

U.S. Fights Giving Pre

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The U.S. attorney's office has appealed a ruling by a Superior Court judge that it must turn over to defense attorneys written statements made by witnesses at pretrial motions hearings.

The government contends that in accordance with an act of Congress known as the Jencks Act, it must produce such documents only after the witness has testified at the time of trial.

Court sources indicate that a judgment against the government would make the prosecutor's job more difficult,

forcing him to reveal early some portions of his case.

Prosecutors in Superior Court are only required to provide defense attorneys with copies of police arrest forms, which often provide little other than the name of the complaining witness and the charges lodged against the defendant. At times, judges require that the names of other witnesses or other evidence be revealed.

The issue of Jencks Act material has been raised before Judge Leonard Braman five times since Jan. 3, each time during a hearing on a motion to suppress evidence.

On each occasion, after the policeman involved in the case testified how he came to seize the evidence in question, the defense attorney has asked for the narrative portion of the PD-163, a police department form that the officer fills out for the prosecutor after an arrest.

On three of the five occasions the government has refused to relinquish the form, arguing that the Jencks Act allows for such revelation only after testimony at the time of trial. On the other two occasions the government submitted the material to the defense but with objection.

trial Evidence to Suspects

Judge Braman has argued that because the defense may not reraise an issue settled by a pretrial motion unless there is substantial new evidence, the defense has a right to see such material at the time of the pretrial hearing.

On that basis, the first two times the government refused to produce the material, the judge ruled for the defense. When the government refused for the third time yesterday, the judge postponed the hearing of the motion until the date of trial.

The case in which the question was first raised was that

of the U.S. vs. Myra A. Witherspoon.

Miss Witherspoon was one of four persons in a car stopped by police at 14th and U Streets nw at 2:50 a.m. Dec. 13. She was charged with carrying a dangerous weapon after a pistol was found in the car.

Miss Witherspoon's attorney, Robert E. Clem, moved to have the evidence (the gun) suppressed on the grounds that the search of the car was illegal.

At the pretrial hearing, Officer Kenneth Noseck testified, "The pistol was recovered,

when I first saw it, at the feet of Miss Witherspoon in the rear..."

Had Clem had the PD-163 (which is now part of the appeals record) available to him

at the hearing, he could have read the statement made by Noseck's partner, Officer Lynn Hanson, that the pistol was found "under the front seat."