



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

United States Attorneys' Bulletin

Published by:

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

TABLE OF CONTENTS

	<u>Page</u>
COMMENDATIONS	477
Casenotes	
Civil Division	
Supreme Court Rules that Federal Criminal Statute Prohibiting the Deposit of Unstamped "Mailable Matter" in Letter Boxes Used by Postal Service for the Delivery of Mail does not Violate the First Amendment	
<u>United States Postal Service v. Council of Greenburgh Civic Associations</u>	479
Age Discrimination in Employment; Jury Trial: Supreme Court Rules that Plaintiffs have no Right to Trial by Jury on Facts Against the United States under the Age Discrimination in Employment Act	
<u>Lehman v. Nakshian</u>	479
Mine Safety Act; Warrantless Search: Supreme Court Rules that the Mine Safety Act Provision for Warrantless Safety and Health Inspections of Mines is Constitutional	
<u>Donovan, Secretary of Labor v. Dewey</u>	480
Veterans' Reemployment Rights: Supreme Court Rejects Government Argument Regarding Treatment of Reservists under Veterans' Reemployment Rights Act	
<u>Monroe v. Standard Oil Co.</u>	481
FOIA Privacy Exemption for Investigatory Files; Fed. R. Crim. P. 6(e) an FOIA Exemption 3 Statute: D.C. Circuit Upholds FOIA Privacy Exemption for Investigatory Files of Watergate Special Prosecution Force, and holds that Fed. R. Crim. P. 6(e), which Prohibits Disclosure of Matters Occurring before a Grand Jury, is an FOIA Exemption 3 Statute	
<u>Fund for Constitutional Government v. National Archives and Records Service</u>	482
Social Security Act Title XVI: D.C. Circuit Upholds Constitutionality of Pass-Through Provision	
<u>State of Oklahoma v. Secretary of Health and Human Services</u>	483

	<u>Page</u>
Bivens Suits Brought by Government Employees: Fifth Circuit Rules that Government Employer- Employee Relationship is a Special Factor Counseling Against Recognizing a Bivens Remedy for a Federal Employee Suing his Superior <u>Bush v. Lucas</u>	484
Land and Natural Resources Division Constitutionality of Title V of the Surface Mining Act Sustained <u>Hodel v. Virginia Surface Mining and Reclamation Assn.</u>	485
Prime Farmlands Provisions of the Surface Mining Act Sustained <u>Hodel v. Indians</u>	486
National Environmental Policy Act; Injunction Vacated on Route 7 following Preparation of Satisfactory EIS <u>Citizens for Balanced Environment and Transportation v. Volpe</u>	486
Jurisdiction for taking of Indian Lands Exclusively in Court of Claims <u>Oglala Sioux Tribe of the Pine Ridge Indian Reservation v. United States</u>	487
Indians; Reserved Water Rights Pass to Non-Indian Purchaser of Allotted Lands, Free of State Regulation <u>Colville Confederated Tribes v. Walton</u>	487
Federal Acquisition of Land Within State for Waterfowl Production Area Sustained <u>United States v. State of North Dakota</u>	488
Alaska Native Claims Settlement Act; Jurisdiction; Mootness <u>Cape Fox Corp. v. United States</u>	488
National Environmental Policy Act; EIS Sustained <u>Isle of Hope Historical Association, Inc. v. U.S. Army Corps of Engineers</u>	489
Oil and Gas Leases; Sustains Denial of Reinstatement Terminated for Late Payment of Rental <u>Ramoco, Inc. v. Andrus</u>	489

Page

Title to Riverbed Found to Rest in Private Parties, Government Barred from Raising Argument for First Time on Appeal <u>Bradford v. United States</u>	490
Water Rights; Res Judicata no Bar to Rights Asserted by United States for Indians <u>United States and Pyramid Lake Paiute Tribe of Indians v. Truckee Carson Irrigation District, State of Nevada</u>	490
Natural Environmental Policy Act; EIS Adequacy for Route I-93 Sustained <u>Green Mountain Grange, No. One v. Lewis</u>	491
Clean Water Act; Siting Orders for Waste Treatment Plant Sustained <u>United States v. District of Columbia</u>	492
Constitutional Law; Evidence Proper as Extended Border Search under Fourth Amendment <u>United States v. Jacobson</u>	493
SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES	495
APPENDIX: FEDERAL RULES OF CRIMINAL PROCEDURE This page should be placed on permanent file, by Rule, in each United States Attorney's office library	499
ADDENDUM: U.S. ATTORNEYS' MANUAL--BLUESHEETS	501
U.S. ATTORNEYS' MANUAL--TRANSMITTALS	513

COMMENDATIONS

Assistant United States Attorney PAMELA ROGERS CHEPIGA, Southern District of New York, has been commended by Mr. Lee F. Laster, Assistant Director in Charge, Federal Bureau of Investigation in New York, New York, for the successful prosecution in United States v. Jacob, a case which resulted in a conviction on each of seventeen counts.

Assistant United States Attorney JOHN HORRIGAN, Northern District of Ohio, has been commended by Mr. Allan A. Ryan, Jr., Director, Office of Special Investigations, Department of Justice, for his invaluable assistance in the Nazi war criminal case of United States v. John Demjanjuk which involved a denaturalization action.

Assistant United States Attorneys DAVID V. KIRBY and VICTOR J. RICCO, Eastern District of New York, have been commended by Mr. Wilbert Nichols, Regional Director of Investigations, Department of the Treasury in New York, New York, for their invaluable advice and assistance concerning a recent investigation of IRA terrorist activities which resulted in the arrests of three defendants, the seizure of substantial quantities of weapons and ammunition, as well as a significant recovery of monetary instruments.

Assistant United States Attorney MICHAEL L. LIPMAN, Southern District of California, has been commended by Mr. Norman A. Zigrossi, Special Agent in Charge, Federal Bureau of Investigation in San Diego, California, for his outstanding performance in handling the successful prosecution of David Phillip Boyd, Rodney Lewis Johnson, and Clyde "Mark" Loo in a case which involved a conspiracy to bomb transformers at National Steel and Shipbuilding Company.

Assistant United States Attorney JOHN D. LYONS, District of Arizona, has been commended by Mr. L. O. Poindexter, Inspector in Charge, United States Postal Service in Los Angeles, California, for his fine work in the recent mail fraud trial of United States v. Wilford R. Gibson/G.M.I., Inc.

Assistant United States Attorneys JOHN J. MCCANN and JOSEPH A. PAVONE, Northern District of New York, have been commended by Mr. Paul V. Daly, Special Agent in Charge, Federal Bureau of Investigation in Albany, New York, for their successful efforts in the investigation and prosecution of Lance R. Myers and others for bank embezzlement.

Assistant United States Attorney SCOTT W. MULLER, Southern District of New York, has been commended by Mr. Michael J. Lonergan, Regional Inspector General for Investigations, Department of Agriculture in New York, New York, for the successful prosecution of the Lower East Side Community Corp. case dealing with the submission of false claims in connection with the summer lunch program funded by the U.S. Department of Agriculture.

Assistant United States Attorney JOSE DE JESUS RIVERA, District of Arizona, has been commended by Mr. Joseph M. Arpaio, Special Agent in Charge, Drug Enforcement Administration in Phoenix, Arizona, for the successful conclusion of a case involving Amfac Drug Supply which resulted in an out of court settlement.

CIVIL DIVISION

Acting Assistant Attorney General Stuart E. Schiffer

United States Postal Service v. Council of Greenburgh Civic Associations (Sup. Ct. No. 80-608) (June 25, 1981) D.J. # 145-5-4766.

SUPREME COURT RULES THAT FEDERAL CRIMINAL STATUTE PROHIBITING THE DEPOSIT OF UNSTAMPED "MAILABLE MATTER" IN LETTER BOXES USED BY POSTAL SERVICE FOR THE DELIVERY OF MAIL DOES NOT VIOLATE THE FIRST AMENDMENT.

This case involved the question whether 18 U.S.C. 1725, which prohibits the placement of unstamped "mailable matter" in a letter box used by the Postal Service for the delivery of mail, may be constitutionally applied to civic associations seeking to distribute leaflets in letter boxes of constituents without paying postage. The district court held that the statute violated the civic associations' First Amendment right of freedom of expression. On our direct appeal, the Supreme Court reversed. Justice Rehnquist, writing for five members of the Court, said that the letter box was not a public forum and that Congress could reasonably limit access in a content-neutral fashion to an essential part of the Postal Service's system for the delivery and receipt of mail. Justice Brennan, concurring in the judgment, concluded that the letter box is a public forum, but that the statute is constitutional because it is a reasonable time, place and manner restriction. Justice White also concurred in the judgment, saying simply that the Government may impose a fee on those who would use a part of the postal system. Justices Marshall and Stevens dissented.

Attorney: John Hoyle (Civil Division)
FTS 633-3547

Lehman v. Nakshian (Sup. Ct. No. 80-242) (June 26, 1981) D.J. # 35-16-1187.

AGE DISCRIMINATION IN EMPLOYMENT; JURY TRIAL: SUPREME COURT RULES THAT PLAIN-TIFFS HAVE NO RIGHT TO TRIAL BY JURY ON FACTS AGAINST THE UNITED STATES UNDER THE AGE DISCRIMINATION IN EMPLOYMENT ACT.

Plaintiff was a 63 year-old civilian employee of the United States Department of the Navy at the time she brought this action against her federal employer under section 15(c) of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §633a(c). She demanded a jury trial, and the government moved to strike her demand on the ground that no right to a jury trial exists in federal sector ADEA actions. The district court denied our motion and upheld plaintiff's right to a jury, but certified the jury trial issue for interlocutory appeal.

On appeal, the D.C. Circuit affirmed the district court's ruling by a two-to-one vote. The court of appeals rejected our argument that there is no right to jury trial in actions against the federal government unless such a right is provided for by explicit statutory language or clear legislative history. Rather, since the government had waived its sovereign immunity by consenting to be sued but had not specified the trial procedure to be used in such suits, the question of whether or not a jury trial is available simply presents "an ordinary question of statutory interpretation." The court of appeals found sufficient indication in the legislative history that Congress intended that jury trial be available in ADEA actions against the government, just as it has been held by the Supreme Court to be available in ADEA suits against private employers under section 7(c), 29 U.S.C. §626(c). See Lorillard v. Pons, 434 U.S. 575 (1978).

The Supreme Court, in a five-to-four split decision, has just reversed the judgment of the court of appeals. Justice Stewart, writing for the majority, found no support in the language of the Act or the legislative history to support the conclusion that Congress intended to provide for jury trials in such actions; indeed, he found some indications to the contrary. Most importantly, however, he clearly articulated the principle that even if the legislative history were ambiguous on this point, there would be no right to a jury "because the plaintiff in an action against the United States has a right to trial by jury only where Congress has affirmatively and unambiguously granted that right by statute."

Attorney: Michael Jay Singer (Civil Division)
FTS 633-3159

Donovan, Secretary of Labor v. Dewey (Sup. Ct. No. 80-901)
(June 17, 1981) D.J. # 236-452-273.

MINE SAFETY ACT; WARRANTLESS SEARCH:
SUPREME COURT RULES THAT THE MINE
SAFETY ACT PROVISION FOR WARRANTLESS
SAFETY AND HEALTH INSPECTIONS OF MINES
IS CONSTITUTIONAL.

This case concerned a challenge to the constitutionality of the Mine Safety Act. The Act was passed in the wake of recent mining disasters and attempted to strengthen safety and health code enforcement in the nation's mines, in part by providing for warrantless, unannounced inspections of mines by Mine Safety inspectors. Numerous mine owners challenged the statute on Fourth Amendment grounds, claiming that a warrant is required. Four courts of appeals have ruled in favor of the government on this issue, but a district court in Wisconsin held the Act unconstitutional.

The Supreme Court accepted jurisdiction and reversed the district court. The district court had recognized the exception to the warrant requirement for pervasively regulated industries such as this one, but had found that in order for the exception to apply, the industry had to have a lengthy history of regulation. Since the mine in this case was a rock quarry which had only come under federal regulation in 1966, the district court held that the exception did not apply. However, in an 8-1 ruling, the Supreme Court accepted our argument that a long history of regulation of an industry is not a prerequisite to an exception to the warrant requirement. The Court distinguished this situation from the one under OSHA, where it has held that a warrant is required for inspections, because the Act here involves a single industry, Congress has mandated a minimum number of inspections per year of every mine in the nation (so there is less unbounded discretion resting in the Act's administrators), mine owners must be familiar with the safety codes and thus know exactly the scope of the inspection and its purpose, and finally the Act prohibits forcible entries and provides a mechanism for judicial review if a mine owner believes he is being harrassed or his privacy unduly invaded.

Attorneys: Douglas N. Letter (Civil Division)
FTS 633-3427

Monroe v. Standard Oil Co. (Sup. Ct. No. 80-298) (June 17, 1981)
D.J. # 145-57-2294.

VETERANS' REEMPLOYMENT RIGHTS: SUPREME
COURT REJECTS GOVERNMENT ARGUMENT REGARDING
TREATMENT OF RESERVISTS UNDER VETERANS' RE-
EMPLOYMENT RIGHTS ACT.

The plaintiff in this case is a reservist who works at a Standard Oil refinery where employees are generally given 40 hours of work per week. In certain weeks, the reservist (Monroe) is required to attend reserve training sessions on Saturday. In spite of this, Standard sometimes schedules him to work on the those days. While Standard then gives Monroe a leave of absence, it does not reschedule him so that he can get 40 hours of work per week, as other Standard employees do. The government claimed that this refusal to accomodate Monroe's reserve schedule is a violation of the Veterans' Reemployment Rights Act which provides that an employer may not deny a reservist an incident or advantage of employment because of his reserve obligations. The district court agreed, but the Sixth Circuit reversed, holding that the statute merely prohibits actual discrimination against a reservist. In a 5-4 decision the Supreme Court sustained the Sixth Circuit's decision, giving the statute a narrow interpretation. Thus, the statute must now be read to prohibit only those employer practices that actually discriminate against reservists (such as firing them because they must sometimes be absent for reserve duties), but does

not prohibit the everyday practices of many employers, such as those here, which merely disadvantage them.

Attorneys: Douglas N. Letter (Civil Division)
FTS 633-3427

Fund For Constitutional Government v. National Archives and Records Service (D.C. Cir. Nos. 79-2047 and 79-2084) (June 23, 1981) D.J. # 145-12-2946.

FOIA PRIVACY EXEMPTION FOR INVESTIGATORY FILES; FED. R. CRIM. P. 6(e) AN FOIA EXEMPTION 3 STATUTE: D.C. CIRCUIT UPHOLDS FOIA PRIVACY EXEMPTION FOR INVESTIGATORY FILES OF WATERGATE SPECIAL PROSECUTION FORCE, AND HOLDS THAT FED. R. CRIM. P. 6(e), WHICH PROHIBITS DISCLOSURE OF MATTERS OCCURRING BEFORE A GRAND JURY, IS AN FOIA EXEMPTION 3 STATUTE.

This action was brought under the Freedom of Information Act to obtain approximately one-half million pages of investigatory documents generated in the course of investigations conducted by the Watergate Special Prosecution Force. The D.C. Circuit has decided the plaintiff's appeal in an opinion by Judge Gasch which constitutes an extremely favorable precedent in two important areas of FOIA law.

First, the court upheld the Government's claim that Exemption 7(c) protected information which would reveal investigations of allegations of possible wrongdoing by individuals who were neither indicted nor prosecuted and information which would reveal facts pertaining to individuals who were not targets of investigation. The court recognized that Government officials are entitled to be protected by Exemption 7(e) in appropriate circumstances.

Second, the decision upheld the withholding of information whose release would disclose matters occurring before the grand jury. In so holding, the court held that Rule 6(e) of the Federal Rules of Criminal Procedure, which prohibits disclosure of matters occurring before the grand jury, is a relevant statute within the meaning of FOIA Exemption 3.

Attorney: Daniel J. Metcalfe (Civil Division)
FTS 633-3183

State of Oklahoma v. Secretary of Health and Human Services
(D.C. No. 80-1004) (June 24, 1981) D.J. # 181-176-16.

SOCIAL SECURITY ACT TITLE XVI: D.C.
CIRCUIT UPHOLDS CONSTITUTIONALITY OF
PASS-THROUGH PROVISION.

Title XVI of the Social Security Act establishes an income-maintenance program for the aged, the blind and the disabled commonly known as SSI. Virtually all of the states have programs designed to supplement the federal SSI benefits. In 1976, Congress discovered that, whenever it passed a cost-of-living increase for SSI recipients, certain states would reduce the amount of their supplemental payments. In order to prevent the states from swallowing the value of the federal increases, Congress conditioned the states' eligibility for the federal Medicaid program upon their willingness to pass the federal cost of living increases through to their intended beneficiaries.

In this action, eleven states argued that the so-called pass-through statute exceeded the scope of the spending power and violated the Tenth Amendment because there was an insufficient nexus between the condition imposed (supplementation of the federal SSI program) and the grant affected (Medicaid). These constitutional arguments rested in large measure upon a construction of the Social Security Act which postulated a minimal degree of interaction between the Medicaid and SSI programs. The states also challenged the breadth of the Secretary's regulations implementing the pass-through statute as unsupported by the legislative intent.

The D.C. Circuit has just held for the federal government on all points. The Court rejected the states' proposed nexus test for limiting the spending power and for triggering the Tenth Amendment on the grounds that it was excessively rigid and would lead to undue judicial interference in the legislative process. The Court further rejected the states' characterization of the Social Security Act programs, finding that Medicaid and SSI are closely related elements of an overall plan for combating human need. Finally, the Court concluded that the regulations were a reasonable implementation of the statute.

Attorney: Linda Cole (Civil Division)
FTS 633-4214

Bush v. Lucas (5th Cir. No. 77-1615) (June 12, 1981) D.J. # 35-1-35.

BIVENS SUITS BROUGHT BY GOVERNMENT EMPLOYEES:
FIFTH CIRCUIT RULES THAT GOVERNMENT EMPLOYER-
EMPLOYEE RELATIONSHIP IS A SPECIAL FACTOR
COUNSELING AGAINST RECOGNIZING A BIVENS REMEDY
FOR A FEDERAL EMPLOYEE SUING HIS SUPERIOR.

Bush, an aerospace engineer at NASA's Marshall Space Flight Center in Alabama, was demoted from a GS-14 position to a GS-12 position after he made some highly publicized statements to the news media concerning his lack of meaningful work. He pursued his civil service remedy and ultimately obtained full administrative reversal, with reinstatement and back pay.

Bush had meanwhile begun this action against Lucas, the director of the Center, for damages for infringement of his freedom of speech in the alleged "retaliatory" demotion. The district court dismissed the suit on the basis of the availability of an adequate administrative remedy and the importance of the government's interest in promoting the efficiency and integrity of its public services through its employees. The Fifth Circuit affirmed, 598 F.2d 958 (1970), and Bush petitioned the Supreme Court for certiorari.

The Supreme Court vacated and remanded this case for reconsideration in light of Carlson v. Green, 446 U.S. 14. In Carlson the Court had held that a Bivens damages remedy will be implied for alleged unconstitutional wrongdoing of federal officials unless (1) special factors are present which counsel hesitation in the absence of affirmative action by Congress or (2) Congress has provided an alternate adequate substitute remedy.

On remand the Fifth Circuit held that a Bivens damage remedy was not available here. The court ruled that the role of Government as an employer toward its employees is fundamentally different from its role as sovereign over private citizens generally, and that the government's special interest in the conduct of its internal affairs, along with Congress's careful development over the years of comprehensive civil service review procedures and remedies, constitute "special factors" counseling hesitation in implying a constitutional damages remedy.

Attorney: Wendy M. Keats (Civil Division)
FTS 633-3355

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

Hodel v. Virginia Surface Mining and Reclamation Assn.
U.S. , Nos. 79-1538 and 79-1596 (S. Ct., June 15, 1981)
DJ 90-1-18-1352.

Constitutionality of Title V of the Surface Mining Act sustained.

Surface mining operators and others brought a pre-enforcement challenge to the constitutionality of Title V of the Surface Mining Act, 30 U.S.C. 1251-1279, which authorizes and directs the Secretary of the Interior to establish a regulatory program setting environmental restrictions on surface coal mining operations and requiring reclamation of stripped lands. The district court had held that Title V was unconstitutional on several grounds and enjoined enforcement. The Supreme Court, reversing the district court, upheld the constitutionality of the Act on its face. First, the court held that the Commerce Clause empowers Congress to enact legislation regulating the manner in which surface mining operations are conducted and requiring reclamation of affected lands. Second, the Court ruled that Title V, which regulates mining operations conducted by private entities, does not violate the Tenth Amendment by intruding into an area of land use regulation reserved exclusively to the states. Third, the plaintiffs' claim that Title V constitutes an uncompensated taking in violation of the Fifth Amendment was held to be premature, as such taking issues can only be resolved on a case-by-case basis in specific factual situations and no such situations are present in this pre-enforcement challenge. Fourth, the Court upheld the Secretary's authority to order an immediate cessation of mining activities, pending a prompt hearing, in situations where the Secretary determines that an immediate danger to public safety or the environment is present. Finally, the Court declined to rule on the civil penalty provisions of the Act, which requires payment into an escrow account pending further review of an order assessing a civil penalty, because the issue was not ripe for review. Three justices filed concurring opinions.

Attorneys: Michael A. McCord and Peter R. Steenland,
Jr. (Land and Natural Resources Division)
FTS 633-2748 and Peter Buscemi, S.G. staff

Hodel v. Indians, ___ U.S. ___, No. 80-231 (S. Ct. , June 15, 1981) DJ 90-1-18-1336.

Prime Farmlands provisions of the Surface Mining Act sustained.

In this companion case to Hodel v. Virginia Surface Mining and Reclamation Assn., the Supreme Court upheld the constitutionality of the "prime farmlands" provisions of the Surface Mining Act which generally require surface mine operators to restore prime farmland to its original productivity. Among other things, the Court rejected an argument that the amount of prime farmlands subject to surface mining, when compared to an aggregate amount of the nation's total farmlands, was too insignificant to justify federal regulation pursuant to the Commerce Clause. The Court likewise held that the prime farmlands requirements did not violate the equal protection and due process guarantees of the Fifth Amendment by effectively placing more onerous conditions on operators in the midwest than other areas with lesser amounts of prime farmlands.

Attorneys: Michael A. McCord and Peter R. Steenland, Jr. (Land and Natural Resources Division)
FTS 633-2748 and Peter Buscemi, S.G. staff

Citizens for Balanced Environment and Transportation v. Volpe, ___ F.2d ___, No. 80-6148 (2d Cir., June 9, 1981)
DJ 90-1-4-510.

National Environmental Policy Act; injunction vacated on Route 7 following preparation of satisfactory EIS.

In 1972, the district court enjoined construction of Route 7, between Norwalk and Danbury, Conn., until an EIS was prepared. In 1980, the court vacated the injunction after evidentiary hearings in which CBET aired its claims that the final EIS was inadequate. The court of appeals affirmed, concluding that the district court had fully discharged its duty to hear and consider CBET's technical objections to the EIS, and was not required "to embroil itself" in minute detail as if it were the decisionmaker. Nor was there error in the district court's adoption of findings and conclusion submitted by one of the parties, where the court's opinion (prior to adoption of findings) showed careful, not "cursory," review of all elements in the case, and the court of appeals' own review showed them well supported by the record.

VOL. 29

JULY 17, 1981

No. 15

Attorneys: United States Attorney Richard Blumenthal
(D. Conn.) Martin W. Matzen and Dirk D.
Snel (Land and Natural Resources Division)
FTS 633-2850/4400

Oglala Sioux Tribe of the Pine Ridge Indian Reservation v.
United States, ___ F.2d ___, No. 80-1878 (8th Cir., June 1,
1981) DJ 90-2-4-691.

Jurisdiction for taking of Indian lands exclusively
in Court of Claims.

The district court dismissed for lack of jurisdiction
the Tribe's suit seeking some \$11 billion and return of some
7.3 million acres of land removed by Congress in 1877 from
their reservations in the Black Hills of South Dakota. The
court of appeals affirmed, concluding that the Indian Claims
Commission Act provided "a one-time, exclusive forum for the
resolution of Indian treaty claims" arising before 1946.

Attorneys: Assistant United States Attorney Jeffrey
Viken (D. S.D.), Martin W. Matzen and
Dirk D. Snel (Land and Natural Resources
Division) FTS 633-2850/4400

Colville Confederated Tribes v. Walton, 647 F.2d 42, Nos. 79-
4297, 79-4309, 79-4383 (9th Cir., June 1, 1981) DJ 90-2-2-168.

Indians; reserved water rights pass to non-Indian
purchaser of allotted lands, free of State regulation.

Granting rehearing and recalling its previous
opinion, the Ninth Circuit held: (1) that by creating the
Colville Reservation, Congress had implicitly reserved for the
Indians sufficient waters to irrigate reservation lands and to
provide spawning water for a replacement fishery; (2) that a
non-Indian purchaser of on-reservation allotted lands succeeded
to all of the rights of his Indian predecessor-in-title and
that he was entitled to share proportionately in the Indians'
reserved rights for irrigation purposes, with a priority date
of the time the reservation was created; and (3) that the State
lacks authority to regulate on-reservation water use even where
a non-Indian is involved, at least where, as here, the entire
watershed is located within the reservation.

Attorneys: Steven E. Carroll, Larry A. Boggs, Robert
L. Klarquist, Peter R. Steenland, Jr., and
Raymond N. Zagone (Land and Natural Re-
sources Division) FTS 633-2068/2731/2748

United States v. State of North Dakota, ___ F.2d ___, No. 80-1655 (8th Cir., June 3, 1981) DJ 90-1-21-1934.

Federal acquisition of land within State for Waterfowl Production Area sustained.

The United States brought an action seeking a judgment declaring that the federal government could acquire lands in North Dakota for use as "Waterfowl Production Areas" without obtaining the consent of the Governor and that certain state statutes purporting to restrict acquisition of federal easements for waterfowl purposes were void under the Supremacy Clause. Affirming the district court, the Eighth Circuit held: (1) that the Duck Stamp Act and related federal statutes do not require the federal government to obtain the Governor's consent in order to acquire lands for use as Waterfowl Production Areas; (2) that even if such permission were required, the United States had obtained the Governor's consent and, once given, the consent cannot be revoked; and (3) that even if the consent could be rescinded, the Governor had not revoked it here. The court of appeals further held that the state statutes purporting to restrict federal acquisition of easements for waterfowl purposes were void because they hindered attainment of federal statutory objectives.

Attorneys: Robert L. Klarquist and Edward J. Shawaker
(Land and Natural Resources Division)
FTS 633-2731/2813

Cape Fox Corp. v. United States, ___ F.2d ___, Nos. 78-3439, 79-4136 (9th Cir., May 26, 1981) DJ 90-1-4-1428.

Alaska Native Claims Settlement Act; jurisdiction; mootness.

The court of appeals affirmed, reversed, and vacated various portions of a district court decision concerning administration of lands selected by a village corporation pursuant to the Alaska Native Claims Settlement Act. Cape Fox, a native corporation, filed suit for declaratory and injunctive relief and damages against the United States, federal officials, and timber companies in connection with the extension of a timber sale contract on National Forest lands selected by the corporation. The corporation claimed that the federal officials had acted improperly in extending the contract and violated ANCSA by not "immediately" conveying the selected land. The contract was terminated in May 1977, the land was conveyed in

November 1978, and the district court ruled on the merits of the controversy in January 1978. The court of appeals affirmed the district court's transfer of the damages claimed against the United States to the Court of Claims. It reversed the district court's determination that the federal officials had acted properly in extending the contract on the grounds that the district court lacked jurisdiction over the claims for declaratory and injunctive relief as the contract by then had been terminated and the controversy moot when the district court ruled. Finally, it set aside the district court's ruling that the federal defendants were not in violation of ANCSA because of delay in conveyance because the controversy had become moot on appeal due to transfer of the land to the corporation.

Attorneys: Anne S. Almy and Peter R. Steenland, Jr.
(Land and Natural Resources Division)
FTS 633-4427/2748

Isle of Hope Historical Association, Inc. v. U.S. Army Corps of Engineers, ___ F.2d ___, No. 80-9051 (5th Cir., Unit B, May 29, 1981) DJ 90-1-0-1671.

National Environmental Policy Act; EIS sustained.

A residents' nonprofit corporation filed suit against the Corps and a private marina seeking revocation of dredge and fill permits issued by the Corps to the marina and seeking recall of the EIS covering the proposed marina expansion. The court of appeals affirmed on the basis of the district court's memorandum, which held that: (1) discussion of local zoning in the EIS was adequate and the Corps properly relied on the findings of county officials that the expansion was consistent with local zoning requirements; (2) discussion of the "taking" of state land was not required in the EIS, in light of the extensive treatment the question received through an appropriate state agency; and (3) the EIS was not invalid for alleged pervasive subjective bias.

Attorneys: Kay L. Richman and Dirk D. Snel (Land and Natural Resources Division) FTS
633-2772/4400

Ramoco, Inc. v. Andrus, ___ F.2d ___, No. 80-1100 (10th Cir., May 27, 1981) DJ 90-1-18-1369.

Oil and gas leases; sustains denial of reinstatement terminated for late payment of rental.

The court of appeals upheld the IBLA's refusal to reinstate several oil and gas leases which had terminated due to late payment of rentals. The IBLA had held that reinstatement of leases under 30 U.S.C. 188(c) is only appropriate where the failure to pay on time is due to factors beyond the lessee's control. The failure of the lessee's secretary to mail the rentals, and her subsequent untrue statements to supervisors that she had mailed them, were held not to be factors beyond the lessee's control. The lessee charged that IBLA's "beyond the lessee's control" standard constituted an impermissibly narrow construction of the reinstatement statute. The court of appeals disagreed, finding that IBLA's narrow interpretation of when reinstatement can be granted is consistent with the congressional intent to guard against fraudulent reinstatement claims.

Attorneys: David C. Shilton and Dirk D. Snel (Land and Natural Resources Division) FTS
633-2737/4400

Bradford, et al. v. United States, ___ F.2d ___, No. 79-1228 (10th Cir., June 8, 1981) DJ 90-1-5-1716.

Title to riverbed found to rest in private parties, government barred from raising argument for ~~first~~ time on appeal.

Plaintiffs, the owners of certain meandered lots on the north side of the Red River, brought this action to quiet title to the bed of the river bed, which is largely dry and stretches for almost a mile to the south, to the Texas border. The United States was joined as a defendant pursuant to 28 U.S.C. 2409a.

The court of appeals held that the United States may not raise for the first time on appeal the issue of whether the river bed had always been dry land, and that in any event the meandering of the plaintiffs' lots by the government surveyors established that they were riparian.

Attorneys: Martin Green and Carl Strass (Land and Natural Resources Division) FTS
633-2728/4624

United States and Pyramid Lake Paiute Tribe of Indians v. Truckee Carson Irrigation District, State of Nevada, et al., F.2d ___, Nos. 78-1115, 78-1943 (9th Cir., June 15, 1981) DJ 90-2-2-173.

Water rights; *res judicata* no bar to rights asserted by United States for Indians.

In a water adjudication proceeding initiated in 1913, the United States asserted water rights for the Pyramid Lake Indian Reservation and for the Newlands Reclamation project. The rights asserted for the Indians were primarily for irrigation purposes, and no right was asserted for water for the purpose of maintaining in Pyramid Lake conditions favorable to the continued existence of the fish which since time immemorial had been a main source of food for the Indians living along its shores.

In a 2 to 1 decision, the Ninth Circuit reversed in part, holding that while the water adjudication proceeding was *res judicata* as between the plaintiff United States and all of the defendants, it did not conclude the rights of the parties represented by the United States. As between the Indian Tribe and the Irrigation project, which obviously had conflicting interests, there was no adversarial representation, both being represented by the United States. By representing both the Tribe and the project, the court held, the government compromised its duty of undivided loyalty to the Tribe. The court remanded the case for the determination of the right, if any, of the Indians to secure water to maintain the fishery, which right, if it exists, must be satisfied from other water rights decreed to the government (and its successor in interest, the Truckee Carson Irrigation District) in the original water adjudication action.

Attorneys: Martin Green and Peter R. Steenland, Jr.
(Land and Natural Resources Division)
FTS 633-2753/2748

Green Mountain Grange, No. One v. Lewis, ___ F.2d ___, Nos. 81-6071, 81-6081 (2d Cir., June 8, 1981) DJ 90-1-2-2251.

Natural Environmental Policy Act; EIS adequacy for Route I-93 sustained.

In an unpublished order, the court of appeals affirmed the district court's decision to allow completion of I-93 through Waterford, Vermont. The plaintiffs had charged that the EIS prepared in connection with the project was inadequate on several grounds that the FHWA had violated Section 128 of the Federal Aid Highway Act by failing to hold a design hearing on the project. In what the court of

appeals characterized as a "thorough and scholarly opinion" the district court rejected plaintiff's claims holding that (1) the EIS was adequate, (2) a supplemental EIS to discuss new federal policies favoring farmland preservation was not required, and (3) the FHWA had substantially complied with the hearing requirements of Section 128 of the Federal Aid Highway Act in light of two hearings held in connection with the State's condemnation process.

Attorneys: Nancy B. Firestone and Edward J. Shawaker
(Land and Natural Resources Division)
FTS 633-2757/2813

United States v. District of Columbia, ___ F.2d ___, No. 80-1495 (June 10, 1981) DJ 90-5-1-1-353.

Clean Water Act; siting orders for waste treatment plant sustained.

This appeal was from three orders entered by the district court in connection with an action under the Clean Water Act concerning the disposal of sewage sludge generated at the Blue Plains Sewage Treatment Plant in the District of Columbia. Since the various jurisdictions which use the plant, all parties to this litigation, had been unable to devise a permanent sludge disposal plan, in 1978 the district court ordered each jurisdiction to designate a site within that jurisdiction to dispose of a portion of the sludge generated at the plant. The district court in 1978 endorsed the various sites, including the site designated by Montgomery County ("Site 2"). In an effort to block implementation of that site, however, Prince George's County in 1980 attempted to remove funding for the site from the budget of the Washington Suburban Sanitary Commission, and instituted various suits collaterally attacking the site in state court. In response the district court entered three orders, requiring the budgeting of funds and enjoining further state court proceedings. Prince George's County appealed from these orders, arguing that they violated the Tenth Amendment and the Anti-Injunction Act. The court of appeals rejected both challenges. It found that National League of Cities does not control here because there is an overriding federal interest in abating water pollution and because the orders were necessary to enforce prior orders of the court. The court also found that the orders were necessary to "protect and effectuate" its prior orders, and therefore came within an express exception to the statute.

Attorneys: Rosanne Mayer and Anne S. Almy (Land
and Natural Resources Division) FTS 633-
5409/4427

United States v. Jacobson, ___ F.2d ___, No. 80-1671 (9th Cir.,
June 12, 1981) DJ 90-8-1-81.

Constitutional Law; evidence proper as extended border
search under Fourth Amendment.

In connection with the investigation by the Customs
Service of parrot smuggling into the United States from
Mexico, agents followed a van from the time it crossed the
border until the parrots were delivered to defendants'
residence in Tucson, Arizona. The shipment was under constant
surveillance. Finally, agents entered defendants' combination
house-place of business area and seized the birds without a
search warrant. The district court granted defendants'
motion to suppress the evidence. The Ninth Circuit reversed,
holding that under the totality of the circumstances, the
search in question was in extended border search and reasonable
under the Fourth Amendment.

Attorneys: Kenneth Berlin, Steven J. Shimberg and
Jacques B. Gelin (Land and Natural
Resources Division) FTS 633-2716/5313/2762

OFFICE OF LEGISLATIVE AFFAIRS
Assistant Attorney General Robert A. McConnell

SELECTED CONGRESSIONAL AND LEGISLATIVE ACTIVITIES

JUNE 24, 1981 - JULY 8, 1981

Court of Appeals for the Federal Circuit. On June 22, the Senate Judiciary Subcommittee on Courts favorably reported to the full Committee S. 21, the Court of Appeals for the Federal Circuit bill. The vote in Subcommittee was 4 (Senators Dole, Thurmond, Simpson, and East) to 1 (Senator Baucus), with one abstention (Senator Heflin). The Subcommittee did not make the important amendment suggested by the Department to eliminate, from the new Claims Court, equitable and declaratory judgment jurisdiction.

INS Efficiency. The House Subcommittee reported out on June 23, 1981, Chairman Mazzoli's Efficiency Bill, H.R. 2043. Several amendments passed unanimously include:

- 1) allowing a foreign student studying English only to obtain the regular "F" category academic visa rather than the new "M" category visas for vocational students;
- 2) granting AG discretion to waive the exclusion of spouses, parents and children who have been convicted of possession of narcotics;
- 3) two Mazzoli amendments restricting foreign medical school graduates from practicing for long periods of time in the U.S.

Last session the INS Efficiency package passed easily in the House and the same is expected this session.

S. 1127 - Intelligence Activities Authorization. On June 24, the Senate Judiciary Committee reported out S. 1127, a bill to authorize appropriations for FY'82 for intelligence activities, after passing an amendment by Chairman Thurmond which deleted Section 509 from the bill. The purpose of Section 509 was to provide permanent authorities for the collection of foreign intelligence and foreign counterintelligence. Section 509 will be included in an amendment to the DOJ authorization bill (S. 951). Senator Thurmond was also going to strike Section 510, which deals with certain amendments to Title 18, but withdrew this part of the amendment after Senator Biden expressed concern that these needed changes in Title 18 would be lost if removed from S. 1127.

Regulatory Reform. On July 9, the House Judiciary Subcommittee on Administrative Law and Governmental Relations continues markup of H.R. 746, Chairman Danielson's regulatory reform proposal. On the Senate side, markup of S. 1080, the Laxalt regulatory reform bill, will presumably be the first order of business at the July 14 Senate Judiciary Committee Executive session.

Venue. On July 17, the Senate Judiciary Committee will hold a hearing on S. 1107, Senator Simpson's venue proposal. Assistant Attorney General Carol Dinkins of the Lands and Natural Resources Division will present the Department's views, which tentatively support the concept of cases being tried and appealed locally. The Simpson bill, however, has so many technical problems that it cannot be supported in its current form. We intend to offer to assist the Committee in drafting acceptable legislation accomplishing our common goals.

Agents Identities Protection. On June 25 the Senate Judiciary Subcommittee on Security and Terrorism formally "polled-out" S. 391, the proposed Intelligence Identities Protection Act, thus clearing the measure for full committee action. There were no subcommittee amendments; however, Senators Biden and Leahy are expected to offer amendments at the full committee level to incorporate a subjective intent standard such as that found in the House version, H.R. 4, and to strike coverage of disclosures of FBI foreign counter-intelligence covert agents.

The House Permanent Select Committee on Intelligence has delayed consideration of H.R. 4. A subcommittee markup has been postponed several times.

DOJ Authorization. As previously reported, the Senate Judiciary Committee has been having problems trimming the DOJ Authorization bill, S. 951, to comply with Budget Committee reconciliation instructions. On June 9 the Committee approved \$60 million in FY 1982 savings; however, in the process it had to reduce the Juvenile Justice program by \$26 million (which drew the opposition of Senator Spector) and the Bureau of Justice Statistics and the National Institute of Justice by \$17 million (which was opposed by Senators Biden and Heflin).

Senator Thurmond found a way to satisfy his colleagues on the Judiciary Committee and still comply with reconciliation instructions. During the June 25 floor consideration of the Omnibus Reconciliation bill, S. 1377, an amendment by Senator Thurmond was agreed to which "corrects a computer error" by placing the Indochinese refugee program under the jurisdiction of the Judiciary Committee. The Thurmond amendment also funds the refugee program for FY 1982 at \$68 million below the base-

line figure of the Senate Budget Committee, achieves another \$42 million in savings for the Patent and Trademark Office, and "cuts" \$6 million in the DOJ Authorization bill. (The DOJ "cuts" are below the Budget Committee baseline figure but equal to the original Administration request.) The net effect of the amendment is to give the Judiciary Committee the needed savings to meet the reconciliation instructions for FY 1982 without the necessity of cutting the Juvenile Justice program, the Bureau of Justice Statistics, or the National Institute of Justice.

S. 1112 - Export Administration Act Authorization. The Department continues to be concerned over section 3 of S. 1112, the Export Administration Act Authorization. Section 3 provides unrestricted access to classified material in the possession of the Department or the CIA by the Department of Commerce. S. 1112 has been reported out of Committee and is awaiting floor action. A similar bill has already passed the House of Representatives. While there is agreement that the provision should be changed to accommodate the DOJ/CIA concerns, discussions have yet to resolve the venue.

USRA Litigation. A provision of the Reconciliation bill adopted by the House of Representatives reorganizes the United States Railway Association (USRA). The provision includes a section which transfers USRA's litigation functions to the Attorney General. Presently, USRA has responsibility over the second phase of the valuation cases which grew out of the creation of Conrail. These valuation cases require allocation of significant resources. The Senate version of the Reconciliation bill contains no such section. The Department's serious concern over the House version arises from the fact that no additional funds have been provided the Department for the litigation.

Nominations.

The Committee on the Judiciary of the United States Senate has reported the nomination of O. Evans Denney to be United States Marshal for the District of Delaware.

On June 24, 1981 the Senate Judiciary Committee concluded its hearing on the nomination of William B. Reynolds to be Assistant Attorney General, Civil Rights Division.

Federal Rules of Criminal Procedure

Rule 6(d). The Grand Jury. Who May
Be Present.

Defendants moved for dismissal of narcotics indictment against them, arguing that Rule 6(d) was violated when two government agents appeared simultaneously and testified interchangeably as witnesses before the grand jury. The defense contended that Rule 6(d) has consistently been strictly construed; the government urged a pragmatic construction, asserting that the simultaneous use of two witnesses was made necessary by the complexity of the indictment and the underlying investigation.

Looking to the history of Rule 6(d), the Court noted the rule speaks of "witness" in the singular whereas the term "interpreters" was deliberately cast in the plural; the common law and the scant case law on the point are consistent with this construction. The Court concluded the first policy underlying Rule 6(d), preserving the secrecy of grand jury proceedings, was not threatened by the joint testimony in this case, but the second policy implicit in the rule, to guard against undue influence upon grand jury witnesses and grand jurors, was implicated. The joint testimony could result in added persuasiveness or one witness's testimony could be inhibited or affected by the presence of the other, particularly since one of the agent-witnesses in this case was under the supervision of the other. Accordingly, the Court held that the joint testimony of the two witnesses resulted in the presence of an unauthorized person before the grand jury contrary to and in violation of Rule 6(d). Distinguishing the legion of cases which adopt a per se rule of prejudice for violations of 6(d), the Court concluded that under the present facts the violation was not prejudicial and did not warrant dismissal of the indictment.

(Motion to dismiss denied.)

United States v. Jerome Otto Lill, et al., 511 F.Supp. 50
(S.D.W.Va. august 15, 1980)

LISTING OF ALL BLUESHEETS IN EFFECT

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
TITLE 1		
Undtd	1-1.200	Authority of Manual; A.G. Order 665-76
11-20-80	1-1.550	Communications from the Department
6-21-77	1-3.100	Assigning Functions to the Associate Attorney General
6-21-77	1-3.102	Assignment of Responsibility to DAG re INTERPOL
6-21-77	1-3.105	Reorganize and Redesignate Office of Policy and Planning as Office for Improvements in the Administration of Justice
4-22-77	1-3.108	Selective Service Pardons
6-21-77	1-3.113	Redesignate Freedom of Information Appeals Unit as Office of Privacy and Information Appeals
6-21-77	1-3.301	Director, Bureau of Prisons; Authority to Promulgate Rules
6-21-77	1-3.402	U.S. Parole Commission to replace U.S. Board of Parole
12-15-80	1-5.410	Subpoena of Reporters
4-28-77	1-6.200	Representation of DOJ Attorneys by the Department: A.G. Order 633-77
8-30-77	1-9.000	Case Processing by Teletype with Social Security Administration
10-31-79	1-9.000	Procedure for Obtaining Disclosure of Social Security Administration Information in Criminal Proceedings
11-16-79	1-9.000	Notification to Special Agent in Charge Concerning Illegal or Improper Actions by DEA or Treasury Agents

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
12-16-80	1-9.100	Relationships with Client Agencies
12-09-80	1-11.500	Informal Immunity
12-16-80	1-13.010	Proceedings Before U.S. Magistrates
7-14-78	1-14.210	Delegation of Authority to Conduct Grand Jury Proceedings
	TITLE 2	
3-2-81	2-2.120	Rehearings En Banc
1-03-77	2-3.210	Appeals in Tax Cases
	TITLE 3	
Undtd	3-4.000	Sealing and Expungement of Case Files Under 21 U.S.C. 844
	TITLE 4	
11-27-78	4-1.200	Responsibilities of the AAG for Civil Division
9-15-78	4-1.210- 4-1.227	Civil Division Reorganization
4-14-80	4-1.213	Federal Programs Branch Case Reviews
5-12-80	4-1.213	Organization of Federal Programs Branch, Civil Division
4-01-79	4-1.300- 4-1.313	Redelegations of authority in Civil Division Cases
11-07-80	4-1.312	Cases Coming Before the U.S. Customs
5-05-78	4-1.313	Addition of "Direct Referral Cases" to USAM 4-1.313
7-18-80	4-1.320	Impositions of sanctions upon Government Counsel and Upon the Government Itself
8-15-80	4-1.327	Judicial Assistance to Foreign Tribunals
4-01-79	4-2.110- 4-2.140	Redelegation of Authority in Civil Division Cases
5-12-80	4-2.230	Monitoring of pre- and postjudgment payments on VA educational overpayment accounts

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
7-07-80	4-2.230	Monitoring of pre- and postjudgment payments on VA educational overpayment accounts
2-22-78	4-2.320	Memo Containing the USA's Recommendations for the Compromising or Closing of Claims Beyond his Authority
11-13-78	4-2.433	Payment of Compromises in Federal Tort Claims Act Suits
8-13-79	4-3.000	Withholding Taxes on Backpay Judgments
5-05-78	4-3.210	Payment of Judgments by GAO
6-01-78	4-3.210	New telephone number for GAO office handling payment of judgments
5-14-79	4-4.230	Attorneys' Fees in EEO Cases
11-21-80	4-4.240	Attorney fees in FOI and PA suits
1-16-81	4-4.260	Attorneys' Fees Award in S.S. Act Review Cases
4-01-79	4-4.280	New USAM 4-4.280, Dealing with Attorney's Fees in Right To Financial Privacy Act Suits
8-08-80	4-4.310; 320; 330	Cases with International or Foreign Law Aspects
4-01-79	4-4.530	Addition to USAM 4-4.530 (costs recoverable from United States)
4-01-79	4-4.810	Interest recoverable by the Gov't
4-01-79	4-5.229	New USAM 4-5.229, dealing with limitations in Right To Financial Privacy Act suits.
2-15-80	4-5.530; 540; 550	FOIA and Privacy Act Matters
4-1-79	4-5.921	Sovereign immunity
4-01-79	4-5.924	Sovereign immunity

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-05-80	4-6.400	Coordination of Civil & Criminal Aspects of Fraud & Official Corruption Cases
5-12-80	4-6.600	Monitoring of pre- and postjudgment payments on VA educational overpayment accounts
7-07-80	4-6.600	Monitoring of pre- and postjudgment Payments on VA Educational Overpayment Accounts
5-12-80	4-6.600	Memo of Understanding for Conduct of Test Program to Collect VA Educational Assistance Overpayments Less Than \$600
8-15-80	4-7.400	Application of State Law to Questions Arising in the Foreclosure of Government-Held Mortgages
1-5-81	4-8.800	Claims Referred by Railroad Retirement Board
9-05-80	4-8.900	Renegotiations Act Claims
9-24-79	4-9.200	McNamara-O'Hara Service Contract Act Cases
9-24-79	4-9.700	Walsh-Healy Act cases
8-08-80	4-10-100	Cancellation of Patents
8-01-80	4-11.210; 220; 230	Copyright, Patent, and Trademark Litigation
4-01-79	4-11.850	New USAM 4-11.850, discussing Right To Financial Privacy Act litigation
4-21-80	4-11.860	FEGLI litigation
4-07-80	4-12.250; .251; .252	Priority of Liens (2420 cases)
5-22-78	4-12.270	Addition of a New Sentence to USAM 4-12.270
4-16-79	4-13.230	New USAM 4-13.230, discussing revised HEW regulations governing Social Security Act disability benefits
11-7-80	4-13.330	Customs Matters
7-25-80	4-13.330	Customs Matters
11-27-78	4-13.335	News discussing "Energy Cases"

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
7-30-79	4-13.350	Review of Government Personnel Cases under the Civil Service Reform Act of 1978
8-1-80	4-13.350	Review of Government Personnel Cases under the Civil Service Reform Act of 1978
4-1-79	4-13.361	Handling of Suits Against Gov't Employees
6-25-79	4-15.000	Subjects Treated in Civil Division Practice Manual
TITLE 5		
TITLE 6		
4-22-80	6-3.630	Responsibilities of United States Attorney of Receipt of Complaint
TITLE 7		
6-21-77	7-2.000	Part 25-Recommendations to President on Civil Aeronautic Board Decisions, Procedures for Receiving Comments by Private Parties
TITLE 8		
6-21-77	8-2.000	Part 55-Implementation of Provisions of Voting Rights Act re Language Minority Groups (interpretive guidelines)
6-21-77	8-2.000	Part 42-Coordination of Enforcement of Non-discrimination in Federally Assisted Programs
5-23-80	8-2.170	Standards for Amicus Participation
10-18-77	8-2.220	Suits Against the Secretary of Commerce Challenging the 10% Minority Business Set-Aside of the Public Works Employment Act of 1977, P.L. 95-28 (May 13, 1977)
5-23-80	8-2.400	Amicus Participation By the Division

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-23-80	8-3.190	Notification to Parties of Disposition of Criminal Civil Rights Matters
5-23-80	8-3.300	Notification to Parties of Disposition of Criminal Civil Rights Matters
TITLE 9		
7-11-79	9-1.000	Criminal Division Reorganization
Undtd (3-80)	9-1.103	Description of Public Integrity Section
3-14-80	9-1.103	Criminal Division Reorganization
Undtd	9-1.215	Foreign Corrupt Practices Act of 1977- 15 U.S.C. 78m(b)(2)-(3); 15 U.S.C. 78dd-1; and 15 U.S.C. 78dd-2
3-14-80	9-1.403; .404;.410	Criminal Division Reorganization
4-16-80	9-1.502	Criminal Division Brief/Memo Bank
7-08-80	9-1.503	Case Citation
6-22-79	9-2.000	Cancellation of Outstanding Memorandum
1-8-81	9-2.145	Interstate Agreement on Detainers
12-09-80	9-2.148	Informal Immunity
Undated (2-27-81)	9-2.164	Policy With Regard to the Issuance of Subpoenas to Members of the News Media, Subpoenas for Telephone Toll Records of Members of the News Media, and the Interrogation, Indictment, or Arrest of, Members of the News Media
Undated (2-27-81)	9-2.166	Grand Jury Subpoenas for Telephone Toll Records
2-28-80	9-4.116	Oral Search Warrants
6-28-79	9-4.600	Hypnosis
Undtd	9-7.000; 9-7.317	Defendant Overhearings and Attorney Overhearings Wiretap Motions

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
5-26-81	9-7.110	Authorization of Applications for Interception Orders
5-26-81	9-7.170	Title III Application
5-26-81	9-7.180	Title III Order
9-10-80	9-7.230;9-7.927; 9-7.928	Trap and Trace Guidelines
5-26-81	9-7.910	Form Interception Application
5-26-81	9-7.921	Form Interception Order
5-26-81	9-7.921	Title III Standard Form Inter- ception Order
7-28-80	9-8.130	Motion to Transfer
2-06-80	9-11.220	Use of Grand Jury to Locate Fugitives
9-18-80	9-11.220	Obtaining Records To Aid in the Location of Federal Fugitives by Use of the All Writs Act, 28 U.S.C. 1651
12-13-78	9-11.220	Use of Grand Jury to Locate Fugitives
5-31-77	9-11.230	Grand Jury Subpoena for Telephone Toll Records
8-13-80	9-11.230	Fair Credit Reporting Act and Grand Jury Subpoenas
Undated (2-27-81)	9-11.230	Limitations on Grand Jury Subpoenas
10-06-80	9-17.000	Speedy Trial Act
1-08-81	9-17.102	Securing the Presence of the Defendant
7-22-80	9-20.140- 9-20.146	Indian Reservations
1-21-81	9-37.000	Habeas Corpus
10-22-79	9-42.000	Coordination of Fraud Against the Government Cases (non-disclosable)

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
6-06-80	9-42.520	Dept. of Agriculture-Food Stamp Violations
6-09-80	9-47.140	Foreign Corrupt Practices Act Review Procedure
2-17-81	9-60.140	Kidnapping
5-22-79	9-61.132; 9-61.133	Steps to be Taken to Assure the Serious Consideration of All Motor Vehicle Theft Cases for Prosecution
7-28-80	9-61.620	Supervising Section and Prosecutive Policy
7-28-80	9-61.651	Merger
7-28-80	9-61.682	Night Depositories
7-28-80	9-61.683	Automated Teller Machines (Off-Premises)
7-28-80	9-61.691	Extortion- Applicability of the Hobbs Act (18 U.S.C. 1951) to Extortionate Demands Made Upon Banking Institutions
7-28-80	9-63.518	Effect of <u>Simpson v. United States</u> on 18 U.S.C. 924(c)
7-28-80	9-63.519	<u>United States v. Batchelder</u> , 42 U.S. 114 (1979)
7-28-80	9-63.642	Collateral Attack by Defendants on the Underlying Felony Conviction
7-28-80	9-63.682	Effect of §5021 Youth Corrections Act Certificate on Status as Convicted Felon
8-13-80	9-65.806	Offenses Against Officials of the Coordination Council for North American Affairs (TAIWAN)
8-08-79	9-69.260	Perjury: False Affidavits Submitted in Federal Court Proceedings Do Not Constitute Perjury Under 18 USC 1623
2-17-81	9-69.421	Fugitive Felon Act
11-28-80	9-69.500	Prosecutions of Escapes by Fed. Prisoners
9-5-80	9-70.002	Farm Labor Contractor Registration Act

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
6-11-80	9-75.000	Obscenity
6-11-80	9-75.080; 084	Sexual Exploitation of Children; Child Pornography
6-11-80	9-75.110	Venue
6-11-80	9-75.140	Prosecutive Priority
6-11-80	9-75.631	Exception - Child Pornography Cases
9-5-80	9-78.400	7 U.S.C. 2041, <u>et. seq.</u>
3-12-79	9-79.260	Access to Information Filed Pursuant to the Currency & Foreign Transactions Reporting Act
10-6-80	9-85.315	Census
5-26-81	9-90.940	Classified Info. Procedures Act of 1980
8-7-80	9-100.280	Continuing Criminal Enterprise (408) 21 U.S.C. 848
1-30-81	9-110.100	RICO Guidelines
10-24-80	9-110.300, <u>et seq.</u>	Extortionate Credit Transactions
5-23-80	9-120.210	Directory: Dept. of Motor Vehicles Driver's License Bureau
1-8-81	9-120.210	Internal Revenue Service Tax Returns
2-29-80	9-121.120; .153; .154	Authority to Compromise & Close Appearance Bond Forfeiture Judgments
5-18-81	9-121.140	Application of Cash Bail to Criminal Fines
4-21-80	9-121.140	Application of Cash Bail to Criminal Fines
4-05-79	9-123.000	Costs of Prosecution (28 U.S.C. 1918(b))
1-29-81	9-139.740	47 USC 506- The LEA Act (Coercive Practices Affecting Broadcasting)

(Revised 7-17-81)

Listing of all Bluesheets in Effect

Title 10--Executive Office for United States Attorneys

Title 10 has been distributed to U.S. Attorneys Offices only, because it consists of administrative guidelines for U.S. Attorneys and their staffs. The following is a list of all Title 10 Bluesheets currently in effect.

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
9-8-80	10-2.100	Notice to Competitive Service Applicants or Employees Proposed for Appointment to Excepted Positions
2-19-81	10-2.101	Submission of SF-61, Appointment Affidavits
Undtd (2-27-81)	10-2.111; 124; 142; 156; 161; 162; 164; 520	Racial/Ethnic Codes
7-14-80	10-2.123	Tax Check Waiver (Individual)
8-6-80	10-2.142	Employment Review Committee for Non-Attorneys
3-2-81	10-2.142; 156; 164; 520	Employment Review Procedures for Non-Attorneys
7-16-80	10-2.144	Certification Procedures for GS-9 and Above Positions
9-12-80	10-2.145	Procedures for Detailing Schedule C Secretaries to Competitive Service Positions
Undtd (12-5-80)	10-2.150	New Authority to Make 1-Yr. Temporary Appointments
11-25-80	10-2.162	Stay-In-School Program
7-16-80	10-2.193	Requirements for Sensitive Positions- Non-Attorney
8-14-80	10-2.193	Preappointment Security Requirements
10-29-80	10-2.194	Procedures for Requesting Access to Sensitive Compartments Info. (SCI)

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
3-27-81	10-2.194	Security Clearances for U.S. Attorneys
4-3-81	10-2.412	Time Spent in Training as Hours of Work under FLSA
6-13-80	10-2.420	Justice Earnings Statement
8-22-80	10-2.523	Affirmative Action Monitoring Procedures
11-25-80	10-2.524	Collection, Retention & Use of Applicant Race, Sex, and Ethnicity Data
10-24-80	10-2.525	Facility Accessibility
10-6-80	10-2.540	Performance Appraisal System for Attorneys
6-11-80	10-2.545	Younger Fed. Lawyer Awards
8-26-80	10-2.551	Standard of Conduct
6-18-80	10-2.552	Financial Disclosure Report
6-11-80	10-2.564	Authorization & Payment of Training
7-11-80	10-2.611	Restoration of Annual Leave
3-27-81	10-2.615	Leave Status in Emergency Situations
4-13-81	10-2.620	Fed. Employees Group Life Insurance
9-29-80	10-2.630	SF 2809- Health Benefits Registration Form
6-6-80	10-2.650	Unemployment Compensation for Federal Employees
6-6-80	10-2.660	Processing Form CA-1207
6-6-80	10-2.664	OWCP Uniform Billing Procedure

<u>DATE</u>	<u>AFFECTS USAM</u>	<u>SUBJECT</u>
4-3-81	10-3.321	Salaried Federal Court Reporters
6-23-80	10-4.262	Procedures
10-30-80	10-4.430	Closing Notice for Case Files
5-4-81	10-5.230	Charges for Employee Parking
11-25-80	10-5.240	Collection of Parking Fees
8-5-80	10-6.100	Receipt Acknowledgment Form USA-204
6-23-80	10-6.220	Docketing & Reporting System
5-16-80	Index to Title 10	

UNITED STATES ATTORNEYS' MANUAL--TRANSMITTALS

The following United States Attorneys' Manual Transmittals have been issued to date in accordance with USAM 1-1.500. This monthly listing may be removed from the Bulletin and used as a check list to assure that your Manual is up to date.

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE MO/DAY/YR</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
1	1	8/20/76	8/31/76	Ch. 1,2,3
	2	9/03/76	9/15/76	Ch. 5
	3	9/14/76	9/24/76	Ch. 8
	4	9/16/76	10/01/76	Ch. 4
	5	2/04/77	1/10/77	Ch. 6,10,12
	6	3/10/77	1/14/77	Ch. 11
	7	6/24/77	6/15/77	Ch. 13
	8	1/18/78	2/01/78	Ch. 14
	9	5/18/79	5/08/79	Ch. 5
	10	8/22/79	8/02/79	Revisions to 1-1.400
	11	10/09/79	10/09/79	Index to Manual
	12	11/21/79	11/16/79	Revision to Ch. 5, 8, 11
	13	1/18/80	1/15/80	Ch. 5, p. i-ii, 29-30, 41-45
	A2	9/29/80	6/23/80	Ch. 7, Index to Title 1, Revisions to Ch. 2, 5, 8 Ch. 2, 5, 8
2	1	6/25/76	7/04/76	Ch. 1 to 4
	2	8/11/76	7/04/76	Index
3	1	6/23/76	7/30/76	Ch. 1 to 7
	2	11/19/76	7/30/76	Index

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE MO/DAY/YR</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
	3	8/15/79	7/31/79	Revisions to Ch. 3
	4	9/25/79	7/31/79	Ch. 3
4	1	1/02/77	1/02/77	Ch. 3 to 15
	2	1/21/77	1/03/77	Ch. 1 & 2
	3	3/15/77	1/03/77	Index
	4	11/28/77	11/01/77	Revisions to Ch. 1-6, 11-15 Index
5	1	2/04/77	1/11/77	Ch. 1 to 9
	2	3/17/77	1/11/77	Ch. 10 to 12
	3	6/22/77	4/05/77	Revisions to Ch. 1-8
	4	8/10/79	5/31/79	Letter from Attorney General to Secretary of Interior
	5	6/20/80	6/17/80	Revisions to Ch. 1-2, New Ch. 2A, Index to Title 5
	A2	4/16/81	4/6/81	Rev. to Ch. 1, 2, 2A, 3, 4, 5, 7, 8, 9A & 9B New Ch. 9, 9A, 9C & 9D
6	1	3/31/77	1/19/77	Ch. 1 to 6
	2	4/26/77	1/19/77	Index
	3	3/01/79	1/11/79	Complete Revision of Title 6
7	1	11/18/77	11/22/76	Ch. 1 to 6
	2	3/16/77	11/22/76	Index
	A2	6/30/81	6/2/81	Rev. to Ch. 5, Index to Title 7, Index to Manual

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE MO/DAY/YR</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
8	1	1/04/77	1/07/77	Ch. 4 & 5
	2	1/21/77	9/30/77	Ch. 1 to 3
	3	5/13/77	1/07/77	Index
	4	6/21/77	9/30/76	Ch. 3 (pp. 3-6)
	5	2/09/78	1/31/78	Revisions to Ch. 2
	6	3/14/80	3/6/80	Revisions to Ch. 3
9	1	1/12/77	1/10/77	Ch. 4,11,17, 18,34,37,38
	2	2/15/78	1/10/77	Ch. 7,100,122
	3	1/18/77	1/17/77	Ch. 12,14,16, 40,41,42,43
	4	1/31/77	1/17/77	Ch. 130 to 139
	5	2/02/77	1/10/77	Ch. 1,2,8,10, 15,101,102,104, 120,121
	6	3/16/77	1/17/77	Ch. 20,60,61,63, 64,65,66,69,70, 71,72,73,75,76,77, 78,79,85,90,110
	7	9/08/77	8/01/77	Ch. 4 (pp. 81- 129) Ch. 9, 39
	8	10/17/77	10/01/77	Revisions to Ch. 1
	9	4/04/78	3/18/78	Index
	10	5/15/78	3/23/78	Revisions to Ch. 4,8,15, and new Ch. 6

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE MO/DAY/YR</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
	11	5/23/78	3/14/78	Revisions to Ch. 11,12,14, 17,18, & 20
	12	6/15/78	5/23/78	Revisions to Ch. 40,41,43, 44, 60
	13	7/12/78	6/19/78	Revisions to Ch. 61,63,64, 65,66
	14	8/02/78	7/19/78	Revisions to Ch. 41,69,71, 75,76,78, & 79
	15	8/17/78	8/17/78	Revisions to Ch. 11
	16	8/25/78	8/02/78	Revisions to Ch. 85,90,100, 101, & 102
	17	9/11/78	8/24/78	Revisions to Ch. 120,121,122, 132,133,136,137, 138, & 139
	18	11/15/78	10/20/78	Revisions to Ch. 2
	19	11/29/78	11/8/78	Revisions to Ch. 7
	20	2/01/79	2/1/79	Revisions to Ch. 2
	21	2/16/79	2/05/79	Revisions to Ch. 1,4,6,11, 15,100
	22	3/10/79	3/10/79	New Section 9-4.800
	23	5/29/79	4/16/79	Revisions to Ch. 61

<u>TRANSMITTAL AFFECTING TITLE</u>	<u>NO.</u>	<u>DATE MO/DAY/YR</u>	<u>DATE OF TEXT</u>	<u>CONTENTS</u>
	24	8/27/79	4/16/79	Revisions to 9-69.420
	25	9/21/79	9/11/79	Revision of Title 9 Ch. 7
	26	9/04/79	8/29/79	Revisions to Ch. 14
	27	11/09/79	10/31/79	Revisions to Ch. 1, 2, 11, 73, and new Ch. 47
	28	1/14/80	1/03/80	Detailed Table of Contents p. i-iii (Ch. 2) Ch. 2 pp 19-20i
	29	3/17/80	3/6/80	Revisions to Ch. 1, 7, 11, 21, 42, 75, 79, 131, Index to Title 9
	30	4/29/80	4/1/80	Revisions to Ch. 11, 17, 42
	38	7-8-80	7-27-80	Revisions to Ch. 2, 16, 17, 60, 63, & 73, Index to Manual
	*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 Manual

*Due to the numerous requests for the U.S. Attorneys' Manual from the private sector, the Executive Office has republished the entire Manual and it is now available to the public from the Government Printing Office. This publication is identical to the one that has been issued to Department of Justice offices. To differentiate the transmittals issued after the GPO publication from previously issued transmittals the Manual Staff has devised a new numbering system. Please note that transmittal numbers issued from hereon will be prefaced with the letter "A." The private sector may order the Manual from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The stock number is 0469T10 and the price is \$145.00, which includes updates.