U.S. Department of Justice
Executive Office for United States Attorneys

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VOL. 28 JANUARY 18, 1980 NO. 2

TABLE OF CONTENTS

VOL. 28 JANUARY 18, 1980 NO. 2

COMMENDATIONS

Deputy Chief of the Criminal Division, MARILYN GAINEY BARNES, Eastern District of New York, has been commended by Herbert Aronowitz, Director of the Department of Health, Education and Welfare, for her receptive attitude and assistance in implementing the group prosecution of twenty-five cases involving violations of the Social Security Act.

Assistant United States Attorney, RHONDA FIELDS, Eastern District of New York, has been commended by Bruce E. Jensen, Chief, New York Drug Enforcement Task Force, for her successful prosecution of a multi-million dollar cocaine trafficking organization, in United States v. Jose Patrino.

Assistant United States Attorneys BOB FOGARTY and BILL MARTIN, Southern District of Ohio, have been commended by Bealer T. Rogers, Jr., Colonel, USAF, MC Commander for their outstanding work in the malpractice case of Meigs v. United States.

Assistant United States Attorneys RICHARD F. LAWLER and CAROLYN HENNEMAN, Southern District of New York, have been commended by the Honorable Geri M. Joseph, United States Ambassador to The Hague, for their successful prosecution of Roy Hagood and Claude Helton, et al for importing and distributing heroin.

Assistant United States Attorney, DOUGLAS K. MANSFIELD, Eastern District of New York, has been commended by Edwin J. Sharp, Special Agent in Charge, Federal Bureau of Investigation, for the successful prosecution of a Possession of Stolen Goods from Interstate Shipment case of United States v. John Tarpey.

Assistant United States Attorney CHARLES ROSE, Eastern District of New York, has been commended by Herbert Aronowitz, Director of the Department of Health, Education and Welfare, for his expeditious handling of twenty-five cases resulting in twenty-two convictions of Social Security Act violations.

Assistant United States Attorney VIVIAN SHEVITZ, Eastern District of New York, has been commended by Edwin J. Sharp, Special Agent in Charge, Federal Bureau of Investigation, for her conviction of a Theft from Interstate Shipment case, United States v. Joseph Sadallah. VIVIAN SHEVITZ was also commended by Bruce E. Jensen, Chief, New York Drug Enforcement Task Force, for her superior performance in a series of successful prosecutions of major Columbian narcotics traffickers, beginning with United States v. Nelson Gomez and also United States v. Sanchez.

Assistant United States Attorneys ANSEL M. STROUD, III and BRIAN P. JOFFRION, Western District of Louisiana, have been commended by Assistant Attorney General, Civil Rights Division, Drew S. Days, III and the Consul General of Mexico Jorge Aguilar S., for their successful prosecution of what is believed to be the first case under the peonage statute that has been handled in Louisiana since the Civil War, it is also the first time the peonage statute has been used when the victims were Mexican nationals in the case entitled United States v. Connie Ray Alford.

VOL. 28 JANUARY 18, 1980 NO. 2

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

POINTS TO REMEMBER

Economic Crime Enforcement Offices Staffing

The Criminal Division's Office of Economic Crime Enforcement is seeking qualified applicants for Economic Crime Enforcement Specialists to be located in the following Districts:

Southern District of Florida
Middle District of Florida
Northern District of Alabama
Northern District of Texas
Northern District of Georgia
Eastern District of Michigan
Western District of Pennsylvania
Eastern District of Louisiana
Northern District of California
Southern District of California
Arizona
Kansas
Western District of Tennessee
Eastern District of Missouri

Applicants having a minimum of three years Federal prosecution experience and residing within the District applied for are particularly sought.

(Executive Office)

Criminal Division Attorney Vacancies

The Criminal Division of the Department of Justice is seeking experienced prosecutors to fill a number of positions at all levels throughout the Division. Some Sections in the Division have openings to be filled immediately while other Sections anticipate openings in the near future.

The Division particularly welcomes applications from women and minority attorneys. Attorneys interested in working in the Criminal Division should send a resume and indicate the kind of work they are interested in, to:

Susan L. Moss
Assistant to the Deputy Assistant Attorney General
Criminal Division
Department of Justice
Washington, D.C. 20530

(Criminal Division)

Processing Freedom of Information and Privacy Act Requests

You are reminded that the United States Attorneys' Manual, Title 1, Section 1-5.130 provides the proper procedure for requests received under the Freedom of Information Act. Upon receipt of a request by a United States Attorney's office, the request should be acknowledged immediately and the requester informed that his correspondence has been forwarded to the Department of Justice FOIA/PA Unit. The envelope should be clearly marked "FREEDOM OF INFORMATION REQUEST" and should be addressed to the Deputy Attorney General, Department of Justice, Room 1214 Washington, D.C. 20530. Upon receipt the FOIA/PA Unit will transmit the request to the appropriate office(s) and/or division(s) of the Department.

The procedures governing the processing of requests received under the Privacy Act are set forth in the United States Attorneys' Manual, Title 1, Section 1-5.230. However, since most requests are either made under both Acts or are made under the Freedom of Information Act but actually involve Privacy Act records, it is recommended that all requests be handled as outlined above.

(Executive Office)

VOL. 28 JANUARY 18, 1980 NO. 2

ADVOCACY INSTITUTE THANKS SUPPORTERS

The 1979 course year was a very successful one for the Attorney General's Advocacy Institute, and many thanks are due the persons from the divisions and U.S. Attorneys' offices whose efforts contributed to that success.

With the assistance of the task forces responsible for course planning and development, AGAI has expanded and fully revised all three of the advocacy courses. The Civil and Criminal Trial Advocacy courses are now three weeks in length. The first two weeks reflect an increased emphasis on small group workshops and student participation in trial exercises. The third week is conducted six months after the first two and concentrates on more complex topics such as grand jury tactics and settlement negotiations. The Appellate Advocacy course has been expanded in length from three days to a full week and also concentrates on small group participation but with a focus on improving both the oral and written appellate advocacy skills of the participants.

The success of all Advocacy Institute programs depends upon the continued support and cooperation of the Legal Divisions and U.S. Attorneys Offices and the oftentimes monumental efforts exerted by many individuals. AGAI and the Executive Office for U.S. Attorneys extend a sincere thank-you to all.

Special thanks go to the members of the task forces and course instructors for 1979:

Members of the Task Forces

Appellate Course
Shirley Baccus-Lobel (N.D. Texas)
Jay Brant (E.D. Michigan)
Jim Bruton (Tax)
Merv Hamburg (Criminal)

Civil Course
James Brookshire (Lands)
Carl Gabel (Civil Rights)
Lawrence Klinger (Civil)
Thomas Lawler (Tax)
Richard Smith (New Mexico)
Steve McNamee (AGAI)

Criminal Course
Daniel Bent (Hawaii)
William Lytton (E.D. Pennsylvania)
Ralph Martin (Criminal)
Stephen Mayo (S.D. California)
William Skretny (W.D. New York)
Robert Westinghouse (W.D. Washington)

Instructors

Alabama
Kenneth E. Vines (M.D.)
Broward Segrest (M.D.)

Alaska
Daniel E. Dennis

Arizona
Gerald S. Frank
Bruce Heurlin
Negatu Molla
Joel Sacks

Arkansas
Floyd Clardy (W.D)

California
Howard Allen (S.D.)
James R. Arnold (C.D.)
William Bower (S.D.)
Raymond J. Coughlin (S.D.)
Floy Dawson (N.D.)
Irma Dirst (C.D.)
Dzintra I. Janavs (C.D.)
George King (C.D.)
Eugene Kramer (C.D.)
John Neece (S.D.)
Stephen G. Nelson (S.D.)
Jeffery G. Niesen (N.D.)
Stephen D. Peterson (C.D.)
Michael Quinton (S.D.)
Warren Reese (S.D.)
Matthew Schumacher (C.D.)
Donald F. Shanahan (S.D.)
Kathryne A. Stoltz (C.D.)
Michael Waltz (S.D.)
Mark Webb (N.D.)
Michael E. Wolfson (C.D.)

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Jerre Dixon
James Gatlin
Donald Hoerl
Richard Stuckey
Jerry B. Tompkins
Richard Vermeire
James Winchester

Connecticut
Michael Hartmere

District of Columbia
Craig Lawrence

Florida
Robert A. Leventhal (M.D)
Douglas B. Segrest (M.D.)
Gary Takacs (M.D.)

Illinois
Frederick Branding (N.D.)
Robert B. Breisblatt (N.D.)
Vince Connelly (N.D.)
Walter Jones (N.D.)
Blanche Manning (N.D.)
Nancy Needles (N.D.)
Cliff Proud (E.D.)
Charles Sklarsky (N.D.)
James Streicker (N.D.)
Robert Tarun (N.D.)

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Charles Goodloe (S.D.)

Iowa
Thomas G. Schrup

Kansas
Stephen K. Lester
Mary Briscoe

Louisiana
William L. Goode (W.D.)

Maine
James Brannigan

Maryland
Daniel Clements

Massachusetts
Robert Collings
Walter Prince

Michigan
Maura Corrigan (E.D)
Leonard Gilman (E.D.)
Victoria L. Toensing (E.D.)
Thomas M. Woods (E.D.)

Minnesota
Ann D. Montogomery

Mississippi
Sam D. Knowlton (N.D.)

Missouri
Anthony Nugent (W.D.)
Kevin F. O'Malley (E.D.)

Nebraska
Paul Madgett
Thomas Thalken

Nevada
Leland Lufty

New Jersey
George Haneke
Thomas McKay

New Mexico
Robert Collins
Charles Sandoval

New York
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Michael Q. Carey (S.D.)
Robert Costello (S.D.)
Steven K. Frankel (S.D.)
Shira Scheindlin (E.D.)
Eugene Welch (W.D.)

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Ohio
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William J. Edwards (N.D.)
Patrick Hanley (S.D.)
John Horrigan (N.D.)
William Hunt (S.D.)
Gerald F. Kaminski (S.D.)
Anthony Nyktas (S.D.)
James E. Rattan (S.D.)
Nancy Schuster (N.D.)

Oklahoma
Kenneth P. Snoke (N.D.)
Charles Waters (W.D.)
Betty Williams (E.D.)

Oregon
Kenneth Bauman
Jack Collins

Pennsylvania
Joseph Cimini (M.D.)
David M. Curry (W.D.)
Mark Durant (E.D.)
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William Gordon, Jr. (E.D.)
Jerry Johnson (W.D.)
Al Lindsay (W.D.)
Craig McKay (W.D.)
Greg Magarity (E.D.)
Jeffrey Manning (W.D.)
Thomas E. Mellon (E.D.)
John Penrose (E.D.)

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William Coates
Thomas E. Lydon

Tennessee
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Texas
T. Jeff Baynham (E.D.)
Jim Gough (S.D.)
Charles Lewis (S.D.)
James L. Powers (S.D.)
Mary L. Sinderson (S.D.)
Richard H. Stephens (N.D.)
John Sweeney (N.D.)
Ronald G. Woods (S.D.)

Vermont
Jerome Niedermeire
Jerome O'Neill

Virginia
Robert Amidon (W.D.)

Washington
Dave Buckey (W.D.)

West Virginia
William A. Kolibash (N.D.)

Wisconsin
William Callahan (E.D.)
James Fergal (E.D.)
Steve Kravit (E.D.)
Joseph Stadtmueller (E.D.)

Legal Divisions
Charles Alexander (Tax)
David Anderson (Civil)
Jeffrey Axelrad (Civil)
William M. Cohen (Lands)
Craig Crenshaw (Civil Rights)
Joe Vaulx Crockett, III (Tax)
Stanley O. Croydon (JMD)
John DiCicco (Tax)
Fred Disheroon (Lands)
Mark Dombroff (Civil)
Claire Fallon (Tax)
John J. Farley, III (Civil)
George Gilinsky (Criminal)
Nicholas Gilman (Civil)
Paul Hancock (Civil Rights)
Gerald Hartman (Civil Rights)
Morton Hollander (Civil)
Gregory Hrebiniak (Tax)
Mary Jennings (Tax)
Gerald Kafka (Tax)
Neil Kaplan (Criminal)
Robert W. King (Tax)
George S. Kondos (JMD)
John Kruse (Civil)
Gerald H. Lindberg (JMD)
C. Brian McDonald (Civil Rights)
Robert G. Nath (Tax)
Walter A. Oleniewski (Civil)
Squire Padgett (Civil Rights)
Donald Paileen (Civil Rights)
James P. Piper (Civil)
Carleton Powell (Tax)
Jane Restani (Civil)
Alexander Ross (Civil Rights)
Dan Ross (Tax)
Irwin Seibel (Antitrust)
Janis A. Sposato (OLC)
Victor Stone (Criminal)
Martin S. Teel, Jr. (Tax)
Bruce E. Titus (Civil)
Jack D. Warren (Tax)
Douglas Wood (AAG)

VOL. 28 JANUARY 18, 1980 NO. 2

Attorney General Directive

The following is a Memorandum issued to all Heads of Offices, Boards, Bureaus, and Divisions; United States Attorneys; Special Agents-in-Charge; Heads of DEA Regional and District Offices, by Attorney General Benjamin R. Civiletti.

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

January 7, 1979

MEMORANDUM TO: All Heads of Offices, Boards, Bureaus, and Divisions;
United States Attorneys;
Special Agents-in-Charge;
Heads of DEA Regional and District Offices

FROM: Benjamin R. Civiletti BRC
Attorney General

SUBJECT: Establishment of Daily Attorney General Reporting System

Commencing on January 14, 1980, a new Daily Reporting System will be initiated throughout the Department of Justice. The purpose of the system is to bring to my direct, personal attention vital information every 24 hours. The kind of information it is necessary to report, and the specifics of transmittal, are described below.

REPORTABLE INFORMATION

Five categories of information within the jurisdiction of the Department are subject to the Daily Reporting System:

(1) Emergencies -- e.g., taking of hostages, hijackings, kidnappings, prison escapes with attendant violence, riots, serious bodily injury to or caused by Department personnel;

(2) Serious allegations of improper conduct by a Department employee, a public official, or a public figure;

(3) Serious conflicts with other governmental agencies or departments;

(4) Serious misconceptions of Departmental actions or policies by the community or press; and

(5) Other information so important as to warrant the personal attention of the Attorney General within 24 hours.

Reports are to be transmitted only on days when information in the above categories is acquired. It is not expected that each Departmental unit will have reportable information each working day. The duty and responsibility for filing the Reports, and for their content, rests on the head of each headquarters and field unit. *

TRANSMITTAL

Method. All Departmental units located in the District of Columbia are to submit reports by courier to the Office of the Attorney General, Department of Justice. Federal Bureau of Investigation field offices are to transmit information by teletype to the Office of the Director, Federal Bureau of Investigation. Drug Enforcement Administration field offices are to transmit information by teletype to the Office of the Administrator, Drug Enforcement Administration. United States Attorneys outside the District of Columbia are to transmit information by teletype to the Director, Executive Office for United States Attorneys. United States Attorneys needing to transmit classified information may use the facilities of the local FBI field office to transmit directly to the Attorney General through the Justice Department Telecommunications Center.

Teletype messages should include markings indicating highest priority transmission. The FBI, DEA and EOUSA will forward the teletype messages by courier to the Office of the Attorney General.

*** A more detailed list of examples of information within the five reportable categories is included in the appendix to this memorandum. The list is provided solely for illustrative purposes, and is not intended to indicate all information which may fall within the five categories.**

If a unit acquires information which requires my immediate attention, and which should not await delivery through the Daily Reporting System, transmittal should be accomplished by the most direct means available. In most cases, this will be by telephone to the head of the Office, Board, Bureau, or Division, to the Counselor to the Attorney General, or directly to me.

Deadline. All Daily Reports are to be received no later than 3 p.m. Eastern Time.

Format. Each individual subject covered in the Report should be displayed in the following format:

Line 1 -- "Daily Attorney General Report."

Line 2 -- Designation of subject as "Civil" or "Criminal."

Line 3 -- Security classification, if any. "Sensitive" but unclassified material should be so labeled.

Line 4 -- Name and location of unit originating Report.

Line 5 -- Designated personnel, and telephone numbers, for clarification and follow-up.

Line 6 to end -- 1-2 paragraph synopsis of information.

The successful implementation of the Daily Reporting System is a matter of the highest priority. Its product is intended for my personal review, and all communications will be treated as confidential. Although I recognize the burden which it places upon you, this System is critical to the proper performance of my duties as Attorney General. I need and appreciate your cooperation.

APPENDIX

DAILY ATTORNEY GENERAL REPORTING SYSTEM: Examples of Reportable Information

(1) Emergencies

A. Terrorist incidents, including:
   1. hostage taking
   2. hijacking
   3. assaults, attempts or serious threats against public officials or figures, or against public facilities or utilities
   4. explosions involving substantial injury or damage
   5. kidnapping for political purposes or ransom

B. Riots, civil disturbances and organized or widespread violence, including:
   1. interference with functioning of governmental units or interstate commerce
   2. demonstrations which have substantial potential for serious violence or substantial property destruction

C. Custodial incidents, including:
   1. prison deaths
   2. prison riots
   3. escapes or attempted escapes
   4. serious assaults or threats against prisoners
   5. courtroom or courthouse incidents involving defendants or witnesses

D. Safety of Justice personnel or cooperating citizens, including:
   1. death or serious bodily injury or threats or attempts against any Department employee or any officer of a law enforcement or criminal justice agency of another department, or of a court, or a witness (especially a protected witness), informant, or other cooperating individual.

E. Use of potentially deadly force by Departmental employees.

F. Other dangerous circumstances.

(2) Serious matters involving possible improper or illegal conduct by a Department employee, a public official, or a public figure.

A. Receipt of a serious, specific, or credible allegation, or of other information indicating such misconduct.

B. Arrest, search or seizure related to such a matter.

C. Actual or anticipated initial public disclosure of such a matter.

(3) Serious conflicts with other governmental agencies or departments:

A. Disputes over investigative or litigative jurisdiction or responsibility.

B. Conflicts in critical operational matters concerning, for example, arrests, searches, seizures, handling of informants, interview or examination of important witnesses, or custody of or access to needed documents.

C. Disagreements over the proper government response to the filing of emergency papers, such as applications for Temporary Restraining Order (TRO) or mandamus.

(4) Serious misconceptions of Department actions or policies by the community or press.

(5) Other information so important as to warrant the personal attention of the Attorney General within 24 hours.

CIVIL DIVISION
Assistant Attorney General Alice Daniel

Himmler v. Califano, No. 77-1083 (6th Cir., December 11, 1979)
DJ 137-37-483

Medicare: Sixth Circuit Reverses District Court's Order Regarding The Timing Of Hearings Provided To Medicare Beneficiaries Who Are Denied Reimbursement For Medical Services Deemed Medically Unnecessary

HEW regulations provide that Medicare beneficiaries, whose doctors have certified in advance that certain provided services are medically necessary, are entitled to a hearing if HEW's fiscal intermediary subsequently determines that the services rendered were not in fact medically necessary. Beneficiaries who do not prevail at such hearings are occasionally subject to liability for substantial bills for medical services which are not covered by Medicare, and which they might not have incurred had they not believed that the services would be covered. The district court, in a very confusing opinion, ordered HEW to conduct "pretermination" hearings to Medicare beneficiaries in this situation. The Sixth Circuit accepted our argument that this case does not present a Goldberg v. Kelly situation and, rather, is more analogous to Mathews v. Eldridge. In conducting the balancing required by Eldridge, the court accepted our argument that HEW's scheme is necessary to protect the system from abuse, that hearings conducted at an earlier time would be an administrative impossibility, and that the medicare beneficiaries interests were adequately protected by the hearings' provisions currently established by regulation.

Attorney: Alfred Mollin (Civil Division)
FTS 633-4792

Narenji v. Civiletti, No. 79-2460 (D.C. Cir., December 27, 1979)
DJ "New"

Immigration: D. C. Circuit Reverses District Court Injunction Barring Government From Requiring Iranian Students To Report To INS

At the direction of the President the Attorney General promulgated a regulation requiring nonimmigrant Iranian students to report to a local INS office. The district court enjoined enforcement of this regulation on the ground that it was in

excess of the Attorney General's authority. Acting on the basis of our emergency appeal, the Court of Appeals has just reversed the district court's judgment. The Court of Appeals held that the regulations were authorized and constitutional since they had a rational basis.

Attorneys: Robert E. Kopp, Anthony J. Steinmeyer, and Michael Jay Singer (Civil Division)
FTS 633-3389
FTS 633-5108
FTS 633-3159

VOL. 28 JANUARY 18, 1980 NO. 2

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General James W. Moorman

Settlement Authority in Cases Arising From the Surface Mining Control and Reclamation Act of 1977

Except for cases authorized to be filed by 5-1.310 of the United States Attorneys' Manual, no case under the supervision of the General Litigation Section, Land and Natural Resources Division, may be initiated by a United States Attorney without the prior authorization of the Assistant Attorney General. The Assistant Attorney General shall sign the complaint prior to its being filed (see 5-1.302) with the exception of complaints for the collection of civil penalties and reclamation fees arising from enforcement of the Surface Mining Control and Reclamation Act of 1977. The United States Attorney is authorized to sign these complaints after authorization to file the complaint is given by the Assistant Attorney General.

Cases under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1201 et seq., are particularly subject to emergency situations. In these cases, authorization to institute an action may be requested by telephone or telegraph directed to Lois J. Schiffer, Chief, General Litigation Section, at 633-2704, or in her absence, to Alfred T. Ghiorzi, Attorney, General Litigation Section at 633-2738, who will obtain approval to institute the action from the Assistant Attorney General, and will telephone the approval to the Assistant United States Attorney, who may then file the complaint. Please provide the following information when requesting emergency authorization to initiate an action:

a) the name of the coal company and its officials;

b) the reason for the need for immediate telephone approvals;

c) the violations noted; and

d) the date of the hearing, if known.

The name of the Assistant Attorney General should appear on complaints so approved.

VOL. 28 JANUARY 18, 1980 NO. 2

OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Alan A. Parker

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

DECEMBER 24, 1979 - JANUARY 8, 1980

Medical Records Privacy. The House Information Subcommittee (Government Operations) met to continue mark-up, but did not complete action on this bill. Amendments of particular interest to the Department will be introduced when the Subcommittee meets in January - (1) to eliminate the balancing test for government access, (2) to insure that a court initiated subpoena may be challenged only in the court which issued it, and (3) to clarify the federal law supremacy section of the bill.

Statute of Limitations for Indian Claims. On December 17, Myles Flint, Indian Resources section chief, testified before the Senate Select Committee on Indian Affairs on extension of the statute of limitations in 28 U.S.C. 2415 relating to certain Indian Claims. The present statute bars claims not brought before April 1, 1980. There is no present bill to extend the statutory period and the DOJ deferred to Interior as to whether such an extension is necessary. Most of the questioning was conducted by Senator Cohen of Maine, who was not receptive to Interior's recommendation of a two-year extension.

Criminal Code Reform. The House Subcommittee is continuing its mark-up and held sessions scheduled for each day through December 21, with a recess at that point until January 3. The Subcommittee keeps falling behind on its schedule and it is unclear when a vote on the full bill will take place.

TRIS. The Senate Judiciary Committee on December 18 ordered favorably reported S. 521, to provide for the payment of losses incurred as a result of the ban on the use of the chemical TRIS in certain fabrics.

Venue. Senator Laxalt agreed to support the Regulatory Reform package if Senator DeConcini held hearings on S. 739, a bill which would limit venue in all civil actions only to the district which incurred a "substantial portion of the impact or injury." A meeting was held December 18, to discuss with subcommittee staff the problems with the bill. There is a possibility that the legislation can be narrowed to focus only on "environmental" litigation. The hearing will be held in early February. Meanwhile, the Department will be assisting with the redrafting.

Bottlers Bill. On December 18, the Senate Judiciary Committee

ordered reported favorably, without amendment, S. 598, the Soft Drink Interbrand Competition Act. The bill would confer a special antitrust exemption on exclusive territorial agreements between soft drink manufacturers and bottlers, freeing such agreements from the "rule of reason" normally applied. There was only one negative vote on the measure in committee. Senator Metzenbaum, casting this "no" vote, noted that there are approximately "103" Senate co-sponsors of the legislation. The Department strongly opposes the bill. The House Judiciary Committee's Monopolies Subcommittee has not scheduled mark-up of comparable legislation, although it is under enormous pressure to do so. There are in excess of "300" House co-sponsors of the legislation. Chairman Rodino agrees with the Department's position and is struggling to keep the bill bottled up! (No pun intended.)

Refugee Bill. On December 20, the House passed the proposed Refugee Act, (H.R. 2816), by a vote of 328 to 47. The amendments which were agreed to by the Judiciary and Foreign Affairs Committees to settle their jurisdictional dispute were included in the bill as passed, with the exception of the provision which would continue federal funding for Cuban refugees in a four-year "phase-down" program. The Cuban program amendment was not even offered because its proponents concluded that it would face a hostile reception on the House floor. Other significant amendments which were adopted would accomplish the following: (1) "sunset" the President's authority to admit over 17,400 normal flow refugees annually without congressional consultations; (2) require a hearing before each Judiciary Committee as part of the consultation process unless exigent circumstances preclude such hearings; (3) subject Presidential determinations on annual normal flow refugee quotas to a possible one-house veto; (4) extend by one additional year the bill's provisions for federal reimbursement to the states for cash and medical assistance refugee programs; and (5) establish an Office of Refugee Policy in the White House.

A conference committee will meet in late January or early February to reconcile the differences between the House and Senate versions of the proposed Act. The conference committee process will provide the Administration with an opportunity to seek the elimination of unwanted provisions such as the one-house veto and the amendment requiring establishment of an Office of Refugee Policy in the White House.

Regulatory Reform. On December 19, the Senate Judiciary Administrative Practices Subcommittee approved by a vote of 6 to 0 the Administration's Regulatory Reform legislation. The proposal, introduced by Senators Culver and Laxalt, provides for detailed analysis of major regulations (defined as those with an economic impact of more than $100 million). It also sets up a Committee on Regulatory Evaluation. The full Senate Judiciary Committee is expected to consider the bill in February. The House

Judiciary Subcommittee on Administrative Law and Governmental Relations is considering the companion measure.

GAO Auditing. S. 1878 was reported out of the Senate Government Affairs Committee on December 11. The Department agreed to a compromise negotiated by OMB with the bills' sponsors, Senator Glenn and Congressman Brooks. Section 102 grants to the GAO the power to go to court to compel production of documents from the Executive Branch. The negotiations produced five exemptions from disclosure: (1) statutory prohibitions; (2) privacy Acts; (3) and (4) documents exempt under FOIA (b)(5) and (b)(7) (predecisional memoranda and law enforcement information); and (5) foreign intelligence and foreign counterintelligence. Section 101 which gives GAO access to audit unvouchered accounts was amended to allow the President to exempt information that would reveal identifying details of sensitive active law enforcement investigations or that would endanger intelligence sources.

The bill should pass quickly through the Senate and should not require a Conference Committee.

Narcotics Profiteering. Senate hearings on this subject revealed substantial support for increased cooperation between federal agencies, and the need for greater exchange of information, where possible without compromising the rights of the individual. It was noted that the Capitol Police Force has more policemen than DEA has narcotics agents! Senate Permanent Committee on Investigations has scheduled further hearings, and will make legislative recommendations to the appropriate legislative committees. The DeConcini amendment to Section 6103 of the Tax Reform Act of 1976 limiting the transfer of tax return information was also discussed. The DeConcini amendment would remove this restriction. It was defeated 68 to 5 on December 13 when he attempted to add it to Windfall Profits tax bill. However, many of those who voted against the amendment did so because they felt that such an important change in the law merited closer, separate consideration, not because they opposed the amendment on the merits.

Dispute Resolution. The House considered this bill on the floor during the week of December 10 with the following results. The Butler amendment to reduce the authorization for the Center and the Advisory Board from $3 million to $1 million passed, as did a motion to recommit with instructions to reduce the funding for grants to states from $15 million to $10 million. The bill then passed with a 12 vote margin. It will now go to Conference, it is doubtful; however, if any funding levels greater than those above will get through the House.

Nominations. Hearing on Charles Renfrew to be Deputy Attorney General was held on Wednesday, December 12, 1979 and continued for rebuttal on Friday, December 13. Hearing on

John Shenefield was held on Friday, December 7, 1979, and is being held open by Senator Metzenbaum. On December 20 the Judiciary Committee approved the nomination of Sanford Litvack to be the Assistant Attorney General for the Antitrust Division. The Renfrew and Shenefield nominations will not be acted upon until next session.

NOMINATIONS:

On December 14, 1979, the Senate received the following nominations:

Henry Woods, to be U.S. District Judge for the Eastern District of Arkansas;

Paul A. Ramirez, to be U.S. District Judge for the Eastern District of California; and

Richard W. Arnold, of Arkansas, to be U.S. Circuit Judge for the Eighth Circuit.

On December 19, 1979, the Senate confirmed the following nominations:

G. Wix Unthank, to be U.S. District Judge for the Eastern District of Kentucky;

Hipolito F. Garcia, and Clyde F. Shannon, Jr., each to be a U.S. District Judge for the Western District of Texas;

Richard S. Arnold, of Arkansas, to be U.S. Circuit Judge for the Eighth Circuit; and

The withdrawal of the nomination of Richard W. Arnold, of Arkansas, to be U.S. Circuit Judge for the Eighth Circuit.

On December 20, 1979, the Senate received the following nomination:

Thomas K. Berg, of Minnesota, to be U.S. Attorney for the District of Minnesota.

CONFIRMATIONS:

On December 19, 1979, the Senate confirmed the following nominations:

Dorothy W. Nelson, of California, to be U.S. Circuit Judge for the Ninth Circuit;

Terry J. Hatter, Jr., to be U.S. District Judge for the

Central District of California;

Edward D. Price, to be U.S. District Judge for the Eastern District of California; and

Ira M. Schwartz, of Washington, to be Associate Administrator of Law Enforcement Assistance.

On December 20, 1979, the Senate confirmed the following nominations:

William M. Kidd, to be U.S. District Judge for the Southern District of West Virginia;

Richard A. Enslen, to be U.S. District Judge for the Western District of Michigan; and

Sanford M. Litvack, of New York, to be an Assistant Attorney General.

Also, by 43 yeas to 25 nays, Senate confirmed the nomination of L. T. Senter, Jr., to be U.S. District Judge for the Northern District of Mississippi.

TAX DIVISION

Assistant Attorney General M. Carr Ferguson

United States of America and Special Agent Nick DiFalco v. Income Realty and Mortgage, Inc., et al. ___ F. 2d ___ (10th Circuit, October 22, 1979) DJ 5-13-2525

Summons Enforcement: Taxpayer's allegation of harassment held insufficient to establish "bad faith" on the part of the IRS; Section 7609's notice requirements did not apply to Internal Revenue Service summons served on a realty and mortgage company since records sought related to taxpayer's activities as a former employee.

As part of an investigation into the federal income tax liability of taxpayer Donald U. West, IRS Special Agent Nick DiFalco issued separate Internal Revenue Service summonses to three financial institutions requiring them to produce their business records concerning various bank accounts of the taxpayer. These three financial institutions were deemed to be "third-party recordkeepers" by the IRS and notice of the service of the summonses was given to the taxpayer as required by 26 U.S.C. § 7609(a). A fourth summons was issued to Income Realty and Mortgage, Inc., and sought information relating to taxpayer's activities as a former real estate salesman with that company. Although the IRS did not give notice to the taxpayer regarding the service of the fourth summons, the taxpayer learned of its issuance and instructed Income Realty not to comply with its terms. Thereupon, the Government filed petitions in the district court for the enforcement of the four summonses. After an evidentiary hearing at which the taxpayer alleged that the summonses were issued for the purpose of harassment, the district court ordered all four summonses enforced and taxpayer appealed.

The court of appeals affirmed the trial court's finding that the taxpayer's evidence was insufficient under United States v. Powell, 379 U.S. 48 (1964), to support his allegations that the summonses served on the three financial institutions and Income Realty were issued for the purpose of harassment. The court also affirmed the district court's denial of intervention by the taxpayer in the Income Realty case on the grounds that the corporation was not a "third-party recordkeeper" (i.e., a "broker") within the meaning of Section 7609(a)(3)(D) of the Code. Finally, the Tenth Circuit upheld the further finding that the employment records sought from Income Realty were not the type of records contemplated by Section 7609 of the Code. In so

finding, the court relied upon the rationale of United States v. Exxon, 450 F. Supp. 422 (Md., 1978).

In short, 26 U.S.C. § 7609 will not permit a stay of compliance or intervention unless (1) the summoned party is shown by the taxpayer to come within one of the defined categories of third-party recordkeeper, and (2) the summoned records were created or maintained by the recordkeeper in that capacity.

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VOL. 28 JANUARY 18, 1980 NO. 2

Federal Rules of Criminal Procedure

Rule 11(e)(6). Pleas. Plea Agreement Procedure. Inadmissibility of Pleas, Offers of Pleas, and Related Statements.

Defendant appealed from conviction on various charges related to illegal traffic in cocaine. Defendant and the Government had entered into a formal plea agreement whereby, in return for being allowed to plead guilty to a single charge of distributing cocaine, defendant would testify before a grand jury and at any trial concerning his knowledge of drug trafficking activities. Defendant did appear before a grand jury and during the course of his testimony admitted to trafficking in cocaine. Immediately before the defendant was to appear to enter his plea of guilty, he withdrew from the plea agreement. The incriminating statements which the defendant had made during his testimony before the grand jury were admitted at trial, after the trial judge found the statements to be voluntary and denied the defendant's suppression motion. On appeal, defendant contends that he testified before the grand jury "in connection with" the plea agreement, so these statements must be excluded under Rule 11(e)(6). The Government argued that defendant's interpretation of the rule is overly broad and conflicts with the purposes of the rule.

The Court noted that an expansive reading of the language of the rule, as is urged by the defendant, is possibile, but, since the language is less than crystal clear, looked to the policies underlying the rule. The main purpose of Rule 11(e)(6) is to promote the free and open negotiation that must precede any compromise between the defense and the Government. Here, however, the defendant's appearance followed all negotiations; therefore, excluding this testimony would not serve the purpose of encouraging compromise and, in fact, would permit a defendant to breach his bargain with impunity, even though the Government has no parallel power to rescind the compromise unilaterally.

The Court concluded that for the purposes of Rule 11(e)(6) statements made by a defendant before a grand jury pursuant to a plea agreement are not statements made in connection with plea negotiations, offers of pleas, or pleas entered and later withdrawn.

(Affirmed.)

United States v. George D. Gelestino, __F.2d__, No. 78-2247 (D.C. Cir., October 26, 1979)

Federal Rules of Criminal Procedure

Rule 16(a)(1)(A).	Discovery and Inspection. Disclosure of Evidence by the Government. Information Subject to Disclosure. Statement of Defendant.
Rule 16(a)(1)(C).	Discovery and Inspection. Disclosure of Evidence by the Government. Information Subject to Disclosure. Documents and Tangible Objects.

Defendant appealed his conviction of committing fraud in the sale of certain securities, contending, inter alia, that the trial judge erred in denying a motion to compel discovery. Defendant had requested all written and recorded statements made by himself to any government agency and any relevant documents held by government agencies, under Rules 16(a)(1)(A) and 16(a)(1)(C). When the Government failed to respond, the defendant filed a motion to compel discovery. This motion was denied by the judge, apparently inferring that the Government was not obligated to produce the information requested. In support of the denial, the Government argued that the prosecutor had met his obligation by producing everything which he intended to use at trial and everything within his possession.

The Court rejected the Government's argument, holding that the Government's duty is broader than this. Rules 16(a)(1)(A) and 16(a)(1)(C) require the prosecution to produce all of defendant's written or recorded statements which are relevant and all other documents which are material. There is some duty of interagency discovery, which normally can be discharged by the prosecutor searching or requesting the search of the files of administrative or police investigations of the defendant in addition to his own files. Without deciding the extent of the Government's duty to provide information held by its various agencies, the Court assumed the trial judge committed error in denying the motion, but

found it to be harmless error, since none of defendant's statements were used to impeach him and none of the other documents would have assisted the defense.

(Affirmed.)

United States v. Bruce A. Jensen, __F.2d__, No. 78-1194 (10th Cir., November 5, 1979)

Federal Rules of Criminal Procedure

Rule 43. Presence of the Defendant

Defendant and five codefendants, indicted for aggravated bank robbery, appeared at arraignment and again at a hearing on pretrial motions, at which time a trial date was set. Defendant was subsequently given permission to leave the district to gather evidence preparatory to trial. When defendant failed to appear for trial, defense counsel moved for a continuance. All other defendants were present and ready for trial and numerous witnesses for both the Government and the defense, from within and without the state, were also present. The trial judge denied the motion for a continuance, and the defendant was tried in absentia, and convicted. When defendant was apprehended two years later, he gave no excuse for his failure to appear at trial, and was sentenced. Defendant appealed, contending the district court erred in proceeding with his trial in his absence.

Defendant conceded that United States v. Peterson, 524 F.2d 167 (4th Cir. 1975), see 24 USAB 87 (No. 2; 1/23/76), which held that a defendant may waive his right to be present at commencement of trial just as he may at a later stage of the proceedings, would, if still a correct expression of the application of Rule 43, be dispositive of his claim of error. However, defendant argued the 1975 amendments to Rule 43 render Peterson obsolete, finding in the words "initially present" in Rule 43(b) what he regards as a clear intention to eliminate any right of a trial judge, previously exercised under the earlier version of Rule 43, and as exercised by the trial judge here under Rule 43(a), to begin a trial in the absence of the defendant. In effect, defendant's argument posited that the use of these words in Rule 43(b) restricted the right under Rule 43(a) to proceed with the trial in the absence of the defendant strictly to a period after the commencement of trial.

The Court found that the history and exposition of the revised Rule, as set forth in the Advisory Committee Notes, provided no support for defendant's argument. The purpose of the revision was to reflect Illinois v. Allen, 397 U.S. 337 (1970), which was concerned only with the power of a trial court to proceed with trial in the absence of a defendant who became disruptive during trial, and any other changes were merely "editorial in nature". Thus, the Court concluded, it is impossible to read into the revision an intention to invalidate the application of the rule as was adopted by the Court in Peterson. Accordingly, the Court adhered to the rule enunciated in Peterson as a proper expression of the trial court's authority under Rule 43(a).

(Affirmed.)

United States v. Hoyt Powell, __F.2d__, No. 79-5072 (4th Cir., November 29, 1979)