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COMMENDATIONS

Jeffrey M. Johnson, Attorney, Boston, Organized Crime Strike Force, was recently commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for his tireless and relentless efforts in the successful prosecution of Salvatore Sperlinga, Nathan Duffy Dubin, Alexander Santo Rizzo and Ruth Lynch.

Assistant United States Attorneys Marsha Lyons, Michael P. Sullivan and David Geneson, Southern District of Florida, have been commended by Robert W. Hundley, General Security Manager, Southern Bell Telephone Company, for their roles in the successful prosecution of Walter Shaw for fraudulent use of the toll service, 18 U.S.C. 1343, i.e. by use of a "blue box."

POINTS TO REMEMBER

WITNESS PROTECTION

On March 31, 1976, Assistant Attorney General for the Criminal Division, Richard L. Thornburgh, issued Memo No. 829 to all United States Attorneys, Section Chiefs and Strike Force Chiefs on the subject of witness protection.

(Executive Office for U.S.
Attorneys)

COLLECTIONS: APPEARANCE BOND FORFEITURE JUDGMENTS

Pursuant to 28 CFR 0.55(g), the Criminal Division has decided to increase the United States Attorneys' delegated authority to compromise or close as uncollectible appearance bond forfeiture judgments. The United States Attorneys now have authority to compromise or close appearance bond forfeiture judgments that are \$5000 or less. If an appearance bond forfeiture judgment is over \$5000, the authority of the Criminal Division must be secured in advance of compromise or closing.

This change in Criminal Division policy will appear in the revised United States Attorneys' Manual. Until the new Manual is published, however, you may rely on this notice as authority.

If you have any questions concerning this policy, please contact the Criminal Division Collection Unit at FTS 739-3601, 2, 3, 4.

(Criminal Division)

VACATION OF GUILTY PLEAS

In response to all 2255 attacks on guilty pleas government counsel should be careful to argue that relief is not available simply because there may be some defect in the plea. A technical nonfundamental violation of Rule 11, F.R. Crim. Proc. -- one, in other words, that did not affect the decision to plead guilty -- is not a sufficient basis to set aside a plea. As the Supreme Court stated in Davis v. United States, 417 U.S. 333, 346, quoting from Hill v. United States, 368 U.S. 428-429:

"collateral attack is not available when all that is shown is a failure to comply with the formal requirements of a rule of criminal procedure in the absence of any indication that the defendant was prejudiced by the asserted technical error" and that, absent a mistake of constitutional or jurisdictional dimensions, "the appropriate inquiry [is] whether the claimed error of law was 'a fundamental defect which inherently results in a complete miscarriage of justice' ***."

For example, the Criminal Division takes the position that most circuits which have granted 2255 relief to defendants not informed of a special parole term have not properly analyzed the problem of collateral review of a lack of technical compliance with Rule 11. Instead, we believe a more reasoned approach was adopted in Bachner v. United States, 517 F.2d 589, 597 (7th Cir. 1975), which considered the precise issue and denied relief to the defendant. There are obviously many other situations involving guilty pleas where the standard set forth in Davis, supra, would preclude relief and therefore where government reliance on that standard would be appropriate.

(Criminal Division)

*See
Legislative Notes
Binder for
page 571*