

United States Attorneys Bulletin



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UNITED STATES DEPARTMENT OF JUSTICE

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COMMENDATIONS

Assistant United States Attorney Cynthia A. Clark, Western District of Missouri, has been commended by Robert J. McCarthy, Special Agent, for her outstanding work in a case involving mail fraud, fraud by wire and interstate transportation of stolen property.

Assistant United States Attorneys Federick T. Davis and Mary Jo White, Southern District of New York, have been commended by Bill Moran, Regional Administrator of the Securities and Exchange Commission, for their success in prosecuting United States v. Ford.

Assistant United States Attorney Michael H. Dolinger, Southern District of New York, has been commended by David H. Stowe, Chairman, National Mediation Board (NMP), for his excellent handling of Trans World Airlines, Inc. v. NMP.

Assistant United States Attorney Michael A. Jones, Western District of Missouri, has been commended by Rolland N. Hughes, Special Agent, for his prosecution of a case involving narcotics possession.

Assistant United States Attorney Dale F. Kainski, Northern District of Ohio, has been commended by Joseph K. McLaughlin, Acting Associate Regional Counsel, Federal Aviation Administration, for his effective handling of Sandra Lee Dunn v. Prock Adams.

Assistant United States Attorney Gene C. Napier, Western District of Missouri, has been commended by John J. Foy, Chief, Criminal Investigation Division, Internal Revenue Service, for his outstanding work leading to a conviction of a Missouri police officer for filing false federal income tax returns.

Assistant United States Attorney Richard N. Stuckey, District of Colorado, has been commended by Theodore P. Rosack, Special Agent in Charge, Federal Bureau of Investigation, for the successful prosecution of a RICO/FPW/ITSP matter involving Paul R. Ervin, et al.

POINTS TO REMEMBER

CORRECTION -- UNITED STATES ATTORNEY APPOINTMENTS

John J. Daly, Jr., Middle District of Florida, was incorrectly listed in the December 8, 1978, issue of the Bulletin as being Presidentially-appointed. Mr. Daly was court-appointed. We apologize for the error.

(Executive Office)

* * *

AMENDMENT TO FEDERAL RULES OF EVIDENCE

On October 28, 1978, President Carter signed the "Privacy Protection for Rape Victims Act of 1978". The Act amends the Federal Rules of Evidence by adding Rule 412. This new rule sets restrictions on the introduction of evidence of the prior sexual behavior of a rape victim. Reputation or opinion evidence about a rape victim's prior sexual behavior is not admissible. Evidence of specific instances of a rape victim's prior sexual conduct is inadmissible except in three narrowly defined circumstances. If after an in camera hearing the trial judge determines one of the specified exceptions is applicable, the court must still find that the evidence is relevant and that its probative value outweighs the danger of unfair prejudice.

All motions to admit such evidence must be made not later than fifteen days before the date on which trial is scheduled to begin, except the court may allow the motion at a later date, if the court determines either that the evidence is newly discovered or that the issue to which such evidence relates has newly arisen in the case. The provisions of Rule 412 apply to trials beginning after November 27, 1978.

(Criminal Division)

* * *

EXECUTIVE OFFICE STAFF--DECEMBER, 1978

There have been a number of personnel changes within the Executive Office during the past months. This roster is to update and replace the last one printed in August, 1978. The following roster is provided for the convenience of those persons in the U.S. Attorneys' Offices who deal directly with Executive Office personnel. Copies of the roster should be made available to all such persons.

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DIRECTOR - William P. (Bill) Tyson (Acting) FTS 633-2121

DEPUTY DIRECTOR - William P. (Bill) Tyson 2123

Secretary to the Deputy Director - Maureen A. Braswell 2123
(Status of all attorney appointments)

Chief, Special Projects - Martha J. Dalby 4183
(Reports; handbooks; statistical profiles of U.S. Attorneys' Offices; coordination of Field Activities; U.S. Attorneys' Conferences; special assignments)

Staff Assistant - D. Glen Stafford 2074
(Pre-employment processing of Assistant U.S. Attorney applicants; Special Assistant U.S. Attorneys; conversions from Law Clerk to Assistant U.S. Attorney; Attorney Employment Review Committee Staff; EOUSA Title, USAM; special assignments)

Management Analyst - Linda J. Fleming 4183
(Handbooks; special reports; EOUSA Title, USAM; Department of Justice newspaper liaison; support for Attorney General's Advisory Committee of U.S. Attorneys; other special projects)

Clerk-Typist - Joyce T. Wood 4183
(U.S. Attorney Offices' statistics; clerical support for Attorney General's Advisory Committee of United States Attorneys and for Special Projects)

FIELD ACTIVITIES

Assistant Director - Ernest R. (Ernie) Bengtson 724-6688
Assistant Director - Edward H. (Ed) Funston 6688
(On-site consultation and assistance to U.S. Attorneys on all aspects of operations; special conferences on problem areas of litigation; Departmental program review)

Management Analyst - Patrick C. (Pat) McAloon 6688
(On-site consultation and assistance on all administrative aspects of operations; management training seminars)

Clerk-Typist - Vacant
(Clerical support for Field Activities)

LEGAL SERVICES

Assistant Director - Laurence S. (Larry) McWhorter 633-3276
(Supervision of all legal services, Attorney General's Advocacy Institute, United States Attorneys' Bulletin, United States Attorneys' Manual, JURIS services)

Secretary to the Asst. Director - Cynthia J. Robinson (Controlled Substance Unit reports; reports of subpoenas to newsmen)	3276
Attorney - Advisor - Leslie H. (Les) Rowe (Department Speedy Trial Coordinator; Freedom of Information and Privacy Acts; legislative inquiries; general legal services)	4024
Attorney - Donald (Don) Burkhalter (detailed to O.P.R.) (Freedom of Information and Privacy Acts; JURIS research; Congressional inquiries; citizen mail)	4024
Law Clerk - Sandra J. (Sandy) Manners (JURIS research, legal support for Legal Services)	4024
Legal Technician - Susan D. Gerzoff (Freedom of Information and Privacy Act files control, quarterly reports; clerical support for Legal Services)	4024
Clerk-Typist - Alice B. Evans (Freedom of Information Act Files, clerical support for Legal Services)	2123
Paralegal - Maureen DeMaio (Editor-U.S. Attorneys' Bulletin and U.S. Attorneys' Manual)	2080
Clerk-Typist - Toni L. Coleman (Clerical support for Bulletin and Manual)	2080
Attorney General's Advocacy Institute	
Administrator - Vacant (Institute training courses; cassette lending library)	
Assistant Administrator - Mary Reed (Institute training courses)	4104
Paralegal Specialist - Susan M. Novotny (Research assistance for Institute training courses)	4104
Clerk-Typist - Mary F. Park (Institute contact point; clerical support for Advocacy Institute)	4104
Clerk-Typist - Valanna Schoeneman (Clerical support for Advocacy Institute)	4104
Staff Assistant - Doris F. Johnson (Fiscal operations; requests for training; course administration)	4022

Clerk-Typist - Dianna Ingram
(Training requests; cassette lending library;
clerical support for Advocacy Institute)

4022

ADMINISTRATIVE SERVICES

Assistant Director - Francis X. (Frank) Mallgrave
(Administrative activities)

3982

Clerk-Typist - Marie R. Reaves
(Clerical support for Administrative services)

3982

ADP Administrator - Patricia D. (Pat) Goodrich
(Review of requests for automated data processing
(ADP) services, systems and equipment; analysis of
management information needs; development of case
weights)

3982

Office Services Manager - L. Carol Sloan
(Office furnishings, equipment (purchase and rental);
libraries; printing; cleaning, repair services; records
disposal; shipment (government bills of lading);
consultation on office moves, word processing centers)

3982

Financial Manager - Edward A. (Ed) Moyer
(Budget; overtime and travel allocation; litigative
reports)

3982

Accounting Clerk - M. Joanne Beckwith
(Financial reports)

3982

Staff Assistant - Virginia L. (Gini) Trotti
(Litigative expenses; foreign travel; relocation;
temporary support positions; certifying officers;
health unit participation)

3982

Space Management Officer - Richard L. (Dick) Kidwell
(Space assignment, alterations, use, building services;
telephone service; physical security; safety and
accident reports)

4663

Space Management Specialist - Stephanie W. (Stevie) Persico
(Space layouts; work authorizations; general space
management services; status of requests for equipment,
furnishings, books, printing, and other services)

4663

Clerk-Typist, Space - Lois P. Williams
(Clerical support for Space Management)

4663

Personnel Officer - Daniel W. (Dan) Gluck
(General supervision of personnel activities)

4251

Personnel Management Specialist - Eileen S. Menton (Classification and compensation; non-attorney training courses; position management; personnel security clearances for classified material; Whitten review, Factor Evaluation System; Fair Labor Standards Act; performance evaluations; student programs; Schedule C employees; reductions-in-force)	3758
Personnel Management Specialist - Carrie G. Kelly (Employee relations and benefits; equal employment opportunity; labor-management relations; occupational health; discipline; adverse action; grievances; leave policy; awards; suggestions)	3758
Clerk-Typist - Rosemary T. Dziedzic (Appointment certificates; clerical support for Personnel Management Specialists)	3758
Personnel Management Specialist - Sally S. Ruble	4251
Personnel Clerk - Scarlitt A. Proctor (Personnel actions for Category I districts - see attached listing)	4251
Personnel Management Specialist - Carrie M. Washington	4641
Personnel Clerk - A. Vanessa Frazier (Personnel actions for Category II districts - see attached listing)	4641
Personnel Management Specialist - Anita M. Davis	4641
Personnel Clerk - Debra J. (Debi) Cleary (Personnel actions for Category III districts - see attached listing)	4641
Personnel Management Specialist - Melinda P. Bell	4251
Personnel Clerk - Patricia C. (Pattie) Poore (Personnel actions for Category IV districts - see attached listing)	4251
Personnel Assistant - Gloria J. Allen (Supervision of and technical assistance to the personnel clerks; basic staffing and classification)	3758

CATEGORY

I	II	III	IV
<u>DISTRICTS</u>	<u>DISTRICTS</u>	<u>DISTRICTS</u>	<u>DISTRICTS</u>
Connecticut	Canal Zone	Alabama N.	Arkansas E.
Delaware	Colorado	Alabama M.	Arkansas W.
Indiana N.	Guam	Alabama S.	District of Columbia
Indiana S.	Hawaii	Alaska	Florida N.
Maine	Idaho	Arizona	Florida M.
Massachusetts	Illinois N.	California N.	Florida S.
Michigan E.	Illinois E.	California C.	Georgia N.
Michigan W.	Illinois S.	California S.	Georgia M.
Minnesota	Iowa N.	California E.	Georgia S.
New Hampshire	Iowa S.	Mississippi N.	Kentucky E.
New York N.	Kansas	Mississippi S.	Kentucky W.
New York E.	Louisiana F.	New Jersey	Maryland
New York S.	Louisiana M.	New Mexico	North Carolina E.
New York W.	Louisiana W.	Oregon	North Carolina M.
North Dakota	FCUSA	Texas N.	North Carolina W.
Ohio N.	Missouri E.	Texas F.	Puerto Rico
Ohio S.	Missouri W.	Texas S.	South Carolina
Pennsylvania E.	Montana	Texas W.	Tennessee E.
Pennsylvania M.	Nebraska	Washington E.	Tennessee M.
Pennsylvania W.	Nevada	Washington W.	Tennessee W.
Rhode Island	Oklahoma N.		Virginia E.
Vermont	Oklahoma E.		Virginia W.
Wisconsin E.	Oklahoma W.		Virgin Island
Wisconsin W.	South Dakota		West Virginia N.
Wyoming	Utah		West Virginia S.

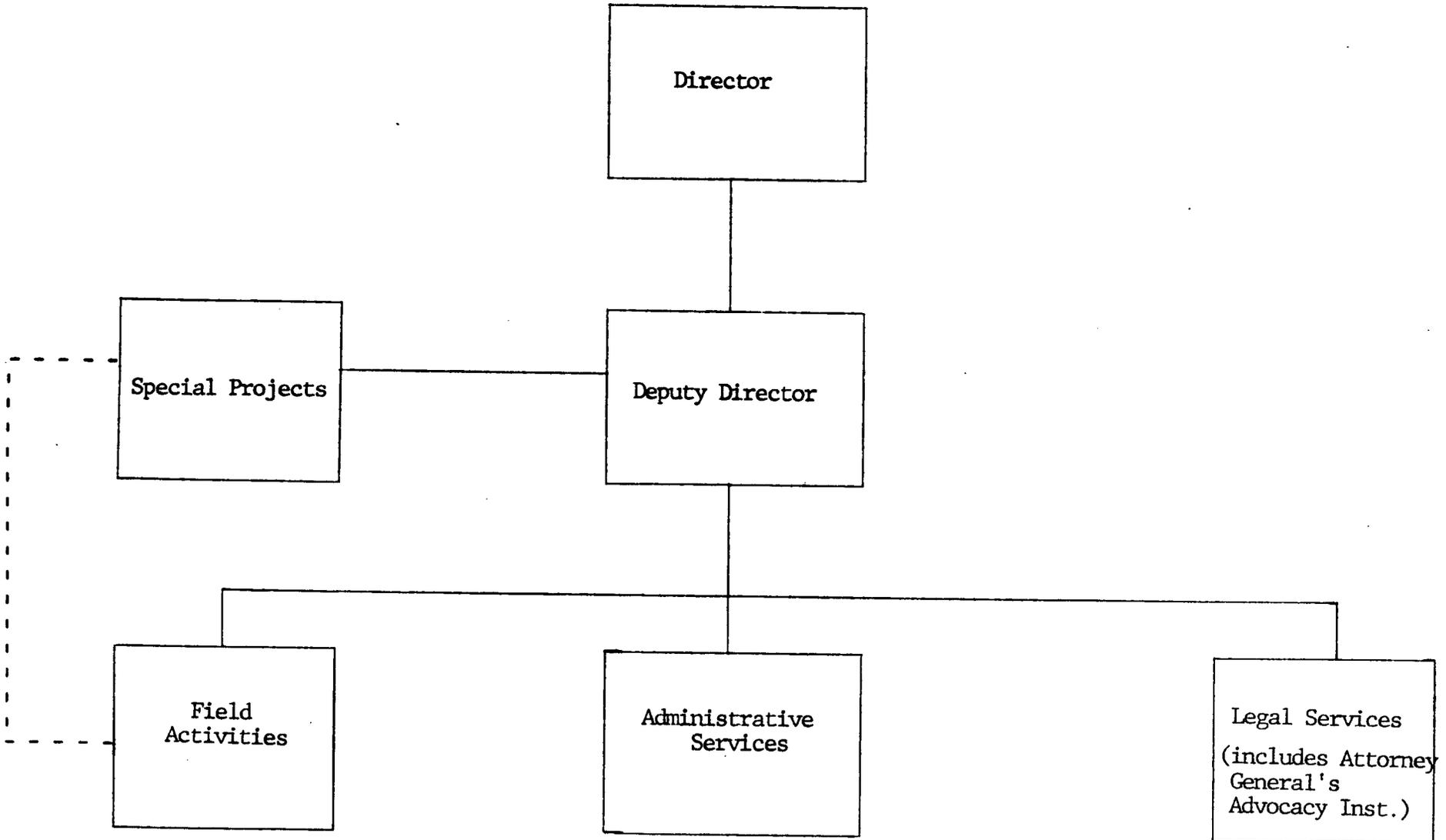
I Sally - Scarlitt

II Carrie - Vanessa

III Anita - Debi

IV Melinda - Patty

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS



CIVIL DIVISION
Assistant Attorney General Barbara Allen Babcock

Conway v. Harris, No. 78-1473 (7th Cir., November 13, 1978)
DJ 145-17-1761

Uniform Relocation Act; Section 8 Subsidies

Plaintiff was forced to move after a private developer exercised an option to acquire the apartment building in which she resided. By previous arrangement with HUD, the private developer demolished the building and created a new apartment building which would receive HUD rent subsidies for qualified low income tenants under the Section 8 program. The Seventh Circuit, affirming the district court, has ruled that the Uniform Relocation Act does not apply to persons, such as plaintiff, displaced as a result of direct rent subsidies to private sponsors. The decision is in conformity with other court of appeals' cases recognizing the inapplicability of the URA when there is no governmental real property acquisition. However, this case, styled as a nation-wide class action, was the only proceeding raising this issue with respect to the Section 8 program. Since other rent assistance programs are being phased out and Section 8 has come to predominate, this case has a special significance for HUD.

Attorney: Bruce Forrest (Civil Division)
FTS 633-3445

Cook v. Arentzen, No. 76-1359 (4th Cir., September 19, 1978)
DJ 145-6-1298

Reinstatement and Back Pay; Court of Claims'
Exclusive Jurisdiction

A former Navy officer sought reinstatement and approximately \$84,000 in back pay on the ground that she was unconstitutionally forced to resign her commission due to her pregnancy. The district court ruled for the government on the merits. The Fourth Circuit, after indicating in an initial opinion its disagreement with the district court on the merits, ruled on rehearing that the district court lacked jurisdiction to consider the reinstatement and back pay claims. The court of appeals reaffirmed the principle that, where a reinstatement claim or a claim for declaratory relief is combined with a monetary claim for over \$10,000, the case must be brought in the Court of Claims under the Tucker Act. The case was ordered transferred to the Court of Claims pursuant to 28 U.S.C. 1406(c).

Attorney: Roger T. Williams (Assistant U.S. Attorney)
FTS 939-6331

Daniels v. Kieser, No. 78-1648 (7th Cir., November 7, 1978)
DJ 145-0-857

Prosecutorial Immunity; Attendance of Witnesses

An Assistant United States Attorney was accused in this civil damage suit of maligning a government witness in a criminal case, who as a result of the prosecutor's allegedly false representations, ultimately was arrested and briefly imprisoned for evading a subpoena. The criminal trial had already begun at the time of the prosecutor's allegedly wrongful act. The district court declined to apply the rule of absolute prosecutorial immunity. The Seventh Circuit reversed. The court reaffirmed the rule, recently restated in Butz v. Economou, that absolute immunity shields prosecutors from money damage liability arising out of their participation in the judicial process. An effort to compel the attendance of a government witness at trial was held covered by this absolute immunity, and not to be the type of "investigative" or "administrative" functions to which a qualified immunity may apply.

Attorney: Nancy K. Needles (Assistant United
States Attorney)
FTS 353-7846

State of South Dakota v. Adams, No. 78-1199 (8th Cir., November 29, 1978) DJ 145-18-538

Highway Beautification Act; Outdoor Advertising

The Secretary of Transportation made a preliminary determination that South Dakota had failed to exercise "effective control" of billboards as required by the Highway Beautification Act. Pending a full administrative hearing, the Secretary temporarily reserved ten percent of the State's Federal-aid Highway apportionment. The State then brought this action to enjoin the reservation, contending that the Act authorizes the Secretary to withhold highway funds only after a hearing and final determination. The Eighth Circuit, accepting our argument and affirming the district court, has held that the Secretary's interim withholding properly preserves the status quo pending the outcome of the administrative process and is within his broad implied powers to administer the Act.

Attorney: Susan Chalker (Civil Division)
FTS 633-4795

Wright v. Califano, Nos. 8-1174, 78-1175 (7th Cir., November 10, 1978) DJ 137-23-570;

Blankenship v. Secretary of HEW, No. 76-2342 (6th Cir., November 24, 1978) DJ 181-31-13

Social Security; Promptness of Hearings

The district court in Wright ordered the Social Security Administration to either provide hearings on Old Age and Survivors claims within specified time frames or make interim payments of benefits to claimants. The Seventh Circuit, departing from First and Second Circuit decisions upholding similar district court orders, has reversed. The court of appeals ruled that, under the Social Security Act and Administrative Procedure Act, the reasonableness of hearing delays must be assessed in light of the agency's resources. Congress has been monitoring the problem, and has not seen fit to impose specific time schedules nor to give the agency sufficient resources to end the delays. This suggested to the Court that the delays violated no statutory requirement. The Court also declined to require specific time limits as a matter of constitutional law since the agency had good faith and unarbitrary reasons (i.e., severely limited resources) for being unable to provide more prompt hearings.

The Sixth Circuit in Blankenship also vacated a district court order imposing specific hearing time limits on the Social Security Administration. That case, however, held the hearing delays to be statutory invalid, and disagreed merely with the district court's remedy. The court of appeals, rather than ordering specific time limits, required a nationwide rulemaking proceeding. We are considering whether to seek rehearing.

Attorney: John Cordes (Civil Division)
FTS 633-3426

DECEMBER 22, 1978

CIVIL RIGHTS DIVISION
Assistant Attorney General Drew S. Days, III

Junior College District of St. Louis v. Califano, No. 78-0319C(3) 78-1830 (4th Cir. Nov. 17, 1978) DJ 169-42-66

Title IX of the Education Amendments of 1972

On November 17, 1978, we filed a notice of appeal in the above-styled case. The issue on appeal is whether the district court erred in declaring that HEW is not authorized by Title IX of the Education Amendments of 1972 to issue regulations prohibiting sex discrimination in the employment practices of educational institutions receiving federal financial assistance and, hence, declaring those regulations invalid and void. This will be our fifth appeal on this issue from adverse district court decisions.

Attorney: Marie Klimesz (Civil Rights Division)
FTS 633-4126

United States v. Broussard d/b/a E & L Restaurant and Lounge, C.A. No. DJ 167-75-187

Title II

On November 17, 1978, we mailed to the United States Attorney for the Eastern District of Texas, a signed complaint in the above-captioned case. The complaint alleges that the defendant follows a pattern and practice of denying to Negroes, on the basis of their race, the use and enjoyment of the E & L Restaurant and Lounge and prays for injunctive relief. This is one of the first cases to be filed and tried by the United States Attorney pursuant to the transfer of responsibility for the enforcement of Title II to the United States Attorney.

Attorney: Lisbon Berry (Civil Rights Division)
FTS 633-4761

Firefighters Institute for Racial Equality and United States v. City of St. Louis, 549 F. 2d 506 (8th Cir. 1977)
DJ 170-42-33

Title VII

On November 29, 1978, the Eighth Circuit issued its latest decision in the above-captioned case. In a prior decision, the Eighth Circuit had held that a test for fire captain administered by the defendants in 1974 had a racial discriminatory impact on blacks and was not job related. In

its most recent decision the Eighth Circuit ruled, post-Bakke, that the use by the defendants of the test, which the Court held was unlawful, justified preferential promotional relief for blacks. It directed the district court to: (1) order the immediate promotion to fire captain of those 12 black firefighters who had passed the 1974 exam, if they otherwise still qualified; (2) in its discretion, also order the promotion of an equivalent number of whites who had passed the 1974 exam; and (3) order assignments to acting fire captain positions to be made on a 50 percent black-white ratio, as far as is practicable, pending development of a valid test.

Attorney: Gerald F. George (Civil Rights Division)
FTS 633-4134

Dallas A.C.O.R.N., et al, v. First Federal Savings and Loan Association of Dallas, C.A. 3-77-1342C (N.D. Tex.)
DJ 175-67-100

Redlining

During its recent exploratory trip to the Southwest, the Hispanic Task Force of the Housing and Credit Section discovered a private redlining suit. In this case an organization representing persons living in racially integrated areas alleged, inter alia, that the third largest lender in the Dallas area does not make mortgage or home improvement loans in certain Dallas neighborhoods containing high concentrations of minority residents. On November 20, 1978, we filed an amicus brief arguing that A.C.O.R.N. and an individual plaintiff had standing to bring suit.

Attorneys: Walter Gorman (Civil Rights Division)
FTS 724-7396
Terry Milton (Civil Rights Division)
FTS 724-7436

Garrity v. Thomson, C.A. No. 78-116 (November 29, 1978)
DJ 168-47-1

Conditions of Confinement

On November 30, 1978, District Judge Shane Devine granted our motion to intervene in the above-captioned case. This case challenged conditions of confinement at Laconia State School. Laconia is New Hampshire's institution for retarded persons. Our Complaint in Intervention alleges that residents suffer from neglect and abuse and that, in addition, many of the residents are capable of receiving services in smaller, less restrictive settings. Although our authority to initiate suits of this type is not clear, we were able to

distinguish the court's holding in United States v. Solomon because that holding does not control in the context of intervention, where Rule 24(b) provides the necessary authority. We had originally proposed participating as amicus, but were encouraged to seek intervention in view of the interest of the United States Attorney.

Attorneys: Roy Haber (Civil Rights Division)
FTS 633-3422
Len Rieser (Civil Rights Division)
FTS 633-3478
Steve Whinston (Civil Rights Division)

City of Dallas, Texas v. United States of America, et al,
C.A. No. 78-1666 (D.D.C., December 1, 1978) DJ 166-73-13

Section 5 of the Voting Rights Act

On December 1, 1978, a motion to intervene was filed by seven Mexican-American citizens of Dallas Texas, in the above-captioned case. This is a declaratory judgment action in which the City of Dallas is seeking preclearance of a proposed method of electing city council members by a plan combining eight single member districts with three at-large seats. The plaintiffs submitted this plan to the district court after the Supreme Court in Wise v. Lipscomb remanded the case for determination of the Section 5 issue, since the State of Texas was not covered under Section 5 when Wise v. Lipscomb was first filed.

Attorneys: Carmen Jones (Civil Rights Division)
Robert Rodrigues (Civil Rights Division)
FTS 633-3727

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General James W. Moorman

Save the Bay, Inc. v. United States Corps of Engineers, _____
F.2d _____, No. 78-1310 (5th Cir., November 14, 1978)
DJ 90-5-1-1-808

Jurisdiction

The court of appeals, in a decision not for publication, dismissed this appeal for lack of jurisdiction. In this action involving the discharge of pollutants into Bay St. Louis, Mississippi, all of the parties had consented to entry of final judgment by the magistrate. The court held that even with the consent of the parties, magistrates cannot enter final judgment. The district court may now enter a final judgment which will be appealable.

Attorneys: Nancy B. Firestone and Dirk D.
Snel (Land and Natural Resources
Division) FTS 633-2757/2769

DCRLA v. Eleven Parcels of Land (Neumann), _____ F.2d _____
No. 77-1966 (D.C. Cir., November 9, 1978) DJ 33-9-734-11

Condemnation

In this appeal from an order of distribution of condemnation proceeds, the D.C. Circuit affirmed the reimbursement of DCRLA, the condemning authority, for sums it expended paying a demolition tax assessment imposed, prior to taking, by the District of Columbia. The court held that the assessment had a priority claim to the fund created by the condemnation award, and that the DCRLA was properly subrogated to the District of Columbia's claim to the assessment and the interest accrued on the assessment prior to payment by the DCRLA.

Attorneys: Anne S. Almy and Carl Strass
(Land and Natural Resources
Division) FTS 633-2855/5037

United States v. 91.90 Acres in Monroe County, Mo. (Walsh Refractories Corp.), _____ F.2d _____ No. 77-1944 (8th Cir. November 6, 1978) DJ 33-26-482-458

Condemnation

The Eighth Circuit reversed a judgment on a jury verdict for the landowner, a clay refractory company. The court agreed that in a partial taking, "severance damages" are not separate items of value, but are automatically part of the before-and-after difference in the value of the property. While a mineral deposit (clay on the remainder parcel, in this instance) may affect the property value, it is impermissible to multiply the mineral deposit as tonnage in place times unit price. According to the Eighth Circuit, the inadmissible evidence of consequential damage, the speculative mineral valuation, and the lack of cautionary instructions, constituted plain error by the district court, requiring a new trial.

Attorneys: Maryann Walsh and Carl Strass
(Land and Natural Resources
Division) FTS 633-5053/5037

United States v. Chevron Oil Co., _____ F.2d _____ No. 76-4083
(5th Cir. November 16, 1978) DJ 62-32-189

Federal Water Pollution Control Act

A Chevron oil well had malfunctioned and spilled 1/2 to 1 barrell of crude oil into Lake Salvadore, La. The company reported the spill and was able to clean up about half of it. The Government sought a civil penalty under Section 311 of the Water Act. An administrative hearing was held, at which the company put on an expert witness who testified that the spill would be totally unharful. The Government did not put on witnesses. Eventually, the Government brought this action to collect the administratively determined penalty, \$1,000. The district court granted summary judgment for the Government. The Fifth Circuit reversed. It held that the statute requires a spill of harmful quantities, and in the present case all the evidence indicated that the spilled quantity was not harmful. It stated that the "sheen test" was a useful test, but in the context of civil penalties it created only a rebuttable presumption of harm. The court's holding did not reach criminal cases for failure to report a spill, but the court

indicated that an irrebutable presumption might be appropriate in those cases.

Attorneys: Edward J. Shawaker and Robert L.
Klarquist (Land and Natural
Resources Division) FTS 633-2813/
2731

Klugh v. United States, _____ F.2d _____ No. 77-1687 (4th Cir.
November 17, 1978) DJ 90-1-23-1802

Quiet Title

The district court refused to reopen at the behest of heirs of an 1881 will, condemnation actions completed in the Thirties; the district court agreed that title was vested in the heirs at the time of the condemnation action and that service and consent (required by applicable law) were proper. A divided court of appeals reversed. The majority bypassed our statute of limitations and federal statutory construction issues and enthusiastically construed the will under South Carolina law as precluding the vesting of fee title until 1988.

Attorneys: Carl Strass and Edmund B. Clark
(Land and Natural Resources
Division) FTS 633-5037/2977

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 32(c)(3). Sentence and Judgment. Presentence Investigation. Disclosure.

The defendant pleaded guilty to two counts of violating federal narcotic laws. On appeal he contended that the district court judge violated Rule 32(c)(3) by not permitting him to review a summary of undisclosed portions of his presentence report. The Court of Appeals disagreed. According to the Court, Rule 32(c)(3) clearly contemplates that a defendant, who fails to follow its express requirements, waives his right to a summary of the undisclosed information, as well as the opportunity to rebut that information. Defense counsel's informal request to defendant's probation officer for the report, cannot be considered tantamount to a formal request made to a Federal judge.

(Affirmed.)

United States v. Ricardo Perez Ruiz, ___ F.2d ___, No. 78-1166 (5th Cir., September 15, 1978).

FEDERAL RULES OF EVIDENCE

Rule 611(a). Mode and Order of Interrogation and Presentation. Control by Court.

Rule 615. Exclusion of Witnesses.

The Government petitioned for a writ of mandamus to vacate the district court's ruling rejecting the Government's designation of a federal agent, who had been actively involved in the investigation, as its representative under exception (2) of Rule 615. This exception provides that where a court has given a witness exclusion order, that "an officer or employee of a party which is not a natural person [who is] designated as its representative" can not be excluded from hearing the testimony of other witnesses. Although Rule 615 does not expressly provide that a Government investigative agent planning to testify at trial can also be the designated representative for the purpose of exception (2), the Court of Appeals felt the legislative history of the rule clearly supported such a construction. The Court added that if the district judge believed the defendants, he could exercise his discretion under Rule 611(a) and require the Government to present the agent's substantive testimony at an early stage of the proceedings. Judge Fay, while concurring in the result, found it contrary to the policy expressed in Rule 615 to allow the district judge to require the government's designated representative to testify at any given time in the proceedings.

(Petition granted.)

In re United States, ___ F.2d ___, No. 78-3299 (5th Cir., November 2, 1978).

FEDERAL RULES OF EVIDENCE

Rule 615. Exclusion of Witnesses.

See Rule 611(a), this issue of the Bulletin for syllabus.

In re United States, ___ F.2d ___, No. 78-3299 (5th Cir., November 2, 1978).

ADDENDUM

UNITED STATES ATTORNEYS' MANUAL--BLUESHEETS

The following Bluesheets have been sent to press in accordance with 1-1.550 since the last issue of the Bulletin.

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
11-27-78	4-1.200	Responsibilities of the Assistant Attorney General for the Criminal Division
11-27-78	4-4.240	Attorney Fees in FOI and Privacy Act Suits
11-27-78	4-12.250	Priority of Liens (2410 Cases)
11-27-78	4-13.335	New USAM 4-13.335 Discussing "Energy Cases"

(Executive Office)

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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
2	1	6/25/76	7/04/76	Ch. 1 to 4
	2	8/11/76	7/04/76	Index
3	1	7/23/76	7/30/76	Ch. 1 to 7
	2	11/19/76	7/30/76	Index
4	1	1/03/77	1/03/77	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
6	1	3/31/77	1/19/77	Ch. 1 to 6
	2	4/26/77	1/19/77	Index
7	1	11/18/77	11/22/76	Ch. 1 to 6
	2	3/16/77	11/22/76	Index
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
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, 77, 78, 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
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, 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	8/2/78	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

*Transmittal to be distributed to Manual Holders soon.

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