



U.S. Department of Justice

Federal Bureau of Investigation
Washington, D.C. 20535

March 5, 2021

MR. JOHN GREENEWALD JR.
SUITE 1203
27305 WEST LIVE OAK ROAD
CASTAIC, CA 91384

FOIPA Request No.: 1490665-000
Subject: AUSTIN, LOUIS LIVINGSTON

Dear Mr. Greenewald:

The enclosed 135 pages of records were determined to be responsive to your subject and were previously processed and released pursuant to the Freedom of Information Act (FOIA). Please see the selected paragraphs below for relevant information specific to your request as well as the enclosed FBI FOIPA Addendum for standard responses applicable to all requests.

- ☒ In an effort to provide you with responsive records as expeditiously as possible, we are releasing documents from previous requests regarding your subject. We consider your request fulfilled. Since we relied on previous results, additional records potentially responsive to your subject may exist. If this release of previously processed material does not satisfy your request, you may request an additional search for records. Submit your request by mail to **Initial Processing Operations Unit, 200 Constitution Drive, Winchester, VA 22602, or by fax to (540) 868-4997**. Please cite the FOIPA Request Number in your correspondence.
- ☐ Please be advised that additional records responsive to your subject exist. If this release of previously processed material does not satisfy your request, you must advise us that you want the additional records processed. Please submit your response within thirty (30) days by mail to **Initial Processing Operations Unit, 200 Constitution Drive, Winchester, VA 22602, or by fax to (540) 868-4997**. Please cite the FOIPA Request Number in your correspondence. **If we do not receive your decision within thirty (30) days of the date of this notification, your request will be closed.**
- ☐ One or more of the enclosed records were transferred to the National Archives and Records Administration (NARA). Although we retained a version of the records previously processed pursuant to the FOIA, the original records are no longer in our possession.

If this release of the previously processed material does not satisfy your request, you may file a FOIPA request with NARA at the following address:

National Archives and Records Administration
Special Access and FOIA
8601 Adelphi Road, Room 5500
College Park, MD 20740-6001

- ☐ Records potentially responsive to your request were transferred to the National Archives and Records Administration (NARA), and they were not previously processed pursuant to the FOIA. You may file a request with NARA using the address above.

- ☐ One or more of the enclosed records were destroyed. Although we retained a version of the records previously processed pursuant to the FOIA, the original records are no longer in our possession. Record retention and disposal is carried out under supervision of the National Archives and Records Administration (NARA) , Title 44, United States Code, Section 3301 as implemented by Title 36, Code of Federal Regulations, Part 1228; Title 44, United States Code, Section 3310 as implemented by Title 36, Code of Federal Regulations, Part 1229.10.
- ☐ Records potentially responsive to your request were destroyed. Since this material could not be reviewed, it is not known if it was responsive to your request. Record retention and disposal is carried out under supervision of the National Archives and Records Administration (NARA) according to Title 44 United States Code Section 3301, Title 36 Code of Federal Regulations (CFR) Chapter 12 Sub-chapter B Part 1228, and 36 CFR 1229.10.
- ☐ Documents or information referred to other Government agencies were not included in this release.

Please refer to the enclosed FBI FOIPA Addendum for additional standard responses applicable to your request. **"Part 1"** of the Addendum includes standard responses that apply to all requests. **"Part 2"** includes additional standard responses that apply to all requests for records about yourself or any third party individuals. **"Part 3"** includes general information about FBI records that you may find useful. Also enclosed is our Explanation of Exemptions.

For questions regarding our determinations, visit the www.fbi.gov/foia website under "Contact Us." The FOIPA Request Number listed above has been assigned to your request. Please use this number in all correspondence concerning your request.

If you are not satisfied with the Federal Bureau of Investigation's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: <https://www.justice.gov/oip/submit-and-track-request-or-appeal>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal." Please cite the FOIPA Request Number assigned to your request so it may be easily identified.

You may seek dispute resolution services by contacting the Office of Government Information Services (OGIS). The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Alternatively, you may contact the FBI's FOIA Public Liaison by emailing foipaquestions@fbi.gov. If you submit your dispute resolution correspondence by email, the subject heading should clearly state "Dispute Resolution Services." Please also cite the FOIPA Request Number assigned to your request so it may be easily identified.

Sincerely,



Michael G. Seidel
Section Chief
Record/Information
Dissemination Section
Information Management Division

Enclosure(s)

FBI FOIPA Addendum

As referenced in our letter responding to your Freedom of Information/Privacy Acts (FOIPA) request, the FBI FOIPA Addendum provides information applicable to your request. Part 1 of the Addendum includes standard responses that apply to all requests. Part 2 includes standard responses that apply to requests for records about individuals to the extent your request seeks the listed information. Part 3 includes general information about FBI records, searches, and programs.

Part 1: The standard responses below apply to all requests:

- (i) **5 U.S.C. § 552(c).** Congress excluded three categories of law enforcement and national security records from the requirements of the FOIPA [5 U.S.C. § 552(c)]. FBI responses are limited to those records subject to the requirements of the FOIPA. Additional information about the FBI and the FOIPA can be found on the www.fbi.gov/foia website.
- (ii) **Intelligence Records.** To the extent your request seeks records of intelligence sources, methods, or activities, the FBI can neither confirm nor deny the existence of records pursuant to FOIA exemptions (b)(1), (b)(3), and as applicable to requests for records about individuals, PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(1), (b)(3), and (j)(2)]. The mere acknowledgment of the existence or nonexistence of such records is itself a classified fact protected by FOIA exemption (b)(1) and/or would reveal intelligence sources, methods, or activities protected by exemption (b)(3) [50 USC § 3024(i)(1)]. This is a standard response and should not be read to indicate that any such records do or do not exist.

Part 2: The standard responses below apply to all requests for records on individuals:

- (i) **Requests for Records about any Individual—Watch Lists.** The FBI can neither confirm nor deny the existence of any individual's name on a watch list pursuant to FOIA exemption (b)(7)(E) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (j)(2)]. This is a standard response and should not be read to indicate that watch list records do or do not exist.
- (ii) **Requests for Records about any Individual—Witness Security Program Records.** The FBI can neither confirm nor deny the existence of records which could identify any participant in the Witness Security Program pursuant to FOIA exemption (b)(3) and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(3), 18 U.S.C. 3521, and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.
- (iii) **Requests for Records for Incarcerated Individuals.** The FBI can neither confirm nor deny the existence of records which could reasonably be expected to endanger the life or physical safety of any incarcerated individual pursuant to FOIA exemptions (b)(7)(E), (b)(7)(F), and PA exemption (j)(2) [5 U.S.C. §§ 552/552a (b)(7)(E), (b)(7)(F), and (j)(2)]. This is a standard response and should not be read to indicate that such records do or do not exist.

Part 3: General Information:

- (i) **Record Searches.** The Record/Information Dissemination Section (RIDS) searches for reasonably described records by searching systems or locations where responsive records would reasonably be found. A standard search normally consists of a search for main files in the Central Records System (CRS), an extensive system of records consisting of applicant, investigative, intelligence, personnel, administrative, and general files compiled by the FBI per its law enforcement, intelligence, and administrative functions. The CRS spans the entire FBI organization, comprising records of FBI Headquarters, FBI Field Offices, and FBI Legal Attaché Offices (Legats) worldwide; Electronic Surveillance (ELSUR) records are included in the CRS. Unless specifically requested, a standard search does not include references, administrative records of previous FOIPA requests, or civil litigation files. For additional information about our record searches, visit www.fbi.gov/services/information-management/foipa/requesting-fbi-records.
- (ii) **FBI Records.** Founded in 1908, the FBI carries out a dual law enforcement and national security mission. As part of this dual mission, the FBI creates and maintains records on various subjects; however, the FBI does not maintain records on every person, subject, or entity.
- (iii) **Requests for Criminal History Records or Rap Sheets.** The Criminal Justice Information Services (CJIS) Division provides Identity History Summary Checks – often referred to as a criminal history record or rap sheet. These criminal history records are not the same as material in an investigative “FBI file.” An Identity History Summary Check is a listing of information taken from fingerprint cards and documents submitted to the FBI in connection with arrests, federal employment, naturalization, or military service. For a fee, individuals can request a copy of their Identity History Summary Check. Forms and directions can be accessed at www.fbi.gov/about-us/cjis/identity-history-summary-checks. Additionally, requests can be submitted electronically at www.edo.cjis.gov. For additional information, please contact CJIS directly at (304) 625-5590.
- (iv) **National Name Check Program (NNCP).** The mission of NNCP is to analyze and report information in response to name check requests received from federal agencies, for the purpose of protecting the United States from foreign and domestic threats to national security. Please be advised that this is a service provided to other federal agencies. Private Citizens cannot request a name check.

EXPLANATION OF EXEMPTIONS

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552

- (b)(1) (A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified to such Executive order;
- (b)(2) related solely to the internal personnel rules and practices of an agency;
- (b)(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;
- (b)(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;
- (b)(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
- (b)(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
- (b)(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;
- (b)(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or
- (b)(9) geological and geophysical information and data, including maps, concerning wells.

SUBSECTIONS OF TITLE 5, UNITED STATES CODE, SECTION 552a

- (d)(5) information compiled in reasonable anticipation of a civil action proceeding;
- (j)(2) material reporting investigative efforts pertaining to the enforcement of criminal law including efforts to prevent, control, or reduce crime or apprehend criminals;
- (k)(1) information which is currently and properly classified pursuant to an Executive order in the interest of the national defense or foreign policy, for example, information involving intelligence sources or methods;
- (k)(2) investigatory material compiled for law enforcement purposes, other than criminal, which did not result in loss of a right, benefit or privilege under Federal programs, or which would identify a source who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(3) material maintained in connection with providing protective services to the President of the United States or any other individual pursuant to the authority of Title 18, United States Code, Section 3056;
- (k)(4) required by statute to be maintained and used solely as statistical records;
- (k)(5) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or for access to classified information, the disclosure of which would reveal the identity of the person who furnished information pursuant to a promise that his/her identity would be held in confidence;
- (k)(6) testing or examination material used to determine individual qualifications for appointment or promotion in Federal Government service the release of which would compromise the testing or examination process;
- (k)(7) material used to determine potential for promotion in the armed services, the disclosure of which would reveal the identity of the person who furnished the material pursuant to a promise that his/her identity would be held in confidence.

RECORDED-1

SE-11

SAC, Washington Field
Director, FBI

February 3, 1953

BY SPECIAL MESSENGER

UNITED STATES v. FIVE CASES, ETC.
CAPON SPRINGS WATER
CONTEMPT OF COURT
OBSTRUCTION OF JUSTICE

2-1

Forwarded herewith is a copy of a memorandum dated January 23, 1953, from the Criminal Division, Department of Justice, requesting an investigation in regard to captioned matter.

You are instructed to conduct the required investigation. Have the Agent assigned to the case contact Mr. Vincent A. Kleinfeld or Mr. John T. Grigaby and review the results of the Food and Drug Administration's investigation with reference to the disappearance of the water, as well as the material submitted by Louis L. Austin. Thereafter submit an investigative report, indicating New York as office of origin, setting forth pertinent information and appropriate leads for the proper development of the case.

For your further information, the Bureau conducted an investigation with reference to a complaint made by Austin in 1934. Copies of the report of SA John F. Sears, dated at Philadelphia, October 30, 1934, in the case entitled "Unknown Subjects, Improper Activities of Employees of Food and Drug Administration," (Philadelphia file 62-1031) were forwarded to the Department by memoranda dated November 7, 1934, and June 23, 1952.

This matter is to be given your immediate attention. The report reflecting the investigation requested of your office is to be forwarded to reach the Bureau on or before February 10, 1953. Instruct all offices to which leads are directed to complete all investigation in this matter and submit reports to reach the Bureau on or before February 24, 1953.

Enclosure

cc New York
Philadelphia (Information, 62-1031)

643 PM '53

- Tolson
- Ladd
- Nichols
- Belmont
- Clegg
- Glavin
- Harbo
- Rosen
- Tracy
- Laughlin
- Mohr
- Tele. Rm.
- Holloman
- Gandy

MJB:DC

RECEIVED
FEB 4 1953
U.S. DEPT. OF JUSTICE
DIRECTOR

COMM - FBI
FEB 4 1953
MAILED 24

79 FEB 20 1953

RAM
LRP

Office Memorandum • UNITED STATES GOVERNMENT

TO : J. Edgar Hoover, Director
 FROM : Federal Bureau of Investigation
 Charles B. Murray, Assistant Attorney General
 Criminal Division
 SUBJECT: United States v. 5 Cases, etc.,
 Capon Springs Water

DATE: January 23 1943

CBM:JTG:IK
 22-48-478
 22-83-478

It is requested that an investigation be made with respect to the disappearance of a quantity of Capon Springs Water which had been seized by the United States Marshal for the Southern District of New York pursuant to process issued in a seizure action brought under the Federal Food, Drug, and Cosmetic Act. The purpose of the investigation will be to determine whether there occurred such a wilful destruction or disposal of the seized article as to constitute criminal contempt in violation of 18 U.S.C. 401, or the corrupt obstruction of the administration of justice in violation of 18 U.S.C. 1503.

The proceeding was commenced by the filing of a libel on June 4, 1943. The libel alleged that the water had been shipped on or about March 16 and 18, 1943, by Capon Water Company from Capon Springs, West Virginia, and was stored in the possession of Norman Storage and Trucking Company, Inc., 10-12 Leonard Street, New York City, New York; and that the article was misbranded in that statements in the labeling were false and misleading in representing the water as effective in restoring certain functions of the human body and in possessing qualities beneficial to health greatly in excess of those derived from ordinary drinking water. The bottles of water were seized by the United States Marshal at the premises of the above storage company and left in its custody by the Marshal. It appears that one Andrew P. St. Thomas was at that time the distributor of the water in New York City and had stored the article at the warehouse in connection with his activities. His address is stated to be at 500 5th Avenue, New York City.

Capon Water Company, Louis L. Austin, and others, appeared as claimants and in February 1944, filed an answer denying the misbranding charge and further defended upon pleas of res judicata based upon a previous judgment in a seizure action brought in January 1928, and a cease and desist order of the Federal Trade Commission entered in January 1938. The District Court held for the claimant and entered an order of dismissal on July 13, 1945. On appeal, the Court of Appeals for the Second Circuit reversed in an opinion dated July 17, 1946, 156 F. 2d 493.

RECORDED-1
 SE-11
 65-6519-53
 JAN 27 1952

Following this, and upon the application of the claimants, the case was removed to the District of New Jersey for trial. Upon such a removal, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(f)) does not require that the seized article be transferred from the one district to the other, and the seized water remained in the warehouse in New York City. Several delays were had which prevented the case being set for trial.

In March 1951, the Food and Drug Administration made a routine inspection to determine the whereabouts and condition of the water which had been seized, and has stated that it discovered that the seized water could not be found in the warehouse in New York City where it had been stored by the United States Marshal. This circumstance prompted the Food and Drug Administration to make further inquiry to determine the whereabouts of the water and the circumstances of its disappearance. The substance of the information obtained pursuant to this inquiry is that no records were available at the warehouse as to the disposition of the water. The manager of the warehouse advised that the last record of any transaction was dated March 12, 1947, and disclosed that a large number of empty bottles were delivered to a transfer company to be returned to Capon Springs, West Virginia, and that the account was closed at that time. Mr. William Herbst, Vice President, stated that he could remember the water being "trucked away not too many years after the seizure and that there was a person present with a truck carrying a badge". He did not know whether the person was from the Food and Drug Administration or from the United States Marshal's office, but was quite sure that the official left a receipt.

Mr. Louis L. Austin, whose address is 1427 Spruce Street, Philadelphia 2, Pennsylvania, who appears to be the principal claimant in the seizure action, has made a number of complaints to this Department and to the Federal Security Agency with respect to the proceedings had in this case, and has repeatedly requested this Department to make an investigation to determine the responsibility for the disappearance of the water. We have been furnished copies of affidavits of the officers of the warehouse company which he obtained. The affidavit of William Herbst, Vice-President of the Norman Storage and Trucking Company, states:

4. That he had been informed of the letter written by the New York Distributor of Capon Springs Water, A. P. St. Thomas on April 25, 1945, to the Norman Storage & Trucking Company, advising that by no means was the seized water to be touched by anyone.
5. That sometime after, at a date he does not now recall, the warehouse was visited by a government representative who presented a badge and said he had come to remove the 19 packages of Capon Springs Water that had been seized. That this party had a truck with him; and that he, William Herbst, help load the seized water on the truck.

6. That he, William Herbst would recognize this man with a badge anywhere, as the man had come to the warehouse on frequent occasions. That, to his, Mr. Herbst's best knowledge and belief, the man with a badge was from the Food and Drug Administration.
7. That he, William Herbst, had given this information to Inspectors Cole and Kedzior of the Food and Drug Administration on their several visits to the Norman Storage & Trucking Company in May of 1951.
8. That he, William Herbst, is positive that the seized water was disposed of in this way and in no other way.

The affidavit of Earnest J. Meyer, President of the storage company, states:

"That he has checked again with the other officers of the Norman Storage and Trucking Company, and they are all positive, without doubt, that the seized water was removed by the Food and Drug Administration, and by no other persons."

In a letter to the Federal Security Administrator dated May 6, 1952, Mr. Austin in effect states that the responsibility for the disappearance of the water has been placed upon him by the Food and Drug Administration and the Department of Justice, and that he desires appropriate steps be taken to absolve him of blame. In his memorandum prepared for the Attorney General dated June 17, 1952, requesting an investigation, Mr. Austin states that the Food and Drug Administration has present knowledge, as it has always had, of the whereabouts of the water, and that an investigation will establish beyond doubt that the water was removed by the Food and Drug Administration. 87-32434-13

The wilful destruction or disposition of the seized water, which was in custodia legis, would constitute a criminal contempt punishable under 18 U.S.C. 401, and perhaps a violation of 18 U.S.C. 1503 which punishes any person who corruptly obstructs or impedes the due administration of justice. The charge made by Mr. Austin that "the Food and Drug Administration has knowledge now, as it always had, of the whereabouts of the water, they say somehow disappeared", is tantamount to saying that the officials of that Agency are covering up the manner of its disposition.

It is, therefore, requested that an investigation be made to determine the circumstances under which the Capon Springs Water involved in this case disappeared or was disposed of, and the identity of the person or persons responsible.

The documents referred to are in the Department's files. Further information desired with respect to this case may be obtained from Mr. Vincent A. Kleinfeld and Mr. John T. Grigsby, attorneys in the Criminal Division.

SERVICE UNIT
SEARCH SLIP

4-22a

Supervisor

Bell

Room

4712

Subj:

*Lawrence H. Tate Co.
Opore Springs, W. Va.*

☒ Exact Spelling

Searchers

☒ All References

Initial *BAB*

☐ Subversive Ref.

Date *1-30*

☐ Main File

☐ Restricted to Locality of

FILE NUMBER

SERIALS

N. R.

(6)

Initialed

SERVICE UNIT
SEARCH SLIP

4-22a

Supervisor Bell

Room 4712

Subj: Louis F. Austin

- ☒ Exact Spelling
☒ All References
☐ Subversive Ref.
☐ Main File
☐ Restricted to Locality of
(none)

Searchers
Initial B-15
Date 1-5-52

FILE NUMBER

SERIALS

- ✓ 62-32454-1, 5, 13,
no 9-19354
✓ 65-27398-38
✓ 65-56402-1673 p. 155
✓ 100-344826-59
✓ 62-32454-14 Summary
(6-23-52)

Initialed

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Ladd *EL*

DATE: January 29, 1953

FROM : Mr. Rosen *Rosen*

SUBJECT: UNITED STATES v. FIVE CASES, ETC.

Q CAPON SPRINGS WATER

CONTEMPT OF COURT

OBSTRUCTION OF JUSTICE

SYNOPSIS:*Q* CAPON WATER CO.

By memorandum dated January 23, 1953, received in the Investigative Division January 28, 1953, the Criminal Division of the Department of Justice requested an investigation to determine the circumstances under which Capon Springs Water seized by the United States Marshal under process brought in the Southern District of New York disappeared or was disposed of and the identity of the person or persons responsible. A libel suit was filed against the Capon Water Company, Louis L. Austin and others on June 4, 1943. The Food and Drug Administration in March, 1951, found that the seized water was no longer in storage and this "prompted the Food and Drug Administration to make further inquiry." Allegation by Austin indicates Food and Drug Administration fully cognizant of disposition of water. Recommend necessary investigation be conducted.

PURPOSE:

To advise you of the Criminal Division's request to investigate a Contempt of Court or Obstruction of Justice case in the disappearance of evidence in a warehouse in New York City, in a Food and Drug Administration Act case. It is recommended we accept the case for investigation. Accordingly, a memorandum to the Washington Field is attached for your approval.

DETAILS:

By memorandum dated January 23, 1953, received in the Investigative Division January 28, 1953, the Criminal Division requested that an investigation be made with respect to the disappearance of a quantity of Capon Springs Water which had been seized by the U. S. Marshal for the Southern District of New York, pursuant to process issued in a seizure action brought under the Federal Food, Drug and Cosmetic Act. The purpose of the investigation would be to determine whether there occurred such willful destruction or disposal of the seized article as to constitute a criminal contempt in violation of Section 401, Title 18, U. S. C. (Contempt of Court) or Section 1503, Title 18, U. S. C. (Obstruction of Justice). The Food and Drug Administration filed a libel suit against the Capon Water Company, Louis L. Austin and others on June 4, 1943, alleging that the certain

Attachment

MJB:DC

79 FEB 20 1953

 RECORDED-1
 INDEXED-1
 169-636-2
 FEB 6 1953

 Tolson _____
 Ladd _____
 Clegg _____
 Glavin _____
 Nichols _____
 Rosen _____
 Tracy _____
 Harbo _____
 Belmont _____
 Mohr _____
 Tele. Room _____
 Nease _____
 Gandy _____

Memorandum to Mr. Ladd

misbranded water had been shipped on or about March 16 and 18, 1943, by Capon Water Company and was stored in the possession of Norman Storage and Trucking Company, Incorporated, New York City. The water was seized by the U. S. Marshal, Southern District of New York, and left in the custody of the Norman Storage and Trucking Company.

U. S. District Court held for the claimants and entered an order of dismissal of the suit on July 13, 1945. The Court of Appeals, Second Circuit, reversed the lower court on July 17, 1946, 156 F. 2d 493. The case was thereafter removed to the Judicial District of New Jersey for trial. In March, 1951, the Food and Drug Administration discovered that the seized water could not be found in the Norman Storage and Trucking Company's warehouse, and thereafter made an investigation to determine the whereabouts of the water and the circumstances of its disappearance.

PRIOR INVESTIGATION BY FOOD AND DRUG ADMINISTRATION:

The Criminal Division's memorandum of January 23, 1953, states that after the seized water could not be found "these circumstances prompted the Food and Drug Administration to make further inquiry to determine the whereabouts of the water and the circumstances of its disappearance." The inquiry resulted in finding the warehouse with no record of the disposition of the water although an official of the warehouse recalled the water being "trucked away not too many years after the seizure and that there was a person present with a truck carrying a badge." This official did not know the identity of the person but was quite sure that he left a receipt. The last record, according to the manager of the warehouse, was dated March 12, 1947, at which time empty bottles were delivered to a transfer company to be returned to the Capon Spring Water Company.

PREVIOUS LITIGATION:

By memorandum dated July 26, 1934, the Department requested an investigation into charges made to the Department of Agriculture by Austin in his letter to that Department dated July 11, 1934. Austin alleged that certain employees of the Food and Drug Administration abused their power and that there existed an unholy alliance between these employees and a powerful outside organization. Our investigation showed that Austin had been in litigation with the Food and Drug Administration since January, 1928, when a suit was filed against him under the Food and Drug Laws, which suit was decided against the Government. Subsequent seizures of Capon Springs Water took place. Austin upon interview complained that the Food

Memorandum to Mr. Ladd

and Drug Administration was being dominated by the American Medical Association in an effort to ruin the reputation of the Capon Springs Water Company. A copy of the report of Special Agent John F. Sears, dated at Philadelphia, October 30, 1934, reflecting the completion of the investigation requested by the Department was forwarded to the Department by memorandum dated November 7, 1934, (Bufile 62-32454-5).

A memorandum dated June 17, 1952, by Louis L. Austin prepared for the Attorney General was transmitted to the Bureau by informal note from the Attorney General dated June 19, 1952, requesting a report on "Capon Springs and Farms." Austin's memorandum was in regard to the disappearance of the seized water in the suit filed in 1943 and requested an investigation by the FBI. Austin alleged that the Food and Drug Administration has knowledge of the whereabouts of the water and that an investigation would establish beyond doubt that the water was removed by that Agency. According to the Criminal Division memorandum, Austin secured affidavits in the matter and has repeatedly requested an investigation to determine the responsibility for the disappearance of the water. By memorandum dated June 23, 1952, the Department was given a summary of the information in our files, together with another copy of the report of Special Agent John F. Sears, dated at Philadelphia, October 30, 1934. The original memorandum of Mr. Austin was returned to the Department with our memorandum of June 23, 1952, (Bufile 62-32454-13).

RECOMMENDATION:

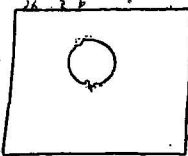
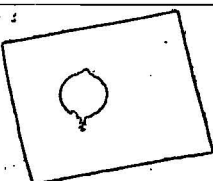
It is recommended that we accept the case for investigation in view of the specific charges against the Food and Drug Administration by Austin.

ACTION:

If you concur with the above recommendation, there is attached hereto for your approval a memorandum to the Washington Field Office.

2-1-53
WFB *LRP*

John F. Sears



Mr. Tolson	
Mr. Ladd	
Mr. Nichols	
Mr. Belmont	
Mr. Clegg	
Mr. Glavin	
Mr. Harbo	
Mr. Rosen	
Mr. Tracy	
Mr. Egan	
Mr. Gurnea	
Mr. Hendon	
Mr. Pennington	
Mr. Quinn	
Mr. Nease	
Miss Gandy	

2-10-53

WASHINGTON FROM WASH FIELD

10

DIRECTOR

DEFERRED

U.S. V FIVE CASES, ETC. CAPON SPRINGS WATER, CONTEMPT OF COURT, OBSTRUCTION OF JUSTICE. REBUJET DATED FEBRUARY LAST. REPORT IN DICTATION WILL BE SUBMITTED BY FEBRUARY ELEVEN.

HOOD

RNW:JAW

49-44

RBH
hm

0-1 to NY 3-4-53
advising deadline
post. MB

0-1 returned 3-10-53
advising report will
be submitted 3-4-53
by SA Caldwell
3/11/53

CLR 3

FEB 11 3 00 PM '53

(Handwritten signature/initials)

RECORDED 13

67-656-3

FEB 25 1953

FEDERAL BUREAU OF INVESTIGATION

FORM NO. 1
THIS CASE ORIGINATED AT **NEW YORK**

FILE NO.

REPORT MADE AT WASHINGTON, D. C.	DATE WHEN MADE FEB 12 1953	PERIOD FOR WHICH MADE 2/6,9,10/53	REPORT MADE BY ROBERT N. WINGARD RA
TITLE UNITED STATES v. Five Cases, etc. Capon Spring Water #10126; FDC #10053			CHARACTER OF CASE CONTEMPT OF COURT, OBSTRUCTION OF JUSTICE

SYNOPSIS OF FACTS:

VINCENT KLEINFELD, JOHN GRIGSBY, Attorneys,
Department of Justice, and GEORGE LARRICK,
Deputy Commissioner, FDA interviewed. Files
FDA and Department of Justice pertaining to
missing evidence reviewed and results set out.

- R U C -

DETAILS: AT WASHINGTON, D. C.

The investigation in this case was predicated on a request of MR.
CHARLES B. MURRAY, Assistant Attorney General, Criminal Division, Department
of Justice. MR. MURRAY furnished the following information in his letter
to the FBI dated January 23, 1953.

"It is requested that an investigation be made with respect to the
disappearance of a quantity of Capon Springs Water which had been seized by the
United States Marshal for the Southern District of New York pursuant to process
issued in a seizure action brought under the Federal Food, Drug, and Cosmetic
Act. The purpose of the investigation will be to determine whether there
occurred such a wilful destruction or disposal of the seized article as to
constitute criminal contempt in violation of 18 U.S.C. 401, or the corrupt
obstruction of the administration of justice in violation of 18 U.S.C. 1503.

"The proceeding was commenced by the filing of a libel on June 4,
1943. The libel alleged that the water had been shipped on or about March 16

APPROVED AND FORWARDED:	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES	
<i>[Signature]</i>		169-1656-14	
COPIES OF THIS REPORT		FEB 19 1953	
5 Bureau (Encl. -10) 3 New York (Encl. -10) 3 Newark (Encl. -10) 2 Philadelphia (Encl. -10) 1 Washington Field (69-44) 67 MAR 2 1953		RECORDED - 106 INDEXED - 106	

PROPERTY OF FBI - This confidential report and its contents are loaned to you by the
FBI and are not to be distributed outside of agency to which loaned.

"and 18, 1943, by Capon Water Company from Capon Springs, West Virginia, and was stored in the possession of Norman Storage and Trucking Company, Inc., 10-12 Leonard Street, New York City, New York; and that the article was misbranded in that statements in the labeling were false and misleading in representing the water as effective in restoring certain functions of the human body and in possessing qualities beneficial to health greatly in excess of those derived from ordinary drinking water. The bottles of water were seized by the United States Marshal at the premises of the above storage company and left in its custody by the Marshal. It appears that one ANDREW P. ST. THOMAS was at that time the distributor of the water in New York City and had stored the article at the warehouse in connection with his activities. His address is stated to be at 500 5th Avenue, New York City.

"Capon Water Company, LOUIS L. ~~AUSTIN~~ ^{PA}, and others, appeared as claimants and in February 1944, filed an answer denying the misbranding charge and further defended upon pleas of res judicata based upon a previous judgment in a seizure action brought in January 1928, and a cease and desist order of the Federal Trade Commission entered in January 1938. The District Court held for the claimant and entered an order of dismissal on July 13, 1945. On appeal, the Court of Appeals for the Second Circuit reversed in an opinion dated July 17, 1946, 156 F. 2d 493.

"Following this, and upon the application of the claimants, the case was removed to the District of New Jersey for trial. Upon such a removal, the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 334(f)) does not require that the seized article be transferred from the one district to the other, and the seized water remained in the warehouse in New York City. Several delays were had which prevented the case being set for trial.

"In March 1951, the Food and Drug Administration made a routine inspection to determine the whereabouts and condition of the water which had been seized, and has stated that it discovered that the seized water could not be found in the warehouse in New York City where it had been stored by the United States Marshal. This circumstance prompted the Food and Drug Administration to make further inquiry to determine the whereabouts of the water and the circumstances of its disappearance. The substance of the information obtained pursuant to this inquiry is that no records were available at the warehouse as to the disposition of the water. The manager of the warehouse advised that the last record of any transaction was dated March 12, 1947, and disclosed that a large number of empty bottles were delivered to a transfer company to be returned to Capon Springs, West Virginia, and that the account was closed at that

"time. MR. WILLIAM HERBST, Vice President, stated that he could remember the water being "trucked away not too many years after the seizure and that there was a person present with a truck carrying a badge". He did not know whether the person was from the Food and Drug Administration or from the United States Marshal's Office, but was quite sure that the official left a receipt.

"MR. LOUIS L. AUSTIN, whose address is 1427 Spruce Street, Philadelphia 2, Pennsylvania, who appears to be the principal claimant in the seizure action, has made a number of complaints to this Department and to the Federal Security Agency with respect to the proceedings had in this case, and has repeatedly requested this Department to make an investigation to determine the responsibility for the disappearance of the water. We have been furnished copies of affidavits of the officers of the warehouse company which he obtained. The affidavit of WILLIAM HERBST, Vice-President of the Norman Storage and Trucking Company, states:

- "4. That he had been informed of the letter written by the New York Distributor of Capon Springs Water, A. P. ST. THOMAS on April 25, 1945, to the Norman Storage & Trucking Company, advising that by no means was the seized water to be touched by anyone.
- "5. That sometime after, at a date he does not now recall, the warehouse was visited by a government representative who presented a badge and said he had come to remove the 19 packages of Capon Springs Water that had been seized. That this party had a truck with him; and that he, WILLIAM HERBST, help load the seized water on the truck.
- "6. That he, WILLIAM HERBST would recognize this man with a badge anywhere, as the man had come to the warehouse on frequent occasions. That, to his, MR. HERBST's best knowledge and belief, the man with a badge was from the Food and Drug Administration.
- "7. That he, WILLIAM HERBST, had given this information to Inspectors COLE and KEDZIOR of the Food and Drug Administration on their several visits to the Norman Storage & Trucking Company in May of 1951.
- "8. That he, WILLIAM HERBST, is positive that the seized water was disposed of in this way and in no other way.

"The affidavit of EARNEST J. MEYER, President of the storage company,, states:

"That he has checked again with the other officers of the Norman Storage and Trucking Company, and they are all positive, without doubt, that the seized water was removed by the Food and Drug Administration, and by no other persons."

"In a letter to the Federal Security Administrator dated May 6, 1952, MR. AUSTIN in effect states that the responsibility for the disappearance of the water has been placed upon him by the Food and Drug Administration and the Department of Justice, and that he desires appropriate steps be taken to absolve him of blame. In his memorandum prepared for the Attorney General dated June 17, 1952, requesting an investigation, MR. AUSTIN states that the Food and Drug Administration has present knowledge, as it has always had, of the whereabouts of the water, and that an investigation will establish beyond doubt that the water was removed by the Food and Drug Administration.

"The wilful destruction or disposition of the seized water, which was in custodia legis, would constitute a criminal contempt punishable under 18 U.S.C. 401, and perhaps a violation of 18 U.S.C. 1503 which punishes any person who corruptly obstructs or impedes the due administration of justice. The charge made by MR. AUSTIN that "the Food and Drug Administration has knowledge now, as it had, of the whereabouts of the water, they say somehow disappeared", is tantamount to saying that the officials of that Agency are covering up the manner of its disposition.

"It is, therefore, requested that an investigation be made to determine the circumstances under which the Capon Springs Water involved in this case disappeared or was disposed of, and the identity of the person or persons responsible.

"The documents referred to are in the Department's files. Further information desired with respect to this case may be obtained from MR. VINCENT A. KLEINFELD and MR. JOHN T. GRIGSBY, attorneys in the Criminal Division."

The Bureau by letter dated February 3, 1953, requested that the above investigation by the Department of Justice be completed and results furnished the Bureau on or before February 24, 1953.

MR. VINCENT KLEINFELD, Attorney, Criminal Division, Department of Justice, advised on February 6, 1953, that he had been affiliated with the handling of this case in the Department of Justice since the case was referred to the Department by the Food and Drug Administration. MR. KLEINFELD advised that in the way of background this case resulted from the seizure of several cases of bottled water by the FDA during 1943. He advised that this water upon seizure was placed in the custody of the Norman Storage and Trucking Company of New York.

MR. KLEINFELD stated that libel for contamination action was instituted under the Federal Drug and Cosmetic Act, the FDA claiming that the product was misbranded because of false therapeutic claims made on behalf of the water. MR. KLEINFELD stated action in the case was brought against the water in Manhattan Federal Court in 1945 at which time the Judge dismissed the action. He stated that the United States had filed an appeal before the Circuit Court and that the action of the District Court was later reversed by the Circuit Court. MR. KLEINFELD pointed out that there was a period of approximately five days between the dismissal by the District Court and the filing of the appeal in the Circuit Court during which period of time the evidence in this case could have been disposed of legally.

MR. KLEINFELD advised that after the Circuit Court had reversed the ruling of the District Court lawyers for MR. LOUIS AUSTIN, owner of Capon Springs requested that the case be moved to Philadelphia, Pennsylvania, the place of MR. AUSTIN's residence. MR. KLEINFELD stated that later the case was moved by mutual agreement to the Federal Court in Camden, New Jersey. He stated that at the present time this case is pending before the court in this District. He advised, however, that inasmuch as the action in the case was directed against the seized water he did not feel that unless the evidence was recovered that any action could be taken in the case. MR. KLEINFELD stated that when the case was moved to Camden the seized water was not transferred inasmuch as this is not necessary and that it was April of 1951 when the FDA first found that this water was missing.

MR. KLEINFELD advised that he did not have any idea as to what had happened to the water; and that he felt positive that the FDA had not moved it inasmuch as they had spent several thousands of dollars in testing Capon Springs water in preparation for this trial, which tests proved that this water did not fulfill the claims made by MR. AUSTIN. MR. KLEINFELD stated that prior to 1948 MR. AUSTIN had made many attempts to have this case dismissed but that since 1948 he has barred all attempts by FDA, the Department of Justice and the U. S. Attorney to dismiss the case. MR. KLEINFELD stated that this was due to the fact that in 1948 the FDA had purchased some Capon Springs water to run tests and had

"dumped" some of the water that they did not need for the tests. He stated that AUSTIN later learned that the tests had not required all of the water and was of the opinion that the tests had been run on the "dumped" water, and that these tests were beneficial to his product. MR. KLEINFELD stated that although he had always found MR. AUSTIN to be a very respectable business man with a pleasing disposition he felt that the Capon Springs water was an obsession with MR. AUSTIN, and he would, as he had, go to any extent to prove this product was noteworthy.

MR. KLEINFELD stated that MR. AUSTIN approached the Department of Justice at every time a new Attorney General became head of the Department and everytime a new Assistant Attorney General took over the Criminal Division. He also stated that it was his understanding MR. AUSTIN has made the same approaches to the FDA at everytime that that organization has had any personnel changes in administrative positions.

MR. KLEINFELD advised that he did not have any specific investigation in mind in reference to the attempt to locate this water other than that which had been set forth in the Department's letter to the FBI dated January 23, 1953. He stated that the case was presently assigned to MR. JOHN T. GRIGSBY, Attorney in the Criminal Division and that MR. GRIGSBY was out of the city and would not return until Monday, February 9, 1953, but suggested that MR. GRIGSBY might have some specific instructions concerning the investigation.

MR. GEORGE LARRICK, Deputy Director, FDA, was interviewed on February 6, 1953 at which time he stated that he had been cognizant of the Capon Springs water case since it was instituted in the FDA in 1943. MR. LARRICK furnished precisely the same background information as that furnished by MR. KLEINFELD. He advised that he had first learned of the missing water on April 9, 1951. He stated that this information had been secured by the FDA on that date as a result of a routine inspection of the evidence. He stated that it was his understanding that no inspection had been made of the evidence by the FDA from the time of the seizure on June 4, 1943 until the date that the evidence was found missing.

MR. LARRICK stated that investigation by personnel of the FDA had failed to uncover any evidence as to what had happened to the missing evidence and further that he felt sure that this evidence had not been removed by any personnel of the FDA. He stated that the claimant in this case, MR. AUSTIN, has made claims through affidavits secured from employees of the Norman Storage and Trucking Company that this evidence was removed by a man with a badge from the FDA. He stated

WFO 69-44

further that MR. AUSTIN has claimed that the FDA working together with the American Medical Association has prosecuted him and his water for many years and that when it was proven by tests that this water was beneficial as he, AUSTIN, had claimed, the FDA had suppressed the evidence and destroyed the water, thereby saving face by not losing the case in court.

MR. LARRICK advised that this was not true; that all of the tests that the FDA had run through competent medical doctors had proven that this water was not beneficial as claimed but would have the same effect as drinking regular Washington, D. C. city water.

MR. LARRICK produced files of the FDA pertaining to this case for the perusal of the reporting agent. The files were reviewed and contained the following information:

A report of seizure accomplishment dated June 4, 1943, reflected that Deputy U. S. Marshal WILLIAM TUBMAN with Inspector CHARLES L. GREENLEE, FDA, has seized from the possession of the Norman Storage and Trucking Company, 10-12 Leonard Street, New York the following evidence: 2 cases of 1/5 gallon demijohn, 9 cases and 8 bottles each, 2 quart size (12 to a case) and 7 cases of 2 quart size, each case containing 6 bottles. This report of seizure reflects that the shipment was from the Capon Water Company, Capon Springs, West Virginia, and was placed in the custody of the Norman Storage and Trucking Company.

The files contain a copy of a memorandum dated March 26, 1951 from the Division of Regulatory Management to the New York District FDA requesting that that division ascertain whether the seized stock was still in the warehouse of the Norman Storage and Trucking Company. A photostatic copy of this memorandum is being furnished as an enclosure with this report marked FDA -1.

The file contained a memorandum from Inspector KENNETH KENDRICK M. COLE to the Chief, New York District, dated April 9, 1951, which sets forth that the stock of the mineral water seized in June, 1943 was no longer in the possession of the Norman Storage Company; further that the President of this company, MR. E. J. MEYN, believed that the water had been shipped back to Philadelphia, Pennsylvania years before. A photostatic copy of this memorandum is being furnished as an enclosure, FDA -2.

The file contained a memorandum from the Division of Regulatory Management to the Chief, New York District, dated April 25,

WFO 69-44

RNW:RA

1951 by which FDA requested that the New York Office conduct a complete investigation as to the disposition of the seized water. A photostatic copy of this memorandum is being furnished as an enclosure, FDA -3.

The file contained the results of the above investigation included in the memorandum of Inspector COLE and JOHN A. KEDZIOR. During the course of this investigation conducted by FDA, MR. ERNEST J. MEYN, President, MR. WILLIAM HERBST, Vice President, and MR. JAMES KIMMINS, Secretary-Treasurer, all of the Norman Storage and Trucking Company, were interviewed and advised that they felt that the evidence had been shipped out several years prior to 1947 but none of these individuals could furnish any information as to who had called for the missing mineral water. During the above investigation the files of the Norman Storage and Trucking Company were reviewed and reflected that all business transactions between this company and the Capon Springs Water Company were terminated in 1947. The Norman Storage files further reflected a letter dated April 25, 1945 from MR. A. P. ST. THOMAS, New York Distributor for the Capon Springs Mineral Water to the effect that the evidence in this case should not be touched until the government properly releases it. A photostatic copy of the above investigation is being furnished as exhibit FDA -4.

The file contained a memorandum from the New York District to the FDA dated January 9, 1952 which reflected results of a telephone conversation between the New York Office and MR. A. P. ST. THOMAS, 500 5th Avenue, New York City. MR. ST. THOMAS advised that he had received a communication from the Capon Springs Company asking that he or the warehouse account for the missing material. He stated that anytime a shipment was made the President and owner of the warehouse, MR. MEYN would insist upon a signed receipt for any quantity that was removed. It was therefore his opinion that the evidence after having set in the basement of the storage company for many years and accumulated dust to the point where it looked like an abandoned lot of material was disposed of by some employee of the warehouse unknown to the officials of that company. A photostatic copy of this memorandum is being furnished as FDA -5.

The file contained a letter from MR. ALANSON W. WILLCOX, General Counsel, Federal Security Agency to MR. AUSTIN dated March 31, 1952. This letter reflects that it has come to MR. WILLCOX's attention that MR. AUSTIN had evidence indicating the complicity of personnel of the FDA in the disappearance of the cases of water which had been seized. A photostatic copy of this letter is being set forth as FDA -6.

WFO 69-444
NRW:NFR

The files contained a memorandum by Inspector JOHN A. KEDZIOR to the Chief, New York Division, dated June 13, 1951, which reflected a contact with Mr. STANLEY H. LOWELL, 113 W. 42nd Street, New York. Mr. LOWELL, who was the Assistant United States Attorney in the Southern District of New York, and who handled this case in that District, had no recollection of any permission having been given by him to remove the evidence from the place of seizure. It was noted that on March 5, 1945, Mr. LOWELL had advised that he would see that the evidence was preserved pending the Solicitor General's determination with respect to any appeal from the decision of the United States District Court, Southern District of New York.

By letter dated November 9, 1951, Assistant United States Attorney ALEX FEINBERG, Camden, New Jersey, requested the United States Marshal in New York to conduct an investigation regarding the whereabouts of the missing evidence.

The New York Office of the Food and Drug Administration on November 9, 1951, requested Deputy Marshal JOHN T. SIGLING to conduct an investigation into the missing evidence. The files of FDA fail to contain the results of any investigation at the Marshal's Office

The file reflects that on August 24, 1951, Assistant United States Attorney FEINBERG advised the court in Camden, New Jersey, of the following facts:

"I ought to bring to your attention, if Your Honor please, the fact that the order for dismissal was signed on July 13, 1945, but the stay pending appeal was not signed until July 18, 1945, a hiatus of five days, during which time unfortunately the res had disappeared. The government does not have any possession of the five cases of Capon Springs Water".

PH New York
The file contained a letter dated April 14, 1952, from HOWARD BURTT, Attorney for Mr. LOUIS AUSTIN, to ALANSON W. WILLCOX, General Counsel, Federal Security Agency. This letter sums up the results of inquiries made by the claimant as to the missing evidence. Attached to this letter were sworn affidavits of Messrs. WILLIAM HERBST, ERNEST MEYN and JAMES KIMMINS, Officials of the Norman Storage and Trucking Company of New York. The affidavits of HERBST and KIMMINS attest to the fact that the missing evidence was removed by a man with a badge believed to be a government official.

WFO 69-44

A photostatic copy of the above letter and affidavits is enclosed as FDA - 7.

The letter of ALANSON W. WILLCOX to Mr. BURTT dated April 23, 1952, in reply to the above letter of April 14, 1952, states in part that he, Mr. WILLCOX, is convinced that no representative of the Food and Drug Administration had any part in removing the missing evidence.

A photostatic copy of this letter is inclosed as FDA - 8.

By letter dated May 6, 1952, addressed to Honorable OSCAR EWING, Administrator, Federal Security Agency, Mr. LOUIS AUSTIN requests Mr. EWING to make recommendation to the Department of Justice for an FBI investigation.

A photostatic copy of this letter is enclosed as FDA - 9.

The file contained a memorandum from Mr. WILLCOX to Mr. OSCAR EWING dated May 16, 1952, in which the former points out the request of Mr. AUSTIN for an FBI investigation as to the missing water. This memorandum points out, in part, as follows:

"Mr. AUSTIN's theory is that the Food and Drug Administration found the case going against it and surreptitiously removed the water from the warehouse in order to render the case moot, and thus get rid of it without admitting err. In support of his theory he has offered (1) the attached affidavits by officials of the warehouse, and (2) argument that because, in his deposition, Mr. LARRICK denied knowledge of certain papers, which had subsequently appeared in the files of the General Counsel's Office, he must have concealed something. I could not detect any significance in the latter contention.

"Of the affidavits the most important one is that of Mr. HERBST, which gives some support, although to my mind weak to the charge that the Food and Drug Administration had something to do with the disappearance of the water".

Mr. WILLCOX went on to suggest that a letter be sent to the Attorney General whereby the FSA made it known that they would cooperate to the fullest with any investigation which the FBI might undertake.

WFO 69-44

A photostatic copy of the above letter is being furnished as enclosure FDA - 10.

Mr. JOHN T. GRIGSBY, Attorney, Criminal Division, Department of Justice, advised on February 9, 1953, that he had handled this case since the case was reported to the Department by the Food and Drug Administration. He stated that this had been a routine violation of the Federal Food, Drug and Cosmetic Act. He stated that after court action in New York, the case was moved to Camden, New Jersey, in 1946. He commented that the case had not gone to trial in Camden due to the many delays resulting from the requests for extensions motions and the inability of the court to find a place for the trial on the calendar. He added that in April of 1951, when it appeared that the case finally would go to trial, a check was made by FDA to ascertain the status of the evidence. He stated the evidence was found missing and an investigation was conducted by FDA in an attempt to locate the evidence without success.

Mr. GRIGSBY pointed out that since the time the evidence was found missing, it has been the opinion of the court that the case should be declared moot due to the inability to try the case without the res. He stated, however, Mr. AUSTIN, the Owner of Capon Springs, has repeatedly stated he does not want the case dismissed as FDA is attempting to suppress the benefits of his water through denial of a trial.

Mr. GRIGSBY stated that Mr. AUSTIN has complained to everyone in any administrative capacity in the Department of Justice and Federal Security Agency, making allegations concerning the missing evidence. He informed that it was therefore decided by FDA and the Department of Justice that an investigation should be conducted in the attempt to locate the evidence prior to the dismissal of the case in Federal Court. He stated that the United States Attorney at Camden, New Jersey, has been advised to withhold his recommendation of dismissal until he is advised by the Justice Department.

Mr. GRIGSBY commented that a review of the Department of Justice Files has failed to reflect any interview with Mr. A. P. ST. THOMAS, former Distributor for Capon Waters in New York, or any attempt to ascertain if ST. THOMAS kept records which might reflect this seized evidence. He stated that he believed Mr. ST. THOMAS should be contacted and the above information obtained.

He further stated that he believed that it should be ascertained if all employees of the FDA in New York City, who had

any chance to remove the evidence, have been quizzed, and, if not, these persons should be interviewed as to their possible removal of the water. He further commented that he felt that the records of Mr. AUSTIN's company in Philadelphia should be reviewed and that any personnel employed by AUSTIN as shipping or receiving clerk should be interviewed as to the possibility of the water having been mistakenly returned to the Capon Springs Company. Mr. GRIGSBY added that it was his understanding that the United States Marshal's Office in New York had conducted an investigation into this case but he informed that he was not cognizant of the results of this investigation as no report had been furnished to the Justice Department or FDA. He stated that he felt that the results of this investigation should be reviewed for any possible leads as to the whereabouts of the water.

Mr. GRIGSBY concluded by saying that he was of the opinion that Mr. AUSTIN would cooperate fully with an investigation, adding that he considered Mr. AUSTIN to be an outstanding businessman who honestly believes in his Spring Water, in fact, to such an extent that this water has become an obsession with him.

The files of the Department of Justice were reviewed in reference to the Capon Springs Water Case and these files contained the following additional pertinent information. It should be noted that the Department Files contained copies of all pertinent information concerning the missing evidence as previously reported from the Food and Drug Administration Files.

A memorandum prepared for Attorney General MC GRANERY by LOUIS AUSTIN of Capon Springs and Farms, dated June 17, 1952, was contained in these files and reads as follows:

"CAPON SPRINGS

and farms

IN THE GREAT NORTH MOUNTAINS
OF WEST VIRGINIA

CAPON SPRINGS, WEST VIRGINIA

June 17, 1952

"MEMORANDUM PREPARED FOR
ATTORNEY GENERAL McGRANERY
by LOUIS L. AUSTIN
of
CAPON SPRINGS & FARMS

"(in re U.S. vs. 5 cases *** Capon Springs
Water, FDC 10053)

- "1. This matter, of little consequence in itself, will if investigated, lead to a scandal of national proportions.
2. It will expose the American Medical Association as a powerful monopoly, acting in restraint of trade, ruthlessly eliminating competition, and completely dominating one of the most respected branches of the Federal Government, to further its own selfish ends.
3. On May 23rd, OSCAR EWING, Administrator of the Federal Security Agency, wrote me that he was:

'Great things are done when men and mountains meet;

This is not done by jostling in the street.'

'transmitting to the Department of Justice a copy of your recent letter, pointing out your suggestion that the matter of the disappearance of the water be turned over for investigation to the Federal Bureau of Investigation. In our letter we state that we would have no objection to such an investigation and, if undertaken, we would cooperate to the fullest extent possible.'

4. My whole purpose here is that this matter not be sidetracked, but that a thorough investigation by the FBI be made. If such investigation discloses that the grave charges I am making are unfounded, no harm will result to any honest person.
5. The particular matter deserving investigation is simple in itself: Who illegally removed some 19 cases of Capon Springs Water from a public warehouse where they had been seized, as misbranded, by the Food and Drug Administration?

- "6. The first word that the seized water was missing came when the U. S. District Court, Camden, N.J. was notified by the U. S. Attorney, at the request of the Food & Drug Administration, that the water had 'somehow disappeared'.
7. The case was before the Court that day on a motion of the Food & Drug Administration to compel us to answer certain interrogatories. In place of arguing the matter of interrogatories, the U. S. Attorney notified the Court of the 'missing' water, indicating that Judge MADDEN would at once dismiss the case, as the disappearance of the water made the case moot. We appealed to Judge MADDEN not to dismiss the case, before we had time to look into the matter. We stated we wanted the case tried on its merits, and we did not believe the res had 'somehow disappeared'. The Judge granted a continuance.
8. Before the court, the Food & Drug Administration made no reference that day, as to who removed the water. Later, they began to subtly hint that we removed the water, though condoning the act by saying that perhaps we thought we were entitled to the water by virtue of a resad judicata decision in our favor by Judge Conger, which decision later was reversed by the Second Circuit Court. Gradually becoming more direct about it, Food & Drug Administration Counsel LEVINSON on several occasions at the taking of depositions, stated 'Our position is that you removed the water.' Then, Counsel LEVINSON submitted excerpt from a letter written by the Department of Justice to the U. S. Attorney at Camden, N. J., in which it was stated: 'It is not unlikely that ...the claimant or someone in his behalf... obtained the water from the warehouse where sotred'.
9. We checked with the three officials of the warehouse, and secured from them three sworn affidavits to the effect that the seized water had been removed by the Food and Drug Administration. We submitted photostatic copies of these affidavits to Administrator EWING, requesting an investigation.
10. We charge that the Food and Drug Administration has knowledge now, as it has always had, of the whereabouts of the water they say 'somehow disappeared'.

- "11. QUESTION: What impelled the Food and Drug Administration to plan to withdraw the case and to invent the story of the 'missing' water?

ANSWER: By depositions taken of more than half a dozen employees of the Food & Drug Administration, we uncovered a vicious and smelly frame-up, the authorship of which was leading right up to the American Medical Association.

12. So shameful and shocking were these revelations that the Food & Drug Administration decided they had better lose the case on a technicality rather than have the facts come to light. Just when we were about to take the deposition which we hoped would show what did happen to the water, the Food & Drug Administration asked the court to prevent us from taking any more depositions on the ground the case was going to be dismissed.
13. The scheme to fasten upon us the responsibility for having removed the water is the one that may prove the undoing of those who concocted it. For, after the FBI investigation established beyond doubt, as it will, that the seized water had been removed by the Food & Drug Administration, the trial will lead, step by step, through a series of reprehensible acts, including tampering with their record, removal of important papers, failure to enter necessary transactions on their records, rigged tests, instructions to their employees to practice deceit, and much more evidence of unethical conduct, - this trial will lead to a directive issued the Food & Drug Administration by the American Medical Association.
14. Previous to requesting Administrator EWING to have the FBI investigation the removal of the res from the warehouse, I had asked the Department of Justice attorneys who were handling the case to look into the 'missing' water. I was informed that there was no way to have the matter investigated. If the matter still rests with them, there will be no investigation, but instead a whitewash of the Food and Drug Administration's conduct.

"On the ground that no honest person should object to such an investigation, I earnestly request that the FBI be instructed to ascertain who it was that illegally withdrew the seized water from the warehouse where stored. This withdrawal was not authorized by the U. S. Marshal's office, and was a violation of the law and an act in contempt of court.

"15. The present action is not in its tenth year. We could have accepted a dismissal in our favor, but felt it our duty to expose to the people of the country the shocking control and domination of one most respected branches of the Government by a vicious monopolistic organization, the American Medical Association."

A copy of the above memorandum was forwarded to the Department of Justice on June 17, 1952, from Mr. JOSEPH SHORT, Secretary to the President.

The file contained a letter dated July 9, 1952, to the Honorable JOSEPH SHORT, Secretary to the President, White House, Washington, D. C., signed by Attorney General JAMES P. MC GRANERY, in response to the memorandum from Mr. SHORT of July 17, 1952. This letter reads, in part, as follows:

"The attorneys in the Department who are familiar with the proceeding advise that since about 1947, Mr. AUSTIN has bombarded the Department with unfounded accusations of alleged underhanded conduct on the part of various officials of the government. I am advised that Mr. AUSTIN considers everything that transpires unfavorable to his case as prompted by an ulterior motive, and from this draws the conclusions upon which his charges are made, and that his last memorandum is fairly indicative of that frame of mind. Without some facts to support a complaint for criminal contempt based upon willful destruction or disposition of an article in the custody of the court, or revealing some apparent violation of Federal Law, no investigation is warranted. No facts tending to support such a complaint have been furnished, and I do not believe that under such circumstances, the Federal Bureau of Investigation should be asked to conduct an investigation".

The file contained a letter dated November 20, 1952, from LOUIS L. AUSTIN to R. D.MC LEAN, Department of Justice, Washington, D. C., which reads, in part, as follows:

"The request I am making is quite simple; an investigation by the FBI of the illegal withdrawal of the entire amount of Capon Springs Water from a public warehouse, where it has been seized and stored under the authority of the U. S. Marshal....

"This is a far more serious matter than appears on the surface. We positively do not want to win on a technicality, particularly when the stigma will attach that we caused the disappearance of the res, thus making prosecution by the Food and Drug Administration impossible. Far more serious facts of a most reprehensible nature will come to light as a result of an investigation by the FBI".

In response to the above letter, Mr. CHARLES B. MURRAY, Assistant Attorney General, wrote Mr. AUSTIN on December 8, 1952, requesting that Mr. AUSTIN advise by letter with respect to the serious facts of a most reprehensible nature which might be brought to light by an investigation. The file contained a letter to Mr. MURRAY from Mr. AUSTIN, dated December 15, 1952, which reads, in part, as follows:

"The Food and Drug Administration may now state that it has 'no information concerning the manner of the disposition of the water', but the record shows that the attorney in your department, handling this matter for the Food and Drug Administration, wrote to another U. S. Attorney, prosecuting a case at Camden, New Jersey, under date of July 2, 1951, 'It is not unlikely that the claimant or someone in his behalf obtained the water from the warehouse where stored.....'

"Regretfully we are being forced to the conclusion that the Department of Justice, as presently constituted, is not only lacking in interest in this matter, but seemingly is determined that there shall be no investigation of it".

WFO 69-44

ENCLOSURES:

TO THE BUREAU:
NEW YORK:
PHILADELPHIA:
NEWARK:

There is being enclosed herewith to the Bureau and the New York, Philadelphia and Newark Offices one photostatic copy of the following. These copies are to be used in connection with investigation requested:

1. FDA #1, memorandum dated March 26, 1951, from Division of Regulatory Management to the New York District.
2. FDA #2, memorandum dated April 9, 1951, from Inspector COLE to Chief, New York District.
3. FDA #3, memorandum dated April 25, 1951, from Division of Regulatory Management to Chief, New York District.
4. FDA #4, memorandum dated May 29, 1951, from Inspectors COLE and KEDZIOR to Chief, New York District. This includes a report of investigation and search of premises of the Norman Storage and Trucking Company. Attached is a copy of a letter to the Norman Storage and Trucking Company from A. P. ST. THOMAS dated April 25, 1945.
5. FDA #5, memorandum dated January 9, 1952, from New York District to the Food and Drug Administration.
6. FDA #6, letter dated March 13, 1952, from ALANSON W. WILLCOX, General Counsel, to PHILIP W. AUSTIN.
7. FDA #7, letter dated April 14, 1952, from HOWARD BURTT, to ALANSON W. WILLCOX and attached affidavits of Messrs. MEYN, HERBST and KIMMINS.

WFO 69-44

8. FDA #8, letter dated April 23, 1952, from Mr. WILLCOX to Mr. BURTT.
9. FDA #9, letter dated May 6, 1952, from LOUIS L. AUSTIN to Honorable OSCAR EWING, Administrator, Federal Security Agency.
10. FDA #10, memorandum dated May 16, 1952, from ALANSON W. WILLCOX to OSCAR R. EWING, Administrator. Also attached is letter of Mr. WILLCOX to the Attorney General dated May 16, 1952.

RUC

ADMINISTRATIVE PAGE

All offices are advised of Bureau instructions that this matter is to be completed and reported to the Bureau no later than February 24, 1953.

LEADS

NEW YORK OFFICE:

AT NEW YORK, NEW YORK:

Will interview ANDREW P. ST. THOMAS, 500 5th Avenue, former agent for Capon Springs Water, for any information that he might be able to furnish concerning the missing evidence.

Will ascertain if ST. THOMAS has any records pertaining to transactions of his company with the Norman Storage and Trucking Company.

Will examine same for any record of seized property.

Will contact the New York Office of the Food and Drug Administration and review any pertinent records maintained by this division.

Will interview CHARLES HERRMAN, Chief, New York Office, FDA, for any information he might have concerning disappearance of water.

Will ascertain if all employees of FDA in New York during pertinent period have been interviewed as to any knowledge of the removal of water.

Will interview all employees not previously interviewed as requested by Mr. GRIGSBY, Attorney, Department of Justice.

Will contact Inspectors KENDRICK COLE and JOHN A. KEDZIOR as to the extent of their investigation. It is noted Inspectors COLE and KEDZIOR conducted investigation in 1951, in an attempt to locate the missing evidence.

ADMINISTRATIVE

LEADS (cont'd.)

Will attempt to locate and interview CHARLES L. GREENLEE, Inspector, FDA, who signed and participated in the seizure of the evidence on June 4, 1943.

Will ascertain from Mr. GREENLEE as to how the evidence was marked and any instructions that he might have given as to its ultimate disposition.

Will contact STANLEY H. LOWELL, 113 W. 42nd Street, New York, former Assistant United States Attorney, who handled the Capon Springs Water Case in Federal Court in the Southern District of New York in 1945, and ascertain if Mr. LOWELL has secured any information concerning the missing evidence.

Will contact the Office of the United States Marshal, Southern District of New York, and review results of the investigation conducted by that agency. It should be noted that an investigation was requested of Deputy Marshal JOHN T. SIGLING by the Food and Drug Administration on November 9, 1951.

Will interview WILLIAM TUBMAN, United States Marshal, who made seizure of water in 1943, and ascertain from him what instructions were given to the Norman Storage and Trucking Company in regard to the maintenance of the evidence.

Will contact Mr. E. J. MEYN, President; Mr. WILLIAM HERBST, Vice President and Mr. JAMES KIMMINS, Secretary-Treasurer, Norman Storage and Trucking Company, 10-12 Leonard Street, N.W., as to their knowledge of the disappearance of the water. It should be noted that Mr. HERBST and Mr. KIMMINS furnished sworn affidavits to the effect that the water was removed by a government official with a badge. Further, that when these individuals were contacted by inspectors for FDA, in 1951, they could not recall who removed the water.

ADMINISTRATIVE

LEADS (cont'd.)

Will review records maintained of transactions between this company and ANDREW ST. THOMAS, Distributor for Capon Springs Water.

Will ascertain the names of the employees of the Norman Storage and Trucking Company who had access to the evidence and consider the advisability of locating and interviewing these individuals.

PHILADELPHIA OFFICE:

AT PHILADELPHIA, PENNSYLVANIA:

Will interview LOUIS L. AUSTIN, owner, Capon Springs Water Company, at 1427 Spruce Street, for any information he might have concerning the disappearance of the water.

Will ascertain if AUSTIN had any receiving or shipping clerk working for him from 1943 to 1947, and if so, will interview this person.

Will review books of the Capon Springs Water Company in reference to shipments to and from A. P. ST. THOMAS in New York, with the attempt to ascertain if the water could have been mistakenly returned by the Norman Storage and Trucking Company to the Capon Springs Water Company.

Will contact the Philadelphia Division of the Food and Drug Administration and review any pertinent records that this division might have concerning the missing water.

NEWARK OFFICE:

AT CAMDEN, NEW JERSEY:

Will contact Assistant United States Attorney ALEX FEINBERG who is handling this case in Federal Court in that district and ascertain if he has any information concerning the missing evidence.

WFO 69-44

ADMINISTRATIVE

LEADS. (cont'd.)

Will ascertain if his office has maintained any records concerning the missing evidence and will, if any records available, review and set out necessary leads.

69-656-1
REFERENCE: Bureau Letter to Washington Field dated 2/3/53.

FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT

NEW YORK

REPORT MADE AT PHILADELPHIA	DATE WHEN MADE 2/24/53	PERIOD FOR WHICH MADE 2/17-20/53	REPORT MADE BY MICHAEL J. ROCK, III (WSM)
TITLE UNITED STATES v. Five Cases, etc. Capon Spring Water, #10126; FDC #10053			CHARACTER OF CASE CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

SYNOPSIS OF FACTS:

Mr. ROBERT C. STANFILL, Mr. T. C. MARAVIGLIA, Chief and Chief Inspector respectively, Philadelphia District, FDA, and Mr. BERNARD LEVINSON, formerly of Food and Drug Legal Division, interviewed. Records, FDA, Philadelphia, pertaining to missing evidence reviewed and results set forth. Mr. LOUIS L. AUSTIN interviewed. Pertinent records of Mr. AUSTIN reviewed and results set forth.

- RUC -

DETAILS: At Philadelphia, Pa.

On February 18, 1953, Mr. ROBERT C. STANFILL, Chief, Philadelphia District, Food and Drug Administration, stated that instant case was begun in Philadelphia on information obtained as a result of the interview of Mr. LOUIS L. AUSTIN by inspectors of the Philadelphia District, Food and Drug Administration, in 1941 or 1942, and that information regarding the 1943 shipment which was seized in New York, was furnished to the New York District, FDA, by Philadelphia District. According to Mr. STANFILL, analyses of the Capon Spring Water were made in Washington, D. C., and the chemical tests were made in Philadelphia, Pa. Mr.

APPROVED AND FORWARDED: <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES
COPY IN FILE COPIES OF THIS REPORT 5-Bureau (ENCLS-20) 3-New York (ENCLS-20) 2-Pittsburgh (ENCLS-20) 1-Philadelphia (69-28) <i>CC with Encls to RAB 3/1/53</i>		INDEXED - 20 RECORDED - 20 <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 100px; text-align: center;"> 38 FEB 25 1953 </div>

PROPERTY OF FBI—THIS CONFIDENTIAL REPORT AND ITS CONTENTS ARE LOANED TO YOU BY THE FBI AND ARE NOT TO BE DISTRIBUTED OUTSIDE OF AGENCY TO WHICH LOANED.

MAR 18 1953

STANFILL advised that on or about February 10, 1953, when in New York City on another matter, he spoke with Mr. CHARLES A. HERRMANN, Chief, New York District, FDA, and that Mr. HERRMANN stated that he was convinced that the FDA had nothing to do with the water which had disappeared and which had been in the custody of the United States Marshal in New York and stored in the Norman Storage and Trucking Company, New York. According to Mr. STANFILL, Inspector GREENLEE, FDA, New York, who accompanied the Marshal at the time of seizure of instant water is an inspector with 30 to 35 years' experience, and Mr. STANFILL advised that he believed that seizure was executed properly and the trucking firm advised of the character of the seized water. Mr. STANFILL continued that Mr. BERNARD D. LEVINSON, who had been counsel for the Federal Security Agency, Food and Drug Division, Washington, D. C., and who was now employed by the Social Security Division, Philadelphia, had represented the Government in some of the depositions taken by the claimant in this case. Mr. STANFILL made available his records which pertained to the disappearance of the water in this case. FDA File #45-453F, Philadelphia District, contained extensive information regarding legal action taken by FDA in cases against Capon Spring Water in 1928 and 1943. Much of this material pertained to tests of the water and prosecution of the cases and is not therefore being reported since it did not pertain to the disappearance of the water in instant case.

This file contained a copy of a Report on Seizure Accomplishment, dated June 4, 1943, Food, Drug, and Cosmetic, #10053, Sample #45453F. Previous investigation in Washington, D. C. revealed the information contained on this form. This form was signed by Inspector CHARLES L. GREENLEE, Food and Drug Inspector.

The file contained a copy of a two-page letter dated June 26, 1951, to the Honorable GROVER C. RICHMAN, JR., USA, Newark, N. J., from DANIEL P. WILLIS, Assistant General Counsel, Food and Drug Division, which advised of the disappearance of the water from the New York Warehouse. This letter stated in part:

"On May 24, 1951, Food and Drug Inspectors again visited the warehouse. On this occasion, the inspectors themselves made a thorough search of all floors of the building and the basement, and found none of the water which had been seized.

"Officials of the warehouse remembered the lot in question as having been in storage there for some time, and their recollection was that it had been shipped out some years ago, possibly in 1947. Where it was shipped, is not definitely known."

A photostatic copy of this letter is being furnished and has been designated as FDA PH #1, page 1 and page 2.

The file also contained a copy of a one-page letter dated August 27, 1951, to Administration Division of Regulatory Management, from the Philadelphia District, which reflected that AUSA FEINBERG, Camden, N. J., informed the court that the "res" in this case could not be located, and that the court remarked that unless the United States Attorney could show cause by September 21 why the case should be continued, it would be dismissed. Photostatic copy of this letter is being furnished and designated as FDA PH #2.

Mr. STANFILL's file also contained a copy of a one-page letter dated October 29, 1951, from Mr. WILLIAM W. GOODRICH, Acting Assistant General Counsel, Food and Drug Division, to PHILLIP W. AUSTIN, Esq., Washington, D. C., which spoke of the proposed deposition to be taken from Inspector RAYMOND D. CHAPMAN and which letter advised AUSTIN that the "res" in this case could not be located. Photostatic copy of this letter is being furnished and designated as FDA PH #3.

Contained in the file was copy of a two-page letter dated January 4, 1952, from BERNARD D. LEVINSON, Attorney, Food and Drug Division, Federal Security Agency, to PHILLIP W. AUSTIN, Esq., Washington, D. C., which answers questions raised by Mr. AUSTIN during the course of Mr. LARRICK's deposition the preceding day as to the disappearance of the water. Photostatic copy of this letter is being furnished and is designated as FDA PH #4, page 1 and page 2.

Mr. STANFILL stated that as he recalled, on March 21, 1952, this case was called before Judge MADDEN in Camden, N. J. He stated that defense attorney BURT was ill and could not be present. Mr. AUSTIN was in the courtroom and local counsel BROWN represented him. United States Attorney GROVER C. RICHMAN, JR., and Assistant ALEXANDER FEINBERG represented the Government.

Mr. STANFILL stated that he was present and conferred briefly with Messrs. FEINBERG and BROWN before the case was called. According to Mr. STANFILL, Mr. RICHMAN said he thought the motion to dismiss should be granted because the res was non-existent. It was stated that a motion regarding depositions was also before the court. Mr. STANFILL advised that Mr. RICHMAN said that the claimant was annoying and taking a lot of time of the Associate Commissioner, the Chief of the New York District, and others on depositions and that he, RICHMAN, thought that it should be stopped, except upon application to and on the order of the court. Mr. STANFILL stated that Mr. BROWN asked for a continuance to give the claimant's Philadelphia counsel opportunity to be present and that the hearing was continued to April 4, 1952. According to Mr. STANFILL, the court directed that no depositions be given by anyone unless application was made and depositions were ordered by the court. Mr. STANFILL stated that the court referred to a letter that he had received from the claimant and he turned it over to Mr. BROWN who was obviously embarrassed by the inpropriety of his client. Mr. STANFILL stated that he had heard from a confidential source, which he preferred not to disclose, that Mr. AUSTIN's attorney, Mr. BROWN, told the judge that he was going to withdraw as counsel for AUSTIN because of indiscretions by AUSTIN, but that the judge stated that someone had to represent AUSTIN and that the court had confidence in Mr. BROWN. Mr. STANFILL stated that it was remarked by the court that time would not be spent on re-trying a case that was won for the Government when the article being defended did not exist.

Mr. STANFILL stated that he attributed Mr. AUSTIN's actions and remarks either to a malicious self-defense or to a sincerity in a one-track mind.

On February 18, 1953, Mr. T. C. MARAVIGLIA, Chief Inspector, Philadelphia District, FDA, advised that he was generally familiar with the case but had no definite information regarding the disposition of the water. He stated that from what he knows of the case, it was his opinion that the water was either disposed of by the United States Marshal, disposed of by the trucking company, or sent back to the company. He stated that any of the above could have been by mistake.

On February 18, 1953, Mr. BERNARD D. LEVINSON, Room 802, Customs House, Second and Chestnut Streets, Referee, Appeals Council, Social Security Administration, advised that

he was formerly with the Food and Drug Legal Division, Washington, D. C., and handled instant case from about 1950 to November 1952. He stated that as a routine matter in the preparation of the case for trial in about March 1951, the thought to check the "res" arose in the Legal Division of the Food and Drug Administration, Washington, D. C. He stated that investigation in New York determined that the res was missing. Mr. LEVINSON stated that as he recalled, the trucking company received a request from Capon Springs, West Virginia, to ship back all stock on hand, and this occurred at about the time Mr. ST. THOMAS, New York Dealer for Capon Spring Water, gave up his franchise. Mr. LEVINSON believed that the res was returned to Capon Spring Water, West Virginia, or Philadelphia. He stated that he recalled that Mr. MEYN, President, Norman Storage and Trucking Company, had stated in a report which had been made by inspectors COLE and KEDZIOR, Food and Drug Administration, that the res was sent back to Capon Springs in 1947. He stated that Mr. MEYN later gave a different story regarding the removal of the water and stated in effect, that a man with a badge had loaded it on a truck. Mr. LEVINSON stated that he does not know what happened to the water; that it is his belief that the Storage Company could furnish information regarding its disappearance in view of the fact that they apparently gave two stories regarding its removal.

On February 18, 1953, Mr. LOUIS L. AUSTIN, business address 1427 Spruce Street, business telephone PE 5-1462; home addresses, Capon Springs, W. Va., and 6908 Henley Street, Philadelphia, phone at latter address, GE 8-5859, advised that he owns the Capon Springs Resort and that the main office of the company is located in Philadelphia. Mr. AUSTIN stated that Miss MARY T. REGAN was employed by him during the period in question and is presently his bookkeeper. He stated that she could furnish information regarding shipments to New York from Philadelphia and Capon Springs, W. Va., and from New York to Philadelphia and Capon Springs, W. Va. He stated that one DENNIE DUNLAP is manager of the Capon Springs Plant in West Virginia, and maintains some records, but none that have not been reported to the Philadelphia Office of Capon Springs. Mr. AUSTIN further advised that Mr. A. P. ST. THOMAS, who operates a travel agency at 500 5th Avenue, New York City, N. Y., was the New York Dealer for Capon Springs. He stated that Capon Springs Water was sold to Mr. ST. THOMAS, who then resold it to his customers. Mr. AUSTIN advised that Mr. ST. THOMAS

discontinued his affiliation with Capon Springs in May 1947. Mr. AUSTIN advised he first learned that the water was missing in about August 1951, when the case was in Federal Court, Camden, N. J., on interrogatories. Mr. AUSTIN continued that the United States Attorney stated at that time that the "res" had disappeared and that they could not prosecute the case. Mr. AUSTIN stated that instant water, which had been stored in Norman Storage and Trucking Company, Inc., New York, had never been returned to Capon Springs, W. Va., or to the Philadelphia Office of the company. He stated that if any full bottles were returned, the records maintained by Miss REGAN would reflect that they were full. He continued that Mr. ST. THOMAS handled the return of empty bottles in May 1947, and that shipment was handled by the Novick Transfer Company, which company hauled between New York City and Winchester, Va. He stated that it was the custom of Capon Spring Water to deliver in its own truck between Capon Springs, W. Va., and Winchester, Va. He stated that all shipments to Mr. ST. THOMAS were between Capon Springs, W. Va., and New York, N. Y., and that shipments did not pass through Philadelphia. He stated that he does not believe that the water was returned in error by the Norman Storage and Trucking Company to Capon Springs, W. Va., since Mr. WILLIAM HERBST, Vice-President of the Norman Storage and Trucking Company, had furnished him, AUSTIN, with a deposition in which he stated that the water was loaded on a truck by a man with a badge. (Photostatic copy of this deposition has already been furnished as a result of investigation in Washington, D. C.).

Mr. AUSTIN stated that he believed the FDA had a bottle of instant water in court in May or June 1945, for the trial and that he believed that the remainder of the water was in the warehouse at that time. Mr. AUSTIN stated emphatically that his contention is that the claim of disappearance of the water which had been removed by the FDA, was a subterfuge to get the case dismissed. He continued that his opinion regarding the FDA's removing the water is based on affidavits of warehousemen and motives of the FDA, which he stated were revealed by depositions pertaining to the tests conducted by the FDA.

Mr. AUSTIN and Miss MARY REGAN made available cards reflecting the returns of bottles from New York City to Capon Springs, W. Va. These cards did not reflect that any full bottles had been returned to Capon Springs, W. Va. Mr. AUSTIN and Miss REGAN advised that the term "case" meant twelve two-quart

PH 69-28

bottles; that the term "one-half case" meant six two-quart bottles. The following information regarding returns from New York City to Capon Springs, W. Va., which information appeared on the cards maintained by Miss REGAN, is set forth below:

6/23/47 - 3 5-gallon bottles

5/20/47 - 34 5-gallon bottles; 39 cases; 30 $\frac{1}{2}$ -cases

5/13/47 - 34 5-gallon bottles; 39 cases; 30 half-cases

Regarding the above entries, dated May 20 and May 13, 1947, Miss REGAN stated that she believed that these were duplicate entries, one having been reported by Mr. ST. THOMAS from New York, and the other having been reported by DENNIE DUNLAP, Capon Springs, W. Va.

5/31/46 - 6 5-gallon bottles; 5 cases

5/15/46 - 66 5-gallon bottles; 86 cases; 72 half-cases;
4 cases, 24 quarts

No date (probably 2/16/45, according to Miss REGAN) -
36 5-gallon bottles; 84 cases; 85 half-cases;
13 cases, quarts

4/4/44 - 18 5-gallon bottles; 64 cases; 49 half-cases;
7 cases, quarts.

The above entries of returns of bottles predate the trial in 1945 and for that reason, information regarding entries previous to the above was not obtained.

Both Mr. AUSTIN and Miss REGAN advised that all of the above returns were of empty bottles and that their records reflected that no full bottles had ever been returned. AUSTIN stated that it was more expensive to return full bottles than

empty ones because of the difference in weight, and that bottles were usually returned in an empty condition.

On February 19, 1953, Mr. AUSTIN made available his files which he stated were pertinent to the disappearance of the water, to SA LOUIS B. PIECHOTA and the reporting agent.

It is to be noted that Mr. AUSTIN's files regarding this case were very extensive and contained much correspondence regarding the trials of the case and the opinions of Mr. AUSTIN regarding the case and the disappearance of the water. Those files were reviewed which Mr. AUSTIN stated pertained to the disappearance of the water.

In a file marked "GEORGE LARRICK," there were papers some of which pertained to the deposition taken from LARRICK. There was also a transcript of the deposition of GEORGE P. LARRICK in the case United States of America Libellant vs. Five Cases, etc., Capon Spring Water, Capon Springs, W. Va., and LOUIS L. AUSTIN, and VIRGINIA H. AUSTIN, Co-Owners, doing business under firm name and style of Capon Springs and Farms, Intervenor--Claimants, Civil Action #10126. This transcript had been prepared by the Watson Reporting Company, 805 "G" Street, NW, Washington, D. C. It was noted that Mr. LARRICK was Deputy Commissioner of the FDA.

A file entitled, "New York" contained many letters from Mr. ST. THOMAS indicating a shortage in the supply of Capon Spring Water in New York in 1945 and 1946, and advising Mr. AUSTIN of complaints regarding the taste of the water and sediment in the water. Mr. AUSTIN's files contain a letter dated March 5, 1945, to Capon Springs, 500 5th Avenue, New York City, from Norman Storage and Trucking Company, Inc., which stated in part that unless the empty bottles which were in the warehouse were removed by April 1, 1945, charges would be increased from \$10.00 to \$20.00 per month. Photostatic copy of this letter is being furnished and designated Austin #1.

Also contained in Mr. AUSTIN's files was a letter dated April 18, 1945, from A. P. ST. THOMAS to Mr. LOUIS L. AUSTIN which stated in part: "As you probably know, we have been paying \$20.00 monthly for storage and handling of empties to the Norman Storage people. We still have a few cases left in the warehouse, information concerning the exact number has not been forthcoming

"from Norman Storage after repeated requests." This letter requested the opinion of Mr. AUSTIN as to whether space at Norman Storage and Trucking Company should be held. Photostatic copies of this letter and copy of the letter of reply dated April 19, 1945, are being furnished and designated as Austin #2, page 1 and page 2.

In Mr. AUSTIN's files, there was a letter dated April 20, 1945, from Mr. ST. THOMAS to Mr. LOUIS L. AUSTIN, which read as follows:

"Norman Storage has advised that the 27 cases which were sealed and seized by the United States Marshal last year are still being kept in the warehouse as the Government has never seen fit to cart them away.

"On the other hand, Norman Storage feels that something should be done about them as they are taking up room, but hesitates to do anything without a release from ourselves. Is it in order for me to write them to simply break the Government seal, dump the water out, and return the empties later on to Philadelphia or Capon Springs? I hesitate doing anything which did not seem perfectly legal, hence, this request to you."

Photostatic copies of this letter and reply by Mr. AUSTIN dated April 24, 1945, are being furnished and have been designated as Austin #3, page 1 and page 2.

Regarding Austin #3, page 1, Mr. AUSTIN stated that he knew of no conversation or communication between himself and Mr. ST. THOMAS, which would impel Mr. ST. THOMAS to speak of breaking the seal, dumping the water, and returning the empties later to Philadelphia or Capon Springs. He stated that his reply to this letter, Austin #3, page 2, was the basis for a letter from Mr. ST. THOMAS to the Norman Storage and Trucking Company, which will be mentioned hereinafter and designated as Austin #11. Mr. AUSTIN continued that he believed that if the bottles which had been marked by the United States Marshal had been received at Capon Springs, W. Va., and any markings were observed, DENNIE DUNLAP would have reported this.

In Mr. AUSTIN's files was a letter dated April 20, 1945, from Mr. ST. THOMAS to LOUIS L. AUSTIN, which mentions the storage problem in New York due to the war. Photostatic copy of this letter is being furnished and designated Austin #4.

There also appeared in the files a letter dated March 27, 1946, from Mr. ST. THOMAS to Mr. L. L. AUSTIN, which mentions the accumulation of empty bottles at Norman Storage and Trucking Company, and the fact that the space is needed. Photostatic copy of this letter is being furnished and designated as Austin #5.

Also, in Mr. AUSTIN's files was a letter dated May 3, 1946, from Mr. ST. THOMAS to Mr. L. L. AUSTIN, which speaks of increasing complaints about the dirt and sediment in the water, plus the obnoxious taste. This letter also mentioned that rather than incur freight charges, the water in stock was thrown out. This letter continues to state that the Norman Storage called again for the ninth time and insisted that all empties be removed. Photostatic copies of this letter are being furnished and designated as Austin #6.

In Mr. AUSTIN's files was a letter dated May 14, 1946, from Mr. ST. THOMAS to Mr. L. L. AUSTIN, which mentions contamination of the water and states in part, "As previously advised, rather than run the risk of any more complaints, we had all the water in the warehouse thrown out and, as advised by Norman Storage today, the total number of cases disposed of in this manner was" etc. Photostatic copy of this letter is being furnished and designated as Austin #7.

A letter dated January 17, 1947, from Mr. ST. THOMAS to Mr. L. L. AUSTIN appeared in Mr. AUSTIN's files. This letter concludes with the statement, "Will you please look into the matter of adjustment in this case and if you so desire, Norman Storage can easily verify the fact that the number of cases indicated above were thrown out." Photostatic copies of this letter and reply dated January 27, 1947, are being furnished and designated as Austin #8, page 1 and page 2.

There was also in Mr. AUSTIN's files, a letter dated May 1, 1947, from Mr. ST. THOMAS to Mr. PORTER L. AUSTIN (Mr. AUSTIN's son), which mentions that as of May 1, 1947,

Mr. ST. THOMAS desired to be relieved of the distributorship in the New York area. This letter stated in part:

"I understand from the Norman Warehouse people that there are about 85 empty cases on hand and if you will advise me when your truck from Virginia makes the next trip to Philadelphia, I can arrange to have these empty cases taken back on that particular truck."

The files contain a reply to this letter dated May 9, 1947, from Mr. PORTER L. AUSTIN to Mr. ST. THOMAS which stated in part, "If you will arrange with Novick Transfer to call at Norman Storage for the empties that are on hand there, we shall appreciate it. Simply have the entire shipment go direct to Winchester, Va., where we can arrange to call for same." Photostatic copies of these letters are being furnished and designated as Austin #9, pages 1 and 2.

There also appeared in the files a letter dated September 10, 1951, from ERNEST MEYN, Norman Storage and Trucking Company, to Mr. L. L. AUSTIN, Capon Springs, W. Va., wherein Mr. MEYN stated that it was his belief that the Food and Drug Administration ordered the removal of the water from his warehouse and stated that he thought that it might possibly be that the receipt for the removal might be somewhere in Mr. AUSTIN's possession. Photostatic copy of this letter is being furnished and designated as Austin #10.

Mr. AUSTIN stated that forwarded with this letter was a letter dated April 25, 1945, from A. P. ST. THOMAS to the Norman Storage and Trucking Company, photostatic copy of which is being furnished and designated as Austin #11. Mr. AUSTIN also advised that there was forwarded with the above letter designated as Austin #10 an envelope of the United States Marshal, New York, addressed to the Norman Storage and Trucking Company, Inc., photostatic copy of which is being furnished and designated as Austin #12. It is to be noted that the original of the letter, Austin #11, is now in the possession of Mr. AUSTIN and that this letter has as stated been addressed to the Norman Storage and Trucking Company. It is to be further noted that the letter, Austin #11, bears the initials "JAK" and the date March 28, 1951. Mr. AUSTIN stated that these were the initials

of Inspector KEDZIOR, FDA, who he alleged had taken this letter without permission from the files of Norman Storage and Trucking Company, according to information which Mr. AUSTIN stated he received in a telephone conversation with Mr. MEYN, details of which will be set forth later in this report. Details regarding the penciled notations appearing on Austin #12 are mentioned in a sheet entitled, "January 8, 1952, Report of Telephone Conversation Between LLA and Mr. MEYN," which will hereinafter be referred to as Austin #14, page 1 and page 2. In the files, was a sheet entitled, "Memos of ST. THOMAS Conversations" in which under date of January 5, 1952, it is stated in part, "ST. THOMAS suggested that perhaps no one was to blame, that is, intentionally, that perhaps the cases, being old and dusty, were accidentally removed." On this sheet, it is further noted that Mr. AUSTIN advised ST. THOMAS against furnishing a statement to the effect that the cases may have been accidentally removed to Mr. CUMMINGS, FDA, New York. Photostatic copy of this sheet is being furnished and designated as Austin #13.

In Mr. AUSTIN's files, there were contained two sheets, one dated January 8, 1952, and the other headed "Telephone Conversation Between LLA and MEYN, page 2." Photostatic copy of the sheets is being furnished and designated as Austin #14, page 1 and page 2. On these sheets, Mr. AUSTIN's remarks on the telephone conversation between himself and MEYN appear, together with conjectures of Mr. AUSTIN.

It is to be noted that on the sheet designated Austin #14, page 1, Mr. AUSTIN makes reference to the fact that a letter written by A. P. ST. THOMAS to the Norman Storage and Trucking Company, dated April 25, 1945, (Austin #11) was sent to him under date of September 6, 1951, and that Mr. AUSTIN advised the reporting agent that letter referred to as Austin #11 was received at the same time as letter designated as Austin #10.

There was also contained in the files a letter dated May 23, 1952, from Mr. EDGAR R. EWING, Administrator, Federal Security Agency, Washington, D. C., to Mr. AUSTIN wherein Mr. EWING states that "I have your letter of May 6, 1952. There is no need for me to discuss certain factual statements in your letter which our people believe are not accurate or conclusions you reached which they considered unwarranted." Mr. EWING

advised AUSTIN that the Department of Justice was aware of the fact that the water which was seized was no longer available. Photostatic copy of this letter is being furnished and designated as Austin #15.

Mr. AUSTIN voluntarily furnished the reporting agent a signed statement, dated February 19, 1953, which reads as follows:

"Feb. 19, 1953

"I am eager and willing to take an affidavit to the following effect:

"1. Neither I nor anyone representing me, or anyone connected with the Capon Water business removed the res, or had anything to do with the removal of the res from the Norman Storage & Trucking Company's warehouse in New York City in the year 1945 or at any other time.

"2. I did not know, have never visited, or ever communicated with anyone connected with the Norman Storage & Trucking Company, until August of 1951, after learning that the Food & Drug Administration had claimed in court that the res had 'somehow disappeared'.

"3. There is not the slightest chance the res could have been returned to us, (full or empty) at Philadelphia or Capon Springs without our knowing it. Our records show no such return for the simple reason none was made.

/s/ "LOUIS L. AUSTIN"

Photostatic copies of this statement are being furnished and designated as Austin #16.

Mrs. EVA D. AUSTIN, sister of Mr. AUSTIN, 7842 Gilbert Street, advised that she has been employed by Mr. AUSTIN since 1929. She stated that Mrs. MARY T. REGAN, who has been employed by Mr. AUSTIN since 1925, is more familiar with bookkeeping and shipments than she, and could furnish any information desired

regarding shipments. Mrs. AUSTIN stated that she had no information regarding the disappearance of instant water.

On February 18, 1953, Miss MARY T. REGAN, 3138 North 33rd Street, Philadelphia, telephone RA 5-3195, advised that she has no copies of inventories which would reflect the amount of goods stored in the Norman Warehouse, New York, at any one time. She stated that if inventories were made, they were made by Mr. ST. THOMAS, but she doubted that he maintained any inventory. She stated that her records reflect no information regarding any full bottles of water returned from New York City to either Capon Springs, W. Va., or Philadelphia. She continued that she receives reports of DENNIE DUNLAP, Manager, Capon Springs, W. Va., Plant, on a printed office form, which she transcribes on her cards which she had previously displayed to the reporting agent. She stated that after about three years, DUNLAP's reports to her are destroyed, and she had on file presently only his reports for 1950, 1951, and 1952. She stated that she did not have available any papers from trucking companies or railroad express regarding shipments from New York to Capon Springs, W. Va. She stated that if empty bottles bearing any particular markings were received by DUNLAP at Capon Springs, W. Va., she believed that he would have reported them. She continued that if markings had been removed, she knew of no company records that might reveal whether bottles would have been returned to Capon Springs, W. Va.

Miss REGAN stated that she could offer no information relative to the disappearance of instant water in this case.

Miss R. MILLER, Novick Transfer Company, 2839 East Tioga Street, advised that the main office of the company is located at 700 North Cameron Street, Winchester, Va., and that the New York Terminal of the Company is located at 414 West 38th Street, New York City. Miss MILLER stated that she was not sure where records pertaining to a shipment emanating from New York would be maintained. She stated, however, that these records would either be maintained at the New York Office or at the Winchester, Va., Office of the company.

PH 69-28

ENCLOSURES TO THE BUREAU,
PITTSBURGH, AND NEW YORK:

One photostatic copy of each of the following documents:

FDA PH #1, pages 1 and 2, letter dated June 26, 1951, to the Honorable GROVER C. RICHMAN, JR., United States Attorney, Newark, N. J., from DANIEL P. WILLIS, Assistant General Counsel, Food and Drug Division.

FDA PH #2, letter dated August 27, 1951, to Administration Division of Regulatory Management from Philadelphia District.

FDA PH #3, letter dated October 29, 1951, to PHILLIP W. AUSTIN, Esq., Washington, D. C., from WILLIAM W. GOODRICH, Acting Assistant General Counsel, Food and Drug Division.

FDA PH #4, page 1 and page 2, letter dated January 4, 1952, to PHILLIP W. AUSTIN, Esq., Washington, D. C., BERNARD D. LEVINSON, Attorney, Food and Drug Division.

Austin #1, letter dated March 15, 1945, from Norman Storage and Trucking Company, Inc., to Capon Springs, New York City, N. Y.

Austin #2, page 1 and page 2, letter dated April 18, 1945, from A. P. ST. THOMAS to Mr. LOUIS L. AUSTIN, Philadelphia, and reply dated April 24, 1945.

Austin #3, page 1 and page 2, letter dated April 20, 1945, from A. P. ST. THOMAS to Mr. LOUIS L. AUSTIN, Philadelphia, and reply dated April 24, 1945.

Austin #4, letter dated April 20, 1945, from A. P. ST. THOMAS to Mr. LOUIS L. AUSTIN, Philadelphia.

Austin #5, letter dated March 27, 1946, from Mr. A. P. ST. THOMAS to Mr. L. L. AUSTIN, Philadelphia.

Austin #6, letter dated May 3, 1946, from Mr. A. P. ST. THOMAS to Mr. L. L. AUSTIN, Philadelphia.

PH 69-28

Austin #7, letter dated May 14, 1946, from A. P. ST. THOMAS to Mr. L. L. AUSTIN, Philadelphia.

Austin #8, page 1 and page 2, letter dated January 17, 1947, from A. P. ST. THOMAS to L. L. AUSTIN, Philadelphia, and reply dated January 27, 1947.

Austin #9, page 1 and page 2, letter dated May 1, 1947, from A. P. ST. THOMAS to Mr. PORTER L. AUSTIN, Philadelphia, and reply dated May 9, 1947.

Austin #10, letter dated September 10, 1951, from ERNEST MEYN, Norman Storage and Trucking Company, Inc., to Mr. L. L. AUSTIN, Capon Springs, W. Va.

Austin #11, letter dated April 25, 1945, from Mr. A. P. ST. THOMAS, to Norman Storage and Trucking Company, New York.

Austin #12, envelope of U. S. Marshal, New York, addressed to Norman Storage and Trucking Company, Inc.

Austin #13, Memos of ST. THOMAS conversations.

Austin #14, page 1 and page 2, report of telephone conversation between LLA and Mr. MEYN.

Austin #15, letter dated May 23, 1952, from OSCAR R. EWING, Administrator, FSA, to Mr. AUSTIN.

Austin #16, voluntary signed statement furnished by Mr. LOUIS L. AUSTIN dated February 19, 1953.

- R U C -

- ADMINISTRATIVE -

For the information of the Pittsburgh Division, referenced report advised of the Bureau's instructions that this matter was to be completed and returned to the Bureau not later than February 24, 1953.

THE NEW YORK DIVISION,
AT NEW YORK, N. Y.

Will, at Novick Transfer Company, 414 West 38th Street, New York City, endeavor to locate records which may account for disappearance of instant water in this case, and interview any individuals who may have information relative to possible removal of this water from Norman Storage and Trucking Company.

This lead was set forth in Philadelphia teletype to New York dated February 20, 1953.

THE PITTSBURGH DIVISION,
AT CAPON SPRINGS, W. VA.

Will interview DENNIE DUNLAP, Plant Manager, Capon Spring Water, for any information he may have relative to the disappearance of instant water in this case. Will check any records maintained by DUNLAP in an effort to ascertain whether instant water might have been returned, particularly during the period of May 1947, to Capon Springs Plant, Capon Springs, W. Va.

Will determine whether any empty bottles bearing markings attached by U. S. Marshal, New York, were received at Capon Springs, W. Va.

This lead was set forth in Philadelphia teletype to Pittsburgh dated February 20, 1953.

REFERENCE: Report of SA ROBERT N. WINGARD, dated February 12, 1953, at Washington, D. C.

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

FEB 23

TELETYPE

G. I. R. - 8

FBI PITTSBURGH

2-23-53

8-54

PM EST

RL

DIRECTOR, SAC NEW YORK AND PHILADELPHIA

URGENT

UNITED STATES V. FIVE CASES, ETC. CAPON SPRING WATER NO. ONE ZERO

ONE TWO SIX, FDC NO. ONE ZERO ZERO FIVE THREE, CONTEMPT OF COURT, OBSTRUCTION OF JUSTICE. RE PH TEL FEB. TWENTY LAST, BUDED FEB. TWENTYFOUR, INSTANT. DENNIE DUNLAP, SUPERINTENDENT, CAPON SPRING WATER, CAPON SPRING AND FARMS, CAPON SPRINGS, WVA., INTERVIEWED THIS DATE BY SA WILLIAM J. KUBASTA. ADVISED NO RECORDS OF ANY TYPE MAINTAINED BY HIM AT CAPON SPRINGS. ALL PAPERS FORWARDED L. L. AUSTIN, OWNER, FOURTEEN TWENTYSEVEN SPRUCE ST., PHILA., UPON RECEIPT OF SAME. AUSTIN AT CAPON SPRINGS ABOUT SIX MONTHS PER YEAR, MAINTAINS ALL RECORDS IN HIS POSSESSION, AND UPON DEPARTURE, TAKES SAME WITH HIM. DUNLAP NOT COGNIZANT OF ANY COURT ACTION REGARDING CAPON SPRING WATER. HAS NO SPECIFIC KNOWLEDGE REGARDING WATER SEIZED AS EVIDENCE. STATES ONLY EMPTY BOTTLES RETURNED TO CAPON SPRINGS FOR REFILLING. AUSTIN TRANSMITS ALL ORDERS TO HIM AT CAPON SPRINGS. SHIPMENTS THEN MADE TO PHILA. WHERE STORED. DUNLAP HAS NO KNOWLEDGE CONCERNING WATER OF A.P. ST. THOMAS, FORMER DEALER, NYC., BEING RETURNED TO CAPON SPRINGS, BELIEVING SUCH STOCK WOULD HAVE BEEN FORWARDED PHILA WAREHOUSE FOR RESALE. NOTES IT IS MORE ECONOMICAL TO RETURN EMPTY BOTTLES TO CAPON SPRINGS FOR REFILL THAN TO PAY SHIPPING COST ON FULL BOTTLES. ACCORDING TO DUNLAP, COMPANY

END PAGE ONE

80 MAR 12 1953

RECORDED-76

68-650-6
FEB 26 1953

PAGE TWO

HANDLED THREE OR FOUR TRUCKLOADS DIRECT TO NYC IN FORTYONE AND ALL OTHER SHIPMENTS DIRECT TO PHILA UNTIL FORTYFOUR OR FORTYFIVE. FROM FORTYFIVE TO FORTYEIGHT LOADS TAKEN BY OWN TRUCK FROM CAPON SPRINGS TO WINCHESTER, VA., WHERE TRANSFERRED TO NOVICK TRANSFER CO. FOR HAULING DIRECT TO PHILA. EMPTY BOTTLES RETURNED IN SAME MANNER. SINCE FORTYEIGHT, HAROLD GOOD, WARDENSVILLE, WVA., HAS HANDLED SHIPMENTS DIRECT TO PHILA. AND RETURN OF EMPTIES, FULL LOADS BEING UTILIZED. DUNLAP STATES GOOD MAINTAINS NO RECORD OF CONTENTS OF LOAD. PGH. UNAWARE IF RH CHECKING NOVICK TRANSFER CO. RECORDS, WINCHESTER, VA. NO LEAD BEING SET OUT FOR RH BUT CC OF THIS TEL BEING SENT RH, AMSD.

HALLFORD

END

NY TO BE ADVISED

ACK IN O PLS

WA 8-58 PM OK FBI WA RD

PH SS OKF BI PH PBC

TU DSIC

FEDERAL BUREAU OF INVESTIGATION

UNITED STATES DEPARTMENT OF JUSTICE

AIR-TEL

Transmit the following Teletype message to:

BUREAU (REGULAR MAIL)
NEW YORK (REGULAR MAIL) (INFO.)

FBI, PHILADELPHIA

2/20/53

DIRECTOR AND SAC

UNITED STATES VS FIVE CASES, ETC. CAPON SPRING WATER #10126; *Be*

FDC #10053; CONTEMPT OF COURT, OBSTRUCTION OF JUSTICE. REREP.

SA ROBERT N. WINGARD DATED 2/12/53 AT WASHINGTON, D.C. REPORT

BEING TYPED AND WILL REACH BUREAU 2/25/53.

ABBATICCHIO

END
MJR/nch
69-28

J. I. R. -8

67-656-7
(6) *RECORDED - 46*Approved: *RGH*

Special Agent in Charge

Sent _____ M

Per _____

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

NRJ:GTC
Transmit the following Teletype message to:

FBI RICHMOND

2-24-53

5:45 P.M.

DIRECTOR, FBI - REGULAR MAIL
SACS NEW YORK - AIR MAIL
PHILADELPHIA - AIR MAIL

UNITED STATES V. FIVE CASES, ETC. CAPON SPRING WATER NUMBER ONE ZERO
ONE TWO SIX, FDC NO. ONE ZERO ZERO FIVE THREE, CONTEMPT OF COURT,
OBSTRUCTION OF JUSTICE. RE PITTSBURGH AIRTEL FEBRUARY TWENTYTHREE
LAST WHEREIN IT IS INDICATED PITTSBURGH UNAWARE WHETHER RICHMOND
IS CHECKING NOVICK TRANSFER COMPANY RECORDS WINCHESTER, VA. AND, THEREFORE,
NO LEAD BEING SET OUT FOR RICHMOND, BUT CC OF REAIRTEL BEING FURNISHED.
RICHMOND HAS NO PRIOR CORRESPONDENCE CAPTIONED CASE AND IS TAKING NO
ACTION UNLESS ADVISED TO THE CONTRARY.

JOHNSON

46-0

2 L.R.-8

RECORDED - 46

64-656-8
FEB 25 1953

Approved: _____

Special Agent in Charge

Sent _____ M

Per _____

66 MAY 16 1953

FEDERAL BUREAU OF INVESTIGATION

UNITED STATES DEPARTMENT OF JUSTICE

69-4
MLJ:AB

NEWARK, N.J.

2/26/53

AIR TEL

Transmit the following Teletype message to:

✓ DIRECTOR, FBI AND SAC NEW YORK

U.S. VS 5 ^{ELI}CASES, ETC., CAPON SPRING WATER #10126; FBC #10053, CONTEMPT
OF COURT, OBSTRUCTION OF JUSTICE. REREP OF SA ROBERT N. WINGARD
2/12/53 AT WASHINGTON, D.C. AUSA ALEXANDER FEINBERG, CAMDEN, NJ,
ADVISED HE HAS NO INFORMATION RE MISSING EVIDENCE IN THIS CASE OTHER
THAN THE FACT THAT HE WAS ADVISED THE EVIDENCE WAS MISSING BY THE
FOOD AND DRUG ADMINISTRATION IN JUNE, 1951, AND THIS INFORMATION WAS
PASSED ON THE U. S. DISTRICT COURT, CAMDEN, NJ, 8/24/51. RECORDS
CONTAINED IN FEINBERG'S OFFICE REVIEWED AND CONTAINED NO INFORMATION
NOT ALREADY SET OUT IN REFERENCED REPORT. RUC
HOSTETTER

END

J. L. K. -8

RECORDED - 59

EX - 101

101-656-9

Approved: _____

Special Agent in Charge

Sent _____ M Per _____

78 MAR 18 1953

MARCH 10, 1953

AIRTEL

SAC, NEW YORK

MAIL

UNITED STATES VS. FIVE CASES, ETC. CAPON SPRINGS WATER,
CONTEMPT OF COURT, OBSTRUCTION OF JUSTICE. REBULET FEBRUARY
THREE, NINETEEN FIFTYTHREE. SUAIRTEL DATE OF REPORT SUBMITTED
AND NAME OF REPORTING AGENT. EXPEDITE.

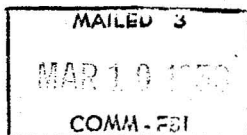
HOOVER

69-656

MJB:rmb

RECORDED - 123

69-656-10
MAR 11 1953
137



224
79 MAR 10 1953

FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT

NEW YORK

BSH

REPORT MADE AT NEW YORK	DATE WHEN MADE Feb 17 1953	PERIOD FOR WHICH MADE 2/27; 3/1-5/53	REPORT MADE BY MELVIN J. CALDWELL
TITLE - UNITED STATES v. Five Cases, etc. Capon Spring Water, #10126; FDC #10053			CHARACTER OF CASE CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

SYNOPSIS OF FACTS:

Mr. CHARLES HERMAN, Chief, FDA, NY District, interviewed as well as inspectors who had assignments on the case. Details set out. Records of USM's office reviewed and Deputy Marshals ENRIGHT and TURMAN interviewed. Details set out. Results of interview with Mr. ANDREW P. ST. THOMAS, former distributor for Capon Springs, and Mr. ERNEST J. MEYN and WILLIAM HERBST, officers of Norman Storage and Trucking Company, set out.

- P -

DETAILS: At New York, New York

Mr. CHARLES HERMAN, Chief, Food and Drug Administration, New York District, advised that he first became acquainted with instant case when he was the Assistant Chief of the Eastern District stationed at the New York station. He advised that at that time he had no personal contact with the case but that from his perusal of the files and recollection of background in the case it was commenced in this district some time in 1943. He advised that samples of the spring water had been taken by Inspector GREENLEE and that GREENLEE at that time indicated from what shipments the samples were taken. Subsequently, according to Mr. HERMAN, the remainder of the shipments were seized by the United States Marshal in June, 1943. He stated that the assignment of the case to this district must have been by a letter from either Washington or Philadelphia but that he does not have a copy of it.

APPROVED AND FORWARDED: <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES	
COPIES OF THIS REPORT 5-Bureau 3-New York (69-53) 100 - 1		<div style="font-size: 2em; font-weight: bold;">67-156-11</div> <div style="font-size: 1.5em; font-weight: bold;">RECORDED-50</div> <div style="font-size: 1.5em; font-weight: bold;">INDEXED-10</div> <div style="font-size: 1.5em; font-weight: bold;">EX-107</div>	

PROPERTY OF FBI - THIS CONFIDENTIAL REPORT AND ITS CONTENTS ARE LOANED TO YOU BY THE FBI AND ARE NOT TO BE DISTRIBUTED OUTSIDE OF AGENCY TO WHICH LOANED.

NY 69-53

He recalls that the samples were brought in and shipped to Washington, D.C. where the clinical analysis of the water was made. From that time until the spring of 1951 when a request was received for the New York District to ascertain if the seized property was still in the Norman Storage and Trucking Company Warehouse, 10-13 Leonard Street, New York City, no inspections or work was done by the New York District office on this case.

He stated that Inspector KENDRICK M. COLE was assigned to contact the warehouse and check the water and ascertain the condition of the contents in the bottles. He stated that subsequently Mr. COLE returned and advised that the water was no longer on the premises and that shortly after Inspector COLE accompanied by Inspector JOHN A. KEDZIOR returned to the Norman Storage Company and made a thorough check of the records, and premises and conferred with Mr. ERNEST J. MEYN, Mr. WILLIAM HERBST and Mr. JAMES KIMMINS concerning the seized water.

Mr. HERRMAN advised that he is positive that the Food and Drug Administration had nothing to do with the removal of the seized water, that no samples were taken from the seized water, that no arrangements had been made with any other agency or organization to remove the water. It is his opinion that the water could have possibly been inadvertently thrown out by someone working for the Norman Storage and Trucking Company or in some similar manner. He stated that the Food and Drug Administration had no power to release the goods but that they would have to be released by an order of the court.

Mr. HERRMAN made available to the writer their records in instant case maintained in File No. 45453F which reflected that the seizure had been accomplished on June 4, 1943, and that Inspector GREENLEE had on May 27, 1943, collected samples which were subsequently sent to Washington for clinical analysis from portions of the shipment of Capon Spring Water then on hand.

Except for information pertaining to the sampling conducted by Mr. GREENLEE and the seizure on June 4, 1943, no correspondence relative to locating the instant water was noted in the file. The correspondence pertained principally

NY 69-53

to medical and clinical analysis and the court trial. The first correspondence noted relative to the disappearance of the water was a memorandum dated March 26, 1951, from the Division of Regulatory Management to the Chief, New York District, requesting that that division ascertain whether the seized stock was still in the warehouse of the Norman Storage and Trucking Company. This information was reported to the Bureau previously by Washington Field Office.

All the information, as previously furnished to the Bureau and photostatic copies of it were furnished also concerning a memo dated April 9, 1951; a memo dated April 25, 1951; a memo dated May 29, 1951; and a memo dated January 9, 1952, was also contained in the New York District Food and Drug Administration files. Additional information contained in files of FDA will be submitted in a future report.

Mr. HERRMAN advised that the complete file concerning this case is either in the possession of the Washington headquarters of the Food Drug Administration or the Philadelphia District of the Food and Drug Administration.

Mr. CHARLES L. GRIMMLEE, Inspector, Food and Drug Administration, advised on March 3, 1953, that on the ninth of February, 1943, pursuant to instructions from LEO L. LUSBY, at that time Chief Inspector of the Eastern District of which district the New York office was known as the New York station, requested that a sample of Capon Spring Water be secured from the water then located on the premises of the Norman Storage and Drug Warehouse. He advised that he had made preparation to secure samples but was unable to do so at that time. He stated that on May 27, 1943, he contacted Mr. ERNEST J. MEYER, President of the Norman Storage and Trucking Company, and collected samples from mixed stock then on hand. In connection with this sampling he advised that he placed on each case from which a sample was taken and also on several other cases his initials and the date on which the samples were taken. He advised that it is his recollection that at this time the cases from which the samples were taken were located in the southeast corner of the warehouse basement. He listed all the shipments which comprised the lot then on the premises in view of the fact as shipments came in the cases were mixed with cases from other shipments and it could not be determined exactly from which shipment the samples were taken.

NY 69-53

Mr. GREENLEE stated that he returned with the U. S. Marshal WILLIAM TUBIN on June 4, 1943, in order that he could clearly point out to Mr. TUBIN the merchandise to be seized. He advised that the Marshal generally after he places an attachment on one of the cases of the lot which was seized, gives either one or two copies of the monition to a representative of the company on whose premises the seized goods were located. He believes that in this case since Mr. MEYN was the person who went with them when the seizure was made that MEYN had received at least one copy of the monition from the U. S. Marshal. Concerning this seized goods, Mr. GREENLEE stated that he had ascertained from Mr. MEYN that no shipments had been received by that company between May 27, 1943, and June 4, 1943, and therefore the seizure was made on all the cases then on the warehouse premises. He further stated that his opinion is that the Marshal advised Mr. MEYN that the seized goods could not be removed without an order of the court.

Concerning the duties of the Food and Drug inspector in this case, Mr. GREENLEE stated that in view of the fact that the water had been seized by the Marshal and was in the custody of the Marshal on the premises of the Norman Storage and Trucking Company Warehouse that he as an inspector would not be obligated to recheck the merchandise but that if it is to be done it should be handled by the U. S. Marshal's Office. In other words, according to Mr. GREENLEE, once the goods were seized it is no longer handled by Food and Drug Administration and they could not take samples from said seized goods unless they received an order from the court. He concluded by stating that his only other connection with the case was when he testified in March, 1944, before Judge CONGER and since that time to his knowledge, he has had no further connection with the seized water or with the disappearance of it.

Mr. KENDRICK COLA, Inspector, Food and Drug Administration, advised on March 3, 1953, that prior to receiving an assignment based on a memorandum from the division of regulatory management, Washington, D.C. to check and ascertain if the seized water was still on the premises of the Norman Storage and Trucking Company and ascertain the condition of said water, he had had no connection with the case. He advised that upon receipt of this assignment he went to the Norman Storage and Trucking Company and contacted Mr. ERNEST J. MEYN, President, who advised him that he recalled the water having been seized but that he did not know where it was at that time but that he

NY 69-53

vaguely remembers that it was shipped to Philadelphia, Pennsylvania. He stated that Mr. MEYN checked an account book and advised him that the last date on which they had shipped any materials for Capon Springs was in May, 1947, and at that time they ceased business relations with Capon Springs. The indications, were according to Mr. MEYN, that at that time all the stock which belonged to Capon Springs had been delivered to local customers and that all empty bottles have been returned. Mr. COLE stated that he subsequently returned to the office and submitted a memorandum reflecting this information on April 9, 1951, to the Chief of the New York District.

Mr. COLE advised that a memorandum was received by the New York Office requesting an investigation be conducted to ascertain where the seized goods were located or information relative to the disappearance; that he and Inspector JOHN A. KEDZIOR contacted Mr. MEYN at the Norman Storage and Trucking Company.

He advised that Mr. MEYN again advised him of the discontinuance of business associations with Capon Springs in May, 1947. They requested further records and Mr. MEYN advised that at that time he had no other records available but would search his files in order to secure any further records he may have relative to the Capon Springs account.

He stated that on this date which was May 24, 1951, that they were introduced to Mr. WILLIAM HERBST, Vice President of Norman Storage and Trucking Company. According to COLE, Mr. HERBST advised that he remembered the seizure and took Inspectors COLE and KEDZIOR to the basement which was in the southeast corner of the building and pointed out to them the area in which the water had been stored. At this time the inspectors were advised that the basement was leased for storage to another concern. According to Inspector COLE, it was Mr. HERBST's belief that a man with a badge had supervised the removing of the seized water several years after the seizure had been conducted. He stated that Mr. HERBST did not know the man who had the badge and did not know whether a receipt had been received for releasing the goods. After searching the basement, Mr. COLE advised that he and Inspector KEDZIOR along with Mr. WILLIAM HERBST made a thorough check

NY 69-53

of the entire premises occupied by the Norman Storage and Trucking Company. Mr. COLE stated that since they were unable to locate the goods and Mr. HERBST had advised that a man with a badge had removed the goods and records were not available to be checked on that date he and Inspector KEDZIOR proceeded to the U. S. Marshal's Office where they checked the records of that office with Mr. JOHN T. SIGLING. These records reflected no information relative to an order having been received by the U. S. Marshal's Office to remove the goods in question. He stated that they then went and checked records of the U. S. Attorney's Office which reflected no information concerning an order of the court to release goods or that the goods had been moved. He advised that it was his belief that he and Inspector KEDZIOR then returned to the Norman Storage and Trucking Company and advised Mr. MEYN to furnish to them all records he had in his possession and they did return and review them.

He stated that he and Inspector KEDZIOR returned to the Norman Storage Warehouse on May 28, 1951 and reviewed all the records which were furnished to them by Mr. MEYN. Mr. MEYN advised that his records were not complete and that he had no records of shipments via Railway Express. He stated that in his and Mr. KEDZIOR's presence Mr. MEYN contacted one Mrs. SHISLEY GORSKY, a former clerk who was unable to furnish any information to Mr. MEYN relative to the seized goods. On this date the inspectors talked to Mr. KIMMINS, Secretary-Treasurer, who advised them that he remembered the seized goods and it was his belief that the goods had been removed several years after the seizure. Mr. COLE stated that they reviewed the records and located nothing that was pertinent to the disappearance of the seizure except that Inspector KEDZIOR made a copy of the letter which was located in the files dated April 25, 1945, from A. P. ST. THOMAS to the Norman Storage and Trucking Company. Mr. COLE stated that after no information was revealed by a search of the records that Mr. MEYN was advised by the inspectors that no one had received a right to remove the seized goods.

Mr. COLE advised that during the general procedure of sampling and having goods seized the inspector takes samples from a lot, initials the case or carton and places the date thereon. He stated that the inspector marks as many cases as he possibly can. Subsequently after the order has been

NY 69-53

received the inspector generally accompanies the Marshal in order to point out to the Marshal the proper goods to be seized. He advised that once the goods are seized it is then in the custody of the U. S. Marshal and it is to be removed on an order of the court.

Mr. JOHN A. KEDZIOR, Inspector, Food and Drug Administration, advised that he accompanied Mr. KENDRICK COLE, Inspector, on May 24 and 28, 1951, to the Norman Storage and Trucking Company Warehouse. He stated that he remembers that they conducted a thorough search of the premises and were unable to locate the water but he is not sure on which day the search was conducted. Concerning their interview with Mr. WILLIAM HERBST he advised that it was HERBST's belief that a man with a badge had been present when the seized goods had been removed, which to HERBST's knowledge had been a year or two after the original seizure had been made. Mr. KEDZIOR further advised that they checked the records of the Marshal's office in order to ascertain whether a record of the releasing of the goods had been received by them and these records reflected no such order. He also, as previously stated by Mr. COLE, accompanied Mr. COLE when the records of the U. S. Attorney were checked. He stated that he was advised by Mr. MEYN that their records were not complete and that there were no records pertaining to shipments by Railway Express. The records, according to Mr. KEDZIOR, showed no information pertaining to the seizure of the goods nor a copy of the libel or a monition. He stated that from his conversation with the officers of the Norman Storage and Trucking Company it was his belief that the goods had been removed prior to May, 1947, when the account with Capon Springs had been closed and that his belief is that at one time or other the seized goods were shipped back to either Capon Springs, West Virginia, or Philadelphia, Pennsylvania. With reference to the letter which was retained in the file dated April 25, 1945 from A. P. ST. THOMAS to the Norman Storage and Trucking Company, Mr. KEDZIOR advised that he made a copy in longhand from this letter and had a copy of the letter typed when he returned to the office.

Both Mr. KEDZIOR and Mr. COLE advised that their knowledge of the disappearance of the seized cases had been fully reported in their memorandum dated May 29, 1951, a photostatic copy of which has been previously furnished to the Bureau by the Washington Field Office.

NY 69-53

Mr. ANDREW P. ST. THOMAS, 143-04 Cherry Avenue, Flushing, New York, presently a sales representative for Lincoln Mercury, 1884 Broadway, and the General Manager of the Terrace Gables Hotel, Falmouth Heights, Massachusetts, furnished the following information:

Mr. ST. THOMAS stated that PORTER AUSTIN, a relative of LOUIS L. AUSTIN, owner of Capon Springs Company, had originally been a distributor for Capon Springs Water in the New York area but that he, Mr. ST. THOMAS, took over this distributorship in approximately 1941. Concerning the business associations with Capon Springs, ST. THOMAS stated that he bought the water from Capon Springs; paid the trucking charges and ordered five tons in water in various size bottles when he placed orders. He stated that the receipt for the trucking charges were returned to Capon Springs and he was reimbursed for those charges. He stated that he recalls having been advised that certain cases of Capon Springs water had been seized and it is his belief that this information was furnished by Mr. ERNEST J. MEYN, previously referred to in this report. He stated that he does not recall receiving either a copy of the monition or libel from Mr. MEYN but if he did receive either one or both he definitely forwarded them to Mr. LEWIS L. AUSTIN. ST. THOMAS stated that he had never seen the seized water; had no knowledge of where it was located; and never ordered it to be removed nor did he ever receive any information to the effect that anyone had ordered the water to be removed.

Mr. ST. THOMAS advised that during the period as distributor for Capon Springs from approximately 1941 to 1947 he had never ordered the Norman Storage and Trucking Company to dump any of the water on the premises or to remove it in any similar manner. He recalls that on one or two occasions he might have returned a few bottles to Philadelphia which he had received from the customers, because they had complained of sediments and impurities in the water. He further advised that on a few occasions he may have advised customers to get rid of the water they had in their possession and he either furnished them a new supply or paid them for the water they had destroyed but he reiterated that this would be only a few bottles or a few cases. He advised that he paid the storage on the bottles stored at the Norman Storage and Trucking Warehouse, believing it to be \$25.00 a month. This storage was for whatever lot he might have on the premises at that time and it was not for any specific storage paid for the seized goods. In other words, according to ST. THOMAS, he simply

NY 69-53

paid for the space in the building and regardless of whether he had no water on hand or 500 cases he paid the same amount which he believed to be \$25.00. He stated that he took care of all local sales and had a truckdriver who made deliveries to his customers and that in general the empty cases were returned to the Norman Storage Company by his customers by Railway Express. He advised that when he had a large amount of empties he normally made arrangements with Mr. AUSTIN to have the bottles returned to Philadelphia or West Virginia.

Concerning the disappearance of the water, Mr. ST. THOMAS advised that he definitely had never considered at any time dumping or removing the seized water and that he had never ordered anyone to do so. He stated that his belief is that the water was still on the premises of the Norman Storage and Trucking Company in 1947. He advised that it is conceivable that the water could have been shipped out by Norman Storage by mistake in view of the fact that he called his orders into the Norman Storage Company and would advise them that he had a deliveryman who was prepared to pick up and make deliveries to local customers and therefore, they could have received some of the seized goods, however, it is his belief that Mr. LOUIS AUSTIN would under no circumstances removed the water or ordered it to be removed but he, ST. THOMAS, thinks that the water was possibly inadvertently thrown out. ST. THOMAS stated that he had never received any remuneration for the seized water and he does not recall if it had been replaced on order from Mr. AUSTIN.

He stated that the warehouse should have received a receipt for every shipment incoming and outgoing. Concerning this, ST. THOMAS advised that there had been no correspondence to his recollection between him and Mr. AUSTIN which mentioned the possibility of breaking the seals on the bottles that had been placed there and having them dumped; also, that no full cases of Capon Spring water had ever been destroyed in the warehouse nor had he issued any orders to release any water.

ST. THOMAS advised that he discontinued business or his connections with Capon Springs in 1947 but he recalls that he had very, very few complaints concerning sediment or impurities in the water that he had delivered the customers.

NY 69-53

ST. THOMAS advised that he had at one time complete records on all the water stored in the Norman Storage Warehouse and had all pertinent information relative to shipments of full bottles to customers and incoming shipments and outgoing shipments to Capon Springs and Philadelphia. It is his belief that only empty bottles and cases were shipped to Capon Springs or Philadelphia. However, he stated that he no longer possesses any records whatsoever pertaining to his distributorship for Capon Springs. He further reiterated that it is his belief that no one ordered the water to be removed or requested that someone remove the water, but that the water in some manner or means was either thrown out as trash, conceivably inadvertantly shipped out to customers, or it could have been returned.

Mr. OTTO T. SIGLING, Chief Clerk, U. S. Marshal's Office, U. S. Courthouse, Foley Square, made available the Marshal's Civil Docket, Volume No. 9, which reflected on Page 79, Marshal's No. 9-79, Court No. AD127-241, the following information concerning the seizure of the Capon Springs water in June, 1943. This record reflects that a monition was issued on June 4, 1943, by GEORGE J. H. FOLLMER returnable on June 15, 1943. The record reflected that this monition was received on June 4, 1943, and delivered for service by Deputy WILLIAM TUBMAN, New York, on June 4, 1943, and that the monition was returned on June 9, 1943, to the U. S. District Court. Under a title, "Execution of Process", the record reflects that on June 4, 1943, Deputy WILLIAM TUBMAN attached 2 cases (5 gallon size), 7 cases (6 bottles each) and one-half gallon size; and 9 cases and 8 bottles (12 bottles each) one-half gallon size, in possession of Norman Storage and Trucking Company, Inc., 10-12 Leonard Street, New York City, and at the same time and place served ERNEST G. MEYER, President.

The following handwritten memo was attached to Page 79, Volume 9:

"RE: letter of Nov. 7

"45-453F.

Capon Springs Water

"Nov. 14

"I visited offices of Norman Storage Company
10 Leonard St. at 11 AM this morning.

NY 69-53

^{N.Y.}
"Mr. ~~ERNEST MEYER~~ President of the Company told me that he handled this matter and is the only familiar with the details.

"Mr. MEYER however is very hazy and indefinite as to details. He said the merchandise was removed by government order but he dosnt ever remember the year that said removal occured. He thinks that Food and Drug inspectors made the removal but will not swear to that. He said withdrawal receipts were in his possession originalli, but that he no longer has them. He thinks he forwarded them to the Capon Springs Water Co. when their mutual affairs were concluded but He said he is not even sure of this.

/s/ R. ENRIGHT"

Another letter forwarding this information to the United States Attorney, Camden, New Jersey, attached to Page 79, Volume 9, is as follows:

"November 14, 1951

"The United States Attorney
Camden, New Jersey

"Sir:

"With reference to the 2 cases each containing one demijohn, 5 gallon size, 7 cases each containing 6 bottles, one-half gallon size and 9 cases each containing 12 bottles one-half gallon size and 8 loose bottles, one-half gallon size, of Capon Springs Water, which was attached by me on June 4, 1943, at the Norman Storage and Trucking Co. Inc. of 10-12 Leonard St., New York, N.Y., pursuant to Monition dated June 4, 1943, I wish to advise that this Capon Springs water cannot be found at the place of seizure and ERNEST G. MEYER, President of said company, is not sure what happened to it as they no longer have any records showing to whom the bottles were delivered.

"Yours truly,

WILLIAM A. CARROLL,
U. S. Marshall, SDNY

by JOHN T. SIGLING
Deputy"

NY 69-53

There was also attached to Page 79, Volume 9, in the Marshal's office a document of stipulation dated July 10, 1945, signed by FRANCIS CAPLEY, U. S. District Judge, attorney for libelant JOHN F. X. McGOHEY, and attorney for claimant WILLIAM W. KILCULLEN. This stated in essence that in view of the fact that the case had been dismissed on July 13, 1945, on a motion of the claimant, the Government was filing this stipulation to stay the removal of the seized goods in view of the fact that the Government was going to appeal the case. There were no further records maintained relative to the instant case or the disappearance of the seized water.

Mr. RAYMOND J. ENRIGHT advised that he had contacted Mr. MEYER concerning the disappearance of the water and upon review of his handwritten memo attached to Page 79, Volume 9, Marshal's Civil Docket, he stated that that is essentially correct and he can recall no further information relative to the instant case. He advised that on no other occasion had he ever been ordered to conduct any investigation or to do any other work relative to the seizure of Capon Springs Water.

Mr. WILLIAM TUBMAN, Deputy Marshal, could recall nothing pertaining to the attachment and seizure which he conducted on June 4, 1943. He stated that he simply placed an attachment on one of the cases and handed a copy of the monition and libel to whoever was the representative of the company on the premises at that time. The attachment he stated is filed and sealed with the stamp of the United States Marshal.

Mr. ALBERT M. GUNZ, Deputy Clerk, U. S. District Court, U. S. Courthouse, Foley Square, made available the records that retained "File No. AD127-241." The file contained a letter to the Clerk, U. S. District Court, District of New Jersey, Camden, New Jersey, dated April 30, 1947, which stated that pursuant to order of this court (U. S. District Court, Southern District of New York) on April 3, 1947, the following admiralty proceeding has been transferred to your district and in accordance with the order under two separate covers the following filed papers are being forwarded.

NY 69-53

It was signed by WILLIAM V. CONNELL, Clerk, and receipt of the items was acknowledged and dated May 1, 1947, signed WILLIAM C. KRAMER, Deputy. The file further contained the stipulation by U. S. District Court, Southern District of New York, dated April 13, 1947, which in essence stated that an order to transfer the case to the District of New Jersey, Camden, New Jersey, is approved. The file contained no further information.

Mr. ERNEST J. MEYN, President, Norman Storage and Trucking Company, 10-12 Leonard Street, New York City, was interviewed by the writer and SA JOHN B. BJORKLUND, JR. Mr. MEYN advised that he recalls the water having been seized by the United States Marshal several years ago but that he does not recall whether or not he received a copy of the libel or monition or was personally with the Marshal when the water was seized.

Mr. MEYN advised that he does not recall when the seized water was removed but that it was prior to the time that business relations were severed with Capon Springs. He stated that his knowledge of the removal was not firsthand and that he did not see anyone with a badge remove the water from the premises nor could he positively state that the water was removed by a marshal or inspector or anyone else. It is his belief that there was an order for release of the water but he does not recall seeing it. Basically he stated that his knowledge of the removal of the water comes from information he received either from Mr. KIMMINS, Secretary-Treasurer or Mr. WILLIAM HERRST, Vice President. Mr. MEYN advised that he knows he had knowledge of the removal of the seized water at the time of the removal but he does not know how he had this knowledge. To the best of his knowledge, papers were presented and the order to remove the water was official. He stated that because of the information he received from either Mr. KIMMINS or Mr. HERRST he believes it was removed by a man with a badge and it is his opinion that the man with the badge was from the Food and Drug Administration because in the past when food is destroyed or removed it is removed by Food and Drug Inspectors. This is the basis for his belief that the water had been removed by a Food and Drug Inspector, however, in the other instances in which materials were either condemned or destroyed the Food and Drug inspectors had done so and there had never been an occasion for destroying seizure goods.

NY 69-53

Mr. MEYN stated that if he received a receipt it would have been forwarded by him to Mr. ST. THOMAS and also any copy of a monition or libel he may have received would have been referred to ST. THOMAS. Mr. MEYN stated that he could not positively assert an inspector or marshal did remove the goods from his firsthand knowledge. He further stated that he never told either Inspector KEDZIOR or Inspector COLE that the seized water had been returned to Capon Springs, West Virginia, or to Philadelphia Office of Capon Springs.

With respect to the dumping or destroying of any water on the premises or the return of any water on the premises, Mr. MEYN advised that to his knowledge there had never been any orders given by anyone to either remove cases or water other than those seized or to destroy any water on the premises. Mr. MEYN advised that he served in the armed services from December, 1944, to May, 1945, and he is positive that the removal took place after his return from the service.

Mr. WILLIAM HERBST advised that he recalls that about two or three years after the seizure of the goods an elderly man who had some kind of a badge whom he believed to be an inspector or marshal, came to the Norman Storage and Trucking Warehouse and presented in the office official papers to remove the seized goods. He recalls that on the next day this gentleman returned and he, Mr. HERBST, contacted Mr. JAMES KIMMINS, Secretary and Treasury, and asked him if it was right to allow the seized goods to be removed. Mr. HERBST advised that Mr. KIMMINS stated that the goods had been released.

Mr. HERBST advised that this gentleman to his knowledge is well known in the neighborhood and that he had a truck backed into the platform and had three or four men with him and after he, Mr. HERBST, had contacted Mr. KIMMINS and verified that this gentleman could remove the goods he and this individual who possessed a badge went to the basement whereupon they had one of the employees load the goods on pallets, roll them into the elevator and he, Mr. HERBST took the goods up on the elevator to the platform and placed them in the rear of the truck, where they were loaded by the individuals who had accompanied this man with the badge. He stated that it was a white paper on one of the cases which was to his knowledge, the attachment

NY 69-53

which this man took off the case before they were removed. He advised that it was his belief there were two or three pallets loaded with the water and that although the cases were in good condition, the bottles appeared to be very dirty and dusty.

Mr. HERBST advised that he never saw the release paper and he based his belief that this man was a Marshal or Food and Drug Administration Inspector because it had always happened in the past that when an individual came into destroy goods it had been an inspector for Food and Drug Administration but in those cases there had never been a question of seized goods. He is positive it was a man with a badge who is known to other business concerns in the neighborhood. Concerning this man with the badge, HERBST stated that he had never come on the premises on any other occasion but advised that he would recognize him if he saw him. The following is a description of this gentleman:

Age	55 - 65
Face	Full, heavy jowls
Height	5' 7"
Weight	185
Complexion	- dark
Characteristics	- Generally wears suit and hat.

He stated that it is his belief that this man was known in the neighborhood as he on occasions came in and removed or destroyed goods and from his knowledge it was his belief that this was normally done by a man from the Food and Drug Administration.

Both Mr. HERBST and Mr. MEYN advised that they had never met ANDREW P. ST. THOMAS, the distributor for Capon Springs Water, and to their knowledge he had never been on the premises.

Mr. MEYN advised that Capon Springs was billed for storage and carrying charges which was for all water handled by them and that these charges were forwarded to Mr. ST. THOMAS.

NY 69-53

Concerning shipments of water, Mr. MEYN advised that generally an individual by the name of MAX GREENHUT delivered the water to Mr. ST. THOMAS' customers, and that these orders were placed through Norman Storage Company telephonically either to a Miss MARIE GORSKY or through one of the other officers and that they delivered the goods to MAX GREENHUT upon receipt of orders from Mr. ST. THOMAS. Mr. MEYN stated that Mr. JAMES KIMMINS is presently on a tour of the country and will be gone for the entire month of March and that in view of the fact that Mr. KIMMINS will not be in one place he cannot at present furnish his address.

Mr. MEYN made available all the records that he possessed which records consisted of an account book, ledger books, and a file on the Capon Springs Water Account. The file contained numerous receipts for shipments delivered by MAX GREENHUT to Mr. ST. THOMAS' customers and also shipments of empty bottles to Capon Springs, West Virginia. There were no records of water having been received from Capon Springs in West Virginia or Philadelphia and a ledger balance could not be prepared to ascertain the amount of incoming shipments of water and outgoing shipments of empty bottles. Mr. MEYN advised that the letter sent to the Norman Storage Company from Mr. A. P. ST. THOMAS dated April 25, 1945, as well as an envelope bearing the return address of the U. S. Marshal's Office had been forwarded to Mr. LOUIS L. AUSTIN in Philadelphia, Pennsylvania.

Mr. MEYN furnished the following list of employees who may have had knowledge of the seized water:

Warehousemen

ANTHONY GWOZNIK

1224 E. 88 Street
Brooklyn

SALVADORE BRAVATA

498 McClean Avenue
South Beach, Staten Island

EDNA REINSTEIN

309 East 170 Street

NY 69-53

MRS. SHIRLEY GORSKI
285 Cypress, Bronx

TIMOTHY CRIMMONS (NE8-5596)
293 Prospect Place

JIMMY TAYLOR
78-34 61 Street,
Glendale, Brooklyn.

- P -

NY 69-53

ADMINISTRATIVE PAGE

MISCELLANEOUS

Correspondence was located in the files of the Food and Drug Administration and also of the files of the Norman Storage and Trucking Company, Inc., 10-12 Leonard Street, New York City, which has not been previously reported. Photostatic copies are being made of this correspondence and information therein will be incorporated in a future report as well as photostatic copies of this correspondence being forwarded to the Bureau.

LEADS

NEW YORK

At New York, New York

Will contact all employees of the Norman Storage Company who may have had knowledge of the seized water in question as furnished by Mr. ERNEST J. MEYN and listed in the details.

Will ascertain from Mr. ERNEST J. MEYN the address of JAMES KLEWINS and set forth a lead to have him interviewed or if no address is available interview Mr. KLEWINS upon his return to New York City.

Will contact Novick Transfer Company, 414 West 38 Street, New York City, in order to ascertain any information they may have available relative to the missing water which had been seized.

REFERENCE: Bulet to WFO, 2/3/53.
Report of SA ROBERT N. WINGARD, WFO, 2/12/53.

FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT

NEW YORK

REPORT MADE AT PHILADELPHIA	DATE WHEN MADE 3-10-53	PERIOD FOR WHICH MADE 2/24, 26; 3/2, 3, 6, 10/53	REPORT MADE BY MICHAEL J. ROCK, III (mtp)
TITLE UNITED STATES v. Five Cases, etc. Capon Spring Water, #10126; FDC #10053			CHARACTER OF CASE CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

SYNOPSIS OF FACTS:

Additional information furnished by Mr. LOUIS L. AUSTIN, Capon Spring Water, and Mr. ROBERT C. STANFILL, FDA, Philadelphia, set forth.

DETAILS:

AT PHILADELPHIA, PA.

On February 24, 1953 Mr. LOUIS L. AUSTIN, Capon Spring Water, 1427 Spruce Street, telephonically contacted reporting Agent and stated that in going through another file in instant case, he had come upon some letters in which he thought reporting Agent would be interested. Mr. AUSTIN was advised that reporting Agent would stop for these letters on February 26, 1953.

On February 26, 1953 Miss MARY T. REGAN, Bookkeeper, Capon Spring Water, made available the letters which had been left with her by Mr. AUSTIN. These letters, photostatic copies of which are being furnished as enclosures to this report, were as follows:

A letter dated September 6, 1951 from Mr. ERNEST J. MEYN, Norman Storage and Trucking Co., Inc. to Mr. L. L. AUSTIN, Capon Springs and Farms, Capon Springs, West Virginia. It is to be noted that this letter enclosed to Mr. AUSTIN a letter which Norman Storage and Trucking Company had received from Mr. A. P. ST. THOMAS, Dealer, Capon Springs Water, New York, and an envelope, which Mr. MEYN stated in this letter, must have contained the official order when the seizure of the water was made. It has been previously reported that Mr. AUSTIN stated that the letter of Mr. ST. THOMAS dated April 25, 1945 and the U. S. Marshal's envelope were, according to Mr. ST. THOMAS, received by him in a letter from the Norman Storage and Trucking Company, dated September 10, 1951. Apparently Mr. AUSTIN was in error in his information.

APPROVED AND FORWARDED: <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES	
COPIES OF THIS REPORT 5 - Bureau (Encls. - 4) --New York (Encls. - 4) --Philadelphia (69-28) cc - RAB MAR 31 1953		69-1656-18 MAR 13 1953 15 18	RECORDED-52 INDEXED-52 EX - 107

THIS REPORT IS UNCLASSIFIED AND ITS CONTENTS ARE LOANED TO YOU BY THE FBI AND ARE NOT TO BE DISTRIBUTED OUTSIDE OF AGENCY TO WHICH LOANED

PH 69-28

and these items were received as enclosures with the letter from the Norman Storage and Trucking Company dated September 6, 1951. In this letter, Mr. MEYN continued, "We believe the seizure order and the receipt when the merchandise was picked up from our warehouse must be somewhere in your records."

Another letter was made available by Mr. AUSTIN through Miss REGAN, which was Mr. AUSTIN's reply dated September 9, 1951 to the above mentioned letter. In his reply, Mr. AUSTIN asks certain questions of Mr. MEYN of the Norman Storage and Trucking Company. This letter reads in part as follows:

"If, as we understand, you released the water in May or June of 1947 to someone from the U. S. Marshal's office, can you not obtain the particulars from the U. S. Marshal's office? Was it not released upon order of the Food & Drug Administration, which had first seized the water in June of 1943?

"Inasmuch as we did not order the water removed (having no authority to do so) and had no knowledge that it was removed until last August 24th, your statement that 'the seizure order and the receipt when the merchandise was picked up from our warehouse must be somewhere in your records' is mystifying to us. Are you inferring that we removed the water?"

There was also obtained from Miss REGAN, a copy of a letter to Mr. A. P. ST. THOMAS from Mr. LOUIS L. AUSTIN dated September 9, 1951, wherein Mr. AUSTIN asked Mr. ST. THOMAS if he had any information regarding the disappearance of the water.

Miss REGAN also furnished another letter from Mr. A. P. ST. THOMAS to Mr. AUSTIN dated September 11, 1951, wherein Mr. ST. THOMAS stated in part as follows:

"Talked with Mr. Mein of Norman Storage today. He feels quite certain the Gov't. removed the water, and I'm inclined to agree with him. My own feeling is the water might have been taken away at, or shortly subsequent to the court action. However, Mr. Mein could locate no records to substantiate such a conclusion.

"Furthermore, all records were turned over to Porter at the time he took over.

"Is it possible one of us may have handed or mailed some of this information to your attorney of record - at the time the action took place."

On March 2, 1953 Mr. LOUIS L. AUSTIN advised reporting Agent that Dr. DOWNS mentioned in the first of the above described letters, is Dr. WINFIELD SCOTT DOWNS, who was a personal friend and an editor with the American Historical Company, New York City. Mr. AUSTIN stated that Dr. DOWNS resides at 142 Glenwood Avenue, Ridgewood, N. J. Mr. AUSTIN continued, that shortly after August 24, 1952, he had called Dr. DOWNS and asked him to contact the Norman Storage Company and obtain what information he could regarding the missing water in this case. Mr. AUSTIN also volunteered the information that he was now in the process of placing the handling of Capon Spring Water in the hands of a non-profit organization, to be known as "The Partnership Foundation." He stated that plans had not yet been completed with regard to this matter, but that he expected that such would be completed during 1953.

By letter dated February 27, 1953, Mr. ROBERT C. STANFILL, Chief, Philadelphia District, Food and Drug Administration, advised reporting Agent as follows:

"I find that among the file jackets on the Capon Springs Water case on my table was one which I did not recognize when you were here. It is the original '45-453 F' sample file jacket covering period from May 24, 1943 to April 16, 1947 and was forwarded to us from our former Eastern District office in New York when the new trial was assigned to Camden, New Jersey. In the event you want to ascertain what is in this jacket you are at liberty to call again."

On March 2, 1953 Mr. T. C. MARAVIGLIA, Chief Inspector, Philadelphia District, Food and Drug Administration, made available the file referred to above by Mr. STANFILL. This file, among other documents, contained a Memorandum of Interview dated August 7, 1943, which was prepared by Mr. A. G. MURRAY (Washington Office, FDA). This memorandum reflected that present at a meeting regarding this case were Mr. EDWARD H. HORTON, Department of Justice, Washington, D. C., and Mr. A. G. MURRAY. This memorandum stated in part,

"Mr. Horton said that Mr. Austin is perfectly willing to remove all objectional statements from the label. . . . Mr. Horton intimated that if we continued to harrass Mr. Austin, the Department of Justice may step in with a restraining hand. I did not comment on this remark."

According to this memorandum, Mr. HORTON said that Mr. AUSTIN does not want a record of judgment against his product and that he will fight if the case cannot be dismissed.

Also contained in this file, was a copy of a letter dated December 31, 1946 from WATSON D. MILLER, Administrator, Federal Security Agency, to "Dear JACK", (probably JOHN B. KELLY, Seaboard Radio Broadcasting Corporation, 1423 Walnut Street, Philadelphia, to whom, according to the copy, the original had been sent). This letter stated in part, "Mr. Austin wrote us recently that the labels on the bottles are now more than three years dead. He apparently intended to send us the current labelling for the water but did not do so."

There was also contained in this file, a copy of a Memorandum of Interview dated March 20, 1947, which had been prepared by GEORGE P. LARRICK, Food and Drug Administration. According to this memorandum, those present were Mr. LOUIS L. AUSTIN of the Capon Water Company, Capon Springs, West Virginia, Mr. HORTON, Attorney, Mr. LEVY, Attorney, Mr. WATSON D. MILLER, Administrator, FSA, and Mr. GEORGE P. LARRICK, FDA. According to this memorandum, both attorneys asserted that they were appearing in this matter as friends of Mr. AUSTIN and not as legal counsel. This memorandum stated in part, "The visitors asserted that they were quite willing to have a termination of the pending seizure if some plan could be invoked whereby a Court Order would not include the condemnation of the seized water. Mr. AUSTIN regards the employment of the term 'condemnation' in the Court Order and in a subsequent notice of judgment, as a serious reflection upon the water, upon the resort maintained at the Springs, and upon himself personally. He asserted that he must do everything possible to prevent the termination of the case under any circumstances where the water would be condemned."

"Mr. AUSTIN was somewhat vehement in his statement that the Government has consistently presented their evidence through the opinion of testimony of physicians who have not used the water. He is convinced that he will win the case in Camden when his testimony is predicated upon actual use of the water by qualified physicians."

PH 69-28

Mr. MARAVIGLIA stated that he believed that the above described documents were what Mr. STANFILL had in mind inasmuch as they reflected the frame of mind of Mr. AUSTIN. Mr. STANFILL was not present on March 2, 1953 at the Food and Drug Administration, Philadelphia, and could not be interviewed.

Mr. MARAVIGLIA stated it is to be noted that prior to approximately 1948, Mr. AUSTIN was desirous of having the case dismissed as long as the dismissal did not include a condemnation of the water, but subsequent to 1948, he has opposed dismissal of the case.

On March 3, 1953 reporting Agent contacted Mr. ROBERT C. STANFILL, who advised that the above described documents were what he referred to in his letter dated February 27, 1953. Mr. STANFILL stated that he believed these items were pertinent to the case, in that they reflected the attitude of Mr. AUSTIN.

ENCLOSURES TO THE BUREAU AND NEW YORK

1 copy (photostatic) each, of the following items:

Letter from ERNEST J. MEYN to Mr. L. L. AUSTIN dated September 6, 1951.

Letter from L. L. A. (AUSTIN) to Mr. ERNEST J. MEYN dated September 9, 1951.

Letter from LOUIS L. AUSTIN to Mr. A. P. ST. THOMAS, dated September 9, 1951.

Letter from Mr. A. P. ST. THOMAS to Mr. AUSTIN dated September 11, 1951.

- R U C -

PH 69-28

ADMINISTRATIVE PAGE

REFERENCE: Report of SA MICHAEL J. ROCK, III, dated 2-24-53
at Philadelphia, Pa.

A. P. ST. THOMAS
500 FIFTH AVENUE
NEW YORK 18, N. Y.

September 11, 1951

Dear Mr. Austin:

First let me tell you how terribly shocked I was to learn of the accident resulting in Ruth's death. I sincerely hope Porter pulls out of it and real soon.

*info - see
you need
show you
to
P. St. Thomas*
About the storage charges - as you know we were accustomed to paying a monthly charge to Norman Storage Co. for the space occupied and of course no extra charge was made to us for the siezed lot. Neither can the Norman Storage Co. find any record of ever having charged the U. S. Gov't for the space occupied by the lot in question.

Talked with Mr. Mein of Norman Storage today. He feels quite certain the Gov't. removed the water, and I'm inclined to agree with him. My own feeling is the water might have been taken away at, or shortly subsequent to the court action. However, Mr. Mein could locate no records to substantiate such a conclusion.

Furthermore, all records were turned over to Porter at the time he took over.

Is it possible one of us may have handed or mailed some of this information to your attorney of record - at the time the action took place.

Awfully sorry I can't be of much assistance at this time. Meanwhile let us hope and pray for Porter's early recovery.

Kindest regards.

Sincerely yours,

A. P. St. Thomas
A. P. St. Thomas

APST/js

Mr. Louis L. Austin
Capon Springs
West Virginia

September 9th, 1951.

Mr. Ernest J. Meyn,
Norman Storage & Trucking Co., Inc.
10 Leonard St. New York City 13.

Dear Mr. Meyn:

I appreciate very much getting your letter of
Sept. 6th, with enclosures.

We would be glad to get the following information:

1. Who paid the monthly storage charges, which you
state were paid as late as May or June of 1947?
2. If, as we understand, you released the water in
May or June of 1947 to someone from the U. S.
Marshal's office, can you not obtain the partic-
ulars from the U. S. Marshal's office? Was it
not released upon order of the Food & Drug Ad-
ministration, which had first seized the water in
June of 1943?
3. Inasmuch as we did not order the water removed
(having no authority to do so) and had no knowledge
that it was removed until last August 24th, your
statement that "the seizure order and the receipt
when the merchandise was picked up from our warehouse
must be somewhere in your records" is mystifying to us.
Are you inferring that we removed the water?

We will hope for more definite information from you.

Sincerely,

Capon Springs Mineral Water
By

L. L. A.

September 9th, 1951.

Mr. A. P. St. Thomas,
500 Fifth Avenue.
New York City.

Dear Mr. St. Thomas:

The water that was seized by the Food & Drug Ad. in June of 1943, at the Norman Storage and Trucking Co., 10 Leonard St. New York City, has apparently mysteriously disappeared and we are trying to learn something about its disappearance. You may be able to help us if you will kindly answer the following questions:

1. Do you know who paid the storage charges on this particular lot of water, which the Norman Storage people say was paid up to May or June of 1947?
2. Do you know anything about the alleged withdrawal of this particular lot of water, which the warehouse people claim was removed about May or June of 1947? If you do, please advise us all the particulars.

Inasmuch as time is important, we would appreciate an immediate answer. Please use the enclosed self addressed envelope.

You will be sorry to hear, I am sure, that Porter was in a most serious accident last Friday, and is now at the Harrisburg Hospital, Pennsylvania, with several severe fractures, but with a good chance to come through. His wife Ruth was instantly killed in the accident.

With kind regards,

Sincerely,

Louis L. Austin

Telephone

Walker 5 - 6576
6577

Distribution
Specialists

Norman Storage & Trucking Co., Inc.

Trucking - - Forwarding - - Warehousing

10-12 Leonard Street

New York 13, N. Y.

September 6 1951

Mr L.L.Austin
Capon Springs and Farms
Capon Springs West Virginia.

Dear Mr Austin:

At the request of Dr. Downs who visited me last week regarding the water that was siezed by the Food & Drug we are enclosing the letter recieved from your representative Mr A.P. St Thomas dated April 25th 1945.

Also enclosed is the envelope which must have contained the official order when the seizxure was made.

We believe the seizure order and the receipt when the merchandise was picked up from our warehouse must be somewhere in your records.

Trusting this information may be of value to you,

Very truly yours

Ernest J. Meyn
Norman Storage & Trucking Co Inc.



Encl.

RECEIVED
MAR 19 1953

[Handwritten signature]

U. R. -8

WASH 15 FROM NEW YORK 18 9-14 P
DIRECTOR URGENT

[Handwritten signature]
[Handwritten signature]
6- *[Handwritten signature]* BELL 11

US VS. ⁷FIVE CASES ETC. CAPON SPRINGS WATER, CONTEMPT OF COURT, *cm*
OBSTRUCTION OF JUSTICE. RE O-ONE FORM, THREE SIXTEEN FIFTY THREE.
BUREAU FILE SIXTY NINE DASH SIX FIVE SIX. REPORT INCLUDING ALL *bl*
INVESTIGATIONS WILL BE SUBMITTED THREE TWENTY FIFTY THREE EXCLUDING
INTERVIEW WITH JAMES KIMMINS, SECRETARY TREASURER, NORMAN STORAGE AND
TRUCKING CO., WHO IS PRESENTLY ON TOUR OF COUNTRY AND ADDRESS CAN NOT
BE OBTAINED.

RECORDED - 79

BOARDMAN

HLD

161-656-13
MAR 20 1953

3-19-53
[Handwritten signature]

63 APR 2 1953

COMMUNICATIONS SECTION
MAR 10 1953

TELETYPE

WASH 4 FROM NEW YORK 18
DIRECTOR URGENT

4-22 PM

6-~~MTB~~
BELL

UNITED STATES VERSUS FIVE CASES CAPON SPRING WATER. RECORDS OF
NOVICK TRANSFER CO. NOT AVAILABLE, NYC. RICHMOND REQUESTED TO REVIEW
RECORDS OF NOVICK TRANSFER CO., SEVEN HUNDRED NORTH CAMERON ST.,
WINCHESTER, VIRGINIA, RELATIVE TO ANY FULL BOTTLES OF CAPON
SPRING WATER SHIPPED TO WEST VIRGINIA OR PHILADELPHIA. BUDED PAST.
EXPEDITE.

BOARDMAN

RICHMOND ADVISED

HLD

1. H. -8
RECORDED - 70

67-656-14
MAR 20 1953

3-18-53
J. H. Boardman
63 APR 2 1953

FEDERAL BUREAU OF INVESTIGATION

UNITED STATES DEPARTMENT OF JUSTICE

AIR TEL

Transmit the following Teletype message to:

FBI RICHMOND

3-21-53

DTD

DIRECTOR, FBI AND SAC, PITTSBURGH

UNITED STATES VERSUS FIVE CASES, ETC., CAPON SPRING WATER, MO.10126, FDC, NO. 10053, CONTEMPT OF COURT, OBSTRUCTION OF JUSTICE.

RENYCTEL MARCH 18 LAST. JOSEPH W. HERSHBERGER, EXECUTIVE VICE
 PRESIDENT, NOVICK TRANSFER CO., WINCHESTER, VA. ADVISED ON MARCH
 20, 1953 THAT IN ACCORDANCE WITH ICC REGULATIONS THEY DO NOT
 RETAIN RECORDS BEYOND THREE YEARS AND THAT THEY ARE UNABLE TO
 LOCATE ANY RECORD ON INSTANT MATTER. COMPANY OFFICE MANAGER
 REPORTS HE HAS SOME NINETEEN FORTY EIGHT RECORDS BUT THAT IT
 WOULD BE NECESSARY TO KNOW DATE OR MONTH OF ANY SPECIFIC SHIPMENT,
 WHETHER PREPAID OR COLLECT AND NAME OF CONSIGNEE BEFORE HIS
 LIMITED RECORDS COULD BE SEARCHED AND THEN POSSIBLE NO RECORD
 WOULD BE FOUND BECAUSE INCOMPLETE. RUC.

JOHNSON

WHP:dtd

46-619

REGULAR MAIL

CC: PITTSBURGH (REGULAR MAIL)

RECORDED - 9

MAR 23 1953

Approved: _____

Special Agent in Charge

Sent _____ M Per _____

68 APR 10 1953

AIR-TEL

FD-36

FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE

NEW YORK, 3/11/53

Transmit the following Teletype message to: BUREAU

US VS FIVE CASES, ETC.; CAPON SPRINGS WATER, CONTEMPT OF
COURT; OBSTRUCTION OF JUSTICE. REBUAIRTEL 3/10/53.
OF SA MELVIN J. CALDWELL BEING SUBMITTED 3/12/53.

REPORT

BOARDMAN

G.I.R.-6

RECORDED-60

169-656-15
MAR 12 1953
24

(3) - Bureau (REGULAR MAIL)

MJC:ECH (#5)
NY 69-53

Approved: *[Signature]*

Special Agent in Charge

Sent _____ M Per _____

53 MAR 31 1953

Assistant Attorney General
Warren Olney III

March 24, 1953

Director, FBI (69-656)

69-656-17
UNITED STATES v. Five Cases
etc. Capon Spring Water
#10126, FDC #10053
CONTEMPT OF COURT
OBSTRUCTION OF JUSTICE
(Department Files 22-48-478
and 22-83-478)

Reference is made to the memorandum of Assistant Attorney General Charles B. Murray dated January 23, 1953, in the above-captioned matter.

There is being enclosed herewith a copy of a letter dated March 2, 1953, from Louis L. Austin to Special Agent Michael J. Rock of our Philadelphia Office.

For your information, Special Agent Rock did not make any statement to Austin as to the extent of the investigation and specifically did not promise Austin that personnel of the Food and Drug Administration would be viewed by Mr. Herbst. This has been called to Mr. Austin's attention.

With reference to Mr. Austin's statement "that the records have been altered or rendered incomplete in an effort to deceive any but the most thorough investigator," Mr. Austin was recontacted but was unable to furnish any specific information that records had been changed.

Special Agent Rock has advised that during the interviews with Austin he has repeatedly endeavored to ascertain the complete nature and scope of our investigation. Mr. Austin was advised that because of the confidential nature of our records he could not be provided with the names of other individuals contacted or to be contacted during this investigation. In reply to questions propounded to the Agent, Mr. Austin has been informed that our investigation will be complete and thorough. He is apparently not aware of the scope of the major portion of the investigation which has been conducted by our New York Office.

With regard to the last paragraph of Mr. Austin's letter to the effect that he has evidence which, if followed through by the FBI, will establish that the Food and Drug

Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Laughlin _____
Mohr _____
Winterrowd _____
Tele. Rm. _____
Holloman _____
Gandy _____

63 APR 7 1953

COMM - FBI
MAR 25 1953
MAILED 28

Assistant Attorney General
Warren Olney III

Administration removed the water and rigged their records to avoid detection, Mr. Austin was recontacted to determine if he had any additional evidence or information relating to the removal of the water. Mr. Austin said he knew of a "peculiar chain of events" which he believed indicated that the Food and Drug Administration had removed the water. Austin said that this material was not readily available and that he would have to get it together and did not know how long this would take.

The above is being furnished for your information. The memorandum of Assistant Attorney General Charles B. Murray dated January 23, 1953, and the report of Special Agent Robert M. Wingard dated February 12, 1953, at Washington, D. C., reflect that Louis L. Austin has made a number of complaints to the Department and the Federal Security Agency in connection with this matter.

Upon the receipt of reports completing this investigation, same will be forwarded to the Criminal Division.

Enclosure

Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Laughlin _____
Mohr _____
Winterrowd _____
Tele. Rm. _____
Holloman _____
Gandy _____

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, FBI

FROM : SAC, Philadelphia (69-28)

SUBJECT: UNITED STATES v. Five Cases
etc. Capon Spring Water
#10126; FDC #10053;
CONTEMPT OF COURT,
OBSTRUCTION OF JUSTICE
(New York - Origin)

DATE: March 16, 1953

~~CONFIDENTIAL~~

Mr. Tolson
Mr. Ladd
Mr. Nichols
Mr. Belmont
Mr. Clegg
Mr. Glavin
Mr. Harbo
Mr. Rosen
Mr. Tracy
Mr. Gearty
Mr. Mohr
Mr. Winterrowd
Tele. Room
Mr. Holloman
Mr. Sizoo
Miss Gandy

Forwarded herewith are two copies of a letter from LOUIS L. AUSTIN to SA MICHAEL J. ROCK, III, dated March 2, 1953, and two copies of the memo of SA ROCK dated March 16, 1953, relative to Mr. AUSTIN's letter.

These are being furnished the Bureau for information, since it is believed Mr. AUSTIN will probably communicate with the Director in this case, particularly if the investigation being conducted by this Bureau does not reflect that the Food and Drug Administration is responsible for the disappearance of the "res" in this case.

JPP/jfm

Enclosures (4)

RECORDED - 23

~~EXPRESS PROCESSING~~

69-656-17

MAR 30 1953

2nd copy
memo dated
3-16-53 sent
to Mr. Bell
by Mr. [unclear]
3/17

Copy along w/
3/24/53 Jfm

C
O
P
Y

March 2nd, 1953

Michael J. Rock, Esq.
Federal Bureau of Investigation
Philadelphia, Pa.

Dear Mr. Rock:

You will recall my asking you this morning if there was any harm in my getting in touch with both St. Thomas and the Norman Storage & Trucking Company, with the view to ascertaining the nature of the investigation being conducted by the FBI in New York into the disappearance of the res in our case.

You very properly answered that it was not up to you to advise one way or the other, but you seemed sure that the investigation in New York was well under way, and that Herbst, VP of the Norman Storage & Trucking Company, would in all probability be given opportunity to identify the Food & Drug inspector who removed the res, and whom he stated he would recognize anywhere.

I owe it to you to advise that I phoned the Norman Storage & Trucking Company late this afternoon, and Mr. Meyn advised me that he had not been called upon by the FBI, that he had no idea an investigation was being conducted, and as a matter of fact, he thought, not hearing anything further after my visits last November, that the case was dropped.

You assured me that this was no unilateral investigation. I welcome being investigated, and I surely want St. Thomas and the warehouse people investigated. But as I told you repeatedly, after all of us are eliminated as having had anything to do with the disappearance of the res, I am counting on a most thorough investigation of the part played by the Food & Drug Administration in the removal of the res from the warehouse.

There is no doubt in my mind that a typical FBI investigation will surely disclose that the Food & Drug Administration 1) removed the water from the Norman Storage & Trucking Company; 2) that perhaps from six to ten employees of the Food & Drug Administration know this;

- 2 -

Michael J. Rock, Esq.

3) that the records have been altered or rendered incomplete in an effort to deceive any but the most thorough investigator; 4) that part of the plan was to make it appear that we ourselves removed the res.

The fact that this investigation has been centered on us is not what disturbs us. It is the impression we have derived that your personal work has been as far as we have been able to tell, restricted to determining what part we (St. Thomas, the warehouse people and myself) played in causing the res to disappear, that is causing us concern.

The oft repeated assertions I have made to you that I have the evidence, which if followed through by the FBI, will establish beyond doubt that the Food & Drug Administration removed the res and has rigged their records to avoid detection, have been met by you with the confident assurance that the FBI has every thing I have, and has in all probability investigated it already. Were you in my place, I believe you would be no happier about this situation than I am.

Respectfully,

Louis L. Austin

C
O
P
Y

MEMO, SAC

March 16, 1953

Re: UNITED STATES v. Five Cases,
etc. Capon Spring Water
#10126; FDC #10053;
CONTEMPT OF COURT;
OBSTRUCTION OF JUSTICE
(New York - Origin)

Re letter from Mr. LOUIS L. AUSTIN to SA MICHAEL J. ROCK, dated March 2, 1953, copies of which are attached.

In accordance with my conversation with SAC R. J. ABBATICCHIO JR. on March 10, 1953, I visited Capon Spring Water, 1427 Spruce Street, which is the office of Mr. AUSTIN, on March 11, 1953, in order that I might refute verbally the false statements, half truths, and cunning innuendoes contained in referenced letter from Mr. AUSTIN.

I was accompanied by SA ROBERT J. LAWSON, and interviewed Mr. AUSTIN from approximately 10:55 a.m. to 11:40 a.m. on the above date. I verbally acknowledged receipt of Mr. AUSTIN's letter to me.

The following represents my comments regarding referenced letter, which were not conveyed to Mr. AUSTIN, and the statements I made to Mr. AUSTIN:

Re 1st Paragraph of Referenced Letter -

My Comments:

The first paragraph of Mr. AUSTIN's letter is true. He did ask me the question indicated. It is to be noted, however, that Mr. AUSTIN apparently desires to be kept abreast of the investigation being conducted by this Bureau since he stated in this letter that he contemplated telephoning Mr. ST. THOMAS and the Norman Storage and Trucking Company, both New York, "with the view to ascertaining the nature and scope of the investigation being conducted by the FBI...."

MJR/jfm
69-28

69-650

PH 69-28
Memo, SAC

Statement to Mr. AUSTIN: I advised Mr. AUSTIN that, in previous interviews with him, I recalled that he did ask whether he might contact New York, and I replied it was not up to me to advise him one way or the other. I further advised Mr. AUSTIN that, by order of the Attorney General, the records of this Bureau are confidential and that he would not be apprised of information contained in our records.

Re 2nd Paragraph of Referenced Letter -

My Comments: The second paragraph from "You" to the word "other" is correct. I answered it was not up to me to advise Mr. AUSTIN one way or the other. Mr. AUSTIN continues in his letter, "but you seemed sure that the investigation in New York...." I made no such statement to Mr. AUSTIN, and he does not state that I made any such statement. The above is a conclusion reached by Mr. AUSTIN. I made no statement to him as to the extent of this investigation.

Statement to Mr. AUSTIN: I advised Mr. AUSTIN I did not promise him that personnel of the Food and Drug Administration in New York would be viewed by Mr. HERBST. I told him that I recalled that he asked me whether this would be done, and I replied to him that the investigation would be complete and thorough. Mr. AUSTIN admitted to interviewing agents that he had asked this question himself, and my reply had been as indicated above.

Re 3rd Paragraph of Referenced Letter -

My Comments: This paragraph contains a statement of Mr. AUSTIN which does not concern me.

Statement to Mr. AUSTIN: I told Mr. AUSTIN that this paragraph represented a statement made by him and that it did not pertain to me.

PH 69-28
Memo, SAC

Re 4th Paragraph of Referenced Letter -

My Comments:

Mr. AUSTIN makes the statement, "You assured me that this was no unilateral investigation." I did not use these words but, in the course of the interview with Mr. AUSTIN, he emphasized he wanted a thorough investigation of FDA, and I advised him a complete investigation would be conducted in this case. In the second sentence of Paragraph 4, Mr. AUSTIN states he welcomes being investigated and that he wants Mr. ST. THOMAS and the warehouse people in New York investigated. The remainder of Paragraph 4 is a conclusion and an opinion of Mr. AUSTIN.

Statement to Mr. AUSTIN:

I told Mr. AUSTIN I did not recall having used the word "unilateral" and that I told him a complete investigation would be conducted in this case. Regarding the remainder of this paragraph, I told Mr. AUSTIN that this represented an opinion and a conclusion of his and that I was only too anxious to receive information or evidence which would substantiate this conclusion.

Re 5th Paragraph of Referenced Letter -

My Comments:

This paragraph contains charges and opinions of Mr. AUSTIN which he was unable to substantiate in my interviews with him.

Statement to Mr. AUSTIN:

I told Mr. AUSTIN that this paragraph represented his opinion and conclusion. I told him he stated in his letter that records of the Food and Drug Administration have been altered or rendered incomplete. I asked him if he had seen records which had been so changed. He replied that he had not. I asked him if anyone told him that FDA records had been altered or rendered incomplete. He stated no one had. I asked him what his basis was for making

PH 69-28
Memo, SAC

such a statement and what evidence or information he had that would prove such a statement. He replied his only evidence was a "peculiar chain of events" which originated in 1943 and continued to 1952, and which he thought represented a conspiracy against him by FDA. He stated he did not know that changed records existed, but he thought that the FBI could discover such.

Re 6th Paragraph of Referenced Letter -

My Comments:

Mr. AUSTIN states, "It is the impression we have derived that your personal work has been, as far as we have been able to tell, restricted to determining what part we (ST. THOMAS, the warehouse people and myself) played in causing the res to disappear, that is causing us concern."

In Paragraph 4, AUSTIN stated that he welcomed an investigation of himself, ST. THOMAS, and the warehouse people, and in Paragraph 6 an investigation of these people is apparently causing him concern.

It is noted in this paragraph that Mr. AUSTIN makes no charges against me and, as is his wont in dealings with other Government representatives, he expresses his impression of my personal work. AUSTIN is judging the investigation by my contact with him in Philadelphia and is apparently disregarding the facts, in that the major portion of the investigation in this case is being conducted in New York.

During interviews with AUSTIN, he has repeatedly endeavored, through questioning and making statements with which he hoped I would agree, to ascertain the complete nature and scope of our investigation. I have been extremely cautious not to divulge to Mr. AUSTIN any information of a confidential nature and to make as few statements as possible.

PH 69-28
Memo, SAC

Statement to Mr. AUSTIN: I advised Mr. AUSTIN I interviewed him in order to obtain any information or evidence he had relative to the disappearance of the res in this case; that such other persons would be interviewed in the course of this investigation as would be necessary to make the investigation complete; and that the investigation was not being restricted to him. I advised Mr. AUSTIN again that, because of the confidential nature of our records, I would not disclose to him the names of other individuals who have been or will be interviewed.

Re 7th Paragraph of Referenced Letter -

My Comments: This paragraph contains assumptions and conclusions by Mr. AUSTIN.

Statement to Mr. AUSTIN: I advised Mr. AUSTIN he stated in his letter that he had the evidence which, if followed by the FBI, would establish beyond doubt that the Food and Drug Administration removed the res in this case. I told Mr. AUSTIN that, in previous interviews with him and during the present interview, I desired any and all information he possessed relative to this matter.

I asked him if he saw anyone remove the water. He replied that he had not. I asked him if anyone who removed the water had told him, AUSTIN, that the water had been removed. He replied he had received no such information. I asked him if he had any other evidence or information relative to the removal of the water. He replied that he had "a peculiar chain of events" which he believed indicated FDA had removed the water. I asked Mr. AUSTIN specifically to furnish this "peculiar chain of events." He stated it was not readily available and that he would have to get it together and did not know how long it would take.

I pointed out to Mr. AUSTIN that he stated in his letter that I told him the FBI had

PH 69-28
Memo, SAC

everything he had. I told Mr. AUSTIN this statement was not true and, if such were the case, I would not have interviewed him in the first place. I told him that, on the occasion of my first interview with him, I requested all information and evidence he had relative to the disappearance of the res. I further told him I recall that he had asked me whether he should get in touch with our New York Division in order that he might furnish information to them which they should have in investigating this case. I informed AUSTIN that, on this occasion, I told him to furnish such information to me, and I would see that it was received by the New York Division. I further stated I told him on this occasion that, if our New York Division desired information from him, the Philadelphia Division would be advised and he would be reinterviewed. Mr. AUSTIN stated that my comments as given above were true.

* * *

Mr. AUSTIN apologized for the interpretation taken from his letter and stated that he did not intend it to reflect upon my personal work, and he added he believed I had been courteous and unbiased in my dealings with him. He stated that the sole basis for his letter to me was the fact that he was somewhat upset after calling Mr. HERBST, Norman Storage and Trucking Company, New York, and ascertaining that HERBST had not as yet been interviewed.

Mr. AUSTIN volunteered to write a letter to me clarifying his first letter and pointing out that he intended his first letter as no reflection upon me. AUSTIN was neither encouraged nor discouraged to write a second letter.

AUSTIN displayed to SA LAWSON and the writer a letter dated March 2, 1953, which he had written to J. EDGAR HOOVER, Director, FBI, but which he had never mailed. He stated he did not mail this letter because he did not want to go over my head. This letter contained a general summary of his case and included the usual unsubstantiated charges which he has made over a period of years against the FDA.

PH 69-28
Memo, SAC.

In the last paragraph of this letter, AUSTIN stated in effect that it was his opinion that SA ROCK had been limited in his investigation by some higher authority in this Bureau. He also stated that SA ROCK had been thorough and courteous in his investigation at all times but, since he ascertained that no investigation had as yet been conducted at the warehouse in New York, he felt the investigation was being restricted to determining his part in the removal of the res in this case.

Mr. AUSTIN was questioned concerning the last paragraph of his letter, and he stated his telephone call to the warehouse in New York was his only basis for believing that I had been restricted in my work by some higher authority in this Bureau. It was pointed out to AUSTIN by SA LAWSON and the writer that the investigation had not been restricted by anyone in this Bureau and that a thorough and objective investigation is being conducted by the FBI, as is done by this Bureau in all cases within our investigative jurisdiction.

Mr. AUSTIN is, in the writer's opinion, unreliable, cunning, and extremely vindictive. He impresses the writer as a psychopath who will stoop to anything if it benefits him or his case. He is a past master at forming conclusions and distorting facts which will allegedly support those conclusions.

The files of the Food and Drug Administration, Philadelphia, and the files of Mr. AUSTIN indicate that AUSTIN is a prolific letter writer. These files are replete with letters which he has directed to various high-ranking Government officials, such as a Presidential Secretary, Department of Justice, Federal Security Agency, Food and Drug Administration, and various other individuals, including RUDOLPH HALLEY, former attorney for the Kefauver Committee. In all these letters, Mr. AUSTIN is vitriolic in his attacks against the Food and Drug Administration, charging them with corruption and dishonesty. He has repeatedly stated in these letters that he has evidence which will show his charges to be true. Mr. AUSTIN, in interviews with me, has been unable to furnish any information to substantiate the charges he made.

AUSTIN expressed opinions as facts, and appeared to be unable to distinguish between an opinion and a fact if the decision involved Capon Spring Water or himself.

PH 69-28
Memo, SAC

It is believed that the Bureau should be advised of the full facts in this matter inasmuch as there is no doubt in my mind that it is only a matter of time until Mr. AUSTIN will communicate with the Director.

It is my opinion, and the opinions of SAs LOUIS B. PIECHOTA and ROBERT J. LAWSON, who have at different times interviewed Mr. AUSTIN with me, that Mr. AUSTIN believes our findings will definitely show FDA removed the res. He believes our investigation will assist him in winning his civil suit with FDA. It is the opinion of the above agents and myself that, if our investigation does not find FDA responsible for the disappearance of the res, Mr. AUSTIN will level abuse upon this Bureau, as he has done with other Government agencies, and will charge a conspiracy against him.

The report of SA ROBERT N. WINGARD dated February 12, 1953, at Washington, D.C., and my report dated February 24, 1953, at Philadelphia, and enclosures to those reports contain ample information regarding the opinions of others, including Attorney General McGRANERY and Mr. OSCAR EWING, former Director, FSA, regarding the attitude of Mr. AUSTIN.

I have had almost twenty years of working experience, over five of which have been in the employ of this Bureau. The fact that Mr. AUSTIN was analyzed correctly the first day I talked to him is proven by the fact that, on my second interview with him, I took another agent with me as a witness.

The above may also be demonstrated by the fact that I gave a receipt to Mr. AUSTIN on February 19, 1953, for the items borrowed from him. It will be further noted that I obtained this receipt from Mr. AUSTIN on February 24, 1953, when I delivered the borrowed items to him. The fact that I did not trust Mr. AUSTIN will be further noted from the fact that I had him write the following receipt on my receipt: "Return of the above items acknowledged, Feb. 24, 1953, /s/ LOUIS L. AUSTIN." This item is contained in 1A-4 of the Philadelphia file.

My report dated February 24, 1953, Page 11, last paragraph, gives information furnished by AUSTIN regarding

PH 69-28
Memo, SAC

a letter from Mr. A. P. ST. THOMAS to Norman Storage and Trucking Company, dated April 25, 1945, which bore initials "JAK" dated March 28, 1951. Mr. AUSTIN stated these were the initials of Inspector KEDZIOR, FDA, who, he alleged, had taken this letter from the files of Norman Storage and Trucking Company without permission.

That I did not trust Mr. AUSTIN may be demonstrated by the fact I initialed no exhibits borrowed from him, but rather initialed and dated a tab of paper which was placed on the document when it was photostated. This was done because it was realized at the time that, if AUSTIN made charges against KEDZIOR, he might do so against me unless foresight were exercised.

I feel I was aware of the unpredictable character of Mr. AUSTIN from the time of my first interview, and I know I was extremely guarded and cautious in any remarks made to him. This may be demonstrated from Mr. AUSTIN's letter, wherein when he quotes me, he quotes me correctly, and wherein it will be noted that his innuendoes are based on his opinions. I feel I have made no misstatements in my dealings with Mr. AUSTIN and that maturity of judgment was exercised.

As further evidence of Mr. AUSTIN's character, on March 3, 1953, AUSTIN advised me in a rather sheepish, abashed, and almost guilty manner that he had information he had not given when previously interviewed because he considered it of a delicate nature. He stated he should have furnished this information during previous interview. This information is as follows:

Mr. AUSTIN mentioned the retrial scheduled for 1952 in Camden, N.J., and stated that he had primed his counsel to be on the alert for a Government move to dismiss the case. Mr. AUSTIN was asked what prompted him to do this, and he stated his attorney, HOWARD BURT, had told him in July 1952 that attorney COOPER BROWN, who represented him, AUSTIN, in Camden, N.J., had said he had uncovered a flaw in the FDA's case and that he could have the case dismissed for a \$1,000.00 fee.

He stated that, after the appearance in court, he interrogated BROWN as to how he had uncovered the flaw in

PH 69-28
Memo, SAC

FDA's case, and BROWN said the information had been "leaked" to him by Assistant United States Attorney FEINBERG. However, BROWN said later that it was not FEINBERG but Federal Judge MADDEN who had "leaked" the information to him. He stated this was the reason he had told his attorney to be on the alert for a dismissal of the Government's case.

AUSTIN's manner in relating the above was not forthright, but rather cunning, and it appeared to be an obvious attempt to cast aspersions on a Federal Judge and an Assistant United States Attorney.

I did not set forth this information in my report dated March 10, 1953, at Philadelphia, because I believed, due to the delicate nature of the above information, it should be furnished to the Bureau by letter and not in report form. I did not set this forth in a cover letter because this memo was in preparation at the time, and the information is reflected herein.

It was amazing to the writer to see how much information Mr. AUSTIN has obtained from Government records by writing letters such as this to Government agencies and officials, and by receiving bit by bit information that properly belongs to the Government in replies to these letters.

Michael J. Rock III

MICHAEL J. ROCK, III
Special Agent

FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT

NEW YORK

PJS

REPORT MADE AT NEW YORK	DATE WHEN MADE 3/20/53	PERIOD FOR WHICH MADE 3/10, 11, 13, 16, 19/53	REPORT MADE BY MELVIN J. CALDWELL
TITLE UNITED STATES v. Five Cases, etc. Capon Spring Water, #10126; FDC #10053			CHARACTER OF CASE CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE
SYNOPSIS OF FACTS: <div style="float: right; text-align: right;">5-1</div> Records FDA, NY District, reviewed and information relative to seized water set out. STANLEY H. LOWELL, former AUSA, employees and former employees of Norman Storage and Trucking Company interviewed. Details set out. Neighborhood warehouse men contacted concerning individual whom Mr. WILLIAM HERBST described as "man with badge" who, according to Mr. HERBST, removed seized goods from Norman Storage and Trucking Company premises. Details set out. <div style="float: right; text-align: right;">I.R.-8</div>			
- P - EXPEDITE PROCESSING			
DETAILS: <p>Mr. CHARLES HERRMAN made available files of the New York District Food and Drug Administration, File No. 45453F, which file reflected that on a sample summary report submitted by Inspector CHARLES L. GREENLEE, he indicated that the Food and Drug Administration was to be billed for samples taken by a Mr. GREENLEE on May 27, 1943.</p> <p>The file failed to reflect that the Food and Drug Administration had been billed for such samples and Mr. HERRMAN advised that to his knowledge the Food and Drug Administration had never received a bill for sampling the goods as indicated. The following correspondence, not previously reported to the Bureau, was located in the files of the New York District Food and Drug Administration, and photostatic copies of each piece of</p>			
APPROVED AND FORWARDED: <div style="text-align: center;"> LUB </div>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES <div style="font-size: 1.5em; font-weight: bold;">69-456-18</div> <div style="float: right; text-align: right;"> RECORDED-80 INDEXED-80 </div>	
COPIES OF THIS REPORT 5 - Bureau (Encs. 10) 3 - New York (69-53) 2 cc - RAB with file.		<div style="text-align: center;"> MAR 23 1953 15 </div> <div style="text-align: right;"> G. W. B. </div>	

PROPERTY OF FBI—THIS CONFIDENTIAL REPORT AND ITS CONTENTS ARE LOANED TO YOU BY THE FBI AND ARE NOT TO BE DISTRIBUTED OUTSIDE OF AGENCY TO WHICH LOANED

63 APR 14 1953

NY 69-53

correspondence is being forwarded.

A Report On Seizure Accomplishment dated June 4, 1943 reflected that the following goods were seized on the premises of Norman Storage and Trucking Company, Inc., 10-12 Leonard Street, New York City:

2 cases of 1 - 5 gallon demijohn each	-	\$ 5.00
9 cases and 8 bottles each 2 quarts (12 to a case)	-	35.00
7 cases - 2 quarts 6 bottles each	-	<u>12.00</u>
		\$ 52.00

This seizure accomplishment was signed by CHARLES L. GREENLEE, Food and Drug Inspector, and the report reflected that he accompanied Deputy United States MARSHAL WILLIAM TUBMAN when the seizure was accomplished. (Enclosed FDA New York No. 1)

A sample summary and analytical report showing the source of the water on which analysis was made, and a report of the analysis was contained in the file. A photostatic copy of this report is being submitted as an enclosure. (Enclosed FDA New York No. 2)

The file contained a letter dated June 13, 1951 which reflected that Mr. STANLEY H. LOWELL, 113 West 42 Street, New York City, had been contacted by Inspector JOHN A. KEDZIOR. (Enclosed FDA New York No. 3)

A memorandum of a telephone conversation between Mr. GILBERT S. GOLDHAMMER and R. L. HORST on November 9, 1951, reflected that Mr. HORST was requested to contact the United States Marshal in order that they could conduct an investigation and furnish the information to the United States Attorney at Camden, New Jersey. (Enclosed FDA New York No. 4)

A letter dated March 24, 1952 in the file, contains information relative to the instant case and a photostatic copy is being furnished as an enclosure. (Enclosed FDA New York No. 5)

Mr. HERRMAN made a check of his files of all inspectors employed by the Food and Drug Administration from January 1, 1943 to the present, and he stated that none of the inspectors hired by the New York District during that period were of the same general description as that furnished by Mr. WILLIAM HERBST, Vice-President of the Norman Storage and Trucking Company, Incorporated. Mr. HERRMAN advised that

NY 69-53

there have been only a handful of inspectors over fifty years of age during this period, and that none of these men even remotely fitted the description furnish by Mr. HERBST. He advised that he had been personally acquainted with all of these inspectors and is, therefore, qualified to make a comparison between them and the individual described by HERBST.

Mr. HERRMAN advised that to his knowledge he has furnished all the information he has in his possession relative to the seizure of the Capon Springs water and of any investigation that may have been conducted by the New York District of the Food and Drug Administration.

Mr. ERNEST J. MEYN, President, Norman Storage and Trucking Company, Incorporated, 10-12 Leonard Street, New York City, made available the following correspondence retained in his Capon Springs file:

A letter dated March 20, 1952 to Mr. E. J. MEYN, Norman Storage and Trucking Company from Mr. LOUIS L. AUSTIN. (Enclosed Norman No. 1)

A letter from E. J. MEYN to Mr. L. L. AUSTIN dated September 10, 1951 which reflects Capon Springs paid all the invoices for merchandise and that the last invoice was dated May 31, 1947. The letter further stated that the records of the Norman Storage and Trucking Company did not reflect in what manner the water had been removed from the premises, and that it is believed that the Food and Drug Administration had ordered the removal of the water from the warehouse and that possibly the receipt for the removal may be in the possession of Mr. L. L. AUSTIN. (Enclosed Norman No. 2)

The file contained a letter dated September 9, 1951 from LOUIS L. AUSTIN to Mr. ERNEST J. MEYN in which Mr. AUSTIN posed several questions requesting information as to who paid the monthly storage charges and other questions concerning the removal of the seized water. (Enclosed Norman No. 3)

A letter from E. J. MEYN to Mr. L. L. AUSTIN dated September 6, 1951 stated in part that a letter received from Mr. A. P. St. THOMAS dated April 25, 1945 and an envelope which Mr. MEYN believed to have contained the official order when the seizure of Capon Springs water was accomplished, was submitted to Mr. AUSTIN as an enclosure to this letter. (Enclosed Norman No. 4)

NY 69-53

A letter dated August 29, 1951 to the Norman Storage and Trucking Company from LOUIS L. AUSTIN reflected that a Dr. W. S. DOWNS would contact the Norman Storage and Trucking Company relative to the disappearance of the Capon Springs water which had originally been seized by the government. (Enclosed Norman No. 5)

Mr. ERNEST J. MEYN advised that he does not presently know the whereabouts of JAMES KIMMINS, Secretary of the Norman Storage and Trucking Company, but stated that he expects him to return to New York prior to April 1, 1953.

Mr. MEYN advised that the water on his premises had never belonged to him and that, therefore, he had never billed anyone for the samples of water which had been taken by the Food and Drug Inspectors. He stated, however, as previously reported to the Bureau, that Mr. A. P. ST. THOMAS had paid all storage charges for Capon Springs water stored on the premises of the Norman Storage and Trucking Company.

Mr. STANLEY H. LOWELL, 51 Chambers Street, New York City, advised that to his knowledge, at the time of the appeal in 1946, the Capon Springs water which had been seized by the United States Marshal, was still in the custody of the government. He advised that he has no records pertaining to either the trial or any information relative to the disappearance of the seized water.

The following neighborhood warehouse men were contacted in an effort to secure information relative to the individual with the badge as described by Mr. HERBST, who had stated that this individual was known to warehouse men in the neighborhood.

Mr. JOSEPH SABELLA, 18 Leonard Street, advised that he has never had any contact with Food and Drug Inspectors fitting the description of the man described by Mr. HERBST. He stated that there have been several individuals in the neighborhood who would in general fit the description, but that these men are individuals who normally buy damaged or spoiled goods, and are generally in business for themselves. He advised that these are the only individuals who have worked in the neighborhood buying or removing damaged or spoiled goods during the past five or six years, and that he knows none of them ever served in an official capacity either in the Food and Drug Administration or any other agency.

Mr. WILLIAM LICHTENSTEIN, owner, Ideal Packing Company, 196 West Broadway, advised that he has met several Food and Drug

NY 69-53

Inspectors in connection with his business, and stated that none of them fit the description of the man as described by Mr. HERBST. He stated that he has never had any occasion to deal with any of the men in the neighborhood who buy damaged and spoiled goods.

Mr. G. W. VOGEL, President, F and S Warehouse and Trucking Corporation, Leonard Street, stated that he has never had any occasion to come in contact with Food and Drug Inspectors and advised that he is not familiar with anyone in the neighborhood serving in an official capacity, that would fit the description as furnished by Mr. HERBST.

The following employees and former employees of the Norman Storage and Trucking Company were contacted relative to information concerning the disappearance of the Capon Springs water which had been seized by the government:

Mr. RICHARD W. HERBST, warehouse man; Mr. JAMES P. TAYLOR, warehouse man and truck driver, advised that they have been employed by the Norman Storage and Trucking Company for approximately twenty-five years, and that they do recall that for a period of time Capon Springs water was handled by that company. They stated, however, that prior to approximately three or four years ago, they had both been on the road driving trucks and, therefore, had very little occasion to become familiar with activities in the warehouse and could furnish no information concerning the disappearance of the Capon Springs water.

ANTHONY GWOZDIK and SALVADORE BRAVATA, former employees of the Norman Storage and Trucking Company, who worked there during the period in question with the exclusion of the years 1943 through 1945 when both were in the service, advised that they recall the Norman Storage and Trucking Company handling Capon Springs water, but were unable to furnish any information relative to the seizure of the water or the disappearance of it.

TIMOTHY CRIMMONS advised that he worked for Norman Storage and Trucking Company from 1942 to November, 1947 when he resigned. He stated that he was in military service from November, 1942 to October, 1945 and that upon his return he was advised that the eighteen cases of Capon Springs water and some extra bottles which were in the basement, upon which there was a piece of paper, had been seized by the government and were not to be moved. He stated that sometime between

NY 69-53

October, 1945 and November, 1947 the water was taken out as he had been advised by someone on the premises that it had been removed. He stated that he cannot positively state as to exactly what time the water was removed and in what manner. He could furnish no further information.

Mrs. A. MILLER, Secretary, Novick Transfer Company, 414 West 38 Street, New York City, advised that all records of closed accounts have been forwarded to the Novick Transfer Company, 700 North Cameron Street, Winchester, Virginia, and that she had no records available.

The Pittsburgh Office advised by teletype dated February 23, 1953, that DENNIE DUNLAP, Superintendent Capon Springs Water, Capon Springs Farm, Capon Springs, West Virginia, advised SA WILLIAM J. KUBASTA that he maintained no records for the Capon Springs and advised that all records and correspondence had been forwarded to LOUIS L. AUSTIN in Philadelphia, Pennsylvania. DUNLAP stated that he was not cognizant of any court action regarding the Capon Springs water, and advised that he had no specific knowledge of Capon Springs water having been seized as evidence. He stated that only empty bottles are received at Capon Springs for refilling, and that all orders are transmitted to him at Capon Springs by Mr. L. L. AUSTIN, and that he fills these orders and ships them to Philadelphia where they are stored. Mr. DUNLAP advised that it would be more economical to return empty bottles to Capon Springs, West Virginia than to pay the shipping charges on full bottles. DUNLAP stated that he could furnish no further information.

The Newark Office advised on February 26, 1953 that Assistant United States Attorney ALEXANDER FEINBERG, Camden, New Jersey, was interviewed and could furnish no further information relative to the disappearance of the seized Capon Springs water. He stated that he had been advised that the res was missing by the Food and Drug Administration in June, 1951, and that he forwarded this information to the United States District Court, Camden, New Jersey, on August 24, 1951. Newark advised that the records contained in Mr. FEINBERG's office were reviewed and no information not already reported to the Bureau was noted.

ENCLOSURES (10) TO BUREAU

FDA New York No. 1

Report of Seizure Accomplishment dated June 4, 1943.

NY 69-53

FDA New York No. 2

Sample summary and analytical report.

FDA New York No. 3

Memorandum dated June 13, 1951 to Chief, New York District from
M. P. KERR.

FDA New York No. 4

Memorandum of telephone conversation between GILBERT S. GOLDHAMMER
and R. L. HORST dated November 9, 1951.

FDA New York No. 5

A letter dated March 24, 1952 to the Division of Regulatory Manage-
ment from ROBERT C. STANFILL, Chief, Philadelphia District.

Norman No. 1

A letter to Mr. E. J. MEYN dated March 20, 1952 from LOUIS L. AUSTIN.

Norman No. 2

A letter dated September 10, 1951 to L. L. AUSTIN from Norman Storage
and Trucking Company, Incorporated.

Norman No. 3

A letter dated September 9, 1951 to Mr. ERNEST J. MEYN from Mr.
LOUIS L. AUSTIN.

Norman No. 4

A letter dated September 6, 1951 to Mr. L. L. AUSTIN from Mr.
ERNEST J. MEYN.

Norman No. 5

A letter dated August 29, 1951 to Norman Storage and Trucking Company
from LOUIS L. AUSTIN.

- P -

- 7 -

NY 69-53

ADMINISTRATIVE PAGE

LEAD

NEW YORK

At New York, New York

Will interview Mr. JAMES KIMMINS upon his return to New York relative to any information he may have concerning the disappearance of the Capon Springs water.

REFERENCE

Report of SA MELVIN J. CALDWELL dated 3/12/53 at New York.

FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT **NEW YORK**

MOS

REPORT MADE AT NEW YORK	DATE WHEN MADE 4/1/53	PERIOD FOR WHICH MADE 3/26,27,30/53	REPORT MADE BY MELVIN J. CALDWELL
TITLE UNITED STATES v. Five Cases, Etc. Capon Spring Water, #10126; FDC #10053			CHARACTER OF CASE CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

SYNOPSIS OF FACTS: **JAMES KIMMINS, Secretary-Treasurer, Norman Storage and Trucking Company, interviewed. Details set out.**

*5/13/68
N.Y.
[Signature]*

- P -

DETAILS: Mr. JAMES KIMMINS, Secretary-Treasurer, Norman Storage and Trucking Company, Inc., 10-12 Leonard Street, New York City, was interviewed on March 30, 1953, and furnished the following information:

Mr. KIMMINS stated that he recalled that quite a few years ago, a load of Capon Spring Water, consisting of approximately 19 or 20 cases, had been seized by the United States Marshal and a white paper placed thereon. He stated that this load of water had been stored in the southeast corner of the basement on the Norman Storage and Trucking Company premises and that it had been kept separate from other goods on the premises.

~~EXTENDED PROCEEDINGS~~

He advised that sometime between 1943, when the goods were seized, and May, 1947, when the Capon Springs Company discontinued business with the Norman Storage and Trucking Company, the water was removed.

Concerning the removal of the water, Mr. KIMMINS stated that two men came to the Norman Storage and Trucking Company premises sometime during the period indicated above, and he, himself, had been advised by the office that it was

APPROVED AND FORWARDED: <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES	
COPIES OF THIS REPORT 5 Bureau 3 New York (69-53)		69-1053-19	APR 2 1953
		[Stamps and signatures]	

PROPERTY OF FBI - THIS CONFIDENTIAL REPORT AND ITS CONTENTS ARE LOANED TO YOU BY THE FBI AND ARE NOT TO BE DISTRIBUTED OUTSIDE OF AGENCY TO WHICH LOANED.

permissible for these individuals to remove the water which had been seized by the Government. He stated he did not recall having seen a release for the goods, but that a release would have been issued by the office before he, Mr. KIMMINS, would have allowed the goods to have been removed. In this case, he feels certain that Mr. MEYN would have been the individual who would have authorized the release of the seized goods. He advised that this individual had some kind of identification on his person and presented it to him, but he does not know whether this individual was a representative of the United States Government. He stated it was his belief that he was a representative of the Government, in view of the fact that the Government had originally seized the water and that, therefore, it must have been released by a Government representative.

Basically, however, Mr. KIMMINS stated that he allowed the water to be taken from the premises on an okay he had received from the office, presumably Mr. MEYN, and he, therefore, does not know exactly whether the gentleman who removed the goods was with the Government or with some other organization. He stated that he had never seen this individual prior to that time and has not seen him since, and advised that he would be unable to recognize him. According to Mr. KIMMINS, this individual did not say he was a representative of the United States Government, nor could Mr. KIMMINS state that this individual was a representative of the United States Government. He advised that he felt the goods would have to be released by Mr. MEYN and that it is his belief that Mr. MEYN would not release the goods to anyone other than a person who represented the Government.

Mr. KIMMINS stated that it is his belief that this individual never went into the basement of the Norman Storage and Trucking Company warehouse, but simply waited on the platform until the seized water was brought up to the platform on pallets by employees of the company. At that time this individual, and another individual who was driving the truck, transported the goods elsewhere.

Mr. KIMMINS stated he does not know to whom the release was given, but he believed it was given to Mr. MEYN, and further, he does not know to whom the monition for the copy of the libel was given when the goods were originally seized.

NY 69-53

Concerning his associations with A. P. ST. THOMAS, Mr. KIMMINS advised that he had seen Mr. ST. THOMAS on one or two occasions, but stated that nine-tenths of the transactions between the Norman Storage and Trucking Company and Mr. ST. THOMAS was handled over the telephone. He advised that on no occasion did Mr. ST. THOMAS ever order the company to dump any of the Capon Spring water, nor had any of the water been destroyed in such a manner except for a few broken or frozen bottles.

Mr. KIMMINS, in summation, stated that he can only recall that a release had been given to an individual whom he believed to be a representative of the Government, and that Mr. KIMMINS, being advised of this release, had permitted the seized water to be removed from the premises. He stated that he could not positively assert that this individual was a representative of the Government, nor had he seen any release for the water. He advised he could furnish no further information relative to the disappearance of the Capon Spring water which had originally been seized by the United States Government.

- P -

NY 69-53

ADMINISTRATIVE PAGE

LEAD

NEW YORK

At New York, New York:

Will report results of investigation conducted by the Richmond, Virginia, Office relative to any shipments of Capon Spring water from New York, New York, to Capon Springs, West Virginia, or Philadelphia, Pennsylvania, when such information is received.

REFERENCE:

Report of SA MELVIN J. CALDWELL, 3/20/53, New York.

FEDERAL BUREAU OF INVESTIGATION

Form No. 1

THIS CASE ORIGINATED AT **NEW YORK**

bjg

REPORT MADE AT NEW YORK	DATE WHEN MADE 5/8/53	PERIOD FOR WHICH MADE 4/22, 29, 30/53	REPORT MADE BY MELVIN J. CALDWELL
TITLE UNITED STATES V. FIVE CASES, ETC. Capon Springs Water #10126; FDC#10053			CHARACTER OF CASE CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

SYNOPSIS OF FACTS:

*1 cc to Rab
by form 06B
with enclosure
5/25/53
Rag*

No records available Novick Transfer Company, Winchester, Virginia.

*1 cc - Criminal
3-3-54*

DETAILS: By letter dated April 27, 1953, Richmond Office furnished a copy of an air-tel dated March 21, 1953, which reflected that JOSEPH HERSHBERGER, Executive Vice President, Novick Transfer Company, Winchester, Virginia, had advised that in accordance with Interstate Commerce Commission regulations they do not retain records beyond a period of three years. He advised that they are unable to locate any record relative to the transportation of full bottles of Capon Springs Water to Philadelphia, Pennsylvania, and Capon Springs, West Virginia from New York City.

The Philadelphia Office by letter dated April 28, 1953, furnished to the New York Office as an enclosure to a letter from LOUIS L. AUSTIN, Capon Springs dated April 15, 1953, again setting forth Mr. AUSTIN's opinion relative to the Food and Drug Administration. This letter is being submitted as an enclosure to the Bureau.

*✓ ENCL 72 to Rab
Rag*

*- C - 7-21-53
let to AFK
RAG - mjl*

ENCLOSURE TO THE BUREAU:

One Photostat of original letter of Mr. LOUIS L. AUSTIN dated 4/15/53 as furnished with Philadelphia letter, 4/28/53.

APPROVED AND FORWARDED: <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN THESE SPACES	
COPY IN FILE COPIES OF THIS REPORT (5) Bureau (69-656) (Encl) 1 - New York (69-53)		69-1656-20 MAY 12 1953	RECORDED - 72

PROPERTY OF FBI - THIS CONFIDENTIAL REPORT AND ITS CONTENTS ARE LOANED TO YOU BY THE FBI AND ARE NOT TO BE DISTRIBUTED OUTSIDE OF AGENCY TO WHICH LOANED.

NY 69-53

ADMINISTRATIVE PAGE

REFERENCE

Report of SA MELVIN J. CALDWELL, New York, 4/1/53.
Richmond letter to New York, 4/27/53.

Assistant Attorney General
Warren Olney III

July 21, 1953

Director, FBI (69-656)

0 UNITED STATES vs. FIVE CASES, ET AL
CAPON SPRINGS WATER NUMBER 10126,
FEDERAL DISTRICT COURT NUMBER 10053,
CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

Reference is made to my memorandum dated May 25, 1953, and to the report of Special Agent Melvin J. Caldwell dated May 8, 1953, at New York.

It will be appreciated if you will advise as soon as possible if any further investigation in connection with this matter is desired of this Bureau.

RAG:mjl

RECORDED-19

JUL 23 1953

130

COMM - FBI

53 JUL 30 1953 21 1953

MAILED 27

Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Laughlin _____
Mohr _____
Tele. Rm. _____
Holloman _____
Gandy _____

107-10126-210
JUL 23 1953
130
F. G. [Signature]
JUL 31 10 00 PM '53
FBI - NEW YORK

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, Federal Bureau of Investigation

FROM : Warren Olney III, Assistant Attorney General
Criminal Division

SUBJECT: UNITED STATES vs. FIVE CASES, ET AL
CAPON SPRINGS WATER NUMBER 10126
FEDERAL DISTRICT COURT NUMBER 10055;
CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

DATE: August 3, 1953

WO:JMK:

22-51-346

Mr. Tolson	_____
Mr. Ladd	_____
Mr. Nichols	_____
Mr. Clegg	_____
Mr. Glavin	_____
Mr. Harbo	_____
Mr. Rosen	_____
Mr. Tracy	_____
Mr. Gearty	_____
Mr. Mohr	_____
Mr. Winterrowd	_____
Tele. Room	_____
Mr. Holloman	_____
Mr. Sizoo	_____
Miss Gandy	_____

G. I. R. -1

This is in reply to your Memorandum dated July 21, 1953, in which you request to be advised whether further investigation of the above-captioned matter is desired.

This matter is being reviewed in the Criminal Division for possible violation of federal criminal laws. Upon the completion of the study of the case we will be pleased to advise you promptly concerning the necessity for further investigation.

RECORDED-1

AUG 14 1953

EX-101

EXTENDED PROCESSING

AUG 5 1953

AUG 11 1953

32

10-1-52
John M. Kealey
Crim Div supervisor
still under review.
No further info.
disc. ed. August
think there of a mistake

169-656-22
AUG 14 1953
Rosen
[Signature]

August 3 1953

Director, Federal Bureau of Investigation

Warren Olney, III, Assistant Attorney General
Criminal Division

WO:JMK:bf

UNITED STATES vs. FIVE CASES, ET AL

22-51-346

CAPON SPRINGS WATER NUMBER 10126

FEDERAL DISTRICT COURT NUMBER 10053,

CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

This is in reply to your Memorandum dated July 21, 1953, in which you request to be advised whether further investigation of the above-captioned matter is desired.

This matter is being reviewed in the Criminal Division for possible violation of federal criminal laws. Upon the completion of the study of the case we will be pleased to advise you promptly concerning the necessity for further investigation.

Assistant Attorney General
Warren Olney III

October 30, 1953

Director, FBI (69-656)

UNITED STATES VS. FIVE CASES, ET AL.
CAPON SPRINGS WATER NUMBER 10126,
FEDERAL DISTRICT COURT NUMBER 10053
CONTEMPT OF COURT, OBSTRUCTION OF JUSTICE
(Department file 22-51-346, WO:JMK:bf)

Reference is made to your memorandum dated August 3, 1953, which advised that this matter was being reviewed in order to determine whether there was any possible violation of Federal criminal laws.

Advice is requested as to whether any decision has been reached.

69-656-23

FWJ:dej

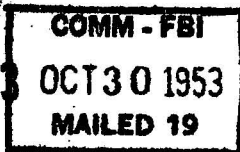
RECORDED-67
EX-103

NOV 2 1953
130

Note: This matter has been discussed telephonically with Mr. J. M. Kelley of the Criminal Division on several occasions. On the last contact Mr. Kelley advised no final decision had been reached but it appeared that the facts in this case did not constitute any criminal violation.

Tolson
Ladd
Nichols
Belmont
Clegg
Glavin
Harbo
Rosen
Tracy
Gearty
Mohr
Winterrowd
Tele. Room
Holloman
Sizoo
Miss Gandy

NOV 4 1953



Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, Federal Bureau of Investigation

DATE: November 19, 1953

FROM : Warren Olney III, Assistant Attorney General,
Criminal Division

WO:JMK

SUBJECT: UNITED STATES v. FIVE CASES, ET AL.
CAPON SPRINGS WATER NUMBER 10126,
FEDERAL DISTRICT COURT NUMBER 10053
CONTEMPT OF COURT, OBSTRUCTION OF JUSTICE

22-51-346

Mr. Tolson	_____
Mr. Ladd	_____
Mr. Nichols	_____
Mr. Belmont	_____
Mr. Clegg	_____
Mr. Glavin	_____
Mr. Harbo	_____
Mr. Rosen	_____
Mr. Tracy	_____
Mr. Mohr	_____
Mr. Trotter	_____
Mr. Winterrowd	_____
Tele. Room	_____
Mr. Holloman	_____
Miss Gandy	_____

This is in reply to Bureau memorandum dated October 30, 1953, in which you request to be advised concerning the subject matter referred to above.

The review of this matter has not been completed in the Criminal Division but a decision with regard to whether it appears that federal criminal statutes may have been violated is expected in the near future, at which time we will advise you promptly.

EXP. PROC.
NOV 20 1953

RECORDED - 10

100-224

NOV 20 1953

DEC 1 1953
220

[Handwritten signatures and initials]

Assistant Attorney General
Warren Olney III

January 6, 1954

Director, FBI

UNITED STATES V. FIVE CASES, ET AL
CAPON SPRINGS-WATER NUMBER-10126
FEDERAL DISTRICT COURT NUMBER 10053
CONTEMPT OF COURT;
OBSTRUCTION OF JUSTICE
(Department file 22-51-346 WO:JMK:MG)

RECEIVED READING ROOM
JAN 6 7 07 PM '54
FBI

Reference is made to your memorandum dated November 19, 1953, which advised the review of this matter had not been completed.

Advice is requested as to whether any decision has been reached concerning whether the facts in this case constitute a violation of Federal criminal statutes.

RECORDED - 90

(Bufile 69-656)

161-656-25

JAN 8 1954

130

FWJ:jrr

Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Gearty _____
Mohr _____
Winterrowd _____
Tele. Room _____
Holloman _____
 Sizoo _____
Miss Gandy _____

COMM - FBI

JAN 15 - 1954

JAN 15 1954

Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, Federal Bureau of Investigation

DATE:

January 29

FROM : Warren Olney III, Assistant Attorney General,
Criminal Division

WO:JMK

SUBJECT: UNITED STATES v. FIVE CASES, ET AL
CAPON SPRINGS WATER NUMBER 10126
FEDERAL DISTRICT COURT NUMBER 10053
CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

22-51-346

69-156

This refers to your memorandum dated January 6, 1954, wherein you requested to be advised concerning our decision with reference to whether the facts reported in the above-entitled subject matter constitute a violation of federal criminal statutes.

Bureau reports and other information in our files pertaining to this matter have been reviewed in the Criminal Division in view of possible violations of Title 18 U.S.C.A., sections 401, 402 and 1503, and it is our conclusion that the evidence submitted is not sufficient on which to base any prosecutive or further investigative action. Accordingly, no further investigation by the Bureau is desired and we are closing our files in this matter.

Mr. Tolson	_____
Mr. Nichols	_____
Mr. Belmont	_____
Mr. Clegg	_____
Mr. Glavin	_____
Mr. Ladd	_____
Mr. Nichols	_____
Mr. Rosen	_____
Mr. Tracy	_____
Mr. Harbo	_____
Mr. Gurnea	_____
Mr. Winterrowd	_____
Tele. Room	_____
Mr. Holloman	_____
Miss Gandy	_____

RECORDED-104
EX-112

25 FEB 1 1954

58 FEB 5 1954

EXP-104
FEB 4 1954

Assistant Attorney General
Warren Olney III

February 5, 1954

Director, FBI (69-656)

UNITED STATES vs. FIVE CASES, ET AL.
CAPON SPRINGS WATER NO. 10126
FEDERAL DISTRICT COURT NO. 10053
CONTEMPT OF COURT
OBSTRUCTION OF JUSTICE
(Department File 22-51-346, WO:JMK:mc)

Reference is made to telephone conversations between J. Warren Wilson and John T. Grigsby of the Criminal Division and a representative of the Bureau on February 3 and 4, 1954.

The following telegram was received on February 3, 1954, from Louis L. Austin, 1427 Spruce Street, Philadelphia, Pennsylvania:

"MAY I RESPECTFULLY REQUEST OPPORTUNITY TO PRESENT TO YOU FACTS REGARDING FBI INVESTIGATION INTO DISAPPEARANCE OF RES IN US VERSUS CAPON WATER CASE NUMBER 10126 FDC NUMBER 11053 LETTER JUST RECEIVED FROM JUSTICE DEPARTMENT REVEALS THAT FBI WAS NOT CALLED UPON TO PERSONALLY INVESTIGATE COMMISSIONER LARRICK AND OTHERS IN FOOD AND DRUG ADMINISTRATION WHOM I CHARGE WITH CONSPIRACY IN PLOTTING DISAPPEARANCE OF RES. THE JUSTICE DEPARTMENT INSTEAD ACCEPTED REPORT OF COUNSEL FOR FDA INASMUCH AS ONE MEMBER OF SAID COUNSEL IS INVOLVED IN CONSPIRACY CHARGES NO TRUE INVESTIGATION WAS MADE. IT WAS WHITEWASH. IF THE PRESENT PLANS TO RUSH THROUGH DISMISSAL OF CASE TOMORROW THURSDAYSMORNING IN US DISTRICT COURT CAMDEN NEW JERSEY GO THROUGH IT WILL INVITE SCANDAL AND REFLECT UNJUSTLY ON FBI. WILL YOU PLEASE REQUEST ATTORNEY GENERAL TO HOLD UP DISMISSAL ACTION UNTIL I CAN PRESENT FACTS TO YOU AND HIM. THE CASE IS NEARLY ELEVEN YEARS OLD NO NEED FOR UNDUE HASTE NOW DISMISSAL WOULD GIVE US TECHNICAL VICTORY BUT WOULD PREVENT THOROUGH INVESTIGATION OF CONSPIRACY CHARGES."

Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Gearty _____
Mohr _____
Winterrowd _____
Tele. Room _____
Holloman _____
 Sizoo _____
Miss Gandy _____

In view of your memorandum dated January 29, 1954, advising that no further action was desired in this matter, Mr. Austin's telegram is being acknowledged with advice that

cc: 1-New York (69-53)
1-Philadelphia (69-28)

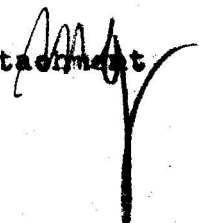
FEB 8 1954

MAILED 8
FEB 5 - 1954
COMM - FBI

FW 3-180

Assistant Attorney General
Warren Olney III

its contents were brought to the attention of the Criminal
Division. A copy of our letter to Mr. Austin is attached
and no further action will be taken in the absence of a
request from you.

Attachment 



Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Gandy _____
Mohr _____
Winterrowd _____
Tele. Room _____
Holloman _____
Sizoo _____
Miss Gandy _____

RECORDED - 9

INDEXED - 9

69-656-28
K-102

February 5, 1954

Mr. Louis L. Austin
1427 Spruce Street
Philadelphia, Pennsylvania

Dear Mr. Austin:

Your telegram of February 3, 1954,
concerning the matter of U. S. vs. Capon
Springs Water No. 10126 has been received.

In accordance with your request,
the information contained in the telegram
was furnished to the Criminal Division of
the Department of Justice on February 3,
1954.

Sincerely yours,

John Edgar Hoover
Director

RECEIVED
FEB 5 1954
U. S. DEPT. OF JUSTICE
COMM-FBI

MAILED 6
FEB 5 1954
COMM-FBI

69-656

cc: 1-New York (69-53) } SEPARATE
1-Philadelphia (69-28) } COVER

NOTE: This is closed case in which investigation conducted
at request of Criminal Division re disappearance of
water seized by U. S. Marshal, SDNY, pursuant to
process in libel action by Food and Drug Administration
against Capon Springs Water Company, Louis L. Austin,
and others. By memorandum 1/29/54, Criminal Division
advised no evidence of Obstruction of Justice or
Contempt of Court and no further action desired.
Austin has been interviewed several times and made
allegations which were not substantiated by investi-
gation. Contents of Austin's telegram furnished

Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Gearty _____
Mohr _____
Winterrowd _____
Tele. Room _____
Holloman _____
 Sizoo _____
Gandy _____

55 FEB 11 1954
FWJ:lge

telephonically to J. Warren Wilson (5:40 p.m., 2/3/54) and John T. Grigsby (9:05 a.m., 2/4/54) of Criminal Division. Both know Austin and describe him as having a phobia on this subject. They feel investigation was thorough and do not believe he has additional information. Since Austin has previously made various unfounded charges and in view of opinion of attorneys in Criminal Division, it is not believed Austin should be encouraged to furnish further information.

J

Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Gearty _____
Mohr _____
Winterrowd _____
Tele. Room _____
Holloman _____
 Sizoo _____
Miss Gandy _____

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE
COMMUNICATIONS SECTION

FEB 2 1954

WESTERN UNION

(7)

Mr. Tolson	_____
Mr. Ladd	_____
Mr. Nichols	_____
Mr. Belmont	_____
Mr. Clegg	_____
Mr. Glavin	_____
Mr. Harbo	_____
Mr. Rosen	_____
Mr. Tracy	_____
Mr. Egan	_____
Mr. Gurnea	_____
Mr. Hendon	_____
Mr. Pennington	_____
Mr. Quinn	_____
Mr. Nease	_____
Miss Gandy	_____

WUS039 NL PD

PHILADELPHIA PENN FEB 2

HON J EDGAR HOOVER

FEDERAL BUREAU OF INVESTIGATION

MAY I RESPECTFULLY REQUEST OPPORTUNITY TO PRESENT TO
YOU FACTS REGARDING FBI INVESTIGATION INTO DISAPPEARANCE
OF RES IN US VERSUS CAPON WATER CASE NUMBER 10126 FDC
NUMBER 11053 LETTER JUST RECEIVED FROM JUSTICE DEPARTMENT
REVEALS THAT FBI WAS NOT CALLED UPON TO PERSONALLY
INVESTIGATE COMMISSIONER LARRICK AND OTHERS IN FOOD AND
DRUG ADMINISTRATION WHOM I CHARGE WITH CONSPIRACY IN
PLOTING DISAPPEARANCE OF RES, THE JUSTICE DEPARTMENT
INSTEAD ACCEPTED REPORT OF COUNSEL FOR FDA INASMUCH AS
ONE MEMBER OF SAID COUNSEL IS INVOLVED IN CONSPIRACY
CHARGES NO TRUE INVESTIGATION WAS MADE, IT WAS
WHITEWASH, IF THE PRESENT PLANS TO RUSH THROUGH
DISMISSAL OF CASE TOMORROW THURSDAYSMORNING IN US
DISTRICT COURT CAMDEN NEW JERSEY GO THROUGH IT WILL
INVITE SCANDAL AND REFLECT UNJUSTLY ON FBI, WILL YOU
PLEASE REQUEST ATTORNEY GENERAL TO HOLD UP DISMISSAL
ACTION UNTIL I CAN PRESENT FACTS TO YOU AND HIM, THE
CASE IS NEARLY ELEVEN YEARS OLD NO NEED FOR UNDUE HASTE
NOW DISMISSAL WOULD GIVE US TECHNICAL VICTORY BUT WOULD
PREVENT THOROUGH INVESTIGATION OF CONSPIRACY CHARGES

LOUIS L AUSTIN 1427 SPRUCE ST PHILADELPHIA

235AME FEB 3 5:40 PM 2/3/54

10126

RECORDED - 9

69-656-27

RECEIVED
FEB 3 1954
FBI

Telephone call by...
Criminal...

4:45 PM 2/3/54
at request of...
send a... to...
to handle...

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Evans *kg*

DATE: March 1, 1954

FROM : F. W. Jaenike *f*

SUBJECT: UNITED STATES vs. FIVE CASES, ET AL.
 CAPON SPRINGS WATER NO. 10126
 FEDERAL DISTRICT COURT NO. 10053
 CONTEMPT OF COURT
 OBSTRUCTION OF JUSTICE
 (Department File 22-51-346, WO:JMK:mc)

Tolson _____
 Ladd _____
 Nichols _____
 Belmont _____
 Clegg _____
 Glavin _____
 Harbo _____
 Rosen _____
 Tracy _____
 Gearty _____
 Mohr _____
 Winterrowd _____
 Tele. Room _____
 Holloman _____
 Sizoo _____
 Miss Gandy _____

John T. Grigsby of the Criminal Division telephonically inquired 3/1/54, as to whether the Bureau has extra copies of investigative reports in this case, which could be loaned to him. He said U. S. District Judge Thomas Madden, Camden, New Jersey, on whose trial calendar the civil case in this matter is pending, expressed a desire to be informed concerning the Bureau's investigation, and it is contemplated that copies of Bureau reports may be made available to the Judge during a conference. At the conclusion of the conference with the writer Grigsby said he would determine the availability of the reports in the Department file and the Bureau should disregard his request for additional copies of our reports in the absence of further advice.

As a matter of background, this is a closed case in which investigation was conducted at the request of the Criminal Division regarding disappearance of water seized by United States Marshal, SDNY, pursuant to process in a libel action filed by the Food and Drug Administration against Capon Springs Water Company, Louis L. Austin. By memorandum January 29, 1954, Criminal Division advised no further action was desired by the Bureau. By memorandum dated February 5, 1954, Criminal Division was advised of receipt of a telegram from Louis L. Austin, in which Austin protested the Department's proposed dismissal of the libel action in United States District Court, Camden.

RECOMMENDATION:

Since Mr. Grigsby of the Criminal Division withdrew his request for additional copies of the reports in this case no further action is required and the foregoing is submitted for your information.

FWJ:dej *dy*
 69-656

RECORDED - 25

EX - 104

69-656-29
MAR 21 1954

5.2 MAR 10 1954

Assistant Attorney General
Warren Olney III

March 15, 1954

Director, FBI (69-656)

RECORDED - 23

EX - 107

69-656-30

UNITED STATES VS. FIVE CASES, ET AL;

CAPON SPRINGS WATER-NUMBER 10126

FEDERAL DISTRICT COURT NUMBER 10053

CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

(Department file 22-48-478; WO:JTG:IK)

Reference is made to your memorandum dated March 10, 1954, requesting advice as to whether the Bureau would have any objection to the furnishing of Bureau reports in this case to United States District Judge Thomas M. Madden for his inspection in camera.

The Bureau does not object to this being done by the United States Attorney, Newark, on the conditions cited in your memorandum that the reports are not to be filed or used in evidence in any proceeding or made available to any other person.

cc: 1-New York (69-530) (information)
with copy of incoming

ENC

JTG

FWJ:dej *dy*

✓

sp *J* *Egan*

RM

RM

ESHup

Tolson _____
Ladd _____
Nichols _____
Belmont _____
Clegg _____
Glavin _____
Harbo _____
Rosen _____
Tracy _____
Gearty _____
Mohr _____
Winterrowd _____
Tele. Room _____
Holloman _____
Miss Gandy _____

5 2 MAR 22 1954

COMM - FBI
MAR 1 6 1954
MAILED 31

Office Memorandum • UNITED STATES GOVERNMENT

TO : J. Edgar Hoover, Director
Federal Bureau of Investigation

FROM : (W) Warren Olney III, Assistant Attorney General
Criminal Division

SUBJECT: United States v. 5 Cases, etc., Capon Springs
Water - No. 10126
Contempt of Court; Obstruction of Justice

DATE: March 10, 1954

WO: J. E. H. K.
22-18-178
Miss Gandy

The above proceeding brought in the District Court for the District of New Jersey under the Federal Food, Drug, and Cosmetic Act involves the seizure and condemnation of a number of bottles of water alleged to be misbranded. During its pendency, the seized water disappeared. Your Bureau was requested to make an investigation to determine whether certain Federal laws may have been violated in connection with the disappearance of the seized water. Such an investigation has been completed and no trace of the missing water is disclosed.

The seizure action becomes moot on account of the disappearance of the seized article. A dismissal has been postponed upon the representation made to the court at our request that there was a possibility that the water would be found during the course of the investigation.

We are now in receipt of a letter from William F. Tompkins, United States Attorney at Newark, New Jersey, advising that the seizure action was pre-tried on February 4, 1954, and that at that time the Honorable Thomas M. Madden, Judge of the District Court, directed the United States Attorney's office to obtain a copy of the Federal Bureau of Investigation report.

Please advise whether there is any objection to the furnishing of copies of these reports to Judge Madden for his inspection in camera, on the condition that the same are not to be filed or used in evidence in any proceeding or made available to any other person.

RECORDED - 23

EX - 107

MAR 10 1954

33

3-17

MAR 10 1954

EXP. PROC.

CC Evans & King
Mr. [unclear]
Mr. [unclear]
Mr. [unclear]
3-16-54

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Rosen *FWJ*DATE: March 15, 1954 *Viper 13*FROM : Mr. Evans *Egan*

SUBJECT: UNITED STATES VS. FIVE CASES, ET AL.
CAPON SPRINGS WATER NUMBER 10126
FEDERAL DISTRICT COURT NUMBER 10053
 CONTEMPT OF COURT; OBSTRUCTION OF JUSTICE

Tolson _____
 Ladd _____
 Nichols _____
 Belmont _____
 Clegg _____
 Glavin _____
 Harbo _____
 Rosen _____
 Tracy _____
 Gearty _____
 Mohr _____
 Winterrowd _____
 Tele. Room _____
 Holloman _____
 Sizoo _____
 Miss Gandy _____

By memorandum 3/10/54, Criminal Division inquired whether the Bureau has any objection to having reports in this case furnished to United States District Judge Thomas M. Madden, Camden, New Jersey, for his inspection in camera on the condition that reports are not to be filed or used in evidence in any proceeding or made available to any other person. Judge Madden, before whom civil action is pending, requested U. S. Attorney, Newark, to furnish copy of FBI reports during pretrial conferences 2/4/54.

As a matter of background, this is a closed case in which investigation was conducted at request of Criminal Division regarding disappearance of water seized by U. S. Marshal, Southern District of New York. Water was seized pursuant to process in a libel action alleging misbranding filed by Food and Drug Administration against Capon Springs Water Company, Louis L. Austin, and others. Reports were submitted by Washington Field Office February 12, 1953, Philadelphia Office, February 24, and March 10, 1953, and New York Office, March 12, 20, April 1, and May 8, 1953, (closing report). No trace of missing water which disappeared some time prior to March, 1951, was found and records of warehouse, in which water was stored, did not contain receipt obtained at time of release. By memorandum 1/29/54, Criminal Division advised facts did not warrant further action in the nature of investigation or prosecution.

It is felt Judge Madden has a definite and legitimate interest in the results of the investigation conducted with respect to alleged contempt of court and obstruction of justice arising out of a civil case in his court. There appears to be no reason why the Bureau should object to having the reports furnished to the judge for inspection in camera on the condition that they are not to be filed or used in evidence in any proceeding or made available to any other person. In this connection, it is noted these reports have been reviewed and they contain no information of a confidential or security nature.

FWJ:dej
 Attachment *Sent 2-16-54*
 69-656

RECORDED-35

EX-129

167-6-6-31
13 MAR 18 1954

30 1954

Memorandum to Mr. Rosen

RECOMMENDATION:

There is attached for approval a memorandum to Assistant Attorney General Olney advising we have no objection to having the Bureau reports in this case furnished to Judge Madden.

Handwritten: JF
EHW

Handwritten: SBC

Handwritten: ✓

Handwritten: [Signature]