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From the Editor-in-Chief

Your *United States Attorneys Bulletin* has a new look this month. Responses to our readers survey indicated that you were interested in more substantive discussions of important issues. We are addressing that with feature articles that focus on a different area of the law in each issue. The balance of the magazine will continue to carry the articles and news items from the Department and the field that you regularly see in the *Bulletin*.

We chose immigration as our first theme for many reasons. The enforcement of immigration laws is one of the Departments priorities. More AUSAs are now engaged in the enforcement of immigration laws than at any other time in our history. Our immigration problems present a challenge to the country, and it is an area in which we, as prosecutors, can make significant contributions. In fact, this issue of the *Bulletin* contains many examples of how one dedicated person can make a major difference in law enforcement. Whether it is a creative United States Attorney who empowers his Assistants, a Border Patrol Agent with new equipment ideas, or an Assistant United States Attorney who designs a model prosecution program, each dedicated person can make a positive contribution. The innovation, creativity, and teamwork springing up around the country to deal effectively with immigration issues should inspire us to adopt the same "can do" attitude to combat criminal and civil problems in our communities. To all of our contributing authors, thank you for your addition to the *Bulletin*. Our publication schedule is printed on the inside of the back cover. Please take a moment to review the topics. Do you have good ideas or issues to share with your colleagues? Feel free to write a one or two page story about an innovative solution to a problem, or give me a call and tell me about it.

And finally, the answer to the most frequently asked question from the field: Yes, we are working on a new edition of the *United States Attorneys Manual*, and it will be published in USABook format.

I am now back in my district and you can reach me at (809)773-3920 or at AVISC01(DNISSMAN).

DAVID MARSHALL NISSMAN

Contents

Letter from the President

April 4, 1996

I am pleased to send greetings to the staff and readers of the *United States Attorneys' Bulletin*.

As you know, my Administration has made the enforcement of immigration laws a top priority. Although we support legal immigration, America cannot tolerate an influx of criminal and illegal aliens. As a nation of immigrants, we cannot permit the abuse of our immigration laws to continue.

As we restore the rule of law to our nation’s immigration system, our goal is to create a seamless web of enforcement from the border to the workplace. Our illegal immigration enforcement policy is focused in four areas: strengthening border control, protecting American jobs by enforcing laws prohibiting employment of illegal immigrants, removing criminal and other deportable aliens, and securing the resources to assist states with the costs of illegal immigration.

In the last two years, we have added more than a thousand border patrol agents and have equipped these agents with the high technology and resources they need to do the job, including sensors, night scopes, computers, and encrypted radios. The results of our efforts are reflected in the successful implementation of Operations "Hold-the-Line" in El Paso, "Gatekeeper" in San Diego, and "Safeguard" in Arizona.

Through Justice Department programs, we are also increasing deportations and exclusions of illegal aliens. In 1995, we removed a record number of criminal and other deportable aliens from this country -- 74 percent more removals than in 1990. Moreover, jailed illegal aliens are being removed from the United States upon their release. We will continue to expand these efforts.

In addition, I believe that tax dollars and government business should not be directed to employers who knowingly hire illegal workers, and I recently issued an executive order barring federal contracts from going to those companies. The order is simple and straightforward, and it will neither burden employers with needless paperwork nor place unreasonable demands on government contracting agencies.

Be assured, however, that we will not tolerate employment discrimination. Our anti-discrimination laws protect legal workers, and I am determined that our strengthened enforcement of illegal immigration laws will not weaken these protections.

I am grateful for the innovative work that you and the Immigration and Naturalization Service are doing. I know that your job is not easy, but you can be proud of your hard work, dedication, and innovation. I am confident that together we will meet the challenges ahead.

Bill Clinton

Statement of the Deputy Attorney General

As you can read in the President's letter, this Adminstration has made immigration a top priority. We are demonstrating that the problem of illegal immigration can be contained, if we develop the right solutions and devote the resources necessary to make them work.

The Administration's agenda is set forth in greater detail in INS Commissioner Doris Meissner's article, which appears after the interview with United States Attorney Alan Bersin. To accomplish this agenda, the Administration has sought and obtained significant new resources-the INS's budget has grown 72 percent from FY 1993 to FY 1996. The Administration has also provided leadership and a framework of interagency cooperation to support these programs. With this support, we have seen the nation's immigration system begin to function effectively, for the first time in decades. This ambitious agenda has presented great challenges for the Department in managing and coordinating within the Department and with other federal agencies. The Attorney General and I have both spent considerable time working closely with INS and other agencies to ensure that our immigration programs are being implemented carefully and effectively.

These programs are pulling together people and resources from all corners of the Department. Let me give you a few examples:

- The five United States Attorneys from our Southwest border districts have formed a Southwest Border Council, working closely with the Criminal Division, FBI, DEA, and INS to develop and implement innovative counter drug enforcement strategies.

- INS operations officers have joined our Detention Planning Committee, to work with the U.S. Marshals Service, the Bureau of Prisons, and the U.S. Attorneys on significant immigration enforcement operations so that the Department's resources and planning can be coordinated effectively.

- With assistance from the Justice Management Division, we have focused on INS's recruitment and training plans and schedules to ensure that our significant personnel growth does not compromise the integrity, training, and preparedness of our immigration officers.

- We have integrated the Civil Division's Office of Immigration Litigation and the Executive Office for Immigration Review-the agency that includes the Immigration Judges-into our planning to ensure that litigation and judicial resources are coordinated with our immigration programs.

- We are working with the Civil Rights Divisions Office of Special Counsel for Immigration Related Unfair Employment Practices to enlist its assistance with our worksite enforcement operations so that they will be conducted with due care and attention to civil rights for all residents.

We have also been working with other federal agencies to take advantage of all available federal resources and expertise in support of our immigration programs:

- The Labor Department is our partner in the worksite enforcement operations, which are targeting violations of the labor laws as well as immigration violators.

- On the Southwest border, we are working closely with the U.S. Customs Service, the Defense Department's Joint Task Force Six, and local law enforcement to coordinate border enforcement operations with maximum effectiveness.

- Our strategy in response to the influx of Cuban and Haitian migrants in 1994 involved a broad coalition of agencies, with the Defense Department, the Coast Guard, the State

Department, and Justice working together under National Security Council leadership to develop solutions that have enabled us to reach a successful resolution of what could have been an uncontrollable immigration problem.

I am very pleased with what the Department has accomplished on immigration and am excited about our plans for the future.

As prosecutors, your work is critical to many of our programs. This issue of the *Bulletin* pulls together a great deal of useful information on immigration enforcement and I urge you to read it closely. I know that those of you who are called upon to support these programs will bring to your work the alacrity and dedication that I have seen consistently in my experience with Assistant United States Attorneys, and I thank you for these and the many other contributions you make to the Department on a daily basis.

Interview with United States Attorney Alan Bersin, Southern District of California

When Alan Bersin was sworn in as the United States Attorney for the Southern District of California in November 1993, he inherited a district with the most active land border in the country. His academic background includes degrees from Harvard and Yale, and two years of study as a Rhodes Scholar. This background perhaps best explains why he turned the Southern District of California into a think tank where problem solving, restructuring, and changing have been paramount. United States Attorney Bersin has brought a team approach to solving many of the human and logistical immigration problems confronting the United States in the Southern District of California. In October 1995, Attorney General Reno designated Bersin as her Special Representative for Southwest Border Issues. While he has implemented many innovative solutions to a variety of civil and criminal problems, this interview focuses on immigration issues. Mr. Bersin was interviewed by Assistant United States Attorney David Nissman, Editor- in-Chief of the *United States Attorneys' Bulletin*.

DN: When you became United States Attorney, what were the most significant crime problems in your district?

ADB: San Diego presents an interesting hybrid of crime problems. On one hand, it is the fifth or sixth largest city in the country, depending on which ranking you consult. It presents the entire constellation of contemporary American metropolitan crime problems, encompassing the entire range of white collar and violent crimes. On the other hand, we are contiguous to the U.S./Mexico border and represent the largest population living on the border: 60 percent of the cross-border population along the entire 2,000 mile border from Brownsville to San Diego lives in, or in Mexico adjacent to, the Southern District of California. This includes Californians north of the border and Baja Californians on the Mexican side. The demographics and geography of the situation have led us to focus on cross-border transactions, and the bulk of business for federal prosecution here remains border-related in a statistical sense. Southern California is the principal corridor both for illegal immigration into the United States and for the importation of narcotics. Our first priority was to rationalize the choice of cases pursued in the office to make our resources count in the area of public safety. A second key objective was to upgrade law enforcement coordination within the district among federal agencies, and between federal and local law enforcement agencies.

DN: What changes did you make to operate your office more efficiently?

ADB: The greatest challenge facing our new management team was the overwhelming volume of border-related offenses, principally federal immigration violations generated by a border that had been neglected for decades and had seen the rule of law evaporate. We needed to restructure prosecution policies in order to employ office resources in a manner that served the community in a more directly beneficial way than had been the case previously. The process took us 20 months from analysis of the problem in concert with the responsible agencies, through the establishment of systems and the training and reorientation of our prosecutors. While awaiting confirmation, I

immersed myself in the facts and prosecution policies of this office. I met with Attorney General Reno as did each other United States Attorney before confirmation. She was of significant assistance, with the background and experience she brought from Florida. It was clear to Ms. Reno, as it became to me, that our prosecutions-at that point nearly five misdemeanors for every felony-did not embody an efficient or sensible use of federal resources in this district. The Attorney Generals insights as a state prosecutor who had worked in a border context with the U.S. Attorney in Miami, proved very useful to us in terms of concrete suggestions. Ms. Reno described how she had enlisted the support of the U.S. Attorney in order to balance the prosecution caseloads of their two offices, so that jointly they produced more of a deterrent impact than did a sum of their separate efforts.

First and foremost it was necessary to sit down with the professionals who were most familiar with the nuts and bolts of border enforcement and prosecution problems and processes. For immigration, this meant Border Patrol and INS District personnel. It included also the agencies involved in the cross-border drug context-DEA, FBI, and Customs. I followed cases with them through the system to understand what happened to individual matters and how the decisions were or were not made. I studied outcome in terms of sanctions that were being imposed by the Magistrates in misdemeanor cases and the way the Guidelines were applied by the District Judges. Our management team then set about redefining the federal criminal caseload in this district.

Changes made included revamping the indictment review process and instituting a pre-indictment disposition system for border-related reactive cases. Twenty-four months later, we have increased the felony caseload by a factor approaching 150 percent, from just over 1,000 felony prosecutions in 1993 to just under 2,400 in 1995. Concurrently, we decreased the number of misdemeanors prosecuted in the district from more than 4,000 to approximately 1,500, with a firm intention to reduce that number to less than 500 in 1996. Driving this change are the immigration and drug trafficking cases that occur here by the dozens daily on the Mexican-United States border. We needed to define and implement effective sanctioning systems. Magistrates in this district, through no fault of their own, having seen so many hundreds of these cases over the years, had reduced the misdemeanor sanction to the point where the deterrent impact was minimal. The Metropolitan Correctional Center in San Diego was a revolving door for people who were spending 20, 40, 60 days in federal custody. We were expending enormous resources on incarceration without enhancing deterrent impact. We discovered an interesting phenomenon: the overwhelming number of drug smugglers, the mules or couriers who are hired by trafficking organizations to bring drugs across the border-the ones apprehended-tend not to come back after they are arrested once. The recidivism rate is very low. At the same time there is an almost inexhaustible supply of potential couriers or mules in the impoverished population south of the border who, for $500 to $1,000 a load, will risk apprehension and prosecution. The lack of effectiveness of previous policies coupled with this important fact concerning recidivism, opened our thinking to a series of alternatives. The result has been a wholesale change in the paradigm governing our operation.

DN: So what happens to the mules now? I recall that the Ninth Circuit had a mule exception to the Guidelines so the judges could further lower sentences.

ADB: Two alternatives to the federal criminal justice sanctioning systems are in effect. For low

volume smugglers who are aliens, we worked with INS and Customs to create a procedure that involves deferring prosecution and referring suspects to INS for exclusion processing as an administrative matter. If apprehended at the border, we do not take these people into federal criminal custody and incur huge pretrial costs including prosecutorial costs, judicial costs, probation costs, marshal and prison costs. Instead, we seize their immigration documents, serve them with an exclusion charging document, set the exclusion hearing date, and send them back to Mexico to await hearing. Persons who do not return for their hearing are ordered excluded in absentia. If they are apprehended again smuggling drugs into the country, they are subject to the initial drug smuggling felony offense, the second drug smuggling offense, and prosecution under Title 8, Section 1326, for reentry after exclusion. This policy has proven to be a much more effective sanction in terms of confronting these offenders. Loss of an immigration document with no prospect of ever getting it back is a more effective and less costly punishment than 30 or 60 days in a BOP facility at the taxpayers expense.

A second major innovation was to enlist the assistance of the District Attorney in San Diego County. Traditionally the District Attorney had refused to prosecute border-related drug cases because of his view that this represented an exclusive federal responsibility. In the spring of 1994, we negotiated an agreement with the District Attorneys office that it would prosecute cases that involve a "San Diego nexus"; i.e., where the offender is either a San Diego resident or the vehicle used for smuggling is registered in this County or, if there is evidence to suggest that the drugs are intended for distribution in San Diego.

DN: How did the District Attorney feel about it?

ADB: In the past, the District Attorney had refused because he saw no logical (or political) basis for the expenditure of County resources for this function. His change in attitude occurred in the context of a nearly complete overhaul of federal/state relationships in this district, and the institution of a genuine and very effective partnership between state and federal prosecutors. Both District Attorney Ed Miller and his successor, Paul Pfingst, committed their office to work jointly with us to determine which court system is better suited to handle crimes for which concurrent jurisdiction exists. We have looked long and hard at the crime problem in San Diego and the two dimensions I pointed out earlier-the large urban setting and the border context. We have let maximum sanction and deterrent impact serve as our guide. The result has been a rationalization between county and federal prosecution resources that has yielded huge dividends to our community.

In the year and a half that we have had the INS deferred prosecution and the D.A. referral programs in effect, more than 3,000 cases that previously would have been federally prosecuted have been diverted to a more effective sanctioning system. At the same time, we have increased our felony caseload to nearly 2,400 matters by significantly increasing our prosecutions of criminal aliens, Criminal History V or VI felons who reenter the United States after having been deported. This prosecution of felons reentering the United States has had a major impact on our community. We increased the number of these Section 1326 prosecutions from 240 in 1994 to more than 1,340 in 1995. During Attorney General Reno's visit last October, she met with San Diego County Sheriff Bill Kolender and District Attorney Paul Pfingst. They pointed to the partnership we have created here and explained how it has contributed to a substantial decrease in crime. The removal of people coming across the border who have a Criminal History V or VI,

which is our standard for prosecution, unquestionably has contributed to significant crime reduction. We reported to Ms. Reno, according to recent statistics released by the State Attorney General's Office, that San Diego and Chula Vista, a small South Bay city adjacent to the border, are two of the top three cities in California in terms of a decrease in crime. The D.A., Police Chief, and Sheriff are firm in their conviction that our federal/state partnership in support of the Department's border initiative-Operation Gatekeeper-have contributed materially to this result.

DN: Is that view known by the bench or shared by the bench? What was the reaction of the courts to the increase in significant immigration prosecutions? I've been reading about the detention crisis you have.

ADB: A problem generated by progress in the immigration prosecution program has been the capacity of the system to work with the numbers of defendants that are now being apprehended and prosecuted. To address this problem, we instituted a fast track prosecution to handle the reentry cases-the 1326 cases-of which there were 1,343 in 1995, compared with 1,060 over the previous nine years. If each of these cases involved a full set of motions and a full workup toward trial, the system obviously could not handle them. Our prosecutors, however, have developed a series of procedures in the context of this fast track system that have resulted in virtually all these cases pleading out within six weeks. Only four of the 1343 cases last year went to trial and each resulted in conviction. On the detention front, the Attorney General assisted by negotiating an unprecedented agreement with the Department of Defense. The Navy Bright Miramar Air Station is now available on an interim basis to detain 320 additional pretrial detainees. By September 1997 a longer term remedy will be in effect.

DN: How do you do it? Tell us the mechanics.

ADB: There is a reported case, *United States v. Estrada-Plata* [57 F.3d 757], in which the Ninth Circuit specifically approved and complimented the district on its fast track program. When a suspect is apprehended and identified by INS or Border Patrol as being subject to 1326 prosecution, the matter is handled by a unit under the leadership of AUSA John Kraemer, who deserves the lion's share of credit for success of the program. (See Kraemer article-"Criminal Alien Prosecution Program.") Within 24 hours of arraignment, an entire discovery package is delivered to defense counsel and to probation, together, depending upon the criminal background of the offender, with a plea offer that expires on a certain date. The plea offer is structured under the Sentencing Guidelines to make acceptance of it virtually guaranteed.

DN: An offer that cant be refused?

ADB: Yes. This is true pretrial in 99-plus percent of the cases because the stipulated outcome is beneficial both to the system and to the defendant. The agreement requires that the defendant plead, waive all presentence reports, appear before an immigration judge for stipulated deportation, and waive appeal, all within a five to six week period. The custody sanction imposed is significantly less than what a post-trial conviction sentence would produce but sufficiently long to spare the community from the presence of these criminals while we continue to strengthen our control at the border.

DN: I assume that part of this is that the stipulated deportation documents have to be executed as part of the plea as well?

ADB: Correct. We have arranged with the Executive Office for Immigration Review and INS for each of these defendants, upon plea, to be ordered deported so that departure from the United States occurs immediately after the sentence has been served. This avoids traditional problems stemming from separation of administrative and criminal processes that caused tremendous difficulties and inefficiencies in the past. Previously, people who had been criminally convicted in our District would tie up the immigration court system with appeals for years. By combining two procedures, the criminal plea and the administrative sanction, into one process, we avoid those consequences. While violent, aggravated felons receive sentences of 60 months or more, the large majority of defendants are sentenced pursuant to a two-year plea agreement. The theory of the two-year sanction is that the Administrations efforts to strengthen Southwest Border have made such significant progress, that taking these defendants off the street for two years represents a proper balance of the benefits and costs at stake. In the past, Criminal History V or VI felons were returned regularly to Mexico and left to reenter through an unreliable border control system to commit new crimes in this community. Two years from now this border will be under even better control than it is today. We have closed the revolving door for this criminal element.

DN: Operation Gatekeeper has been a very successful enforcement program. Give us a quick overview of what it is.

ADB: It is a comprehensive strategy designed and implemented since the Attorney General visited San Diego in August 1993 and observed a border that was virtually out of control. As a result of neglect for almost all of American history, this border was completely porous. Just under 600,000 people were being apprehended each year in a 14-mile corridor inland east from the Pacific Ocean. It is estimated that anywhere from a million to two million undocumented per- sons were crossing the border illegally in the San Diego Sector on their way north, principally to Los Angeles but also to other cities on the west coast. Border Patrol morale was miserable. The problem was most evident in plainly insufficient personnel and defective equipment. Agents were operating in a 19th century mode in terms of processing arrestees with carbon copies and ball point pens. Phony names were supplied regularly on the advice of smugglers ("coyotes") such that INS had no reliable means of identifying any of the 600,000 people who were being apprehended in the San Diego sector. The Automated Fingerprint Identification System (AFIS) for checking criminal backgrounds could be applied to less than one percent of those apprehended. This inability to identify potentially violent criminal offenders was enormously debilitating in terms of crime control efforts.

In short, it was a border that was dark, violent, and inefficient. Then Ms. Reno set to work. The Attorney General and INS Commissioner Doris Meissner made a commitment to the Border Patrol that sufficient resources would be provided for agents to do their job. With the support of the President and the consent of Congress, resources have flowed into San Diego in a significant way. The number of Border Patrol agents in the district has been doubled from 1,000 to 2,000. The equipment fleets have been renovated or replaced. The border is marked through construction of a fence by the military and National Guard. Lights have taken the night away from smugglers. From the standpoint of prosecutions, the situation was revolutionized with the

introduction in October 1994 of the IDENT system, and its steady implementation over the last year. That system permits us for the first time to identify biometrically every person who is apprehended. Three fingerprints and a photograph are placed into a computerized database. We can now identify people with criminal backgrounds through processing that is accomplished electronically. This has been the linchpin for the fast track prosecution program our office developed in concert with INS and EOIR. It is important to view Operation Gatekeeper as a comprehensive effort encompassing border control, prosecution, and appropriate incarceration. It represents a complete revamping of criminal prosecution processes and standards as well as administrative sanctioning through the Immigration Court system.

The situation now represents a dramatic improvement from the one that existed in August 1993. Gone are the days and nights when hundreds of undocumented persons would rush across the border, with Border Patrol agents attempting to grab one person in each hand. The plan was to create an identifiable border, light it, and provide the Border Patrol with resources to patrol it professionally. Those basic changes have taken place in one of federal law enforcement's most positive stories of progress. The strategic aim of Gatekeeper is to push illegal migrants out of the western part of the sector. If they cross at Imperial Beach or Chula Vista, they fade into urban San Diego and apprehension becomes exceedingly difficult. In San Diego County, 90 percent of the population hugs the 50-mile coastline. If you move 25 miles to East County, you are in the country, and the mountainous and rugged terrain are much more difficult to cross. This facilitates the Border Patrols apprehension of illegal entrants.

The next focus will be on investigating and dismantling the alien smuggling organizations that have dominated this part of the world for so long, virtually unchallenged by law enforcement. A second priority is to act concretely on our recognition that we must demagnetize the job market. Ultimately what accounts for people coming here from Mexico is the intent to better their economic fortunes. Ninety-eight percent or more of the people apprehended are seeking illegally what many of our grandparents obtained lawfully-an improved life for their families. The fact that many in our country are willing to employ these illegal entrants accounts for the steady flow of migrants from the interior of Mexico. The Immigration Reform and Control Act enacted in 1986 provided for employer sanctions for the first time in American history. But enforcement is extraordinarily difficult because Southern California is the counterfeit document capital of the world. It is exceedingly difficult to establish that the employer is aware of the illegal status of his or her employee if the employee presents credible false documents. For this reason, civil and criminal enforcement of employer sanctions has been largely derailed. There are plans in place and innovative programs on INS agenda that will alter this situation. Over the coming year, we intend to coordinate our activities, civilly and criminally, with INS to create a more effective deterrent in the workplace.

DN: Attorney General Reno recently asked you to serve as her Special Representative for Southwest Border issues. What does she want you to do in that capacity?

ADB: The Attorney General wanted someone who lives and works on the border to be available to keep her advised of developments that necessarily cross component and agency lines. Ms. Reno understands comprehensively that as the Department makes progress in asserting a rational system of border control, this result will impact more agencies and creates new challenges. I am attempting to assist the Attorney General and Deputy Attorney General to coordinate various

inter-agency initiatives along the Southwest Border. An example would be the Memorandum of Understanding between the INS/Border Patrol and DEA concerning the handling of drug smuggling cases arising from border checkpoint arrests. Another example is to determine the most effective way to coordinate the work of the Border Patrol and the FBI in the area of alien smuggling investigations. The premium on agency cooperation will increase as we become more effective on the Southwest Border.

DN: What is a Port Court?

ADB: The Port Court is an immigration court operated at the port of entry (POE) by INS and the Executive Office for Immigration Review (EOIR). The need for it arose from an intolerable situation that we confronted at the POE where hundreds of people daily were attempting to enter the United States illegally, either based on oral misrepresentations or on the presentation of a counterfeit document. We had no effective sanction. The numbers were so overwhelming that the criminal justice system could not respond appropriately. At the same time, we could not countenance people attempting to enter the country illegally, presenting phony documents, having the inspector confiscate the documents and return the person to Mexico, only to have that person secure another counterfeit card from one of the numerous vendors in Tijuana and attempt to reenter illegally two hours later. Under the leadership of INS District Director Mark Reed, we instituted a program under which those who present counterfeit documents are arrested and detained for exclusion proceedings, with the warning that if they return after having been administratively sanctioned by the Immigration Court, they will face felony prosecution. The Executive Office for Immigration Review (EOIR) cooperated in unprecedented fashion with INS and the United States Attorneys office to implement the concept and the pilot "port court" was established. EOIR, under the leadership of Tony Moscato and Michael Creppy, flew judges in on a TDY basis to operate the Court. We found that after six weeks of operation, 1,800 people had been excluded from the United States on account of their criminal misuse of the POE. The port court represents an important step in creating a credible deterrent.

DN: Would you recommend the Port Court be established elsewhere? Are the situations different in other districts?

ADB: It is crucial to remember-in virtually all policy areas-that one size never fits all. What works in one district may not work in another. Cookie cutter solutions are destined for failure. EOIR, INS, and United States Attorneys in other districts along the border faced with similar circumstances can examine our experience as a potential solution, and then shape a procedure and institution that best fits their own circumstances.

DN: What role have your Assistants played in assessing community problems, whether they are criminal or civil, and determining how to use our resources to improve quality of life in the community?

ADB: The special role prosecutors play in the criminal justice system, both locally and federally, places an AUSA in a pivotal position to be a problem solver, to analyze the operation of the system, and to propose improvements to it. Only the prosecutor is in contact with the defendant,

the arresting officer, the court, the probation officer, and prison authorities. Only the prosecutor has the capacity, perspective, and opportunity to look at the system as a whole. AUSAs can be instrumental in modifying procedures and perfecting outcomes. Many innovations implemented here in San Diego can be attributed to ideas and concepts that AUSAs brought to my attention. The Port Court was the brainchild of Virginia Black, an INS attorney who works in our office as a Special Assistant United States Attorney. The Criminal Alien Fugitive Return Program was conceived by AUSAs Michael Wheat and Alberto Arevalo who then implemented it in conjunction with Mexican authorities as well as INS.

In each of those instances, and there are more examples in other areas of our practice, an AUSA took the time to think through a problem and bring it to the attention of agency heads and the United States Attorney. What I may have contributed to this process was to develop a level of trust with my counterparts in other agencies so that presentation of these ideas by our office did not lead to either automatic rejection or slow bureaucratic death. Once we managed to get our head in the window and demonstrate that these programs could enhance the effectiveness of all of our performances, the door opened up for innovation on a wide-spread scale.

Assistants typically know the system better than management. They know what's wrong with it and they usually have more than one proposal to fix it. They've got to take the time and have the tenacity to see a project through to completion. After persuading their supervisors of the merits of a concept, the AUSA must be prepared to expend the effort actually to go and work with the concerned agency representatives. Virginia Black spent many days at the ports of entry in this district, both here and in the Imperial Valley. John Kraemer probably is better known to more agents in San Diego than any other prosecutor. He knows the agents on a face-to-face, first name basis. Michael and Alberto have achieved the same with regard to the alien smuggling and fugitive alien return programs. The answer here involves the same kind of ingenuity, industriousness, and tenacity that generally brings satisfaction in professional life. Assistants are in a unique position to achieve this success. But they must nurture and act on a passion for justice and fairness in the system, and to correct what are obvious blemishes on (and sometimes serious defects in) the performance of our federal criminal justice system. ❖

Building an Immigration System to Meet America's Challenges—Commissioner Doris Meissner, Immigration and Naturalization Service

Three years ago, President Clinton and the Department of Justice outlined a comprehensive strategy to reverse years of lax enforcement of our nation's immigration laws. The Immigration and Naturalization Service (INS), the Executive Office for Immigration Review, and United States Attorneys from Florida to New York and California have worked together to develop and implement an aggressive and effective immigration strategy for the nation and for critical regions of the country.

We started at INS by reorganizing our agency, developing a strategic plan, and providing the agency with resources it badly needed. With the support of President Clinton and with bipartisan support in Congress, we have increased the agency's budget 72 percent-from $1.5

billion in FY 1993 to $2.6 billion in FY 1996. We are using these new resources to increase the size of our Border Patrol, our investigative and asylum officer staff, and our detention capacity, and to modernize our equipment and technology to do our work more effectively.

We then launched major initiatives to strengthen enforcement along the U.S.-Mexican Border. We began in El Paso, Texas, where we launched Operation Hold the Line in October 1993. We followed this with Operation Gatekeeper in San Diego, California, and Operation Safeguard in Arizona in October 1994. These enforcement operations deployed strategies designed for each region, together with a strengthened Border Patrol presence, new roads and fencing along the border, newly installed lighting in key urban areas, upgraded equipment, and advanced technologies to track and apprehend illegal crossers. These efforts are paying off. We are disrupting long entrenched routes for illegal immigration and we have made the Southwest border harder to cross illegally than ever before.

In addition, we are using streamlined deportation procedures, a growing corp of detention and deportation officers, additional INS attorneys, and expanded detention capacity to identify, locate, and deport record numbers of criminal and other illegal aliens from the United States. In FY 1995, INS removed almost 32,000 criminal aliens and a total of over 49,000 illegal aliens from the country. In the current fiscal year, we expect to remove over 62,000 illegal aliens.

We are doubling our investigation staff to target employers who hire illegal workers, eliminating abuse of our asylum system, and taking unprecedented measures to handle a record-breaking number of qualified applicants applying for United States citizenship. In short, we are enforcing laws that have languished on the books and fixing problems in our immigration system that have been ignored for too long.

But the INS has not been out there solving these problems alone. In fact, the key to the success on immigration to date has been our agency's tremendous partnership with other law enforcement agencies and offices both within and outside of the Department of Justice, most notably the Offices of the United States Attorneys. United States Attorneys across the country, most particularly in areas heavily impacted by immigration, have backed up our efforts on every front.

First, United States Attorneys have aggressively prosecuted criminals for immigration-related crimes. Criminal prosecution is key to our ability to establish a credible deterrence to illegal immigration. We have shown, for example, with the aggressive prosecution of 18 U.S.C., Section 1326, that we mean business when we issue an order of deportation. United States Attorneys are prosecuting and sending to prison record numbers of criminal aliens who defy deportation orders by returning to the United States. In San Diego, United States Attorney Alan Bersin's office prosecuted over 1,300 criminal aliens for reentry following deportation in the last year alone.

Second, our United States Attorneys' offices have helped us crack down on alien smuggling rings. With the leadership of United States Attorney Mary Jo White, Southern District of New York, DOJ indicted 42 members and arrested 30 members of the violent Fukienese Flying Dragon Gang in February 1996. In Los Angeles, United States Attorney Nora Manella successfully prosecuted the organizers of the now infamous El Monte Sweatshop, and in San Francisco, United States Attorney Michael Yamaguchi indicted and is prosecuting the organizers of the Thai prostitution ring. These actions show that our federal law enforcement team is working with unsurpassed determination to put an end to the abhorrent business of trading in human cargo.

Third, United States Attorneys' offices have helped us put into place innovative solutions to the immigration and crime problems that plague many communities in the United States. For example, working with United States Attorneys in California and Florida, we have put into place county jail programs to identify and process criminal aliens for deportation without releasing them to the streets.

Finally, United States Attorneys are working with us to develop comprehensive approaches to the problem of illegal immigration and to help us build partnerships with state and local governments and law enforcement agencies. In Florida, we are working with the United States Attorneys for the Southern, Middle, and Northern Districts-Kendall Coffey, Charles Wilson, and Michael Patters-onto develop a comprehensive immigration plan for the state. This plan will include a program to deport illegal aliens who violate federal firearm provisions and an effort to remove criminal aliens directly from county jails. United States Attorneys Coffey, Wilson, and Patterson, together with district and regional INS officials, have been chief architects of the Florida Immigration Plan, and they will be central to its implementation.

We hope to use this strong immigration enforcement team to build an even better record in the future—as we develop plans for key immigration states; advance our judicial deportation program; and continue to enforce our nation's laws against smugglers, criminal aliens, and those who otherwise violate the immigration law for personal gain.

The Immigration and Naturalization Service is honored to work side by side with the best prosecutors in the nation. We understand that United States Attorneys face overwhelming caseloads, and we appreciate that many have nonetheless made immigration cases a priority. We could not have made the progress we have achieved, nor undertaken challenges we face ahead, without this crucial support. We will continue to walk in lock-step with United States Attorneys around the country to advance our important immigration mission. ❖

Tank Scopes at San Diego Border

Vanessa May Howard University School of Law

It used to be a slow and cumbersome pursuit. The infrared scopes used by the Border Patrol to view incoming aliens at night along the San Diego border had to be set up on tripods. That took time and, once in place, scopes had to be disassembled to be moved to another location. Bob Carney thought of a better way.

Before joining the INS Border Patrol, Bob Carney was a Captain in the United States Army's Armor Corps, also known as the Tank Unit. He knew all about tanks and tank equipment. In conceiving his idea for quick mobile sights for the border, he remembered the thermal night sights used in M-683 tanks. "Couldn't those sights be used out here?" he thought to himself. "Couldn't we have them installed in a mobile unit of some kind . . . like a jeep . . . or on a truck?" Those ideas inspired Bob to put pencil to paper and devise a prototype. His first one consisted of a thermal scope set on a platform in the bed of a pickup truck. The apparatus worked, except that it was exposed. Ultimately, Bob was able to secure some Chevy Blazers. He retrofitted the M-683 thermal scopes in the Blazers. This configuration enclosed and camouflaged the scopes, and they were highly mobile.

While getting the equipment and having it transported posed enormous logistical problems, Carney's networking paid off. He asked friends in the Army's Tank and Automotive

Command if they could provide the necessary hardware. Then he contacted William Boles, the Army's Weapons System Manager, about getting some M-683 scopes. He was able to provide Bob with scopes from M-683 tanks that had been retired, at no cost to the Border Patrol. The scopes required a 24-volt power system. Bob contacted Buck Thornley, a Staff Sergeant with the Tank and Automotive Command, and described his need for vehicles with 24-volt power systems. The Army provided Carney with old Chevy Blazers equipped with the power systems.

Now that Bob could get the hardware, he had to devise a way to get it to San Diego. He contacted Captain Jeff Smiley of the United States Air Force. Jeff found a way to transport the scopes. Bob, by now a Major in the National Guard, then contacted some friends in the Guard and asked if they could transport the Blazers. They agreed.

Having found that he could secure the hardware and that it could be shipped to the Border Patrol, he only needed one more thing: permission to do so. His superior officers at the Regional Logistical Support Office and the Defense Reutilization Management Office gave him the green light, and all of his other plans began to fall in line. When the hardware arrived, Bob went to work.

The use of the mobile night sights has greatly improved the efficiency of the San Diego Border Patrol. According to Bob, the ability to view night activity via the mobile thermal sights has led to more drug seizures, more effective tracking of illegal aliens, and a quicker response time in locating smuggler hideouts.

One person's vision has given the Border Patrol a new way to improve their collective night vision, and as a result we have a new tool to use in our battle on the border. ❖

Strategic Strengthening at the Southwest Border

Vanessa May Howard University School of Law

The first half of 1996 was an exciting time for the men and women who guard our borders along the Southwest corridor. INS is instituting new tactics and reenforcing and revamping already existing programs.

In an effort to curtail the rampant drug smuggling activity at the border and the steady stream of illegal entrants, INS officials have begun accelerating the deployment of personnel and resources to Operation Gatekeeper and Safeguard. Two hundred Border Patrol agents and one hundred INS officers, mostly inspectors and investigators, are being sent to California and Arizona. The inspectors will crack down on those who try to enter the United States with false documentation. The agents will patrol the borders, operate checkpoints on major highways running between Tucson and San Diego, and be detailed to major Southwest airports. These ventures will set the stage for a first time collaboration across state boundaries.

INS also plans to expand its partnerships with local law enforcement. For the first time, the Attorney General has authorized Federal reimbursement to local law officers for assisting the Border Patrol.

National Guard Units will lend support to INS operations. The National Guard joins the Department of Defense's Joint Task Force 6, which already supports the INS by supplying personnel, training, and equipment for INS antidrug smuggling efforts.

These strategic strengthening efforts should be fully implemented in a few months. ❖

Advanced Technology at U.S.-Mexican Border

Peter Baroni, Howard University School of Law

Operation Gatekeeper, Attorney General Janet Reno's plan to secure the U.S.-Mexican border, has become a successful arena for using advanced technology for accomplishing this task. The technology includes infrared cameras that allow night vision for border monitors, an electric current that disables absconding vehicles, a computer system called "IDENT" that records photographs and fingerprints of everyone apprehended at the border, and a computer system that identifies legal border-crossing commuters by voice. Most of this technology was originally developed for military and intelligence purposes.

A variety of infrared cameras have eliminated the cover of night as a means by which illegal immigrants can avoid the United States Border Patrol. Night scopes give border agents full night vision and have been major contributors to the 61 percent increase in the number of border apprehensions over the past year.

The "auto-arrestor" produces an electronic current that is generated through a conductive strip placed across the road to shut down the vehicle's ignition system. The process can be implemented to stop the vehicle without harm to the driver or passengers.

Border patrol agents also use a satellite tracking system to observe agents in the field. The system allows command center agents to track field agents' vehicles by using a small satellite dish attached to the top of a patrol car. The system allows the control center to monitor field agents and avoid gaps in patrol routes.

Another new technology being used at the border is the IDENT system. It records a photograph and fingerprint of all border detainees. The system is a significant weapon in combating smugglers at the border. In the past, smugglers would simply give different names and identification every time they were apprehended. Now repeat officers and criminal aliens may be identified and prosecuted.

The INS is currently testing a voiceprint identification system to be used by legal border-crossing commuters. The system would require the driver to enter his/her name and a personal identification number in a cellular pone when he/she nears the border. A roadside agent would then use a surveillance camera to scan the vehicle, showing the vehicle and driver to the agent, without requiring the commuter to stop. ❖

Border Patrol in the 1990s

Brian Brown and Peter Baroni, Howard University School of Law

The Border Patrol's primary objective is to determine alienage. As such, their jurisdiction is limited, and their activities are primarily focused along the border with Mexico. In 1994, the Border Patrol adopted a comprehensive strategy of controlling the high-volume illegal crossing areas along that border. This strategy involved targeting and dedicating the majority of their resources to key areas. The objective was to gain control of these high-volume areas. Once control of an area is gained, the resources needed to maintain control are greatly reduced, new locations can be targeted, and surplus resources redirected to those areas. Assistant Chief of the

U.S. Border Patrol, Tom Walters, explains that maintaining control of these areas is the most efficient use of resources, and it has been highly effective in bringing parts of the border under control.

Historically, illegal crossing resources were focused on key urban areas. Once the Border Patrol gained control of those areas, resources were then used to expand from the urban area which was already under control. However, recent statistics show that the number of crossings which take place in the areas tangential to the urban areas is relatively small. Walters explains that the decrease in the number of crossings outside urban areas is partially due to a lack of infrastructure in these tangential areas. Thus, illegal crossers have no place to go and get "lost in the crowd" once they cross the border. The new comprehensive plan takes these statistics into account, and resources are more efficiently used in other urban areas where high incidents of illegal crossings are reported.

When asked about Mexico's assistance in stopping the illegal crossings, Walter commented that "they were quite cooperative in dealing with all non-Mexican crossers." However, the Mexican Constitution places limits on the assistance that Mexican officials can give in stopping Mexicans from "moving." But Walters remains positive, commenting that, "like any relationship, it takes time to develop." He also extended an open invitation to Assistant United States Attorneys to come and see what a Border Patrol Agent's day is like. He explained that in recent years, agents have been increasingly exposed to risks. Agents who previously detained 20 to 30 illegal crossers single handedly, are now forced to approach such groups cautiously.

The success of the 1994 plan was due in part to the Border Patrol Agents' sense of unity. This unity is developed during an agent's training and first assignment. Agents must graduate from the Border Patrol Academy and be proficient in Spanish. Since a vast majority of the Border Patrol's resources are dedicated to the southwestern border, new Border Patrol agents begin their initial tour of duty there. This uniform initiation into the service provides agents with a sense of shared identity. Their dedication to each other is evidenced in the number of volunteers participating in the Border Patrol Tactical Unit, a group of Border Patrol volunteers from across the country that can, should an emergency arise, mobilize in 10 to 48 hours at any point along the border. Walters says that the Border Patrol is a highly mobile group of agents; however, economics make mass movement of agents impractical. Thus, the Unit plays an important support role in combating illegal crossings. Agents in areas that are sparsely enforced are aware that reinforcement is a phone call away.

The Border Patrol is receiving unprecedented support from the current administration and the country, in the form of increased resources, technology, and moral support. Through Operation Gatekeeper, Border Patrol agents in the San Diego sector have been successful in increasing apprehensions and decreasing attempted illegal crossings. Assistant Chief Walters hopes this initiative and success will be rewarded by strong internal policies that will help keep "honest businesses honest in their dealings with illegal aliens." He noted that cracking down on businesses that employ illegal aliens will help reinforce the Border Patrol's efforts. He pointed out that at some point, the level of effectiveness of the Border Patrol is limited or, more appropriately, set by the citizens of the United States and the freedoms they hold dear. For now, the focus of the Border Patrol is to curb illegal crossings and cut down on the number of criminal alien crossers. ❖

Apprehensions on the Rise in Arizona

Assistant United States Attorney Joseph Koehler
District of Arizona

There has been a recent dramatic rise in Arizona in the number of apprehensions of illegal aliens. Part of that increase has been attributable to Operation Gatekeeper in San Diego, and the remainder appears to be the result of changing economic conditions in Mexico and increased enforcement resources along our border with Mexico. Prior to the implementation of Operation Safeguard, illegal aliens paid approximately $150 to travel from Nogales to Phoenix. Now illegal aliens are paying more than $700 for the same trip.

The latest change has been a shift in the location of choice for crossing the border from Nogales to Douglas. Other remote stations are seeing increased numbers as well. These numbers indicate that enforcement efforts are succeeding in driving illegal alien traffic away from established routes and toward more difficult routes through remote areas.

In addition, the total number of apprehensions has begun to drop. Now that number is hovering from 1,000 to 1,200 per day. The gradual but steady decrease in apprehensions demonstrates that word of the increased enforcement is out, in part through our Spanish language broadcasts in Southern Arizona and Mexico.

The increase in apprehensions has placed a heavy strain on agents to identify criminal aliens and separate them from mere illegal entrants. The on-line IDENT system has proven to be a powerful tool in this arena. Once an agent processes an illegal alien with the IDENT system, the agent can find out within minutes if the alien is among the thousands of criminal aliens who have been enrolled in the IDENT database. Our prosecutions of criminal aliens for reentry after deportation rose dramatically immediately after IDENT went into effect in Southern Arizona.

All of the success we have experienced has been the direct result of close coordination between INS, Border Patrol, and the United States Attorney's office, resulting in speedy redeployment of resources to respond to changes in demand as well as innovative methods for using those resources.

For example, in a recent large-scale exercise, Border Patrol and INS set up a Temporary Collection Point for processing aliens near Nogales. Aliens would be processed and moved from the facility within 24 hours, with an average stay of four hours. Aliens who were not voluntarily returned to Mexico would be transferred to a Temporary Staging Facility equipped to accommodate them for up to six weeks, pending their placement at a permanent INS detention center. Criminal aliens would be sorted out using the IDENT system at the Temporary Collection Point and housed in pretrial detention. The exercise was very successful in demonstrating the agencies' ability to respond to rapidly changing conditions along the border.

In addition, the district has been providing periodic training to agents to improve the quality of prosecutions and to enhance the cooperation between the agencies involved in the prosecution process. The involvement of the United States Marshals Service has greatly improved the efficiency of the pre-sentence deportation program. Our next target is the creation of a Centralized Prosecutions Unit within the Tucson Sector of the Border Patrol to unify prosecution standards sector-wide within Border Patrol, as well as to achieve economies of scale in the processing of paperwork related to reentry prosecutions. A collateral goal in creating the unit is the recruitment of supervisors and Special Agents to work in the Anti-Smuggling Unit.

Finally, Arizona is in the process of creating a "Port Court" for holding INS hearings at the port of entry in Nogales, Arizona. This program will be similar to the "Port Court" program in

Otay Mesa, California. United States Attorney Janet Napolitano and Senior Litigation Counsel Daniel Drake have been instrumental in bringing this project to fruition, and INS District Counsel Pat Vroom spearheaded the INS effort to bring the "Port Court" project to Arizona. This "Port Court" will enable us to shift resources away from prosecution and toward civil remedies for aliens who attempt to enter the United States through the use of false documents.

Within our office itself, we now have a paralegal dedicated to immigration prosecutions, who handles intake in all reentry cases. As part of that process, the paralegal prepares a draft complaint; collects the reports and criminal history for each reentry case; and assembles a package for each case, including a draft information, waiver of indictment, plea agreement, offer letter, and a draft indictment for use in the event that the defendant rejects the plea offer. The District's plea policies have been changed slightly to encourage more pre-indictment pleas. Our pleas in reentry cases have gone from being almost exclusively post-indictment to almost exclusively pre-indictment, which has lifted a great burden off the entire system by reducing grand jury time and court time related to arraignments. ❖

Alien Smuggling by Rail

U.S. v Gonzalez
Assistant United States Attorney Mervyn Mosbacker
Southern District of Texas

The alien smugglers' scheme depended on the conspiracy of a railroad employee on the United States side of the Rio Grande River border. The smugglers would round up a group of 50 to 60 aliens on the Mexico side of the border and guide them across the river to a holding area in Brownsville. The railroad employee, who had access to boxcars and extra door seals, directed the aliens to freight cars that were under seal and unlikely to be inspected by INS or Customs officials. Once the aliens were inside the boxcar, the door was resealed until it reached a rail transfer yard near Houston, some 350 miles north. In Houston, the human cargo was released. During the summer of 1995, a plan failed when a train that usually ran at night was delayed and the aliens, loaded in a sealed boxcar carrying automobile bumpers manufactured in Mexico, were left idle in the mid-August sun. Brownsville residents near the rail yard heard people inside the boxcar banging and screaming for help. Immigration officials rescued the dehydrated aliens, some packed inside crates with car bumpers. The smugglers, including the railroad employee, were arrested and indicted. Five entered guilty pleas and three were convicted and received sentences from five months to two years. ❖

Rio Grande and Highway Systems Exacerbate Immigration

Assistant United States Attorney Mervyn M. Mosbacker
Southern District of Texas, Brownsville Division

From north of Laredo to east of Brownsville, where it empties into the Gulf of Mexico, the Rio Grande River meanders for 458 miles along the southern border of the Southern District of Texas. The area north of the river is the tip of Texas, a roughly triangular area that juts farther south than any other part of the border with Mexico. With the exception of the Rio Grande Valley (the intensely farmed area east of Rio Grande City to the coast, with Raymondville at its northern limits and the Rio Grande at its southern limits), the tip of Texas is largely ranch land-a vast expanse of brush country that includes the fabled King Ranch.

Along the Rio Grande on this stretch, are three sets of twin cities: Laredo (pop. 166,000)/Nuevo Laredo (pop. 219,468); McAllen (pop. 110,000)/Reynosa (pop. 252,667); and Brownsville (pop. 115,000)/Matamoros (pop. 303,293). With much greater population on the Mexican side and much better paying jobs on the United States side, it is easy to see why there are so many "daily" or "weekly" illegal immigrants-the local illegal immigration problem. These local illegal immigrants include those looking for work in agriculture and other areas of the local economy, and a smaller number of criminal aliens looking to prey on others.

There is another element to the illegal immigration problem in the area. The highway systems on both sides of the border allow alien smuggling organizations to move illegal immigrants to destinations in the interior of the United States. The major destinations are Houston and San Antonio, which also serve as transit areas for points farther north. The routes are north from Laredo on Interstate 35, north from McAllen on U.S. Highway 281, and north from Brownsville on U.S. Highway 77.

In 1995, the United States Attorney's office for the Southern District of Texas, working with the Border Patrol and INS criminal investigations, began to aggressively address the criminal alien problem in South Texas. From 1994 to 1995, prosecutions of 8 U.S.C. § 1326 cases in border offices of the District increased from 65 to 137. With increased manpower assigned to the Border Patrol and the implementation of the IDENT (automated fingerprint) system, the increase accelerated in 1996 (from 4 prosecutions in January 1995, to 12 in January 1996). This effort, coupled with the Border Patrol's increase in patrols in the river area near downtown Brownsville, has produced tangible results. From 1994 to 1995, the crime rate in Brownsville fell by 15.54 percent in major crime categories.

Recently, INS criminal investigations in the Harlingen District began to address the criminal alien problem in the state probation and parole system. The first county surveyed, Hidalgo County, is a border county where half the persons on state probation or parole were identified as aliens. The current strategy is for Border Patrol to identify criminal aliens in the jail population, along with those they may apprehend, and for INS investigators to address aliens on probation or parole.

With 8 U.S.C. § 1326 prosecutions handled by the United States Attorney's office, and deportation and exclusion proceedings handled by INS, the legal tools to address the criminal alien problem are available. The same is not true for the problem of alien smuggling organizations.

The United States Attorney's office for the Southern District of Texas' longstanding policy is to aggressively prosecute alien smuggling felonies under 8 U.S.C. § 1324, and the Border Patrol has increased its strength in Brownsville, the border city on the main smuggling route in the Southern District of Texas, by 70 percent. Alien smuggling or transportation prosecutions in Brownsville went up from 69 in 1994 to 164 in 1995, and is accelerating in 1996.

South Texas is also a route favored by the organizations that traffic in Central Americans, because it is the closest point in the United States to Central America. One can drive from

Brownsville, Texas, to the Guatemala border within 24 hours. Central America is also a staging area for Chinese and Indian aliens.

The increase in prosecutions of § 1324 cases has not deterred these large smuggling organizations because the penalties are not tough enough. For a § 1324 prosecution, the Sentencing Guidelines start out with a base offense level of nine, and if the offense was committed for other than profit, the base offense is decreased by three levels. The effect of this has been to make the profit issue the main battleground in the prosecutions, with the defendants winning that skirmish by intimidating and threatening the aliens they transport to claim that a profit was not made for transporting them. With the "no profit" finding in hand, up to 99 aliens can be transported, and the transporter can still be scored at 0 to 6 months under the Guidelines with an acceptance of responsibility.

An increase in the Guideline base offense level for alien trafficking would help combat the well-organized alien smuggling business. The criminal aliens have learned that their violations of law will bring stiff penalties, and the resulting decrease in crime rates has been gratifying. The same message should be sent to alien trafficking organizations. ❖

The Los Angeles "Night Court" Hearing Program

Executive Office for Immigration Review

For some years, almost since the beginning of the Institutional Hearing Program, the Los Angeles Immigration Court has conducted hearings in the Los Angeles county jail every Thursday. Because of over population at the jail, INS and the County Sheriff's office proposed a procedure whereby deportation hearings could be conducted by Immigration Judges at "night court."

On June 1, 1995, with less than two weeks notice from INS, the Los Angeles Immigration Court commenced the test of what was to become referred to as "night court." In truth, the court is more of a matinee court. The test project was so successful that the program is now a permanent Los Angeles detainee hearing program, and is still referred to by many as "night court."

The purpose of the program was to have INS personnel interview inmates being released from the county jail system. These releases would take place early in the morning (approximately 3:00 a.m.), the time when inmates are normally released. If they were determined to be non-citizens, INS would further inquire into the deportability of the released alien. If deportable, the alleged criminal alien would be released into INS custody, brought to the INS holding area in the Federal Building of 300 N. Los Angeles Street, charged, and brought to Immigration Court in the evening or afternoon for a deportation hearing.

INS officials originally believed that the only way to achieve the goal of "same day" deportation hearings was for the Immigration Court to conduct the hearings at night. After several telephone conferences between the Office of the Chief Immigration Judge and the District Director's office, it was agreed that charging documents would be filed with the Immigration Court in two increments. The first increment would be filed by 10:00 a.m. for hearings at 1:00 p.m., and the second would be filed at noon for hearings at 3:00 p.m. The Immigration Service is responsible for providing the hearing data, time, and place on the Order to Show Cause (OSC), and for ensuring that the waiver of the required 14-day delay in scheduling a hearing has been

executed by the respondent. The Immigration Court agreed to take a maximum of 40 cases each day. If the OSC's filed on a given day exceed 40, the excess is scheduled for the next business day.

The program has been extremely successful. ❖

Port Court

Special Assistant United States Attorney Virginia Black
Southern District of California

Attorney General Reno announced in October 1995 the first permanent immigration court facility to be located in a United States Port of Entry on the Southwest border with Mexico. With this announcement of a "Port Court," immigration judges take up position on the front line of the border enforcement efforts initiated and strengthened by the Clinton Administration.

Ms. Reno's announcement was made during her visit to San Diego where she applauded the district's successes as part of the Administration's Gatekeeper I initiative. Gatekeeper I, a comprehensive strategy implemented following Attorney General Reno's visit to San Diego in August 1993, infused a manpower- and resource-poor Border Patrol with personnel and new equipment. A state-of-the-art identification system, "IDENT," was introduced in the field, allowing agents for the first time in history to immediately and accurately identify a person and avoid the time-consuming, frustrating problem of multiple falsely-claimed identities. The success of Gatekeeper I's border control efforts focusing on the detection and apprehension of aliens along the border between the land border ports of entry forced illegal entrant and alien smuggling traffic to seek a new route.

The new route was through the land border ports, most significantly at the world's largest land border port of San Ysidro, where an estimated 200 to 400 aliens daily attempted to illegally enter the United States, either by false statements or by the presentation of false documents. The Port was ill-prepared to respond to this influx and even less able to sanction this number of malafide applicants. Port staffing levels were less than they had been in 1988, and equipment needs and upgrades were unmet.

Recognizing that the ports of entry were critical to effective border control and had to be positioned to respond to the challenge, Attorney General Reno also ratified and publicly announced the implementation of Gatekeeper II. Gatekeeper II, a proposal committing the efforts and resources of the INS, the Executive Office for Immigration Review (the immigration courts) and the United States Attorney's office outlined a coherent plan to sanction, for the first time in history, this flood of illegal entrants into the United States. Such a sanction was heretofore impossible given the inability of the criminal justice system to prosecute such vast numbers.

Gatekeeper II called for the immediate detailing of inspectors to the San Ysidro Port of Entry and installed the "IDENT" system and other equipment for inspection use. A port operational plan and prosecution guidelines for an expedited administrative exclusion hearing process were drafted to assure administrative sanctioning of the targeted alien impostors.

It would have been logistically impossible for the INS to transport this staggering number of aliens to the immigration court sitting in downtown San Diego and likewise impossible for the immigration judges to adjudicate this number of exclusion cases had the INS, Executive Office for Immigration Review, and the United States Attorney's office not worked together so as to allow the immigration judges to decide the cases right at the border itself in the Port Court situated in

the Port of Entry at Otay Mesa, a short distance from San Ysidro. The Port Court eliminated costly and time-consuming transportation of aliens to the downtown San Diego court site and allowed for the immediate execution of the immigration judge's order of exclusion and deportation.

As the second prong of the sanctioning process, the United States Attorney's office for the Southern District of California stood poised to accept for felony prosecution any alien impostor ordered excluded and deported at the Port Court who subsequently entered or attempted to enter the United States illegally. Such a case typically would not have been federally prosecuted because the alien lacked any prior criminal history.

Since the Port Court began pilot operation in the Port of Entry on July 12, 1995, more than 4,000 alien impostors have appeared before an immigration judge, the INS has presented the cases, the immigration judges have ordered the exclusion of the impostors, and the INS has contemporaneously executed the orders right at the Port of Entry. Less than 20 of the impostors ordered excluded and deported by immigration judges sitting at the Port Court have been arrested attempting to again illegally reenter the United States. All have been charged with the felony criminal violation of Title 8 United States Code, Section 1326, attempted reentry after deportation.

The success of the Port Court is stunning but even more remarkable when viewed in comparison with previous statistics. In March 1994 exclusion cases represented only one percent (1 percent) of the total immigration hearing case load in the San Diego district. This figure reveals the lack of enforcement efforts previously being focused at the ports of entry and the absence of any meaningful sanction previously being imposed. Today, 44 percent of all cases adjudicated by immigration judges in San Diego are exclusion cases. Moreover, in all of fiscal year 1994 the San Diego INS District formally deported 9,589 aliens. The INS, with the cooperation of the Executive Office for Immigration Review and the United States Attorney's office, and with the financial and personnel resource infusion by the Clinton Administration, formally excluded and deported 4,000 aliens in just six months of 1995 through the Port Court operating at the Port of Entry. ❖

Port Courts I and II

Executive Office for Immigration Review
Office of the Chief Immigration Judge

Port Court I is an outgrowth of United States Attorney Alan Bersins deferred prosecutions program. Aliens who, at the time of their attempted entry, commit crimes such as smuggling or drug trafficking are subject to exclusion from the United States. They are generally placed in detention pending prosecution. The deferred prosecution program permits them to enter pleas to reduced charges after exclusion orders have been entered against them by an Immigration Judge. Port Court I is a joint effort among the United States Attorneys office, EOIR, and INS to identify, detain, and expeditiously adjudicate cases and effect the removal of criminal aliens as they attempt to enter this country through the ports of entry in southern California.

The objectives of Port Court I are twofold. First, by entering orders of exclusion against these criminal aliens, they can immediately be released from detention and deported to their country of nationality. This avoids additional detention costs that would otherwise be borne by

United States taxpayers. Secondly, by removing these aliens from detention, additional bed space is freed in our prisons and detention facilities. This, in turn, allows the government to continue prosecution and incarceration of other criminals who must be removed from society.

Port Court I currently operates out of temporary space provided by INS at the port of entry at Otay Mesa, California. The program began in July 1995, and is expected to be ongoing. The temporary court is staffed by a single judge and operates four days per week, with both morning and afternoon calendars. This program will soon be expanded as two permanent courts are built at the Otay Mesa facility, and Port Court I will be a two-judge operation that will run five days per week.

Since its inception, 1,200 cases have been filed in Port Court I, and have resulted in 450 exclusion orders.

Port Court II is a joint initiative of INS and EOIR to increase the ability of INS to process and exclude from the United States an increasing number of undocumented aliens who illegally attempt to gain entry.

The Port Court II program operates out of the Federal Building in San Diego. Port Court II is staffed by two Immigration Judges recently hired to handle this increased caseload. These judges preside over morning and afternoon calendars five days a week. This program, which began in July 1995, was initially to be a temporary program that would expire on August 25, 1995. However, the program has been continued for an indefinite period.

Unlike Port Court I, which targeted criminal aliens, Port Court II targets applicants for admission who are impostors, bearers of fraudulent documents, and those who attempt entry by avoiding inspection. Hearings are generally conducted in groups of 20. This requires that each member of the group agrees to waive his/her right to representation to an individual hearing, and to have additional time within which to prepare his/her case.

Since its inception in July 1995, Port Court II has resulted in the entry of approximately 165 additional exclusion orders each week for a total of approximately 4,000 to date. ❖

Achievements in Immigration Prosecutions

Assistant United States Attorney Nandor Vadas
Northern District of California

The Northern District of California has substantially increased the number of immigration prosecutions. Prior to 1995, data from the Promis system revealed that the District prosecuted 249 8 U.S.C. § 1326 cases. In 1995 alone, the district prosecuted 177 cases, and we anticipate another substantial increase in 1996.

The following programs implemented in 1994 and 1995 resulted in numerous successful prosecutions of illegal immigrants.

Operation Gangland is a district-wide program to identify, locate, and prosecute gang members who are also subject to prosecution under Title 8 U.S.C., Section 1326(b)(2) (reentry after deportation for aggravated felony conviction). Using the GREAT software program, we are able to identify all of the known gangs in the Northern District of California. GREAT uses information from local and state law enforcement agencies who report on gang activities in their respective jurisdictions. This information is updated on a regular basis and forms the database used by the Gangland task force to search for illegal immigrants who are also gang members.

After a street gang is identified and targeted for prosecution, we cross index the names with the central indexing system used by INS and come up with a list of potential defendants. These names are again cross checked with criminal history database information, resulting in potential prosecution of illegal aliens who have Immigration Prosecutions continued from page 19 committed sex crimes, drive-by shootings, assaults, and street-level sales of narcotics.

It is anticipated that the next phase of Gangland will be the arrest of gang members on federal warrants with the addition of state charges on other members of specific local gangs which deal in narcotics and other forms of illegal activity. If successful, operation Gangland will be able to continue its primary mission of dismantling street gangs and prosecuting its members for various state and federal violations arising out of their illegal activities.

The goal of this program is to bring a renewed level of security and safety to the citizens in the Northern District of California. Gang violence, whether associated with narcotics trafficking, extortion, or other forms of violent anti-social behavior, destroys the quality of life for everyone who is exposed to gang culture and gang life.

Operation Safe, a task force located in the San Jose Division, tracks sex offenders who must register under California Penal Code, Section 290. An unanticipated benefit of this program was the identification of approximately seven sex offenders in 1995 who qualified for 1326 prosecution, and were successfully prosecuted. They will be deported after serving their federal prison terms.

In August 1995, INS, in conjunction with the California Department of Corrections (CDC), conducted a joint operation to identify, arrest, and federally prosecute CDC parolees who are also illegal immigrants. This task force identified 15 potential violators in the Northern District of California. Six of these violators were federally prosecuted, including one defendant who had been in state prison for child molestation. ❖

Operation Green Talon

United States Attorney Kristine Olson
District of Oregon

In April 1994 the District of Oregon initiated Operation Green Talon to deal with illegal reentrants engaged in criminal activity. For the most part, the criminal activity relates to drug trafficking crimes. The principal thrust of this policy is to substantially increase the number of prosecutions of criminal aliens with prior felony or aggravated felony convictions, while minimizing resource expenditures.

In order to carry out Green Talon, this office developed a prosecution policy which allows illegal reentrants to plead guilty to a two-year felony, 8 U.S.C. § 1326(a), in lieu of prosecution pursuant to § 1326(b)(1) (10 years) or (b)(2) (20 years). In return for the quick guilty plea, the defendants are expected to waive all appellate rights and to submit to deportation without a further hearing.

As a result of the Green Talon program, approximately 377 criminal aliens have been indicted. Virtually all of these cases have been resolved through guilty pleas, and thus do not divert resources from other programs. The Green Talon program has been well-received by local law enforcement authorities, as well as by the citizens of the community.

The Green Talon program is limited to first-time offenders. Defendants with prior § 1326

convictions are prosecuted pursuant to § 1326(b)(1) or (b)(2), depending on their prior criminal histories. Also, defendants who are charged with other federal crimes in addition to the 1326 violation are not considered candidates for the Green Talon option; those cases are handled on a case-by-case basis. ❖

Criminal Alien Prosecution Program

Assistant United States Attorney John R. Kraemer
Southern District of California

For years, thousands of criminal aliens formally deported by Immigration Judges throughout the United States after the commission of serious felonies, repeatedly found their way back into this country, only to commit further serious felonies. Although some, when arrested again, were charged with felony reentry after deportation under 8 U.S.C. 1326, most, because of the large volume of such cases in this district, were prosecuted as misdemeanor illegal entries under 8 U.S.C. 1325. When convicted of the misdemeanor, the criminal alien received no more than 180 days in jail, and often less.

In late 1994, United States Attorney Alan Bersin announced an unprecedented effort aimed at criminal aliens who return to the United States after deportation. That effort intended to make full use of the enhanced penalties for reentry after deportation under the President's 1994 Crime Bill, and complement United States Border Patrol and INS efforts, through Operation Gatekeeper, to identify and arrest criminal aliens at the border or anywhere else they might be found in the Southern District of California.

During 1995 alone, over 1,300 deported criminal aliens, including those with prior convictions for murder, rape, armed robbery, burglary, and serious narcotics offenses, were arrested in the Southern District of California. The fact that so many criminal aliens were arrested in this district, which shares a common 150-mile border with Mexico, was not new. What was new is that all of the defendants were brought before the U.S. District Court on straight felony charges under Title 8 U.S.C. Sec. 1326. In fact, more criminal aliens were prosecuted here under Section 1326 in 1995 than in the previous 10 years combined. Between January 1 and December 11, 1995, U.S. District Court Judges imposed 1,562 years of imprisonment on the first 848 defendants convicted under Section 1326. In addition, each defendant was ordered to serve at least one year of supervised release following completion of the prison term. Finally, as a condition of the plea agreement, each defendant agreed to appear before a U.S. Immigration Judge within 24 hours of sentencing for the entry of an order of deportation, to be executed immediately upon completion of the prison term. Despite the number of felony filings, only four criminal alien defendants chose to go to trial during 1995. All were convicted.

The influx of 1,300 new felony cases in this district (more than doubling the number of felony cases traditionally filed each year for all categories of crime) was accomplished with minimal staff increases and without diverting resources from other prosecutive priorities. Our success was a direct result of: (1) Attorney General Renos assignment of two Special Assistant United States Attorneys to this district to exclusively prosecute criminal alien cases; (2) a complete revision of our prosecution guidelines; (3) the modification and expansion of a fast-track system first developed for these cases in 1993; (4) the creation of a paralegal team within the United States Attorneys office, responsible for preparing and tracking these cases; and (5) the

close cooperation of the INS, Border Patrol, Executive Office for Immigration Review, U.S. Marshals Service, and Bureau of Prisons.

Under the fast-track program, discovery is provided to the defendant within 24 hours of arraignment on the complaint, together with a preindictment plea offer. In all but the most serious cases, the defendant is allowed to plead guilty to a violation of 8 U.S.C. Sec. 1326(a), which carries a maximum term of two years. Because most of the defendants face substantially more time under the Sentencing Guidelines, few defendants refuse the Governments offer. Thereafter, if the defendant accepts the offer, he or she must: (1) waive indictment by a federal grand jury; (2) forego any hearing on motions; (3) plead to a felony information charging reentry after deportation; (4) waive a presentence report; (5) stipulate to the appropriate prison term (usually 24 months); (6) submit to immediate sentencing; (7) waive all sentencing appeals; (8) appear before an Immigration Judge for entry of an order of deportation within 24 hours of sentencing; and (9) waive all appeals of the deportation order.

This districts fast-track program was recently praised by the Ninth Circuit in *United States v. Estrada-Plata*, 57 F.3d 757 (9th Cir. 1995), which said:

> "In light of the overall crime problem in the Southern District of California, the government chose to allow Section 1326 defendants the opportunity to plead to a lesser offense, if done so at the earliest stage of the case. Like the district court, we find absolutely nothing wrong (and quite frankly, a great deal right) with such a practice. The policy benefits the government and the court system by relieving court congestion."

In the past 14 months, over 1,500 deported criminal aliens have been arrested and prosecuted under Section 1326 in this district. If crime rate statistics are any indication, these efforts, coupled with those of local law enforcement, are making a positive impact in San Diego, which now enjoys one of the lowest crime rates in the nation. ❖

Prosecution of Aggravated Felon-Illegal Reentry Cases

Assistant United States Attorney Donald M. Reno, Jr.
Western District of Washington

The two largest counties in the Western District of Washington are King (Seattle) and Pierce (Tacoma). County jail officials for both counties estimate that 20 to 25 percent of their jailed inmates are "foreign born." In January 1996, the Washington Department of Corrections (DOC) reported that INS had lodged detainers on 680 DOC inmates (from a total prison population of 11,719) known to be "illegal aliens." Hispanics constitute the overwhelming number of these illegal aliens.

A large percentage of the DOC illegal alien inmates will be prosecuted by the district as "aggravated felons" per 8 U.S.C. § 1326(b)(2) upon their release from the DOC to the INS detainers.

Increased Penalties for Alien-Felons Who Illegally Reenter the Country After Deportation

In September 1994, Congress increased the maximum incarceration period under 8 U.S.C. § 1326(b)(1) and (2) to 10 and 20 years, respectively. Convictions for drug trafficking, regardless of the amount of drugs involved, fall within the definition of an "aggravated felony" and require a 16-level enhancement to the base offense level of 8 under the Sentencing Guidelines. *United States v. Abreu-Cabera*, 64 F.3d 67, 74-76 (2nd Cir. 1995); *United States v. Andrino-Carillo*, 63 F.3d 922, 925 (9th Cir. 1995) cert. denied 116 S. Ct. 746 (1996).

Virtually all of the aliens prosecuted as aggravated felons by this office acquired their predicate trafficking convictions in California, Oregon, or Washington state courts, as a result of "street deals" or selling small quantities of drugs.

Plea Offers Premised Upon Assistants Pre-Filing an Estimate of the Alien's Criminal History Category

The Ninth Circuit recently approved the Southern District of Californias United States Attorney's offices "fast-track" plea bargaining policy that allows illegal aliens charged with illegal reentry as aggravated felons to plead to 1326(a) (statutory maximum penalty of two years). *United States v. Estrada-Plata*, 57 F.3d 757 (9th Cir. 1995).

This "fast-track" policy permits aggravated felons to avoid harsher penalties mandated by the Sentencing Illegal Reentry Cases continued from page 22 Guidelines for aggravated felons that would otherwise result in the imposition of 6- to 10-year sentences. As noted by the *Estrada* court, this fast-track system is an extremely practical plea policy for a district like the Southern District of California that is overwhelmed with illegal reentry prosecutions due to the district's proximity to the Mexican border.

The heavy illegal alien inmate population in the District of Washington also results in a substantial number of illegal reentry prosecutions. To deal with this, the district implemented a plea policy that requires an aggravated felon to plea to 1326(b)(1) (illegal reentry as a felon). Despite a plea to (b)(1), the 16-level enhancement required for aggravated felons is applicable as "relevant conduct" (U.S.S.G. § 1B1.3). If a pre-charging review of the alien's criminal history indicates that the criminal history points do not exceed 15, a four-level downward departure per § 5K2.0 is offered in exchange for agreement to an INS deportation. Aggravated felons who have 16 or more criminal history points and a prior § 1326 conviction are offered a two-level downward departure in exchange for their deportation and waiver of an administrative appeal.

Approximately 70 percent of the district's 1326(b) prosecutions are Criminal History Category VI aggravated felons. Although the districts plea policy is sometimes questioned by the defense bar as being inequitable as compared to the San Diego "fast-track," very few plea offers are rejected. ❖

Immigration-Mann Act Investigations

Assistant United States Attorney Ed Kubo
District of Hawaii

Prostitution a Growing Concern in Hawaii

A significant area of local concern in the past has been illegal Chinese immigration. Since 1994, when the last federal prosecution of individuals occurred for bringing Chinese aliens to this District by boat, boats now seem to be avoiding Hawaii as its destination.

A more significant current problem is the importation of illegal aliens to Hawaii for purposes of prostitution. According to the Honolulu Police Department, on any given night there will be close to a hundred prostitutes in Waikiki soliciting tourists. The police have become frustrated, complaining that arrestees bail out and are back on the streets before they can complete their reports. There is an international aspect to this; prostitution rings will have their prostitutes "migrate" like birds back and forth between Canada and Hawaii, depending on the season of the year and on major events in the region. Because of the local police frustration, and the international aspect of the problem, a task force approach was adopted.

The Baker Case

Lamar Duran Baker, a/k/a "Mario", was identified as a major international pimp by police in Vancouver, Hawaii, and California. His base of operation was Vancouver, Canada, and he operated extensively in Waikiki, Hawaii. His method of operation was to have his prostitutes enter the United States at a Washington State port of entry, posing as United States citizens, and then fly to Hawaii. Baker had approximately eight Canadian prostitutes working for him in Hawaii alone during 1993.

In August, 1993, he recruited a 17-year old Canadian girl. She was sent to Hawaii for several months in late 1993, working virtually every night for Baker, earning between $3,000 to $5,000 a night. All monies were turned over to Baker, who gave her spending money. She became our key witness at the trial.

The juvenile's version of events was thoroughly investigated, to establish her credibility by corroborating her story. Every place that she told us she stayed while traveling from Vancouver to Washington state to Hawaii was substantiated with records from the motels or apartment owners and neighbors. Every long distance call made by her to Baker and vice versa, which were made using either a calling card or a cellular phone, was confirmed by Canadian phone/cellular records and United States phone/cellular records. Every wire of cash Baker sent her for motel expenses and travel to Hawaii was confirmed by Western Union or American Express. Her flight to Hawaii was also confirmed by Hawaiian Airlines records, and the car she described him to be using was confirmed with rental car records in Hawaii. Finally, her prostitution arrests while in Hawaii were confirmed by the undercover police officers who made the arrests, as well as the local court records.

Based on the above, along with Mann Act charges, Baker was indicted for two specific immigration charges: (1) knowingly encouraging and inducing an alien to enter and reside in the United States in reckless disregard of law, in violation of 8 U.S.C. § 1324(a)(1)(D), and (2) knowingly transporting an illegal alien within the United States, in violation of 8 U.S.C. § 1324(a)(1)(B)

At trial, the defense argued that the jury should not believe her, and that the defendant was charged based on unsubstantiated allegations of a girl he tried to help while she was in Hawaii. To counter this, we placed all of our corroborating evidence on first, and had her testify last.

Because of the strength of the evidence at trial, Baker asked if he could plead guilty after we rested our case in chief. We informed him that when we arrested him on our indictment, we

also executed a search warrant on his apartment and located a bullet. Because it was our intention to indict him on the felon in possession charge, he also needed to plead to an information covering that charge. Baker agreed.

Baker pled guilty to all seven counts of the indictment which charged him with the Mann Act and Immigration counts, and to a one count information charging him with being a felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1). He was sentenced on November 6, 1995, by District Judge David Alan Ezra to 160 months imprisonment. Specifically, for the two immigration counts, the defendant received 60 months for each count (concurrent to each other but consecutive to the Mann Act counts). ❖

Crime and Immigration: A Joint Venture

Deputy United States Attorney for Special Prosecutions Amalia Meza, Southern District of California,
and Civil Rights Trial Attorney Jim U. Oliver, Jr., DOJ Civil Rights Division, Criminal Section

Since the early 1990s, legal immigrants have entered the United States at a rate of approximately 900,000 per year, with illegal immigrants swelling the country's population at an estimated 300,000 per year. From California's Proposition 187, to Patrick Buchanans suggestion to build a 2,000 mile fence, to the proposed legislation in Congress denying citizenship to children born in the United States of undocumented aliens, there is an ever-increasing focus on the impact of both legal and illegal immigration on this country. Regardless of whether the fears behind such efforts are real or imaginary, federal prosecutors investigating crimes which accompany both legal and illegal immigration face challenges unique in law enforcement.

A recent joint prosecution by the Criminal Section of the Civil Rights Division and the Los Angeles United States Attorney's Office into the enslavement of Thai women in Los Angeles sweatshops supplying the garment industry illustrates the conflicting law enforcement pressures in this area. The defendants recruited women, primarily from rural areas of Thailand, for "good jobs" in the United States. The Thai women signed contracts for three years to work off the fee they would owe the defendants for bringing them into the United States. When they arrived at their work sites in this country, the women worked from 7:00 am until midnight, were not permitted to leave the compounds, and lived constantly under the supervision of guards.

The case presented the lems faced in prosecuting the standard alien and DOJ attorneys with those problems faced in prosecuting the standard alien smuggling case, but prosecution would be further complicated by the additional charges of kidnapping and involuntary servitude. Assistant United States Attorneys who prosecute alien smugglers recognize the necessity of ensuring the cooperation of the undocumented aliens, who themselves are guilty of unlawfully entering the United States. The aliens' testimony must be preserved for trial by delaying the normal streamlined procedure where the aliens plea and are deported or voluntarily returned to their country.

The Thai defendants were charged with kidnapping (18 U.S.C. § 1201) on the theory that the women were tricked (or "inveigled") into agreeing to come to work for the defendants. The involuntary servitude charges (18 U.S.C § 1584) were founded on the theory that, even though the women initially agreed to perform labor for the defendants, involuntary servitude occurred

when the victims were prevented from quitting their work.

The investigation into the Thai case was further complicated by the fact that the investigation was handled primarily by INS agents. Since the INS does not count slavery convictions in its statistics, management initially resisted committing the necessary resources to the case. Further, most INS agents are themselves not experienced in doing lengthy grand jury investigations. Once prosecutors overcame the institutional resistance to the investigation, the case agents proved to be enthusiastic and extremely capable in handling the complexities of the investigation.

Prosecutors face other problems in investigating the variety of crimes generated by both legal and illegal immigration. The overlap of authority among various federal law enforcement agencies with jurisdiction over the national borders often results in confusion and competition over which agency has ultimate responsibility for the investigations. A crime involving a documented or undocumented alien as either a victim or a subject often requires cooperation among the United States Attorney's office, the Criminal Section of the Civil Rights Division, the FBI, the OIG, the Border Patrol, as well as investigators for the various agencies who seek to impose administrative sanctions for misconduct of their own employees. The solution is to create a cooperating investigative team in which responsibilities of each agency are clearly delineated.

The recent conviction of an INS supervisory inspector for a civil rights violation and for soliciting sexual bribes provides an example of the benefits of such cooperation. The case was prosecuted jointly by the United States Attorney's office for the Southern District of California and the Criminal Section of the Civil Rights Division, and was investigated jointly by Department of Justice OIG agents and the FBI. The defendant was an INS inspector in San Ysidro who handled first level immigration appeals. He targeted female aliens, the majority of whom were entering the United States legally. The defendant would retain the women's immigration papers, and then, under the pretense of going to a different INS office, lure them to a nearby fleabag motel with hourly room rates. Once there, the defendant solicited sexual favors from the women in exchange for his returning their documents. Many of the initial witness interviews were done by OIG agents, who were not familiar with conducting extensive criminal investigations in anticipation of trial. The OIG agents were later aided by FBI agents, who provided their expertise in coordinating the collection of physical evidence, lab testing, and preparing evidence for trial.

Both the Thai slavery case and the San Ysidro sexual bribery case illustrate the difficulty of getting immigration related crimes investigated at all. To a degree not found in other types of cases, the subjects in immigration crimes often exercise a great amount of control over the victims, regardless of whether they are in the country legally or illegally. The Thai victims were prevented from contacting authorities by threats of beating and the burning of the family home in Thailand. The Mexican females were threatened with the confiscation of their documents which they needed to legally enter the United States for their jobs in Mexico. The victims in both cases were not familiar with either their rights or available options under United States' law.

United States Attorneys' offices should establish procedures both internally and with the Criminal Section of the Civil Rights Division to streamline and expedite the review of all criminal complaints involving the victimization of both documented and undocumented aliens. While all criminal prosecutions benefit from witness interviews at a point when memories are fresh, time pressures are particularly acute in border-related cases. Given the fact that the non-law enforcement witnesses in these investigations are often in the United States illegally, they may be returned to their country of origin if there is any delay in investigating their allegations. Cases

against law enforcement officers for using unnecessary force are very difficult to prove in any instance. Those occurring along the border often have no witnesses at all, or undocumented alien witnesses who will be subject to cross-examination on a perceived anti-law enforcement bias. It is therefore essential to establish procedures to ensure that any injuries to a victim are documented through contemporaneous photographs and a medical examination of the victim.

The Southern District of California provides a working model for the efficient handling of criminal complaints against law enforcement officers who target foreign nationals. Where the subject of the complaint is an INS officer or a Border Patrol Agent, the OIG acts as a clearinghouse. It has the responsibility for receiving a complaint, interviewing the victims and witnesses, and collecting reports of the incident. This information is then faxed to the United States Attorney's office and the Criminal Section of the Civil Rights Division within 24 hours after the complaint is received. Whenever injuries have been sustained in connection with an unnecessary use of force complaint, both the Border Patrol and INS will detain all victims and witnesses until the complaint is reviewed. A Criminal Section attorney and the Civil Rights Assistant United States Attorney will then review the complaint within 24 to 36 hours after receipt in order to determine whether criminal prosecution is warranted.

If the evidence appears sufficient to support a successful prosecution, the case will be assigned to the appropriate agency for additional investigation. In the Southern District of California, these in-depth investigations are handled jointly by FBI and OIG agents who prepare a written report within 21 days. In other districts, this investigation is handled by the FBI. After the conclusion of the preliminary investigation, the Civil Rights Assistant United States Attorney and an attorney from the Criminal Section of the Civil Rights Division jointly determine whether the case is prosecutable. If a case does not merit prosecution, but does evidence misconduct, it is referred to the INS Office of Internal Audit for administrative action.

The United States Attorney's office in the Southern District of California also has created a civil rights working group comprised of both federal law enforcement agencies and citizens advocacy groups to (1) provide information to the general public regarding the complaints of foreign nationals, (2) create a forum for raising and addressing immigration related issues, (3) open up direct lines of communication between members of the working group, and (4) provide assistance to federal law enforcement in locating witnesses and other evidence to support prosecutions of abuse. Prosecutors in the San Ysidro sex case received invaluable assistance from both the advocacy groups and the Mexican Consulate in locating victims in Mexico's interior and in the gathering of evidence, which can be difficult in a foreign country. These groups also assist in convincing victims and witnesses that they will not suffer retaliation for assisting in a criminal investigation targeting a United States official.

One of the most effective ways to ensure that the rights of legal and illegal aliens will be protected is through the continued training of those federal law enforcement officers who have contact with them. Attorneys from the Criminal Section of the Civil Rights Division are available to assist United States Attorney's Offices in conducting limited training seminars to any interested law enforcement agencies, federal or local.

The Criminal Section of the Civil Rights Division has joint enforcement authority with the United States Attorney's offices for cases involving the deprivation of personal liberties. This section is a trial section whose attorneys work jointly with Assistant United States Attorneys in the grand jury investigations and the trials of violations of the various federal criminal civil rights statutes. The Section, either independently or along with Assistant United States Attorneys,

prosecutes conspiracies to interfere with federally protected rights, the deprivation of rights under color of law, the use of force or threat of force to injure or intimidate someone in their enjoyment of specific rights (e.g., voting, employment, education, enjoyment of public facilities and accommodations), criminal housing interference, and interference with persons seeking to obtain or provide reproductive health services. The attorneys in the Criminal Section are available to discuss cases and provide assistance. In addition, the Section conducts a criminal civil rights training seminar for Assistant United States Attorneys once a year. ❖

Counterfeit Immigration Documents

Assistant United States Attorney Denise Williams
Northern District of Texas

Title 18, United States Code, Section 1546(a), makes it unlawful for a person to use, possess, obtain, accept, or receive a document for entry into or as evidence of an authorized stay or employment in the United States, knowing that document has been obtained by any false claim or statement, or to have been procured by fraud or unlawfully obtained.

Examples of the kinds of documents covered by this statute (other than those listed in the statute) are birth certificates, resident alien cards, employment authorization cards, arrival-departure records, or other documents that make it appear as though an alien has the authority to live or work in the United States. An important distinction exists between counterfeit immigration documents and those fraudulently obtained but validly issued by INS.

Counterfeit immigration documents are not issued by INS, but obtained from street vendors. For under $200, an illegal alien can buy a set of cards on the street, including a Form I-551, Resident Alien Card (commonly called "green card"), and a Social Security Card.

Within the last year, the United States Attorney's office for the Northern District of Texas, Lubbock Division, prosecuted a large counterfeit documents organization operating out of California. The group of mainly family members was in the business of establishing and running document mills in Dallas, Denver, Atlanta, New York, San Francisco, and Los Angeles. An undercover Border Patrol agent posing as a person who could run document mills was able to infiltrate the organization. To enhance his credibility with the group, the agent obtained false INS-issued immigration documents for many family members. In exchange for the INS-issued documents, the organization paid the agent in cash, provided him with thousands of sets of blank documents, and gave him instructions in the operation of a document mill. Eighteen people were indicted for the conspiracy, for fraud in connection with immigration documents, possession of document-making implements, and for illegal reentry after deportation. To date, eleven have been arrested and pled guilty to one count of the indictment.

In contrast to the counterfeit documents sold on the street, many aliens possess validly issued immigration documents obtained by making fraudulent statements on INS applications.

One immigration program has created widespread fraud. In 1986, Congress enacted the Immigration Reform and Control Act (IRCA) to assist farmers who were continually losing their illegal alien workers as a result of Border Patrol efforts. The initiative was called the Special Agricultural Worker Program. The program provided, among other things, that if an alien could provide proof from a farmer or farm labor contractor that he had worked in perishable agriculture for at least 90 days between May 1, 1985, and May 1, 1986, he could obtain temporary legal

residency from INS and eventually become a permanent resident alien. The deadline for filing applications under this program was November 30, 1988. Under these provisions and the amnesty provisions of the Act, approximately 3.2 million people applied nationwide. INS estimates that 80 percent of the applications filed in the Lubbock, Texas, legalization office alone were fraudulent; i.e., the aliens purchased fraudulent letters from farm labor contractors. Some of the farm labor contractors sold thousands of these letters, and have admitted that none of the people who bought them did the work. INS did not have the resources to investigate each application, and they were under court mandates to process the applications by a specific date. As a result of these fraudulent applications and approvals, many illegal aliens are currently living and working in the United Statesand each use of their documents constitutes a violation of 18 U.S.C. § 1546. Obviously, intelligence information must be gathered about the providers of the letters so that when aliens present "green cards," the agent or others will be able to determine if it is fraudulent. ❖

Green Cards While-U-Wait

U.S. v Salazar

Assistant United States Attorney Yong J. An
Southern District of Texas

INS agents received a tip that counterfeit immigration documents were for sale in an outdoor market stall in front of a popular grocery store in Houston. Undercover investigators confirmed that for from $100 to $200, a person could get an alien registration card and social security card. The process took about an hour from the time Francisco Salazar received the person's photograph and the personal information they desired until the laminated card was produced. He took the order and collected the necessary information and photograph at his mall stall, and the cards were made at Salazars nearby apartment. Agents arrested him and seized his laminator, typewriter, and over 200 counterfeit green cards and social security cards. Salazar received a one-year sentence. ❖

Employment Provisions a Priority in Eastern District of New York

Assistant United States Attorneys Kiyo Matsumoto and Scott Dunn, and
Special Assistant United States Attorney Patricia Gannon, INS trial attorney assigned to the United States Attorney's office

In July 1995, Eastern District of New York United States Attorney Zachary W. Carter and New York District Director Edward McElroy, Immigration and Naturalization Service, began a joint initiative that, to date, has resulted in the recovery of over $165,000 from employers who violated the employer sanction provisions of the Immigration and Nationality Act, 8 U.S.C. § 1324a et seq., and refused to pay monetary penalties imposed by INS.

Employers cannot knowingly hire or continue to employ an alien unauthorized for employment in the United States, and employers are required to verify the identity and

employment eligibility of all employees hired after November 6, 1986. Employers found by INS to be in violation of the employer sanctions provisions were issued a notice of intent to fine containing a civil monetary penalty. Employers largely ignored these fines, either refusing demands for payment or attempting to avoid payment by dissolving their businesses and opening new ones under a different name. Employers appeared to have a sense of invulnerability with respect to these penalties, believing that the United States lacked the resources to enforce collection of the sums owed.

In the summer of 1995, Mr. McElroy committed a Special Assistant United States Attorney (SAUSA) and two INS Special Agents to the United States Attorney's office for the Eastern District of New York. The SAUSA provides litigation support for civil suits seeking judgment on the INS civil penalties and enforces those judgments under the Federal Debt Collection Procedures Act, 28 U.S.C. § 3001 et seq. The Special Agents conduct investigations as to the employers' current business operations, and locate assets, including bank accounts, real property, equipment, and accounts receivable which may be available to satisfy the civil judgments under the Federal Debt Collection Procedures Act.

Since July 1995, the United States Attorney's office in Brooklyn, with the assistance of INS, filed 19 complaints in Federal District Court against companies in Brooklyn, Queens, and Long Island who violated the employer sanctions provisions. After obtaining a judgment against an employer, the United States Attorney's office makes a demand for payment and, if the employer refuses to pay, enforcement remedies such as the garnishment of bank accounts, are used. These efforts have resulted in the collection of over $165,000.

A $63.5 million increase in funding for worksite enforcement activities will double the number of agents and support staff who investigate employer violations from 317 to 719 nationwide. ❖

Virgin Islands Puts a Dent in Employer Fraud

Assistant United States Attorney David Nissman
District of the Virgin Islands

During the investigation of *United States v. Amspec* for environmental violations, we discovered that the targets had engaged in proactive employer fraud to obtain visas for foreign workers who were not entitled to enter and work in the United States. The company, while engaged in multiple violations of the Atomic Energy Act, was illegally importing its lower level management team from Canada. Amspec falsely claimed in visa applications that these workers possessed skills that they could not find in U.S. workers, a prerequisite for the visa. In reality, the missing skills these individuals possessed were a wholesale contempt for the Nuclear Regulatory Commission's rules on handling nuclear by-product material.

A second case, *United States v. West Indies Transport (WIT), et al.*, involved a scheme in which the defendants, through a series of shell corporations, imported Philippine nationals as laborers to man a drydock operation. The defendants, through their agents, falsely claimed on visa applications filed in Manila that the workers were to be solely employed as foreign crewmen aboard ocean going vessels. The only time the drydock workers went on the high seas was to have their passports stamped to keep their "status" current. The generous defendants provided housing for their workers by having them live in shipping containers. The defendants designed a

plumbing system that sent raw sewage from the containers into a bay which was the source of water that the St. Thomas desalinization plant used to produce drinking water for the island.

In both cases the defendants were charged with, among other things, a RICO count under Virgin Islands law. All of the Amspec defendants pled guilty, and most of the individual defendants received jail terms. All of the WIT defendants went to trial and were found guilty on all counts. The owner of the business received a 37-month jail term, and the individual and corporate defendants were ordered to pay fines and restitution in excess of $5 million. The WIT case was jointly tried with Howard Stewart of the Environmental Crimes Section. ❖

Civil Remedy for Immigration-Related Document Fraud

Office of the Chief Administrative Hearing Officer

Federal prosecutors should be aware of the civil penalties for document fraud contained in Section 1324c of Title 8, U.S.C. This provision was enacted as Section 544(a) of the Immigration Act of 1990 (P.L. 101-649, Nov. 29, 1990, 104 Stat. 5059) and may also be cited as Section 274C of the Immigration and Nationality Act.

Section 274C states, in pertinent part:

> (a) Activities Prohibited. It is unlawful for any person or entity knowingly -
>
> (1) to forge, counterfeit, alter, or falsely make any document for the purpose of satisfying a requirment of this Act.
>
> (2) to use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act.
>
> (3) to use or attempt to use or to provide or attempt to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of satisfying a requirement of this Act, or
>
> (4) to accept or receive or to provide any document lawfully issued to a person other than the possessor (including a deceased individual) for the purpose of complying with section 274A(b).

Section 274C(d) provides enforcement authority to the Immigration and Naturalization Service, allows an opportunity for a hearing before an Administrative Law Judge (ALJ), and sets out a range of civil money penalties for violations. ALJs within the Executive Office for Immigration Review's Office of the Chief Administrative Hearing Officer (OCAHO) have jurisdiction over cases in which a hearing has been requested. Although the number of complaints filed by INS with OCAHO has been relatively small, there have already been a number of published decisions interpreting the parameters of this statute. Moreover, OCAHO anticipates a significant increase in caseload in this area in light of FY 1996 budgeting enhancements for INS enforcement efforts against immigration-related document fraud. ❖

Operation False Love

Maria Pabon Lopez, Former Assistant United States Attorney
District of Puerto Rico

The illegal alien situation in Puerto Rico is a problem of enormous proportions. Scores of illegal aliens from the neighboring Dominican Republic come to Puerto Rico constantly, most of them crossing the shark infested Mona Channel, which separates the two islands. This two to three day sea voyage is done aboard crude, homemade wooden boats known as "yolas" (yawls). The conditions on board a "yola" are deplorable and fraught with health hazards. A typical "yola" is between 30 to 60 feet long. Often, over 100 people are crowded into a yolamany of them standing. There are no sanitary facilities in a "yola;" no safety flotation devices; and no protection against the sun, rain, and wind. Invariably, there are open containers of fuel where nearby the "yola" captains light up and smoke cigarettes. And once the boat arrives at the shores of western Puerto Rico, the passengers are told by the captains to jump, sometimes into deep water, and find their way to shore on their own.

This alien smuggling industry operates clandestinely in the eastern coast of the Dominican Republic, which is the closest side to Puerto Rico. Would-be travelers find out about a trip by word of mouth and come from all over the island to the east coast, usually to Miches, which is known as the alien smuggling capital of the Dominican Republic. Once there, the prospective passengers pay a large sum of money for the next trip. They will stay in town, on call until one night when, after hiding in open fields for hours, they are told to board the "yola" quietly, so as to avoid being noticed by the Dominican Coast Guard or Police. Also, on many occasions the Dominican authorities are bribed to "look the other way" on the night of the trip. After a perilous voyage, these illegal aliens, most of them from the Dominican Republic, but also Colombians, Chinese, and Haitians are dropped off to fend on their own in Puerto Rico. This cycle continues, for an estimated total of 4000 illegal immigrants entering the United States through Puerto Rico in this manner annually. INS calculates that for every "yola" intercepted, there is another one that comes into Puerto Rico.

As these aliens have an immediate need to legalize their immigration status, one of the easiest and most common ways has been through fraudulent marriages to Puerto Ricans. The Puerto Rican, as a United States citizen, can petition a Dominican spouse through an I-130 Form, a Petition for an Alien Relative. This form confers a temporary resident status which eventually leads to permanent resident status.

Payment for the fraudulent marriage is typically $2500 to $3500. Most of the time the sum is paid in installments, as the illegal alien continues to work clandestinely in such service jobs as cafeterias, bars, and doing housework. The couple usually meets through a Dominican intermediary or "arranger," who approaches the Puerto Rican and asks if he/she will marry a Dominican for money. After the deal is made, the couple meets once or twice to make the marriage and payment arrangements. These meetings often take place at the "arranger's" home or place of business.

The marriage follows soon after; it is typically performed by a minister at the home of the "arranger" or some relative of the Dominican. The arranger often acts as best man or maid of honor. Pictures of the couple with their wedding cake are taken, to be used later as evidence of the legality of the marriage. There have been instances where INS has found that as many as four marriages were performed in one day and the same cake is used for all four sets of wedding

pictures. After the ceremony and brief reception are over, each spouse goes their own way. They only come together later on for the Puerto Rican to sign the immigration forms, at which time he/she usually gets paid another installment. Later on, the couple has to appear for an adjustment of status interview at the Examinations of Adjudication Division of the INS San Juan District Office. Oftentimes, the "arranger" will help the couple prepare for memorizing each others birth dates, tastes in food, and description of their alleged household, etc. These are the types of questions that the INS examiners usually ask the couple to verify if the marriage is bona fide.

It is estimated that in Puerto Rico, over 80 percent of all the marriages between a Puerto Rican and a Dominican are fraudulent. Although some of the marriage fraud investigations begin from referrals of the United States Consulate in Santo Domingo, most of them are detected by the INS examiners during the interview, which is routinely videotaped as evidence. The couple appears at the appointed time for the interview and after being advised of the nature and purpose of the interview as well as of the fact that the interview is being videotaped, each spouse is interviewed individually.

After interviewing each party separately and discovering glaring inconsistencies in their answers, the examiner will typically confront the Puerto Rican and warn him/her of his/her rights. In many cases, he/she will give a sworn statement admitting that payment was made, that the couple never lived together as man and wife, and that the sole purpose of the marriage was to circumvent the immigration laws. The case is then turned over to the INS Investigations Unit for criminal prosecution or administrative action.

In June of 1995, the INS Investigation Unit of the San Juan District, headed by Special Agent Roberto Ramos and the Office of the United States Attorney, represented by Assistant United States Attorney Edwin Vazquez, Deputy Chief of the Criminal Division, embarked on a large-scale operation aimed at prosecuting marriage fraud cases to act as a deterrent to this growing problem. The operation was named Operation False Love by the team of Assistant United States Attorneys assigned to handle the caseload. They were: Assistant United States Attorneys W. Stephen Muldrow, Maria Pabon, Jacabed Rodriguez Coss, and Sonia Torres. Twenty-six indictments against 30 defendants were returned by the grand jury in one day. (Some of the Dominican aliens had already been deported.) The defendants were all arrested in one night in a sting operation, which generated wide media coverage, thereby enhancing the deterrent effect of the operation.

The indictments all charged both the United States citizen and the alien with a violation of 8 United States Code, Section 1325(b) [Marriage Fraud] and 18 United States Code, Section 2 [Aiding and Abetting] in Count One. Counts Two and Three charged the alien and the United States Citizen, respectively, with violations of Title 18 United States Code, Section 1546 [False statement in a document required by immigration laws] based on the false representations made in the immigration forms submitted (I-485 and I-130). Finally, Count Four charged them both with a violation of 18 United States Code, Section 1001 [False statements in a matter within the jurisdiction of an agency of the United States] and Title 18 United States Code, Section 2 [Aiding and Abetting] based on the statements made at the time of the videotaped interview. No "arrangers" were charged in Operation False Love, but in other cases, they have been charged along with the couple under Title 18, United States Code, Section 371 [Conspiracy].

As of this date, all defendants arrested pled guilty and the majority have been sentenced. Six remain fugitives. Some of the sentences imposed have included treatment for substance addiction, since many of the Puerto Ricans who marry for money use the cash to support a drug

or alcohol addiction.

Among the lessons learned from these marriage fraud cases have been the importance of thorough investigation. In one case, for example, the Dominican husband acknowledged the paternity of a child that was born during the sham marriage, but was fathered by another, in an effort to bolster his defense. Investigation of the state health and welfare records as well as the state demographic registry disclosed the true identify of the child's father, and when this information was given to the defendant in open file discovery, he pled guilty. In another marriage fraud case where the "arranger" was charged, investigation disclosed that she herself had obtained citizenship fraudulently and was later charged and so convicted, thus having to relinquish her citizenship as part of the plea agreement.

Marriage fraud can be found in many segments of society. In Puerto Rico, during the year 1995, three state police officers were convicted of marriage fraud and were expelled from the force. It is therefore worthwhile to undertake projects such as Operation False Love periodically and afford them widespread publicity as a deterrent. This is so since INS anecdotal evidence suggests that this operation has been effective in curbing sham marriages in Puerto Rico.

(Note: Maria Lopez resigned in February 1996 to get married and to relocate to Austin, Texas. She wishes to thank Assistant United States Attorney W. Stephen Muldrow and INS Special Agent Roberto Ramos for their assistance with this article.) ❖

Midwives Virtual Birth Practices Uncovered—*U.S. v Esquevel*

Assistant United States Attorney Laura Surovic
Southern District of Texas

A tip to Immigration Naturalization Service led to an investigation of several midwives in the lower Rio Grande Valley area. Undercover investigators found that for a fee of from $400 to $800, certain midwives would deliver a baby in Cameron County without ever seeing the baby. A birth certificate filed by a State-registered midwife would attest to the Texas birth and United States citizenship of a child actually born elsewhere. The investigation revealed that this was an active practice for midwives in the region, with some filing hundreds of fraudulent birth certificates. The INS investigation has resulted in charges filed against four midwives who have pled guilty, and the investigation is continuing. Since the investigation began, the number of delayed birth certificates filed by midwives in the area has dropped dramatically. ❖

Wedding Plans Derailed by INS Inspector

Assistant United States Attorney Richard Smith
Southern District of Texas

The couple landed in Houston aboard a Continental flight from Equador. They presented their husband-and-wife Equadorian passport to the United States Immigration Inspector at Intercontinental AirportMr. Juan Naranjo-Naranjo and his wife, Maria Del Pilar Mino Gutierrez.

Ms. Gutierrez did not appear to be a native of Guatemala and was unresponsive when asked questions by the inspector. Mr. Naranjo said that his wife was physically impaired and unable to speak or hear. Attempts by the Inspector to communicate with her in written Spanish and lip reading were unsuccessful. Closer inspection of the passport revealed evidence of tampering with the photograph. When Mr. Naranjo was questioned about previous trips to the United States reflected in his Equadorian passport, it became clear that he was not a valid holder of the passport. Naranjo and his wife were facing a quick return flight to Equador when he revealed that he was Pablo Velasquez, and that Ms. Gutierrez, who was really Sharmila Patel from India, was coming to the United States to marry a man from Chicago.

The return flight to Equador seemed inevitable until Velasquez proposed privately to the INS Inspector that he would pay the inspector $4,000 to complete his mission of delivering Ms. Patel to her future husband in Chicago.

Ms. Patel regained her hearing and ability to speak, and assented to such an arrangement. Velasquez added that if things worked out, the inspector could realize $4,000 on future trips. The inspector appeared to have agreed to the bribe, and that evening when an installment of $3,290 in cash was produced, Velasquez was arrested for bribery.

Later that evening, the inspector began receiving calls from a man representing the intended husband. During the conversations, the man offered the inspector $4,000 if Ms. Patel would be sent to Chicago. Again, the inspector appeared to agree to the bribe, and arrangements were made for the man to bring the money to the inspector and pick up the bride-to-be. As promised, $4,000 in cash was delivered and more arrests were made. A total of five people were indicted and pled guilty for immigration and bribery offenses, nearly $8,000 in bribe money was forfeited, Velasquez and Ms. Patel were deported, and the Chicago husband-to-be was fined $10,000. ❖

Regional LECCs Along the Border

Executive Assistant United States Attorney John Lenoir
and Law Enforcement Coordinator Lynette Ehler
Southern District of Texas

The Southern District of Texas has one of the busiest criminal dockets in the nation, due primarily to immigration cases. The district is a principal gateway to the United States, with its major seaports and airports and the land ports along the 300-mile border with Mexico. Metropolitan Houston is home to an immigrant population from all continents. Over 60 nations maintain consulates, and the United States Department of State has a large regional office of the Bureau of Diplomatic Security in Houston.

The greatest volume of immigration law enforcement activity, however, is concentrated along the South Texas corridor north of the Rio Grande River. It is here that the United States Border Patrol keeps its vigil against illegal entry along the expanse of brush lands and congested border cities of Brownsville and Laredo. There is considerable crime associated with illegal border crossingsnarcotics smuggling and transportation of stolen property are common. Violent gangs also work the border as land pirates preying on those least likely to report crime to the police.

The variety of criminal activity of the border region requires well coordinated law enforcement. In addition to INS, other federal agencies that are active in enforcing and

investigating the region are Customs, the Drug Enforcement Agency, and the FBI. Dozens of municipal police agencies, county sheriffs, and state police also enforce the law along this corridor. Chief Jose Garza, the Border Patrol Officer in Laredo, is currently Chief of the Lower Rio Grande area. He credits the district's Law Enforcement Coordinating Committee (LECC) with providing the forum for the various law enforcement agencies to meet, share intelligence, and discuss the coordination of operations along the border.

Because of the Southern District of Texas size and diversity, it has regional LECCs. The Laredo- Area LECC and the Lower Rio Grande Valley LECC are directed by a steering committee comprised of law enforcement leaders of local, state, and federal agencies. The Assistant United States Attorneys in charge of the branch offices in Laredo and Brownsville coordinate the regional LECCs in close association with the district's LECC Coordinator.

Regional LECCs provide an excellent training resource for the smaller jurisdictions. INS and United States Secret Service agents have provided training in identifying counterfeit documents and currency. DEA and United States Army trainers have provided courses in narcotics investigations. United States Attorney Gaynelle Griffin Jones participates in meetings in which all law enforcement in the area is represented. The active presence of the LECC in the region, according to INS District Director Michael Trominsky, has enabled the Border Patrol to enhance its relationship with the local law enforcement agencies. ❖

New "S" Visa Program for Foreign Witnesses

Beneva Weintraub, Chief
S Visa Unit, Office of Enforcement Operations, Criminal Division

The Violent Crime Control Act of 1994 created a new "S" nonimmigrant classification under United States immigration law. A limited number of these classifications (100 per fiscal year, plus an additional 25 for certain terrorism matters) is available for foreign witnesses who provide critical, reliable information concerning a criminal organization and whose presence in the United States is essential to a successful investigation or prosecution. For such witnesses, the Attorney General may waive existing grounds for exclusion (such as criminal convictions or problems with immigration status), which might otherwise result in deportation or ineligibility to enter the United States.

An alien may be admitted to "S" nonimmigrant status for up to three years. During this time, the alien must report regularly to the sponsoring law enforcement agency and may obtain work authorization. Eligible family members (spouse, parents, and married and unmarried sons and daughters) also may be admitted and do not count against the numerical limit. If the alien complies with all of the terms of the program, the sponsoring law enforcement agency may apply for certification which would enable the alien and eligible family members to apply for adjustment to lawful permanent resident status.

This program is particularly useful for witnesses or informants who would be in danger if they returned to their home countries. **There are still many slots available for fiscal year 1996.** Application must be made by a local, state, or federal law enforcement agency, which includes a United States Attorney's office, or by a court. If you have suitable candidates, you are urged to submit applications in ample time for consideration within this fiscal year. For further information and application forms, contact Beneva Weintraub, (202)514-1077. ❖

State Criminal Alien Assistance Program

Office of Justice Programs

In late January, the Office of Justice Program's (OJP) Bureau of Justice Assistance provided $87 million in grants to 44 states and the District of Columbia, marking the first time the Federal government has provided relief to states to help them with their responsibility to lock up illegal criminal aliens in the United States. The grants were made under the 1994 Crime Law's State Criminal Alien Assistance Program (SCAAP).

The grants are intended to assist states with some of the costs they incur to incarcerate aliens who were illegally in the country at the time they committed the crimes for which they were incarcerated. Reimbursement is available only for illegal aliens who were convicted of a felony offense. Reimbursement efforts are coordinated with INS initiatives to remove illegal aliens from penal systems.

Attorney General Janet Reno, who announced the grants, said, "President Clinton's administration has committed more resources to fight illegal immigration than any other, and is the first to help states lock up criminal aliens. Today's grants provide direct relief for overburdened states and make the Federal government a full partner in incarcerating criminal aliens."

In FY 1996, the Justice Department has asked Congress for an additional $300 million for SCAAP-the maximum amount authorized in the 1994 Crime Act, which authorized $1.8 billion in SCAAP funding over six years. The total FY 1995 appropriation for SCAAP was $130 million.

In October 1994, the Attorney General awarded a down payment of $42.9 million in SCAAP awards to seven states: Arizona, California, Florida, Illinois, New Jersey, New York, and Texas. These states received these initial awards based on information from the Urban Institute's study, "Fiscal Impacts of Undocumented Aliens: Selected Estimates for Seven States," which indicated them to have a disproportionate number of undocumented aliens. ❖

Litigating Immigration Cases in District Court

Assistant United States Attorney Dexter Lee
Southern District of Florida

INS cases that are commonly filed in district court are habeas petitions that seek review of orders of exclusion, 8 U.S.C. § 1105a(b); challenge the legality of detention by INS; challenge the denial of parole under 8 U.S.C. § 1182(d)(5), by INS for aliens in exclusion proceedings, and judicial review of agency action, such as the denial of a request for stay of deportation.

The most demanding cases in terms of time are those that challenge orders of exclusion or deny a request for stay of deportation by INS. Typically, the habeas petition is filed at the eleventh hour when the petitioner is in INS custody, and within days, if not hours, of being deported. An emergency motion for temporary restraining order (TRO) to stay deportation normally accompanies the habeas petition. This is a civil Assistant United States Attorney's equivalent of a capital case, since the deportation of the alien divests the district court of subject-matter jurisdiction [8 U.S.C. § 1105a(c)]. From the aliens standpoint, he must obtain a stay or he loses.

When the matter is received by the district court, an emergency hearing may be scheduled on the TRO motion. The AUSA must first immediately notify the local INS District Counsel's Office, and fax the pleadings that have been served on the United States Attorney, along with the alien's scheduled deportation date, and all the facts regarding the alien's status, including the date of entry into the United States, the date the alien was ordered excluded and deported by the immigration judge, and when the appeal was dismissed by the Board of Immigration Appeals.

Under the Immigration and Nationality Act, the availability of judicial review does not require the Attorney General to defer the deportation of an alien with an administrative final order [8 U.S.C. § 1105a(a)(8)]. When faced with an emergency TRO motion, some courts will enter a stay without a hearing to preserve the status quo, and others will conduct a hearing to have the benefit of the governments response. The AUSA must first determine the position of INS on whether they will voluntarily stay the deportation pending review by the court. If INS declines to do so, that decision must be communicated to the court promptly, and a response to the motion for TRO must be filed as soon as possible. As a practical matter, once a habeas is filed, INS should be notified of the possibility of a stay. If a hearing has been scheduled, the AUSA must promptly tell INS that a stay has been entered, in order to stop the deportation.

To obtain a stay, the petitioner must meet the following familiar four-prong test for obtaining injunctive relief: (1) There is a substantial likelihood of success on the merits; (2) There will be irreparable harm if a stay is not granted; (3) The balance of hardships favors the petitioner; and (4) Granting the stay will not disserve the public interest. Ignacio v. INS, 955 F.2d 295, 299 (5th Cir. 1992).

Inasmuch as the deportation of the alien divests the court of jurisdiction, *Umanzor v. Lambert*, 782 F.2d 1299, 1302 (5th Cir. 1986), and the entry of a stay will only mean the alien remains in detention pending the outcome of the case, usually the petitioner will be able to establish elements (2) and (3). For the government, areas most susceptible for attack are the alien's likelihood of success on the merits of his claim, and whether a stay would disserve the public interest. The AUSA must address the substantive merits of the underlying claim to demonstrate the unlikelihood of success on the merits. If the alien challenges an order of exclusion, the response should show that the order is supported by substantial evidence, and that any relief sought by the alien, such as political asylum, was properly denied. With regard to public interest, the AUSA can argue that Congress did not provide for an automatic stay upon filing a habeas petition, as it did for petitions to review orders of deportation. Thus, only the most meritorious habeas petitions should have stays granted. One can then argue that the underlying habeas petition lacks merit, and accordingly, the stay should not be granted. NOTE: Should a stay be granted by the court, the AUSA should contact INS immediately and note the time and identity of the person to whom the notice was given.

The district court also has jurisdiction to review denials of requests for stay of deportation issued by the district director or the Board of Immigration Appeals. The court applies the "abuse of discretion" standard, which provides that discretion is abused only if there is no evidence to support the decision or if the decision is based on an improper understanding of the law. *Bothyo v. Moyer*, 772 F.2d 353, 355 (7th Cir. 1985). In contesting a stay motion, the government should cite the facts relied upon in denying the stay and argue their soundness.

If a stay is granted, the court will normally set a schedule for the Government to file a written response to the habeas petition. The court reviews the administrative record to determine if "substantial evidence" supports the deportation order. 8 U.S.C. § 1105a(a)(4). For technical

assistance in preparing a response, or to obtain the certified administrative record in cases where an alien is seeking review of an order of exclusion, please contact Department's Office of Immigration Litigation, (202)616-4900. ❖

Southern District of Florida Holds

Immigration Symposium

On January 25-26, 1996, the United States Attorney's office for the Southern District of Florida sponsored a two-day symposium to discuss the management of immigration policy within the state of Florida. The forum, "Immigration Challenges Facing Florida: A Federal and State Law Enforcement Symposium," was a rare opportunity for Florida's elected representatives, immigration and law enforcement officials, and members of the community to discuss immigration challenges within the state. Recognizing the goals of successful immigration policies, the two-day symposium focused on law enforcement issues; matters relating to border management, alien smuggling, and deportation proceedings; management of legal immigration within Florida; and community current immigration topics.

Lieutenant Governor Buddy McKay of the state of Florida opened the symposium and INS Commissioner Doris Meissner was the keynote speaker.

The symposium accomplished the goal of assisting federal and state governments to establish a comprehensive Florida immigration plan. The plan will assist the governments in establishing better systems to prevent alien smuggling, deport criminal and illegal aliens, secure Florida's coast and seaport, and protect the rights of legal immigrants.

To request a copy of the report published from the conference, please contact Ms. Marcia G. Cooke, Director of Professional Development, Southern District of Florida, (305)536-5414. ❖

Success: False Imprisonment Claim Dismissed

Assistant United States Attorneys Scott Dunn and Kiyo Matsumoto, and
Special Assistant United States Attorney Mary Elizabeth Tibbetts Eastern District of New York

In February 1996, a Federal judge in the Eastern District of New York ruled that Nil Anser Mahmud, a Pakistani who was detained for 64 days upon trying to enter the United States, had no right to press a false imprisonment claim under the Federal Tort Claims Act (FTCA) and was not entitled to damages for challenging detention under state negligence law. This decision marked the first time a Federal court judge ruled that an alien could not make a false imprisonment claim under the FTCA. Mr. Mahmud arrived at John F. Kennedy Airport with a B-2 and passport and claiming that he was going to visit Disneyland. Immigration and Naturalization Service authorities noticed that the photographs on Mahmud's B-2 and passport were different and that the print on his visa seemed irregular, and that the man who came to pick up Mahmud from the airport claimed that he would be staying with the man locally. These inconsistencies led INS officers to deny Mahmud entry into the United States and to charge him with willfully misrepresenting a material fact to gain admission and with failing to establish, in accordance with his visa, that he was a bona fide tourist. After Mahmud had been held for 64 days, the case was

resolved with the stipulation that he would be admitted to the U.S. for one month following the posting of $1,000 bond. He then sued the government and INS, alleging that he was wrongly detained and entitled to damages. The judge found that Mr. Mahmud had consented to the initial detention and to continuing incarceration. The judge said that the "Plaintiff was given the option of returning to Pakistan, and was told that if he elected . . . to go before a judge he would be detained." Mahmud consented to stay and, therefore, consented to detention. "A person seeking entry into the United States has significantly less right to avoid confinement than a person already lawfully in the United States who wishes to avoid incarceration for a crime," said the judge. ❖

Successes in Opposing Appellate Motions for Stays of Deportation

Diogenes Kekatos, Chief
Civil Division, Immigration Unit
Southern District of New York

The Immigration Unit of the Southern District of New York's Civil Division has enjoyed considerable success in the Second Circuit in opposing motions for discretionary stays of deportation pending the courts ruling on petitions for review. Since the beginning of 1995, the Southern District has successfully opposed over 87 percent of these motions. A stay denial in these cases usually eliminates the entire appeal, because the alien is promptly deported and the court is automatically divested of jurisdiction over the alien's appeal by statute. Vigorous opposition of stay motions, coupled with selective use of cross-motions for summary affirmance in the most frivolous cases, have enabled the Immigration Unit to dispose of the vast majority of aggravated felony appeals in the Second Circuit efficiently and with favorable results.

In non-aggravated felony cases, the alien's filing of a petition for review of the deportation order in the Court of Appeals triggers an automatic stay of deportation pending the appeal. Aliens convicted of aggravated felonies were previously entitled to an automatic stay of deportation as well. The Immigration Act of 1990 eliminated this privilege in aggravated felony cases. See 8 U.S.C. § 1105a(a)(3). This amendment, the Second Circuit has observed, reflects "Congress's decision that aggravated felons be promptly discharged from this country" absent a showing of "strong reasons" for a stay of their deportation. *Jenkins v. INS*, 32 F.3d 11, 15 (2d Cir. 1994).

In appropriate cases, the Unit has seized the opportunity of a stay motion to cross-move for summary affirmance of the underlying decision of the Board of Immigration Appeals. The Second Circuit has granted numerous such cross-motions, immediately terminating the appeal on the merits. Moreover, the Second Circuit has occasionally dismissed the entire appeal sua sponte based on the contentions in the stay opposition papers.

This experience suggests that aggressive use of the stay motion process can be a powerful tool in managing the docket of aggravated felony appeals. Stay motions require comparatively expedited responses, usually within ten days, but the results in the Second Circuit have proved to be well worth the effort of opposition. A denial of the stay motion usually produces the same result as a win on the full appeal, and with far greater speed and efficiency. ❖

Attorney General Highlights

Walter Dellinger
Acting Solicitor General

On February 29, 1996, Attorney General Janet Reno announced that Walter Dellinger will become Acting Solicitor General of the United States when Drew S. Days, III, leaves that position at the end of the current term of the United States Supreme Court. Dellinger, a renowned constitutional scholar on leave from Duke University Law School, is the Assistant Attorney General in charge of the Office of Legal Counsel. He came to the Justice Depart-ment in April 1993. "Professor Dellinger's profound knowledge and respect for the law and the Court make him an ideal successor to Drew Days," said Attorney General Reno. Days is returning to Yale University Law School where he holds the Alfred M. Rankin chair. Days argued 15 cases in the Supreme Court during his three years as Solicitor General. ❖

Janice Chenier Taylor Named U.S. Trustee for Region 5

On February 5, 1996, Janice Chenier Taylor was appointed by the Attorney General as United States Trustee for Region 5. Taylor has been acting United States Trustee in New Orleans, the principal office for Region 5, since January 1995. Ms. Taylor will oversee the administration of bankruptcy cases in Louisiana and Mississippi. ❖

AG Unveils Crackdown on Bankruptcy Fraud

On February 29, 1996, the Attorney General unveiled a nationwide law enforcement effort aimed at prosecuting those who illegally conceal assets, file fraudulent bankruptcy petitions, or otherwise abuse the bankruptcy system. The "Operation Total Disclosure" campaign has resulted in criminal charges being filed against 123 defendants in 36 federal districts in the last several weeks. Operation Total Disclosure is the result of a multiagency effort involving the United States Trustee Program, United States Attorneys, the FBI, and the Criminal and Tax Divisions of DOJ, in coordination with the IRS and the Postal Inspection Service. ❖

AG Announces Pro Bono Policy

On March 6, 1996, Ms. Reno announced a new policy designed to encourage DOJ employees to perform pro bono legal or volunteer service in their local communities. Reno, joined by Deputy Attorney General Jamie Gorelick, also announced a special program with the District of Columbia's Office of Corporation Counsel to provide the District with much needed technical expertise, advanced legal training, and pro bono legal assistance. The pro bono policy calls for the establishment of a Pro Bono and Volunteer Services Committee within the Department, chaired by a high-level official from the Office of Policy Development, with representatives from all offices and components. The committee will be responsible for developing pro bono opportunities for Departmental employees, publicizing those opportunities, arranging training for employees

participating in pro bono work, and coordinating that work with the Department's existing Volunteer Services Program. The Attorney General said that while special efforts are being made to identify ways in which the Department employees can help address the unmet legal needs in the District of Columbia, the pro bono and volunteer policy extends to all the United States Attorneys offices.

On March 15, 1996, EOUSA Director Carol DiBattiste forwarded a memorandum to United States Attorneys outlining the pro bono activities that are automatically preapproved, and enclosing a March 8, 1996, memorandum from the Attorney General on the Pro Bono and Volunteer Services Policy and a copy of the DOJ Policy Statement on Pro Bono Legal and Volunteer Services to be used in each United States Attorney's office. To engage in pro bono legal or volunteer services, an employee must follow the already established approval policy of the Department. For USAOs, Juliet Eurich, EOUSAs Legal Counsel, is the Deputy Designated Agency Ethics Official whose office should be contacted. The United States Attorney or a supervisor is also asked to approve all requests before they are sent to the Legal Counsel's office for review and action. The Pro Bono policy provides for the Director, EOUSA, to designate some types of pro bono legal and volunteer services as automatically preapproved; however, employees still have to notify their supervisors in advance of undertaking the activity. If you would like a copy of these memoranda, please contact the *United States Attorneys Bulletin* staff, (202)514-3572, or if you have questions, please contact Attorney Advisor Robert Marcovici, EOUSAs Legal Counsel's office, (202)514-4024. ❖

Moves to Make the Legal System Less Expensive and Faster

On February 5, 1996, Attorney General Janet Reno, in a speech to the American Bar Association's House of Delegates in Baltimore, announced that President Clinton had signed an executive order that will help lower the costs and ease the delays of government litigation, and improve access to the civil justice system for Americans. The executive order instructs government lawyers at federal agencies to use alternative dispute resolution techniques including negotiation, mediation, and arbitration when appropriate. As a result of this order, President Clinton removed the prohibition on the use of binding arbitration by the federal government. DOJ will supervise the implementation of the Presidents order by federal agencies. These reforms complement those previously established by the Attorney General's April 7, 1995, directive on alternative dispute resolution. Other reforms announced by the President include encouraging government attorneys to do Pro Bono and other volunteer work; reducing delays and improving the administrative adjudication systems in agencies; allowing for self-representation by those who file claims against the government, as opposed to having to hire private counsel; and educating Americans about government policies and procedures for filing claims and seeking benefits. ❖

Project to Improve Interstate Enforcement of Protective Orders in Domestic Violence Cases

On February 21, 1996, Attorney General Reno announced that DOJ will join Kentucky's Justice Cabinet in the nation's first state project to improve the interstate enforcement of civil and criminal protective orders in domestic violence cases. They will develop and test various

enforcement methods. Ms. Reno noted how difficult it can be to get one state to enforce another state's protective orders against abusers, despite new requirements to do so in the 1994 Violence Against Women Act. Kentucky has developed an on-line protective order system as part of its Law Information Network of Kentucky, a system that quickly verifies the existence and conditions of orders entered in any of the state's 120 counties. ❖

AG, FBI, and DEA Secure Commitment to Use Asset Forfeiture

On February 16, 1996, in a memorandum to United States Attorneys, EOUSA Director Carol DiBattiste forwarded a memorandum from Attorney General Janet Reno, FBI Director Louis J. Freeh, and DEA Administrator Thomas Constantine discussing their intention to reinvigorate the asset forfeiture program. This memorandum was written to secure commitment to stated directives to ensure that asset forfeiture is used where appropriate to its fullest advantage. They recommend a meeting of federal law enforcement agencies to assess the use of asset forfeiture in each district and the ways it may be best used. This meeting should include representatives of Treasury agencies as well as the Postal Service, the U.S. Parks police and the Food and Drug Administration where these agencies participate in the asset forfeiture program. District plans and best practices that are a result of these meetings should be sent to Assistant United States Attorney Suzanne M. Warner, EOUSAs Assistant Director for Asset Forfeiture, The Bicentennial Building, Suite 8500, 600 E Street, N.W., Washington, D.C. 20530; telephone, (202)616-6444; fax, (202)616-5087; or Email AEX02(SWARNER). ❖

Juvenile Murderers Triple Over 10 Years

On March 7, 1996, at the White House Leadership Conference on Youth Drug Use and Violence, Attorney General Reno announced that the number of juvenile murderers tripled between 1984 and 1994. A new DOJ publication, *Juvenile Offenders and Victims: 1996 Update on Violence*, reports that the number of juvenile murderers using guns quadrupled, while juveniles using other weapons to kill stayed about the same. The Attorney General said, "These figures threaten the success we've had in bringing overall violence down nationwide. Congress must step forward and keep its promises to help us put new police on the streets, put hardened young people behind bars, send first-time offenders to drug courts and boot camps, and keep kids out of gangs. We can only save our futures if we act now." For copies of the report, write to the Juvenile Justice Clearinghouse, Office of Juvenile Justice and Delinquency Prevention, Box 6000, Rockville, Maryland 20857, or call 1(800)638-8736. ❖

United States Attorneys' Offices/ Executive Office for United States Attorneys

Correction: The *United States Attorneys' Bulletin* staff apologizes for omitting mention of the Criminal Division in the Operation Sentinel article in the February 1996 issue. The Criminal Division played a major role with the United States Attorneys' offices in this important initiative.

Honors and Awards

1995 Directors Awards Executive Office for United States Attorneys

On March 8, 1996, at a ceremony in the Great Hall of the DOJ, Attorney General Janet Reno, Deputy Attorney General Jamie Gorelick, EOUSA Director Carol DiBattiste, and EOUSA Principal Deputy Director Donna Bucella presented the 1995 Directors Awards honoring the men and women of the United States Attorneys offices, EOUSA, and the DOJ for their outstanding efforts in the areas of drug-related cases, violent crime, financial institution fraud, civil enforcement, financial litigation, and other law enforcement activities. The Awards Ceremony was dedicated to the memory of those people in the United States Attorneys offices who passed away during 1995. The award recipients were:

Superior Performance as an Assistant United States Attorney Posthumous Award
Jennifer Bremer (Central District of California)
Lawrence D. Gaynor (District of Rhode Island)
Amy Elizabeth Spain (Western District of Tennessee)

Special Recognition Award
Stephen R. Colgate, Assistant Attorney General for Administration (DOJ, Justice Management Division)
Michael J. Roper, Deputy Assistant Attorney General (DOJ, Justice Management Division)

Superior Performance as an Assistant United States Attorney
Lawrence Anderson and Janice Jenkins (Northern District of Georgia)
Allen D. Applbaum and Chauncey Parker (Southern District of New York)
M. Taylor Aspinwall, Susan Paola Foa, Paul L. Gray, and Robert Zauzmer (Eastern District of Pennsylvania)
Andrew B. Baker, Jr. (Northern District of Indiana)
Randy Ira Bellows (Eastern District of Virginia)
Harry Benner (District of Columbia)
Thomas A. Blair (Southern District of Florida)
Leslie Ragon Caldwell, Margaret M. Giordano, and Melissa G. Murphy (Eastern District of New York)
Douglas Cannon (Middle District of North Carolina)
Katherine M. Choo and Charlotte Treby Williams (Southern District of New York)
Colm F. Connolly (District of Delaware)
Melanie C. Conour and John E. Dowd (Southern District of Indiana)
James L. Cott and Sara L. Shudofsky (Southern District of New York)
James G. Cowles, Jr., and Kelly A. Pomes (Western District of Louisiana)
Julia K. Craig (Southern District of California)
Thomas More Daly and Robert Lee Simpkins, Jr. (Southern District of Illinois)
Howard F. Daniels (Central District of California)
Susan B. Dohrmann (Western District of Washington)

Eric A. Dubelier (District of Columbia)
Kimberly A. Dunne (Central District of California)
Marisa J. Ford (Western District of Kentucky)
Carol A. Fortine and Steven W. Pelak (District of Columbia)
Elizabeth Glazer, Steven M. Cohen, James Goldston, Michael Rogoff, and Jonathan Schwartz (Southern District of New York)
Charles A. Guadagnino (Eastern District of Wisconsin)
Andrew R. Hamilton, Phillip E. Porter, and Linda J. Stebbins (Western District of Washington)
Veronica Harrell-James (Southern District of Florida)
Amy B. Hartmann (Eastern District of Michigan)
Theodore B. Heinrich and Joseph W. Martini (District of Connecticut)
Nancy A. Garza Herrera and Bernard E. Hobson (Southern District of Texas)
Noel L. Hillman (District of New Jersey)
Nathan J. Hochman (Central District of California)
Arlene Joplin (Western District of Oklahoma)
John N. Joseph (Eastern District of Pennsylvania)
Michael D. Kendall and Alexandra Leake (District of Massachusetts)
Janet F. King (Northern District of Georgia)
David A. Koenigsberg (Southern District of New York) and Allen L. Lear and Tracy Whitaker (DOJ, Civil Division)
Kenneth C. Kohl (District of Columbia)
Robert P. LaRusso and Joseph R. Conway (Eastern District of New York)
Dexter A. Lee (Southern District of Florida)
Christopher G. Lehmann, Jody Kasten, and Claire S. Kedeshian (Eastern District of New York)
Lisa B. Lench (Central District of California)
James B. Letten, Steven Irwin, and Salvador R. Perricone (Eastern District of Louisiana)
Andrea M. Likwornik, Matthew E. Fishbein, and Peter C. Sprung (Southern District of New York)
Eileen M. Marutzky and Linda A. Wawzenski (Northern District of Illinois)
Beth McGarry (Northern District of California)
William Michael, Jr. (Southern District of Florida)
Gary V. Milano (District of New Hampshire)
Craig S. Morford (Northern District of Ohio) and Michael Attanasio (DOJ, Criminal Division)
Craig N. Moore and Charles A. Tamuleviz (District of Rhode Island)
Brian Netols (Northern District of Illinois)
Stephen F. Peifer (District of Oregon)
George F. Peterman III (Middle District of Georgia)
James E. Phillips (Northern District of Alabama)
Charles Pinnell (Western District of Washington)
Jeffrey R. Ragsdale and Lynn C. Leibovitz (District of Columbia)
Timothy R. Rice (Eastern District of Pennsylvania)
Stephen L. Roth (District of Utah)
Michael E. Runyon (Middle District of Florida)
Jonathan Sack (Eastern District of New York)
Ronald S. Safer and Steven Alan Miller (Northern District of Illinois)

Kathleen M. Salyer (Southern District of Florida)
John D. Sammon (Northern District of Ohio)
Patrick J. Schneider (District of Arizona)
Adolph Duane Schwartz (Western District of Kentucky)
Gretchen C. F. Shappert (Western District of North Carolina)
Jose P. Sierra (District of New Jersey)
Barbara Slaymaker Sale and Joyce K. McDonald (District of Maryland)
Edward A. Smith (Southern District of New York)
Jeffrey D. Smith and Larry R. C. Stephen (District of New Jersey)
William B. Spivak, Jr. (Central District of California)
Robert G. Stahl (District of New Jersey)
Patricia Stewart (District of Columbia)
Patrice Harris Sullivan (Eastern District of Louisiana)
Gregory J. Surovic (Southern District of Texas)
Shaun E. Sweeney (Western District of Pennsylvania)
Allan N. Taffet, Manvin S. Mayell, and Lisa A. Jonas (Southern District of New York)
Michelle Tapken (District of South Dakota)
William R. Toliver (Northern District of Georgia)
Daniel F. Van Horn (District of Columbia)
Theresa Mary B. VanVliet (DOJ Criminal Division)
Timothy P. VerHey (Western District of Michigan)
John K. Vincent (Eastern District of California)
Edwin J. Walbourn III (Eastern District of Kentucky)
Lamar C. Walter (Southern District of Georgia)
Gregory Lane Waples (District of Vermont)
Andrew Weissmann and George Stamboulidis (Eastern District of New York)
Michael Eugene Winck (Eastern District of Tennessee)
James Timothy Zuba, John Glenn McKenzie, and Scott A. Verseman (Northern District of Illinois)

Superior Performance as a Special Assistant United States Attorney
Virginia A. Black (Southern District of California)
Ginny M. Hamm (Eastern District of Kentucky)
Brian Jennings (Southern District of Indiana)
Elpedio N. Vitale (District of Connecticut)

Executive Achievement Award
William J. Edwards (Northern District of Ohio)
John R. Hailman (Northern District of Mississippi)
John R. Kraemer (Southern District of California)
Cynthia M. Lee (Northern District of Iowa)
Shirah Neiman (Southern District of New York)

Outstanding Performance in Law Enforcement Coordination
Terry L. Derden (District of Idaho)

Steven James Hess (District of Maryland)

Outstanding Performance in Victim-Witness Assistance
Alberta Joan Gay (District of Kansas), Gayla C. Stewart (Northern District of Oklahoma), and Dahlia Marie Lehman (Western District of Oklahoma)

Mark Gallinghouse Memorial Award for Excellence in Financial Litigation
Faith A. Devine (Central District of California)
Sylvia S. Dulgarian (District of Rhode Island)
Sharon D. Simmons (Northern District of Alabama)

Superior Performance in Asset Forfeiture
Virginia M. Covington and Edward B. Gaines (Middle District of Florida)
John A. Houston (Southern District of California)
Richard D. Kaufman (Western District of New York)

Superior Achievement in Furthering Equal Employment Opportunity
Caren Y. Kusaka (District of Hawaii)

Superior Performance in a Litigative Support Role
Patricia A. Cossairt (Northern District of Texas)
Fred C. Doyle (District of Columbia)
Deanna F. Grant (District of Utah)
Regina A. Haiman and Bethany S. Miller (Eastern District of Virginia)
Pamela S. Jackson (Middle District of Tennessee)
Joan M. Jones (Southern District of New York)
Michele E. Lincalis (Middle District of Pennsylvania)
Diane Russell-Coffey and Kathleen Skagerberg (Northern District of Illinois)
Maribel Santiago (District of New Jersey)
Kathleen E. Seabough (Western District of Missouri)
James H. Williams (Southern District of New York)

Superior Performance in a Managerial or Supervisory Role
Joan M. Benson (Executive Office for United States Attorneys)
William H. Browder, Jr. (District of Maine)
Mitchell D. Dembin (Southern District of California)
Juliet Eurich and Naomi Miske (Executive Office for United States Attorneys)
Janis L. Harrington (Executive Office for United States Attorneys)
Stephen P. Heymann (District of Massachusetts)
Jane E. Mahlke (Northern District of West Virginia)
Debra L. Markey (District of Columbia)
Richard H. Stephens (Northern District of Texas)
Nancy C. Wicker (District of South Carolina)

Appreciation Award for Contributions to the Executive Office for United States Attorneys

and United States Attorneys' Offices
The District of Puerto Rico and the Southern District of Florida
Diane L. Cook and Theresa R. De Haan (Executive Office for United States Attorneys)
Rudolph Ferrara and Walter Lynn Ayers (District of Nevada)
Judy Bee Fields (Executive Office for United States Attorneys)
Angela P. Hammond and James L. Miles (Executive Office for United States Attorneys)
Stacy Joannes (Western District of Wisconsin)
Cassandra F. Myers (Executive Office for United States Attorneys)
Kurt J. Shernuk (District of Kansas)
Rick W. Sumrall (Middle District of Louisiana)

Appreciation Award for Enhancing the Missions of the Executive Office for United States Attorneys and United States Attorneys' Offices
Donna A. Bucella (Executive Office for United States Attorneys)
Patrick J. Foley (Northern District of Ohio)
Danette Scagnetti (Eastern District of Michigan) ❖

AUSA John R. Hailman Receives Executive Excellence Award

On March 14, 1996, Assistant United States Attorney John R. Hailman, Northern District of Mississippi, was presented the prestigious Senior Executive Association Professional Development League's 1995 Executive Excellence Award for Distinguished Executive Service at an awards breakfast at the National Press Club in Washington, D.C. The award recognizes career employees whose significant contributions to public service have enhanced the image of federal executives. Assistant United States Attorneys Daryl Trawick and Andrew G. Oosterbaan, Southern District of Florida, were finalists for the Executive Excellence Awards for Executive Achievement. ❖

Significant Issues/Events

Death Penalty Cases

On February 29, 1996, EOUSA Director Carol DiBattiste enclosed in a memorandum to United States Attorneys, a copy of the outline for required submissions from United States Attorneys offices for cases subject to the death penalty, and a sample memorandum from the Attorney Generals Review Committee to the Attorney General which illustrates the appropriate information to include in these requests. During the January 1996 Advisory Committee meeting, Attorney General Reno emphasized the importance of including all appropriate facts in requests for authorization to seek or not to seek the death penalty. For assistance in preparing these requests, please contact Deputy Assistant Attorney General Kevin DiGregory, DOJ Criminal Division, (202)514-9725. ❖

1996 United States Attorneys National Conference

The Conference will be hosted by the District of Maryland, and will be held from May 28 through May 30, 1996, at the Stouffer Renaissance Harborplace Hotel in Baltimore, Maryland. United States Attorney Janet Napolitano has appointed a conference planning group chaired by Kathryn Landreth (NV). Other members include Lynne Battaglia (MD), Sherry Matteucci (MT), Mary Jo White (SDNY), John Kelly (NM), Michael Skinner (WDLA), Donnie Dixon (SDGA), Steve Hill (WDMO), Scott Matheson (UT), Carol DiBattiste (EOUSA), and Theresa Bertucci (EOUSA). ❖

Restrictions on Political Activities

On March 1, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, guidance issued from the Attorney General on February 27, 1996, concerning the need for Senate Confirmed Presidential Appointees, Presidential Appointees, Non-Career Members of the Senior Executive Service, and Schedule C Employees to request prior approval of certain public activities that might be construed as partisan. Please contact EOUSA Legal Counsel Juliet A. Eurich, (202)514-4024, to seek approval for a public activity.

On March 1, 1996, as a result of recent questions from employees in the United States Attorneys' offices concerning the scope of permitted activities, EOUSA Director Carol DiBattiste forwarded to employees of United States Attorneys' offices, a memorandum issued by the Attorney General in October 1994 concerning certain limitations on political activity, and a summary of the Do's and Don'ts under the Hatch Act, for those interested in getting involved in a political campaign or running for office. Please contact Juliet Eurich at the above number for further information. If you would like a copy of these memoranda, please contact the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

District of Kansas Gives Asset Forfeiture Money to Law Enforcement Agencies

On February 28, 1996, United States Attorney Jackie Williams presented $646,870 in forfeiture money-the result of the largest drug cash seizure in the history of Kansas-to the Kansas Highway Patrol and the Trego, Kansas, County Attorneys office. ❖

AGAC Subcommittee Restructuring

On February 12, 1996, United States Attorney Janet Napolitano, Chair of the Attorney Generals Advisory Committee (AGAC), forwarded a memorandum to United States Attorneys outlining the Restructuring of AGAC Subcommittees. A few highlights are:

(1) With the exception of health care fraud, all white collar crime working groups have been rolled into the White Collar Crime Subcommittee (Computer, Bank Fraud, Securities/ Commodities Fraud, Gaming, and Tax);

(2) The Legislative Subcommittee has been expanded to include public policy, with the idea that that subcommittee will act as the United States Attorney liaison for White House

initiatives in the crime area. It will also serve as a clearinghouse for legislation proposed by the United States Attorneys; legislation proposed by the Department which affects the United States Attorneys will be reviewed by this Subcommittee and the appropriate subcommittee handling the subject matter;

(3) A new Subcommitteethe Justice Programs Subcommitteewill include legal programs such as the Weed and Seed initiative. Its charter will be to increase communications between the United States Attorneys and the Office of Justice Programs, improve United States Attorney participation in the grant process, and ensure that United States Attorneys are better informed in this area;

(4) The Security Working Group has been folded into the Domestic Safety Subcommittee; and

(5) The Prosecutor Immunity Working Group will continue to exist as an ad hoc working group.

AGAC Update

The AGAC met in Washington, D.C., on March 13 and 14, 1996. First Assistant United States Attorney for the District of Idaho, Terry Derden, has been appointed to serve as ad hoc member as well as First Assistant United States Attorney Shirah Neiman, Southern District of New York. Ms. Neiman represents a large district on the AGAC and Mr. Derden, a small district.

The next meeting of the AGAC is scheduled for April 15 and 16, 1996, in Washington, D.C. If you have an issue to be raised at the meeting, please contact Judy Beeman, (202)514-4633. ❖

Trends VIA Comprehensive Profile of Workforce Data

On February 29, 1996, EOUSA Director Carol DiBattiste forwarded a copy of *Trends VI*, a comprehensive profile of workforce data for United States Attorneys offices for Fiscal Year 1995. The Trends series will benchmark United States Attorneys offices workforce characteristics at the end of each year.

Trends VI should be a valuable tool for making workforce management decisions in the upcoming year. If you have questions or comments, please contact Debra Brown, Assistant Director, EOUSA Personnel Staff, (202)616-6873. ❖

Advance Notice of Foreign Travel

EOUSA has received an increased number of last minute requests for foreign travel, including some requests after the travel has occurred. Foreign travel requests should be forwarded to EOUSA's Financial Management Staff (FMS) at least three weeks in advance of the planned travel so that the clearance can be processed through the Department of State and the Office of International Affairs (OIA). As soon as attorneys are aware that they will be traveling to a foreign country, even if the final travel dates have not been set, they should notify OIA so they can ensure

that all treaty restrictions are being followed. EOUSA also should be made aware of the tentative travel dates so they can begin the clearance process through the Department of State. When travel dates are confirmed, EOUSA can notify the Department of State of the exact dates of travel. Foreign travel requests that are not submitted within three weeks of the travel date, must include a detailed explanation for the delay. Traveling without the proper clearance not only jeopardizes safety but may cause extreme complications for the United States government. For further information, please contact Lydia Ransome, EOUSA's FMS, (202)616-6899. ❖

Criminal Caseload Statistics and Criminal Appeals Data

On February 26, 1996, in a memo to United States Attorneys, EOUSA Director Carol DiBattiste forwarded updated charts containing actual data for criminal caseload statistics as of the end of FY 1995, and a new criminal appeals data chart for Fiscal Years 1991 through 1995, reflecting the information reported by United States Attorneys' offices and maintained in EOUSA's case management system. For further information, contact Barbara A. Tone, Chief, Data Analysis Group, EOUSA, (202)616-6779. ❖

Fiscal Year 1995 *United States Attorneys' Statistical Report*

On March 15, 1996, in a memo to United States Attorneys, EOUSA Director Carol DiBattiste forwarded the Fiscal Year 1995 United States Attorneys Statistical Report. The report provides a statistical and narrative summary of the criminal and civil matters and cases handled by United States Attorneys offices (USAOs) during the year, and illustrates noteworthy prosecution and litigation accomplishments and the significant liaison work USAOs performed with all Department components, federal, state, and local law enforcement officials, the victims of crime, the local community, schools, and other organizations. For further information, contact Barbara A. Tone, Chief, EOUSAs Data Analysis Group, (202)616-6779. ❖

Transcript Presentation Manager Application Available

The long-awaited Transcript Presentation Manager (TPM) application is now available on the EOUSA Bulletin Board System (BBS) for download. Transcript presentation manager allows a user to synchronize the text of a transcribed telephone conversation (transcript) with the recording (audio). The audio is recorded onto a hard disk using any **16-bit sound card** compatible with Windows 3.1. After the transcript is synchronized, sections or all of the transcript and recording can be displayed and played for a jury. Transcripts can be typed directly into the application's editor. Sections of the text can be redacted very quickly. Copies of the transcript can be printed directly from the application. The files include a comprehensive manual and the application has a very good help file. Please see your System Manager if you wish to use this application. The TPM software file is available on the EOUSA BBS as TPM200.ZIP. If you have distribution questions, please contact Ray Collado, EOUSA's Office Automation Staff, AEX11(RCOLLADO). Other questions should be directed to Office Automation Assistant Director Carol Sloan, AEX11(CSLOAN). Both may be reached at (202)616-6969. ❖

Relocation of USAOs

Eastern District of Oklahoma

The United States Attorney's Office for the Eastern District of Oklahoma has relocated. Their new address and telephone numbers are:

United States Attorneys Office
Eastern District of Oklahoma
1200 W. Okmulgee
Muskogee, Oklahoma 74401
Telephone: (918)684-5100
Fax number: (918)684-5130 ❖

Western District of Tennessee

The United States Attorney's Office for the Western District of Tennessee has relocated. Their new address is:

United States Attorneys Office
Western District of Tennessee
800 Clifford Davis Federal Office Building
167 North Main Street
Memphis, Tennessee 38103-1898

Their telephone number is the same, (901)544-4231. ❖

District of Utah

The United States Attorneys Office for the District of Utah has relocated. Their new addresses and telephone numbers are:

Office Location: 185 South State Street
Suite 400
Salt Lake City, Utah 84111

Mailing Address: United States Attorneys Office
District of Utah
350 South Main Street
B36
Salt Lake City, Utah 84101

Their telephone number is the same, (801)524-5682, and their fax number is (801)524-6924. ❖

EOUSA Staff Update

On March 19, 1996, **Debra Brown** became the Assistant Director, Personnel Staff (Personnel Officer), relieving Gary Wagoner who has been acting in that capacity since November 1995. Ms. Brown obtained both her undergraduate and graduate degrees from Howard University, Washington, D.C., and began her career in federal personnel management in 1977. Ms. Brown joins us with vast experience in the personnel field, including her past position of Personnel Officer at the Department of the Interior.

On April 1, 1996, **Michael P. Moran** joined EOUSA as the new Assistant Director, Equal Employment Opportunity Staff, replacing Janet Craig (Assistant United States Attorney, Southern District of Texas), who has been acting in that capacity since the retirement of Yvonne Makell last year. Mr. Moran, a native of Taiwan, obtained his law degree in 1985 from Hofstra Law School, Hempstead, New York. He has experience in both EEO and management, and served as Counsel of the Resolution Trust Corporation, where he handled labor-employee relations and EEO matters.

Janet Craig will become the Director, Office of Legal Education (OLE), on May 1, 1996, replacing Tom Majors, Assistant United States Attorney on detail from the Western District of Oklahoma, who will be returning to his district after two years at OLE. Ms. Craig was the Deputy Chief of the Civil Division, in the Southern District of Texas and originally came to EOUSA as an Assistant Director for Civil Programs in OLE. She performed in that capacity for several months until she became Acting Assistant Director for EEO in July 1995.

On March 18, 1996, **Jane Bondurant**, Assistant United States Attorney from the Western District of Kentucky, began a detail at EOUSA, working with the Financial Litigation Staff on collections matters. She replaces Chris Sciarrino, Assistant United States Attorney from the District of Connecticut, who returned to her district in December 1995.

On April 16, 1996, **Donna Everett**, Assistant United States Attorney from the Central District of California, will complete her detail as the ACE Coordinator for Legal Programs Staff.

Donna Enos, who has worked in EOUSA since 1987, and who has most recently served as the Acting Director, LECC/VW Staff, has been requested by name to be detailed to the Office of the Vice President of the United States, Community Empowerment Board. This Board works with state governments in the establishment of economic empowerment zones/enterprise communities. One important goal of this board is to establish a link with United States Attorneys offices. ❖

Security Update

In a January 26, 1996, memorandum to United States Attorneys, District Office Security Managers, and Administrative Officers, EOUSA Director Carol DiBattiste forwarded the Security and Emergency Planning Staffs (SEPS) Security Bulletin 95-05, which outlines changes in the minimum requirements for safeguarding classified national security information. Also included in the memorandum was updated information concerning national security information (from 28 C.F.R., Part 17), security aids, computer security, and the reproduction of classified material. Questions should be directed to Arlene DeLong, EOUSA's Security Programs Staff, (202)616-6878. ❖

Office Automation Update

Information America is a collection of investigative databases available from WESTLAW. It can be used to look up the personal names, addresses, telephone numbers, and Social Security numbers of millions of people and businesses nationwide, real and personal property asset descriptions, locations and values, corporate assets, financial abstracts, executives backgrounds, bankruptcy records, state and federal lawsuit filings, UCC filings, liens, and judgments. Notes containing detailed information on this service is available from the *United States Attorneys' Bulletin* staff, (202)514-3572. ❖

Office of Legal Education

OLE Publication Corner

We are pleased to announce a new publication this month, and an important new revision of the USABook program. In addition, we have taken some significant steps toward achieving our goal of publishing a new edition of the *United States Attorneys Manual* (USAM) this year.

The Judicial Center's *Reference Manual on Scientific Evidence* is now in USABook format and ready for downloading. This outstanding book, originally published in 1994, has extensive treatments of the science and law of DNA, epidemiology, toxicology, statistics, and other scientific evidence topics. It also contains a comprehensive treatment of Daubert issues, and discussions of court procedures surrounding the appointment and use of expert witnesses, discovery, and pre-trial hearings and conferences. This book will be extremely useful for both civil and criminal litigators.

A new version of USABook, version 1.08, is now finished, tested, and available for downloading. This version has a number of significant new features:

• **Jump links to forms and related sections:** These links, embedded in the text, allow the user to immediately jump to related documents. For example, a reference in a book that suggests the use of a form will have a number in reverse video next to it. Pressing that number (or clicking on it with a mouse) will cause the form to be immediately displayed on the screen.

• **Jump links to glossary definitions:** Some of the books have glossaries; in those books there are jump links from technical terms to the glossary definitions.

• **Hypertext word searches:** Clicking on any word on the screen with the mouse pointer will cause a search for all references to that word in the text. This feature is particularly useful in locating other references to a case holding.

A new edition of the USAM is being written this year. This would mark the first major revision of the USAM since 1988. The new USAM will be published in both hard copy and in USABook format. ❖

OLE Projected Courses

OLE Director Tom Majors, is pleased to announce projected course offerings for the months of June through September 1996 for the Attorney Generals' Advocacy Institute (AGAI) and the Legal Education Institute (LEI). Lists of these courses are on pages 50 and 51. ❖

AGAI

AGAI provides legal education programs to Assistant United States Attorneys (AUSAs)

and attorneys assigned to Department of Justice (DOJ) Divisions. The courses listed are tentative; however, OLE sends Email announcements to all United States Attorneys offices (USAOs) and DOJ Divisions approximately eight weeks prior to the courses.

LEI

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

Other LEI courses offered for all Executive Branch attorneys (except AUSAs), paralegals, and support personnel are officially announced via quarterly mailings to Federal departments, agencies, and USAOs. Nomination forms are available in your Administrative Office or attached as **Appendix A**. They must be received by OLE at least 30 days prior to the commencement of each course. Notice of acceptance or non-selection will be mailed to the address typed in the address box on the nomination form approximately three weeks prior to the course. Please note that OLE does not fund travel or per diem costs for students attending LEI courses. ❖

Office of Legal Education Contact Information

Address:	Bicentennial Building, Room 7600 600 E Street, N.W. Washington, D.C. 20530	Telephone: Fax:	(202)616-6700 (202)616-7487

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

AGAI Courses

Date	Course	Participants
	June	
3-7	Advanced Civil Trial	AUSAs, DOJ Attorneys
4-6	Advanced Money Laundering	AUSAs, DOJ Attorneys
11-14	Health Care Fraud	AUSAs, DOJ Attorneys
12-14	ARPA for DOJ Attorneys	DOJ Attorneys
16-20	Environmental Crimes	AUSAs, DOJ Attorneys
18-21	Employment Discrimination	AUSAs, DOJ Attorneys
24-26	Violent Crime and Juvenile Offenders	AUSAs, DOJ Attorneys
24-28	Appellate Advocacy	AUSAs, DOJ Attorneys
	July	
7-9	Constitutional Torts	AUSAs, DOJ Attorneys
9-11	Financial Litigation Investigation and Enforcement	AUSAs, DOJ Attorneys
9-12	Complex Prosecutions	AUSAs, DOJ Attorneys
15-24	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
16-18	Federal Tort Claims Act	AUSAs, DOJ Attorneys
16-18	Advanced Asset Forfeiture	AUSAs, DOJ Attorneys
22-26	Criminal Federal Practice Seminar	AUSAs, DOJ Attorneys
23-25	Bankruptcy Fraud	AUSAs, DOJ Attorneys
23-26	Civil Chiefs	AUSAs, DOJ Attorneys
29-8/2	Appellate Advocacy	AUSAs, DOJ Attorneys
	August	
5-9	Advanced Criminal Trial	AUSAs, DOJ Attorneys
6-9	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
12-16	Advanced Civil Trial	AUSAs, DOJ Attorneys
19-22	Computer Crimes	AUSAs, DOJ Attorneys
27-29	Appellate Chiefs	AUSAs, DOJ Attorneys
	September	
9-13	Civil Federal Practice Seminar	AUSAs, DOJ Attorneys
10-12	Sixth Circuit Component	AUSAs, DOJ Attorneys
10-13	Public Corruption	AUSAs, DOJ Attorneys
17-20	Criminal Civil Rights	AUSAs, DOJ Attorneys
24-27	Attorney Supervisors	AUSAs, DOJ Attorneys
25-27	Negotiations for Assistant United States Attorneys and DOJ Trial Attorneys	AUSAs, DOJ Attorneys
25-27	Homicide Investigations and Prosecution	AUSAs, DOJ Attorneys

LEI Courses

Date	Course	Participants
	June	
3-7	Criminal Paralegal	USAO Paralegals, DOJ Paralegals
10-13	Examination Techniques	Agency Attorneys
10-14	Basic Paralegal	USAO Paralegals, DOJ Paralegals
17-18	Bankruptcy Symposium	AUSAs, DOJ Attorneys
17-18	Evidence	Agency Attorneys
18-19	Freedom of Information Act for Attorneys and Access Professionals	Agency Attorneys
20	Privacy Act	Agency Attorneys
21	Legal Writing	Agency Attorneys and Paralegals
24-28	Appellate Paralegal	USAO Paralegals, DOJ Paralegals
	July	
1-2	Agency Civil Practice	Agency Attorneys
9-10	Federal Acquisition Regulations	Agency Attorneys
10	Advanced Freedom of Information Act	Agency Attorneys
11	Freedom of Information Act Forum	Agency Attorneys
12	Computer Law	Agency Attorneys
15-19	Basic Paralegal (Agency)	Agency Paralegals
23-25	Bankruptcy Fraud	Agency Attorneys
26	Legal Writing	Agency Attorneys and Paralegals
29-8/2	Research and Writing Refresher for Paralegals	USAO Paralegals, DOJ Paralegals
	August	
5-9	Experienced Legal Secretaries	USAO Paralegals, DOJ Paralegals
12	Statutes and Legislative Histories	Agency Attorneys
13	Introduction to Freedom of Information Act	Agency Attorneys
14-16	Attorney Supervisors	Agency Attorneys
19-21	Discovery	Agency Attorneys
19-23	Civil Paralegal	USAO Paralegals, DOJ Paralegals
20-22	Bankruptcy for Support Staff	USAO Sup. Staff, DOJ Sup. Staff
22-23	Freedom of Information Act for Attorneys and Access Professionals	Agency Attorneys
26-28	Environmental Law	Agency Attorneys
30	Appellate Skills	Agency Attorneys
	September	
5-6	Federal Administrative Process	Agency Attorneys
9	Ethics for Litigators	Agency Attorneys
9-13	Experienced Paralegal	USAO Paralegals, DOJ Paralegals
11-12	Evidence	Agency Attorneys
16-19	Examination Techniques	Agency Attorneys
17-20	Grand Jury Coordinators	USAO Grand Jury Clerks

20	Fraud, Debarment and Suspension	Agency Attorneys
24	Ethics and Professional Conduct	Agency Attorneys
25-27	Advanced Negotiation Skills	Agency Attorneys
27	Legal Writing	Agency Attorneys and Paralegals

WordPerfect 5.1 Tips

WordPerfect for DOS Navigation Keys

WordPerfect for DOS has a number of key combinations for editing and moving around documents. Some of these-the arrow keys and the delete and backspace keys-are pretty obvious. Some other very useful key combinations are not so obvious and, in some cases, are unique to WordPerfect.

To explore these key combinations, turn off NumLock. NumLock allows you to turn the keys on the right-hand part of your keyboard into a numeric keypad but it gets in the way if you are word processing. If the NumLock light on the upper right-hand corner of your keyboard is on, and/or if the "Pos" indicator in the lower right part of your screen is blinking, press the NumLock key.

PgUp and **PgDn** move you up and down pages. The pages are the **physical pages that you print**, which can be made up of **several viewing screens**. In order to move up and down one screen at a time, use the **gray plus and minus keys** on the far right side of the keyboard.

Here are some other key combinations you should know:

• To go left or right one word, press the control key and the left or right arrow.

• To go to the left edge of the screen, press **Home**, and then left arrow. To go to the end of a line, press End.

• To go to the beginning of a document, press **Home** twice, and then up arrow. To go to the bottom of a document, press **Home** twice, and then down arrow. Note: You can go past the occurrence of any codes at the beginning or end of a document by pressing **Home** three times before pressing the arrow key.

• To go to any particular page, press Home, type the page number, and then press Enter. ❖

DOJ Highlights

Appointments

Civil Rights Division

Ms. Suzanne K. Drouet is serving as Acting Deputy Chief of the Civil Rights Division's Criminal Section while Deputy Chief Tom Perez is detailed to the Senate. Ms. Drouet will be responsible for criminal civil rights matters arising in the Fourth, Sixth, Seventh, and Eighth Federal judicial circuits. She can be reached on (202)514-4152. ❖

Federal Bureau of Investigation

On February 20, 1996, FBI Director Louis J. Freeh swore in Police Chief Harlin R.

McEwen of Ithaca, New York, as Deputy Assistant Director, head of the Communications and Technology Branch of the FBIs Criminal Justice Information Services Division. Mr. McEwen is the first local police executive to have assumed a leadership role in an FBI division that is directed at the identification needs of law enforcement at every level nationwide. ❖

Post-*Adarand* Guidance on Affirmative Action in Federal Employment

On February 29, 1996, in a memorandum from Associate Attorney General John R. Schmidt to General Counsels, guidance on the use of affirmative action in federal employment was provided to all DOJ Component Heads. On June 28, 1995, DOJ's Office of Legal Counsel issued preliminary legal guidance on the implementation of Adarand. As indicated in the June memorandum, although Adarand was a challenge to a Department of Transportation contracting program, its holding applies to race-based decisions in all areas of federal activity, including employment. (See USAB, Vol. 43, No. 8, Aug 1995.) To assure that race is used in a manner consistent with Adarand principals, each agency is expected to use the guidance provided in the February 29 memorandum, and communicate it throughout its agency. If you would like a copy of this memorandum, please contact the United States Attorneys Bulletin staff, (202)514-3572. ❖

Civil Division

Security Clearance Denials or Revocations

Several cases have been percolating through the Courts of Appeals involving the question of whether courts may review security clearance denials or revocations. One case is pending on a certiorari petition. In order to inform the Solicitor Generals office of the actual number and the nature of such cases, the Civil Division requests that the United States Attorneys offices advise the Federal Programs Branch or the Appellate Staff immediately of all such cases pending in their offices, including (1) what, if any, statutory remedial scheme is involved, (2) whether a constitutional or Bivens claim is involved, (3) whether any other basis for the challenge is alleged, and (4) the status of all such cases. In addition, to ensure uniformity of representation of the governments position, the Civil Division requests that handling of these cases be closely coordinated with either the Federal Programs Branch [Susan Rudy, (202)514-2071, or Email SS28(RUDY)] or the Appellate Staff [Freddi Lipstein, (202)514-4815, or Email SS02(LIPSTEIN)]. ❖

Criminal Division

Instructions on Prosecutions under the Communications Decency Act On March 1, 1996, Acting Assistant Attorney General John C. Keeney sent a memorandum to United States Attorneys stating that the initiation of any investigations or prosecutions for violations of 47 U.S.C. §§ 223(a)(1)(B), (a)(2), and 223(d), should be deferred until a three-judge panel has ruled on a pending motion for a preliminary injunction in *ACLU v. Reno*. On February 8, 1996, President Clinton signed the Telecommunications Act of 1996 which contained the

Communications Decency Act (CDA) that amended Title 47 U.S.C. § 223 to prohibit certain transmissions of obscene or indecent material in a manner which makes it available to minors. [See 47 U.S.C. §§ 223(a)(l)(B) and (a)(2), 223 (d), as amended or added by Title V, Section 502 of the Telecommunications Act of 1996 (or indecency provisions).] On February 9, as a result of a lawsuit challenging the CDA filed in the Eastern District of Pennsylvania in the case *American Civil Liberties Union et al. v. Reno*, the district court gave the government until February 14, 1996, to file an opposition to plaintiffs request for a temporary restraining order upon the Departments representation that it did not intend to initiate any investigation or seek an indictment against any person pursuant to the indecency provisions at issue. Accordingly, United States Attorneys were advised not to initiate investigations or seek indictments against any person for violations of 47 U.S.C. §§ 223(a)(1)(B) and (a)(2), and 223(d), as amended or added by Title V, Section 502 of the Telecommunications Act of 1996, until the district court ruled on the pending motion for a temporary restraining order. On February 15, the district court enjoined the United States from enforcing the provisions of 47 U.S.C. § 223(a)(1)(B)(ii), insofar as they extend to "indecent" but not "obscene" communications. The court denied plaintiffs' request for a temporary restraining order as to the provisions of Section 223(d), and the plaintiffs have now moved for a preliminary injunction before a three-judge panel convened to hear the merits of the case. On February 26, the court signed a stipulation agreed to by the parties which set a schedule for conducting a hearing on the motion for a preliminary injunction. In order to give the parties time to present evidence and respond to arguments presented, the government stipulated that the temporary injunction as to 47 U.S.C. § 2243(a)(1)(B)(ii) remain in effect and that it will not initiate any investigations or prosecutions for violations of 47 U.S.C. § 223(d) for conduct occurring after enactment of the provision until the panel decides the motion for a preliminary injunction. The stipulation does not give putative defendants immunity for conduct in violation of Sections 223(a)(1)(B) and (d) which occurs after enactment of these provisions or during the time of the stipulation, should the panel deny the motion for a preliminary injunction or the Supreme Court ultimately uphold the statute. Moreover, the stipulation does not restrict any investigations or prosecutions concerning child pornography under 18 U.S.C. §§ 225, et seq. or obscenity under 18 U.S.C. §§ 1461 et seq. If you would like a copy of the stipulation, please contact the *United States Attorneys Bulletin* staff, (202)514-3572. ❖

Solicitor General

Bailey v. United States, No. 94-7448. Argued on October 30, 1995, by Deputy Solicitor General Michael R. Dreeben, decided December 6, 1995.

Petitioners Bailey and Robinson were convicted of federal drug offenses and of violating 18 U.S.C. § 924(c)(1). That provision imposes a five-year minimum term on a person who "during and in relation to any crime of violence or drug trafficking crime . . . uses or carries a firearm." In Bailey's case, a loaded 9mm pistol was found inside a bag in the locked trunk of his car after he was arrested for possession of cocaine. In Robinson's case, an unloaded, holstered .22-caliber Derringer was found inside a locked trunk in her bedroom closet after an undercover officer made a controlled buy of crack cocaine from the apartment. In a divided opinion, D.C. Circuit held that the evidence was sufficient to establish that each defendant had used a firearm in relation to a drug trafficking offense, and affirmed the § 924(c)(1) convictions.

The Supreme Court granted certiorari to clarify the meaning of "use" under § 924(c)(1). Petitioners argued that "use" signifies active employment of a firearm. Respondent defended the D.C. Circuit's holding that "use" could be inferred from a gun's "accessibility and proximity" to drugs or drug proceeds. The Court agreed with petitioners and held that use under § 924(c)(1) "requires evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense."

Noting that "use" must connote more than mere possession of a firearm by a person who commits a drug offense, a unanimous Supreme Court, in an opinion by Justice O'Connor, rejected the proximity and accessibility standard because it "provides almost no limitation on the kind of possession that would be criminalized; in practice, nearly every possession of a firearm by a person engaged in drug trafficking would satisfy the standard." The Court concluded that "[a]n evidentiary standard for finding `use' that is satisfied in almost every case by evidence of mere possession does not adhere to the obvious congressional intent to require more than possession to trigger the statutes application."

The Court noted some of the activities that fall within its definition of use under § 924(c)(1). It stated, "The active-employment understanding of `use' certainly includes brandishing, displaying, bartering, striking with, and most obviously, firing or attempting to fire, a firearm. We note that this reading compels the conclusion that even an offenders reference to a firearm in his possession could satisfy § 924(c)(1)." The Court also noted that "use" does not encompass the situation where an offender conceals a gun in preparation for an imminent confrontation: "If the gun is not disclosed or mentioned by the offender, it is not actively employed, and it is not `used.'"

Based on the "active-employment" definition of "use," the Court concluded that the evidence was insufficient to support either Baileys or Robinson's conviction under the "use" prong of Section 924(c)(1). The Court remanded for consideration of whether the convictions could be upheld under the "carry" prong of the statute. ❖

Libretti v. United States, No. 94-7427. Argued on October 3, 1995, by Malcolm L. Stewart, Assistant to the Solicitor General, decided November 7, 1995.

Defendant Libretti entered a plea agreement whereby he pled guilty to a criminal drug offense, agreed to criminal forfeiture of drug-tainted property under 21 U.S.C. 853, and waived his constitutional right to a jury trial. At the colloquy on the agreement the trial judge explained the consequences of the waiver of jury trial without specifically mentioning the Fed. R. Crim. P. 31(e) right to a jury trial on asset forfeitability. After sentencing Libretti on the drug offense, the district court ordered the property forfeited, despite Libretti's objection that the judge found no factual basis for forfeitability pursuant to Fed. R. Crim. P. 11(f). The court of appeals affirmed.

The Supreme Court affirmed. It first held that Rule 11(f), which forbids a court to enter judgment upon "a plea of guilty" without assuring that there is "a factual basis" for the plea, does not require a district court to inquire into the factual basis for a stipulated forfeiture of assets embodied in a plea agreement. Holding that forfeitures are aspects of sentences, not separate substantive offenses, the Court concluded that the plain language of the Rule, which applies to offenses, not sentences, precluded Libretti's contrary interpretation. The Court nevertheless went on to state that the district court did not rest its forfeiture order solely on the plea agreement stipulation of forfeitability. In the Court's view, the record amply showed that the district court

concluded that the facts before the court met the statutory requisites for forfeiture.

The Court also held that Libretti's plea agreement, in conjunction with his colloquy with the trial judge on the agreement, adequately waived jury trial on the forfeitability of assets. Together, the agreement and colloquy made clear that there would be no jury proceedings if he pled guilty. It was not dispositive that neither mentioned Rule 31(e). Rule 31(e) provides that "[i]f the indictment . . . alleges that . . . property is subject to criminal forfeiture, a special verdict shall be returned as to the extent of the . . . property." This right, the Court held, is merely statutory in foundation, for forfeiture is an aspect of sentencing that does not fall within the Sixth Amendment right to a jury determination of guilt or innocence. Thus, the agreement did not need to mention Rule 31(e) for the waiver to be valid. Similarly, the district court did not need to mention that Libretti's plea would effect a waiver of this statutory right, which is not included in the information that the trial judge must communicate to a defendant under Rule 11(c) to ensure that a guilty plea is valid.

Justices Souter and Ginsburg concurred in part and concurred in the judgment. Justice Souter preferred not to decide whether there is a Sixth Amendment right to jury trial on the scope of forfeiture or whether a trial court is constitutionally required to advise defendants of whatever jury trial rights they may have; he believed the indictment and the general information the trial judge must convey to a defendant about jury trial rights were adequate protection of any possible right to jury trial on forfeitability. Justice Ginsburg maintained that waiver of the Rule 31(f) right to jury trial on forfeiture must be knowing, but believed that Libretti had sufficient information from two pre-trial references to the right. Justice Stevens dissented, believing that the opinion of the court of appeals endorsed forfeiture of more assets than those described in the forfeiture count of the indictment, and thus sanctioned a penalty beyond that authorized by law. ❖

Bureau of Justice Statistics

Criminal Justice Data

On February 16, 1996, the Bureau of Justice Statistics (BJS) announced the availability of their criminal justice data, free of charge on the Internet at BJS's new home page, including criminal justice reports, spreadsheets, and news releases in a variety of formats. The home page address is http://www.ojp.usdoj.gov/bjs/. Among reports that are available are *Violence Against Women: Estimates from the Redesigned Survey; Weapons Offenses and Offenders; Prisoners at Midyear 1995; Capital Punishment 1994; Drugs and Crime, Facts, 1994; Guns Used in Crime; and Trends in Juvenile Violence.* BJS collects information that profiles the nation's federal, state, and local criminal justice systems from crime through sentence and punishment. For additional information about the home page, call Jay Hoover, (202)307-1132. ❖

Drug Enforcement Agency

On February 15, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys the DEA publication, *Speaking Out Against Drug Legalization*, a guide that evolved from a two-day meeting hosted by DEA in which law enforcement, health, and academic experts addressed arguments against legalization. For further information, please contact Kirby A. Heller,

EOUSAs Legal Counsels office, (202)514-4024. ❖

Justice Management Division

Major Contract Awarded for Consolidated Office Automation Network

On March 6, 1996, DOJ awarded a seven-year, major computer systems contract that could top $500 million, to GTE Government Systems of Chantilly, Virginia. The Justice Consolidated Office Network (JCON) contract will allow DOJ organizations to acquire and use a common set of hardware and off-the-shelf software, including Windows-based document processing, calendaring, and electronic mail, along with necessary installation, training, and system support. JCON will provide office automation support to the Attorney General's office, other DOJ senior management and policy offices, the United States Attorneys' offices, the six litigating divisions, nationwide offices of the U.S. Trustees, Executive Office for Immigration Review, the U.S. Marshals Service, and other Department organizations. JCON will consolidate and replace AMICUS and EAGLE when those contracts expire. ❖

Ethics and Professional Responsibility

Conflicts of Interest

A report was referred to OPR alleging that a federal prosecutor had a series of conversations with a firm representing the FDIC to facilitate dismissal of lawsuits brought by members of the prosecutor's family. The FDIC had already explained to the family members that they had sued the wrong entity. OPR determined that the prosecutor had spoken to an attorney representing FDIC, whom he asked to prepare a stipulation of dismissal. The prosecutor told the attorney what his position was with the federal government, but he also said that he was not calling in an official capacity. In addition, he explained that he was not representing the members of his family. OPR determined that the prosecutor had not attempted to influence government decision-making improperly. ❖

Media Policy

OPR received a report that a federal prosecutor provided information to a local reporter in advance of a scheduled press conference, which allowed the reporter to "scoop" the press conference and embarrass the United States Attorney and local law enforcement officials. OPR found that the prosecutor exercised poor judgment in providing information to the reporter before the press conference. ❖

New Opinion on Honorarium Ban

EOUSA's Office of Legal Counsel routinely receives requests from Assistant United States Attorneys (AUSAs) for approval to receive compensation for teaching or conducting training courses. These were examined under both the teaching regulations at 5 C.F.R. § 2635.807 and the honorarium ban at 5 C.F.R. § 2636, because no determination had been made as to whether AUSAs were covered by the honorarium ban after the Supreme Court's decision in *United States v. National Treasury Employees Union*, 115 S.Ct. 1003 (1995) (NTEU). On February 26, 1996, however, the Department's Office of Legal Counsel (OLC) issued an opinion that makes this issue moot.

In *NTEU*, the Supreme Court held that the honorarium ban was unconstitutional as applied to employees "below grade GS-16." The Supreme Court declined to extend its holding to employees beyond those on whose behalf the suit was brought, so the ban still applied to other classes of employees, such as those in the Senior Executive Service. The Department was examining whether AUSAs should be considered "below grade GS-16" when OLC issued its opinion, finding that the Court's decision effectively nullified the honorarium ban, and that it cannot be enforced against any government employee.

Many of you received letters advising that you could have compensation for teaching courses paid to an escrow account pending a determination by the Department as to the status of AUSAs. Now that this has been resolved, you are free to move any such money from escrow accounts into your own accounts. ❖

OPR Trends in Misconduct Allegations

On March 13, 1996, EOUSA Director Carol DiBattiste sent a memorandum to United States Attorneys, Assistant United States Attorneys, and Professional Responsibility Officers regarding the Office of Professional Responsibility's (OPR) Trends in Misconduct Allegations Report of January 26, 1996. OPR tracks allegations of misconduct for possible trends to help prosecutors to prevent conduct likely to lead to misconduct allegations. In its most recent report, OPR identified the following areas:

Unsupervised Visits to Detainees

OPR noted instances in which it has investigated allegations that law enforcement agents permitted cooperating inmate witnesses and their friends and family members to have unsupervised visits while at a United States Attorney's office. In one instance, a number of convictions were overturned because of the government's failure to disclose that these visits occurred. In another case, the government was forced to negotiate for reduced sentences for certain defendants after the government failed to disclose unsupervised contacts between a cooperating witness and his wife. At least one United States Attorney's office properly issued a memorandum directing that, "no AUSA should allow or acquiesce in allowing any social visit by friends and family with an inmate . . . in temporary custody of an agent." The United States Attorney also notified the local offices of several law enforcement agencies of this policy.

Improper Use of Trial Subpoenas

Although there are not enough complaints to OPR of improper use of trial subpoenas to

require an individual's attendance at a pretrial conference to represent a trend, the report noted that there are enough instances to warrant a reminder to prosecutors of the limits of the subpoena power. Under Fed. R. Crim. P. 17(a), subpoenas are only returnable at the place of trial, and they should not be used to command a person to appear at the prosecutor's office for a pretrial interview. See *United States v. LaFuente*, 991 F.2d 1406, 1411 (8th Cir. 1993) ("The practice of using trial subpoenas to compel witnesses to attend pretrial conferences is improper under Rule 17 of the Federal Rules of Criminal Procedure."), appeal after remand, 54 F.3d 457 (8th Cir.), cert. denied, 116 S.Ct. 264 (1995); *United States v. Keen*, 509 F.2d 1273, 1274 (6th Cir. 1975) ("highly improper" for prosecutor to use subpoenas to compel attendance at pretrial interviews); *United States v. Hedge*, 462 F.2d 220, 222-223 (5th Cir. 1972) (use of subpoenas to compel attendance at pretrial conference is "irregularity" not authorized by Rule 17(a)); *United States v. Standard Oil Co.*, 316 F.2d 884, 897 (7th Cir. 1963) (same); cf. *United States v. DiGilio*, 538 F.2d 972, 985 (3d Cir. 1976) ("Rule 17 does not . . . authorize the use of grand jury subpoenas as a ploy for the facilitation of office interrogation."), cert. denied sub nom. *Lupo v. United States*, 429 U.S. 1038 (1977). ❖

Discovery and *Brady/Giglio* Obligations

On February 7, 1996, EOUSA Director Carol DiBattiste sent a memorandum to United States Attorneys, First Assistant United States Attorneys, Criminal Division Chiefs, and Professional Responsibility Officers regarding Discovery and *Brady/Giglio* Obligations. The Office of Professional Responsibility (OPR) has been tracking allegations of misconduct for possible trends. OPR reports failures to comply with *Brady/Giglio* and discovery obligations as a recurring theme in allegations. There has been an ncrease in the Courts' claims of prosecutors misconduct for failing to comply with these requirements.

OPR noted that law enforcement personnel have failed to preserve witnesses notes and statements that may potentially constitute Jencks Act or even exculpatory material. This problem may be exacerbated when task forces include agents and officers from different jurisdictions with different training. Depending on the circumstances, the non- federal agents may be deemed "functionally part" of the federal prosecution team for purposes of applying Jencks Act and *Brady/Giglio* requirements.

Ms. DiBattiste reported that EOUSA, in conjunction with the Criminal Division, is currently surveying the various law enforcement agencies to determine their policies concerning preservation of witnesses' notes. Once a federal prosecutor becomes involved in a case, the court will likely hold the prosecutor accountable if state or federal law enforcement officers destroy notes that should have been preserved.

In response to this problem, some United States Attorney's offices send a form letter to all case agents reminding them to preserve Jencks Act and exculpatory material. If you would like a copy of this form letter, please contact Kirby A. Heller, (202)514-4024, or Email AEX03(KHELLER). Ms. DiBattiste recommends conducting in-house training for all federal and local law enforcement officers to ensure that they are familiar with discovery and *Brady/Giglio* obligations. ❖

Career Opportunities

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

Experienced Attorney, GS-12/GS-14
Executive Office for United States Attorneys Legal Counsel's Office

The DOJ Office of Attorney Personnel Management is recruiting for one experienced attorney for the Legal Counsel's Office, Executive Office for United States Attorneys (EOUSA). Incumbent will serve as Attorney-Advisor on the Legal Counsel's office staff. The Legal Counsel is functionally responsible for providing support to the Director, EOUSA, and the United States Attorneys and their staffs (USAOs) in personnel, EEO, performance and disciplinary matters, ethics, standards of conduct, procurement and financial matters, criminal issues, and other general administrative and legal issues. The incumbent will be assigned any or all of these issues to provide legal advice and opinions and to recommend policy, and may be the designated agency representative in personnel and EEO proceedings. Incumbent will also provide training in areas of Legal Counsel expertise for USAOs and EOUSA staffs. Applicants must possess a J.D. degree; be an active member of the bar in good standing (any jurisdiction); possess superior oral and written communication skills, as well as strong interpersonal skills; have demonstrated capacity to function, with minimal guidance, in a highly demanding environment; and have three or more years of experience. Experience with federal ethics and standards of conduct, adverse actions, EEO, and litigation is very desirable. Applicants must submit a resume or OF-612 (Optional Application for Federal Employment), a writing sample, and a current performance appraisal to the address below. Current SF-171 (Application for Federal Employment) will still be accepted as well. Applications for this position must be submitted to the following address and must be postmarked by April 22, 1996.

U.S. Department of Justice
Executive Office for United States Attorneys
Administrative Services, Personnel Staff
Attn: Charlene Evanoff
Bicentennial Building
600 E Street, N.W., Room 8104
Washington, DC 20530

The salary range is GS-12 ($44,458 to $57,800) to GS-14 ($62,473 to $81,217).

Experienced Attorneys, GS-12 to GS-15
Civil Rights Division,
Voting Section

This position is open only to DOJ attorneys.

The DOJ Office of Attorney Personnel Management is seeking experienced attorneys to work in the Civil Rights Division's Voting Section in Washington, D.C. The Voting Section enforces laws designed to safeguard the right to vote of racial and language minorities and members of other specially affected groups. In enforcing the Voting Rights Act, the Section brings lawsuits against state and local jurisdictions to challenge unfair election systems. The Section also administratively reviews, under Section 5 of the Act, voting changes, including such highly sensitive matters as redistricting plans to determine whether they are discriminatory in purpose or effect, and it monitors election day activities through the assignment and oversight of federal observers.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year post-J.D. experience. No telephone calls please. Applicants must submit a current OF-612 (Optional Application for Federal Employment) or resume, writing sample, and current performance appraisal to:

U.S. Department of Justice
Civil Rights Division
Voting Section
P.O. Box 66128
Washington, DC 20035-6128

A Current SF-171 (Application for Federal Employment) will still be accepted as well. Current salary and years of experience will determine the appropriate salary level. The possible range is GS-12 ($44,458 to $57,800) to GS-15 ($73,486 to $95,531). These positions are in anticipation of future vacancies and are open until filled. ❖