



**U.S. Department of Justice**  
**Executive Office for United States Attorneys**

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# **United States Attorneys' Bulletin**

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COMMENDATIONS

Assistant United States Attorney HOWARD A. ALLEN, Southern District of California, has been commended by Mr. Diogenes K. Galanos, Special Agent in Charge of the Drug Enforcement Administration in San Diego, California, for the accomplishment of their first RICO prosecution resulting from the Stephen Rittenberg, et al investigation.

Assistant United States Attorney THOMAS R. KING, JR., Western District of Virginia, has been commended by Mr. Nolan Douglas, Special Agent in Charge of the Bureau of Alcohol, Tobacco and Firearms in Richmond, Virginia, for the outstanding manner in which he prosecuted two conspiracy cases involving the manufacture, transportaton and sale of illegal M-80 explosives.

Assistant United States Attorney THOMAS C. LEE, District of Oregon, has been commended by Mr. Robert C. Turner, District Counsel for the Portland District Corps of Engineers, Department of the Army, for his professionalism exhibited in developing the case of Northwest Environmental Defense Center v. Bratton and organizing the necessary data dealing with the changing legal principles governing litigation under the National Environmental Policy Act.

Assistant United States Attorney RUTH A. NORDENBROOK, Eastern District of New York, has been commended by Mr. Thomas R. Dooney, Assistant Vice President, Investigations Department of the Chemical Bank in New York, for her outstanding efforts in coordinating an investigation leading to the prosecution of Robert Muni for fraud.

Assistant United States Attorney ARCHIE CARL PIERCE, Western District of Texas, has been commended by Mr. Peter B. Bensinger, Administrator of the Drug Enforcement Administration in Washington, D.C., for his accomplishments as the prosecuting attorney in the investigation of David Philip Ischy, a complex marijuana air smuggling case.

Assistant United States Attorney LEONA H. SHARPE, Southern District of New York, has been commended by Mr. Joel M. Mangel, Acting Assistant General Counsel for Public Health, Department of Health and Human Services in Rockville, Maryland for her fine work in connection with a series of legal actions involving the Manhattan Health Plan, Inc. and Title XIII of the Public Health Service Act.

Assistant United States Attorney GORDON A. D. ZUBROD, Middle District of Pennsylvania, has been commended by Mr. Kenneth E. Fletcher, Chief Postal Inspector, United States Postal Service in Washington, D.C., for his success in obtaining a guilty verdict against James C. LaBar, et al, in a case involving a conspiracy to defraud the United States Postal Service.

EXECUTIVE OFFICE FOR U.S. ATTORNEYS  
William P. Tyson, Acting DirectorPOINTS TO REMEMBEREthics: Post Government Employment Restrictions and Disqualification

IN RE: Asbestos Cases, USDC, E.D. Virginia, Norfolk and Newport News Divisions, Cp-77-1

A number of the defendant-manufacturers of asbestos in these consolidated cases filed a Motion to Disqualify the law firm which served as co-counsel representing the plaintiffs. The grounds were the employment by the firm of a former Civil Division attorney who previously represented the Government in this litigation. The attorney and the law firm urged that the screening procedures adopted by the firm would adequately shield the attorney from the rest of the firm's involvement in this litigation; the Civil Division agreed that the firm need not be disqualified. In reaching its decision to grant a waiver of imputed disqualification of the firm, the Civil Division undertook a comprehensive investigation into the attorney's activities which included an extensive file review, consultation with the client agencies, and interviews with Department of Justice attorneys who worked with and for the attorney. The Government served its Waiver of Imputed Disqualification of the firm on January 16, 1981. The Motion to Disqualify was argued on January 27, 1981, and on February 27, 1981, an evidentiary hearing was held before the active status judges of the Norfolk and Newport News Divisions en banc.

In its Opinion filed April 6, 1981, and amended on May 6, 1981, the Court ordered the disqualification of the firm from further participation in the Norfolk and Newport News cases. The Opinion is troubling since it appears to undermine the importance of the Government's waiver as contemplated by ABA Formal Opinion 342 and applies rather loose standards by which to order disqualification, such as possibilities and presumptions.

We are concerned about the effect of this Opinion on the government's ability to hire qualified attorneys in the future in addition to the problems current government attorneys may encounter in pursuing their legal careers in the private sector. An appeal has been noticed by the attorney and the firm; the Civil Division is currently in the process of determining the most efficacious manner in which to present the governmental interests to the Fourth Circuit.

(Civil Division)

"SPECIAL NOTICE REGARDING CIVIL FEDERAL EMPLOYEE DISPUTES INVOLVING  
DISCRIMINATION"

Judicial review of actions appealable to the Merit Systems Protection Board is provided for in 5 U.S.C. 7702-7703. Under this scheme actions involving discrimination are reviewable in the district court while cases that do not involve discrimination are reviewable in the courts of appeals or the Court of Claims.

Several cases have arisen which involve both claims of discrimination and non-discrimination claims. The construction of the judicial review provisions governing these "mixed cases" have created confusion both within and without the government. To cure this confusion the Appellate Staff of the Civil Division has developed two model legal memoranda (Wiggins v. United States Postal Office, 5th Cir. No. 81-4007 and Hayes v. United States Government Printing Office, D.C. Cir. No. 80-2425) setting forth the position of the Justice Department in such cases. In those memoranda the Government takes the position that a mixed case remains as one case for purposes of judicial review. Thus, a case which has become final is judicially reviewable in the district court not the court of appeals. Anyone having such a case should contact William Kanter, FTS 633-5428 or Fred Geilfuss, FTS 633-5427 to obtain the model memoranda.

(Civil Division)

## CIVIL DIVISION

Acting Assistant Attorney General Thomas S. Martin

Baldrige v. Shapiro, Sup. Ct. No. 80-1436 (April 27, 1981)  
D.J. # 145-9-539

CENSUS; PRIVILEGE: SUPREME COURT GRANTS  
CERTIORARI IN CENSUS DATA FOIA CASE.

Essex County New Jersey brought this action under the Freedom of Information Act for disclosure of Census Bureau address lists for the Newark, New Jersey area. One district court rejected the government's Exemption 3 claim and ordered the Census Bureau to release its address lists to the county -- subject to an order that county officials receiving the data be sworn to maintain their confidentiality. The court of appeals summarily affirmed. The Supreme Court, after initially staying the disclosure order, has now granted our certiorari petition. In doing so the court will resolve a conflict with the Tenth Circuit which recently held that Census Bureau address lists are by statute strictly confidential and are privileged from discovery.

Attorney: Michael Kimmel (Civil Division)  
FTS 633-5714

Evans v. Kreps, D.C. Cir. No. 80-1438 (April 29, 1981)  
D.J. # 145-9-481

FREEDOM OF INFORMATION: D.C. CIRCUIT  
UPHOLDS FOIA EXEMPTION 3 STATUS OF EXPORT  
ADMINISTRATION ACT OF 1979.

Plaintiff Evans, a journalist, sought FOIA access to Commerce Department records revealing the identities of firms exporting goods and technology to the U.S.S.R. The Department resisted disclosure on the basis of a 1979 amendment to the Export Administration Act (EAA) specifying that licensing data obtained pursuant to that Act under a pledge of confidentiality shall be exempt from the FOIA. Evans argued, in response, that the 1979 amendment had only prospective effect, and that licensing data obtained prior to its effective date remained subject to disclosure on the basis of the D.C. Circuit's earlier opinion in American Jewish Congress v. Kreps, 574 F.2d 624 (1978 holding that the EAA's confidentiality provisions were not specific enough to qualify as an Exemption 3 statute). The Court of Appeals agreed that the 1979 amendment was designed to overrule the Court's decision in American Jewish Congress, and affirmed the district court's ruling that all confidential licensing data obtained by the Department pursuant to the EAA -- whether before



or after the effective date of the 1979 amendment -- was intended by Congress to be fully exempt from FOIA release.

Attorney: Mark H. Gallant (Civil Division)  
FTS 633-4052

Hammond v. Sec'y HHS, C.A. 10 No. 79-2123 (Decided April 21, 1981)  
D.J. # 181-13-33

SOCIAL SECURITY; "DEEMING"; HEARINGS: TENTH  
CIRCUIT HOLDS HHS MAY "DEEM" INCOME OF PARENTS  
AND SPOUSES WITHOUT INDIVIDUAL HEARING IN  
SUPPLEMENTAL SECURITY INCOME PROGRAM.

Disabled persons are eligible for SSI benefits if their income falls below certain levels. For minors, the income is "deemed" to the income of a "parent (or the spouse of such a parent) ..., whether or not available ..., except to the extent it would be inequitable under the circumstances." 42 U.S.C. 1382c(f)(2). HHS has adopted regulations to provide deductions from parental income for, e.g., living and working expenses, but HHS will not hold hearings to determine "equitable circumstances" for individual families.

Plaintiffs were disabled minors who contended that since, under Colorado law, their stepfather's income could not be required for their support, it was inequitable to "deem" that the stepparental income would be available. The district court agreed; while not invalidating the HHS regulations, the district court held they could not be "perfunctorily" applied. The proceedings were remanded for a hearing to determine whether deeming here would be inequitable.

The Court of Appeals reversed. It found that the district court's view of the statute required excision of the language, "whether or not available." The court observed that the HHS regulations provided that not all parental income is deemed. Thus, "the Secretary, by regulation, has given practical effect to the 'excepting' language in the statute...."

Attorney: Bruce Forrest (Civil Division)  
FTS 633-3392

May 22, 1981

CIVIL RIGHTS DIVISION  
Acting Assistant Attorney General James P. TurnerUnited States v. Texas Education Agency (Lubbock ISD), CA No. 58  
06A (N.D. Tex.) DJ 169-73-33

## School Desegregation

On April 15, 1981, the district court entered a memorandum opinion. In 1978, the district court required the desegregation of nine predominantly minority schools; thirteen other predominantly minority schools were found not to be segregated as a result of de jure segregative acts and were not included in the desegregation plan. On appeal by the United States, the court of appeals entered an opinion in 1979 remanding the case to the district court to reconsider whether or not intentionally segregative actions found to have occurred caused the segregation at the remaining minority schools in the district. The remand trial was held in January and February 1980, and we urged the district court to find a system-wide violation which resulted in system-wide segregation. The district court's April 15 decision largely rejected our arguments and found that the segregation at most of the remaining minority schools was not the result of school actions, but instead was the result of de jure segregative actions of the school board and required the board to submit a desegregation plan for these schools.

Attorneys: Joseph Rich (Civil Rights Division)  
FTS 633-3843  
Robert Rodrigues (Civil Rights Division)  
FTS 633-2156

United States v. Henry Glisan, et al, CA No. 78-A-1195 (D. Colo)  
DJ 175-13-44Discrimination in Housing and Public  
Accommodations

Immediately following presentation of evidence in the trial on April 22 and 23, 1981, Judge Alfred Arraj rendered an oral opinion. In this housing and public accommodation case, we alleged that the defendants had violated the various Acts by their refusal to rent apartments and motels to non-United States citizens, that this refusal was intended to avoid renting to Arabs and Mideasterners, and that it had the effect of discriminating against such persons on the basis of national origin. The court found that the defendants had established their policy because of experiences they had had with Arab and Iranian tenants in light of their socio-cultural traits and

May 22, 1981

and that these socio-cultural traits were not to be confused with national origin. Accordingly, the court found for the defendants and ruled that their policy did not have a discriminatory effect on persons from Mideast. We are currently studying the possibility of an appeal.

Attorneys: Ira Pollack (Civil Rights Division)  
 FTS 633-3807  
 Terry Milton (Civil Rights Division)  
 FTS 633-4161  
 Betsy Dineen (Supervisory Paralegal Specialist,  
 Civil Rights Division)  
 FTS 633-4749

United States v. South Bend, Indiana Community School Corporation, et al., CA No. S-80-35 (N.D. Ind.) DJ 169-26-2

#### School Desegregation

On April 17, 1981, Judge Allen Sharp entered a memorandum opinion and order. The judge approved and entered the consent order containing the desegregation plan which had been negotiated between the United States and the school board. The plan will be implemented in the fall of 1981. The judge also denied intervention to Clay Quality Education II, Inc., a white suburban group which had sought to challenge the power of the court to enter a consent order requiring desegregation in the absence of a finding or admission of a constitutional violation. The judge further denied intervention to the South Bend branch of the NAACP, which had sought a hearing on details of the proposed desegregation plan, by holding that it had failed to carry its burden of showing that representation by the United States was inadequate.

Attorneys: Michael B. Wise (Civil Rights Division)  
 FTS 633-3809  
 Richard Epps (Civil Rights Division)  
 FTS 633-4742

United States v. City of Yonkers, et al, CA No. 80CIV 7407(ADS) (S.D.N.Y.) DJ 170-51-68

#### Employment Discrimination

On April 20, 1981, we and counsel for the City of White Plains, New York submitted a proposed consent decree to the district court to resolve the portion of the suit covering the City of White Plains Police Department. The suit against Yonkers Police Department remains unresolved. The decree calls

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for interim hiring goals for minorities and women, and for the city to engage in active recruitment. The parties are to confer if for any reason it appears that the city will not meet its interim goals.

Attorneys: Barbara Shulman (Assistant U.S. Attorney)  
FTS 662-1969  
David L. Rose (Civil Rights Division)  
FTS 633-3831

LAND AND NATURAL RESOURCES DIVISION  
Assistant Attorney General Carol Dinkins

Watt v. Alaska, \_\_\_\_ U.S. \_\_\_\_, No. 79-1890 (S.Ct., April 21, 1981) DJ 90-1-18-1177.

Wildlife Refuge Revenue Sharing Act governs division of oil and gas royalties from Kenai Moose Rouge after 1964.

In 1941, public land of the United States was withdrawn from most forms of entry, but not from mineral leasing, to establish the Kenai Moose Range in Alaska, now part of the National Wildlife Refuge System. In the 1950's, Interior issued several oil and gas leases on public land within the Moose Range pursuant to the Mineral Leasing Act of 1920. The choice confronting the Secretary here was whether, after 1964, he had to distribute oil and gas revenues under the Mineral Leasing Act, in which case Alaska would receive 90 percent and the United States 10 percent, or under the Wildlife Refuge Revenue Sharing Act, as amended in 1964, in which case Kenai Peninsula Borough, the Alaskan "county" in which the Moose Range lies, would receive 15 percent and the United States, 75 percent. The Secretary, relying on an opinion of the Comptroller General, concluded that the latter governed. The Supreme Court affirming the Ninth Circuit and district court, held, over three dissents, that the Mineral Leasing Act continued to govern. According to the Court's majority, the interaction of the two statutes produced the following result: (a) oil and gas revenues on public domain lands both within and without a national wildlife refuge are governed by Section 35 of the Mineral Leasing Act; and (b) oil and gas revenues on acquired lands within a refuge are, by operation of the Mineral Leasing Act for Acquired Lands, governed by the Wildlife Refuge Revenue Sharing Act. Justice Stevens, concurring in the result, stated that certiorari should never have been granted.

Attorneys: S.G. Staff; Nancy B. Firestone and  
Dirk D. Snel (Land and Natural  
Resources Division) FTS 633-2757/4400

Santa Monica Airport Ass'n. v. City of Santa Monica, \_\_\_\_ F.2d \_\_\_\_, Nos. 79-3550, 79-3589, 79-3590 (9th Cir., April 23, 1981) DJ 90-5-3-55.

Mootness created by new regulations; partial preemption.

In a brief, per curiam decision, the court of appeals rejected all attacks upon those portions of the City's airport noise control regime that had survived review by the district court. It declined to find total federal preemption in this area, as urged by the airport users association. However, it avoided passing upon the important question of whether the particular means employed by the City to measure noise was preempted; it declared, probably erroneously, that the issue had been mooted by virtue of a new City noise code. The court also affirmed, inter alia, the invalidation of the City's ban on jet aircraft.

Attorney: Peter R. Steenland, Jr. (Land and  
Natural Resources Division) FTS 633-2748

United States v. E.B. Weiss, 642 F.2d 296, No. 78-2800 (9th Cir., April 13, 1981) DJ 90-1-4-1684

Department of Agriculture's mining regulations for National Forests sustained.

In affirming a summary judgment enjoining the owners of unpatented placer mining claims from conducting any mining activity which could disturb the surface of national forest lands until they had complied with Agriculture's regulations, the court specifically held that regulations designed to minimize adverse environmental impacts on surface resources in national forests were authorized by the Department's Organic Administration Act of June 4, 1897. These regulations, the court ruled, reasonably harmonized the competing interests of developing the Nation's mineral resources and the other purposes for which Congress established the national forests.

Attorneys: Jacques B. Gelin, Maryann Walsh and  
Robert L. Klarquist (Land and  
Natural Resources Division) FTS  
633-2762/4168/2731

Amyes v. United States Department of Transportation, \_\_\_\_\_  
F.2d \_\_\_\_\_, No. 79-3471 (9th Cir., April 13, 1981)  
DJ 90-1-5-1778.

Laches bars challenge to construction of bridge.

Dr. Amyes sued to enjoin construction of a bridge in Newport Bay, Calif., on the ground it would be too low to provide adequate clearance for many boats, including his own. The Coast Guard had issued a permit for the bridge under the General Bridge Act. The district court granted summary judgment for defendants. In a memorandum not for publication, the Ninth Circuit affirmed. The court stressed that Amyes was guilty of laches since he had not moved for a TRO, preliminary injunction, or stay pending appeal, and in the meantime the State has spent millions of dollars in construction costs.

Attorneys: Thomas H. Pacheco, Carl Strass and  
Anne S. Almy (Land and Natural  
Resources Division) FTS 633-2767/4624/  
4427

United States v. Certain Lands in Anchorage Alaska (C Street Foodland), \_\_\_ F.2d \_\_\_, No. 79-4429 (9th Cir., March 27, 1981)  
DJ 33-2-232.

Condemnation; Highest and best use must be reflected in market.

By unpublished memorandum of affirmance, the court of appeals upheld the commission's valuation at the "highest and best use" urged by the landowner, but for which the commission concluded there was no "immediate" market at the time of taking. Citing Olson v. U.S., the court held that such a use affects fair market value only to the extent a buyer would be willing to pay a premium for it. The court was unimpressed by the landowner's other procedural and evidentiary points of appeal. As to interest, the court rejected the claim that mortgage rates available to the landowner as borrower were an appropriate measure. Instead, the measure is the investment return available at the time of taking; and because the deficiency was a claim against the United States, T-bill rates provide "useful" data as to the reasonable rate of return.

Attorneys: Michael A. McCord, Martin W. Matzen  
and Jacques B. Gelin (Land and Natural  
Resources Division) FTS 633-2850/2762

Graham v. Estuary Properties, Inc., \_\_\_ So.2d \_\_\_, No. 58, 485  
(S. Ct. Fla., April 16, 1981) DJ 90-1-24-13.

Taking; no results where permit is denied to prevent a public harm.

The Florida Supreme Court ruled that denial of a development permit by Lee County and the Florida Land and Water Adjudicatory Commission to Estuary Properties did not effect an unconstitutional taking. The Court adopted the reasoning of the Wisconsin Supreme Court in Just v. Marinette County, holding that the denial prevented a public harm, the destruction of wetlands.

Attorneys: Ann P. Gailis and Dirk D. Snel (Land and Natural Resources Division) FTS 633-1442/4400

United States v. 77,819.10 Acres in Socorro and Catron Counties, N. Mex. (White Sands Missile Range), \_\_\_\_\_ F.2d \_\_\_\_\_, Nos. 79-2087 and 79-2210 (10th Cir., April 8, 1981) DJ 33-32-181-64.

Condemnation; award based on opinion of "conservation contractor" that evaluation estate cut lease value by 50 percent sustained.

The United States condemned an evacuation estate over a cattle ranch, enabling the government to require occupants to periodically vacate the land. Part of the ranch was owned by an individual and part was leased by the individual from the State of New Mexico. The United States appealed the Commission's awards to both the individual and the State. The court of appeals rejected the governments contention that the award to the individual was based on speculation rather than the probative evidence. The court held it was not error for the Commission to rely on the opinion of a "conservation contractor" that the evacuation estate cut the lease value of the ranch by 50 percent. The court agreed with us that the award to the State was not based on competent evidence. The State had claimed that the taking reduced the value of various rights reserved in its lease agreements, such as the right to grant easements of access. It had not, however, shown any potential for making use of these rights in the reasonably near future. The award to the State was thus reversed.

Attorneys: David C. Shilton and Edward J. Shawaker (Land and Natural Resources Division) FTS 633-2737/2813



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United States v. DeFelice, 641 F.2d 169, No. 80-3397 (5th Cir., April 9, 1981) DJ 90-5-1-1-1001.

Canal converted to tidal waters subject to Corps of Engineers jurisdiction under 1899 Rivers and Harbors Act.

A private landowner, after first obtaining state-court confirmation of an access right-of-way to his land, commenced in July 1977, to improve this access way by reconstructing a dam (to be topped by a roadway) across Cheniere Traverse Canal, Louisiana. Reconstruction involved placing fill material in the Canal. After officials of the Army Corps of Engineers demanded that such work be stopped, the government sued the landowner, claiming that the 1899 Rivers and Harbors Act and the Clean Water Act had been violated. The district court forbade the landowner from performing further reconstruction work on the dam and ordered him to restore the Canal's water depth and adjacent contours as they were prior to reconstruction. The court of appeals, affirming, held that the Canal--which joined other canals leading to the Gulf of Mexico--was a navigable waterway within the meaning of the 1899 Act and Corps regulations thereunder. The district court's ruling, that "mere capability of navigability in commercial use and/or the fact that the canal was subject to the ebb and flow of the tide was sufficient to establish Corps' jurisdiction even over a private and artificial canal," was expressly upheld. The court of appeals distinguished National Wildlife Federation v. Alexander, 613 F.2d 1054 (D.C. Cir. 1979), and similar cases which involved nontidal, landlocked, intrastate lakes from the instant case involving tidal waters connecting the Gulf of Mexico. The court further held that reconstructing the dam without a Corps permit did not fit within any exemptions contained in Corps regulations.

Attorneys: A. Donald Mileur and Dirk D. Snel  
(Land and Natural Resources Division)  
FTS 633-4400

United States v. Washington (five unrecognized tribes), 641 F.2d 1368, Nos. 78-4447 and 78-4472 (9th Cir., April 20, 1981) DJ 90-2-0-670.

Indians; treaty status denied to Indian groups.

After Judge Boldt's original decision granting certain northwestern Indian Tribes up to 50 percent of har-

vestable fish on runs passing through traditional fishing grounds, a number of Indian groups intervened to assert fishing rights. This case involved five such groups, whose members are descendants of treaty-signatory tribes. The groups are not recognized by the federal government as Indian tribes. The district court found that the five groups were not tribes entitled to exercise treaty rights, and the court of appeals affirmed in a 2-1 opinion. The majority stated that treaty-tribe status is established when a group of citizens of Indian ancestry is descended from a treaty signatory and has "maintained an organized tribal structure." The majority held that the district court erred in stating that federal recognition is required to establish tribal status. However, the district court alternatively found that these groups were not entitled to treaty status because they had not functioned since treaty times as "continuous separate, distinct and cohesive Indian cultural or political communities." This finding was found to be supported by the evidence, and sufficient to support the judgment. The majority rejected the argument that the groups were entitled to a presumption of continuing existence since treaty time. Judge Canby dissented on the ground that Judge Boldt's findings were inadequate to resolve the question of tribal continuity since treaty time.

Attorneys: David C. Shilton and Edward J.  
Shawaker (Land and Natural  
Resources Division) FTS 633-2737/  
2813

Merrill Karlen v. United States, \_\_\_\_ F.2d \_\_\_\_ (8th Cir.,  
April 9, 1981) DJ 90-6-1-22.

Collateral estoppel bars relitigation of lease interpretation.

The United States, on behalf of the Lower Brule Sioux Tribe, cancelled a grazing lease when it appeared that the tenant rancher was cutting more hay than the lease allowed. The rancher appealed the lease cancellation. After an evidentiary hearing, Interior affirmed, and the rancher did not seek judicial review. The United States then sued in district court to collect damages for conversion of the unauthorized hay and moved for partial summary judgment on the question of the interpretation of the lease. The district court ruled that the rancher was collaterally estopped to relitigate the interpretation of the lease and that the only question for the jury was the calculation of damages. The

Eighth Circuit affirmed this offensive use of collateral estoppel, where the plaintiff in the subsequent action relies on the earlier decision of an agency, rather than of another court. It also affirmed the district court's instructions to the jury that the proper measure of damages was the fair market value of the unauthorized hay cut, minus the cost of harvesting it.

Attorneys: Robert D. Clark and Robert L.  
Klarquist (Land and Natural  
Resources Division) FTS 633-2855/  
2731

EDF v. Costle, \_\_\_\_ F.2d \_\_\_\_ (D.C. Cir., April 21, 1981)  
DJ 90-5-1-5-76.

EPA and Interior's efforts to control salinity on Colorado River sustained.

EDF sued EPA and Interior, alleging under various statutes that the agencies were not doing enough to control salinity in the Colorado River. Seven western states intervened as defendants. The court of appeals affirmed the district court's summary judgment for the defendants, and held that (1) the district court properly struck four of EDF's litigation affidavits which were not part of the administrative record (this part of the opinion contains useful language on the proper scope of review); (2) the court of appeals would not consider EDF's argument concerning APA Section 4(c) (statement of basis and purpose) because it was raised for the first time on appeal; (3) the approved water quality standards for salinity, including implementation plans, complied with the requirements of the Clean Water Act; (4) EPA had no duty under Section 303(c)(4)(B) of the Clean Water Act to promulgate revised or new salinity standards; (5) EPA had not violated Section 303(d) by not promulgating total maximum daily loads (TMDLS) for salinity; (6) EPA had not violated Section 303(e) by failing to disapprove or remedy the Colorado River basin states' continuing planning processes (CPPs); (7) Interior had not violated its duty under Section 201 of the Colorado River Basin Salinity Control Act (CRBSCA) to develop alternatives to current salinity control programs; and (8) Interior and EPA had not violated NEPA Section 102(2)(E), concerning study of alternatives.

Attorneys: EPA Staff, Thomas H. Pacheco and  
Edward J. Shawaker (Land and  
Natural Resources Division) FTS  
633-2767/2813

White Mountain Apache Tribe v. Arizona, \_\_\_\_ F.2d \_\_\_\_, No. 78-3427 (9th Cir., April 6, 1981) DJ 90-6-0-82.

Summary judgment in favor of State in action by Indians to enjoin state infringement of hunting and fishing license requirements reversed and remanded.

The court of appeals reversed the district court's grant of summary judgment to the State in an action to enjoin the State from enforcing its hunting and fishing license requirements, fees, closed seasons and bag limits upon non-Indians who hunt and fish on the Fort Apache Indian Reservation with tribal licenses and subject to sometimes divergent tribal closed seasons and bag limits. The case was remanded for further consideration by the district court, in light of various recent Supreme Court decisions, including findings as to the extent of the respective state and tribal regulatory and revenue interests, and the migratory or non-migratory nature of the wildlife in issue. Notwithstanding the nominally favorable outcome, the terms of the remand are not especially promising for the Indians. The court of appeals rejected many of the arguments the United States advanced as amicus curiae in support of the Tribe, holding that neither the proviso to Public Law 280, nor the Indian Reorganization Act or the disclaimer of interest in Indian lands in the Arizona Enabling Act provides much, if any, support for a federal preemption argument. The court also rejected the argument that state regulation infringes upon tribal self government. The court of appeals decision was rendered after the Supreme Court's recent decision in Montana v. United States (Crow Tribe), but takes no note of that decision. While the relevance of Montana is doubtful from the face of that opinion, on April 6, 1981, the Supreme Court granted a petition for certiorari in New Mexico in Mescalero Apache Tribe (10th Cir.), which presents issues virtually identical to those in this case, and remanded the Mescalero case to the Tenth Circuit for reconsideration in light of Montana. The opinion in this case was issued the same day as the Supreme Court's order in Mescalero, and took no note of that order. The effect, if any, of these developments on the White Mountain Apache case is unclear at this time.

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OFFICE OF LEGISLATIVE AFFAIRS  
Acting Assistant Attorney General Michael W. Dolan

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

APRIL 30, 1981 - MAY 13, 1981

Select Commission on Immigration. Three days of hearings were held jointly by the House and Senate Subcommittees on Immigration to review the recommendations of the Select Commission. Witnesses included Commission members, labor leaders, mayors and governors, and representatives of various interest groups. Nearly all subcommittee members attended and the sentiment seemed unanimous in favor of employer sanctions and increased enforcement efforts by INS.

No administration witnesses were invited to testify since policy will not be set until the President evaluates the report of the Interagency Task Force which postponed its reporting date from May 4 to May 18, 1981.

Federal Crime Control Effort. On May 5, 1981, the House Judiciary Subcommittee on Crime began hearings on the effort of the federal government to control crime with Associate Attorney General Rudolph Giuliani testifying for the Department. Chairman Hughes was critical of the Department for not taking a favorable position on his bill to amend the Omnibus Crime Control Safe Streets Act of 1968 to continue funding for LEAA projects that had been successful. Mr. Giuliani testified that the Department was awaiting the results of the Attorney General's task force on violent crime before making specific recommendations on any programs. The minority members of the subcommittee also expressed concern about how the Administration was going to cut the budget and at the same time expand the fight against crime.

Criminal Code. The House Judiciary Subcommittee on Criminal Justice has scheduled two subcommittee meetings to discuss revision of the Criminal Code on May 6 and 12.

SES Hearing. On May 7, 1981 the House Post Office and Civil Service Subcommittee on Civil Service held hearings on the Senior Executive Service. DEA Administrator Peter Bensinger and FBI Assistant Director Oliver Revell testified in favor of including their offices in the SES program. DEA has submitted to OMB for approval a draft bill which is exactly the same as the bill passed by the Senate last Congress.

Special Prosecutor Act. On May 20 and 22, 1981, the Senate Governmental Affairs Subcommittee on Oversight of Government Management will hold hearings on the special

prosecutor provisions of the Ethics in Government Act of 1978. The hearings will focus on the appointment and functions of the special prosecutor in the investigations that have arisen under the Act as well as on criticisms and suggested reforms. Associate Attorney General Rudolph Giuliani will testify for the Department on May 22.

H.R. 2098 - Inspector General. On Thursday, May 7, 1981, H.R. 2098 was marked up by the House Committee on Government Operations. The bill would place a statutory Inspector General in the Department of Justice. There were no significant changes in the bill from the mark up at the subcommittee level. The Office of Professional Responsibility has been deleted from those units of the Department which would be transferred to the Inspector General.

S. 547 - Siletz Indian. On Monday, May 11, 1981, Anthony C. Liotta, Deputy Assistant Attorney General, Lands and Natural Resources Division, testified before the Select Committee on Indian Affairs of the United States Senate. The subject of the hearing was S. 547, a bill which would enable the Secretary of Interior to erect permanent improvements on land acquired for the Confederate Tribes of Siletz Indians of Oregon. The Department supports this legislation if a clarifying amendment is added to the bill.

VA Debt Collection. On Tuesday, May 19, 1981, Stuart E. Schiffer, Deputy Assistant Attorney General, Civil Division, will testify before the House Committee on Veterans Affairs. The subject of the hearing will be the use of Veterans Administration attorneys to litigate the collection of debts owed the VA. Litigation authority was granted to the VA by P.L. 96-466.

DOJ Authorization - Senate. On May 5, the Senate Judiciary Committee met to discuss a number of pending measures including the DOJ Authorization bill, S. 951. No vote was taken on S. 951 because at least eight members of the Committee had amendments which had not yet been circulated among all Committee members. Accordingly, Chairman Thurmond put the matter over until May 12, at which time votes will be taken on the amendments and the bill itself. Specific proposed amendments which have already surfaced are as follows: (1) a Dole amendment for a Justice Department study not to exceed \$1 million for NLETS data system; (2) a Heflin amendment for a study of the Administrative Law Judge system in the federal government; (3) a Baucus amendment to add Titles I, II, and IV of S. 284 (respectively covering DOJ litigating authority, a request for a case management study, and a requirement that the Attorney General report to the Congress each time the Department declines to defend the constitutionality of a statute); (4) a Mathias

amendment authorizing \$600,000 for prison renovation; (5) a Thurmond-Denton-Biden amendment increasing the FBI foreign counterintelligence budget; (6) a Biden amendment authorizing \$5 million for DEA state and local task forces; and (7) a Spector amendment to restore \$70 million for the Office of Juvenile Justice and Delinquency Prevention.

DOJ Authorization - House. On May 6, Chairman Rodino's Monopolies and Commercial Law Subcommittee marked up the Chairman's version of the DOJ Authorization bill, H.R. 3111. The Subcommittee adopted Representatives Mazzoli's amendment adding \$25 million for INS, a Seiberling amendment making the Antitrust Division a separate line item, a Kastenmeier amendment restoring \$10 million that had been deleted on the assumption that legislation would be enacted transferring U.S. Attorney's and Marshals' functions to the D.C. government, a Hughes amendment restoring the provision we requested for DEA to retain certain funds for the purchase of evidence and the payment of informants, a Hughes amendment reducing DEA funding by \$8 million to conform with the Administration budget, and a Kastenmeier amendment aimed at eliminating the practice of holding juvenile material witnesses in illegal immigration cases in adult correctional facilities.

Representative Edwards, as Chairman of the Subcommittee on Civil and Constitutional Rights, had several amendments which would direct the FBI to take various administrative steps pertaining to disciplinary proceedings, training programs, and enforcement activities on Indian reservations. However, since Mr. Edwards was represented only by staff at the May 6 hearings, and because Mr. McClory objected that the minority members of the Edwards' Subcommittee were not consulted, Chairman Rodino did not act on the Edwards' Amendment. After the meeting Mr. Rodino indicated that the Edwards' amendments did not belong in the Authorization bill and should instead be made part of the legislative history in the bill report.

The Rodino bill, as amended in subcommittee, has been reintroduced as a "clean bill", H.R. 3462, and will come before the full committee for mark up on May 12.

#### Nominations:

On May 5, 1981, the United States Senate received the nomination of Robert A. McConnell to be Assistant Attorney General, Office of Legislative Affairs.

On May 11, 1981, the United States Senate received the nomination of Henry D. McMaster to be U.S. Attorney for the District of South Carolina.

## Federal Rules of Evidence

Rule 609. Impeachment by Evidence of Conviction of Crime.

Defendant appealed from his conviction for a theft offense, contending, inter alia, that the trial judge erred in ruling that defendant's prior conviction of a state bribery offense was admissible for impeachment purposes under Rule 609. Defendant argued that a conviction which is otherwise admissible under Rule 609 should not be admitted if based upon a plea of nolo contendere. This was an issue of first impression.

The Court noted that the Rule does not facially distinguish between convictions resulting from a guilty plea and those resulting from a plea of nolo contendere, and that such a distinction which had existed in an earlier draft of the rule was deleted from the final version, indicating that no such distinction was intended. The Court also noted that a plea of nolo contendere adjudicates guilt with the same finality and force as a judgment entered pursuant to a guilty plea or a conviction following trial, and that such a plea admits every essential element of the offense. Pointing out the distinction between the evidentiary use of pleas to a criminal charge (which are inadmissible under Rule 410) and convictions of criminal charges based on such pleas, the Court concluded that convictions based on nolo contendere pleas are admissible for impeachment purposes under Rule 609, as long as the other requirements of the rule are met. Since the state bribery conviction involved here was admissible under either subsection (a)(1) or (a)(2) of Rule 609, the trial judge properly admitted the conviction for impeachment.

(Affirmed.)

United States v. James Williams, 642 F.2d 136 (5th Cir. April 8, 1981)



## Federal Rules of Criminal Procedure

Rule 6(d). The Grand Jury. Who May  
Be Present.

Three days after being dismissed from service, a grand juror participated in grand jury proceedings where her presence was necessary for a quorum. Neither the juror nor the government were aware of the fact that the juror had been dismissed. The defendant sought dismissal of the indictment, contending that the presence of the dismissed grand juror at grand jury proceedings violated Rule 6(d).

The Court noted that in determining whether a given person who appears in a grand jury room is "unauthorized", the courts have traditionally looked to the specific language of Rule 6(d) to determine if the person falls within any of the permissible categories of persons whose presence before the grand jury is allowed by the Rule. The Court found that "jurors" are such a permissible category, even though Rule 6(d) might be interpreted as not expressly so stating, and that it was therefore necessary to next determine whether a disqualified juror is nonetheless a "juror" within the implicit meaning of Rule 6(d). Concluding that a contrary indication in United States ex rel. McCann v. Thompson, 144 F.2d 604 (2d Cir. 1944), was not an accurate reflection of current law, the Court held that a disqualified juror does not fall within any of the "permissible categories" of persons permitted to attend grand jury proceedings, and that reversal was thus required under the per se rule used in dealing with violations of Rule 6(d).

(Indictment dismissed without prejudice.)

United States v. Arthur F. Furman, D.D.S.,  
507 F.Supp. 848 (D.Md. February 12, 1981)

## LISTING OF ALL BLUESHEETS IN EFFECT

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
	TITLE 1	
Undtd	1-1.200	Authority of Manual; A.G. Order 665-76
11-20-80	1-1.550	Communications from the Department
6-21-77	1-3.100	Assigning Functions to the Associate Attorney General
6-21-77	1-3.102	Assignment of Responsibility to DAG re INTERPOL
6-21-77	1-3.105	Reorganize and Redesignate Office of Policy and Planning as Office for Improvements in the Administration of Justice
4-22-77	1-3.108	Selective Service Pardons
6-21-77	1-3.113	Redesignate Freedom of Information Appeals Unit as Office of Privacy and Information Appeals
6-21-77	1-3.301	Director, Bureau of Prisons; Authority to Promulgate Rules
6-21-77	1-3.402	U.S. Parole Commission to replace U.S. Board of Parole
12-15-80	1-5.410	Subpoena of Reporters
4-28-77	1-6.200	Representation of DOJ Attorneys by the Department: A.G. Order 633-77
8-30-77	1-9.000	Case Processing by Teletype with Social Security Administration
10-31-79	1-9.000	Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings
11-16-79	1-9.000	Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
12-16-80	1-9.100	Relationships with Client Agencies
12-09-80	1-11.500	Informal Immunity
12-16-80	1-13.010	Proceedings Before U.S. Magistrates
7-14-78	1-14.210	Delegation of Authority to Conduct Grand Jury Proceedings
	TITLE 2	
3-2-81	2-2.120	Rehearings En Banc
1-03-77	2-3.210	Appeals in Tax Cases
	TITLE 3	
Undtd	3-4.000	Sealing and Expungement of Case Files Under 21 U.S.C. 844
	TITLE 4	
11-27-78	4-1.200	Responsibilities of the AAG for Civil Division
9-15-78	4-1.210- 4-1.227	Civil Division Reorganization
4-14-80	4-1.213	Federal Programs Branch Case Reviews
5-12-80	4-1.213	Organization of Federal Programs Branch, Civil Division
4-01-79	4-1.300- 4-1.313	Redelegations of authority in Civil Division Cases
11-07-80	4-1.312	Cases Coming Before the U.S. Customs
5-05-78	4-1.313	Addition of "Direct Referral Cases" to USAM 4-1.313
7-18-80	4-1.320	Impositions of sanctions upon Government Counsel and Upon the Government Itself
8-15-80	4-1.327	Judicial Assistance to Foreign Tribunals
4-01-79	4-2.110- 4-2.140	Redelegation of Authority in Civil Division Cases
5-12-80	4-2.230	Monitoring of pre- and post judgment pay- ments on VA educational overpayment accounts

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
7-07-80	4-2.230	Monitoring of pre- and post judgment payments on VA educational overpayment accounts
2-22-78	4-2.320	Memo Containing the USA's Recommendations for the Compromising or Closing of Claims Beyond his Authority
11-13-78	4-2.433	Payment of Compromises in Federal Tort Claims Act Suits
8-13-79	4-3.000	Withholding Taxes on Backpay Judgments
5-05-78	4-3.210	Payment of Judgments by GAO
6-01-78	4-3.210	New telephone number for GAO office handling payment of judgments
5-14-79	4-4.230	Attorneys' Fees in EEO Cases
11-21-80	4-4.240	Attorney fees in FOI and PA suits
1-16-81	4-4.260	Attorneys' Fees Award in S.S. Act Review Cases
4-01-79	4-4.280	New USAM 4-4.280, Dealing with Attorney's Fees in Right To Financial Privacy Act Suits
8-08-80	4-4.310; 320; 330	Cases with International or Foreign Law Aspects
4-01-79	4-4.530	Addition to USAM 4-4.530 (costs recoverable from United States)
4-01-79	4-4.810	Interest recoverable by the Gov't.
4-01-79	4-5.229	New USAM 4-5.229, dealing with limitations in Right To Financial Privacy Act suits.
2-15-80	4-5.530; 540; 550	FOIA and Privacy Act Matters
4-1-79	4-5.921	Sovereign immunity
4-01-79	4-5.924	Sovereign immunity

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-05-80	4-6.400	Coordination of Civil & Criminal Aspects of Fraud & Official Corruption Cases
5-12-80	4-6.600	Monitoring of pre- and post judgment payments on VA educational overpayment accounts
7-07-80	4-6.600	Monitoring of pre- and postjudgment Payments on VA Educational Overpayment Accounts
5-12-80	4-6.600	Memo of Understanding for Conduct of Test Program to Collect VA Educational Assistance Overpayments Less Than \$600
8-15-80	4-7.400	Application of State Law to Questions Arising in the Foreclosure of Government-Held Mortgages
1-5-81	4-8.800	Claims Referred by Railroad Retirement Board
9-05-80	4-8.900	Renegotiations Act Claims
9-24-79	4-9.200	McNamara-O'Hara Service Contract Act Cases
9-24-79	4-9.700	Walsh-Healy Act cases
8-08-80	4-10-100	Cancellation of Patents
8-01-80	4-11.210; 220; 230	Copyright, Patent, and Trademark Litigation
4-01-79	4-11.850	New USAM 4-11.850, discussing Right To Financial Privacy Act litigation
4-21-80	4-11.860	FEGLI litigation
4-07-80	4-12.250; .251; .252	Priority of Liens (2420 cases)
5-22-78	4-12.270	Addition of a New Sentence to USAM 4-12.270
4-16-79	4-13.230	New USAM 4-13.230, discussing revised HEW regulations governing Social Security Act disability benefits
11-7-80	4-13.330	Customs Matters
7-25-80	4-13.330	Customs Matters
11-27-78	4-13.335	News discussing "Energy Cases"

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
7-30-79	4-13.350	Review of Government Personnel Cases under the Civil Service Reform Act of 1978
8-1-80	4-13.350	Review of Government Personnel Cases under the Civil Service Reform Act of 1978
4-1-79	4-13.361	Handling of Suits Against Gov't Employees
6-25-79	4-15.000	Subjects Treated in Civil Division Practice Manual
TITLE 5		
TITLE 6		
4-22-80	6-3.630	Responsibilities of United States Attorney of Receipt of Complaint
TITLE 7		
6-21-77	7-2.000	Part 25-Recommendations to President on Civil Aeronautic Board Decisions, Procedures for Receiving Comments by Private Parties
4-13-81	7-5.700	Motor Vehicle Info. & Cost Savings Act
TITLE 8		
6-21-77	8-2.000	Part 55-Implementation of Provisions of Voting Rights Act re Language Minority Groups (interpretive guidelines)
6-21-77	8-2.000	Part 42-Coordination of Enforcement of Non-discrimination in Federally Assisted Programs
5-23-80	8-2.170	Standards for Amicus Participation
10-18-77	8-2.220	Suits Against the Secretary of Commerce Challenging the 10% Minority Business Set-Aside of the Public Works Employment Act of 1977 P.L 95-28 (May 13, 1977)
5-23-80	8-2.400	Amicus Participation By the Division

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-23-80	8-3.190	Notification to Parties of Disposition of Criminal Civil Rights Matters
5-23-80	8-3.300	Notification to Parties of Disposition of Criminal Civil Rights Matters
	TITLE 9	
7-11-79	9-1.000	Criminal Division Reorganization
Undtd (3-80)	9-1.103	Description of Public Integrity Section
3-14-80	9-1.103	Criminal Division Reorganization
Undtd	9-1.215	Foreign Corrupt Practices Act of 1977-15 U.S.C. 78m(b)(2)-(3); 15 U.S.C. 78dd-1; and 15 U.S.C. 78dd-2
3-14-80	9-1.403; .404;.410	Criminal Division Reorganization
4-16-80	9-1.502	Criminal Division Brief/Memo Bank
7-08-80	9-1.503	Case Citation
6-22-79	9-2.000	Cancellation of Outstanding Memorandum
1-8-81	9-2.145	Interstate Agreement on Detainers
12-09-80	9-2.148	Informal Immunity
Undated	9-2.164	Policy With Regard to the Issuance of Subpoenas to Members of the News Media, Subpoenas for Telephone Toll Records of Members of the News Media, and the Interrogation, Indictment, or Arrest of, Members of the News Media
Undated	9-2.166	Grand Jury Subpoenas for Telephone Toll Records
2-28-80	9-4.116	Oral Search Warrants
6-28-79	9-4.600	Hypnosis
Undtd	9-7.000; 9-7.317	Defendant Overhearings and Attorney Overhearings Wiretap Motions

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
9-15-80	9-7.110	Authorization of Applications for Interception Orders
9-10-80	9-7.230;9-7.927; 9-7.928	Trap and Trace Guidelines
9-15-80	9-7.910	Form Interception Application
9-15-80	9-7.921	Form Interception Order
7-28-80	9-8.130	Motion to Transfer
2-06-80	9-11.220	Use of Grand Jury to Locate Fugitives
9-18-80	9-11.220	Obtaining Records To Aid in the Location of Federal Fugitives by Use of the All Writs Act, 28 U.S.C. 1651
12-13-78	9-11.220	Use of Grand Jury to Locate Fugitives
5-31-77	9-11.230	Grand Jury Subpoena for Telephone Toll Records
8-13-79	9-11.230	Fair Credit Reporting Act and Grand Jury Subpoenas
8-13-80	9-11.230	Fair Credit Reporting Act and Grand Jury Subpoenas
Undated	9-11.230	Limitations on Grand Jury Subpoenas
10-06-80	9-17.000	Speedy Trial Act
1-08-81	9-17.102	Securing the Presence of the Defendant
7-22-80	9-20.140 to 9-20.146	Indian Reservations
1-21-81	9-37.000	Habeas Corpus
10-22-79	9-42.000	Coordination of Fraud Against the Government Cases (non-disclosable)
6-06-80	9-42.520	Dept. of Agriculture-Food Stamp Violations
6-09-80	9-47.140	Foreign Corrupt Practices Act Review Procedure



<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
2-17-81	9-60.140	Kidnapping
5-22-79	9-61.132 & 9-61.133	Steps to be Taken to Assure the Serious Consideration of All Motor Vehicle Theft Cases for Prosecution
7-28-80	9-61.620	Supervising Section and Prosecutive Policy
7-28-80	9-61.651	Merger
7-28-80	9-61.682	Night Depositories
7-28-80	9-61.683	Automated Teller Machines (Off-Premises)
7-28-80	9-61.691	Extortion- Applicability of the Hobbs Act (18 U.S.C. 1951) to Extortionate Demands Made Upon Banking Institutions
7-28-80	9-63.518	Effect of <u>Simpson v. United States</u> on 18 U.S.C. 924(c)
7-28-80	9-63.519	<u>United States v. Batchelder,</u> 42 U.S. 114 (1979)
7-28-80	9-63.642	Collateral Attack by Defendants on the Underlying Felony Conviction
7-28-80	9-63.682	Effect of §5021 Youth Corrections Act Certificate on Status as Convicted Felon
8-13-80	9-65.806	Offenses Against Officials of the Coordi- nation Council for North American Affairs (TAIWAN)
8-08-79	9-69.260	Perjury: False Affidavits Submitted in Federal Court Proceedings Do Not Constitute Perjury Under 18 USC 1623
2-17-81	9-69.421	Fugitive Felon Act
11-28-80	9-69.500	Prosecutions of Escapes by Fed. Prisoners
9-5-80	9-70.002	Farm Labor Contractor Registration Act
6-11-80	9-75.000	Obscenity

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
6-11-80	9-75.080; 084	Sexual Exploitation of Children; Child Pornography
6-11-80	9-75.110	Venue
6-11-80	9-75.140	Prosecutive Priority
6-11-80	9-75.631	Exception - Child Pornography Cases
9-5-80	9-78.400	7 U.S.C. 2041, <u>et. seq.</u>
3-12-79	9-79.260	Access to Information Filed Pursuant to the Currency & Foreign Transactions Reporting Act
10-6-80	9-85.315	Census
8-7-80	9-100.280	Continuing Criminal Enterprise (408) 21 U.S.C. 848
1-30-81	9-110.100	RICO Guidelines
10-24-80	9-110.300, <u>et seq.</u>	Extortionate Credit Transactions
5-23-80	9-120.210	Directory: Dept. of Motor Vehicles Driver's License Bureau
1-8-81	9-120.210	Internal Revenue Service Tax Returns
2-29-80	9-121.120, .153 and .154	Authority to Compromise & Close Appearance Bond Forfeiture Judgements
4-21-80	9-121.140	Application of Cash Bail to Criminal Fines
4-05-79	9-123.000	Costs of Prosecution (28 U.S.C. 1918(b))
1-29-81	9-139.740	47 USC 506- The LEA Act (Coercive Practices Affecting Broadcasting)

(Revised 5-22-81)

Listing of all Bluesheets in Effect

Title 10--Executive Office for United States Attorneys

Title 10 has been distributed to U.S. Attorneys Offices only, because it consists of administrative guidelines for U.S. Attorneys and their staffs. The following is a list of all Title 10 Bluesheets currently in effect.

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
9-8-80	10-2.100	Notice to Competitive Service Applicants or Employees Proposed for Appointment to Excepted Positions
2-19-81	10-2.101	Submission of SF-61, Appointment Affidavits
Undtd (2-27-81)	10-2.111, 124, 142, 156, 161, 162, 164, 520	Racial/Ethnic Codes
7-14-80	10-2.123	Tax Check Waiver (Individual)
8-6-80	10-2.142	Employment Review Committee for Non-Attorneys
3-2-81	10-2.142, 156, 164, 520	Employment Review Procedures for Non-Attorneys
7-16-80	10-2.144	Certification Procedures for GS-9 and Above Positions
9-12-80	10-2.145	Procedures for Detailing Schedule C Secretaries to Competitive Service Positions
Undtd (12-5-80)	10-2.150	New Authority to Make 1-Yr. Temporary Appointments
11-25-80	10-2.162	Stay-In-School Program
7-16-80	10-2.193	Requirements for Sensitive Positions- Non-Attorney
8-14-80	10-2.193	Preappointment Security Requirements
10-29-80	10-2.194	Procedures for Requesting Access to Sensitive Compartments Info. (SCI)

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
3-27-81	10-2.194	Security Clearances for U.S. Attorneys
4-3-81	10-2.412	Time Spent in Training as Hours of Work under FLSA
6-13-80	10-2.420	Justice Earnings Statement
5-23-80	10-2.520	Racial/Ethnic Codes
8-22-80	10-2.523	Affirmative Action Monitoring Procedures
11-25-80	10-2.524	Collection, Retention & Use of Applicant Race, Sex, and Ethnicity Data
10-24-80	10-2.525	Facility Accessibility
8-22-80	10-2.525	Employment Review Procedures for Grades GS-1 - GS-12
10-6-80	10-2.540	Performance Appraisal System for Attorneys
6-11-80	10-2.545	Younger Fed. Lawyer Awards
8-26-80	10-2.551	Standard of Conduct
6-18-80	10-2.552	Financial Disclosure Report
6-11-80	10-2.564	Authorization & Payment of Training
5-4-81	10-2.564	Authorization & Payment of EEO Training
7-11-80	10-2.611	Restoration of Annual Leave
3-27-81	10-2.615	Leave Status in Emergency Situations
4-13-81	10-2.620	Fed. Employees Group Life Insurance
9-29-80	10-2.630	SF 2809- Health Benefits Registration Form
6-6-80	10-2.650	Unemployment Compensation for Federal Employees
6-6-80	10-2.660	Processing Form CA-1207
6-6-80	10-2.664	OWCP Uniform Billing Procedure

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
4-3-81	10-3.321	Salaried Federal Court Reporters
6-23-80	10-4.262	Procedures
10-30-80	10-4.430	Closing Notice for Case Files
5-4-81	10-5.230	Charges for Employee Parking
11-25-80	10-5.240	Collection of Parking Fees
8-5-80	10-6.100	Receipt Acknowledgment Form USA-204
6-23-80	10-6.220	Docketing & Reporting System
5-16-80	Index to Title 10	

## UNITED STATES ATTORNEYS' MANUAL--TRANSMITTALS

The following United States Attorneys' Manual Transmittals have been issued to date in accordance with USAM 1-1.500. This monthly listing may be removed from the Bulletin and used as a check list to assure that your Manual is up to date.

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE MO/DAY/YR</u>	<u>DATE OF Text</u>	<u>CONTENTS</u>
1	1	8/20/76	8/31/76	Ch. 1,2,3
	2	9/03/76	9/15/76	Ch. 5
	3	9/14/76	9/24/76	Ch. 8
	4	9/16/76	10/01/76	Ch. 4
	5	2/04/77	1/10/77	Ch. 6,10,12
	6	3/10/77	1/14/77	Ch. 11
	7	6/24/77	6/15/77	Ch. 13
	8	1/18/78	2/01/78	Ch. 14
	9	5/18/79	5/08/79	Ch. 5
	10	8/22/79	8/02/79	Revisions to 1-1.400
	11	10/09/79	10/09/79	Index to Manual
	12	11/21/79	11/16/79	Revision to Ch. 5, 8, 11
	13	1/18/80	1/15/80	Ch. 5, p. i-ii, 29-30, 41-45
	A2	9/29/80	6/23/80	Ch. 7, Index to Title 1, Revisions to Ch. 2, 5, 8 Ch. 2, 5, 8
2	1	6/25/76	7/04/76	Ch. 1 to 4
	2	8/11/76	7/04/76	Index
3	1	6/23/76	7/30/76	Ch. 1 to 7
	2	11/19/76	7/30/76	Index

		<u>DATE OF TEXT</u>		
	3	8/15/79	7/31/79	Revisions to Ch. 3
	4	9/25/79	7/31/79	Ch. 3
4	1	1/02/77	1/02/77	Ch. 3 to 15
	2	1/21/77	1/03/77	Ch. 1 & 2
	3	3/15/77	1/03/77	Index
	4	11/28/77	11/01/77	Revisions to Ch. 1-6, 11-15 Index
5	1	2/04/77	1/11/77	Ch. 1 to 9
	2	3/17/77	1/11/77	Ch. 10 to 12
	3	6/22/77	4/05/77	Revisions to Ch. 1-8
	4	8/10/79	5/31/79	Letter from Attorney General to Secretary of Interior
	5	6/20/80	6/17/80	Revisions to Ch. 1-2, New Ch. 2A, Index to Title 5
	A2	4/16/81	4/6/81	Rev. to Ch. 1, 2, 2A, 3, 4, 5, 7, 8, 9A & 9B New Ch. 9, 9A, 9C & 9D
6	1	3/31/77	1/19/77	Ch. 1 to 6
	2	4/26/77	1/19/77	Index
	3	3/01/79	1/11/79	Complete Revision of Title 6
7	1	11/18/77	11/22/76	Ch. 1 to 6.
	2	3/16/77	11/22/76	Index

		<u>DATE OF TEXT</u>		
8	1	1/04/77	1/07/77	Ch. 4 & 5
	2	1/21/77	9/30/77	Ch. 1 to 3
	3	5/13/77	1/07/77	Index
	4	6/21/77	9/30/76	Ch. 3 (pp. 3-6)
	5	2/09/78	1/31/78	Revisions to Ch. 2
	6	3/14/80	3/6/80	Revisions to Ch. 3
9	1	1/12/77	1/10/77	Ch. 4,11,17, 18,34,37,38
	2	2/15/78	1/10/77	Ch. 7,100,122
	3	1/18/77	1/17/77	Ch. 12,14,16, 40,41,42,43
	4	1/31/77	1/17/77	Ch. 130 to 139
	5	2/02/77	1/10/77	Ch. 1,2,8,10, 15,101,102,104, 120,121
	6	3/16/77	1/17/77	Ch. 20,60,61,63, 64,65,66,69,70, 71,72,73,75,76,77, 78,79,85,90,110
	7	9/08/77	8/01/77	Ch. 4 (pp. 81- 129) Ch. 9, 39
	8	10/17/77	10/01/77	Revisions to Ch. 1
	9	4/04/78	3/18/78	Index
	10	5/15/78	3/23/78	Revisions to Ch. 4,8,15, and new Ch. 6



		<u>DATE OF TEXT</u>	
11	5/23/78	3/14/78	Revisions to Ch. 11,12,14, 17,18, & 20
12	6/15/78	5/23/78	Revisions to Ch. 40,41,43, 44, 60
13	7/12/78	6/19/78	Revisions to Ch. 61,63,64, 65,66
14	8/02/78	7/19/78	Revisions to Ch. 41,69,71, 75,76,78, & 79
15	8/17/78	8/17/78	Revisions to Ch. 11
16	8/25/78	8/02/78	Revisions to Ch. 85,90,100, 101, & 102
17	9/11/78	8/24/78	Revisions to Ch. 120,121,122, 132,133,136,137, 138, & 139
18	11/15/78	10/20/78	Revisions to Ch. 2
19	11/29/78	11/8/78	Revisions to Ch. 7
20	2/01/79	2/1/79	Revisions to Ch. 2
21	2/16/79	2/05/79	Revisions to Ch. 1,4,6,11, 15,100
22	3/10/79	3/10/79	New Section 9-4.800
23	5/29/79	4/16/79	Revisions to Ch. 61

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE MO/DAY/YR</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
	24	8/27/79	4/16/79	Revisions to 9-69.420
	25	9/21/79	9/11/79	Revision of Title 9 Ch. 7
	26	9/04/79	8/29/79	Revisions to Ch. 14
	27	11/09/79	10/31/79	Revisions to Ch. 1, 2, 11, 73, and new Ch. 47
	28	1/14/80	1/03/80	Detailed Table of Contents p. i-iii (Ch. 2) Ch. 2 pp 19-20i
	29	3/17/80	3/6/80	Revisions to Ch. 1, 7, 11, 21, 42, 75, 79, 131, Index to Title 9
	30	4/29/80	4/1/80	Revisions to Ch. 11, 17, 42
	38	7-8-80	7-27-80	Revisions to Ch. 2, 16, 17, 60, 63, & 73, Index to Manual
	*A2	11-4-80	10-6-80	New Ch. 27, Revisions to Ch. 1, 2, 4, 7, 17, 34, 47, 69, 120, Index to Title 9, and Index to Manual

\*Due to the numerous requests for the U.S. Attorneys' Manual from the private sector, the Executive Office has republished the entire Manual and it is now available to the public from the Government Printing Office. This publication is the exact same one that has already been issued to Department of Justice offices. To differentiate the transmittals issued after the GPO publication from previously issued transmittals the Manual Staff has devised a new numbering system. Please note that transmittal numbers issued from hereon will be prefaced with the letter "A." The private sector may order the Manual from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The stock number is 0469T10 and the price is \$145.00, which includes updates.