



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

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# **United States Attorneys' Bulletin**

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APPENDIX: FEDERAL RULES OF CRIMINAL PROCEDURE  
These pages should be placed on permanent  
file, by Rule, in each United States  
Attorney's office library.

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COMMENDATIONS

Assistant United States Attorney ANA BARNETT, Southern District of Florida, has been commended by Mr. Jeffrey Axelrad, Director, Torts Branch, Civil Division, for her successful representation in a recent tort case involving swine flu liability.

Assistant United States Attorney STUART BASKIN, Southern District of New York, has been commended by Mr. William H. Webster, Director, Federal Bureau of Investigation, for his outstanding performance in connection with the investigation of Croatian terrorist matters for the last three years. The trial of United States v. Ivan Cale was successfully concluded with guilty verdicts against five of the six defendants.

First Assistant United States Attorney JACK COLLINS and Assistant United States Attorneys BOB WEAVER and RON HOEVET, District of Oregon, have been commended by Mr. Earl M. Campbell, Special Agent in Charge, Office of Investigations, for their work in the case of United States v. Charapata. The case resulted in the convictions of the operators of 15 nursing homes in the Northwest on charges of false statements and diversion with respect to the use of federal funds provided for nursing care and tax evasion.

Assistant United States Attorney JEFFREY C. FISHER, District of Wyoming, has been commended by Mr. Robert F. Price, Resident Agent in Charge, Drug Enforcement Administration, for his excellent presentation in the securing of a Court Order in the District Court of Wyoming upholding the right of the Drug Enforcement Administration to issue administrative subpoenas to Mountain States Telephone and Telegraph Company for telephone company records.

Assistant United States Attorney TERENCE P. FLYNN, District of New Jersey, has been commended by Mr. John C. Keeney, Acting Assistant Attorney General, Criminal Division, for his outstanding work in United States v. Geils and Forest Marine Electric, Inc., which was the first prosecution for a violation of the Iranian Assets Control Regulations under the International Emergency Economic Powers Act.

Assistant United States Attorney ROBERT J. FOGARTY, Southern District of Ohio, has been commended by Kenneth B. Knowles, Colonel, USAF. Despite the defendant's assertion of the statute of limitations defense, Mr. Fogarty was able to obtain a favorable judgment in the case United States v. Rudy Yeager, dba Rudy's Body Shop.

First Assistant United States Attorney HENRY I. FROSHIN and Assistant United States Attorney H. HAROLD STEPHENS, Northern District of Alabama, have been commended by Mr. S. Neil Hosenball, General Counsel, National Aeronautics and Space Administration, for the high degree of professionalism exhibited in the case of Pioneer Contract Services, Inc. v. Robert A. Frosch.

Assistant United States Attorney STEPHEN GILLMAN, Southern District of Florida, has been commended by Mr. Charles Howell, Special Agent in Charge, United States Secret Service, for his superior accomplishment in the prosecution of five defendants who were convicted of conspiracy to distribute large quantities of counterfeit currency in the case of United States v. Macineras.

Assistant United States Attorneys CHARLES GOODLOE, JR. and BRADLEY WILLIAMS, Southern District of Indiana, have been commended by Mr. Harlan C. Phillips, Special Agent in Charge, Federal Bureau of Investigation, Nebraska, for their handling of the case of Charles Egger, former Special Agent for the FBI, against Harlan Phillips.

Assistant United States Attorney IRA GROPPER, Southern District of Florida, has been commended by Mr. Edward W. Davidson, Director, Family Nutrition Programs, Department of Agriculture, for his well prepared and detailed presentation of evidence which resulted in the disqualification of Flamingo Produce Store from the food stamp program. Mr. Gropper has also been commended by Mr. T. J. Ansbro, Jr., Assistant City Attorney and by Mr. Leonard A. Ceruzzi, Assistant Chief Counsel, General Legal Services Division, for his diligent, enthusiastic representation of the interest of the City and the FAA in City of Tamarac v. FAA, City of Fort Lauderdale. Mr. Gropper's performance resulted in a dismissal with prejudice of a law suit which challenged the installation of airport flight safety equipment at a general aviation airport.

Assistant United States Attorney DAVID L. MAURER, Eastern District of Michigan, has been commended by Mr. Vernon J. Owens, Regional Counsel, Internal Revenue Service, for his handling of a motion filed in Braun v. United States. The Internal Revenue Service office is also familiar with Mr. Maurer's involvement in Surmacz v. Department of Treasury, pertaining to an EEO Complaint of an IRS employee.

Assistant United States KENNETH S. MCHARGH, Northern District of Ohio, has been commended by Mr. Joseph E. Griffin, Jr., Special Agent in Charge, Federal Bureau of Investigation, for the successful prosecution in the case of United States v. Valavanis and Gordon, involving a recent fraud by wire.

Assistant United States Attorneys ROSS PARKER and MICHAEL HLUCHANIUK, Eastern District of Michigan, have been commended by Mr. B. G. Martin, Inspector in Charge, United States Postal Service, for the successful prosecution of Archibald Hapai Ryan for the sale and distribution of child pornography through the United States Mails. This was the first trial for violations of Title 18, United States Code, Section 2252 (a)(1).

Assistant United States Attorney JOHN N. THOMPSON, JR., Eastern District of Michigan, has been commended by Mr. B. G. Martin, Inspector in Charge, United States Postal Service, for his diligent preparation and presentation resulting in the successful prosecution of Danny Carl Chambers on the charge of a felon in possession of a firearm.

Assistant United States Attorney K. CHRIS TODD, Southern District of New York, has been commended by Mr. Thomas V. Cash, Acting Special Agent-in-Charge, Drug Enforcement Administration, for his connection with the successful prosecution in the case of United States v. Martino, involving a heroin/cocaine conspiracy. The trial ended recently in the conviction of all six defendants.

Assistant United States Attorney WILLIAM TURNOFF, Southern District of Florida, has been commended by Warden Thomas F. Keohane, Jr., Federal Correctional Institution, for his successful prosecution of two inmates who were guilty of smuggling marijuana into the Institution.

Assistant United States Attorney CHARLES J. WALSH, District of New Jersey, has been commended by Mark Novitch, M.D., Acting Commissioner of Food and Drugs, for his service in food and drug litigation. Mr. Walsh's representation has led to victories for the position espoused by the agency in United States v. Premo Pharmaceutical Laboratories, Inc. and United States v. Article of Drug ... Hormonin and has led to a favorable negotiated consent decree of injunction in United States v. Pharmadyne Laboratories, Inc. and a negotiated dismissal with prejudice in Premo Pharmaceutical Laboratories, Inc. v. United States.

Assistant United States Attorneys STEVE WEHNER and PAUL LASKOW, Eastern District of Pennsylvania, have been commended by Mr. James J. McClung, Special Agent in Charge, United States Customs Service, for their work in high priority Customs investigations. Their impressive efforts resulted in the successful prosecution of Timothy J. Shanahan, III, who was convicted in Federal District Court on 21 counts of violations of United States laws, relative to the theft of approximately \$220,000 worth of commodities.

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April 10, 1981

NO. 8

POINTS TO REMEMBERPrisoner Witnesses

The Bureau of Prisons has advised that because of the extraordinary difficulty in determining the appropriate institution for the safe housing of a prisoner-witness, it is imperative that they be furnished the following information on all persons who have been identified as posing a threat to the witnesses and who are likely to come into Federal custody.

1. Name
2. Alias
3. Date of birth
4. FBI #
5. Race
6. Sex
7. Ethnic origin
8. Offense/Charge
9. State of appeal, fugitive escape, non-incarcerated, etc.

Your compliance in providing this information will enable the Bureau of Prisons to adequately monitor the separation needs of protected prisoner-witnesses.

The information should be provided to the Office of Enforcement Operations at the time witness protection is being requested for a prisoner-witness in accordance with USAM 9-21.600.

(Criminal Division)

April 10, 1981

CIVIL RIGHTS DIVISION  
Acting Assistant Attorney General James P. TurnerUnited States v. Charleston County School Board and the State  
of South Carolina, CA No. 81-50-8 (D.S.C.) DJ 169-67-73

## School Desegregation

On March 2, 1981, the United States filed a motion requesting Judge Solomon Blatt, Jr. to disqualify himself from hearing our case against the Charleston County School District and the State of South Carolina. We argued in our Memorandum in Support that (a) under 28 U.S.C. 455(a), Judge Blatt's impartiality may reasonably be questioned since his father served as speaker of the General Assembly when it passed the allegedly unconstitutional Act of Consolidation in 1967 and that (b) under Section 455(b) the Judge should disqualify himself since "a person within the third degree" "is an officer to the proceeding." Currently, Judge Blatt's father is Speaker Emeritus of the South Carolina Legislature. Alternatively, we urged Judge Blatt to request a legal opinion from the ABA's Advisory Committee on Judicial Activities.

Attorneys: Thomas M. Keeling (Civil Rights Division)  
FTS 633-4713  
Michael Sussman (Civil Rights Division)  
FTS 633-4735  
Gregg Meyers (Civil Rights Division)  
FTS 633-4564

Gulf Oil Company v. Bernard, No. 80-441 (E.D. Tex.) DJ 170-75-32

## Title VII of the Civil Rights Act

On March 3, 1981, we filed in the Supreme Court a brief as amicus curiae. The Supreme Court granted certiorari to consider the constitutionality of a "gag" order imposed on plaintiffs and their attorneys (the NAACP Legal Defense Fund) at the outset of this Title VII class action. The order, which is based on recommendations of the Manual for Complex Litigation, prohibits communications with potential class members without prior court approval. We argued that the order is not appropriate under Rule 23 and is an unconstitutional restraint of speech.

Attorney: Carol Heckman (Civil Rights Division)  
FTS 633-4126



April 10, 1981

Liddell v. Board of Education, CA No. 72 C 100(1) (E.D. Mo.)  
DJ 169-42-36

School Desegregation

On March 4, 1981, the district court (Hungate, J.) issued a series of nine orders. Of particular interest was the court's self-proclaimed "philippic" against the State of Missouri which was read, in full, in open court. After reciting the State's efforts to produce a voluntary inter-district plan, the court noted that the "extraordinary machinations" of the State compelled only one conclusion: "The State has, as a matter of deliberate policy, decided to defy the authority of the Court." The Court then set a new series of deadlines and noted that failure of the State (or the United States or the St. Louis Board of Education) to meet these deadlines could "result in the issuance of an order of contempt." The order require a new voluntary plan of inter-district cooperation no later than May 4, 1981 with an interior plan to be filed by April 3, 1981.

Attorneys: Thomas M. Keeling (Civil Rights Division)  
FTS 633-4716  
Craig Crenshaw (Civil Rights Division)  
FTS 633-2192  
Jeremiah Glassman (Civil Rights Division)  
FTS 633-4739

RAJ v. Kavanaugh, CA No. 3-74-394 (N.D. Tex.) DJ 144-73-1772

Conditions of Confinement

On March 5, 1981, we filed the settlement agreement in this case, a seven-year old suit challenging conditions and treatment in eight Texas mental hospitals in which we are litigating amicus. Notice to the class will issue, and the Court will hold a hearing on any objections to the agreement on April 3, 1981. Absent valid objections, we anticipate court approval at that time.

Attorney: Andrew Barrick (Civil Rights Division)  
FTS 633-3447

March 27, 1981

Caulfield v. New York City Board of Education, No. 80-1107 (E.D. N.Y.) DJ 169-52-7

Title VI of the Civil Rights Act

On March 9, 1981, we filed in the Supreme Court our opposition to the petition for certiorari. The petitioners challenge a Second Circuit decision affirming the constitutionality of faculty assignment goals voluntarily undertaken by the Board to remedy Title VI violations charged by HEW in 1977. Other issues include the authority under Title VI to ban discriminatory employment practices resulting in discrimination against students, and the constitutionality of requiring school districts to submit to us racial and ethnic data about teachers.

Attorney: Mickey Matesich (Civil Rights Division)  
FTS 633-4493

LAND AND NATURAL RESOURCES DIVISION  
Assistant Attorney General Carol E. Dinkins

Schade v. Andrus, \_\_\_\_ F.2d \_\_\_\_, Nos. 78-3700 and 78-3703  
(9th Cir., February 2, 1981) DJ 90-1-4-1370.

Alaskan Trade and Manufacturing Act.

The court of appeals affirmed the district court's reversal of an IBLA decision to reject a slaughterhouse operator's Alaskan Trade and Manufacturing Site application to the extent that it included 22 1/2 acres of watershed needed to assure a pure water supply. The court rejected the Secretary's contention that only land in actual "active" use was authorized under the T&M Act. The court held that the applicant need only demonstrate that the land is "needed" under the T&M Act and that the Secretary's requirement for an "active" use was contrary to the language of the statute. The court of appeals, however, affirmed the Secretary's contention in the district court, that if an administrative appeal is filed by an applicant, the Secretary need not also file an appeal in order to seek a further reduction of the amount awarded by an ALJ.

Attorneys: Nancy B. Firestone and Peter R.  
Steenland (Land and Natural  
Resources Division) FTS 633-2757/  
2748

Logan v. Andrus, \_\_\_\_ F.2d \_\_\_\_, No. 79-1294 (10th Cir.,  
February 3, 1981) DJ 90-2-4-269.

Indians; Tribal Government; Only matters properly  
raised in complaint will be considered by court.

Six Osage Indians, who own head rights or shares in the Osage Mineral Estate, brought this action challenging the power of the Osage Tribal Council to represent the Osage Tribe in various federal programs and the use of trust or mineral estate funds for tribal programs. The district court held that the Osage Tribal Council had the general powers of a tribal government but that the Council was required to use funds derived from the mineral estate only for benefit of the owners of head rights and not for the benefit of the Tribe generally. The plaintiffs thereafter moved to vacate the judgment on the ground that the limitation of the right to vote for Council members to those who owned head rights was unconstitutional. The district

court denied the motion and the plaintiffs appealed. On appeal, the Tenth Circuit affirmed, holding that the district court had properly decided the issues raised in the complaint and the constitutional issue raised in the post-judgment motion was not properly raised by the plaintiffs who had the right to vote.

Attorneys: Gail Osherenko, Carl Strass and  
Anne S. Almy (Land and Natural  
Resources Division) FTS 633-4353/  
4427

Pacific Legal Foundation v. Andrus, \_\_\_ F.2d \_\_\_, Nos. 79-3472,  
79-3566 and 79-3661 (9th Cir., March 6, 1981) DJ 90-5-1-1-1127.

Clean Water Act; Endangered Species Act.

One day after oral argument,, the court of appeals issued a brief memorandum reversing the decision of the district court (Hauk, J.) granting summary judgment to PLF and (1) requiring the Secretary of the Interior to issue "on-the-record determinations" (rather than the statutorily prescribed biological opinions) as to whether EPA's regulatory actions, under the CWA affecting Los Angeles' Hyperion sewage plant and elsewhere, jeopardize or conserve endangered species; (2) requiring a similar "on-the-record" determination by EPA after holding a public hearing (which was not required by the CWA or the Endangered Species Act); and (3) rejecting the biological assessments and opinions prepared by EPA and Interior as insufficient to comply with the Act. The court of appeals remanded to the district court to reconsider the award of attorneys fees made to PLF. Giving no indication whether PLF might ultimately recover any fees in the face of the appellate reversal, the Ninth Circuit did instruct the district court not to employ the controversial "cost-plus" method of determining fees upon remand.

Attorneys: Joshua I. Schwartz (Solicitor General's  
Office) and Edward J. Shawaker (Land and  
Natural Resources Division) FTS 633-2688/  
2863

United States v. 179.77 Acres in Dutchess County, N.Y. ("Val Kill"), \_\_\_ F.2d \_\_\_, No. 80-6225 (2nd Cir., March 6, 1981)  
DJ 33-33-1029-1.

Condemnation.

In this case involving the condemnation of the estate where Eleanor Roosevelt once resided, in order to create an

historical memorial to her memory, the Second Circuit by an unreported decision, affirmed the judgment of the district court, following a two-week jury trial, awarding the prior owners \$300,000 as just compensation. The court rejected the owners' allegations that the trial court erred in its evidentiary rulings and was biased, holding that the government presented sufficient evidence of recent sales of comparable properties to warrant use of the fair market value standard of appraising the property; that reproduction cost data, inherently inflationary and prejudicial, was properly held inadmissible; that the court did not abuse its discretion in admitting evidence of a prior sale of the property; that the court correctly excluded evidence regarding the government's intended use of the property, in calculating its market value, because the landowners failed to demonstrate that the operation of an historical memorial would be the property's highest and most profitable use; and that the landowners' assertions of bias on the part of the trial court were without merit.

Attorneys: Assistant United States Attorney  
William J. Hibsher (S.D. N.Y.),  
Joshua Schwartz (Solicitor General's  
Office), Kay Richman and Jacques B.  
Gelin (Land and Natural Resources  
Division) FTS 633-2688/2956/2762

United States v. 162.30 Acres in Clay Co., Miss. (Uithoven),  
F.2d \_\_\_\_\_, No. 80-3707 (5th Cir., Unit A, March 13, 1981)  
DJ 33-25-361-22.

Condemnation; Declaration of Taking Act; National  
Historic Preservation Act of 1966.

In connection with the Tennessee-Tombigbee Waterway project, the United States filed a declaration of taking to acquire property for inclusion in a project recreation area. The landowners resisted condemnation on the ground that their dwelling was within the site of an abandoned Nineteenth Century riverfront town called Barton which is listed on the National Register of Historic Places under the National Historic Preservation Act of 1966. Although it claimed it had complied with the Act, and that the Advisory Council on Historic Preservation had so certified, the government filed a motion to strike the defense without introducing evidence showing compliance. The Fifth Circuit affirmed, holding: (1) alleged non-compliance by federal officials with the mandate of the NHPA is not a legally sufficient defense to condemnation under the

Declaration of Taking Act, but -- as suggested by the government -- (2) a district court in condemnation may require compliance with that Act and either withhold possession by the government or take appropriate injunctive action to enforce its order.

Attorneys: Jacques B. Gelin, Anne S. Almy and  
Ann P. Gailis (Land and Natural  
Resources Division) 633-2762/1442/  
4427

OFFICE OF LEGISLATIVE AFFAIRS  
Acting Assistant Attorney General Michael W. Dolan

## SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

MARCH 19, 1981 - APRIL 1, 1981

Inspector General. The Subcommittee on Legislation and National Security of the House Government Operations Committee has scheduled a hearing for April 8, 1981 on H.R. 2098, the Inspector General Amendments Act of 1981. This legislation would place a statutory office of Inspector General in the Department.

H.R. 1362 - Motor Fuel Marketer Preservation Act. On Tuesday, March 31, 1981, Richard Favretto, Acting Assistant Attorney General, Antitrust Division, testified before the House Subcommittee on Energy, Environment and Safety Issues Affecting Small Business. The subject of the hearing was H.R. 1362, the Small Business Motor Fuel Marketer Preservation Act of 1981. The Department opposes the legislation.

Criminal Code. On March 25, 1981, Congressman Conyers, the new chairman of the House Judiciary Subcommittee on Criminal Justice held a subcommittee meeting on criminal code reform.

Attending the meeting, other than Congressman Conyers, were Congressmen Edwards, Hall, Seiberling and Sensenbrenner. Conyers indicated that he has sent a letter to the Attorney General requesting he testify in the near future on the prospects of a comprehensive criminal code reform bill. Congressman Conyers expressed doubt over the feasibility of a comprehensive, as opposed to piece meal approach, to code reform. Congressmen Hall, Sensenbrenner and Seiberling, all of whom voted against the bill appeared optimistic about its chances. Congressman Hall wanted a speedy time table for any further hearings because of the lengthy hearings held last Congress. The members expressed concern over whether the Senate would do anything on a bill and, therefore, whether the House should spend much time on it.

No hearing date or further subcommittee meetings were scheduled.

FBI Oversight Career Development. On March 25, 1981, the House Judiciary Subcommittee on Civil and Constitutional Rights held an oversight hearing on FBI career development. The focus of the hearing concerned the benefits provided agents who are required to transfer in the career development program. Chairman Edwards appeared very sympathetic to the emotional and financial

burden placed on the families of those agents who have to transfer. He also appears willing to help change the reimbursement provisions.

FBI Oversight - Laboratories and Indian Reservation. The House Judiciary Subcommittee on Civil and Constitutional Rights will hold FBI Oversight hearings on Laboratories and Indian Reservations on April 2, 1981. Thomas F. Kelleher, Director of the Laboratory Division will testify on laboratories.

Pretrial Services. On March 31, and April 6, 1981, the House Subcommittee on Crime will hold hearings on pretrial services. Presumably, the focus will be Chairman Hughes' bill, H.R. 1133, the Pretrial Services Act of 1981. The bill is identical to the one reported out of the Judiciary Committee last Congress which authorizes expansion of a demonstration program now operating in 10 U.S. District Courts. The April 6 hearing will be held in New York City and representatives from the U.S. Attorneys Office will testify.

FBI Authorization. On April 8, 1981, the House Judiciary Subcommittee on Civil and Constitutional Rights will hold hearings on FBI Authorization. FBI Director Webster is scheduled to testify.

Senior Executive Service. On April 7 and 8, 1981 the House Post Office and Civil Service Subcommittee on Civil Services will hold a hearing on the Senior Executive Service (SES). Among other related issues the Subcommittee will consider the question of whether the SES authorities should be extended or made applicable to agencies not now covered. FBI and DEA who are currently not covered will testify.

DOJ Appropriations. On March 24, the Attorney General testified before the House Appropriations Subcommittee on State, Justice, Commerce and Judiciary concerning DOJ appropriations for FY 1982. Subcommittee Chairman Neil Smith indicated his approval of the budget decision not to reduce the size of the Antitrust Division, but urged that existing personnel levels be used "more effectively" to foster the growth of small businesses by protecting them from the anti-competitive practices of large corporations. Chairman Smith was also critical of the Administration's decision to terminate funding for the Legal Services Corporation. Representative Joseph Early (D. Mass.) expressed strong reservations regarding the proposed elimination of funds for the Juvenile Justice program, cuts in funding for DEA state and local task forces, and the proposed termination of the U.S. Trustees program. Mr. Early was particularly interested in the administratively uncontrollable overtime funds used by the Department's law enforcement agencies. Early indicated that such overtime



payments should be eliminated and replaced by higher salaries.

Congressman Jack Hightower (D. Texas) focused his comments on the problems of illegal immigration and the lack of control of our southwest border with Mexico. Mr. Hightower was critical of the proposed budget cuts for the INS and urged that INS resources be increased instead.

DOJ Authorization. The Attorney General testified on March 26 before the Senate Judiciary Committee on the request. Many areas of concern noted by the committee members echoed questions raised in the recent House and Senate appropriations hearings and in the House authorization hearing, such as: ending U.S. Marshal's Service of private process, elimination of U.S. Trustees program, elimination of the Office of Juvenile Justice and Delinquency Prevention, reduced resources for the INS, and renewed efforts to enact a revised criminal code. However, there was little overt criticism of the Administration's budget decisions, the only significant exception being Senator DeConcini's rather muted protest over the elimination of funding for multi-state intelligence projects.

Senator Grassley congratulated the Attorney General for "keeping an open mind" on the legislative veto issue and urged him to look at each proposed use of a legislative veto device in its individual context, rather than issuing a "blanket condemnation" of such devices as had been done under the previous Administration. The Senator also invited the Attorney General to testify on the subject of legislative vetoes before the Judiciary Subcommittee on Agency Administration. Senator Grassley also pressed the Attorney General for some indication of the Department's position on implementation of the recently enacted attorney's fees legislation and the Equal Access to Justice Act. Mr. Grassley urged the Attorney General to interpret the Act so that attorneys' fees paid would come out of individual agency budgets as a meaning of curbing over-zealous government litigation against small businessmen. The Attorney General indicated that the matter was still under study and that the primary concern was one of budgetary impact.

Civil Division, Foreign Claims Settlement Commission, Civil Rights Division Authorization Hearings. On March 26, Thomas Martin, Acting Assistant Attorney General, Civil Division, testified before the House Judiciary Subcommittee on Administrative Law and Governmental Relations on that Division's portion of the Department's authorization request. Richard Yarborough, Commissioner, Foreign Claims Settlement Commission, performed the same function for the Commission, also before the Administrative Law Subcommittee. On April 1, Acting Assistant Attorney General James Turner, Civil Rights Division, will appear before the House Judiciary Subcommittee on Civil and

Constitutional Rights to testify on Civil Rights' authorization request.

Legal Services Corporation. On April 1, Janis Sposato, Attorney-Advisor in the Office of Legal Counsel, testified before the House Judiciary Subcommittee on Courts, Civil Liberties and the Administration of Justice on the subject of the Legal Services Corporation. Ms. Sposato's testimony will address only the issues of whether or not Congress can constitutionally prohibit the Corporation from funding a program which is unionized and/or whether, as a condition of funding, the Corporation can require a unionized program not to engage in strikes. In OLC's view, it would be unconstitutional to bar unionizing by Corporation programs but not to bar strikes.

Nominations. On Thursday, March 26, 1981, the United States Senate confirmed the nomination of William F. Baxter to be Assistant Attorney General, Antitrust Division.

On Friday, March 27, 1981, the Committee on the Judiciary of the United States Senate held a hearing on the nominations of Rudolph W. Giuliani to be Associate Attorney General, D. Lowell Jensen to be Assistant Attorney General, Criminal Division and Carol E. Dinkins to be Assistant Attorney General, Lands and Natural Resources Division.

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NO. 8

Federal Rules of Criminal Procedure

Rule 32(c)(1). Sentence and Judgment.  
Presentence Investigation.  
When Made.

See Rule 11(e)(1), this issue of the Bulletin for syllabus.

United States v. Albert Harris III, 635 F.2d 526  
(6th Cir. December 15, 1980).

## Federal Rules of Criminal Procedure

Rule 11(e)(1). Pleas. Plea Agreement  
Procedure. In General.

Rule 32(c)(1). Sentence and Judgment.  
Presentence Investigation.  
When Made.

Defendant was convicted and received a four year sentence. On appeal he contended that his sentence should be set aside because prior to trial his counsel was informed by the prosecutor that the probation officer would recommend a three year sentence if defendant pleaded guilty and a five year sentence if he went to trial. Such information was routinely furnished to the prosecutor by the probation department, but not to defense counsel.

The Court of Appeals held that, although the judge himself did not make any representations to defendant, the use of a sentencing recommendation during plea negotiations violated Rule 11(e)(1) which forbids the court from participating in plea discussions since the probation office is an arm of the court. The Court further held that such disclosure by the probation officer, particularly when made to only one side, was contrary to Rule 32(c)(1) which states that "[t]he report shall not be disclosed . . . unless the defendant has pleaded guilty or nolo contendere or has been found guilty . . ." However, because defendant rejected the plea agreement and went to trial and there was no evidence in the record that the district court was influenced at the time of sentencing by the pretrial recommendation of the probation office, the Court affirmed defendant's sentence.

(Affirmed.)

United States v. Albert Harris III, 635 F.2d 526  
(6th Cir. December 15, 1980).