



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

United States Attorneys' Bulletin

Published by:

Executive Office for United States Attorneys, Washington, D.C.
For the use of all U.S. Department of Justice Attorneys

TABLE OF CONTENTS

	<u>Page</u>
COMMENDATIONS	495
POINTS TO REMEMBER	
EOUSA Coordinates United States Attorneys' Offices Surveys	497
Case Citations	497
Appellate Practice: Government Attorneys Should Strictly Comply with the Appendix Requirements of Rule 30, F.R.A.P.	498
CASENOTES	
Civil Division	
Due Process and Equal Protection: Supreme Court Upholds Federal Funding Restriction on Abortion	
<u>Harris v. McRae</u>	499
Jurisdiction: Supreme Court Resolves Scope of 1252 Jurisdiction	
<u>United States v. Zbaraz</u>	500
Due Process: Medicaid Patients Have No Constitutional Right to a Hearing on the Question of Their Nursing Home's Decertification from Medicaid Participation.	
<u>O'Bannon v. Town Court Nursing Center, et al.</u>	500
Passport Authority: D.C. Circuit Rejects the Authority of the Secretary of State to Revoke a Passport on Grounds of Serious Damage to the National Security and Foreign Policy of the United States, and Restores Philip Agee's Passport	
<u>Philip Agee v. Edmund S. Muskie, Secretary of State</u>	501
Ethics; Interlocutory Appeals: Second Circuit, En Banc, Upholds Screening of Former Government Attorney	
<u>Michael F. Armstrong, et al. v. Clovis McAlpin, et al.</u>	502
Urban Renewal: Third Circuit Affirms Summary Judgment for HUD and Local Urban Renewal Board in a Relocation Benefits Claim	
<u>Messer v. Virgin Islands Urban Renewal Board</u>	503

Page

FOIA: Sixth Circuit Upholds FDA's With- holding of Two Documents Under Exemption 5 of the Freedom of Information Act, but Rules that Agency Did Not Meet Its Burden of Proof on the Remaining Records <u>Parke, Davis & Co. v. Califano</u>	503
SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES	505
APPENDIX: FEDERAL RULES OF EVIDENCE These pages should be placed on permanent file, by Rule, in each United States Attorney's office library	511
FEDERAL RULES OF CRIMINAL PROCEDURE These pages should be placed on permanent file, by Rule, in each United States Attorneys's office library	515
ADDENDUM: U.S. ATTORNEYS' MANUAL---BLUESHEETS	519
U.S. ATTORNEYS' MANUAL--TRANSMITTALS	527

COMMENDATIONS

Assistant United States Attorney WAYNE C. ALEXANDER, Western District of North Carolina, has been commended by Edward W. Norton, General Counsel of the Small Business Administration, for his oral argument before the Fourth Circuit of Appeals in Duncan, et al. v. Penninger.

Assistant United States Attorney JOYCE BABST, Central District of California, has been commended by Howard A. Paulsey, Supervisory Special Agent of the Federal Bureau of Investigation, for her excellent work and successful prosecution of Arva Lee Ray, Terry Austin Pool and Christopher Allen Hulett for Conspiracy to Murder and Murder.

United States Attorney J. A. "TONY" CANALES, Southern District of Texas, has been awarded the Regional Commissioner's Award for his unselfish assistance to and support of the Austin District Criminal Investigation Division, Internal Revenue Service, in its investigation of tax violations.

United States Attorney's Office Law Clerk SANDY DUFFY, District of Oregon, has been commended by A. G. Oard, Forest Supervisor of the United States Department of Agriculture, for her outstanding job in representing the Wallowa-Whitman National Forest before the U.S. Magistrate.

Assistant United States Attorney LIONEL LOFTON, District of South Carolina, has been commended by Gary Owen Watt, Special Agent in Charge of the Federal Bureau of Investigation, for his outstanding work and successful prosecution of Senator John D. Long, III.

Assistant United States Attorneys LARRY A. MACKEY, Central District of Illinois, and ELLEN J. SCHANZLE-HASKINS and THOMAS SCHANZLE-HASKINS, Southern District of Illinois, have been commended by Attorney General Benjamin R. Civiletti, for their excellent work in a recent case involving fraud against the Bank.

Assistant United States Attorney CHARLES ROSE, Eastern District of New York, former Legal Assistant, has been commended by Albert W. Seeley, Special Agent in Charge of the U.S. Customs Service, for his excellent work on the Brooklyn Waterfront Cargo Theft cases.

Assistant United States Attorney HENRY ROSSBACHER, Central District of California, has been commended by L. D. Guy, Engineer in Charge of the Federal Communications Commission, for the skillful work he performed on a case involving threats by radio.

Assistant United States Attorney F. WILLIAM SOISSON, Eastern District of Michigan, has been commended by O. Franklin Lowie, Special Agent in Charge of the Federal Bureau of Investigation, for his successful conviction of Mobley, Allen, Marcangelo and Jones; the recovery of 2.8 million dollars in counterfeit securities; and the break up of a counterfeit money and narcotics operation.

Assistant United States Attorney NANCY WIEBEN STOCK, Central District of California, has been commended by Bob Skopeck, Special Agent in Charge of the Bureau of Alcohol, Tobacco and Firearms, for her total cooperation and hard work in the investigation of an arson which occurred at the warehouse of a Los Angeles clothing importer which resulted in the indictment of the owners.

Assistant United States Attorney CLARENCE TAYLOR, Northern District of Ohio, has been commended by Chief of Police H. C. Davis, Jr., of the Medina Ohio Police Department, for his consideration and cooperation in a case involving a gun violator.

Assistant United States Attorney PAMELA J. THOMPSON, Eastern District of Michigan, and MARK S. FELDHEIM, Civil Division, have been commended by J. M. MacMillan, District Counsel of the Veterans Administration, for their work in the successful outcome of the litigation against the Veterans Administration.

Assistant United States Attorneys JAMES TUCKER and JERRY DAVIS, Southern District of Mississippi, have been commended by Thomas I. Gray, Chief of the Criminal Investigation Division of the Internal Revenue Service, for their outstanding work in the tax trial of Kimbrough G. Middlebrook, Meridian, Mississippi.

Assistant United States Attorney MICHAEL H. WAINWRIGHT, Western District of Louisiana, has been commended by J. Ransdell Keene, United States Attorney in the Western District of Louisiana, for his successful prosecution of vote fraud cases in the Fourth Congressional District of the State of Louisiana.

Assistant United States Attorney JEAN B. WELD, Western District of Virginia, has been commended by Nolan E. Douglas, Special Agent in Charge of the Bureau of Alcohol, Tobacco and Firearms, for the outstanding manner in which she represented the government in recent "moonshine" cases.

EXECUTIVE OFFICE FOR U.S. ATTORNEYS
William P. Tyson, Acting DirectorPOINTS TO REMEMBEREOUSA Coordinates United States Attorneys' Offices Surveys

The Attorney General has signed a new Department of Justice Order, designating the Executive Office for United States Attorneys as the Department of Justice unit to coordinate all surveys, questionnaires, and requests for visits to perform surveys in U.S. Attorneys' Offices (DOJ Order No. 2810.1, June 13, 1980). The Order is being mailed to all U.S. Attorneys and all Department offices, boards, divisions, and field offices, and is being printed in the U.S. Attorneys' Manual in USAM 1-5.700 (full text of Order) and USAM 10-6.340 (summary).

The Acting Director, EOUSA, has designated a Survey and Research Project Coordinator, Assistant Director for Legal Services, (FTS 633-3276), to whom United States Attorneys should refer any questions regarding surveys and to whom all surveys without EOUSA endorsement should be referred.

The Order directs that in order to conserve the resources of U.S. Attorneys' Offices and to avoid duplication of research efforts, all requests for survey information of more than one U.S. Attorney's Office by all Department of Justice, U.S. Government, or other public or private sector organizations or persons, should be directed to the EOUSA for review, coordination, and referral to alternate information sources where available. The EOUSA will endorse appropriate surveys and will directly request the participation of U.S. Attorneys in approved surveys. United States Attorneys should not respond to any surveys or questionnaires not received from or endorsed by the EOUSA, but should refer the request to the Executive Office for appropriate consideration.

(Executive Office)

CASE CITATIONS

Because JURIS provides ready access to recent case citations, the Criminal Division's Legal Reference Unit in the Office of Legal Support Services no longer maintains such citations. However, Legal Reference Unit personnel will check criminal case citations through JURIS for those United States Attorneys' Offices not having their own JURIS facilities. For this service, contact the Legal Reference Unit at FTS 724-7184.

(Criminal Division)

Appellate Practice: Government Attorneys Should
Strictly Comply With The Appendix Requirements of
Rule 30, F.R.A.P.

It is of the utmost importance that government attorneys strictly comply with the appendix requirements of Rule 30, F.R.A.P. The Third Circuit has just dismissed an appeal for failure to file a complete and accurate appendix. (Kushner v. Winterhur Swiss Insurance Co., No. 79-2383 (April 30, 1980)). While the government was not a party to that case, we are bound by the same procedural requirements and face the same sort of penalty in any appeal which we may file. Several years ago the Fourth Circuit did dismiss one of our appeals for failure to file an appendix.

(Civil Division)

CIVIL DIVISION
Assistant Attorney General Alice Daniel

Harris v. McRae, No. 79-1268 (Sup. Ct. June 30, 1980) DJ# 145-16-1021.

DUE PROCESS AND EQUAL PROTECTION: SU-
PREME COURT UPHOLDS FEDERAL FUNDING
RESTRICTION ON ABORTION.

In a five to four decision, the Supreme Court held that neither the federal government nor the states must fund abortions for indigent women.

1. Initially, the Court held that the Medicaid statute does not impose any unilateral funding obligations upon the states. The Court noted that the central premise of the Medicaid program is the idea of cooperative funding. Where Congress withdraws its share of the funding for a particular service, the states have no obligation to continue their own funding.

2. The Court then held that funding restrictions do not impinge upon the constitutional right to privacy recognized in Roe v. Wade. Such statutes do not place an obstacle of the government's making in the path of a woman who chooses to obtain an abortion. They simply leave the obstacle created by the plaintiffs' own indigence in place. The Court reiterated its view that the government has no obligation to subsidize constitutionally protected choices.

3. The Court also held that funding restrictions do not transgress the constitutional guarantee of equal protection. The Court refused to apply strict scrutiny because the funding restrictions do not infringe a fundamental right and because they do not affect a suspect class. It then held that the denial of public funds for abortions is rationally related to the legitimate governmental goal of encouraging childbirth.

4. The Court also held that the funding restrictions do not violate the Establishment Clause. There is a strong secular basis for such legislation and the mere fact that it also happens to parallel the religious tenets of the Roman Catholic Church is not enough to make out a First Amendment violation.

5. The Court did not reach the question of whether the funding restrictions violate the Free Exercise Clause because it accepted our argument that none of the named plaintiffs had standing to raise the issue. The individual plaintiffs failed

to make sufficiently detailed factual allegations and the organizational plaintiff lacked standing to assert the free exercise rights of its members because those rights require individualized proof.

Attorney: Linda Cole (Civil Division)
FTS 633-3525

United States v. Zbaraz, No. 79-491 (Sup. Ct. June 30, 1980)
DJ# 145-16-1584

JURISDICTION: SUPREME COURT RESOLVES SCOPE
OF 1252 JURISDICTION.

The Supreme Court held that the district court lacked jurisdiction to decide the constitutionality of the federal statute restricting the use of Medicaid funds for abortions because there was no case or controversy between the plaintiffs and the United States. The Court noted that the plaintiffs had never sued the federal government, had never challenged the validity of the federal statutes and had always claimed that they could obtain complete relief from the State of Illinois. The constitutionality of the federal statute had been interjected into the case only because the court of appeals had issued an erroneous decision during an earlier stage of the litigation, directing the district court to decide the constitutional question. (At that point the United States intervened under 28 U.S.C. 2403). Despite the fact that the district court lacked jurisdiction to invalidate the federal statute, the Supreme Court held that it had appellate jurisdiction to decide any issue in the case pursuant to 28 U.S.C. §1252. The Court then upheld the abortion funding restrictions adopted by the State of Illinois on the basis of its decision in Harris v. McRae.

Attorney: Linda Cole (Civil Division)
FTS 633-3525

O'Bannon v. Town Court Nursing Center, et al., No. 78-1318
(Sup. Ct. June 23, 1980) DJ#137-62-598)

DUE PROCESS: MEDICAID PATIENTS HAVE NO
CONSTITUTIONAL RIGHT TO A HEARING ON THE
QUESTION OF THEIR NURSING HOME'S DECERTI-
FICATION FROM MEDICAID PARTICIPATION.

The Supreme Court has held that Medicaid patients do not have a constitutional right to a hearing on the question of whether their nursing home should be decertified as a Medicaid provider. Reversing the Third Circuit's en banc decision, the

Supreme Court held that neither the Medicaid Act nor HHS regulations conferred on patients a protected property interest in continued residence at a home that has been decertified by the government. The Court recognized that decertification would require transfer of Medicaid patients, with possibly serious hardships for the elderly. However, the Court held that such transfers would be the indirect and incidental result of government enforcement against the home, and for that reason would not amount to a deprivation of protected rights of the patients. The Court suggested, however, that the patients might have an action against a decertified home for damages stemming from their transfer.

Attorneys: Alice Mattice (formerly of Civil Division)
William Kanter (Civil Division)
FTS 633-5460

Philip Agee v. Edmund S. Muskie, Secretary of State, No. 80-1125 (D. C. Cir. June 27, 1980) DJ# 145-2-311

PASSPORT AUTHORITY: D.C. CIRCUIT REJECTS
THE AUTHORITY OF THE SECRETARY OF STATE
TO REVOKE A PASSPORT ON GROUNDS OF SERIOUS
DAMAGE TO THE NATIONAL SECURITY AND FOREIGN
POLICY OF THE UNITED STATES, AND RESTORES
PHILIP AGEE'S PASSPORT

The Secretary of State revoked Philip Agee's passport upon determining Agee was engaged in a campaign of international activities causing serious damage to the national security and foreign policy of the United States. Cross-motions for summary judgment were filed, and Agee conceded for purposes of those motions that his international travel activities caused serious damage to the national security and foreign policy of the United States. The district court concluded that the national security and foreign policy regulation on which the Secretary relied in revoking the passport had not been legislatively authorized, and ordered Agee's passport restored.

We appealed and obtained a stay from the District of Columbia Circuit. In his argument for affirmance, Agee relied on statements in the Supreme Court's decisions in Kent v. Dulles and Zemel v. Rusk, that the Secretary's passport authority must be narrowly construed and approved by Congress expressly, or by legislative acquiescence in the face of a consistent and substantial administrative practice. We argued that when national security is implicated the Secretary's authority under the Passport Act should be broadly construed, and that, in any event, Secretaries of State have denied passports on related grounds with sufficient regularity to infer Congressional approval.

A divided panel of the court of appeals affirmed (Judges Wald and Robb; Judge MacKinnon dissenting). The court concluded that revoking a passport on grounds of serious damage to the national security or foreign policy was not explicitly provided for by the statute, and did not fall within the narrow areas of past administrative practice that could be said to have been legislatively approved.

Attorneys: Michael Hertz (Civil Division)
FTS 633-4096
Mark Gallant (Civil Division)
FTS 633-5108
Douglas Letter (Civil Division)
FTS 633-3427
Leonard Schaitman (Civil Division)
FTS 633-3321

Michael F. Armstrong, et al. v. Clovis McAlpin, et al., No. 79-7042 (2d Cir. June 20, 1980) DJ#145-13-728

ETHICS; INTERLOCUTORY APPEALS: SECOND
CIRCUIT, EN BANC, UPHOLDS SCREENING OF
FORMER GOVERNMENT ATTORNEY

In this en banc Second Circuit decision, the court vacated the prior decision of the panel and ruled that the Code of Professional Responsibility did not require the disqualification of a law firm due to the presence in the firm of a former government attorney previously associated with the case. While the underlying litigation was between private parties, the government filed a brief as amicus.

The court ruled first that orders denying motions to disqualify attorneys are not appealable. In the special circumstances of this case, however, the court determined that it should nonetheless decide the merits of the disqualification motion.

The court (7 of 9 judges concurring) then ruled that the presence of a former government attorney in a law firm does not require that the firm be disqualified, so long as the former government attorney is properly screened from participating in cases in which the attorney formerly participated during the attorney's government tenure. The court upheld the government's position that disqualification is not required unless the court finds that an attorney's presence will "taint the underlying trial." An "appearance" of impropriety alone will not justify disqualification. Here, since the screening of the former government attorney satisfied the district court that the

attorney's presence would not taint the underlying trial, the en banc court ruled that the district court's denial of the disqualification motion must be upheld.

Attorney: Frederic D. Cohen (Civil Division)
FTS 633-5054

Messer v. Virgin Islands Urban Renewal Board, No. 79-1968 (3rd Cir. June 11, 1980) DJ# 145-17-2238

URBAN RENEWAL: THIRD CIRCUIT AFFIRMS
SUMMARY JUDGMENT FOR HUD AND LOCAL URBAN
RENEWAL BOARD IN A RELOCATION BENEFITS
CLAIM

Plaintiff Messer operated a laundry business in an area of St. Croix, Virgin Islands, which had been approved for urban renewal in 1973 by the Virgin Islands legislature. The Department of Housing and Urban Development agreed to provide part of the fundings for the urban renewal. In 1976 Messer moved his business outside the area slated for urban renewal and filed a claim with the local urban renewal agency for \$22,000 in moving expenses pursuant to the Urban Relocation and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq. The claim was denied on the basis that, at the time of his move, Messer's business property had not been acquired by the urban renewal agency. This ruling was affirmed by HUD's local area office. Messer then brought this action for judicial review in the district court. The district court granted summary judgment to the local urban renewal board and HUD. That judgment has just been affirmed by the Third Circuit. The Third Circuit ruled that Congress did not intend that the mere announcement of an urban renewal plan, or the mere inclusion of property within the geographical boundary of such a plan, without acquisition of particular property or notice of acquisition, would trigger the payment of benefits under the Relocation Act.

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

Parke, Davis & Co. v. Califano, No. 78-1140 (6th Cir. June 16, 1980) DJ# 145-16-1324

FOIA: SIXTH CIRCUIT UPHOLDS FDA'S WITH-
HOLDING OF TWO DOCUMENTS UNDER EXEMPTION 5
OF THE FREEDOM OF INFORMATION ACT, BUT
RULES THAT AGENCY DID NOT MEET ITS BURDEN
OF PROOF ON THE REMAINING RECORDS

Parke, Davis & Co., which has been involved in Food and

Drug Administration proceedings concerning the marketability of one of its drug products, filed suit under the Freedom of Information Act to obtain certain records withheld by FDA under exemption 5 on the ground that the documents reflect the agency's internal deliberative process. The district court allowed the withholding of some records but directed the disclosure of 17 documents in an order which appeared to confuse Parke, Davis's rights under the FOIA with its asserted need for records in an administrative proceeding.

On appeal the Sixth Circuit upheld the agency's authority under exemption 5 of the FOIA to withhold documents generated in the scientific administrative decisionmaking context so long as those documents do indeed reflect the agency's internal deliberative process. But the agency must satisfy its burden of proof by providing affidavits with sufficient "specificity and detail" to support its claim. Here, the court of appeals found that the burden had been satisfied for only 2 of the 17 documents at issue. In addition, the court of appeals clarified the district court's ruling by suggesting that the lower court did not confuse FOIA rights with administrative discovery rights but, rather, was merely identifying the administrative context of the FOIA dispute.

Attorney: Michael Jay Singer (Civil Division)
FTS 633-3159

OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Alan A. Parker

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

JUNE 25, 1980 - JULY 8, 1980

Venue. On June 24, the Senate Judiciary Committee approved as a separate bill the same provisions on environmental venue included in the Judiciary Committee version of S. 262 (regulatory reform). The Department opposes the provisions and has communicated that opposition to the Hill. This latest maneuver is apparently an effort to keep the environmental venue legislation alive, just in case regulatory reform legislation remains stymied. There has been little interest in this matter in the House to date.

Wartime Relocation Commission. On June 24, the House Judiciary Committee approved legislation (H.R. 5499) establishing a Wartime Relocation Commission to review the mass relocation and internment of 120,000 American native born citizens and lawful resident aliens during World War II. The Department had testified in favor of this legislation. A companion bill has already passed the Senate.

Attorney Fees. On June 24, the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice completed testimony on various attorney fees bill, including S. 265 (the Senate-passed version strongly opposed by the Department) and H.R. 7208 (the Department's bill). Since S. 265 already has more than 150 cosponsors in the House, it is apparent that some attorney fees legislation will be enacted in the 96th Congress. Markup will be held right after Congress returns from its July recess.

Fair Housing. At the June 24 Executive Session of the Senate Judiciary Committee, Senator Bayh raised, and carried over on his own motion, S. 506 the fair housing amendments. Had Senator Bayh not done so, any one of a number of opponents would have requested that consideration of the bill be postponed. No further sessions of the Committee have been scheduled; it may be that there will be no further meetings of Judiciary for the remainder of the Congress. To protect against this eventuality, Senator Kennedy managed to have the House-passed bill, H.R. 5200, held at the Majority Leader's desk.

Court of Appeals for the Federal Circuit/Judicial Discipline. On June 25, with only minor amendments, the House Judiciary Subcommittee on Courts, Civil Liberties, and the Administration of Justice favorably reported to the full Committee H.R. 3806. The bill would merge the Court of Customs and Patent Appeals with the appellate level of the Court of Claims, creating a new Court of Appeals for the Federal Circuit. This proposal, which originated in the Department, has already passed the Senate.

Parental Kidnapping Prevention Act. Hearings on H.R. 2190, the Parental Kidnapping Prevention Act, were held on June 24th with Mark M. Richard, Deputy Assistant Attorney General, Criminal Division, and Francis M. Mullen, Jr., Executive Assistant Director of the FBI testifying. Though the Subcommittee appeared concerned with respect to those parental kidnappings which endanger the safety of the child, there was general opposition to full criminalization of parental kidnapping. Chairman Conyers is not expected to take any further action on the bill.

Cartel Restriction. The House Commerce Subcommittee on Consumer Protection and Finance held a hearing on June 24, 1980 on H.R. 4661 (the Cartel Restriction Act). This bill, which was introduced by Congressman Gore, would require United States companies to notify the Federal Trade Commission and the Department of Justice whenever the U.S. companies or their foreign subsidiaries engage in or are requested or required to engage in certain anticompetitive practices with a competing foreign firm. The bill would also codify the act of state doctrine and elements of recent court decisions on the scope of foreign commerce antitrust jurisdiction.

John H. Shenefield, Associate Attorney General, presented DOJ's views on the bill at the June 24 hearing. The Department does not support the enactment of the reporting requirements as presently drafted but believes that a sufficiently narrow and focused reporting program could be drafted and could be beneficial. DOJ does not favor the bill's attempt to codify the act of state doctrine and the standard for determining whether a court should exercise jurisdiction in such areas. The Department prefers the flexibility afforded by judicial rules for these issues.

Other witnesses testifying at the hearing on June 24 were Congressman Gore, Ronald Rowe (Assistant Director, Bureau of Competition, FTC), Richard S. Newfarmer (Department of Economics, University of Notre Dame), and Barbara Epstein (Vice President, Horace DePodiwin Associates, Inc.). Gore, Newfarmer and Epstein spoke in support of the bill. Rowe's testimony was substantially similar to DOJ's position.

Customs Court. On June 25, 1980, the House Judiciary Committee marked up H.R. 7540, the Customs Court bill. Representative Volkmer's amendment, which deleted the provision of the legislation adopted in the subcommittee requiring a political affiliation test in the selection of the Court's judges, passed 11-8. Representative McClory vowed to take the issue to the House floor.

DOJ Appropriations. On July 1 the House completed action on the Justice Department portion of H.R. 7584, the appropriations bill for the Departments of State, Justice and Commerce and the Judiciary.

By a vote of 337 to 72 the House agreed to an amendment by Representative Fish that would increase the salaries and expenses of the Immigration and Naturalization Service by \$22.37 million to fund 311 Border Patrol and 106 immigration inspectors positions.

The House rejected a McClory amendment to reprogram \$100 million to the Department of Justice appropriations to LEAA discretionary grants (221 to 182). \$20 million of the \$100 million sum would have come out of the Juvenile Justice program. The remaining \$80 million would have come from other Justice programs, although no particular areas were specified.

Also rejected was a Bauman amendment that sought to withhold from obligation or expenditure 5% of the Department's appropriations except for the additional \$22.37 million for Immigration and Naturalization Service (division vote of 89 to 75).

The State, Justice, Commerce Appropriation bill was not completed and will be taken up again during the first week back after the recess.

Soft Drink Bottlers. On June 28, 1980, the Senate, by voice vote, passed S. 598 (the Soft Drink Interbrand Competition Act). This was the same version passed by the House on June 24 by a vote of 377 to 34. The Department strongly opposes this legislation, which is now awaiting Presidential decision.

Patents. In a markup session on July 2, 1980, the House Science Committee reported S. 1250 (the Technological Innovation Act of 1980). This legislation would create centers for the promotion of industrial and technological innovation in the Department of Commerce and the National Science Foundation.

Criminal Code Reform. The House Judiciary Committee reported out H.R. 6915, its criminal code reform bill on July 2. A report on the bill should be available around July 22. Issues decided in the final markup sessions include:

- defeated Kindness amendment to add a "solicitation" offense,
- defeated Lungren amendment to allow a limited form of government appeal of sentencing,
- adopted Hyde amendment to reinstate Logan Act provisions which had been stricken in Subcommittee,
- defeated Sensenbrenner amendment to add death penalty provisions,
- rejected reconsideration of Hall amendment to add union activity to extortion offense.

Private Relief for James Thornwell. Follow-up hearings on H.R. 5063 were held June 26th before the Administrative Law and Governmental Relations Subcommittee of the House Judiciary Committee. Jack Farley, Assistant Director, Torts Branch, Civil Division, and John Euler, Senior Counsel, Torts Branch, Civil Division, testified for the Department. No action was taken on the bill at the hearing and the Committee has suggested that a markup will not be held until the end of July. In the interim the Committee has requested additional information with respect to whether Thornwell is under a conservatorship and as to his current source of income.

Medical Records Privacy. House Commerce Committee completed mark-up on this legislation last week. Included in the mark-up was the adoption of some amendments worked out between the Administration and Representative Preyer's staff to take care of some law enforcement concerns. The balancing test was modified somewhat as was the challenge procedure, although both of these items still remain troublesome to us. An interesting new note to this process is that the Judiciary Committee has requested a sequential referral of the bill. The Parliamentarian will rule on the request after the other Committees (Ways and Means is the only one left) have finished their business.

Snepp Decision. Congressman Edwards' Subcommittee on Civil and Constitutional Rights has scheduled a hearing for late July, 1980 on "prepublication review and secrecy requirements imposed by law or contract upon current and former federal employees." The hearing stems from the Supreme Court's decision in Snepp v. United States. Alice Daniel, Assistant Attorney General, Civil Division, is expected to testify for the Department.

Lobbying. On June 26, 1980 the Senate Governmental Affairs Committee put off until July 21, 1980, any further markup of S. 2160, the Lobbying bill. The Committee could not agree on whether to reconsider Senator Durenberger's amendment to the Contributor Disclosure section of the bill which would only require disclosure of the name of the contributor and not the amount contributed. Subsequent to the defeat of that amendment, Senator Mathias's amendment to eliminate contributor disclosure was passed. The elimination of the Contributor Disclosure section would effectively gut the bill. There is an excellent chance that the Durenberger amendment would pass if reconsidered. Senator Chiles has threatened to withdraw consideration of the Lobbying bill if the Durenberger amendment is not reconsidered.

Criminal Procedure Amendments. The House Judiciary Subcommittee on Criminal Justice will continue markup of H.R. 7473, to amend the Federal Rules of Criminal Procedure to allow defense pre-emptory challenges of Federal District Court Judges, later this summer.

Nominations. On June 26, 1980, the Senate confirmed the following nominations:

U.W. Clemon, to be a U.S. District Judge for the Northern District of Alabama;

Judith N. Keep, to be U.S. District Judge for the Southern District of California;

Marilyn H. Patel, and Thelton E. Henderson, each to be a U.S. District Judge for the Northern District of California;

A. Wallace Tashima, to be U.S. District Judge for the Central District of California;

Carmen C. Cerezo, to be U.S. District Judge for the District of Puerto Rico;

Earl H. Carroll and Alfred C. Marquez, each to be a U.S. District Judge for the District of Arizona.

On July 2, 1980 the Senate Judiciary Committee concluded hearings on the nomination of Fred D. Gray, to be United States District Judge for the Middle District of Alabama, after the nominee testified and answered questions in his own behalf.

VOL. 28

JULY 18, 1980

NO. 15

Federal Rules of Evidence

Rule 103(a). Rulings on Evidence.
Effect of Erroneous Ruling.

See Rule 103(c) Federal Rules of Evidence, this issue of the Bulletin for syllabus.

United States v. Daniel J. Ledesma, ___ F.2d ___,
No. 79-2003 (7th Cir. June 25, 1980)

Federal Rules of Evidence

Rule 103(c). Rulings on Evidence.
Hearing of Jury.

Rule 103(a). Rulings on Evidence.
Effect of Erroneous Ruling.

Because the trial judge informed counsel at the beginning of trial that he did not have sidebars for any purpose, all offers of proof were made in the presence of the jury. Defendant appealed his convictions, contending that he was deprived of a fair trial because the judge failed to follow the requirements of Rule 103(c) and allowed the prosecutor to suggest inadmissible evidence to the jury.

The Court noted that while a court is not required to hold all proceedings pertaining to the admissibility of evidence outside the jury's presence, an automatic "no sidebar" rule was contrary to Rule 103(c)'s requirement that proceedings "be conducted, to the extent possible, so as to prevent inadmissible evidence from being suggested to the jury . . ." However, looking to Rule 103(a)'s provision that, "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right is affected", the Court found the error in this case did not affect any substantial right because the inadmissible evidence suggested to the jury could have had, at most, only a slight effect, and there was no indication of prosecutorial misconduct.

(Convictions on three counts affirmed, conviction on fourth count reversed on other grounds.)

United States v. Daniel J. Ledesma, ___ F.2d ___,
No. 79-2003 (7th Cir. June 25, 1980)

Federal Rules of Criminal Procedure

Rule 42(b). Criminal Contempt.
Disposition Upon Notice
and Hearing.

See Rule 42(a) Federal Rules of Criminal Procedure,
this issue of the Bulletin for syllabus.

In re Robert T. Gustafson, Esquire, ___ F.2d ___,
No. 78-3732 (9th Cir. May 30, 1980)

Federal Rules of Criminal Procedure

Rule 42(a). Criminal Contempt.
Summary Disposition.

Rule 42(b). Criminal Contempt.
Disposition Upon Notice
and Hearing.

In a decision too lengthy and involved to be summarized here, the Ninth Circuit examined in detail the issue of when courts may use summary contempt procedures contained in Rule 42(a), and when courts must instead use the contempt hearing procedures set out in Rule 42(b). The case contains an excellent discussion of case law bearing on this issue.

(Summary contempt holding reversed.)

In re Robert T. Gustafson, Esquire, ___ F.2.d ___,
No. 78-3732 (9th Cir. May 30, 1980)

LISTING OF ALL BLUESHEETS IN EFFECT

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
TITLE 1		
5-23-78	1 thru 9	Reissuance and Continuation in Effect of BS to U.S.A. Manual
Undtd	1-1.200	Authority of Manual; A.G. Order 665-76
6-21-77	1-3.100	Assigning Functions to the Associate Attorney General
6-21-77	1-3.102	Assignment of Responsibility to DAG re INTERPOL
6-21-77	1-3.105	Reorganize and Redesignate Office of Policy and Planning as Office for Improvements in the Administration of Justice
4-22-77	1-3.108	Selective Service Pardons
6-21-77	1-3.113	Redesignate Freedom of Information Appeals Unit as Office of Privacy and Information Appeals
6-21-77	1-3.301	Director, Bureau of Prisons; Authority to Promulgate Rules
6-21-77	1-3.402	U.S. Parole Commission to replace U.S. Board of Parole
Undtd	1-5.000	Privacy Act Annual Fed. Reg. Notice; Errata
12-5-78	1-5.400	Searches of the News Media
8-10-79	1-5.500	Public Comments by DOJ Emp. Reg., Invest., Indict., and Arrests
4-28-77	1-6.200	Representation of DOJ Attorneys by the Department: A.G. Order 633-77
8-30-77	1-9.000	Case Processing by Teletype with Social Security Administration
10-31-79	1-9.000	Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
11-16-79	1-9.000	Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents
7-14-78	1-14.210	Delegation of Authority to Conduct Grand Jury Proceedings
1-03-77	TITLE 2 3-3.210	Appeals in Tax Case
Undtd	TITLE 3 3-4.000	Sealing and Expungement of Case Files Under 21 U.S.C. 844
11-27-78	TITLE 4 4-1.200	Responsibilities of the AAG for Civil Division
9-15-78	4-1.210- 4-1.227	Civil Division Reorganization
4-14-80	4-1.213	Federal Programs Branch Case Reviews
5-12-80	4-1.213	Organization of Federal Programs Branch, Civil Division
4-1-79	4-1.300- 4-1.313	Redelegations of authority in Civil Division Cases
5-5-78	4-1.313	Addition of "Direct Referral Cases" to USAM 4-1.313
4-1-79	4-2.110- 4-2.140	Redelegation of Authority in Civil Division Cases
5-12-80	4-2.230	Monitoring of pre-and post judgment payments on VA educational overpayment accounts
2-22-78	4-2.320	Memo Containing the USA's Recommendations for the Compromising or Closing of Claims Beyond his Authority
11-13-78	4-2.433	Payment of Compromises in Federal Tort Claims Act Suits
8-13-79	4-3.000	Withholding Taxes on Backpay Judgments
5-05-78	4-3.210	Payment of Judgments by GAO
6-01-78	4-3.210	New telephone number for GAO office handling payment of judgments

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-14-79	4-4.230	Attorneys' Fees in EEO Cases
11-27-78	4-4.240	Attorney fees in FOI and PA suits
4-1-79	4-4.280	New USAM 4-4.280, dealing with attorney's fees in Right To Financial Privacy Act suits
4-1-79	4-4.530	Addition to USAM 4-4.530 (costs recoverable from United States)
4-1-79	4-4.810	Interest recoverable by the Gov't.
4-1-79	4-5.229	New USAM 4-5.229, dealing with limitations in Right To Financial Privacy Act suits.
2-15-80	4-5.530; 540; 550	FOIA and Privacy Act Matters
4-1-79	4-5.921	Sovereign immunity
4-1-79	4-5.924	Sovereign immunity
2-18-77	4-6.400	Coordination of Fraud Against The Government Cases
5-5-80	4-6.400	Coordination of Civil & Criminal Aspects of Fraud & Official Corruption Cases
5-12-80	4-6.600	Monitoring of pre- and post judgment payments on VA educational overpayment accounts
5-12-80	4-6.600	Memo of Understanding for Conduct of Test Program to Collect VA Educational Assistance Overpayments Less Than \$600
9-24-79	4-9.200	McNamara-O'Hara Service Contract Act Cases
9-24-79	4-9.700	Walsh-Healy Act cases
4-1-79	4-11.210	Revision of USAM 4-11.210 (Copyright Infringement Actions).
4-1-79	4-11.850	New USAM 4-11.850, discussing Right To Financial Privacy Act litigation
4-21-80	4-11.860	FEGLI litigation
6-4-79	4-12.250; 4-12.251	Priority of Liens (2410 cases)

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
4-7-80	4-12.250; .251; .252	Priority of Liens (2420 cases)
5-22-78	4-12.270	Addition to USAM 4-12.270
4-16-79	4-13.230	New USAM 4-13.230, discussing revised HEW regulations governing Social Security Act disability benefits
11-27-78	4-13.335	News discussing "Energy Cases"
7-30-79	4-13.350	Review of Government Personnel Cases under the Civil Service Reform Act of 1978
4-1-79	4-13.361	Handling of suits against Gov't Employees
6-25-79	4-15.000	Subjects Treated in Civil Division Practice Manual
TITLE 5		
11-13-79	5-2.130	Naming of State in Clean Water Act Enforcements Actions Against Municipalities
9-06-77	5-2.310(a) and (b); 5-2.312	Representation of the Environmental Protection Agency
9-06-77	5-3.321; 5-3.322	Category 1 Matters and Category 2 Matters-Land Acquisition Cases
9-14-78	5-4.321	Requirement for Authorization to Initiate Action
9-14-78	5-5.320	Requirement for Authorization to Initiate Action
9-14-78	5-5.321	Requirement for Authorization to Initiate Action
9-14-78	5-7.120	Statutes Administered by the General Litigation Section
9-14-78	5-7.314	Cooperation and Coordination with the Council on Environmental Quality
9-14-78	5-7.321	Requirement for Authorization to Initiate Action

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
9-14-78	5-8.311	Cooperation and Coordination with the Council on Environmental Quality
	TITLE 6	
4-22-80	6-3.630	Responsibilities of United States Attorney of Receipt of Complaint
	TITLE 7	
6-21-77	7-2.000	Part 25-Recommendations to President on Civil Aeronautic Board Decisions, Procedures for Receiving Comments by Private Parties
	TITLE 8	
6-21-77	8-2.000	Part 55-Implementation of Provisions of Voting Rights Act re Language Minority Groups (interpretive guidelines)
6-21-77	8-2.000	Part 42-Coordination of Enforcement of Non-discrimination in Federally Assisted Programs
5-23-80	8-2.170	Standards for Amicus Participation
10-18-77	8-2.220	Suits Against the Secretary of Commerce Challenging the 10% Minority Business Set-Aside of the Public Works Employment Act of 1977 P.L 95-28 (May 13, 1977)
5-23-80	8-2.400	Amicus Participation By the Division
5-23-80	8-3.190	Notification to Parties of Disposition of Criminal Civil Rights Matters
5-23-80	8-3.330	Notification to Parties of Disposition of Criminal Civil Rights Matters
	TITLE 9	
7-11-79	9-1.000	Criminal Division Reorganization
Undtd (3-80)	9-1.103	Description of Public Integrity Section
3-14-80	9-1.103	Criminal Division Reorganization
11-13-79	9-1.160	Requests for Grand Jury Authorization Letters for Division Attorneys

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
Undtd	9-1.215	Foreign Corrupt Practices Act of 1977- 15 U.S.C. 78m(b)(2)-(3); 15 U.S.C. 78dd-1; and 15 U.S.C. 78dd-2
4-14-80	9-1.403; .404;.410	Criminal Division Reorganization
4-16-80	9-1.502	Criminal Division Brief/Memo Bank
6-22-79	9-2.000	Cancellation of Outstanding Memorandum
5-11-79	9-2.025	Trade Secrets Act-Prosecution Under 18 U.S.C. 1905
1-25-80	9-2.145	Interstate Agreement on Detainers
5-5-80	9-2.148	Informal Immunity
4-16-79	9-2.168	State and Territorial Prisoners Incarcerated in Federal Institutions
5-12-80	9-4.206 & 7	Mail Covers
2-28-80	9-4.116	Oral Search Warrants
6-28-79	9-4.600	Hypnosis
Undtd	9-7.000; 9-7.317	Defendant Overhearings and Attorney Overhearings Wiretap Motions
4-28-80	9-7.230	Pen Register Surveillance
2-06-80	9-11.220	Use of Grand Jury to Locate Fugitives
12-13-78	9-11.220	Use of Grand Jury to Locate Fugitives
5-31-77	9-11.230	Grand Jury Subpoena for Telephone Toll Records
8-13-79	9-11.230	Fair Credit Reporting Act and Grand Jury Subpoenas
5-22-79	9-16.210	Explanation of "Special Parole" in Entry of Pleas Pursuant to Rule 11 F.R. Crim. P.

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
11-13-79	9-34.220	Prep. Reports on Convicted Prisoners for Parole Commission
10-22-79	9-42.000	Coordination of Fraud Against the Government Cases (non-disclosable)
6-6-80	9-42.520	Dept. of Agriculture-Food Stamp Violations
2-27-80	9-47.120	Foreign Corrupt Practices Act Review Procedure
6-9-80	9-47.140	Foreign Corrupt Practices Act Review Procedure
6-29-79	9-60.291	Forfeiture of Devices Illegally Used to Intercept Wire or Oral Communications
5-22-79	9-61.132 and 9-61.133	Steps to be Taken to Assure the Serious Consideration of All Motor Vehicle Theft Cases for Prosecution
5-22-79	9-63.165	Revision of Prosecutive Policy to Reflect Availability of Civil Penalty for Processing Individuals who Attempt to Carry a Firearm Aboard a Carrier Aircraft
8-08-79	9-69.260	Perjury: False Affidavits Submitted in Federal Court Proceedings Do Not Constitute Perjury Under 18 USC 1623
1-3-80	9-69.420	Issuance of Federal Complaint in Aid of States' Prerequisites to; Policy
6-11-80	9-75.000	Obscenity
6-11-80	9-75.080; 084	Sexual Exploitation of Children; Child Pornography
6-11-80	9-75.110	Venue
6-11-80	9-75.140	Prosecutive Priority
6-11-80	9-75.631	Exception - Child Pornography Cases
3-12-79	9-79.260	Access to information filed pursuant to the Currency & Foreign Transactions Reporting Act

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-11-78	9-120.160	Fines in Youth Corrections Act Cases
3-14-80	9-120.210	Armed Forces Locator Services
5-23-80	9-120.210	Directory: Dept. of Motor Vehicles Driver's License Bureau
2-29-80	9-121.120, .153 and .154	Authority to Compromise & Close Appearance Bond Forfeiture Judgements
4-21-80	9-121.140	Application of Cash Bail to Criminal Fines
4-05-79	9-123.000	Costs of Prosecution (28 U.S.C. 1918(b))

(Revised 7-9-80)

Listing of all Bluesheets in Effect

ADDENDUM

Note that you should remove the Bluesheet affecting 9-27.000 from your U.S. Attorneys' Manual. This Bluesheet was replaced by the bluesheet dated February 28, 1980, affecting USAM 9-4.116.

UNITED STATES ATTORNEYS' MANUAL--TRANSMITTALS

The following United States Attorneys' Manual Transmittals have been issued to date in accordance with USAM 1-1.500. This monthly listing may be removed from the Bulletin and used as a check list to assure that your Manual is up to date.

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE MO/DAY/YR</u>	<u>DATE OF Text</u>	<u>CONTENTS</u>
1	1	8/20/76	8/31/76	Ch. 1,2,3
	2	9/03/76	9/15/76	Ch. 5
	3	9/14/76	9/24/76	Ch. 8
	4	9/16/76	10/01/76	Ch. 4
	5	2/04/77	1/10/77	Ch. 6,10,12
	6	3/10/77	1/14/77	Ch. 11
	7	6/24/77	6/15/77	Ch. 13
	8	1/18/78	2/01/78	Ch. 14
	9	5/18/79	5/08/79	Ch. 5
	10	8/22/79	8/02/79	Revisions to 1-1.400
	11	10/09/79	10/09/79	Index to Manual
	12	11/21/79	11/16/79	Revision to Ch. 5, 8, 11
	13	1/18/80	1/15/80	Ch. 5, p. 1-11, 29-30, 41-45
2	1	6/25/76	7/04/76	Ch. 1 to 4
	2	8/11/76	7/04/76	Index
3	1	6/23/76	7/30/76	Ch. 1 to 7
	2	11/19/76	7/30/76	Index

	3	8/15/79	7/31/79	Revisions to Ch. 3
	4	9/25/79	7/31/79	Ch. 3
4	1	1/02/77	1/02/77	Ch. 3 to 15
	2	1/21/77	1/03/77	Ch. 1 & 2
	3	3/15/77	1/03/77	Index
	4	11/28/77	11/01/77	Revisions to Ch. 1-6, 11-15 Index
5	1	2/04/77	1/11/77	Ch. 1 to 9
	2	3/17/77	1/11/77	Ch. 10 to 12
	3	6/22/77	4/05/77	Revisions to Ch. 1-8
	4	8/10/79	5/31/79	Letter from Attorney General to Secretary of Interior
	5	6/20/80	6/17/80	Revisions to Ch. 1-2, New Ch. 2A, Index to Title 5
6	1	3/31/77	1/19/77	Ch. 1 to 6
	2	4/26/77	1/19/77	Index
	3	3/01/79	1/11/79	Complete Revision of Title 6
7	1	11/18/77	11/22/76	Ch. 1 to 6
	2	3/16/77	11/22/76	Index
8	1	1/04/77	1/07/77	Ch. 4 & 5
	2	1/21/77	9/30/77	Ch. 1 to 3
	3	5/13/77	1/07/77	Index
	4	6/21/77	9/30/76	Ch. 3 (pp. 3-6)
	5	2/09/78	1/31/78	Revisions to Ch. 2
	6	3/14/80	3/6/80	Revisions to Ch. 3

9	1	1/12/77	1/10/77	Ch. 4,11,17, 18,34,37,38
	2	2/15/78	1/10/77	Ch. 7,100,122
	3	1/18/77	1/17/77	Ch. 12,14,16, 40,41,42,43
	4	1/31/77	1/17/77	Ch. 130 to 139
	5	2/02/77	1/10/77	Ch. 1,2,8,10, 15,101,102,104, 120,121
	6	3/16/77	1/17/77	Ch. 20,60,61,63, 64,65,66,69,70, 71,72,73,75,76,77, 78,79,85,90,110
	7	9/08/77	8/01/77	Ch. 4 (pp. 81- 129) Ch. 9, 39
	8	10/17/77	10/01/77	Revisions to Ch. 1
	9	4/04/78	3/18/78	Index
	10	5/15/78	3/23/78	Revisions to Ch. 4,8,15, and new Ch. 6
	11	5/23/78	3/14/78	Revisions to Ch. 11,12,14, 17,18, & 20
	12	6/15/78	5/23/78	Revisions to Ch. 40,41,43, 44, 60
	13	7/12/78	6/19/78	Revisions to Ch. 61,63,64, 65,66
	14	8/02/78	7/19/78	Revisions to Ch. 41,69,71, 75,76,78, & 79
	15	8/17/78	8/17/78	Revisions to Ch. 11

16	8/25/78	8/02/78	Revisions to Ch. 85,90,100, 101, & 102
17	9/11/78	8/24/78	Revisions to Ch. 120,121,122, 132,133,136,137, 138, & 139
18	11/15/78	10/20/78	Revisions to Ch. 2
19	11/29/78	11/8/78	Revisions to Ch. 7
20	2/01/79	2/1/79	Revisions to Ch. 2
21	2/16/79	2/05/79	Revisions to Ch. 1,4,6,11, 15,100
22	3/10/79	3/10/79	New Section 9-4.800
23	5/29/79	4/16/79	Revisions to Ch. 61
24	8/27/79	4/16/79	Revisions to 9-69.420
25	9/21/79	9/11/79	Revision of Title 9 Ch. 7
26	9/04/79	8/29/79	Revisions to Ch. 14
27	11/09/79	10/31/79	Revisions to Ch. 1, 2, 11, 73, and new Ch. 47
28	1/14/80	1/03/80	Detailed Table of Contents p. i-iii (Ch. 2) Ch. 2 pp 19-20i
29	3/17/80	3/6/80	Revisions to Ch. 1, 7, 11, 21, 42, 75, 79, 131, Index to Title 9
30	4/29/80	4/1/80	Revisions to Ch. 11, 17, 42