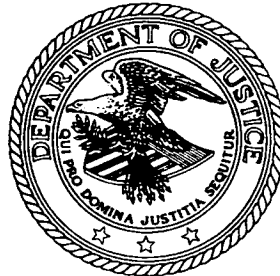


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# United States Attorneys Bulletin



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POINTS TO REMEMBERIMMUNITY AUTHORIZATION

A substantial amount of effort is required in the review and processing of requests for immunity authorization.

In submitting such a request, the following should be kept in mind:

- 1) Submit the request well in advance of the date you need a reply. A month is not too long, and two weeks from our date of receipt is the regular processing time.
- 2) Fill out the request form (OBD-111) completely. The information requested, while summary in nature, should be substantive, and provide a basis for evaluation. Indicate whether any other witness has been granted formal immunity in your particular case.
- 3) If, after submitting the request, the defendant pleads guilty, your witness decides to testify without asserting his 5th Amendment privilege, or the request otherwise becomes unnecessary, much wasted effort can be prevented by calling the Immunity Unit, 739-4594, 4595 and providing this information.

All immunity authorizations are personally signed by the Assistant Attorney General, and are reviewed prior to that by at least a Section Attorney, a Section Chief, and a Deputy Assistant Attorney General. Name checks are conducted with at least the Immunity Unit, Criminal Division Records, the Organized Crime and Racketeering Section the Federal Bureau of Investigation, and the cognizant Section's own files. All this requires time, and you are encouraged to provide it to us by making timely requests.

\* \* (Criminal Division)

CLE ACCREDITATION

Training courses sponsored by Attorney General's Advocacy Institute have been accredited by the States of Iowa and Minnesota as providing continuing legal education towards their yearly requirements. Further inquiries on this matter may be addressed to the Institute.

(Executive Office)

## AUDIO TAPE CASSETTE LIBRARY

As a supplement to its existing continuing legal education programs, the Attorney General's Advocacy Institute (AGAI) has compiled an audio cassette tape lending library which is now available for use by the United States Attorney's Offices and Department legal divisions.

This set of tapes was assembled from sources both inside and outside the Department of Justice. Assistant United States Attorneys, Department Attorneys and noted legal scholars from the private bar have contributed to its development. A listing of tapes which are now available is presented below:

1. Subject: Evidence  
An outstanding lecture series on evidence with an emphasis on hearsay. It includes material on the common law and the Federal Rules of Evidence.  
  
Lecturer: Professor Irving Younger - Irving Younger is Professor of Trial Technique at Cornell University Law School. He is also a recognized authority on the law of evidence.  
  
(12 tape set, 12 hrs)
2. Subject: The Grand Jury  
The lecture examines the practical problems associated with the effective handling of a grand jury investigation with a focus on white collar crime prosecutions.  
  
Lecturer: Bruce Goldstein - Mr. Goldstein is the Executive Assistant U.S. Attorney in the District of New Jersey with extensive experience in white collar crime and public corruption cases.  
  
(2 tape set, 2 hrs)
3. Subject: Selection of Jury/Opening Statement  
This lecture deals with the tactics and strategy of selecting a jury and the preparation and use of the opening statement.  
  
Lecturer: Roger Spaeder - Mr. Spaeder is a former Assistant U.S. Attorney in the District of Columbia, and an outstanding lecturer with experience as both law school and AGAI instructor.  
  
(2 tape set, 1-3/4 hrs)

4. Subject: Exclusionary Hearing Tactics  
An examination of tactical problems and in-court techniques related to exclusionary hearings.
- Lecturer: Robert DeLuca - Mr. DeLuca is an Assistant U.S. Attorney in the Eastern District of Pennsylvania and has lectured at several AGAI sessions.
- (1 tape set, 1-1/2 hrs)
5. Subject: Expert Witnesses  
This lecture examines the preparation, use, and examination (direct and cross) of expert witnesses at trial.
- Lecturer: Roger Adelman - Mr. Adelman is an Assistant Attorney in the District of Columbia, where he is Chief of the District Court Felony Trial Division.
- (2 tape set, 1-1/2 hrs)
6. Subject: Cross Examination & Impeachment  
This lecture examines both the evidentiary and tactical aspects of cross examination and impeachment in a criminal case.
- Lecturer: Melvin Kracov - Mr. Kracov is an Assistant U.S. Attorney in the District of New Jersey, where he has participated in various training seminars. Mr. Kracov is also a lecturer with, and a former director of, the AGAI.
- (2 tape set, 1-1/2 hrs)
7. Subject: Documentary Evidence  
A practical guide in the handling and use of documentary evidence.
- Lecturer: Charles Alexander - Mr. Alexander is the Assistant Chief, Criminal Section, Tax Division, and one of its most experienced trial attorneys. He is particularly knowledgeable in the use of documentary evidence in complex criminal litigation.
- (2 tape set, 1-1/4 hrs)

8. Subject: Direct Examination

This lecture illustrates the proper technique for effective direct examination.

Lecturer: Thomas Russell - Mr. Russell is an Assistant U.S. Attorney in the Western District of Washington and among the most noted of the AGAI's lecturers.

(2 tape set, 2 hrs)

9. Subject: Closing Argument and the Guilty Plea

An examination of the closing argument and guilty plea with emphasis placed upon the preparation, organization, and presentation of closing arguments.

Lecturer: Vincent Marella - Mr. Marella is a Assistant U.S. Attorney in the Central District of California who has lectured at Loyola Law School and the AGAI.

(3 tape set, 3 hrs)

10. Subject: Sentencing

An exposition of the substantive federal law governing sentencing.

Lecturer: Jeffrey Miller - Mr. Miller, now in private practice, was an Assistant U.S. Attorney in the Eastern District of Pennsylvania and chief of that office's criminal division.

(2 tape set, 1-1/2 hrs)

11. Subject: Trial Objections

An examination of the tactical problems confronted in making and meeting trial objections.

Lecturer: Dennis Lewis - Mr. Lewis is an Assistant U.S. Attorney in the Eastern District of Texas who has lectured at several AGAI courses.

(1 tape set, 1/2 hr)

12. Subject: Federal Rules of Evidence

A set of lectures videotaped in 1975 designed to familiarize Department of Justice attorneys with the new Federal Rules of Evidence. The following topics are included in this lecture series:

- 1) General Introduction
- 2) Presumptions in Civil Practice;  
Judicial Notice
- 3) Relevancy
- 4) Privilege
- 5) Witnesses (FRE 607-13)
- 6) Witnesses (FRE 601-606, 614-15)
- 7) Hearsay I
- 8) Hearsay II; Opinions and Experts I
- 9) Opinions and Experts II; Closing Remarks
- 10) Documents

(10 tape set; 7-1/2 hrs: loaned as set)

The above-listed audio tapes are available for a maximum loan period of thirty (30) days. Requests for them should be in writing and directed to the AGAI. They are designed to be played on standard cassette tape players. Cassette players are available from the AGAI for loan to offices which do not have access to similar machines.

If your office has tapes which you think should be reviewed for inclusion in the AGAI library, or if you have any suggestions concerning the tapes library, please notify Geoffrey Beauchamp, Room 4410, Main Justice, FTS 739-4104.

(Executive Office)

CASENOTES

EXECUTIVE OFFICE FOR U. S. ATTORNEYS  
Director William B. Gray

United States v. Patrick J. Clifford, et al., (E.D.N.Y. No. 75-CR-654), appeal filed sub. nom. United States v. Security National Bank, (2d Cir., No. 76-1283). DJ 72-52-28.

Federal Election Law. Double Jeopardy.

Defendant bank and three of its officers were charged with violations of 18 U.S.C. 610, 659 and 1001. The bank was charged under Sec. 610, which prohibits any direct or indirect payment by a national bank to any candidate to any election, with giving employees pay increases so they could contribute to the bank's political fund. (On the motion to dismiss various counts, see U.S. v. Clifford, 409 F. Supp. 1070 (E.D.N.Y. 1976).) When the Government learned of the trial judge's intended instruction that a guilty verdict required the charged contributions be actually made with bank funds, it sought mandamus. Mandamus was denied on procedural grounds. The bank was acquitted on the basis of that instruction. The individual defendants were also acquitted of the main charges.

In an appeal filed August 9, the Government concedes that the individual defendants are protected against double jeopardy, but argues that the appeal on the merits with respect to the bank should be heard on the ground that corporations are not so protected. It is argued that a corporation is not a person within the meaning of the Double Jeopardy Clause. On the merits, the Government considers the district court's construction of Sec. 610 to be an emasculating loophole and seeks, not a second crack at the apple, but "merely an opportunity to have a [new] trial free of substantial legal error."

Staff: David G. Trager, U.S. Attorney, E.D.N.Y.  
Robert F. Katzberg, Assistant U.S. Attorney,  
E.D.B.Y., FTS 330-7089



CIVIL DIVISION  
Assistant Attorney General Rex E. Lee

Canadian Pacific (Bermuda) Ltd. v. United States (C.A. 5, No. 75-1199, decided July 12, 1976). DJ 61-17M-142.

Suits in Admiralty Act.

The owner of a grounded vessel brought this action against the United States, alleging that the Army Corps of Engineers was negligent in maintaining the waterway. The court of appeals reversed the district court's finding of negligence, holding that where the government had no prior knowledge of the existence of shoals which caused the accident, the government could not have misled navigators with respect to the existence of the shoals. The court also held that the government had no duty to survey or dredge the channel, and thus, the failure of the government to discover the shoal that caused the accident did not constitute a lack of due care.

Attorney: Thomas L. Jones (Civil Division),  
FTS 739-3371.

Maine Potato Growers, Inc. v. Butz (C.A. 1, No. 75-1445, decided July 30, 1976). DJ 107-3.

Agriculture.

The First Circuit has just upheld on direct review an order of the Secretary of Agriculture suspending the license to trade in potatoes of a major Maine growers' cooperative for sixty days. The suspension was occasioned by frequent misgrading of potato shipments during the years 1969-72. On review, the cooperative argued that the penalty was unduly harsh, and would result in economic hardship to innocent growers. The court of appeals rejected the argument, reasoning that the purpose of the penalty was to deter possible future violators as well as to punish those who had violated the grading requirements.

Attorney: Michael Kimmel (Civil Division),  
FTS 739-3331.

South Windsor Convalescent Home, Inc. v. Mathews (C.A. 2, No. 75-6136, decided July 27, 1976). DJ 137-14-142. [45 U.S.L.W. 2088]

Social Security Act.

The district court had ruled that it was unconstitutional for an HEW regulation, providing for the recapture of accelerated depreciation from a provider of services which leaves the Medicare program, to be applied to recapture funds

received by the provider prior to the first day of the year in which the regulation became effective. On our appeal, we argued that under Weinberger v. Salfi, 422 U.S. 749, the district court was without jurisdiction to consider the issue, and alternatively, if there were jurisdiction, it lies in the Court of Claims. On the merits, we argued that the regulation is both constitutional and authorized by statute. The court of appeals accepted our jurisdictional argument and held that since the suit involves a claim for a money judgment of over \$10,000, jurisdiction lies in the Court of Claims.

Attorneys: Judith S. Feigin (Civil Division),  
FTS 739-3170; David M. Cohen (Civil  
Division), FTS 264-9233.

United States v. Le Beouf Bros. Towing Co. (C.A. 5, Nos. 74-3140,  
74-2849, decided August 16, 1976). DJ 62-32-184.

Federal Water Pollution Control Act.

In this case the district court held that monetary penalties assessed under the Federal Water Pollution Control Act by the Coast Guard against corporations which spill oil into navigable waters are criminal in nature. The court therefore held the monetary penalties barred by a use immunity provision of the statute, which insulates from prosecution the reporters of oil spills. We appealed, arguing that the penalties were civil in nature and necessary to finance a revolving fund which is used to clean up oil spills. The appellee argued that it was a violation of due process to penalize a spiller when the spiller's report of the spill was the only means for determining responsibility. The Fifth Circuit held that requiring a report of the spill, and then penalizing the spiller did not violate the Fifth Amendment.

Attorney: Michael H. Stein (Civil Division),  
FTS 739-4795.

CRIMINAL DIVISION  
Assistant Attorney General Richard L. Thornburgh

United States v. William David Hill, \_\_\_\_\_ F.2d \_\_\_\_\_ (4th Cir.  
Aug. 9, 1976) (No. 75-1629). D.J. 29-100-6604.

Juvenile Justice and Delinquency Prevention Act

The Fourth Circuit held that, under the Juvenile Justice and Delinquency Act of 1974, 18 U.S.C. 5031 et. seq., a seventeen year old bank robber was not entitled to trial by jury. The Court thus specifically extended the ruling in McKeiver v. Pennsylvania, 403 U.S. 528 (1971) to the federal courts.

The Court of Appeals also found that juveniles were not entitled to indictment by grand jury. Thus, the brief dicta on this issue in Kent v. United States, 383 U.S. 541, 555 (1966) and In re Gault, 387 U.S. 1, 14 - 15 (1967) was formalized into the law of the Fourth Circuit.

Further, the Court held that a letter from a local juvenile judge stating that the state court had refused to assume jurisdiction over a juvenile with respect to the act of delinquency with which the juvenile was charged by the United States was sufficient to confer jurisdiction in the United States under the certification investigation required in 18 U.S.C. 5032.

Attorneys: Thomas K. Berger (E.D. Va.) FTS 557-9100.

LAND AND NATURAL RESOURCES DIVISION  
Assistant Attorney General Peter R. Taft

Committee for Humane Legislation et al. v. Elliot L. Richardson,  
et al. (C.A. D.C. Nos. 76-1479, et al., August 6, 1976).  
D.J. 90-1-4-1062.

Marine Mammal Protection Act of 1972

The court of appeals, affirming the district court, held that, under the Marine Mammal Protection Act of 1972, the National Marine Fisheries Services could not issue permits allowing the killing of porpoise incidental to "on porpoise" commercial tuna fishing until it determined the optimum sustainable population (OSP) of each species and the effect of the permitted takings on this population. The court also determined that the tuna industry's application for a permit had not demonstrated that the taking of the porpoise would be consistent with the purposes of the Act. The court of appeals stayed the effective date of the injunction until January 1, 1977, to avoid an immediate catastrophic effect on the tuna industry.

Attorney: Robert A. Kerry (Land and Natural Resources Division) FTS 739-2770.

Stephen Williams, et al v. Kleppe (C.A. 1, No. 75-1332, July 30, 1976). D.J. 90-1-10-1223.

Regulation of Public Lands; Constitutional Law

The court of appeals affirmed the district court and upheld a regulation by the U.S. Park Service imposing a total ban on nude bathing in the Cape Cod Seashore National Park. The court concluded that, even assuming that plaintiffs' interest in a pleasurable activity should be accorded some substantive constitutional protection, the regulation barring nude bathing bears a substantial relationship to the conservational and environmental objectives of the Seashore, which outweighed the plaintiffs' interest.

Attorney: Assistant United States Attorney James J. O'Leary (D. Mass.) FTS 223-2280.