



United States Attorneys' Bulletin



EXECUTIVE
OFFICE FOR
UNITED
STATES
ATTORNEYS

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William P. Tyson, Director

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COMMENDATIONS

Assistant United States Attorney JAMES R. ARNOLD, Central District of California, was commended by Lieutenant General Forrest S. McCartney, Commander, United States Air Force, for his outstanding litigation support of the Air Force Space Division's efforts to build essential family housing in the White Point area of Palos Verdes, California.

Assistant United States Attorney MARK EDWARD ASPEY, District of Arizona, was commended by Mr. Howard A. Tokheim, Postal Inspector-in-Charge, United States Postal Service, Phoenix, Arizona, for his successful prosecution of United States v. McCaffrey.

Assistant United States Attorney EDMUND A. BOOTH, JR., Southern District of Georgia, was commended by Mr. L.C. Fowler, District Counsel, Corps of Engineers, Department of the Army, for his successful resolution of Gold Mech., Inc. v. Delta Industrial Contractors, Inc.

Assistant United States Attorneys ROBERT C. BRICHLER and WILLIAM E. HUNT, Southern District of Ohio, were commended by Mr. William R. Britt, Chief, Criminal Investigation Division, Internal Revenue Service, for their continuing contributions and support to the Criminal Investigation Division and to the overall mission of the Service.

Assistant United States Attorney PATRICK R.S. BUPARA, Northern District of California, was commended by Mr. Richard W. Held, Special Agent-in-Charge, Federal Bureau of Investigation, for his excellent representation of two agents in Coleman v. United States and Parris v. United States.

Assistant United States Attorneys K. TATE CHAMBERS, GREGORY K. HARRIS, and DAVID E. RISLEY, Central District of Illinois, were commended by Mr. L.W. Wiggs, Postal Inspector-in-Charge, United States Postal Service, St. Louis, Missouri, for their successful prosecution of United States v. Lone.

Assistant United States Attorney ROBERT E.L. EATON, JR., District of Columbia, was commended by Mr. Joseph R. Davis, Assistant Director, Legal Counsel Division, Federal Bureau of Investigation, for his dedication and expertise which brought a successful resolution to a major Freedom of Information Act lawsuit.

Assistant United States Attorney WILLIAM T. GRIMMER, Northern District of Indiana, was commended by Mr. Paul A. Adams, Inspector General, Department of Housing and Urban Development, for his successful investigation and prosecution of several rental subsidy fraud cases in South Bend, Indiana.

Assistant United States Attorney MICHAEL A. JOHNS and First Assistant United States Attorney VIRGINIA A. MATHIS, District of Arizona, were commended by Mr. Joseph R. Davis, Assistant Director, Legal Counsel Division, Federal Bureau of Investigation, for their professionalism and spirit of cooperation displayed during the investigation into the shooting death of an FBI agent.

Assistant United States Attorney and Coordinator, Organized Crime and Drug Enforcement Task Force, JAMES A. LASSART, Northern District of California, was commended by Mr. Joseph E. Krueger, Special Agent-in-Charge, Drug Enforcement Administration, for his lecture on search warrants presented to Special Agents of the Drug Enforcement Administration, San Francisco, California.

Assistant United States Attorney STEPHEN J. LICCIONE, Eastern District of Wisconsin, was commended by Mr. Donald J. Goode, Vice President, Human Resources Department, Security Savings and Loan, for his excellent case preparation and professionalism in the successful prosecution of United States v. Qualls.

Assistant United States Attorney EDITH S. MARSHALL, District of Columbia, was commended by Mr. Lewis D. Junior, American Consul General, Rotterdam, The Netherlands, for her intelligence, patience and devotion to duty as demonstrated during the trial of Thomas v. Shultz.

Assistant United States Attorney GEORGE D. NIESPOLO, Northern District of California, was commended by Mr. Frank J. Marine, Special Attorney, Honolulu Field Office, Organized Crime and Racketeering Section, Criminal Division, Department of Justice, for his assistance in the successful prosecution of Hawaii gangster defendants in United States v. Madamba.

Assistant United States Attorney JOHN P. PANNETON, Eastern District of California, was commended by Assistant Attorney General Stephen S. Trott, Criminal Division, Department of Justice, for his excellent contributions as planner of and lecturer at the Economic Crime Enforcement Conference in San Diego, California.

Assistant United States Attorneys L. LELAND SMITH and MARK D. STUAAN, Central District of Illinois, were commended by Mr. L.W. Wiggs, Postal Inspector-in-Charge, United States Postal Service, St. Louis, Missouri, for their successful prosecution of a very complex million dollar fraud scheme.

Assistant United States Attorney R. JEFFREY WAGNER, Eastern District of Wisconsin, was commended by Mr. Elliott E. Lieb, Chief of the Milwaukee Office, Criminal Investigation Division, Internal Revenue Service, for his excellent trial preparation and trial skills which resulted in the successful prosecution of United States v. Piper.

CLEARINGHOUSEVictim/Witness Community Services Directory

The Victim/Witness Assistance Unit for the District of Columbia United States Attorney's Office has recently compiled a Community Services Directory listing organizations which specifically assist victims or witnesses of crimes committed in the District of Columbia. The Directory serves as a reference source not only for the Victim/Witness Assistance Unit, but for all Assistant United States Attorneys.

Victim/Witness Coordinators and Assistant United States Attorneys desiring a copy should contact the Office of Legal Services on FTS 633-4024, and request CH-26.

Executive Office)

POINTS TO REMEMBERAttorney General's Advisory Committee of United States Attorneys

The following appointments have been made to subcommittees of the Attorney General's Advisory Committee of United States Attorneys for 1986. Additional appointments may be made as new United States Attorneys are sworn in.

Subcommittees:Affirmative Civil Litigation

Chairman, Edward S. G. Dennis, Jr., Eastern District of Pennsylvania,
Marvin Collins, Northern District of Texas
Frank W. Donaldson, Northern District of Alabama
Thomas W. Greelish, District of New Jersey
Leon B. Kellner, Southern District of Florida
Salvatore R. Martoche, Western District of New York
Henry K. Oncken, Southern District of Texas
Joseph P. Russoniello, Northern District of California
William F. Weld, District of Massachusetts
James J. West, Middle District of Pennsylvania
Robert J. Wortham, Eastern District of Texas

Drug Abuse Prevention and Education

Chairman, Daniel A. Bent, District of Hawaii
Joseph S. Cage, Jr., Western District of Louisiana

Drug Abuse Prevention and Education (Cont'd)

Edward S.G. Dennis, Jr., Eastern District of Pennsylvania
J. Alan Johnson, Western District of Pennsylvania
Leon B. Kellner, Southern District of Florida
William A. Kolibash, Northern District of West Virginia
Ronald D. Lahners, District of Nebraska
John E. Lamp, Eastern District of Washington
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Layn R. Phillips, Northern District of Oklahoma
Charles H. Turner, District of Oregon
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Raymond J. Dearie, Eastern District of New York
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Roger Hilfiger, Eastern District of Oklahoma
James G. Richmond, Northern District of Indiana
Joseph P. Russoniello, Northern District of California
Michael R. Spaan, District of Alaska
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Stanley A. Twardy, Jr., District of Connecticut
Robert G. Ulrich, Western District of Missouri
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John Volz, Eastern District of Louisiana
Robert Q. Whitwell, Northern District of Mississippi

Office Management

Chairman, Stephen M. McNamee, District of Arizona
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Joe B. Brown, Middle District of Tennessee
William C. Carpenter, Jr., District of Delaware
Gerald D. Fines, Central District of Illinois
William A. Maddox, District of Nevada
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George W. Proctor, Eastern District of Arkansas
John A. Smietanka, Western District of Michigan
Joseph M. Whittle, Western District of Kentucky

Law Enforcement Coordination

Chairman, Joe D. Whitley, Middle District of Georgia
George L. Phillips, Southern District of Mississippi
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Richard S. Cohen, District of Maine
Anton R. Valukas, Northern District of Illinois
W. Thomas Dillard, Northern District of Florida
Frederick J. Hess, Southern District of Illinois
Kenneth W. McAllister, Middle District of North Carolina
Richard A. Stacy, District of Wyoming
John W. Gill, Jr. Eastern District of Tennessee

Budget

Chairman, W. Thomas Dillard, Northern District of Florida
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John R. Byrnes, Western District of Wisconsin
Maurice O. Ellsworth, District of Idaho
J. Alan Johnson, Western District of Pennsylvania
William L. Lutz, District of New Mexico
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George L. Phillips, Southern District of Mississippi
Stanley A. Twardy, Jr., District of Connecticut

Organized Crime and Narcotics

Chairman, Peter K. Nunez, Southern District of California
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Patrick M. McLaughlin, Northern District of Ohio
Henry K. Oncken, Southern District of Texas
Hinton R. Pierce, Southern District of Georgia

Legislation

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Stanford O. Bardwell, Jr., Middle District of Louisiana
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Louis G. DeFalaise, Eastern District of Kentucky
Joseph E. diGenova, District of Columbia
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Layn R. Phillips, Northern District of Oklahoma
Stanley A. Twardy, Jr., District of Connecticut
Brent D. Ward, District of Utah

Indian Affairs

Chairman, Philip N. Hogen, District of South Dakota
Byron H. Dunbar, District of Montana
William L. Lutz, District of New Mexico
Stephen M. McNamee, District of Arizona
Rodney S. Webb, District of North Dakota

Civil Division Tort Policy Working Group

Chairman, Helen M. Eversberg, Western District of Texas
James W. Diehm, District of the Virgin Islands
Patrick M. McLaughlin, Northern District of Ohio
Robert Q. Whitwell, Northern District of Mississippi

Delegates to Criminal Division Sentencing Working Group

J. Alan Johnson, Western District of Pennsylvania
Robert W. Merkle, Middle District of Florida
John D. Tinder, Southern District of Indiana
Robert G. Ulrich, Western District of Missouri

Liaison to Attorney General's Advocacy Institute

David A. Faber, Southern District of West Virginia
William L. Lutz, District of New Mexico
Stephen M. McNamee, District of Arizona

Executive Working Group on Federal-State-Local Law Enforcement Relations

John D. Tinder, Southern District of Indiana
Joe D. Whitley, Middle District of Georgia

Delegates to National Environmental Enforcement Council

Gene S. Anderson, Western District of Washington
Frederick J. Hess, Southern District of Illinois
William S. Price, Western District of Oklahoma
Anton R. Valukas, Northern District of Illinois
Richard V. Wiebusch, District of New Hampshire

Delegates to Attorney General's Media Guidelines Committee

John W. Gill, Jr., Eastern District of Tennessee
George L. Phillips, Southern District of Mississippi

Delegate to Attorney General's Advisory Corrections Council

Frederick J. Hess, Southern District of Illinois

Items Submitted for Publication in the United States Attorneys' Bulletin.

The Executive Office for United States Attorneys, through its Office of Legal Services, Bulletin Staff, has developed a form for United States Attorneys' offices to regularly submit summaries of case decisions, with application to other districts, for publication in the Bulletin. A copy of the form is appended to this issue of the Bulletin, along with instructions for completing the form.

(Executive Office)

JURIS Data Base List

Appended to this issue of the Bulletin is the most recent revised JURIS Data Base Listing, dated January 1986.

(Justice Management Division)

Personnel

Effective January 3, 1986, Elsie L. Munsell resigned as United States Attorney for the Eastern District of Virginia.

Effective January 6, 1986, Justin W. Williams was court appointed United States Attorney for the Eastern District of Virginia.

Effective January 6, 1986, Stanley A. Twardy, Jr. was sworn in as the Presidentially-appointed United States Attorney for the District of Connecticut.

Effective January 6, 1986, Jason P. Green was appointed the Director, Office of Legal Services, Executive Office for United States Attorneys.

Effective January 6, 1986, Arnold I. Burns assumed the position of Associate Attorney General.

(Executive Office)

Potential Litigation on Libyan Executive Orders

On January 7, 1986, the President signed an Executive Order prohibiting trade with Libya and certain other transactions involving Libya, including the performance of contracts supporting industrial or other commercial projects in Libya and travel to Libya or activities within Libya by any United States citizen or permanent resident alien other than transactions necessary to

effect such person's departure from Libya until February 1, 1986. The order does not prohibit travel to or from Libya for journalistic activity by persons regularly employed in such capacity by a news gathering organization.

On January 8, 1986, the President signed a second Executive Order blocking transfers of all property of the government of Libya in the United States and in the possession of United States persons in this country or their overseas branches.

Both orders were signed pursuant to authority given the President by the International Emergency Economic Powers Act (50 U.S.C. §1701, et seq.), the National Emergencies Act (50 U.S.C. §1601 et seq.), and Section 301 of Title 3 of the United States Code. The January 7th Order was additionally supported by authority contained in Sections 504 and 505 of the International Security and Development Cooperation Act of 1985 (Public Law 99-83), and Section 1114 of the Federal Aviation Act of 1958, as amended (49 U.S.C. §1514). The Secretary of the Treasury, in consultation with the Secretary of State, is authorized under each Order to carry out its provisions.

The Executive Orders referred to above are now published as Executive Order No. 12543, 51 Fed. Reg. 875 (January 9, 1986), and Executive Order No. 12544, 51 Fed. Reg. 1235 (January 10, 1986). Treasury Department regulations implementing the Executive Orders are published at 51 Fed. Reg. 2462 (January 16, 1986).

In the event that you become aware that litigation has or may be initiated that will challenge these orders or the actions taken under them, please contact immediately David J. Anderson, Director, Federal Programs Branch, Civil Division, at FTS 633-3354, or R. John Seibert, Senior Trial Counsel, Federal Programs Branch, Civil Division, at FTS 633-3395. Such suits may include actions not only against the United States and its agencies, but also between private parties whose commercial interests are affected by the Orders. Inquiries on specific aspects of the Executive Orders should be referred to Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, at FTS 376-0408.

(Civil 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 the Communications Center, Executive Office for United States Attorneys, at FTS 633-1020.

(Executive Office)

CASENOTES

CIVIL DIVISION

SUPREME COURT REAFFIRMS PRINCIPLE OF JUDICIAL DEFERENCE
TO ACADEMIC DECISIONS.

In this action a medical student challenged his dismissal from the University of Michigan's combined undergraduate-MD program on the basis of poor academic performance. After a six-year history of academic difficulties, Ewing failed Part I of the National Board of Medical Examiners test, achieving the lowest score ever recorded by a University of Michigan student. The medical school's Promotion and Review Board determined to dismiss him from the program. Following unsuccessful appeals to the university, Ewing filed suit in district court claiming that he had a property interest in his status as a medical student and that the university's action was arbitrary and capricious and violated a substantive due process right because the university had a practice of permitting medical students who failed the NBME to retake it and he was the only student not permitted to retake the exam.

Following a four-day bench trial, the district court dismissed the action, specifically ruling that review of academic decisions is extremely limited and that Ewing had not alleged bad-faith or ill will in the university's conduct sufficient to establish a substantive due process claim. The Sixth Circuit reversed on substantive due process grounds stating that the arbitrary and capricious deprivation of a constitutionally recognized right could state a substantive due process violation.

Assuming, without deciding, that federal courts can review academic decisions under a substantive due process standard, the Supreme Court reversed the court of appeals decision finding that the facts of record amply support the university's decision to dismiss Ewing. In so doing the Court reaffirmed prior decisions counseling judicial restraint in review of the substance of academic decisions and emphasized its special concern for academic freedom. The government filed an amicus curiae brief in support of the university.

Regents of the University of Michigan v. Ewing, 106 S.Ct. 563, No. 84-1273 (Dec. 9, 1985). D. J. # 145-0-1665.

Attorneys: Leonard Schaitman (Civil Division) FTS 633-3441;
Freddie Lipstein (Civil Division) FTS 633-3542.

THIRD CIRCUIT HOLDS THAT A TORT ACTION CHALLENGING THE INSPECTION AND SUPERVISION OF A FEDERALLY-FUNDED SEWER GRANT IS BARRED BY THE DISCRETIONARY FUNCTION EXCEPTION.

Several townships in Pennsylvania formed a Municipal Authority to construct a sanitary sewer system. The Environmental Protection Agency (EPA) awarded the Authority a grant of \$8,600,000, and the Farmers Home Administration (FmHA) approved a long-term loan of \$3,200,000, contingent upon the satisfactory completion of the project. The Authority obtained interim financing from the two plaintiff banks. The construction of the sewer was faulty, and a citizen's suit led to a court order directing the Authority to abate the discharge of untreated sewage into nearby waterways. EPA then refused to make its final grant payment, and FmHA refused to close its loan on the ground that the defects in the sewer system had not been corrected. The Authority defaulted on its loans from the two banks. The banks foreclosed upon the Authority's assets and brought this Tort Claims Act suit against the government for the deficiency of \$3,674,129 plus interest.

The banks claimed that the two federal agencies had inspected the construction as it progressed and had negligently failed to detect the defects and to advise the banks of them. The district court granted summary judgment to the government, holding that the action was barred by the misrepresentation exception. On the banks' appeal, the Third Circuit affirmed, but based its decision upon the discretionary function exception, without reaching the misrepresentation exception. Relying upon United States v. S.A. Empresa de Viacao Aerea Rio Grandense, 104 S.Ct. 2755 (1984), the court of appeals held that the expenditure of federal funds for the sewer project was a discretionary function. It affirmed the district court's finding that the government's inspections of the project had been solely to protect its own interests, not those of the plaintiff banks. It also held that neither the statutes, regulations, nor contract documents created any duty upon the government to conduct inspections for the banks' benefit.

Pennbank and First Seneca Bank v. United States, ___ F.2d ___, No. 85-3066 (3d Cir. Dec. 20, 1985). D. J. # 157-64-713.

Attorneys: Anthony J. Steinmeyer (Civil Division) FTS 633-3388; Roger Clegg (formerly on detail to the Appellate Staff) FTS 633-2035.

ELEVENTH CIRCUIT HOLDS INTERSTATE LAND SALES FULL DISCLOSURE ACT PROTECTS PURCHASERS OF CONDOMINIUM APARTMENT UNITS SOLD PRIOR TO COMPLETION.

Plaintiff signed a purchase contract for a luxury condominium unit in Florida that did not contain a promise to deliver within two years. The seller had not registered the development, nor provided the necessary pre-sale disclosures, pursuant to the Interstate Land Sales Full Disclosure Act. Plaintiff brought this suit for rescission, as the Act provides. The district court granted summary judgment to the developer, holding that the Act was intended to protect only purchasers of "raw land." Because that decision directly conflicted with HUD's regulations, we filed an amicus brief and presented oral argument on behalf of the United States. In a decision that basically adopts our arguments, the court of appeals reversed. In particular, the court of appeals agreed with HUD that a condominium was a type of real property ownership and, as such, was properly included within the concept of "lots," the term used by Congress in the Act. The court also agreed with HUD that the Land Sales Act requirements apply at the time a sales contract is entered into, not (as the district court had held) at the time title formally is transferred. The case was remanded for trial on another issue, the outcome of which is of no interest to the government.

Winter v. Hollingsworth Properties, Inc., F.2d , No. 84-5476 (11 Cir. Dec. 11, 1985). D. J. # 36-18-527.

Attorneys: John F. Cordes (Civil Division) FTS 633-3380;
Bruce Forrest (Civil Division) FTS 633-4575

LAND AND NATURAL RESOURCES DIVISION

CORPS REGULATION OF ADJACENT WETLANDS DOES NOT CONSTITUTE A TAKING.

The Supreme Court unanimously reversed the Sixth Circuit and issued an opinion upholding the Corps of Engineers' regulations asserting Clean Water Act jurisdiction over "adjacent wetlands." In the opinion written by Justice White, the Court rejected the Sixth Circuit's position that the Corps' regulatory authority under the statute and its implementing regulations must be narrowly construed to avoid a taking without just compensation in violation of the Fifth Amendment. The Supreme Court held that the requirement of obtaining a permit did not constitute a taking. It stated that ultimately if a permit is denied, a taking might occur, but then a Tucker Act remedy would be available. Therefore, the possibility of a taking did not justify adoption of a

narrowing construction of regulatory jurisdiction. The Court then "easily" concluded that the property in question was an "adjacent wetlands" under the plain language of the regulations. Finally, the Court upheld the validity of the regulations. It restated the principle that an agency's interpretation of the statutes it administers should be upheld if reasonable. It reviewed the Clean Water Act legislative history and found ample justification for the Corps' conclusion that "waters of the United States" encompassed "adjacent wetlands." It could not say that the Corps' ecological judgment that wetlands affect the water quality of adjacent water bodies and function as integral parts of such bodies was unreasonable. The Court also found significant the legislative history of the 1977 amendments in which Congress refused to overrule the administrative construction of the statutory jurisdiction.

United States v. Riverside Bayview Homes, ___ U.S. ___, No. 84-701 (Dec. 4, 1985). D. J. # 90-5-1-1-702.

Attorneys: Ellen J. Durkee (Land and Natural Resources Division) FTS 633-3888; Anne S. Almy (Land and Natural Resources Division) FTS 633-2749.

CERCLA DOES NOT PERMIT JUDICIAL REVIEW OF EPA'S RESPONSE ACTIONS PRIOR TO INITIATION OF COST-RECOVERY ACTION.

The court agreed with our position that CERCLA does not permit judicial review of the Environmental Protection Agency's response actions prior to initiation of a cost-recovery action. The court rejected the waste generator's due process arguments and their attempts to distinguish between emergency removal actions and long-term remedial actions.

Lone Pine Steering Committee v. EPA, ___ F.2d ___, No. 85-5097 (3d Cir. Nov. 22, 1985). D. J. # 90-11-2-111.

Attorneys: Kathleen P. Dewey (Land and Natural Resources Division) FTS 633-4519; David C. Shilton (Land and Natural Resources Division) FTS 633-5580.

NINTH CIRCUIT HOLDS THAT DISTRICT COURT LACKS JURISDICTION TO REVIEW INTERIOR SECRETARY'S DETERMINATION OF HEIRS OF DECEASED INDIAN FOR CLAIMS JUDGMENT DISTRIBUTION PURPOSES.

Acting pursuant to the Klamath Indian Judgment Distribution Act (25 U.S.C. §§565-565g) the Secretary of the Interior determined the heirs of a deceased Klamath Indian for purposes of

distributing the decedent's per capita share of a judgment award to the tribe. The plaintiff had failed to prove to the Secretary's satisfaction that he was either the biological or adopted son, and hence the heir, of the deceased member. The statute (25 U.S.C. §565a(b)) provided that such determination "shall be final and conclusive." The plaintiff sought judicial review alleging that the Secretary applied the wrong law upon which such determination should be based. The district court dismissed for want of subject matter jurisdiction and the court of appeals affirmed.

The appeals court said that overcoming "the presumption that persons aggrieved by administrative action are afforded judicial review of that action" requires a "persuasive reason to believe that Congress intended to preclude such review." Such Congressional intent may be found either in explicit statutory proscription or in a system of remedies in the context of the entire legislative scheme. Here the court found both. The court noted the numerous statutory language variations concerning the finality of the Secretary's findings with regard to heirship and other kinds of fact finding. But, it refused to assume from these that Congress purposely varied the discretion given to the Secretary in this field. It concluded that Congress intended the Secretary "to decide finally, and without judicial review, the heirship of persons claiming interests in the judgment fund entitlements of deceased Indians."

Ruff v. Hodel, 770 F.2d 839, No. 84-3809 (9th Cir. Sept. 4, 1985). D. J. # 90-2-4-982.

Attorney: George D. Dysart (Special Assistant United States Attorney, District of Oregon) FTS 423-3660.

NINTH CIRCUIT ISSUES PRELIMINARY INJUNCTION WHERE PLAINTIFFS RAISE "SERIOUS QUESTIONS" AS TO ADEQUACY OF EIS.

The Ninth Circuit reversed the denial of a preliminary injunction against construction of a Forest Service road in southeastern Alaska. The court held that the district court had improperly read Section 708 of ANILCA (the RARE II release clause) to bar review under NEPA of whether to build a road in a nonwilderness area. The district court was also found to have erred in holding that the agency had discretion to determine the level of detail in the EIS. The court of appeals directed that an "interim injunction" should be entered since plaintiffs had raised "serious questions" as to the adequacy of the relevant EIS. The court found that sufficient irreparable harm had been shown by the mere fact that such a serious question had been raised regarding compliance with NEPA. Judge Skopil concurred with the result, but wrote separately to express his opinion that the majority had read Section 708 too narrowly.

City of Tenakee Springs v. Block, _____ F.2d _____, No. 84-3883
(9th Cir. Dec. 20, 1985). D. J. # 90-1-4-2688.

Attorneys: David C. Shilton (Land and Natural Resources
Division) FTS 633-5580; Dirk D. Snel (Land and Natural
Resources Division) FTS 633-4400.

COMMERCIAL FISHERMEN FOUND TO HAVE NO CONTRACT
GUARANTEEING THEIR RIGHT TO FISH FOREVER IN EVERGLADES
NATIONAL PARK.

Commercial fishermen brought this suit to challenge the National Park Service's (NPS) rules banning commercial fishing in the Everglades National Park effective December 31, 1985. The fishermen alleged (1) that they were third party beneficiaries to a contract between the United States and Florida and that the rules abridged their vested right to fish insured by that contract; (2) that NPS should be estopped from enforcing its rules because it promised never to prohibit fishing in the Park; and (3) that the rules were invalid because they were arbitrary and capricious. The district court granted our motion for summary judgment, and the court of appeals affirmed

The court of appeals examined both the agreement between the United States and Florida and Florida law and found no contract guaranteeing the fishermen the right to fish forever in the Park. Thus, it held, the fishermen had no vested property right. The court also held that NPS could not be estopped because its representations could not be construed as promises and were subject to NPS's retention of its conservation function. Thus, any alleged reliance by the fishermen on suggestions that commercial fishing would never be prohibited in the Park was unreasonable. Finally, the court held that the fishermen's claim that the rules are invalid because they depart from NPS policy was meritless in light of NPS's regulation of commercial fishing from the time the Park was established to the time the rules were promulgated. Further, the rules were fully supported by the record, especially in light of the broad discretion the NPS has in determining how best to protect public land resources.

Organized Fishermen of Florida v. Hodel, _____ F.2d _____, No. 84-5722 (11th Cir. Nov. 15, 1985). D. J. # 90-1-4-2165.

Attorneys: J. Carol Williams (Land and Natural Resources
Division) FTS 633-2757; Jacques B. Gelin (Land and Natural
Resources Division) FTS 633-2762.

UNITED STATES ATTORNEYS' OFFICES

DISTRICT OF IDAHO

DISTRICT COURT, RELYING ON BUSH V. LUCAS, DECLINES TO CONSIDER FEDERAL EMPLOYEE'S BIVENS ACTION ARISING FROM A CONFLICT OF INTEREST DISPUTE.

An employee of the Fish and Wildlife Service, Department of Interior, brought a Bivens and Federal Tort Claims Act action against a number of his supervisors and the United States. Plaintiff alleged Fifth Amendment violations arising from his supervisor's handling of a conflict of interest problem which arose from plaintiff's operation of his private business. Plaintiff sought declaratory and injunctive relief and \$5,312,500 in damages. The District Court, relying upon the Supreme Court's decision in Bush v. Lucas, 462 U.S. 367 (1983), dismissed the Bivens action. Citing to the plaintiff's numerous administrative alternatives, the court concluded that the "comprehensive regulation of federal civilian employment by Congress" was a proper basis to refuse to allow the plaintiff to maintain a Bivens action even if the federal defendants had "grossly overreacted to plaintiff's conflict of interest and were overzealous in taking personnel actions against plaintiff . . ." The court also dismissed the FTCA action refusing to extend Kelley v. United States, 568 F.2d 259 (2d Cir. 1978) beyond federal driver cases.

Lewis v. Myshak, ___ F. Supp. ___, No. 84-1357 (D. Idaho, Dec. 20, 1985). J. D. # 157-22-396.

Attorney: Jeffery W. Ring, (Assistant United States Attorney, District of Idaho) FTS 554-1211.

ITEM FOR PUBLICATION IN THE UNITED STATES ATTORNEYS' BULLETIN

TO: Editor-in-Chief, United States Attorneys' Bulletin
1629 - Main, 10th & Pennsylvania Avenue, N.W.
Washington, D.C. 20530

FROM: Name: _____ Phone No: _____

Title: _____

District: _____

A. HEADNOTE (brief description of the case):

B. CASE SUMMARY (Note: Please report only those cases which may have relevancy for other districts.):

C. TITLE OF CASE (with complete citation and DOJ number):

D. Attorney(s) to contact for further information, if different from above, include telephone number:

Dated: _____

INSTRUCTIONS FOR COMPLETING THE FORM, "ITEM FOR
PUBLICATION IN THE UNITED STATES ATTORNEYS' BULLETIN"

- A. Headnote. The headnote is a brief description of the holding, is in all capital letters, is underlined, and the left and right margins are 15 and 70, respectively, with the right margin justified. If the headnote is more than one line, only underline the last line.
- B. Case summary. Briefly highlight the facts of the case, it's status, and it's relevance to other districts, if known. Please submit only those cases with relevancy to other districts and state that relevancy early in the case summary. Also, please limit the length of individual items to one-half page.
- C. Complete case title, with citation. The Bulletin Staff follows the "Bluebook" (A Uniform System of Citation, Thirteenth Edition, The Harvard Law Review Association (1983)) recommendations for case cites, and includes the Department of Justice control number assigned to the case.
- D. Attorney(s). Give the name(s), section assigned in United States Attorney's office, and telephone number(s) of the attorney(s) who can be contacted for further information about the case.

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JURIS DATA BASE LISTING
Revised January 1986

CASELAW

U.S. Supreme Court	178 U.S. (1900) - Slips
Federal Reporter, 2d Series	300 F.2d (1962) - Slips
Federal Supplement	332 F.Supp (1970) - Slips
Court of Claims	134 Ct. Cl. - 231 Ct. Cl. (1956 - February 1982)
Claims Court	1 Cl. Ct. (1982) - Slips
Federal Rules Decisions	73 F.R.D. (1976) - Slips
Court of Military Review	1 C.M.R. - 50 C.M.R. (1951-1975)
Military Justice Reporter	1 M.J.R. - Slips (1974 - Present)
Atlantic 2d Reporter	370 A.2d (1977) - Present (D.C. cases only)
Bankruptcy Reporter	1 B.R. (1979) - Slips

SHEPARD'S CITATIONS

United States Reports	1944 - Present
Supreme Court Reporter	1944 - Present
Lawyer's Edition (1st & 2d Series)	1944 - Present
Federal Reporter	1970 - Present
Federal Reporter Second Series	1970 - Present
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Federal Rules Decisions	1970 - Present
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Court Martial Reports	1951 - Present
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STATLAW - STATUTORY LAW

Public Laws	93rd - 98th Congress (1-149 and 473)
United States Code	1982 Edition
** Executive Orders	12/31/47 - 11/1/85
Civil Works Laws	Vols. 1-4 (1790 - 1966) and Selected Public Laws to September, 1983

* New JURIS File
** Major File Additions

STATLAW - STATUTORY LAW (Cont'd)

Comprehensive Crime Control Act of 1984

Pub. L. No. 98-473 (CCCA),
 Pub. L. No. 98-573
 (Tariff Act), Pub. L. No.
 98-596 (Fine Enforcement
 Act) and Criminal
 Division Handbook on the
 Comprehensive Crime
 Control Act of 1984

DIGEST - WEST HEADNOTES

Supreme Court Reporter
 Federal Reporter, 2d Series
 Federal Supplement
 Federal Rules Decisions
 Regional Reporters (State Cases)

1961 - advance sheets
 1960 - advance sheets
 1960 - advance sheets
 1960 - advance sheets
 1967 - advance sheets

TAX

** U.S. Tax Court Decisions

U.S. Board of Tax Appeals Decisions
 Enforcement Decisions

Tax Protesters

Vols. 83 (2/84-Present)
 Vols 1-66 (11/42 - 9/76)
 Vols 19 - 47 (2/30-11/42)
 Tax Division's Summons
 Enforcement Decisions
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 Decision List

BRIEFS - DEPARTMENT OF JUSTICE BRIEFS

Office of the Solicitor General Briefs

Civil Division Briefs

Civil Division Trial Briefs

Civil Rights Division Briefs

Land and Natural Resources
 Division Briefs

U.S. Attorneys' Offices Briefs

Briefs since the 10/1982
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 Selected Criminal Appellate
 Briefs (1980-Present)

MANUAL - UNITED STATES ATTORNEYS' MANUAL

** All Titles (1-10)

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WRKPRDT - DEPARTMENT OF JUSTICE WORK PRODUCTS

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Civil Division Monographs	Selected Monographs
Criminal Division Narcotics Newsletter	July 1979 - Present

LEGHIST - Legislative Histories of Federal Laws

Equal Access to Justice Act (EAJA) Legislative History

ADMIN - ADMINISTRATIVE LAW

Published Comptroller General Decisions	Vols. 1-63 (1921-Sept. 1984)
Unpublished Comptroller General Decisions	(1/5/51 - 9/28/84)
Opinions of the Attorney General	Vols. 1-43 (1791-1980)
O.L.C. Memorandums	Vols. 1-3 (1977-1979)
Board of Contract Appeals	Vols. 56-2 to 85-2 (7/56-4/85)
Federal Labor Relations Authority Decisions & Reports on Rulings of the Asst. Sec. of Labor for Labor Management Relations	Vols. 1-17 (1/79-3/85) 1 A/SLMR - 8 A/SLMR (1/73-12/78)
Federal Labor Relations Council Rulings on Requests of the Asst. Sec. of Labor for Labor Management Relations	Vols. 1-6 (1/70-12/78) Volume 1 (2/70-6/75)
HUD Administrative Law Decisions	Selected Decisions (2/79 - present)
Merit Systems Protection Board Decisions	Vols. 1 (1940)-18 (1984)
Board of Immigration Appeals Decisions	and Slips

REGS - FEDERAL REGULATIONS

** Code of Federal Regulations	1984 Edition, Titles 32, 40-50
	**1985 Edition, Titles 1-31, 33-39
Unified Agenda of Federal Regulations	October, 1985 Edition

TREATIES

Bevans: Treaties and Other International Agreements of the United States	Vols. 1-12 (1776-1949)
United States Treaties and Other International Agreements	Vols. 1-33 (1/50 - 5/83)
Department of Defense Unpublished International Agreements	(6/47 - 1/84)

FOIA - FREEDOM OF INFORMATION ACT

FOIA Update Newsletter

Vol. 1, No. 1 - Vol. 6,
No. 3 (Fall 1979 -
Summer 1985)

FOIA Short Guide

FOIA Case List Publication
(September 1985 Edition)

FORENS - Mid-Atlantic Association of Forensic Scientists Newsletter

Scientific Sleuthing Newsletter

July, 1976 - Spring, 1985

INDLAW - INDIAN LAW

Opinions of the Solicitor (Interior)
Ratified Treaties
Unratified Treaties
Presidential Proclamations
Executive Orders and Other Orders
 Pertaining to Indians

Vols. 1 and 2 (1917 - 1974)
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1801 - 1868
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REFERENZ - TRAINING AIDS FOR JURIS USERS

JURIS Reference Manual, Parts I - IV

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

- 01-03-86 From William P. Tyson, Director, Executive Office for United States Attorneys, by Susan A. Nellor, Director, Office of Legal Services, re: "Annual Survey of Corruption Prosecutions in United States Attorneys' Offices."
- 01-06-86 From William P. Tyson, Director, Executive Office for United States Attorneys, by Jason P. Green, Director, Office of Legal Services, re: "Motor Vehicle Theft Law Enforcement Act of 1984 (184407)."

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