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Forfeitures

The United States Attorney's Office for the Southern District of Florida was successful in recovering more than $7.9 million in a civil forfeiture action recently. The above-styled action, and a separate civil forfeiture action, were consolidated resulting in a recovery of the total amount plus over $1.5 million in interest.

The forfeiture actions were based on 21 U.S.C. 881(a)(c) and 31 U.S.C. 1102 (31 U.S.C. 5317, as amended by P.L. No. 97-258). The court found that the money was the proceeds of illegal narcotics transactions, and that it had been transported unlawfully into the United States. The owner of the money, who is currently appealing the conviction in the Southern District of Florida for violations resulting from his money laundering activities, is a citizen and resident of Cali, Columbia.

The court detailed the basic route taken to launder this money, which usually began with a street transaction in the United States. The proceeds of these transactions were transferred to Columbia for "sale" at discount rates to drug producers who, in turn, resold the cash to a company called Sonal. This company returned this "laundered" cash to a bank account in Miami, Florida. It was the money in this account that was subject to one of the forfeiture actions. United States Customs Service agents had also seized an additional amount, some $3,686,639, prior to its deposit in the Sonal bank account. This latter sum was the subject of the second forfeiture action.

For additional information concerning this case, you may contact Assistant United States Attorney Joe Florio on FTS 350-4471.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, Director

POINTS TO REMEMBER

Presidential Directive On Safeguarding National Security Information

On March 11, 1983, Attorney General William French Smith issued a memorandum to Heads of Offices, Board, Divisions and Bureaus, supporting the Presidential Directive on Safeguarding National Security Information. The purpose of the Presidential Directive is to strengthen efforts to safeguard national security information from unlawful disclosure and is based upon recommendation of an interdepartmental group chaired by the Department of Justice. The directive is an attachment to the Attorney General's memorandum which is included in this issue of the United States Attorneys' Bulletin.

(Executive Office)

National Security Decision Directive On Safeguarding National Security Information (NSDD-84)

On March 22, 1983, Attorney General William French Smith issued a memorandum to Heads of Offices, Boards, Divisions and Bureaus, assigning the responsibility for the implementation of the National Security Decision Directive on Safeguarding National Security Information (NSDD-84). This memorandum is attached as an appendix to this issue of the United States Attorneys' Bulletin.

(Executive Office)

Authority Of United States Magistrates To Issue Court Orders For Installation Of Pen Registers

In a teletype to all United States Attorneys and Strike Force Chiefs on January 17, 1983, Mr. D. Lowell Jensen, Assistant Attorney General, Criminal Division, advised that the American Telephone and Telegraph Company (AT&T) had questioned the authority of United States Magistrates to issue orders requiring telephone companies to provide technical assistance in the installation and operation of pen registers, and instructed that United States Attorneys should seek such technical assistance orders from the United States District Judges only.

In a letter responding to an inquiry from the Honorable John V. Singleton, Jr., Chief Judge for the United States District Court for the Southern District of Texas, who questioned the authority of AT&T to refuse to honor such an order from a magistrate, Assistant Attorney General Jensen suggested that a possible solution could be the implementation of a local district rule delegating to magistrates the authority to sign these technical assistance orders. As indicated in Mr. Jensen's letter, at least two such rules have been adopted to date. In light of the fact that AT&T has agreed to honor technical assistance orders issued under such rules, United States Attorneys may wish to suggest the adoption of a similar rule in their particular judicial district should such a problem arise.

For your information and guidance, a copy of Mr. Jensen's letter to Judge Singleton as well as the two adopted rules are included as appendices to this issue of the United States Attorneys' Bulletin.

(Executive Office)

Guidelines For Motions For Costs

On April 1, 1983, J. Paul McGrath, Assistant Attorney General, Civil Division, issued a memorandum referring to the recovery of the costs of litigation under Rule 54(d), Federal Rules of Civil Procedure, and reminding all United States Attorneys that when the Government is considering moving for costs as the prevailing defendant in litigation, discretion should be exercised in determining whether an assessment of costs or a reduction in the amount of costs is appropriate. This memorandum supersedes the memorandum of the Assistant Attorney General, Civil Division, dated April 14, 1978, and is attached to this issue of the United States Attorneys' Bulletin.

(Executive Office)

Guidelines For Use By United States Attorneys And Agents Requesting Information From The Federal Parent Locator Service (PLS) In Connection With Parental Kidnapping And Child Custody Cases

The Office of Child Support Enforcement (OCSE) of the Department of Health and Human Services has established guidelines for use by United States Attorneys and agents who are requesting information from the Federal Parent Locator Service (PLS) in connection with parental kidnapping and child custody cases. These guidelines are described in the letter from Mr. A. Svahn, Director, OCSE, to the Executive Office for United States Attorneys. That letter is set out in full as an Appendix to this issue. See also 45 C.F.R. 303.69.

Proposed amendments to these regulations will modify the current regulations to allow agents or attorneys of the United States to have direct access of OCSE, without regard to state agreements. Also, the OCSE has waived the processing fee as to United States Attorneys and agents for requests of information under the PLS. These amendments will be published in the United States Attorneys' Bulletin as soon as they become final. If any additional questions arise regarding these matters, please contact Ms. Judy Hagopian (OCSE) at FTS 443-5350.

(Executive Office)

Parental Kidnapping

Effective immediately, the two requirements of USAM Section 9-69.421:

- that there be evidence that the victim child is in physical danger or in a condition of abuse or neglect, and

- that Criminal Division approval be secured before a complaint may be filed under the Fugitive Felon Act,

are suspended until further notice. This change in policy is being made to allow the FBI and the Criminal Division to monitor the effect upon the Bureau's caseload resulting from this action over a one-year period. United States Attorneys' offices shall continue to report requests for assistance to the Bureau whether or not complaints are authorized. In order to assist the Bureau in determining the appropriate priority to assign the warrant, when the initial contact is made with a United States Attorney's office, information relative to the danger to the child and other dangers posed by the abducting parent should be ascertained. As in other fugitive felon cases,

the FBI Field Office will assign the priority. Please bear in mind that the Fugitive Felon Act was enacted to assist the states in their efforts to apprehend and prosecute criminals who have gone beyond their jurisdiction. Accordingly, care should be taken not to authorize warrants where there is reason to believe that the state will not extradite and prosecute once the fugitive is located and arrested by the FBI.

Attorneys familiar with this policy are available on FTS 724-7526, 6971 and 6893. A bluesheet effecting this policy change will be sent to all USAM holders when published.

(Executive Office)

Use Of Prisoners In Investigations

Reference is made to the attached memorandum of March 10, 1982, sent to various investigative agencies outlining the procedures and requirements for requests to utilize Federal prisoners in investigations when consensual monitoring devices, furloughs, or extraordinary transfers are necessary.

As stated in that memorandum, Norman Carlson, Director, Bureau of Prisons, has asked that the Office of Enforcement Operations assist him by coordinating and reviewing all requests for the utilization of Federal prisoners in some form of undercover capacity. Mr. Carlson has advised that recently agents and/or attorneys have been making requests directly to his office and to field staff creating potentially serious security problems for the prospective informants. To ensure the appropriate security, Mr. Carlson has instructed his field staff not to discuss the utilization of prisoners as informants in specific cases unless first authorized by their headquarters. Agents and attorneys should not contact Bureau of Prisons field personnel concerning these unusual requests so that the appropriate security can be maintained. Mr. Carlson has asked that the Office of Enforcement Operations request your cooperation in complying with the procedures set forth in the March 10, 1982, memorandum.

Please be assured that the Office of Enforcement Operations shall expeditiously assist your office in handling your requests as it has in the past. The information provided will be held in the strictest confidence and no dissemination of the information will be made without prior approval from your office.

Requests should be addressed to the personal attention of Gerald Shur, Associate Director, Office of Enforcement Opera-

tions, and, if not hand carried to Room 2229 Main Justice Building, they should be mailed to Post Office Box 7600, Benjamin Franklin Station, Washington, D.C. 20044-7600. Of course in exigent circumstances, telephonic assistance will be provided.

Your cooperation concerning this matter is greatly appreciated.

(Criminal Division)

Memorandum

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Subject
USE OF PRISONERS IN INVESTIGATIONS

Date
10 MAR 1982

To
ALL INVESTIGATIVE AGENCIES
ALL OEO PARALEGAL SPECIALIST

From
Gerald Shur, Associate Director
Office of Enforcement Operations
Criminal Division

Norman Carlson, Director, Bureau of Prisons, has asked that the Office of Enforcement Operations review all requests from investigative agencies to use federal prisoners in investigations when consensual monitoring devices, furloughs, or extraordinary transfers are necessary.

In order to assist Mr. Carlson and to expeditiously assist your agency, I would appreciate your coordinating all such requests from your agency and referring them to me for review. Please include the following information in each request:

1. Location of the prisoner
2. Identifying data on the prisoner
3. Necessity of utilizing the prisoner in the investigation
4. Name(s) of target(s) of the investigation
5. Nature of activity requested
6. Security measures to be taken to ensure the prisoner's safety if necessary
7. Length of time the prisoner will be needed in the activity
8. Whether the prisoner will be needed as a witness
9. Whether a prison redesignation will be necessary upon completion of the activity
10. Whether the prisoner will remain in the custody of the investigative agency or whether he/she will be unguarded except for security purposes

I will review your request immediately upon receipt and make a recommendation to the Director, Bureau of Prisons. I will advise you of my recommendation and the Bureau of Prisons will advise you directly of its decision.

Please provide this office (not the Bureau of Prisons) with a report detailing the results of the activity within 60 days of its conclusion.

Your cooperation in this matter is appreciated.

The Criminal Justice Act Of 1964 (18 U.S.C. §3006A) Does Not Authorize Payments To Lawyers Representing Claimants In Civil Forfeiture Proceedings

The General Litigation and Legal Advice Section of the Criminal Division recently received an inquiry from the United States Attorney's Office for the Eastern District of Michigan questioning the propriety of Federal Defender Organization lawyers representing claimants in civil forfeiture proceedings. In response to this inquiry the General Litigation and Legal Advice Section prepared a legal memorandum concluding that such representation is improper.

Section 3006A of Title 18, United States Code, does not authorize payments to lawyers representing claimants in civil forfeiture proceedings because the statute was enacted to provide indigent individuals with legal counsel only in those proceedings in which the individual's personal liberty is at stake. Given the fact that a civil forfeiture proceeding is an in rem proceeding, it, a fortiorari, does not involve an issue of personal liberty. Accordingly, the statute does not authorize representation in civil forfeiture proceedings. Questions concerning the above memorandum should be directed to John T. Bannon, Jr., General Litigation and Legal Advice Section (FTS 724-6971).

(Criminal Division)

Coordination Of United States Attorneys' Offices Surveys

In accordance with Department of Justice Order 2810.1 dated June 13, 1980, as incorporated in the United States Attorneys' Manual, Section 1-5.700, the Executive Office for United States Attorneys coordinates all surveys and questionnaires directed to individual United States Attorneys' offices. The order sets forth the procedures for the conduct of such surveys and provides that, among other things, all requests for surveys be directed to the Director of the Executive Office for United States Attorneys for coordination and approval. A copy of this order is included as an appendix to this issue of the United States Attorneys' Bulletin.

(Executive Office)

Foreign Travel Requests

More foreign travel requests are anticipated as a result of the instruction offered at the Offshore Jurisdiction Seminar held in Washington, D.C., from January 18-20. Among other

subjects, the conference provided information on how to get bank records out of Switzerland and other countries, what countries will permit, or not permit, Assistant United States Attorneys to interview witnesses, and how to authenticate public and business records received from outside the United States.

In the event that travel to a foreign country should become necessary, please keep in mind that the Executive Office requires two weeks notice for all foreign travel requests. See USAM 10-3.540. A recent surge of foreign travel requests, and in particular, urgent, last minute requests, has severely taxed the capacity of the Executive Office to attend to these requests properly. Therefore, a new procedure requiring the United States Attorney's personal intervention has been instituted for foreign travel requests for which insufficient advance notification is provided. This procedure is contained in a teletype message to United States Attorneys from the Assistant Director for Administrative Services dated February 9, 1983. A copy should be available from the administrative officer in each office. Questions concerning foreign travel should be directed to Ms. Gerri Rodkey of the Executive Office (FTS 633-3348).

(Executive Office)

On-Site Reviews

The Equal Employment Opportunity Commission (EEOC) is scheduled to begin on-site reviews of the Office of the United States Attorneys' Equal Opportunity Programs.

If your office is contacted by EEOC regarding on-site reviews, or for any reason, the Equal Employment Opportunity Office of the Executive Office for United States Attorneys is to be notified immediately. The person to contact is Frances H. Cuffie, Equal Employment Opportunity Officer, Executive Office for United States Attorneys (FTS 673-6333).

(Executive Office)

Changing Federal Civil Postjudgment Interest Rates Under 28 U.S.C. §1961

The Cumulative List Of Changing Federal Civil Postjudgment Interest Rates is attached as an appendix to this issue of the United States Attorneys' Bulletin.

(Executive Office)

OFFICE OF THE SOLICITOR GENERAL
Solicitor General Rex E. Lee

The Solicitor General has authorized the filing of:

A brief amicus curiae on or before April 8, 1983, with the Supreme Court in Trans World Airlines, Inc. v. Franklin Mint Corporation, Nos. 82-1186 and 82-1465. The issue is whether recent international monetary developments and the repeal in 1978 of the Par Value Modification Act render unenforceable in the United States courts the limitations on carrier liability, stated in terms of quantities of gold, prescribed by Article 22 of the 1929 Warsaw Convention on international air transportation.

A petition for a writ of certiorari on or before April 29, 1983, with the Supreme Court in Freeman Ringer v. Heckler. The issue is whether 42 U.S.C. 405(h) bars Federal question jurisdiction to entertain "procedural" challenges under the Social Security Act. The Government contends that it does.

A petition for a writ of certiorari on or before May 3, 1983, with the Supreme Court in United States v. Leon. The issue is whether the exclusionary rule should be modified so as not to require the suppression of evidence seized in reasonable, good-faith reliance on a search warrant that is later held to be defective.

A brief amicus curiae on or before May 12, 1983, with the Supreme Court in Helicopteros Nacionales de Colombia, S.A. v. Elizabeth Hall. The issue is whether the Texas Supreme Court erred in determining that a South American company had sufficient contacts with the State of Texas to make it amenable to suit in Texas. The United States believes that the contacts were not sufficient.

A petition for a writ of certiorari on or before May 23, 1983, in United States v. Litonjua. The issue is the same as that presented in Mendoza v. United States, 672 F.2d 1320 (9th Cir. 1982), cert. granted, No. 82-849 (Jan. 24, 1983).

A petition for a writ of certiorari on or before May 27, 1983, with the Supreme Court in Washington Post v. Department of State. The issue is whether documents pertaining to a special State Department fund are exempt from disclosure under the Freedom of Information Act.

A petition for a writ of certiorari on or before May 30, 1983, with the Supreme Court in Northern Plains Resource Council v. EPA. The issue is the same as that presented in Administrator, EPA v. Sierra Club, No. 82-242 (cert. granted Oct. 18, 1983).

A petition for a writ of certiorari on or before June 5, 1983, with the Supreme Court in NLRB v. New York University Medical Center. The issue is the same as that presented in NLRB v. Transporation Management Corp., No. 82-168 (argued March 28, 1983).

A brief amicus curiae on or before June 8, 1983, in support of the respondent in Consolidated Rail Corporation v. Darrone, No. 82-862. The issue is whether Section 504 of the Rehabilitation Act prohibits employment discrimination only where the primary purpose of Federal financial assistance is to provide employment.

The Solicitor General has filed a brief amicus curiae supporting reversal in Hishon v. King & Spaulding, No. 82-940. The issue is whether a law firm organized as a partnership violates Title VII if one of the associates in its employ is denied on account of her sex an equal opportunity for admission to the partnership.

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Steiner v. United States, Bky. No. 281-02796-D, Adv. No. 282-1214-D-7 (Bankr. E.D. Ca. 1983)

STUDENT LOAN PAYMENTS

In Steiner v. United States (Order, January 25, 1983), the United States Bankruptcy Court for the Eastern District of California, adopting the analysis in In re Johnson, 17 B. R. 95 (Bankr. W.D. Mo. 1981), held that student loan payments accruing during the five years prior to bankruptcy are nondischargeable. Under §523(a)(8), only payments which became due and owing over five years before the filing of the bankruptcy petition are discharged. The court rejected the analysis of In re Brown, 4 B. R. 745 (Bankr. E.D. Va. 1980), which held that a student loan is discharged in its entirety if the first installment became due prior to five years before bankruptcy.

Attorney: Assistant United States Attorney
Joseph F. DePietro (E.D. Ca.)
FTS (440-2331)

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

United States Postal Service Board of Governors v. Aikens, ____ U.S. ____, No. 81-1044 (April 4, 1983). D.J. # 35-16-939.

TITLE VII: SUPREME COURT VACATES ADVERSE TITLE VII JUDGMENT AND HOLDS THAT WHEN DEFENDANT RESPONDS TO PLAINTIFF'S PROOF BY OFFERING EVIDENCE OF THE REASONS FOR PLAINTIFF'S REJECTION, THE COURT MUST DECIDE THE ULTIMATE FACTUAL ISSUE OF INTENTIONAL DISCRIMINATION.

After a two-day trial in this employment discrimination case, the district court entered judgment for the Government. The court held that plaintiff failed to establish a prima facie case because the evidence showed there was a considerable increase in the number of blacks holding high positions in the Postal Service and that blacks as well as whites were promoted over plaintiff. Moreover, the court found that plaintiff introduced no evidence of specific acts of discrimination against him and produced no credible evidence that he was equally or more qualified than others who were promoted during the relevant period.

The court of appeals reversed, holding that plaintiff could make out a prima facie case merely by showing that he was black, that he had applied for a promotion for which he was minimally qualified, and that the Postal Service selected another, non-minority, applicant. The Government petitioned for certiorari, arguing that a prima facie case had not been established.

In a unanimous decision, the Supreme Court has just vacated the decision of the D.C. Circuit. Because the case had gone to trial and the Government had fully responded to plaintiff's proof by offering evidence regarding the reasons for the employment decision, the Supreme Court held that the question of whether plaintiff initially made out a prima facie case dropped from the case (along with any attendant presumptions). The only issue thus remaining was whether the defendant intentionally discriminated against the plaintiff. On that issue, the Court stated, the plaintiff bears the burden of persuasion.

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Assistant Attorney General J. Paul McGrath

Accordingly, the Court remanded the case to the district court to decide, on the basis of all the evidence before it, whether the Postal Service had discriminated against plaintiff.

Attorneys: Robert Greenspan (Civil Division)
FTS (633-5428)

Marleigh Dover (Civil Division)
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Itek Corp. v. First National Bank of Boston, ___ F.2d ____, Nos. 82-1631, 1632, 1633 (1st.Cir. March 29, 1983).
D.J. # 145-0-1215.

TREASURY REGULATIONS: FIRST CIRCUIT SUSTAINS TREASURY'S AUTHORITY TO CONTINUE TO REGULATE IRANIAN ASSETS IN CONNECTION WITH ONGOING PROCEEDINGS BEFORE THE IRAN-UNITED STATES CLAIMS TRIBUNAL.

After Iran released the hostages, the United States, pursuant to its international undertaking, suspended litigation of claims against Iran in this country, so that such claims could be presented to the Iran-United States Claims Tribunal. Exempted from that suspension were claims by U.S. nationals seeking to prevent payment of standby letters of credit (SLC's) to Iran. Iran objected to this exception and filed an interpretive dispute before the Tribunal seeking damages against the United States in an amount equal to the total of all unpaid SLC's in its favor.

After Itek had obtained a permanent injunction against the payment of three SLC's, the Treasury Department, in order to allow resolution of the SLC dispute through either the Tribunal or negotiations with Iran, adopted a regulation prohibiting the final extinguishment of Iran's interest in SLC's. The district court on a motion for reconsideration held the regulation did not apply to Itek's judgment, and when Itek pursued that argument in the court of appeals, Treasury amended the regulation to provide specifically that it was applicable to all judgments that had not become final through the exhaustion of the appellate process.

The First Circuit has just accepted all our arguments in support of the SLC regulation. Specifically, the court held: (1) that Iranian SLC's were properly regulated under the International Emergency Economic Powers Act (IEEPA); (2) that the

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IEEPA powers were properly utilized in conjunction with ongoing negotiations with Iran and proceedings before the Tribunal; (3) that the SLC regulation applied to Itek's judgment pending on appeal; and (4) that the SLC regulation did not unconstitutionally interfere with the jurisdiction of Federal courts. The decision should be helpful in maintaining executive control over Iranian assets throughout the course of protracted arbitration proceedings.

Attorney: Michael F. Hertz (Civil Division)
FTS (633-3180)

Battles Farm Co. v. Pierce, _____ F.2d _____, Nos. 76-1641, 76-1642 (D.C. Cir. April 1, 1983). D.J. # 145-17-1145.

HUD REGULATIONS: D.C. CIRCUIT HOLDS THAT LOW-INCOME HOUSING PROJECT OWNERS WERE NOT ENTITLED TO LONG-TERM CONTRACTS UNDER HUD'S NOW-DEFUNCT OPERATING SUBSIDY PROGRAM.

Section 236 of the National Housing Act, 12 U.S.C. 1715z-1, was designed to encourage development of rental and cooperative housing for lower income families. The 1974 amendments to the statute authorized, inter alia, establishment of an "operating subsidy" program, which provided a subsidy to qualifying housing projects to defray rental increases arising out of higher utility costs and local property taxes, within limits prescribed by the statute.

The operating subsidy program generated a great deal of litigation on the issue of whether HUD was required to make operating subsidy payments, or whether the Secretary had discretion not to implement the program. The Secretary took the position that the operating subsidy program was not mandatory and that HUD had discretion to use its limited resources to implement the other section 236 programs to the exclusion of the operating subsidy program. The courts uniformly rejected this position.

The Battles Farm case was brought in March, 1976 by project owners who sought to compel the Secretary to make operating subsidy payments. The owners sought subsidies retroactive to February 18, 1975, the date on which the operating subsidy program was supposed to be in place. The district court directed the Secretary to make operating subsidy payments to the plaintiffs from February 18, 1975, onward. The Secretary appealed this decision. The district court refused to order the Secretary to enter into long-term operating subsidy contracts, however, and

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rejected the plaintiffs' contention that they were entitled to subsidies retroactive to February, 1975. The plaintiffs cross-appealed, and pursuant to stipulation, the Secretary agreed to make operating subsidies prospectively during the pendency of the appeal.

This litigation remained in abeyance until February, 1982, when the court requested a status report from the parties. The plaintiffs contended that they remained entitled to long-term operating subsidy contracts and to retroactive subsidies for the period February 1975 through May 1976. We disagreed and moved for supplemental briefing on the effect of post-1976 developments and changes in the law on this case. (In 1977, Congress had restructured the program, and in 1978 eliminated it.) The court granted our motion.

In our supplemental briefs, we argued that Congress had left the question of how to implement the operating subsidy program--as opposed to the question of whether to implement the program at all--to the Secretary's discretion, and that the Secretary acted reasonably in not entering into long-term operating subsidy contracts. We also contended that the plaintiffs were no longer entitled to retroactive subsidies, since retroactive payments had been made directly to their tenants pursuant to settlement of the nationwide class action brought by the tenants in 1982.

The D.C. Circuit has now upheld the Secretary's refusal to enter into long-term operating subsidy contracts, agreeing fully with our reasoning. The court stated that "the Housing Act leaves the implementation of the subsidy program to [the Secretary's] discretion," and added that "the Secretary correctly notes that no court has ever adopted the interpretation of the Housing Act advanced by Battles Farm." The court did hold, however, that the plaintiffs were entitled to retroactive subsidies based on the rents they would have charged had the Secretary implemented the program in February 1975, and remanded the case to the district court for computation of the retroactive award.

Since the plaintiffs estimated their long-term contract claim to be worth $6.2 million, while they placed a value of only $120,000 on their retroactive subsidy claim, the D.C. Circuit's decision represents a substantial victory for the Secretary.

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John S. Koppel (Civil Division)
FTS (633-5684)

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

White Motor Corporation v. Citibank, N.A., _____ F.2d ____, No. 82-3638 (6th Cir. April 1, 1983). D.J. # 77-1200.

BANKRUPTCY JURISDICTION: SIXTH CIRCUIT FOLLOWS FIFTH CIRCUIT IN HOLDING THAT THERE IS BANKRUPTCY JURISDICTION IN THE DISTRICT COURTS AFTER MARATHON PIPE LINE CO., AND THAT THE EMERGENCY RULES FOR LIMITED REFERRALS TO BANKRUPTCY COURTS ARE CONSTITUTIONAL.

We have recently filed Statements of Interest in various courts in support of the Department's position that there is continued bankruptcy jurisdiction in the district courts in the aftermath of the Supreme Court's decision in Northern Pipeline Construction Co. v. Marathon Pipe Line Co., 102 S.Ct. 2858 (1982) (invalidating the delegation of Article III judicial power to bankruptcy courts contained in section 241(a) of the 1978 Bankruptcy Reform Act), and that the emergency rules governing bankruptcy procedures adopted by the district courts, at the direction of the Judicial Councils of the Circuits, are constitutional. The lower courts have been sharply divided on the issue. On February 28, 1983, the Fifth Circuit became the first court of appeals to rule on the issue, holding in a brief per curiam opinion in In Re Braniff Airways, Inc., No. 83-1048, that bankruptcy jurisdiction remains in the district courts under 28 U.S.C. 1471(a) and (b), enacted by the 1978 Bankruptcy Reform Act, or alternatively, under 28 U.S.C. 1334, until April 1, 1984. The court affirmed without opinion the district court's holding that the emergency rules providing for a limited transfer of the district courts' jurisdiction to bankruptcy courts were valid.

The Sixth Circuit in this case in a well-articulated decision agrees with the Fifth Circuit. The court concluded that the district courts may adjudicate bankruptcy proceedings under sections 1471(a) and (b) and 1334, and that the emergency rules do not violate the Constitution, as did the provision of the 1978 Act struck down in Marathon, because the district courts retain primary jurisdiction over all bankruptcy proceedings and the bankruptcy courts have only derivative jurisdiction. Additionally, the court decided a retroactivity issue not presented in Braniff, holding that the cases filed before the stay in Marathon expired should be adjudicated under the interim

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

rules rather than under the jurisdictional grant to the bankruptcy courts contained in 28 U.S.C. 1471(c) which was invalidated in Marathon.

We have recently filed a Statement of Interest in the Second Circuit in In re Keene Corporation, No. 83-3013, involving the Johns-Manville bankruptcy proceedings. In addition, the Eighth Circuit in In re Orville Hansen, No. 83-1158 (March 27, 1983), has followed the Fifth Circuit in Braniff. Finally, in the Braniff case American Airlines has filed a petition for certiorari in the Supreme Court.

Attorneys: Michael F. Hertz (Civil Division)
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Eloise E. Davies (Civil Division)
FTS (633-3425)

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

United States v. General Electronics, Inc., No. 82-1509 (D. New Jersey Feb. 18, 1983). D.J. # 77-48-1824.

GOVERNMENT CONTRACTS --LIMITATIONS: ONE-YEAR SUIT PERIOD UNDER 28 U.S.C. §2415(a) HELD TO COMMENCE ONLY WHEN ALL PRELIMINARY PROCEEDINGS (INCLUDING JUDICIAL APPEAL FROM ASBCA DECISION) HAVE BEEN COMPLETED.

This action to enforce liability under a faithful performance quaranty of a Government procurement contract was filed in May 1982, within one year after a Court of Claims ruling which upheld a 1977 ASBCA excess costs determination against the contractor. The corporate quarantor contended that claim against it was barred by then, because the alternative one-year limitations period in 28 U.S.C. §2415(a) (which commences "after final decisions have been rendered in applicable administrative proceedings") should be tolled only by ASBCA proceedings and not during any subsequent appeal to a court. Support for the quarantor's position is found in United States v. Dawkins, 629 F.2d 972 (4th Cir. 1980).

However, in his detailed opinion, now reported (556 F. Supp. 801), Judge Debevoise specifically declined to follow Dawkins and held that the statutory one-year period commenced in this case only when the Court of Claims finally ruled. The quarantor has appealed to the Third Circuit.

Attorneys: C. William Lengacher (Civil Division)
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David V. Seaman (Civil Division)
FTS (724-7296)

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Federal Rules of Evidence

Rule 804(b)(5). Hearsay Exceptions; Declarant unavailable. Other exceptions.

Defendant's girlfriend was granted immunity and gave inculpatory testimony against him before the grand jury. She and defendant were later married, and at his trial she exercised her spousal privilege not to testify against him. The prosecution was permitted to introduce the wife's previous grand jury testimony under Rule 804(b)(5), the "residual exception" to the hearsay rule. Defendant appealed.

The court of appeals noted the while there is general agreement among the circuits that grand jury testimony may be admissible under 804(a)(5), differences exist as to what constitutes "equivalent circumstantial guarantees of trustworthiness" within the meaning of the Rule. The court therefore established criteria for such testimony to be admissible: the witness must first be unavailable; the court must satisfy itself of the trustworthiness of the testimony by looking at the witness' motivation for testifying, the extent of his personal knowledge, and the existence of corroborating evidence; and the court must examine the reasons for the witness' unavailability and consider defendant's role in causing it. Finally, the subject matter of the testimony should be considered, with direct evidence of defendant's guilt requiring a heavier weighing of the above factors than evidence relating to a collateral matter. The court held that the wife's grand jury testimony met the requirements of the Rule as established above, and was properly admissible.

(Affirmed.)

United States v. Jeffrey A. Barlow, 693 F.2d 954 (6th Cir. Nov. 24, 1982).

U.S. ATTORNEYS' LIST EFFECTIVE May 27, 1983

UNITED STATES ATTORNEYS

DISTRICT	U.S. ATTORNEY
Alabama, N	Frank W. Donaldson
Alabama, M	John C. Bell
Alabama, S	J. B. Sessions, III
Alaska	Michael R. Spaan
Arizona	A. Melvin McDonald
Arkansas, E	George W. Proctor
Arkansas, W	W. Asa Hutchinson
California, N	Joseph P. Russoniello
California, E	Donald B. Ayer
California, C	Stephen S. Trott
California, S	Peter K. Nunez
Colorado	Robert N. Miller
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Delaware	Joseph J. Farnan, Jr.
District of Columbia	Stanley S. Harris
Florida, N	W. Thomas Dillard
Florida, M	Robert W. Merkle, Jr.
Florida, S	Stanley Marcus
Georgia, N	Larry D. Thompson
Georgia, M	Joe D. Whitley
Georgia, S	Hinton R. Pierce
Guam	David T. Wood
Hawaii	Daniel A. Bent
Idaho	Guy G. Hurlbutt
Illinois, N	Dan K. Webb
Illinois, S	Frederick J. Hess
Illinois, C	Gerald D. Fines
Indiana, N	R. Lawrence Steele, Jr.
Indiana, S	Sarah Evans Barker
Iowa, N	Evan L. Hultman
Iowa, S	Richard C. Turner
Kansas	Jim J. Marquez
Kentucky, E	Louis G. DeFalaise
Kentucky, W	Ronald E. Meredith
Louisiana, E	John Volz
Louisiana, M	Stanford O. Bardwell, Jr.
Louisiana, W	Joseph S. Cage, Jr.
Maine	Richard S. Cohen
Maryland	J. Frederick Motz
Massachusetts	William F. Weld
Michigan, E	Leonard R. Gilman
Michigan, W	John A. Smietanka
Minnesota	James M. Rosenbaum
Mississippi, N	Glen H. Davidson
Mississippi, S	George L. Phillips
Missouri, E	Thomas E. Dittmeier
Missouri, W	Robert G. Ulrich

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North Mariana Islands	David T. Wood

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

March 11, 1983

MEMORANDUM

TO: Heads of Offices, Boards, Divisions and Bureaus

FROM: William French Smith WFS
Attorney General

SUBJECT: Presidential Directive on Safeguarding National Security Information

The President has issued a directive to strengthen our efforts to safeguard national security information from unlawful disclosure. This directive, a copy of which is attached, is based upon the recommendations of an interdepartmental group chaired by the Department of Justice. I fully support the President's policy and expect that it will be faithfully implemented throughout the Department.

This directive does not alter the existing obligation of Department personnel to comply with statutes and regulations pertaining to national security information. We must be careful to avoid the unnecessary or improper use of classification. Whenever possible, information should be kept unclassified or declassified so as to permit public access. However, information that is properly classified in the interest of national security must be protected from unauthorized disclosure.

Many of the specific requirements of the directive involve no change from current Department of Justice policy.

-- The use of nondisclosure agreements and the requirement of prepublication review in appropriate cases are consistent with current policies. More detailed guidance on these policies will be provided in the near future.

-- The directive requires no change in existing Department policies on use of the polygraph, with regard to attorneys or FBI employees. Policies with regard to employees in the competitive service will be changed to conform with expected revisions in OPM regulations on this subject.

-- Internal investigations of unauthorized disclosures will continue to be coordinated by the Office of Professional Responsibility, with assistance from the FBI as needed.

To the extent implementation of the President's directive requires changes in Department of Justice policies and procedures, you will be kept fully informed.

Safeguarding National Security Information

As stated in Executive Order 12356, only that information whose disclosure would harm the national security interests of the United States may be classified. Every effort should be made to declassify information that no longer requires protection in the interest of national security.

At the same time, however, safeguarding against unlawful disclosures of properly classified information is a matter of grave concern and high priority for this Administration. In addition to the requirements set forth in Executive Order 12356, and based on the recommendations contained in the interdepartmental report forwarded by the Attorney General, I direct the following:

1. Each agency of the Executive Branch that originates or handles classified information shall adopt internal procedures to safeguard against unlawful disclosures of classified information. Such procedures shall at a minimum provide as follows:

a. All persons with authorized access to classified information shall be required to sign a nondisclosure agreement as a condition of access. This requirement may be implemented prospectively by agencies for which the administrative burden of compliance would otherwise be excessive.

b. All persons with authorized access to Sensitive Compartmented Information (SCI) shall be required to sign a nondisclosure agreement as a condition of access to SCI and other classified information. All such agreements must include a provision for prepublication review to assure deletion of SCI and other classified information.

c. All agreements required in paragraphs 1.a. and 1.b. must be in a form determined by the Department of Justice to be enforceable in a civil action brought by the United States. The Director, Information Security Oversight Office (ISOO), shall develop standardized forms that satisfy these requirements.

d. Appropriate policies shall be adopted to govern contacts between media representatives and agency personnel, so as to reduce the opportunity for negligent or deliberate disclosures of classified information. All persons with authorized access to classified information shall be clearly apprised of the agency's policies in this regard.

2. Each agency of the Executive branch that originates or handles classified information shall adopt internal procedures to govern the reporting and investigation of unauthorized disclosures of such information. Such procedures shall at a minimum provide that:

a. All such disclosures that the agency considers to be seriously damaging to its mission and responsibilities shall be evaluated to ascertain the nature of the information disclosed and the extent to which it had been disseminated.

b. The agency shall conduct a preliminary internal investigation prior to or concurrently with seeking investigative assistance from other agencies.

c. The agency shall maintain records of disclosures so evaluated and investigated.

d. Agencies in the possession of classified information originating with another agency shall cooperate with the originating agency by conducting internal investigations of the unauthorized disclosure of such information.

e. Persons determined by the agency to have knowingly made such disclosures or to have refused cooperation with investigations of such unauthorized disclosures will be denied further access to classified information and subjected to other administrative sanctions as appropriate.

3. Unauthorized disclosures of classified information shall be reported to the Department of Justice and the Information Security Oversight Office, as required by statute and Executive orders. The Department of Justice shall continue to review reported unauthorized disclosures of classified information to determine whether FBI investigation is warranted. Interested departments and agencies shall be consulted in developing criteria for evaluating such matters and in determining which cases should receive investigative priority. The FBI is authorized to investigate such matters as constitute potential violations of federal criminal law, even though administrative sanctions may be sought instead of criminal prosecution.

4. Nothing in this directive is intended to modify or preclude interagency agreements between FBI and other criminal investigative agencies regarding their responsibility for conducting investigations within their own agencies or departments.

5. The Office of Personnel Management and all departments and agencies with employees having access to classified information are directed to revise existing regulations and policies, as necessary, so that employees may be required to submit to polygraph examinations, when appropriate, in the course of investigations of unauthorized disclosures of classified information. As a minimum, such regulations shall permit an agency to decide that appropriate

adverse consequences will follow an employee's refusal to cooperate with a polygraph examination that is limited in scope to the circumstances of the unauthorized disclosure under investigation. Agency regulations may provide that only the head of the agency, or his delegate, is empowered to order an employee to submit to a polygraph examination. Results of polygraph examinations should not be relied upon to the exclusion of other information obtained during investigations.

6. The Attorney General, in consultation with the Director, Office of Personnel Management, is requested to establish an interdepartmental group to study the federal personnel security program and recommend appropriate revisions in existing Executive orders, regulations, and guidelines.

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

March 22, 1983

MEMORANDUM

TO: Heads of Offices, Boards, Divisions and Bureaus

FROM: William French Smith
Attorney General

SUBJECT: NSDD-84

This memorandum assigns responsibility for implementing the National Security Decision Directive on Safeguarding National Security Information (NSDD-84), within the Department of Justice. You were provided a copy of the text of this NSDD with my memorandum of March 11, 1983, on this subject.

1. The Office of Intelligence Policy and Review (OIPR), in consultation with appropriate components of the Department, will coordinate the development of policies and procedures to implement the requirements of the NSDD that pertain to the Department as an agency that originates or handles classified information. In particular:

a. The Security Programs Staff will ensure that non-disclosure agreements are executed in conformity with NSDD paragraphs 1.a. & b.

b. The Office of Public Affairs will be consulted in developing policies on media contacts as required by NSDD paragraph 1.d.

c. The Office of Professional Responsibility will review and modify internal procedures, as necessary, to ensure compliance with NSDD paragraphs 2 and 5.

d. The directors of FBI, DEA and INS will be consulted regarding implementation of these requirements within their components.

2. The Criminal Division will supervise the implementation of NSDD paragraph 3, in consultation with FBI and OIPR. The Civil Division will be consulted when circumstances indicate that consideration should be given to enforcement of nondisclosure obligations through civil litigation.

3. OIPR will recommend to me a plan for implementing NSDD paragraph 6.

4. OIPR will coordinate the provision of advice to other departments and agencies regarding their implementation of the NSDD.

U.S. Department of Justice

Criminal Division

VOL. 31 APRIL 29, 1983 NO. 8 291

Assistant Attorney General Washington, D.C. 20530

MARCH 16, 1983

Honorable John V. Singleton, Jr.
Chief Judge
United States District Court for
the Southern District of Texas
Room 11144
United States Courthouse
515 Rusk
Houston, Texas 77002-2696

Dear Judge Singleton:

William P. Tyson, the Director of the Executive Office for United States Attorneys, has related to me your concerns about the Department of Justice's policy to seek orders requiring telephone companies to provide technical assistance in the installation and operation of pen registers only from United States District judges.

Several months ago, the American Telephone and Telegraph Company informed the Department of Justice that, in its opinion, United States Magistrates do not have authority to issue these ancillary technical assistance orders. Our research revealed that while magistrates clearly have authority under Rule 41(b) of the Federal Rules of Criminal Procedure to authorize the installation of pen registers, there is no rule, statute, or reported decision, that grants magistrates the authority to execute orders directing the telephone company to assist the government in such installation. As United States v. New York Telephone Company, 434 U.S. 159 (1977) makes clear, the District Courts have inherent power under the All Writs Act, 28 U.S.C. §1651, to issue technical assistance orders. While the All Writs Act confers authority upon the Supreme Court and courts established by Act of Congress, it apparently grants no similar power to United States Magistrates. Thus, while we believe that the issuance of a technical assistance order is a ministerial duty capable of performance by a magistrate, we can find no specific grant of authority enabling the magistrates to issue these orders. Accordingly, we have concluded that absent

CC: William P. Tyson, Director
Executive Office for United States Attorneys

some clear and affirmative authority in statute, Federal Rule, or case law, it would be more prudent to instruct United States Attorneys to have all pen register orders directed to telephone companies issued by United States District Court judges.

We agree that it is the role of the courts to determine the scope of the authority of United States Magistrates. A local District Court rule delegating to the magistrates power to consider all pen register applications and direct telephone company technical assistance would, therefore, clearly provide the requisite authority. The United States District Courts for the District of Maryland and the Western District of Missouri have adopted such local rules, copies of which are enclosed for your reference. AT&T has agreed to honor technical assistance orders issued by magistrates in districts with this type of court rule. We hope that you will consider the issuance of a similar rule in your district as an acceptable solution to the problem. If your district should decide to issue such a local rule, we would recommend including trap and trace orders, as was done by the court in the Western District of Missouri, to avoid similar problems in directing assistance in the installation of traps and traces.

Thank you for bringing your concerns to our attention. If I can be of any further assistance, please do not hesitate to let me know.

Very truly yours,

D. Lowell Jensen
Assistant Attorney General
Criminal Division

Enclosures

ORDER AMENDING RULE 22(K)(19) OF THE LOCAL COURT RULES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

For good cause appearing, the United States District Court en banc for the Western District of Missouri, does unanimously

ORDER that Rule 22(K)(19) of the Local Court Rules of the United States District Court for the Western District of Missouri, previously adopted effective January 1, 1983, be amended this 15th day of February, 1983, to be effective February 15, 1983, to read as follows:

> "Issue orders authorizing the installation and use of devices, such as traps and traces, which are used to determine from which telephone number a telephone call originated, and pen registers, which are used to register telephone numbers dialed or pulsed from a particular telephone; and issue orders directing a communications common carrier, as that term is defined in Section 153(h), Title 47, United States Code, including a telephone company, to provide assistance to a named federal investigative agency in accomplishing the installation of traps, traces, and pen registers."

RUSSELL G. CLARK
Chief Judge

JOSEPH E. STEVENS, JR.
District Judge

SCOTT O. WRIGHT
District Judge

D. BROOK BARTLETT
District Judge

HOWARD F. SACHS
District Judge

ROSS T. ROBERTS
District Judge

Rule 48. Objection to Arrest or Attachment.

Where property is arrested or attached, any person claiming an interest in the property arrested or attached may, upon a showing of any improper practice or a manifest want of equity on the part of the plaintiff, be entitled to an order requiring the plaintiff to show cause forthwith why the arrest or attachment should not be vacated or other relief granted consistent with these rules. This rule shall have no application to suits for seamen's wages when process is issued upon a certificate of sufficient cause filed pursuant to Sections 4546 and 4547 of the Revised Statutes (Title 46, US Code, Sections 603 and 604). [Adopted, 3-1-79.]

MISCELLANEOUS

Rule 70. Forfeiture of Collateral. [Omitted]

Rule 80. Authority of United States Magistrates.

1. All magistrates have jurisdiction to try, hear and determine cases within their original and referred jurisdiction throughout the entire District of Maryland.

The criminal jurisdiction of the magistrates for the District of Maryland is allotted, for convenience of administration, as follows:

a. The magistrates in Baltimore will have primary duties in Baltimore City, and Baltimore, Caroline, Carroll, Cecil, Dorchester, Harford, Howard, Kent, Montgomery, Queen Anne's and Talbot Counties. They will also have primary responsibility at Fort George G. Meade and the National Security Agency.

b. The magistrate in Hagerstown will have primary duties in Allegany, Garrett, Washington and Frederick Counties and will also have jurisdiction over that area of Fort Ritchie which extends into the Middle District of Pennsylvania.

c. The magistrate in Hyattsville will have primary duties in Prince George's, Anne Arundel, Charles, Calvert and St. Mary's Counties.

d. The magistrate in Salisbury will have primary responsibility for Assateague National Park (including so much thereof as is situate in the Eastern District of Virginia), and Somerset, Wicomico and Worcester Counties.

2. All magistrates are specially designated to try persons accused of, and sentence persons convicted of, all misdemeanors, as defined by 18 USC §1, and are authorized to conduct all proceedings and enter appropriate Orders and Judgments in such cases, to exercise all powers heretofore held by United States Commissioners, and to exercise all other powers authorized by 28 USC §636(a). A full-time magistrate may conduct a jury trial in any misdemeanor case when the defendant so requests and is entitled to trial by jury under the Constitution and laws of the United States. In any trial by jury, the proceedings shall be recorded by a court reporter.

3. a. *Cases under 28 USC §§2254 and 2255.* A magistrate may be designated by a District Judge to perform any and all duties imposed upon the District Judge by the Rules Governing cases under 28 USC §§2254 and 2255, to the full extent permitted by Rule 10 thereof.

b. *Cases under 42 USC §1983.* A magistrate may be designated by a District Judge to conduct hearings, including evidentiary hearings, and to submit to the District Judge proposed findings of fact and recommendations for disposition of prisoner petitions challenging conditions of confinement, subject to review as provided in Local Rule 82.

c. *Civil and Criminal Actions in General.* Pursuant to 28 USC §636(b), upon designation by a District Judge, a magistrate is empowered to perform the following:

(1) Hear and determine (including the passage of final orders as to all or any part of) any pretrial matter pending before the court, subject only to review as provided in Rule 82, except:

(a) a motion for injunctive relief;

(b) a motion for judgment on the pleadings;

(c) a motion for summary judgment;

(d) a motion to dismiss or quash an indictment or information made by the defendant;

(e) a motion to suppress evidence in a criminal case;

(f) a motion to dismiss or permit maintenance of a class action;

(g) a motion to dismiss for failure to state a claim upon which relief can be granted; and

(h) a motion to involuntarily dismiss an action.

(2) A District Judge may designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to the District Judge proposed findings of fact and recommendations for action to be taken by the District Judge as to any motion excepted in subdivision (1) above, subject to review as provided in Local Rule 82. In any case referred to a magistrate pursuant to this subparagraph, the proceedings shall be recorded by a court reporter.

d. *Designation as Special Master.* A magistrate may be designated by a District Judge to serve as a special master pursuant to and in accordance with Rule 53, Federal Rules of Civil Procedure, and the applicable provisions of Title 28, USC. With consent of the parties, such designation may be made notwithstanding the limitations of subsection (b) of Rule 53. Appeals from the decision of a magistrate designated as a special master pursuant to this rule shall be taken in accordance with Rule 53, Federal Rules of Civil Procedure.

e. *Additional Duties.* A magistrate may be designated by a District Judge to perform such additional duties as are not inconsistent with the Constitution and laws of the United States.

4. All United States Magistrates are authorized to pass the following orders and perform the following functions:

a. Orders allowing criminal defendants on bail or recognizance to leave the District of Maryland where the United States Attorney and the surety, if any, consent to the entry of such order.

b. All orders in mortgage foreclosures prior to ratification of sale.

c. Conduct all proceedings pursuant to Rule 40 of the Federal Rules of Criminal Procedure and issue any Order in connection therewith.

d. Establish and maintain in an index prisoner habeas corpus petitions and civil rights cases, and process such cases upon referral by the District Judge.

e. Hear and accept dismissals of complaints, criminal informations, and indictments in criminal cases.

f. When requested by a District Judge, handle arraignments of not guilty pleas, schedule motions, schedule pretrial conferences, and schedule trials in criminal cases. In the event a defendant does not appear for arraignment before the magistrate, he may direct the Clerk to issue a bench warrant for the defendant's arrest.

g. [Deleted]

h. When requested by a District Judge, assist in the conduct of pretrial or discovery matters in civil and criminal cases.

i. Under appropriate conditions and when an order is required, to order line-ups, photographs, fingerprinting, palm-printing, voice identification, mental or physical examination, the taking of blood, urine, fingernail, hair and bodily secretion sampling (with appropriate medical safeguards required by due process considerations), and handwriting exemplars.

j. Order and conduct supplementary proceedings in accordance with Maryland Rule of Procedure 628, a, b, c, and e, upon the filing of an appropriate affidavit.

k. Issue writs of habeas corpus ad testificandum and ad prosequendum.

l. Receive grand jury returns.

m. Conduct preliminary hearings in probation revocation proceedings.

n. Issue show cause orders to enforce administrative summons or subpoenas.

o. Review default and confessed judgments.

p. Order the forfeiture or exoneration of bond in criminal cases.

q. Make special appointments to serve process pursuant to Rule 4(c), Fed R Civ P.

r. When requested by a District Judge in actions filed under 42 USC §405(g), review administrative determinations regarding entitlement to benefits under the Social Security Act and related statutes, notice and conduct such legal arguments as may be appropriate and prepare a proposed written order or decision, together with any proposed conclusions of law, for consideration by the District Judge. The parties may seek review thereof as provided in Local Rule 82.

s. Conduct extradition proceedings pursuant to 18 USC §3184.

t. Accept waivers of indictment pursuant to Rule 7(b), Fed R Crim P.

u. Utilize the services of the Probation Office for preparation of presentence investigations and other reports and recommendations.

v. Issue warrants or enter orders permitting entry into and inspection of premises, and/or seizure of property, in non-criminal proceedings, as authorized by law, when properly requested by the Internal Revenue Service (as, for example, in making levy pursuant to Sec 6331, IRC (1954)) or by other government agencies.

w. Organize petit and grand juries, and when requested by the Court, receive jury verdicts.

x. Consider and grant or deny motions of litigants to proceed in forma pauperis, with appeal to a District Judge.

y. Execute exemplifications of court records for use in the United States.

z. Conduct naturalization ceremonies.

aa. When requested by the District Judge, admit attorneys to the Bar of this Court.

ab. In accordance with 28 USC Section 636, a magistrate may upon reference by a District Judge, hear and conduct such evidentiary proceedings as are deemed necessary or appropriate by the magistrate and submit to the referring District Judge proposed findings of fact and recommendations with respect to the disposition of a petition to enforce compliance with a summons issued by the Internal Revenue Service.

ac. Any magistrate sitting in Baltimore is authorized to conduct proceedings for initial commitment of narcotics addicts under Title III of the Narcotics Addicts Rehabilitation Act. The magistrate, after conducting such proceedings, shall recommend to the District Court the commitment of the addict or shall state his reasons for recommending against commitment. In a case where

the magistrate recommends against commitment, the addict shall have a right to a hearing de novo before a District Judge.

The magistrate's recommendation shall be transmitted forthwith to the chambers judge for appropriate action.

ad. All United States Magistrates for the District of Maryland are specially designated to commit persons to St. Elizabeth's Hospital, Washington, D. C., in accordance with the provisions of the District of Columbia Code, Section 21-902.

ae. Upon request of the United States Attorney, a United States Magistrate shall have the authority to consider and approve an agreement between the Government and a defendant to defer prosecution in any misdemeanor case for a period not to exceed one year from the date said agreement is approved by the United States Magistrate.

af. Upon the request of the United States Attorney, authorize the installation of pen registers and execute orders directing telephone company assistance to the government for such installation.

5. The powers and duties imposed upon United States Magistrates by these rules shall be discharged in accordance with the Constitution and laws of the United States and the Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure and Federal Rules of Evidence, and such other applicable rules and regulations as may from time to time become effective.

[Amended 3-25-77, 4-1-78 and 4-1-80.]

Rule 81. Trial of Civil Cases Before Magistrates, by Consent.

The judges of the District Court may, by order, designate magistrates from time to time to exercise the authority to hear and determine civil cases granted under 28 USC §636(c); provided, however, that any such magistrate must meet such statutory and regulatory prerequisites for the exercise of §636(c) jurisdiction as may be provided from time to time. Magistrates designated pursuant hereto may try any civil case in which all parties have consented to trial by a magistrate, and which has been referred to a magistrate by a District Judge. The Court may, on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate under this subsection.

Cases referred to magistrates pursuant to 28 USC §636(c) shall be randomly assigned among the magistrates.

Upon the filing of any civil case, the Clerk of Court shall notify the parties of their right to consent to the exercise of a magistrate's civil jurisdiction pursuant to 28 USC §636(c). The form and content of the notice and of any consent form shall be as adopted by the Court.

The plaintiff shall be responsible for seeing to the execution of consent forms and filing of them with the Clerk of Court, should the parties consent. No consent form will be made available, nor will its contents be made known to any judge or magistrate, unless and until all parties have consented to the reference. All judges and magistrates are cautioned not to persuade or induce any party to consent to reference of any civil matter to a magistrate. However, nothing contained herein shall preclude any judge or magistrate from inquiring into or suggesting to the parties a reference of any case to a magistrate, without persuasion or inducement. Every effort should be made by judges and magistrates and other court personnel to protect the voluntariness of the parties' consent.

Should the parties consent to reference to a magistrate, they may further consent, in writing, that the appeal of the matter is to lie to the District Court rather than to the Court of Appeals. Should the parties consent to appeal to the District Court, the entire case is to be considered on the record by a judge

U.S. Department of Justice

Civil Division

VOL. 31 APRIL 29, 1983 299 NO. 8

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

1 APR 1983

MEMORANDUM

TO: All United States Attorneys
(Including Overseas)

FROM: J. Paul McGrath
Assistant Attorney General
Civil Division

SUBJECT: Guidelines for Motions for Costs

As you are aware, the United States, like any other litigant, is entitled to recover the costs of litigation under Rule 54(d), Federal Rules of Civil Procedure. I would like to remind you that when the government is considering moving for costs as the prevailing defendant in litigation, discretion should be exercised in determining whether a request for the assessment of costs or a reduction in the amount of costs is appropriate. Although it is difficult to establish any set rules for determining under what circumstances costs should not be sought, there may be cases, for example, when the plaintiff's financial situation at the time the litigation was initiated or as a result of the litigation, warrants a request for a reduction in costs or a waiver of costs.

If you have any questions concerning this matter, contact my Special Assistant, Greg Walden, at 633-5713. This memorandum supersedes the memorandum of the Assistant Attorney General, Civil Division, dated April 14, 1978.

DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of
Child Support Enforcement

Refer to:

Rockville MD 20852

301

VOL. 31 APRIL 29, 1983 NO. 8

Mr. William P. Tyson
Director
Executive Office for United States Attorneys
Department of Justice
Washington, D.C. 20530

Dear Mr. Tyson:

The purpose of this letter is to inform you of procedures which United States attorneys and agents must use if they wish to request information from the Federal Parent Locator Service (PLS) in connection with parental kidnapping and child custody cases. We have sent a similar letter to the Honorable William H. Webster, Director of the Federal Bureau of Investigation.

Some background information on the Office of Child Support Enforcement (OCSE) and the Federal PLS may be helpful. OCSE, located in the Department of Health and Human Services, administers the Child Support Enforcement program established by the Social Services Amendments of 1974 under title IV-D of the Social Security Act (the Act). This federally funded, State administered program was established to enforce support obligations owed by absent parents to their children, locate absent parents, establish paternity and obtain child support. Public Law 97-35, effective August 13, 1981, amended title IV-D of the Act to allow States to collect spousal support in certain cases. Section 9 of Public Law 96-611, enacted in December, 1980 amended title IV-D to permit certain authorized persons, including United States agents and attorneys, to receive Federal PLS information in parental kidnapping or child custody cases. (See Enclosure A.)

In accordance with section 453 of the Act, OCSE operates the Federal PLS to help States locate absent parents. Basically, the Federal PLS discloses absent parents' social security numbers and their home and employment addresses, which are obtained from Federal and State agencies. This information is provided only to persons authorized under the Act to receive it.

Regulations implementing section 9 of Public Law 96-611 were published by OCSE in the Federal Register on November 3, 1981. (See Enclosure B.) These regulations specify that, in parental kidnapping and child custody cases, requests for Federal PLS information may come from either of two sources: (1) State Child Support Enforcement agencies that have entered into written agreements with OCSE, or (2) any agent or attorney of the United States who is involved in a parental kidnapping or child custody case. In States that have an agreement with OCSE to use the Federal PLS in parental kidnapping and child custody cases, the U.S. attorney or agent must request information through the State PLS. In States that do not have agreements with OCSE, the U.S. agent or attorney may request information directly from the Federal PLS.

We have developed the following procedures for United States agents and attorneys to use to request information from the Federal PLS in parental kidnapping or child custody cases. These are the only cases in which information may be released directly to United States agents or attorneys.

1. Contact the State Child Support Enforcement Agency to determine if the State has signed an agreement with OCSE to process parental kidnapping and child custody cases. If it has, the agent or attorney must process the request through that agency. A list of State Child Support Enforcement Agencies is provided in Enclosure C.

2. If the State does not have an agreement with OCSE to process parental kidnapping and child custody cases, the following items should be sent directly to the Federal PLS:

   a. A signed Transmittal/Certification Letter on official letterhead. (See sample in Enclosure D.) The letter must be signed by the U.S. District Attorney or by a Senior Supervisor Resident Agent.

   b. Sufficient information to identify the individual who is sought, provided on either of the two enclosed forms. (See Enclosure E.) Form 1 is to be used if the absent parent's social security number (SSN) is available. Form 2 is to be used if the absent parent's SSN is not available.

To cover costs, OCSE will charge a location fee of $10 for each request processed and an additional fee of $4 for each request submitted without a SSN. If, during processing, the SSN cannot be found, the $10 location fee will not be charged since a location cannot be made without a SSN. The U.S. attorney or agent's office will be billed as soon as processing is completed.

If your staff have any questions about this program or about the procedures outlined in this letter, please have them contact our Internal Information Systems Branch at 443-4950.

Sincerely,

/s/

John A. Svahn
Director

Enclosures

VOL. 31 APRIL 29, 1983 NO. 8

FORM 1 - Use this form if social security number is known.

U.S. Department of Health and Human Services
Office of Child Support Enforcement
Rockville, Maryland 20852

FEDERAL AGENT OR ATTORNEY
PARENT LOCATOR REQUEST
PARENTAL KIDNAPPING/CHILD CUSTODY CASE

DATE: December 1, 1982

Absent Parent's SSN: 312-46-5061

Absent Parent's Name: Patricia (First) Ann (Middle) Pendergast (Maiden) (Gonzalez)* (Last)

Absent Parent's Date of Birth: _____ (Day) _____ (Month) _____ (Year)

Other Names Used: (if known) Patricia (First) _____ (Middle) Hamilton (Last)

*Mrs. Gonzalez had her name changed back to Pendergast in the Final Judgment of Dissolution of Marriage.

In August, 1982, Mrs. Pendergast used P.O. Box 18932, San Jose, California, 95158-8932 as an address, but she has since stated that she is moving.

Official Letterhead

(SAMPLE TRANSMITTAL/CERTIFICATION LETTER)

DATE:_____

TO: Federal Parent Locator Service
Office of Child Support Enforcement
Department of Health and Human Services
6110 Executive Boulevard - Suite 900
Rockville, Maryland 20852

FROM: Name and Title of Certifying Official (This must be a United States District Attorney or his/her designee or a Special Agent in Charge or his/her designee.)

SUBJECT: Requests to the Federal Parent Locator Service for Information Concerning a Parental Kidnapping or Child Custody Case

A. For each request included with this transmittal, I certify the following:

(1) The request is being made solely to locate an individual in connection with a parental kidnapping or child custody case.

(2) Any information obtained through the Federal Parent Locator Service (PLS) will be treated as confidential, will be used solely for the purpose for which it was obtained and will be safeguarded in accordance with the Privacy Act of 1974 (5 USC 552a).

B. I further certify that Federal tax information obtained through the Federal PLS will not be used or disclosed in violation of 26 U.S.C. 7213(a)(1) and 26 U.S.C. 7217.

Number of Requests:

With SSN_____
Without SSN_____

_____
(Signature of Certifying Official)

VOL. 31 APRIL 29, 1983 305 NO. 8

DEPARTMENT OF JUSTICE

Order

DOJ 2810.1

Jun. 13, 1980

Subject: COORDINATION OF UNITED STATES ATTORNEYS' OFFICES SURVEYS

The Executive Office for United States Attorneys (EOUSA) is hereby designated as the Department of Justice unit which will coordinate all surveys of and questionnaires to United States Attorneys' Offices, and coordinate the scheduling of visits and telephone surveys of United States Attorneys' Offices.

1. PURPOSE: The purpose of this order is to ensure the most efficient responses to surveys by Department of Justice units; to ensure the efficient use of personnel and resources of U. S. Attorneys' Offices in response to surveys; to avoid duplication of research efforts; and to ensure that alternate sources of data are utilized when available.

2. SCOPE: The provisions of this order apply to all offices, boards, divisions, bureaus and field offices.

3. PROCEDURES:

   a. This Order shall apply when information is sought from more than one U. S. Attorney's Office, by Department of Justice Offices, Boards, Divisions, Field Offices and Bureaus (hereinafter units), or by other organizations such as research groups, government research contractors and grantees, Congressional committees and Congress members, which seek information through Department of Justice units. This Order also applies to surveys by individual United States Attorneys.

Distribution:
OBD/H-4 OBD/F-2
BUR/H-4 BUR/F-2

Initiated By:
Executive Office for United States Attorneys

b. Requests for surveys to be conducted should be submitted to the Director, EOUSA, by the head of the requesting Department of Justice unit. Congressional requests for surveys shall continue to be submitted by Congress to the Assistant Attorney General, Office of Legislative Affairs, who shall then submit the request directly to the EOUSA.

c. Department of Justice units submitting requests for surveys shall propose dates for replies which allow the maximum possible time for coordination, dissemination and the preparation of responses by individual U. S. Attorneys' Offices.

d. Prior to submitting formal requests to the EOUSA, the requesting units shall make inquiries of the other appropriate DOJ units, other appropriate governmental units, and the EOUSA, as to whether the information needed is available from alternate sources, previous surveys or reports. The EOUSA will make further inquiries for alternate information sources as appropriate.

e. The request for a survey shall consist of a list of proposed U. S. Attorneys' Offices to participate, and a proposed questionnaire or survey form, detailing the specific information sought and briefly summarizing the background and the litigative, legislative or other purpose for which the information is sought. Whenever possible, questionnaire forms shall be provided for replies by U. S. Attorneys.

f. The requesting unit and the EOUSA shall cooperate to make any necessary modifications in proposed surveys, in furtherance of the purposes of this Order. The Director, EOUSA, shall give approval of surveys prior to dissemination and shall request the participation of U. S. Attorneys, usually in writing as an attachment accompanying the survey forms. The Director, EOUSA, shall communicate with U. S. Attorneys to request participation and coordinate convenient scheduling of visits by Department units conducting surveys.

g. Printing and distribution of surveys shall be the responsibility of the requesting Department of Justice unit.

h. The survey shall designate the requesting unit as the recipient of replies, which shall also be responsible for reporting survey results. The Director, EOUSA, shall designate a staff member of the EOUSA to be contacted by U. S. Attorneys for questions regarding surveys.

i. The requesting units shall fully inform the Director, EOUSA, of the results of surveys and provide copies of all written reports and other derivative products.

By R Civiletti

BENJAMIN R. CIVILETTI
Attorney General

6/13/80
Date

CUMULATIVE LIST OF CHANGING FEDERAL CIVIL POSTJUDGMENT INTEREST RATES

(as provided for in the amendment to the Federal postjudgment interest statute, 28 U.S.C. §1961, effective October 1, 1982)

Effective Date	Annual Rate
10-01-82	10.41%
10-29-82	9.29%
11-25-82	9.07%
12-24-82	8.75%
01-20-83	8.65%
02-17-83	8.99%
03-17-83	9.16%
04-14-83	8.98%

NOTE: When computing interest at the daily rate, round (5/4) the product (i.e., the amount of interest computed) to the nearest whole cent.