



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

United States Attorneys' Bulletin

Published by:

*Executive Office for United States Attorneys, Washington, D.C.
For the use of all U.S. Department of Justice Attorneys*

*Spoke w/ Lori Kibler
12/7 - matter repto
CUSA*

*Spoke w/ McHarris - City - OIA
all attorneys in office aware
of letter - just call the
MB*

TABLE OF CONTENTS

	<u>Page</u>
CLEARINGHOUSE	641
POINTS TO REMEMBER	
Report On Convicted Prisoners - Form USA-792	643
Solicitations	643
Debt Collection Commendation	644
CASENOTES	
CIVIL DIVISION	
D.C. Circuit Holds Courts Have Jurisdiction To Review Claim That Agency Actions Under Records Disposal Laws Were Arbitrary And Capricious	
<u>American Friends Service Committee v. William H. Webster</u>	647
First Circuit Issues Decision Requiring Judicial Deference To DOT Handicapped Regulations, And Reversing District Court Order Requiring Local Transit Agency To Purchase 42 Buses With Wheelchair Lifts	
<u>Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority</u>	648
Fourth Circuit Hold FTCA Punitive Damages Exception Bars Award Of General Damages To Permanently Comatose Plaintiff, Requires Reduction Of Lost Future Earnings To Account For Taxes, And Requires Reduction Of Lost Future Earnings By Amount Awarded For Future Medical Care	
<u>Flannery v. United States</u>	649
Eleventh Circuit Rules That Failure Of Farmers' Home Administration To Inform News Media Of Beneficial Terms Of A 1973-74 Emergency Loan Program Requires The Agency To Reopen The Program Today	
<u>Payne v. Block</u>	650

	<u>Page</u>
APPENDIX: FEDERAL RULES OF CRIMINAL PROCEDURE This page should be placed on permanent file, by Rule, in each United States Attorney's office library	653
LIST OF U.S. ATTORNEYS	655

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, DirectorCLEARINGHOUSELaw Enforcement Coordinating Committee (LECC) Subcommittee On
Victims And Witnesses

The United States Attorney's office for the Southern District of Texas reported on a useful technique to obtain the assistance of victim/witness programs in local prosecutors and law enforcement offices. The creation of an LECC Subcommittee on Victims and Witnesses was used as a springboard for an invitation to the coordinator of the victim/witness unit in the Harris County District Attorney's office to speak to the Subcommittee. That unit, comprised of a staff of eight, provides various victim/witness services through the Harris County Office, which is staffed by over 200 criminal prosecutors. Such local operations can be very useful to a United States Attorney's office in assessing it's needs in this area and implementing the Attorney General's Guidelines on Victim and Witness Assistance.

Such a subcommittee would also be useful in maintaining constant liaison with local social service agencies and any local or state victim/witness units within a district. This is especially important inasmuch as the Attorney General's Guidelines require each office to maintain current records which reflect available local social services, victim compensation and other related information. Questions regarding the LECC Subcommittee in the United States Attorney's office for the Southern District of Texas may be directed to Assistant United States Attorney Samuel G. Longoria (FTS 526-4646).

(Executive Office)

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
William P. Tyson, DirectorPOINTS TO REMEMBERReport On Convicted Prisoners - Form USA-792

Form USA-792, "Report on Convicted Prisoners," was revised in September of 1981. The September 1981 edition revised the previous edition of March 1980 by adding the following language above the space provided for the date and the Assistant United States Attorney's signature:

NOTIFICATION REQUEST:

_____ I wish to be notified of the date and place set for this prisoner's parole hearing.

_____ I wish to be notified of the Commissioner's decision in this case.

A copy of the September 1981 edition of Form USA-792 appears at USAM 9-34.222 at 7 (11/81). Additional copies are available by requisition from the Department of Justice Warehouse, 400 T Street, N.E., Washington, D.C. 20002, using Form DOJ-182.

(Executive Office)

Solicitations

The Field Activities Section of the Executive Office conducts on-site evaluations of the United States Attorneys' offices, directed toward improvement in the legal administration of the 94 offices. The Section evaluation staff is augmented by the voluntary services of supervisory Assistant United States Attorneys, senior Assistant United States Attorneys and senior Administrative Officers.

The review teams consist of one or more Assistant United States Attorney evaluators and when possible, an Administrative Officer. When evaluating a United States Attorney office, the

evaluators interview United States District Judges, United States Magistrates, heads of offices of the client agencies, and all supervisory United States Attorney and support personnel in the office. A sampling of work load, a review of the management techniques of the office and a review of the controls used by United States Attorney to control waste, fraud and abuse is also evaluated.

Reports are submitted through the Field Activities Section to the United States Attorney, and the Director of the Executive Office.

Because of continuing turn-over of volunteers, we are again soliciting Senior Assistant United States Attorneys to participate in the evaluation program. Minimum qualifications for this work are 5 years as an Assistant United States Attorney or less if the volunteer is a supervisor. The recommendation and approval of the United States Attorney is, of course, required.

Assistant United States Attorneys selected as evaluators should be available for assignments for at least a period of one year and should expect to evaluate 4 to 6 offices during that time. Trial schedules and other important office work will be taken into consideration in making assignments.

If you are interested in this program please submit a brief biography and a written recommendation and approval from your United States Attorney to:

Executive Office for United States Attorneys
Attention: Ernest R. Bengtson
Assistant Director
Field Activities
Skyline 1, Suite 800-A
5205 Leesburg Pike
Falls Church, VA 22041

(Executive Office)

Debt Collection Commendation

Assistant United States Attorney B. B. Allen, Southern District of Florida, has been commended by Mr. Samuel T. Currin, United States Attorney,, Eastern District of North Carolina, for the exemplary cooperation and assistance he provided Mr. Currin's

office in the aggressive collection of a \$2500 criminal fine in United States v. Phillip Norman Ader a/k/a Chic Eder. AUSA Allen collected the entire amount due on the fine against the debtor, who was incarcerated in the Florida State Prison System, through a writ of execution on the debtor's funds held in trust by his attorney. This action was taken following the debtor's attorney's refusal to pay the fine for over one year. Mr. Currin praised AUSA Allen's work as a fine example of what can be accomplished in nation-wide collection efforts when United States Attorneys' offices work beyond district lines in the collection of delinquent debts due the Government.

(Executive Office)

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

American Friends Service Committee v. William H. Webster, et al., F.2d No. 81-1735 (D.C. Cir. Sept. 30, 1983).
D.J. # 145-12-4141.

D.C. CIRCUIT HOLDS COURTS HAVE JURISDICTION TO
REVIEW CLAIM THAT AGENCY ACTIONS UNDER RECORDS
DISPOSAL LAWS WERE ARBITRARY AND CAPRICIOUS.

In 1980 the district court enjoined the disposal of most FBI records, finding that the National Archives and Records Service (NARS) had failed to fulfill its statutory obligation to ensure that the FBI's records disposal program complied with the Federal records laws (Title 44, U.S.C.). The court ordered NARS and the FBI to submit for court approval a new FBI records disposal plan, which they did in late 1981. When the district court failed to either approve or reject the new plan, we proceeded with an interlocutory appeal from various injunctive orders entered during the course of the district court proceedings.

The court of appeals rejected our argument that the district court erred in entertaining plaintiff's claims, ruling that persons who have made FOIA requests that were unsuccessful because records had been disposed of, and persons who are directly affected by an agency's activities so that its records may be necessary to protect their legal rights, are within the zone of interests the records' laws are intended to protect. The court of appeals also affirmed the district court's finding that the FBI's records disposal program fails the arbitrary and capricious test. The court ruled that NARS' duty is to examine the records disposal plans submitted to it by agencies and to reject those plans if they do not meet the statutory standards governing preservation and disposal of records. In addition, on appeal we challenged the district court's order that NARS must inspect three types of records (grand jury materials, electronic surveillance materials, and tax returns and tax return information) that are found in the FBI's records system. The court of appeals agreed with us that the three noted types of records are subject to statutory restrictions on disclosure that permit no exception for NARS' inspection.

Attorneys: Leonard Schaitman (Civil Division)
FTS (633-3441)

Marc Johnston (Civil Division)
FTS (633-3305)

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority, _____ F.2d _____ No. 82-1771 (1st Cir. Sept.29, 1983). D.J. # 145-18-828.

FIRST CIRCUIT ISSUES DECISION REQUIRING
JUDICIAL DEFERENCE TO DOT HANDICAPPED
REGULATIONS, AND REVERSING DISTRICT COURT
ORDER REQUIRING LOCAL TRANSIT AGENCY TO
PURCHASE 42 BUSES WITH WHEELCHAIR LIFTS.

Plaintiffs, a class of handicapped persons in Rhode Island, brought this suit against the Rhode Island Public Transit Authority (RIPTA) and others, including the U.S. Department of Transportation, claiming that RIPTA was not meeting its obligations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794). Plaintiffs conceded, however, that RIPTA had complied with the section 504 regulations promulgated by DOT, but argued that compliance with the DOT regulations was not sufficient. The district court adopted plaintiffs' argument, and issued a lengthy opinion requiring, inter alia, that the next 42 buses purchased for Providence, Rhode Island, be equipped with wheelchair lifts. The district court also dismissed DOT as a party-defendant. On appeal, the Solicitor General approved the filing of a government amicus curiae brief. The First Circuit has just issued an opinion reversing the district court judgment, and agreeing with our submission that compliance with the DOT regulations satisfied RIPTA's section 504 obligation. The court of appeals stressed that (1) section 504 does not impose "affirmative action" - type obligations on recipients of Federal aid, and (2) Federal agencies, not the Federal judiciary, are best positioned to define the appropriate accommodation of handicapped persons under section 504.

Attorneys: William Kanter (Civil Division)
FTS (633-1597)

John F. Cordes (Civil Division)
FTS (633-4214)

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Flannery v. United States, _____ F.2d _____ No. 80-1563 (4th Cir. Sept. 21, 1983). D.J. # 157-84-130.

FOURTH CIRCUIT HOLDS FTCA PUNITIVE DAMAGES
EXCEPTION BARS AWARD OF GENERAL DAMAGES TO
PERMANENTLY COMATOSE PLAINTIFF, REQUIRES
REDUCTION OF LOST FUTURE EARNINGS TO ACCOUNT
FOR TAXES, AND REQUIRES REDUCTION OF LOST
FUTURE EARNINGS BY AMOUNT AWARDED FOR FUTURE
MEDICAL CARE.

In this Federal Tort Claims Act case damages of approximately \$2.2 million were awarded to a plaintiff who was left permanently comatose after an automobile accident with a government vehicle. We appealed only the damages awarded to the plaintiff, arguing that they were excessive and punitive. The largest element of damages was \$1.3 million awarded to the plaintiff for total and permanent loss of the ability to enjoy life. Because no court in this country appears ever to have awarded a totally and permanently comatose plaintiff general damages, the Fourth Circuit certified to the West Virginia Supreme Court the question whether general damages are recoverable in such a situation. The state Supreme Court ruled that they are and that it is immaterial whether a plaintiff is aware of his injury. The Fourth Circuit then ordered reargument on our claim that, notwithstanding the state law, it is punitive to award a permanently comatose plaintiff general damages and, therefore, prohibited in an FTCA case. The court of appeals' decision agreed completely with this argument. It reasoned that damages which are of no use or consolation to a plaintiff are not compensatory, regardless of how state law characterizes them. Because all of the plaintiff's needs were provided by other elements of the damages he was awarded, and because his comatose condition made general damages useless to the plaintiff, the Fourth Circuit held that no general damages could be awarded in this case. On appeal we also argued that the FTCA's prohibition of punitive damages requires that an award for lost future earnings be reduced to account for the income taxes future earnings would have borne. The state Supreme Court ruled on certification that such a reduction is not appropriate under state law, but again the Fourth Circuit agreed with our argument that the FTCA's prohibition of punitive damages is applicable. Finally, the Fourth Circuit sua sponte also ruled that the

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

damages awarded for lost future earnings should be reduced by the amount of damages awarded for future medical care.

Attorneys: Anthony Steinmeyer (Civil Division)
FTS (633-3388)

Marc Johnston (Civil Division)
FTS (633-3305)

Payne v. Block, _____ F.2d _____ No. 81-5365 (11th Cir. Sept. 19, 1983). D.J. # 145-8-1081.

ELEVENTH CIRCUIT RULES THAT FAILURE OF
FARMERS' HOME ADMINISTRATION TO INFORM NEWS
MEDIA OF BENEFICIAL TERMS OF A 1973-74
EMERGENCY LOAN PROGRAM REQUIRES THE AGENCY TO
REOPEN THE PROGRAM TODAY.

Plaintiff Payne, a farmer in north Florida, brought this class action alleging that the Farmers' Home Administration had made inadequate public announcements of a 1973-74 emergency loan program in 13 counties in Florida that had been declared a disaster area as a result of rains and flooding. The district court ruled that the agency's news media announcements were inadequate because of failure to mention beneficial terms (one percent interest and a \$5,000 forgiveness), and ordered the agency to make new public announcements and to reopen the program in Florida. The Government argued on appeal that the relevant details of the program were published in the Federal Register, and that, under Schweiker v. Hansen, 450 U.S. 785 (1981), any asserted lack of compliance with an "instruction" about making additional news media announcements could not authorize reopening of a program that was subject to a 1974 application cut-off date. The court of appeals in a decision issued on September 19, 1983, rejected these arguments, holding that Hansen was distinguishable. The court held that the instruction about informing the news media was a "regulation" because it was published in the Federal Register and Code of Federal

VOL. 31

OCTOBER 28, 1983

651
NO. 21

CIVIL DIVISION
Assistant Attorney General J. Paul McGrath

Regulations, that the regulation was not followed by the agency here, and that a court has the power to order an agency to follow its regulations.

Attorney: Michael Kimmel (Civil Division)
FTS (633-5714)

FEDERAL RULES OF CRIMINAL PROCEDURES
Rule 32(d). Sentence and Judgment.
Withdrawal of Plea of Guilty.

Defendant pled guilty to conspiracy to distribute marijuana. Eight months after entering this plea defendant underwent psychological testing and was diagnosed as suffering from Post-traumatic Stress Disorder, a psychiatric malady arising from combat service in Viet Nam. Because this disorder was diagnosed as having existed at the time of the offense, defendant filed a Rule 32(d) motion to withdraw the guilty plea alleging that it would be a manifest injustice to allow his plea to stand since he lacked the mental capacity to form the necessary intent to commit the offense. The defendant's motion was denied.

The court of appeals, in affirming the district court, rejected the defendant's asserted psychological defense, which focused on his motives, holding the defendant's motives are irrelevant if he retained the capacity to make knowing and voluntary choices. To grant a Rule 32(d) motion based solely on this "belated discovery of fact" would be adverse to the institutional and public need for finality in the judicial system. The court, applying the "manifest injustice" standard, held that the district court did not exceed the bounds of discretion in denying the defendant's Rule 32(d) motion to withdraw his plea.

(Affirmed.)

United States of America v. Steve Lake, 709 F.2d 43 (11th Cir. July 5, 1983).

U.S. ATTORNEYS' LIST EFFECTIVE July 29, 1983

UNITED STATES ATTORNEYS

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
Alabama, N	Frank W. Donaldson
Alabama, M	John C. Bell
Alabama, S	J. B. Sessions, III
Alaska	Michael R. Spaan
Arizona	A. Melvin McDonald
Arkansas, E	George W. Proctor
Arkansas, W	W. Asa Hutchinson
California, N	Joseph P. Russoniello
California, E	Donald B. Ayer
California, C	Alexander H. Williams, III
California, S	Peter K. Nunez
Colorado	Robert N. Miller
Connecticut	Alan H. Nevas
Delaware	Joseph J. Farnan, Jr.
District of Columbia	Stanley S. Harris
Florida, N	W. Thomas Dillard
Florida, M	Robert W. Merkle, Jr.
Florida, S	Stanley Marcus
Georgia, N	Larry D. Thompson
Georgia, M	Joe D. Whitley
Georgia, S	Hinton R. Pierce
Guam	David T. Wood
Hawaii	Daniel A. Bent
Idaho	Guy G. Hurlbutt
Illinois, N	Dan K. Webb
Illinois, S	Frederick J. Hess
Illinois, C	Gerald D. Fines
Indiana, N	R. Lawrence Steele, Jr.
Indiana, S	Sarah Evans Barker
Iowa, N	Evan L. Hultman
Iowa, S	Richard C. Turner
Kansas	Jim J. Marquez
Kentucky, E	Louis G. DePalaise
Kentucky, W	Ronald E. Meredith
Louisiana, E	John Volz
Louisiana, M	Stanford O. Bardwell, Jr.
Louisiana, W	Joseph S. Cage, Jr.
Maine	Richard S. Cohen
Maryland	J. Frederick Motz
Massachusetts	William F. Weld
Michigan, E	Leonard R. Gilman
Michigan, W	John A. Smietanka
Minnesota	James M. Rosenbaum
Mississippi, N	Glen H. Davidson
Mississippi, S	George L. Phillips
Missouri, E	Thomas E. Dittmeier
Missouri, W	Robert G. Ulrich

<u>DISTRICT</u>	<u>U.S. ATTORNEY</u>
Montana	Byron H. Dunbar
Nebraska	Ronald D. Lahners
Nevada	Lamond R. Mills
New Hampshire	W. Stephen Thayer, III
New Jersey	W. Hunt Dumont
New Mexico	William L. Lutz
New York, N	Frederick J. Scullin, Jr.
New York, S	Rudolph W. Giuliani
New York, E	Raymond J. Dearie
New York, W	Salvatore R. Martoche
North Carolina, E	Samuel T. Currin
North Carolina, M	Kenneth W. McAllister
North Carolina, W	Charles R. Brewer
North Dakota	Rodney S. Webb
Ohio, N	J. William Petro
Ohio, S	Christopher K. Barnes
Oklahoma, N	Francis A. Keating, II
Oklahoma, E	Gary L. Richardson
Oklahoma, W	William S. Price
Oregon	Charles H. Turner
Pennsylvania, E	Edward S. G. Dennis, Jr.
Pennsylvania, M	David D. Queen
Pennsylvania, W	J. Alan Johnson
Puerto Rico	Daniel F. Lopez-Romo
Rhode Island	Lincoln C. Almond
South Carolina	Henry Dargan McMaster
South Dakota	Philip N. Hogen
Tennessee, E	John W. Gill, Jr.
Tennessee, M	Joe B. Brown
Tennessee, W	W. Hickman Ewing, Jr.
Texas, N	James A. Rolfe
Texas, S	Daniel K. Hedqes
Texas, E	Robert J. Wortham
Texas, W	Edward C. Prado
Utah	Brent D. Ward
Vermont	George W. F. Cook
Virgin Islands	James W. Diehm
Virginia, E	Elsie L. Munsell
Virginia, W	John P. Alderman
Washington, E	John E. Lamp
Washington, W	Gene S. Anderson
West Virginia, N	William A. Kolibash
West Virginia, S	David A. Faber
Wisconsin, E	Joseph P. Stadtmueller
Wisconsin, W	John R. Byrnes
Wyoming	Richard A. Stacy
North Mariana Islands	David T. Wood