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COMMENDATIONS

Assistant United States Attorney Robert J. Perry, Central District of California, has been commended by Benjamin R. Civiletti, Assistant Attorney General, Criminal Division, for his excellent work in connection with bail matter in the successful prosecution of United States v. Valenzuela.

Assistant United States Attorney Bill L. Barnett, Northern District of Alabama, has been commended by United States Attorney J. R. Brooks, Northern District of Alabama, for his successful prosecution of two defendants for possession with intent to distribute and conspiracy to possess heroin.

Assistant United States Attorney James C. Thomason, III, Northern District of Alabama, has been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for his work in the successful prosecution of the defendant in an illegal gambling operation case.

Assistant United States Attorney Robert S. Stone, Northern District of Ohio, has been commended by Lem A. Roberson, Acting District Director, Internal Revenue Service, for the assistance he provided the Service in obtaining compliance with a writ of entry in the McCurdy case.

POINTS TO REMEMBER

UNITED STATES ATTORNEY APPOINTMENTS

The following Presidentially-appointed United States Attorneys have entered on duty. The Executive Office staff takes this opportunity to extend its hearty welcome.

<u>DISTRICT</u>	<u>UNITED STATES ATTORNEY</u>	<u>ENTERED ON DUTY</u>
California, C.	Andrea Sheridan Ordin	10/19/77
Indiana, N.	David T. Ready	10/19/77
Missouri, E.	Robert Kingsland	10/21/77

(Executive Office)

* * *

UNITED STATES ATTORNEYS' MANUAL--BLUESHEETS

No Bluesheets have been sent to press in accordance with USAM 1-1.550 since the last issue of the Bulletin.

(Executive Office)

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CIVIL DIVISION
Assistant Attorney General Barbara Allen Babcock

Texaco, Inc., et al. v. FTC, _____ U.S. _____ (Sup. Ct. Nos. 76-1432, 1434 & 1435, denied October 3, 1977).
DJ 102-1647.

Administrative Subpoena Enforcement.

In connection with an investigation of possible deceptive practices in the public reporting of natural gas reserves, the Federal Trade Commission subpoenaed relevant gas supply records of the major natural gas producers. A panel of the D.C. Circuit quashed the subpoenas on the ground that the integrity of the publicly-reported gas reserves for the years in question had already been sustained by the Federal Power Commission. But the en banc D.C. Circuit upheld the subpoenas in full, rejecting the use of collateral estoppel as a defense to an administrative subpoena. 555 F.2d 862. The Supreme Court denied certiorari in June, and this past week denied the gas producers' petition for rehearing, thus leaving the favorable en banc decision intact.

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

American Federation of Government Employees v. Dunn, _____ F.2d _____ (C.A. 9, No. 75-3804, decided September 28, 1977).
DJ 35-5-10.

Right of Government to Contract-Out.

After a cost comparison study, the Air Force decided to engage a private contractor to perform food service functions at three Air Force bases in Alaska. The American Federation of Government Employees brought suit on behalf of the Government employees who lost their jobs as a result of this action, asserting that it was illegal for the Government to contract-out. The Ninth Circuit, adopting our arguments, has just sustained the legality of the contracting-out program. This decision will be of special value to us in other circuits where similar cases are pending.

Attorneys: William Kanter (Civil Division),
FTS 739-3354; Harry R. Silver
(Civil Division), FTS 739-3953.

Moorer v. HUD, _____ F.2d _____ (C.A. 8, No. 76-1830, decided September 9, 1977). DJ 145-17-803.

Housing and Urban Development.

The Urban Development Act requires the federal government to reimburse persons displaced by federal acquisitions of housing. The plaintiffs in this case sued the Government because they were displaced by private acquisition of property which were aided by federal financial assistance through mortgage insurance and interest subsidy payments. The district court had held that the plaintiffs were entitled to relief under the law. The Eighth Circuit reversed holding that the plain statutory language indicates that benefits are available to displaced persons only on property taken by a federal agency or by a state agency receiving federal assistance.

Attorney: Bruce Forrest (Civil Division),
FTS 739-3445.

Page v. Mills, _____ F.2d _____ (C.A. 1, No. 77-1396, decided October 6, 1977). DJ 145-12-3073.

Prosecutorial Immunity.

After initially pleading not guilty in a criminal proceeding, plaintiff withdrew his plea and was placed on "informal probation," with the concurrence of his attorney, the U.S. Attorney, and District Judge Gignoux. Plaintiff then filed this civil suit against the United States Attorney, seeking money damages from him on the ground that no statute authorized any type of probation without a criminal conviction. Judge Gignoux denied plaintiff's request for recusal in the civil suit. The District Judge also dismissed plaintiff's complaint, ruling that the United States Attorney was entitled to prosecutorial immunity. Plaintiff appealed to the First Circuit and, before any briefs on the merits were filed, moved for summary reversal of Judge Gignoux' refusal to recuse himself. We cross-moved for summary affirmance. The First Circuit has just denied plaintiff's motion for summary reversal and, in addition, has granted our motion for summary affirmance, relying on Imbler v. Pachtman, 424 U.S. 409 (1976).

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

Paluso v. United States, _____ F.2d _____ (C.A. 10, No. 76-1464,
decided September 30, 1977). DJ 178-77-7.

Black Lung Benefits.

The Tenth Circuit, has ruled that a coal miner who submits his application for federally funded Black Lung Act benefits to HEW prior to the Act's jurisdictional cut-off date is entitled to benefits based on disability the onset of which follows the cut-off date. The Fourth, Fifth, Sixth, and Eighth Circuits have previously accepted our position that such a miner would not be entitled to benefits from HEW. We are filing a petition for rehearing with the Tenth Circuit.

Attorney: Mark H. Gallant (Civil Division),
FTS 739-5325.

United States v. Beardslee, _____ F.2d _____ (C.A. 6, No.
75-2466, decided September 14, 1977). DJ 105-38-44.

Bankruptcy.

The Court of Appeals for the Sixth Circuit, adopting our argument, has just ruled that the bankruptcy discharge of a principal debtor, indebted to the SBA, does not release the private guarantors of that debt from their independent liability to SBA. In reaching this result, the Court of Appeals held the applicable law to be federal, distinguishing United States v. Yazell, 382 U.S. 341 (1966), and its own decision in Weinstein v. United States, 511 F.2d 56 (C.A. 6, 1975). This decision will help insure the success of SBA's vast lending programs.

Attorney: Harland F. Leathers (Civil Division),
FTS 739-2493.

United States v. Hanger One, Inc., _____ F.2d _____ (C.A. 5,
No. 75-3654, decided September 29, 1977). DJ 46-1-255.

Respondeat Superior under False Claims Act, Judicial
Ethics.

In this civil suit under the False Claims Act, the United States claimed damages from the corporate defendant for knowingly furnishing 18,000 defective artillery shells. The district court, after signing a 159-page opinion, entered summary judgment against the government. On our appeal, the court of appeals has just reversed, holding, inter alia, that the corporation can be held liable under the Act for the wrongful conduct of even those corporate employees who are not in positions of substantial responsibility and broad authority.

The court of appeals also ruled that the preparation of at least two-thirds of the lengthy district court opinion by the defendant's counsel without notice to the Government, following ex parte communications, constituted a breach of the canons of judicial conduct, and that the Government may seek the disqualification of the district judge on remand. The reversal is significant to the Government for the still further reason that the attorney had written the district court opinion in such a way that it was considered to be res judicata in the defendant's \$3.5 million claim against the United States before the Armed Services Board of Contract Appeals.

Attorney: Thomas G. Wilson (Civil Division),
FTS 739-3395.