

United States Attorneys Bulletin



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TABLE OF CONTENTS

	<u>Page</u>
FROM THE EXECUTIVE OFFICE	
CLEARINGHOUSE	4
Court Opinion Summaries	437
COMMENDATIONS	439
POINTS TO REMEMBER	
Processing Judgments Against The United States	441
CASENOTES	
Civil Division	
Social Security Act: Supreme Court Upholds Constitutionality Of Restriction Of Mother's Insurance Benefits To Widows And Divorced Wives <u>Califano v. Boles</u>	443
Second Circuit Holds FTCA Remedy Does Not Preclude Bivens Action <u>Nelson Hernandez v. C. Lattimore,</u> <u>et. al.</u>	443
Government Procurement Contracts: Seventh Circuit Upholds Comptroller General's Right Of Access To Records Of Contractor <u>United States v. Abbott Laboratories</u>	444
Federal Tort Claims Act: Ninth Circuit Rules That Feres Bar Pre- cludes Suit For Wrongful Death Of Serviceman Even Though Alleged Tort- feasor Was Civilian Employee Of FAA <u>Uptegrove v. United States</u>	444
Civil Rights Division	
Education for All Handicapped Children Act <u>Armstrong v. Kline</u>	447
Section 5 of the Voting Rights Act <u>United States v. County Council of</u> <u>Charleston County</u>	447
Section 504 of the Rehabilitation Act <u>Halderman v. Pennhurst</u>	448
In-Cell Segregation <u>Stewart v. Rhodes</u>	448

	<u>Page</u>
Land and Natural Resources Division	
Indians	
<u>Washington v. Washington Commercial</u> <u>Passenger Fishing Vessel Assn.</u>	449
Indians	
<u>Chloe Whiskers v. United States</u>	449
Condemnation	
<u>Washington Metropolitan Area Transit</u> <u>Authority v. Goldman</u>	450
Indians	
<u>Maine v. Dana and Sockabasin</u>	450
APPENDIX: FEDERAL RULES OF EVIDENCE	
This page should be placed on permanent file, by Rule, in each United States Attorney's office library.	451
FEDERAL RULES OF CRIMINAL PROCEDURE	
This page should be placed on permanent file, by Rule, in each United States Attorney's office library.	453
Citations for the slip opinions are available on FTS 724-6933.	
ADDENDUM: U.S. ATTORNEYS' MANUAL--BLUESHEETS	455
U.S. ATTORNEYS' MANUAL--TRANSMITTALS	456

EXECUTIVE OFFICE STAFF - August, 1979

The following Executive Office roster reflects a number of recent personnel changes. Copies of this roster should be made available to all persons in the U.S. Attorneys' Offices who deal directly with Executive Office personnel.

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

DEPUTY DIRECTOR - William P. (Bill) Tyson 2123

Secretary to the Deputy Director - Patty L. Hartman 2123

Executive Assistant - Martha J. Dalby 4183
(Reports; coordination of Field Activities; statistical summaries, U.S. Attorneys' Offices; U.S. Attorneys' Conferences; sensitive personnel matters; special assignments)

Management Analyst - Linda J. Fleming 3974
(Handbooks; reports; EOUSA Title, USAM; Department of Justice newspaper liaison; support for Attorney General's Advisory Committee of United States Attorneys; other special projects)

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

Staff Assistant - D. Glen Stafford 2074
(Pre-employment processing of Assistant U.S. Attorney applicants; Special Assistant U.S. Attorneys; Law Clerk-AUSA conversions; Employment Review Committee Staff; status of attorney appointments)

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)

U.S. TRUSTEES PILOT PROGRAM

Attorney-Advisor - Donald (Don) Burkhalter 7562
(U.S. Trustees Pilot Program)

Management Analyst - Patrick C. (Pat) McAloon 6688
(Temporarily assigned to U.S. Trustees Pilot Program)

Administrative Officer - Charles A. (Chuck) Marlow 6688
(U.S. Trustees Pilot Program)

Clerk-Typist - Anne C. Simione 6688
(Clerical support for U.S. Trustees Pilot Program)

LEGAL SERVICES

ASSISTANT DIRECTOR - Laurence S. (Larry) McWhorter 633-3276
 (Supervision of all legal services, United States Attorneys' Bulletin, United States Attorneys' Manual, JURIS services; U.S. Trustees Pilot Program)

Secretary to the Assistant Director - Cynthia J. Robinson 3276
 (Controlled Substances Unit reports; reports of subpoenas to newsmen)

Attorney-Advisor - Leslie H. (Les) Rowe 4024
 (Department Speedy Trial Coordinator; Freedom of Information and Privacy Acts; legislative inquiries; general legal services)

Attorney - Susan A. (Sue) Nellor 4024
 (Freedom of Information and Privacy Acts; general legal services)

Law Clerk - Sandra J. (Sandy) Manners 4024
 (JURIS research, legal support for Legal Services)

Legal Technician - Susan D. Gerzoff 4024
 (Freedom of Information Act files control, quarterly reports; clerical support for Legal Services)

Clerk-Typist - Alice B. Evans 4024
 (Freedom of Information Act files, clerical support of Legal Services)

Clerk-Typist - Patricia C. (Pattie) Poore 4024
 (Freedom of Information Act files, clerical support of Legal Services)

Paralegal - Deirdre M. Forrest 2080
 (Editor-United States Attorneys' Bulletin and United States Attorneys' Manual)

Clerk-Typist - Vacant 2080
 (Clerical support for Bulletin and Manual)

ATTORNEY GENERAL'S ADVOCACY INSTITUTE

ACTING DIRECTOR - Richard E. Carter 4104
 (Institute training courses)

Acting Assistant Director - Mary Reed 4104
 (Institute training courses)

Paralegal Specialist - Maureen DeMaio 4104
 (Research assistance for Institute training courses; cassette lending library)

Clerk-Typist - ValAnna Schoeneman (Institute contact point; clerical support for Advocacy Institute)	633-4104
Clerk-Typist - Kathy L. Shoop (Clerical support for Advocacy Institute)	4104
Staff Assistant - Doris F. Johnson (Fiscal operations; requests for training; course administration)	4104
Clerk-Typist - Dianna Ingram (Training requests; cassette lending library; clerical support for Advocacy Institute)	4104
<u>ADMINISTRATIVE SERVICES</u>	
ASSISTANT DIRECTOR - Francis X. (Frank) Mallgrave (Administrative activities)	3982
Staff Assistant - Janine LaBastille (Litigative expenses; foreign travel; relocation; temporary support positions; certifying officers; health unit participation; general clerical support)	3982
Clerk-Typist - Gerri Rodkey (Clerical support for Administrative Services)	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)	4663
Clerk-Typist - Kathy A. Rafferty (Clerical support for Space Management; System 6 applications)	4663
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
Office Services Specialist - Virginia L. (Gini) Trotti (Support for Office Services; status of requests for equipment, furnishings, books, printing, and other services; System 6 applications)	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

Financial Manager - Edward A. (Ed) Moyer (Budget; overtime and travel allocation; litigative reports)	633-3982
Budget Analyst - M. Joanne Beckwith (Budget preparation and execution; financial reports)	3982
Personnel Officer - Daniel W. (Dan) Gluck (General supervision of personnel activities)	4458
Personnel Management Specialist - Eileen S. Menton (Classification and compensation; non-attorney training courses; position management; Whitten review, Factor Evaluation System; Fair Labor Standards Act; performance evaluations; student programs; Schedule C employees; reductions-in-force)	4458
Personnel Management Specialist - Vacant (Employee relations and benefits; equal employment opportunity; labor-management relations; occupational health; discipline; adverse action; grievances; leave policy; awards; suggestions; personnel security; clearances for classified material)	4458
Clerk-Typist - Jane Clancy (Appointment certificates; clerical support for Personnel Management Specialists)	4458
Personnel Management Specialist - Sally S. Ruble	4461
Personnel Clerk - Larry F. Wells (Personnel actions for Category I districts - see attached listing)	4461
Personnel Management Specialist - Carrie M. Washington	4461
Personnel Clerk - G. Cassandra Wages (Personnel actions for Category II districts - see attached listing)	4461
Personnel Management Specialist - Vacant	4461
Personnel Clerk - A. Vanessa Frazier (Personnel actions for Category III districts - see attached listing)	4461
Personnel Management Specialist - Melinda P. Bell	4461
Personnel Clerk - Scarlitt A. Proctor (Personnel actions for Category IV districts - see attached listing)	4461
Personnel Assistant - Gloria J. Allen (Supervision of and technical assistance to the personnel clerks; basic staffing and classification)	4461

CATEGORY

<u>I</u> <u>DISTRICTS</u>	<u>II</u> <u>DISTRICTS</u>	<u>III</u> <u>DISTRICTS</u>	<u>IV</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 C.	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 E.	EOUSA	Maryland
New York S.	Louisiana M.	New Jersey	North Carolina E.
New York W.	Louisiana W.	New Mexico	North Carolina M.
North Dakota	Missouri E.	Oregon	North Carolina W.
Ohio N.	Missouri W.	Washington E.	Puerto Rico
Ohio S.	Montana	Washington W.	South Carolina
Pennsylvania E.	Nebraska		Tennessee E.
Pennsylvania M.	Nevada		Tennessee M.
Pennsylvania W.	Oklahoma N.		Tennessee W.
Rhode Island	Oklahoma E.		Virginia E.
Vermont	Oklahoma W.		Virginia W.
Wisconsin E.	South Dakota		Virgin Islands
Wisconsin W.	Utah		West Virginia N.
Wyoming	Texas N.		West Virginia S.
	Texas E.		
	Texas S.		
	Texas W.		

I Sally - Larry

II Carrie - Cassandra

III Anita - Vanessa

IV Melinda - Scarlitt

CLEARINGHOUSECOURT OPINION SUMMARIES

We have been advised that the Ninth Circuit Appellate Division has developed a system of preparing summaries of recent court opinions and sharing them with the U. S. Attorneys' Offices in that circuit. Questions may be directed to Kathyne Stoltz, Assistant U.S. Attorney, Central District of California on FTS 798-3036.

COMMENDATIONS

Assistant United States Attorney RICK ANDERSON, District of Montana, has been commended by Drug Enforcement Administration Regional Director Jerry N. Jenson, for his successful prosecution of a complex case involving the importation of a quantity of cocaine from Ecuador for distribution in Montana involving numerous witnesses and numerous items of evidence.

Special Assistant United States Attorney for the District of Canal Zone, EDWARD H. FUNSTON, has been commended by Frank J. Violanti, United States Attorney, District of Canal Zone for his diligent and skillful efforts in Government of the Canal Zone v. Robert Thrush.

Assistant United States Attorney FREDERICK O. GRIFFIN, Western District of Missouri, has been commended by United States Attorney Ronald S. Reed, Jr., District of Missouri and by United States Attorney James P. Buchele, District of Kansas for his outstanding work in the case of United States v. Charles D. Bremson, Jr., et. al.

Assistant United States Attorney WILLIAM A. KOLIBASH, Northern District of West Virginia, has been commended by William H. Webster, FBI Director, for his fine performance in connection with the prosecution of several individuals involved in illegal gambling activities in Hancock County.

Assistant United States Attorney HARRY KOCH, Northern District of Texas, has been commended by H.S. Knight, Director, United States Secret Service, for his successful prosecution of seven defendants charged with counterfeiting violations.

Assistant United States Attorneys RICHARD LAWLER and CAROLYN HENNEMAN, Southern District of New York, have been commended by the Honorable Irving Ben Cooper, United States District Judge, acknowledging their fine work in United States v. Robinson, et. al.

Assistant United States Attorney RALPH MCMURRY, Eastern District of New York, has been commended by Peter B. Besinger, Administrator of Drug Enforcement Administration for his successful handling of the case Fonseca v. Blumenthal.

Assistant United States Attorney CARL E. STEWART, Western District of Louisiana has been commended by Grady W. Smithey, Jr., Regional Director of Family Nutrition Programs United States Department of Agriculture, for his successful defense in behalf of the Department of Agriculture's Food Stamp Program judicial reviews of retail grocer disqualification.

Assistant United States Attorney CAROLYN WATTS, Northern District of Ohio has been commended by Monroe Woods, Regional Administrator, United States Department of Agriculture, for her successful representation in the case of Addison Svmor v. United States.

Assistant United States Attorney ROBERT L. ZIMMERMAN, District of Montana has been commended by Jerry N. Jenson, Regional Director of the Drug Enforcement Administration, for his outstanding record in the field of drug prosecution in the District of Montana over the past four years.

POINTS TO REMEMBER

PROCESSING JUDGMENTS AGAINST THE UNITED STATES

The Executive Office has recently been notified by G. V. Hart, Chief of the Payment Branch of the General Accounting Office, of two situations which frequently generate questions in the processing of judgments against the United States.

(1) Transmittal letters frequently request that the plaintiff's attorney be designated payee or co-payee, whereas the judgment itself merely directs payment to the plaintiff. See, e.g., Margaret T. Blake v. Hoston, D.D.C., CA No. 76-0479, submitted for payment by letter dated June 29, 1979. Where the judgment directs payment to the plaintiff, it is the plaintiff who is the judgment creditor of the United States, and, even where the payment represents costs or attorney's fees, it is our position that we are without authority to vary from the express terms of the judgment. However, since there is no legal prohibition against providing in a judgment for the designation of an attorney as payee or co-payee, a judgment or stipulation can always be drafted to provide for this. Thus, in the future, if it is desired to designate plaintiff's counsel as payee or co-payee, express language to this effect should be included in the judgment or stipulation. Without such express language, checks may be drawn payable only to the plaintiff(s).

(2) In a number of cases, the involvement of the United States is not readily discernible from the face of the judgment. For example, this happens in judgments under Title VII of the Civil Rights Act where the named defendant may be the head of some relatively small unit within an agency. Since our authority under 31 U.S.C. 724a to certify district court judgments for payment is limited to judgments rendered "in accordance with" 28 U.S.C. 2414, it is important that this be ascertainable from the documentation submitted. Accordingly, in future cases, where the involvement of the United States is not obvious from the face of the judgment, we would recommend the inclusion of a brief identifying phrase in the transmittal letter (for example, "Enclosed is the court's judgment in the subject case, an employment discrimination action under 42 U.S.C. 2000e-16 . . .").

This information should preclude questions which may arise in the future.

CIVIL DIVISION

Acting Assistant Attorney General Stuart E. Schiffer

Califano v. Boles, No. 78-808 (Sup. Ct., June 27, 1979) DJ
137-76-341

Social Security Act: Supreme Court
Upholds Constitutionality Of Restriction
Of Mother's Insurance Benefits To Widows
And Divorced Wives

The Supreme Court has accepted our argument that section 202(g)(1) of the Social Security Act, which restricts mother's insurance benefits to widows and divorced wives of wage earners, does not violate the equal protection guarantee of the Due Process Clause of the Fifth Amendment by denying such benefits to the mother of an illegitimate child because she was never married to the wage earner who fathered the child. The Court thereby reversed the decision of the district court which held the section unconstitutional. The Court ruled that the distinction between married and unmarried mothers bore a rational relation to the governmental interest in easing the economic loss sustained upon the death of the wage earner and that marriage was a reasonable indicator of probable dependency. The Court also noted that the benefits accrued to the mother and not to the child(ren) and therefore, the distinction between married and unmarried mothers was not an illegal discrimination on the basis of illegitimacy as appellees had insisted. The Court emphasized the broad discretion of Congress in setting up classes of Social Security Act beneficiaries, analogizing the process to "painting a fence, rather than touching up an etching."

Attorney: Susan A. Ehrlich (Civil Division)
FTS 633-3170

Nelson Hernandez v. C. Lattimore, et al., No. 78-2098 (2d Cir.,
June 7, 1979) DJ 157-51-2119

Second Circuit Holds FTCA Remedy Does
Not Preclude Bivens Action

Plaintiff, a federal prisoner, brought a Bivens-type action against federal prison guards claiming that they violated his Eighth Amendment rights by beating him and by failing to provide medical assistance. The district court dismissed the action on the ground that the Bivens claim against the individual officers had been preempted by the 1974 amendment to the Federal Tort Claims Act, 28 U.S.C. 2680(h), which allows suit under the FTCA for assaults and batteries by federal law enforcement officers. The Second Circuit affirmed the dismissal on the alternate

ground that on the facts alleged, there was no violation of the Eighth Amendment. The court expressly held, however, that the availability of a FTCA claim does not preempt a Bivens-type action.

Attorney: Kent T. Stauffer (Assistant U.S. Attorney
S.D.N.Y.)
FTS 662-1973

United States v. Abbott Laboratories, No. 78-2254 (7th Cir.,
July 5, 1979) DJ 145-121-40

Government Procurement Contracts:
Seventh Circuit Upholds Comptroller
General's Right Of Access To Records
Of Contractor

The court of appeals has affirmed the district court's grant of access to the records of Abbott Laboratories relating to four contracts. Abbott had resisted making cost and pricing records available upon the ground that they were not "directly pertinent" to the government's contracts. The district court's decision allowing access in full, as sought by the Comptroller General, was based primarily upon the prior decision of Eli Lilly & Co. v. Staats, 574 F.2d 904 (C.A. 7), certiorari denied, 99 S.Ct. 362. In this decision the court of appeals, however, even went beyond its earlier Lilly decision by rejecting a contention that the inspection would result in substantial injury to Abbott and yield little, if any, benefits to the Comptroller General. The court accepted our argument that the statutory requirement that the access-to-records provision be included in the contract was a congressional balancing of the equities which the court was not free to reconsider.

Attorney: Harland F. Leathers (Civil Division)
FTS 633-4774

Uptegrove v. United States, No. 77-1723 (9th Cir., May 21, 1979)
DJ 157-12-1904

Federal Tort Claims Act: Ninth
Circuit Rules That Feres Bar Pre-
cludes Suit For Wrongful Death Of
Serviceman Even Though Alleged Tort-
feasor Was Civilian Employee Of FAA

The Ninth Circuit has affirmed the district court's application of the Feres doctrine to bar a Tort Claims Act suit arising out of the alleged negligence of FAA air traffic controllers. Plaintiffs' decedent was a serviceman killed while a military space-available passenger on an Air Force C 141 transport. The Ninth Circuit applied the "incident to service" bar of Feres v. United States, 340 U.S. 135 (1950), even though decedent was on

leave status at the time of the accident and not travelling pursuant to military orders. The Court of Appeals stressed that the presence of decedent on the aircraft was due to the fact that he was on active duty; and that, while on board, he was subject to the command of the military flight crew and could be disciplined before a military court for violating provisions of the Uniform Code of Military Justice. Reaffirming its prior decision in United States v. Lee, 400 F.2d 558 (C.A. 9, 1968), certiorari denied, 393 U.S. 1053 (1969), the Court of Appeals also held that only the military status of the decedent, and not the civilian status of the tortfeasor, was relevant in applying the Feres rule that the Tort Claims Act bars suits for injuries sustained "incident to service."

Attorney: Michael E. Quinton (Assistant U.S.
Attorney, San Diego, California)
FTS 895-5662

August 3, 1979

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

Armstrong v. Kline (E.D. Pa.) CA Nos. 78-172, 78-132 and 78-133, DJ 168-62-8

Education for All Handicapped Children Act

On June 21, 1979, the Court issued its opinion, in which the United States had participated as amicus. Plaintiffs in Armstrong were parents of severely mentally and physically handicapped children who had proved in administrative proceedings that their children could not receive an effective education unless instruction were continued in some degree during the summer months. Defendant school officials had flatly prohibited and publicly-funded summer programming, regardless of the gravity of the child's handicap or the severity of his or her regression during the summer break. The Court held for plaintiffs, as we had argued. Although we had advocated this result under Section 504 of the Rehabilitation Act, the Court chose to rest its decision on nearly identical regulations promulgated under the Education for All Handicapped Children Act.

Attorney: Leonard Rieser (Civil Rights Division)
FTS 633-3478

United States v. County Council of Charleston County (D.S.C.)
CA No. 78-905, DJ 166-67-70

Section 5 of the Voting Rights Act

On July 3, 1979, a three-judge panel entered an order granting summary judgment for defendants. The Court held that the implementation of home rule in Charleston County did not constitute a voting change subject to Section 5 review, that by preclearing the state Home Rule Act the Attorney General precleared the resulting transfer of powers to the Charleston County Council, and that the procedures for conducting the referendum election in the county did not constitute changes subject to Section 5 review. We are reviewing the opinion to determine whether an appeal is warranted.

Attorney: Harvey Knudson (Civil Rights Division)
FTS 724-6679

August 3, 1979

Halderman v. Pennhurst, Nos. 78-1490, 78-1564 and 78-1602
DJ 144-62-1085

Section 504 of the Rehabilitation Act

On July 6, 1979, the United States Court of Appeals for the Third Circuit entered an order, reheard en banc. These appeals by defendants were from an order requiring the transferring of the residents of the Pennhurst State School and Hospital, mentally retarded persons, to community facilities. The district court found violations of Section 504 of the Rehabilitation Act, state statutes and the Fourteenth Amendment. The case was argued before a panel in January 1979. The letter from the Clerk transmitting the orders advised that rehearing will be on September 6, 1979, and that until July 16, 1979, the court would entertain applications for a stay of the district court order.

Attorney: Frank Allen (Civil Rights Division)
FTS 633-4488

Stewart v. Rhodes (S.D. Ohio) CA No. C 278-220, DJ 168-58-7

In-Cell Segregation

On July 13, 1979, the Court issued an opinion and order granting the two part preliminary injunction sought by the United States. The Court held that the practice of assigning inmates to cells at the Columbus Correctional Facility on the basis of their race was a violation of the inmates' constitutional rights. The Court rejected defendants' argument that in-cell segregation was justified by concerns of institutional security. The second part of the injunction limited the authority of prison officials to chain inmates to beds.

Attorneys: Adjoa Burrow (Civil Rights Division)
FTS 633-4583
Steve Whinston (Civil Rights Division)
FTS 633-3479

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

Washington v. Washington Commercial Passenger Fishing Vessel Assn., U.S. _____, No. 77-983 (S.Ct. July 2, 1979) DJ 90-2-0-760

Indians

In a 6-3 decision, the Court, in essence, affirmed the decision of Judge Boldt finding that the tribes' right to take fish entitled them to an opportunity to catch 50 percent of the fish coming to their usual and accustomed places, unless the State could establish the tribes' needs could be satisfied with a lesser amount. The only variation the majority made to Judge Boldt's order was that it directed that the on-reservation ceremonial and subsistence catches of the Indians had to be included in their 50 percent share.

Attorneys: Kathryn A. Oberly and Edward J. Shawaker (Land and Natural Resources Division) FTS 633-2813 and Solicitor General's Staff

Chloe Whiskers v. United States, _____ F.2d _____, No. 77-1620 (10th Cir., June 14, 1979) DJ 90-2-4-278

Indians

The Tenth Circuit affirmed the district court's dismissal of the suit for lack of jurisdiction under the Tucker Act. The case arose out of a settlement between the United States and the Southern Paiute Nation to compensate the latter for the taking of aboriginal homelands in southern Utah and northern Arizona. The plaintiffs, who allegedly were improperly excluded from receiving shares of the judgment fund created by Congress, brought a damage suit under the Tucker Act against the United States for breach of trust in distributing the fund. Although the court of appeals concluded that the Tucker Act provides a jurisdictional basis for a breach of trust claim, the court could find no evidence that the judgment fund in question was to be held in trust pending distribution or that the Secretary of the Interior was to act as a trustee in distributing the fund.

Attorneys: Larry G. Gutteridge, Jacques B. Gelin and Michael A. McCord (Land and Natural Resources Division) FTS 633-2762/2774

Washington Metropolitan Area Transit Authority v. Goldman,
F.2d _____, No. 78-1587 (4th Cir., June 24, 1979) DJ
33-21-525-59

Condemnation

In a per curiam unpublished opinion, the court of appeals affirmed the district court's dismissal of an action in which certain landowners had challenged Metro's decision to take a fee simple interest rather than partial interest in their property. Relying upon Berman v. Parker, 348 U.S. 26, 35-36 (1954), and its progeny, the district court held that, although a landowner may challenge the public purpose of the government's taking, once a public purpose is established courts will not review the quantum of estate taken.

Attorneys: Nancy B. Firestone and Robert L.
Klarquist (Land and Natural Resources
Division) FTS 633-2757/2731

Maine v. Dana and Sockabasin, A.2d _____, No. 78-3
(S.Ct., Me., July 3, 1979) DJ 90-6-0-87

Indians

This case presented the issue of whether one of the two reservations of the Passamaquoddy Tribe was "Indian country" for the purposes of the Major Crimes Act, on April 16, 1977. The court held that the various Indian Non-intercourse Acts, as they relate to the sale of tribal land, apply to the Indians of Maine and always have applied to those Indians. The court also held that that statute gives rise to a fiduciary duty on the part of the United States to protect such tribes' land, and that that fiduciary duty is sufficient to make a tribe and that land it occupies a "defendent Indian community" under 18 U.S.C. 1151. The court thus remanded the case to the trial court to determine whether the Passamaquoddies were a tribe in 1790 (when the first Non-intercourse Act was passed) and whether they were a tribe on April 16, 1977, when the alleged crimes were committed. If these questions were answered in the affirmative, exclusive jurisdiction over the crime (arson) would be in the United States.

Attorneys: Edward J. Shawaker and Jacques B.
Gelin (Land and Natural Resources
Division) FTS 633-2813/2762

FEDERAL RULES OF EVIDENCE

Rule 501. General Rule.

Defendant appeals from conviction of voluntary manslaughter of his wife's mother in Indian country. Defendant invoked the "anti marital facts" privilege and contends that a witness' testimony that moments after the truck hit the victim he heard defendant's wife exclaim, "He [defendant] ran over my mother," although admissible under the excited utterance exception to the hearsay rule, violated the marital privilege.

In holding that the marital privilege was not violated by the admission of the spouse's excited utterance, the court noted that it was not bound by the Ninth Circuit's statement in dicta that the anti marital facts privilege precludes a third person from relating an out-of-court statement made by a spouse. Rule 501 requires the court to interpret privileges "in the light of reason and experience." The possible benefit of excluding such statements cannot justify excluding the evidence which is relevant and often highly probative. "(W)hen a marriage has deteriorated to the point where one spouse makes statements damaging to the other, that marriage will usually proceed to its fate regardless of how the spousal privilege is applied." Subjecting third person statements to the hearsay rule protects against their admittance being used to undercut the marital privilege.

The trial court's explanation that the defendant's wife did not testify because the defendant had involved the husband/wife privilege did not violate the rule prohibiting adverse comment on invocation of the spousal privilege after the Government objected to defense counsel's veiled comment on the Government's failure to call the wife as a witness.

(Affirmed.)

United States v. Norman Tsinnijinnie, ___ F.2d ___, No. 78-3522 (9th Cir., June 29, 1979).

FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 6(e). The Grand Jury. Secrecy
of Proceedings and Disclosure.

In a previously unpublished Memorandum-Decision and Order the trial court denied the defendant's motion to dismiss the indictment on the ground that the grand jury was not properly instructed with respect to the offense or, in the alternative, that the Court examine the grand jury minutes to ascertain whether the Government's charge was fair.

The Court follows the authority of United States v. Linetsky, 533 F.2d 192 (5th Cir. 1976), and United States v. Slepicoff, 524 F.2d 1244 (5th Cir.) cert. denied, 96 S. Ct. 2215 (1976) which rejected the contention that the indictments were invalid because of assertedly improper instructions to the grand jury. Since the motion to dismiss is denied, it is not necessary for the court to examine the minutes.

The Memorandum has been submitted for publication at the request of the United States Attorney, Eastern District of New York, in light of the amendments to Rule 6(e) which become effective on August 1, 1979, and will provide for recordation of proceedings, including the Government's instructions to the grand jury.

(Motion denied.)

United States v. Zvonko Busic, Julienne Busic, Petar Metanic, and Frank Pesut, ___ F.2d ___ No. 76-CR-602 (2nd Cir., March 22, 1977).

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>
6/22/79	9-2.000	Cancellation of Outstanding Memorandum
6/28/79	9-4.600	Use of Hypnosis
6/21/79	9-7.181	Order Requiring Assistant of Communication Carrier, Landlord, Custodian, or Other Persons Necessary to Accomplish Interception

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
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
	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
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
20	2/1/79	2/1/79	Revisions to Ch. 2
21	2/16/79	2/5/79	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