



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

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# **United States Attorneys' Bulletin**

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TABLE OF CONTENTS

	<u>Page</u>
CLEARINGHOUSE	
Initiating, Compromising, Dismissing or Closing Cases- Prior Department Approval	417
COMMENDATIONS	419
POINTS TO REMEMBER	
Publication of Selected Opinions of Office of Legal Counsel	421
CASENOTES	
Civil Division	
Civil Rights Attorneys Fee Act: Supreme Court Rules that Prevailing Party Under Civil Rights Attorneys Fees Act Must Prevail on the Merits <u>Hampton v. Hanrahan</u>	423
Equal Protection: Supreme Court Upholds Constitutionality of Lower Level AFDC Payments to Puerto Ricans <u>Harris v. Santiago Rosario, et al.</u>	423
Federal Tort Claims Act; Coal Mine Disaster; Clearly Erroneous Doctrine: Sixth Circuit Affirms District Court Ruling that Negligence of Federal Mine Inspections, if any, Did Not Proximately Cause Mine Explosion that Killed 39 Miners <u>Collins v. United States</u>	424
Labor-Management Reporting and Disclosure Act: Fifth Circuit Holds Union's Candidate Eligibility Requirement Invalid <u>Marshall v. Local 1402, International Longshoremen's Association of Tampa</u>	425
Feres Doctrine: First Circuit Upholds Continuing Validity of Feres Doctrine and Applies it to Army Error in Preparation of Discharge Papers <u>Jose D. Montero Torres v. United States</u>	426

- Immunity of Government Officials: D.C.  
Circuit Rejects Absolute Immunity in  
Damage Action Against LEAA Officials  
Charging Failure to Enforce Civil Rights  
Requirements Applicable to LEAA Grants  
National Black Police Association, Inc., et al.  
v. Velde, et al. 427
- Defaults Against Government; Social Security  
Disability Benefits: First Circuit Sets  
Standards for Entry of Default Judgments  
Against Government in Social Security Disability  
Benefits Cases  
Jose Santiago v. Secretary of Health, Education &  
Welfare 427
- Jurisdiction of Foreign Service Grievance Board:  
D.C. Circuit En Banc Holds Foreign Service  
Grievance Board has no Jurisdiction to Review  
Merits of Separation of a Former Officer  
Schuler v. U.S.A., Department of State, et al. 429
- Civil Rights Division  
Bilingual Education, Title VI of the 1964 Civil  
Rights Act, Provisions of the 1974 Equal Education  
Opportunity Act  
United States v. State of Texas 431
- Developmentally Disabled Assistance and Bill  
of Rights Act  
Halderman v. Pennhurst 431
- Title VII of the Civil Rights Act of 1968  
United States v. New York Racing Inc., et al. 432
- Title VIII of the Civil Rights Act of 1968  
United States v. Calder Race Course, Inc., et al;  
Gulfstream Park Racing Association, Inc., et al;  
and Hialeah, Inc., et al. 432
- Land and Natural Resources Division  
Surface Mining Control and Reclamation Act  
In re Surface Mining Regulation Litigation 433
- Condemnation; Courts Lack Jurisdiction to Enlarge  
Declaration of Taking  
United States v. 101.88 Acres in St. Mary Parish,  
Louisiana (Avoca) 433

Clean Water Act <u>Commonwealth of Kentucky ex rel. Robert F. Stephens v. United States Nuclear Regulatory Commission</u>	434
Corps of Engineers Dredge and Fill Permits <u>United States v. Herman Diamond</u>	435
Removal <u>Johl v. Town of Groton</u>	436
Condemnation, Courts Lack Jurisdiction to Enlarge Declaration of Taking <u>United States v. 3,218.9 Acres in Warren County, Pa.</u>	436
Condemnation; Adequacy of Commission Report Under Merz <u>United States v. 346.30 Acres in Kay County, Oklahoma</u>	437
SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES	439
APPENDIX: FEDERAL RULES OF EVIDENCE These pages should be placed on permanent file, by Rule, in each United States Attorneys' office library	445
Citations for the slip opinions are available on FTS 724-7184	
ADDENDUM: U.S. ATTORNEYS' MANUAL---BLUESHEETS	447
U.S. ATTORNEYS' MANUAL---TRANSMITTALS	455

EXECUTIVE OFFICE FOR U.S. ATTORNEYS  
William P. Tyson, Acting DirectorCLEARINGHOUSEInitiating, Compromising, Dismissing or Closing Cases- Prior  
Department Approval

In several recent cases Assistant United States Attorneys have intentionally and/or inadvertently compromised civil liabilities pursuant to plea agreements reached in criminal cases. As a result of these civil settlements, the United States was unable to recover over \$700,000 in civil fraud penalties. The settlements were unauthorized under existing Departmental regulations governing the settlement of civil claims. Department regulations limit the authority of United States Attorneys to initiate, compromise, dismiss or close certain cases with prior Department approval.

To ensure that Department policy is uniformly and properly applied and that United States Attorneys' offices and the litigating divisions within the Department are not working at cross-purposes, all United States Attorneys and Assistant United States Attorneys should familiarize themselves with the existing Department regulations governing civil settlement procedures. If there is any question on whether your actions require prior Department approval, you should make appropriate inquiries before taking any action.

The following citations direct your attention to pertinent passages in the United States Attorneys Manual and Title 28 of the Code of Federal Regulations:

1. Civil Division  
Title 4-1.300- 1.328, 4-2.000-2.433  
Please note the bluesheet covering 4-2.120; 28 C.F.R. §0.160 (Subpart Y) and Appendix to Subpart Y, Directive No. 110-78.
2. Criminal Division  
Title 9-2.000-2.173; 28 C.F.R. §0.160 (Subpart Y) and Appendix to Subpart Y, Memo No. 375 and Directive No. 2.
3. Tax Division  
Title 6-2.010, 2.210, 2.230, 2.312, 2.320, 2.350, 2.400-2.460, 3.010, 4.140, 4.420-4.800; 28 C.F.R. §0.160 (Subpart Y) and Appendix to Subpart Y, Directive No. 30 and 31.
4. Land and Natural Resources  
Title 5-1.300-1.640; 28 C.F.R. §0.160 (Subpart Y) and Appendix to Subpart Y, Directive No. 7-76.
5. Anti-trust Division  
Title 7-4.100, 4.110, 4.120, 4.400, 4.510, 5.240.

(Executive Office)

COMMENDATIONS

Assistant United States Attorney, DEAN B. ALLISON, Central District of California, has been commended by Leonard H. Rossen, Regional Administrator for the U.S. Securities and Exchange Commission, for his outstanding professional work in the case of United States v. Aaron A. Kleinman, one of the few criminal cases ever prosecuted under the Investment Advisers Act.

Assistant United States Attorney, JIM ARNOLD, Central District of California, has been commended by Wilbur W. Jennings, Regional Attorney for the United States Department of Agriculture, for his excellent research and hard work on the exploratory mining activities on federal land which was used in the case of Homestake Mining Company v. Bergland.

Assistant United States Attorney, GEORGE C. BATCHELER, Northern District of Alabama, has been commended by Herbert J. Lewis, Jr., District Counsel for the Veterans Administration, for his efficient representation of the VA school liability debt.

Assistant United States Attorney, DAVID EISENBERG, Eastern District of New York, has been commended by Michael J. Lonergan, Regional Inspector General of Investigations, United States Department of Agriculture, for his outstanding services in obtaining the indictment against Samuel Fuchs of the Express Food Company.

Assistant United States Attorney, FREDERICK A. JACOBSEN, Central District of California, has been commended by Robert E. Biehl, Jr., Director of the Program Integrity Staff, Department of Health, Education and Welfare, for his successful prosecution of Vaa T. Tufuga aka Victor Siaau.

United States Attorney, THOMAS E. LYDON, Jr., Central District of South Carolina, has been commended by Drew S. Days III, Assistant Attorney General of the Civil Rights Division, for his encouragement, invaluable knowledge of local procedures, and for the excellent support staff services provided to the attorneys involved in the difficult migrant prosecution of United States v. Larry and Barbara Wilson.

Assistant United States Attorney, AMANDA METCALF, Central District of California, has been commended by Drew S. Days III, Assistant Attorney General of the Civil Rights Division, for her performance in investigating and handling the case of United States v. City and County of San Francisco.

Assistant United States Attorney, JAMES STOTTER II, Central District of California, has received an award from the Veterans Administration, for his excellent work throughout the case of Rora A. Phillips, et al, v. United States.

Assistant United States Attorney, THEODORE W. WU, Central District of California, has been commended by Martin J. White, Acting Director, Office of Investigations, Department of the Treasury, for his outstanding presentation on criminal fraud prosecution during a recent Fraud Seminar held in San Pedro, California and for his continuing support in prosecuting customs criminal fraud cases.

EXECUTIVE OFFICE FOR U.S. ATTORNEYS  
William P. Tyson, Acting DirectorPOINTS TO REMEMBERPublication of Selected Opinions of Office of Legal Counsel

On May 29, 1980 Attorney General Benjamin R. Civiletti announced publication of the first volume of selected opinions of the Office of Legal Counsel, covering the year 1977. The opinions deal with significant legal questions referred to OLC that year. All U.S. Attorneys offices are on the mailing list.

The Office of Legal Counsel, headed by Assistant Attorney General John Harmon, prepares the formal legal opinions of the Attorney General and gives informal legal advice on request to the President, the White House, members of the Cabinet, and the heads of noncabinet agencies. Both an Attorney General opinion and an OLC opinion are considered binding on Executive Branch agencies and are for the use of all branches of government as well as the private bar and the public.

The criteria used in selecting OLC opinions for publication are that they would be useful to lawyers in and out of government and that the agencies requesting the opinions permit publication.

The formal opinions of the Attorney General have been published since 1791. The latest volume includes the years 1961 to 1974. Later opinions are issued in slip form until there are enough to make a bound volume.

The first volume of OLC opinions contains 73 of the approximately 300 rendered by OLC in 1977.

The opinions address such issues as the power of a state to rescind its ratification of a proposed constitutional amendment, the provision of transportation and other services to a former president, the effect of a Presidential pardon on aliens who left the United States to avoid military service and the disposition of the memorabilia of former President Nixon.

Preparation of the 1978 and 1979 volume is in progress.

(Executive Office)

CIVIL DIVISION  
Assistant Attorney General Alice Daniel

Hampton v. Hanrahan, No. 79-912 (Sup. Ct., June 2, 1980)  
DJ# 146-7-6336-9

CIVIL RIGHTS ATTORNEYS FEE ACT: SUPREME  
COURT RULES THAT PREVAILING PARTY UNDER  
CIVIL RIGHTS ATTORNEYS FEES ACT MUST  
PREVAIL ON THE MERITS

This suit against certain FBI officials in their individual capacity arose from the celebrated 1969 raid on Black Panther headquarters in Chicago. The district court entered a directed verdict in favor of the individual federal defendants. Reversing, the court of appeals held that the district court had erred in entering the directed verdict because factual questions were presented. The court further held that under the Civil Rights Attorneys Fees Act, 42 U.S.C. 1988, the individual defendants must pay the attorneys fees in connection with the plaintiff's appeal.

On behalf of the individual federal defendants we filed a petition for certiorari challenging both the award of attorneys fees and the reversal of the directed verdict. The Supreme Court has just granted the petition and summarily reversed the court of appeals on the attorneys' fees issue. The Supreme Court held that the plaintiffs were not "prevailing parties" under the statute because they had yet to prevail on the merits of their complaint. To the extent our petition challenged the reversal of the directed verdict, the Supreme Court denied the petition, three judges dissenting.

Attorneys: Harland Leathers (formerly of Civil  
Division)  
Robert E. Kopp (Civil Division)  
FTS 633-5459

Harris v. Santiago Rosario, et al., No. 79-1294 (Sup. Ct.  
May 27, 1980) DJ# 145-16-1172

EQUAL PROTECTION: SUPREME COURT UPHOLDS  
CONSTITUTIONALITY OF LOWER LEVEL AFDC  
PAYMENTS TO PUERTO RICANS

The Supreme Court has summarily reversed a decision of the district court of Puerto Rico declaring 42 U.S.C. 1308 and 1396d(b) unconstitutional as violating the equal protection component of the Fifth Amendment. Those statutes provide a

lower level of federal reimbursement under the program of Aid to Families with Dependent Children to Puerto Rico (and to Guam and the Virgin Islands) than that provided to the States.

In a per curiam decision, the Court agreed with our argument that under the plenary powers conferred by the Territory Clause of the Constitution, Art. IV, §3, cl. 2, Congress may treat Puerto Rico differently from the States so long as there is a rational basis for its actions. The Court concluded that this statutory classification was rationally grounded on three factors: Puerto Rican residents do not contribute to the federal treasury through income taxes; the cost of treating Puerto Rico as a State under the statute would be high; and greater benefits could create a welfare elite and disrupt the Puerto Rican economy. These were the same considerations that supported the previous decision in Califano v. Torres, 435 U.S. 1 (1978), (relied on here), in which the Court held that a provision of the Social Security Act pursuant to which persons residing in the United States lost their supplemental security income benefits upon moving to Puerto Rico, was rationally based. Torres had arisen in the context of the right to travel, however, and did not address equal protection considerations. Justices Brennan, Blackmun and Marshall disagreed that Torres controls this case, and would have noted probable jurisdiction and set the case for oral argument.

The Court's decision, which confirms Congress' power to draw rational distinctions between states and territories, has wide implications in the area of legislative programs affecting the territories.

Attorney: Wendy M. Keats (Civil Division)  
FTS 633-3259

Collins v. United States, No. 78-3125 (6th Cir. May 22, 1980) DJ# 157-30-113

FEDERAL TORT CLAIMS ACT; COAL MINE  
DISASTER; CLEARLY ERRONEOUS DOCTRINE:  
SIXTH CIRCUIT AFFIRMS DISTRICT COURT  
RULING THAT NEGLIGENCE OF FEDERAL MINE  
INSPECTIONS, IF ANY, DID NOT PROXIMATELY  
CAUSE MINE EXPLOSION THAT KILLED 39 MINERS

Plaintiffs in this case are the survivors of 25 miners killed when a mine exploded in 1970 in Hyden, Kentucky, as

well as one miner injured in the explosion. Plaintiffs sought approximately \$7 million in damages under the Federal Tort Claims Act. Plaintiffs claimed that federal mine safety inspectors were negligent in not uncovering various safety defects in the Hyden mine. After a trial, the district court found that the disaster stemmed from grossly improper mining practices by the mine operator, and not from negligent inspections. The court entered judgment for the government, and plaintiffs appealed. The Sixth Circuit has just affirmed the district court's judgment, accepting our argument that the district court's fact findings were not clearly erroneous. The Sixth Circuit declined to reach our alternative argument that the Federal Tort Claims Act does not comprehend lawsuits based on violations of federal safety statutes. This is a significant issue, which, as the Sixth Circuit noted, "will be presented squarely" in the pending case of Raymer v. United States, No. 80-3033 (C.A. 6), where a district court entered judgment against the government on a negligent mine inspection claim.

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

Marshall v. Local 1402, International Longshoremen's Ass'n of Tampa, No. 78-2338 (5th Cir. May 14, 1980) DJ# 156-17M-136

LABOR-MANAGEMENT REPORTING AND DISCLOSURE  
ACT: FIFTH CIRCUIT HOLDS UNION'S CANDI-  
DATE ELIGIBILITY REQUIREMENT INVALID

The Secretary of Labor brought this action in district court to set aside an election of union officers. The union rule in issue required that a member must attend or be excused from at least one meeting in each of twelve months prior to nomination as an officer in order to be eligible. The district court entered summary judgment for the union, rejecting our argument that the union's eligibility requirement had an anti-democratic effect on elections. On our appeal, the Fifth Circuit reversed. The court of appeals ruled that the candidacy requirement violated section 410(e) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. 481(e). The court agreed with our assertion that the decision here is controlled by the rationale of Steelworkers v. Usery, 429 U.S. 305 (1977).

Attorney: Patricia G. Reeves (Civil Division)  
FTS 633-2689

Jose D. Montero Torres v. United States, No. 79-1530 (1st Cir. May 22, 1980) DJ# 157-65-471

FERES DOCTRINE: FIRST CIRCUIT UPHOLDS  
CONTINUING VALIDITY OF FERES DOCTRINE  
AND APPLIES IT TO ARMY ERROR IN PREPAR-  
ATION OF DISCHARGE PAPERS

The First Circuit, accepting our arguments, has applied the Feres doctrine to a serviceman suing the government for injuries allegedly arising out of an error in the preparation of his papers discharging him from the Army. Rather than showing that Montero had received an honorable discharge, to which he was entitled, Montero's papers showed him to be discharged for conduct triable by court-martial, a dishonorable discharge. As a result, he was ineligible for job placement, medical and other benefits administered by the Veterans Administration. Eventually, the Army corrected the papers, but Montero sued. The district court dismissed on the basis of Feres v. United States, which held that the government is not liable under the Federal Tort Claims Act for injuries to servicemen where the injuries arise out of or are in the course of activity incident to service. The First Circuit affirmed, holding that discharge is incident to military service and the process itself is conducted by military personnel in the course of their military duties. In addition, allowing a soldier to maintain an action under state law for this type of injury would undermine the distinctively federal character of the military. The court also held that the subsequent failure of the Army to advise the VA of its error and correction did not state a post-discharge cause of action. The Army has no legal duty to advise other federal agencies of its action.

Attorneys: Susan Ehrlich (Civil Division)  
FTS 633-3170  
Wendy Keats (Civil Division)  
FTS 633-3259

National Black Police Association, Inc., et al. v. Velde, et al., No. 77-1273 (D.C. Cir. May 14, 1980) DJ# 145-12-2485

IMMUNITY OF GOVERNMENT OFFICIALS: D.C. CIRCUIT REJECTS ABSOLUTE IMMUNITY IN DAMAGE ACTION AGAINST LEAA OFFICIALS CHARGING FAILURE TO ENFORCE CIVIL RIGHTS REQUIREMENTS APPLICABLE TO LEAA GRANTS

In this action seeking injunctive relief against LEAA, and damages individually from former Attorney General Levi and three former LEAA officials for their alleged violation of plaintiffs' constitutional rights by failing to terminate LEAA funding to local police agencies accused of engaging in discriminatory employment practices, the district court held that the individual defendants were absolutely immune from suit and that the claims for official relief were moot because the governing statute had been substantially changed. In a decision issued on May 14, 1980, sixteen months after oral argument, a divided panel of the D.C. Circuit reversed. Senior Judge Bazelon and District Judge Parker held that the claims for official relief were not mooted by the statutory amendment, and that the statutory scheme for civil rights compliance did not allow sufficient discretion in enforcement for the individual defendants to claim absolute immunity as administrative prosecutors under Butz v. Economou, 438 U.S. 478 (1978). Judge Tamm dissented on the immunity issue, arguing that the defendants were engaged in exactly the type of decision-making "the Supreme Court had in mind when it spoke of functions 'analogous to those of a prosecutor,' Butz v. Economou, 438 U.S. at 515." We are presently considering whether to seek rehearing en banc.

Attorney: Barbara L. Herwig (Civil Division)  
FTS 633-3469

Jose Santiago v. Secretary of Health, Education & Welfare (and six consolidated cases), No. 79-1175 (1st Cir. May 22, 1980) DJ# 137-65-1351

DEFAULTS AGAINST GOVERNMENT; SOCIAL SECURITY DISABILITY BENEFITS: FIRST CIRCUIT SETS STANDARDS FOR ENTRY OF DEFAULT JUDGMENTS AGAINST GOVERNMENT IN SOCIAL SECURITY DISABILITY BENEFITS CASES

In a series of Social Security disability benefits cases, the district court for the District of Puerto Rico

entered orders which amounted to default judgments against the government. These orders came as a response to what the district court called "contumacious conduct" on the part of HEW. The district court had ordered that HEW file memoranda of law in support of agency decisions that were being challenged on appeal. HEW failed to file the memoranda, sometimes after having acquired several extensions and sometimes having provided no excuse. The district court ordered, as a result, that each plaintiff be awarded disability benefits. The government appealed contending that such an order was violative of Rule 55(e), F.R.Civ.P., barring default judgments against the government "unless the claimant establishes his claim \* \* \* by evidence satisfactory to the court," and 42 U.S.C. 405(g) which provides that the factual findings of the Secretary shall be conclusive if supported by substantial evidence. The government argued that, even absent a brief from HEW, it was necessary for the district court to examine the administrative record to determine if the agency decision was supported and if so, to rule in favor of the government.

The court of appeals vacated the district court's automatic entry of default judgments, but in so doing made it clear that the district court can enter default judgments against HEW under a more relaxed standard when HEW fails to submit a required brief. The court ruled first that a default could be entered against the government in accordance with Rule 55(a), F.R.Civ.P., as a sanction for having disobeyed orders of the court made pursuant to the court's inherent authority. After default the district court is empowered under Rule 55(e) to enter a default judgment relying on plaintiff's brief to point out the lack of support for the agency's decision.

The court of appeals also stated that in reviewing a default judgment entered in the district court against HEW in these circumstances, its "concern will not be with examining the record for substantial evidence, but with assuring ourselves that the district court properly applied Rule 55(e)."

Attorney: Susan Ehrlich (Civil Division)  
FTS 633-3107

Schuler v. U.S.A., Department of State, et al., No. 78-1797  
(D.C. Cir. May 23, 1980) DJ# 145-2-357

JURISDICTION OF FOREIGN SERVICE GRIEVANCE  
BOARD: D.C. CIRCUIT EN BANC HOLDS FOREIGN  
SERVICE GRIEVANCE BOARD HAS NO JURISDICTION  
TO REVIEW MERITS OF SEPARATION OF A FORMER  
OFFICER.

Frank Schuler was separated from the Foreign Service in 1944 for leaving his post without authorization. From 1945 to 1953 he held various temporary positions with foreign affairs agencies, but he was never rehired as a permanent career officer. After the enactment of the Freedom of Information and Privacy Acts, Schuler discovered allegedly false and distorted reports in his personnel file which he claimed were at the root of his failure to be rehired by the government.

Pursuant to newly created grievance procedures Schuler sought review by the Foreign Service Grievance Board of his dismissal, correction of his records, back pay and pension rights. The Board held that Schuler's claim was not within its jurisdiction which was limited in the case of former officers to wrongful denials of "an allowance or other financial benefit." Schuler appealed to the district court which dismissed his complaint.

On appeal, a divided panel originally held that the language "allowance or other financial benefit" could cover Schuler's claim for back pay and pension rights due to his not being rehired. The court granted our petition for rehearing with suggestion for rehearing en banc, vacated the panel decision and heard argument en banc on the scope of the Grievance Board's jurisdiction over former officers.

The en banc court has agreed with our view of the Grievance Board's jurisdiction and has held that the term "financial benefit" cannot be construed to include former officers' core challenges to separation decisions. The court further held that any tort claim Schuler seeks to state fails on statute of limitations grounds.

Attorney:           Freddi Lipstein (Civil Division)  
                          FTS 633-3380

June 20, 1980

CIVIL RIGHTS DIVISION  
Assistant Attorney General Drew S. Days IIIUnited States v. State of Texas, CA No. 5381 (E.D. Tex.)  
DJ 169-75-19Bilingual Education, Title VI of the 1964  
Civil Rights Act, Provisions of the 1974  
Equal Education Opportunity Act.

On May 19, 1980, our post-trial brief was filed. In the December 1979 trial we held a longstanding motion filed by the United States and Mexican-American intervenors challenging the (1) adequacy of the bilingual programs required by the State of Texas, and (2) adequacy of the enforcement efforts of the State to assure that local districts throughout the state are properly implementing bilingual programs. In our brief, we submitted an extensive review of the evidence and argued that the court should find the state in noncompliance with the requirements of the Court's 1971 statement order as well as finding violations of Title VI of the 1964 Civil Rights Act and provisions of the 1974 Equal Educational Opportunity Act. We further urged the court to require the state to submit a new comprehensive plan to address the shortcomings in their present requirements for bilingual education, including specific instructions that the plan at a minimum should meet present federal standards in the area of bilingual education; we also urged the Court to require the state to formulate and adopt an enforcement plan.

Attorney: Joseph Rich (Civil Rights Division)  
FTS 633-3843Halderman v. Pennhurst, Nos. 79-1404, 79,1908, 79-1414, 79-1415  
and 79-1489 (E.D. Pa.) DJ 144-62-1085Developmentally Disabled Assistance and  
Bill of Rights Act

On May 16, 1980, a brief was filed in the Supreme Court opposing the petition for certiorari. The principal question presented is whether the Developmentally Disabled Assistance and Bill of Rights Act (42 U.S.C. 6001 *et seq.*) creates a judicially enforceable right in mentally retarded persons to appropriate habilitative conditions in the setting least restrictive of personal liberties. Also presented are questions concerning a Pennsylvania law claim on which the court of appeals found for the plaintiffs; whether the United States was

June 20, 1980

properly allowed to intervene; whether the class should have been decertified upon discovery of a division of opinion; and whether the remedy unacceptably infringes principles of federalism.

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

United States v. New York Racing Inc., et al, CA No. CV80-1332  
(E.D. N.Y. DJ. 175-52-104)

Title VII of the Civil Rights Act of 1968

On May 15, 1980, suit was filed against the New York Racing Association, which operates Belmont, Aqueduct and Saratoga race courses, and its president, alleging that they engage in the unlawful pattern and practice of providing free housing for male backstretch personnel and exclude women from their housing facilities. We seek injunctive relief to halt the discriminatory provision of housing and monetary compensation for the women employees who have been denied free housing.

Attorneys: Sandy Beber (Civil Rights Division)  
FTS 633-2191  
Franz Marshall (Civil Rights Division)  
FTS 633-4751

United States v. Calder Race Course, Inc., et al; Gulfstream Park Racing Association, Inc., et al; and Hialeah, Inc., et al., CA No. 80-1171-Civ. JAG (S.D. Fla.) DJ 175-18-224

Title VIII of the Civil Rights Act of 1968

On May 15, 1980, suit was filed against the corporate owners of Hialeah, Gulfstream and Calder race courses and their presidents alleging that they engage in the individual and group patterns and practices of unlawfully providing free housing for male backstretch employees while either totally excluding women from track housing (Calder, Gulfstream) or artificially restricting opportunities for occupancy by women (Hialeah). We seek injunctive relief and equitable compensation for female victims.

Attorneys: Sandy Beber (Civil Rights Division)  
FTS 633-2191  
Franz Marshall (Civil Rights Division)  
FTS 633-4751

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

In re Surface Mining Regulation Litigation, \_\_\_\_\_ F.2d \_\_\_\_\_,  
No. 78-2190 et seq. (D.C. Cir. May 2, 1980) DJ 90-1-18-1287'

## Surface Mining Control and Reclamation Act

This appeal involved several challenges to regulations promulgated by the Secretary of the Interior implementing the interim regulatory program under the Surface Mining Control and Reclamation Act of 1977. The court of appeals rejected certain challenges to the general validity of the Secretary's regulations but also overturned some specific regulations. As to the general challenges, the court ruled that: (1) the basis and purpose statement accompanying the regulations was completely adequate and that the Secretary sufficiently identified technical literature on which he relied; (2) the regulations need not contain a general variance procedure; and (3) the Secretary was not required to make economic and inflationary impact analyses. In addition, the court ruled that the Secretary was authorized to promulgate interim program regulations governing surface mining on Indian lands. However, the court also invalidated regulations which established a 1,000-foot limitation on blasting and a one inch per second limitation on particle velocity resulting from blasting. The court also struck down the grandfather exemption for surface mining on prime farmlands. Finally, the court held that the Secretary was not authorized to promulgate water quality regulations more stringent than those already promulgated by EPA and remanded certain regulations containing variances and exemptions to the district court for a determination as to whether the provision are already applicable to surface mines through EPA's regulatory program.

Attorneys: Michael A. McCord and Carl Strass  
(Land and Natural Resources Division) FTS 633-2774/5244

United States v. 101.88 Acres in St. Mary Parish, Louisiana (Avoca), \_\_\_\_\_ F.2d \_\_\_\_\_, No. 77-2768 (5th Cir. May 5, 1980)  
DJ 33-19-49-193

Condemnation; Courts lack jurisdiction to enlarge declaration of taking

The landowners in a condemnation action claimed that the declaration of taking did not include all of the lands

which the United States was actually taking. Project maps filed by the United States with its declaration of taking showed that the United States intended to deposit dredge spoil on certain areas not described in the declaration. The United States contended that these areas were navigable waters of the United States, and could thus be used by the United States without compensation. The landowners contended that these areas were owned by them, and were not subject to the navigation servitude. The district court held that the only lands for which the landowners could be compensated in the condemnation action were those expressly described in the declaration of taking, and that the landowners could not, therefore, put into issue the value of any other lands. The court of appeals affirmed, pointing out that if the United States in fact uses land which is owned by the landowners, and which is not subject to the navigation servitude, the United States will have to pay, but that the amount to be paid will have to be decided in a separate action, brought by the landowners under either 28 U.S.C. 1346(a)(2) or 28 U.S.C. 1491. "The 5th Amendment, while it guarantees that compensation be just, does not guarantee that it be meted out in a way more convenient to the landowner than to the sovereign."

Attorneys: Martin Green and Carl Strass  
(Land and Natural Resources  
Division) FTS 633-2827/5244

Commonwealth of Kentucky ex rel. Robert F. Stephens v.  
United States Nuclear Regulatory Commission, F.2d \_\_\_\_\_,  
No. 78-1369 (D.C. Cir. April 18, 1980) DJ 90-1-4-1828

#### Clean Water Act

Section 410(a)(1) of the Clean Water Act requires any applicant for a federal license or permit to construct facilities which may result in a discharge into navigable water to obtain a certification from the state in which the dischargers charge will originate that the discharge will comply with the Clean Water Act. When the Public Service Company of Indiana, Inc. applied for a license from the NRC to construct a nuclear power plant on the Indiana shore of the Ohio River, the company submitted a Section 401(a)(1) certification from the State of Indiana. However, the

Commonwealth of Kentucky and other intervening parties challenged the company's certification because they claimed that the end of the discharge pipe would be in the Ohio River on the Kentucky side of the border. The NRC determined that the proper border between the two states should be the 1792 low-water mark on the Indiana side of the river (rather than the present low-water mark as argued by Kentucky) and that the discharge pipe would be located in Indiana. On petition for review of the NRC's decision, the D.C. Circuit affirmed the NRC's order. The court of appeals relied on the Supreme Court's decision of March 24, 1980, in Kentucky v. Indiana, an original Supreme Court action. There the Supreme Court had ruled that the border between the states was the 1792 low-water mark, which was the same conclusion reached by the NRC.

Attorneys: NRC Staff, Neil Proto, Carl Strass and Michael McCord, (Land and Natural Resources Division)  
FTS 633-5244/2774

United States v. Herman Diamond, \_\_\_\_\_ F.2d \_\_\_\_\_, No. 78-2969 (5th Cir. April 28, 1980) DJ 62-2077

Corps of Engineers dredge and fill permits

The court of appeals affirmed, in a per curiam opinion under its Local Rule 21, the district court's denial of motions for relief from its previously affirmed judgment enjoining Diamond from filling a tidal marsh within the navigable waters of the United States without the necessary Army Corps of Engineers permit. The court of appeals also affirmed the district court's judgment upholding the Corps' denial of an after-the-fact permit sought by Diamond to retrospectively validate his fill and authorize further filling. By the same opinion, the court of appeals affirmed the district court's judgment in a related Civil Division case dismissing Diamond's civil damages action against Corps officials who provided testimony in the two Lands cases.

Attorneys: Joshua I. Schwartz and Robert L. Klarquist (Land and Natural Resources Division) FTS 633-2754/2731

Johl v. Town of Groton, \_\_\_\_\_ F.2d \_\_\_\_\_, No. 78-6257 (2nd Cir. April 22, 1980) DJ 90-1-0-1587

Removal

In an unpublished, not-to-be-cited order, the court firmly established the doctrine that a state Supreme Court appeal cannot be removed to federal district court two years after its dismissal by the state appellate court.

Attorneys: Assistant United States Attorney  
George Kelly (D. Conn.), Jerry  
Jackson and Anne S. Almy (Land  
and Natural Resources Division)  
FTS 633-2772/4427

United States v. 3, 218.9 Acres in Warren County, Pa. (Ross Heirs), \_\_\_\_\_ F.2d \_\_\_\_\_, No. 79-2122 (3rd Cir. April 23, 1980)  
DJ 33-391039

Condemnation, Courts lack jurisdiction to enlarge declaration of taking

To acquire land for the Allegheny National Forest, the United States took in condemnation the surface estate of certain land but reserved the subsurface mineral estates in the owners thereof. Also reserved for the subsurface owners was a right of entry upon the condemned surface estate to extract minerals from the uncondemned subsurface estate, but, under the declaration of taking, the exercise of this right of entry was made subject to certain regulations of the Secretary of Agriculture. The district court concluded that such regulated use of the surface worked a sufficient taking of the subsurface estate so as to enable a jury to award \$485,812 as just compensation for the subsurface estate. On appeal by the government, the Third Circuit remanded with instructions to vacate this award, ruling that the district court had erroneously enlarged the nature of the estate taken, contrary to explicit language of the declaration of taking. Noting that the district court apparently believed that the Secretary's regulations of the surface use would diminish the value of drilling rights

to the mineral estate, the Third Circuit concluded that "a possible future taking of property does not give rise to a present cause of action for damages."

Attorneys: Carl Strass and Dirk D. Snel  
(Land and Natural Resources  
Division) FTS 633-5244/4400

United States v. 346.30 Acres in Kay County, Oklahoma,  
F.2d \_\_\_\_\_ (10th Cir. April 14, 1980) DJ 33-37-317-495

Condemnation; Adequacy of commission report under  
Merz

The owner of a half interest in the mineral estate of lands condemned for the Corps of Engineers Kaw Lake project appealed from the district court's overruling of its objections to the commission report. The court rejected appellants' contention that the commission erred in awarding a value for sand and gravel substantially less than the sum obtained by multiplying an alleged unit value by the volume of the deposit. The court found that the defendants had not established a market value for their sand and gravel interest, and that the award (\$31,000) was in fact generous as we had contended, but was permissible based upon the record. The court also held that the commission report, objected to by all parties, satisfied the minimum requirements set down by the Supreme Court in Merz.

Attorneys: Joshua I. Schwartz and Robert L.  
Klarquist (Land and Natural  
Resources Division) FTS 633-2754/  
2731

OFFICE OF LEGISLATIVE AFFAIRS  
Assistant Attorney General Alan A. Parker

## SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

MAY 28, 1980 - JUNE 10, 1980

Institutions. On May 23, 1980, the President signed H.R. 10, the institutions bill (P.L. 96-247).

School Prayer. In April of last year, the Senate passed S. 450, the Department's Supreme Court jurisdiction bill. Attached to that bill on the Senate floor was an amendment, proposed by Senator Helms, eliminating the jurisdiction of the federal courts over cases relating to voluntary prayer in public schools and public buildings. The Helms amendment was opposed by the Department on both constitutional and policy grounds. Nevertheless, the amendment carried and S. 450 has languished in the House Judiciary Committee ever since.

It now appears that an effort is being made to revive the bill by House supporters of the Helms amendment. A petition to discharge the Judiciary Committee from further consideration and send the bill to the House floor is circulating. There have been active efforts by Helms amendment supporters and, at last count, there are now 170 signatures.

Internment of Japanese during World War II. On June 2, the House Judiciary Subcommittee on Administrative Law and Governmental Relations conducted a hearing on S. 1647 and H.R. 5499, the proposed "Commission on Wartime Relocation and Internment of Civilians Act." These bills would create a Commission to "determine whether a wrong was committed" against those interned and "to recommend appropriate remedies." Stuart Schiffer, Deputy Assistant Attorney General, Civil Division, will endorse the bills on behalf of the Department. The hearing will also encompass H.R. 5977, a bill which would create a remedy for those interned and, by Department estimates, cost some \$3 billion. The Department intends to submit a subsequent written comment on H.R. 5977, and indicate that our initial study raises serious problems with the bill.

Medical Records Privacy. Further discussions are being held to determine whether there is any more room for agreement between DOJ and Congressman Preyer's staff on amendments to this bill. Ways and Means has taken no further action, and Commerce has taken no action. Senate Governmental Affairs has taken no action since its hearings last year.

FOIA and Intelligence Information. House Subcommittee on Government Information and Individual Rights (Government Operations) will be holding hearings on H.R. 7055 and H.R. 7056 to amend the Freedom of Information Act with regard to the intelligence community. H.R. 7056 is the Administration proposal originated by Justice, and has our support. H.R. 7055 is Preyer's own more narrow proposal which is not sufficient as the Department views it.

Paperwork Reduction. H.R. 6410 will soon be marked-up in Senate Governmental Affairs Committee. Although committee staff and OMB insist the bill would not require the Department to seek OMB approval of subpoenas, interrogatories, CIDs and other investigative devices, the bill reads as though they would be included. DOJ is continuing to press for statutory exemptions but it is an uphill battle.

Motor Vehicle Theft Act. The House Foreign Affairs Inter-American Subcommittee and Interstate and Foreign Commerce Subcommittee on Consumer Protection and Finance is scheduled to conduct joint hearings on the Motor Vehicle Theft Act, focusing on auto part smuggling on the borders between the U.S. and Canada and the U.S. and Mexico on June 2, 10 and 12. Philip Heymann is scheduled to testify on June 10, 1980.

Parental Kidnapping. The House Judiciary Subcommittee on Crime will be holding a hearing on Parental Kidnapping on June 24, 1980. It is expected that DOJ will be invited. If so, the Criminal Division and FBI will testify. We have testified before and oppose any expansion of federal jurisdiction to cover kidnapping.

Arson. The Senate Judiciary Subcommittee on Criminal Justice is scheduled to hold a hearing on S. 252, the Arson bill, on June 12, 1980. At a meeting held on May 28, 1980, it was decided, presuming OMB agrees, that the Fire Prevention Administration will testify for the Administration. The other agencies, including DOJ, will send their views to the Fire Administration. The Administration opposes the bill because it would be a duplication of effort (FBI and LEAA) and costly.

Antitrust Collateral Estoppel, Antitrust Prejudgement Awards. House floor action on H.R. 4046 and H.R. 4048 is now scheduled for May 29, 1980.

IRS Disclosure of Information to Law Agencies. The Senate Finance Committee has scheduled a hearing on S. 2402, which would amend the Tax Reform Act of 1976 to allow easier access to IRS information by federal authorities who are investigating organized crime figures and drug traffickers. Witnesses for the hearing have not been determined.

Rock Island Railroad. S. 2553, which provides for the extension of rail service on the Rock Island Railroad is now law. The legislation contains one troubling item in section 118 which deals with employee stock ownership plan and related trust. Sec. 118(c)(9) places the United States in a position of indemnifying the trustees of the Corporation for any liabilities incurred in connection with the implementation of the stock option plan. The Department obviously has difficulties with the provision; however, because of a funding deadline of May 21, 1980, and the presence of provisions in the bill which we support, Executive approval was given.

Intelligence Oversight. On June 3 the Senate passed the intelligence oversight bill, S. 2284, by a 89 to 1 vote. This four page bill is all that is left of the original effort to enact a comprehensive charter. The bill which passed the Senate expands reporting requirements to encompass all U.S. intelligence agencies. However, the number of congressional committees that must give prior notice of intelligence activities to is reduced to the House and Senate Intelligence Committees. Should the President determine that the national security would be endangered by disclosing information to both committees, the information may be given only to the four senior congressional leaders of both parties and the four senior members of the two committees. If the President asserts a constitutional privilege not to give prior notice of covert operations, the bill requires that he "fully inform" the Intelligence Committees in a timely manner.

Senator Moynihan withdrew his amendment to the bill that would have prohibited the CIA from having journalists, clergy, or academics as spies.

An issue originally incorporated in the Intelligence Charter, the Protection of Agents' Identity, will be the subject of Senate Intelligence Committee hearings on June 24, 25 and 26.

Fair Housing. After seven previously unsuccessful attempts to get a quorum to mark up S. 506, the fair housing amendments, Chairman Bayh finally managed to begin consideration of the bill on June 4. Unfortunately, the markup did not go well from the Administration's perspective. A DeConcini/Thurmond compromise to strike the administrative proceedings from the bill and substitute mandatory referral of housing cases to U.S. magistrates, with appeal de novo to the district court, passed by vote of 4 to 2 (DeConcini, Hatch, Thurmond, Simpson in favor; Metzenbaum and Bayh against; Heflin present). In the Department's view, this is even worse than the "Sensenbrenner amendment" which opponents hope will be attached to the House bill. A DeConcini amendment to exclude appraisers passed unanimously. A third troublesome amendment, to strike coverage

for insurance redlining, passed 5 to 1. The only amendment defeated, and only by the narrow margin of 3 to 4, would have substituted the "intent" test for the "effects" test for proving a violation of the Act.

The Subcommittee plans one more day of markup and will then report the bill out. Whether or not some or all of these matters can be remedied in full Committee is unknown. Depending on the text of the bill as it emerges from Committee, the Administration may have to withdraw its strong endorsement of this legislation.

Architectural Barriers. On June 11, Drew Days (Assistant Attorney General, Civil Rights Division) is scheduled to testify before the House Education and Labor Subcommittee on Select Education. The subject of the hearings is oversight of the Architectural and Transportation Barriers Compliance Board. Mr. Days is appearing in his role as Chairman of the Interagency Coordinating Council on the status of interagency agreements and policies affecting the Board.

National Guard Torts. On May 30, the Senate passed by voice vote S. 1858, to make the United States liable under the Federal Tort Claims Act for the torts of National guardsmen in training. The Department, on behalf of the Administration, strongly opposed this proposal on the ground that guardsmen are state, not federal, employees and are outside our supervision and control. There appears to be considerable sentiment for this concept, however, and the Department is currently preparing a strong statement in opposition for House use.

Cuban Refugees. David Crosland, INS Acting Commissioner, appeared before the House Subcommittee on Immigration to discuss the Cuban refugees on June 4. The hearing was a "follow-up" to a May 13 subcommittee meeting. Crosland participated in a panel which included refugee coordinator Palmieri, the Federal Emergency Management Authority, the Coast Guard and the Public Health Service. As before, Chairwoman Holtzman expressed concern as to whether the Administration has any set policy on the Cuban refugees and also wanted statistics on Cubans with criminal records or health problems.

Criminal Code Reform. The House Judiciary Committee is continuing markup of its bill, H.R. 6915. On June 4 the Committee voted on one of the most controversial issues on the bill, whether Enmons, which held that union activity is outside the extortion offense, would be retained. By a 17-13 vote, the Committee adopted a Seiberling amendment to keep current law, after defeating amendments by Hall and Gudger which would have provided some federal jurisdiction.

Lobby Disclosure. S. 2160 was taken up by the Senate Governmental Affairs Committee but only one amendment was discussed before Senator Mathias (the leading opponent) had to leave. Senator Chiles (the bill's sponsor) insisted on further markups which Ribicoff scheduled for June 11th and 12th. Mathias is expected to offer nearly 40 amendments in an apparent effort to stall the bill.

The House Judiciary Committee passed a similar bill last fall but is awaiting Senate action before bringing it to the floor.

Stanford Daily. In a meeting with several divisions of the Department, it was decided that now was not the proper time to compromise on this legislation. While guidelines would certainly be easier to live with than the all third parties bill reported by the House Judiciary Committee, it is still viewed as being an inappropriate solution to a "non-problem." Since there does appear to be some possibility of our winning the issue in the full Senate Judiciary Committee, it was decided to go at least one more round before compromising with the Senate.

Currency Transactions Amendments. Senate Banking is holding hearings on the proposal to amend the Bank Secrecy Act to improve the chances of convicting persons who attempt to take large sums of currency, derived from illegal enterprises, out of the country. Justice will not be testifying, but will be providing its views for use by Congressman John LaFalce, the House sponsor of the legislation who will be testifying on June 6th.

Antitrust Collateral Estoppel. H.R. 4046 passed the House (254-0) on May 30, 1980. <sup>152</sup>

Antiterrorism. On June 4, 1980 the Senate Governmental Affairs Committee unanimously reported out S. 333, the Anti-terrorism bill with two amendments. The first amendment, which passed 8-7, was proposed by Senators Eagleton and Stevens and eliminated the explosive taggants section. After considerable discussion it was agreed that the report would contain language allowing the continuance of government sponsored research and development of explosive taggants. The second amendment proposed by Senator Cohen and unanimously adopted prohibits the exchange of "ideas" (students from countries supporting terrorism attending MIT, Cal Tech., etc.) which could be converted for military purposes.

Soft Drink Bottlers. On June 27, 1980 the House will vote on a motion to take away from the Judiciary Committee H.R. 3567, the Soft Drink Bottlers bill. A discharge petition, the first one this year, was signed by 218 members. The bill is currently scheduled for mark-up by the Judiciary Subcommittee on Monopolies and Commercial Law on June 11, 1980.

Criminal Procedure Amendments. The House Judiciary Subcommittee on Criminal Justice held a hearing on the Supreme Court amendments to the Federal Rules of Criminal Procedure on June 6, 1980. At this time the Department of Justice is not scheduled to testify, but another hearing date or submission of written comments will be offered by the Department.

Nominations. On June 2, 1980 the United States Senate received the following nominations:

Earl H. Carroll, and Alfred C. Marquez, each to be a U.S. District Judge for the District of Arizona;

George Howard, Jr., to be U.S. District Judge for the Eastern and Western Districts of Arkansas;

Charles P. Kocoras, to be U.S. District Judge for the Northern District of Illinois;

John E. Sprizzo, to be U.S. District Judge for the Southern District of New York.

On June 4, 1980, the Senate Judiciary Committee concluded hearings on the nominations of Clyde F. Shannon, Jr. to be U.S. District Judge for the Western District of Texas, and Felemon B. Vela, to be U.S. District Judge for the Southern District of Texas, after the nominees testified and answered questions in their own behalf, and held hearings on the nominations of Ruth B. Ginsburg, of New York, to be U.S. Circuit Judge for the District of Columbia Circuit, and Hipolito F. Garcia to be a U.S. District Judge for the Western District of Texas, where the nominees testified and answered questions in their own behalf.

## Federal Rules of Evidence

Rule 801(d)(2)(E). Hearsay. Definitions.  
Statements Which Are Not  
Hearsay. Admission by  
Party-Opponent.

Defendants appealed conspiracy convictions, contending that there was insufficient evidence to prove the existence of a conspiracy as a condition precedent to permitting the jury to consider the hearsay statements of coconspirators under Rule 801(d)(2)(E). Defendants and government both contended that determination of this issue was controlled by United States v. Andrews, 585 F.2d 961 (10th Cir. 1978). The Court, however, deemed it important to determine whether Andrews should be applied retroactively, or prospectively only.

Before Andrews, in the Tenth Circuit the trial judge was required only to make an initial determination that 1) there was prima facie independent evidence that the conspiracy existed, 2) both declarant and defendant were members of the conspiracy, and 3) the statement was made in furtherance of the conspiracy. The jury then determined whether these factors were proved beyond a reasonable doubt. Andrews held that such coconspirator's statements may be admitted under Rule 801(d)(2)(E) only if the trial judge determines that the preponderance of the evidence indicates that these three factors are present.

Applying the three-prong test for retroactive application set forth in Chevron Oil Co. v. Huson, 404 U.S. 97 (1971), the Court concluded that Andrews should be applied prospectively only; thus, the district court did not err in employing the test previously adhered to in the Tenth Circuit. However, the Court went on to say, in dicta, that the Andrews rule had been met and discussed more fully the rules to be applied in determining the admissibility, under Andrews, of statements made by coconspirators under Rule 801(d)(2)(E).

(Affirmed.)

United States v. Ronald K. Peterson, et al., 611 F.2d  
1313 (10th Cir. November 15, 1979)

## Federal Rules of Evidence

Rule 501. Privileges. General Rule

Defendant who was found guilty of murder appealed his conviction on the ground that his confession, admitted into evidence against him, was privileged because it was a confidential communication to a clergyman.

The Court did not find it necessary to reach the question of whether the privilege for penitential communications applies in federal proceedings because the presence of a security officer with defendant's consent at the time the confession was made destroyed the confidentiality necessary to invoke the privilege.

(Affirmed.)

United States v. Walter Marlin Webb, 615 F.2d 828  
(9th Cir. March 4, 1980)

## LISTING OF ALL BLUESHEETS IN EFFECT

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
TITLE 1		
5-23-78	1 thru 9	Reissuance and Continuation in Effect of BS to U.S.A. Manual
Undtd	1-1.200	Authority of Manual; A.G. Order 665-76
6-21-77	1-3.100	Assigning Functions to the Associate Attorney General
6-21-77	1-3.102	Assignment of Responsibility to DAG re INTERPOL
6-21-77	1-3.105	Reorganize and Redesignate Office of Policy and Planning as Office for Improvements in the Administration of Justice
4-22-77	1-3.108	Selective Service Pardons
6-21-77	1-3.113	Redesignate Freedom of Information Appeals Unit as Office of Privacy and Information Appeals
6-21-77	1-3.301	Director, Bureau of Prisons; Authority to Promulgate Rules
6-21-77	1-3.402	U.S. Parole Commission to replace U.S. Board of Parole
Undtd	1-5.000	Privacy Act Annual Fed. Reg. Notice; Errata
12-5-78	1-5.400	Searches of the News Media
8-10-79	1-5.500	Public Comments by DOJ Emp. Reg., Invest., Indict., and Arrests
4-28-77	1-6.200	Representation of DOJ Attorneys by the Department: A.G. Order 633-77
8-30-77	1-9.000	Case Processing by Teletype with Social Security Administration
10-31-79	1-9.000	Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
11-16-79	1-9.000	Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents
7-14-78	1-14.210	Delegation of Authority to Conduct Grand Jury Proceedings
	TITLE 2	
1-03-77	2-3.210	Appeals in Tax Case
	TITLE 3	
Undtd	3-4.000	Sealing and Expungement of Case Files Under 21 U.S.C. 844
	TITLE 4	
11-27-78	4-1.200	Responsibilities of the AAG for Civil Division
9-15-78	4-1.210- 4-1.227	Civil Division Reorganization
4-14-80	4-1.213	Federal Programs Branch Case Reviews
5-12-80	4-1.213	Organization of Federal Programs Branch, Civil Division
4-1-79	4-1.300- 4-1.313	Redelegations of authority in Civil Division Cases
5-5-78	4-1.313	Addition of "Direct Referral Cases" to USAM 4-1.313
4-1-79	4-2.110- 4-2.140	Redelegation of Authority in Civil Division Cases
5-12-80	4-2.230	Monitoring of pre-and post judgment payments on VA educational overpayment accounts
2-22-78	4-2.320	Memo Containing the USA's Recommendations for the Compromising or Closing of Claims Beyond his Authority
11-13-78	4-2.433	Payment of Compromises in Federal Tort Claims Act Suits
8-13-79	4-3.000	Withholding Taxes on Backpay Judgments
5-05-78	4-3.210	Payment of Judgments by GAO
6-01-78	4-3.210	New telephone number for GAO office handling payment of judgments

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-14-79	4-4.230	Attorneys' Fees in EEO Cases
11-27-78	4-4.240	Attorney fees in FOI and PA suits
4-1-79	4-4.280	New USAM 4-4.280, dealing with attorney's fees in Right To Financial Privacy Act suits
4-1-79	4-4.530	Addition to USAM 4-4.530 (costs recoverable from United States)
4-1-79	4-4.810	Interest recoverable by the Gov't.
4-1-79	4-5.229	New USAM 4-5.229, dealing with limitations in Right To Financial Privacy Act suits.
2-15-80	4-5.530; 540; 550	FOIA and Privacy Act Matters
4-1-79	4-5.921	Sovereign immunity
4-1-79	4-5.924	Sovereign immunity
2-18-77	4-6.400	Coordination of Fraud Against The Government Cases
5-5-80	4-6.400	Coordination of Civil & Criminal Aspects of Fraud & Official Corruption Cases
5-12-80	4-6.600	Monitoring of pre- and post judgment payments on VA educational overpayment accounts
5-12-80	4-6.600	Memo of Understanding for Conduct of Test Program to Collect VA Educational Assistance Overpayments Less Than \$600
9-24-79	4-9.200	McNamara-O'Hara Service Contract Act Cases
9-24-79	4-9.700	Walsh-Healy Act cases
4-1-79	4-11.210	Revision of USAM 4-11.210 (Copyright Infringement Actions).
4-1-79	4-11.850	New USAM 4-11.850, discussing Right To Financial Privacy Act litigation
4-21-80	4-11.860	FEGLI litigation
6-4-79	4-12.250	Priority of Liens (2410 cases)
	4-12.251	

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
4-7-80	4-12.250; .251; .252	Priority of Liens (2420 cases)
5-22-78	4-12.270	Addition to USAM 4-12.270
4-16-79	4-13.230	New USAM 4-13.230, discussing revised HEW regulations governing Social Security Act disability benefits
11-27-78	4-13.335	News discussing "Energy Cases"
7-30-79	4-13.350	Review of Government Personnel Cases under the Civil Service Reform Act of 1978
4-1-79	4-13.361	Handling of suits against Gov't Employees
6-25-79	4-15.000	Subjects Treated in Civil Division Practice Manual
	TITLE 5	
9-14-78	5-1.110	Litigation Responsibility of the Land & Natural Resources Division
9-14-78	5-1.302	Signing of Pleadings by AAG
9-7-78	5-1.310	Authority of U.S. Attorneys to Initiate Actions Without Prior Authorization to Initiate Action
9-14-78	5-1.321	Requirement for Authorization to Initiate Action
1-3-79	5-1.325; 5-1.326	Case Weighting System, Case Priority System, Procedures
9-7-78	5-1.620	Settlement Authority of Officers within the Land and Natural Resources Division
9-7-78	5-1.630	Settlement Authority of U.S. Attorneys
9-14-78	5-2.130	Statutes administered by Pollution Control Section

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
11-13-79	5-2.130	Naming of State in Clear Water Act Enforcements Actions Against Municipalities
9-06-77	5-2.310(a) and (b); 5-2.312	Representation of the Environmental Protection Agency
9-14-78	5-2.312	Cooperation and Coordination with Environmental Protection Agency
9-14-78	5-2.321	Requirement for Authorization to Initiate Action
9-14-78	5-3.321	Requirement for Authorization To Initiate Action
9-06-77	5-3.321; 5-3.322	Category 1 Matters and Category 2 Matters-Land Acquisition Cases
9-14-78	5-4.321	Requirement for Authorization to Initiate Action
9-14-78	5-5.320	Requirement for Authorization to Initiate Action
9-14-78	5-7.120	Statutes Administered by the General Litigation Section
9-14-78	5-7.314	Cooperation and Coordination with the Council on Environmental Quality
9-14-78	5-7.321	Requirement for Authorization to Initiate Action
9-14-78	5-8.311	Cooperation and Coordination with the Council on Environmental Quality
	TITLE 6	
4-22-80	6-3.630	Responsibilities of United States Attorney of Receipt of Complaint
	TITLE 7	
6-21-77	7-2.000	Part 25-Recommendations to President on Civil Aeronautic Board Decisions, Procedures for Receiving Comments by Private Parties

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
	TITLE 8	
6-21-77	8-2.000	Part 55-Implementation of Provisions of Voting Rights Act re Language Minority Groups (interpretive guidelines)
6-21-77	8-2.000	Part 42-Coordination of Enforcement of Non-discrimination in Federally Assisted Programs
5-23-80	8-2.170	Standards for Amicus Participation
10-18-77	8-2.220	Suits Against the Secretary of Commerce Challenging the 10% Minority Business Set-Aside of the Public Works Employment Act of 1977 P.L 95-28 (May 13, 1977)
5-23-80	8-2.400	Amicus Participation By the Division
5-23-80	8-3.190	Notification to Parties of Disposition of Criminal Civil Rights Matters
5-23-80	8-3.330	Notification to Parties of Disposition of Criminal Civil Rights Matters
	TITLE 9	
7-11-79	9-1.000 <small>bn.</small>	Criminal Division Reorganization
Undtd (3-80)	9-1.103	Description of Public Integrity Section
3-14-80	9-1.103	Criminal Division Reorganization
11-13-79	9-1.160	Requests for Grand Jury Authorization Letters for Division Attorneys
Undtd	9-1.215	Foreign Corrupt Practices Act of 1977-15 U.S.C. 78m(b)(2)-(3); 15 U.S.C. 78dd-1; and 15 U.S.C. 78dd-2
4-14-80	9-1.403; .404;.410	Criminal Division Reorganization
4-16-80	9-1.502	Criminal Division Brief/Memo Bank
6-22-79	9-2.000	Cancellation of Outstanding Memorandum
5-11-79	9-2.025	Trade Secrets Act-Prosecution Under 18 U.S.C. 1905

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
1-25-80	9-2.145	Interstate Agreement on Detainers
5-5-80	9-2.148	Informal Immunity
4-16-79	9-2.168	State and Territorial Prisoners Incarcerated in Federal Institutions
5-12-80	9-4.206 & 7	Mail Covers
2-28-80	9-4.116	Oral Search Warrants
6-28-79	9-4.600	Hypnosis
Undtd	9-7.000; 9-7.317	Defendant Overhearings and Attorney Overhearings Wiretap Motions
4-28-80	9-7.230	Pen Register Surveillance
2-06-80	9-11.220	Use of Grand Jury to Locate Fugitives
12-13-78	9-11.220	Use of Grand Jury to Locate Fugitives
5-31-77	9-11.230	Grand Jury Subpoena for Telephone Toll Records
8-13-79	9-11.230	Fair Credit Reporting Act and Grand Jury Subpoenas
5-22-79	9-16.210	Explanation of "Special Parole" in Entry of Pleas Pursuant to Rule 11 F.R. Crim. P.
11-13-79	9-34.220	Prep. Reports on Convicted Prisoners for Parole Commission
10-22-79	9-42.000	Coordination of Fraud Against the Government Cases (non-disclosable)
2-27-80	9-47.120	Foreign Corrupt Practices Act Review Procedure
6-29-79	9-60.291	Forfeiture of Devices Illegally Used to Intercept Wire or Oral Communications
5-22-79	9-61.132 and 9-61.133	Steps to be Taken to Assure the Serious Consideration of All Motor Vehicle Theft Cases for Prosecution

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-22-79	9-63.165	Revision of Prosecutive Policy to Reflect Availability of Civil Penalty for Processing Individuals who Attempt to Carry a Firearm Aboard a Carrier Aircraft
8-08-79	9-69.260	Perjury: False Affidavits Submitted in Federal Court Proceedings Do Not Constitute Perjury Under 18 USC 1623
1-3-80	9-69.420	Issuance of Federal Complaint in Aid of States' Prerequisites to; Policy
3-12-79	9-79.260	Access to information filed pursuant to the Currency & Foreign Transactions Reporting Act
5-11-78	9-120.160	Fines in Youth Corrections Act Cases
3-14-80	9-120.210	Armed Forces Locator Services
5-23-80	9-120.210	Directory: Dept. of Motor Vehicles Driver's License Bureau
2-29-80	9-121.120, .153 and .154	Authority to Compromise & Close Appearance Bond Forfeiture Judgements
4-21-80	9-121.140	Application of Cash Bail to Criminal Fines
4-05-79	9-123.000	Costs of Prosecution (28 U.S.C. 1918(b))

(Revised 6-4-80)

Listing of all Bluesheets in Effect

ADDENDUM

Note that you should remove the Bluesheet affecting 9-27.000 from your U.S. Attorneys' Manual. This Bluesheet was replaced by the bluesheet dated February 28, 1980, affecting USAM 9-4.116.

## 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.

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

	3	8/15/79	7/31/79	Revisions to Ch. 3
	4	9/25/79	7/31/79	Ch. 3
4	1	1/02/77	1/02/77	Ch. 3 to 15
	2	1/21/77	1/03/77	Ch. 1 & 2
	3	3/15/77	1/03/77	Index
	4	11/28/77	11/01/77	Revisions to Ch. 1-6, 11-15 Index
5	1	2/04/77	1/11/77	Ch. 1 to 9
	2	3/17/77	1/11/77	Ch. 10 to 12
	3	6/22/77	4/05/77	Revisions to Ch. 1-8
	4	8/10/79	5/31/79	Letter from Attorney General to Secretary of Interior
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
	6	3/14/80	3/6/80	Revisions to Ch. 3

9	1	1/12/77	1/10/77	Ch. 4,11,17, 18,34,37,38
	2	2/15/78	1/10/77	Ch. 7,100,122
	3	1/18/77	1/17/77	Ch. 12,14,16, 40,41,42,43
	4	1/31/77	1/17/77	Ch. 130 to 139
	5	2/02/77	1/10/77	Ch. 1,2,8,10, 15,101,102,104, 120,121
	6	3/16/77	1/17/77	Ch. 20,60,61,63, 64,65,66,69,70, 71,72,73,75,76,77, 78,79,85,90,110
	7	9/08/77	8/01/77	Ch. 4 (pp. 81- 129) Ch. 9, 39
	8	10/17/77	10/01/77	Revisions to Ch. 1
	9	4/04/78	3/18/78	Index
	10	5/15/78	3/23/78	Revisions to Ch. 4,8,15, and new Ch. 6
	11	5/23/78	3/14/78	Revisions to Ch. 11,12,14, 17,18, & 20
	12	6/15/78	5/23/78	Revisions to Ch. 40,41,43, 44, 60
	13	7/12/78	6/19/78	Revisions to Ch. 61,63,64, 65,66
	14	8/02/78	7/19/78	Revisions to Ch. 41,69,71, 75,76,78, & 79
	15	8/17/78	8/17/78	Revisions to Ch. 11

16	8/25/78	8/02/78	Revisions to Ch. 85,90,100, 101, & 102
17	9/11/78	8/24/78	Revisions to Ch. 120,121,122, 132,133,136,137, 138, & 139
18	11/15/78	10/20/78	Revisions to Ch. 2
19	11/29/78	11/8/78	Revisions to Ch. 7
20	2/01/79	2/1/79	Revisions to Ch. 2
21	2/16/79	2/05/79	Revisions to Ch. 1,4,6,11, 15,100
22	3/10/79	3/10/79	New Section 9-4.800
23	5/29/79	4/16/79	Revisions to Ch. 61
24	8/27/79	4/16/79	Revisions to 9-69.420
25	9/21/79	9/11/79	Revision of Title 9 Ch. 7
26	9/04/79	8/29/79	Revisions to Ch. 14
27	11/09/79	10/31/79	Revisions to Ch. 1, 2, 11, 73, and new Ch. 47
28	1/14/80	1/03/80	Detailed Table of Contents p. i-iii (Ch. 2) Ch. 2 pp 19-20i
29	3/17/80	3/6/80	Revisions to Ch. 1, 7, 11, 21, 42, 75, 79, 131, Index to Title 9
30	4/29/80	4/1/80	Revisions to Ch. 11, 17, 42