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COMMENDATIONS

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

Riley J. Atkins (District of Oregon), by Frank W. Hunger, Assistant Attorney General, Civil Division, Department of Justice, for obtaining a favorable result on behalf of the United States in a fraud case in which a large drug store chain overcharged the Medicaid program over $500,000. (A detailed discussion of this case appears in Vol. 41, No. 8, of the U.S. Attorneys' Bulletin, at p. 262.)

Rachel C. Ballow (Virginia, Eastern District), by Irwin Ansher, Attorney-Advisor, United States Mint, Department of the Treasury, Washington, D.C., for her outstanding cooperative efforts in bringing an employment discrimination case to a successful conclusion.

J. David Bennett (Louisiana, Eastern District), by Anthony E. Daniels, Assistant Director, FBI Academy, Quantico, Virginia, for his excellent presentation on practical approaches to financial institution fraud investigations at a major training seminar for criminal investigators and bank examiners.

Diane Berkowitz (Indiana, Northern District), by David R. B. Collins, President, Airlines Reporting Corporation (ARC), Arlington, Virginia, for her successful prosecution of a complex airline case involving the fraudulent issuance of stolen ARC traffic documents.

Michael Bidwell (District of Arizona), by Gary A. Husk, Chief Counsel, Drug Enforcement Section, Office of the Attorney General, Phoenix, for his valuable assistance in presenting a course at the Navajo Indian Reservation on prosecuting child sexual abuse cases, and for his commitment to the successful prosecution of crimes perpetrated on Navajo children.

Alan Burrow (Florida, Northern District), was presented a Distinguished Service Certificate in recognition of his excellent presentation on Jamaican gang activity in rural America at the 2nd Annual International Gang Information Sharing Conference held recently in Baltimore, Maryland.

Mike Child (District of Colorado), by Colonel Ronald J. Rakowsky, Staff Judge Advocate, Headquarters Air Reserve Personnel Center, Department of the Air Force, Denver, for his prompt and efficient action in responding to a request for assistance in an investigation of a reservist for alleged misconduct in the civilian community.

Robert D. Clark (District of Colorado), by Harold J. Hughes, Chief Field Counsel, U.S. Postal Service, Salt Lake City, for his excellent representation, courtesy and cooperation in connection with a court-ordered settlement conference.

John Earnest and ***Katherine Corley*** (Alabama, Northern District), received Certificates of Appreciation from the Alabama Department of Public Safety, for their key role in the year-long investigation of one of the largest cocaine and marijuana distribution organizations in the Northern District, resulting in the indictment of 22 individuals, guilty pleas from all defendants, and a $1.5 million forfeiture.

Roger W. Frydrychowski (Virginia, Eastern District), by Floyd I. Clarke, Acting Director, FBI, Washington, D.C., for his outstanding assistance and successful resolution of a major financial institution fraud case.

Jennifer Granholm and ***Stephen Murphy*** (Michigan, Eastern District), by Michael E. Yott, Special Agent, Bureau of Alcohol, Tobacco and Firearms, Detroit, for their extraordinary efforts in successfully prosecuting a recent case involving fourteen defendants, over fifteen kilos of cocaine, the seizure of over $150,000 in assets, seven vehicles, and seventeen guns.

William Hahesy (California, Eastern District), by Robert E. Richardson, Regional Inspector General for Investigations, Department of Health and Human Services, San Francisco, for his outstanding success in the prosecution of an individual who submitted $895,000 in false claims to the Medicare program.

Rebecca Hidalgo and ***Rachel Ballow*** (Virginia, Eastern District), by Dennis F. Hoffman, Chief Counsel, Drug Enforcement Administration, Washington, D.C., for their professionalism and legal skill in bringing a discrimination case brought by a DEA employee to a successful conclusion.

Harry L. Hobgood (North Carolina, Middle District), by I. John Vasquez, Supervisory Special Agent, FBI, Charlotte, for his successful prosecution of an $8.8 million loan fraud case involving two separate trials and resulting in guilty verdicts for both after short jury deliberation.

Greg Hough (District of Kansas), by Robert B. Davenport, Director, Kansas Bureau of Investigation, Topeka, for his outstanding prosecutive skill in a marijuana case, and for his special consideration of a child witness involved in the trial.

Arlene Joplin and ***Susan Stewart Dickerson*** (Oklahoma, Western District), by Bob A. Ricks, Special Agent in Charge, FBI, Oklahoma City, for successfully prosecuting an Oklahoma City adoption attorney who defrauded sixteen prospective parents out of more than $194,000 by fabricating stories about the availability of an infant, then claiming that the birth mother had changed her mind. In fact, no infants existed.

Leslie M. Kaestner and ***Kim Taylor*** (Oklahoma, Western District), by William S. Sessions, former Director, FBI, Washington, D.C., for their outstanding professional and legal skill in the successful prosecution of a Colombian/South American drug trafficking organization.

George M. Kelley, III and ***James A. Metcalfe*** (Virginia, Eastern District), by Frank J. Frysiek, Special Agent in Charge, U.S. Customs Service, Sterling, Virginia, for their outstanding assistance in obtaining convictions of three Chinese Nationals for illegally shipping restricted U.S. military technology to the Peoples Republic of China.

E. James King, Michael Buckley, Amy Hartman, Wayne Pratt, and ***John Roth*** (Michigan, Eastern District), by Lawrence M. Gallina, Acting Special Agent in Charge, Drug Enforcement Administration, Detroit, for serving as guest instructors at an In-Service Legal Update Class, and for devoting their valuable time and effort to a study of the U.S. narcotics laws.

Carol C. Lam (California, Southern District), by Floyd I. Clarke, Acting Director, FBI, Washington, D.C., for her professionalism and skillful litigation of a health-care fraud matter, resulting in guilty pleas and fines in the amount of $111,000.00.

Stephen Lapham (California, Eastern District), by Mark Logan, Acting Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms, San Francisco, for his successful jury trial conviction of a felon in possession of a firearm. (The defendant is a Triggerlock violator with five previous felony convictions, including three violent crimes (two manslaughters and one robbery).)

K. Roxanne McKee (Texas, Western District), by Colonel Timothy E. Naccarato, Chief, Litigation Division, Judge Advocate General's office, Department of the Army, Arlington, Virginia, for her outstanding service rendered to the Department of the Army and the Texas Adjutant General's office in a recent Title VII discrimination case, and for obtaining a ruling in the Government's favor.

Jan Mann, Fred Harper, Gaven Kammer and ***Richard Westling*** (Louisiana, Eastern District), by Richard S. Swensen, Special Agent in Charge, FBI, New Orleans, for their valuable contribution to the success of the 8th Annual Moot Court Training Program for the New Orleans Division.

N. George Metcalf (Virginia, Eastern District), by G. Thorn McDaniel, III, Criminal Investigation Division, Internal Revenue Service, Richmond, for his professionalism and legal skill in two separate trials involving drug organizations, and for the successful results in both cases.

Michael Mosman and ***Special Assistant United States Attorney Joshua Marquis,*** (District of Oregon), by John E. Lowe, Regional Forester, Forest Service, Department of Agriculture, Portland, for successfully prosecuting a fraud case involving false billings submitted to the Forest Service.

Scott Park (California, Eastern District), by Frank A. Renzi, Special Agent in Charge, U.S. Secret Service, Sacramento, for his successful prosecution of a 17-year old who devised a scheme to access Social Security records, defraud a bank of approximately $80,000, invest the proceeds in fraudulent accounts, and establish money market accounts, mutual funds, and stock purchases.

John W. Raley, Jr., United States Attorney, ***Sheldon J. Sperling*** and ***Paul G. Hess***, Assistant United States Attorneys (Oklahoma, Eastern District), by William S. Sessions, former Director, FBI, Washington, D.C., for their successful efforts in obtaining the convictions of several individuals for illegal drug-related crimes, including murder, for coordinating the preparation of over 100 witnesses for trial, managing numerous witnesses and exhibits, and undertaking the difficult task of seeking and presenting the death penalty.

F. Michael Ringer (Oklahoma, Western District), by James R. Allison, Interim United States Attorney, District of Colorado, Denver, for his prompt action in responding to a request for assistance in a case of a sensitive nature, and for his professionalism and legal skill in bringing the matter to a successful conclusion.

Gregory Sasse (Ohio, Northern District), by Neil S. Cartusciello, Chief, Environmental Crimes Section, Environment and Natural Resources Division, Department of Justice, for his outstanding success in a recent environmental crime case, as well as several other cases in the past. (Mr. Sasse's record of convictions places the Northern District of Ohio among the nation's leaders in environmental prosecutions.)

Margaret A. Smith (Virginia, Eastern District), by Daniel J. Metcalfe, Co-Director, Office of Information and Privacy, Department of Justice, for her valuable assistance and support of the Department's Freedom of Information Act training activities, and for her contributions to the success of the program.

Stephen G. Sozio (Ohio, Northern District), by Jack Chivatero, District Director, Internal Revenue Service, Cleveland, for his outstanding success in obtaining a settlement in the largest civil forfeiture action in the Northern District of Ohio involving an alleged drug dealer who relinquished his claim to approximately $1.5 million dollars of personal and real property.

Richard Starrett (Mississippi, Southern District), by John J. Hughes, Chief, Middle Atlantic Office, Antitrust Division, Department of Justice, Philadelphia, for his professionalism, dedication and valuable assistance in a trial and subsequent retrial of a complicated price-fixing case.

Diane Sullivan (District of Columbia), by Larry Lee Gregg, General Counsel, U.S. Marshals Service, Arlington, Virginia, for her excellent representation and success in obtaining a ruling in favor of the Government in a Federal Tort Claims Act lawsuit involving a Deputy U.S. Marshal.

A. Richard Tolles and ***Special Assistant United States Attorney Samuel W. Bettwy*** (California, Southern District), by James B. Turnage, Jr., District Director, Immigration and Naturalization Service, San Diego, for their professionalism and excellent negotiating skill in the favorable settlement of several cases involving allegations of mistreatment of detained aliens in El Centro.

Aimee B. Wolfson (New York, Southern District), by Conrad K. Harper, The Legal Adviser, Department of State, Washington, D.C., for her valuable assistance and skilled advocacy in obtaining dismissal of a complaint against the United States brought by former citizens of South Vietnam seeking control of their former country's assets held in the United States.

Samuel Wong (California, Eastern District), by Special Agent Charles A. Stowell, Drug Enforcement Administration (DEA), Sacramento, for his participation as an instructor at the DEA Aerial Observation School for students from various law enforcement agencies throughout the western United States.

Deborah Y. Yeoh and ***Diana Hassel*** (New York, Southern District), by R. M. Reish, Warden, Federal Correctional Institution, Federal Bureau of Prisons, Otisville, New York, for their valuable assistance and cooperative efforts in bringing a recent sensitive case to a successful conclusion, and for their assistance on countless other occasions.

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SPECIAL COMMENDATION FOR THE SOUTHERN DISTRICT OF ALABAMA

William R. Sawyer, Assistant United States Attorney for the Southern District of Alabama, was commended by Randall R. Pope, Superintendent, Great Smoky Mountains National Park, National Park Service, Department of the Interior, Gatlinburg, Tennessee, for his outstanding professional skill and success in a wrongful death action suit against the United States. The incident occurred in the Great Smoky National Park where a black locust tree fell into a roadway striking an automobile killing the driver and injuring the passenger. The driver's executrix and the passenger brought suit claiming that the United States had negligently maintained the Park by failing to detect and remove the black locust tree. The United States contended that suit was barred by the "discretionary function" exception to the Federal Tort Claims Act. The District Court entered judgment for $520,000 against the United States which was reversed by the Eleventh Circuit Court of Appeals. The Eleventh Circuit held that the hazardous tree removal program of the Park was a discretionary function and that the District Court had impermissibly "second guessed" the United States in the exercise of its discretion. Mr. Pope stated that the Eleventh Circuit opinion is a very important one for Great Smoky National Park and other units in the national park system, and expressed his indebtedness to Mr. Sawyer and the United States Attorney's office "for their unflagging support during this appellate litigation."

[NOTE: The Civil Division Appellate Staff prepared a detailed summary of this case, which was reprinted in the "Case Notes" section of the United States Attorneys' Bulletin, Vol. 41, No. 7, dated July 15, 1993, at p. 243.]

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SPECIAL COMMENDATION FOR THE EASTERN DISTRICT OF CALIFORNIA

Kathleen Servatius, Assistant United States Attorney for the Eastern District of California, was commended by Mark Logan, Acting Special Agent in Charge, Bureau of Alcohol, Tobacco and Firearms (BATF), San Francisco, for her professionalism and legal skill in a complicated -- and confusing -- jury trial. In a search of the premises of Roland Noack of Calaveras Co. in 1990, officers found evidence indicating that the property had been the site of a methamphetamine laboratory. They also found Noack in possession of semi-automatic firearms with parts to convert those semi-automatics into machineguns, and complete parts kits used to assemble firearms silencers. BATF was requested to take possession of and examine the firearms evidence and identify any possible federal violations pertaining to the firearms, and/or the firearms conversion parts, and silencer kits.

In the spring of 1991, Noack was indicted on federal narcotics violations, but no firearms violations. At the time of his arrest on those charges, BATF prepared and executed a search warrant on his premises for additional evidence pertaining to possible firearms violations. In the fall of 1991, a jury voted ten to two in favor of conviction of Noack on the narcotics violations. The decision was then made to retry Noack, with the filing of a superseding indictment charging the original narcotics violations, and the federal firearms violations. In the summer of 1992, Noack entered a plea of guilty to one of the federal firearms charges, then subsequently withdrew his plea and again demanded a jury trial.

In November, 1992, Kathleen Servatius commenced jury trial. Because the firearms evidence consisted mainly of conversion parts and/or conversion kits and/or silencer kits (and literature for the assembly-completion of these items), without any actual completed and functional machineguns or silencers, presentation of the firearms evidence was particularly difficult, even for the most experienced prosecutor with personal knowledge of firearms. But Ms. Servatius prevailed. The jury again voted ten to two in favor of conviction on the narcotics violations, but convicted on all of the firearms counts.

* * * * *

SPECIAL COMMENDATION FOR THE EASTERN DISTRICT OF VIRGINIA

W. Nell Hammerstrom, Jr. and ***David G. Barger*** (Virginia, Eastern District), by Pete S. Nylander, Senior Resident Agent, Division of Law Enforcement, Fish and Wildlife Service, Department of the Interior, Wilsonville, Oregon, for their significant prosecution and conviction of a former employee of the U.S. Fish and Wildlife Service, Office of Scientific Authority, and the Smithsonian Institution, who illegally imported into the United States and failed to declare the hides and horns of a Punjab Urial and a Chinkara Gazelle.

Richard N. Mitchell began his employment with the Fish and Wildlife Service in 1979 as a zoologist in the Office of Endangered Species. In 1982 he transferred to the Office of Scientific Authority where he was responsible for implementing federal law involving international wildlife import and export permits, including cases involving the country of Pakistan. An investigation was initiated in 1988 when it was alleged that Mr. Mitchell set up a nonprofit organization known as the American Ecological Union (AEU) and solicited contributions from big game hunters who had applied for import permits from the Fish and Wildlife Service. In exchange for the funding, Mitchell provided the donors with the opportunity to hunt in previously unopened areas of Asia, and in addition, offered his services as a hunting guide in Pakistan. During this period, Mr. Mitchell failed to disclose his annual income from AEU or for his guiding services. On May 25, 1993, a jury in the Eastern District of Virginia, returned a guilty verdict, and on August 13, 1993, Mr. Mitchell was sentenced to two years probation and a fine of $1,000.00. Mr. Nylander stated that this decision is significant to the Fish and Wildlife Service, not only because of the major threat to our natural resources, but also because of its finding on foreign law violation(s) as a predicate for prosecution under the Lacey Act, Title 16, United States Code, Section 3372(a)(2)(A).

* * * * *

HONORS AND AWARDS

Northern District Of Ohio

James L. Bickett, Assistant United States Attorney for the Northern District of Ohio, was presented the Inspector General's Integrity Award by Michael T. Dyer, Regional Inspector General for Investigations, Department of Health and Human Services, Chicago. This award is the highest recognition given to persons or agencies by the Office of Inspector General in acknowledgement of their outstanding efforts in program integrity. Mr. Bickett has been a strong advocate in combatting fraud in the Social Security and health care programs. His assistance, guidance, and legal skills have led to the successful recovery of Social Security funds and the awarding of monetary penalties in several Social Security Administration program cases. In addition, he has streamlined a method to pursue False Claims Act affirmative litigation and his approach has saved numerous hours of investigative activity and reports. In both Social Security and health care program cases, Mr. Bickett has been a continuous supporter of the Office of Investigations and the reduction of fraud, waste and abuse against the Medicare, Medicaid and Social Security Administration programs.

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Western District Of Pennsylvania

Margaret Picking, Assistant United States Attorney for the Western District of Virginia, was presented a Special Award of Honor by the International Narcotic Enforcement Officers Association, Inc., Albany, New York, at the opening session of the International Drug Conference in Reno, Nevada. Ms. Picking was honored for her outstanding service and dedication to her duties in the area of law enforcement.

* * * * *

Eastern District Of Louisiana

Fred P. Harper, Jr. and ***Gaven T. Kammer, Assistant United States Attorneys for the Eastern District of Louisiana,*** were presented the Chief Postal Inspector's Award by K.J. Hunter, Chief Postal Inspector, U.S. Postal Service, Washington, D.C., for their professionalism, enthusiasm, and knowledge of the law in connection with the investigation and prosecution of an individual for the tragic homicide/robbery of the Paulina, Louisiana Postmaster in April, 1992. In March, 1993, the Federal District Court jury returned a verdict of guilty of murder in the first degree after forty-five minutes of deliberation.

* * * * *

Northern District Of California

Robert D. Ward, Assistant United States Attorney for the Northern District of California, received a plaque from Cary H. Copeland, Director and Chief Counsel, Executive Office of Asset Forfeiture, Office of the Deputy Attorney General, for his contributions to the Department's forfeiture program. Mr. Copeland stated that, in addition to being one of our foremost asset forfeiture practitioners, Mr. Ward has contributed substantially to the national forfeiture program through his participation as a lecturer at forfeiture training conferences. His substantial criminal prosecution experience and exceptional asset forfeiture skills combine to make him an irreplaceable treasure.

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District Of Utah

Gordon Campbell, Assistant United States Attorney for the District of Utah, has been inducted into the American College of Trial Lawyers. A ceremony is scheduled for September 17-22, 1993, in Washington, D.C. with President Clinton, Attorney General Reno, and Justice Sandra Day O'Connor in attendance. Mr. Campbell has served in the United States Attorney's office for the District of Utah for the past seven years. According to the American College of Trial Lawyers roster, Mr. Campbell is the only Department of Justice attorney to receive this prestigious honor.

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DEPARTMENT OF JUSTICE LEADERSHIP

Federal Bureau Of Investigation

On September 1, 1993, in an Oath of Office ceremony attended by President Clinton and Attorney General Janet Reno, ***Louis Freeh*** was sworn in as Director of the Federal Bureau of Investigation. Director Freeh served as an FBI agent from 1975 to 1981 in the New York City Field Office and at FBI Headquarters in Washington, D.C. In 1981, he joined the United States Attorney's office for the Southern District of New York as an Assistant United States Attorney. Subsequently, he held positions there as Chief of the Organized Crime Unit, Deputy United States Attorney, and Associate United States Attorney. In July, 1991, Director Freeh was appointed to the Federal bench.

United States Attorneys

A current list of United States Attorneys as of September 3, 1993 appears at p. 330 of this Bulletin. For further information, please call the Executive Office for United States Attorneys at (202) 514-2121.

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ATTORNEY GENERAL HIGHLIGHTS

Attorney General Reno Addresses The National Black Prosecutors Association

The following is an excerpt from a speech delivered by Attorney General Janet Reno, before the National Black Prosecutors Association on August 12, 1993, in Washington, D.C.:

. . . The first thing is to look at charging and sentencing. There has been a tendency in the past for the U.S. attorneys and the federal prosecutors to look at their charging decisions, and each individual local prosecutor to look at theirs. And nobody should look at the whole as far as the nation is concerned. The United States Attorney in the Southern District of Florida has a certain threshold for cocaine that is far different and far higher than other U.S. attorneys around the country. What impact does that have on the federal prison system? We have to start thinking about it and looking at it and understanding the implications.

We have to work with the National Association of Attorneys General and the National District Attorneys Association, to come up with a principal theory of what should be charged federally and what should be charged in state court; not based on headline grabbing, not based on somebody wanting to get the credit, but what is best for the community and best for the case. . . . I want to focus on and will be working with the U.S. attorneys and the advisory committee. And I want to develop a team with the United States attorneys. Some people suggest, "Well, you have to take more control." And other people suggest that the U.S. attorneys do their own thing. I don't ascribe to either review. I ascribe to us building a team where we participate together, discuss together, and try to develop and evolve a sensible policy. But it is a policy that is very clear in terms of the agreements that I have a sense of from the U.S. Attorneys Advisory Committee.

We want to make sure that one of our first objectives is to make sure that innocent people do not get prosecuted. And I think prosecutors around this nation have to rededicate themselves to that effort. It happens. It happened in the 15 years that I was State Attorney. I had a man write me from prison. He had an alibi. His lawyer would not listen to him. We got him convicted in a trial by jury, but we started investigating the alibi. We found it was true, got him out of jail. Prosecutors around this nation have to rededicate themselves to making sure we do everything humanly possible to protect the innocent person. Secondly, we have to proceed and prosecute based on principles of due process and fair play. The charges have to fit the crime, and fit the evidence, and fit what is just.

We have to review the whole process, work with the Sentencing Guidelines Commission, work with Congress, to make sure that we do not have any type of disparate treatment, any type of disparate treatment based on race, ethnic background or any other arbitrary feature in the sentencing policy. And we are currently engaged in that. Phil Heymann, the Deputy Attorney General, is currently leading a project to review the sentencing patterns in the Federal Prison System to find out who is there, to find out what percent are first offenders, what percent are non-violent, what percent were not aggressors, or the chief and principal architects of the crime they committed, what percent are aliens, what percent are there probably because of a substance abuse problem, what we can do in terms of structure to recommend to Congress a sentencing pattern that makes sense.

> Again, we want to involve prosecutors around the nation. But I will tell you, one of the most frustrating things for me is, to come from a state where the average sentence being served in state prison is only 20 to 30 percent of the sentence and to see dangerous offenders getting out of prison early, while others are there on minimum mandatory sentences that are serving longer sentences. It disturbs me when I see violent criminals around this nation getting out because the states do not have sufficient prison capacity . . . We have to develop a partnership between the state and federal systems so that we understand the priorities in this nation. And I think the priorities are clear. The American people want the really dangerous, the recidivists, the three-time armed robber, put away and kept away for the rest of his crime-producing life. . . .
>
> In three or four years, we are going to have a shortage of prison cells. And even if we build enough prison cells, we are going to have a shortage of operating expenses necessary to house people for the length of time the judges are sentencing them. We have to have truth in sentencing. When we sentence somebody, we have to mean what we say. And we have to be able to carry it out. To do that, we may have to construct more prisons. But at the same time, we have to understand that we can manage our prison cells, both state and federally, far better, I think, than we have in the past, if we understand that we have to approach this from the point of view of what is right, and not what is politically popular in the headlines.

A complete transcript of this and other speeches by the Attorney General are available by calling the United States Attorneys' Bulletin staff, at (202) 514-4633.

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Statement Of The Attorney General Concerning John Demjanjuk

On September 1, 1993, Attorney General Janet Reno issued the following statement concerning the Sixth Circuit order concerning the accused Nazi death camp guard, John Demjanjuk:

> Yesterday, the Sixth Circuit denied our emergency stay application and request for a rehearing by the full, 14-member court of a three-judge order allowing John Demjanjuk's return to the United States. As you are aware, the goverment's position is that John Demjanjuk was properly denaturalized and ordered deported, based upon judical determinations that he served in Nazi death camps in Poland and intentionally misrepresented that past in order to become a naturalized citizen of the United States.
>
> The Court of Appeals is presently considering Demjanjuk's challenge to the government's handling of his extradition to Israel. Although we welcome resolution of this remaining issue, in our view, it does not require his physical presence here in this country. In ay event, the court order 'merely directs that Demjanjuk be permitted to be present in the United States during the pendency of this reopened proceeding. All parties will be given an opportunity to address issues related to his future status at that time.'
>
> In light of the Sixth Circuit's order directing Demjanjuk's return, our only avenue remaining to prevent his entering the United States would be to seek a stay from the United States Supreme Court. The Solicitor General, Drew Days, has notified me that he has decided, after thorough consideration of the matter, against applying for an emergency stay from the Supreme Court. I have reviewed the matter with Mr. Days, and based on the law and all the circumstances of the case, I agree with his decision.

We will continue to do everything possible to uphold the court orders denaturalizing and deporting Mr. Demjanjuk. Since this matter is pending in the Sixth Circuit, and will be argued, further comment would be inappropriate at this time.

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National Drug Intelligence Center

On August 10, 1993, Attorney General Janet Reno dedicated the National Drug Intelligence Center in Johnstown, Pennsylvania. The Center not only analyzes drug trafficking information, but is the first to take information from other agencies and identify trends. Rows of computer terminals allow analysts to collect information obtained by a federal agency and compare the information with that collected by another agency. Evidence from the U.S. Customs Service, the Immigration and Naturalization Service, and fifteen other offices will be reviewed at the Center as well. The technology used to collect the information is the same as that used by the Department of Defense in setting up battle plans and tracking foreign troops.

The Center employs 130 people, and is located in a former turn-of-the-century department store building which was converted into federal offices.

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DEPARTMENT OF JUSTICE HIGHLIGHTS

Anti-Crime Initiative

On August 11, 1993, President Clinton announced a number of initiatives to prevent crime and reduce gun violence. A copy of the White House press release is attached at the Appendix of this Bulletin as Exhibit A.

In his statement at a ceremony in the White House Rose Garden, the President stated that the plan will put police on the street and criminals in jail. It expands the federal death penalty to let criminals know that if they are guilty, they will be punished. It lets law abiding citizens know that we are working to give them the safety they deserve. The President further stated that the crime bill that will be introduced in September will include $3.4 billion to fund up to 50,000 new police officers to walk the beat. It will also create a police corps to give young people money for college, train them in community policing, and ask them to return to their communities to serve as police officers in return for their education. This will add to the numerous community policing initiatives already undertaken. Other initiatives announced by the President are:

- Keep handguns out of the hands of criminals by passing the Brady bill, which will require a five-day waiting period before purchasing a handgun, and taking other measures on assault weapons that will begin to end the arms race in our streets;

- Provide community boot camps, which give young people discipline, training, and a better chance to avoid a life of crime, and provide criminal addicts with drug treatment;

- Pass a crime bill that increases penalties for gun offenses, reforms habeas corpus procedures to raise counsel standards and limit appeals, and imposes federal death penalties for killing a federal law enforcement officer and other heinous crimes.

Gun Dealer Licensing

On August 11, 1993, President Clinton issued a directive to the Secretary of the Treasury concerning gun dealer licensing. A copy is attached at the Appendix of this Bulletin as Exhibit B.

The President stated that a major problem facing the Nation today is the ease with which criminals, the mentally deranged, and even children can acquire firearms. The gruesome consequences of this ready availability of guns is found in the senseless violence occurring throughout the country with numbing regularity. While there is not one solution to the plague of gun-related violence, there is more than sufficient evidence indicating that a major part of the problem involves the present system of gun dealer licensing, which encourages a flourishing criminal market in guns.

Since all new firearms used in crime have at some point passed through the legitimate distribution system, federal firearms licenses represent the first line of defense in our efforts to keep guns out of the hands of criminals. The President directed the Department of the Treasury and the Bureau of Alcohol, Tobacco and Firearms (ATF) to take whatever steps are necessary, to the extent permitted by law, to ensure compliance with represent licensing requirements, such as:

- Improving the thoroughness and effectiveness of background checks in screening dealer license applicants;

- Revising the application process to require the applicant to supply all information relevant to establishing qualification for a license, and to require more reliable forms of identification of the applicant, such as fingerprinting, to assist in identifying an applicant's criminal or other disqualifying history;

- Making the "premises" requirement of the statute more meaningful by increasing field checks and the use of other procedures to verify compliance;

- Increasing the scrutiny of licensees' multiple handgun sales reports and providing automated access to multiple sales report information by serial number for firearms trace purposes;

- Requiring dealers to obtain more reliable identification from purchasers;

- Reviewing sanctioning policies to determine the feasibility and desirability of adding the option of license suspension for certain violations;

- Expanding the use of cooperative agreements with state and local law enforcement agencies to address licensing and trafficking problems; and

- Expanding ATF's capabilities to utilize effectively the firearms transaction records of out-of-business licensees for tracing purposes through the use of automation and other technology.

The President stated, "The Brady bill, which requires a waiting period before the purchase of a handgun, is simply common sense. I have said so before Congress and before the American people. It is long past time to pass it. If the Congress will pass it, I will sign it. I believe now that Congress will pass it. There is no conceivable excuse to delay this action one more day."

Importation Of Assault Pistols

On August 11, 1993, President Clinton issued a directive to the Secretary of the Treasury to take the necessary action to suspend the importation of foreign-made assault pistols. A copy is attached at the Appendix of this Bulletin as Exhibit C.

A category of pistols commonly referred to as assault pistols has increasingly become the weapon of choice for drug dealers, street gang members, and other violent criminals. These pistols, generally characterized by their bulky military-style appearance and large magazine capacity, include domestically manufactured TEC-9's and MAC-10's as well as imported models like the Uzi pistol and the H&K SP-89. Their popularity appears to stem from their intimidating appearance and their considerable firepower. The President stated that too many weapons of war are making their way onto our streets and turning our streets into war zones. Therefore, it is time to reassess how the present regulatory approach can be made more effective in achieving the legislative directive to preclude importation of firearms that are not particularly suitable for or readily adaptable for sporting purposes. Accordingly, the President directed that necessary steps be taken to reexamine the current importation factoring system to determine whether the system should be modified to ensure that all non-sporting handguns are properly denied importation.

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New Police Hiring Supplement Program

On August 30, 1993, Attorney General Janet Reno announced the details of a new Administration program to help communities fight crime more effectively. Through the new Police Hiring Supplement Program, the Department will award grants to law enforcement agencies to hire officers as part of their overall strategy to address crime through community policing. Under the discretionary grant program, law enforcement agencies from around the nation will vie for $150 million available to help implement long-term policing strategies that address local needs.

The Police Hiring Supplement monies will be available for a three-year period to help communities most in need pay the salaries and benefits of sworn law enforcement officers who are being hired or rehired. The $150 million for this program is part of the supplemental budget appropriation requested by the President. The Department will administer the plan under the Bureau of Justice Assistance's (BJA) Edward Byrne Memorial State and Local Law Enforcement Assistance Program. Fifty percent of the funds ($75 million) will be awarded to law enforcement agencies serving populations of 150,000 or more. The other 50 percent will be awarded to jurisdictions serving populations of under 150,000. The Attorney General said, "These grants will help law enforcement agencies hire up to 2,100 more police officers. This is the first step toward fulfilling the President's commitment to put additional police on the street. We are working to pass a crime bill to help communities hire 50,000 new officers and further expand community policing."

Application kits are being sent to law enforcement agencies across the country, to city and county officials as well as to state criminal justice planning agencies. The Department will consider each application based on a community's public safety and economic needs. Applicants must provide a strategy describing how additional sworn officers would lead to increased community policing. They also must outline their plan for continuing their initiatives and retaining positions created after the three-year grant period ends. In addition, they must give assurances that grants will not be used to supplant local or state dollars. Applications will be considered in three rounds, with deadlines of October 14, November 1 and December 1. The first awards will be announced in November and December. The Department has established a Response Center specifically to provide law enforcement agencies with information and assistance in preparing grant applications. The telephone number is: (202) 307-1480.

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New Indictment In The Southern District Of New York

On August 25, 1993, a federal grand jury in the Southern District of New York returned a 20-count indictment charging fifteen defendants with conspiracy against the United States. The alleged conspiracy includes several terrorist plots, including a plan to bomb buildings and property in the New York City area. Specifically, members of the conspiracy are alleged to have carried out the February 26, 1993 explosion at the World Trade Center, and to have planned the bombings of the United Nations, the Federal Building at 26 Federal Plaza, the Lincoln and Holland Tunnels, and the George Washington Bridge, and other terrorist acts. Eleven of the fifteen defendants were indicted on July 14, 1993 on charges arising out a scheme to bomb several buildings and other targets in New York City. (See, Vol. 41, No. 8, United States Attorneys' Bulletin, at p. 269.)

The current indictment includes Omar Ahmad Ali Abdel Rahman, a/k/a "Omar Ahmed Ali," a/k/a "Omar Abdel Al-Rahman," a/k/a "Sheik Rahman," a/k/a "Sheik Omar." Also named in the current indictment is El Sayyid Nosair, a/k/a "Abu Abdallah," a/k/a "El Sayyid Abdul Azziz," a/k/a "Victor Noel Jafry." The Grand Jury charges that from at least 1989 up to and including the date of the filing of this indictment, there existed an organization which was headquartered in the New York metropolitan area, and which operated both in the United States and internationally. An objective of the organization was to carry out and conspire to carry out acts of terrorism, including bombings and murders, against various governments and government officials, including the United States government and United States government officials. Shiek Rahman was a leader of the organization, with whom others consulted in pursuing and planning bombings, murders and other acts of terrorism in furtherance of the objectives of the conspiracy. Further, and among other things, Shiek Rahman provided instruction regarding whether particular acts of terrorism were permissible or forbidden, served as a mediator of disputes among members of the organization, and undertook to protect the organization from infiltration by law enforcement authorities. El Sayyid Nosair, and others named in the July 14, indictment, were members of the organization who planned and executed acts of terrorism, including, among other things, bombings and murder, and recruited others for those purposes.

If you would like a copy of the indictment, please call the United States Attorneys' Bulletin staff at (202) 514-4633.

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CRIMINAL DIVISION

Memorandum Of Understanding Concerning Nazi War Criminals

On August 26, 1993, Deputy Attorney General Philip B. Heymann and Procurator General of Ukraine Victor Ivanovich Shishkin signed a Memorandum of Understanding between the Department of Justice and the Procuracy General of Ukraine Concerning Cooperation in the Pursuit of Nazi War Criminals. The agreement provides for mutual "legal assistance in conducting investigations concerning individuals who are suspected of having committed Nazi war crimes or having assisted in the commission of such crimes." The agreement replaces one between the Department of Justice and the Office of Procurator General of the USSR which was signed in October, 1989. That agreement technically remained in force between the United States and the Ukraine upon the dissolution of the USSR but negotiations began on the agreement signed on August 26 after the Procuracy General of Ukraine expressed a desire in September, 1992 for a new one.

The agreement with the USSR served as the basis of discussions and was eventually modified to make certain points more explicit. The Justice Department has concluded similar agreements during the last year with Latvia and Lithuania. Ukraine has also signed such agreements with Australia and Canada. The Department said the new agreement is an important step toward expanding the federal investigations of alleged Nazi war criminals living in the United States. It will permit the Office of Special Investigations (OSI) of the Department's Criminal Division to conduct interviews and depositions of witnesses in Ukraine and facilitate OSI's access to investigative files of the former KGB relating to war crimes which are now in Ukrainian custody.

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Computer Importation Of Child Pornography

On August 31, 1993, the Department of Justice announced that people who use computers to obtain child pornography are being arrested and charged by federal prosecutors. Six individuals have been charged or indicted since May, and nine more cases may be filed in September. There was a time when pornography, much of it originating overseas, was seized after packages were opened by Postal or Customs Inspectors. Now, however, high-quality pictures can be dialed up on international and domestic computer bulletin boards. George Burgasser, Acting Chief of the Child Exploitation and Obscenity Section of the Criminal Division said, "Individuals who use computers to get child pornography should know that computers leave electronic footprints that can be tracked by investigators."

The current investigation began when the U.S. Customs Service received information that a child pornography bulletin board in Aalborg, Denmark was being used by several hundred Americans as a means of bringing child pornography into the United States. In May, 1992, Danish police, acting on a request from U.S. authorities, searched the home of a Danish national and seized a computer system and records and hundreds of pornographic pictures of children. For a fee, individuals anywhere in the world could join and receive child and deviant hard core pornography in the form of graphic images, text and computer games which the recipient could then download to his own computer. In October, 1992, again at the request of the United States, Danish police executed a search warrant on the home of the operator of another child pornography bulletin board distribution system. On both occasions, U.S. Customs officials traveled to Denmark to copy the computer data and return it to the United States. The U.S. Customs Service concluded that approximately 45 Americans were knowingly involved in the importation of child pornography.

After consultation with the Child Exploitation and Obscenity Section and the Computer Crime Unit of the Criminal Division, the Customs Service served 31 search warrants in 15 states and 30 cities in March -- the largest anti-child pornography operation in U.S. history. Three hundred federal, state and local law enforcement officials took part in the effort. Many of the searches also resulted in the seizure of computers which are subject to forfeiture. Indictments and pleas have been entered in the following districts thus far: Northern District of Texas; Eastern District of Louisiana; Western District of Missouri; Northern District of Florida; the District of Massachusetts; and the District of Minnesota.

The illegal importation of child pornography is a violation of 18 U.S.C. 2252, which carries a maximum penalty of ten years in prison and a fine of up to $100,000, unless there has been a prior conviction in which case the penalty is 5 to 15 years and a maximum $200,000 fine.

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ANTITRUST DIVISION

Antitrust Policy Changes

On August 10, 1993, at the annual conference of the American Bar Association in New York, Anne K. Bingaman, Assistant Attorney General for the Antitrust Division, announced that the Division will expand its 1978 Corporate Leniency Policy and withdraw the Vertical Restraints Guidelines issued January 23, 1985. Ms. Bingaman stated that the changes in antitrust policy will assist the Division in vigorously and effectively enforcing antitrust laws.

Corporate Leniency

Under the Division's current Corporate Leniency policy, a copy of which is attached at the Appendix of this Bulletin as Exhibit D, corporations that are the first to disclose their involvement in antitrust violations prior to the beginning of a government investigation into the violation while also satisfying other requirements may, at the discretion of the Division, not be prosecuted for the violation. The policy change will assure leniency not only to corporations that meet those standards, but also make leniency available at the Division's discretion, to corporations that come forward after the initiation of a government investigation or that have otherwise failed to qualify for assured leniency. Assistant Attorney General Bingaman said, "By providing greater assurance to corporate counsel and broadening the circumstances in which leniency is offered, these changes should induce more corporations to come forward. Such a development would increase the deterrent effect of the antitrust laws and allow a more productive use of the Division's resources."

Vertical Restraints Guidelines

In announcing the withdrawal of the Vertical Restraints Guidelines, Ms. Bingaman said, "The Vertical Restraints Guidelines do not set forth the Division's current analysis of vertical practices and are not consistent with judicial interpretations of the antitrust laws. They are misleading both to practitioners attempting to counsel clients as well as businesses attempting to conform with the law. For these reasons, it is appropriate to withdraw the Vertical Restraints Guidelines."

Vertical Restraints Guidelines pertain to vertical agreements involving firms within the same chain of distribution of a product. Agreements between a manufacturer and its wholesaler or between a wholesaler and its retailers are considered to be vertical agreements. Such agreements frequently attempt to limit the conditions under which products are resold or the conditions under which distributors may purchase. The Department's Vertical Restraints Guidelines were designed to provide the business community with guidance as to the Department's antitrust enforcement intentions with respect to several commonly used forms of vertical restraints in various economic settings. Ms. Bingaman stated that by expanding the Corporate Leniency Policy and withdrawing the Vertical Restraints Guidelines, the Division has made significant strides to more effectively enforce the antitrust laws.

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CIVIL DIVISION

Federal Rules Of Civil Procedure

On July 28, 1993, Frank W. Hunger, Assistant Attorney General for the Civil Division, testified before the Subcommittee on Courts and Administrative Practice of the Senate Judiciary Committee concerning proposed amendments to the Federal Rules of Civil Procedure.

Mr. Hunger stated that one of his first undertakings was to review the Department's position concerning the proposed amendments and assist the Associate Attorney General in conveying the Civil Division's position on the rules to the Chairman of the Subcommittee on Intellectual Property and Judicial Administration. A hearing was held on this subject on June 16, 1993, and letters dated June 25, 1993 and July 19, 1993 were sent to Chairman William J. Hughes and to Chairman Howell Heflin setting out the Department's positions on the proposed amendments. In the letters, the Department emphasized its continued support for discovery and pretrial reforms, which reduce delay and expense. In particular, the Department reaffirmed its support of the proposed amendment to Rule 16, which concerns scheduling conferences and scheduling orders. It is the position of the Department that this proposed change will substantially improve judicial management of civil cases. Additionally, the Department reaffirmed its support of the proposed changes to Rules 30, 31 and 33 because it believes that the presumptive limits on discovery should promote reductions in discovery costs without sacrificing the fair adjudication of civil cases. The Department also restated its support for the more controversial proposed change to Rule 11. The "safe harbor" provision should encourage parties to work out disputes and voluntarily withdraw insupportable claims and defenses without court intervention.

After careful consideration, the Department decided to withdraw its earlier support for the proposed amendment to Rule 26(a)(1) concerning mandatory disclosure. Mr. Hunger explained that the previous "support" the proposed change received within the Department was nominal at best. Given the intense controversy surrounding the proposed amendment to Rule 26(a)(1) and its potential for exacerbating the very problem it was designed to ameliorate, the Committee should oppose it.

If you would like a copy of Mr. Hunger's testimony, please call the United States Attorneys' Bulletin staff, at (202) 514-4633.

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CIVIL RIGHTS DIVISION

Retroactivity Of The Civil Rights Act Of 1991 As Applied Against Federal Government Employees

On August 10, 1993, Associate Attorney General Webster L. Hubbell issued a memorandum to Frank Hunger, Assistant Attorney General for the Civil Division, and James P. Turner, Acting Assistant Attorney General for the Civil Rights Division, concerning retroactivity of the Civil Rights Act of 1991 as applied against federal government employees. Mr. Hubbell was presented differing views as to whether the Department of Justice should regard the jury trial and compensatory and punitive damages provisions contained in section 102 of the 1991 amendments to the Civil Rights Act of 1964 as applying to currently pending claims brought against the federal government by covered federal employees. Up to this point, the Department has been able to argue the law of the circuit in those jurisdictions where the court of appeals has ruled against retroactivity and move for a stay in other circuits. However, Judge Thomas Hogan of the District Court for the District of Columbia has ordered the United States Attorney's office to brief the federal government's position on demands for jury trial. Therefore, the Department must address whether to assert the sovereign immunity defense with respect to the retroactive application of the 1991 Act against the federal government.

The Associate Attorney General has reached the conclusion that the Department of Justice should direct the United States Attorney in the case pending before Judge Hogan not to assert sovereign immunity as a defense against the retroactive application of section 102. A copy of his opinion is attached at the Appendix of this Bulletin as Exhibit E.

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First Housing Discrimination Suit In Nationwide Random Testing Program Filed In California

On August 9, 1993, the Department of Justice filed the first lawsuit in California as a result of a nationwide random testing program to identify and eliminate housing discrimination. The civil rights complaint was filed in the U.S. District Court in Los Angeles against the owners and manager of an apartment complex in Sepulveda, California, alleging they violated the Federal Fair Housing Act by discriminating against African-American prospective tenants. The complaint seeks monetary damages for persons who may have been subjected to discrimination, a civil penalty and an injunction prohibiting the defendants from engaging in further discrimination. The lawsuit was based on evidence of racial discrimination gathered by testers for the Department and the Fair Housing Council of the San Fernando Valley. Paired groups of white and black testers, who were given matching characteristics and credentials, inquired about the availability of apartments at the complex. African-American testers were treated uniformly less favorably and offered less favorable rental terms than white testers, according to the complaint.

The Department has been conducting fair housing testing in several cities throughout the country since 1992. Initial lawsuits resulting from random testing were filed in Detroit in October. In June, the first of the Detroit cases was resolved with a consent decree requiring the defendants to pay the highest civil penalty ever levied against a property owner and to make $225,000 available to compensate victims of the discrimination.

The Department developed its proactive testing program after Congress, in 1989, amended the Fair Housing Act to authorize the Department to seek civil penalties and monetary damages for victims of housing discrimination. James P. Turner, Acting Assistant Attorney General for the Civil Rights Division, said, "Random testing is a critical tool for identifying discrimination, because sometimes discrimination is so subtle victims don't know it's happening to them. If we only tested on the basis of complaints, we would not be able to truly attack a covert problem."

Individuals who believe they may have been victims of housing discrimination anywhere in the United States should call either the Housing and Civil Enforcement Section of the Civil Rights Division of the Department of Justice at (202) 514-4713, or the Department of Housing and Urban Development's Fair Housing hotline at 1-800-669-9777.

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ENVIRONMENT AND NATURAL RESOURCES DIVISION

Harbor Cleanup In The State Of Washington

On August 17, 1993, in an enterprising solution to harbor cleanup, a settlement was announced by the Department of Justice calling for sediment dredged from a Washington State harbor to be used to enlarge and improve port facilities, rather than be shipped expensively to a disposal site.

The project involves dredging contaminated sediments from the Sitcum Waterway and non-contaminated sediments from the Blair Waterway near Tacoma, Washington. Blair Waterway sediments are dredged routinely for navigational purposes. Sediments from both waterways will be used to fill in the so-called Milwaukee Waterway, which will become a marine container terminal, thereby becoming a component of the Port of Tacoma's approximate 24-acre expansion plan for new terminal space. The fill will be placed behind an impermeable barrier and capped to prevent contamination from seeping. Over ten acres of new salmon and wildlife habitat will be established to replace habitat lost by filling in the Milwaukee Waterway.

The settlement resulted from a complaint filed by the Justice Department claiming that port activity was injuring the natural resources of a wide area known as Commencement Bay. High levels of arsenic, copper, lead, and zinc contaminants were found. The Port of Tacoma will pay $12 million in damages, as part of the approximately $37 million for the port's expansion. Acting United States Attorney Susan Barnes lodged the consent decree in the U .S. District Court in Tacoma, which settles claims brought under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The decree is subject to public comment that must be considered before it can become final. Comments should be sent to: Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, Re: U.S. v. Port of Tacoma, D.J. No. 90-11-3-711.

The agreement, referred to as the "Sitcum Waterway Remediation Project," involved federal, state and tribal agencies including the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, the Department of the Interior, the State of Washington, the Puyallup Indian Tribe and the Muckleshoot Indian Tribe. Acting Assistant Attorney General Myles Flint, of the Environment and Natural Resources Division, said, "The federal, state, and tribal agencies responsible for overseeing environmental cleanup worked cooperatively and creatively with private and governmental entities responsible for cleaning up environmental contamination to achieve these terrific results. Because of this cooperation, the various agencies were able to coordinate the cleanup with the Port's economic development plan."

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POINTS TO REMEMBER

Family Medical Leave Act

On August 3, 1993, Michael W. Bailie, Deputy Director, Administrative Services, Executive Office for United States Attorneys (EOUSA), forwarded to all United States Attorneys an advance copy of the Office of Personnel Management interim regulations implementing sections 6381 through 6387 of Title 5, United States Code, as added by Title II of the Family and Medical Leave Act of 1993 (FMLA, Public Law 103-3, Feb. 5, 1993). FMLA requires covered employers to provide up to twelve weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous twelve months, and if there are at least fifty employees within seventy-five miles.

These regulations were to be published in the Federal Register on July 23, 1993 for requisite comments by October 21, 1993. Meanwhile, and most importantly, the interim regulations are in effect as of August 5, 1993. Employees invoking his/her entitlement to leave under the FMLA on or after that date who meet the criteria for leave and have complied with the requirements and obligations under the FMLA may not be denied family and medical leave.

Attached at the Appendix of this Bulletin as Exhibit F is a fact sheet describing federal employee entitlements, job benefits and protection, advance notice and medical certification, and covered employees. Also attached is a fact sheet which explains the rights of an employee under the Act. If you have any questions, please contact Gail C. Williamson, Assistant Director, Personnel Staff, EOUSA, at (202) 501-6918, or Denise Kaufman, at (202) 501-6899.

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United States Attorneys' Bulletin

In compliance with the recent directive concerning budget cutting and cost saving measures, the United States Attorneys' Bulletin has been reduced in size, and its distribution has been cut approximately in half. Each office should be receiving a copy for the United States Attorney, and one copy for every two Assistant United States Attorneys. Additional copies will have to be provided by the District.

Please note that the United States Attorneys' Bulletin has moved to Room 1627, Department of Justice. For further details concerning this and other office relocations within the Executive Office for United States Attorneys, please refer to p. 325 of this Bulletin.

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LEGISLATION

Criminal Aliens In The United States

Both Houses of Congress are conducting the following hearings and briefings on the impact of criminal aliens in the United States:

• A hearing scheduled for August 5, 1993, on the impact of criminal aliens on the criminal justice system has been postponed by the House Judiciary Subcommittee on Crime and Criminal Justice. No new date has been set. When it is re-scheduled, the Subcommittee has asked the Acting Commissioner of the Immigration and Naturalization Service (INS), the Director of the Executive Office for Immigration Review (EOIR), and the Director of the Bureau of Prisons (BOP) to address the following issues: prison population; the extent of INS and BOP cooperation; and procedures for the deportation of criminal aliens. The BOP Director has also been asked to comment on H.R. 2438, the "Criminal Aliens Incarceration Act," which is intended to provide for illegal aliens who are sentenced to imprisonment under State law, to be confined in a federal facility. It also authorizes the Attorney General to deport aliens sentenced to imprisonment before completion of sentence. The Department has not previously expressed a position regarding H.R. 2438. In anticipation that this hearing will go forward at some point, the Office of Legislative Affairs is continuing to coordinate clearance of the statements of the components involved.

• The minority staff of the Senate Permanent Subcommittee on Investigations (PSI) of the Governmental Affairs Committee recently conducted a preliminary inquiry in San Diego and Los Angeles on criminal aliens. Their itinerary included discussions with INS officials, the Executive Office for Immigration Review, the United States Attorney's office, and OCDETF officials, as well as state and local officials. One of the specific areas of interest was the institutional hearing process, in which criminal alien cases are heard while the individual is still in a state or local correctional facility. With this in mind, the Subcommittee staff visited the Donovan state facility to observe actual hearings taking place.

• On August 31, 1993, the House Government Operations Subcommittee on Information, Justice, Transportation and Agriculture held a hearing in Los Angeles on the fiscal impact of immigration on Los Angeles and the State of California. Of particular interest to the Subcommittee was the impact on the county and state criminal justice systems of illegal aliens who have committed crimes, and implementation of the prisoner transfer treaty program which could help alleviate problems with housing criminal aliens in state and local prisons. General information on the prisoner transfer treaty program was provided in a written statement prepared by the Criminal Division.

• On August 27, 1993, Congressman Sam Farr (D-Cal.) and the California Assembly Select Committee on Statewide Immigration Impact held a hearing in Santa Cruz. The focus of the hearing was immigration issues in California's 17th Congressional District, and included Border Patrol issues. INS representatives presented only factual information and did not address any questions regarding policy.

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SENTENCING REFORM

Guideline Sentencing Update

A copy of the Guideline Sentencing Update, Volume 6, No. 1, dated August 9, 1993, is attached as Exhibit G at the Appendix of this Bulletin. The Guideline Sentencing Update is distributed periodically by the Federal Judicial Center, Washington, D.C. to inform judges and other judicial personnel of selected federal court decisions on the sentencing reform legislation of 1984 and 1987 and the Sentencing Commission.

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CASE NOTES

CIVIL DIVISION

Fourth Circuit Holds That National Rifle Association Cannot Recover Attorney's Fees Under Gun Control Act

In 1988, the National Rifle Association (NRA) and other organizations and individuals sued under the Administration Procedure Act to invalidate regulations issued under the Gun Control Act (18 U.S.C. 921 et seq.), as modified in 1986 by the Firearms Owners Protection Act. Of the more than one hundred regulations implicated in the challenge, the district court invalidated part of one, and in 1990 the Fourth Circuit invalidated another and part of a third. The NRA then moved for attorney's fees under the Gun Control Act. Section 924(d)(2) of Title 18 is a two-part fee statute. Subparagraph (A) mandates a fee award in an action or proceeding for the return of firearms or ammunition seized. Subparagraph (B) provides that '[i]n any other action or proceeding under the provisions of this chapter, the court, when it finds that such action was without foundation, or was initiated vexatiously, frivolously, or in bad faith," shall award fees to the prevailing party other than the United States. The district court denied fees on the ground that Section 924(d)(2) was half offensive and half defensive, and that subparagraph (B) applied only to actions in which the prevailing party was forced to defend an action brought by the United States.

The Fourth Circuit, the first court of appeals to decide a case involving this fee provision, has now affirmed, noting that the action for which the NRA was the prevailing party was its own lawsuit, which could not have been without foundation since it had achieved part of its goal. The court rejected the NRA's claim that the "action" that was without foundation was the agency's action in promulgating the regulation. The statutory language required that the action for which fees are sought by the prevailing party and the action that is without foundation be one and the same. The governing principle for this kind of fee case is that only a prevailing defendant -- unlike the partially prevailing plaintiff NRA in this case -- can properly seek fees under this fee-shifting provision.

National Rifle Ass'n v. Bentsen, No. 92-2261 (July 16, 1993) [4th Cir. D.S.C.]. DJ # 80-67-52

Attorneys: Michael Jay Singer - (202) 514-5432
Edward Himmelfarb - (202) 514-3547

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Fifth Circuit Holds That Federal One-Year Limitations Period Governs Suits On Standard Flood Insurance Policies

Plaintiffs purchased a Standard Flood Insurance Policy from the defendant, which was a "Write Your Own" company; that is, a private insurer issuing flood insurance policies the terms of which were prescribed by, and the risks on which were entirely borne by, the Federal Emergency Management Agency (FEMA). Plaintiffs suffered a loss, but their claim was denied in part because the policy excluded damage to finished basements. Plaintiffs sued, claiming that they should be paid under the policy and that the private insurer's agent misrepresented the coverage of the policy. The suit was brought more than one year but less then four years after the loss. The policy itself and federal regulations specify a one-year limitations period; state law provides a four-year limit and invalidates any contractual limitation period that is shorter than two years. The district court held that the state law period applied. Defendant appealed and we appeared as amicus curiae.

The court of appeals has now held, as we argued, that the federal one-year limitations period governs suits under the policy itself and that plaintiffs' suit under the policy is therefore time-barred. The court also held that the plaintiffs' suit for misrepresentation was governed by state law and was timely. We expressed no opinion on this point, since FEMA is not liable regarding this cause of action.

Spence v. Omaha Indemnity Insurance Co., No. 92-7257 (Aug. 2, 1993) [5th Cir.; S.D. Tex.] DJ # 145-193-1400

Attorneys: Mark B. Stern - (202) 524-5089
Jonathan R. Siegel - (202) 514-4821

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Sixth Circuit Reverses Disability Benefits Award Based On District Court's Improper De Novo Review of Administrative Decision

An Administrative Law Judge (ALJ) denied claimant's application for disability benefits on the ground that she retained the capacity to perform light sedentary work and that a significant number of suitable positions existed in the regional economy. Claimant sought review of the ALJ's decision before the Appeals Council and introduced a new treating physician statement and a new vocational expert assessment based on this new statement. The Appeals Council declined to reopen the case, concluding that the "new" evidence was unpersuasive because the physician's changed conclusion was unsupported by any medical findings. The Appeals Council upheld the ALJ decision, which became the Secretary's final decision. The claimant sought review in the district court. The Magistrate concluded that the plaintiff had failed to show good cause for her failure to submit the "new" evidence at the ALJ hearing, and thus there was no basis for remanding to the Secretary. Nonetheless, the Magistrate held that the district court itself could consider the new evidence, and on that basis recommended an award of benefits. The district court adopted the Magistrate's recommendation.

The Sixth Circuit has now reversed in a published opinion that squarely holds that where the Appeals Council considers the new evidence but declines to review the case, the court reviews the ALJ decision under the substantial evidence test. Under this test, the court found that the ALJ decision was supported by substantial evidence and reversed the award of benefits.

Cotton v. Sullivan, No. 92-6392 (August 13, 1993) [6th Cir.; W.D. Ky.].
DJ # 137-31-706

Attorneys: Freddi Lipstein - (202) 514-4815
Susan Sleater - (202) 514-1790

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D.C. Circuit Upholds Common Fund Attorney's Fee Award That Is Based On Percentage Of The Amount By Which Counsel Increased The Fund

After the D.C. Circuit held that the Secretary of Health and Human Services was required to retroactively compensate hospitals for certain Medicare-related photocopying expenses, three hospitals brought this nationwide class action seeking such compensation for all hospitals. The Secretary did not oppose class certification. The parties agreed to settle the case for approximately $27 million. Plaintiffs' counsel then sought a "common fund" attorney's fee -- that is, a fee to be paid out of the recovery rather than by requiring the government to pay it on top of the recovery -- of 20 percent of the full $27 million in the settlement fund, or about $5.6 million.

The Secretary sought to limit the fee to the lodestar (hours worked times hourly rate) of $619,000. The district court awarded $2 million, reasoning that the efforts of plaintiffs' counsel had contributed only $10 million of the $27 million settlement fund and that counsel is entitled to 20 percent only of that $10 million. On cross-appeals, the D.C. Circuit has affirmed the $2 million award. The majority (Sentelle, Randolph) did not accept our theory that a common fund award should be limited to the lodestar. The majority found that common fund cases are distinguishable from fee-shifting awards, which the Supreme Court recently held in City of Burlington v. Dague, 112 S.Ct. 2638 (1992), must be limited to the lodestar and may not be increased to compensate counsel for the risk of losing the case and thus of getting no fee. Rather, the majority decided that a fee award in a common fund case of 20 percent of the fund is reasonable. Nevertheless, the majority upheld the district court's determination that the efforts of plaintiffs' counsel only created about $10 million of the $27 million fund, since the issues concerning the balance of the fund were not seriously in dispute. It thus agreed to limit the fee to 20 percent of the $10 million, yielding a $2 million fee, rather than award the full $5.6 million that plaintiffs' counsel sought. Judge D. H. Ginsburg dissented in part, concluding that the fee was still too high and that it should be limited to no more than twice the lodestar, absent some special reason.

Swedish Hospital Corp. v. Shalala, Nos. 92-5061, 92-5155 (August 10, 1993)
[D.C. Cir.; D.D.C.] DJ # 137-16-1362

Attorneys: William Kanter - (202) 514-4575
Frank A. Rosenfeld - (202) 514-0168

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False Claims

Northern District of California Holds That 1) The Citation Of Articles Containing False Statements In A Grant Application Can Be False Statements Even When Citations Themselves Are Accurate, And 2) False Statements Can Be Implicit

The Government asserted that defendants were liable under the civil False Claims Act for statements which were submitted to the National Institute of Health (NIH) in connection with research grants and which, as evidence of the applicant's competence, cited articles written by him, while knowing that the articles contained false statements about certain research. Denying the defendants' motion for summary judgment, the court held that defendants' argument that they never warranted the accuracy of the data discussed in the articles was specious and that the citations were submitted to demonstrate that grant monies were being spent on legitimate, scientific research. The court further held that purposeful deception, while containing no explicit, factual misstatement, is nonetheless actionable under the False Claims Act.

United States ex rel. Condie v. Board of Regents of the University of California, Civ. No. C89-3550-FMS (N.D. Calif., June 11, 1993)

Attorney: Cynthia Schnedar - (202) 307-0255

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Eastern District Of Michigan Grants Motion For Summary Judgment In Which Government Sought Only Civil Penalties Based On Collateral Estoppel Effect Of Prior Conviction, And Finds That $395,000 In Civil Penalties Does Not Violate Double Jeopardy Clause In Case Involving $157,000 In Costs To The Government

After reviewing the indictment and jury instructions in the prior criminal case, the Eastern District of Michigan concluded that a conviction in that case for making false statements and wire fraud estopped defendant from denying liability in the civil False Claims Act case. The court further held that where demands for payment could not have been made absent the false statements or fraud of the defendant, the demands for payment are cognizable under the Act, even if they were submitted by a third party. Government need not show actual damages in order to recover civil penalties under the Act. The court further found that imposition of $395,000 in civil penalties was not so disproportionate to Government's costs ($50,000 in damages and $107,127 in investigative and litigative costs) to constitute a second punishment in violation of Double Jeopardy Clause.

United States ex rel. Regnerus v. Ford, C.A. 90-CV-60003-AA (E.D. Mich. June 8, 1993)

Attorney: Dennis L. Phillips - (202) 307-1086

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District Court In Utah Holds That Qui Tam Provisions Are Constitutional, That Real Party In Interest Is The Government And That The Government Loses The Power To Adversely Affect The Relator's Rights If The Government Chooses Not To Intervene And Does Not Later Seek To Intervene For Good Cause

Holding that the qui tam provisions do not violate Article III standing requirements, the separation of powers doctrine or the Appointments Clause of Article II, the court also stated that 1) the real party in interest in a qui tam action is the Government not the relator, and 2) relator is subordinate to and prosecution of qui tam action is conducted under the control of the Attorney General, but if the Government initially chooses not to intervene and does not later intervene upon a showing of "good cause", it "loses the power to adversely affect the relator's rights".

United States ex rel. Colunga v. Hercules, Inc., Civ. No. 89-C-954J (D. Utah August 10, 1993)

Attorney: Dennis Egan - (202) 307-0240

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ENVIRONMENT AND NATURAL RESOURCES DIVISION

Regulations Implementing Endangered Species Act Sustained

Plaintiffs challenged two Fish and Wildlife Service regulations implementing the Endangered Species Act: 1) the regulation, 50 C.F.R. 17.3, defining the statutory term "harm," which is one form of a "take," to include habitat modification, and 2) the regulation, 50 C.F.R. 17.31(a), extending the protection for endangered species to threatened species as well.

The panel unanimously upheld the validity of the latter regulation, providing for a blanket extension of protection to all threatened species. In so holding, they rejected plaintiffs' contention that the plain language of the statute requires that regulations protecting threatened species apply only to individual species, promulgated by rulemaking that determines whether protection is necessary and advisable for each individual species.

Sweet Home Chapter of Communities for a Greater Oregon v. Babbitt, D.C. Cir. No. 92-5255 (July 23, 1993) (Mikva, Williams, and Sentelle)

Attorneys: Ellen Durkee - (202) 514-4426
Martin W. Matzen - (202) 514-2753

* * * * *

Law Firm Lacks Standing To Appeal Bureau Of Indian Affairs (BIA) Decision That Contract For Legal Services With Another Law Firm Does Not Require BIA Approval

The Tenth Circuit affirmed the district court's dismissal of this action brought by the Western Shoshone Business Council on behalf of the Western Shoshone Tribe of the Duck Valley Reservation (Western Shoshones), and a law firm retained by the Western Shoshones. The Western Shoshones and law firm entered into a contract for legal services and submitted it to the BIA for approval, pursuant to

25 U.S.C. 81. The BIA determined that the contract was between private parties and did not require BIA approval because the Western Shoshones do not appear on the Department of Interior's list of federally recognized tribes. (The Pauite-Shoshone Tribes of the Duck Valley Reservation are the only federally recognized tribe on the Duck Valley Reservation.)

The Tenth Circuit held that the law firm did not have standing to appeal the BIA decision because the non-Indian contracting party is not within the zone of interests protected by 25 U.S.C. 81; the purpose of Section 81 is to protect the Indians and tribal lands, not to regulate lawyers or to create an administrative right of review for non-Indian contractors. The Western Shoshones were also held not to be within the zone of interests protected or regulated by Section 81 because they do not appear on Interior's list of recognized tribes. The Court explained that Interior's regulations establishing procedures for recognizing tribes eclipsed earlier ad hoc judicial determinations of recognition. Finally, the Court rejected plaintiffs' arguments that 28 U.S.C. 1362 (actions by Indian Tribes), 1361 (mandamus), or 1346(a)(2) (U.S. as defendant) were adequate to provide jurisdiction and held that the district court did not abuse its discretion in denying plaintiffs leave to amend its complaint because the new count simply restated the issues contained in the original complaint.

Western Shoshone Business Council v. Babbitt, 10th Cir. No. 92-4062 (July 27, 1993) (Logan, Roney, and Seymour)

Attorneys: Ellen Durkee - (202) 514-4426
John A Bryson - (202) 514-2740

* * * * *

State Court Holds That Percolating Groundwater Is Not Subject To Appropriation Under Arizona Law Where It Does Not Constitute "Subflow"

Reaffirming its earlier decision in Maricopa County Municipal Water Conservation District No. One v. Southwest Cotton Co., 39 Ariz. 65, 4 P.2d 369 (1931), the Arizona Supreme Court ruled that a percolating groundwater is not subject to appropriation under Arizona law, even where such groundwater is hydrologically connected to surface waters. The court ruled that groundwater is subject to appropriation only where it constitutes the subflow of a river, and the court narrowly limited "subflow" to mean, in almost all cases, only waters found within, or immediately adjacent to, the bed of the surface stream itself. As percolating groundwater is not subject to appropriation, rights to the use of such groundwaters are not included within the scope of general stream adjudications conducted in Arizona.

With regard to scope of proceedings under the McCarran Amendment, 43 U.S.C. 666, to adjudicate the water rights of the United States, the court stated that the McCarran Amendment was not intended to affect the rights of the states to define the scope of their general stream adjudications. The court then held that the "tribal court may adopt a rationally based exclusion for wells having a de minimus effect on the river system."

In Re the General Adjudication of All Rights to Use Water in the Gila River System and Source, Arizona Supreme Court Nos. WC-90-0001-IR et seq. (July 27, 1993) (Feldman, C.J. for unanimous court)

Attorneys: Dirk D. Snel - (202) 514-4400
Robert Klarquist - (202) 514-2731
Patrick Barry - (202) 272-4057

* * * * *

TAX DIVISION

Sixth Circuit Affirms Favorable Decision Of District Court In Case Of First Impression Involving Interpretation Of the Student Nurse Exception Contained In The Social Security Tax Provisions of the Internal Revenue Code

On July 23, 1993, the Sixth Circuit, in a divided opinion, affirmed the favorable decision of the District Court in Johnson City Medical Center Hospital v. United States, a case of first impression involving the interpretation of the student nurse exception contained in the social security tax provisions of the Internal Revenue Code. Under Section 3121(b)(13) of the Internal Revenue Code, amounts paid for "service[s] performed as a student nurse in the employ of a hospital" are excepted from FICA taxes. The Government contended that this exception only applies to nominal amounts paid for services performed on a substantially less than full time basis which are an integral part of the student nurse's training for a degree. The taxpayer asserted that all amounts paid to a person who was a nursing student were excepted from FICA taxes. The Sixth Circuit majority concluded that the Government's interpretation accurately reflected the legislative history of the statute, including the historical context in which the statute was passed. (At that time (1939), nursing schools were owned and operated almost exclusively by hospitals, which trained students primarily by apprenticeship methods in return for room, board, and sometimes a small stipend.) The dissent argued that the Government's interpretation was unduly narrow and was thus entitled to little deference.

This decision is extremely important to the Government. Currently, there are numerous cases pending in the federal district courts and at the administrative level involving this same issue. Furthermore, a House Ways and Means Committee Report estimates that nearly $510 million in social security taxes will be paid by nursing students employed by hospitals for the years 1991 through 1995.

* * * * *

Seventh Circuit Issues Opinion In Continental Illinois Corp. v. Commissioner Addressing Several Important Tax Issues

The first question presented was whether Continental Illinois is entitled to a foreign tax credit for Brazilian withholding taxes due on interest paid by Brazilians to foreign lenders. Under the Internal Revenue Code, an American taxpayer may claim a foreign tax credit with respect to foreign taxes for which it is legally liable. Continental Illinois lent money to Brazilian borrowers who agreed to pay the Brazilian withholding taxes. The Government contended that the tax was only enforceable against the borrowers and that, accordingly, Continental Illinois was not legally liable for it. Both the Tax Court and the Seventh Circuit disagreed, holding that Continental Illinois was legally liable for the taxes, and that it was thus entitled to claim the foreign tax credit. The Seventh Circuit also agreed with the Tax Court in holding that Continental Illinois was required to reduce the amount of the tax credit it claimed to the extent of subsidies provided by the Brazilian Government to the borrowers. As many banks made loans to Brazil during this period, these issues are of importance to the fisc. The Eighth Circuit is currently considering these issues in Norwest Corp. v. Commissioner.

This case also presented a question concerning the documentation necessary to claim a foreign tax credit for withholding taxes due on interest paid to foreign lenders. The taxpayer made loans to borrowers in 39 foreign countries, all of which imposed a withholding tax in connection with interest paid by borrowers to nonresident lenders. The Internal Revenue Service disallowed the claimed foreign tax credits because the taxpayer failed adequately to substantiate the payment of the taxes. The Tax Court,

while holding that the taxpayer's recordation of these tax liabilities on its own books was not adequate substantiation, ruled that, if the taxpayer's claim was supported by letters from the borrowers stating that they had made the tax payments in question, the payment had been adequately substantiated. The Seventh Circuit reversed, holding that letters from borrowers are insufficient to establish that tax payments are made.

This case further presented the question of the timing for including in income amounts received under a contingent repayment obligation. Continental Illinois made domestic loans (of 5-to-10 years' duration) under agreements which provided for a floating interest rate. The agreements further provided that, if the interest rate rose above a certain level, Continental Illinois would refund this "excess interest" to the borrower at the time that the loan matured, so long as there had been no shortfalls, prepayments or defaults on the loan. The bank did not report this "excess interest" as income on the theory that it might have to repay it. The IRS determined that taxpayer was required to accrue the "excess interest" in the current year (subject to a later offsetting deduction upon repayment) in order clearly to reflect income. Both the Tax Court and the Seventh Circuit agreed. As with the first issue decided, this question was of substantial importance to the fisc.

* * * * *

Ninth Circuit Dismisses Appeal On Behalf Of Bivens Defendant For Lack Of Appellate Jurisdiction

On July 16, 1993, the Ninth Circuit, in a published opinion, dismissed our appeal on behalf of the Bivens defendant in Linda Nelson v. Steven Silverman for lack of appellate jurisdiction. Under Mitchell v. Forsyth, 457 U.S. 11 (1984), an order denying a motion for summary judgment on grounds of qualified immunity from suit is immediately appealable. The Ninth Circuit, adopting as its explicit holding what was arguably dictum in Pelletier v. Fed. Home Loan Bank of San Francisco, 968 F. 2d 865 (1992), here laid down a "one bite of the apple" rule for Mitchell v. Forsyth appeals in Bivens cases. Since a notice of appeal had previously been filed in this case from the trial court's denial of a motion to dismiss, this ruling means that the Bivens suit will go to trial. (The earlier appeal was dismissed on the Government's and the Government employee's motion prior to briefing so that we could further develop the record before pressing an appeal.)

This important jurisdiction question, which essentially tests the reach of the Supreme Court's decision in Mitchell v. Forsyth, is one on which the circuits are divided. The Ninth Circuit, while purportedly joining the First and Seventh Circuits, has actually taken the "one bite" rationale one step further than either of those courts in holding that a "protective" appeal that was never prosecuted to decision constitutes a first "bite." Its holding here, moreover, is contrary to Sixth Circuit authority and to dicta in an Eighth Circuit opinion. We are considering recommending the filing of a petition for rehearing with suggestion for rehearing en banc and are coordinating the handling of this case with the Division. The Civil Division has a petition for panel rehearing outstanding in Pelletier.)

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OFFICE OF LEGAL EDUCATION

COMMENDATIONS

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

Asset Seizure, Forfeiture, and Equitable Sharing (Anchorage, Alaska)

Terry Derden, Senior Litigation Counsel, Eastern District of Arkansas; ***Robert E. Mydans,*** District of Colorado. From the District of Alaska: ***Betsy O'Leary*** and ***Chuck Farmer,*** LECC Coordinator; ***Fred Thomas,*** Resident Agent in Charge, Drug Enforcement Administration; ***Lou Ann Henderson,*** Special Agent, Federal Bureau of Investigation; ***Billy Johnson,*** Group Manager, and ***Rod Hageman,*** Special Agent, Criminal Investigation Division, Internal Revenue Service; and ***Randy Johnson,*** Chief Deputy Marshal. ***Karen Tandy,*** Chief, Litigation Section, Asset Forfeiture Office, Criminal Division.

Criminal Paralegal (Washington, D.C.)

From the Southern District of West Virginia: ***Victoria B. Major, Phillip B. Scott,*** and ***Pamela S. Hudson,*** Paralegal Specialist. From the District of Columbia: ***John P. Dominguez; Mark Adler,*** Fraud Section, Criminal Division; and ***John M. Campbell,*** Chief of Public Corruption, Government Fraud Section. From the Eastern District of Virginia: ***Lawrence J. Leiser,*** Chief, General Crimes Unit, ***Julia Simmonds,*** Grand Jury Clerk, ***Sabrina Black,*** Paralegal Specialist, ***Robert C. Chestnut, John T. Martin,*** and ***Nash W. Schott.*** ***Lynne Lamprecht,*** Deputy Director of Training, Southern District of Florida. ***Steve Liccione,*** Eastern District of Wisconsin.

Financial Litigation for AUSAs (Cincinnati, Ohio)

Tim Murphy, Deputy Associate Attorney General. ***Robert N. Ford,*** Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division. From the Civil Division: ***J. Christopher Kohn,*** Director, Commercial Litigation Branch, and ***David Epstein,*** Director, Foreign Litigation. From the Criminal Division: ***Sarah McKee,*** Senior Trial Attorney, Office of International Affairs, and ***Sandra Bright,*** Deputy Executive Officer. ***Eileen Zimmer,*** Senior Financial Anaylst, Corporate Finance Unit, Antitrust Division. From the Executive Office for United States Attorneys: ***Richard W. Sponseller,*** Associate Director, Financial Litigation Staff, and ***Kathleen Haggerty,*** Assistant Director, Financial Litigation Staff. ***Eric Benderson,*** Associate General Counsel, Small Business Administration. ***Robin Lee,*** Chief, and ***Brenda Frank,*** Senior Attorney, National Health Service Corps Section, Public Health Service. ***Carl Gamble,*** Senior Counsel, Division of Legal Services, Office of Investigations, Resolution Trust Corporation; and ***Robert W. Russell,*** Senior Counsel, Federal Deposit Insurance Corporation. ***Roslyn Moore-Silver,*** District of Arizona; ***Elizabeth Stein,*** Southern District of Florida; ***Carol Davilo,*** Northern District of Illinois; ***Gerald Burke,*** Southern District of Illinois; ***Patricia Rogers,*** Northern District of Mississippi; ***Kathleen Connors,*** District of New Jersey; ***Paul Condon,*** Northern District of New York; ***Kathleen Zebrowski,*** Southern District of New York; ***Riley Atkins,*** District of Oregon; ***James G. Sheehan,*** Eastern District of Pennsylvania; ***Patricia Gober,*** Northern District of Ohio; ***Randi Russell,*** Eastern District of Texas; ***Robert Darden*** and ***Joe Mirsky,*** Southern District of Texas; ***Win Grant*** and ***David Schiller,*** Eastern District of Virginia; ***Lynne Sollen,*** Eastern District of Wisconsin; and ***Mark Camell,*** Western District of Wisconsin.

Basic Asset Forfeiture Attorney Seminar (Columbia, South Carolina)

Cary H. Copeland, Director, and ***Laurie J. Sartorio,*** Assistant Director, Executive Office for Asset Forfeiture, Office of the Deputy Attorney General. ***Lee Radek,*** Director, ***Alice Dery,*** Special Counsel, and ***Karen Tandy,*** Chief, Litigation Section, Asset Forfeiture Office, Criminal Division. ***Carl J. Jensen,*** Special Agent, Federal Bureau of Investigation, Washington, D.C. ***Timothy J. Kruthaupt,*** Division Chief, Operations Support Division, FINCEN, Arlington, Virginia. ***Esteban F. Sanchez,*** Asset Forfeiture Chief, Central District of Illinois; ***J. Douglas Barnett,*** District of South Carolina; ***Noel Brennan,*** District of Columbia; ***Kathleen Brinkman,*** Southern District of Ohio; ***Eric S. Honig,*** Central District of California; ***Patricia Kerwin,*** Middle District of Florida; ***Elizabeth M. Landes,*** Northern District of Illinois; ***Art Leach,*** Northern District of Georgia; and ***James H. Swain,*** Eastern District of Pennsylvania.

Appellate Advocacy (Washington, D.C.)

Drew Days, Solicitor General. ***Mark Stern,*** Assistant Chief, Appellate Staff, Civil Division. From the Criminal Division: ***Mervyn Hamburg,*** Senior Counsel, Appellate Staff; ***Tom Booth, Lou Fisher, Nina Goodman, Richard Friedman, Joe Wyderko, John McMillan,*** and ***Paul Lewis. Donna Eide,*** Southern District of Indiana; ***Jefferson Gray,*** District of Maryland; ***Barbara Grewe,*** District of Columbia; ***Roger Heaton,*** Central District of Illinois; ***Michael Mossman,*** District of Oregon; ***Jennifer Peregard,*** Eastern District of Michigan; ***Mark Stalmach,*** Western District of Texas; ***David Williams,*** District of New Mexico; and ***Deborah Woods,*** Western District of Oklahoma.

Environmental Crimes Seminar (Buffalo, New York)

Martin J. Littlefield, Western District of New York; ***Benjamin A. Hagood,*** District of South Carolina; ***Frederick Petti,*** District of Arizona; ***David Kubicheck,*** District of Wyoming; ***Angel Cortinas,*** Southern District of Florida; ***Richard Welch,*** District of Massachusetts; ***Ronald Sarachan,*** Eastern District of Pennsylvania; ***Melanie Pierson,*** Southern District of California; ***Steve Katzman,*** Central District of California; ***Patrick Flachs,*** Eastern District of Missouri; and ***Craig Benedict,*** Northern District of New York. From the Criminal Division: ***Theodore Greenberg,*** Chief, Money Laundering Section; Criminal Division. From the Environmental Crimes Section: ***Charles DeMonaco,*** Assistant Chief; ***Paul Rosenzweig, Herbert Johnson, Peter Murtha, James Morgulec, James Howard, Eric Nagle,*** and ***Richard Udell,*** Trial Attorneys. From the Environmental Protection Agency: ***David Taliaffero,*** Office of Regional Counsel, Region V; ***Eileen Zimmer,*** Corporate Finance Unit, Anti-Trust Division; ***Paula Smith,*** Chief, Evidence Audit Quality Assurance Section; ***Eric Nottingham,*** NEIC; and ***Brendan O'Brien,*** Special Agent, Criminal Investigations Division, Region I. ***Lisa Pollisar,*** Chief, Litigation Support Group, Environment and Natural Resources Division.

Freedom of Information Act Administrative Forum (Washington, D.C.)

From the Office of Information and Privacy: ***Richard L. Huff,*** Co-Director, ***Carol S. Hebert,*** Attorney-Advisor, ***Michael H. Hughes,*** Attorney-Advisor, ***Charlene K. Wright,*** Deputy Chief, and ***Margaret Ann Irving,*** Associate Director.

Discovery: Interrogatories and Depositions (Washington, D.C.)

Madelyn Johnson, District of Columbia; ***Richard Parker,*** Eastern District of Virginia. From the Federal Programs Branch, Civil Division: ***Vince Garvey,*** Deputy Director, ***Brian Kennedy,*** Assistant Director, ***Thomas Millet,*** Assistant Director, ***Elizabeth Pugh,*** Assistant Director, ***Anne Weismann,*** Assistant Director, and ***John Tyler,*** Senior Trial Attorney. From the Torts Branch, Civil Division: ***Mary Leach,*** Senior Trial Counsel, ***Marie Louise Hagen,*** Trial Attorney, and ***Michael Truscott,*** Trial Attorney. ***Richard C. Stearns,*** Deputy Chief Counsel, Office of Thrift Supervision, Department of the Treasury; and ***Bob Erickson,*** Deputy General Counsel, Office of General Counsel, United States Marshals Service.

Evidence Seminar (Washington, D.C.)

From the Eastern District of Virginia: ***Richard Parker, Dennis Kennedy,*** and ***Nash Schott. Scott Glick,*** Trial Attorney, Terrorism and Violent Crimes Section, Criminal Division. ***Marie Louise Hagen,*** Trial Attorney, Torts Branch, Civil Division. ***Richard Foster,*** Chief Attorney, Office of Civil Rights, Department of Education. ***Michael Reed,*** Assistant Chief, General Litigation Section, Environment and Natural Resources Division. ***Richard Roberts,*** Assistant United States Attorney, District of Columbia. ***James Richardson,*** Attorney-Advisor, U.S. Court of Military Appeals.

Complex Prosecutions Seminar (Nashville, Tennessee)

From the Eastern District of Virginia: ***Kenneth Melson,*** United States Attorney; ***Joseph Aronica*** and ***Jack Hanly, Jr.,*** Assistant United States Attorneys. ***Ted McBride,*** First Assistant United States Attorney, District of South Dakota; ***Lance A. Caldwell,*** District of Oregon; ***William Cohen,*** Middle District of Tennessee; ***Richard Deane,*** Chief, Criminal Division, Northern District of Georgia; ***Alice Hill*** and ***Steve Mansfield,*** Central District of California; ***Carol C. Lam,*** Southern District of California; ***Ronald Sievert,*** Chief, Criminal Division, Austin Branch, and ***Dan Mills,*** Western District of Texas; ***Jimmie Lynn Ramsaur,*** Middle District of Tennessee; ***Kenneth Shernuk,*** District of Kansas; ***Michael P. Sullivan,*** Senior Litigation Counsel, Southern District of Florida; ***Joseph P. Vader,*** Senior Litigation Counsel, District of Columbia; ***Cheryl Pollak,*** Lead Drug Task Force Attorney, Eastern District of New York. ***David Farnham,*** Senior Trial Attorney, Southern Criminal Enforcement Division, Tax Division. From the Criminal Division: ***Ellen R. Meltzer,*** Special Counsel, Fraud Section, ***Stephen T'Kach,*** Deputy Chief, Electronic Surveillance Unit, Office of Enforcement Operations; and ***Ronald Roos,*** Trial Attorney, International Security Section.

Large Office Criminal Chiefs Seminar (Arlington, Virginia)

Philip B. Heymann, Deputy Attorney General; ***Webster Hubbell,*** Associate Attorney General; ***David Margolis,*** Acting Associate Attorney General; ***Jo Ann Harris,*** Special Counsel to the Attorney General; ***Richard Scruggs,*** Assistant to the Attorney General; ***Steven Zipperstein,*** Special Counsel, Office of the Assistant Attorney General, Criminal Division. From the Executive Office for United States Attorneys: ***Anthony C. Moscato,*** Director; ***Wayne Rich,*** Principal Deputy Director; ***Michael McDonough,*** Assistant Director, Financial Management Staff; ***Brian Jackson,*** Assistant Director, Evaluation and Review Staff; ***Gail Williamson,*** Assistant Director, Personnel Staff; and ***Mary Anne Hoopes,*** Deputy Legal Counsel. From the Office of Professional Responsibility: ***Michael Shaheen,*** Counsel, ***Richard Rogers,*** Deputy Counsel, and ***John Thomas Ezell,*** Assistant Counsel. ***Andy Purdy,*** Chief Deputy General Counsel, United States Sentencing Commission. ***James DeAtley,*** United States Attorney, Western District of Texas. ***James Allison,*** United States Attorney, District of Colorado. From the District of Columbia: ***Ramsey Johnson,*** United States Attorney, ***H. Marshall Jarrett,*** Chief, Criminal Division, and ***Dan Seikaly,*** Chief, Transnational and Major Crimes Section. ***Howard Zlotnik,*** Chief, Criminal Division, District of Nevada. ***Maria Arroyo-Tabin,*** Chief, Criminal Division, Southern District of California. ***Stuart Platt,*** Chief, Criminal Division, Eastern District of Texas. ***James McAdams,*** Managing Assistant, Southern District of Florida. ***Terry Zitek,*** Chief, Criminal Division, Middle District of Florida. ***Gina Talamona,*** Public Affairs Specialist, Office of Public Affairs. ***Joan Ward,*** Senior Training Instructor, Justice Management Division.

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

Jane Ley, Deputy General Counsel, and ***Julia Loring Eirinberg,*** Attorney-Advisor, Office of Government Ethics. ***Joseph E. Gangloff,*** Director, Conflicts of Interest Crimes Branch, Criminal Division. ***Roger McNamara,*** Senior Ethics Officer, Office of General Counsel, Department of the Air Force. ***Janet Gnerlich,*** Associate Counsel, Office of Chief of Naval Research, Department of the Navy. ***Wendy Lienesch,*** Assistant General Counsel for Employment Law and Information, Office of General Counsel, Federal Bureau of Prisons. ***Michael Robinson,*** Attorney, Appellate Staff, Civil Division.

Attorney Management (Washington, D.C.)

Yvonne Hinkson, Deputy Associate General Counsel for Employment Law and Information, Federal Bureau of Prisons.

Ethics Advisors Training (Salt Lake City, Utah)

Richard Parry, District of Utah. From the Office of Legal Counsel, Executive Office for the United States Attorneys: ***Deborah C. Westbrook,*** Legal Counsel, ***Donna Henneman,*** Ethics Program Manager, and ***Lee Cumberland,*** Management Analyst. ***Mary Biesenbach,*** Director, Ethics Program, Office of General Counsel, Justice Management Division. ***John T. Ezell, III,*** Assistant Counsel, Office of Professional Responsibility. ***George Pruden,*** Associate General Counsel/Ethics Officer, Office of General Counsel, Bureau of Prisons. ***G. Sid Smith,*** Attorney-Advisor, Office of Government Ethics.

COURSE OFFERINGS

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

AGAI Courses

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

September 1993

Date	*Course*	*Participants*
1-2	Appellate Chiefs, USAOs	Appellate Chiefs
14-16	Attorney Management	Supervisory AUSAs
20-24	Federal Practice, Criminal	AUSAs, DOJ Attorneys
21-23	Asset Forfeiture Component Seminar	10th Circuit (AUSAs, Support Staff, LECC Coordinators)
21-23	International Issues	AUSAs, DOJ Attorneys
27-29	Civil Rights	AUSAs, DOJ Attorneys
28	Executive Session for USAs (Debt Collection)	U.S. Attorneys
28-30	Computer Crimes	AUSAs, DOJ Attorneys

Date	Course	Participants
	October, 1993	
5-8	Federal Practice	DOJ Attorneys, AUSAs
19-21	Money Laundering, Financial Issues, Asset Forfeiture	AUSAs, DOJ Attorneys
19-22	Complex Prosecutions	DOJ Attorneys, AUSAs
25-Nov. 5	Civil Trial Advocacy	DOJ Attorneys
	November 1993	
4-5	Asset Forfeiture, ARPA	AUSAs, DOJ Attorneys, Attorneys
15-19	Appellate Advocacy	AUSAs, DOJ Attorneys
15-18	Criminal Tax Institute	AUSAs, DOJ Attorneys
17-19	Asset Forfeiture Component	Ninth Circuit (AUSAs, Support Staff, LECC Coordinators)
	December 1993	
1-3	First Assistants, USAOs	FAUSAs (Large Offices)
6-11	Asset Forfeiture Advocacy	AUSAs
7-10	Evidence for Experienced Litigators	AUSAs
8-10	Attorney Management	Supervisory AUSAs
13-17	Complex Prosecutions, Advanced Grand Jury	AUSAs
14-16	Land Acquisitions	AUSAs, DOJ Attorneys
14-16	Customs Fraud	AUSAs, DOJ Attorneys, Attorneys

LEI Courses

LEI offers courses designed specifically for paralegal and support personnel from United States Attorneys' offices **(indicated by an * below)**. Approximately eight weeks prior to each course, OLE will send an Email to all United States Attorneys' offices announcing the course and requesting nominations. The nominations are sent to OLE via FAX, and student selections are made. OLE funds all costs for paralegals and support staff personnel from United States Attorney's offices who attend LEI courses.

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

September 1993

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

October 1993

5	FOIA Update	Attorneys
8	Ethics and Professional Conduct	Attorneys
13-14	FOIA for Attorneys and Access Professionals	Attorneys, Paralegals
15	Privacy Act	Attorneys, Paralegals

October 1993 (continued)

Date	***Course***	***Participants***
25-26	Federal Administrative Process	Attorneys
26-28	Environmental Law	Attorneys
27-29	Attorney Managers	Supervisory Attorneys
	November 1993	
1-5	Support Staff	Support Staff, USAOs
2-3	Agency Civil Practice	Attorneys
8-10	Discovery	Attorneys
15-19	Criminal Paralegal	Paralegals
17	Introduction to FOIA	Attorneys, Paralegals
22	Ethics for Litigators	Attorneys
22	Legal Writing	Attorneys
29-30	Federal Acquisition Regulations	Attorneys
30-Dec. 2	Basic Bankruptcy	Attorneys
30-Dec. 3	Librarians Conference	Librarians
30-Dec. 3	Examination Techniques	Attorneys
	December 1993	
13-15	Negotiation Skills	Attorneys
14	Advanced FOIA	Attorneys
14-16*	Land Aquisitions for Support Staff	Paralegals, Support Staff, USAOs
16-17	Alternative Dispute Resolution	Agency Counsel
20	Statutes and Legislative Histories	Paralegals, Support Staff

OFFICE OF LEGAL EDUCATION CONTACT INFORMATION

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(202) 501-7334

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

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ADMINISTRATIVE ISSUES

Executive Office For United States Attorneys

AGAC (Attorney General's Advisory Committee) Liaison; And The United States Attorneys' Bulletin And Manual Staff

The offices of the AGAC Liaison, the United States Attorneys' Bulletin and the United States Attorneys' Manual Staff have moved. The address, telephone and fax numbers are:

Room 1627, Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Telephone: (202) 514-4633
Fax: (202) 514-5850

If you have any questions, please call Judy Beeman, Regina Barrett, or Audrey Williams.

Legal Counsel's Office

On June 21, 1993, the Legal Counsel's Office for the Executive Office for United States Attorneys, moved to other office space in the Department of Justice. The address, telephone and fax numbers are:

Room 1643, Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Telephone: (202) 514-4024
Fax: (202) 514-1104

If you have any questions, please call Deborah Westbrook, Legal Counsel.

Labor And Employee Relations Branch

The Labor and Employee Relations Branch, Legal Counsel's Office, Executive Office for United States Attorneys has moved to the Department of Justice. The address, telephone and fax numbers are:

Room 1644, Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

Telephone: (202) 514-5340
Fax: (202) 514-5721

If you have any questions, please call Paul Ross.

* * * * *

Scheduling Annual Leave to Avoid Forfeiture

Scheduling annual leave to avoid forfeiture at the end of the leave year requires planning on the part of employees and supervisors alike. Even though Federal employees covered by the leave program enjoy an employment benefit that is the envy of many non-Federal workers, lack of planning and inattention to some simple requirements cause a number of employees to forfeit sizeable leave balances each January.

The law, regulations, and DOJ Orders governing the restoration of forfeited annual leave are prescriptive. Two requirements must be met: (1) the leave must be scheduled **in writing** before the start of the third biweekly pay period prior to the end of the leave year, and (2) someone with delegated authority must determine that an exigency is of major importance and that therefore scheduled annual leave may not be used by the employee. In order to comply with the deadline requirement for scheduling annual leave this year, all "use or lose" leave must be scheduled in writing by November 27, 1993.

Each year Administrative Officers in Servicing Personnel Office Districts and the Executive Office for United States Attorney's Personnel Staff receive requests from employees and managers to restore forfeited annual leave. Only annual leave meeting the above requirements can be restored to employee accounts. Due to failures to adhere to the requirements noted above, only one hour of annual leave was restored for every two hours forfeited at the end of the 1992 leave year. We obviously need to improve employee and supervisor understanding of this program to get our statistics looking a whole lot better!

Managing a leave program is a shared responsibility. Employees must plan for and use annual leave and make written requests of supervisors for approval to be away from the office. Supervisors have to consider workload requirements when approving employee requests for leave. We cannot emphasize enough that the leave must be scheduled in writing, since the Comptroller General has held consistently that the "written request" requirement is statutory and that employees are charged with actual or constructive notice of the requirement. Administrative Officers should take steps now to compile a list of employees who have projected "use or lose" leave balances and make supervisory officials aware of such leave balances.

In a memorandum dated July 22, 1993 all Administrative Officers were asked to run the FOCUS report USELOSE to determine which district employees will have "use or lose" annual leave balances at the end of the leave year. Supervisors should be made aware of these balances and take steps to encourage employees to initiate requests to schedule and use such leave.

* * * * *

Unemployment Compensation For Federal Employees

Title XV, Unemployment Compensation for Federal Employees (UCFE), was added to the Social Security Act by the 83rd Congress on January 1, 1955, It is now recodified and identified as 5 U.S.C. §8501-8509, and administered by the Secretary of Labor. The UCFE program provides unemployment benefits for Federal employees similar to those programs provided by the state unemployment insurance laws for people working in the private sector. The UCFE program also determines which state should receive each Federal employee's services and wages for benefit purposes, and sets out criminal penalties for anyone who knowingly makes false statements to obtain unemployment benefits which are not due under the law.

Employees who have lost their Federal jobs may receive compensation for lost wages as long as they have had a substantial "attachment to the labor force." Attachment to the labor force is the amount of time a person has worked within a specified period of time called the base period. In most states the base period is designated as the first four of the last five calendar quarters before a valid claim is filed. To be entitled to benefits a person must:

1) be unemployed or working less than full time;

2) be ready and available for work;

3) and not be disqualified for reasons explained in the state law, such as voluntarily leaving one's employment without good cause, for misconduct connected with the work, or for refusal of suitable work without good cause.

The Social Security Act does not require the State Unemployment Insurance laws to be uniform. Therefore, state eligibility and disqualification provisions vary considerably from state to state. The amount of benefits to which an individual is entitled varies according to the formula in the state. In all states it depends on the amount of wages earned during the base period, and on the pattern of earnings during that period. Weekly benefit amounts and duration of benefit payments differ under the various state laws.

If you have any questions, please contact your servicing personnel office.

* * * * *

CAREER OPPORTUNITIES

Office Of United States Trustee, Miami, Florida

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

Applicants must possess a J.D. degree, have at least two years of legal experience, and be an active member of the bar in good standing (any jurisdiction). Outstanding academic credentials are essential, and litigation experience and familiarity with bankruptcy law and the principles of accounting are important. Applicants must submit a resume and law school transcript to: Department of Justice, Office of the U.S. Trustee, 51 SW First St., Suite 1204, Miami, Florida 33130, Attn: Charles S. Glidewell.

Current salary and years of experience will determine the appropriate salary level. The possible range is GS-11 ($33,623 - $43,712) to GS-15 ($66,609 - $86,589). This advertisement is issued in anticipation of a future vacancy. No telephone calls, please.

* * * * *

Office of United States Trustee, New York

The Office of Attorney Personnel Management, Department of Justice, is seeking an experienced attorney to assist with the management of the legal activities of the United States Trustee's office in New York. Responsibilities include assisting with the administration and trying of cases filed under Chapters 7, 11, 12, and 13 of the Bankruptcy Code; maintaining and supervising a panel of private trustees; supervising the conduct of debtors in possession and other trustees; and ensuring that violations of civil and criminal law are detected and referred to the U.S. Attorney's office for possible prosecution, as well as participating in the administrative aspects of the office.

Applicants must possess a J.D. degree, have at least five years of legal experience, be an active member of the bar in good standing (any jurisdiction), possess extensive litigation and management experience and at least three years of bankruptcy law experience. Applicants must submit a resume, salary history and SF-171 (Application for Federal Employment) to: Department of Justice, Office of the U.S. Trustee, 80 Broad Street, Third Floor, New York, New York 10004, Attn: Arthur J. Gonzalez.

Current salary and years of experience will determine the appropriate salary level. The possible range is $71,938 to $101,800. This advertisement is issued in anticipation of a future vacancy. No telephone calls, please.

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APPENDIX

CUMULATIVE LIST OF CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

(As provided for in the amendment to the Federal postjudgment interest statute, 28 U.S.C. §1961, effective October 1, 1982)

Effective Date	Annual Rate	Effective Date	Annual Rate	Effective Date	Annual Rate	Effective Date	Annual Rate
10-21-88	8.15%	02-14-90	7.97%	05-31-91	6.09%	09-18-92	3.13%
11-18-88	8.55%	03-09-90	8.36%	06-28-91	6.39%	10-16-92	3.24%
12-16-88	9.20%	04-06-90	8.32%	07-26-91	6.26%	11-18-92	3.76%
01-13-89	9.16%	05-04-90	8.70%	08-23-91	5.68%	12-11-92	3.72%
02-15-89	9.32%	06-01-90	8.24%	09-20-91	5.57%	01-08-93	3.67%
03-10-89	9.43%	06-29-90	8.09%	10-18-91	5.42%	02-05-93	3.45%
04-07-89	9.51%	07-27-90	7.88%	11-15-91	4.98%	03-05-93	3.21%
05-05-89	9.15%	08-24-90	7.95%	12-13-91	4.41%	04-07-93	3.37%
06-02-89	8.85%	09-21-90	7.78%	01-10-92	4.02%	04-30-93	3.25%
06-30-89	8.16%	10-27-90	7.51%	02-07-92	4.21%	05-28-93	3.54%
07-28-89	7.75%	11-16-90	7.28%	03-06-92	4.58%	06-25-93	3.54%
08-25-89	8.27%	12-14-90	7.02%	04-03-92	4.55%	07-23-93	3.58%
09-22-89	8.19%	01-11-91	6.62%	05-01-92	4.40%	08-19-93	3.43%
10-20-89	7.90%	02-13-91	6.21%	05-29-92	4.26%		
11-17-89	7.69%	03-08-91	6.46%	06-26-92	4.11%		
12-15-89	7.66%	04-05-91	6.26%	07-24-92	3.51%		
01-12-90	7.74%	05-03-91	6.07%	08-21-92	3.41%		

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

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UNITED STATES ATTORNEYS

DISTRICT	U.S. ATTORNEY
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Alabama, M	James Eldon Wilson
Alabama, S	Edward Vulevich, Jr.
Alaska	Joseph W. Bottini
Arizona	Janet Ann Napolitano
Arkansas, E	Paula Jean Casey
Arkansas, W	Paul K. Holmes, III
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California, E	Robert M. Twiss
California, C	Terree A. Bowers
California, S	James W. Brannigan, Jr.
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Connecticut	Albert S. Dabrowski
Delaware	William C. Carpenter, Jr.
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Guam	Frederick A. Black
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Wisconsin, W	Grant C. Johnson
Wyoming	Richard A. Stacy
North Mariana Islands	Frederick Black

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EXHIBIT
A

The White House

Office of the Press Secretary

For Immediate Release **August 11, 1993**

THE CLINTON ADMINISTRATION PLAN TO EXPAND COMMUNITY POLICING AND REDUCE GUN VIOLENCE

It is time for America to make a serious commitment to community policing, to having people back on the beat, working the same neighborhoods, making relationships with people in ways that prevent crime . . . . How will the federal government provide 100,000 more police officers? First of all, by getting the crime bill passed.

Bill Clinton
Detroit, Michigan
October 17, 1992

The first duty of government is to keep its citizens safe. The Clinton Administration is offering a number of initiatives to prevent crime and reduce gun violence:

- Expand community policing in cities and towns across America by putting up to 100,000 more officers on the streets.

- Keep handguns out of the hands of criminals by passing the Brady Bill, which will require a five-day waiting period before purchasing a handgun, and taking other measures on assault weapons that will begin to end the arms race in our streets.

- Provide community boot camps, which give young people discipline, training, and a better chance to avoid a life of crime, and provide criminal addicts with drug treatment.

- Pass a crime bill that increases penalties for gun offenses, reforms habeas corpus procedures to raise counsel standards and limit appeals, and imposes federal death penalties for killing a federal law enforcement officer and other heinous crimes.

PUTTING 100,000 MORE OFFICERS ON THE STREET

A first step we can take to reduce crime in America is to put more police on the streets, walking the beat and working with neighbors as partners against crime. The Clinton Administration's anti-crime initiative will expand community policing throughout the nation. This innovative way of thinking about policing has already helped reduce crime in several communities across the country. From New York to St. Louis to Los Angeles, police departments are using this approach to put more police on the streets.

The Clinton Administration has launched a government-wide effort to put 100,000 more officers and public safety personnel on the street:

Supplemental Appropriations: Congress passed and the President signed into law on July 2 an FY93 supplemental appropriations bill that included $150 million in community policing grants to hire and rehire police officers. This competitive grants program will become available to states and localities in early September, and will put more than 2,100 new police on the streets over the next three years.

Policing and Public Safety: The cornerstone of the President's community policing plan to put police on the street is the Policing and Public Safety program that will be part of this year's crime bill. An expansion of the Cop-on-the-Beat legislation introduced by Rep. Charles Schumer (D-NY), the Justice Department program will challenge communities to implement community policing by providing grants, training, and technical assistance for police officers. The program is authorized at $3.4 billion over the next five years, which will help communities put up to 50,000 new officers on the street. The Administration will make full funding for this program a priority.

Police Corps: This four-year, $100 million program will give college scholarships and police training to as many as 4-5,000 students who are willing to make a four-year commitment to serve their communities as police officers. As Governor of Arkansas, President Clinton instituted the nation's first state Police Corps program.

Safe Schools Initiative: Schools should be a safe haven for children, free of weapons, drugs, and crime. Education Secretary Richard Riley has introduced emergency Safe Schools legislation, based on a proposal by Rep. Schumer and others, that will enable local education authorities to hire security personnel and pay for police officers who include schools as part of their community policing "beat". The Administration's budget request includes $475 million for Safe Schools over the next five years, which would fund up to 4,000 sworn and non-sworn officers.

Community Partnerships Against Crime: Some of the nation's worst pockets of crime are concentrated in neighborhoods with public housing. To help make public housing safer, Housing and Urban Development Secretary Cisneros is transforming his department's Drug Elimination Grant Program into a more effective program called Community

Partnerships Against Crime (COMPAC). The Administration's budget request includes more than $700 million over the next five years to put as many as 5,000 sworn and non-sworn officers to work in law enforcement, security, and community policing in public housing.

National Service: Up to one-quarter of the slots in the national service plan Congress is expected to put on the President's desk in September will be available for young people who choose to pay their country and their communities back through public safety and law enforcement. The program could put up to 25,000 young people to work as non-sworn personnel for local police departments, crime prevention groups and other public safety efforts. The President hopes to put the first National Service participants to work by the summer of 1994.

Empowerment Zones and Enterprise Communities: The economic plan which the President signed into law August 10 will create jobs in depressed urban and rural areas around the country by targeting growth incentives and investments into nine Empowerment Zones and 100 Enterprise Communities. The Administration's budget request includes up to $500 million for up to 6-7,000 officers to do community policing in these areas, because businesses can't create jobs where the streets are not safe. While the Empowerment Zone proposal passed as part of budget reconciliation, the Appropriations Committees have not approved the Administration's budget request.

Troops-to-Cops: As we downscale the military in the aftermath of the Cold War, we need to put our best trained, most talented men and women to work keeping America safe here at home. To help police departments tap into the pool of talented military personnel, Secretary of Labor Robert Reich will make as much as $10 million from the Defense Diversification Program available to retrain up to 1,500 veterans who are leaving the military for jobs with state and local police departments.

Paying for Public Safety: Funding for these policing programs is included in the Administration's budget baseline for FY 1994-98. If additional funds are required for these and other Administration initiatives, the Administration will continue to pursue additional budget cuts, including ones the Administration sought but has not yet achieved in Congress this year. It is expected that Congressional leadership and the National Performance Review will identify additional savings. Community policing programs assume some state/local match.

REDUCING GUN VIOLENCE

The Clinton Administration is committed to passing the Brady Bill, and reducing the wave of gun violence that is plaguing America.

Brady Bill: This legislation -- named for former Reagan press secretary James Brady, and championed by his wife Sarah -- will impose a five-day waiting period for

handgun purchases, and require background checks so that we can help keep handguns out of the hands of criminals. The Brady Bill passed both houses of Congress last session with bipartisan support.

Assault Weapons: Recent attacks on children at a swimming pool in Washington, D.C., and on a law firm in San Francisco have underscored the need for Congress to consider legislation addressing the sale and availability of semiautomatic assault weapons -- the guns of choice for drug- and gang-related crime.

Presidential Action: Today, the President will sign Presidential Memoranda to suspend the importation of assault pistols, which are not covered under the existing assault weapons import ban, and to toughen enforcement of compliance procedures in issuing federal firearms licenses to gun dealers.

COMMUNITY BOOT CAMPS FOR YOUNG OFFENDERS AND DRUG TREATMENT FOR CRIMINAL ADDICTS

In Arkansas, Governor Clinton pioneered the use of community boot camps, which provide young people the discipline, education, and training they need for a better chance to avoid a life of crime. The Administration will work with Congress to convert closed military bases and other appropriate facilities into a system of boot camps. Director of the Office of National Drug Control Policy Lee Brown and Attorney General Janet Reno will work to ensure that we use the criminal justice system to provide criminal addicts with drug treatment.

FEDERAL DEATH PENALTY

The Administration will ask Congress to pass crime legislation that provides the death penalty for nearly 50 offenses -- including killing a federal law enforcement officer and killing state officers in the course of cooperative investigations with federal agencies.

HABEAS CORPUS REFORM

Senator Biden has introduced breakthrough habeas reform legislation, with strong support from district attorneys, state attorneys general, and the Administration. The legislation will, for the first time, limit inmates to filing a single, federal habeas corpus appeal within a six-month time limit. At the same time, the legislation will also assure that all indigent capital defendants will be represented by counsel who meet specific, rigorous experience and qualification standards.

EXHIBIT
B

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release August 11, 1993

August 11, 1993

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

SUBJECT: Gun Dealer Licensing

A major problem facing the Nation today is the ease with which criminals, the mentally deranged, and even children can acquire firearms. The gruesome consequences of this ready availability of guns is found in the senseless violence occurring throughout the country with numbing regularity. While there is not one solution to the plague of gun-related violence, there is more than sufficient evidence indicating that a major part of the problem involves the present system of gun dealer licensing, which encourages a flourishing criminal market in guns.

The Gun Control Act of 1968 established a licensing system for persons engaged in businesses of manufacturing, importing, and dealing in firearms. These licensees are allowed to ship firearms in interstate commerce among themselves, and are required to abide by State laws and local ordinances in their sale of firearms to non-licensees. They are also prohibited from selling firearms to felons, certain other classes of persons, and generally to out of state persons. This Act also established a comprehensive record-keeping system and authorized the Secretary to conduct inspections to ensure compliance with the Act. The statutory qualifications for a licensee are that the applicant is at least 21 years of age, is not a felon or other person prohibited from possessing firearms, has not willfully violated the Gun Control Act, and has premises from which he intends to conduct business. The license fee for a basic dealer's license is only $10 a year.

The minimal qualification standards of the statute, coupled with policies of neglect and opposition to legitimate regulatory efforts by past Administrations, leave us with a situation where in some ways we have made it easier to get a license to sell guns than it is to get and keep a driver's license. Today there are in excess of 287,000 Federal firearms licensees, and a great number of these persons probably should not be licensed.

The Bureau of Alcohol, Tobacco and Firearms (ATF) estimates that only about 30 percent of these are bona fide storefront gun dealers. ATF estimates that probably 40 percent of the licensees conduct no business at all, and are simply persons who use the license to obtain the benefits of trading interstate and buying guns at wholesale. The remaining 30 percent of licensees engage in a limited level of business, typically out of private residences. While the Federal statute creates no minimum level of business activity to qualify for a license, many of the licensees in this category operate in violation of State and local licensing, taxing, and other business-related laws. Since the overall purpose of the Gun Control Act was to assist State and local gun control efforts, at the very least we need to coordinate the Federal licensing process with the appropriate State and local agencies.

This Administration is committed to doing more to prevent this criminal market in illegal guns from continuing to flourish. Since all new firearms used in crime have at some point passed through the legitimate distribution system, Federal firearms licenses represent the first line of defense in our efforts to keep guns out of the hands of criminals.

Accordingly, you have informed me that you will direct the Department of the Treasury and ATF to take whatever steps are necessary, to the extent permitted by law, to ensure compliance with present licensing requirements, such as:

(a) improving the thoroughness and effectiveness of background checks in screening dealer license applicants;

(b) revising the application process to require the applicant to supply all information relevant to establishing qualification for a license, and to require more reliable forms of identification of the applicant, such as fingerprinting, to assist in identifying an applicant's criminal or other disqualifying history;

(c) making the "premises" requirement of the statute more meaningful by increasing field checks and the use of other procedures to verify compliance;

(d) increasing the scrutiny of licensees' multiple handgun sales reports and providing automated access to multiple sales report information by serial number for firearms trace purposes;

(e) requiring dealers to obtain more reliable identification from purchasers;

(f) reviewing sanctioning policies to determine the feasibility and desirability of adding the option of license suspension for certain violations;

(g) expanding the use of cooperative agreements with State and local law enforcement agencies to address licensing and trafficking problems;

(h) expanding ATF's capabilities to utilize effectively the firearms transaction records of out-of-business licensees for tracing purposes through the use of automation and other technology.

Acting pursuant to your statutory authority, you shall make such determinations and issue orders, regulations and rulings, as appropriate, to achieve the objectives stated in this memorandum.

I further direct that you initiate these actions as soon as possible and report your progress implementing these and other measures consistent with the foregoing to me within 90 days and annually thereafter.

All Executive agencies shall, to the extent permitted by law, cooperate with and assist you in carrying out the objectives of this memorandum. You shall consult with the Attorney General, the Director of National Drug Control Policy, and other Executive agencies as necessary to coordinate and implement the objective of this memorandum. To the maximum extent possible, the Attorney General, through the Office of Justice Programs, Bureau of Justice Assistance, will expand support to State and local agencies working with ATF on joint projects relating to licensing and trafficking in firearms. Nothing in this memorandum shall be construed to require actions contrary to applicable provisions of the law. You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON

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EXHIBIT C

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release August 11, 1993

August 11, 1993

MEMORANDUM FOR THE SECRETARY OF THE TREASURY

SUBJECT: Importation of Assault Pistols

A category of pistols commonly referred to as assault pistols has increasingly become the weapon of choice for drug dealers, street gang members, and other violent criminals. These pistols, generally characterized by their bulky military-style appearance and large magazine capacity, include domestically manufactured TEC-9's and MAC-10's as well as imported models like the Uzi pistol and the H&K SP-89. Their popularity appears to stem from their intimidating appearance and their considerable firepower.

These weapons have been used to harm and terrorize many Americans, particularly our children, in recent years. As a result, it is no longer possible to stand by and witness the deadly proliferation of these weapons without acting to protect our communities.

Although addressing the domestic production of these weapons requires a change in the statute, which I support, existing law already bans the importation of firearms unless they are determined to be particularly suitable for or readily adaptable for sporting purposes. I am informed that shortly after enactment of the Gun Control Act of 1968, the Treasury Department adopted a factoring system to determine whether handguns were importable pursuant to this standard. The system entails the examination of the firearm against a set of criteria, with points being awarded for various features. A minimum score is required before importation is approved. The criteria and weighted point system were designed to address the crime gun of the day, the cheap, easily concealable "Saturday Night Special." Under this 25-year old system, small caliber, easily concealable handguns score few points and are banned from importation. However, assault-type pistols -- the new crime gun of the day -- because of their large size, weight, and caliber, easily score the necessary points to qualify for importation even though none of these pistols appears to have any legitimate sporting purpose. Accordingly, it is time to reassess how the present regulatory approach can be made more effective in achieving the legislative directive to preclude importation of firearms that are not particularly suitable for or readily adaptable for sporting purposes.

I hereby direct you to take the necessary steps to reexamine the current importation factoring system to determine whether the system should be modified to ensure that all nonsporting handguns are properly denied importation. You have advised me that the Bureau of Alcohol, Tobacco and Firearms (ATF) will issue a notice of proposed rule-making in the near future that will propose changes to the factoring system to address the assault pistol problem. You have further advised me that effective immediately action on pending applications to import these weapons will be suspended, and that final action on any application will be delayed until this review process is completed.

Nothing herein shall be construed to require actions contrary to applicable provisions of law. You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON

# # #

EXHIBIT D

CORPORATE LENIENCY POLICY

The Division has a policy of according leniency to corporations reporting their illegal antitrust activity at an early stage, if they meet certain conditions. "Leniency" means not charging such a firm criminally for the activity being reported. (The policy also is known as the corporate amnesty or corporate immunity policy.)

A. Leniency Before an Investigation Has Begun

Leniency will be granted to a corporation reporting illegal activity before an investigation has begun, if the following six conditions are met:

1. At the time the corporation comes forward to report the illegal activity, the Division has not received information about the illegal activity being reported from any other source;

2. The corporation, upon its discovery of the illegal activity being reported, took prompt and effective action to terminate its part in the activity;

3. The corporation reports the wrongdoing with candor and completeness and provides full, continuing and complete cooperation to the Division throughout the investigation;

4. The confession of wrongdoing is truly a corporate act, as opposed to isolated confessions of individual executives or officials;

5. Where possible, the corporation makes restitution to injured parties; and

6. The corporation did not coerce another party to participate in the illegal activity and clearly was not the leader in, or originator of, the activity.

B. Alternative Requirements for Leniency

If a corporation comes forward to report illegal antitrust activity and does not meet all six of the conditions set out in Part A, above, the corporation, whether it comes forward before or after an investigation has begun, will be granted leniency if the following seven conditions are met:

1. The corporation is the first one to come forward and qualify for leniency with respect to the illegal activity being reported;

2. The Division, at the time the corporation comes in, does not yet have evidence against the company that is likely to result in a sustainable conviction;

3. The corporation, upon its discovery of the illegal activity being reported, took prompt and effective action to terminate its part in the activity;

4. The corporation reports the wrongdoing with candor and completeness and provides full, continuing and complete cooperation that advances the Division in its investigation;

5. The confession of wrongdoing is truly a corporate act, as opposed to isolated confessions of individual executives or officials;

6. Where possible, the corporation makes restitution to injured parties; and

7. The Division determines that granting leniency would not be unfair to others, considering the nature of the illegal activity, the confessing corporation's role in it, and when the corporation comes forward.

In applying condition 7, the primary considerations will be how early the corporation comes forward and whether the corporation coerced another party to participate in the illegal activity or clearly was the leader in, or originator of, the activity. The burden of satisfying condition 7 will be low if the corporation comes forward before the Division has begun an investigation into the illegal activity. That burden will increase the closer the Division comes to having evidence that is likely to result in a sustainable conviction.

C. Leniency for Corporate Directors, Officers, and Employees

If a corporation qualifies for leniency under Part A, above, all directors, officers, and employees of the corporation who admit their involvement in the illegal antitrust activity as part of the corporate confession will receive leniency, in the form of not being charged criminally for the illegal activity, if they admit their wrongdoing with candor and completeness and continue to assist the Division throughout the investigation.

If a corporation does not qualify for leniency under Part A, above, the directors, officers, and employees who come forward with the corporation will be considered for immunity from criminal prosecution on the same basis as if they had approached the Division individually.

D. Leniency Procedure

If the staff that receives the request for leniency believes the corporation qualifies for and should be accorded leniency, it should forward a favorable recommendation to the Office of Operations, setting forth the reasons why leniency should be granted. Staff should not delay making such a recommendation until a fact memo recommending prosecution of others is prepared. The Director of Operations will review the request and forward it to the Assistant Attorney General for final decision. If the staff recommends against leniency, corporate counsel may wish to seek an appointment with the Director of Operations to make their views known. Counsel are not entitled to such a meeting as a matter of right, but the opportunity will generally be afforded.

Issued August 10, 1993

EXHIBIT E

U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

August 10, 1993

MEMORANDUM

TO: Frank Hunger
Assistant Attorney General
Civil Division

Jim Turner
Acting Assistant Attorney General
Civil Rights Division

FROM: Webster L. Hubbell

SUBJECT: Retroactivity of the Civil Rights Act of 1991 As Applied Against Federal Government Employees

As you know, I have been presented with differing views as to whether the Department of Justice should regard the jury trial and compensatory and punitive damages provisions contained in section 102 of the 1991 amendments to the Civil Rights Act of 1964 as applying to currently pending claims brought against the federal government by covered federal employees. Up to this point, we have been able to argue the law of the circuit in those jurisdictions where the court of appeals has ruled against retroactivity and move for a stay in other circuits. However, Judge Thomas Hogan of the District Court for the District of Columbia has ordered the U.S. Attorney's office to brief the federal government's position on demands for jury trial. We must therefore address squarely whether to assert the sovereign immunity defense with respect to the retroactive application of the 1991 Act against the federal government.

This has been one of the most difficult legal questions I have confronted since coming to the Justice Department. I have appreciated the hard work you and your staffs have put into this issue and have been impressed with the quality of those efforts on all sides.

I have reviewed the memoranda submitted by the Civil Division, the Office of the Solicitor General, and the Civil Rights Division and consulted with these Offices. The Civil Division and the Office of the Solicitor General have articulated forceful and well-reasoned arguments in favor of asserting a sovereign immunity

defense. Nevertheless, I am persuaded that the Department of Justice should direct the United States Attorney in the case pending before Judge Hogan not to assert sovereign immunity as a defense against the retroactive application of section 102.

I have reached this conclusion for several reasons which I set forth briefly below. I would be happy to discuss more fully with you my reasoning.

First, I believe this the sounder reading of precedent. Although the case law requires that a waiver of sovereign immunity be unequivocal, it has never required a specific and explicit demarcation of the scope of the waiver. Instead, the Supreme Court has always looked to Congress' intent as expressed in the statute itself. The language and the structure of section 102 treats in every respect private plaintiffs and covered federal employees identically. It is the position of the Department that Congress intended section 102 to apply retroactively to private plaintiffs. Therefore, Congress should be regarded as having intended section 102 to apply retroactively to covered federal employees. This reasoning falls squarely within the bounds of existing case law, and therefore does not require the establishment of adverse precedent.

Second, significant Departmental policy considerations, particularly relating to consistency, support arguing for retroactive application of section 102. Asserting that the 1991 Act applies retroactively against the private sector and state governments but not against the federal government could undermine our argument in Landgraf. More significantly, a contention by the government that it should not be held to the standards of this act could undermine the law's effectiveness among the general public.

I recognize that Congress' decision to enhance the tools available to those seeking to vindicate their rights inevitably implicates the Department's obligation to defend suits against the United States. The Civil Division has discharged this functior honorably and well, and I am confident that the Civil Division will continue to do so despite the additional burden of a retroactive section 102. It goes without saying that despite this added burden, the government should continue to prevail where no intentional discrimination has occurred.

The position of the Department, as a general matter, is that, in those circuits that have not held against the retroactive application of the Civil Rights Act of 1991, section 102 applies retroactively to covered federal employees. However, I look forward to continued dialogue with the Civil and Civil Rights Divisions and the Office of the Solicitor General regarding the development and application of this policy.

cc: The Attorney General
The Solicitor General

EXHIBIT F

FEDERAL EMPLOYEE ENTITLEMENTS under the FAMILY AND MEDICAL LEAVE ACT OF 1993

(effective August 5, 1993)

ENTITLEMENT

Sections 6381 through 6387 of title 5, United States Code, as added by Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103-3, February 5, 1993), provides covered Federal employees with entitlement to 12 workweeks of unpaid leave during any 12-month period for the following purposes:

- the birth of a son or daughter of the employee and the care of such son or daughter;
- the placement of a son or daughter with the employee for adoption or foster care;
- the care of a spouse, son, daughter, or parent of the employee who has a serious health condition; or
- a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position.

Under certain conditions, FMLA leave may be taken intermittently, or the employee may work under a work schedule that is reduced by the number of hours of leave taken as family and medical leave. An employee may elect to substitute other paid time off, as appropriate, for any unpaid leave under the FMLA. FMLA leave is in addition to other paid time off available to an employee.

JOB BENEFITS AND PROTECTION

Upon return from FMLA leave, an employee must be returned to the same position or to an "equivalent position with equivalent benefits, pay status, and other terms and condition of employment."

An employee who takes FMLA leave is entitled to maintain health benefits coverage. An employee may pay the employee share of the premiums on a current basis or pay upon return to work.

ADVANCE NOTICE AND MEDICAL CERTIFICATION

- The employee must provide notice of his or her intent to take family and medical leave not less than 30 days before leave is to begin or as soon as is practicable.

- An agency may request medical certification for FMLA leave taken to care for an employee's spouse, son, daughter, or parent who has a serious health condition or for the serious health condition of the employee.

COVERED EMPLOYEES (NOTE: Both Titles I and II might need to be referenced to determine eligibility)

- Employees covered by Title 5 Annual and Sick Leave System excluding temporaries and intermittants

- Federal employees covered by Title I of the FMLA, which would include certain federal temporary and intermittant employees.

YOUR RIGHTS
under the
FAMILY AND MEDICAL LEAVE ACT OF 1993

FMLA requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and if there are at least 50 employees within 75 miles.

REASONS FOR TAKING LEAVE:

Unpaid leave must be granted for any of the following reasons:

- to care for the employee's child after birth, or placement for adoption or foster care;

- to care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or

- for a serious health condition that makes the employee unable to perform the employee's job.

At the employee's or employer's option, certain kinds of *paid* leave may be substituted for unpaid leave.

ADVANCE NOTICE AND MEDICAL CERTIFICATION:

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met.

- The employee ordinarily must provide 30 days advance notice when the leave is "foreseeable".

- An employer may require medical certification to support a request for leave because of a serious health condition, and may require second and third opinions (at the employer's expense) and a fitness for duty report to return to work.

JOB BENEFITS AND PROTECTION:

- For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan."

- Upon return from FMLA leave, most employees must be restored to their original or equivalent pay, benefits, and other employment terms.

- The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

UNLAWFUL ACTS BY EMPLOYERS:

FMLA makes it unlawful for any employer to:

- interfere with, restrain, or deny the exercise of any right provided under FMLA;

- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

ENFORCEMENT:

- The U.S. Department of Labor is authorized to investigate and resolve complaints of violations.

- An eligible employee may bring civil action against an employer for violations.

FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

FOR ADDITIONAL INFORMATION:

Contact the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

REPLICA OF MANDATORY NOTICE APPROVED BY THE SECRETARY, U. S. DEPARTMENT OF LABOR (WH PUBLICATION 1420, JUNE 1993)

Guideline Sentencing Update

FEDERAL JUDICIAL CENTER

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

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

VOLUME 6 • NUMBER 1 • AUGUST 9, 1993

General Application Principles

POLICY STATEMENTS

Seventh Circuit holds that district courts "must follow policy statements unless they contradict a statute or the Guidelines." Defendant's five-year term of supervised release was revoked for drug possession. Under 18 U.S.C. § 3583(g), he was subject to a prison term of not less than 20 months. Under the Guidelines he was subject to a 12–18 month term, or 20 months in light of the mandatory term under § 3583(g). *See* §§ 7B1.3, 7B1.4(a) & (b)(2), p.s. The government argued that the Chapter Seven policy statements were merely advisory, not binding. The district court agreed and sentenced defendant to 36 months.

The appellate court remanded: "Both parties agree that the correct interpretation of this policy statement leads to the conclusion that the district court must sentence Lewis to 20 months imprisonment—no more and no less. . . . While we may have been previously inclined to accept the proposition that policy statements are merely advisory, . . . this view has been explicitly rejected by . . . *Stinson v. U.S.*, 113 S.Ct. 1913 (1993). In reaching its holding that sentencing guideline commentary is binding, unless contrary to statute or the Guidelines themselves, the Court [stated]: 'The principle that the Guidelines Manual is binding on federal courts applies as well to policy statements.' *Id.* at 1917." Therefore, "we are compelled to hold that the district court erred by not sentencing Lewis to 20 months imprisonment, absent a departure. . . . U.S.S.G. sec. 7B1.4(b)(2) does not conflict with any statute or the Guidelines themselves. Consequently, Lewis must be resentenced."

U.S. v. Lewis, No. 92-2586 (7th Cir. July 8, 1993) (Kanne, J.).

Note: This appears to be the first circuit to hold that the Chapter Seven policy statements must be followed. Most of the circuits had held, prior to *Stinson*, that Chapter Seven must be considered but is not binding. See *Outline* generally at VII.

Offense Conduct

DRUG QUANTITY—MANDATORY MINIMUMS

U.S. v. Mergerson, No. 92-1179 (5th Cir. July 12, 1993) (King, J.) (Remanded: For defendant convicted of conspiracy to distribute heroin, it was error to use amounts he negotiated to sell to find him responsible for over one kilogram of heroin and thus subject to the statutory minimum term under 21 U.S.C. § 841(b)(1)(A)(i). Although negotiated amounts are used under the Guidelines, see § 2D1.1, comment. (n.12), "§ 841(b)(1)(A)(i) requires that drug quantities actually be possessed with the intent to distribute—rather than merely being negotiated—[and] the district court's findings for purposes of guidelines sentencing are in large part inapplicable to the court's separate findings pursuant to § 841(b)(1)(A)(i)." Therefore, "the district court had to find . . . that Mergerson actually possessed or conspired . . . to actually possess over a kilogram of heroin during the conspiracy . . . . Mere proof of the amounts 'negotiated' with the undercover agents . . . would not count toward the quantity of heroin applicable to the conspiracy count.").

See *Outline* at II.A.3 and B.4.a.

Departures

SUBSTANTIAL ASSISTANCE

Third Circuit holds government may not deny § 5K1.1 motion to penalize defendant for exercising right to trial. The government offered to move for a substantial assistance departure if defendant pled guilty to mail fraud and money laundering charges. Defendant refused to plead to money laundering because he believed the statute did not apply to his conduct. The government responded by "withdraw[ing] the proposed § 5K1.1 plea agreement offer based on [defendant's] refusal to plead," and added that it also had "serious reservations" about defendant's truthfulness, which could also preclude a § 5K1.1 motion. Defendant was convicted on all counts and no § 5K1.1 motion was made. Defendant claimed the district court could depart under *Wade v. U.S.*, 112 S.Ct. 1840 (1992), because the government had an unconstitutional motive for denying the motion—to penalize him for going to trial. He also claimed that his assistance was equal to or greater than that of two defendants who pled guilty and received departures. The district court denied defendant's request, stating that *Wade* did not prohibit the government's action.

The appellate court remanded: "The Court in *Wade* stated that a district court may grant relief to a defendant if the prosecutor has 'an unconstitutional motive' for withholding a § 5K1.1 motion. . . . [I]t is an elementary violation of due process for a prosecutor to engage in conduct detrimental to a criminal defendant for the vindictive purpose of penalizing the defendant for exercising his constitutional right to a trial."

On remand, defendant can attempt to prove prosecutorial vindictiveness. He is not entitled to a presumption of vindictiveness, however, "because the government has proffered legitimate reasons . . . for its refusal to file a 5K1.1 motion," namely, that defendant's assistance was not, in fact, substantial. Thus, defendant "must prove actual vindictiveness in order to prevail. . . . [H]e must show that the prosecutor withheld a 5K1.1 motion solely to penalize him for exercising his right to trial," and this requires showing "that the government's stated justifications . . . are pretextual."

U.S. v. Paramo, No. 92-1861 (3d Cir. July 7, 1993) (Cowen, J.).

See *Outline* at VI.F.1.b.iii.

Fifth Circuit remands refusal to file § 5K1.1 motion because "significant ambiguities" in the plea agreement require a determination of the intent of the parties. Defendant entered into a plea agreement with the government. At defendant's rearraignment, the government told the district

court "that it is implicit although not spelled out in the agreement that if Mr. Hernandez should provide substantial assistance to the Government. . . . that the Government may make a motion for downward departure at sentencing." Defendant provided information, but the government claimed the assistance was insubstantial and did not file a motion. Defendant claimed that he provided the government with all the information it requested, but the government did not follow up on it and did not give him an opportunity to provide more assistance. Defendant was sentenced to the statutory minimum after refusing the chance to withdraw his plea.

The appellate court remanded, holding that the district court must determine whether the government's conduct was consistent with the parties' reasonable understanding of the plea agreement, which in this case involves "the parties' interpretation of what might constitute substantial assistance." Here, "it is unclear from the record what more Hernandez could have provided—or, more to the point, what more the government could possibly have contemplated that he would provide—in order to earn a motion for downward departure." The Fifth Circuit has held that when a defendant accepted a plea agreement in reliance on government representations "and did his part, or stood ready to perform but was unable to do so because the government had no further need or opted not to use him, the government is obliged to move for a downward departure." *See U.S. v. Melton*, 930 F.2d 1096, 1098–99 (5th Cir. 1991) [4 *GSU* #5].

As to whether the government's use of "may" instead of "shall" move for departure gave it greater discretion, the court stated: "We find it difficult if not impossible to believe that any defendant who hopes to receive a [§ 5K1.1 motion] would knowingly enter into a plea agreement in which the government retains unfettered discretion to make or not to make that motion, even if the defendant should indisputably provide substantial assistance. On remand . . . , the government should not be heard to make the legalistic argument that merely by using the word 'may' the government is free to exercise the prosecutor's discretion whether to make the motion . . . . Frankly, we are incredulous that any defendant would consciously make such an obviously bad deal absent some extremely compelling need to plea rather than stand trial."

U.S. v. Hernandez, No. 92-7485 (5th Cir. July 7, 1993) (Weiner, J.).

See *Outline* at VI.F.1.b.ii.

U.S. v. Dixon, No. 92-5780 (4th Cir. July 2, 1993) (Hall, J.) (Remanded: The government breached the plea agreement by not making a § 5K1.1 motion. The agreement stated that if defendant's "cooperation is deemed by the Government as providing substantial assistance in the investigation or prosecution of another person," the government would make the motion. The government "repeatedly conceded" defendant had, in fact, substantially assisted an investigation, but wanted to withhold the motion until defendant assisted in a future trial. Noting that the agreement provided for assistance in the investigation *or* prosecution of another, the appellate court held that "the government has no right to insist on assistance in both investigation and prosecution . . . . Dixon's providing substantial assistance in the investigation of another person has already triggered the government's duty under the plea agreement . . . . Dixon is entitled to specific performance.").

See *Outline* at VI.F.1.b.ii.

U.S. v. Beckett, No. 92-3091 (5th Cir. July 7, 1993) (DeMoss, J.) (Remanded: Although the government specified it was moving under § 5K1.1 only and not for a departure from the statutory minimum under 18 U.S.C. § 3553(e), the district court had discretion to depart below the statutory minimum. "[O]nce the motion is filed, the judge has the authority to make a downward departure from any or all counts, without regard to any statutorily mandated minimum sentence. We see nothing in these provisions that causes us to believe that Congress intended to permit the government to limit the scope of the court's sentencing authority by choosing to package its substantial assistance representation in a 5K1.1 motion rather than a 3553(e) motion.").

See *Outline* at VI.F.3.

Adjustments

Acceptance of Responsibility

U.S. v. Clemons, No. 92-6285 (6th Cir. July 19, 1993) (Milburn, J.) (Affirmed: Adopting the reasoning of *U.S. v. Frazier*, 971 F.2d 1076, 1084 (4th Cir. 1992), the appellate court held that "conditioning the acceptance of responsibility reduction on a defendant's waiver of his Fifth Amendment privilege against self-incrimination does not penalize the defendant for assertion of his right against self incrimination in violation of the Fifth Amendment." Thus, it was proper to deny the § 3E1.1 reduction to a defendant who accepted responsibility for the offense of conviction but refused to admit to related conduct. The court noted, however, that the 1992 amendments to § 3E1.1 and Application Note 1(a), which did not apply to defendant, "'would appear to preclude the Fifth Amendment issue from arising in the future . . . .' (*U.S. v. Hicks*, 978 F.2d 722, 726 (D.C. Cir. 1992)."). *See also U.S. v. March*, No. 92-3343 (10th Cir. July 9, 1993) (Logan, J.) (Affirmed: § 3E1.1 reduction properly denied to defendant who followed advice of counsel and refused to discuss circumstances of offense with probation officer preparing presentence report, claiming he might incriminate himself and destroy basis for appeal.). *But see U.S. v. LaPierre*, No. 92-10321 (9th Cir. July 12, 1993) (Norris, J.) (Remanded: District court may not deny § 3E1.1 reduction because defendant claimed privilege against self-incrimination and refused to discuss facts with probation officer and planned to appeal—exercise of constitutional rights may not be weighed against defendant.).

See *Outline* at III.E.2 and 3.

Role in the Offense

U.S. v. Webster, No. 90-50699 (9th Cir. June 11, 1993) (per curiam) (Remanded: District court should consider whether defendant qualifies for minor participant adjustment—based on all relevant conduct—for his role as a courier. However, downward departure may not be considered under *U.S. v. Valdez-Gonzalez*, 957 F.2d 643 (9th Cir. 1992), which held that departure for a drug courier may be appropriate if the courier was the only "participant" in the offense of conviction. The Nov. 1990 amendment to § 3B's Introductory Commentary, which states that relevant conduct should be used for role in offense adjustments, effectively overturned the reasoning of *Valdez-Gonzalez*, which focused on the fact that the earlier version of § 3B1.2 did not adequately account for a defendant's role in relevant conduct.).

See *Outline* at III.B.5.

U.S. Department of Justice
Executive Office for U.S. Attorneys
Office of Legal Education

Nomination Form

EXHIBIT H

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

(202) 501-7467
FAX (202) 501-7334
(202) 208-7235

(Please Type)

COURSE

Course Name	Course Date(s)	Course Location

NOMINATOR

Name	Title	
Phone Number	Number of Nominees Submitted:	Order of Preference of this Nominee:

NOMINEE

Name	Title	
Office, Agency or Department Name		Phone Number

QUESTIONNAIRE

1. Has the nominee applied for this course in the past and not been selected?

   Yes No (please circle) If yes, how many times?

2. What percentage of nominee's work involves the subject(s) of the course?

3. Indicate the level of skill or knowledge nominee has in this area:

   Novice Intermediate Advanced (please circle)

4. How many years has the nominee worked in this area?

5. What training has the nominee had in this area?

6. If necessary, please indicate any special considerations:

ADDRESS

Return mailing Address: Must be Typed and fit into box

LEI USE ONLY	
ACCEPTED	NOT SELECTED