorneys
8	Ethics and Professional Conduct	Attorneys
14-16	Attorney Supervisors	Attorneys
17	Ethics for Litigators	Attorneys
17	Legal Writing	Attorneys
20-21	Evidence	Attorneys
28-30	Docketing Clerks	Docketing Clerks
28-30	Bankruptcy Fraud	Attorneys
28-12/1	Examination Techniques	Attorneys
December		
4-8	Criminal Paralegal *	USAO Paralegals
11-15	Experienced Legal Secretaries *	USAO Support Staff
12-14	ACE for Paralegals	USAO Paralegals
January 1996		
8	Ethics for Litigators	Attorneys
8-12	Legal Support Staff *	USAO Paralegals
9-11	Environmental Law	Attorneys
10	Advanced Freedom of Information Act	Attorneys, Paralegals
12	Appellate Skills	Attorneys
17-18	Freedom of Information Act for Attorneys and Access Professionals	Attorneys, Paralegals
18-19	Law of Federal Employment	Attorneys
19	Privacy Act	Attorneys, Paralegals
22-23	Federal Acquisition Regulations	Attorneys
24-25	Federal Administrative Process	Attorneys
26	Legal Writing	Attorneys
30-2/2	Grand Jury Clerks *	USAO Grand Jury Clerks
February		
6-8	Basic Bankruptcy	Attorneys
12-15	Use of Computers in Litigation for Paralegals *	USAO Paralegals
15-16	Legislative Drafting	Attorneys, Paralegals
21	Freedom of Information Act Administrative Forum	Attorneys, Paralegals
22-23	Natural Environmental Protection Act	Attorneys
22-23	Alternative Dispute Resolution	Attorneys

Office of Legal Education Contact Information

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

Telephone: (202)616-6700
FAX: (202)616-7487

Director	Tom Majors, AUSA, WDOK
Deputy Director	David W. Downs
Assistant Director (AGAI-Criminal)	Dixie Morrow, AUSA, MDGA
Assistant Director (AGAI-Criminal)	Mary Jude Darrow, AUSA, EDLA
Assistant Director (AGAI-Civil and Appellate)	Eileen Gleason, AUSA, EDLA
Assistant Director (AGAI-Asset Forfeiture and Financial Litigation)	Kathy Stark, AUSA, SDFL
Assistant Director (LEI)	Donna Preston
Assistant Director (LEI)	Eileen Gleason, AUSA, EDLA
Assistant Director (LEI)	Mary Jude Darrow, AUSA, EDLA
Assistant Director (LEI-Paralegal and Support)	Donna Kennedy

WordPerfect 5.1 Tips

Lines That Run Off the Edge of the Screen

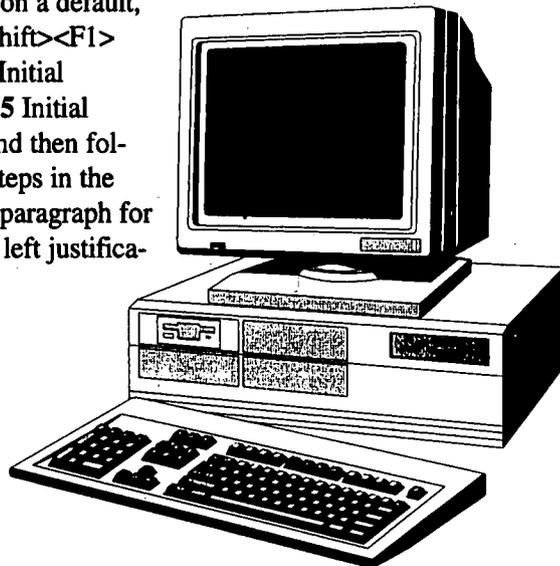
Does your display have lines that run off the edge of the screen, making reading and editing difficult? The reason for this is easy to understand. The standard DOS character display is made up of 25 lines that are exactly 80 characters long. If the printing font you are using is small enough, it will place more than 80 characters on a line, which is too many to be displayed on the screen. The problem can be solved by choosing a larger font and/or changing your justification.

In order to set a larger base font in a document, go to the beginning of the document and type <Ctrl><F8>, and then select **4 Base Font**. You will be presented with a list of fonts. Some or all of the fonts may have numbers next to them along with abbreviations. "CPI" means characters per inch; the larger the number, the smaller the type. "Pitch" or "Point" is the type size; the larger the pitch, the larger the type. These terms are used interchangeably. For example, pica sized type is 10 cpi and 12 point; elite type is 12 cpi and 10 point. Some fonts are marked "scalable," which means that the point size can be set at any number you want. Experiment with different fonts and type sizes

until you find one that fits the screen and gives you an attractive typeface.

You can choose a smaller font if you are not using full justification. To change justification, press <Shift><F8>, **1 Line, 3 Justification, 1 Left**. Many people find left justification (sometimes called ragged right edge) more readable, especially for letters.

You can make these changes your default settings. To make a font the default font, press <Shift><F7>, and **Select Printer, 3 Edit, and 5 Initial Base Font**. To make left justification a default, select <Shift><F1> **Setup, 4 Initial Settings, 5 Initial Codes, and then follow the steps in the previous paragraph for selecting left justification.** ❖



DOJ Highlights

Significant Issues/Events

Antitrust Division

Appointments

On August 8, 1995, Assistant Attorney General Anne K. Bingaman, Antitrust Division, announced the following appointments as Deputy Assistant Attorneys General in the Division:

- David Turetsky was appointed as Deputy Assistant Attorney General for Regulatory Affairs. He will supervise the Division's efforts with respect to regulated entities, including the telecommunications industry, and will oversee civil litigation, policy, and the filing of regulatory comments in these areas.
- Carl Shapiro was appointed Deputy Assistant Attorney General for economic analysis. He will be responsible for supervising all economic analysis within the Division, directing the Division's Economic Analysis Group, and providing advice to Bingaman on both merger and civil non-merger investigations.
- Lawrence R. Fullerton was named Deputy Assistant Attorney General for Merger Enforcement. He will head the Division's review of mergers and acquisitions in the midst of considerable new merger activism. ❖

Civil Rights Division

HUD's Final Regulations Pertaining to Housing for Older Persons

On August 23, 1995, Bobby Kammerman, Coordinator of the Civil Division's U.S. Attorneys' Fair Housing Program, forwarded a memorandum to Civil Chiefs containing HUD's final rules relating to housing for older persons, which took effect on September 18, 1995. If you would like a copy of these rules that were published in the *Federal Register*, Vol. 60, No. 160, August 18, 1995, please contact the *United States Attorney's Bulletin* staff, (202)514-3572. ❖

Criminal Division

Terrorism and Violent Crime Section Senior Trial Attorney E. Thomas Roberts to Coordinate UNABOM Investigation

On August 29, 1995, Assistant Attorney General Jo Ann Harris, Criminal Division, sent a memorandum to United States Attorneys announcing the designation of E. Thomas Roberts as the coordinator of prosecutive efforts relating to the UNABOM investigation being conducted by a multiagency task force under the direction of FBI SAC Jim Freeman and ASAC Terry Turchie in San Francisco. Northern District of California AUSA Steven Freccero is providing invaluable on-the-scene support to the task force. As the investigation impacts more and more districts, investigative leads are being sent by the task force to agency field offices, and national coordination of the investigative steps requiring prosecutive input is essential. Roberts has initiated a communications network among the eleven United States Attorneys' offices having potential venue in any case against the UNABOMer. Roberts' key responsibilities in consultation with the United States Attorneys' offices (USAOs) are to ensure that there is legal support and guidance for the task force and to provide timely information about the case to the affected USAOs. For complete coordination of this investigation, Ms. Harris has asked offices not to issue subpoenas or seek court orders without first contacting Mr. Roberts. The task force has requested that questions or contacts concerning their investigation also be directed to Mr. Roberts, (202)307-3950, (800)SKY-PAGE, or email CRM04(ROBERTST). ❖

Use of Pre-Trial Diversion

In an August 3, 1995, memorandum from Assistant Attorney General Jo Ann Harris to United States Attorneys, Ms. Harris reported on a recent Criminal Division review of the use of pre-trial diversion in the Federal system. This review, prompted by Attorney General Janet Reno, revealed that there is a wide variation in the use of pre-trial diversion between different districts. Ms. Harris asked that United States Attorneys evaluate the use

of pre-trial diversion in their districts and consider this for appropriate cases. Guidelines for the use of pre-trial diversion are found in Section 9-22.000 of the *United States Attorneys' Manual*. ❖

Environment and Natural Resources Division

Appointments

On August 30, 1995, Assistant Attorney General Lois J. Schiffer, Environment and Natural Resources Division, named three Deputy Assistant Attorneys General in the Division:

- Jim Simon will oversee the Environmental Crimes Section and the Indian Resources Section.
- Nancy Firestone will oversee the Appellate Section and the Environmental Defense Section.
- John Cruden will be responsible for the Land Acquisition Section, the Environmental Enforcement Section, and the Administrative Office.

Other personnel actions that were announced in the Division:

- Jim Kilbourne will run the Division's Appellate Section.
- Jim Clear will head the Indian Resources Section.
- Kalyn Free has joined the Indian Resources Management Team as Senior Counsel. ❖

Regulatory Reinvention Initiatives

Under directive of President Clinton and Vice President Gore, the Environment and Natural Resources Division has made policy improvements to facilitate business compliance with statutory requirements. In July, they adopted a policy that waives all civil penalties for small businesses employing 100 or fewer persons that participate in and act promptly to remedy violations discovered in a compliance assistance program. This policy promotes environmental compliance among small businesses by providing a grace period for them to correct violations discovered in good faith and promptly corrected. The company must participate in a Federal or state compliance assistance program, cannot be a repeat environmental offender, and violations cannot involve criminal conduct or pose a significant public health, safety, or environmental threat. If these

conditions are met and the violation is promptly corrected, no penalty is assessed. ❖

Office of Justice Programs— Bureau of Justice Statistics

U.S. Prison Population Grew Last Year

Almost 1.5 million people were incarcerated in the U.S. in 1994. That number represents the second largest annual increase in the State and Federal prison population in history. The total number of men and women in prison last December was 1,053,738—a new record. State and Federal prisons, which primarily hold convicted felons serving longer sentences, contained about two-thirds of the total, and locally operated jails, which primarily hold people awaiting trial or serving sentences of a year or less, held the other third. California and Texas together held more than one in every five inmates in the nation. Seventeen states accounted for 4 percent of all prisoners. Prison populations increased by at least 10 percent in 16 states last year, with Texas reporting the largest growth, followed by Georgia. Alaska and Connecticut reported fewer prisoners who had been sentenced to more than a year. States with the highest incarceration rates were Texas, Louisiana, and Oklahoma. North Dakota had the lowest, followed by Minnesota and West Virginia. These statistics are published in the Bureau of Justice Statistics (BJS) report, "Prisoners in 1994," (NCJ-151654) written by statisticians Allen J. Beck and Darrell K. Gilliard. Single copies may be obtained from the BJS Clearinghouse, Box 179, Annapolis Junction, Maryland 20701-0179, or by faxing orders to (410)792-4358; data from tables and graphs used in BJS reports can be obtained in spreadsheet files on 5¼ and 3½ inch diskettes by calling (202)616-3283. ❖

U.S. Parole Commission

Parole Commission Offers Blanket Coverage for Parole Violation Warrants

On September 15, 1995, the U.S. Parole Commission initiated 24-hour, 7-days-a-week service to issue warrants for parole violations. Under the old system, such service was available only during the normal 40-hour workweek. U.S. Parole Commission Chairman Edward F. Reilly

said, "This new policy will ensure that immediate action may be taken when the U.S. Parole Commission is notified that an individual has violated the conditions of his or her parole." ❖

Significant Cases

Antitrust Division

DOJ Reaches Consent Decree with ABA

On June 27, 1995, the Division filed a civil lawsuit and settlement in Washington, D.C., District Court against the American Bar Association. The complaint alleged that the ABA unfairly used its power as a law school accrediting agency to protect law faculties' economic interests and working conditions. As a result, the Division argued, the schools had to meet costly accreditation requirements that had little to do with the quality of the legal education they provided. Under the Consent Decree, the ABA is prohibited from fixing faculty salaries and refusing to accredit schools simply because they are for profit. ❖

Bruce Pearson, (202)307-0809

Civil Division

Mack v. United States/Printz v. United States United States Court of Appeals for the Ninth Circuit, Filed September 8, 1995, before Herbert Y.C. Choy; William C. Canby, Jr.; and Ferdinand F. Fernandez, Circuit Judges

Opinion by Judge Canby; Partial Concurrence and Partial Dissent by Judge Fernandez

The United States Court of Appeals for the Ninth Circuit reversed judgments of two district courts and held that the Brady Handgun Control Act's provision requiring local law enforcement officials to temporarily conduct background checks of prospective handgun purchasers is constitutional. The Brady Act, passed in 1993, imposes a waiting period of up to five days for the purchase of a handgun and subjects a prospective purchaser to a background check prior to sale. During the first five years of the Act, the chief law enforcement officer (CLEO) of the prospective purchaser's place of residence is required to

conduct the background check. The Brady Act requires CLEOs to make a "reasonable effort" to ascertain whether receipt or possession of a handgun by the prospective buyer would be in violation of the law.

Richard Mack and Jay Printz, as sheriffs, are the CLEOs in their respective jurisdictions of Graham County, Arizona, and Ravalli County, Montana. Both had invoked the Tenth and Fifth Amendments to challenge the validity of the Brady Act; Mack also argued that the Act violated the Thirteenth Amendment. Judge Canby, writing for the majority, deflected the constitutional challenges and concluded that the Act did not transgress the Tenth Amendment's implied limitation on federal power to regulate state activities. Since the background checks are not "alien" to the usual line of state law enforcement duties and present only a "minimal interference" with state functions in both scope and duration, the Act was found compatible with the established system of federalism. The Court of Appeals also dismissed as unripe Fifth Amendment challenges by Mack and Printz that the criminal provisions of the Act are void for vagueness.

Judge Fernandez dissented from the court's holding that the Brady Act does not violate the Tenth Amendment but concurred in the other parts of the court's opinion. Judge Fernandez wrote that Congress, via the Brady Act, has "eliminated the niceties of the federal-state relationship." Rather than ordering state legislatures or agencies to adopt a scheme for vetting requests for gun transfers, Congress has "dragooned" the state officials directly, treating them as if they were "mere federal employees." Judge Fernandez added that the states can do nothing about this situation and must bear the full cost of the tasks imposed by the Brady Act. ❖

Mark B. Stern, (202)616-2777

Civil Rights Division

ADA Settlement Reached with Safeway Stores, Inc.

On July 26, 1995, the Department announced a settlement agreement with Safeway Stores, Inc., which requires that all 835 Safeway stores in the U.S. build at least one sufficiently wide entrance to its stores so that they can accommodate wheelchairs. ❖

Margarita Prieto, (202)307-0663

Kay Pestaina, (202)307-0663

Criminal Division

Defendants Allegedly Defraud HHS in Medicare Program Scheme

On August 24, 1995, ABC Home Health Services, Inc.; Robert J. and Margie B. Mills, principal officers and majority shareholders; Arthur C. DeLozier; and James H. McManus were charged in an 82-count indictment with conspiring, making false statements, mail fraud, receiving illegal Medicare program kickbacks, and money laundering. Robert Mills also was charged with witness tampering and filing false tax returns. The scheme allegedly resulted in more than \$1 million in fraudulent Medicare program reimbursements. ❖

Christopher L. Varner, (202)514-0248
AUSA Thomas A. Withers,
Southern District of Georgia

Former U.S. Senator Pleads Guilty to Conversion of U.S. Funds

On August 22, 1995, Former U.S. Senator David F. Durenberger pled guilty to a five-count misdemeanor Information charging him with knowing and willful conversion of United States Senate funds, arising out of a scheme in which he obtained reimbursement from the Senate for purportedly "renting" a Minneapolis condominium that he owned. Durenberger admitted submitting vouchers to the Senate for his stays at the condominium, along with invoices created by an Independent Service Company owned by a political supporter. ❖

Raymond N. Hulser, (202)616-0387

Guilty Plea for Conspiracy to Launder Drug Money and Distribute Cocaine

On August 8, 1995, Francisco Colon-Quinones, financial director of a Columbian drug trafficking and money laundering operation, pled guilty to conspiracy to launder approximately \$40 million in drug trafficking proceeds and conspiracy to distribute over five kilograms of cocaine. ❖

Bruce A. Pagel, (202)514-0917
AUSA Frank Rebollo, District of Puerto Rico

BCCI to Turn Over More than \$393 Million

On August 29, 1995, an order was issued turning over more than \$393 million seized from the Bank of Credit and Commerce International (BCCI) to the U.S. and the fiduciaries of the BCCI Worldwide Victims Fund, pursuant to a 1991 Plea Agreement. Of that, \$223 million will go directly to the Victims' Fund, \$10 million will go to the State of New York in payment of a fine, and the balance will remain available to the Attorney General to use to offset the losses suffered by the FDIC insurance fund as a result of BCCI's criminal activities. ❖ **Stefan D. Cassella, (202)514-1263**

Federal Extradition Statute Violates the Constitutional Principle of Separation of Powers

On August 31, 1995, the U.S. District Court for the District of Columbia declared that 18 U.S.C. 3184, the Federal extradition statute, is unconstitutional. In *Anthony Lobue and Thomas Kulekowskis v. Warren N. Christopher*, the court found that the statute violates separation of powers principles because it confers on the Secretary of State the power to review the legal decisions of Federal extradition judges and magistrates. ❖

Sara B. Criscitelli, (202)514-0040

U.S. Citizenship of Former Member of Nazi-Sponsored Killing Unit Revoked

On August 3, 1995, the U.S. citizenship of Jonas Stelmokas of Philadelphia, Pennsylvania, an officer and platoon commander in the Nazi-sponsored 3rd Lithuanian *Schutzmannschaft* (Protective Detachment) Battalion during World War II, was revoked. Office of Special Investigations (OSI) Director Eli M. Rosenbaum terms the Stelmokas decision "an important victory in the Government's comprehensive effort to identify and take legal action against those who helped realize Adolf Hitler's genocidal ambitions." OSI has obtained the denaturalization of 52 Nazi persecutors and removed 44 from the U.S. The Stelmokas case is the first Nazi trial in this country to make use of what OSI Director Eli M. Rosenbaum called the "treasure trove" of captured Nazi documents in the former Soviet Union that were opened to western investigators following the collapse of communist rule in eastern and central Europe. ❖ **Denise Noonan Slavin, (202)616-2531**

Robert G. Seasonwein, (202)616-2539

Dead-Beat Dad Pleads Guilty

On August 21, 1995, Lawrence Sargus was ordered to pay past due child support of \$16,412 and is required to maintain his current support obligation until his youngest child reaches 18 as a result of his guilty plea on a one-count criminal Information under the Child Support Recovery Act of 1992. ❖ **M. Craig Wolf, (202)307-3975**

Environment and Natural Resources Division

Horsehead Settles Environmental Lawsuit

In a settlement lodged on August 24, 1995, Horsehead Resource Development Company, Inc. (HRD), and Horsehead Industries, Inc. (HI), will pay a \$5.65 million penalty and spend a total of \$30-40 million to reduce harmful releases of lead and cadmium into the soil, air, and water from the Horsehead facility located in Palmerton, Pennsylvania. The settlement resolves a lawsuit filed by the U.S. and Pennsylvania Department of Environmental Protection against HI and HRD which alleged the companies violated the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act. ❖

Susan Lively, (202)514-3900

Arnold Rosenthal, (202)514-3446

AUSA Robert Long, Middle District of Pennsylvania

Ethics and Professional Responsibility

Grand Jury Testimony— Accuracy

After a Federal district court dismissed a 91-count indictment claiming that a Federal agent had grossly misled a grand jury, OPR began an inquiry into the matter. OPR agreed with the court that the agent had provided testimony that was "false by omission," but disagreed with a second finding that the agent had, on another occasion, provided testimony that was "false on its face." Although there was no evidence that the prosecutor who presented the agent's testimony to the grand jury had colluded with the agent to deceive the panel, OPR determined that the prosecutor had made no effort whatsoever to clarify the agent's testimony. OPR also found other instances of misconduct, including an improper, post-indictment subpoena of a witness. ❖

Candor to the Tribunal— Misstatements in Appellate Brief

A United States Court of Appeals notified OPR that the Government's brief on a certain appeal contained several misstatements of fact. OPR determined that the prosecutor who submitted the brief had not prosecuted the case, had made a reasonably diligent effort to ascertain the facts, and had attempted to bring some misstatements to the court's attention. OPR also concluded that the office in question did not have adequate procedures for involving prosecutors in appeals, which led to the errors. Subsequently, the office adopted and implemented new appellate procedures. ❖

Clarification

In the September Ethics and Professional Responsibility column, the first summary, which involved a prosecutor who had twice made improper arguments to the jury, left the impression that the proposed discipline of removal reflected solely those two instances of misconduct. In fact, at the time, the Department was looking into two other matters regarding this lawyer, neither of which involved his performance at trial.

Sentencing Guidelines

Guideline Sentencing Update

Appendix C is the *Guideline Sentencing Update*, Vol. 7, No. 10, dated August 10, 1995. It 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 Guidelines. Past Guideline Sentencing Updates have been compiled by the Federal Judicial Center in a comprehensive manual, *Guideline Sentencing*. This volume can be downloaded by your system manager in USABook format from the EOUSA Bulletin Board. ❖

Career Opportunities

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

Civil Rights Division Disability Rights Section Experienced Attorney/Deputy Chief GS-15

This position is open only to current Department of Justice attorneys.

The Office of Attorney Personnel Management is seeking an experienced attorney for the position of Deputy Chief of the Disability Rights Section, Civil Rights Division in Washington, D.C. Responsibilities include directing the activities of a staff of approximately 71 attorneys and support personnel. The Disability Rights Section receives and investigates complaints alleging discrimination by public accommodations and commercial facilities; handles the Division's ADA litigation responsibilities under Titles I, II and III; provides extensive technical assistance; certifies State and local accessibility codes for equivalency with ADA standards; and provides ADA policy guidance. The Section has recently taken over responsibilities handled by other Sections in the Division, includ-

ing enforcement of Title I (employment by State and local governments), complaint investigations under Title II, and regulatory and coordination responsibilities for Title II and Section 504 of the Rehabilitation Act of 1973.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least 4 years of post-J.D. experience, all or a major portion of which must be Federal court civil litigation experience. Applicants must have demonstrated experience in the disability rights field. No telephone calls, please. Applicants must submit a current OF-612 (Optional Application for Federal Employment) or resume with a writing sample to:

U.S. Department of Justice
Civil Rights Division
Attn: Deputy Chief Vacancy
P.O. Box 66738
Washington, D.C. 20035-6738

A current SF-171 (Application for Federal Employment) will still be accepted as well. Current salary

and years of experience will determine the appropriate salary level within the GS-15 range (\$71,664-\$93,166). **This position will only be open until October 6, 1995.**

**Experienced Attorney, GS-15
Criminal Division/Director, OCDETF**

This position is open only to current Department of Justice attorneys.

The Office of Attorney Personnel Management is seeking an experienced attorney for the position of Director, Executive Office for the Organized Crime Drug Enforcement Task Force (OCDETF) Program, Criminal Division, Washington, D.C. The incumbent will serve as Director, reporting under the general supervision of the Assistant Attorney General for the Criminal Division and direct supervision of a Deputy Assistant Attorney General. He/she will be responsible for a variety of functions that involve direction and oversight for OCDETF. The OCDETF Program is a nationwide program which combines the resources and techniques of several agencies in concentrated, long-term operations designed to attack and destroy narcotics trafficking organizations. The OCDETF Program's overall goal is to identify, investigate, and prosecute members of high-level drug trafficking enterprises, and to destroy the operations of those organizations.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and

have at least 4 years of post-J.D. experience. Applicants must also have the ability to meet and deal effectively with high-level officials in the Department of Justice and other Federal, State and local organizations; knowledge of and experience in dealing with sensitive narcotics trafficking issues and activities; ability to formulate and implement Department policies on all matters pertaining to assigned areas; and ability to serve as a spokesperson for one's organization.

Applicants may submit a resume, the Optional Application for Federal Employment (OF-612), or the Application for Federal Employment (SF-171), or any other chosen written format, as well as a copy of a supervisory appraisal of performance issued within the past 12 months. Application materials should be sent to:

U.S. Department of Justice, Executive Office
Criminal Division
Attn: Sandra Bright
Main Building, Room 2229
10th Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20530

No telephone calls, please. **This position is open until filled but no later than October 13, 1995.** Current salary and years of experience will determine the appropriate salary level in the GS-15 range (\$71,664 - \$93,166).

**Updated Addresses for the United States Attorney's Office,
Southern District of Texas**

Headquarters Mailing Address:

U.S. Attorney's Office
Southern District of Texas
P. O. Box 77208-1129
Houston, TX 77208-1129
Phone: (713)567-9000

Headquarters Shipping Address:

U.S. Attorney's Office
c/o U.S. Marshal Service
U.S. Courthouse
515 Rusk
Houston, Texas 77002

Branch Offices—

Mailing Address:

U.S. Attorney's Office
P. O. Box 1671
Brownsville, TX 78522-1671
Phone: (210)548-2554

Shipping Address:

U.S. Attorney's Office
c/o U.S. Marshal Service
Federal Courthouse
1001 East Elizabeth, Room 306
Brownsville, TX 78520

Mailing Address:

U.S. Attorney's Office
Wilson Plaza, West Tower
606 N. Carancahua Street, Suite 140
Corpus Christi, TX 78476
Phone: (512)888-3111

Shipping Address:

U.S. Attorney's Office
c/o U.S. Marshal Service
Wilson Plaza, West Tower
606 N. Carancahua, Suite 1600
Corpus Christi, TX 78476

Mailing Address:

U.S. Attorney's Office
P.O. Box 1179
Laredo, TX 78042
Phone: (210)723-6523

Shipping Address:

U.S. Attorney's Office
c/o U.S. Marshal Service
1300 Matamoros, 2nd Floor
Laredo, TX 78040

Mailing Address:

U.S. Attorney's Office
Texas Commerce Bank
Benson Tower
1701 West Highway 83, Suite 305
McAllen, TX 78501-5159
Phone: (210)630-3173

Shipping Address:

U.S. Attorney's Office
c/o U.S. Marshal Service
Texas Commerce Bank
Benson Tower
1701 West Highway 83, 8th Floor
McAllen, TX 78501

Legal Education Institute
 E Street, NW
 Room 7600
 Washington, D.C. 20530

Telephone: (202) 616-6700

FAX: (202) 616-6476
 (202) 616-6477

LEI COURSE CONTACT:

Return Mailing Address: Must be typed and fit into the box below

	LEI USE ONLY	
	ACCEPTED	NOT SELECTED

C O U R S E	Course Name	Course Date(s)	Course Location
	N O M I N E E	Name	
Office, Agency, or Department		Phone Number	

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

S U P E R V I S O R	Name		Title
	Phone Number	Number of Nominees Submitted	Order of Preference of this Nominee

Guideline Sentencing Update

a publication of the Federal Judicial Center

volume 7, number 10, August 10, 1995

Departures

Mitigating Circumstances

Ninth Circuit holds that departure for "sentencing entrapment" may be warranted. In a "reverse sting" operation defendant was convicted of conspiracy to possess with intent to distribute five kilograms of cocaine. However, the evidence indicated that defendant agreed to buy the cocaine only after several months of persistent pressure by a confidential informant. Also, defendant preferred and could afford to buy only one kilogram, and agreed to buy the five kilograms only after the undercover agent offered to "front" four of the five kilograms and the informant said he would buy back three or four kilograms from defendant. There was also some doubt that defendant had, in fact, agreed to buy five kilograms. The district court denied defendant's request for a departure based on sentencing entrapment, held him responsible for five kilograms, and imposed the mandatory minimum sentence of ten years. On appeal defendant conceded he was predisposed to dealing cocaine, but argued that departure was warranted because "he would not have negotiated a transaction for five kilograms of cocaine but for the government's unusually favorable financial terms," *see* §2D1.1, comment. (nn. 12 & 17).

The appellate court remanded, finding defendant's "sentencing entrapment theory convincing. Application Notes 12 and 17 clearly require the district court to determine whether sentencing entrapment has occurred. Under Note 12, the district court 'shall exclude' from the calculation the amount of drugs which flow from sentencing entrapment. Further, under Note 17, a downward departure is warranted when sentencing entrapment occurs." The defendant "has the burden of proof to demonstrate that he had neither the intent nor the resources for completing a five kilogram cocaine transaction . . . , [but] the district court is obligated to make express factual findings as to whether Naranjo met this burden." The district court's statement, however, "fails to provide any finding relevant to the critical issue of Naranjo's predisposition to engage in a five-kilogram cocaine transaction. . . . Our reading of the record strongly suggests that Naranjo had neither the intent nor the resources to engage in a five-kilogram cocaine transaction." The case was remanded "with instructions to provide specific factual findings to support [the] ruling that Naranjo did not prove sentencing entrapment."

U.S. v. Naranjo, 52 F3d 245, 250-51 (9th Cir. 1995).

See *Outline* at VI.C.4.c and II.B.4.a.

Seventh Circuit holds that departure for "sentence manipulation" would be warranted only "for the most outrageous governmental conduct." Defendant claimed that the government engaged in sentence manipulation when—against government policy—it continued to use a confidential informant (CI) after he made an unauthorized drug purchase from defendant. Defendant argued that the government wanted to ensure that he made another sale of weapons to the CI so that his sentence would be enhanced under §2K2.1(b)(1)(B) (increasing offense level by two for offense involving 5-7 firearms).

The appellate court rejected defendant's argument. "The doctrine of sentencing manipulation states that a judge cannot use evidence to enhance a defendant's sentence if the government procured that evidence through outrageous conduct solely for the purpose of increasing the defendant's sentence under the Sentencing Guidelines. . . . We decline to extend the application of this doctrine any further than for the most outrageous governmental conduct. . . . The defendant would have to establish that the government specifically continued to employ the CI for the purpose of pursuing another two point enhancement such that the defendant's due process was violated." Agreeing with the district court that the government had legitimate reasons for continuing to use the CI, the court added that "if the government really wanted to enhance Messino's sentence, it could have authorized the CI to try to buy other weapons in addition to those already purchased. The fact that it refrained from doing so makes it clear that the government was not engaged in deliberate sentence manipulation."

U.S. v. Messino, 55 F3d 1241, 1256 (7th Cir. 1995).

See *Outline* at VI.C.4.c.

Substantial Assistance

Third Circuit holds that §5K1.1 motion—in absence of motion under §3553(e)—does not permit departure below statutory minimum sentence. Defendant's plea agreement stated that, in return for his cooperation, the government would move under §5K1.1 for a departure from the applicable guideline range. There was no agreement for departure via 18 U.S.C. §3553(e) below the 10-year mandatory minimum. The district court ruled that because the government moved only under §5K1.1, it could not depart below the statutory minimum and imposed the 10-year sentence. Defendant argued on appeal that a §5K1.1 motion also authorizes departure below a mandatory minimum sentence.

The appellate court affirmed. "The root issue for decision here is whether the prosecutor in a given case will be able to grant access to a Guideline departure for cooperation and at the same time retain control of access to a departure from a lower, statutory minimum. A literal reading of §5K1.1 would indicate that a prosecutor has this option. This conclusion is consistent as well with the Congressional judgment reflected in §3553(e). Moreover, no policy considerations appear to counsel against this conclusion and a number counsel in favor. . . . We hold that a motion under USSG §5K1.1 unaccompanied by a motion under 18 U.S.C. §3553(e) does not authorize a sentencing court to impose a sentence lower than a statutory minimum." In so holding the court joined the Eighth Circuit. Four circuits have held that a §5K1.1 motion authorizes departure below the statutory minimum without a separate motion under §3553(e).

U.S. v. Melendez, 55 F3d 130, 135–36 (3d Cir. 1995) (Huyett, Dist. J., dissenting).

See *Outline* at VI.F3.

Third Circuit requires "individualized, case-by-case consideration of the extent and quality of a defendant's cooperation in making downward departures under §5K1.1." In departing downward three offense levels after a §5K1.1 motion, the district court stated that "*my practice*, when I grant a §5K1.1 motion, is to go down three levels, three additional levels, on the theory if Acceptance of Responsibility is worth three levels, Substantial Cooperation should be worth the same." (Emphasis added by appellate court.) Although the court also gave other reasons to support the final sentence imposed, the appellate court held that remand was required to ensure that the court did not use a "mechanical policy of departing down three levels for substantial cooperation."

A defendant's substantial assistance "can involve a broad spectrum of conduct *that must be evaluated by the court on an individual basis.*" Application Note to U.S.S.G. §5K1.1 (emphasis added). A proper exercise of the district court's discretion under §5K1.1, therefore, involves an individualized qualitative examination of the incidents of the defendant's cooperation, and would not seem to admit of the use of sentencing 'practices.'" The district court's other reasons did not, "as required by §5K1.1, analyze the cooperation itself, as opposed to the crime or the defendant. Moreover, the otherwise detailed statement of reasons was delivered, by its own terms, only to explain why the court sentenced defendant above the minimum of the applicable guideline range of 360 months to life, not to explain why the court chose the three-level adjustment. . . . [W]e conclude that the district court erred as a matter of law in what, at least on the face of the record, appears to have been a mechani-

cal application of the guidelines to this one defendant in the conspiracy."

U.S. v. King, 53 F3d 589, 590–92 (3d Cir. 1995).

See *Outline* at VI.F3.

Adjustments

Vulnerable Victim

Ninth Circuit holds that defendant need not specifically, or initially, target vulnerable victim. Defendants were convicted on fraud and other charges in connection with their operation of a fraudulent health insurance scheme. The insurance was originally sold to employer associations, but over the course of the scheme individual claimants did not have their medical claims paid. These individuals continued to pay premiums to defendants to keep their coverage despite the fact that defendants "often stalled and gave claimants 'the run-around.'" The district court made it clear that it based defendants' §3A1.1 enhancements on their continuing to take money from these claimants, not because they originally targeted them: "It's that after they found out victims were vulnerable and they could not pay those claims, they continued to accept premiums from people who had not had claims paid but were afraid not to keep making their premium payments for fear they wouldn't be covered." Defendants argued on appeal that §3A1.1 cannot apply because they did not specifically target their victims, as Application Note 1 indicates is required, and that these victims were no more vulnerable than other victims of health insurance fraud.

The appellate court rejected both arguments and affirmed. The court acknowledged that Note 1 "states that §3A1.1 'applies to offenses where an unusually vulnerable victim *is made a target* of criminal activity by the defendant.' . . . (emphasis added). The commentary thus appears to require more than just actual or constructive knowledge—the commentary suggests that the defendant must have an actual intent to 'target' a vulnerable victim before §3A1.1 can apply." However, such a requirement "is inconsistent with the plain language of §3A1.1, which only requires that the defendant 'should have known' that the victim was vulnerable." The commentary can be reconciled with the guideline by reading it to have "a limited purpose—to exclude those cases where defendants do not know they are dealing with a vulnerable person." Here, defendants had that knowledge because they "personally talked to and engaged in stalling tactics with individual claimants who complained about unpaid medical claims. Appellants thus knew, or at the very least 'should have known,' that many vulnerable victims were not getting their claims paid, and yet appellants continued to accept premiums from them."

The court also held that the “individuals who developed medical problems and then could not get their claims paid fulfill both the unusually vulnerable ‘physical or mental condition’ and the ‘otherwise particularly susceptible’ criteria of §3A1.1. Several of the victims had serious physical or mental conditions that required follow-up care. These individuals realistically could not have switched insurance companies—they were at the mercy of the appellants.” The court “emphasize[d] that appellants in this case did more than just fail to pay for the victims’ medical claims. Appellants continued to accept premiums from these victims, many of whom were ‘afraid not to keep making their premium payments for fear they wouldn’t be covered.’ It is this continual fraud perpetrated upon these victims—who became vulnerable once they developed medical conditions, had outstanding medical bills, and in some cases needed further treatment—that triggered §3A1.1.”

The court specifically disagreed with *U.S. v. Rowe*, 999 F.2d 14, 17 (1st Cir. 1993), which reversed a §3A1.1 enhancement in a similar case. But note that the First Circuit reasoned that the individual claimants were not vulnerable to defendant’s offenses because, unlike the case here, “the thrust of the wrongdoing with which Rowe was charged was the initial fraudulent solicitations and the mismanagement or looting of the plan’s assets. The near certainty that some of the subscribers would be more enmeshed than others appears to have been a collateral aspect of the wrongdoing.”

U.S. v. O’Brien, 50 F.3d 751, 754–57 (9th Cir. 1995).

See *Outline* at III.A.1.a, c, and d.

Acceptance of Responsibility

Second Circuit holds that §3E1.1(b)(1) reduction may not be denied because defendant was not truthful about misconduct of others. Defendant received the two-point reduction for acceptance of responsibility but the district court denied the additional point under §3E1.1(b)(1) because it believed that, while defendant provided complete information about his own conduct, he misrepresented the involvement of others in the conspiracy. The appellate court rejected this reasoning and remanded. “A three-level reduction is available to a defendant who, in addition to clearly demonstrating his acceptance of responsibility, ‘assist[s] authorities in the investigation or prosecution of his own misconduct’ by ‘timely providing complete information to the government concerning his own involvement in the offense.’ See *id.* §3E1.1(b)(1) (emphasis supplied). . . . Section 3E1.1(b)(1) refers only to the defendant’s ‘own misconduct’ and ‘own involvement,’ and a defendant has satisfied the requirements for an adjustment under that section when he has described his

own involvement in the crime. . . . Once it is determined that a defendant has completely and truthfully disclosed his criminal conduct to the government, the inquiry with respect to section 3E1.1(b)(1) is complete.”

U.S. v. Leonard, 50 F.3d 1152, 1158–59 (2d Cir. 1995).

See *Outline* at III.E.4.

Determining the Sentence

Consecutive or Concurrent Sentences

Third Circuit holds that courts are not required to depart downward in order to impose the “reasonable incremental penalty” calculated under §5G1.3(c). At the time of sentencing defendant had served 17 months of a prior 21-month sentence. For each of the instant offenses his guideline range was 15–21 months, and the district court imposed concurrent 15-month sentences that were to run concurrently with the remaining 4 months on the prior sentence. Defendant claimed that this was improper because his *total* time served for the prior and instant offenses should be only 24 months pursuant to Note 3 of §5G1.3(c), which calculates a “reasonable incremental penalty” by “approximat[ing] the total punishment that would have been imposed under §5G1.2 (Sentencing on Multiple Counts of Conviction) had all of the offenses been federal offenses for which sentences were being imposed at the same time.” He argued that, following Application Note 3, he should receive no more than 7 additional months of incarceration.

The appellate court affirmed, holding that district courts are not required to depart from the guideline range for the instant offense in order to impose the total punishment calculated under Note 3. “Section 5G1.3 provides guidance in determining whether to run a sentence concurrently or consecutively. While it appears to permit a downward departure from the applicable guideline range to meet its objectives, it does not create a sentencing scheme in itself nor does it require a downward departure. . . . [S]entencing Holifield to less than 15 months to meet the general objectives of §5G1.3 would have been a departure from the guideline range. And although §5G1.3 would permit a departure, the Commentary clearly states that the methodology ‘does not, itself, require the court to depart.’” The court also noted that Illustration D in the Commentary supports this conclusion by indicating that a total sentence in excess of that reached under the Note 3 methodology is proper and a downward departure is not required. See also *U.S. v. Whiteley*, 54 F.3d 85, 91–92 (2d Cir. 1995) (affirmed: “While downward departures are not impermissible . . . §5G1.3(c) does not itself authorize a court to impose a sentence below the guideline minimum in order to replicate the ‘total punishment’ that would

have been imposed upon Whiteley had he been sentenced for all relevant offenses at once").

The court added that it agreed with "the majority of circuits that have [concluded] that although the district court must calculate the 'reasonable incremental punishment' according to the [Note 3] methodology, it need not impose that penalty. Instead, the court may employ a different method in determining the sentence as long as it indicates its reasons for not employing the commentary methodology."

U.S. v. Holifield, 53 F.3d 11, 14-17 (3d Cir. 1995).

See *Outline* at V.A.3.

General Application

Amendments

Third Circuit upholds "one book rule." Although defendant was sentenced in November 1993, his crime was completed by May 1988. Following the "one book rule" in §1B1.11(b)(2) (Nov. 1992), the district court used the 1987 Guidelines in their entirety to avoid *ex post facto* problems because the 1993 Guidelines would have required a more severe sentence (by three offense levels). Defendant argued that, following prior Third Circuit cases that disapproved a one book rule, he should have

been sentenced under the 1987 Guidelines but also received the benefit of the three-level, rather than two-level, reduction for acceptance of responsibility that was available in 1993.

The appellate court affirmed. Although the circuit had previously rejected the one book rule, the court concluded that "the Sentencing Commission, through its adoption of section 1B1.11(b)(2), has effectively overruled those opinions insofar as they conflict with the codification of the 'one book rule.' . . . [W]e join the majority of other courts of appeal which have already upheld the application of the 'one book rule.'" The court also rejected defendant's claim that "because the 'one book rule' was not in effect at the time of his offenses, its application violates the *ex post facto* clause" by not allowing the three-level reduction. "In this case, the application of the 1987 guidelines, pursuant to section 1B1.11(b)(2), resulted in a sentence of at least thirteen months less than what Corrado would have received under the 1993 guidelines. In our view, where, as here, the applicable guidelines overall work to the defendant's advantage in terms of the sentence imposed, there is no *ex post facto* violation."

U.S. v. Corrado, 53 F.3d 620, 623-25 (3d Cir. 1995).

See *Outline* at I.E.

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