



United States Attorneys' Bulletin



**EXECUTIVE
OFFICE FOR
UNITED
STATES
ATTORNEYS**

Published by:

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

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COMMENDATIONS

The following Assistant United States Attorneys have been commended:

LINDA A. AKERS (District of Arizona) by Attorney General Edwin Meese III, Department of Justice, for her efforts in the successful prosecution of Ralph Cortiana under the Archaeological Resource Protection Act -- the first felony conviction obtained under that statute. Ms. Akers was also commended by Regional Forester Sotero Muniz, United States Department of Agriculture, for her outstanding work in this case.

DAVID L. ALLRED (Alabama, Middle) was presented a Certificate of Appreciation from Special Agent in Charge Paul M. Durham, Alcohol, Tobacco and Firearms, in appreciation of his dedicated efforts which resulted in a successful conviction in an arson case. Mr. Allred was also commended by Assistant Attorney General F. Henry Habicht, II, Lands and Natural Resources Division, Department of Justice, for his excellent work which resulted in a successful prosecution in an environmental case.

JEFFERY BABCOCK and **CARLOS MARTINEZ** (Texas, Southern) by Inspector in Charge Allison T. Brown, United States Postal Service, for their high degree of professionalism and personal dedication which resulted in the successful prosecution of a child pornography case -- the first prosecution under the recent PROJECT LOOKING GLASS National Reverse Sting Program in southern Texas.

RICHARD BANKS (Texas, Southern) by Regional Inspector Derle Rudd, Internal Revenue Service, for his tenacious and diligent prosecution in a bribery case.

LEON BARFIELD (Georgia, Southern) by the Honorable Dudley H. Bowen, Jr., United States District Court, Augusta, Georgia, for his impressive and excellent presentation of an intricate drug conspiracy case and masterful command of almost 500 potential exhibits.

K. TATE CHAMBERS (Illinois, Central) by Drug Compliance Coordinator Edward E. Duffy, Department of Registration and Education for a successful prosecution in a criminal diversion case.

THOMAS T. COURIS (California, Eastern) by Assistant Special Agent in Charge Robert E. Bender, Drug Enforcement Administration, for his tenacious efforts which lead to a successful conviction in a criminal case.

ROGER W. DOKKEN and **JAN EMMERICH** (District of Arizona) by Director Jane Nady Burnley, Ph.D., Office of Justice Programs. Mr. Dokken is commended for establishing a training program for prosecutors and investigators within the District on child molestation. Ms. Emmerich, Victim Witness Coordinator for the District of Arizona, is commended for her outstanding job in servicing the victims of the Hopi Tribe.

EDGAR W. ENNIS, JR., and **W. LOUIS SANDS** (Georgia, Middle) by Joseph R. Davis, Assistant Director - Legal Counsel, Federal Bureau of Investigation for demonstrating their skillful cross-examination techniques during the New Agents Moot Court Program.

WILLIAM P. FANCIULLO (New York, Northern) by Director William S. Sessions, Federal Bureau of Investigation, for his aggressive and tenacious efforts in securing the dismissal of the Federal defendants from the civil rights lawsuits in Albany, New York arising out of the visit of the South African Springboks rugby team in 1981. As part of this case, Mr. Fanciullo obtained a protective order which prevented the possible disclosure of a highly sensitive Bureau confidential source which represented a significant contribution to the defense of the FBI's informant program.

NATHAN A. FISHBACH (Wisconsin, Eastern) by General Counsel Rosemary M. Collyer, National Labor Relations Board, for his fine representation of the Board in a civil case involving the interrelationship between First Amendment rights of federal employees and the interests of the National Labor Relations Board as employer.

HOLLY B. FITZSIMMONS (District of Connecticut) by Assistant Attorney General, William F. Weld, Criminal Division, Department of Justice, for her outstanding work in the prosecution of a highly complex case involving violations of the Arms Export Control Act relating to the unlawful exportation, and attempted exportation, of Hawk missile system parts to Iran.

PATRICK J. HANLEY (Ohio, Southern) by Chief William R. Britt, Criminal Investigation Division, Internal Revenue Service, for his outstanding work in a complex fraudulent income tax shelter prosecution.

PATRICK D. HANSEN (Indiana, Northern) by Michael T. Dyer, Regional Inspector General for Investigations, Department of Health and Human Services, for his recent work on a joint investigation effort that

resulted in multiple indictments and convictions identifying more than \$426,800 in state and federal program losses.

MATTHEW L. JACOBS (Wisconsin, Eastern) by Chief Elliott E. Lieb, Criminal Investigation Division, Internal Revenue Service, for his excellent work and successful prosecution of a tax protestor charged with failing to file tax returns.

EDWARD R. KANDLER (California, Eastern) by Field Solicitor Ralph G. Mihan, United States Department of the Interior, for bringing to a successful conclusion a highly complex lands case involving a parcel of land located within the Wawona section of Yosemite National Park.

ANN M. KISTING (Wisconsin, Eastern) by Director William S. Sessions, Federal Bureau of Investigation, for her excellent efforts in the successful prosecution of a bank robbery/larceny ring which was responsible for 37 bank robberies in the Eastern District of Wisconsin in the past two years.

R. STEVEN LAPHAM (California, Eastern) by Chief William F. Horner, Criminal Investigation Division, Internal Revenue Service, for his outstanding and successful efforts in the prosecution of a tax protestor.

JOHN LAWLOR (Florida, Middle) by Captain Robert E. Broach, JAGC, United States Navy, for successfully representing the Navy in a civil case.

STEPHEN J. LICCIONE (Wisconsin, Eastern) by Special Agent in Charge Lawrence J. Nelson, Federal Bureau of Investigation, for his outstanding achievements and personal commitment which resulted in a successful prosecution in a bribery case.

MICHAEL L. MARTINEZ (District of Columbia) by Martha L. Girard, Deputy Director of the Federal Register, National Archives and Records Administration, for providing outstanding representation of the NARA in a civil case.

KRIS MCLEAN (District of Montana) by Attorney in Charge Lawrence M. Jakub, Office of the General Counsel, United States Department of Agriculture, for his successful prosecutive efforts and expertise in the field of mineral law.

THOMAS E. MORRIS and **JOHN E. STEELE** (Florida, Middle) by Joseph R. Davis, Assistant Director - Legal Counsel, Federal Bureau of Investigation for demonstrating a high degree of professionalism in their cross-examination efforts during the New Agents Moot Court Program.

JOSEPH D. NEWMAN (Georgia, Southern) by Supervisory Special Agent Milton E. Nix, Jr., Federal Bureau of Investigation, for his excellent presentation to the Criminal Informant Development In-service Training Class.

CHARLES R. NIVEN (Alabama, Middle) by Colonel Seymour Copperman, Chief, General Litigation Division, Office of the Judge Advocate General, Headquarters United States Air Force, for his outstanding work which resulted in the dismissal of a discrimination lawsuit.

RICHARD N. PALMER (District of Connecticut) by Chief of Police William F. Farrell, Department of Police, New Haven, Connecticut, for his outstanding and successful prosecutive efforts in a very difficult and dangerous criminal investigation within the New Haven Police Department.

CALVIN C. PRYOR (Alabama, Middle) by Special Agent in Charge Michael L. Mitchell, Office of Inspector General, Department of Defense, for his valuable and timely assistance in executing an affidavit which resulted in a temporary restraining order being issued to protect approximately \$1,455,704 worth of forklift equipment. Mr. Pryor was also presented a plaque by United States Marshal Melvin E. Jones, Middle District of Alabama, for his outstanding support and assistance to that office in the fifteen years he has been in the United States Attorney's Office.

CARL E. ROSTAD (District of Montana) by Deputy Chief Paul E. Coffey, Organized Crime and Racketeering Section, Criminal Division, Department of Justice, for his diligence and tenacity in a recent successful RICO prosecution.

FRANK H. SANTORO (District of Connecticut) by Acting Project Manager Charles R. Rinaldi, United States Department of the Interior, for his outstanding handling of a complex case involving Trail lands.

D. BROWARD SEGREST (Alabama, Middle) by Assistant General Counsel Michael B. Hirsch, Federal Emergency Management Agency, for his successful representation of the agency in a federal disaster assistance program prosecution. Mr. Segrest was also commended by Assistant Attorney General Richard K. Willard, Department of Justice for his exceptional ability as a trial lawyer which contributed immeasurably to a favorable verdict in this case.

JUDITH A. WHETSTINE (California, Northern) by Director Stanley E. Morris, United States Marshals Service for successfully defending the Marshals Service in a sexual harassment case.

FORFEITURE MATTERSAsset Forfeiture: Compilation of Civil Statutes

The Asset Forfeiture Office (AFO) has prepared a new manual entitled Asset Forfeiture: Compilation of Civil Statutes. This manual will provide an as complete and up-to-date description of federal civil forfeiture statutes as possible, including those enacted and/or amended recently as part of, inter alia, the Anti-Drug Abuse Act of 1986, Pub. L. No. 99-570; the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603; and, the Child Abuse Victims' Rights Act of 1986, Pub. L. No. 99-500. This new publication surveys in excess of 140 civil forfeiture statutes contained in the United States Code.

The Manual will be available for distribution in the very near future. Each United States Attorney's office will receive two copies -- each district office will receive one copy. Upon receipt of your manual, please complete the "tear" sheet which is enclosed for updating purposes, and return to the mailing address indicated. In addition, if you have not returned the "tear" sheet included with the previously published Asset Forfeiture: Law, Practice and Policy, please do so immediately inasmuch as update materials regarding that volume have been prepared and are to be mailed shortly.

(Asset Forfeiture Office, Criminal Division)

Notice Procedures for All Forfeiture Actions

A copy of the Forfeiture Notice Procedures issued by the Asset Forfeiture Office on September 24, 1987, was reprinted in the November 15, 1987 issue of the Bulletin (VOL. 35, NO. 11). The Asset Forfeiture Office has requested the following changes be made:

1. Page 259, No. II. CIVIL FORFEITURE, Subparagraph A, No. 4.

No. 4 reads, "A copy of the Verified Complaint for Forfeiture." As many Verified Complaints for Forfeiture are quite lengthy, reprinting the entire complaint will often involve considerable unnecessary expense. Therefore, this sentence should be changed to read, "A statement that a Verified Complaint for Forfeiture has been filed in United States District Court."

2. Page 260, No. II. CIVIL FORFEITURE, Subparagraph B.

Where notice is made by mail, the inclusion of a copy of the Verified Complaint for Forfeiture is not so onerous. Therefore, the first full sentence should read, "Such notice shall include, at a minimum, all information contained in the published notice, and a copy of the Verified Complaint for Forfeiture." (New material underlined.)

(Asset Forfeiture Office, Criminal Division)

POINTS TO REMEMBER

Attorney General's Advisory Committee of
United States Attorneys

Attorney General Meese has announced the appointment of six new members to serve three-year terms on the Attorney General's Advisory Committee of United States Attorneys:

Robert C. Bonner, Central District of California

William C. Carpenter, District of Delaware

Henry E. Hudson, Eastern District of Virginia

Charles W. Larson, Northern District of Iowa

James G. Richmond, Northern District of Indiana

Anton R. Valukas, Northern District of Illinois.

Other members of the Committee are:

Robert G. Ulrich, Chairman, Western District of Missouri

Stephen M. McNamee, Vice-Chairman, District of Arizona

Daniel A. Bent, Vice-Chairman, District of Hawaii

Frank W. Donaldson, Northern District of Alabama

Helen M. Eversberg, Western District of Texas

J. Alan Johnson, Western District of Pennsylvania

Andrew J. Maloney, Eastern District of New York

J. B. Sessions III, Southern District of Alabama

John Volz, Eastern District of Louisiana

Brent D. Ward, District of Utah

Joseph E. diGenova, District of Columbia

Chairman Robert Ulrich was unanimously reelected by members of the Advisory Committee to a second term as Chairman on December 1, 1987. He will serve a one-year term. The new Vice Chairmen are Stephen M. McNamee, District of Arizona, and Daniel A. Bent, District of Hawaii.

The Attorney General's Advisory Committee of United States Attorneys was formed in September 1973 as a mechanism to include the United States Attorneys in formulating Department policy. Presently, it has two functions: It serves the Attorney General by informing him of problems experienced by United States Attorneys as the nations principle litigators, and by making recommendations to the Attorney General. Secondly, it serves the United States Attorneys.

The Committee coordinates the collective efforts of the United States Attorneys with the divisions, agencies of the Department of Justice, and departments and agencies external to the Department of Justice. The Committee represents the United States Attorneys with the Department of Justice, other departments and agencies of the government, and occasionally private organizations. New members are appointed each year to provide for broad representation of United States Attorneys nationwide.

In advising the Attorney General, the Committee conducts studies and makes recommendations to improve management of United States Attorney operations and the relationship between the Department and the federal prosecutors. The Committee also helps formulate new programs for improvement of the criminal justice system and the delivery of legal services at all levels.

(Executive Office for U.S. Attorneys)

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Bank Fraud Cases -- Fast Track Programs

At the direction of the Economic Crime Council the Fraud Section has compiled and forwarded to all United States Attorneys a package of materials used in the successful Fast Tract programs in the Northern District of California and the Western District of Washington. Fast Track programs have been extremely successful in assuring prosecution of less significant offenses without draining prosecutive and investigative resources. These materials include:

1. Bank fraud seminar materials handed out to bank investigators when the Northern District of California Fast Track program began;
2. A journal article written by Assistant United States Attorney Peter Robinson on the program in the Northern District of California;
3. An update to the banking community on the Northern District of California program, dated January 23, 1985; and
4. A pre-filing target letter and plea agreements used by the Western District of Washington to resolve minor fraud matters.

Samples of the plea agreements used by the Western District of Washington are attached for your review at the Appendix of this Bulletin.

These materials are made available to assist you if you decide to institute a Fast Track program in your district. If you have any questions, please contact William Hendricks III, Chief, Fraud Section, Criminal Division (FTS 786-4377), Assistant United States Attorney Peter Robinson, Northern District of California, (FTS 556-8416); or Assistant United States Attorney Bruce Carter, Western District of Washington, (FTS 399-7970).

(Fraud Section, Criminal Division)

* * * *

Coordination of Criminal and Civil Fraud, Waste and Abuse

By memorandum of July 16, 1986, the Attorney General issued Guidelines on Coordination of Criminal and Civil Fraud, Waste and Abuse Proceedings. Consistent with the Guidelines, in the course of criminal investigation or prosecution, care should be taken not to make any representation that may bind the government in a related civil case (such as the amount of damages) without consultation with the civil attorney. Assistant United States Attorneys should remind agency counsel that administrative settlement of civil liability should not be concluded without approval from the Justice Department.

(Executive Office for U.S. Attorneys)

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Marinel Cuban Immigration Cases

The United States Government has been detaining Marinel Cuban aliens in anticipation of their eventual return to Cuba. The original repatriation agreement, which was entered into between the United States and Cuba in 1984, and which provided for the return to Cuba of a significant number of Marinel Cubans, was suspended by Cuban officials in 1985. That agreement was reinstated in November of 1987, and the deportation of these aliens is again possible. As a result of recent riots on the part of Marinel Cubans at their principal sites of detention in Atlanta, Georgia and Oakdale, Louisiana, these aliens have been dispersed to detention facilities throughout the United States.

It is anticipated that these detained Marinel Cubans will bring lawsuits, most frequently by way of habeas corpus actions, challenging chiefly their deportation to Cuba and/or their continued detention by INS. In the past, the Department of Justice has often not been served with these habeas corpus petitions. In order to ensure that the Department is promptly notified of such lawsuits, all United States Attorneys are requested, as soon as a habeas corpus petition is filed by a Cuban, to contact by telephone either Joseph F. Ciolino, FTS 272-4376, or Donald A. Couvillion, FTS 272-4397 of the Department's Office of Immigration Litigation, Civil Division. In addition, copies of the pleadings are to be forwarded by

expeditious courier to either of these attorneys. If the aforementioned attorneys are not available, telephonic contact should be made with either of the following Office of Immigration Litigation attorneys: Lauri Steven Filppu, Deputy Director, FTS 272-4705; Madelyn E. Johnson, FTS 272-4702; Richard Chamovitz, FTS 272-9844; or Carl McIntyre, Jr., FTS 724-9348.

Please note that the postal service mailing address for the Office of Immigration Litigation is different than its address for private courier service (e.g. DHL, Federal Express) deliveries. Those addresses are:

1. POSTAL SERVICE MAIL:
Office of Immigration Litigation
P.O. Box 878, Ben Franklin Station
Washington, D.C. 20044
2. PRIVATE COURIER SERVICE:
Office of Immigration Litigation
Patrick Henry Building, Room 8136
601 "D" Street, N.W.
Washington, D.C. 20530

(Civil Division)

* * * *

Personnel

Effective December 23, 1987, **H. Gary Annear** was appointed Acting United States Attorney for the District of North Dakota.

Effective January 4, 1988, **Deborah J. Daniels** was appointed interim United States Attorney for the Southern District of Indiana.

Effective January 11, 1988, **Wayne A. Rich, Jr.**, Assistant United States Attorney for the District of West Virginia, was appointed Acting Deputy Director for the Executive Office of United States Attorneys.

(Executive Office for U.S. Attorneys)

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Sentencing Guidelines Alert

The Office of Policy and Management Analysis of the Criminal Division has published a second issue of the above-captioned bulletin. This current issue of Alert dated December 10, 1987, addresses the Sentencing Act of 1987, signed by President Reagan on December 7, 1987.

A limited number of copies were mailed to all United States Attorneys' offices by regular mail. Please provide copies to all personnel in your office responsible for sentencing issues.

(Executive Office for U.S. Attorneys)

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Social Security Disability Litigation

Social Security Disability cases represent both, a significant portion of United States Attorneys' civil caseload and a large dollar value. A number of case management procedures have been developed to expedite processing Social Security cases. This is a reminder of procedures to be followed in our continuing efforts to efficiently and effectively handle this litigation in cooperation with the Department of Health and Human Services (HHS).

United States Attorneys are to teletype notices of new Social Security cases to the Office of Hearings and Appeals, Arlington, Virginia, and the Office of the General Counsel, Social Security Division, Baltimore, Maryland, within three (3) business days of service. It is important to follow this procedure if we expect timely suggested answers from HHS.

Social Security court orders and settlements should be promptly transmitted to HHS. Procedures for handling adverse decisions in Social Security Act review cases (including remand orders) are found in Title 4 of the United States Attorneys' Manual, Section 4-1.511. Pursuant to that section, adverse decisions should be forwarded to both the Social Security Administration (with a copy to the Department of Health and Human Services Chief Counsel's office in your region) and the Civil Division within two (2) business days of their receipt by United States Attorneys. Expeditious action is critical if the decision is adverse to HHS since the Civil Division requires an appeal recommendation be made to the appellate staff within 30 days of the adverse decision. Moreover, in cases where the plaintiff prevails and we do not appeal, HHS needs the orders to expeditiously implement them and timely pay benefits. Where prompt electronic transmission is not possible, please make immediate telephone contact and follow it with express mail.

HHS should be advised when a notice of appeal is filed. Please provide a copy of notices filed by claimants and the government to both the Chief Counsel's office in your region and the Social Security Division, Baltimore, Maryland.

(Executive Office for U.S. Attorneys)

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CASENOTES

OFFICE OF THE SOLICITOR GENERAL

The Solicitor General has authorized the filing of:

A petition for certiorari in United States v. Broce, Nos. 86-2166 and 86-2202 (10th Cir. Aug. 18, 1987) (unpublished). The issue is whether a defendant who enters a plea agreement to plead guilty to two separate conspiracy charges is later entitled to a factual determination through a collateral attack on his sentence to determine if the two conspiracies charged and admitted were in fact only two parts of a single conspiracy.

A petition for certiorari in Mesa v. California, slip op. Nos. 86-1525 and 86-1500 (9th Cir. Mar. 26, 1987). The question presented is whether a federal employee charged in state court with a crime arising out of the performance of his federal duties may remove the case to federal district court under 28 U.S.C. §1442(a)(1) without alleging a federal defense to the state criminal charge.

An acquiescence to a petition for certiorari in Sheridan v. United States, 823 F.2d 820 (9th Cir. 1987). The issue is whether the intentional tort exception to the Federal Tort Claims Act, 28 U.S.C. §2680(h), also bars claims alleging that the government negligently failed to control an employee who committed an intentional tort.

A petition for certiorari in United States v. Stuart, 813 F.2d 243 (9th Cir. 1987). The issue is whether a summons for tax information issued at the behest of a foreign government pursuant to treaty obligations is subject to the same good faith requirements as a domestic summons.

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LAND AND NATURAL RESOURCES DIVISION

COSTS RECOVERABLE BY THE STATE OF TENNESSEE UNDER CERCLA SECTION 9607(a) FOR RESPONDING TO LIQUIDATION TRUSTEE'S FAILURE TO REMOVE HAZARDOUS SUBSTANCES FROM PROPERTY IN DEBTOR'S ESTATE ARE ALLOWABLE AS "ADMINISTRATIVE EXPENSES" IN CHAPTER 7 BANKRUPTCY PROCEEDING

The court of appeals reversed rulings by the bankruptcy court and district court denying administrative expense priority to the State of Tennessee costs in responding to the debtor's hazardous wastes. The United States filed a brief amicus curiae in support of the State.

Wall Tube, the debtor, manufactured metal fabrications and generated hazardous waste streams in the course of its operations. It ceased operations in October 1983 and filed a Chapter 7 petition in bankruptcy in February 1984. Meanwhile, state inspectors had cited the company for violations of the state hazardous waste laws concerning the on-site retention and storage of wastes. The state subsequently expended over \$23,000 to inventory and survey the wastes at the Wall Tube site. (The site was eventually cleaned up by the owner of the property.)

The bankruptcy court ruled that the State's claim for reimbursement was a liability of the estate, but that it was not entitled to priority as an administrative expense because the costs were not necessary to preservation of the estate nor did they fulfill a legal obligation of the Trustee in administering the estate. In reaching this conclusion, the bankruptcy court ruled that trustees in liquidation were not required by 28 U.S.C. 959(b) to manage the property of the estate in accordance with the law of the State. The district court affirmed the bankruptcy court.

The court of appeals first ruled that the trustee was obligated to comply with the state's hazardous substance laws, and that his failure to do so compelled the State "to remedy the environmental health hazard at public expense." The court concluded that the State's expenses were "actual and necessary, both to preserve the estate in required compliance with state law and to protect the health and safety of a potentially endangered public." Accordingly, it reversed and remanded to the bankruptcy court to enter an order affording the State's costs priority as administrative expenses.

In Re: Wall Tube & Metal Products Company, William L. Lancaster v. State of Tennessee, 6th Cir. No. 86-5963 (October 14, 1987) DJ # 90-11-3-135

Attorneys: Anne S. Almy (Land and Natural Resources Division) FTS 633-2749,
Edward J. Shawaker (Land and Natural Resources Division)
FTS 633-4010

* * * *

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 32(c)(3)(D). Sentence and Judgment. Presentence Investigation. Disclosure.

At a sentencing hearing, defendant called the court's attention to claimed errors of fact in the presentence report. Defendant discovered that his presentence report had been sent to the Bureau of Prisons and the United States Parole Commission unchanged. Defendant filed a motion to vacate or correct his sentence under 28 U.S.C. §2255, contending that (1) the court permitted inaccurate information to remain in his presentence report after he had called it to the court's attention and, (2) that it failed to make any findings as to the accuracy of that report, both in violation of Rule 32(c)(3)(D), which requires the district courts to make findings as to any controverted matters, or determine that no such findings are necessary because the matters controverted will not be taken into account at sentencing and that a written record of the sentencing court's findings accompany any copy of the report made available to the Bureau of Prisons or the United States Parole Commission. The district court denied the motion and defendant appealed.

The United States Court of Appeals for the Eighth Circuit held that no substantial rights have been violated. The sentencing transcript reflects that some of the matters objected to are insignificant on their face; the district court accepted defendant's version of some facts and sufficiently indicated that it would not consider other disputed matters in imposing sentence; the remaining objections did not raise material issues of fact, as opposed to matters of opinion. The district court is directed on remand to send appropriate authorities the transcript of sentencing proceedings together with a copy of this opinion, which will fully satisfy Rule 32.

(Affirmed; cause remanded with instructions.)

Thunder v. United States, 810 F.2d 817 (8th Cir. 1987)

* * * *

Rule 6(e). The Grand Jury. Recording and Disclosure of Proceedings.

During an independent grand jury investigation, the FBI obtained information pertaining to defendant's income. Allegations had been made accusing defendant of receiving money for performance of certain acts. The United States Attorney provided information, primarily memoranda of interviews and summaries of FBI agent investigations, to the Internal Revenue Service (IRS) for possible use in an administrative proceeding. The material had not been presented to the grand jury. The defendant sought to have an administrative summons quashed contending it was based on disclosure of "matters occurring before the grand jury," in violation of Rule 6(e). The district court enforced the administrative summons. The defendant appealed.

The Court of Appeals for the Tenth Circuit held that when documents or other material will not reveal what actually transpired before a grand jury, their disclosure is not an invasion of the protective secrecy of its proceedings, nor is it an interference with the grand jury as a principal tool of criminal accusation. The test of whether disclosure of information will violate Rule 6(e) depends upon "whether revelation in the particular context would in fact reveal what was before the grand jury." A reviewing court must find that disclosure is certain to destroy the protections of Rule 6(e) before it finds a violation of the rule. Revelation of information learned by other governmental agencies in a parallel investigation without disclosure of what had been submitted to the grand jury was not improper. As the Court suggested in United States ex rel. v. Tynan, 757 F.2d 1085 (10th Cir. 1985), it is not the information itself, but the fact that the grand jury was considering that information which is protected by Rule 6(e). For that reason, the Court could not accept defendant's argument that the information disclosed to the IRS was "grand jury material."

(Affirmed; stays dissolved.)

Anaya v. United States, 815 F.2d 1373 (10th Cir. 1987)

* * * *

APPENDIXCUMULATIVE 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.)

<u>Effective Date</u>	<u>Annual Rate</u>	<u>Effective Date</u>	<u>Annual Rate</u>
12-20-85	7.57%	04-10-87	6.30%
01-17-86	7.85%	05-13-87	7.02%
02-14-86	7.71%	06-05-87	7.00%
03-14-86	7.06%	07-03-87	6.64%
04-11-86	6.31%	08-05-87	6.98%
05-14-86	6.56%	09-02-87	7.22%
06-06-86	7.03%	10-01-87	7.88%
07-09-86	6.35%	10-23-87	6.90%
08-01-86	6.18%	11-20-87	6.93%
08-29-86	5.63%		
09-26-86	5.79%		
10-24-86	5.75%		
11-21-86	5.77%		
12-24-86	5.93%		
01-16-87	5.75%		
02-13-87	6.09%		
03-13-87	6.04%		

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.

For cumulative list of those federal civil postjudgment interest rates effective October 1, 1982, through December 19, 1985, see United States Attorneys' Bulletin, Vol. 34, No. 1, Page 25, January 17, 1986.

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TELETYPES TO ALL UNITED STATES ATTORNEYS
FROM THE EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

- 11/20/87 From Charles E. Fitzwilliam, Acting United States Attorney, District of Puerto Rico, to All United States Attorneys, re: Information on Dr. Barry Jacobs of Herndon, Virginia, as an expert witness.
- 11/24/87 From William F. Weld, Assistant Attorney General, Criminal Division, re: Special Parole Terms.
- 12/08/87 From Robert G. Ulrich, United States Attorney, Western District of Missouri, re: Implementing the New Policy for Destroying Contraband Drug Evidence.
- 12/10/87 From Frederick J. Hess, United States Attorney, Southern District of Illinois, re: Multi-district Plea Agreements.

* * * *

UNITED STATES ATTORNEYS' LIST

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
Alabama, N	Frank W. Donaldson
Alabama, M	James Eldon Wilson
Alabama, S	J. B. Sessions, III
Alaska	Michael R. Spaan
Arizona	Stephen M. McNamee
Arkansas, E	Charles A. Banks
Arkansas, W	J. Michael Fitzhugh
California, N	Joseph P. Russoniello
California, E	David F. Levi
California, C	Robert C. Bonner
California, S	Peter K. Nunez
Colorado	Robert N. Miller
Connecticut	Stanley A. Twardy, Jr.
Delaware	William C. Carpenter, Jr.
District of Columbia	Joseph E. diGenova
Florida, N	K. Michael Moore
Florida, M	Robert W. Merkle
Florida, S	Leon B. Kellner
Georgia, N	Robert L. Barr, Jr.
Georgia, M	Samuel A. Wilson
Georgia, S	Hinton R. Pierce
Guam	K. William O'Connor
Hawaii	Daniel A. Bent
Idaho	Maurice O. Ellsworth
Illinois, N	Anton R. Valukas
Illinois, S	Frederick J. Hess
Illinois, C	J. William Roberts
Indiana, N	James G. Richmond
Indiana, S	Deborah J. Daniels
Iowa, N	Charles W. Larson
Iowa, S	Christopher D. Hagen
Kansas	Benjamin L. Burgess, Jr.
Kentucky, E	Louis G. DeFalaise
Kentucky, W	Joseph M. Whittle
Louisiana, E	John Volz
Louisiana, M	P. Raymond Lamonica
Louisiana, W	Joseph S. Cage, Jr.
Maine	Richard S. Cohen
Maryland	Breckinridge L. Willcox
Massachusetts	Frank L. McNamara, Jr.
Michigan, E	Roy C. Hayes
Michigan, W	John A. Smietanka
Minnesota	Jerome G. Arnold
Mississippi, N	Robert Q. Whitwell
Mississippi, S	George L. Phillips
Missouri, E	Thomas E. Dittmeier
Missouri, W	Robert G. Ulrich

UNITED STATES ATTORNEYS' LIST
(Continued)

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
Montana	Byron H. Dunbar
Nebraska	Ronald D. Lahners
Nevada	William A. Maddox
New Hampshire	Richard V. Wiebusch
New Jersey	Samuel A. Alito, Jr.
New Mexico	William L. Lutz
New York, N	Frederick J. Scullin, Jr.
New York, S	Rudolph W. Giuliani
New York, E	Andrew J. Maloney
New York, W	Roger P. Williams
North Carolina, E	J. Douglas McCullough
North Carolina, M	Robert H. Edmunds, Jr.
North Carolina, W	Thomas J. Ashcraft
North Dakota	H. Gary Annear
Ohio, N	Patrick M. McLaughlin
Ohio, S	D. Michael Crites
Oklahoma, N	Tony Michael Graham
Oklahoma, E	Roger Hilfiger
Oklahoma, W	William S. Price
Oregon	Charles H. Turner
Pennsylvania, E	Edward S. G. Dennis, Jr.
Pennsylvania, M	James J. West
Pennsylvania, W	J. Alan Johnson
Puerto Rico	Daniel F. Lopez-Romo
Rhode Island	Lincoln C. Almond
South Carolina	Vinton DeVane Lide
South Dakota	Philip N. Hogen
Tennessee, E	John W. Gill, Jr.
Tennessee, M	Joe B. Brown
Tennessee, W	W. Hickman Ewing, Jr.
Texas, N	Marvin Collins
Texas, S	Henry K. Oncken
Texas, E	Robert J. Wortham
Texas, W	Helen M. Eversberg
Utah	Brent D. Ward
Vermont	George J. Terwilliger III
Virgin Islands	Terry M. Halpern
Virginia, E	Henry E. Hudson
Virginia, W	John P. Alderman
Washington, E	John E. Lamp
Washington, W	Gene S. Anderson
West Virginia, N	William A. Kolibash
West Virginia, S	Michael W. Carey
Wisconsin, E	Patricia J. Gorence
Wisconsin, W	Patrick J. Fiedler
Wyoming	Richard A. Stacy
North Mariana Islands	K. William O'Connor

1 one-count Information charging a violation of Title / (4) /,
 2 United States Code, Section / (5) /. In this regard,
 3 / (1) / understands that the maximum penalty which the
 4 Court may impose upon (his/her) plea of guilty is imprisonment for
 5 a period not to exceed / (6) /, a fine not to exceed Two
 6 Hundred Fifty Thousand Dollars (\$250,000), or both; plus a
 7 mandatory penalty assessment of Fifty Dollars (\$50) to be
 8 deposited in the Crime Victims Fund, pursuant to Title 18,
 9 United States Code, Section 3013. / (1) / acknowledges that
 10 no promises of any type have been made to (him/her) with respect
 11 to the sentence in this matter.

12 2. / (1) / agrees to make restitution to
 13 / (7) / in the amount of / (8) /
 14 pursuant to such terms and conditions as may be formulated by the
 15 United States Probation Office.

16 3. The United States of America agrees not to bring any
 17 additional charges against / (1) / based upon evidence in
 18 the Government's possession at the time of this Agreement and
 19 arising out of (his/her) conduct while / (9) /, unless
 20 / (1) / breaches this plea agreement.

21 In this regard, / (1) / recognizes that the
 22 United States of America has agreed not to include all of the
 23 criminal charges in the Information which are established by the
 24 evidence solely because of this Agreement and that if this
 25 Agreement is breached, the United States of America expressly
 26 retains the right to dismiss the Information without prejudice and

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 Seattle, WA 98104
 (206) 442-7970

1 to present to the Grand Jury for Indictment all of the criminal
2 violations established by the evidence.

3 / (1) / expressly waives (his/her) right to
4 challenge the initiation of additional charges against (him/her)
5 arising out of the above-described conduct if (he/she) breaches
6 this plea agreement.

7 4. The United States of America expressly reserves the right
8 to speak to the Court at the time of sentencing pursuant to
9 Rule 32(a)(1) of the Federal Rules of Criminal Procedure. The
10 United States of America further reserves the right to provide to
11 the Court and to the United States Probation Office a statement of
12 facts relating to all of the criminal conduct for which
13 / (1) / was responsible; and further reserves the right
14 to correct and comment on any misstatements of fact made by
15 / (1) / or (his/her) attorney in the course of the
16 presentence investigation or in the course of the sentencing or
17 other proceedings.

18 The United States of America and / (1) / acknowledge
19 that the above-stated terms and conditions constitute the entire
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1 plea agreement between the parties and deny the existence of any
2 other terms and conditions not stated herein.

3 DATED this ____ day of _____, '1985.

4

5 _____
6 / (1) /
7 Defendant

6

7 _____
8 / (3) /
9 Attorney for Defendant

8

9

10 _____
11 / (2) /
12 Assistant United States Attorney

10

11

12

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14

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16

(1) Name of defendant

17

(2) Name of Assistant United States Attorney

18

(3) Name of attorney for defendant

19

(4) and (5) Title and Section violated

20

(6) Maximum sentence of imprisonment

21

(7) Bank/Savings and Loan Association, or victim

22

(8) Amount of restitution

23

(9) Limitations on period, i.e., "while an employee of _____
" or "during the period continuing through _____"

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	NO.
)	
v.)	
)	PLEA AGREEMENT
/ (1) _____,	/)	
)	
Defendant.)	
_____)	

COME NOW the plaintiff, United States of America, by and through its counsel, Gene S. Anderson, United States Attorney for the Western District of Washington, and / (2) _____/, Assistant United States Attorney for said District, and the defendant, / (1) _____/, and (his/her) counsel, / (3) _____/, and enter the following plea agreement pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure:

1. / (1) _____/ agrees to plead guilty to a one-count Information charging a violation of Title / (4) _____/, United States Code, Section / (5) _____. In this regard, / (1) _____/ understands that the maximum penalty which the Court may impose upon (his/her) plea of guilty is imprisonment for a period not to exceed / (6) _____/, a fine not to exceed

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PLEA AGREEMENT - 1
9807 (O)

(9/85)

1 One Hundred Thousand Dollars (\$100,000), or both; plus a mandatory
2 penalty assessment of Twenty-Five Dollars (\$25) to be deposited in
3 the Crime Victims Fund, pursuant to Title 18, United States Code,
4 Section 3013. / (1) / further understands that what the
5 sentence will be is left entirely to the discretion of the Court.

6 / (1) / acknowledges that no promises of any type have
7 been made to (him/her) with respect to the sentence in this matter.

8 2. / (1) / agrees to make restitution to
9 / (7) / in the amount of / (8) /
10 pursuant to such terms and conditions as may be formulated by the
11 United States Probation Office.

12 3. The United States of America agrees not to bring any
13 additional charges against / (1) / based upon evidence in
14 the Government's possession at the time of this Agreement and
15 arising out of (his/her) conduct while / (9) /, unless
16 / (1) / breaches this plea agreement.

17 In this regard, / (1) / recognizes that the
18 United States of America has agreed not to include all of the
19 criminal charges in the Information which are established by the
20 evidence solely because of this Agreement and that if this
21 Agreement is breached, the United States of America expressly
22 retains the right to dismiss the Information without prejudice and
23 to present to the Grand Jury for Indictment all of the criminal
24 violations established by the evidence.

25 / (1) / expressly waives (his/her) right to
26 challenge the initiation of additional charges, including felony

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1 charges, against (him/her) arising out of the above-described
2 conduct if (he/she) breaches this plea agreement.

3 4. The United States of America expressly reserves the right
4 to speak to the Court at the time of sentencing pursuant to
5 Rule 32(a)(1) of the Federal Rules of Criminal Procedure. The
6 United States of America further reserves the right to provide to
7 the Court and to the United States Probation Office a statement of
8 facts relating to all of the criminal conduct for which
9 / (1) / was responsible; and further reserves the right
10 to correct and comment on any misstatements of fact made by
11 / (1) / or (his/her) attorney in the course of the
12 presentence investigation or in the course of the sentencing or
13 other proceedings.

14 The United States of America and / (1) /
15 acknowledge that the above-stated terms and conditions constitute
16 the entire plea agreement between the parties and deny the
17 existence of any other terms and conditions not stated herein.

18 DATED this ____ day of _____, 1985.

19
20
21
22
23
24
25
26

/(1)/
Defendant

/(3)/
Attorney for Defendant

/(2)/
Assistant United States Attorney

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Seattle, WA 98104
(206) 442-7970

NOTES ON 487a - c

- (1) Name of defendant
- (2) Name of Assistant United States Attorney
- (3) Name of attorney for defendant
- (4) and (5) Title and Section violated
- (6) Maximum sentence of imprisonment
- (7) Bank/Savings and Loan Association, or victim
- (8) Amount of restitution
- (9) Limitations on period, i.e., "while an employee of _____"
" or "during the period continuing through _____"