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COMMENDATIONS

Assistant United States Attorneys B. Don Hale, Melton L. Alexander, and James C. Thomason, III, Northern District of Alabama, have been commended by Edward H. Levi, Attorney General, for their successful efforts in the prosecution of George Robert Booth, III, and others for the robbery of the First National Bank of Stevenson.

Assistant United States Attorney Judson Gee, Southern District of Texas, has been commended by John M. Stokes, Regional Attorney, Department of Health, Education, and Welfare, Dallas, Texas, for his diligence in obtaining very satisfactory settlements of several recent Medicare overpayment suits.

Assistant United States Attorneys John P. Berena and Stewart I. Mandel, Northern District of Ohio, have been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for their exceptional performance in the recent criminal prosecution of Russell LaVerne Shindeldecker and Richard Dale Sweeney.

Assistant United States Attorney George B. Nielsen, Jr., District of Arizona, has been commended by Wilbur W. Jennings, Regional Attorney, Department of Agriculture, San Francisco, California, for his able defense in Henry Densmore v. Golden West Management, a case involving difficult questions of law and fact in the area of Farmers Home Administration home loans.

POINTS TO REMEMBER

SOCIAL SERVICES ACT OF 1974: SERVICE OF WRITS OF GARNISHMENT

With regard to Public Law 93-647 and the garnishment of Federal Employment wages, we are furnishing a list of the individuals within the Social Security Administration against whom writs of garnishment or attachment involving Title II (of the Social Security Act) benefit payments should be served.

Service should be made according to the first three digits of the social security claim number if retirement or survivors benefits are being paid, and no beneficiaries are residing outside the United States, as follows:

Claim Numbers Beginning With

Regional Representative Bureau of Retirement and Survivors Insurance Social Security Administration 96-05 Horace Harding Expressway Flushing, New York 11368	001-134
Regional Representative Bureau of Retirement and Survivors Insurance Social Security Administration 300 Spring Garden Street Philadelphia, Pennsylvania 19123	135-222 232-236 577-584
Regional Representative Bureau of Retirement and Survivors Insurance Social Security Administration 2001 Twelfth Avenue, North Birmingham, Alabama 35285	223-231 237-267 400-428 587
Regional Representative Bureau of Retirement and Survivors Insurance Social Security Administration 165 North Canal Street Chicago, Illinois 60606	268-302 316-399 700 Series

Regional Representative	303-315
Bureau of Retirement and Survivors Insurance	429-500
Social Security Administration	505-515
610 East 12th Street	525
Kansas City, Missouri 64106	585
Regional Representative	501-504
Bureau of Retirement and Survivors Insurance	516-524
Social Security Administration	526-576
1221 Nevins Avenue	586
Richmond, California 94801	

Beneficiaries receiving disability benefits:

Director, Division of Benefit Services
Bureau of Disability Insurance
Social Security Administration
1500 Woodlawn Drive
Baltimore, Maryland 21241

Beneficiaries residing outside United States (except
Puerto Rico, Virgin Islands, Guam, or American Samoa):

Director, Division of International Operations
Bureau of Retirement and Survivors Insurance
Social Security Administration
6709 Whitestone Road
Baltimore, Maryland 21207 (Executive Division)

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PUBLICATIONS OF THE DEPARTMENT OF JUSTICE'S LEGAL DIVISIONS

The following is a listing of publications of the Legal
Divisions:

Antitrust Division:

Antitrust Bulletin
Grand Jury Manual

Civil Division:

Civil Division Practice Manual

Civil Rights Division:

Handbook for Drafting Jury Instructions for
Use in Criminal Civil Rights Cases

Criminal Division:

Manual on the Law of Search and Seizure
Narcotic Addict Rehabilitation Act (NARA) Handbook
Guides for Drafting Indictments (4 Vols.)
A Practical Handbook of Grand Jury Procedure
Handbook on the Protection of Government Property
Handbook for Federal Obscenity Prosecutions
Extradition Handbook
Manual for the Prosecution of Perjury
Manual for Conduct of Electronic Surveillance Under
Title III of Public Law 90-351
Labor Racketeering Manual
Proving Federal Crimes
Collections Manual
Comprehensive Drug Abuse Prevention Manual

Lands and Natural Resources Division:

Condemnation Seminar
Condemnation Handbook
Standards for Preparation of Title Evidence
Lands Division Journal

Tax Division:

Manual for Criminal Tax Trials
U.S. Attorneys' Guide

Pending any future incorporation within the U.S.
Attorneys' Manual, these publications can be obtained only
by request to the appropriate Legal Division. (Executive Division)

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IRS PERSONNEL: WITNESSES IN NON-TAX CASES

Donald C. Alexander, Commissioner, Internal Revenue
Service, has requested that IRS personnel be given at least

one week's notice prior to such time as their testimony is needed in non-tax cases. With adequate lead time, the IRS will be better able to avoid haphazard work scheduling, unplanned overtime work, and inadequate case development and review. Also note that production of Internal Revenue Documents which have been retired to Federal Record Centers will ordinarily take several weeks.

(Executive Office)

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MANUAL FOR CRIMINAL TAX TRIALS: DISCLOSURE

The Tax Division, following several months of deliberation and after a review of the current case law, has determined that the "Manual for Criminal Tax Trials" constitutes material subject to the provision of Title 5, United States Code, Section 552(a)(2). Accordingly, this manual must now be made available in its entirety for public inspection and copying.

The Tax Division has further determined, after consultation with the Executive Office for United States Attorneys, that the most expeditious procedure to implement this decision is to have the manual available for public examination not only here in Washington, D.C., but also at the offices of the United States Attorneys throughout the country. Accordingly, as of August 29, 1975, individuals seeking access to this manual are being referred to the Reading Room in the Department of Justice and to the offices of the United States Attorneys.

In connection with the release of this manual, the Tax Division has prepared a "Preface" which must be inserted immediately after the Title Page in each copy of the Manual for Criminal Tax Trials. Please note that we consider the "Preface" to be an essential document which must be placed in the manual prior to any public inspection. Copies of the "Preface" were sent in September to all holders of the Manual.

(Tax Division)

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Interface Between the Privacy
and Freedom of Information Acts

With regard to the procedural interface of the two Acts, there is attached a copy of the new section, 16.57 of 28 C.F.R. This new section was approved by the Deputy Attorney General on September 24, 1975. Note that the discretion referred to in Section 16.57(a) is the Deputy Attorney General's and that the effect of (a) is that a component element of the Department (e.g., A.U.S.A.) must consider a request under the Freedom of Information Act to the extent that the Privacy Act precludes access.

§16.57 Relationship of Privacy Act and the Freedom of
Information Act.

- a) Issuance of this section and actions considered or taken pursuant hereto are not to be deemed a waiver of the Government's position that the materials in question are subject to all of the exemptions contained in the Privacy Act. By providing for exemptions in the Act, Congress conferred upon each agency the option, at the discretion of the agency, to grant or deny access to exempt materials unless prohibited from doing so by any other provision of law. Releases of records under this section, beyond those mandated by the Privacy Act, are at the sole discretion of the Deputy Attorney General and of those persons to whom authority hereunder may be delegated. Authority to effect such discretionary releases of records and to deny requests for those records as an initial matter is hereby delegated to the appropriate system managers as per the Notices of Systems of Records published in 40 Federal Register 167, pages 38703-38801 (August 27, 1975).
- b) Any request by an individual for information pertaining to himself shall be processed solely pursuant to Subpart D of these regulations. To the extent that the individual seeks access to records from systems of records which have been exempted from the provisions of the Privacy Act, the individual shall receive, in addition to access to those records he is entitled to receive under the Privacy Act and as a matter of discretion as set forth in subsection

(a), access to all records within the scope of his request to which he would have been entitled under the Freedom of Information Act, 5 U.S.C. 552, but for the enactment of the Privacy Act and the exemption of the pertinent systems of records pursuant thereto. Only those fees set forth in section 16.46 of this Title may be charged a requester as to any records to which access is granted pursuant to the provisions of this subsection.

- c) When an individual requests access to records pertaining to a criminal, national security or civil investigative activities of the Federal Bureau of Investigation which are contained in systems of records exempted under provisions of the Privacy Act, such requests shall be processed as follows:
- 1) Where the investigative activities involved have been reported to F.B.I. Headquarters, records maintained in the F.B.I.'s Central files will be processed; and,
 - 2) Where the investigative activities involved have not been reported to F.B.I. Headquarters, records maintained in files of the Field Office identified by the requester will be processed.

(Executive Office for U.S. Attorneys)

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Voiceprints - Recent Development

The Fourth Circuit affirms the use of voiceprints as evidence at trial.

The Fourth Circuit in United States v. Carl Joseph Baller, Jr., (decided July 9, 1975, No. 74-1697; 17 Cr.L. 2359 (C.A. 4)), a prosecution involving telephonic bomb threats, has upheld the use of voiceprint evidence at trial following the Sixth Circuit decision in United States v. Franks, 511 F.2d 25 (6th Cir., 1975). (See, United States Attorneys Bulletin, Vol. 23, No. 9, May 2, 1975). The Court found no abuse of discretion in the admission of the voiceprint testimony:

"The evidence presented in an extensive voir dire demonstrated spectography's probative value, despite doubts within the scientific community about its absolute accuracy." Slip Op. at p. 9.

The Criminal Division continues to endorse the use of voiceprint evidence in appropriate cases (see, United States Attorneys Bulletin, Vol. 20, No. 6, March 17, 1972). In addition, the Bureau of Alcohol, Tobacco and Firearms has a qualified voiceprint examiner who is willing to assist United States Attorneys in collecting voiceprint evidence and testifying at trial as to its reliability. For information contact Frederick Lundgren, Bureau of Alcohol, Tobacco and Firearms at FTS (202) 964-6677.

It is requested that United States Attorneys keep the Criminal Division apprised on a continuing basis of decisions in their districts relating to voiceprint evidence. Any questions on these matters may be directed to the General Crimes Section at FTS (202) 739-2745.

(Criminal Division)

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ANTITRUST DIVISION
Assistant Attorney General Thomas E. Kauper

DISTRICT COURT

SHERMAN ACT

ANESTHESIOLOGISTS CHARGED WITH VIOLATION OF SHERMAN
ACT SECTION 1.

United States v. The American Society of
Anesthesiologists, Inc., (75 CIV 4640; September 22, 1975,
DJ 60-423-21)

On September 22, 1975 we filed a civil action under Section 1 of the Sherman Act charging The American Society of Anesthesiologists, Inc. (ASA) with conspiring "to raise, fix, stabilize and maintain fees charged by members of the defendant for rendering anesthesia services." It is charged that among the co-conspirators who participated in the violation are individual members of ASA and component societies.

ASA is a New York corporation with its principal place of business in Park Ridge, Illinois. It is an association of physicians engaged in the business of providing anesthesia services to the public. Physicians become members by joining component societies which are active in 48 states, the District of Columbia and Puerto Rico. The component societies control ASA through the election of delegates and directors who govern ASA and determine its policies.

Anesthesiologists specialize in inducing a state of anesthesia, usually in connection with the performance of surgery in a hospital. There are approximately 12,200 anesthesiologists in the United States, over 90 percent of whom are ASA members. Anesthesiologists are generally engaged in the private practice of medicine, deriving their income from fees charged directly to the patient. ASA members realize annual revenues in excess of \$675 million.

As a basis of establishing an effect on interstate commerce, we allege that a substantial portion of the fees charged patients by ASA members are paid directly or indirectly by health insurance carriers, and that fees charged by ASA members have a direct and substantial effect upon the payments made and upon the premiums charged by health insurance carriers which are in interstate commerce. We also allege that under the Medicare program, substantial payments are made by the United States Treasury across state lines through insurance carriers acting as intermediaries, to anesthesiologists located throughout the United States, and that under the Medicaid program, substantial payments are made to anesthesiologists by state governments from funds received across state lines from the United States Treasury.

We charge that the ASA and co-conspirators effectuated the conspiracy by "among other things, adopting, publishing and circulating relative value guides or schedules which are used by members of ASA in determining fees charged for anesthesia services and which assign specific values to particular procedures."

We allege, as effects of the conspiracy, that:

- (a) fees for the sale of anesthesia services by members of the ASA have been raised, fixed, stabilized, and maintained at artificial and noncompetitive levels;
- (b) price competition in the provision of anesthesia services by the members of the ASA has been restrained; and
- (c) purchasers of anesthesia services have been denied the right to obtain such services at competitively determined fees.

Included in the Prayer for relief is a request that the ASA "be enjoined and restrained from promulgating, adopting or disseminating any guide or schedule con-

cerning fees or from making any recommendations regarding the calculation of fees to be charged by members."

This is the first action challenging the legality of "relative value guides" which have been issued by many national and state medical societies for use by physicians in calculating their fees. By its terms, the ASA relative value guide does not fix the dollar amount of the fee to be charged by the anesthesiologist. The guide establishes unit values for providing anesthesiological services during various operations, based generally on the difficulty of the operation. Additional unit values are added based on the age of the patient, the physical condition of the patient, time spent with the patient, etc. The anesthesiologist decides what the dollar value (also known as the "conversion factor" or "multiplier") of each unit is, and multiplies the number of units applicable to the operation by this dollar figure to arrive at his fee. The use of the guide, combined with the fact that in local areas, anesthesiologists tend to assign the same dollar value to each unit, results in a uniformity of fees.

The case has been assigned to Judge Constance Baker Motley.

Staff: John Sirignano, Jr., Ellen R. Agress, Edwin Weiss and Erwin L. Atkins

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LAND AND NATURAL RESOURCES DIVISION
Acting Assistant Attorney General Walter Kiechel, Jr.

COURT OF APPEALS

ENVIRONMENT; CLEAN AIR ACT

REVIEW OF EPA'S APPROVAL OF STATE IMPLEMENTATION
PLAN; ECONOMICS AND STATE OF TECHNOLOGY RELEVANT.

Duquesne Light Company, et al. v. EPA (C.A. 3,
No. 72-1542, Aug. 21, 1975; D.J. 90-5-2-3-48).

On review of the EPA's approval of the portions of the Pennsylvania implementation plan regulating the emissions of sulfur dioxide from power plants, the Third Circuit Court of Appeals held that EPA must consider in detail the economic impact, as well as the technological feasibility, of the emission limitations imposed on the utilities by the plan. The court remanded the case, ordering EPA to reconsider the economic impact of sulfur oxide limitations imposed by Pennsylvania's implementation plan, and to evaluate the technological feasibility of the emission limits in light of evidence concerning scrubbers that has arisen since the Pennsylvania plan was initially approved.

The court did not rule that EPA's finding of economic feasibility was incorrect, but held only that the agency failed to consider economic arguments that "are too cogent and critical to be disregarded," and it remanded the plan to EPA for consideration of such arguments.

The court noted that a remand of the plan on economic grounds ordinarily would preclude consideration of the plan's technological feasibility, but it indicated "some concerns" regarding the use of scrubbers.

Although the Act "was designed to prod technological progress" and does permit the agency to "make reasonable projections of future technological growth," the court said, it does not give the agency unbounded authority to make "crystal ball" predictions. The Pennsylvania plan, the court noted, requires utilities to commence scrubber installation immediately. "Therefore, if workable scrubbers are not now available for coal-burning boilers, the anticipated enhancement must be such that machinery currently constructed may be economically modified to incorporate the technological improvements that will render scrubbers practicable for this industry," the court stated.

The court also noted that although significant progress has been made in scrubber technology, "the present record does not seem to contain the technical data necessary for a rational determination" that past experience with scrubbers supports their widespread installation and use. "There is little to specify at what pace the technology will develop," the court said, "and there is also a paucity of testimony regarding the cost of adjustments necessary to render currently produced equipment effective and reliable." The court concluded, "Without some evidence that such technical data was available to the Administrator when he approved the emission limitations, we would be hesitant to conclude that he had not acted arbitrarily." The court directed EPA to re-evaluate the technological feasibility of scrubbers and to grant the utilities a "reasonable time for compliance" with whatever limitations are eventually approved for control of the utilities' emissions.

Staff: John E. Varnum (Land and Natural Resources Division).

ENVIRONMENT; NEPA

HUD MUST PREPARE EIS WHEN REAL ESTATE DEVELOPER REGISTERS UNDER THE INTERSTATE LAND SALES FULL DISCLOSURE ACT.

Scenic Rivers Association v. Lynn, et al. (C.A. 10, Nos. 74-1520 and 74-1750, July 30, 1975; D.J. 90-1-4-917).

The court of appeals upheld the decision of the district court requiring HUD to prepare an environmental impact statement when a private real estate developer files a statement of record and property report for a proposed subdivision with HUD pursuant to the Interstate Land Sales Full Disclosure Act, 15 U.S.C. sec. 1701 et seq. The court found that HUD was engaged in "major federal action" within the meaning of Section 102(2)(C) of NEPA and that requiring an EIS was not inconsistent with the Land Sales Act.

The court reversed the district court's determination that HUD must hold public hearings on the EIS.

Staff: Charles E. Biblowit (Land and Natural Resources Division).

CONDEMNATION

A LESSOR IS NOT ENTITLED TO RECEIVE THE VALUE OF IMPROVEMENTS WHICH THE GOVERNMENT, AS LESSEE, HAS MADE, BECAUSE JUST COMPENSATION DOES NOT REQUIRE THE GOVERNMENT TO PAY FOR VALUE IT HAS CREATED.

United States v. The Right to Use & Occupy 12.16 Acres in City of Louisville, State of Kentucky & The Louisville & Jefferson County Air Board (Bowman Field)
(W.D. Ky., Civ. 7313-A, Sept. 10, 1975; D.J. 33-18-150-6).

In 1942 the United States condemned land for training glider pilots. In 1948 the Government sold the land to the Jefferson County Air Board, but leased it back for a term expiring in 1972. That lease gave the Government the right to make alterations, attach fixtures and erect additions to existing structures. These structures were to remain the property of the Government which had the right to remove the same and restore the premises. Prior to the expiration of the lease on June 30, 1972, the parties attempted to negotiate a new lease. They could not agree because the Air Board contended that since the improvements were not removed at the expiration of the lease they became the property of the Air Board and rental should take into consideration the value of the improvements as well as the land. The Government maintained that the rental should be based solely on the value of the land. When the parties could not agree, the United States condemned a term of years beginning July 1, 1972, and ending March 31, 1973, but extendible for yearly periods until March 31, 1977.

In its brief, the Air Board argued that Almota Farmers Elevator and Warehouse Company v. United States, 409 U.S. 470 (1973), requires a new approach and a different result. It contended that Almota rejected the Government's method of evaluating a leasehold which contains improvements.

Judge Allen disagreed and ruled:

Almota lends no weight to the Air Board's position. While the plaintiff [Government] here is a lessee like Almota, and like Almota erected improvements on the condemned property and had title in them, and the right to remove them, the

*See
Legislativa
Notes Binder for
page 941*