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SEP 13 1991

MEMORANDUM FOR EDE HOLIDAY  
ASSISTANT TO THE PRESIDENT  
AND SECRETARY OF THE CABINET

FROM: ROBIN CARLE *RC*  
EXECUTIVE SECRETARY  
TO THE DEPARTMENT

SUBJECT: 1991 Fall Issues Assessment Report

The following report summarizes key issues and activities which are expected to occur within the Department of Health and Human Services between September 15 to December 31, 1991.

**I. HIGHEST PRIORITIES -- SUMMARY LISTING**

- \* Minority Health Plan
- \* Implement provisions of the Clinical Laboratory Improvement Amendments of 1988
- \* Food Labeling
- \* HIV AIDS Health Care Worker Campaign
- \* Publish regulations on proposed criteria regarding SSA impairments caused by HIV infection.
- \* Child Immunization Summit Visits
- \* Publish Final Rule to Establish New Medicare Method for Paying Physicians
- \* Child Care and Development Block Grant
- \* Surgeon General's Update on AIDS Epidemic
- \* Healthy Start Initiative Announcement of Demonstration Sites
- \* Child Welfare Reform
- \* Head Start Expansion and Quality Improvements

**II. SURVEY OF KEY ISSUES****SECRETARIAL ACTIVITIES**

The following are confirmed Secretarial activities known to date. As his schedule permits, Secretary Sullivan hosts a private breakfast every other Thursday with a key leader of the Congress to discuss legislative issues of mutual concern. Additional calendar updates may be provided as changes occur.

- 09/16/91 **Third National Asian Pacific Conference on Substance Abuse and AIDS Prevention and Treatment, Arlington, VA**  
The theme of the Conference is "Dispelling the Myth, Promoting a National Agenda on Substance Abuse Issues within the Asian Communities." The Secretary is the keynote speaker.
- 09/17/91 **National Conference on Child Abuse and Neglect Speech - Colorado**  
The Secretary will discuss our commitment to children's programs, including our many efforts to address violence, child abuse and neglect, immunization, Healthy Start and the need for a culture of character.
- 09/20/91 **Dallas Immunization Summit Visit - Dallas, Texas**  
This is the first of six summit visits to encourage immunization efforts and attempt to understand local problems. Drs. Mason, Roper, and Novello will participate in these visits along with other high public officials.
- 09/23-27/90 **Immunization Week**
- 09/23/91 **Sorian Health Care Forum Speech - Washington, DC**  
The Secretary is expected to discuss the Administration's plans for health care reform. The principles for reform will be mentioned, as well as a brief discussion of the five lectures.

- 09/23/91 **Wharton School Alumni Club Speech - Washington, DC**  
Again, this "captains of industry" audience will expect a discussion about health care reform. Because business leaders have a vital role in implementing health care reform, culture of character and more, this is an important audience for the Secretary to call to action. He will share his views as presented in the five lectures and discuss the specific role that these business leaders can play.
- 09/24/91 **National Breast Cancer Awareness Month Speech - Washington, DC**  
The Secretary and Mrs. Sullivan will emphasize the need to increase awareness of the dangers of breast cancer and the need for periodic examinations.
- 09/27/91 **Healthy Mothers/Healthy Babies Speech - Washington, DC**  
Dr. Sullivan will announce the communities selected for the Healthy Start Initiative at the Healthy Mothers/Healthy Babies Coalition meeting. The communities will be challenged to reduce their infant mortality rate by 50% over the next few years.
- 09/27/91 **National Conference of Editorial Writers Speech - Salt Lake City, Utah**  
This audience would like a discussion of our ideas on health care reform. Because these writers have often called on our department to do more, we will take this opportunity to share the very detailed groundwork we have laid for meaningful reform, and share our view of further actions to increase access to care.
- 09/29/91 **Ford Hall Forum Speech - Boston, Massachusetts**  
This is a lecture before the Massachusetts Medical Society. The Secretary will talk about health care reform and the role of biomedical research in health care reform.
- 10/02/91 **Economic Club of Detroit - Detroit, Michigan**  
The Secretary will discuss health care reform before this group of business leaders. This speech will be carried on national public radio.

- 10/03/91 **AEI Health Policy Conference Speech - Washington, DC**  
This conference will present information on critical issues for health care reform.
- 10/07-11/91 **Child Health Week**
- 10/06/91 **American Dental Association House of Delegates Speech - Seattle, Washington**  
The ADA would like the Secretary to talk about health care reform. Additionally, he may discuss AIDS and the HIV guidelines.
- 10/07/91 **International Conference on Human Genetics Speech - Washington, DC**  
The Secretary will talk about HHS biomedical initiatives, the Bush Administration's strong record on biomedical research funding and the international implications of biomedical research.
- 10/07/91 **National Conference on Lead Poisoning Speech/Press Conference - Washington, DC**  
The Secretary will talk about the dangers of lead poisoning and our efforts to address this problem.
- 10/08/91 **International Association of Chiefs of Police Speech - Minneapolis, Minnesota**  
The Secretary will talk about violence as a health problem, including a discussion of the black homicide rate, violence in the media and the steps we can take to create a culture of character.
- 10/09/91 **Foundation for Biomedical Research Speech - Washington, DC**  
The Secretary will talk about the importance of biomedical research, our biomedical initiatives and the Bush Administration's record on funding for biomedical research.
- 10/10/91 **House Ways and Means Committee, Washington, D.C.**  
The Secretary will testify before the Ways and Means Committee on health care reform.
- 10/10/91 **National Teleconference - Mothers Against Drugs (MAD), HHS Studio**  
The Secretary will address this national teleconference sponsored by MAD and Governor Roemer. Topics will include health promotion strategies and preventing tobacco and substance abuse among children and youth.

- 10/28/91 **Phoenix Immunization Summit Visit - Phoenix, Arizona**  
The second in the series of six immunization summits, the Secretary will talk about the importance of immunization and our efforts to address low immunization rates in rural and under-served areas.
- 10/31/91 **Speech to the National Press Club - Washington, DC**  
The Secretary is expected to make a major policy address on health care reform.
- 11/07/91 **Tobacco Free Society Speech - University of Oklahoma, Oklahoma City, Oklahoma**  
The Secretary will restate our health promotion/disease prevention agenda, especially as it relates to a smoke-free society by the year 2000.
- 11/13/91 **Rapid City Immunization Summit Visit - Rapid City, South Dakota**  
The third in the series of six immunization summits, the Secretary will talk about the importance of immunization and our efforts to address low immunization rates in rural and under-served areas.
- 11/15/91 **Karolinska Institute Speech - Stockholm, Sweden**  
This is an annual clinical science lecture. The Secretary will speak on the international implications of biomedical research.
- 11/18-22/91 **National Family Awareness Week**
- 11/23/91 **Vatican Conference on Drug and Alcohol Abuse Speech - Rome, Italy**  
The Secretary will talk about American efforts to reduce the demand for drugs, including our efforts on research, treatment and prevention. Also, he will discuss the international aspects of these issues.
- 11/25-29/91 **National Adoption Week**
- 11/25/91 **Howard University/Child Health in the Inner City Speech - Bethesda, Maryland**  
The Secretary will talk about violence and health disparities, and governmental efforts to address these issues. Also, he will mention the need to establish a culture of character.

12/13/91 **Philadelphia Immunization Summit Visit - Philadelphia, Pennsylvania**

The fourth in the series of six immunization summits, the Secretary will talk about the importance of immunization and our efforts to address low immunization rates in rural and under-served areas.

12/14-17/91 **International AIDS Conference - Africa**

**INITIATIVES AND POLICIES UNDER DEVELOPMENT  
OR CONSIDERATION BY THE DEPARTMENT**

Change in the Social Security Administration's (SSA's) Toll-Free Number. As a result of a statutory requirement that places SSA under the government-wide FTS 2000 program, effective September 30, 1991, SSA's national toll-free number will change from 1-800-234-5772 to 1-800-SSA-1213. SSA has begun an extensive public information campaign to alert the public, national organizations, the media, and the Congress to this change. An "intercept" message will direct callers to the new toll-free number.

Secretary Sullivan's Access Plan for Minority Health.

Dr. Sullivan will announce later in September a new Minority Health Plan. Key elements of the plan include: assisting local communities to establish school-linked health programs; conducting hypertension research and disseminating better information to minorities about high blood pressure control; improving placement and retention of National Health Service Corps providers; and expanding the Community/Migrant Health Center program to target underserved areas.

News Conference on Smoking. The National Cancer Institute will announce on October 2 the initiation of a major project called the American Stop Smoking Intervention Study, a joint effort with the American Cancer Society. Dr. Sullivan has been invited to be the prime spokesperson.

Clinical Practice Guideline. In late October, Dr. Sullivan and Dr. Mason will announce the availability of the first clinical practice guideline on the management of acute post-operative pain, developed with support from the Medical Effectiveness Treatment Program (MEDTEP).

Healthy Children Ready to Learn Initiative. The Surgeon General has formed a Task Force with representatives from the Departments of Agriculture, Education, and Health and Human Services, and the White House to address the President's First Education Goal. The Task Force will be working this fall to organize a Conference on the critical role of parents in the education of children, scheduled to be held February, 1992 in Washington, D.C. Attending the conference will be parents, as well as professionals. The Task Force is working closely with Governor Ashcroft's office to ensure participation by the states. Each State has been asked to convene a planning meeting prior to the conference to prepare parents for their participation. These State-level meetings will begin this fall.

Lead Poisoning in Children. The Centers for Disease Control will release a revised statement on lead poisoning, Preventing Lead Poisoning in Young Children. This statement will provide guidance for pediatric health care providers and lead screening programs. The revised statement will define a new blood lead level of concern and advocate universal screening and primary prevention of lead poisoning. The current CDC recommended level of micrograms of lead per deciliter of whole blood (ug/dL) wherein "preventive actions for such exposure should receive the highest priority" is 25 ug/dL. What the CDC Advisory Committee on Lead Poisoning will recommend is that if levels of 10 ug/dL are found in a geographic area, that the community should take action in the form of education and prevention measures to reduce the sources of lead. At 15 or more ug/dL, individual case management should be established, and, at 20 or more ug/dL, ongoing medical therapy should be undertaken.

HIV/AIDS and Health Care Workers. Dr. Sullivan and Dr. Mason will initiate a Centers for Disease Control campaign this fall to inform the public and health care professionals about guidelines to prevent transmission of the AIDS virus or hepatitis B during health care. The campaign will: use television and print messages to urge the public to call the AIDS hotline for information including a brochure with answers to questions about AIDS and health care workers; use focus groups to gather information about the fear of getting AIDS from health care workers; and, sustain the effort through other communications channels such as the "America Responds to AIDS" campaign.

White House Service Integration Working Group. HHS staff are providing analytic support to help the Working Group develop its integration agenda and identify targets of opportunity for service integration. We are coordinating the preparation of a report to the President to be submitted in the fall. In addition, we are working to expand the database cataloging major federal programs for children, youth and families by early fall.

Consideration of the "Oregon Medicaid Demonstration Project" Waiver Application. This is a proposal to substantially reform the Oregon Medicaid Program by rationing services, as part of an overall health care reform initiative. If the Federal government grants the waiver that Oregon is requesting, it would result in the adoption of a standard Medicaid benefits package in the State, which would then become the standard for a small business insurance pool and, eventually, other programs in the State. Through Oregon's overall health care reform initiative, the State would guarantee health care to all its residents; however, health care services would be prioritized, and those health care services with lower priorities would not be reimbursed.

#### STORIES OF NATIONAL INTEREST

Lead-based Paint and Occupational Health. In September, the Centers for Disease Control will disseminate an "Alert" indicating an immediate health hazard to workers removing lead-based paint from bridges and other steel structures and will provide public health recommendations for protection of workers.

Televised Movie on Child Support. CBS is planning to air a movie, "Runaway Father," on September 22, 1991, 9:00 EST. The movie is based on the story of Pat Bennett whose husband disappeared in 1968, leaving her with three children and no income. CBS may mention the Handbook on Child Support Enforcement and the Child Support Enforcement Program in a "for further information" segment following the movie.

Indoor Air Quality Guide. In November, the Centers for Disease Control and the Environmental Protection Agency will release a jointly developed Building Managers' Indoor Air Quality Guide to assist building managers in preventing and solving indoor air quality problems.

World AIDS Day. The World Health Organization has again designated December 1 as World AIDS Day. The global theme this year is "Sharing the Challenge." In recognition of this event, the Department has designated December 1 as National AIDS Awareness Day. Various national HHS activities are planned to highlight collaboration that currently exists among groups and to encourage the creation of new partnerships among all sectors. Secretary Sullivan will be sending letters to the State Governors, Cabinet-level Secretaries, and Heads of Federal Agencies, the major television networks, and the Commissioner of the National Football League asking them to join in commemorating National AIDS Awareness Day.

**LEGISLATIVE ACTIVITIES**

SSA Independent Agency. On September 17th, the House Ways and Means Committee has scheduled a hearing on H.R. 2838, the "Social Security Trust Fund Integrity and Benefits Improvement Act of 1991." The bill would provide for the establishment of SSA as an independent agency; for a phased-in increase in the retirement earnings test for people aged 65 to 69; an increase in widow's benefits for widows under age 65 when their spouse dies; removal of administrative costs from the cap on domestic discretionary spending; a GAO study of ways to improve the accuracy and efficiency of the disability determination process; and an increase in the FICA exemption for election workers.

Child Care and Development Block Grant. Representative Thomas J. Downey, acting Chairman of the Subcommittee on Human Resources, House Committee on Ways and Means, has requested a hearing on the interim final regulations for the Child Care and Development Block Grant program as well as the regulations implementing the At-Risk Child Care provisions of the Omnibus Budget Reconciliation Act of 1990 (OBRA), on September 17th. Jo Anne Barnhart is expected to testify.

Child Welfare Reform. The House Ways and Means Subcommittee on Human Resources is expected to mark-up H.R. 2571, the Family Preservation Act of 1991, by the end of September. This bill converts the title IV-B child welfare services program to a capped entitlement at an estimated cost of \$10 billion over 5 years. In the Senate, the Finance committee has no action scheduled on the companion bill, S.4, the Child Welfare and Preventive Services Act. This bill combines the two current foster care entitlements, one for administration costs and one for actual care, to create one new, broad capped entitlement. It would provide for such things as expansion of services available to vulnerable families, authorize demonstration projects to improve coordination of child welfare services with other related services, and change existing foster care and adoption assistance programs. The estimated cost of the bill is \$3.5 billion over 5 years.

Child Abuse Prevention and Treatment Act. The Senate Labor and Human Resources Committee has marked-up S. 838, a bill to reauthorize the Child Abuse Prevention and Treatment Act and related programs through FY 1994. Senate floor action is expected in September or early October. The House has already passed H.R. 2720, which would reauthorize these programs for one year (FY 92) in order to allow the U.S. Advisory Board on Child Abuse and Neglect time to recommend additional changes to these programs.

Health care Reform. Senator Bentsen reportedly plans to introduce a small group market reform bill. The bill will focus on changing the tax code to encourage small businesses to purchase health insurance for their employees. It will also include Federal reforms of the small group market health insurance by placing limits on premium rates, require automatic renewability and limit exclusions for preexisting medical conditions. It is believed that Senator Bentsen may try to move the bill out of his committee later this year.

Senator Kennedy is redrafting the Democratic health care reform bill, S. 1227, in an effort to bypass Senator Bentsen. That measure includes mandates which are not favored by Senator Bentsen.

AFDC-Emergency Assistance/Welfare Hotels. The Administration will propose revisions in the Aid to Families with Dependent Children (AFDC) program to discourage the use of welfare hotels to provide housing to low-income families by prohibiting the use of federal AFDC and Emergency Assistance (EA) matching funds for welfare hotels. Short emergency stays in commercial facilities will be permitted.

Social Security "Notch" Issue. A number of bills have been introduced to deal with the "notch" issue. As a result of the flawed computation method enacted in 1972, the so-called "notch" occurs because workers born between 1910 and 1916 receive unintended windfall benefits that are higher than benefits of comparable workers born before or after that period. Two of the most prominent bills are those introduced by Senator Sanford and Representative Roybal, S.567 and H.R. 917. The bill would provide higher Social Security benefits for certain workers born in 1917-1926 and have attracted a large number of cosponsors. We anticipate a high degree of congressional and public interest in these bills, especially because the National Committee to Preserve Social Security and Medicare is very active in promoting "notch" legislation.

ADAMHA Reorganization. Prior to the recess, the Senate passed the ADAMHA reorganization bill which included provisions to reorganize ADAMHA which we support. The Waxman committee has not yet taken up ADAMHA legislation. Since the Senate and Administration both want ADAMHA reorganization, Congressman Waxman is expected to position his committee to get something for agreeing to the proposal.

**REGULATIONS**

Medicaid Donated Funds and Taxes. HHS announced (September 12) a regulation which will prohibit the payment of federal Medicaid funds to match donations by or on behalf of health-care providers or the Medicaid portion of certain provider taxes that are returned in the form of higher Medicaid payments. The rule states that funds donated from providers will be subtracted from nominal state Medicaid expenditures before the federal matching share is calculated.

Physician Performance Standard Rates of Increase for Fy 1992. This notice announces the FY 1992 Medicare physician performance standards rates of increase for expenditures and volume of physician services under Part B. The notice includes rates of increase for all physician services and for the categories of surgical and nonsurgical services. This is expected to be issued in October.

Fee Schedule for Physicians' Services. The final rule establishes a Medicare fee schedule that includes national uniform relative values for all physician's services. It replaces the current reasonable charge payment mechanism with a resource-based relative value scale fee schedule beginning January 1992. This is expected to be issued in October.

Food Labeling. DHHS is required under the Nutrition Labeling and Education Act of 1990 to publish in the Federal Register by November 8, 1991--the anniversary of the enactment of that legislation--20 more nutrition labeling regulations in addition to those already published during the summer. These rulemakings will cover such subjects as fat and cholesterol descriptors, health messages, and petition procedures for State pre-emption of Federal rules in this area.

Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratory Improvement Amendments of 1988 (CLIA). The purpose of this rule is to implement provisions of the Clinical Laboratory Improvement Amendments of 1988 requiring certification by HHS of all laboratories in the United States and its territories that perform tests on material derived from the human body. This is expected to be issued in January. However, congressional interest group attention may occur prior to publication.

Medical Evaluation Criteria for Immune System Disorders. This fall, the Social Security Administration expects to publish proposed criteria in the Listing of Impairments regarding impairments caused by human immunodeficiency virus (HIV) infection. These rules will be used to evaluate claims for disability benefits under the Social Security Act. At this same time, SSA expects to publish proposed revisions to the regulations to incorporate procedures it uses to make findings of presumptive disability for people who allege infection with HIV.

Medical Devices. The Safe Medical Device Act of 1990 requires that DHHS issue five regulations during the September 15, 1991 to December 31, 1991 time period, and four other regulations in January 1992. These rulemakings involve several major new responsibilities for FDA in the device market.

Scientific Misconduct Investigations. Under court order, HHS published in the Federal Register on June 13 for public comment a statement of the policies and procedures used in investigating possible instances of misconduct in science. A final version of this statement, taking into account the public comments received, will probably be published before December 31. There are high levels of interest in this matter within the scientific research community.

Maternal and Child Health Model Application Form. The Department, in conjunction with the Department of Agriculture, will publish in the Federal Register this fall a model application form that states can choose to adopt for the purposes of streamlining the application processes for women who are at risk for inadequate access to health care during a pregnancy.

Child Care and Development Block Grant. The interim final rules for the Child Care and Development Block Grant, published on June 5, 1991, implement section 5082 of the Omnibus Budget Reconciliation Act of 1990. Approximately 1,400 comments regarding the interim final rules have been received and will be reviewed and responded to in the final regulation. It is anticipated that the draft regulation will be forwarded to OMB early in 1992. In the meantime, applications for FY 1991 and plans for program implementation were received in July from 55 states and territories and 156 Indian Tribes. Initial approvals will be given for a number of applications and plans this September. The remainder of the applications and plans will be processed during the first quarter of FY 1992.

Adoption and Foster Care Analysis and Reporting System (AFCARS). The final rule for the proposed adoption and foster care data collection system will be submitted to OMB in late 1991 or early 1992.

Foster Care Section 427 Regulations. The Department is developing a Notice of Proposed Rulemaking (NPRM) which proposes changes in the federal foster care program administered pursuant to titles IV-B and IV-E of the Social Security Act.

Head Start Staff Requirements and Program Options. The final rule is under review by the Department and is expected to be submitted to OMB later this year. This regulation will play an important role in maintaining and improving the quality and effectiveness of Head Start nationwide. It clarifies existing regulations and policies regarding Head Start staffing patterns and options. In addition, it institutes new requirements regarding: 1) staffing; 2) hours and days of program operations; 3) allowable class size and home visitor caseloads; and 4) the development of a combination center/home-based program option.

At-Risk Child Care Program. The proposed rule for the At-Risk Child Care Program, published on June 25, 1991, implements section 5081 of the Omnibus Budget Reconciliation Act of 1990 (OBRA), which creates a child care program for low-income working families that are not receiving Aid to Families with Dependent Children (AFDC). This proposed rule also amends current regulations to allow parents maximum choice in the selection of child care providers authorized by the JOBS program and transitional child care. The comment period for the NPRM ended on August 26, 1991 and produced approximately 750 comments from the press, advocacy groups and the general public on the rule with respect to applicable standards. It is anticipated that the final regulation will be published in February 1992.

#### REPORTS OR STUDIES

Inspector General's Reports on Youth and Alcohol. The Inspector General will issue this fall two reports of a four-part study requested by the Surgeon General on youth and alcohol. The first report, released during a press conference on September 11, 1991, deals with enforcement of underage drinking laws by the States. The second one focuses on the standards and practices of the alcohol industry concerning advertising and adherence to guidelines.

Findings in "Exposure to Alcoholism in the Family" Advanced Data. An upcoming publication is expected in late September from the National Center for Health Statistics (NCHS), "Exposure to Alcoholism in the Family: United States, 1988". This publication presents data obtained in the 1988 National Health Interview Survey on Alcohol. The survey was undertaken by NCHS and the National Institute of Alcohol Abuse and Alcoholism. The survey found that about 43% of U.S. adults (76 million people) have been exposed to alcoholism in the family. It estimates that \$150 billion will be expended from lost employment and reduced productivity by 1995.

National Commission on AIDS Report. In compliance with its Congressional mandate, the National Commission on AIDS will submit a comprehensive two-year report to the President and the Congress before the end of September. The report contains approximately 30 recommendations based on information obtained from hearings and site visits over the past two years.

The 1990 Census Report on Child Support and Alimony. This report, sponsored by the Administration for Children and Families, is expected to be released in September. This biennial report will present detailed information on the number who receive child support.

Feasibility of Mandatory Immediate Income Withholding for All Child Support Cases. This is a mandated study on the feasibility, cost implications, and other effects of requiring immediate wage withholding for all child support awards. It will be submitted to Congress in October.

Teen Attitudes and Practices Survey. In October, the Centers for Disease Control will publish some of the findings of the Teen Attitudes and Practices Survey. The survey will provide information on national use of tobacco by teenagers. The survey represents the first such survey conducted by the Public Health Service since 1979.

AIDS: The Societal Impact. In late October, the National Academy of Sciences will release its report, AIDS: The Societal Impact. The report will describe the profound effects HIV/AIDS has had on: health care establishments; public health infrastructure; biomedical research; and specific high risk populations, such as gay men, IV drug users, and women.

Surgeon General's Update on HIV Infection and AIDS. The Surgeon General will publish her update report to educate the public on the changing face of the AIDS epidemic. The anticipated release is for World AIDS Day on December 1, 1991.

National Household Survey. The National Household Survey is a probability-based sample of 9,259 people representative of the U.S. household population age 12 and over. Originally, this was a series of surveys conducted every two to three years. In order to monitor changes in drug use closely, data collection has been conducted every year since 1990 and a survey may be released in December.

**INTERNATIONAL MEETINGS**

Pharmaceutical Development. The Food and Drug Administration will co-sponsor the First International Conference on Harmonization, to be held November 5-7, 1991 in Brussels, Belgium. The purpose of the meeting is to achieve greater standardization of the technical requirements for pharmaceutical development. Other sponsors include the European Community and Japan. This conference has implications for international trade and pharmaceutical development, in particular, the removal of certain trade barriers, and more importantly, the speeding of products to the marketplace.



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20410-0001

September 13, 1991

MEMORANDUM FOR: Ede Holiday  
Assistant to the President  
and Secretary of the Cabinet

FROM: Mary S. Brunette *Mary Brunette*  
Assistant Secretary for Public Affairs

SUBJECT: 1991 Fall Issues Assessment

> HIGHEST PRIORITIES

1. Obtain substantial funding for HOPE programs.
2. Develop legislation to implement the recommendations of the President's Commission on Regulatory Barriers to Affordable Housing.
3. HUD Reform -- resolve material weaknesses and outstanding Inspector General audits.
4. Develop strategies for 1993 budget submission to advance the President's homeownership priorities, including the use of Section 8 vouchers for low-income families.

> HOPE UPDATE

Both the House and the Senate have passed versions of the 1992 HUD Appropriations Bill, including funding for the President's HOPE (Homeownership and Opportunity for People Everywhere) initiatives.

The Senate version calls for \$440 million in HOPE funding broken down as follows: \$175 million for HOPE 1, the public housing homeownership segment of HOPE; \$130 million for HOPE 2, the multi-family assisted housing component of HOPE; \$125 million for HOPE 3, the single-family, government-owned or foreclosed component of HOPE; and \$10.4 million for HOPE for Elderly Independence.

The House version allocates \$351 million for HOPE: \$151 million for HOPE 1; \$100 million for HOPE 2; and \$100 million for HOPE 3.

The Bill now moves into the House-Senate conference which we expect to take place in late September or early October. On September 5, Secretary Kemp sent a letter to all conferees recommending that the conference accept the Senate's HOPE funding level, while renewing the Administration's request for full funding of \$855 million.

While the Administration supports the funding levels in the Senate bill, HUD officials believe the House bill better allocates resources within the HUD budget. The Administration believes that the Senate has placed HUD's 1992 budget on a collision course with very important housing needs in the future, especially since the mandatory costs of the low-income housing preservation program will increase substantially in both FY 1993 and 1994. Through a combination of carryovers, recaptures, and underfunding of Section 8 amendment needs, the Senate has provided unsustainable increases for many HUD programs, including CDBG, public housing modernization and development, and HOME. HUD officials are continuing to work with members of the House and Senate and their staffs to resolve these issues.

#### > MAJOR SECRETARIAL ACTIVITIES

September 19, 1991 -- Secretary Kemp will address the annual breakfast meeting of the National Black Masters of Business Administration Association. The speech will focus on the Bush Administration's efforts to expand entrepreneurial opportunities for minorities through programs and policies such as Enterprise Zones and cutting the capital gains tax. This is part of an ongoing series of speeches to highlight the Administration's initiatives to create economic growth and jobs in America's inner cities. (New York, NY)

September 20, 1991 -- Secretary Kemp will address the U.S. Hispanic Chamber of Commerce National Convention. President Bush and Interior Secretary Lujan are also scheduled to address the Convention. The speech will highlight President Bush's initiatives to expand economic growth and entrepreneurial opportunities among the Hispanic community, including Enterprise Zones, cutting the capital gains tax, and establishing a Free Trade Zone with Mexico. Secretary Kemp will also discuss the impressive gains in business formation and business growth among Hispanic entrepreneurs during the Bush and Reagan Administrations. (Chicago, IL)

September 24, 1991 -- Secretary Kemp will address the Inspectors General National Conference. The speech will focus on the

management and financial reforms undertaken at HUD during the Bush Administration and discuss the role of the Inspector General's office in assisting these reforms. (Denver, CO)

September 26, 1991 -- Secretary Kemp will address the annual meeting of the World Affairs Council, a public policy forum of over 9,000 members from the business, political, and cultural community of Los Angeles. The speech will focus on the Bush Administration's efforts to use free enterprise and private property ownership as tools in a new war on poverty. (Los Angeles, CA)

September 27, 1991 -- Secretary Kemp will address the Commonwealth Club of California, a public policy forum with over 20,000 members across the Nation. The speech will be similar in subject matter to the World Affairs Council address. (San Francisco, CA)

October 4, 1991 -- Secretary Kemp will host a luncheon for the President's Commission on White House Fellows. (Washington, DC)

October 4, 1991 -- Secretary Kemp will address the Public Housing Authority Directors Meeting. The speech will focus on the Bush Administration's efforts to expand resident management and ownership in America's public housing communities through initiatives such as HOPE. (Washington, DC)

October 8, 1991 -- Secretary Kemp will host a Brown Bag luncheon for HUD Schedule "C" appointees. Stuart Butler, domestic policy fellow at the Heritage Foundation, will be the guest speaker. This is part of an ongoing series of Brown Bag luncheons designed to expose HUD appointees to the latest urban affairs scholarship. Past guests include Dr. Michael Sherraden, author of Assets and the Poor, and Alex Kotlowitz, author of There Are No Children Here.

October 9, 1991 -- Secretary Kemp will attend a fundraising event for Pennsylvania Senate candidate Dick Thornburgh and a fundraising reception for the Pennsylvania GOP. The details are still be resolved. (Pittsburgh, PA)

October 19, 1991 -- Secretary Kemp will address the Western States Leadership Conference. The speech will focus on the Bush Administration's anti-poverty initiatives, including HOPE and Enterprise Zones. (Maui)

October 30, 1991 -- Secretary Kemp will address U.S. League of Savings Institution annual conference. The speech will focus on

the Bush Administration's efforts to expand affordable housing opportunities for low- and middle-income Americans. Secretary Kemp will also discuss the findings and recommendations of the President's Advisory Commission on Regulatory Barriers to Affordable Housing. (Washington, DC)

November 4, 1991 -- Secretary Kemp will attend the opening of the Ronald Reagan Presidential Library. (Los Angeles, CA)

November 15, 1991 -- Secretary Kemp will address the Massachusetts Republican Party's Campaign for Leadership Dinner. The speech will focus on the Bush Administration's anti-poverty initiatives and how they are winning support for the GOP among minority audiences. (North Falmouth, MA)

NOTE: Schedules for November and December are tentative and will be revised in the coming months.

#### > LEGISLATIVE ACTIVITIES

NOTE: Committee staffers were unable to provide definite dates for the following hearings. The time frames given are as specific as possible. HUD officials are expected to be invited to testify.

Late September/Early October -- The House-Senate Conference will complete the HUD Appropriations Bill for FY 1991. (see HOPE Update for a complete discussion of this issue)

Late September -- The House Government Operations Committee will hold a hearing on the finding of the 2nd Annual Federal Housing Administration (FHA) report.

Late September -- The Senate Banking Committee is scheduled to mark-up legislation on Government Sponsored Enterprises (GSE's). The legislation deals with GSE capital standards and affordable housing provisions.

Late September -- The House Science, Space, and Technology Committee will hold a hearing on the Fire Safety Act of 1991, a piece of legislation which would require retro-fitting of sprinkler systems in federally-assisted housing communities.

Early October -- The Senate Government Affairs Committee will hold a hearing on government procurement of environmentally sound products. Several agencies have been invited to testify on RCRA -- the Resource Conservation and Recovery Act.

Late October -- The House Government Operations Committee will hold a hearing on the targeting of Community Development Block Grant (CDBG) funds to low-income communities and individuals. HUD has consistently supported greater targeting of CDBG benefits to low-income Americans.

Late October -- The House Government Operations Committee is scheduled to hold a hearing on HUD's recently released Housing Discrimination Study. The Study, which was conducted prior to the Bush Administration's implementation of the Fair Housing Amendment's Act of 1988, found that black and hispanic renters and homebuyers faced varying degrees of discrimination approximately 50% time.

#### > UPCOMING MEETINGS

September 17, 1991 -- Federal Housing Finance Board meeting. As Secretary of Housing and Urban Development, Secretary Kemp is a statutory member of the Board.

October 7, 1991 -- Closed meeting of the Resolution Trust Corporation (RTC). As Secretary of Housing and Urban Development, Secretary Kemp is a statutory member of the RTC Oversight Board, along with the Secretary of the Treasury and the Chairman of the Federal Reserve.

November 19, 1991 -- Federal Housing Finance Board meeting.

November 20, 1991 -- Open meeting of the Resolution Trust Corporation (RTC).

December 17, 1991 -- Federal Housing Finance Board meeting.

December 18, 1991 -- Closed meeting of the Resolution Trust Corporation (RTC).

#### > FORTHCOMING REPORTS AND STUDIES

1. "Barriers" Report -- HUD continues to disseminate copies of the report by the President's Advisory Commission on Regulatory Barriers to Affordable Housing, entitled "Not In My Back Yard," to the media, interest groups, and Congress. The report has received widespread publicity around the country and strong support from housing development and building groups.

HUD is currently working on a legislative package which incorporates the Commission's recommendations, including making federal housing assistance contingent on effective barrier removal strategies; encouraging the development of model codes; and establishing a regulatory reform clearinghouse. The Department will issue a report to Congress sometime in November on the steps HUD is taking to follow-up on the Commission's recommendations.

Developing legislation and continuing public publicization of the report and the effects of regulations on housing affordability will continue to be a top priority of the Department in the coming months.

2. Rent Control Report -- Near the end of October, the Department will release its comprehensive report on the effects of rent control. Surveys were conducted in every jurisdiction in America with rent control regulations to develop a framework for analyzing the deleterious effects of rent control on housing affordability.
3. 1990 Urban Policy Report -- The 1990 Urban Policy Report is currently being cleared by OMB. The Report highlights the Administration's priorities in housing and urban development, including expanding homeownership and affordable housing opportunities; creating jobs and economic development through Enterprise Zones; empowering the poor through resident management; enforcing fair housing for all; helping make public housing drug free; and helping to end the tragedy of homelessness.

#### > INTERAGENCY ACTIVITIES

\* On September 25, 1991, the Interagency Council on the Homeless will hold a full meeting. Secretary Kemp and HHS Secretary Sullivan are scheduled to attend.

\* In mid-November, the Interagency Council on the Homeless will hold a regional workshop in Philadelphia, PA. This is one if an ongoing series of regional workshops to provide information and technical assistance to local homeless service providers.

\* The Interagency Council on the Homeless and the Government Services Administration (GSA) are continuing their cooperation in Operation Desert Share, a program to distribute surplus food to homeless Americans.



# United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240



September 13, 1991

MEMORANDUM FOR EDE HOLIDAY  
ASSISTANT TO THE PRESIDENT  
AND SECRETARY OF THE CABINET

FROM: R. Thomas Weimer, Chief of Staff  
SUBJECT: 1991 Summer Issues Assessment

The following report summarizes key issues and activities at the Department of the Interior for September 15, to December 31, 1991.

## I. HIGHEST PRIORITIES -- SUMMARY LISTING

1. Advance legislation to open the Arctic National Wildlife Refuge to environmentally responsible oil and gas operations.
2. Submit Bureau of Land Management Wilderness recommendations to the President by October 21.
3. Field Test the Revised Federal Manual for Identifying and Delineating Jurisdictional Wetlands and implement the President's decision on wetlands.
4. Work with the Department of Energy and the Congress to permit implementation of the Waste Isolation Pilot Project in New Mexico.
5. Resolve the issue of impact assistance to coastal States for oil and gas development on Federal leases.
6. Publish in the Federal Register the final critical habitat rule for the northern spotted owl by December 13, and a draft recovery plan by the end of December, and act on the Bureau of Land Management's request to the Endangered Species Committee for an exemption for 44 timber sales in Oregon.
7. Work with the Congress to identify amendments to the Endangered Species Act needed in the 1992 reauthorization.

8. Pursue the civil and criminal cases against Exxon Corporation for natural resource damages arising out of the Exxon Valdez oil spill, and continue natural resource damage assessments.
9. Pursue implementation of the "Enjoy Outdoors America" recreation initiative.
10. Work with the Congress to resolve California water issues including impacts of drought, Reclamation Reform Act Amendments, and fish and wildlife protection in the Central Valley.
11. Work with the Congress on proposed legislative amendments to the 1872 Mining Law.
12. Implement the Secretary's initiative on concessions within the National Park System, and complete analysis of concessions operations in the Fish and Wildlife Service, Bureau of Land Management, Bureau of Reclamation, and Bureau of Indian Affairs.
13. Publish regulations to implement the 1988 Amendments to the Indian Self Determination Act.
14. Continue implementation of the American Battlefield Protection Program.
15. Issue and promulgate a new proposed rule on Valid Existing Rights for coal mining.
16. Assist the State of West Virginia to resolve issues concerning the regulation of surface coal mining and reclamation operations.
17. Continue to work with Congress on legislation to protect, interpret, and manage the Columbus Landing Site at Salt River Bay, St. Croix, U.S. Virgin Islands.

## II. SURVEY OF KEY ISSUES

### SECRETARIAL ACTIVITIES

**September 16.** The Secretary will participate in the National Hispanic Presidential Tribute in Washington D.C.

**September 17.** The Secretary will attend the Hispanic Caucus Dinner in Washington, D.C.

**September 18.** The Secretary will join the President in an event at the Grand Canyon in Arizona highlighting the environment.

**September 20.** The Secretary will speak at the U.S. Hispanic Chamber of Commerce annual meeting in Illinois.

**September 23.** The Secretary will participate in the opening of the Tinicum National Environmental Center in Philadelphia.

**October 5.** The Secretary will host the first Annual Congressional Fishing Tournament in Washington, D.C.

**October 6.** The Secretary will participate in a Bureau of Land Management Back Country Byways dedication in Cripple Creek, Colorado.

**October 8-9.** The Secretary will speak at the National Park Service 75th Anniversary Symposium in Vail, Colorado.

**October 12.** The Secretary will participate in the Columbus Quincentennial Kick-off event at Union Station in Washington, D.C.

**October 16.** The Secretary will address the Alaska Federation of Natives Annual Conference in Anchorage, Alaska. The conference theme will commemorate the 20th anniversary of the passage of the Alaska Native Claims Settlement Act.

**November 4.** The Secretary will address the National Minerals Policy Forum, convened by the Department of the Interior to assist in developing an overall minerals policy for the Administration, in Washington, D.C.

**December 7.** The Secretary will attend the commemoration at the USS Arizona Memorial marking the 50th anniversary of the attack on Pearl Harbor in Hawaii.

## INITIATIVES AND POLICIES UNDER DEVELOPMENT

**American Battlefield Protection Program.** The Department's American Battlefield Protection Program encourages partnership activities among the Federal, State, local, and private sector groups to protect Civil War and other battlefields in the United States. The Program is actively encouraging the documentation, planning, and protection of 25 high priority Civil War battlefields. A private foundation patterned after the Ellis Island Foundation has been chartered and is seeking private donations to be used by States, local governments and non-profit organizations to protect important battlefield sites in the United States.

**Comprehensive Royalty Compliance Strategy.** The Assistant Secretary for Land and Minerals Management and the Director of the Minerals Management Service will oversee the implementation of the June 21 recommendations of a Task Force to improve the Royalty Management Program's compliance program.

**Federal Helium Price Increase.** Effective October 1, the price charged Federal helium customers for government refined helium will be increased to \$55.00 per thousand cubic feet. This \$6.55 per thousand cubic feet increase, only the second increase since 1962, completes a two-staged price restructuring initiative undertaken by the Bureau of Mines to more closely track the replacement cost of crude helium.

**Outer Continental Shelf.** Comments on the Natural Gas and Oil Resource Management Comprehensive Program for 1992-1997 and Draft Environmental Impact Statement are due on October 29. The Final Environmental Impact Statement will be issued in 1992. Eight public hearings will be held in coastal States: Anchorage, Alaska, September 10; Wilmington, North Carolina, September 10; New Orleans, Louisiana, September 11; Houston, Texas, September 12; Ocean Springs, Mississippi, September 17; Mobile, Alabama, September 18; Santa Maria, California, September 18; and Gulf Breeze, Florida, September 19.

**Endangered Species Act Reauthorization.** Although the Act is not scheduled for reauthorization until 1992, the economic implications of the listing and proposed listing of various species as threatened or endangered will continue to stimulate public concern and pressure for legislative action. The Department has established a working group to consider possible improvements in the Act.

**Alaska Native Villages - Nature and Extent of Governmental Powers.** The efforts of Alaska Native villages to reorganize pursuant to the Indian Reorganization Act have raised issues as to the nature and extent of the governmental powers, if any, which the villages may have over non-members and lands which neither the village nor any of its members own. Constitutions adopted

by the villages pursuant to the Indian Reorganization Act must be approved by the Secretary of the Interior. Approval of a pending constitution for the village of Circle could precipitate a lawsuit to resolve this issue.

**Hybrid Species Protection Policy.** The Fish and Wildlife Service is developing a policy on the protection of hybrids of species listed under the Endangered Species Act. Prior to December 14, 1990, Solicitor's opinions held that hybrids (e.g., crosses between a listed species and an unlisted species) should not receive the protection of the Act. All existing Solicitor's opinions and memoranda on this matter were withdrawn on December 14, 1990. A policy being developed would hold that hybrids between full biological species, and between biological subspecies or populations may be protected if they represent the only available genetic material of the listed form.

**Large Mammal Management in National Parks.** A National Park Service initiative will improve management of large mammals in the National Park System. A prototype management guide (Integrated Eastern White-tailed Deer Management Guide) will be completed by September 30.

**National Reclamation Standards.** The Bureau of Land Management has developed an integrated comprehensive nationwide reclamation policy for solid leasable, locatable, and salable minerals. The manual and handbook will ensure consideration of multiple uses, and achieve national uniformity and consistency in mitigation requirements, while public lands are used for mining.

**Office of Management and Budget Circular A-16.** On October 19, 1990, the Office of Management and Budget issued a revised Circular A-16, which expanded the breadth of spatial data coordination and established the interagency Federal Geographic Data Committee. The Department of the Interior has government-wide leadership responsibility for the Committee and for coordinating base mapping, digital cartographic, cadastral, geologic and wetlands data. In October the Committee will issue a report on the accomplishments during the first year under the revised circular and the plan for future years.

**Coordination of Water Data Activities.** Office of Management and Budget Circular A-67, which assigns the responsibility for coordination of water data acquisition and dissemination to the Department of the Interior, may be rescinded along with a number of other circulars. Discussions are underway at the Office of Management and Budget to assure that the necessary coordination continues.

**Coastal Wetlands Grants.** Proposed rules establishing requirements for participation in the newly authorized Coastal Wetlands Grant program may be

published in the Federal Register within the next 60 days. Each coastal State Governor was informed and invited to submit grant proposals.

**CITES Conference Negotiating Positions.** By October 4, the Fish and Wildlife Service must submit its formal proposals for new Convention on International Trade in Endangered Species of Wild Fauna and Flora resolutions and policy issues. These will include resolutions dealing with regulation of the pet trade in wild birds, mandatory marking of crocodilian hides, sale of confiscated specimens, and role of scientific authorities in implementing the Convention.

**Task Force on Royalty Compliance.** The final report of the Task Force on Royalty Compliance, published in July, recommended proceeding with a comprehensive, integrated compliance strategy which will assure that the highest level of company compliance can be achieved through incentives for companies to pay and report correctly and promptly. An action plan implementing the recommendations of the Task Force is currently under development by the Minerals Management Service and is scheduled for completion by October 1991. The House Interior Committee staff has received a copy of the Compliance Task Force report and has requested a copy of the action plan prior to October 25.

**Safety and Environmental Management Program.** A Minerals Management Service Task Force Report on Outer Continental Shelf Inspection and Enforcement recommended that all outer continental shelf operators be required to develop and implement a safety and environmental management program. Public comments on the concept will be evaluated during the period, and a decision to proceed with rulemaking should be made by January 1992.

**Cooperative Development of Reservoirs.** The Minerals Management Service is developing policies and procedures to implement Section 6004 of the Oil Pollution Act, which requires that the Secretary prevent the harmful effects of unrestrained competitive development of oil and gas reservoirs underlying the Federal/State boundary.

**Heritage Education.** The National Park Service has established a "Teaching with Historic Places" program. This long-range program, conducted jointly by the National Park Service and the National Trust for Historic Preservation, consists of three projects to date: using the National Register of Historic Places to teach American history and social studies in elementary and secondary schools; a prototype teacher workshop; and an extensive educational kit of lesson plans.

**Water Resources Research Act of 1984.** Water Resource Research Institutes established under this Act must be evaluated at least once every five years. Criteria and procedures for a FY 1992 evaluation will be completed this fall.

**Indian Water Rights Settlements.** The Bureau of Indian Affairs is working to develop a strategy to fund Indian water rights settlements. Fifteen active adjudications and 15 active negotiations could be affected.

**Fire and Management Assistance.** The Bureau of Land Management has initiated technical fire and management assistance to Honduras. A team will travel to Honduras, October 13-20, to assess its significant fire management problems and prepare for training which will take place in January 1992.

**Environmental Ethics Program.** A memorandum of understanding is being signed by the Forest Service, Bureau of Land Management, and the National Park Service with the National Outdoor Leadership School on an environmental ethics program to implement the "Leave No Trace" Program for use of public land areas with minimal impact on the environment. The trainees will then become trainers in their agencies.

**Water Conservation Plan.** A draft water conservation plan, completed in May, outlines significant water conservation activities for the Bureau of Reclamation as required by the Presidential Management By Objectives. The plan will be discussed within the Department and with the Office of Management and Budget.

## SIGNIFICANT PROBLEM AREAS

**Bureau of Land Management Exemption Request.** On September 11, the Bureau of Land Management submitted an application to the Endangered Species Committee to exempt 44 of its FY 1991 timber sales from the requirements of Section 7 of the Endangered Species Act. The Secretary has 20 days to decide whether the application is in order and should be accepted for consideration by the Committee.

**Drought.** Due to continued severe drought conditions in California, Oregon, Nevada, and Idaho, the Bureau of Reclamation is pursuing drought management options, including wildlife refuge water transfers, as well as legislative and administrative actions to promote Federal-State cooperation in drought preparedness and management.

**Endangered Species Listings.** The possible endangered species listings of the Delta Smelt in California and several species of salmon in both California and along the Columbia River in the Pacific Northwest are raising serious concerns over the disruption of future water and power deliveries to agricultural, municipal and industrial users in these areas.

**Revised Federal Manual for Identifying and Delineating Jurisdictional Wetlands.** The revised Manual was published in the Federal Register on August 14, initiating a 60-day public comment period. During this review period, the Fish and Wildlife Service is participating in interagency field testing of the revised Manual.

**Air Quality at Shenandoah National Park.** In the last few years, about twenty coal-fired power plants applied for permits within a 200 kilometer radius of Shenandoah National Park. The Department asked that Virginia not permit increased emissions from the new power plants without requiring decreased emissions from existing facilities so as to offset the impact at Shenandoah. In April, Virginia issued permits to two power plants. The Department has subsequently negotiated agreements, including offsets, to settle its objections to the two permits. The Environmental Protection Agency, however, is still considering appeals of the Multitrade and ODEC/Virginia Power permits. Virginia intends to propose additional permits within the next few months, so the Department will have to determine its position. This fall, the Environmental Protection Agency and Virginia may convene a "roundtable" of all interested parties to address these and related issues.

**Klamath River-origin Salmon Harvest Allocation.** The salmon harvest agreement between commercial, sport, and tribal fishing interests that directed the

allocation of Pacific salmon originating from the Klamath River has expired. Most user groups have been dissatisfied with the expiring agreement either because of its impact on Native American rights or because of its significant impact on the harvest of intermingled salmon stocks in the ocean. In preparation for establishing a new agreement, the Department of the Interior will be working with the involved tribes to quantify tribal fishing rights.

**Zebra Mussels Spread.** Zebra mussels, having already undergone a population explosion in the Great Lakes, have now been found in the Illinois River approximately 200 miles downstream from Chicago, and may already be in the Mississippi River. The Fish and Wildlife Service is working on mechanisms to control zebra mussel populations and to reduce their significant impacts on fishery resources, power-generating facilities, and municipal water systems.

**Impact Assistance.** The issue of impact assistance (revenue sharing) to coastal States for oil and gas development on Federal lands was elevated when Louisiana recently sought an injunction to block Outer Continental Shelf sale 125 because of the lack of impact assistance. It is uncertain whether future sales will face the same threat. There are presently four bills in Congress dealing with the issue.

**Waste Isolation Pilot Project.** The Assistant Secretary for Land and Minerals Management administratively withdrew Bureau of Land Management land near Carlsbad, New Mexico to permit storage of transuranic radioactive waste by the Department of Energy at the Waste Isolation Pilot Project. The Department of Energy must still complete certain actions before the administrative process is complete. In reaction to public controversy over the project, the House Committee on Interior and Insular Affairs passed a resolution declaring the land should not be used for waste storage. Bills proposed in both the House and Senate are pending.

**West Virginia Surface Mining.** West Virginia is on notice from the Office of Surface Mining Reclamation and Enforcement that additional State funding and staffing are needed for the West Virginia regulatory program. Although the Federal government matches State costs dollar for dollar, West Virginia has been unable to identify sufficient State resources to assure adequate program performance. If the funding problem is not resolved, the Office of Surface Mining Reclamation and Enforcement could be forced to take over all or part of the West Virginia State surface mining program. A special session of the State legislature is scheduled for September 30, 1991. Office of Surface Mining Reclamation and Enforcement is assisting the State to assure the continued operation of its program.

**Bison Management at Yellowstone National Park.** The National Park Service, U.S. Forest Service and the State of Montana are working together to develop a long-range bison management plan to prevent bison that migrate out of the park

each winter from damaging private property, eating livestock forage, and causing a risk of transmission of the disease brucellosis from wild bison to domestic cattle.

**§ 122 Process.** The Department of the Interior, as a Trustee for natural resources under Superfund and Executive Order 12580, is being asked to participate in §122(j) settlement negotiations at an ever-increasing number of National Priorities List hazardous waste sites and Oil Spill sites. This process can involve intense and lengthy negotiations to settle Departmental claims at a single site. The Department is receiving such requests from the Department of Justice at an average rate of 5 more each month.

**Alabama Boundary Dispute.** Mobil and BP Exploration Inc., Federal lessees, propose to begin production from offshore oil and gas leases in Federal waters off Alabama in September and October, respectively. Shell, a State lessee, is scheduled to commence production in October or November. Due to recent recalculation of the State/Federal boundary, the ownership and allocation of production between the State and Federal Governments from these common reservoirs is in dispute. The recalculation resulted in a net gain of Federal acreage. A process to reach agreement will be proposed to Alabama in early September to allow production to commence.

## LEGISLATIVE ACTIVITIES

**Arctic National Wildlife Refuge.** The Senate Energy and Natural Resources Committee has reported S. 1220, the National Energy Security Act of 1991, including provisions authorizing exploration for oil and gas on the Arctic National Wildlife Refuge. It is not clear whether Senate floor action will occur this year. The House Merchant Marine and Fisheries Committee is expected to begin markup of Chairman Jones' bill, H.R. 1320, toward the end of September.

**Rocky Mountain Arsenal.** Representative Wayne Allard's (R-CO) bill, H.R. 2883, would transfer the Rocky Mountain Arsenal near Denver, Colorado, from the Army to the Fish and Wildlife Service for addition to the National Wildlife Refuge System. While there are significant wildlife resources in this near-urban setting, the Department remains concerned over the possibility of accepting liability for cleanup of this contaminated site.

**Wilderness Legislation.** House action on S. 1029, Colorado Wilderness, for the Forest Service is anticipated before December 31. The legislation would include designation of two Bureau of Land Management wilderness areas (Powderhorn and Tabeguache) comprising approximately 77,000 acres of public lands administered by the Bureau of Land Management. New Mexico Wilderness legislation affecting Bureau of Land Management lands is expected to be introduced before December 31. The Department will complete transmittal of all Statewide Bureau of Land Management Wilderness recommendations to the President by October 21 (Colorado, Idaho, Nevada, New Mexico, Oregon, Montana, Utah and Wyoming).

**California Fish/Wildlife Protection Act.** A hearing is expected in October before the House Interior and Insulars Committee, Subcommittee on Water, Power, and Offshore Energy Resources. The bill includes language to reallocate water for fish and wildlife purposes in the Central Valley Project in California. Debate over the bill will focus on Federal program requirements vs. State primacy of water rights.

**Biodiversity.** The House Committee on Science, Space and Technology has reported Rep. Scheuer's bill, H.R. 585, and the House Committee on Merchant Marine and Fisheries is moving H.R. 2082, Rep. Studts' National Biological Diversity Conservation Act. The Senate Committee on Environment and Public Works has also held a hearing on Sen. Moynihan's bill, S. 58, but prospects for action in the Senate are uncertain.

**Tribal Judicial Systems.** S. 1530, to provide for and assist the development of tribal judicial systems, was subject of a hearing on June 5. The same Committee has scheduled a hearing on the Indian Tribal Courts Act of 1991.

**Western States Water Policy Review.** The Senate Committee on Energy and Natural Resources, Subcommittee on Water and Power will hold a hearing on September 19 on S. 1228, the Western States Water Policy Review Act, to provide for a comprehensive review by the Secretary of the Interior of western water resources problems and programs.

**Reclamation Reform.** Reclamation Reform Act Amendments to improve the administration of the program and to correct and prevent abuses stemming from farms receiving subsidized water over the 960-acre limitation are under consideration. The House passed Congressman George Miller's bill in June. Senator Bill Bradley held a hearing on September 12.

**Reclamation Projects Authorization and Adjustment Act.** H.R. 429, passed in the House in June, includes Reclamation Reform Act amendments, legislation to restrict water and surplus crop subsidies, the Central Utah Project Completion Act, Grand Canyon Protection Act, and 25 other water related titles. This bill and other Senate versions will most likely be considered by the Senate prior to completion of the Congressional session this fall.

**Law enforcement.** In Duro v. Reina the Supreme Court held that Indian tribes lacked criminal jurisdiction over non-member Indians. To fill a possible gap in law enforcement, Congress passed legislation temporarily authorizing tribes to continue to exercise criminal jurisdiction over non-member Indians. The authorization expires September 30.

**Federal Helium Requirements.** The Bureau of Mines has prepared draft legislation for the Secretary to submit to Congress that would allow all Federal agencies to purchase their helium requirements from the private sector, if they chose to do so. Under the Helium Act of 1960, Federal customers can purchase helium only from the Bureau of Mines.

**Custer Battlefield National Monument, MT.** Hearings have been held on legislation to rename Custer Battlefield National Monument as "Little Bighorn Battlefield National Monument" and to authorize an Indian Memorial at the battlefield. The Administration testified in support of both the Indian Memorial and the name change and urged enactment of the bill.

**St. Croix, Virgin Islands Historical Park and Ecological Preserve.** The House and Senate are considering identical bills that would authorize a new national park unit at Salt River Bay on St. Croix to protect the Columbus landing site and adjacent critical ecological resources. The Secretary will testify on September 24th before the House Committee on Interior and Insular Affairs, Subcommittee on National Parks and Public Lands.

**Amendments to Federal Oil and Gas Royalty Management Act of 1982.** The Department is developing legislation to amend Outer Continental Shelf Lands Amendments section 10 by replacing the 2-year limitation on outer continental shelf refunds with a 6-year limitation for refunds or credits on any payment and deleting the Congressional reporting requirement. The amendment requires payors to receive prior Minerals Management Service approval before taking a credit on a lease which has been audited, and gives the Department discretionary authority to grant refunds or credits in certain circumstances.

**1872 Mining Law.** The Department is continuing to assess the Bumpers and Rahall bills to amend the 1872 Mining Law. Congressional action on the comprehensive bills does not appear imminent at this time although the Senate is expected to act on a temporary patent moratorium in mid-September.

**Geologic Mapping.** H. R. 2763 and S. 1179, similar bills to establish a National Geologic Mapping Program, are expected to be reported by the House Interior and Insular Affairs, and the Senate Energy and Natural Resources Committees, respectively.

## REGULATIONS

**Critical Habitat Designation for the Northern Spotted Owl.** On May 6, the Fish and Wildlife Service published a proposed rule to designate critical habitat for the northern spotted owl. A revised proposed rule was published on August 13, with comments due by October 15. A final rule will be published by December 13.

**Delta Smelt Petition Finding.** A final decision on whether to list the delta smelt as endangered was due on June 29. A decision on this San Francisco Bay area fish species is now expected in September.

**Gulf Sturgeon.** The Gulf sturgeon is an anadromous fish that inhabits several river systems from Louisiana to Tampa, Florida, and the Gulf of Mexico. The species was proposed for listing on May 30, 1990. The final listing is expected to be published in September. Critical habitat is presently not determinable. If critical habitat is proposed, it will be extremely controversial.

**National Park Service Concession Contracts and Permits.** The National Park Service announced in the August 23 Federal Register, its proposal to amend the regulations which describe National Park Service procedures for award of concession contracts and permits in order to make more competitive, within the scope of existing law, the renewal of concession contracts and permits. The National Park Service will publish in September revised concession contract standard language.

**Access to Inholdings in Bureau of Land Management Wilderness Areas.** Notice of intent to propose regulations that provide for access to private and State owned lands located within the boundaries of Bureau of Land Management designated wilderness areas may be published in the Federal Register by December 31.

**Valid Existing Rights.** The Office of Surface Mining Reclamation and Enforcement proposed formal rulemaking July 18, 1991, aimed at providing maximum safeguards for parks and other protected areas consistent with the surface mining law's exclusion for people who have valid existing rights. The issue is a private owner's right to surface mine coal in parks and similar areas where surface mining is otherwise prohibited. The comment period closes on September 16, 1991.

**Tribal Status.** The Bureau of Indian Affairs is about to issue the first revision of its regulations governing whether a group of Indian descendants exist as an Indian tribe. The regulations have been in place since the fall of 1978. The Bureau's process has been criticized for its slowness and has been the subject of several

Congressional oversight hearings. Over the years there have been a number of hearings on proposed acknowledgment or "recognition" legislation. The Bureau expects either an oversight hearing or a hearing on general acknowledgment legislation.

**Indian Self-Determination Act Amendments of 1988.** The Bureau of Indian Affairs is preparing implementing regulations for the 1988 amendment to the Indian Self-Determination Act. Within the coming quarter, proposed regulations will be submitted to the Department of Health and Human Services for its concurrence.

**Harvest Information Program.** A proposed rule to establish a harvest information program or other mechanism to improve estimates of harvest rates of migratory game birds by hunters will be published in late October. Under this rule, hunters would be required to obtain and maintain in their possession a program card, which will be distributed through State license vendors.

**National Natural Landmarks.** The National Natural Landmarks Program rules relating to landowner notification and consent may be modified. An Advance Notice of Proposed Rulemaking, was published in the October 29, 1990 Federal Register. Draft regulations will be published in the Federal Register during the period, and during the 90-day comment period, the National Park Service will hold nine public hearings. A moratorium on evaluation, nomination, and designation of new sites has been extended indefinitely until revised regulations are final.

**Royalty Rate Reductions.** A rulemaking action to amend requirements governing reduction of royalty rates for offshore oil, gas and sulfur leases should be published as a proposed rule by the end of the year. The change will facilitate action on requests for and approval of reductions of royalty rate in cases where a reduced rate will be advantageous to the Government by extending the useful life of a field or giving industry incentive to undertake new recovery activities.

**Increased Outer Continental Shelf Lessee Bonding.** A final rule is under review at the Office of Management and Budget that will increase the minimum level of bond coverage required of lessees and operators of active outer continental shelf oil and gas and sulphur leases. The final rule is designed to permit increased bonding requirements to be phased in as lease assignments are acted upon and as new exploration or development and production plans are proposed by outer continental shelf operators. The Minerals Management Service is also considering other actions to increase protection against potential lessee defaults on lease abandonment costs.

**Geothermal Valuation.** This final rulemaking, under review at the Office of Management and Budget, will amend and clarify the existing regulations governing

establishes for the first time specific valuation criteria for Federal geothermal resources. It codifies existing policies and procedures, particularly the netback procedure, that were developed within the context of the original regulations. This regulation should be published in October.

**Valuation Benchmarks.** This proposed regulation will clarify how production of gas from Federal leases and certain Indian leases will be valued when it is not sold pursuant to arm's-length contracts. Under this proposed rule, a lessee or the Minerals Management Service would need to obtain only one arm's-length contract comparable to the lessee's non-arm's-length contract to demonstrate that gross proceeds under the non-arm's-length contract are acceptable for royalty purposes. This codifies administrative policy guidance that has been in effect since late 1988. Review by the Office of Management and Budget is due to be completed sometime in September.

**Proliferation of Special Events in the Nation's Capitol.** A growing number of special events in the D.C. memorial core (about 1,700 annually) is severely impacting parklands, budgets, concessioners, law enforcement and visitors. Proposed regulations limiting these special events, such as festivals on the National Mall, are being reviewed by the Department.

**Proposals to Change the Species Listing under CITES.** By October 4, the Fish and Wildlife Service must submit to the CITES (Convention on International Trade in Endangered Species of Wild Fauna and Flora) Secretariat any proposed species changes to the current list. Any proposals submitted after that date cannot be considered by the Party nations at the eighth meeting of the Conference of the Parties in Kyoto, Japan next March 2-13, 1992. The possible proposals that have drawn the most attention include the bluefin tuna, the freshwater pearly-mussel family, and tropical mahoganies.

**Colorado River Regulations.** Draft regulations concerning the administration of Federal project water deliveries in the Lower Colorado River (Arizona, California, and Nevada) will be published during this period.

**Federal Energy Regulatory Commission.** The Fish and Wildlife Service has raised serious reservations over a number of the final rules the Federal Energy Regulatory Commission has approved for its hydropower licensing process. Among the rules the Fish and Wildlife Service may appeal are changes in the formal negotiation process with fish and wildlife agencies and a major change in the definition of "fishways" which would severely restrict the Secretary's authority, under the Federal Power Act.

**Subsistence Management on Public Lands in Alaska.** The Department is preparing permanent regulations to govern Federal management of subsistence hunting and fishing on public (Federal) lands in Alaska. Proposed regulations, along with an environmental impact statement, will be released for 60 day public review and comment during the first week of October. It is expected that the final proposed regulations along with the environmental impact statement will be completed by the end of January or early February, 1992. The current temporary Federal regulations expire on June 30, 1992. The State of Alaska is currently considering ways to achieve compliance with Title VIII of the Alaska National Interest Lands Conservation Act and thus reassume management of subsistence on all land in Alaska. Currently, the State manages fish and wildlife resources used for subsistence purposes only on State and privately owned lands.

**White Earth Reservation Land Settlement Act.** Final procedural regulations for determining those persons entitled to compensation under the White Earth Reservation Land Settlement Act of 1985, as amended, are presently in the Departmental approval process. No problems are anticipated with these regulations, which should be effective before the end of the calendar year, thus enabling the Administrative Judge to begin hearing and deciding cases.

## REPORTS or STUDIES

**Grand Canyon Visibility Transport Commission.** On or before November 15, 1991, the Environmental Protection Agency will convene the Grand Canyon Visibility Transport Commission mandated by the Clean Air Act Amendments of 1990. The Commission's must assess visibility impairment and prepare a report concerning possible measures for remedying the impairment.

**Wounded Knee, SD.** On April 30, the National Park Service testified before the Senate Select Committee on Indian Affairs on the need to develop proposals to commemorate the events of 1890 at Wounded Knee Creek, South Dakota. The Service has begun a study of alternatives, emphasizing cooperative strategies with tribal and State governments, for protecting, interpreting and managing Wounded Knee. The first public meetings were held in June and the study is scheduled for completion in 1992.

**Civil War Sites Study.** The Civil War Sites Study Act of 1990 requires a study of Civil War battlefields in the Shenandoah Valley and establishes a Civil War Sites Advisory Commission to prepare a study of significant Civil War sites and structures throughout the U.S. The Shenandoah study is due in November; the broader study is due a year later.

**Bureau of Land Management-USSR Agreement on Global Change Research.** A memorandum of understanding is being developed between the Bureau of Land Management, the Soviet Branch of the World Laboratory and the Goscom Hydromet Alpine Geophysical Institute to establish a global change research project. The project will establish paired ecosystem monitoring sites in four corresponding climatic regions in the Soviet Union and the United States. The project will be conducted jointly with Colorado State University.

**Kesterson Repayment.** A report is being prepared for submittal to Congress on repayment of the Kesterson Reservoir cleanup. The report, requested by Congress by March 15, 1991, was sent for review by interested parties in July.

**Glen Canyon Test Flow Releases.** On November 1, 1991 "interim" flows are scheduled to be implemented at Glen Canyon Dam. Interim flows will remain in effect until a record of decision regarding dam operations is made following scheduled 1993 completion of the Glen Canyon Dam Environmental Impact Statement. The effect of interim test flows on downstream resources are presently being monitored and evaluated.

**Colorado River Salinity Program.** In October, the Bureau of Reclamation will submit a report to Congress on the status of the Colorado River Salinity Program

in response to an audit resolution agreement reached with the Inspector General last September.

**Corwin Springs Known Geothermal Resource Area Study, MT.** The Geothermal Steam Act Amendments Act of 1988 requires a report to Congress on the impact of present and potential geothermal development in the vicinity of Yellowstone National Park on the thermal features in the park and recommendations on measures necessary to protect park resources. The Secretary's report to Congress is currently being reviewed in the Department.

**Ellis Island Special Study.** The National Park Service was requested in the FY 91 Appropriations Act to study options for improving access to Ellis Island. The study has been completed and recommends against any bridge. Congressman Guarini and Senator Lautenberg have introduced legislation to require the National Park Service to establish a permanent bridge from Liberty State Park (NJ).

**Crater Lake.** A report on the "Presence or Absence of Significant Thermal Features Within Crater Lake National Park," prepared by the U.S. Geological Survey and Bureau of Land Management will be transmitted to Congress.

**Jordanelle Dam.** The U.S. Geological Survey will transmit its report reviewing the Jordanelle Dam, which is being constructed by the Bureau of Reclamation. The report examines whether the dam was built to sufficiently rigorous standards concerning seismic risks and whether adequate water supply is available.

**West Coast Coastal Barriers.** The Fish and Wildlife Service is working with West Coast States (outside Alaska) to recommend to Congress additional to the Coastal Barrier Resources System that are acceptable to the States. Draft maps for public comment should be available during this period.

**Bureau of Indian Affairs Schools and Public Schools.** In September, the Bureau of Indian Affairs will transmit to the Office of Management and Budget the results of a study which compares costs, staffing patterns and funding levels between Bureau and local public schools in selected parts of the country.

**Report to Congress - Great Lakes Fish and Wildlife Restoration.** The Great Lakes Fish and Wildlife Restoration Act requires an annual report to the Committee on Merchant Marine and Fisheries and the Committee on Environment and Public Works. The first Report will be submitted in late November 1991.

**Status and Trends of Wetlands in the Conterminous United States.** The Emergency Wetlands Resource Act of 1986 requires an updated report on wetlands status and trends every 10 years. The first report was due to Congress,

September 1990, but is currently in Departmental clearance process. The report is expected to be released during this period.

**Helium Report.** The Bureau of Mines will submit a cost-benefit analysis of the Bureau's helium operations to fulfill a request by the House Committee on Appropriations.

**Aquatic Nuisance Species.** A Federal Task Force, co-chaired by the Fish and Wildlife Service, will complete a report in November on the Zebra mussel and other nonindigenous species.

**Oil and Gas Atlas.** During the early part of FY 1992, the Minerals Management Service will award a contract to the Texas Bureau of Economic Geology for the preparation of a Gulf of Mexico Oil and Gas Atlas Series. The project is estimated to cost \$4 million over 4 years with cooperators contributing approximately \$500,000 each and the Minerals Management Service \$100,000 per year plus significant manpower participation.

**Gas Valuation Study.** A contract will be awarded before the end of the year to evaluate alternative valuation procedures for natural gas. The Minerals Management Service collects Federal royalties (as a percentage of gas value) on all gas produced on Federal and Indian onshore and offshore lands. The study will assess the extent to which current or alternative approaches to gas valuation meet policy goals, such as protection of the public's interest, administrative efficiency, market driven operations, and effects seen in industry decision making.

## MEETINGS or EVENTS

**September 7-25.** As part of the Department of the Interior's Hungarian Assistance Project, a delegation from the Department will travel to Budapest to assist the Republic of Hungary to develop an effective program to manage its mineral resources in an emerging market-based economy.

**September 12-20.** The Third Session of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change will be held in Nairobi, Kenya.

**September 16.** The Franklin Delano Roosevelt Memorial Commission will host a ground breaking ceremony for the FDR Memorial in West Potomac Park, Washington, D.C.

**September 16.** The World Forestry Congress will be held in Paris.

**September 16.** The Interstate Mining Compact Commission will hold its Annual Meeting in Indianapolis, Indiana.

**September 16-19.** The First International Conference of the National Science Foundation-sponsored National Center for Geographic Information and Analysis will be held in Boulder, Colorado.

**September 16-20.** A United States-China Bilateral Symposium on Droughts and Arid-Region Hydrology, under annex 3 of our protocol with the People's Republic of China, will be held in Tucson, Arizona.

**September 17.** The Migratory Bird Conservation Commission will meet in Washington, D.C.

**September 22-27.** The Department of the Interior will host the quarterly meeting of the State and Tribal Royalty Auditors Committee in Washington, D.C.

**September 23-27.** The Minister of Tourism and Environment from Zimbabwe will be in Washington D.C. and travelling around the U.S. for consultations on listing of the African elephant under the Endangered Species Act and CITES and on management of national parks.

**September 26-27.** The National Earthquake Hazards Reduction Program Advisory Committee will meet in Menlo Park, California.

**September 27.** The National Strategic Materials and Minerals Program Advisory Committee will be meet in Salt Lake City, Utah.

**September 29-October 2.** The American Mining Congress will meet in New Orleans, Louisiana.

**October 7-10.** An international National Park Service 75th Anniversary Symposium, "Protecting our National Parks, Challenges and Strategies for the 21st Century," will be held in Vail, CO.

**October 14-18 or October 28-November 1.** The new Secretary General of CITES, Izgrev Topkov, will be visiting Washington to consult on CITES issues.

**October 18.** The Western States Water Council will hold its quarterly meeting in Tulsa, Oklahoma.

**October 28-29.** The National Earthquake Prediction Evaluation Council will meet in Portland, Oregon.

**October 28-November 3.** The Annual Meeting of Working Group VII of the U.S.-U.S.S.R. Agreement on Cooperation in Environmental Protection will be held in Williamsburg, Virginia.

**Mid-October.** The Alaska Federation of Natives will hold its annual convention.

**November 3-9.** The National Water Resources Association Conference will be held in Monterey, California.

**November 3-9.** The Middle East Water Summit will be held in Istanbul, Turkey. If host President Turgut Ozal of Turkey is successful in preventing an invitation to Israel, the United States likely will not participate.

**November 4.** The National Minerals Policy Forum, convened by the Department of the Interior to assist in developing an overall minerals policy for the Administration, will meet in Washington, D.C.

**November 4-7.** The Standing Committee of the 65 Nation Convention on Wetlands of International Importance will meet in St. Petersburg, Florida.

**November 5-7.** A symposium on the Pacific Exclusive Economic Zone, cosponsored by the U.S. Geological Survey and the National Atmospheric and Oceanic Administration, will be held in Portland, Oregon.

**November 5-7.** The First National Conference on Climate Change and Water Resources Management will be held in Albuquerque, New Mexico.

**November 19-23.** The Fish and Wildlife Service, in conjunction with the European Economic Community and the government of France, will sponsor a conference of African elephant range States, potential donor nations, and key non-government organizations at the United Nations Environmental Program headquarters in Nairobi, Kenya.

**November 25-26.** The annual Canadian Minerals Conference on issues of minerals availability and environmental impacts of mining practices will be held in Ottawa, Canada.

**November.** National American Indian Heritage Month.

**December 3-4.** The North American Wetlands Conservation Council will meet in Sacramento.

**December 4-7.** The USS Arizona Memorial in Honolulu, Hawaii is planning four days of solemn observances and special programs to commemorate the 50th anniversary of the attack on Pearl Harbor.

## NEGOTIATIONS

**Florida Buy-Back.** The Department of the Interior is negotiating with the Governor of Florida to initiate a joint Federal/State buy-back of Outer Continental Shelf leases in the Eastern Gulf of Mexico. These negotiations result from the President's June 1990 decision on the Outer Continental Shelf Oil and Gas Leasing Program. The Florida delegation has been active in monitoring this situation and supports the Governor's position to not participate in a joint buy-back.

**Thunder Basin National Grasslands.** During 1989 and 1990 royalty revenues from a coal lease were incorrectly distributed by the Federal government. The State of Wyoming was temporarily underpaid and five of its counties were overpaid. The State believes it is owed interest for the time it was underpaid. Negotiations with the Governor are underway.

**Anadromous and Estuarine Species Jurisdiction Under the Endangered Species Act.** The Fish and Wildlife Service and National Marine Fisheries Service are revising the 1974 memorandum of understanding regarding jurisdictional responsibilities and listing procedures under the Act. The current agreement does not clarify agency jurisdiction over anadromous and estuarine species where both agencies have overlapping interests and historical jurisdictions.

**Collier Land Exchange.** This project involves the exchange of the Phoenix Indian School Property in Arizona for 108,000 acres in Florida which would be included in the Big Cypress National Preserve and the Ten Thousand Islands and Florida Panther Wildlife Refuges, plus the establishment of an education trust fund for various Indian tribes. In July 1991 the Colliers declined to exercise their rights to consummate this exchange based on the National Park Service approved appraisal of the Phoenix Indian School. In accordance with the legislation authorizing the exchange, the Indian School will be offered for sale to the highest bidder over the minimum price established by the Act. These bids are due by October 30. The Colliers will have the right to acquire the property at 5 percent over the highest bid until December 4.

**Contract Mining.** The Office of Surface Mining has identified a number of large coal companies that made extensive use of contract mining operators and subsequently abandoned their sites without completing reclamation or paying all reclamation fees and civil penalties. Three companies--Wellmore Coal Corporation, A.T. Massey Coal Company, and Westmoreland Coal Company--have signed agreements to provide information on all of their contract mining operations. During the next 90 days, the Department of the Interior will identify sites on the companies' contractor lists that have outstanding violations and negotiate abatement and payment plans with the companies.

**Crab Orchard National Wildlife Refuge Superfund Site.** This National Wildlife Refuge, located in southern Illinois, contains the Department of the Interior's first Environmental Protection Agency National Priorities List Superfund site. Before Congress created this refuge, World War II munitions production occurred on the property. One potentially responsible party, a private company, has recently entered into an agreement with the Department of the Interior to help clean up the PCB contamination. This Fall, a four-party inter-agency agreement among the Environmental Protection Agency, the Illinois Environmental Protection Agency, the U.S. Army (for the Department of Defense) and the Department of the Interior, outlining the entire clean up process will be finalized. This will be the first four-party agreement of this type ever signed.

**Crow Tribe v. United States (Crow 107th)** (Cl.Ct.). The U.S. Motion to Dismiss has been argued in this breach of trust action for \$80,000,000 for lost use, rents and profits arising from a 100-year-old General Land Office survey error that excluded 36,000 acres from the Crow Reservation in Montana. About 13,000 acres were turned over to the Northern Cheyenne Tribe, most of the rest was patented, and the U.S. holds most of the minerals underlying about 14,000 acres. Rather than sue the Northern Cheyenne Tribe and other landowners in the disputed strip, the Tribe is working with its Congressional delegation to prepare a legislative settlement of its claim, and negotiating with a team appointed by the Secretary. The Tribe will present a preliminary proposal on September 17. The next negotiating session will be in Billings in early October.

**Removal of Feral Horses at Ozark National Scenic Riverway, MO.** The Missouri League for Wild Horses was granted a temporary restraining order against the removal of feral horses at Ozark National Scenic Riverway. The feral horses (15 were identified in a recent flyover) are competing directly for forage with several species of wildlife, both game and non-game species. Ozark proposed action in accordance with National Park Service Management Policies which calls for removal "whenever an exotic plant or animal species threatens park resources or public health and when control is prudent and feasible." The court granted a temporary restraining order, and briefs on the merits will be filed in September in response to the court's hearing on a request for preliminary injunction. The park recently received a request for a permit allowing the Wild Horses League to manage the horses within the park.

**District of Columbia Stadium.** The District of Columbia and the owner of the National Football League's Washington Redskins are negotiating an agreement that will allow construction of a new sports stadium adjacent to Robert F. Kennedy Stadium in Anacostia Park, Washington, D.C. The National Park Service has had limited discussions with the District of Columbia about the proposed new stadium, but has not been involved in the agreement negotiations. National Park Service

approval, and possibly legislation, will be necessary for the new stadium to be built on National Park Service property.

**Manassas National Battlefield Park Legislative Taking.** Most of the former owners of property taken by the Manassas National Battlefield Park Amendments of 1988 have been compensated, at a cost to the United States of approximately \$118,000,000. Several claims, however, still remain unresolved. The major unresolved claim is that for compensation due to Virginia Power for the relocation of its power lines included in the taking. The National Park Service and Virginia Power are discussing compensation.

**Offshore Pipelines.** The Minerals Management Service and the Department of Transportation are negotiating a revised Memorandum of Understanding that would allow the Department of the Interior to assume jurisdiction over the offshore pipelines in the Gulf of Mexico which are used to transport outer continental shelf oil and gas production to shore. Policy guidance on responsibilities are being addressed in the Executive Order pending approval for implementation of the Oil Pollution Act. Approval of the Executive Order should clear the way toward resolution of the issues that have delayed progress on the memorandum of understanding.

**Matagorda Island.** A draft comprehensive management plan to integrate management for the entire island by the State of Texas and the Fish and Wildlife Service have been prepared for signatures by the Secretary of the Interior and the Governor of Texas. A current joint management agreement applies to the north portion of the island that is owned partially by the Fish and Wildlife Service and partially by the State of Texas. The draft agreement would extend the joint management to include also the south portion of the island which the Fish and Wildlife Service purchased with Land and Water Conservation Fund monies. It is now in review by the Department of the Interior. Current language in the FY 1992 House Interior Appropriations Bill would prohibit implementation of such an agreement.

**Flathead Indian Irrigation Project.** The Bureau of Indian Affairs is negotiating with Confederated Salish and Kootenai Tribe of Flathead and the Joint Board of Control to resolve longstanding disagreements on the Flathead Indian Irrigation Project.

## COURT DECISIONS/LITIGATION

**United States v. Exxon Corporation, et al., (D. Alaska), and United States v. Alaska, (D. Alaska).** This case involves large amounts of natural resource damage assessments against the Exxon Corporation arising out of the Exxon Valdez oil spill. With the disapproval of the civil settlement of the Federal and State government's civil claims against Exxon Corporation, our efforts shift to the criminal litigation. We will have to devote continued efforts to funding studies in support of both civil and criminal cases, responding to Freedom of Information Act discovery requests and subpoenas for documents, and developing affirmative discovery requests for use by the Department of Justice in the Federal case.

**Mt. Graham Red Squirrel v. Yeutter, No. 89-410 (D. Ariz. & 9th Cir.).** This action will determine whether a quarter-billion dollar astronomical complex can be built atop a peak in Southern Arizona which is the sole habitat of an endangered squirrel species. Congress has ratified the original biological opinion under the Endangered Species Act that construction of three telescopes would not jeopardize the species' survival. Squirrel populations fell significantly, a change in circumstance which would normally require reinitiation of consultation. When the Forest Service declined to reopen consultation on the grounds that the ratifying legislation precluded it, the Sierra Club sued. The trial court denied a motion to temporarily restrain construction. A final hearing is set for September 27.

**International Litigation.** The Supreme Court will now review the Eighth Circuit ruling that Section 7 of the Endangered Species Act applies to Federal agency actions conducted within foreign countries. Oral argument will probably be scheduled for October or November.

**Belville Mining Co. v. Lujan ("Belville I"), No. C-1-89-790 (S.D. Ohio).** On July 22, 1991, the court ordered the Department to promulgate a rule defining Valid Existing Rights, which would determine the conditions under which mining would be allowed in national parks which, in the absence of "valid existing rights," would be prohibited. A proposed definition had already been published four days before the court's decision; the Department will report to the court bimonthly on progress in finalizing the rule. The Department moved that the court reconsider its decision concerning the disapproval of State definitions of Valid Existing Rights, since legislation allows State programs to be more stringent than Federal regulations. A decision on the motion is expected within 90 days, after which the Department will have 60 days to appeal.

**Whitney Benefits, Inc. v. United States, No. 499-83 (Fed. Cir.).** In February 1991, the U.S. Court of Appeals for the Federal Circuit affirmed that the Surface Mining Control and Reclamation Act's prohibition of surface mining on alluvial

valley floors in Wyoming constituted a taking of Whitney's mineral interest and confirmed the lower court's award of \$60.3 million plus interest. On July 31, the Government filed a petition for certiorari to the U.S. Supreme Court. Whitney filed a response in opposition. The Supreme Court is likely to rule on the petition within the next 90 days.

**West Virginia Mining and Reclamation Association v. Snyder, No. 91-0123-W(S) (N.D. W.Va.)**. On July 31, 1991, two West Virginia industry organizations filed to enjoin the Office of Surface Mining from taking enforcement actions in the State without first issuing ten-day notices pursuant to the Surface Mining Control and Reclamation Act. On August 30, the court enjoined the Office of Surface Mining, ruling that the memorandum of understanding providing for waiver of the ten-day notice constituted a "rule" that was adopted without the notice and comment required by the Administrative Procedures Act. The Department has 60 days to decide whether to appeal the preliminary injunction.

**Gray Wolf Restoration to Yellowstone**. On August 8, 1991, the Defenders of Wildlife entered a complaint in the U.S. District Court in the District of Columbia against the Secretary of the Interior and the Directors of the National Park Service and Fish and Wildlife Service. The complaint alleges that the failure to reintroduce wolves into Yellowstone is a violation of the agency duties to conserve endangered species, to develop and implement recovery plans for endangered species, and to use agency authorities in furtherance of the purposes of the Endangered Species Act. The complaint must be answered within 60 days.

**Northern Cheyenne Tribe v. Hodel**, 842 F.2d 224 (9th Cir.) (1988). The Tribe challenged the adequacy of the Department's 1981 Powder River Coal lease sale Environmental Impact Statement. The District Court ruled that the socio-economic impact analysis was inadequate. The Ninth Circuit reversed and remanded for further proceedings. On July 24, the District Court ordered the government to refund the bonus bids and rental payments of two lessees. We anticipate a hearing September 23 on whether the remaining leases should be suspended or voided.

**Wind River Indian Water Rights Litigation**. The Shoshone and Arapaho Tribes are suing the State of Wyoming in State court alleging a failure on the part of the State Engineer to enforce the instream flow dedication of their reserved water right. On March 11, the court found that the Tribes are entitled to make instream flow dedications, but placed limitations on those dedications. On May 3, the Wyoming Supreme Court granted the State of Wyoming's motion for stay of the District Court decision. Briefing is completed and we await the scheduling of oral argument.

**1002 Report Lawsuit**. In August 1989, lawsuits were filed against the Department alleging deficiencies in the Department's "1002 Report" on the Arctic National

Wildlife Refuge, and the need for a supplemental environmental impact statement. The District Court ordered the Department to circulate an update of the Bureau of Land Management's assessment of the oil and gas potential of the Arctic National Wildlife Refuge's coastal plain as a supplemental environmental impact statement. The Department will recommend an appeal of this decision.

**Coeur d'Alene Tribe v. Gulf Resources, Inc.** In this first tribal suit for natural resource damages under Superfund, the Coeur d'Alene Tribe seeks funds for the restoration of fish, birds, and other creatures in the Coeur d'Alene River and Lake Coeur d'Alene affected by the Bunker Hill Superfund Site in North Idaho. From 1890 to 1988, mines and smelters dumped millions of tons of tailings containing heavy metals into the river. A key question is whether the Tribe's statute of limitations has run out. The Department of Justice will intervene to argue that the Tribe (and the U.S.) have several years before they must file suit.

**Living History Lawsuit, Cook v. Lujan** (D.D.C.) A volunteer, Lauren Cook, alleges that the National Park Service discriminates against women in Civil War "living history" presentations. Plaintiff Cook sought to play a Confederate fife player at a battlefield surgery scene at Antietam National Battlefield. Plaintiff challenges the policy of the National Park Service which requires living history participants accurately to portray the physical characteristics of the role either directly or thorough costuming and makeup.

## STORIES OF INTEREST TO THE MEDIA

### Economic Analysis of Proposed Critical Habitat for the Northern Spotted Owl.

On May 21, the Fish and Wildlife Service convened a panel from several Federal agencies to conduct an economic analysis of the proposed critical habitat for the northern spotted owl. The analysis will continue into the fall.

Endangered Species Listings. Possible endangered species listings for salmon species in the Columbia River system and Delta Smelt species in California will generate strong media interest, especially regarding economic impacts.

AB Lateral Hydropower Facility. The possible private development of a hydropower facility requiring diversions of water from the Gunnison River in Colorado, immediately above the Black Canyon of the Gunnison River National Monument, is of interest to Western news media. The Bureau of Reclamation will issue a Record of Decision in September.

California Water Stories. The media will be interested in California water stories, including passage of drought legislation, Reclamation Reform Act Amendments, Central Valley Fish and Wildlife Protection legislation, and the issue of State vs. Federal administration of the Central Valley Project.

Glen Canyon Interim Flows. The Secretary is expected to announce interim operating criteria for Glen Canyon powerplant on November 1.

National Park Service 75th Anniversary Media Stories. August 25 marked the 75th Anniversary of the Organic Act that created the National Park Service in 1916. The National Park Service anticipates continued intense media interest.

Christopher Columbus Quincentennial. The National Park Service will officially kick-off the Christopher Columbus Quincentennial on Columbus Day, October 12, at Columbus Plaza in Washington, D.C.

Technical Assistance In Earth Sciences With Mexico. Signing of a Memorandum of Understanding between the U.S. Geological Survey and Mexico's National Institute of Statistics, Geography and Information by the end of this year will provide technical exchange and cooperative activities with Mexico in surveying mapping, remote sensing, and geographic information systems.

## OTHER

**Coastal Barrier Resources System.** Coastal States and local governments have until December 1, 1991, to recommend minor and technical boundary modifications to units of the System within their jurisdiction. The Fish and Wildlife Service will work with the Congress and State and local governments to complete this process as required by the Coastal Barrier Improvement Act.

**Historic Preservation Grants to Indian Tribes and Alaska Natives.** The National Park Service plans to solicit applications in November for grants to support the preservation of a wide range of important aspects of tribal and Native Alaskan cultural heritage.

**Boundary Adjustment Criteria.** Public Law 101-628 (November 28, 1990) directs the Secretary to develop, within one year, criteria for evaluating proposed changes to existing park boundaries. The National Park Service is working on this task.

**Low Water Levels and Hazardous Waste Investigation at Glen Canyon National Recreation Area, UT/AZ.** Three years of drought have caused a significant drop in the water level of Lake Powell--70 feet below full pool over the last 2 years. Millions of dollars have been spent to move marinas, extend utilities and construct low water access. The receding water level had exposed a number of discarded batteries and other debris that may be hazardous. ARA Leisure Services, the concessioner at Glen Canyon National Recreation Area, has been investigated by the Departmental Inspector General and the Arizona and Utah Attorneys General, for alleged dumping of hazardous waste in Lake Powell. The National Park Service has initiated an internal review of park management's activities and decisions as they relate to concession hazardous waste management and is planning a complete site investigation to determine if contamination exists at the alleged sites.

**Pacific Salmon Treaty Act of 1985.** Pursuant to the Pacific Salmon Treaty Act of 1985, the President, Secretary of State, and Secretary of the Interior, will be involved in appointing six Indian representatives to the U.S. Section of the Pacific Salmon Commission from nominations by 24 northwest treaty fishing tribes. Tribal nominations are being made.



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

September 13, 1991

MEMORANDUM FOR EDE HOLIDAY  
ASSISTANT TO THE PRESIDENT  
AND SECRETARY OF THE CABINET

FROM TONY SCHALL *Tony Schall*  
ASSISTANT TO THE ATTORNEY GENERAL

SUBJECT: Department of Justice 1991 Fall Issues  
Assessment

The following report summarizes key issues and activities at the Department of Justice for the period September 15, to December 31, 1991. The memorandum is in five parts, as follows:

Part I: Highest priorities of the Acting Attorney General;

Part II: Acting Attorney General's activities;

Part III: Major initiatives of the Acting Attorney General and the Justice Department;

Part IV: Legislative matters of major interest to the Acting Attorney General and the Justice Department; and

Part V: Important cases and matters, negotiations and conferences, and studies.

**I. HIGHEST PRIORITIES OF THE ACTING ATTORNEY GENERAL**

(1) The confirmation of Judge Clarence Thomas of the United States Court of Appeals for the District of Columbia Circuit to be Associate Justice of the United States Supreme Court (See Part IV A below);

(2) Legislative matters that are important to the President's policies and programs; most importantly, crime and civil rights legislation. (See Parts IV B - IV E and IV H below);

- (3) The war on violent crime (See Part III A below);
- (4) The prosecution of white collar criminals, including those involved in financial (savings and loan) fraud, insurance fraud, and money laundering (See Part III B below); and
- (5) The war on drugs, including the prosecution of former Panamanian dictator Manuel Noriega (See Part III C below).

## II. ACTING ATTORNEY GENERAL ACTIVITIES

(1) **September 23.** [Washington, D.C.] On behalf of the United States, the Acting Attorney General and Janet Steiger, Chairman of the Federal Trade Commission, will sign the antitrust cooperation agreement that has been negotiated with the European Community Competition Commission. The agreement provides for notification and consultation on internationally sensitive antitrust matters, in a manner similar to agreements the United States now has with Australia and Canada.

(2) **September 26.** [San Francisco, CA] The Acting Attorney General will address the Multinational Asian Organized Crime Conference. High-level law enforcement officials from ten Pacific Rim countries will attend the conference. The conference stems from the Department's Organized Crime National Strategy, which proposed measures to assess and combat the emerging threat of Asian organized crime in the United States. The conference will provide an opportunity for foreign officials to discuss the nature and impact of organized crime in their own countries, with the majority of time devoted to presentations on a variety of topics relevant to fighting Asian organized crime in the United States.

(3) **October 2.** [Louisville, KY] The Acting Attorney General will address the Kentuckiana Crime Stoppers International Annual Conference.

(4) **October 7.** [Minneapolis, MN] The Acting Attorney will address the annual meeting of the International Association of Chiefs of Police.

(5) **October 9.** [Minersville, PA] The Acting Attorney General will attend the dedication ceremony for the Schuylkill Federal Correctional Institution.

(6) **October 15.** [Washington, DC] The Acting Attorney General will attend the dedication of the Law Enforcement Officers Memorial.

(7) **October 16.** [Quantico, VA] The Acting Attorney General will be the keynote speaker at the Federal Bureau of Investigation's Violent Crime Symposium.

(8) **November** [Washington, D.C.] The Acting Attorney General will convene the Justice Department's Symposium on the Bill of Rights.

(9) **December** [The Hague, Netherlands] The Acting Attorney General expects to be the United States representative to the TREVI Ministerial Conference. TREVI (Terrorism, Radicalism, Extremism, Violence International) is an international group which is comprised of ministerial department heads, chiefs of police, and directors of security services from twelve European countries. The group meets on a semiannual basis in the country holding the European Community presidency. The United States, along with several other countries, has observer status in this group.

(10) In addition to the foregoing, during this period, the Acting Attorney General will participate in events honoring and recognizing (i) those who were instrumental in the investigation and prosecution of Walter LeRoy Moody, Jr., for the mail bomb murders of Judge Robert S. Vance of the United States Court of Appeals for the 11th Circuit and Savannah, Georgia civil rights lawyer Robert Robinson; and (ii) the individuals responsible for the successful resolution of the recent hostage situation at the federal correctional institution in Talladega, Alabama. The Acting Attorney General has suggested that the President participate in these events.

### **III. MAJOR INITIATIVES OF THE ACTING ATTORNEY GENERAL AND THE JUSTICE DEPARTMENT**

In light of the priorities identified by the President and the issues that confront the Nation, the Acting Attorney General is placing particular emphasis on the following initiatives:

#### **A. Combating Violent Crime**

The first civil right of every American is to be free from violent crime, whether it be on the street, in the workplace, or at home. To a large extent, combating violent crime and punishing its perpetrators are matters for state and local law enforcement. The Acting Attorney General and the Justice Department, however, have important roles to play in this area. Currently, in addition to its regular day-to-day law enforcement effort, the Justice Department has two crime initiatives underway: Project Triggerlock and Violent Crime Task Forces.

Project Triggerlock is a comprehensive effort to use federal laws pertaining to firearm violence to target the most dangerous violent criminals in each community and put them away for hard time in federal prisons. Each United States Attorney's Office is establishing a task force of prosecutors which will develop a strategy to identify and apprehend the most violent offenders in its district. In addition, a Triggerlock Working Group of the Attorney General's Advisory Committee of United States Attorneys has been established to work with the Justice Department's Criminal Division.

Violent Crime Task Forces are pilot projects using the "Weed and Seed" strategy. "Weed and Seed" is a thematic initiative designed to involve non-law enforcement entities in follow up to law enforcement operations targetting specific drug infested neighborhoods. The theme can be flexibly applied to divergent types of law enforcement programs. For example, in phase one of a Weed and Seed effort, federal, state, and local law enforcement agencies engage in a massive clean sweep effort to "pull the weeds" -- to remove the infrastructure of gangs, of violent predators, and of drug dealers from the target area. In phase two, federal and state agencies "plant the seeds" for economic development and housing. Pilot Weed and Seed projects have been initiated in Kansas City, Missouri, and Trenton, New Jersey.

Finally, an important part of the cooperative effort with state and local law enforcement is the Asset Forfeiture Program. The Comprehensive Crime Control Act of 1984 and the Anti-Drug Abuse Act of 1986 grant the Attorney General and the Justice Department latitude in the seizure of currency and property used in connection with criminal operations. Money in the Fund is shared with state and local law enforcement agencies based upon their proportional participation in investigations which lead to forfeitures. In the last six years, the Fund has collected more than \$1.5 billion in seized assets, and in fiscal year 1990 alone \$200 million was shared at the state and local levels.

#### B. White Collar Crime

White collar crime also will be an important priority of the Acting Attorney General. In this area, the Justice Department will continue to direct a major effort at financial institution fraud, in response to the savings and loan crisis and to be ahead of any overlapping problems in the banking industry. In the area of financial institution fraud enforcement, the Justice Department has:

- a. Established the position of Special Counsel for Financial Institution Fraud;

b. Directed the creation of a Financial Frauds Coordinating Unit to support the work of the Special Counsel;

c. Formed a senior interagency group to identify the most significant savings and loan and bank fraud cases and to focus investigative and prosecutive resources on them;

d. Established the New England Bank Fraud Task Force;  
and

e. Increased resources in the U.S. Attorneys' Offices to support the prosecution of these important matters.

In January, the Attorney General submitted to the President and the Congress a two-year report on the accomplishments of the Justice Department in prosecuting fraud in the Nation's thrift industry. The report stated that, during the period from October 1, 1988, through December 31, 1990, 403 defendants had been convicted in major savings and loan fraud cases. Seventy-nine percent of those convicted received prison terms, including one as long as 30 years. By way of update, as of August 31, 1991, 820 defendants had been charged in major savings and loan fraud cases. Of the 676 defendants in that group whose cases had been brought to final resolution, 628 had been convicted, a 92 percent success rate.

In fiscal year 1991 alone, 953 defendants have been charged in major fraud cases involving banks, credit unions, and savings and loan institutions combined. These prosecutions have resulted in 773 convictions, a 94 percent success rate.

In February, the Attorney General announced the creation of a New England Bank Fraud Task Force. The Task Force opened for business in Boston on May 6. The Task Force is led by the Fraud Section of the Justice Department's Criminal Division and includes attorneys from the Tax and Civil Divisions and the U.S. Attorneys' Offices in Massachusetts, New Hampshire, Maine, Vermont, Rhode Island, and Connecticut.

The Economic Crime Council, an advisory body for the Department of Justice, has identified fraud and corruption in the insurance industry as an area needing intensified federal law enforcement attention. The Justice Department is part of a multiagency Insurance Working Group that is collecting and analyzing insurance fraud data in order to determine the scope of the problem, identify types of insurance frauds, establish priorities, seek sources of referral, and conduct training. The Council will meet on October 8 to review and adopt a plan for responding to the problem of fraud and corruption in the insurance industry.

During this period, two investigations in the area of white collar crime will receive particular priority attention: first, the investigation into the activities of the Bank of Credit & Commerce International (with a particular focus on money laundering), which is ongoing in Tampa and Miami, Florida, Atlanta, Georgia, Washington, D.C., and elsewhere, and which saw a Racketeer Influenced and Corrupt Organizations indictment unsealed in Tampa on September 5; and second, the investigation into possible bid rigging and other forms of fraud in connection with auctions of U.S. Treasury securities.

Other area of particular focus for the Department's white collar crime effort will be the HUD scandals, defense procurement fraud, and public corruption.

C. The War on Drugs

The war on drugs will be a major priority of the Acting Attorney General. The focus will be upon both domestic and international law enforcement, with particular emphasis on money laundering and the extradition of fugitives to the United States. The emphasis on multi-agency efforts through the Organized Crime Drug Enforcement Task Forces (OCDETF) targetting major drug organizations will continue.

D. Organized Crime

The Justice Department's organized crime strategy for the 1990s was announced in January. The strategy seeks to eliminate the influence of the 24 traditional families of LaCosa Nostra (LCN). In addition, available resources are being targetted at relatively new and emerging crime syndicates, including Asian organized crime groups.

E. Civil Rights

The enforcement of the Nation's civil rights laws is an important priority of the Acting Attorney General. Particular emphasis is being placed on combating hate crime. In 1990, the Department had a 100 percent success rate in prosecuting hate crimes. A related area consists of cases involving the use of excessive force by police. Following the widely publicized Rodney King incident in Los Angeles, the Justice Department's Civil Rights Division was directed to undertake a review of all official complaints of police misconduct filed within the past six years to discern whether any pattern of misconduct is apparent. That review is ongoing. In addition, the National Institute of Justice of the Justice Department's Office of Justice Programs was asked to determine if there is a correlation between police brutality and a lack of adequate training and internal disciplinary procedures. It is expected that a contract

for that part of the project will be awarded at the end of September.

In the civil rights area, the Justice Department's Community Relations Service (CRS) will continue to be active. The job of CRS is to provide mediation and conciliation in situations where tension exists in communities as a result of "disputes, disagreements, or difficulties relating to discriminatory practices based on race, color or national origin . . ." This past summer, CRS worked to mediate and conciliate in situations involving racial tension in Milwaukee, Wisconsin, and Brooklyn, New York.

Finally, approximately ten cases are being brought every month under procedures enacted in 1988 to strengthen the Department's role in eliminating housing discrimination throughout the country. Many of these cases involve discrimination against families with children and persons with disabilities, who had no federal recourse against housing discrimination before the Fair Housing Act was amended in 1988.

#### F. International Affairs

A priority of the Acting Attorney General will be work in the international area in conjunction with the Administration's overall program and initiatives. This work is an important part of the war on drugs and the effort against terrorism. It also is important in connection with the introduction of the "Rule of Law" to the Soviet Union and Eastern Europe.

#### G. Judicial Vacancies

A priority of the Acting Attorney General will be working with White House Counsel's Office in the process of selecting nominees to fill judicial vacancies, including vacancies resulting from the creation of additional judgeships last year.

#### H. Prison Expansion

Expanding federal prison capacity will be an important part of the Acting Attorney General's law enforcement effort.

#### I. Deregulation Initiatives

The Justice Department has a seat on the White House Competitiveness Council and is a member of Administration working groups that are studying regulatory reform initiatives in various industries, including banking, broadcasting, and health care. Work in this area is ongoing:

(1) Department of Justice Bank Competition Working Group: The Department of Justice chairs an interagency bank competition working group that consists of the Department, the President's Council of Economic Advisors, the Treasury Department, and the Board of Governors of the Federal Reserve System. The purpose of the working group is to assess the strength of competition to the banking industry from non-banking entities. Since its inception in April 1991, the working group has identified research questions and discussed existing empirical evidence on competition among banking and non-banking entities.

(2) Television Broadcast Market Rules: On August 7, the Federal Communications Commission issued a Notice of Inquiry inviting comments from the public on whether it should modify current television broadcast rules that limit the number of broadcast stations that a single entity may own and that prohibit the television networks from owning cable stations. These rules were promulgated during the 1960s and 1970s when the cable industry was in its infancy and there were fewer channels of communication and program producers available. The Justice Department will be studying these issues with a view toward determining whether, at this time, the rules tend to impede or promote competition.

(3) Competitiveness Council Health Care Working Group: White House Counsel has asked the Justice Department to lead an interagency working group to explore proposals for enhancing by competition the efficiency of the federal government's procurement of health care services. Other participating agencies will include the Department of Health and Human Services, the Office of Personnel Management, the Treasury Department, and the Commerce Department.

#### J. Motor Fuel Excise Tax Evasion

Beginning December 1, 1990, the federal motor fuel excise tax was increased from 9 cents to 14 cents per gallon. Nationwide, even before the tax hike, evasion schemes were depriving the Government of as much as \$1 billion annually.

The Department of Justice has identified fuel excise tax evasion as an enforcement priority and is engaged in a vigorous program to fight widespread noncompliance with the fuel excise tax laws. The magnitude of the problem is illustrated by the indictment pending in the Eastern District of New York charging Joseph Galizia (a soldier in the Genovese organized crime family) and four others (two of whom are members of a Russian crime group) with the evasion of more than \$14 million in gasoline excise taxes over a ten-month period. This case will be tried in October 1991, and should receive substantial press coverage.

The motor fuel excise tax evasion problem is not confined to the New York area, and Justice Department attorneys are working closely with the Federal Bureau of Investigation and the Internal Revenue Service to quell evasion schemes that have sprung up nationwide. Cooperation among these federal agencies has led to 28 convictions for motor fuel excise tax evasion over the last two and one-half years. Those convicted include not only organized crime figures, but also otherwise legitimate dealers, such as Getty Terminals Corp. (a subsidiary of Getty Petroleum Co.) and a Getty vice-president, each convicted last year of conspiracy and tax evasion.

**PART IV. LEGISLATIVE MATTERS OF MAJOR INTEREST  
TO THE ACTING ATTORNEY GENERAL AND  
THE JUSTICE DEPARTMENT**

A. Thomas Hearing

Hearings on the nomination of Judge Clarence Thomas of the United States Court of Appeals for the District of Columbia Circuit to be Associate Justice of the United States Supreme Court.

B. Comprehensive Violent Crime Control Act of 1991

Earlier this year, the Administration submitted its proposed legislation to Congress as S. 635 and H.R. 1400. In lieu of the Administration bill, the Senate passed a bill that contains elements of S. 635 (such as limitations on certain habeas corpus petitions and death penalty and firearms provisions) but also has many objectionable features, including a provision dealing with the exclusionary rule that would be a significant setback for law enforcement. The House Subcommittee on Crime recently reported its own version of a Violent Crime bill that also differs substantially from the Administration's proposal. The Justice Department will closely monitor the progress of these bills during the fall. It is expected that the House-Senate conference will take place in October and that a bill will be on the President's desk before the end of the year.

C. Money Laundering Legislation

Two money laundering-related bills, H.R. 26 and S. 953, are being considered by Congress. Title IX of S. 953 contains a number of money laundering provisions, although few of these relate to law enforcement. H.R. 26, the House money laundering bill, passed the House in June, but has been ignored by the Senate Banking Committee. It is anticipated that the Justice Department will try to resurrect provisions of H.R. 26 at the

conference on the banking reform bill if S. 953 passes. In addition, the Money Laundering Improvements Act of 1991 (S. 1665) is pending in the Senate. It was introduced at the request of the Department and in anticipation that Senator D'Amato would offer it as an amendment to S. 953 when that bill reaches the Floor.

D. RICO Amendment

The Department of Justice will continue to monitor the progress of H.R. 1717, the Racketeer Influenced and Corrupt Organizations Act (RICO) Amendments of 1991. The legislation has been reported by the House Judiciary Committee, but no date has been set for floor consideration. This legislation is designed to reform the Federal civil RICO statute to address the perceived problem of inappropriate uses of the statute by private plaintiffs.

E. Forfeiture Legislation

During this quarter, the Justice Department will submit a bill to amend the criminal and civil forfeiture statutes and to extend the scope of forfeiture provisions to new offenses. The proposed legislation will also include minor changes to forfeiture procedures, technical amendments, and changes in the Department of Justice Assets Forfeiture Fund.

F. Senate Advice and Consent on Signed MLATs and Extradition Treaties and Protocols

This fall, the Justice Department will seek, through the State Department and the White House, Senate advice and consent to ratification of the following mutual legal assistance treaties (MLATs), and extradition treaties/protocols:

<u>MLATs</u>	<u>Extradition Treaties</u>
Argentina	Australia (Protocol)
Jamaica	Bahamas
Nigeria	Belgium (signed, but the State Department may want to renegotiate)
Panama	Germany (Protocol)
Spain	Spain (Protocol)
Uruguay	Switzerland

G. BCCI Hearings

A number of Congressional Committees are examining various allegations related to the Bank of Credit & Commerce International. The Justice Department anticipates that hearings will be held on this matter throughout the upcoming quarter.

## H. Civil Rights Act of 1991

H.R. 1, which the Administration opposes, passed the House of Representatives without sufficient strength to override a Presidential veto. Companion legislation has not been introduced in the Senate. However, on June 27, Senator John Danforth introduced his proposal for civil rights legislation in three separate bills: S. 1407, 1408, and 1409. It is anticipated that during the period between September 15 and the adjournment of Congress the focus of activity on this issue will be on the Danforth bills, which, in their present form, do not meet the requirements that the President has laid down for a civil rights bill that he would sign.

### I. Resale Price Maintenance (RPM)

The Senate has passed and the House Judiciary Committee has reported legislation that would override two important Supreme Court decisions: Monsanto and Sharp. These cases involve the issue of proof of per se unlawful agreements to fix resale prices. The bills differ somewhat, but each would permit a jury to infer the existence of an unlawful agreement to fix resale prices merely from the fact of complaints to a manufacturer about a discounter's prices when those complaints lead to the discounter's termination. Each would also apply a per se rule to agreements to terminate a discounter regardless of whether there is an agreement on price or price level between the manufacturer and other dealers. The Department has consistently opposed these bills, and a senior advisors veto threat is outstanding. Action on the House floor is possible this fall.

### J. Production Joint Ventures

Both the House and Senate Judiciary Committees have reported bills to extend the protections of the National Cooperative Research Act to production joint ventures. Sought by the Administration, such legislation would guarantee rule of reason treatment to such ventures and provide for the limitation of antitrust liability to actual damages only. Both House and Senate versions, however, limit the coverage of the legislation with respect to joint ventures with foreign parties. The House bill, H.R. 1604, limits foreign ownership to 30 percent and requires all joint venture facilities to be located in the United States. The Senate bill, S. 479, requires "principal" joint venture production facilities to be located in the United States and a demonstration of a "substantial commitment" to the United States economy by each party. The Justice Department, the Commerce Department, the Treasury Department, and the United States Trade Representative have said that they will recommend a veto. Statements of Administration Position are being prepared which repeat this threat, joined in by the Secretary of State.

K. Defense Production Act, Exon/Florio

Legislation to extend the Exon/Florio review provisions of the Defense Production Act to acquisitions of United States firms when the acquisition by a foreign firm affects the economic security of the United States (as opposed to its "national security" -- the present statutory scheme) will likely be considered this fall. The Justice Department expects to join other agencies in opposing such bills as, among other things, potentially anticompetitive.

L. McCarran-Ferguson Insurance Antitrust Exemption

Bills that would amend the McCarran-Ferguson Act to limit the antitrust exemption provided for the business of insurance are pending in the House and Senate Judiciary Committees (H.R. 9, Brooks; S. 430, Metzenbaum), although congressional attention is currently focused on insurer solvency and regulation. The Department provided views to the Office of Management and Budget on the Brooks bill in April, stating opposition to the manner in which it would reform the exemption (risk to potentially procompetitive activities, uncertainty as to effect on state action). The Justice Department has been working on an options paper with a working group of the Economic Policy Council in an effort to develop a detailed Administration position on McCarran-Ferguson reform.

M. Bell Operating Companies Manufacturing

The Department has testified with the Commerce Department in support of legislation to lift the manufacturing line-of-business restriction in the AT&T decree. The Senate-passed bill, S. 173, would allow the Bell Operating Companies (BOCs) to manufacture telecommunications equipment, but has drawn a senior advisors veto threat because of its domestic content and domestic manufacturing requirements. The Administration also opposes the bill's restrictions on inter-BOC joint ventures and other new regulation of BOC manufacturing activities.

N. Federal Tort Claims Act

Members of Congress continue to resolve insurance coverage problems through proposals to expand Federal Tort Claims Act (FTCA) coverage. The Justice Department is opposed to expansion of the FTCA where the government exercises no supervision or control. Such proposals could well be the focus of activity in Congress during this period. An example is H.R. 2239, a proposal to make providers of health care services to Community and Migrant Health Centers and Health Centers for the Homeless federal employees for purposes of tort liability under the FTCA.

O. Symms Amendment - Takings

Senator Steve Symms succeeded in attaching S. 50, the Private Property Rights Act of 1991, to the Senate-passed version of the Surface Transportation Efficiency Act. S. 50 is designed to assure that the goals of Executive Order 12630, the Takings Executive Order, are met. Legislation similar to the Symms bill is now pending in the House but has not yet been added to that chamber's surface transportation legislation. The Justice Department expects hearings on the legislation before the House Government Operations Committee in September. It is anticipated that the hearings also will address a takings initiative proposed by former Attorney General Thornburgh and Office of Management and Budget Director Darman which provides a financial incentive to avoid unintended Fifth Amendment takings. The bill -- the Judgment Fund Financial Management Act -- would have each agency reimburse the judgment fund for takings awards arising from program activities of that agency. The Administration fully supports both legislative proposals and has pledged to work for their passage.

P. Federal Facilities Legislation

Sovereign immunity waiver legislation has passed the House and has been reported out of the Senate Environment and Public Works Committee. Both House and Senate bills are now on the Senate calendar. The Administration is preparing a Statement of Administration Policy which opposes the legislation unless changes are made as suggested in testimony by witnesses last spring.

Additional matters on the legislative horizon that are of interest to the Justice Department are listed in the memorandum attached to this report.

**PART V. IMPORTANT CASES, MATTERS AND INITIATIVES, NEGOTIATIONS AND CONFERENCES, AND STUDIES**

Between September 15 and December 31, Justice Department lawyers will be representing the United States in a wide variety of cases, and Department components will be involved in a wide variety of matters and initiatives. Also, during this period, there will be various negotiations and conferences, and studies will be released. As of now, the following items are viewed as significant and/or likely to attract media attention:

A. Cases

(1) Supreme Court Cases. The following are significant cases that the Court will hear after the October 1991 Term opens:

a. Freeman v. Pitts. This case will be argued by the Solicitor General on the opening day of the Supreme Court's Term, October 7. This case, arising out of the DeKalb County, Georgia, school desegregation litigation, considers the standards for determining when a school district has satisfied its desegregation obligations. The government is arguing that the court of appeals exceeded its authority in requiring race-conscious student assignments to counteract demographic changes in the county that affected the racial composition of the schools, after the school district had been found to have fulfilled its obligations in the area of student assignments.

b. U.S. State Department v. Ray. In this case, which will be argued October 9, the government is taking the position that the court of appeals erred in requiring the State Department to disclose the names of, and personal information about, Haitian nationals it interviewed upon their return to Haiti after unsuccessful attempts to enter the United States illegally. The government is contending that the information is exempt from disclosure under the Freedom of Information Act's privacy exemption.

c. Bray v. Alexandria Women's Health Clinic. In this case, which will be argued October 16, the government argues that the Ku Klux Klan Act of 1871 does not confer federal court jurisdiction over a suit by abortion providers and patients against Operation Rescue demonstrators who block access to abortion clinics. The Supreme Court has ruled that the statute applies only against those who act because of a "class-based animus," and the government contends that opposition to abortion is not the equivalent of discrimination against women as a class. The government's position is that the claims against the Operation Rescue demonstrators should be addressed in state court.

d. INS v. Doherty. This case will be argued October 16. It involves the deportation of a terrorist of the Irish Republican Army. The government contends that the Attorney General may properly take the country's opposition to terrorism and other foreign policy concerns into account in denying withholding of deportation, and may consider the applicant's ineligibility for asylum because of his terrorist activities in declining to reopen asylum proceedings previously waived by the applicant. The government seeks to deport Doherty to Great Britain, where he stands convicted of a variety of crimes, including the murder of a British officer in Northern Ireland.

e. United States v. Mabus. Not yet scheduled for argument, this is the Mississippi higher education desegregation case. The government contends that Mississippi has not yet satisfied its obligation to desegregate its former system of black and white colleges, because admission policies still discriminate on the basis of race and the State maintains duplicative programs at nearby historically white and historically black schools. The government does not, however, agree with the private plaintiffs that the Constitution requires the State to spend certain amounts on the historically black schools to compensate for past neglect. The government's position is that the Equal Protection Clause protects the students -- not the institutions -- and that so long as the students are afforded the choice of which college to attend without regard to race, the question of state expenditures on specific institutions is one for the State to resolve, not the federal courts.

f. Lee v. Weisman. In this case, which is not yet scheduled for argument, the court of appeals ruled that an invocation and benediction delivered by a rabbi at a public middle school graduation ceremony violated the First Amendment's Establishment Clause. The government contends that this was error, and is urging the Court to adopt a rule that requires some showing of coercion before a practice will be found to constitute an illegal establishment of religion.

g. United States v. Verdugo-Urquidez. The Justice Department will be asking the Supreme Court to review a decision of the United States Court of Appeals for the Ninth Circuit in a case having implications for inter-national relations and international law-enforcement policy. The case involves a Mexican citizen whom American agents arrested in Mexico and brought to the United States for prosecution. The United States Court of Appeals for the Ninth Circuit held that the agents' conduct violated the United States' international obligations and that it was improper to obtain custody of the defendant other than through the extradition treaty between the United States and Mexico.

(2) Other Cases.

a. Noriega Trial. Jury selection began on September 5 in the narcotics prosecution of former Panamanian dictator Manuel Noriega. The trial, which is being held in the United States District Court for the Southern District of Florida (Miami), is expected to last well into the coming quarter.

b. Exxon Valdez. As a result of the 1989 oil spill, one criminal action and various civil cases are pending. The criminal case is scheduled for trial in October. This scheduling followed the court's rejection of a criminal plea and a proposed

\$100 million fine. (As a result, the related \$900 million civil consent decree was withdrawn.) There is enormous uncertainty about what sentence would be imposed if convictions are obtained. The maximum fine each defendant would ordinarily face if convicted on all five counts is \$1.6 million. However, if the court imposes fines under the Alternative Fines Act, the total amount could be as high as \$700 million. The Justice Department is continuing to prepare the civil case for natural resource damages and cleanup costs and is working closely with the State of Alaska in the effort.

c. Alvarez-Machain Appeal. The United States Court of Appeals for the Ninth Circuit is expected to rule this fall on the government's appeal of the district court order dismissing the indictment against Humberto Alvarez-Machain on the grounds that his abduction by Mexican officials at the behest of U.S. law enforcement officers, combined with the subsequent protest of the Mexican Government, violated the U.S.-Mexico Extradition Treaty.

d. Pollard Appeal. It is possible that, during the period between September 15 and December 31, the United States Court of Appeals for the District of Columbia Circuit will rule on the appeal by Jonathan Pollard from the 1990 denial of his motion to withdraw his plea of guilty to charges of espionage on behalf of Israel.

e. Census Litigation. During this period, there likely will be activity in two important cases arising out of the decennial census:

(1) Tucker v. United States Department of Commerce. This Illinois class action is the first case challenging the 1990 Census to reach a court of appeals. Plaintiffs sought to bring a class action of Illinois residents to compel a statistical adjustment to the 1990 Census to reflect the undercount of certain subgroups in the population. The district court dismissed the suit on political question grounds and plaintiffs have appealed, with the City of Chicago filing an amicus brief in support of plaintiffs' suit. The Justice Department brief filed on July 22, 1991, urges that plaintiffs' claims present a non-justiciable political question and that the actions of the Executive Branch defendants were committed to agency discretion by law.

(2) City of New York v. United States Department of Commerce. Plaintiffs in this suit are a number of states, localities, and organizations challenging the July 15, 1991, decision of the Secretary of Commerce not to adjust the decennial census to correct for differential undercounts and overcounts of various groups. The Secretary decided not to adjust the census

because of a lack of consensus among expert opinion as to whether an adjustment would improve the accuracy of the census. The Secretary was particularly concerned that the adjustment under consideration was not sufficiently reliable to adjust for the undercount and correctly locate the missing persons in the correct geographic locations. Plaintiffs have challenged that decision, arguing that an adjustment is required both by the Constitution and the statutes governing the census. The Justice Department has moved in the district court to dismiss on political question grounds.

Although the district court has not reviewed the administrative record or undertaken an analysis of the agency decision, it has nevertheless authorized plaintiffs to undertake far-ranging document discovery and depositions of agency officials, including depositions of Secretary of Commerce Robert Mosbacher, the Director of the Census Bureau, other Census Bureau officials, and an employee in the White House Counsel's office. In the wake of the denial by the United States Court of Appeals for the Second Circuit of the Justice Department's mandamus petition, the Justice Department will be moving for a protective order in the district court, and will request a stay of the depositions.

(f) Competition in Contracting. On June 26, the United States filed an action in the United States District Court for the District of Columbia seeking a declaratory judgment that 31 U.S.C. § 3554(c), a provision of the Competition in Contracting Act of 1984 (CICA), is unconstitutional under the doctrine of separation of powers. Section 3554(c) provides that the Comptroller General may order a procuring agency to award a disappointed bidder or other interested party on a federal project its costs of filing a bid protest, bid preparation costs, and attorney fees, whenever the Comptroller General determines that the procuring agency violated a statute or regulation.

Since CICA's inception, the Department of Justice has taken the position that there are only three constitutional ways that such fees and costs could be awarded: (1) by the Executive Branch procuring agency on its own initiative, in the implementation of a statute directing that such fees be paid; (2) by the Judicial Branch, in the consideration of challenges to agency denials of fee awards pursuant to a grant of subject matter jurisdiction to hear such claims; or (3) by Congress itself, through the passage of a private bill on behalf of a bid protestor that has met the requirements of the Constitution's presentment and bicameral approval clauses. In this case, the award of fees and costs fits into none of these categories. It is possible that this issue will be resolved through the

legislative process. In July, the Senate passed an amendment to the National Defense Authorization Act that would give the Comptroller General authority to make recommendations, not orders, regarding fees and costs.

(g) A-12/Stealth Fighter. On June 7, 1991, two Government contractors filed a complaint in the United States Claims Court arising out of the Department of the Navy's termination of the contract for the development and production of the A-12 "stealth" fighter plane. The case is McDonnell Douglas Corporation and General Dynamics Corporation v. United States. The complaint (i) challenges the Navy's determination that the contractors were in default and the Navy's demand for the return of \$1.4 billion in unliquidated progress payments, (ii) seeks \$1.4 billion in equitable adjustments, and (iii) asks for an unspecified amount in "termination for convenience" costs.

(h) United States of America v. Inslaw, Inc. Inslaw, when it became bankrupt, was engaged in a dispute over the use of software with its customer, the Department of Justice. Inslaw secured a judgment from the bankruptcy court against the Department for approximately \$8 million, the bankruptcy court concluding that the Department had violated the automatic stay in bankruptcy which prohibits creditors from interfering with a debtor's property after it files for bankruptcy. The district court affirmed. However, in a major victory for the Justice Department, the United States Court of Appeals for the District of Columbia Circuit reversed, ruling that none of the acts or omissions alleged by Inslaw would amount to a violation of the automatic stay. Accordingly, the Court of Appeals vacated all orders related to the automatic stay, the only basis for Inslaw's prior judgement. The Court later denied Inslaw's petition for rehearing en banc, but stayed its mandate to permit Inslaw to file a certiorari petition. The mandate has now issued. This matter, which is the focus of an investigation by the House Judiciary Committee, will continue to attract media attention.

(i) Washington Legal Foundation, et al. v. Alexander, et al. In this case, which is pending in the United States District Court for the District of Columbia, white college students and a legal foundation have alleged that the Department of Education has abdicated its statutory duty to terminate federal funding to colleges and universities that offer or permit race-based (minority) scholarships. Plaintiffs seek a declaration that Title VI of the Civil Rights Act of 1964 forbids universities from offering scholarships in which race is a factor, and that Title VI requires the Department of Education to terminate federal funding to universities that have such programs. Plaintiffs also contend that Title VI's alleged prohibition extends even to private scholarships offered by educational institutions, so long as those institutions receive any federal funding.

Virtually every college and university in the country receives federal funding, and many (if not most) offer minority scholarships. Education's policy toward such scholarships has been in flux since late 1990 and early 1991. Shortly after Secretary Lamar Alexander was confirmed in March of this year, the agency began a sweeping reevaluation of the issue. The government's motion to dismiss, arguing that the plaintiffs lack a right of action against the government to dictate Education's enforcement policy, was argued on August 22, 1991. If that motion is denied, it may be necessary for the government to take a position on the sensitive issue of whether Title VI forbids colleges and universities from offering minority scholarships.

(j) Specter, et al. v. Garrett, et al. This case, which is pending in the United States District Court for the Eastern District of Pennsylvania, challenges the process by which the Navy and the Defense Base Closure and Realignment Commission developed recommendations for closure of naval bases, particularly the Philadelphia Naval Shipyard, under the Base Closure and Realignment Act of 1990. Plaintiffs include four U.S. Senators and six Congressmen from Pennsylvania, New Jersey, and Delaware, as well as the states' Governors, Attorney Generals, and the states themselves. Three labor unions and their presidents are also plaintiffs. Plaintiffs essentially claim that the Navy predetermined to close the Shipyard and that it engineered that recommendation by ignoring contrary evidence and withholding information from the Commission and from the General Accounting Office, which had some statutory role in monitoring the process.

Plaintiffs have moved for a preliminary injunction forbidding the Department of Defense from closing any naval base while the case is pending, and a hearing on that motion has been set for September 30. The district court ordered immediate discovery, and both the Navy and the Commission have begun turning over hundreds of thousands of documents. Plaintiffs intend to follow up with numerous depositions, including those of the Secretary and Undersecretary of the Navy and Secretary of Defense Cheney.

(k) Indian Rights to Shellfish in the Pacific Northwest. In United States v. Washington, litigation pending in the United States District Court for the Western District of Washington, the Justice Department soon must decide what position to take on the claimed right of 16 Indian tribes to take shellfish from certain areas. The Department of the Interior supports the tribes' right to take any species of shellfish wherever found with certain specific exceptions, and other federal agencies are willing to support a right of entry onto all tidelands which a tribe has historically fished as long as their security and operational concerns are not harmed. The State of Washington, on the other hand, opposes a comprehensive

determination of the treaty right. Since the Department represents the interests of the tribes and federal agencies, whatever decision it makes is sure to be controversial and opposed by either the State or the tribes. The Department has been investigating the possibility of a settlement as a more amicable, less controversial way to resolve this issue.

(l) Red Squirrels. The litigation over protection of the red squirrel from construction of a telescope by the University of Arizona in its habitat continues to be front-page news in Arizona. In May, plaintiffs failed to enjoin construction until a more rigorous monitoring program could be put in place, and the University has proceeded with construction activity this summer, albeit at a slow pace. A hearing for a preliminary injunction and summary judgment is scheduled for the end of September.

(m) Spotted Owls. The litigation over protection of habitat for the Northern spotted owl in the Pacific Northwest is a major media story both there and nationally because of the way it is seen as pitting development and economic interests squarely against environmental and preservation values. There are several cases pending in various jurisdictions (United States district courts in Washington and Oregon, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court) on a myriad of issues, but all are fundamentally concerned with the balance between timbering and environmental interests.

(n) California Supreme Court Case Involving the Constitutionality of California's Unitary Tax Scheme. The California Supreme Court has agreed to hear the consolidated cases of Barclays Bank of California v. Franchise Tax Board and Barclays Bank International, Ltd. v. Franchise Tax Board and has permitted the United States to file an amicus brief. These cases present the question whether California's unitary taxation system as applied to a foreign corporation and its domestic subsidiary represents an unconstitutional burden upon, and interference with, foreign commerce. The brief filed by the United States on May 15, 1991, at the request of the Department of State, supports Barclays Bank's position and argues that California's unitary taxation system, as applied in these cases, violates the Foreign Commerce Clause of the United States Constitution. These consolidated cases are now awaiting argument and decision in the California Supreme Court; no date for argument has been scheduled.

## B. Matters and Initiatives

### (1) Bolivian Surrender/No Extradition Decree

During the period between September 15 and December 31, the Justice Department will continue to monitor Bolivia's

Surrender/No Extradition Decree, which is modeled after Columbia's. It is anticipated that Bolivian authorities will request evidence in connection with their prosecution of surrendering traffickers. The Department intends to press Bolivia to act on some 15 pending extradition requests and to sign the new extradition treaty negotiated last year.

(2) Federal Deposit Insurance Corporation (FDIC)

The Justice Department currently is handling 134 bank tort cases involving over \$5.3 billion. The amount at stake in this litigation has increased despite a number of favorable judicial decisions. Currently, the Department is engaged in discussions regarding several areas of tension with certain bank and thrift regulatory agencies, particularly the FDIC and the Resolution Trust Corporation (RTC). The issues arise in several discrete contexts. Frequently, the agency commences a damage action against the officers and directors of a failed bank, thereby allowing for third-party claims as well as counterclaims sounding in tort to be filed against the United States or the agency. Sometimes, direct tort suits are filed against either the agencies or the United States by persons alleging injury due to the agencies' actions. In other instances, the agencies desire to construe suits against themselves to sound in tort in order to substitute the United States as defendant and, possibly, to avoid having to pay any adverse judgment out of their own funds. Recently, the Department commenced discussions with the FDIC and the RTC with a view toward arriving at a common position on the issues in tort cases.

(3) Domestic Policy Council Wetlands Task Force

Through its Environment and Natural Resources Division, the Justice Department has continued to work with the Wetlands Task Force to develop recommendations for steps to help strive for the goal of no net loss of wetlands. In August, the President announced the results of that effort, which included commitments to funding acquisition of these resources, creation of mitigation banks in which persons seeking to use some wetlands can create others as offsets, and streamlining the regulatory process. The latter includes revising the "Wetlands Delineation Manual" to define more carefully what a wetland is. The manual revision has been put out for notice and comment, and it is expected that a formal rule will be promulgated this fall pursuant to the Administrative Procedure Act.

(4) NEPA Application to CERCLA Cleanups

The Justice Department is participating in interagency discussions on the issue of whether the National Environmental Policy Act (NEPA) should be applied to cleanups performed by federal agencies at their own facilities under the Comprehensive

Environmental Response, Compensation, and Liability Act (CERCLA). This is a matter of considerable significance to the administration of federal facilities.

(5) Revisions to the Justice Department's Merger Guidelines. During this period, the Justice Department will be working with the Federal Trade Commission on revisions to the Antitrust Division's Merger Guidelines, with the objective of issuing the first ever joint federal enforcement guidelines.

(6) Airline Tariff Publishing

The Justice Department is conducting a civil investigation into airline pricing practices, focusing primarily on the use of computerized fare dissemination services to facilitate communication and agreement among carriers on future pricing strategies. All major airlines and the Airline Tariff Publishing Company, an industry joint venture, are under scrutiny. Airlines publish their rates on an on-line computer system. While this provides customers with up-to-the-minute information on rates, it may permit tacit collusion--the airlines announce tentative price increases but abandon them if competitors do not follow suit. In addition, the system may be used to retaliate against price cutters.

(7) Financial Interest/Syndication Rules

In the wake a ruling by the Federal Communications Commission (FCC), the television networks have petitioned the Justice Department to consent to a modification of the antitrust consent decrees that currently restrict their ownership of financial interests in programming and their participation in the syndication business. Organizations representing the producers are expected to strongly advocate that the Department not consent or that it delay any action until after the time for reconsideration of the FCC ruling has expired. House Judiciary Committee Chairman Jack Brooks has expressed an interest in the process.

(8) Heating Oil Investigation

Following expressions of congressional concern and public outrage, the Justice Department has been conducting an investigation into the causes of a rapid increase in the prices of home heating oil following a cold snap in December 1989. The investigation is continuing.

(9) Gasoline Price Increases

Also continuing is the Justice Department's investigation into the gasoline price increases that followed the Iraqi invasion of Kuwait.

(10) HIV

The Justice Department currently is working with the Department of Health and Human Services to fashion regulations addressing the issue of admitting into the United States individuals with HIV infection. This is an issue that continues to attract media attention.

C. Negotiations and Conferences

(1) Colombia. The Justice Department represents the United States in negotiations and planning aimed at implementing the Declaration of Intent between the United States and the Government of Colombia with respect to mutual cooperation in the investigation and prosecution of narcotics traffickers. The Department expects further requests from Colombia for U.S. evidence needed to prosecute narco-traffickers who have surrendered to ensure that the "surrendered" are successfully prosecuted and appropriately punished for their crimes. The Department also wants to protect both U.S. law enforcement interests and the lives of cooperating witnesses and their families.

(2) Meeting with Swiss Authorities to Discuss Resolution of Pending Forfeiture Cases. Justice Department attorneys plan to meet this fall with Swiss central and cantonal authorities to discuss more than a dozen cases in which the United States has requested that the Swiss freeze bank accounts believed to contain drug trafficking proceeds. The participants will try to devise case-specific solutions that will allow the forfeiture of these funds under either Swiss or United States law. They will also address the issue of the disposal of the assets upon forfeiture.

(3) Organized Crime Conference. An Organized Crime Seminar is scheduled in Suzdol, Soviet Union, for October 21-25. Participants will include law enforcement experts from approximately 20 countries. The Justice Department will represent the United States at the conference.

(4) Chemical Action Task Force. The Report of the Chemical Action Task Force, which was endorsed at the July London Summit, made numerous recommendations for preventing the diversion of chemicals from international commerce to produce illicit drugs. During the next three months, the Justice Department, in conjunction with the State Department, will participate in bilateral and multilateral meetings to promote implementation of the Task Force recommendations.

(5) State Bar President's Day. For the second consecutive year, the Justice Department is planning to host State Bar President's Day, tentatively scheduled for early November. For this event, the presidents, presidents-elect, and executive

directors of each of the state bar associations will be invited for a day of briefings by senior departmental officials on Department of Justice initiatives and programs.

(6) Soviet Visit. As part of a single country project on the "American Legal System and the Rule of Law" sponsored by the United States Information Agency, an eight-member delegation from the Soviet Union will be visiting the Department of Justice during the first week of October. This will be the delegation's second visit to the Department, and will occur at the conclusion of its month-long visit to the United States. It is expected that the delegation will meet specifically with the law enforcement components and Bureau of Prisons officials. The delegation consists of six officials from the Ministry of Justice and two members of the Leningrad (soon-to-be St. Petersburg) City Council.

(7) Memorandum of Understanding Concerning Aviation Security. On July 30, 1991, a Memorandum of Understanding (MOU) concerning aviation security was signed by the United States and the then Union of Soviet Socialist Republics (USSR) Governments. At that time, it was agreed that aviation security experts from the United States and the USSR would meet within 90 days of signing the MOU and would discuss crisis management policies and practices. The Federal Bureau of Investigation (FBI) has been assisting the State Department in the coordination of this project, inasmuch as the MOU discusses the actions to be taken in the event of a terrorist incident involving either a Soviet or U.S. aircraft. A meeting has been tentatively scheduled to occur in Moscow during October 1991. Representatives from the FBI, the Federal Aviation Administration, and the State Department are scheduled to attend.

#### D. Studies

(1) Study on Export Restraints. Last year, the Justice Department's Antitrust Division announced the initiation of a study project to consider the question of whether the antitrust laws could be used to reach overseas conduct that impedes U.S. consumers. It is anticipated that this study, which has involved consultation with other government agencies concerned with the issue, will be completed this fall. This is a matter of extreme interest to other federal agencies and to foreign government agencies.

(2) Immigration and Naturalization Service (INS) 1990 Statistical Yearbook. INS prepares and submits a Statistical Yearbook annually to Congress. The Yearbook contains statistics on immigrant, nonimmigrant, and refugee arrivals, naturalization and derivative citizenship, the apprehension and removal of illegal aliens from the United States, and other program-related statistics. The 1990 report should be released by November.

(3) Federal Bureau of Investigation (FBI) Studies.

During the period between September 15 and December 31, the FBI will release three studies that could attract public interest. In October, the FBI will publish a report of a Special Survey of Selected Felonious Killings of Law Enforcement Officers. Also in October, it will release its six-month preliminary crime trend data for 1991.

A comprehensive study on the forensic use of DNA technology was conducted by the National Research Council of the National Academy of Sciences and is expected to be published this fall. This study was funded in part by the National Institute of Justice of the Justice Department's Office of Justice Programs and the FBI to provide an independent perspective of the technical and social issues associated with the forensic applications of DNA technology. The findings of the study will undoubtedly be of interest in connection with identifying recommended regulatory controls which may be appropriate in this area and which are now under consideration by Congress and by state legislative bodies.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 6, 1991

MEMORANDUM

To: Tony Schall  
 Assistant to the Attorney General

From: W. Lee Rawls *WLR*  
 Assistant Attorney General

Subject: Significant Pending Legislation

Attached is a list of legislation which is currently pending in the House and/or Senate. We anticipate that the attached legislation will see final action before Congress recesses this year. The Department of Justice has has a significant interest in either opposing or supporting these bills.

<u>Bill</u>	<u>Status</u>	<u>Admin. Position</u>
<b>I. Criminal Laws</b>		
Crime Bill	S. 1241 passed Senate.	Admin supports bill, H.R. 1400 & S. 635. House will mark-up Democrat's bill week of 9/23. Support adoption of President's provisions.
Public Corruption	Passed in Senate Crime bill S. 1241.	Supports.
Reauthorization of Independent Counsel (by Dec. 1992)		Position pending.
Violence Against Women Act of 1991 (Biden)	S. 15. Passed Senate Judiciary Committee.	Opposes.

Brady Bill	H.R. 7 and S. 1241. Waiting period for handgun purchases	Opposes unless part of President's crime bill is adopted.
Anti-Terrorism Act of 1991	S. 740. H.R. 2371. Passed in Senate.	Opposes.
Reform of the Banking Industry (Includes DOJ Money Laundering Provisions)	H.R. 6. Passed House Banking S. 543. Passed Senate Banking.	Position pending at OMB.
Racketeer Influenced and Corrupt Organizations	H.R. 1717. Passed in House.	Opposes.
Barring Witness Fees for those Incarcerated (Hughes)	H.R. 2324. Passed in House Judiciary Committee.	Supports.
Sports Gambling (Hatch)	S. 474. Pending in Senate Judiciary.	Opposes.
Federal Prison Industries UNICOR (Dixon)	S. 1691. No action.	Opposes.

## II. Civil Laws

<u>Bill</u>	<u>Status</u>	<u>Admin. Position</u>
Civil Rights Act of 1991	H.R. 1. Passed by House. No formal Senate action.	Veto threat.
Joint Production Ventures	S. 1163 - Admin. bill, no action; H.R. 27, on House calendar; S. 479, on Senate calendar.	Veto threat on H.R. 27 & S. 47
Civil Justice Reform	S. 1569, pending in Judiciary, no action.	No position.
Motor-Voter	S. 250, on Senate calendar.	Strongly oppose Endorse S. 921 as alternative.
Resale Price Maintenance	S. 429. Passed Senate; H.R. 1470, on House calendar.	Veto threat on both bills.

Hatch Act Repeal	S. 914 & H.R. 20. No action in either chamber.	Veto threat (no yet formally presented).
Baby Bell	S. 173, passed Senate. No action in House yet.	Veto threat.
Community Health Centers	H.R. 2239, pending House Judiciary Cmte; Misc pending Senate bills. No action.	Veto threat.
Cable	S. 12, on Senate calendar & H.R. 1303, in Energy & Commerce Cmte.	Strongly oppose Veto threat likely.
D.C. Sup. Court	H.R. 568, in D.C. Cmte.	Veto threat.
Campaign Finance Reform	S. 3, passed Senate; no House bill.	Veto threat.

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR  
WASHINGTON, D.C.

September 13, 1991

MEMORANDUM FOR EDE HOLIDAY  
ASSISTANT TO THE PRESIDENT  
AND SECRETARY OF THE CABINET

FROM: LYNN M. MARTIN 

SUBJECT: 1991 Fall Issues Assessment

The following report summarizes key issues and activities at the Department of Labor for September 15 to December 31, 1991.

I. HIGHEST PRIORITIES - SUMMARY LISTING

- o Strive for better ways to provide working American men and women with true job security.
- o Develop and implement a strategy to achieve the objectives of Track III of the President's AMERICA 2000 program.
- o Secure Senate confirmation of DOL's Senior Management Team.
- o Defeat the Striker Replacement bills (S.55/H.R. 5).
- o Secure passage of amendments to the Job Training Partnership Act (JTPA).
- o Implement Memorandum of Understanding (MOU) on labor cooperation with Mexico to support the President's objective to negotiate a North American Free Trade Agreement (NAFTA).
- o Publish in the Federal Register the Final Rule for the prevention of occupational diseases caused by Bloodborne Pathogens by December 1.
- o Examine departmental organization to consolidate duplicate functions and better serve the beneficiaries of DOL programs.
- o Implement DOL's Glass Ceiling Initiative.
- o Address OSHA Reform bills (S. 1622/H.R. 3160).

U.S. Department of Labor

- o Promote DOL's Pension Opportunities for Workers Expanded Retirement (POWER) proposal for expanded pension coverage, simplification, and portability.
- o Revise labor organization financial report forms to implement the Beck decision.
- o Consolidate departmental international activities to help better implement initiatives to assist Eastern Europe, Czechoslovakia, and Bulgaria. Similar programs are being planned for Albania, Romania, and the Baltics.
- o Exemplify DOL as a Model Workplace by upgrading employee skills, creating a safer, healthier, more productive Federal workplace where employees achieve greater job satisfaction through involvement in decision-making, and share this program with other Federal agencies.

II. SURVEY OF KEY ISSUES

SECRETARIAL ACTIVITIES

September 16 and 17. Separate Interviews with National Hispanic Reporter, Hispanic Magazine, El Nuevo Herald, La Opinion, Hispanic Business Magazine and La Prensa. Topic: DOL's Glass Ceiling Initiative.

September 16. Deliver remarks to education and government leaders at Fortune Magazine's Education Summit, at the Capitol Hilton. Topic: School-to-Work Transition.

September 17. Meet at DOL with Veterans' Affairs Secretary Derwinski, to discuss interagency budget issues; with Rep. Shay (R-CT), to discuss the Construction Safety Bill; with Dean Kleckner, President, American Farm Bureau Federation, to discuss seasonal farmworker issues.

September 18. Participate in the Washington Times Editorial Board luncheon, to discuss current Labor issues.

September 18. Courtesy call at DOL by George Herbert Walker, III, Congressional candidate from Missouri.

September 19. Meet with Chairman Pedro Viera, and Vice Chairman Jose Velez of Service, Employment, and Redevelopment (SER) - "Jobs for Progress". Subject: Current SER programs.

September 19. Deliver remarks at the National Press Club. Topic: State of the workforce.

September 23. Interview with the Institutional Investor. Topic: Pensions.

September 23. Deliver keynote address at the National Restaurant Association's Annual Conference, at the Washington Hilton Hotel. Topic: The Labor agenda.

September 24 - October 6 - Vacation

October 7. Deliver keynote address at the National Alliance of Business Annual Conference, at the Washington Hilton Hotel.

October 8. Deliver keynote address at the National Construction Association Annual meeting in Washington. Topics: DOL's Glass Ceiling Initiative.

October 8. Deliver remarks at the Committee For Economic Development forum in Washington. Topics: Military training in the workforce and integrating military personnel into the civilian workforce.

October 10. Deliver keynote address at the Conference Board's Human Resources Conference, at the Waldorf-Astoria Hotel, NY.

October 12. Lunch at DOL with Clayton Yeutter, Chairman, Republican National Committee.

October 12. Deliver remarks at the Indiana Republican State Dinner, at the Indianapolis Civic Center, IN.

October 14. Deliver keynote address at the Western Wisconsin 2000 Economic Development Conference, sponsored by Rep. Steve Gunderson (R-WI), in LaCrosse WI. Topic: The changing workforce and how we can prepare for it.

October 16. Co-host at DOL with U.S. Trade Representative Carla Hills, a meeting of the Labor Advisory Committee on Trade Policy and Trade Negotiations.

October 17. Deliver remarks at the Bureau of National Affairs Conference on Work & Family, at the Washington Hilton Hotel. Topic: DOL work and family agenda.

October 19. Courtesy call at DOL by Arthur Fletcher, Commissioner, U.S. Commission on Civil Rights.

October 21. Deliver keynote address at the American Trucking Association's Management Conference, at the Washington Hilton Hotel. Topics: ERISA, unemployment taxes, and striker replacements.

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October 23. Meet for breakfast in the White House Mess with Ambassador Carla Hills. Subject: Labor Advisory Committee.

October. Host a reception at DOL, following the deposit at ILO Headquarters of the U.S. ratification of ILO Convention No. 105 concerning the abolition of forced labor (signed by President Bush last May, and ratified by the Congress).

October 25. Chair meeting, at DOL, of the Pension Benefit Guaranty Corporation (PBGC) Board of Directors, which includes Secretary Brady and Secretary Mosbacher.

October 26. Deliver remarks at Sen. McCain's (R-AZ) "Arizona Woman 1991" event in the Phoenix Convention Center, AZ. Topics: DOL's Glass Ceiling Initiative, and women in the workforce.

October 26. Attend Arizona GOP Fundraiser.

November 4-6. Chair the U.S. delegation to the European Community (EC) meeting with Commissioner for Social Affairs, Vasso Papandreou and his delegation. Topics: Employment rights and U.S. equal employment opportunity laws and policies; EC efforts to address disparities between workers in the North and South of the European Community; and organized labor's response in Europe to the economic restructuring that is attending the creation of a European Single Market (EC 1992).

November 7. Deliver remarks at the U.S. Chamber of Commerce Association's Insiders Breakfast, at the Chamber of Commerce building, Washington. Topic: Toward an effective and competitive workforce.

November 14. Deliver remarks at a South Carolina GOP cocktail reception fundraiser in Charleston, SC.

November 15. Deliver remarks at the Fortune 500 Forum for CEOs, Chairmen, and Presidents of Fortune 500 companies, at the Charleston Place, SC.

November 25-December 6. Travel to Portugal and Spain to meet with government officials and private sector representatives, to share lessons from the European Community (EC) that may be applicable to a North American Free Trade Agreement (NAFTA) and European migration flows. Travel to Italy to address the Ripon Educational Fund's Ninth Annual Transatlantic Conference in Rome. Brief visit to Moscow to address the closing session of a U.S.-Soviet conference on business education.

December 9. Preside in Mexico City, with Mexican Secretary of Labor and Social Welfare Arsenio Farell Cubillas, over an international conference open to union and industry

representatives from the U.S., Mexico, and Canada. Topic: Occupational safety and health issues in the iron and steel industry.

### INITIATIVES AND POLICIES UNDER DEVELOPMENT

Memorandum of Understanding (MOU) on Labor Cooperation with Mexico. In support of the President's objective to negotiate a North American Free Trade Agreement (NAFTA) with Mexico and Canada, DOL and Mexico's Secretariat of Labor and Social Welfare signed and are currently implementing an MOU regarding cooperation on labor issues such as: occupational health and safety; child labor; general work conditions, including labor standards and their enforcement; resolution of labor conflicts; worker training; and labor statistics.

Track III of the President's AMERICA 2000 Program. DOL is developing and plans to begin implementing a strategy to achieve the objectives of Track III of the President's AMERICA 2000 program. The strategy will include: (1) a national campaign to promote public awareness of the benefits of life long learning and training; (2) certification and standards that are job-related and industry specific in order to expand structured training opportunities for adult workers; (3) a program to promote the use of school-to-work programs that integrate educational programs with work-based learning concepts, in order to provide more meaningful educational training opportunities for youth; and (4) continued implementation of the Secretary's Commission on Achieving Necessary Skills (SCANS), to provide the views of employers to both education and training institutions concerning the skills and proficiency levels necessary for young people to enter and succeed in the world of work.

Glass Ceiling Initiative. DOL has initiated a four-point program to remove the artificial barriers ("glass ceiling") preventing qualified minorities and women from reaching management positions: to educate Department officials in the intricacies of corporate human resource issues; to conduct corporate management reviews having a glass ceiling component; to serve as a catalyst to foster voluntary efforts within the corporate community to remove any barriers which may exist to the advancement of minorities and women into management positions; and to give public recognition and rewards to Federal contractors demonstrating particularly creative and effective efforts.

Expansion of Technical Assistance Programs for Eastern Europe. In FY 1990, DOL initiated programs of labor technical assistance in Poland and Hungary. In FY 1991, the funding and scope of these programs was expanded and additional assistance is now being provided to Czechoslovakia and Bulgaria, and planned for Albania,

Romania, and the Baltics. These programs are designed to institute social safety nets for dislocation workers; to empower individuals through training, with tools needed to succeed in a market economy; and to advance market-oriented reforms of social and economic institutions. Two new key priorities for 1991 are assistance to deal effectively with mass unemployment associated with privatization, and economic education for workers.

BECK Decision/Functional Reporting for Labor Unions. Pursuant to the Beck decision, implement changes to union functional reporting on the Labor Organization Annual Report Form LM-2. This change would require unions to report their expenditures in "functional" categories to disclose expenses made for certain kinds of activity, such as political candidate support, lobbying as well as for contract negotiations, contract administration, and union organizing. It is likely to be very controversial with the labor unions.

Substance Abuse in the Workplace. Substance abuse has been estimated to cost employers over \$100 billion annually. While larger firms have begun to implement programs to deal with this problem, smaller firms have lacked information and resources. DOL is developing a program to assist such employers by disseminating state-of-the-art information on workplace substance abuse and employee assistance programs.

Initiatives for the Soviet Union. DOL is continuing to provide advice for a private sector initiative in support of development of the Soviet coal industry. The Department is also working with the Organization for Economic Cooperation and Development (OECD) on a possible conference in the Soviet Union on a productive labor market in a free enterprise economy.

Tamper-Resistant Sampling Cassettes. DOL's Mine Safety and Health Administration (MSHA) plans to require that dust sampling cassettes be more tamper-resistant. A prototype has been developed that is being evaluated by MSHA, the Bureau of Mines, and the National Institute for Occupational Safety and Health, and may be available commercially in January 1992.

Mine Safety and Health Four State Initiative. DOL's MSHA is coordinating state and federal inspections at underground coal mines employing fewer than 50 miners, in a Joint Mine Assistance program to reduce serious mining accidents in Kentucky, West Virginia, Pennsylvania and Virginia, which have 70% of all coal mining fatalities.

Heatpacking Special Emphasis Program. DOL's Occupational Safety and Health Administration (OSHA) is undertaking a Special Emphasis Program (SEP) and issuing enforcement instructions for a series of comprehensive SEP inspections on ergonomic hazards in

meatpacking plants, identified as a major source of occupational illness, and resulting in high incidence rates and related workers' compensation costs. Enforcement actions under this program are expected to begin before December 1991.

**Employment Service Reform.** DOL is developing administrative and legislative options for strengthening the capacity of the public Employment Service (ES) to meet the future needs of the American workforce. These options will include the development of ES performance standards, an improved ES reporting system, increased technical assistance to the system, and a research and demonstration program to test new ideas and acquire basic information on key ES questions.

### **SIGNIFICANT PROBLEM AREAS**

**General Aptitude Test Battery (GATB).** In 1986, the Department of Justice took the position that "race-conscious" use of the GATB resulted in "reverse discrimination." The GATB, used by 34 States to test job applicants for subsequent referral to employers, uses a scoring adjustment procedure that adjusts scores for specific racial and ethnic groups. In July 1990, DOL proposed discontinuing its use and solicited comments from the public. Over 1,500 comments were received, many from employers and local and joint apprenticeship councils who opposed the proposal. Other groups favored the proposed action. A study by the National Academy of Sciences did not provide a basis for resolving the issue. The GATB has received attention in the national press and in Congress because employers strongly support the continued use of GATB as a tool for ES job referral. The Department's final decision, in concert with the Administration, is imminent.

**Executive Life Insurance Company Failure.** DOL's Pension and Welfare Benefits Administration (PWBA) is continuing to work to resolve annuities issues raised by the failure of Executive Life Insurance Company. Key Congressional committees are questioning the extent of liability of PBGC to annuitants whose insurer cannot make annuity payments. The PBGC's policy is that it does not guarantee annuities. Further insurance company failures could place additional pressure on the PBGC and the Department from our authorizing committees.

**Chemical Industry Enforcement Strategy.** DOL's Occupational Safety and Health Administration (OSHA) is developing and implementing an enforcement strategy for the entire chemical industry which includes conducting special emphasis enforcement programs in the petrochemical industry (PETROSEP) and

promulgating a process safety management standard. This strategy responds to a series of explosions in oil and chemical plants which included numerous fatalities. Congressional authorizing committees and the media have shown keen interest in this strategy and its development.

Asphalt Fumes Permissible Exposure Limits. OSHA is updating permissible exposure limits for construction, maritime and agriculture. (See general discussion under "Regulations", below.) As part of this rulemaking, OSHA is planning to propose an exposure limit for asphalt fumes. It is also planning to make a preliminary determination that asphalt fumes are carcinogenic. The asphalt industry, as represented by the Asphalt Institute, has become aware of OSHA's activities and is beginning to exert pressure on the Department. It is likely the asphalt industry will also raise this issue with the White House, OMB and specific Congressmen.

Review of OSHA State Plans. The Occupational Safety and Health Administration is currently engaged in a comprehensive review of state plans for enforcing the OSH Act. This review will include consideration of North Carolina's state plan. A tragic fire earlier this month in that state claimed the lives of 25 poultry workers and recently prompted the AFL-CIO to petition OSHA to withdraw its approval of the North Carolina plan.

#### LEGISLATIVE ACTIVITIES

Prevent Enactment of Striker Replacement Legislation. H.R. 5, so-called "striker replacement" legislation, passed the House as amended on July 17 by a final vote of 247-182. A slightly modified Senate companion bill, S. 55, was reported out of the Senate Labor and Human Resources Committee on June 19. Senate floor action is considered likely in late September or early October.

Amendments to the Job Training Partnership Act of 1991 (JTPA). Key elements of the Administration's legislation to amend JTPA, H.R. 2496 and S. 1404, are to maintain the successful cornerstones of the current JTPA delivery system; target JTPA on youth and adults most at-risk of failure in the job market; achieve a more comprehensive, coordinated human resources program; enhance program quality; and increase program accountability. H.R. 3033, the bipartisan JTPA bill approved unanimously in the House Subcommittee on Employment Opportunities, is scheduled for markup in the Education and Labor Committee on September 24. The Senate is presently working on introduction of a bipartisan bill.

Prevent Enactment of Mandated Parental Leave Legislation. Mandated parental leave legislation, identical to that which the 101st Congress passed and the President vetoed, has been introduced in both the House and the Senate. Both House and Senate leadership have identified mandated parental leave as a priority issue. Action is likely in both Congressional chambers this fall.

Support for East European Democracy (SEED) Act. Efforts to amend the 1989 SEED Act failed at the end of the last Congress. FY 1991 assistance programs for Eastern Europe are being undertaken under existing SEED Act authority and authority provided in conjunction with the FY 1991 Foreign Appropriations Act. The Congress is once again considering amendments to the basic authority provided in the 1989 SEED legislation. DOL is actively participating in the formulation of Administration policy in the area of labor technical assistance and other social initiatives.

Unemployment Insurance (UI) Reform. Rep. Tom Downey (D-NY) has stated that he will intensify his efforts to push his UI reform bill, H.R. 3040, through Congress. This bill would extend benefits to laid-off workers up to 20 additional weeks based on a three-tier system. Additionally, the Downey bill, as originally introduced, would have allowed the President to pay for the plan by either increasing the taxable wage base or by declaring an emergency, which would place the bill outside of the pay-as-you-go constraints of last year's budget agreement. The next "reform" package will more than likely provide for such an option for the President. The Department is opposed to this legislative proposal.

North American Free Trade Agreement (NAFTA). Senate floor consideration of S.Res. 109, Sen. Don Riegle's (D-MI) measure to allow amendments to a NAFTA in the areas of environmental standards, labor rights, dispute resolution, rules of origin, and adjustment assistance, is deemed possible, but not likely during the remainder of the current Senate session.

Pension Losers Legislation. DOL and the Pension Benefit Guaranty Corporation (PBGC) will continue to oppose legislation expanding PBGC paid benefits to individuals who lost pensions before ERISA was passed in 1974. The legislation is currently attached to the Older Americans Act, which must be reauthorized by September 30. Benefits paid under the legislation could cost the PBGC \$500 million and violate the budget agreement's pay-go rules. The bill could also create a precedent of using PBGC funds to bail out unrelated constituencies. PBGC currently has a \$2 billion deficit.

**ERISA Preemption.** Currently, ERISA preempts any state law that "relates to" employee benefits (excluding some specific areas of banking and insurance regulation). This preemption has been broadly interpreted by the courts. Bills that would limit the scope of ERISA preemption have been introduced in Congress. Both House and Senate Labor Committees are expected to mark up legislation in September, with possible floor action before the end of this session. The bills include provisions which would preserve state laws providing compensatory and punitive damages for unfair denial of insurance benefits (which are provided through ERISA plans), as well as state laws regulating apprenticeship programs and prevailing wages. The Department is currently developing a position on the bills.

**Veterans' Reemployment Rights.** The Administration proposed a Veterans' Reemployment Rights bill this year to update the existing VRR law. The House passed H.R. 1578, Rep. Tim Penny's (D-MN) VRR bill, on June 26. Penny's bill is strongly supported by the Administration because it contains the majority of the Administration's bill. The Senate is expected to consider S. 1095, Sen. Cranston's (D-CA) version of H.R. 1578, in late September. The Administration has not yet formalized a position on the Cranston bill.

**Davis-Bacon Reform.** The last major amendments to the Davis-Bacon Act were enacted in 1935, when Federal construction contracts above a \$2,000 threshold were made subject to prevailing (union) wage coverage. There are two major Davis-Bacon reform packages currently pending: H.R. 1987, introduced by House Labor Standards Subcommittee Chairman Austin Murphy (D-PA); and S. 1689, the companion bill introduced just before the August recess by Senate Labor and Human Resources Chairman Edward Kennedy (D-MA). We expect to see movement on both bills in the fall.

**Glass Ceiling Legislation.** Senate Minority Leader Robert Dole (R-KS) and Rep. Susan Molinari (R-NY) intend to introduce legislation when Congress reconvenes to study whether the "glass ceiling" exists. The Secretary of Labor would chair the Glass Ceiling Commission to be established by the legislation. DOL has not taken a formal position on the legislation.

**POWER Proposal.** The Department will continue to testify before Congress on the need to expand pension coverage through enactment of a simple small business pension program and simplification of pension rules. Secretary Martin testified at a Senate Small Business Committee hearing on September 12. Additional hearings in the Senate Finance Committee are expected.

**OSHA Reform.** On August 1, Sen. Edward Kennedy (D-MA) and Rep. William Ford (D-MI) introduced S. 1622 and H.R. 3160, respectively. "The Omnibus OSHA Reform Bill" includes provisions

for extending protection under the OSH Act to farmworkers and Federal employees. Other provisions include allowing employees to participate in company health and safety committees, allowing workers the right to refuse dangerous work, and authorizing workers to challenge penalties for safety and health violations. Additionally, the legislation would require OSHA to move quickly on setting new standards for exposure to chemicals and updating current regulations. Sponsors of the legislation hope also to extend OSHA's authority to impose fines upon Federal workplaces which are in violation of health and safety codes. Preliminary review indicates that the Department will oppose this legislation, but the Secretary has not made a final decision.

**Coal Commission.** A hearing on the status of the United Mine Workers of America (UMWA) health benefits funds is expected in the Senate Finance Committee this month. The hearing is expected to focus on the report issued by former Secretary Dole's Coal Commission, established pursuant to the Pittston Coal Co. strike settlement. The report suggested that a Federal enterprise ought to be established and funded through premiums/taxes on the coal industry to pay for the benefits of "orphans" (individuals whose earned health benefits are not being paid for by an existing company). The Department will be coordinating a position with HHS, Treasury and OMB.

**PBGC Legislation.** The Department will work with Treasury and Commerce to review PBGC's proposals to improve pension funding requirements. This legislation could result in the loss of substantial revenue and have a major cost impact on large employers with underfunded pension plans. The provision--but no means to pay for it--was requested in the President's budget last year. The Department and the Administration have already approved legislation--also requested in last year's budget--to improve PBGC's ability to recover its claims in bankruptcy proceedings (recoveries against bankrupt companies who have terminated underfunded pension plans). Legislation to change funding requirements may be introduced this session.

**Child Labor Criminal Penalties.** Section 843 (a) and (b) of "The Violent Crime Act of 1991," proposes to increase criminal penalties for willful violations of child labor laws when such violations cause death or serious injury. DOL and OMB are currently drafting a statement of Administration policy. The legislation is set for sequential referral.

**Immigration Reform and Control Act (IRCA).** DOL is preparing for possible House oversight hearings on the agency's enforcement of the H-2A Program authorized by IRCA. Under IRCA, employers are allowed to apply for non-immigrant alien workers to perform agricultural work of a seasonal or temporary nature. The H-2A program requires employers to apply for a DOL certification for

services of such workers. Regulatory standards regarding recruitment of U.S. workers, wages, housing, meals, transportation and workers' compensation must be met before certification is granted. Majority staff of the House Education and Labor Committee issued a July 1991 report on the use of H-2A workers in the Florida sugar cane industry that documents alleged inadequacies in the DOL administration and enforcement of the H-2A program.

### REGULATIONS

Final Rule For The Prevention Of Occupational Diseases Caused By Bloodborne Pathogens. OSHA is finalizing its rule on Bloodborne Pathogens and expects to have a Federal Register publication date of December 1991. The extensive and complex record supporting the rule has resulted in an extended development time for the final rule. The agency has committed to completing the document by the December date and OMB has agreed to expedite a review to meet the deadline.

Immigration Act of 1990. Interim final regulations or final regulations will be published this fall for four programs: D-1 visa crewmembers, H-1B visa specialty occupations, F-1 visa foreign students, and permanent employment-based immigration. An advanced notice of proposed rulemaking and a notice of proposed rulemaking to implement the labor market information pilot project will also be published this fall.

Disabilities Act of 1990. The Department will continue efforts to publish the "Americans with Disabilities Act of 1990" procedural regulations and engage in ongoing interagency coordination with the Equal Employment Opportunity Commission.

Participant Directed Individual Account Plans (404(c)). On March 13, 1991, DOL published in the Federal Register a repropoed regulation relating to the circumstances under which a plan fiduciary is relieved of liability for investment decisions made by plan participants with respect to their individual accounts. A final regulation should be ready for publication in the Federal Register early in 1992.

Final Rule on Formaldehyde. OSHA issued a proposed rule in July. It is expected that a final rule will be published without the necessity for a public hearing since the proposal had been agreed to by both industry and labor. The proposal reduces the permissible exposure limit (PEL), provides limited medical removal protection, and revises the labeling and training requirements. The Administrative Stay of the revised standard has been extended to cover the time necessary to finalize this rule.

Final Rule on Asbestos (Tremolite, Anthophyllite and Actinolite). OSHA expects to issue its final rule late this year or in January 1992 on whether to regulate nonasbestiform tremolite, anthophyllite and actinolite in the same manner as asbestos.

Final Rule on 4,4-Methylenedianiline. OSHA expects to issue its final rule in early 1992 on workplace standards for 4,4-'Methylenedianiline, an animal and potential human carcinogen. This is OSHA's first final standard resulting from mediated rulemaking techniques.

Proposed Rule on Lead In Construction. OSHA expects to issue an NPRM in 1992 that will afford construction workers broad protection equivalent to those provided in the agency's 1978 standard for general industry. At the same time, OSHA is updating the permissible exposure limits for air contaminants (including lead) in the maritime, agricultural, and construction sectors and expects to have an NPRM early next year. The air contaminants' update for construction will propose lowering the permissible exposure limit for lead from the current 200 micrograms per cubic meter of air to 50 micrograms per cubic meter.

Request For Information On Indoor Air Quality. OSHA will issue a request for information in September on indoor air quality. Public comment is being solicited on the general health effects of poor air quality, the effectiveness of ventilation systems, building maintenance programs currently in use, and the hazards of specific contaminants such as passive tobacco smoke and radon.

Advance Notice of Proposed Rulemaking (ANPRM) on Ergonomic Safety and Health Management. OSHA will issue an Advance Notice of its intention to initiate rulemaking for a comprehensive ergonomics standard. Owing to the lack of such a standard, OSHA's only enforcement tool relating to ergonomic hazards is the General Duty Clause of the Occupational Safety and Health Act, Section 5(a)(1), which requires employers to provide a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical injury. This notice should be published in the Federal Register in the 2nd quarter of FY 92.

Process Safety Management Standard. The Clean Air Act Amendments of 1990 require OSHA to issue a Process Safety Management standard by November 1991. A report on contract workers in the petrochemical industry has recently become available and will be placed into the public record. A Federal Register notice of reopening the public record to do this and to take public comment on the contractor worker issue will be published in the last quarter of FY 91.

PEL Update for Construction, Maritime and Agriculture. In 1989, OSHA published updated permissible exposure limits (PELs) for general industry. OSHA is now developing a proposal to update the PELs for construction, maritime and agriculture. A proposal is expected to be published in the fall of this year. A controversial aspect of this rulemaking is asphalt fumes - see discussion under "Significant Problem Areas", above.

NPRM on the Reporting of Fatalities and Multiple Hospitalization Accidents. OSHA expects to issue an NPRM in November to modify the existing regulations for employers to report occupational fatalities. The proposal would require employers to report fatalities and multiple hospitalizations within 8 rather than 48 hours of their occurrence. The proposal would also require employers to report any accident that results in the hospitalization of three or more workers, thereby replacing the current threshold of five or more hospitalizations.

NPRM on the Recording and Reporting of Occupational Injuries and Illnesses. OSHA expects to issue an NPRM in December/January to propose a comprehensive revision of the injury and illness recordkeeping system. The revision will modify the recordkeeping regulations, supplementary instructions and forms used by nearly 750,000 business establishments.

#### REPORTS OF STUDIES

Mexican Free Trade Agreement (NAFTA) Labor Issues. OSHA will continue working with its Mexican counterparts to finish a comparison of the occupational safety and health programs of the U.S. and Mexico. This comparison, part of the two countries' Action Plan designed to support the development of a Free Trade Agreement, will examine aspects of the U.S. and Mexican programs.

Bureau of Labor Statistics (BLS) Major Economic Indicators:

September 26.	U.S. Import and Export Prices Indexes
October 4.	The Employment Situation
October 11.	Producer Price Index
October 17.	Consumer Price Index
October 24.	U.S. Import and Export Price Indexes
October 29.	Employment Cost Index
November 1.	The Employment Situation
November 13.	Producer Price Index
November 14.	Consumer Price Index
November 27.	U.S. Import and Export Price Indexes
December 6.	The Employment Situation
December 12.	Producer Price Index
December 13.	Consumer Price Index
December 27.	U.S. Import and Export Price Indexes.

**Child labor.** The Department will undertake a study on child labor problems in the US and Mexico as part of the work plan designed to implement the MOU between the US and Mexican Labor Departments.

**Coal Mine Respirable Dust.** The Coal Mine Respirable Dust Task Group, established to review the respirable coal mine dust program as enforced by MSHA, will submit a report in November 1991. The report will focus on the results of the spot inspections the task group began conducting in July at nearly 600 mines throughout the Nation to determine dust levels, and evaluate compliance with regulations. This follows the MSHA investigation that found widespread tampering with respirable coal dust samples taken by mine operators as part of DOL's program to protect miners from coal workers' pneumoconiosis.

**Blueprint for Action: Building Community Coalitions.** This "user-friendly" publication scheduled for late September 1991, will serve as a guide to the SCANS skills foundation and competencies, "What Work Requires of Schools" and as a primer on building coalitions to help promote the SCANS message.

**Workplace Literacy Survey: Meeting the Nation's Needs.** The Department will release a report in October, prepared by the Educational Testing Service which will profile the workplace literacy of two major DOL population groups, participants in Job Training Partnership Act programs and clients of Employment Service/Unemployment compensation programs. The document will be patterned after reports produced by the National Assessment of Educational Progress (NAEP).

**Health insurance coverage (COBRA).** FWBA will conduct a research projects to analyze the impact of continuation of health insurance coverage (COBRA), including identifying which segment of those eligible have actually elected the coverage and determining what is known about their actual costs in relation to the statutory cap on premiums employers may charge. This work may be important if proposals to expand health coverage with COBRA-like requirements are seriously considered.

#### **MEETINGS OF EVENTS**

**Mexican Free Trade Agreement (NAFTA).** On December 9-10, the U.S. and Mexico will hold a seminar to analyze hazards in the iron and steel industry and a discussion of cases in which the incidence of occupational accidents and illnesses has been successfully reduced. Secretary Martin will deliver a keynote address.

**East European Democracy (SEED) Act.** From September 8-28, a team of 10 inspectors from Poland will visit Chicago, Illinois, to

study at the OSHA Training Institute and participate in workplace inspections with OSHA field personnel. The following month, 10 OSHA safety and health experts will head a tri-partite delegation to Poland. The focus of the delegation will be primarily to assist in inspections of typical Polish workplaces under the Support for East European Democracy (SEED) Act.

Immigration Nursing Relief Advisory Committee. The second meeting of the Immigration Nursing Relief Advisory Committee will be held in November or December. This Committee was established pursuant to the Immigration Nursing Relief Act of 1989 to assist the Secretary of Labor in carrying out the duties under the Act. Membership includes representatives of HHS, Justice, hospitals, labor organizations, and other interested organizations.

Mentoring Conference. DOL will sponsor a national mentoring conference on October 18, 1991, in Washington, D.C. The Conference theme is "Mentoring: A Sound Investment in America's Future". Conference panels will explore the roles of education, business/labor and public/private human services in volunteer mentoring activities.

#### COURT DECISIONS/LITIGATION

##### **OCCUPATIONAL SAFETY AND HEALTH ACT**

AFL-CIO v. Department of Labor. The case involves numerous industry groups, as well as the AFL-CIO, in a challenge of the validity of our generic air contaminants standard, which sets permissible exposure limits (PELs) for 428 toxic substances. This case is crucial to OSHA's ability to modify multiple PELs without conducting substance by substance analyses.

Secretary of Labor v. Caterpillar Tractor Corp. The Occupational Safety and Health Review Commission is expected to decide soon whether the Department can cite an employer for multiple instances of violative conduct where the employer has evidenced egregious failure to comply with the Act. This issue is crucial to the Department's policy of assessing large penalties against the worst offenders.

##### **MINE SAFETY AND HEALTH ACT**

Dust cassettes. At issue in these cases is the apparent intentional removal of respirable coal dust from samples submitted by companies. These samples are designed to give an accurate picture of the level of respirable dust in operators' coal mines. These cases include more than 500 coal mine operators and more than \$6.5 million in proposed civil penalties.

Also, several related cases are pending in the U.S. Attorney's office for possible criminal prosecution. In addition to this litigation, we expect more congressional hearings.

"Walk-around". In Thunder Basin Coal Co. v. Martin, a Federal district court enjoined the Secretary from enforcing the Department's regulations regarding the right of miners to choose individuals to represent them during "walk-around" inspections of safety and health inspections at mines. The basis of this decision was that there was a reasonable likelihood that enforcement of the regulations would conflict with the right of mine operators under the National Labor Relations Act (NLRA) to impose certain restrictions on access to the mine by union representatives. On appeal, we will argue that the district court did not have jurisdiction to decide whether the Secretary's regulations conflict with the NLRA, and that the decision should have been decided in the first instance by the Federal Mine Safety and Health Review Commission. This case is of major interest to mine operators facing union organizing efforts.

#### EMPLOYEE RETIREMENT INCOME SECURITY ACT

Martin v. AFG Industries; Martin v. Pacific Lumber Company; Martin v. Magnetek (Annuities Cases). In June and July 1991, the Department of Labor brought three civil actions against fiduciaries of pension plans that had purchased group annuity contracts from Executive Life Insurance Co. to fund benefits for the plans' participants and beneficiaries. The complaints allege that the funds violated ERISA by failing to conduct a prudent selection process under the circumstances. The lawsuits seek to require the defendants to restore any losses suffered by the participants or beneficiaries, to guarantee the annuities through another carrier, and to permanently bar the defendants from serving as fiduciaries or serve providers to any plan governed by ERISA.

#### VIETNAM ERA VETERANS' READJUSTMENT ASSISTANCE ACT OF 1974

King v. St. Vincent's Hospital. The Supreme Court granted certiorari in this case, which presents the issue of whether a reasonableness standard should be applied to a National Guard member's request for leave from employment in order to serve full time in the National Guard. The Government is representing the employee.

#### FAIR LABOR STANDARDS ACT

Martin v. Burger King Corporation. The Eleventh Circuit in this case will consider whether the district court erred in dismissing the Secretary's injunction action against Burger King. The Secretary brought this action to enjoin the fast food company's

failure to comply with the FISA's provisions regulating the employment of 14 and 15-year-old children. Despite evidence of widespread violations in the company-owned restaurants and a history of unfulfilled promises of compliance by corporate officials, the district court dismissed the action as moot upon the company's implementation of a policy to permanently discontinue employing anyone under the age of 16.

Public Employer-Overtime Cases. Pursuant to the Supreme Court's 1985 decision in Garcia v. San Antonio Metropolitan Transit Authority, the Department has brought suit under the FLSA against the States of New York, Wyoming, Alabama, and West Virginia, seeking overtime compensation found to be due to employees of the states.

#### SERVICE CONTRACT ACT

Service Employees Int'l Union v. Martin. The SEIU in this case alleges that DOL has improperly failed to periodically adjust the minimum fringe benefits levels that must be incorporated into Federal contracts that are governed by the Service Contract Act. The Department recently completed reviewing minimum fringe benefit rates and revised the methods by which those rates are set. The Office of Management and Budget agreed with the Department's new approach. In addition to raising the government's service contract costs dramatically, these actions are expected to make moot the outstanding issues in this lawsuit.

#### DAVIS-BACON ACT

Building and Construction Trades Department, AFL-CIO v. U.S. Department of Labor Wage Appeals Board (Midway). In May of this year, a Federal appeals court issued a decision partially invalidating a DOL regulation providing for the payment of Davis-Bacon Act prevailing wages to certain truck drivers who haul material or supplies to or from the site of a covered Federal construction project. In the court's view, the Davis-Bacon Act does not permit coverage of "material delivery truck drivers who come on to the site of the work merely to drop off construction materials" from bona fide commercial supply sites. The government decided against seeking rehearing in the court of appeals and is considering what actions would be appropriate when the judicial review process has been concluded.

#### AIRLINE DEREGULATION ACT

Air Line Pilots Association v. U.S. Department of Labor. A lawsuit was filed last year in Federal district court challenging the Department's failure to promulgate regulations to implement the Airline Employee Protection Program (AEPP) provisions of the

Airline Deregulation Act. We moved to dismiss the suit as premature, one of the bases being the failure of Congress to appropriate any funds for the program. On September 11, 1991, the Department of Transportation issued their determination that there had been no "qualifying dislocation" as a result of airline deregulation which would have triggered the payment of benefits.

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**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

400 Seventh St., S.W.  
Washington, D.C. 20590

September 13, 1991

MEMORANDUM FOR: EDE HOLIDAY  
ASSISTANT TO THE PRESIDENT  
AND SECRETARY OF THE CABINET

FROM: John Gaughan  
Chief of Staff

SUBJECT: 1991 Fall Issues Assessment

The following report summarizes key issues and activities at the Department of Transportation for September 15 to December 31, 1991.

**I. HIGHEST PRIORITIES -- SUMMARY LISTING**

1. Enact by October 1, 1991, surface transportation reauthorization legislation consistent with Administration objectives.
2. Enact the DOT Appropriations Act for FY 1992 and the Commerce, Justice, and State Appropriations Act which includes funding for the Maritime Administration.
3. Continue efforts to enhance competition and safety through the implementation of the Airport Noise and Capacity Act of 1990 and the Aviation Safety and Capacity Expansion Act.
4. Continue to resist Congressional attempts to pass legislation which would call for the reregulation of aspects of the airline industry.
5. Implement the Aviation Security Improvement Act of 1990.
6. Implement the Oil Pollution Act of 1990.
7. Continue to work toward Senate ratification of the Montreal Protocols.
8. Continue efforts to support the National "70% by 1992" Safety Belt Program.

9. Press forward in our efforts to broaden aviation agreements with Canada, Germany, Mexico, and the United Kingdom.
10. Adopt further regulations governing the transportation of hazardous materials.
11. Win confirmation of Arthur J. Rothkopf as General Counsel of DOT.
12. Coordinate with EPA on regulations which implement the Clean Air Act Amendments of 1990.
13. Establish a strategic planning process within the Department and update and implement the National Transportation Policy.
14. Obtain authorization and appropriations to enable the Department to build a new headquarters building.

## II. SURVEY OF KEY ISSUES

### SECRETARIAL ACTIVITIES

September -- The Secretary is likely to announce the third military airport for conversion to civilian use.

September 19 -- Presidential surface bill event in Los Angeles.

November 20 -- The Secretary is scheduled to speak at the World Railways Congress.

### INITIATIVES AND POLICIES UNDER DEVELOPMENT

Airline Competition. The Secretary will continue to concentrate on a variety of initiatives to preserve and enhance competition in the airline industry. These initiatives include airport capacity expansion, slot and gate access, increased foreign investment, streamlined route award procedures, International Air Transport Association rate-making reform, computer reservation system (CRS) rules review, and international aviation liberalization.

The Department will decide whether to approve the joint application of Delta Air Lines and Pan American World Airways to transfer the bulk of Pan American's transatlantic routes to Delta and whether Delta's intention of taking an

equity position in Pan Am would result in the effective transfer to Delta of Pan Am's Latin American authority.

Aircraft Noise and Capacity Issues. The Airport Noise and Capacity Act signed into law November 5, 1990 requires the Department to issue rules related to the establishment of passenger facility charges (PFCs), phase-out of Stage 2 (noisier) aircraft, and procedures for airports to restrict operation of noisier aircraft by December 31, 1999.

The FAA issued its final rule on PFCs in May and airports already have begun the process to gain FAA approval to collect the fees. The charges will provide an estimated \$1 billion annually for the Nation's top 50 airports in non-federal funds for airport expansion.

The Department has prepared two aviation noise and capacity final rules that are awaiting OMB clearance. The rules concerning local noise restrictions must be promulgated before airports can begin collecting PFCs. Another condition of PFC collection is the initiation of rulemaking to make "slots" at some of the busiest airports available to new airlines. The Department issued an NPRM on September 9, 1991.

Americans With Disabilities Act of 1990. The Department issued a final rule September 6, 1991, implementing the accessibility requirements of the ADA, including standards for accessible public and private passenger vehicles and requirements for complementary paratransit services. The rule also includes provisions for public transportation providers to seek undue financial burden waivers. Waivers will be decided on a case-by-case basis.

In addition to DOT, the Department of Justice, the Equal Employment Opportunity Commission and the Architectural and Transportation Barriers Compliance Board (ATBCB) have issued rules to implement ADA regulations and standards. The ATBCB's guidelines for accessible vehicles and transportation facilities have been incorporated in DOT's rule. The Department has worked and will continue to work with these agencies to ensure that public and private entities comply with the ADA requirements and that appropriate enforcement mechanisms are in place.

Tort Reform: General Aviation Products Liability. We have begun discussions with aircraft manufacturers and users to aid us in our support of legislative initiatives to achieve aviation products liability reform.

Aviation Security. Efforts to implement the Aviation Security Improvement Act of 1990 are continuing. One new rule will be proposed during the fall of 1991. This rule would require airlines to comply with a passenger

information collection requirement for international flights. The Department is also continuing to work with the Department of State on assignment of additional FAA civil aviation security and safety personnel overseas.

Working with the Departments of State, Justice and Treasury, the Department is developing recommendations to Congress on whether legislation should be enacted to provide monetary and tax relief to victims of terrorism. A position is expected by November 1991.

The FAA's Office of Civil Aviation Security has completed its selection of the Federal Security Managers (FSM) to be stationed at each of the Category X airports (the 18 major domestic airports) in the United States. On October 6, after a two week training program developed specifically for the FSMs, they will assume their duties to monitor airport security.

FAA expects to issue, during the final quarter of CY 1991, a set of testing procedures for certification of automated explosive detection systems (EDS) designed to detect bulk explosives. This will allow vendors to submit commercial EDS system designs to FAA for test and evaluation, leading to certification of individual designs. Once certified, systems can be purchased and used by air carriers. FAA is continuing to work with selected airports to install test EDS units.

Maritime Reform. By yearend, the Department expects to have prepared a policy statement on the future of operating assistance for the U.S. merchant marine. Contracts under the current program begin to expire in significant numbers over the next several years. It is important for U.S.-flag carriers to know what kind of investment environment they will operate in when their contracts expire.

The Advisory Commission on Conferences in Ocean Shipping will continue its deliberations on the future structure of regulation of the ocean shipping industry, to include issues relating to antitrust immunity for conferences, principles of common carriage, and tariff filing and enforcement. Secretary Skinner chairs the Advisory Commission; Deputy Secretary Chao is vice-chairman and has overseen the day-to-day operations of the Commission. Public hearings will conclude in September; a draft report should be prepared by December 31, 1991.

The Clean Air Act Amendments. The Clean Air Act Amendments of 1990 require the EPA, with the concurrence of the Department, to promulgate a regulation by November 15, 1991, which assures that federal transportation plans, programs, and projects conform to the attainment requirements of the Clean Air Act. In the event EPA and DOT miss the deadline,

lawsuits may force action. Because this regulation will have a major impact on federal transportation investments in most urban areas, the time frame is very short, and the potential for a lawsuit is high. The Department is working closely and intensively with the EPA to comply with this major new requirement and assure that needed transportation services are maintained.

Commercial Driver's Licensing. Major efforts are presently underway within the Federal Highway Administration to implement fully the requirements of the Commercial Motor Vehicle Safety Act of 1986 by the April 1, 1992, deadline. As of August 30, 39 states are issuing Commercial Driver's Licenses (CDL's). All the 51 jurisdictions have the CDL legislation in place, are doing knowledge testing, and have entered into a contract with American Association of Motor Vehicle Administrators' network to be brought on-line with the Commercial Driver's License Information System connection. The skills testing requirements are being completed by 50 of the 51 jurisdictions. Blood Alcohol Content enforcement is currently in effect in 26 states. On September 11-12, a National CDL Coordinators Conference was held in Phoenix, AZ, to plan the strategies necessary to ensure that all jurisdictions will be in the position of having tested and licensed each driver desiring a CDL by the April 1992 deadline.

Foreign Ownership and Investment in U.S. Domestic Transportation Industries. Proposed legislation addressing foreign ownership and investment, discussions of maritime reform including ownership/investment restrictions, and the need for capital in these industries have prompted the Department to initiate a thorough look at foreign ownership and investment in the U.S. transportation industry. Recently, the Secretary announced the Administration's support for legislation that would increase the ceiling on voting stock owned by foreigners to forty-nine percent.

Foreign investment in domestic transportation is seen as a vital financial tool that can (1) provide a new source of capital to struggling industries, (2) open avenues to new technology, and (3) better link our domestic industries to the global marketplace. The issue is highly complex. It is influenced, in part, by international air, maritime, and related trade agreements, and it frequently revolves around the principle of reciprocity--allowing access in exchange for rights we have been granted by another country. The Treasury, Commerce, and Defense Departments, and the U.S. Trade Representative have policies and provisions which support or restrict foreign ownership of and investment in U.S. industries.

Runway Incursion. FAA has published the runway incursion plan to prevent unauthorized incursion on the active runway

by aircraft, vehicles, persons, etc. A four-phase program is now underway, with the first phase being tested and demonstrated at selected airports. The second phase, now in the contract stage, will buy and test low cost alternatives to detect incursions, such as bar codes and magnetic sensors. The third and fourth phases will research and develop systems that will better identify incursion targets and provide automated data links warning pilots of potential runway incursions.

New DOT Headquarters Building. The President's FY 1992 Budget includes \$542 million in the GSA and DOT budgets to finance the construction of a new DOT headquarters building. We are working with GSA to achieve Congressional approval of the prospectus for the new building at the Union Station site as well as appropriations for the necessary funds to begin work.

### LEGISLATIVE ACTIVITIES

Surface Transportation Reauthorization Legislation. The Department is redoubling its efforts to obtain passage of surface transportation legislation based on the following principles: (1) a five year authorization, (2) no tax increase, (3) adequate funding for the National Highway System, and (4) leverage of additional State and local funds. The Administration's bill, the "Surface Transportation Assistance Act of 1991," has been introduced as S. 610 and H.R. 1351. Our proposal is a comprehensive restructuring of the Department's highway, highway safety and transit programs with authorizations provided through FY 1996. The current authorizations for these programs expire at the end of FY 1991.

The Senate has passed its own reauthorization proposal, the "Surface Transportation Efficiency Act of 1991" (S. 1204). The Administration has objected to the Senate bill, primarily because of its failure to provide adequate funds for the National Highway System, and to increase the State and local matching shares for the highway and transit programs. The Administration has signaled that the President's senior advisors would recommend that he veto S. 1204 if these concerns are not addressed.

The House Public Works and Transportation Committee and the Ways and Means Committee reported their bill, the "Intermodal Surface Transportation Infrastructure Act of 1991" (H.R. 2950). This bill would increase the gasoline tax by 5 cents per gallon to fund a major expansion of Federal involvement in, and funding for, surface transportation programs. The President has written to House leaders indicating that he would veto surface transportation

legislation presented to him with this tax increase. We have also advised the House of other serious objections we have to the bill.

We will continue to work closely with key House and Senate members to try to pass an acceptable bill. We are also reviewing the impacts on DOT programs if passage of an acceptable bill is delayed. The next Congressional action is expected to occur in the House; however, that bill appears to be delayed by the controversy over the 5 cent per gallon gasoline tax.

Omnibus Transportation Employee Testing Act. The Urban Mass Transportation Administration (UMTA) is the only DOT modal agency without anti-substance abuse regulations mandating its grantees to drug and alcohol test their safety sensitive employees. Under the Omnibus Act, UMTA would be covered; thus, we will work to insure its inclusion in the new surface bill. (It is currently included in the Senate version, but not in that of the House.)

FY 1992 Department of Transportation Appropriations Bills. The House-passed appropriations bill is within the 602 allocations set forth by the Appropriations Committee. The date for the Senate subcommittee markup is September 13, but Conference with the House is unlikely to occur before the end of September, thus requiring a one-month continuing resolution. Senator D'Amato offered the Hollings-Danforth Alcohol and Drug Testing and Rehabilitation Legislation (narrowed to the transit industry) to the Appropriations Bill on September 12. It also includes \$4 million for operation of the Presidential Task Force on the Trans-Alaskan Pipeline System. The Task Force has not been established. Also of concern, the Senate Commerce, Justice, and State Appropriations Bill for FY 1992 includes a "Buy America" type restriction affecting the repair and acquisition of Ready Reserve Force vessels.

Aviation Reauthorization. The Federal Aviation Administration's programs to modernize the air traffic control system, operate the system, provide grants to airports and perform research must be reauthorized by the end of FY 1992. The Department is developing a proposal that will be sent to OMB in the fall.

Aviation Industry. Several aviation bills have been introduced which propose new economic regulation of the industry. We anticipate that the bills will be pursued by the aviation subcommittees, and Department witnesses will testify in opposition. The Department has already objected to various House Aviation Subcommittee bills as unnecessary and unwise reintroduction of economic regulation. The Department will continue to make the case that airline deregulation has worked well, and programs and policies in

place and under development are designed to maintain and enhance competition in the airline industry.

Most of the aviation legislation is focused on the "major carrier concentration" issue, with almost no safety activity, although a veto threat has been issued on H.R. 14, a bill that would regulate flight attendant duty time. This bill has passed the House, but not by a veto-proof margin. H.R. 2074 calls for intrusive regulation of computer reservations systems (CRSs), sale of slots, gates and international routes, and foreign investment in domestic air carriers. H.R. 2037 would regulate in some of these areas and vastly expand regulation of consumer issues, such as lost luggage. S. 1628 would force divestiture of CRS systems by airlines, repeal the slot "buy-sell" rule, restrict transfer of international routes, place restrictions on foreign investment in U.S. carriers, and guarantee the outstanding tickets of bankrupt carriers.

Federal Employers' Liability Act (FELA). The Department has prepared legislation to repeal the Federal Employers' Liability Act (the tort-based injury compensation system for railroad employees) and place the railroad industry under the individual State workers' compensation programs. The Department expects to submit the legislative package to Congress shortly. The FELA repeal legislation was submitted at the end of the 101st Congress.

CAFE Standards. Because of safety concerns, the Department continues to oppose Congressional efforts to increase the corporate average fuel economy (CAFE) standards. The National Academy of Sciences' study to assess how available technology could meet energy, environmental and safety requirements concurrently will enable the debate on increasing the CAFE standards to consider the full range of options. The study is due to the Department by the end of the year.

Montreal Protocols. The Protocols, which establish strict liability in cases of death or injury occurring on international flights and substantially increase (to \$130,000) the liability limits of the underlying Warsaw Convention, have been favorably reported from the Senate Foreign Relations Committee. The Department will continue to press for ratification of this multilateral agreement because adoption of these Protocols would improve significantly the current regime for air carrier liability.

Metropolitan Washington Airports. A recent Supreme Court decision invalidated a Congressional Board of Review that supervised important activities of the Metropolitan Washington Airports Authority (Washington National and Dulles Airports). Until legislative action is taken, the Authority cannot undertake important new projects. While

the Administration has taken no position on the corrective legislation, it does have a stake in the legislative veto aspects of any new Congressional action. As a practical matter, the Department believes it is important that these Federally owned facilities continue to be managed and developed locally.

Deregulation of Interstate Trucking. The Secretary will again submit proposed legislation to eliminate remaining economic regulation of interstate motor carriers and to sunset the Interstate Commerce Commission and transfer its rail functions to the Departments of Transportation and Justice.

### REGULATIONS/EXECUTIVE ORDERS

Oil Pollution Act (OPA) OF 1990. This Act directs the President to carry out functions specified in the legislation. Since this Act primarily concerns the marine environment, the USCG is the agency most affected by the Act's provisions.

Accordingly, the USCG and EPA prepared an Executive Order, which is still awaiting OMB clearance, delegating the President's authority under OPA to the Coast Guard and other appropriate federal agencies. Significant aspects of the Act include: liability compensation and financial responsibility relating to oil pollution costs and damages, including removal cost financing; measures to enhance the prevention of oil pollution (e.g., double hulls) and systems to improve preparedness; and expansion of enforcement authority, including increases in the maximum penalties. An interim regulation is being developed concerning the presentation, filing, processing, settlement and adjudication of claims against the Trust Fund under OPA.

Coast Guard NPRM on Certificates of Financial Responsibility. By the first week of October 1991, it is expected that the Coast Guard will release its NPRM on Certificates of Financial Responsibility (COFR) for international shipping. The rulemaking is in response to requirements of the Oil Pollution Act (OPA) of 1990, and there is little room for discretion by the Coast Guard in the NPRM's content. The new COFR requirements include higher insurance levels and continue existing statutory guarantor arrangements to cover clean-up from oil spills, environmental damage, and other costs. The international group of Protection & Indemnity Associations, P&I Clubs (i.e., international shipowners who band together to mutually indemnify each other, and handle most ocean shipping insurance), have asserted that they will refuse to issue insurance guarantees when the new Coast Guard requirements go into effect, because of their higher

exposure and OPA's failure to adopt an international liability regime known as the 1984 Protocols. The publication of the NPRM may precipitate the issue and generate predictions of dire consequences among shipping interests.

Coast Guard User Fees. The Omnibus Budget Reconciliation Act of 1990 and the Coast Guard's implementing regulations require the Secretary of Transportation to establish a recreational boat user fee that would be collected annually in fiscal years 1991-95. The Senate Coast Guard authorization bill (S. 1297) was amended to include a repeal of the user fee. The House highway bill (H.R. 1351) was also amended to repeal user fees, apparently with valid offsetting revenues. A class action suit (Boat U.S. v. United States) has been filed challenging both the statute and the implementing regulations. The suit alleges the fee is really a tax.

Railroad User Fees. The Department is proceeding to issue an interim final rule to collect fees to cover the costs of the Federal railroad safety program specified in the Federal Railroad Act of 1970 for FY 1991. We expect the rule to be issued prior to the end of September. A new rulemaking will be initiated in FY 1992 for development of a follow-on fee collection mechanism.

Computer Reservations Systems. The Department's rules governing airline-owned computer reservations systems (CRSs) will expire on November 30, 1991. On March 26, 1991, the Department issued a notice proposing to readopt the rules with some changes to limit the CRS owners' ability to operate the systems in ways that may prejudice the position of their airline competitors. The Department is now reviewing the comments filed in response to that notice to determine what rules should be adopted.

Phase-out of Stage 2 Aircraft. The Aviation Noise and Capacity Expansion Act of 1990 requires the elimination of noisier "Stage 2" aircraft by December 31, 1999, and directs the Secretary to establish a schedule for the phase-out of these aircraft. The Act required that a final rule be issued by July 1, 1991. The final rule is awaiting OMB clearance.

Limitation on Locally Imposed Noise or Access Restrictions on Stage 2 and Stage 3 Aircraft. The Aviation Noise and Capacity Expansion Act of 1990 limits noise and access restrictions by local airport operators on the operation of Stage 2 and Stage 3 aircraft. A final rule implementing these restrictions is awaiting OMB clearance.

Alcohol Impairment Prevention Program. The Department is exploring the need to adopt additional regulations or

programs to respond to the hazards of alcohol impairment in transportation industries. The Department has analyzed more than 200 comments, representing a broad variety of viewpoints, filed in response to a November 1989 advance notice of proposed rulemaking on the subject (ANPRM). The Department is considering issuing a notice of proposed rulemaking (NPRM) that, among other things, would propose alcohol testing in transportation industries. In addition, the Department is working with the Office of Management and Budget and other Federal agencies on a task force examining the need to take similar steps for alcohol impairment for federal employees and contractors, as well as for regulated industries.

Hazardous Materials Registration and Fee Assessment. The Department is preparing to send to OMB an NPRM concerning the mandatory assessment of an annual registration fee for hazardous materials shippers and carriers, and, with some exceptions, packaging manufacturers. Fees could range from \$300 to \$5,050 (including \$50 processing fee) per registrant. The fee would be used to fund a nationwide emergency response training and planning grant program.

Passenger Manifest Information. The Aviation Security Improvement Act of 1990 requires the Department to issue regulations requiring airlines to collect additional information from U.S. citizen passengers traveling to or from the United States. The information is to be made available to the State Department in the event of an aviation disaster, and would be used to assist in contacting victims' next of kin. The Department will issue an NPRM shortly, which will give the airlines maximum flexibility to meet the additional manifest information requirements in the most cost-effective manner. Foreign airlines carrying U.S. citizens to or from the United States would also be required to comply.

Commercial Space User Fees. The Department published a final rule establishing user fees for commercial launch companies, to go into effect on September 18, 1991. Companies that carry out commercial space launches are licensed by the Department's Office of Commercial Space Transportation. The user fees are designed to recover part of the Department's costs for issuing these licenses, which include costs for assessing the safety of the proposed launch.

#### REPORTS/STUDIES

Shipping Advisory Commission. On April 10, 1991, the Advisory Commission on Conferences in Ocean Shipping commenced a year-long study of the impact of the 1984

Shipping Act. As part of its fact-finding effort, the Commission has been holding field hearings, with the next hearing scheduled for New York. The Commission is to issue its report and recommendations by April 10, 1992.

Maglev and High Speed Rail Technology. As part of the national Maglev initiative, the Department recently awarded research contracts to explore innovative approaches to resolving performance issues and determine areas where U.S. expertise in science and engineering can lead to major advancements in Maglev technology.

Compensation for Victims of Terrorism. The Department will be preparing a report and recommendations to the President and the Congress on whether the U.S. Government should compensate victims of terrorism. The report is called for in the Aviation Security Improvement Act of 1990. Other agencies participating in analysis of the issues and in preparation of the report and recommendations include the Departments of State, Treasury, Defense, and Justice; other agencies will be asked to participate as needed. The target date for circulating the report within the Administration is the end of October; the deadline for submission of the report and recommendations is the end of November 1991.

Boston to New York Rail Corridor Improvements. The Department is completing a study of potential physical improvements to the Northeast Corridor between Boston and New York to aid the private sector, state and local governments, and the federal government in making investment decisions.

Lessons Learned From Desert Shield/Storm. The Department is working with the Department of Defense in reviewing the performance of the Ready Reserve Force (RRF) during Operation Desert Shield/Storm to determine ways to improve the effectiveness of the RRF during war or other national emergencies. A report addressing improvements needed to the fleet, including the size and composition of the fleet and operational and maintenance requirements, will be completed in the near future. We expect the Department's FY 1993 budget request to OMB to reflect the changes recommended by the report.

Study of Love Field, Dallas, Texas. The DOT expects to have a draft final report by September of its study of the potential operational, economic, and environmental impacts of repealing or modifying current legislative restrictions on air carrier flights to and from Dallas' Love Field. The draft will be reviewed to ensure that it does not inappropriately influence related litigation that has been brought against DOT. This study will assist the Department in developing its position on this issue. A Department

representative will testify before the House Subcommittee on Aviation on September 24, 1991.

Aviation War-Risk Insurance. Authority for the Government to issue war-risk insurance, which was critical to the success of airlift support for Operation Desert Storm, expires in September 1992. The FAA has undertaken a study of the law, Title XIII of the Federal Aviation Act, in coordination with the Departments of State and Defense and other interested agencies. The report, originally due to OMB in July 1991, has been delayed pending resolution of a number of issues with DOD, such as whether FAA should insure the domestic leg of a trip. The report will recommend renewal of the program, and continued administration by the FAA.

New San Diego Airport. A local, binational working group headed by the City of San Diego has been established to address plans for a new airport to be located near the United States/Mexico border. FAA has funded three planning grants under the Airport Improvement Program to review site alternatives. A master planning effort, sponsored by the city, is now underway and will be accomplished in phases over the next several months.

## NEGOTIATIONS

North American Free Trade Agreement. The Department is chairing the land transportation negotiations that are part of the North America Free Trade Agreement. The principal objective is to achieve greater access to the Mexican market for U.S. truck, bus, and railroad operators. Negotiations will take place over the fall in Mexico City, Ottawa, and Washington. Projected completion date for the substance of the land transportation negotiations is December 31, 1991.

Shipbuilding Subsidies. The Department is participating in negotiations in the Organization for Economic Cooperation and Development (OECD) to eliminate subsidies and other support governments give to shipbuilders. Other agencies participating in the discussions include USTR, Commerce, and State. It is expected that the negotiations, which have been underway for nearly two years, will either terminate successfully or break off this fall.

Major Aviation Bilateral Liberalization Talks: Canada, Germany, Mexico, and the United Kingdom. The Secretary has launched major initiatives to liberalize important bilateral aviation relationships. This fall, representatives from DOT (and State) will meet separately with their British, German and Canadian counterparts to advance this process. The U.K. and Germany talks will frame the issues and develop

procedures for the negotiations, while those with Canada, begun earlier, will advance to exchanging specific proposals and defining areas of agreement. Representatives from DOT and State also will begin talks with Mexico with the objective of formalizing the liberal civil aviation environment that now exists between our two countries.

Bilateral Air Worthiness Agreements (BAA) with the People's Republic of China (PRC) and the U.S.S.R. An exchange of diplomatic notes between the United States and the PRC is expected in mid-September to effect a limited United States/PRC BAA. The limited BAA will permit the PRC to assist the FAA with the production surveillance activities of the McDonnell Douglas MD-80 series being built at the Shanghai Aviation Industrial Corporation, Shanghai, China.

Based on the U.S. government policy decision to explore Soviet technical readiness for a BAA, the FAA plans to send (in mid-September or October) nine special discipline technical teams to begin in-depth technical assessment for a possible BAA. The technical assessment of the Soviet aircraft certification system is expected to take 4-5 years to complete.

#### MEETINGS/EVENTS

Greater Utilization of the St. Lawrence Seaway. At sites in Brazil and Argentina, November 15-23, 1991, the Administrator of the St. Lawrence Seaway Development Corporation will lead a U.S./Canada trade mission to promote enhanced Seaway utilization with current and new business partners. Trade mission participants include Great Lakes/St. Lawrence Seaway maritime community leaders representing ports, vessel operators, longshoremen, an agricultural products association and a major coal shipper.

National Drunk and Drugged Driving Awareness Week (3-D Week), December 7-13, 1991. An annual observance to promote non-impaired driving, the program is timed in close proximity to several holidays when drunk driving and traffic fatalities typically increase. As in previous years, we will be requesting a Presidential Proclamation.

#### COURT DECISIONS/LITIGATION

Exxon Valdez Oil Spill. On March 12, 1991, Exxon, the State of Alaska, and the United States entered into a proposed settlement of Exxon's potential liability to the respective governments for natural resources damages and additional cleanup expenses resulting from the Exxon Valdez oil spill.

Under the terms of the settlement, Exxon agreed to plead guilty to various criminal charges and pay a \$100 million fine, as well as \$900 million in settlement of civil claims by both governments. A Federal district court, however, refused to accept the criminal plea. Moreover, the State of Alaska, after rejection of the settlement by its legislature, decided to withdraw from the agreement and so, too, has Exxon. As a result, both the criminal and civil litigation are expected to go forward in federal district court (Alaska), a process likely to consume several years. Recent discussions between the State of Alaska and the Federal Government have resulted in a settlement agreement regarding the joint management and disposition of any natural resource damages recovered from Exxon. The possibility of broader settlement discussions is also being explored.

The Coast Guard, as the Federal on-scene coordinator, continues its supervisory role over cleanup activities performed by Exxon. Also, the extensive delegations of new federal authorities to prevent and clean up oil spills are now on their way to the President in the form of a new Executive Order.

Pan American 103 Disaster. This suit arises out of the in-flight bombing of Pan Am Flight 103 over Lockerbie, Scotland on December 21, 1988. The plaintiff's target defendant is Pan Am, but the United States has been named as a third party defendant. Pan Am's claim against the FAA revolves primarily around the suggestion that the FAA had verbally waived certain of its security requirements and that the FAA was involved with other government agencies in covert operations which intentionally circumvented Pan Am's security procedures. This case is pending in the District Court for the Eastern District of New York. It is presently set for trial in January 1992.