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

February 15, 1994

MEMORANDUM FOR THE ATTORNEY GENERAL

FROM: Richard Scruggs

SUBJECT: National Security Matters

At your suggestion, I have prepared a memorandum outlining my ideas concerning how national security matters can be better coordinated within the Department. For purposes of this memorandum, I have included the following offices and divisions within the Department as dealing with national security matters:[1/]

Criminal Division

- Internal Security Section
- Terrorism and Violent Crime Section
- Office of International Affairs (OIA)
- Narcotics and Dangerous Drugs Section
- Office of Professional Development and Training (OPDAT)

Office of the Deputy Attorney General

- International Criminal Investigative Training Assistance Program (ICITAP)

- Office of International Programs

Interpol

Office of Intelligence Policy and Review (OIPR)

1/ I have accepted the broad definition of "national security" as including matters relating to foreign relations even though I do not necessarily agree with that definition.

Office of Legal Counsel

I have only included the components within Main Justice; therefore, I have not included investigative and enforcement offices such as the FBI, DEA, U.S. Marshals, and INS. Also, I have not included numerous other offices which also handle international matters, such as the Foreign Commerce Section of the Antitrust Division, the Office of Foreign Litigation of the Civil Division and the Environmental and Natural Resources Division. In my opinion, these offices and divisions do not deal with the core issues related to national security.

As can be readily determined, all of the above-mentioned national security components report to only four principals: the Attorney General, the Deputy Attorney General, the Assistant Attorney General for the Criminal Division, and the Assistant Attorney General for the Office of Legal Counsel. These are the four individuals who should consult on national security matters and provide national security policy. These four principals require adequate staffing to assist them in dealing with national security matters, and to provide daily interface and coordination with other related components of the Government, such as the National Security Council (NSC), FBI, DEA, the Department of State (DOS), Department of Defense (DOD), and members of the intelligence community. In order to retain present lines of authority delegated to the principals, and to prevent any disruption, I am proposing that one person be assigned to represent and assist each principal, and to supervise the components reporting to that principal. The national security staff would consist of the Counsel for Intelligence Policy (as head of OIPR) reporting to the Attorney General, an Associate Deputy Attorney General reporting to the DAG, a Deputy Assistant Attorney General reporting to the AAG Criminal, and a Deputy Assistant Attorney General reporting to the AAG, OLC. These staff individuals should closely coordinate their activities through a "National Security Coordinating Committee" which should meet frequently. These individuals should also coordinate their activities on a more informal basis through daily contacts and daily interaction with each other.

The following diagram depicts how this system would be organized:

Attorney General	DAG	AAG/OLC	AAG/Criminal
Counsel for Intelligence Policy	Associate Deputy Attorney General[2/]	Deputy Assistant Attorney General	Deputy Assistant Attorney General
OIPR	ICITAP Interpol		Internal Security Section Terrorism and Violent Crime Section OIA OPDAT Narcotics and Dangerous Drugs Section

[2/] The offices under this individual's supervision could be shifted to the Criminal Division without affecting the overall organization.

Under this proposal, coordination of all national security matters can be effectively achieved without a disruptive re-organization of the Department. In addition, this proposal will guarantee adequate staffing for the Attorney General and DAG for their dealings and responsibilities with the NSC. Finally, this proposal can provide the Attorney General with staffing for consideration and discussion of covert action plans and other sensitive issues. [3/]

As part of this plan, I am also adopting the suggestion of Mark Richard to establish a "Center" within the Department to act as the point of contact with the intelligence community. Because these contacts involve issues related to foreign intelligence, covert actions, and criminal law, the "Center" should be a unit within OIPR. Simply put, OIPR can legally and practically act as a coordinator between the Criminal Division (and U.S. Attorneys) and the intelligence community on criminal matters; however, the Criminal Division cannot act as coordinator between OIPR and the intelligence community on matters relating to foreign intelligence and covert actions. The "Center" should have the following functions:

(1) Act as recipient of intelligence information from the intelligence community. This information should then be quickly distributed to the relevant components within DOJ.

(2) Act as requestor on behalf of all Departmental components for information and file searches from the intelligence community.

(3) Act as coordinator and facilitator for the resolution of legal and practical issues arising between the intelligence communities and the numerous Departmental components during litigation.

(4) Act as coordinator and advisor for joint intelligence community and law enforcement activities. This includes issues arising when the intelligence community is reporting on matters relevant to potential or actual

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[3/] Because of their extreme sensitivity, consideration of covert action plans should be limited to a core group consisting of the Attorney General, Deputy Attorney General, Counsel for Intelligence Policy, and Associate Deputy Attorney General. The other individuals should be included only on a case-by-case basis at the direction of the Attorney General.

criminal prosecutions. In such situations, the interest of the intelligence community in secrecy must be balanced with the prosecutor's interest in admissible evidence.

The "Center" should be staffed by attorneys who are experienced in intelligence matters as well as by attorneys who are experienced in criminal matters. [4/] Consideration should also be given to having attorneys from the FBI, DEA, and the intelligence community detailed to the "Center." Finally, it may also be advisable to have some non-attorney staff, such as analysts, assigned. With the combination of permanent staff provided by OIPR and detailed individuals from other divisions and agencies, the "Center" can be operational in short order without a significant expenditure of scarce funds.

As you can see, I have borrowed the ideas of many individuals including those of Phil Heymann, Mark Richard, Elizabeth Rindskopf, Dan Gallington, and others. Perhaps, after you have had an opportunity to consider this proposal , you may want to consult those affected in order to obtain their comments and criticisms.

[4/] These attorneys could be permanently assigned to the "Center" or rotated periodically on detail.

U. S. Department of Justice

Criminal Division

Washington, D.C. 20530

February 7, 1994

MEMORANDUM

TO: Jo Ann Harris
Assistant Attorney General
Criminal Division

FROM: Roger A. Pauley, Director
Office of Legislation
Criminal Division

SUBJECT: Agenda Items for Brown Bag Lunch

1. Legislation. A substantive crime agenda cannot reasonably be formulated until after the pending crime bill is enacted. Then we will know much more about which of our proposals failed of enactment and why, and can make informed judgements about whether to pursue them this year or next (or never).

More thought should be given to the process whereby legislative proposals are developed within the Division and the Department. Possibly, the Sections should be asked every six months to furnish ideas to this office. In addition, I would like to see more attention given to the development or periodic "minor amendment" bills to remedy nettlesome gaps or inconsistencies in criminal laws and problems resulting from judicial interpretations. In the past, the Department (through this Office) produced several of these bills which were enacted, but recently the Judiciary Committees and their staffs have not been receptive because (a) their leadership has focused on matters of topical interest rather than "nuts and bolts" improvements; and (2) there is a concern, particularly on the House side, that such bills may be used for political purposes by the opposition (e.g. to try to add a capital punishment or exclusionary rule amendment). This latter concern can be addressed (as in the past) through seeking a prior understanding with the minority leaders in the Committee that this vehicle will not be used for politi-

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cal purpose. [1] The first concern can be addressed through persuading the congressional leadership of the need to keep federal statutory law abreast of developments.

2. Rules. The criminal rules in my judgment are in pretty good shape and our primary task is to prevent bad proposals from being adopted. We do, however, have a few relatively minor proposals pending. Here, as with legislation, more thought should be give to the process whereby Rules proposals are developed within the Department. Heretofore, almost all proposals have emanated from this Office, with an occasional contribution from AUSAs.

There are one or two significant Rules matters that could be pursued if desired -- equalizing and reducing the number of peremptory challenges in felony cases (especially if the Supreme Court this Term expands Batson, as we are urging, to include gender discrimination); and overturning the Sells decision on Rule 6(e) and permitting the Department to share grand jury material with civil attorneys without a court order based on particularized need. This would benefit not only the Civil Division (e.g. in enforcing the False Claims Act), but also our own attorneys responsible for enforcing civil remedies such as RICO suits and forfeitures. Both these issues have histories within the Rules Committee which we can discuss.

3. Sentencing. Strategically, we should discuss whether or not to recommend that the Commission promulgate any amendments this cycle, given the peculiar legal situation that obtains in which, according to OLC under the previous Administration, only 3 of the Commission's members -- less than a quorum -- are authorized to take action. (It is doubtful whether the Administration will cure this problem by nominating and getting confirmed four new members before the end of April).

Bureaucratically, we should discuss how sentencing policy should be handled within the Department. In my view, the current system of doing it through the DAG's Office has not functioned well. Consideration should be given to returning this matter to the Criminal Division, and the "changing of the guard" at the DAG level provides an excellent opportunity to rethink this question.

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[1] Usually, the ranking members have a minor proposal or two that is useful or not harmful and can be included in the package as the price for political peace on the particular bill in question.

Garland

U. S. Department of Justice

Criminal Division

Deputy Assistant Attorney General

Washington, D.C. 20530

January 24, 1994

MEMORANDUM

TO: Roger A. Pauley, Director
Office of Legislation

FROM: Merrick Garland
Deputy Assistant Attorney General

RE: Proposed Legislation re
Grand Jury Access to Educational Records

The Assistant Attorney General has approved your proposal on this subject, and you should go ahead with your two proposed courses of action.

cc: Richard Scruggs

U. S. Department of Justice

Criminal Division

GTS# 9400 10614

Washington, D.C. 20530

MEMORANDUM

JAN 11 1994

TO: Merrick B. Garland
Deputy Assistant Attorney General

FROM: Roger A. Pauley, Director
Office of Legislation RAP

SUBJECT: Proposed Legislation Relating to Grand Jury Access to Educational Records

Attached is a legislative proposal to create a federal grand jury exception to an existing statute requiring notification of the student before an educational institution complies with a grand jury subpoena. The notification requirement apparently has been a thorn in law enforcement's side for some time, and most recently caused a problem in the Unibom investigation (concerning a bomber who has been operating sporadically for many years sending explosives devices to academic figures). The request for legislation came to me most immediately via Freddi Sison and Jim Reynolds, but I understand there is interest also from some higher level folks on the fourth or fifth floor.

If you approve the substance, I would recommend (1) seeking through OPD and OLA to include this in the Department's package of minor amendments which we are trying to get added to the crime bill, and (2) contacting the Department of Education to enlist its official support.[1] The latter is necessary since the Committees in Congress which (or whose staff at a minimum) must sign off are far more likely to be influenced by DOE than by ourselves, and the Judiciary Committees will almost certainly not entertain an amendment to this title 20 statute without the concurrence of the Committees having jurisdiction over this issue.

Please advise.

Attachments

cc: Freddi Sison; Jim Reynolds

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[1]This has already been done on an informal, low-level basis by Jim Reynolds' Section.

SEC. GRAND JURY ACCESS TO EDUCATIONAL RECORDS

Subsection (b)(1) of the Family Educational Rights and Privacy Act of 1974, as amended (20 U.S.C. 1232g(b)(1)) is amended by --

(1) striking "and" at the end of clause (H);

(2) striking the period at the end of clause (I) and inserting "; and"; and

(3) inserting after clause (I) the following

"(J) a federal grand jury, in response to a subpoena thereof. For good cause shown, the court shall order an educational agency or institution (and any officer, director, employee, or shareholder of, or agent or attorney for, such agency or institution) on which a federal grand jury subpoena for education records has been served not to disclose to any person the existence or contents of the subpoena or any information furnished to the grand jury in response thereto.".

Explanation

This proposed amendment to the Family Educational Rights and Privacy Act (FERPA) would bring that statute in conformity with virtually all other federal privacy laws involving third party record custodians, by recognizing an exception for information sought pursuant to a federal grand jury subpoena. See e.g., 12 U.S.C. 3413(i) and 3420, creating a similar exception to the Right to Financial Privacy Act of 1978; and 15 U.S.C. 1681b, containing a grand jury exception to the restrictive disclosure provisions of the Fair Credit Reporting Act. Because the federal grand jury is the constitutionally prescribed sole method of bringing felony charges in the federal justice system, it is a basic and vital principle that a federal grand jury subpoena should lie against any type of record (subject only to a valid claim of privilege) and without any precondition that the subject of the record, who may be a target of the investigation, be notified of the existence of the subpoena.

By contrast, 20 U.S.C. 1232g(b)(2) creates such a condition. It provides that no federal funds shall be available to any educational agency or institution (as defined) which has a policy or practice of releasing any educational records pertaining to a student, even in response to a court order or subpoena, unless the student (and his or her parents) is advised before compliance by the educational agency or institution.

This requirement of advance notification, which is unjustified in the grand jury context, may frequently operate to thwart an important federal criminal investigation, by alerting

the student that the grand jury has focused on him and causing him either to flee or to conceal or destroy incriminating evidence. While federal prosecutors have had some success in using the All Writs Act, 28 U.S.C. 1651, to persuade courts to issue orders precluding notification to anyone of the existence or contents of a federal grand jury subpoena for student educational records, such orders are wholly discretionary with the court. Accordingly, the mere <u>possibility</u> of relief under the All Writs Act does not provide sufficient protection for the interests of law enforcement.

The proposed amendment is closely derived from the analogous provisions creating grand jury exceptions in the Right to Financial Privacy Act and the Fair Credit Reporting Act. First, the amendment would exempt federal grand jury subpoenas from the mandatory notification obligation of the FERPA. Second, it would direct a court, for good cause shown, to order the educational agency or institution (and those working for it) <u>not</u> to disclose the existence of the subpoena or the information supplied in response thereto to the student or any other person. In considering what constitutes "good cause", it is intended that the court have recourse to 12 U.S.C. 3409, which sets forth five circumstances in which the court, as to subpoenaed financial records, may preclude notice. Those circumstances occur when there is reasonable cause to believe that notice of the subpoena will (1) endanger the life or safety or any person; (2) lead to flight from prosecution; (3) result in destruction of or tampering with evidence; (4) bring about intimidation of

potential witnesses; or (5) otherwise seriously jeopardize an investigation.

Enactment of this proposal will both aid law enforcement and, at the same time, remove a legal barrier which places educational institutions in the unenviable position of either risking their eligibility for federal funds or hindering a legitimate federal grand jury investigation.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1978 Act. House Report No. 95–1137 and House Conference Report No. 95–1753, see 1978 U.S.Code Cong. and Adm.News, p. 4971.

Codifications

A prior section 1232f was renumbered by Pub.L. 95–561, § 1231(a)(2), and is now set out as section 1221e–1a of this title.

Effective Dates

1978 Act. Section effective with respect to appropriations for fiscal year 1980 and subsequent fiscal years, see section 1261 of Pub.L. 95–561, set out as a note under section 1232c of this title.

LIBRARY REFERENCES

American Digest System

Access to records, see Records ⇐30 to 35.

Encyclopedias

Access to records, see C.J.S. Records §§ 35 to 41.

1979 Act. Amendment by Pub.L. 96–46 effective Oct. 1, 1978, see section 8 of Pub.L. 96–46, set out as a note under section 240 of this title.

WESTLAW ELECTRONIC RESEARCH

Records cases: 326k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1232g. Family educational and privacy rights

(a) Conditions for availability of funds to educational agencies or institutions; inspection and review of education records; specific information to be made available; procedure for access to education records; reasonableness of time for such access; hearings; written explanations by parents; definitions

(1)(A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be required as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4)(A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information

(ii) are maintained by a

by a person acting for suc

(B) The term "education rec

(i) records of instructio personnel and educationa are in the sole possession not accessible or revealed tute;

(ii) if the personnel of a access to education recor section, the records and d unit which (I) are kept apa agraph (A), (II) are main purposes, and (III) are no than law enforcement offic

(iii) in the case of persc cational agency or institutic such agency or institution, r normal course of business person in that person's cap available for use for any ot

(iv) records on a student older, or is attending an inst which are made or mainta psychologist, or other recog sional acting in his professi or assisting in that capacity, or used only in connection the student, and are not avai providing such treatment, personally reviewed by a phy sional of the student's choice

(5)(A) For the purposes of this mation" relating to a student inc name, address, telephone listing, of study, participation in officiall weight and height of members o ance, degrees and awards receiv educational agency or institution

(B) Any educational agency or ry information shall give public n tion which it has designated as s

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1) of this section, the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his professional or paraprofessional capacity, or assisting in that capacity, and which are made, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment, except that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5)(A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to

each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) Release of education records; parental consent requirement; exceptions; compliance with judicial orders and subpoenas; audit and evaluation of federally-supported education programs; recordkeeping

(1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a) of this section) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency, who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 1221e-3(c) of this title), or (iv) State educational authorities under the conditions set forth in paragraph (3) of this subsection;

(D) in connection with a student's application for, or receipt of, financial aid;

(E) State and local officials or authorities to whom such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering

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agency or (D) State educational
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student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of Title 26; and

(I) subject to regulations of the Secretary, in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

Nothing in clause (E) of this paragraph shall prevent a State from further limiting the number or type of State or local officials who will continue to have access thereunder.

(2) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an education agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally-supported education program, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided,* That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than

those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4)(A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(5) Nothing in this section shall be construed to prohibit State and local educational officials from having access to student or other records which may be necessary in connection with the audit and evaluation of any federally or State supported education program or in connection with the enforcement of the Federal legal requirements which relate to any such program, subject to the conditions specified in the proviso in paragraph (3).

(c) Surveys or data-gathering activities; regulations

The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) Students' rather than parents' permission or consent

For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights

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(e) Informing parents or students of ric

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(f) Enforcement; termination of assistar

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be taken only if the Secretary finds
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(g) Office and review board; creation; fu

The Secretary shall establish or de
board within the Department of Ec
investigating, processing, reviewing, a
the provisions of this section and co
concerning alleged violations of this
duct of hearings, none of the function
section shall be carried out in any of
Department.

(Pub.L. 90–247, Title IV, § 438, as added I
Aug. 21, 1974, 88 Stat. 571, and amended
1974, 88 Stat. 1858; Pub.L. 96–46, § 4(c), A
96–88, Title III, § 301, Title V, § 507, Oct. 17
99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

HISTORICAL AND STATU

Revision Notes and Legislative Reports

1974 Acts. House Report No. 93–805 and Senate Conference Report No. 93–1026, see 1974 U.S.Code Cong. and Adm.News, p. 4093.

House Report No. 93–1056 and Senate Conference Report No. 93–1409, see 1974 U.S.Code Cong. and Adm.News, p. 6779.

1979 Acts. House Report No. 96–338, see 1979 U.S.Code Cong. and Adm.News, p. 819.

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accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) Informing parents or students of rights under this section

No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) Enforcement; termination of assistance

The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this chapter, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) Office and review board; creation; functions

The Secretary shall establish or designate an office and review board within the Department of Education for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.

(Pub.L. 90–247, Title IV, § 438, as added Pub.L. 93–380, Title V, § 513(a), Aug. 21, 1974, 88 Stat. 571, and amended Pub.L. 93–568, § 2(a), Dec. 31, 1974, 88 Stat. 1858; Pub.L. 96–46, § 4(c), Aug. 6, 1979, 93 Stat. 342; Pub.L. 96–88, Title III, § 301, Title V, § 507, Oct. 17, 1979, 93 Stat. 677, 692; Pub.L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1974 Acts. House Report No. 93–805 and Senate Conference Report No. 93–1026, see 1974 U.S.Code Cong. and Adm.News, p. 4093.

House Report No. 93–1056 and Senate Conference Report No. 93–1409, see 1974 U.S.Code Cong. and Adm.News, p. 6779.

1979 Acts. House Report No. 96–338, see 1979 U.S.Code Cong. and Adm.News, p. 819.

Senate Report No. 96–49 and House Conference Report No. 96–459, see 1979 U.S.Code Cong. and Adm.News, p. 1514.

Amendments

1986 Amendment. Subsec. (b)(1)(H). Pub.L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "Title 26" thus requiring no change in text.

1979 Amendment. Subsec. (b) (5). Pub.L. 96–46 added subsec. (b) (5).

Date: Wednesday, December 29, 1993 11:49 am
From: CRM02(CARVER)
Subject: Attwood Case -Reply

I spoke with Ira Oring earlier today. His office is inclined to pursue the agreement and intends to contact all other U.S. Attorneys' offices through the EOUSA, provided Holland and Knight agrees that EWI will accept an agreement which excludes any U.S. Attorney's office specifically declining to sign on. After talking with Ira Oring, I contacted the SEC and the FBI.

I spoke with Gary Sundig (sp ?), an Associate Director, SEC, explained that both the plea agreement and the non-prosecution agreement will preserve the government's right to pursue civil/administrative remedies, but will bar criminal prosecution of any of the corporate entities for the false filings one of the corporations caused to be made with the SEC. Mr. Sundig was aware of the USAO/FBI investigation/prosecution in Maryland, and said that an SEC attorney may have assisted the USAO. He said that he does not anticipate any SEC opposition to the USAO's entering into non criminal prosecution agreements with the corporations, but will make some inquiries within the SEC and get back to me.

I spoke with Ron Dick, Chief of the Financial Institution Fraud Unit, FBI White Collar Crimes Section. He will initiate the appropriate inquiry.

F4.1M

CRA ORING
AUSA
Balt
410-962-2458 x389

USAO/Baltimore wants to enter into plea agreement in fraud case with Eastern Waste Mgmt - a sub of Attwood. Company wants plea to bind US, not just Balt

Jack Keeney

EOUSA can send out NOTICE to ALL USAOs -- Balt is planning plea, NOTICE IF WIN 10 DAYS you have objection. Shld also check w/ FBI + SEC, + Environment Div. Plea can't cover TAX. If all agree is done + no objections registered, CRM can enter into global plea.

Bob Trout

→ I advised him BAY is in USAO/Balt's court. CRM will facilitate, but decision is up to USAO-Balt.

202-861-1414

Alan Carver

→ I advised him of Keeney's advice; Allan will coor w/ USAO-Balt.

U. S. Department of Justice

Criminal Division

Office of the Deputy Assistant Attorney General *Washington, D.C. 20530*

May 1, 1993

MEMORANDUM

TO: The Attorney General

FROM: Mark M Richard
Deputy Assistant Attorney General

SUBJECT: Improving Relations Between the Criminal Division and the United States Attorneys

Several weeks ago you asked me for my views on possible steps that can be taken to improve the relations between the Criminal Division and the United States Attorneys. Set forth below is my analysis of the problem and some suggested steps that could be taken to foster a closer and more constructive relationship between the Criminal Division and the United States Attorneys.

A. NATURE OF THE PROBLEM

The root cause of the historic tension between the Criminal Division and many United States Attorneys can be traced to the lack of clear definition of the mission of the Criminal Division as it relates to the United States Attorneys. The basic fears of many United States Attorneys are twofold: a) "bureaucrats" in the Criminal Division attempt to oversee or otherwise second guess their decisions when it comes to criminal cases and programs and; b) the Division aspires to function as an independent litigative presence in their districts either with respect to particular cases or the running of entire programs. Actions which even remotely suggest that the Division is attempting to perform either role is met with loud cries of foul by the United States Attorneys. More recently, a third concern is being voiced by some United States Attorneys predicated on an alleged lack of competence and experience by personnel in the Division to perform even its traditional role in providing policy input to the Attorney General on criminal justice issues.

B. SHORT TIME SOLUTIONS

There are a variety of steps the Department can immediately take which will address, at least in part, some of the tensions

that exist between the Criminal Division and United States Attorneys. * These include:

1. As the Attorney General and the Deputy set the tone of the relationship in the first instance by how they relate to the Assistant Attorney General of the Criminal Division, it is imperative that a clear role for the Assistant Attorney General is established and articulated to all Division personnel and United States Attorneys. To the extent that you and the Deputy make it clear to the United States Attorneys that the normal "chain of command" for them on criminal cases and issues in the first instance is through your appointed Assistant Attorney General for the Criminal Division and not directly to the Deputy.

* Many of these steps can and should be taken with respect to all Divisions and not be confined to just the Criminal Division, enhancing the role and status of the Assistant Attorney General and in turn the Division. Conversely, if United States Attorneys can bypass the Assistant Attorney General and obtain resolution of criminal case problems solely through the operation of the Deputy's staff as occurred during the prior administration you are sending a clear message that you regard the Division as not having a legitimate role to play in resolving case problems. In any event, your view of the mission of the Division will set the tone for the relationship.

In formulating your position on the issue of mission definition, you should note that the Division plays many roles only a few of which directly impact on United States Attorneys. These have traditionally included:

a. Serving as a strategic reserve of prosecutorial resources thereby permitting the Attorney General and senior Department managers to quickly direct on a short term basis appreciable resources to specific national problems. For example, when the savings and loan scandal began to erupt around the country, the Criminal Division, acting under the AG's authority, quickly devoted resources to the problem to supplement the efforts of the United States Attorneys until such time as the USAs could acquire additional resource allocations to address the problem on a long term basis;

b. Coordinating with investigative and regulatory agencies on a national level concerning criminal justice activities and issues;

c. Staffing selected cases due to the recusals of the United States Attorney and their offices;

d. Providing supplemental resources for the United States Attorneys in complex cases which require appreciable staffing commitments or unique expertise;

e. Providing United States Attorneys with various forms of support in terms of obtaining immunity orders, electronic surveillance orders and other sensitive investigative or prosecutorial measures that require main Justice approval by law or policy;

f. Rendering oversight and guidance in particularly sensitive cases involving national security and foreign relations issues;

g. Staffing of a limit category of cases out of the Division due to the nature of the case,such as investigations of federal judges; and,

h. Coordinating multidistrict investigations and prosecutions.

2. Have each Deputy Assistant Attorney General in the Division designated as principal liaison officials for geographical groups of United States attorneys. This will foster a close and personal relationship between Division managers and United States Attorneys and provide the field with direct contact points within the Division for all issues regardless of topic;

3. Permit Deputy Assistant Attorney Generals in the Division to attend selected United States Attorneys conferences;

4. Encourage the establishment of a practice whereby career officials in the Division and United States Attorneys offices who wish to become Section or Division Chiefs or above must spend at least three months attached to the other component so as to obtain first hand a balanced Department perspective.

5. Establish regular management and policy seminars attended by senior managers from the Division and United States Attorneys.

6. Have the Assistant Attorney General in charge of the Division serve as an ex officio member of the Advisory Committee for United States Attorneys.

7. Establish a meaningful multi-day orientation seminar for all new United States attorneys so they are exposed to the Department and its expectations. During the course of the seminars that should meet and spend time with critical career and non-career Division managers.

8. Prepare an executive summary of the Criminal Division portion of the USA manual with particular emphasis on coordination, consultation and approval portions of the publication.

9. Direct that the Advocacy Institute devote significant portions of the training program for new Assistant United States

Attorneys and Criminal Division personnel to the need for coordination between their offices and the Department.

Long Term Solutions

1. In addition to defining with precision the role of the Criminal Division, a structural step that should be considered to address the underlying issues of coordination is to work towards a merger of the Criminal Division and the Executive Office for United States Attorneys into one component under the same Assistant Attorney General. By placing both components under the same integrated management structure, lines of authority and function will be understood by all concerned. Moreover, budgetary needs of the Department will become clearer because the Assistant Attorney General will be not just the needs of the United States Attorneys or the Criminal Division but rather a single functioning and integrated unit.

An additional benefit of this arrangement is that the Assistant Attorney General would have hands are knowledge of how best to deploy the resources of the existing Criminal Division so as to reinforce most effectively the activities of the United States Attorneys. Existing tensions and competition between the Division and the United States Attorneys should no longer be an issue under such an arrangement as the distinction between Assistant United States Attorneys and Division personnel fade.

2. In recent years the Department has been publicly vilified for its inability to respond to major investigative and prosecutorial challenges. Both the BCCI and BNL matters floundered in part out of headquarters timidity to provide leadership and direction. Notwithstanding that these matters cried out for centralized direction and control, the Department was afraid of United States Attorneys, Congress and the media crying "Washington interference" if decisions were being made in Washington rather than at the field level. This was so despite obvious signs that the cases were poorly staffed, poorly coordinated and in desperate need of professional oversight.

To address this deficiency while ensuring that public confidence in the impartial handling of such cases is maintained, it is suggested that an immediate process be announced whereby the Deputy or Attorney General, can designate particular investigations or prosecutions as "national cases." The finding triggering such a designation would be set forth in written documents and reflect the need for national coordination, central direction or what ever factors justify such actions.

The net effect of such a designation would be to empower the head of the Criminal Division to be in charge of ensuring that: a) the case in adequately staffed, b) the case is being afforded the priority deserves, c) prosecutive theories and lines of inquiry are thorough and appropriate, d) the indictment is

supported by the evidence. This proposal does not mean that the Division would be taking the matter over but merely that the head of the Division would be responsible for ensuring that the case is being appropriately handled and that, to the extent that it is not, direct that corrective measures be taken.

D. **Conclusions**

It is clear that we have a coordination problem of long term duration that must be addressed. It is equally clear that now is an ideal time to address the issue because we will be dealing with a new crop of United States Attorneys and a new Assistant Attorney General in the Criminal Division. We must begin by making this issue a priority item on the management agenda. Selection of an action program should be targeted for implementation no longer than the first conference of Clinton United States Attorneys.

U. S. Department of Justice

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U. S. Department of Justice

Washington, DC 20530

October 8, 1993

MEMORANDUM

TO: Jo Ann Harris
Assistant to the Attorney General

FROM: Laurence A. Urgenson
Acting Deputy Assistant Attorney General

SUBJECT: White Collar Case Monitoring Procedures

In accordance with your request, this memorandum sets forth a proposal I had submitted for consideration back in 1990, recommending procedures for monitoring nationally significant white collar crime investigations. As I now review them, my suggestions, appear to be a bit cumbersome. What I would now prefer is a broader plan, reformulating the Economic Counsel as the principle mechanism both determining white collar policy and monitoring significant investigations.

The 1990 Prior Proposal

The Department's current procedures for identifying and monitoring nationally significant white collar crime investigations are set forth in a March 17, 1987 Order of the Attorney General. The Order directs the Economic Crime Council to "provide mechanisms to identify nationally significant economic crimes" and requires United States Attorneys and the major investigative agencies to notify the Council when such cases arise. In addition, the United States Attorneys are also directed to prepare federal district plans that implement the Attorney General's national economic crime priorities. Under the Order, the district plans and periodic case reports are the primary mechanisms for identifying, monitoring and coordinating nationally significant white collar prosecutions.

The requirements of the Attorney General's Order are not being implemented. United States Attorneys do not prepare district plans

*or periodic reports. While enforcement of the Attorney General's Order is an option available to the Department, none of the Chairmen of the Economic Crime Council have chosen to require compliance. It, therefore, appears appropriate to consider whether an alternative information gathering and monitoring procedure should be considered. This memorandum sets forth a preliminary format for such an alternative. The premise of the proposal is that a system for monitoring white collar crime law enforcement will be productive only if it limits additional reporting requirements and includes incentives to encourage long-term participation. Accordingly, the proposal seeks to identify priority cases through the examination of pre-existing executive summaries rather than through requiring additional reports. Moreover, where additional monitoring of field operations is required the emphasis is on minimizing the complexity and formality of the evaluation and review procedures. The proposal also seeks to provide prompt and useful information to the participating United States Attorneys and offers investigative agencies a means to identify backlogged cases. Finally, the proposal provides a mechanism to assess our progress in implementing various Attorney General initiatives.

The proposal has four parts: (1) agency based data collection; (2) screening to identify nationally significant cases; (3) evaluation of designated cases using targeted appraisal forms and (4) implementation of monitoring procedures.

1. Agency Based Data Collection

The essential premise of the proposal is that sufficient information to identify nationally significant white collar cases exists in the form of various status and management reports that are not being collected and reviewed by the Criminal Division. These reports include memoranda to the Assistant Director of the Criminal Investigative Division of the FBI, United States Attorneys' reports to the EOUSA (particularly those dealing with resource allocations), the Postal Service's summary of the "top one hundred cases" and a host of IG reports. The initial step in implementing the proposal is to add the Assistant Attorney General for the Crimina Division to the distribution list for all significant internal agency reports dealing with white collar investigations.

2. Screening to Identify Nationally Significant Cases

The management reports received by the Criminal Division would then be reviewed in light of the established criteria for nationally significant cases. The criteria include: (1) identity of the subjects of the investigation; (2) dollar amount of potential loss to the victim; (3) involvement of foreign officials; (3) national security implications; (4) significant legal issues; (5) multi-district implications and (6) substantial forfeiture potential. The review would be limited to determining whether the allegations involve a matter that should be designated as a

nationally significant investigation.

3. Evaluation Using Targeted Appraisal Forms

The designation of a case as a nationally significant white collar investigation would trigger additional reporting and monitoring requirements. Initially, a notice and appraisal form would be sent to the United States Attorney's office handling the matter. If feasible, the notice would alert the United States Attorney to other investigations involving the same subjects and identify offices dealing with similar significant legal issues. The United States Attorney would be asked to complete a National Priority Case Tracking Form which would be designed to enable a preliminary assessment of the investigative approach, the availability of forfeiture remedies, and the need for additional resources.

4. Monitoring Procedures

The evaluation of the completed appraisal form would result in any number of possible responses ranging from informal discussions to a site review of the evidence and a request for a prosecutive memorandum. The nature of the review would be determined on a case by case basis and would be limited to the steps necessary to evaluate the scope and sophistication of the issues presented, the reasonableness of the prosecutive approach, the adequacy of staffing, and the degree of compliance with department policies such as coordination with other districts and consideration of forfeiture potential. The goal would be to minimize the complexity and formality of the evaluation process. In a limited number of cases, however, it may be appropriate to advise the United States Attorney not to settle or indict the case without prior consultation with the appropriate Department of Justice official.

5. Conclusion

The key features of the proposal are designed to streamline our information and monitoring procedures without unduly increasing hostility to "central office second guessers." If this preliminary proposal is deemed to merit further consideration, we will prepare a more detailed analysis providing a better definition of the program, a discussion of resource needs, and a procedure for implementation.

D
J

U. S. Department of Justice

Criminal Division

Washington, D.C. 20530

September 17, 1993

TO: Jo Ann Harris
Special Counsel to the Attorney General

THROUGH: Merrick Garland
Deputy Assistant Attorney General
Criminal Division

FROM: Mary Lee Warren
Chief
Narcotic and Dangerous Drug Section

SUBJECT: Section Chief's Perspective on the Criminal Division

Attached are some partisan thoughts and opinions about the Criminal Division's mission [bold and expansive] and what's working in the Narcotic and Dangerous Drug Section [most is working very, very well and professionally] and what's not working in the Section [a minimalist topic].

MISSION OF THE CRIMINAL DIVISION

The mission of the Criminal Division should combine multiple objectives: (i) proposing, providing commentary on, and implementing policy; (ii) offering support to and maintaining a strategic reserve for federal prosecution efforts; and (iii) representing the U.S. Government in criminal justice matters in international, national, and state/local fora.

The Criminal Division should suggest policy guidance and offer legislative or like initiatives in criminal law, criminal procedure, prosecutive strategies, and related matters. While neither the premier nor final voice in criminal justice policy for the Department or Administration, the Criminal Division's opinions should be valued and persuasive. It is the Criminal Division that should be able to provide the confluence of on-line prosecutors' experience (from support rendered to the USAOs and from its own litigation responsibilities), agencies' operations and directions (from headquarters and in the field), and other Departments' (such as, the Departments of Treasury, State, and Defense) or entities' (such as, other countries' ministries of justice and international and regional working groups) interests. From this rich mix of the theoretical and practical should come insights for policy-making and the policy-makers.

Further, the Criminal Division must be available to provide support to prosecutors in the field by responding to requests for legal advice and assistance, offering an array of training opportunities and authoring pertinent publications. Similar help should be made available to the law enforcement agencies and developing countries (for example, in drafting model legislation). Guidance and help in the USAOs' implementing Department policies (such as, in their requests for electronic surveillance, witness protection, and even death penalty authorizations) must be effectively given. Importantly, litigation units must be maintained as a strategic reserve for the U.S. Attorneys to call upon when the proposed investigation and prosecution involve complex or sophisticated matters beyond their experiences or available resources or in an emerging area of the law (such as, for example, essential and precursor chemicals or steroids offenses in recent years) or in a recusal matter or when multiple jurisdictions look for a coordinated approach to the criminal offenses of a wide-ranging illicit enterprise.

And, the Criminal Division must continue to provide the Department and the Administration with valued representation in our dealings with other prosecutors' offices (such as, the National Association of Attorneys General), other countries' justice ministries and in international working groups (such as, the U.N. Commission on Narcotic Drugs, the Chemical Action Task Force, and the like). Because the practice of federal criminal law, particularly in the area of narcotics law enforcement, is international in scope and yet, in many senses, local in impact,

it becomes the Criminal Division's responsibility to appear for and represent the Department and Administration in many arenas simultaneously.

ONE OF MANY HIGH POINTS OF NDDS' WORK

The many strengths of the Narcotic and Dangerous Drug Section have combined to make the **US/COLOMBIAN EVIDENCE SHARING PROJECT** an historic success.

In February 1991, after the Colombian legislature declared the extradition of Colombian nationals to be unconstitutional, the U.S. entered into an evidence sharing agreement with the Republic of Colombia. The first agreement provided a mechanism for the transfer of U.S. evidence and criminal cases to the newly-established Colombian Fiscalia [Prosecutor's Office] for the prosecution of the so-called "Surrenderees" -- those individuals, including Pablo Escobar and Juan David, Fabio, and Jorge Ochoa of the Medellin Cartel, who had surrendered to Colombian custody in exchange for leniency in the resolution of all their narcotrafficking crimes. It was later understood between the parties that the agreement would be extended to a second category of violators, the so-called "Extraditables" -- those narcotraffickers from Medellin and elsewhere who were in Colombian custody pursuant to U.S. extradition requests at the time that extradition was banned.

Recently, the U.S. Government has entered a new phase of the project in which a third category of offenders -- all other Colombian narcotics kingpins [primarily, the Cali Cartel leadership] -- are now subject to the evidence exchange program.

The responsibility for the U.S. Government's role in the US/COLOMBIAN EVIDENCE SHARING PROJECT has been shouldered by the Narcotic and Dangerous Drug Section of the Criminal Division. NDDS has been able to fulfill this role because of its credibility within the Department, among the U.S. Attorneys' Offices around the country, with the agencies -- DEA, FBI, and Customs, and in the international community. This hard-won respect rests on the Section's recognized expertise in major narcotics prosecutions in the Districts and in its role of coordinating multi-district investigations, as well as its responsibilities for training AUSAs in prosecuting high-level narcotics cases. It also rests on the Section's having provided guidance to the agencies and having participated in international, multilateral, and bilateral law enforcement working groups.

To date, evidentiary packages, involving, at times, depositions of U.S. witnesses by Colombian prosecutors and judges, have been provided in approximately 40 Colombian prosecutions. The results of the Colombian prosecutions were disappointing at first in light of U.S. expectations for such cases had they been tried in our courts. More recently, the Colombian cases built solely on U.S. evidence have resulted in convictions and substantial terms of imprisonment for Colombian

offenders who were once viewed by the Colombian populace and themselves as beyond the law. A turning point in the Project occurred when NDDS conducted [and US/AID funded] a Training Seminar for Colombian Prosecutors at a secure facility in the U.S. The seminar included classwork in comparative substantive and evidentiary law and procedure, investigative techniques, oral advocacy, and the like, as well as workshops pairing the Colombian prosecutors with the AUSAs responsible for the prosecutions of the same Cartel cases. In addition to learning new law and techniques, each country's prosecutors gained a new-found appreciation for the professionalism and personal commitment of their counterparts. At a meeting in Washington last week, the Colombian Ambassador to the U.S. sat through a five hour meeting of the NDDS attorneys with the Colombian Vice-Fiscal. At the end of the meeting and on through the evening, according to those close to him, the Ambassador (the former Colombian Presidential Adviser on International Affairs) was heard to remark that he never would have imagined the progress in the cases and the working relationship of the two countries that has now occurred. The work, earlier thankless in many respects, reflects NDDS' abilities at their most meaningful best.

UNNECESSARY LOW POINT IN NDDS' EFFORTS

Although hard-pressed to identify anything within the Narcotic & Dangerous Drug Section's ambit that is of limited value, credibility, or meaning, the Section's relationship, indeed, the Criminal Division's relationship with the Attorney General's Advocacy Institute ["AGAI"] of the Executive Office for U.S. Attorneys ["EOUSA"] has been less than ideal. From this vantage point at least, the fault appears to lie primarily with AGAI and, from whatever vantage point, the conflict is baseless and unnecessary.

Periodically, NDDS takes responsibility for programming training conferences at the beginning and advanced level for federal narcotics prosecutors. The topics covered in these sessions are drawn from past teaching experiences, up-to-date insights into areas of concern (relying upon the Section's Litigation Unit assignments in the districts and from the requests posed by AUSAs in the field to our Policy Unit staff in Washington), and recent case law reports. NDDS has tried to set the agenda for these conferences in a logical progression of subject areas and has used its reputation and influence to summon presenters from among an array of the most experienced AUSAs and Department trial attorneys. While NDDS has been responsible for most of the programming, AGAI has been responsible for the funding of these efforts and in doing so has severely limited the number of Department trial attorneys who may attend these sessions and has typically refused to underwrite the travel and per diem expenses of these attorneys. But even more discouraging, the AGAI representatives at these sessions have repeatedly, publicly disparaged the Criminal Division and Main Justice, in general.

For example, in the first training conference convened after the appointment of a new Chief of the Section in 1991, she welcomed the participants and then outlined the responsibilities and services provided by the Section. The AGAI representative then took the dais and announced that, unlike the previous speaker, she was not a bureaucrat but was a real lawyer. The Chief -- ready to match her 11 years' of trial work in the U.S. Attorney's Office in the Southern District of New York against the protestor's experience in one of the Districts of West Virginia -- refrained, and continued with the program. In another conference, the AGAI representative called a meeting of the AUSAs in the classroom at the end of the day and unceremoniously removed any Department trial attorneys who lingered behind. When questioned later, the representative said that he needed to encourage the AUSAs, fearing they might feel at sea during the change of administrations. Whatever the intention, the result was that the Department attorneys were reduced to second class citizen status in front of their peers.

From all accounts, the NDDS experience is not unique rather it tends to mirror the experiences of several other Criminal Division sections. Further, these antagonisms toward the Criminal Division revealed in the area of training seem to recur through other dealings of EOUSA with the U.S. Attorneys' Offices. All this is unnecessary. The Criminal Division and each of its sections and offices work to serve and support the prosecutors in the field. If there are any flaws or failings in these roles, they should be discussed and repaired as appropriate, but should not be cause for sniping. These low points need not continue.