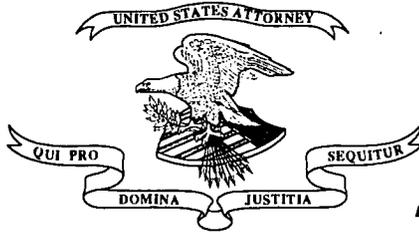




SPECIAL EDITION



UNITED STATES ATTORNEYS' BULLETIN

Forty-Third Year

November 8, 1995

Memorandum from the Attorney General on Dawson v. United States



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

November 7, 1995

MEMORANDUM TO ALL ASSISTANT UNITED STATES ATTORNEYS

FROM: THE ATTORNEY GENERAL

RE: Dawson v. United States

As you may know, on October 31, the United States Court of Appeals for the Fifth Circuit reversed the trial court in Dawson v. United States, (No. 94-10938). A copy of the opinion is attached. This Federal Tort Claims Act case involved sanctions imposed by the district judge against two Assistant United States Attorneys for not complying with a local rule requiring civil litigants to make a good faith effort to settle cases. We are pleased that the Fifth Circuit agreed with the Department's position in this matter, and that the court not only vacated the sanctions, but reversed the trial judge's findings and conclusions that the AUSAs acted in bad faith.

I am a strong proponent of providing the Department's attorneys with the tools necessary to make professionally responsible decisions in their representation of the United States. Where our lawyers err, I support the system we have set up for handling such matters. However, when our lawyers are wrongly accused of misconduct, as in this case, I will be equally forceful in defending them. We took this matter very seriously and Assistant Attorney General Frank Hunger personally argued the appeal for the Department before the Fifth Circuit. We will continue to be vigilant in defending our lawyers in cases such as this.

**Factual Summary of
Dawson v. United States**
1995 WL 638422 (5TH Cir. (Tex.))
Decided October 31, 1995

Dawson brought a *pro se* suit under the Federal Tort Claims Act against the United States for injuries he sustained while playing fly ball in a federal prison in Texas. The government answered the suit admitting that Dawson was injured, but denying liability and raising a number of affirmative defenses, including but not limited to, failure to state a claim upon which relief could be granted. After the answer was filed, the District Court ordered the parties to meet and discuss settlement and submit a joint status report. They did and reported to the court that little progress toward settlement was made because there remained many disputed matters, but that the prospect for settlement would always be open and would be diligently pursued after discovery.

The Court then issued a scheduling order directing the parties to meet and discuss settlement again before the pretrial conference. In both orders the Court referred to Local Rule 9.1 which requires the parties to make a "good faith effort" to settle the case and stated that he expected the parties to comply with this local rule.

Before the settlement conference the government filed a motion to dismiss, or in the alternative, for summary judgment arguing that the complaint failed to state a claim upon which relief could be granted and cited the Texas recreational use statute, which protects a landowner from liability unless it has been grossly negligent, or acted with malice or in bad faith. Subsequently, a settlement conference was held as ordered by the judge but no settlement was reached. This was reported to the judge.

Dawson failed to appear at the pretrial conference and the trial judge questioned the assigned AUSA about the pending summary judgment motion and a federal statute, 18 U.S.C. § 4042, which provides that the Bureau of Prisons is to provide safekeeping and care for federal prisoners. The AUSA said he was "vaguely" familiar with the statute, but did not believe it applied to an FTCA case. The court then questioned him about the Texas recreational use

statute. The court denied the summary judgment motion and ruled that the Texas statute did not apply and stated that he was "disappointed that the government would rely (on the Texas recreational use statute) in light of its blatant inapplicability to the facts of this action." The Court also questioned the government attorneys about the settlement negotiations and inquired about the amount of money discussed. The government explained that it had not offered any money because there was a dispositive motion pending and the government considered the suit to be frivolous. The judge responded that he believed the AUSA had acted in bad faith.

The trial judge then ordered the plaintiff to appear and show cause why he should not be sanctioned for failing to appear at the pretrial conference. In the show cause the court also ordered the AUSAs on the case to show cause why they should not be sanctioned for violating the Local Rule concerning settlement negotiations. The government insisted it had complied with the Local Rule. Dawson did not appear at the show cause hearing, but there was a lengthy hearing on sanctioning the government attorneys and the court made a number of rulings against the government and its counsel from the bench at the conclusion of the hearing. Sixteen months later, the court issued a 33 page opinion supplementing the bench rulings and found that both AUSAs should be sanctioned for failure to make a good faith effort to settle the case. The sanctions included 15 hours of ethics training and a reprimand against one AUSA and a reprimand against the other AUSA.

The government moved to alter or amend the sanctions order which was denied in a 37 page opinion.

An appeal followed and the Court of Appeals for the Fifth Circuit reversed and vacated the sanctions order, finding that the trial court had abused his discretion. The Court found that the AUSAs "should not have been sanctioned. Likewise, findings that they acted improperly, or unprofessionally, in the manner in which they handled this action are clearly erroneous. To that end, we find most inappropriate the district court's conclusions that they, in effect, tried to manipulate, or take advantage of, Dawson at the settlement conferences or in preparing the pretrial order. No more need be said; this most regrettable chapter is closed."



UNITED STATES ATTORNEYS' **BULLETIN**

Volume 43, No. 11

Forty-Third Year

November 1, 1995

Interview with Outgoing Chair of AGAC, the Honorable Michael Stiles, and His Successor the Honorable Janet Napolitano

Michael Stiles has been serving as the United States Attorney for the Eastern District of Pennsylvania since November 1, 1993. In January 1994, Mr. Stiles was appointed by Attorney General Janet Reno to the AGAC, and in May 1994, she appointed him to chair the Committee effective September 1994. Mr. Stiles' past positions include: Judge in the Court of Common Pleas of Philadelphia County, Trial Judge in the Criminal Section of the Trial Division, and a prosecutor in the Philadelphia District Attorney's Office. He has served as chairman or member on numerous professional associations and boards, including the Philadelphia Criminal Justice Coordinating Commission, Pennsylvania Conference of State Trial Judges, Pennsylvania District Attorneys Association, and the National District Attorneys Association.

Janet Napolitano has been serving as the United States Attorney for the District of Arizona since July 3, 1993. Prior to becoming U.S. Attorney, she was a partner in the law firm of Lewis and Roca in Phoenix, where she specialized in appellate litigation. While there, Ms. Napolitano chaired several committees of the State Bar. She has been heavily involved in community and political organizations throughout Arizona and the nation.

The Attorney General's Advisory Committee (AGAC) and its Subcommittees provide critical advice and counsel to the Attorney General and to the senior leadership of the Department. For example, in August we profiled the prominent role which the AGAC played in the selection of Watergate Special Prosecutor Leon Jaworski (*USAB*, Vol. 43, No. 8, pp. 265-267). Similar in composition to the



Janet Napolitano and Michael Stiles

Committee created by Attorney General Elliott Richardson 22 years ago, the AGAC remains an important player in determining policies which the Department will enforce in support of the Administration's goals. Assistant United States Attorney Dixie Morrow (referred to as DM), Assistant Director of Criminal Programs in EOUSA's Office of Legal Education, spoke with the outgoing chair of the AGAC, the Honorable Michael Stiles (referred to as MS), United States Attorney for the Eastern District of Pennsylvania, and his successor, the Honorable Janet Napolitano (referred to as JN), United States Attorney for the District of Arizona. They share a common belief in the continuing vitality of the AGAC.

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From the Editor-in-Chief

This month's Bulletin features interviews with Mike Stiles, outgoing Chair of the Attorney General's Advisory Committee (AGAC), and incoming Chair, Janet Napolitano. The AGAC is a dynamic body that meets regularly to discuss important issues facing the Justice Department. As the Attorney General said in last month's interview, the views of both United States Attorneys and Assistant United States Attorneys are solicited, and do influence the decisions of Department policy makers.

In one of the areas in which such views were solicited, we are happy to report that the Department was successful in getting the Judicial Conference to reject proposed changes to Rule 16. See the story on page 361.

Many of you have continued to express an interest in seeing your colleagues commended. As I indicated to you earlier, we plan to dedicate the January 1996 issue to awards and commendations. Those of you submitting commendations are requested to explain the significance of the AUSA's accomplishments so that the information is meaningful to colleagues.

In 1996 we are going to a bi-monthly magazine format. While all of the current features will be included, each issue will have a theme. What this means is that we are soliciting at least four or five articles on each featured topic. The articles can be about particularly significant and interesting cases, and should feature practical suggestions. The first issue in the new format will concentrate on immigration issues. The explosion of new ideas and new technology on the border is something all Federal prosecutors and Federal agents should know about, because there is much there that can be applied in other areas of our work. Other themes under consideration include: affirmative civil enforcement, evidence, terrorism and violent crimes, international law issues, investigative techniques, environmental law, Native American issues, and alternative dispute resolution in the Federal courts. Nothing is etched in stone, so call me with your suggestions. This can be a dynamic magazine in which we share with each other the best ideas, techniques, and advances from the field. But remember, it is your magazine, and the contributions of Assistant United States Attorneys are a necessary predicate to its usefulness.


David Marshall Nissman

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DM: Would you begin by telling me a little about how you think the Attorney General's Advisory Committee and its subcommittee structure go about achieving the objective of guiding the senior leadership of the Department?

MS: I think we do that by coming together as United States Attorneys from all across the country. Fifteen members meet monthly from large, medium, and small offices with a lot of different perspectives and experiences. We meet at the Department with the Attorney General, the Deputy, and the leaders of the Department and share our views and concerns, and listen to them, as well. I don't know that we guide them necessarily, but we do have an impact on matters that they are dealing with in terms of providing a U.S. Attorney's perspective. Their concerns also have some impact on our perspective on major issues.

"Every one of the fifteen members is assigned certain other U.S. Attorneys to be in contact with regularly about issues that come before the Attorney General's Advisory Committee. Since I've chaired the Advisory Committee, from the very beginning I've emphasized, at the very least, that the members call the U.S. Attorneys on their contact list before every one of our meetings to ask if there are issues that they wish raised, and then after each of our meetings to discuss all the issues that have been raised."

Michael Stiles

It's certainly been amazing to me, over the course of my couple of years on the AGAC, to observe the kind of respect and the confidence that the Attorney General has in United States Attorneys. She gives us the full opportunity to give complete and informed advice to her. It's not that on each and every issue we are in complete accord about everything with the Department or with the Attorney General, but much more often than not, the views and the advice that we give to her are listened to and followed.

DM: There's an obvious reason that your membership is limited to approximately 15 members. How do you liaison with your fellow, non-member United States Attorneys across the country?

MS: That is a very important point and question. Members of the Attorney General's Advisory Committee who are appointed by the Attorney General to stag-

gered two-year terms understand very early on that their most important responsibility is to keep in contact with the U.S. Attorneys who are on their phone contact list. Every one of the 15 members is assigned certain other U.S. Attorneys to be in contact with regularly about issues that come before the Attorney General's Advisory Committee. Since I've chaired the Advisory Committee, from the very beginning I've emphasized, at the very least, that the members call the U.S. Attorneys on their contact list before every one of our meetings to ask if there are issues that they wish raised, and then after each of our meetings to discuss all the issues that have been raised. We spend a lot of time in the beginning of our meetings each month just going around the table to talk about phone contact issues—to have each member raise issues that they have been asked to raise by their phone contact people. That's the kind of communication that means it's not just 15 people sitting around the table but that our meeting can represent the views of many more United States Attorneys. I've said to all the United States Attorneys and to the members of the Attorney General's Advisory Committee that we can't be effective if we only represent the people on the Committee in a given year. We have to express the concerns of our





entire 93-member United States Attorney organization.

DM: Other than through the telephone contact list system, how can United States Attorneys or the Assistants who work for those United States Attorneys bring matters to the attention of the Attorney General's Advisory Committee?

MS: Well, they can very easily and directly do it by picking up the phone and calling me or by calling whomever is Chair of the Attorney General's Advisory Committee, and a lot of United States Attorneys do that. I spend a

lot of time each day talking to U.S. Attorneys on the phone who have issues that they want raised through the Attorney General's Advisory Committee or to the Attorney General. We also have an Attorney General who is very accessible. U.S. Attorneys by now know that if they have an issue that they think merits a direct approach to the Attorney General, they simply have to pick up the phone and speak to her directly and, if she's not available, she'll call back very quickly. Every U.S. Attorney around the country knows that. Indeed, there have been experiences in my office where the Attorney General has called an Assistant back directly on an issue the Assistant raised with her by letter or otherwise. Moreover, all U.S. Attorneys are on subcommittees and when issues arise in the subcommittee work, the U.S. Attorneys on those subcommittees can call me directly when there are matters which they wish to raise with the Attorney General's Advisory Committee. For the first time, we have Assistant United States Attorneys on subcommittees as well, so that they are represented. We had a lot of volunteers and we couldn't accommodate all of them, but I think we will have rotations there as well so that more Assistant United States Attorneys can have input on subcommittees. Finally, when there is a matter that the U.S. Attorney wishes to raise directly or present directly to

all of the Attorney General's Advisory Committee, if that United States Attorney is not on the Advisory Committee, he or she is invited to come when we meet and address us on those issues and stay for the rest of the meeting if he or she wishes, and that occurs with some regularity.

DM: How are the efforts of both the Committee and the subcommittees documented?

MS: There are regular reports from the subcommittees to the Attorney General's Advisory Committee. There is also a system of notifying all U.S. Attorneys, both before and after AGAC meetings of all of the issues that we have discussed. Judy Beeman does an excellent job of taking minutes throughout our meeting, transcribing them, and mailing them to all United States Attorneys within a week of our meeting, so that they know the issues that we've discussed at a particular Attorney General's Advisory Committee meeting. Also, every U.S. Attorney is advised in writing before the AGAC meetings of the issues on the agenda, and they are urged to contact the U.S. Attorney on their phone contact list if there are other issues that they wish raised at the AGAC meetings.

"We do have a First Assistant on the AGAC. And we also have Assistant U.S. Attorneys on each of the subcommittees of the AGAC. So there is communication and, more important, input from Assistant U.S. Attorneys concerning matters that involve them."

Janet Napolitano

DM: Other than the U.S. Attorneys and senior leadership of the Department, is there anyone else who has access to the minutes of the meetings? For example, do you expect United States Attorneys to share those minutes with their staffs, or brief the contents of those minutes to their staffs?

JN: I think that's up to the individual U.S. Attorney. We do have a First Assistant on the AGAC. And we also have Assistant U.S. Attorneys on each of the subcommittees of

the AGAC. So there is communication and, more important, input from Assistant U.S. Attorneys concerning matters that involve them.

DM: The AGAC has existed in nearly the same format since it was first created by former Attorney General Elliot Richardson in 1973, and then later formalized by an Executive Order in 1976. Do you believe that the Committee is optimally structured to further the initiatives of both the Department and the Administration and, if you don't feel that it is optimally structured, what would you do to change it?

JN: I think the Committee is well structured to serve its purpose. It is large enough to provide broad representation from different types of offices—both in size and geographic location—and yet of a size that can be easily administered. One of the things we will be looking at is the subcommittee structure. The subcommittee structure itself is not as formalized as the structure of the AGAC. I'm going to be talking to the U.S. Attorneys who chair the subcommittees to see what directions we can take some of them in.

DM: What do you consider to be the most valuable accomplishment of the Committee during your tenure as its Chair?

MS: I think we have really completed the development of a new partnership between United States Attorneys and Main Justice, and I say completed because my predecessor, Mary Jo White, did a magnificent job as Chair and she started what I think we have finished in my year as Chair in establishing a kind of special partnership, as I say, between United States Attorneys and Main Justice. It's a partnership where great respect and I think, deference, is being shown to United States Attorneys and also there's recognition by United States Attorneys of the central role that Main Justice plays

in our system. Examples of that kind of partnership are the reduction of prior approval requirements. We've reduced substantially the number of situations where United States Attorneys have to get prior approval on matters from Main Justice. We've increased the authority of the United States Attorneys unilaterally to settle civil matters up to \$1 million. We have new Bluesheets in Environmental and Civil Rights cases which fairly distribute the authority for decision-making in those areas between United States Attorneys and Main Justice. We've recently established a consultation requirement, but not a prior approval requirement, with regard to search warrants for subject attorneys' offices which sets, I think, an appropriate balance of recognition of the importance of the need for a national perspective but also recognizes the authority and the competence of U.S. Attorneys to make difficult decisions within their own offices. And that's the kind of balance and kind of

mutual respect that I think has been an important accomplishment of the AGAC. There is no doubt in the minds of the members of the AGAC that we work for an Attorney General who really cares about and listens to our points of view.

DM: What are your highest priority issues for the coming year as the new Chair of the Committee?

JN: One is, of course, to continue having a regular presence within the upper levels of the Department and to make pertinent and timely recommendations on issues that affect all the U.S. Attorneys' offices. Second, I would like to revisit our subcommittee structure to see if we can more closely align our subcommittees with the structure and the initiatives of the Department. Third, I think that among the U.S. Attorneys, we

ought to have some discussion about proactive initiatives that we as U.S. Attorneys would like to advocate that the Department undertake.

"We've reduced substantially the number of situations where United States Attorneys have to get prior approval on matters from Main Justice.

We've increased the authority of the United States Attorneys unilaterally to settle civil matters up to \$1 million. We have new Bluesheets in Environmental and Civil Rights cases which fairly distribute the authority for decision-making in those areas between United States Attorneys and Main Justice. We've recently established a consultation requirement, but not a prior approval requirement, with regard to search warrants for subject attorneys' offices which sets, I think, an appropriate balance of recognition of the importance of the need for a national perspective but also recognizes the authority and the competence of U.S. Attorneys to make difficult decisions within their own offices."

Michael Stiles

DM: The Attorney General obviously takes care in appointing members of the AGAC who not only hail from different size offices throughout the country, but who bring to the table diverse backgrounds and experience. How do you think that mix of United States Attorneys contributes to the way in which you do business?

MS: I think we've come to realize that some problems, some priorities, some issues differ from district to district, differ from region to region, may differ due to the size of an office, and I think that is a very healthy recognition that allows us to have a wider perspective with regard to the problems in national law enforcement.

DM: How do you intend for the Committee to affect the day-to-day activities of Assistant United States Attorneys?

JN: Well, I don't think our role is to regulate the day-to-day activities of Assistant U.S. Attorneys. Our role comes into play when there are issues that can affect the policy or procedures of U.S. Attorneys' offices, generally. For example, we work with the Department on Bluesheets that govern how certain activities are carried out. We worked with the Criminal Division in eliminating prior approval requirements. That kind of work affects every criminal Assistant U.S. Attorney in the country. In addition, there are certain issues that the AGAC has formed working groups to examine. One of those involves the whole issue of immunity for prosecutors and investigators, and whether there need to be legislative changes or changes in the rules of pleadings or burdens of proof in those kinds of cases, and what those changes should be.

DM: How do you believe that service on the Committee—especially now in your new role as Chair—affects your own ability to discharge your duties as United States Attorney in your home District of Arizona?

JN: It's a challenge and what it will require is for the supervisory staff in our district to step up to the plate and cover for me more than perhaps they had to in the past. I have excellent supervisory and line assistants in our district so I think we'll be able to manage this quite well. I've been on the AGAC two years. I've been a very active member of two of its subcommittees, and I've juggled those responsibilities pretty well and I intend to keep doing that.

DM: Finally, Mr. Stiles, what have you found to be the most personally rewarding aspect of your service with the Advisory Committee?

MS: Well, the Attorney General wrote to me to thank me for the service that I provided in the last year. I wrote back thanking her for the opportunity, and telling her that I felt the most rewarding part was this opportunity to meet so many

remarkable, dedicated, and talented people in the United States Attorneys' offices around the country and in Main Justice, whom I would not otherwise come to know. I've made many good friends all across the country and they are friendships that I think will remain long after we've left Government service. I think that's a feeling that a lot of people have who come together as a community of United States Attorneys and work with people in the Justice Department, and that, to me, is really the most personally rewarding aspect of service with the AGAC.

DM: Understanding that you will have a unique opportunity to reach colleagues throughout the Department in the *U.S. Attorney's Bulletin*, is there anything about yourself or your leadership of the Attorney General's Advisory Committee that you would like to share?

JN: It's a great honor to be selected and it's also a great responsibility. I hope that if people have ideas or suggestions of things they want the AGAC to be taking up that they will let me know about them. ❖

"It's a great honor to be selected and it's also a great responsibility. I hope that if people have ideas or suggestions of things they want the AGAC to be taking up that they will let me know about them."

Janet Napolitano

Attorney General Highlights

Judicial Conference Votes Against Proposed Rule 16 Changes

On September 28, 1995, Deputy Attorney General Jamie Gorelick forwarded a memorandum to United States Attorneys concerning the Judicial Conference's vote against a proposed amendment to Rule 16 that would have imposed enhanced discovery obligations on Federal prosecutors. The Department's objections to the proposed amendment communicated to the Conference at all stages of the amendment process fell into three categories: (1) it would have interfered with DOJ's law enforcement responsibilities by restricting its ability to protect the interests of witnesses and victims of crimes; (2) it would have led to an increase in collateral litigation and delayed trials; and (3) it was unnecessary because Assistant United States Attorneys provide defense counsel with much of the information covered by the amendment voluntarily in advance of trial, unless safety to witnesses or the interest of justice dictate a contrary course. Proposed changes to Rule 16 have been debated for the last year, and Attorney General Janet Reno and Deputy Attorney General Jamie Gorelick have strongly resisted changes. (See July 1, 1995, *USAB*, Vol. 43, No. 7, "Interview with the Deputy Attorney General.") For further information, please contact Associate Deputy Attorney General David W. Ogden, (202)514-6909. ❖

AG Announces Bankruptcy Fraud Program

On October 10, 1995, the Attorney General announced a bankruptcy fraud program being coordinated jointly by the Attorney General's Advisory Committee of United States Attorneys and the Executive Office for United States Trustees. The program will focus on developing a coordinated law enforcement effort in bankruptcy fraud and developing training programs on bankruptcy fraud detection, investigation, and prosecution for Assistant United

States Attorneys, Assistant United States Trustees, and FBI agents. In a memo announcing the program, Attorney General Reno said, "Bankruptcy is a public process, and we must aggressively pursue those who would use the system to avoid their valid legal obligations, delay or evade their Federal and State tax obligations, and otherwise distort the process which offers deserving debtors the opportunity to seek a fresh start." For a copy of the Attorney General's memorandum or for further information about the program, contact AUSA Mary Jude Darrow, Assistant Director, Office of Legal Education, (202)616-6700. ❖

AG Appoints Special Representative for Southwest Border and Announces Tougher Sanctions

On October 14, 1995, at a briefing in San Diego by DOJ leaders concerning the progress of the first year of Operation Gatekeeper, Attorney General Janet Reno announced the latest Clinton Administration initiatives to create tough new programs against organized alien smugglers, criminal aliens, and serious repeat border crossers, and new measures to expand Operation Gatekeeper's accomplishments. The Attorney General announced the appointment of United States Attorney Alan Bersin, Southern District of California, as her Special Representative for Southwest Border Issues. He will Chair the Southwest Border Council consisting of U.S. Attorneys from the districts bordering Mexico; the U.S. Attorney for the Central District of California; and senior DOJ Criminal Division, DEA, FBI, and Customs' representatives. Ms. Reno said that her selection, in consultation with INS Commissioner Doris Meissner, was based on Bersin's knowledge of the issues, his track record in creating tough new prosecution programs, and his experience working closely with the INS to develop innovative projects.

One initiative that Mr. Bersin worked closely with INS to develop is a Port Court, to broaden the use of formal

charges against certain border crossers by increasing the detention space for immigration violators and providing an immediate increase in the San Diego Border Patrol agent force. The Port Court ensures that border aliens are detained and given immediate exclusion hearings. Should excluded aliens return to the U.S., they are prosecuted under Title 8, U.S.C., Section 1326. A pilot Port Court has operated since July, resulting in the exclusion of more than 2,600 illegal aliens. The permanent court is expected to result in more than 12,000 removals in FY96. INS has secured additional detention spaces to hold aliens awaiting exclusion and deportation hearings and Reno has instructed her staff to work with the Sheriff and other officials from San Diego County to develop long term detection options. The AG also announced that the San Diego Border Patrol agent force has been increased through detailed agents and overtime funding. ❖

AG Doubles Funds for Community Policing to Combat Domestic Violence Program

On October 2, 1995, Attorney General Janet Reno announced that DOJ's COPS office will increase funding for the Community Policing to Combat Domestic Violence Program from \$10 million to \$20 million, an initiative that will fund innovative domestic violence prevention programs carried out by law enforcement agencies working in cooperation with local victim services programs. On September 9, 1995, the Attorney General announced that 330 police and sheriffs' departments in 48 states and two U.S. territories will receive over \$93.6 million to hire and redeploy more than 2,000 officers, part of the Administration's efforts to add 100,000 police officers and sheriffs' deputies to the nation's streets—an effort that has exceeded expectations. Twenty-five thousand police officers and sheriff's deputies have been funded within the first year of the effort. ❖

Nationwide Raids Target Online Computer Service Use for Child Porn and Child Sex

On September 13, 1995, DOJ announced the arrest of 12 persons and searches of approximately 125 homes and offices following an "Innocent Images" investigation that began in late August to halt the distribution of child pornography on the nation's largest computer network, America Online. Attorney General Reno said, "We are not going to permit exciting new technology to be misused to exploit and injure children." The investigation began following a 10-year old boy's abduction from his neighborhood, and the identification of two suspects who allegedly had sexually exploited numerous juvenile males in the mid-Atlantic region. ❖

AG Speaks at Crime Stoppers International Conference

On September 30, 1995, Attorney General Janet Reno addressed the Crime Stoppers International Conference meeting in Virginia Beach, Virginia. She focused on the importance of community-based efforts to fight crime. Crime Stoppers International has assisted in nearly 100,000 convictions, and in the recovery of \$4 billion in narcotics and property. ❖

AG Announces Program to Combat Domestic Violence

On September 8, 1995, the Attorney General announced a new national initiative to provide funds for innovative community policing efforts aimed at reducing incidents of domestic violence. The \$10 million Community Policing to Combat Domestic Violence Program is the first program in which the Federal Government will work with local police departments to develop innovative programs to combat spousal and family abuse. ❖

United States Attorneys' Offices

The United States Attorneys' National Conference will be held during the week of February 11, 1996, in Santa Fe, New Mexico.

Correction: Federal Law Enforcement Officers' Association Prosecutorial Awards

John Lancaster, who received the Federal Law Enforcement Officers' Association Prosecutorial Award, is now with the Criminal Division and was a former AUSA from the Western District of Texas, not the Northern District of Texas as reported in the October 1, 1995, *USAB*.

Office of the District of Maryland was selected as the Defense Criminal Investigative Service Office of the Year. The award, considered one of the most prestigious in the organization, was presented at an Office of Inspector General, DOD Awards Luncheon on October 18, 1995. ❖

International Narcotic Enforcement Officers' Association Award

On September 25, 1995, Executive Director John J. Bellizzi of the International Narcotic Enforcement Officers' Association announced that Assistant United States Attorney Mark V. Courtade, Western District of Michigan, was selected to receive the Association's Special Award of Honor for his outstanding service and dedication in prosecuting Federal drug-trafficking cases. Presentation of the award will take place at the International Drug Conference on November 13, 1995, in West Palm Beach, Florida. ❖

Honors and Awards

United States Attorney John W. Raley, Jr., Inducted into American College of Trial Lawyers

On September 23, 1995, United States Attorney John W. Raley, Jr., Eastern District of Oklahoma, was inducted into the American College of Trial Lawyers (ACTL) at their Annual Meeting in San Antonio, Texas. ACTL is a professional association of lawyers skilled and experienced in the trial of cases, and dedicated to maintaining and improving the standards of trial practice, the administration of justice, and the ethics of the profession. ❖

District of Maryland Receives DOD Criminal Investigative Service Office of the Year Award

On September 11, 1995, the Defense Criminal Investigative Service announced that the Baltimore

AUSA Bonnie R. Schlueter Receives FWP Award

At a luncheon on August 24, 1995, the Federal Women's Program Committee of the Pittsburgh Federal Executive Board presented AUSA Bonnie R. Schlueter, Western District of Pennsylvania, with the Silver Award for the 1995 Federal Woman of the Year for her exemplified degree of character, job interest, and performance, and her substantial contributions to women in the Federal Government. ❖

Significant Issues/Events

Appointments

AUSA Accepts Law Judge Position with the Office of Personnel Management, Register for Administrative Law Judges

Effective October 15, 1995, Assistant United States Attorney Riley J. Atkins, who had been with the District of Oregon's Civil Division for the past 12 years, accepted an Administrative Law Judge position with the U.S. Office of Personnel Management, Register for Administrative Law Judges. ❖

Attorney General's Advisory Committee Update

The Attorney General's Advisory Committee (AGAC) met in Washington, D.C., on September 20-21, 1995, and a summary of the meeting was distributed to United States Attorneys and First Assistant United States Attorneys on October 11, 1995. The next meeting is scheduled for November 8 and 9 in Washington, D.C. If you have a possible issue to be raised at the November meeting, please contact Judy Beeman, Executive Assistant to the Committee, (202)6514-4633. ❖

Searches of Attorneys' Offices who are Suspect, Subject, or Target of Criminal Investigations

On October 17, 1995, Carol DiBattiste forwarded a memorandum to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, Civil Chiefs, and Professional Responsibility Officers, forwarding a Bluesheet on DOJ's policy on seeking a search warrant for the premises of an attorney who is a suspect, subject, or target of a criminal investigation. The Bluesheet creates Section 9-2.161(b) to *USAM* 1-1.550. The Bluesheet (1) mandates that before seeking judicial authorization of such a search warrant, a United States Attorney or Assistant Attorney General must approve the search;

(2) requests that the DOJ attorney handling the case consult with the Criminal Division before applying for a warrant; and (3) outlines and requests that attorneys be trained in the approval process and procedures of seeking a search warrant. For further information, please contact Edgar Brown, Criminal Division, Office of Enforcement Operations, (202)514-5541, or after hours, (202)514-5000. If you would like a copy of the Bluesheet, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Americans with Disabilities Act and Rehabilitation Act of 1974

Congress recently amended the Rehabilitation Act of 1974 to incorporate standards created by the Americans with Disabilities Act. In a July 20, 1995, memorandum from Assistant Attorney General Deval L. Patrick, Civil Rights Division, to Director Carol DiBattiste, Executive Office for United States Attorneys, Patrick stated that the Civil Division and the Civil Rights Division have made efforts to coordinate the positions taken by the Department as both plaintiff and defendant in cases involving allegations of discrimination based on disability. Assistant United States Attorneys who handle such cases also should be aware of the need to advance consistent positions in litigation. **Appendix A** is intended to familiarize AUSAs with important issues relating to these kinds of cases. ❖

ADR Guide

As a result of an Alternative Dispute Resolution (ADR) Order signed by Attorney General Janet Reno in April 1995 (see *USAB*, Vol. 43, No. 5, p. 151), EOUSA and the Attorney General's Advisory Committee Working Group on ADR published "EOUSA's Policy Statement and Practice and Procedure Guide on the Use of Alternative Dispute Resolution," that was sent via memorandum from EOUSA Director Carol DiBattiste to United States Attorneys, First Assistants, and Civil Chiefs (for each Civil AUSA). It is a guide to assist Districts in maximizing the appropriate use of ADR. Please contact Special AUSA Jeanette Plante, EOUSA's Legal Programs Staff, (202)616-6444, for further information about this important Department initiative. ❖

Participation in Binding Arbitration

On September 25, 1995, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, First Assistant United States Attorneys, and Civil Chiefs, a formal memorandum opinion from DOJ's Office of Legal Counsel (OLC) on constitutional prohibitions on Federal Government participation in binding arbitration. OLC concluded that there are no general constitutional prohibitions against participation in binding arbitration by Federal Government parties but recognizes that Districts should carefully analyze participation in binding arbitration on a case-by-case basis. This position reverses the previous position of the Department that the Appointments Clause of the Constitution precludes Federal Government participation. Executive Order No. 12778 still prohibits Federal government counsel from voluntarily participating in binding arbitration. OLC's opinion has been formalized and will be published soon. If you would like a copy of the opinion, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Justice Performance Review's Adverse Actions Report and Recommendations

The Justice Performance Review's Adverse Actions Team (the Team) was established at the request of Attorney General Janet Reno to examine existing processes available for dealing with performance and disciplinary problems, and to make recommendations to simplify these processes and to make them more timely. On September 19, 1995, the Team's report and 43 recommendations that concern every aspect of how adverse actions are handled at the Department, were presented to the Attorney General and her senior staff. On September 29, 1995, EOUSA Director Carol DiBattiste, forwarded the Team's report and recommendations to United States Attorneys for review and comment. EOUSA's Legal Counsel's office analyzed the United States Attorneys' response and forwarded their analysis, including necessary revisions to the report, to Attorney General Reno on October 31, 1995. For further

information, please contact Naomi J. Miske, EOUSA's Legal Counsel's office, (202)514-4024. ❖

IRS Provides Information for Cases Involving Willful Failure to Pay Child Support for Children Living in Another State

On September 14, 1995, the Department of Treasury's IRS office in Des Moines, Iowa, forwarded a letter to AUSA Robert Teig, Southern District of Iowa, concerning cases involving violations of 18 U.S.C. 228, willful failure to pay child support for children living in another state. IRS encouraged disseminating this information to save agencies time in perfecting requests when 18 U.S.C. 228 is being pursued. The following is a summary of the guidelines contained in the letter.

- Periodically the IRS receives certifications from the Secretary of Health, Education, and Welfare to collect delinquent child support obligations pursuant to Section 6305 of the Internal Revenue Code. The information relative to these accounts is not return information and, therefore, is not subject to the provisions of 26 U.S.C. 6103; however, it is subject to 5 U.S.C. 552(a) Privacy Act (PA) disclosure restrictions. Recently, the IRS was asked to assist a district in processing an Exparte Order for violations of 18 U.S.C. 228 but found that the Order only allowed for disclosure of returns and return information, and did not cover the child support account the IRS had. The PA allows the IRS to disclose records if permitted for a routine use; however, this Order did not meet Subsections (b)(7) and (b)(11) of the Act since it did not specify this particular record, but only returns and return information. In order to obtain delinquent child support account information in investigations, it can be requested two ways.
- If an Exparte Order is being requested for returns and return information, the words "other information" should be added to the standard language and the information can be processed under (b)(11) as an Order of the Court. The reference to the violation of 18 U.S.C. 228

will be considered as identifying the specific "other information."

- If an Exparte Order is not being pursued for returns or return information, a written request from the head of the Federal agency citing the record (delinquent child support account information) being requested and the specific statute are sufficient to allow release of the information under (b)(7). Any return or return information that may be in the collection file would not be provided if the (b)(7) access is pursued. ❖

District of Arizona Seeks to Restore "Deadbeat" Law

United States Attorney Janet Napolitano vows that every resource available will be used to try to get Arizona Federal Judge Paul Rosenblatt's ruling that the Child Support Recovery Act of 1992 law is unconstitutional, overturned following his dismissal of two Arizona cases in which two Illinois men are alleged to have owed \$64,000 in child support to children living in Arizona. Supporting a request by President Clinton, Napolitano asked Rosenblatt to reevaluate his ruling which made Arizona the only state where the law cannot be enforced. Although Rosenblatt based his ruling on a Supreme Court ruling that the Gun-Free School Zone Act is unconstitutional because it does not substantially affect interstate commerce, Napolitano disagreed saying, "studies show that the economic effects of people not receiving child support are felt between the states." After announcing on August 27, 1995, that her office filed a motion asking Rosenblatt to reevaluate his ruling, Napolitano said that she will go to the 9th U.S. Circuit Court of Appeals and beyond if necessary. Rosenblatt's ruling has caused a delay in filing additional cases in Arizona, affecting a dozen cases that had been investigated and were ready to be filed. ❖

District of South Dakota Cracks Down on Deadbeat Dads

On October 3, 1995, eight cases were filed in South Dakota to prosecute parents who are in default in making child support payments. These cases are part of a nationwide effort by Federal prosecutors to get parents to pay the estimated \$34 billion they owe for child support. Child support owed by these eight parents alone totals \$220,702.61. ❖

Senate Rejects Recommendations to Equalize Penalties for Crack and Powder Cocaine

The Senate passed legislation on September 29, 1995, to reject the U.S. Sentencing Commission's recommendations to equalize penalties for trafficking and possession of crack and powder cocaine, and to reduce certain money laundering penalties. The House Judiciary Committee approved similar legislation in early September but the full house has yet to act. Sentencing Commission recommendations will take effect unless overriding legislation is enacted by November 1. ❖

DOJ's Policy on Indian Sovereignty

On September 15, 1995, EOUSA Director Carol DiBattiste forwarded a memorandum to United States Attorneys enclosing DOJ's policy on Indian Sovereignty and Government-to-Government relations with Indian tribes, which establishes fundamental governing principles for DOJ interaction with Indian tribes. To be effective, these principles must be understood by the staff in the Districts, and must be discussed in light of the United States Attorneys' mission. Issues regarding the policy should be directed to Herb Becker, Director of the Office of Tribal Justice, and United States Attorney John Raley, Eastern District of Oklahoma and Chair of the AGAC's Native American Issues Subcommittee. EOUSA's contact for issues regarding this policy is AUSA Iden G. Martyn, Deputy Director of Programs, (202)616-6483. ❖

MOU Between DOJ and Health Care Financing Administration (HCFA)

On September 22, 1995, EOUSA Director Carol DiBattiste and United States Attorney and Chair of the AGAC Health Care Fraud Subcommittee Lynne Battaglia forwarded a memorandum to United States Attorneys and Civil and Criminal Health Care Fraud Coordinators enclosing a copy of a Memorandum of Understanding (MOU) between DOJ and HCFA, who is responsible for nursing home oversight. Terms of the MOU require that when HCFA intends to impose a civil monetary penalty (CMP) for nursing home violations, they notify the U.S. Attorneys' civil and criminal Health Care Fraud Coordinators. The U.S. Attorneys' offices (USAOs) then have 14 days from the receipt of the notice to advise HCFA that it should not proceed with the imposition or collection of the CMP, so that pending investigations or investigations as a result of the notification are protected. When USAOs have no ongoing investigations but intend to initiate one after receiving a notice, the USAO and HCFA are required to discuss ways to allow HCFA to proceed with the CMP so that both HCFA and USAO interests are met. In cases where USAOs are actively investigating nursing home facilities, USAOs are required to determine if the CMP should proceed. For a list of recent developments in health care fraud cases, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572, or for further information, contact AUSA Marianne Tomecek, EOUSA Legal Counsel's Office, (202)514-6267. ❖

District of the Virgin Islands Receives Money from EOUSA's Disaster Relief Fund

On October 6, 1995, the Executive Office for United States Attorneys forwarded \$5,223 to the District of the Virgin Islands as they strive to overcome the damage caused by Hurricane Marilyn. Funds are being distributed to help cover uninsured losses, and money has been set aside to purchase drinking water for families of United States Attorney's office staff. United States Attorney Jim

Hurd, on behalf of all employees of the District of the Virgin Islands, expressed his deep appreciation to District friends and colleagues for their expressions of concern and assistance provided via the Disaster Relief Fund. ❖

Urgent Report Bluesheet

On September 27, 1995, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys and Assistant United States Attorneys forwarding the Bluesheet that clarifies the Department's urgent report procedures and transmittal methods. The Bluesheet was originally issued on July 27, 1995, to holders of Title 1 of the *United States Attorneys' Manual*. For further information, please contact Judy Beeman, (202)514-4633. ❖

Sunset of the Resolution Trust Corporation

On September 28, 1995, EOUSA Director Carol DiBattiste forwarded the Resolution Trust Corporation's (RTC's) contact list to United States Attorneys as a reminder of RTC's closure on December 31, 1995, pursuant to the terms of the RTC Completion Act. At that time, RTC matters will be turned over to the Federal Deposit Insurance Corporation. Carl F. Gamble, Counsel, Fraud and Criminal Liaison Unit, RTC, encourages United States Attorneys' offices to review outstanding investigations and cases which involve RTC or financial institutions that have been or are under RTC control. For further information or a copy of the memorandum sent to United States Attorneys, please contact Tracey Carey, EOUSA Priority Programs Staff, (202)616-6780. ❖

Details Outside of DOJ

On October 16, 1995, EOUSA Director Carol DiBattiste forwarded a memorandum from Assistant Attorney General for Administration Stephen R. Colgate requesting

that United States Attorneys' offices limit details to non-governmental entities to those circumstances under which the Department is fully reimbursed for the employee's salary and benefits. This new policy directed by Deputy Attorney General Jamie Gorelick does not affect mission-related nonreimbursable details to other Federal agencies or to State or local governments. Exceptions to the policy will be considered on a case-by-case basis. For further information, please contact Susan Eastwood, EOUSA Special Assistant to the Deputy Director, (202)514-4295. ❖

Correction:

The *United States Attorneys Bulletin* staff apologizes for printing an error last month in the mailing address of the headquarters office of the U.S. Attorney for the Southern District of Texas, (in Appendix A of the October 1, 1995, issue). The correct address is:

U.S. Attorney's Office
Southern District of Texas
P.O. Box 61129
Houston, TX 77208-1129

Address Change for Northern District of Florida

The Northern District of Florida requests that mail for the United States Attorney, the Administrative Officer, and the Personnel Officer be sent to their Pensacola office at:

U.S. Attorney's Office
114 East Gregory Street
Pensacola, Florida 32501 ❖

Branch Office Relocation in the Eastern District of Washington

The Eastern District of Washington's branch office recently relocated. The new addresses are:

Mailing Address:
U.S. Attorney's Office
402 E Yakima Avenue
Box 4065
Yakima, WA 98901
Phone: (509)454-4425
Fax: (509)454-4435

Shipping/FedEx Address:
U.S. Attorney's Office
402 E Yakima Avenue
Suite 21
Yakima, WA 98901-2760 ❖

New Shipping Address for the District of Idaho

The U.S. Attorney's office in the District of Idaho has a new shipping address.

U.S. Attorney's Office
First Interstate Center
877 W. Main Street
Suite 201
Boise, ID 83702

This address should only be used for items requiring personal delivery, such as Fed Ex packages.

All regular mail should be sent to:

U.S. Attorney's Office
P.O. Box 32
Boise, ID 83707-0032 ❖

Significant Cases

Armed Career Offender Imprisoned Southern District of Alabama

On October 11, 1995, Bruce L. Oxner was sentenced to 360 months imprisonment as an armed career offender. Oxner was involved in a crime spree in Louisiana, Texas, and culminating in a convenience store robbery in Alabama. After the robbery, Oxner led deputies on a high-speed chase resulting in several accidents. The court granted the Government's request for an upward departure and found that Oxner's criminal history category did not adequately reflect his history. ❖ AUSA Maria E. Murphy

Cellular Telephone Fraud Guilty Verdict Northern District of California

On September 25, 1995, Clinton Watson was found guilty of three counts of cellular telephone fraud, causing an estimated \$2 million in losses to the cellular telephone industry. He invented a program that enabled him to clone cellular telephones, had approximately 600 unauthorized cellular telephone numbers, and had been involved in or was connected to the sale of over 1,000 cloned cellular telephones or programming chips. ❖

AUSA Carlos Singh

Latin Kings Gang Members Convicted on Drug Charges District of Connecticut

On September 29, 1995, nine leaders and soldiers of the Latin Kings street gang were convicted for conspiring with one another to sell drugs and commit acts of violence, including nine murders and several shootings. ❖

AUSA Theodore Heinrich
AUSA Joseph Martini

First Criminal Indictment Under Venting Provisions of the Clean Air Act Southern District of Florida

On September 27, 1995, D & J Enterprises, Inc.; Raymond "Buck" Phillips; and William Hudson were indicted for conspiring to violate the Federal Clean Air Act

by venting approximately 700 pounds of the refrigerant gas R-22 into the atmosphere during a demolition project at former Homestead Air Force Base. ❖

AUSA Thomas Watts-FitzGerald

Nassar Sentenced in Lockheed Bribery Case Northern District of Georgia

On July 31, 1995, Suleiman A. Nassar pled guilty to violating the bribery portion of the Foreign Corrupt Practices Act (see *USAB*, Vol. 43, No. 9, p. 303) and was sentenced to one and a half years in prison and ordered to pay \$125,000 through assets seized by the Government. ❖

AUSA Martin J. Weinstein
AUSA Nicolette Templer

OSHA Violation in Death of a Worker Southern District of Georgia

Robert E. Swing was sentenced to six months imprisonment for his guilty plea to a violation of occupational safety and health standards in the death of a worker. Swing permitted an employee to enter and clean a tank which had transported a hazardous gasoline additive without providing proper training and failing to provide the required body harness with a retrieval line for rescue in an emergency. Swing purchased a retrieval system following an earlier OSHA-sponsored visit but returned it to the seller unused. ❖

AUSA Frank J. DiGiamarino

Three Indicted for Fraudulent Hiring Practices Northern District of Illinois

On September 20, 1995, Former Undersheriff James Dvorak, former Sheriff's Office Director of Personnel James K. Hogan, and Felix P. Calozzo were named in Informations for allegedly directing or participating in various fraudulent hiring practices including "ghost-pay-rolling" in the Cook County Sheriff's Department between 1987 and 1990. Dvorak and Hogan allegedly directed a scheme in which 22 people, including public officials, their friends, relatives, and campaign workers, were hired as ghost-payrollers, and Calozzo allegedly became the Sheriff's Office ghost payroller after bribing a former administrative aide to Dvorak to get the position. These three indictments raise the number of people to 18 charged

in a continuing investigation of various branches of city, county, and state government since the investigation began in October 1994. ❖

AUSA Scott Levine
AUSA Patrick Collins

Equestrian Team Member and Trainer Guilty of Wire Fraud Northern District of Illinois

On September 21, 1995, George Lindemann, Jr., of the U.S. Equestrian Team, and his trainer, Marion Hulik, were found guilty of wire fraud in connection with hiring a "hit man" to electrocute an unsuccessful show jumping horse to collect \$250,000 in insurance. Twenty-three people were indicted and 20 pled guilty of killing horses for insurance and fleeing owners of show horses; one defendant awaits trial. ❖

AUSA Steven Miller
AUSA Susan Cox

Organized Crime Enforcer Sentenced Northern District of Illinois

On October 6, 1995, Robert Salerno, an organized crime enforcer and boxing trainer, was sentenced to life imprisonment for the 1985 torture-murder of independent bookmaker Hal Smith who was killed because he refused to pay "street taxes" to organized crime to protect his gambling business. ❖

AUSA Mitchell Mars
AUSA David Buvinger

Illegal Activities Linked to Organized Crime Northern District of Illinois

On October 3, 1995, Marco D'Amico, second in command of a Chicago area "street crew," was sentenced to 147 months imprisonment after pleading guilty to racketeering conspiracy, bookmaking, extortion, weapon, and tax charges. D'Amico admitted operating a sports bookmaking business and high-stakes poker games for 14 years and using threats and violence to collect juice loans and street taxes. He signed an unusual stipulation at sentencing linking his illegal activities to organized crime. ❖

AUSA John Burley
AUSA Patrick King

Brothers Sentenced for Bank Fraud Eastern District of Louisiana

On October 4, 1995, John Mmahat, former Gulf Federal Savings Bank Board Chairman and practicing attorney, was sentenced to 21 years imprisonment and ordered to pay \$2 million in restitution to the FDIC and \$32,000 to an individual victim for fraud related to the operation of the failed Gulf Federal. Joseph Mmahat, former president of Gulf Federal and brother of John, was sentenced to 29 months imprisonment and ordered to pay \$45,000 in restitution to the FDIC and \$1,000 to an individual victim for fraud related to the operation. The defendants were found guilty of conspiring to misapply Gulf Federal funds, making false entries in Gulf Federal's records, and making false statements to FSLIC. ❖

AUSA Eileen Gleason
AUSA James R. Mann
Donald B. Mackay, Criminal Division,
(202)514-4246
James J. Nixon, Criminal Division,
(202)514-0248

Indictment for Adulterated Meat and Poultry District of Massachusetts

Costas Provisions Corp.; its President, George Deligiannides; and Vice-President, George Frangiadkis, were indicted on 14 counts alleging violations of the Federal Meat Inspection Act and the Poultry Products Inspection Act, after dead mice; rodent fecal matter; black mold; crumbling cork insulation; and filthy floors, walls, and ceilings were observed, and after the corporation had been warned about this unlawful conduct by Department of Agriculture employees. ❖

AUSA Sheila W. Sawyer

Sentence for Car Bomb Eastern District of North Carolina

On September 18, 1995, Charles P. Hickman Verna was sentenced to 10 years in prison for placing a bomb in his ex-wife's car while it was parked in front of her home. The bomb, discovered by their seven-year-old son, never detonated due to a design error made by Verna. He was

convicted of possession of a bomb by a convicted felon and possession of an unregistered bomb. ❖

AUSA John H. Bennett

Indictment for Federal Meat Inspection Act Violations Eastern District of North Carolina

On September 20, 1995, Charles M. Contris, Gerry D. Pearson, Gene K. Jacobs, and Spring Valley Meats, Inc., were indicted for violating the Federal Meat Inspection Act (FMIA) after allegedly allowing swine to enter the plant without proper examination of Federal inspectors; allowing dead swine which had been processed but not inspected to enter the plant; preparing swine product for human consumption in an unlawful manner; and offering swine products that were adulterated, uninspected, and did not pass FMIA for sale. ❖

AUSA J. Douglas McCullough

Five Convicted in Firearms Violations Western District of Oklahoma

On October 4, 1995, Leo Gamblin, Jr.; Anthony Wolfe; Travis Johnson; Gary Roberts; and Christopher McBain were convicted for their involvement in the manufacture, possession, and transfer of destructive devices. Gamblin, Wolfe, Johnson, and Roberts sold 10 remanufactured grenades to an ATF informant. Wolfe was also convicted of drug distribution. McBain, a licensed Federal firearms dealer and NRA field representative, was convicted of making the 10 grenades and two pipe bombs, and held accountable for possessing a machine gun. ❖

AUSA Edward J. Kumiega
AUSA Mark A. Yancey

Terrorist Sentenced for Abortion Clinic Violence District of Oregon

On September 12, 1995, Rachele Ranae "Shelley" Shannon was sentenced to 20 years incarceration for six arsons and two butyric acid attacks on abortion clinics in Oregon, California, and Nevada in 1992. This sentence will be served consecutively to the 10-year state sentence she is currently serving for a 1993 attempted murder of a Wichita, Kansas, doctor. Shannon continues to encourage violence while in prison, authoring inciteful literature for national

publications and corresponding with other advocates of violence. ❖

AUSA Stephen F. Peifer
AUSA Benjamin B. Wagner,
Eastern District of California

Three Indicted on Environmental and Other Charges Western District of Pennsylvania

On September 20, 1995, Robert J. and Charles J. Sechan, and Thomas D. O'Brien were indicted on charges of RICO, bribery, mail fraud, and illegally discharging pollutants into U.S. waters. The Sechans' business was to treat and recycle petroleum contaminated soils. Alleged activities included violating environmental laws of five states, defrauding customers who paid for proper legal disposition of petroleum contaminated soils, and bribing of public officials in connection with obtaining permits and resolving violation notices, constituting the operation of an enterprise under the RICO laws. ❖

AUSA Constance M. Bowden
AUSA Wallace Kleindienst

Man Indicted for Bank Embezzlement Western District of Pennsylvania

On September 20, 1995, a grand jury indicted Sean Hitchman for bank embezzlement in violation of 18 U.S.C §656, just three days after he failed to report to work and his employer, Mellon Bank, noticed that \$1,200,000 in cash was missing from ATMs which Hitchman serviced his last two days of work. FBI agents recovered \$735,000 of the money from Hitchman's car in Pittsburgh on September 19, 1995. On September 21, 1995, Dutch police, acting on a provisional arrest request, arrested Hitchman in Amsterdam where he awaits extradition. ❖

AUSA Stephen R. Kaufman
AUSA Thomas J. Farrell

Illegal Gambling Nets 10 Years Western District of Pennsylvania

On September 29, 1995, John F. "Duffy" Conley was sentenced to 10 years imprisonment and fined \$1 million after being convicted of conspiracy to operate an illegal gambling business. Conley was the head of a large-scale video poker business gambling operation which extended throughout Western Pennsylvania and involved the use of

video poker machines for making illegal payoffs. Twenty-four other individuals who were involved in Conley's extensive gambling operation have pled guilty to Federal gambling or conspiracy charges. ❖

AUSA James R. Wilson
William D. Braun, Criminal Division,
(202)514-1091

Guilty Plea for Money Laundering Conspiracy District of Puerto Rico

On September 26, 1995, Fernando Vazquez Ortiz, leader of a check stealing gang, and 12 others pled guilty to money laundering, following a conspiracy to steal U.S. Treasury Checks by abstracting them from mail boxes. Payees of the Treasury Checks were mostly elderly Social Security beneficiaries and disabled veterans. After stealing the checks, they prepared false identification cards using victims' information and photographs of the gang members and older members of the gang then cashed the checks. All codefendants pled guilty except one who has been hospitalized for several months. ❖

AUSA Antonio Bazan

Three Guilty of Carjacking and Murder of Police Officer District of Puerto Rico

On September 22, 1995, Ernesto "Nesty" Cirilo Munoz, Saul Mangual Corchado, and Luis Antonio "Tony" Ramirez Ynoa were found guilty of carjacking and murder of local undercover Puerto Rico Police Officer Ivan Mejias Hernandez. Officer Hernandez was shot and pushed over an embankment in his car. ❖

AUSA Jeanette Mercado-Rios

Indictment for Attempt to Bomb IRS Center Building Eastern District of Texas

On September 12, 1995, Charles Ray Polk was indicted for allegedly attempting to use an explosive device to destroy the IRS Austin Service Center building and to kill persons located in the building through detonation of the device. ❖

AUSA Jim Middleton
AUSA Gregg Marchessault

Juveniles Plead Guilty in Carjacking Incident Eastern District of Texas

Nine juveniles were prosecuted as adults and received prison sentences ranging from 27 months to 428 months for their roles in a carjacking incident. The defendants used two sawed-off shotguns and a pistol to steal a 1986 Dodge Caravan. As a result, one person was shot repeatedly and another was shot at point-blank range; both victims survived. ❖

AUSA Jim Middleton
AUSA John B. Stevens

Indictment for International Money Laundering Conspiracy Southern District of Texas

On October 12, 1995, Houston residents Arthur Merla and Ysrael Mustafa-Bernabe and New Jersey resident Rafael Nunez were indicted for their alleged involvement in an international money laundering operation that began in March 1989 and involved the movement of U.S. currency in excess of \$20 million from Houston and New Jersey to Colombia and other foreign locations. ❖

AUSA Ken Magidson

Archaeological Resources Protection Act Guilty Verdict District of Utah

On September 21, 1995, Earl K. Shumway, a notorious looter of Anasazi sites in southeast Utah, was found guilty on Archaeological Resources Protection Act (ARPA) charges and damaging U.S. property after arranging for a helicopter mechanic to find a pilot to fly them to two remote sites in Canyonlands National Park to loot artifacts—involving desecration of human remains of an Anasazi infant—and the Manti-Lasal National Forest to loot artifacts. The mechanic and pilot pled guilty to ARPA felonies. In a separate case, Shumway pled guilty to other ARPA charges for offenses that occurred in 1994 on Bureau of Land Management land in southeastern Utah. ❖

AUSA Wayne Dance

Guilty Plea for Federal Fraud District of Vermont

On September 5, 1995, former attorney Joseph C. Palmisano pled guilty to a Federal fraud indictment following his admission that between 1986 and 1993 he committed mail, wire, securities, bankruptcy, and bank fraud; money laundering; forgery; and that he made false writings. As part of his plea, Palmisano will forfeit to the U.S. \$700,000 that he laundered in the course of his frauds. ❖

AUSA Gregory L. Waples

Woman Indicted in Connection with Disappearance and Murder of Her Husband Eastern District of Virginia

On September 26, 1995, Deborah Lynn Morris was indicted on charges of mail fraud, obstruction of justice, and theft of Government property relating to the 1987 disappearance and murder of her husband. ❖

AUSA Chuck Rosenberg

Upward Departure for Firearms Dealer Eastern District of Virginia

On August 28, 1995, Wayne O. Caldwell, a federally licensed firearms dealer, was sentenced after upward departure from the sentencing guidelines to concurrent terms of imprisonment of 10 years for illegally selling firearms to a felon [18 U.S.C. §922(d)(1)] and 5 years for participating in an illegal firearms conspiracy (18 U.S.C. §371).

Caldwell sold 621 firearms to felons and drug dealers over a one-year period. The Court granted the upward departure motion (from 57-71 months up to 120 months) due to the danger of death and physical injury from the firearms being used to further the drug trade and to protect gun transactions. The Court ruled that the U.S. established the "specific, definable, and extensive" threat to the public from the firearms violations. Co-defendant Angelo G. Henley was sentenced to concurrent terms of imprisonment of three years for participating in an illegal firearms conspiracy (18 U.S.C. §371) and three years for possession of a firearm by a convicted felon [18 U.S.C. §922(g)(1)]. The Court granted the United States' substantial assistance motion because Henley assisted regarding Caldwell. ❖

AUSA S. David Schiller

Life Imprisonment for Violence Against Women Act Violation Southern District of West Virginia

On September 1, 1995, Christopher J. Bailey was sentenced to life imprisonment for kidnapping and 20 years for interstate domestic violence, to run concurrently. The court also ordered restitution of \$40,000 representing his anticipated earnings in prison. He beat his wife into unconsciousness and locked her in the trunk of his car for an extended period of time. ❖

FAUSA Charles T. Miller
AUSA Philip J. Combs
AUSA Stephanie D. Thacker

Executive Office for United States Attorneys

EOUSA Staff Update

Paula Nasca, Assistant Director, Security Programs Staff, will be leaving EOUSA to become the Director of Security Programs at the Executive Office for Immigration Review.

Gail Williamson, former Assistant Director, Personnel Staff, has assumed the position of Associate Director for Operations, deputy to Mike Bailie, Director of Operations.

Gary Wagoner, former Chief of EOUSA's Programs, Policy, and Evaluations Branch, assumed the position of Acting Assistant Director, Personnel.

Civil Rights Division attorney **Jeff Senger** joined the Office of Legal Education on a detail as Assistant Director for Civil and Appellate Programs. At Civil Rights, Jeff was a Senior Trial Attorney and brought suits against banks, real estate companies, and landlords under the Fair Housing Act and the Equal Credit Opportunity Act. ❖

Health Benefits and TSP Open Seasons

The DOJ open season for health benefits is November 13 through December 11, 1995, and the open season for the Thrift Savings Plan is November 15, 1995, to January 31, 1996. ❖

Non-sensitive Positions for Student Programs During Budget Cuts

On October 6, 1995, EOUSA Director Carol DiBattiste forwarded a memorandum to United States Attorneys and Administrative Officers that outlines the criteria for determining if a law student, student, or volunteer is eligible for a non-sensitive position in order to avoid the high cost of background investigations. If you have questions or would like a copy of this memorandum, please contact EOUSA's Personnel Staff, (202)616-6874, or EOUSA's Security Programs Staff on (202)616-6878. ❖

U.S. Postal Service Changes—Eagle is Extinct

Effective October 1, 1995, the U.S. Postal Service will not accept Federal agency envelopes, post cards, or mailing labels printed with the eagle in the upper right corner. Agencies must continue to affix postage to each piece of mail by postage meter or with official mail stamps. ❖

Cost Savings Compromise

On September 15, 1995, *The Washington Post* published proposed Federal benefit changes. Under the Senate-House budget blueprint guidelines, nearly \$10 billion would be shifted away from the Government and onto workers and retirees by:

- Limiting the Government contribution to employee and retiree health premiums by a dollar amount rather than

a percentage amount. That amount would be adjusted yearly based on the inflation rate, and the change could mean that the amount of premiums paid by workers and retirees may double or triple in a few years because medical costs rise faster than regular inflation rates. This change is estimated to save the Government nearly \$5 billion, passing most of the costs on to workers and retirees.

- Eliminating the high-three retirement formula for a high-five system, a proposal that may mean that employees would have to work longer to get the same retirement benefits. Official estimates believe that this change may cost each retiree about four percent over a lifetime.

Senator Ted Stevens' (R-Alaska) plan, if accepted by the Senate and the House budget conferees, would protect the Government percentage share of health premiums and eliminate the need for going to the high-five retirement formula but would require workers to pay more for their retirement beginning next year. CSRS would start paying 7.5 percent versus the current 7 percent, and FERS would contribute 1.3 percent versus the current 0.8 percent. Stevens' plan would also make permanent April cost-of-living adjustments (due in January) for retirees, a temporary change that has been in effect since April 1994. ❖

Designation of Beneficiaries

Stephanie F. Michie
EOUSA Personnel Staff

Although not a pleasant subject, the assignment of designated beneficiaries for retirement funds, life insurance, Thrift Savings Plan (TSP), and other unpaid compensation is very important. If you die while an employee of the Federal government, monies payable to your survivors are paid in accordance with designation of beneficiary forms in your Official Personnel Folder (OPF) or, if there are no designations on file, in the order of precedence that has been established for the various funds. Order of precedence varies slightly among the different designations and is explained in detail on each designation of beneficiary form. If you are satisfied with the order of precedence, designating a beneficiary is not necessary. Remember, as circumstances in your life change, it is a good idea to review those beneficiary designations.

If you are unsure what may be in your OPF, please contact your Administrative Officer/Personnel Officer (AO/PO) who can answer questions and/or provide the above-mentioned forms for completion. After you complete the forms, return them to your AO/PO. If you are unsure what may currently be on file with the TSP or OPM, it is a good idea to complete new forms and forward them directly to the addresses indicated on the forms. For further information, please contact your AO/PO. ❖

Office of Legal Education

OLE Publication Corner

In October, the Research and Publications Unit launched Volume 4 of the OLE Litigation Series, *Immigration Law*. This month we are producing Volume 5, *Ethics and Professional Responsibility*. This book will be approximately 50 chapters, focus on both civil and criminal issues, and should be a very useful reference book for all Government prosecutors. On the docket for December is the *ACE Manual*. In late January, we will be publishing a book on Violent Crime. Following that, the book of the month club will stop, regroup, and take a needed deep breath.

As always, we will be sending one book to each United States Attorney's office. The books can also be downloaded from the EOUSA Bulletin Board, a feature that allows each office to print the number of copies they need. You may also download all of the books in USABook format from the Bulletin Board. Fifteen offices have now completed office wide USABook installations. To get USABook installed in your district, simply ask your System Manager. ❖

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 377 and 378.

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 *). ❖

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-Civil and Appellate)	Jeff Senger, Attorney, Civil Rights Division
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-Paralegal and Support)	Donna Kennedy

AGAI Courses

Date	Course	Participants
NOVEMBER		
6-7	Second Annual Conference for Professional Responsibility Officers	Professional Responsibility Officers
6-8	Basic Money Laundering	AUSAs, DOJ Attorneys
6-9	Criminal Tax Institute	AUSAs, DOJ Attorneys
7-8	Ethics Officers Training	Ethics Officers
14-17	Native American Issues	AUSAs, DOJ Attorneys
28-30	Criminal Chiefs	USAO Criminal Chiefs
28-12/1	Constitutional Torts	AUSAs (Civil Division)
DECEMBER		
4-13	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
5-7	Basic Affirmative Civil Enforcement	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
23-25	Violent Crime and Juvenile Offenders	AUSAs, DOJ Attorneys
23-26	Attorney Supervisors	AUSAs
30-2/2	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
21-23	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys
26-3/1	Appellate Advocacy	AUSAs, DOJ Attorneys
MARCH		
4-7	Civil Federal Practice	AUSAs, DOJ Attorneys
4-7	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
4-8	Advanced Criminal Trial	AUSAs, DOJ Attorneys
5-7	Selected Topics in Bankruptcy	AUSAs, DOJ Attorneys
18-29	Civil Trial Advocacy	AUSAs, DOJ Attorneys
18-22	Criminal Federal Practice	AUSAs, DOJ Attorneys
19-21	Advanced Money Laundering	AUSAs, DOJ Attorneys

LEI COURSES

Date	Course	Participants
NOVEMBER		
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*	USAO Docketing Clerks
28-30	Bankruptcy Fraud	Attorneys
28-12/1	Examination Techniques	Attorneys
DECEMBER		
4-8	Criminal Paralegals*	USAO Paralegals
5-7	ACE for Paralegals*	USAO Paralegals
11-15	Experienced Legal Secretaries*	USAO Support Staff
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	AUSAs, 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
26-3/1	Civil Paralegal*	USAO Paralegals
MARCH		
11	Introduction to the Freedom of Information Act	Attorneys, Paralegals
11-15	Experienced Legal Secretaries*	USAO Support Staff
12-15	Examination Techniques	Attorneys
19-20	Agency Civil Practice	Attorneys
22	Legal Writing	Attorneys
25	Computer Acquisitions	Attorneys

WordPerfect 5.1 Tips

A Complex Macro for Creating Case Citations

In the September 1995 *United States Attorneys' Bulletin*, we looked at simple macros in WordPerfect 5.1 for DOS and noted that the macro language is quite powerful; in fact, it is virtually a programming language. For a change of pace this month, let's look at a complex macro for advanced users that creates a case citation when the user presses <Alt>V.

To create this macro, you have to use the macro editor. There is no direct way to get into it; you have to create a dummy macro by pressing <Ctrl><F10>, <Alt>V. Give the macro a descriptive name, like "case cite." When the blinking "Macro Def" comes on the screen, terminate the macro recorder by pressing <Ctrl><F10> again. Press <Ctrl><F10>, <Alt>V again, and select 2 Edit. Delete {DISPLAY OFF} if it appears in the box. You will then need to enter the following "script" *exactly* as shown below:

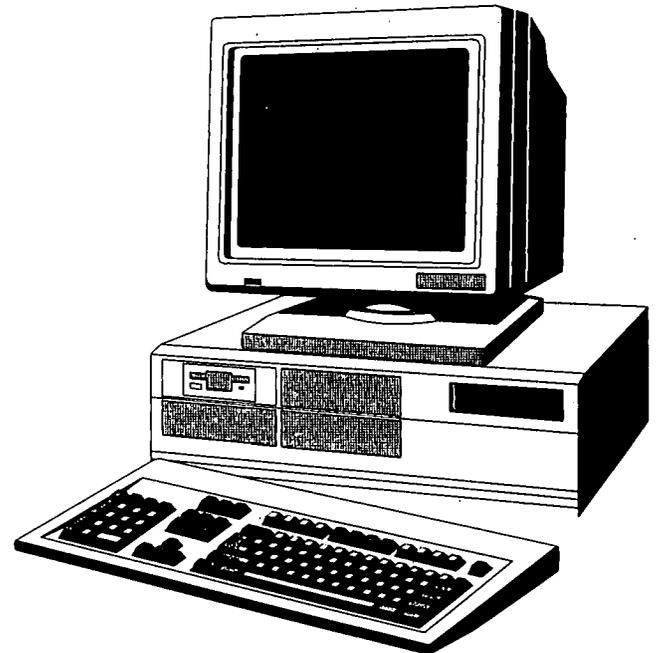
```
{Underline}United;States;v.:{INPUT}~{Right},:
{TEXT}Volume~~{VARIABLE}Volume~
{IF}{LEN}Volume~>2~F.2d:{ELSE}F.3d:{END IF}
{INPUT}~({CHAR}Circuit~~{CASE}){VARIABLE}
Circuit~~
0~10~1~1~2~2~3~3~4~4~5~5~6~6~7~7~8~8~9~9~c~11~
E~11~~~11~~{QUIT}
{LABEL}10~10th{GO}Cir~
{LABEL}1~1st{GO}Cir~
{LABEL}2~2d{GO}Cir~
{LABEL}3~3d{GO}Cir~
{LABEL}4~4th{GO}Cir~
{LABEL}5~5th{GO}Cir~
{LABEL}6~6th{GO}Cir~
{LABEL}7~7th{GO}Cir~
{LABEL}8~8th{GO}Cir~
{LABEL}9~9th{GO}Cir~
{LABEL}11~11th
{LABEL}Cir~
·Cir.19:{CHAR}{VAR 1}~~{VARIABLE}{VAR 1}~
{CHAR}{VAR 1}~~{VARIABLE}{VAR 1}~
```

NOTE: The various commands that appear in **bold face** should not be typed out. Instead, enter them in the following manner:

{Underline}	press <F8>
{Right}	press <Ctrl>V, and then the right arrow key
{VAR 1}	press <Ctrl>V, and then <Alt>1
all others	press <Ctrl><PageUp>, and select from the list

The ~ character is the shifted key next to 1 at the upper left corner of the keyboard. The : character is produced by pressing the space bar. If you enter the script exactly as it appears above, you will have an <ALT>V macro that intelligently builds a case citation as you fill in the blanks. It even figures out whether the volume should be F.2d or F.3d from the length of the volume number.

The above macro is included to familiarize you with the availability of the macro features in WordPerfect. Again, the script must be entered exactly as it appears above to create the macro. For more information on editing macros, see your WordPerfect reference manual. ❖



DOJ Highlights

Significant Issues/Events

Civil Rights Criminal Section Deputy Chief Detailed to Office of Senator Kennedy

Civil Rights Division, Criminal Section Deputy Chief Tom Perez has begun a one-year detail as chief civil rights staffer in the Office of Senator Edward Kennedy. Acting in his absence for matters in districts within the 4th, 7th, and 8th Circuits and Border Patrol/INS matters in states other than California will be Francesca Freccero [(202)514-4464] through early January 1996, and Suzanne Drouet [(202)514-4152] thereafter until Mr. Perez returns. ❖

DOJ Office of Public Affairs Establishes Contacts with United States Attorneys' Offices

On September 22, 1995, DOJ Public Affairs Specialist Gina Talamona announced to United States Attorneys and media contacts that additional press officers will be assisting her to keep in touch with United States Attorneys to provide greater guidance concerning press matters. These officers will not only be assisting with press releases but will be reaching out to national media to get cases national attention, making press releases available to DOJ reporters including major print and electronic media representatives, advancing USAO stories nationally, developing ways to get USAOs more national exposure, and answering questions about Department policies. United States Attorneys will be called by DOJ's press officers on a regular basis to find out about upcoming press matters of national interest. Ms. Talamona asks that United States Attorneys' offices also give her office advance notification of significant matters that would be of interest to the media. A copy of brief bios of the DOJ Public Affairs Office press officers and the districts to which they are assigned are

available from the *United States Attorneys' Bulletin* staff, (202)514-3572. For further information, please contact Gina Talamona, telephone (202)616-2771 or Fax (202)514-5331. ❖

Statute of Limitations for 26 U.S.C. 7212(a)—Omnibus Clause Prosecutions

Defendants in several criminal tax cases [e.g., *United States v. Workinger*, CR No. 94-60023 (D. OR, January 11, 1995); *United States v. Connell, et al.*, CR-F 94-5052 REC (E.D. CA, February 6, 1995)] raised the argument that the statute of limitations for prosecutions under the so-called "omnibus clause" of 26 U.S.C. § 7212(a) (i.e., corruptly obstructs or impedes, or endeavors to obstruct or impede, the due administration of the Internal Revenue Code) is three years rather than six. It is the position of the Tax Division that the statute of limitations for section 7212(a) omnibus clause offenses is six years. The Division's position is based on 26 U.S.C. § 6531(6), which provides a six-year statute "for the offense described in section 7212(a) (relating to intimidation of officers and employees of the United States)." As an alternative position, a six-year statute of limitations for section 7212(a) omnibus clause prosecutions may be premised (as the Tax Division's *Criminal Tax Manual* (1994 Edition) indicates at 7-4 and 17-9) on 26 U.S.C. § 6531(1), which provides a six-year statute for offenses involving the defrauding or attempt to defraud the United States in any manner. The Division's reliance on Section 6531(6) as the primary basis for a six-year limitations period is a change from the position set forth in the *Criminal Tax Manual*. Prosecutors should contact the Criminal Appeals and Tax Enforcement Policy Section of the Tax Division [(202)514-3011] prior to responding to any challenge raising a statute of limitations issue in a prosecution under the omnibus clause of section 7212(a). ❖

Reducing the Number of Sentencing Appeals

On October 4, 1995, in a memo to United States Attorneys, Acting Assistant Attorney General John C. Keeney of the Criminal Division provided guidance regarding the possible use of waivers of sentencing appeal rights and post-conviction rights in plea agreements to reduce the burden of appellate and collateral litigation involving sentencing issues. Mr. Keeney asks that United States Attorneys' office prosecutors evaluate whether such waivers would be a useful addition to plea agreements in their districts. For questions concerning sentencing appeal waivers or a copy of the guidelines, please contact Mr. Tom Booth of the Criminal Division's Appellate Section, (202)514-5201, or Email CRM(BOOTH). ❖

U.S.-Panama Mutual Legal Assistance Treaty

On September 6, 1995, the U.S.-Panama Mutual Legal Assistance Treaty (MLAT) became effective. The treaty, which languished for a number of years awaiting the U.S. Senate's approval, should prove particularly useful to U.S. prosecutors seeking bank and corporate records from Panama. The MLAT contains "Kerry Amendment" provisions on the exchange of currency transaction information involving over \$10,000. For further information, please contact OIA Attorney Mary Troland, (202)514-0015. ❖

Attacking Financial Institution Fraud

The second quarterly report for fiscal year 1995, *Attacking Financial Institution Fraud*, for the Senate and the House of Representatives of Congress was published by the Office of Special Counsel for Financial Institutions Fraud. ❖

Office of Justice Programs Resource Guide

The 1995 *Office of Justice Programs Resource Guide* was published in September. If you are interested in

obtaining a copy, please call the DOJ Response Center, 1(800)421-6770. ❖

Bureau of Justice Statistics Reports Correctional Population Tops 5 Million

On August 27, 1995, DOJ reported that more than 5.1 million Americans—almost 2.7 percent of the adult population—were under some form of correctional supervision last year, which represents an average annual increase of 7.6 percent since 1980. About three-quarters are being supervised in the community on probation or parole, and the others are confined in prison. Additional information about DOJ statistics may be obtained from the BJS Clearinghouse, Box 179, Annapolis Junction, Maryland 20701-1079, 1(800)732-3277. ❖

DOJ Grants for Tribal Governments for Combatting Violence Against Women

On September 8, 1995, Assistant Attorney General Laurie Robinson, Office of Justice Programs, announced that fourteen tribal governments representing nine states will receive grants of between \$53,000 and \$75,000 to aid their efforts in combatting violence against Indian women. These awards, totalling \$1,021,594, are the first under the STOP Violence Against Indian Women grants program authorized under the provisions of the 1994 Crime Bill. They will allow for the training of police officers handling domestic disputes, improving tribal codes and ordinances, developing public education programs, and providing adequate shelters for victims who leave abusive relationships. ❖

Di Gregory Testifies Before House Subcommittee on Crime

On September 28, 1995, Deputy Assistant Attorney General Kevin Di Gregory testified before the House Subcommittee on Crime where he presented the Department's views on the DNA Identification Grants

Improvement Act (H.R. 1241); H.R. 1533, regarding increasing the penalty for escaping from a federal prison; the False Identification Act of 1995 (H.R. 1552); H.R. 2359, concerning the implementation of the death sentence in Federal facilities; and H.R. 2360, regarding prisoner community service projects. If you would like a copy of Mr. Di Gregory's statement, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

DOJ Report on Juvenile Offenders and Victims

On September 7, 1995, a DOJ report was released estimating that if current trends continue, juvenile violent crime arrests will more than double by the year 2010. Attorney General Janet Reno said, "This report is a road map to the next generation of crime unless we should do something now." The estimate is based on juvenile arrest trend data from 1983 through 1992 and a projected 22 percent increase in juvenile population. ❖

Civil Rights Forum

The summer 1995 issue of *Civil Rights Forum* has been distributed to Federal Civil Rights staff; state and local Government officials; and a wide range of community, professional, and public groups and individuals. Articles in this issue address environmental justice, recent court decisions, Title VI and Title IX litigation activities of the Educational Opportunities Section, DOJ's position on damages for unintentional ADA discrimination, and the MOU between the Civil Rights Division and the Office of Justice Programs. Copies can be obtained by contacting Allen Payne, (202)307-2246. ❖

Significant Cases

Antitrust Division

Mitsubishi Paper Mills Ltd. and New Oji Paper Co. Ltd. to Pay \$3.5 Million for Price Fixing Conspiracy

On September 26, 1995, Mitsubishi Paper Mills Ltd. and New Oji Paper Co. Ltd. pled guilty and agreed to pay fines of more than \$3.5 million for their role in a fax paper price fixing conspiracy. ❖ *Lisa Phelan, (202)307-1166*
Sheryl Robinson, (202)307-2133
Reginald Tom, (202)307-6348

Doctors and Hospitals in Connecticut and Missouri Charged in Monopolizing Health Care

On September 13, 1995, doctors and hospitals in Danbury, Connecticut, and St. Joseph, Missouri, were charged with unlawfully attempting to keep out lower-priced, managed health care plans and other competitors. Two separate suits were filed charging that in each instance a monopoly hospital joined with almost every local physician to set higher priced terms and conditions for managed care health plans in its area. ❖

Mark Botti, (202)307-0827
(Connecticut Case: U.S. v. Health Care Partners, Inc.)
Edward Eliasberg, (202)307-0808
(Missouri Case: U.S. v. Health Choice of NW Missouri, Inc.)

Civil Rights Division

Apartment Complex Sued for Refusing to Rent to African Americans

On October 10, 1995, the owners and former managers of the Marsten Apartments were sued for violations of the Federal Fair Housing Act for allegedly telling African Americans that no apartments were available. The owners and managers of the Marsten Apartments are also alleged to have discriminated against families with children. ❖

Timothy J. Moran, (202)514-3510
AUSA Carolyn Bell-Harbin,
Eastern District of Michigan

Bird Sentenced in FACE Case

On September 14, 1995, Frank Lafayette Bird was sentenced to one year imprisonment and was ordered to pay \$820 restitution to a doctor for damage to his car. On June 12, Bird was convicted of one count of the Freedom of Access to Clinic Entrances Act. Bird threw a bottle at Dr. Theodore Herring's vehicle while he was attempting to drive into a health clinic parking lot. ❖

*Kevin Forder, (202)514-4164
AUSA Richard Harris,
Southern District of Texas*

Skinhead Convicted for Assaulting African American

On September 12, 1995, Matthew David Cannon was convicted after being charged with conspiracy to interfere with a federally protected right and interference with a federally protected right. Cannon, accompanied by four others, struck Lloyd Tate in the head with a glass bottle and repeatedly kicked him in the face and body. Three of the four others involved pled guilty to violating Tate's rights to use a park in Des Moines, Iowa, and the fourth pled guilty to conspiring to interfere with Tate's civil rights. ❖

Jessica Ginsburg, (202)514-4464

Law Enforcement Officer Sentenced for Beating Prisoner

On September 5, 1995, Dwayne A. Evans, who pled guilty on April 28, 1993, to beating a handcuffed prisoner in a West Virginia jail, was sentenced to one year and one day in jail and to two years of supervised release with the condition that he not serve in a law enforcement capacity. ❖

*Steven Dettelback, (202)514-5463
AUSA Chuck Miller,
Southern District of West Virginia*

Criminal Division

Guilty Plea for Conspiracy to Distribute Drugs

On September 6, 1995, in the case of Fernando Briseno-Pulido, et al., defendant Abraham Becerra Acesta pled guilty to conspiracy to distribute approximately 46

kilograms of methamphetamine and possession with intent to distribute approximately 45 kilograms of cocaine. The case arose from a Southern District of California OCDETF investigation known as "Broker Border." The lead defendant and two other defendants pled guilty to conspiracy charges in July and August and forfeited their interest in three vehicles. ❖

Patricia Profit, (202)514-0945

Whitaker Sentenced for Mailing Threatening Communications

On September 12, 1995, Vincent Whitaker was convicted of violating two counts of 18 U.S.C. §876 (mailing threatening communications). He sent threatening letters to the President and to two doctors who perform abortions. ❖

*Barry Kowalski, (202)514-4067
Wendy Olson, (202)514-4593
Kevin Forder, (202)514-4164
FAUSA Grant C. Johnson,
Western District of Wisconsin*

Importation of Counterfeit Goods

On September 26, 1995, 10 indictments were returned in the District of New Jersey, the Western District of Washington, and the Eastern District of New York charging 33 Korean nationals in connection with illegally importing and distributing counterfeit leather goods and other expensive designer products. ❖

*Marilyn Mitchell, (202)616-8398
Amy C. Chang, (202)514-6882
AUSA Robert A. Mintz, District of New Jersey*

Health Care Fraud

On September 11, 1995, James H. McManus, transportation director of ABC Home Health Services, Inc. (ABC), pled guilty to conspiring to defraud the Department of Health and Human Services (HHS) by making false statements and submitting fraudulent requests for reimbursement from the HHS Medicare program. ABC, which was based in Georgia with branch offices in 20 other states, provided home health care services. During 1994, ABC received approximately \$440 million in Medicare program reimbursements from HHS. ❖

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

Telemarketing Fraud

On September 18, 1995, John Fulwood, Michael Miller, and Kezia Parmley pled guilty to a one-count information charging them with conspiracy to commit mail fraud in connection with the operation of Edge Investments (Edge), an illegal telemarketing venture based in La Jolla, California. Fulwood, Miller, and Parmley, Edge's chief executive officer, president, and office manager, respectively, defrauded customers of approximately \$1.7 million. Edge sold computer software that purportedly took the risk out of gambling on horse racing. As part of their plea agreement, the defendants, all Australian citizens, will be deported following their sentences. ❖

James A. Candelmo, (202)514-0880

Financial Institution Fraud

On September 13, 1995, Edward C. Madden, Jr., a real estate developer, pled guilty to a three-count indictment charging him with conspiracy to commit bank fraud and bank bribery, and bank fraud, in connection with approximately \$5 million in loans obtained from Lawrence Savings Bank in Massachusetts. Madden is the sixth person to be convicted in a continuing investigation of fraud at Lawrence. ❖

Paul M. Glickman, (617)565-8231

Anita S. Lichtblau, (617)565-8231

Extraditions—Lobue v. Christopher

On September 29, 1995, the U.S. Court of Appeals stayed the order of the District Court in *Lobue v. Christopher* that enjoined surrenders of fugitives for extradition to other countries. On September 15, the District Court certified as a class all persons who were or would be subject to extradition, enjoined the surrender of any class member, and directed the U.S. to inform every district court, where an extradition was pending of its order. The U.S. appealed the order and applied for an emergency stay

of the class-wide injunction pending resolution of its appeal of the Court's August 31 decision declaring the Federal extradition statute unconstitutional. ❖

Sara B. Criscitelli, (202)514-0040.

Environment and Natural Resources Division

Plum Borough Agrees to Cease Raw Sewage Discharges

On September 29, 1995, Plum Borough, a suburb of Pittsburgh, Pennsylvania, agreed to settle charges of Clean Water Act violations. Plum and its municipal sewer authority will spend \$2 million to upgrade its sewer system, including building a two million gallon retention tank to house excess raw sewage until the treatment plant has the capacity to treat the sewage, upgrading the sewer conveying system, and improving plant maintenance. Under the agreement, Plum will also pay a \$180,000 civil penalty. ❖

Sarah Himmelhoch, (202)514-0180

AUSA Michael Coleville,

Western District of Pennsylvania

Proposed Consent Decree at Eagle Mine Superfund Site

On September 14, 1995, the Environmental Protection Agency; Viacom International, Inc.; and Colorado Department of Public Health and Environment entered into a Consent Decree for a settlement under which Viacom will perform cleanup duties to improve the water quality. Additionally, Viacom will pay the United States over \$3.3 million in reimbursement for past response costs. ❖

David Dain, (202)514-3644

AUSA Linda Surbaugh, District of Colorado

Ethics and Professional Responsibility

Abuse of Position

OPR received allegations that a prosecutor had used his official position to obtain law enforcement records for improper purposes. An investigation disclosed that the prosecutor had taken steps to obtain information on an individual who had begun dating his girl friend. The prosecutor had law enforcement officials check the individual's

vehicle registration and obtain a police report on a drunk driving charge against the individual. The prosecutor gave the INS a copy of a divorce petition to further an INS inquiry into the individual. The prosecutor also received information from INS on the progress of its investigation. It was concluded that the prosecutor had abused his position. ❖

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.

Experienced Attorney Drug Enforcement Administration GS-11 to GS-14

The DOJ Office of Attorney Personnel Management is seeking two experienced attorneys to work in the Civil Litigation (CCL) and Civil Administrative (CCA) Sections of the Office of Chief Counsel, Drug Enforcement Administration (DEA), at DEA Headquarters in Arlington, Virginia. Positions are for future vacancies and are subject to budgetary approval. Attorneys hired for both positions will primarily be responsible for representing DEA before the Merit Systems Protection Board (MSPB) and the Equal Employment Opportunity Commission (EEOC). The CCL attorney will also be responsible for providing legal counsel in civil and environmental matters, litigation support in Title VII actions, Federal Tort Claims Act, Bivens, and other civil matters in the Federal Courts involving DEA and its employees. The CCA attorney will also be responsible for providing legal counsel in acquisition and Economy Act reviews, contract litigation, debt collection, and ethics, and providing counsel on issues related to the administra-

tive operation of a Federal agency. Excellent oral and written advocacy and legal research skills are required, as well as strong academic credentials; prior litigation experience and/or experience in Federal personnel law are highly desirable.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (in any jurisdiction), and have at least two years of post-J.D. legal experience. Applicants must submit a detailed resume and a legal writing sample, by close of business on November 12, 1995, to:

Deputy Chief Counsel
Drug Enforcement Administration
700 Army Navy Drive
Arlington, VA 22202

No telephone calls please. Current salary and years of legal experience will determine the appropriate salary level from GS-11 (\$36,174 - \$47,025) to GS-14 (\$60,925 - \$79,200).

Attorneys (Two Judicial Law Clerk Positions) Executive Office for Immigration Review

The DOJ Executive Office for Immigration Review, is seeking applications from attorneys for two judicial law clerk (to Administrative Law Judge) positions for the Office of the Chief Administrative Hearing Officer in Falls Church, Virginia. These positions are for future vacancies and are temporary appointments for a period of 14 to 24 months. Responsibilities include preparing legal memoranda, performing legal research, and drafting proposed orders and decisions.

Applicants must have at least one year of post-J.D. experience and be an active member of the bar in good standing (any jurisdiction). Applicants should have excellent research and writing skills. A thorough knowledge of immigration, labor, and/or Title VII law is desirable. Applicants may submit a resume, writing sample, and most recent performance appraisal to the address below. SF-171s (Application for Federal Employment) will still be accepted as well.

U.S. Department of Justice
Executive Office for Immigration Review
Office of the Associate Director
Attn: Judy Berryhill
5107 Leesburg Pike, Suite 2300
Falls Church, VA 22041

No telephone calls please. This announcement is open until filled, but no later than December 1, 1995. Current salary and years of experience will determine the appropriate grade and salary levels. The possible range is GS-11 (\$36,174 to 47,025) to GS-12 (\$43,356 to 56,362).

Immigration and Naturalization Service Experienced Attorneys GS-11 to GS-14

The DOJ Office of Attorney Personnel Management is seeking experienced attorneys for General Attorney positions with the Immigration and Naturalization Service

(INS) located in Miami, New York, Los Angeles, San Francisco, and El Centro (California).

Responsibilities include representing the INS in exclusion, deportation, and rescission proceedings before Immigration Judges, representing the INS before Administrative Law Judges in employer sanctions and civil document fraud cases, providing legal advice to INS's operating units, and providing litigation support to U.S. Attorneys' offices on immigration-related matters.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year of post-J.D. experience. Applicants must submit a resume, a law school transcript (if the J.D. degree was received within the past five years), a writing sample, and an indication of preferred location(s) to:

Robert S. Finkelstein
Associate General Counsel
Chief, Management Division
Office of the General Counsel
U.S. Immigration and Naturalization Service
425 I Street, N.W., Room 6100
Washington, DC 20536

Positions are at the GS-11 through GS-14 level with a salary range between \$35,578 and \$77,893. (Salary range is slightly higher in some cities.) The positions are open until filled. No telephone calls please.

Federal Bureau of Prisons Commercial Law Branch GS-11 to GS-13 Experienced Attorney

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

DOJ's Office of Attorney Personnel Management is recruiting for one experienced attorney for the Lands Section of the Commercial Law Branch, Federal Bureau of Prisons (BOP). This Section handles a variety of land and environmental related transactions and cases, including acquisitions of property involving millions of dollars.

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

have at least one year of post-J.D. experience. Applicants should have a strong interest in real property and environmental issues, and an exceptional academic background. Litigation or comparable experience, or direct experience in land acquisition, National Environmental Policy Act (NEPA) compliance, or related issues are highly desirable. No telephone calls please. Applicants must submit a current OF-612 (Optional Application for Federal Employment) or resume and writing sample to:

U.S. Department of Justice
Federal Bureau of Prisons
Legal Administrative Officer
320 First Street, NW
Washington, DC 20534

A current SF-171 (Application for Federal Employment) will also be accepted. Applications must be postmarked by November 15, 1995. Current salary and years of experience will determine appropriate grade and salary level in the GS-11 (\$36,174 to \$47,025) to GS-13 (\$51,557 to \$67,021) range. ❖

**Defenses in Cases Alleging Employment Discrimination
on the Basis of Disability**

Employees of Federal agencies may file complaints pursuant to Sections 501 and 504 of the Rehabilitation Act of 1973, 29 U.S.C. 791 and 794, alleging that they have been discriminated against in their employment on the basis of a disability. In 1992, Congress amended the Rehabilitation Act to make the employment standards of Title I of the Americans with Disabilities Act (ADA), 42 U.S.C. 12111-12117, applicable to discrimination claims brought under Sections 501 and 504. See Pub. L. No. 102-569, codified at 29 U.S.C. 791(g), 794(d). The United States Attorneys' offices and the Civil Division defend Federal agencies charged with discrimination on the basis of disability. The Civil Rights Division is authorized to file actions alleging that public and private entities have violated provisions of the ADA. Accordingly, the ADA sometimes places the Government on both sides of an issue. Over the last few years, there have been a few instances in which the Government advanced positions in cases filed against Federal agencies that were later considered to have been incorrect.

It is important for the Government to avoid taking contradictory positions in court. Whenever a complaint alleges that a Federal agency has violated the Rehabilitation Act, the attorneys defending the agency should refer to the ADA and to the regulations and guidelines the EEOC has promulgated to enforce the provisions of the ADA. The regulations are published at 29 C.F.R. 1630, and the guidelines are published as an Appendix to the regulations. The regulations and guidelines cover the full range of employment issues, including pre-employment inquiries about disabilities, definitions of disability and an individual with a disability, the duty of reasonable accommodation, and appropriate remedies.

The ADA, regulations, and guidelines provide important guidance on the positions the Government may assert as a defendant, and may even suggest that a defense may not be permissible and that settlement should be entertained. They should always be considered when determining the proper scope of the Government's defensive posture.

For further information, please contact Brian Kennedy, (202)514-3357 (Civil Division), or Mark Gross, (202)514-2172 (Civil Rights Division).

Legal Education Institute
 1000 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
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N O M I N E E	Name	Title
	Office, Agency, or Department	Phone Number

Q U E S T I O N N A I R E	<p>1. Has the nominee applied for this course in the past and not been selected?</p> <p style="text-align: center;">Yes No (please circle) If yes, how many times?</p>
	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