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EXECUTIVE OFFICE STAFF - DECEMBER 1979

The following Executive Office roster reflects a number of recent personnel changes. Copies of this roster should be made available to all persons in the U.S. Attorneys' Offices who deal directly with Executive Office personnel.

<u>ACTING DIRECTOR</u> - William P. (Bill) Tyson	FTS 633-2121
Secretary to the Acting Director - Patty L. Hartman	2123
Executive Assistant - Martha J. Dalby (Reports; coordination of Field Activities; statistical summaries, U.S. Attorneys' Offices; U.S. Attorneys' Conferences; sensitive personnel matters; special assignments)	4183
Management Analyst - Linda J. Fleming (Reports; Editor/Coordinator USAM Title 10; Department of Justice newspaper liaison; support for Attorney General's Advisory Committee of United States Attorneys; other special projects)	3974
Clerk-Typist - Joyce T. Wood (U.S. Attorney Offices' statistics; general clerical support, including support for Attorney General's Advisory Committee of United States Attorneys)	4183
Staff Assistant - D. Glen Stafford (Pre-employment processing of Assistant U.S. Attorney applicants; Special Assistant U.S. Attorneys with compensation; Law Clerk-AUSA conversions; Employment Review Committee Staff; status of attorney appointments)	2074
<u>ACTING DEPUTY DIRECTOR</u> - Laurence S. (Larry) McWhorter	3276
Secretary to the Acting Deputy Director - Cynthia J. Robinson	3276
Special Assistant - Maureen Gevlin (Department Speedy Trial Coordinator)	2103
<u>FIELD ACTIVITIES</u>	
ASSISTANT DIRECTOR - Ernest R. (Ernie) Bengtson	724-7827
ASSISTANT DIRECTOR - Edward H. (Ed) Funston (On-site consultation and assistance to U.S. Attorneys on all aspects of operations; special conferences on problem areas of litigation; Departmental program review)	7827
Secretary - Mary Alice Winchester (Clerical support to Field Activities)	7827
<u>LEGAL SERVICES</u>	
ASSISTANT DIRECTOR - Laurence S. (Larry) McWhorter (Supervision of all legal services, United States Attorneys' Bulletin, United States Attorneys' Manual, JURIS services)	633-3276
Secretary to the Assistant Director - Cynthia J. Robinson (Controlled Substances Unit reports; reports of subpoenas to newsmen; Special Assistant U.S. Attorneys without compensation)	3276

Paralegal - Sandra J. (Sandy) Marners (JURIS research, legal support for Legal Services)	633-4024
Attorney-Advisor - Leslie H. (Les) Rowe (Freedom of Information and Privacy Acts; legislative inquiries; general legal services)	4024
Attorney - Donald (Don) Burkhalter (Temporarily detailed to Executive Office of U.S. Trustees)	4024
Attorney - Susan A. (Sue) Nellor (Freedom of Information and Privacy Acts; general legal services)	4024
Paralegal - Susan D. Gerzoff (Freedom of Information Act files control, quarterly reports; clerical support for Legal Services)	4024
Clerk-Typist - Alice B. Evans (Freedom of Information Act files, clerical support for Legal Services)	4024
Clerk-Typist - Dee Moroney (Freedom of Information Act files, clerical support for Legal Services)	4024
Paralegal - Deirdre M. Forrest (Editor-United States Attorneys' Bulletin and United States Attorneys' Manual)	2080
Clerk-Typist - Deborah (Debbie) Asnip (Clerical support for Bulletin and Manual)	2080
<u>OFFICE OF LEGAL EDUCATION</u>	
DIRECTOR - Richard E. (Dick) Carter (Institute training courses; Department attorney training coordinator)	4104
Secretary to the Director - Renee M. Harris (Clerical support and assistant to the Director; Institute correspondence coordinator)	4104
Director, Attorney General's Advocacy Institute - Vacant	4104
Assistant Director, Civil- Stephen M. (Steve) McNamee (Institute training courses)	4104
Paralegal - Maureen DeMaio (Research assistant for Civil training course; specialized seminars and cassette lending library)	4104

Clerk-Typist - Kathy L. Shoop (Clerical support and coordination of all training courses - Civil, special seminars)	633-4104
Assistant Director, Criminal - Mary S. Reed (Institute training courses)	4104
Paralegal - ValAnna Schoeneman (Research assistant for Criminal training course; specialized seminars and Institute contact point)	4104
Clerk-Typist - Arlene Carmona (Clerical support and coordination of all training courses - Criminal, special seminars)	4104
Assistant Director, Appellate - Vacant	4104
Paralegal - Donna C. Corbin (Research assistant for Appellate training course; specialized seminars and Continuing Legal Education requirements)	4104
Clerk-Typist - Nancy A. Armstrong (Clerical support and coordination of all training courses - Appellate, special seminars)	4104
Administrative Officer - Doris F. Johnson (Fiscal operations; requests for training and logistical coordinator)	4104
Clerk-Typist - Dianna Ingram (Requests for training; Continuing Legal Education and logistical support)	4104
Director, Legal Education Institute - Vacant	4104
<u>ADMINISTRATIVE SERVICES</u>	
ASSISTANT DIRECTOR - Francis X. (Frank) Mallgrave (Administrative activities)	3982
Staff Assistant - Janine LaBastille (Foreign travel; relocation; temporary support positions; certifying officers; general clerical support)	3982
Clerk-Typist - Gerri Rodkey (Clerical support for Administrative Services)	3982
Space Management Officer - Richard L. (Dick) Kidwell (Space assignment, alterations, use; building services; telephone service; physical security; safety and accident reports; health unit participation)	4663

Office Services Manager - L. Carol Sloan (Office furnishings, equipment (purchase and rental); libraries; printing; cleaning, repair services; records disposal; shipment (government bills of lading); consultation on office moves, word processing centers)	633-4663
Space Management Specialist - Stephanie W. (Stevie) Persico (Space layouts; work authorizations; general space management services)	4663
Support Services Specialist - Virginia L. (Gini) Trotti (Support for Office Services; status of requests for equipment, furnishings, books, printing, and other services; System 6 applications)	4663
Financial Manager - Edward A. (Ed) Moyer (Budget; overtime and travel allotments; litigation expenses)	3982
Budget Analyst - M. Joanne Beckwith (Budget preparation and execution; financial reports)	3982
Personnel Officer - Daniel W. (Dan) Gluck (General supervision of personnel activities)	4461
Sr. Personnel Management Specialist (Prgms.) - Eileen S. Menton (Classification and compensation; non-attorney training courses; position management; Whitten review, Factor Evaluation System; Fair Labor Standards Act; performance evaluations; student programs; Schedule C employees)	4461
Personnel Management Specialist (Programs) - Gloria J. Harbin (Employee relations and benefits; labor-management relations; occupational health; discipline; adverse action; grievances; leave policy; awards; suggestions; personnel security; clearances for classified material)	4461
Clerk-Typist - Jane Clancy (Appointment certificates; non-attorney training requests; clerical support for Personnel Management Specialists - Programs)	4461
Sr. Personnel Management Specialist (Oprs.) - Sally S. Ruble	4464
Personnel Clerk - Sandy C. Hagens (Personnel actions for Category I districts - see attached listing)	4464
Personnel Management Specialist - Carrie M. Washington	4464
Personnel Clerk - Jeanette Campbell (Personnel actions for Category II districts - see attached listing)	4464
Personnel Management Specialist - Melinda P. Bell	4458
Personnel Clerk - Scarlitt A. Proctor (Personnel actions for Category III districts - see attached listing)	4458

Personnel Management Specialist - Mary L. Fox 633-4458
 Personnel Clerk - J. Ann Hackley 4458
 (Personnel actions for Category IV districts -
 see attached listing)

Personnel Management Specialist - Henry W. Zecher 4464
 Personnel Clerk - Patricia L. (Pat) Holland 4464
 (Personnel actions for Category V districts -
 see attached listing)

Personnel Assistant - A. Vanessa Frazier 4461
 (Supervision of and technical assistance to the
 personnel clerks; basic staffing and classification)

MANAGEMENT SERVICES AND INFORMATION SYSTEMS

ASSISTANT DIRECTOR - Patricia D. (Pat) Goodrich 3982
 (Management support and information systems)

Management Analyst - Patrick C. (Pat) McAloon 5132
 (Office procedures and practices, use of resources,
 training - temporarily detailed to Executive Office
 of U.S. Trustees)

Automated Litigation Support Specialist - Klaus Liephold 798-4667
 (Litigation management systems - Los Angeles)

ASSIGNMENT OF DISTRICTS
(REVISED - 11/6/79)

			I	II	III				I	II	III
DISTRICT						DISTRICT					
01 Ala.	N.					44 Mo.	E.			✓	
02	M.					45	W.			✓	
03	S.					46 Mont.					
06 Alaska						47 Nebr.				✓	
08 Arizona				✓		48 Nev.					
09 Ark.	E.					49 N. H.		✓			
10	W.					50 N. J.				✓	
11 Cal.	N.	✓				51 N. Mex.					
12	C.	✓				52 N. Y.	N.	✓			
98	S.	✓				53	E.	✓			
97	E.	✓				54	S.	✓			
92 C. Z.				✓		55	W.	✓			
13 Colo.				✓		56 N. C.	E.				✓
14 Conn.		✓				57	M.				✓
15 Del.		✓				58	W.				✓
16 D. C.				✓		59 N. Dak.					
17 Fla.	N.					60 Ohio	N.				✓
18	M.					61	S.				✓
04	S.					62 Okla.	N.			✓	
19 Ga.	N.					63	E.			✓	
20	M.					64	W.			✓	
21	S.					65 Oregon					
93 Guam						66 Pa.	E.	✓			
22 Hawaii						67	M.	✓			
23 Idaho						68	W.	✓			
24 Ill.	N.			✓		69 P. Rico					
25	E. S.			✓		70 R. I.		✓			
26	S. C.			✓		71 S. C.					
27 Ind.	N.	✓				73 S. Dak.					
28	S.	✓				74 Tenn.	E.				
29 Iowa	N.			✓		75	M.				
30	S.			✓		76	W.				
31 Kansas				✓		77 Texas	N.			✓	
32 Ky.	E.			✓		78	E.			✓	
33	W.			✓		79	S.			✓	
34 La.	E.					80	W.			✓	
95	M.					81 Utah				✓	
35	W.					82 Vermont		✓			
36 Maine		✓				83 Va.	E.				✓
37 Md.				✓		84	W.				✓
38 Mass.		✓				94 V. I.					
39 Mich.	E.	✓				85 Wash.	E.				
40	W.	✓				86	W.				
41 Minn.						87 W. Va.	N.				✓
42 Miss.	N.					88	S.				✓
43	S.					89 Wisc.	E.				
						90	W.				
EDUSA				✓		91 Wyoming					

I Sally Ruble - Sandy Hagens
 II Carrie Washington - Jeanette Campbell
 III Melinda Bell - Scarlitt Proctor

ASSIGNMENT OF DISTRICTS
(REVISED - 11/6/79)

DISTRICT		IV	V	DISTRICT		IV	V
01	Ala. N.	✓		44	Mo. E.		
02	M.	✓		45	W.		
03	S.	✓		46	Mont.		✓
06	Alaska		✓	47	Nebr.		
08	Arizona			48	Nev.		✓
09	Ark. E.	✓		49	N. H.		
10	W.	✓		50	N. J.		
11	Cal. N.			51	N. Mex.		✓
12	C.			52	N. Y. N.		
98	S.			53	E.		
97	E.			54	S.		
92	C. Z.			55	W.		
13	Colo.			56	N. C. E.		
14	Conn.			57	M.		
15	Del.			58	W.		
16	D. C.			59	N. Dak.		✓
17	Fla. N.	✓		60	Ohio N.		
18	M.	✓		61	S.		
04	S.	✓		62	Okla. N.		
19	Ga. N.	✓		63	E.		
20	M.	✓		64	W.		
21	S.	✓		65	Oregon		✓
93	Guam		✓	66	Pa. E.		
22	Hawaii		✓	67	M.		
23	Idaho		✓	68	W.		
24	Ill. N.			69	P. Rico	✓	
25	E. I.			70	R. I.		
26	S. C.			71	S. C.	✓	
27	Ind. N.			73	S. Dak.		
28	S.			74	Tenn. E.	✓	
29	Iowa N.			75	M.	✓	
30	S.			76	W.	✓	
31	Kansas			77	Texas N.		
32	Ky. E.			78	E.		
33	W.			79	S.		
34	La. E.	✓		80	W.		
95	M.	✓		81	Utah		
35	W.	✓		82	Vermont		
36	Maine			83	Va. E.		
37	Md.			84	W.		
38	Mass.			94	V. I.	✓	
39	Mich. E.			85	Wash. E.		✓
40	W.			86	W.		✓
41	Minn.		✓	87	W. Va. N.		
42	Miss. N.	✓		88	S.		
43	S.	✓		89	Wisc. E.		✓
				90	W.		✓
				91	Wyoming		✓

IV Mary Fox - Ann Hackley

V Henry Zecher - Pat Holland

COMMENDATIONS

Assistant United States Attorneys PETER BLOCH, LAWRENCE FARKASH, PATRICIA HYNES, ANDREW KARLEN and GEORGE MANNING, Southern District of New York, have been commended by Regional Inspector General Michael J. Lonergan, U.S. Department of Agriculture, for their efforts in convicting all fifteen defendants in the "Blusal Case."

Assistant United States Attorney CYNTHIA A. CLARK, Western District of Missouri, has been commended by W.R. Richie, Postal Inspector in Charge, for her success in obtaining the conviction in a Mail/Security Fraud violations case.

Assistant United States Attorney RICHARD H. DOLAN, Eastern District of New York, has been commended by Jerold D. Cummins, Deputy Assistant General Counsel of the Federal Trade Commission, for his fine legal work in Lefrak, et al. v. Aramco, et al.

Assistant United States Attorney MITCHELL EHRENBERG, Northern District of Ohio, has been commended by Everett Loury, District Director of Internal Revenue Service, for his knowledge and expertise displayed in a recent summons enforcement case.

Assistant United States Attorney KENNETH JOSEPHSON, Western District of Missouri, has been commended by Katherine Rosenfeld, Regional Program Integrity Director of the Health Care Financing Administration, for his fine assistance in enforcing financial accountability and in deterring fraud and abuse in the Medicare and Medicaid programs.

Assistant United States Attorney PHILIP S. MALINSKY, Central District of California, has been commended by Edward W. Norton, General Counsel, Small Business Administration, for his perseverance and professionalism demonstrated in American National Bank v. Thomas S. Kleppe, Administrator, Small Business Administration.

Assistant United States Attorney WILLIAM MARTIN, Southern District of Ohio, has been commended by Postal Inspector in Charge C.P. Nelson, for his fine work in a fraudulent food coupon redemption case involving Ralph Everett and his son John, both of Dayton, Ohio.

Assistant United States Attorney JOSEPH R. MATHEWS, Northern District of New York, has been commended by Postal Inspector in Charge R.J. Grannan, for his success in obtaining the conviction of Gary R. Paro on 34 counts of Mail Fraud.

Assistant United States Attorney JEFFREY L. VIKEN, District of South Dakota, has been commended by William H. Webster, Director of the Federal Bureau of Investigation, for his extraordinary prosecutive efforts in the Mark Lee Blote case which involved the theft of approximately \$300,000 in gold bars from the Black Hills Gold Creations Company in Rapid City.

Assistant United States Attorneys KENNETH E. VINES and SUSAN B. BEVILL, Middle District of Alabama have been commended by Herbert J. Lewis, Jr., District Counsel of Veterans Administration for their superb work in Francois v. Cleland.

Assistant United States Attorney BURTON WESTON, Eastern District of New York, has been commended and awarded a Certificate of Appreciation by John W. Fallon, Regional Director of the Drug Enforcement Administration for his support of DEA's efforts over the past three years.

EXECUTIVE OFFICE FOR U.S. ATTORNEYS
William P. Tyson, Acting Director

POINTS TO REMEMBER

UNITED STATES ATTORNEY APPOINTMENT

The following Court-appointed United States Attorney has been confirmed by the Senate. The Executive Office Staff takes this opportunity to extend its hearty welcome.

<u>DISTRICT</u>	United States Attorney	<u>Entered On Duty</u>
E.D. Arkansas	George Proctor	10-01-79

(Executive Office)

* * * * *

Freedom of Information and Privacy Act Decisions

United States Attorneys and Assistant U.S. Attorneys are requested to send a copy of any decision involving the Freedom of Information or Privacy Acts to the Federal Programs Branch, Civil Division, (Attn: Ms. Jean Kornblut), Washington, D.C. 20530.

Receiving copies of such decisions in a timely manner is of great assistance to both the Civil Division and The Office of Information Law and Policy.

Your assistance is most appreciated.

(Executive Office)

CIVIL DIVISION
Acting Assistant Attorney General Alice Daniel

Alexander v. United States, No. 77-1612 (5th Cir., October 31, 1979) DJ 157-75-211

Torts: Fifth Circuit Exonerates
Government From Liability For
Accident At Contractor-Operated
Ammunition Plant

The district court in this case held that, by virtue of its safety inspection program, and its approval of the contractor's equipment and procedures, the government operated an ammunition plant with its independent contractor as a "joint endeavor," and was liable for the death of an employee of the contractor in an on-the-job accident. A judgment of \$180,000 was entered against the government. The Fifth Circuit reversed the judgment, holding that, under the doctrine of United States v. Orleans, 425 U.S. 807 (1976), the United States is not liable for the acts or omissions of its independent contractors in the general situation where, as here, it did not supervise the "day-to-day operations" of the contractor. The court further held that the government breached no independent duties owed to the contractor's employees, and that, in any event, the accident was caused solely by the decedent's own negligence.

Attorney: Michael Kimmel (Civil Division)
FTS 633-3418

Babcock & Wilcox Co. v. Marshall, No. 79-1641 (3d Cir., November 16, 1979) DJ 223076-913

OSHA: Third Circuit Holds That OSHRC
Is The Initial Forum To Determine
Validity Of An OSHA Inspection Warrant

This is an appeal from orders of the district court denying Babcock & Wilcox's motions to quash three OSHA inspection warrants and dismissing its complaint challenging the constitutionality of those warrants. The Third Circuit has just affirmed, ruling that before obtaining judicial review, Babcock and Wilcox must exhaust its administrative remedies by presenting its arguments to the Review Commission. Judicial review would then be in the court of appeals.

Attorney: Marleigh Lang (Civil Division)
FTS 633-3449

Church of Scientology v. Department of Justice, No. 76-2506 (9th Cir., November 8, 1979) DJ 145-12-2273

Freedom Of Information Act: Ninth Circuit Affirms Decision To Withhold Information Under Exemption 7(D)

This case involved a request for certain documents held by the Drug Enforcement Agency regarding the Church of Scientology. The DEA denied the request as to 24 documents because their release would reveal confidential sources. After an in camera review of the disputed documents, the district court largely upheld the claims of the DEA. The principal question for the court of appeals was whether the words "confidential source" within FOIA Exemption 7(D) include foreign, state, and local law enforcement agencies which pass information along to the DEA in confidence. The Ninth Circuit in a major ruling under the Act held that such sources of information were covered by the exemption. Judge Wallace dissented.

Attorney: Paul Blankenstein (Civil Division)
FTS 633-3528

Hernandez v. Home Savings Ass'n, No. 76-2794 (5th Cir., November 15, 1979) DJ 101-017-3

Contracts: Fifth Circuit Holds HUD Entitled To Permanent Financing Escrow Fund Where Mortgagor Defaulted During Construction Of Project Insured Under The National Housing Act

Pursuant to the National Housing Act, HUD undertook to insure two construction projects in Texas. In each case the mortgagor was required to place, in escrow, funds representing a permanent financing charge (discount fee) to be paid when the long term mortgage loan issues at the conclusion of construction. In both cases the mortgagors defaulted before completion of construction. Because the contract documents stated the discount fee was "held for the account of the mortgagor" prior to the "final endorsement" of the permanent loan, which never took place in these cases, both district courts awarded the escrow accounts to the mortgagors or their assignees. On our appeal, the Fifth Circuit reversed relying on other contract language which made such funds subject to HUD's control and direction in the event of a claim for insurance (i.e. default). The

Court noted that HUD's claim to the funds was not dependent on final endorsement, but solely on a claim for insurance.

Attorney: Michael Hertz (Civil Division)
FTS 633-4096

Maritime Overseas Corp. v. United States, No. 77-2956 (9th Cir., November 6, 1979) DJ 61-11-2500

Admiralty: Ninth Circuit Upholds Rule
That A Party Seeking Indemnification
From The Government On The Basis Of A
Settlement Agreement With A Third Party
Must Establish That The Government Was
In Fact Negligent

Plaintiff, a merchant vessel, filed this Suits in Admiralty action against the United States, alleging that the United States was contractually bound to indemnify plaintiff for the costs incurred in settling a state court Jones Act suit filed against plaintiff by the estate of a merchant seaman. The Jones Act suit accused the vessel of failing to provide the seaman with adequate medical care. Since the medical services had been performed by Navy doctors under contract with the vessel, the vessel tendered defense of the Jones Act suit to the United States. The tender was refused, and plaintiff settled the Jones Act suit for \$85,000. Plaintiff then filed this indemnity action against the United States. The district court entered judgment for the plaintiff based on the fact that the evidence before it "could have convinced a state court jury that [the seaman's] death was caused by negligent examination." The court of appeals reversed, accepting our argument that the United States could not be held liable as an indemnitor unless the district court made a finding that the government was in fact at fault. (In the present case, the district court had indicated that in its opinion, the government doctors were not at fault.) In line with the position taken in the government's brief, the case was remanded for further findings on this issue.

Attorney: Frederic D. Cohen (Civil Division)
FTS 633-3178

National Ass'n of Farmworker Organizations v. Marshall, No. 78-1666 (D.C. Cir., November 19, 1979) DJ 145-10-481

Attorneys Fees: D.C. Circuit Bars Award Of Attorneys Fees From Grant Funds

This case concerns plaintiffs' efforts to obtain counsel fees from grant funds paid out by the Labor Department pursuant to the Comprehensive Employment and Training Act. The attorneys had successfully brought suit against the agency to compel it to allocate \$12 million in CETA grant funds to alleviate unemployment among agricultural workers. They then sued to obtain attorneys' fees from these additional monies. In a significant expansion of its earlier decisions on the issue, the court of appeals affirmed the district court's denial of the fee application. The court held that federal grant funds remained subject to the bar of 28 U.S.C. 2412 -- which prohibits attorneys fees from federal funds in the absence of an express statute authorizing them -- even though the monies had been paid out to private grantees and would not revert to the government at a future date. The court emphasized that the government's continuing control of the monies even while in the grantees' hands caused them to retain their federal character, notwithstanding that the monies were entirely out of the hands of the federal government. The court distinguished other cases which intimated a contrary result (National Treasury Employees Union v. Nixon, 521 F.2d 317 (D.C. Cir., 1975)) by observing that in those non-grant decisions there was no continuing governmental interest or control. The decision in the present case should effectively protect federal grant funds from diminution by attorneys fees.

Attorney: Robert Greenspan (Civil Division)
FTS 633-4613

Writers Guild of America, West, Inc. v. American Broadcasting Co., No. 77-1058 (9th Cir., November 14, 1979) DJ 82-12C-64

Administrative Procedure: Ninth Circuit Remands The "Family Hour" Case

The Ninth Circuit held that the doctrine of primary jurisdiction requires that the First Amendment and Administrative Procedure Act claims of plaintiffs in their challenge to adop-

tion of the "family viewing policy" should first be addressed in administrative proceedings before the FCC. The district court was directed to hold claims against the private parties (television networks) in abeyance pending resolution and judicial review of the FCC proceedings.

Attorney: Mark N. Mutterperl (Civil Division)
FTS 633-3178

December 7, 1979

CIVIL RIGHTS DIVISION
Assistant Attorney General Drew S. Days, III

United States v. City and County of San Francisco, CA No. C-78
2521 CFP (N.D. Calif.) DJ 166-11-10

Minority Language Voters

The United States Attorney's office filed a motion requesting the Court to order defendants to show cause why they should not be held in contempt of the October 23, 1979, preliminary injunction. A hearing was held on November 23, 1979, and parties have been ordered to confer and attempt to devise a permanent plan for compliance with Section 203. The motion, which was served on November 14, 1979, followed the city's failure to provide oral assistance to minority language voters at 6 of 51 Spanish precincts and 12 of 69 Chinese precincts as required by the preliminary injunction for the November 6, 1979, election for city officials, and the city's subsequent refusal to commit themselves to filing with the Court by any certain date a list of bilingual poll workers for the city's December 11, 1979, run-off (general) election. Our papers filed November 13, 1979, ask that the Court find the city in contempt of the preliminary injunction; that the city be ordered to cure its contempt by (1) giving the Chief Administrative Officer primary responsibility for the December 11 election, (2) filing with the Court a list of the bilingual poll workers, (3) filing with the Court a plan specifying the manner in which bilingual poll workers will be recruited and trained, and (4) appointing an individual or individuals fluent in Chinese and Spanish to oversee recruitment and translations; and that the city be fined \$1,000.00 for each day it continues to be in violation of the preliminary injunction.

Attorneys: Barry H. Weinberg (Civil Rights Division)
FTS 724-7396
Amanda Metcalf (Assistant U.S. Attorney)
FTS 556-5040

United States v. Pima County Community College, CA No. 75-280
TUC-WCF (D. Ariz.) DJ 169-8-19

Title VII

Judge Mary Ann Richey entered a consent decree in Tucson settling this case. Our suit alleged that the college retaliated against eight staff members for filing EEOC charges of

December 7, 1979

discrimination. Our amended complaint alleged jurisdiction under Sections 706 and 707 of Title VII, but the 707 count had been dismissed. Subsequent to the filing of our complaint in December, 1975, six of the eight complainants either settled privately with the college or were dismissed from our suit. The consent decree includes an injunction against all employment discrimination, and specifically forbids retaliation against anyone exercising rights under the fair employment laws. The decree requires the College to file an affirmative action plan with the court, and to report to us annually on its employment activities. The decree also provides for a payment of \$3850 to each of the two complainants still in the case. The Ninth Circuit assessed attorney's fees against us in connection with an appeal we had taken on a procedural point in the case; and the decree now requires us to pay the County \$7700 in fees and costs.

Attorney: Maimon Schwarzschild (Civil Rights Division)
FTS 633-3831

Pavey v. University of Alaska, CA No. A 79-019 (D. Alaska)
DJ 169-6-4

Title IX of the Civil Rights Act of 1964

Pursuant to Title IX of the Civil Rights Act of 1964, the United States filed a motion to intervene as plaintiff. Our complaint in intervention alleges, inter alia, that the University of Alaska is failing to provide financial resources for the development of female athletes to the same extent it provides financial resources for the development of male athletes, in violation of the Fourteenth Amendment and 20 USC Section 1681. The complaint places special emphasis on disparities that exist between the women's basketball team and the men's basketball team at the Anchorage Campus. Our complaint requests that the Court enjoin the defendants from continuing to discriminate, on the basis of sex, in the University's athletic program, and that they be required to take affirmative steps to eliminate the present effects of past discrimination. If the Court grants our motion, this will be the first Title IX athletics case in which the Division has intervened.

Attorney: Kaydell Wright (Civil Rights Division)
FTS 633-2856

TAX DIVISION
Assistant Attorney General M. Carr Ferguson

United States of America and John DeZelar, Revenue Agent v. Basic Bible Church of America and Lyle Miller, Director and Trustee (8th Circuit, October 30, 1979) DJ 5-39-2756

Jurisdiction: Eighth Circuit holds that service of a show cause order is sufficient to obtain personal jurisdiction over the respondents in summons enforcement proceeding.

Summons Enforcement: Summons is not rendered invalid by Government's failure to tender witness fees and mileage costs in advance.

Magistrates: Referral of summons enforcement proceeding to United States Magistrate for proposed findings and recommendations is proper so long as district court makes de novo determination of the matter.

Between March and June, 1977, the Internal Revenue Service (IRS) made several unsuccessful attempts to obtain voluntary disclosure of information about the Basic Bible Church of America for the purpose of reassessing the tax-exempt status of the Church pursuant to 26 U.S.C. § 501(c)(3). Revenue Agent John DeZelar served Lyle Miller, as director and trustee of the Church, with a summons directing him to appear and produce specified Church records and documents for IRS examination. When Miller refused to do so, the Government filed in the district court a petition for enforcement of the summons pursuant to 26 U.S.C. §§ 7402 and 7604. The district court ordered the summons enforced and Miller and the Church appealed.

The court of appeals held, first, that the district court obtained personal jurisdiction over the Church and Miller when he was served with the show cause order and the petition for enforcement of the summons. Second, the court held that there was no requirement to tender witness fees and mileage costs in advance of the date set for compliance with the summons. Third, the court held that the Church had been properly notified in writing prior to the issuance of the summons that an examination of its books and records was going to be made in accordance with 26 U.S.C. § 7605(c).

Finally, the court of appeals noted that the district court's referral of the proceeding to a United States Magistrate for proposed findings of fact and recommendations was proper under 28 U.S.C. § 636(b)(3). Although the district court need not conduct a full hearing de novo after receiving the Magistrate's findings and recommendations, it must nevertheless make a de novo determination of the matter in accordance with 28 U.S.C. § 636(b)(1).

Attorneys: Gilbert S. Rothenberg and
Charles E. Brookhart (Tax
Division) FTS 633-3057

OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Alan A. Parker

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

NOVEMBER 13 - NOVEMBER 27, 1979

Refugees. On November 9 the Judiciary Committee filed its report on the proposed Refugee Act, (H.R. 2816), pursuant to the informal compromise between the Judiciary and Foreign Affairs Committees. Cognizant staffers expect the bill to reach the floor shortly after Thanksgiving under a two-hour open rule. During consideration of the bill on the floor of the House, Mr. Sawyer will undoubtedly offer his amendment to place a flat annual limit of 50,000 on normal flow refugee admissions (the amendment was only rejected by a vote of 13 to 14 at the Judiciary Committee markup). In addition, it is anticipated that there will be efforts to attach floor amendments dealing with the deportation of Iranian students in the United States. Although such amendments would normally be subject to challenge on germaneness grounds, there may be attempts to get the Rules Committee to waive the germaneness requirement.

The Departments of State and HEW may also look for sponsors of floor amendments correcting portions of the bill which are of concern to those agencies. HEW, for example, objects to a provision authorizing 100% reimbursement to the states for cash and medical assistance refugee programs, for up to four years after a refugee enters the United States. (The Administration's refugee bill allowed federal reimbursements for up to two years after a refugee's entry.) HEW also objects to an amendment Mr. Fascell will offer, pursuant to his compromise with the Judiciary Committee, which would give HEW discretion to reimburse state and local governments for services rendered to aliens claiming political asylum prior to November 1, 1979. Although the Fascell amendment is aimed at the Haitian situation in Florida, HEW feels that such a provision would create a "troublesome precedent" with regard to other groups of undocumented aliens.

The projected December floor vote will leave little time for the Conference Committee process to be completed prior to the December 15 expiration of the most recent extension of the refugee parole programs. Accordingly, the State Department has already begun planning for another short-term extension of the parole programs at present levels.

Swine Flu. Congressman Mazzoli introduced H.R. 5838 which establishes an independent Commission to process and decide all cases involving claimants/plaintiffs who suffered from Guillan-Barre Syndrome within 20 weeks of swine flu inoculations. It has been referred to the Subcommittee on Administrative Law and Government Relations. No formal hearings have been set and the Department is continuing business as usual while participating in informal meetings with congressional staffers.

GAO. Markup by the full Governmental Affairs Committee has been delayed on S. 1878 which gives GAO the power to go to court against the Executive Branch for the production of documents. Representatives from OLA, OLC, OMB,

DOD, Treasury, State and the White House are meeting with staffers for the Subcommittee on Energy and Natural Resources chaired by Senator Glenn, who is coincidentally the sponsor of the bill. The bill passed the House but is now slowed down in the Senate Subcommittee.

Judicial Impact Statements. During the hearing on this proposal, it was suggested that the use of these statements be limited because of the somewhat primitive state of the art, and the fact that it is obvious on the face of many pieces of legislation whether or not there will be a judicial impact. It was noted that impact statements can be a good general planning device, and that as the information and technology become more sophisticated and complete, the results will be more accurate.

Stanford Daily. The markup in the House Subcommittee on Courts, Civil Liberties, and the Administration of Justice which was originally scheduled for the week of November 5 was cancelled, and as of now has not been rescheduled.

State Justice Institute Act. Maurice Rosenberg, Assistant Attorney General, OIAJ, testified November 19 before the Senate Judiciary Subcommittee on Jurisprudence and Governmental Relations on the State Justice Institute Act, as proposed by the Subcommittee Chairman, Senator Heflin.

Criminal Code Reform. Chairman Drinan's plan for a vote on the full bill by November 15 or 16, with the bill and section-by-section analysis going to members of the full Judiciary Committee before Christmas holidays was defeated Wednesday, November 14. The Subcommittee adopted a motion by Congressman Kindness that there not be a vote that week but that instead the Subcommittee continue its work, having the staff prepare a print soon after Thanksgiving recess to be circulated widely, with the Subcommittee voting on the bill at the beginning of the second session. In supporting Kindness' motion, Congressman Lungren stated that if the Chairman insisted on a vote on Friday, that the bill could go to the full Committee on a 5-4 vote. None of the members present spoke in support of Drinan's proposal and Kindness' motion was accepted without a vote.

The Subcommittee made the following decisions regarding sentencing issues this past week:

1. The Subcommittee deleted subsection 4302(d) which would have required the Sentencing Committee to reflect average time served by similarly situated offenders when recommending terms of imprisonment.
2. The Subcommittee deleted Section 4303 which provided for the Sentencing Committee to issue policy statements to Federal judges. The Subcommittee was concerned that the policy statements would not be subject to congressional review.
3. The Subcommittee adopted a provision to allow probation officers to obtain search warrants on less than probable cause. Currently, there is a split in the circuits on this, with one requiring no warrant and another requiring a warrant on less than probable cause.

In other areas, the Subcommittee decided to ask the staff to redraft the civil forfeiture, Section 8101, to enumerate procedural due process requirements. The Subcommittee declined to consider whether current law on civil investigative demands creates Fifth Amendment problems. Congressman Kindness noted that he would like to see this issue raised in full Committee.

The Senate Judiciary Committee began a 5-day markup schedule on S. 1722 on November 19. Senator Kennedy has indicated that he would like a vote on the full bill on Wednesday, November 28. For its markup procedure, the Committee is considering amendments in three groups, and has already adopted Group I and II, preserving the right of any member to raise objections later. Group III amendments were being circulated on November 20, with staff discussing these amendments with members outside markup sessions. The amendment which caused most concern was a Baucus amendment providing an affirmative defense against a contempt charge where the order was constitutionally invalid. The amendment was adopted with Simpson and Cochran objecting. Senator Leahy also raised several concerns, requesting a vote on provisions in Section 1722 relating to unions and the extortion offense.

Lobbying. Senator Chiles' lobbying reform bill is being redrafted and will be reintroduced in December. Hopefully, it will go to full Committee markup in January. Meanwhile, back at the House, no likely floor action is scheduled as yet and none is likely before next year.

False Claims. Hearings were held before Senator DeConcini's Subcommittee on Judicial Machinery on S. 1981, the Department's proposed amendments to the False Claims Act. Testifying was J. Roger Edgar of the Commercial Branch of the Civil Division along with a panel of attorneys from that Branch and Merrick Garland, Special Assistant to the Attorney General. Also testifying was Stan Page, former Chief of the Government Fraud Section.

The Subcommittee staff hopes to complete their report during the week of November 26 and schedule full Committee markup the week after.

Financial Privacy Act Amendments. Representatives of Justice, Treasury, Commerce (NTIA) and OMB met with Domestic Policy staff to discuss the amendments proposed by Justice earlier this year. Most of the fifteen amendments received general approval. A couple were in need of clarification or rewriting, and a decision was made to drop one or two others, including the fine for financial institutions which refuse to co-operate. In general, the package was quite well received, and should garner Administration support in its final form.

Two issues were raised which will need further consideration: (1) whether to extend the coverage of the Act to state and local government law enforcement agencies, and (2) the need to conform other pending privacy legislation, so that the procedures for complying with any privacy laws will be the same for purposes of efficiency and simplicity. The first will require a review of the feasibility of extension, and the second could have some impact on the FBI Charter legislation, which also has access restrictions and procedures.

Medical Records Privacy. Markup of this bill by the House Subcommittee on Information Practices (Government Operations) is tentatively scheduled for December 11. Chairman Preyer has introduced an amended version of his original bill which does take care of some DOJ problems, but some others remain.

Year End Procurement. The hearing on hurry-up spending of funds by government agencies at the end of the fiscal year has been rescheduled for November 29. The "whistleblower" is an LEAA employee, and an official LEAA representative will also appear.

FBI Charter. Detailed hearings have concluded in the Senate. It is contemplated that there will be one more hearing, early next year just before the bill is marked up, with the Attorney General and Director of the FBI as the wrap up witnesses.

DOJ Authorization. Conference report and statement of managers has been filed. Conference report is scheduled for House floor on Tuesday, November 27.

LEAA Reauthorization. Conference report and statement of managers has been filed. It has not as yet been scheduled for floor action.

Antitrust Legislation. On November 15 the Subcommittee on Monopolies and Commercial Law of the House Judiciary Committee reported favorably on five bills altering the procedures used for antitrust cases. The five, along with a sixth bill, not yet acted upon by the Subcommittee, all stem from the recommendations of the National Commission for the Review of Antitrust Laws and Procedures of last January. The first of the five acted upon, H.R. 3271 (passed by voice vote), clarifies the authority of the Justice Department to utilize outside contractors to process, analyze and evaluate materials received pursuant to civil investigative demands. Two amendments to the bill were approved, one striking the phrase "or consulted" from the definition of agents and the other explicitly placing agents under the criminal sanctions of 18 U.S.C. §1905.

The second bill, H.R. 4050 (passed by voice vote), gives to the Department express authority to issue civil investigative demands for products of discovery possessed by parties to litigation not involving the Department. Two amendments were approved, one clarifying that the protections normally accorded to CID material would apply to such products and a second limiting the authority to acquire material from administrative agencies to that stemming from administrative litigation rather than rulemaking proceedings.

The third bill, H.R. 4048 (passed 4-2), authorizes the award to successful antitrust plaintiffs of interest (at prevailing commercial rates) on their actual damages from the date of service of the complaint to the date of judgment. Two changes were accepted. First, instead of the award being somewhat automatic, with the court granted authority to reduce such payments "if unjust," the bill was amended to permit the court to make such interest payments "if just." Second, the court was given authority to reduce the period of time, in addition to reduction of the rate, for calculation of the interest.

The fourth bill, H.R. 4049 (passed by voice vote), expanded the definition of persons covered by section 7 of the Clayton Act to include non-corporate entities. The new definition was made applicable only to acquisitions after the date of enactment of the bill.

The final bill, H.R. 4046 (passed by voice vote), permits courts to give collateral estoppel effect to findings in antitrust suits brought by the Department.

The parallel legislation on the Senate side, S. 390, passed the Senate in July.

Oil Merger Legislation. On November 20 the Senate Judiciary Committee reported favorably (9-8) S. 1246, the oil merger bill. The bill generally would prohibit the 18 largest U.S. oil companies from acquiring other large companies, subject to enhancing competition and enhancing energy defenses. Beginning with the Committee print of October 19, four amendments offered by Senator DeConcini were agreed to. The most important of these establishes a different prohibition threshold for acquirable non-energy companies (i.e. assets of \$50 million) than for acquirable energy companies (assets of \$100 million). Another of the amendments weakened the qualifying test for the enhancing energy defense. The third amendment placed a specific time limit on the Attorney General for commencing an action to enforce the ban.

Other amendments agreed to included defining joint undertakings and energy conversion and changing the effective date of the prohibition. Rejected was an amendment by Senator Dole exempting companies that had plowed back all income into energy through new capital expenditures.

Federal Rules of Criminal Procedure

Rule 18. Place of Prosecution and Trial.

Defendant was convicted in the Eastern District of Illinois of two counts of obstructing a criminal investigation in violation of 18 U.S.C. 1510 by beating a fellow employee who was cooperating with the FBI. The beating occurred in the Southern District of Illinois, but the investigation obstructed was being conducted in the Eastern District. Citing Rule 18 and the Sixth Amendment, the defendant contends on appeal that his conviction should be set aside because venue was laid in a district other than the one where the offense (the beating) took place.

The Government argued in reply that the gravamen of the offense of obstructing a criminal investigation is the effect of the misconduct on the administration of justice, rather than the act itself, and that venue was therefore properly laid in the district in which the investigation was being conducted. The Government relied on United States v. O'Donnell, 510 F.2d 1191 (6th Cir. 1975), see 23 USAB 457 (No. 10; 5/16/75), which held that a prosecution for obstruction of justice under 18 U.S.C. 1503 is properly held in the district whose court proceedings have been affected, regardless of where the actual act of obstruction took place.

The Court rejected the Government's argument, finding more analogous the reasoning in United States v. Swann, 441 F.2d 1053 (D.C. Cir. 1971), see 19 USAB 801 (No. 18; 9/3/71), where, in a prosecution under 18 U.S.C. 1503 arising from a beating, it was held that the beating was the gravamen of the offense and the district where the beating took place, rather than the district whose court proceedings were affected, was therefore the proper district. This reasoning was also adopted in United States v. Bachert, 449 F. Supp. 508 (E.D. Pa. 1978). The words of the Sixth Amendment and Rule 18, taken on their face, clearly indicate that an accused cannot be tried in one district for a

crime committed in another and the Government's argument strays too far from the original bases of our venue laws on notions of fair, fast, and efficient administration of justice. The trial should have been held in the Southern District of Illinois, where the beating took place, rather than the Eastern District, where the investigation which was obstructed was proceeding.

(Reversed and remanded for dismissal of the indictment.)

United States v. Ronald R. Nadolny, 601 F.2d 940
(7th Cir., July 17, 1979)

Federal Rules of Criminal Procedure

Rule 43. Presence of the Defendant

Defendant appeals from conviction on two counts of interstate transportation of falsely made and forged securities, contending that this trial in absentia was prohibited by Rule 43 of the Federal Rules of Criminal Procedure and violated the constitutional right guaranteed to him by the Confrontation Clause of the Sixth Amendment. Defense counsel had written the defendant numerous times and talked with him on one occasion by telephone to remind him of his trial date. Shortly before trial, unable to contact the defendant, and having received information from the defendant's employer that the defendant had left the area and that his location was unknown, defense counsel informed the trial judge of his inability to locate the defendant. Continuance was declined. Defendant was subsequently located, arrested, and returned for sentencing.

The Court recognized that the defendant had a constitutional right to be present at trial. While Rule 43 represents a "crystallization" of the rule of two earlier Supreme Court cases, this constitutional right may be waived, and such waiver may be implied from the defendant's conduct. The Court concluded that the defendant's conduct in this case constituted a waiver of his rights under Rule 43, and the district judge did not, therefore, abuse his discretion in proceeding with the trial in the defendant's absence.

(Affirmed.)

United States v. James Eugene O'Donnell, No. 79-5045
(4th Cir., November 1, 1979)

Federal Rules of Criminal Procedure

Rule 15(c). Depositions. Payment of Expenses.

The Government appealed from orders of the district court directing the United States to pay attorneys' fees to retained defense counsel in a criminal case for services rendered in connection with a deposition taken by the United States in advance of trial pursuant to an order of the trial court granted under Rule 15.

After determining that these were appealable collateral orders, the Court noted that no case has been reported in which a court has awarded attorney fees incurred in the taking of a deposition pursuant to Rule 15(c). While in some contexts the word "expense" may be given a broad construction, the Court concluded it is not justified here, where Congress has expressly narrowed the word "expense" to mean only those costs incurred for travel and subsistence. If Congress had intended for attorney fees to be covered, it could have specifically provided for such expenses, as it has done in many statutes. Accordingly, the Court held that Rule 15(c) does not give the district court discretion to award attorney fees to retained counsel for services in the taking of depositions in a criminal case when requested and authorized by the court and vacated the orders in this case.

(Vacated.)

United States v. Dale E. Baker, 603 F.2d 759, (9th Cir., August 30, 1979)