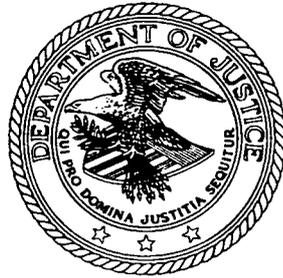


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NO. 7

UNITED STATES DEPARTMENT OF JUSTICE

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Citations for the slip opinions are available on
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APPENDIX: FEDERAL RULES OF EVIDENCE

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INDEX TO POINTS TO REMEMBER OF 1977
FIRST QUARTER

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COMMENDATIONS

United States Attorney D. Dwayne Keyes and Assistant United States Attorney Richard W. Nichols, Eastern District of California, have been commended by Seitaro Asanuma, Commissioner General, National Police Agency, Tokoyo, Japan, for their personal assistance in a notable contribution toward the speedy completion of an official request for extradition of a murder suspect to Japan.

Assistant United States Attorney Otis W. Carroll, Jr., Eastern District of Texas, has been commended by Norman A. Carlson, Director, Bureau of Prisons, for his outstanding job in the preparation, presentation and prosecution of the Willie Caruso Free homicide case.

Assistant United States Attorney D. Broward Segrest, Middle District of Alabama, has been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for his exemplary work in the case United States v. Jack Dempsey Waites, et al. Assistant United States Attorney Segrest was also commended by Nancy Snyder, Director, Food Stamp Division, Food and Nutrition Service, Department of Agriculture, for his effective presentation on food stamp prosecutions at a training session for food stamp investigators in Kansas City.

Assistant United States Attorney Edward J. Lee, District of Massachusetts, has been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for the outstanding manner in which he handled the prosecution of Joseph DiCarlo and Ronald MacKenzie.

Assistant United States Attorney Samuel J. Behringer, Jr., Eastern District of Michigan, has been commended by Colonel Melvyn D. Remus, District Engineer, Corp of Engineers, Detroit, Michigan, for his fine efforts in the handling of a significant wetlands case, United States v. Riverside Bayview Homes, Inc., et al.

Assistant United States Attorney David P. Bancroft, Northern District of California, has been commended by United States Attorney James L. Browning, Jr., for his successful handling of the case United States v. Marilyn Jean Buck.

Assistant United States Attorney Terrance Smiljanich, Middle District of Florida, has been commended by Charles R. McConachie, Acting Chief, Consumer Affairs Section, Antitrust Division, for his successful prosecution of the case United States v. Southwestern Plasma Center, Inc.

Assistant United States Attorneys Daniel A. Brown and James A. Rattan, Southern District of Ohio, have been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for their professional prosecution of a complicated extortion case which was based on circumstantial evidence involving an explosive device placed on an airplane.

Assistant United States Attorney James Stotter, II, Central District of California, has been commended by John J. Corcoran, General Counsel, Veterans Administration, for his excellent performance in the case Drew O. Wiley, et al. v. United States.

Assistant United States Attorneys Patricia M. Hynes, Alan R. Kaufman, and Michael Devorkin, Southern District of New York, have been commended by Richard L. Thornburgh, former Assistant Attorney General, Criminal Division, for the successful prosecution of a complex land fraud case, United States v. Amrep Corporation, et al.

Assistant United States Attorney Barnee C. Baxter, Jr., Southern District of Georgia, has been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for his outstanding performance in the prosecution of persons charged with illegal gambling activities.

Assistant United States Attorney Craig R. McKay, Western District of Pennsylvania, has been commended by Rear Admiral W. E. Caldwell, U. S. Coast Guard Commander, Second Coast Guard District, for his competent representation and successful conclusion of a Coast Guard pollution enforcement case against Ohio Barge Line, Inc.

Assistant United States Attorney Sandra J. Wittman, Southern District of California, has been commended by Lieutenant Commander M. J. Oberle, Supply Corps, Navy Exchange Officer, United States Navy, for her successful prosecution of the case United States v. Zenaida Karstetter.

Assistant United States Attorney Jon K. Sargent, District of Kansas, has been commended by John Weiss, Deputy Regional Solicitor, U. S. Department of Labor, for his careful and thorough preparation and handling of the case United States v. Pinston-Hollar.

Assistant United States Attorney JoAnn Harris, Southern District of New York, has been commended by Michael J. Lonergan, Regional Director, U. S. Department of Agriculture, for her excellent work in the investigation, preparation and presentation of the Harold Lane Check Cashing, Inc. case

Assistant United States Attorney Tony White, Western District of Missouri, has been commended by Paul A. Zoss, United States Attorney, Southern District of Iowa, for his assistance in that district which led to the successful prosecution of a difficult bank robbery case, United States v. William Alan Johnston, et al.

Trial Attorney Ignazio J. Ruvalo, Torts Section, Civil Division, has been commended with the presentation of a plaque by the Director of the U. S. Marshals Service expressing their appreciation and gratitude for his efforts in successfully defending the U. S. Marshals Service in the case Garber v. United States.

POINTS TO REMEMBER

UTILIZATION OF FORM USA-181 (ED. 3-5-75)

On November 30, 1976, the Executive Office for U. S. Attorneys adopted an employee suggestion for use of a Case Assignment Slip, Form USA-181 (see reverse) as part of the case control system for U. S. Attorney offices.

This slip has been utilized in the U. S. Attorney's office for the Western District of Kentucky since December of 1972. They feel that the slip has helped to increase the operating efficiency of their case control system. We encourage adoption of this suggestion in your office providing that it has practical application. The slip may be used by the U. S. Attorney, a Supervisory Assistant U. S. Attorney, the Administrative Section, the docket room, the receptionist, or any other designated employee as a ready reference for case and matter assignments. By providing a copy of the slip to an appropriate member of your administrative staff, subsequent mail and calls may be referred expeditiously and directly to the assigned attorney. One copy of the slip should remain attached to the original incoming material.

Although not all U. S. Attorney offices will benefit from the use of this Case Assignment Slip, we feel that the larger offices will find the form to be an improved control device. Sufficient quantities of Form USA-181 are presently available through normal ordering procedures.

(Executive Office)

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OLD UNITED STATES ATTORNEYS' MANUALS

With the revised United States Attorneys' Manual now completed, you may dispose of the old United States Attorneys' Manual as you wish.

(Executive Office)

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Form USA-181 (Ed. 3-5-75)

Title	CASE ASSIGNMENT SLIP	Folder No.	L - O - P - BG	
				Date Opened:
			Date Closed:	

Assigned to (date)	
Reassigned to (date)	

Remarks:

Form USA-181 (Ed. 3-5-75)

Note: This is a multicolored snap-out type form.

U. S. ATTORNEY CORRESPONDENCE ADDRESSED TO THE CIVIL DIVISION

The Civil Division receives a large volume of correspondence from the United States Attorneys' offices. It would greatly expedite the processing of mail in the Civil Division if both the DJ file number and name of the legal section were referenced on all correspondence, copies of pleadings having no transmittal letter, and forms USA 200 which are forwarded to the Division.

Approximately ten months ago the General Litigation Section, Civil Division, adopted a new system in which a significant number of cases have been and will be delegated to United States Attorneys' offices for direct handling with assistance from the involved agency, and without specific involvement by the General Litigation Section except in unusual circumstances. Those cases are now delegated by a form letter (Form CIV-193) sent to the agency, with a copy to the United States Attorney.

Notwithstanding the advice in the delegation letter that, except for final orders or judgments, no copies are to be sent to the General Litigation Section, they continue to receive substantial amounts of material in these delegated cases. In order to reduce unnecessary work by your staff and to eliminate undue expense, the Civil Division suggests that you remind your staff that such materials need not be sent to them, except in those cases where it is believed that Civil Division involvement on a continuing basis is required.

(Civil Division)

* * *

CIVIL DIVISION
Assistant Attorney General Barbara Allen Babcock

Knable v. Wilson (___ F.2d ___, C.A.D.C, No. 75-1655, decided March 9, 1977). DJ 145-12-1729.

Class Actions.

Forty-one named plaintiffs, seeking damages totalling over two million dollars, brought suit against various federal officials as a result of the arrests outside the Department of Justice during the May Day demonstrations in 1971. The plaintiffs also moved for certification of the case as a class action. The district court entered an order denying such certification. Plaintiffs, without awaiting a final judgment, filed an appeal from that order. The court of appeals dismissed the appeal, accepting our argument that orders denying class action status are not "final" and, hence, not appealable under 28 U.S.C. 1291.

Attorneys: Robert E. Kopp (Civil Division),
FTS 739-3389; John K. Villa (formerly
of the Appellate Section).

Richerson v. Jones (___ F.2d ___, C.A. 3, No. 76-1385, decided March 7, 1977). DJ 170-62-40.

Civil Rights Act.

In this Civil Rights Act case, the district court awarded the plaintiff federal employee a retroactive promotion to a GS-12 position without a specific finding that he would have attained that position but for the discrimination. We appealed, contending that such a finding was necessary. The Third Circuit has accepted our position and remanded the case to the district court for the specific finding of what position the plaintiff would have been promoted to but for the discrimination.

Attorney: Donald Etra (Civil Division),
FTS 739-4785.

C. McChord Christie v. Garth Marston, et al. (___ F.2d ___,
C.A. 7, No. 76-1780, decided March 4, 1977). DJ 35-23-93.

Age Discrimination in Employment Act.

Christie, a 68-year old employee of the Federal Home Loan Bank Board with 30-years of federal service, filed suit against officers of the Board, claiming he had been discriminated against in his employment on the basis of age. In particular, he alleged that the Board was trying to force him to retire, although the mandatory age of retirement in federal service is

70. The Board, which represented the federal defendants in the district court, moved to dismiss the complaint on the ground that the Age Discrimination in Employment Act protects private employees only between the ages of 40 and 65, and that the 1974 amendments to the ADEA, which added a new section granting federal employees a cause of action based on age discrimination, should be read in tandem with the pre-existing 40-to-65 year age limitation. The district court accepted the Board's argument, which was supported by the Civil Service Commission, and dismissed the complaint. The Seventh Circuit has now reversed, holding that it would be illogical to deny the protection of the ADEA to federal employees between the ages of 65 and 70, in view of the fact that federal employees may not be mandatorily retired before age 70.

Attorney: Neil H. Koslowe (Civil Division),
FTS 739-5325.

CRIMINAL DIVISION
Assistant Attorney General Benjamin R. Civiletti

United States v. Monroe, ___ F.2d ___, No. 76-1881 (C.A. 9,
decided Feb. 22, 1977).

United States v. Eddy, ___ F.2d ___, No. 76-2338 (C.A. 9,
decided Dec. 22, 1976).

Controlled Substances Act

The republication of Schedules of Controlled Substances mandated by 21 U.S.C. 812 is satisfied by the annual publication of those schedules in the Code of Federal Regulations. The fact that a Federal Register item listing the schedules of controlled substances is not printed annually does not void the schedules. Indictments for Title 21 violations are not invalid on the grounds that no Schedule of Controlled Substances had been published annually.

Attorney: Charles L. Jaffee
Criminal Division
Narcotic and Dangerous
Drug Section
FTS 739-3971

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Peter R. Taft

Robinson v. Knebel (___ F.2d ___, C.A. 8, No. 76-1459,
decided March 2, 1977). DJ 90-1-4-922.

National Environmental Policy Act; Standing.

The court of appeals affirmed the district court's holding that an EIS prepared for a recreational lake by the Soil Conservation Service was adequate. The court found the treatment of alternatives reasonable and that the cost-benefit analysis was not required to be mathematically precise. The court rejected the argument that the landowners (whose land may be taken for the project and who alleged they were area hunters and would also suffer from project impact on farming operations) did not have standing to challenge the treatment of specific alternatives in the EIS.

Attorney: Robert A. Kerry (Land and Natural
Resources Division), FTS 739-2770.

United States v. Gilbert Hamel (___ F.2d ___, C.A. 6,
No. 76-1478, decided March 10, 1977). DJ 62-37-38.

Federal Water Pollution Act.

The court of appeals affirmed a jury verdict convicting Hamel of willfully discharging gasoline into navigable waters, in violation of Section 301 of the FWPCA. The court of appeals held that gasoline although not specifically listed, falls within the FWPCA's definition of "pollutant," and, hence, that its discharge without a permit violates Section 301. The court noted that the availability of prosecution under FWPCA Section 311 or the Refuse Act was immaterial since the Government is free to choose the statute under which it wishes to proceed. The court also rejected Hamel's attacks on the sufficiency of the evidence and the prosecutor's allegedly improper closing argument to the jury.

Attorney: Michael D. Graves (Land and Natural
Resources Division), FTS 739-4496.

United States v. William V. Haddon and Frank M. Dinsmore
(___ F.2d ___, C.A. 1, No. 76-1371, decided March 2,
1977). DJ 90-1-5-1279.

Quieting Title to Federally Condemned Land.

The court of appeals affirmed a decree which quieted the title of the United States to land acquired by condemnation in 1948, and which ordered the ejection of those occupying the land. The occupants, professing no notice of the condemnation, claimed under a 1965 municipal tax title but this was held insufficient to defeat the condemnor's title which, under 40 U.S.C. sec. 258a, vested upon filing of the declaration of taking.

Attorneys: Dorothy R. Burakreis and Dirk D. Snel
(Lands and Natural Resources Division),
FTS 739-2800 and 2769.