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# United States Attorneys Bulletin



*Volume 25*  
*Missing issues*  
*no. 2, 4, 5, 9,*

*Published by Executive Office for United States Attorneys  
Department of Justice, Washington, D.C.*

Vol. 25

January 7, 1977

No. 1

UNITED STATES DEPARTMENT OF JUSTICE

TABLE OF CONTENTS

	<u>Page</u>
INDEX TO POINTS TO REMEMBER OF 1976 (VOLUME 24)	3
COMMENDATIONS	7
POINTS TO REMEMBER	
NOTIFICATION OF CONSULAR OFFICERS UPON ARREST OF FOREIGN NATIONALS	9
CASENOTES	
Civil Division	
Social Security Act	
<u>Mathews v. Decastro</u>	11
Federal Tort Claims Act. Civil Commitment	
<u>Johnson v. United States</u>	11
Federal Tort Claims Act	
<u>McGarry v. United States</u>	11
<u>Martin v. United States</u>	12
Civil Rights Act. Exhaustion of Remedies by Unnamed Class Members	
<u>Simmons v. Schlesinger</u>	12
APPENDIX: FEDERAL RULES OF CRIMINAL PROCEDURE	13
These pages should be placed on permanent file, by Rule, in each United States Attorney's office library	
Citations for the slip opinions are available on FTS 739-3754.	

## INDEX TO POINTS TO REMEMBER OF 1976 (VOLUME 24)

Note: As we have indicated earlier, 24 USAB 501 (No. 11), most of the materials now appearing as Points to Remember will be incorporated into the revised U.S. Attorneys' Manual.

Administrative Matters	
Cassette Tapes Library	
Contents	24 USAB 854 (No. 18)
Federal Rules of Evidence	24 USAB 829 (No. 17)
Reporting of Attorney Man-Hours	24 USAB 4 (No. 1)
Standard Office Procedures Handbook	24 USAB 293 (No. 7)
Training	24 USAB 828 (No. 17)
	24 USAB 853 (No. 18)
Travel Guidelines	24 USAB 153 (No. 4)
Foreign Travel	24 USAB 955 (No. 22)
U.S. Attorneys' Bulletin Appendix on Federal Rules of Criminal Procedure	24 USAB 911 (No. 20)
Banks	
Subpoena of Records	24 USAB 912 (No. 20)
Bonds	
Collection of Appearance Bond Forfeiture Judgments	24 USAB 569 (No. 8)
Injunction Bonds in Disappointed Bidder Suits	24 USAB 988 (No. 24)
Citations to Criminal Cases	24 USAB 296 (No. 7)
Civil Division Practice Manual	24 USAB 687 (No. 14)
Collections	
Appearance Bond Forfeiture Judg- ments	24 USAB 569 (No. 8)
Criminal Fines in Wagering Tax Cases	24 USAB 613 (No. 13)
Conflict of Interest	
Element of Intent	24 USAB 358 (No. 8)
Controlled Substances Act	
Cocaine Types Covered	24 USAB 467 (No. 10)
Expungement of Records	Superseded by USAM 3-4.000
Copyrights	
Sound Recordings	24 USAB 235 (No. 6)

Counterfeiting		
Color Copiers	24 USAB 609 (No. 13)	
Detainers		
Interstate Agreement on	24 USAB 503 (No. 11)	
Electronic Surveillance		
Disclosure	24 USAB 3 (No. 1)	
Preparation of Supporting Documentation	24 USAB 687 (No. 14)	
Expungement of Records		
Simple Possession; Controlled Substances Act	Superceded by USAM 3-4.000	
Evidence		
Unsworn Declarations	24 USAB 987 (No. 24)	
FBI		
Domestic Security Guidelines	24 USAB 593 (No. 13)	
Firearms		
False Statement Charge	24 USAB 45 (No. 2)	
Intrastate purchase; receipt by convicted felon	24 USAB 100 (No. 3)	
Foreign Officials		
Protection of	24 USAB 504 (No. 11) 24 USAB 610 (No. 13)	
Grand Jury		
Subpoenas of Bank Records	24 USAB 912 (No. 20)	
Habeas Corpus		
Attack on Guilty Plea	24 USAB 570 (No. 12)	
Identification		
Compelled Repetition of Disguise	24 USAB 296 (No. 7)	
Eyewitness Testimony; Jury Instructions	24 USAB 99 (No. 3)	
Immunity		
Authorization for Witness Of Governmental Officers	24 USAB 853 (No. 18) 24 USAB 782 (No. 16)	
Indian Matters		
Assaults in Indian Country	24 USAB 355 (No. 8)	
Indictment		
Form: 18 U.S.C. 1711	24 USAB 971 (No. 23)	

Investigations	
Domestic Security Guidelines	24 USAB 593 (No. 13)
Social Security Violations	24 USAB 781 (No. 16)
Jurisdictional Defenses	24 USAB 985 (No. 24)
Jury	
Waiver of Jury Trials	24 USAB 875 (No. 19)
Labor Matters	
Deferred Prosecution of Union Officials	24 USAB 283 (No. 7)
Magistrates	
Waiver of Trials before	24 USAB 875 (No. 19)
Motor Vehicles	
Odometer Tampering	24 USAB 931 (No. 21)
Parole Litigation	24 USAB 956 (No. 22)
Pleas	
Evidence of Withdrawn Guilty Pleas	24 USAB 45 (No. 2)
Vacation of Guilty Pleas	24 USAB 570 (No. 12)
Postal Matters	
Return Receipts	24 USAB 154 (No. 4)
Form for Indictment: 18 U.S.C. 1711	24 USAB 971 (No. 23)
Missappropriation of Funds	24 USAB 971 (No. 23)
Pretrial Diversion	
Tax Cases	24 USAB 612 (No. 13)
Prisoner Litigation	24 USAB 956 (No. 22)
Privacy Act	All items superceded by USAM 1-5.000
Search Warrants	
Income Tax Cases	24 USAB 732 (No. 15)
Sentence Credit for Time Spent by Extradited Defendants in Foreign Custody	24 USAM 1007 (No. 24)
Social Security Violations	24 USAB 781 (No. 16)
Sovereign Immunity Defense	24 USAB 985 (No. 24)
Speedy Trial Act	
Applicability of 3151(h) exclusions to 3164 ninety-day period	24 USAB 611 (No. 13)
Opinions relating to	24 USAB 731 (No. 15)

Receipt from Admin. Off. of  
U.S. Courts July 1976 Amendments  
to Guidelines

24 USAB 875 (No. 19)

Subpoenas

Bank Records

24 USAB 912 (No. 20)

Tax Matters

Pretrial Diversion

24 USAB 612 (No. 13)

Search Warrants

24 USAB 732 (No. 15)

Voiceprint Evidence

24 USAB 468 (No. 10)

Witness Protection

24 USAB 569 (No. 12)

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COMMENDATIONS

Assistant United States Attorney Daniel H. Shapira, Western District of Pennsylvania, has been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for his assistance in the investigation leading to the conviction of Gust T. Zanos.

Assistant United States Attorney Harry C. Batchelder, Jr., Southern District of New York, has been commended by John W. Fallon, Regional Director, Drug Enforcement Administration, for his outstanding efforts in the successful prosecution of Jeffrey Rudd and Cary Fields, representing the complete immobilization of the largest (tablets valued at \$60 million) clandestine methaqualone manufacturing and distribution organization in the United States during 1975.

Assistant United States Attorney Michael Quinton, Southern District of California, has been commended by C. E. McDowell, Acting Judge advocate General, United States Navy, for his success on the appellate level in Collins v. Rumsfeld, a case dealing with the variable reenlistment bonus.

Assistant United States Attorneys Daniel J. Beller, Thomas Sear and Constance Cushman, Northern District of Illinois, have been commended by Royal B. Martin, Jr., of Harris Burman and Silets, Chicago, for their ingenuity, imagination and enthusiasm in U.S. v. Alvarez. Mr. Martin, formerly an Assistant in the Northern District of Illinois, was one of the defense counsel in this major narcotics case which resulted in 20 convictions.

Assistant United States Attorney Stephen G. Nelson, Southern District of California, has been commended by Frederick A. Rody, Jr., Acting Administrator, Drug Enforcement Administration, for his efforts in U.S. v. Eastman.

Assistant United States Attorney Sarah Gold, Southern District of New York, has been commended by J. Wallace La Prade, Assistant Director in Charge, New York, Federal Bureau of Investigation, for her efforts in the bank robbery case of Leroy McClain, Jr.

POINTS TO REMEMBER

## NOTIFICATION OF CONSULAR OFFICERS UPON ARREST OF FOREIGN NATIONALS

It is essential that the provisions of 28 C.F.R. 50.5 be followed any time a foreign national is arrested, other than by the Immigration and Naturalization Service for administrative deportation or exclusion proceedings. Any United States Attorney unable to contact a foreign consul or requiring assistance in determining our treaty obligations should promptly contact the Government Regulations and Labor Section of the Criminal Division.

(Criminal Division)

CIVIL DIVISION  
Assistant Attorney General Rex E. Lee

Mathews v. DeCastro, \_\_\_ U.S. \_\_\_, 45 U.S.L.W. 4049 (decided December 13, 1976). DJ 137-23-500.

Social Security Act.

Under the Social Security Act, a married woman under 62 whose husband retires or becomes disabled is granted monthly benefits if she has a minor or dependent child in her care, but a divorced woman similarly situated whose ex-husband retires or becomes disabled does not. A three judge district court held the classification unconstitutional. On our appeal, the Supreme Court reversed, holding that the classification does not offend the equal protection clause, because it was rational for Congress to assume that married women as a class would be more dependent on their husbands than divorced women.

Attorneys: Rex E. Lee (Civil Division), FTS 739-3301; Stephen L. Urbanczyk (Office of the Solicitor General), FTS 739-3948; Paul Blankenstein (Civil Division), FTS 739-3469.

Johnson v. United States, \_\_\_ F.2d \_\_\_ (C.A.D.C. No. 74-2011, decided December 2, 1976). DJ 157-16-1073.

Federal Tort Claims Act. Civil Commitment

Plaintiff brought suit against the United States alleging false arrest and imprisonment and malpractice on the part of a Veterans Administration doctor who committed plaintiff to a mental hospital. The court of appeals affirmed the district court's dismissal of the suit. The court held, first, that the false arrest and imprisonment count was barred by the false imprisonment exclusion to the Tort Claims Act, and second, that the malpractice count based on the same incident failed to state a claim under D.C. law.

Attorney: Michael A. Pace (Assistant U.S. Attorney), FTS 376-2929.

McGarry v. United States, \_\_\_ F.2d \_\_\_ (C.A. 9, Nos. 74-1503 & 74-1504, decided December 6, 1976). DJ 157-46-141 & 157-46-151.

Federal Tort Claims Act.

The plaintiff's decedent in this Tort Claims case, an employee of an independent contractor of the AEC, was killed while working near electric power lines operated by the contractor. The Ninth Circuit held that the United States had a duty to see that the independent contractor exercised due care in carrying out its operations. It also held that reservation

of the right to inspect contained in the contract showed that there was no policy of delegating safety responsibilities to contractors, and therefore the United States could not rely upon the discretionary function exception. The court remanded the case for further findings on the issue of contributory negligence.

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

Martin v. United States, F.2d (C.A. 9, No. 75-2918, decided December 3, 1976). DJ 157-12C-592.

Federal Tort Claims Act.

The district court in this case held the United States liable for the death of a visitor to Yellowstone National Park who was attacked and killed by a grizzly bear. The court of appeals reversed on the grounds of discretionary function (28 U.S.C. § 2680(a)) and contributory negligence. The court held that "[i]t was not the intention of the Congress as we read the Federal Tort Claims Act and the enactments relating to Yellowstone Park, to make the defendant, United States of America, an insurer of the safety of all Yellowstone National Park visitors."

Attorneys: Judith H. Norris (formerly of the Civil Division, now Assistant U.S. Attorney),  
FTS 223-5833; Ronald Glancz (Civil Division), FTS 739-3424.

Simmons v. Schlesinger, F.2d (C.A. 4, No. 75-2182, decided December 6, 1976). DJ 170-79-67.

Civil Rights Act. Exhaustion of Remedies by Unnamed Class Members

In this federal employee race discrimination suit brought under Title VII of the Civil Rights Act, the court of appeals upheld the district court's refusal to certify a broad class of employees at a Naval facility in Virginia, where only the named plaintiffs had exhausted their administrative remedies. Because of the broad remedial powers vested in the Civil Service Commission, and the importance Congress attached to administrative remedies in the federal sector, the court declined to follow the rule in private sector cases that exhaustion by a named party is sufficient to maintain a broad class action. The court found that class claims could have been exhausted administratively: "related" claims can be exhausted through the procedures applicable to individual complainants, and "unrelated" claims can be exhausted through the CSC's third party complaint procedure (see 5 C.F.R. 713.251). The court also indicated that such third party complaint procedures are judicially reviewable under Title VII.

Attorney: Seth M. Lloyd, formerly Special Counsel,  
Office of Civilian Manpower Management,  
Department of the Navy.