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COMMENDATIONS

Assistant United States Attorney Rodney W. Snow, District of Arizona, has been commended by Clarence M. Kelly, Director, Federal Bureau of Investigation, for the successful prosecution of Captain Gregory Alberico.

Assistant United States Attorney John G. Hawkins, District of Arizona, has been commended by Peter B. Bensinger, Administrator, Drug Enforcement Administration for his work in United States v. Lemmie Coleman et. al. and United States v. Harold Hamilton et. al. which resulted in the dissolution of two major heroin distribution organizations.

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POINTS TO REMEMBER

UNITED STATES ATTORNEYS' MANUAL--BLUESHEETS

The following Bluesheets have been sent to press in accordance with USAM 1-1.550 since the last issue of the Bulletin.

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
1/12/78	9-4.912	Tax Disclosure: Written Requests
1/12/78	9-4.970	Tax Disclosure: Joint Tax - Nontax Cases
1/12/78	9-4.983	Tax Disclosure: Electronic Surveillance Requests

(Executive Office)

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CIVIL DIVISION

Assistant Attorney General Barbara Allen Babcock

Brandon v. Eckard, _____ F.2d _____, No. 74-1503 (D.C. Cir. December 22, 1977) DJ 145-171-125

Freedom of Information Act; Presidential Papers

A deed dated March 27, 1969, purported to transfer to GSA some 600,000 items of former President Nixon's papers and materials covering the period 1948 to 1962. Subsequently, two persons connected with the deed were convicted of back-dating it. The deed restricted public access to the materials during Mr. Nixon's Presidency, and by letter dated one day prior to his resignation, Mr. Nixon purported to extend the restriction to 1985. Brandon filed a request for disclosure of these materials under the Freedom of Information Act. The request was denied by GSA and the district court granted summary judgment for the Government. On Brandon's appeal, the D.C. Circuit stayed proceedings pending the Supreme Court's decision in the Nixon Presidential materials case. The court then requested supplemental briefs regarding, inter alia, the impact of the Supreme Court's decision and recent amendments to the FOIA. The court has now remanded the case to the district court for consideration of these questions.

Attorney: Anthony J. Steinmeyer (Civil Division)
FTS 739-3442

Clemente v. United States, _____ F.2d _____, No. 77-1156 (1st Cir. December 16, 1977) DJ 157-65-329

Federal Tort Claims Act; Federal Safety Regulations

Plaintiffs' decedents, including the baseball player Roberto Clemente, were killed in the crash of a private plane carrying relief supplies to earthquake victims in Nicaragua. The district court held the United States liable on grounds that the FAA had failed to inspect the plane and warn passengers that the plane was overweight and lacked a proper flight crew in accordance with a Regional Order of the FAA. Reversing, the First Circuit noted that the FAA Order in question was issued as a gratuitous safety measure, not under statutory compulsion, and held that promulgation of the internal Order created no duty of care on the part of the government.

Attorney: Michael J. Pangia (Civil Division)
FTS 739-3406

Dole v. Carter, _____ F.2d _____, No. 77-2117 (10th Cir. December 31, 1977) DJ ("New")

Case or Controversy; Political Question

In a suit filed December 23, 1977, Senator Dole sought an injunction against the President's return of the Crown of St. Stephen to Hungary on January 6, 1978. The Crown is a religious-national relic which was turned over to the U.S. Armed Forces in the closing days of World War II. The district court on December 30, 1977, rejected Senator Dole's argument that the return of the Crown constituted a modification of the Paris Peace Treaty of 1947 and thus required a new treaty and Senate ratification. On December 31, 1977, the Tenth Circuit denied an injunction pending appeal, holding that the suit raised a nonjusticiable political question. On January 3, 1978, Mr. Justice White rejected the Senator's request for a Supreme Court injunction and thus removed all barriers to delivery of the Crown to Hungary.

Attorneys: Steven Frank (Civil Division)
FTS 739-3346; and
Michael Kimmel (Civil Division)
FTS 739-3418

Gibson v. United States, _____ F.2d _____, Nos. 76-2490 and 76-2673 (3d Cir. December 15, 1977) DJ 157-48-710

Federal Tort Claims Act; Vicarious Liability

OEO contracted the operation of the Kilmer Job Corps Center to an independent contractor. Plaintiff, an employee of the contractor, was injured on the job, apparently as a result of the contractor's negligence. The district court held that a Job Corps Center is an "inherently dangerous activity," and that the government was liable for the contractor's negligence under the State-law doctrine which imputes a contractor's negligence to the contractee if the contracted activity is "inherently dangerous." Relying on the Supreme Court's decision in United States v. Orleans, 425 U.S. 807, the Third Circuit reversed, holding that, because the Federal Tort Claims Act, 28 U.S.C. 2671, does not authorize vicarious liability against the government for negligence of a contractor, the government could not be subject to liability under the "inherently dangerous activity" doctrine.

Attorney: Michael Kimmel (Civil Division)
FTS 739-3418

Maroscia v. Levi, _____ F.2d _____, No. 76-2236 (7th Cir. December 20, 1977) DJ 145-12-2760

Freedom of Information Act; Exemptions 7, 2 and 1

The Seventh Circuit has held that reports of FBI Interviews and the names of interviewees, third parties, FBI personnel and other law enforcement personnel may be withheld from disclosure under Information Act exemptions 7(C), (D), and (F) (investigatory records). The court also held that exemption 2 (internal personnel rules and practices) permits nondisclosure of "administrative markings such as file numbers, initials, signatures and mail routing stamps, and references to previous communications utilized to maintain control of an investigation." In addition, the court held that a CIA document falls within exemption 1 (national security information). In reaching this decision the court ruled that it may rely on the CIA's affidavit and that in camera inspection is not necessary in every case.

This case is the first appellate decision on many recurring Information Act issues concerning investigative agencies. The court's decision is stamped unpublished, but we are moving to have it published.

Attorney: Mark Mutterperl (Civil Division)
FTS 739-3178

United States v. Hibbs, _____ F.2d _____, No. 76-2639 (3d Cir. December 27, 1977) DJ 130-62-2690

False Claims Act; FHA Certificates

Defendant-real estate broker filed false certifications as to the condition of certain houses in the Philadelphia area. These certifications were a prerequisite to HUD's issuance of mortgage insurance on these homes. Subsequently, these mortgages went into default forcing the United States to pay out approximately \$60,000 in insurance benefits. The defaults were in no way caused or related to the false certifications.

The Third Circuit rejected defendant's claim that there was no False Claims Act liability because of the lack of causal connection between default and the false certification. The court did, however, for the first time in a False Claims Act case, limit the Government's damages because of the lack of a causal connection. Instead of measuring damages by the amount of insurance benefits paid out by the Government, the court limited the Government's damages to the difference between the

enhanced value of the homes represented by the false certifications, and the actual value of the properties at the time of certification.

Attorney: Michael F. Hertz (Civil Division)
FTS 739-4096

Wright v. United States, _____ F.2d _____, No. 76-1497 (10th Cir. December 22, 1977) DJ 157-77-257

Federal Tort Claims Act; Discretionary Function

Plaintiffs' decedents in this case were killed while attempting to traverse a washed-out approach to a bridge built five years earlier by the Bureau of Indian Affairs. In one of several alternate holdings for the government, the Tenth Circuit ruled on our appeal that liability was precluded by the "discretionary function" exception because the approach road construction was performed under a statute permitting the BIA to aid state government construction projects and was thus "in the execution of a statute," 28 U.S.C. 2680(a).

Attorney: Donald Etra (Formerly of the Civil Division)

OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Patricia M. Wald

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

January 10 - January 27, 1978

Institutionalized Persons. On February 7 the House Judiciary Committee plans to mark-up H.R. 9400, a bill to authorize action by the Attorney General for redress in cases involving deprivation of rights of institutionalized persons secured or protected by the Constitution or laws of the United States. The Department strongly supports this bill and we are working closely with the relevant congressional staffs in the effort to secure committee approval. We anticipate that the bill will be favorably reported.

FBI Director. The Senate Judiciary Committee has tentatively scheduled hearings on the confirmation of Judge William Webster as FBI Director for the week of January 30.

Department Authorization. Hearings on appropriation authorizations for the Department are tentatively scheduled to commence on February 21 in the Senate Judiciary Committee and about March 1 in the House Judiciary Committee. This will mark the first time that the Department has been required to have Department-wide authorizations. We are working with the Committee staffs regarding the desired format and content for the hearings.

Criminal Code Reform. On January 19 the Senate commenced debate on S. 1437, the Criminal Code Reform Act and hopefully will pass the bill soon. The House Judiciary Subcommittee on Criminal Justice expects to continue briefings on H.R. 6869, the House counterpart, starting January 30 and to commence formal hearings the week of February 13.

Foreign Intelligence Surveillance. The Senate Select Committee on Intelligence will continue hearings during the week of January 23 on S. 1566, the foreign intelligence wiretap bill. Since the measure has already been reported favorably by the Senate Judiciary Committee, we are hopeful that it can reach the Senate floor early this spring.

Refugees. An effort is now underway to reach an accommodation between the Administration and Congressman Eilberg on H.R. 7175, Mr. Eilberg's proposed Refugee Act of 1977. The impetus for this effort stems from the plan to parole an

additional 7,000 Indochinese "boat case" refugees into the U.S.

Grand Jury Reform. The House Judiciary Subcommittee on Immigration, Citizenship and International Law expects to markup the grand jury reform bill in February.

Wiretap. The House Select Committee on Intelligence is holding hearings on the Foreign Intelligence Surveillance Act (H.R. 7308). In the Senate, the Select Committee on Intelligence is expected to report out the Senate companion bill in February.

NOMINATIONS: The Senate received the following nominations:

Almeric L. Christian, to be a Judge of the District Court of the Virgin Islands.

Jack E. Tanner, to be U.S. District Judge for the Eastern and Western Districts of Washington;

John P. Volz, to be U.S. Attorney for the Eastern District of Louisiana;

David T. Wood, presently U.S. Attorney for the District of Guam, to be also U.S. Attorney for the District of the Northern Mariana Islands;

William H. Webster, of Missouri, to be Director of the Federal Bureau of Investigation.