



U.S. Department of Justice

Executive Office for United States Attorneys

---

# United States Attorneys' Bulletin

---



**EXECUTIVE  
OFFICE FOR  
UNITED  
STATES  
ATTORNEYS**

*Published by:*

*Executive Office for United States Attorneys, Washington, D.C.*

*For the use of all U.S. Department of Justice Attorneys*

TABLE OF CONTENTS

	<u>Page</u>
COMMENDATIONS.....	359
CLEARINGHOUSE	
Victim And Witness Act Of 1982--Obstruction Of Justice-- Sample Jury Instructions.....	363
POINTS TO REMEMBER	
Comparative Summary Of United States Attorneys' Cash Collections.....	364
Department Of Justice Policy With Regard To Open Judicial Proceedings.....	364
Establishment Of The National Victims Resource Center, Office Of Justice Assistance, Research, And Statistics.....	364
Motions For Relief From Sentences Imposed By The United States District Court For The Canal Zone.....	365
Prejudgment Interest On Government Claims.....	365
Teletypes To United States Attorneys.....	367
United States Attorneys' Manual Bluesheets And Transmittals.	367
CASENOTES	
OFFICE OF THE SOLICITOR GENERAL	
Cases Recently Filed In The Supreme Court By The Solicitor General.....	368
CIVIL DIVISION	
Supreme Court Affirms The Government's Right To Recover Payments Made Pursuant To The Federal Employees Compensation Act From An Employee's Damage Recovery From A Tort-Feasor <u>United States v. Lorenzetti</u> .....	369
Second Circuit Holds That The Government Can Decide When To Release Wiretap Materials, Consistent With the Omnibus Crime Control and Safe Streets Act Of 1968 <u>In re NBC</u> .....	370
Sixth Circuit Upholds Labor Secretary's Construction Of The Pension Offset Requirement Of The Federal Unemploy- ment Tax Act As Applying To Social Security Retirement Benefits <u>Bowman v. Stumbo</u> .....	371

TABLE OF CONTENTSPage

Ninth Circuit Dismisses Plaintiff's Appeal As Moot In Case Challenging Constitutionality Of Joint Resolution And Presidential Proclamation Designating 1983 As "The Year Of The Bible"	
<u>Zwerling v. Reagan</u> .....	372
Unanimous Supreme Court Finds Consumers Impliedly Precluded From Seeking Review Of Market Orders	
<u>Block v. Community Nutrition Institute</u> .....	373
Supreme Court Upholds Terms Of Bonneville Power Administration Sales To "Direct Service Industrial" Customers	
<u>Aluminum Company of America v. Central Lincoln Peoples' Utility District</u> .....	374
Supreme Court Holds That Suit Challenging Regulation Prohibiting Medicare Reimbursement For Special Surgical Procedure Is Subject To Exhaustion Requirements Of 42 U.S.C. §405(g)	
<u>Heckler v. Ringer</u> .....	375
D.C. Circuit Holds That A Class Injunction Based On Interpretation Of A Regulation Does Not Prevent Amendment Of The Regulation	
<u>NAACP, Jefferson County Branch v. Donovan</u> .....	376
District Of Columbia Circuit Reverses Order Requiring An Investigation Under The Ethics In Government Act Into Alleged Crimes By High-Ranking Officials In Connection With The 1979 Murders Of Five Demonstrators In Greensboro, North Carolina	
<u>Nathan v. Attorney General</u> .....	377
Eleventh Circuit Upholds Attorney General's Policies Concerning Dangerous Mariel Cubans Incarcerated In Atlanta	
<u>Fernandez-Roque v. Smith</u> .....	378

## LAND AND NATURAL RESOURCES DIVISION

Condemnation; Ruling That Injunctive Relief Withholding Possession Of Land Acquired Under Declaration Of Taking Act Not Warranted, Affirmed

<u>United States v. 162.20 Acres of Land, Situated in Clay County, Miss. (Uithoven)</u> .....	379
---	-----

TABLE OF CONTENTS

	<u>Page</u>
FERC Required To Give Some Consideration To Fishery Problems And Mitigation Measures In A Relicensing Covering Forty Years As It Does In An Initial Licensing <u>Confederated Tribes and Bands of The Yakima Indian Nation v. FERC</u> .....	380
Equal Access to Justice Act; Claimant Must Actually Prevail Against The United States To Recover <u>Omaha Tribe of Nebraska v. Swanson</u> .....	381
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS Selected Congressional and Legislative Activities.....	382
APPENDIX	
FEDERAL RULES OF CRIMINAL PROCEDURE <u>Rule 48(a)</u> (This page should be placed on permanent file, by Rule, in each United States Attorney's library.).....	387
Comparative Summary of U.S. Attorneys' Cash Collections.....	388
Department of Justice Policy With Regard to Open Judicial Proceedings (Amended Regulations, Order No. 1031-83).....	389
Establishment of National Victims Resource Center (Announcement).....	390
Motions for Relief From Sentences Imposed by the United States District Court for the Canal Zone (Letter Utilized by the Office of Legal Counsel in Responding to Inquiries).....	391
United States Attorneys' Manual - Bluesheets.....	393
United States Attorneys' Manual - Transmittals.....	396
List of Teletypes to All United States Attorneys.....	404
List of United States Attorneys.....	405

COMMENDATIONS

Assistant United States Attorney SANDRA L. BERRY, Northern District of California, was commended by Mr. Joseph M. Hamblin, Deputy Regional Counsel, Department of Housing and Urban Development, San Francisco, for her assistance in recovering \$4,875,000 for the government in a Chapter XI bankruptcy case.

Assistant United States Attorney GERRILYN G. BRILL, Northern District of Georgia, was commended by Mr. Lawrence K. York, Special Agent in Charge, Federal Bureau of Investigation, Atlanta, for her very effective presentation of the government's evidence in United States v. Wade. The case, which involved a complex "advance fee" scheme, was a significant one and Assistant United States Attorney BRILL'S successful prosecution had important impact on white collar law enforcement.

Assistant United States Attorneys WILLIAM S. FARMER, JR. and JOHN C. GIBBONS, Northern District of California, were commended by Attorney General William French Smith for their outstanding work in the prosecution of James Durward Harper, Jr., an espionage case. The Attorney General's letters to Assistant United States Attorneys FARMER and GIBBONS are appended to this section of the Bulletin.

Assistant United States Attorney J. MICHAEL FITZHUGH, Western District of Arkansas, was commended by Assistant Attorney General F. Henry Habicht, II, Land and Natural Resources Division, for his unstinting efforts in the preparation of United States v. 230 Acres in Marion County, Arkansas, and for his outstanding advocacy before the land commission. This was a major land condemnation case.

Assistant United States Attorney JAMES E. LACKNER, District of Minnesota, was commended by Mr. Norman A. Carlson, Director, Bureau of Prisons, for his outstanding efforts in connection with the Olmsted Citizens for a Better Community case.

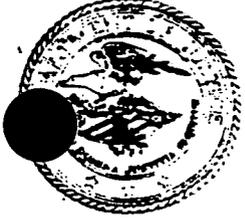
Assistant United States Attorney JOSEPH J. MCGOVERN, District of Massachusetts, was commended by Mr. Anthony R. Conte, Regional Solicitor, Department of the Interior, for his successful representation of the Park Service in Weidlinger v. Department of the Interior. This case involved a substantial piece of property donated for inclusion in the Cape Cod National Seashore.

Assistant United States Attorney RICARDO R. PESQUERA, District of Puerto Rico, was commended by Mr. William H. Webster, Director, Federal Bureau of Investigation, for his successful prosecution of

Carlos Rodriguez-Rodriguez and Isabel Panos Agullo. This was a 14-count indictment with 13 defendants charged with stealing and purloining \$3.2 million from Banco de Ponce, and 1 count of possession with the intent to distribute heroin.

Assistant United States Attorney PATRICIA D. ROGERS, Northern District of Mississippi, was commended by Major General William E. Read, U.S. Army Corps of Engineers, for her successful prosecution of Williams v. Collins. This was a Bivens type suit.

Assistant United States Attorney BETSY C. STEINFELD, Northern District of West Virginia, was commended by Mr. John A. Mintz, Assistant Director, Legal Counsel Division, Federal Bureau of Investigation (FBI), for her outstanding defense work in Smith v. Garrett, a Bivens suit against FBI agents.



Office of the Attorney General  
Washington, D. C. 20530

JUN 6 1984

William S. Farmer, Jr., Esquire  
Assistant United States Attorney  
450 Golden Gate Avenue  
San Francisco, California 94102

Dear Mr. Farmer:

Please accept my personal congratulations and gratitude for your outstanding work in the prosecution of James Durward Harper, Jr., for espionage.

Your contributions in putting the case together for prosecution are a credit to you personally and professionally. Your fine accomplishments in this extremely important case are consistent with the high traditions of the Department of Justice and the United States Attorney's Office for the Northern District of California.

You have my sincerest appreciation and thanks for your outstanding work.

Sincerely,

William French Smith  
Attorney General



Office of the Attorney General  
Washington, D. C. 20530

JUN 6 1984

John C. Gibbons, Esquire  
Assistant United States Attorney  
450 Golden Gate Avenue  
San Francisco, California 94102

Dear Mr. Gibbons:

I want to extend my congratulations and gratitude for your superb handling of the prosecution of James Durward Harper, Jr., for espionage. The successful resolution of this extremely important and sensitive case is due in large measure to your fine work and dedication.

Your untiring efforts in putting the case together and in the plea negotiations, as well as your performance in presenting the case to the Court for plea and sentencing, are a credit to you personally and professionally. You have every right to be proud of your accomplishments.

Please accept my warmest thanks for a job well done.

Sincerely,

William French Smith  
Attorney General.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS  
William P. Tyson, Director

CLEARINGHOUSE

Victim And Witness Protection Act Of 1982--Obstructions Of Justice  
--Sample Jury Instructions

Assistant United States Attorney Rick J. Norman, Middle District of Louisiana, provided the Executive Office for United States Attorneys with a copy of the government's Requested Jury Instructions and a copy of the government's Answer and Memorandum In Opposition To Defendant's Motion For Judgment Of Acquittal Or, Alternatively, For A New Trial in the criminal case of United States v. Wesley and Cooper, No. 83-74-B (M.D. La. filed Mar. 12, 1984). This case involves a felon who was arrested for possession of a firearm and who, while in custody, allegedly solicited the assistance of a second party to threaten a third party to commit perjury at the felon's trial.

The 34 jury instructions include basic instructions as set forth in Pattern Jury Instructions, Criminal Cases, U.S. Fifth Circuit, District Judges Association, 1983 Edition, as well as special instructions. The requested jury instructions cover the following matters as they relate to obstruction of justice: evidence tending to show defendant's consciousness of guilt; conspiracy; and elements of 18 U.S.C. §1503; elements of 18 U.S.C. §1512; evidence of similar transactions by one defendant to be considered in determining whether the target of an alleged threat perceived the statements of the defendant's accomplice as a threat; and the principle of conscious avoidance of knowledge.

The government's Answer and Memorandum addresses the following issues: whether a person can be guilty of obstructing justice if that person had no direct contact with the target of a threat or intimidation; whether convicting and sentencing the defendant under both 18 U.S.C. §1503 and 18 U.S.C. §1512 is a violation of the double jeopardy clause of the Fifth Amendment; whether 18 U.S.C. §1503 is to be construed narrowly by using the in pari materia and ejusdem generis rules of statutory construction; and whether a person can be found guilty of aiding and abetting in the commission of a crime if the principal was acquitted.

Copies of the jury instructions and the answer and memorandum may be obtained by contacting the Legal Services Section, Executive Office for United States Attorneys (FTS 633-4024). Please ask for Publication No. CH-5, 1984.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS  
William P. Tyson, Director

POINTS TO REMEMBER

Comparative Summary of United States Attorneys' Cash Collections

Appended to this issue is a "24-Month Comparative Summary of U.S. Attorneys' Cash Collections" for the period May 1, 1982, through April 30, 1984. The Debt Collection Section recommends that this summary table be used by U.S. Attorneys as a guidepost in the assessment of the effectiveness of their debt collection units.

(Executive Office)

Department of Justice Policy with Regard to Open Judicial Proceedings

Order No. 1031-83, effective October 18, 1983, clarifies the types of judicial proceedings set forth in 28 C.F.R. §50.9 which require government attorneys to secure approval by either the Deputy Attorney General or the Assistant Attorney General, Criminal Division, prior to the attorney's moving for or agreeing to closure. The addition of arraignments and bond hearings to this section is intended to clarify some uncertainty existing in United States Attorneys' offices as to whether these proceedings are within the regulation. In addition, a new section has been added which provides for a review by the Criminal Division of records of closed proceedings which remain sealed after 60 days. If the reasons for closure are still applicable at that time, the review will be repeated at 60-day intervals until it is appropriate for the records to be unsealed.

A copy of the amended regulations is attached as an appendix to this issue of the Bulletin.

(Executive Office)

Establishment of the National Victims Resource Center, Office of Justice, Assistance, Research, and Statistics

The Office of Justice Assistance, Research, and Statistics, in the June/July 1984 issue of The National Sheriff, announced the establishment of the National Victims Resource Center. A Copy of the announcement is attached as an appendix to this issue of the Bulletin.

Motions for Relief from Sentences Imposed by the United States District Court for the Canal Zone

Appended to this issue of the Bulletin is a copy of a letter utilized by the Office of Legal Counsel in responding to inquiries from prisoners about the appropriate venue for 2255 motions challenging sentences imposed by the former United States District Court for the District of the Canal Zone. Questions concerning this policy may be directed to Ms. Debra Valentine, Attorney-Advisor, Office of Legal Counsel, at 633-4487.

(Executive Office)

Prejudgment Interest On Government Claims

The United States is entitled to recover prejudgment interest on its claims, and demands for such interest should be included in all prejudgment demands for payment and, if suit is required, the complaint should ask for interest at the prejudgment rate to the date of judgment.

The basic rule has long been that the United States is entitled to recover prejudgment interest on claims. Royal Indemnity Co. v. United States, 313 U.S. 289 (1914); Billings v. United States, 232 U.S. 261, 284-88 (1914). Until recently, however, there was no uniform law covering prejudgment interest. This was altered as of October 1, 1982, by the passage of Section 11 of the Debt Collection Act of 1982, Pub. L. 97-365, 96 Stat. 1749, now codified at 31 U.S.C. § 3717. Important points to remember about this legislation are:

1. The rate of interest is established by the Treasury and is called the "current value of funds (CVF)" rate; it is also referred to as the "Treasury tax and loan account" rate. This rate is published both in the Federal Register and the Treasury Fiscal Requirements Bulletin. To receive the rate at any given time, call Tanya Ward at FTS 634-5714. Since October, 1982 (the effective date of the Debt Collection Act), the rates have been as follows:

Oct. 1, 1982	-	Dec. 31, 1982	-	11.98%
Jan. 1, 1983	-	Mar. 31, 1983	-	13.00%
Apr. 1, 1983	-	June 30, 1983	-	13.00%
Jul. 1, 1983	-	Sep. 30, 1983	-	11.00%
Oct. 1, 1983	-	Dec. 31, 1983	-	9.00%
Jan. 1, 1984	-	Dec. 31, 1984	-	9.00%

Note well that, under Section 11, the rate for each calendar year is the 4th quarter CVP rate for the previous year (Oct. 1 - Dec. 31). This is the rate which will apply as of January 1 for the entire following year unless the Secretary changes it during the year because the quarterly rate is more or less than two percentage points from the previously set rate. (For FY 1983, Treasury used 13% as the Debt Collection Act rate, which was altered to 11% in the 3rd quarter and 9% in the fourth quarter. For FY 1984, the Debt Collection Act rate will be 9% unless a change of 2% or more occurs in any succeeding calendar quarter.)

2. The interest rate described above is the minimum; an agency can charge more if there is some special justification for doing so.

3. The interest is simple (not compound) interest. The rate remains fixed on the date demand is made and does not change from year to year.

4. Interest accrues after notice of the amount due is first mailed to the debtor.

5. Administrative costs of collecting the debt and a penalty may be charged; interest may not be charged on either administrative costs or the penalty.

6. The interest rate fixed by the Debt Collection Act does not apply if a statute, regulation, agreement, or contract prohibits charging interest or explicitly fixes the rate of interest. (As a practical matter, most referrals will include a Certificate of Indebtedness or other documentation which will specify the prejudgment interest rate to be charged; however, should the referring agency fail to do so, the appropriate CVP rate should be used.)

7. The "United States Rule" continues to apply. Under this rule, a partial payment is credited first to court costs and fees, next to accrued interest, and the balance (if any) to principal; subsequent interest then accrues on the remaining principal, computed from the date of the partial payment. Woodward v. Jewell, 140 U.S. 247, 248 (1891).

These are only the highlights of Section 11; if you have a question on interest to be collected on prejudgment claims, consult the statute or the Federal Claims Collection Standards (FCCS), 4 C.F.R. §101.1 et seq. (The revised FCCS have been published in 49 Fed. Reg. 8889-8905, dated March 9, 1984. They are effective as of April 9, 1984.) You may also call John W. Showalter, Assistant Director, Commercial Litigation Branch, FTS 724-7174 for further information.

(Executive Office)

Teletypes To All United States Attorneys

A listing of the teletypes sent during the period from June 19, 1984, through July 13, 1984, is attached as an appendix to this issue of the Bulletin. If a United States Attorney's office has not received one or more of these teletypes, copies may be obtained by contacting Ms. Theresa Bertucci, Chief of the Communications Center, Executive Office for United States Attorneys, at FTS 633-1020.

(Executive Office)

United States Attorneys' Manual Bluesheets and Transmittals

Updated lists of United States Attorneys' Manual Bluesheets and Transmittals are appended to this issue of the Bulletin.

(Executive Office)

OFFICE OF THE SOLICITOR GENERAL  
Solicitor General Rex E. Lee

The Solicitor General has authorized the filing of:

A petition for a writ of mandamus in In re United States of America, No. 83-2103. The question presented is whether the district court has failed to perform its clear duty by not ruling on the government's motion, filed in July 1982, for a preliminary injunction to enjoin use of a reapportionment plan for the lower house of the New Mexico legislature on the ground that it violates the Voting Rights Act of 1965, as amended, and the Constitution.

A petition for a writ of certiorari in Forsyth v. Kleindienst, No. 82-1812 (3d Cir. Mar. 8, 1984). The question presented is whether the denial of a Bivens defendant's claim of qualified immunity is appealable under the collateral order doctrine. The dispute in this case arises out of former Attorney General Mitchell's authorization of warrantless domestic national security wiretaps to gather information about a plot to destroy underground tunnels in Washington and to kidnap then National Security Advisor Henry Kissinger.

A petition for a writ of certiorari in Bagley v. Lumpkin, 719 F.2d 1462 (9th Cir. 1983). The question presented is whether a defendant is entitled to an automatic reversal of his conviction when the government fails to disclose information in its files that would be useful in defense counsel's cross-examination of a government witness no matter how harmless the error, i.e., no matter how unlikely it is that disclosure of the information would have altered the outcome of the trial.

## CIVIL DIVISION

Acting Assistant Attorney General Richard K. Willard

United States v. Lorenzetti, \_\_\_ U.S. \_\_\_, No. 83-838 (May 29, 1984). D.J. # 83-62-78.

SUPREME COURT AFFIRMS THE GOVERNMENT'S RIGHT TO RECOVER PAYMENTS MADE PURSUANT TO THE FEDERAL EMPLOYEES COMPENSATION ACT FROM AN EMPLOYEE'S DAMAGE RECOVERY FROM A TORT-FEASOR.

The Federal Employees Compensation Act (FECA) provides that when an employee is injured in the scope of their employment, he/she is entitled to be compensated for medical expenses and a percentage of lost wages. The Act also provides that when the employee's injury is caused by a third party and the employee recovers damages from that third party, the employee must reimburse the compensation fund for the amount it previously paid out.

Lorenzetti was injured in an automobile accident in Pennsylvania in the course of his employment, and he sued the tort-feasor and eventually settled the action. Because the government had paid his medical expenses and lost wages, the Department of Labor asserted a lien to recover the amount paid. Lorenzetti filed a declaratory judgment action in federal court claiming that, because the Pennsylvania no-fault law precluded him from recovering medical expenses and lost wages from a tort-feasor, the government should not be able to seek reimbursement from what he recovered for pain and suffering.

The district court held that FECA was plain on its face, and makes all categories of damages for injuries for which FECA payments are made subject to the government's right of reimbursement. The Court of Appeals for the Third Circuit reversed. In the appellate court's view, construing the statute according to its plain language resulted in unfair treatment of federal employees subject to state no-fault laws and that result could not be what Congress intended.

Because the Third Circuit's decision conflicted with a Sixth Circuit decision on the same question and because the potential loss to the government was estimated to be about \$20 million if other circuits followed the Third, we petitioned for certiorari. The Supreme Court, in a unanimous decision, has reversed the Third

CIVIL DIVISION  
Acting Assistant Attorney General Richard K. Willard

Circuit. The Supreme Court held that the language of FECA is clear and unambiguous, and requires employees to reimburse the government from all personal injury tort damages recovered from a third party. The Court held that the plain meaning of the statute is not inconsistent with the legislative history, even though Congress had not expressly considered the various states' no-fault laws when it enacted or amended FECA. The Court also held that the purpose of minimizing the cost of FECA is directly advanced by construing FECA uniformly in all states and that, if a different balance should be struck in light of the proliferation of no-fault laws, that is a job for Congress. Finally, the Court noted that to the extent FECA operates unfairly in no-fault states, the inequity arises from the state schemes' introduction of extrinsic complications.

Attorneys: Freddi Lipstein  
FTS 633-4825

William Kanter  
FTS 633-1597

In re NBC, No. 83-9040 (2d Cir. May 23, 1984). D.J. # 82-14-60.

SECOND CIRCUIT HOLDS THAT THE GOVERNMENT CAN  
DECIDE WHEN TO RELEASE WIRETAP MATERIALS, CON-  
SISTENT WITH THE OMNIBUS CRIME CONTROL AND  
SAFE STREETS ACT OF 1968.

NBC published several broadcasts regarding Las Vegas entertainer Wayne Newton, and in those broadcasts indicated that Newton had ties with organized crime and had lied both to a grand jury and at the trial of a Mafia member. Newton sued NBC for libel, and, in order to defend itself, NBC requested that the Organized Crime Strike Force turn over to it wiretap transcripts, applications, and court orders involving Newton and several Mafia figures. The Strike Force declined to do so, and NBC brought suit claiming that it was entitled to the materials under the Omnibus Crime Control and Safe Streets Act of 1968 and the Organized Crime Control Act because it intended to use the information in connection with a civil action. We argued that, with regard to the wiretap transcripts, Congress did not intend

CIVIL DIVISION  
Acting Assistant Attorney General Richard K. Willard

to make them automatically available for civil discovery, but that the Justice Department could decide when to release such materials. With regard to the wiretap applications and orders, we argued that such items could be ordered released by a court when good cause is shown, but that NBC's showing such materials might lead to discovery of relevant information was not "good cause."

The district court declined to order disclosure, and the Second Circuit affirmed. The court of appeals' unanimous opinion agreed with our arguments on all points, although it leaves open the possibility that in different circumstances in which a civil litigant is seeking release of wiretap materials disclosure might be appropriate.

Attorneys: Barbara L. Herwig  
FTS 633-5425

Douglas N. Letter  
FTS 633-3427

Bowman v. Stumbo, Nos. 82-5746, 83-5457 (6th Cir. May 25, 1984).  
D.J. # 145-10-2015.

SIXTH CIRCUIT UPHOLDS LABOR SECRETARY'S  
CONSTRUCTION OF THE PENSION OFFSET REQUIREMENT  
OF THE FEDERAL UNEMPLOYMENT TAX ACT AS  
APPLYING TO SOCIAL SECURITY RETIREMENT  
BENEFITS.

The Federal Unemployment Tax Act contains minimum requirements for state unemployment insurance laws. In 1980 Congress amended the Act to require states to offset certain pension income from unemployment benefits, specifically requiring that pensions "under a plan . . . contributed to" by the terminating employer must be offset from unemployment benefits. The Labor Department interpreted this provision as requiring offset of any Social Security pension if the terminating employer pays Social Security (FICA) taxes--a construction which covers most Social Security pensions. Labor's construction was challenged in several lawsuits by Social Security recipients seeking unemployment benefits after a lay-off from a post-retirement job. These challenges relied on legislative history, primarily a pre-enactment suggestion of

## CIVIL DIVISION

Acting Assistant Attorney General Richard K. Willard

Senator Bradley that a Social Security pension would not be offset unless the pension was based on work for the terminating employer--a construction which would cover few Social Security pensions since most are based on earlier employment. The government argued that plaintiffs' construction was contrary to the plain meaning of the statute, and would dissipate fiscal savings intended by the offset requirement (some \$85 million a year). The Sixth Circuit now has joined the Ninth Circuit in reversing a district court injunction for a state-wide class of Social Security recipients. Both circuits hold that the statute has a plain meaning which cannot be displaced by a contrary statement in the legislative history.

Attorney: Michael Kimmel  
FTS 633-5714

Zwerling v. Reagan, No. 83-6546 (9th Cir. May 16, 1984). D.J. # 145-1-1010.

NINTH CIRCUIT DISMISSES PLAINTIFF'S APPEAL AS MOOT IN CASE CHALLENGING CONSTITUTIONALITY OF JOINT RESOLUTION AND PRESIDENTIAL PROCLAMATION DESIGNATING 1983 AS "THE YEAR OF THE BIBLE."

This case involved a challenge to the constitutionality of Senate Joint Resolution No. 165 and Proclamation No. 5018, designating 1983 as the "Year of the Bible." Plaintiffs filed this action in the district court on April 21, 1983, contending that the Joint Resolution and Proclamation violated the Establishment Clause of the First Amendment. On December 22, 1983, the district court ruled in favor of the government, reasoning that the Joint Resolution and Proclamation did not have the force of law and were therefore not the kinds of governmental actions encompassed by the Establishment Clause. Plaintiffs thereafter appealed, and on March 30, 1984, the government moved to dismiss the appeal as moot, since the 1983 "Year of the Bible" had come to an end and is now of only historical interest. By order of May 16, 1984, the Ninth Circuit granted our motion and dismissed the appeal as moot.

Attorneys: Leonard Schaitman  
FTS 633-3441

Michael Jay Singer  
FTS 633-3159

## CIVIL DIVISION

Acting Assistant Attorney General Richard K. Willard

Block v. Community Nutrition Institute, No. 83-458 (June 4, 1984).  
D.J. # 98-16-30.

UNANIMOUS SUPREME COURT FINDS CONSUMERS  
IMPLIEDLY PRECLUDED FROM SEEKING REVIEW OF  
MARKET ORDERS.

Three individual consumers and other parties brought an Administrative Procedure Act claim seeking review of milk market orders which set the minimum prices dairy farmers receive for milk, pursuant to the Agricultural Marketing Agreement Act (AMAA), 7 U.S.C. §601, et seq. The AMAA expressly grants only handlers (milk processors) a right of judicial review. The District of Columbia Circuit affirmed dismissal of the other parties, but found no "clear and convincing evidence" that Congress precluded consumers from seeking judicial review, because the statute and the legislative history are silent regarding consumers' rights and the Supreme Court has previously ruled that dairy farmers could obtain judicial review in the face of similar silence.

A unanimous Supreme Court reversed, holding that consumers are impliedly precluded from seeking review. The Court ruled that the "clear and convincing evidence" standard does not require "unambiguous proof" but serves only as a "useful reminder" that, unless "congressional intent to preclude judicial review is 'fairly discernible' in the details of the legislative scheme," the general presumption favoring judicial review of administrative action is controlling. Here, the Court found preclusion from "inferences of intent drawn from the statutory scheme as a whole," in particular, the "detailed mechanism for judicial consideration of particular issues at the behest of" handlers. Also, the fact that nowhere in the AMAA's complex scheme for development of market orders are consumers given a statutory role "is sufficient reason to believe that Congress intended to foreclose consumer participation in the regulatory process" even though the statute requires consideration of consumers' interests (see 7 U.S.C. §602(2), (4)).

Attorneys: Leonard Schaitman  
FTS 633-3441

Susan Sleater  
FTS 633-3925

CIVIL DIVISION  
Acting Assistant Attorney General Richard K. Willard

Aluminum Company of America v. Central Lincoln Peoples' Utility District, \_\_\_ U.S. \_\_\_, No. 82-1071 (June 5, 1984). D.J. # 145-19-184.

SUPREME COURT UPHOLDS TERMS OF BONNEVILLE  
POWER ADMINISTRATION SALES TO "DIRECT SERVICE  
INDUSTRIAL" CUSTOMERS.

Historically, the Bonneville Power Administration (BPA) has sold hydroelectric power generated by federal dams under long-term contracts to a mix of customers. Although preference in these sales was given by statute to public bodies and cooperatives, there was enough power left over to enable production of large amounts of aluminum and nickel for private concerns. By the 1970's, federal hydro power became very cheap in comparison to non-federal thermal power. Increased demands by preference customers threatened to terminate sales to non-preference direct-service industrial customers, and even preference customer requirements could not be met. In 1980 Congress passed the Pacific Northwest Electric Power Planning and Conservation Act to allocate BPA power. The Act required the issuance of 20-year contracts, the terms of which would be reviewable as final agency actions in the Ninth Circuit. In this case, the preference customers challenged BPA's contract offers to the direct-service industrial customers, contending that the offers violated their historical right to preference, which was preserved intact by the express terms of the 1980 Act. The Ninth Circuit agreed with the preference customers, but, on certiorari, the Supreme Court reversed.

The Court agreed with the government that the Act contemplated a wide degree of bargaining discretion over the terms of power delivery, and that the statutes did not preclude improved power quality to non-preference customers in order to meet other statutory directives. The Court held that the Administrator's decision was consistent with the plain language of the Act, its legislative history, would further the goals of Congress, and hence was "fully reasonable." Justice Stevens dissented, calling for the more literal reading of the Act on delivery of actual power quantity.

Attorneys: Robert S. Greenspan  
FTS 633-5428

Bruce G. Forrest  
FTS 633-3542

CIVIL DIVISION  
Acting Assistant Attorney General Richard K. Willard

Heckler v. Ringer, \_\_\_\_\_ U.S. \_\_\_\_\_, No. 82-1772 (May 14, 1984).  
D.J. # 137-12C-941.

SUPREME COURT HOLDS THAT SUIT CHALLENGING  
REGULATION PROHIBITING MEDICARE REIMBURSEMENT  
FOR SPECIAL SURGICAL PROCEDURE IS SUBJECT TO  
EXHAUSTION REQUIREMENTS OF 42 U.S.C. §405(g).

In 1980, the Secretary of Health and Human Services (HHS) issued an administrative ruling barring reimbursement under the Medicare Act for a surgical procedure known as bilateral carotid body resection (BCBR) on the ground that it had not been shown to be a safe or effective treatment for relieving symptoms of pulmonary distress. Plaintiffs, Medicare claimants who had either had BCBR or who wished to undergo it but who had not exhausted their administrative remedies, sued to enjoin the Secretary from relying on the ruling to deny their claims, arguing that she was estopped from doing so since prior to the issuance of the ruling the procedure had been found "reasonable and necessary" within the meaning of the Medicare Act in a number of ALJ and Appeals Council decisions.

The Ninth Circuit held that plaintiffs' challenge was essentially a "procedural" one aimed at preventing the Secretary from using a presumptive rule as an administrative mechanism for determining benefits awards, and that accordingly jurisdiction existed under 28 U.S.C. §1331 notwithstanding the exhaustion requirements of 42 U.S.C. §405(g). It also held that the Secretary had effectively waived the exhaustion requirement for plaintiffs' substantive claims by issuing a binding ruling (indicating she was not interested in further appeals on the issue) and that subjecting plaintiffs to an exhaustion requirement would prejudice them in a way that could not thereafter be adequately remedied by an award of benefits.

On May 14, 1984, the Supreme Court reversed and remanded the case. With respect to the three plaintiffs who had had the BCBR surgery, the Court found that their claim was one "arising under" the Medicare Act, and rejected the notion that characterizing an issue as "procedural" rather than "substantive" could be a basis for ignoring the exhaustion requirement in 42 U.S.C. §405(g). Furthermore, the Court held, exhaustion of administrative remedies was in no sense futile for these plaintiffs since the ruling post-dated their surgeries and therefore would not govern their reimbursement claims. With respect to the remaining plaintiff, who had not yet had BCBR surgery, the Court held that his claim was also cognizable only under 42 U.S.C. §405(g), and that since

CIVIL DIVISION  
Acting Assistant Attorney General Richard K. Willard

he had not given the Secretary the opportunity to rule on a concrete claim for reimbursement he had not satisfied the nonwaivable exhaustion requirement of §405(g).

Attorneys: Anthony J. Steinmeyer  
FTS 633-3388

Melissa Clark  
FTS 633-5431

NAACP, Jefferson County Branch v. Donovan, Nos. 83-1919, 83-2165  
(D.C. Cir. June 12, 1984). D.J. # 145-156-349.

D.C. CIRCUIT HOLDS THAT A CLASS INJUNCTION  
BASED ON INTERPRETATION OF A REGULATION DOES  
NOT PREVENT AMENDMENT OF THE REGULATION.

Plaintiffs, U.S. migrant farmworkers seeking higher wages, challenged a Labor Department interpretation of a regulation governing minimum piece rate wages payable by employers of temporary alien harvest workers permitted entry under DOL certification of need. In a nationwide class injunction the district court adopted plaintiffs' interpretation of the piece rate regulation, and ordered the Department to condition future labor certifications on higher wage rates required by that interpretation. Without seeking modification of the injunction, the Department promulgated a regulatory amendment under which its own method for determining minimum piece rates would be expressly authorized. Six days later the district court, to "enforce" its earlier injunction and because of doubts whether the amendment complied with the APA, entered a second injunction prohibiting the Department from implementing the amendment pending further order of the court. On appeal, the D.C. Circuit reversed, holding that an agency can engage in new rulemaking "to correct a prior rule which a court has found defective," and likewise is free to make and implement regulatory changes in the face of an existing injunction based on a particular interpretation. The court of appeals also held that the district court's failure to justify its second interlocutory injunction under the Virginia Petroleum standards in a "very dubious interim relief proceeding" undermined any other legal basis for the injunction. It remanded the case for a final decision on whether the amended regulation is valid under the APA.

Attorney: Michael Kimmel  
FTS 633-5714

CIVIL DIVISION  
Acting Assistant Attorney General Richard K. Willard

Nathan v. Attorney General, Nos. 83-1619 & 83-1643 (D.C. Cir. June 5, 1984). D.J. # 145-12-5254.

DISTRICT OF COLUMBIA CIRCUIT REVERSES ORDER  
REQUIRING AN INVESTIGATION UNDER THE ETHICS IN  
GOVERNMENT ACT INTO ALLEGED CRIMES BY HIGH-  
RANKING OFFICIALS IN CONNECTION WITH THE 1979  
MURDERS OF FIVE DEMONSTRATORS IN GREENSBORO,  
NORTH CAROLINA.

This case grows out of a 1979 Nazi and Ku Klux Klan attack in Greensboro, North Carolina, on a group of blacks and members of the Communist Workers' Party who were demonstrating against the Klan. Plaintiffs are victims (and relatives of victims) of the assault. They claim that various officials covered by the Ethics in Government Act, including the Attorney General, the FBI Director, and the Assistant Attorney General for the Civil Rights Division, conspired either to plan the assault or to "cover up" federal involvement in it. The district court entered judgment for plaintiffs, and ordered the Attorney General to conduct a "preliminary investigation" of plaintiffs' charges, pursuant to the Ethics Act. The District of Columbia Circuit has just reversed the district court judgment. The panel (Edwards, Bork, and Davis, JJ.), however, did not agree on a rationale for reversal. Judge Bork's concurring opinion accepted our threshold argument that the Ethics Act does not permit judicial review. Judge Davis, on the other hand, while he characterized our threshold position as "substantial," rested his concurring opinion on the inadequacy of plaintiffs' factual submission. Judge Edwards' short concurrence also stressed "the facts before [the Court]."

Attorneys: Leonard Schaitman  
FTS 633-3441

John Cordes  
FTS 633-4214

CIVIL DIVISION  
Acting Assistant Attorney General Richard K. Willard

Fernandez-Roque v. Smith, No. 83-8628 (11th Cir. June 1, 1984).  
D.J. # 39-19-85.

ELEVENTH CIRCUIT UPHOLDS ATTORNEY GENERAL'S  
POLICIES CONCERNING DANGEROUS MARIEL CUBANS  
INCARCERATED IN ATLANTA.

This case is a class action on behalf of approximately 1000 excludable Cuban aliens who arrived in the United States in the 1980 Mariel boatlift and who are now detained at the Atlanta Penitentiary. The Attorney General has established a Status Review Plan, involving file reviews and personal interviews, to determine whether each individual alien should be paroled. On the basis of its finding of a constitutionally protected liberty interest, the district court held that the detainees were entitled to a "presumption of releasability" and that the government must carry the burden of proving "by clear and convincing evidence that a detainee, if released, will be likely to abscond, to pose a risk to the national security, or to pose a serious threat to persons or property in the United States." The aliens were given the right to be represented by counsel at government expense, and numerous additional requirements characteristic of a full adversary hearing were imposed. The district court also ruled that the government must provide preliminary hearings for those aliens who have previously been released and whose immigration parole is being revoked. On our appeal, the Eleventh Circuit has now reversed, holding that neither the Constitution nor the Immigration and Nationality Act limits the ability of the Attorney General to detain excludable aliens such as plaintiffs when the country of their nationality refuses to take them back.

Attorneys: Barbara Herwig  
FTS 633-5425

John Rogers  
FTS 633-1673

LAND AND NATURAL RESOURCES DIVISION  
Assistant Attorney General F. Henry Habicht, II

United States v. 162.20 Acres of Land, Situated in Clay County,  
Miss. (Uithoven), No. 83-4447 (5th Cir. June 4, 1984). D.J. #  
33-25- 361-22.

CONDEMNATION; RULING THAT INJUNCTIVE RELIEF  
WITHHOLDING POSSESSION OF LAND ACQUIRED UNDER  
DECLARATION OF TAKING ACT NOT WARRANTED,  
AFFIRMED.

The United States filed a complaint and declaration of taking to acquire land for the Tennessee-Tombigbee Project, and the landowners asserted counterclaims alleging that the government had failed to comply with the requirements of the National Historic Preservation Act (NHPA) and other environmental laws. The district court entered judgment striking the landowners' defenses and the landowners appealed. The Fifth Circuit, 639 F.2d 299 (1981), affirmed, holding that alleged non-compliance by federal officials with the mandate of NHPA, is not a legally sufficient defense to a condemnation under the Declaration of Taking Act, but remanded for a determination whether the Corps had complied with NHPA for purposes of deciding whether to withhold possession from the government or to issue appropriate injunctive relief. Rehearing was denied, 644 F.2d 34, as was certiorari, 454 U.S. 828. On remand, the district court, 564 F. Supp. 987, entered judgment for the government, holding that the government had complied with NHPA and NEPA (a new issue raised by the landowners), and again the landowners appealed. On appeal, the Fifth Circuit held that (1) the government had fully satisfied its obligations under NHPA (declining to reconsider the ruling by the prior panel that non-compliance with NHPA is not a valid defense to a condemnation), and (2) the Corps was not required to perform a site-specific Environmental Impact Statement (EIS), since the agency's programmatic EIS contained all the analysis required by Section 102(2)(c) of NEPA.

Attorneys: Jacques B. Gelin  
FTS 633-2762

David C. Shilton  
FTS 633-5580

LAND AND NATURAL RESOURCES DIVISION  
Assistant Attorney General F. Henry Habicht, II

Confederated Tribes and Bands of the Yakima Indian Nation v. FERC,  
No. 83-7561 (9th Cir. June 7, 1984). D.J. # 90-1-4-2547.

FERC REQUIRED TO GIVE SOME CONSIDERATION TO  
FISHERY PROBLEMS AND MITIGATION MEASURES IN A  
RELICENSING COVERING FORTY YEARS AS IT DOES IN  
AN INITIAL LICENSING.

The National Marine Fisheries Service (NMFS) challenged the Federal Energy Regulatory Commission's (FERC) grant of a new forty-year license for an existing dam on the Columbia River. The court of appeals granted NMFS's petition for review and set aside the license. The court ruled that under the Federal Power Act, FERC must give the same careful consideration to fishery problems and mitigation measures in a relicensing proceeding as it does in an initial licensing. This statutory requirement precludes FERC from deferring consideration of fishery problems to a separate post-licensing proceeding, as it tried to do in this case. The court also found that FERC's failure to give pre-license consideration to fishery issues violated the Fish and Wildlife Coordination Act and the Pacific Northwest Power Act, which require, respectively, "equal consideration" and "equitable treatment" of fish along with power. Furthermore, FERC's failure to require the applicant to submit a fish and wildlife exhibit prior to licensing, was found to violate FERC's own regulations. Finally, the court struck down as unreasonable, FERC's determination not to prepare an Environmental Impact Statement (EIS) prior to licensing. Because the Federal Power Act treated relicensing as essentially equivalent to the grant of a new license, the case does not fall under the EIS exception for actions, which are merely phases of an essentially continuous activity. Instead, it represents an irreversible commitment of a public resource (the flow of the river) for a forty-year period.

Attorneys: David C. Shilton  
FTS 633-5580

Robert L. Klarquist  
FTS 633-2731

LAND AND NATURAL RESOURCES DIVISION  
Assistant Attorney General F. Henry Habicht, II

Omaha Tribe of Nebraska v. Swanson, No. 83-1812 (8th Cir. June 8, 1984). D.J. # 90-2-4-774.

EQUAL ACCESS TO JUSTICE ACT; CLAIMANT MUST  
ACTUALLY PREVAIL AGAINST THE UNITED STATES TO  
RECOVER.

The Omaha Tribe of Nebraska appealed from a denial of attorneys' fees and costs under the Equal Access to Justice Act (EAJA), 28 U.S.C. §2412. The Tribe argued that it was the prevailing party and that the government's position was not substantially justified. The court of appeals affirmed the judgment of the district court, holding that under EAJA, "it is necessary for a party actually to prevail against the United States; it is not enough that a party predict that it would have won if the case had proceeded to judgment on the merits." Since the Tribe did not prevail, the court found it unnecessary to rule on the issue of whether the government's position was substantially justified. The court did not mention the government's argument that an Indian tribe can never be a party eligible for fees under EAJA.

Attorneys: Claire L. McGuire  
FTS 633-2855

Anne S. Almy  
FTS 633-4427

OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS  
Assistant Attorney General Robert A. McConnell

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

JULY 3, 1984 - JULY 13, 1984

HOUSE ACTION ON THE PRESIDENT'S ANTI-CRIME  
LEGISLATION AS PASSED BY THE SENATE  
(UPDATED TO 7/2/84)

STATISTICAL SUMMARY

# of Parts of President's Anti-Crime Package approved by Senate . 49

\* \* \*

# of Parts Approved by House of Representatives ..... 6  
# of Parts Reported by House Committee ..... 8  
# of Parts Reported by House Subcommittee ..... 2  
# of Parts Subject of House Hearings ..... 6  
# of Parts Receiving No House Action Whatsoever ..... 27

<u>Bill and Title</u>	<u>House Committee of Jurisdiction</u>	<u>Status</u>
S. 1762 The "core," non- controversial bill passed by Senate 91-1		
Title I Bail Reform	Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of House Judiciary. Bob Kastenmeier, Chairman	House bail bill, H.R. 1098, reported by Subcommittee on June 13. This bill is virtually identi- cal to Title I of S. 1762.

<u>Bill and Title</u>	<u>House Committee of Jurisdiction</u>	<u>Status</u>
Title II Sentencing Reform	Subcommittee on Criminal Justice, of House Judiciary. John Conyers, Chairman	A sentencing bill, based on H.R. 4827 (Conyers), reported by Subcommittee on June 28. "Clean" bill to be introduced when House returns from July 4th recess. This bill does not go as far as we would like toward a "determinate" sentencing system, is defense oriented in that it allows defen- dants to appeal harsh sentences but prevents the government from appealing unreasonably lenient sentences, and suffers from other grave defects. A criminal fine collec- tion bill, H.R. 5846, similar to the fine collection provision of Title II of S. 1762, has been reported by full House Judiciary.
Title III Forfeiture Reform	Subcommittee on Crime, of House Judiciary. Bill Hughes, Chairman	H.R. 4901 (Hughes) reported by full House Judiciary Committee on Feb. 28, 1984. Pending before Ways and Means pursuant to a joint referral to that Committee. This House bill lacks the substitute asset and

<u>Bill and Title</u>	<u>House Committee of Jurisdiction</u>	<u>Status</u>
		RICO provisions that are in the Senate-passed bill. H.R. 4901 includes drug penalties provisions in Title V of S. 1762.
Title IV Insanity Defense Reform	Subcommittee on Criminal Justice, of House Judiciary. John Conyers, Chairman	H.R. 3336 (Conyers) reported by full Committee on Nov. 21, 1983. This House bill is similar to Senate bill concept but suffers from defects regarding procedures for determining competency.
Title V Drug Enforcement Amendments	Subcommittee on Crime, of House Judiciary. Bill Hughes, Chairman	H.R. 4698 (Hughes) reported by House Judiciary and now pending before House Energy and Commerce pursuant to a joint referral to that Committee. Similar to diversion control provision of Senate bill.
Title VI Justice Assistance Act	Subcommittee on Crime, of House Judiciary. Bill Hughes, Chairman	H.R. 2175 (Hughes) approved by House on May 10, 1983. This House bill has an administrative structure that would result in more of each program dollar being consumed as "overhead" here in Washington

<u>Bill and Title</u>	<u>House Committee of Jurisdiction</u>	<u>Status</u>
		with less going to state and local agencies.
Title VII Surplus Property Amendments	Before Subcommittee on Administrative Law and Governmental Relations, chaired by Rep. Sam Hall. Possible sequential referral Government Operations chaired by Rep. Jack Brooks	No hearings held or scheduled.
Title VIII Labor Racketeering Amendments	Before Subcommittee on Crime, chaired by Rep. Bill Hughes. Possible sequential referral to House Committee on Education and Labor chaired by Rep. Carl Perkins	No hearings held or scheduled.
Title IX Foreign Currency Transaction Amendments	Before Subcommittee on Crime, chaired by Rep. Bill Hughes. Possible sequential referral to House Committee on Banking, Housing and Urban Affairs	Hearing held on April 11, 1984.
Title X Miscellaneous Violent Crime Amendments	Primarily before the Subcommittee on Crime; Bill Hughes, Chairman; and the Subcommittee on Criminal Justice, John Conyers, Chairman, of House Judiciary.	Part N approved by the Congress as P.L. 98-305. Part L reported by House Judiciary Committee as H.R. 5526. Parts E, F, G and K have been the subject of hearings. No action whatsoever on the other 9 parts.

<u>Bill and Title</u>	<u>House Committee of Jurisdiction</u>	<u>Status</u>
Title XI Serious Non-Violent Offenses	Primarily before the Subcommittee on Crime, Bill Hughes, Chairman; and the Subcommittee on Criminal Justice, John Conyers, Chairman, of House Judiciary.	Parts A and D approved by the Congress as P.L. 98-292 and P.L. 98-107, respectively. Parts F and G reported by House Judiciary Committee as H.R. 5872. Part H reported by House Judiciary Committee as H.R. 5910. No action whatsoever on the other 5 parts.
Title XII Procedural Amendments	Primarily before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of House Judiciary. Bob Kastenmeier, Chairman	Part F has been approved by the House as H.R. 4249. Part G has been approved by the Congress as part of the Deficit Reduction Act. House Judiciary Committee has reported Part L as H.R. 5819. No action whatsoever on the other 9 parts.
S. 1763 Reform of Federal Intervention in State Proceedings passed by Senate 67-9	Subcommittee on Courts, Civil Liberties, and the Administration of Justice, of House Judiciary. Bob Kastenmeier, Chairman	No hearings held or scheduled.
S. 1764 Exclusionary Rule Reform passed by Senate 63-24	Subcommittee on Criminal Justice, of House Judiciary. John Conyers, Chairman	One hearing held in early 1983 at which point Chairman Conyers announced that he would not hold further hearings or take any action on this issue.
S. 1765 Capital Punishment passed by Senate 63-32	Subcommittee on Criminal Justice, of House Judiciary. John Conyers, Chairman	No hearings held or scheduled.

## FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 48(a). Dismissal. By Attorney for Government.

Defendant was indicted for bank embezzlement and making false statements. On the day of trial the government moved to dismiss, offering as its only reason that dismissal "would best meet the ends of justice." The district court dismissed without prejudice, although defendant objected on the ground that the government had not alleged any legitimate or compelling reason. Defendant was later reindicted on the same charges, and before the same judge moved to dismiss, contending that the court erred in dismissing the first indictment without prejudice. The court, agreeing with defendant's reasoning that the government did not submit any reasons for dismissal of the first indictment, dismissed the second indictment. The government appealed, contending that the text of Rule 48(a) and its history indicate that the reasons need not be stated.

The Supreme Court, in promulgating the Rule, eliminated the Advisory Committee's requirement that the prosecutor state reasons for dismissal, but added the requirement that leave of court be obtained. The Court of Appeals held that the primary purpose of the added requirement is to prevent harassment of a defendant by a prosecutor's charging, dismissing, and recharging defendant with a crime, and to honor this purpose the court at the very least must know the facts and reasons underlying the prosecutor's decision to seek dismissal. The Court further noted that an order granting or denying such a motion is reviewable for abuse of discretion, and therefore the record must contain reasons and facts explaining the trial court's decision. The Court further held that dismissal of the second indictment was an appropriate sanction since the only reason the government could articulate, on defendant's motion to dismiss the second indictment, was that it was not prepared to go to trial at the time of the first indictment.

(Affirmed.)

United States v. Jacque Kristina Derr, 726 F.2d 617 (10th Cir. Jan. 23, 1984).

24-MONTH COMPARATIVE SUMMARY OF U.S. ATTORNEYS' CASH COLLECTIONS  
(May 1, 1982 through April 30, 1984)

<b>CRIMINAL</b>			
Cash Receipts			
Month	82 - 83	83 - 84	% Change
<b>May</b>	<b>\$ 2,671,948</b>	<b>\$ 2,435,264</b>	<b>(08.86)%†</b>
June	2,798,487	3,104,237	10.93%
<b>July</b>	<b>2,095,293</b>	<b>5,598,537</b>	<b>167.20%</b>
August	4,504,267	2,899,271	(35.63)%†
<b>September</b>	<b>3,421,458</b>	<b>6,407,632</b>	<b>87.28%</b>
October	5,501,985	5,422,644	(01.44)%†
<b>November</b>	<b>1,540,581</b>	<b>7,695,363</b>	<b>399.51%</b>
December	2,926,059	6,106,913	108.71%
<b>January</b>	<b>6,441,614</b>	<b>10,201,709</b>	<b>58.37%</b>
February	3,538,503	3,194,953*	(09.71)%†
<b>March</b>	<b>2,099,760</b>	<b>5,296,561</b>	<b>152.25%</b>
April	6,130,917	4,068,920**	(33.63)%†
<b>Total</b>	<b>\$43,670,872</b>	<b>\$62,432,004</b>	<b>42.96%</b>

<b>CIVIL</b>			
Cash Receipts			
Month	82 - 83	83 - 84	% Change
<b>May</b>	<b>\$ 20,231,418</b>	<b>\$ 14,660,724</b>	<b>(27.53)%†</b>
June	6,353,010	13,746,440	116.38%
<b>July</b>	<b>9,752,093</b>	<b>12,776,758</b>	<b>31.02%</b>
August	8,294,488	11,726,309	41.37%
<b>September</b>	<b>15,719,678</b>	<b>22,082,178</b>	<b>40.47%</b>
October	7,243,968	12,770,761	76.30%
<b>November</b>	<b>10,215,151</b>	<b>8,051,231</b>	<b>(21.18)%†</b>
December	8,845,767	8,768,241	(00.88)%†
<b>January</b>	<b>12,344,126</b>	<b>16,935,642</b>	<b>37.20%</b>
February	8,588,325	8,928,510	3.96%
<b>March</b>	<b>13,395,189</b>	<b>11,973,924</b>	<b>(10.61)%†</b>
April	17,341,700	14,472,805**	(16.54)%†
<b>Total</b>	<b>\$138,324,913</b>	<b>\$156,893,523</b>	<b>13.42%</b>

<b>TOTALS</b>			
Cash Receipts			
Month	82 - 83	83 - 84	% Change
<b>May</b>	<b>22,903,366</b>	<b>17,095,988</b>	<b>(25.36)%†</b>
June	9,151,497	16,850,677	84.13%
<b>July</b>	<b>11,847,386</b>	<b>18,375,295</b>	<b>55.10%</b>
August	12,798,755	14,625,580	14.27%
<b>September</b>	<b>19,141,136</b>	<b>28,489,810</b>	<b>48.84%</b>
October	12,745,953	18,193,405	42.74%
<b>November</b>	<b>11,755,732</b>	<b>15,746,594</b>	<b>33.95%</b>
December	11,771,826	14,875,154	26.36%
<b>January</b>	<b>18,785,740</b>	<b>27,137,351</b>	<b>44.46%</b>
February	12,126,828	12,123,463*	(00.03)%†
<b>March</b>	<b>15,494,949</b>	<b>17,270,485</b>	<b>11.46%</b>
April	\$ 23,472,617	\$ 18,541,725**	(21.01)%†
<b>Totals</b>	<b>\$181,995,785</b>	<b>\$219,325,527</b>	<b>20.51%</b>

\* Maryland not reporting.

\*\* Includes 2 prior months' cash for New York, Southern District.

†( ) = Negative Values.

## DEPARTMENT OF JUSTICE

## 28 CFR Part 50

[Order No. 1031-83]

## Policy With Regard to Open Judicial Proceedings

AGENCY: U.S. Department of Justice.

ACTION: Final rule.

**SUMMARY:** This order adds arraignments and bond hearings to the types of judicial proceedings for which prior authorization is required before seeking or agreeing to closure. New section (f) establishes a 60 day review requirement to ensure that records of closed proceedings are unsealed as soon as possible.

EFFECTIVE DATE: October 18, 1983.

**FOR FURTHER INFORMATION CONTACT:** David M. Simonson (202-724-6672), Office of Enforcement Operations, Criminal Division, Department of Justice, Washington, D.C. 20530.

**SUPPLEMENTARY INFORMATION:** This order is a clarification of the types of judicial proceedings set forth in 28 CFR 50.9(a) which require approval prior to moving for or agreeing to closure. The addition of arraignments and bond hearings to this section clarifies some uncertainty existing in United States Attorneys' Offices as to whether these proceedings are within the regulation.

Additionally, a new section (f) has been added which provides for a review of records of closed proceedings which remain sealed after 60 days. If the reasons for closure are still applicable at that time, the review will be repeated at 60 day intervals until it is appropriate for the records to be unsealed. The Criminal Division has been assigned the role of monitoring compliance with this section.

This Order is not a rule within the meaning of either Executive Order 12291, Section 1(a), or the Regulatory Flexibility Act, 5 U.S.C. 601, et seq.

## List of Subjects in 28 CFR Part 50

Administrative practice and procedure.

## PART 50—[AMENDED]

By virtue of the authority vested in me, as Attorney General, by 28 U.S.C. 509, 510, 516, and 519 and 5 U.S.C. 301, 50.9 of Title 28 of the Code of Federal Regulations is hereby amended as follows:

1. Paragraph (a) is revised to read as follows:

## § 50.9 Policy with regard to open judicial proceedings.

(a) These guidelines apply to all federal trials, pre- and post-trial evidentiary proceedings, arraignments, bond hearings, plea proceedings, sentencing proceedings, or portions thereof, except as indicated in paragraph (e) of this section.

2. Existing paragraph (f) is redesignated as paragraph (g) and new paragraph (f) is added as follows:

(f) Because of the vital public interest in open judicial proceedings, the records of any proceeding closed pursuant to this section, and still sealed 60 days after termination of the proceeding, shall be reviewed to determine if the reasons for closure are still applicable. If they are not, an appropriate motion will be made to have the records unsealed. If the reasons for closure are still applicable after 60 days, this review is to be repeated every 60 days until such time as the records are unsealed. Compliance with this section will be monitored by the Criminal Division.

Dated: October 18, 1983.

William French Smith,  
Attorney General.

[FR Doc. 83-29051 Filed 10-25-83; 8:45 am]

BILLING CODE 4410-01-M

## A National

# VICTIMS RESOURCE CENTER

## Announced

**T**he President's Task Force on Victims of Crime, in its December 1982 report, recommended the establishment of a National Victims Resource Center. Specifically, the Task Force report called for a federally based resource center that would serve as a national clearinghouse of information on victim assistance and compensation programs and victim advocacy organizations; function as a liaison to public and private organizations that assist crime victims; and operate as a reference point for those seeking current information on state victim compensation programs and other victim-related legislation and victim services.

In pursuit of its mandate to implement the recommendations of the Task Force, the Office of Justice Assistance, Research, and Statistics, U.S. Department of Justice, has established this National Victims Resource Center. The Center works through a network of public and private organizations at the national, state, and local level that promote or operate victim assistance programs. It maintains a computerized *national program data base* containing descriptions of all types of victim assistance programs throughout the country. A *legislative data base* has been developed to track pending and enacted legislation on victim assistance and compensation programs. Both make it easier for people to learn what others are doing for victims including the problems they encounter, the results they achieve, and the new insights they gain.

The National Victims Resource Center also collects and makes available literature—books, articles, reports, and audiovisual materials—on such victim-related topics as:

- victim services and assistance,
- compensation and restitution,
- the criminal justice system and the victim,
- victims and their families,
- children and other special classes of victims,
- victim protection,
- medical/mental health and victims.

Brief summaries of the documents in this collection make up a *bibliographic data base* for the use of researchers and practitioners alike.

### What Services are Available?

A telephone call or letter puts you in touch with information specialists at the National Victims Resource Center who can provide you with:

- descriptions of existing victim assistance programs,
- names and addresses of people to contact for more information,

- bibliographies, data base searches, and other information products,
- copies of documents and other materials in paper or microfiche,
- access to other materials through interlibrary loan arrangements,
- rental of audiovisual materials,
- reading room services in the Washington, D.C., metropolitan area.

### Who Can Use These Services?

Anyone interested in assisting victims of crime, including those already providing services (victim assistance counselors, private organizations, doctors, nurses, public agencies) and persons in the criminal justice system (law enforcement personnel, prosecutors, judges, judicial staff, attorneys). Citizens, educators, and legislators concerned with the treatment of victims and their families also can benefit by using these resources.

### Your Help is Needed!

This growing network of national, state, local, and private sector groups, all contributing information on current programs and legislation, needs your participation. Help us by letting us know what is happening where you are.

Please send us:

- descriptions and contacts for current programs,
- published and unpublished reports of research, surveys, and studies concerning victims and victim service programs.

### For More Information . . .

Call the National Victims Resource Center at (202) 724-6134 or write:

### National Victims Resource Center

Office of Justice Assistance,  
Research, and Statistics  
Washington, DC 20531 ★

LETTER UTILIZED BY THE OFFICE OF LEGAL COUNSEL IN RESPONDING TO INQUIRIES FROM PRISONERS RE: 28 U.S.C. §2255 MOTIONS.

Mr. John Doe  
P.O. Box 1000  
Anytown, USA 10005

Dear Mr. Doe:

This letter responds to your inquiry of November 29, 1983, to the Attorney General concerning your efforts to apply for relief from a sentence imposed by the United States District Court for the District of the Canal Zone. As you are aware, pursuant to 28 U.S.C. §2255, persons in custody under sentence of a court established by an Act of Congress must bring a motion for relief in the court which imposed the sentence. However, the jurisdiction of the Canal Zone District Court that sentenced you terminated on March 31, 1982. See Panama Canal Act of 1979, Pub. L. No. 96-70, 93 Stat. 455, 22 U.S.C. §§3601, 3841, Article XI of Panama Canal Treaty of 1977 (Sept. 7, 1977), reprinted in 16 Int'l Leg. Mat. 1022 (1977).

We understand that you filed a motion under 28 U.S.C. §2255 in the United States District Court for the Eastern District of Louisiana on the advice of the Administrative Office of the United States Courts, but that the pleadings were dismissed without prejudice for lack of jurisdiction. We further understand that you or your attorney have contacted the legal attache of the American Embassy in Panama, as well as this Department, the Supreme Court and various Members of Congress, but that no federal official has informed you where to apply for relief pursuant to 28 U.S.C. §2255.

Unfortunately, no legislation has been enacted to establish arrangements for the orderly transfer of jurisdiction over any actions that were filed and went to judgment in the Canal Zone District Court or, more specifically, to permit challenges to criminal sentences imposed by the court. Although the Committee on Merchant Marine and Fisheries, during the 97th Congress, considered legislation that would have formally transferred actions that originated in the Canal Zone District Court to the Eastern District of Louisiana, the bill received neither full House nor Senate consideration.

Because no court currently exists in which you can file a motion under 28 U.S.C. §2255, we suggest that you consult with your attorney on whether to make an application for a writ of habeas corpus pursuant to 28 U.S.C. §2241. Section 2255 of Title 28 provides that a prisoner may apply for a writ of habeas corpus if "it also appears that the remedy by [§2255] motion is inadequate or ineffective to test the legality of his detention." The burden of coming forward with evidence affirmatively showing the inadequacy of ineffectiveness of a §2255 motion rests with the petitioning prisoner. See Accardi v. Blackwell, 412 F.2d 911, 914 (5th Cir. 1969). Nevertheless, given your situation, the government can assure you that it would not challenge your petition for a writ of habeas corpus pursuant to 28 U.S.C. §2241 on the ground that you had failed to establish that the remedy provided for under §2255 is "inadequate or ineffective." Cf. McGhee v. Hanberry, 604 F.2d 9, 10 (5th Cir. 1979) (prior unsuccessful §2255 motion is insufficient, in and of itself, to show inadequacy or ineffectiveness of that remedy).

We hope that this information will be of some help to you.

Sincerely,

Larry L. Simms  
Deputy Assistant Attorney  
General  
Office of Legal Counsel

LISTING OF ALL BLUESHEETS IN EFFECT  
JULY 2, 1984

<u>AFFECTS USAM</u>	<u>TITLE NO.</u>	<u>DATE</u>	<u>SUBJECT</u>
1-12.100	TITLE 1	4/24/84	Eligibility Criteria
9-2.111 *	TITLE 9	10/19/83	Declination of a Prosecution for National Security Reasons
9-2.132	TITLE 9	3/21/84	Policy Limitations on Institution of Pro- ceedings-Internal Security Matters
9-2.133	TITLE 9	4/09/84	Policy Limitations on Institution of Pro- ceedings, Consultation Prior to Institution of Criminal Charges
9-2.134 9-2.135 *	TITLE 9	4/24/84	Policy Limitations on Institution of Pro- ceedings, Consultation in Other Situations
9-2.169 *	TITLE 9	5/28/82	Testimony of FBI Laboratory Examiners
9-7.013	TITLE 9	4/03/84	Procedures for Lawful, Warrantless Intercep- tions of Verbal Communications
9-7.014 *	TITLE 9	4/03/84	Use of Pen Registers
9-7.1000 **	TITLE 9	5/22/84	Video Surveillance
9-11.230	TITLE 9	4/16/84	Fair Credit Reporting Act and Grand Jury Subpoenas-Discretion of U.S. Attorneys
9-21.340 to 9-21.350	TITLE 9	3/12/84	Psychological/Vocational Testing; Polygraph Examinations for Prisoner-Witness Candidates

\* Approved by Advisory Committee, being permanently incorporated.

\*\* In printing.

LISTING OF ALL BLUESHEETS IN EFFECT  
JULY 2, 1984

<u>AFFECTS USAM</u>	<u>TITLE NO.</u>	<u>DATE</u>	<u>SUBJECT</u>
9-27.510	TITLE 9	5/25/84	Opposing Offers to Plead Nolo Contendere
9-38.000	TITLE 9	4/06/84	Forfeitures
9-60.134 to 9-60.135	TITLE 9	3/30/84	Allegations of "Mental Kidnapping" or "Brainwashing" by Religious Cults; "Deprogramming" of Religious Sect Members
9-60.215	TITLE 9	3/30/84	"Electronic, Mechanical or Other Device" (18 U.S.C. §2510(5))
9-60.231 *	TITLE 9	3/30/84	Scope of Prohibitions
9-60.243	TITLE 9	3/30/84	Other Consensual Interceptions
9-60.251 *	TITLE 9	3/30/84	Lesser Offenses
9-60.291	TITLE 9	3/30/84	Interception of Radio Communications
9-61.130 to 9-61.134	TITLE 9	4/30/84	National Motor Vehicle Theft Act-Dyer Act (18 U.S.C. §§2311-2313)
9-61.640 to 9-61.642	TITLE 9	4/30/84	Bank Robbery
9-63.132 to 9-63.133	TITLE 9	5/02/84	Indictment; Death Penalty
9-63.195	TITLE 9	5/02/84	Protection of Confidentiality of Security Procedures
9-63.460 to 9-63.490	TITLE 9	5/02/84	Obscene or Harassing Telephone Calls - 47 U.S.C. §223
9-71.400	TITLE 9	5/24/84	Prosecutive Policy
9-75.091 *	TITLE 9	3/28/84	47 U.S.C. §223-Comment
9-75.140 *	TITLE 9	3/28/84	Prosecutive Policy

LISTING OF ALL BLUESHEETS IN EFFECT  
JULY 2, 1984

<u>AFFECTS USAM</u>	<u>TITLE NO.</u>	<u>DATE</u>	<u>SUBJECT</u>
9-90.941 *	TITLE 9	3/21/84	Pre-indictment Use of Classified Information
9-120.210 *	TITLE 9	12/29/83	Location of Debtors
9-120.350 *	TITLE 9	12/29/83	FBI Financial Investigations
9-121.600 *	TITLE 9	9/28/83	USAM 9-121.600
9-130.300	TITLE 9	4/09/84	Prior Authorization Generally
9-131.030	TITLE 9	4/09/84	Consultation Prior to Prosecution
9-131.110	TITLE 9	4/09/84	Hobbs Act Robbery
10-2.800; ** 10-9.160	TITLE 10	4/30/84	Notice of Provision for Special Accommodations

UNITED STATES ATTORNEYS' MANUAL--TRANSMITTALS

The following United States Attorneys' Manual Transmittals have been issued to date in accordance with USAM 1-1.500.

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE OF TRANSMITTAL</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
TITLE 1	A2	9/29/80	6/23/80	Ch. 7, Index to Title 1, Revisions to Ch. 2, 5, 8
	A3	9/23/81	8/3/81	Revisions to Ch. 1, 5, 12, Title 1 Index, Index to USAM
	A4	9/25/81	9/7/81	Revisions to Ch. 15, Index to Title 1, Index to USAM
	A5	11/2/81	10/27/81	Revisions to Ch. 5, 7
	A6	3/11/82	12/15/81	Revisions to Ch. 3, 5, 11, Title 1 Index, Index to USAM
	A7	3/12/82	2/9/82	Revisions to Ch. 8, Index to Title 1
	A8	5/6/82	4/27/82	Revisions to Ch. 2, 8, Title 1 Index, Index to USAM
	A9	3/9/83	8/20/82	Revisions to Ch. 5, 9, 10, 14
	A10	5/20/83	4/26/83	Revisions to Ch. 11
	A11	2/22/84	2/10/84	Complete revision of Ch. 1, 2
	A12	3/19/84	2/17/84	Complete revision of Ch. 4
	A13	3/22/84	3/9/84	Complete revision of Ch. 8
	A14	3/23/84	3/9 & 3/16/84	Complete revision of Ch. 7, 9
	A15	3/26/84	3/16/84	Complete revision of Ch. 10
	A17	3/26/84	3/26/84	Complete revision of Ch. 6
	A18	3/27/84	3/23/84	Complete revision of Ch. 11, 13, 14, 15

\* Transmittal is currently being printed.

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE OF TRANSMITTAL</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
TITLE 1	A19	3/29/84	3/23/84	Complete revision of Ch. 12
	A20	3/30/84	3/23/84	Index to Title 1, Table of Contents to Title 1
	A21	4/17/84	3/23/84	Complete revision of Ch. 3
	AAA1	5/14/84		Form AAA-1
TITLE 2	A2	9/24/81	9/11/81	Revisions to Ch. 2
	A3	1/20/82	11/10/81	Revisions to Ch. 3
	A4	5/17/83	10/1/82	Revisions to Ch. 2
	A5	2/10/84	1/27/84	Complete revision of Title 2-replaces all previous transmittals
	*A11	3/30/84	1/27/84	Summary Table of Contents to Title 2
	AAA2	5/14/84		Form AAA-2
TITLE 3	A2	7/2/82	5/28/82	Revisions to Ch. 5
	A3	10/11/83	8/4/83	Complete revision of Title 3-replaces all prior transmittals
	AAA3	5/14/84		Form AAA-3
TITLE 4	A2	7/30/81	5/6/81	Revisions to Ch. 2, 3, 4, 9, 11, 12, 15, Index to Title 4 & Index to USAM
	A3	10/2/81	9/16/81	Revisions to Ch. 1
	A4	3/10/82	8/10/81	Revisions to Ch. 1, 2, 4, 5, 8, 10, 11, 13, Index to Title 4
	A5	10/15/82	5/31/82	Revisions to Ch. 2, 3, 12
	A6	4/27/83	2/1/83	Revisions to Ch. 2, 3, 9, and 12
	A7	4/16/84	3/26/84	Complete revision of Ch. 7, 8, 12

TRANSMITTAL  
AFFECTING  
TITLE

<u>TITLE</u>	<u>NO.</u>	<u>DATE OF TRANSMITTAL</u>	<u>DATE OF TEXT</u>	<u>Contents</u>
TITLE 4	A8	4/16/84	3/28/84	Complete revision of Ch. 2, 14, 15
	A9	4/23/84	3/28/84	Complete revision of Ch. 3
	A10	4/16/84	3/28/84	Complete revision of Ch. 10
	A11	4/30/84	3/28/84	Complete revision of Ch. 1, 9, Index to Title 4
	A12	4/21/84	3/28/84	Complete revision of Ch. 6
	A13	4/30/84	3/28/84	Complete revision of Ch. 4
	A14	4/10/84	3/28/84	Complete revision of Ch. 13
	A15	3/28/84	3/28/84	Complete revision of Ch. 5
	A16	4/23/84	3/28/84	Complete revision of Ch. 11
	AAA4	5/14/84		Form AAA-4
TITLE 5	A2	4/16/81	4/6/81	Revisions to Ch. 1, 2, 2A, 3, 4, 5, 7, 8, New Ch. 9, 9A, 9B, 9C, & 9D
	A3	3/22/84	3/5/84	Complete revision of Ch. 1, 2, 3(was 2A)
	A4	3/28/84	3/12/84	Complete revision of Ch. 12 (was 9C)
	A4	undated	3/19/84	Complete revision of Ch. 5 (was Ch. 4), 6, 8
	A5	3/28/84	3/20/84	Complete revision of Ch. 9, 11 (was 9B)
	A6	3/28/84	3/22/84	Complete revision of Ch. 7
	A7	3/30/84	3/20/84	Complete revision of Ch. 10 (was 9A)
	A8	4/3/84	3/22 & 3/26/84	Complete revision of Ch. 13, 14, 15, Table of Contents to Title 5
	A11	4/17/84	3/28/84	Complete revision of Ch. 4 (was Ch. 3)
	A12	4/30/84	3/28/84	Index to Title 5
	AAA5	5/14/84		Form AAA-5

(4)

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE OF TRANSMITTAL</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
TITLE 6	A2	3/23/84	2/8/84	Complete revision of Title 6-replaces all prior transmittals
	AAA6	5/14/84		Form AAA-6
TITLE 7	A2	6/30/81	6/2/81	Revisions to Ch. 5, Index to Title 7, Index to USAM
	A3	12/4/81	11/16/81	Revisions to Ch. 5
	A4	1/6/84	11/22/83	Complete revision to Title 7-replaces all prior transmittals
	*A12	3/3/84	12/22/83	Summary Table of Contents to Title 7
	AAA7	5/14/84		Form AAA-7
TITLE 8	A1	4/2/84	2/15/84	Ch. 1, 2, Index to Title
	A2	6/21/82	4/30/82	Complete revision to Title 8
	*A12	3/30/84	2/15/84	Summary Table of Contents to Title 8
	AAA8	5/14/84		Form AAA-8
TITLE 9	A2	11/4/80	10/6/80	New Ch. 27, Revisions to Ch. 1, 2, 4, 7, 17, 34, 47, 69, 120, Index to Title 9, and Index to USAM
	A3	6/30/81	4/16/81	Revisions to Ch. 1, 4, 7, 21, 42, 61, 69, 72, 104, Index to USAM
	A4	6/1/81	5/29/81	Revisions to Ch. 4, 7, 70, 78, 90, 121, New Ch. 123, Index to Title 9, Index to USAM

TRANSMITTAL  
AFFECTING  
TITLE

<u>TITLE</u>	<u>NO.</u>	<u>DATE OF TRANSMITTAL</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
TITLE 9	A5	11/2/81	6/18/81	Revisions to Ch. 4, 8, 20, 47, 61, 63, 65, 75, 85, 90, 100, 110, 120, Index to Title 9, Index to USAM
	A6	12/11/81	10/8/81	Revisions to Ch. 17, Title 9 Index, Index to USAM
	A7	1/5/82	10/8/81	Revisions to Ch. 2, 7, 37, 60, 90, 139, Title 9 Index, Index to USAM
	A8	1/13/82	11/24/81	Revisions to Ch. 34, Index to Title 9, Index to USAM
	A9	3/12/82	9/8/82	Revisions to Ch. 11, Title 9 Index, Index to USAM
	A10	10/6/82	3/29/82	Revisions to Ch. 1, 11, 16, 69, 79, 120, 121, Entire Title 9 Index, Index to USAM
	A11	3/2/83	9/8/82	Revisions to Ch. 120, 121, 122
	A12	9/19/83	5/12/83	Revisions to Ch. 101
	A13	1/26/84	1/11/84	Complete revision of Ch. 132, 133
	A14	2/10/84	1/27/84	Revisions to Ch. 1
	A15	2/1/84	1/27/84	Complete revision of Ch. 8
	A16	3/23/84	2/8/84	Complete revision of Ch. 135, 136
	A17	2/10/84	2/2/84	Complete revision of Ch. 39
	A18	2/3/84	2/3/84	Complete revision of Ch. 40
	A19	3/26/84	2/7/84	Complete revision of Ch. 21
	A20	3/23/84	2/8/84	Complete revision of Ch. 137, Ch. 138

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE OF TRANSMITTAL</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
TITLE 9	A21	3/19/84	2/13/84	Complete revision of Ch. 34
	A22	3/30/84	2/01/84	Complete revision of Ch. 14
	A24	3/23/84	2/28/84	Complete revision of Ch. 65
	A25	3/26/84	3/7/84	Complete revision of Ch. 130
	A26	3/26/84	2/8/84	Complete revision of Ch. 44
	A27	3/26/84	3/9/84	Complete revision of Ch. 90
	A28	3/29/84	3/9/84	Complete revision of Ch. 101
	A29	3/26/84	3/9/84	Complete revision of Ch. 12
	A30	3/26/84	3/19/84	Complete revision of Ch. 9
	A31	3/26/84	3/16/84	Complete revision of Ch. 78
	A32	3/29/84	3/12/84	Complete revision of Ch. 69
	A33	3/29/84	3/9/84	Complete revision of Ch. 102
	A34	3/26/84	3/14/84	Complete revision of Ch. 72
	A35	3/26/84	2/6/84	Complete revision of Ch. 37
	A36	3/26/84	2/6/84	Complete revision of Ch. 41
	A37	4/6/84	2/8/84	Complete revision of Ch. 139
	A38	3/29/84	2/28/84	Complete revision of Ch. 47
	A39	3/30/84	3/16/84	Complete revision of Ch. 104
	A40	4/6/84	3/9/84	Complete revision of Ch. 100
	A41	4/6/84	3/9/84	Complete revision of Ch. 110
	A42	3/29/84	3/09/84	Complete revision of Ch. 64

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE OF TRANSMITTAL</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
TITLE 9	A43	4/6/84	3/14/84	Complete revision of Ch. 120
	A44	4/5/84	3/21/84	Complete revision of Ch. 122
	A45	4/6/84	3/23/84	Complete revision of Ch. 16
	A46	2/30/84	1/16/84	Complete revision of Ch. 43
	A47	4/16/84	3/28/84	Revisions to Ch. 7
	A48	4/16/84	3/28/84	Complete revision of Ch. 10
	A49	4/16/84	3/28/84	Revisions to Ch. 63
	A50	4/16/84	3/28/84	Revisions to Ch. 66
	A51	4/6/84	3/28/84	Complete revision of Ch. 76, deletion of Ch. 77
	A52	4/16/84	3/30/84	Complete revision of Ch. 85
	A53	6/6/84	3/28/84	Revisions to Ch. 4
	A55	4/23/84	4/6/84	Complete revision of Ch. 134
	A56	4/30/84	3/28/84	Revisions to Ch. 42
	A57	4/16/84	3/28/84	Complete revision of Ch. 60, 75
	A58	4/23/84	4/19/84	Summary Table of Contents of Title 9
	A59	4/30/84	4/16/84	Entire Index to Title 9
	A60	5/03/84	5/03/84	Complete revision of Chapter 66
	A61	5/03/84	4/30/84	Revisions to Chapter 1
	A63	5/11/84	5/9/84	Complete revision to Ch. 7
	A66	5/10/84	5/8/84	Complete revision to Ch. 131
	A68	5/31/84	3/16/84	Revisions to Ch. 104
	AAA9	5/14/84		Form AAA-9

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE OF TRANSMITTAL</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
TITLE 10	A2	11/2/81	8/21/81	Revisions to Ch. 2, 3, 6, Index to Title 10
	A3	12/1/81	8/21/81	Revisions to Ch. 2
	A4	12/28/81	---	Title Page to Title 10
	A5	3/26/82	1/8/82	Revisions to Ch. 2, 6, Index to Title 10
	A6	6/17/82	1/4/82	Revisions to Ch. 4, Index to Title 10
	A7	3/4/83	5/31/82	Revisions to Ch. 2, 3, 5, 6, and New Ch. 9
	A8	4/5/84	3/24/84	Complete revision of Ch. 1
	A9	4/6/84	3/20/84	Complete revision of Ch. 7
	A10	4/13/84	3/20/84	Complete revision of Ch. 5
	A11	3/29/84	3/24/84	Complete revision of Ch. 6
	A12	4/3/84	3/24/84	Complete revision of Ch. 8
	A14	4/23/84	3/28/84	Complete revision of Ch. 4
	A15	4/17/84	3/28/84	Complete revision of Ch. 3, 9
	A16	5/4/84	3/28/84	Index and Appendix to Title 10
	*A17	3/30/84	3/28/84	Summary Table of Contents to Title 10
	A18	5/4/84	4/13/84	Complete revision to Ch. 2
	A19	5/02/84	5/01/84	Revisions to Chapter 4
	AAA10	5/14/84		Form AAA-10
TITLE 1-10	A1	4/25/84	4/20/84	Index to USAM

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS  
William P. Tyson, Director

Teletypes To All United States Attorneys

- 06/19/84--From William P. Tyson, Director, Executive Office for United States Attorneys, by Susan A. Nellor, Assistant Director, re: "United States Judicial Inquiry on Cameras in the Courtroom."
- 06/20/84--From William P. Tyson, Director, Executive Office for United States Attorneys, re: "Asset Forfeiture Survey FY 1983."
- 06/20/84--From William P. Tyson, Director, Executive Office for United States Attorneys, by Richard L. DeHaan, Senior Management Advisor, re: "Action Memo to Avoid Fiscal Year 1984 Budget Deficit."
- 06/20/84--From William P. Tyson, Director, Executive Office for United States Attorneys, re: "Clarification of June 14, 1984, Action Memo to Avoid Fiscal Year Budget Deficit: LECC Program."
- 06/21/84--From William P. Tyson, Director, Executive Office for United States Attorneys, by Susan A. Nellor, Assistant Director, re: "Interim Bankruptcy Rules."
- 06/29/84--From William P. Tyson, Director, Executive Office for United States Attorneys, by Susan A. Nellor, Assistant Director, re: "Operation of Bankruptcy Courts."
- 06/29/84--From William P. Tyson, Director, Executive Office for United States Attorneys, by Richard E. Carter, Director, Office of Legal Education, re: "Mandatory CLE/Members of Kentucky Bar."

## UNITED STATES ATTORNEYS' LIST

<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	Robert C. Bonner
California, S	Peter K. Nunez
Colorado	Robert N. Miller
Connecticut	Alan H. Nevas
Delaware	Joseph J. Farnan, Jr.
District of Columbia	Joseph E. diGenova
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	William R. Vanhole
Illinois, N	Dan K. Webb
Illinois, S	Frederick J. Hess
Illinois, C	Gerald D. Fines
Indiana, N	R. Lawrence Steele, Jr.
Indiana, S	John D. Tinder
Iowa, N	Evan L. Hultman
Iowa, S	Richard C. Turner
Kansas	Benjamin L. Burgess
Kentucky, E	Louis G. DeFalaise
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

UNITED STATES ATTORNEYS

<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	Layn R. Phillips
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. Hedges
Texas, E	Robert J. Wortham
Texas, W	Helen M. Eversberg
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