m.L.

United States Attorneys

Bulletin

Published by Executive Office for United States Attorneys
Department of Justice, Washington, D.C.

Vol. 25 May 13, 1977 No. 10

UNITED STATES DEPARTMENT OF JUSTICE

VOL. 25 May 13, 1977 NO. 10

TABLE OF CONTENTS

Vol. 25 May 13, 1977 No. 10

UNITED STATES ATTORNEYS' MANUAL

As USAM 1-1.550 indicates, communications from Washington pending their incorporation into the Manual will be printed on blue paper. A number of these "bluesheets" have already been distributed. Their contents will not be reprinted in this Bulletin, but they will be listed.

Date	Affects USAM	Subject
9/30/76	1-2.200	Advisory Committee of U.S. Attorneys; Subcommittee on Indian Affairs
Undtd	1-1.200	Authority of Manual; A.G. Order 665-76
Undtd	1-5.000	Privacy Act Annual Fed. Reg. Notice; Errata
2/18/77	4-6.400 9-42.000	Coordination of Fraud Against the Gov't Cases
4/22/77	1-3.108 9-90.700	Selective Service Pardons
4/27/77	9-1.202 9-1.246	Assignment of Responsibilities for Two Statutes
4/28/77	1-6.200	Representation by Department of Employees: A.G. Order 683-77
4/18/77	4-12.253	Priority of Liens

(Executive Office)

* * *

ATTORNEY GENERAL'S ADVOCACY INSTITUTE

The Executive Office instituted in fiscal year 1975 a major training program with the establishment of the Attorney General's Advocacy Institute, designed to sharpen advocacy skills and provide continuing legal education for U.S. Attorneys and their staffs.

Trial (civil and/or criminal) or appellate advocacy sessions are conducted every two months with the goal of training all newly-appointed Assistant U.S. Attorneys within six months of their entrance on duty. The sessions consist of lectures, demonstrations, and mock trial or oral argument workshops. Instructors are experienced attorneys drawn from U.S. Attorneys' Offices. Federal district judges preside over the mock trials. U.S. Attorneys and Assistant Attorneys General nominate attorneys to be participants in these sessions in response to teletypes sent from the Executive Office.

The Institute also has a cassette tape lending library. For information on this, refer to 24 USAB 854 (No. 18, 9/3/76).

For more information, call or write the Institute, Room 4412 Main Justice Bldg., 9th & Pennsylvania Ave., N.W., Washington, D.C. 20530, FTS 739-4104.

(Executive Office)

* * *

Vol. 25 May 13, 1977 No. 10

EXECUTIVE OFFICE FOR U. S. ATTORNEYS
Director William B. Gray

Bar Ass'n of Erie Cty. v. Anonymous Attorneys, (N.Y. Ct. App., decided April 5, 1977), 45 U.S.L.W. 2478.

Immunity; Testimony of Attorneys

The New York Court of Appeals held that the immunity granted New York attorneys called to testify before a grand jury investigating the fixing of traffic tickets does not bar the use of their testimony as evidence against them in disciplinary proceedings. The court stated that statutory immunity and the Fifth Admendment privilege extend only to criminal proceedings, leaving disciplinary proceedings unprotected.

United States v. Scallion, 548 F.2d 1168(5th Cir. 1977).

Interstate Agreement on Detainers Act

The Court held that a writ of Habeas Corpus ad Prosequendum was not a detainer within the meaning of the Act. Rejecting the decisions of U.S. v. Mauro, 544 F.2d 588 (2d Cir. 1976) and Esola v. Groomes, 520 F.2d 830 (3d Cir. 1975), the Court stressed that Congress' adoption of the IADA was not meant to eliminate traditional ways for federal courts to obtain custody of state prisoners.

Attorney: D.H. Perkins, Jr.
AUSA, W.D. La.
FTS 493-5277

CIVIL DIVISION
Assistant Attorney General Barbara Allen Babcock

Begley v. Califano, 544 F.2d 1345 (C.A. 6, 1976), ____ U.S. ____ (Sup. Ct. No. 76-6154, cert. denied, April 25, 1977). DJ 178-58-3.

Black Lung Act

The Supreme Court has just declined to review the Sixth Circuit's decision which, in adopting the Government's argument, had ruled that a miner must establish that he became totally disabled by black lung disease on or before June 30, 1973 to qualify for federal benefit payments. The Sixth Circuit's decision has already been followed by the Fourth and Fifth Circuits, and the same issue is now pending before the Tenth Circuit. It is estimated that, by leaving the Sixth Circuit's decision intact, the denial of certiorari will save the Government over $10 million.

Attorney: Frederic Cohen (Civil Division), FTS 739-2786.

Nationwide Building Maintenance, Inc. v. Sampson, ____ F.2d ____ (C.A.D.C. No. 76-1453, decided April 18, 1977). DJ 145-171-15.

Freedom of Information Act; Attorney's Fees

The court of appeals in this case rejected the Government's position that attorney's fees should never be awarded in Freedom of Information Act cases when information is voluntarily released without the necessity for a court order. The granting of attorney's fees in such cases, however, is not automatic and in exercising its discretion whether to award such fees, the court must take the following factors into account: public benefit, commercial benefit to the complainant, nature of the complainant's interests in the records sought, and reasonableness of the Government's asserted legal basis for withholding. The court also cited with approval two additional factors articulated by the Second Circuit in Vermont Low Income Council v. Usery, 546 F.2d 509 (1976), namely -- (1) whether plaintiff's action could reasonably have been regarded as necessary, and (2) whether plaintiff's suit had substantial causative effect on the delivery of the information.

Attorney: Eloise E. Davies (Civil Division), FTS 739-3425.

Dakota National Bank v. First National Bank and Trust Co. of Fargo, ____ F.2d ____ (C.A. 8, No. 76-1585, decided April 14, 1977). DJ 145-3-1493.

Branch Banking

This suit was brought by a competitor bank to challenge the Comptroller's approval of a branch banking application. The competitor argued that a drive-in facility already operated by the applicant constituted the one branch allowed by state law. The Comptroller found that the drive-in facility was an extension of the applicant bank's main office and not a branch. The district court affirmed the Comptroller's determination. The Eighth Circuit, however, has just reversed, holding that the drive-in facility was a branch within the meaning of that term as used in federal law and therefore the Comptroller improperly approved the branching application.

Attorney: Mark Mutterperl (Civil Division), FTS 739-3159.

CRIMINAL DIVISION
Assistant Attorney General Benjamin R. Civiletti

United States v. Antelope, __U.S.__, 45 U.S.L.W. 4361 (Sup. Ct. No. 75-661, decided April 19, 1977).

Indians; Equal Protection; Major Crimes Act

The Supreme Court held that equal protection is not violated by the federal prosecution of an Indian for the murder of a non-Indian on the reservation upon a theory of felony-murder, when a non-Indian who committed the same act would have been tried in state court under state law (in this case, Idaho's) which does not recognize felony-murder. The Court reasoned that the Major Crimes Act (18 U.S.C. 1153), like all federal regulation of Indian affairs, is not based upon an impermissible racial classification, but "is rooted in the unique status of Indians as 'a separate people' with their own political institutions. Federal regulation of Indian tribes, therefore, is governance of once-sovereign political communities, it is not to be viewed as legislation of a 'racial' group consisting of 'Indians . . . .'"

The fact that, under long-standing decisions of the Supreme Court, prosecution of crimes on the reservation that do not involve Indians is left to state authorities who may operate under different substantive or procedural law, does not provide the basis for an equal protection claim. "Under our federal system, the National Government does not violate equal protection when its own body of law is evenhanded, regardless of the laws of States with respect to the same subject matter."

Attorney: Michael Farrell (Criminal Division)
FTS 739-3119