
Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

36

Divider Title: _____

Hate Crimes

1. Issue Statement. (1) Whether 18 U.S.C. 245, which requires that a defendant have acted because of race, color, religion, or national origin, and because the victim was engaging in a federally protected activity, is sufficient to reach street crimes motivated by bias, and (2) whether existing federal law should be extended to authorize prosecution of crimes committed because of the sexual orientation, gender, or disability of the victim.

2. Status. There has been substantial criticism by some members of Congress regarding the Department's alleged failure to investigate the incident in Crown Heights, New York, where a Hasidic Jew (Yankel Rosenbaum) was killed in 1991 by a black man after a black child was run over by a Hasidic Jew. After a suspect was acquitted in state court, the Attorney General eventually agreed to convene a grand jury, handled jointly by the Civil Rights Division and the U.S. Attorney for the Eastern District of N.Y.

3. Department Position. The most difficult issue for the Division has been whether 18 U.S.C. 245, which prohibits racially motivated interference with certain forms of "federally protected activity," applies to racially motivated street crimes.

We have recently taken the position in two cases (a position we had rejected for many years) that use of a street or sidewalk is a federally protected activity within the meaning of section 245. Because of uncertainty over that position, the Civil Rights Division has proposed eliminating the federal activity requirement in cases involving bodily injury. This change would ensure that the Department could reach racially motivated assaults.

The Department is also considering whether to include in this proposal coverage of bodily injury inflicted because of sexual orientation, gender, or disability. There is increasing evidence that assaults based on the victim's sexual orientation represent a growing nationwide problem that should be addressed through hate crime legislation. Violence based on gender, similarly, represents an enormous problem, but poses particular difficulties in crafting legislation because of reluctance to federalize domestic violence and sexual assaults. As yet, the Department has not concluded whether a sufficient record exists to justify extension to assaults committed because of disability. The Department is attempting to produce a final proposal for possible inclusion in the crime bill.

4. Judiciary Members Interest/Positions.

Sen. Feinstein is the Senate-author of the Hate Crimes Sentencing Enhancement Act, which is part of the Senate-passed Crime Bill. The Act directs the Federal Sentencing Commission to establish enhancements for existing federal crimes that are motivated by race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation. A similar provision is in the House-passed Crime Bill.

Senator Simon has expressed interest in expanding the jurisdiction of the Community Relations Service to permit it to intervene in instances involving disputes based on religion or sexual orientation. The Department has already expressed its support for the inclusion of sexual orientation by sending the Service to Mississippi to mediate a dispute involving the harassment of lesbians.

Both versions of the Crime Bill would amend the Hate Crime Statistics Act to require the Attorney General to collect data regarding hate crimes committed because of disability.

The Senate recently passed a bill sponsored chiefly by Sen. Specter to enhance penalties for a criminal violation of the Fair Housing Act if fire or a firearm were used or more than \$100 in property damage resulted. Similar enhancements for all criminal civil rights violations involving the use of fire or a firearm (but not including property damage) are in the crime bills.

Contact: Bill Yeomans

Hate Crimes

Addendum: Judiciary Committee Members' Positions/Interests

Senator Feinstein is the Senate-author of the Hate Crimes Sentencing Enhancement Act, which is part of the Senate-passed Crime Bill. (It also passed the House in a separate measure.) The Act directs the Federal Sentencing Commission to establish enhancements for existing federal crimes which are motivated by animosity against a person based on race, religion, etc.

Senator Simon wants to expand statutory authority of the Community Relations Service.

HATE CRIMES

Senator Simon. I concur completely. We passed legislation I guess about two years ago now to ask the FBI to keep track of hate crimes, so that this is not simply anecdotal evidence about what is happening in our society. We have received the first preliminary reports and I am pleased Judge Sessions is following through. This is our chance to lobby you, Ms. Reno. If you can put in a good word saying you think this is important, I think that would be helpful.

Ms. Reno. I certainly will. Interestingly enough, I just received correspondence from my office, because I haven't forgotten that I have a role there, though these last three weeks have been interesting--but I got a letter wherein there has apparently been some problem in the reporting of hate crimes from our State, and I want to make sure that any such problem is straightened out, because I think it will be valuable information in which we can plan both State and national strategies.

SENATOR PAUL SIMON
QUESTIONS FOR ATTORNEY GENERAL JANET RENO
CONFIRMATION HEARING

QUESTION: HATE CRIMES
COMMUNITY RELATIONS SERVICE

Currently, the Department of Justice has two agencies which have jurisdiction over hate crimes, the FBI and the Community Relations Service (CRS). However, these two agencies define hate crimes differently. As you know, the FBI collects statistics on hate crimes based on race, ethnicity, sexual orientation, and religion. The CRS, however, provides assistance to communities in resolving disputes based only on race and ethnicity.

Several of my colleagues and I have expressed a desire to expand the jurisdiction of the Community Relations Service so that they are empowered to respond to incidents involving sexual orientation and religion, as well. CRS, claiming that its hands are tied by its limited statutory mandate, has consistently refused to expand its scope of activities.

o What is your position on the present CRS definition of hate crimes?

ANSWER: Our communities have endured too much hate-motivated violence and crime, including religious and sexual orientation based animus. We must work to address this problem at its root. Part of this approach entails working in the communities to address hostilities before they spill over into crime.

The Community Relations Service has been a valuable tool in defusing tensions based on race, national origin, and ethnicity. I would be happy to review with the members of the Judiciary Committee the efficacy of deploying the Service's resources to the problem of crimes motivated by sexual orientation or religious hostility as well as the legal requirements for such a deployment.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

37

Divider Title: _____

DOJ INVESTIGATION INTO VIOLENCE IN CROWN HEIGHTS, NEW YORK

1. ISSUE STATEMENT

The Department of Justice has been involved in the investigation and prosecution of acts of racially and religiously motivated violence stemming from events that occurred from August 19 - 22, 1991, in the Crown Heights neighborhood of New York.

There are several different aspects to the violence that erupted in Crown Heights. The first incident occurred at approximately 8:20 p.m. on August 19th. At that time, a station wagon, the last car of a motorcade accompanying the Grand Rebbe of the Lubavitch Hasidim, struck and killed Gavin Cato and seriously injured Angela Cato, two black children who were playing on the sidewalk at the intersection of President and Utica Streets. Immediately following the accident, hundreds of black Crown Heights residents surrounded the accident scene. The crowd became increasingly angry as word spread that the Hasidic driver had been treated for minor injuries by a Hasidic ambulance service while the seriously injured children lay on the sidewalk. The anger escalated over the next few hours. There has never been a prosecution of any individual for the deaths of the Cato children.

At about 11:00 p.m., approximately 100 persons followed a black male toward the Lubavitch commercial center, yelling anti-Jewish comments. At approximately 11:20 p.m., a group of between 10 and 15 black youths encountered Yankel Rosenbaum, a Hasidic Jew, at the corner of President Street and Brooklyn Avenue. The group surrounded and attacked Rosenbaum, punching, kicking and stabbing him four times. Lemrick Nelson, a 16 year old black youth, was arrested at the scene. After Rosenbaum died later that evening, Nelson was charged and ultimately prosecuted by state authorities for Rosenbaum's murder. Nelson was acquitted of these charges in November, 1992.

For three days and nights following the Rosenbaum homicide, numerous incidents of violence occurred against Jews and Jewish owned properties in the Crown Heights neighborhood. There has been widespread criticism of the nature of the police response during the nights of August 20th and 21st when NYPD used a "fixed-post" strategy in deploying its officers, with officers being assigned to positions and told not to leave those positions. It was not until August 22nd that this strategy was supplemented by mobile police units that kept track of roving bands of rioters and used the unlawful assembly statute more aggressively to arrest individuals as soon as trouble broke out. The violence finally quieted on August 22, 1991. Hasidic and other Jewish leaders subsequently charged, and filed a civil law suit alleging, that then-Mayor David Dinkins and then-Police Chief Lee Brown conspired to deprive the Jewish community of police protection for invidious reasons.

For their part, the African-American and Caribbean-American communities have criticized the fact that the deaths of the Cato children have never been prosecuted. They have asked for a federal investigation into allegations of a pervasive and longstanding disparity in the quality of municipal services provided in Crown Heights to them as compared to the Hasidic community.

After the acquittal of Lemrick Nelson, members of the Hasidic community, as well as many other Jewish leaders, urged that Nelson be prosecuted a second time on federal criminal civil rights charges (18 U.S.C. §245.) They also requested prosecution for other acts of violence and property damage that occurred in the days following Rosenbaum's killing, and prosecution of David Dinkins and Lee Brown on criminal civil rights charges for failing to provide appropriate police protection during those days of violence.

2. STATUS

During the state prosecution of Lemrick Nelson the Department of Justice, pursuant to longstanding policy, monitored the local prosecution and did not actively conduct any investigation. Following Nelson's acquittal in November, 1992, an active investigation was initiated with attorneys from both the Civil Rights Division and the United States Attorney's office for the Eastern District of New York. Department attorneys interviewed numerous witnesses and conducted an intensive evidentiary review to determine whether, regarding any of the incidents, there was an evidentiary basis for federal jurisdiction under the applicable civil rights statute. We also examined whether, regarding the homicide of Yankel Rosenbaum, a dual prosecution of Lemrick Nelson was warranted pursuant to the Department's Petite policy. This review continued for several months and, by the end of the summer of 1993, a recommendation was prepared for the Attorney General. The recommendation addressed all aspects of the Crown Heights violence.

In September, 1993, on the eve of the Attorney General's announcement regarding the Department's review of the case, Brooklyn District Attorney Joe Hynes requested that he be allowed to provide additional information to the Attorney General regarding federal jurisdiction to address the acts of violence against the Jewish residents of Crown Heights. He was given that opportunity and submitted a memorandum. A few weeks thereafter, Mr. Hynes's office again contacted the Department advising that there was significant new evidence in the case pertaining to the homicide of Yankel Rosenbaum. The DA's office, in consultation with Department of Justice attorneys, pursued leads relating to this new evidence until January, 1994, when DA Hynes requested that the Attorney General assume responsibility for the ongoing investigation.

On January 25, 1994, in response to this request, the Attorney General agreed to assume responsibility for the investigation and to convene a federal grand jury. The Assistant Attorney General for Civil Rights and the United States Attorney for the Eastern District of New York met recently to resolve issues of strategy and staffing for the current phase of the investigation, as well as for a possible trial. Attorneys from the Eastern District and the Civil Rights Division have presented evidence to the grand jury and expect a decision fairly soon. Of course, any final recommendation on a request of the grand jury will be carefully reviewed by the Department.

3. DEPARTMENT POSITION

See attached reference materials.

4. JUDICIARY COMMITTEE MEMBERS POSITIONS

While no senator from New York is on the Judiciary Committee, presumably every senator joined the September, 1993 Senate resolution (on a vote of 97 or 98 to 0) calling upon the Department of Justice to conduct an investigation into the Crown Heights violence. The Department has reassured the Senators that we have been closely involved in monitoring the various state investigations and prosecutions into these events and are taking all appropriate action to enforce applicable federal civil rights and criminal laws.

5. REFERENCE MATERIALS

Attached are copies of recent correspondence between the Attorney General and DA Hynes regarding the Department's assumption of responsibility for the ongoing investigation.



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

January 25, 1994

The Honorable Charles J. Hynes
Kings County District Attorney
Municipal Building
210 Joralemon Street
Brooklyn, New York 11201

Dear Mr. Hynes:

In our January 10, 1994 meeting, you asked the Department of Justice to initiate and join with you in a federal prosecution against at least two individuals on federal criminal civil rights charges. You also communicated your belief that under the current state of the evidence, there is a prosecutable case against both individuals.

We believe that if you are confident that presently existing evidence supports state homicide charges, your office should proceed with a presentation to a state grand jury and proceed upon any resulting indictments. We hold this view for several reasons. First, under New York's statutory double jeopardy rule, a federal civil rights prosecution would bar any state prosecution on homicide charges. Particularly since the applicable federal civil rights charge, 18 U.S.C. §245, requires additional elements of proof not required in a state homicide prosecution -- specifically, that the defendant attacked the victim because of his religion and because the victim was enjoying the use of a public facility -- it seems imprudent to forego a state homicide prosecution in favor of a more difficult federal civil rights prosecution.

Moreover, a state prosecution will not significantly impair our ability to proceed on federal civil rights charges should it be determined that sufficient evidence exists to support a federal prosecution. Indeed, to the extent that published reports concerning new leads present possible conflicts with evidence presented at the state trial, the record of any new

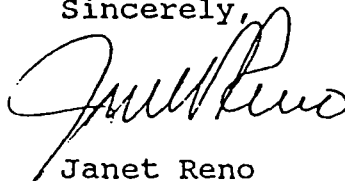
state prosecution may provide the most complete basis for resolving those conflicts and for assessing the current state of the evidence against other potential defendants.

In sum, it is our view that if you believe the existing evidence is sufficient to support state homicide charges, you should proceed with your case. We are prepared to offer you the full assistance of federal investigative agencies as well as the advice and knowledge of federal prosecutors who have been involved in the investigation of this matter. We would await the conclusion of your case and then determine whether further federal action is warranted. If, on the other hand, you would prefer that we take over the investigation, recognizing that you may be precluded from ever filing state homicide charges, we are prepared to use a federal grand jury to continue the investigation into the killing of Yankel Rosenbaum. We would use the grand jury in the same manner we use all investigative grand juries: to find the truth and to determine if there is credible evidence to support a prosecution. The investigation would be comprehensive, would follow all leads that have been and will be developed, and would include the taking of sworn testimony from all relevant witnesses. At the conclusion of the grand jury investigation, we would then determine whether the evidence supports an indictment. If you choose this option, we would expect that you would stop your grand jury presentation and that all local investigators and prosecutors would be fully available to, and cooperative with, federal authorities.

You also proposed that attorneys from your office be cross-designated as Assistant United States Attorneys to assist in the federal effort. While we appreciate and would need your assistance in our investigation, it is our view that the more prudent course is for the prosecution teams to remain distinct and that we pursue other forms of cooperation.

I look forward to your response.

Sincerely,

A handwritten signature in dark ink, appearing to read "Janet Reno", written in a cursive style.

Janet Reno

DISTRICT ATTORNEY OF KINGS COUNTY
MUNICIPAL BUILDING
BROOKLYN, N.Y. 11201
(718) 802-2000



CHARLES J. HYNES
DISTRICT ATTORNEY

BY FAX

January 25, 1994

The Honorable Janet Reno
Attorney General
United States Department of Justice
Constitution Avenue & Tenth Street, N.W.
Washington, D.C. 20530

Dear Madam Attorney General:

I have your letter of January 25, 1994 and am grateful for your willingness to commence a federal grand jury investigation into the murder of Yankel Rosenbaum.

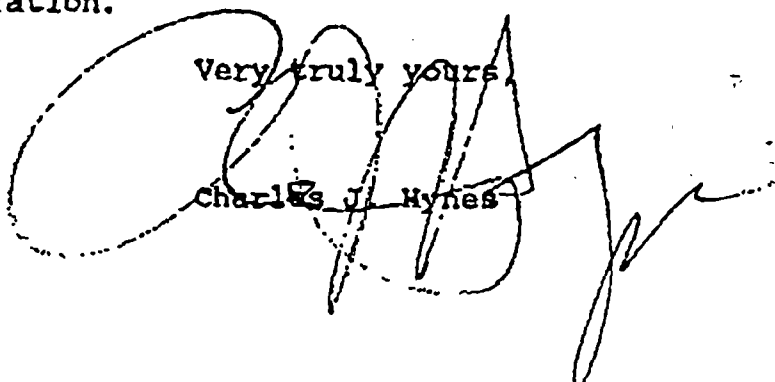
As I indicated to you when we met on January 10, 1994, I believe that the immediate commencement of a federal investigation and prosecution of both Lemrick Nelson and Ernesto Edwards is by far the most prudent way to proceed.

I am, of course, mindful of the significance of foregoing a state homicide prosecution in favor of an immediate federal prosecution. As you know, we are barred from prosecuting Lemrick Nelson again. Therefore, it is only in a federal court that a jury will hear all of the evidence against both individuals in a manner which best reflects the events that took place on the streets of Crown Heights on the night of August 19, 1991, without any further delay. Moreover, the ultimate sentence in a successful federal prosecution, life imprisonment, is no less than the sentence that would be imposed under New York State Law and not subject to the frailties of a parole system.

Hon. Janet Reno
Attorney General
January 25, 1994
Page Two

As I requested two weeks ago when we met and in response of your letter of today, I ask you to assume the investigation. I believe that you have made a courageous decision which brings to this case the best hope of achieving justice. You can be assured of my complete cooperation.

Very truly yours,


Charles J. Hynes

CJH:yf

Copyright 1994 The New York Times Company
The New York Times

February 15, 1994, Tuesday, Late Edition - Final

SECTION: Section B; Page 2; Column 1; Metropolitan Desk

LENGTH: 248 words

HEADLINE: Group Heckles Reno Over Crown Heights

BODY:

Attorney General Janet Reno was heckled and booed during an appearance in Manhattan last night by people demanding that she include former Mayor David N. Dinkins and former Police Commissioner Lee P. Brown in the Federal investigation of the killing of Yankel Rosenbaum in Crown Heights in 1991.

Speaking at Congregation Kelilath Jeshurun at 125 East 85th Street, Mrs. Reno was asked several times why she had not included both former city officials in her decision to open a Federal investigation into the death of Mr. Rosenbaum, a rabbinical student who was fatally stabbed when attacked by a group of blacks during street disturbances in Crown Heights.

One youth was acquitted of Mr. Rosenbaum's murder last year, but the police said they are investigating another suspect.

But Mrs. Reno declined to comment on the investigation, except to say that once a determination has been made in the investigation, it will be explained or the case will go to trial.

"When the investigation is completed, I will be happy to comment," she said amid boos from a few people in an audience of about 700.

Yehuda Kaploun, who said he had been a roommate of Mr. Rosenbaum, passed out an "open letter" in which he asked Mrs. Reno to seek indictments against Mr. Dinkins and Mr. Brown if an investigation concludes they failed to take quick action against violent mobs.

In addition, a group identifying itself as the Jewish Action Alliance held up a banner calling on Mrs. Reno to resign.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: February 15, 1994

LEVEL 1 - 8 OF 20 STORIES

Copyright 1994 The Times Mirror Company
Los Angeles Times

January 26, 1994, Wednesday, Southland Edition

SECTION: Part A; Page 22; Column 3; National Desk

LENGTH: 101 words

HEADLINE: NATION IN BRIEF;
NEW YORK;
U.S. TO PROBE SLAYING OF HASIDIC SCHOLAR

BYLINE: From Times Staff and Wire Reports

BODY:

Atty. Gen. Janet Reno said the Justice Department will conduct a civil rights investigation of a Jewish scholar's slaying during the 1991 Crown Heights riots. Reno made the decision after hearing pleas from lawmakers and Brooklyn Dist. Atty. Charles J. Hynes, whose office was criticized after a state jury acquitted the only defendant charged in the case. Three days of violence erupted after a car in the motorcade of a Jewish religious leader jumped a curb and killed a 7-year-old black boy. Yankel Rosenbaum, a Hasidic scholar from Australia, was later fatally stabbed by a group of blacks.

LANGUAGE: ENGLISH

LOAD-DATE-MDC: January 27, 1994

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

38

Divider Title: _____

Abortion Clinic legislation.

1. Issue Statement. The Senate and House have passed legislation protecting access to abortion and other reproductive health services. The bills authorize criminal penalties and civil remedies against individuals who use force, threats of force, physical obstruction, or destruction of property to deny women access to reproductive health services or to interfere with those who provide such services.

2. Status. The President will sign the bill in the next week.

3. Department Position. The Attorney General endorsed this legislation and took a personal role in developing and supporting it.

Although the Department supports new legislation, we have also attempted to use existing federal law, to the extent possible, to protect women seeking abortions. While the Supreme Court severely restricted the scope of 42 U.S.C. 1985(3) in Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753 (1993), the Division told the Tenth Circuit in Women's Health Care Services v. Operation Rescue -- National, No. 91-3250, that there are circumstances in which 42 U.S.C. 1985(3) may be applied. The Court recently remanded the case for consideration whether a different clause of 1985(3) or state law could support the injunction entered by the district court. In addition, the Supreme Court held in National Organization For Women v. Scheidler, No. 92-780, that RICO, 18 U.S.C. 1962(c) and (d), can apply to the activities of anti-abortion groups that engage in racketeering activity.

The Attorney General has repeatedly cautioned that we must find a way to ensure women access to abortions without restricting the legitimate expression of opinion by those who oppose abortion. The Supreme Court will be reviewing a case Madsen v. Women's Health Center, No. 93-880, which will address some First Amendment issues raised by injunctive limits on abortion clinic protestors. The Department filed a brief on the side of the clinic and the Solicitor General presented oral argument.

It has not yet been determined how the new legislation will be enforced. The Civil Rights Division has recommended to the Attorney General that it take the lead in enforcing the new law.

4. Judiciary Committee Members Interest/Positions. Sen. Kennedy was the principal sponsor of the bill and Sen. Hatch was a leading opponent (the conference report was approved by the Senate 69-30). Sen. Hatch and others argued that the bill was designed to suppress expression of the pro-life point of view. Sen. Hatch offered an amendment that was accepted that extends the protections of the bill to places of worship and individuals exercising First Amendment religious rights.

Contact: Bill Yeomans

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

39

Divider Title: _____

**NONDISCRIMINATION IN EMPLOYMENT
ON THE BASIS OF SEXUAL ORIENTATION**

1. ISSUE STATEMENT

On December 2, 1993, the Attorney General issued a policy statement of nondiscrimination in employment. The statement forbids discrimination in employment actions on the basis of sexual orientation, as well as on the basis of a number of other characteristics such as race and religion.

The statement was drafted in detailed negotiations among the FBI and interested Department components to ensure full consideration of all relevant policy concerns, including national security interests.

The resulting policy balance forbids discrimination on the basis of sexual orientation while authorizing inquiry into any matter that reasonably would subject the applicant or employee to coercion.

2. STATUS

The Department is in the process of preparing regulations to implement the nondiscrimination policy. The regulations, which soon will be finalized, will state that sexual orientation is not germane to a person's suitability or eligibility for security clearance. The FBI is preparing similar regulations to govern its investigatory procedures.

We have discussed the possibility of revising and reissuing the policy statement so that it includes age among the referenced characteristics as to which the Department does not discriminate.

3. DEPARTMENT POSITION

The Department's current position is set forth in the Attorney General's December 2, 1993 policy statement: "The Department of Justice does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation. . . . In the context of determining eligibility for security clearances or access to sensitive information, the Department may investigate and consider any matter that would reasonably subject the applicant or employee to coercion; but no inference concerning susceptibility to coercion may be raised solely on the basis of the race, color, religion, sex, national origin, disability, or sexual orientation of the applicant or employee."

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

No member has staked out firm ground on the issue in the nonmilitary context. Senator Thurmond strongly supported the ban on gays in the military. Senators Kennedy and Metzenbaum are the

Democratic Members of the committee who are most likely to express an interest in and support for the Department's nondiscrimination policy.

NOTE: There are three pending matters that also raise issues concerning the Department's general position towards discrimination on the basis of sexual orientation.

Litigation policy. A DOJ working group has analyzed the possibility of the Department's advocating some level of enhanced scrutiny for constitutional claims of discrimination on the basis of sexual orientation in the nonmilitary context. That analysis is now in the DAG's and ASG's offices. The working group is now preparing a set of followup memoranda, including one by OPD assessing different possible pending cases in which the Department could choose to advocate for some higher level of scrutiny.

Hate Crimes. The Department is formulating a proposed revision of the Hate Crimes statute, 18 U.S.C. § 245, to eliminate the jurisdictional requirement that the victim was assaulted because of engagement in an enumerated federally protected activity. As part of that project, we may propose including within the statutory definition of hate crimes assaults that are motivated by animus towards the victim's sexual orientation.

Ovett, Mississippi. The Attorney General recently issued a Tasking Order to permit mediators from the Community Relations Service to work in Ovett, Mississippi, where two lesbians who are seeking to establish a feminist camp (known as "Camp Sister Spirit") have been intimidated and threatened by violence by local townspeople. It is the first use of the CRS to attempt to mediate community conflicts arising out of citizens' sexual orientation, although CRS mediation expertise has been used in the past to address conflicts not strictly within CRS's statutory mandate.

DOJ STATEMENT OF POLICY WITH RESPECT
TO NONDISCRIMINATION IN EMPLOYMENT

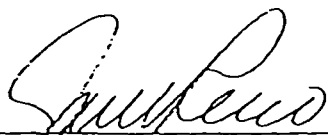
The Department of Justice does not discriminate on the basis of race, color, religion, sex, national origin, disability, or sexual orientation. Every person seeking or holding employment with the Department, its bureaus, and its divisions, is judged in hiring and in connection with any other employment action -- including, without limitation, disciplinary action; issuance, denial, or revocation of a security clearance; or dismissal -- on the basis of his or her abilities, demonstrated performance, experience, conduct, character, judgment, stability, discretion, integrity, responsibility, candor, and other appropriate qualifications.

The Department may inquire into and examine a person's performance, experience, conduct, character, judgment, stability, discretion, integrity, responsibility, and candor in determining suitability for employment and trustworthiness. In the context of determining eligibility for security clearances or access to sensitive information, the Department may investigate and consider any matter that would reasonably subject the applicant or employee to coercion; but no inference concerning susceptibility to coercion may be raised solely on the basis of the race, color, religion, sex, national origin, disability, or sexual orientation of the applicant or employee.

Each component of the Department is directed to issue any further rules or regulations necessary to implement fully this policy statement.

This statement of policy is not intended to create any enforceable legal rights in any person.

Date: December 2, 1993



Attorney General

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

40

Divider Title: _____

Religious Freedom Restoration Act

Issue: Congress passed and the President signed into law the Religious Freedom Restoration Act in November 1993. The most significant controversy concerns how the Act will be applied in prisons.

The Act overturned Employment Division v. Smith, 490 U.S. 872 (1990), and restored the compelling interest standard in Free Exercise Clause claims, as set forth in Sherbert v. Verner, 374 U.S. 398 (1963). Under the Act, government may burden an individual's exercise of religion only if it has a compelling interest in doing so and pursues the least restrictive means of furthering its compelling interest.

The Act was supported by a broad coalition of civil libertarians and religious groups. The most significant opposition came from prison administrators, who lobbied for a less strict standard to govern claims by prisoners. The Bureau of Prisons opposed the legislation internally.

Department Position: The Attorney General rejected the calls for a softening of the standard and endorsed the bill in the form in which it eventually passed. In a letter to Sen. Biden, dated May 5, 1993, she stated:

Certainly, the strong interest that prison administrators and society in general have in preserving security, order, and discipline in prison will receive great weight in the determination whether the government meets the compelling interest test when there is a claim that exercise of religious rights is burdened and whether it has pursued the least restrictive alternative in doing so. Activities that are presumptively dangerous or carry a demonstrable likelihood of jeopardizing discipline within a prison will continue to be subject to regulation after enactment of [the Act].

Likewise, prison administrators will retain authority, in many instances, to regulate the time, place, and manner of an inmate's exercise of religion.

Judiciary Committee Members:

Sen. Hatch, a sponsor of the bill, recently took the Senate floor to criticize the position taken by the Department in Christians v. Crystal Evangelical Free Church, No. 93-2267 (8th Cir.). The Department argued as intervenor that the Religious Freedom Restoration Act did not prevent a Bankruptcy Trustee from recouping money that a couple had given to their church while they were insolvent and within one year of filing a bankruptcy petition. The Department argued that there was no substantial burden imposed on free exercise rights and, in any event, there

was a compelling interest in protecting the property of others from being given away. Sen. Hatch disputed the presence of a compelling interest in the absence of actual fraud.

Contact: Bill Yeomans



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

May 5, 1993

The Honorable Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

As you know, I strongly support S. 578, the Religious Freedom Restoration Act of 1993 and urge its swift enactment. The bill is designed to overturn Employment Division v. Smith, 110 S. Ct. 1595 (1990), which, in my view, mistakenly rejected the balancing test of Sherbert v. Verner, 374 U.S. 398 (1963). According to Sherbert, government action that substantially burdened religious practice had to be justified by a compelling government interest. In Smith, however, the Court held that application of a neutral law of general applicability -- even if it has the effect of burdening religious practice -- does not run afoul of the Free Exercise Clause of the First Amendment. This weakening of the protection afforded one of our society's most fundamental freedoms is extremely troubling and should be corrected by substituting the stronger protection afforded by S. 578.

Concerns have been expressed that the standard of review of S. 578 will unduly burden the operation of prisons and that the bill should be amended to adopt a standard more favorable to prison administrators when confronted with the religious claims of prisoners. These concerns have been presented by knowledgeable and sincere individuals for whom I have great respect, but I respectfully disagree with their position and urge the Committee to approve the bill without amendment.

Prior to 1987, the Supreme Court had not distinguished explicitly between the standard of review applicable to the religious claims of prisoners and those of others. In that year, for the first time, it held that a prison regulation that impinges on an inmate's right of free exercise "is valid if it is reasonably related to legitimate penological interests." O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987), quoting Turner v. Safley, 482 U.S. 78, 89 (1987). Thus, the Court had abandoned the compelling interest standard regarding inmate claims only a few years prior to doing so for the general population in Smith.

Prisons had operated under Sherbert for a number of years before O'Lone and Turner adopted a standard that is plainly less accommodating to the prisoners' exercise of religious rights. During that period, prisoners attempted to gain privileges based on fabricated free exercise claims. Not surprisingly, those types of claims have continued even under the standard of O'Lone and Turner. They will doubtless continue whether S. 578 becomes law or not.

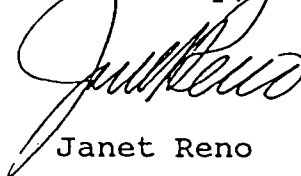
In my view, the four dissenters in O'Lone had the better of the argument. They would have required prison administrators to demonstrate that the restrictions imposed in that case -- preventing certain Muslims from attending a religious service central to their faith -- furthered a compelling government interest and were no greater than necessary to achieve legitimate penological objectives. This standard parallels that incorporated in S. 578.

Certainly, the strong interest that prison administrators and society in general have in preserving security, order, and discipline in prison will receive great weight in the determination whether the government meets the compelling interest test when there is a claim that exercise of religious rights is burdened and whether it has pursued the least restrictive means of doing so. Activities that are presumptively dangerous or carry a demonstrable likelihood of jeopardizing discipline within a prison will continue to be subject to regulation after enactment of S. 578.

Likewise, prison administrators will retain authority, in many instances, to regulate the time, place, and manner of an inmate's exercise of religion. Restrictions that do not deny inmates the opportunity to engage in otherwise permissible religious practice, but merely require them to pursue such activities within the context of prison life, likely will not substantially burden inmates' free exercise rights and will be permissible.

I, therefore, strongly urge the Committee to approve S. 578 without amendment.

Sincerely,

A handwritten signature in dark ink, appearing to read "Janet Reno", written in a cursive style.

Janet Reno



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

May 11, 1993

The Honorable Jack Brooks
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

As you know, I strongly support H.R. 1308, the Religious Freedom Restoration Act of 1993 and urge its swift enactment. The bill is designed to overturn Employment Division v. Smith, 110 S. Ct. 1595 (1990), which, in my view, mistakenly rejected the balancing test of Sherbert v. Verner, 374 U.S. 398 (1963). According to Sherbert, government action that substantially burdened religious practice had to be justified by a compelling government interest. In Smith, however, the Court held that application of a neutral law of general applicability -- even if it has the effect of burdening religious practice -- does not run afoul of the Free Exercise Clause of the First Amendment. This weakening of the protection afforded one of society's most fundamental freedoms is extremely troubling and should be corrected by substituting the stronger protection afforded by H.R. 1308.

Concerns have been expressed that the standard of review of H.R. 1308 will unduly burden the operation of prisons and that the bill should be amended to adopt a standard more favorable to prison administrators when confronted with the religious claims of prisoners. These concerns have been presented by knowledgeable and sincere individuals for whom I have great respect, but I respectfully disagree with their position and urge the Committee to approve the bill without amendment.

Prior to 1987, the Supreme Court had not distinguished explicitly between the standard of review applicable to the religious claims of prisoners and those of others. In that year, for the first time, it held that a prison regulation that impinges on an inmate's right of free exercise "is valid if it is reasonably related to legitimate penological interests." O'Lone v. Estate of Shabazz, 482 U.S. 342, 349 (1987), quoting Turner v. Safley, 482 U.S. 78, 89 (1987). Thus, the Court had abandoned the compelling interest standard regarding inmate claims only a few years prior to doing so for the general population in Smith.

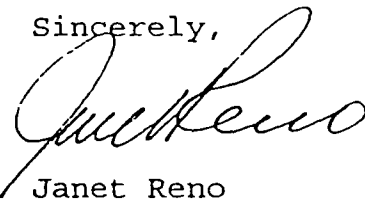
Prisons had operated under Sherbert for a number of years before O'Lone and Turner adopted a standard that is plainly less accommodating to the prisoners' exercise of religious rights. During that period, prisoners attempted to gain privileges based on fabricated free exercise claims. Not surprisingly, those types of claims have continued even under the standard of O'Lone and Turner. They will doubtless continue whether H.R. 1308 becomes law or not.

In my view, the four dissenters in O'Lone had the better of the argument. They would have required prison administrators to demonstrate that the restrictions imposed in that case -- preventing certain Muslims from attending a religious service central to their faith -- furthered a compelling government interest and were no greater than necessary to achieve legitimate penological objectives. This standard parallels that incorporated in H.R. 1308.

Certainly, the strong interest that prison administrators and society in general have in preserving security, order, and discipline in prison will receive great weight in the determination whether the government meets the compelling interest test when there is a claim that exercise of religious rights is burdened and whether it has pursued the least restrictive means of doing so. Activities that are presumptively dangerous or carry a demonstrable likelihood of jeopardizing discipline within a prison will continue to be subject to regulation after enactment of H.R. 1308.

Likewise, prison administrators will retain authority, in many instances, to regulate the time, place, and manner of an inmate's exercise of religion. Restrictions that do not deny inmates the opportunity to engage in otherwise permissible religious practice, but merely require them to pursue such activities within the context of prison life, likely will not substantially burden inmates' free exercise rights and will be permissible.

I, therefore, strongly urge the Committee to approve H.R. 1308 without amendment.

Sincerely,

Janet Reno

RELIGIOUS FREEDOM RESTORATION ACT

Senator Hatch. Thank you, Mr. Chairman.

Senator Kennedy and I will soon introduce the Religious Freedom Restoration Act, along with several other colleagues. Now, this bill restores the requirement that a State or the Federal Government have a compelling interest in order to justify a burden on the exercise of religion. Actually, the bill responds to a 1990 Supreme Court case, Oregon v. Smith, which in our opinion eroded the protection of religious liberty, and this bill has a very wide-ranging religious and philosophical coalition in support of it.

Can you give me any indication whether the Clinton administration will support passage of that this year?

Ms. Reno. Senator, the President is very anxious to sign that bill as soon as Congress can get it to his desk. And as I indicated to you and to Senator Kennedy, I look forward to working with you in that effort.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

41

Divider Title: _____

PODBERESKY v. KIRWAN

1. ISSUE STATEMENT

This lawsuit questions the constitutionality of the race-based Banneker Scholarship Program at the University of Maryland, College Park. The merit scholarship, which includes full tuition and room and board, is available only to high-achieving African American students. The issues in the case are whether UMCP had a strong evidentiary basis for concluding that its prior discrimination against blacks through its former dual system had continuing effects; and whether the race-based scholarship program was narrowly tailored to remedy those effects.

The lawsuit was filed in 1990 by a Hispanic student who complained that the university violated the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964 by failing to consider his application because he was not black. The parties filed cross motions for summary judgment and the court ruled for the university and in favor of the scholarship program. On appeal, the court remanded the case back to the district court to make specific findings concerning the existence of present effects of past discrimination by UMCP that would justify a race-based scholarship program on or about the time (1989) that Podberesky was denied the opportunity to compete for a Banneker Scholarship.

On November 18, 1993, the district court again granted summary judgment in favor of the defendant university and in favor of the race-based scholarship. The court found that the university had presented sufficient evidence of continuing effects in four areas to justify a remedy such as the Banneker Scholarship. These continuing effects included: (1) the University's negative reputation in the black community, (2) underrepresentation of blacks in the student body, (3) low retention and graduation rates for black students, and (4) a hostile racial climate on campus.

The case is controversial in that it involves scholarships that are only available to black students and which are not available to other minority students or white students.

It should also be remembered that this case considers whether lingering vestiges of the prior de jure racially dual system justify the scholarship program. It does not consider whether such programs can be justified to create or maintain a racially diverse student body.

2. STATUS

The case is currently on appeal. Oral argument was heard on May 10, 1994.

3. DEPARTMENT POSITION

The Department filed amicus briefs in both the district court and the court of appeals for the fourth circuit in support of the defendant University and the race-based scholarship.

In the district court we argued that the scholarship was a remedial component of a five year remedial plan that was in effect in 1989 when Podberesky applied for the scholarship. The plan was part of a systemwide agreement between Maryland and the United States Department of Education's Office for Civil Rights, and was required by OCR to eradicate the vestiges of the prior dual system. Therefore, present vestiges should be viewed systemwide, and not isolated to a particular school in the system. We also argued that the plan was narrowly tailored because race-neutral measures had proven to be ineffective, the necessity of the program was to be reviewed periodically, and the funds that supported the scholarship amounted to only 1% of the financial aid available at UMCP.

In the court of appeals we argued that the history of state-imposed racial segregation, along with a continuing racial disparity in UMCP's student enrollment, provides a strong basis in evidence for the use of race-based scholarships as a remedial tool for desegregation. We also argued that the scholarship program was consistent with the Department of Education's guidelines on race targeted aid, as well as repeating our narrow tailoring argument.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

All members may have an interest. The subject of race-based scholarships was highlighted in the last administration when the Assistant Secretary of DOE's OCR, Michael Williams, questioned the legality of such scholarships. Congress became active regarding the issue, especially Senator Simon, and asked GAO to study the issue. DOE was asked to develop guidelines. However, Congress asked DOE to await the completion of the GAO study, which effectively put the development of the guidelines into this administration. DOE's guidelines permit the use of race-based scholarships in several situations, including to overcome the effects of past discrimination when a State or local legislative body has a strong basis in evidence identifying the discrimination for which remedial action is necessary.

5. REFERENCE MATERIALS

Relevant briefs and the opinions of the court(s) are on file in the section.

Contact: Nat Douglas/Jeremiah Glassman

LEE AND UNITED STATES v. MACON CO. BOARD OF EDUC. (RANDOLPH CO. ALABAMA)

1. ISSUE STATEMENT

Whether the Randolph County, Alabama School Board should be required to show cause why Hulond Humphries, the principal of Randolph County High School should not be terminated or reassigned to duties that do not involve contact with or supervision of students at Randolph County High School because he made racially disparaging remarks to students at the school.

The incident which triggered the filing of our motion seeking supplemental relief in this longstanding school desegregation case occurred in February 1994. Principal Humphries assembled all upper level students and informed them that the senior prom, a regularly scheduled extracurricular activities sponsored by the school district, would be cancelled if any interracial student couples planned to attend. He asked any students who planned to attend the prom with a person of another race to identify themselves. One student identified herself as having biracial parents and asked for guidance. Principal Humphries stated to the assembly that this student's parents had made a "mistake" and he did not want others to make the same "mistake".

Although the threat to cancel the prom was later rescinded by the Superintendent, the school board has expressly declined to take disciplinary action.

In our motion we also complain about the school district's failure to desegregate its faculty and administrative staffs, its failure to hire black teachers and administrators, and its disciplining black students more harshly than white students.

The case is controversial because it is the first time we have sought to have a Principal terminated or reassigned.

2. STATUS

We filed our motion on May 17, 1994. The motion is pending.

3. DEPARTMENT POSITION

Civil Rights Division AAG Patrick stated in reference to our filing: "Today's action demonstrates that some of the problems that once haunted us are still with us, and that we must never relent in the struggle to end racial discrimination. We will not turn back." **** "

The Department's position is that unless the Board can come up with some compelling evidence, the Principal should either be fired or transferred into a position in which he will not

directly interact with students.

We also want a written assurance that the school district will not retaliate against complaining students and parents including those who participated in a boycott of schools over the Principal's conduct, and the failure of the school district to do anything about it.

We also seek relief on the discipline and faculty and staff issues.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

Since the school district is located in Alabama, Senator Heflin of Alabama may have an interest in this case.

5. REFERENCE MATERIALS

The motion and supporting memorandum are on file in the section.

Contact: Nat Douglas/Jeremiah Glassman

UNITED STATES v. COMMONWEALTH OF VIRGINIA/(VMI Case)

1. ISSUE STATEMENT

In March 1990, the United States filed suit against the Commonwealth of Virginia, Virginia Military Institute (VMI), and others alleging that the defendants discriminated on the basis of sex by maintaining a policy of limiting admission to VMI, a public state supported college, to males. In April 1991, a trial was held on the issue of liability. The United States argued that the Commonwealth had not articulated any legitimate state interest sufficient to justify the admissions policy of VMI, and that the admissions policy thus violated the equal protection guarantees of the United States' Constitution. In June 1991, the district court entered its opinion, ruling for defendants.

The United States appealed the district court decision to the Fourth Circuit Court of Appeals. That court vacated the decision of the district court. The appellate court found that the admissions policy violated equal protection guarantees, holding that defendants had not justified offering the unique VMI type of education to men and not to women. However, "in light of * * * the generally recognized benefit that VMI provides," the Court did not order that women be admitted to VMI if constitutionally acceptable alternatives were available. The Court remanded the case to the district court, with the directive that the Commonwealth could choose, consistent with equal protection guarantees, to admit women to VMI, establish parallel programs or institutions, abandon state support of VMI, or select some other "creative" option.

Following the remand to the district court, defendants filed a proposed remedial plan which provided for the creation of a "parallel" program for women only -- the Virginia Women's Institute for Leadership -- at Mary Baldwin College. Mary Baldwin is a private undergraduate college in Virginia, with predominantly female enrollment. The United States opposed defendants' plan, arguing that the program omits the essential components and benefits of the unique VMI experience, and thus is not constitutionally adequate.

On April 29, 1994, the district court issued its order approving defendants' plan. The United States filed its Notice of Appeal of this decision on May 13, 1994.

Controversial issues include defendants' view, which is not supported in fact or in law, that the value of single gender higher education, both public and private, is at issue in this litigation.

2. STATUS

On May 13, 1994, the United States filed its notice of appeal of the April 29, 1994 decision of the district court. Until a briefing schedule is received from the Fourth Circuit Court of Appeals, no further action will be taken by the United States.

3. DEPARTMENT POSITION

The district court's decision approves a plan which does not satisfy either the mandate of the Fourth Circuit Court of Appeals or the equal protection rights of those women who seek a VMI type of education. The Virginia Women's Institute for Leadership (VWIL) program falls far short of providing women a program similar to that offered to men at VMI. The VWIL does not offer any of the core experiences of the VMI type of education: The holistic adversative system, the overarching military lifestyle (including the student residence hall experience), and the vigorous physical training program are all omitted from the VWIL. Any "parallel" program must offer women, at a minimum, the central attributes of the VMI program, that establish its attraction and its uniqueness. The VWIL plainly fails to accomplish this result, and thus is not a constitutionally acceptable remedy for defendants' equal protection violation.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

This case may be of interest to Senator Thurmond. A similar suit against The Citadel, an institution similar to VMI located in South Carolina, is currently in litigation before the district court in Charleston, SC. The United States is a plaintiff-intervenor in that suit.

5. REFERENCE MATERIALS

All relevant briefs and court opinions are on file in the Appellate Section of the Civil Rights Division.

Contact: Nat Douglas/Jeremiah Glassman

FAULKNER AND UNITED STATES v. JONES/(The Citadel Case)

1. ISSUE STATEMENT

On March 2, 1993, private plaintiffs filed a lawsuit against The Citadel, The Military College of South Carolina, a state supported and state operated institution, which is located in Charleston, South Carolina, challenging its male only admissions policy to the Corps of Cadets. The Corps of Cadets is the full time day program at the school.

In May 1993, the United States intervened in the lawsuit as a plaintiff. The lawsuit raises the same issues as our lawsuit against VMI.

For the 1993-94 school year, the court granted preliminary relief and permitted the plaintiff Shannon Faulkner to attend day classes with the male students, but did not permit her to participate in the Corps or live in the barracks, which are located on campus.

2. STATUS

The trial of the lawsuit began on May 16, 1994, and is expected to last several weeks.

3. DEPARTMENT POSITION

Our underlying position is the same as in the VMI case. However, unlike VMI, The Citadel has not even provided a specific alternative plan such as the Mary Baldwin option that we are appealing in VMI. Accordingly, our position is that The Citadel must admit women.

Attorney General Reno has called Shannon Faulkner to wish her well in view of the hostility she is facing at The Citadel.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

Senator Thurmond is from South Carolina and will surely have an interest in the case.

5. REFERENCE MATERIALS

Since the trial is ongoing, all reference materials -- our files -- are in Charleston, South Carolina.

Contact: Nat Douglas/Jeremiah Glassman

AYERS AND UNITED STATES v. FORDICE

1. ISSUE STATEMENT

The issue before the district court is whether the State of Mississippi has eradicated the vestiges of discrimination from its prior de jure racially dual system of higher education.

Pursuant to a referral from the U. S. Department of Education, the Department intervened in a private suit in 1974 concerning the desegregation of the Mississippi higher education system. The case was tried in 1985. The district court ruled against the government and the private plaintiffs. On appeal, a three-judge panel reversed the district court; later the Court of Appeals for the Fifth Circuit sitting en banc reinstated the district court's decision. The United States and private plaintiffs petitioned for certiorari. On June 26, 1992, the Supreme Court issued a ruling favorable to the government and private plaintiffs. United States v. Fordice, 112 S.Ct. 2727 (1992).

In Fordice, the Supreme Court held that the lower courts had applied the wrong legal standard in ruling that Mississippi's adoption of race-neutral policies and practices had satisfied the State's obligation to dismantle its former de jure segregated system of colleges and universities. Under the correct standard, the Court held:

If the State perpetuates policies and practices traceable to its prior system that continue to have segregative effects -- whether by influencing student enrollment decisions or by fostering segregation in other facets of the university system -- and such policies are without sound educational justification and can be practicably eliminated, the State has not satisfied its burden of proving that it has dismantled its prior system.

The Court identified four "surviving aspects of Mississippi's prior dual system which are constitutionally suspect", emphasizing that this list was a nonexclusive list. Since the decision in Fordice, the United States has identified approximately 40 policies and practices which we allege to be remnants of the dual system that must be remedied by the State. Discovery closed on January 14, 1993. The Court rescheduled the remand trial proceedings from February 1, 1994 to May 4, 1994, in order to permit the parties to engage in settlement discussions.

Attorney General Reno wrote to counsel for private plaintiffs and Mississippi's Governor and Attorney General to express her "personal" interest in this case and advised them that Associate Attorney General Hubbell would participate in the

initial settlement talks. The settlement discussions were not successful. Trial began on May 9, 1994 and is expected to last several weeks.

An area of potential controversy in Fordice is the proposal by Mississippi to physically close and abandon the campus of historically black Mississippi Valley State University and merge its operation with historically white Delta State University. While the Supreme Court has directed the district court on remand to closely examine the efficacy of the continued operation of all eight Mississippi's universities, the United States has historically opposed the proposed closure or merger of historically black colleges and universities. Our position has been that these schools should be given appropriate programs, facilities, and funding to function as full partners in their state systems.

2. STATUS

Trial began on May 9, 1994, and is expected to last several weeks.

3. DEPARTMENT POSITION

The Department's position is that remnants of the prior racially dual system remain in virtually all areas of the state system's operations. Most notably in such areas as mission designations, admission standards, program offerings, finance, and facilities. Our position is that the colleges which the state established for black students, Jackson State, Alcorn State and Mississippi Valley, have been historically shortchanged and remain segregated today. It is also our position that the traditionally white schools also remain racially identifiable.

It is also important to note that we have consistently opposed the proposed closure or merger of historically black colleges and universities. Our position has been that these schools should be given appropriate programs, facilities, and funding to function as full partners in their state systems. Such measures should make the institutions attractive to other-race students.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

We have similar lawsuits pending in Alabama, Louisiana, and Tennessee. Senator Heflin of Alabama may have an interest in the case.

5. REFERENCE MATERIALS

Since the trial is ongoing, the files are in Oxford, Mississippi. However, certain briefs, filings and court decisions may be available, if needed.

Contact: Nat Douglas/Jeremiah Glassman

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

42

Divider Title: _____

LEE AND UNITED STATES v. MACON CO. BOARD OF EDUC. (RANDOLPH CO. ALABAMA)

1. ISSUE STATEMENT

Whether the Randolph County, Alabama School Board should be required to show cause why Hulond Humphries, the principal of Randolph County High School should not be terminated or reassigned to duties that do not involve contact with or supervision of students at Randolph County High School because he made racially disparaging remarks to students at the school.

The incident which triggered the filing of our motion seeking supplemental relief in this longstanding school desegregation case occurred in February 1994. Principal Humphries assembled all upper level students and informed them that the senior prom, a regularly scheduled extracurricular activities sponsored by the school district, would be cancelled if any interracial student couples planned to attend. He asked any students who planned to attend the prom with a person of another race to identify themselves. One student identified herself as having biracial parents and asked for guidance. Principal Humphries stated to the assembly that this student's parents had made a "mistake" and he did not want others to make the same "mistake".

Although the threat to cancel the prom was later rescinded by the Superintendent, the school board has expressly declined to take disciplinary action.

In our motion we also complain about the school district's failure to desegregate its faculty and administrative staffs, its failure to hire black teachers and administrators, and its disciplining black students more harshly than white students.

The case is controversial because it is the first time we have sought to have a Principal terminated or reassigned.

2. STATUS

We filed our motion on May 17, 1994. The motion is pending.

3. DEPARTMENT POSITION

Civil Rights Division AAG Patrick stated in reference to our filing: "Today's action demonstrates that some of the problems that once haunted us are still with us, and that we must never relent in the struggle to end racial discrimination. We will not turn back." **** "

The Department's position is that unless the Board can come up with some compelling evidence, the Principal should either be fired or transferred into a position in which he will not

directly interact with students.

We also want a written assurance that the school district will not retaliate against complaining students and parents including those who participated in a boycott of schools over the Principal's conduct, and the failure of the school district to do anything about it.

We also seek relief on the discipline and faculty and staff issues.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

Since the school district is located in Alabama, Senator Heflin of Alabama may have an interest in this case.

5. REFERENCE MATERIALS

The motion and supporting memorandum are on file in the section.

Contact: Nat Douglas/Jeremiah Glassman

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

43

Divider Title: _____

UNITED STATES v. COMMONWEALTH OF VIRGINIA/ (VMI Case)

1. ISSUE STATEMENT

In March 1990, the United States filed suit against the Commonwealth of Virginia, Virginia Military Institute (VMI), and others alleging that the defendants discriminated on the basis of sex by maintaining a policy of limiting admission to VMI, a public state supported college, to males. In April 1991, a trial was held on the issue of liability. The United States argued that the Commonwealth had not articulated any legitimate state interest sufficient to justify the admissions policy of VMI, and that the admissions policy thus violated the equal protection guarantees of the United States' Constitution. In June 1991, the district court entered its opinion, ruling for defendants.

The United States appealed the district court decision to the Fourth Circuit Court of Appeals. That court vacated the decision of the district court. The appellate court found that the admissions policy violated equal protection guarantees, holding that defendants had not justified offering the unique VMI type of education to men and not to women. However, "in light of * * * the generally recognized benefit that VMI provides," the Court did not order that women be admitted to VMI if constitutionally acceptable alternatives were available. The Court remanded the case to the district court, with the directive that the Commonwealth could choose, consistent with equal protection guarantees, to admit women to VMI, establish parallel programs or institutions, abandon state support of VMI, or select some other "creative" option.

Following the remand to the district court, defendants filed a proposed remedial plan which provided for the creation of a "parallel" program for women only -- the Virginia Women's Institute for Leadership -- at Mary Baldwin College. Mary Baldwin is a private undergraduate college in Virginia, with predominantly female enrollment. The United States opposed defendants' plan, arguing that the program omits the essential components and benefits of the unique VMI experience, and thus is not constitutionally adequate.

On April 29, 1994, the district court issued its order approving defendants' plan. The United States filed its Notice of Appeal of this decision on May 13, 1994.

Controversial issues include defendants' view, which is not supported in fact or in law, that the value of single gender higher education, both public and private, is at issue in this litigation.

2. STATUS

On May 13, 1994, the United States filed its notice of appeal of the April 29, 1994 decision of the district court. Until a briefing schedule is received from the Fourth Circuit Court of Appeals, no further action will be taken by the United States.

3. DEPARTMENT POSITION

The district court's decision approves a plan which does not satisfy either the mandate of the Fourth Circuit Court of Appeals or the equal protection rights of those women who seek a VMI type of education. The Virginia Women's Institute for Leadership (VWIL) program falls far short of providing women a program similar to that offered to men at VMI. The VWIL does not offer any of the core experiences of the VMI type of education: The holistic adversative system, the overarching military lifestyle (including the student residence hall experience), and the vigorous physical training program are all omitted from the VWIL. Any "parallel" program must offer women, at a minimum, the central attributes of the VMI program, that establish its attraction and its uniqueness. The VWIL plainly fails to accomplish this result, and thus is not a constitutionally acceptable remedy for defendants' equal protection violation.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

This case may be of interest to Senator Thurmond. A similar suit against The Citadel, an institution similar to VMI located in South Carolina, is currently in litigation before the district court in Charleston, SC. The United States is a plaintiff-intervenor in that suit.

5. REFERENCE MATERIALS

All relevant briefs and court opinions are on file in the Appellate Section of the Civil Rights Division.

Contact: Nat Douglas/Jeremiah Glassman

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

44

Divider Title: _____

FAULKNER AND UNITED STATES v. JONES/(The Citadel Case)

1. ISSUE STATEMENT

On March 2, 1993, private plaintiffs filed a lawsuit against The Citadel, The Military College of South Carolina, a state supported and state operated institution, which is located in Charleston, South Carolina, challenging its male only admissions policy to the Corps of Cadets. The Corps of Cadets is the full time day program at the school.

In May 1993, the United States intervened in the lawsuit as a plaintiff. The lawsuit raises the same issues as our lawsuit against VMI.

For the 1993-94 school year, the court granted preliminary relief and permitted the plaintiff Shannon Faulkner to attend day classes with the male students, but did not permit her to participate in the Corps or live in the barracks, which are located on campus.

2. STATUS

The trial of the lawsuit began on May 16, 1994, and is expected to last several weeks.

3. DEPARTMENT POSITION

Our underlying position is the same as in the VMI case. However, unlike VMI, The Citadel has not even provided a specific alternative plan such as the Mary Baldwin option that we are appealing in VMI. Accordingly, our position is that The Citadel must admit women.

Attorney General Reno has called Shannon Faulkner to wish her well in view of the hostility she is facing at The Citadel.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

Senator Thurmond is from South Carolina and will surely have an interest in the case.

5. REFERENCE MATERIALS

Since the trial is ongoing, all reference materials -- our files -- are in Charleston, South Carolina.

Contact: Nat Douglas/Jeremiah Glassman

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

45

Divider Title: _____

AYERS AND UNITED STATES v. FORDICE

1. ISSUE STATEMENT

The issue before the district court is whether the State of Mississippi has eradicated the vestiges of discrimination from its prior de jure racially dual system of higher education.

Pursuant to a referral from the U. S. Department of Education, the Department intervened in a private suit in 1974 concerning the desegregation of the Mississippi higher education system. The case was tried in 1985. The district court ruled against the government and the private plaintiffs. On appeal, a three-judge panel reversed the district court; later the Court of Appeals for the Fifth Circuit sitting en banc reinstated the district court's decision. The United States and private plaintiffs petitioned for certiorari. On June 26, 1992, the Supreme Court issued a ruling favorable to the government and private plaintiffs. United States v. Fordice, 112 S.Ct. 2727 (1992).

In Fordice, the Supreme Court held that the lower courts had applied the wrong legal standard in ruling that Mississippi's adoption of race-neutral policies and practices had satisfied the State's obligation to dismantle its former de jure segregated system of colleges and universities. Under the correct standard, the Court held:

If the State perpetuates policies and practices traceable to its prior system that continue to have segregative effects -- whether by influencing student enrollment decisions or by fostering segregation in other facets of the university system -- and such policies are without sound educational justification and can be practicably eliminated, the State has not satisfied its burden of proving that it has dismantled its prior system.

The Court identified four "surviving aspects of Mississippi's prior dual system which are constitutionally suspect", emphasizing that this list was a nonexclusive list. Since the decision in Fordice, the United States has identified approximately 40 policies and practices which we allege to be remnants of the dual system that must be remedied by the State. Discovery closed on January 14, 1993. The Court rescheduled the remand trial proceedings from February 1, 1994 to May 4, 1994, in order to permit the parties to engage in settlement discussions.

Attorney General Reno wrote to counsel for private plaintiffs and Mississippi's Governor and Attorney General to express her "personal" interest in this case and advised them that Associate Attorney General Hubbell would participate in the

initial settlement talks. The settlement discussions were not successful. Trial began on May 9, 1994 and is expected to last several weeks.

An area of potential controversy in Fordice is the proposal by Mississippi to physically close and abandon the campus of historically black Mississippi Valley State University and merge its operation with historically white Delta State University. While the Supreme Court has directed the district court on remand to closely examine the efficacy of the continued operation of all eight Mississippi's universities, the United States has historically opposed the proposed closure or merger of historically black colleges and universities. Our position has been that these schools should be given appropriate programs, facilities, and funding to function as full partners in their state systems.

2. STATUS

Trial began on May 9, 1994, and is expected to last several weeks.

3. DEPARTMENT POSITION

The Department's position is that remnants of the prior racially dual system remain in virtually all areas of the state system's operations. Most notably in such areas as mission designations, admission standards, program offerings, finance, and facilities. Our position is that the colleges which the state established for black students, Jackson State, Alcorn State and Mississippi Valley, have been historically shortchanged and remain segregated today. It is also our position that the traditionally white schools also remain racially identifiable.

It is also important to note that we have consistently opposed the proposed closure or merger of historically black colleges and universities. Our position has been that these schools should be given appropriate programs, facilities, and funding to function as full partners in their state systems. Such measures should make the institutions attractive to other-race students.

4. JUDICIARY COMMITTEE MEMBERS' INTEREST/POSITION

We have similar lawsuits pending in Alabama, Louisiana, and Tennessee. Senator Heflin of Alabama may have an interest in the case. In 1981, the United States and private plaintiffs sued Alabama and its colleges alleging that the former racially dual system had not been disestablished. The case was originally tried in 1985 and we won in district court, however, the court of appeals ruled that the judge who heard the case should have disqualified himself. No Alabama district court judge could be found to hear the case because of their association with one or more of the university defendants. The case was assigned to

Judge Murphy of Georgia who ruled in our favor in 1991 and ordered relief. The private plaintiffs did not think the relief went far enough, appealed and won. The appellate court remanded the case for Judge Murphy to consider whether the missions of the historically black colleges, Alabama A&M and Alabama State, should be elevated so that they can attract white students. The court must also consider whether the land grant funds and functions allotted to Auburn University and Alabama A&M should be changed. The court must also consider whether African Americans are fairly treated in the college curricula. The court was told to consider the full range of remedies including the closure of institutions.

The court has indicated that the remedy may be intrusive and has said that he will hire his own experts, which has been interpreted by the parties as possible merger or closure of schools. Needless to say, the defendant institutions are nervous and the traditionally black institutions are concerned that they may lose their autonomy. Auburn is concerned about the land grant issue insofar as reallocation can involve millions of dollars.

5. REFERENCE MATERIALS

Since the trial is ongoing, the files are in Oxford, Mississippi. However, certain briefs, filings and court decisions may be available, if needed.

Contact: Nat Douglas/Jeremiah Glassman

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

46

Divider Title: _____

ENFORCEMENT OF THE AMERICANS WITH DISABILITIES ACT (ADA)

I. ISSUE STATEMENT

Background. The Americans with Disabilities Act of 1990 provides comprehensive civil rights protections to persons with disabilities. It assigns to the Attorney General wide-ranging enforcement and technical assistance responsibilities regarding public accommodations and commercial facilities (including, for example, all hotels, restaurants, retail stores, theaters, health care facilities, convention centers, parks, and stadiums) and the programs, services, activities, and employment practices of State and local government. The ADA's coverage extends to over five million places of public accommodation and 80,000 units of State and local government.

Areas of controversy. Disability rights groups and members of Congress have gone public with concerns over the small amount of resources committed to ADA enforcement relative to the Act's vast scope of coverage. There is also growing dissatisfaction with the fact that the Department no longer opens for investigation every complaint that it receives.

Given these resource limitations, some in the business community have become skeptical of the Federal Government's commitment to enforcing the ADA, and have adopted a "wait and see" attitude toward compliance. On the other hand, some in the business community, including the editors of the Wall Street Journal, feel that the Department has been overly aggressive and too quick to litigate under the ADA. Still others continue to complain about a lack of information about how to comply with the ADA.

Some representatives of State and local governments are viewing ADA requirements as examples of "unfunded mandates" that Congress has shifted to other levels of government.

II. DEPARTMENT POSITION

Our response has been to pursue an energetic program of enforcement and technical assistance activity to educate business and government as to their responsibilities and compel compliance where voluntary efforts fail. We have initiated or participated in 16 lawsuits and we have achieved greater access for individuals with disabilities in resolving well over 200 other matters. The resolution of these matters has resulted in the removal of physical barriers, the provision of auxiliary aids, and the elimination of discriminatory policies in a wide variety of settings, including hotels, restaurants, retail stores, private schools, health clubs, banks, police departments, courts, town halls, stadiums, and prisons.

Earlier this month we settled our lawsuit against Becker CPA Review, Inc., which was the Department's first suit filed under

the ADA and the subject of a Wall Street Journal editorial last week. Becker, the nation's largest CPA review course, has agreed to provide sign language interpreters and a variety of other auxiliary aids to students who need them for full participation in the course. It has also agreed to pay \$20,000 to be distributed among up to seven students who claim they were denied appropriate auxiliary aids and to establish a \$25,000 scholarship fund for accounting students with hearing impairments and who attend California State University, Northridge.

We are attempting to be as responsive as possible to the wide range of issues raised in the hundreds of complaints we receive from people with disabilities. Our goal is to respond to the real problems that people with disabilities are facing. We believe it is important to pursue cases in all of the geographical regions of our country and to have a docket that reflects the diversity of types of private entities and units of State and local government.

Although we have assembled a critical mass of resources to mount a credible enforcement effort, the Department is unlikely ever to have adequate resources to initiate action in response to every individual who has a valid title III complaint. As it traditionally has done in other areas of civil rights enforcement, the Department must focus its resources on matters that will have a broad impact and will promote development of the law. The new Civil Rights Division leadership is reviewing the current enforcement strategy and priorities and will make any adjustments that appear necessary.

In response to the continuing need for information about how to comply with the ADA, the Department is conducting a wide range of technical assistance activities designed to raise public awareness of the ADA, including the operation of an ADA telephone information line (which was recently converted to an 800 number with expanded hours of operation), mass-mailings to entities covered by the ADA, the maintenance of an electronic bulletin board allowing direct access to ADA materials by personal computer users, and updates to the Department's ADA Technical Assistance Manuals. The Department also recently awarded an additional \$3.2 million in grants to fund projects that will inform the private sector, State and local governments, and individuals with disabilities about their rights and responsibilities under the ADA.

We are also taking steps to better educate State and local government officials about the exact nature of their obligations under the ADA. The "unfunded mandates" furor is based to a large degree on a faulty understanding of the ADA's requirement for "program accessibility" which does not require the retrofitting of all public facilities.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

47

Divider Title: _____

THE CIVIL RIGHTS DIVISION'S PROGRAM TO ATTACK MORTGAGE LENDING
DISCRIMINATION

1. ISSUE STATEMENT

The 1990 Home Mortgage Disclosure Act (HMDA) report, released by the Federal Reserve Board in October 1991, and subsequent reports for 1991 and 1992, show that minority applicants for home mortgage loans (particularly blacks) have been rejected at substantially higher rates than have white applicants. The HMDA data that lenders are required to submit include the applicant's income and the amount of the loan sought, but they do not include detailed qualifying information such as credit history, liquid assets, and outstanding indebtedness. However, after controlling for income, the data show that, on a national basis, blacks in high income brackets are as likely to be denied as whites in the lowest bracket.

In September 1992 the Department of Justice brought its first "pattern or practice" case involving home mortgage loans. The suit, against Decatur Federal Savings and Loan in Atlanta, was settled by the filing of a consent decree along with the complaint. The relief included payment by the lender of \$1 million in compensatory and punitive damages to 48 blacks who we identified as victims of the defendant's discriminatory practices.

The most significant aspect of the Decatur case was our expert's use of a complex statistical analysis to show that the lender has rejected substantial numbers of black applicants who had met the loan underwriting standards that were in fact applied to successful white applicants.

Within three weeks of our filing of the Decatur case, the Boston Fed released a report on its study of 1990 lending in the Boston area. The report's authors used a similar statistical methodology and concluded that race was significantly correlated with loan denial.

Discrimination in home mortgage lending was made unlawful by the 1968 Fair Housing Act, and all forms of lending discrimination were prohibited by the 1974 passage of the Equal Credit Opportunity Act. During the years preceding the Decatur case, neither this Department nor the bank regulatory agencies had taken any significant action against mortgage lending discrimination. Congress amended the ECOA in 1991 to require the bank regulators to refer matters to the Attorney General when they had "reason to believe" lenders had engaged in a pattern or practice of lending discrimination.

The Department's second major case in this area, against the Shawmut Mortgage Company (filed and settled by consent decree in

December 1993) was based on a referral from the Federal Reserve Board. However, the Shawmut case has been the agencies' only referral dealing with loan underwriting. One referral from the Office of the Comptroller of the Currency produced our suit against the Vicksburg (Mississippi) National Bank for charging blacks higher interest rates than whites on unsecured home improvement loans, and we are now investigating two other referrals (from the Fed and the Office of Thrift Supervision) that concern lenders' charging minority borrowers discriminatorily high interest rates.

The remainder of the agency referrals have involved less complex issues (such as age discrimination in issuance of credit cards and spousal signature requirements). The Civil Rights Division believes these matters should be resolved without use of the limited resources we have available for attacking the more serious problem of denial of home loans on the basis of race or ethnicity.

2. STATUS

In addition to the two referrals mentioned above, the Housing and Civil Enforcement Section is now conducting three major investigations of mortgage lenders and is about to launch a similar investigation jointly with HUD.

3. DEPARTMENT POSITION

In testimony before the Senate Banking Committee last fall, the Attorney General said that she was giving mortgage lending discrimination her highest priority, and she announced a substantial increase in the resources of the Housing and Civil Enforcement Section for this purpose.

Last December, in announcing the settlement of the Shawmut case, Attorney General Reno stated that the Department had sought compensatory but not punitive damages against the lender because it had taken steps to identify and promptly correct its discriminatory practices. She urged all mortgage lenders to take voluntary corrective action, saying that those who did would be better off than those that did not once they received a visit from the Department.

4. JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS

Presumably, all favor vigorous enforcement. The Banking Committee has the action in this area. Senator Moselely-Braun is the only member of both Banking and Judiciary.

5. REFERENCE MATERIALS

Attached is a copy of the joint Policy Statement on Fair Lending, signed on March 8, 1994, by the Attorney General and the heads of the nine other federal agencies with an enforcement role in this area.

6. CONTACT PERSON

Paul Hancock
Chief, Housing and Civil Enforcement Section
4-1638

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

48

Divider Title: _____

DENNY'S PUBLIC ACCOMMODATIONS SETTLEMENT

1. ISSUE STATEMENT

On May 24, 1994 the Civil Rights Division announced the largest public accommodations settlement ever, reached with the Denny's restaurant chain which was accused of discrimination against African-American customers in its outlets across the country.

The agreement, in the form of two consent decrees filed in U.S. District Courts in San Jose, CA and Baltimore, MD, resolves two suits that accused Denny's of failing to serve blacks, requiring blacks to pre-pay, and forcing them to pay a cover charge. In one instance, black Secret Service agents who protect the President were denied service at a Denny's in Annapolis, MD. In another a black judge was forced to wait nearly an hour for service in a California Denny's while white customers were served, ate and left the restaurant.

The suit was settled by the Department of Justice together with a California plaintiffs' law firm and the Washington Lawyers' Committee for Civil Rights and Urban Affairs. Denny's will pay a total of \$45.7 million dollars to the plaintiffs in the private class action suits, but has also agreed to retain an independent civil rights monitor to enforce compliance with the decrees; to educate and train new employees in racial sensitivity and their obligations under the Public Accommodations Act; implement a testing program; feature minorities in their advertisement, and; include a non-discrimination policy statement in all advertisements and in every restaurant. Once approved by the courts the decrees will remain in effect for 5 years.

2. STATUS

The consent decrees were filed in U.S. District Courts in San Jose, CA and Baltimore, MD on May 24, 1994 and now await approval by these courts.

3. DEPARTMENT POSITION

The Civil Rights Division is not permitted to sue for money damages under the Public Accommodations Act, but was involved in reaching settlement on all of the prospective, non-monetary forms of relief, including the civil rights monitor, the training, the testing, and the advertising.

Assistant Attorney General Deval L. Patrick said that while "the problem [of discrimination in public accommodations] is not as great today as it once was, . . . for all those public accommodations that haven't lost their appetite for racism, I want to warn you here that we are watching." Mr. Patrick has also advised that there are 20 more ongoing investigations in the area of discrimination in public accommodations.

4. JUDICIARY COMMITTEE MEMBER INTEREST/ POSITION

No member of the committee has yet expressed a particular interest in this case, although because Denny's is headquartered in Spartanburg, S.C., it is possible Sen. Thurmond may ask about it. It should be noted, however, that Flagstar, Denny's parent company, was quite cooperative in the settlement and very apologetic in media coverage surrounding the settlement, so it is unlikely that the company itself would press Sen. Thurmond to criticize the Department's actions.

5. REFERENCE MATERIALS

Attached is the New York Times story of May 25, 1994 on the Denny's settlement. The report ran on the front page of the Times and received widespread national coverage including reports on all network evening programs.

Contact: Helaine Greenfeld

Denny's Restaurants to Pay \$54 Million in Race Bias Suits

By STEPHEN LABATON

Special to The New York Times

WASHINGTON, May 24 — Denny's, a national restaurant chain, agreed today to pay more than \$54 million to settle lawsuits filed by thousands of black customers who had been refused service or had been forced to wait longer or pay more than white customers.

The new head of the civil rights division of the Justice Department, Deval L. Patrick, called the agreements the largest and broadest settlements ever achieved since laws were adopted more than 30 years ago to end segregation in restaurants and other places that serve the public.

The agreement, worked out in cooperation between Government lawyers and lawyers representing Denny's customers, ended Federal class-action lawsuits in Baltimore and in San Jose, Calif., and a complaint in Virginia. Those actions were filed by thousands of black customers who asserted that Denny's had violated their civil rights by treating them rudely and routinely giving preferential treatment to whites.

In one instance, a black Federal judge from Houston and his wife who had been traveling for 18 hours said

they were forced to wait at a Denny's in Yreka, Calif., for almost an hour as white teen-agers taunted them and referred to them as "niggers."

In another case, six black Secret Service agents assigned to the Presidential detail were refused a table at a Denny's in Annapolis, Md., while their white counterparts were served.

For more than three years Denny's, a subsidiary of Flagstar Companies Inc. of Spartanburg, S.C., has been the target of growing complaints that its restaurants segregated blacks or required them to pre-pay or make various payments not required of white patrons.

The company denied that it had a policy of discrimination, but it nonetheless promised to take immediate steps to prevent shabby treatment of its black customers.

Some executives said they feared the publicity had begun to discourage blacks, who represent 10 percent of its customers, from eating at the 1,500 Denny's restaurants. In all, more than 4,300 claims were filed asserting that the company had treated black customers worse than whites.

Under today's settlements, how much each customer receives from Denny's will depend on how many people come forward within the next few months.

In addition to the cash payment and the promise to improve its treatment of blacks, the company agreed to hire Sharon Lybeck Hartmann, a Los Angeles lawyer, to enforce the consent decree and to monitor any civil rights problems that may arise. It also promised to begin a program in which blacks posing as customers

will investigate whether Denny's restaurants are discriminating.

"With today's action, the message is clear: there will be a high price to pay for unlawful indignities, and the Justice Department will exact that price wherever the law is violated," Mr. Patrick said. "Unfair standards employed by restaurants must no longer be standard fare."

The settlements also suggested that after more than a year without a leader, the civil rights division at the Justice Department may be beginning a more active period. The division suffered a bruising political setback when President Clinton withdrew the nomination of Lani Guinier last year to head the division. Mr. Clinton left the position vacant for the first 15 months of his Administration.

Through much of the last year, the division also faced criticism from New York Democrats and Republicans for its investigation into the 1991 disturbances in the Crown Heights section of Brooklyn.

Moreover, today's settlements reflected a revived partnership between civil rights and Government lawyers that had disappeared during the Reagan and Bush Administrations.

The two Federal suits settled today had been filed under Title II of the Civil Rights Act of 1964, which is known as the Public Accommodations Act. The law was often used in the 1960's and 70's to eliminate many lingering segregation problems, but in the last decade it has not been widely cited.

Last year another restaurant chain, Shoney's, agreed to pay \$105 million to thousands of black employees and job applicants to settle a

discrimination case, but that case did not involve customers.

Lawyers for some of the black customers said today that they had begun to uncover evidence that the thousands of cases were not random but reflected a pervasive attitude of discrimination that permeated the company's management.

"We believe that there was, at the company, an attitude that went into the management level, but we don't know exactly how high," said John Relman, a lawyer for the Washington Lawyers' Committee for Civil Rights. "This attitude at the company, at the management level and working its way down, had the effect of causing discriminatory attitudes going down to the lowest levels of the company."

Another lawyer, Mari Mayeda, said that during pretrial fact-finding a former manager testified about training sessions in which managers were instructed about how to deal with too many blacks in a restaurant at one time. Ms. Mayeda said the company's code word for such occasions was a "blackout."

But Jerome J. Richardson, the chairman and chief executive of Flagstar, denied that there was any policy to discriminate against blacks.

"These settlements are not an admission that Denny's has had a policy or practice of discrimination against African Americans," he said. At a news conference in Washington, he sought to portray the incidents as random and not part of any corporate strategy.

"We serve 1 million customers a day at Denny's and we have 40,000 employees," Mr. Richardson said. "It would be naïve on my part to say that customers are always satisfied."

Within the last year, Mr. Richardson said, the company has taken significant steps to prevent discrimination at its restaurants, including training and random checking. It has

also hired Norman J. Hill, a black executive, to head its human resources department.

But the portrait of the chain presented by some customers today suggested that it had been plagued by racial problems.

Kristina Ridgeway was 17 years old when she walked into a Denny's in San Jose in 1991 with 17 other teenagers after attending a college forum sponsored by the San Jose chapter of the National Association for the Advancement of Colored People. The restaurant demanded a cover charge in addition to a prepayment for the meal, even though several white classmates did not have to make such payments.

Cont'd

"I was very upset," Ms. Ridgeway said. "Both my parents are from the South and they had to grow up with this kind of thing, and they would always tell me that I wouldn't have to deal with stuff like this."

In another case in California, Rachel Thompson recalled how Denny's offered a free meal for anyone on a birthday and how she had brought proof of her 13th birthday to a family gathering in Vallejo. The restaurant refused to accept a baptismal certificate with Rachel's date of birth on it.

"They just said that wasn't enough and made a big scene," she said. "I felt embarrassed. It was humiliating because other families in there were looking at us, and I guess they thought we were some kind of bad criminals."

And some incidents occurred as recently as last year, even as the company was trying to resolve accusations of discrimination.

In April 1993, Denny's agreed as part of consent decree to take steps to end discrimination as its settlement of Federal case in California. But the same day it entered that consent decree, Denny's refused to serve six black Secret Service agents. They

sued in Federal court in Baltimore, and the case in California was reopened.

Federal judges in Baltimore and San Jose must approve the settlements before they take effect, a process that lawyers said should be completed this summer. Once approved, the customers will receive \$46 million and their lawyers will share another \$8.7 million. Any money left over

from the settlements will be donated to the United Negro College Fund and to other nonprofit organizations dedicated to furthering civil rights.

The case should not have a large effect on Flagstar's bottom line. Denny's had revenues of \$1.53 billion in 1993, and the parent company, Flagstar, owns more than 500 Hardee's franchises, as well as as El Pollo Loco and Quincy's Family

Steakhouse chains.

In over-the-counter trading, the stock of Flagstar closed today at \$9.50, down 37.5 cents in light trading.

✓ Sharing in Denny's Award

Special to The New York Times

WASHINGTON, May 24 — Customers of Denny's who believe that the restaurant chain treated them improperly because they are black will have to file a claim if they want to share in today's proposed settlements.

For customers of Denny's in any state but California, awards are possible for any incidents that occurred from July 1, 1987, through today. For California customers, the incident must have occurred from Nov. 14, 1988, through today.

Lawyers for the two Federal class-action suits settled today advised that customers could call a toll-free number, 1-800-836-0055, to obtain a form that will be used to separate valid claims from frivolous ones. The forms will also be published in major newspapers this summer.

Lawyers said the forms would ask for biographical information from the customers. They will also request a description of what happened and will ask if a complaint was filed at the time of the incident and whether the customer has witnesses.

"They will have to show more than just that they would have liked to have been served more quickly," said Craig A. Hoover of Hogan & Hartson, a firm involved in the case. "But the standard of proof is not as rigorous as a trial."

The claims will be examined by a California law firm, Saperstein, Mayeda & Goldstein, or the Washington Lawyers Committee for Civil Rights and Urban Affairs. To discourage fraudulent claims, lawyers said, anyone who presented a false claim could be subject to perjury proceedings.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

49

Divider Title: _____

COMPREHENSIVE ASYLUM REFORM

ISSUE STATEMENT: The INS asylum processing system has not been able to keep up with the explosion of asylum applications filed by aliens who are not in removal proceedings. The volume of asylum cases filed has increased from 56,000 in FY 1991 to over 150,000 in FY 1993. There are currently 150 asylum officers working on a backlog of 364,000 pending applications.

The backlog has encouraged abuse of the system by aliens seeking to gain entry into the United States through the filing of fraudulent or spurious claims. Such claims may not be decided for several years, by which time the aliens may have become established in the community, thus making deportation more difficult should their asylum claims eventually be denied. Many aliens are using "boilerplate" asylum applications which are provided to them by unscrupulous immigration lawyers, often for inflated fees. This situation has generated criticism because it represents a loss of control over a program which was originally intended to benefit genuine refugees from other countries.

STATUS: The Administration has proposed new asylum rules and procedures which have been published in the Federal Register, and will amend existing regulations to streamline the adjudication of asylum application submitted to INS Asylum Officers. The new rules, coupled with substantial additional resources in FY 94 and requested in FY 95, are expected to reduce application processing times from about 18-24 months to six months or less. They will deter non-meritorious applications by reviewing all cases and deciding them quickly. Funding for these reforms is dependent on passage of the current versions of the Crime Bill, which contains authorization to use crime control funding for asylum reform. The essential elements of the comprehensive asylum reform package are as follows:

- o Doubles the number of asylum officers from 150 to 300 and provides for hiring 55 additional immigration judges.
- o Provides employment authorization only to those aliens who are granted asylum or whose applications are not decided within 6 months of the application date. This will remove the incentive for aliens to file false claims solely as a means to secure work authorization, and will result in a substantial reduction in the number of claims filed.
- o Streamlines the claims procedure, including elimination of a written decision for aliens whose claims are denied, and refers denied cases directly to an immigration judge who will review the asylum claim if raised in removal proceedings.
- o Imposes a fee of \$130 for each asylum claim. This will cover some of the cost of case processing and will discourage nonmeritorious claims. The fee can be waived by INS in cases of extreme hardship. The fee assessment has raised controversy, and

was opposed by some refugee advocate groups and other commenters.

The Administration is also supporting legislation which would permit expedited exclusion proceedings in extraordinary circumstances, such as the arrival of a large number of undocumented aliens which exceed the normal screening capacity and resources of the INS, and/or when aliens in a vessel are escorted to or into the United States by the Coast Guard. A similar legislative proposal was offered last summer, which contained increased penalties for alien smuggling, RICO applications, and gave wiretap authority to INS. This legislation was well received, but did not move in Congress, and we decided not to push it. The current draft bill has cleared DOJ and is currently before OMB for review and clearance. The present strategy is to append this proposal to H.R. 783, the Technical Amendments Act, which Congressman Mazzoli introduced. This bill has already passed both houses of Congress.

DEPARTMENT POSITION: At a February 9, 1994, news conference introducing the asylum reform package, Attorney General Reno stated that the new asylum initiatives are designed to "protect legal refugees" while deterring those who abuse the system. Commissioner Meissner has voiced the need for reform "that will preserve fundamental legal protection afforded to legitimate asylum seekers, while addressing the problems of asylum abuse."

4. CONGRESSIONAL INTEREST: Several members of the Judiciary Committee, including Senators Feinstein, Kennedy and Simpson, have been deeply involved in the development of asylum reform. Senator Feinstein was present at the Attorney General's February announcement of the reform package.

5. REFERENCE MATERIALS: Attached are 1) Summary of the proposed asylum rule. 2) Memorandum from INS Office of General Counsel, including the draft expedited exclusion legislation. 3) Memorandum from the DOJ Office of Legislative Affairs outlining legislative strategy.

SUMMARY OF PROPOSED ASYLUM REFORM REGULATIONS

Comprehensive new regulations have been proposed that will reform the political asylum system, as directed by President Clinton in July 1993. The centerpiece of the proposed regulations is to grant protection to legitimate refugees quickly and to refer claims that cannot be granted to an Immigration Judge (IJ). If the Immigration Judge does not grant the claim, and no other relief is appropriate, the hearing will result in an exclusion or deportation order.

The proposed system, coupled with substantial additional resources in FY 94 and requested in FY 95, will reduce application processing times from an average 18-24 months to six months or less. It will deter non-meritorious applications by reviewing all cases and deciding them quickly. The proposal was developed through extensive consultation within the Administration, among key congressional offices, and with a representative range of non-governmental immigration organizations. The essential elements are as follows:

Establishes a Streamlined, Timely Asylum System. Currently, an alien may pursue his asylum application before the INS Asylum Officer Corps (AOC) until receiving a decision, but if denied, he may restart the whole process before an IJ during the removal proceedings. This lack of integration contributes to duplication of effort, increasing backlog of cases and delays in reaching final decisions. Affirmative asylum processing - including INS processing and de novo adjudication by an IJ - now takes a minimum of 18 to 24 months. Under reform, INS and IJ procedures are expected to be completed in 180 days or less for all newly filed applications. The proposed regulations streamline the process by:

- o Granting asylum and work authorization within 60 days to meritorious cases and referring cases that cannot be granted to IJs;
- o Eliminating the preparation of detailed, time-consuming denials by asylum officers in cases where they do not grant asylum to applicants who have no legal immigration status. Instead, asylum applications from these individuals will be referred automatically, and mandatorily, to IJs for adjudication as part of exclusion or deportation proceedings;
- o Giving asylum officers discretion in conducting personal interviews. Certain cases lacking any merit will not be interviewed;
- o Eliminating the requirement that an asylum officer send the applicant a Notice of Intent to Deny (NOID), thereby eliminating the 30 day rebuttal period for challenges to the NOID;
- o Requiring the asylum officer, in cases where he has not granted asylum and the applicant lacks lawful status, to refer the application to an IJ at the same time the applicant is served with the charging document that initiates removal proceedings;

- o Eliminating the need in virtually all cases for asylum officers to determine whether "withholding of deportation" is an appropriate benefit after the denial of an asylum application. Under the proposed rule, asylum officers, in most cases, will not need to reach this issue because they will not be issuing asylum denials in exclusion or deportation cases. IJs will continue to determine whether withholding of deportation is appropriate in those cases;
- o Specifying that information contained in an asylum application may be used as a basis for removal proceedings before an IJ against otherwise deportable aliens;
- o Authorizing asylum officers and IJs to deny otherwise approvable claims on the ground that the applicant can be deported or returned to a country in which the alien would not face harm or persecution and would have access to full and fair procedures for determining the asylum claim in that country, in accordance with appropriate international agreements;
- o Discouraging applicants from filing claims before IJs that differ from the claims they filed before asylum officers by requiring that the original asylum application be forwarded to the IJ at the time the case is referred by the asylum officer.

Reduces Incentives to File for Asylum Solely to Obtain Work Authorization. Currently, an asylum applicant may apply for an Employment Authorization Document (EAD) at the time of filing. INS must grant work authorization if the asylum application is not frivolous or has not been adjudicated within 90 days of filing. Our analysis shows that many applicants are filing claims solely to obtain an EAD. Such filings increase both the backlog of cases to be adjudicated and the time before deserving applicants are granted asylum. The proposed regulations provide that work authorization will not be granted unless the original asylum application has been granted or is not decided within 180 days. This is a 90-day increase over the current waiting period for an interim EAD. The reforms place the burden upon INS and the IJs to adjudicate claims promptly within the 180-day period, since, by doing so, the need to adjudicate work authorization separately is avoided. Well-founded asylum applications are anticipated to be granted within 60 days of filing and employment authorized immediately for those applicants. An applicant who has been convicted of an aggravated felony will not be granted employment authorization. An applicant who previously obtained work authorization, but whose application for asylum or withholding of deportation is denied because of the conviction, shall have his work authorization terminated automatically as of the date of the denial.

Improves Communication With Department of State on Country Conditions. Asylum officers and the IJs will have access electronically to State Department information on detailed country conditions to assist them in making asylum decisions. INS and the IJs also may request specific information from the State Department on individual cases or specific country conditions. The State Department may, in its discretion, provide information available to it concerning individual cases. Under the proposed regulations, INS will not be required to wait 60 days, as now mandated, for the Department of State's discretionary advisory opinion before issuing a decision on each asylum application.

Requires A Filing Fee for Asylum and Initial Work Authorization Applications to Alleviate Increasing Costs. The proposed regulations institute a fee of \$130 for filing an asylum application. The proposed fee for initial applications for an EAD is \$60. Consistent with fees for non-asylum applications, these filing fees will be waived if the applicant is able to demonstrate that he is unable to pay. The estimated cost of adjudicating each asylum application is \$615. INS has avoided charging fees for asylum in the past by funding the program through a surcharge assessed on other immigration benefits. Funds collected through this surcharge are no longer sufficient to cover the asylum program and will be supplemented with funds collected through the fee.

Reduces Paperwork. The proposed regulations reduce asylum application paperwork in two primary ways. First, the Biographical Information Form (Form G-325A) is eliminated because the main asylum application (Form I-589) will be redesigned to request necessary information that is now sought in separate Form G-325A. Second, an applicant must submit only three, not the currently required four, copies of the asylum application, and any supporting material.

March 29, 1994

Expedited Exclusion Legislation

Phyllis Coven
Deputy Associate Attorney General

T. Alexander Aleinikoff
General Counsel

One of the measures we have taken in preparing for a potential mass migration situation is to draft legislation to expedite exclusion proceedings for aliens who arrive during an immigration emergency. Following is a description of the bill, its current status, our legislative strategy, and our reasons for believing other alternatives for expediting the proceedings will not work if a mass migration occurs.

Description of Bill

This bill proposes to grant the Attorney General authority to dispense with the normal exclusion procedures where she determines that the number of aliens en route to or arriving in the United States presents an extraordinary immigration situation, or where the alien is on a vessel either inside or outside the territorial waters of the United States which is escorted into the United States by officers of the United States, or where the alien arrives on a vessel in any circumstances.

It vests the Attorney General with authority to provide by regulation for a procedure for special orders of exclusion and deportation for aliens who arrive as described above who are excludable, without referral to an Immigration Judge. The bill provides for no administrative appeal of a special order of exclusion except in the case of an alien who appears to have been admitted for lawful permanent residence.

An alien is not subject to an order of special exclusion if the alien has a credible fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. An alien determined to have a credible fear of persecution is taken before an Immigration Judge for an exclusion proceeding in accordance with section 236. The Attorney General has authority to provide by regulation that an alien with a credible fear would be subject to a special order of

exclusion if the alien can be returned to a country where the alien does not have a credible fear of persecution or return to persecution.

Judicial review is severely limited in this bill. The Attorney General's decision of whether to invoke the special procedures in this bill are unreviewable, as is the determination of whether an alien has a credible fear of persecution. The bill provides for review of special exclusion orders only in individual habeas corpus actions. In these actions the court is restricted to a review of whether the petitioner is an alien, whether the alien has been specially excluded, and whether the alien can prove that the alien has been lawfully admitted for permanent residence. If the court determines that the alien was not specially excluded, or was lawfully admitted for permanent residence, the alien is afforded a hearing in accordance with section 236.

The entire legal process will be considerably expedited under this proposed legislation, in that, except for aliens who have a credible fear of persecution, there will no longer be exclusion hearings presided over by immigration judges or routine review of exclusion orders by the Board of Immigration Appeals (BIA).

The process is lengthy under current law, since the alien is entitled to an exclusion hearing before an immigration judge, with opportunities for appeals to the BIA, the district court and the Court of Appeals. In a detained case, the average time to complete an immigration judge hearing on the merits in Florida¹ is four months. If not detained, the merits hearing can expect to be completed in Florida in 12 to 18 months. On a detained case, the Board will act within 45-90 days. For non-detained cases, the average time for a Board decision is at least a year. The District Court will take several months to decide a detained case; a non-detained case somewhat longer. The Court of Appeals usually takes a year or more to decide such immigration cases.

Under the proposed legislation, it is likely that the entire process, including the limited judicial review allowed, could be completed in 90-120 days for aliens subject to special orders of exclusion. The time frame would depend on the number of aliens arriving, and the resources available to handle a mass migration.

Current status of bill

The draft bill is currently at OMB for review and clearance. OLA, INS, EOIR, OIL and the Department of State worked together to craft language acceptable to all parties.

¹It is likely that Florida would be the situs of a mass migration contemplated by this bill.

Legislative Strategy

Originally, a legislative proposal was offered last summer to provide for summary exclusion. That proposal was somewhat different from this one, in that it was primarily designed to control the no document/fraudulent document situation at airports. The present intention is to append our proposal to H.R. 783, the Technical Amendments Act, which Congressman Mazzoli introduced. This bill has already passed both houses of Congress. It is thought that H.R. 783 has about a 40% chance of passing the Congress. We expect that we will know before Memorial Day whether or not this bill will actually pass.

Why Alternatives are Unworkable

We believe this legislation is necessary in order to be prepared for any potential mass migration emergency. We have decided to pursue this legislative approach, since we do not believe these same results could be accomplished with either an Executive Order or with the present statute.

Executive Order

While section 212(f) of the Act provides the President with authority to issue proclamations to suspend the entry of aliens or to restrict the conditions of alien entries, we do not believe that such a proclamation could have the same effect as the proposed legislation. Specifically, under the statutory proposal for expedited exclusion, judicial review is severely restricted. This is a major modification of current law, and cannot be accomplished by Executive Order.

Present Law

The scheduling of exclusion hearings can be expedited under existing authority. However, opportunities for judicial review cannot be altered administratively. Furthermore, as you know, a class action lawsuit was filed against the Department of Justice on behalf of all Chinese aliens claiming persecution on account of coerced population control policies, on the ground that the White House intervened in these cases by directing that they be placed on a "fast track." While the lawsuit has not yet been decided, we would prefer to avoid future litigation of this nature.

SPECIAL PROCEDURES FOR EXPEDITIOUS EXCLUSION

Section 1. Section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) is amended by adding at the end the following new subsections:

"(d)(1) Notwithstanding the provisions of subsection (b) of this section and of section 236, the Attorney General under the circumstances described in subparagraphs (A) or (B) may, without referral to an Immigration Judge, order the exclusion and deportation of an alien who appears to an examining immigration officer to be excludable. The Attorney General shall by regulation establish a procedure for special orders of exclusion and deportation under this subsection when, in the case of aliens who are excludable under section 212(a) --

A. The Attorney General determines that the number or circumstances of aliens en route to or arriving in the United States present an extraordinary immigration situation; or

B. The alien (i) is brought or escorted under the authority of the United States into the United States, having been on board a vessel encountered outside of the territorial waters of the United States by officers of the United States; (ii) is brought or escorted under the authority of the United States to a port of entry, having been on board a vessel encountered within the territorial sea or internal waters of the United States; or (iii) has arrived on a vessel in circumstances

other than as described in subsections (i) and (ii) of this paragraph.

The judgment whether there exists an extraordinary immigration situation within the meaning of (A) or whether to invoke the provisions of (B) is committed to the sole and exclusive discretion of the Attorney General.

"(2) As used in this section, extraordinary immigration situation means the arrival or imminent arrival in the United States or its territorial waters of aliens who by their number or circumstances exceed the capacity of the resources and procedures normally applied to the inspection and examination of such aliens.

"(3) When the Attorney General determines to invoke the provisions of paragraph (1), she may suspend the normal operation of immigration regulations regarding the inspection and exclusion of such aliens as the Attorney General in her discretion may deem appropriate.

"(4) A special exclusion order entered in accordance with the provisions of this subsection is not subject to administrative appeal, except that the Attorney General shall provide by regulation for prompt review of such an order against an applicant who appears to have been lawfully admitted for permanent residence. A special exclusion order shall have the same effect as if the alien had been ordered excluded and deported pursuant to section 236, except that judicial review of such an order shall be available only under section 106.

"(5) No alien may be ordered specially excluded under

paragraph (1) if he or she is physically present in the United States and seeks asylum under section 208 of the Act if, in the opinion of the Attorney General, such alien has a credible fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, in the country of such person's nationality, or in the case of a person having no nationality, the country in which such person last habitually resided. The Attorney General may by regulation provide that this paragraph shall not apply in the case of an alien who can be returned to a country where the alien does not have a credible fear of persecution or of return to persecution. As used herein, the term "credible fear of persecution" means that, (A) there is a substantial likelihood that the statements made by the alien in support of his or her claim are true, and (B) in light of such statements and country conditions, the alien has a reasonable possibility of establishing eligibility as a refugee within the meaning of section 101(a)(42)(A). An alien determined to have a credible fear of persecution shall be taken before an Immigration Judge for exclusion proceedings in accordance with section 236.

"(6) Notwithstanding the provisions of paragraph 5, the Attorney General may, in her discretion, provide that an application for asylum made by any alien subject to the special exclusion procedures provided for in paragraph 1 may be considered pursuant to section 208, and any regulations promulgated thereunder for applications considered pursuant to this paragraph; Provided,

however, that an alien not granted asylum under this section would be subject to a special order of exclusion under paragraph 1.

"(7) Nothing in this subsection shall be regarded as requiring an inquiry before an Immigration Judge in the case of an alien crewman or alien stowaway."

"(e) In any action brought for the assessment of penalties for improper entry or re-entry of an alien under section 275 and 276 of the Immigration and Nationality Act, no court shall have jurisdiction to hear claims attacking the validity of orders of exclusion, special exclusion, or deportation entered under sections 235, 236, and 242 of the Immigration and Nationality Act."

Section 2. Judicial Review

Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended by changing the heading to read, "JUDICIAL REVIEW OF ORDERS OF DEPORTATION AND EXCLUSION, AND SPECIAL EXCLUSION", and by adding at the end the following new sub-section:

"(d) Special Exclusion. Notwithstanding any other provision of law, and except as provided in this subsection, no court shall have jurisdiction to review any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of the special exclusion provisions contained in section 235(d); except as provided herein, there shall be no judicial review

of (i) determinations by the Attorney General to invoke the provisions of section 235(d), (ii) the application of section 235(d) to individual aliens, including the determinations made under paragraphs 5 and 6, (iii) procedures and policies adopted by the Attorney General to implement the provisions of section 235(d). Regardless of the nature of the action or claim or the identity of the party or parties bringing the action, no court shall have jurisdiction or authority to enter declaratory, injunctive, or other equitable relief not specifically authorized in this subsection, or to certify a class under Rule 23 of the Federal Rules of Civil Procedure.

"(1) Judicial review of any cause, claim, or individual determination made or arising under or pertaining to special exclusion under section 235(d) shall only be available in habeas corpus proceedings, and shall be limited to determinations of (i) whether the petitioner is an alien, (ii) whether the petitioner was ordered specially excluded, and (iii) whether the petitioner can prove by a preponderance of the evidence that he or she is an alien lawfully admitted for permanent residence and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 235(d)(3).

"(2) In any case where the court determines that the petitioner (i) is an alien who was not ordered specially excluded, or (ii) has demonstrated by a preponderance of the evidence that he or she is a lawful permanent resident, the

court may order no remedy or relief other than to require that the petitioner be provided a hearing in accordance with section 236, or a determination in accordance with section 235(c) or 273(d). Any alien who is provided a hearing under section 236 pursuant to these provisions, may thereafter obtain judicial review of any resulting final order of exclusion pursuant to section 106(b) of the Act.

"(3) In determining whether an alien has been ordered specially excluded, the court's inquiry shall be limited to whether such an order in fact was issued and whether it relates to the petitioner. There shall be no review of whether the alien is actually excludable or entitled to any relief from exclusion."

Section 3. Section 101(a)(13) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)) is amended by adding the following language after the word "otherwise", in the first sentence:

"except that no alien arriving under the circumstances described in section 235(d)(1)(A) or 235(d)(1)(B) shall be regarded as making an entry into the United States for purposes of the immigration laws, and".



U. S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 18, 1994

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

FROM: SHEILA F. ANTHONY, ASSISTANT ATTORNEY GENERAL
FOR LEGISLATIVE AFFAIRS

SUBJECT: STRATEGY FOR IMMIGRATION LEGISLATION THIS YEAR

PURPOSE: To inform the Deputy Attorney General of the Office of Legislative Affairs' strategy recommendations on immigration for the 103rd Congress

Because immigration is triggering such volatile reactions on the Hill this year, Senator Kennedy and Congressman Mazzoli, chairmen of the Senate and House Judiciary Immigration Subcommittees, are reluctant to move any immigration legislation to the floor this session, and we agree. Instead, Senator Kennedy has proposed holding two immigration hearings this summer (the first on June 9) on the legislation introduced by Senators Simpson, Reid and Feinstein and on the Administration's immigration accomplishments this year. We understand that Senator Biden has agreed to hold the hearings at the full Committee level, so that the Attorney General may testify along with INS Commissioner Doris Meissner. We believe that this approach will present an appropriate opportunity for the Administration to detail its immigration strategies and achievements and diminish pressure for action on legislative provisions that the Administration does not support.

In addition, our strategy for enactment of the legislative provisions the Administration is seeking is twofold. First, both the House and Senate crime bills contain authorization to use Crime Control Funding for asylum reform, strengthening the border patrol, and expediting the deportation of criminal aliens through the institutional hearing program. We will work with the conferees to ensure that the authorization language remains in the crime bill, and will if necessary ask the Attorney General to convey our support for those provisions. We also will be meeting with the appropriations staff on the vital importance of the President's budget request for the immigration initiatives and the budget amendment to partially reimburse the states for the costs of incarcerating undocumented criminal aliens.

Second, last year both the House and Senate passed H.R. 783, an immigration technical corrections bill, in different forms. Chairmen Kennedy and Mazzoli have agreed to work with us to add to that bill the other legislative items the Administration is seeking this year. Those items are: (1) clarification that asylum applicants are not entitled to work authorization (the only statutory change needed to implement INS's asylum reform);¹ (2) authority to allow INS to waive the naturalization interview;² (3) language making permanent the visa waiver pilot program (which Congressmen Mazzoli and Schumer support, among others);³ (4) a provision barring certain defenses to deportation for an aggravated felon who has been sentenced (instead of who has served) to a term of imprisonment of at least five years; (5) assessing an immigration inspection fee against certain "cruise ship" passengers (a statutory change requested by OMB);⁴ (6) extending the telephone verification system pilot which aids employers in confirming alien employees' authorization to work in the United States;⁵ and (7) a modified version of the expedited exclusion legislation the President transmitted to Congress last July, which would be used to deter alien smuggling.

¹ Such language already was adopted by the House Judiciary Immigration Subcommittee when it marked up H.R. 2602, Chairman Mazzoli's immigration reform bill, last year. We do not expect H.R. 2602, re-introduced after mark-up as H.R. 3363, to move beyond the full Committee because Chairman Brooks is aware that the Administration opposes title II, which contains asylum reform provisions that conflict with the INS's proposed asylum regulations.

² When INS Commissioner Doris Meissner discussed our proposed additions to H.R. 783 with Mazzoli, he stated that he believes that statutory authorization to waive the naturalization interview could be controversial. He suggested waiving the interview administratively, which INS believes it has the authority to do. Mazzoli's staff advises that Mazzoli thinks that Commissioner Meissner has backed away from the statutory proposal. In early May, OLA asked INS Congressional Affairs to confirm whether the Commissioner wishes to discuss this item further with Mazzoli or has agreed to drop the language.

³ This language is included in Mazzoli's immigration bill, H.R. 2602, now H.R. 3363, marked up by the Immigration Subcommittee last year.

⁴ INS Congressional Affairs advised earlier this month that Senator Hollings, Chairman of the Senate Appropriations Commerce, Justice, State and Judiciary Subcommittee, is opposed to a "cruise ship" fee.

⁵ Mazzoli strongly supports the telephone verification system.

Currently, we are waiting on NSC and DPC approval of the modified expedited exclusion language, which we hope to receive tomorrow. (NSC and DPC staff are briefing their principals to make sure the expedited exclusion language does not raise Haiti-related concerns.) After we give this last piece to Congressman Mazzoli's staff, we will begin meeting with the relevant congressional staffers (staff for Immigration Subcommittee Members, principal staff for full Judiciary Committees, principal appropriations staff, Hispanic Caucus staff, Congressional Black Caucus staff, staff from key California, Texas and Florida members, and leadership staff) to obtain their final concurrence on the package. Congressman Mazzoli then can bring H.R. 783 up on the House floor for a vote under suspension of the rules. After the House passes the bill, Senator Kennedy has agreed to bring it to a vote by the Senate immediately.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

50

Divider Title: _____

BORDER MANAGEMENT

1. ISSUE STATEMENT: On February 3, Attorney General Janet Reno and Immigration and Naturalization Commissioner Doris Meissner announced a comprehensive two-year strategy to strengthen enforcement of immigration laws.

- o Strengthening border control is critical to these initiatives. The strategy is "prevention through deterrence" in order to gain control of the border. Instead of spreading the strength of additional officers and resources along the entire border, the strategy concentrates all of these new resources at the most active points of illegal entry. By disrupting smuggling routes, illegal traffic will be deterred or forced through ports of entry or over more hostile terrain less suited for crossing and more suited for enforcement. In order to multiply the effectiveness of human resources, technology will be employed as an integral part of this deterrent strategy. This technology will include: infrared scopes, border lighting, fencing, upgraded sensor reporting and dispatch systems, automated booking procedures, and fingerprinting illegal crossers to determine recidivism.

Initially, this strategy will be applied to the San Diego and El Paso areas. Once control of these areas is gained, it will ultimately be applied across the entire southwest border. By the end of 1995, INS will add 1,010 agents to border enforcement. This will be achieved by hiring 500 new agents and redeploying 510 agents freed from desk work as the result of automation and the redirection of existing resources. Additionally, INS is examining user fee funding mechanisms to generate increased staffing and administrative resources at ports of entry.

- o On July 27 the President announced his intention to provide resources to strengthen enforcement programs to combat illegal immigration. The President's initiative addressed illegal immigration generally, and alien smuggling and counterterrorism specifically. These initiatives were designed to 1) prevent illegal entry into the United States; 2) remove and deport illegal aliens and alien felons expeditiously; and 3) strengthen criminal penalties and investigatory authorities.
- o A key point of these initiatives is the integrity of INS officers. INS is revising its training to emphasize ethics and civil rights. The Service is also strengthening internal disciplinary procedures and establishing a Citizens Advisory Panel that will bring complaints to the Commissioner and open a dialogue between INS and affected constituencies on integrity issues. Although the INS is taking firm action against

illegal entry and criminal aliens that abuse the nation's hospitality, the Service is also promoting naturalization through public education and streamlined procedures to help bring newcomers into full participation in American society.

2. **STATUS:** Currently, there are approximately 100 trainees at the Border Patrol Academy, Federal Law Enforcement Training Center, Glynco, GA. An additional 250 are scheduled to be trained by the end of FY-94. Technology such as fencing and lighting are in place in San Diego, and lighting is being procured for El Paso, tentatively targeted for completion in April 94. The infrastructure for the automated booking system and upgraded sensor reporting systems is being installed and should be operational by October 1994.

3. **DEPARTMENT POSITION:** The Department of Justice has supported and continues to support the President's Immigration Initiatives.

4. **JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS:** Senator DeConcini, as Chairman of the Appropriations Committee, Subcommittee on Treasury, Postal Service and General Government, maintains a strong interest in resource issues for INS Inspections and Border Patrol programs. Senator Feinstein supports a \$1 land-border inspection fee to fund border inspections and control. She was the primary architect of the Senate language providing for \$45 million for new positions to the Border Patrol. In the last session of Congress, Senator Hatch introduced legislation that would repeal employer sanctions but increase the number of Border Patrol agents.

5. **REFERENCE MATERIALS:** February 3, 1994, DOJ press release announcing two-year strategy to curb illegal immigration and Commissioner Meissner's remarks relating to the 1995 Immigration Initiatives.

IMMIGRATION-RELATED PROVISIONS OF THE CRIME BILLS PASSED
BY THE HOUSE AND SENATE

ISSUE STATEMENT: What is the Administration's position on the immigration-related provisions of the crime bills?

BACKGROUND: The crime bill passed by the Senate on November 24, 1993, contains numerous immigration-related provisions (the principal provisions are discussed below). The House version, passed on April 21, contains only five immigration-related provisions, which also are described below.

STATUS: The Department expects to meet with conferees' staff the week of May 23 to discuss the Administration's specific views on the crime bills, including the immigration-related provisions. A final vote on a conference report could occur shortly after the Memorial Day recess. The most important immigration-related provisions for the Department are those that, consistent with the President's FY 1995 budget, authorize appropriations from the Crime Control Fund for asylum reform, improving border controls, and deporting criminal aliens (the institutional hearing process).

DEPARTMENT POSITION: SENATE-PASSED CRIME BILL

Authorization of appropriations from the Crime Control Fund for four immigration-related activities -- expedited deportation for denied asylum applicants (asylum reform), improving border controls, deportation of criminal aliens, and the construction of two INS service processing centers. The Department strongly supports these provisions, as the funds are vital to implement the immigration initiatives announced by the Attorney General on February 3rd. The President's budget request for FY 1995 proposes an allocation of trust fund money that includes \$181 million for border controls, \$55 million for criminal alien deportation, and \$64 million for asylum reform. (Although the crime bills would authorize appropriations for service processing center construction, the FY 95 budget does not request appropriations for that activity. However, funds could be requested for a later fiscal year.)

Noncooperation provision sponsored by Senator Roth requires States and localities to cooperate with INS enforcement efforts against undocumented aliens. A State or locality that has a policy or practice of refusing to cooperate cannot receive Federal anti-crime funding. The Administration supports the goal of this provision, but is concerned that its current wording may be overbroad. For example, the provision as worded could deter participation in legitimate educational opportunities, and could involve public school teachers and administrators in "blanket" requests for information. The Department will suggest that this provision be limited to cooperation by the police and in the context of serious criminal activity only.

The "secret courts" provision creates special removal procedures for "alien terrorists" when normal deportation proceedings "would pose a risk to the national security of the U.S. because such proceedings would disclose classified information." The Administration believes that the same result may be achieved by amending the current statute to permit the secure use of classified information in administrative removal proceedings.

The criminal alien provisions would streamline the deportation process and expand the class of aliens who have limited discretionary relief from deportation. The principal provisions are discussed below.

(a) Expanded definition of aggravated felon to include additional offenses, including some offenses for which a sentence of five years' imprisonment could be imposed. Pursuant to U.S. and international law, aggravated felons are not eligible for withholding of deportation because they are considered to have been convicted of "particularly serious crimes." However, some of the crimes which be added to the definition of aggravated felon by the crime bill appear not to be "particularly serious crimes." As a result, the Department will work to limit the number of crimes added to the definition to those which are "particularly serious".

(b) Summary deportation (elimination of administrative deportation hearings and discretionary relief from deportation for aggravated felons who are conditional residents or not lawful permanent residents). The Department supports this provision, which appears to result in a streamlined and efficient process. However, we will seek to add safeguards to protect against the mistaken deportation of U.S. citizens and permanent residents.

(c) Judicial deportation (permits a Federal court to enter an order of deportation against a convicted aggravated felon at the time of sentencing if the U.S. Attorney and INS so request 20 days before sentencing). The Department generally supports this procedure, but will work to limit it to non-lawful permanent residents.

(d) Removal of aggravated felons' eligibility for certain relief from deportation (pursuant to section 212(c) of the Immigration and Nationality Act) if they have been sentenced to at least five years' imprisonment. Under current law, the bar to relief only applies if the aggravated felon has served at least five years of imprisonment. The Administration supports this provision but will work to modify the bar so that it will not apply where the sentence has been suspended. The section also defines aggravated felons as per se ineligible for

withholding of deportation. The Administration is concerned about the effect of expanding the definition of an aggravated felon on these forms of relief.

(e) Permitting electronic or telephonic deportation hearings with the consent of the alien. The Administration recommends deleting the phrase "with the consent of the alien", except in the context of merits hearings, where demeanor is an essential element of the judge's determination.

(f) Reimbursing States for Costs of Incarcerating Criminal Aliens -- Subject to the availability of appropriations, and at the request of a State or locality, allows the Attorney General to: (1) take custody of a criminal alien who is incarcerated in a State or local facility to provide for the imprisonment of the alien in a Federal facility, or (2) compensate the State or locality for its costs of incarcerating the alien. The Attorney General has supported this concept, if Congress appropriated the funding for it. This provision is not necessary, because in April, the President transmitted to Congress a FY 1995 budget amendment creating the "State Criminal Aliens Assistance Program," which will provide \$350 million in reimbursements to states for part of their costs for incarcerating criminal aliens.

Prohibition of payment of certain Federal benefits to persons "not lawfully present within the United States". Current regulations generally define persons eligible for most Federal benefits as citizens and aliens "lawfully admitted for permanent residence" or "permanently residing under color of law" (PRUCOL). The Administration favors a statutory definition of eligibility for benefits. However, the provision actually would broaden the current definition of eligibility in certain cases. For example, under section 5102, asylum applicants and nonimmigrants could receive Medicaid and SSI. We will work to delete this provision from the crime bill, recommending that it be handled separately, in a forum where any reform can be developed consistently with the Administration's health care and welfare reform.

Sense of the Senate provision on asylum reform, sponsored by Senator Kassebaum, with findings relating to the backlog of asylum applications and abuse of the asylum laws that exists. This provision calls for the reform of our asylum laws to provide for: (1) the expedited exclusion of asylum applicants who arrive at ports-of-entry with fraudulent or no immigration documents and make a non-credible claim of asylum, and (2) an affirmative asylum processing system. The Administration has no objection to this provision.

HOUSE-PASSED CRIME BILL

Authorization of appropriations from the Crime Control Fund for four immigration-related activities -- expedited deportation for denied asylum applicants (asylum reform), improving border controls, deportation of criminal aliens, and the construction of two INS service processing centers. The Department strongly supports these provisions, as discussed above.

Self-Petitioning for Abused Alien Spouses allows certain battered alien spouses to obtain legal immigration status in the United States, even if the alien's spouse or other immediate relative did not petition for the battered spouse or withdrew the petition. The Department supports this provision with technical changes.

Passport and Visa Offenses Penalties Improvements increases the criminal penalties for visa and passport document fraud, designed to combat the increased use of fraudulent documents by aliens seeking to enter the United States and deter future criminal activity in this area. The Department supports this provision.

Incarceration of Undocumented Criminal Aliens requires the Federal Government either to reimburse states for the costs of the incarceration of certain criminal aliens or to take such aliens into Federal custody. This requirement only would be subject to appropriations until October, 1988. The Department has supported the concept of such reimbursement, if subject to appropriations, in recognition of the special financial burden faced by states with high populations of criminal aliens. See discussion of similar Senate-passed provision above. In addition, the definition of undocumented criminal aliens for purposes of this provision should be specified.

Authority for INS to Accept Certain Immigration-Related Assistance could facilitate the deportation of aliens who are subject to charges for misdemeanor or felony crimes, who are either unlawfully within the United States or willing to submit to voluntary return. (For example, with this authority, INS could use buses owned or hired by state or local governments to transport such illegal aliens from contiguous countries back to the border.) The Department does not object to this provision.

Authorization of 6,000 More Border Patrol Agents and support staff for Fiscal Years 95-99. The Department believes that the Administration's present budget requests for resources for INS are sufficient.

JUDICIARY COMMITTEE MEMBERS INTEREST/POSITIONS: Senators Ted Kennedy, Paul Simon, Dennis DeConcini, Dianne Feinstein, and Alan Simpson all are very interested in immigration issues, but only Senators Kennedy, DeConcini and Simpson are crime bill conferees.

They are expected to support adding certain alien smuggling provisions to the crime bill (to increase penalties for alien smuggling, add alien smuggling as a RICO predicate, and provide wiretap authority for alien smuggling investigations), which the Administration would support. Senator Simpson's immigration bill also includes provisions similar to those in the Senate-passed crime bill designed to expedite the deportation of aggravated felons and prohibit certain illegal aliens from receiving most Federal benefits.

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

51

Divider Title: _____

Clinton Presidential Records Digital Records Marker

This is not a presidential record. This is used as an administrative marker by the William J. Clinton Presidential Library Staff.

This marker identifies the place of a tabbed divider. Given our digitization capabilities, we are sometimes unable to adequately scan such dividers. The title from the original document is indicated below.

52

Divider Title: _____

CRIMINAL ALIENS

ISSUE STATEMENT: Criminal aliens fall into two primary categories: 1) foreign born nationals who are in the United States illegally who are convicted of crimes; 2) foreign born nationals who are in the United States legally who are convicted of crimes which render them deportable under the Immigration and Nationality Act ("INA").

BACKGROUND: The Attorney General has very specific responsibilities with respect to the detention and processing of criminal aliens. Section 241 of the INA requires the Attorney General to initiate deportation proceedings as "expeditiously as possible" after the date certain criminal aliens are convicted. The Attorney General's responsibilities are focused on "aggravated felons" as the term is defined in the INS to include murderers, drug and gun traffickers, money launderers and individuals who commit non-political crimes of violence resulting in five years imprisonment and certain other foreign crimes. Immigration consequences for aggravated felons include mandatory detention for non-lawfully admitted deportable aliens, and ineligibility for most relief from deportation.

The Anti-Drug Abuse Act of 1988 also requires the Attorney General to conduct deportation proceedings within state, federal, and local correctional facilities and to obtain deportation orders prior to their release.

In addition, Section 501 of the Immigration Reform and Control Act of 1986 provides that the Attorney General shall reimburse a State for the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State. Thus far, Congress has only appropriated monies for reimbursement for convicted Mariel Cuban aliens (and that funding was discontinued in FY 1994). This year, the Administration submitted to Congress a FY 1995 budget amendment which would provide such funding to the States for criminal aliens, as described below.

STATUS: The Department's efforts are as follows:

The Institutional Hearing Program

The Institutional Hearing Program (IHP) is a cooperative effort between the INS, the Executive Office for Immigration Review, and various state and federal correctional agencies to initiate and complete deportation proceedings of convicted alien criminals while they are serving their prison sentences. The goal of the program is to ensure that convicted criminals can be immediately deported upon completion of their sentences, alleviating detention costs to the states and the federal government. The IHP currently operates in 67 state prisons, two county jails, including Los Angeles County, and six Federal Bureau of Prisons facilities. Special negotiations, led by the Associate Attorney General's Office, are in process with state governments to improve the operations of the IHP in California, New York,

Florida, Texas, and Illinois. Significant progress has been made in New York and Florida, as set forth below.

New York -- As a result of negotiations with state correctional officials, a new IHP program went into effect on April 4, 1994, consolidating operations into three New York facilities. INS investigators, trial counsel, and immigration judges will permanently staff these facilities to identify and initiate deportation proceedings against alien prisoners. After one month of operation, 100 final orders of deportation were issued in New York, as compared to 373 for all of last year.

Florida -- On April 7, 1994, INS Commissioner Doris Meissner and Governor Lawton Chiles entered into an innovative Memorandum of Understanding to expedite the deportation of up to 500 non-violent alien criminals currently serving time in Florida's prisons. Under this pilot project, the Governor will exercise his clemency authority to allow for the immediate deportation of specially identified criminal aliens.

National Criminal Alien Tracking Center (NCATC)

For the first time, \$1.4 million in funding has been provided for the development of the Congressionally mandated National Criminal Alien Tracking Center (NCATC) and a test pilot of this important initiative is underway with the Phoenix Police Department. NCATC will provide state and local law enforcement officials with 24 hour query access to INS records. It will be a powerful tool for identifying and processing suspected criminal aliens and coordinating criminal and immigration enforcement action.

DOJ Grants to the States -- Studying the Criminal Alien Problem

* \$200,000 Department of Justice/Bureau of Justice Assistance grants are available to each of five large immigration states to ensure their coordination with the development of the National Criminal Alien Tracking Center.

* A \$90,000 grant has been awarded to the National Criminal Justice Association to study state executive authority to expedite deportation of criminal aliens, and to determine if pilot projects such as that implemented in Florida can be replicated on a larger scale.

Mexican Transfer Treaty Program

Pursuant to negotiations between Attorney General Reno and former Mexican Attorney General Carpizo, the Mexican government has agreed to accept the voluntary transfer of approximately 400 Mexican nationals currently serving time in United States prisons this year. To date, nearly 200 Mexican criminals have been transferred to Mexico, the largest number of prisoners ever to be voluntarily returned to the custody of the Mexican government.

The Mexican transfers are being carried out under the Treaty on the Execution of Penal Sentences signed by the United States and Mexico in 1977, which requires that the prisoners consent to their transfer.

INS Violent Gang Task Force

The INS Violent Gang Task Force (VGTF) works proactively with federal and state law enforcement agencies in disrupting and dismantling alien gangs in the United States. Through this special initiative since 1993, 2,843 alien gang members have been arrested, and \$156,600,000 worth of narcotics seized, along with currency, firearms, and property valued at \$8,051,000. During the first four months of Fiscal Year 1994, in Los Angeles alone, more than 130 gang members have been arrested and placed in deportation proceedings.

State Criminal Alien Assistance Program

The President sent to Congress on April 22, 1994, a FY 1995 budget amendment to establish a \$350 million State Criminal Alien Assistance Program within the Department of Justice. This program is designed to help States pay for the costs of incarcerating illegal aliens convicted of a felony, and was authorized by Congress as part of Section 501 of the Immigration Reform and Control Act of 1986.

Urban Institute Grant

To assist in evaluating the costs of illegal immigration, on March 4, 1994, the Department of Justice awarded a grant to the Urban Institute, a non-profit, non-partisan organization, to undertake a comprehensive analysis of the states' estimates of medical, education, corrections, and welfare costs imposed by undocumented aliens. This information will be critical in helping the Administration and Congress develop the federal response to states' concerns about the fiscal impact of illegal immigration.

REFERENCES: Attached are: Updated Statistics on Institutional Hearing Program. 2) Talking Points on State Criminal Aliens Assistance Program. 3) Summary of Urban Institute Analysis, with Questions and Answers.

CRIMINAL ALIEN DEPORTATIONS NATIONWIDE*

<u>FY</u> <u>1994</u>	<u>FY</u> <u>1993</u>	<u>FY</u> <u>1992</u>	<u>FY</u> <u>1991</u>	<u>FY</u> <u>1990</u>	<u>FY</u> <u>1989</u>	<u>FY</u> <u>1988</u>	<u>FY</u> <u>1987</u>	<u>FY</u> <u>1986</u>
11836	20121	18438	13233	8578	7349	5773	4374	1865

* This data reflects actual removals from (1) Institutional Hearing Program, (2) Detained Docket (those in INS custody), and (3) Non-Detained Docket (i.e., released on bond or released on own recognizance. Data reflects receipts through April 1994.

CRIMINAL ALIEN DEPORTATIONS - CALIFORNIA*

<u>FY</u> <u>1994</u>	<u>FY</u> <u>1993</u>	<u>FY</u> <u>1992</u>	<u>FY</u> <u>1991</u>	<u>FY</u> <u>1990</u>	<u>FY</u> <u>1989</u>	<u>FY</u> <u>1988</u>	<u>FY</u> <u>1987</u>	<u>FY</u> <u>1986</u>
5514	9304	7662	6094	3689	3842	3528	2673	888

* This data reflects actual removals from (1) Institutional Hearing Program, (2) Detained Docket (those in INS custody), and (3) Non-Detained Docket (i.e., released on bond or released on own recognizance. Data reflects receipts through April 1994.

IHP DEPORTATIONS - CALIFORNIA*

From the inception of the first IHP in California in 1988 to 05/01/94, 9,004 criminal aliens have been deported directly from the state and county IHP facilities.

STATE IHP

<u>TOTAL</u>	<u>FY</u> <u>1994*</u>	<u>FY</u> <u>1993</u>	<u>FY</u> <u>1992</u>	<u>FY</u> <u>1991</u>	<u>FY</u> <u>1990</u>	<u>FY</u> <u>1989</u>	<u>FY</u> <u>1988</u>
7978	1515	2166	1182	1062	856	758	439

*As of 05/01/94

LOS ANGELES COUNTY JAIL IHP

<u>TOTAL</u>	<u>FY</u> <u>1994*</u>	<u>FY</u> <u>1993</u>
1026	390	636

*As of 05/01/94

DRAFT

TALKING POINTS

ANNOUNCEMENT OF NEW STATE CRIMINAL ALIEN ASSISTANCE PROGRAM THURSDAY, APRIL 21, 1994

- o . The Administration intends to provide Federal assistance to States which face extraordinary financial burdens because they have high populations of illegal aliens in their correctional facilities.
- o We are submitting today a FY1995 budget amendment to Congress to establish a \$350 million State Criminal Alien Assistance Program within the Department of Justice to address the concerns of the States. Congress recognized the longstanding problem of States' burdens relating to incarceration of illegal aliens and authorized this program under Section 501 of the Immigration Reform and Control Act of 1986. This Administration is sympathetic to the problems States face and is attempting to reverse past Administrations' neglect of these problems.
- o We expect that several immigration-affected States, which have higher than average populations of illegal aliens, will chiefly benefit from this Federal assistance program. These potentially eligible States include California, Texas, Florida, New York, Illinois, New Jersey and Arizona.
- o The exact funding allocation procedures have not been determined. When the funds are appropriated, the Attorney General will promulgate regulations to:
 - o establish program participation eligibility criteria for States;
 - o require verification by States of the eligible incarcerated population with the Immigration and Naturalization Service of the Department of Justice;
 - o prescribe a formula by which the Department of Justice's Office of Justice Programs will distribute assistance to eligible States.
- o The eligible incarcerated population consists of aliens in the United States and who are alien convicted of a felony and imprisoned by States. This definition is prescribed under Section 501 of the Immigration Reform and Control Act of 1986.

URBAN INSTITUTE ANALYSIS OF ILLEGAL ALIEN COST INFORMATION BY STATES

- o On 1/31, Director Panetta, AG Reno, and Secretary Shalala met with Governors of California, Texas, Florida, Illinois, New York, New Jersey and Arizona to discuss how illegal immigration affects their budgets.
- o The Director asked Chris Edley to take the lead in working with the States to review their budget proposals and to identify potential solutions.
- o On 2/23, OMB, WH Intergovernmental Affairs, DOJ, HHS, and DoEd officials convened meeting with representatives of Governors' offices to discuss States' assessment of costs imposed by illegal aliens, methodologies to estimate those costs, States' analysis of political trends and legislative opportunities.
- o We determined early that the Federal government needed our own critical analysis of the States' plans to review their validity and accuracy. Preliminary review of States' claims revealed that they used non-comparable methodologies and data. We needed a way to verify their methods and to more accurately determine the magnitude of their problems. We also needed a set of uniform standards to evaluate the various cost components.
- o On 3/1, the Urban Institute, a well respected, non-profit, and non-partisan research organization with extensive experience in the field of immigration and immigrant policy research, submitted a grant proposal to DOJ to request funding for a project to estimate the fiscal impacts of illegal aliens on the States and to critically review the States' claims.
- o UI proposed to analyze the costs imposed by undocumented aliens on States in the areas of Medicaid, public education, and corrections. The AFDC cost of citizen children of illegal aliens will also become part of the overall analysis. UI also proposed to review the contributions to the States by illegal aliens from revenues paid.
- o On 3/4., DOJ disbursed a \$60,000 grant to UI to fund its proposed study.
- o OMB and the Departments convened three technical conference calls with the States' experts on Medicaid, corrections and education issues to discuss their cost estimation methodologies and the quality of their data. (Dates: 3/7, 3/9, 3/10)
- o On 4/10, OMB convened another conference call at the States' request to discuss the revenue issues. Several States were against the concept of calculating tax contributions made by illegal aliens.

- o These conference call were followed up extensive written questions to solicit more in-depth information from the States. To date, most States have been cooperative in terms of submitting requested information on a timely basis.
- o On 3/17, OMB convened a senior level conference call with States, HHS, DOJ, DoEd, WH, and UI to follow up on the progress of this project.
- o We expect UI to deliver to OMB and the departments a draft report on medicaid, education, and corrections issues, with associated tables and charts, for review on 6/1. A draft of the AFDC portion of the study may not be available until 7/15.
- o Pending review by OMB, the Departments, and expert reviewers who have been retained for this study, UI expects that a final report of the Medicaid, education and corrections issues could be ready by July 1, with the AFDC portion available in August.

POTENTIAL QUESTIONS AND ANSWERS

Q: Now that the Federal government has agreed to pay States for costs relating to incarceration of illegal aliens, will you agree to also pick up the tab for:

Medicaid Costs?

A: We are currently reviewing the magnitude of the problems States face in the area of Medicaid costs. We will consult with Congress to see how the Federal government can best handle this problem.

Welfare Costs:

A: These issues are part of the overall welfare reform discussion within the Administration. Congress will also be looking into these issues. We will also consult with States.

Public Education Costs?

- A:**
- o The Supreme Court mandated in Plyler v. Doe that all children, regardless of status, are entitled to public education.
 - o Some of these children schools are educating are citizens of the U.S who have parents with different immigration statuses. Others are undocumented alien. These children are not in control of their status and should not be penalized for the actions of others.
 - o Most of these children will grow up and work in the United States. Education is an important and wise investment to ensure that they become contributing members.

Q: Are you proposing funding for this program in response to the Florida lawsuit?

A: We have been in consultation with States since January over the issues of costs imposed by illegal aliens. This program has long been authorized by Congress. However, it has never been funded by Congress or previous Administrations. I believe this program is response to the President's concern that we should provide some assistance to States.

Q: What is your position on the Florida lawsuit?

A: The lawsuit is currently under review by the AG. Defer question to AG/DOJ.

Q: What programs are you cutting to pay for this new program?

A: Our budget amendment offsets the costs of the program by proposing that the Federal Communications Commission be fully funded by fee revenues, instead of partially funded as under current law, and by continuing certain accounts at enacted levels, consistent with assumptions made in the House and Senate budget resolutions.

Q: How much do you think California will get?

A: This will depend on the number of illegal aliens incarcerated in California. But based on some preliminary review of numbers of aliens incarcerated in different States, we expect that California will receive at least 50% of the total resources. Generally, funds would be distributed to the States based on their relative population of incarcerated illegal aliens.

Q: Which States will qualify for this assistance?

A: This program is intended to help the States which are the most affected by illegal immigration problems. The AG will establish the program participation eligibility criteria by regulation once the funds are appropriated for this purpose.

Q: When will the States receive the money?

A: We expect that States with higher than average share of illegal alien population would most likely to be the beneficiaries of this program.

Q: DOJ is years behind in issuing regulations to release the Immigration Emergency Fund. Is DOJ likely to stall the issuance of regulations in order to withhold the money from the States?

A: DOJ will attempt to propose implementing regulations as soon as possible and consult to the maximum extent possible with the States before finalizing the regulations. We very much want to provide Federal assistance to the States and have no intention for withholding resources, if appropriated, for such technical reasons.

Q: What kinds of information do you have currently about the States' costs relating to illegal immigration?

A: We are reviewing these cost questions as part of the UI study. We should have a better sense of the magnitude of States' problems by this summer.