USABulletin

February 1997 Volume 45, Number 1

Civil Issues

In This Issue

Published by
Executive Office for United States Attorneys
Washington, D.C.
Carol DiBattiste, Director
United States Attorneys' Bulletin Staff, (202) 616-1681
David Marshall Nissman, Editor-in-Chief
Wanda J. Morat, Editor
Barbara J. Jackson, Editor
Patrice A. Floria, Editor
Susan Dye Bartley, Graphic Designer
Nina M. Ingram, Student Assistant

Send distribution address and quantity corrections to:
Barbara Jackson, Executive Office for United States Attorneys, Bicentennial Building, Room 6011, 600 E Street, N.W., Washington, D.C. 20530-0001
(202) 616-8407 or fax (202) 616-6653

From the Editor-in-Chief

This month we salute our colleagues in the Department engaged in civil litigation. As the demands on us become more complex, our civil attorneys are continually asked to develop new areas of expertise. As this issue of the *Bulletin* demonstrates, civil practice on behalf of the Government covers a great deal of territory. We begin with an article about Assistant Attorney General Frank Hunger of the Civil Division. If you have the pleasure of meeting Mr. Hunger, you will quickly see that he is a litigator's litigator. His favorite DOJ pastime involves rolling up his sleeves and getting to work on cases with Assistant United States Attorneys and Civil Division lawyers.

One of our feature articles, “Alternative Dispute Resolution Report,” is by Peter Steenland, Senior Counsel for ADR in the Department. He provides thought-provoking information on new ways to settle cases.

To all of our contributing authors, thank you for your excellent submissions. Because of your many suggestions, we have decided to run a special issue of the *Bulletin* in April on Health Care Fraud. Those of you who would like to contribute to this issue, please follow the instructions on the inside back cover of the magazine.

Suggestions, comments, criticisms? You can reach me in St. Croix at (809) 773-3920 or AVISC01(DNISSMAN).

DAVID MARSHALL NISSMAN

Letter to the Editor

Assistant United States Attorney Steve Heymann's views on International Exchange

Assistant Heymann is the Deputy Chief of the Criminal Division for the District of Massachusetts

Candidly, this is a piece of advocacy and not journalistic neutrality. It advocates that the Department support the continuing development and funding of international exchange programs for its line prosecutors, and that its line prosecutors aggressively seek to participate in the programs both here and abroad.

As the last *United States Attorneys' Bulletin* concerning international affairs was going to press, I was returning with a Justice Department delegation from the French National Magistrates School. Ten Assistant United States Attorneys, Criminal Division Attorneys, and judges were invited by the French Government to attend a week-long series of lectures about the operation of the French criminal justice system and to visit various court sessions. The exchange was the fourth in a series between the two governments, which has been hosted by the United States and France in alternating years.

The exchange program was originally designed to facilitate the coordination of criminal investigations. The absence of probable cause requirements in France and the absence of a true analogue to investigating magistrates in the United States were factors creating regular difficulties in honoring letters rogatory and mutual legal assistance treaty requests between the two countries.

My first thought during the lectures, however, was not about how this would assist me in the relatively few matters our office handled with the French. Rather, it was how much I wished that I had known what I was learning when I needed assistance in Argentina a few months earlier. I was handling a computer crime investigation where we believed that someone was breaking into American military computers from Argentina. A computer network in Buenos Aires was the source of some of the attacks, and we contacted the system administrator there to see if he could help identify who was in the company's system. The administrator discovered there was an intruder in his system and took the matter to an investigating magistrate. The result, which I neither anticipated nor understood then, was to divest the police of their independent investigative powers.

Thinking American cost me the use of a potentially effective ally in the investigation. Argentina, like so many countries, modeled its criminal justice system on the continental system promulgated by the French. Unlike in the United States, the victim of a crime had a personal right to compel the initiation of a criminal investigation by an investigating magistrate. Police had investigatory powers only in the preliminary stages of a case and, once an investigating magistrate was involved, the police could only act at the victim's direction.

As criminal cases become more and more international, exchanges such as that in which I participated provide the knowledge necessary to avoid costly mistakes resulting from not knowing how other important criminal justice systems function. They also provide valuable insights into

accomplishing our work more skillfully, more fairly, and with greater compassion. In my case, witnessing the central role of the victim in French criminal cases not only taught me to avoid easily an investigative problem in continental criminal justice systems but how important it is to integrate better the victim into our own process for a sense of justice having been achieved by all those affected by a crime.

Contents

Statements Before Grand Jury—Expected Witness Perjury
Cross Examination—Good Faith Basis for Questions

Career Opportunities

Criminal Division, Office of Professional Development and Training/Director—GS-15 Experienced Attorney
Office of Professional Development and Training—GS-15 Experienced Attorney
Federal Bureau of Prisons—GS-11 to GS-14 Experienced Attorneys
Civil Division, Commercial Litigation Branch—GS-12 to GS-15 Experienced Attorneys
Criminal Division, Terrorism and Violent Crime Section—GS-13 to GS-15 Experienced Attorneys
U.S. Trustees Office—GS-12 to GS-14 Experienced Attorney

The Civil Division of the Department of Justice

For more than three years, Frank Hunger has served as the Assistant Attorney General of the Civil Division. He is originally from Winona, Mississippi, a small town near Greenville, Mississippi. After receiving his undergraduate degree from the University of Mississippi, AAG Hunger joined the Air Force where he was on active duty for four years. After the Air Force, he attended Duke University School of Law, graduating in 1965. He then clerked for the U.S. Court of Appeals for the Fifth Circuit. He returned to Mississippi where he joined a small firm which specialized in civil litigation. He tried a broad spectrum of civil cases and also handled criminal cases at the trial and appellate levels, serving as court-appointed counsel on matters ranging from assaults to capital murder.

AAG Hunger became the managing partner of the law firm and, under his leadership, the firm grew to be one of the largest and most successful firms in the Mississippi Delta. His practice evolved to a concentration on complicated toxic tort and products liability cases. While he remained based in Greenville, his clientele became nationwide with a focus on Federal district and appellate court litigation.

He is currently a fellow in the American College of Trial Lawyers, serves on the Advisory Committee of the Federal Rules of Civil Procedure, and is the immediate past President of the Bar Association for the Fifth Federal Circuit.

His private practice experience was "good background for a person who occupies this position, [the Assistant Attorney General of the Civil Division]." His experience in taking depositions, producing documents, meeting with judges, and awaiting jury verdicts—being "in the trenches"—has given him an understanding and respect for the work of litigators in every area of practice.

With the assistance of United States Attorneys' offices, the Civil Division is responsible for a broad range of cases and transactions, including major commercial and tort cases, the defense of the constitutionality of challenged laws and statutes, and the defense of all Government officials sued in their official and individual capacities.[1] The division's 680 lawyers work with United States Attorneys' offices to manage a docket of approximately 17,000 cases and claims. In the last three and a half years, the Department has achieved unprecedented success in all of these areas.

AAG Hunger oversees a division that is one of the biggest money makers for taxpayers. From 1993 through 1996, Civil Division attorneys and Assistant United States Attorneys collected a record $2.5 billion—most of it resulting from cases involving fraud against taxpayers.

Affirmative Civil Enforcement (ACE), one of the division's top priorities, "has been a Justice Department-wide success story," according to Hunger. ACE conferences to educate Department

---

[1]See "Recent Developments in Litigation Against Federal Employees and Government Counsel," on page 37 of this *USAB.*

attorneys and investigators have fostered relationships and contacts to enhance joint efforts between the Civil Division and United States Attorneys. AAG Hunger said that he encourages Assistants to, "take steps to ensure that . . . criminal divisions understand and preserve the significant civil interests of the cases they are handling, by cooperation, coordination, and early referral to the civil attorneys in their offices and . . . at the Department, and by the judicious use of grand jury subpoenas."

The Civil Division joins with the United States Attorneys' offices to encourage affirmative litigation. The benefits of the United States Attorneys' offices working together with the Civil Division are apparent when the most sophisticated defendants are forced to give up their illegal gains to the United States in compensation for the losses they have caused. Hunger's actions, in this regard, have made one message clear: Resources spent on civil fraud actions produce the best return on investment in the Government.

Qui tam actions, often "whistleblower" suits, are now assigned like other fraud cases except for certain reporting requirements. These civil actions have increased significantly, due in part to the publicity of qui tam amendments that allow people to file actions on behalf of the United States and receive a portion of the settlement.[2] Close coordination of these actions among the Civil Division and the United States Attorneys' offices is important to successful settlements.

The fastest growing areas of qui tam cases are health care fraud and defense procurement-related cases. In a recent discussion with the *USAB* staff, Mr. Hunger reported that the Civil Division is "sending out far more cases to the USAOs than ever before," and for those not delegated, he is "pleased with how the Civil Division and USAO Assistants have been able to cooperate while working these cases together. With some rare exceptions, it's an arrangement that's working extremely well." Some successful cases worked jointly by the Civil Division and USAOs appear on page 4.

* * * * * * * * * *

Successes*

Complex **health care fraud** cases with record recoveries and settlements include:

• The largest civil fraud recovery in history—$324 million from National Medical Enterprises for systematically overbilling Medicare, Medicaid, and other Federal health care programs. (Arizona, CDCA, SDCA, District of Columbia, Colorado, SDFL, NDGA, NDIL, SDIN, Kansas, EDLA, EDMI, Minnesota, EDMO, WDMO, New Jersey, WDOK, EDPA, EDTX, NDTX, SDTX, WDTX, EDVA, WDWI)

---

[2]See "Qui Tam Litigation—A Billion Dollar Industry," on page 15 of this *USAB*.

*The United States Attorneys' offices listed following these settlements were involved in civil or criminal aspects of these cases.

• A $182 million settlement with LabCorp for inducing physicians to order unnecessary blood tests that were then improperly charged to Medicare and Medicaid. (MDNC, SDCA, SDNY, District of Columbia, EDVA, MDPA, New Mexico)

• A settlement of $85 million with Caremark, Inc., for accepting kickbacks to induce referrals and submitting fraudulent bills to Medicare. (Minnesota, SDOH)

Recent **defense-related settlements** include:

• The largest recovery against a defense contractor in history—$150 million from United Technologies for overbilling and misrepresenting facts in reporting the fraud to the Government through the Department of Defense's Voluntary Disclosure Program. (Connecticut)

• A settlement of $88 million from Lucas Industries for failing to test airplane parts sold to the Navy, Army, and Air Force. (CDCA, Utah)

• A settlement of $85 million from Teledyne for fraudulent testing of military components. (CDCA)

• A settlement of $82 million from Litton Systems, Inc., for overcharging for computer services. (CDCA)

• A settlement of $75 million from Boeing for mischarging independent research and development costs and other improper charges. (WDWA)

* * * * * * * * * * *

To assist Federal litigators, the Commercial Litigation Branch, through the efforts of Senior Trial Counsel Judith Rabinowitz, is currently revising the civil fraud monograph and regularly Emails civil Assistants a newsletter, the *ACE Hotline!*, covering qui tam actions and decisions on civil fraud issues. She also maintains an ACE network available to Department attorneys.[3]

Today, the Civil Division is involved in the largest and most complex commercial contract cases ever litigated, including a suit by McDonnell Douglas and General Dynamics against the Navy over the A-12 stealth fighter contract, in which approximately $3 billion is at issue; and Winstar, a series of 123 cases involving 400 savings and loans institutions that are suing the Government for a change in the law that allegedly cost them $20 billion. (United States Attorneys' offices are working with the Civil Division on Winstar.)

The Civil Division has effectively defended the Government against billions of dollars in contract, patent, and other commercial claims, including a suit by the Hughes Corporation which claimed that the Government infringed a satellite patent. Hughes demanded $4 to $6 billion in damages and, although a settlement in the $1 billion range was suggested, the court awarded Hughes only

[3]Ibid.

about $120 million—an amount close to the Civil Division's prediction.

Nowhere has AAG Hunger's experience resulted in greater savings to the taxpayers than in the area of tort claims against the Government. These cases are similar to those he handled in private practice, and Hunger's litigation background has paid off in a number of cases. For example, in a recent medical malpractice administrative claim, using his extensive trial experience, AAG Hunger was able to guide agency and Civil Division counsel to a structured settlement nearly $1 million less than had originally been negotiated.

The Civil Division's use of reversionary trusts in large catastrophic injury cases has saved the Government millions of dollars. With Mr. Hunger's encouragement, civil attorneys are using structured settlements with a reversionary interest for the United States in more and more cases. These settlements help plaintiffs as well as protect the Government from unjust windfalls to the plaintiffs' heirs. Two notable reversionary trust cases handled by United States Attorneys' offices are:

> *Pettis v. United States*, in which AAG Hunger authorized a $5.8 million settlement for multiple personal injury claims resulting from an accident between a civilian automobile and a National Guard vehicle. The settlement included a $3.1 million structured settlement for a passenger in the civilian vehicle who sustained severe neurological injuries as a result of the accident, rendering him a quadriplegic. AAG Hunger authorized the settlement to include a reversionary medical trust fund. Five months after the authorization of the settlement, the plaintiff died and the balance of the trust, approximately $600,000, and the "return on premium" for the annuity that was feeding the trust, approximately $1,065,000—over half the cost of the settlement—were returned to the United States. (United States Attorney's office for the Eastern District of Oklahoma.)
>
> *Hill v. United States*, in which the Supreme Court denied certiorari, an appellate decision authorized the Government to pay most of the damages assessed in the case to a reversionary trust for the child, with remaining funds reverting to the U.S. Treasury upon the child's death. (United States Attorney's office for the District of Colorado.)

Victories in Medicare cases over the past three years have saved the Government over $1.5 billion. Three recent Supreme Court cases are:

> *Good Samaritan Hospital, et al., v. Sullivan*, in which the Supreme Court accepted the agency's position, advanced by the Civil Division, that hospitals cannot evade the Health and Human Services (HHS) Secretary's annual limitations on reasonable costs which, according to HHS, will save as much as $400 million annually. (Handled jointly by the Civil Division and the United States Attorney's office for the District of Nebraska.)
>
> *Shalala v. Guernsey Memorial Hospital*, in which the Supreme Court upheld the Civil Division's position that the HHS Secretary is not required to adhere to generally accepted accounting principles in making Medicare provider reimbursement decisions, which saved Medicare approximately $100 million. (Handled jointly by the Civil Division and the

United States Attorney's office for the Southern District of Ohio.)

Thomas Jefferson University v. Shalala, in which the Supreme Court upheld HHS's interpretation of a Medicare regulation prohibiting reimbursement for graduate medical education costs "redistributed" from medical schools to hospitals, a decision that saved the Government over $150 million. (Handled jointly by the Civil Division and the United States Attorney's office for the Eastern District of Pennsylvania.)

The Civil Division has defended numerous Executive Branch decisions. For example, the division has successfully defended (1) Megan's Law, which protects children by requiring released sex offenders to register with local officials when they move into a new community; (2) numerous challenges to the Brady Act, upholding the five-day waiting period in all cases; (3) numerous challenges to the Freedom of Access to Clinics Act; (4) the process of selecting bases for closure under the Defense Base Closure and Realignment Act, in which the Supreme Court accepted the Civil Division's argument that the process of selecting bases for closure was not subject to judicial review; (5) the Religious Freedom Restoration Act (RFRA) in both state and Federal courts, which should prove helpful in defending the RFRA in the Supreme Court; and (6) the Health Care Task Force against a claim that it was subject to the Federal Advisory Committee Act and that its meetings had to be open to the public.

Since 1993, the Civil Division's Office of Consumer Litigation (OCL) has obtained nearly $44 million in criminal fines and civil penalties.[4] The Office, in conjunction with the United States Attorney's office for the District of Maryland, has continued to spearhead a criminal investigation of generic drug manufacturers that focused on intentional deviations from approved pharmaceutical formulas and that has resulted in the conviction of more than 15 corporations and 60 individuals. In addition, OCL obtained the conviction of an additional 76 individuals and 14 corporations for other types of violations of the Federal Food, Drug, and Cosmetic Act, and prosecuted more than 60 cases of odometer fraud.

In 1995, OCL attorneys reached an agreement with Madison Square Garden in New York City to remove cigarette signs from locations that the Department contended were strategically selected to be seen on televised sports coverage. This was the first lawsuit to prevent the circumventing of Congress' 1971 ban on broadcast advertising of cigarettes. Although Madison Square Garden did not admit wrongdoing, it did agree to the consent decree.

In a similar case that AAG Hunger negotiated for the Government, a settlement agreement was reached with Philip Morris, Inc., to resolve allegations that the company illegally advertised cigarettes on television during professional sports events. Philip Morris was prohibited from placing cigarette advertisements next to playing fields at televised sports events or in locations that will appear on television.

At an ACE conference in Kentucky, AAG Hunger encouraged Assistants to notify the Civil Division when they have criminal fraud cases that may involve a civil opportunity to recover

---

[4]See "The Office of Consumer Litigation" on page 25 of this *USAB*.

substantial Federal funds. The Commercial Litigation Branch works on cases nationwide and can coordinate national initiatives and priorities to assure uniformity throughout the Department. AAG Hunger said in an address to Assistants, "The knowledge of what cases are out there allows us to ensure that no one has to reinvent the wheel. For example, many health care schemes are repeated by the same or different providers in a number of jurisdictions."

AAG Hunger is a great proponent of Alternative Dispute Resolution (ADR), a mechanism that allows the Department to handle a large volume of litigation through techniques such as mediation, mini-trials, and arbitration.[5] His support of ADR was demonstrated in an agreement the Civil Division reached on behalf of the Consumer Product Safety Commission (CPSC) with McDonald's Corporation, following a dispute over McDonald's obligation to report under the Consumer Product Safety Act. McDonald's failed to report to CPSC numerous injuries that were associated with a merry-go-round type device installed at its restaurants. The Civil Division devised and negotiated an innovative settlement for CPSC with the McDonald's Corporation, convincing its management to resolve the controversy by voluntarily funding a $10 million CPSC safety advertising campaign, and agreeing to pay a $5 million monetary penalty if it failed to report future injuries. Had the case been prosecuted, the maximum penalty would have been $1.25 million. This settlement exemplifies the goals of ADR.

AAG Hunger is concerned with situations in which Government attorneys are unfairly threatened with sanctions. "When we have a United States Attorney or an Assistant United States Attorney who is working on behalf of their country and conducting themselves properly, we need to do everything we can to stand up for them when they are wrongfully accused. It is one of my special projects. There was a situation within the Fifth Circuit where there were two Assistant United States Attorneys that I felt, after reviewing the case, acted properly in every sense of the word. They were sanctioned by the district judge and we thought that the judge erred. So I familiarized myself with the case and when the time came to argue orally, I did. I really enjoyed it. It was one of the more satisfying experiences I've had since I've been here because I knew I was standing up for what was right and the United States Court of Appeals agreed with us. They dealt with the matter in a very satisfactory way." In that case, the Court of Appeals vacated the sanctions and reversed the district judge's findings and conclusions that the attorneys acted in bad faith.

Mr. Hunger has gone to special lengths to be accessible to United States Attorneys and Assistant United States Attorneys, using his visits or phone calls to USAOs to seek questions or concerns about the myriad issues surrounding civil cases. It is not unusual for him to call an attorney in the field—the one taking the depositions, who knows the judge and the witnesses—to discuss issues in cases that come across his desk. His goal, he stated, is to "establish a better rapport with United States Attorneys' offices throughout the country. Before coming here, I litigated with some of the top lawyers throughout the country, and there are none better than you'll find in the United States Department of Justice. I say that with all sincerity. I've never had this much pride. When my time comes to leave, and I look back over my legal career, this will be the highlight. I thank all the Assistant United States Attorneys and Department of Justice lawyers who are doing a terrific

---

[5]See "Alternative Dispute Resolution Report" and "Removing Barriers to the Use of Alternative Dispute Resolution," on pages 7 and 9 of this *USAB*.

job.”

Alternative Dispute Resolution Report

Senior Counsel for ADR Peter Steenland*
Civil Division
(202) 616-9471

A growing number of Assistant United States Attorneys and Department attorneys are using dispute resolution techniques to settle Federal cases on terms favorable to the Government. In addition to the case-settlement programs in many judicial districts, our litigators have begun using funds made available by the Alternative Dispute Resolution (ADR) office to retain third-party neutrals to assist them in resolving their cases.

The following case summaries describe dispute resolution techniques used to settle a wide array of cases involving the United States and its agencies. These cases are but a handful of the many matters being resolved through ADR. In reporting on these settlements, however, we have chosen to use a somewhat different format to describe how these cases were resolved than that normally seen in the *USABulletin* to summarize reported decisions; we have deleted the case title and some other identifying information, so that we can provide the reader with as much detail as possible without violating the nature of the confidential, negotiation/dispute resolution process. For additional information on any of these settlements, please call the Office of the Senior Counsel for ADR at (202) 616-9471.

Mediation Used to Obtain Successful Settlements in Tort Claims

Mediation Used to Achieve Settlement at the Government's Estimated Exposure

In this Federal Tort Claims Act (FTCA) action, a Postal truck ran a red light and injured the plaintiff. Liability was uncontested, but damages were in dispute. The plaintiff sustained a serious back injury. The Postal Service estimated that damages were between $400,000 and $700,000 for this type of injury. This estimate included lost wages as well as pain and suffering. The Assistant United States Attorney believed that the plaintiff's demand of $900,000 reflected wholly unrealistic expectations. The Assistant selected an experienced mediator with many years of insurance company defense work who was able to do effective reality-testing with the plaintiff by getting him to recognize the weaknesses in his case. The case settled for $400,000.

Mediated Settlement Provides Contribution from a Third-party Where Our Liability Is Not in Dispute

In an FTCA action, the plaintiff sued the United States for $571,000 after her vehicle collided with a vehicle driven by a Department of Labor employee. A county government road crew vehicle was blocking most of the southbound lane highway because of ongoing road work at the

*Peter Steenland has been with the Department since 1969. For the 17 years preceding his appointment, he was the Chief of the Appellate Section in the Environment and Natural Resources Division. He is assisted by an attorney who serves on a rotating detail to that office. The present Deputy Senior Counsel is Assistant United States Attorney Pat Stout, Northern District of Georgia.

scene of the accident. The county vehicle was not displaying any flashing lights, and there were no signs alerting motorists of the construction. The accident occurred when the Federal employee entered the oncoming lane of traffic while passing the county vehicle and collided with the plaintiff. Although we did not dispute the United States' liability, we sued the county government as a third-party defendant for failing to alert motorists about the construction and failure to activate the flashers on its vehicle.

The Assistant United States Attorney suggested mediation to counsel for the plaintiff and the county government. The other parties agreed. Then the Assistant took depositions of all the participants and witnesses prior to the mediation to establish the basic evidence surrounding the accident.

Because of the mediator's significant experience in insurance defense work, he was able to help the local government understand its litigation risk, even in the face of a deposition by the Federal employee who acknowledged that the accident would have occurred regardless of the lack of signs for the county government vehicle. In addition, the mediator was able to help the county understand that the United States would probably be able to overcome this deposition given the other evidence. The case settled for $50,000. The United States agreed to pay 65 percent of that award, and the local government agreed to pay the remainder. The Assistant United States Attorney estimates that this settlement was considerably less than what we were likely to have paid if the matter had gone to trial, and that at least a month of the Assistant's time was saved that otherwise would have been spent preparing for litigation.

Mediation Used to Settle Damage Claim Where Liability Was Uncontested

In this FTCA action, a Postal truck hit a mother and son. The Government was clearly liable and settled promptly with the mother. However, the son's demand for an award of $25,000 caused that suit to go forward before a district court judge known for generous awards in these kinds of cases. About two months before the scheduled trial date, after examining the Executive Office for United States Attorneys' case selection criteria for using dispute resolution, the Assistant United States Attorney suggested mediation.

The mediator was effective in helping the plaintiff understand that because he had neither permanent disabilities nor lost wages, any likely damage award would be far lower than the $25,000 sought in his complaint. The mediation took several hours and was successful. The Government agreed to pay the plaintiff $6,000 in damages. In addition, the mediation saved the Government at least nine days in trial preparation and trial work.

Mediation Used to Address Unrealistic Expectations by Plaintiff after Injury

The plaintiff was injured in a fall outside a Post Office and brought suit for $1 million in damages. Our liability was clear but the plaintiff rejected a settlement offer that her attorney recommended she accept. Not wanting to either litigate the case or get involved in protracted, difficult negotiations, the Assistant United States Attorney suggested mediation. The plaintiff agreed and, after a joint session with all parties, the agreed-upon mediator worked with the plaintiff and her

counsel to help her see the weaknesses of her position. Shortly thereafter, the case settled, with the United States and an insurance company each paying $7,500 to the plaintiff.

Mediation Fails but Still Accelerates Settlement Date in Tort Claim Litigation

A plaintiff sued the United States and a glass contractor for $1.5 million, alleging that both were negligent in maintaining the windows at a Veterans Hospital. The plaintiff suffered from numerous medical maladies including diabetes and a variety of vascular problems. He was at the hospital for the amputation of his right leg when a glass window in the hospital admission's office fell from the frame and broke on the plaintiff's legs. The lacerations on his remaining left leg did not heal and it was amputated eight months after the scheduled amputation of his right leg. If this case had gone to trial, the Assistant United States Attorney would have argued that the plaintiff's left leg would have been amputated anyway in light of his existing medical condition and that the accident, at worst, accelerated the amputation.

The Assistant United States Attorney felt that the Federal Government might be liable for some damages, based on the plaintiff's loss of use of his remaining leg for whatever time might have passed before its inevitable amputation, if the accident had not occurred. The United States suggested mediation with an experienced magistrate, in part because the plaintiff's attorney tended to settle his cases on the day before trial, and the Assistant wanted to get the matter resolved more promptly. Although the mediation did not produce a settlement, the case did settle two weeks later at $450,000, with the United States and the glass company each paying $225,000. The mediator appeared to convince the plaintiff that because his remaining leg would have been amputated in any event, his initial demand was excessive and unrealistic. Moreover, since settlement occurred two months before trial, the Assistant believes the mediation accomplished his goal of bringing the matter to closure more quickly and at a lower award than a settlement immediately before trial.

Mediation Provides New Insights to Both Parties, Aiding in Tort Claim Settlement

In this wrongful death action brought by surviving children, a Bureau of Indian Affairs' (BIA) truck driven by a BIA employee caused the decapitation of plaintiff's father and his common law wife. The Government was clearly liable on rather egregious facts. The Assistant United States Attorney suggested mediation with a mediator who was well-respected by the local bar. The mediation was held two weeks before trial. The plaintiffs asked for $3.25 million in damages and the Government eventually settled at $1 million.

The mediator was effective in pointing out to the Government that the value of the decedent's business was higher than the Government's original estimate because the nature of the business was dependent on the decedent's skill and business contacts. The mediator also helped the Government recognize that damages would be higher for one of the two surviving children who had Downs Syndrome, and suffered from the loss of parental support. At the same time, the mediator was effective in assisting the plaintiffs to understand better that their economist's analysis contained serious errors, and that any award of damages would not be as high as the plaintiffs assumed, since the parents had been divorced for many years, the father was not the

custodial parent, and he was not close to either child.

The Assistant United States Attorney handling this case spent seven hours in mediation, and estimates that if the case had not settled, it would have required several weeks to prepare for trial.

Dispute Resolution Used in Affirmative Litigation Under The Fair Housing Act

Appellate Mediation Program Used after a Loss in District Court to Obtain Favorable Settlement, Saving the Time and Uncertainty Involved in an Appeal

The Department of Justice sued a condominium association under the Fair Housing Act for discrimination on the basis of disability, because the condominium refused to provide a parking space near the building for an individual with a mobility impairment. The district court ruled against the United States, finding that the condominium had no authority to allocate such a space under state law. On appeal, the Sixth Circuit directed that the case be placed in its mediation program. The mediation took approximately three hours and resulted in a payment of $10,000 to the complaining party, who had moved away from the condominium; a consent decree under which the condominium agreed to accommodate individuals with disabilities in the future to the extent authorized by law; and vacation of the lower court's decision. The Civil Rights Division attorney handling the case felt the mediation allowed the parties to reach a favorable result. The complaining party obtained significant relief without the delay of an appeal, the Division eliminated a bad legal precedent, and the process saved the Department 20 to 40 hours of staff time that would have been necessary to pursue an appeal in circumstances where reversal of this adverse ruling was not certain.

Appellate Mediation Used to Expedite Ultimate Relief

HUD sued a municipal housing authority for discrimination on the basis of race, alleging that the authority assigned African Americans to public housing in less desirable neighborhoods, while giving preferable housing to whites. The complaining party had asked to move to a better neighborhood, the authority had refused her request, and her home was then fire-bombed.

The HUD Administrative Law Judge awarded $180,000 in damages to the complaining party. The authority appealed to the Ninth Circuit. The parties were negotiating a settlement, but the court's briefing schedule threatened to disrupt the discussions. The Civil Rights Division attorney on the case arranged to put the case into the Ninth Circuit's mediation program, and the mediator was able to delay the briefing schedule to allow the settlement negotiations to be completed. The parties agreed to a settlement under which the housing authority gave the complaining party a house in a desirable area. Although the mediator's skills were not essential to this settlement, the availability of the alternative process saved the parties from having to prepare briefs and appellate arguments (approximately 60 hours of Department staff time), expedited the complaining party's receipt of compensation (by approximately two years), and avoided the possibility that the Ninth Circuit would reduce the Administrative Law Judge's damage award.

Appellate Mediation Used to Expedite Payment of Judgment and Avoid Appellate Court Ruling

on Novel Issue of Law

In this Fair Housing Act case, the complaining party, who had AIDS, was evicted by his landlord, who was aware of the complaining party's disability and knew that the eviction would deprive the complaining party of the supportive community he had established in that location. The HUD Administrative Law Judge awarded $48,000 in damages and the landlord appealed. The Ninth Circuit selected the case for submission to its mediation program. The mediation session lasted approximately three hours and resulted in an expedited damages payment of $32,000 to the complaining party's estate. The attorney handling the case expressed satisfaction with this result because it expedited payment of the judgment and avoided a possible adverse ruling on a novel question of law. She estimated that mediation saved the Department approximately 60 hours in staff time and expedited resolution of the case by approximately a year.

Mediation Used to Achieve a Remedy That a Court Could Not Provide in Housing Litigation

After filing suit against the owners of a large housing complex for violations of the Fair Housing Act, the Civil Rights Division suggested the parties use mediation in an attempt to negotiate a settlement. The defendants agreed and a mediator was selected. After several sessions, the parties reached a settlement. In addition to the defendant's agreeing to comprehensive injunctive relief barring future discrimination, the Government received $1 million in monetary relief. This relief included a significant payment to create a fund for yet-to-be identified victims of the defendant's activities, and additional money that will go to a nonprofit corporation to establish affirmative integration programs at that housing complex. The relief also included comprehensive advertising of the provisions of the consent decree to the minority members of the community. Thus, the negotiated relief, obtained with the assistance of the mediator, included elements no court would have the authority to order.

Federal Eminent Domain

Prospect of Mediation Convinces Law Firm to Settle Condemnation Case Before Mediation Process Begins, Saving Time That Would Have Been Spent in Mediation and Discovery

When the General Services Administration needed to acquire property to expand a Federal courthouse, the Land Acquisition Section of the Environment and Natural Resources Division filed a condemnation action against a building adjacent to the courthouse that was owned by a law firm. The parties were far apart in their views of just compensation, and early efforts to settle the case were unsuccessful. At the suggestion of the trial judge, the parties agreed to mediation. In the course of preparing for mediation, the landowners indicated that they would settle for a very small increase in just compensation above the Government's last offer. The Government increased its offer by that amount and the case settled. The Land Acquisition Section attorney handling the case believes that the case would have settled in any event, but the need to prepare for mediation caused the law firm to recognize the weakness of its case earlier than would have otherwise happened, thereby saving the parties from taking a number of depositions prior to an inevitable settlement.

Third-party Neutral Convinces Landowner That its Method of Valuing Condemned Property Will Not Succeed at Trial and Settlement Is Obtained after Modest Concessions by the Government

In another case involving an expansion of a Federal courthouse, the Government condemned a building owned by a private business. Here, the parties were unable to settle because the landowners insisted on using a method of valuation that the Federal Government refused to recognize as legitimate. After the district court rejected the Government's request to use non-binding arbitration, the parties proceeded to mediation. By using private caucuses with each party, the mediator was able to persuade the United States to increase its offer of just compensation by $65,000. At the same time, the mediator worked with the landowners and they began to realize the flaws in their appraisal approach. The case settled when the landowners reduced their claim by $300,000, ultimately accepting the Government's last offer.

Title VII Litigation

Mediation Used to Settle Weak Racial Discrimination Claim for Non-monetary Award

A Federal agency was sued for racial discrimination and an unspecified amount of damages on the basis of a performance evaluation that was lower than that expected by the plaintiff. After the Assistant United States Attorney took the plaintiff's deposition, the Government filed a motion for summary judgment. While that motion was pending, the court suggested mediation.

The Government arrived at the mediation convinced that the strength of its case warranted no concessions. The plaintiff had left her job with the Federal agency; she demanded an award of $50,000. The mediator worked with both parties and, after several hours, the case settled for no monetary payment when the Federal agency agreed to prepare a "neutral" letter regarding the employee's performance, and to arrange for all reference calls from prospective employers to go to a pre-determined supervisor who would not make any reference to the disputed performance rating, which remained unchanged. The Assistant handling the case estimates that the settlement saved the Government additional discovery that would have been required if the summary judgment motion had been denied.

Environmental Law

Mediation Used to Resolve Underlying Controversy and Avoid Future Litigation Where Federal Agency Was Virtually Certain to Prevail in Immediate Lawsuit

Several municipalities adjacent to a large regional airport sued to challenge an Environmental Impact Statement prepared for an airport expansion project funded by the Federal Aviation Administration (FAA). In anticipation of this litigation, the Statement had been prepared in close cooperation with attorneys in the Environment and Natural Resources Division of the Department. Moreover, the FAA had the benefit of an unblemished record of victories in challenges to its actions involving the National Environmental Policy Act.

Nevertheless, the Federal attorneys asked the court to put the case into its mediation program

because they believed that a victory in the NEPA case would not prevent additional controversy and endless litigation, once the airport had been expanded. With the mediator's assistance, the FAA, the airport operator, the adjacent municipalities, and others were able to create a regime for future airport operation that addressed the role of the FAA in air traffic and safety, the needs of the region for additional air transportation, and the concerns about additional airport noise by nearby communities located under the flight paths. In this manner, the mediator was able to resolve the underlying controversy that provoked the litigation, in the context of settling a suit that the Government was virtually certain to win.

False Claims Act Litigation

Offer to Mediate Prior to Filing Complaint Against Defendant Results in Favorable Settlement

A United States Attorney was about to file a False Claims Act suit against a large corporation engaged in international agricultural trade, for having improperly claimed refunds of customs duties on the export of certain agricultural products. The company had asserted its entitlement to refunds based on a complex regulatory scheme. Prior to filing the case, the United States Attorney invited the corporation to participate in mediation, in the hope of obtaining a swift, consensual resolution of this enforcement action. The company agreed to mediation and, after several sessions, decided to pay the United States several million dollars in settlement of the Government's claim that it had improperly received custom duty refunds. In the judgment of the United States Attorney and the Civil Division, the mediation produced a satisfactory resolution of a complicated case in far less time than would have been required to litigate the matter.

Want Help? Call us

The Senior Counsel for ADR in the Department of Justice can provide whatever assistance, advice, or information you need to represent the United States in a dispute resolution proceeding. This office was created in 1995 by the Attorney General to encourage greater use of ADR in civil litigation throughout the Department.

OFFICE OF THE SENIOR COUNSEL FOR ADR

Telephone: (202) 616-9471
Fax: (202) 616-9570
Email: SMO02(STEENLAN)

SERVICES

- Drafting mediation agreements
- Locating third-party neutrals: mediators, early neutral evaluators, arbitrators
- Funding for dispute resolution

- Providing advice and guidance on dispute resolution strategies
- Working with you to persuade opposing counsel to use ADR
- Assisting in the expedition of settlement agreements obtained in settlements using dispute resolution
- Providing guidance when the court directs the Government to use ADR
- Training in representing the Government in dispute resolution processes
- Putting you in contact with other Department attorneys who have experience using ADR

Have You Used Adr? Tell Us about It.

We are very interested in learning about your experiences—good, bad, or indifferent—in using ADR to achieve successful settlements in civil litigation. We would like to know if your mediator met your expectations so that we can make informed decisions when other Department of Justice attorneys consider using that person. We would also like to know if you have used certain techniques that have proven successful in your role as an advocate in an ADR process.

Many attorneys find themselves practicing in districts with court-ordered ADR programs. Some of these programs, in terms of timing of the ADR event, may make it more difficult for our attorneys to reach a settlement in Government cases. We would like to work with you on such issues. Other attorneys have taken the initiative on their own, retaining private ADR providers and retired judges to assist them in negotiating settlements with opposing counsel.

A growing number of Magistrate Judges are being trained to be effective mediators, while others continue to conduct settlement conferences in an old fashioned, arm-twisting manner. We would like to share the secrets of your success with other Department attorneys, and help you to resolve whatever problems you might confront as the use of ADR becomes more prevalent in Federal courts.

Tell us what’s happening in your district and in your cases so that we can share the knowledge, address the problems, and become more effective in using these processes, where appropriate, to better represent the United States in civil litigation.

Removing Barriers to the Use of Alternative Dispute Resolution

Peter R. Steenland
Senior Counsel for ADR
Civil Division
(202) 616-9471

As part of the Department's program to encourage greater use of dispute resolution, we are attempting to remove any barriers or impediments that may inhibit its use. If you have questions about these actions or questions about using ADR in your cases, please call. We want to help you.

The following are some of the steps we have taken:

- **ADR Case Selection Criteria**: To assist you in determining if ADR is appropriate in your cases, a group of Civil Chiefs and other Assistant United States Attorneys experienced in ADR have prepared a document containing case selection criteria for all types of ADR. Copies were sent to all United States Attorneys' offices. If you cannot locate your copy, we can provide you with one.

- **Funding**: Where court-appointed settlement officers are not available, using private dispute resolution providers such as mediators costs money. Instead of hiring third-party neutrals at the expense of your litigation budget, the Department has created a special fund solely for ADR. Funds to hire neutrals can be obtained by completing a standard OBD-47 form, which previously was used only to retain witnesses. Your Administrative Officer has been delegated authority to use this fund for ADR requests, up to $8,000 per case.

- **Standard Forms**: The ADR Office has draft mediation agreements and other ADR documents that we can Email to you.

- **Locating and Selecting Neutrals**: The Senior Counsel for ADR regularly assists Assistant United States Attorneys in identifying and selecting neutrals to provide ADR services.

- **Reporting**: The ADR reporting form has been changed as a result of requests by several Civil Chiefs. The new form eliminates the requirement to estimate the benefits of ADR. Ultimately, the form will not be necessary because ADR reporting will occur as information is entered in the new Executive Office for United States Attorneys' (EOUSA) docket tracking system.

- **Liaison with Court Officials**: The Senior Counsel for ADR consults regularly with court-appointed settlement officials in the various districts and circuit courts of appeals on the use of ADR in Government cases, and Assistants are encouraged to share their experiences and suggestions with the Senior Counsel for ADR.

- **Training: Enhanced Negotiations and Mediation Advocacy**: In conjunction with the EOUSA's Office of Legal Education, we are training Assistants in enhanced negotiation techniques and mediation advocacy. If you have not been trained, we will be training in your district soon.

- **Recognition for Settling Cases**: In the past, Assistants who settled cases on terms favorable to the Government did not always receive the same recognition as those who litigated cases to an ultimate conclusion. We have created a John Marshall Award for ADR as one step toward the Attorney General's larger goal of encouraging greater use of ADR. Assistant United States Attorney Janice Hebert, Western District of Louisiana, received the first award last year. The Attorney General's policy statement on recognition for the use of ADR is attached.

Qui Tam Litigation—A Billion Dollar Industry

Judith Rabinowitz, Senior Trial Counsel
Commercial Litigation Branch, Civil Division
(202) 307-0386

There are two major changes in the world of Affirmative Civil Enforcement (ACE) that have taken place in the past decade in United States Attorneys' offices (USAOs). First, ACE exists in all USAOs. Civil fraud recovery has become an integral part of the resolution of any white collar investigation in which the Government is the victim. Second, qui tam litigation has redefined civil litigation.

Qui tam actions, commonly known as whistleblower suits, are actions filed by private parties on behalf of the United States under the civil False Claims Act (FCA), 31 U.S.C. §§ 3729-3733. The substantive provisions of the FCA establish liability for any person who knowingly presents, or causes to be presented, a false claim against the United States. Claim is broadly defined to cover any request or demand for payment, be it under a Department of Defense (DOD) contract, a National Institute of Health grant, a Commodity Credit Corporation guaranty, or through a claim for Medicare benefits. Unlike in criminal cases, the burden of proof under the FCA is preponderance of the evidence, making civil false claims actions attractive even when the evidence does not meet criminal standards.

But perhaps the most compelling feature of the FCA, for whistleblowers and the United States alike, is the remedy it affords—three times the Government's damages plus a $5,000 to $10,000 civil penalty for each false claim presented. As a qui tam plaintiff or "relator," a whistleblower in a successful case can collect up to 30 percent of the Government's recovery in the action.

Although the qui tam provisions were part of the FCA since its birth during the Civil War, they have reached prominence only in the last decade as a result of extensive reforms enacted in late 1986. The FCA Amendments of 1986 made it more lucrative for a relator to bring a qui tam action and loosened severe jurisdictional restrictions on bringing suit.

Qui Tam Impact

Before taking a closer look at the 1986 Amendments, let's look at just how big an impact they have had. In the decades before the amendments, there were only a handful of qui tam suits. The first year of the amendments, Fiscal Year 1987, there were 33 cases. That number topped 100 in Fiscal Year 1992, and reached over 200 in Fiscal Year 1994. In Fiscal Year 1996, relators filed 360 qui tam cases—nearly a case a day, weekends and holidays included.

No doubt, some of these cases involve allegations already under investigation by the Government and, in that sense, they may not all be "new" matters. But the presence of a qui tam action adds a new dimension to a case. Suddenly, the relator, qui tam procedure, and the court, establish the timetable for the investigation and litigation, not the Government alone. Also, there is a third party in the litigation—the relator—not the adversary, to be sure, but not quite co-counsel either.

And then there is the enormous number of new cases. Obviously, new cases mean more business,

but the impact does not stop with ACE. Many qui tam actions result in criminal referrals and eventually lead to convictions or global settlements.

In the early years of the amendments, DOJ handled the vast majority of qui tam actions. The Fraud Section of the Civil Division's Commercial Litigation Branch was responsible. The reason for centralized handling was to facilitate congressional information requests and to establish a uniform interpretation of the novel new provisions. As the issues became more defined and established in the case law, and the number of cases became overwhelming, DOJ began to treat these cases similarly to any other civil fraud action. In other words, qui tams are regularly delegated, monitored, and jointly handled with USAOs. However, delegation is slightly different for qui tam cases. Because of DOJ's need to respond to congressional requests for information, Assistant United States Attorneys must report back to DOJ on the intervention status and disposition of delegated qui tam cases.

Not surprisingly, there is a pattern between the kinds of qui tam cases being filed and the districts handling them. Roughly 1,630 qui tam actions have been filed since the amendments took effect. DOD accounts for about 725 of the these cases. Health and Human Services is second with a little over 600 cases, although health care fraud is out pacing defense procurement in new filings. No other agency breaks out of the double digits. (The Veterans Administration and the Department of Interior tie for third with about 100 cases each.)

As you might expect, California, with its prosperous defense industry, is home to a huge number of these cases (Central District, 242; Northern District, 73; Eastern District, 62; and Southern District, 41). Meanwhile, Florida, with a significant portion of its population on Medicare, sees the next largest chunk (Middle District, 57; Southern District, 35; Northern District, 11). Some districts are just beginning to see qui tam suits, but one thing is sure—there will be more, a great many more, in the future.

Another obvious way to assess the impact of qui tam cases is to look at recoveries. Since 1986, the Government has pursued about one-fifth of the cases filed—220 cases overall—and recovered $1.13 billion. Relators have received about $197 million as their share, or an average of 18 percent, where shares have been determined.

The Government declined intervention in 812 cases. Relators who pursued those cases recovered about $26 million and received $7 million as their share. In other words, $98 of every $100 recovered in qui tam cases has been recovered in cases the Government had pursued.

The remaining 540 cases are under investigation.

Qui Tam Procedure

Qui tam procedure is set forth at 31 U.S.C. § 3730. A relator initiates an action by filing a complaint under seal. He or she then serves a copy of the complaint and a written disclosure of "substantially all material evidence and information the person possesses" on the Attorney General and the United States Attorney for the district in which the action is filed. The purpose of the seal

is to allow the Government to investigate the allegations, unhindered by publicity or the defendant's knowledge.

The action remains under seal for an initial statutory period of 60 days. At the end of that period, the Government has the option of electing to intervene in the action, electing to decline intervention, or (most likely) asking the court to extend the seal to allow additional time for investigation and consideration of action. Complex cases and cases involving parallel criminal proceedings can remain under seal for two or three years. In some cases, the Government may seek an order allowing the seal to be partially lifted for the purpose of discussing settlement with the defendant before intervention and active litigation.

If the Government does intervene, it assumes primary responsibility for prosecution of the case. However, the relator continues to be a party in the action, which adds a new dynamic to what is otherwise the Government's civil fraud case. Relators can be valuable sources of information and understanding, particularly when they are present or former employees of the defendant. On the other hand, they may not have a realistic understanding of the strengths and weaknesses of their cases or the time it takes for investigation and prosecution. It is always best to keep relators generally informed of the progress of the case and to create realistic expectations to preempt challenges to proposed settlements later on.

If the Government elects not to intervene, that does not mean that the case is over for the Government. The United States is still the real party in interest. Therefore, the Government attorney handling the case must continue to monitor the proceedings. There are six important reasons for continued monitoring: (1) to protect the Government's interests should facts emerge to warrant later intervention; (2) to ensure that attempts by relators to amend their complaints to include new allegations are executed under seal, entitling the Government to a new statutory period to investigate and to elect whether to intervene with respect to new allegations; (3) to review settlement agreements to ensure a fair allocation of false claims allegations as compared to any companion employee discrimination claims, common law claims accruing to the relator, or amounts allocated to "fees and costs"; (4) to ensure that settlement agreements conform to the requirements of civil fraud settlements, including the requirement for a narrow release no broader than the scope of the complaint; (5) to safeguard the interpretation of the FCA by filing amicus briefs when warranted, both in the district court and at the appellate level (the latter as authorized by the Solicitor General); and (6) to maintain and report back to DOJ statistical information necessary to respond to information requests from Congress and the media concerning qui tam actions.

The relator's share of any recovery depends on whether the Government intervenes. If the Government does intervene, the relator is entitled to 15 to 25 percent of the proceeds of the action, "depending on the extent to which the person substantially contributed to the prosecution of the action." The statute authorizes a smaller share, or no share at all, under very limited circumstances. If the Government declines intervention, the relator is entitled to 25 to 30 percent of the proceeds. DOJ has developed Relator's Share Guidelines, citing the relevant case law. These guidelines are available through your Civil Chief, or you may contact the Commercial Litigation Branch.

Finally, the qui tam provisions bar suits "based upon the public disclosure of allegations or transactions," unless the relator is an "original source," which the statute defines as a person with "direct and independent knowledge of the information on which the allegations are based." What constitutes an action "based upon a public disclosure" and what it means to be an "original source" are probably the most frequently litigated issues under the qui tam provisions. Indeed, the unique nature of qui tam provisions generally, and the flood of new qui tam cases, have generated hundreds of new opinions and a growing relators' bar. Government lawyers need to be prepared to meet the challenges of handling these cases.

Government Resources to Meet the Qui Tam Challenge

Judith Rabinowitz, Senior Trial Counsel
Commercial Litigation Branch, Civil Division
(202) 307-0386

Perhaps the best way to learn how to meet the qui tam challenge is to attend the conference this month on qui tam litigation. This conference, sponsored by the Commercial Litigation Branch in conjunction with EOUSA and the Office of Legal Education, will be held February 26 to 28, 1997, in Washington, D.C. The conference will offer an intense course on qui tam procedure, the practical side of handling qui tam cases, and developing issues in qui tam litigation.

Before and after the course, Government attorneys can take advantage of DOJ's decade of experience in handling qui tam cases, both through DOJ publications and by contacting DOJ attorneys directly. A chapter in the Civil Fraud Monograph, published by the Commercial Litigation Branch, is devoted to qui tam litigation. First written in 1994, this chapter will be revised and reissued early this year. As previously mentioned, a separate paper on Relator's Share Guidelines is also available.

DOJ also issues the *ACE Hotline!*—an Email publication that includes announcements of general ACE interest and a rundown of recent decisions on civil fraud issues, including qui tam cases. The *ACE Hotline!* is transmitted about every six weeks to all Assistant United States Attorneys handling ACE cases.

Finally, DOJ offers access to the entire ACE network. Just call the author of this article or any other DOJ civil fraud attorney. If we cannot answer your questions, we can send them over the Email network to find someone who can. As many Assistant United States Attorneys already know, this is a valuable resource not only for general questions about handling qui tam cases, but also for finding out specific information related to your case, such as the scoop on an expert (yours or your opponent's) or whether there are investigations pending in other districts related to the qui tam in yours.

Thoughts on Current Bankruptcy Issues

Assistant United States Attorney Anthony LaBruna
District of New Jersey

You know the routine, the conversation usually goes something like this:

FRIEND, RELATIVE, ACQUAINTANCE, TOTAL STRANGER (FRATS): Hi! How are you? Are you still over there in New Jersey at the Attorney General's office?
ME: Well actually, it's the **U.S.** Attorney's office.
FRATS: That's the state, right?
ME: No. . . it's the **United States** Government.
FRATS: So, you send anybody up the river lately?
ME: No. . . I don't "send people up the river," I do civil litigation.
FRATS: What's that?
ME: Well, sometimes people sue the United States and we defend the case, other times we sue them.
FRATS: And then you put them in jail?
ME: No. . . these aren't crimes, besides, we're the defendant in a lot of these cases.
FRATS: You have anything to do with that mob guy they caught?
ME: No, I don't do that.
FRATS: You should put those guys in jail forever.

And so it goes. Sometimes I wonder if it wouldn't just be easier to switch to the Criminal Division, rather than to engage in the Sisyphean task of trying to explain what it is that we do in the Civil Division. Indeed, if I am finally given the opportunity after such scintillating repartee to ultimately explain our job, the response is often greeted with glazed eyes and that painful expression of someone who is trying desperately to look interested for a polite amount of time before switching the subject, or abandoning me altogether in favor of the guy on the other side of the room who is regaling the crowd with his story of how he ran into some well-known hockey player at Burger King.

Given the opportunity, however, I will explain that we not only defend the various and sundry suits arising from unwanted vehicular encounters, ubiquitous slip-and-fall on Government property, disappointed bidders' disappointments, airplane accidents, malpractice, condemnation, dumping of unwanted hazardous chemicals and other stuff almost anywhere, getting back stuff that belongs to us, and so on, but we also affirmatively prosecute (if I can use such a criminal sounding word without actually having to send anyone to jail) affirmative cases for the myriad abuses of Federal programs and property, dreamed up by the clever, and not so clever, public. We collect money, give away money (sometimes), and count money. We foreclose and forebear. We protect civil rights, constitutional rights, Government rights, personal rights, and the environment. Indeed, in certain cases, we even act as criminal **defense** counsel. In short, we do a great many things that make for really lousy cocktail party conversation.

Perhaps it is that very same diversity of practice which, while fascinating to us, is uncontrollably soporific to others. It is work which can involve issues of first impression, fine distinctions of the law, and factual scenarios which constantly challenge the "little grey cells" (see Hercule Poirot)

but which would bore the man-on-the-street to tears.

It is in this context, therefore, that we now come to a relatively unknown realm of bankruptcy practice. Civil practice is to bankruptcy, what Pluto is to its moon in the solar system of the United States Attorney's office. It is perhaps one of the most neglected areas of Government practice and often involves issues and procedures wholly unfamiliar to the average Assistant United States Attorney. With this in mind, I would like to highlight some of the issues that might be encountered, as a way of increasing the understanding of the way bankruptcy impacts our civil practice. One should be mindful of the fact that this article is more in the nature of an exercise as to what might be encountered on a trip to that distant planet, rather than definitive answers as to whether light reaches the surface and does it sustain life. Furthermore, I cannot even begin to touch upon all of the thousands of issues which could arise in a bankruptcy context; rather, I will briefly highlight some issues in bankruptcy which have recently been raised and which may form the basis for a broader understanding of the subject.

While a great deal of civil sweat is expended fending off would-be claimants against the Government fisc, far less is often expended trying to recover what is owed to or owned by the United States. Perhaps this is because some may view the efforts in this regard as exceeding the return, some see it as a futile process, or some simply do not identify the ways in which the United States can participate in the bankruptcy process.

Bankruptcy litigation is very different than other civil litigation. By definition, the law and the rules are heavily weighted in favor of the debtor. Thus, for example, if it suits the debtor's purpose, the case may move very quickly, or it may not move at all. Creditors are left to their own devices to protect their interests, and if they fail to participate, in most cases, their interests will be largely unrepresented. This is not necessarily a bad thing. If one determines that the United States' interests are no different from that of other similarly situated creditors, and that there is little you can do, then participation in the bankruptcy may not be necessary. For example, if the United States is owed a relatively small amount of money from an individual creditor; the debt is a general, dischargeable, unsecured debt; and the bankruptcy is a no-asset, Chapter 7 liquidation, odds are that participation by the United States would be of no benefit. But the United States is often in a position different from other creditors. Our debts are often secured, or priority, or large, or non-dischargeable, or not debts at all. In these circumstances, it is often in the Government's best interest to participate in the bankruptcy. Finally, it has been my experience that, while most of the cases we are involved in are within the context of Chapter 13, by far the most complex (and interesting?) issues occur in the context of Chapter 11.

The United States, however, is rarely invited to participate in a bankruptcy, except under circumstances of necessity. Unlike regular civil litigation (if there is such an animal), the bankruptcy court and the various participants do not necessarily encourage other individuals to participate in the bankruptcy process. Furthermore, despite the fact that Federal Bankruptcy Rule 2002(j) requires notice be given to the United States Attorney, it does not always happen. Failure to notify the United States generally is not fatal, *per se*, to the process. Thus, you will have to move to reopen the issue and you may have to show that failure to give the United States notice is more than just harmless error.

To begin the process, you should request notice pursuant to Rule 2002 if you want to participate in the bankruptcy and receive notices of activities in the case. Before participating in any bankruptcy proceeding, it is very important to read *United States v. Nordic Village, Inc.*, 503 U.S. 30, 112 S.Ct. 1011, 117 L.Ed.2d 181, 60 USLW 4159 (U.S.Ohio, Feb 25, 1992) (No. 90-1629), and any related cases for your district. It is important not to waive sovereign immunity in some circumstances; this is an issue to consider prior to participating in any bankruptcy proceeding.

Debts Which are Non-dischargeable or Limited in Their Dischargeability

The United States is treated differently from other creditors in the area of non-dischargeable debts. Congress recognized that there are some circumstances where it would be against public policy to allow a debtor to discharge a debt owed to the United States. Most, **but not all**, of these exceptions can be found in 11 U.S.C. § 523. Before deciding how to proceed in any case, read both § 523 and the statute under which the debt to the United States was created. Debtors and their attorneys often fail to read the statute related to the debt, which may provide for a different dischargeability standard.

The greatest number of cases falling within the purview of § 523 undoubtedly occur under § 523(a)(8), which covers the dischargeability of educational benefits. While most attorneys understand this exception, frequently they are unaware of the exceptions to this exception. In our district, perhaps the most problems occur in relation to grants under the Health Education Assistance Loan (HEAL) Program and the National Health Service Corps (NHSC) scholarship programs. In both instances, the dischargeability of the debt is governed by the Loan/Scholarship statute, **not** by § 523. Debtor's attorneys often make the mistake of relying on the wrong statute much to the detriment of both their clients and themselves. The standards for the discharge of HEAL loans and NHSC scholarships are very different than routine educational loans (42 U.S.C. §§ 292-292p; 42 U.S.C. §§ 254d, *et seq.*).

Other debts under § 523 which can be non-dischargeable involve those that relate to fines, penalties, or forfeitures payable to the United States [11 U.S.C. § 523(a)(7)]. While many of these debts are straightforward, one type of case in particular may prove troublesome: the type of case where, under perhaps an environmental statute, a consent decree is signed by the defendant or potential defendant in settlement of the case. In those documents, often the defendant insists that there be language indicating that he is not admitting to any liability for the violation, and that nothing in the document should be interpreted as an admission of wrongdoing. While this language may make settlement of the matter easier, it presents a problem should the debtor file for bankruptcy. In that case, there may be no clear documentation for finding that the debt falls within the ambit of either 11 U.S.C. § 523(a)(2) or (7). While it is still clearly arguable that the debt relates to fraud, false representations, fine, or penalty, it would be easier if the original settlement document included language designed to avoid this problem.

Return of Government Owned or Secured Property

This is an enormously broad category and cannot be covered thoroughly here. Nonetheless, I

would like to highlight potential trouble spots. The Bankruptcy Code was definitely not written with the United States Government in mind, although over the years, there have been a number of improvements which helped address some of the special needs of the United States. Nonetheless, getting Government owned or secured property returned to the United States can still present a formidable challenge.

Real Property

Recently, the shortcomings of the Code have become painfully evident with respect to HUD financed, multi-family housing. In a case in our district which is still being litigated, HUD attempted to foreclose on a mortgage of a multi-family housing complex that is seriously in default. HUD previously pursued rehabilitation of this complex and chose not to foreclose, they recently experienced a change of policy, whereby high-density, multi-family dwellings are no longer considered desirable for the low-income, urban population. The debtor, in an attempt to forestall the foreclosure, filed a Chapter 11 bankruptcy petition. We have been litigating this bankruptcy for several months in an attempt to recover the building and replace it with better, safer housing. What has become evident from this process, however, is that the Bankruptcy Code is not designed to address the more altruistic aspects of Government policy. Rather, it is focused on the financial aspects of the situation, leaving public policy-type issues waiting in the wings. The United States, therefore, is left with rather limited remedies, and with clients who sometimes are unable to understand why the process cannot be expedited.

The issue of secured real property also is seen in the context of SBA loans. In a Chapter 11 case, owners of a business, who many years ago obtained several SBA loans, filed a Chapter 11 petition. These loans were secured by the equipment of the business and the personal guarantees of the principals of the business. The personal guarantees were further secured by mortgages on the real property of the principals. By the time the Chapter 11 was filed, the equipment was worthless, the elderly principals had no traceable assets, and their equity in the real property was very small in comparison to the debt. Ultimately, through a complex settlement agreement, the reorganized business (now under new ownership) agreed to assume the debt and make payments to the SBA, in exchange for an agreement not to pursue the former owners on the personal guarantees, so long as the debt was being paid. The resolution required creative negotiations which exploited the remaining strengths of our security.

Return of Property Not Part of the Estate

There are a number of situations where the Government might request a return of property that is not property of the bankruptcy estate. These types of cases present many legal issues, not the least of which is likely to be a challenge by the debtor that the property is, in fact, part of the bankruptcy estate.

The circumstances in which this issue has come up are varied. In one case, a large, established, four-year college filed a Chapter 7 bankruptcy petition. The college was administering scholarship money for the Department of Education (DOE) and the funds were supposed to be maintained in a separate bank account because they did **not belong to the school**; it was money the school was

holding as trustee for DOE. As trust funds, therefore, this money cannot be part of the bankruptcy estate because it was not property of the school. Nonetheless, the Chapter 7 trustee is claiming that part of the funds belong to the estate under a complex set-off type theory. To further complicate the issue, the administrators of the school mismanaged the money and co-mingled the funds with the operating account of the school, using the funds to pay the school's day-to-day expenses. This case presents a number of complex issues involving the interplay of several DOE statutes with the Bankruptcy Code. Currently, the district is trying to negotiate a settlement of our adversary complaint without further litigation.

Another similar situation involves the bankruptcy of a major airline. This case raised a hoard of bankruptcy issues involving the United States. In the first instance, the airline has been or will be subject to a number of costly fines by the FAA for various violations of rules prior to the bankruptcy. In addition to these fines, money is also owed to IRS and at least three other Government agencies—the Department of Agriculture (USDA), United States Customs Service, and the Immigration and Naturalization Service (INS)—on account of fees for passengers on international flights. USDA, INS, and Customs Service say that the fees are, in fact, held in trust (in much the same way that DOE funds were held in trust) and, thus, they are not part of the bankruptcy estate and must be turned over to the United States. It is too early in litigation to determine if the district will prevail on all of the issues raised in this case.

Another case involves an attempt to secure the return of Government property in the possession of a defense contractor that has filed a Chapter 11 petition. Here, we are trying to secure the return of property given to the contractor for repair prior to the filing of the petition. This property is owned by the United States and should **not** be property of the estate. Nonetheless, the contractor is balking at the return because they have partially performed under the contract. While the law is seemingly clear on the return of United States property used for defense, and the lack of any right by the debtor-in-possession to assume an executory defense contract, there is still a fight to secure the property for the Government.

Other Recent Issues

The district has been beset by several cases where the debtors claimed that a United States agency violated the automatic stay by taking the debtors' IRS refunds and applying them toward the debts. The debtors are asking for return of the money and for sanctions for the perceived stay violations. These cases raised issues of voidable preferences, automatic stay violations, set-off of a pre-petition debt with (so they say) a post-petition obligation, and mutuality of obligation. Circuits (and districts) are split on some of these issues, and some are cases of first impression as they apply to the facts of the case. Again, the outcomes of these cases remains to be seen but, where the law in the district is undecided, there is an opportunity to create law favorable to the interests of the United States.

While there is virtually an unlimited number of issues which present themselves in the context of bankruptcy, space permits only the most cursory overview of what we have seen as the "hot" topics in recent cases. Bankruptcy can be a complex and misunderstood process. It is also an unfortunate aspect of this practice, that some members of the bankruptcy bar seek to exploit the

weaknesses of the process to their own advantage in ways that might be considered incongruous with the intent of the law. To this extent, it is critical that the Government attorney be alert to potential abuses and bankruptcy fraud, and make the appropriate referral when necessary. Perhaps at the next party when someone asks who I've sent to jail lately, I'll have something different to say.

Why Criminal Folks Should Love to Work with Civil Folks (and Vice Versa)

Assistant United States Attorneys Michael K. Loucks and Susan G. Winkler
District of Massachusetts

AUSA Loucks is in the Criminal Division and AUSA Winkler is in the Civil Division. Together with AUSA Mark J. Balthazard, also in the Criminal Division, we worked on an investigation of a large clinical laboratory company. The process was successful and fun. We exaggerate just a little the commonly held criminal and civil positions on joint investigations to make some points.

In big dollar fraud cases where a Government program is the principal victim, two situations frequently recur nationwide, both at Main Justice and at United States Attorneys' offices. The specifics differ but the end results, unfortunately, are all too similar. The Government attorneys involved, whether Criminal or Civil, often look back upon the results of these cases as the most successful of their career. Yet because of the failure of close coordination, the Government is shortchanged and *no one ever even discusses it.*

What are we talking about? Consider these facts and the two ways these big dollar fraud cases are usually handled. A large corporation cheats the Government, through one of its programs, of $40 million. Twenty-five million dollars of the fraud is provable beyond a reasonable doubt. The remaining $15 million is provable as civil false claims. District A usually handles program fraud through a long, slow grand jury investigation. In District B, the Criminal Division folks' eyes glaze over when the box count is over 10, and these same cases are "first" investigated civilly.

The Normal Criminal Game: Squeezing the Civil Division

You are the criminal AUSA in District A. You do your normal two-year grand jury investigation and hardly involve the Civil Division in the case until the end, when the company requests a global resolution. With statutes of limitations looming, you issue an ultimatum to the company—pay the fine called for by the Sentencing Guidelines (1.4 times the $25 million loss) and restitution or get indicted in two weeks. The company caves. They plead and give you all the money but they want a civil release, and they want it nationwide. You agree, and now, at the eleventh hour, you bring in the Civil Division (but boy do you hate that).

You learned most of your evidence through the grand jury and don't want to share it with civil. (You have a case against individuals that you don't want to mess up.) And besides, you have other things to do to get the criminal plea resolved, and this has always been your criminal case. (Heck, the only reason you're even bringing in Civil is because the company wants a global resolution.) Only because you are forced to, you do a bare bones Rule 6(e) disclosure to Civil, after making the Civil AUSA write the motion. You resist any requests for more time because you have the company over a barrel and, frankly, you don't want to lose momentum. The Civil Division in your district and at the Department grumble a bit about the lack of time to consider other alternatives but each falls into line. And, as you have correctly reasoned, how can they stand in the way? You have struck an agreement with the company that calls for the payment of $60 million, a $35 million fine and restitution of $25 million. How can anyone in their right mind refuse to approve the Government getting back $60 million?

So everyone signs the releases within the Department and you and your United States Attorney are heroes. Civil is a bit peeved but they'll get over it. I mean, you got 60 million bucks back for the Government! Who's going to listen to Civil anyway?

We Only Handle Them Civilly 'Cause Criminal is Too Slow

In District B, the agency (or whistle blower) makes sure the case goes to the Civil Division first. The Criminal Division hates complex paper trails and, besides, they take forever to finish investigations. Big dollar fraud cases can be resolved more quickly and with good results on the Civil side. The Government gets its money back quickly and, if the Criminal Division really wants to punish some individuals, well, they can go chase that rainbow. A Criminal AUSA is assigned to the case but only because office policy requires it. The AUSA is really just window dressing.

As the Civil AUSA, you use an IG subpoena to get documents and interview the whistle blower and, maybe, a few more friendly witnesses. You look for a quick way to evaluate the Government's loss (perhaps based upon HCFA audit data) and make some "reasonable" assumptions (guesses really) regarding the extent of the false claims. But that's about it. You make little effort to determine whether anyone had criminal intent (that's not your job) and you don't interview any hostile witnesses. You don't even interview any witnesses currently employed by the company because, frankly, you can't do it in any decent forum—you don't have the power of the grand jury to make people talk to you. And, besides, to use the cumbersome Civil Investigative Demand process will really slow things down and may give defense counsel the opportunity to sit in on your interviews. Who needs that!

With your rough estimate of single damages ($25 million), you explain to the company's attorneys the value of settling quickly. With typical hyperbole that your average defense counsel no longer believes, you threaten three times single damages plus minimum mandatory penalties of $5000 per false claim if they want to fight but, for a fast resolution, you offer double damages—about what the company could have hoped to achieve by self-reporting. They bridle at paying anything on the soft $15 million and you concur—to prove that was really owed would take considerable investigative effort and, besides, they will give you full double damages on the other $25 million. While you don't get them a criminal pass, no one really cares. Realistically, what Criminal AUSA is going to chase after the company after the Civil Division has already scooped all the money? The Criminal case, as you anticipated in the beginning, will just die a quiet death on the vine.

In a quarter of the time it took the Criminal AUSA to get $60 million and a little piece of paper with the word felony on it, you net the Government $50 million.

How'd the Government Do?

The Criminal AUSA clipped the company for $60 million. The Civil AUSA got $50 million much faster. Everyone looked like stars—the United States Attorneys got their press conferences and the Attorney General even did a national press interview about your case. You already expect a Director's Award.

Government do okay? Not hardly. **Both approaches sold the Government short by upwards of $60 million.** One can feel terrific about $50 or $60 million, until considering that the result **should have been *$120 million***.

How so? In the first example, the Criminal AUSA never truly gave the Civil Division a fair shot to collect the full range of damages recoverable by the Government. The entire focus was the Criminal resolution. By the time the Criminal folks "allowed" the civil side of the house to participate, it was too late in the game for the negotiations to fairly include proper consideration of the additional civil damages and appropriate civil penalties. The $15 million in soft fraud seemed unimportant and the civil damages recoverable in addition to restitution (remember the minimum of trebles?) was never considered.

In the second example, the failure to conduct a real investigation cost the Government sorely. Inevitably, the company's lawyers know just what you're doing and **what you aren't doing** during an investigation. During a grand jury investigation, most large corporations are bound by by-laws or statutes to pay legal fees of employees up to the time they are convicted of an offense. With this requirement, company lawyers have a pretty good picture of just who you are **or aren't interviewing**, or who is being compelled to appear before a grand jury **and who is not**. Counsel for the corporation generally obtains reports from friendly defense attorneys regarding your knowledge and understanding of the documents. Whether you are **or not** looking at the paper you have subpoenaed quickly becomes known to your adversary. Ultimately, the company knows if the case has not been sufficiently developed for the Government to press hard, and they obtain a commensurate result.

How the Government Can Do Better

Recently, we prosecuted Damon Clinical Laboratories Inc., in the District of Massachusetts. This case was one of the labscam investigations initially developed by AUSA Carol Lam in San Diego following the prosecution of National Health Laboratories in the Southern District of California. From the moment the investigation was first handed off to Massachusetts, it was worked jointly between the Criminal and Civil Divisions.

To avoid immediate grand jury issues, documents were obtained with Inspector General subpoenas. From the beginning, the Civil and Criminal AUSAs were involved in all planning meetings. Everyone reviewed the subpoenaed documents (even the FBI agents). Before commencing grand jury interrogations, we conducted many interviews of witnesses in several nationwide "sweeps"—the information obtained was equally shared between Criminal and Civil. Where we could and before we began using the grand jury, we issued additional IG subpoenas for documents. The impact on our house was that both Criminal and Civil sides of the investigation were aware of the evidence of the fraud.

After we commenced grand jury, we split up the "non-grand jury" work. There was a clear delegation of work among all Government counsel, so little duplication of effort occurred and the different aspects of the complex investigation could proceed simultaneously. While the Criminal AUSAs were working in the grand jury, the Civil AUSA pursued the audit data necessary to

calculate damages. Civil developed necessary expert and medical testimony—things for which we did not need to use the grand jury. Our weekly meetings were bifurcated—we discussed non-grand jury matters first, and then, with only Criminal AUSAs and investigators present, discussed the grand jury matters.

What was the effect? When the company asked for a global resolution, we presented separate civil and criminal proposals. Chargeable criminal fraud was about $25 million and civil fraud was another $15 million, for a total loss of about $40 million. The company seeking the global resolution was now a successor to Damon which had purchased the problem without knowing it existed, stopped the fraud upon discovery, and cooperated with the investigation. Given those facts, we tempered the size of our demands.

What was our criminal bargaining posture? Assuming that the company paid their damages/restitution on the Civil side, we'd require payment of a minimum criminal fine of 1.4 times the criminal loss, or $35 million, to comply with the Guidelines. On the Civil side, assuming that the company paid the demanded fine on the Criminal side, we'd accept 2.1 times the damages for the criminally based conduct, and roughly double damages for the remaining conduct to fully reimburse the programs with interest, and to recover investigative costs, for a total of $83 million. Thus, the total recovery represented roughly 3.5 times the single damages for the criminally chargeable conduct, and slightly more than two times the damages for the remaining civil false claims.

What was the reaction? First, the company tried to play one side of our house against the other, suggesting there was only so much money on the table, and that if that money went to pay the criminal fine, money would have to come out of the civil penalty. To their surprise, we flatly rejected the argument. Later, the company suggested that they didn't really want a global resolution after all, and they would settle just the criminal case. Our response: fine, but on the criminal side they would have to pay the $35 million fine plus $25 million in restitution, and then they would still have to deal with the civil false claims suit, including the $15 million in civil fraud and the attendant minimum mandatory penalties. In short, we told them we didn't care if it was one battle or two. The threat that the Civil side of our house would, in fact, go forward was credible because Civil was actively involved in all stages of the investigation.

The company had no choice but to pay the ticket we presented. The total recovery for the Government, paid within a week, was $3.00 back for every dollar stolen, for a total of $119 million.

While the ability to pay can sometimes depress a total recovery, in many instances the Government has only a real criminal investigation or only a real civil investigation, and is not truly prepared to try the case on either side. Our adversaries ultimately know what type of investigation has been pursued and can evaluate the seriousness of the demand to pay or fight. Our failure to conduct a truly joint investigation, bringing to bear the full panoply of civil and criminal remedies, will assuredly shortchange our recoveries.

So if you are a Criminal AUSA, bring in the Civil side; if you are a Civil AUSA, bring in the

Criminal side; and, if you are a United States Attorney, make sure your troops understand the value of a joint investigation and then make them do it.

The Office of Consumer Litigation

Director Eugene Thirolf
(202) 307-3009

Consider the following cases, taken from the headlines of recent newspapers:

> Houston, Texas, May 1996. Your office names a local doctor in a 75-count indictment charging mail fraud; violations of the Federal Food, Drug, and Cosmetic Act; and contempt of court. The charges stem from the doctor's sales of a purported cancer cure that FDA has not approved and has long sought to prevent the doctor from selling in interstate commerce. Congressional hearings give the doctor's supporters, people with life-threatening diseases, a platform to praise the doctor. The media actively reports their stories of life and death struggles with cancer. FDA supports the prosecution, but decides to allow more cancer patients to receive the doctor's experimental drugs.[1]
>
> Boston, Massachusetts, August 1996. The morning paper heralds, "what prosecutors term a significant judicial statement about individual responsibility in corporate wrongdoing" when former executives of C.R. Bard are sentenced to 18 months imprisonment after a jury trial conviction. The sentences stem from Bard's marketing of heart catheters outside of required FDA approval processes. Bard earlier pled guilty to 391 counts and paid a $61 million fine.[2]
>
> Rockville, Maryland, June 1996. You open a newspaper to find a headline, "FDA Pushes Halcion Probe." The article concerns an FDA report to Congress saying that the Upjohn Company "hid safety concerns about the controversial sleeping pill Halcion." The FDA report criticizes its own prior handling of the matter. The article continues, "'Further inquiry into allegations of criminal misconduct by Upjohn is most appropriately the subject of consideration by the Department of Justice,' says the report . . . . 'Final resolution of the matter will occur only with a Department of Justice assessment and conclusion.'" A Congressman promises further investigation.[3]
>
> Baltimore, Maryland, December 1995. The morning newspaper contains an editorial saying that your office "has been conducting a little-recognized and under-appreciated investigation into the American pharmaceutical industry." The editorial states that more than 50 convictions against 14 firms and numerous individuals "helped clean up the operations of the generic drug industry." It cites a recent corporate plea and $10 million

---

[1] *Houston Chronicle*, May 2, 1966, "Burzynski Given OK for 50 More Patients"; *Houston Chronicle*, May 3, 1966, "Seaward Fights a New Cancer War"; *The Arizona Republic*, July 31, 1966, "FDA 'Playing God' Parents Say as Cancer Drug Sought for Ill Son."

[2] *The Boston Globe*, August 9, 1996, "Ex-Bard Executives Sentenced"; *The Wall Street Journal*, August 9, 1996, "Former Executives of Bard Receive 18 Months in Jail."

[3] *Chicago Sun-Times*, June 1, 1996, "FDA Pushes Halcion Probe"; *Chicago Tribune*, May 31, 1966, "Evening Business"; *Houston Chronicle*, June 1, 1996, "FDA Admits Mistake, Urges Probe of Halcion."

fine as an example.[4]

> Chicago, Illinois, August 1996. Several years ago successful litigation upheld FDA's seizure of a product called "Sensor Pads," devices designed for women to use in self-examination for breast lumps. The Seventh Circuit upheld FDA's regulation of Sensor Pads, finding that the devices are used in the diagnosis of disease. Today you open the newspaper and learn that FDA's Sensor Pad regulation is being held up as the "poster child of FDA reform," and a Congresswoman is reported to have "persuaded Congress to ask the FDA to allow the product to be sold over the counter. FDA officials are reconsidering, but in the meantime [legislation has been prepared] that would make the pad available over the counter."[5]

What do these cases have in common? At least three things: litigation involving the FDA; important public health implications; and significant interest of the media, Congress, or both. But the publicity can be highly favorable, or significantly skeptical, of the Government's actions.

Simply put, FDA cases involve a mix of scientific, medical, and public health issues. Unlike most fraud cases, the interplay of those considerations can create disagreement among concerned parties and draw the spotlight of the media and Congress. Likewise, because these crimes can directly affect the public health, the failure to aggressively investigate and prosecute may lead to unacceptable risks to the public.

The Office of Consumer Litigation (OCL) in "Main Justice" deals with FDA cases everyday, and our attorneys can help you assess these types of cases and consider many of these factors that may not be immediately apparent when a case is referred to your office. This article responds to numerous requests by Assistant United States Attorneys to publicize OCL.

Introduction

OCL is in the Civil Division of DOJ, though we actively prosecute both criminal and civil cases. The office is both a resource for Assistants faced with cases arising under a variety of Federal consumer protection statutes, and a reviewer of proposed enforcement actions under those statutes. Many Assistants have worked with OCL, but many others are not aware of us. This article explains OCL and what we can do for Assistants.

OCL was established in 1971 as the Consumer Affairs Section of the Antitrust Division as part of an effort to emphasize the consumer protection functions of the Federal Government. The office was placed in the Antitrust Division because offices with dual jurisdiction over civil and criminal cases were common in that Division, and because OCL's consumer protection activities and the competition cases handled by the Antitrust Division appeared similar.

---

[4]*The Baltimore Sun*, December 18, 1995, "Noted in Brief."

[5]*United States v. 25 Cases, . . . Sensor Pads*, 942 F.2d 1179 (7th Cir. 1991); *Newsday*, August 19, 1996, "FDA Ruling Fought/Breast-Exam Pad Availability Sought."

In the early 1980s, when the Antitrust Division was shedding non-antitrust duties, OCL moved to the Civil Division. This occurred even though an increasing number of OCL cases were criminal prosecutions. OCL's dual civil and criminal jurisdiction exists because it enforces and defends consumer protection programs of various Federal agencies [most notably FDA, the Federal Trade Commission (FTC), the Consumer Product Safety Commission, and the Department of Transportation's National Highway Traffic Safety Administration], several of which use criminal and civil sanctions as integral enforcement tools.

By regulation 28 C.F.R. § 0.45(j), OCL is responsible for litigation under the principal Federal consumer protection laws, including the Federal Food, Drug, and Cosmetic Act; the odometer tampering prohibitions of the Motor Vehicle Information and Cost Savings Act; the Consumer Product Safety Act; and a variety of laws administered by the FTC, such as the Fair Debt Collection Practices Act.

OCL enforces these statutes and defends agencies through litigation under these statutes. Even a cursory review of the case law reveals that over the last 25 years we have played a central role in creating and developing the jurisprudence in these areas. This expertise can be tapped to expedite research and drafting.

In addition to litigative expertise, OCL coordinates related matters that are pending in different United States Attorneys' offices (USAOs), serving as liaison for various parts of agencies involved, particularly the FDA. The FDA's Office of Criminal Investigations frequently brings cases directly to USAOs and we have coordinated among various USAOs where similar cases are pending; for example, in various matters involving bootleg infant formula. In cases in which Congress takes an active interest, such as those described above, OCL has the historical knowledge to put events in the context of overall FDA enforcement. Our involvement in these cases can help fit them into their historical context, allowing the Government to knowledgeably address criticisms which may arise.

While OCL has litigated thousands of cases, the laws we enforce and defend are often esoteric. Issues that arise under these laws are often novel in a particular jurisdiction, and infrequently litigated in many United States Attorneys' offices. Our attorneys have the expertise and experience to deal with and to help Assistants deal with cases under these laws quickly and authoritatively. Assistants are encouraged to consult with us to get sample indictments, civil pleadings, memoranda of law, sentencing guidelines analyses, and assistance in avoiding problems.

Some examples of prosecutions in which OCL has worked effectively with United States Attorneys' offices to protect consumers are: black market distribution of steroids before they were scheduled as "controlled substances"; manufacturers of generic drugs who obtained FDA approval of products through fraud and bribery; importers and distributors of bulk animal drugs not approved for use in food-producing animals; "food fraud" artists who stretch foods with cheap fillers and sell them as 100 percent pure; and used car traffickers who rolled back the odometers to give the appearance of lower mileage.

Early consultation with OCL will ensure that cases are pursued efficiently and effectively, so let us know about cases in USAOs. If facts presented to you by law enforcement agencies or members of the public suggest a possibility of civil or criminal proceedings under one or more of the statutes discussed above, please call us. Criminal prosecutions and civil penalty or injunctive proceedings under the statutes for which OCL is responsible must be approved by the Assistant Attorney General for the Civil Division. This approval can be obtained through OCL early in the process. Our role is to assure uniform nationwide implementation of this country's consumer protection laws.

When the Civil Division's contribution to USABook goes on-line this month, the Office of Consumer Litigation's section will be extremely useful—crammed with model briefs, charging instruments, jury instructions, and other materials organized in a user-friendly and litigation oriented-format.

OCL's attorneys can be reached through Director Eugene Thirolf, (202) 307-3009 [Email SS28(THIROLF)]; at OCL's main number, (202) 307-0066; or by fax at (202) 514-8742.

Defending Federal Employee Wage Garnishment Actions

Trial Attorney Jeannine R. Lesperance
Commercial Litigation Branch, Civil Division
(202) 616-2236

Federal employees pay bills just like anyone else. Thus, like their private sector counterparts, they may run into trouble with their creditors. Most of the time, Federal agencies, like other employers, need not be concerned about such matters. When creditors seek to garnish wages to pay outstanding debts, however, an employee's problems can become a Federal employer's problems under the provisions of two statutes.

The first statute, 42 U.S.C. § 659, allows creditors to garnish the pay of Federal employees to pay child support and alimony. Although garnishment of Federal pay for child support and alimony has been authorized for about 20 years, the statute was rewritten in August 1996, as part of the omnibus welfare reform bill.[1] The second statute, 5 U.S.C. § 5520a, enacted in 1993, allows creditors to garnish the pay of Federal employees to pay commercial debts.[2]

Litigation under both statutes is becoming more common as the volume of Federal wage garnishments grows. For example, the Department of Defense Finance and Accounting Service processes an average of 2,500 wage garnishments every month. With that number of writs passing through a relatively new system, mistakes are bound to be made and questions are bound to arise.

This article canvasses some of the issues of which attorneys for the Federal Government should be aware. In addition, it offers some practical advice to attorneys defending agencies charged with mishandling a writ of garnishment.

Common Problems With Federal Wage Garnishment

The three most common problems arising under the statutes are: (1) whether a writ of garnishment is "regular on its face;" (2) to what extent the agency is required to "respond" within the 30-day statutory time period; and (3) what is "pay."

Is the Writ "Regular on its Face"?

Writs of garnishment take forms as diverse as the state courts and administrative bodies that issue them. For example, some writs command that the recipient provide information relating to an employee's pay, others direct the recipient to withhold the employee's pay pending further court order, still others require the agency to withhold and immediately surrender the pay to the court. Indeed, their one common feature is that they tend to be wellsprings of jargon indecipherable even to seasoned commercial lawyers. Thus, one of the greatest challenges faced by agencies served

---

[1] "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," P.L. 104-193 § 362, 110 Stat. 2105, 2242-46 [codified as amended at 42 U.S.C. § 659 (1996)].

[2] Hatch Act Reform Amendments of 1993, Pub. L. 103-94, § 9(a), 107 Stat. 1007 [codified as amended at 5 U.S.C. § 5520a (1993)].

with writs of garnishment is knowing whether the writ is "regular on its face."

Whether a writ is "regular on its face" is important because, if it is and the agency properly honors it, the agency is relieved from liability to its employee.[3] An agency that erroneously deems a writ to be regular and so honors it risks liability to its employee; an agency that erroneously deems a writ to be irregular and refuses to honor it risks liability to the judgment-creditor.

So where should agencies look for guidance? The statutes provide a few clues. First, the writ need not be issued by a court; it may come from a state agency or official if authorized by state law.[4] In addition, if the writ is for child support or alimony, the writ may be issued by certain foreign courts.[5] By regulation, agencies are not required to ascertain whether the court obtained personal jurisdiction over the employee.[6] However, the statute appears to require agencies to ascertain that the writ was issued by an authorized entity and otherwise conforms to state law.[7] Payroll officers who question the regularity of a writ should call agency counsel for advice.

Second, the writ must order the agency to pay money to a party other than the employee.[8] Some states, such as New Mexico, ask employers to withhold and escrow rather than withhold and pay. Such writs do not fall within the statutes' technical definitions of "legal process." Moreover, by regulation, agencies are not required to escrow funds for commercial garnishments.[9]

Third, the writ or accompanying papers must identify the particular individual whose pay is to be garnished, the type of money to be garnished, and the nature of the garnishment.[10]

As a general rule, anything less than a social security number is likely to be inadequate for purposes of identifying an individual employee. A social security number is not required, however,

---

[3]42 U.S.C. § 659(f); 5 U.S.C. § 5520a(g).

[4]42 U.S.C. § 659(I)(5)(A); 5 U.S.C. § 5520a(a)(3)(A).

[5]42 U.S.C. § 659(I)(5)(A)(ii).

[6]5 C.F.R. §§ 581.305(g), 582.305(j).

[7]For example, 5 C.F.R. § 581.305(a)(1) (permitting the agency not to honor legal process if it "does not, on its face, conform to the laws of the jurisdiction from which it was issued.")

[8]42 U.S.C. § 659(I)(5)(B); 5 U.S.C. § 5520a(a)(3)(B). Although the statutes restrict the definition of "legal process" as an order to pay money, they also require agencies, under separate provisions, to respond to interrogatories relating to garnishments [42 U.S.C. § 659(c)(2); 5 U.S.C. § 5520a(d)].

[9]5 C.F.R. § 582.305(I). Agencies may be required to escrow funds for child support and alimony garnishments if the original writ ordered money paid to a third party but the writ is then suspended due to the employee's appeal [5 C.F.R. § 581.305(b)]. The Office of Personnel Management is considering amending this regulation to relieve agencies from escrow for child support and alimony.

[10]42 U.S.C. § 659(b); 5 U.S.C. § 5520a(c)(2).

by statute or regulation.[11] Both the statutes and regulations leave the question of whether the information is sufficient to be answered by the agency on a case-by-case basis.

The type of money to be garnished and the nature of the garnishment also are important because "pay" is defined differently under each statute.[12] For example, if the writ states that the garnishment is to pay a commercial debt, but purports to garnish retirement pay, then the writ may not be "regular on its face," because Federal retirement pay is available to pay only child support, alimony, and, under separate statutes, marital property awards.[13]

When in doubt as to whether a writ is "regular," an agency can implead the funds and ask for a determination by the court; refuse to honor the garnishment and defend an action brought by the judgment creditor; or honor the garnishment and defend an action brought by the employee. Of these three courses, the latter is probably the best. Among other things, if the agency can show that it honored the writ in good faith and under a colorable claim that the writ is "regular on its face," a court is likely to rule that the statutes' immunity provisions relieve the agency from liability to the employee.[14]

When and How must the Agency "Respond"?

Both garnishment statutes require an agency properly served to "respond" to legal process within 30 days.[15] Because "respond" is not defined by either statute or regulation, it, too, is the subject of litigation.

To illustrate the problem, assume that a writ of garnishment ordering withholding is received on February 10, 1996. The pay periods run from February 5-18, February 19-March 4, and March 5-18. The corresponding pay dates are March 2, 16, and 30. Some creditors have asserted that the agency must withhold from the March 2 paycheck because that money is "payable" after the date the writ was served. In their view, "respond" means pay into court. Thus, the Government would have 30 days from February 10, or until March 11, to surrender the withheld funds. In sum, creditors who adopt this view expect the Government to be able to ascertain that the writ is regular on its face, locate the employee, complete the necessary paperwork, and begin to withhold money within the space of approximately two weeks. This result makes little sense in view of the fact that the Government has 15 days to notify the employee of the writ.[16]

---

[11]Id.; see also 5 C.F.R. §§ 581.203(a), 582.203(a).

[12]42 U.S.C. § 659(h); 5 U.S.C. § 5520a(a)(4).

[13]Id.; see also 5 U.S.C. §§ 8345(j), 8467(a).

[14]42 U.S.C. § 659(f); 5 U.S.C. § 5520a(g).

[15]42 U.S.C. § 659(c)(2)(C); 5 U.S.C. § 5520a(d).

[16]42 U.S.C. § 659(c)(2)(A); 5 U.S.C. § 5520a(d).

A more reasonable conclusion is that "respond" simply means "answer the writ" by sending a written response to the issuing entity. Depending upon the circumstances of the case, the answer could be (1) we have no money payable to the employee; (2) we will begin to withhold money on [date] and then will surrender [amount]; or (3) we will not honor the writ because it is defective in some regard.[17] If the writ is regular on its face, the agency should begin to withhold as soon as possible. Then, if challenged, the agency can explain to the issuing court why it could not begin to withhold sooner. Thus, using the example set forth above, the agency should begin to withhold wages as soon as possible, most likely from the March 16 paycheck, but should file an answer with the court by March 11 explaining what it intends to do.[*]

If the creditor objects to our response by moving to enforce the writ or by other motion, the agency should alert counsel immediately so that the action may be removed within the 30 day time period prescribed by 28 U.S.C. § 1446(b).

What Constitutes "Pay" Subject to Legal Process?

Creditors serve writs upon Federal agencies which purport to claim entitlement to various types of money. The statutes and regulations, taken together, define "pay" subject to legal process in enough detail to solve most of the problems which arise. Agencies should be aware, however, of the following two issues.

First, "pay" is defined differently under the two garnishment statutes. For example, as mentioned above, retirement pay is not subject to legal process for a commercial debt.[18] Payroll offices should review each writ to ensure that it seeks to garnish pay amenable to process under the applicable statute.

Second, the garnishment statutes pertain only to money payable to employees as remuneration for employment. They have nothing to do with contract payments, grant payments, or other types of payments under Federal programs, the availability of which is governed by other laws.[19] Although this fact should be apparent, some creditors nevertheless have served state writs of garnishment and execution upon Federal agencies in an attempt to capture contract and program payments. Such actions usually can be dismissed voluntarily or involuntarily.

Practice Tips And Possible Defenses to Garnishee Actions Brought to Enforce Writs

Given the foregoing problems, it is not surprising that agency payroll offices mishandle writs of

---

[17]For example, the writ has expired; see 5 C.F.R. § 581.305(f), or no money is available because other claims have priority [42 U.S.C. § 659(d); 5 U.S.C. § 5520a(h)(1); 5 C.F.R. §§ 581.105(a), 581.305(d), 582.305(e) and (f)].

[*]The Department of Health and Human Services recently submitted to Congress a technical amendment which would take out the word "respond" and replace it with "begin the process to withhold in response."

[18]42 U.S.C. § 659(h); 5 U.S.C. § 5520a(a)(4); 5 U.S.C. §§ 8345(j), 8467(a).

[19]5 C.F.R. § 581.104; see also, e.g., the Assignment of Claims Act, 31 U.S.C. § 3727; 41 U.S.C. § 15.

garnishment from time to time, due to inadvertence or a misinterpretation of applicable state law. Although this may seem obvious, one way to avoid problems is to respond carefully to each writ. Agencies often send form responses which do not fit individual circumstances. If there is a reason not to honor the writ, the agency should ensure that it provides that reason to the issuing entity.

When, however, a problem arises and leads to litigation, how should the agency respond?

One option being tested in the courts is the defense of sovereign immunity. Congress enacted the garnishment statutes to make Federal employees amenable to wage garnishment just like employees in the private sector. To do that, however, Congress needed to enact a limited waiver of sovereign immunity, because writs of garnishment were considered to be a type of "suit" against the Government.[20] What remains to be determined by the courts is the scope of that limited waiver.[21]

Both statutes use the same operative language to waive sovereign immunity to render Federal employee wages amenable to garnishment. In short, they provide that the employee's pay shall be subject to legal process in the same manner and to the same extent "as if the agency were a private person."[22]

The crux of the argument that the Department of Justice has been presenting to the courts is that Congress intended to render the pay of Federal employees amenable to garnishment to the same extent as private employees; Congress did not intend to make agencies liable for damages for failing to honor a writ to the same extent that private employers are liable.

The argument is based upon (1) the plain language of the statutes, read in view of the principle that waivers of sovereign immunity must be strictly construed and cannot be implied;[23] and (2) the legislative histories, which indicate that Congress intended to reduce welfare spending by making employees responsible for their own debts, not burden the public fisc with claims for damages.[24]

---

[20]According to legislative history,

> [t]he reason that, until now, federal wages have not generally been subject to garnishment, is historical. A court order to a federal agency to withhold an employee's wages is considered a type of suit against the federal government, and, under the principle of sovereign immunity, the government may not be sued without its consent -- specifically, without enactment of a statute permitting suit.

S. Rep. No. 57, 103d Cong., 1st Sess. 103 (1993), reprinted in 1993 U.S.C.C.A.N. 1802, 1807; see also id. at 1810 ["'The bottom line,' . . . is that, with enactment of legislation to remove federal employees' immunity from garnishment, federal employees 'will be treated the same as all other Americans.'" (quoting Sen. Craig)].

[21]The argument is likely to be useful only to agencies that do not have "sue and be sued" clauses.

[22]42 U.S.C. § 659(a), (b); 5 U.S.C. § 5520a(b).

[23]For example, *Department of the Army v. FLRA*, 56 F.3d 273, 277 (D.C. Cir. 1995).

[24]Sample briefs setting forth the argument in detail may be obtained from the author or by electronic mail at ss10(lesperan).

To date, only one court has held that the garnishment statutes do not waive sovereign immunity to permit suits for damages.[25] Several courts have held that the child support and alimony statute waives sovereign immunity to permit suits for compensatory damages but not punitive damages.[26] One court has held that the commercial garnishment statute waives sovereign immunity to permit a suit against the Government for compensatory damages; that case is on appeal to the United States Court of Appeals for the District of Columbia Circuit.[27]

All the courts which have found a waiver of sovereign immunity to permit suits for money damages for failure to honor a writ of garnishment have relied, to some extent, upon regulations promulgated by the Office of Personnel Management (OPM). The current child support and alimony garnishment regulations expressly provide that, should an agency fail to honor a writ of garnishment, it "shall be liable for the amount that [it] would have paid, if the [writ] had been honored."[28] The commercial garnishment statute provides that, if an agency is required to correct an error, "under no circumstances will the agency be required to pay more than if it had originally honored the legal process."[29] OPM is considering proposing to delete both provisions to clarify that its regulations should not be construed to support a waiver of sovereign immunity.

In sum, if a creditor sues an agency for damages for failure to honor a writ of garnishment, the defense of sovereign immunity should be raised. Even if a court awards damages or the agency settles the claim, however, the Government should not end up paying its employees' bills. Whatever the agency ultimately pays upon settlement or judgment can be set off against the future salary of the employee,[30] including, in the case of commercial garnishments, the administrative cost of processing the garnishment.[31]

Conclusion

Federal trial attorneys should expect to see more cases arising under the garnishment statutes as the creditors' bar becomes aware of them. Our success in defending such actions will depend in

---

[25]*Green v. Green*, 106 Wash. L. Reporter 1201 (Sup. Ct. D.C. 1978) (interpreting the child support and alimony garnishment statute).

[26]*Loftin v. Rush*, 767 F.2d 800, 806-10 (11th Cir. 1985) (allowing a claim for damages against the United States under § 659 but limited to the amount of pay not withheld and excluding interest); *DeTienne v. DeTienne*, 815 F. Supp. 394, 397-98 (D. Kansas 1993); *Young v. Young*, 547 F. Supp. 1, 3-5 (W.D. Tenn. 1980).

[27]*First Virginia Bank v. Randolph*, 920 F. Supp. 213 (D.D.C. 1996), appeal pending, No. 94-1156 (D.C. Cir.).

[28]5 C.F.R. § 581.305(e).

[29]5 C.F.R. § 582.305(g).

[30]5 U.S.C. § 5514; see also 42 U.S.C. § 659(h)(2) and 5 U.S.C. § 5520a(g) (providing generally that the claims of the United States against the employee have priority over the claims of private creditors).

[31]5 C.F.R. § 582.305(k); OPM's draft proposed rulemaking would mandate that agencies deduct the cost of processing commercial garnishments from the pay of the employee.

large measure upon the court's interpretation of the many ambiguous provisions and the precision of the regulations which OPM will promulgate. In the meantime, Assistant United States Attorneys should not hesitate to seek advice from the Civil Division as soon as a garnishment problem develops.

Challenges to Constitutionality of Prison Litigation Reform Act Require Intense Cooperation

Assistant Director Barbara L. Herwig
Appellate Staff, Civil Division
(202) 514-5425

Congress recently enacted legislation, the Prison Litigation Reform Act of 1995 (PLRA), Pub.L. No. 104-134, to reform the area of prisoner litigation, to put statutory limits on the kinds of relief courts may grant in litigation relating to prison conditions and to provide for termination of prospective relief orders regarding prison conditions that do not conform to these limits. The Act places limits on a prisoner's ability to litigate in the Federal courts in forma pauperis (IFP) without prepayment of fees, by providing that an indigent prisoner must pay fees over time and is barred from IFP status if he has had three suits dismissed as frivolous.

The Attorney General has the responsibility to defend the constitutionality of the act when it is questioned. This can occur in cases in which the United States or an agency or official thereof is a party, or in cases in which the United States is not initially a party but the Attorney General is notified that the constitutionality of the Act has been drawn into question, or we otherwise learn of the constitutional challenge. While the majority of challenges to the PLRA have been in the jurisdiction of the Civil Division, they can also arise in cases handled by other Divisions, such as Criminal. The Department is making every effort to coordinate its position regardless of the Division or office where the constitutional challenge arises, so that the Government takes a uniform position.

The following are some of the PLRA cases handled by the Civil Division which have reached the courts of appeals.

Termination of Prospective Relief

Harry Plyler, et al., v. William D. Leeke, et al., 4th Cir.

Under the PLRA, a district court, upon motion by any party, must terminate a consent decree granting prospective relief to prisoners, unless the district court finds that the relief is warranted under specified standards. The district court rejected plaintiffs' argument that the PLRA's termination provisions are unconstitutional. The court held that Congress may alter the substantive law to be applied to existing prospective judgments and may require a court to reexamine the prospective relief ordered by an existing judgment under the new substantive standards. The court held that the consent decree did not meet PLRA standards and terminated the decree. Plaintiffs appealed to the Fourth Circuit. The Fourth Circuit affirmed, holding that the termination provisions of the PLRA do not violate the separation of powers doctrine. The court explained that a consent decree was not a final judgment for separation of powers purposes as it is subject to subsequent changes in the law. The court also found no violation of the plaintiffs' equal protection or due process rights.

Michael Gavin, et al., v. Robert Ray, et al., 8th Cir.

After enactment of the PLRA, the defendants moved to terminate a prospective consent decree. The district court held that the termination provision of the PLRA violates separation of powers principles because the consent decree, including the prospective relief ordered, is a final judgment affecting private rights. The court concluded that the PLRA unconstitutionally interfered with the final judgment and the court's power to decide when prospective relief should end. Thus, the district court denied defendants motion for termination of relief. The court certified the question for appeal under 28 U.S.C. § 1292(b), and the Eighth Circuit has accepted the appeal.

In Forma Pauperis Provisions

Everett R. Lyon v. Del Vande Krol, et al., 8th Cir.

An inmate of the Iowa State Penitentiary brought this action in Federal district court under 42 U.S.C. § 1983 and requested to proceed IFP, which would permit him to proceed without prepaying the filing fee of $120. The district court recognized that under the new IFP provisions of the PLRA, the plaintiff was barred from IFP status because three prior actions he filed were dismissed as frivolous. Under PLRA's "three strikes" provision, 28 U.S.C. § 1915(g), a prisoner is barred from IFP (unless he is under imminent danger of serious physical injury) if he has, on three or more prior occasions while incarcerated, brought an action or appeal that was dismissed on the grounds that it was frivolous, malicious, or failed to state a claim upon which relief may be granted. The prisoner here argued that Section 1915(g) is unconstitutional, and we intervened to defend the constitutionality of the provision. The district court issued an order holding Section 1915(g) to be unconstitutional, because it burdened a right of access to the Federal courts and violated the plaintiff's right to equal protection. The Court sua sponte certified the issue for immediate appeal under 28 U.S.C. § 1292(b).

Dorothy Floyd v. U.S. Postal Service, 6th Cir.

The Court of Appeals for the Sixth Circuit asked us to brief issues relating to how the PLRA impacts indigent **non-prisoners** who seek to file IFP pursuant to 28 U.S.C. § 1915(a). The problem is that, in amending § 1915(a), the PLRA requires that the indigent person file an affidavit "that includes a statement of all assets such **prisoner** possesses" (emphasis added). The use of the term "prisoner" instead of "person" in the quoted statutory phrase appears to be a drafting error, but raises the question whether, in light of the PLRA's amendment, § 1915(a) no longer authorizes indigent **non-prisoners** to proceed IFP. The Court of Appeals has issued an opinion holding that the statute does not preclude non-prisoners from obtaining IFP status.

Hampton v. Hobbs, 6th Cir.

Before the enactment of the PLRA, 28 U.S.C. § 1915 required all litigants seeking to proceed in a trial court or on appeal IFP and without prepayment of fees, to file an affidavit of poverty. Under the PLRA, the prisoner must pay the full amount of the filing fees by periodic partial payments from his "prisoner trust fund account" [28 U.S.C. § 1915(b)(1) and (2)]. The Sixth Circuit has asked the parties to brief the following questions: (1) Is it a violation of equal protection to require an indigent prisoner to pay the full amount of filing fees when the prisoner is granted

permission to proceed IFP under 1915(a), whereas an indigent non-prisoner is not required to pay the filing fees when he is granted permission to proceed IFP under that section? (2) Is it a violation of due process to assess and collect monies from an indigent prisoner's trust account? (3) Does it chill and, thus, violate an indigent prisoner's First Amendment rights to require an indigent prisoner to pay the full filing fees under § 1915(b)(1) in order for him to file any civil action or appeal IFP? (4) Does it violate an indigent prisoner's right to access to the court to require him to pay the full filing fees under § 1915(b)(1) in order for him to file any civil action or appeal IFP? (5) Is it a violation of the Double Jeopardy Clause to require an indigent prisoner to pay the full amount of filing fees under § 1915(b)(1) in order for him to file any civil action or appeal IFP?

Roller v. Gunn, 4th Cir.

The IFP prisoner appealed dismissal of his challenge to the retroactive application of a South Carolina statute which changed the frequency of parole hearings. When faced with payment of a filing fee in the court of appeals—the new mandate of the PLRA—the plaintiff moved to have the Fourth Circuit declare the provision requiring payment of the fee by an IFP prisoner and a provision of the PLRA requiring a prisoner to pay costs, unconstitutional.

Compensation of Special Masters

James Gomez, et al., v. United States District Court for the Eastern District of California (Jay Lee Gates, et al., Real Parties in Interest), 9th Cir.

The consent decree called for appointment of a mediator to supervise its implementation. The mediator was subsequently appointed as a special master pursuant to Rule 53 as part of a contempt order. (The order was recently reversed by the Ninth Circuit in a decision not addressing any PLRA issues.) In an order issued after enactment of the PLRA, the district court held that the PLRA's provision concerning compensation of special masters [§ 3626(f)(4)] was not applicable to the mediator/special master in either of his roles. (Reasoning that a mediator appointed with consent of the parties pursuant to a consent decree is not a special master within the meaning of the PLRA and, in any event, § 3626(f)(4) does not apply retroactively to masters appointed before the PLRA's enactment.) California has sought review of this order.

If these or other PLRA issues are raised in prisoner suits you are handling, or if you are aware of non-United States Government cases raising these issues, please bring them to the attention of the Civil Division, or the appropriate Division immediately. The Department's position on the PLRA has been the subject of intense discussion at the highest levels of the Department, and uniformity of position is of the utmost importance. The Civil Division's points of contact for cases at the appellate level are Barbara Herwig and Robert Loeb of the Appellate Staff and, for cases in trial court, they are Vince Garvey and John Schumann of the Federal Programs Branch.

ACE: Past and Future

ACE Working Group

The Affirmative Civil Enforcement (ACE) program is a powerful legal tool used to ensure that Federal funds are recovered, that Federal laws are obeyed, and that violators provide compensation to the Government for losses and damages they cause as a result of fraud, waste, and abuse of Government funds and resources. There are a number of Federal affirmative civil statutes designed for the express purpose of enforcing the Federal law. Among the civil enforcement actions filed by the United States Attorneys are those brought pursuant to the False Claims Act; the Clean Water and Clean Air Acts; civil enforcement of controlled substance violations; Racketeering Influenced and Corrupt Organizations (RICO); civil divestiture actions; defense procurement fraud actions; health care fraud enforcement; affirmative tort cases; civil rights cases; civil actions pursuant to the Financial Institution Reform, Recovery, and Enforcement Act; and Food and Drug Administration cases.

In Fiscal Year 1992, three United States Attorneys' offices were selected as pilot districts for ACE programs. With modest additional resources, these offices collected over $7.5 million in the first year. By 1995, the ACE initiative resulted in the pilot districts collecting over $130 million.

Meanwhile, other civil Assistant United States Attorneys around the country began establishing their own ACE programs by meeting with agencies and establishing lines of communication with criminal Assistant United States Attorneys prosecuting fraud cases. In a relatively short period of time, recoveries nationwide began increasing.

Because of this success, the Executive Office for United States Attorneys (EOUSA) requested funding from the Three Percent Fund for additional resources for ACE. In January 1995, EOUSA received funding for 110 dedicated ACE positions allocated throughout the country. In Fiscal Year 1996, the Three Percent Fund provided funding for an additional 43 two-year term positions. With the passage of the Health Insurance Portability and Accountability Act of 1996, the United States Attorneys received additional funding for ACE efforts in health care fraud.

The increase in personnel has produced an upsurge in ACE collections. Fiscal Year 1996 marked the first time that over $500 million was collected in ACE cases alone. The first quarter of Fiscal Year 1997 has seen several very large recoveries which may portend another record year in ACE collections in Fiscal Year 1997.

Assistant United States Attorneys and Civil Division attorneys work together on the ACE Working Group which promotes ACE projects, provides training, and assists the Attorney General's Advisory Committee. Formed in December 1991, the Working Group comprises attorneys from throughout the country and from offices of all sizes.

The Working Group's function is: (1) to work with agency clients on a national and regional level to develop cases, (2) to streamline ACE cases by sharing form pleadings and "cookbook" investigative projects, (3) to help offices establish their own ACE programs, and (4) to address issues and problems which might otherwise hinder ACE work.

With the assistance of the ACE Working Group, the United States Attorneys' offices have coordinated enforcement programs to target fraud in innovative and productive ways. For example, the Central District of California has a fast track program to address false statements in loan applications submitted to federally insured institutions, including the Small Business Administration (SBA) loan guarantees, for violations of the Financial Institution Reform, Recovery, and Enforcement Act of 1989. The project is based on 18 U.S.C. § 1014, which makes it a crime to make a materially false statement to a federally insured financial institution to obtain a loan. The United States Attorney's office demands a penalty equal to a percentage of the requested loan amount and, if necessary, files a complaint requesting a penalty equal to that amount. Only 3 of 100 cases resolved in the district required judicial action. In all three cases, judges adopted the Government's request for a penalty of 20 percent of the loan amount. This program has proven highly successful and has been credited by the SBA in significantly deterring loan fraud.

Several districts have established highly successful programs aimed at quickly processing high numbers of food stamp fraud cases. In one district, their program produced a 60 percent collection rate on food stamp debts previously considered uncollectible. The pleadings and forms developed by one district have been distributed and adopted by several other districts.

There is no doubt that the ACE program will continue to grow in 1997. In addition to the 43 positions funded through the Three Percent Working Capital Fund, the Health Insurance Portability and Accountability Act of 1996 has provided for funding for 30 civil Assistant United States Attorneys as well as 76 other positions to be used for civil and criminal health care fraud cases. Besides these new positions, the Act has provided funding to allow EOUSA to conduct health care fraud training, to purchase specific CD Rom libraries for every district, and to make available automated litigation support for large health care fraud cases.

Recent Developments in Litigation Against Federal Employees and Government Counsel

Assistant Director Barbara L. Herwig
Appellate Staff, Civil Division
(202) 514-5425

The Qualified Immunity Defense

The Attorney General and the Civil Division have made a strong commitment to maintaining and developing the doctrine of qualified immunity as an effective means of protecting Federal employees from meritless litigation arising from the performance of their duties.

Recently, the Department was successful as amicus in advocating its position on qualified immunity in *Crawford-El v. Britton* [93 F.3d 813 (D.C. Cir. 1996) (en banc)], a case involving the District of Columbia government where the official's motivation was put in issue by the constitutional tort alleged by the plaintiff. Because the qualified immunity doctrine is intended to protect Government employees from not simply liability but also trial, in the past the D.C. Circuit required a plaintiff to plead, then offer "direct evidence" of improper motive in order to overcome the official's qualified immunity in such cases. This direct evidence rule gave recognition to the need to protect Government employees from trial but, for almost a decade, the Department has considered the rule impossible to defend because it means that a plaintiff cannot establish a case by using circumstantial evidence. In the *Crawford-El* case, the Court of Appeals sua sponte decided to sit en banc to reexamine the direct evidence rule.

In our amicus brief, the Department argued that heightened specificity of pleading should be required in **all cases** in which the defendant raises the defense of qualified immunity. Faced with the qualified immunity defense, the plaintiff must plead the facts with sufficient detail to permit the trial judge to determine whether the case should be dismissed based on the right to immunity. In addition, when the constitutional claim turns on the defendant's **motive**, the Department argued that a plaintiff should be required to plead specific facts that give rise to a strong inference of the asserted unconstitutional motive; at the summary judgment stage, the plaintiff should be required to offer evidence that, at a minimum, raises a strong inference of improper motive.

As expected, the court rejected its prior rule that required direct evidence of motive to defeat qualified immunity. However, still recognizing the need for a special rule to protect officials in motive-based cases, the court replaced it with an alternative approach. Under the standard adopted by the court, a plaintiff must support his allegations of improper motive with "clear and convincing evidence" at the summary judgment stage, and the plaintiff's right to discovery before the trial judge's ruling on a motion for summary judgment is limited. The court did not address the general heightened specificity of pleading issue applicable in non-motive cases.

Although the standard adopted by the court is somewhat different from that proposed, the court's analysis is consistent with that of the Department, and the standard adopted will offer substantial protection to officials facing baseless *Bivens* suits. In other jurisdictions where the issue is open, we should continue to press for favorable standards for qualified immunity, as in *Crawford-El*. The Civil Division's attorneys to be contacted are Senior Trial Counsel R. Joseph Sher in

Constitutional Torts, and Barbara Herwig and Robert Loeb in the Appellate Staff.

Defense of Government Counsel

Another critical priority of the Attorney General and the Civil Division is the defense of Government attorneys accused of misconduct and unfairly sanctioned. Two cases in particular warrant mention.

In one, now concluded, we convinced the Court of Appeals to reverse a district court order sanctioning Government counsel for allegedly violating a local rule requiring the parties to engage in good-faith settlement negotiations. In the trial judge's view, the Government should have settled the case by paying the plaintiff $10,000. He reprimanded the Government attorneys involved and ordered one of them to attend 15 hours of court-approved ethics training. We appealed with Assistant Attorney General Frank W. Hunger presenting oral argument. The Court of Appeals reversed and vacated the lower court's order, completely vindicating the Government attorneys. The court clarified that "good-faith" settlement negotiations do not require making a settlement offer and that a district court's disagreement with the merits of a position asserted in good faith by counsel cannot serve as the basis for sanctions. In addition, the court accepted as valid our numerous reasons for not making a settlement offer in this case, including the fact that the plaintiff had not been diligent in pursuing his case and the Government desired to avoid encouraging frivolous prisoner litigation. Finally, the Court of Appeals found the lower court's factual findings that the Government attorneys acted improperly and unprofessionally in the manner in which they handled this action to be clearly erroneous. The court concluded its opinion by stating: "No more need be said; this most regrettable chapter is closed."

In the other case, which is still pending, we have appeared in support of a Circuit Judicial Council that ordered two matters to be reassigned from the trial judge to the Chief Judge of the district pursuant to 28 U.S.C. § 332. In one of the matters reassigned, a Federal criminal prosecution, the trial judge ordered a Federal prosecutor from another district to turn over materials that had been sealed by the court in the other district and, when she refused to do so, the judge found her in contempt. The case was then reassigned to the Chief Judge, who promptly vacated the contempt finding. The trial judge filed a petition for writ of mandamus claiming that the order of the Judicial Council was beyond its authority under Section 332. The Judicial Council retained private counsel to respond. The United States also filed an answer to the petition arguing that it is not appropriate to issue the writ, and Assistant Attorney General Hunger presented oral argument. We are awaiting a decision from the Court of Appeals.

Interview with Director David Epstein

Office of Foreign Litigation, Civil Division

David Epstein has been the Director of the Office of Foreign Litigation (OFL), Civil Division, Department of Justice, since 1982. He graduated from Georgetown Law Center in 1961 and obtained a Masters in Law degree from there in 1966. He is a member of the District of Columbia Bar. He served as an Attorney Advisor at the Federal Communications Commission from 1962 to 1969, at which time he joined the Department of Justice as a trial attorney in the Civil Division. In 1975 he became an Assistant Section Chief in the former Economic Litigation Section of the Civil Division. Prior to assuming his foreign litigation duties, he served as Director of the Commercial Litigation Branch from 1978 to 1982.

David Epstein (DE) was interviewed by Assistant United States Attorney David Nissman (DN), Editor-in Chief of the *United States Attorneys' Bulletin*.

DN: What is the mission of the Office of Foreign Litigation? How does it affect United States Attorneys' offices (USAOs)?

DE: The mission of OFL is to represent the interests of the United States in litigation in foreign courts. This includes both affirmative and defensive litigation in which the United States is a party. These responsibilities are defined in 28 C.F.R. 0.46, which specifically authorizes the Assistant Attorney General in charge of the Civil Division to direct all foreign litigation.

Our responsibilities include cases of all types in foreign courts—civil, criminal, environmental, and so on. We are able to assist United States Attorneys' offices (USAOs) in a number of ways. First, often an issue with international ramifications may arise in domestic litigation, such as issues of foreign sovereign immunity. We have extensive experience and can provide information and guidance on law and policy. Second, we can institute litigation in foreign courts to collect debts owed to the United States. We also assist USAOs in the area of international judicial assistance which includes service of process and the taking of evidence abroad. Finally, we can provide information to AUSAs on clearance procedures they should follow when they are traveling overseas on official business.

DN: What types of foreign litigation is the U.S. involved in?

DE: We handle a wide variety of cases, both affirmative and defensive. The bulk of our cases is civil in nature and similar to the kind of suits the Civil Division handles in the U.S. This includes a mixture of commercial cases (contracts, employment, admiralty, real estate). We also handle tort suits brought against Government agencies and those in which Government employees are sued in their individual capacity. Not surprisingly, most of our litigation occurs in countries where the U.S. has a large military or diplomatic presence. So, it fits that our two principal clients are the State Department and the Department of Defense. The largest single category of cases are employment suits brought by foreign service nationals who are employed by the U.S. in embassies or military installations. In the affirmative area, we have a number of cases involving breach of contract claims or "white collar" crime cases where we allege the United States has been

defrauded and is entitled to recover money owed to the U.S.

DN: Could you give us a few examples?

DE: In the past three years, we have handled about 50 labor suits in Germany involving restructuring of the U.S. Embassy in Bonn and various consulates throughout Germany. This is part of the State Department's plan to downsize some of its existing missions in order to satisfy expanding demands on its resources. This has led to the severance of many local national employees. In these suits, plaintiffs who were either RIFed or reassigned complain that the way we've downsized or reorganized has violated their rights under local law. They seek damages for lost benefits and, in some cases, request that the State Department be compelled to reinstate them. Another example includes a malpractice suit filed against the U.S. Air Force in England in which we succeeded in establishing that the U.S. visiting forces have absolute immunity to suits brought in English courts by members of our own Armed Forces. In addition, the United States was recently sued together with the Government of Japan in Tokyo District Court by over 3,000 residents near Yokota Air Base for compensation for noise pollution allegedly caused by U.S. flight operations at the base.

DN: What are some examples of cases in which we might be plaintiffs?

DE: Our role in affirmative litigation has become increasingly important in recent years. As white collar crime has increased throughout the world, we're often requested to seek money and other property belonging to the U.S. which is located overseas, usually in connection with U.S. criminal cases or civil fraud matters where the proceeds of the crime are hidden. In these cases, we generally proceed by attaching the assets and instituting recovery proceedings in foreign courts on behalf of the U.S. as the damaged party. For example, we have a pending case in Liechtenstein where we have attached approximately $8 million in bank accounts traceable to a health care fraud scheme in California. We have also effected substantial recoveries in a number of fraud cases in Japan where local companies collusively rigged bids on U.S. military contracts. We have also been successful in recovering money overseas in collection cases on behalf of various Government agencies such as defaulted student loans, SBA loans, and other breach of contract matters.

DN: What treaty responsibilities does your office handle?

DE: We are the central authority for the Hague Evidence Convention, and, in that capacity, we handle evidence requests from foreign courts to the U.S. This involves processing the requests and forwarding them to the USAO in the district in which the witness resides. There are instructions in the *United States Attorneys' Manual* on obtaining that evidence in a manner that is acceptable to the foreign court. As central authority for the Hague Service Convention, we handle requests from foreign central authorities for service of process in civil and commercial cases. We process about eight thousand requests each year under this treaty. After we process the requests, they are forwarded to the U.S. Marshals Service for service on the requested party. We also serve as central authority for the Inter-American Convention on Letters Rogatory, which provides for service of process between the U.S. and various Central and Latin American countries. For that

treaty, we act as the central authority for both incoming and outgoing requests. Our support staff can assist USAOs on the proper procedures for using any of these treaties.

DN: If we have reason to believe there are funds in a foreign country that would be forfeitable under U.S. law, does your office get involved in bringing suit?

DE: The forfeiture area can be tricky for us. As a general rule, foreign courts will not recognize or enforce civil or criminal forfeitures. In light of our general international experience, we consult with local counsel to determine whether the U.S. forfeiture is enforceable or whether we can employ some other theory to achieve the same result. For example, if the defendant in the U.S. assigns rights to the forfeited property to the U.S., then we may be able to institute appropriate proceedings independent of the forfeiture to assert our ownership interest in the property. This has occurred in a number of plea agreement situations. USAO's have requested us to assist in the recovery of forfeited property such as houses, boats, stock interests in foreign corporations, and foreign bank accounts, and we have been successful in some of these cases.

DN: Is it a problem to execute on real property in a foreign country? How do we get that real property?

DE: If property rights were assigned to the U.S., we would instruct and work with a foreign lawyer to take the necessary legal steps to register our title to the property. If our ownership rights were contested, we might institute an action in the foreign court to clear the title. We are currently working with the Asset Forfeiture Section in the Criminal Division and local counsel to effect legal transfer of ownership to two valuable houses in France. These properties were forfeited to the U.S. in a plea agreement in a major narcotics case handled by the USAO in Tallahassee, Florida. We hope to sell the properties and return the proceeds to the Forfeiture fund.

DN: Is it necessary, in terms of U.S. plea discussions or plea documents, to get the property deeded over? Does that make a difference?

DE: Anything that clearly shows our right to the property helps. Before executing the plea agreement, the AUSA should insure that the defendant possesses the requisite interest in the property to assign rights to the U.S. For example, if corporate interests are involved, the AUSA should establish that the defendant has the controlling interest and the requisite authority and/or consent to make the assignment.

DN: In these cases in which the Office of Foreign Litigation is maintaining litigation in a foreign country, does your office hire foreign counsel?

DE: Yes. We must employ foreign counsel to appear on our behalf in all of our cases. I have three Civil Division attorneys on my staff. Three of us are located in Washington and another supervises our litigation in Europe through our field office in London. Our attorneys provide instruction to foreign counsel based on our knowledge of international law and U.S. policy, and after consultation with the interested division, agency, or office. Because of the high volume of our

caseload, we can quickly identify critical issues and advise foreign counsel on possible defenses to the lawsuit. For example, we may be able to assert certain jurisdictional defenses, such as sovereign immunity, if consistent with applicable U.S. policy and the law of the foreign country where the lawsuit has been filed.

DN: How many countries do we have lawsuits in?

DE: We estimate an active caseload of approximately 1,400 cases in over 80 countries.

DN: That's a lot to manage. How do you stay on top of it?

DE: We have to be selective in deciding which cases to concentrate on. Naturally, most of our time is spent on the more important and complex matters—and the most sensitive ones from a political and diplomatic point of view. We're fortunate to have an excellent roster of foreign counsel. Many of these firms have been representing the U.S. in our cases for many years, so they're quite experienced in dealing with us. About 100 of those lawyers are on board at any given time.

DN: How does the U.S. know who the good lawyers are in foreign jurisdictions?

DE: Through experience we've developed a sense of the type of foreign lawyer who works best for us. We look for foreign counsel with strong credentials in the local legal system. We rely heavily on their advice in matters of local law and procedure. Cost is an important factor as well.

DN: Could you tell us the areas in which your office has the most contact with USAOs?

DE: The defensive foreign litigation caseload would not involve the USAOs because that category is outside of the U.S. However, we frequently advise USAOs on international law or litigation issues in their cases. As stated, we can assist USAOs in pursuing remedies in foreign courts to recover foreign assets in connection with U.S. cases.

DN: Does your office play a role in obtaining foreign evidence?

DE: We can assist USAOs in obtaining evidence abroad. This can be a confusing area because evidence gathering procedures vary greatly between common law and civil law legal systems. For example, civil law countries don't recognize U.S. pre-trial discovery and there are limitations on the scope of the evidence that can be obtained. We assist USAOs in determining the proper procedures to follow and when coordination with the Office of Citizens Services of the Department of State is necessary. USAOs should also remember that Jim Gresser, who is in charge of our field office in London, can be of assistance in connection with obtaining evidence, conducting civil investigations, etc., in European countries.

DN: Do foreign courts frequently ask your office to give them information about areas of law that your office is not the central custodian of—areas that go beyond your expertise? If so, what do you do?

DE: If an evidence request emanates from a foreign court, we try to cooperate to the fullest extent possible to provide the requested information. Working with the State Department, we have even assisted foreign judges in conducting evidentiary hearings in the United States under their rules and procedures.

DN: Is plea bargaining often not recognized in foreign countries?

DE: Certain U.S. legal concepts are unknown in civil law countries and plea bargaining is one of them. We have had several cases in the office in which defendants have agreed to repatriate assets located abroad as part of a plea bargaining agreement. The issue has arisen as to whether such consent is compelled or coercive and we need to provide U.S. law on the subject to show that plea bargaining is an established part of U.S. criminal law and practice and a quid pro quo type agreement.

DN: Do foreign rules of evidence present problems for us?

DE: In civil law countries, they tend to be broader than what is generally admissible under U.S. rules of evidence. This is particularly true in the hearsay area. Courts in civil law countries rely heavily on expert opinions. We often employ legal experts on complex questions of law, international law issues, and foreign law matters.

DN: In the affirmative area of foreign litigation, do foreign courts perceive that we are going beyond our boundaries or territorial limits? If so, how do we deal with that?

DE: There may be issues of extraterritoriality in some of our affirmative cases. In order to avoid these implications, we try to rely on universally recognized causes of action such as common law fraud, restitution, and unjust enrichment. However, it would be a common defense strategy to allege that the case essentially represents an unwarranted extension of U.S. law.

DN: What is it about the contrast in the systems that makes the penal law concept so difficult?

DE: Recognition and enforcement of penal laws is a universal problem regardless of whether a civil or common law legal system is involved. Certain subject matter areas such as criminal law, tax, fines, and forfeitures are traditionally off-limits in terms of recognition and enforceability. While there are a number of factors involved, independent sovereign states intensely resist anything that suggests enforcement of the public act of another sovereign.

DN: In an OFL memorandum, you mentioned that treaties don’t cover the concept of the enforceability of foreign judgments. Is the U.S. concerned with having to enforce foreign judgments that we might have questions about, or is it a mutual concept?

DE: This is a problem, especially for the U.S. The European countries have two multilateral treaties covering recognition and enforcement treaties. The U.S. is not a party to any bilateral or multilateral treaty in these areas. There has been a reluctance on the part of some European countries to enter into a treaty arrangement with the U.S. on recognition and enforcement

because of problems associated with the U.S. legal system, such as size of damage awards in tort cases, the concept of punitive damages, etc. However, the U.S. sponsored a proposal at the Hague Conference for Private International Law for new multilateral recognition and enforcement conventions covering civil and commercial cases, and negotiations will commence in 1997.

DN: So the U.S. doesn't have fears about enforceability of foreign judgments here but it's the reverse—foreign countries look at our legal system with many questions.

DE: Foreign judgments are enforced in the U.S. on principles of international comity and goodwill. There are due process and public policy considerations which might preclude enforcement by U.S. courts. However, in my view, U.S. courts tend to be more liberal in enforcing foreign judgments than vice versa. As I said, there is a certain suspicion in some of these countries about the U.S. legal system and its operation.

DN: How do you organize your office? Do you have a duty attorney who answers incoming calls? Do you divide cases by region?

DE: We have a field office in London which supervises our work in Europe. The rest of the cases filed in other countries are divided between the three attorneys in our office in Washington. Like most law offices, our attorneys acquire expertise in handling certain types of cases, so we may divide our work that way. If some of the cases require special handling, we may ask for assistance from other offices with expertise in a particular area. For example, the Civil Fraud Section has helped us on certain large affirmative fraud cases. We don't have an assigned duty attorney, but there is always an attorney available to answer incoming calls.

DN: How large is your support staff?

DE: The support staff is comprised of five employees: my secretary, a legal technician, and three outside contract employees who are responsible for processing requests under the international judicial assistance treaties handled by the office.

DN: With the volume of cases in your office, is it sometimes difficult for AUSAs to get in contact with your lawyers?

DE: There is always an attorney available to discuss cases and questions with AUSAs. We always make sure that USAOs' calls come first. We encourage AUSAs to contact us early if an international law or litigation issue is likely to arise in one of their cases. If an AUSA has a question about service of process or obtaining evidence abroad, one of the support staff will be glad to assist.

DN: What advice would you give to AUSAs who have issues involving foreign litigation? What steps should they take to prepare for a successful case? Let's start with foreign evidence in civil cases.

DE: We can provide general advice on the best way to obtain the evidence. We need to know

whether the evidence can be obtained on a voluntary basis or through compulsory means. The procedures vary greatly depending on that consideration. If the evidence is to be produced voluntarily, the AUSA will generally be able to obtain a U.S. type of deposition. If the only way is through compulsory means, then the Hague Evidence Convention or letters rogatory procedures will have to be used. We can discuss all options with the AUSA.

DN: What procedures would you advise us to take initially in affirmative civil litigations in foreign countries?

DE: As soon as the USAO becomes aware of the existence of foreign assets in connection with one of their cases, they should contact us. We want to avoid asset flight. If the AUSA waits until a final judgment is obtained, it may be too late to secure the assets. We need to know, with a reasonable degree of certainty, the identification of the assets and where they're located. Then we contact our foreign counsel to see if there are remedies, such as a preliminary attachment, that we can use to freeze the assets pending the completion of the U.S. proceeding. We advise USAOs not to write off the possibility of recovering foreign assets without first discussing the situation with us.

(Susan, please box this info to go in the interview.)

CHECKLIST FOR OBTAINING EVIDENCE FROM FOREIGN PARTIES

1. Is the deponent a party or non-party witness?
   - A party witness [as defined in Rule 10(b)] is subject to discovery under the Federal Rules of Civil Procedure.
   - Where there is no in personam jurisdiction over witnesses, such as third-party witnesses, expert witnesses, etc., compulsory means, such as Hague Evidence Convention procedures, letters rogatory will be used in most cases in obtaining the evidence.
2. Is the deposition voluntary or compulsory?
   - If voluntary, check with the American Citizens Services office of the State Department, (202) 647-5226, to determine whether U.S.-style depositions before the U.S. consul are permitted under the laws of the country where the witness resides. If so, contact the State Department to find out what arrangements must be made before the deposition is taken.

(Susan, please box the following info to go in interview.)

OFFICE OF FOREIGN LITIGATION PERSONNEL

David Epstein, Director
James A. Gresser, Attorney, European Office, London, UK
Paul Herrup, Attorney
Jonathan P. Welch, Attorney
Esther E. Wooten, Secretary to the Director
Patricia A. Harris, Legal technician
Marcella Chloe, Records technician
Shanita Washington, Records technician
Refina Colt, Records technician

Commendations

The following commendations were submitted to the Executive Office for United States Attorneys during the period April through December 1996. The *United States Attorneys' Bulletin* publishes commendations semiannually of Assistant United States Attorneys and USAO personnel commended with them.

Dawn Aihara, Legal Secretary (District of Hawaii), by INS District Director Donald A. Radcliffe, for her assistance in Operation Circumvent, a case which convicted merchants of selling fraudulent designer label items.

Robert Anderson (Western District of Wisconsin), by FBI Special Agent in Charge Michael J. Santimauro, for his outstanding efforts in the successful prosecution of Gordon Hoff, Sr.; Gordon Hoff, Jr.; and Eric Richard Meyer who were convicted in a drug conspiracy case.

Robert G. Anderson (Southern District of Mississippi), by President Jerry St. Pe, Ingalls Shipbuilding, Inc., for his outstanding efforts in bringing about two indictments involving workers compensation fraud.

Gary D. Arbeznik (Northern District of Ohio), by FBI Special Agent in Charge Van A. Harp, for his outstanding assistance with a Russian organized crime case.

Raquel N. Arellano (District of Arizona), by U.S. District Judge William D. Browning, District of Arizona, for her expertise in representing the Government in *United States v. Price*, a drug case involving possession with intent to distribute and the importation of marijuana.

Steve Baer (Western District of Virginia), by Postmaster Matthew J. Hoffman, U.S. Postal Service, Charlottesville, for his commitment and excellent work in the civil action, *Trimble v. The U.S. Postal Service*.

Jane Barrett (District of Maryland), by Deputy Assistant Secretary Michael L. Davis, Policy and Legislation, Department of the Army, for her outstanding efforts in the successful prosecution of Interstate General Company for violations of Section 404 of the Clean Water Act.

Robert D. Bartels, Deputy Chief of the Civil Section (District of Arizona), by Forest Supervisor Charles R. Bazan, Tonto National Forest, U.S. Department of Agriculture, for his outstanding efforts in handling two civil action cases for the Tonto National Forest, *United States v. Haught* and *United States v. Shumway*.

Timothy Bass (Central District of Illinois), by DEA Special Agent in Charge James A. Morgan, for the outstanding manner in which he handled the juvenile matter in the Joiner family drug prosecution.

Paul S. Becker (Western District of Missouri), by FBI Special Agent in Charge David M. Tubbs, for his dedicated efforts in organized crime investigations.

Gloria Bedwell (Southern District of Alabama), by DEA Administrator Thomas A. Constantine, for her extraordinary efforts in support of the DEA's New Orleans Mobile Enforcement Team.

Suzanne Bell (Central District of California), by U.S. Customs Service Associate Chief Counsel Paul E. Wilson, for her outstanding work in *Jeorge Penaflor v. United States Customs Service*, which resulted in the dismissal of this Freedom of Information Act case.

Craig A. Benedict (Northern District of New York), by Colonel Gary Thomas, Corps of Engineers, District Engineer, Department of the Army, for his outstanding efforts in the successful prosecution of *United States v. Iroquois Pipeline*, an environmental case.

Linda M. Betzer (Northern District of Ohio), by U.S. Customs Service Port Director John M. Regan, for her efforts in the successful prosecution of Continental General Tire, Inc., in a complex international case.

James L. Bickett (Northern District of Ohio), for receiving an award from the Office of Inspector General of the Department of Housing and Urban Development for his efforts in the Affirmative Civil Enforcement Program.

Linda G. Bizzarro (Eastern District of Louisiana), by DEA Special Agent in Charge Ronald J. Caffrey, for her outstanding efforts in the successful prosecution of *United States v. Rogelio Polledo, et al.*, a drug case.

Greg Bordenkircher (Southern District of Alabama), by DEA Administrator Thomas A. Constantine, for his extraordinary efforts in support of the DEA's New Orleans Mobile Enforcement Team.

Greg Bordenkircher (Southern District of Alabama), by FBI Special Agent in Charge Nicholas J. Walsh, for his efforts in the investigation and successful prosecution of James Dennis for bank fraud and bankruptcy fraud.

Katharine A. Bostick (Northern District of California), by United States Attorney Nora Manella, Central District of California, for her extraordinary efforts in the successful prosecution of *United States v. Howard Messer, et al.*, a major narcotics money laundering case.

Katharine A. Bostick (Northern District of California), by U.S. Customs Service Special Agent in Charge Rollin B. Klink, for her exceptional efforts in the Thanong Siriprechapong drug prosecution.

Dawn Bowen (Southern District of Florida), by Linda Collins Hertz, retired Chief, Appellate Division, Southern District of Florida, for her efforts in the preparation and presentation of the argument in the Manuel Noriega case.

John S. Bowler (Eastern District of North Carolina), by Colonel W. W. Scheffler, U.S. Marine Corps, for his invaluable assistance in a general court-martial case involving Marines trafficking

drugs aboard the Marine Corps Air Station in Cherry Point.

Thomas C. Bradley, Trial Attorney (Tax Division, Department of Justice), by United States Attorney Helen Fahey, Eastern District of Virginia, for his successful efforts in several credit card fraud and passport fraud cases during the six months he was assigned to the Special Assistant United States Attorneys' Unit in the Eastern District of Virginia.

Harold E. Brown, Jr. (Western District of Texas), by District Counsel Albert C. Proctor, Army Corps of Engineers, Fort Worth, for his representation in the investigation and settlement of the civil fraud case, *Brown & Root Services Corporation v. United States.*

Christa D. Brunst (Northern District of Ohio), by FBI Special Agent in Charge Van A. Harp, for her outstanding assistance with a Russian organized crime case.

Edwin Brzezinski (Eastern District of Missouri), by ATF District Director C. David Royalty, Southwest District, for his efforts in obtaining a favorable decision in *Anton S. Dubinsky v. United States*, a firearms licensing case.

Mary Beth Buchanan (Western District of Pennsylvania), by Supervisory Agent J. A. Wisniewski, Pittsburgh Credit Card Fraud Task Force, U.S. Postal Inspection Service, Pittsburgh Division, for her efforts as a member of the Pittsburgh Credit Card Fraud Task Force and for receiving the "Outstanding Team Award" at the Excellence in Government Awards banquet on May 28, 1996.

Almon S. Burke, Jr. (Western District of Pennsylvania), by ATF Group Supervisor John P. McIlwain, for his assistance in obtaining a Federal Search Warrant.

Patricia Burton, Supervisory Paralegal (District of Colorado), by United States Attorney Nora M. Manella, Central District of California, for her outstanding assistance to the Financial Litigation Unit in her district.

Mark Byrne (Central District of California), by FBI Supervisory Special Agent Susan R. Chainer, for his outstanding efforts in the successful prosecution of Aman Khan for fraudulently manufacturing and/or selling unapproved aircraft parts.

J. Matthew Cain (Northern District of Ohio), by FBI Special Agent in Charge Van A. Harp, for his outstanding assistance with a Russian organized crime case.

Mark Cameli (Western District of Wisconsin), by Assistant Attorney General Frank W. Hunger, Civil Division, for his efforts in the successful settlement of *United States v. Crown Equipment Corporation*, an affirmative tort case.

Valerie Casanova, Secretary (Central District of California), by Director Michael F. Hertz, Commercial Litigation Branch, Civil Division, for the exceptional support she provided to the trial team during *United States ex rel. Peterson and Kroll v. Northrop Corporation*, a false claims

case.

Robert S. Cessar (Western District of Pennsylvania), by IRS Chief Edward J. Litchko, Criminal Investigation Division, for his excellent efforts in the successful investigation and prosecution of the six individuals involved in the Michael Carlow, et al., organization for bank fraud.

Anne Whatley Chain (Eastern District of Pennsylvania), by Assistant Inspector General for Investigations Stephen N. Marica, U.S. Small Business Administration (SBA), for her excellent efforts in the successful prosecution of several fraud cases for the SBA.

Philip C. Chance (Western District of Kentucky), received a Certificate of Appreciation from the U.S. Postal Inspection Service for his successful prosecution of three cases involving the mailing of controlled substances.

Randy S. Chartash (Northern District of Georgia), by Federal Law Enforcement Officers Association's National President Victor Oboyski, for being selected for their 1995 Group Award for investigative guidance and prosecutorial skill in "Operation Wall Walker," an undercover operation conducted at the U.S. Penitentiary in Atlanta, Georgia.

Jackie Chooljian (Central District of California), by Criminal Division Chief Robert J. Conrad, Western District of North Carolina, for assisting AUSA Brian Whisler in the sentencing of *United States v. Duong, et al.*, a bank fraud conspiracy case.

Jackie Chooljian (Central District of California), by United States Attorney William A. Keffer, Southern District of Florida, for her invaluable assistance in *United States v. Kenneth Thenen, et al.*, a wire fraud and money laundering case.

Carlie Christensen (District of Utah), by Chief Park Ranger Larry C. Van Slyke, Canyonlands National Park, for her outstanding efforts in the defense of a wrongful death suit filed against Zion National Park.

Todd S. Clemons (Western District of Louisiana), by Chief Postal Inspector K. J. Hunter, U.S. Postal Service, for his extraordinary efforts in the successful prosecution of Clayton James Phillips for the armed robberies of two Post Offices in Louisiana.

Gaines Cleveland (Southern District of Mississippi), by President Jerry St. Pe, Ingalls Shipbuilding, Inc., for his outstanding efforts in bringing about two indictments involving workers compensation fraud.

Faith Coburn, Victim Specialist (Eastern District of Wisconsin), by Attorney General Janet Reno, for her outstanding work with the Model Victim Witness Program in her district.

Dara Corrigan (District of Columbia), by Nelson A. Diaz, General Counsel of Housing and Urban Development, for her presentation to the court of the Government's dismissal motion in *Ervin and Associates v. Cisneros*, which challenged the Section 8 (a) program to assist small

socially and economically disadvantaged businesses.

Cliff Cronk (Southern District of Iowa), by FBI Acting Special Agent in Charge Thomas W. Richardson, for his invaluable assistance in the successful prosecution of Kimmi Lynn Hardy and Bob Hardy for kidnapping and murder.

Kenneth D. Crowder (Southern District of Georgia), by Colonel William C. Kirk, U.S. Army, General Counsel, for his superb representation in two recent proceedings in bankruptcy court, *Hatton v. AAFES/DPP* and *Hoskins v. United States Army and Air Force Exchange Service.*

James Crowe, Jr., Criminal Chief (Eastern District of Missouri), by FBI Special Agent in Charge Wiley D. Thompson, III, for his extraordinary efforts in an investigation of a man threatening to detonate a bomb at the 1996 St. Louis Fair.

Matthew C. Crowl (Northern District of Illinois), by Deputy Chief Matthias E. Casey, City of Chicago Police Department, Organized Crime Division, for his successful prosecution of the Gangster Disciple gang cases.

Barbara Curry (Central District of California), by private citizen Barry B. Martin, Woodland Hills, California, for her outstanding efforts in the prosecution of *United States v. Root*, a murder-for-hire case.

Howard Daniels (Central District of California), by Director Michael F. Hertz, Commercial Litigation Branch, Civil Division, for the exceptional logistical support he provided to the trial team during *United States ex rel. Peterson and Kroll v. Northrop Corporation*, a False Claims Act case.

Christine W. Dean (Eastern District of North Carolina), by DEA Special Agent in Charge Raymond J. McKinnon, for her efforts in the successful prosecution of the Donald Pleasants drug organization.

Antoinette Decker (Eastern District of Missouri), by DEA Special Agent in Charge Anthony R. Bocchichio, for her outstanding efforts in the successful prosecution of George and Elisa DeLuca for narcotics conspiracy and money laundering.

William D. Delahoyd (Eastern District of North Carolina), by H. Morris McKnight, Director of Loss Prevention, Lowe's Food Stores, Inc., for his exceptional efforts in the successful prosecution of eleven members of a theft ring in *United States v. Donald Reid Thomas, et al.*

Richard A. Dennis (Western District of Kentucky), by Director Ronald Hicks, Personnel Division; E.T. Leonard, Personnel Officer; Jack W. Meyer, Employee Relations Specialist; and Linda L. Jones, Assistant Administrative Officer, U.S. Department of Agriculture, for his efforts in the past four years representing the Food Safety and Inspection Service in a number of civil lawsuits brought against the Agency and several employees by Norman A. Harris, a former employee.

Honorable Michael E. Dettmer (Western District of Michigan), by U.S. Railroad Retirement Board Inspector General Martin J. Dickman, for his efforts in the successful prosecution of Michigan Southern Railroad Company for fraud.

Thomas A. Devlin, Jr. (Northern District of Georgia), by FBI Director Louis J. Freeh, for his successful prosecution of Irving Alvin, Willie Brown, and Baron Herder for armed bank robbery.

Uttam Dhillon (Central District of California), by FBI Director Louis J. Freeh, for his support to the team investigating the Mexican Mafia, resulting in the first violent crime RICO (Racketeer Influenced and Corrupt Organizations) indictment in the Central District of California.

Jack P. Dicanio (Central District of California), by FBI Director Louis J. Freeh, for his support to the team investigating the Mexican Mafia, resulting in the first violent crime RICO (Racketeer Influenced and Corrupt Organizations) indictment in the Central District of California.

Thomas M. DiBiagio (District of Maryland), by FBI Supervisory Special Agent John T. Sylvester, for his successful prosecution of *United States v. Donald Francella, Jr.*, in which the defendant, a guard with Federal Armored Express, stole $31,000 from two shipments of money; and *United States v. Harold Tyronne Hill, Floyd Anthony Jones, and Donna Elizabeth Hammond*, in which the three were convicted of bank robbery.

Thomas M. DiBiagio (District of Maryland), by Special Agent in Charge Russell M. Kelly, Department of Veterans Affairs, for his outstanding efforts in the successful prosecution of three Veterans Affairs laundry facility employees for theft of Government property for selling more than $6000 in stolen linens to an undercover agent.

Frank DiMarino (Southern District of Georgia), by Chief Eileen Sobeck, Wildlife and Marine Resources Section, Environment and Natural Resources Division, for his outstanding efforts during Operation Goodtime Charlie and Operation Castnet, violations of Title 16 U.S.C. § 3372—Lacey Act, protection of wildlife. Operation Goodtime Charlie dealt with the attempted bribery of a Georgia Department of Natural Resources Officer and Operation Castnet dealt with the prosecution of 21 individuals for violating state fishing laws.

Leo M. Dillon (Western District of Pennsylvania), by FBI Director Louis J. Freeh, for his exceptional efforts in the successful prosecution of three defendants involved in judicial corruption in the Allegheny County Common Pleas Statutory Appeals Court.

Keir N. Dougall (Eastern District of Pennsylvania), by Inspector Attorney Thomas V. Sottile, U.S. Postal Inspection Service, for his outstanding efforts in the successful settlement agreement with American Future Systems (AFS), which was accused of a false billing scheme by mailing invoices to customers that had not placed orders.

John Duncan (Northern District of New York), by U.S. Coast Guard Rear Admiral G. F. Woolever, for his efforts in the successful prosecution of Michael McHugh on two counts of involuntary manslaughter.

Robert L. Eberhardt (Western District of Pennsylvania), by General Services Administration Regional Inspector General for Investigations George J. Hallett, for his efforts in the New Pig Corporation investigation and settlement of this potential False Claims Act case.

Thomas Eckert (Western District of Virginia), by Colonel Warren H. Davies, Superintendent, Ohio State Highway Patrol, for his efforts in the successful prosecution of Brett R. Irby for fraud.

Debbie English, Legal Assistant (Northern District of Georgia), by FBI Special Agent in Charge David W. Johnson, Jr., for her outstanding efforts in the multi-agency investigation of the Dar-UL Movement for violent crime and firearms trafficking.

Elliot Enoki, First AUSA (District of Hawaii), by INS District Director Donald A. Radcliffe, for his outstanding assistance in Operation Circumvent, a case which convicted merchants of selling fraudulent designer label items.

Kenneth C. Etheridge (Southern District of Georgia), by Colonel William C. Kirk, U.S. Army, General Counsel, for his superb representation in two recent proceedings in bankruptcy court, *Hatton v. AAFES/DPP* and *Hoskins v. United States Army and Air Force Exchange Service.*

Michael Fagan (Eastern District of Missouri), by DEA Special Agent in Charge Anthony R. Bocchichio, for his outstanding efforts in the successful prosecution of George and Elisa DeLuca for narcotics conspiracy and money laundering.

Thomas J. Farrell (Western District of Pennsylvania), by U.S. Department of Labor Assistant District Director Richard J. Clougherty, for his efforts in the criminal prosecution of Franco/Cost Co./Cost Corp. under the provisions of the Fair Labor Standards Act.

Gary Felder (Eastern District of Michigan), by former Assistant Attorney General Deval L. Patrick, Civil Rights Division, for his invaluable legal advice and logistical support during settlement negotiations involving the Michigan Mega Conference Athletic League.

Joseph Ferguson (Northern District of Illinois), by DEA Special Agent in Charge James A. Morgan, for his outstanding work in the seizure and forfeiture of a Gulfstream G1 jet aircraft from a Mexican narcotics trafficker.

John M. Fietkiewicz (District of New Jersey), by FBI Director Louis J. Freeh, for his efforts in a stock fraud trial resulting in the successful prosecution of Barry Davis and his associates.

Katherine Fincham (Western District of Missouri), by Assistant Inspector General for Investigations William H. Garvie, Department of Energy, for her outstanding efforts in successfully prosecuting James Kish for two counts of bribery in connection with a program receiving Federal funds.

Mark L. Frazier (Western District of Texas), by Inspector General Thomas R. Bloom, U.S. Department of Education, for his excellent representation and prosecution of American Truck

Driving Schools for fraud, resulting in the seizure of $2.23 million in assets.

Laurence Freedman, Trial Attorney (Commercial Litigation Branch, Civil Division, DOJ), by David L. Haron, Frank and Stefani Professional Corporation, for his efforts in prosecuting the civil portion of *Byrne v. Damon Clinical Laboratories*, a Federal False Claims Act case in which the Government recovered $84,000,000 from Corning Incorporated, the successor to Damon, together with a guilty plea by the corporation and a $35,000,000 criminal fine.

Gary Gaertner (Eastern District of Missouri), by Sergeant Richard Spurgeon, Oklahoma City Police-Santa Fe, for his assistance when he was subpoenaed to testify in *United States v. Vincent Edwards*. Mr. Edwards, a felon in possession of multiple firearms, was distributing firearms and ammunition for the Gangster Disciples out of Chicago.

Annette Garcia, Supervisory Legal Secretary (Central District of California), by Director Michael F. Hertz, Commercial Litigation Branch, Civil Division, for her assistance as a logistical problem solver during *United States ex rel. Peterson and Kroll v. Northrop Corporation*, a False Claims Act case.

Ernest Garcia (Western District of Texas), by D. Keith Rollins, Regional Counsel, Department of Veterans Affairs, for his efforts in obtaining a favorable judgment in *Celia Price, et al.,* a medical malpractice case.

Stephen Garcia (Western District of Texas), by Defense Criminal Investigative Service Special Agent in Charge John F. West, Southwest Field Office, for his efforts in the successful prosecution of Dr. Loring A. Gifford and his associate, Mr. Samerjeet Sidhu, for health care fraud.

Brandy Gardes, Special AUSA (Western District of Texas), by U.S. Customs Service Special Agent in Charge David M. Nobles, for co-counseling a jury trial of a U.S. Customs Service employee who took confidential information belonging to the U.S. Customs Service and gave it to a third party.

Michael Gertzman (Southern District of New York), by DEA Administrator Thomas A. Constantine, for his outstanding prosecutorial contributions to the Julio Carrillo investigation, resulting in the dismantling of two violent street gangs.

Thomas Gezon (Western District of Michigan), by U.S. Railroad Retirement Board Inspector General Martin J. Dickman, for his efforts in the successful prosecution of Michigan Southern Railroad Company for fraud.

Virginia Gibson-Mason (Eastern District of Pennsylvania), by Inspector Attorney Thomas V. Sottile, U.S. Postal Inspection Service, for her outstanding efforts in reaching a successful settlement agreement with American Future Systems (AFS), for a false billing scheme.

Wendy Goggin (Middle District of Tennessee), by Senior Judge L. Clure Morton, U.S. District

Court, Middle District of Tennessee, for her outstanding trial ability.

Richard H. Goolsby (Southern District of Georgia), by IRS Criminal Investigation Division Chief William R. Britt, for his outstanding efforts in a recent health care fraud case.

Bruce Green (Eastern District of Oklahoma), by Chief Judge Mickey D. Wilson, U.S. Bankruptcy Court, Northern District of Oklahoma, for the commendable job representing Chief Judge Wilson in his capacity as Judge of the Bankruptcy Court in Tulsa.

Mark D. Greenberg, Trial Attorney (Office of Policy Development, DOJ), by United States Attorney Helen Fahey, Eastern District of Virginia, for his successful efforts in several credit card fraud and passport fraud cases during the six months he was assigned to the Special Assistant United States Attorneys' Unit in the Eastern District of Virginia.

Dick Gregorie (Southern District of Florida), by Executive Vice President Paul F. West, Elizabeth Arden Co., New York, for his efforts in Operation Stormfront, a cargo theft investigation.

Barbara A. Grewe (District of Columbia), by EOUSA Director Carol DiBattiste, for receiving the 1996 Merit Award for her extraordinary efforts to the Office of the Inspector General in heading the investigation into allegations of misconduct relating to the "Good O' Boys Roundup."

Deborah Griffin (Southern District of Alabama), by DEA Administrator Thomas A. Constantine, for her extraordinary efforts in support of the DEA's New Orleans Mobile Enforcement Team.

Nancy L. Griffin (Eastern District of Pennsylvania), by General Counsel Mary Lou Keener, Department of Veterans Affairs, for her outstanding efforts in the wrongful death suit, *Fraser v. United States*, and two suicide cases, *Hanke* and *Laferriere*.

Lisa Grimes Johnston (Northern District of West Virginia), by ATF Special Agent in Charge Robert H. Wall, Philadelphia Field Division, who presented her with a certificate of appreciation for outstanding work in the prosecution of Gary L. DeTemple, who was convicted for destroying real and personal property by fire, mail fraud, false declarations in statements in bankruptcy proceedings, and false oath in bankruptcy hearings.

Jennifer C. Guerin (District of Arizona), by Colonel Daniel P. Hass, U.S. Air Force, Chief, Tort Claims and Litigation Division, Air Force Legal Services Agency, for her outstanding efforts in defending the *Michal and Terrance Wartell v. United States* Federal Tort Claims Act case.

Jennifer C. Guerin (District of Arizona), by District Chief Nick B. Melcher, U.S. Department of the Interior, for the excellent counsel and assistance she provided in *James Rue Marie, et al., v. Bruce Babbitt, Secretary of the Interior*, an employment discrimination case.

Mikal Hanson (District of South Dakota), by Social Service Investigator James McLaughlin, Child Welfare Social Services, Standing Rock Sioux Tribe, for outstanding efforts in child sexual

abuse cases.

George Hardy (Northern District of California), by General Counsel Eric A. Rubel, U.S. Consumer Product Safety Commission, for his efforts in negotiating a fair and appropriate plea agreement in *United States v. Gail E. Daly* and *David A. Daly*, a case involving violations of the Flammable Fabrics Act.

James R. Harper, III (Northern District of Georgia), by FBI Special Agent in Charge David W. Johnson, Jr., for his outstanding guidance and handling of OCDETF cases, in particular, the Eugene Smith investigation, in which Mr. Smith was the mastermind of a burglary/theft ring.

Robin Harris (Northern District of California), by Assistant Inspector General for Investigations Carol L. Levy, U.S. Agency for International Development, Washington, D.C., for her excellent efforts in the successful prosecution of Jon A. Hepper for submission of an inflated bio-data sheet.

Robert Haviland (Eastern District of Michigan), by Director Gregory W. Anderson, Corporate and Financial Investigation, Blue Cross Blue Shield of Michigan, for his efforts in the successful prosecution of Calvin Lazar for mail fraud and tax evasion.

D. Marc Haws (District of Idaho), by Ira T. Burton, Washington County Prosecuting Attorney, and Michael B. Wadley, Washington County Sheriff, for his efforts in the investigation and prosecution of individuals involved in the senseless killing of Forest Service employee, David J. Wheeler.

John Hemann (Northern District of California), by Assistant General Counsel Beverly G. Agee, U.S. Department of Housing and Urban Development (HUD), California State Office, for his exemplary work in *Adams v. United States of America* and *Applon v. United States of America*, lawsuits that attacked HUD's conduct in operating the Acorn Housing projects. His expertise resulted in the plaintiff's withdrawal with prejudice.

John Hemann (Northern District of California), by Colonel Alexander W. Purdue, U.S. Air Force, for his persistent efforts on the *SAMEENA, Inc.*, case which was a challenge to the debarment of a Government contractor.

Kurt P. Hermanns (Western District of Washington), by Inspector General Thomas R. Bloom, U.S. Department of Education, for his efforts in the successful prosecution of Ronald L. Bailie, Nada Bailie, and Terri Bailie for conspiracy, false statements, and embezzlement of Department of Education Perkins Loan Funds.

Carlos Hermosillo (Western District of Texas), by U.S. Customs Service Special Agent in Charge David M. Nobles, for his efforts in the successful prosecution of two former U.S. Customs Service inspectors for bribery and conspiracy to smuggle drugs.

Stephen Heymann (District of Massachusetts), by General Counsel of the Navy Steven S. Honigman, for his efforts in a successful investigation involving illegal intrusion into numerous

Department of the Navy, Department of Defense, and other Government computer systems.

Norma F. Holland, Paralegal Assistant (Eastern District of North Carolina), by United States Attorney David M. Barasch, Middle District of Pennsylvania, for her outstanding assistance in the investigation and successful prosecution of Michael Tessari for wire fraud and money laundering.

Dennis Holmes (District of South Dakota), by Chief Ronald A. Sarachan, Environmental Crimes Section, Environment and Natural Resources Division, for his outstanding efforts in the successful prosecution of Tim Sinskey and Wayne Kumm for violating the Clean Water Act.

Jay Holtmeir (Southern District of New York), by DEA Administrator Thomas A. Constantine, for his outstanding prosecutorial contributions to the Julio Carrillo investigation, resulting in the dismantling of two violent street gangs.

Steven Holtshouser (Eastern District of Missouri), by DEA Special Agent in Charge Anthony R. Bocchichio, for his outstanding efforts in the successful prosecution of George and Elisa DeLuca for narcotics conspiracy and money laundering.

Douglas Horn (Eastern District of Oklahoma), by Executive Director Edward Ashworth, The Southern Poverty Law Center, Montgomery, Alabama, for his efforts in exposing, prosecuting, and convicting three defendants for plotting to bomb the Law Center's offices and other public buildings.

James Howard (District of Maryland), by Deputy Assistant Secretary Michael L. Davis, Policy and Legislation, Department of the Army, for his outstanding efforts in the successful prosecution of Interstate General Company for violations of Section 404 of the Clean Water Act.

Jean Hudson (Western District of Virginia), by FBI Special Agent in Charge Stanley Klein, for the responsiveness and cooperative effort she provided during the investigation into the disappearance of Alicia Showalter Reynolds.

Carmina Hughes (District of Maryland), by FBI Special Agent in Charge Timothy P. McNally, for her outstanding efforts in the successful prosecution of James H. Van Metre for kidnapping.

Sharon Hutsler, Paralegal (Western District of Missouri), by Deputy Chief Frank J. Marine, Organized Crime and Racketeering Section, Criminal Division, for her outstanding assistance in connection with the prosecution of *United States v. Edward M. Doumani, et al.*, a bankruptcy fraud case.

Valerie Jackson, Legal Secretary (District of Arizona), by District Chief Nick B. Melcher, U.S. Department of the Interior, for her excellent assistance in *James Rue Marie, et al., v. Bruce Babbitt, Secretary of the Interior*, an employment discrimination case.

Michael C. Johnson (Central District of California), by Field Director Gary W. Van Sickle, California Tree Fruit Agreement, for his tenacious efforts during the Hughes Development

Corporation bankruptcy hearings.

Pamela L. Johnston (Central District of California), by Civil Rights Division Assistant Attorney General Deval L. Patrick, for her efforts in *United States v. White, et al.*, a FACE (Freedom of Access to Clinic Entrances) case.

Jane H. Jolly (Eastern District of North Carolina), by DEA Special Agent in Charge Raymond J. McKinnon, for her efforts in successful prosecutions of numerous major narcotics distributors.

Ben Jones (Central District of California), by FBI Senior Supervisory Resident Agent Randy D. Parsons, for his exceptional efforts in the successful prosecution of five defendants for the armed robbery of a Palm Springs bank.

Cam Jones (Western District of Tennessee), by Director Larry Wallace, Tennessee Bureau of Investigation, for her outstanding assistance in the successful prosecution of a health care fraud case, *United States v. James Earl Henry, Jr., et al.*

Mark C. Jones (Eastern District of Michigan), by Director Gregory W. Anderson, Corporate and Financial Investigation, Blue Cross Blue Shield of Michigan, for his efforts in the successful prosecution of health care professionals conspiring to defraud Blue Cross Blue Shield of Michigan, Medicare, and Medicaid.

Michael Jones, Paralegal Specialist (EOUSA), by Chief Paul F. Hancock, Housing and Civil Enforcement Section, Civil Rights Division, for his participation as a tester in the Fair Housing Testing Program.

Cindy Jorgenson (District of Arizona), by Colonel Daniel P. Hass, Chief, U.S. Air Force, Tort Claims and Litigation Division, Air Force Legal Services Agency, for her outstanding efforts in defending the *Michal and Terrance Wartell v. United States* Federal Tort Claims Act case.

John Joseph (Eastern District of Pennsylvania), by Assistant Inspector General for Investigations Stephen N. Marica, U.S. Small Business Administration (SBA), for his excellent efforts in the successful prosecution of numerous Affirmative Civil Enforcement cases for the SBA.

Bruce Judge (Eastern District of Michigan), by Special Agent in Charge Dale W. Schuitema, Drug Enforcement Administration, for his efforts in the successful prosecution of 13 defendants involved in a large narcotics trafficking and money laundering operation.

Amy Berne Kaminshine (Northern District of Georgia), by General Counsel Judith Winston, Department of Education, for her outstanding representation of the Secretary of Education in *Shorter v. Riley*, the first of several class actions challenging the enforceability of hundreds of Federal Family Education Loan Program loans.

Debra Kanof (Western District of Texas), by Defense Criminal Investigative Service Special Agent in Charge John F. West, Southwest Field Office, for her efforts in the successful

prosecution of Dr. Loring A. Gifford and his associate, Mr. Samerjeet Sidhu, for health care fraud.

Nancy Kardon (Central District of California), by ATF Special Agent in Charge Bernard H. LaForest, for her outstanding work in orchestrating the prosecution and ultimate conviction of Judge Hillard, a violent career criminal.

Stephen R. Kaufman (Western District of Pennsylvania), by Chief Anthony V. Nanni, Litigation I Section, Antitrust Division, for his assistance during the investigation and successful resolution of an antitrust case involving Pennsylvania Explosives Distributors.

Stephen R. Kaufman (Western District of Pennsylvania), by IRS Chief Edward J. Litchko, Criminal Investigation Division, for his excellent efforts in the successful investigation and prosecution of six individuals involved in the Michael Carlow, et al., organization for bank fraud.

Stephen R. Kaufman (Western District of Pennsylvania), by William F. Wells, Branch Chief C, Criminal Investigation Division, IRS, for his efforts in the successful conclusion of the David Sager tax evasion investigation.

Jan E. Kearney (District of Arizona), by United States Attorney Saul A. Green, Eastern District of Michigan, for her outstanding efforts in attempting to implement a Rule 20 transfer in *United States v. John Abramo*.

Nancy L. Kelley (Northern District of Ohio), by United States Attorney William D. Wilmoth, Northern District of West Virginia, for representing the Government at the removal and detention hearings of James Johnson and Imam Lewis, who were charged with transporting explosive material in inter-state commerce.

Dennis Kennedy (Eastern District of Virginia), by Howard S. Weintraub, U.S. Customs Service, for his outstanding effort and perseverance during the investigation, prosecution, and sentencing of Joseph Miano, a former DEA Analyst, for unlawful disclosure of information and theft of Government property.

Marcus Kerner (Central District of California), by FTC Senior Trial Attorney David R. Spiegel, for his assistance regarding *FTC v. Duboise, et al.*, a consumer fraud case.

Mark R. Kmetz (Eastern District of Pennsylvania), by Special Agent in Charge James J. Hagen, Defense Criminal Investigative Service, for his outstanding efforts in the successful settlement of *United States v. Rubber Crafters and Peter Zannoni*, a False Claims Act case.

Constance Komoroski (Central District of California), by Federal Bureau of Prisons Assistant Director Peter M. Carlson, Correctional Programs Division, for her excellent representation during Mr. Carlson's deposition in *Rabbi Abraham Low v. Warden*, a Religious Freedom Restoration Act case.

Frank Kortum (Central District of California), by Brigadier General G. B. Higginbotham, Defense Industrial Supply Center, for his efforts in handling the Air Industries Corporation settlement, which resulted in the successful resolution of the case and a recovery of approximately $2,600,000 for the Defense Industrial Supply Center.

Frank Kortum (Central District of California), by Director Michael F. Hertz, Commercial Litigation Branch, Civil Division, for his legal research during *United States ex rel. Peterson and Kroll v. Northrop Corporation*, a False Claims Act case.

Eliot Krieger (Central District of California), by Federal Bureau of Prisons Assistant Director Peter M. Carlson, Correctional Programs Division, for his superb work during Mr. Carlson's deposition in *Rabbi Abraham Low v. Warden, et al.*, a Religious Freedom Restoration Act case.

Edward Kubo (District of Hawaii), by DEA Assistant Special Agent in Charge Sidney A. Hayakawa, for his efforts in the successful prosecution of several DEA Honolulu District Office drug cases, including the successful prosecution of two members of the Boo-Yaa Tribe.

Stephen Kunz (Middle District of Florida), by Douglas Finlay, for his efforts in the recent prosecution of the person who murdered Mr. Finlay's father.

Honorable Peg Lautenschlager (Western District of Wisconsin), by FBI Special Agent in Charge Michael J. Santimauro, for her personal involvement in two cases. The first resulted in the successful prosecution of Steven Paul Oliver for kidnapping, and the second involved the conviction of Gordon Hoff, Sr.; Gordon Hoff, Jr.; and Eric Richard Meyer in a drug conspiracy matter.

Terri Law (Central District of California), by FBI Acting Special Agent in Charge Ralph R. Girardi, for her outstanding performance in support of the Grape Street Crips task force which resulted in 16 convictions and the conviction of Wayne Day for conspiring to distribute cocaine and cocaine base.

Retha J. Lee, Victim-Witness Coordinator (Eastern District of North Carolina), by Colonel W. W. Scheffler, U.S. Marine Corps, for her invaluable assistance in the successful prosecution of Bruce Gilliken for trafficking in child pornography.

Lisa B. Lench (Central District of California), by FBI Director Louis J. Freeh, for her support to the team investigating the Mexican Mafia, resulting in the first violent crime RICO (Racketeer Influenced and Corrupt Organizations) indictment in the Central District of California.

Robert I. Lester (Central District of California), by Executive Officer/Clerk Frank E. Goodroe, U.S. District Court, Central District of California, for the outstanding representation he provided to that office in numerous cases.

Lawrence Lincoln (Western District of Washington), by Inspector General Thomas R. Bloom, U.S. Department of Education, for his efforts in the successful prosecution of Ronald L. Bailie,

Nada Bailie, and Terri Bailie for conspiracy, false statements, and embezzlement of Department of Education Perkins Loan Funds.

Michael Littlefield (Eastern District of Oklahoma), by Executive Director Edward Ashworth, The Southern Poverty Law Center, Montgomery, Alabama, for his efforts in exposing, prosecuting, and convicting the three defendants responsible for plotting to bomb the Law Center's offices and other public buildings.

James H. Love (Western District of Pennsylvania), by IRS Criminal Investigation Division Chief Edward J. Litchko, Philadelphia, for his outstanding efforts in the successful prosecution of Ronald Whethers and five other defendants charged with narcotic trafficking and money laundering.

Miroslav Lovric (Northern District of New York), by Superintendent James W. McMahon, New York State Police, State Campus, for his remarkable efforts in the successful prosecution of three defendants responsible for the drug-related slaying of Michael Monsour.

James C. Lynch (Northern District of Ohio), by U.S. Customs Service Port Director John M. Regan, for his efforts in the successful prosecution of Continental General Tire, Inc., for violating Title 18 § 542—entry of goods by means of a false statement.

John Lyons (Northern District of California), by U.S. Customs Special Agent in Charge Rollin B. Klink, for his extraordinary efforts in the Thanong Siriprechapong drug prosecution.

Michael W. Magner (Eastern District of Louisiana), by DEA Special Agent in Charge Ronald J. Caffrey, for his outstanding efforts in the successful prosecution of *United States v. Rogelio Polledo, et al.*, a drug case.

Elizabeth Makowski, Paralegal Assistant (Eastern District of Wisconsin), by Attorney General Janet Reno, for her outstanding work with the Model Victim Witness Program.

John G. Malcolm (Northern District of Georgia), by Independent Counsel Larry D. Thompson, King & Spalding, for his extraordinary efforts in *United States v. James G. Watt* during his detail to the Office of Independent Counsel. Watt was charged with perjury, false statements, and obstruction of justice.

Bernard Malone (Northern District of New York), by Superintendent James W. McMahon, New York State Police, State Campus, for his remarkable efforts in the successful prosecution of three defendants responsible for the drug-related slaying of Michael Monsour.

Robert Marcovici, Attorney-Advisor (Office of Legal Counsel, EOUSA), by United States Attorney Michael Troop, Western District of Kentucky, for his exceptional efforts on the Emergency Witness Assistance Program (EWAP) proposal.

Diane Marion (Eastern District of Michigan), by C. W. Wilson, Inspector in Charge, Detroit

Division, U.S. Postal Inspection Service, for her significant efforts in the successful prosecution of postal employee Jack Brian Turner for making death threats toward a Postal Inspector and his family.

J. Michael Marous (Southern District of Ohio), by EOUSA Director Carol DiBattiste, for successfully negotiating the plea agreement in *U.S. v. Melnikas*, a case involving the theft and attempted sale of six ancient manuscript pages from documents in the Vatican Library and two cathedral libraries in Spain.

Ana Maria Martel (Northern District of Iowa), by INS District Director F. Gerard Heinauer, Omaha District Office, for her efforts in the successful prosecution of 47 aliens charged with illegally entering the U.S., and other immigration violations.

Douglas Martin, Victim Specialist (Eastern District of Wisconsin), by Attorney General Janet Reno, for his outstanding work with the Model Victim Witness Program in his district.

Iden Martyn (EOUSA), by Director Jerry Patchan, Executive Office for U.S. Trustees, for his efforts and those of his staff during "Operation Total Disclosure," which resulted in the indictment of 134 defendants in 118 cases in 43 districts for bankruptcy fraud.

Anne Christine Massullo (Northern District of California), by Assistant General Counsel Beverly G. Agee, U.S. Department of Housing and Urban Development (HUD), California State Office, for her exemplary work in *Adams v. United States of America* and *Applon v. United States of America*, lawsuits that attacked HUD's conduct in operating the Acorn Housing projects. Her expertise resulted in the plaintiff's withdrawal with prejudice.

Anne Christine Massullo (Northern District of California), by Assistant Inspector General for Investigations William H. Garvie, Department of Energy, for her exceptional efforts in the successful conclusion of the Work For Others False Claims Act case.

Douglas B. Maynard (Southern District of New York), by DEA Administrator Thomas A. Constantine, for his outstanding prosecutorial contributions to the Julio Carrillo investigation, resulting in the dismantling of two violent street gangs.

Roselind McCoy, Financial Litigation Agent (Eastern District of Oklahoma), by Robert B. Bird, Assistant Regional Attorney and Senior Counsel, U.S. Department of Agriculture (USDA), for her exceptional efforts in collecting funds owed to USDA agencies.

J. Douglas McCullough (Eastern District of North Carolina), by U.S. Customs Service Resident Agent in Charge L. M. Flippin, for his efforts in the joint IRS/U.S. Customs OCDETF investigation of Grady Cummings.

Regina McCullough, Paralegal Specialist (Eastern District of Michigan), by DEA Special Agent in Charge Dale W. Schuitema, for her efforts in the successful prosecution of 13 defendants involved in a large narcotics trafficking and money laundering operation.

Hal McDonough (Middle District of Tennessee), by Senior Judge L. Clure Morton, U.S. District Court, Middle District of Tennessee, for his outstanding trial ability.

John McEvoy, Administrative Officer (Central District of California), by Director Michael F. Hertz, Commercial Litigation Branch, Civil Division, for being the trial team's point of contact at the courthouse and for providing office space to organize documents and store the exhibits during *United States ex rel. Peterson and Kroll v. Northrop Corporation*, a False Claims Act case.

Patricia McGarry (Eastern District of Missouri), by FBI Special Agent in Charge Wiley D. Thompson, III, for her prompt assistance in obtaining a search warrant for an investigation into illegally cloned cellular telephones.

Barry McHugh (District of Idaho), by FBI Special Agent in Charge Thomas T. Kubic, for his outstanding efforts in the investigation and prosecution of Harold J. Klassen for mail and health care fraud.

Patrick A. McInerney (Western District of Missouri), by FBI Special Agent in Charge David M. Tubbs, for his outstanding efforts in a lengthy Asian criminal enterprise investigation which resulted in all but one of the defendants pleading guilty to conspiracy, bookmaking, transmission of wagering information, and/or tax charges.

William L. McKinnon (Northern District of Georgia), by FBI Special Agent in Charge David W. Johnson, Jr., for his outstanding efforts in the multi-agency investigation of violent crime and firearms trafficking by members of the Dar-UL Movement.

Kitty McLaughlin, Paralegal Assistant (Western District of Pennsylvania), by Anthony V. Nanni, Chief, Litigation I Section, Antitrust Division, for her assistance during the investigation and successful resolution of an antitrust case involving Pennsylvania Explosives Distributors.

Robert H. McWilliams, Jr. (Northern District of West Virginia), by ATF Special Agent in Charge Robert H. Wall, Philadelphia Field Division, who presented him with a certificate of appreciation for his outstanding work in the criminal prosecution of Gary L. DeTemple, who was convicted on 20 counts of an indictment, for destroying real and personal property by fire, mail fraud, false declarations in statements in bankruptcy proceedings, and false oath in bankruptcy hearings.

Geoffrey S. Mearns, First AUSA (Eastern District of North Carolina), by FBI Director Louis J. Freeh, for his outstanding efforts in the successful prosecution of Norman DuPont for the murder of Harmon Fuchs.

Thomas J. Mehan (Eastern District of Missouri), by FBI Special Agent in Charge Wiley D. Thompson, III, for his outstanding efforts in an investigation of a man who threatened to detonate a bomb at the 1996 St. Louis Fair.

N. George Metcalfe (Eastern District of Virginia), by Colonel Joseph A. Neurauter, U.S. Army

Staff Judge Advocate, for his outstanding efforts in the prosecution of *United States v. Dirk Ward*, a drug case.

Lloyd Meyer (Western District of Michigan), by D/Lt. Terry L. Harris, Michigan State Police, for his outstanding efforts in prosecuting numerous Methcathinone cases from 1994 through 1996.

Joseph T. Mickel (Western District of Louisiana), by Chief Postal Inspector K. J. Hunter, U.S. Postal Service, for his extraordinary efforts in the successful prosecution of Clayton James Phillips for the armed robberies of two Post Offices in Louisiana.

Brian D. Miller (Eastern District of Virginia), by Michael A. Little, Regional Inspector General for Investigations, Department of Health and Human Services, for his excellent work in the investigation of Poplar Springs Hospital, a False Claims Act case based on a violation of the Medicare Anti-Kickback Act.

Lawrence E. Miller (Western District of Missouri), by District Director John B. Mitchell, Office of Labor-Management Standards, U.S. Department of Labor, for his outstanding efforts in the successful prosecution of Earl Speidel for embezzlement.

Mark Miller (Western District of Kentucky), received a Certificate of Appreciation from the U.S. Postal Inspection Service for his successful prosecution of two cases involving the mailing of controlled substances.

Dixie Morrow (Middle District of Georgia), by EOUSA Director Carol DiBattiste, for her work as an Assistant Director for Criminal Programs while on detail to the Office of Legal Education (OLE), particularly the new courses she developed while at OLE, such as the Homicide Prosecutions Course and the International /National Security Coordinators Conference.

Stephen A. Muchnick (Eastern District of Missouri), by Chief U.S. Probation Officer R. James Behm, U.S. District Court, Eastern District of Missouri, for his representation in the Gassel Revocation Hearing in which a man was charged with statutory rape while on supervised release.

Maria Murphy (Southern District of Alabama), by FBI Supervisory Special Agent Stephen P. McGavin, for her outstanding efforts in the successful prosecution of Curtis James Pleasant who was convicted of assaulting a Federal officer, being a felon in possession of a handgun, and for the use of a handgun by a felon during the commission of a crime.

Richard S. Murray (Western District of Michigan), by FBI Director Louis J. Freeh, for his outstanding efforts in the successful prosecution of James Allen Hibbler for possession and distribution of child pornography.

Michel Nicrosi (Southern District of Alabama), by FDA Special Agent in Charge Kent W. Walker, for her efforts in the successful prosecution of Arthur and Juanita Mallard for bank fraud, mail fraud, tax fraud, and selling a new drug without FDA approval in interstate commerce.

Patrick T. Noonan (Western District of Pennsylvania), received an award from FBI Director Louis J. Freeh for his participation in the Organized Crime and Drug Enforcement Task Force from January 1993 to October 1995 which focused on the interstate movement of crack cocaine from source cities outside of Johnstown, Pennsylvania.

John E. Nordin, II (Central District of California), by FBI Director Louis J. Freeh, for his successful defense of *Ronald E. Ting v. United States of America and James Burns*, a use of deadly force case.

John E. Nordin, II (Central District of California), received an award from the U.S. Department of Agriculture Forest Service for his outstanding efforts during the Tort and Bivens *Pinon Hills Fire Victims* case.

Andrew Norman (District of Maryland), by FBI Special Agent in Charge Timothy P. McNally, for his outstanding efforts in the successful prosecution of James H. Van Metre for kidnapping.

Karen B. Norris (Western District of Texas), by Regional Counsel Attorney Bruce C. Williams, Department of Veterans Affairs, for her excellent representation and defense in *Webb v. United States*, a complex psychiatric medical malpractice case.

Sharon K. Novitsky (District of Arizona), by Dr. George J. Ivanisko, Administrative Crown Counsel, Supreme Court, Province of British Columbia, for her excellent, competent legal assistance in the extradition from Arizona to British Columbia of Arthur Christy for sexual offense of a child.

Daniel O'Brien (Central District of California), by Assistant Special Agent in Charge for Fraud R. D. Porter and Special Agent in Charge R. B. Miller, Naval Criminal Investigative Service, for his outstanding efforts in successfully prosecuting *United States v. Omar Hazim Shemdin*, who pled guilty to one felony count of submitting false statements to the Department of Defense in violation of 18 U.S.C. 1001, and one felony count of subscribing to a false Federal income tax return, in violation of 26 U.S.C. 7206(1).

Daniel O'Brien (Central District of California), by Postal Inspector R. L. DeGasperin and Inspector in Charge L. S. Crawford, Jr., U.S. Postal Inspection Service, for his efforts in the investigation and successful prosecution of *United States v. Okeh, et al.*, a credit card fraud case.

Stephen O'Meara (Southern District of Iowa), by FBI Acting Special Agent in Charge Thomas W. Richardson, for his invaluable assistance in the successful prosecution of Kimmi Lynn Hardy and Bob Hardy for kidnapping and murder.

Carla B. Oppenheimer (Western District of Missouri), by Chief U.S. Probation Officer Stephen M. Donnelly, U.S. District Court, for her dedication and commitment in successfully prosecuting *United States v. George and Judy Townsend*, a mail fraud and tax fraud case.

Les Osborne, White Crime Section Chief (District of Hawaii), by INS District Director Donald

A. Radcliffe, for his outstanding assistance in Operation Circumvent, a case which convicted merchants of selling fraudulent designer label items.

Donald B. Overall, Chief, Civil Division (District of Arizona), by District Chief Nick B. Melcher, U.S. Department of the Interior, for his excellent counsel and assistance he recently provided in *James Rue Marie, et al., v. Bruce Babbitt, Secretary of the Interior*, an employment discrimination case.

Mitzi Dease Paige (Southern District of Mississippi), by District Manager Ted W. Woodall, Human Resources, Mississippi District, U.S. Postal Service, for professionalism, dedication, and devotion to duty she displayed while working on *Doretha Wiley v. Marvin T. Runyon*, an employment discrimination case.

John F. Paniszczyn (Western District of Texas), by Colonel Daniel P. Hass, Chief, U.S. Air Force, Tort Claims and Litigation Division, for his outstanding work in the medical malpractice case, *Capt. Kenneth C. Wells, et al., v. United States*.

John F. Paniszczyn (Western District of Texas), by Colonel Gary C. Bradham, U.S. Air Force, for his outstanding representation in the age discrimination case, *Purcell v. U.S. Air Force*.

John F. Paniszczyn (Western District of Texas), by Director Jose R. Coronado, Audie L. Murphy Memorial Veterans Hospital Division, Department of Veterans Affairs, for his efforts in *Pankey v. Brown*, an employment discrimination case.

Linda L. Parker (Western District of Missouri), by FBI Special Agent in Charge David M. Tubbs, for her exceptional efforts in the successful prosecution of *United States v. William F. Borders, et al.*, a health care fraud case.

Marietta Parker (Western District of Missouri), by Assistant Inspector General for Investigations William H. Garvie, Department of Energy, for her outstanding efforts in successfully prosecuting James Kish for two counts of bribery in connection with a program receiving Federal funds under 18 U.S.C. § 666.

Marietta Parker (Western District of Missouri), by Regional Inspector General for Auditing Carolyn S. Emery, General Services Administration, for her outstanding efforts in the successful conclusion of *United States v. I. I. Ozar, et al.*, a conspiracy to commit major fraud against the U.S.

Kent W. Penhallurick (Northern District of Ohio), by Assistant Regional Counsel Joel D. Malkin, General Services Administration, Region 5, for his superb work in obtaining a favorable settlement for the Government in *Rodney Newman, et al., v. United States*, a personal injury case.

Kent W. Penhallurick (Northern District of Ohio), by Judge Paul R. Matia, U.S. District Court, Northern District of Ohio, for his valuable service as a mediator in the *Jones v. Shelby Police Department, et al.*, civil rights action.

Darlene Permuter, Secretary (Eastern District of Missouri), by FBI Special Agent in Charge Wiley D. Thompson, III, for her outstanding efforts in preparing essential documentation for an investigation of a man threatening to detonate a bomb at the 1996 St. Louis Fair.

Maxine S. Pfeffer (Southern District of New York), received the 1996 Merit Award for her extraordinary efforts in heading an investigation into allegations that high-ranking INS officials deliberately misled a Congressional delegation during a trip to Miami in June 1995.

Barbara Phelps, Secretary (Western District of Virginia), by FBI Special Agent in Charge Stanley Klein, for her responsiveness and cooperative effort during an investigation into the disappearance of Alicia Showalter.

Richard Poehling (Eastern District of Missouri), by FBI Special Agent in Charge Wiley D. Thompson, III, for his extraordinary efforts in an investigation of a man who threatened to detonate a bomb at the 1996 St. Louis Fair.

Margaret Poff (Eastern District of Michigan), by DEA Special Agent in Charge Dale W. Schuitema, for her efforts in the successful prosecution of 13 defendants involved in a large narcotics trafficking and money laundering operation.

Omer Poirier (District of Hawaii), by INS District Director Donald A. Radcliffe, for his outstanding efforts as lead attorney in Operation Circumvent, a case which convicted merchants of selling fraudulent designer label items.

Dan A. Polster (Northern District of Ohio), by Regional Anti-Piracy Counsel Katherine E. Timon, Recording Industry Association of America, Inc., for his outstanding representation in *U.S. v. Robert I. Palmer*, a sound recording piracy case.

Laura Przybylinski (Western District of Wisconsin), by FBI Special Agent in Charge Michael J. Santimauro, for her outstanding efforts in the successful prosecution of Steven Paul Oliver for kidnapping.

Angela Rasoletti, Paralegal (Northern District of Ohio), by IRS Chief George M. Rezny, Criminal Investigation Division, for her assistance in preparing enlarged trial exhibits for the trial *United States v. Robert Headley*, a tax fraud case.

Michael W. Reap, First AUSA (Eastern District of Missouri), by FBI Acting Special Agent in Charge Phillip W. Thomas, for his efforts in the successful prosecution of Jamil Rashim Fuller for violation of mail fraud statutes in connection with a telemarketing fraud scheme.

Loretta Reinecke, Secretary (Central District of California), by FTC Senior Trial Attorney David R. Spiegel, for her assistance in *FTC v. Duboise*, a consumer fraud case.

David Risley (Central District of Illinois), by DEA Special Agent in Charge James A. Morgan, for his outstanding efforts as lead prosecutor in the successful prosecution of the Joiner family

cocaine trafficking organization.

Angela Rivera, Supervisory Legal Secretary (Central District of California), by Director Michael F. Hertz, Commercial Litigation Branch, Civil Division, for ensuring that the trial team's varied supply needs were met during *United States ex rel. Peterson and Kroll v. Northrop Corporation*, a False Claims Act case.

Charles Roberts (Northern District of New York), by FBI Supervisory Senior Resident Agent Michael A. Mason, for his efforts in the successful prosecution of Mark Steven Besaw Sovie for interstate transmission of threatening communications.

R. Barry Robinson (Western District of Texas), by D. Keith Rollins, Regional Counsel, Department of Veterans Affairs, for his efforts in obtaining a favorable dismissal of *Melanie Shields v. United States*, a Title VII sexual harassment case.

Sara R. Robinson (Central District of California), by Counsel Robert H. McCall, Defense Contract Management Command, Defense Logistics Agency, for her outstanding efforts in defending his agency in *Tchakmakjian v. Perry*, a Title VII discrimination claim.

E. T. Rolison, Jr. (Southern District of Alabama), by DEA Administrator Thomas A. Constantine, for his extraordinary efforts in support of DEA's New Orleans Mobile Enforcement Team.

David M. Rosen (Eastern District of Missouri), by Assistant Inspector General for Investigations William H. Garvie, Department of Energy, for his outstanding assistance in the successful prosecution of Joseph Pembroke, an environmental case dealing with the air monitoring of asbestos abatement.

David M. Rosenfield, Special AUSA (District of New Jersey), by FBI Director Louis J. Freeh, for his efforts in a stock fraud trial resulting in the successful prosecution of Barry Davis and his associates.

Jacqueline Ross (District of Massachusetts), by General Counsel of the Navy Steven S. Honigman, for her efforts in a successful investigation involving illegal intrusion into numerous Department of the Navy, Department of Defense, and other Government computer systems.

Stephen Roth (District of Utah), by Secretary of Defense William J. Perry, for his efforts to clear a significant obstacle for the Army to begin live agent operations at the Chemical Demilitarization Facility in Tooele, Utah, in an attempt to destroy our country's chemical weapons stockpile in an environmentally sound manner.

Eduardo Roy (Northern District of California), by DEA Special Agent in Charge William J. Mitchell, for his outstanding efforts in the successful prosecution of numerous Cannabis cases over the last four years.

Eric Ruschky (District of South Carolina), by Director Larry J. McKeown, Child Support Enforcement Division, for his extraordinary efforts in the successful prosecution of numerous child support cases in the District of South Carolina.

George Russell, III (District of Maryland), by Associate General Counsel James S. Green, U.S. Office of Personnel Management (OPM), for his outstanding representation in *Virginia Burgin and Joseph K. Burgin v. Office of Personnel Management and HealthPlus, Inc.*, a case involving an attack on an OPM decision regarding disputed claims under their administration of the Federal Employees Health Benefits Program.

George Russell, III (District of Maryland), by Attorney Karen Dickson Vance, U.S. Postal Service, for his efforts in *Essex v. United States*, a tort case involving the fall of an elderly post office customer.

Ronald S. Safer (Northern District of Illinois), by Deputy Chief Matthias E. Casey, City of Chicago Police Department, Organized Crime Division, for his successful prosecution of the Gangster Disciple cases.

William R. Sawyer (Southern District of Alabama), by Chief Counsel Bruce R. Granger, Department of Health and Human Services, for his extraordinary representation in *WHL, Inc., and Shoals Imaging Clinic Corporation, Inc., v. Donna E. Shalala*, a civil action for judicial review regarding Medicare reimbursement payments.

William R. Sawyer (Southern District of Alabama), by FBI Special Agent in Charge Nicholas J. Walsh, for his efforts in the conviction of James Dennis for bankruptcy fraud.

Pat Schaper, Secretary (Eastern District of Missouri), by FBI Acting Special Agent in Charge Phillip W. Thomas, for her assistance during the prosecution of Jamil Rashim Fuller for violation of mail fraud statutes in connection with a telemarketing fraud scheme.

Judy Schmelig, Victim-Witness Coordinator (Eastern District of Missouri), by Sergeant Richard Spurgeon, Oklahoma City Police-Santa Fe, for taking care of his travel arrangements when he was subpoenaed to testify in *United States v. Vincent Edwards*, a case involving a felon in possession of multiple firearms who was distributing firearms and ammunition in Chicago for the Gangster Disciples.

Michele S. Schroeder (Northern District of Illinois), by DEA Special Agent in Charge James A. Morgan, for her outstanding work in the seizure and forfeiture of a Gulfstream G1 jet aircraft from a Mexican narcotics trafficker.

Robert F. Schroeder (Northern District of Georgia), by Independent Counsel Larry D. Thompson, King & Spalding, for his extraordinary efforts in *United States v. James G. Watt* during his detail to the Office of Independent Counsel. Watt was charged with perjury, false statements, and obstruction of justice.

Michael A. Schwartz (Eastern District of Pennsylvania), by Assistant Inspector General for Investigations Stephen N. Marica, U.S. Small Business Administration, for his excellent work in the successful prosecution of Michael Fink, Derek Koss, and Irving Eichenbaum for attempting to defraud the Small Business Administration.

Andrew Scoble (Northern District of California), by U.S. Customs Special Agent in Charge Rollin B. Klink, for his extraordinary efforts in the Thanong Siriprechapong drug prosecution.

Jacqueline Scola (Southern District of Florida), by Executive Vice President Paul F. West, Elizabeth Arden Co., New York, for her efforts in Operation Stormfront, a cargo theft investigation.

Perry Seakus (District of Maryland), by FBI Special Agents Steve Stowe and Ed Ryan, for his outstanding efforts in the Steve Hester Bivens case.

Eugene A. Seidel (Southern District of Alabama), by Colonel Daniel P. Hass, USAF, Chief, Tort Claims and Litigation Division, for his outstanding efforts in the defense of *Trisha B. Perry v. United States, et al.*, a case involving a military physician participating in a residency program at a civilian medical facility pursuant to military orders, being sued in his individual capacity in State court. As a result of Mr. Seidel's efforts, the Air Force physician was removed from the case as a defendant, the plaintiffs' Motion to Remand was denied, and the Government was granted its Motion to Dismiss.

Jeffrey M. Senger, Assistant Director, Civil and Appellate Programs (Office of Legal Education, EOUSA), by Senior Counsel Peter R. Steenland, Jr., Alternative Dispute Resolution Program, for his extraordinary efforts at the Miami Enhanced Negotiations/ADR Training Program.

Stan Serwatka (Western District of Texas), by U.S. Customs Service Special Agent in Charge David M. Nobles, for his assistance and guidance to the El Paso Office of Internal Affairs during the trials of three U.S. Customs Service employees for corrupt activities.

Bill Shaefer (Northern District of California), by ATF Special Agent in Charge Paul M. Snabel, for his outstanding efforts during Operation "Dragon Fire," a joint U.S. Customs/ATF investigation into illegal firearms trafficking by individuals in the U.S. and the Peoples Republic of China, resulting in the seizure of 2,000 machine guns.

Thomas C. Simon (District of Arizona), by FBI Special Agent in Charge Bruce J. Gebhardt, for his hard work and professionalism during *United States v. Dennison Etsitty*, a Safe Trails Task Force (STTF) case. The STTF is a cooperative effort between the FBI and the Navaho Criminal Investigators to investigate and combat crime in the Navaho Indian Reservation.

F. William Soisson (Eastern District of Michigan), by Chief of Police Joseph E. Thomas, Southfield Police Department, for his outstanding performance in the investigation and prosecution of a murder-for-hire and narcotics trafficking organization known as "Best Friends."

Steve Sorenson (District of Utah), by Chief Park Ranger Larry C. Van Slyke, Canyonlands National Park, for his outstanding efforts in the defense of a wrongful death suit filed against Zion National Park.

Peter G. Spivack (Central District of California), by Paul Heller, Paul Heller Productions, for his efforts in the successful prosecution of Gregory and Trevor Dickenson for fraud.

Michael D. Stein (Northern District of West Virginia), by Special Agent in Charge James J. Hagen, Defense Criminal Investigative Service, for his excellent prosecutorial efforts in a case involving Rubber Crafters, Incorporated, a Defense procurement fraud case.

J. Daniel Stewart (Western District of Missouri), by Chief Paul E. Coffey, Organized Crime and Racketeering Section, Criminal Division, for his efforts in the successful conviction of Ferrell Riley and Cheryll Coon for mail fraud, wire fraud, money laundering, bribery, and RICO (Racketeer Influenced and Corrupt Organizations), in connection with their insurance industry activities.

Christian H. Stickan (Northern District of Ohio), received an award from the Department of Health and Human Services and the Social Security Administration for his dedication and successful prosecution of cases involving these agencies.

Thomas P. Swaim (Eastern District of North Carolina), by United States Attorney David M. Barasch, Middle District of Pennsylvania, for his outstanding assistance in the investigation and successful prosecution of Michael Tessari for wire fraud and money laundering.

Shaun E. Sweeney (Western District of Pennsylvania), by Senior Investigator Donald C. Checkan, ERIE Insurance Group, for his outstanding efforts in the successful prosecution of Robert Frydrych for arson and mail fraud.

Holly Sydlow (Northern District of Ohio), by Attorney E. Roy Hawkens, Civil Division Appellate Staff, for her valuable assistance in deciding how best to proceed in *Jean Todd v. United States*, a medical malpractice/wrongful death case.

Robert Teig (Northern District of Iowa), by INS District Director F. Gerard Heinauer, Omaha District Office, for his efforts in the successful prosecution of 47 aliens charged with illegally entering the U.S., and other immigration violations.

Michael Terrell (Central District of California), by FBI Acting Special Agent in Charge Ralph R. Girardi, for his continued outstanding performance in support of the Grape Street Crips task force which resulted in 16 convictions and a guilty verdict against Wayne Day for conspiring to distribute cocaine and cocaine base.

Roderick Thomas (District of Columbia), by Nelson A. Diaz, General Counsel of Housing and Urban Development, for his professional representation in *Ervin and Associates v. Dunlap*, an aggressively presented Bivens action brought by a disgruntled Government contractor.

Pamela Thompson (Eastern District of Michigan), by former Assistant Attorney General Deval L. Patrick, Civil Rights Division, for her invaluable legal advice and logistical support during settlement negotiations involving the Michigan Mega Conference Athletic League, an education discrimination case.

Maureen Tighe (Central District of California), by Director Jerry Patchan, Executive Office for U.S. Trustees, for her efforts during "Operation Total Disclosure," a nationwide effort to prosecute bankruptcy fraud cases which resulted in the indictment of 134 defendants in 118 cases in 43 judicial districts.

Cynthia E. Tompkins (Eastern District of North Carolina), by Postal Inspector in Charge R. M. Hazelwood, III, U.S. Postal Inspection Service, for her outstanding efforts in the successful prosecution of postal employee Marcus A. Stewart for theft of mail.

John J. Trucilla (Western District of Pennsylvania), by Lieutenant Charles E. Bowers, Jr., Narcotics Unit, City of Erie Bureau of Police for his efforts in the successful prosecution of Felix Romero for possession of 456 grams of crack cocaine.

Robert Trusiak (Northern District of Ohio), by Chief Counsel Thomas W. Crawley, Region V, Social Security Administration, for the outstanding legal services he provided over the years in a variety of district and appellate court matters.

Bonnie Ulrich (District of South Dakota), by Colonel Charles H. Wilcox, II, Chief, General Litigation Division, Department of the Air Force, for her outstanding efforts in the successful settlement of *Rogerson v. Widnall*, a complex EEO case.

Patricia A. Valentine, Paralegal Assistant (Western District of Pennsylvania), received an award from FBI Director Louis J. Freeh for her participation in the Organized Crime and Drug Enforcement Task Force from January 1993 to October 1995 which focused on the interstate movement of crack cocaine from source cities outside of Johnstown, Pennsylvania.

John J. Valkovci, Jr. (Western District of Pennsylvania), received an award from FBI Director Louis J. Freeh for his participation in the Organized Crime and Drug Enforcement Task Force from January 1993 to October 1995 which focused on the interstate movement of crack cocaine from source cities outside of Johnstown, Pennsylvania.

Gina S. Vann (Southern District of Alabama), by FBI Special Agent in Charge Nicholas J. Walsh, for her efforts in the conviction of James Dennis for bank fraud.

John Vaudreuil (Western District of Wisconsin), by Chief Warden Ralph Christensen and Administrator Stanley A. Schneider, Environmental Crimes Section, Bureau of Law Enforcement, Wisconsin Department of Natural Resources, for his efforts in the successful prosecution of Leo Kelly for unlawfully transporting and disposing of hazardous waste.

John Vaudreuil (Western District of Wisconsin), by FBI Special Agent in Charge Michael J.

Santimauro, for his outstanding efforts in the successful prosecution of Gordon Hoff, Sr.; Gordon Hoff, Jr.; and Eric Richard Meyer who were convicted in a drug conspiracy matter.

Herbert J. Villa (Northern District of Ohio), by Agent in Charge Frederick E. Wolk, Medina County Drug Task Force, for his efforts in the successful forfeiture action against Joseph and Linda Viscomi.

James G. Warwick (District of Maryland), by Lieutenant Colonel Carla S. Walgenbach, U.S. Air Force, Air Force Legal Services Agency, for his outstanding efforts in the defense of *Bankert v. United States*, a medical malpractice case which resulted in a very low judgment against the U.S.

Linda Wawzenski (Northern District of Illinois), by Inspector General Martin J. Dickman, U.S. Railroad Retirement Board, for her outstanding efforts in coordinating investigative and prosecutive strategies for program fraud cases.

W. Dennis Wedemeyer (Eastern District of Missouri), by District Counsel R. Dale Holmes, Department of the Army, Corps of Engineers, for his efforts in the favorable outcome of *Suzanne Harris v. Secretary of the Army*, a Title VII case.

Leon W. Weidman, Chief, Civil Division (Central District of California), by Director Michael F. Hertz, Commercial Litigation Branch, Civil Division, for the logistical and staff support he provided during *United States ex rel. Peterson and Kroll v. Northrop Corporation*, a False Claims Act case.

Kenneth E. Weinfurt (Western District of Missouri), by FBI Special Agent in Charge David M. Tubbs, for his exceptional efforts in the successful prosecution of *United States v. William F. Borders, et al.*, a health care fraud case.

Hollis Raphael Weisman (District of Maryland), by Frederick G. Schamann, for her efforts in the successful prosecution of Calvin Curlen who assaulted a fellow employee at the Goddard Space Flight Center.

Jack S. Weiss (Central District of California), by United States Attorney Dale Ann Goldberg, Southern District of Ohio, for his assistance in handling a crack cocaine trafficking detention/removal hearing involving Glen Watkins, a fugitive since 1994.

Francia Wendelborn, Victim-Witness Coordinator (Eastern District of Wisconsin), by Attorney General Janet Reno, for her outstanding work with the Model Victim Witness Program in her district.

Julie A. Werner-Simon (Central District of California), by Postal Inspector in Charge L. S. Crawford, Jr., U.S. Postal Inspection Service, for her excellent efforts in the successful prosecution of Herbert Schachter and Judith Lee Collins for mail fraud.

M. Monica Wheatley (Western District of Kentucky), received a Certificate of Appreciation

from the U.S. Postal Inspection Service for developing a streamlined process for the timely acquisition of search warrants and orders for electronic transmitting devices, and for her successful prosecution of a case involving the mailing of controlled substances.

Matt Whitworth (Western District of Missouri), by Regional Inspector General for Auditing, Carolyn S. Emery, General Services Administration, for his outstanding efforts in the successful conclusion of *United States v. I. I. Ozar, et al.*, a conspiracy to commit major fraud against the U.S.

Kandice Wilcox (Northern District of Iowa), by INS District Director F. Gerard Heinauer, Omaha District Office, for her efforts in the successful prosecution of 47 aliens charged with illegally entering the U.S. and other immigration violations.

Carol Wilkinson (Southern District of Florida), by Executive Vice President Paul F. West, Elizabeth Arden Co., New York, for her efforts in Operation Stormfront, a cargo theft investigation.

Scott L. Wilkinson (Eastern District of North Carolina), by FBI Special Agent in Charge John E. Morley, for his outstanding efforts in the successful prosecution of *United States v. Decker, et al.*, a telemarketing fraud case.

Scott L. Wilkinson (Eastern District of North Carolina), by U.S. Secret Service Special Agent in Charge Kevin T. Foley, for his efforts in the investigation and prosecution of Atlantic Business Consultants for conducting a telemarketing operation that defrauded over 11,000 victims of $1.8 million.

J. Gaston B. Williams (Eastern District of North Carolina), by United States Attorney David M. Barasch, Middle District of Pennsylvania, for his outstanding efforts in the investigation and successful prosecution of Michael Tessari for wire fraud and money laundering.

Amy S. Winkleman (District of New Jersey), by FBI Director Louis J. Freeh, for her efforts in the successful prosecution of Barry Davis and his associates for stock fraud.

Susan Winkler (District of Massachusetts), by David L. Haron, Frank and Stefani Professional Corporation, for her efforts in prosecuting the civil portion of *Byrne v. Damon Clinical Laboratories*, a Federal False Claims Act case in which the Government recovered $84,000,000 from Corning Incorporated, the successor to Damon, together with a guilty plea by the corporation and a $35,000,000 criminal fine.

Ronald Wise (Southern District of Alabama), by Colonel William S. Vogel, Department of the Army, Corps of Engineers, for his outstanding efforts and representation in an environmental case, *Sierra Club; Mobile Bay Audubon Society; and Native Forest Network v. U.S. Army Corps of Engineers*.

Suzanne Wissman (Southern District of Illinois), by DEA Special Agent in Charge Joseph J.

Corcoran, for her efforts in the successful prosecution of Charles J. Trione, Sr., and 20 members of his marijuana distribution organization.

Thomas J. Wright (District of South Dakota), by Bonnie J. Hairy Shirt of St. Francis, South Dakota, for his efforts in the successful prosecution of Rick Young for his assault on her son.

Ellen Zimiles, Chief, Asset Forfeiture (Southern District of New York), by Assistant Secretary for Community Planning and Development, Andrew Cuomo, U.S. Department of Housing and Urban Development, for her efforts to prevent the displacement of more than 400 low-income, disadvantaged residents of the Kenmore Hotel in New York.

Kurt Zimmerman (Central District of California), by Regional Counsel Dale Rettig, U.S. Small Business Administration, for his excellent representation in *Orbas and Associates v. Army and SBA*, a disappointed bidder case which resulted in the plaintiff dismissing the complaint.

Attorney General Highlights

Deputy Attorney General Gorelick to Resign

On January 14, 1997, Deputy Attorney General Jamie S. Gorelick announced that she will be resigning to return to private life. She said she will remain in office long enough to help Attorney General Janet Reno assemble a team to lead the Department in the Clinton Administration's second term. Since March 1994, Ms. Gorelick has served as the Department's chief operating officer, provided overall supervision of the Department, and functioned as the direct manager of its law enforcement components. She is one of the longest serving Deputies in the Department's history. Ms. Gorelick introduced new managerial structures to guide the Department in the midst of a 30 percent increase in the Department's personnel and a 70 percent budget increase during her tenure. One of Ms. Gorelick's principal priorities was to help prepare the Department to respond effectively to the new challenges of transnational crime and terrorism. To accomplish this, she created new relationships and administrative protocols with the State Department, the Treasury Department, the Defense Department, and the intelligence community. The Deputy Attorney General also worked with the Department's law enforcement components to improve responses to crisis situations in the aftermath of the Ruby Ridge and Waco incidents. After the bombing of the Federal building in Oklahoma City, Ms. Gorelick coordinated the Government's overall response to the bombing and supervised the investigative and prosecutorial responses to the crisis. Among her many other accomplishments, she also helped guide the Department through the Unabomber investigation, the Administration's review of affirmative action, and an immigration crisis with Haiti.

Associate Attorney General Schmidt Resigns

Associate Attorney General John R. Schmidt resigned on January 20, 1997. Mr. Schmidt oversaw the work of the Civil, Civil Rights, Antitrust, Tax, and Environment and Natural Resources Divisions. He also oversaw the Office of Justice Programs, the Office of Information and Privacy, the Community Relations Service, the Executive Office for United States Trustees, the Foreign Claims Settlement Commission, and aspects of the implementation of the 1994 Crime Bill, including the COPS program. On December 16, 1996, Attorney General Reno announced that John C. Dwyer of San Francisco will serve as Acting Associate Attorney General from January 20, 1997, until the Senate confirms a presidential nominee.

AG Announces 1997 AG Advisory Committee

On January 9, 1997, the Attorney General announced the new members of her 1997 Advisory Committee. The following new members will serve two-year terms beginning January 1, 1997:

Karen Schreier, District of South Dakota, Vice Chair
Alan Bersin, Southern District of California
Zachary W. Carter, Eastern District of New York
Harry D. Dixon, Jr., Southern District of Georgia

Veronica Coleman, Western District of Tennessee
Kristine Olson, District of Oregon
Paul M. Gagnon, District of New Hampshire
William D. Wilmoth, Northern District of West Virginia

The remaining members are:

Donald K. Stern, District of Massachusetts, Chair
J. Michael Bradford, Eastern District of Texas
Christopher Droney, District of Connecticut
Peg Lautenschlager, Western District of Wisconsin
Stephen C. Lewis, Northern District of Oklahoma
Don C. Nickerson, Southern District of Iowa
Charles J. Stevens, Eastern District of California
Janet Napolitano, District of Arizona, ex officio
Eric H. Holder, Jr., District of Columbia, ex officio
Shirah Neiman, AUSA, Southern District of New York
Terry Derden, AUSA, District of Idaho

The outgoing members are:

Gregory Sleet, District of Delaware, Vice Chair
P. Michael Patterson, Northern District of Florida
Kathryn Landreth, District of Nevada
Sherry Matteucci, District of Montana
Thomas J. Monaghan, District of Nebraska
Janice McKenzie Cole, Eastern District of North Carolina
Michael R. Stiles, Eastern District of Pennsylvania, ex officio

AG Promotes Alternative Dispute Resolution

On December 13, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, First Assistant United States Attorneys, and Civil Chiefs, a memo from Attorney General Reno promoting greater use of dispute resolution techniques, particularly in disputes between Indian tribes and the United States. The Attorney General asks that every consideration be given to negotiation and dispute resolution techniques to resolve conflicts.[1] For personnel in USAOs, your office should have a copy of this memorandum. If not, you may call (202) 616-1681.

Bilateral Mutual Legal Assistance Treaty[2]

---

[1]See also "Alternative Dispute Resolution Report," and "Removing Barriers to the Use of Alternative Dispute Resolution," on pages 7 and 9 of this *USAB*.

[2]See also "New Mutual Legal Assistance Treaty with the United Kingdom," on page 81 of this *USAB*.

On December 2, 1996, Attorney General Reno and British Home Secretary Michael Howard exchanged instruments of ratification for a new bilateral Mutual Legal Assistance Treaty that will strengthen the relationship between the Department and the Home Office, and increase the ability of Britain and America to provide assistance to each other. The treaty provides a mechanism for obtaining evidence, including testimony, on a wide variety of offenses, and provides for the freezing and forfeiture of the proceeds of serious crimes. “This treaty will help ensure that those who commit crimes in either country will be prosecuted,” Attorney General Reno said. “It will serve as an important tool in the fight against transnational crime.”

Crime-Fighting Milestones

On December 19, 1996, the Department announced that it reached another milestone in implementing President Clinton’s 1994 Crime Act—passing the halfway mark on its way toward funding 100,000 police officers. The Department has provided more than $300 million in grants to help states build or expand prisons and encourage them to keep violent offenders in prison longer under Truth-in-Sentencing laws.

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

Significant Issues/Events

Gun Ban for Individuals Convicted of a Misdemeanor Crime of Domestic Violence

On December 20, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys and First Assistant United States Attorneys concerning a statutory change affecting persons permitted to possess firearms and ammunition. On September 30, 1996, Title 18, U.S.C. § 922(g)(9) took effect, making it illegal for anyone who has been convicted of a misdemeanor crime of domestic violence to possess any firearm or ammunition. This provision applies to persons convicted at any time prior to or after the law took effect. There is no exemption for law enforcement officers and agents. If an individual has ever been convicted of a misdemeanor crime of domestic violence within the meaning of the statute, continued retention of any firearm or ammunition, whether Government-issued or privately owned, may subject that person to felony criminal penalties, including a sentence of up to 10 years imprisonment and a fine of up to $250,000, as well as administrative action. Individuals affected by this statute may not possess any firearm or ammunition and must return any Government-issued firearm or ammunition to his or her immediate supervisor. EOUSA will modify the information required for future deputizations to reflect this change in the law, and send a new package to be used for requesting deputization to United States Attorneys' offices. For personnel in USAOs, your office should have a copy of Ms. DiBattiste's December 20 memo. If not, you may call (202) 616-1681.

No Guns for Batterers: New Federal Law Protects Domestic Violence Victims
Director Bonnie J. Campbell, Violence Against Women Office
Director Aileen Adams, Office for Victims of Crime
Victims of domestic violence won an important victory in the midnight hours of the 104th Congress when the Federal Government made clear that batterers should be banned from possessing guns. Under this most recent amendment to the Gun Control Act of 1968, persons convicted of any qualifying misdemeanor crime of domestic violence are prohibited from owning or possessing a firearm [18 U.S.C. § 922(g)(9)]. The law also adds domestic violence convictions to the "Brady checklist" sent to local law enforcement for a background check prior to each handgun sale from a federally licensed firearms dealer. With the 1994 Violence Against Women Act amendment, which added persons subject to a valid civil restraining order to the classes of prohibited gun purchasers under 18 U.S.C. §§ 922(d) and 922(g), the Federal policy against batterers possessing guns is crystal clear.

The new law is a powerful prevention tool because it is frequently the presence of a gun that turns an abusive relationship into a homicide case. This fact is confirmed across the country by countless case examples. In Berberton, Ohio, Marilyn Garland was physically abused and beaten by her husband. He was convicted of misdemeanor offenses but no law prevented him from owning a gun. The violence continued and he finally used his gun to kill his wife. In Cedar Rapids, Iowa, Gloria Heising was shot to death by a man she had dated. Both of them were postal

workers. After a history of abuse, he was convicted of harassment and terminated from his job. He sent a certified letter to a house on her route and shot her when she delivered it.[1] Recently in Los Angeles, California, a 16-year old pregnant girl, Veronica Daniel, was gunned down by her husband after he served less than a third of his sentence on misdemeanor domestic violence charges. A temporary restraining order against him expired while he was in jail, and his gun was never confiscated.

These are hardly isolated crimes. According to a study prepared by the Centers for Disease Control, firearm-associated family and intimate assaults are 12 times more likely to be fatal than assaults not associated with firearms.[2] In California, Department of Justice Law Enforcement statistics for 1994 show that only a small portion of domestic violence calls to the police involve firearms. But when the incident is fatal, guns were used in a large majority of cases. Only 1.7 percent of domestic violence calls involving weapons included a report of a firearm (3,089 out of 182,240); however, in 68 percent of domestic violence homicides, firearms were used (153 out of 224).

We know that domestic violence involves a pattern of control that ranges from verbal/psychological threats and public humiliation to physical harm in the form of slapping, choking, kicking, and other abusive behavior. Because firearms can be used to intimidate and frighten, as well as to maim and kill, a gun in the hands of a batterer is clearly a potent force for gaining and maintaining control. Now Federal prosecutors have a new tool to use in the fight against domestic abuse.

The first case under the new statute is in the Northern District of Iowa.[1] The defendant faces charges under Section 922(g)(9) for possession of a firearm after a domestic violence misdemeanor conviction.

The 1996 amendment also criminalizes the knowing transfer of a firearm to a person convicted of a qualifying domestic violence misdemeanor [18 U.S.C. § 922(d)(9)]. Violations of §§ 922(d)(9) and 922(g)(9) subject the defendant to a maximum term of imprisonment of 10 years [18 U.S.C. § 924(a)(2)].

Removing firearms from abusive relationships may save peoples' lives. Recently, the Office for Victims of Crime provided funding for a domestic violence specialist within EOUSA to provide training and technical assistance to United States Attorneys' offices across the country. Assistant United States Attorney Margaret S. Groban, Southern District of New York, was selected for this position and would be happy to respond to questions regarding the prosecution of domestic violence cases or the new Federal laws prohibiting possession of firearms. She can help you compile information to present to your local Violent Crime Task Forces to enhance state and local prosecutions and enforcement of new laws, as well as help you develop strategies to encourage

---

[1]See case details on page 67.

[2]Saltzman, L.E., Mercy, J.A., O'Carroll, P.W., Rosenberg, M.L., Rhodes, P.H., "Weapon involvement and injury outcomes in family and intimate assaults," *JAMA*, 1992, 267:3043-47.

appropriate referrals for prosecution to your office. She can be reached in the United States Attorney's office in Portland, Maine, or by beeper, (800) 405-0581. Preventing revictimization and escalating violence is the best service we can provide to victims of domestic abuse. Taking guns away from abusers won't solve the domestic abuse problem, but the abuse to the victim may not be fatal.

First Person in Nation Charged Under New Federal Law

On December 11, 1996, United States Attorney Stephen J. Rapp, District of Iowa, announced that William M. Smith of Cedar Falls, Iowa, is charged with possession of a firearm after having been previously convicted of an assault involving domestic violence. This charge is the first in the nation under a new Federal law which took effect on September 30, 1996, prohibiting persons who have been convicted of misdemeanor crimes of domestic violence from acquiring or possessing firearms. The charge is contained in a complaint filed in U.S. District Court in Cedar Rapids. The complaint alleges that on November 17, 1996, William Smith shot his wife, Lauralee Smith, with a .380 pistol he purchased on November 15, 1996. The complaint also alleges that William Smith had assaulted her on September 13, 1994, by pushing her, grabbing her neck, and throwing her to the ground. He was convicted for the assault on November 28, 1994.

Attorney General's Advisory Committee Meeting

The Attorney General's Advisory Committee met on November 20-21, 1996, in Washington, D.C. Some items discussed by the Committee were the Federal interest in prosecuting death penalty cases, proposed legislative initiatives, affirmative action programs, sentencing guidelines, Tax Division Bluesheet, hate crimes, and the Community Relations Service.

The next meeting will be held on February 12-13, 1997, in Washington, D.C.

104th Congress Legislative Summary

On January 8, 1997, EOUSA Director Carol DiBattiste forwarded to United States Attorneys and First Assistant United States Attorneys, a memo from Office of Legislative Affairs Assistant Attorney General Andrew Fois concerning the overview of the 104th Congress. The memo included a general summary of matters involving the past Congress, a detailed review of particular legislation in areas of interest to the Department, and an outline of the key bills enacted. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Safeguards for Grand Jury Information

On December 11, 1996, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys, First Assistant United States Attorneys, and Criminal Chiefs containing five recommendations regarding USAO grand jury safeguards that EOUSA received from the Inspector General (IG) following their inspection of safeguarding grand jury material at seven USAOs and six grand jury reporting firms (Report Number I-96-11). The first recommendation

concerns which employees of grand jury reporting firms require background investigations. The Department is reviewing the issue of grand jury-related background investigations and, when the matter is resolved, EOUSA will provide guidance. Until then, USAOs should continue to follow DOJ Order 2600.4. The second recommendation is that EOUSA instruct the USAOs to maintain complete and accurate records for clearances of grand jury court reporter personnel. USAOs are reminded that background investigations and clearances for grand jury court reporter personnel are subject to periodic review, and records must be scrupulously maintained to ensure compliance with this recommendation. The third recommendation is that USAOs conduct annual inspections of all contractor grand jury reporter facilities, including all physical, personnel, computer, and storage elements of the facility to ensure compliance with DOJ security requirements. The fourth recommendation is that EOUSA instruct the USAOs to limit access to grand jury information to only those persons authorized, as provided in the rule. This requirement is stated in Rule 6(e) of the Federal Rules of Criminal Procedure for the United States District Court, and DOJ Order 2600.4. The fifth recommendation is that EOUSA provide standardized guidelines to the USAOs regarding storage and disposal practices for grand jury information in closed cases. The *United States Attorneys' Manual*, Section 3-4.433, instructs USAOs to purge as many unneeded documents as possible when closing a case file. EOUSA's Security Programs Staff is drafting procedures to cover the five recommendations. These guidelines will be submitted for consideration for inclusion in the *United States Attorneys' Manual*. Adherence to the IG's recommendations is important to the secure and efficient conduct of grand jury proceedings. For personnel in USAOs, your office should have a copy of this memo. If not, you may call EOUSA's Security Programs Staff, (202) 616-6878.

New Giglio Policy

On December 13, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys forwarding from the Office of the Attorney General, the *Policy Regarding the Disclosure to Prosecutors of Potential Impeachment Information Concerning Law Enforcement Agency Witnesses (Giglio Policy)*. The *Giglio Policy* applies to all Department investigative agencies, and is the result of many months of discussion among the Attorney General's Advisory Committee, the Criminal Division, and the Federal investigative agencies. It is designed to encourage open communication between investigative agencies and prosecuting offices regarding potential impeachment information and to establish a record-keeping mechanism for prosecuting offices that would ensure that the same or similar potential impeachment information is treated uniformly by all prosecutors within an office, giving due regard to relevant circumstances. Questions regarding this policy should be directed to Assistant United States Attorney Sandra Bower, EOUSA's Legal Counsel's office, (202) 514-4024. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Pilot Electronic Court Filing Begins in New Mexico

The Electronic Document Exchange Laboratory (EDE Lab), a Justice Performance Review lab established to examine issues and undertake projects related to the electronic exchange of documents in the legal setting, is about to begin its first electronic filing pilot project with the United States District Court for the District of New Mexico. That District Court is currently

undertaking a major modernization effort called Advanced Court Engineering (ACE). Ultimately, it will provide the capability for electronic filing over the Internet, reduced paper flow, enhanced case tracking, and World Wide Web access to court records such as opinions, calendars, docket sheets, and pleadings.

The United States Attorney's office (USAO) for the District of New Mexico and one or more litigating components from the Department will participate in the project. The EDE Lab team will work with the district court, and selected cases and counsel from the USAO and the participating litigating components, to fully test the system and analyze issues. These include, but are not limited to, security, document integrity and authentication, signature, and delivery, as well as the hardware and software needs for a well-functioning paper-less system. In addition, participants in the project will evaluate the impact of paper-less filing in terms of cost and user satisfaction.

The pilot project will allow counsel to file court documents electronically over the Internet. It will enable counsel of record to file all documents related to the case electronically, without the need for paper filing, and will also permit the electronic search of court case files. Ultimately, the system will allow the court to provide electronic notice of court activity in active litigation files. The system uses EDI (electronic data interchange), PDF (portable document format), ODBC (open database connectivity), and HTML (hypertext markup language).

If you are interested in more information about the EDE Lab or wish to recommend legal processes for consideration for EDE facilitation, please contact EDE Lab Team Leader Jeanette Plante, EOUSA's Legal Programs office, AEX12(JPLANTE) or (202) 616-6444; Associate Director Gail Williamson, EOUSA's Operations Staff, AEX11(GWILLIAM) or (202) 616-6600; or Steve Roman, Assistant Director, Systems Development, Justice Management Division, JMD03(ROMAN) or (202) 514-0390.

Renewed Commitment to Special Emphasis Programs

On December 17, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys concerning a renewed commitment to Special Emphasis Programs (SEP). The six recognized SEPs in the Department are the Federal Women's Program, Black Affairs Program, Hispanic Employment Program, Asian/Pacific American Program, Native American Program, and Selective Disability Veterans. In September 1996, 73 SEP Managers were trained at an EOUSA Office of Legal Education and Equal Employment Opportunity Staff co-sponsored training seminar. These SEP Managers are ready to reinvigorate the Special Emphasis Programs in our offices. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Child Exploitation and Obscenity Working Group

On January 17, 1997, United States Attorney Gregory M. Sleet, District of Delaware, and Acting Chief Terry R. Lord, Child Exploitation and Obscenity Section (CEOS), Criminal Division, sent a memo to Child Exploitation and Obscenity Coordinators regarding the Child Exploitation and Obscenity Working Group (Working Group) and CEOS. The Working Group's main goals are:

(1) to facilitate communication and improve the relationship between the United States Attorneys' offices (USAOs) and CEOS and (2) to facilitate and improve communication with and among FBI, Customs Service, and Postal Inspection Service regarding child abuse and exploitation cases. CEOS is responsible for issues relating to the following crimes: obscenity, sexual abuse, Mann Act violations, sexual exploitation of children, international child kidnapping, Privacy Protection Act, child support, the treatment of child witnesses and victims, and the Communications Decency Act. Regarding these crimes, CEOS is responsible for: (1) providing legal and technical assistance to USAOs; (2) proposing legislation, developing investigative and prosecutive initiatives, and recommending policy to senior officials within the Department; and (3) coordinating multi-district litigation. For further information, contact Assistant United States Attorney Patricia Donahue, Central District of California, (213) 894-0640. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Supplemental Standards on Ethical Conduct

On December 12, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys and First Assistant United States Attorneys forwarding a copy of the Supplemental Standards of Ethical Conduct which were published in the Federal Register on November 25, 1996. These regulations supersede those at 28 C.F.R. Part 45. The new regulations are structured differently than the prior regulations and do not necessarily require prior approval for service as an officer, director, or trustee. They do mandate prior approval for outside employment that involves a "subject matter, policy, or program that is in the component's area of responsibility." "Outside employment" is defined broadly to encompass both compensated and uncompensated activity including services such as a lawyer, officer, director, trustee, or partner. Questions should be directed to Juliet Eurich, EOUSA's Legal Counsel's office, (202) 514-4024. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Pay Adjustments for Attorneys

On December 31, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys and Administrative Officers announcing a 2.3 percent nationwide pay adjustment for nonsupervisory/non-Senior Litigation Counsel Assistant United States Attorneys (AUSAs) and supervisory and Senior Litigation Counsel AUSAs, effective January 5, 1997. All AUSAs also received locality pay increases equal to locality pay increases authorized by the President for General Schedule employees; these increases were effective January 5, 1997.

Trends VII

On December 6, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys forwarding "Trends VII, Workforce Trends in United States Attorneys' offices as of October 1996." Trends VII provides a comprehensive profile of workforce data for Fiscal Year 1996. The purpose of the Trends series is to benchmark United States Attorneys' offices' workforce characteristics annually. Trends VII is in the same basic structure as Trends VI but includes some improvements, including information on the number of attorneys, support, and paralegal specialists by district as well as the percentage of the workforce each constitutes;

appointments and extensions of Special Assistant United States Attorneys in the Fourth Quarter of 1996; and expanded coverage of awards, with more details on awards for attorney and support staff as well as the use of time off awards. Questions regarding Trends VII should be directed to Peter McSwain, Acting Assistant Director, EOUSA's Personnel Staff, (202) 616-6849. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Criminal Case Reports

On December 17, 1996, Case Management Staff Assistant Director Eileen Menton sent a memo to United States Attorneys, Criminal Chiefs, Administrative Officers, and System Managers which included the following reports: (1) Criminal Cases and Defendants in U.S. District Court for FY 1996; (2) Immediate Declinations by Reason during FY 1996; (3) Percentages of Criminal Cases Pending, Aged by Date Received; and (4) Percentages of Criminal Matters Pending, Aged by Date Received. Questions regarding these reports should be directed to Patti Ostrowski (TALON) at AEX11(POSTROWS) or (202) 616-6944, or Sharon Hopson (PROMIS/USACTS-II) at AEX11(SHOPSON) or (202) 616-6943.

VERA Plan for Fiscal Year 1997

On January 3, 1997, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys and Administrative Officers outlining the essential features of how Voluntary Early Retirement Authority (VERA) will be used within United States Attorneys' offices and EOUSA. Questions regarding VERA should be directed to Denise Kaufman, EOUSA's Personnel Staff, (202) 616-6800. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

IG Inspections and Audit Workplans

On December 16, 1996, EOUSA Director Carol DiBattiste sent a memo to United States Attorneys regarding Fiscal Year 1997 Inspections and Audit Workplans. The Inspections Division of the Office of the Inspector General plans to review the effective use of funds for the President's Violent Crime Task Forces, the effectiveness of the Affirmative Civil Enforcement Programs, and the controls and compliance with travel regulations; the Audit Division plans to review the Department's cost recovery of debt collection expenses, including the accountability and proper use of the Three Percent Fund.

FBI Victim-Witness Assistance Program Action Plan

On December 11, 1996, EOUSA Director Carol DiBattiste forwarded to United States Attorneys, Assistant United States Attorneys, and LECC/Victim-Witness Coordinators a memorandum from FBI Director Louis Freeh to Attorney General Reno, describing an action plan to enhance the FBI's Victim-Witness Assistance Program. The plan identifies FBI victim-witness priorities and collaborative efforts necessary to bring the FBI into compliance with the *Attorney General Guidelines on Victim and Witness Assistance*. The Victim-Witness Assistance Program Action

Plan will be instituted incrementally from October 1996 to August 1997. Each Special Agent in Charge is required to meet with United States Attorneys to identify strategies for coordinating the delivery of victim-witness rights. Questions should be directed to Assistant Director Kimberly Lesnak, EOUSA's LECC/VW Staff, (202) 616-6792. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Youth Crime Prevention Brochure

The Western District of Pennsylvania published a brochure on youth crime prevention entitled, "Youth Crime Prevention Counsel, 1997 Strategic Plan." A copy of this brochure was sent to each United States Attorney. If you would like a copy, please contact Assistant United States Attorney Bernita Brooks-Griggs, Western District of Pennsylvania, (412) 644-3545.

National Symposium on Child Sexual Abuse

The Office for Victims of Crime (OVC) is sponsoring a National Symposium on Child Sexual Abuse in Huntsville, Alabama, on March 18-21, 1997, including specialized training for Federal teams on March 18, and 100 workshop sessions on topics such as investigative practices, interviewing children, multi-disciplinary teams, alternative methods of testifying, grand jury practice, and Federal child exploitation legislation, from March 19 through 21. For further information, please contact Sue Shriner, Office for Victims of Crime, (202) 616-3577.

19th International Asian Organized Crime Conference

On April 21-25, 1997, the United States Attorney's office for the Middle District of Florida, in conjunction with 21 other law enforcement agencies, will host the 19th International Asian Organized Crime Conference at the Clarion Plaza Hotel in Orlando, Florida. The conference will focus on Asian criminal organizations and their associated worldwide gang activity, including sessions on drug and weapons trafficking, fraud schemes, counterfeiting, home invasion robberies, concealment and traps, technology crimes, interview techniques, gaming operations, cross cultural communication, and police and community programs. This conference is open to the criminal justice community and will be an excellent opportunity for networking with law enforcement officers from across the United States and Asia. The registration fee is $235 prior to March 1, 1997, and $270 thereafter. Travel arrangements may be made through Suncoast Destination Management. There is a special conference rate of $89 for lodging at the Clarion Plaza; call toll free at (800) 933-7970. For more information, direct inquiries to International Asian Organized Crime Conference, 4211 North Lois Avenue, Tampa, Florida, (813) 878-7368, or visit the conference Web Site at http://www.baylink.net/iaoc.

District Office Security Managers' Conference

The 1997 District Office Security Managers' Conference will be held March 3-5, 1997, at the Sheraton Austin Hotel in Austin, Texas. The conference will include a program covering physical, personnel, computer, and information security, with information on the latest policies, procedures, and issues that affect districts. Questions regarding the agenda should be directed to Jim Hopson,

EOUSA's Security Programs Staff, (202) 616-6878.

Office of Justice Programs and AGAC Subcommittee on Justice Programs

Assistant Attorney General Laurie Robinson
Office of Justice Programs

This column has been moved from the DOJ Highlights Section to the USAO/EOUSA Section.[1] I am pleased to expand it to include the AGAC Subcommittee on Justice Programs. The Subcommittee plays a crucial role in advising OJP and its components in our dealings with United States Attorneys' offices. By sharing this column, I hope that OJP and the Subcommittee can together keep United States Attorneys' offices informed of the many programs, new research findings and statistics, and training and technical assistance opportunities available through OJP.

The Justice Programs Subcommittee was created in early 1996, having evolved from the AGAC Weed and Seed Subcommittee. Its mission is to interact with the Office of Justice Programs to generate and create greater communication and cooperation between OJP and the United States Attorneys and their offices.

Mike Dettmer has been an invaluable resource to me, and I look forward to sharing this forum with him to provide relevant and informative news to United States Attorneys.

United States Attorney Michael H. Dettmer
Western District of Michigan
Chair, Subcommittee on Justice Programs

By sharing this column with AAG Laurie Robinson, our Subcommittee now has an avenue of communication with our fellow United States Attorneys on issues involving OJP and its bureaus. The Subcommittee holds quarterly meetings at OJP and, with Laurie's excellent leadership, the United States Attorneys have been receiving a post-graduate education in the functions and value of OJP and its bureaus. Our present membership includes United States Attorneys Peg Lautenschlager, Karen Schreier, Fred Thieman, Tom Monaghan, Walt Holton, Eddie Jordan, and Mike Troop. Laurie Robinson and Marlene Beckman of OJP serve as the Subcommittee's agency liaisons, and Iden Martin and Tracey Carey of EOUSA also attend and assist the Subcommittee. We invite any interested United States Attorneys to join us as a member of this Subcommittee.

We are committed to maintaining a continuing dialogue and partnership between OJP and the United States Attorneys' offices. In 1996, we arranged to have OJP and its bureaus make various presentations, such as those given during the United States Attorneys' Conference in May. We have also presented sessions at other conferences, such as those involving our offices' LECC and VW coordinators, programs dealing with OVC issues, and sessions in districts involved with Weed and Seed programs.

The most recent quarterly meeting of the Subcommittee on Justice Programs was held in Washington on December 11.

---

[1]Other OJP significant issues/events appear in the DOJ Highlights Section on page 83.

Weed and Seed News

Stephen Rickman, Director of the Executive Office for Weed and Seed (EOWS), updated the Subcommittee. EOWS recently gave United States Attorneys the option of offering their Weed and Seed sites participation in the Drug Education For Youth (DEFY) program, a drug prevention program for children ages 9 to 12. The program is operated through a partnership between the Department of Justice and the Navy Department. In addition, plans are underway for EOWS to provide United States Attorneys' offices with Weed and Seed road signs for Weed and Seed sites. Recognizing the important role and guidance offered by United States Attorneys nationwide, EOWS senior staff recently met with a group of United States Attorneys to discuss overall program policy for the coming year.

Recently, EOWS responded to United States Attorneys' requests for change in the policy governing Weed and Seed asset forfeiture budgets by convening a group to work on changing these guidelines. A final decision on the new guidelines from the Justice Management Division is expected soon, and details will be provided as they become available.

LECC/Victim-Witness Staff and the Community Desk Concept

Kimberly Lesnak, Assistant Director of the Law Enforcement Coordinating Committee/Victim-Witness Staff of EOUSA, discussed the relationships between the Law Enforcement Coordinators in the United States Attorneys' offices and the bureaus of OJP. LECC/VW Staff has worked closely with OJP to increase resources available to the field.

Among the projects in which the LECC/VW Staff has been involved is an initiative to explore innovative ways to facilitate a community's access to information about OJP's programs and services through implementation of the concept of "community desks." Under this concept, OJP would provide comprehensive information for a particular community in a single location, allowing community representatives to gather general information about programs and services in their geographic area without having to endure the "ping pong" effect of being bounced from desk to desk. This concept would also enable OJP to assist communities in strategic planning by providing a comprehensive snapshot of OJP's activities in the area.

The Community Desk Working Group, headed by OJP Deputy Assistant Attorney General Reggie Robinson and Senior Advisor to the Assistant Attorney General Fred Garcia, is hosting a series of focus groups to address the various issues involved in this project and gather feedback from multiple and diverse sources. On December 19, the first focus group session brought together 13 Law Enforcement Coordinators to discuss the community desk concept. OJP, the Office of Community Oriented Policing Service, and EOUSA collaborated to host the LECC focus group. Future focus groups will bring together state agency representatives, local government officials, and representatives of nongovernmental organizations.

National Crime Victims Rights Week

Aileen Adams, Director of the Office for Victims of Crime (OVC), briefed the Subcommittee on

OVC's activities. Of particular interest to United States Attorneys' offices is the upcoming National Crime Victims Rights Week, which will be observed April 13 to 19, 1997. OVC will join thousands of victims and victim advocates across the country to reflect upon the needs and rights of crime victims and to recognize the accomplishments of advocates throughout the nation. Information about OVC programs during the week will be provided later to United States Attorneys' offices.

OVC is now soliciting nominations for two prestigious awards which will be bestowed during that week—the Crime Victims Fund Award and the Crime Victim Service Award. The Crime Victims Fund Award recognizes individuals whose extraordinary efforts have significantly enhanced contributions to the Crime Victims Fund. Past recipients include Assistant United States Attorneys and Financial Litigation Unit staff, among others. **Nominations for this award are due February 21, 1997**. Nominations for the Crime Victim Service Award, the highest Federal honor granted to victim advocates, were due on January 31, 1997.

Laurie Robinson and I invite you to contact any of us who serve on the Subcommittee to help you find answers or programs that will benefit your district.

EOUSA Staff Update

Mr. Frank M. Kalder, Jr., has been selected to be the Deputy Director of EOUSA's Financial Management Staff. Mr. Kalder presently serves as the Deputy Director of the Justice Management Division's Budget Staff.

Office of Legal Education

USABook Corner

The Research and Publications Unit of the Office of Legal Education is pleased to announce a number of new USABook publications. These publications, along with the latest version of the USABook computer program, can be downloaded by your System Manager from the EOUSA Bulletin Board.

Manual on Recurring Problems in Criminal Trials, 4th Ed. (Federal Judicial Center 1996)—This excellent book, prepared for newly appointed district judges, is a concise manual on trial issues. The manual is divided into eight parts: Part I, *Representation of the Defendant*, discusses waivers of counsel, self-representation, standy and hybrid counsel, and substitution of counsel. Part II, *Jury*, covers jury waivers, Batson issues, sequestration, replacement of jurors, anonymous juries, jury questions, juror misconduct and improper contacts, deadlocks, inconsistent and partial verdicts, and post-trial attempts to impeach verdicts. Part III, *Disclosure Issues*, covers Jencks and Brady disputes. Part IV, *Enforcement of Orders During Trial*, contains a thorough treatment of civil and criminal contempt, recalcitrant witnesses, and disruptive defendants. Part V, *Evidence*, counsels judges on ruling on conspiracy issues, privileges, identification evidence, experts, tape recordings, other crimes, confrontation, confessions, self-incrimination, stipulations, and defense requests for witness interviews. Part VI, *Argument*, covers

opening statements and arguments, with guidance on issues revolving around comments on failures to testify or present evidence. Part VII, *Multiple Defendants*, deals with joinder and severance, the Bruton rule, and codefendant testimony. Part VIII, *Verdict*, discusses special verdicts, judgments of acquittal, and mistrials.

On each point, the trial judge is advised of the proper ruling, with supporting citations of authority. This is obviously a "must have" book for Federal trial lawyers. Where the suggested ruling is consistent with Government positions, the book provides compelling authority. In other cases, the book serves to alert lawyers to problem areas and the need for strong trial memoranda.

The Criminal Tax Manual—This two-volume manual was originally published by the Tax Division in 1994. It is a comprehensive treatment of criminal tax issues that should be of general interest to all criminal practitioners, and includes an extensive and useful discussion of Federal conspiracy law. It also includes hundreds of sample jury instructions and other forms.

Expertise in the Civil Division—The USABook version of this popular Civil Division booklet allows users to instantly locate the name and phone number of Civil Division attorneys with expertise in 400 legal issues and statutes.

OLE Projected Courses

OLE Director Janet Craig is pleased to announce projected course offerings for the months of March through June 1997 for the Attorney General's Advocacy Institute (AGAI) and the Legal Education Institute (LEI). Lists of these courses are on the following pages.

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 who attend LEI courses.

Videotapes Available

A list of videotapes offered through OLE, and instructions for obtaining them, are attached as Appendix B.

Office of Legal Education Contact Information

Address: Bicentennial Building, Room 7600
600 E Street, NW
Washington, DC 20530-0001

Telephone: (202) 616-6700
FAX: (202) 616-6476

Director . . . . . Janet Craig, AUSA, SDTX
Deputy Director . . . . . David W. Downs
Assistant Director (AGAI-Criminal) . . . . . Jackie Chooljian, AUSA, CDCA
Assistant Director (AGAI-Civil and Appellate) . . . . . Jeff Senger, Civil Rights Division
Assistant Director (AGAI-Asset Forfeiture and
Financial Litigation) . . . . . Tony Hall, AUSA, Idaho
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
	March	
4-7	Complex Prosecutions	AUSAs, DOJ Attorneys
11-13	Asset Forfeiture for Criminal Prosecutors	AUSAs, DOJ Attorneys
12-14	Dispute Resolution/Enhanced Negotiations	AUSAs, DOJ Attorneys
12-14	Violence Against Women and Children	AUSAs, DOJ Attorneys
17-21	Advanced Criminal Trial	AUSAs, DOJ Attorneys
24-28	White Collar Crime	AUSAs, DOJ Attorneys
	April	
1-3	Financial Litigation for Paralegals	USAO Paralegals
1-4	Evidence for Experienced Litigators	AUSAs, DOJ Attorneys
1-4	Civil Chiefs	Civil Chiefs
1-4	Computer Crimes	AUSAs, DOJ Attorneys
8-11	First Assistant United States Attorneys	FAUSAs
9-11	Dispute Resolution/Enhanced Negotiation	AUSAs, DOJ Attorneys
14-18	Civil Federal Practice	AUSAs, DOJ Attorneys
14-18	Criminal Federal Practice	AUSAs, DOJ Attorneys
14-23	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
15-17	Asset Forfeiture Component Seminar	AUSAs, DOJ Attorneys
28-5/9	Civil Trial Advocacy	AUSAs, DOJ Attorneys
29-5/1	Basic Bankruptcy	AUSAs, DOJ Attorneys
	May	
1-2	Ethics for AUSAs and DOJ Attorneys	AUSAs, DOJ Attorneys
5-9	Attorney Management Pilot Seminar	AUSAs, DOJ Attorneys
13-16	Violent Crime and Juvenile Offenders	AUSAs, DOJ Attorneys
13-22	Criminal Trial Advocacy	AUSAs, DOJ Attorneys
14-16	Overview of ARPA	AUSAs, DOJ Attorneys
20-22	Dispute Resolution/Enhanced Negotiations	AUSAs, DOJ Attorneys
20-22	Use of Computers in Litigation	AUSAs, DOJ Attorneys
	June	
2-6	Advanced Civil Trial	AUSAs, DOJ Attorneys
3-5	Advanced Asset Forfeiture	AUSAs, DOJ Attorneys
9-13	Appellate Advocacy	AUSAs, DOJ Attorneys
10-13	Grand Jury Seminar	AUSAs, DOJ Attorneys
11-13	Archaeological and Historic Resources	AUSAs, DOJ Attorneys
16-27	Civil Trial Advocacy	AUSAs, DOJ Attorneys
17-20	Crisis Response	AUSAs, DOJ Attorneys
18-20	Dispute Resolution/Enhanced Negotiations	AUSAs, DOJ Attorneys
23-26	Employment Discrimination	AUSAs, DOJ Attorneys
24-27	Native American Issues	AUSAs, DOJ Attorneys
24-27	Fraud Seminar	AUSAs, DOJ Attorneys

LEI COURSES

March

3-5	Law of Federal Employment	Agency Attorneys
7	Special FOIA Administrative Forum	Agency Attorneys
10-11	Federal Administrative Process	Agency Attorneys
10-14	Legal Research and Writing Refresher	Agency Attorneys/Paralegals
14	Legal Writing	Agency Attorneys/Paralegals
17-19	Public Lands and Natural Resources	Agency Attorneys
18-19	Federal Administrative Process	Agency Attorneys
24-26	Attorney Supervisors	Agency Attorneys
24-28	Legal Support Staff	USAO Paralegals

April

1-4	Examination Techniques	Agency Attorneys
8-11	Librarians Seminar	USAO Librarians
9-11	Attorney Supervisors	Agency Attorneys
14-15	Freedom of Information Act for Attorneys and Access Professionals	Agency Attorneys
16	Privacy Act	Agency Attorneys
17-18	Evidence	Agency Attorneys
21-25	Experienced Legal Secretaries	USAO Support Staff

May

1-2	Legislative Drafting	Agency Attorneys
5-7	Law of Federal Employment	Agency Attorneys
5-9	Basic Paralegal	USAO Paralegals
13-14	Ethics for Litigators	Agency Attorneys
20-22	FTCA for Agency Counsel	Agency Attorneys
28	Advanced Freedom of Information Act	Agency Attorneys
29	Freedom of Information Act Administrative Forum	Agency Attorneys

June

2-3	Agency Civil Practice	Agency Attorneys
6	Statutes and Legislative Histories	Agency Attorneys
17-19	Attorney Supervisors	Agency Attorneys
17-20	USA Secretaries Seminar	USA Secretaries
20	Legal Writing	Agency Attorneys/Paralegals
24-25	Freedom of Information Act for Attorneys and Access Professionals	Agency Attorneys
26	Privacy Act	Agency Attorneys
30-7/2	Trial Preparation	Agency Attorneys

Computer Tips

Moving Programs to the GroupWise Shelf

Those of you who have migrated from the old EAGLE menu system to Windows under PHOENIX are no doubt enjoying the efficiency of putting more than one program on your screen at a time. But this functionality comes at a price—a cluttered screen. If you are spending a lot of time hunting down the icons you need through a forest of stuff you do not need, you will appreciate this month's tip.

Your PHOENIX installation comes with a first rate "program launcher" that you can use to clean up your desktop: the GroupWise Shelf. You already use the icons in the gray border area of GroupWise to handle Email and scheduling. In the middle of the GroupWise screen is a white area, the "GroupWise Shelf," that you can use to store the icons of programs you use every day. The remaining icons stay out of the way in a minimized File Manager icon. The result is a clean, organized work area.

The first step is to start placing the icons of the programs you use every day on the GroupWise Shelf. As an example, let's put the USABook program on the Shelf.

1. Locate the USABook icon in Program Manager in the group called Legal Research.
2. Single click your mouse pointer on this icon to highlight it, and then press <Alt><Enter>. This will bring up the "Program Item Properties" dialog box.
3. Press the <Tab> key, and the contents of the "Command Line:" item will be highlighted. Copy this item to the clipboard buffer by pressing <Ctrl>C.
4. Go to GroupWise and click on File (it's the item just above the In Box icon), and then New. This will bring up the "New Shelf Icon" dialog box.
5. Under Caption, enter "USABook" and then click on Add. This will bring up the "Shelf Item Properties" dialog box.
6. Press <Ctrl>V to insert the command line that you captured to the buffer in step 3 into the "Command Line:" box.
7. Click on OK to create your shelf icon.

NOTE: GroupWise will arbitrarily assign an icon picture to your completed item. If you want to change the appearance of your icon, just highlight it, press <Alt><Enter> to bring up the Shelf Icon Properties box, and select "Change Icon" to select a more appropriate picture.

You can now repeat steps 1 to 7 with the other programs you use regularly. A typical shelf might include WordPerfect for Windows, WordPerfect for DOS, WestMate, a DOS icon, and the Windows Calculator.

As a final step to get rid of screen clutter, you need to change your File Manager settings so that File Manager will sit minimized in the corner of your screen when not in use. Click on Options under File Manager, and select "Minimize on Use" and "Save Settings on Exit" (when properly selected, there will be check marks next to these items).

DOJ Highlights

Appointments

On December 17, 1996, Office of Intergovernmental Affairs Director Nicholas M. Gess sent a memo to Attorney General Reno, Deputy Attorney General Gorelick, and Associate Attorney General Schmidt, announcing the election of three new State Attorneys General—Jeff Modisett (D), Indiana; Hardy Myers (D), Oregon; and Michael Fisher (R), Pennsylvania.

Civil Division

Civil Rights Act of 1991: Litigating Position Regarding Punitive Damages

On January 21, 1997, Assistant United States Attorney Juliet A. Eurich of EOUSA's Office of Legal Counsel, sent a January 10, 1997, memo from Assistant Attorney General Frank Hunger, Civil Division, to United States Attorneys and Civil Chiefs. Mr. Hunger's memo, including a brief that argues that the Postal Service is a Government agency not subject to punitive damages under the 1991 Civil Rights Act, stated the following:

> In Section 102 of the Civil Rights Act of 1991, 42 U.S.C. 1981a(b), Congress for the first time made punitive damages available to plaintiffs in cases brought under Title VII of the Civil Rights Act and the Rehabilitation Act. Section 1981a(b)(1) provides that "A complaining party may recover punitive damages under this section against a respondent (**other than a government, government agency, or political subdivision**) if the complaining party demonstrates that the respondent engaged in a discriminatory practice or discriminatory practices with malice or with reckless indifference to the federally protected rights of an aggrieved individual" (emphasis added). The Acting Solicitor General has determined that the United States Postal Service is a "government agency" exempt from punitive damages under this provision.

The model argument, prepared by the Civil Division's Appellate Staff, articulates the Government's position that the Postal Service is exempt under section 1981(b)(1). Questions may be directed to Marleigh Dover, Appellate Staff, Civil Division, (202) 514-3511 or Email SS01(Dover); or Matthew Collette, Appellate Staff, Civil Division, (202) 514-4214 or Email SS01(Collette). For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Criminal Division

Requirement for Seeking Search Warrant for Attorney's Premises

On January 21, 1997, Acting Assistant Attorney General John C. Keeney, Criminal Division, sent a memo to EOUSA Director Carol DiBattiste, concerning the requirement for United States

Attorneys to consult with the Criminal Division prior to seeking a search warrant for the premises of an attorney who is a suspect, subject, or target of a criminal investigation. Guidelines concerning this requirement were issued in October 1995. Mr. Keeney expressed that the policy is working well; however, because some issues were raised, specifically concern about the use of a "taint" team and about the guideline's consultation requirement, Keeney requested that a Criminal Division letter in response to concerns of the American College of Trial Lawyers be included in the *Bulletin*. The letter is attached as Appendix C.

New Mutual Legal Assistance Treaty with the United Kingdom

Associate Director Lystra G. Blake
Office of International Affairs
(202) 514-0010

The Office of International Affairs (OIA) is pleased to announce the entry into force of a new Mutual Legal Assistance Treaty (MLAT) between the United States and the United Kingdom. Assistance from the United Kingdom under the treaty is available to Federal, state, and local authorities in the United States.

Introduction

On December 2, 1996, the United States and the United Kingdom exchanged instruments of ratification for the "Treaty between the Government of the United States of America and the United Kingdom of Great Britain and Northern Ireland on Mutual Legal Assistance in Criminal Matters," which was signed by Attorney General Janet Reno on January 5, 1994. The treaty provides for assistance in the investigation, prosecution, and suppression of serious criminal offenses and in "proceedings relating to criminal matters," such as grand jury proceedings and civil and administrative proceedings involving forfeiture and criminal fines. It covers a wide range of criminal offenses, including terrorism, fraud, narcotics trafficking, and money laundering. The Justice Department believes that the existence and use of the treaty will substantially improve, expand, and expedite United States prosecutors' access to evidence and other legal assistance from the United Kingdom.

Provisions of the Treaty

Scope of treaty

Scope of covered offenses—The treaty applies to all conduct punishable as a criminal offense under the laws of the United States and specifically covers assistance in forfeiture proceedings.

It should be noted that, under the treaty, there is no tax exemption, therefore, the United Kingdom is obligated to provide assistance to the United States in "pure tax" cases; i.e., tax cases that do not involve money shown to have been derived from criminal offenses otherwise covered by the treaty.

Scope of assistance—Assistance that may be sought from the United Kingdom under the treaty includes: (1) taking testimony or statements; (2) providing documents, records, and evidence;

(3) serving documents; (4) locating persons; (5) transferring individuals in custody for testimonial purposes; (f) executing requests for searches and seizures; (g) identifying, tracing, freezing, seizing, and forfeiting the proceeds and instrumentalities of crime and immobilizing forfeitable assets; and (h) providing assistance in proceedings relating to forfeiture, restitution, and the collection of criminal fines.

Furthermore, assistance under the treaty includes measures aimed at facilitating the formal use of information from the United Kingdom in proceedings in the United States. Specifically, the completion of Forms A, B, and C, which are attached to the treaty, by appropriate United Kingdom officials or individuals is designed to help prosecutors secure the admission into evidence of bank and business records, Government records and reports, and items seized by United Kingdom authorities in response to United States treaty requests.

Limitations on compliance—A United States request for assistance under the treaty may be denied by the United Kingdom for any of the following reasons: (1) the execution would impair its sovereignty, security, "other essential interests," or would be contrary to important public policy; (2) the request relates to an individual who could not be proceeded against in the United Kingdom for the offense for which assistance is requested, because of a previous acquittal or conviction; (3) that the request relates to an offense of a political character; (4) that the request relates to an offense under military law that is not also an offense under ordinary criminal law; (5) that the request does not establish reasonable grounds to believe that the specified criminal offense was committed and that the information sought is related to the offense and located in the United Kingdom; or (6) that the request does not conform to the provisions of the treaty.

The United Kingdom also has discretion under the treaty to postpone execution of a request or to provide a conditional response if execution would interfere with an ongoing United Kingdom proceeding or prejudice the safety of any person in the United Kingdom.

Requests for assistance—contents and procedures

All requests to the United Kingdom under the treaty must be made by the "Central Authority" for the United States, which is the Office of International Affairs in the Criminal Division of the Department.

Each request for assistance must contain (1) the name of the authority conducting the relevant investigation or proceeding, (2) the subject matter and nature of the investigation or proceeding, (3) a summary of the information giving rise to the request, (4) a description of the information or other assistance sought, and (5) the purpose for which assistance is being requested.

Furthermore, whenever necessary and possible, requests should specify the identity and likely whereabouts of persons who are to be served or located, or from whom testimony is sought; a list of questions to be asked of a witness; a description of places to be searched and items to be seized; an enumeration of the expenses to which a person asked to appear in the United States; a description of any particular procedures to be followed in executing the request; and any other information that might facilitate execution of the request.

Miscellaneous provisions and requirements

Costs—The following costs must be paid by the United States prosecutor's office making a request to the United Kingdom: (1) expert witness fees; (2) travel expenses for witnesses providing testimony in the United States; and (3) costs of an extraordinary nature.

Confidentiality—The treaty generally provides that evidence or information obtained under the treaty will be kept confidential, except to the extent that it is needed for the investigation or prosecution of the criminal offense(s) described in the request. Unless otherwise indicated by the United Kingdom, evidence or information obtained under the treaty may be used for any purpose when it has been disclosed in a public judicial or administrative hearing related to the request. However, prosecutors wishing to use or share information obtained from the United Kingdom for cases or a purpose other than those specified in the original treaty request, **must** seek the advice of OIA before doing so.

The treaty also allows either party to ask that the subject matter and contents of its requests for assistance be kept confidential. The Central Authorities are called upon to inform each other of any inability to maintain such confidentiality before the request in question is executed. This provision may be particularly important in requests made to the United Kingdom because their financial institutions may be required to notify their customers of inquiries about their accounts.

Use of other cooperative mechanisms—The treaty explicitly recognizes that either party may seek assistance from the other pursuant to other international agreements, practices, or domestic laws. However, before seeking recourse to alternative, unilateral mechanisms for securing evidence or information from the United Kingdom (e.g., issuing Bank of Nova Scotia subpoenas, pursuing Ghidoni waivers), it is imperative that United States prosecutors first consult with OIA to ensure that such actions do not result in a violation of treaty commitments.

Mutuality of Obligation

It is likely that more requests under the new U.S.-U.K. MLAT will be made by United States authorities than by our United Kingdom counterparts. The Department, through OIA, will continue its close working relationship with the Central Authority in the United Kingdom to ensure that all treaty requests made by the United States are given careful and expeditious treatment. To assist the Department in its efforts on behalf of United States prosecutors and law enforcement officials, authorities in this country who are designated to execute treaty requests from the United Kingdom are asked to provide assistance as expeditiously and fully as possible, with an overall view toward making the new treaty a viable, effective, and efficient means of strengthening bilateral law enforcement cooperation.

Conclusion

As noted earlier, the Office of International Affairs in the Department's Criminal Division has been designated the Central Authority for the United States in implementing the U.S.-U.K. MLAT. Prosecutors or law enforcement officials interested in making a request to the United

Kingdom under the treaty should contact OIA at (202) 514-0000 or write to OIA, 1400 New York Avenue, N.W., Bond Building, Fifth Floor, Washington, D.C. 20005. Exemplars, advice, and assistance are available upon request.

OCDETF Reorganization

On December 10, 1996, EOUSA Director Carol DiBattiste forwarded a memo via broadcast fax to United States Attorneys, First Assistant United States Attorneys, Criminal Chiefs, and OCDETF Attorneys, from OCDETF Director Kenneth Magidson, announcing the approval of OCDETF's regional reorganization plan and describing its implementation process. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

New Extradition and Mutual Legal Assistance Treaties

On November 22, 1996, Office of International Affairs (OIA) Director Frances Fragos Townsend sent a memo to United States Attorneys announcing OIA's efforts with the State Department to revise many of the United States' outdated extradition treaties and to negotiate new Mutual Legal Assistance Treaties (MLATs). OIA is now determining which countries to target for future negotiations and is soliciting information about countries in which new extradition treaties, MLATs, or law enforcement agreements are needed. The memo included a list of five countries with whom the most recent treaties were entered, 19 countries with whom new extradition treaties were signed but not yet entered into force, 15 countries with whom the United States has MLATs in force, and 16 countries with whom MLATs have been signed but are not yet in force. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Office of Justice Programs

Bureau of Justice Statistics

Capital Punishment Statistics
On December 4, 1996, the Bureau of Justice Statistics (BJS) announced that 16 states executed a total of 56 men last year. This was the largest number of prisoners put to death in one year since the United States Supreme Court upheld the constitutionality of revised state capital punishment laws in 1976, and the greatest number of executions in 38 years. A copy of BJS' *Bulletin*, "Capital Punishment 1995," is available on the Internet, http://www.ncjrs.org/cp95, or on the BJS Webpage, http://www.ojp.usdoj.gov/bjs/.

Female Victims of Violent Crime
On December 17, 1996, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys from BJS Director Jan M. Chaiken, providing notice of the publication, *Female Victims of Violent Crime—Selected Findings*. It includes 1992-1994 data for rape/sexual assault, robbery, and assault from the redesigned National Crime Victimization Survey; victimization trend data for 1973-1994, adjusted for the redesign; and homicide data from the 1994 FBI Uniform Crime Reports. It summarizes the latest published data on both fatal and nonfatal violence between

intimates (current or former spouse, boyfriend, or girlfriend) as opposed to relatives, friends/acquaintances, and strangers. For a copy of this publication, contact the BJS Clearinghouse, (800) 732-3277, or write, P.O. Box 179, Dept BJS-236, Annapolis Junction, MD 20701-0179.

Sex Offenses and Offenders
On November 26, 1996, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys from BJS Director Jan M. Chaiken, providing notice of the publication of "Sex Offenses and Offenders." It draws on more than two dozen statistical datasets maintained by BJS and the Uniform Crime Reporting Program of the FBI, and provides a comprehensive overview of current knowledge about the incidence and prevalence of violent victimization by sexual assault, the response of the justice system to such crimes, and the characteristics of those who commit sexual assault or rape. For a copy of this publication, contact the BJS Clearinghouse, (800) 732-3277, or write, P.O. Box 179, Dept. BJS-236, Annapolis Junction, MD 20701-0179.

Men and Women Violent Crime Victims: A Narrowing Ratio
On December 18, 1996, BJS announced that there were 10.9 million violent crimes in 1994, with two female victims for every three male victims. Twenty years ago there were two female violent crime victims for every four male victims. The overall trend indicates the rates of victimization for men and women converge—the rate for men decreasing and the rate for women remaining relatively stable or increasing. BJS published these and other findings in its December 1996 *Selected Findings* article entitled, "Female Victims of Violent Crime" (NCJ-162602). A copy is available on BJS' Home Page at http://www.ojp.usdoj.gov/bjs/ by clicking on "What's new at BJS." Additional BJS materials are available from the BJS fax-on-demand, (301) 251-5550, or by calling the BJS Clearinghouse, (800) 732-3277.

Sourcebook of Criminal Justice Statistics
On November 19, 1996, BJS announced that the 23rd annual edition of the *Sourcebook of Criminal Justice Statistics* is available on the World Wide Web. The Home Page address is http://www.albany.edu/sourcebook/. The 1995 edition presents 654 data tables from more than 100 sources on characteristics of the criminal justice system, public attitudes toward crime and criminal justice topics, nature and distribution of known offenses, characteristics and distribution of persons arrested, judicial processing of defendants, and persons under correctional supervision. The *Sourcebook* is also available in printed form from the BJS Clearinghouse, (800) 732-3277.

National Institute of Justice

Drug Use Forecasting
In June 1996, the National Institute of Justice (NIJ) released its annual "1995 Drug Use Forecasting Research Report" on adult and juvenile arrestees. New features in this report include methamphetamine data and the 1995 analyses. For a copy of this report, contact NIJ's National Criminal Justice Reference Service (NCJRS), (800) 851-3420. A copy is also available on the NCJRS Home Page, http://www.ncjrs.org.

Research in Brief Publication Series

The following NIJ publications in the *Research in Brief* series are available: "Work Release: Recidivism and Corrections Costs in Washington State," "Illegal Firearms: Access and Use by Arrestees," and "National Process Evaluation of Operation Weed and Seed." For a copy of these publications, contact NCJRS, (800) 851-3420, or write, Box 6000, Rockville, MD 20849-6000.

Research in Action Publication Series
The following NIJ publications in the *Research in Action* series are available: "Key Legislative Issues in Criminal Justice—Intermediate Sanctions," "Key Legislative Issues in Criminal Justice—Mandatory Sentencing," and "Key Legislative Issues in Criminal Justice—Transferring Serious Juvenile Offenders to Adult Courts." For a copy of these publications, contact NCJRS, (800) 851-3420, or write, Box 6000, Rockville, MD 20849-6000.

Office of Juvenile Justice and Delinquency Prevention

Decline in Juvenile Violent Arrest Rates
On December 12, 1996, Attorney General Reno announced a decline in the arrest rate for youths 10 to 14. According to a Department report based on an analysis of FBI data released in August, violent crime arrest rates declined four percent in 1995 for people 17 and under, the first drop since 1987. *Juvenile Arrests 1995*, which analyzes data from the FBI's 1995 Uniform Crime Reports, expands upon the preliminary 1995 youth violence figures and provides state-specific information. Attorney General Reno also announced the availability of $16.5 million in grants for programs to prevent gang violence and other juvenile crime. At a December 13 conference, she announced new regulations that became effective December 10 that offer greater flexibility to state and local governments that receive funding under the Juvenile Justice and Delinquency Prevention Act. These regulations expand the states' ability to detain a juvenile or confine a delinquent in the same facility with adult offenders, and allow states to transfer delinquent offenders to adult facilities once they reach the age of full criminal responsibility (defined by state law). States can now hold an accused offender in a secure facility for up to 24 hours both before and after the juvenile's initial court appearance.

Juvenile Arrests 1995 is available from the Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Juvenile Justice Clearinghouse, Box 6000, Rockville, MD 20857, or (800) 638-8736. Information about the new formula grant regulations; the Innovative Local Law Enforcement and Community Policing formula grant program; the OJJDP National Conference; and other OJJDP programs, publications, and conferences is available through the OJJDP World Wide Web, http//www.ncjrs.org/ojjhome.htm.

OJJDP Journal, *Juvenile Justice*
On December 5, 1996, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys from Administrator Shay Bilchik, OJJDP, providing notice of the December 1996 Journal, *Juvenile Justice*, which covers "Restoring the Balance: Juvenile and Community Justice," providing valuable insight into balanced and restorative justice; "Aftercare Not Afterthought: Testing the IAP Model," describing the implementation of OJJDP's intensive community-based aftercare programs initiative; and "Using Satellite Teleconferencing," covering getting training and information to those in geographically diverse areas. For personnel in USAOs, your office

should have a copy of this memo. If not, you may call (202) 616-1681.

Violence Against Women Office

Grants to Treat Domestic Violence as a Crime
On December 18, 1996, the Department announced that 122 communities across the country will receive over $46 million to help investigate and prosecute domestic assaults as crimes. These are the first grants awarded under the Violence Against Women Act's Grants to Encourage Arrest Policies Program administered by the Department's Office of Justice Programs. Funds will be used to establish automated information systems to track perpetrators; create a protocol for implementing mandatory or pro-arrest policies for law enforcement agencies; deliver comprehensive training programs for police, prosecutors, probation and parole officers, and the judiciary; and establish advocacy services, such as safety planning and legal counseling, for domestic violence victims.

Immigration and Naturalization Service

New Initiatives to Improve Naturalization Program
On December 4, 1996, the Department announced the implementation of a series of initiatives to improve and strengthen the United States naturalization program, including an expanded effort to ensure that no individual is naturalized without the verified completion of a fingerprint check by the FBI, and the hiring of an independent management consulting and accounting firm to oversee an audit of INS naturalization cases from September 1995 through December 1996. The audit will be monitored by the Department's Office of the Inspector General (OIG). INS instituted additional service-wide quality assurance steps to ensure that all procedures are being consistently followed throughout the naturalization process, including the use of a standardized worksheet to document that all clerical processing and statutory eligibility determinations have been completed; mandatory supervisory review of cases involving a criminal history or other serious question of good moral character; and random quality assurance reviews of every office, conducted by knowledgeable INS officers who are not involved in the naturalization program. The Department also will select an expert consulting firm to work with INS to re-engineer the naturalization process. The effort will build on the improvements and independent reviews currently underway and will be conducted in conjunction with the Department, OIG, FBI, INS headquarters and field personnel, and outside consultants.

United States Parole Commission

New Parole Conditions
On December 16, 1996, the Department announced that the United States Parole Commission, responding to increased criminal use of the Internet, approved the discretionary use of special conditions of parole that would impose tight restrictions on the use of computers by certain high-risk parolees. The Commission noted the surge of "how-to" information available on the Internet and other computer on-line services relating to such offenses as child molestation, hate crimes, and illegal use of explosives. Parolees may be required to obtain prior written approval from the Commission to use information services such as an Internet service provider, bulletin board

system, or any other public or private computer network. Parolees would be prohibited from possessing or using data encryption techniques or programs; be required to agree to unannounced examinations of his/her computer by the probation officer; have to permit the installation of equipment, at their own expense, to monitor computer use; and be required to maintain a daily log of computer use. Any special condition on computer use imposed for a parolee would be in addition to the standard conditions now in place that limit the parolee's travel, association, and other activities.

United States Marshals Service

FY 1996 Prisoner Population
On December 11, 1996, EOUSA Director Carol DiBattiste forwarded a memo to United States Attorneys from United States Marshals Service (USMS) Director Eduardo Gonzalez regarding prisoner population growth in Fiscal Year 1996, which reached a record high of 24,000 in September. This growth resulted in the USMS ending Fiscal Year 1996 with an average daily population of 23,374 prisoners in custody on any given day. This is an increase of 2,722 prisoners or 13.2 percent above the Fiscal Year 1995 average. For personnel in USAOs, your office should have a copy of this memo. If not, you may call (202) 616-1681.

Ethics and Professional Responsibility

Examination of Witness—Questions about Marital Privilege

OPR investigated an appellate court's finding that a Federal prosecutor committed professional misconduct leading to reversible error in asking the defendant's wife whether she had invoked the marital privilege before a grand jury. OPR found that the propriety of inquiring about the privilege at trial was a question of first impression, that case law arguably supported the prosecutor's decision to question the witness, and that the Federal prosecutor had a justifiable reason to ask the question: to show bias. In addition, before the prosecutor began the inquiry, he requested and was granted leave from the court to proceed. OPR concluded that the questioning did not constitute professional misconduct.

Statements Before Grand Jury—Expected Witness Perjury

OPR investigated criticism by a court that a Federal prosecutor told a grand jury that he expected a witness to commit perjury. The witness was later indicted and convicted of perjury. The court found that the prosecutor's statement did not have a substantial impact on the grand jury, but that the statement was nonetheless improper. OPR concluded that the prosecutor acted in reckless disregard of the duty to be fair to grand jury witnesses and to refrain from inflaming or otherwise improperly influencing the grand jury.

Cross Examination—Good Faith Basis for Questions

OPR reviewed judicial findings that a Federal prosecutor engaged in prosecutorial misconduct by asking a defense witness questions for which there was no good faith factual basis, by pointing out during cross-examination that the defendant failed to produce exculpatory information, and by violating a pre-trial order by eliciting testimony about a co-defendant's prior conviction. The court also imputed misconduct of the case agent to the prosecutor. OPR concluded that the prosecutor could not be held responsible for the agent's misconduct and that some of the court's criticism involved minor, inadvertent errors during a heated trial. OPR also found that the Federal prosecutor had a good-faith basis for the questions in dispute, that the questions about exculpatory evidence were proper, given the defendant's testimony on direct, and that the testimony about a prior conviction had been inadvertent. OPR concluded that the prosecutor should not have continued asking questions about these matters after the court ruled that they were improper.

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 the following positions will be required to pass a urinalysis test to screen for illegal drug use prior to final appointment.

The following announcements can be found on the Internet at http://www.usdoj.gov/gopherdata/oapm/jobs.

GS-15 Experienced Attorney
Criminal Division
Office of Professional Development and Training/Director
DOJ's Office of Attorney Personnel Management is seeking an experienced attorney to serve as the Director of the Office of Professional Development and Training (OPDAT), Criminal Division. The purpose of OPDAT is to enhance the administration of criminal justice abroad. Its mission is to offer legal training and developmental assistance to prosecutors and judicial personnel in select developing countries and emerging democracies. Working with the U.S. Agency for International Development (USAID), the State Department, U.S. Embassies, and other components of the U.S. Justice Department, OPDAT provides or coordinates training and institution building to enhance the professional capabilities of prosecutors, judges, defense attorneys, and others as a means of helping to build more responsive and responsible criminal justice systems. OPDAT has broad responsibility for making all administrative arrangements for its programs and for setting program policy in conformance with U.S. policy as directed by the President and Congress, and for maintaining effective liaison with the governments of the countries involved to ensure continued interest and support of the mission. OPDAT training programs are already underway in South and Central America, and in Central and Eastern Europe. OPDAT also serves as the Department's liaison with various private and public agencies that sponsor visits by foreign officials interested in the U.S. legal system.

The OPDAT Director establishes goals for the overall program; coordinates with top management of the Department and the Criminal Division, policy level officials in USAID and Department of State, and other agencies, as necessary, to ensure compliance with U.S. policy in training and developmental assistance to foreign administration of justice officials. The Director personally directs the design of appropriate training courses, continually evaluates course offerings to ensure that program goals are being met, and makes changes in emphasis as required to ensure that program goals are achieved. As required, the incumbent meets with cabinet level administration of justice personnel and top level representatives of criminal justice agencies in subject countries to assess the need for and to foster participation in training programs.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least five years of post-J.D. experience. Applicants must also possess the following qualifications: experience in prosecution of cases involving violent crimes, narcotics, fraud, and public corruption; knowledge of civil law criminal justice systems; familiarity with principles of investigation and prosecution used in such civil law systems; ability to design and

deliver training programs; experience which demonstrates ability to manage complex programs; knowledge of foreign legal systems; and willingness to travel periodically to locations abroad and within the U.S. as needed. Applicants must submit a resume and/or form OF-612 (Optional Application For Federal Employment) to:

Criminal Division
Attn: Cheryl Rosanova
Office of Administration
Personnel Programs Staff
Suite 800, Washington Center Building
1001 G Street, NW
Washington, DC 20530

No telephone calls please. Applications must be postmarked by February 14, 1997. Current salary and years of experience will determine the appropriate salary for the GS-15 ($75,935-$98,714) pay range.

GS-15 Experienced Attorney
Office of Professional Development and Training
Moscow, Russia

DOJ's Office of Attorney Personnel Management is seeking an experienced attorney to serve as a Resident Legal Advisor (RLA) in Moscow for the Criminal Division's Office of Professional Development and Training (OPDAT). The RLA represents the U.S. Department of Justice and U.S. Government in establishing and maintaining relationships with Russian law enforcement and government officials, including prosecutors, judges, parliamentarians, and others for the purpose of developing and implementing conferences, workshops, and other training programs in the furtherance of the Russian criminal justice system; and in consulting on or providing technical advice on criminal justice legislation, where appropriate. The RLA personally carries out training programs for prosecutors, judicial personnel, investigators, and others and may be called upon to handle case or policy-related matters on behalf of the Department, in addition to his/her primary role in enhancing administration of justice programs in Russia.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least five years of post J.D. legal experience. Applicants must also have: (1) experience which demonstrates an ability to manage complex programs; (2) an ability to design and deliver training programs; (3) substantial prosecutorial experience; (4) a working knowledge of foreign legal systems; (5) experience in the law and procedures applicable to international extradition and mutual legal assistance; and (6) fluency in written and spoken Russian.

Current salary and years of experience will determine the appropriate salary level for the GS-15 ($69,300-$90,090) pay range. The position requires relocation to Moscow, Russia, and requires extensive travel within Russia. Relocation expenses are authorized for current Federal employees. Posting in Moscow will entitle the selectee to Post Allowance and Post Differential rates set by the U.S. Department of State. Applicants must submit a resume or OF-612 (Optional Application

for Federal Employment), a short or partial writing sample (not to exceed five pages), and a current performance appraisal to:

U.S. Department of Justice
Criminal Division
Attn: Cheryl Rosanova
Personnel Programs Staff
1001 G Street, N.W.
Washington, D.C. 20530

A current SF-171 (Application for Federal Employment) will still be accepted as well. No telephone calls please. Applications must be postmarked by February 14, 1997.

Individuals who have previously submitted applications for this position with a prior closing date of January 10, 1997, need not reapply.)

GS-11 to GS-14 Experienced Attorneys
Federal Bureau of Prisons

DOJ's Office of General Counsel, Federal Bureau of Prisons, is seeking experienced attorneys for the following anticipated positions: three attorney positions, one senior attorney-advisor position, and two supervisory attorney positions. The location of the senior attorney position will be Washington D.C., and the locations for the supervisory attorneys will be Phoenix, Arizona, or Kansas City, Kansas.

Responsibilities for the attorney positions include providing legal advice and assistance to central office and field managers on labor related issues, researching labor related issues, preparing cases for hearing, preparing post-hearing briefs, and representation before Administrative Judges and other third-party hearing officers. Predominant workload will consist of Equal Employment Opportunity (EEO) and Federal Labor Relations Authority (FLRA) cases, with occasional representation assignments involving Merit Systems Protection Board (MSPB), Office of Special Counsel (OSC), and arbitrators. Other duties may include participation in labor negotiations, serving as an instructor on labor matters, and other labor-related tasks.

Responsibilities for the senior attorney position will primarily consist of advising the attorney staff on caselaw, strategy, and new developments in labor law. Duties also include reviewing investigative reports, providing training in labor relations, assisting the Deputy and Chief of the Labor Law Branch on labor matters, participating in labor negotiations, and selecting cases, representing the Bureau before third parties.

Responsibilities for the supervisory attorney positions may include all duties listed above with the additional duty of supervising attorneys and managing the satellite office (in either Phoenix or Kansas City).

Frequent travel to field correctional institutions or other Bureau of Prisons sites is required. Potential for travel could range between 35 to 50 percent of the time.

Applicants must possess a J.D. degree, be an active member of the Bar in good standing (any jurisdiction), and have at least one year of post J.D. experience. Preference in the attorney positions will be given to applicants with strong Federal labor relations or litigation background. In addition to a strong labor and litigation background, supervisory attorney applicants must have attorney supervisory experience and the senior attorney applicants must have a minimum of three years of experience in advisory and advocacy roles in the administrative areas such as FLRA, EEO, MSPB, Arbitration, and/or OSC.

Applicants must submit a resume and writing sample (up to ten pages) to:

Bureau of Prisons
Attn: "LLB applicant"
Labor Law Branch
Suite 716, HOLC Building
320 First Street, N.W.
Washington, D.C. 20534

No telephone calls please. Current salary and years of experience will determine the appropriate grade and salary level. For the attorney positions, the grade range is GS-11 to GS-13. For senior attorney-advisor and supervisory attorney positions, the grade range is GS-13 to GS-14. These positions are open until filled but no later than March 1, 1997.

Appointments are subject to satisfactory completion of the three-week course, "Introduction to Correctional Techniques," in Glynco, Georgia.

GS-12 to GS-15 Experienced Attorneys
Civil Division
Commercial Litigation Branch
DOJ's Office of Attorney Personnel Management is recruiting for experienced trial attorneys to handle health care fraud litigation for the Civil Fraud group of the Commercial Litigation Branch, Civil Division. The group is responsible for litigation involving fraud against the Federal Government including Medicare, Medicaid, and other federally funded health care benefits programs. Attorneys hired under this announcement will work closely with attorneys in other components of the Department, the Department of Health and Human Services, and other law enforcement agencies to investigate and litigate cases in the Federal courts to redress fraud and abuse with respect to these health plans. A strong background in Federal civil litigation and/or health care law is desirable.

Applicants must possess a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least one year of post J.D. experience. Applicants may submit a resume or OF-612 (Optional Application for Federal Employment). A current SF-171 (Application for Federal Employment) will still be accepted as well. Current Federal Government employees must also submit a copy of a supervisory appraisal of performance issued within the past 12 months and a copy of their most recent Personnel Action (SF-50). Applications should be sent to:

U.S. Department of Justice
Civil Division
Personnel Management Branch
Attn: Mary S. Moore
P.O. Box 14660
Ben Franklin Station
Washington, D.C. 20044-4660

No telephone calls please. These positions are opened until filled but no later than May 31, 1997. Current salary and years of experience will determine the appropriate salary level from GS-12 ($44,458-$57,800) to GS-15 ($73,486-$95,531).

GS-13 to GS-15 Experienced Attorneys
Criminal Division
Terrorism and Violent Crime Section
The Terrorism and Violent Crime Section (TVCS) of the Criminal Division is seeking several experienced attorneys in Washington, D.C. TVCS has a broad range of responsibilities in the areas of terrorism and violent crime including prosecutions concerning domestic and extraterritorial terrorism, firearms prosecutions, death penalty reviews, legislation, crisis response, the Alien Terrorist Removal Court, criminal immigration matters, and support and advice to Assistant United States Attorneys in prosecutions in areas of TVCS expertise.

Applicants must posses a J.D. degree, be an active member of the bar in good standing (any jurisdiction), and have at least two and one-half years of post J.D. legal experience. Applicants must also have a strong academic background as well as excellent research and writing skills, and preferably litigation experience. Some travel may be required.

Current salary and years of experience will determine the appropriate salary level from the GS-13 ($52,876-$68,729) to the GS-15 ($73,486-$95,531) range. Applicants must submit a resume or OF-612 (Optional Application for Federal Employment), writing sample, and performance appraisals for the last three years to the address below. A current SF-171 (applicant for Federal Employment) will still be accepted as well. Please submit applications to:

U.S. Department of Justice
Criminal Division
Terrorism and Violent Crime Section
Attn: Ronnie L. Edelman, Principal Deputy Chief
Room 2513
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

These positions are open until filled.

GS-12 to GS-14 Experienced Attorney
U.S. Trustees Office

Phoenix, Arizona
DOJ's Office of Attorney Personnel Management is seeking an experienced attorney for the United States Trustee's Office for Region 14, which consists of the Federal judicial districts in Arizona. The attorney will be responsible for advising and representing the United States Trustee in the Bankruptcy Court, the District Court, and the Court of Appeals for the Ninth Circuit. Some travel will be required.

Applicants must possess a J.D. degree; be an active member of the bar in good standing (any jurisdiction); and have at least two years of experience in the area of bankruptcy law combined with experience in commercial litigation, and corporate or financial law. Applicants must also possess strong research and writing skills, and outstanding academic and professional credentials. Applicants must submit an OF-612 (Optional Application for Federal Employment), or a resume and a cover letter to:

Adrianne Kalyna, United States Trustee
P.O. Box 36170
Phoenix, AZ 85067-6170

A current SF-171 (Application for Federal Employment) will still be accepted as well. No telephone calls please. Current salary and years of experience will determine the appropriate salary level. The possible range is GS-12 ($44,953-$58,442) to GS-14 ($63,169-$82,120). Applications must be postmarked by February 14, 1997.

The *USABulletin* Wants You

Below is our **revised** schedule for the next three issues. In order for us to continue to bring you the latest, most interesting, and useful information, please contact us with your ideas or suggestions for future issues. If there is specific information you would like us to include in the *USABs* below, please contact David Nissman at AVISC01(DNISSMAN) or (809) 773-3920. Articles, stories, or other significant issues and events should be Emailed to Wanda Morat at AEX12(BULLETIN).

April 1997	**Health Care Fraud**
June 1997	**Electronic Investigative Techniques**
August 1997	**Law Enforcement Retrieval Services**