



United States Attorneys' Bulletin



**EXECUTIVE
OFFICE FOR
UNITED
STATES
ATTORNEYS**

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COMMENDATIONS

Assistant United States Attorney LAWRENCE O. ANDERSON and the staff of the United States Attorney's Office, Eastern District of Wisconsin, were commended by Senator William Proxmire, The Senate of Wisconsin, for their skillful handling of the investigation and subsequent trial in the murder of Clifford G. Albers at the Menominee Indian Reservation.

Assistant United States Attorney WENDY P. ARNELL, District of Maryland, was commended by Mr. Paul A. Adams, Inspector General, Department of Housing and Urban Development, for her successful prosecution in the cases collectively known as Pleasant Homes, Seat Pleasant, Maryland.

Assistant United States Attorney LESLIE K. BAKER, District of Oregon, was commended by Mr. Theodore M. Gardner, Special Agent-in-Charge, Federal Bureau of Investigation, Portland, Oregon, for her exemplary efforts in the successful prosecution of James Douglass.

Assistant United States Attorney TENA CAMPBELL, District of Utah, was commended by Ms. Carol M. Fray, District Director, Internal Revenue Service, Salt Lake City, Utah, for her excellent work in the prosecution of Gerald A. Hasz.

Assistant United States Attorney PAUL CORRADINI, District of Arizona, was commended by Mr. Gregory G. Ferres, District Counsel, Veterans Administration, Phoenix, Arizona, for his successful prosecution efforts in Blakely v. United States.

Assistant United States Attorney NATHAN A. FISHBACH, Eastern District of Wisconsin, was commended by Mr. H. Ernest Woodby, Special Agent-in-Charge, Federal Bureau of Investigation, Milwaukee, Wisconsin, for his professionalism in prosecuting United States v. Daul.

Assistant United States Attorney CHARLES F. FLYNN, District of Columbia, was commended by Mr. Charles R. Gillum, Acting Inspector General, Office of the Inspector General, General Services Administration, for his outstanding litigation skills in Lett v. General Services Administration.

Assistant United States Attorney BERNARD J. GLASER, JR., District of Nebraska, was commended by Mr. James F. Ahearn, Special Agent-in-Charge, Federal Bureau of Investigation, Omaha, Nebraska, for his successful prosecution of a complex white collar crime case.

Assistant United States Attorney JOHN R. HALLIBURTON, Western District of Louisiana, was commended by Mr. Irwin E. Clair, District Manager, Social Security Administration, Shreveport, Louisiana, and by Ms. Christine L. McDonald, District Manager, Social Security Administration, Little Rock, Arkansas, for his successful defense in Upshaw v. Heckler, Secretary of Health and Human Services.

Assistant United States Attorney JOHN F. HOEHNER, Northern District of Indiana, was commended by Mr. K.C. Weaver, Inspector-in-Charge, United States Postal Service, Chicago, Illinois, for his superior work in prosecuting United States v. Hollins.

Assistant United States Attorney PAUL PENDLEY, District of Nebraska, was commended by Mr. James F. Ahearn, Special Agent-in-Charge, Federal Bureau of Investigation, Omaha, Nebraska, for his fine work in United States v. Smiley.

Assistant United States Attorneys KAREN B. PETERS and MORGAN E. SCOTT, JR., Western District of Virginia, were commended by Mr. William H. Webster, Director, Federal Bureau of Investigation, for their important contributions and successful prosecution in United States v. Muncy.

Assistant United States Attorney CALVIN C. PRYOR, Middle District of Alabama, was recently commended by United States Marshal Melvin E. Jones, Middle District of Alabama, for his outstanding contribution and willingness to render assistance to the United States Marshals Office in the area of writs and execution.

Assistant United States Attorney MARY G. SLOCUM, District of South Carolina, was recently commended by Mr. Thomas R. Thomas, Assistant District Counsel, Internal Revenue Service, Atlanta, Georgia, for her exemplary assistance on behalf of the Internal Revenue Service, in handling the bankruptcy hearing on Jones Refrigeration, Heating and Coolers, Inc.

Assistant United States Attorneys GEORGE C. STOLL and JOAN M. SWANSON, Northern District of California, were commended by Colonel Seymour Copperman, Office of the Judge Advocate General, United States Air Force, for their outstanding work leading to a rapid and successful conclusion in Hart v. Orr.

Assistant United States Attorneys PAUL A. WEINMAN, JR., and ROBERT H. EDMUNDS, JR., Middle District of North Carolina, were commended by Mr. William J. Williamson, Special Agent-in-Charge, United States Secret Service, Department of the Treasury, Charlotte, North Carolina, for their outstanding prosecution in cases involving credit card fraud.

Personnel.

Effective September 3, 1985, Douglas H. Ginsburg, was named Assistant Attorney General for the Antitrust Division.

(Executive Office)

Subpoenas To An Attorney For Information Relating To The Representation Of A Client.

United States Attorneys and their Assistants, as well as attorneys in the litigating divisions of the Department, must obtain the authorization of the Assistant Attorney General before issuing a subpoena to an attorney in any matter, civil or criminal, for information concerning the representation of a client. By teletype dated July 18, 1985, to all United States Attorneys, Deputy Attorney General D. Lowell Jensen outlined the criteria to be met before approval will be given for the issuance of a subpoena.

Further clarification of these guidelines is contained in a Bluesheet to USAM 9-2.161(a). Any questions concerning this matter should be directed to William J. Landers, Special Counsel to the Assistant Attorney General, Criminal Division, on FTS 633-4647.

(Criminal Division)

Teletypes To All United States Attorneys.

A listing of recent teletypes sent by the Executive Office is appended to this 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)

CASENOTES

OFFICE OF THE SOLICITOR GENERAL

The Acting Solicitor General has authorized the filing of:

A direct appeal in Heckler v. POSSE, 613 F. Supp. 558 (E.D. Cal.). The question presented is whether Section 414(g) of the Social Security Act effects a taking of property within the meaning of the Fifth Amendment by preventing states from withdrawing from the Social Security System.

A petition for certiorari in United States v. Mottaz, S. Ct. No. 85-546. The question presented is whether the 12-year statute of limitations under the Quiet Title Act or the 6-year statute of limitations of 28 U.S.C. §2401(a) is applicable to a suit by an Indian to recover land (or its equivalent in money damages) from the United States.

A petition for certiorari in Jones v. Lightner, S. Ct. No. 85-561. The question presented is whether the collateral order doctrine permits an immediate appeal from an order denying a claim of qualified immunity in a damages actions against a public official.

A petition for certiorari in United States v. Hughes Properties, Inc., S. Ct. No. 85-554. The question presented is whether a gambling casino using the accrual method of tax accounting is entitled to deduct amounts shown on the "jackpot indicators" of its progressive slot machines at the close of its taxable year, even though it has no obligation to pay those amounts unless and until the jackpots are won by patrons in some future year.

A petition for certiorari in CFTC v. Schor, No. 83-1703 (D.C. Cir.). The question presented is whether the CFTC may decide a state law counterclaim for damages that arise out of the same transaction as a complaint for reparations.

A petition for certiorari in INS v. Cardoza-Fonseca, No. 83-7777 (9th Cir.). The question presented is whether an alien's burden of proving a "well-founded fear of persecution" in order to establish eligibility for asylum pursuant to Section 208(a) of the Immigration and Nationality Act is equivalent to her burden of proving a "clear probability of persecution" in order to establish eligibility for withholding of deportation pursuant to Section 243(h) of the Act.

CIVIL DIVISION

SEVENTH CIRCUIT REVERSES DISTRICT COURT ORDER ENJOINING
DEPARTMENT OF JUSTICE FROM ENFORCING DEPARTURE CONTROL
ORDER PREVENTING PARENTS FROM TAKING THEIR ESTRANGED
CHILD TO THE SOVIET UNION.

In 1980, the Polovchak family left the Soviet Ukraine and entered the United States as refugees. When they decided to return to the Soviet Union, their 17 year old daughter and 12 year old son (Walter) announced that they did not wish to return because they would be persecuted, and went to live with their adult cousin. An Illinois state court took away the Polovchaks' custody rights temporarily. The Polovchaks appealed this ruling, but left for the Soviet Union without their son. (They did not oppose their daughter's decision to stay here.) After an Illinois appellate court returned custody to the parents, the Attorney General issued a departure control order under the federal immigration laws preventing anyone from taking Walter out of the United States involuntarily. The Polovchaks brought suit seeking an injunction against this order, as well as against the grant of asylum to Walter, and damages. The case languished for several years until two months before Walter's 18th birthday when the district court enjoined enforcement of the departure control order, thereby removing the legal impediment that had blocked Walter's forcible return to the Soviet Union. We appealed and the Seventh Circuit granted an emergency stay of the injunction, setting an expedited briefing and argument schedule. We pointed out that, if returned to the Soviet Union, Walter would be under his parents' control only briefly until he became 18, and would very likely be imprisoned or sent into internal exile as a result of his numerous statements here criticizing the Soviet Union.

The court of appeals held that the due process rights of the Polovchaks had been violated because, as parents, they were not given adequate notice and an opportunity for a hearing regarding the departure control order. The court, however, agreed with our argument that the district court had not adequately weighed Walter's interests before issuing an injunction against the departure control order. Therefore, the court overturned the injunction and ordered the district court to hold a hearing to weigh the competing interests properly. Because Walter becomes emancipated on October 3, 1985, it is likely that this case will become moot before anything further happens.

Polovchak v. Meese, _____ F.2d _____, No. 85-2297 (7th Cir. Sept. 10, 1985). D. J. # 39-23-1164.

Attorneys: Carolyn B. Kuhl (Civil Division) FTS 633-5421;
Barbara L. Herwig (Civil Division) FTS 633-5425; Douglas
Letter (Civil Division) FTS 633-3427.

LAND AND NATURAL RESOURCES DIVISION

SECRETARY'S DECISION TO TAKE LAND IN TRUST FOR INDIANS
UNREVIEWABLE.

This action involves a challenge to the Secretary of the Interior's decision to acquire a tract of land in trust for the benefit of the Seminole Indian Tribe. The district court dismissed the complaint on sovereign immunity and standing grounds.

The court of appeals found the action barred whether construed as a quiet title action or as a review of agency action. The court noted that the quiet title action excludes from its waiver of sovereign immunity, trust or restricted Indian lands. The court further held that to the extent the action could be viewed as seeking review of agency action, it was also barred. The court concluded that the Secretary's statutory authority to take land in trust for Indians, in 25 U.S.C. §465, provides no standards by which to review the Secretary's actions and thus is unreviewable under the Administrative Procedures Act because such actions are committed to agency discretion by law.

State of Florida v. United States Department of the Interior,
F.2d, No. 84-3246 (11th Cir. Aug. 16, 1985). D. J. #
90-6-7-351.

Attorneys: J. Carol Williams (Land and Natural Resources Division), FTS 633-2757; Martin W. Matzen, (Land and Natural Resources Division), FTS 633-4426.

UNITED STATES ATTORNEYS' OFFICES

SOUTHERN DISTRICT OF TEXAS

HOUSTON ASSISTANT UNITED STATES ATTORNEY REQUESTS
HEARING PRIOR TO SENTENCING IN A COMPLEX CREDIT CARD
FRAUD CASE FOR THE PURPOSE OF ASSURING THAT THE COURT
HAD A SOUND BASIS TO SET AN APPROPRIATE REMEDY OF
RESTITUTION FOR SUBROGATE VICTIM.

In accordance with the provisions of the Victim and Witness Protection Act of 1982 and within the purview of 18 U.S.C. §§3579-3580, Assistant United States Attorney James C. Sabalos, in the Southern District of Texas, petitioned the court for a hearing

to determine the actual financial loss incurred by subrogate victim, Bank of America, Card Center, Pasadena, California, in the Southern District of Texas, as a result of the criminal offenses committed by defendant and co-defendants who devised and executed a scheme to defraud the Bank of America by obtaining money and property by means of false and fraudulent pretenses. Their scam was also conducted in as many as fifteen other states.

Due to the anomalous circumstances involved, it was not possible to provide the Probation Office with the actual monetary amount that had been taken in our district for their preparation of the Victim Impact Statement. Consequently, the U.S. Probation Office concurred that the government should request a hearing to put on evidence of such losses to assure that the court would have a sound basis to set an appropriate remedy of restitution. Without this information, the court would not have an adequate record before it to make an assessment of restitution.

The hearing was granted by the court, and as a result, the subrogate victim, the Bank of America, was granted restitution from the defendant in the amount of \$297,786.00. This was the amount proved to have been sustained by them as of the hearing date.

United States v. Johnson, ___ F.2d, ___, Cr. No. H-85-80,
(S.D. Tx. Sept. 1985).

Attorney: James Sabalas (Assistant United States Attorney,
Southern District of Texas), FTS 526-4671.

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
TELETYPES TO ALL UNITED STATES ATTORNEYS

- 10-01-85 From William P. Tyson, Director, Executive Office for United States Attorneys, by Richard L. DeHaan, Director, Office of Administration and Review, re: "FY 1986 Appropriation Level."
- 10-07-85 From William P. Tyson, Director, Executive Office for United States Attorneys, re: "Appointment of Ms. Stella Kourakos."
- 10-07-85 From William P. Tyson, Director, Executive Office for United States Attorneys, by Thomas G. Schrup, Acting Director, Office of Legal Education, re: "Creditor's Rights and Remedies Conference, November 18-22, 1985, New Orleans, Louisiana."

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	Stephen M. McNamee
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
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Georgia, M	Joe D. Whitley
Georgia, S	Hinton R. Pierce
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Illinois, S	Frederick J. Hess
Illinois, C	Gerald D. Fines
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Iowa, S	Richard C. Turner
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Louisiana, M	Stanford O. Bardwell, Jr.
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Mississippi, S	George L. Phillips
Missouri, E	Thomas E. Dittmeier
Missouri, W	Robert G. Ulrich

UNITED STATES ATTORNEYS

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Montana	Byron H. Dunbar
Nebraska	Ronald D. Lahners
Nevada	William A. Maddox
New Hampshire	Richard V. Wiebusch
New Jersey	Thomas W. Greelish
New Mexico	William L. Lutz
New York, N	Frederick J. Scullin, Jr.
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New York, E	Raymond J. Dearie
New York, W	Salvatore R. Martoche
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North Carolina, M	Kenneth W. McAllister
North Carolina, W	Charles R. Brewer
North Dakota	Rodney S. Webb
Ohio, N	Patrick M. McLaughlin
Ohio, S	Anthony W. Nyktas
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Oklahoma, W	William S. Price
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Pennsylvania, W	J. Alan Johnson
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Rhode Island	Lincoln C. Almond
South Carolina	Vinton DeVane Lide
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Tennessee, M	Joe B. Brown
Tennessee, W	W. Hickman Ewing, Jr.
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Texas, S	Henry K. Oncken
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