# ANNUAL REPORT

OF THE ATTORNEY GENERAL
OF THE UNITED STATES

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

To the Senate and House of Representatives of the

United States of America in Congress assembled:

I herewith report on the business of the Department of Justice for the Fiscal Year 1974.

The report includes a brief summary of the highlights and major accomplishments of the Department, followed by detailed accounts covering the activities of the various offices, divisions and bureaus of the Department. This report was prepared pursuant to the requirements of P.L. 90-620. It is my understanding that the report has been delayed primarily because of printing problems. The Department of Justice regrets the delay in forwarding this report.

I trust the report will provide additional insight into the activities of the Department of Justice and will help members of Congress assess the Department's performance in executing the laws.

Respectfully submitted,

Edward H. Levi

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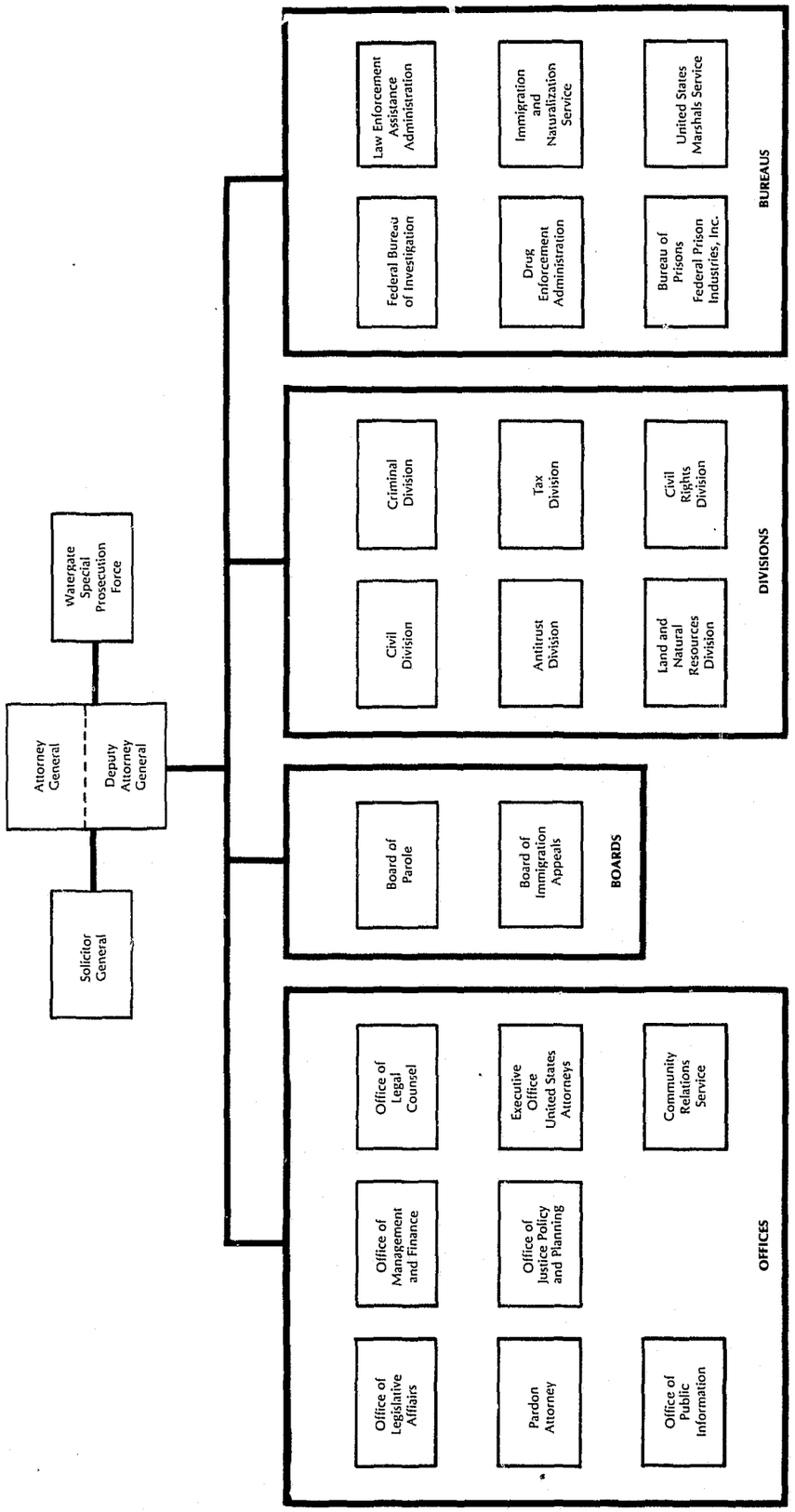





# Summary of Activities and Accomplishments—Fiscal Year 1974

## Litigation

The United States Attorneys, who represent the United States in cases before the Federal district and appellate courts, terminated 44,255 criminal cases and 30,998 civil cases in 1974. The yearly total in pending cases increased in the civil area, due largely to the large number of civil cases filed. The number of pending criminal cases was reduced 2.5 percent over the preceding year. There were 464,124 hours spent in court which represent an overall increase of 12.9 percent with several districts showing significant increases. U.S. Attorneys also brought 25,786 criminal proceedings before Federal grand juries and spent approximately 10.7 percent more time before grand juries than in the previous year. The number of hours in the grand jury rose markedly largely because of the complexity of many of the matters which were investigated by the U.S. Attorneys such as fraud, criminal tax and other white collar crimes. In addition to their trial work, the U.S. Attorneys also handled criminal and civil appeals. The number of appeals filed increased 5.4 percent overall, with an increase of 20.6 percent over the previous year in the civil area.

The Office of Solicitor General handled 2,428 cases before the Supreme Court, an increase of 14 percent over the last term and 143 percent over the past 10 terms.

The Tax Division collected $79 million in judgments against delinquent taxpayers in fiscal year 74, while saving $115 million in refund suits. Decisions of the Tax Court involving assessed deficiencies of over $5 million were upheld in the Courts of Appeals. The Tax Division also prepared more trial and appellate briefs and tried and argued more cases than in 1973. The Division obtained the convictions of 968 persons for criminal tax offenses, reflecting a conviction rate of 92 percent in all the cases prosecuted.

The Organized Crime Strike Forces of the Criminal Division registered a total of 1,544 convictions in organized crime reflecting a 60 percent increase. The number of defendants indicted during the year rose by more than 20 percent over fiscal year 1973. Wiretapping under court order provided an effective weapon in the campaign against organized crime with 181 orders executed in 1974. During the year, 54 defendants in 37 cases were convicted of distributing obscene material. This compares with 33 convictions in 24 cases in 1973, and only two convictions in 1969. With the cooperation of IRS, FBI and HUD personnel, the Fraud Section has successfully implemented a campaign against fraudulent activities in 25 cities. In the course of the two year program, 276 indictments naming 467 defendants have been returned, resulting in 280 convictions by trial or plea, including the conviction of three FHA area or insuring office directors. This is among the most comprehensive fraud-against-the-Government investigations ever instituted and is a classic example of the coordinating and supervising capability of an enforcement section.

The Antitrust Division filed 67 antitrust cases (33 civil and 34 criminal) in the Federal District courts. This is an increase over the 62 cases (42 civil and 20 criminal) filed in 1973. Of the cases instituted in fiscal 1974, 13 in-

volved mergers, 31 alleged price fixing and nine contained monopolization charges. In the past year the Division terminated 66 cases (48 civil and 18 criminal) and at the end of the fiscal year there were 135 cases (101 civil and 34 criminal) pending. In addition, there were two cases in which consent decrees were signed by one or more, but not all defendants, and the cases were settled, but not terminated. This was due to the customary 30-day waiting period from the time a decree is lodged with the court to the time it is finally entered. Of the 48 civil cases closed, the Government won 42, lost three and dismissed three; of the 18 criminal cases concluded, the Government won 15 and lost three. One antitrust case, appealed to the Supreme Court in fiscal 1973, was terminated in 1974. This cases was lost by the Government. In 1974 two cases were appealed to the Supreme Court.

The Civil Division worked on a total of 45,334 cases during the year. This workload was comprised of 26,304 cases which were still pending at the end of the 1973 year plus 19,030 new cases in 1974. The Division terminated 15,775 cases in 1974, leaving 29,559 cases pending. Of those concluded, 45 percent were suits against the United States in which a total exceeding $1.9 billion was sought. Recoveries were held to $84.3 million or 4.3 percent of the aggregate claims. The Government was plaintiff in the other 55 percent of the terminated cases, claiming a total of $221.2 million. Judgments and settlements in those cases amounted to $127.3 million or a recovery of 47.5 percent. Collections by the Civil Division amounted to $90.9 million in fiscal 1974, which included $49.3 million in cash with the balance in the value of property obtained.

The Civil Rights Division created in 1957, continued its emphasis on enforcing all Federal statutes and executive orders prohibiting discrimination in employment, education, housing, voting, public accommodations and facilities and federally funded programs. In 1974, a new unit, the Office of Indian Affairs, was established to protect the rights of American Indians under the Civil Rights Act of 1968. The Division became involved in 236 new law suits during fiscal year 1974, an increase of 27 cases of the previous year, establishing a new litigation record.

The Land and Natural Resources Division carries out its responsibilities through eight sections and a Legislative Assistant. The Division is involved in legislation concerning air, water and noise pollution and such natural resources as oil reserves and minerals. In 1974, the Division completed a requested Congressional report concerned with the establishment of a judicial system that would handle environmental cases exclusively. Legislative matters docketed in 1974 numbered 22 less than in 1973, but did produce several important acts dealing with the construction of the Alaskan pipeline and energy (oil) allocations for future use. Congressional priorities for 1974 showed environmental and energy matters to be the most important subjects.

### Investigation

Investigations by the FBI led to a record number of convictions, 15,240, the highest in history. Fines, savings, and recoveries in FBI cases amounted to $489,224,018.

A total of 37,891 fugitive felons were located including fugitives sought for Federal violations as well as those located for state agencies under the Fugitive Felon Act. The FBI laboratory in Washington, D.C. conducted 557,454 examinations of evidence, a 4.9 percent increase over the previous year.

During the year, through its domestic efforts and in cooperation with foreign governments, the Drug Enforcement Administration removed more than 1,039 pounds of heroin, 796 pounds of morphine base and 35,398 pounds of opium from the worldwide illicit market. DEA agents arrested or assisted state and foreign police in investigations leading to the arrest of nearly 14,700 illicit drug violators. Furthermore, in pursuit of its responsibility to prevent legally manufactured drugs from reaching the illicit market, DEA initiated more than 1400 investigations of persons and firms that handle these drugs.

### Immigration and Naturalization

More than a quarter of a billion persons were inspected at United States ports-of-entry during the year, almost one-and-a-half times the admissions 10 years ago.

During the year, 394,861 immigrants were admitted to the United States. Seven countries accounted for 51 percent of the total immigration. A total of 529,706 aliens were denied admission upon their arrival at United States ports-of-entry, a 4 percent increase over last year.

The Immigration and Naturalization Service located 788,145 deportable aliens, an increase of 20 percent over 1973. Ninety percent of the deportable aliens located were Mexican nationals. Border Patrol agents apprehended 83,114 aliens who had been induced or assisted to enter illegally or who had been transported unlawfully after entry, nearly twice the number of the previous year.

United States citizenship was granted to 131,655 persons. Over 6 percent of the new citizens were former nationals of Cuba, China, Italy, the Philippines, The United Kingdom, Germany, Mexico, and Greece.



### Community Relations Service

The Community Relations Service helped resolve 530 racial difficulties in 508 communities during the past fiscal year. Crisis resolution constituted the great majority of the Services' activities, a redirection of effort from the crisis prevention activities of previous years. The Service introduced the new method of formal medication to resolve crises and conducted 15 cases by this process.

### Marshals Service

The United States Marshals, with their unique double duty of representing the executive branch of government and acting as executive officers of the Federal Courts, improved courtroom security at sensitive trials and conducted 134 special assignments successfully in 1974. This number reflects an increase of 68 percent over 1973 totals. The Marshals are vested with responsibility over government witnesses in organized crime trials where the witness load has increased 10 fold since 1970. U.S. Marshal participation in more significant trials of this year are the American Indian Movement trials in South Dakota, Minnesota and Nebraska; the Mitchell-Stans trial in New York; and the Gainesville Eight trial in Florida.

### Financial Assistance

The Law Enforcement Assistance Administration continued to support State and local law enforcement and criminal justice agencies improve the administration of justice. By the end of fiscal year 1974, LEAA's aid to State and localities totaled $3.4 billion dollars.

During the past year, encouraging progress has been made in providing States and localities additional tools to effect criminal justice improvements. The report of the National Advisory Commission on Criminal Justice Standards and Goals, the National Crime Victim Surveys and the studies on crime prevention through environmental design are but a few examples of the new approaches which have been developed through the LEAA program in this fiscal year.

### Corrections

The Bureau of Prisons continued to modernize its operations. Operating 47 correctional institutions, ranging from penitentiaries to community treatment centers, the Bureau provided inmates with extensive educational and vocational opportunities in an effort to assist them in returning to society.

The Federal prison population, representing approximately one-ninth of the nation's confined offenders, was 23,691 at the close of the fiscal year, a 1.5 percent increase in population. There were 1,514 more admissions to Federal institutions than discharges during the year. The average sentence length of the confined population has continued to rise steadily, from 74.0 months in 1967 to more than 93 months in 1974.

A massive program of reorganization, regionalization and decentralization was carried out in 1974. The result was a more streamlined organization consisting of five new regions in the field and five divisions at Bureau headquarters.

### Federal-State Cooperation

The direct assistance programs reported previously has continued during fiscal year 1974. In addition to financial support provided to local law enforcement agencies by LEAA, the FBI, the Immigration and Naturalization Service, the Community Relations Service, DEA and the Bureau of Prisons offered technical service to state and local agencies. These services included laboratory analysis, training and other forms of assistance to supplement the work of local law enforcement agencies.

# Office of Deputy Attorney General

The Deputy Attorney General assists the Attorney General in overall supervision and management of the Department and in formulation and implementation of major departmental policies and programs. In addition, the Deputy Attorney General's office coordinates the activities of the several departmental divisions, oversees the Bureaus and supervises the work of the U.S. Attorneys' and Marshals' offices located in each of the 94 judicial districts as well as other departmental offices located in the field.

Under the Constitution, the President appoints Federal judges, U.S. Attorneys and U.S. Marshals, subject to confirmation by the Senate. The Office of the Deputy Attorney General is responsible for investigating and processing prospective candidates for Presidential appointments to these positions. During 1974, 19 persons were appointed to the Federal Judiciary, including nine appointments to the Federal Superior Court of the District of Columbia and one appointment to the District of Columbia Court of Appeals. In addition, 28 U.S. attorneys and 23 U.S. marshals were appointed during 1974.

All appointments, promotions, and separations of Department attorneys are handled by the Deputy Attorney General's staff. His staff supervises the appointment of law students for the Attorney General's employment program for honor law graduates and the summer law intern program. Over 2,600 third-year law students made application for the 1974 Attorney General's employment program for honor law graduates. This year's class of 130 attorneys was selected from 60 law schools. They represented 30 States and the District of Columbia, seventeen appointees ranked in the first five graduates in their law school classes and 71 served on the boards of editors of their law reviews.



# Executive Office for U.S. Attorneys

The Executive Office for United States Attorney provides general executive assistance to, and supervision of, the offices of the 94 United States Attorneys. In addition, the Executive Office maintains liaison between United States Attorneys and the divisions, bureaus and offices of the Department, as well as other Federal agencies.

During the fiscal year two significant initiatives were undertaken to improve the advocacy in the U.S. Attorneys' Offices and to enhance the role of the U.S. Attorneys in certain policy making areas of the Department.

The first was the establishment of the first Attorney General's Advocacy Institute, which was created at the direction of the Attorney General. The Director of the Executive Office serves as the Executive Director of this Institute with the Assistant Attorney General, Civil Division and the U.S. Attorney, Washington, D.C., serving as the co-directors. The Institute consists of a lecture and mock trial program on trial advocacy and a series of continuing legal education seminars on topics pertinent to the work of the Department of Justice. Federal District Court Judges preside over the mock trials of the Trial Advocacy Program.

The second initiative was the formation of the Attorney General's Advisory Committee of United States Attorneys. This committee, which is comprised of selected United States Attorneys, was established by the Attorney General for the purpose of making recommendations on policies of the Department, such as those in the areas of law enforcement and management, and to promote greater consistency in the application of legal standards across the country.

The U.S. Attorneys themselves are the chief law enforcement representatives of the Attorney General in the 94 judicial districts throughout the United States. In executing their duties, the U.S. Attorneys handled a wide variety of litigation for the government, ranging from prosecution of Federal criminal violations, such as fraud and bank robbery, to representing the United States in environmental suits and other civil litigation to which the United States was a party. The authorized staff level of the U.S. Attorneys' offices for 1974 was 2,947, compared to 2,906 for the previous year. The staff included 1,425 attorneys and 1,522 supporting personnel.

The staff of the U.S. Attorneys has increased at a steady rate in the last several years, as a result of a tremendous influx of cases involving the United States in Federal District Court. Criminal cases filed totaled 43,319 cases—and civil filing totaled 33,067.

U.S. Attorneys terminated 44,255 criminal cases and 30,998 civil cases in 1974. The yearly total in pending cases increased in the civil area, due largely to the large number of civil cases filed. The number of pending criminal cases was reduced 2.5 percent over the preceding year.

There were 464,124 hours spent in court, which represent an overall increase of 12.9 percent, with several districts showing significant increases. U.S. Attorneys also brought 25,786 criminal proceedings before Federal grand juries and spent approximately 10.72 percent more time before grand juries than in the previous year. The number of hours in the grand jury rose markedly, largely because of the complexity of many of the matters which were investigated by the U.S. Attorneys such as fraud, criminal tax and other white collar crimes. In addition to

their trial work, the U.S. Attorneys also handled criminal and civil appeals. The number of appeals filed increased 5.4 percent with an increase of 20.6 percent over the previous year in the civil area. With regard to terminations, there was a decrease of 1.5 percent, although there was an increase of 17.5 percent in the number of civil appeals terminated.

In the criminal area, U.S. Attorneys in many districts noted an increase in certain areas of litigation, particularly fraud, official corruption,interstate transportation of stolen securities and mail theft. While some districts noted a slight decline in the number of drug cases, many other districts continued to see a rapid increase in this area of prosecution.

Many U.S. Attorneys, even those in smaller states, saw an increase in the prosecution of white collar crimes. This increase in fraud and financial crime prosecution was due largely to the increased effort of U.S. Attorneys to plan creatively and to use their resources in conjunction with the investigative agencies of government to deal with major law enforcement problems.

**Crimes By Public Officials**

The most important political corruption case handled by U.S. Attorneys, indeed one of the most important in the Nation's history, involves the former Vice-President of the United States.

On October 10, 1973, Spiro T. Agnew, former Vice-President of the United States, entered a plea of nolo contendere to a one-count criminal information charging income tax evasion for 1967. The court accepted the plea and placed Mr. Agnew on probation for a period of three years, probation to be conditioned upon his uniform good behavior and his payment of the maximum fine of $10,000 within thirty days.

The plea agreement between the government and Mr. Agnew which preceded this court proceeding provided, in part that upon Mr. Agnew's resignation from his constitutional office, the government would file the tax charges, Mr. Agnew would plead nolo contendre, the government would file with the court a full exposition of the evidence accumulated during the U.S. Attorney's investigation of his corrupt activities, and Mr. Agnew would admit in open court that he received cash from Maryland engineers which was not expended for political purposes and which he knew to be taxable income to him. Because of the unprecedented nature of the proceedings and the unusual historical significance of the criminal action, the government was represented at the arraignment by Attorney General Elliot L. Richardson, Assistant Attorney General Henry E. Petersen, U.S. Attorney George Beall, and other representatives of his office.

In *U.S. v. N. Dale Anderson,* the highest elected public official for Baltimore County, Maryland, was convicted on 32 counts of bribery, extortion, and conspiracy, growing out of kickbacks relating to engineering and consulting services provided to the county. A number of other political figures and public officials were indicted and convicted in this district in the same year, including 18 Baltimore City police officers who were convicted of accepting case payoffs from local gambling operations.

In many other districts, the U.S. Attorneys vigorously prosecuted abuses of power by public officials.

—The U.S. Attorney in the Northern District of Illinois, for example, successfully convicted a leading alderman and leader of the Chicago City Council for mail fraud and conspiracy in connection with certain land deals. The office also convicted two alderman of the Chicago City Council for bribery. The press secretary to the mayor of Chicago was convicted of mail fraud and a state representative along with two former mayors and four trustees of an estate were convicted of bribery regarding a land development matter. The top official of the Cook County Official's Office, the mayor of Westhaven, Illinois, the former mayor of Robbins, Illinois, the village managers of Brookfield, Illinois, and Elmwood Park, Illinois, and others were also prosecuted for abuse of the powers of their office.

—In the Southern District of New York, a Congressman was indicted on charges of conspiracy, bribery, perjury and conflicts of interest and pled guilty to the charges. A candidate for city council was indicted and convicted on charges of conspiracy, bribery and perjury for his activities relating to efforts to obtain a lease from a New York City Model City's Administration.

—After a lengthy investigation, a United States Senator was indicted in the Middle District of Florida on charges of bribery and conspiracy in connection with an alleged effort to raise funds for the Senator in return for influencing government-sponsored housing projects and mortgage insurance grants.

—In San Antonio, Texas, George B. Parr, a lawyer, former judge, former sheriff and an important political figure of Duvall County, was convicted in an eight count indictment charging income tax evasion and false swearing.

—In addition to these well known figures, U.S. Attorneys across the Nation also vigorously prosecuted many other high and mid-level public officials who had abused their authority. In the Eastern District of Louisiana, a former commander of the New Orleans Police Department, Vice Squad, was convicted and sentenced on charges of obstructing State and local law enforcement. Philadelphia Councilman Isador Bellis was convicted for receiving kickbacks. In New Jersey, Nelson G. Gross, former chairman of the New Jersey Republican Party and former candidate for the U.S. Senate, was convicted of conspiracy to defraud the United States and obstruction of justice. Twelve New York Narcotics Squad police officers were indicted and convicted in the theft of heroin in the Eastern and Southern Districts of New York, in a case in which they were charged with obtaining and dividing approximately $380,000 worth of heroin seized in narcotic arrests.

**Fraud**

In the area of "White Collar Crime," U.S. Attorneys across the country also developed a large number of major fraud cases. Offices like Philadelphia, Los Angeles, Washington, D.C., St. Louis, and Brooklyn, New York, saw a large increase in this area and devoted a substantial portion of the time of their senior attorneys to these cases.

Investigations and prosecutions were conducted in areas including H.U.D. frauds, food stamp frauds, merchandising mail frauds, securities and bank frauds, charity solicitation frauds, petroleum pricing violations, as well as tax fraud. The pattern was the same across the country. Mail fraud prosecutions, for example, tripled in the Western District of Oklahoma. In the Southern District of Texas the number of hours in court doubled, due largely to the major upswing in the prosecution of white collar criminals.

The following are typical of the types of cases which were investigated and prosecuted:

—After an extensive grand jury investigation, C. Arnold Smith, San Diego financier, was indicted on charges of conspiring to misapply $170,000 of funds of the now-defunct U.S. National Bank. He and Phillip A. Toft, former president of Westgate-California Corporation, were charged in 25 counts of conspiracy to make false statements and entries.

—In November, 1973, the Federal grand jury in Los Angeles, California, returned an indictment in a major prosecution involving Equity Funding Company of America. An investigation of the corporation, which was listed and actively traded on the New York Stock Exchange, began in April, 1973. The indictment charged 22 persons including 20 executives and former employees of Equity Funding of America and two outside accountants. This case involved massive fraud concerning the sale of fraudulent life insurance policies and the marketing of securites based on false financial statements. The overall loss has been estimated to be one of the largest in the annals of white collar crime and as yet remains incalculable. Prior to trial 18 defendants pleaded guilty, one pleaded during the trial, and three were awaiting a separate trial at the end of the fiscal year.

—In *United States v. Somenzi and Avenetti,* both defendants pleaded guilty to an indictment charging conspiracy to transporting stolen securities. These securities were transported from London, England, to Los Angeles and were valued at over $30,000,000. In August, 1973, John Swank, Roland Mayotte and Vernon Huff were indicated and later convicted on bank fraud charges alleging misapplication and misuse of over $3,000,000 of Barclay's Bank of California funds. On August 23, 1973, Edwin J. Bieler, also known as "Superfan" a Los Angeles Radio personality, was indicted and convicted on charges that he filed false and fraudulent claims against the United States which caused the loss of over $600,000 in Federal funds. The entire loss to the Government was approximately $1,600,000.

—In September, 1973, Daniel Manning and David Woolridge were sentenced to serve prison terms totaling six years after their conviction in a six-week jury trial of conspiracy to sell more than 700,000 shares of stock to the public without filing a registration statement, among other SEC criminal violations. On October 20,1973, Richard Murray, a stock broker, was sentenced to five years imprisonment on charges of attempting to obstruct justice by hiring an ex-prize fighter to kill another broker who had related to the authorities information concerning a multi-million dollar check-kiting scheme which Murray had directed.

—In the Southern District of New York, Charles Coldberg and Pocono International, land developers, were found guilty by a jury in a major fraud case involving charges of mail fraud and violation of Interstate Land Sales Act in connection with the sale of vacation home sites. In the District of Iowa the U.S. Attorney successfully prosecuted a mail fraud case involving a multi-state vacation fraud scheme offering reduced price tours of Las Vegas, Nevada. This particular type of fraud was prevalent throughout the country and was also prosecuted in the District of Oklahoma and the Middle District of Florida, among others.

—Massive frauds against the Department of Housing and Urban Development were the subject of a concerted prosecution program by U.S. Attorneys across the country.

—In the Eastern District of Michigan, the investigation of housing frauds resulted in more than 120 convictions in a single year. After a three-month trial, Leon Jackson, HUD-approved contractor, and codefendant Herman Williams, HUD area management broker, were sentenced to 2½ years each and fined $3,000 and $2,500 respectively for conspiracy to rig bids and bribery. Leon Falk and Burton Freedman, both broker-investors, who had pleaded nolo contendere to submitting false statements to HUD, were each was sentenced to two

years and fined $5,000. James A. Lee, HUD-approved contractor, was sentenced to three years with all but six months suspended and fined $10,000 on his plea of guilty to rigging bids and paying bribes. Clarence E. Collins, HUD area management broker, was sentenced to one year, fined $2,500, and placed on probation for two years, on his pleas of guilty to bribery. W. Dan Edmonds, HUD area management broker, was sentenced to 18 months with all but 60 days suspended, and fined $5,000 on a plea of guilty to rigging bids and accepting bribes.

—In *U.S.* v. *Harry Bernstein*, in the Eastern District of New York, a federal jury, after a nine-month trial, returned a guilty verdict convicting Eastern Service Corporation (one of the largest mortgage lending institutions in the East), Harry Bernstein (Eastern's president and sole shareholder), and others for a wide-ranging pattern of criminal activity in the mortgage industry. These cases arose out of F.H.A. programs.

A variety of other frauds including frauds against individual businessmen and consumers were prosecuted.

—In the Eastern District of Pennsylvania, certified public accountants Hyman Dickerman and Julius Rennick were indicted on bribery charges; eight defendants, including a law student were indicted for criminal involvement with the SBA, and Henry Nowak, a former Customs Supervisory Officer, was convicted of bribery.

—The 1973 Summer Youth Program in Buffalo, New York, was the object of a large fraud scheme. After approximately six months of intensive investigation, 12 defendants were charged in five indictments and three criminal informations with fraud. The Summer Youth Program was the recipient of approximately $520,000 in funds made available through the United States Department of Housing and Urban Development.

—In one of the most complicated criminal trials ever held in the Western District of Washington, the president and principal stockholder of two small telephone companies was convicted on 11 counts of fraud by wire for defrauding $60,000 from General and Bell Telephone Companies.

—Two Pittsburgh area men, Dale Carter and Richard Ranalla, were convicted for operating three separate fraudulent charity schemes which netted over $300,000 from Pittsburgh area residents. The three schemes were designed to bilk people of money which was supposed to go to various worthy causes. Another individual in the Pittsburgh area was sentenced to ten years in prison for violating the United States mail fraud statutes in connection with a massive home repair swindle in the Pittsburgh area.

**Narcotics and Other Federal Violations**

The United States Attorneys were also busy with a rapidly growing case load involving violations of other Federal crimes including narcotics violations. While some districts reported a slight decline in drug cases, many reported a continued upswing. Many of the cases involved international and interstate transportation of narcotics and tremendous amounts of narcotics.

In the Northern District of Texas, three defendants were convicted for the possession of heroin with a street value of $1,700,000. In the Southern District of the same state, a high school teacher, a football coach and a former student were convicted for distribution of heroin mailed from Thailand, and 50 other individuals were convicted in a conspiracy to distribute five tons of marihuana. In the Southern District of Texas, nine Houston Police Department Narcotics Division officers were indicted for the deprivation of the rights of citizens and for the possession and distribution of heroin.

—Similar drug smuggling and distribution conspiracies were prosecuted in other districts. In the Southern District of Florida, seven defendants were indicted and convicted for their participation in a cocaine importation ring which handled 40-80 pounds of heroin. A prominent doctor was also convicted for distribution of narcotics.

—Medical doctors and other professionals were convicted in many other districts. In Colorado, Doctor Thor Jorgenson was found guilty on four counts of illegally dispensing narcotics and dangerous drugs. The Government's evidence included 22 of those prescriptions written to four agents in a one-month period.

—In the Northern District of California, convictions were achieved in a large and well-financed narcotics and tax evasion operation involving hundreds of thousands of dollars in Swiss and Bohemian bank accounts and widespread LSD manufacturing. The principals convicted were Nicholas Sand and Timothy Scully. An additional subject, Lester Friedman, was subsequently convicted of perjury in connection with the case. Involved in the distribution and financing of the LSD operations were the Hells Angels Motorcycle Club and Timothy Leary's "Brotherhood of Eternal Love."

—Many of these large drug ring prosecutions involved the cooperation of foreign governments. In the Western District of Washington, for example, in *U.S.* v. *Habut*, 18 defendants were indicted for their involvement in a major cocaine conspiracy stretching all the way to Bolivia. This was the first of a number of major drug conspiracy cases involving large drug networks. In Denver, Colorado, Craig Mundt and others were convicted in a conspiracy, which was successfully prosecuted largely due to the cooperation of the Peruvian Government. At the time of his arrest in Peru, Mr. Mundt was caught in possession of 6.6 pounds of pure cocaine.

There was a tremendous prosecutive effort by the U.S. Attorneys over the whole range of other Federal crimes. For example, the following cases were brought to court:

—Twenty-one individuals were indicted in a $2,000,000 stolen airline ticket network (E. D. New York). Two contractors were indicted for $90,000 bribes to the Illinois Secretary of State (S.D. Illinois). Nineteen individuals were caught in a huge theft and fencing ring of farm equipment (S.D. California). Two individuals were arrested and indicted for a $200,000 extortion attempt involving a banker's wife as a hostage (Colorado); a kidnapper received 20 years and a $700,000 ransom was recovered (N.D. Oklahoma); a Swiss bank and officer were indicted for fraud in a stock offering (C.D. California); and five individuals were charged with possession of $4,000,000 worth of stolen securites (N. D. Ohio).

—In addition, a hospital and two administrators pleaded guilty on 32 counts of Medicare fraud (Arizona), and the 25th physician that year (1973), was convicted in Philadelphia for Medicare fraud (E.D. Pennsylvania), and received two years imprisonment. A bank manager pleaded guilty to a $100,000 embezzlement (E.D. Missouri); the President and member of the board of a large metropolitan bank was convicted for the embezzlement of $8,000,000 dollars (Massachusetts); and a defrauder was convicted for the sale of $1,100,000 worth of bogus slenderizing tablets.

**Civil**

In the civil area the Attorneys are involved in a large number of tort claim and civil fraud cases, and handle numerous actions filed against the officers of the Executive Branch, Freedom of Information Act cases and other miscellaneous civil matters. The following represents the type of litigation handled in various districts during the year:

—In the Northern District of Alabama, the U.S. Attorney reopened the case of *U.S.A.* v. *Dick Coffey*, which had been closed by a consent decree, in an action filed as a result of housing discrimination practices by a realtor. This was the first such housing discrimination case against a realtor whereby the Department of Justice reopened a case due to a failure to comply with a consent decree. Also in the same district the largest bankruptcy (tax) collection in the history of the district was made in the payment of $1,148,965.61 by Walker Brothers General Merchandise.

—A case in the Eastern District of New York is illustrative of the major tort cases which were handled by the U.S. Attorneys. *William Fertig* v. *United States of America* is significant for its employment of a unique device to reduce the damages which the Government would have to pay in catastrophic injury type cases where prospective damages, while substantial, are nevertheless speculative. In the *Fertig* case an action was brought under the Federal Tort Claims Act (28 U.S.C. Section 2671 et seq.) to recover damages based on the alleged malpractice of doctors and nurses employed at a Public Health Service Hospital. This case involved a patient at a Public Health Service Hospital who developed a rare reaction to the general anesthetic being administered to him. He suffered a cardiac arrest and severe brain damage. The damages in this case may over the course of years prove to be extraordinary or insubstantial, there being no way to tell. After lengthy negotiations the case was settled in the amount of one million dollars. Of the total amount the sum of $650,000 is to be put in trust for the plaintiff. The income generated by the trust will be used to care for him during his life. In addition, there will be power to invade the principal if necessary. Upon the death of the plaintiff, the remainder will revert to the United States.

—The U.S. Attorney's Office, Eastern District of Pennsylvania, handled a similar major medical malpractice case in which the plaintiff sought $3,000,000 for a minor plaintiff who was born a quadraplegic with massive, irreversible brain damage. The case was tried for eight days and finally settled by means of a reversionary trust of $375,000 to pay for the maintenance of the child during his lifetime, with the principal of the trust to revert to the government, plus $125,000 in damages.

—In the Southern District of New York, the U.S. Attorney successfully defended the government against a $29 million suit. The case of *Pan American World Airways* v. *Aetna Casualty and Surety Co.* involved a civil suit to recover for the loss of a Pan American Boeing 747 jumbo jet hijacked over London, England in November 1970, and destroyed by members of the Popular Front for the Liberation of Palestine at Cairo, Egypt. Certain insurers had written "all risk" insurance for Pan-Am and the United States had insured Pan-American's fleet for "war risks" policy. The case was tried before the District Court without a jury and on September 17, 1973, the court held Pan-American's "all risk" insurers liable and exonerated the government under its "war risks" policy. Judgment in excess of $29,000,000 was entered.

In the same district the U.S. Attorney received payment of $1.7 million, the largest single collection of personal income taxes owed for a one year period.

**Environment**

The United States Attorneys have become involved in a large amount of environmental litigation in the last several years. The volume of these cases continues to grow. The U.S. Attorneys are involved in these suits enforcing the criminal and civil laws of the United States

Code and also representing the government in environmental suits filed against the government. The following represents the type of litigation handled in various districts during the year:

—In the Northern District of West Virginia, significant civil cases handled by this office included environmental suits where the government advocated the causes of the environmentalists in two of the cases and opposed the environmentalists in the other. The two cases in which the government supported the environmentalists were *United States* vs. *National Steel Corporation* and *United States* vs. *Consolidation Coal Company.* In the National Steel case, a consent decree was entered which will require National Steel to treat pollution discharges emanating from its plant in Weirton, West Virginia, into the Ohio River. In the Consolidation Coal case, a consent decree was entered which should significantly improve the water quality of a tributary of the Monongahela River near Morgantown, West Virginia.

—The Western District of Pennnylvania is also representative of the number of districts which handled a significant amount of environmental litigation. Three Pittsburgh area steel manufacturers, United States Steel Corporation, Jones & Laughlin Steel Corporation and Wheeling-Pittsburgh Steel Corporation, entered "no contest" pleas to criminal charges of polluting the Monongahela and Ohio Rivers during the summer of 1970. The charges were brought under the Refuse Act of 1899. The court fined the three defendant corporations $8,500,00, $5,500.00 and $3,500.00 respectively.

—In *United States* v. *Union Texas Petroleum* the defendant, a Division of Allied Chemical, pled nolo contendere to nine counts of violation of the Migratory Bird Treaty Act. The defendant and six other oil companies were charged with killing migratory birds by maintaining oil sludge pits. Through improper maintenance of the separator act unit, oil was allowed to enter the water retaining pit with the water covering the surface. During the two migratory seasons, waterfowl would land on the resulting oil sludge pit, and soon died. It is estimated that in Colorado nearly 30,000 migratory birds died annually in more than 1,000 such pits. As a result of this Federal action, this condition, that had been allowed to go uncorrected for over eight years, is now being rectified rapidly by the over 300 oil companies operating in the District of Colorado.

—National Environmental Protection Act (NEPA) suits were brought in every state of the union. In the Western District of Washington, the U.S. Attorneys' Office was involved in several pieces of litigation concerning Environmental Impact Statements required under NEPA. The case of *Sierra Club* v. *Ross Williams* involved a NEPA challenge to a forest service timber sale. It was compromised with the sale proceeding under restrictions acceptable to Sierra Club.

—*Sierra Club* v. *Hodel* was a NEPA challenge to a Bonneville Power Administration (BPA) contract to sell electricity to a smelter operated by an Alcoa subsidiary. The District Court dismissed the NEPA challenge, ruling that the BPA's impact statement covering the customer smelter was not required under the statute.

**Criminal and Civil Cases Handled by U.S. Attorneys in U.S. District and Appellate Courts and State Courts**

**Fiscal Year Ended June 30, 1974**

| Judicial District | Criminal Cases in U.S. District And Appellate Courts: Pend 7-1-73[1] | Filed[2] | Term[3] | Pend 6-30-74 | Criminal Defendants in U.S. District and Appellate Courts: Pend 7-1-73[1] | Filed[2] | Term[3] | Pend 6-30-74 | Civil Cases in U.S. District and Appellate Courts and State Courts: Pend 7-1-73[1] | Filed | Term | Pend 6-30-74 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Alabama N | 169 | 439 | 483 | 125 | 224 | 645 | 707 | 162 | 212 | 358 | 326 | 244 |
| Alabama M | 47 | 233 | 242 | 38 | 53 | 320 | 332 | 41 | 50 | 92 | 89 | 53 |
| Alabama S | 70 | 159 | 188 | 41 | 126 | 227 | 293 | 60 | 66 | 102 | 102 | 66 |
| Alaska | 159 | 206 | 261 | 104 | 205 | 235 | 301 | 139 | 245 | 76 | 73 | 248 |
| Arizona | 1,044 | 1,370 | 1,381 | 1,033 | 1,406 | 1,865 | 2,000 | 1,271 | 442 | 512 | 454 | 500 |
| Arkansas E | 100 | 287 | 274 | 113 | 110 | 359 | 327 | 142 | 185 | 270 | 198 | 257 |
| Arkansas W | 28 | 91 | 97 | 22 | 32 | 116 | 123 | 25 | 150 | 133 | 106 | 177 |
| Calif N | 731 | 924 | 980 | 675 | 1,033 | 1,144 | 1,211 | 966 | 865 | 596 | 520 | 942 |
| Calif C | 1,678 | 1,915 | 1,986 | 1,607 | 2,062 | 2,453 | 2,530 | 1,985 | 1,131 | 1,316 | 1,189 | 1,258 |
| Calif E | 489 | 934 | 966 | 457 | 583 | 1,127 | 1,110 | 600 | 450 | 265 | 223 | 493 |
| Calif S | 1,548 | 2,712 | 2,391 | 1,369 | 2,169 | 3,741 | 3,259 | 2,651 | 264 | 293 | 308 | 249 |
| Colorado | 278 | 596 | 518 | 356 | 317 | 774 | 680 | 411 | 308 | 318 | 273 | 353 |
| Connecticut | 276 | 371 | 349 | 258 | 356 | 546 | 484 | 418 | 339 | 496 | 449 | 386 |
| Delaware | 76 | 90 | 59 | 67 | 156 | 109 | 182 | 83 | 117 | 74 | 83 | 108 |
| Dist of Col | 1,467 | 1,279 | 1,501 | 1,245 | 1,757 | 1,567 | 1,915 | 1,409 | 1,166 | 588 | 1,016 | 738 |
| Florida N | 104 | 273 | 269 | 108 | 132 | 396 | 366 | 162 | 138 | 215 | 227 | 126 |

See footnotes at end of table.



**Criminal and Civil Cases Handled by U.S. Attorneys in U.S. District and Appellate Courts and State Courts, Fiscal Year Ended June 30, 1974—Continued**

| Judicial District | Pend 7-1-73[1] | Filed[2] | Term[3] | Pend 6-30-74 | Pend 7-1-73[1] | Filed[2] | Term[3] | Pend 6-30-74 | Pend 7-1-73[1] | Filed | Term | Pend 6-30-74 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Florida M | 729 | 760 | 445 | 845 | 1,025 | 1,143 | 730 | 607 | 594 | 688 | 513 | |
| Florida S | 480 | 995 | 959 | 516 | 755 | 1,419 | 1,419 | 755 | 479 | 754 | 695 | 538 |
| Georgia N | 446 | 708 | 730 | 424 | 618 | 981 | 1,034 | 565 | 377 | 743 | 700 | 420 |
| Georgia M | 99 | 274 | 264 | 109 | 146 | 460 | 455 | 151 | 114 | 125 | 124 | 115 |
| Georgia S | 82 | 260 | 256 | 36 | 169 | 308 | 380 | 97 | 95 | 116 | 99 | 112 |
| Hawaii | 130 | 164 | 154 | 140 | 210 | 241 | 205 | 246 | 114 | 117 | 73 | 158 |
| Idaho | 53 | 104 | 96 | 61 | 64 | 128 | 122 | 70 | 129 | 155 | 135 | 149 |
| Illinois N | 725 | 984 | 986 | 723 | 1,098 | 1,524 | 1,570 | 1,052 | 1,144 | 1,172 | 783 | 1,533 |
| Illinois E | 199 | 187 | 262 | 124 | 275 | 235 | 362 | 148 | 220 | 225 | 128 | 317 |
| Illinois S | 136 | 249 | 230 | 155 | 167 | 368 | 203 | 232 | 169 | 178 | 169 | 178 |
| Indiana N | 310 | 409 | 393 | 326 | 369 | 522 | 505 | 386 | 233 | 237 | 157 | 313 |
| Indiana S | 268 | 400 | 414 | 254 | 366 | 545 | 590 | 321 | 418 | 423 | 452 | 389 |
| Iowa Northern | 42 | 99 | 93 | 48 | 53 | 153 | 143 | 63 | 83 | 84 | 94 | 73 |
| Iowa Southern | 88 | 155 | 153 | 90 | 107 | 181 | 192 | 96 | 113 | 147 | 159 | 101 |
| Kansas | 239 | 520 | 562 | 197 | 297 | 662 | 698 | 261 | 427 | 775 | 729 | 473 |
| Kentucky E | 181 | 439 | 442 | 176 | 242 | 649 | 627 | 264 | 681 | 598 | 592 | 687 |
| Kentucky W | 85 | 432 | 413 | 104 | 149 | 539 | 534 | 154 | 337 | 314 | 292 | 359 |
| Louisiana E | 201 | 571 | 546 | 226 | 379 | 777 | 754 | 402 | 385 | 572 | 632 | 325 |
| Louisiana M | 38 | 55 | 64 | 32 | 49 | 73 | 83 | 39 | 64 | 76 | 56 | 84 |
| Louisiana W | 115 | 269 | 292 | 92 | 182 | 303 | 368 | 117 | 291 | 304 | 300 | 295 |
| Maine | 93 | 62 | 97 | 58 | 110 | 66 | 113 | 63 | 47 | 61 | 50 | 58 |
| Maryland | 428 | 747 | 697 | 478 | 645 | 1,040 | 976 | 709 | 416 | 333 | 335 | 414 |
| Massachusetts | 407 | 388 | 364 | 431 | 732 | 570 | 564 | 738 | 531 | 389 | 317 | 599 |
| Michigan E | 1,312 | 1,715 | 1,638 | 1,389 | 2,088 | 2,163 | 2,063 | 2,188 | 548 | 603 | 523 | 628 |
| Michigan W | 241 | 226 | 286 | 188 | 291 | 273 | 319 | 245 | 180 | 132 | 114 | 198 |
| Minnesota | 296 | 364 | 443 | 217 | 351 | 454 | 540 | 265 | 387 | 340 | 372 | 355 |
| Mississippi N | 45 | 111 | 129 | 27 | 53 | 138 | 163 | 28 | 109 | 119 | 125 | 103 |
| Mississippi S | 64 | 141 | 159 | 46 | 82 | 196 | 204 | 74 | 236 | 263 | 239 | 260 |
| Missouri E | 201 | 393 | 387 | 207 | 260 | 455 | 471 | 244 | 338 | 291 | 320 | 309 |
| Missouri W | 338 | 711 | 588 | 481 | 413 | 857 | 719 | 551 | 683 | 967 | 862 | 788 |
| Montana | 85 | 169 | 168 | 86 | 94 | 195 | 190 | 99 | 131 | 98 | 119 | 110 |
| Nebraska | 144 | 209 | 209 | 144 | 174 | 254 | 250 | 178 | 153 | 236 | 232 | 197 |
| Nevada | 136 | 275 | 269 | 142 | 172 | 463 | 386 | 249 | 152 | 98 | 133 | 117 |
| New Hampshire | 54 | 49 | 64 | 39 | 57 | 62 | 77 | 42 | 34 | 66 | 62 | 38 |
| New Jersey | 961 | 614 | 787 | 785 | 1,715 | 857 | 1,191 | 1,381 | 1,029 | 1,010 | 895 | 1,144 |
| New Mexico | 196 | 411 | 434 | 173 | 241 | 508 | 542 | 207 | 248 | 255 | 278 | 225 |
| New York N | 272 | 173 | 258 | 187 | 362 | 234 | 351 | 245 | 504 | 291 | 261 | 534 |
| New York E | 1,291 | 982 | 1,166 | 1,087 | 2,327 | 1,522 | 1,913 | 1,936 | 1,910 | 1,165 | 809 | 2,266 |
| New York S | 1,571 | 1,389 | 1,229 | 1,731 | 2,586 | 2,417 | 2,103 | 2,900 | 2,258 | 1,276 | 1,377 | 2,157 |
| New York W | 565 | 348 | 487 | 426 | 756 | 412 | 599 | 569 | 619 | 376 | 471 | 524 |
| N Carolina E | 116 | 373 | 360 | 129 | 183 | 522 | 513 | 192 | 163 | 172 | 182 | 153 |
| N Carolina M | 90 | 385 | 383 | 92 | 112 | 460 | 477 | 95 | 106 | 115 | 109 | 112 |
| N Carolina W | 85 | 331 | 291 | 125 | 101 | 416 | 372 | 145 | 89 | 128 | 19 | 93 |
| North Dakota | 54 | 145 | 123 | 76 | 81 | 227 | 214 | 94 | 92 | 113 | 132 | 73 |
| Ohio Northern | 600 | 847 | 939 | 508 | 744 | 977 | 1,082 | 639 | 1,103 | 1,031 | 963 | 1,171 |
| Ohio Southern | 188 | 407 | 455 | 140 | 231 | 476 | 515 | 192 | 715 | 765 | 708 | 772 |
| Oklahoma N | 53 | 175 | 169 | 59 | 68 | 223 | 222 | 69 | 270 | 268 | 330 | 208 |
| Oklahoma E | 31 | 70 | 77 | 24 | 46 | 86 | 100 | 32 | 109 | 90 | 107 | 92 |
| Oklahoma W | 107 | 268 | 250 | 125 | 138 | 313 | 287 | 164 | 314 | 413 | 321 | 406 |
| Oregon | 182 | 263 | 269 | 177 | 213 | 328 | 328 | 203 | 298 | 375 | 343 | 330 |
| Pa Eastern | 538 | 857 | 934 | 461 | 764 | 1,290 | 1,389 | 665 | 844 | 673 | 786 | 731 |
| Pa Middle | 174 | 245 | 269 | 150 | 213 | 279 | 298 | 194 | 287 | 393 | 295 | 385 |
| Pa Western | 287 | 430 | 424 | 293 | 454 | 680 | 690 | 444 | 283 | 355 | 371 | 267 |
| Puerto Rico | 322 | 168 | 240 | 250 | 371 | 197 | 275 | 293 | 664 | 264 | 202 | 726 |
| Rhode Island | 52 | 133 | 129 | 46 | 70 | 149 | 158 | 61 | 165 | 109 | 137 | 137 |
| S Carolina | 126 | 487 | 467 | 146 | 169 | 695 | 601 | 223 | 663 | 958 | 844 | 777 |
| South Dakota | 212 | 263 | 206 | 269 | 227 | 328 | 249 | 306 | 96 | 78 | 76 | 98 |
| Tennessee E | 94 | 296 | 270 | 120 | 119 | 395 | 369 | 145 | 113 | 179 | 169 | 123 |
| Tennessee M | 125 | 337 | 367 | 95 | 213 | 459 | 497 | 175 | 153 | 155 | 149 | 159 |
| Tennessee W | 202 | 261 | 254 | 209 | 321 | 440 | 409 | 352 | 113 | 140 | 127 | 126 |
| Texas Northern | 318 | 732 | 764 | 266 | 442 | 915 | 1,043 | 314 | 591 | 608 | 619 | 580 |
| Texas Eastern | 72 | 204 | 201 | 75 | 101 | 254 | 245 | 110 | 320 | 185 | 239 | 266 |
| Texas Southern | 935 | 1,458 | 1,556 | 837 | 1,043 | 2,185 | 2,333 | 1,195 | 582 | 582 | 458 | 706 |
| Texas Western | 499 | 1,305 | 1,319 | 485 | 663 | 1,720 | 1,752 | 631 | 299 | 421 | 326 | 394 |
| Utah | 48 | 134 | 122 | 60 | 56 | 166 | 139 | 83 | 145 | 157 | 145 | 157 |
| Vermont | 85 | 145 | 108 | 122 | 112 | 25 | 178 | 169 | 106 | 139 | 110 | 135 |
| Virginia E | 445 | 992 | 1,018 | 419 | 612 | 1,228 | 1,274 | 566 | 316 | 475 | 443 | 348 |
| Virginia W | 23 | 221 | 229 | 15 | 26 | 246 | 256 | 16 | 161 | 261 | 132 | 290 |
| Washington E | 92 | 129 | 128 | 93 | 99 | 141 | 140 | 100 | 181 | 192 | 148 | 225 |
| Washington W | 294 | 490 | 524 | 260 | 347 | 590 | 621 | 316 | 486 | 596 | 601 | 481 |
| West Virginia N | 52 | 97 | 115 | 34 | 55 | 106 | 122 | 39 | 111 | 77 | 86 | 102 |
| West Virginia S | 94 | 236 | 200 | 130 | 137 | 301 | 279 | 159 | 292 | 266 | 183 | 375 |
| Wisconsin E | 258 | 212 | 281 | 189 | 298 | 268 | 314 | 252 | 292 | 231 | 183 | 340 |
| Wisconsin W | 107 | 103 | 93 | 117 | 114 | 110 | 101 | 123 | 177 | 173 | 125 | 225 |
| Wyoming | 26 | 103 | 120 | 9 | 41 | 137 | 166 | 12 | 49 | 73 | 77 | 45 |
| Canal Zone | 63 | 425 | 453 | 35 | 63 | 467 | 494 | 36 | 7 | 12 | 6 | 13 |
| Guam | 2 | 21 | 15 | 8 | 2 | 31 | 22 | 11 | 24 | 43 | 48 | 19 |
| Virgin Islands | 172 | 207 | 171 | 208 | 222 | 246 | 224 | 244 | 78 | 23 | 12 | 89 |
| Totals | 28,580 | 43,319 | 44,255 | 27,644 | 40,341 | 53,102 | 59,789 | 36,654 | 34,019 | 33,067 | 30,998 | 36,088 |

*[1] 7-1-73 Pending Figures Adjusted to Reflect Corrections Reported by United States Attorneys Offices*
*[2] Includes 1709 Cases or 1828 Defendants Initiated by Transfer Under Rule 20*
*[3] Includes 1784 Cases or 2116 Defendants Terminated by Transfer Under Rule 20 and 2505 Cases or 4249 Defendants Dismissed Because of Superseding Indictment or Information*

## Criminal Cases and Defendants in United States District Court by Offense - Fiscal Year 1974

| Offense | Filed[1] | Term.[2] | Defts. Filed[1] | Defts. Term.[2] | Guilty | Not Guilty[3] | Dismissed[4] | Rule 20 | Other[5] |
|---|---|---|---|---|---|---|---|---|---|
| Accessory After The Fact | 58 | 58 | 70 | 73 | 51 | 4 | 12 | 1 | 5 |
| Aiders And Abetters | 190 | 167 | 386 | 349 | 234 | 19 | 72 | 2 | 22 |
| Animal Health | | | | | | | | | |
| Protection of Horses | 49 | 35 | 88 | 57 | 10 | 3 | 44 | 0 | 1 |
| Quarantine | 16 | 18 | 30 | 39 | 26 | 1 | 2 | 10 | 0 |
| Anti-Gambline | 141 | 168 | 809 | 1,136 | 711 | 35 | 279 | 4 | 107 |
| Anti-Racketeering | 214 | 210 | 531 | 661 | 291 | 29 | 247 | 13 | 81 |
| Anti-Riot Laws | 24 | 9 | 30 | 22 | 0 | 0 | 18 | 3 | 1 |
| Antitrust | 19 | 14 | 113 | 71 | 66 | 0 | 5 | 0 | 3 |
| Bail | 580 | 530 | 565 | 535 | 296 | 6 | 165 | 38 | 30 |
| Bank Robbery | 1,945 | 1,967 | 2,709 | 2,734 | 1,709 | 79 | 474 | 116 | 356 |
| Bankruptcy | 37 | 36 | 42 | 39 | 14 | 10 | 8 | 0 | 7 |
| Banks And Banking | 1,100 | 1,151 | 1,236 | 1,403 | 985 | 42 | 256 | 42 | 78 |
| Betrayal of Office | 78 | 76 | 90 | 89 | 65 | 1 | 20 | 1 | 2 |
| Bribery | 165 | 192 | 271 | 337 | 166 | 35 | 82 | 4 | 20 |
| Carriers And Transportation | | | | | | | | | |
| Air Carriers And Aviation | 87 | 107 | 90 | 114 | 60 | 3 | 20 | 14 | 17 |
| Freight Forwarders | 2 | 2 | 2 | 2 | 2 | 0 | 0 | 0 | 0 |
| Motor Commercial Vehicles | 203 | 209 | 219 | 226 | 196 | 1 | 23 | 3 | 3 |
| Navigation And Navigable Waters | 3 | 11 | 5 | 12 | 10 | 0 | 2 | 0 | 0 |
| Shipping (incl crimes on/over the high seas | 919 | 1,051 | 1,336 | 1,523 | 918 | 75 | 336 | 62 | 134 |
| Stowaways On Vessels Or Air | 6 | 7 | 6 | 7 | 5 | 0 | 2 | 0 | 0 |
| Transportation Of Specific Items | | | | | | | | | |
| dentures | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| Explosives | 58 | 58 | 60 | 61 | 55 | 0 | 5 | 1 | 0 |
| Warehouse Act | 2 | 1 | 2 | 1 | 1 | 0 | 0 | 0 | 0 |
| Citizenship And Nationality | 70 | 67 | 75 | 70 | 49 | 3 | 17 | 0 | 1 |
| Civil Rights | 54 | 76 | 112 | 162 | 43 | 34 | 44 | 0 | 41 |
| Communications | 52 | 49 | 68 | 70 | 41 | 4 | 18 | 0 | 7 |
| Conflict Of Interest | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Conservation And Control Of Fed Lands & Resources | 191 | 158 | 229 | 211 | 135 | 5 | 41 | 4 | 26 |
| Conservation Of Natural Resources | | | | | | | | | |
| Birds | 213 | 231 | 378 | 468 | 356 | 25 | 78 | 3 | 6 |
| Fishing Violations | 9 | 8 | 11 | 10 | 7 | 0 | 3 | 0 | 0 |
| Game | 21 | 21 | 30 | 36 | 15 | 0 | 19 | 1 | 1 |
| Pollution | 83 | 109 | 93 | 118 | 69 | 7 | 34 | 1 | 7 |
| Conspiracy | 658 | 489 | 1,672 | 1,181 | 531 | 67 | 320 | 25 | 188 |
| Consumer Protection | | | | | | | | | |
| Agriculture | | | | | | | | | |
| Agricultural Adjustment Act | 5 | 8 | 23 | 37 | 27 | 1 | 9 | 0 | 0 |
| Agriculture Inspection Certificates | 2 | 2 | 3 | 3 | 3 | 0 | 0 | 0 | 0 |
| Cotton Statistics And Estimates | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Federal Insecticide, Etc. Act | 68 | 76 | 73 | 81 | 65 | 0 | 16 | 0 | 0 |
| Packers And Stockyards Act | 7 | 8 | 9 | 9 | 7 | 0 | 1 | 0 | 1 |
| Tobacco Inspection Act And Tobacco Control | 1 | 0 | 3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Federal Trade Comm. & Commercial Regulations | | | | | | | | | |
| Federal Hazardous Labeling | 5 | 6 | 8 | 12 | 6 | 0 | 6 | 0 | 0 |
| Miscellaneous Food | | | | | | | | | |
| Filled Milk Act & Mislabeled Dairy Product | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Meat Inspection Act | 13 | 8 | 21 | 16 | 8 | 0 | 8 | 0 | 0 |
| Other Protection | | | | | | | | | |
| Consumer Credit Protection Act | 9 | 7 | 11 | 8 | 3 | 2 | 2 | 0 | 1 |
| Mail And Wire Fraud | 663 | 738 | 1,031 | 1,119 | 671 | 52 | 246 | 52 | 98 |
| Securities Frauds | | | | | | | | | |
| Inveykf 1940 | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| Securities Exchange Act Of 1934 | 15 | 12 | 33 | 38 | 27 | 7 | 1 | 1 | 2 |
| Securities Frauds | 28 | 34 | 157 | 96 | 39 | 9 | 28 | 3 | 17 |
| Contempt | 76 | 64 | 110 | 85 | 48 | 4 | 27 | 0 | 6 |
| Controlled Substances | 8,320 | 8,523 | 13,482 | 13,705 | 6,458 | 368 | 3,438 | 208 | 1,233 |
| Copyright | 44 | 32 | 82 | 68 | 48 | 0 | 20 | 0 | 0 |
| Counterfeiting-Misuse/Money Stamps | 905 | 1,066 | 1,152 | 1,381 | 944 | 45 | 201 | 67 | 124 |
| Crimes Affecting The Mails | 3,164 | 3,234 | 3,344 | 3,658 | 2,848 | 71 | 513 | 117 | 109 |
| Crimes Affecting The Military/Merchant Marine | 9 | 10 | 9 | 10 | 6 | 0 | 2 | 0 | 2 |
| Crimes By And Against Indians | 9 | 7 | 10 | 14 | 7 | 7 | 0 | 0 | 0 |
| Customs | | | | | | | | | |
| Customs Laws | 223 | 224 | 290 | 307 | 199 | 8 | 39 | 3 | 8 |
| Elections And Political Activities | 26 | 24 | 49 | 46 | 30 | 0 | 9 | 0 | 7 |
| Embezzlement | 107 | 113 | 118 | 135 | 98 | 2 | 25 | 5 | 5 |
| Escape | 931 | 940 | 1,042 | 1,036 | 740 | 19 | 141 | 63 | 73 |
| Espionage And Censorship | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Extortion | 153 | 176 | 199 | 237 | 117 | 22 | 69 | 8 | 21 |
| Federal Custody | 50 | 41 | 58 | 46 | 37 | 1 | 5 | 0 | 3 |
| Food, Drug, And Cosmetic Act | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Foreign Agent Registration Act | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Foreign Policy Impairment | 2 | 5 | 4 | 10 | 7 | 0 | 1 | 0 | 2 |
| Forgery & Misuse Of Official Insignia & Documents | 23 | 29 | 27 | 34 | 25 | 4 | 1 | 4 | 0 |
| Fraud Against The Government | 2,636 | 2,808 | 3,087 | 3,301 | 2,323 | 72 | 587 | 178 | 141 |
| Injury To Or Interference With Govt. Property | 25 | 33 | 35 | 47 | 35 | 1 | 6 | 0 | 5 |
| Immigration | 1,666 | 1,661 | 2,0-5 | 2,004 | 1,492 | 20 | 430 | 16 | 46 |
| Impersonation | 61 | 72 | 67 | 74 | 41 | 3 | 13 | 7 | 10 |
| Income Tax | 1,393 | 1,445 | 1,574 | 1,619 | 1,143 | 79 | 200 | 80 | 117 |

See footnotes at end of table.



## Criminal Cases and Defendants in United States District Court by Offense-Fiscal Year 1974—Continued

| Offense | Filed[1] | Term.[2] | Defts. Filed[1] | Defts. Term.[2] | Guilty | Not Guilty[3] | Dismissed[4] | Rule 20 | Other[5] |
|---|---|---|---|---|---|---|---|---|---|
| Integrity Of Federal Programs | | | | | | | | | |
| Bankhead-Jones Farm Tenant Act | 3 | 2 | 3 | 2 | 2 | 0 | 0 | 0 | 0 |
| Commodity Credit Corporation Charter Act | 3 | 5 | 3 | 6 | 5 | 0 | 1 | 0 | 0 |
| Economic Opportunity Amendments Of 1967 | 11 | 19 | 15 | 23 | 15 | 0 | 4 | 2 | 2 |
| Food Stamp Program | 267 | 329 | 377 | 456 | 357 | 9 | 82 | 2 | 6 |
| Motor Vehicle Emission Standards | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| Small Business Act | 39 | 35 | 41 | 35 | 29 | 1 | 4 | 1 | 0 |
| Social Security Act | 67 | 65 | 73 | 73 | 49 | 1 | 21 | 2 | 0 |
| Interference With Government Officers | 340 | 335 | 405 | 420 | 231 | 40 | 93 | 4 | 52 |
| Jurisdictional Statutes | 1,179 | 1,043 | 1,383 | 1,230 | 810 | 35 | 291 | 50 | 44 |
| Juvenile Delinquency | 197 | 190 | 234 | 221 | 191 | 0 | 22 | 1 | 7 |
| Kidnapping | 384 | 246 | 459 | 319 | 199 | 9 | 48 | 9 | 54 |
| Labor Laws | 89 | 103 | 132 | 168 | 95 | 9 | 48 | 3 | 13 |
| Liquor Statutes | | | | | | | | | |
| Indian Liquor Laws | 2 | 1 | 5 | 4 | 0 | 0 | 1 | 0 | 3 |
| Internal Revenue Service Liquor Violations | 653 | 700 | 1,010 | 1,067 | 862 | 36 | 112 | 9 | 48 |
| Interstate Shipments - Bills Of Lading | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Misprison Of Felony | 45 | 56 | 47 | 57 | 48 | 0 | 6 | 1 | 2 |
| Motor Vehicle Theft | 1,906 | 2,199 | 2,370 | 2,725 | 1,819 | 91 | 403 | 231 | 181 |
| Obscene Or Harassing Telephone Calls | 4 | 6 | 4 | 6 | 3 | 0 | 1 | 2 | 0 |
| Obscenity | 112 | 103 | 161 | 159 | 71 | 7 | 53 | 5 | 23 |
| Obstruction Of Justice | 150 | 138 | 203 | 205 | 91 | 30 | 66 | 1 | 17 |
| Occupational Tax On Gamblers | 4 | 4 | 4 | 4 | 3 | 0 | 1 | 0 | 0 |
| Other Crimes Of Violence | 252 | 250 | 307 | 293 | 175 | 16 | 72 | 7 | 23 |
| Other Stolen Property | 1,465 | 1,786 | 1,873 | 2,297 | 1,389 | 62 | 371 | 324 | 151 |
| Passports And Visas | 243 | 215 | 252 | 221 | 186 | 3 | 26 | 4 | 2 |
| Perjury | 221 | 211 | 240 | 252 | 133 | 26 | 69 | 1 | 23 |
| Prostitution | 64 | 63 | 113 | 119 | 41 | 11 | 41 | 7 | 19 |
| Protection Of Working Men | | | | | | | | | |
| Occupational Safety And Health Act | 2 | 1 | 3 | 2 | 1 | 1 | 0 | 0 | 0 |
| Railroad Unemployment Insurance Act | 7 | 9 | 7 | 9 | 6 | 0 | 3 | 0 | 0 |
| Unemployment Compensation Federal Employees | 4 | 4 | 4 | 4 | 3 | 0 | 0 | 1 | 0 |
| Sabotage | 0 | 2 | 0 | 3 | 2 | 1 | 0 | 0 | 0 |
| Selective Service | 1,316 | 2,650 | 1,322 | 2,657 | 839 | 112 | 1,195 | 148 | 363 |
| Theft Of Government Property | 727 | 762 | 974 | 1,015 | 663 | 35 | 212 | 49 | 56 |
| Treason, Sedition And Subversive Activities | 1 | 2 | 2 | 2 | 1 | 0 | 1 | 0 | 0 |
| Veterans Claims | 21 | 17 | 24 | 19 | 8 | 5 | 5 | 0 | 1 |
| Weapons Control | 2,769 | 2,686 | 3,151 | 3,108 | 2,057 | 156 | 617 | 61 | 217 |
| Wrongful Acts | 3 | 3 | 3 | 3 | 3 | 0 | 0 | 0 | 0 |
| All Other | 597 | 630 | 751 | 809 | 446 | 35 | 173 | 29 | 126 |
| Totals | 41,037 | 43,572 | 55,627 | 59,022 | 37,505 | 2,014 | 12,785 | 2,114 | 4,604 |
| D.C. and Territorial Violations | | | | | | | | | |
| Abortions | 0 | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 0 |
| Arson | 2 | 1 | 2 | 1 | 0 | 0 | 1 | 0 | 0 |
| Assault | 76 | 78 | 85 | 83 | 20 | 6 | 28 | 0 | 29 |
| Bribery—Obstruction/Justice | 1 | 1 | 1 | 1 | 1 | 0 | 0 | 0 | 0 |
| Burglary | 66 | 94 | 79 | 111 | 64 | 2 | 27 | 0 | 18 |
| Children Offenses | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Crimes Against Public Offices, Officers | 2 | 2 | 2 | 2 | 1 | 0 | 1 | 0 | 0 |
| Embezzlement | 22 | 18 | 22 | 18 | 10 | 1 | 3 | 0 | 4 |
| Exclusion & Deportation | 21 | 22 | 23 | 22 | 19 | 0 | 3 | 0 | 0 |
| False Personation/False Pretense | 1 | 2 | 1 | 2 | 1 | 0 | 1 | 0 | 0 |
| 9 | | | | | | | | | |
| Forgery | 5 | 20 | 5 | 20 | 10 | 0 | 9 | 0 | 1 |
| Fraud & False Statements | 5 | 10 | 6 | 11 | 1 | 0 | 10 | 0 | 0 |
| Gambling | 1 | 2 | 1 | | | | | | |
| Gambling | 1 | 2 | 13 | 14 | 0 | 0 | 14 | 0 | 0 |
| Homicide | 51 | 62 | 59 | 76 | 33 | 11 | 8 | 0 | 24 |
| Kidnapping | 0 | 7 | 0 | 7 | 3 | 0 | 1 | 0 | 3 |
| Larceny | 68 | 60 | 88 | 76 | 24 | 5 | 37 | 0 | 10 |
| Manslaughter | 4 | 3 | 4 | 3 | 3 | 0 | 0 | 0 | 0 |
| Miscellaneous | 11 | 13 | 11 | 13 | 0 | 0 | 2 | 0 | 11 |
| Motor Vehicle Violations | 3 | 6 | 3 | 6 | 2 | 0 | 4 | 0 | 0 |
| Obscenity | 2 | 1 | 2 | 1 | 0 | 0 | 0 | 0 | 1 |
| Perjury | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 0 | 0 |
| Prison Breach | 0 | 2 | 0 | 2 | 1 | 0 | 0 | 0 | 1 |
| Prostitution—Pandering | 30 | 1 | 30 | 1 | 0 | 0 | 0 | 0 | 1 |
| Robbery | 54 | 132 | 56 | 139 | 55 | 1 | 25 | 1 | 37 |
| Sex Offenses | 8 | 32 | 8 | 35 | 16 | 0 | 5 | 0 | 14 |
| Trespass-Injuries To Property | 0 | 1 | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Vagrancy | 5 | 5 | 6 | 6 | 3 | 0 | 3 | 0 | 0 |
| Weapons Control | 43 | 11 | 43 | 11 | 1 | 0 | 1 | 0 | 9 |
| All Other | 90 | 96 | 96 | 104 | 52 | 3 | 30 | 1 | 18 |
| Totals | 673 | 683 | 647 | 767 | 320 | 29 | 214 | 2 | 202 |
| Grand Totals | 41,610 | 44,255 | 56,274 | 59,789 | 37,825 | 2,043 | 12,999 | 2,116 | 4,806 |

*[1]Excludes 1709 cases or 1828 defendants initiated by transfer under rule 20*
*[2]Includes 1784 cases or 2116 defendants terminated by transfer under rule 20 and 2505 cases or 4249 defendants dismissed because of superseding indictments or informations*
*[3]Includes 16 verdicts of not guilty by reason of insanity*
*[4]Includes 405 appellate defendants dismissed in favor of the U.S.*
*[5]Includes defendants involved in appellate decisions and proceedings suspended indefinitely by court*

United States Attorneys Financial Summary Fiscal Year Ended June 30,1974

Part 1 Imposed

| Judicial District | Fines | Forfeitures | Penalties | Foreclosures | Other Civil Judgments | Bonds Forfeited | Total | Pre-Judgment Civil Claims |
|---|---|---|---|---|---|---|---|---|
| Alabama N | 210,889.36 | 2,000.00 | 215.00 | .00 | 404,604.26 | .00 | 617,708.62 | 530,365.60 |
| Alabama M | 43,232.00 | 1,000.00 | .00 | .00 | 195,393.00 | .00 | 239,625.00 | 84[illegible].00 |
| Alabama S | 25,220.00 | 26,166.75 | 1,899.31 | 26,838.00 | 36,028.56 | 65.00 | 116,219.60 | 227,970.43 |
| Alaska | 215,997.00 | .00 | .00 | 200,816.00 | 180,621.00 | 50.00 | 597,484.00 | 948,695.74 |
| Arizona | 396,965.00 | .00 | .00 | 63,494.00 | 1,582.00 | 315,950.00 | 777,991.00 | 376,348.00 |
| Arkansas E | 75,798.00 | .00 | 11,160.00 | 646,854.01 | 65,608.80 | 23,000.00 | 822,420.81 | 28,280.16 |
| Arkansas W | 15,875.00 | .00 | 1,600.00 | 482,309.36 | 768,274.00 | .00 | 1,268,058.36 | 23,917.97 |
| Calif N | 257,370.00 | .00 | .00 | .00 | 549,411.59 | 44,000.00 | 860,781.59 | 4,149,295.68 |
| Calif C | 842,208.69 | .00 | 7,345.68 | 16,000.00 | 3,036,941.71 | 303,750.00 | 4,206,246.08 | 10,140,781.93 |
| Calif E | 225,285.00 | .00 | .00 | 56,533.31 | 19,964.43 | 27,800.00 | 329,582.74 | 8,395,280.00 |
| Calif S | 397,936.68 | 184,797.82 | 13,940.49 | 267,401.02 | 146,801.50 | 1,167,450.00 | 2,018,327.51 | 1,302,650.97 |
| Colorado | 155,235.00 | 260,800.00 | 53,790.07 | 519,113.12 | 295,427.27 | 69,000.00 | 1,348,365.46 | 3,132,917.56 |
| Connecticut | 53,145.00 | .00 | 6,895.00 | 142,124.26 | 1,349,080.23 | .00 | 1,551,244.49 | 207,688.57 |
| Delaware | 37,994.00 | 5,200.00 | 1,044.50 | 183,720.54 | 161,450.99 | .00 | 389,410.03 | .00 |
| Dist of Col | 171,214.00 | 3,500.00 | 2,666.80 | .00 | 126,299.54 | 7,000.00 | 310,680.34 | 371,510.00 |
| Florida N | 54,486.15 | .00 | 343.16 | 569,032.33 | 7,706,722.44 | .00 | 8,330,584.08 | 400,425.18 |
| Florida M | 134,607.00 | .00 | 5,269.00 | 6,580,720.00 | 1,367,188.00 | 58,500.00 | 8,146,284.00 | 1,378,093.00 |
| Florida S | 472,269.00 | 146.16 | 29,680.93 | 1,071,973.34 | 2,173,816.45 | 513,000.00 | 64,260,885.88 | 339,291.17 |
| Georgia N | 306,560.00 | 8,699.19 | 53,756.13 | 55,253.00 | 141,392.05 | 92,500.00 | 658,160.37 | 188,287.88 |
| Georgia M | 25,982.50 | 8,430.00 | .00 | .00 | 258,929.32 | 7,712.65 | 296,054.47 | 176,797.86 |
| Georgia S | 79,285.00 | 10,380.22 | 47,729.68 | .00 | 37,298.97 | 5,000.00 | 179693.87 | 246,255.94 |
| Hawaii | 30,749.00 | .00 | .00 | .00 | 1,300.00 | .00 | 32,045.00 | 26,000.00 |
| Idaho | 17,900.00 | .00 | 4,641.74 | 339,891.72 | 323,084.15 | 120.00 | 685,637.61 | 284,908.17 |
| Illinois N | 561,485.03 | 22,833.00 | 124,697.00 | 6,053,296.38 | 3,691,226.37 | 516,000.00 | 10,969,537.78 | 13,010,652.26 |
| Illinois E | 80,012.31 | .00 | .00 | 95,240.65 | 94,587.19 | .00 | 269,840.15 | 10,189.00 |
| Illinois S | 19,852.50 | .00 | 210.00 | 287,868.60 | 50,819.43 | 26,000.00 | 384,750.53 | 94,730.20 |
| Indiana N | 173,978.35 | .00 | 3,371.24 | 459,339.51 | 56,377.13 | 7,500.00 | 700,566.23 | 1,288,084.38 |
| Indiana S | 139,484.00 | .00 | 500.00 | 6,339,720.00 | 1,609,727.00 | .00 | 8,089,431.00 | 2,868,290.00 |
| Iowa Northern | 83,470.00 | .00 | 3,522.00 | 71,819.00 | 29,655.00 | .00 | 188,466.00 | .00 |
| Iowa Southern | 53,357.59 | .00 | 21,032.69 | 1,192,241.60 | 238,726.66 | 35,000.00 | 1,540,358.54 | 2,191,269.05 |
| Kansas | 55,835.32 | 80.08 | 11,208.03 | 3,879,880.78 | 1,132,359.50 | 14,500.00 | 5,093,863.71 | 572,538.87 |
| Kentucky E | 161,309.52 | .00 | 7,559.38 | .00 | 41,967.53 | 56,482.00 | 287,318.43 | 21,795.57 |
| Kentucky W | 54,422.00 | 12,087.00 | 72,046.46 | 1,157,572.04 | 448,950.40 | 3,500.00 | 1,748,577.90 | 2,672,455.25 |
| Louisiana E | 302,601.36 | 8,523.07 | 174.12 | 6,189,387.01 | 588,462.48 | 10,000.00 | 7,099,148.06 | 24,914,024.53 |
| Louisiana M | 9,104.00 | .00 | 8,000.00 | 1,216,707.29 | 64,546.16 | 335.00 | 1,298,692.45 | 2,695,222.85 |
| Louisiana W | 73,375.00 | .00 | 7,690.00 | 1,586,782.00 | 184,299.00 | .00 | 1,852,146.00 | 4,058,676.00 |
| Maine | 49,895.00 | .00 | 133,689.21 | .00 | 40,071.25 | 2,500.00 | 226,155.46 | 920,627.32 |
| Maryland | 259,499.00 | 10,000.00 | 262,876.22 | 251,071.06 | 1,581,486[illegible]3 | .00 | 2,364,933.21 | 2,110,634.05 |
| Massachusetts | 364,665.00 | .00 | 7,904.36 | 4,961,620.08 | 270,644.05 | 16,349.00 | 5,621,182.49 | 4,093,240.94 |
| Michigan E | 775,811.50 | 535.03 | 285.40 | 14,940,523.43 | 137,041.93 | 52,500.00 | 15,906,697.29 | 1,099,900.03 |
| Michigan W | 30,225.00 | .00 | .00 | 160,551.20 | 151,661.07 | 1,000.00 | 343,437.27 | 1,022,086.56 |
| Minnesota | 109,575.00 | .00 | .00 | .00 | 343,698.91 | .00 | 453,273.91 | 9,344.51 |
| Mississippi N | 22,550.22 | 13,559.25 | 189.80 | 17,222.62 | 182,678.40 | 1,000.00 | 237,200.29 | 1,287,700.15 |
| Mississippi S | 66,075.00 | 200.00 | 2,401.47 | 411,340.00 | 504,999.15 | .00 | 985,0-5.62 | 815,905.43 |
| Missouri E | 108,622.50 | 5,706.61 | 11,557.04 | .00 | 368,494.76 | 228,500.00 | 722,880.91 | 581,572.98 |
| Missouri W | 82,525.43 | 5,625.00 | 7,-87.56 | .00 | 368,731.01 | 3,500.00 | 467,469.00 | 1,029,862.17 |
| Montana | 15,670.00 | .00 | 13,090.69 | 17,104.12 | 25,997.64 | .00 | 71,862.45 | 44,232.12 |
| Nebraska | 41,742.82 | .00 | 1,243.44 | 227,375.07 | 1,756,402.83 | 1,250.00 | 2,028,014.16 | .00 |
| Nevada | 69,325.00 | .00 | 500.00 | .00 | 289,146.22 | .00 | 358,971.22 | 2,412.03 |
| New Hampshire | 100,950.00 | .00 | .00 | .00 | 16,181.90 | .00 | 117,131.90 | 1,339.38 |
| New Jersey | 1,048,309.00 | 1,173.60 | .00 | 11,118,329.74 | 950,802.11 | 52,000.00 | 13,170,614.45 | 12,304,398.71 |
| New Mexico | 132,766.00 | 1,000.00 | .00 | 276,589.00 | 380,046.88 | 36,000.00 | 826,401.88 | 327,859.00 |
| New York N | 82,115.00 | .00 | .00 | .00 | 5,760.00 | .00 | 87,875.00 | 898.00 |
| New York E | 865,625.00 | .00 | .00 | 284,124.51 | 3,408,941.34 | .00 | 4,558,690.85 | 2,585,213.61 |
| New York S | 1,848,774.99 | .00 | .00 | .00 | 21,320,692.21 | 77,000.00 | 23,246,467.20 | 1,378,784.12 |
| New York W | 196,100.00 | 4,650.00 | 6,870.00 | 317,951.00 | 229,996.00 | 12,500.00 | 768,067.00 | 2,287,313.00 |
| N Carolina E | 187,895.00 | .00 | .00 | .00 | 71,775,33 | .00 | 259,670.33 | 4,724.30 |
| N Carolina M | 87,777.00 | 793.00 | .00 | .00 | 41,805.40 | 1,500.00 | 131,875.40 | 3,678.00 |
| N Carolina W | 138,707.00 | .00 | 28,698.80 | .00 | 92,383.71 | 14,100.00 | 273,889.51 | 129,847.20 |
| North Dakota | 67,200.00 | .00 | 2,500.00 | 402,931.15 | 157,965.31 | .00 | 630,596.46 | 725,386.11 |
| Ohio Northern | 226,802.20 | .00 | 5,605.68 | 2,683,690.95 | 1,844,937.66 | .00 | 4,761,036.49 | 3,812,385.59 |
| Ohio Southern | 74,325.00 | .00 | .00 | 1,371,957.14 | 70,614.42 | .00 | 1,516,896.56 | 328,538.20 |
| Oklahoma N | 29,000.00 | .00 | .00 | 1,579,175.56 | .00 | .00 | 1,608,175.56 | 127,836.11 |
| Oklahoma E | 37,675.00 | .00 | 2,232.00 | 738,356.55 | 82,220.38 | .00 | 861,483.93 | 168,600.00 |
| Oklahoma W | 138,136.00 | .00 | 6,537.90 | 5,345,412.90 | 590,406.00 | 8,000.00 | 6,088,492.80 | 64,328.00 |
| Oregon | 60,700.00 | 3,750.00 | 3,870.00 | 438,481.48 | 338,356.59 | 1,500.00 | 846,658.07 | 1,263,016.15 |
| Pa Eastern | 915,642.10 | .00 | .00 | 1,542,761.67 | 4,295,876.55 | 5,000.00 | 6,759,280.32 | 142,417.28 |
| Pa Middle | 86,569.00 | .00 | .00 | 2,100.00 | 200,826.80 | 15,000.00 | 304,495.80 | .00 |
| Pa Western | 624,028.80 | .00 | .00 | 244,103.94 | 236,729.63 | 32,000.00 | 1,136,862.37 | 68,293.94 |
| Puerto Rico | 38,920.00 | .00 | .00 | .00 | .00 | 5,400.00 | 44,320.00 | .00 |
| Rhode Island | 58,625.00 | .00 | 1,825.00 | .00 | 104,400.88 | .00 | 164,850.88 | 146,265.61 |
| S Carolina | 86,475.00 | .00 | .00 | 5,829,849.28 | 388,310.91 | 1,500.00 | 6,306,135.19 | 1,960,166.04 |
| South Dakota | 51,342.00 | .00 | .00 | 13,800.00 | 230,249.00 | .00 | 295,391.00 | 23,510.00 |
| Tennessee E | 52,845.00 | 629.96 | 565.94 | 1,569.52 | 450,763.44 | 10,400.00 | 516,773.86 | 70,574.07 |
| Tennessee M | 47,735.00 | .00 | .00 | .00 | 68,494.05 | .00 | 116,229.05 | 275,790.49 |
| Tennessee W | 39,370.00 | 88.12 | 22,727.90 | .00 | 75,975.85 | 39,769.32 | 157,931.19 | 2,267,580.43 |
| Texas Northern | 393,268.00 | 20,204.00 | 84,233.84 | .00 | 1,515,161.21 | 54,950.00 | 2,067,817.05 | 3,684,365.11 |
| Texas Eastern | 63,285.00 | .00 | 7,175.00 | 34,795.48 | 526,060.00 | .00 | 631,315.48 | 256,245.80 |
| Texas Southern | 422,510.45 | 37,655.00 | .00 | .00 | 258,248.11 | 887,500.00 | 1,605,916.56 | 601,172.73 |



United States Attorneys-Financial Summary Fiscal Year Ended June 30, 1974, Part 1 Imposed—Continued

| Judicial District | Fines | Forfeitures | Penalties | Foreclosures | Other Civil Judgments | Bonds Forfeited | Total | Pre-Judgment Civil Claims |
|---|---|---|---|---|---|---|---|---|
| Texas Western | 136,513.30 | .00 | .00 | .00 | 12,944.56 | 5,000.00 | 154,457.86 | .00 |
| Utah | 26,195.00 | .00 | 4,145.00 | 195,636.10 | 109,648.13 | .00 | 335,624.23 | 173,157.35 |
| Vermont | 31,100.00 | .00 | 100.00 | 13,517.41 | 98,038.30 | 4,700.00 | 147,455.71 | .00 |
| Virginia E | 380,077.50 | .00 | .00 | 1,366,377.11 | 142,260.05 | .00 | 1,888,714.66 | 115,515.00 |
| Virginia W | 65,605.00 | .00 | 9,131.65 | .00 | 3,886.83 | .00 | 78,623.48 | .00 |
| Washington E | 15,532.00 | .00 | 2,790.00 | 718,070.00 | 33,909.00 | .00 | 770,301.00 | 4,756,530.82 |
| Washington W | 60,037.00 | 1,732.68 | 41,251.77 | 8,800,226.79 | 178,382.11 | 26,000.00 | 9,107,630.35 | 122,564.46 |
| West Virginia N | 15,500.00 | .00 | .00 | .00 | 132,061.00 | .00 | 147,561.00 | 123,373.00 |
| West Virginia S | 666,850.00 | .00 | .00 | .00 | 50,419.11 | 1,000.00 | 718,269.11 | 284,033.74 |
| Wisconsin E | 47,284.00 | 2,000.00 | 23,432.00 | 261,930.47 | 157,110.94 | 7,500.00 | 499,257.41 | 2,608,255.89 |
| Wisconsin W | 9,669.00 | .00 | .00 | 368,089.70 | 140,066.84 | .00 | 517,825.54 | 234,611.50 |
| Wyoming | 6,085.00 | .00 | 162.19 | .00 | 186,588.29 | .00 | 192,835.48 | 551,855.09 |
| Canal Zone | 6,216.00 | 200.00 | .00 | .00 | .00 | 3,100.00 | 9,516.00 | 1,471.50 |
| Guam | 1,800.00 | .00 | .00 | .00 | .00 | .00 | 1,800.00 | .00 |
| Virgin Islands | 4,150.00 | .00 | .00 | 103,181.35 | .00 | .00 | 107,331.35 | .00 |
| Totals | 17,656,757.19 | 864,147.52 | 1,177,668.27 | 104,791,745.25 | 72,799,275.09 | 4,802,232.97 | 201,891,826.29 | 144,466,955.22 |

United States Attorneys Financial Summary Fiscal Year Ended June 30, 1974

Part 2 Collected

| Judicial District | Fines | Forfeitures | Penalties | Foreclosures | Other Civil Judgments | Bonds Forfeited | Total | Civil w/o Actual Suit or Prosec. |
|---|---|---|---|---|---|---|---|---|
| Alabama N | 236,121.90 | .00 | 25.00 | .00 | 192,946.23 | .00 | 429,092.13 | 1,302,291.39 |
| Alabama M | 30,701.00 | .00 | .00 | .00 | 22,073.00 | .00 | 52,774.00 | 35,606.00 |
| Alabama S | 21,986.00 | 18,489.88 | 1,916.80 | 27,486.66 | 52,321.60 | 65.00 | 122,265.94 | 44,694.99 |
| Alaska | 108,024.00 | .00 | .00 | 37,296.00 | 122,101.00 | 3,434.93 | 320,855.93 | 925,177.74 |
| Arizona | 176,772.00 | .00 | 100.00 | 48,700.00 | 38,518.00 | 166,650.00 | 430,740.00 | 152,279.00 |
| Arkansas E | 57,964.65 | 47.06 | 11,153.32 | 592,718.96 | 809,384.87 | .00 | 1,471,268.86 | 177,779.95 |
| Arkansas W | 10,178.00 | .00 | 150.52 | 489,233.76 | 10,602.08 | .00 | 510,164.36 | 134,970.70 |
| Calif N | 265,146.12 | .00 | .00 | .00 | 377,826.07 | 15,995.00 | 658,967.19 | 480,571.36 |
| Calif C | 242,204.03 | 3,873.08 | 11,254.58 | 552.80 | 674,019.61 | 107,460.00 | 1,039,364.10 | 6,964,978.35 |
| Calif E | 156,308.25 | .00 | .00 | 41,364.91 | 34,372.19 | 5,100.00 | 237,145.33 | 117,260.98 |
| Calif S | 224,305.60 | 184,822.14 | 13,814.72 | 2,988.04 | 79,066.84 | 459,664.78 | 965,162.17 | 732,592.22 |
| Colorado | 98,513.00 | 260,800.00 | 21,848.31 | 19,882.52 | 373,766.01 | 6,000.00 | 780,809.84 | 1,138,839.50 |
| Connecticut | 46,640.0 | | | | | | | |
| Connecticut | 46,640.00 | .00 | 2,956.00 | 59,151.16 | 181,234.13 | .00 | 289,981.29 | 109,699.04 |
| Delaware | 9,289.00 | 2,033.00 | 944.50 | 85,523.17 | 48,222.86 | .00 | 146,012.53 | 4,357.05 |
| Dist of Col | 252,948.45 | 1,700.00 | .00 | .00 | 19,446.36 | 13,600.00 | 287,694[illegible]1 | 234,592.39 |
| Florida N | 50,784.69 | .00 | 423.16 | 556,685.80 | 7,037,979.30 | .00 | 7,645,872.90 | 398,070.11 |
| Florida M | 112,447.00 | .00 | 877.00 | 5,738,656.00 | 215,785.00 | 50,000.00 | 6,117,765.00 | 1,538,229.00 |
| Florida S | 205,870.80 | 146.16 | 42,280.41 | 472,757.91 | 724,498.84 | 245,600.00 | 1,691,154.12 | 1,342,757.30 |
| Georgia N | 305,764.78 | 8,299.19 | 53,917.65 | 23,211.70 | 102,043.27 | 34,733.22 | 527,969.81 | 143,599.53 |
| Georgia M | 11,992.50 | 2,801.00 | .00 | .00 | 67,453.31 | 2,712.65 | 84,959.46 | 131,989.44 |
| Georgia S | 83,535.00 | 10,380.22 | 6,608.56 | .00 | 20,589.25 | .00 | 121,163.03 | 12,594.02 |
| Hawaii | 17,256.00 | .00 | .00 | 100.00 | 2,453.98 | .00 | 19,809.98 | 9,058.91 |
| Idaho | 11,218.00 | .00 | 2,848.50 | 973,518.83 | 34,701.75 | 120.00 | 1,022,407.08 | 214,318.58 |
| Illinois N | 621,690.29 | 10,939.00 | 35,467.82 | 69,368.81 | 740,92867 | 11,739.00 | 1,490,133.59 | 784,395.74 |
| Illinois E | 72,186.31 | 2,000.00 | 121.09 | 92,071.26 | 177,280.88 | .00 | 343,659.54 | 60,442.82 |
| Illinois S | 25,050.00 | .00 | 5,711.09 | 270,582.95 | 83,199.24 | 3,210.00 | 387,753.28 | 133,726.07 |
| Indiana N | 98,397.60 | .00 | 13,240.68 | 380,743.14 | 110,390.85 | 7,[illegible]00.00 | 610,822.32 | 548,234.12 |
| Indiana S | 133,801.00 | 2,201.00 | .00 | 1,366,156.00 | 229,411.00 | .00 | 1,756,569.00 | 516,933.00 |
| Iowa Northern | 93,565.00 | .00 | 1,555.00 | 80,211.00 | 42,943.57 | .00 | 218,274.57 | 282,622.55 |
| Iowa Southern | 63,420.89 | .00 | 1,973.69 | 687,150.80 | 49,659.07 | 7,010.00 | 809,214.45 | 1,013,205.81 |
| Kansas | 77,871.86 | 8,226.11 | 5,099.00 | 3,376,872.66 | 130,008.19 | 1,900.00 | 3,599,977.82 | 639,767.83 |
| Kentucky E | 47,306.52 | .00 | 16,476.18 | .00 | 303,754.55 | 15,770.00 | 383,307.25 | 183,403.81 |
| Kentucky W | 49,065.00 | .00 | 18,010.58 | 827,826.67 | 85,044.68 | 2,500.00 | 982,446.93 | 303,341.87 |
| Louisiana E | 272,481.58 | 2,546.56 | 4,140.26 | 4,779,156.93 | 332,401.68 | 10,000.00 | 5,400,677.01 | 1,552,435.84 |
| Louisiana M | 13,526.00 | .00 | .00 | 291,593.55 | 91,475.71 | 335.00 | 396,930.26 | 80,612.20 |
| Louisiana W | 69,420.00 | .00 | 6,015.00 | 1,438,500.00 | 91,009.00 | .00 | 1,604,944.00 | 273,777.00 |
| Maine | 48,110.00 | .00 | 129,981.75 | .00 | 29,944.06 | 2,750.00 | 210,785.81 | 390,078.95 |
| Maryland | 165,993.18 | 17,019.41 | 33,939.18 | 54,549.80 | 1,181,340.14 | 7,775.00 | 1,460,616.71 | 300,655.10 |
| Massachusetts | 307,797.00 | .00 | 9,766. 4 | 4,937,472.73 | 432,711.69 | 8,579.00 | 5,696,327.16 | 2,255,838.15 |
| Michigan E | 529,734.10 | 535.03 | 145.12 | 14,940,523.43 | 238,516.30 | 14,200.00 | 15,723,653.98 | 3,616,936.24 |
| Michigan W | 6,875.00 | .00 | 760.00 | 80,000.00 | 30,045.51 | .00 | 117,680.51 | 199,587.64 |
| Minnesota | 147,767.75 | .00 | .00 | .00 | 72,446.42 | .00 | 220,214.17 | 73,809.07 |
| Mississippi N | 30,600.00 | 13,758,41 | 524.80 | 746.41 | 10,428.26 | .00 | 56,057.88 | 957,609.48 |
| Mississippi S | 63,997.86 | 200.00 | 2,456.20 | 411,340.00 | 379,886.94 | .00 | 857,881.00 | 218,506.88 |
| Missouri E | 72,994.76 | 3,274.12 | 2,947.04 | .00 | 53,761.99 | 3,927.00 | 136,904.91 | 355,066.46 |
| Missouri W | 35,584.00 | 5,625.00 | 3,949.11 | .00 | 64,441.23 | .00 | 130,599.34 | 174,946.78 |
| Montana | 17,721.12 | 142.80 | 1,599.00 | 90,852.76 | 17,571.02 | .00 | 127,886.72 | 52,386.40 |
| Nebtaska | 32,375.54 | .00 | 50.00 | 364,022.35 | 205,912.72 | .00 | 602,360.61 | 266,972.24 |
| Nevada | 60,990.00 | .00 | 500.00 | .00 | 140,998.50 | 15,690.00 | 238,178.50 | 4,262.00 |
| New Hampshire | 38,425.00 | .00 | .00 | .00 | 15,657.06 | .00 | 54,082.06 | 195,693.95 |
| New Jersey | 353,611.84 | 1,216.60 | 1,220.00 | 3,020,786.14 | 969,655.37 | 274,000.00 | 5,120,489.95 | 2,910,311.89 |

## United States Attorneys Financial Summary Fiscal Year Ended June 30, 1974, Part 2 Collected—Continued

| Judicial District | Fines | Forfeitures | Penalties | Foreclosures | Other Civil Judgments | Bonds Forfeited | Total | Civil w/o Actual Suit or Prosec. |
|---|---|---|---|---|---|---|---|---|
| New Mexico | 49,621.00 | .00 | .00 | 186,371.00 | 76,768.94 | 350.00 | 313,110.94 | 192,926.46 |
| New York N | 75,000.00 | .00 | .00 | 38,114.00 | 56,976.00 | .00 | 170,090.00 | 230,836.00 |
| New York E | 480,942.21 | 399,500.00 | 160,017.31 | 112,775.91 | 221,410.67 | 2,000.00 | 1,376,646.10 | 361,470.30 |
| New York S | 349,547.90 | .00 | .00 | .00 | 2,177,284.90 | 92,030.00 | 3,118,862.80 | 2,122,629.96 |
| New York W | 85,565.00 | 545.00 | 2,305.00 | 123,722.00 | 40,582.00 | .00 | 252,719.00 | 642,293.00 |
| N Carolina E | 50,130.68 | .00 | .00 | .00 | 22,816.03 | .00 | 72,946.71 | 33,905.40 |
| N Carolina M | 105,030.00 | 793.00 | .00 | .00 | 89,298.72 | 100.00 | 195,221.72 | 6,225.40 |
| N Carolina W | 109,962.15 | .00 | 6,703.83 | .00 | 46,139.92 | 1,500.00 | 164,305.90 | 131,796.41 |
| North Dakota | 27,170.00 | .00 | 2,500.00 | 295,383.37 | 28,454.56 | .0 | | |
| North Dakota | 27,170.00 | .00 | 2,500.00 | 295,383.37 | 28,454.56 | .00 | 353,507.93 | 498,560.83 |
| Ohio Northern | 311,511.60 | .00 | 4,210.00 | 2,249,790.27 | 421,610.08 | .00 | 2,987,121.95 | 316,312.68 |
| Ohio Southern | 145,290.00 | .00 | 2,500.00 | 1,112,658.28 | 240,123.34 | .00 | 1,500,571.62 | 20,994.80 |
| Oklahoma N | 25,000.00 | .00 | .00 | 879,694.00 | 30,479.97 | .00 | 935,170.97 | 67,470.58 |
| Oklahoma E | 24,953.00 | .00 | 877.00 | 216,417.66 | 25,021.00 | .00 | 266,768.66 | 48,791.30 |
| Oklahoma W | 102,364.00 | .00 | 4,092.00 | 3,542,777.73 | 109,255.12 | 7,750.00 | 3,766,238.85 | 65,672.00 |
| Oregon | 45,876.36 | 3,750.00 | 990.00 | 296,237.04 | 214,647.38 | 1,500.00 | 563,000.78 | 395,672.16 |
| Pa Eastern | 662,460.40 | .00 | .00 | 71,500.00 | 484,318.17 | .00 | 1,218,278.57 | 232,196.61 |
| Pa Middle | 46,763.00 | .00 | 10,594.00 | 61,316.00 | 53,557.45 | 15,000.00 | 187,230.45 | 10,054.00 |
| Pa Western | 156,020.42 | .00 | 9,945.21 | 202,747.27 | 340,214.72 | .00 | 708,927.62 | 87,458.1 |
| Puerto Rico | 27,369.00 | .00 | .00 | .00 | 389,991.06 | 5,000.00 | 422,360.06 | 119,294.58 |
| Rhode Island | 57,535.00 | .00 | 1,350.00 | .00 | 8,295.00 | .00 | 77,180.00 | 111,499.59 |
| S Carolina | 50,280.00 | .00 | 323.30 | 4,776,222.35 | 181,569.23 | 1,000.00 | 5,009,394.88 | 809,259.74 |
| South Dakota | 41,856.38 | .00 | .00 | 89,590.00 | 14,639.00 | .00 | 146,085.38 | 62,708.00 |
| Tennessee E | 44,536.00 | 2,602.40 | 410.94 | 1,127,555.30 | 31,037.19 | .00 | 1,206,141.83 | 163,533.08 |
| Tennessee M | 66,731.38 | 1,012.35 | .00 | .00 | 6,097.23 | .00 | 73,840.96 | 166,608.85 |
| Tennessee W | 29,605.31 | 2,868.27 | 1 | | | | | |
| Tennessee W | 29,605.31 | 2,868.27 | 135.00 | .00 | 21,720.27 | 13,992.50 | 68,321.35 | 38,638.28 |
| Texas Northern | 232,145.36 | 25,750.00 | 58,915.50 | .00 | 619,389.62 | 335.00 | 936,535.48 | 3,030,546.93 |
| Texas Eastern | 30,882.00 | .00 | .00 | 34,795.48 | 43,188.83 | .00 | 108,866.31 | 163,213.58 |
| Texas Southern | 578,079.46 | 37,655.00 | .00 | .00 | 539,649.46 | 177,981.15 | 1,333,365.07 | 422,364.36 |
| Texas Western | 155,331.77 | 2,293.16 | 6,750.45 | .00 | 244,104.30 | 1,790.00 | 410,269.68 | 106,752.14 |
| Utah | 54,010.00 | .00 | 5,195.00 | 158,931.73 | 63,200.69 | .00 | 281,637.42 | 80,522.8 |
| Vermont | 19,450.00 | .00 | 100.00 | 13,517.41 | 83,743.30 | 4,700.00 | 121,510.71 | 40,283.56 |
| Virginia E | 279,168.13 | 115.00 | 1,937.00 | 993,400.00 | 51,970.78 | .00 | 1,326,590.91 | 124,328.78 |
| Virginia W | 46,392.63 | .00 | 5,391.66 | 5,888.57 | 29,831.52 | .00 | 87,504.38 | 147,677.21 |
| Washington E | 15,154.00 | .00 | .00 | 228,900.00 | 15,741.00 | .00 | 259,795.00 | 219,757.04 |
| Washington W | 58,956.36 | 5,150.64 | 26,905.65 | 5,413,440.70 | 84,259.92 | 10,000.00 | 5,598,753.27 | 58,071.24 |
| West Virginia N | 31,768.52 | .00 | .00 | .00 | 39,789.77 | .00 | 71,558.29 | 37,561.44 |
| West Virginia S | 60,500.00 | .00 | .00 | .00 | 36,079.57 | .00 | 96,579.97 | 288,878.34 |
| Wisconsin E | 27,375.00 | .00 | 725.00 | 152,439.25 | 247,008.27 | 300.00 | 427,847.52 | 437,466.07 |
| Wisconsin W | 10,188.00 | .00 | .00 | 365,655.86 | 99,273.39 | .00 | 475,117.25 | 189,349.75 |
| Wyoming | 6,330.00 | .00 | 163.00 | 267,973.88 | 80,306.58 | .00 | 354,773.46 | 48,988.21 |
| Canal Zone | 6,216.00 | 200.00 | .00 | .00 | .00 | 3,100.00 | 9,516.00 | 1,350.50 |
| Guam | 1,899.27 | .00 | .00 | .00 | .00 | .00 | 1,899.27 | .00 |
| Virgin Islands | 1,700.00 | .00 | .00 | .00 | .00 | .00 | 1,700.00 | 11,532.00 |
| Totals | 12,179,797.19 | 1,043,310.59 | 779,855.21 | 69,768,167.79 | 25,162,114.20 | 1,836,449.23 | 110,769,694.21 | 47,037,319.26 |

## Work of United States Attorneys Fiscal Year 1974

| Judicial Districts | Trials | Other | Trials | Other | Civil Cases Filed | Criminal Cases Filed[2] | Criminal Matters Received | Proceedings Before Grand Jury | Civil Matters Received |
|---|---|---|---|---|---|---|---|---|---|
| | Civil Cases Terminated | | Criminal Cases Terminated[1] | | | | | | |
| Alabama | 11 | 315 | 36 | 447 | 358 | 439 | 1,285 | 342 | 423 |
| Alabama M | | 89 | 42 | 200 | 92 | 233 | 835 | 159 | 140 |
| Alabama S | 6 | 96 | 25 | 163 | 102 | 159 | 487 | 82 | 143 |
| Alaska | 2 | 71 | 19 | 242 | 76 | 206 | 607 | 59 | 82 |
| Arizona | 7 | 447 | 132 | 1,249 | 512 | 1,370 | 3,952 | 923 | 734 |
| Arkansas | 14 | 184 | 65 | 209 | 270 | 287 | 920 | 158 | 322 |
| Arkansas W | 7 | 99 | 19 | 78 | 133 | 91 | 520 | 58 | 145 |
| California N | 16 | 504 | 105 | 875 | 596 | 924 | 3,399 | 394 | 767 |
| California C | 70 | 1,119 | 191 | 1,795 | 1,316 | 1,915 | 7,410 | 1,197 | 1,724 |
| California E | 13 | 210 | 72 | 894 | 266 | 934 | 2,246 | 533 | 358 |
| California S | 68 | 240 | 247 | 2,144 | 293 | 2,712 | 26,387 | 1,449 | 403 |
| Colorado | 34 | 239 | 91 | 427 | 318 | 596 | 1,940 | 365 | 445 |
| Connecticut | 42 | 407 | 19 | 330 | 496 | 371 | 1,532 | 237 | 519 |
| Delaware | | 83 | 15 | 84 | 74 | 90 | 347 | 68 | 97 |
| District of Columbia | 113 | 903 | 214 | 1,287 | 588 | 1,279 | 2,810 | 68 | 97 |
| Florida N | 4 | 223 | 40 | 229 | 215 | 273 | 879 | 161 | 233 |

See footnotes at end of table.



## Work of United States Attorneys Fiscal Year 1974—Continued

| Judicial Districts | Trials | Other | Trials | Other | Civil Cases Filed | Criminal Cases Filed[2] | Criminal Matters Received | Proceedings Before Grand Jury | Civil Matters Received |
|---|---|---|---|---|---|---|---|---|---|
| Florida M | 26 | 662 | 68 | 692 | 594 | 729 | 3,750 | 394 | 837 |
| Florida S | 32 | 663 | 153 | 806 | 754 | 729 | 3,750 | 394 | 837 |
| Georgia N | 11 | 689 | 130 | 600 | 743 | 708 | 2,645 | 491 | 870 |
| Georgia M | 3 | 121 | 37 | 227 | 125 | 274 | 985 | 202 | 203 |
| Georgia S | 9 | 90 | 33 | 223 | 116 | 260 | 1,188 | 138 | 161 |
| Hawaii | 16 | 57 | 13 | 141 | 117 | 164 | 983 | 110 | 122 |
| Idaho | 8 | 127 | 6 | 90 | 155 | 104 | 558 | 70 | 179 |
| Illinois N | 12 | 771 | 129 | 857 | 1,172 | 984 | 4,957 | 613 | 1,336 |
| Illinois E | 1 | 127 | 42 | 220 | 225 | 187 | 637 | 135 | 278 |
| Illinois S | 2 | 167 | 26 | 204 | 178 | 249 | 914 | 133 | 246 |
| Indiana N | 2 | 155 | 48 | 345 | 237 | 409 | 1,160 | 283 | 261 |
| Indiana S | 2 | 450 | 39 | 375 | 423 | 400 | 1,415 | 289 | 485 |
| Iowa N | 1 | 93 | 12 | 81 | 84 | 99 | 364 | 56 | 135 |
| Iowa S | 3 | 156 | 23 | 130 | 147 | 155 | 525 | 98 | 135 |
| Kansas | 11 | 718 | 91 | 471 | 775 | 520 | 1,524 | 316 | 825 |
| Kentucky E | 4 | 588 | 74 | 368 | 598 | 439 | 1,316 | 310 | 570 |
| Kentucky W | 2 | 290 | 33 | 380 | 314 | 432 | 1,784 | 263 | 418 |
| Louisiana E | 24 | 608 | 71 | 475 | 572 | 571 | 1,521 | 301 | 889 |
| Louisina M | | 56 | 8 | 56 | 76 | 58 | 291 | 31 | 105 |
| Louisina W | 2 | 298 | 24 | 268 | 304 | 269 | 1,349 | 189 | 513 |
| Maine | 2 | 48 | 8 | 89 | 61 | 62 | 334 | 31 | 119 |
| Maryland | 31 | 304 | 78 | 619 | 333 | 747 | 3,262 | 472 | 554 |
| Massachusetts | 8 | 309 | 55 | 309 | 385 | 388 | 1,954 | 271 | 486 |
| Michigan E | 18 | 505 | 124 | 1,514 | 603 | 1,715 | 4,295 | 1,011 | 486 |
| Michigan W | 2 | 112 | 15 | 271 | 132 | 228 | 538 | 69 | 164 |
| Minnesota | 5 | 367 | 55 | 388 | 340 | 364 | 1,354 | 225 | 436 |
| Mississippi N | 17 | 108 | 26 | 103 | 119 | 111 | 521 | 56 | 135 |
| Mississippi S | 14 | 225 | 8 | 151 | 263 | 141 | 991 | 64 | 309 |
| Missouri E | 13 | 307 | 60 | 327 | 291 | 393 | 2,257 | 261 | 397 |
| Missouri W | 3 | 859 | 64 | 524 | 967 | 711 | 1,966 | 367 | 1,100 |
| Montana | 9 | 110 | 10 | 158 | 98 | 169 | 629 | 81 | 118 |
| Nebraska | 5 | 227 | 25 | 184 | 236 | 209 | 971 | 149 | 270 |
| Nevada | 24 | 109 | 32 | 237 | 98 | 275 | 1,310 | 180 | 116 |
| New Hampshire | 2 | 60 | 6 | 58 | 66 | 49 | 104 | 25 | 87 |
| New Jersey | 9 | 886 | 60 | 727 | 1,010 | 614 | 3,768 | 381 | 1,198 |
| New Mexico | 7 | 271 | 54 | 380 | 255 | 411 | 1,717 | 259 | 302 |
| New York N | 3 | 258 | 20 | 238 | 291 | 173 | 1,102 | 121 | 347 |
| New York E | 3 | 806 | 125 | 1,061 | 1,165 | 982 | 3,133 | 437 | 1,300 |
| New York S | 132 | 1,245 | 169 | 1,060 | 1,276 | 1,389 | 3,050 | 930 | 1,390 |
| New York W | | 471 | 22 | 465 | 376 | 348 | 1,859 | 225 | 480 |
| North Carolina E | 34 | 148 | 41 | 319 | 172 | 373 | 1,335 | 262 | 173 |
| North Carolina M | 4 | 105 | 89 | 294 | 115 | 385 | 910 | 281 | 124 |
| North Carolina W | 8 | 111 | 60 | 231 | 128 | 331 | 945 | 220 | 149 |
| North Dakota | 8 | 124 | 16 | 107 | 113 | 145 | 380 | 93 | 166 |
| Ohio N | 10 | 953 | 45 | 894 | 1,031 | 847 | 2,874 | 477 | 1,230 |
| Ohio S | 6 | 702 | 30 | 425 | 765 | 407 | 1,809 | 216 | 906 |
| Oklahoma N | 2 | 328 | 13 | 156 | 263 | 175 | 620 | 89 | 343 |
| Oklahoma E | 4 | 103 | 11 | 66 | 90 | 70 | 448 | 42 | 111 |
| Oklahoma W | 1 | 320 | 32 | 218 | 413 | 268 | 1,545 | 153 | 595 |
| Oregon | 44 | 299 | 35 | 233 | 375 | 263 | 1,135 | 154 | 434 |
| Pennsylvania E | 26 | 760 | 123 | 811 | 673 | 857 | 3,299 | 668 | 852 |
| Penssylvania M | 3 | 292 | 46 | 223 | 393 | 245 | 1,027 | 196 | 561 |
| Pennsylvania W | 14 | 357 | 78 | 346 | 355 | 430 | 1,487 | 266 | 414 |
| Puerot Rico | 3 | 199 | 19 | 221 | 264 | 168 | 732 | 110 | 275 |
| Rhode Island | 6 | 131 | 10 | 129 | 109 | 133 | 642 | 63 | 131 |
| South Carolina | 20 | 824 | 49 | 418 | 958 | 487 | 2,101 | 384 | 1,438 |
| South Dakota | 2 | 74 | 26 | 180 | 78 | 263 | 1,247 | 221 | 87 |
| Tennessee E | 6 | 163 | 44 | 226 | 179 | 296 | 1,448 | 181 | 225 |
| Tennessee M | 5 | 144 | 50 | 317 | 155 | 337 | 1,136 | 144 | 182 |
| Tennessee W | 24 | 103 | 56 | 198 | 140 | 261 | 950 | 169 | 172 |
| Texas N | 40 | 579 | 71 | 713 | 608 | 732 | 3,901 | 546 | 767 |
| Texas E | 16 | 223 | 16 | 185 | 185 | 214 | 879 | 115 | 222 |
| Texas S | 26 | 432 | 143 | 1,413 | 582 | 1,458 | 3,652 | 945 | 693 |
| Texas W | 12 | 314 | 80 | 1,239 | 421 | 1,305 | 2,976 | 626 | 497 |
| Utah W | 12 | 133 | 17 | 105 | 157 | 134 | 844 | 40 | 188 |
| Vermont | 3 | 107 | 9 | 99 | 139 | 145 | 274 | 107 | 150 |
| Virginia E | 48 | 395 | 208 | 810 | 475 | 992 | 3,216 | 629 | 565 |
| Virginia W | 2 | 130 | 12 | 217 | 261 | 221 | 601 | 151 | 285 |
| Washington E | | 148 | 16 | 112 | 192 | 129 | 544 | 79 | 235 |
| Washington W | 26 | 575 | 72 | 452 | 596 | 490 | 1,803 | 267 | 765 |
| West Virginia N | 3 | 83 | 10 | 105 | 77 | 97 | 338 | 46 | 107 |
| West Virginia S | 4 | 179 | 33 | 167 | 266 | 236 | 948 | 153 | 467 |
| Wisconsin E | 4 | 179 | 47 | 234 | 231 | 212 | 638 | 115 | 275 |
| Wisconsin W | 1 | 124 | 10 | 83 | 173 | 103 | 410 | 75 | 201 |
| Wyoming | 6 | 71 | 7 | 113 | 73 | 103 | 386 | 6 | 86 |
| Canal Zone | | 6 | 56 | 397 | 12 | 425 | 605 | | 12 |
| Guam | 1 | 47 | 3 | 12 | 43 | 21 | 61 | 15 | 49 |
| Virgin Islands | 1 | 11 | 37 | 134 | 23 | 207 | 298 | 10 | 29 |
| TOTALS | 1,320 | 29,678 | 5,128 | 39,127 | 33,067 | 43,319 | 170,865 | 25,786 | 40,996 |

[1] Includes 1784 cases terminated, by transfer under Rule 20 and 2505 cases dismissed because of superseding indictments or informations.
[2] Includes 1709 cases inititated by transfer under Rule 20.

# U.S. Marshals Service

The Director of the United States Marshals Service is appointed by the Attorney General and is operationally responsible to the Deputy Attorney General for day-to-day operations. He directs and supervises the 94 U.S. Marshals, one in each of the Federal judicial districts.

Assisted by their deputies and administrative staffs, the Marshals have a unique role in the Federal administration of justice. While agents of the executive branch of Government, they also function as executive officers of the Federal courts. They are located throughout the 50 states as well as in Guam, Puerto Rico, the Virgin Islands, and the Canal Zone, and discharge varied responsibilities in widely divergent environments. To insure efficient operation, the Federal judiciary must look to the executive branch for contributory support, which is provided in large measure by programs of the U.S. Marshals Service.

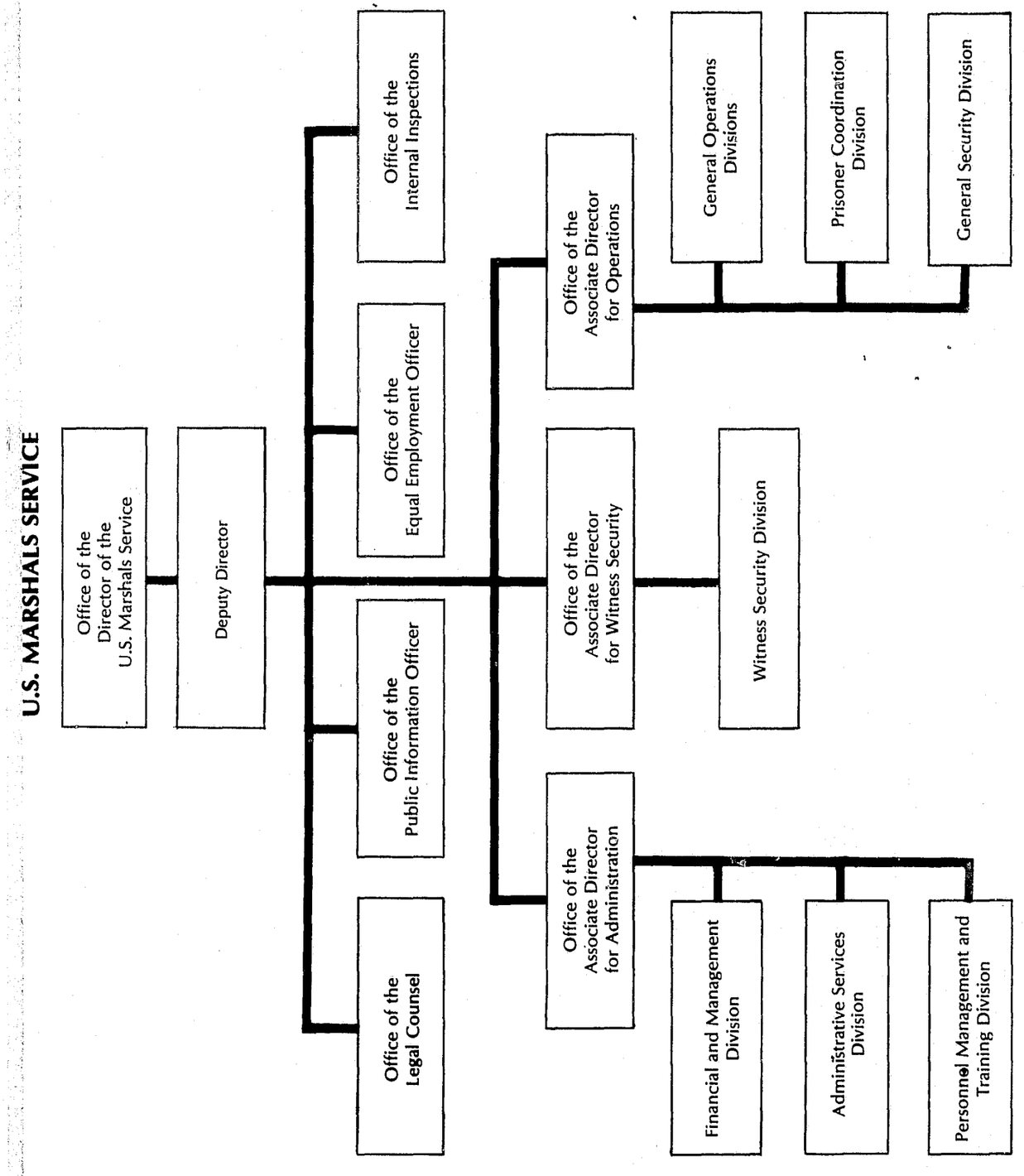
**Witness Security**

The Organized Crime Control Act of 1970 gives the Attorney General the statutory authority for the protection and maintenance of sensitive government witnesses engaged in testifying against organized crime. The United States Marshals Service is charged with this responsibility and in 1974 provided assistance to 504 witnesses, a ten-fold increase over 1970. Maintenance of these witnesses and their families includes an identity change with supporting credentials, relocation to a new geographic area and limited subsistence until employment can be obtained. This coverage frequently encompasses the period of time between the witnesses' first appearance before the Grand Jury and the culmination of the trial. For the protection of prisoner witnesses, the "safehouse" concept has been utilized to assure their safety and security in detention facilities. The safehouses proved to be highly convenient for the incarceration of prisoner witnesses needed by the Special Prosecutor's Office and the Senate Watergate Committee.

A functional reorganization elevated the witness security division in order to expedite its approach to the myriad problems of protection, relocation, funding, documentation and employment that are inherent in this program.

*U.S. Marshals received 141,000 prisoners for movement in fiscal year 1974 and utilized automobiles, vans, buses and aircraft to transport them to designated institutions.*





During an average week in 1974, the United States Marshals Service was responsible for the protection and maintenance of 275 witnesses, utilizing 180 Deputy U.S. Marshals on special details and a staff of 26 in Washington administering the program. To maintain the high level of trained experienced deputies dealing with witnesses, over 160 men received specialized security training in a two-week course of instruction.

**Court Security**

The U.S. Marshals Service is responsible for maintaining the integrity of the Federal judicial process by insuring the security of some 360 buildings housing U.S. District Courts as well as the personal safety of the 644 Federal judges holding court therein. This includes the physical protection of judges off the bench who have been the target of specific threats.

Security surveys have been conducted in 128 buildings housing Federal courts, and security systems have been designed, funded and installed in 74 sites with 22 others under construction.

In order to meet the growing demands for improved security at sensitive trials, and to effectively nullify threats against members of the judiciary, 134 special assignments, an increase of 68% over last year, were staffed and supported with technical services. Security specialists and deputies were sent to out-of-district locations, often providing 24-hour coverage on judges and members of their families.

*The use of technology in the Federal courts assists the marshal in providing security for judicial proceedings. Security systems have been installed in all major court facilities to protect against violence or disruptions in the courtroom. In addition, marshals provide personal protection for judges, attorneys or jurors who recieve threats on their lives.*

Some of the more significant trials requiring extraordinary security measures were the American Indian Movement trials in South Dakota, Minnesota and Nebraska, the Hanafi Muslim murder trial in Washington, D.C., the Mitchell-Stans trial in New York, and the Gainesville Eight trial in Florida.

**General Operations**

Under statutory authority, the United States Marshals Service is obligated to execute all lawful precepts directed to the Service by the courts. In fiscal year 1974, this accounted for 3,795 property seizures, the arrest of 17,751 persons on Federal warrants and the reception of 691,733 pieces of civil and criminal process for service.

A National Warrant Program was established to facilitate the coordination and execution of warrants of arrest by marshals. Framed by new regulations and guidelines and operating in conjunction with the Federal Bureau of Investigation's NCIC, the warrant program is growing more effective in bringing immediately before the courts those in violation of court orders.

The National Guard Armories Program evolved from a request by the Department of Defense seeking assistance to halt the theft of military armaments from local armories. The Service contacts local and state police authorities and solicits their aid in monitoring armory security by increased patrol surveillance. This endeavor has contributed materially to the reduction of arms thefts from National Guard Armories throughout the United States.

**Prisoner Coordination**

The marshals have custody of all Federal prisoners from the time of their arrest until they are delivered to a penal institution or released by the court. In order to transport prisoners to and from the 94 judicial districts and to penal institutions with maximum security and efficiency, all prisoner movements are coordinated by headquarters utilizing teletype communications. Over 900,000 manhours were expended handling and transporting 140,000 prisoners, an increase of 67 percent over 1970. In the interest of economy, the Service has embarked on a system of prisoner moves utilizing 10 passenger vans in conjunction with Bureau of Prisons' buses on long haul movements.



**Special Operations**

The Special Operations Group is a highly trained, self-supporting mobile reaction force skilled in confrontation management. It is designed to provide a suitable Federal response in civil disturbance situations of national interest. It also provides backup support for each of the 94 U.S. marshals. The unit is capable of assembling a fully operational reactive force at any point in the United States within six hours.

Elements of the 150 man Special Operations Group were utilized in the civil disturbance in the Virgin Islands, the eviction of armed squatters on Federal land at Tocks Island, Pennsylvania, the execution of court orders due to labor unrest in Charleston, West Virginia, and support for disruptive trials in Leavenworth and Topeka, Kansas. In addition, this unit provided security for representatives of the Organization of American States while meeting in Washington, D.C.

*The National Recruiting Program brought a centralized approach to recruiting deputy U.S. Marshals in fiscal year 1974. The new deputies average 28 years of age, with 56 percent holding a bachelor's degree or higher. Over 4,000 applications for examination were received for 80 deputy U.S. Marshal positions.*

**Training and Recruiting**

The U.S. Marshals Service participated in the training of 1,086 persons in 1974. This included basic, intermediate, advanced and specialized courses of instruction designed to produce technically competent professionals in the law enforcement field.

A National Recruiting Program was inaugurated to recruit talented people as deputy U.S. marshals. The 80 new recruits, selected from over 4,000 applications, average 28 years old with over three years of college education. Fifty-six percent have bachelor's degrees or higher.

## STATEMENT OF COSTS IN JUDICIAL DISTRICTS FOR FISCAL YEAR 1974 AS OF JUNE 30, 1974

| Judicial Districts | Total | Fees & Expenses of Witnesses | Salaries & Expenses, U.S. Attorneys & Marshals | Support of U.S. Prisoners |
|---|---|---|---|---|
| Alabama: | | | | |
| Northern | $ 1,087,666.76 | $ 43,689.40 | $ 967,183.76 | $ 76,793.60 |
| Middle | 714,946.60 | 48,607.28 | 623,250.25 | 43,089.07 |
| Southern | 493,523.79 | 47,093.58 | 431,525.90 | 14,904.31 |
| Alaska | 646,763.20 | 17,269.32 | 553,085.14 | 76,408.74 |
| Arizona | 2,644,312.82 | 213,174.84 | 1,792,959.42 | 638,178.56 |
| Arkansas: | | | | |
| Eastern | 831,701.33 | 66,331.61 | 734,512.32 | 30,857.40 |
| Western | 416,904.04 | 39,475.39 | 363,094.57 | 14,334.08 |
| California: | | | | |
| Northern | 3,341,320.44 | 225,949.94 | 2,337,629.35 | 777,741.15 |
| Eastern | 1,704,805.32 | 208,668.72 | 1,111,636.39 | 384,500.21 |
| Central | 6,640,784.89 | 620,376.49 | 4,765,438.98 | 1,254,969.42 |
| Southern | 4,693,438.01 | 186,245.19 | 2,091,398.97 | 2,415,793.85 |
| Canal Zone | 192,647.22 | 920.00 | 191,727.22 | |
| Colorado | 1,652,312.45 | 199,648.64 | 1,073,413.79 | 379,250.02 |
| Connecticut | 1,195,585.27 | 99,877.20 | 761,043.10 | 334,664.97 |
| Delaware | 353,171.74 | 8,768.19 | 321,385.69 | 23,017.86 |
| District of Columbia | 14,454,157.68 | 377,950.15 | 10,849,933.13 | 3,226,274.40 |
| Florida: | | | | |
| Northern | 696,087.03 | 75,982.52 | 556,694.71 | 63,409.80 |
| Middle | 2,653,594.61 | 450,715.02 | 1,867,928.68 | 334,950.91 |
| Southern | 2,775,975.31 | 398,607.79 | 2,015,664.00 | 361,703.52 |
| Georgia: | | | | |
| Northern | 1,817,361.32 | 213,290.95 | 1,269,826.31 | 334,244.06 |
| Middle | 703,007.52 | 107,419.65 | 557,453.61 | 38,134.66 |
| Southern | 770,006.64 | 61,435.40 | 680,522.55 | 28,048.69 |
| Guam | 198,715.60 | 552.59 | 189,844.19 | 8,318.82 |
| Hawaii | 607,999.81 | 31,808.56 | 478,042.02 | 98,149.23 |
| Idaho | 434,165.12 | 19,016.21 | 389,995.15 | 25,153.76 |
| Illinois: | | | | |
| Northern | 4,625,089.84 | 338,178.59 | 4,039,278.88 | 247,632.37 |
| Eastern | 594,698.60 | 48,141.46 | 450,994.09 | 95,563.05 |
| Southern | 560,988.82 | 48,988.17 | 460,659.22 | 51,341.43 |
| Indiana: | | | | |
| Northern | 687,531.44 | 72,119.61 | 568,146.91 | 47,264.92 |
| Southern | 950,228.14 | 90,523.90 | 784,158.68 | 75,545.56 |
| Iowa: | | | | |
| Northern | 458,372.87 | 46,508.85 | 363,225.01 | 48,639.01 |
| Southern | 483,375.25 | 48,971.39 | 394,871.27 | 39,532.59 |
| Kansas | 1,607,319.53 | 138,003.48 | 1,225,480.53 | 243,835.52 |
| Kentucky: | | | | |
| Eastern | 1,097,331.40 | 186,291.37 | 744,175.96 | 166,864.07 |
| Western | 1,108,214.31 | 66,513.68 | 801,850.93 | 239,849.70 |
| Louisiana: | | | | |
| Eastern | 2,345,967.62 | 168,248.21 | 1,919,177.75 | 258,541.66 |
| Middle | 290,321.61 | 26,752.76 | 221,611.89 | 41,956.96 |
| Western | 1,044,862.39 | 66,905.42 | 920,487.76 | 57,469.21 |
| Maine | 341,288.21 | 13,801.76 | 289,139.25 | 38,347.20 |
| Maryland | 2,360,361.32 | 121,968.17 | 1,813,962.63 | 424,430.32 |
| Massachusetts | 2,069,613.43 | 91,549.85 | 1,551,417.11 | 426,646.47 |
| Michigan: | | | | |
| Eastern | 2,293,763.03 | 124,116.39 | 1,642,540.04 | 527,106.60 |
| Western | 557,068.64 | 17,124.48 | 496,183.36 | 43,760.80 |
| Minnesota | 1,172,855.16 | 77,191.99 | 877,381.74 | 218,281.43 |
| Mississippi: | | | | |
| Northern | 540,397.05 | 22,391.32 | 507,484.94 | 10,520.79 |
| Southern | 765,768.48 | 33,670.59 | 698,290.38 | 33,807.51 |
| Missouri: | | | | |
| Eastern | 1,372,491.82 | 91,631.48 | 1,041,900.84 | 238,959.50 |
| Western | 1,469,034.09 | 92,118.80 | 1,122,334.11 | 254,581.18 |
| Montana | 610,895.86 | 40,530.90 | 527,073.73 | 43,291.23 |



## STATEMENT OF COSTS IN JUDICIAL DISTRICTS FOR FISCAL YEAR 1974 AS OF JUNE 30, 1974

| Judicial Districts | Total | Fees & Expenses of Witnesses | Salaries & Expenses, U.S. Attorneys & Marshals | Support of U.S. Prisoners |
|---|---|---|---|---|
| Nebraska | 620,058.00 | 33,790.50 | 549,739.62 | 36,527.88 |
| Nevada | 883,211.40 | 116,381.04 | 658,607.82 | 108,222.54 |
| New Hampshire | 280,103.30 | 11,532.88 | 251,763.46 | 16,806.96 |
| New Jersey | 3,563,347.46 | 157,991.87 | 3,257,716.20 | 147,639.39 |
| New Mexico | 974,755.90 | 159,196.75 | 718,475.08 | 97,084.07 |
| New York: | | | | |
| Northern | 727,425.46 | 15,744.30 | 662,694.26 | 48,986.90 |
| Eastern | 3,722,032.80 | 326,292.61 | 3,147,373.80 | 248,366.39 |
| Southern | 6,726,924.94 | 614,157.34 | 5,917,408.25 | 195,359.35 |
| Western | 980,095.11 | 72,419.84 | 808,816.78 | 98,858.49 |
| North Carolina: | | | | |
| Eastern | 838,151.87 | 78,806.82 | 682,312.27 | 77,032.78 |
| Middle | 438,752.54 | 24,688.84 | 348,505.25 | 65,558.45 |
| Western | 583,876.32 | 45,947.06 | 450,885.81 | 87,043.45 |
| North Dakota | 473,571.08 | 31,934.99 | 414,130.54 | 27,505.55 |
| Ohio: | | | | |
| Northern | 1,696,473.02 | 100,628.45 | 1,300,525.80 | 295,318.77 |
| Southern | 1,383,750.13 | 58,811.50 | 1,075,567.25 | 249,371.38 |
| Oklahoma: | | | | |
| Northern | 534,531.37 | 31,765.94 | 483,366.71 | 19,398.72 |
| Eastern | 395,575.07 | 27,310.61 | 354,362.37 | 13,902.09 |
| Western | 941,437.63 | 77,973.12 | 676,189.57 | 187,274.94 |
| Oregon | 1,486,761.64 | 94,831.38 | 1,070,198.91 | 321,731.35 |
| Pennsylvania: | | | | |
| Eastern | 2,723,707.42 | 144,213.48 | 2,075,423.16 | 504,070.78 |
| Middle | 952,288.95 | 28,098.11 | 593,151.77 | 331,039.07 |
| Western | 1,287,880.81 | 94,713.33 | 1,046,559.15 | 146,608.33 |
| Puerto Rico | 738,236.43 | 52,783.68 | 646,769.09 | 38,683.66 |
| Rhode Island | 647,140.92 | 231,922.48 | 382,775.45 | 32,442.99 |
| South Carolina | 1,453,360.62 | 109,243.39 | 1,237,774.84 | 106,342.39 |
| South Dakota | 1,313,225.64 | 77,130.82 | 1,153,745.87 | 82,348.95 |
| Tennessee: | | | | |
| Eastern | 779,048.60 | 54,730.97 | 668,271.22 | 56,046.41 |
| Middle | 748,908.73 | 39,363.89 | 567,960.50 | 141,584.34 |
| Western | 889,399.98 | 119,362.73 | 656,236.14 | 113,801.11 |
| Texas: | | | | |
| Northern | 2,281,766.01 | 167,305.62 | 1,679,005.83 | 435,454.56 |
| Eastern | 790,463.55 | 39,081.74 | 567,960.50 | 141,584.34 |
| Southern | 2,729,135.67 | 177,492.09 | 2,021,184.40 | 530,459.18 |
| Western | 3,253,394.65 | 189,310.05 | 1,821,007.52 | 1,243,077.08 |
| Utah | 653,132.37 | 47,711.67 | 418,411.88 | 187,008.82 |
| Vermont | 395,260.24 | 20,430.19 | 333,197.13 | 41,632.92 |
| Virginia: | | | | |
| Eastern | 2,297,850.51 | 167,243.96 | 1,881,558.08 | 249,048.47 |
| Western | 468,435.57 | 11,323.01 | 336,923.42 | 120,189.14 |
| Virgin Islands | 386,888.58 | 42,192.30 | 340,258.13 | 4,438.15 |
| Washington: | | | | |
| Eastern | 530,221.82 | 14,687.85 | 482,489.70 | 33,044.27 |
| Western | 1,735,283.12 | 73,065.17 | 1,300,455.30 | 361,762.65 |
| West Virginia: | | | | |
| Northern | 404,902.38 | 11,296.13 | 317,009.74 | 76,596.51 |
| Southern | 884,235.99 | 77,020.28 | 584,887.42 | 222,328.29 |
| Wisconsin: | | | | |
| Eastern | 594,644.92 | 49,677.81 | 491,844.16 | 53,122.95 |
| Western | 357,375.65 | 42,981.82 | 290,762.34 | 23,631.49 |
| Wyoming | 301,696.55 | 17,018.65 | 277,256.52 | 7,421.38 |
| Sub-Total | $137,977,514.55 | $10,014,724.31 | $105,572,870.79 | $22,389,919.45 |
| Department Total | 5,827,884.45 | 1,624,606.69 | 3,947,397.21 | 255,880.55 |
| Grand Total | $143,805,399.00 | $11,639,331.00 | $109,520,268.00 | $22,645,800.00 |

# Office of Justice Policy and Planning

The Office of Justice Policy and Planning was established as a focal point for the study and analysis of all aspects of the United States justice system. As a staff arm of the Attorney General and the Deputy Attorney General, the Office is responsible for policy development through the identification and analysis of significant policy issues at a level broader than its predecessor organizations in that is is not limited solely to criminal matters. The Office initiates proposals for reform and comments on proposals and recommendations made by others. The goal is to assist in improving the machinery and effectiveness of the justice system and the climate in which it functions.

The Office is made up of a staff with wide and varying interests in the administration of justice. They combine a variety of skills and training, having personal expertise in law and the social sciences. Effective action is dependent upon the Office's ability to work with the various components of the Department and organizations outside the Department in identifying, defining and solving justice policy problems.

During 1974 the Office of Justice Policy and Planning worked on a review of the Management-by-Objectives process and proposals for a Bureau of Justice Statistics, helped complete preparation of legislation revising the Federal Criminal Code, and provided expertise for development of the President's Clemency Program. The Office played a leading role in developing the proposals on speedy trial and privacy currently being considered by the Congress, and serves as the liaison to the Domestic Council Committee on the Right of Privacy. The Office heads task forces on pretrial diversion, the career criminal, white collar crime, Indian rights and civil justice. The Office is also responsible for overseeing implementation of recommendations arising from task forces and projects.

The Office has responsibility for major aspects of the Department's liaison with outside groups and agencies. Relations are maintained with the American Bar Association, the National Association of Attorneys General, the National District Attorneys Association, and organizations such as the Federal Judicial Center.

Each of these endeavors is designed to fulfill the mission of the Office: to improve the quality of justice in the United States.



# Office of the Special Prosecutor

The Watergate Special Prosecution Force was established by Order No. 517-73 of the Attorney General on May 25, 1973. The Office of the Special Prosecutor was reestablished by Order No. 551-73 of the Attorney General on November 2, 1973. Archibald Cox of Cambridge, Massachusetts, served as Special Prosecutor from May 25 to October 20, 1973. Mr Leon Jaworski of Houston, Texas, became Special Prosecutor on November 5, 1973.

The decision to establish the Office of the Special Prosecutor came as a result of hearings before the Senate Judiciary Committee on the nomination of Elliot L. Richardson to be Attorney General during May 1973.

The Attorney General's Directive that established this office stated, "The Special Prosecutor shall have full authority to organize, select and hire his own staff of attorneys, investigators and supporting personnel . . . in such numbers and with such qualifications as he may reasonably require." Congress approved the initial budget request with a personnel allotment of 90 persons. Beyond that, the Special Prosecutor had no clear organizational precedent or model to follow. The agency that developed was to be relatively small, tight-knit, very independent, and conscious of the urgency of its task and of the need for confidentiality in much of its business.

Several specific areas of inquiry had been spelled out beforehand, which made it possible to form separate teams of attorney-investigators, or task forces, for the major areas. These separate task forces were the Watergate Task Force, the Plumbers Task Force, the Campaign Contributors Task Force, the Dirty Trick Task Force, the ITT Task Force, and the Counsel to the Special Prosecutor.

Questions of law that arise during the investigations are referred to the Counsel to the Special Prosecutor. Before presentation is made to a Grand Jury for its consideration of possible indictment, a detailed prosecution memorandum is prepared by the investigating task force. These memoranda narrate the facts of the investigation, analyze their legal context and give an opinion as to whether probable cause exists to believe the named individual or entity has committed a criminal violation.

The memoranda are distributed among staff members for reaction and comment. If no further need for investigation is apparent, the putative case is subjected to further analysis in a series of meetings which include the Special Prosecutor, Deputy Special Prosecutor, the Counsel to the Special Prosecutor, members of their staffs and members of the responsible task force.

Each aspect of a possible prosecution is examined, including the wording of a draft indictment, evidence available to be presented at a trial and legal issues to be faced both before and after trial in the event of a conviction.

At the end of the fiscal year the Special Prosecutor had completed investigations and initiated court actions on 37 individuals and 13 corporations.

# Office of Solicitor General

The Solicitor General, with the assistance of a small staff of attorneys, is responsible for conducting and supervising all aspects of Government litigation in the Supreme Court of the United States. In addition, the Solicitor General passes upon every case in which a decision is rendered in any court against the United States to determine whether the Government will appeal. He also decides whether the United States should file a brief as *amicus curiae* in any appellate court.

During the past term of the Supreme Court (June 25, 1973 to July 25, 1974), the Office handled 2,428 cases which represented 48 percent of the 5,079 cases on the Court's docket, an increase of 14 percent over the last term and 143 percent over the past 10 terms. (Table I.) Of the cases acted upon at the term, there were 1,595 in which the Government appeared as the respondent, 76 petitions for writs of certiorari filed or supported by the Government and five cases in which it appeared as *amicus curiae* for the respondent. (Table II-A.) During the same period the Court acted upon 18 appeals filed or supported by the Government and 38 cases where the Office either represented the appellee or appeared as *amicus curiae* supporting the appellee. (Table II-B.) In addition, the Office participated in five cases on the Court's original docket. (Table II-D.)

Of the 3,521 petitions for writs of certiorari docketed and acted upon, six percent were granted during the term. Of those filed or supported by the United States, excluding eight protective petitions which were denied when the opposing petitions were likewise denied, 78 percent were granted. This reflects the careful screening of the Government cases by the Solicitor General and his staff before the decision is made to file a petition. Of the 18 appeals filed or supported by the Government, probable jurisdiction was noted by the Court in 15. (Tables II-A and B.)

The Government participated in the argument or filed briefs as *amicus curiae* in 93 (55 percent) of the 170 cases argued on the merits before the Supreme Court. Of the cases decided on the merits, with or without argument, the Government participated in 160 of 349 cases, 75 percent of which were decided in favor of the Government's position.

The important Government cases decided included *Secretary of the Navy* v. *Avrech* and *Parker* v. *Levy,* which upheld the constitutionality of the so-called General Article of War making criminal conduct to the prejudice of good military order and discipline and conduct unbecoming an officer and a gentleman; *Arnett* v. *Kennedy,* which upheld the constitutionality of the provision of the Lloyd-LaFolette Act that permits the discharge of a nonprobationary federal employee without a prior evidentiary hearing; *Millikin* v. *Bradley,* which invalidated busing between school districts designed to eliminate segregation in the Detroit public schools; and *Saxbe* v. *Washington Post,* which held that the press has no First Amendment right to interview individual prisoners in jail.

In the criminal law field, the right of the police to search the driver of an automobile that has been stopped for a motor vehicle law violation was upheld in *United States* v. *Robinson.* In *United States* v. *Calandra,* the Court held that a witness could not refuse to answer questions before a grand jury on the ground that the evidence upon which the questions were based was obtained from an unlawful search and seizure.

The court decided two important antitrust cases. In *United States* v. *General Dynamics,* it upheld the merger of two large coal companies; in *United States* v. *Marine Bancorporation,* it rejected the Government's contention that the merger of two major banks in different banking markets in the State of Washington violated Section 7 of the Clayton Act because it eliminated potential competition between the two firms. The Court sustained the Bank Secrecy Act against challenges under the First, Fourth and Fifth Amendments in *California Bankers Association* v. *Shultz.* In *United States* v. *Richardson* and *Schlesinger* v. *Reservists Committee to Stop the War,* the Court limited the standing of citizens and other persons to challenge Government action if they are not affected directly by it.

The broad scope of the statute barring suits to enjoin the collection of taxes was reaffirmed in *Bob Jones University* v. *Simon, et al* and in *Alexander* v. *Americans United, Inc.*

In addition to the cases before the Supreme Court, there were 670 cases in which the Solicitor General decided not to petition for certiorari, 13 cases in which a direct appeal was not taken and 1,236 cases in which the Solicitor General was called upon to decide whether to authorize taking a case to one of the courts of appeals, producing a total of 4,347 substantive matters handled by the Office during the year.

TABLE I

Office of the Solicitor General—Supreme Court Litigation. October Term, 1973 (June 25, 1973 - July 25, 1974) Total Cases

| | 1964 | | 1965 | | 1966 | | 1967 | | 1968 | | 1969 | | 1970 | | 1971 | | 1972 | | 1973 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| 1. Total number of cases on dockets | 2662 | 100 | 3284 | 100 | 3356 | 100 | 3586 | 100 | 3918 | 100 | 4202 | 100 | 4213 | 100 | 4535 | 100 | 4639 | 100 | 5079 | 100 |
| a. Brought over from preceding Term | 367 | 14 | 482 | 15 | 591 | 18 | 453 | 13 | 613 | 16 | 767 | 18 | 793 | 19 | 892 | 20 | 891 | 19 | 891 | 18 |
| b. Docketed during the Term | 2295 | 86 | 2802 | 85 | 2765 | 82 | 3133 | 87 | 3305 | 84 | 3435 | 82 | 3420 | 81 | 3643 | 80 | 3748 | 81 | 4188 | 82 |
| 2. Disposition of cases on dockets at the Term: | | | | | | | | | | | | | | | | | | | | |
| Total | 2662 | 100 | 3284 | 100 | 3356 | 100 | 3586 | 100 | 3918 | 100 | 4202 | 100 | 4213 | 100 | 4535 | 100 | 4639 | 100 | 5079 | 100 |
| a. Cases acted upon and closed | 2180 | 82 | 2693 | 82 | 2903 | 86 | 2973 | 83 | 3151 | 80 | 3409 | 81 | 3321 | 79 | 3644 | 81 | 3748 | 81 | 3876 | 76 |
| b. Cases acted upon but not closed | 66 | 2 | 90 | 3 | 67 | 2 | 68 | 2 | 79 | 2 | 101 | 3 | 115 | 3 | 110 | 2 | 84 | 2 | 95 | 2 |
| c. Cases docketed but not acted upon | 416 | 16 | 501 | 15 | 386 | 12 | 545 | 15 | 688 | 18 | 692 | 16 | 777 | 18 | 781 | 17 | 807 | 17 | 1108 | 22 |
| 3. Cases carried over to next Term | 482 | | 591 | | 453 | | 613 | | 767 | | 793 | | 892 | | 891 | | 891 | | 1203 | |
| 4. Classification of cases acted upon at the Term: | | | | | | | | | | | | | | | | | | | | |
| Total | 2246 | 100 | 2783 | 100 | 2970 | 100 | 3041 | 100 | 3230 | 100 | 3510 | 100 | 3436 | 100 | 3754 | 100 | 3832 | 100 | 3971 | 100 |
| a. Certioraris | 1980 | 88 | 2464 | 90 | 2618 | 88 | 2704 | 89 | 2880 | 89 | 3165 | 90 | 3067 | 89 | 3405 | 91 | 3361 | 88 | 3578 | 90 |
| b. Appeals | 115 | 5 | 164 | 5 | 170 | 6 | 173 | 6 | 187 | 6 | 214 | 6 | 263 | 8 | 233 | 6 | 354 | 9 | 277 | 7 |
| c. Miscellaneous docket, original writs | 146 | 7 | 138 | 5 | 175 | 6 | 158 | 5 | 158 | 5 | 119 | 4 | 91 | 3 | 100 | 3 | 103 | 3 | 105 | 3 |
| d. Original Docket | 5 | - | 15 | - | 6 | - | 6 | - | 5 | - | 12 | - | 15 | - | 16 | - | 14 | - | 10 | - |
| e. Certifications | 0 | - | 2 | - | 1 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 1 | - |
| 5. Cases participated in by the Government | 1000 | 38 | 1116 | 34 | 1143 | 34 | 1274 | 36 | 1325 | 34 | 1500 | 36 | 1620 | 38 | 1839 | 41 | 2133 | 46 | 2428 | 48 |
| 6. Cases not participated in by the Government | 1662 | 62 | 2168 | 66 | 2213 | 66 | 2312 | 64 | 2593 | 66 | 2702 | 64 | 2593 | 62 | 2696 | 59 | 2506 | 54 | 2651 | 52 |

Table II-A

Office of the Solicitor General - Classification of Cases upon Which the Supreme Court Has Acted

[This does not include cases in which the Court has merely acted on applications for stays, extensions of time, or similar matters, or denied petition for rehearing]

| | 1964 | | 1965 | | 1966 | | 1967 | | 1968 | | 1969 | | 1970 | | 1971 | | 1972 | | 1973 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| A. Petitions for Writs of Certiorari | | | | | | | | | | | | | | | | | | | | |
| 1. Total number docketed and acted upon | 1929 | 100 | 2414 | 100 | 2549 | 100 | 2645 | 100 | 2843 | 100 | 3125 | 100 | 3011 | 100 | 3339 | 100 | 3295 | 100 | 3521 | 100 |
| a. Petitions filed or supported by Government | 46 | 2 | 33 | 1 | 37 | 1 | 55 | 2 | 35 | 1 | 49 | 2 | 58 | 2 | 50 | 2 | 58 | 2 | 76 | 2 |
| (1) Government as petitioner | 36 | 2 | 30 | 1 | 30 | 1 | 38 | 1 | 27 | 1 | 37 | 2 | 45 | 2 | 39 | 2 | 52 | 2 | 61 | 2 |
| (2) Government as *amicus*, supporting petitioner | 10 | - | 3 | - | 7 | - | 17 | 1 | 8 | - | 12 | - | 13 | - | 11 | - | 6 | - | 15 | - |
| b. Petitions not filed or supported by Government | 1883 | 98 | 2381 | 99 | 2512 | 99 | 2590 | 98 | 2808 | 99 | 3076 | 98 | 2953 | 98 | 3289 | 98 | 3237 | 98 | 3445 | 98 |
| (1) Government as respondent | 676 | 36 | 802 | 34 | 804 | 32 | 887 | 34 | 950 | 33 | 1076 | 34 | 1194 | 40 | 1339 | 40 | 1470 | 45 | 1595 | 45 |
| (2) Government as *amicus*, supporting respondent | 11 | - | 4 | - | 2 | - | 12 | - | 8 | 1 | 9 | - | 2 | - | 3 | - | 17 | - | 5 | - |
| (3) No participation by Government | 1196 | 62 | 1575 | 65 | 1706 | 67 | 1691 | 64 | 1850 | 65 | 1991 | 64 | 1757 | 58 | 1947 | 58 | 1750 | 53 | 1845 | 53 |
| 2. Total number of petitions granted | 137 | 7 | 180 | 7 | 185 | 7 | 271 | 10 | 192 | 7 | 169 | 5 | 196 | 6 | 317[2] | 9 | 207 | 6 | 218 | 6 |
| a. Petitions filed or supported by Government | 37 | 80 | 23 | 70 | 31 | 84 | 36 | 65 | 28 | 80 | 29 | 59 | 44 | 76 | 36 | 72 | 41 | 71 | 53 | 70 |
| (1) Government as petitioner | 29 | 81 | 21 | 70 | 25 | 83 | 24 | 63 | 22 | 81 | 19 | 51 | 31 | 69 | 27 | 70 | 36 | 69 | 39 | 64 |
| (2) Government as *amicus*, supporting petitioner | 8 | 80 | 2 | 67 | 6 | 86 | 12 | 71 | 6 | 75 | 10 | 83 | 13 | 100 | 9 | 82 | 5 | 83 | 14 | 93 |
| b. Petitions not filed or supported by Government | 100 | 5 | 157 | 7 | 154 | 6 | 235 | 9 | 164 | 6 | 140 | 5 | 152 | 5 | 281[2] | 9 | 166 | 5 | 165 | 5 |
| (1) Government as respondent | 33 | 5 | 58 | 7 | 45 | 6 | 93 | 10 | 66 | 7 | 61 | 6 | 53 | 4 | 52 | 4 | 51 | 4 | 69 | 4 |
| (2) Government as *amicus*, supporting respondent | 1 | 9 | 2 | 50 | 1 | 50 | 5 | 42 | 2 | 25 | 4 | 44 | 0 | - | 1 | 33 | 10 | 59 | 2 | 40 |
| (3) No participation by Government | 66 | 6 | 97 | 6 | 108 | 6 | 137 | 8 | 96 | 5 | 75 | 4 | 99 | 6 | 228[2] | 12 | 105 | 6 | 94 | 5 |
| 3. Total number of petitions denied or dismissed | 1781 | 92 | 2214 | 92 | 2347 | 92 | 2356 | 89 | 2632 | 92 | 2923 | 94 | 2793 | 93 | 2997 | 90 | 3066 | 93 | 3268 | 93 |
| a. Petitions filed or supported by Government | 9 | 20 | 10 | 30 | 6 | 16 | 17 | 31 | 6 | 17 | 20 | 41 | 13 | 22 | 14 | 28 | 16 | 28 | 23 | 30 |
| (1) Government as petitioner | 7 | 19 | 9 | 30 | 5 | 17 | 12 | 32 | 5 | 19 | 18[1] | 49 | 13[1] | 29 | 12[1] | 30 | 15[1] | 29 | 22[1] | 36 |
| (2) Government as *amicus*, supporting petitioner | 2 | 20 | 1 | 33 | 1 | 14 | 5 | 29 | 1 | 13 | 2 | 17 | 0 | - | 2 | 18 | 1 | 17 | 1 | 7 |
| b. Petitions not filed or supported by Government | 1772 | 94 | 2204 | 92 | 2341 | 94 | 2339 | 91 | 2626 | 93 | 2903 | 94 | 2780 | 94 | 2983 | 91 | 3050 | 94 | 3245 | 94 |
| (1) Government as respondent | 637 | 94 | 739 | 92 | 752 | 94 | 791 | 89 | 877 | 92 | 1006 | 93 | 1133 | 95 | 1277 | 96 | 1410 | 96 | 1510 | 95 |
| (2) Government as *amicus*, supporting respondent | 10 | 91 | 2 | 50 | 1 | 50 | 7 | 58 | 6 | 75 | 3 | 33 | 2 | 100 | 2 | 67 | 7 | 41 | 3 | 60 |
| (3) No participation by Government | 1125 | 94 | 1463 | 93 | 1588 | 94 | 1541 | 91 | 1743 | 94 | 1894 | 95 | 1645 | 94 | 1704 | 88 | 1633 | 93 | 1732 | 94 |
| 4. Total number of petitions mooted or dismissed | 11 | 1 | 20 | 1 | 17 | 1 | 18 | 1 | 19 | 1 | 33 | 1 | 22 | 1 | 25 | 1 | 22 | 1 | 35 | 1 |

[1] Includes protective and cross-petitions denied upon government recommendation after disposition of related cases.
[2] See note 1 in text above

NOTE: Percentages based on participation.

Table II-B

Office of the Solicitor General - Classification of Cases Upon Which the Supreme Court Has Acted

| | 1964 | | 1965 | | 1966 | | 1967 | | 1968 | | 1969 | | 1970 | | 1971 | | 1972 | | 1973 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| B. Appeals | | | | | | | | | | | | | | | | | | | | |
| 1. Total number docketed and acted upon | 98 | 100 | 145 | 100 | 146 | 100 | 161 | 100 | 165 | 100 | 193 | 100 | 227 | 100 | 199 | 100 | 322 | 100 | 257 | 100 |
| a. Appeals filed or supported by Government | 11 | 11 | 17 | 12 | 11 | 8 | 15 | 9 | 3 | 5 | 24 | 12 | 23 | 10 | 17 | 9 | 29 | 9 | 18 | 7 |
| (1) Government as appellant | 9 | 9 | 17 | 12 | 9 | 6 | 11 | 7 | 5 | 3 | 20 | 10 | 20 | 9 | 14 | 7 | 21 | 7 | 14 | 5 |
| (2) Government as *amicus*, supporting appellant | 2 | 2 | 0 | - | 2 | 2 | 4 | 2 | 3 | 2 | 4 | 2 | 3 | 1 | 3 | 2 | 8 | 2 | 4 | 2 |
| b. Appeals not filed or supported by Government | 87 | 89 | 128 | 88 | 135 | 92 | 146 | 91 | 157 | 95 | 169 | 88 | 204 | 90 | 182 | 91 | 293 | 91 | 239 | 93 |
| (1) Government as appellee | 24 | 25 | 32 | 22 | 43 | 29 | 49 | 30 | 39 | 23 | 36 | 19 | 27 | 12 | 20 | 10 | 43 | 13 | 37 | 15 |
| (2) Government as *amicus*, supporting appellee | 1 | 1 | 1 | - | 3 | 2 | 1 | 1 | 3 | 2 | 5 | 2 | 12 | 5 | 7 | 3 | 5 | 2 | 1 | - |
| (3) No participation by Government | 62 | 63 | 95 | 66 | 89 | 61 | 96 | 60 | 115 | 70 | 128 | 67 | 165 | 73 | 155 | 78 | 245 | 76 | 201 | 78 |
| 2. Total number dismissed, affirmed or reversed without argument | 67 | 68 | 101 | 70 | 114 | 78 | 106 | 66 | 112 | 68 | 130 | 67 | 168 | 74 | 159 | 80 | 270 | 84 | 204 | 79 |
| a. Appeals filed or supported by Government | 2 | 18 | 4 | 24 | 4 | 37 | 3 | 20 | 2 | 25 | 8 | 33 | 10 | 43 | 4 | 24 | 14 | 48 | 3 | 17 |
| (1) Government as appellant | 2 | 22 | 4 | 24 | 4 | 44 | 3 | 27 | 2 | 40 | 8 | 40 | 9 | 45 | 4 | 29 | 12 | 57 | 3 | 21 |
| (2) Government as *amicus*, supporting appellant | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 1 | 33 | 0 | - | 2 | 25 | 0 | - |
| b. Appeals not filed or supported by Government | 65 | 75 | 97 | 76 | 110 | 81 | 103 | 71 | 110 | 70 | 122 | 72 | 158 | 77 | 155 | 85 | 256 | 87 | 201 | 84 |
| (1) Government as appellee | 16 | 67 | 28 | 87 | 36 | 84 | 33 | 67 | 30 | 77 | 27 | 75 | 25 | 93 | 18 | 90 | 37 | 86 | 28 | 76 |
| (2) Government as *amicus*, supporting appellee | 0 | - | 1 | 100 | 0 | - | 0 | - | 2 | 67 | 1 | 20 | 3 | 25 | 5 | 71 | 4 | 80 | 1 | 100 |
| (3) No participation by Government | 49 | 79 | 68 | 72 | 74 | 83 | 70 | 73 | 78 | 68 | 94 | 73 | 130 | 79 | 132 | 85 | 215 | 88 | 172 | 86 |
| 3. Total number Jurisdiction Noted or set for argument | 31 | 32 | 44 | 30 | 32 | 22 | 55 | 34 | 53 | 32 | 63 | 33 | 59 | 26 | 40 | 20 | 52 | 16 | 53 | 21 |
| a. Appeals filed or supported by Government | 9 | 82 | 13 | 76 | 7 | 63 | 12 | 80 | 6 | 75 | 16 | 67 | 13 | 57 | 13 | 76 | 15 | 52 | 15 | 83 |
| (1) Government as appellant | 7 | 78 | 13 | 76 | 5 | 56 | 8 | 73 | 3 | 60 | 12 | 60 | 11 | 55 | 10 | 71 | 9 | 43 | 11 | 79 |
| (2) Government as *amicus*, supporting appellant | 2 | 100 | 0 | - | 2 | 100 | 4 | 100 | 3 | 100 | 4 | 100 | 2 | 67 | 3 | 100 | 6 | 75 | 4 | 100 |
| b. Appeals not filed or supported by Government | 22 | 25 | 31 | 24 | 25 | 19 | 43 | 29 | 47 | 30 | 47 | 28 | 46 | 23 | 27 | 15 | 37 | 13 | 38 | 16 |
| (1) Government as appellee | 8 | 33 | 4 | 13 | 7 | 16 | 16 | 33 | 9 | 23 | 9 | 25 | 2 | 7 | 2 | 10 | 6 | 14 | 9 | 24 |
| (2) Government as *amicus*, supporting appellee | 1 | 100 | 0 | - | 3 | 100 | 1 | 100 | 1 | 33 | 4 | 80 | 9 | 75 | 2 | 29 | 1 | 20 | 0 | - |
| (3) No participation by Government | 13 | 21 | 27 | 28 | 15 | 17 | 26 | 27 | 37 | 32 | 34 | 27 | 35 | 21 | 23 | 15 | 30 | 12 | 29 | 14 |

NOTE: Percentages based on participation

Table II-C, D, E

Office of the Solicitor General - Classification of Cases Upon Which the Supreme Court Has Acted

| | 1964 | | 1965 | | 1966 | | 1967 | | 1968 | | 1969 | | 1970 | | 1971 | | 1972 | | 1973 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| C. Miscellaneous Docket—Original Writs | | | | | | | | | | | | | | | | | | | | |
| 1. Total number of applications for original writs docketed and acted upon | 146 | 100 | 138 | 100 | 173 | 100 | 158 | 100 | 158 | 100 | 119 | 100 | 90 | 100 | 100 | 100 | 103 | 100 | 105 | 100 |
| a. Filed or supported by Government | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (1) Government as petitioner | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (2) Government as *amicus*, supporting petitioner | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| b. Not filed or supported by Government | 146 | 100 | 138 | 100 | 173 | 100 | 158 | 100 | 158 | 100 | 119 | 100 | 90 | 100 | 100 | 100 | 103 | 100 | 105 | 100 |
| (1) Government as respondent | 29 | 20 | 33 | 24 | 34 | 20 | 26 | 16 | 40 | 25 | 36 | 30 | 22 | 24 | 35 | 35 | 39 | 38 | 47 | 45 |
| (2) Government as *amicus*, supporting respondent | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 1 | 1 |
| (3) No participation by Government | 117 | 80 | 105 | 76 | 139 | 80 | 132 | 84 | 118 | 75 | 83 | 70 | 68 | 76 | 65 | 65 | 64 | 62 | 57 | 54 |
| 2. Total number decided without argument | 146 | 100 | 138 | 100 | 173 | 100 | 158 | 100 | 157 | 99 | 118 | 99 | 90 | 100 | 100 | 100 | 103 | 100 | 105 | 100 |
| a. Filed or supported by Government | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (1) Government as petitioner | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (2) Government as *amicus*, supporting petitioner | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| b. Not filed or supported by Government | 145 | 100 | 138 | 100 | 173 | 100 | 158 | 100 | 157 | 99 | 118 | 99 | 90 | 100 | 100 | 100 | 103 | 100 | 105 | 100 |
| (1) Government as respondent | 29 | 20 | 33 | 24 | 34 | 20 | 26 | 16 | 39 | 24 | 35 | 29 | 22 | 24 | 35 | 35 | 39 | 38 | 47 | 45 |
| (2) Government as *amicus*, supporting respondent | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 1 | 1 |
| (3) No participation by Government | 117 | 80 | 105 | 76 | 139 | 80 | 132 | 84 | 118 | 75 | 83 | 70 | 68 | 76 | 65 | 65 | 64 | 62 | 57 | 54 |
| 3. Total argued or set for argument | 0 | - | 0 | - | 0 | - | 0 | - | 1 | - | 1 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| a. Filed or supported by Government | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (1) Government as petitioner | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (2) Government as *amicus*, supporting petitioner | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| b. Not filed or supported by Government | 0 | - | 0 | - | 0 | - | 0 | - | 1 | - | 1 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (1) Government as respondent | 0 | - | 0 | - | 0 | - | 0 | - | 1 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (2) Government as *amicus*, supporting respondent | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 1 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| (3) No participation by Government | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| D. Original Docket | | | | | | | | | | | | | | | | | | | | |
| 1. Total number acted upon | 5 | 100 | 15 | 100 | 6 | 100 | 6 | 100 | 5 | 100 | 12 | 100 | 15 | 100 | 16 | 100 | 14 | 100 | 10 | 100 |
| a. Government participating | 1 | 20 | 11 | 73 | 5 | 83 | 3 | 50 | 3 | 60 | 6 | 50 | 10 | 67 | 8 | 50 | 5 | 36 | 5 | 50 |
| b. Government not participating | 4 | 80 | 4 | 27 | 1 | 17 | 3 | 50 | 2 | 40 | 6 | 50 | 5 | 33 | 8 | 50 | 9 | 64 | 5 | 50 |
| E. Certificates | | | | | | | | | | | | | | | | | | | | |
| 1. Total number of certificates docketed and acted upon | 0 | - | 2 | 100 | 1 | 100 | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 1 | 100 |
| a. Government participating | 0 | - | 2 | 100 | 1 | 100 | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - |
| b. Government not participating | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 0 | - | 1 | 100 |

Table III

Office of the Solicitor General - Classification of Supreme Court Cases Argued or Decided on Merits

| | 1964 | | 1965 | | 1966 | | 1967 | | 1968 | | 1969 | | 1970 | | 1971 | | 1972 | | 1973 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent | Number | Percent |
| A. Argued | | | | | | | | | | | | | | | | | | | | |
| 1. All cases argued | 122 | 100 | 131 | 100 | 150 | 100 | 179 | 100 | 139 | 100 | 144 | 100 | 151 | 100 | 173 | 100 | 177 | 100 | 170 | 100 |
| 2. Government participating | 70 | 57 | 76 | 58 | 77 | 51 | 115 | 64 | 68 | 49 | 73 | 51 | 89 | 59 | 78 | 45 | 103 | 58 | 93 | 55 |
| a. Government as petitioner or appellant[2] | 33 | 47 | 35 | 46 | 30 | 39 | 33 | 29 | 25 | 37 | 26 | 35 | 33 | 37 | 37 | 47 | 40 | 39 | 37 | 40 |
| b. Government as respondent or appellee[2] | 21 | 30 | 30 | 39 | 37 | 48 | 63 | 55 | 29 | 43 | 37 | 51 | 30 | 34 | 25 | 32 | 35 | 34 | 30 | 32 |
| c. Government as *amicus*[2] | 16 | 23 | 11 | 15 | 10 | 13 | 19 | 16 | 14 | 20 | 10 | 14 | 26 | 29 | 16 | 21 | 28[4] | 27 | 26[4] | 28 |
| 3. Government not participating | 52 | 43 | 55 | 42 | 73 | 49 | 64 | 36 | 71 | 51 | 71 | 49 | 62 | 41 | 95 | 55 | 74 | 42 | 77[5] | 45 |
| B. Decided on Merits With or Without Argument | | | | | | | | | | | | | | | | | | | | |
| 1. All cases decided on merits[1] | 234 | 100 | 282 | 100 | 307 | 100 | 369 | 100 | 258 | 100 | 239 | 100 | 329 | 100 | 447 | 100 | 437 | 100 | 349 | 100 |
| 2. Government participating | 104 | 44 | 133 | 47 | 127 | 41 | 200 | 54 | 130 | 50 | 133 | 56 | 150 | 46 | 125 | 28 | 180 | 41 | 160 | 46 |
| a. Decided in favor of Government's position[2] | 78 | 75 | 81 | 61 | 95 | 75 | 126 | 63 | 83 | 64 | 77 | 58 | 100 | 67 | 88 | 70 | 128 | 71 | 120 | 75 |
| b. Decided against Government's position[2] | 25 | 25 | 51 | 38 | 31 | 24 | 72 | 36 | 47 | 36 | 52[3] | 39 | 47 | 31 | 37 | 30 | 48 | 27 | 34 | 21 |
| c. Not classifiable as for or against[2] | 1 | - | 1 | 1 | 1 | 1 | 2 | 1 | 0 | - | 4 | 3 | 3 | 2 | 0 | - | 4 | 2 | 6 | 4 |
| 3. No participation by Government | 130 | 56 | 149 | 53 | 180 | 59 | 169 | 46 | 128 | 50 | 106 | 44 | 179 | 54 | 322 | 72 | 257 | 59 | 189 | 54 |

[1] Includes cases summarily affirmed, reversed or vacated on the In Forma Pauperis Docket.
[2] Percentage is based on the total cases in which the Government participated.
[3] Includes 16 consolidated cases which constitute four groups of cases arising from lower court decisions on which the Government was a party; and one case dismissed on jurisidictional grounds after argument.
[4] Includes cases in which the Government filed briefs as *amicus curiae* but did not participate in the argument.
[5] One case argued and set for reargument.

# Office of Legal Counsel

The Attorney General is the chief law officer of the Government. The Office of Legal Counsel, headed by an Assistant Attorney General, is his principal aide in carrying out his statutory responsibilities of furnishing legal advice to the President and the heads of executive departments and agencies. The Office drafts the Attorney General's formal opinions and renders its own opinions on a variety of legal questions involving the operations of the executive branch. The opinions of the Attorney General and those of the Office of Legal Counsel are regarded as the ultimate authority in the executive branch on the exposition of the Constitution and the statutes of the United States as they may be involved in the administration of executive branch programs.

While few formal Attorney General's opinions are issued, they customarily involve particularly complex issues. For example:

—The opinion of the Attorney General of March 21, 1974, interpreted Section 2(b)(2) of the Export Import Bank Act of 1945, as amended, which regulates the extension of credit by the Eximbank to Communist countries.

—The opinion of May 25, 1974, dealt with the question whether the powers of the House Judiciary Committee in connection with its Presidential impeachment inquiry overrode the provisions of the Internal Revenue Code relating to disclosure of tax return information.

—The opinion of June 10, 1974, considered whether the Register of Copyrights has legal discretion to deny registration of a copyright reversal application which asserts two different bases of renewal that the Register considers contradictory.

Numerous Office of Legal Counsel interpretations were furnished during the past fiscal year, including 136 written opinions. These provided legal advice in response to requests from various executive departments and agencies on such subjects as executive privilege, conflict-of-interest law, the Federal Advisory Committee Act, the Freedom of Information Act and the proposed Midway Islands Code.

All proposed Executive orders, Presidential proclamations, and regulations requiring approval by the President or the Attorney General, are reviewed by the Office as to form and legality before issuance. During the past year the Office passed on 138 Executive orders and proclamations. These included orders assigning various functions vested in the President by law to agency heads, adjusting rates of pay for Federal employees, extending diplomatic privileges and immunities, and providing for effectuation of the Federal Energy Administration Act of 1974. Proclamations dealt with the oil import program, imports of agricultural commodities, and a variety of ceremonial matters.

The Office advises the Attorney General in connection with his review of decisions of the Board of Immigration Appeals of the Department of Justice, and his disposition of appeals under the Freedom of Information Act involving access to Department of Justice records. It also reviews as to form and legality orders proposed to be issued by the Attorney General.

The Office serves as in-house counsel to other components of the Department of Justice on a variety of legal questions. For example, advice was rendered during the fiscal year concerning such issues as impeachment, subpoenas to newsmen, and proposed regulations on criminal justice information systems. The Office also assists the Office of the Deputy Attorney General and the

Office of Legislative Affairs on the legal aspects of proposed legislation. Opinions in these categories totaled 512 in the past fiscal year.

The Office provides informal advice to other agencies on numerous questions under the Freedom of Information Act, most frequently when they contemplate denying requests for access to their records. Proposed final denials by other agencies are reviewed by the Department's Freedom of Information Committee, consisting of lawyers from the Office and from the Civil Division. This is done pursuant to 28 CFR 50.9, which requires such review before a suit against an agency under the Act will be defended by the Deparment. Proposed final denials are now being reviewed at a rate which exceeds 200 a year, and a considerable portion of them are changed by the agencies to grants of access after consulting the Committee.

During the year the Office prepared and delivered Congressional testimony on numerous legislative matters, including Federal financing of Federal elections, direct popular election of the President, Federal enforcement of family support obligations, establishment of an independent Department of Justice, access of individuals to Government records, revision of the system for classification of national security documents, and various amnesty bills.

Liaison is maintained with the Department of State in matters affecting the United Nations and other international organizations. Since 1969 the Office has provided assistance to the President's Personal Representative for Micronesian Status Negotiations, dealing with an area now being administered by the United States under a United Nations trusteeship. The Office has represented the Attorney General on the Administrative Committee of the *Federal Register*, the Board of Trustees of the National Trust for Historic Preservation, the Advisory Council on Historic Preservation, and the American Revolution Bicentennial Administration Task Force. It is also the liaison with the Council of State Governments and other bodies concerned with Federal-State relations.

No litigation is handled by the Office, but it occasionally participates with other divisions of the Department in the preparation of briefs relating to constitutional or statutory issues within its area of expertise. During the fiscal year the Office provided assistance to the litigating divisions with respect to impoundment, pocket veto, and the amenability of former Vice President Agnew and former Judge Kerner to prosecution.



# Office of Legislative Affairs

The Office of Legislative Affairs under the direction of the Assistant Attorney General for Legislative Affairs is responsible for conducting or coordinating the various contacts with the Congress. In addition to responding to the numerous requests and inquiries from congressional committees, individual members and their staffs, the Office exercies general supervision over the Department's legislative program. The functions of the Office include maintaining liaison between the Department and the Congress, reviewing and submitting department legislative reports, coordinating the preparation of proposed departmental legislation, responding to requests from congressional committees and the Office of Management and Budget for reports on bills and proposed legislation, appearances before congressional committees on justice related matters and advising the President on the legal sufficiency of much of the legislation enacted by Congress and presented to him for approval.

The Department's legislative program for the 93rd Congress included 32 separate proposals. As of October 18, 1974, seven of the proposals had been enacted into law and several others had progressed to a point where passage is likely. Two of the more important proposals which have been enacted are:

—P.L. 93-83, which extended the Law Enforcement Assistance Administration program and made numerous improvements in it.

—P.L. 93-281, which improved anti-drug abuse efforts and narcotic treatment programs.

Important proposals in the legislative program which have received significant congressional attention, but have not yet been enacted include:

—Psychotropic Substances Act, which would amend the Comprehensive Drug Abuse Prevention and Control Act of 1970 to discharge obligations under the Convention on Psychotropic Substances relating to regulatory controls on the manufacture, distribution, importation, and exportation of psychotropic substances;

—Revision of the Federal Criminal Code which would implement the recommendations of the Administration concerning the report of the National Commission on Reform of Federal Criminal Laws;

—Establishment of rational criteria for the mandatory imposition of the sentence of death;

—Federal Tort Claims Act amendments which would immunize from civil liability all Government employees sued on account of acts performed by them within the scope of their employment; and,

—Provisions to regulate the collections, retention and dissemination of personal information contained in criminal justice information systems.

The Office had 2,519 bills referred to it during the 93rd Congress by congressional committees and the Office of Management and Budget as of October 18, 1974. Officials of the Department had made 83 appearances before congressional committees.

## Status Report – 93rd Congress, First & Second Sessions
## Legislation Referred to Legislative & Legal Section
## As of September 30, 1974

| | PUBLIC BILLS | | |
|---|---|---|---|
| | 1973 1st Ses. | 1974 2nd Ses. | Total |
| Public & Private Bills Referred: | | | |
| By Congressional Committees | 1,186 | 373 | 1,559 |
| By Budget Bureau (Drafts, etc.) | 437 | 271 | 708 |
| By Budget (Enrolled) | 72 | 48 | 120 |
| By Misc. Sources | 8 | 30 | 38 |
| Total | 1,703 | 722 | 2,425 |
| Public & Private Disposed Of: | | | |
| To Congressional Committees | 358 | 286 | 644 |
| To Budget Bureau (Drafts, etc.) | 332 | 264 | 596 |
| To Budget (Enrolled) | 72 | 48 | 120 |
| To Miscellaneous | 8 | 31 | 39 |
| To Congressional Misc. Action | 50 | 30 | 80 |
| Total | 820 | 659 | 1,479 |
| Deferred Action | | | 52 |
| At Budget for Clearance | | | 310 |
| Total Disposed of | | | 1,841 |
| Pending—Public & Private: | | | |
| In Section | | | 111 |
| In Division | | | 473 |
| Total Pending | | | 584 |

*Part 2*

| | PRIVATE BILLS | | | |
|---|---|---|---|---|
| | 1973 1st Ses. | 1974 2nd Ses. | Total | GRAND TOTAL |
| | 29 | 13 | 42 | 1,601 |
| | 9 | 22 | 31 | 739 |
| | 4 | 4 | 8 | 128 |
| | – | – | – | 38 |
| | 42 | 39 | 81 | 2,506 |
| | 13 | 20 | 33 | 677 |
| | 7 | 17 | 24 | 620 |
| | 4 | 4 | 8 | 128 |
| | – | – | – | 39 |
| | 1 | – | 1 | 81 |
| | 25 | 51 | 66 | 1,545 |
| | | | | 52 |
| | | | 6 | 316 |
| | | | 72 | 1,913 |
| | | | | 111 |
| | | | 9 | 482 |
| | | | 9 | 593 |



## Legislative Activity — 91st Thru 93d Congress

### Requests for Reports

| From Committees | From Budget | | | From Misc. | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 1st Ses. | 2nd Ses. | Total | 1st Ses. | 2nd Ses. | Total | 1st Ses. | 2nd Ses. | Total | Grand Total |
| *91st Congress - 1969 - 1-2-1971:* | | | | | | | | | | |
| Public Bills | 1,172 | 642 | 1,814 | 333 | 388 | 721 | 8 | 10 | 18 | 2,553 |
| Private Bills | 48 | 20 | 68 | 27 | 24 | 51 | 1 | - | 1 | 120 |
| Private Immigration | 5,033 | 502 | 5,535 | 49 | 64 | 113 | - | - | - | 5,648 |
| Total | 6,253 | 1,164 | 7,417 | 409 | 476 | 885 | 9 | 10 | 19 | 8,321 |
| *92nd Congress - 1971 - 10-18-72:* | | | | | | | | | | |
| Public Bills | 1,249 | 521 | 1,770 | 427 | 357 | 784 | 3 | 6 | 9 | 2,563 |
| Private Bills | 28 | 21 | 49 | 30 | 24 | 54 | - | - | - | 103 |
| Private Immigration | 2,334 | 205 | 2,539 | 25 | 37 | 62 | - | - | - | 2,601 |
| Total | 3,611 | 747 | 4,358 | 482 | 418 | 900 | 3 | 6 | 9 | 5,267 |
| *93d Congress - 1973-4 - 10-1-74:* | | | | | | | | | | |
| Public Bills | 1,186 | 373 | 1,559 | 509 | 319 | 828 | 8 | 30 | 38 | 2,425 |
| Private Bills | 42 | 13 | 55 | 13 | 26 | 39 | - | - | - | 94 |
| Private Immigration | 405 | 819 | 1,224 | 12 | 49 | 61 | - | - | - | 1,285 |
| Total | 1,633 | 1,205 | 2,838 | 534 | 394 | 928 | 8 | 30 | 38 | 3,804 |

### REQUESTS DISPOSED OF

| | To Committees Action** | | | To Budget | | | To Misc. | | | Cong. & Def. | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1st Ses. | 2d Ses. | Total | 1st Ses | 2d Ses. | Total | 1st Ses. | 2d Ses. | Total | 1st Ses. | 2d Ses. | Total | GRAND TOTAL |
| 91st Cong. 1969-70(1-2-71): | | | | | | | | | | | | | |
| Public Bills | 443 | 424 | 867 | 494 | 418 | 912 | 5 | 13 | 18 | 92 | 240 | 332 | 2,129 |
| Private Bills | 28 | 18 | 46 | 33 | 32 | 65 | 1 | - | 1 | 1 | 2 | 3 | 115 |
| Private Immigration | 3,800 | 1,131 | 4,931 | 49 | 64 | 113 | - | - | - | - | - | - | 5,044 |
| Total | 4,271 | 1,473 | 5,844 | 576 | 514 | 1,090 | 6 | 13 | 19 | 93 | 242 | 335 | 7,288 |
| 92d Cong.—1971-1972: | | | | | | | | | | | | | |
| Public Bills | 467 | 352 | 819 | 559 | 472 | 1,031 | 5 | 8 | 13 | 75 | 75 | 150 | 2,013 |
| Private Bills | 10 | 25 | 35 | 23 | 35 | 58 | - | - | - | 1 | 2 | 3 | 96 |
| Private Immigration | 1,496 | 254 | 1,750 | 25 | 37 | 62 | - | - | - | - | - | - | 1,812 |
| Total | 1,973 | 631 | 2,604 | 607 | 544 | 1,151 | 5 | 8 | 13 | 76 | 77 | 153 | 3,921 |
| 93d Cong—1973-4(10-1-74) | | | | | | | | | | | | | |
| Public Bills | 358 | 286 | 644 | 404 | 622 | 1,026 | 8 | 31 | 39 | 50 | 82 | 132 | 1,841 |
| Private Bills | 11 | 20 | 31 | 12 | 21 | 33 | - | - | - | - | - | - | 64 |
| Private Immigration | 405 | 622 | 1,027 | 12 | 49 | 61 | - | - | - | - | - | - | 1,088 |
| Total | 774 | 928 | 1,702 | 428 | 692 | 1,120 | 8 | 31 | 39 | 50 | 82 | 132 | 2,993 |

NOTE**:

Congressional or deferred action prior to completion of report by Department

# Office of Management and Finance

The Office of Management and Finance (OMF) serves as the management arm of the Department by directing Department-wide policy in internal administrative matters and providing direct administrative support services to the Department's headquarters organizations. The Office also develops and directs administrative management programs which are Department-wide in scope.

A primary mission of the Office is to study and evaluate the Department's current management systems, structures, practices, and procedures and make appropriate recommendations for their improvement. In executing this mission, the office analyzes Departmental structures and systems as they relate to goal setting, policy development, decision-making, program planning, program execution and evaluation, and executive selection, development and placement. The Office is also concerned with examining the potential for more rational integration of missions and improved communications.

The Office is responsible for budget formulation and review, financial management, personnel administration, training, information processing, procurement, communications, space management, internal audit, judicial review and examinations, and library support services.

In meeting these responsibilities, the Office seeks to eliminate administrative management problems and minimize their dysfunction on the total operation of the Department. At the same time, the Office seeks to anticipate problems which may interfere with goal achievement in the Department. Providing assistance to line management enables the operating organizations to concentrate their efforts on mission accomplishment.

The major emphasis during this year has been to engage in rigorous program planning and evaluation which is consistent with the priorities of the criminal justice system. Planning for fiscal year 1976 began in January 1974 and represented the Department's first effort at budget formulation from a comprehensive program approach. All organizational elements of the Department submitted their 1976 budget plans within a common framework that facilitated analysis of resource needs from a Departmental perspective. The efforts this year are intended as a first step toward the development of a Department-wide planning and budgeting system. This effort is seen as fulfillment of the Office's key function of providing for the most effective allocation of the Department's resources among organizations and programs.

### Management Programs and Budget Staff

The Management Programs and Budget Staff (MPBS) of OMF is responsible for planning, developing, and directing the implementation of Department-wide management policies, programs, and systems in the areas of program analysis, budget formulation and execution, and financial planning and reporting. In addition, the staff reviews and evaluates Department organization structures, missions, and programs, resource utilization, management systems, and special management problems to insure that the use of resources by Department organizations is consistent with the policy priorities of the Attorney General and Deputy Attorney General as well as with the Department's goals and objectives.



The following major projects were undertaken by the Management Programs and Budget Staff during 1974:

*Department of Justice Management-by-Objective System (MBO)*—The MBO system was fully implemented in 1974 to assist senior managers in identifying and monitoring the implementation of fiscal year 1975 and 1976 program objectives which contribute to the achievement of the Department's mission and provide a program framework to support financial analysis and improve resource allocation decisions. All organizations were required to submit their 1976 budget requests in support of their program-oriented 1976 MBO submissions. The MBO system involves the continuous monitoring, reporting and evaluation of program progress in terms of bi-monthly status reports of objectives.

*Automated Budget*—The study of an automated budget system was begun by MPBS in late fiscal year 1974, so that portions of the automated budget could be operational for the 1977 budget cycle. Once in operation, the automated budget system would establish a comprehensive financial management system which would include budget status data on the current year, budget year, and budget year plus one. In addition, the system would also readily provide data for expenditures andor workload comparisons between different Department program areas and would greatly improve the Department's program and management evaluation capabilities.

*Analysis of the Issues Affecting U.S. Border Law Enforcement*—The Management Programs and Budget Staff coordinated a joint response by the Drug Enforcement Administration (DEA) and the Immigration and Naturalization Service (I&NS) for a Department of Justice position on salient issues pertaining to the security of the U.S. borders. With the increase in activities by DEA, I&NS and the Customs Service along the Southwest Border, it was essential that Federal enforcement efforts have closer cooperation, improved sharing of information and resources, and a clearer definition of roles and responsibilities. MPBS coordinated the development of the Department of Justice's position on border law enforcement. In particular, this position paper offered a series of recommendations which centered on improved role definition of each agency's enforcement responsibilities; mechanisms for resource sharing among the agencies; identification of areas which required resource augmentation; and suggestions for legal and statutory changes to improve border enforcement.

*Reorganization of the Board of Immigration Appeals*—Working in close conjunction with the Board of Immigration Appeals, the Management Programs and Budget Staff developed a proposal for and approved by the Deputy Attorney General to improve the adjudication function of the Board through major changes in its case review and decision-making procedures. Innovations were also introduced in the area of attorney research and opinion-writing and in the facilitation of important precedent decisions to ensure greater uniformity and consistency to an expanding body of immigration law.

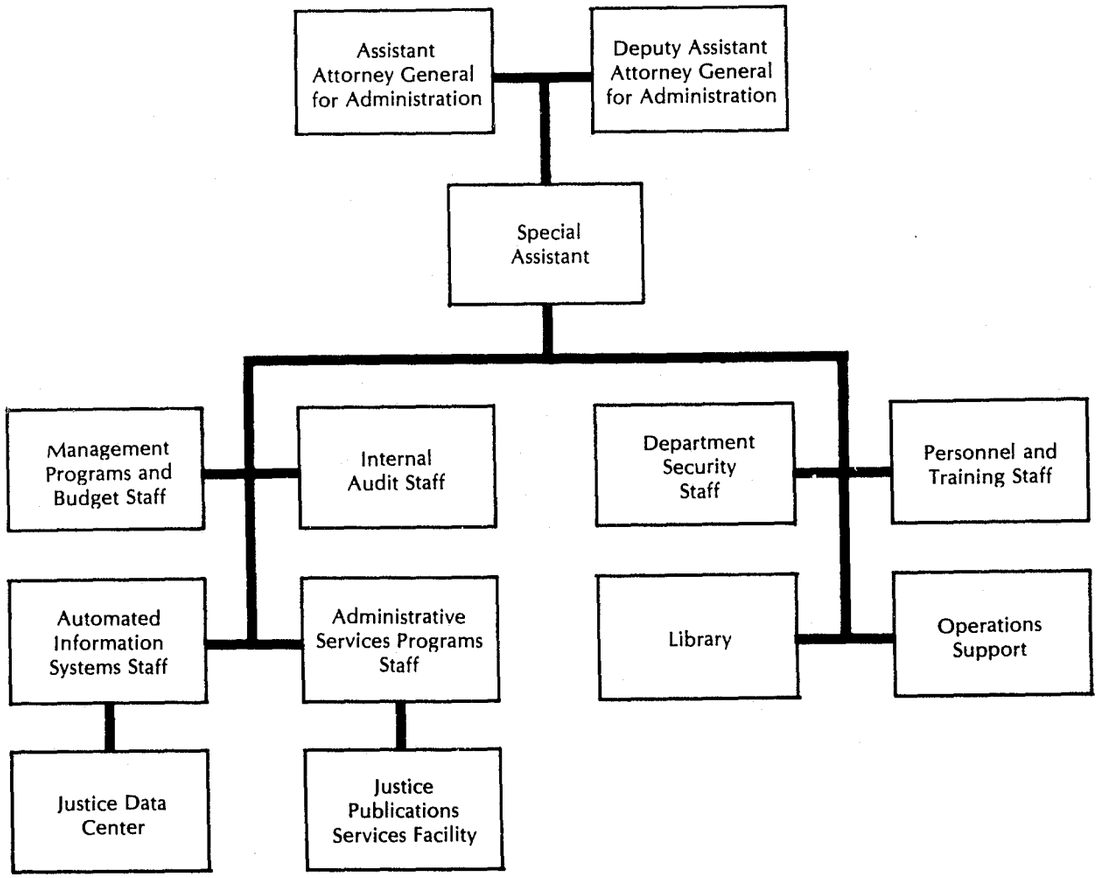
*DOJ Briefing and Conference Center*—The Center became available for use in late fiscal year 1974 in time for the first annual Deputy Attorney General's MBOBudget Hearings. The Center provides briefing facilities augmented by modern audiovisual equipment which facilitates the presentation of information by storing and displaying critical data. A special lighting system designed to accommodate Department press conferences and the capacity for multiple floor arrangements give the Center the required flexibility to service adequately the needs of the Department. The Center provides senior management with a dynamic environment for decision-making.

*United States Marshals Service (USMS) Study*—The USMS study, which was conducted by a Joint Task Force of OMF, resulted in an indepth analysis of the management, staffing and organization of the USMS. The Joint Task Force made recommendations to restructure the USMS organization to improve management control over headquarters and district operations. The Director of USMS has convened a USMS Task Force to implement the recommendations made in the study.

*Staff Support to the Attorney General Strike Force Committee*—Staff support was begun in early June, 1974. In support of the Director of MPBS, who served as a member of the Strike Force Committee, the MPBS engaged in a six city survey of Strike Force operations while serving as staff to the Attorney General's Committee on Strike Force Operations. The research consisted of extensive interviews with Strike Force participants, U.S. Attorneys, and members of the local police and Federal Judiciary. A summary and analysis of findings was provided to the Committee in late June, 1974. Subsequently, the Attorney General announced that the Strike Forces would continue to operate under the direction of the Criminal Division.

*The Agnew Investigation*—On August 23, Attorney General Richardson authorized Glen E. Pommerening, then Acting Assistant Attorney General for Administration, to conduct an inquiry into the possibility that Department of Justice personnel had released information regarding the Baltimore County investigation being conducted by the U.S. Attorney for the District of Maryland. This Departmental inquiry was

## OFFICE OF MANAGEMENT AND FINANCE






in response to the allegations by then Vice-President Spiro Agnew that information regarding his alleged involvement in accepting political payoffs was being leaked to the press by Department of Justice employees. Members of the Management Programs and Budget Staff were selected to assist Mr. Pommerening in this inquiry. Based on an extensive analysis of the information which appeared in the press and on the sworn statements of 141 individuals from the Department of Justice, the inquiry concluded that there was "no empirical evidence nor credible information to substantiate the charge that the Department of Justice or any individual Department of Justice employee conducted a campaign of leaks."

*Budget*—The Management Programs and Budget staff has certain ongoing responsibilities of a budgetary nature. Formulation and presentation of the budget ($1,923,951,000 and 49,198 positions) to the Attorney General, Office of Management and Budget, and the Congress are coordinated within this staff. Dissemination of detailed standards of presentation, significant policy decisions, and review to insure conformity were undertaken in 1974. Departmental budget execution controls and reports to reviewing agencies such as the Office of Management and Budget and the General Accounting office, as well as liaison with the Appropriations Committees of Congress, were provided by the Management Programs and Budget Staff.

### Personnel and Training Staff

The fiscal year was marked by significant change in the organization of the Personnel and Training Staff. The Staff's Department-wide program leadership capability was enhanced by relieving it of the responsibility for providing direct personnel services. In addition, the work of the Staff was redistributed among six relatively homogenous units, whereas previously it had been distributed among four units, each of which was responsible for several major programs. This change, coupled with a modest increase in staff, was designed to highlight and strengthen, in particular, programs in career development, labor-management relations, staffing and position management and, thereby, improve service in these areas to the constituent bureaus.

The planning and evaluation capability of the Personnel and Training Staff was strengthened by the personnel program objectives system implemented in the preceding year and by augmentation of the staff. The evaluation system was extended through both headquarters organizations, an area where accomplishments were reported in 1973, and through field installations. Stressing the direct involvement of managers and supervisors at all levels in the evaluation of personnel programs, major emphasis was placed on the achievement of personnel management goals as one dimension of achieving mission-related goals. In support of this concept, greatly increased use was made of reports from the Department's automated work-force information system and relevant manpower information was provided routinely to managers and supervisors. An employment fact book, published quarterly and comprising over thirty tables of comparative manpower data, was initiated and given broad distribution throughout the Department.

While recognizing that the focus of personnel management lies not in the personnel office but with line management, the Department is also cognizant of the need to ensure that its legal responsibilities under the merit system are judiciously exercised. Attention was directed toward increasing the capability for technical post-audit and review of operating personnel offices. In this connection, a working committee consisting of personnel specialists from all major components of the Department completed a draft of a handbook designed to provide general guidance for the conduct of personnel management evaluation reviews and specific guidelines for regulatory audits.

Labor union activities in the Department have continued to expand. The American Federation of Government Employees (AFGE) won nationwide bargaining rights for employees of the U.S. Marshals Service. The AFGE also gained bargaining rights for employees of the Board of Immigration Appeals, the Central Office of the Bureau of Prisons, and the Office of the U.S. Attorney for the Western District of New York. Contract negotiations between AFGE nationwide units and the Bureau of Prisons and the Immigration and Naturalization Service resulted in numerous impasses that had to be referred to the Federal Impasses Panel. These same negotiations also produced several negotiability disputes on which the Personnel and Training Staff issued decisions.

New legislation and revised regulations had a major impact on adverse action and appeal procedures and established additional requirements for counseling systems for troubled employees. These changes have required the Staff to develop a number of directives and instructions for the guidance of employees and managers in the Department.

Anticipating a significant reduction-in-force in the Community Relations Service, new reemployment priority list instructions were developed and issued early in the year. Subsequently, employees being separated were registered in the system and attempts made to place them. By the end of the year, only 15 employees remained to be placed in other jobs within the Department. In another staffing area, a number of issues

arose in connection with the examination used to fill border patrol agent positions, and several meetings with officials of the Immigration and Naturalization Service and the Civil Service Commission were necessary to resolve them.

The development of executives and mid-level managers continued to receive emphasis. During the year, 20 supergrade personnel and approximately 300 mid-level managers received formal management training or participated in developmental experiences sponsored by the Department or outside agencies. In addition, 50 mid-level managers received developmental assignments designed to increase their managerial abilities and broaden their experience. A comprehensive executive development program for fiscal year 1975 was developed by the Personnel and Training Staff and approved by the Attorney General. In addition to the special efforts made in the area of executive development, continued attention was given to training and development of employees at other levels. Total expenditures for training in 1974 were $7.7 million as compared with $6.8 million for the preceding fiscal year, an increase of 14 percent.

As a result of a number of extensive reorganizations throughout the Department, the Personnel and Training Staff evaluated and coordinated a record volume of supergrade position and personnel actions in 1974. This included 116 proposals respecting supergrade positions and spaces and 117 proposals for the appointment, promotion or reassignment of persons to supergrade positions. Comparable figures for fiscal year 1973 were 36 and 61, respectively.

A substantial amount of staff time was expended in developing and issuing instructions for the administration of overtime pay for General Schedule employees under the Fair Labor Standards Act, which Congress extended to cover Federal employees in April, 1974.

The equal employment opportunity (EEO) programs grew in strength and impact in fiscal year 1974, largely as the result of the Department's plans of action for EEO for calendar years 1973 and 1974. Major improvements were made in the establishment of a Department-level program for Spanish-speaking persons, including the designation of a Spanish-speaking specialist in each bureau and the development of a Spanish-speaking committee chaired by a Deputy Assistant Attorney General. Our objective to establish an upward mobility program led to the reassignment of a person to lead the effort and the development of the Department's first formal program for upward mobility and improved utilization of employee skills.

At the request of the Attorney General, the Deputy Attorney General required each major organizational element to set goals for recruiting, promoting, and training women and minorities throughout the Department. Members of the Personnel and Training Staff and bureau EEO officers participated in the conventions of nine major civil rights and community action organizations. EEO and recruitment programs were presented to an estimated 100,000 people through Department of Justice exhibits at the conventions. More importantly, the exhibits provided an opportunity to present Department law enforcement programs to the public through participating bureau specialists. One of the most significant programs to inform the public and Department employees of EEO efforts was the Women's Fair presented by the Department's Federal Women's Program. Media coverage and more than 2,000 guests assured that the contributions which women make to law enforcement and to the Department are recognized and increased.

The Department's minority employment increased by 777 persons over the previous year. As of June 30, 1974, the Department employed 7,723 minorities, constituting 15.5 percent of its work force. The percentage of women, however, remained constant at 32.2 percent. At the end of fiscal year 1973, minority employment accounted for 6,946, or 14.7 percent of the work force, and women for 15,520, or 32.2 percent of the total work force.

The number of discrimination complaints has grown steadily over the past five years. This is attributable primarily to increased employee awareness of the program. During 1974, a total of 62 formal EEO complaints was processed and 273 persons received counseling on EEO related problems. A large part of the apparent success of the counseling program is based on the training of counselors and the institution of the Department's Volunteer Representatives Program which was developed by the Federal Women's Program.

**Automated Information Systems Staff**

The Automated Information Systems Staff (AISS) of the Office of Management and Finance formulates policies, standards, and procedures to govern information systems and services within the Department of Justice. The Staff reviews, approves, and administers all contractual agreements pertaining to the procurement of ADPtelecommunications equipment and services. The Staff is also responsible for the design, development, and implementation of all ADP and telecommunications systems which are Department-wide in scope or which pertain to the automated retrieval of legal information. The Staff is responsible for systems control and data base management of approximately 70 automated information systems supporting the investigatory, litigation, and administrative management activities of the Department.

During 1974, the AISS was significantly expanded and has been assigned responsibility for a number of additional activities, including the operation of the Justice Data Center, the design and development of ADP systems which support the bureaus, the formulation of policies, plans, and standards to govern all Department of Justice financial management systems, the design, development, and implementation of ADPtelecommunications systems which serve the Department and the legal divisions, and the formulation of policies and long-range plans to govern the use of ADP and telecommunications within the Department.

The significant accomplishments of the *ADPTelecommunications Policy, Planning, and Standards Group* during 1974 are summarized in the following paragraphs:

—Conducted a survey of the Department's telecommunications systems. A specific product was recommended for the Justice Telecommunications System (JUST) telecommunications network to balance the message load and reduce the total network mileage by approximately 5,000 miles.

—Developed the specifications and site plans and initiated the procurement activity to acquire an IBM 370168 for the Department to ease the significant overload now plaguing the Justice Data Center.

—Analyzed, provided alternatives and made recommendations regarding message switching of non-Federal law enforcement communications on the National Crime Information Center (NCIC) and the National Law Enforcement Telecommunications System (NLETS).

—Assumed primary responsiblity for the Department's representations on the Interdepartment Radio Advisory Committee (IRAC), bringing this representation from the bureau level to the departmental level.

—Reviewed ADP procurement actions from Department, Divisions, Offices, Bureaus and Boards for adequacy of justification, comparative cost benefits, equipment compatability, maximization of competition, and operational impact on existing systems.

—Initiated the ADPMIS Equipment Inventory Analysis for the Department. Previously, this material had been submitted separately by the Divisions, Offices, Bureaus and Boards.

—Established the Federal Interagency Law Enforcement Telecommunications Group (FELT) consisting of representatives from the Department of Justice, Department of the Interior, Department of Transportation, and Department of Treasury.

The following is a listing of significant accomplishments during 1974 by the *Financial Systems Policy, Planning, and Standards Group*:

—Accomplished conversion of Immigration and Naturalization Service (INS) to the Department Central Payroll System. This was an addition of approximately 8,000 employees to the centralized payroll system and included indoctrination and training of INS personnel. The centralization of payroll resulted in increased effectiveness and improved economy in paying personnel.

—Coordinated with General Accounting Office (GAO) and the Law Enforcement Assistance Administration, the Drug Enforcement Administration (DEA), and Bureau of Prisons (BOP) in the design and review of new accounting systems that meet Department, bureau and GAO requirements. BOP accounting system was approved by GAO during this fiscal year.

—Assisted OMF task force in a study of the U.S. Marshal's Service, (USMS).

—In conjunction with the Executive Office of the U.S. Attorneys and the Information Systems Section, developed new forms and procedures for increasing the reliability and effectiveness of the Department Statistical Collection System.

—Completed programming and system implementation of the GSA FEDSTRIP/Motor Pool Accounting Subsystem. This subsystem distributes to cost centers GSA charges for warehouse and self-service store issues and for motor pool services. This subsystem eliminates the need to review GSA invoices for accounting input and to key coding documents for input to the computer.

The *ADPTelecommunications Systems Development Group* made significant accomplishments in several areas during 1974 including:

—Provision of systems analysis services to the Department in several administrative areas, e.g., design and/or redesign of automated systems supporting payroll, accounting, records management, and supply.

—Production, testing, and maintenance of computer programs which support the aforementioned administrative areas.

—Provision of data information services to the Department and its bureaus in the programming and processing of special data extracts and reports.

The *Systems and Data Base Control Group* was established to provide automated information systems and data processing support for the litigating divisions of

the Justice Department. Significant accomplishments for 1974 include:

—*Automated Legal Information Retrieval*: Implementation of the JURIS computer-based system for retrieval of legal information; initiation of the JURISLEXIS Evaluation Project to assess the impact and utility of automated information retrieval for legal research by attorneys; creation of the Legal Research Section of Attorney-Advisors and Computer Specialists for providing training and consultation to attorneys using automated legal information retrieval systems, and establishment of an on-going collection and editing program for Departmental materials comprising the Legal Data Base.

—*Caseload Management Systems*: Implementation of the interim Docket and Reporting System for U.S. Attorneys to maintain an inventory of cases and collections; operation of statistical reporting systems to supply management information on activities and accomplishments by U.S. Attorneys, U.S. Marshals, Civil Division Customs Section, Tax Division, Antitrust Division, and production of over 100 special reports from the statistical data bases for various organizations of the Department of Justice.

The *Systems Operations Group* comprises three elements: the Justice Telecommunications Center, the Justice Payroll Center and the Justice Data Center. During 1974 the Systems Operations Group had the following accomplishments.

—At the beginning of fiscal year 1974, the Justice Telecommunications System (JUST) served the headquarters elements of the Department, plus the U.S. Attorneys, U.S. Marshals and the Regional Offices of LEAA with 191 terminals in service. By the end of 1974, the system had been expanded to include the Bureau of Prisons (BOP) and the Immigration and Naturalization Service (INS); 57 terminals were added for INS and 29 for the Bureau of Prisons. With scattered additions elsewhere, the system expanded to 297 terminals serving 324 offices. The administrative message workload increased from an average of 50,500 messages monthly to 95,000 monthly. In the secure portion of the Communication Center, message volumes increased from an average of 5,000 monthly to 7,000 monthly. During the final quarter of 1974 the message switching computer of the Justice Telecommunications System was linked with a 370/155 computer system at the Justice Data Center to provide on-line access to NCIC for the Drug Enforcement Administration (DEA).

—The INS payroll was incorporated into Justice Payroll Center operations, consisting of some 8,000 pay accounts, bringing the total number of pay accounts serviced to over 30,000. Control was assumed over the file maintenance of the JUNIPER system along with responsibility for reports distribution to all users of the system.

—DEA was assisted in the design, programming and implementation of the STRIDE system.

—The Antitrust Division was given ADP technical support in implementing a computer-based system to support trial attorneys assigned to the IBM antitrust case.

—Analysts and programmers were provided to redesign, program and implement a major Bureau of Prisons system.

—Systems analysis consultation and training were provided to Departmental ADP staffs in the conversion to and usage of microfilm technology.

—A computer resource billing and accounting system was implemented for all users of the Justice Data Center. This action enabled the distribution of summary and/or detailed computer activity for each user of the Justice Data Center.

During 1974 a total of 134,360 jobs were run on the computers at the Justice Data Center; also, 3,238 microfilm frames (pages) were processed and distributed.

**Library**

The Main Library of the Justice Department and its various divisions maintain over 200,000 volumes. Their resources are used in preparing legal briefs and memoranda and in preparing supporting economic and social findings necessary in litigation, as well as for general reference use. These resources, together with the services provided by the staff, make this one of the foremost legal research centers of the Federal Government. The library collects, organizes and disseminates recorded information essential to the Department in accomplishing its mission. Often this material is assembled before the need is felt by the legal activities. The library's resources are supplemented by interlibrary loan services to and from other libraries in the Federal community. During the fiscal year, 1,321 volumes were borrowed from other libraries, primarily the Library of Congress, and 1,886 volumes were lent to other Government libraries.

The main library, with its 135,000 volumes, is the principal repository of reference and research materials. The Division libraries and other smaller collections maintain basic working collections of Federal reports and statutes and a few important and widely used reference materials. They also hold reference materials applicable to the work of these specialized units. Librarians assigned to these Division libraries continued to assist the attorneys in compiling legislative histories of importance to the respective Divisions, in obtaining publications for official use from sources outside the Department, in answering a wide variety of reference questions, and in maintaining convenient indices of briefs and cases.

All libraries continued to meet expanding Departmental responsibilities by acquiring new materials and providing staff expertise and service. Use of library materials continued at a high level. Over 400,000 books and periodicals were circulated and used in the library for reference. The librarian conducted courses in legal research methods and techniques attended by attorneys from throughout the Department and participated in the annual meeting of the American Association of Law Libraries. Other members of the staff participated in various professional activities.

**Internal Audit Staff**

The Internal Audit Staff was responsible for (1) performing independent internal audits of all organizations, programs, and functions within the Department, (2) conducting judicial examinations of offices under the jurisdiction of the Administrative Office of the U.S. Courts, (3) conducting investigations of equal employment opportunity (EEO) complaints, and (4) providing coordination and liaison with the General Accounting Office.

The primary objective of internal audits is to assist officials at all management levels in improving programs and functions. This objective is achieved through a professional staff of internal auditors assigned to review operations, make critical evaluations, report conditions where improvements can be made, and make recommendations for changes or corrective actions. Audits vary in scope from those limited to reviews of the reliability of financial statements to those evaluating the efficiency and economy of management of programs or functions.

A total of 44 internal audit reports was issued during the year covering:

—Management controls over the Impact Cities Program, compliance with the Civil Rights Act and related EEO orders and directives, research activities of the National Institute of Criminal Justice, and effectiveness of directives system (Law Enforcement Assistance Administration);

—Property management, fees charged for services rendered to individuals or firms, and a follow-up review of detention functions (Immigration and Naturalization Service);

—Property management and accounting, management of buildings and facilities construction funds, administrative activities at 19 field institutions and financial activities at 11 field locations (Bureau of Prisons);

—Procurement and contracting activities, and payroll practices and procedures (Drug Enforcement Administration); and

—Policies and practices relating to the use of administratively uncontrollable overtime in the Federal Bureau of Investigation, Drug Enforcement Administration, Immigration and Naturalization Service and United States Marshals Service.

As of July 27, 1973, the Staff was delegated the responsibility for conducting judicial examinations of the Offices of Clerks of United States Courts, United States Magistrates, United States Probation Officers, Bankruptcy Judges and Trustees and Receivers in Bankruptcy and Official Court Reporters in the 94 Judicial Districts of the United States. A total of 55 examinations was conducted covering judicial activities in 23 districts.

The Staff is responsible for conducting investigations of equal employment opportunity complaints in the Departmental headquarters offices, the boards, the legal divisions, U.S. Attorneys' Offices, the Community Relations Service, and the U.S. Marshals Service. These complaints allege discrimination on the basis of race, color, religion, sex, or national origin. Twelve investigative reports were issued during the year and two additional staff members received training in the methods, procedures, and techniques of investigating EEO complaints.

Other activities of the Staff included assisting a number of organizations in developing comments and identifying corrective actions needed to accommodate recommendations contained in 18 different General Accounting Office audit reports and maintaining an effective follow-up system for evaluation of corrective actions taken by management on findings and recommendations contained in internal audits and GAO reports.

**Department Security Staff**

Pursuant to the provisions of Department of Justice Order No. 543-73, October 26, 1973, the Department Security Staff was established by combining into a single staff the Office of Security, the Emergency Coordinator from the Criminal Division and the Physical Security Unit from the Administrative Division. The mission of the Department Security Staff as stated in the Order is to "Direct all Department security programs including personnel, physical, document and automatic data processing and telecommunications security and formulate and implement Department defense mobilization and contingency planning." In addition, the Department Security Staff implements the responsibilities of the Attorney General pursuant to Section 13 of Executive Order No. 10450 (Personnel

Security) in providing to the heads of departments and agencies such advice as may be required to enable them to establish and maintain appropriate employee security programs. Accordingly, the Department Security Staff has chaired a series of meetings with representatives of various executive departments to discuss problems that may exist and changes that may be made to improve the operation of the Personnel Security Program in the Executive Branch of the Federal Government. The Department Security Staff also serves on various subcommittees of the Interdepartmental Committee on Internal Security (ICIS) dealing with matters pertinent to their responsibilities.

The Personnel Security Group of the Staff is responsible for administering Executive Order No. 10450 (Security Requirements for Government Employment). During the past fiscal year this group evaluated 5,328 applicant and employee cases. Cases reviewed included: special programs clearances for FCC Alien Amateur Radio Licenses, 1,045 cases; Court Reporters for Grand Jury duty, 382 cases; Re-investigations program, 295 cases, and Security of Government Employees, 239 cases.

The Information Security Group of the Staff is responsible for administering Executive Order No. 11652 (Safeguarding of Official Information in the Interests of the Defense of the United States). During 1974, this group processed 1,138 requests for clearances for access to classified information and conducted 26 inspections of Department offices to insure compliance with the provisions of E.O. 11652. This group will be expanding its activities during 1975 to include the development of Department-wide computer security and telecommunications security programs.

The Physical Security Group of the Staff is responsible for maintaining the physical security of all Department of Justice buildings by establishing general requirements for controlling access to the buildings using GSA police, receptionists and technical security devices. This group works closely with various Department organizations to obtain a reasonable degree of protection for Department employees, visitors and property while minimizing costs to the Department and inconvenience to our employees and visitors. The Physical Security Group is also responsible for the issuance of building passes and credentials to Department employees. In 1974, 9,600 passes and credentials were processed.

The Emergency Preparedness Group is responsible for developing, coordinating and insuring the maintenance of contingency operating and evacuation plans to be used in the event of fire, bombings, bomb threats or other local or national emergencies. This Group also develops, coordinates, and insures the maintenance of relocation plans for essential Department of Justice employees, including the maintenance of the relocation sites with the necessary equipment and vital records.

**Justice Publication Services Facility**

It is the responsibility of the Justice Publication Services Facility to plan, direct and administer Department-wide policies, procedures and regulations pertaining to all printing, distribution, graphics, composition, and photographic services and to provide direct service in each of these areas to all units of the Department. The Justice Publication Services Facility also serves as the Department's liaison with the Joint Committee on Printing of the Congress and the Government Printing Office.

The Justice Publication Services Facility has implemented a program expanding printing and related services for all segments of the Department. This was accomplished by creating additional satellite stations, and improving equipment, management procedures and utilization of personnel.

During the past year the Joint Committee on Printing authorized the conversion of the Federal Bureau of Investigation printing plant to a satellite unit under the Justice Publication Services Facility.

A program was implemented to provide total comprehensive visual support for the entire Department during the past year. A complete support activity for the Justice Briefing and Conference Center has been established. This activity provides all visual support services for presentations given in the Center.

The newly created Field Operations Support Group, reporting to the Director, Justice Publication Services Facility, was established to provide printing, copying, and duplicating assistance to our 600-plus field offices. The span of management is nation-wide and this new concept now gives the responsibility to analyze all the requests for a change of or rental of additional equipment for duplication, copying, and printing to the Field Operations Support Group. Another important task will be to advise Field Personnel in new and improved techniques and educate them in applicable Government Printing Office and Joint Committee on Printing regulations.

**Operations Support Staff**

The Operations Support Staff (OSS) provides direct administrative support to the offices, boards and divisions (OBD) of the Department in budget and accounting, personnel, records management, and other administrative services. In addition, OSS provides certain direct fiscal and other support services to the U.S. Marshals Service. In performance of its support functions, OSS is responsible for coordination and liaison with other Office of Management and Finance staffs and with OBD administrative offices to insure consistency with Department-wide policies and standards.

Because this was its first year of operation, OSS was not involved in fiscal year 1974 budget formulation. OSS was responsible, however, for developing apportionments, allocation tables, allotments and financial status reports for the six OBD appropriations, which totaled $210,007,000.

In providing personnel management support, OSS processed 32,276 personnel actions, an increase of 17 percent over 1973. To insure compliance with Department policy on equal employment opportunity, a separate EEO Unit was established. The Unit is responsible for coordinating OBD participation in upward mobility programs. At the end of the year approximately 17 percent of all OBD employees were minority group members.

Management's continuing effort to improve the quality of the Department's work force is reflected in the 1,833 training requests for OBD employees approved during 1974. The cost of this training, a total of 48,148 man-hours, was over $197,000.

Labor relations assistance was given to management of the Board of Immigration Appeals, the first OBD headquarters organization to face employee unionization. A major issue is the inclusion of professional employees, i.e., attorney personnel, in the bargaining unit, which would give the local far more expertise in its dealings with management. In the regional operations, the American Federation of Government Employees Local 3500 gained recognition in the Office of the United States Attorney for the Western District of New York. OSS provided support in negotiation of an agreement signed on June 26, 1974, the second such agreement between an OBD organization and a union local. Contact was made at a third U.S. Attorney's Office but the union involved has yet to obtain a showing of interest.

The central mailroom received and processed approximately 2,210,000 pieces of mail, an increase of 28 percent over 1973. Almost 700,000 pieces of correspondence were classified and assigned and 56,425 new Departmental files were established, compared to 47,523 new files in 1973.

Expansion of OBD organizations required a total of 115 requests for new or additional space to be processed, an increase of almost 80 percent over 1973. More than 7,800 man-hours of moves or other lavor services were provided to serviced organizations by the OSS labor crew during 1974.

Under the Department's personal property utilization and disposal system, excess personal property valued at $440,000 was transferred to other Federal agencies. Surplus personal property valued at $520,000 was donated to educational and health institutions through a program sponsored by the Department of Health, Education and Welfare. Through the rehabilitation program, furniture which had a replacement value of approximately $23,700 was put in service at a cost of $9,600.

The purchasing activity processed 15,215 transactions involving 25,780 line items which had a cost of $6,604,185. The decline in the number and value of line items resulted from:

—The establishment of a separate contracting and purchasing authority in the U.S. Marshals Service; and

—New procedures which allow U.S. Attorneys' offices to obtain supplies and office machine repairs locally, either through GSA's FEDSTRIP system or through blanket purchase orders established for them by OSS.

Through formal advertising or negotiation, the contracting activity entered into 79 contractual agreements with a total value of $2,720,763. The decrease in this area was the result of the Marshals Service's new contracting authority and a delay in renewal of grand jury reporting contracts.

**Administrative Services Programs Staff**

The Administrative Services Programs Staff is responsible for the development and issuance of policy and procedures and the coordinating of the Department's records management, personal property, real property, space management, procurement, supply management, warehousing, motor vehicles, energy, and environmental protection programs.

This office assisted the Drug Enforcement Administration in its negotiations with the General Services Administration for necessary space so that all DEA's headquarters elements could be consolidated.

This office acquired 99,623 sq.ft. of space through the General Services Administration in the new Chester Arthur Building, 425 Eye Street, N.W. Washington, D.C. While a portion of the space was used to house the expanding headquarters activities of the Department, the major portion was used to house the Immigration and Naturalization Service.

During fiscal year 1974, this office arranged through the General Services Administration the disposal of approximately 813.3 acres of land which was not required by the Bureau of Prisons (BOP). We have also declared excess and are awaiting for disposal instructions of an additional 285.1 acres of BOP land.

This office assisted in the acquisition by the Bureau of Prisons of 188 acres of land at Fort Dix, New Jersey and 205 acres of land at Miami, Florida, which were declared excess by other Government agencies. This land will be used as sites for new penal institutions. The estimated ex-

penditure, if the acreage had not been acquired from excess, would have been approximately $400,000.00.

During the year, 11 new forms were designed and 15 directives issued. Included in the directives were four in Directives Management, two in Forms Management, one in Correspondence Management, three in Mail Management, three in Parking Management, one in Space Management, and one in Procurement. The number of forms designed included one each in Forms Management and Correspondence Management, seven in Mail Management, and two in Parking Management.



# Community Relations Service

The responsibility of the Community Relations Service (CRS) is resolving racial conflict. Created in the Civil Rights Act of 1964, the Service is mandated by Congress "to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin."

CRS helps States and local communities to defuse tense situations involving minority groups—American Indians, Chicanos, Blacks, Puerto Ricans, Asian Americans and Eskimos. Its aim is to provide disputants with alternative methods and strategies for resolving problems relating to discrimination without resorting to litigation or violent and disruptive tactics. In so doing, CRS does not enforce laws, regulate practices, or grant funds; instead, the agency applies various techniques of persuasion in actual or potentially disruptive situations where third-party intervention can facilitate peaceful resolution.

Persuasion takes the forms of two essential services: conciliation and mediation. Conciliation involves the injection of a neutral third party with special skills and resources into disputes, difficulties, or disagreements in order to avoid, minimize, and/or remove violence, offer alternatives to involved parties, and influence actions toward peaceful resolution. Mediation is a technical process, more formal than conciliation, in which an intermediary has sanctions from the disputants and assists them in reaching a mutually satisfactory settlement of their differences, preferably with built-in self-enforcing mechanisms.

During the fiscal year, CRS reorganized and expanded its efforts to resolve active disputes, disagreements, and difficulties. CRS also reorganized its field operations to conform to the Federal regional structure. It presently maintains a staff of 103 located in Washington, D.C. and in 10 regional offices, from which it provides crisis response to all states and territories.

The agency expanded its Crisis Alert System, a nationwide system of contacts that provides timely information regarding potential or actual crises. It stepped up efforts to help State and local governments with contingency planning geared to improve their capability to humanize the resolution of conflicts and crises. CRS also devoted significant efforts to retraining CRS staff, as well as to training State and local personnel in the techniques of conflict resolution.

In addressing racial tension, the particular services provided by CRS included:

—Assessing tense or potentially tense situations as a neutral third party, providing a Federal presence in critical situations in which there is a useful purpose served by on-the-scene observation;

—Facilitating communications between disputants so that issues and opposing viewpoints were perceived and examined;

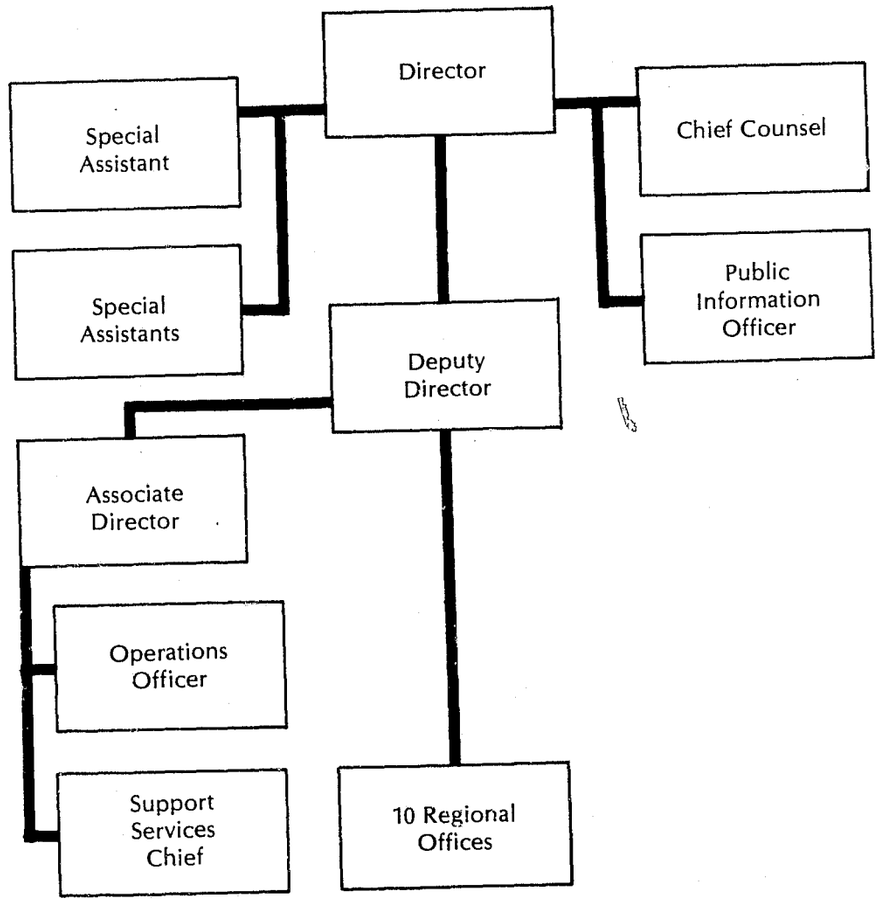
—Arranging and/or convening meetings between the adversaries and chairing negotiation sessions;

—Assisting adversaries to understand the nature of conflict, crisis and protest, and to overcome inhibiting stereotypes;

—Helping disputants identify and enlist resources which bear on resolution of the conflict;

—Advising and consulting with law enforcement officials to reduce the likelihood of confrontation or violence when inflammatory conditions prevailed;

# COMMUNITY RELATIONS SERVICE




- Boston
- New York
- Philadelphia
- Atlanta
- Chicago
- Dallas
- Kansas City
- Denver
- San Francisco
- Seattle



—Intervening in conflicts between and within ethnic/racial groups to seek solutions to such discord;

—Helping to formulate and apply constructive internal disciplinary procedures (self-policing systems) in the planning and execution of protest activities involving large numbers of participants; and,

—Arranging for appropriate mechanisms with which to assure follow-up implementation of agreements reached.

The agency helped resolve 530 racial difficulties in 508 communities during this fiscal year; 15 of which were resolved through the formal mediation process. The average time spent per mediation case was 270 staff hours and involved a staff of not more than four per case.

Following are examples of CRS mediation and conciliation efforts during the fiscal year.

**Drake University, Des Moines, Iowa**

A seven-member group of black students at Drake University School of Law charged the University with "racism and racist attitudes" in its admissions and personnel policies. In a letter to the dean, the Drake Chapter of the Black American Law Students Association (BALSA) cited the small number of minority enrollment, the disproportionate attrition rate of black students and the failure of the University to employ minorities in non-janitorial job categories. Discrimination complaints were filed with the Des Moines Human Rights Commission and the Iowa Civil Rights Commission. To avoid the time-consuming procedures associated with these grievance proceedings and subsequent court actions, the members of the Drake University Chapter of BALSA requested CRS mediation assistance. In September 1973 CRS convened negotiations between representatives from BALSA and Drake University. One month later a mediation agreement was signed and publicly disclosed at a press conference. The agreement incorporated plans for the affirmative action necessary to provide for fuller minority participation in the affairs of Drake University Law School.

**Kingsland (Camden County), Georgia**

The death of a black male at the hands of a law enforcement agent in July 1973 incensed black citizens of Camden County. The incident received wide newspaper coverage, and the black citizens asked CRS to arrange a meeting with the governor so they could present their grievances. Persons attending the meeting who were employed by Thiokol Chemical Corporation in Camden County were promptly fired for being absent from the job. The incident sparked a strike by all black employees. CRS was asked to intervene by State, county and local officials and community groups. The State sent its civil and technical disorders unit into the area to work with CRS. Striking employees threw up picket lines around the Thiokol plant and white males armed with shotguns and rifles also appeared at the plant. CRS met with law enforcement officials, other city and county officials, the Thiokol plant manager, black community leaders and union officials. Labor issues were separated from community grievances and mechanisms for further communication were set up. This series of meetings had some positive effects in lowering the level of community tension.

In subsequent meetings with local and national Thiokol executives, it was determined that the Corporation would support the overall concern of black citizens if the strikers returned to work. CRS then arranged additional meetings involving city, county, and Thiokol officials with black community leaders. CRS sought to find areas of common concern and finally narrowed the issues so that an informal agreement was reached enabling Thiokol employees to return to work.

**Rockford, Illinois**

After the severe beating of a Chicano factory worker by two policemen trying to make an arrest, Chicano community leaders related to CRS a history of alleged police brutality and harassment. The police department had tried to improve its community relationship through chaplain and citizen ride-along programs and an effort to recruit and train minority police. However, Latinos felt they had no input or participation in these programs.

The CRS conciliator first met individually with Latino leaders, the chief of police, the Rockford Human Rights Commission director, and the mayor. He then convened a joint meeting between all the various factions. As a result of the latter meeting, the police chief agreed to the establishment of a police-community advisory council. He also arranged for the recruitment of Latino police candidates through the Spanish-speaking center, and agreed to have all his police officers take 40 hours of community relations training courses. The mayor agreed to appoint two Latinos to the Human Rights Commission and have them choose a liaison person with his office. The two policemen charged with brutality were given polygraph tests, which both failed. The chief suspended the policemen for five days and conducted an investigation during which the officers admitted falsifying the reports on this and other incidents. They were subsequently fired.

**Kansas State Prison, Lansing, Kansas**

Investigations by the Kansas Commission on Civil Rights (KCCR) revealed numerous problems at the Men's Prison at Lansing. An NAACP task force dealing

with Statewide corrections issues expressed serious concern about the prison's conditions, and local Lansing attorneys reported a high number of complaints from minority inmates. The executive director of the KCCR requested CRS assistance to seek to alleviate potentially explosive conditions at the prison. In initial meetings convened by CRS with appropriate State officials, it became evident that the KCCR director and the Acting Director of the Kansas State Penal System held opposing views on prison issues, the most controversial being the appropriate procedure by which desegregation of the inmate population should proceed. Two State officers requested CRS to serve as mediator to help them resolve the complicated and difficult issues pertinent to prison desegregation. The settlement worked out ensured the assignment of inmates to the prison's cellhouses without regard to race or ethnic origin.

**Ramapo College, Mahwah, New Jersey**

A group of black students, concerned about focusing the attention of college administrators toward the concerns of minority students enrolled under the Educational Opportunity Fund (EOF) Program, organized a demonstration and occupied a building on the Ramapo College campus. CRS was called in to avoid an open confrontation between students and police.

CRS worked to create an atmosphere of understanding and cooperation by arranging a series of meetings between minority and white students, college officials, and State educators. Support by the New Jersey State Chancellor of Higher Education was instrumental in establishing CRS' effectiveness to serve as the impartial third-party mediator, and led to the successful resolution of all but three of the major issues which precipitated the conflict.

The CRS mediator presided over the deliberations, which resulted in a signed agreement inclusive of the following items:

—the establishment of a more adequate process for recruiting Educational Opportunity Fund (EOF) students;

—an evaluation of student financial needs, and a reassessment of the college budget to meet the needs of all students;

—an increase in housing allocations for EOF students; increased responsibilities for the EOF directors;

—a commitment to the development of majors in third world studies;

—improvement in the college transporatation system;

—authorization for the use of Ramapo College grant funds as part of financial aid packages for EOF students; and,

—the establishment of a tutoring service and the eradication of the existing remedial programs.

**McLaughlin, South Dakota**

The wife of an Indian resident of McLaughlin received fractures of both arms in an alleged attack by a police officer at the jail where her husband was being held. This incident of alleged police brutality climaxed a series of police harassments and misconduct charges by the Indians. A McLaughlin Indian requested the American Indian Movement (AIM) to come to McLaughlin and investigate the latest incident. Based on its investigation, AIM issued a press release calling for the immediate dismissal of the Chief of Police and the accused officer. Some 50 members of AIM converged on McLaughlin for a weekend strategy meeting. The Bureau of Indian Affairs police were placed on alert and tension in McLaughlin and the Standing Rock Reservation (Fort Yates, North Dakota) was at an all-time high. The accused police officer was pressured to resign and left McLaughlin.

The U.S. Attorney in Sioux Falls called in CRS, which immediately established communications between AIM, the police department, the Mayor's office, and the Bureau of Indian Affairs police, an effort which quickly eased community tension. CRS set up meetings with AIM and provided technical assistance in identifying the issues. CRS then arranged a meeting with the City Council, at which time the demands were presented during a 4-hour negotiating session. CRS was instrumental in obtaining a compromise on a 30-day suspension of the police chief instead of his outright dismissal. The compromise also included an agreement, passed by the City Council in the form of a resolution, that the police chief would attend law enforcement courses during the suspension. In addition, the City Council agreed to create a Human Relations Commission and name an Indian as coordinator. Tension quickly abated in the community as a result of action taken by CRS and local officials.



**Distribution of Conciliation/Mediation Cases By Problem Area**

| Region | Administration of Justice | Education | Community Development | Other |
|---|---|---|---|---|
| New England | 8 | 12 | 1 | 3 |
| Northeast | 8 | 23 | 3 | 12 |
| Mid-Atlantic | 15 | 21 | 1 | 11 |
| Southeast | 28 | 27 | 7 | 8 |
| Midwest | 22 | 24 | 6 | 17 |
| Southwest | 16 | 19 | 1 | 7 |
| Central | 12 | 12 | 7 | 8 |
| Rocky Mountain | 22 | 17 | 4 | 10 |
| Western | 32 | 16 | 3 | 8 |
| Northwest | 22 | 19 | 21 | 17 |
| Total | 185 | 190 | 54 | 101 |

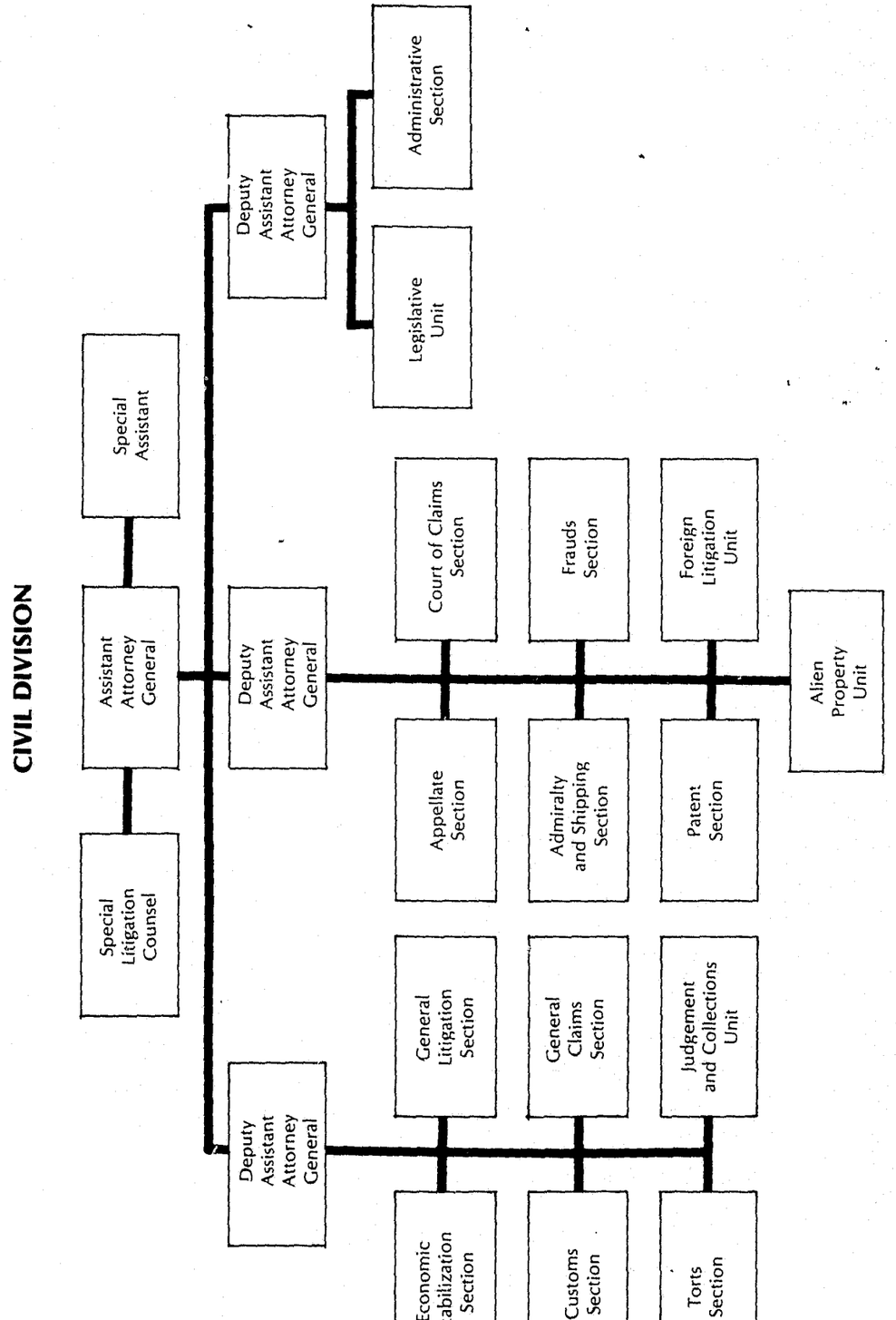
# Civil Division

The Civil Division is responsible for the general litigation of the Government in cases both initiated by, or brought against the United States or against Cabinet members and other Federal officers in their official capacities. The cases arise out of both commercial and purely governmental business of all Federal departments, agencies and instrumentalities and the acts of civilian and military personnel in the course of performing their Government service. The cases are litigated in all Federal courts as well as in state courts and the tribunals of foreign countries. The litigation is conducted by the Division's staff of 232 attorneys and by the United States Attorneys and their staffs under the Division's direction and supervision.

Excluding a huge volume of customs cases and also a few major alien property claims and matters in terminal stages, the Division worked on a total of 45,334 cases during the year. This workload was comprised of 26,304 cases which were still in various stages of litigation at the end of the 1973 year plus 19,030 new cases which developed during the year. The Division terminated 15,775 cases in 1974, leaving 29,559 cases pending. Of those concluded, 45 percent were suits against the United States in which a total of over $1.9 billion was sought. Recoveries were held to $84.3 million or 4.3 percent of the aggregate claim. The Government was plaintiff in the other 55 percent of the cases terminated, claiming a total of $221.2 million. Judgments and settlements in these cases amounted to $127.3 million or a recovery of 47.5 percent. Collections by the Civil Division amounted to $90.9 million in fiscal year 1974, which included $49.3 million in cash and the balance in the value of property obtained. These collection figures include some payments received during the year under the terms of compromise agreements reached in prior years as well as collections obtained by the Government in connection with fiscal year 1974 litigation. Case-and-dollar statistics do not, however, adequately indicate the significance of the Division's work. Comparatively small claims frequently present crucial questions of law and the decisions may have lasting and far-reaching effects on Government operations. Moreover, a large percentage of the most important cases do not involve a money judgment, but involve attacks upon the constitutionality or statutory authority of administrative actions. Finally, among the most important points to be noted about the Civil Division is the incredibly broad range and diversity of its activities. While each of the other Divisions is organized about a unifying theme or coherent body of substance, the Civil Division is the repository for all functions not otherwise assigned and, as such, is vested with the responsibility for meeting the Government's legal needs in many, if not most, of its operations. In consequence, the Division encompasses a series of discrete and distinct legal specialities, ranging from admiralty to torts, customs to foreign litigation, which often have as little in common as one division does with another.

The full scope of the Division's operations is reflected in the varied sections and units that make up its organization. The Division is composed of ten sections, a Foreign Litigation Unit and a Judgment and Collections Unit. In addition, the Assistant Attorney General has a Special Litigation Counsel and staff to work on important and unique cases. The following brief descriptions of these subdivisions and the summary of their more im-





portant cases during the year give some indication of the diversity of litigation within the Civil Division.

**Admiralty and Shipping Section**

The Admiralty and Shipping Section handles all proceedings by and against the United States of America and its officers and agents, including the military, relating to ships, shipping, navigable waters and workmen's compensation. This includes the defense and prosecution of both tort and contract claims arising out of shipping and maritime matters. Contract claims arise out of contracts involving the water transportation of cargos or passengers, dredging, vessel mortgages, vessel repairs, wharfage, and seaman's wages. Tort claims arise from accidents occurring or consummated upon navigable waters. The Section's varied caseload derives from the Nation's position as the world's largest shipowner and one of the world's largest shippers of goods and cargo.

While the Section's general admiralty and litigative expertise are available to all officers and agencies of the Federal Government, its primary clients include some that may perhaps be surprising, especially in light of the "water-related" functions they perform, including: the Army Corps of Engineers, in its maintenance of the Nation's immense system of inland waterways; the Department of Agriculture, in its role as a major shipper of cargo on both public and private vessels; the Navy and the Coast Guard, in their various military, regulatory and service functions; and the Federal Maritime Commission, in its regulation of foreign shipping.

In 1974, the Section handled 1,908 cases, terminating 772 and ending the year with 1,136 still pending. Of the 772 that were terminated, 251 involved claims on behalf of the Government, with $11,205,221 awarded to the United States. The remaining 521 cases involved claims against the United States totaling $89,982,915. Only $4,522,073, or approximately 5% of the total sued for was awarded, representing a savings of over $85,000,000 to the Government.

While a detailed description of the cases comprising the Section's workload is inappropriate here, it will be useful to define some of the broader categories of its activity. Approximately 40 percent of the Section's workload in fiscal 1974 was comprised of cases involving the defense of wrongful death or personal injury actions brought against the United States Government, arising out of three basic situations: collisions with ships of the United States Government; accidents aboard United States vessels, or aboard private vessels with allegations of causation by Government negligence; or negligence charged against the Coast Guard in its search and rescue operations. Another 30 to 35 percent of the Section's workload involved actions brought by the Government for damage to Government property in one of three general fact situations: collision with ships owned either privately or by foreign governments; major or minor damage to the Government's systems of locks and canals through the negligence of private or other governmental users; and loss or damage to Government property being shipped on private vessels through the negligence of carrier or third party. Other major areas of activity include: the prosecution of violations of navigation safety statutes; the prosecution of, or defense against, cases brought under environmental legislation where the polluter is a vessel and the Government is involved; litigation arising out of the policing of inter- or multi-national fishing agreements.

There were two major changes in the activity of the Section during 1974. In the first, the volume of Vietnam-related cases markedly declined as the lagging caseload finally caught up to the diminution of American presence there. In the second, the number of environmentally oriented cases, which has seen a steady increase over the last several years, continued to grow in fiscal year 1974.

**Appellate Section**

The Appellate Section is responsible for all appellate cases and matters developing out of lower court civil litigation. That responsibility embraces a wide range of functions, including: coordination of communications between all interested parties on the side of the Government; caseload management; provision of expertise; and the actual prosecution or defense of appellate cases in the Federal Circuit Courts of Appeals, state appellate courts and the U.S. Supreme Court. Each function will be discussed in some detail below.

*Communications*

This Section is the prime communication conduit for all interested parties during the course of any given appeal. Thus, inquiries from various United States Attorneys Offices, by whom the cases were generally tried in the lower court, or from the various client agencies, at whose behest or in whose support appeals are being taken or defended, concerning the status of any given appeal will generally be directed toward the Appellate Section. Further, such Divisional strategy or policy as is necessitated by any appeal will be determined by Divisional leadership after consultation with Section staff and leadership.

*Caseload Management*

The Section fulfills a dual function with regard to the management of appellate caseload at the Circuit Court of Appeals level: (1) it studies and analyzes all adverse trial court decisions and makes the initial determination regarding whether an appeal should be undertaken and submits that determination, in the form of a recommendation, for final approval by the Solicitor General; (2) where the appeals have been approved, or where they have been taken against the United States, the Section assumes full responsibility for the handling of the appeal, including the preparation of the Government's brief and the presentation of oral argument. A substantial number of these appeals are assigned to the U.S. Attorneys' Offices for handling.

The Section also assumes full responsibility for the drafting of all documents filed in the U.S. Supreme Court, including briefs on the merits, petitions for certiorari and jurisdictional statements. The United States Attorneys play no role in these cases but the Office of the Solicitor General participates actively, arguing most of the cases itself.

*Provision of Expertise*

The provision of day-to-day supervision of United States Attorneys Offices assigned to handle appeals in the Circuit Courts of Appeals is minimal. However, the Section stands prepared to provide aid and expertise to any United States Attorney, upon request. Such aid includes: consultation by phone on specific problems that arise during the course of the appeal; provision of synopsis of arguments to be made, or positions to be taken that have been used successfully in other circuits or that have been adopted by the Division; and, in the extreme, at the request of a United States Attorney, the handling of a given appeal earlier assigned to that U.S. Attorney.

*Conduct of Appeals*

The actual briefing and oral argument of appeals themselves is central to the Section's operations; it handles over four hundred appeals from the United States District Courts to the Circuit Courts of Appeals, approximately one-half of the yearly caseload in appellate civil litigation. It also handles a number of appeals and other review proceedings before the Supreme Court, both in concert with the Solicitor General and in its own right.

While the substance of the Section's caseload is both broad and diverse, arising, as it does, out of the diversity of the entire division's litigation, one major element in 1974 should be highlighted and identified as an area of future concern as well. This is the Freedom of Information Act which was enacted in 1966 and significantly amended on November 21, 1974. Under the 1966 version of the Act, a significant and increasing volume of cases and issues began reaching the appellate courts in the post-1970 period. For example, in 1973 and 1974, the Supreme Court decided two significant cases concerning military secrets and internal deliberative documents (*Environmental Protection Agency* v. *Mink*,(1). As of November 1, 1974, the Civil Division was handling 91 Freedom of Information Act cases. The 1974 Amendments to the Act, which take effect on February 19, 1975, modify the procedural and some substantive provisions of the Act, and authorize Federal courts to award attorneys fees to successful claimants in certain circumstances. In view of the Amendments, and the increased public awareness of the Act, it is expected that Freedom of Information Act cases will grow in number as the courts attempt to define the meaning of its often ambiguous provisions. The Appellate Section can be expected to continue to play a significant role in this increasing litigation.

**Court of Claims Section**

This Section represents the United States in all cases before either the United States Court of Claims or the Chief Commissioner of the Court of Claims, except those relating to taxes, lands, or patents. The Section's caseload consists largely of suits: for monetary damages on all forms of contracts with the United States; on claims for salary and other monetary benefits brought by civilian and military personnel; on monetary claims for the transportation of Government property; on claims for the recoupment of excessive profits under the Renegotiation Act; on claims referred by Congress under the Congressional Reference Act; on just compensation claims under the Constitution for the taking of personal property by the United States; and on other miscellaneous claims founded upon the Constitution, or any Act of Congress or any regulation of an executive department.

The Court of Claims Section attorneys represented the United States in 1,908 cases in fiscal year 1974, involving total listed claims against the Government in excess of $1,092,000,000. Of these cases, 233 involving listed claims in excess of $281,976,000 were terminated with $6,242,489 awarded to the claimants and $3,760,157 to the Government.

During the Court term October 1973-July 1974, the Court of Claims published decisions in 124 cases of which 79 were in cases handled by attorneys in the Court of Claims Section. Each of these decisions which the Court determined to publish represented a significant ruling in the contracting, regulatory, personnel or other activities of the Federal Government which can generate such monetary claims against the United States. Among the published decisions are the following illustrative rulings:

In the case of *Donald Wayne Morrison* v. *United States*,(2) the Court had to rule on an unusual controversy stemming from the combat activities of United States troops in South Vietnam. The plaintiff, a sergeant in the United States Army, while on a combat patrol in the central highlands of South Vietnam participated in the discovery of a container located in a cave, which contained $150,000 in United States currency. The Army assumed possession of the currency and plaintiff brought suit contending that under the doctrine of "treasure trove" he had gained valid title to the cash. The Court rejected the claim relying upon principles of law that such property, obtained by combat troops during an official mission, becomes the property of the Government and not that of the individual soldier.

The case of *Butz Engineering Corp.* v. *United States*(3) brought forward the question of just how independent Congress intended the Postal Service to become when it enacted the Postal Reorganization Act of 1970, Public Law 91-375, 84 Stat. 719. The Court ruled that despite the fact that the Postal Service was transformed into an "independent establishment" the United States still could be sued upon a contract let by that Service. Upon the merits, however, the Court ruled in favor of the United States and dismissed the suit.

**Customs Section**

The Customs Section is responsible for all litigation incident to the reappraisal and classification of imported goods, including the defense of all suits in the Customs Court and the presentation, with the Appellate Section, of customs appeals to the Court of Customs and Patent Appeals. The litigation here generally arises as a result of duties assessed by the United States Customs Service under the Tariff Act of 1930, as amended by the Tariff Schedules of 1963, and paid at the time of assessment by the importer. Upon the denial of an administrative protest, the importer may then bring an action in the Customs Court to challenge whether the goods assessed were properly appraised and/or classified, arguing for a classification or appraisal that will result in a lower assessment of duty. At that point, the Customs Section is served and the matter officially becomes a "case."

It should be noted, however, that a large percentage of these cases are resolved through non-litigative means, including: proposal and counterproposal between the complainant, the Customs Section, and the Customs Service; negotiation; compromise; and/or failure to press the suit by the complainant. Thus, the bulk of what may appear to be a very large litigative caseload (see below) at first inspection is frequently resolved through non-litigative activity, allowing the Section's attorneys to concentrate their efforts more intensively upon those cases in which accord cannot be so simply reached. However, a considerable amount of time is spent in acting on non-litigative proposals.

At the start of fiscal year 1974, there were 278,875 cases pending in the Customs Court. During the course of the year, the backlog was reduced by 127,717 cases. This prodigious decrease in case backlog was, as with similar reductions in the last several years, another "dividend" from Public Law 91-271, which mandated: improved administrative procedures; extended time limitation periods; and a filing fee (to encourage the consolidation of entries and denied protests in a single court civil action). This benefit is further evidenced when it is considered that the 3,598 civil actions filed with the Customs Court (up 763 from fiscal year 1973) represent what would have been in excess of 20,000 cases under the old system.

In fiscal year 1974, the Government prevailed in 49 percent of the 68 opinions rendered by the Customs Court in contested cases in its trial and appellate terms for a winning percentage in that court of 71.3 percent, up from last year's 63.9 percent. In 31 opinions rendered by the Court of Customs and Patent Appeals during fiscal year 1974, the Government prevailed in 19, for a winning percentage of 61.2 percent down from last year's 67.7 percent.

Among the more fascinating elements of the Section's work is the incredible variety of subject matter with which it must deal upon a daily basis as an endless parade of goods subject to tariff moves unceasingly across our shores. Two case discussions will serve to illustrate both the complexity and the piquancy of the tasks.

The first, pending decision in the Customs Court, involves the dutiable status of a DC-9 aircraft imported in the United States after having been exported from Switzerland. The aircraft had been built in the United States and included a set of wings and empennage which were made in Canada and imported into the United States under a temporary importation bond which was posted in lieu of the payment of duty. After the importation of the aircraft from Switzerland, the interior of the aircraft was allegedly renovated and, thereafter, the aircraft was exported to West Germany. Upon importation from Switzerland, duty was assessed on the entire aircraft. Plaintiff claims that the wings and empennage should be constructively separated or segregated for tariff purposes, and that the remainder of the plane was entitled to the benefit of drawback under section 313 of the Tariff Act of 1930, as amended. The effect of plaintiff's claims would result in the payment of duty only upon the wings and empennage, and the refund of that duty, less 1 percent, upon the plane's exportation. Apart from the monetary significance involved in the litigation, the case is significant from a legal standpoint as it involves the question of whether the construction segregation doctrine enunciated by the courts has been successfuly eliminated by the Tariff Schedules of the United States. Ancillary to this question is the issue of whether Customs could have ceased utilizing the constructive segregation doctrine in liquidating aircraft under similar circumstances without the giving of a notice of a change of practice.

The second was a case of first impression in the Customs Court regarding the classification of pregnant cattle. The pregnant cattle were classified by Customs as "other cattle" under item 100.53 of the Tariff Schedules, dutiable at 1.5 cents per pound. The importer contended that the pregnant cattle were "young cows," imported specially for dairy purposes, and should have been classified under item 100.50, Tariff Schedules of the United States, as "Cows imported specially for dairy purposes," dutiable at one cent per pound. The appellate court affirmed the Customs Court's decision sustaining the Customs classification upon a review of the extensive testimony in the trial record, concluding therefrom "that the meaning of 'cow' in the dairy trade is a female bovine of a breed suitable for dairy purposes which has produced a calf." This conclusion was buttressed, not only by the legislative history, but also by the additional fact that the animals in question did not possess, at the time of importation, a suitability for dairy purposes since each had to first produce a calf before becoming marketable for dairy purposes.

**Economic Stabilization Section**

The Economic Stabilization Section has the responsibility for handling all the litigation involving the Government and its instrumentalities occurring in or related to both the Economic Stablization Program and the Emergency Petroleum Allocation Program. At the close of the fiscal year, 343 cases were pending in the Section.

The Section's responsibilities in these two programs extend over civil and criminal cases at both the trial and appellate level. A number of criminal actions have been brought against oil companies and gasoline station operators and all have resulted in guilty verdicts. Although the expiration on April 30, 1974, of the Economic Stabilization Act terminated the Government's authority to issue and enforce new wage and price regulations, the entire fiscal year saw a great deal of litigation involving the program and this activity with respect to pending cases will continue into fiscal year 1975.

The Government's authority to allocate petroleum products was first granted under the Economic Stabilization Act in the amendments to the Act passed in April 1973. However, with the outbreak of war in the Middle East and the imposition of the Arab oil embargo, a national shortage of petroleum developed to which Congress reacted by the enactment of the Emergency Petroleum Allocation Act of 1973, Public Law 93-159, November 27, 1973. The shortages reached their most crucial point, particularly in gasoline, in February and March of 1974, and the Section became heavily engaged in enforcing the regulations of the Federal Energy Office and in resisting challenges to the program by various segments of the industry, particularly the major oil companies who were affected by the crude oil allocation programs.

Typical of the type of litigation that developed in the price program were the challenges to meat prices during the freeze which was imposed after the rather flexible Phase III program proved inadequate to stem rising inflationary pressures. The Cost of Living Council imposed a 60-day freeze from June 13, 1973 to August 12, 1973, during which time the stronger controls of Phase IV were being developed. The imposition of ceiling prices on meat threatened for a time to cause cattle raisers to withhold livestock from the market on the ground that the freeze prevented them from securing adequate prices for the livestock. In the ensuing scare over a possible nation-wide shortage of meat, five civil actions were commenced in Federal district courts around the country. Two of these in very short order reached the appellate level. The Temporary Emergency Court of Appeals passed upon the actions of the Council and upheld these actions as having a rational basis which tended to promote the objectives of the program. *Pacific Coast Meat Jobbers Assn.* v. *Cost of Living Council*,(4) and *Western States Meat Packers Assn.* v. *Dunlop*.(5)

A very significant challenge to the wage side of the stabilization program came when the Government attempted to prevent the State of Ohio from giving a 10.6 percent increase in wages and salaries to State employees after the Pay Board ordered only a 7 percent increase. Ohio contended that there was no indication that Congress ever intended State employees to be covered by this program. The Temporary Emergency Court of Appeals held otherwise. *United States* v. *State of Ohio*. (6) Ohio sought certiorari to the Supreme Court which was granted and the case will be argued in the Fall of 1974.

The petroleum allocation program has also been one in which the Section's resources have been divided into securing compliance with the program and with resisting challenges to it. By the end of fiscal year 1974, over 75 court proceedings had taken place to secure compliance with the gasoline price regulations. Almost all of these were decided in favor of the Government and resulted in restitution of the illegal price increases to the market-

place and the payment of a civil penalty by the offending gasoline station operator. One of the most important challenges to the gasoline allocation program came at the height of the crisis when the State of Maryland contended that the allocation made to it by the Federal Energy Office was not an equitable share of the available supplies. The District Court in Maryland found in favor of the State and ordered the allocation of 20,500,000 more gallons into Maryland for the month of February. In a matter of days the case was argued in the Temporary Emergency Court of Appeals and the District Court was reversed on the grounds that there was clearly a rational arrangement for the allocation and that even though some of the data upon which the agency had relied was unreliable the agency was clearly doing its best to remove these shortcomings and pursuant to its Congressional mandate should be permitted to operate without the intrusion of the Federal courts in its work. *Mandel* v. *Simon.*(7)

**Frauds Section**

The Frauds Section is responsible for the review of any wrongful taking of the money or property of the United States, or overt attempt to do so, to determine whether a civil suit to recover damages and/or gain additional relief is warranted. In so doing, the Section works closely with its counterpart in the Criminal Division, often reviewing the same reports from the Federal Bureau of Investigation and conferring upon various elements of related cases while, at the same time, making its own independent determination regarding whether to proceed civilly in any given case.

The Section's caseload arises from the entire spectrum of Government operations, including: false billings or other submissions by Government contractors designed to generate payments higher than justified; fraudulent applications for Federal loans and grants, with recent emphasis on Small Business Administration programs; fraudulent applications for loan assurances and guarantees, especially from the Federal Housing Administration and Veteran's Administration; any of the myriad schemes to obtain surplus Government property by illegal means; and Medicare and Social Security frauds. The Section's most important tool in litigating these cases is the False Claims Act, 31 U.S.C. 231-235, which provides for the recovery of double damages and forfeitures ($2,000 each) for the presentation of false, fictitious or fraudulent claims for payment against any Government agency. This Act provides the Government with a strong, civil response to fraud in addition to general civil remedies.

During fiscal year 1974, the Frauds Section handled 1,764 cases, terminating 593, representing a total award to the United States of $3,716,552. An additional 2,358 matters received by the Section were closed without action, held in suspense status pending further information and investigation of developments, or delegated to the various United States Attorneys for their exclusive handling. There were several discernable trends in caseload over the course of the fiscal year, including: the continuation of a high referral rate in new housing fraud cases to the Section; an increase in cases relating to procurement contracts of the Department of Defense; and an increase in cases relating to various programs of the Small Business Administration.

**General Claims Section**

The General Claims Section is possessed of perhaps the broadest operational mandate in the Civil Division. The activities of the Section, stated as simply as possible, include: the conduct of all suits of claims for money or property on behalf of the United States Government not otherwise specially assigned within the Department of Justice (generating heavy involvement in the substantive area of Government contracts); the defense of the United States, or an officer or agency thereof named as a defendant, in a foreclosure, quiet title, interpleader or partition suit with respect to property on which the Government retains a lien; the enforcement of veteran's reemployment rights in industry, including seniority rights and claims for pay and other employment benefits (these actions required a specific statutory authorization to represent private persons); the defense of veteran's insurance claim litigation; the assertion of the interests of the United States Government in significant bankruptcy litigation including corporate reorganization proceedings and arrangement proceedings under Chapter XI of the Bankruptcy Act; and the conduct of reparation cases before the Interstate Commerce Commission.

The broad mandate of the Section has, in turn, generated a large and expanding caseload over the size of which the Section often has little or no control. For instance, the Section was able to terminate 4,842 cases in 1974, the highest number closed in any of the last several years. However, the number of new case referrals, 5,193, more than kept pace with the terminations, as they reached their highest level in the last several years as well. Since new case referrals cannot, generally speaking, be refused by the section, there is no bar to continued caseload increases in the future.

In light of the likelihood of continued caseload expansion in the future, at a time when expanded resources are not always readily available, the Section has adopted as one its objectives a reduction in caseload by developing means other than litigation for the resolution of an increasing number of cases. This could best be accomplished by providing for the administrative resolution of numerous cases, or categories of cases, which presently are brought to the Department for judicial resolution. Cases under consideration for such treatment are those where the law is clear but which require significant staff time for routine resolution due to the number of cases involved. The Federal Claims Collection Act of 1966, 31 U.S.C. 951 *et. seq.* is an excellent illustration of one type of approach to the problem of relieving court congestion and the heavy burden of work on the Department of Justice. The Act gave most agencies compromise and closing authority for the first time, and it caused a 37 percent reduction in the number of claim referrals to the Department for litigation.

**General Litigation Section**

The General Litigation Section is responsible for a wide variety of litigation by and against the United States and its officers and agents in Federal district courts and State courts. This litigation includes proceedings to review orders of administrative agencies, defense of suits against Government agencies and their officials to enjoin official acts, affirmative suits to prevent interference with Government operations, and many other types of cases involving enforcement or protection of Federal rights and interests.

A substantial part of its caseload consists of suits under the Social Security Act, the Agricultural Adjustment Act, Selective Service Act, the Civil Service and Veterans' Preference Acts, district court suits under the Tucker Act, and suits under special jurisdictional acts of Congress.

Significant cases handled by this Section include interventions in litigation challenging the constitutionality of acts of Congress, Taft-Hartley Act national emergency injunction suits in situations affecting the national health or safety, defense of members of Congress and other Government officials who are sued as a result of acts performed in the course of their official duties, and civil enforcement proceedings under the Labor-Management Reporting and Disclosure Act of 1959.

During fiscal year 1974 the General Litigation Section handled 17,648 cases, an increase of 1,380 over the number handled in fiscal year 1973; 13,892 cases were pending at the end of fiscal year 1974.

Cases defended during fiscal year 1974 included so-called "impoundment" suits challenging the Executive's determination not to expend certain Congressionally appropriated or authorized funds for various programs such as those authorized by Title II of the Federal Water Polution Control Act Amendments of 1972, Title IX of the Public Health Service Act, Title III of the National Defense Education Act, the Federal-Aid Highway Act, Title I of the Vocational-Education Act of 1963, and the Grants for Basic Water and Sewer Facilities Program.

There were a substantial number of actions involving defense of Federal agencies against charges of discrimination by would-be, present and former Government employees under the 1972 amendments to the Civil Rights Act of 1964 which give a limited right of action against allegedly discriminatory activities of the Federal Government; actions under the Agricultural Marketing Agreement Act challenging marketing agreements under the Act; suits attacking FAA regulations regarding the searches of airline passengers and x-ray inspection of carry-on luggage; actions against various aspects of the Secretary of Agriculture's administration of the Food Stamp Program, involving both eligibility and ineligibility provisions, and withdrawal or suspension of authority to redeem food stamps; a variety of suits against decisions and regulations of the Comptroller of the Currency regulating national banks; actions seeking to enjoin calls to active military duty by numerous reservists for violations of regulations relating to their conduct and appearance; and actions attacking HUD's approval of various urban redevelopment and low and middle income housing plans and projects.

Defense of class actions makes up a large part of the Section's work. Numerous such actions were defended in fiscal year 1974, challenging the administration of a wide variety of Federal programs, including alleged discriminatory practices relating to Federal employees; the failure to grant, or the discontinuance of, benefits under statutes such as the Supplemental Security Income for Aged, Blind and Disabled, the Aid for Families with Dependent Children, and the Medicare and Medicaid provisions of the Social Security Act.

One example of the Section's work was its defense of the Secretary of Labor in *National Independent Coal Operators Association, et al.* v. *Brennan.*(8) Plaintiff in this action was an association composed of owners and operators of coal mines and coal processing facilities which sued to enjoin the operation of Title IV of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. Section 901, *et seq.* Part C of this Title requires coal mine operators to pay Black Lung Benefits to coal miners who were totally disabled by, or whose deaths resulted from, Black Lung disease. The Act was challenged as unconstitutionally retroactive on the ground that the benefits provisions were to be applied in favor of miners and their beneficiaries with regard to coal mine employment prior to the enactment of the statute. A Federal district court found the Act and regulations promulgated by the Secretary of Labor to be constitutional and valid in all respects. An appeal to the Supreme Court has been filed.

### Patent Section

The Patent Section is responsible for the Government's patent, trademark and copyright litigation, although it is the patent area that consumes the great bulk of the Section's time and resources. Most of the Section's patent work involves the defense of the Government and its agencies including, most frequently, the Department of Defense, the Atomic Energy Commission, the National Aeronautics and Space Administration, and the Departments of Agriculture and Interior, against suits brought by private individuals for the infringement of their patent rights (issues arising between Government employees and the Government on research and development contracts are generally handled administratively, with no involvement of the Section). The litigation is tried in one of four forums: the United States Court of Claims, the Board of Interferences of the Patent Office, the United States district courts, and the Court of Customs and Patent Appeals.

Many patent cases involve very sophisticated technology and require a general understanding of complicated pieces of equipment. This is necessarily so since most cases will involve a determination and evaluation by the Court of the extent to which the patent advances the state of the art to which it pertains. There is also the issue of whether the equipment alleged to infringe the patent actually uses the improvement specified in the patent or, on the contrary, uses a technique substantially different in structure and principle of operation from that in the patent. These questions arise in areas such as: electronics, communication equipment, military ammunition fuses, computers, chemical processes, aerodynamics, high speed aircraft, and missiles and their guidance systems. It should be clear then, that litigation of patent issues requires a very high degree of non-legal technical knowledge in any of a number of discrete, rigorous, technical disciplines. Fourteen patent infringement cases in the Court of Claims were terminated during 1974. In eight of these cases, a total of $1,471,350 was paid by the Government. The other six cases were dismissed.

Although the bulk of the Section's work is involved with patents, one of the most significant cases of this, or any, year occurred in the copyrights area in 1974. In *Williams & Wilkins Co.* v. *United States,*(9) the Court of Claims held that library photocopying as practiced by the National Library of Medicine and the National Institutes of Mental Health is a fair and permissable use of copyrighted medical journals and is, thus, not an infringement of the publisher's copyright in such journals. The case is one of first impression and is currently under review by the Supreme Court. The implications of the case are extremely broad in the possible applicability of the publisher's copyright against any person or entity which regularly utilizes photocopies.

### Torts Section

The Torts Section is responsible for handling, with minor exceptions, all tort actions involving the United States, its officers and agents, including both those brought on behalf of the Government and those in which the Government is the defendant.

The primary source under which affirmative tort actions and claims are asserted on behalf of the United States and its agencies is the Federal Medical Care Recovery Act. Recoveries from third-party tortfeasors under the Medical Recovery Act—by the Section and other Government agencies concerned—totaled $9,961,026 in calendar year 1973, an increase of $377,400 over recoveries in calendar year 1972.

The situation with respect to cases in which the United States is a defendant is somewhat different than that in which it is the plaintiff. Under the doctrine of "sovereign immunity," the United States and its Governmental units were traditionally not subject to tort actions unless they had consented to the suit. Thus, the United States Government was immune from suit without its own consent. With the passage of the Federal Tort Claims Act, the United States waived its immunity in certain areas and permitted suits to be brought against it. It is the responsibility of the Torts Section to handle the defense of those suits. In the same vein, it is also the responsibility of the Section to handle all administrative claims filed under the Act within the Department of Justice and to review, for approval or disapproval, claims filed under the Act which are forwarded to the Department of Justice from all other Government agencies. In fiscal year 1974, 1,785 new cases and claims were filed with the Torts Section; 1,434 were handled to conclusion with approximately $33,282,000 awarded claimants by way of judgments and settlements; of these, 809 involving claims of $483,000,000 were concluded without Government liability. While there were a number of interesting cases in torts during fiscal year 1974, the most important was undoubtedly the establishment of a novel area of Government liability in its review and certification processes. The lead case involved the Department of Health, Education and Welfare, in *Mary Jane Griffin* v. *United States.*(10) Mary Jane Griffin contracted polio which, the District Court found, was caused by a defective dose of polio vaccine manufactured by the Pfizer Company and approved for public consumption by the Public Health Service, Department of Health, Education and Welfare. The Court found that the Public Health Service was negligent in releasing the vaccine to the public and acted in disregard of its regulations which established criteria for approving polio vaccine. The District Court's damage award to Mr. and Mrs. Griffin totaled $2,059,946. The Court of Appeals in a 2 to 1 decision affirmed the decision of the District Court as to liability but reduced the damage award by one half based upon a joint tortfeasor release executed by the Griffins in favor of the Pfizer Company. The importance of the decision lies in the recognition, by both courts, of a liability in the Government for negligence in review of products related to public health. At the same time, there are suits across the county attempting to establish Government liability for the violation of a variety of Governmental regulatory schema, including: safety standards from the Federal Highway Administration, the Department of Labor, and airworthiness certifications from the Federal Aviation Administration. The ultimate issue in all of these cases is whether the Government can be held liable for its violation of its own review and certification procedures or standards. The question is one of vital importance in many areas of Government operation.

### Special Litigation Counsel

The Special Litigation Counsel functions as a part of the Office of the Assistant Attorney General and is generally assigned major cases which, because of their complexity or the significance of the issues involved, are handled directly before the courts by senior attorneys with extensive litigation experience. The assignments may involve cases in which the Assistant Attorney General has become directly interested because of the importance of the issues involved. The Special Litigation Counsel has a staff of four attorneys. Because of the broad spectrum of cases which may be assigned to the Special Litigation Counsel, attorneys from other sections, and on occasion other divisions within the Department, may be assigned to work on particular assignments where a mutual interest exists.

Among the more significant matters handled by the Special Litigation Unit in fiscal year 1974 were a number of cases involving the constitutionality of the Regional Rail Reorganization Act of 1973. On September 30, 1974 the Special Court under the Regional Rail Reorganization Act of 1973 issued its opinions reviewing the decisions by various district courts whether the railroads under their jurisdiction are to be reorganized under the new Act. The courts having jurisdiction over the Penn Central and its bankrupt leased lines, the Lehigh Valley, the Central Railroad of New Jersey, and the Lehigh & Hudson, had refused to allow such reorganization on the ground that the process afforded by the new Act was not "fair and equitable." In certain respects these courts followed a decision of a three-judge court in a suit by Connecticut General Insurance Corporation(11) and other creditors of and investors in Penn Central which had held the Act unconstitutional in certain respects. This decision is now under appeal to the Supreme Court of the United States. The Special Court, in a unanimous decision, affirmed the two district courts that had directed that reorganization take place under the Regional Rail Reorganization Act and reversed those that had refused to do so. However, it stayed its judgment to enable it to reflect the results reached by the Supreme Court on the pending appeal in the *Connecticut General* case. This procedure was necessary because the Act prohibits direct review of the Special Court's decision. The Special Litigation Unit represented the interests of the United States in all proceedings before both the Special Court and the *Connecticut General* court.

Another significant group of cases being handled by the Special Litigation Counsel arose out of a series of narcotics raids conducted by Federal agents in and around Collinsville, Illinois, Plaintiffs in these cases seek millions of dollars in damages alleging that the agents wrongfully and maliciously injured them, invaded their privacy, and destroyed their property. The agents had previously been acquitted of criminal civil rights charges by a Federal court jury. In the first of the civil suits to go to trial, a jury returned a verdict for the Federal agent who was represented by an Assistant United States Attorney and a member of the Special Litigation staff. The remaining cases, which are in different stages of preparation in several district courts will involve litigation over many disputed issues of fact and law.

Another major Special Litigation case, a sequel to *United States* v. *Marchetti,*(12) involved the CIA's enforcement of its secrecy agreements with its former employees. In the *Marchetti* case, the courts had ruled that the CIA was entitled to specific enforcement of such agreements which prohibit the disclosure of classified intelligence information acquired while in government service. The injunction also provided that in order to prevent the inadvertant disclosure of classified information, all manuscripts by Marchetti relating to intelligence or the CIA were required to be submitted to the agency 30 days in advance of publication. Following submission to the CIA and the agency's deletion of over 300 items of classified information (later reduced to 160), Marchetti, a co-author, and the publisher sued for judicial review of the deletions. After an extensive round of discovery and a three-day trial—much of which was conducted *in camera*—the district court ruled that the agency had proved some of the deletions to be classified but had failed to establish that others were. The court also ruled against plaintiffs' contentions that the material was in the public domain and that the authors had acquired it outside of their official duties. *Knopf* v.

*Colby.*(13) Both sides appealed to the Fourth Circuit Court of Appeals and argument was heard in June after expedited briefing.

**Foreign Litigation Unit**

The Foreign Litigation Unit's primary responsibility is to represent the United States before foreign tribunals in civil cases brought against the United States and its agencies and instrumentalities, and in civil suits initiated by the United States abroad. The Unit also provides legal representation to civilian and military personnel and to foreign service officers who are sued abroad as a result of acts performed in the course of their Government service. The Unit's foreign caseload is a miniaturization of the cases handled by the other specialized sections of the Civil Division before domestic courts. Thus, the Unit handles litigation arising out of constuction, procurement and service contracts entered into with foreign contractors; employment contracts with foreign nationals; damage claims for personal injury or death resulting from the operation of Government-owned vehicles or vessels abroad; disputes involving Government-owned real estate abroad; tax claims asserted by foreign states or their political subdivisions against Government-owned property; admiralty claims; bankruptcy proceedings; and appellate proceedings. The Government is represented before foreign tribunals by foreign advocates and counsel selected and retained by the Unit who work in close consultation with and under the direction and supervision of the Unit.

The Unit's staff and foreign counsel worked on a total of 186 cases in 28 foreign countries during fiscal year 1974. This workload was comprised of 135 cases which were still in various trial and appellate stages at the end of fiscal year 1973, as well as 51 new cases which developed during the year; the Unit terminated 32 foreign cases in fiscal year 1974.

Perhaps the most significant decision rendered by a foreign tribunal during fiscal year 1974 was that of the Court of Appeals of Florence, Italy, in the case of *Cali* v. *United States.*(14) The Court reversed a lower court which had ordered a retroactive pay increase for the years 1952-1962 for a former Italian employee of the U.S. Army at a military installation in Italy, to reflect cost-of-living increases in the Italian economy. If upheld, the Army would have been required to make similar retroactive adjustments in the wages of some 800 local employees who were similarly situated, at an expense to the Government of several hundred thousand dollars. The appellate tribunal found that although the U.S. Army had not literally complied with the provisions of local law mandating the payment of cost-of-living increases as a separate item of pay, the Army's pay scales had in fact exceeded during the relevant time comparable local pay scales plus the required cost-of-living increases.

In addition to its responsibilities for foreign litigation, the Unit is also called upon to handle domestic cases turning upon questions of international or foreign law; litigation under the Trading with the Enemy Act, e.g., *Von Clemm* v. *Banuelos*(15); or drawing into issue the foreign policy interests of the United States, e.g., *Spacil* v. *Crowe,*(16) and *Deep, Deep Ocean Products, Inc.* v. *U.S.S.R.,*(17) rejecting challenges to grants of immunity issued by the State Department in suits brought against foreign states in the courts of the United States.

Finally, the Unit is assigned the responsibility for the receipt, processing and execution of requests for international judicial assistance transmitted by foreign authorities, both under the Hague Service Convention of 1965, TIAS 6638, 20 UST 361, and under the Hague Evidence Convention of 1968, TIAS 7444, 23 UST 2555. The Unit processed 1,115 such requests during fiscal year 1974—an increase of over 50 percent over the preceding fiscal year—and represented the Government's interests in court whenever execution of foreign judicial assistance requests resulted in litigation, e.g., *In re Letters Rogatory from the City Court of Haugesund, Norway.*(18)

**Judgment and Collection Unit**

This Unit supervises litigation and other activities connected with collecting and enforcing civil judgments obtained by or referred to the Civil Division. In addition to executions, garnishments, and supplementary proceedings, the Unit attends to the Government's interests in bankruptcies, receivership proceedings and estate matters, in actions against third-party converters and in actions to set aside fraudulent conveyances. It also acts to perfect or renew the Government's lien position, and to protect it in thirdparty foreclosure actions. During fiscal year 1974 it directly supervised and participated in 1,463 cases in which the individual judgments exceeded $10,000 in amount, and rendered advice and assistance to U.S. Attorneys with reference to some 10,000 cases involving judgments in smaller amounts. There were 809 cases pending at the end of the fiscal year. The following cases illustrate the variety of work handled by the Unit.

Because Federal judgment enforcement is conducted very largely under provisions of state law relating to executions, liens, exemptions, etc., there are frequent occasions in which the courts must find accommodation between the Federal and state systems. Two cases illustrate the point. In *United States* v. *Reg McQuatters,*(19) the plaintiff was permitted to revive a judgment grounded in fraud that was listed in a bankruptcy proceeding in which a general discharge was obtained prior to the 1970 amendment to the Bankruptcy Act, now requiring specific exception from discharge. In *United States* v. *Thomas Boyd Kellum, et al.,*(20) it was held that registration in the Southern District of Mississippi, pursuant to 28 U.S.C. Section 1963, of a judgment obtained in the Northern District of that State, served as a revival of the judgment so as to obviate the question of whether limitations provisions of state law or 28 U.S.C. Section 2415(a) prevented further revival of the original judgment.

Many cases require enforcement actions in multiple districts. In the case of *United States* v. *Morton S. and Helen Chatkin,*(21) enforcement of judgments in the total amount of $214,702 required the imposition of liens and the making of arrangements involving prior lien holders in Arizona, Illinois, and Puerto Rico which are expected to result in collection of the full principal amount of the Government's claims plus a substantial portion of post-judgment interest. Similar activity was required in *United States* v. *William T. Minor, et al.,* (22) in which much FBI investigation and garnishment actions by the Unit were required in a number of states resulting in collection of $40,000, substantially the full amount of the uncollected balance of an SBA loan. That case also included a contribution action between guarantors in which the Government was named as a party. Other cases require the taking of separate judgments against joint and several guarantors residing in different districts and the working out of compromise arrangements in which the debtors contribute in accordance with their ability to pay; e.g., *United States* v. *Korson*(23) and *United States* v. *Scheps.*(24).

**Workload Summary of Cases, by Section, Fiscal Year 1974**

| | Cases Pending 1973 | New Cases 1974 | Cases Terminated | Cases Pending |
|---|---|---|---|---|
| Admiralty & Shipping | 1,372 | 536 | 772 | 1,136 |
| Appellate | 1,127 | 2,630 | 2,313 | 1,444 |
| Court of Claims | 1,519 | 389 | 233 | 1,675 |
| Customs | 278,875 | 3,606 | 127,764 | 154,717 |
| Economic Stabilization | 392 | 293 | 342 | 343 |
| Frauds | 1,190 | 574 | 593 | 1,171 |
| General Claims | 5,462 | 5,193 | 4,842 | 5,813 |
| General Litigation | 11,306 | 6,342 | 3,756 | 13,892 |
| Patent | 182 | 61 | 50 | 193 |
| Torts | 2,377 | 1,785 | 1,434 | 2,728 |
| Foreign Litigation | 264 | 1,250 | 1,159 | 355 |
| Judgment & Collection | 1,113 | 350 | 654 | 809 |

**Comparative Workload Summary of Cases by Section**

| Sections | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|
| Admiralty & Shipping | 2,057 | 1,988 | 1,852 | 1,604 | 1,372 | 1,136 |
| Appellate | 688 | 764 | 951 | 1,120 | 1,127 | 1,444 |
| Court of Claims | 806 | 898 | 1,291 | 1,503 | 1,519 | 1,675 |
| Economic Stabilization | – | – | – | 634 | 392 | 343 |
| Frauds | 498 | 577 | 564 | 576 | 1,190 | 1,171 |
| General Claims | 3,418 | 3,951 | 4,067 | 5,015 | 5,462 | 5,813 |
| General Litigation | 4,450 | 8,046 | 9,568 | 11,433 | 11,306 | 13,892 |
| Patent | 225 | 229 | 202 | 176 | 182 | 193 |
| Torts | 2,042 | 2,324 | 2,324 | 2,299 | 2,377 | 2,728 |
| Foreign Litigation | 203 | 200 | 236 | 234 | 264 | 355 |
| Judgment & Collection | 1,135 | 1,127 | 1,155 | 1,119 | 1,113 | 809 |
| Railroad Reorganization | – | – | – | 12 | – | – |
| Renegotiation | – | – | 113 | – | – | – |
| Total Number of Cases | 15,522 | 20,104 | 22,323 | 25,725 | 26,304 | 29,559 |
| Customs | 431,612 | 436,475 | 442,851 | 403,059 | 278,875 | 154,717 |

**CITATIONS**

(1) *Environmental Protection Agency* v. *Mink,* 410 U.S. 73 (1973)
(2) *Donald Wayne Morrison* v. *United States,* 203 Ct. Cl. 692; 492 F. 2d 1219 (1974)
(3) *Butz Engineering Corp.* v. *United States,* 204 Ct. Cl. 561; 499 F. 2d 619 (1974)
(4) *Pacific Coast Meat Jobbers Assn.* v. *Cost of Living Council,* 481 F.2d 1388 (T.E.C.A., 1973)
(5) *Western States Meat Packers Assn.* v. *Dunlop,* 482 F.2d 1401 (T.E.C.A., 1973)
(6) *United States* v. *State of Ohio,* 487 F.2d 936 (T.E.C.A., 1973)
(7) *Mandel* v. *Simon,* 493 F.2d 1239 (T.E.C.A., 1974)
(8) *National Independent Coal Operators Association,* et al. v. *Brennan,* 372 F.Supp. 16 (U.S.D.C. D.C., 1974)
(9) *The Williams & Wilkins Co.* v. *United States,* 203 Ct. Cls. 74; 487 F. 2d 1345
(10) *Mary Jane Griffin* v. *United States,* 351 F.Supp. 10 (E.D. Pa.); 500 F. 2d 1059 (C.A. 1974)
(11) *Connecticut General Ins. Co. et al.* v. *United States Railway Assn. et al.,* U.S.D.C. E.D. Pa., Civil Action No. 74-189
(12) *United States* v. *Marchetti,* 466 F.2d 1309 (C.A. 4, 1973)
(13) *Knopf* v. *Colby,* U.S.D.C. E.D. Va., Civil Action No. 540-73-A
(14) *Cali* v. *United States,* Judgment of January 23, 1974 (Italy)
(15) *Von Clemm* v. *Banuelos,* 365 F.Supp. 477 (D. Mass. 1973), Aff'd 498 F. 2d 163 (C.A. 1, 1974)
(16) *Spacil* v. *Crowe,* 489 F.2d 614 (C.A. 5, 1973)
(17) *Deep, Deep Ocean Products, Inc.* v. *U.S.S.R.,* 493 F.2d 1223 (C.A. 1, 1974)
(18) *In re Letters Rogatory from the City Court of Haugesund, Norway,* 497 F.2d 378 (C.A. 9, 1974)
(19) *United States* v. *Reg McQuatters,* 370 F.Supp. 1286, D.C., W.D. Texas
(20) *United States* v. *Thomas Boyd Kellum, et al.,* S.D. Miss., Civil Action No. 73J-86(N)
(21) *United States* v. *Morton S. and Helen Chatkin,* U.S.D.C., W.D Pa., Misc. No. 4122 and 4126
(22) *United States* v. *William T. Minor, et al.,* U.S.D.C., N.D. Texas, Civil 7-744
(23) *United States* v. *Korson,* S.D. N.Y., C.A. 69, Civil 3308
(24) *United States* v. *Scheps,* D. N.J. C.A. 939-69

# Civil Rights Division

The Civil Rights Division is responsible for the enforcement of Federal statutes and executive orders prohibiting discrimination in employment, education, housing, voting, public accommodations and facilities, and federally financed programs. The Division also enforces Federal criminal statutes which prohibit specified acts of interference with Federally protected rights and activities.

Established in 1957 with a staff of ten attorneys, the Division presently has an authorized strength of 179 attorneys and 186 support personnel. The basic goal of the Division is to resolve national problems of discrimination through voluntary compliance, where possible, and litigation if such efforts fail. Except for criminal enforcement work, where the cases normally involve jury trials, the suits are equitable and seek remedies through the injunctive process.

The Division presently has eight major sections, each of which has jurisdiction over particular subject areas and related statutes:

—The Employment Section, enforcing Title VII of the Civil Rights Act of 1964, as amended in 1972 and Executive Order 11246 as amended;

—The Education Section, enforcing Title IV of the 1964 Act;

—The Housing Section, enforcing Title VIII of the Civil Rights Act of 1968;

—The Voting and Public Accommodations Section, enforcing the Voting Rights Act of 1965, as amended in 1970, and Title II of the 1964 Act;

—The Criminal Section, enforcing the criminal provisions of the post-Civil War civil rights statutes, Title IX and portions of Title I of the 1968 Act;

—The Federal Programs Section, enforcing Title VI of the 1964 Act, which prohibits discrimination in federally-assisted programs;

—The Office of Institutions and Facilities, enforcing Title III of the 1964 Act and constitutional amendments insuring the civil rights of persons in jails, prisons, mental hospitals and juvenile homes.

A new unit, the Office of Indian Rights, was established this year to protect the rights of American Indians under Title II of the Civil Rights Act of 1968 (Indian Bill of Rights) and other Federal statutes.

One other Division unit, the Office of Planning, Legislation and Appeals, advises and assists the Assistant Attorney General and other attorneys in the Division on special legal, policy and legislative issues.

All Division attorneys are headquartered in Washington, D.C., although many are required to travel a significant portion of each year during pretrial preparation and court proceedings.

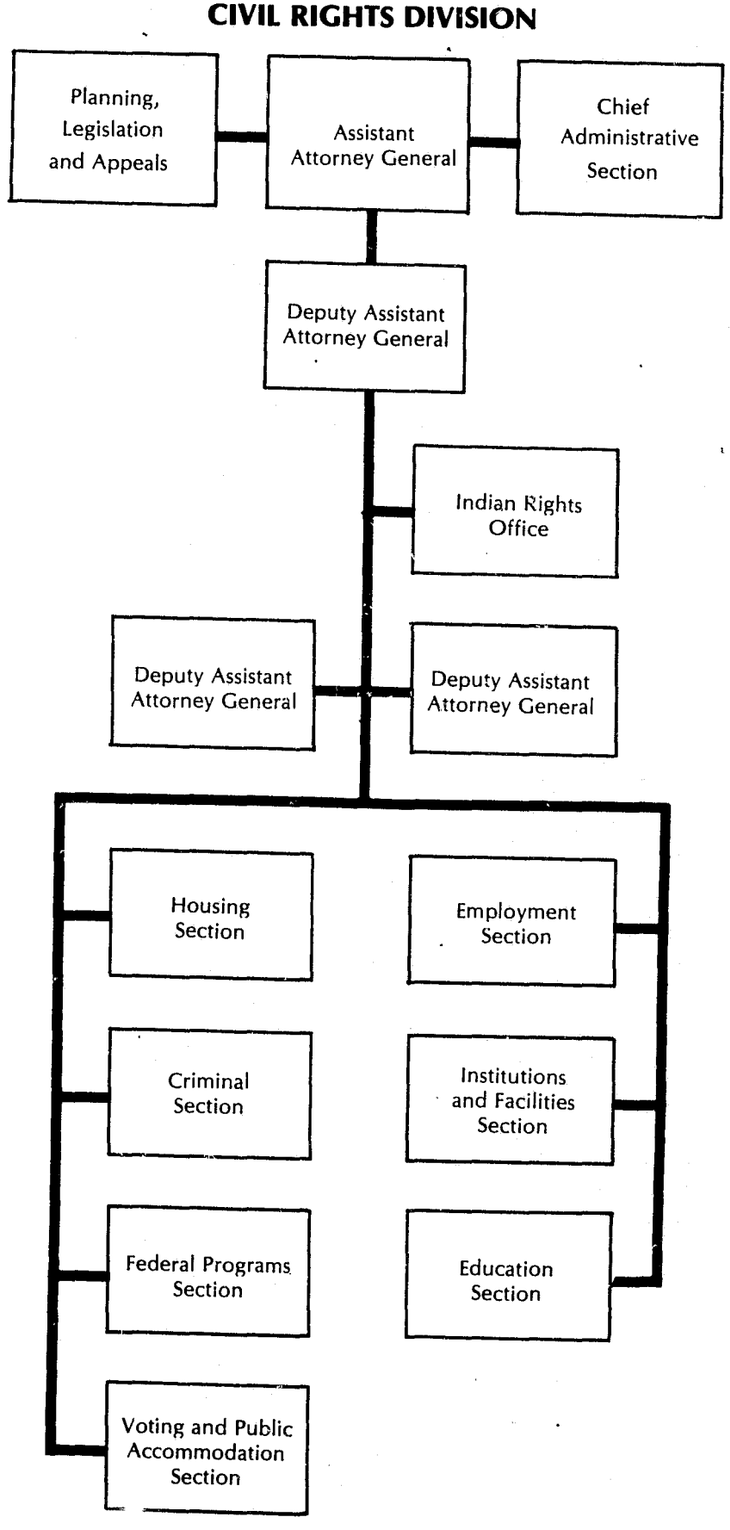
During fiscal year 1974 the Civil Rights Division became involved in 236 new lawsuits—an increase of 27 over the previous year—establishing a new litigation record.

Following are brief descriptions of recent activities and legal developments in each area of the Division's enforcement program.

### Employment Section

The Employment Section of the Civil Rights Division is charged with the enforcement of equal employment laws against public employers, federal contractors, and contractors involved in Federally financed projects as provided in Title VII and the revenue sharing act, as well as in Executive Order 11246 as amended. The section filed





17 new suits in 1974 alleging discrimination based on race, national origin, sex and religion.

The Department of Justice authority to file job discrimination suits against private employers, labor organizations, and employment agencies was transferred to the Equal Employment Opportunity Commission on March 24, 1974. However, prior to that transfer the Department maintained an active role in challenging discriminatory employment practices in the private sector by instituting two industry-wide, nation-wide suits against the trucking and steel industries. The Department is the sole Federal agency empowered to redress employment discrimination practices in state and local governments. Accordingly, the Civil Rights Division has initiated action in ten cases where police and fire departments, municipal governments as a whole and state laws were perpetuating unequal employment opportunities and policies.

The 17 new suits filed in 1974 named 477 defendants employing over 630,000 people(1). There were four trials during this period, and twenty-one previously filed suits were resolved by consent decrees or court orders entered after trial(2). This resulted in over 12,000 jobs becoming available to minorities and women through hiring goals, and more than 50,000 incumbent employees will receive certain transfer rights or seniority carryover privileges as relief for prior discrimination. Monetary compensation for victims of discrimination obtained in the form of back pay was over $45 million during the past fiscal year.

In March 1974, the first suit by the Division against a major industry was filed against the trucking industry(3). Seven major trucking firms were named to represent a class of 342 other general freight carriers. The suit charges the trucking industry with discrimination against black and Spanish-surnamed persons in hiring, job assignment, and seniority practices. The seven named companies, as well as more than 100 of the listed class members employing over 125,000 individuals, have signed a consent decree which establishes hiring goals for minority persons in better-paying jobs and provides back pay for those who transfer to road driver jobs, a classification which has tradiitionally excluded minorities.

Another precedential settlement covering an industry on a nationwide basis was entered in April with the steel producers(4). Nine of the nation's major steel companies signed two consent decrees that resolved a simultaneously filed suit alleging that black, Spanish-surnamed and female employees were hired and assigned to less desirable and generally lower-paying jobs with the least opportunity for advancement. The decrees provided $30,940,000 in back pay for 34,500 minority employees and 5,600 women, as well as new seniority provisions, hiring goals and timetables to increase the number of minority and female workers.

Other suits in the private sector which provide for substantial back pay relief involve three utility companies, Detroit Edison, Georgia Power, and American Telephone and Telegraph. The Detroit Edision case(5) is currently on appeal. The Court cited the Michigan utility for discriminatory practices and ordered substantial relief in terms of hiring goals and seniority carryover, in addition to suspension of unvalidated hiring and promotion tests.

A final decree was entered against the Georgia Power Co.(6), after trial and appeal wherein $2.1 million in back pay and other compensation is to be distributed to black victims of job discrimination with some of the money going to retired employees in their pension allowances. The bulk of the back pay award has been distributed. Provision is also made to increase the minority work force by almost doubling it.

The third suit against the American Telephone and Telegraph Company(7), was settled by a consent decree reached among the Justice and Labor Departments, Equal Employment Opportunity Commission and the company. The suit charged that female management employees were paid less than their male co-workers performing jobs requiring similar skills and responsibilities. As a result, some 7,000 employees will receive $7 million in back pay and $23 million in wage adjustments.

Three suits filed against several building trades in Chicago and Baltimore were both filed and subsequently settled during the fiscal year. The decrees provide for membership goals for approximately 2,100 minorities(8).

Public sector employment cases have been the responsibility of the Division since enactment of the Equal Employment Opportunity Act of 1972. The first suits against police departments were filed in Chicago(9), Buffalo(10), and Philadelphia(11). In the Chicago case, trial was held on the issue of the validity and discriminatory impact of the testing program utilized by the city for hiring and promotional purposes. The decision is pending.

A suit against the Maryland State Police(12) was the first against a state level law enforcement agency, and a consent decree entered simultaneously provides job opportunities for women and blacks. Another first in the public realm involved the bringing of the first religious discrimination suit against the Albuquerque Fire Department. A Seventh Day Adventist firefighter had been dismissed for refusing to work on Saturdays in order to observe his Sabbath. A consent decree was also obtained with the city of Jackson, Mississippi(13), the first case in which back pay was awarded to municipal employees.



The Employment Section has been active in related areas, filing briefs as *amicus curiae* in nine cases with issues related to those as found in current litigation or naming parties with whom we are also actively engaged. In *Morrow* v. *Crisler*, a Mississippi State Police case, the Court of Appeals for the Fifth Circuit accepted the Government's contention that it was error not to require hiring goals and remanded the case to the district court for further relief.

A non-litigative function of the Section has been its active participation with other governmental agencies constituting the Equal Employment Opportunity Coordinating Council in preparing guidelines on testing for state and local governments. The guidelines are intended to provide a uniform governmental standard of what constitutes a non-discriminatory device for personnel selection and promotion.

**Education Section**

The Education Section of the Civil Rights Division is currently involved in more than 200 lawsuits involving over 500 individual school districts. As a result of actions in these cases and the efforts of private groups and other public agencies, the Division has brought about the virtual elimination of *de jure* dual school systems in most districts. One hundred and eighty-five districts operating under court order, in litigation to which the Division was a party, have been found to be in substantial compliance with their student desegregation orders for three years and have been released from active supervision on this question by the court. Thirty-nine of these cases have been referred to the Department of Health Education and Welfare for monitoring.

Although most formerly segregated school systems are now operating under final student assignment plans, one of the Education Section's priorities during the past year has been to monitor desegregation court orders and resolve transitional problems which develop in the conversion of dual school districts to unitary systems. These problems include discriminatory faculty hiring, demotion and dismissal policies, segregated transportation systems, segregated classrooms, student transfers to avoid attendance at integrated schools, and the sale of public school property to private segregated academies. Whenever possible, the Section seeks voluntary resolution of these problems through consent decrees, and in 33 cases in this fiscal year such compliance has been achieved. However, in 16 cases the Division has found it necessary to request the courts to order corrective relief. Within the past year U.S. district courts have entered orders in lawsuits initiated by the United States, requiring the desegregation of the Conway County, Arkansas(14) and Kinloch, Missouri school system(15).

The Section initiated litigation against the school districts in Richardson(16) and Beaumont, Texas (17) and Rapides Parish, Louisiana(18), alleging that these districts have failed to desegregate their all black schools. The Division has asked the U.S. Court of Appeals for the Fifth Circuit to reverse a district court(19) ruling that there had been no discrimination against Mexican-American students in Austin, Texas and overrule approval of the school district's proposal to desegregate only the sixth grade of all black schools.

With the task of dismantling formerly dual school systems in the southern states largely completed, the Division has become increasingly involved in school cases involving northern cities. In March, trial was held in Omaha, Nebraska in a lawsuit(20) filed by the Division alleging the creation and maintenance of an unconstitutionally segregated school system. A similar lawsuit has been initiated against the Kansas City, Kansas school district. In response to the action of this Division, a Federal judge refused to allow the Pasadena, California, Board of Education(21) to use a substitute desegregation plan that would have allowed students to choose a school rather than being assigned to a school under the 1970 court-approved desegregation plan.

The Section has also given high priority to assuring that equal educational opportunity is provided to all minority groups. In this area, the emphasis is on the right of non-English speaking students and those of limited English speaking ability to receive instruction designed to meet their special educational needs. The Supreme Court, ruling on an appeal brought by Chinese-speaking students in San Francisco and supported by the United States(22), has ruled that under Title VI of the Civil Rights Act of 1964, such children are entitled to receive special language assistance as a requisite of equal educational opportunity. The Division has intervened in this case and will participate in the development of a program of adequate relief.

The Education Section has substantially expanded its efforts to enforce Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972. By fiscal year 1974 the Section had filed seven cases under Title VII and completed trial in three. The section has alleged discrimination in hiring against three suburban school districts in Missouri(23) (Jennings, Hazelwood and Ladue) and the Baltimore County, Maryland(24) school system. Discrimination has been alleged in faculty assignment by the Kansas City, Kansas school system(25); a temporary restraining order has been obtained on behalf of a faculty member dismissed by Oklahoma State University(26); and a suit has been filed against the State of North Carolina(27) alleging that

its use of the National Teacher Examination discriminates against minority group members. In addition, the section participated as *amicus curiae* in cases(28) in the Supreme Court in which the Court ruled against the mandatory maternity leave policies of two school systems.

In February, 1974, the U.S. Court of Appeals for the Fourth Circuit ruled in favor of the United States' contention that the Nansemond County, Virginia(29) school board had used the National Teacher Examination in a way which discriminated against black applicants and in-service teachers. In April, the Ladue, Missouri(30) school system agreed to a consent order which required the adoption of hiring goals for a five-year period.

In the area of higher education, this section has filed a lawsuit under Title VI of the Civil Rights Act, alleging racial discrimination by the State of Louisiana(31) in the operation of the twenty schools in the state college system. In addition, we have continued our efforts to develop an effective plan for the desegregation of the state-supported colleges in Tennessee(32).

**Housing Section**

Under the provisions set forth in the 1968 Fair Housing Law, the Department of Justice has moved vigorously to expand equal housing opportunity through legal actions, formal written agreements and efforts to educate the public as well as those who influence and control the housing industry. During the year, the Civil Rights Division filed 44 pattern and practice fair housing cases in 22 states, including our first Title VIII suits brought in Connecticut, Delaware and Kansas(33). A total of 100 individual defendants were named in these actions.

Thirty-six consent decrees were entered enjoining more than 50 defendants from all violations of the Fair Housing Law and requiring the implementation of affirmative compliance programs. (Six of these decrees amended and superseded earlier orders.) Additionally, post-trial court orders were entered in five actions litigated by this Division(34), three of which were favorably decided(35). Two cases were dismissed by the district court and are being appealed by the United States.

In a continuing effort to eliminate the dual housing market which perpetuates segregated housing patterns, the Department brought at least fifteen cases charging real estate companies with steering and blockbusting violations of the Fair Housing Law. Two of these suits, our first in the Hartford, Connecticut metropolitan area(36), named eight real estate companies whose combined sales activity substantially affects fair housing opportunities in that city.

In addition to other suits filed against land development companies, public housing authorities, trailer parks, as well as a segregated boarding home in Philadelphia,(37) a large number of cases brought during fiscal 1974 alleged discriminatory apartment rentals, including the first complaint charging discrimination solely against Puerto Ricans(38). Named as defendant in another suit was one of the largest apartment owners in the New York Metropolitan area whose operations account for more than 14,000 units(39).

In other significant activity, the Department sought to challenge the constitutionality of "anti-testing" provisions contained in several municipal ordinances, as well as a state statute. The section alleged that such laws, which make it illegal to conduct tests to ascertain the availability of dwellings, preclude persons from determining if they are victims of housing discrimination under Title VIII and, therefore, are in conflict with Federal law and unenforceable under the Supremacy Clause. As a result of such notification by this Department, the cities of Madison and Milwaukee, Wisconsin, as well as San Antonio, Texas agreed to repeal testing prohibitions. Similarly, the city of Upper Arlington, Ohio, repealed its anti-testing ordinance after suit was filed in which the United States intervened(40). The United States also brought its first suit against a state, challenging the Wisconsin anti-testing law(41). That case is now pending.

During the past year several important decisions were issued by district courts in cases litigated by this Division. The ruling in *United States* v. *J.C. Long*(42) is of particular significance. In addition to finding that defendants had engaged in a pattern and practice of discrimination in their rental and sales activity and ordering injunctive and conventional affirmative relief, the court ruled that black "victims" should be entitled to monetary relief for damages suffered as a result of defendants' discriminatory practices. This marked the first litigated case holding that monetary relief for individuals is recoverable in a suit brought by the Attorney General under 42 U.S.C. 3613.

In another case heard in Miami, Florida(43), the court found that defendant, M.I. Robbins Realty Co., had engaged in blockbusting and steering violations. Further, the court held that defendant Robbins is liable for the acts of his agents, concluding that "the failure of a principal to assure nondiscrimination by his employees is the essence of a pattern or practice."

A favorable decision was also issued in *United States* v. *Henshaw Brothers, Inc.*(44) in which the court found that defendants' refusal to rent apartments to military personnel below the rank of major was, in fact, a subterfuge to avoid renting to black servicemen. The order enjoins discrimination on the basis of military status in addition to race, color, religion and national origin.

In the Division's first suit charging discriminatory exercise of zoning powers by a municipal government(45), the district court held that discriminatory zoning was covered by the Fair Housing Act. However, the court found that the United States had failed to establish that the incorporation of Black Jack, Missouri and the adoption of a zoning ordinance which, in effect, prevented the construction of a proposed racially integrated government subsidized development was racially discriminatory. We have appealed tha decision, as well as the court's ruling in *United States* v. *Saroff*(46) which held that racial representations by the company's agents to homeowners to induce sales of their homes were isolated instances and did not constitute a pattern or practice of discrimination by the defendant.

An earlier adverse decision in *United States* v. *Pelzer Realty Co.*(47) was reversed by the U.S. Court of Appeals for the Fifth Circuit which found that defendants' racially discriminatory treatment of two black prospective customers constituted a pattern and practice of discrimination. Further, the court found that the United States was entitled to relief if discriminatory effect was established regardless of defendant's motivation.

In addition to those orders entered in pattern and practice cases brought by the United States, other important decisions were handed down in actions in which the section participated as *amicus curiae*. The Seventh Circuit, affirming the district court, in *Barrick* v. *City of Gary, Indiana,*(48) upheld the validity of a city ordinance forbidding the posting of for sale signs by real estate companies, as well as individual homeowners, in residential zones. The amicus brief had urged the appellate court to affirm because the ordinance regulates commercial activity rather than protected speech and does not deny plaintiffs liberty or property without due process of law.

In another highly significant opinion the Supreme Court, in *Curtis* v. *Loether,*(49) upheld the decision of the Court of Appeals for the Seventh Circuit that either party to an action for damages under Section 812 of the Fair Housing Act is entitled to a jury trial. The Section's memorandum filed in the Supreme Court had urged reversal of the Seventh Circuit, arguing that the expense and complexity of a jury trial would deter victims of discrimination from bringing private actions and that no constitutional right to a jury exists in an essentially equitable proceeding. The decision of the Supreme Court does not directly address the right to jury trial in pattern and practice cases brought by the Attorney General under Section 813.

With increased emphasis on developing a strong enforcement program to insure that existing orders are effectively implemented, the Division filed motions for supplemental relief and/or contempt in at least six cases(50). In addition to civil contempt charges, the Section's first criminal contempt case was brought in *United States* v. *Dick Coffey*(51). The defendant pleaded guilty to criminal contempt and was sentenced to a suspended fine.

Civil contempt actions were brought against two real estate companies operating in the western suburbs of Chicago(52), an apartment rental service in Boston(53) and the operator of several apartment houses in Denver.(54) The case of *United States* v. *Crimson Apartment Service, Inc.*(55) is the first to apply the remedies of civil contempt to a Title VIII injunction. Among other things, defendants were ordered to post a $2,500 surety bond and to pay a $100 a day fine so long as they failed to purge themselves of civil contempt.

In other significant enforcement action, a supplemental order was entered in *United States* v. *Scott Management Co., Inc., et al.*(56), after the company was advised that it was in noncompliance with an earlier consent decree. The defendants, who manage over 3,100 units in the Washington, D.C. area, were required to pay twenty-six alleged victims of discrimination a total of $6,500 in liquidated damages and to post a bond of $25,000 to ensure compliance.

During the past year the Department also sought and obtained monetary damages for alleged victims of discrimination in an increased number of cases settled by negotiation. In *United States* v. *Colonial Village Apts., Inc.*(57), the Section's first case alleging discrimination against Asians, the consent decree required defendants to pay each of 31 alleged victims the sum of $250 in return for a release from liability. In *United States* v. *Gertner*(58), another suit alleging apartment discrimination, the defendants were required to pay moving costs and to offer any available apartment rent free for one month to all black applicants whose records had been racially coded. Additionally, the defendants were required to pay the moving costs of black tenants who had applied for other projects but who were referred to projects designated for black occupancy. The settlement negotiated in *United States* v. *New River Apts., Inc.*(59) orders defendant to afford to those blacks who reside in black "pockets" of the complex an opportunity to relocate in a building of their choice with defendant absorbing all proper moving costs. In another important case involving a racially segregated boarding home for "desirable white working girls" in Philadelphia(60), defendants were required to pay four alleged victims of discrimination damages ranging in amounts from $500 to $4,423. That case is also noteworthy in that one of the defendants, Provident National Bank, which was trustee

under a private will requiring that funds be spent discriminatorily, was ordered to search its files and report to the court the existence of any other trusts which require discrimination in housing. In another suit alleging apartment rental discrimination, in which the Department intervened(61), defendants agreed to pay each of two private plaintiffs $250 in damages and $2,000 in attorney's fees and to offer to two other alleged victims either payment of $250 or tenancy at one of defendants' complexes. In another case involving a large suburban Philadelphia real estate sales agency, the defendants were required to pay $500 to a black husband and wife who, the United States alleged, were victims of discrimination.

Finally, during the past year, Division leadership addressed a number of organizations, including fair housing groups, as well as persons representing the real estate industry, to acquaint them with the provisions of Federal law and to encourage their cooperation and assistance in making equal housing opportunity a reality throughout the country. Negotiation with the National Association of Realtors, which was once a committed opponent of fair housing, resulted in the publication by that organization, of a Realtor's Guide to Equal Housing Opportunity which strongly supports affirmative action to promote equal treatment.

## Voting and Public Accommodations Section

*Voting Program*

The Civil Rights Division is responsible for the enforcement of the Voting Rights Act of 1965 and its 1970 Amendments to insure that all qualified citizens have the opportunity to register and vote without discrimination on account of race or color. The Act requires that covered jurisdictions submit all changes in voting practices or procedures to either the United States District Court for the District of Columbia for judicial review or to the Attorney General for administrative review. Changes which are not so submitted are not legally enforceable. The determination of the Attorney General concerns whether such changes have the purpose or effect of discriminating on account of race. During fiscal year 1974, 414 submissions were sent to the Attorney General. The Department objected to 29 submissions and did not object to 331. The remainder were pending at the end of the year.

Other provisions of the 1965 Act authorize the Attorney General to assign observers to monitor elections to insure that the right to vote and to have the vote properly counted is not denied during the election process. During the year 196 observers were assigned to cover ten elections in three states. In addition, one county in Mississippi was designated by the Attorney General for the listing of persons by Federal examiners as voters eligible to vote in all elections. During the eight days the examiners were present, 181 persons were listed as registered voters.

A decree was entered in *United States* v. *Callicutt*(63), in a suit filed in January 1973, in which the United States had alleged that the local registrar of voters applied a higher and stricter standard to black voter applicants than applied to white persons. Consequently, many black students attending two local predominantly black colleges were not allowed to register to vote. The court's order restrained and enjoined the defendant from failing to apply uniform standards to all applicants for registration, including black students attending school in Marshall County, Mississippi, and from failing to register every student applicant who was denied registration because of the application of a stricter or more stringent standard than was applied to other applicants.

A three judge district court entered an 83-page opinion in *Beer* v. *United States, et al.*(64) denying the city of New Orleans a declaratory judgment. The city had sought a determination, pursuant to Section 5 of the Voting Rights Act of 1965, that its councilmanic redistricting plan does not have a racially discriminatory purpose or effect. The court concluded that the city's plan would result in a dilution of minority voting strength. This was based on the fact that under the plan, blacks who constitute a population majority in two of the five districts and a majority of registered voters in one district would be able to elect only one of seven councilmen (14 percent) when they comprise 35 percent of the population of the city. In addition, the court determined that the at-large seats in use since 1954 must be considered in evaluating the redistricting as a whole. These seats were out of reach of the black population, therefore, in the absence of a "compelling governmental interest" to maintain them, their use could not be permitted. Lastly, the court approved the Division's approach of analysis of Section 5 submissions under the 1965 Voting Rights Act. Defendants filed a notice of appeal to the Supreme Court on March 15, 1974, which is pending.

In *United States* v. *Bishop*(65), the United States Court of Appeals for the Fifth Circuit held that it was appropriate relief for a Federal court to set aside an election when it was shown that prior to the election purging of voters from the registered voters list was conducted on a racial basis even though no racial purpose was found to exist. The purging in this case involved the Tullulah, Louisiana municipal election. Because the appellate court decision was published just four months before the next regular city election, a new election was not ordered to replace officials chosen at the prior election.

The United States District Court for the District of Columbia, in *New York* v. *United States*(66), decided that the United States could withdraw its consent to a previously entered declaratory judgment which, in effect, exempted three New York counties from coverage under Section 5 of the Act. The court also decided that the three counties should not presently be exempted since, during the past ten years, a "test or device" had been used to deny voting rights to Spanish speaking Puerto Rican citizens in those counties (New York, Kings, and Bronx). Voting instructions and other official literature were printed only in English. An appeal to the Supreme Court is pending.

In addition to the litigation, the effort of the Department may be reflected in the fact that as of March 31, 1974, there were more than 1,300 black elected officials in the southern states. Prior to 1965, there were 72 black persons holding elected office in these states.

*Public Accommodations Program*

The Civil Rights Division processed over 290 complaints and reports of alleged discrimination in public accommodations during fiscal year 1974. Places of public accommodation at which discrimination on account of race, color, religion or national origin is prohibited by Title II of the Civil Rights Act of 1964 include restaurants, hotels, taverns, theaters, skating rinks and service stations.

The Division, in accordance with its policy, referred a number of complaints to state and local agencies which have similar statutes for resolution of matters within their jurisdiction. The Division investigated, through the Federal Bureau of Investigation, over 175 complaints and reports of alleged violations of Title II. The Division filed 71 cases in Federal district courts in which violations of Title II were alleged. This was only three fewer than the record of 74 filed in the previous year. Fifty consent decrees were entered, 12 more than the previous year.

The policy adopted during the previous year of requiring court orders to resolve substantiated violations of Title II rather than accepting non-judicial settlements continued to be manifest in 1974, when only two such non-judicial settlements were entered. The increased reliance on a court order is predicated on the fact that the nondiscrimination provisions of Title II have been in effect since 1964, and violations which come to our attention are unlikely to have resulted from ignorance of the law.

Significant cases decided during the year included *United States* v. *Slidell Youth Football Association*(67). The court decided that playing football by a youth football league, which excluded black participants, was a place of entertainment as defined in Title II. As such, the league could not discriminate on the basis of race. The out-of-state origin of the football equipment provided the necessary interstate commerce connection.

Pursuant to a Federal court's power to enforce its orders by contempt of court proceedings, the owner of a restaurant was found to be in contempt of court for failure to serve black persons in a nondiscriminatory manner. The court, in *United States* v. *Roy Elder McKoy*(68) found the owner of the Belvoir Restaurant to have violated the permanent injunction issued January 27, 1967. The court ordered the defendant to pay a fine of $100 a day until he purged himself of contempt by taking several steps to insure compliance, including the posting of a $500 bond.

Another significant case(69) was filed in Louisiana, after this Division received information that the operators of Boone's Funeral Home refused to provide services for the dead baby of a black serviceman stationed at a local Air Force base. Boone's Funeral Home arranged to transfer the body to Good Samaritan Funeral Home, an all-black facility. The Department's complaint, filed pursuant to the provisions of the Thirteenth Amendment of the United States Constitution, 42 U.S.C. 1981 and 42 U.S.C. 1982, alleged that the above acts and practices deny to blacks the same right to contract for the services and facilities of Boone's Funeral Home. The complaint further alleged that the above acts and practices interfere with and unduly burden the rights of Federal military personnel serving in Louisiana. Litigation is still proceeding at this time.

On June 10, 1974, a decision and order were entered after trial in *United States* v. *Arlington Recreation Center*(70), holding a pool hall is covered under Title II as a place of entertainment. This was the Section's first case against a pool hall to proceed to trial and the first time such coverage of a pool hall had ever been enunciated by a court after a trial on the merits.

## Office of Institutions and Facilities

The Office of Institutions and Facilities is concerned with the civil rights of inmates of state and local institutions to which individuals may be involuntarily committed. These are jails, juvenile detention facilities, prisons, mental hospitals and mental retardation facilities.

Although the office has developed a substantial litigative program under Title III of the Civil Rights Act of 1964, involving racially segregated institutions, the major problems in this field of the law are not those of racial discrimination. The major problems concern the denial of constitutional rights, regardless of race, to be free from

cruel and unusual punishment and to be accorded the fundamental protections of due process. There are, however, no statutes giving the Attorney General authority to bring suit in this area, absent racial segregation or discrimination based on race, creed, color, sex or national origin. Historically, this has been reflected in the fact that most of the Section's major cases have involved suits brought initially by private parties. On February 21, 1974, however, this pattern was broken with the filing of a complaint in *United States* v. *Solomon*(71), the first case brought under the non-statutory jurisdiction of the United States on behalf of institutionalized persons. The suit seeks to ensure proper and humane care, including recognition of a constitutional right to treatment, for more than 2,000 mentally retarded residents of the Rosewood State Hospital in Maryland.

One of the major accomplishments of the office during the year was the decision in *Battle & U.S.* v. *Anderson, et al.*(72), a suit involving segregation, racial discrimination and a broad spectrum of other unconstitutional conditions and practices at the Oklahoma State Penitentiary. After all parties had rested on March 15, 1974, Judge Bohannon ruled from the bench in favor of the plaintiffs and the United States on every factual issue. The final order in the case was handed down on May 30, 1974, and is considered to be one of the most important decisions on the constitutional rights of prisoners.

An important procedural precedent was established when a motion to intervene in *Wilson* v. *Kelley*(73) was granted. This case was decided in 1968 and resulted in an order prohibiting racial segregation in any penal facility in the state of Georgia. The motion to intervene under Title IX of the Civil Rights Act of 1964 for the purpose of enforcing the existing order against certain county jails was held to be timely over the objection of the defendants. In the case of *United States* v. *Wyandotte County, Kansas*(74) the defendants' petition for a writ of certiorari was denied by the Supreme Court on December 3, 1973. This is a case in which the court of appeals had held that a general fear of possible racial violence in the event of integration does not justify the continuance of a segregated county jail.

In the course of the year the office was involved, at various stages, in eight suits challenging racial segregation in seven county jails and one city jail in four different states. At any given time, these jails house approximately 550 prisoners. Consent decrees were obtained against the jails of Polk and Sumter Counties, Florida(75), and Polk and Troup Counties, Georgia(76). A motion for summary judgment was granted in *United States* v. *Rowan County, North Carolina*(77), on May 24, 1974, in which the court held that the jail facility was unlawfully segregated. The case is presently on appeal to the Fourth Circuit on the issue of whether the county itself and the members of the County Board of Commissioners can be held to have violated Title III of the 1964 Civil Rights Act when racial segregation was practiced by the county sheriff in a jail owned, financed and maintained by the county, acting through its commissioners.

In addition to the Battle case, other prison cases in which the office was involved during the fiscal year affected the rights of inmates in prisons or prison systems in the states of Alabama, Mississippi, Florida, Texas and Louisiana. Appeals were argued before the Fifth Circuit Court of Appeals in the cases of *Newman* v. *Alabama*(78) and *Gates & United States* v. *Collier*(79). The decision below in the former case, in which the Section participated as a litigating *amicus curiae*, held that the quality and quantity of medical care being furnished inmates of the Alabama state penal system was constitutionally inadequate. The latter case struck down as unconstituional many conditions and practices at the Mississippi State Penitentiary. Neither appeal has as yet been decided. The necessity for enforcement activity continued in Gates, however, with a major compliance hearing in July 1973. After the Section successfully moved to reopen the record for the taking of further evidence, a hearing was held in January 1974. Although the defendants were not found to be in contempt of court, Judge Keady denied the motion of the state to reintroduce the practice of using armed inmate guards in lieu of paid guards. In addition, he suspended the operation of a statute setting a limitation on the salary payable to the Superintendent of the Penitentiary (thereby enabling the hiring of the first qualified penologist ever to be in charge of the facility) and found that numerous incidents of physical mistreatment of inmates, denied by the state, had in fact occurred.

In a post hearing memorandum in the case of *Hooks* v. *Wainwright*(80), in which the Section is participating as a litigating *amicus curiae*, the court was urged to order the implementation of a program of legal assistance for indigent inmates of the Florida Division of Corrections, including both reasonably comprehensive law libraries and adequate legal services. Another case involving the rights of Florida prison inmates, in which the Section is also participating as litigating *amicus curiae*, is *Costello* v. *Wainwright*(81). This, like Newman, *supra*, is a comprehensive medical care case. During the year, extensive pre-trial discovery and preparation were conducted and we were instrumental in the court's appointing a panel of experts to evaluate medical care at all of the state's penal facilities. The panel reported that situations at various facilities ranged from good to barbaric, with most clearly failing to meet constitutional standards.

During November and December 1973, trial was held in *Williams and U.S.* v. *McKeithen*(82), which involved both segregation and other conditions (particularly medical care) at the Louisiana State Penitentiary. In the months preceding the trial, the officials of the Louisiana Department of Corrections had made a decision to desegregate the penitentiary. Personnel from this office worked closely with these officials, with the result that the penitentiary was more than 90 percent integrated by the time the trial was held. This case is still under consideration by the court.

Pre-trial activities continued in *Lamar & U.S.* v. *Coffield*(83), a case involving racial and ethnic discrimination in all aspects of the operations of the Texas Department of Corrections. In addition, we are now participating as a litigating *amicus curiae* in the case of *Ruiz* v. *Estelle*(84), which challenges numerous other conditions and practices affecting the more than 17,000 inmates of the Texas penal system.

Significant non-litigative activity involving prisons included this Section's participation in the desegregation of four facilities of the Missouri penal system, the largest being the Missouri State Penitentiary, and the Georgia State Prison. As in Louisiana, personnel from the office worked closely with state officials in planning and carrying out the desegregation process. In all three instances, integration was effected without incident.

A major accomplishment of the office was the interim order in the case of *Morales* v. *Turman*(85), which followed a six-week trial in which attorneys from the office participated on behalf of the United States as litigating *amicus curiae*. In addition to granting specific relief, Judge Justice recognized the existence of a constitutional right to a reasonable habilitative effort for the 2,500 incarcerated juveniles in the state of Texas.

The case of *Wyatt* v. *Aderholt*(86), involving the rights of the mentally ill and retarded in institutions of the State of Alabama, remained under consideration by the Fifth Circuit for the entire fiscal year. In an extremely important supplemental proceeding at the trial level, however, Judge Johnson adopted the position of the United States, as litigating *amicus curiae*, as to the restrictions that should be placed on sterilizations of patients in the hospitals which were subjects of the original suit. The position asserted by this office participating as *amicus curiae* was adopted by the court in *Stoner* v. *Miller*(87). The court held that a local ordinanace barring mental patients who had been released from institutions but required some continued treatment from living in the community would frustrate the movement towards deinstitutionalization in this area. The court also held that the ordinance would be in violation of the right of a mentally ill person to be treated in accordance with the doctrine of "least restrictive alternative."

In a joint effort with the Education Section, this office initiated participation in the case of *North Carolina Association for Retarded Citizens and United States* v. *North Carolina*(88). This case asserts the right to education of all mentally retarded persons in the State of North Carolina, whether or not confined to institutions for the mentally retarded, and the right to treatment of those who are so confined. This involves, of course, the right to education, together with all other aspects of this right first enunciated in the Wyatt case *supra*. In the course of the year, this office became involved in other important litigation affecting the rights of the mentally ill and retarded. *Alexander and United States* v. *Hall*(89) challenges the constitutional adequacy of South Carolina's commitment procedures and the treatment received by individuals who have been committed. *Davis* v. *Watkins*(90), with the United States as a litigating *amicus curiae*, involves commitment, conditions and treatment of the criminally insane in the State of Ohio. *Horacek* v. *Exon*(91), with the United States as *amicus curiae*, concerns the treatment of mentally retarded persons in the institutions of the State of Nebraska. All of these cases were in the pre-trial stage at the close of the fiscal year. So, too, was one of the most important cases in which the office is involved, *New York Association for Retarded Children and Parisi* v. *Rockefeller*(92), asserting the right to treatment on behalf of the more than 4,000 mentally retarded residents of the Willowbrook State School, Staten Island, New York.

In addition to its litigative activities on behalf of the mentally ill and retarded, the office undertook an extensive study in the broad area of experimentation on human subjects. The first results of this study were seen in the supplemental Wyatt, *supra*, proceeding, but it is anticipated that this area of the law will produce further litigation in the future.

**Federal Programs Section**

The Federal Programs Section of the Civil Rights Division of the Department is responsible for enforcing Title VI of the Civil Rights Act of 1964. In addition, the section is responsible for the nondiscrimination provisions of the State and Local Fiscal Assistance Act of 1972 (General Revenue Sharing Act), the Crime Control Act of 1973, and the Comprehensive Employment and Training Act of 1973. It is also responsible for coordinating the implementation of Title VI by the

Federal grant agencies; and in fiscal year 1974, 25 agencies adopted new or amended Title VI regulations. The most significant of these regulations dealt with site selection, affirmative action requirements, and employment practices of the recipients of Federal financial assistance.

The coordination responsibilities of the Federal Programs Section were considerably broadened when the President signed Executive Order 11764 on January 21, 1974. To carry out these additional responsibilities a coordination unit within the Federal Programs Section was established which will provide continuing technical assistance and program guidance to the Federal grant agencies whose programs are covered by Title VI.

Since March 1974, the Federal Programs Section has also undertaken civil rights reviews of 19 cities under the nondiscrimination provisions of the General Revenue Sharing Act. In addition, the section has conducted civil rights reviews of three state law enforcement agencies and seven metropolitan police departments, either pursuant to the Attorney General's authority under the Crime Control Act of 1973 or as a result of coordination with the Law Enforcement Assistance Administration.

Another function of the Federal Programs Section is litigation on the basis of a referral from a Federal grant agency. During fiscal year 1974 the Section handled ten active cases and one involving post-decree enforcement. Three of the cases dealt with discrimination by State Agricultural Extension Services(93). In Mississippi, a favorable decree was entered awarding back pay to named plaintiffs, and ordering the Extension Service to institute statewide affirmative programs for recruitment, hiring and promotion of minority extention personnel. The court also ordered the elimination of discrimination in Mississippi's 4-H and homemaker clubs. A similar lawsuit is pending against the North Carolina Cooperative Extension Service, and the section is also monitoring the activities of the Alabama Cooperative Extension Service to ensure that it complies with a court decree entered in 1971.

Two of this section's cases(94) dealt with the right of Spanish-speaking persons to receive welfare benefits and services on an equal basis with English speaking persons. One case in California is still pending while the other was resolved when the Connecticut Welfare Department agreed to hire additional Spanish-speaking personnel.

The Division is acting as a litigating *amicus curiae* in a case brought against the Alabama Department of Pensions and Securities(95) on behalf of all dependent and neglected black children in need of their services alleging that the Department discriminates by refusing to provide the same quality of foster care services as is provided to white children in similar circumstances. The section is currently awaiting a decision by the district court.

A case involving a legal question of first impression decided this year was *Bob Jones University* v. *Johnson*(96). In that case the section represented the Veterans Administration and argued that Title VI of the Civil Rights Act of 1964 applied to veterans educational benefits. The court agreed and upheld the Veterans Administration's termination of Bob Jones University as an approved school at which veterans can use educational benefits.

The section also filed a suit(97) at the request of the Department of Health, Education and Welfare (HEW) to enjoin interference by the Alabama State Welfare Department with an investigation by HEW into alleged discrimination in the administration of Alabama's Federally assisted welfare programs. The court granted our request for the injunction and required the state agency to cooperate with HEW in any future investigation.

### Criminal Section

The Criminal Section of the Civil Rights Division is responsible for enforcing a number of criminal statutes passed during the Reconstruction period which were designed to preserve personal liberties. Two of these laws prohibit persons from acting under color of law or in conspiracy with others to interfere with or deny the exercise of federal constitutional rights. Other laws prohibit the holding of individuals in peonage or involuntary servitude.

The enforcement power of the Division was broadened by the passage of the Civil Rights Act of 1968 which made it a federal offense to use force or threats of force to injure or intimidate any person involved in the exercise of certain federal rights and activities. These federal rights include voting, enrolling in and attending public schools, obtaining equal services in the area of public accommodations, participating in Federal programs as well as equal employment opportunities. A separate provision prohibits racially motivated intimidation in relation to equal housing opportunity.

During the year the Division reviewed approximately 9,000 complaints of alleged violations of criminal civil rights laws. These complaints were carefully reviewed and resulted in approximately 1,000 being sent to the FBI for investigation. The results of 46 of the investigations were presented for consideration to Federal grand juries which returned 30 indictments against 84 persons. Six persons were also named in two informations filed. A total of nine convictions were obtained as a result of 27 trials. In addition, 15 persons pled guilty in eight cases.

Complaints, investigations and prosecutions relative to alleged summary punishment by law enforcement officers accounted for approximately two-thirds of the Division's activities in the criminal law area. Over 50 such officials were prosecuted for having allegedly denied persons their federal rights.

The Division continued in its enforcement of violations of post-Civil War peonage and involuntary servitude statutes. Two persons were indicted for subjecting migrant workers to such treatment. The first trial resulted in a hung jury, the second in a conviction(98). Another trial resulted in the conviction of the defendant although the judge subsequently granted the defendant's motion for acquittal(99).

In extending the application of the "acting under color of law" doctrine to deprivations of property, the Division had indicted in 1972 a pauper attorney who extorted money from his indigent clients(100). The Division's indictment had been dismissed by the district court, however, this decision was reversed by the Seventh Circuit Court of Appeals. The Supreme Court's decision not to hear the case allows the Division to proceed with its prosecution.

Some of the other cases this year involving violations of criminal statutes resulted in the conviction of the Grand Dragon of the Ku Klux Klan in Michigan of tarring and feathering a principal of a high school(101). In addition, two persons entered guilty pleas to charges of intimidating blacks who moved into white neighborhoods(102) and a white officer was convicted by a jury of beating a black man in New Orleans, resulting in the loss of the man's eye(103).

In other actions, five truck drivers pled guilty to charges of conspiracy in the death of another trucker during a protest over the shortage of gasoline(104); eight former national guardsmen were indicted on charges of violating the civil rights of four students who were shot to death and nine others who were wounded during the May 4, 1970, campus confrontation at Kent State University(105); and two railroad policemen were convicted of mistreating vagrants trespassing on company property(106). In another case, Federal narcotics agents in Collinsville, Illinois were indicted and later acquitted of charges stemming from searches conducted of various homes for drug suspects(107).

The Division is involved in the appeal of the conviction of five members of the Michigan Ku Klux Klan for the bombing of ten school buses in 1971. The buses were to be used to carry out a Federal desegregation order in Pontiac, Michigan(108). The court's decision is pending.

The Division also participated in a Supreme Court appeal in a case involving the conviction of five officials for conspiring to interfere with voting rights in a Federal election by "stuffing the ballot box"(109). The Supreme Court adopted the Division's theory on appeal and the convictions were affirmed.

### Office of Indian Rights

The Office of Indian Rights (OIR) was organized on August 13, 1973, to ensure the protection of the civil rights of American Indians through enforcement of Title II (Indian Bill of Rights) of the Civil Rights Act of 1968 and other Federal civil rights statutes.

During its first year the office initiated over 100 investigations concerning the alleged deprivations of the civil rights of American Indians, participated in 20 civil and criminal legal actions, and conducted an extensive survey of Indian tribes and other governmental agencies in an effort to ascertain the most substantial civil rights problems faced by American Indians.

In Oklahoma, a complaint(110) was filed against the Anadarko Municipal Hospital alleging that the hospital failed to provide emergency services to Indians on account of race. A consent decree entered simultaneously with the complaint enjoined the hospital from racially discriminating against American Indians in the provision of medical service, and to ensure that the future treatment of American Indians will be provided on a nondiscriminatory basis.

In Arizona a complaint(111) was filed alleging that certain voting and election procedures of the San Carlos Apache tribe violated the provisions of the Indian Bill of Rights (25 U.S.C. 1302 *et seq.*). After obtaining a temporary restraining order, a consent decree was negotiated which enjoined the tribe from any further violations of Federal law and further required that future elections be held in accord with a court approved plan.

The Division represented the Federal defendants in the successful appeal to the Supreme Court of a case(112) which upheld the constitutionality of the Federal statutes which establish an employment preference for American Indians in Bureau of Indian Affairs positions. Additionally, the Division participated in two similar lower court cases which also upheld the principle of limited Indian employment preference.

In *Wounded Head* v. *Oglala Sioux Tribe*(114), the office defended the Department of the Interior and the Solicitor in the district court in a case involving tribal election procedure. The Division took the position that, in the absence of specific legislation to the contrary, the tribe may establish their own voting and election procedure to include limiting the right to vote to those members 21 years of age or older.

In another Arizona case(115), the Division filed suit to overturn a 1972 redistricting plan for Apache County which concentrated Indian voters in one of three districts although Indians constituted a majority in the county.

The case was argued before a three-judge Federal court in June of 1974 and the decision is pending. This was the first voting rights suit filed by this Division to protect the voting rights of Indians.

In a related action(116) which was ultimately consolidated with the Apache County lawsuit, the Division defended the Attorney General's enforcement of the Indian Citizenship Act which, the Division argued, secured American Indians' right to vote in state and local elections. The decision in this case is pending.

In criminal actions, the Office obtained a one count indictment against Melvin E. Litzau(117), a white police officer of the McLaughlin, South Dakota, police department. Litzau was charged with an assault which broke both arms of an Indian woman on November 3, 1973. Litzau subsequently pled *nolo contendere* to the charge and is pending sentence by the Federal judge. The Office also obtained a two-count indictment against a Bureau of Indian Affairs police officer(118) at the Fort Yates, North Dakota, Indian Reservation, charging the officer with assaulting an Indian prisoner who was confined in the Fort Yates jail. He will be brought to trial in 1975.

In addition to the cases outlined above, the Division is presently participating in several cases in which legal positions have been taken which seek to preserve the right of a tribe to govern their internal affairs, so far as the activities of the tribe are not inconsistent with the equal protection requirement of the Indian Bill of Rights and other Federal laws. Specifically, these cases involve the right of an Indian Pueblo to determine his own membership(119); the right of Indian prisoners to maintain their cultural and religious beliefs(120); and tribal immunity from suit to the extent that Congress has not waived such immunity by specific legislation(121).

**Comparative Workload Summary, New Cases**

| | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|
| Criminal interference with civil rights | 11 | 29 | 51 | 50 | 38 | 40 | 33 |
| Education | 25 | 36 | 58 | 36 | 16 | 19 | 18 |
| Employment | 26 | 20 | 10 | 18 | 34 | 15 | 25 |
| Housing | 2 | 12 | 40 | 42 | 16 | 39 | 48 |
| Public accomodations and public facilities | 26 | 45 | 25 | 37 | 38 | 84 | 79 |
| Voting | 4 | 3 | 5 | 15 | 17 | 10 | 9 |
| Misceilaneous | 4 | 1 | 0 | 8 | 3 | 2 | 24 |
| Totals | 98 | 146 | 189 | 206 | 162 | 209 | 236 |

**Comparative Summary of Cases[1] and Matters,[2] Civil Rights Division[3]**

| | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|---|
| New cases[4] | | | | | | | | | | |
| Criminal | 6 | 11 | 7 | 11 | 29 | 51 | 50 | 38 | 40 | 43 |
| Civil | 85 | 126 | 137 | 87 | 117 | 138 | 156 | 124 | 169 | 203 |
| Total | 91 | 137 | 144 | 98 | 146 | 189 | 206 | 162 | 209 | 236 |
| Matters received: | | | | | | | | | | |
| Criminal | 1,623 | 1,885 | 1,652 | 1,670 | 2,281 | 2,431 | 2,694 | 2,967 | 3,020 | 3,499 |
| Civil | 1,695 | 1,972 | 1,768 | 1,113 | 956 | 968 | 1,359 | 1,178 | 1,401 | 1,560 |
| Total | 3,318 | 3,857 | 3,420 | 2,783 | 3,237 | 3,399 | 4,053 | 4,145 | 4,421 | 5,059 |
| Cases terminated: | | | | | | | | | | |
| Criminal | 6 | 9 | 2 | 12 | 17 | 40 | 48 | 55 | 41 | 30 |
| Civil | 33 | 50 | 49 | 108 | 81 | 44 | 29 | 88 | 61 | 106 |
| Total | 39 | 59 | 51 | 120 | 98 | 84 | 77 | 132 | 102 | 136 |
| Matters terminated: | | | | | | | | | | |
| Criminal | 1,360 | 1,387 | 1,442 | 1,889 | 2,297 | 2,581 | 2,937 | 3,142 | 2,962 | 3,490 |
| Civil | 652 | 744 | 1,799 | 1,069 | 1,821 | 739 | 628 | 948 | 2,242 | 1,544 |
| Total | 2,012 | 2,131 | 3,241 | 2,958 | 4,118 | 3,320 | 3,565 | 4,090 | 5,204 | 5,034 |

See footnotes at end of table.



**Comparative Summary of Cases[1] and Matters,[2] Civil Rights Division[3]—Continued**

| | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|---|
| Cases pending: | | | | | | | | | | |
| Criminal | 21 | 27 | 32 | 30 | 42 | 54 | 56 | 32 | 31 | 34 |
| Civil | 268 | 246 | 334 | 314 | 355 | 456 | 592 | 628 | 767 | 864 |
| Total[5] | 289 | 273 | 366 | 344 | 397 | 510 | 648 | 660 | 798 | 898 |
| Matters pending: | | | | | | | | | | |
| Criminal | 657 | 1,155 | 1,594 | 1,407 | 1,391 | 1,228 | 985 | 595 | 653 | 662 |
| Civil | 1,668 | 2,896 | 3,036 | 3,048 | 2,183 | 2,482 | 3,213 | 3,443 | 2,817 | 2,833 |
| Total[5] | 2,325 | 4,051 | 4,630 | 4,455 | 3,574 | 3,710 | 4,198 | 4,038 | 3,470 | 3,495 |

[1] A "case" is a judicial proceeding in which the United States is a party, intevenor, or amicus curiae. It remains pending as long as there is the likelihood of further enforcement proceedings.

[2] A "matter" is a complaint of racial discrimination which is being investigated. Each unit generally represents a single public or private entitly against whom one or more such complaints have been made.

[3] Division established Dec. 9, 1957. For statistics on the years 1958-64 see the "Annual Report of the Attorney General for the fiscal year 1964."

[4] Until the responsibility for such cases was transferred to the Criminal Division in May 1966, the Civil Rights Divsion's statistics reflected cases and matters having to do with issues of Federal and State custody not related to the Federal civil rights laws. It is possible to separate "custody" cases filed and terminated statistics from civil rights statistics for the years shown by this table and this has been done by subtraction. For the years 1964-66 there were, in addition to the numbers shown above, the following "custody" cases filed: 1964 - 165; 1965 - 112; 1966 - 76; "custody" cases terminated: 1964 -200; 1965 - 66; 1966 -170; 1967 - 1.

[5] Totals reflect reinstatements and other necessary statistical adjustments.

**Comparative Summary of School Litigation**

| Source of jurisdiction | 1959 | 1961 | 1963 | 1964 | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| CRA 1964, Title IX (intervention) | x | x | x | x | 5 | 35 | 10 | 1 | 3 | 1 | 3 | 1 | 0 | 0 |
| Title IV (school desegregation) | x | x | x | x | 2 | 12 | 42 | 12 | 21 | 15 | 19 | 1 | 2 | 2 |
| Title VI (Federal funds) | x | x | x | x | 0 | 0 | 2 | 1 | 2 | 14 | 4 | 0 | 0 | 0 |
| U.S. defendant | x | x | x | x | 1 | 3 | 2 | 5 | 7 | 11 | 4 | 7 | 4 | 9 |
| Amicus Curiae | 1 | 5 | 4 | 5 | 2 | 8 | 0 | 5 | 2 | 16 | 6 | 7 | 9 | 4 |
| Other | 0 | 2 | 7 | 3 | 1 | 0 | 0 | 1 | 1 | 1 | 0 | 0 | 4 | 3* |
| Totals | 1 | 7 | 11 | 8 | 11 | 8 | 56 | 25 | 36 | 58 | 36 | 16 | 19 | 18 |
| Number closed | 1 | 5 | 11 | 6 | 0 | 9 | 3 | 1 | 0 | 22 | 8 | 15 | 7 | 28 |
| Number still active at close of year | 0 | 2 | 2 | 4 | 15 | 64 | 117 | 141 | 177 | 214 | 150 | 251 | 263 | 253 |

[1] 1 case reinstated included in number active but not in category listing.
[2] Reflects reinstatements and adjustments to number pending at close of fiscal year 1970 because several cases consolidated on appeal had been counted as 1.
[3] Faculty employment discrimination cases brought under Title VII of the 1964 Civil Rights Act.

* 2 of these cases are Title VII employment discrimination; 1 is a case involving constitutional rights.

## CITATIONS

(1) *United States* v. *Philadelphia Police Department*, No. 74-400 (E.D. Pa., February 19, 1974)
*United States* v. *St. Louis Fire Department*, No. 74-200C(4) (E.D. Mo., March 18, 1974)
*United States* v. *City of Jackson, Miss., No. J 74-66(n) (S.D. Miss., March 22, 1974)*
*United States* v. *Buffalo Fire Department*, No. 1974-195 (W.D. N.Y., April 25, 1974)
*United States* v. *City of Memphis, Tenn.*, No. C 74-286 (W.D. Tenn., May 16, 1974)
*United States* v. *State of Maryland*, No. CA 74-8 (D. Md., January 4, 1974)
*United States* v. *State of Nevada*, No. R-2989 BRT (D. Nev., December 26, 1973)
*United States* v. *Alburquerque Fire Department*, No. 10442 (D. N.M., November 16, 1973)
*United States* v. *Chicago Police Department*, No. 73C-2080 (N.D. Ill., August 14, 1973)
*United States* v. *Buffalo Police Department*, No. 1973-414 (W.D. N.Y., August 14, 1973)

*United States* v. *Trucking Employers, Inc.*, (nationwide trucking) No. 74-454 (D. D.C., March 20, 1974)
*United States* v. *Allegheny-Ludlum, et al.* (nationwide steel) No. 74-P-339 (N.D. Ala., April 12, 1974)
*United States* v. *Thurston Motor Lines, Inc.*, No. CC 74-114 (W.D. N.C., May 22, 1974)
*United States* v. *Electrical Workers, Local 24, et al.*, (Baltimore Building Trades) No. 74-3M (D. Md., January 2, 1974)
*United States* v. *New York Newspaper and Mail Deliverers Union*, No. 73 C 4278 (S.D. N.Y., October 9. 1973)
*United States* v. *Chicago Sheet Metal Workers*, No. 73-C-2039 (N.D. Ill., August 10, 1973)
*United States* v. *Asbestos Workers, Local 17*, (Chicago Building Trades), No. 73 C 2020 (N.D. Ill., August 9, 1973)

(2) *United States* v. *City of Jackson, Miss.*, No. J 74-66(n) (S.D. Miss., March 25, 1974)
*United States* v. *State of Maryland*, No. 74-8 (D. Md., January 7, 1974)
*United States* v. *Allegheny Ludlum, et al.*, No. 74-P-339 (N.D. Ala., April 12, 1974)
*United States* v. *Trucking Employers, Inc.*, No. 74-454 (D. D.C., March 20, 1974)
*United States* v. *Los Angeles Fire Department*, No. 72-1806 (C.D. Cal., August 7, 1972)
*United States* v. *Chicago Fire Department*, No. 73 C-661 (N.D. Ill., March 29, 1974)
*United States* v. *Electrical Workers Local 24, et al.*, (Baltimore Bldg. Trades) No. 74-3M (D. Md., consent decree re: steamfitters entered January 10, 1974)
*United States* v. *Asbestos Workers Local 17*, (Chicago Bldg. Trades) No. 73 C 2020 (N.D. Ill., consent decree re: Pipefitters and Ironworkers filed August 9, 1973 and November 16, 1973, respectively)
*United States* v. *Eastex, Inc.*, No. B-73-CA-81 (E.D. Tex., February 8, 1974)
*United States* v. *Philadelphia Electric Co.*, No. 72-1483 (E.D. Pa., September 21, 1973)
*United States* v. *East Texas Motor Freight*, No. 36025B (N.D. Tex., February 20, 1974)
*United States* v. *Ironworkers, Local 396, et al.* (St. Louis Bldg. Trades) No. 71 C-559(2) (E.D. Mo., consent decrees re: Pipefitters and Ironworkers filed September 21, 1973 and November 9, 1973 respectively)
*United States* v. *Associated Transport*, No. C-99-G-68 (M.D. N.C., December 20, 1973)
*United States* v. *Boston Fire Department*, No. C-73-269-F (D. Mass., February 8, 1974)
*United States* v. *Florida East Coast Railway*, No. 64-107-Civ. J. (M.D. Fla., February 28, 1974)
*United States* v. *Lee Way Motor Freight*, No. 72-445 (W.D. Okla., December 27, 1973)
*United States* v. *Detroit Edison*, No. 38479 (E.D. Mich., October 2, 1973)
*United States* v. *Electrical Workers, Local 27* (Newark Building Trades), No. 44471 (D. N.J., final decree entered August 20, 1973 re: Electricians)
*United States* v. *Inspiration Consolidated Copper Co.*, No. 70-91-Globe (D. Ariz., September 22, 1973)
*United States* v. *National Lead Co.*, No. 70-C-21(1) (E.D. Mo., January 30, 1974)

(3) *United States* v. *Trucking Employers, Inc.*, (nationwide trucking) No. 74-454 (D. D.C., partial consent decree entered March 20, 1974)
(4) *United States* v. *Allegheny Ludlum, et al.*, No. 74-P-339 (N.D. Ala., April 12, 1974)
(5) *United States* v. *Detroit Edison Co.*, No. 38479 (E.D. Mich., October 2, 1973)
(6) *United States* v. *Georgia Power Co.*, No. 12355 (N.D. Ga., January 31, 1974) 7 EPD 9167
(7) *EEOC, Labor and United States* v. *American Telephone and Telegraph Co.*, No. 73-149 (E.D. Pa., January 18, 1973)
(8) *United States* v. *Electrical Workers, Local 24, et al.*, (Baltimore Building Trades) No. 74-3M (D. Md., consent decree re: steamfitters entered January 10, 1974)
*United States* v. *Asbestos Workers Local 17, et al.*, (Chicago Building Trades) No. 73C 2020 (N.D. Ill., consent decree re: Pipefitters and Ironworkers filed August 9, 1973 and November 16, 1973, respectively)
(9) *United States* v. *Chicago Police Department*, No. 73C-2080 (N.D. Ill., November 16, 1973)
(10) *United States* v. *Buffalo Police Department*, No. 1973-414 (W.D. N.Y., August 14, 1973)
(11) *United States* v. *Philadelphia Police Department*, No. 74-400 (E.D. Pa., February 19, 1974)
(12) *United States* v. *State of Maryland*, No. CA 74-8 (D. Md., January 4, 1974)
(13) *United States* v. *City of Jackson, Miss.*, No. J 74-66(n) (S.D. Miss., March 22, 1974)
(14) *United States* v. *State of Arkansas* (Conway Co.) ///F.Supp./// (E.D. Ark., July 26, 1973)
(15) *United States* v. *State of Missouri* (Kinloch) 363 F. Supp. 739 (E.D. Mo., 1973)
(16) *United States* v. *TEA* (Richardson ISD) CA No. 3-4076-A, (N.D. Tex., May 23, 1974)
(17) *Beaumont ISD* v. *HEW*, ///F.Supp./// (E.D. Tex., May 24, 1974)
(18) *United States & Valley* v. *Rapides Parish School Board*, C.A. No. 14796 (W.D. La., June 17, 1974)
(19) *United States* v. *TEA* (Austin ISD) ///F.Supp./// (W.D. Tex., August 1, 1973)
(20) *United States* v. *School District of Omaha*, CA No. 73-0-320 (D. Nebraska, August 10, 1973)
(21) *Spangler* v. *Pasadena City Board of Education*, ///F. Supp./// (S.D. Calif., March 1, 1974)
(22) *Lau* v. *Nichols* (San Francisco U.S.D.), 414 U.S. 569 (1974)
(23) *United States* v. *Jennings, Mo.*, CA No. 73-C-259(3) (E.D. Mo., April 26, 1973)
*United States* v. *Hazelwood*, CA No. 73C-553 (E.D. Mo., August 9, 1973)
*United States* v. *Ladue*, CA No. 73-387 (2) (E.D. Mo., June 12, 1973)
(24) *United States* v. *Baltimore Co.*, CA No. 73-387 B (D. Md., April 23, 1973)
(25) *United States* v. *Kansas City Unified School District S500*, CA No. KC 3738 (D. Kansas, May 18, 1973)
(26) *United States* v. *Oklahoma State University*, CA No. 73-441 (W.D. Okla., June 29, 1973)
(27) *United States* v. *State of North Carolina*, CA No. 4476 (E.D. N.C., October 16, 1973)
(28) *Cohen* v. *Chesterfield Co.* and *Cleveland* v. *LaFleur*, 414 U.S. 632 (1974)
(29) *United States and Walston* v. *Nansemond Co.*, 492 F.2d 919 (4th Cir., 1974)
(30) *United States* v. *Ladue, Mo., supra*, n. 23.
(31) *United States* v. *State of Louisiana*, CA No. 74-68 (M.D. La., March 14, 1974)
(32) *United States and Geier* v. *Dunn*, CA No. 5077 (M.D. Tenn., April 11, 1974)
(33) *United States* v. *Lownds and Manning Realty Co.*, CA No. H74-38 (D. Conn., February 1, 1974)
*United States* v. *Kesselman*, CA No. 4769 (D. Del., November 28, 1973)
*United States* v. *Gaston*, CA No. 74-69-C5 (D. Kan., March 27, 1974)
(34) *United States* v. *City of Black Jack*, 372 F.Supp. 319 (E.D. Mo., 1974)
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(35) *United States* v. *J.C. Long, supra*, n. 34
*United States* v. *M.I. Robbins, supra*, n. 34
*United States* v. *Henshaw Brothers, Inc.*, et al., *supra*, n. 34
(36) *United States* v. *Lownds and Manning Realty Co., supra*, n. 33
*United States* v. *The Barrows and Wallace Co., et al.*, CA No. H74-143 (D. Conn., May 2, 1974)
(37) *United States* v. *Provident National Bank, et al.*, CA No. 74-1340 (E.D. Pa., May 30, 1974)
(38) *United States* v. *Schwartz and Shefa Development Corp.*, CA No. 74C-692 (E.D. N.Y., May 6, 1974)
(39) *United States* v. *Trump, et al.*, CA No. 73C 1529 (E.D. N.Y., October 15, 1973)
(40) *Jones, et al.* v. *City of Upper Arlington*, CA 73-304 (S.D. Ohio, April 26, 1974)
(41) *United States* v. *State of Wisconsin*, CA No. 74 C 3 (W.D. Wisc., January 3, 1974)
(42) *United States* v. *J.C. Long, supra*, n. 34
(43) *United States* v. *M.I. Robbins, supra*, n. 34
(44) *United States* v. *Henshaw Brothers, Inc., et al., supra*, n. 34
(45) *United States* v. *City of Black Jack, supra*, n. 34
(46) *United States* v. *Saroff, supra*, n. 34
(47) *United States* v. *Pelzer Realty Co.*, 484 F.2d 438 (5th Cir. 1973)
(48) *Barrick Realty, Inc.*, v. *City of Gary*, P.H.E.O.H. Rptr. Para. 13,632 (7th Cir. 1974)
(49) *Curtis* v. *Loether*, P.H.E.O.H. Rptr. Para. 13, 634 (U.S. Sup. Ct., 1974)
(50) *United States* v. *West Suburban Board of Realtors, et al.*, CA No. 69-C-1460 (N.D. Ill., amended motion for supplemental relief and civil contempt filed October 5, 1973)
*United States* v. *Dick Coffey*, CA No. 71-706 (N.D. Ala., motion for civil and criminal contempt filed October 15, 1973)
*United States* v. *Crimson Apt. Service, Inc.*, CA No. 71-593-M (D. Mass., Application for Show Cause Order for civil contempt filed February 25, 1974)
*United States* v. *Bob Lawrence Realty Co., et al.*, CA No. 13468 (N.D. Ga., Motion for Supplemental Relief filed February 25, 1974, Supplemental Consent Order entered March 7, 1974)
*United States* v. *Luebke*, CA No. C-3486 (D. Colo., application for show cause order for civil contempt filed May 14, 1974)
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(51) *United States* v. *Dick Coffey*, CA No. 71-706 (N.D. Ala., November 16, 1973)
(52) *United States* v. *West Suburban Board of Realtors, et al., supra*, n. 50
(53) *United States* v. *Crimson Apt. Service, Inc., supra*, n. 50
(54) *United States* v. *Luebke, supra*, n. 50
(55) *United States* v. *Crimson Apt. Service, Inc.*, P.H.E.O.H. Rptr. Para. 13,665 (D. Mass., 1974)
(56) *United States* v. *Scott Management Co., et al.*, CA No. 21234 (D.Md., April 8, 1974)
(57) *United States* v. *Colonial Village Apts., et al.*, CA No. 252-73-A (N.D. Va., October 26, 1973)
(58) *United States* v. *Gertner*, CA No. 73-H-909 (S.D. Tex., November 19, 1973)
(59) *United States* v. *New River Apts., Inc.*, CA No.

980 (E.D. N.C., February 5, 1974)

(60) *United States* v. *Provident National Bank, et al., supra,* n. 37

(61) *Ellis and United States* v. *Zicka,* CA No. 8918 (S.D. Ohio, January 3, 1974)

(62) *United States* v. *Chess Realty,* CA No. 73-2205 (E.D. Pa., May 29, 1974)

(63) *United States* v. *Callicutt, ///F.Supp.///* (N.D. Miss., June 10, 1974)

(64) *Beer* v. *United States, et al.,* 374 F. Supp. 363 (D. D.C. 1974)

(65) *United States* v. *Bishop,* 488 F. 2d 310 (5th Cir., 1973)

(66) *New York* v. *United States, ///F.Supp.///* (D. D.C., January 10, 1974) and (April 30, 1974)

(67) *United States* v. *Slidell Youth Football Association, ///F.Supp.///* (E.D. La., June 27, 1974)

(68) *United States* v. *Roy Elder McKoy, ///F.Supp.///* (E.D. Va., March 18, 1974)

(69) *United States* v. *Good Samaritan Funeral Home and Boone's Funeral Home,* CA No. 74-406 (E.D. La., April 24, 1974)

(70) *United States* v. *Arlington Recreation Center, ///F.Supp.///* (M.D. Fla., June 10, 1074)

(71) *United States* v. *Solomon,* No. 74-181 (D. Md., February 21, 1974)

(72) *Battle and United States* v. *Anderson,* 376 F. Supp. 402 (E.D. Okla., 1974)

(73) *Wilson* v. *Kelley,* 294 F. Supp. 1005 (N.D. Ga. 1968) (three-judge panel)

(74) *United States* v. *Wyandotte County, Kansas,* 343 F. Supp. 1189, *rev'd* 480 F.2d 969 (10th Cir. 1973), *cert. denied* 414 U.S. 1068 (1973)

(75) *United States* v. *Sumter County,* No. 73-9-Civ-D-O (M.D. Fla., March 4, 1974);
*United States* v. *Polk County,* No. 73-252-Civ-T-K (M.D. Fla., March 8, 1974)

(76) *Wilson and United States* v. *Bailey,* No. 1130 (M.D. Ga., January 11, 1974);
*Wilson and United States* v. *Lolt,* No. 2635 (N.D. Ga., January 25, 1974)

(77) *United States* v. *Rowan County, North Carolina,* No. 74-1922 (M.D. N.C., May 24, 1974)

(78) *Newman* v. *Alabama,* 349 F. Supp. 298, 489 F.2d 298 (pending decision on appeal)

(79) *Gates* v. *Collier,* 349 F. Supp. 881, *aff'd* 489 F.2d 298, vacated in part reheard *en banc* October 2, 1974

(80) *Hooks* v. *Wainwright,* Nos. 71-144-Civ-J-S and 71-1011-Civ-J-S (M.D. Fla., December 29, 1971)

(81) *Costello* v. *Wainwright,* Nos. 72-109-Civ-J-S and 72-94-Civ-J-S (M.D. Fla., February 9, 1972)

(82) *Williams* v. *McKeithen,* No. 71-98 (M.D. La., May 26, 1971)

(83) *Lamar and United States* v. *Coffield,* No. 72-H-1393 (S.D. Tex., May 24, 1973)

(84) *Ruiz* v. *Estelle,* No. 5523 (E.D. Tex., consolidated April 12, 1974)

(85) *Morales* v. *Turman,* 364 F. Supp. 166 (E.D. Tex., 1973)

(86) *Wyatt* v. *Aderholt,* No. 3195 N (M.D. Ala., December 20, 1973 and January 8, 1974)

(87) *Stoner* v. *Miller,* No. 74 C 53 (E.D. N.Y., May 17, 1974)

(88) *North Carolina Association for Retarded Citizens and United States* v. *North Carolina,* No. 3050 (E.D. N.C., January 29, 1974)

(89) *Alexander and United States* v. *Hall,* No. 72-209 (D. S.C., May 15, 1974)

(90) *Davis* v. *Watkins,* No. 73-205 (N.D. Ohio, May 22, 1974)

(91) *Horacek* v. *Exon,* No. 72 L 299 (D. Neb., May 26, 1974)

(92) *New York Association for Retarded Children and Parisi* v. *Rockefeller,* No. 72 Civ 356, 357 (E.D. N.Y., March 17, 1972)

(93) *Wade* v. *Mississippi Cooperative Extension Service,* F. Supp. (N.D. Miss., February 15, 1974);
*Bazemore* v. *Friday,* CA No. 2879 (E.D. N.C., November 18, 1971);
*Strain* v. *Philpott,* 331 F. Supp. 836 (M.D. Ala., 1971)

(94) *Asociacion Mixta Progresista* v. *Dept. of Health, Education and Welfare,* CA No. C-72-882 SAW (N.D. Cal., May 16, 1972);
*Sanchez* v. *Norton,* CA No. 15732-73 (D. Conn., April 19, 1973)

(95) *Player* v. *Alabama Department of Pensions and Securities,* CA No. 3835N (M.D. Ala., November 17, 1972)

(96) *Bob Jones University* v. *Johnson,* F. Supp. (D. S.C. July 25, 1974)

(97) *Player* v. *Alabama Department of Pensions and Securities, supra,* n.95

(98) *United States* v. *Walter Taylor, et al.,* Cr. No. 74-1657 (M.D. Fla., January 25, 1974)

(99) *United States* v. *Joe Brown,* No. 73-295-Cr-DA (S.D. Fla., Nobember 20, 1974)

(100) *United States* v. *Senak,* No. 71-H-Cr-61 (N.D. Ind., February 8, 1972)

(101) *United States* v. *Robert Miles,* F. 2d (Cr. Nos. 47371, 47379, 6th Cir. 1974)

(102) *United States* v. *Daniel Reed,* Cr. No. 74-0215-Y (D. Md., May 15, 1974);
*United States* v. *Richards,* Cr. No. 74-79-A (N.D Ga., May 15, 1974)

(103) *United States* v. *Hearod,* 499 F. 2d 1003 (5th Cir. 1974)

(104) *United States* v. *Landis and German,* (E.D. Pa., March 29, 1974);
*United States* v. *Hoffman, Zellner, Ostrander,* Cr. No. 74-185 (E.D. Pa., May 14, 1974 and June 3, 1974)

(105) *United States* v. *Shafer,* Cr. No. 74-165 (N.D. Ohio, March 29, 1974)

(106) *United States* v. *Hoffman & Curotto,* No. 73CR305 (N.D. Ill., September 20, 1973)

(107) *United States* v. *Bloemker, et al.,* No. S-CR-73-80 (S.D. Ill., April 4, 1974)

(108) *United States* v. *Robert Miles, ///F.2d///* (Cr. Nos. 74-1518, 1519, 6th Cir. 1974)

(109) *Anderson* v. *United States,* 94 S.Ct. 2253 (1974)

(110) *United States* v. *The Anadarko Municipal Hospital,* CA No. 74-300D (W.D. Okla., March 22, 1974)

(111) *United States* v. *The San Carlos Apache Tribe,* CA No. 74-52- TVC (D. Ariz., April 12, 1974)

(112) *Morton* v. *Mancari, ///U.S.///* (1974)

(113) *Freeman* v. *Morton,* 499 F. 2d 494 (D.C. Cir. 1974);
*Nogle* v. *Morton,* CA No. 74-199D (W.D. Okla., July 9, 1974);
*Frazier* v. *Morton,* CA No. 74-1006 (D. S.D., July 3, 1974)

(114) *Wounded Head* v. *Oglala Sioux Tribe, /// F.Supp.///* (D. S. Dak., January 18, 1974)

(115) *United States* v. *Apache County, Arizona,* CA. No. 74-50 (D. Ariz., January 23, 1974)

(116) *McDonald* v. *Saxbe,* CA No. 73-623 (D. Ariz., January 22, 1974)

(117) *United States* v. *Litzau,* Crim. No. CR 73 (D. S. Dak., December 14, 1973)

(118) *United States* v. *Gates,* Crim. No. 1-74-22 (D. N. Dak., June 18, 1974)

(119) *Martinez* v. *Santa Clara Pueblo,* CA No. 9717 (D. N. Mex., September 22, 1972)

(120) *Teterud* v. *Gilliman,* CA No. 73-85-2 (S.D. Iowa, March 21, 1973)

(121) *Tanasket* v. *Thompson, ///F. 2d///* (9th Cir., 1974), *cert. den. ///U.S.///* (1974)

# Criminal Division

The Criminal Division supervises the enforcement of all Federal criminal laws except those that are specifically assigned to other divisions of the Department. Its major accomplishments in 1974 were carried out by nine sections.

Substantial increases were recorded in over-all convictions in organized crime cases. Among the organized crime strike forces, convictions totaled a record 1,544, representing more than a 60 percent increase, with the number of defendants indicted during the year up more than 20 percent.

Continuing pressure on organized crime syndicates was reflected in cases resulting in the jailing of the boss or acting head or former boss of three of New York's five crime organizations; the indictment of another New York crime chieftain along with his son-in-law; the affirmation on appeal of the convictions of the New England syndicate boss, and of the No. 2 leader in New York's largest and most influential syndicate; and the jailing of the No. 2 leaders in Pittsburgh and Philadelphia. In addition, the Montreal, Canada crime boss was convicted in New Jersey for narcotics violations. Many other ranking syndicate members were convicted or placed under legal process during the year.

Title IX of the Organized Crime Control Act of 1970, which was invoked in Fiscal Year 1973 for the first time in the war against organized crime, was utilized with greater intensity in 1974. Four additional criminal indictments were filed to break the crime hold on legal enterprises obtained in illegal ways or by a pattern of racketeering. In one case in 1974, Title X, the Special Offender Sentencing provision, was invoked by the courts resulting in a 20-year sentence. Under normal proceedings the criminal defendant would have been subject only to a maximum of ten years. That action is being tested by the defendant on appeal.

Use was made for the first time of the civil injunction provision of Title IX. In a case against a Chicago gambling enterprise, a preliminary injunction was issued to halt the gambling activity based in a pool room. The Government also is seeking an order to require the pool hall owner to divest himself of its ownership and to require the gambling operators regularly to report their source of income. This innovative approach has been received by the bookmaking fraternity with considerably more shocked surprise than the more customary fines, with business-as-usual soon after.

Exemplifying the strike force concept was Operation Fraulein, an 18-month joint investigation of the New York Joint Strike Force and the New York County District Attorney's Office. Contributing to the effort were local, state, Federal and international investigative agents, requiring close cooperation, effective relations, and a division of prosecutive effort that culminated in six Federal and eight state indictments.

Wiretapping under court order continued to provide an effective weapon in the war against organized crime. A total of 181 orders were executed. No application was denied by the courts. One wiretap on a syndicate member who was believed to be a syndicate leader, revealed that he was taking criminal orders from another individual who up to this point had not been suspected as being in a leadership role.

During the year, target cities added in the HUD/FHA housing fraud investigations were increased from 16 to 25. Indictments and convictions in the two-year program increased to 467 indicted and 280 convicted, with 312 of these defendants indicted and 227 of them convicted in 1974. The investigations into housing frauds reached personnel as high as the directors of three FHA Area or Insuring Offices (all three of whom were convicted) and a United States Senator who was indicted in Florida for bribery involving FHA housing programs. The success of the task forces has been the result of cooperation of representatives of the HUD Inspector General's Office, Internal Revenue Service, Federal Bureau of Investigation, and the United States Attorneys.

Other significant cases included the indictment of Congressman Bertram L. Podell, his brother who was his law partner, and a Florida businessman, for conspiracy, bribery and perjury in connection with efforts to obtain an air route; the indictment of 12 Federal meat graders; the conviction of a former American Vice Consul in Portugal for bribery; and a multitude of other persons in public service for acts of corruption.

There were no successful hijackings of a commercial passenger aircraft during the year; in fact, none in the past 19 months. There were hijackings of helicopters and an unsuccessful hijacking attempt in Baltimore in which a guard, the copilot and the would-be hijacker were killed. This matter, which was of great public concern in recent years, reflects the continuing success of prompt prosecutive action and the adoption in January 1973, of the current preboard screening program.

To combat the heavy loss of cargo thefts in recent years, 15 city working groups have been organized in key cities, and in the effort to provide greater coordination in the enforcement of concurrent jurisdiction offenses, Federal-State Law Enforcement Committees now are operating in 26 states. To meet the growing problem of the use of false identification to commit crimes and avoid arrest, steps were taken to establish a Federal Advisory Committee on False Identification.

Highly publicized kidnapping-extortion cases included several involving political or terrorist activity such as the matter of the Symbionese Liberation Army and Patricia Hearst. Among others cases in which indictments quickly were brought was that of the kidnapper of the editor of an Atlanta newspaper and of a defendant charged with the kidnap conspiracy in Mexico of an American Vice Consul later found slain.

Culminating a two-year effort, a Federal Court in Denver ruled admissible in evidence certain Swiss Bank documents that were authenticated in a deposition taken on Swiss soil by an American Consular Officer under provisions of a 40 year-old statute which was invoked for the first time for that purpose.

Among major narcotics presecutions were the convictions in San Diego, California, of a father and son who were in possession of LSD having an estimated street value of more than $10,000,000; the 15-year sentence of a New York organized crime syndicate boss who was convicted with 14 others in a cocaine ring; and the indictment of a major New York narcotic trafficker involved in a case in which 164 pounds of heroin and $967,450 in cash were seized.

During the year, 54 defendants in 37 cases were convicted of distributing obscene material. This compares with 33 convictions in 24 cases in 1973, and only two convictions in 1969. The first criminal conviction was obtained under the Federal Coal Mine Health and Safety Act, and the first two criminal convictions under the Occupational Safety and Health Act. These cases involved the death of workers in industrial accidents.

A sharp escalation in criminal prosecutions for willful infringement of copyrights on sound recordings produced 68 convictions with but one acquittal.

Six oil companies were fined in Colorado under the Migratory Bird Treaty Act for killing birds as a result of negligent maintenance of open oil sludge pits. Seven foreign fishing vessels were seized during the year for fishing in U.S. territorial waters in violation of the Bartlett Act. Among the violators were a Japanese vessel fined a record $300,000 and a Russian vessel fined $250,000. A record total of more than $1 million in penalties and fines was collected during the year.

Several years of effort on the investigation of the murder of Joseph Yablonski culminated during 1974. Former United Mine Workers of America President W.A. (Tony) Boyle was indicted with others for conspiracy to violate Yablonski's civil rights, and Boyle and others also were indicted and convicted of murder in Pennsylvania state court. Indictments were also obtained against several California letture growers and a Teamster official on charges of unlawful payments to influence actions in a farm workers dispute.

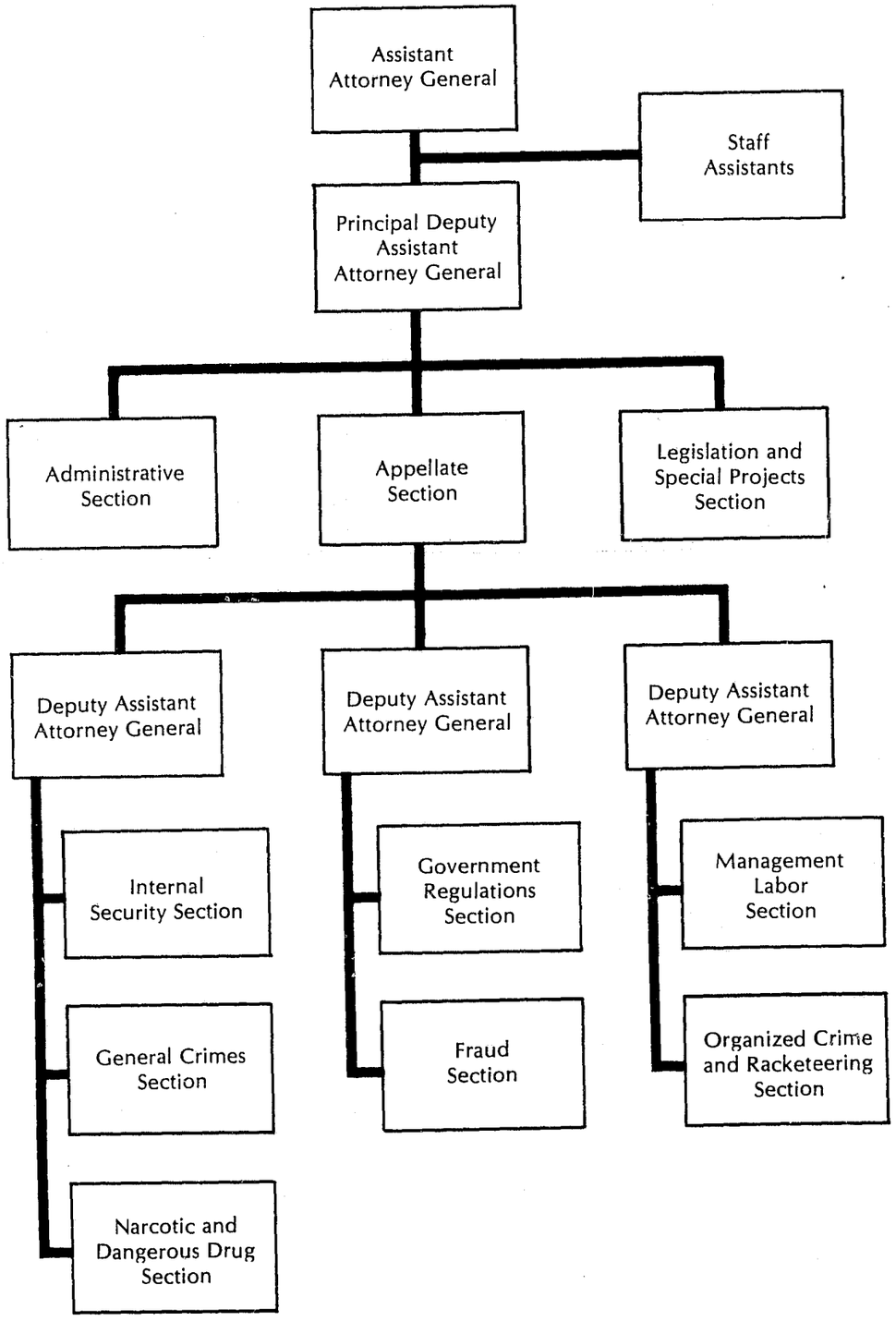
More than 2,000 pages of background analyses were prepared to assist the Senate Judiciary Committee in its preparation of a report on the proposed new Federal Criminal Code.

### Organized Crime and Racketeering Section

The Organized Crime and Racketeering Section, the largest unit of the Criminal Division, is responsible for supervision of all efforts of the Division directed at the organized criminal element. In addition, the Section also supervises the enforcement of certain statutes prohibiting racketeering activities which have been a major source of revenue for the criminal organizations.

As a general rule all Federal criminal enforcement, no matter what the offense, is assigned to the Section

## CRIMINAL DIVISION






whenever it is determined that the subjects under investigation are racketeers or part of syndicated criminal operations. In addition, the Section has specific supervisory authority for the extortionate credit provisions of the Consumer Credit Protection Act of 1968, the Gambling Devices Act of 1962, and the laws pertaining to gambling, extortion, infiltration of legitimate business and liquor violations. The Section also has a civil function in that it is charged with use of the civil injunction provisions under the Organized Crime Control Act of 1970.

The Section coordinates the efforts of the various Federal agencies against organized crime, stimulating joint investigative efforts against organized crime and the exchange of intelligence information. Attorneys from the Section work closely with the Federal Bureau of Investigation, Drug Enforcement Administration, Bureau of Alcohol, Tobacco and Firearms, Internal Revenue Service, Secret Service, Bureau of Customs, Postal Inspection Service and Labor-Management Services Administration. They also work closely with state and local law enforcement officers.

Organized crime syndicates exert a broad influence over legitimate business and union activities, and exert extensive, but diminishing, political influence at the local level. Organized crime receives its largest income from gambling, followed by loansharking, but it also engages in numerous other unlawful activities such as narcotics and illegal drug distribution and large scale theft, fencing and fraud operations. Effectively immobilizing criminal operators in many ways, convictions also are obtained by the Section based on perjury, obstruction of justice, bail jumping or contempt committed with intent to thwart the original investigation.

### Organized Crime Strike Forces

The majority of the Section's attorneys are assigned to 18 Organized Crime Strike Forces based in metropolitan areas. As of July 30, 1974, of the 149 attorneys assigned to the Section, 127 were assigned to the Strike Forces.

Initiated in 1967, the Strike Force program quickly proved its effectiveness and was expanded to its present level. Uniting representatives of Federal investigative agencies under legal guidance of attorneys from the Section and the various United States Attorneys offices, the Strike Forces have led to better intelligence through interchange of information, more efficient use of agent personnel through joint investigations involving many agencies, pursuit of these investigations with greater expertise and finesse using the legal adjuncts of the investigative Grand Jury, and, on the whole, a larger number of prosecutions.

The Strike Force is a team approach. The team concentrates efforts of all concerned Federal agencies on a single, visible organized crime syndicate or activity. Each agency participates in the planning, pools intelligence and contributes to the group strategy and operation through investigations conducted in its specialized area of responsibility, but retains absolute control over its own operations.

As of June 30, 1974, Strike Forces were operating in Baltimore, Boston, Brooklyn, Buffalo, Chicago, Cleveland, Detroit, Kansas City, Los Angeles, Miami, Newark, New Orleans, New York City, Philadelphia, Pittsburgh, St. Louis and San Francisco, as well as a special strike force in Washington, D.C. Constant review of these operations is necessary in order to insure the most effective use of the manpower assigned. The need for the Strike Forces in their present locations is constantly being reassessed.

In the past year, plans have been made for existing Strike Forces to have formal representation from state and local law enforcement bodies. The experience of the New York and Los Angeles Strike Forces (which have had such representation since their inception) has proved so beneficial that the concept was expanded to Boston in 1974.

An excellent example of the operation of the Strike Force concept is Operation Fraulein, an 18-month joint investigation of the New York Joint Strike Force and the New York County District Attorney's Office. Involved in this highly successful effort were local, state, Federal and international investigative agents, requiring close cooperation, effective relations, and a division of prosecutive effort that culminated in six Federal and eight state indictments.

Also involved were both state and Federal court-authorized wiretaps, two German wiretaps authorized by German courts, a sensitive international aspect in the investigation, grand jury testimony by four unindicted European co-conspirators granted immunity, letters rogatory in a Swiss bank transaction, and the financial support of Law Enforcement Assistant Administration funds.

The six Federal indictments resulted in 27 convictions (most were guilty pleas) involving cocaine smuggling, counterfeiting, extortionate credit, mail fraud, Hobbs Act extortion, and an $18,000,000 stolen and counterfeit securities conspiracy in interstate and foreign commerce.

One significant accomplishment of the joint effort of Operation Fraulein was the tying together of several previously considered separate cases involving theft from interstate shipment. One by one, as the investigation unfolded, each of the separate cases was identified as a part of the whole, and incorporated. The major

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prosecution concerned an $18,000,000 securities conspiracy, including $14,500,000 in counterfeit bills and the balance taken from five separate thefts of which two were from U.S. mails. Named were 16 defendants of whom seven were non-extraditable Europeans. Except for one American fugitive, the others all pleaded guilty. On two occasions, the investigative agents went to Europe and won the cooperation of four European co-conspirators who appeared before the grand jury.

### Legal Developments and New Procedures

The Section continued to use the provision of the Organized Crime Control Act of 1970 to good advantage. For the first time, use was made of the civil injunctive provisions of Title IX. On April 30, 1974, Judge Frank McGarr in the Northern District of Illinois granted a preliminary injunction against an illegal gambling business in Chicago. The case, which was the result of courtauthorized wiretaps, is now on appeal. Judge McGarr ruled the civil relief sought was remedial despite references to criminal conduct. Relief sought by the Government included requests that the owner of a pool hall, which was the seat of the gambling enterprise, be divested of ownership; that the defendants submit to depositions; and that in addition to enjoining them from further gambling activity, they be required to submit regular reports of their sources of income. The preliminary injunction was issued when the defendants balked at submitting to depositions.

Four additional criminal indictments, one of which ended in conviction, invoked Title IX of the Act (18 U.S.C. 1972). In New York City, Milton Parness was convicted of acquiring a business by illegal means. While on parole for a prior offense, Parness founded a gambling junket business and made an alliance with a Caribbean casino for whom he also collected debts of gamblers. However, Parness skimmed the collections he made, plunging the casino into financial difficulty, and then loaned the casino $160,000 of the casino's own money that he had skimmed. When the casino defaulted on its note, Parness forclosed. A jury convicted Parness October 4, 1973.

Again in New York City, the Act was invoked against three union leaders for operating their union, Local 342 of the Meatcutters, using a system of kickbacks from executives of many of the area's largest supermarket chains. Twelve chain store executives also were indicted for making the payments. How much this added to the price of meat to the consumer is unknown.

In Brooklyn the Act was used to indict a union officer who benefited by a pattern of kickbacks from employers and loans from the union welfare fund to a business in which he had an interest. In New Jersey three loansharks were indicted under the same provisions for taking over legitimate business in payment of shylock loans.

The Special Offender Sentencing provision of Title X of the Act has been involved in several cases, but as yet only one such sentence has been meted out by the courts. In that case a suspected mob "hit man" received a sentence of 20 years. Without utilizing Title IX provisions, he would have been subject only to a maximum of ten years. The decision is presently on appeal by the defendant.

### Impact on Criminal Organizations

During fiscal year 1974 more than a dozen top organized crime leaders were convicted or under legal process as the result of new actions. Thomas DiBello, boss of the New York Colombo syndicate, was jailed for contempt after refusing to testify before a grand jury despite a grant of immunity. A similar fate fell to Michael Genovese, No. 2 in the Pittsburgh syndicate, who was the first high echelon member jailed in his area in years; and to Philip Charles Testa, the acting boss in Philadelphia. Carmine Tramunti, boss of the Luchese syndicate in New York City, was convicted of charges involving heroin, and also was sentenced by the state courts to three years for contempt as the result of a Federal investigation including court-approved wiretaps.

Gennaro Angiulo, boss of the New England syndicate, was convicted again on retrial of assaulting a Coast Guard officer after his first conviction was overturned on appeal. The second conviction was affirmed by the First Circuit Court of Appeals. Vincent Aloi, former boss of the Colombo syndicate, was sentenced by the state to seven years on perjury, and Rocco Miraglia, a member of the Colombo hierachy, plead guilty to bank fraud.

John Brancato, No. 2 in Cleveland, was fined on a gambling charge. Anthony La Rocca, Jr., nephew of the Pittsburgh syndicate boss, was sentenced to three years for weapons violations. Louis G. LeFaivre, known as Gus Funk, Baltimore gambling kingpin, his son and two daughters were sentenced on gambling charges. Ernest Rocco Infelice, a high ranking Chicago syndicate member, was sentenced to 10 years on heroin charges.

John V. Camilleri, a high ranking member of the Buffalo syndicate, was killed gangland style a few weeks after he was indicted on aiding and abetting charges involving a Hobbs Act conspiracy. Vincent Rizzo, a Genovese syndicate ranking member, was sentenced to 20 years after pleading guilty to three indictments.

Convictions were affirmed on appeal of Aniello Dellacroce, underboss of the once powerful Gambino syndicate in New York, and of Ettore Cocco. Dominick Mantell, a Buffalo syndicate leader, was convicted in Boston of mail fraud. Frank Dasti, boss of the Montreal, Canada, organization, was convicted in New Jersey for narcotics violations. Joseph DiVarco and Joseph Arnold, two influential Chicago syndicate members, were convicted of income tax violations.



### Other Significant Cases

Among other significant cases are those directly involving state and local cooperation. Operation Fraulein, the 18-month joint investigation that led to six Federal and eight state indictments, had its start when the state District Attorney brought a case to the Joint Strike Force in New York City that had grown beyond the investigative reach of the local office.

In Southern California, a court-authorized wiretap on a syndicate member, who until then was believed to be a syndicate leader, revealed that he was taking criminal orders from another individual who, until that time, was unsuspected of any mob involvement. Evidence developed by further investigation was turned over to state authorities; conviction resulted in 1974.

Three Youngstown, Ohio, police officers, one a 20-year veteran, were arrested on Federal evidence for involvement in a burglarly ring. A Colombo syndicate member was indicted with two policemen on mail fraud charges and investigation indicated that an alleged attempt to murder an informant may have been involved.

In New Orleans a joint investigation by the Strike Force and the United States Attorney resulted in the discovery of $360,000 in kickbacks to a City Councilman from a state inheritance tax collector whom the councilman helped obtain the political job. The state has indicted the councilman. In Baltimore, police arrested a man who tried to arrange for the murder of his wife by hiring a Strike Force agent.

Corruption cases of public officials included state and local officials as well as Federal officers and agents. In Pittsburgh the testimony of former numbers baron, Anthony Grosso whose name bears the landmark Supreme Court wagering tax ruling and who is now serving 10 years, resulted in the indictment of Alderman Jacob Williams and the conviction of Alderman Frank Bruno and Allegheny County Racket Squad Chief Samuel G. Farraro for receiving protection payoffs. The evidence resulted in the first convictions obtained in a gambling organization that is reputed to have operated freely for 20 years. The cases were tried personally by the United States Attorney. Also in Pittsburgh the state arrested a gambler who was out on three-year probation after pleading guilty to Federal gambling charges. The gambler was operating a lottery in the state.

In Kansas City Patrolman Jerry W. Lawson and Anthony R. Russo, the latter attorney for the Kansas City syndicate boss, were convicted for involvement in a scheme of payoffs to protect prostitution. In Kansas City, Missouri, State Senator Jasper M. Brancato was indicted for mail fraud on charges of evading $800,000 in state sales taxes accomplished by using patronage influence to pack state tax offices.

Two Louisiana state representatives were convicted for siphoning commissions on state insurance business to themselves. Two Bureau of Alcohol, Tobacco Tax and Firearms agents were indicted for involvement in heroin distribution. In New York City, 12 members of the elite narcotics squad were indicted in a heroin conspiracy scheme. Former Queens District Attorney Thomas Mackell was indicted by the state for official misconduct and hindering the Federal prosecution of a defrauder.

Tax prosecutions included the conviction of a well known fraud artist in Los Angeles who derived $345,000 from a Las Vegas casino and $240,000 from a California bank by fraud. And in Cleveland a bettor, in debt to the mob, was convicted of doctoring his employer's computer so that he received the money the computer showed was withheld for Federal tax.

Major theft cases included the conviction of a Chicago stock broker, indebted to mob gamblers, in the sale of $540,000 in stolen securities derived from a $900,000 burglary in Pittsburgh. In Detroit a "Purple Gang" associate was indicted for possession of $1,000,000 in Swiss watch movements burglarized from a customs broker at Kennedy Airport in New York. In Miami, Daniel Arreola and Albert Santi were indicted in a securities theft case that resulted in recovery of more than $2,000,000 in Sunbeam Corporation stock. In Chicago, Ronald Vincent Peccia was indicted for possession of $1,500,000 in stolen St. Andrews Public Service bonds. In Georgia eight defendants were convicted for the theft of the entire inventories of clothing factories in the North Georgia area.

Major or syndicate-related bookmaking figures indicted or convicted during the year include the following:

| Strike Force | Major Defendant | Yearly Gross or function |
|---|---|---|
| Baltimore | Robert S. Curreri | $ 1,000,000 |
| | Gus Funk | 10,000,000 |
| | Ray Torain | 4,800,000 |
| | Carroll Glorioso | line |
| | Nathan Miller | 3,500,000 |
| | Julius Cottman | 3,000,000 |
| Boston | Carmello Coco | line |
| | Michael Pellicci | mob book |
| Chicago | Joseph Pozzi | 13,000,000 |
| | Anthony Tito | 12,000,000 |
| Cleveland | Albert Kotoch | 8,500,000 |
| Detroit | Antonio S. Bitoni | 2,500,000 |
| Las Vegas | Frank Joseph Masterana | layoff hub |
| Los Angeles | David Goldberg | layoff |
| Miami (Atlanta) | Charles C. Anderson | 15,000,000 |
| Newark | Anthony Racaniello | 3,000,000 |
| Philadelphia | Alfred H. Manuszak | 10,000,000 |
| | TOTAL | 85,800,000 |

## Intelligence and Special Services Unit

The Organized Crime and Racketeering Section also includes an Intelligence and Special Services Unit whose objectives are to gather, store and retrieve information for management. The information is supplied by the various Federal investigative agencies concerned with organized crime. It is the only unit at present on a national level which correlates and indexes data on organized crime.

The Unit is responsible for the maintenance and development of a variety of compterized systems to aid the operation of the Section. Chief among the new programs is the development of the Racketeer Profile. During 1974, intelligence analysts were assigned to several Strike Force locations and made responsible for increasingly varied tasks, including training sessions in the Racketeer Profile system and the processing of intelligence requests. In addition, the Intelligence and Special Services Unit has assisted in the protection and relocation of several hundred witnesses in cases handled by the Strike Forces and in matters before congressional committees. The Unit has also assisted local law enforcement agencies with their witness protection requests.

## Special Operations Unit

The Special Operations Unit handles all matters in the Organized Crime and Racketeering Section which are not expressly assigned elsewhere. It provides legal and administrative support to the Strike Forces. It processes for the Attorney General's action requests for permission to apply for court-authorized electronic interception of wire or oral communications under Title III, Omnibus Organized Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510 *et seq.*, and requests to employ consensual electronic surveillance devices in criminal investigation.

The Unit also formulates and coordinates policies for nationwide application regarding the legal aspects of electronic matters and processes for approval of the Assistant Attorney General, Criminal Division, requests to apply for witness immunity under 18 U.S.C. 6002 and 6003, requests for certification of the need for a special grand jury under 18 U.S.C. 3331, and requests for certification for deposition purposes under 18 U.S.C. 3505.

From January 1969 through June 30,1974, a total of 1134 applications were made to the Courts for Title III interception orders. This figure includes 208 extensions. In 1974, 181 court-authorized wiretaps were executed. The categories of offenses in which the 1127 executed orders were obtained follow:

| Offense | Jan 1969 thru FY 1973 | FY 1974 |
|---|---|---|
| Gambling | 680 | 98 |
| Narcotics | 160 | 43 |
| Loansharking | 38 | 16 |
| Counterfeiting | 12 | 0 |
| Kidnapping | 1 | 0 |
| Obstruction of Justice | 7 | 0 |
| Bribery | 5 | 0 |
| Theft & embezzlement | 2 | 1 |
| Business infiltration | 7 | 4 |
| Interstate Transportation of Stolen Property | 13 | 11 |
| D.C. Code | 18 | 6 |
| Transport Explosives | 1 | 0 |
| Hobbs Act | 2 | 2 |
| TOTAL | 946 | 181 |

## Wiretap Authorization Procedure

The Supreme Court decision in *Giordano* v. *United States,* invalidating the Department's former electronic surveillance authorization procedures, resulted in the dismissal of numerous cases involving hundreds of defendants due to suppression of the intercepted communications. The large number of cases taken out of the prosecutive pipeline was, however, only one of the debilitating effects of this situation. Many cases involving properly authorized interceptions were kept from trial, and much of the Section's legal effort was diverted from grand jury and trial court practice to motions and appellate work. This unexpected development was not appreciably reflected in the Section's statistics.

During 1974 the Strike Forces returned 574 indictments involving 1380 defendants resulting in 873 convictions. Of those indicted or convicted, 936 were syndicate members or associates. In 1973, 548 indictments were returned involving 1787 defendants resulting in 930 convictions, including 1052 syndicate members or associates.

The following are comparative statistics for the past decade:

**Overall Indictments and Convictions**
**Organized Crime and Racketeering Section**

| Fiscal Year | Number of Defendants Indicted | Number of Defendants Convicted |
|---|---|---|
| 1974 | 2521 | 1765 |
| 1973 | 2408 | 1616 |
| 1972 | 3044 | 998 |
| 1971 | 2122 | 629 |
| 1970 | 1142 | 418 |
| 1969 | 813 | 449 |
| 1968 | 1166 | 520 |
| 1967 | 1107 | 400 |
| 1966 | 994 | 457 |
| 1965 | 706 | 468 |



## General Crimes Section

The General Crimes Section supervises the enforcement of statutes relating to protection of government integrity (bribery, graft, conflict of interest); government operations and property (attacks on Federal officers, including the President and Members of Congress, and foreign officials and official guests of the United States, theft of Government property, counterfeiting, postal depredation, and interception of communications); channels of interstate commerce (aircraft hijacking, cargo theft, auto theft, transportation of stolen property, and forged or counterfeit securities); the public (crimes on Federal lands and the high seas, riot, explosives, and weapons control offenses, bank robbery, kidnapping and extortion) and legal procedures (obstruction of justice, false testimony, prison offenses).

All matters involving the Fugitive Felon Act, Juvenile Delinquency Act, Youth Corrections Act, mental competency of defendants, probation, parole, and collateral attack on conviction also come under the supervision of the General Crimes Section. Two units within the Section focus respectively on the special threats of organized terrorism and the traffic in stolen and counterfeit securities.

The duties of the General Crimes Section include coordinating prosecutions, on both policy and operational levels, with other departments and agencies; fostering anti-crime measures through coordination with Federal, state and private agencies and institutions; responding to Congressional and private correspondence, and reviewing and recommending proposed legislation. When possible on request, or as otherwise deemed appropriate (most frequently in terrorist or illegal securities matters), members of the Section directly participate in field operations presenting cases to Federal grand juries, arguing preliminary motions, appearing at trial in selected prosecutions, and briefing and arguing appeals.

To preserve integrity in Federal operations, the Section scrutinizes disposition of every allegation of corruption involving a Federal official to achieve such handling of the matter as will fully vindicate the public's right to honest administration of its business. An extensive grand jury probe in 1974 of corruption in Federal Housing Administration activities in Florida disclosed a pattern of bribes and gratuities furnished by builders to officials for political favors, forming the basis for indictment of U.S. Senator Edward J. Gurney and others.

Congressman Bertram L. Podell, his law-partner brother and a Florida businessman were indicted for conspiracy, bribery and perjury in connection with efforts to obtain a Florida-Bahamas air-taxi route for Atlantic Airlines. Section coordination of intensive FBI and Department of Agriculture investigation of corrupt practices in the meat industry in Los Angeles assisted in securing indictment of 14 meat industry officials and their companies and 12 Federal meat graders, trial of which produced three convictions and one acquittal of companies and their officials.

Former American Vice Consul William Lawhorn, who served in Oporto, Portugal, was convicted for conspiracy and bribery. Indictment of a Small Business Administration loan officer and a number of borrowers followed a searching probe of the agency's Philadelphia office. Investigation in 1974 of conflict of interest in funneling Federal grant funds to a corporation in which he had an interest resulted in conviction of an Associate Commissioner, Office of Education, Health, Education and Welfare.

At the close of fiscal year 1974, Operation Cleansweep, a two-year inquiry into Federal operations along the Mexican border, had produced 43 convictions including five Immigration and Naturalization Service Inspectors and two Customs officers for bribery, fraud and immigration law violations. Thirty-three of the total 321 matters investigated are still open.

Among the cases involving protection of Government operations was the conviction of Charles Tougas and Kenneth Morrison who used their official positions at the Smithsonian's Mount Hopkins Observatory to acquire nearly $4,000,000 in excess property and sell it for their own gain. A fence and his assistant were also convicted and $2,000,000 in property was recovered. The Section has initiated a review of Federal property controls which hold promise for improvement in theft prevention and detection techniques.

In support of postal operations, the four ringleaders and many of the minor figures in the "Canadian Gang" were convicted. The gang of some 25 to 100 loose associates operating from Canada moved over the years from systematic hotel burglaries and fencing into heavy swindles and foundered upon embarking on a mail theft and forgery scheme involving a take of up to $20,000 weekly.

Attacks on Federal officials resulted in convictions of Tyrone Marshall for the robbery and wounding of U.S. Senator John C. Stennis, and the conviction of George Baldwin in Florida and Ismael Rivera in New York for murder of agents doing undercover narcotics investigations; and a poacher who callously killed a National Park Service Ranger.

Conviction of Zelig Spirn and Mitchell Rein, militants, for assaulting the Second Secretary of the Soviet Mission to the United Nations was attended by an un-

precedented success in obtaining a waiver of Soviet objections to appearance of its victim officials as witnesses. The Section contributed substantially to policy development for the Cabinet Committee to Combat Terrorism and drafted legislation to implement international conventions on terrorism. Chief among terrorist activities were murder of an Israeli military attache and mail bombing of the British Embassy. Garrett Brock Trapnell, serving a sentence for skyjacking, was convicted of conspiracy to obtain his release by kidnapping a consul.

Convictions for interception of private communications included two automobile dealerships for bugging customer conversations in their salesrooms, Marshall Soghoian for purchase of prohibited devices for shipment to the Zambian Government, and two employees of J.P. Stevens Textile Company for bugging union organizers in a motel room. A favorable appellate decision in *United States* v. *Bast* supported a broad application of the prohibition against advertisement of interception devices, and in *United States* v. *Harpel*, the Tenth Circuit affirmed the conviction of Colorado police officer Richard Harpel for wiretapping. An attorney and a broadcast company vice president are under indictment for using a hidden microphone to eavesdrop on a radio station manager. A station vice president and an engineer previously pleaded guilty to an information based on the same incident.

1974 saw a dramatic improvement in one aspect of interstate commerce of great public concern. There was no successful hijacking of a commercial passenger aircraft during the year; in fact, none in the past 19½ months. This was in contrast to 26 skyjackings in the first six months of 1972, a number equivalent to all such incidents in 1971. Except for those still fugitives, all hijackers have been prosecuted and of those prosecuted none was acquitted. All the fugitives except one commandeered aircraft to foreign havens. During the year an attempted hijacking of a passenger aircraft at Baltimore-Washington International Airport by Samuel J. Byck ended in Byck's death by suicide after he had been wounded and after he had fatally shot a police officer and the copilot and wounded the pilot. The aircraft had not left the boarding ramp. In July 1973 a Sheppard Air Force Base airman in Texas was indicted for air piracy in the hijacking of a charter helicopter flight in which he was the lone passenger. In May 1974 a militant commandeered a New York helicopter and held the crew as hostage until apprehended and held for mental observation.

Lax airline security of tickets contributed to a theft of some 8,000 tickets, and the resulting grand jury investigation produced indictment of 21 major fences, most of whom have pleaded guilty. Industry loss from stolen tickets amounts to several million dollars a year. Further indictments of the central figures in this traffic are expected. On a broader front, the Section, working with the Interagency Commitee on Transportation Security, developed 15 city working groups to coordinate industry, state and Federal enforcement activities in each city area and to encourage industry improvement in cargo security as an alternative to greater Federal regulation. Federal-State Law Enforcement Committees are now in operation in 26 states. This program of the Attorney General provides for coordination of enforcement on concurrent jurisdiction offenses. Having initiated the program, the Section now assists in committee establishment and monitors and guides their operations.

In the area of protection of the public, the continued rise in statistics of Federal firearms violations is an indication that this avenue of crime control is becoming increasingly effective. In 1974 there were 3,123 arrests, 3,045 indictments and 2,132 convictions, up 30 percent, 29 percent and 57 percent respectively. Section-drafted legislation is now pending in Congress to overcome the requirement the Supreme Court imposed in *United States* v. *Bass* for proof of actual involvement of interstate commerce in prosecutions for possession of a firearm by a convicted felon.

Dean Martin, Jr., was arrested in Los Angeles on charges of illegal possession of a cannon, machine guns and scores of hand guns, and the arrest of Eugene Burcher in April 1974 was accompanied by the seizure of some $100,000 worth of military weapons stashed in his Virginia residences.

Firearms violence in the Virgin Islands has declined substantially since the August 1973 conviction and sentencing of the five perpetrators of the brutal Fountain Valley Golf Course murders to eight consecutive life sentences. The Section-initiated program for use of the United States Marshals Service to improve local protection of armories in prevention of weapons thefts is now in effect nationwide. In addition, over half of the 4,427 armory firearms vaults now have alarm systems and 347 more are being installed. The usual rapid apprehension of the thieves and recovery of most stolen weapons, as in the case of three who stole 77 weapons, including fully automatic M-14 rifles and a grenade launcher from the ROTC armory at Cornell University, are not a substitue for adequate security.

Bank robberies are again on the rise, up 16 percent in 1974 to 3,485. The Section has drafted proposed regulations under the Bank Protection Act of 1968 to correct observed deficiencies in bank security in the use of alarm systems, surveillance cameras and bait money. In addition, the Section secured the cooperation of the United States Marshals Service in conducting bank security surveys in 15 target cities.

Because of the growing problem of criminal fugitives obtaining and using false identification to commit crimes and to avoid arrest, the Section took preliminary steps toward the establishment of a Federal Advisory Committee on False Identification. This Committee, which will consist of representatives from Federal agencies as well as from State and local government agencies and public interest groups, will develop a comprehensive Federal plan to prevent criminals from obtaining false identification and using it in bank robbery, car ring, immigration, credit card and other cases.

The cases arising out of the militant occupation of Wounded Knee in early 1973 continued to place heavy demands on Section attorneys. By the close of 1974, 123 persons were still under indictment in cases arising out of the occupation.

To deal with an increasing problem of political and extortion kidnaps, the Section obtained supervisory jurisdiction over violations of the Hobbs Act which involve kidnap attempts. In addition, to insure full and proper application of Federal resources to missing persons cases, the Section has initiated a new policy of closely reviewing each determination that such a case is not for Federal investigation. The editor of the Atlanta Constitution, John R. (Reg) Murphy, was kidnapped by "Col." A.H. Williams. Within a matter of days, Williams was apprehended and charged with extortion. Bobby Joe Keese was indicted in San Diego concerning the kidnap conspiracy in Hermosillo, Mexico, of American Vice Consul John S. Patterson, who later was found slain.

Protection of the integrity of the legal process continues as a high priority objective of the Section. Perjury filings remained stable at 71, but false declaration and obstruction cases rose eight percent to 268. Section attorneys reviewed a number of lengthy Congressional hearing transcripts and agency referrals for possible perjury and obstruction.

Escape cases were up eight percent to 824 and prison riot and contraband cases rose 40 percent to 51 in FY 1974. Section attorneys met with District of Columbia Corrections officials in an effort to solve recurring problems relating to escape, inmate assaults, contraband traffic, and operation of the furlough program at Lorton Reformatory. An escape attempt of three prisoners in the Federal Detention Center in New York City failed and the several guards seized as hostages were released unharmed. Trial in the case of *United States* v. *Hunter, et al.*, involving the kidnapping of four Federal prison employees during the July 31, 1973, riot at the Leavenworth Penitentiary, was delayed due to the apparent suicide by hanging of William D. Hurst on May 18, 1974.

Litigation involving Federal prisoners increased again this year with the total number of petitions up 10 percent to 4,987, including the habeas corpus petition of Lt. William Calley and the habeas corpus action of Pfc. Robert R. Preston, who flew a military helicopter onto the White House Lawn. In *Wolff* v. *McDonnell*, the Supreme Court limited the rights of prisoners in disciplinary actions resulting in loss of good time. This ruling is expected to substantially reduce the volume of this type of prisoner litigation.

During the year the FBI located 3,478 fugitives pursuant to the Fugitive Felon Act. Carl Bowles, an escaped murderer from the Oregon State Penitentiary, was apprehended in Idaho following a shoot-out with the FBI. Two hostages were later found dead. Three individuals will be prosecuted for harboring Bowles. Lindell Hunter, an escapee from the Georgia State Penitentiary, who was on the FBI's Ten Most Wanted List, was apprehended in Iowa.

In 1974 cases involving the adjudication of juveniles as delinquents in Federal courts numbered 727. In addition, the Criminal Division authorized adult prosecution of sixteen juveniles. The Supreme Court in *Dorszynski* v. *United States* settled the controversy regarding Youth Corrections Act sentences, holding that when a court declines to sentence under the Act, express no-benefit findings are required but supporting reasons for such findings need not appear on the record.

Prosecution Unit attorneys expended great effort in 1974 on the Patricia Hearst-Symbionese Liberation Army matter, and cases (four convictions) relating to shipment of weapons, ammunition and explosives to terrorists in Northern Ireland, bombing activities of anti-Castroites operating from Miami, and the Weatherman-claimed bombing of the California Attorney General's office and the Gulf Oil building in Pittsburgh. The plot of an American, a Moroccan, and a Pakistani to kidnap a high French official and force release of Moroccan prisoners in France failed when British Customs discovered weapons and ammunition the conspirators had sent by air in a false-bottomed truck from Los Angeles to London. In close cooperation with British authorities, two were convicted in England and the American in California.

Estimates of the float in counterfeit and stolen securities run as high as 50 billion dollars. The Section provides the necessary coordinated national approach to investigations and prosecutions for trafficking in illicit securities. An example this year was the indictment of some 47 defendants in the Middle and Southern Districts of Florida, of whom 31 have been convicted. Their activities ranged through Illinois, California, New York and Canada, as well as Florida, and involved some three to

four million dollars worth of counterfeit and stolen securities. In Jacksonville, Florida, ten persons were indicted in a massive counterfeit securities scheme involving the pledge of fake securities for loans in a number of banks.

**Appellate Section**

During 1974 the workload of the Appellate Section continued to increase. An average of 29 attorneys the Section prepared 1,205 responses to petitions for certiorari which had been filed in the Supreme Court. This represents a 20 percent increase over 1973 when 1,076 responses were prepared, a continuation of the steady increase over the last seven years; in Fiscal Year 1967 the comparable figure was 494. In addition, the Section prepared 19 briefs on the merits in Supreme Court cases and prepared 21 Government petitions and jurisdictional statements. Since briefs on the merits and petitions require considerable time, this represents a substantial effort on Supreme Court cases.

The Appellate Section continued to brief and argue many appellate cases, including those handled by various Strike Forces of the Organized Crime and Racketeering Section. The Section prepared and filed 99 such cases in 1974. This work represents a substantial part of the workload of the Section since many of these cases require a great deal of time to prepare because of long involved records and complex and numerous issues.

In 1974 there were 916 memoranda submitted to the Solicitor General recommending for or against further review of Criminal Division cases. This also is a substantial increase from previous years; up from 719 memoranda in 1973. In addition, the Court of Appeals Review Unit had substantial contact with United States Attorneys and continued to assume responsibility for important Court of Appeals litigation in the Fifth Circuit and Sixth Circuit. The Unit also continues to review and lend aid to United States Attorneys in preparing briefs at Courts of Appeals and last year reviewed 599 appellants' briefs.

The Supreme Court decided a great number of Criminal Division cases last year which have had a significant impact on the development of criminal law. Some basic decisions were made in the wiretap field and many more are expected in the future. In *United States* v. *Giordano,* the Court decided a very significant case under Title III of the Omnibus Crime Control and Safe Streets Act. The Court held that wiretap applications which had not in fact been authorized by the Attorney General personally or by specially designated Assistant Attorneys General did not comply with the statute, and, accordingly, the evidence obtained from such wiretaps and extensions was suppressed. The Court reasoned that Congress had intended to condition the use of wiretaps upon the judgment of senior officials who could be held accountable.

Two further wiretap cases were decided in favor of the Government. First, it was held in *United States* v. *Chavez* that even though the wiretap application incorrectly identified an Assistant Attorney General, there had been no statutory violation that warranted suppression; this is particularly true where the responsibility for the approval of the application had been properly exercised by the Attorney General. Second, the Court decided in *United States* v. *Kahn* that the failure in the application to name the defendant's wife, who was known to be in the household and used the telephone, did not make evidence of her conversation inadmissible. The Court held that the provision of "others as yet unknown" was sufficient under the statute to include the unnamed wife who at the time of the application was not known to have participated in the offense and against whom there was no independent probable cause to believe that she had committed an offense.

The Supreme Court continued to decide a great many important cases in the field of search and seizure. Foremost among its decisions was *United States* v. *Robinson,* where the Court held that whenever a police officer properly takes a suspect into custody the officer is authorized to make a full and complete search of that individual. Such search, under the circumstances, was held to be reasonable and it was not necessary to show that the officer was either searching for weapons or evidence of crime. In other words, the mere custodial arrest was held sufficient to support the full search. In addition, the Court in *United States* v. *Edwards* upheld a search of clothing of an accused ten hours after his arrest. The Court held that where the custodian was unable to secure appropriate clothing for the inmate, such delayed search without a warrant was reasonable. In *United States* v. *Matlock,* the Court held that where a third party gave consent to the search, even though evidence of her authority was hearsay, it was sufficient for the police to act. In *Gooding* v. *United States,* the Supreme Court also upheld the validity of a nighttime search for narcotics under the general Federal provisions which do not require any special showing to obtain a nighttime search warrant rather than one in the daytime. Finally, the Supreme Court in *Cardwell* v. *Lewis,* by a 5 to 4 vote, with Justice Powell specially concurring on a jurisdictional issue, held that there was no Fourth Amendment violation in obtaining paint samples from the exterior of the respondent's vehicle without a warrant even though the vehicle had been impounded by the police and thus was secure from being removed and having the evidence destroyed.

The Court decided an extremely important case in the mail fraud field which may have serious consequences in the future. By a vote of 5 to 4, the Supreme Court held, in *United States* v. *Maze,* that in the usual credit-card scheme the fraud had come to an end when the credit-card purchaser had obtained the product and that the subsequent use of the mails in transferring the credit slip did not affect the success of the scheme and thus did not provide jurisdiction under the mail fraud statute.

As usual, the Supreme Court decided a number of issues involving narcotics. In addition to the cases noted under search and seizure, the Supreme Court held, in *Warden* v. *Marrero,* that persons convicted under the Narcotics Act in effect prior to May 1, 1971, would not be eligible for parole or probation since those restrictive provisions were part of the punishment under the old act. This case, along with *Bradley* in the previous term, thus settled a long-standing problem of sentencing for those offenses prior to May 1, 1971. It is now clear that all the provisions of the old act, including mandatory sentence as well as ineligibility for parole and probation, apply to those offenses. In addition, the Court upheld the statutory provisions of the Narcotic Rehabilitation Act in *Marshall* v. *United States.* The Court there held that a defendant with two or more prior felony convictions was not eligible for "NARA" treatment and that Congress could rationally draw this distinction without violating the due process or equal protection clauses.

The Supreme Court also decided an important case involving grand jury witnesses. In *United States* v. *Calandra,* the Court held that a grand jury witness could not decline to answer questions based upon evidence allegedly obtained through an unlawful search and seizure. The Court held that to allow a full hearing as to the source of evidence used to formulate questions would tend to unduly interfere with the effective and expeditious discharge of the Grand Jury's duties and would only have a minimal effect on deterring police misconduct.

In *Hamling* v. *United States,* concerned with obscenity, the Court decided that those defendants whose cases were on direct appeal prior to the previous decision in *Miller* v. *United States* would be afforded all the benefits enunciated in *Miller* even though that case was decided subsequent to their offense. In addition, the Court clarified the matter of the standard to be used by the jury in deciding whether an item is obscene. The Court held that the District Judge could allow a jury to decide the obscenity *vel non* by using contemporary community standards without setting up any specific required geographical area. At the same time, the Court held it would be harmless error to instruct a jury on a national standard rather than the narrow community standard. In addition, the Court unequivocally upheld the constitutionality of the Federal Obscenity Statute, 18 U.S.C. 1461.

In dealing with the ever increasing litigation involving prison and parole problems, the Court in the last fiscal year term decided *Wolff* v. *McDonnell,* in which the Federal Government not only filed a brief *amicus* but also participated in the oral argument. The Court agreed substantially with the present Federal prison disciplinary practices. In particular, the Court ruled that due process as applied to prison disciplinary proceedings requires only that the prisoner be given written notice of the violation, opportunity to present evidence, and a statement of the reasons for the disciplinary action. The Court rejected the prisoner's claim that he was entitled to counsel and the right of cross-examination at such proceedings. In addition, the Court agreed with the present Federal practice that prison officials may constitutionally require that all incoming mail be opened in the inmate's presence to examine the contents for contraband.

The Supreme Court decided a very important military case. In *Parker* v. *Levy,* the Supreme Court upheld the constitutionality of Articles 133 and 134 of the Uniform Code of Military Justice. In light of the great number of convictions previously obtained under these Sections, this decision effectively settled a great many cases.

The Supreme Court upheld the Federal Government's expanded reading of gun control legislation. In *Huddleston* v. *United States,* the Court held that the Gun Control Act of 1968 covered the redemption of a firearm from a pawn shop under the provisions making it illegal to knowingly make a false statement in connection with the acquisition of any firearm. Thus the Court has strengthened the prosecutor's hand by allowing a conviction at any stage of transferring guns where false statements are made.

Finally, the Supreme Court settled the long-standing conflict regarding the application of the Youth Corrections Act in sentencing those who are eligible under that Act. In *Dorszynski* v. *United States,* the Court held that before a judge sentences a youth under applicable criminal statutes he must find unmistakably on the record that the offender would not receive benefit from treatment under the Act. While expanding this sentencing procedure, the Supreme Court held that the Judge need not support such finding with specific reasons, thus, a great deal of litigation in regard to the sufficiency of the finding will be avoided.

In addition to the specific decisions noted above, the Supreme Court decided a great number of Criminal Division cases having more limited application, such as approving the Government's forfeiture procedures in *Calero-Toledo* v. *Pearson Yacht Leasing Co.;* expanding

the use of collateral attack to cover new court decisions decided in *Davis* v. *United States;* limiting in *Michigan* v. *Tucker* the effect of *Miranda* in relation to the admission of evidence which was the fruit of an interrogation that occurred prior to the decision in *Miranda,* and, in *United States* v. *Kahan,* approving the use in a criminal case of voluntary testimony given in a preliminary proceeding.

**Comparative Workload Summary, Appellate Section**
**(Supreme Court Only)**

| Fiscal Year | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|
| Responses to petitions for certiorari | 478 | 539 | 632 | 712 | 777 | 954 | 1,076 | 1,205 |
| Briefs on the merits | 21 | 14 | 22 | 20 | 28 | 21 | 18 | 19 |
| Petitions and Direct Appeals | 5 | 2 | 9 | 24 | 24 | 16 | 15 | 21 |
| Memoranda to the Solicitor General | 153 | 189 | 234 | 566 | 646 | 705 | 719 | 916 |

### Fraud Section

The Fraud Section supervises the prosecution by United States Attorneys of criminal frauds arising under the mail fraud and wire fraud statutes, the securities act, and frauds arising from Government procurement and other programs involving expenditure or grants of Federal funds. In addition, the Section supervises the prosecution of embezzlement and misapplication of the funds and false entries in the records of national banks, financial institutions whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Corporation, and various Federal credit institutions. It also supervises prosecutions under the criminal provisions of the National Bankruptcy Act. The Section now supervises election fraud matters, including the "Federal Election Campaign Act of 1971" which, among other things, established reporting and disclosure requirements with respect to the receipt and expenditure of Federal election campaign funds.

The Section placed particular emphasis during the year on international fraud, the housing fraud program, securities fraud, and election fraud. A Major Violators Unit was created as part of the Section's efforts to curb international fraud schemes which affect our nation. The Unit placed particular emphasis during the year on the international activities of organized white collar criminals. Since its creation the Unit has directly secured convictions of over 15 defendants arising out of the fraudulent use of banks, mutual funds and insurance companies. Investigations are presently underway in the areas of insurance, mutual funds, advance fees and the fraudulent use of precious metals. Plans are underway to present to other nations through appropriate channels the extensive knowledge and experience that has been gained through this program. It is expected that this sharing of knowledge will greatly accelerate international cooperation and law enforcement in major fraud investigations.

In the housing fraud program, task forces of IRS, FBI and HUD personnel under the supervision of the Fraud Section and United States Attorneys are now operating in 24 major cities where fraudulent practices appear most prevalent. Since the inception of the program two years ago, 276 indictments naming 467 defendants have been returned, resulting in 280 convictions by trial or plea, including the conviction of three FHA Area or Insuring Office directors who were sentenced to terms ranging from 18 months to 10 years. The operation continues to expand. This undoubtedly is the most comprehensive fraud-against-the-Government investigation instituted and is a classic example of the coordinating and supervising capability of an enforcement section.

In the election fraud area convictions were obtained against 20 corporations and five individuals with respect to illegal corporate contributions to political candidates.

The Fraud Section recently established a Program Fraud Unit that will emphasize the need for quicker and better developed cases involving fraudulent Government loans or grants or the misuse of program funds. The Program Fraud Unit held a seminar in June of the principal executive branch grant agencies to acquaint them with the new unit and improve coordination with the Department of Justice and United States Attorneys. Similarly, two white collar crime seminars were conducted for Assistant United States Attorneys handling fraud cases.

On April 30, 1974, a two-year effort culminated in a court ruling in Denver, Colorado, upholding the admission into evidence of Swiss Bank documents admitted by letters rogatory on the basis of a deposition of a Swiss bank officer taken in Switzerland pursuant to 18 U.S.C. 3491 *et seq.* The statute, invoked for the first time in its 40-year history for this purpose, permits the prosecution to move for the taking of a deposition in a criminal case for the limited purpose of authenticating foreign business records. It was the first deposition of a Swiss national taken by an American Consular Officer on Swiss soil. Swiss law prohibits execution of "foreign official acts" on Swiss soil without express permission of the Swiss Federal Government. The evidence was involved in the case of John Hay. The documents in question show that funds, which allegedly were received as a bribe, were paid into the Swiss bank account of Hay.

Following is a selection of other significant cases in which Fraud Section personnel actively participated:.

—In California, the indictment of John G. Burke, former president of Geotek Resources Fund, Inc., and others for mail fraud and violations of the securities laws in the sale of securities of oil exploration programs;

—In the District of Columbia the conviction (plea) by former Congressman J. Irving Whalley of Pennsylvania for conspiracy to defraud the United States stemming from payroll irregularities;

—In Wisconsin the conviction of Robert Crowley, Sr. and other family members on charges of misapplication of funds of the City Federal Savings and Trust, Milwaukee, Wisconsin;

—The February 1974 indictment in Texas of Jake Jacobsen and Ray Cowan for bank misapplication in connection with loans made by the First Savings and Loan Association of San Angelo, Texas; .

—The conviction in Florida of Jack Morrow and Russell Moore on charges of mail fraud and conspiracy to defraud investors in securities of a fraudulent Panamanian bank, Normandie Trust, of over one-half million dollars. This was part of the international fraud program;

—The convictions in Florida of William C. Smith and others on mail fraud charges in the fraudulent sale of loan commitments of the Anglo-Canadian Group, Ltd., a worthless Canadian corporation, also an international fraud case;

—An indictment was returned in California charging C. Arnholt Smith, prominent financier, and Philip Toft with misapplication of over $170 million for the U.S. National Bank of San Diego, California;

—In Florida, the indictment of a United States Senator and others on charges of conspiracy and bribery in connection with the solicitation of funds from HUD contractors in return for favored treatment in the award of contracts;

—In Arkansas and Indiana, those convicted and fined for political contributions included two Arkansas milk producer executives, an East Chicago bank, and the Arkansas Electric Cooperative, Inc., along with 15 local electric cooperatives;

—In North Carolina Dr. John Robert Kernodle, Chairman of the Board of Trustees of the American Medical Association and a Director and Chairman of North State Bank of Burlington, N.C., was sentenced to 18 months for misapplication of bank funds. He and four other bank officers, one of whom was a former state banking commissioner, pleaded guilty to the charge.

### Management and Labor Section

The Management and Labor Section is charged with the supervision of the Federal criminal statutes relating to employee-employer relationships and the internal operations of labor unions. The Section includes within its jurisdiction those statutes prohibiting interference with interstate commerce by extortion, embezzlement of a union's assets by an officer or employee of the union, improper payments by employers to union officials, embezzlement of the assets of pension and welfare funds, and the payment of kickbacks to influence the acts of trustees or agents of pension and welfare funds. The Section's jurisdiction also extends to the supervision of the explosive statutes whenever explosives are used in connection with a labor dispute. Finally, the Section has jurisdiction over violations of the reporting requirements of the Welfare and Pension Plans Disclosure Act and violations of the Labor Management Reporting and Disclosure Act.

Fiscal Year 1974 saw the culmination of several years of effort devoted to the investigation of the operation of the United Mine Workers of America (UMWA) and the murder of Joseph Yablonski. In September 1973, W.A. Boyle, former President of the UMWA, was indicted in the Western District of Pennsylvania along with William J. Turnblazer, President of District 19, UMWA, for conspiracy to violate Yablonski's civil rights in violation of 18 U.S.C. Sec. 241. The two were also indicted by the Commonwealth of Pennsylvania on three counts of murder. Turnblazer plead guilty to the Federal offense and was subsequently sentenced to a term of 15 years' imprisonment. On April 11, 1974, Boyle was convicted on the murder charge in the Pennsylvania Court of Common Pleas. The Federal indictment was subsequently dismissed without prejudice. In December 1973, the Supreme Court denied certiorari of Boyle's previous conviction for violations of 18 U.S.C. Secs. 371, 610 and 29 U.S. Sec. 501(c). The fine of $130,000 imposed as part of the sentence was subsequently collected.

During the year Section attorneys were instrumental in obtaining the conviction of Calvin Stubbs, Ira Kiner, Sam Pruett, Oscar Toney and Rosedell Kiner, all officers of Local 124, United Construction and Trades International Union, Detroit, Michigan, for violations of 29 U.S.C. Sec. 186. Also convicted were Jack Moriarty, Regional Representative, American Guild of Variety Artists, in Detroit, Michigan. Moriarty entered a plea of guilty to a charge of violating 29 U.S.C. Secs. 436 and 439 after making restitution of $1,400 of misappropriated funds. Section attorneys also obtained the conviction of Clarence J. Quinn, Jr., a self-proclaimed black civil rights leader in Atlanta, Georgia, for violations of 18 U.S.C. Sec. 1951, a charge which stemmed from Quinn's attempt to extort money from Atlanta merchants. Others indicted and convicted through the efforts of Section attorneys include Donald D. Mahon, President of the National Brotherhood of Packinghouse and Dairy Workers and National Executive Secretary-Treasurer of the National Industrial Workers of Des Moines, Iowa. Mahon, who had been a candidate for Congress in 1966, 1968 and 1970,

entered a plea of guilty to three counts of embezzling union funds and misappropriating such funds in support of his political campaigns. He was sentenced to three years' probation and ordered to make restitution.

Section attorneys were also responsible for obtaining the indictment of James Robert Martin and Thomas Hitchcock, lettuce growers of Salinas, California, and Theodore J. Gonsalves, former Secretary-Treasurer of Local 748, International Brotherhood of Teamsters, for violation of 29 U.S.C. Sec. 186. The growers are alleged to have made unlawful payments to Gonsalves to influence his actions and to assist them in a dispute with the United Farm Workers. Also indicted were Allen Dorfman, Irwin Weiner, Ronald DeAngelis, Anthony Spilotro, Jack Sheetz, and Albert Matheson, in a scheme to misapply the funds of the Central States Pension Fund of the Teamster's Union, located in Chicago, Illinois.

Finally, Section attorneys participated in the successful defense of a civil action brought by former President of the Teamster's Union, James R. Hoffa, against the Attorney General to void a condition in the grant of executive clemency which bars Hoffa from engaging in union activity prior to March 6, 1980.

Six indictments or informations were filed against 12 defendants for violations of Section 302 of the Taft-Hartley Act, and 10 persons were convicted of offenses under the statute; 44 indictments were returned against 49 defendants, and 56 persons were convicted of embezzling union funds in violation of 29 U.S.C. Sec. 501(c). Also, 18 indictments were filed against 16 defendants, and 10 persons were convicted of making false entries in union records in violation of 29 U.S.C. Section 439. Twelve indictments charged 18 defendants with embezzlement of welfare and pension plan assets in violation of 18 U.S.C. Section 664, and 16 defendants were convicted. Two indictments charged two defendants with failing to provide information required to be reported by the Welfare and Pension Plans Disclosure Act in volation of 29 U.S.C. 308, and four persons were convicted. Seven indictments charged seven persons with violations of 18 U.S.C. Section 1954 in that they gave or received kickbacks in connection with welfare and pension plan activities, and eight persons were convicted of violating that statute. Finally, 136 indictments were returned against 274 persons for extortion under the Hobbs Act (18 U.S.C. Section 1951), and 275 defendants were convicted.

**Legislation and Special Projects Section**

The Legislation and Special Projects Section has primary responsibility for developing and supporting the Criminal Division's legislative program and for providing wide-ranging support services, principally in the nature of legal research and advice, to other Sections of the Criminal Division, United States Attorneys' Offices, and Federal investigative agencies. A primary concern of the Section is the drafting of the Department's legislative program on crime, the evaluation of other pending legislative proposals dealing with crime, and the development of practical, legal, and constitutional analyses in support of important legislation.

Approximately two-thirds of the Section's work was related to assisting in the development of an entirely new Federal Criminal Code. The principal effort was directed to developing a draft of such a code that could be supported both by the members of Congress interested in revision of the Federal criminal laws and by the Department of Justice, superseding the present S.1, 93rd Cong. (introduced by Senators McClellan, Ervin, and Hruska) and S.1400 and H.R. 6036, 93rd Cong. (introduced on behalf of the Administration). Substantial progress has been made resulting in the publication of a 700-page committee print of a bill creating a new Federal Criminal Code. It contains a commonly supportable draft of the substantive provision, the procedural and administrative provisions, and the necessary conforming amendments to over 800 non-Title 18 offenses that are scattered throughout the 50 titles of the United States Code. More than 2,000 pages of background analyses were prepared for the consideration of the Senate Judiciary Committee's staff in its preparation of a Senate Report on the bill. Members of the Section participated with other representatives of the Department in testifying before the Senate Judiciary Committee on provisions of the code encompassing the defense of insanity; the principles of accomplice and organizational liability; the mental elements of criminal offenses; the inchoate offenses of criminal conspiracy, criminal attempt, and criminal solicitation; and the substantive offenses relating to obstruction of Government functions in general, obstruction of law enforcement, obstruction of justice, contempt, perjury and false statements, and bribery and graft. In addition, members of the Section held informal briefing sessions with members of the Criminal Justice Subcommittee of the House Judiciary Committee to explain the provisions of the proposed Federal Criminal Code and appeared before the annual convention of the Federal Bar Association to explain the death penalty provisions and the general sentencing provisions of the proposed code.

The Section also did extensive drafting and support work in relation to several other legislative matters. The Section participated in the drafting of provisions that would create an offense of attempted aircraft hijacking, and that would apply a constitutionally supportable death penalty to aircraft hijacking offenses during which a death occurs. Both of these provisions were incorporated in the Anti-Hijacking Act of 1974. The Section also worked on legislation involving juvenile delinquency proceedings, credit card frauds, speedy trials, pre-trial diversion programs, reporters' privilege, prison and parole matters, changes in Federal grand jury practice, and restriction of access to criminal records.

The Criminal Divison received many requests from congressional committees and Government departments and agencies for comment on pending bills. The Section wrote or supervised the writing of comments dealing with 96 bills and legislative proposals referred to the Section for comment. The Legislation and Special Projects Section is also involved in a number of programs designed to assist in the effective enforcement of Federal criminal law.

The Assistant Attorney General in charge of the Criminal Division is an exofficio member of the Advisory Committee on Criminal Rules of the Judicial Conference, pursuant to appointent by the Chief Justice of the United States. This important committee is charged with the task of drafting and recommending changes in the Federal Rules of Criminal Procedure. The Section engaged in extensive background research on various proposals to amend the Federal Rules of Criminal Procedure and a member of the Section accompanied the Assistant Attorney General to meetings by the Advisory Committee for the purpose of assisting in the presentation of the Department's views on several pending proposals. Members of the Section also participated in an intradepartmental committee, chaired by a member of the Section, which was established to consider the position of the Department of Justice with regard to possible further changes in the Federal Rules of Criminal Procedure. The Section likewise participated in the work of an intradepartmental committee established to make recommendations concerning the proposed Federal Rules of Evidence that were forwarded to the Congress by the Chief Justice of the United States.

The Section initiated a revised, week-long training program for new Department attorneys assigned responsibilities in the trial of Federal criminal cases. The program is designed to acquaint new attorneys with policy issues, legal issues, and trial practice matters that they may expect to encounter in criminal trials. In addition, the Section began the organization of several specialized training programs covering particular pretrial and trial problems. The Section also began the initial development of a series of trial practice manuals for use by Department attorneys and United States Attorneys, and began work on a complete revision of the criminal portion of the United States Attorneys' Manual.

The Section engaged in considerable research on several criminal law problems, including constitutional and procedural matters relating to grand juries, the legal and practical implications of pre-trial diversion programs and the supervision of such programs, and the propriety of dissemination of criminal justice information to and from state law enforcement agencies.

The Section operates an Immunity Unit to coordinate and monitor the use of the immunity provisions of Title 2 of the Organized Crime Control Act of 1970, as well as the immunity provisions contained in 18 U.S.C. 2514. During the period January 1 to September 30, 1974, the Unit received and processed 1,195 requests for authority to seek immunity for 2,219 witnesses.

A Legislative History Unit is maintained by the Section, the primary responsibility of which is to compile histories of significant legislative matters and to provide access to all background materials connected with any given legislative proposal. During 1974 the Unit, at the request of other Department attorneys, assisted in researching 529 issues involving legislative matters.

A Research Unit is also maintained by the Section. This Unit digests, analyzes, indexes and files recent court decisions and legal memoranda and assists Government attorneys in their research of legal and policy issues. The Unit also prepares summaries of the important recent decisions involving the Federal Rules of Criminal Procedure which are published biweekly in the United States Attorneys' Bulletin.

The Section operates a Correspondence Unit which prepares answers to mail received by the Department of Justice from citizens on subjects pertaining to crime and criminal law. The Unit also provides information for the use of Members of Congress in reply to similar letters from constituents. During the year the Unit directly handled 3,329 such letters, of which 669 had been forwarded to the Department by Members of Congress.

**Government Regulations Section**

The Government Regulations Section supervises litigation to enforce criminal and civil sanctions of a wide variety of statutes providing for the regulation of private activity by Federal departments and agencies. These include statutes having for their purposes protection of consumers; protection of public health; conservation of birds, fish, and mammals, including endangered species; protection of miners, longshoremen, and other workers; regulation of all modes of transportation; and regulation of communications. The Section also supervises international extradition and judicial assistance matters; legal matters arising under the immigration, citizenship and naturalization laws; criminal and civil sanctions of the custom laws; and the enforcement of miscellaneous criminal statutes, such as the White Slave Traffic Act, the

copyright laws, the Jenkins Tobacco Tax Act, the Export Control Act, the Gold Reserve Act, and criminal sanctions under the Soldiers' and Sailors' Civil Relief Act.

The bulk of the Section's work under the immigration and naturalization laws is civil litigation, consisting of representing the Government in petitions for review of deportation orders in courts of appeals; habeas corpus, declaratory judgment, injunction, and other actions in the district courts; and appeals from district court decisions.

There continues to be a substantial volume of cases in both the district courts and the courts of appeals challenging the actions of the Secretary of Labor under the labor certification program, the purpose of which is to protect the American labor market from the harmful impact of an influx of non-essential foreign workers. The Section received 226 petitions for review of deportation orders in courts of appeals and 85 appeals from district court actions, as well as 371 declaratory judgment actions and 94 other actions in district courts. In addition, the Immigration and Naturalization Service referred directly to United States Attorneys potential criminal cases involving 48,809 violations, resulting in the prosecution of 17,966 violations. Included were cases of illegal entry, document fraud, false representation as to United States citizenship, and re-entry without permission after deportation.

The Court of Appeals for the Ninth Circuit issued three decisions interpreting and expanding *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973), so as to restrict severely the authority of the Immigration and Naturalization Service to stop and search vehicles at immigration checkpoints. The checkpoints continue to be operated under area warrants of inspection. The Solicitor General has authorized petitions for certiorari in these cases in an effort to get definitive guidance from the Supreme Court.

The Section plays a vital role in all extradition matters. It acts as liaison between the investigative agencies, the United States Attorneys, and the Department of State; reviews and aids in the preparation of documents seeking extradition of fugitives to the United States to insure that they are sufficient and meet treaty requirements; and reviews all documents submitted pursuant to extradition requests from foreign countries. The Section also participates with the State Department in a continuing program to expand and modernize our extradition treaties. During the year a new treaty with Paraguay entered into force; treaties with Denmark, Italy and Uruguay were ratified by the Senate; negotiations of new treaties with Canada and Australia were completed; and treaties with five other countries were at various stages of completion. Over 250 extradition matters were handled; 15 fugitives were Galley extradited to the United States; the return of 25 other fugitives was accomplished by other means, such as deportation or voluntary return; extradition requests for five of our fugitives were denied by foreign governments; and four of our fugitives were being prosecuted locally in lieu of extradition. Over 50 extradition requests were pending with foreign governments at the end of the year. Foreign governments were represented in United States courts in 12 extradition cases resulting in the extradition of eight fugitives to foreign countries with four cases still pending.

Major commercial distributors of pornography continue to be the primary objects of the Section's obscenity program. There were convictions of 54 defendants in 37 cases involving distributors of obscene materials compared with convictions of 33 defendants in 24 cases in 1973 and only two convictions in 1969. On June 30, 1974, there were 108 cases pending in the Federal courts in either pre-trial, trial or appellate status involving 244 defendants. An intensified program directed at the commercial distribution of hardcore 35 mm. motion picture films has continued, resulting in a number of convictions. These cases included such hardcore films as "Deep Throat" in the Middle District of Florida and the Eastern District of Kentucky, and "Hot Circuit" in the District of Columbia. In addition to its responsibility for criminal prosecutions, the Section supervises litigation based upon statutory authority to restrain the dissemination of sexually oriented advertisements through the mail to persons who are offended by them. Three cases were initiated to restrain the dissemination of offensive sexual matter to unwilling recipients.

The Section supervises criminal and civil actions to enforce a wide variety of regulatory statutes administered by the Department of Agriculture, including the Agriculture Marketing Agreement Act, the Animal Quarantine and Laboratory Animal Welfare Acts, the Federal Seed Act, the Grain Standards Act, the Federal Meat Inspection Act, the Poultry Products Inspection Act, the Twenty-Eight Hour Law, and the Warehouse Act.

During the year, the Department of Agriculture referred 227 criminal cases and 145 civil cases; 180 criminal and 110 civil cases were terminated; and a total of $54,523 in fines and penalties was imposed.

Litigation for enforcement of various transportation statutes is also supervised by the Section. Of notable importance is the enforcement of the statutes dealing with safety on the highways and waterways, in aviation, and in railroading. During the past year 128 civil penalty cases were terminated under the aircraft safety provisions of the Federal Aviation Act and a total of $125,624 in penalties was collected; 15 cases under the railroad safety laws were concluded in favor of the Government with fines and penalties of $34,050; 244 convictions were obtained under the motor carrier safety laws with fines totaling $244,400; and 51 convictions were secured under the Interstate. Commerce Act (including the supplementary Elkins Act) with fines of $784,300.

Among other highlights were the following:

—With the enactment of Public Law 92-140, copyright protection was extended to sound recordings, the sale of unauthorized duplication of recordings having mounted to hundreds of millions of dollars annually. In 1974, a vigorous enforcement policy produced a sharp increase in criminal prosecutions resulting in 68 convictions secured with but one acquittal.

—The first criminal convictions under the Federal Coal Mine Health and Safety Act when the Consolidation Coal Company and one of its employees were convicted in the Southern District of Ohio after a fallen roof had killed a young miner.

—The first two criminal convictions under the Occupational Safety and Health Act were secured against corporations in Omaha, Nebraska, and Denver, Colorado. Each case involved the death of a workman caused by the collapse of a trench at a construction project.

—Six oil companies were fined in the District of Colorado under the Migratory Bird Treaty Act for killing birds as a result of negligent maintenance of open oil sludge pits.

**Internal Security Section**

The Internal Security Section handles matters relating to the Nation's internal security. The Section prosecutes cases involving treason, espionage, sedition, sabotage, and violations of the Neutrality Act and Trading with the Enemy Act. In addition, the Section is responsible for all civil cases related to internal security instituted against the United States or suits for damage or injunctive relief involving internal security matters. It also administers the Foreign Agents Registration Act of 1938 and supervises enforcement of the Military Selective Service Act. Organizationally, the work of the Section is discharged by four units.

**Statutory Unit**

The Statutory Unit is responsible for enforcing criminal statutes relating to national security and foreign relations, including treason, espionage, sabotage and atomic energy matters. It also supervises the prosecution of offenses involving the Neutrality Act, the Trading with the Enemy Act, and the Munitions Control Act. In addition, it enforces the statutes which prohibit fishing by foreign vessels within U.S. territorial waters and is responsible for the supervision of the Military Selective Service Act.

Among the more significant cases handled by the Unit during the past fiscal year were the following:

—Two individuals, members of an anti-Castro Cuban exile group, entered guilty pleas during the course of their trial in the District of New Jersey on a charge of conspiracy to destroy property of the Cuban Government located in Canada, in violation of the Neutrality Act (18 U.S.C. Section 956).

—A Federal grand jury in the Eastern District of Louisiana returned an indictment charging Reynolds International, Inc., with unlawfully importing ore into the United States from Rhodesia, in violation of the Rhodesian Sanctions Regulations. The Rhodesian Sanctions Regulations were promulgated pursuant to the United Nations Participation Act of 1945. On December 15, 1973, the firm entered a guilty plea and the Court imposed a fine of $5,000 and ordered a forfeiture of the ore valued at $18,000.

—The District Court for the District of New Jersey entered a final judgment of conviction against John W. Butenko, thereby concluding the lengthy post-trial litigation in the famous espionage case which began in 1964, and involved efforts to pass national defense secrets relating to the Strategic Air Command to agents of a foreign power. In March 1969, the Supreme Court vacated the judgment of conviction and remanded this case to the District Court for an evidentiary hearing on the question of whether the conviction was tainted by unlawful electronic surveillance. There were numerous motions and hearings conducted in an effort to resolve this question and finally, in May, 1974, Butenko withdrew his motion for hearing on the electronic surveillance question and the Court entered a final judgment of conviction in the case.

—Seven foreign vessels were seized during the year for fishing in United States territorial waters in violation of 16 U.S.C. 1081 (the Bartlett Act). The vessels were from Japan (two), Russia, Bulgaria, Romania, Mexico, and South Korea. The largest recoveries in fines and civil settlements in the history of the enforcement of the Act were obtained in two cases, $300,000 in a case involving a Japanese vessel and $250,000 against a Russian vessel. A record total of $1,105,000 in fines and civil penalties was obtained during the year. Enforcement of this statute requires close coordination with the Coast Guard and the Departments of State and Commerce, the latter agencies having a substantial interest in the foreign relations and conservation aspects of these actions.

The Unit provided specific advice and guidance to the various United States Attorneys in matters of law, policy and procedure in thousands of instances involving

prosecutions under the Military Selective Service Act, as well as in civil litigation involving in-service conscientious objectors seeking habeas corpus relief. In 1974, 1,393 cases were instituted and 2,563 were terminated by trial or dismissal, leaving a total of 4,398 pending indictments; 4,062 of this group are fugitives from justice.

Although the draft has been discontinued, the enforcement of the Selective Service Act continues. Since July 1, 1973, when the authority to induct expired, the only obligation still demanded of young men under the Military Selective Service Act has been the duty to register. All but a few young men have fulfilled this obligation in a timely manner and, in accordance with Departmental policy, prosecutions for failure to register have only been initiated where the failure has been for an unconscionably prolonged period and has resulted from knowing disregard or willful neglect.

The Unit processed 26 requests from historical researchers and scholars for access to Department files under the Freedom of Information Act, 5 U.S.C. 552. The requests involved such cases as the prosecutions of Alger Hiss, Julius and Ethel Rosenberg, and Ezra Pound, and required hundreds of hours of attorneys' time in screening files.

The Attorney General requested a complete review of the Counterintelligence Program that had been carried on by the FBI for twenty years. A representative from the Unit participated in the five-month study, which resulted in a comprehensive report being submitted to the Attorney General.

### Civil Litigation Unit

The Civil Litigation Unit has responsibility for representing the United States in all civil cases, both in the district court and the court of appeals, involving internal security matters instituted against the United States or its officials and for initiating all suits for damage or injunctive relief involving internal security matters within this area of responsibility. With this duty goes the ancillary responsibility for providing advisory opinions and legal advice to all governmental agencies and departments on internal security matters which may in the future generate civil litigation. Additionally, this unit has the responsibility for the supervision of all civil forfeiture actions provided under statutes within its jurisdiction.

The majority of the civil workload of this Unit involves the defense of civil suits instituted against the Attorney General and various Federal officials by individuals alleging that they have been the subject of a warrantless national security electronic surveillance conducted in violation of their constitutional and statutory rights. Each of these suits is grounded upon the Supreme Court decision in *Bivens* v. *Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), establishing a Federal cause of action under the Fourth Amendment for alleged torts committed by Federal agents, upon 18 U.S.C. Section 2520 which provides a civil remedy for surveillances alleged to have been conducted in violation of Title III of Omnibus Crime Control and Safe Streets Act. The factual predicate for the majority of these suits arises from either the disclosure of a warrantless national security electronic surveillance by the Government in a companion criminal case or simply upon a general allegation by the plaintiff stating a belief that he has been illegally overheard. In all of these actions the plaintiffs seek monetary damages and in most cases injunctive relief prohibiting such alleged surveillance by the Government in the future.

Several important legal issues are presented by these pending cases. One example involves a suit instituted following the decision by the Supreme Court in *United States* v. *United States District Court*, 407 U.S. 297 (1972), holding that the President does not have the power to authorize warrantless electronic surveillances for purely domestic intelligence gathering purposes. The defendant involved in the surveillance found unlawful by the Supreme Court instituted a civil suit alleging a violation of his Fourth Amendment rights by the Federal defendants who authorized and conducted the surveillance. In resolving this question, one of the issues before the Court in the pending cases will be whether the Supreme Court's decision should be applied retroactively to now provide the plaintiff with a civil cause of action against those Federal defendants who acted in the good-faith belief that their conduct was lawful. In a similar context, a civil suit was instituted following the disclosure of the fact that in early 1969 a national security electronic surveillance was authorized by the President to determine the source or sources of the disclosure of highly classified information which had appeared in the press. In that suit, one of the subjects of the surveillance alleged that his Fourth Amendment rights were violated by this national security surveillance. In resolving this issue, the Court will be presented with the question of whether the conduct of such a surveillance by the Executive is reasonable under the constraints of the Fourth Amendment when it is authorized by the President for foreign policy purposes to protect national security information against foreign intelligence activities.

This Unit is currently defending these and other similar civil cases involving challenges to the conduct by the Executive of warrantless national security surveillance, as well as civil suits challenging the investigative and intelligence gathering activities of the Federal Bureau of Investigation and other Government agencies. In one such suit decided this year, the United States District Court for the District of Columbia concluded that where an electronic surveillance was instituted under the constitutional authority of the President over the conduct of the Nation's foreign affairs and pursuant to his inherent power to protect the national security, such surveillance was reasonable within the meaning of the Fourth Amendment and not violative of Title III of the Omnibus Crime Control and Safe Streets Act, where the activities of the organization which was the subject of the surveillance constituted a clear threat to the Nation's foreign relations.

Other civil litigation handled by this Unit involved suits arising under the Trading with the Enemy Act; suits challenging adverse determinations made under the personnel security program of the various Governmental agencies; and civil forfeiture actions.

In one personnel security case decided this year, the United States District Court for the Eastern District of Pennsylvania upheld the revocation by the Department of Defense of a security clearance granted by a Government contractor where it was determined that the holder of the clearance had *inter alia* failed to disclose material facts on his Department of Defense personnel security questionnaire.

In another action, plaintiffs brought suit against the Attorney General and the Secretary of State claiming that the Government's refusal to grant temporary visas to four Cuban filmmakers invited by plaintiffs to a film festival in the United States violated plaintiffs' First Amendment rights. Following a ruling in plaintiffs' favor requiring the Secretary of State to set forth his reasons for denying the Cubans temporary visas, the Secretary explained that three of them were members of or affiliated with the Communist Party of a foreign state, Cuba; that they were ineligible for visas under the Immigration and Nationality Act; and that to grant them waivers would be incompatible with the policy of the United States in isolating Cuba from other countries. The United States District Court for the Southern District of New York found this reason sufficient and upheld the Government's action, rejecting plaintiffs' contention that the Government must determine as to each applicant individually whether the plaintiffs' First Amendment rights should take precedence over the Government's national security and foreign policy interests. The Court also upheld the Secretary's requirement that the fourth Cuban, as to whom the Department of State did not have sufficient information, apply in person to a consular office for a determination of his eligibility for a visa, even if it meant that this individual must travel to another country with which the United States has diplomatic relations.

### Registration Unit

The Internal Security Section through its Registration Unit administers and enforces three registration statutes designed to protect the national defense, internal security and foreign relations of the United States. They require public disclosure by persons who, on behalf of foreign interests, engage in propaganda and other activities seeking to influence public opinion or official action.

During the year registrations under the Foreign Agents Registration Act (FARA) increased by 94, bringing the total to 2,521, of which 510 are currently active. Short-form registrations increased by 479, bringing the total to 11,409, of which 3,723 are currently active. These short-form registration statements were filed by persons who directly rendered services or assistance as officials or employees of a registrant in the interest of the latter's foreign principal.

Reviews were made of 12,434 separate pieces of propaganda filed during the fiscal year and 6,466 reports were made on the dissemination of the propaganda filed by registrants. The decline in propaganda received over 1973 was due largely to a refinement in the criteria requiring submission.

From 1943 through 1974, a total of 32 inspections of books and records pursuant to 22 U.S.C. Section 615 were made, in the main by the FBI. Subsequently, a vigorous new administration and enforcement program was commenced. The assignment of additional personnel to the Unit permitted the staff to inaugurate a comprehensive program of inspections and field conferences which was designed to insure maximum disclosure through the monitoring of registrants' activities for or on behalf of their foreign principals and to assist registrants in improving their responses to the disclosure requirements of the Act. In addition, liaison between the Registration Unit and a number of other Government agencies, including several committees in both houses of Congress, was intensified. This, in part, permits the staff to acquaint pertinent agencies and other officials of Government with the provisions of the Act of concern to them.

Seven new registration statements were filed pursuant to Public Law 893 by persons who had knowledge of or had received an assignment or training in the espionage or sabotage service of a foreign country. The total of such registrations under this Act is now 113.

### Civil Disturbance Unit

The Civil Disturbance Unit receives, collates and evaluates investigative reports and information, from

departmental and other sources, that pertain to actual or potential violent or disruptive activity prejudicial to the orderly conduct of Governmental affairs. The Unit also examines investigative reports and public source material to collect, analyze and evaluate information pertaining to the plans, activities, methodology and impact of individuals and groups who engage in extremist or terrorist activity. Pertinent information is processed and disseminated to appropriate elements of the executive branch.

The Civil Disturbance Unit is the focal point for the discharge of the Attorney General's responsibility for coordinating all Federal civil activity in connection with civil disorders. It adminsters and operates the Department of Justice Information Center (DJIC) which monitors, nationwide, all activity having civil disturbance potential. The Unit has continuing liaison with Federal investigative and enforcement agencies and U.S. Attorneys in order to maintain an informed posture calculated to insure a carefully measured response to civil disorders. It administers the civil disorder program in liaison with the Senior Civilian Representative of the Attorney General teams which may be deployed during civil disorders to provide on-the-scene information to assist in the discharge of his responsibilities. The Unit also provides key Departmental personnel, and other elements of the executive branch, with timely, necessary information on potential civil disturbances.

The Unit administers the departmental "watch officer" program which ensures that a responsible senior attorney is available within five minutes on a 24-hour basis to deal effectively with suddenly emergent requirements and specifically to be responsive to an executive branch program, managed by the Department of State, which provides for immediate interagency reaction to non-military occurrences which could have an adverse impact on the conduct of foreign relations.

**Additional Responsibilities**

Personnel of the Internal Security Section also represent the Department on three of the six subordinate groups of the Interdepartmental Committee on Internal Security (ICIS). ICIS is directed by its charter to "effect the coordination of all phases of the internal security field, except those specifically assigned to the Interdepartmental Intelligence Conference." It takes action necessary to insure the highest practicable state of internal security, including planning and preparing for adequate internal security in the event of a war-related emergency. ICIS is comprised of representatives of the Departments of Justice, State, Defense and Treasury. The Justice representative (Deputy Assistant Attorney General, Criminal Division) serves as the Committee's chairman. The chairman is appointed by the President after consultation with the Attorney General. ICIS has established under it a Standing Committee, four subcommittees (each of which is responsible for a particular area of internal security), and a joint committee with the Interdepartmental Intelligence Conference. Such groups are comprised of representatives from approximately 20 other departments and agencies concerned with internal security matters. The Section also provides the Executive Secretary of the ICIS and his staff.

**Narcotic and Dangerous Drug Section**

The Narcotic and Dangerous Drug Section is responsible for the criminal and civil litigation arising under the Federal laws pertaining to narcotics, marijuana and other dangerous drugs, all of which are classified as "controlled substances" under the Controlled Substances Act (21 U.S.C. 801 *et seq.*). In addition, the Section is responsible for supervision of litigation arising under the Narcotic Addict Rehabilitation Act of 1966.

Supplementing the Section's supervisory function are two Units, one for the Southeastern United States at Miami, Florida, and the other for the Southwest at San Diego, California, each of which is actively involved in the investigation and prosecution of controlled substance offenses. In addition, attorneys from the section have continued to assist United States Attorneys in the trial of complex cases.

The following are highlights of major prosecutions coming under the Section's supervisory authority during the year:

—The conviction of Clarence F. Batchelder and his 24-year-old son, Robert, in San Diego, California, of conspiracy to distribute LSD and marijuana. About one-half pound of LSD was seized from the Batchelders at the time of their arrest. The LSD's street value was over 10 million dollars. Clarence Batchelder was sentenced to eight years in prison and given a lifetime special parole term. Robert was sentenced to three years in prison and also given a lifetime special parole term.

—The arrest by Drug Enforcement Administration agents in Las Vegas, Nevada, of Gary Lickert and the seizure of 25 crates of stereophonic speakers in which 817 pounds of hashish were concealed. The hashish's street value was about five million dollars. The hashish was shipped to Lickert from Holland and was detected by a "marijuana sniffing dog" at JFK International Airport in New York City.

—In *United States* v. *Capo*, et al., which was tried in the Northern District of Florida, all seven defendants were convicted of attempting to import over nine tons of marijuana. Six defendants received 20-year prison sentences. The seventh was given a 10-year sentence.

—Herbert Sperling, 34-year-old leader of a New York narcotic ring, was sentenced to life imprisonment and fined $300,000 after being convicted of various narcotic offenses, including a charge of violating the continuing criminal enterprise provisions of the Controlled Substances Act. Ten other members of Sperling's ring were sentenced to prison terms ranging from three to 12 years.

—The Sixth Circuit Court of Appeals affirmed to conviction of Leroy F. Collier for unlawfully importing large amounts of cocaine and for violating the continuing criminal enterprise provisions of the Controlled Substances Act. Eleven pounds of pure cocaine were seized from Collier at the time of his arrest. The Sixth Circuit, relying largely on the rationale of *United States* v. *Manfredi*, 488 F. 2d 588 (2d Cir. 1973), summarily rejected Collier's claim that the continuing criminal enterprise provisions are unconstitutionally vague.

—Rene Texeira, a major New York City heroin trafficker, and several of his associates were convicted of conspiracy and other narcotic violations in the Southern District of New York. Texeira was given a 20-year prison sentence. Two of his lieutenants also received long prison terms (15 years and 20 years). Texeira, in addition to widespread narcotic activities in the New York City area, also shipped large amounts of heroin to New Orleans, Louisiana. Two of his couriers who transported heroin to New Orleans testified against him at trial.

—Conviction of Carmine Tramunti, boss of one of New York's five organized crime syndicates, and 14 other individuals, on narcotic offenses. Tramunti was sentenced to 15 years on May 7. In October 1973, Tramunti was indicted with 32 others involved in a cocaine ring. Several of Tramunti's codefendants were indicted for conspiring to murder the main prosecution witness against Tramunti.

—Methaqualone was placed in Schedule II of the Controlled Substances Act. Methaqualone is a non-barbiturate dispressant which is used legitimately as a sleeping aid and daytime sedative. The drug was placed under control after it was found to be subject to grave abuse by young people and can lead to psychological and physical dependence.

—Indictment of Vincent Pappa, a major narcotic trafficker, with others in a heroin conspiracy involving a case in which 164 pounds of heroin and $967,450 in cash were seized. Pappa presently is serving a five-year sentence for a conviction for narcotic violations and income tax evasion.

**Court Operations**

| | FY 1974 | FY 1973 | FY 1972 |
|---|---|---|---|
| Days in Court | 3830 | 3481 | 3159 |
| Days in Grand Jury | 1402 | 1984 | 1677 |

**Organized Crime Syndicates**
**High Echelon Convictions**

| Fiscal Year | Number of Defendants Indicted | Number of Defendants Convicted |
|---|---|---|
| 1974 | 68 | 69 |
| 1973 | 111 | 69 |
| 1972 | 121 | 60 |
| 1971 | 106 | 61 |
| 1970 | 109 | 33 |
| 1969 | 59 | 29 |
| The overall activity of the Section is reflected as follows: | | |
| 1974 | 2521 | 1765 |
| 1973 | 2408 | 1616 |

**Witness Security Program Expenditures for Principals**

| Fiscal Year | $ Expended | Number of Principals | Total in Family |
|---|---|---|---|
| 1969 | Not available | 29 | 67 |
| 1970 | $ 162,358.36 | 53 | 141 |
| 1971 | 429,563.61 | 92 | 248 |
| 1972 | 744,851.83 | 222 | 537 |
| 1973 | 1,271,969.03 | 347 | 849 |
| 1974 | 2,210,000.00 | 504 | 1,145 |

Note that the $ amounts represent costs for subsistence, housing, medical, movement of household goods for witnesses protected and/or maintained under the provisions of DOJ Memo 734.

# Antitrust Division

The Antitrust Division has the primary goal of promoting competition in all sectors of the American economy. The Sherman and Clayton Acts, which the Division has primary responsibility for enforcing, reflect the basic economic tenet that business decisions made in a setting of competition in price, quality, and service will produce more and better goods at lower prices to the consumer than decisions made in an environment of monopoly or combinations of competitors. Competition, and the antitrust policy designed to preserve it, is of course, a primary force in coping with the problems of inflation.

The Division's principal concern is the protection of the the public, the American consumer who in the final accounting pays the price for all goods and services produced. The Division promotes competition and prosecutes those who seek to destroy it in the firm belief that only through vigorous, free competition can we develop and maintain the economic potential to produce the things needed at prices which the public can afford.

Section 1 of the Sherman Act makes price-fixing which affects interstate commerce a federal crime. The impact of weakened competition and widespread price-fixing is particularly dangerous during a period of severe inflation. During fiscal year 1974, the Division filed 31 cases involving price-fixing, and it has worked with State Attorneys General and the Offices of the United States Attorneys to mobilize other resources to combat this problem. During fiscal year 1975, the Division hopes to work even more closely with these Offices. In addition, the Division seeks to prevent monopolization in the free market sector of the economy and to prevent anticompetitive mergers. The largest percentage of staff time and attention is required for the above area.

Another of the Division's goals is to have a maximum impact on regulatory agency decision-making. A procompetitive influence on rule-making can affect an entire industry, and has broad and lasting results in terms of fostering competition. When it is considered that some 10 percent of the GNP falls within the regulated area—in excess of 100 billion dollars—it is understood that every one percent reduction in economic waste in this area would currently save consumers more than a billion dollars a year. Suits have also been brought alleging abuse of the regulatory process to achieve anticompetitive ends.

The Division has continued its activity in advising both the Administration and the Congress with respect to the impact of existing law and new legislative proposals on competition, and in appraising whether such legislation is needed and appropriately drafted. The Antitrust Division has proposed and supported the enactment of laws designed to enhance its investigatory powers, to increase maximum fines in Sherman Act cases, to make a violation of the Sherman Act a felony rather than a misdemeanor, to streamline judicial procedures in antitrust litigation, and to provide appellate review of interlocutory orders or injunctions. For instance, the Division supports legislation to raise the maximum fine for antitrust criminal violations from $50,000 to one million dollars. This latter provision is important because at present a corporation can engineer a price-fixing conspiracy that nets literally millions of dollars a year to the conspirators, and look forward to a maximum fine, if detected, prosecuted and convicted, of only $50,000.



While the Division can ask jail terms for up to a year for the individuals concerned, jail sentences are short and infrequent.

Another important function of the Division is to advise courts through the filing of briefs *amicus curiae* in cases of private litigation involving the application and interpretation of antitrust principles. There are a growing number of requests by courts and private litigants for *amicus* briefs on matters involving competition and this is considered an important litigation activity.

The Antitrust Division has been delegated the responsibility for supervising the litigation of most of the new consumer protection agencies as well as certain of the established consumer agencies. This involves advising the agencies, aiding in the preparation of pleadings, reviewing proposed cases, and cooperating with the Offices of United States Attorneys throughout the country in the trial of these matters. The statutes involved include the Federal Food, Drug and Cosmetic Act, the Hazardous Substances Act, the Federal Trade Commission Act, the Fair Credit Reporting Act, and the Consumer Product Safety Act.

In fiscal year 1974 the Division had an authorized strength of 327 attorneys, 34 economists and 268 support personnel. Over one-third of the attorneys served in the Division's seven field offices. The Division filed 67 antitrust cases (33 civil and 34 criminal) in the Federal district courts. This is an increase over the 62 cases (42 civil and 20 criminal) filed in 1973. Of the cases instituted in fiscal year 1974, 13 involved mergers, 31 alleged price fixing and nine contained monopolization charges.

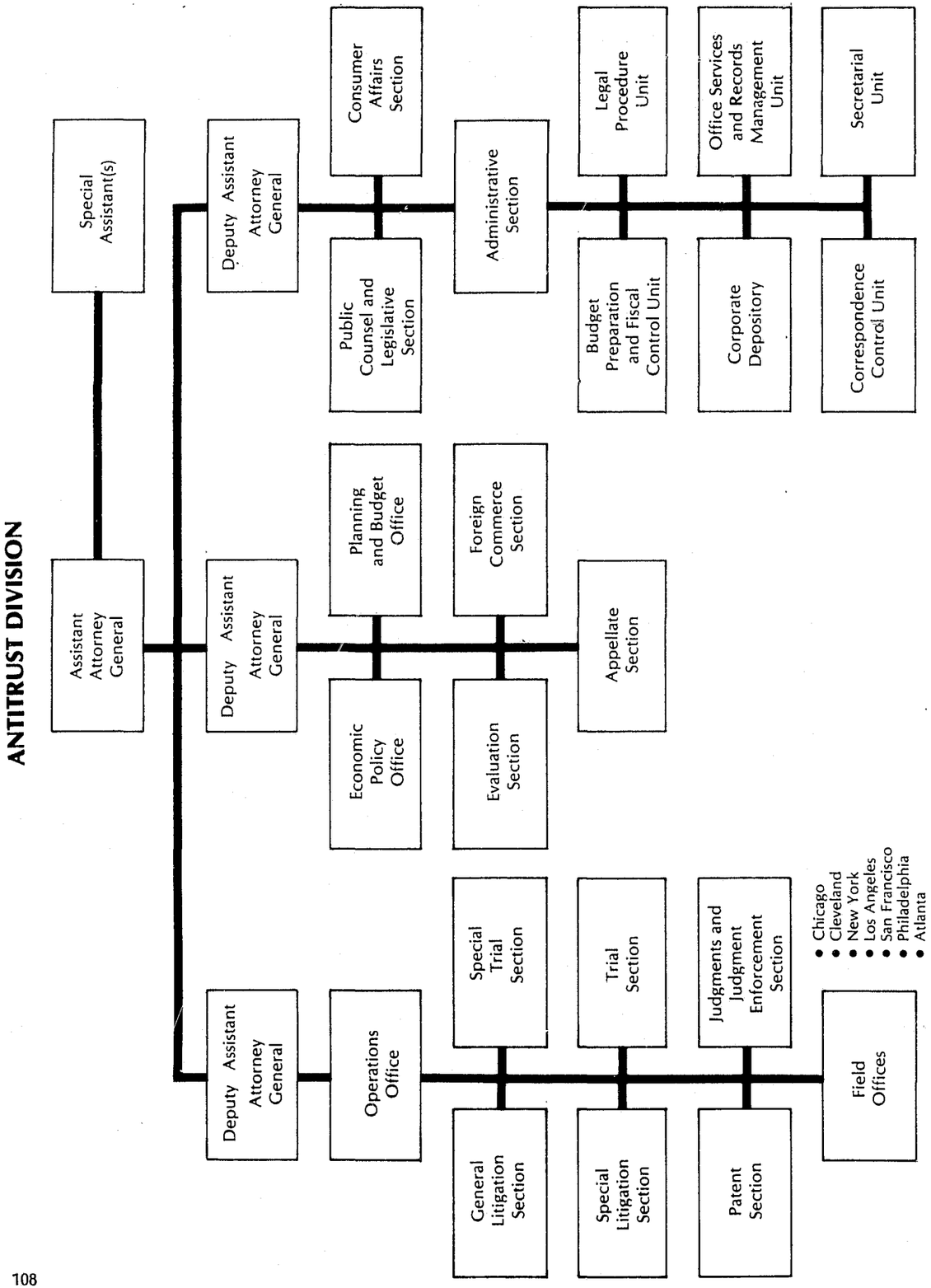
In the past year the Division terminated 66 cases (48 civil and 18 criminal) and at the end of the fiscal year there were 135 cases (101 civil and 34 criminal) pending. In addition, there were two cases in which consent decrees were signed by one or more, but not all defendants, and the cases were settled, but not terminated. This was due to the customary 30-day waiting period from the time a decree is lodged with the court to the time it is finally entered. Of the 48 civil cases closed, the Government won 42, lost three and dismissed three; of the 18 criminal cases concluded, the Government won 15 and lost three. One antitrust case, appealed to the Supreme Court in fiscal year 1973, was terminated in 1974. This case was lost by the Government. In 1974, two cases were appealed to the Supreme Court.

Since the Antitrust Division is responsible for initiating its own litigation without referrals from other agencies, investigations are of major importance. While the number of investigations in fiscal 1974 (335) was less than fiscal 1973 (455), the decrease did not affect the number of cases filed. In fact, cases increased. With the establishment of the Economic Policy Office, new procedures have been set up which have eliminated unpromising investigations, thereby reducing the quantity of investigations, but increasing the quality of the investigative program. During the past year the Division commenced 37 grand jury investigations compared to 34 in 1973.

Much of the Division's litigation and investigatory work is conducted by six litigating sections in Washington, i.e., General Litigation, Special Litigation, Trial, Special Trial, Patent, and Judgments and Judgment Enforcement. The first four sections have broad responsibility within defined industries and focus upon all potentially anticompetitive conduct or transactions, from price fixing through mergers within those industries. The Patent Section concentrates upon the anticompetitive procurement and use of patents. The Judgments and Judgment Enforcement Section is charged with securing defendants' compliance with judicial decrees which the Division has won in previous litigation.

In addition, the Division's seven field offices—located in Chicago, Cleveland, New York, Philadelphia, Atlanta, Los Angeles, and San Francisco—have broad enforcement responsibility for all antitrust violations within the regions they serve. Finally, three other sections located in Washington have important litigation and enforcement tasks. The Public Counsel and Legislative Section conducts significant antitrust investigations and litigation in the regulated industries; the Foreign Commerce Section has responsibility for antitrust cases and investigations involving export and import trade of the United States; and the Consumer Affairs Section is responsible for litigation under consumer protection statutes other than the Sherman and Clayton Acts. All of this litigation and investigation, with the exception of the activities of the Consumer Affairs Section, is supervised and directed by the Office of Operations. Novel and difficult issues of antitrust law and policy are often referred to the Evaluation Section for analysis and comment.

The Antitrust Division's appearances before regulatory agencies and advice on proposed legislation are also assigned primarily to the Public Counsel and Legislative Section, but personnel from other sections are often involved in such activities as well, including staff from the Foreign Commerce Section, the Evaluation Section, and the Economic Policy Office. In addition, both the Appellate and Consumer Affairs Sections have considerable contact with other executive branch agencies. These sections plus the Planning and Budget Office report to two Deputy Assistant Attorneys General who have overall responsibility for interagency affairs, legislative activity, and continuing reassessment of long-term Division goals and policies.






To increase the efficiency of utilization of Division resources and expand enforcement, the Division was reorganized during 1974 to the configuration mentioned above. In the area of greater efficiency, the responsibility for litigation has been streamlined; controls have been tightened; and there has been a reduction in unnecessary layers of review. The Economic Policy Office, formerly the Economic Section, has been given more authority and has become more sophisticated in its approach to antitrust matters. Previously it had been largely used for support at trial. Now it is developing the ability to survey an entire industry, and spot rigidities or other indications of other than market forces at work which may help to uncover violations which would otherwise be unnoticed. Also worthy of note is the creation of a new unit, the Office of Planning and Special Programs, which will monitor utilization of manpower and resources. The Division will now be able, for the first time, to get a concrete idea of what avenues pay off in terms of enforcement, and what avenues simply use up manpower and money which might be more effectively applied elsewhere.

There was also established, in the past year, a special energy unit which has been conducting a preliminary investigation to determine if there were any violations of the antitrust laws by the major oil companies in connection with the recent fuel shortage and resulting sharp price increases.

**New Cases Initiated**

The Division continued a vigorous program of litigation attacking price fixing, market and customer allocations, reciprocity, monopolization, mergers, and other forms of anticompetitive conduct. A brief description of some of the significant cases filed during the year follows.

**Price Fixing**

A Federal grand jury in Pittsburgh, Pennsylvania, indicted the nation's six largest gypsum board manufacturers and ten of their present and former top executives for combining and conspiring to restrain trade in violation of Section 1 of the Sherman Act(1). A criminal contempt petition was filed at the same time in the U.S. District Court in the District of Columbia. According to the indictment, the six corporate defendants and two co-conspirator corporations had total sales of gypsum board during the period covered by the conspiracy (1960-1973) of more than $4 billion, and account for more than 90 percent of the total sales of this product in the United States. The contempt petition charged that the combination and conspiracy violated the final judgment of the U.S. District Court for the District of Columbia entered on May 15, 1951, in a civil antitrust suit brought by the Justice Department against seven gypsum manufacturers.

Under existing law, the maximum penalty upon conviction of the charge in the indictment is $50,000 fine for each company and one year in prison and a $50,000 fine for each individual. The court in a criminal contempt action has discretion as to the punishment to be imposed.

A civil antitrust suit was filed in the U.S. District Court in Houston, Texas on October 15, 1973, against nine steel companies on charges of violating Sections 1 and 2 of the Sherman Act in connection with the sale of reinforcing steel bars (re-bars) in Texas(2). Re-bars are used by the companies in fabricating other steel materials and are also sold to independent fabricators. Among the defendants were three of the nation's largest steel companies, U.S. Steel, Bethlehem, and Armco. A criminal action involving fourteen steel companies, including the nine named in this civil suit, is pending in the same court based on an indictment returned on August 30, 1973. The defendant firms operate steel mills at which reinforcing steel bars are produced. Re-bars are used to reinforce concrete in highways, buildings, bridges, and other structures. Sales of re-bar materials in Texas by the defendants amount to over $20 million annually.

The complaint alleged that the defendants combined and conspired to restrain trade and to monopolize from 1969 to at least 1972 in violation of Sections 1 and 2 of the Sherman Act by raising and stabilizing prices of reinforcing steel bars; requiring independent fabricators in the Dallas and Houston areas to limit their bid submissions for the supply of re-bar materials to construction projects requiring no more than a specified tonnage of steel bars; and allocating certain construction contracts among themselves in accordance with their respective shares of the market for re-bar materials in the state of Texas. According to the complaint, the conspiracy had the effect of increasing the price of re-bar materials in Texas and of eliminating competition between the mills and the independent fabricators in the Houston and Dallas-Fort Worth areas.

A Federal grand jury in Dallas, Texas, indicted four flying services in Texas, Arizona, Alabama, and Wyoming on charges of price fixing and other antitrust violations in connection with Federal crop-dusting contracts(3). A companion civil suit named the same four defendants: Aviation Specialties Co., Mesa, Arizona, Clark's Aerial Service, Brownfield, Texas, Dothan Aviation Corp., Dothan, Alabama, and Ralco, Inc., Cheyenne, Wyoming.

The indictment and civil suit charged that since at least as early as 1968, the defendants had engaged in a combination and conspiracy to allocate among themselves government crop dusting contracts, submit rigged bids

on such contracts, and to cooperate in discouraging other companies from entering bids, all in violation of Section 1 of the Sherman Act. According to the indictment and complaint, the Federal government spent a substantial proportion of its $26 million fire and control budget on crop dusting services in the area served by the defendant. The maximum penalty upon conviction of each corporate defendant is a fine of $50,000.

A Federal grand jury in Springfield, Illinois, indicted 22 contracting firms and four of their executives, charging them with bid rigging in connection with the construction of federally assisted highway projects in the State of Illinois(4). Seven separate indictments were returned. The indictment involved 11 highway construction projects in Illinois, on which the state received bids in early 1972. The total amount of bids for those projects was over $20 million.

According to the indictments, the defendants agreed to allocate among themselves specific projects, and submit collusive, rigged bids to the State of Illinois. The indictments charged that as a result of the conspiracy, Illinois and the U.S. Government were denied the benefits of free and open competition in highway construction, and prices of Federally assisted highway construction were fixed and maintained at high, artificial, non-competitive levels. The maximum penalty upon conviction is $50,000 for each corporate defendant and one year in prison and a $50,000 fine for each individual defendant.

Indictments and civil suits were filed in the U.S. District Court in Phoenix, Arizona, against five Arizona baking companies and six of their current and former executives, charging conspiracy to fix prices and rig bids on bakery products in Arizona(5). The corporate defendants sold approximately $31 million dollars worth of bakery products in 1972 to both private retailers and governmental and other institutions, including schools and hospitals. The indictment and complaint charged that as a result of conspiracy beginning as early as 1963, prices of bakery products in Arizona were raised to, and maintained at artificial, non-competitive levels, and purchasers of bread and bread products were unlawfully deprived of free and open competition in the sale of bakery products.

Indictments and civil suits were filed in the U.S. District Court in San Francisco against nine producers of paper labels and eight of their present and former top executives, charging conspiracy to illegally fix prices(6). The defendants' product, non-pressure sensitive paper labels, is used primarily on packages of food, beverage, drug and cosmetic products.

The defendants were charged with engaging in a combination and conspiracy in violation of Section 1 of the Sherman Act, beginning as early as 1966, to fix, raise, maintain and stabilize the prices of labels; fix and stabilize other terms and conditions of sale; obtain prior to submitting a bid or price quotation to a particular account, information regarding bids, price quotations, or prices currently in effect at that account from the member of the conspiracy who had previously submitted bids to or was currently supplying that account; and refrain from competing for all or part of the label business or customers supplied by another member of the conspiracy. The conspiracy was also alleged to be in violation of a 1942 judgment in *United States* v. *Schmidt Lithograph Co., et al.,* and the Department of Justice petitioned the court to issue an order requiring two of the defendant companies to show cause why they should not be held in criminal contempt.

A Federal grand jury in Trenton, New Jersey, indicted 12 building maintenance firms and five company officials on charges of bid rigging allocating customers throughout New Jersey(7). A companion civil suit was also filed.

The defendant companies furnish janitorial and general cleaning services to residential and commercial property owners in New Jersey. In 1972, they had total revenues of about $25 million. The indictment charged the defendants with violating Section 1 of the Sherman Act by conspiring, since at least 1967, to allocate customers; refrain from soliciting or competing for the customers so allocated; impose requirements of compensation on building maintenance companies which fail to adhere to the terms of the conspiracy; and submit noncompetitive and rigged bids.

One of the company officials was also indicted for conspiracy and obstruction of justice in connection with the withholding of evidence from the grand jury. Another company official was indicted for making a false declaration to a grand jury.

**Reciprocity**

The Department of Justice filed a civil antitrust suit charging Continental Can Company, Inc. of New York City with using reciprocal arrangements with its customers and suppliers in violation of the Sherman Act(8). Continental is the largest container manufacturer in the United States. It manufactures and sells cans, bags, plastic bottles, fiber drums, corrugated cartons and other containers throughout the United States. It had total sales in 1972 of approximately $2.2 billion.

A proposed consent judgment was also filed. The proposed consent judgment would prohibit Continental for ten years from using its purchases to aid, influence or promote its sales to suppliers; purchasing or selling products, goods or services on the condition or understanding that purchases by it from any supplier will be based or conditioned upon its sales to such suppliers; communicating to anyone that its sales to any firm are a factor in its purchasing decisions; maintaining statistical compilations that compare sales to and purchases from suppliers; and assigning any trade relations function or duty to any employee. The judgment would also order Continental to disregard its sales to any supplier as a factor in its purchasing decisions.

A complaint and proposed consent judgment were filed against Grow Chemical Corporation, a New York City paint and coatings manufacturer, for using reciprocal purchasing arrangements with its customers and suppliers in violation of the Sherman Act(9). Grow Chemical Corporation is engaged in the production and sale of paint, coatings, solvents, adhesives, sealants, plastic tubing, industrial cleaning materials and other chemicals. In 1971, Grow had total sales of approximately $60 million. According to the complaint, Grow's reciprocal purchasing arrangements had the effect of foreclosing sales by its competitors and by competitors of its suppliers.

The proposed judgment would prohibit Grow for 10 years from using its purchases to aid, influence or promote its sales to suppliers; purchasing or selling products, goods or services on the condition or understanding that purchases by it from any supplier will be based or conditioned upon its sales to such supplier; communicating to anyone that its sales to any firm are a factor in its purchasing decisions; maintaining statistical compilations that compare sales to the purchases from suppliers; and assigning any trade relations function to any employee. The judgment also orders Grow to disregard its sales to any supplier as a factor in its purchasing decisions.

**Monopolization**

The Department filed separate civil antitrust suits against the nation's two largest tire manufacturers—Goodyear and Firestone—charging that each independently attempted to monopolize the replacement tire market(10). The suit also charged each company with having made anticompetitive acquisitions of smaller firms. The suits were filed in U.S. District Court in Cleveland, Ohio. No conspiracy between the two companies was charged in either suit.

According to the complaint, the tire manufacturing industry is highly concentrated, with five major tire companies accounting for more than 95 percent of the tires sold to vehicle manufacturers and more than 80 percent of the replacement tire market. The replacement tire market, involving new tires eventually sold directly to consumers at retail, is twice the size of the new vehicle tire market, bringing in sales of more than $2 billion a year. The Goodyear Tire and Rubber company is the largest of the five major tire manufacturers, and has the largest share of the replacement tire market, i.e., approximately 28 percent. In 1971 its total sales of all products exceeded $4 billion. The Firestone Tire and Rubber Company is the second largest tire manufacturer, with approximately 25 percent of the replacement market, and 1971 total sales of over $2.5 billion.

The charges of attempted monopolization against the two companies were based upon a series of independent acts and practices by each defendant. The complaint alleged that actions by the defendants violated the Sherman and Clayton Acts by eliminating and suppressing price competition; forcing small independent tire distributors from the replacement market; raising barriers to entry into the production of tires by acquiring independent distributors; and reducing competition in the tire industry as a whole. The suits asked the court to order divestiture of those assets and facilities of each of the two defendants which may be necessary to dissipate the effects of the alleged violations. Also requested were orders enjoining the defendants from practices having the purpose or effect of continuing, reviving, or renewing any of the violations charged in the complaints.

A civil antitrust suit was filed in U.S. District Court in Kansas City, Missouri, charging a dairy cooperative, Mid-America Dairymen, Inc., with attempting to monopolize and unreasonably restrain the sale of milk in a ten-state area(11). This was the third antitrust suit filed by the Justice Department since 1972 challenging the activities of the nation's dairy cooperatives. Two previous suits were filed against Associated Milk Producers, Inc. and Dairymen, Inc.

Mid-America has its principal headquarters in Springfield, Missouri, and has a membership of approximately 19,000 milk producers located in Texas, Missouri, Kansas, Nebraska, Iowa, Illinois, Minnesota, Wisconsin, Arkansas and Oklahoma. The complaint charged that Mid-America has attempted to monopolize the sale of milk in its marketing area, in violation of Section 2 of the Sherman Act, by a number of practices designed to eliminate competition from independent producers.

A Federal grand jury in Washington, D.C. indicted the three leading United States transporters of mobile homes, and six individuals, on charges of monopolizing the business of transporting mobile homes in violation of Sections 1 and 2 of the Sherman Act(12). The three corporate defendants are Morgan Drive Away, Inc., Elkhert, Indiana, National Trailer Convoy, Inc., Tulsa, Oklahoma, and Transit Homes, Inc., Greenville, South Carolina. Since 1965 these three companies have accounted for more than 85 percent of all revenues earned

from transporting mobile homes. In 1971, carriers engaged in the mobile home transportation business in the United States earned revenues exceeding $71 million.

Mobile home carriers transport mobile homes from the factories which manufacture them to dealers, from dealers to sites selected by mobile home purchasers, and from one site to another. The transportation industry is regulated, and authority to transport mobile homes must be obtained from the Interstate Commerce Commission where interstate business is involved or from state regulatory agencies.

The indictment charged that since at least the early 1950's, the defendants combined and conspired to restrain and monopolize, and did monopolize, the business of transporting mobile homes within the United States.

**Challenges to Anticompetitive Conduct in the Service Industries**

A civil antitrust suit was filed in U.S. District Court in Portland, Oregon, charging that fee schedules of the Oregon State Bar are unreasonable restraints of trade which have eliminated fee competition among lawyers in the sale of legal services(13). All of the approximately 3,700 attorneys licensed to practice law in Oregon are required by state law to be members of the state bar association. According to the complaint, members of the Oregon State Bar receive total estimated revenues of $150 million each year for rendering legal services. The suit charged that the Oregon State Bar and its members have for many years combined to violate Section 1 of the Sherman Act by agreeing to adopt uniform minimum fee schedules; adopt uniform suggested fee schedules; and publish, circulate, and utilize such schedules. As a result of these activities, the complaint charged, fees for the sale of legal services have been fixed at artificial levels, and purchasers of legal services have been denied the right to obtain such services at competitively determined fees.

The suit asked that the court enjoin the Oregon State Bar and its members from adopting, distributing, or suggesting any schedule of legal fees to be charged by attorneys in the State of Oregon.

**Mergers and Acquisitions**

A civil antitrust suit was filed to prevent Black and Decker, the nation's largest manufacturer of portable electric power tools, from acquiring McCulloch Corporation, the nation's largest manufacturer of gasoline-powered chain saws(14). In 1972, Black and Decker's total sales exceeded $346 million; McCulloch's 1972 total sales exceeded $60 million. In that year more than one million gasoline-powered chain saws were sold, worth approximately $115 million.

According to the complaint, although Black and Decker does not presently manufacture or sell gasoline-powered chain saws, such equipment is complementary to Black and Decker's power tool line and may be marketed through the same distribution channels and advertised in the same media. It was also alleged that Black and Decker was one of only a few companies with the capability and incentive to expand into the gasoline-powered chain saw market and that competition generally in that market might be substantially lessened if the proposed acquisition was consummated.

A suit was filed in the U.S. District Court in Philadelphia, challenging the acquisitions by Mrs. Smith's Pie Company, Pottstown, Pennsylvania, of four related companies described in the complaint as the "Harriss Company(15)."

At the time of the acquisitions in May 1973, Mrs. Smith's Pie Company was the nation's largest producer of frozen dessert pies and Harriss Company was the nation's fourth largest producer. The owner of the two Harriss Pie Companies also owned Douglas Cold Storage Co. and Food Industries of America, Inc., which were engaged in processing and storage of Harriss Company products, and were included in the acquisition.

According to the complaint, Mrs. Smith's Pie Company accounted for approximately 33 percent of total industry sales in 1972, with sales of $53.5 million. The Harriss Company accounted for seven percent of industry sales in 1972, with sales of $12.2 million. The complaint alleged that the production and sale of frozen dessert pies is a highly concentrated industry, with four producers accounting for 61 percent of total industry sales in 1972. The complaint alleged that the acquisitions would eliminate direct competition between Mrs. Smith's and Harriss, and would increase concentration and substantially lessen competition in the frozen dessert pie industry. The complaint asked that the acquisitions be declared unlawful and that Mrs. Smith's Pie Company be required to divest itself of the four acquired companies.

A suit was filed in the U.S. District Court in Boise, Idaho, challenging the 1972 acquisition of a large grocery wholesale firm by a retail grocery chain(16). The retailer, Albertson's Inc., is located in Boise, and operates more than 250 supermarkets in 13 western states, Arkansas and Louisiana. At the time of the acquisition in 1972, Albertson's was the largest retailer of groceries and related products in a geographic market encompassing southern Idaho and eastern Oregon; its sales of $36 million account for 14 percent of the area's total grocery sales. The wholesaler, Mountain States Wholesale Company is also located in Boise, and in 1972 had $53 million in sales of groceries in the southern Idaho eastern



Oregon market, 43 percent of all sales at wholesale in that area. Before its acquisition by Albertson's, Mountain States also sponsored a group of affiliated retail grocery stores which operated in southern Idaho-eastern Oregon and competed for sales with Albertson's and other retail grocery stores. In 1972, the affiliates accounted for four percent of total retail grocery sales in the area.

According to the complaint, Albertson's purchases of groceries and related products from Mountain States amounted to about $22 million, or about 18 percent of all purchases from grocery wholesalers in southern Idaho and eastern Oregon. The complaint alleged that because of the acquisition competitors of Mountain States in the wholesale distribution of groceries and related products have been foreclosed from access to Albertson's as a customer; competitors of Albertson's may be foreclosed from access to Mountain States as a supplier; barriers to entry into the wholesale distribution of groceries in the southern Idaho-eastern Oregon market have been raised; and competition betweenAlbertson's and Mountain States' group of affiliated grocery stores in the retail distribution of groceries has been permanently eliminated. The complaint asked that Albertson's be required to divest itself of Mountain States, that the companies be ordered to take such action as is necessary to restore the competition eliminated as a result of the acquisition, and that Albertson's be enjoined for a ten-year period from acquiring any wholesale or retail distributor of groceries and related products in southern Idaho-eastern Oregon.

**Banking**

Two civil antitrust suits were filed in the U.S. District Court in Detroit challenging the acquisition of two Michigan banks by the Michigan National Corporation of Bloomfield Hills, Michigan(17). One suit challenged Michigan National Corporation's proposed purchase of Valley National Bank, in Saginaw, Michigan; the other opposed the purchase of the Central Bank, N.A., in Grand Rapids. (Similar challenges originally filed November 14, 1973, had been dismissed by a Federal district court on February 19, 1974, without prejudice, on the ground that the suits were filed prematurely.) Michigan National Corporation's principal subidiary, Michigan National Bank in Lansing, Michigan, was also named as a defendant in both suits.

The suits charged that the proposed purchases would violate Section 7 of the Clayton Act by eliminating competition between Michigan National Corporation and the banks to be purchased. The suits also argued that the proposed acquisitions could increase concentration in commercial banking in the Saginaw and Grand Rapids banking markets.

The proposed acquisitions were approved by the Federal Reserve Board on October 18, 1973 and by the Comptroller of the Currency on May 16, 1974. The suits sought to have the acquisitions declared unlawful and enjoined.

A suit was filed in the U.S. District Court in Rutland, Vermont, challenging the merger of The Merchants National Bank, Burlington, Vermont, and Montpelier National Bank, Montpelier, Vermont(18).

As of December 31, 1972, The Merchants National Bank had total deposits of $57.7 million and Montpelier National Bank had total deposits of $32.6 million. Montpelier National was the second largest bank in the Montpelier-Barre area of Vermont, with 21.2 percent of that area's commercial bank deposits. Merchants National was the fifth largest in that area, with 8.3 percent of commercial bank deposits. Consolidation of the two banks would make the resulting bank the largest in the area.

The complaint alleged that the proposed acquisition would violate Section 7 of the Clayton Act by eliminating competition between the two banks in the Montpelier-Barre area. The complaint also alleged that concentration in that area would be substantially increased and that overall competition in the area would be substantially lessened. The suit asked that the proposed merger be declared unlawful, and that the defendants be enjoined from carrying out any such merger or consolidation.

**Allocation of Customers and Territories**

A Federal grand jury in Philadelphia indicted United Parcel Service of America, Inc., New York, New York on charges of conspiring with another firm to allocate customers and service areas for the delivery of packages in the Philadelphia metropolitan area(19). Named as unindicted co-conspirators in the indictment and a companion civil suit were Hourly Messengers, Inc., a wholesale package delivery company operating in the Philadelphia-Camden area, and Alvin Rosenberg, the former owner of Hourly Messengers.

According to the indictment, the effects of the conspiracy were to restrain and suppress actual and potential competition between the two firms, to deprive customers of UPS and Hourly Messengers the opportunity of an open and competitive market, and to stabilize and maintain the price of special delivery wholesale package delivery service by Hourly Messengers at artificial and non-competitive levels.

**Patents**

A civil antitrust suit was filed in the U.S. District Court for the Southern District of New York, charging the

Copper Development Association, Inc., and eleven copper fabricating companies with entering into an agreement to restrict the assignment and licensing of two United States patents relating to a special plumbing system, called the Sovent system, in violation of Section 1 of the Sherman Act(20).

The Sovent system is used primarily in high-rise office and residential buildings. Due to its unique design, the system eliminates the need for additional tubing required in conventional plumbing systems and therefore affords a cost savings to the purchaser.

The complaint charged the eleven copper companies and their Association with conspiring to exclude manufacturers and sellers of noncopper plumbing materials from the market for the Sovent system, by jointly acquiring the United States patent rights to the system and thereafter restricting the assignment and licensing of the two patents to only those manufacturers who agreed to produce the system in copper or copper-based alloys. The complaint charged that as a result of the unlawful agreement, competition has been restricted in the manufacture and sale of the system, and in the manufacture and sale of plumbing pipe and tubing generally.

The complaint asked that the defendants be ordered to grant licenses, on reasonable terms and at non-discriminatory rates, to all appplicants for the system, and that the defendants be enjoined from limiting in any way the licensing or assignment of the patents comprising the system.

**Foreign Activities**

The Division conducted investigations, by grand jury and civil investigative demand, of corporate activities tending to restrain free competition of America's import and export trade. A civil case was filed against an American firm, Foote Chemical, and a major German company, Metalgesellschaft, to halt a conspiracy to divide world markets in the sale of the metal lithium. Also, the Division's Foreign Commerce Section continued its program of notification and cooperation with Canada and the other members of the Organization for Economic Cooperation and Development (OECD). Semi-annual meetings of the OECD Restrictive Business Practices Committee were held in November and April. Many topics were discussed at these meetings, and special attention was given to the need for increased international antitrust enforcement and legislation as a restraint on inflation, and to the possibilities of increased cooperation in international antitrust enforcement. There was considerable discussion of the antitrust aspects of patent licensing arrangements, export cartels, and multinational corporations. Antitrust actions instituted by the various members were reviewed as in the past. The Division also participated in several meetings of working parties of the Restrictive Business Practices Committee of the OECD. These working parties produce summaries and recommendations concerning particular international competitive problems such as multinational corporations, transnational mergers, export cartels, and government procurement policy.

In addition to its normal case work and activities regarding international cooperation, the Division has been increasingly active appearing before other Government agencies in its role as advocate for procompetitive policies in United States foreign commerce before other agencies of the United States Government. Principal activities of this kind concern Federal Tariff Commission proceedings involving antidumping enforcement. The Division has filed briefs and proposed changes in the existing regulations with the objective of preserving fair import competition as sanctioned by law, and has appeared before the Commission in antidumping investigations involving aluminum lead and kraft pulp.

The Division also met with many foreign visitors and foreign antitrust officials who traveled here to study American enforcement methods and theories. Lastly, the Division prepared testimony and written comments regarding many proposed bills involving foreign competition and foreign trade.

**Regulatory Proceedings**

During fiscal year 1974 the Antitrust Division filed comments in a number of proceedings before the Securities and Exchange Commission (SEC), the most significant of which are herein noted. In several proceedings the Division urged the SEC to prohibit the various stock exchanges from fixing public and intramember brokerage commission rates.

In a proceeding involving the authorization of exchanges for the trading of options in securities, the Division urged the Commission to foster interexchange competition in the trading of the same class of options.

The Division also filed comments urging the Commission not to prohibit banks from offering investment services that had proven beneficial to small investors solely because such bank activities were competitive with services offered by securities brokers.

During fiscal year 1974, the Division filed two major submissions with the Federal Reserve Board. In one, the Division suggested to the Board a set of criteria which the Board should use in order to allow bank holding companies to engage in savings and loan activities in the most pro-competitive manner. In the other filing, the Division urged the Board to refrain from attempting to provide electronic funds transfer services itself, and instead, adopt policies which would promote private sector competition in the emerging electronic funds transfer market.

The Antitrust Division participated in a proceeding before the FCC in which the Division urged the Commission to adopt rules which would prohibit the same parties from owning a daily newspaper and a television station or CATV (community antenna, or "cable" television) system in the same local market.

The Division filed comments urging the Commission to continue its policy of requiring telephone companies to interconnect their facilities with equipment supplied by the customers and to resist efforts by State regulatory commissions to prohibit such interconnection. In addition, the Division urged the Commission to adopt policies which would promote competition between various types of providers of land mobile communication services.

In addition, through its Public Counsel and Legislative Section, the Division has brought antitrust policy to bear in the federally-regulated tdransportation and energy sectors of the economy by representations in rule-making or adjudicatory proceedings before the Civil Aeronautics Board, the Interstate Commerce Commission, the Federal Maritime Commission, the Securities and Exchange Commission, the Atomic Energy Commission and the Federal Power Commission. The Division participated in 16 proceedings before the CAB; seven before the AEC (six on nuclear power plant applications and one on rule-making); five before the ICC; four before the FMC; three before the SEC; and one before the FPC. In addition, the Division conducted antitrust review of 18 nuclear power plant applications referred by the Atomic Energy Commission.

The matters involved in these various regulatory agency proceedings included the rules and regulations which should apply to the chartering of aircraft by air freight-forwarders; an investigation of Air Traffic Conference By-Laws; the Union Pacific-Rock Island railway merger; air carrier applications relative to reduction of capacity in major domestic airline markets; air coach lounge tariffs; the domestic air passenger fare structure and extent of competition or freedom to be allowed; the International Air Transport Association Agreement on North Atlantic Passenger Fares; proposed regulation of air charter rates between the United States and Europe; a Pan American-American Airlines route exchange agreement; an acquisition involving Airborne Freight Corporation and IU International Corporation; a pool agreement among North Atlantic ocean carriers; the ICC application of American Delivery Systems to compete in the small package handling business; an acquisition involving Navajo Freight Lines and Garrett Freight Lines; the elimination of gateways for certain irregular motor carriers; and proceedings under the Public Utilities Holding Company Act involving the acquisition of Columbus and Southern Ohio Electric Company by American Power Company and a proposed merger involving the Eastern Electric Energy System.

**Consumer Protection**

Through its Consumer Affairs Section the Division is also responsible for enforcement of the principal consumer protection statutes, e.g., the Federal Food, Drug and Cosmetic Act, the Hazardous Substances Act, the Federal Trade Commission Act, Consumer Product Safety Act, and the Truth in Lending and Fair Credit Reporting Acts. The Division supervises civil seizure actions, injunctive suits and criminal prosecutions recommended by the Food and Drug Administration (FDA) and the Consumer Product Safety Commission. Upon request from the United States Attorney, or the client agencies, assistance is also rendered in preparation and presentation of such cases, including trial litigation. In the past year Division attorneys litigated six criminal trials on behalf of FDA against food wholesalers and warehousers for maintenance of insanitary facilities and the sale of adulterated foods. During FY 1974 successful prosecutions resulted in imposition of fines and penalties totalling $70,000. One jail sentence was obtained, and defended successfully on appeal, for violation of probation.

Division attorneys are fully responsible for prosecution of civil penalty actions for violation of Federal Trade Commission cease and desist orders, both trade regulation and consumer fraud orders. Responsibility includes review and revision of complaints drafted by FTC and filing and prosecution of such cases. All discovery and pretrial motions are conducted by Division attorneys who have responsibility for litigation or settlement. In FY 1974 one civil penalty suit was litigated, and one successfully terminated on motion for summary judgment. Three were settled by consent decree. Total penalties imposed by Federal courts amounted to $175,000.

It is also the Division's responsibility to defend orders of the Food and Drug Administration and the Consumer Product Safety Commission in the courts of appeals. In the last year the Consumer Affairs Section briefed and argued a successful opposition to motions to stay mattress flammability standards, and successfully defended the Commission regulations to eliminate thermal and electric hazards in children's toys. The major appellate undertaking of the year was defense of FDA's nutritional labeling regulations. Twenty-two petitions were filed in several courts broadly challenging these regulations.

Two Division attorneys assigned to these cases obtained transfer and consolidation of all petitions in the Ninth Circuit, the court where the first case was filed, and then retransfer to the Second Circuit as a more convenient forum for the litigaiton. After defeating several prehearing motions to remand to the agency, Division attorneys assisted the court in setting a briefing and argument timetable. In August the court affirmed the major provisions and basic concept of the regulations. When these regulations become effective in January 1975, they should eliminate widespread fraud in the marketing of products promoted for nutritional supplementation, and assure consumers that they are purchasing rationally formulated combinations of vitamin and mineral products.

**Legislative Reports and Other Interagency Activity**

The Assistant Attorney General in charge of the Division, or his representative, made 22 appearances before Congressional Committees for the purpose of giving testimony on matters of concern to the Division; answered 689 Congressional mail inquiries, 48 White House referrals, processed 141 requests for comment to Congress on proposed legislation, and submitted to Congress a major legislative proposal to amend the Antitrust Civil Process Act. Of particular significance also was the Division's participation, along with the Department of Commerce, in formulating and drafting an Administration patent reform bill, i.e., a total updating and rewriting of Title 35, United States Code.

Section 105(b) of the Atomic Energy Act requires that all applications for licenses to construct and operate nuclear power plants be referred to the Attorney General for antitrust advice. If the Attorney General recommends a hearing on antitrust issues, the Atomic Energy Commission is required to hold such hearing. During the last fiscal year the Division considered a total of 23 applications under the Atomic Energy Act to assess the need for antitrust hearing. Activity in connection with the AC proceedings included the preparation and presentation of evidence, including economic and engineering data; the filing of pleadings, motions, and briefs; numerous consultations with applicants; and various discovery undertakings.

Under Section 408(b) of the Federal Aviation Act, the Division recommended to the CAB that no objection on antitrust grounds be made to five proposals to approve agreements. Included were agreements involving World Airways and Korean Air Lines; Chase Manhattan Bank and Hawaiian Air lines; and Kodiak and Western Air Lines.

Section 207 of the Federal Property and Administrative Services Act of 1949, as amended, provides in general that no executive agency shall dispose of any plant or other property to any private interest until such agency has received the Attorney General's advice as to whether such disposal would tend to create or maintain a situation inconsistent with the antitrust laws. Favorable advice was rendered other Federal agencies in 70 cases with respect to surplus property disposals and antitrust implications. Typical transactions concerned aircraft carcasses, a former missile site, and naval vessels.

From the beginning of the program in 1961, pursuant to E.O. 10936, through the end of fiscal year 1974, the Antitrust Division received 27,487 reports of identical bidding. Federal agencies have submitted 16,607 of these reports, and State and local governments khave submitted 10,880.

**Business Review**

Although the Department is not authorized to give advisory opinions to private parties, the Division reviews proposed business plans in certain circumstances for private firms and states its enforcement intentions. This policy, known as the business review procedure is codified in 28 C.F.R. § 50.6.

On February 15, 1974, the Division amended the regulations under which the business review procedure operates. These amendments provide that 30 days following the date upon which the Division takes any action pursuant to a business review request, the request, the information supplied to support it, and the Division's letter in response would be indexed and placed in a file available to the public upon request. Only those documents in which public release would adversely affect the requesting party's operations or business relationships are withheld from the public file, and then only to the extent and for the time considered necessary or justified by the Division.

During fiscal year 1974, the Division responded to 33 requests for business review letters. These included a number of proposed merger transcactions and various proposed business activities, marketing arrangements, and the like. The investigation and analysis of these requests, and the subsequent decisions in response to the requests, involved roughly the same type and amount of Division resources that would have been required for self-initiated investigations of the same or similar actions or practices. For example, the Division responded to three separate, but related requests under the business review procedure involving the Franklin National Bank. These requests were all made by the New York Clearing House and its member banks and covered a proposed investigation of the condition of Franklin National Bank, the purchase of various assets of Franklin National Bank, and the preparation of proposals to be submitted to Federal bank regulatory agencies concerning the possible acquisition of all or part of Franklin National Bank. The analysis and investigation of these proposals involved staff discussions with the parties, analysis and review by the staff of considerable amounts of data submitted by the parties, and discussions with staff and officials of the various bank regulatory agencies.

**Action on Previously Filed Cases**

On February 22, 1974, Judge Frederick van Pelt Bryan entered a final judgment in *U.S. v. General Electric Company.* This civil action challenged General Electric's control of market prices of light bulbs through an agency-consignment system of distribution. Virtually the same system had been unsuccessfully challenged by the Government in 1926 and 1949. In 1966, the Antitrust Division again challenged the legality of GE's effort to control prices through an agency-consignment system. The Government alleged that the Supreme Court decision in the 1926 case had been eroded over the years in a series of both private and Government challenges to similar distribution systems. On May 8, 1973, Judge Bryan granted the Government's Motion for Summary Judgment. Judge Bryan rejected GE's argument that the case was barred by the doctrine of *res judicata.* The court found that applicable law, as enunicated by the Supreme Court, now dictated that GE's control over the prices charged by independent businessmen be declared illegal *per se.*

Since Judge Bryan found that General Electric relied in good faith upon prior decisions of the Supreme Court and the U.S. District Court for the District of New Jersey in favor of General Electric on the question now decided against GE, the final judgment provides that it should have prospective application only. General Electric is ordered by the final judgment to cancel the illegal provisions of its contracts. There are three injunctive provisions. First, General Electric is enjoined from entering into or enforcing any contract with any consignment agent to establish the prices at which large lamps may be sold or consigned by any consignment agent. Second, General Electric is enjoined from supplying large lamps to any consignment agent upon any condition that establishes the prices at which any consignment agent may sell or consign large lamps. Finally, General Electric may not issue announcements of prices at which consignment agents should sell, advertise, or consign large lamps, unless the announcements contain a statement that the prices are suggested only.

**Comparative Analysis of Antitrust Cases Filed by Fiscal Years**

| | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|
| Cases filed: | | | | | | | | | |
| Civil | 32 | 36 | 40 | 39 | 54 | 52 | 72 | 421 | 33 |
| Criminal | 12 | 17 | 10 | 14 | 5 | 12 | 15 | 20 | 34 |
| Total | 44 | 53 | 50 | 53 | 59 | 64 | 87 | 62 | 67 |
| Cases filed involving price fixing: | | | | | | | | | |
| Civil | 14 | 26 | 9 | 10 | 15 | 14 | 31 | 19 | 10 |
| Criminal | 12 | 16 | 10 | 13 | 4 | 9 | 14 | 19 | 21 |
| Total | 26 | 42 | 19 | 23 | 19 | 23 | 45 | 38 | 31 |
| Merger cases filed | | | | | | | | | |
| Of which there were bank merger cases numbering | 4 | 1 | 7 | 12 | 5 | 8 | 9 | 3 | 6 |
| Monopolization cases filed: | | | | | | | | | |
| Civil | 5 | 6 | 3 | 3 | 11 | 15 | 13 | 5 | 6 |
| Criminal | 0 | 0 | 1 | 2 | 0 | 2 | 1 | 1 | 3 |
| Total | 5 | 6 | 4 | 5 | 11 | 17 | 14 | 6 | 9 |
| Individuals indicted | 43 | 70 | 48 | 28 | 14 | 34 | 24 | 42 | 84 |
| Antitrust related cases | 0 | 0 | 1 | 0 | 1 | 2 | 3 | 0 | 8 |

**Workload Statement-Antitrust Division**

| *Fiscal years* | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| District Courts: | | | | | | | | | |
| Civil | | | | | | | | | |
| Pending first of year | 118 | 115 | 99 | 75 | 83 | 88 | 96 | 124 | 116 |
| Filed | 32 | 36 | 40 | 39 | 54 | 52 | 72 | 42 | 33 |
| Terminated | 35 | 52 | 64 | 31 | 49 | 44 | 44 | 50 | 48 |
| Won | 25 | 47 | 59 | 30 | 43 | 42 | 41 | 44 | 42 |
| Lost | 3 | 0 | 3 | 1 | 4 | 1 | 1 | 5 | 3 |
| Dismissed | 7 | 5 | 2 | 0 | 2 | 1 | 2 | 1 | 3 |
| Pending end of year | 115 | 99 | 75 | 83 | 88 | 96 | 124 | 116 | 101 |
| Criminal: | | | | | | | | | |
| Pending first of year | 26 | 18 | 26 | 22 | 20 | 14 | 16 | 19 | 18 |
| Filed | 12 | 17 | 10 | 14 | 5 | 12 | 15 | 20 | 34 |
| Terminated | 20 | 9 | 14 | 16 | 11 | 10 | 12 | 17 | 15 |
| Won | 17 | 9 | 13 | 16 | 10 | 9 | 12 | 17 | 15 |
| Lost | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 3 | 3 |
| Dismissed | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| Pending end of year | 18 | 26 | 22 | 20 | 14 | 16 | 19 | 18 | 34 |
| *Court of Appeals:* | | | | | | | | | |
| Pending first of year | 1 | 2 | 1 | 1 | 2 | 4 | 2 | 3 | 1 |
| Filed | 3 | 1 | 1 | 4 | 3 | 4 | 2 | 1 | 1 |
| Terminated | 2 | 2 | 1 | 3 | 1 | 7 | 1 | 3 | 2 |
| Won | 2 | 2 | 1 | 0 | 1 | 3 | 1 | 3 | 1 |
| Lost | 0 | 0 | 0 | 1 | 0 | 3 | 0 | 0 | 1 |
| Dismissed | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Pending end of year | 2 | 1 | 1 | 2 | 4 | 2 | 3 | 1 | 2 |
| *Supreme Court:* | | | | | | | | | |
| Pending first of year | 3 | 6 | 4 | 2 | 0 | 1 | 4 | 5 | 1 |
| Filed | 7 | 4 | 3 | 1 | 2 | 4 | 5 | 1 | 2 |
| Terminated | 4 | 6 | 5 | 3 | 1 | 1 | 4 | 5 | 1 |
| Won | 2 | 5 | 4 | 3 | 0 | 1 | 3 | 4 | 0 |
| Lost | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 1 | 1 |
| Pending end of year | 6 | 4 | 2 | 0 | 1 | 4 | 5 | 1 | 2 |

| Years | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|
| Antitrust cases: | | | | | | | | | |
| Filed | 44 | 53 | 50 | 53 | 59 | 64 | 87 | 62 | 67 |
| Appealed | 10 | 5 | 4 | 5 | 5 | 7 | 7 | 2 | 5[1] |
| Terminated | 55 | 61 | 78 | 47 | 60 | 54 | 56 | 71 | 66 |
| Pending | 133 | 125 | 97 | 103 | 102 | 112 | 143 | 134 | 135 |
| Consumer affair proceedings: | | | | | | | | | |
| Pending beginning of year | | | | | | | 395 | 726 | 1113 |
| Instituted | | | | | | | 856 | 1265 | 690 |
| Terminated | | | | | | | 525 | 878 | 771 |
| Pending end of year | | | | | | | 726 | 1113 | 1032 |
| Investigations: | | | | | | | | | |
| Pending beginning of year | 567 | 590 | 644 | 692 | 710 | 678 | 758 | 773 | 776 |
| Instituted | 449 | 444 | 446 | 555 | 516 | 562 | 437 | 455 | 335 |
| Terminated | 426 | 390 | 398 | 537 | 548 | 482 | 422 | 452 | 396 |
| Pending end of year | 590 | 644 | 692 | 710 | 678 | 758 | 773 | 776 | 715 |
| Administrative law cases: | | | | | | | | | |
| Instituted | 236 | 208 | 342 | 195 | 208 | 197 | 211 | 257 | 293 |
| Terminated | 183 | 236 | 378 | 201 | 205 | 175 | 185 | 257 | 240 |
| Pending | 238 | 220 | 184 | 178 | 181 | 203 | 229 | 229 | 282 |
| Miscellaneous proceedings | 248 | 277 | 242 | 371 | 409 | 515 | 508 | 523 | 580 |

[1] These were two additional cases where a decree was signed by one or more but not all defendants and cases were settled but not terminated due to 30 day waiting period.

**Comparative Analysis of Antitrust Cases Filed by Fiscal Years**

| | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|
| Cases filed: | | | | | | | | | |
| Civil | 32 | 36 | 40 | 39 | 54 | 52 | 72 | 42 | 33 |
| Criminal | 12 | 17 | 10 | 14 | 5 | 12 | 15 | 20 | 34 |
| Total | 44 | 53 | 50 | 53 | 59 | 64 | 87 | 62 | 67 |
| Cases filed involving price fixing: | | | | | | | | | |
| Civil | 14 | 26 | 9 | 10 | 15 | 14 | 31 | 19 | 10 |
| Criminal | 12 | 16 | 10 | 13 | 4 | 9 | 14 | 19 | 21 |
| Total | 26 | 42 | 19 | 23 | 19 | 23 | 45 | 38 | 31 |
| Merger cases filed | 14 | 7 | 20 | 26 | 15 | 24 | 19 | 16 | 13 |
| Of which there were bank merger cases numbering | 4 | 1 | 7 | 12 | 5 | 8 | 9 | 3 | 6 |
| Monopolization cases filed: | | | | | | | | | |
| Civil | 5 | 6 | 3 | 3 | 11 | 15 | 13 | 5 | 6 |
| Criminal | 0 | 0 | 1 | 2 | 0 | 2 | 1 | 1 | 3 |
| Total | 5 | 6 | 4 | 5 | 11 | 17 | 14 | 6 | 9 |
| Individuals indicted | 43 | 70 | 48 | 28 | 14 | 34 | 24 | 42 | 84 |
| Antitrust related cases | 0 | 0 | 1 | 0 | 1 | 2 | 3 | 0 | 8 |

**Workload Statement-Antitrust Division**

| | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|
| District Courts: | | | | | | | | | |
| Civil: | | | | | | | | | |
| Pending first of year | 118 | 115 | 99 | 75 | 83 | 88 | 96 | 124 | 116 |
| Filed | 32 | 36 | 40 | 39 | 54 | 52 | 72 | 42 | 33 |
| Terminated | 35 | 52 | 64 | 31 | 49 | 44 | 44 | 50 | 48 |
| Won | 25 | 47 | 59 | 30 | 43 | 42 | 41 | 44 | 42 |
| Lost | 3 | 0 | 3 | 1 | 4 | 1 | 1 | 5 | 3 |
| Dismissed | 7 | 5 | 2 | 0 | 2 | 1 | 2 | 1 | 3 |
| Pending end of year | 115 | 99 | 75 | 83 | 88 | 96 | 124 | 116 | 101 |
| Criminal: | | | | | | | | | |
| Pending first of year | 26 | 18 | 26 | 22 | 20 | 14 | 16 | 19 | 18 |
| Filed | 12 | 17 | 10 | 14 | 5 | 12 | 15 | 20 | 34 |
| Terminated | 20 | 9 | 14 | 16 | 11 | 10 | 12 | 21 | 18 |
| Won | 17 | 9 | 13 | 16 | 10 | 9 | 12 | 17 | 15 |
| Lost | 1 | 0 | 1 | 0 | 0 | 1 | 0 | 3 | 3 |
| Dismissed | 2 | 0 | 0 | 0 | 1 | 0 | 0 | 1 | 0 |
| Pending end of year | 18 | 26 | 22 | 20 | 14 | 16 | 19 | 18 | 34 |
| Court of Appeals: | | | | | | | | | |
| Pending first of year | 1 | 2 | 1 | 1 | 2 | 4 | 2 | 3 | 1 |
| Filed | 3 | 1 | 1 | 4 | 3 | 4 | 2 | 1 | 3 |
| Terminated | 2 | 2 | 1 | 3 | 1 | 7 | 1 | 3 | 2 |
| Won | 2 | 2 | 1 | 0 | 1 | 3 | 1 | 3 | 1 |
| Lost | 0 | 0 | 0 | 1 | 0 | 3 | 0 | 0 | 1 |
| Dismissed | 0 | 0 | 0 | 1 | 0 | 0 | 0 | 0 | 0 |
| Pending end of year | 2 | 1 | 1 | 2 | 4 | 2 | 3 | 1 | 2 |
| Supreme Court: | | | | | | | | | |
| Pending first of year | 3 | 6 | 4 | 2 | 0 | 1 | 4 | 5 | 1 |
| Filed | 7 | 4 | 3 | 1 | 2 | 4 | 5 | 1 | 2 |
| Terminated | 4 | 6 | 5 | 3 | 1 | 1 | 4 | 5 | 1 |
| Won | 2 | 5 | 4 | 3 | 0 | 1 | 3 | 4 | 0 |
| Lost | 2 | 1 | 1 | 0 | 0 | 0 | 1 | 1 | 1 |
| Pending end of year | 6 | 4 | 2 | 0 | 1 | 4 | 5 | 1 | 2 |



## Cases Cited

(1) *United States* v. *U.S. Gypsum Company, et. al.*, Cr. 73-347; Cr. 1042-73.
(2) *United States* v. *Armco Steel Corp., et. al.*, Civ. 73-H1427
(3) *United States* v. *Aviation Specialties Co., et al.*, Cr. 3-3272; Civ. 3-7722E.
(4) *United States* v. *The Standard Paving Company, et. al.*, Cr. S-CR.-74-4.
(5) *United States* v. *Rainbo Baking Company of Phoenix, et. al.*, Cr. 74-53(PHX); Civ. 74-102(PHXEC).
(6) *United States* v. *H.S. Crocker Co., et. al.*, Cr. 2424R; Cr. 74-182-CBR; Civ.-C-74-0560-RFP.
(7) *United States* v. *American Building Maintenance Corp., et. al.*, Cr. 74-170.
(8) *United States* v. *Continental Can Co.*, 74 Civ. 2783.
(9) *United States* v. *Grow Chemical Corporation*, 74 Civ. 2784.
(10) *United States* v. *Goodyear Tire and Rubber Company* and *United States* v. *Firestone Tire and Rubber Company*, Civ. C73-835 and Civ. C73-836.
(11) *United States* v. *Mid-America Dairymen, Inc.*, 73-Civ.-681-W3.
(12) *United States* v. *Morgan Drive Away, Inc., et. al.*, Cr. 697-73.
(13) *United States* v. *Oregon State Bar*, Civ. 74-362.
(14) *United States* v. *Black and Decker Manufacturing Co., et. al.*, Civ. 73-964-B.
(15) *United States* v. *Mrs. Smith's Pie Company, et. al.*, Civ. 74-419.
(16) *United States* v. *Albertson's Inc.*, Civ. 1-74-60.
(17) *United States* v. *Michigan National Corporation, et. al.*, Civ. 4-71882; Civ. 4-71883.
(18) *United States* v. *The Merchants National Bank, et. al.*, Civ. 73-336.
(19) *United States* v. *United Parcel Service*, Cr. 73-409; Civ. 73-1773.
(20) *United States* v. *Copper Development Association, Inc., et. al.*, 74 Civ. 1712.

# Land and Natural Resources Division

The Assistant Attorney General in charge of the Land and Natural Resources Division supervises all suits and matters of a civil nature in the Federal district courts and courts of appeals, in the State courts, and in the Court of Claims relating to real property, including not only lands but water and other related natural resources and the Outer Continental Shelf and marine resources and to the protection of the environment. This encompasses condemnation proceedings for the acquisition of property; actions to remove clouds and to quiet title; to recover possession; to recover damages; to determine boundaries; to cancel patents; to establish rights in minerals, including mineral leases, in oil reserves, and in other natural resources; to establish water rights and protect water resources; to abate water, air and noise pollution; to defend actions for compensation for the claimed taking by the United States of real property or any interest therein; and to defend actions seeking to establish an interest in real property adverse to the United States.

The Division is responsible for criminal prosecutions for air, water and noise pollution, as well as criminal actions to protect the navigable waters and adjacent wetlands.

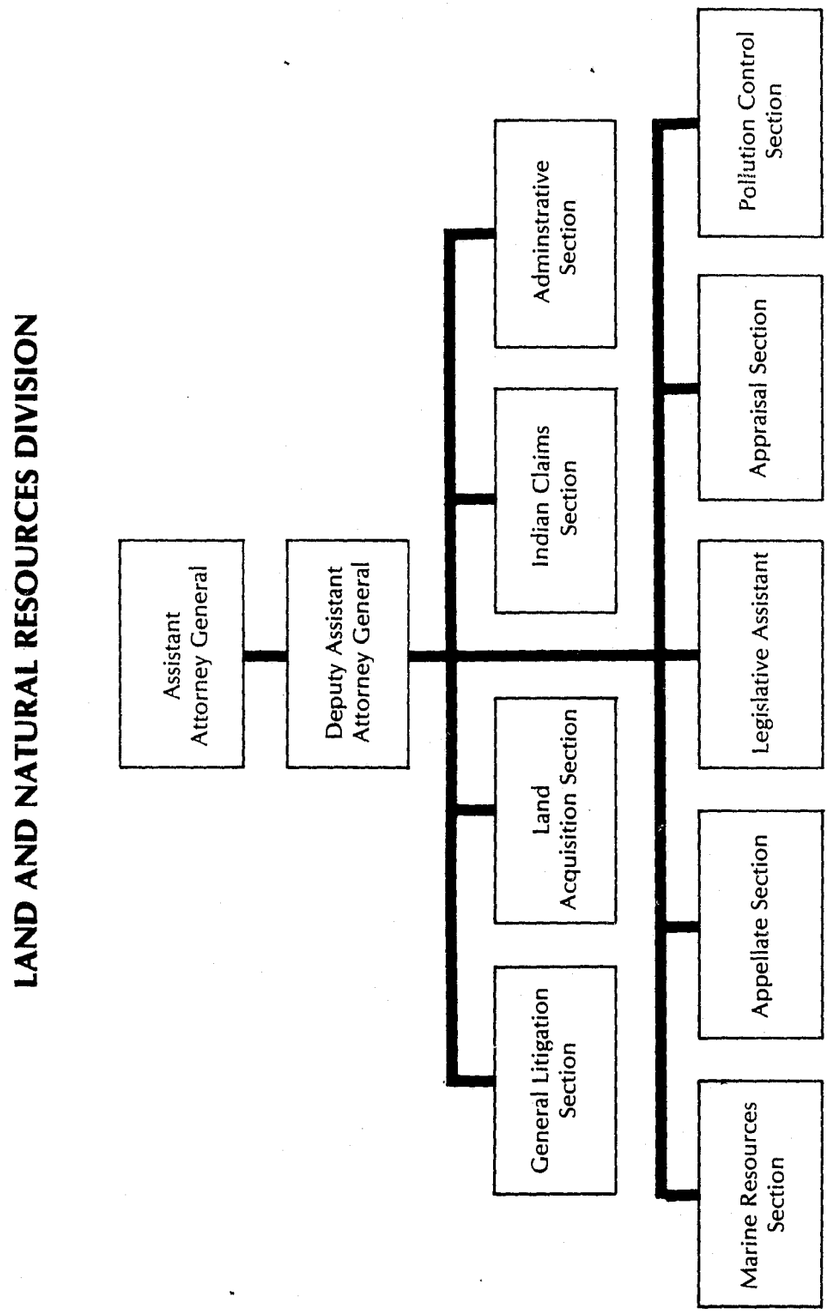
The Division is also charged with representing the interests of the United States in all civil litigation except civil rights cases, pertaining to Indians and Indian affairs, including the defense of Indian claims against the United States, whether in the Court of Claims or before the Indian Claims Commission. It defends officers of the United States, handles injunction and mandamus proceedings and litigation arising from contracts whenever those matters affect the rights of the United States in the use of title of its real property, as well as suits against government officers arising out of the National Environmental Policy Act. It represents the Administrator of the Environmental Protection Agency in suits involving judicial review of his actions.

The work of the Land and Natural Resources Division is carried on through eight sections and a Legislative Assistant. The organization chart accompanying this report shows the general responsibilities of each of those sections which will be amplified in the following report for specific activities for fiscal year 1974. The Administrative Section is devoted to support of the other sections and the Office of the Assistant Attorney General and its activities will not be reported upon separately. The activities of the Legislative Assistant of the Division are being combined with the other legislative activities of the Department.

Although not a legislative report, a major accomplishment responsive to legislative requirement was completed in this year. Section 9 of the Federal Water Pollution Control Act Amendments of October 18, 1972, 86 Stat. 816, 899, required that the President, through the Attorney General, make a study of the feasibility of establishing a separate court or court system having jurisdiction over environmental matters and reporting the results of this study together with recommendations to Congress within one year.

The responsibility for conducting this study was assigned to the Land and Natural Resources Division. The views of numerous Federal agencies and private organizations were solicited and received. Based upon those responses, and the independent study of this Division, the report recommended against establishment of an environmental court system. The report was





transmitted to Congress on October 16, 1973.

**Pollution Control Section**

The three principal pollution control statutes—the Clean Air Act (42 U.S.C. 1857 *et seq.*), the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1151 *et seq.*) and the Noise Control Act of 1972 (42 U.S.C. 4901 *et seq.*)—all contemplate the development of emission standards and limitations by the Administrator of the Environmental Protection Agency. These standards and limitations, upon surviving the crucible of judicial review, would be enforced by the Administrator, the States, or citizens (pursuant to the "citizens' suits" provisions in each of these statutes), against all sources of emissions coming within their purview.

As the attached Table summarizing the litigation handled by the Pollution Control Section for fiscal year 1974 shows, the Administrator's standards and limitations are now undergoing extensive review.. During the year, seventy petitions for the judicial review of actions under the Federal Water Pollution Control Act and one hundred eight petitions for the judicial review of actions under the Clean Air Act were filed. A consequence of these challenges to standards and emission limitations is an inability to bring an action to enforce them, and the attached Table reflects this in its showing that only fourteen water pollution abatement actions (four under the Refuse Act and ten under the Federal Water Pollution Control Act) and only two air pollution abatement actions were filed during the year.

An enforcement action of interest brought under the provisions of the Clean Air Act was against the Volkswagon Company, *United States* v. *Volkswagenwerk Aktiengesellschaft and Volkswagen of America* (D. N.J. No. 74-356), charging it with failure to report the existence in its engines of prohibited devices which disconnected the engines' emission control systems at certain temperatures. On March 12, 1974, a civil action was filed against the company, and on the same day a consent decree was entered requiring the defendant to pay $120,000 in civil penalties, and to effectuate certain administrative changes to prevent a recurrence of the situation.

One of the abatement actions filed under the Federal Water Pollution Control Act was against the Washington Suburban Sanitary Commission, *State Water Control Board, et. al.* v. *Washington Suburban Sanitary Commission* (D. D.C. No. 1813-73), to enjoin its discharges of untreated sewage into the Potomac River. The complaint was filed on October 23, 1973, after the Government's motion for leave to intervene in an action previously brought by the States of Maryland and Virginia against the Washington Suburban Sanitary Commission had been granted. The Government's action was based both upon the Federal common law, and upon enforcement proceedings begun by the Government under the Federal Water Pollution Control Act prior to its amendment in 1972. In February 1974, however, the District of Columbia announced that the Blue Plains Treatment Plant would no longer treat the sewage since the District was unable to dispose of the sludge. Thereupon, the Department of Justice, pursuant to Section 504 of the Federal Water Pollution Control Act, the so-called "emergency-suit provision," secured an order from the District Court for the District of Columbia requiring the District of Columbia to treat sewage and requiring the District and the suburban counties to designate disposal sites. After several months of intensive negotiation, the suits were settled by the closing of outlets in the sewerage system from which untreated sewage had been discharged into the Potomac, and by the signing of a consent decree requiring the various communities served by the Blue Plains Treatment Plant to restrict the flow of sewage to certain specified amounts and to accept for disposal within their jurisdictions their proportionate share of the resulting sludge.

Although few new abatement actions were filed, previously-filed abatement actions required a substantial amount of attention. The suit against the Reserve Mining Company, *United States* v. *Reserve Mining Co.*, 380 F.Supp. 11 (D. Minn.), *stayed*, 498 F.2d 1073 (C.A. B. 1974), made unparalled demands upon the section's resources. The complaint in this case had been filed on February 17, 1972, under the Refuse Act, and before the enactment, on October 18, 1972, of the Federal Water Pollution Control Act Amendments; consequently, the Section's ability to proceed with this action was preserved by Section 4 of the Federal Water Pollution Control Act Amendments. The action was filed to enjoin the discharge by the defendants of 67,000 tons a day of taconite tailings, on the ground that these tailings degraded the quality of water of Lake Superior, and had an adverse effect upon the biota of the Lake. In June of 1973, it was discovered that the tailings contained asbestos fibers, which studies by various doctors had shown to be carcinogenic when inhaled. As a consequence, the Government immediately devoted its attention to ascertaining whether these particles were also carcinogenic when ingested.

The trial of the case began on August 1, 1973, and continued without substantial interruption for over eight months, during which 148 days were devoted to actual trial in court. The transcript of the trial fills 19,927 pages. This was undoubtedly the most complicated pollution abatement suit ever tried. Expert witnesses called to testify for the Government included minerologists, geologists, hydrologists, oceanographers, physicists, chemists, radiologists, experimental pathologists, epidemeologists, physicians, surgeons, economists and accountants, drawn not only from Federal agencies, but also from private institutions throughout the United States, as well as from West Germany, Scotland, England and Canada. The trial ended on April 20, 1974, on which day the district court, finding that Reserve's discharges into Lake Superior had exposed thousands of people to a substantial health risk, directed "that the discharge from the Reserve Mining Company into Lake Superior be enjoined as of 12:01 a.m., April 21, 1974." Thereafter, on May 11, 1974, the district court issued an opinion consisting of 109 typewritten pages, setting forth its findings of fact and conclusions of law. The Eighth Circuit Court of Appeals, however, on April 22, 1974, stayed the district court's injunction, and that stay is still in effect, pending the outcome of the appeal taken by the Reserve Mining Company from the district court's decision.

Another water pollution abatement case in which the section was deeply involved was *Vermont* v. *New York and International Paper Company*, 417 U.S. 270 (1974), an original action brought to require the paper company to abate the discharges from its paper mill into Lake Champlain and to remove a bed of sludge which had built up over the years as a result of the discharges, and to require the State of New York to take appropriate action to abate the offending discharge. At the request of the Environmental Protection Agency, the United States intervened in the action to make available to the court its resources and knowledge with respect to the environmental consequences of the removal of the sludge bed. After four months of hearings, the Special Master appointed by the Supreme Court suggested that the parties settle their case, and, after four months of negotiations, a proposed consent decree was worked out, and was presented to the Supreme Court for its approval. The Supreme Court, however, declined to approve the proposed consent decree. The proposed consent decree provided, among other things, that questions relating to its enforcement would be initially decided by a Special Master appointed pursuant to the decree, and that parties dissatisfied with the Special Master's ruling could seek a review of that ruling by the Supreme Court. The Supreme Court stated that its role under the proposed consent decree would be more "arbitral" than judicial, and that since its functions, as set forth in Article 3 of the Constitution, are judicial, it could not assent to discharging the nonjudicial role assigned to it by the proposed decree. The Court suggested that the parties might settle their dispute either by an interstate compact or by an agreement, and the parties, accordingly, have been meeting to consider the possibility of settling the suit by agreement in accordance with the Court's suggestion.

The citizens' suit provisions of the pollution abatement statutes have begun to give rise to many suits against the Administrator of the Environmental Protection Agency. The main purpose of these provisions was to enable citizens to bring actions against polluters to require their emissions to conform to applicable standards and limitations; indeed, this section has argued that this is the sole purpose of the citizens' suit provisions. However, this section has not prevailed in this argument, and environmental organizations have succeeded in invoking the citizens' suit provisions of these statutes as a jurisdictional base for requiring the Administrator to take some specific action. Thus, when the Guidelines for Effluent Limitations provided for by Section 304 of the Federal Water Pollution Control Act Amendments of 1972 were not promulgated within the time required by the statute, the Natural Resources Defense Council brought an action against Russell Train, the Administrator of the Environmental Protection Agency, *Natural Resources Defense Council* v. *Train*, 6 E.R.C. 1033 (D.D.C., No. 1609-73, 1973), to require him to publish these guidelines. The district court issued an order directing the publication of the guidelines which established a schedule for 32 various types of industries. Although the Administrator has appealed from this decision, guidelines and effluent limitations for 28 industries have been published. However, the ability of the Administrator to act upon or to enforce these guidelines is unclear, for 18 of these guidelines have been the subject of petitions to review filed in appellate courts throughout the Nation.

Procedurally similar to the *Natural Resources Defense Council* v. *Train* suit was the action filed in 1972 by the Sierra Club against the Administrator, under the citizens' suit provisions of the Clean Air Act *Sierra Club* v. *Ruckelshaus*, 344 F.Supp. 253 (D.D.C. 1972), to require him to disapprove State implementation plans not prohibiting the deterioration of air in those portions of the country where the air is better than required by the national ambient air quality standards. The order sought by the plaintiff was issued by the district court, affirmed *per curiam* by the District of Columbia Court of Appeals and affirmed by an equally divided Supreme Court, 412 U.S. 541 (1973). The final regulations directed to be issued by the Court have still not been issued, a reflection, basically, of the extraordinary difficulties of devising the regulations, and the enormous impact on the economy and growth of the country which these regulations will have. When these regulations finally are issued, they will undoubtedly be the subject of scores of petitions to review.

These two cases establish the pattern of litigation which will be common over the next few years: the citizens' suit provisions will be invoked to require the Administrator to act in a certain way, and after the court issues the requested order, numerous petitions to review will be filed challenging the action of the Administrator. It is also likely that when the Administrator revises his action as a result of a court order in a petition to review case, other petitions to review can be filed challenging the revised action.

Further complicating the situation is the fact that the citizens' suit provisions in the pollution abatement statutes permit the award of "costs of litigation (including reasonable attorneys fees and expert witnesses fees) to any party, whenever the court determines such award is appropriate." The attorneys in the *Sierra Club* v. *Ruckelshaus* case requested, pursuant to the citizens' suit provisions of the Clean Air Act, attorneys fees in the amount of $100,000, and were awarded attorneys fees in the amount of $48,500; the attorneys in *Natural Resources Defense Council* v. *Train* are seeking attorneys fees in the amount of $11,950; their request is under submission. The Department opposes the award of attorneys' fees on a number of grounds, the most interesting of which is that since the citizens' suit provisions of the statutes were designed to reimburse citizens for the expenses they incurred in performing the public service entailed in the abatement of a specific source of pollution, citizens who bring actions not seeking to abate a specific source of pollution do not come within the purview of the statutes. This argument has not yet been ruled upon.

The Division's program of protecting wetlands through the vigorous enforcement of Section 10 of the River and Harbor Act of 1899 was accelerated and intensified during the year. Major emphasis is being placed upon encouraging the various United States Attorneys to work closely with the Corps of Engineers, the Environmental Protection Agency, and the Fish and Wildlife Service to detect unlawful dredging or filling of wetlands at an early time, and to bring actions both penalizing the violator, and requiring, where practicable, the restoration of the land to its condition prior to the unlawful dredging or filling. This objective was stressed in the Conference on Federal Environmental Litigation held in Orlando, Florida, on January 21, 1974, and was the subject of personal meetings of the Assistant Attorney General with various United States Attorneys. The attached Table shows that this emphasis resulted in the development of 55 new civil cases and matters and 39 new criminal cases and matters under Section 10 of the River and Harbor Act of 1899. As the fiscal year ended, plans were being made for a conference to discuss wetlands protection litigation, to be attended by the Attorney General and all United States Attorneys from the Gulf Coast States. It is expected that this conference, as well as others scheduled for later in the year, will further increase the Department's litigation to protect the wetlands.

The decision rendered by the District Court for the Middle District of Florida on March 15, 1974, in *United States* v. *Holland*, 373 F.Supp. 665 (M.D. Fla. 1974), will also add to the Department's ability to protect the wetlands. In that decision, the court held that Section 404 of the Federal Water Pollution Control Act of 1972 confers upon the Corps of Engineers jurisdiction to control the filling in or dredging out of areas which are in fact subject to the regime of tidal waters, even though such lands are above the "line of mean high tide," which line the Corps of Engineers has traditionally considered to be the limit of the area over which it may exercise jurisdiction under Section 10 of the River and Harbor Act of 1899. The Corps of Engineers has been encouraged to accept, and to act promptly within the area of, this augmented jurisdiction, and through the implementation of this decision the Corps of Engineers will be in a position to more effectively protect the Nation's wetlands and marshes.

The energy crisis will ultimately have some impact upon the future of environmental litigation. Much time was devoted during the year to a study of proposed bills which would relax the requirements of existing pollution legislation. Although three bills (the Emergency Petroleum Allocation Act, the Federal Energy Administration Act, and the Energy Supply and Environmental Coordination Act) were enacted, only the latter amended the Clean Air Act. It is possible that the long-term energy requirements will necessitate additional accommodations in this area.

**General Litigation Section**

As reported in previous years, the National Environmental Policy Act (NEPA), 82 Stat. 852, 42 U.S.C. 4321 *et seq.*, which became law January 1, 1970, led to a substantial amount of litigation in which agencies of the United States were charged with failing to take the steps required by the act to make sure that environmental considerations were given appropriate attention in the planning of major federal actions. The act has had wide application throughout the Government and more than 30 agencies have been named in suits alleging failure to comply with it.

The development of the energy crisis during the last fiscal year has added a new dimension to the problem of protecting the environment. Since the measures which may be taken to increase production of energy, including the development of new resources, frequently are not consistent with the protection of the environment, a balancing of priorities became essential. While this may have resulted in some temporary decrease in environmental litigation, that decrease appears to have been short-lived. In fact, it appears to have resulted in an increased effort to stop environmentally undesirable activities. During the closing months of fiscal year 1974, actions charging failure of government agencies to comply with NEPA were being filed at the highest rate since enactment of the statute.

The good faith of many of the parties bringing such action is beyond question. It has become equally clear, however, that NEPA does furnish access to the courts by those desiring to stop or to modify the planning of projects for other than environmental reasons. Once access to the courts is obtained, the actions are not limited to forcing compliance with NEPA, but Congress has enacted many statutes over a period of more than 70 years which become involved in the litigation. Some of the principal statutes are the Fish and Wildlife Coordination Act, the National Forest Multiple Use Act, the Wilderness Preservation Act, provisions of the Federal Highway Act for the protection of parklands, and the National Historical Sites Preservation Act. Individual suits have charged violations of as many as 17 statutes by a single agency with respect to a single project. In a number of instances plaintiffs seem to have charged violations of every statute having any possible bearing on a particular project, and have failed to offer substantial proof of alleged violations.

In some instances substantial delays have resulted from the litigation, such as the Alaska Pipeline discussed in last year's annual report. It is probable that most of the projects where delay was encountered were projects planned before or soon after enactment of NEPA and before expertise had been developed by the various agencies in preparing the impact statements required and when many matters appeared to be controlled more by emotions than sound reasoning. Now that the emotional stage seems to have passed, at least in part, and a substantial number of court decisions interpreting the act has been received (though none has yet reached the Supreme Court), it is expected that the benefits of the Act can be obtained with less delays from litigation. While this may seem inconsistent with the fact that a larger number of suits is being filed, recent experience with suits appears to justify the section's hopes. This is demonstrated by the effort to carry out the program of the President to increase oil and gas production by leasing larger acreages offshore for oil and gas development.

The Department of the Interior held two sales of oil and gas leases, one off the Mississippi-Alabama-Florida coast (MAFLA), and one off the east Florida coast. An action, *Sierra Club* v. *Morton,* M.D. Florida,(1) was brought to question the validity of the environmental impact statement on the MAFLA sale. A preliminary injunction was denied, and after a trial, the case has been dismissed. No delay in the sale occurred, although the suit was instituted less than one week before the hearing on the motion for preliminary injunction, and development under the leases sold is now going forward.

Suit was also brought on the east Texas sale, *Public Citizens* v. *Morton,*(2) District of Columbia. The suit questions the validity of the impact statement because it used estimates of onshore reserves furnished by industry. The court denied a motion for a preliminary injunction to delay the sale until the Interior Department could make its own reserve estimates. The sale was held without delay. The suit remains pending in the district court.

Significant settlements were reached in some NEPA cases thus eliminating the need for extensive litigation. Typical are *Environmental Defense Fund* v. *Peterson,*(3) District of Columbia, a suit charging failure to comply with NEPA in the construction of supertankers under the Merchant Marine Act, and *National Wildlife Federation* v. *Tiemann,*(4) District of Columbia, which involved a number of federal-aid highway projects. In both instances, settlements were worked out which eliminated or lessened delays in the projects involved.

In two cases involving enforcement of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), *People for Environmental Progress* v. *Callaway,*(5) Central District of California, and *Lee* v. *Callaway,*(6) Middle District of Florida, the Department successfully urged that enforcement of this Act was vested exclusively in the Environmental Protection Agency and the Attorney General. Suits brought by private parties were dismissed.

In an effort to increase production of energy, the Department of the Interior has considered the leasing of coal deposits on Federal and Indian lands in the North Great Plains Area of North and South Dakota, Montana and Wyoming. The Fort Union formation in this area contains the largest coal reserve in this country. For more than fifty years, the Federal Government has issued prospecting permits and mining leases for coal development in the area. While studies for a much larger development were under way in the Department of the Interior, an action, *Sierra Club* v. *Morton,*(7) District of Columbia, was brought seeking a declaratory judgment that an environmental impact statement under NEPA was required if those studies were to proceed. The court concluded that no Federal "program" for coal development in the area had been adopted or promulgated at the present time and that such studies as

were being carried on did not require an impact statement. The studies were permitted to continue.

In another case, *Redding* v. *Morton,*(8) District of Montana, the court refused to stop operations under coal mining leases on several thousand acres on the Crow Indian Reservation. The leases had been granted prior to the decision in *Davis* v. *Morton,* 469 F.2d 593 (C.A. 10, 1972), holding that environmental impact statements were required for major Federal actions affecting Indian lands, but the Department of the Interior was preparing environmental statements before approving mining plans. The above two cases are presently on appeal.

A third case involving Resources Development in the Northern Great Plains region, *EDF* v. *Morton,* Civil No. 1220, District of Montana, was recently filed by conservation organizations to enjoin delivery of water from federallyoperated projects under existing water option contracts. The plaintiffs charge that a comprehensive environmental impact statement is required for the program as well as violation of several Federal reclamation statutes. Several coal and power companies have intervened.

In July and August 1973, a lengthy trial was held in *Canal Authority* v. *Callaway,*(9) Middle District of Florida, and related cases, which questioned, among other things, the President's authority to halt construction of the Cross Florida Barge Canal. A decision was rendered in February 1974, holding that the President was without authority to terminate the Cross Florida Barge Canal (although he could temporarily halt construction for the purpose of studying environmental factors), that the Office of Management and Budget unlawfully created a budget reserve of $150,000 appropriated by Congress for preparing a NEPA impact statement, and that the NEPA statement prepared by the U.S. Forest Service was inadequate because it did not treat the entire project and was prepared under a legally erroneous assumption as to the President's authority. The result is that construction is halted while a new impact statement is being prepared. It is expected that the statement will be filed with the Council on Environmental Quality about June 30, 1976.

An important development in the environmental litigation has been the attempt by plaintiffs' attorneys to recover attorney fees and their costs in addition to those costs expressly allowed by statute. The Department has successfully resisted these efforts. In the Alaska Pipeline case, the matter reached the court of appeals which denied the claim for attorney fees and costs against the Federal defendants but allowed one-half of such fees and costs against the oil company intervenors. The oil companies are seeking certiorari.

There were significant achievements in the field of Indian law during the year. The protection of fishing rights of the tribes of the Pacific Northwest has been the subject of continuing litigation for many years. Several years ago the District Court for Oregon in *United States* v. *State of Oregon*(10) handed down a decision requiring that the State so manage its fishing resources on the Columbia River that the Indians would receive a fair share of the harvest. The State of Washington has not been willing to adhere to this principle and in September 1970, suit was brought against it, *United States* v. *State of Washington,*(11) Western District of Washington. Seven tribes intervened as plaintiffs. On January 11, 1974, the court handed down a lengthy opinion upholding the claim of the United States and the Indians that state regulation of fishing must recognize the rights of the Indians. The case is now on appeal. The district court opinion is in accord with the decision of the Supreme Court of November 19, 1973, in *Washington Game Commission* v. *Puyallup Tribe,* 414 U.S. 44, in which the Court held that as long as steelhead fishing is permitted, there must be an accommodation between the Indians' net-fishing rights and the rights of sports fishermen. While these cases go far in establishing the law protecting the treaty fishing rights of Indians, the practical application of that law continues to present very serious problems.

With the increasing demand for the limited supply of water available, particularly in the western states, litigation for the protection of the rights of the United States and of its Indian wards takes on increasing importance. This was highlighted during the year by efforts to protect the rights of the Indians of the Pyramid Lake Indian Reservation in Nevada and the Pueblo Indians in New Mexico.

After the Supreme Court refused to accept jurisdiction of an original action to establish the rights of the Pyramid Lake Indians to sufficient water from the Truckee River to maintain the level of the lake, an action, *United States* v. *State of Nevada,*(12) District of Nevada, was filed to establish those rights. At the close of the fiscal year, service of process on some 13,000 defendant water users was nearing completion. In the meantime the Department of the Interior gave notice to the Truckee-Carson Irrigation District that it was terminating the contract, effective October 31, 1974, under which that district operates the federally-financed reclamation projects on the Truckee and Carson Rivers for alleged violations of the terms of the contract. The district has brought suit against the Secretary, *Truckee-Carson Irrigation District* v. *Morton,*(13) District of Nevada, claiming the notice was not in accordance with the terms of the contract and asking the court to enjoin its termination.



About eight years ago, a suit was instituted, *United States* v. *Aamodt,*(14) District of New Mexico, affecting the rights of four Pueblos to the use of water from a tributary of the Rio Grande River. The case was referred to a Special Master and lengthy procedural delays ensued. The actual trial got under way in April 1974. It will continue intermittently for several months. The Indians have intervened and are represented by private counsel. It is expected the decision will be very important in determining the extent of the rights of the Pueblos, both under United States law and under the laws of the prior sovereigns.

The Mescalero Apache Tribe in New Mexico has under construction a recreation facility in connection with which it will build a small lake. The lake will be filled with water from a small stream which rises on the Reservation but flows into the Hondo River. In *State of New Mexico* v. *Lewis,*(15) which has been pending for many years in the state courts of New Mexico, water users on the Hondo River attempted to enjoin the Indians from using the waters to fill the lake. The Department successfully opposed the injunction and the matter is now on appeal.

The administration of the Alaska Native Claims Settlement Act of December 18, 1971, continues to be the subject of very extensive litigation. This involves claims of individuals to enrollment, whether nonresident natives shall have a separate regional corporation, the selection of lands for the villages and regions, and other related matters. It now appears quite probable that this litigation will render it completely impossible for the Secretary of the Interior to comply with the timetable established by Congress. A number of bills are now pending to alleviate the situation.

In other litigation, on January 31, 1974, the Department received a request from the Department of the Navy for immediate action to enjoin the Standard Oil Company of California from producing oil from a newly discovered area adjoining Naval Petroleum Reserve No. 3. Suit was filed by the Department and a preliminary injunction against further production was obtained. It remains in effect pending negotiations for a settlement of the matter pursuant to the terms of the contract between Navy and Standard.

The District Court for West Virginia in *Izaak Walton League* v. *Butz*(16) held that clearcutting of timber on the Monongahela Forest was not authorized by the Forest Service Organic Act, but that only "dead, mature or large growth" trees which are "individually marked" may be cut. The Forest Service claims this prevents the use of modern silvacultural practices in managing the forest. An appeal is pending and remedial legislation is being considered.

**Land Acquisition Section**

In this fiscal year, there were filed 567 new condemnation actions to acquire 2,807 tracts of land for the use of Federal departments and agencies. Final judgments were obtained in 592 cases concluding the acquisition of 3,462 tracts of land. There were 1,916 condemnation cases pending at the end of the year involving 10,096 tracts of land. Since there were 10,751 tracts pending on condemnation proceedings on June 30, 1973, the pending tracts were reduced by a total of 1,582 opinions from the number rendered in the previous fiscal year. This decrease was largely due to the additional exercise of the authority given to Federal departments and agencies to approve titles to lands acquired by direct purchase under delegation of authority issued by the Attorney General as authorized by Public Law 91-393 approved September 1, 1970, 84 Stat. 835. The lands included in the closed cases and purchases totaled 552,617.22 acres and were acquired at a total cost of $183,018,795.33, which was $71,991,341.20 in excess of the cost of lands acquired in fiscal year 1973.

In fiscal year 1970 there were 17,955 tracts in pending condemnation proceedings and on June 30, 1974, there were 10,096 tracts pending. This material reduction has been due primarily to increased training programs and to the active assistance by attorneys in this section who had sole or joint responsibility with the United States Attorneys for preparation and trial for approximately 4,663 of the pending tracts and general supervision of the remaining pending tracts. Legal educational seminars for the Assistant United States Attorneys and the attorneys in this section have been very beneficial. A one week seminar for Assistant United States Attorneys was held in San Francisco, California, in September 1973, and a two week instruction program for attorneys in this section was conducted in January 1974. Senior attorneys led the sessions which undertook a step-by-step analysis of condemnation cases from pretrial condemnation cases involving large amounts of money and a great amount of trial preparation. The present program has not only resulted in a reduction of the condemnation tract load but has caused a significant increase in the quality of the preparation and trial of cases.

The litigation risks handled by this section usually involve great sums of money. For example, in one case handled by the personnel of this section, involving certain real property, 1,307 buses and other miscellaneous properties owned by the C.C. Transit Company and WV&M, the owners claimed compensation of approximately $35,500.000 and the commission awarded the sum of $44,904,000.

**Indian Claims Section**

*a. Court of Claims*

The Court of Claims rendered eight appellate decisions in Indian Claims Commission cases during the year. The court held the Indians could not recover for minerals removed prior to extinguishment of aboriginal title in *United States* v. *Northern Paiute Nation*, Appeal No. 18-72. The Government was unsuccessful in its attempts to secure a holding that aboriginal title is extinguished when the Indians lose exclusive use and occupancy (*Turtle Mountain Band* v. *United States*, Appeal No. 6-72, and *Gila River Pima Maricopa Indian Community* v. *United States*, Appeal No. 14-72). On Indian appeals, the court affirmed the Commission that the sale of Indian lands to homesteaders pursuant to statute was not a Fifth Amendment taking (*Three Affiliated Tribes of Fort Berthold Reservation* v. *United States*, Appeal No. 17-72), and that the claim for $95,000,000 in oil royalties was invalid (*Seminole Nation* v. *United States*, Appeal No. 4-73). The court also affirmed the dismissal of claims for the reversion to railroad rights-of-way but upheld a similar claim for station grounds in *Seminole Nation* v. *United States*, Appeal No. 3-73. Two appeals were dismissed on procedural grounds. In an original jurisdiction suit under 28 U.S.C. sec. 1505 (*Dan Andrade*, Nos. 347-72, 47-73), the court refused to reopen the 1964 settlement with the California Indians. Plaintiffs argued the settlement had been improperly secured. At the close of the year there were 19 appeals from the Indian Claims Commission pending before the Court of Claims and one petition for certiorari pending before the Supreme Court.

*b. Final Judgments*

The Indian Claims Commission entered 19 final judgments in fiscal year 1974 of which three were dismissed. There were 16 final judgments awarding Indian tribes $62,714,161.97. Of these, 13 judgments determined the value of 33,390,006 acres of land acquired by the United States from Indian tribes between 1802 and 1936 and totaled $55,568,832.22. There were three judgments in nonland cases totaling $7,145,329.75. Two of these were general accountings, i.e., claims that the United States had erroneously disbursed tribal funds or failed to pay interest on or otherwise collect such funds. One claim was a payment of $90,000 for the destruction of the Tlingit village of Angoon, Alaska, in 1882 by United States gunboats. The Commission in *Little Shell Band*, 33 Ind. Cl. Comm. 469 dismissed, for lack of proof of exclusive use and occupancy, the aboriginal title claim of the so-called "Chippewa-Cree" Indians to 16,000,000 acres in Montana lying between the Missouri River and the Canadian border. Also in *Seminole Indians of Florida*, 33 Ind.Cl. Comm. 70, the Commission dismissed the claim that a 5,000,000-acre reservation had been established in the Everglades for the Florida remnant of Seminoles after the tribe moved to Indian territory in the 1830's.

*c. Interlocutory Decisions*

An interlocutory decision in *James Strong, et al.*, 31 Ind. Cl. Comm. 89, by the Indian Claims Commission determined aboriginal title in southern Ohio, Indiana and nearby enclaves extinguished by the Treaty of Greeneville made in 1795. The tracts ceded contained approximately 13,600,000 acres and were claimed by various groups of Chippewas, Pottawatomies, Delawares, Ottawas, Shawnees, Six Nations, Wyandots, Miamis, Peorias and Kickapoos in 13 dockets. The Commission determined, *Citizen Band of Pottawatomi*, 32 Ind. Cl. Comm. 400, 461 the extent of recognized title to be 6,577,558.04 acres. In a supplemental opinion, *Prairie Band of Pottawatomi*, 33 Ind. Cl. Comm. 394, it was held that the Indian tribe must pay the fair market value of 5,000,000 acres of Iowa land received in 1835 in exchange for recognized title lands ceded in Wisconsin, Illinois and Michigan which are now in the process of being valued. Value was determined to be $5,980,122 for 5,823,000 acres in *Goshute Tribe*, 31 Ind. Cl. Comm. 225. The Indians in *Goshute Tribe* were also awarded $1,273,000 for minerals removed prior to date aboriginal title was extinguished. The Commission made three other interlocutory decisions on value covering 9,376,593 acres and found such lands had a value of $18,497,000. One of these decisions also allowed $450,000 for gold mined on the Sioux reservation prior to the date the Indians lost title. However, since two of the three decisions were held to constitute Fifth Amendment takings for which the Indians would be entitled to five percent interest per annum, the awards plus interest could amount to $104,060,450. The decision in *Sioux Nation*, 33 Ind. Cl. Comm. 151, which accounts for $102,262,500 of this amount, is by far the largest single determination of potential liability under the Indian Claims Commission Act.

*d. Accounting Decisions*

Accounting decisions began to be a substantial portion of the Indian Claims Commission's work this year. The Commission has written 15 opinions on accounting cases. The most significant of these was the decision that the Act of September 11, 1841, 5 Stat. 465, 31 U.S.C. sec. 547a, required the United States to pay, in effect, five percent compound interest on all tribal funds held by the Government unless another interest rate was specified by law (*Te-Moak Band of Western Shoshone, et al.*, 31 Ind. Cl. Comm. 427, rehearing denied, 33 Ind. Cl. Comm. 417). This and related holdings are pending in a consolidated appeal before the Court of Claims. An accounting claim was settled for $7,000,000 in *Jicarilla Apache Tribe*, 33 Ind. Cl. Comm. 364. Final judgment was entered for $55,329.75 in *Six Nations, et al.*, 32 Ind. Cl. Comm. 440. The issues which may be raised in general accounting cases have been expanded. The Commission has made it clear that general accounting cases will not be confined to fiscal records but that it will require the Government to account for all tribal property which it managed. (*Blackfeet and Gros Ventre Tribes, et al.*, 32 Ind. Cl. Comm. 65; *San Carlos Apache Tribe, et al.*, 33 Ind. Cl. Comm. 416). The accounting reports made by the United States prior to 1970 are continuing to be held inadequate by the Commission and it has ordered seven supplemental reports during the year. Fifth Amendment takings and fairness of past agreements may also be raised as exceptions in accounting cases without regard to the 1951 statute of limitations generally applicable to such claims (*Fort Peck Indians*, 34 Ind. Cl. Comm 24). One partial summary judgment for illegal disbursements was entered against the United States for $355,079.57 in *Blackfeet and Gros Ventre Tribes, et al.*, 32 Ind.Cl.Comm. 65. The Commission entered an interlocutory award of $10,830,860.40 for removal of minerals from Chiricahua Apache aboriginal title lands in an accounting case, *Fort Sill Apache Tribe, et al.*, 34 Ind. Cl. Comm. 81.

*e. Miscellaneous*

The Commission wrote five opinions on miscellaneous interlocutory decisions. A claim that the Government had failed to develop water and agricultural resources on a reservation was dismissed in American Indians Residing on the Maricopa Ak Chin Reservation, 31 Ind. Cl. Comm. 384. The United States was held liable for using tribal funds since 1937 to pay operation and maintenance charges for an Indian irrigation project in Gila River Pima-Maricopa Indian Community, 33 Ind. Cl. Comm 18. The Indians have been allowed to file an amended petition claiming $2,100,000 because the United States has not performed alleged oral promises to support the Indians' fishing industry (Makah Indian Tribe, 34 Ind.Cl.Comm. 14).

**Marine Resources Section**

The major activity of the Marine Resources Section continues to be in original suits in the Supreme Court to fix federal-state offshore boundaries.

Evidentiary hearings and all requirements for closing the record before the Special Master in *United States* v. *Maine, et al.*, S.Ct., No. 35, Original, were completed. This case involves the rights to the natural resources of the entire outer continental shelf on our Atlantic coast, except for the State of Florida which is a separate case. Briefing before the Master by the United States and the 12 defendant States totalled over 1,000 pages. The report of the Special Master containing his recommendations as to findings of fact and conclusions of law is expected to be submitted to the Supreme Court in August. Once this occurs the parties will be given an opportunity to submit briefs to the Supreme Court supporting or opposing the recommendations of the Master, after which the Court will hear oral argument before deciding the case.

The parties in *United States* v. *Louisiana*, S.Ct., No. 9, Original, completed briefing and oral argument was held before the Special Master. Although the United States in 1971 was awarded the rights to the natural resources of 2½ million acres in submerged lands and $1.1 billion in impounded funds derived from that area, the rights to the resources of a considerable area of seabed involving approximately another billion dollars of impounded monies will be determined by these proceedings. In February and April the Special Master circulated drafts of his proposed report to the parties requesting comments as to technical accuracy. Comments were submitted and a post-trial conference completed the proceedings before the Special Master.

Briefing and oral argument before the Special Master in *United States* v. *Florida*, S.Ct., No. 52, Original, was accomplished. This case, which springs in part from *United States* v. *Maine, et al.*, involves rights to the natural resources of the seabed adjacent to Florida in both the Gulf of Mexico and the Atlantic Ocean. The report of the Special Master was submitted to the Supreme Court and the Court ordered the report filed and set a briefing schedule. Most of the findings of fact and conclusions of law recommended by the Master are consistent with the position of the United States. The United States and Florida simultaneously filed exceptions to the report of the Master in the Supreme Court. Replies to the exceptions will be filed on or before Ausust 10, 1974. The case will be set down for oral argument before the Court makes its decision probably early in the October Term 1974.

At the invitation of the Supreme Court, the United States intervened in *Texas* v. *Louisiana*, S.Ct., No. 36, Original, involving a dispute between those states as to the location of their shared boundary in the Sabine River and ownership of islands in that river. After the Supreme Court invited the views of the United States with regard to ownership of islands in the west half of the Sabine River, Louisiana moved to enlarge the case to include the

determination of its shared boundary with Texas in the Gulf of Mexico. The United States submitted a brief in support of Louisiana's motion and the Special Master submitted his report to the Court recommending enlargement of the issues as requested by Louisiana. Thereafter the Court granted Louisiana's motion. The Court granted motions by the United States in November and March to intervene and file a complaint and an amended complaint setting forth the claim to one island in the Sabine River, and the United States' position as to the location of the offshore boundary in the Gulf of Mexico. The Court also granted a motion by the City of Port Arthur, Texas, to intervene. After extensive discovery and the exchange of pretrial briefs, a hearing was held before the Master between May 20-23, 1974. A briefing schedule has been established by the Special Master.

Between December 1972 and August 1973, the United States and Florida and Texas attempted unsuccessfully in *United States* v. *Florida and Texas,* S.Ct., No. 54, Original, to negotiate a deferral of litigation in the Supreme Court over the rights of those States to enforce their fishery laws against foreign vessels and crews in the area from three to nine miles from the coastline until after the Third United Nations Conference on the Law of the Sea held in Caracas, Venezuela. After these negotiations failed, the parties commenced discovery. Pretrial conferences were held to narrow issues and establish procedures and a schedule to govern evidentiary hearings before the Special Master appointed by the Supreme Court.

Three cases were litigated in the court of appeals. One of these cases involved a claim by the State of Alaska to the natural resources of the submerged lands of lower Cook Inlet, Alaska. The remaining two cases involved claims by individuals to the outer continental shelf off of California; in both cases, the denial of such claims was affirmed.

In *United States* v. *State of Alaska,* C.A. 9, the State claimed the natural resources of the submerged lands of Cook Inlet on the ground that all of Cook Inlet was historic inland waters within the Submerged Lands Act grant to the State. The district court ruled that Cook Inlet had always been historic inland waters of the United States and granted the State the rights to the resources. The determination by the Court affects not only the domestic allocation of seabed resources but also the international relations of the United States, e.g., rights of foreign nations to conduct innocent passage and to fish in these waters are directly affected. The Court of Appeals for the Ninth Circuit affirmed the decision of the district court. On June 17 a petition for certiorari was filed, thereby automatically extending until final resolution of this case the previously acquired stay of the judgment with respect to foreign fishing and navigation in Cook Inlet. Since January continuing negotiations have been held with representatives of Alaska regarding a possible interim agreement which would permit development of the oil and gas in Cook Inlet pending a decision by the Supreme Court.

*Appraisal Section*

Personnel of the Appraisal Section analyzed 1,883 appraisal reports involving 2,315 tracts during the year. They participated in 376 compromise settlements. In addition, a total of 650 memorandums were written to complete the workload of 968 cases processed.

*Appellate Section*

Appellate litigation continued to multiply noticeably for the third straight year. Most of this increase is environmental litigation, many cases having commenced in the courts of appeals on petitions for review as permitted by particular statutes, principally the Clean Air Act. Recent features of appellate practice which are noteworthy persist. Accelerated briefing and argument of cases and an appreciable amount of motion practice, which frequently require as much time and effort as regular briefs.

**Litigation Developments**

*I. National Environmental Policy Act*

A substantial amount of litigation continues concerning the National Environmental Policy Act, and, in most situations, these cases challenge the absence of or adequacy of environmental impact statements (EISs). Numerous federal projects have been subject to attack for alleged deficiencies in the preparation of EISs. Many delays causing increased costs in construction have been occasioned by these suits.(17)

The Fourth Circuit has decided that the decision of the Army Corps of Engineers not to prepare an EIS prior to the granting of a permit for construction of a fishing pier was neither arbitrary nor capricious.(18) The construction of jails in downtown New York and Chicago were found, in negative impact statements which were approved by courts of appeals, not to significantly affect the quality of the human environment.(19)(20) A preliminary injunction was denied and the case remanded to the district court, where eventually it will be decided whether a 33 U.S.C. sec. 403 permit inherently requires an EIS. Similarly, a preliminary injunction was denied in a suit brought to halt construction of a federal bulk mail facility, but the court remanded for reconsideration of whether problems of storm water run-off requires an EIS.(21) Justice Douglas has granted a stay pending appeal in the Ninth Circuit to maintain the status quo in the



construction of the Warm Springs Dam, after environmentalists questioned project safety and water purity.(22) The Sixth Circuit has allowed construction to proceed in the Creek Lake Project in Ohio pending revision of the EISs.(23) The Eighth Circuit upheld the adequacy of the EIS for the Truman Dam Project, but declined to offer an opinion on whether the district court was correct in alluding to congressional discontent with judicial enforcement of NEPA, or whether it was proper for the court to consider the failure of plaintiffs to express their dissatisfaction in comments on the draft EIS.(24) Also, a challenge to the adequacy of the EIS issued for expansion of the Agricultural Research Center in Beltsville, Maryland, was denied.(25)

The proper standard of review of an EIS was held by several courts to be the "arbitrary and capricious" standard,(26)(27) and the review of an EIS is to be based upon the administrative record as supplemented only to a limited extent. (28)

In remanding to determine whether there has been compliance with NEPA, the district court was ordered to determine whether the relief sought would constitute such an intolerable burden on governmental functions, when weighed against private harm, that the suit should be dismissed. This is the Ninth Circuit's version of sovereign immunity.(29)

An EIS filed by Housing and Urban Development was found inadequate for failure to fully discuss alternative drainage system plans for a proposed HUD-guaranteed housing project.(30) The D.C. Redevelopment Land Agency was required to submit a draft EIS to accompany the D.C. Action Year Urban Renewal Program, and the court went on to hold that a local (state) agency could be enjoined in Federal court from expending Federal funds, if the Federal agency itself could have been enjoined from providing the funds.(31) But where local citizens challenged new zoning regulations and sought to enjoin local officials from beginning a construction project, because the Secretary of the Interior had not yet prepared an EIS on his master plan for the whole area, the court reluctantly denied relief, holding that the lower court did not have jurisdiction over local officials prior to the Secretary's commitment to the project and complaince with NEPA.(32)

After having prepared an EIS, the Interstate Commerce Commission concluded that a general increase in railroad freight rates would have no significant adverse impact on the quality of the human environment. A three-judge district court, however, enjoined the proposed rate increase. The Supreme Court summarily vacated the injunction, holding that it encroached on the ICC's "primary jurisdiction" over national transportation policy.(33)

A series of highway cases has further defined the limits of environmental review for highway construction projects. The Eighth Circuit ruled that an EIS does not have to consider the entire highway system within a State, nor even the entire highway involved, so long as the road segment and EIS are logical and consider the impact from one terminus to the other. Here, the case was remanded because one of the termini was illogical.(34) The Fourth Circuit declined to enjoin construction of a highway against insubstantial allegations of the federal nature of the project and noncompliance with NEPA, and the court futher held that a stiff bond must be given by the plaintiff if certiorari were sought.(35) In California completion of a state highway was enjoined on grounds that NEPA requirements were unfulfilled, absent a timely showing that the State had rejected Federal support.(36) The Fourth Circuit refused to enjoin construction on environmental grounds in a case where construction had already reached a stage where strict compliance with NEPA would be a meaningless formality.(37) The preparation of EISs by a state highway department was found permissible where the Federal Highway Administration had not simply rubber-stamped the State's work.(38)(39) The discretionary denial of an injunction pending review of an EIS was affirmed by the Ninth Circuit, which, as have other circuits, generally permitted construction to continue pending court review. (40)

In other cases, the Forest Service was compelled to file an EIS when contracting to sell substantial timber(41) and where clear-cutting was involved.(42) The Interstate Commerce Commission was required to have its staff prepare an EIS before any hearing on a rail abandonment proceeding.(43)

*II. Clean Air Act*

The relationship between the National Environmental Policy Act (NEPA) and the Clean Air Act was further clarified in a case where the Anaconda Copper Company sued to enjoin the Environmental Protection Agency from promulgating sulfur oxide regulations until an EIS was prepared and Anaconda was granted an adjudicatory hearing. The court held that no such EIS was required, that the district court lacked jurisdiction, and that Anaconda was not deprived of due process by EPA's refusal to grant it an adjudicatory hearing.(44) EPA regulations requiring all gasoline retailers to furnish "unleaded gasoline" were upheld as adequate. The court, however, went on to declare that strict vicarious liability should not be imposed on refiners for lead contamination.(45)

There have been numerous challenges to state implementation plans (SIPs), prepared pursuant to the Clean Air Act. The Fifth Circuit held that EPA approval of

the Georgia SIP violated the Clean Air Act in several respects—public disclosure of emission data was faulty, provisions for variances were faulty, the tall stack dispersion strategy was incorrect, and factors, other than public health, were plugged into the SIP.(46) Similar challenges to the Iowa SIP met with a different result, for there the court approved the plan and determined that it complied with the strictures of the Clean Air Act.(47) When EPA, without giving notice or opportunity for public comment, issued what it termed a "clarification" of the sulphur dioxide regulations in the Michigan SIP, the court held that these changes were substantive and not revisionary, and thus required compliance with the informal rulemaking requirements of the Administrative Procedure Act.(48) The Tenth Circuit decided that it lacked jurisdiction to review EPA's disapproval of certain aspects of the New Mexico SIP.(49)

The Sixth Circuit has held that Section 118 of the Clean Air Act should not be construed so as to require federal officers to apply for and obtain state air pollution emission permits as a prerequisite to operating federal facilities within the various states.(50) The Supreme Court has determined that a warrantless entry onto the premises of a company (a parking lot) by a state air pollution inspector to conduct a smoke opacity test does not violate the Fourth Amendment.(51)

The Tenth Circuit dismissed as moot several challenges made to EPA-imposed SIPs under the Clean Air Act.(52) Also the D.C. Circuit took similar action in the sulfur oxide secondary standards.(53) The Clean Air Act standards for sulfuric acid plants and fossil fuel generator plants were approved as being achievable and economically feasible.(54)

The First Circuit, in a novel opinion, has allowed the recovery of attorney fees by environmental groups even when they are unsuccessful in a Section 307 review under the Clean Air Act.(55)

In the first Transportation Control Plan to be decided, the court set aside the air bleed retrofit regulation as it applied to Philadelphia.(56) The court also held that the enforcement provisions of the Clean Air Act (Section 113) could be used against the State of Pennsylvania if it did not comply with its duties under the Transportation Control Plan.

*III. Water Pollution*

Several appeals have dealt with the Corps of Engineers' permit system under 33 U.S.C. sec. 401 et seq. The Third Circuit held that one who fills in navigable water without a permit, but in reliance on a governmental policy of not requiring permits, and who occupies the fill for some time without governmental objection, acquires a right to maintain the fill.(57) The Consolidated Edison Electric Company was precluded from dumping excavated material into the Hudson River without first obtaining a permit pursuant to Section 404 of Title 33 U.S.C.(58) The Sixth Circuit rejected the government's argument that a corporate owner is not always the "person in charge" of its leaking oil facilities and entitled to immunity from prosecution based on information gathered as a result of the reporting of oil spills, which reports are required by law.(59) A conviction for discharging refuse into the Grand Calument River was obtained against the United States Steel Company.(60) The First Circuit, in an opinion approving the unregulated floating of logs to sawmills, noted that the Government's inaction was no defense to this proceeding. The Government had in part sought the removal of sunken logs and bark that had accumulated in a streambed. The court concluded that this inaction could be considered, however, in framing equitable relief on remand.(61)

The Corps of Engineers' discretionary decision to deny a permit to dredge and fill was held subject to judicial review only to determine whether the decision was arbitrary and capricious within the meaning of the Administrative Procedure Act.(62) In the Gathright Dam Project, which was rated by EPA as "environmentally unsatisfactory," the court of appeals approved the district court's requirement of certain additions to the EIS and refused to enjoin the project.(63)

*IV. Atomic Energy Commission*

Several challenges to actions taken by the Atomic Energy Commission were litigated. The D.C. Circuit affirmed the AEC's decision not to close a certain nuclear power plant, over challenges that regulations pertaining to the emergency core cooling systems were inadequate.(64) In another case the court dismissed, for lack of jurisdiction, a suit challenging an AEC order which had excluded certain broad environmental issues from consideration, the court holding that the AEC had not issued a final order and that such non-final orders are not reviewable.(65) The Second Circuit upheld the decision of the AEC not to issue an EIS for the granting of a license to Columbia University for a small research reactor, ruling that the decision not to submit an EIS was a "threshold finding" supported by substantial evidence in the record that an EIS was unnecessary.(66)

The Third Circuit also declined to review an order of the AEC entered in a licensing proceeding, where opponents to the issuance of the license sought financial and technical assistance in connection with their participation in the AEC hearings.(67)

*V. Attorneys' Fees*

Requests for attorneys' fees promise to increase. The D.C. Circuit granted plaintiffs' motion for costs and attorneys' fees in connection with their successful litigation over the Alaskan pipeline, but went on to hold that there was a statutory bar against awarding attorneys' fees against the United States; consequently, the pipeline company would pay half and plaintiffs would pay half.(68)

The proper method of valuation of property being condemned continues to be frequently litigated. The Fifth Circuit ambiguously stated that a fee simple interest in land could be properly valued by multiplying tonnage, not as a royalty on underlying minerals but as an interest in the land, by a unit price.(69) In the Tenth Circuit, valuation witnesses were permitted to give, on direct examination, their opinion of fair market value based on the "range" of sales studied by them without specifying the sales they actually study.(70) When owners refused to vacate condemned property, it was held that the Government did not have to pay interest on the deficiency ultimately awarded to the condemnees until after a possession order had been issued against the condemnees.(71) The Eighth Circuit held that the Government is not entitled to demonstrate that the untaken portion of a three-unit holding has a highest and best use different from the two taken tracts which affected the amount of compensation owing.(72) Jury verdicts within the range of the evidence continue to be affirmed,(73)(74) as are jury instructions which fairly instruct the jury.(75) A stipulation as to value, negotiated with a landowner, was found to be based on fraud in the inducement; the court found that payment had not been tendered within 60 days, because the landowner was unable to convey clear title.(76)

Courts continue to pay close attention to the procedural aspects of condemnation. Where the Government's declaration of taking was vague with respect to the description of the land taken, a court remanded the case to the district court to determine whether, in fact, there was a taking at all.(77) The factual findings of Rule 71A commissions continue to be undisturbed on appeal,(78)(79) and appellate courts continue to refuse to retry the issue of just compensation *de novo*.(80) The landowners challenge to the sufficiency of the evidence supporting the jury's award of just compensation for land in the Lower Granite Lock and Dam Project on the Snake River was rejected without opinion.(81) A court has stated that in its discretion it may refuse to allow condemnees' motion to produce appraisal reports from the Government's expert witness which had been prepared for the use of other private property owners in the vicinity of the subject tract.(82) The government has also been held to have the burden of establishing the hold-over use of condemned land in order to establish the reasonable rental attendant to such use.(83) The Eighth Circuit held that the government has no interest in the distribution of an award of just compensation where the proper division of the award is simply a dispute between the lessor and lessee.(84) The exception of a declaration of taking of public utility easements does not permit the utility company to counterclaim in the district court; rather, its proper claim for relief lies in the Court of Claims, in a Tucker Act suit.(85)

The perennial right-to-take case resulted in the Sixth Circuit's granting our motion to dismiss without oral argument.(86) The authority to take was also recognized as existing in an appropriations act, where the taking of leasehold interests was authorized.(87) The determination of the district court of a land-use restriction under the urban renewal plan for Southwest Washington was affirmed without opinion.(88) Tenants in a building condemned by the Redevelopment Authority of Philadelphia prior to passage of the Uniform Relocation Assistance and Real Property Policies Act of 1970 unsuccessfully sought compensation.(89)

The Fifth Circuit, in accord with its past practice, has certified to the Florida Supreme Court the question of the validity of mining leases granted by the Trustees of the Florida State Internal Improvement Trust Fund.(90) The Supreme Court denied a writ of certiorari in the case where the district court refused to grant a jury trial and had set the trial of valuation of a muchlitigated condemnation case before a Rule 71A commission. (91) Certiorari was also denied in a challenge to a title determination based upon a map designed solely for navigational purposes.(92)

In Chicago, it was held that the cost of lands needed for relocating railroad tracks and approaches to bridges over the Cal-Sag Navigation Channel should be borne by the United States but that the lower court's award of interest on the government's deposit could not stand, since the local Sanitary District could have withdrawn the deposit.(93)

In a dispute over the proper distribution of a condemnation award, it was held that the lessee, who leased the land from the State of Arizona as Enabling Act school trust lands, was entitled only to the value of the land's improvements and not to value of any present or future leasehold interests.(94)

*VII. Indian Litigation*

Consistent with the Supreme Court's practice in past years, the Court has decided a substantial number of cases involving Indians, their lands, and their rights. The Court declared that general anti-discrimination laws do not repeal special Indian preference statutes for employment at the Bureau of Indian Affairs, and that such Indian preferences are not unconstitutional.(95) The Court also repudiated the Ninth Circuit decision which had

extended Interior's Indian welfare benefit programs to all Indians, whether living on or off the reservation. In a narrow decision, an unassimilated Indian with close tribal ties living off the reservation was held entitled to welfare benefits.(96)

Salmon fishing continues to be a source of contention between Indians and the States wherein they reside. The Supreme Court concluded that the State of Washington could not preclude Indians from commercial net fishing under an 1855 treaty while allowing sport fishing by non-Indians.(97) The Court denied certiorari in an Indian fee distribution award case.(98) The Court remanded a case to the Washington State Supreme Court for a determination of whether Indian petitioners had been destroying food fish outside of their reservation.(99)

The procedural rights of Indians have also been further defined. An Indian claim to the right of possession over certain tribal lands was deemed to be a suit "arising under the Constitution" sufficient to invoke the Federal district court's jurisdiction under 28 U.S.C. secs. 1331 and 1362.(100) The Supreme Court granted certiorari in a case where the Tenth Circuit struck down a Congressional and Indian regulation on liquor sales on reservation lands by non-Indians for vagueness,(101) and the Court also noted jurisdiction of a criminal action where two Indians were prosecuted under state law for hunting on land which, by agreement between the Indians and the United States, would remain open for hunting to Indians.(102) Certiorari has also been granted in an Indian custody suit where the Indians are claiming the State of South Dakota has no jurisdiction over Indians residing in Indian country.(103)

The rights of Indians have also been the subject of many opinions of the courts of appeals. The Indian Employment Preference Statute, 25 U.S.C. sec. 472, has been held to apply to the Bureau of Indian Affairs, and the Secretary of the Interior was not allowed to make any employment exceptions to this statute.(104) The Ninth Circuit found the Secretary of the Interior was not arbitrary or capricious in construing the ambiguous membership requirements of a tribe's constitution according to the tribe's own interpretation.(105) It was held that federal district courts have jurisdiction to hear claims by individual Indians that a tribal election plan violated the one-man, one-vote rule,(106) but it was also held in another case that Indians must exhaust tribal remedies before suing in federal court.(107)

Decisions affecting Indian rights in land include judgments that the Pueblo Indians could not sue federal officials and a development company over a disputed 99-year lease because of the bar of sovereign immunity,(108) and that the Puyallup Indian Reservation still exists, with its attendant fishing rights, even though almost all of the land has been sold to non-Indians.(109)

An important Ninth Circuit opinion recites that federal district courts have jurisdiction only over the issue of eligibility, and not over the classification of land, when an Indian applies for an allotment of public land under 25 U.S.C. secs. 336 and 345.(110) The court noted that classification of land is a matter within the discretion of the Secretary of the Interior and, therefore, unreviewable. Also, it was held that a suit concerning Indian allotments must be dismissed for the failure to have exhausted administrative remedies.(111)

The Ninth Circuit approved Interior's cancellation of a lease of Indian land in Palm Springs, California, because the terms of the lease had not been complied with.(112) That court affirmed a dismissal of an action which sought an injunction and damages against a utility for an alleged trespass across Indian land holding that the Federal Power Commission enjoyed primary jurisdiction.(113) The Tenth Circuit held that a contract existed between the Federal and state governments requiring Colorado to provide tuition-free education for Indians, regardless of residence, in return for land given it by the United States in 1910.(114)

The Tenth Circuit struck down a challenge to the constitutionality of a federal statute which prevents non-Indians from inheriting (by descent) restricted property from those of one-half or more Osage Indian blood.(115) In another will contest case, the Ninth Circuit upheld a lower court decision which found that a deceased Indian had been mentally competent to execute a will.(116)

Attorneys' fees cases continue to be a source of litigation. One case held that, absent specific statutory authority, an award of such fees against the Government in an Indian claims case is impermissible, and 25 U.S.C. secs. 175 and 476 provide no such direct authorization.(117) In another case, two firms were successful in their suit to compel the Secretary of the Interior to pay them $297,000 out of a refund to the Osage Indians stemming from an Internal Revenue Service federal estate tax ruling beneficial to the Indians.(118)

An Indian student's challenge to his having been expelled from a Bureau of Indian Affairs school was determined to be moot since, in a subsequent incident, he was sentenced to two years in the custody of the Attorney General.(119) A suit seeking to close an off-reservation Bureau of Indian Affairs school was found barred by sovereign immunity since the United States had not consented to being sued and the judgment sought would have expended itself on the Federal treasury.(120)

The cancellation of a tribal lease of land to an Indian who subsequently assigned the lease to another Indian was found by the court to involve the Indian Civil Rights Act, rather than being an intra-tribal matter, and the district court was held to have jurisdiction to entertain such a suit.(121) Permissive intervention after settlement of a suit involving fishing, hunting and harvesting of wild rice was also affirmed.(122) An Indian allotment application was also found to be subordinate to an earlier classification for a soldier's scrip patent.(123)

*VIII. Transportation and Housing*

The Third Circuit in a highway case held that the granting of summary judgment was inappropriate since a genuine issue of fact existed as to whether the requisite Section 128(a) federal design approval was completed on time.(124) The Ninth Circuit denied an injunction pending appeal against the application of the Alaska transportation control plan for Fairbanks, reasoning that the delay in application would do more harm to the public interest than leaving the plan in effect.(125) Also, in a second appearance before the Ninth Circuit, a Section 4(F) statement and environmental impact statement were found to be inadequate.(126) The Federal Highway Act, 23 U.S.C. sec. 128(a), also was found not to be retroactive so as to require new corridor or design hearings.(127) The Fifth Circuit refused to enjoin construction of a highway across public parkland, finding that the alternative route proposed by the plaintiffs also required parkland and was not a feasible and prudent alternative.(128)

In two housing cases, it was determined that in a suit to enjoin the demolition of a county courthouse the district court had improperly denied plaintiffs' motion to amend to show standing,(129) and that HUD had properly retained a $30,000 security deposit as liquidated damages for a breach of contract by a garden apartment developer.(130)

Tenants of low-rent housing were found to be entitled to notice of proposed rent increases and an opportunity to file written objections with HUD. They have no right to a public hearing, however, before such an increase.(131) Certiorari was denied in an attempt to annex Offutt Air Force Base and its military housing area to the City of Bellevue.(132)

*IX. Public Lands and Property*

*a. General*

There have been the usual number and wide variety of cases considered by the courts of appeals in this subject area. The Supreme Court, in an unusual decision, declined to apply the traditional doctrine of avulsion. Due to stream channelization by the United States, water receded rapidly from its old course, which normally would mean that the doctrine of avulsion would apply, fixing the boundaries as they were prior to the rapid change. Here, however, the dispute was between a state and a private landowner and the court determined that the equal footing doctrine, which provides that title to navigable streams of western states vests in the state upon its admission into the Union, was not applicable and the landowner took title to the new land.(133) The Supreme Court also settled a long-standing title dispute between the United States and claimants under competing state patents which involved valuable oil-producing lands. The opposing title claimants were found to have not met their burden of proof and their state patent was found invalid.(134)

Certiorari was denied in controversies involving fraudulently obtained entries and patents of public land(135) as well as convictions for engaging in commercial fishing iside an area designated as a National Seashore,(136) and the limitation by Interior on the value of land available for selection for soldiers' additional rights to agricultural land.(137) The United States also obtained a partial summary judgment against a developer constructing a private road over federal lands.(138)

The Tenth Circuit sustained summary judgment, declaring that the terms of an easement deed acquired by the United States forbade landowners from landfilling and placing structures within the easement area.(139) In Arkansas, it was ruled that the Corps of Engineers did not have a perpetual easement to re-enter land to clear and maintain a drainage channel which it had originally constructed in 1939.(140) The Fifth Circuit determined that title to 1,377 acres of Gulf Coast land reverted to the United States under the terms of a 1947 deed because the claimants had failed to use the land excluively for public park purposes.(141) It has been held that a deed which transferred Stewart Airport to the New York State Metropolitan Transportation Authority required FAA approval for all proposed changes to the airport which might adversely affect the facility's safety, utility, or efficiency.(142) The Ninth Circuit first approved the Interior Department's suspension of drilling operations in the Santa Barbara Channel to enable Congress to consider its legislative proposal designed to protect the environment,(143) but subsequently held that, in the light of congressional inaction, such leases could no longer be suspended.(144)

It was decided that two provisions in the Colorado River Storage Act of 1951 were repealed or suspended by subsequent appropriation acts explicitly denying expenditures of funds for protective works for Rainbow Bridge.(145) When the Secretary of the Army and the Environmental Defense Fund appealed from a failure of the district court to modify its injunction preventing the

Corps of Engineers from drawing down the waters of Lake Ocklawaha, the court of appeals ruled that the district court applied the wrong legal standards in considering the motion to modify by placing the burden on the modification-movants.(146) Where a landowner's property was not riparian on the date of the issuance of his patent, it was held that certain accretions belong to the United States as riparian owner of the land.(147)

Land exchanges continue to present difficult problems, as was noted by the Ninth Circuit in its opinion dealing with an exchange of National Forest lands for use in a large recreational development. The court found that there were undecided questions concerning the non-mineral and equal value limitations of the General Exchange Act.(148) In a land exchange which was delayed by the Department of Agriculture, the value of the selected land greatly increased. The Eighth Circuit found that the proposed exchange was a binding agreement and directed the Department of the Interior to issue a patent.(133)

An increasing number of cases has concerned National Forest lands. The Fifth Circuit decided that the United States is the sole owner of certain land in the Sabine National Forest in Texas by virtue of a conveyance by one co-tenant, followed by its recording and adverse possession by the Government.(150) Landowners were also enjoined from constructing a new access road to their property over National Forest lands without first obtaining a special-use permit from the Forest Service.(151) In a title dispute, the Ninth Circuit found that a federal official could not raise in a second trial a defense of sovereign immunity, since, even if the first appellate decision rejecting that defense was erroneous, it was the law of the case.(152) Subsequently the court denied the Government's petition for rehearing or clarification, stating that undisputed title was in the plaintiff.(153) The Ninth Circuit sustained a summary judgment in favor of the United States in an action to collect rent for use and occupation of a building in a National Forest occupied under a special use permit giving the Forest Service the right to charge reasonable rent.(154) The Fifth Circuit affirmed a denial of a preliminary injunction and agreed that the Secretary of Agriculture's regulations providing for the impoundment and sale of livestock found trespassing on National Forest lands were constitutional and that a hearing was not required prior to the impoundment or sale.(155) The Idaho Supreme Court concluded that the United States does have reserve rights dating from the 1906 withdrawal for a National Forest and that in a general adjudication the United States must quantify its rights and may not continue to assert them without limitation.(156)

Several cases have involved enforcement of easements and water rights designed for the protection of wildlife. The Ninth Circuit modified a preliminary injunction directing the defendants to reduce ground water pumping so as to restore water levels in Devils' Hole, Death Valley National Monument, in order to protect an endangered species of pupfish.(157) The court of appeals directed maintenance of present water levels but rejected that part of the district court's injunction requiring restoration of water levels by a certain date. At a later date this injunction was made permanent.(158) In order to protect bird breeding grounds, the United States brought a suit to compel certain farmers in North Dakota to plug a large ditch on their land to maintain certain wetlands. The court of appeals affirmed the district court's injunction preventing defendants from draining their land and required them to fill the ditch.(159)

In a tax case, the Ninth Circuit ruled that the district court lacked jurisdiction to hear a claim that the United States owed a county tax levied during construction of the Los Angeles Airport Postal facility, since the claim exceeded the statutory maximum of the Tucker Act.(160)

The D.C. Circuit affirmed the order of the district court which had dissolved an injunction previously issued against Housing and Urban Development, D.C. Redevelopment Land Agency and National Capital Planning Commission in connection with the adoption of controls for the downtown urban renewal area of Washington.(161) The Supreme Court also denied a petition for a writ of mandamus where the conversion of public trust lands was charged against the President and other federal officials, including judges.(162)

*b. Mining*

A number of cases dealt with mining rights. A pipeline company sought to prevent potash mining under the land to which it held a surface patent, and alleged that it could condemn the mineral interests underground. The Tenth Circuit denied relief, holding that the pipeline company's knowledge of the mining company's lease granted by the Interior Department for the potash, and of the mineral reservation in the surface patent, prevented the pipeline company from asserting a right to lateral and subjacent support.(163) Interior's invalidation of 16 manganese mining claims in Arizona was upheld because use had not been made of the alleged valuable mineral deposit due to changed economic conditions.(164) The Ninth Circuit agreed that the Secretary of the Interior was correct in voiding certain mining claims for silica sand because the claimant failed to demonstrate that the lands were marketable.(165) Where defendants had located mining claims on public lands but tried to use the lands for non-mining purposes, the same circuit affirmed summary judgment against the claim holders, declaring the defendants' claims void, and ordered ejectment.(166)

In two other Ninth Circuit cases, the court affirmed dismissal of an action by a mining claimant to set aside a decision of the Secretary of the Interior, declaring two mining claims null and void for lack of discovery of a valuable mineral deposit.(167) In addition, the court ruled that colored stone (used for decorative roofing material) is a common variety, not subject to location under the mining laws.(168) In an ejectment proceeding, the United States was awarded possession of National Forest lands occupied by a miner under a millsite location held in connection with mining claims which had been previously invalidated in extended litigation.(169) In an action by the United States to cancel a mining lease and enjoin further mining operations, the court of appeals held that this was neither a condemnation nor quiet title proceeding, as defendants argued, and that the district court lacked Tucker Act jurisdiction to award $250,000 against the United States.(170) Where summary judgment was granted the United States in a mining claim contest, the appellate court reversed and concluded that, when a substantial controversy exists, the district court must evaluate conflicting facts in the record and point out operative facts in order to determine if the administrative record is supported by substantial evidence.(171) The Ninth Circuit remanded a case concerning sand and gravel claims in Nevada for review of the administrative record.(172)

In a suit by Texaco to recover the value of the helium constituent of natural gas sold to Phillips, the Supreme Court reversed the judgment of the court of appeals, holding that there was no jurisdiction for the suit.(173) The Eighth Circuit also set aside an injunction restraining the Secretary of Agriculture from ruling on a proposed application for a permit to prospect by the owner of reserved mineral rights in the Boundary Waters Canoe Area.(174)

## Statistics

The Appellate Section case statistics for the last five years follow:

**Appellate Section—Case Statisitics**

| | 1974 | 1973 | 1972 | 1971 | 1970 |
|---|---|---|---|---|---|
| Number of new cases | 812 | 440 | 301 | 204 | 143 |
| Number of cases closed | 329 | 312 | 286 | 214 | 153 |
| Cases pending end of year | 900 | 417 | 289 | 274 | 284 |
| Total cases handled | 1,229 | 729 | 575 | 488 | 437 |
| Memoranda for the Solicitor General | 136 | 133 | 109 | 94 | 96 |
| Number of briefs filed | 226 | 223 | 158 | 97 | 109 |
| Number of oral arguments | 106 | 107 | 72 | 58 | 53 |
| Number of cases decided | 176 | 151 | 130 | 95 | 84 |
| Number of cases summarily disposed of | 62 | 43 | * | * | * |
| Number of substantive motions on responses filed | 149 | 124 | * | * | * |

* No records kept for these years

**LAND ACQUISITION SECTION—TRACTS RECEIVED, CLOSED AND PENDING FISCAL YEARS 1952 to 1974, INCLUSIVE**

| Fiscal Year | Condemnation Tracts Received | Condemnation Tracts Closed | Condemnation Tracts Pending | Title Tracts Received | Title Tracts Closed | Title Tracts Pending |
|---|---|---|---|---|---|---|
| 1974 | 2,807 | 3,462 | 10,096 | 5,126 | 3,133[7] | 2,643 |
| 1973 | 3,026 | 6,307 | 10,751 | 8,407 | 8,407[6] | 3,204 |
| 1972 | 2,262 | 4,543 | 14,032 | 6,619 | 6,804[5] | 1,235 |
| 1971 | 2,691 | 4,333 | 16,313 | 12,599 | 12,600[4] | 1,420 |
| 1970 | 8,495 | 4,431 | 17,955 | 17,204 | 16,390[3] | 1,421 |
| 1969 | 4,717 | 3,696 | 13,891 | 15,521 | 15,443[2] | 607 |
| 1968 | 4,089 | 4,782 | 12,870 | 12,228 | 17,706[1] | 529 |
| 1967 | 3,967 | 6,788 | 13,563 | 12,263 | 11,555 | 6,007 |
| 1966 | 4,957 | 7,768 | 16,384 | 15,786 | 16,630 | 5,299 |
| 1965 | 10,062 | 6,614 | 19,195 | 18,685 | 17,911 | 6,143 |
| 1964 | 6,917 | 12,527 | 15,747 | 15,905 | 14,935 | 5,369 |
| 1963 | 8,259 | 16,261 | 21,357 | 14,030 | 16,449 | 4,399 |
| 1962 | 8,663 | 11,361 | 29,359 | 11,319 | 12,484 | 6,818 |
| 1961 | 10,848 | 6,399 | 32,057 | 8,768 | 11,600 | 7,983 |
| 1959 | 9,942 | 8,989 | 27,608 | 6,511 | 8,887 | 10,815 |
| 1958 | 6,796 | 7,883 | 28,286 | 9,427 | 8,071 | 9,256 |
| 1957 | 7,437 | 7,864 | 29,373 | 9,534 | 7,645 | 7,900 |
| 1956 | 12,119 | 7,535 | 29,800 | 7,587 | 6,092 | 6,011 |
| 1955 | 6,147 | 7,598 | 25,216 | 5,210 | 6,146 | 4,516 |
| 1954 | 5,700 | 6,339 | 26,667 | 5,297 | 6,963 | 5,452 |
| 1953 | 10,025 | 9,282 | 27,306 | 7,928 | 11,458 | 6,231 |
| 1952 | 7,609 | 8,191 | 26,563 | 8,550 | 8,092 | 9,761 |
| | 154,811 | 171,860 | | 246,086 | 253,048 | |

[1] Includes 6,239 tracts closed by preliminary opinion or cancellation.
[2] Includes 4,466 tracts closed by preliminary opinion or cancellation.
[3] Includes 7,210 tracts closed by preliminary opinion or cancellation.
[4] Includes 4,935 tracts closed by preliminary opinion or cancellation.
[5] Includes 3,795 tracts closed by preliminary opinion or cancellation.
[6] Includes 3,430 tracts closed by preliminary opinion or cancellation.
[7] Includes 2,554 tracts closed by preliminary opinion or cancellation.

**LAND ACQUISITION SECTION—TRACTS AND PARCELS RECEIVED, CLOSED PENDING—ACRES ACQUIRED—COST 1952 to 1974 FISCAL YEARS, INCLUSIVE**

| Fiscal Year | Tracts Received | Tracts Closed | Tracts Pending June 30 | Acres Acquired | Cost of Parcels and Acres |
|---|---|---|---|---|---|
| 1974 | 7,933 | 9,149[7] | 12,793 | 552,617 | $ 183,018,795.33 |
| 1973 | 11,433 | 14,714[6] | 13,955 | 248,783 | 111,027,454.13 |
| 1972 | 8,881 | 11,347[5] | 15,267 | 471,040 | 132,175,872.94 |
| 1971 | 15,290 | 16,933[4] | 17,733 | 499,912 | 189,340,994.34 |
| 1970 | 25,699 | 20,821[3] | 19,376 | 897,873 | 161,234,933.96 |
| 1969 | 20,238 | 19,139[2] | 14,498 | 594,141 | 174,392,775.19 |
| 1968 | 16,317 | 22,820[1] | 13,399 | 1,066,975 | 183,440,371.26 |
| 1967 | 16,230 | 18,343 | 19,570 | 1,129,087 | 171,826,973.83 |
| 1966 | 20,743 | 24,398 | 21,683 | 1,451,010 | 160,910,127.56 |
| 1965 | 28,747 | 24,525 | 25,338 | 1,729,207 | 177,069,764.98 |
| 1964 | 22,822 | 27,462 | 21,116 | 1,530,087 | 191,260,285.59 |
| 1963 | 22,289 | 32,710 | 25,756 | 701,953 | 149,543,359.20 |
| 1962 | 19,982 | 23,845 | 36,177 | 575,390 | 145,441,802.13 |
| 1961 | 19,616 | 17,999 | 40,040 | 405,094 | 116,615,398.79 |
| 1960 | 16,453 | 17,876 | 38,423 | 401,388 | 128,209,884.82 |
| 1959 | 18,858 | 16,554 | 39,846 | 456,639 | 107,195,951.52 |
| 1958 | 16,223 | 15,954 | 37,542 | 668,835 | 84,235,231.96 |
| 1957 | 16,971 | 15,509 | 37,273 | 753,710 | 59,998,318.04 |
| 1956 | 19,706 | 13,627 | 35,811 | 595,679 | 63,489,732.80 |
| 1955 | 11,357 | 13,744 | 29,732 | 448,233 | 60,954,619.48 |
| 1954 | 10,997 | 13,302 | 32,119 | 580,418 | 78,198,483.41 |
| 1953 | 17,953 | 20,740 | 33,537 | 626,426 | 74,145,506.79 |
| 1952 | 16,159 | 16,283 | 36,324 | 736,900 | 91,150,700.00 |
| | 400,897 | 427,794 | | 17,121,297 | $ 2,995,877,338.05 |

[1] Includes 6,571 tracts closed by preliminary opinion or cancellation.
[2] Includes 4,466 tracts closed by preliminary opinion or cancellation.
[3] Includes 7,210 tracts closed by preliminary opinion or cancellation.
[4] Includes 4,935 tracts closed by preliminary opinion or cancellation.
[5] Includes 3,795 tracts closed by preliminary opinion or cancellation.
[6] Includes 3,430 tracts closed by preliminary opinion or cancellation.
[7] Includes 2,554 tracts closed by preliminary opinion or cancellation.



**Indian Claims Section Summary[1] Fiscal Year Ending June 30, 1974**

| | | Acres | Amount Claimed | Net Final Judgments |
|---|---|---|---|---|
| 1. Final Judgments (Commission) | 248[2] | 650,514,115.44 | $1,130,484,306.95[3] | $512,528,267.25 |
| 2. Final Judgments (Ct. Cl.) | 15[4] | 20,192,915.52 | 100,838,955.67[5] | 29,121,360.39 |
| | | 670,707,030.96 | $1,231,323,262.62 | $541,649,627.64 |
| Dismissed | | | | |
| 3. By Plaintiffs | 46 | | | |
| 4. By Commission | 156 | | | |
| 5. By Court of Claims | 13 | | | |
| 6. By Distirct Court | 3 | | | |
| | 218 | | | |
| Liability Determined | | | | |
| 7. Indian Title | 36 | 115,833,966.10[6] | | |
| 8. Recognized Title | 54 | 103,568,445.53[6] | | |
| 9. Treaty or Reservation Title | 4 | 8,884,129.80[6] | | |
| 10. Miscellaneous | 19 | Not applicable | | |
| | 113 | | | |

[1] Statistics are cumulative, 1948 to date.
[2] Includes 36 nonland claims.
[3] Includes 42 cases in which amount claimed was not ascertainable.
[4] Includes 7 nonland claims.
[5] Includes 4 cases in which amount claimed was not ascertainable.
[6] Acres estimated.

## WORKLOAD STATISTICS, FISCAL YEAR 1974

| | Initial Pending | New | Closed | Final Pending | Fines or Penalties |
|---|---|---|---|---|---|
| W-1.00 33 U.S.C. 407 (Refuse Act) | 106 | 4 | 46 | 64 | |
| W-2.00 33 U.S.C. 1319(b) and (d) (Enforcement) | 4 | 10 | 0 | 14 | |
| W-2.01 33 U.S.C. 1321(e) and Civil (Imminent Threat) Penalties | 2 | 29 | 6 | 25 | |
| W-2.02 33 U.S.C. 1321(f) and (g) (Clean-up costs) | 2 | 6 | 0 | 8 | |
| W-2.03 33 U.S.C. 1364 (Emergency Powers: sec. 504) | 0 | 1 | 1 | 0 | |
| W-2.04 33 U.S.C. 1365 (Citizens suits: sec. 505) | 1 | 17 | 0 | 18 | |
| W-2.05 33 U.S.C. 1369 (Petitions to review: sec. 509) | 0 | 70 | 6 | 64 | |
| W-3.00 33 U.S.C. 403: 33 U.S.C. 1344 (Dredging and Filling) | 83 | 55 | 37 | 101 | |
| W-4.00 33 U.S.C. 1415(a) and (d) (Ocean Dumping) | 0 | 1 | 0 | 1 | |
| W-5.00 Common Law (Nuisance) | 2 | 0 | 0 | 2 | |
| W-9.00 Other | 46 | 26 | 19 | 53 | |
| A-1.00 42 U.S.C. 1857c-8 (Enforcement: sec. 113(b)) | 2 | 2 | 1 | 3 | $ 500 |
| A-1.01 42 U.S.C. 1857c-8 (Conference: sec. 115) | 0 | 0 | 0 | 0 | |
| A-1.02 42 U.S.C. 1857f-3 (Engines: sec. 204) | 1 | 4 | 1 | 4 | $120,000 |
| A-1.03 42 U.S.C. 1857h-1 (Emergency Powers: sec. 303) | 0 | 0 | 0 | 0 | |
| A-1.04 42 U.S.C. 1857h-2 (Citizens suits: sec. 304) | 10 | 10 | 5 | 15 | |
| A-1.05 Petitions to Review 42 U.S.C. 1857h-5 (Judicial Review sec. 307) | 75 | 108 | 17 | 166 | |
| A-2.00 Common Law | 1 | 1 | 1 | 1 | |
| A-9.00 Other | 16 | 8 | 7 | 17 | |
| N-1.00 42 U.S.C. 4910(c) (Enforcement: sec. 11) | 0 | 0 | 0 | 0 | |
| N-1.01 42 U.S.C. 4911 (Citizens suits: sec. 12) | 0 | 2 | 1 | 1 | |
| N-1.02 42 U.S.C. 4915 (Petitions to Review sec. 16 | 0 | 0 | 0 | 0 | |
| N-9.00 Other | 0 | 3 | 0 | 3 | |
| TOTAL CIVIL | 351 | 357 | 148 | 560 | $120,500 |
| W-10,00 33 U.S.C. 407 (Refuse Act) | 175 | 38 | 118 | 95 | $207,800[1] |
| W-11.00 33 U.S.C. 1321(b)(5) (Notification) | 26 | 19 | 30 | 15 | $ 22,400 |
| W-12.00 43 U.S.C. 1334 (OCS Regulations) | 1 | 0 | 1 | 0 | |
| W-13.00 33 U.S.C. 403, 33 U.S.C. 1344 (Dredging and Filling) | 29 | 39 | 18 | 50 | $ 49,000 |
| W-14.00 33 U.S.C. 1319(c) (Enforcement) | 0 | 2 | 0 | 2 | |
| W-15.00 33 U.S.C. 1415(b) (Ocean Dumping) | 0 | 0 | 0 | 0 | |
| W-19.00 Other | 0 | 1 | 0 | 1 | |
| A-10.00 42 U.S.C. 1857(c)-8(c) (sec. 113(c)) | 0 | 9 | 0 | 9 | |
| A-13.00 Other | 0 | 0 | 0 | 0 | |
| N-10.00 42 U.S.C. 4910(a) (Enforcement: sec. 11) | 0 | 0 | 0 | 0 | |
| N-19.00 Other | 0 | 0 | 0 | 0 | |
| TOTAL CRIMINAL | 231 | 108 | 167 | 172 | $279,200 |
| TOTAL FISCAL YEAR | 582 | 465 | 315 | 732 | $399,700 |

[1] Of this amount, $8,250.00 was awarded to informers pursuant to 33 U.S.C. 411.



## CITATIONS

(1) *Sierra Club* v. *Morton*, No. 73-629.
(2) *Public Citizens* v. *Morton*, Civil No. 74-739.
(3) *Environmental Defense Fund* v. *Peterson*, Civil No. 2164.
(4) *National Wildlife Federation* v. *Tiemann*, Civil No. 74-1215.
(5) *People for Environmental Progress* v. *Callaway*, 373 F. Supp. 589.
(6) *Lee* v. *Callaway*, 348 F. Supp. 389.
(7) *Sierra Club* v. *Morton*, Civil No. 1182-73.
(8) *Redding* v. *Morton*, Civil No. 74-12 BLG.
(9) *Canal Authority* v. *Callaway*, Civil No. 71-92-Civ-J.
(10) *U.S.* v. *Oregon*, Civil No. 68-513.
(11) *U.S.* v. *State of Washington*, Civil No. 9213.
(12) *U.S.* v. *Nevada*, Civil No. R-2987-JBA.
(13) *Truckee-Carson Irrigation Dist.* v. *Morton*, Civil No. R74-34 BRT.
(14) *U.S.* v. *Aamodt*, Civil No. 6639.
(15) *New Mexico* v. *Lewis*, Civil No. 20294.
(16) *Izaak Walton League* v. *Butz*, 367 F. Supp. 422.
(17) *Environmental Defense Fund, Inc.* v. *Armstrong (New Melones)*, 487 F.2d 814 (C.A. 9, 1973), cert. den., *EDF* v. *Stamm*, 416 U.S. 974.
(18) *Rucker* v. *Willis*, 484 F.2d 158 (C.A. 4, 1973).
(19) *Hanly* v. *Kleindienst*, 482 F.2d 448 (C.A. 2, 1973), cert. den., 414 U.S. 908.
(20) *First National Bank of Chicago* v. *Richardson*, 484 F.2d 1369 (C.A. 7, 1973).
(21) *Maryland Planning Commission* v. *Postal Service*, 487 F.2d 1029 (C.A. D.C. 1973).
(22) *Warm Springs Dam Task Force, et al.* v. *Gribble* (No. A-1146, June 17, 1974).
(23) *Ohio* v. *Callaway*, F.2d (C.A. 6, 1974).
(24) *Environmental Defense Fund, Inc.* v. *Callaway*, F.2d (C.A. 8, 1974).
(25) *The Maryland-National Capital Park and Planning Commission* v. *Schultz*, F.2d (C.A. D.C. 1974).
(26) *Sierra Club* v. *Froehlke*, 486 F.2d 946 (C.A. 7, 1973).
(27) *Life of the Land* v. *Brinegar*, 414 U.S. 1052 (1973).
(28) *Conservation Council* v. *Froehlke*, F.2d (C.A. 4, 1973).
(29) *Association of Northwest Steelheaders* v. *United States.*
(30) *Silva* v. *Romney*, 482 F.2d (C.A. 1, 1973).
(31) *Jones* v. *D.C. R.L.A.*, F.2d (C.A. D.C. 1974).
(32) *Biderman* v. *Morton*, F.2d (C.A. 2, 1974).
(33) *United States* v. *SCRAF*, 414 U.S. 1035 (1973).
(34) *Indian Lookout Alliance* v. *Volpe*, 484 F.2d 11 (C.A. 8, 1973).
(35) *James River & Kanawha Canal Parks* v. *Richmond Metropolitan Authority*, 481 F.2d 1280 (C.A. 4, 1973).
(36) *La Raza Unida of Southern Alameda County* v. *Volpe*, 488 F.2d 559 (C.A. 9, 1973).
(37) *Ecos* v. *Volpe*, F.2d (C.A. 4, 1973).
(38) *Iowa Citizens for Environmental Quality* v. *Volpe*, 487 F.2d 849 (C.A. 8, 1973).
(39) *The Citizens Environmental Council* v. *Volpe*, 484 F.2d 870 (C.A. 10, 1973).
(40) *Sullivan* v. *Brinegar* (No. 73-49), cert. den., 414 U.S. 855 (1973).
(41) *Wyoming Outdoor Coordinating Council* v. *Butz*, 484 F.2d 1244 (C.A. 10, 1973).
(42) *Wyoming Outdoor Coordinating Council* v. *Butz*, 484 F.2d 1244 (C.A. 10, 1973).
(43) *Harlem Valley Transportation Assoc.* v. *Stafford*, F.2d (C.A. 2, 1974).
(44) *Anaconda* v. *Ruckelshaus*, 482 F.2d 1301 (C.A. 10, 1973).
(45) *Amoco Oil Co.* v. *EPA*, F.2d (C.A. D.C. 1974).
(46) *NRDC* v. *EPA*, F.2d (C.A. 5, 1974).
(47) *NRDC* v. *EPA*, 483 F.2d 690 (C.A. 8, 1973).
(48) *Detroit Edison Co.* v. *EPA*, F.2d (C.A. 6, 1974).
(49) *Transwestern Coal Gasification Co.* v. *EPA* (C.A. 10, 1973).
(50) *Commonwealth of Kentucky* v. *Ruckleshaus*, F.2d (C.A. 6, 1974).
(51) *Air Pollution Variance Board of Colorado* v. *Western Alfalfa Corp., U.S. (1974).*
(52) *Arizona Public Service Co.* v. *EPA*, 483 F.2d 1775, cert. granted, 42 L.W. 3633 (C.A. 10, 1973), and *Public Service Co. of New Mexico* v. *EPA, (C.A. 10, No. 72-1572, Aug. 30, 1973).*
(53) *Kennecott Copper Corp.* v. *EPA*, F.2d (C.A. D.C. 1973).
(54) *Essex Chemical Corp.* v. *Ruckelshaus*, and *Appalachian Power Co.* v. *EPA*, 486 F.2d 427 (C.A. D.C. 1973).
(55) *National Resources Defense Council* v. *Environmental Protection Agency*, 484 F.2d 1331 (C.A. 1, 1973).
(56) *Pennsylvania* v. *EPA*, F.2d (C.A. 3, 1974).
(57) *United States* v. *Stoeco Homes*, F.2d (C.A. 3, 1974).
(58) *Scenic Hudson Preservation Conference* v. *Callaway*, F.2d (C.A. 2, 1974).
(59) *United States* v. *Republic Steel Corp.*, F.2d (C.A. 6, 1974).
(60) *U.S. Steel Corp.* v. *United States* (No. 73-75).
(61) *United States* v. *Kennebec Log Driving Co.*, 491 F.2d 562 (C.A. 1, 1973).

(62) *Di Vosta Rentals, Inc.* v. *Lee,* 488 F.2d 674 (C.A. 5, 1974).
(63) *Cape Henry Bird Club* v. *Laird,* 484 F.2d 453 (C.A. 4, 1973).
(64) *Union of Concerned Scientists* v. *Atomic Energy Commission,* F.2d (C.A. D.C. 1974).
(65) *Ecology Action* v. *AEC,* 492 F.2d 998 (C.A. 2, 1974).
(66) *Morningside Renewal Council* v. *AEC,* 482 F.2d 234 (C.A. 2, 1973).
(67) *Citizens for a Safe Environment* v. *AEC,* 489 F.2d 1018 (C.A. 3, 1973).
(68) *Wilderness Society* v. *Morton,* 495 F.2d 1026 (C.A. D. C. 1974).
(69) *United States* v. *83.22 Acres in Richmond County, Ba.,* 480 F.2d 1143 (C.A. 5, 1973).
(70) *United States* v. *45,131.44 Acres in El Paso, Fremont and Pueblo Counties,* 483 F.2d 569 (C.A. 10, 1973).
(71) *United States* v. *Certain Land in New London, Conn.,* 492 F.2d 1381 (C.A. 2, 1974).
(72) *United States* v. *1,162.65 Acres in Henry and St. Clair Counties, Mo.,* 498 F.2d 1298 (C.A. 8, 1974).
(73) *United States* v. *504.90 Acres in Bonneville County, Idaho (C.A. 9, 1973).*
(74) *United States* v. *Jack T. and Gloria B. Fischbach,* owners of Tract No. 6-45, et al. (C.A. 4, 1973).
(75) *United States* v. *145.31 Acres in Huntingdon County, Penna.* 485 F.2d 682 (C.A. 3, 1973).
(76) *United States* v. *1557.28 Acres in Osage County, Kan.,* 486 F.2d 445 (C.A. 10, 1973).
(77) *United States* v. *21.54 Acres in Marshall County, W.Va.,* 491 F.2d 301 (C.A. 4, 1973).
(78) *United States* v. *186.65 Acres in Boone and Polk Counties, Iowa,* 505 F.2d 735 (C.A. 8, 1974).
(79) *United States* v. *363.40 Acres in Clermont County, Ohio,* 492 F.2d 1244 (C.A. 8, 1974).
(80) *United States* v. *105.22 Acres in the County of New Haven, Conn.,* 498 F.2d 8 (C.A. 2, 1974).
(81) *United States* v. *8,312 Acres in Whitman and Asotin Counties, Wash.,* F.2d (C.A. 9, 1974).
(82) *United States* v. *45.02 Acres in Douglas County, Colo.,* 495 F.2d 1398 (C.A. 10, 1974).
(83) *United States* v. *2,135.44 Acres in Madera and Mariposa Counties, Calif.* (C.A. 9, 1973).
(84) *United States* v. *1,061.14 Acres in Stutsman County, N.D.,* 391 F.2d 700 (C.A. 8, 1974).
(85) *United States* v. *40.60 Acres in Contra Costa, Calif.,* 483 F.2d 927 (C.A. 9, 1973).
(86) *United States* v. *112.07 Acres in Clermont County, Ohio* (C.A. 6, 1973).
(87) *United States* v. *The Right to Use and Occupy 3.28 Acres in Alexandria, Va.,* 484 F.2d 1140 (C.A. 4, 1973).
(88) *L'Enfant Plaza North, Inc.* v. *D.C.R.L.A.* (C.A. D.C. 1973).
(89) *L & A Creative Arts Studio, Inc.* v. *Redevelopment Authority of Phila.,* 478 F.2d 1339 (C.A. 3, 1973), cert. den., 414 U.S. 910 (1973)
(90) *Coastal Petroleum Co.* v. *Sec. of the Army,* 491 F.2d 973 (C.A. 5, 1973).
(91) *2,431.4 Acres in Hancock County, Miss.* v. *United States,* 414 U.S. 1024 (1973).
(92) *United States* v. *100 Acres In Marin County, Calif.,* 414 U.S. (1973); *100 Acres of Land, Etc.* v. *United States,* 414 U.S. 864 (1973).
(93) *United States* v. *35.163 Acres in Cook County, Illinois,* 489 F.2d 758 (C.A. 7, 1974).
(94) *United States* v. *2,562.92 Acres in Yuma and Mohave Counties,* 495 F.2d 12 (C.A. 9, 1974).
(95) *Morton* v. *Mancari,* 417 U.S. 535 (1974).
(96) *Morton* v. *Ruiz,* 415 U.S. 199 (1974).
(97) *Dept. of Game of Washington* v. *Puyallup Tribe,* 414 U.S. 44 (1973).
(98) *Godfroy* v. *United States,* 200 C.Cls. 728 (1973).
(99) *Satiacum* v. *Washington,* 414 U.S. 1 (1973).
(100) *Oneida Indian Nation of New York* v. *County of Oneida, New York,* 414 U.S. 661 (1974).
(101) *United States* v. *Mazurie, et al.,* 41 L.W. 3480 (1974).
(102) *Antoine* v. *Washington,* 42 L.W. 3685 (1974).
(103) *Decoteau* v. *The District County Court for the Tenth Judicial District, S. Dak.,* 417 U.S. 929 (1974).
(104) *Freeman* v. *Morton,* 499 F.2d 494 (C.A. 8, 1974).
(105) *Baciarelli* v. *Morton,* 481 F.2d 610 (C.A. 9, 1973).
(106) *Daly* v. *Morton,* 483 F.2d 708 (C.A. 8, 1973).
(107) *Charles O'Neal* v. *Cheyenne River Sioux Tribe,* F.2d (C.A. 8, 1973).
(108) *The Tewa Tesuque* v. *Morton,* 498 F.2d 240 (C.A. 10, 1974).
(109) *United States of America* v. *State of Washington,* 496 F.2d 620 (C.A. 9, 1974).
(110) *Pallin* v. *United States,* 496 F.2d 27 (C.A. 9, 1974).
(111) *Greenewald* v. *Morton* (C.A. 9, 1973).
(112) *Sessions, Inc.* v. *Morton,* 491 F.2d 854 (C.A. 9, 1974).
(113) *Sycamore Valley Association* v. *Southern California Edison Company* (C.A. 9, 1973).
(114) *Tahdooahnippah* v. *Thimmig,* 481 F.2d 438 (C.A. 10, 1973).
(115) *Bigheart* v. *Pappan,* 482 F.2d 1066 (C.A. 9, 1974).



(116) *Akers* v. *Morton,* 499 F.2d 44 (C.A. 9, 1974).
(117) *Pyramid Lake Paiute Tribe of Indians* v. *Morton,* 499 F.2d 1095 (C.A. D.C. 1974).
(118) *Wilkinson* v. *Morton,* F.2d (C.A. D.C. 1974).
(119) *Cameron* v. *Whirlwindhorse,* 494 F.2d 110 (C.A. 8, 1974).
(120) *National Indian Youth Council* v. *Bruce,* 485 F.2d 97 (C.A. 10, 1973).
(121) *Stanley Johnson* v. *Lower Elwaha Tribal Community of the Lower Elwaha Indian Reservation, 484 F.2d 200 (C.A. 9, 1973).*
(122) *Leech Lake Area Citizens Committee* v. *The Leech Lake Band of Chinnewa Indians,* 486 F.2d 888 (C.A. 8, 1973).
(123) *Kale* v. *United States,* 489 F.2d 449 (C.A. 9, 1973).
(124) *Hopewell Township Citizens I-95 Committee* v. *Volpe,* 482 F.2d 376 (C.A. 3, 1973).
(125) *State of Alaska* v. *EPA,* F.2d (C.A. 9, 1973).
(126) *Brooks* v. *Volpe,* 487 F.2d 1344 (C.A. 9, 1973).
(127) *Keith* v. *California Highway Commission,* 506 F.2d 696 (C.A. 9, 1973).
(128) *Finish Allatoona's Interstate Right, Inc.* v. *Brinegar,* 484 F.2d 638 (C.A. 5, 1973).
(129) *The West Augusta Historical and Genealogical Society* v. *The Urban Renewal Authority of Parkersburg, W. Va.* 489 F.2d 755 (C.A. 4, 1974).
(130) *Malmud* v. *Romney,* 491 F.2d 750 (C.A. 3, 1973).
(131) *Thompson* v. *Walter Washington* 497 F.2d 626 (C.A. D.C. 1973).
(132) *City of Bellevue* v. *United States,* 474 F.2d 473 (No. 72-1591).
(133) *Bonelli Cattle Co.* v. *Arizona,* 414 U.S. 313 (1973).
(134) *Buras* v. *United States,* 458 F.2d 346 (C.A. 5, 1972), cert. den., 414 U.S. 865.
(135) *Reed* v. *Morton,* 414 U.S. 1064 (1973).
(136) *Duffy* v. *United States,* 414 U.S. 978 (1973).
(137) *Boothe* v. *Morton* 414 U.S. 828 (1973).
(138) *United States* v. *American Land Co.* (C.A. 9, 1974).
(139) *United States* v. *The Fisher-Otis Co., Inc., and Coit* 496 F.2d 1146 (C.A. 10, 1974).
(140) *United States* v. *373.10 Acres in Crittendon and Poinsett Counties, Ark.,* 483 F.2d 531 (C.A. 8, 1973).
(141) *United States* v. *State of Florida,* 482 F.2d 205 (C.A. 5, 1973).
(142) *Town of New Windsor* v. *Ronan,* 481 F.2d 450 (C.A. 2, 1973).
(143) *Gulf Oil Corp.* v. *Morton,* 493 F.2d 141 (C.A. 9, 1973).
(144) *Gulf Oil Corp.* v. *Morton,* 493 F.2d 141 (C.A. 9, 1973).
(145) *Friends of the earth* v. *Armstrong,* 485 F.2d 1 (C.A. 10, 1973).
(146) *Canal Authority of State of Florida* v. *Callaway,* 489 F.2d 567 (C.A. 5, 1974).
(147) *United States* v. *243.25 Acres in Imperial County, Calif.* (C.A. 9, 1974).
(148) *National Forest Preservation Group* v. *Butz,* 485 F.2d 408 (C.A. 9, 1973).
(149) *Perry Van Wie* v. *Butz and Morton* (C.A. 8, 1973).
(150) *United States* v. *Stanton,* 495 F.2d 515 (C.A. 5, 1974).
(151) *United States* v. *Rogers,* F.2d (C.A. 9, 1974).
(152) *Andros* v. *Rupp* (C.A. 9, 1973).
(153) *Andros* v. *Rupp* (C.A. 9, 1973).
(154) *United States* v. *Industrial Communications Systems* (C.A. 9, 1973).
(155) *McVay* v. *United States,* 481 F.2d 615 (C.A. 5, 1973).
(156) *Avondale Irrigation District* v. *North Idaho Properties,* 523 F.2d 818 (S.Ct. Idaho, 1974).
(157) *United States* v. *Francis Leo Cappaert,* 483 F.2d 433 (C.A. 9, 1973).
(158) *United States* v. *Cappaert,* 508 F.2d 313 (C.A. 9, 1974).
(159) *United States* v. *Albrecht,* 496 F.2d 906 (C.A. 8, 1974).
(160) *Gunter* v. *United States,* F.2d (C.A. 9, 1974).
(161) *BASYAP* v. *D.C. Redevelopment Land Angecy* (C.A. D.C. 1974).
(162) *Matthews* v. *USCA for the Fifth Circuit,* 414 U.S. 907 (1973).
(163) *Transwestern Pipeline* v. *Kerr-McGee Corp.,* 492 F.2d 878 (C.A. 10, 1974).
(164) *Reid Smith* v. *Morton,* 489 F.2d 1275 (C.A. 9, 1974).
(165) *Duval* v. *Morton* (C.A. 9, 1973).
(166) *United States* v. *Springer,* 491 F.2d 239 (C.A. 9, 1974).
(167) *Barton* v. *Morton,* 498 F.2d 288 (C.A. 9, 1974).
(168) *Brubaker* v. *Morton,* 500 F.2d 200 (C.A. 9, 1974).
(169) *Henrikson* v. *United States,* 414 U.S. 976 (1973).
(170) *United States* v. *Clair Bird,* F.2d (C.A. 10, 1974).
(171) *Nickol* v. *United States,* 501 F.2d 1389 (C.A. 10, 1974).
(172) *Osborne* v. *Morton* (C.A. 9, 1974).
(173) *Phillips Petroleum Co.* v. *Texaco* (S.Ct. 1974).
(174) *Izaak Walton League of America* v. *St. Clair,* 497 F.2d 849 (C.A. 8, 1974).

# Tax Division

The Tax Division represents the United States and its officers in litigation, both civil and criminal, arising under the internal revenue laws, except proceedings in the United States Tax Court. The Division's chief activity is to act as trial and appellate counsel for the Internal Revenue Service; however, it also represents other agencies—such as the Departments of Defense and Interior and the Energy Research and Development Administration—which may have problems with state and local taxing authorities.

While the Division's mission is to aid the Revenue Service in collecting the Federal revenue, and to deter willful cheating by taxpayers through the vigorous prosecution of criminal offenders, it has an equal interest in establishing correct legal principles which will serve as guidelines to taxpayers and their representatives as well as the employees of the Revenue Service. Every taxpayer with a legal tax problem is entitled to a fair and speedy resolution of the controversy by the judiciary. The Tax Division endeavors to cooperate with private attorneys to expedite the processing of litigation.

Among the types of litigation in which the Tax Division represents the Federal Government are:

(a) Refund suits brought by taxpayers against the United States to recover taxes alleged to have been erroneously or illegally collected.

(b) Suits brought by individuals to foreclose mortgages or to quiet title to property in which the United States is named as a party defendant because of the existence of a Federal tax lien on the property.

(c) Suits brought by the United States to collect unpaid assessments, to foreclose Federal tax liens, to obtain judgments against delinquent taxpayers, to enforce summonses, and to establish tax claims in bankruptcy, receivership, or probate proceedings.

(d) Proceedings involving mandamus, injunctions, and other specific writs arising in connection with internal revenue matters.

(e) Proceedings brought against the Internal Revenue Service for disclosure of information under the Freedom of Information Act.

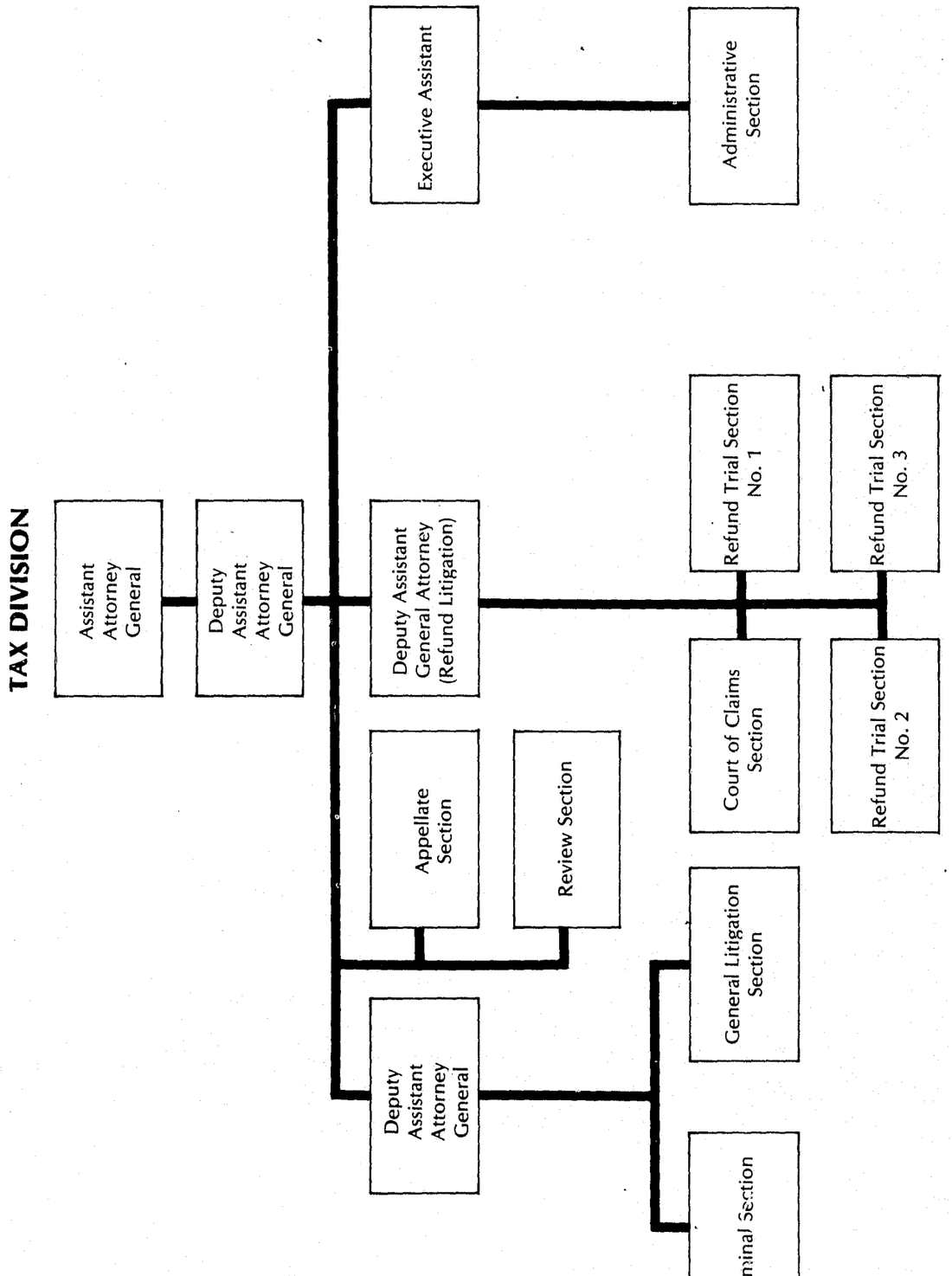
(f) Intergovernmental immunity suits in which the United States resists attempts to apply a state or local tax to some activity or property of the United States.

(g) Criminal cases involving, among others, attempts to evade and defeat taxes, willful failure to file returns and to pay taxes, filing false returns and other deceptive documents, making false statements to revenue officials, and other miscellaneous offenses involving internal revenue matters.

In accord with the Attorney General's program to upgrade the litigating skills of departmental attorneys, the Criminal Section of the Tax Division commenced a series of institutes on criminal tax trials for United States Attorneys and their Assistants during 1974. These seminars included presentations on the elements of criminal tax offenses, direct and circumstantial methods of proof, preparation of criminal tax cases for trial, and evidentiary problems peculiar to criminal tax cases. As part of this program, the Criminal Section prepared a comprehensive manual on these subjects which was used as a text at the seminars. The manual is now serving as a reference tool by United States Attorneys in criminal tax trials.

The Division plans to continue the institutes next year and to have them incorporated into the existing training





program for the Division's attorneys. That program includes lectures and workshops devoted to the handling of all phases of criminal and civil litigation and to the development of advocacy skills.

### Criminal Tax

The Department has placed responsibility for deciding whether to prosecute a criminal tax case in the Tax Division to achieve maximum consistency and continuity of policy and legal positions for all of the Federal Judicial Districts.

**Supervisory Functions**—Agents of the Intelligence Division of the Internal Revenue Service investigate cases involving possible violations of the internal revenue laws. The resulting investigative report and exhibit file is then reviewed by the appropriate Regional Counsel of the Service. Those cases in which it is believed there is evidence to support a criminal prosecution are forwarded to the Tax Division's Criminal Section. There each case is analyzed and a detailed written recommendation is made to the Assistant Attorney General on whether or not the case warrants prosecution, and on what charges. In 1974 such criminal prosecution memoranda containing a review of the evidence and recommendations were prepared in 1,839 cases, up 17 percent over fiscal 1973. Prosecution was approved in 1,665 cases, a rate of 90.5 percent.

When prosecution is approved, the file containing the report and exhibits is forwarded to the appropriate United States Attorney. The Tax Division sets forth in its letter of transmittal details of the precise charges which are to be brought and any specific instructions applying to a particular case. Other procedural matters are also detailed in the letter, such as the indictment form to follow and the date of the running of the statute of limitations on the offense. Regular follow-up reporting is required by the Tax Division to keep the Department abreast of the progress of the prosecution through the stages of indictment, plea, trial, and final disposition. Frequent telephone calls and written communications are also made with the United States Attorneys on questions of criminal tax law and procedure, trial strategy and Departmental policy.

**Field Activities**—Continuing the trend of last year, there have been an increasing number of requests from United States Attorneys for attorneys from the Criminal Section of the Tax Division to assist in grand jury investigations, trial preparations, and to conduct the trial of criminal tax cases. In addition, cases of national importance and cases developed under the Attorney General's drive on organized crime and racketeering, which generally are of great complexity and have ramifications beyond the borders of a judicial district or state, may be handled directly by specialists from the Tax Division. The number of such cases has been augmented by the drives conducted, both by the Internal Revenue Service and the Department, against drug traffickers and narcotics dealers. In the past fiscal year 50 different attorneys in the Criminal Section were in the field on assignments on 450 occasions in 32 states.

**Role in Organized Crime Program**—The Tax Division and the Criminal Division coordinate closely in criminal tax cases arising in the drive against organized crime. Under special procedures, tax fraud cases against racketeers and cases involving income from criminal activities are brought to the attention of the Criminal Division. The Criminal Division, in turn, consults with the Tax Division on the tax aspects of matters developed through the Criminal Division's investigations. This close liaison enables each Division to carry out its responsibilities more effectively. The Tax Division's supervision of criminal tax matters enables it to apply the same high evidentiary and policy standards to racketeer tax cases as in other cases. The specialized knowledge of the Tax Division's attorneys is brought to bear on racketeer tax cases, and the same high percentage of success has been maintained in this category as in nonracketeer tax cases.

To implement its cooperation with the Department's anti-rackets drive, the Tax Division assigns experienced tax prosecutors to maintain liaison with each of the 18 Criminal Division strike forces in the major cities across the country. During the past 12 months Criminal Section attorneys participated in the development and prosecution of major rackets figures throughout the United States: reputed narcotics traffickers in San Francisco, New York City, St. Louis, Hawaii, Kentucky, Florida, Georgia, and Pennsylvania; dealers in stolen goods in Rhode Island and Florida; public corruption cases in California, Florida, Georgia, Illinois, Indiana, Maryland, Massachusetts, New Jersey, New York, Pennsylvania, and Texas; and a number of people identified as associated with crime organizations.

In 1974, 337 new racketeer and public corruption cases, including 153 narcotics trafficker cases, were received. The racketeer case load is 19 percent of the Tax Division's total criminal tax case load. Some 163 such convictions were obtained in 1974, of which 19 were narcotics traffickers.

**Case Load Summary**—During 1974 the Division received 1,777 new criminal tax cases. The total docket of pending criminal tax cases including those in the hands of the United States Attorneys and in the appellate courts numbered 2,442.

Convictions were obtained in 92 percent of the cases prosecuted. A total of 968 defendants were convicted.



Most of these were found guilty on their pleas of either guilty or nolo contendere (accepted over the Department's continued objections to nolo pleas). In 288 cases going to trial, convictions were achieved in 191 for a trial success rate of 66 percent.

In 1974 prosecutions in the criminal tax enforcement operation of the Tax Division included taxpayers across the full spectrum of occupational activities and social positions. Nonracketeer convictions included doctors, lawyers, accountants, school teachers, municipal officers, and corporation officers. Included among the convictions during the year for criminal tax offenses, most having overtones of bribery, commercial bribery, and extortion, were those of a former Congressman, a former city commissioner, a county executive and his predecessor in office, a state senator, a state judge, some powerful political bosses, union officials, large-scale builder-developers, corporate executives, and a large group of offenders in the federal housing industry.

While the drive to increase the criminal enforcement of the revenue laws continued, and the drive against organized crime intensified during 1974, further impetus was given to the program against drug traffickers inaugurated in 1972. The Narcotic Traffickers Program is aimed at middle and upper echelon distributors and financiers involved in narcotics trafficking. These individuals insulate themselves from the daily operations of the drug traffic, but their practice of living beyond their means as disclosed in their tax returns makes them vulnerable to successful prosecution under the Internal Revenue Code.

### Civil Tax

Civil cases account for approximately 83 percent of the volume of tax work of the Division. In 1974 there were 3,600 civil tax suits involving $278 million in tax liability which were filed in the trial courts. Taxpayers instituted 2,654 suits involving $210 million, while the Government filed 946 suits involving $68 million.

### Appellate Cases

With minor exceptions the Tax Division is responsible for handling all appeals from judgments of the district courts in civil and criminal tax cases, and for handling all appeals from decisions of the U.S. Tax Court. The Division also handles appeals to state appellate courts in cases involving certain defined issues, such as the enforcement of Federal tax liens and the applicability of state taxes to the Federal Government or its lessees. The Division, under the supervision of the Solicitor General, also prepares briefs and memoranda in tax cases in the Supreme Court.

In 1974 there were 265 (202 last year) appeals from Tax Court decisions and 443 (531 last year) appeals from the Federal district courts processed. The Division handled 16 (42 last year) appeals from state courts, and 139 (97 last year) criminal appeals. The Supreme Court acted on 139 petitions for certiorari in tax cases. The Government petitioned in only seven cases; four were granted and three denied. During 1974 there were 154 taxpayer petitions for review pending or received, of which 107 were denied. The Supreme Court decided eight cases on the merits: seven for the Government, one for the taxpayers.

The Appellate Section prepared 709 (632 last year) briefs on the merits and presented oral arguments in 332 (311 last year) cases during this year. The Government prevailed in 277 of the 367 cases decided by the courts of appeals, a 75 percent margin of victory.

### Supreme Court Decisions

During the 1973 Term the Supreme Court decided eight cases involving the administration of the Federal tax laws, ruling in favor of the Government in seven of these cases.

In one of the cases decided in the Government's favor(1), involving the constitutionality of the record-keeping rules and the reporting requirements respecting domestic and foreign financial transactions imposed by the Bank Secrecy Act of 1970, the Court upheld these provisions of the Act, as well as the regulations promulgated thereunder, against constitutional attack on First, Fourth, and Fifth Amendment grounds.

In another Government victory(2), a member of a three-man law partnership has been ordered by a grand jury conducting a tax investigation of his affairs to produce the firm's financial books and records. He asserted his Fifth Amendment privilege against self-incrimination with respect to the books, a claim which the Court rejected, holding that the partnership possessed an identity of its own, and that the individual involved held the records in a representative, rather than a personal, capacity. In so holding the Court rejected the size of the organization as controlling, instead emphasizing the separateness of the partnership as an entity apart from its members.

In another case won by the Government(3), the issue was whether the corporate taxpayer was entitled to deduct as interest, alleged original issue discount, measured by the difference between the $50 face amount of its five percent debentures and the $33 per share fair market value of its $50 par 5 percent cumulative preferred stock, in the wake of a corporate recapitalization where the debentures were issued in lieu

of the cancelled preferred stock. The Court, rejecting the argument that the transaction should be treated as though the debentures had been sold for cash, and the cash then used to retire the preferred, held that this form of corporate refinancing did not give rise to a deductible cost incurred for the acquisition of new capital.

Two cases of broad significance were decided for the Government in the procedural area. The Court, in the first, held that the Anti-Injunction Act (Section 7421(a) of the Internal Revenue Code) was a bar to the plaintiff's suit to compel the Revenue Service to reinstate its Section 501(c)(3) tax-exempt status, which had been revoked because the plaintiff had become a lobbying or "action" organization(4). In the second case the Court held that Section 7421(a) barred a suit to restrain the Revenue Service from revoking the tax exemption ruling and advance deductibility assurance previously issued to a university which refused to admit blacks, assertedly on religious grounds(5). In both cases the majority opinions were essentially premised upon the fact that plaintiffs had failed to establish the prerequisites for injunctive relief, namely that, under no circumstances, could the Government ultimately prevail, and that, absent injunctive relief, they would sustain irreparable injury.

In another case decided in favor of the Government(6), the issue was whether Section 337 of the Code applied to permit nonrecognition of taxpayer's gain, when corporate property was destroyed by fire before the adoption of a plan of complete liquidation, but the insurance proceeds were not received until after the plan was adopted. (Section 337 provides, in general, for nonrecognition of gain or loss at the corporate level if substantially all of the corporate assets are sold, and the corporation liquidated, within a twelve-month period following adoption of the plan of complete liquidation.) The Court held that the involuntary conversion by fire was a "sale or exchange" occurring at the time of the fire, not at some later point, and that, since the fire was prior to the adoption of the plan of complete liquidation, Section 337 was inapplicable.

In another significant case(7) the Supreme Court dealt with the case of a public utility which used its own equipment and crews to construct facilities for production and distribution of electrical power. The issue was whether the utility could deduct currently, the normal depreciation on its trucks and other relatively short-lived transportation equipment used in construction, or whether it was required to capitalize that part of the depreciation in the construction activity as part of the cost of the long-lived facility constructed. The Court held that, to the extent the equipment involved was used to build the long-lived facilities, the cost of the equipment was to be treated as an element of the cost of construction and capitalized accordingly.

In the only case decided against the Government this term(8), the Court held that the taxpayer, an investor-limited partner, could deduct under Section 174 of the Code his prorata share of the partnership's research and experimentation costs incurred in developing a new trash burner, even though the partnership was still far from actually marketing the device. The basis of the decision was that to hold otherwise would negate the legislative purpose of Section 174 by perpetuating the tax-favored position of large and established businesses. The Court rejected the Government's contention that the taxpayer would not be engaged in a "trade or business" (through his partnership relationship) until such time as the partnership actually engaged in holding the burners out for sale.

**Court of Appeals Decisions**

The Federal tax cases decided by the appellate courts during this year presented a wide variety of issues. In addition to cases involving more substantive income and estate tax questions, there were numerous procedural decisions involving such issues as the power of the Federal courts to enjoin tax collection efforts in the wake of the Revenue Service's closing a taxpayer's tax year and assessing a tax deficiency under Section 6851 of the Code. The latter is a procedure sometimes employed in unusual situations, e.g., where the individual involved is about to leave the country. In one case(9), the Second Circuit denied injunctive relief, while in another the Sixth Circuit permitted an injunction to issue(10). (The Supreme Court will be asked to review the question.) The Tenth Circuit, in a significant decision, denied injunctive and declaratory relief to various parties seeking to have the tax-exempt status of the Junior Chamber of Commerce revoked. This was based on the grounds that it unconstitutionally discriminates against women who may not become members, and is sufficiently linked to the Federal Government by virtue of its role in administering various grant programs as to constitute its discriminatory admission policy "state action(11)."

There were several appellate decisions in the income tax field which represented important Government victories. For example, the "Controlled Foreign Corporation" provisions of Subpart F of the Code, whereby foreign corporate earnings may be taxed to the controlling shareholders although not distributed as dividends, was sustained against taxpayer challenges on constitutional grounds by both the Second(12) and Tenth(13) Circuits. There were Eighth(14) and Ninth(15) Circuit decisions upholding the Commissioner's broad power under Section 482 of the Code to allocate items of gross income and deductions in order to reflect income accurately.

The Fifth Circuit held that, for purposes of the Section 531 unreasonable accumulation surtax, the needs of the business for liquid working capital should be ascertained by taking into account the substantial appreciation in value of the corporation's readily marketable investment securities(16). The Ninth Circuit held that a corporation was not entitled to an interest deduction for alleged original issue discount based upon its allocation of part of the proceeds of an issue of convertible debentures at par to the conversion privilege, thereby allegedly creating discount on issuance(17). In another case of considerable importance, the Fifth Circuit sustained the Government's position that a purported anticipatory assignment of income (designed to create income in a year in which the assignor-taxpayer had available a sheltering net operating loss carryover) was in substance a financing transaction. The result was that "income" received in the year of assignment was a loan, and the taxpayer remained taxable on its income as and when realized in a later year(18).

The Sixth Circuit, in a potentially far-reaching decision(19), held that the donor of appreciated property in a "net gift" situation, which had been pledged as collateral for a loan in excess of its cost, realized taxable income to the extent of such excess. The Fifth Circuit, in an important decision for the Government, held that the shareholders' expenses incurred in collecting a claim held by their dissolved corporation in the aftermath of the corporation's liquidation were capital in nature, offsetting the gain realized on the liquidation, rather than fully deductible from ordinary income(20).

In the ongoing litigation in the field of life insurance taxation, the Government sustained a loss in the Third Circuit, which held that the taxpayer's practice of establishing a reserve account to cover a particular form of settlement option which might be elected under certain of its policies constituted a "life insurance reserve" for tax purposes(21). In a case also arising in the insurance industry, the Fifth Circuit, while sustaining the position of the Government on the principal issues, held that, where an insurance company had been required to take into income gross deferred and uncollected premiums, it was entitled to currently accrue future renewal commissions due its agents with respect to such premiums(22).

In the field of capital gain vs. ordinary income tax problems, the Ninth Circuit held that a patentee's transfer of patent rights limited to a particular "field of use" restriction did not constitute a transfer of substantially all the transferor's rights within the scope of Section 1235 of the Code. The transfer was also accordingly not assured eligibility for capital gain treatment(23). In a somewhat related area of taxation of intangibles, both the First and Sixth Circuits held that the transfer to a controlled corporation of a patent application which had not yet been granted was not a transfer of property of a character which was subject to depreciation in the hands of the transferee. Section 2039 was therefore inapplicable to render the transferor's gain taxable as ordinary income rather than capital gain(24).

In the area of summons enforcement litigation, the appellate courts have recently had occasion to deal with the issue of the availability of the Fifth Amendment privilege for accountant's work papers in the physical possession of the taxpayer's attorney. The Third Circuit, in a case where the papers were delivered by the accountant to the taxpayers, and by them to their attorney, noted that the papers would not be privileged in the hands of the accountant, and held that the attorney was obliged to surrender the documents(25). The Fifth Circuit, in a case where the accountant delivered the papers directly to taxpayer's attorney, also refused to permit the attorney to assert the privilege against production of the accountant's papers(26), but came to a different conclusion where the accountant's papers were first delivered to the taxpayer, then to the attorney(27).

Although there is relatively little gift tax litigation at the appellate level, there was a potentially significant decision this year by the Fourth Circuit in a case involving "reciprocal gifts" utilized by taxpayer and his brother to proliferate annual exclusions. The Court sustained the Government's position that the donor had actually made substantial gifts to his own children, exceeding the allowable exclusions, rather than to his own children and those of the brother(28).

In the area of appellate litigation in the criminal field, the Government prevailed in several significant cases. Notable among these was a decision by the Seventh Circuit holding that a sitting federal judge could be indicted and brought to trial for various federal crimes, including tax evasion, without first being impeached and removed from office(28a). A pair of decisions by the Ninth Circuit holding that in a prosecution for willful failure to file a return, the Supreme Court's decision in *United States* v. *Bishop*, 412 U.S. 346 (1973), does not require the trial court to instruct the jury that the defendant's failure to file must be due to bad purpose andor evil motive(28b). In another case the Fourth Circuit found that the six year statute of limitations on prosecution was applicable where the indictment charged a conspiracy to defraud the United States by impeding, impairing, obstructing, and defeating the lawful governmental functions of the Internal Revenue Service in the ascertainment, computation, assessment, and collection of income tax(28c).

### Trial Court Proceedings

Tax Division attorneys tried 658 civil cases in the lower courts in 1974. Of the total, 495 were before the Federal district courts, 131 before State courts, and 32 before the Court of Claims. The Government's position was upheld in 726 of the 810 decisions handed down the the trial courts.

During 1974 the Division continued its active preparation of cases for trial. Its attorneys took 2,527 discovery actions and conducted 914 pretrial proceedings.

Civil cases at the trial level were concerned with over $750 million in tax liability and involved a variety of transactions.

### Refund Suits

During the year the trial sections continued their efforts to litigate those cases which represented the best opportunities for clarification of the tax laws. These decisions will provide the general public and the business community clear-cut guidance in the administration of their affairs. The following represent important developments in refund litigation during the fiscal year 1974.

As noted in prior annual reports one of the most important areas of civil tax litigation, from the standpoint of the impact on the revenue, continues to be the construction and application of the Life Insurance Company Income Tax Act of 1959, which substantially revised the method of taxing life insurance companies. At year-end there were 23 life insurance company cases pending in the Court of Claims and 17 cases pending in the District Courts. During the year two cases were tried before the Court of Claims, which industry-wide, involve upwards of $100 million a year in tax revenue. The first case(29) involved issues dealing with the treatment of deferred and uncollected premiums and the includability in the company's assets of escrow funds maintained to protect its investments in mortgages. The second case(30) concerned questions of whether unearned premiums on credit and health insurance policies reinsured with the taxpayer should be included in the taxpayer's total reserves to determine whether it qualified for taxation as a life insurance company, and whether taxpayer's life insurance reserves for 1965 with respect to a group annuity policy issued nine days before the end of the year should be computed on a daily basis.

The District Court rendered a decision in favor of the Government in a suit which challenged the inclusion in gross income of amounts withheld from the salary of an Internal Revenue Service employee and contributed by him to the Civil Service Retirement Fund(31). The Court's decision was based on the grounds, *inter alia*, that the amount withheld from the employee was part of his fixed salary and that, upon being employed by the Internal Revenue Service, he consented to the withholding as his contribution to the Civil Service Retirement Fund. The taxpayer has appealed to the Court of Appeals for the Sixth Circuit.

The potential impact of this litigation on the retirement systems of both state and Federal governments is tremendous. To date the Internal Revenue Service has received over one million claims which represents a potential refund of approximately $1 billion, apart from the loss of revenue which would result from a decision holding current withholdings nontaxable.

In a case(32) of first impression and of major importance to the trucking industry, the District Court held that the plaintiff-lessee of the trucks was liable for the highway use tax on the trucks rather than the owner-lessor. The trucks were baseplate registered in California in the name of the plaintiff-lessee alone. The trucks were prorate registered in the State of Wisconsin in the names of both the plaintiff-lessee and the owner-lessor-drivers.

The Court, in its opinion, held that the trucks were primarily "connected to the State of California and that Congress intended the term 'registration' to mean registered in the one state with which a truck is primarily identified for purposes of complying with the registration laws of many states." In this particular case that one state mentioned by the Court was California. This, since the only name of the registration certificate in California was the plaintiff-lessee, that company was liable for the tax.

This case, which is on appeal to the Eighth Circuit, will affect every trucking company operating on a multistate basis and involves millions of dollars in highway use taxes.

### Employment Taxes

A growing area of litigation in the tax law is the question of an employer's liability for employment taxes, i.e., withholding, FICA, and FUTA. This liability turns on whether a person performing services for another is an employee of the latter or an independent contractor. In a recent case(33) which could have widespread impact in the insurance industry, a district court concluded that insurance salesmen were not employees of the insurance company whose policies they sold under a contractual arrangement. The Court concluded that the company did not have the requisite right to control the salesmen and, accordingly, they were not employees within the purview of the employment tax statutes.

Other cases are pending which present the same issue in the insurance industry(34), and overall we have noticed a considerable increase in this type of litigation.



Decisions of this nature, on an industry-wide basis, provide guidelines which materially aid the companies in the administration of their affairs.

### Fourth and Fifth Amendment Defenses in Refund Suits

A taxpayer brought suit(35) to recover the 10 percent excise tax on wagering, contending he was not in the business of accepting wagers on horse races. The Government proceeded to take his deposition, during the course of which the taxpayer refused to answer several questions on the asserted authority of the Fifth Amendment. The District Court, after plaintiff had reiterated his refusal to answer, dismissed the plaintiff's suit, holding that plaintiff was entitled to remain silent, but must make a choice between silence and continuance of the case. Thus the Court reiterated a long-standing position that a taxpayer cannot, by claiming the benefits of the Fifth Amendment, refuse to divulge information generally required of plaintiffs and still maintain his civil tax refund suit.

A related problem in wagering excise tax cases concerns the use of evidence obtained in violation of a taxpayer's Fourth Amendment rights. In a recent case(36) the taxpayer filed motions to suppress evidence and for summary judgment based upon an earlier state court determination that all of the betting paraphernalia obtained by local police was illegally seized under a defective search warrant and, therefore, inadmissible. The Government's defense was based on two positions in opposition to the motions: first, that there was probable cause for the issuance of the search warrant under Federal law, and second, that evidence illegally seized by local police may be used by the Government in a civil tax case. The district court held that, under Federal standards, probable cause existed for the search warrant and that the evidence seized could be used by the Government. The Court did not address itself to the second argument.

### Distributions to Shareholders by a Closely Held Corporation

The shareholders of a closely held corporation guaranteed certain loans to the corporation, in exchange for which the corporation agreed to pay them a fee equal to three percent of the loans. The corporation deducted the fee paid as a business expense. The Commissioner of Internal Revenue denied the claimed deduction on the ground that the payment was in the nature of a distribution of earnings and thus a dividend. In the ensuing refund suit (37) the court concluded that the fee was reasonable and necessary and, therefore, deductible. The Government has appealed to the United States Court of Appeals for the Fifth Circuit. If this decision is permitted to stand, it could pave the way for some unwarranted tax avoidance.

### Estate Taxation of Life Insurance Proceeds

In a significant area of the tax law, the United States District Court for the Eastern District of Louisiana has ruled(38) that the proceeds of an insurance trust were includable in a decedent's gross estate where the decedent was both the insured and the trustee, with certain definitive powers respecting the distribution of income from the trust. The court held that this right to alter the time or manner of enjoyment of the proceeds, even though held in a fiduciary capacity, constituted an incident of ownership requiring includability of the proceeds in decedent's estate. This decision, from which the taxpayer has appealed, is in direct conflict with decisions of the Second and Sixth Circuits.

### Taxation of Professional Sports Franchises

In a case(39) which has attracted considerable publicity and is being viewed with great interest both by owners of professional sports franchises and by the Internal Revenue Service, there is presented the hitherto unlitigated issue of what portion, if any, of the purchase price of a professional sport franchise may be attributable to amortizable player contracts, as distinguished from nonamortizable items such as the franchise itself. The group which purchased the Atlanta Falcons franchise in the National Football League for $8.5 million treated only $50,000 of the purchase price as attributable to the NFL franchise and, hence, undepreciable and unamortizable. The bulk of the purchase price, $7.7 million, was regarded as payment for player contracts, amortizable or depreciable over a 5.25-year "useful life" of the players. In effect, this procedure permitted the owners to write off approximately 90 percent of their cost in slightly over five years. The Government maintains that the vast bulk of the purchase price was attributable to the franchise, with its attendant features, such as a geographical monolopy, share in television revenues, and other intangible rights with an indefinite, and hence unamortizable life. The ultimate outcome may have considerable precedential effect on the tax treatment of other franchises in all professional sports.

### General Litigation

The General Litigation Section is responsible for supervising and handling, at the trial level, all civil tax

litigation in both Federal and state courts, except suits for the refund of taxes paid. These judicial proceedings include suits to reduce tax assessments to judgment and to enforce tax liens; suits to establish transferee liability and to set aside fraudulent transfers; suits to enforce levies and to recover taxes erroneously refunded; suits to enforce Internal Revenue Summonses issued pursuant to Section 7602 of the 1954 Code for the purpose of ascertaining the correctness of returns and determining the liability of a person for taxes; the defense of suits against the United States under 28 U.S.C., Section 2410; the defense of suits to enjoin the assessment and collection of taxes; and the defense of suits under the Freedom of Information Act which involve tax matters. In addition this section represents the tax interests of the United States in bankruptcy and receivership proceedings, as well as in controversies concerning state and local taxes.

*Third Party Challenges to Administrative Action by IRS*

This past year saw a continuation of the increase in suits seeking declaratory or injunctive relief by public interest or other organizations or individuals (frequently as class actions) with respect to administrative action taken by the Internal Revenue Service, usually in the tax ruling or regulation areas. The first general category of this type of litigation involves challenges to the Internal Revenue Service's administrative grant of allegedly favorable tax treatment or benefits by way of ruling(s) to certain taxpayers or a class of taxpayers. Among these cases is one(40) which involved a challenge by indigents and welfare rights organizations to a published revenue ruling (Rev. Rul. 69-545) which eliminated the requirement of an earlier revenue ruling that hospitals, which are tax-exempt "charities" under Code Section 501(c)(3), must provide free or below cost service to those unable to pay, not merely free care in an emergency room. The District Court, over the Government's objection, entertained jurisdiction over this suit and voided the revenue ruling. After the District Court decision, cases were brought by indigents in other judicial districts seeking to challenge the tax-exempt status of hospitals which have allegedly failed to treat indigents(41).

In a case brought in the District Court for the District of Columbia by a public interest law firm challenging the grant of favorable tax benefits to a class of taxpayers, the Court rejected the Government's jurisdictional objections and voided prospectively Rev. Rul. 72-355, which provided guidelines as to the circumstances under which political organizations will be recognized as separate donees for purposes of the gift tax exclusion(42).

In another case which involved a challenge to Rev. Rul. 72-355 on the ground that it was the result of political influence, the Court, after discovery by the plaintiff, dismissed the complaint with the approval of plaintiff's counsel(43).

Subsequently, the same public interest law firm brought a challenge to the validity of the revenue rulings and private letter rulings which authorize foreign tax credits allowed American oil companies as a result of their payments to foreign governments for the extraction of oil. In that suit plaintiffs also seek to have the Government assess and collect the substantial tax liabilities which would allegedly result if the rulings are held invalid(44). The Government's motion to dismiss the suit on jurisdictional grounds is pending before the District Court.

In still another suit by the same public interest law firm, a challenge was made to the prohibition on substantial lobbying activities with respect to organizations qualifying under Section 501(c)(3) of the Internal Revenue Code(45). This time the District Court granted the Government's motion to dismiss and the case is now pending on appeal.

While many of the third-party challenges to favorable administrative action taken by the Internal Revenue Service with respect to others have been brought in the District of Columbia, suits of this type have also been brought elsewhere. Some examples are: a class action by employees of a closed plant challenging the tax status of a pension plan of their employer(46); a suit by black children and others challenging the tax-exempt status of Catholic schools which allegedly are engaged in racial discriminatory practices(47); a challenge to the tax-exempt status of foundations which allegedly discriminate on the basis of race (in that case the Court of Appeals for the Second Circuit held such actions may be brought against the Commissioner of Internal Revenue)(48); and an action by two employees to enjoin collection of a portion of their taxes allegedly used for military and defense purposes(49). In the last case the District Court held that the statute requiring full withholding was unconstitutional as applied to these employees and, as a result, a direct appeal is pending in the United States Supreme Court.

Another category of suits challenging the Commissioner's administration of the tax laws consists of actions by non-taxpayers (in the context of the particular controversy involved) who have been the subject of alleged adverse administrative action by the Internal Revenue Service. In one such case International Telephone and Telegraph Corp. (ITT) has brought a suit challenging the Commissioner's action in revoking certain private letter rulings issues in connection with ITT's acquisition of Hartford Fire Insurance Company; these rulings are solely concerned with the tax liability of Hartford's stockholders, not the liability of ITT itself(50). The Government has moved to dismiss this lawsuit, primarily on the basis of the Anti-Injunction Act, Section 7421(a) of the Internal Revenue Code of 1954, as interpreted in recent Supreme Court decisons(51).

Another suit of this type, which has received extensive media coverage, was brought by representatives of the Cattle Feeding Industry. This group contended that the material distortion of income test included in a recent revenue ruling (Rev. Rul. 73-530), concerning the deductibility of a prepaid feed expense, would adversely affect their ability to market partnership interests in cattle feeding funds as "tax shelter" investments to high-income taxpayers. The District Court denied the Government's motion to dismiss and ruled that the Commissioner had improperly adopted the material distortion of income test(52).

A third category of cases seeking to compel administrative action by the Internal Revenue Service involves actions by organizations which contend that they should be tax-exempt organizations under the Internal Revenue Code of 1954(53).

*Freedom of Information Act*

The last year has seen a significant and substantial increase in workload in connection with the handling of litigation brought against the Internal Revenue Service under the Freedom of Information Act. This is litigation involving discovery of Internal Revenue Service documents and files, and the administrative processing of proposed final denials of Freedom of Information Act requests made to the Internal Revenue Service. By order of the Attorney General, the Department of Justice must approve all final denials of Freedom of Information Act requests made to any agency, including the Internal Revenue Service.

Freedom of Information Act litigation seeking production of Internal Revenue Service documents and files generally can be broken down into three categories: (1) actions by public interest groups(54); (2) actions by taxpayers as an aid to them in their controversies with the Internal Revenue Service over their civil tax liabilities or actual or potential criminal prosecution for violation of the tax laws(55); and (3) actions by nontaxpayers to obtain documents or information from the Internal Revenue Service to aid them in some controversy with a taxpayer. In two recent instances(56) actions were brought to obtain documents which relate to the Internal Revenue Service's revocation of the private rulings issued in connection with ITT's acquisition of Hartford Fire Insurance Company. Plaintiffs seek this information to assist them in their private stockholders' litigation with ITT under the securities laws.

Another significant development in the disclosure area is the increase in the number and complexity of requests for Internal Revenue Service documents or files for use in litigation in which the Internal Revenue Service is not a party. An example is found in the extensive third party subpoena duces tecum served on the Commissioner of Internal Revenue by International Telephone and Telegraph Corp(57). Although the Internal Revenue Service is not a party to the lawsuit in which the subpoena was issued, the determination of ITT's right to production of the thousands of documents sought in the subpoena will require a substantial expenditure of man-hours by attorneys of the Department of Justice and the Internal Revenue Service. Another example of this type of litigation involves a case wherein the plaintiff seeks access to Internal Revenue Service documents obtained in connection with a criminal tax investigation of one of the defendants and has caused the service of a third party subpoena on the Cleveland, Ohio, District Director of Internal Revenue and other Service officials(58).

Finally, it is becoming a common litigating device or tactic to seek access to Internal Revenue Service documents and files in connection with all civil and criminal tax proceedings, and the volume of these requests and the complexity of the issues raised by the requests have substantially increased.

*Bankruptcy*

Recent amendments to the Bankruptcy Act and the adoption of new Rules of Bankruptcy Procedure have resulted in an increase in the volume and complexity of the bankruptcy litigation handled by this Section. In addition to defending against objections to proofs of claims for taxes, full-fledged adversary proceedings with formalized pleading requirements and discovery and pretrial procedures similar to those provided by the Federal Rules of Civil Procedure in United States District Courts are now commonplace in bankruptcy actions. These proceedings include seeking recovery of money or property for an estate, the determination of the validity or priority of a tax lien on assets of the estate, and actions wherein the bankrupt seeks a determination as to the dischargeability of a tax debt.

Previously, litigation concerning the dischargeability of a prebankruptcy tax debt normally arose only in those cases in which the United States sought collection of the tax liability after bankruptcy and the bankrupt raised the defense of his discharge in bankruptcy in a lawsuit. Recent amendments to the Bankruptcy Act do not clearly waive the sovereign immunity of the United States to suits by bankrupts to determine the dischargeability of

tax liabilities in Bankruptcy Courts where the United States has not filed a proof of claim in the bankruptcy (normally no asset cases). Where the United States has not filed a proof of claim for taxes and the bankrupt has sought a determination as to dischargeability of certain taxes, the United States has thus raised a defense of lack of jurisdiction and this issue is presently before the United States Courts of Appeals for the Fifth and Ninth Circuits. Jurisdiction was sustained by the District Court for the Northern District of Texas in one case(59); lack of jurisdiction was found by the District Court for the Central District of California in two other cases(60).

In those bankruptcy cases where a proof of claim has been filed and the bankrupt seeks a determination as to their dischargeable nature, newly enacted law requires the United States not only to defend on the issue of dischargeability, but also to seek a judgment from the Bankruptcy Court with respect to the tax liabilities involved. A new avenue for litigation of tax liabilities has thus been made available to bankrupt taxpayers, and it is being increasingly employed.

*Termination of Taxable Year*

Section 6851 of the Internal Revenue Code of 1954 provides the Internal Revenue Service with an extraordinary weapon to protect collection of federal taxes. If the Service finds that a taxpayer intends (1) to depart quickly from the country, or (2) to remove his property from the country, or (3) to conceal either himself or his property within the country, or (4) to do any other act to prejudice collection of current taxes, then the Service may declare the current income tax year terminated or closed and demand immediate payment of income taxes due for the shortened year. This provision has been relied upon significantly over the past three years, and has proved to be one of the few means by which the Service may collect income taxes due.

The Service will make an immediate assessment against an individual upon the termination and will demand for payment; the Government has always contended that this assessed liability is not a "deficiency," as that term is defined in the Internal Revenue Code(61). A frequent attack by the taxpayer upon this enforced collection is through the assertion that the liability is by law a deficiency, that Internal Revenue must issue the taxpayer a "notice of deficiency," and that the failure to issue such a notice entitles the taxpayer to an automatic injunction against collection by distraint(62). The Tax Division has handled approximately 100 cases brought to restrain tax collection of an assessment made pursuant to a termination of a current taxable year.

*State and Local Taxes*

Attorneys in the General Litigation Section also handle a number of controversies concerning state and local taxes. These controversies may arise in any area where there is interaction between the Federal Government and state and local governments, but basically involve the right of state and local authorities to: (1) impose a tax upon the Federal Government, its agencies, instrumentalities, employees, or those with whom it contracts; (2) enact regulatory statutes which interfere with the functioning of the Federal Government and its agencies or instrumentalities; and (3) impose a tax "with respect to the income or personal property" of a nonresident servicemen in contravention of the provisions of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C., Appendix, Section 574). In some instances the General Litigation Section is apprised of the existence of the controversy by inquiries from private citizens to the President, Attorney General, or members of Congress, which are referred to this Section. Most frequently, the matter is referred to this Section directly by the Federal Agency which believes it is aggrieved by the action of state and local officials. In these cases a decision must be made as to whether there is a sufficient basis for the United States to become involved in the controversy. Once that decision is made in the affirmative, the General Litigation Section is authorized to take the appropriate action to aid the agency involved in resolution of the controversy. In many instances the appearance of the United States as an interested, or even aggrieved, party has resulted in successful negotiations with the state or local officials. Oftentimes however, litigation becomes necessary.

Several important cases have recently arisen regarding the right of state and local taxing authorities to assess and collect a sales andor use tax against Government contractors. Although it is clear that state and local taxes assessed directly against the United States are constitutionally impermissible(63), it is less clear when the tax is assessed against a Government contractor under a cost-reimbursable type contract. In such cases the economic burden of the tax is upon the United States. However, the courts have rejected the prior practice of invalidating a state or local tax on the basis that the economic burden is upon the United States, and they will now uphold the tax unless it is shown that the "legal incidence" thereof is upon the United States. In one case(64) presently pending before the District Court for the Central District of California, the question is whether the California sales and use taxes may be imposed upon lessees of the United States or lessees of third party contractors of the United States under cost-reimbursable type contracts. This issue is one which has frequently recurred and is presently being contested in a number of cases presently pending in this Section(65).

Although the attempt at taxation of the Federal Government, its agencies, instrumentalities, and contractors is the most common area of controversy, a number of cases have been handled by this Section which involve the attempt of state and local authorities to otherwise regulate and control the activities of Federal agencies and instrumentalities. Thus, controversies have arisen between the state and local authorities and the armed services concerning the rights of the state and local municipalities to regulate the purchasing of liquor by military personnel. This regulation is accomplished by a "mark-up" on the liquor and by states prohibiting purchases from any distillers not controlled by the state. A three-judge panel of the District Court for the Southern District of Mississippi is considering(66) the statutory scheme enacted by the State of Mississippi for the "mark-up" and regulation of liquor consumed by members of the armed services, both on and off their federal reservations. This is being considered in the light of the Government's argument that the statutory scheme enacted by the State of Mississippi constitutes an impermissible attempt to tax a federal instrumentality and that it unconstitutionally interferes with Federal procurement regulations and policy.

Similarly, there are pending cases involving the right of the Commonwealth of Pennsylvania to require the American National Red Cross to comply with the provisions of its Solicitation of Charitable Funds Act(67), and the right of the State of Arizona to deny employees of the Internal Revenue Service credit for their accounting experience obtained through their tenure with the Internal Revenue Service for purposes of the experience requirements for certification as a Certified Public Accountant in that State(68).

A significant portion of the state and local tax cases involves the protection of the rights afforded servicemen under the provisions of the Soldiers' and Sailors' Civil Relief Act. Specifically, the General Litigation Section handles cases where a state or local taxing authority seeks to impose a tax on the income or personal property of a serviceman who is temporarily residing within a state but who is a domiciliary of another state is absent from his home state solely by reason of compliance with military orders. In this instance taxation on income or personal property is specifically prohibited by Section 514 of the Soldiers' and Sailors' Civil Relief Act. Controversies most generally arise in determining whether the tax is in fact, a tax with respect to personal property. There is pending in the District Court for the District of Hawaii the issue as to whether the Hawaii motor vehicle tax is prohibited by Section 514(69). A pending controversy with Champaign County, Illinois, involves the application of the Illinois Mobile Home Privilege Tax to servicemen.(70)

**Compromise of Civil Tax Cases**

In 1974 the Department took final action of 998 settlement offers under authority of Section 7122, Internal Revenue Code. Of the 988 offers acted on in 1974, 742, or approximately 75 percent, were approved and 246, or approximately 25 percent, were rejected. Final actions for fiscal year 1974 were taken as follows:

| Final Action | Approved | Rejected | Total |
|---|---|---|---|
| Attorney General | 42 | — | 42 |
| Assistant Attorney General | 104 | 50 | 154 |
| Chief, review section | 209 | 8 | 217 |
| Chiefs of other sections | 387 | 188 | 575 |

Of the 146 settlements approved by the Attorney General or the Assistant Attorney General, 35 involved refunds in excess of $100,000 which were submitted to the Joint Congressional Committee on Internal Revenue Taxation.

**Statistical Review of 1974**

Fiscal year 1974 was a very successful year for savings and recovery of revenue through the conduct of litigation. A total of $74 million in judgments was obtained against delinquent taxpayers. Savings in refund suits were $115 million, while taxpayers recovered $19 million. Further, decisions of the Tax Court involving assessed deficiencies of over $5 million were upheld in the courts of appeals. Thus, the total monetary benefit to the Federal Government attributable to the Division's activities was $194 million, the highest rate of recovery in the Division's history.

**Work Load Data and Backlog**

The tables and charts which follow show the trend in the volume of new tax litigation over the past several years. It will be noted that receipts during this period fluctuated around the 10,000-case plateau. What lies ahead will be directly influenced by the recent revision of the tax laws, increased involvement in the Administration's organized crime program, further increase in the Internal Revenue Service's enforcement staff, continued business expansion and prosperity, and, the growing population.

During 1974 the Division's staff prepared more trial and appellate briefs and tried and argued more cases than in fiscal 1973. For the 16th consecutive year, over 1,400 court appearances were made by Division attorneys, and for

the sixth straight year, over 2,000 formal trial and appellate briefs were prepared and filed in court. In all areas of trial practice, the Division surpassed the fiscal 1973 figures.

Fiscal year 1974 was another successful year in handling tax litigation in the courts. The following table compares recent results with various periods in the past:

| | 1974 | 1973 | 1972 | 1971 | 1970 | 1969 | 1968 | 1967 |
|---|---|---|---|---|---|---|---|---|
| Government wins | | | | | | | | |
| Criminal | 85 | 78 | 84 | 79 | 81 | 78 | 75 | 75 |
| Convictions | 94 | 95 | 95 | 95 | 95 | 95 | 95 | 95 |
| Taxpayer's | | | | | | | | |
| Recovery of money | 17 | 22 | 23 | 22 | 23 | 24 | 25 | 21 |

Supreme Court: The Division won seven of eight tax cases.

Courts of Appeals: The Government's position was upheld in 277 of 367 decisions of the courts of appeals (a 75 percent margin).

Trial Courts: The Government was successful in 726 of 810 trial court judgments (a 90 per cent margin).

Criminal Cases: The Division obtained the conviction of 1,025 persons for tax offenses. It brought to 14,473 the number found guilty in the past eighteen years, and 17,374 in the past 42 years. The number of convictions for the past 12 years is revealed by the following figures:

**Convictions**

| | |
|---|---|
| 1974 | 1,025 |
| 1973 | 1,094 |
| 1972 | 835 |
| 1971 | 775 |
| 1070 | 612 |
| 1969 | 673 |
| 1968 | 664 |
| 1967 | 653 |
| 1966 | 632 |
| 1965 | 625 |
| 1964 | 607 |
| 1963 | 597 |

The amount of direct monetary gain is not a true measure of the success of the Division and it fluctuates from year to year, depending upon the taxes involved in concluded cases. Of paramount importance is the contribution of litigation to the development of sound interpretations of the revenue laws and their effect upon the determination of cases at the administrative level. Nevertheless, fiscal year 1974 was an extremely successful year for savings and recovery of revenue through the conduct of litigation. A total of $74 million in judgments was obtained against delinquent taxpayers. Savings in refund suits were $115 million, while taxpayers recovered $19 million of their claims. Further, decisions of the Tax Court involving assessed deficiencies of $5 million were upheld in the courts of appeals. Thus, the total direct monetary gain attributable to the Division's activities was $194 million. The indirect effect, while not susceptible of calculation, would probably dwarf the determinable dollar value by comparison.

Even though the Division undertook to give increased attention to cases of prime importance and difficulty, all work was handled with dispatch. The number of requests for extensions of time to file responsive pleadings continued at the lowest level since such records have been kept; the time required to process settlement offers, to issue checks to successful taxpayers in refund suits and to dispose of criminal cases in the Department remained within acceptable times; and the complete time required to dispose of the average tax case continued to be well under two years.



**Comparative Work Load Summary**

| | 1964 | 1965 | 1966 | 1967 | 168 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Pending | 5,880 | 5,610 | 5,923 | 5,909 | 6,031 | 5,827 | 5,824 | 6,358 | 6,310 | 6,792 | 7,542 |
| Received | 10,362 | 10,608 | 10,142 | 9,492 | 9,602 | 10,127 | 9,835 | 10,036 | 10,528 | 10,601 | 10,718 |
| Closed | 10,632 | 10,295 | 10,156 | 9,370 | 9,806 | 10,130 | 9,301 | 10,084 | 10,046 | 9,851 | 10,120 |
| Pending | 5,610 | 5,923 | 5,909 | 6,031 | 5,827 | 5,824 | 6,358 | 6,310 | 6,792 | 7,542 | 8,140 |

**Comparison of Work Received and Closed**

| | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|---|
| Received | | | | | | | | | | |
| Civil cases | 3,035 | 2,855 | 2,871 | 2,893 | 2,731 | 2,869 | 2,999 | 3,349 | 3,331 | 3,732 |
| Criminal cases | 745 | 786 | 695 | 852 | 934 | 1,077 | 1,120 | 1,570 | 2,009 | 1,777 |
| Total cases | 3,780 | 3,641 | 3,566 | 3,745 | 3,665 | 3,946 | 4,119 | 4,919 | 5,340 | 5,509 |
| Liens | 4,853 | 4,624 | 4 935 | 4,125 | 3,428 | 3,528 | 4,108 | 4,081 | 4,050 | 4,099 |
| Miscellaneous | 1,975 | 1,877 | 1,091 | 1,732 | 3,034 | 2,361 | 1,809 | 1,528 | 1,211 | 1,110 |
| Total miscellaneous | 6,828 | 6,501 | 5,926 | 5,827 | 6,462 | 5,889 | 5,917 | 5,609 | 5,261 | 5,209 |
| Totals | 10,608 | 10,142 | 9,492 | 9,602 | 10,127 | 9,835 | 10,036 | 10,528 | 10,601 | 10,718 |
| Closed | | | | | | | | | | |
| Civil cases | 2,585 | 2,911 | 2,695 | 3,178 | 2,727 | 2,515 | 3,054 | 3,210 | 3,127 | 3,378 |
| Criminal cases | 700 | 719 | 651 | 711 | 1,024 | 1,046 | 1,005 | 1,207 | 1,596 | 1,603 |
| Total cases | 3,285 | 3,630 | 3,346 | 3,889 | 3,751 | 3,561 | 4,059 | 4,417 | 4,723 | 4,981 |
| Liens | 4,894 | 4,605 | 4,853 | 4,138 | 3,423 | 3,527 | 4,108 | 4,081 | 4,050 | 4,099 |
| Miscellaneous | 2,116 | 1,921 | 1,171 | 1,779 | 2,956 | 2,303 | 1,917 | 1,548 | 1,078 | 1,040 |
| Total miscellaneous | 7,010 | 6,526 | 6,024 | 5,917 | 6,379 | 5,830 | 6,025 | 5,629 | 5,128 | 5,139 |
| Totals | 10,295 | 10,156 | 9,370 | 9,806 | 10,130 | 9,391 | 10,084 | 10,046 | 9,851 | 10,120 |

**Work Production**

| | 1965 | 1966 | 1967 | 1968 | 1969 | 1970 | 1971 | 1972 | 1973 | 1974 |
|---|---|---|---|---|---|---|---|---|---|---|
| Pleadings prepared | 2,736 | 3,190 | 2,834 | 3,152 | 3,167 | 2,835 | 3,356 | 3,565 | 3,421 | 4,005 |
| Discovery action | 2,843 | 3,755 | 2,934 | 2,435 | 2,521 | 2,203 | 2,214 | 2,053 | 2,029 | 2,527 |
| Pretrials | 1,194 | 1,215 | 1,193 | 1,007 | 1,032 | 852 | 863 | 839 | 788 | 914 |
| Trials | 1,136 | 1,159 | 1,202 | 1,049 | 1,126 | 1,127 | 1,159 | 1,165 | 1,055 | 1,198 |
| Appellate arguments | 416 | 296 | 317 | 297 | 353 | 366 | 373 | 324 | 347 | 361 |
| Briefs prepared | 1,539 | 1,598 | 1,539 | 1,557 | 1,630 | 1,662 | 1,674 | 1,882 | 1,906 | 2,132 |
| Legal memos | 3,547 | 3,599 | 3,734 | 3,792 | 3,840 | 3,657 | 3,975 | 3,836 | 4,335 | 4,715 |

### Tax Division, Savings and Collections

£In millions_

| Fiscal year | Collections | Savings | Total |
|---|---|---|---|
| 1974 | $79.0 | $115.0 | $194.0 |
| 1973 | 80.0 | 111.0 | 191.0 |
| 1972 | 77.0 | 113.0 | 190.0 |
| 1971 | 73.0 | 108.0 | 181.0 |
| 1970 | 74.0 | 106.0 | 180.0 |
| 1969 | 75.0 | 104.0 | 179.0 |
| 1968 | 72.0 | 100.0 | 172.0 |
| 1967 | 67.0 | 122.0 | 189.0 |
| 1966 | 65.0 | 123.0 | 188.0 |
| 1965 | 26.0 | 85.0 | 111.0 |
| 1964 | 35.8 | 97.5 | 133.3 |
| 1963 | 24.3 | 93.2 | 117.5 |
| 1962 | 41.6 | 80.2 | 121.8 |
| 1961 | 14.0 | 85.9 | 99.9 |
| 1960 | 19.2 | 120.7 | 139.9 |
| 1959 | 18.6 | 174.9 | 193.5 |
| 1958 | 7.1 | 118.9 | 126.0 |
| 1957 | 22.5 | 67.5 | 90.0 |
| 1956 | 6,8 | 60.1 | 66.9 |
| 1955 | 20.3 | 32.1 | 52.4 |
| 1954 | 6.1 | 48.4 | 54.5 |
| 1953 | 7.6 | 15.7 | 23.3 |
| 1952 | 9.2 | 17.3 | 26.5 |

### Tax Division Wins and Losses

| | Won | | Lost | | Total | | Percent of Government Wins | |
|---|---|---|---|---|---|---|---|---|
| | 1974 | 1973 | 1974 | 1973 | 1974 | 1973 | 1974 | 1973 |
| Supreme Court | 7 | 8 | 1 | 1 | 8 | 9 | 88 | 89 |
| Circuit Court of Appeals | 277 | 283 | 40 | 100 | 367 | 383 | 75 | 74 |
| District Court | 544 | 709 | 60 | 189 | 604 | 898 | 90 | 79 |
| Court of Claims | 36 | 57 | 10 | 13 | 46 | 70 | 78 | 82 |
| State Court | 146 | 77 | 13 | 29 | 159 | 106 | 92 | 66 |
| Total | 1,010 | 1,134 | 174 | 332 | 1,184 | 1,466 | 85 | 77 |

### Average Time

| | 1974 | 1973 | 1972 | 1971 | 1970 | 1969 | 1968 | 1967 |
|---|---|---|---|---|---|---|---|---|
| Average time to: | | | | | | | | |
| Dispose of a tax case | 1 year 10 months | 1 year 10 months | 1 year 8 months | 1 year 9 months | 1 year 10 months | 1 year 8 months | 1 year 10 months | 1 year 7 months |
| Process a criminal case in department | 2 months 20 days | 2 months 25 days | 2 months 29 days | 3 months 1 day | 2 months 10 days | 3 months 5 days | 2 months 29 days | 3 months 8 days |
| Process a settlement offer | 2 months 14 days | 2 months 0 days | 2 months 2 days | 2 months 0 days | 2 months 1 day | 2 months 2 days | 2 months 4 days | 2 months 11 days |
| Issue a check to a taxpayer | 1 month 20 days | 1 month 5 days | 1 month 5 days | 1 month 7 days | 1 month 9 days | 2 months 17 days | 1 month 7 days | 28 days |
| Average # of extensions per case | .03 | .02 | .04 | .04 | .04 | .05 | .05 | .06 |
| Percentage of cases under 2 years old | 74 | 72 | 74 | 71 | 73 | 73 | 72 | 74 |



## CITATIONS

(1) *California Bankers Assn.* v. *Shultz,* 416 U.S. 21.
(2) *Bellis* v. *United States,* 417 U.S. 85 (1974).
(3) *Commissioner* v. *Nat. Alfalfa Dehydrating,* 417 U.S. 134 (1974).
(4) *Alexander* v. *"Americans United" Inc.,* 416 U.S. 752 (1974).
(5) *Bob Jones University* v. *Simon,* 416 U.S. 725 (1974).
(6) *Central Tablet Mfg. Co.* v. *United States,* 417 U.S. 673 (1974).
(7) *Commissioner* v. *Idaho Power Co.,* 42 U.S. Law Week 5067 (Sup. Ct., June 24, 1974).
(8) *Snow* v. *Commissioner,* 416 U.S. 500 (1974).
(9) *Laing* v. *United States,* 496 F.2d 853 (C.A. 2, 1974), cert. granted Oct. 15, 1974 (No. 73-1808) (43 U.S. Law Week 3187).
(10) *Rambo* v. *United States,* 492 F.2d 1060 (C.A. 6, 1974), pet. for cert. pending (No. 73-2005); Hall v. United States, 493 F.2d 1211 (C.A. 6, 1974), cert. granted Oct. 15, 1974 (43 U.S. Law Week 3187).
(11) *Jr. C. of C. of Rochester, Inc., N.Y.* v. *U.S. Jaycees, Tulsa, Okl.,* 495 F.2d 883 (C.A. 10, 1974), pet. for cert. pending (No. 73-2025).
(12) *Garlock, Inc.* v. *Commissioner,* 489 F.2d 197 (C 1973).
(13) *Estate of Whitlock* v. *Commissioner,* 494 F.2d 1297 (C.A. 10, 1974), cert. denied Oct. 15, 1974 (43 U.S. Law Week 3204).
(14) *Liberty Loan Corp.* v. *United States,* 498 F.2d 225 (C.A. 8, 1974).
(15) *Kelly Investment Co.* v. *Commissioner,* 500 F.2d 108 (C.A. 9, 1974).
(16) *Ivan Allen Co.* v. *United States,* 493 F.2d 426 (C.A. 5, 1974), cert. granted Dec. 17, 1974 (No. 74-22) (43 U.S. Law Week 3348).
(17) *Hunt Foods & Industries, Inc.* v. *Commissioner,* 496 F.2d 532 (C.A. 9, 1974).
(18) *Hydrometals, Inc.* v. *Commissioner,* 485 F.2d 1236 (C.A. 5, 1973), cert. denied, 416 U.S. 938 (1974).
(19) *Johnson* v. *Commissioner,* 495 F.2d 1079 (C.A. 6, 1974).
(20) *Estate of Meade* v. *Commissioner,* 489 F.2d 161 (C.A. 5, 1974), cert. denied Oct. 15, 1974 (43 U.S. Law Week 3204).
(21) *Mutual Benefit Life Insurance Co.* v. *Commissioner,* 488 F.2d 1101 (C.A. 3, 1973), cert. denied Oct. 15, 1974 (43 U.S. Law Week 3204).
(22) *Great Commonwealth Life Insurance Co.* v. *United States,* 491 F.2d 109 (C.A. 5, 1974).
(23) *Mros* v. *Commissioner,* 493 F.2d 813 (C.A. 9, 1974).
(24) *Chu* v. *Commissioner,* 486 F.2d 696 (C.A. 1, 1973); *Davis* v. *Commissioner,* 491 F.2d 709 (C.A. 6, 1974).
(25) *Fisher* v. *Commissioner,* 500 F.2d 683 (C.A. 3, 1974).
(26) *United States* v. *White,* 477 F.2d 757 (C.A. 5, 1973), aff'd *en banc,* 487 F.2d 1335 (C.A. 5, 1973), cert. denied Oct. 15, 1974 (43 U.S. Law Week 3203).
(27) *United States* v. *Kasmir,* 499 F.2d 444 (C.A. 5, 1974).
(28) *Shultz* v. *United States,* 493 F.2d 1225 (C.A. 4, 1974).
(28a) *United States* v. *Isaacs,* 493 F.2d 1124 (C.A. 7, 1974).
(28b) *United States* v. *Klee, 494 F.2d 394 (C.A. 9, 1974); United States* v. *Hawk,* 497 F.2d 365 (C.A. 9, 1974).
(28c) *United States* v. *Lowder,* 492 F.2d 953 (C.A. 4, 1974).
(29) *Monumental Life Insurance Co.* v. *United States,* Ct. Cl. No. 71-73.
(30) *Penn Security Life Insurance Co.* v. *United States,* Ct. Cl. No. 109-68.
(31) *Hogan* v. *United States,* 367 F. Supp. 1022 (E.D. Mich., 1973), aff'd, 35 A.F.T.R. 2d 1024 (C.A. 6, Mar. 18, 1975).
(32) *Little Audrey's Transportation Co.* v. *United States,* 369 F. Supp. 329 (Neb., 1974).
(33) *Reserve Nat. Insurance Co.* v. *United States,* 34 A.F.T.R. 2d 5104 (W.D. Okla., May 17, 1974).
(34) *Damberger* v. *United States,* Civil No. 73-0264-EBR (N.D. Cal.) and *Standard Life & Accident Ins. Co.* v. *United States,* Civil No. 74-150-C (W.D. Okla.).
(35) *McNatt* v. *United States,* 32 A.F.T.R. 2d 5733 (N.D. Tex., Aug. 20, 1973).
(36) *Lippa* v. *United States,* Civil No. CIV-1972-555 (W.D. N.Y.).
(37) *Tulia Feedlot, Inc.* v. *United States,* 33 A.F.T.R. 2d 382 (N.D. Tex., Nov. 30, 1973), and 33 A.F.T.R. 2d 584 (N.D. Tex., Jan. 12, 1974).
(38) *Rose* v. *United States,* 33 A.F.T.R. 2d 1413 (E.D. La., Nov. 21, 1973).
(39) *Laird* v. *United States,* Civil No. 17282 (N.D. Ga.).
(40) *Eastern Kentucky Welfare Rights Org.* v. *Shultz,* 370 F. Supp. 325 (D.C. D.C., 1973).
(41) *Chapman* v. *Berkshire Medical Center and Internal Revenue Service (Mass.,* No. 74-1954); *Refugio Lugo* v. *Simon* (N.D. Ohio, No. C74-345).
(42) *Tax Analysts and Advocates* v. *Shultz,* 376 F. Supp. 889 (D.C. D.C., 1973).
(43) *Nader* v. *Internal Revenue Service* (D.C. D.C., No. 1851-73).
(44) *Tax Analysts and Advocates* v. *Simon* (D.C. D.C., No. 74-917).
(45) *Tax Analysts and Advocates* v. *Shultz* (D.C. D.C., No. 833-73).
(46) *Craig* v. *Bemis* (S.D. Ala., No. 7738-73).
(47) *Greenhouse* v. *Greco* (W.D. La., No 17741).
(48) *Jackson* v. *Commissioner* (W.D. N.Y., No. 1971-592).

(49) *American Friends Service Committee* v. *United States* (E.D. Pa., No. 70-1405).
(50) *International Telephone and Telegraph Corp.* v. *Commissioner* (Del. Civ. No. 74-70).
(51) *Alexander* v. *"Americans United" Inc.*, 416 U.S. 752 (1974), and *Bob Jones University* v. *Simon*, 416 U.S. 725 (1974).
(52) *Cattle Feeders Tax Committee* v. *Shultz*, 33 A.F.T.R. 2d 428 (W.D. Okla., Dec. 7, 1973), rev'd, 504 F.2d 462 (C.A. 10, 1974).
(53) *Center on Corporate Responsibility, Inc.* v. *Shultz*, 368 F. Supp. 863 (D.C. D.C., 1973) decided adversely to the Government; *United States Servicemen Sons* v. *Shultz* (D.C. D.C., No. 780-73), dismissed by agreement of the parties; *Vietnam Veterans Against the War* v. *Internal Revenue Service* (E.D. Mo., No. 74-561); *Forward Association* v. *Commissioner* (S.D. N.Y., No. 74-Civ.-1049); and *Rev. Anderson* v. *Commissioner* (S.D. N.Y. and D.C. D.C.) pending.
(54) *Tax Reform Research Group* v. *Internal Revenue Service* (D.C. D.C., No. 74-216); *Tax Analysts and Advocates* v. *Internal Revenue Serv., 362 F. Supp. 1298 (D.C. D.C., 1973), aff'd in part, 34 A.F.T.R. 2d 5731 (C.A. D.C., Aug. 19, 1974).*
(55) *Fruehauf Corp.* v. *Internal Revenue Service* (E.D. Mich., No. 4-70345), and *Chamberlain* v. *Internal Revenue Service* (S.D. Ala., No. 7742-73).
(56) *O'Shea* v. *Internal Revenue Service* (Conn., No. N-74-5) and *Bernstein* v. *Internal Revenue Service* (S.D. N.Y., No. 74-Civ. 2804).
(57) *Herbst* v. *ITT* (Conn., No. 15,155).
(58) *Reserve Ins. Co.* v. *Concrete Construction Services, Inc. and Murray Mehlman* (N.D. Ohio, No. 69-667).
(59) *In re Durensky,* (N.D. Tex., Bk. No. 3-2585, May 28, 1974), pending on appeal (C.A. 5, No. 74-3038).
(60) *In re Zook,* 34 A.F.T.R. 2d 5091 (C.D. Cal, Mar. 27, 1974), pending on appeal (C.A. 9, No. 74-1930) and *In re Gwilliam* (C.D. Cal., Bk. No. 73-00087, Jan. 25, 1974) pending on appeal (C.A. 9, No. 74-2350.
61) See Section 6211 of the Internal Revenue Code of 1954. In order for the Internal Revenue Service to find a deficiency, a full-year income tax return must be filed or, if unfiled, must be overdue.
(62) See Sections 6212, 6213 and 7421 of the Internal Revenue Code.
(63) *McCulloch* v. *Maryland,* 4 Wheat. 316 (1819).
(64) *United States* v. *State Board of Equalization* (C.D. Cal., No. 72-2568-R).
(65) *United States* v. *Byron L. Dorgan, et al.* (N. Dak., No. A3-74-68); *Commonwealth of Virginia* v. *Hercules, Inc.* (presently pending before State Tax Commissioner).
(66) *United States* v. *State Tax Commission of State of Mississippi* (S.D. Miss., No. 4554).
(67) *Commonwealth of Pennsylvania* v. *American National Red Cross* (presently pending before State Attorney General).
(68) *William A. Keebler* v. *Arizona State Board of Accountancy* (Sup. Ct. Ariz., Maricopa Co., No. 295590).
(69) *United States* v. *State of Hawaii, et al.* (Hawaii, No. 74-131).
(70) *United States* v. *State of Illinois, et al.* (E.D. Ill., No. 74-139-D).



# Drug Enforcement Administration

The Drug Enforcement Administration (DEA) was created on July 1, 1973, as a result of Reorganization Plan No. 2 of 1973, to mount a sustained assault on the illicit traffic in drugs. The outset of fiscal year 1974 was a period of transition for the new agency, bringing together as it did the personnel and resources of the former Bureau of Narcotics and Dangerous Drugs, Office for Drug Abuse Law Enforcement, Office of National Narcotics Intelligence, the drug investigative activities of, the Customs Service, and the controlled substance research activities of the Law Enforcement Assistance Administration (LEAA). Prior to the formation of DEA, Federal drug law enforcement activities were carried out by a loosely confederated interdepartmental alliance which often presented serious operational and organizational shortcomings. Under DEA, Federal enforcement of the Nation's drug laws continue without loss of momentum; enforcement efforts are now consolidated within the Department of Justice. The consolidation not only provides a clear-cut, efficient line of authority within the Department but, in the opinion of Drug Enforcement Administrator John R. Bartels, Jr., "gives us a greater ability to deal with foreign countries and other U.S. agencies overseas. The Federal anti-drug enforcement effort now speaks with a single voice which commands increased respect."

The major responsibilities of DEA include the following:

—Development of overall Federal drug law enforcement programs, planning and evaluation;

—Investigation and preparation for prosecution of those who have violated Federal drug trafficking laws;

—Investigation and preparation for prosecution of suspects connected with illicit drugs seized at U.S. ports-of-entry and international borders;

—Conduct of all relations with drug law enforcement officials of foreign governments under the policy guidance of the Cabinet Committee on International Narcotics Control;

—Coordination and cooperation with State and local law enforcement officials on joint enforcement efforts;

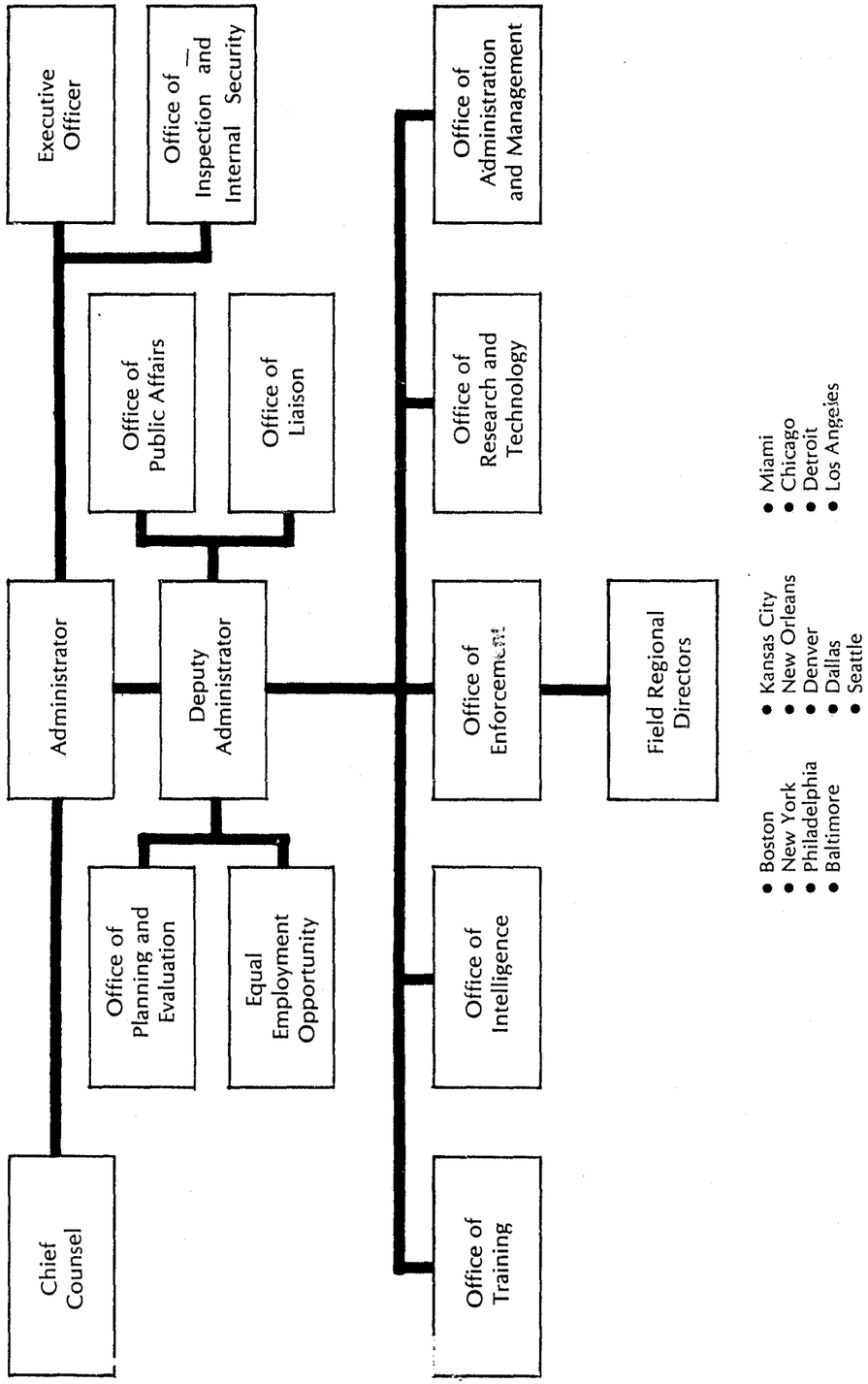
—Regulation of the legal manufacture of narcotics and other controlled substances under Federal regulations.

DEA also sponsors research in the field of drug abuse, conducts drug abuse prevention programs, and provides specialized training in narcotics control to local, State, Federal, and foreign enforcement officials, pharmacists and forensic chemists.

### Office of Enforcement Criminal Investigations

The basic DEA enforcement program, i.e., Geographic Drug Enforcement Program (G-DEP), is designed to provide a multi-level attack on selected violators. It combines drug categories such as heroin, cocaine, hashish, and others with domestic and foreign geographic areas such as the United States, Europe, Middle East, Southeast Asia, South America, and others into drug trafficking situations termed GEO-Drug areas, G-DEP employs the use of a violator rating system which provides broad selectivity and a measurement of effectiveness. The objective of this program is effective enforcement action designed to suppress illicit drug distribution organizations on a national and worldwide basis through selective enforcement. The program directs a majority of DEA's enforcement resources toward the arrest and

## DRUG ENFORCEMENT ADMINISTRATION






prosecution of the highest level violators.

Other programs such as the mobile task forces, assistance to State and local enforcement agencies, strike forces, the compliance and regulation function; and the use of such enforcement tools as court authorized wire intercepts, special purpose vehicles, communication systems, detection devices, radar, purchases of evidence and payments for information, and surveillance equipment contribute to DEA efforts in combatting illicit drug traffic.

Internationally, DEA had 174 agents and 119 support personnel assigned to 59 offices in 38 countries at the end of fiscal year 1974. DEA foreign-based personnel provide intelligence, expertise, and technical assistance to their foreign police counterparts in investigations involving illicit drugs intended for distribution in the United States. The success of cooperative narcotics investigations is indicated not only by the examples below, but also by the prosecution of members of major international syndicates responsible for the illicit traffic in the various countries. The following are brief accounts of significant activity from several geographic drug areas.

—On July 29, 1973, a DEA Special Agent accompanied an Afghanistan enforcement team on a raid of a house in Kabul: 849 lbs. of hashish were seized and four defendants were arrested. Subsequent investigation led to the immobilization of a hashish smuggling ring.

—Two high-level members of the Sicilian Mafia and two of their associates were arrested by the Italian Police at Padova, Italy, on August 24, 1973, when they delivered approximately 92 pounds of pure heroin to a DEA Special Agent who had negotiated with the traffickers for several weeks.

—On September 7, 1973, Venezuelan Police in cooperation with DEA's Caracas District Office seized approximately 51 pounds of cocaine and arrested two Colombian nationals. The seizure resulted from undercover negotiations conducted by a DEA agent.

—On September 12, 1973, a joint DEA/Colombian marihuana eradication operation was initiated in the mountains around Fundacion, Colombia. By September 24, 1973, a total of 14 tons of marihuana had been destroyed and six defendants arrested.

—On September 18, 1973, DEA agents in Illinois seized a clandestine laboratory and enough chemicals to produce an estimated $250,000 worth of amphetamines and hallucinogens per week. The seizure climaxed a six-month investigation. Three persons were arrested on the site of the laboratory in Gurnee and a fourth at a bookstore in Chicago.

—On November 1, 1973, DEA agents arrested two suspects as they delivered 5.5 pounds of hashish oil to an undercover agent at Hartford, Connecticut. Also seized was $2,480 which will be forfeited to the Internal Revenue Service. One suspect admitted smuggling approximately eight pounds of hashish oil from Lebanon earlier in the year.

—On November 18, 1973, DEA and Mexican Federal Judicial Police (MFJP) Agents arrested two defendants at Nogales and seized over ten pounds of brown heroin and cocaine. On the same date, DEA and MFJP agents arrested another individual in an unrelated case and seized 11 pounds of brown heroin near Guadalajara. In both instances DEA provided information that lead to the seizures.

—On November 18, 1973, a DEA agent, acting in an undercover capacity, received 2 tons of hashish from a smuggling organization. Pakistan Police searched the premises where the two-ton delivery was made and seized an additional 10 tons. Several people were arrested as a result of this investigation.

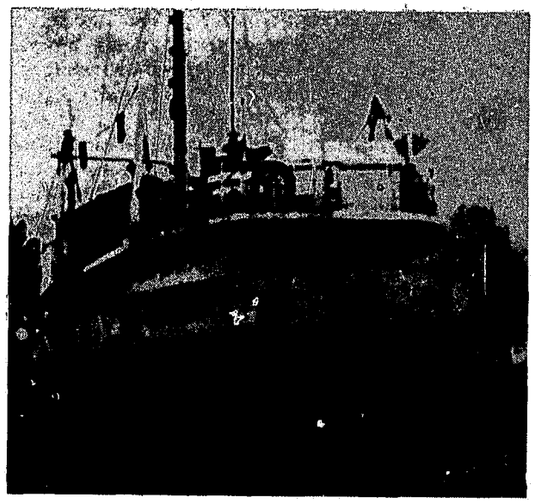
—Acting on information provided by DEA, Colombian National Police at La Union, Colombia, seized over 37 pounds of cocaine and arrested two individuals on December 2, 1973.

—A six-month investigation was culminated in New York City on February 25, 1974, when a major heroin-cutting plant was seized intact by a team of DEA agents and detectives of the New York Police Department. The seizure included 26 pounds of heroin worth more than $10 million on the illicit market, 38 pounds of diluent material, various cutting paraphernalia, and 4 handguns. Two persons were arrested.

—On March 9, 1974, a working heroin laboratory was seized and six individuals, including the chemist, were arrested in Bangkok. Subsequent investigation led to the arrest of the laboratory's financial backers who had made an agreement to manufacture heroin and smuggle it into Amsterdam. These arrests closed a smuggling ring which had shipped approximately 211 pounds of heroin to the U.S. since 1970.

—Acting on information supplied by the DEA Santiago District Office, Chilean Police on April 6, 1974, seized six suitcases containing approximately 40 pounds of cocaine. The continuing investigation has resulted in thirty arrests and the identification of the principles of a large trafficking network.

—On April 11, 1974, Special Agents of the DEA Paris Regional Office and the French Police culminated a four-month intensive investigation which led to the seizure of 44 pounds of pure heroin in Paris. Four major Corsican traffickers were arrested, and two remain fugitives. The group was known to have supplied heroin to the U.S. market for the past fifteen years.



*The freighter, SEA TRADER, from which was seized a record 3,700 pounds of Moroccan hashish 60 miles from Nassau, in April, 1974.*

*A portion of the hashish seized from the freighter SEA TRADER.*

—The largest recorded seizure of hashish in the Western Hemisphere was made on April 12, 1974, by Bahamian officials and DEA agents. The seizure of 3,700 pounds of the drug was made aboard the Panamanian-registered freighter, Sea Trader. The 150-foot ship became disabled about 800 miles east of the Florida coast and was boarded by U.S. and Bahamian officials after being towed to an area about 60 miles northwest of Nassau by the U.S. Coast Guard Cutter, Gallatin. The hashish was being shipped to the U.S. from Morocco when the freighter became disabled. The hashish was contained in 50 burlap bags; the freighter carried no other cargo. Six Americans were arrested.

—On May 3 and 4, 1974, the Mexican Federal Judicial Police seized a total of 16 tons of packaged marihuana and the two trucks which were being used to transport it. The seizure, which was effected in cooperation with agents of the DEA Mexico City Regional Office, resulted in the arrest of three individuals and the identification of several others involved in marihuana smuggling.

—On June 26, 1974, a Thai fishing trawler containing 2.1 tons of opium was seized and its 9-man crew arrested in Vietnamese waters. Subsequent information was received concerning an additional sea-bed cache of opium. This information from DEA and independent information from the Hong Kong Police resulted in the subsequent seizure of approximately 1,760 pounds of opium and 300 pounds of morphine base by the Hong Kong Narcotics Bureau.

*Operation SEA/M*
*(Special Enforcement Activity in Mexico)*

After a number of years of diplomatic meetings and recommendations, DEA and the Mexican Federal Judicial Police, through various mutual agreements, began a joint enforcement operation in Mexico. From January 26, 1974 to April 30, 1974, this special task force located and eliminated four heroin-producing laboratories, seized over 110 pounds of Mexican "brown" heroin, 117 pounds of raw opium, 10 tons of marihuana, approximately two million units of dangerous drugs, and arrested 126 defendants. These units received full support from the Attorney General of Mexico and were granted authority to follow through on any investigation in the Republic of Mexico. To support the enforcement activities of these special impact units, the Drug Enforcement Administration provided equipment, personnel, and complete financial support. On January 26, 1974, two impact units began enforcement activities in the State of Sinaloa. Roadblocks were set up as a police action to probe the suspected movement of opium couriers in the Culiacan area. The result of the first few days of this probing exercise established an effective method of investigating the Mexican heroin problem in the Sinaloa area. Seizures of opium led impact units to the location of heroin-producing laboratories. Additionally, several heroin distributors were apprehended as a result of the arrest of the opium



*Mexican Federal Judicial Policemen inspecting opium poppy field during Operation SEA/M.*

couriers. Through these heroin laboratory investigations, SEA/M personnel provided positive knowledge regarding morphine extraction and heroin conversion processes.

Operation SEA/M received the highest level of cooperation from the Mexican Federal Judicial Police. The death of FJP Agent Jose Luis Ballesteros and the serious injury of DEA Special Agent Rogelio Guevara reaffirmed, through their sacrifice and dedication, the need for a total commitment from both the Mexican and United States Governments in improving their enforcement programs.

*Operation Springboard*

Operation Springboard has been responsible for the disruption of several high level narcotic distribution networks, some of which brought narcotics from Europe to the United States via Latin America. Started by the Bureau of Narcotics and Dangerous Drugs in November of 1972, it has represented a singularly successful attempt to coordinate the efforts of the United States and foreign enforcement authorities towards designated high level violators. Thirty-six outstanding indictments, which have been handed down in the Southern and Eastern districts of New York, charge 310 individuals with conspiracy to violate the narcotic laws of the United States. This is an increase of 206 over last year. These charges involve the smuggling of many thousands of pounds of heroin and cocaine into the U.S. Based on exhaustive interviews of informants and defendants, huge international conspiracies have been identified and targeted. Numerous individuals have been arrested and returned to U.S. custody to stand trial and the return of more is anticipated. Operation Springboard represents a truly international effort to interdict the illicit flow of narcotics.

*Operation SNO*
*(The Special Narcotics Operation)*

Operation SNO was established in April of 1972 as a Special Narcotics Task Force for northern Thailand. SNO is a highly mobile narcotics enforcement operation, capable of quick action anywhere in the country. Due to its effectiveness in the north of Thailand, SNO units are being deployed in southern Thailand for the purpose of interdicting the narcotics flow from the tri-border area of northern Thailand, Laos, and Burma. This flow is destined for Malaysia, Hong Kong, and points south. SNO, acting as a data base for intelligence information, has used its mobility to seize approximately 9,552 pounds of opium, 356 pounds of morphine, and 89 pounds of heroin in 1974. The SNO project will continue indefinitely.

*Operation GSI*
*(Groupe Special D'Investigations)*

The Groupe Special D'Investigations was developed in late 1971 for the purpose of interdicting narcotics flow from the tri-border area of Thailand, Laos, and Burma. It is staffed by the Royal Laotian Government, military, and civilian enforcement personnel. GSI has been very effective in maintaining operational liaison with its foreign counterparts and extremely successful in gathering valuable intelligence on major narcotics trafficking organizations. The ability of the GSI personnel to pursue the intelligence obtained has resulted in the seizure of approximately 126 pounds of opium and 23 pounds of heroin in 1974. DEA and USAID are continuing to provide technical assistance and financial support to the GSI efforts. The GSI project will continue indefinitely.

*International Cooperation and Aircraft Surveillance*

During June 23-24, 1974, DEA agents and Mexican Federal Judicial Police made the largest single seizure of marihuana in history. Thirty-six tons of marihuana with a street value of about $20 million were taken from a secret basement in a Mexicali warehouse following a six-month investigation by DEA agents.

This investigation began in January 1974 when DEA agents in California developed information that large tar and asphalt-carrying tanker trucks, which delivered road paving material into the Mexicali-Calexico area, were returning into the U.S. with cargoes of marihuana. The tankers had apparently been successful in bringing the marihuana across the border because the strong odor of

tar and asphalt frustrated attempts to use drug *sniffer dogs.* It was ascertained that the principles involved in the smuggling resided in Tecate, B. C., Mexico, and that this particular illicit operation was controlling a stash of between twenty and forty tons of marihuana someplace in the Mexicali Valley.

On June 16, 1974, it was determined that these same violators were going to attempt to smuggle into the United States approximately seven tons of marihuana by use of the tanker trucks. On the 23rd, at 12:30 a.m., a tank truck entered into a lumber yard followed shortly thereafter by another tank truck. A Cessna 206 was utilized in following the tank out of the Mexicali Valley area in Tecate, B.C., Mexico. Upon reaching Tecate, the ground unit from Calexico and several ground units from the San Ysidro Office were able to visually maintain surveillance on the tank truck. At the time of entry at San Ysidro, a search was conducted on the two tank trailers and they were discovered to be carrying a large amount of marihuana. Shortly after this attempt to enter the United States, the second tanker truck attempting to cross the border was also seized and found to contain marihuana. A total of 11,022 pounds of marihuana were found concealed in the four tank trailers of the two trucks.

On the morning of the 24th, ground units with Mexican Federal Jucidial Police proceeded to the lumber yard, where a search was begun of the area. A close inspection revealed that there were a few marihuana seeds on the floor in two areas and it was noticed that one section of the concrete floor sounded different when pounded upon. A large beam and the metal plate were unbolted and removed from a cement floor, revealing a hole going down into a room measuring approximately 25'x36'x9', which was stacked to the ceiling and to all four walls with marihuana.

A count of this seizure revealed 30.4 tons of packaged marihuana ready for shipment to the United States. To date, eight persons have been arrested in this investigation. It is expected additional arrests will be made as both United States and Mexican authorities expand the investigation in their respective countries.

### Compliance and Regulation Program

The Drug Enforcement Administration is charged with special regulatory responsibilities under the Comprehensive Drug Abuse Prevention and Control Act of 1970. The third full year of operation under the Act ended on May 1, 1974. The DEA now routinely registers more than 502,000 legitimate drug handlers annually. About 53,000 new applicants for registration are processed for qualification as outlined in the regulation. Scheduled compliance investigations are performed on a

*Portion of 36 tons of marihuana seized from beneath a warehouse in Mexicali in June, after a cooperative DEA Mexican investigation.*

priority basis to determine the suitability of approximately 6,700 manufacturers, distributors, researchers, importers, and exporters for re-registration. Quotas for Schedule I and II drugs are established, assigned, and maintained to keep supplies of these drugs in balance with medical and research requirements. In addition to meeting its regulatory requirements, DEA gains diversion intelligence through its investigations.

*Investigations of Legitimate Drug Handlers*

DEA conducted 1,408 investigations of legitimate drug handlers in fiscal year 1974. Of these investigations, 354 were initiated by complaints and 1,054 were scheduled investigations. Regulatory actions include drug seizures from 20 registrants, the arrest of 53 registrants, 294 letters of admonition, 116 administrative hearings, surrender of 205 registration certificates, revocation of 64 registrations, 32 denials and 44 suspensions.

During 1974, the majority of the approximately 850 methadone clinics were inspected for security purposes. Resulting from DEA findings in part, the Congress enacted the Narcotic Addict Treatment Act of 1974 amending the Controlled Substnces Act (CSA) of 1970. Practitioners operating narcotic treatment programs must now register separately for this specific activity. The Act grants authority to establish standards as well as recordkeeping and security requirements. DEA is presently working with FDS, SAODAP, and NIDA to resolve joint responsibilities and modify regulations to implement the Act.



DEA's state and industry programs are designed to foster cooperative efforts against drug diversion. Encompassed in these programs are ongoing communications with regulated industry and professions and cooperative Federal/State regulatory enforcement programs directed against retail level diversion. During FY 1974, the three-state Diversion Investigation Unit (DIU) pilot program was successfully concluded. These LEAA-funded units are composed of representatives from DEA and state regulatory and enforcement agencies. Their investigations involve retail drug diversion. Based on results from the pilot program seven states have been added, making a total of ten units to become operational in fiscal year 1975. A total of 7,994 inquiries from state professional licensing boards were processed during 1974. In a Voluntary Compliance Program emphasizing self-regulation, a series of special state invitational conferences were held for the regulated professions, i.e., dentists, pharmacists, nurses, physicians, veterinarians, and podiatrists.

### Office of Intelligence

In describing intelligence operations in DEA, it is necessary to distinguish between *tactical* intelligence, i.e., intelligence which contributes directly and immediately to making a case against a specific violator; *operational* intelligence, i.e., intelligence which might contribute to a case against a specific violator, but does not fit directly into ongoing investigations; and *strategic* intelligence, i.e., general information about sources of drugs or the external environment in which DEA operates which does not contribute to making any specific case, but which does influence decisions at the policy level about the geographic allocation of DEA resources. Having made this distinction, it is possible to describe how collection requirements for the different kinds of intelligence are defined.

With respect to tactical intelligence, the collection requirements are usually defined by individual agents working on the case. They levy requirements on intelligence personnel in their own region, on enforcement personnel in other regions, and both enforcement and intelligence personnel at Headquarters. These collection requirements are reviewed and given priorities by group supervisors in the field. On occasion, when a case becomes sufficiently large and important, a Centac Unit will be formed in Headquarters to coordinate and motivate the collection of tactical intelligence information.

With respect to operational intelligence, the collection requirements are usually defined by the area desk officers. They levy requirements on Headquarters intelligence personnel both in their own sections and others to develop profiles and network analyses of traffickers who are important in their geographic area, and who may, or may not be, currently the subject of a live investigation.

Strategic intelligence collection requirements are established by the Administrator and the strategic intelligence staff. The Administrator requests regular information on the prices and availability of the different drugs in each domestic region, the receptivity of foreign host governments to DEA operations, and significant changes in the domestic policies of foreign governments which are major sources of drugs. In addition, the Administrator will occasionally request ad hoc reports on such issues as the post-bail trafficking of narcotics offenders, the sentencing policies associated with various drugs, and the disposition of conspiracy cases.

Monthly and bi-weekly intelligence reports are prepared for the Attorney General, other Department of Justice officials, the DEA Administrator, and for DEA Headquarters and field personnel. More than 30 network analyses, 600 biographic profiles of traffickers, and 100 special studies were produced in fiscal year 1974.

Plans have been prepared and key spots along trafficking routes selected in domestic and foreign regions for deployment of Narcotics Intelligence Officers (NIOs). NIOs will establish operational intelligence networks designed to collect and report accurate and timely data on drug traffickers, their operations and local area situations. Preliminary recruitment has begun.

Plans have been developed for the El Paso Intelligence Center scheduled to be operational in the Fall of 1974. This Center will be the focal point for the compilation of all intelligence data involving activities in Mexico and along the U.S.-Mexico border. Personnel will conduct on-site network analyses and refer results to various Regional Offices. Tactical information/intelligence will be disseminated immediately for pertinent enforcement action.

An air intelligence program to combat the use of aircraft in illicit narcotics traffic was instituted during 1974. The U.S. Customs Service and the Federal Aviation Administration (FAA) are cooperating to ensure that pertinent data elements available from their sources are included in the program.

During 1974, Project IMPACT was designed and implemented. This project is an economic analytical approach to measure, explain, and predict behavior and change in the illicit drug market. The project is focused initially on a large Eastern city and contiguous areas to measure change in the heroin market as a result of tougher legislation and increased enforcement pressure. Completion is scheduled for the latter part of 1974. If this analytical system provides the expected predictive

capabilities, the system can then be applied to other markets at home and abroad.

DEA contracted for, monitored and directed publication of Institute for Defense Analyses (IDA) studies on brown heroin and heroin signatures. The methodology developed in this project, expansion of DEA capability to handle more drug samples, and an expected increase in submission of samples from domestic and overseas seizures/buys will enable DEA to establish probable areas of origin of the drugs and trends/patterns of movement of these drugs. This will provide a better, more meaningful picture of the heroin situation and help to pinpoint vulnerable areas for attack by enforcement elements.

Computer capability for the processing of highly sensitive and classified material will be operational the latter part of 1974. The system is part of the overall Narcotics Intelligence System that will focus on persons engaged in producing and moving illicit drugs, identifying significant events and trends in drug supply and distribution for evaluating impact of enforcement strategies.

A planning conference with forensic laboratory officials from 18 states was conducted in conjunction with LEAA. This resulted in a plan for a nationwide program to use drug analysis data from Federal and local laboratories. The plan has been distributed to concerned Federal, State and city agencies. Future progress in this area is dependent upon DEA obtaining computer support resources to handle the program.

### Office of Science and Technology

A continuing major effort of the DEA is its Drug Control Program. It has developed an Early Warning System to provide data on the changing drug abuse trends. The objective is to develop, maintain, and continually improve a national and worldwide drug abuse information system that will produce timely, systematic, and scientific intelligence essential to the DEA in performing its function.

### Drug Abuse Warning Network

Project Drug Abuse Warning Network (DAWN) represents the largest and most comprehensive data collection phase of the Early Warning System. It is a network of approximately 1,300 facilities, i.e., medical examiners, hospital emergency room and in-patient facilities, and crisis centers located in 29 Standard Metropolitan Statistical Areas. Plans are in process to provide direct terminal access to monthly computerized data. DAWN has generated abuse statistics on approximately 2,500 dangerous drug substances involved in 170,000 abuse episodes. Monthly reports are distributed to DEA headquarters and regional personnel in addition to other Federal agencies, e.g., FDA, NIDA and NIMH.

*Project Label* represents a systematic and computerized activity of continuously updating and maintaining a listing of all products containing controlled substances marketed from August 1971 to date by trade and generic name, manufacturer, components and composition, acquisition and NDC number, and by appropriate control status under the CSA of 1970. Project Label is currently being employed as a data base for the DEA's Automated Reports and Consummated Order System (ARCOS). Plans are being formulated to provide "on line" capabilities for Project Label.

### Drug Control Actions

Two hundred and five petitions from registrants were reviewed and processed. Of these, "Exempt Chemical Preparation" status was granted to 171, 31 drugs were "excepted" and 3 "excluded" from appropriate provisions of the Controlled Substances Act and regulations. During 1974, 11 substances were brought under control of the Controlled Substances Act by final order published in the *Federal Register*.

### Supporting Research

DEA has continued to support the collection of data from behavioral and physiological systems to be used as input to decisions for control and proper scheduling of drugs. The data are utilized in a matrix of information which helps to eliminate bias in making decisions. The individual parts of the system have been modified to give greater sensitivity; some parts of the system have been computerized for increased accuracy and efficiency. Drugs are currently being studied which will be considered for control in the near future.

Development of a radioimmunoassay for THC in body fluids and the preparation of a supplement to the first volume of the manual for analytical methods are in progress.

The Special Studies Program is engaged in planning, implementing and evaluating a variety of research and analytic studies on a continuing basis to: (1) identify and analyze vulnerabilities of, and threats to, society imposed by patterns of drug abuse, the availability of drugs and the diversion of, and trafficking in, illicit drugs; (2) identify or develop appropriate DEA responses to the threats and analytically determine optimal responses from among the alternatives; and (3) evaluate the effectiveness of responses to the identified threats.

The primary purpose of the Advanced Technology program is to: (1) develop systems and technologies for enforcement, intelligence, and compliance applications to limit the supply of illicit drugs in the U.S., and to reduce the illicit utilization of controlled substances in the U.S.; and (2) accomplish studies, analyses, and tests and evaluation of these systems to assure their most effective application in enforcement operations.

The eight program elements included in the Advanced Technology Program are crop detection; laboratory detection, search and surveillance technology, communications command and control; border control and interdiction, forensic sciences; intelligence support; and operations support.

In fiscal year 1974 the number of R&D projects increased to 60, up from 19 in 1973. During 1974, 30 of 60 active projects were completed, and the resulting hardware and software made available for enforcement applications.

—Compass trip, an airborne system developed to detect the spectral signature of poppy fields, was operationally tested with encouraging results. Steps are being taken to expand this system capability.

—Research has been sponsored to identify, test, and evaluate alternative approaches for detection of effluent characteristics from clandestine heroin laboratories. The most promising of these techniques were tested and evaluated in a field environment to determine the potential effectiveness for operational use.

—Technical requirements and specifications were developed to satisfy drug enforcement low-light-level TV needs. Additionally, a video monitoring system was developed to enable agents to remotely monitor a target area.

—Projects were initiated to develop a family of devices intended for use by undercover agents as a means of assuring their safety during negotiations with drug traffickers. Also, prototype concealable antennas for vehicles were developed and benchtested preparatory to procurement of sufficient units for field testing.

—The detailed definition of long-term DEA communications requirements was initiated to permit design and development of the necessary systems.

—In the operational support area, equipment has been developed or procured for evaluation by enforcement personnel in areas such as high frequency radio, covert transmitters and antennas, slow scan video, agent safety alert devices, etc. Additionally, material capable of stopping .38 caliber bullets has been tested and initial garments received for field evaluations.

### Laboratory Operations

During 1974 the laboratories analyzed 41,000 exhibits related to investigations conducted by the state, local, and other Federal law enforcement agencies. Each exhibit required several examinations and the laboratory system performed over 250,000 examinations in fiscal year 1974.

During 1974 several new drugs of abuse were encountered, as well as many unusual preparations. Some examples are:

—*Mecloqualone:* This drug is a chlorinate derivative of methaqualone. Most exhibits were clandestinely made tablets.

—*Pemoline:* This drug is a CNS stimulant slightly less than amphetamine. Tablets encountered were illicitly produced.

—*Diazepam and chlordiazepoxide mixture:* These drugs are not commercially produced in combination. These tablets appear to be clandestinely made.

—*1-(1-Phenylcyclohexyl) Pyrrolidine:* This drug is another analog of Phencyclidine. The Thiophene analog appeared in illicit channels approximately one year ago.

In 1974, 1,200 ballistics examinations were conducted. Approximately 75 percent were DEA and DEA cooperative submissions. State or local submissions accounted for approximately 17 percent. The remaining samples were from U.S. Customs, other Federal agencies, or foreign agencies. The ballistics program was used as the backbone for a nationwide and international DEA effort to stop the flow of mini-bennie amphetamine tablets during 1974. The ballistics tables have been computerized as a component of STRIDE (System to Retrieve Information from Drug Evidence), making this an important investigative and intelligence instrument. STRIDE was initiated in 1973 and was expanded in 1974 to include computer terminal input and data retrieval capabilities for use by the intelligence and enforcement functions.

In addition to identifying drug evidence for prosecutive purposes, DEA forensic scientists determine potency of the drug, identify other drugs in combination with the controlled substances and identify diluents and adulterants and other components. When compiled and evaluated, this information provides scientific intelligence data.

Forensic chemists provide other technical assistance to special agents. For example, during fiscal year 1974, forensic chemists participated in 53 clandestine laboratory seizures. Additionally, vacuum sweeps for microscopic traces of drug materials were conducted in the field on six occasions. The examination of packaging material for latent finger prints, forensic photographic capabilities, and a specific test for the identification of cocaine were also developed to assist enforcement activities during 1974.

During 1974 representatives of the laboratory participated in such annual meetings and functions as the American Academy of Forensic Sciences, the Pittsburgh Conference on Analytical Chemistry and Applied Spectroscopy, the Eastern Analytical Symposium, consultant to the United Nations for the International Scientific and

Technological Conference on Narcotics and Dangerous Drugs, East Asian Narcotics Conference on American Overseas Community Problems, Canadian Society of Forensic Sciences, Association of Official Analytical Chemists and the International Symposium on Microchemical Techniques.

Articles pertaining to forensic drug chemists written by laboratory personnel appeared in journals such as the *Journal of Official Analytical Chemists, Journal of Pharmaceutical Sciences, International Microform Journal of Legal Medicine, Journal of Forensic Sciences,* and the *Journal of Chromatography.* Twelve issues of *Microgram,* a newsletter containing the latest analytical methods and drug intelligence, were distributed to approximately 1,100 enforcement agencies in the United States and in over 60 foreign countries.

Approximately 500 drug standards, not commercially available and necessary as references when analyzing drugs, were furnished to law enforcement laboratories in the United States and in foreign countries.

A nine-lesson training course for forensic chemists entering the laboratory system was made available to state and local law enforcement agencies for use in training their staffs, as well as law enforcement agencies in foreign countries. Five one-week forensic chemist training seminars were given for state and local chemists. A special one-week seminar was given to New York State Forensic Scientists and a special two-week school was given to forensic scientists for Argentina, Brazil, Ecuador, Mexico, Peru, Uruguay and Venezuela. On-the-job training for five individuals for one-week periods was given to forensic scientists from the United States and foreign countries.

The second issuance to the DEA analytical manual entitled *Analysis of Drugs* and covering the analysis of narcotic drugs, cocaine, and marihuana was distributed to domestic and foreign law enforcement agencies and laboratories providing service to such agencies. Approximately 1,000 copies were mailed. A third section of the analytical manual covering nuclear magnetic resonance and mass spectrometry spectra of compounds previously published was compiled during the fiscal year. After printing, the section will be distributed to all holders of the manual.

### Office of Training

There were significant increases in the drug law enforcement training activities of DEA during 1974. The numbers of trainees in several important categories showed major gains and a number of new and vital programs were implemented.

### Internal Training

Using fiscal year 1973 for comparison, basic agent trainees increased by 57 percent; agents trained in technical skills increased by 50 percent; foreign preassignment training increased by 50 percent; career development training increased by 91 percent; a new program of mid-level management was begun and 70 persons were trained; and 131 employees and wives were provided foreign language training in the U.S. and overseas.

### State and Local Training

The Drug Enforcement Officers Academy (10 weeks) showed a gain of 31 percent graduates over 1973. This program is designed for mid-level management police officers and provides instruction in training methods and drug unit management along with investigative techniques. Graduates from the Law Enforcement Officers Schools (2 weeks) increased by 6 percent, and there was a gain of 17 percent in graduates from the Forensic Chemist Seminars.

### International Training

An increase of 15 percent graduates of the Drug Enforcement Officers Academy was realized. Only English speaking officers are selected for this program. Graduates from the 2-3 week specialized programs presented overseas increased by 36 percent. Three new programs were implemented: the Advanced International School, conducted in Washington, D.C., was started and 143 officials were trained; 14 chemists were trained in a four-week Forensic Chemist Seminar and 13 executives were trained in the U.S.

### Public Education

In 1974, DEA's public eduation programs were conducted in four areas: distribution of publications and film loans through Headquarters and domestic and overseas offices; community-justice system state seminars designed to improve the inter-relationships among criminal justice agencies and community agencies dealing with drug abuse; information and education programs to assist enforcement officers and the public to recognize the role of the criminal justice system in drug prevention; CSA registrant programs for self-regulation and voluntary compliance.

### Community-Justice System Programs

The Phase III Program based on earlier DEA programs for community-criminal justice cooperation focuses on state-level planning for local community cooperation between the criminal justice system and other community agencies.



### CSA Registrant Self-Regulation/Voluntary Compliance Program

The objective of this program is to provide information and assistance to associations of registrants under the Controlled Substances Act (pharmacists, physicians, other health professions) in developing self-regulation, peer-group counseling, inter-professional co-operation and other methods of preventing diversion.

### Office of Administration and Management Equal Employment Opportunity

DEA has a commitment to EEO for all employees. EEO and affirmative action programs have been expanded to include EEO field representatives in five DEA regional offices.

Female special agents were first hired in November 1971, and currently 23 are working in field offices throughout the U.S. Performance has been excellent.

From September, 1973 to July 1, 1974, 38.2 percent of all special agents hired have been minorities:

Blacks—36
Spanish—32
Asian—15
Minority Total—83
Other—134
Total—217

Included in these totals are 13 female special agents.

### Health Protection Program

During fiscal year 1974, 1,608 special agents, basic agent trainees and chemists were provided comprehensive physical examinations under the Administration's health protection program. For 326 individuals, physicals were performed by DEA physicians in the headquarter's medical clinic for agent and chemist personnel in the Washington and Baltimore area and for incoming basic agent trainees. Physical examinations were also provided for 259 of the Administration's employees and dependents being assigned overseas.

### Radio Communications

The program of improving radio communications in support of the Drug Enforcement Administration enforcement responsibilities continued throughout 1974 with the installation of new radio systems and the upgrading of existing systems. Implementation of the National Radio Plan, designed in 1971, is nearing completion in Regions 1-13. The Region 14 Los Angeles radio system has been designed and will be installed in 1975.

The formation of DEA necessitated many changes to the National Radio Plan due to the increase in agent personnel, the establishment of new offices, and the increase in areas of responsibility for the enforcement of Federal drug laws by DEA special agents. Plans were established in 1974 to provide viable radio communications systems to all newly created offices and to modify and upgrade existing systems.

Radio requirements for the foreign regional offices continue to increase. The needs of these offices will be supplied with surplus VHF equipment whenever possible.

The National Training Institute is continuing to utilize the surplus VHF equipment in a radio system similar to a small regional office system. The system includes one repeater, two base stations, one console with phone patch, one recording console, twenty mobiles, and thirty-four portables.

### Automated Data Systems

*Controlled Substances Act Registration System (CSA)*

The implementation of a new program system during 1973 was designed to purge the registration system of inactive CSA registrations. This program resulted in the deletion of over 111,500 registrants and has permitted more intensive review of the remaining registrants for detection of possible non-compliance with the Controlled Substances Act of 1970.

*Enforcement Information System*

The Narcotics and Dangerous Drugs Information System (NADDIS) was operational during 1974. NADDIS is a data capture process and on-line computer system. NADDIS capabilities permit compilation and analysis of operational intelligence data, identification of persons involved in illicit drug trafficking and their method of operation, and the production of drug traffic statistics and management reports through visual display or in hard copy.

*(DEA ADP Telecommunications System)*

The DEA ADP Telecommunications System, which is currently operational in thirteen regions, will be extended to selected overseas regional offices. During 1975, DATS will also provide access to the FBI's NCIC System, Custom's TECS System, and the STRIDE System.

*Automated Reports and Consummated Orders System (ARCOS)*

This is an automated system which became operational in 1974. It assists in accomplishing regulatory functions through simplified drug industry reporting procedures and the maintenance of a comprehensive data base with detail and summary data pertaining to the production and distribution of specified controlled substances. In

concert with the CSA data base, ARCOS will be expanded to provide the capability to extract diversion and quota data for other regulatory/intelligence oriented systems.

### Office of Chief Counsel

During fiscal year 1974, DEA attorneys worked with personnel of the Department of Justice in the preparation of recommendations to the Secretary of Health, Education, and Welfare which resulted in 11 substances being brought under control and five others awaiting control consideration. DEA attorneys assisted in the drafting and the provision of other staff support services which were necessary for the passage of Public Law 93-281, the "Narcotic Addict Treatment Act of 1974."

Attorneys prepared 98 orders to show cause why action should not be taken by DEA to revoke, deny or suspend a registration to engage in controlled substances activities. These orders resulted in the denial of 22 registrations and the revocation of 67 registrations. Moreover, there were 203 voluntary surrenders of registration during the period. DEA attorneys appeared in court on 12 occasions regarding registration matters, including three cases when restraining orders were sought by registrants and refused by the courts.

Attorneys represented DEA at 35 adjudicatory and rule-making hearings relating to infractions by registrants. Additionally, hearings under Section 505 of the Controlled Substances Act led to 58 written agreements with drug manufacturers and wholesalers under which they agreed to correct certain deficiencies.

Attorneys continued assistance to States in enactment of the State Uniform Controlled Substances Act and State regulations to implement the Act. By the end of the fiscal year, 41 States and three territories had adopted the Act.

Over 1,100 hours of instruction were provided by attorneys at DEA training schools, including such subjects as search and seizure, law of arrest, court procedure, rules of evidence, forfeitures, conspiracy, post-arrest procedures and applicable criminal laws. Assistance was furnished by DEA attorneys to State officials in the establishment and training of Diversion Investigative Units (DIUs) in three States, i.e., Alabama, Michigan and Texas.

During the year, administrative matters relating to 1,208 seized vehicles, vessels and aircraft were processed by attorneys for review of legal sufficiency. Rulings on more than 400 petitions for remission or mitigation of forfeiture were made. Legal representation was provided DEA by attorneys in three employee adverse action hearings. Decisions were made on 69 employee claims, 396 accidents were reviewed for liability, and 82 tort claims were processed. Ninety-six contracts were reviewed for legal sufficiency, and approximately 400 advisory and legal opinions were provided. Attorneys drafted 106 notices and orders relating to DEA's regulatory functions for publication in the *Federal Register*. Comments and advisory reports were prepared on 55 legislative proposals, and numerous orders, directives and regulations were drafted by DEA attorneys to implement Reorganization Plan No. 2 of 1973 which created DEA. DEA attorneys have furnished significant assistance to the State Department in the area of international drug control, and one DEA attorney has been detailed to the State Department for liaison purposes. Projects of major significance in the international area included: U.S. relations with international organizations engaged in drug control, establishment of U.S.-Turkish opium policy, the worldwide shortage of medicinal opium, the U.N. Fund for Drug Abuse Control, legislation related to the Psychotropic Convention, and other treaty matters related to drug control and extradition matters.



# Immigration and Naturalization Service

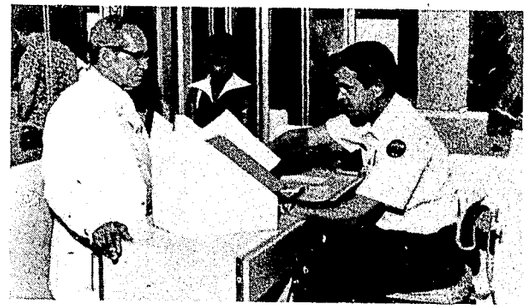
The Immigration and Naturalization Service enforces and administers the immigration and nationality laws of the United States. The examinations function includes the inspection of persons arriving at U.S. ports of entry in order to determine their admissibility and the adjudicating of requests for benefits and privileges under the immigration laws. The enforcement arm of the Service is comprised of investigators and Border Patrol agents, augmented by the support functions of the Detention and Deportation Division. It is their duty to enforce the immigration laws by preventing the illegal entry of aliens into the United States, and by locating and removing those who entered surreptitiously and those who are in illegal status because they have violated the terms of their lawful admission.

The Immigration and Naturalization Service is also responsible for the examination of applicants for citizenship to determine their qualifications for naturalization. After a determination has been reached in each case, the facts are presented to Federal and State naturalization courts where the final granting or denial of citizenship takes place. Certificates of Citizenship are also granted to persons deriving or acquiring U.S. citizenship under special provisions of the law. Promotion of instruction and training in citizenship and the fostering of meaningful citizenship ceremonies is also included in the Service's responsibilities.

### Examinations

*Inspections*

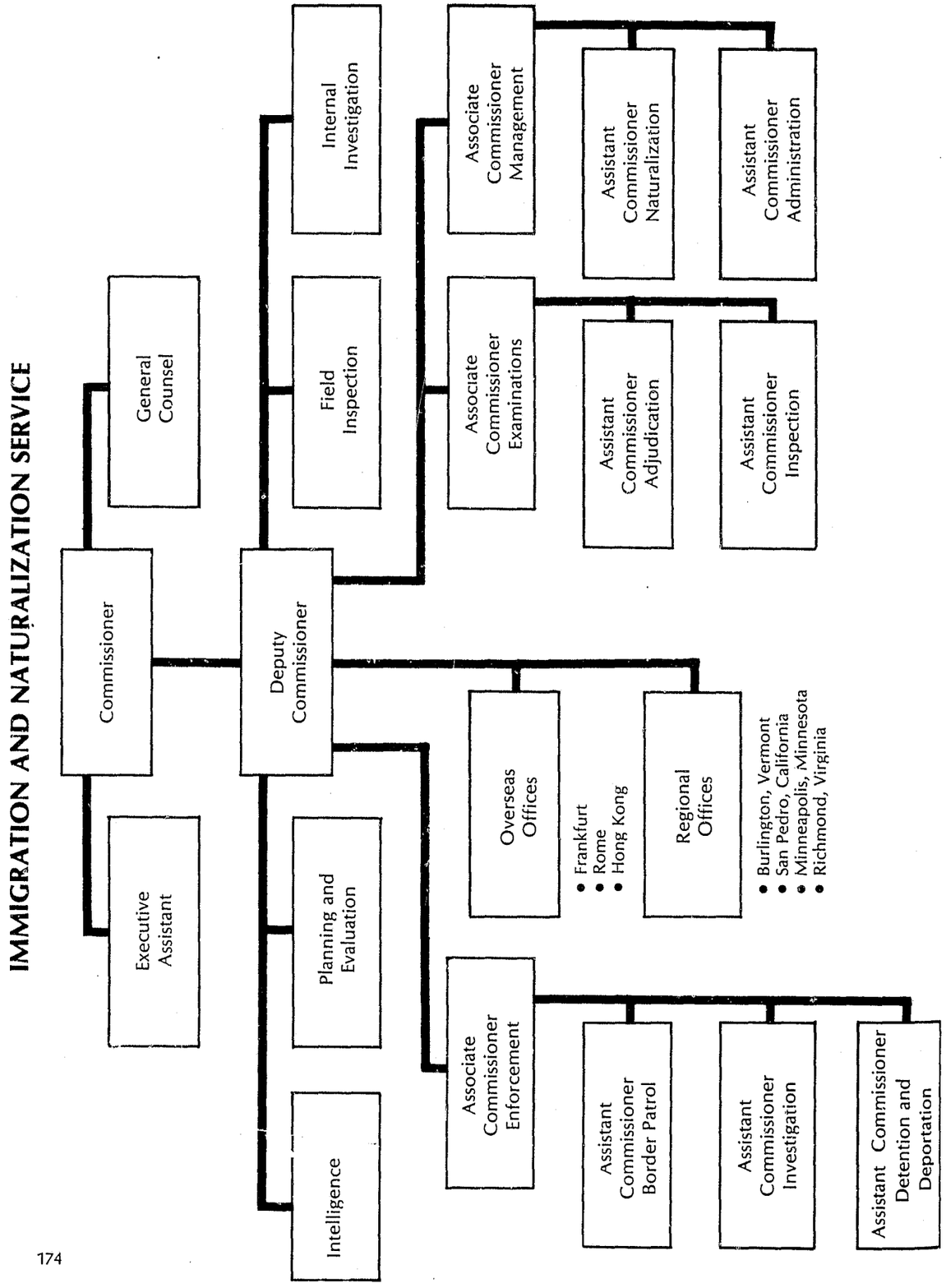
More than a quarter of a billion persons were inspected at U.S. ports of entry during fiscal year 1974. The 267,416,910 persons admitted to the United States during 1974 included 143,727,726 alien border crossers; 842,264 resident aliens returning after short trips abroad; 6,066,444 aliens admitted as nonimmigrants, including tourists, businessmen, students, foreign government officials, temporary workers, and others; 2,707,856 alien crewmen granted shore leave; and 394,861 immigrant aliens admitted for permanent residence. Better than 90 percent of the 112,590,186 U.S. citizens admitted during the year crossed the Canadian and Mexican borders.



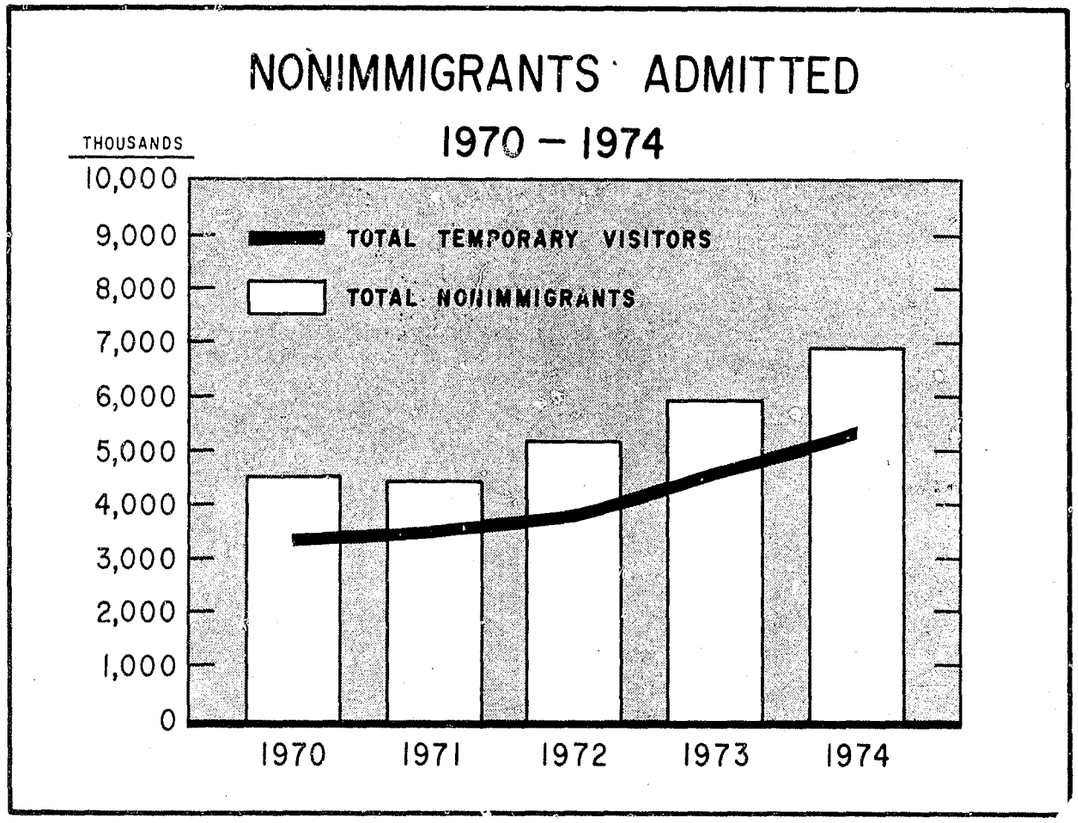
*Passengers arriving at Miami International Airport being inspected by immigrant inspector.*

*Immigrants*

As provided under the 1965 amendments to the Immigration and Nationality Act, countries in the Eastern Hemisphere and their dependencies are subject to an annual numerical limitation of 170,000 immigrant visa numbers, with no more than 20,000 numbers to be allotted to any one country. Immigrant visas issued under





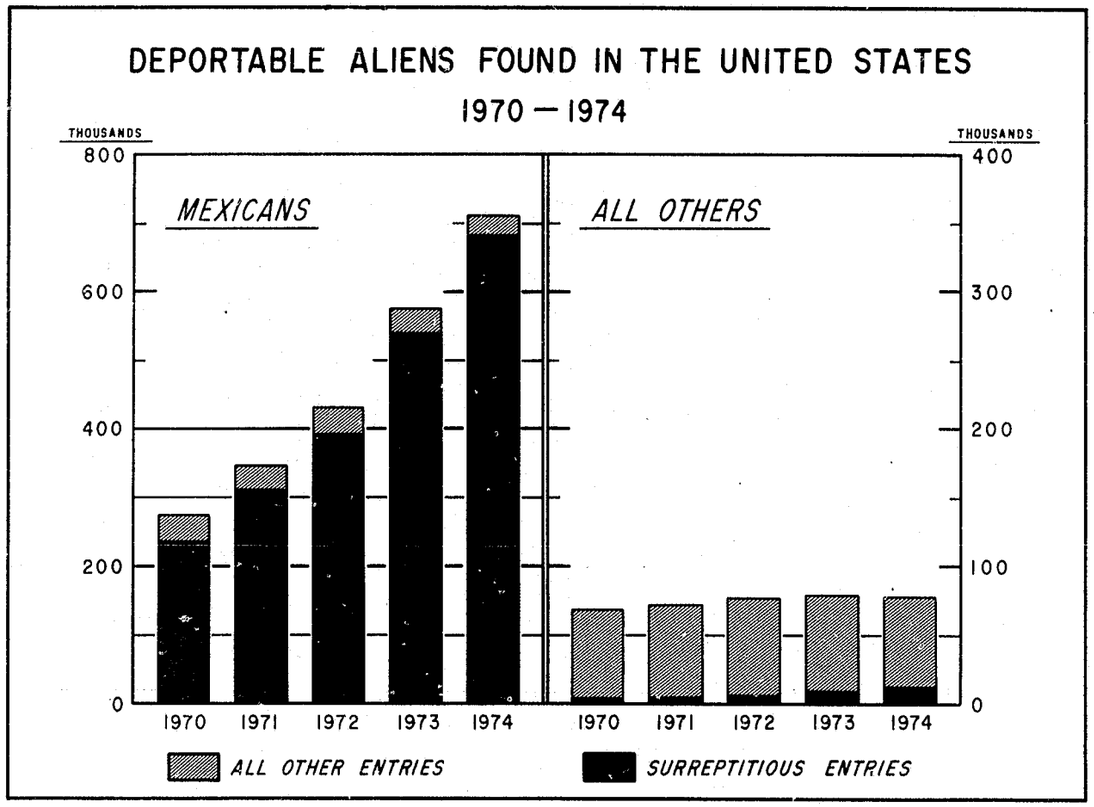

this numerical restriction are assigned on the basis of seven preference categories: four of which provide for the reunion of families of U.S. citizens and resident aliens; two for professional, skilled, or unskilled workers whose services are needed in the United States; and one for refugees. A limit of 120,000 per year, available on a first-come, first-served basis, is placed on the immigration of natives of independent countries of the Western Hemisphere. The parents, spouses, and children of U.S. citizens are designated as "immediate relatives" and are exempt from the numerical restrictions of both hemispheres.

During 1974, 394,861 immigrants were admitted to the United States, with 159,059 persons subject to the numerical restrictions of the Eastern Hemisphere and 115,072 subject to the numerical limitations of the Western Hemisphere. Only seven countries accounted for 51 percent of the total immigration: Mexico (71,586), the Philippines (32,857), Korea (28,028), Cuba (18,929), China and Taiwan (18,056), Italy (15,884), and the Dominican Republic (15,680). A total of 318,763 of the immigrants admitted during the year were granted their visas abroad, while the remaining 76,098 had their temporary status in the United States administratively adjusted to permanent residence.

*Adjudications*

In its administration of the immigration laws' the Service adjudicates a wide variety of applications and petitions regarding the right of aliens to enter, re-enter, or remain in the United States. Included are petitions for preference visas for aliens or for temporary workers, applications for adjustment of status, and the issuance of border crossing cards.

As the number of aliens coming to the United States increases each year, the number of adjudications received




also rises. A record 1,449,337 applications and petitions were received during 1974 compared with 1,393,163 in 1973.

*Inadmissible Aliens*

While keeping inconvenience to the traveling public at a minimum, it is important that each person inspected for admission to the United States meets the qualifications for admission specified by law. During fiscal year 1974 there were 529,706 aliens denied admission upon their arrival at U.S. ports of entry, a 40 percent increase over last year. Included in this number were 398,377 aliens seeking to enter as border crossers, 31,026 crewmen who were denied landing privileges, and 281 stowaways who were discovered and detained on the vessels that brought them.

**Enforcement**

*Deportable Aliens Located*

During the year, Service officers located 788,145 deportable aliens, an increase of 20 percent over fiscal year 1973. The increase is accounted for primarily by the increase of 133,136 in the number of deportable Mexican aliens located. Ninety percent of the deportable aliens located were Mexican nationals.

Border Patrol agents located 634,777 deportable aliens, while investigators and other Service officers located the remaining 153,368. Of the total located, 88 percent (693,084) entered illegally at other than ports of inspection, primarily over the Mexican border.

Exclusive of 7,154 crewmen who technically violated their terms of admission because their ships were unable to depart the United States within the time specified, 77 percent of the illegal aliens were located within 30 days after becoming deportable and only 5 percent had been in the country illegally more than one year before location. Deportable aliens who were employed at the time of apprehension numbered 245,430.

*Smuggling*

Alien smuggling violations continued to follow the upward trend established over the past several years. Border Patrol agents apprehended 83,114 aliens who had been induced or assisted to enter illegally or who had been transported unlawfully after entry, nearly twice the number of the previous year. Apprehensions of smugglers of aliens and violators of statutes relating to unlawful transportation of aliens increased from 6,355 in fiscal year 1973 to 8,074 in fiscal year 1974.

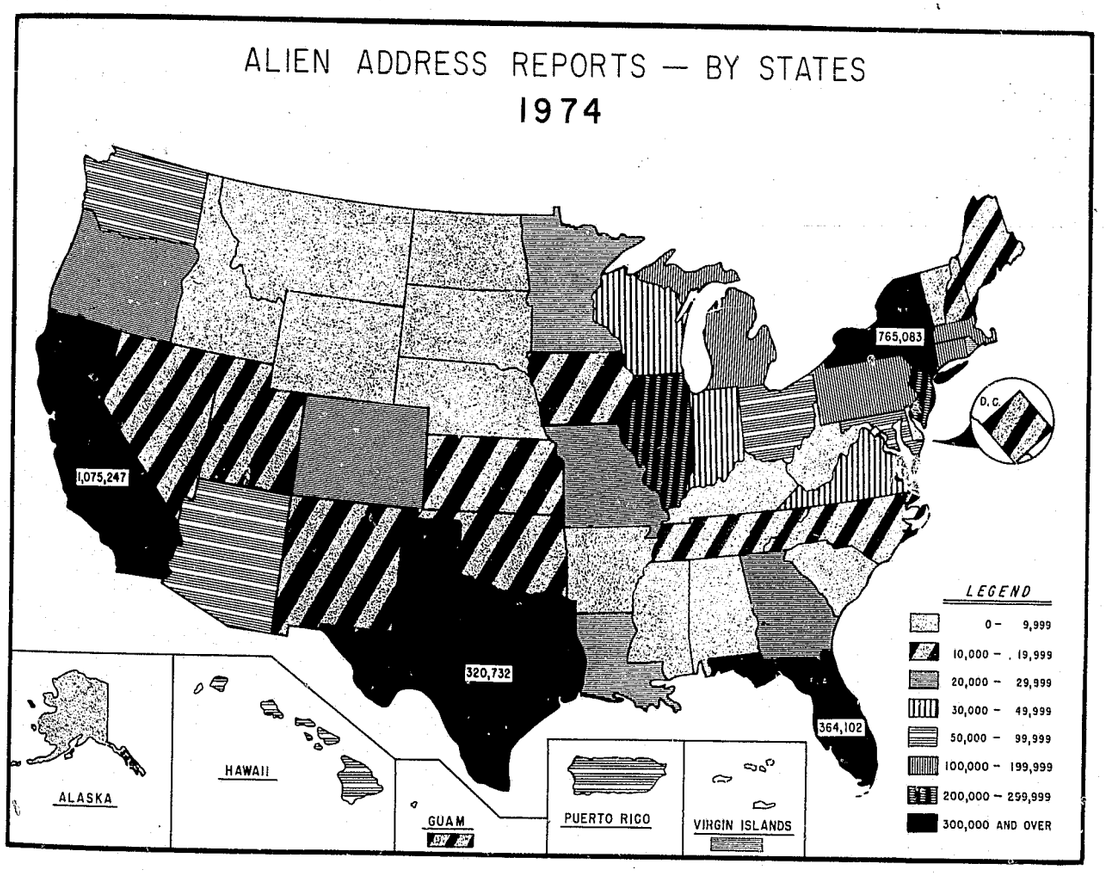
*Cooperation With Other Law Enforcement Agencies*

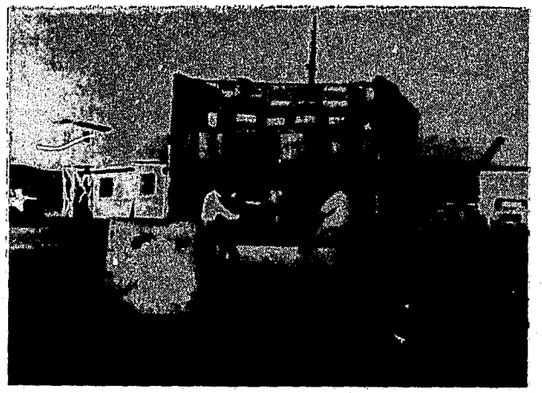
Cooperative efforts between the Service and other Federal, State, local and foreign country law enforcement agencies continued to receive major emphasis. Supervisory officers throughout the country served as instructors in police schools and academies and explained the Service's law enforcement mission to numerous school groups and civic organizations.

The positive results of liaison activities are reflected in the 99,615 violators of immigration and nationality laws referred to Border Patrol agents by other law enforcement agencies. Border Patrol officers encountered and released to appropriate agencies 2,990 violators of other laws, including 1,728 violators of narcotics laws. Incident to pursuing their primary mission of immigration law enforcement, Service officers participated in the seizure of marijuana, hard narcotics, and other dangerous drugs valued at more than $56.5 million.

*Foreign-Born Law Violators*

Continued Service efforts in the field of anticrime and racketeering resulted in the completion of 13,183 investigations of aliens suspected of being involved in criminal, immoral, or narcotics activities. Applications for orders to show cause in deportation proceedings were made in 2,679 such cases which resulted in the





*Clever attempt to smuggle 30 aliens into the United States thwarted by Border Patrol agents.*

deportation of 594 aliens.

The Service, through its antisubversive programs, continued to emphasize the detection, identification, and investigation of foreign-born persons whose conduct may be prejudicial to the internal security of the United States. The 2,242 investigations of suspected foreign-born subversives carried out in 1974 led to the location of 144 deportable aliens of this class. Antisubversive programs were also carried out along the Canadian and Mexican borders in order to preclude the entry of known alien subversives.

Service officers encountered an increasing number of schemes designed to circumvent the immigration laws. Completion of 16,676 immigration fraud investigations exposed continued use of altered, fraudulent, or counterfeit passports, nonimmigrant visas, and immigration documents, and attempts to evade labor certification requirements. Of particular concern to the Service was the increasing number of marriage frauds encountered during the year.

*Deportations and Required Departures*

The number of aliens deported under formal orders of deportation increased slightly in 1974, reaching a total of 18, 824. Aliens required to depart from the United States without a formal order of deportation numbered 718,740, a 27 percent increase over fiscal year 1973.

Aliens admitted to Service and non-Service detention facilities during the year numbered 132,382 and 154,444, respectively. Of this total 267,379, or 93.2 percent, were Mexican nationals.



## Management

*Naturalizations Granted*

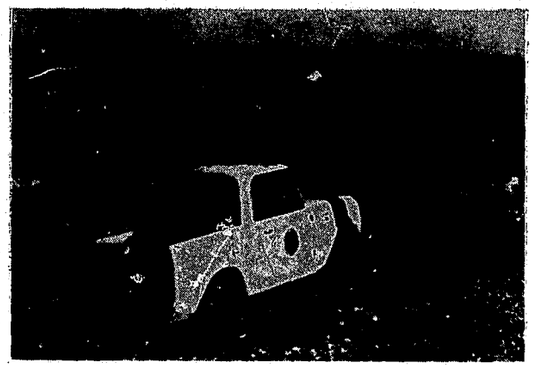
U.S. citizenship was granted to 131,655 persons at approximately 2,000 hearings held in 556 Federal and State naturalization courts during 1974. At these court proceedings, Service officers make recommendations for the grant or denial of citizenship based on a complete examination to determine that each applicant meets the statutory prerequisites for naturalization. Before citizenship is granted, each alien must take a solemn oath of allegiance and promise to support and defend the Constitution and laws of the United States against all enemies, both foreign and domestic.

Of the new citizens, 103,450 were naturalized under the general provisions of the law requiring five years' permanent residence in the United States. Certain other groups are eligible for naturalization after a shorter period of permanent residence. Included in this category were 14,768 spouses, 6,511 natural or adopted children of U.S. citizens, 6,848 servicemen and veterans who had honorably served the United States, and 78 other aliens who qualified for citizenship by other means.

Over 56 percent of the new citizens were former nationals of Cuba (18,394), China and Taiwan (8,692), Italy (8,898), the Philippines (13,573), the United Kingdom (8,554), Germany (5,785), Mexico (5,206), and Greece (5,551). The remaining 57,002 were former nationals of 135 other foreign nations.

*Derivative Citizenship*

Certificates of citizenship were issued to 33,586 persons during 1974. The 9 percent increase over 1973 is largely attributed to a procedure which involves the simultaneous processing of applications for children



*A team of Border Patrol agents on line watch near the Rio Grande River. Established on May 28, 1924, the Border Patrol celebrated its golden anniversary this year.*

who would derive citizenship upon the naturalization of the parents along with the application for naturalization submitted by the parents.

*Citizenship Education and Responsibility*

Applicants for naturalization, with few exceptions, are required by law to have a speaking, reading, and writing knowledge of the English language and a knowledge and understanding of the history and the principles and form of government of the United States. For many years the law has authorized Federal agency activity to promote the instruction and training of naturalization applicants to meet these prerequisites, and the Service has carried out this prerogative through close liaison with educational institutions. During 1974, 89,311 naturalization candidates attended 3,822 public school classes, and another 3,831 persons enrolled in home study courses.

The Service-published Federal Textbooks on Citizenship were distributed free of charge to 83,035 applicants who attended public school classes or who enrolled in home study courses and to instructors working with these candidates. The Service's film library, enlarged during the year, was also used extensively to supplement the textbook materials.

*Organizational Realignment*

During fiscal year 1974, under the direction of a new Commissioner, the Service initiated several changes in its organizational structure to insure optimum efficiency and effectiveness. In addition to establishing the position of Deputy Commissioner, the former operations and management functions were divided into three functional areas: enforcement, examinations, and management.

As part of the Commissioner's realignment of the Service, two newly formed units were established directly under the Deputy Commissioner. One of the units, the Office of Planning and Evaluation, was assigned the responsibility for developing, reviewing and evaluating policies, programs, structure and resource utilization, and needs of the Service. Another unit, Internal Investigations, was formed to monitor employee conduct within the Service.

# Board of Immigration Appeals

The Board of Immigration Appeals is a five-member, quasi-judicial body created by regulation as a part of the Office of the Attorney General pursuant to authority conveyed by section 103(a) of the Immigration and Nationality (I&N) Act of 1952 (8 U.S.C. 1103(a)). Subject to the general supervision and direction of the Attorney General, the Board exercises those aspects of his power and authority which he has delegated to it in the administration of the immigration laws of the United States (8 CFR 3.1). As the highest administrative tribunal in the immigration field, the Board reviews appeals from certain decisions of the Immigration and Naturalization Service under the regulations which define its jurisdiction (8 CFR 3.1(b)). Approximately 75 percent of the appeals relate to deportation proceedings. Board decisions of this type are, by statute, subject to direct judicial review in the courts of appeals (8 U.S.C. 1105a).

In the discharge of its responsibilities, the Board must interpret the immigration laws, establish guidelines for the exercise of the Attorney General's discretion in connection with relief from deportation, and strive to carry out the Congressional mandate that the immigration laws receive uniform application throughout the United States. The Board accomplishes its mission in part by analyzing, refining, systemizing and clarifying policy and procedure in its decisions; and in part by reconciling inconsistent orders issued by different District Directors or Immigration Judges of the Immigration and Naturalization Service.

The Board consists of a Chairman and four Board members who collectively perform the quasi-judicial function of rendering legal decisions. Supporting the Chairman are an Executive Assistant, who has authority to act as an Alternate Board member, and nine staff attorneys.

Except as they may be modified or overruled by the Board or the Attorney General, decisions of the Board are binding on all officers of the Immigration and Naturalization Service. Selected decisions designated by the Board serve as precedents in all proceedings involving the same issue or issues (8 U.S.C. 1103; 8 C.F.R. 3.1(g)). Precedent decisions of the Board are published, comprising 14 volumes to date. In the past year the Board published 76 additional precedent decisions.

The Board increased its production dramatically during fiscal year 1974, disposing of cases involving 3,468 aliens as opposed to 1,623 the previous year. Incoming cases rose from 2,016 to 2,610. During the year the Board decided a number of cases involving interesting and complex issues, many having wide application.

## Procedure

Several cases decided in the last year involved significant procedural matters. In *Matter of Palma*,[1] the Board held that an alien's departure while he was under a final order of deportation executed the deportation order and terminated proceedings, thus rendering nugatory a subsequent motion to reopen the deportation proceedings. In contrast, it was held in *Matter of Mladineo*,[2] that where the Board had dismissed a respondent's appeal for lack of jurisdiction, the immigration judge's decision stands undisturbed; and if the respondent subsequently moves to reopen the proceedings, the immigration judge should adjudicate the motion.



Regarding administrative authority, in *Matter of Lepofsky*,[3] the Board ruled that an Immigration Judge lacks the power, in exclusion proceedings, to allow applicants to withdraw their applications for admission on the condition that they depart from the United States within a given time. The Board found such an action to be an infringement on the authority of the District Director, who alone may, pursuant to 8 C.F.R. 212.5(a), parole inadmissible aliens into the United States under such terms and conditions as he may deem appropriate. In *Matter of Anaya*,[4] the Board held that an immigration judge lacks jurisdiction to grant extended or indefinite voluntary departure. That power is within the sole discretion of the District Director, and the Board lacks the authority to review such an exercise of discretion by the District Director.

## Labor Certification

Before becoming permanent residents of the United States, certain aliens are required by section 212(a)(14) of the I&N Act to obtain certification from the Secretary of Labor that their employment will not adversely affect American workers. In *Matter of Galvan*[5] a case involving an alien who commuted to work daily from outside the United States, the Board held that this labor certification requirement was not applicable to permanent residents who have once met the requirement and who have not lost their status.

In order to facilitate labor certification determinations, the Department of Labor has devised several lists or schedules of aliens who do or do not qualify under section 212(a)(14). In *Matter of Lau*,[6] the Board followed, and applied in a novel fact setting, a court decision which declared the suspension of one of these schedules to have been invalid because notice of suspension was not published in the *Federal Register*.

The Immigration and Naturalization Service has also established regulations to assist in determining which aliens are required to apply for labor certifications. *Matter of Heitland*,[7] involved an alien who claimed to be exempt from the labor certification requirement as an "investor" within the meaning of these regulations. The alien had some idle investments and also owned a $3,400 vehicle which he operated in his delivery service business. The Board denied the alien's claim to "investor" status. In so doing, the Board held that an investment under the regulation must be productive of a service or commodity, and thus excluded the alien's idle capital from consideration. The Board also indicated that the regulation should not be interpreted in a manner tending to foster marginal businesses which, in reality, compete adversely with skilled and unskilled laborers.

With respect to another provision of these Service regulations, *Matter of Park*,[8] held that the labor certification exemption applicable to "members of the Armed Forces" did not extend to prospective members of the military.

## Deportation

Questions regarding deportability arose as to students who became incarcerated for a brief period as the result of minor convictions. The Board held that when the incarceration affected the student's academic progress, it constituted a failure to maintain student status, *Matter of Mehta*,[9] but when academic progress was not affected, the incarceration did not constitute a violation of student status, *Matter of Murat-Khan*.[10]

Deportation does not lie where there has been no "entry." An alien's lack of mental capacity was held to render her departure not intended and her return therefore not an entry, *Matter of Farmer*.[11] When the purpose of the departure was to sign a bond book, as part of Mexican criminal proceedings, the trip was occasioned by legal process and accordingly the return therefrom was an entry, *Matter of Acosta*.[12] When, at the time of his departure, an alien intended to assist other aliens to enter the United States illegally, his return following even a brief departure was an entry, *Matter of Valdovinos*.[13]

A narcotics conviction which has been set aside pursuant to the Federal Youth Corrections Act does not constitute a predicate for deportation, *Matter of Zingis*.[14] In so holding, the Board adopted the view espoused in *Morera* v. *INS*, 462 F.2d 1030 (1 Cir. 1972). In regard to state convictions for possession of marijuana, which have been expunged pursuant to state laws which are analogous to the Federal Youth Corrections Act, the Board adopted the Service position on recommendation of the Solicitor General that such convictions, likewise, do not constitute a basis for deportation under section 241(a)(11), *Matter of Andrade*.[15]

## Bond

In an important bond case, *Matter of Toscano-Rivas*,[16] the Attorney General, on certification by the Board, decided that sections 103 and 242 of the I&N Act authorize the inclusion in a delivery and appearance bond, in connection with a deportation proceeding, of a condition prohibiting unauthorized employment. However, he stated that such a condition should be governed by a published regulation of the Immigration and Naturalization Service. In the absence of such a regulation, the Attorney General upheld the Board's decision dismissing the Service appeal from the order of the immigration judge in which he deleted the condition concerning employment which the District Director had

included.

**Exclusion**

During the past year the Board resolved a number of difficult legal questions arising in exclusion proceedings, an increasing number of which clarified the procedure for handling claims to refugee status or allegations of political or other persecution.

In *Matter of Pierre*,[17] the Board held that a boatload of Haitians who, upon arrival at the Port of West Palm Beach, Florida, remained on board their vessel awaiting inspection by immigration officers, did not make an entry into the United States. There being no entry, exclusion, rather than deportation, proceedings were appropriate. The aliens sought withholding of deportation under section 243(h) of the Immigration and Nationality Act on the ground of possible political persecution if returned to Haiti. The Board ruled that they were ineligible for consideration for such relief, inasmuch as section 243(h) relief is available only in expulsion proceedings.

In *Matter of Nestor*,[18] the Board found that applications for political asylum were not properly before an immigration judge in exclusion proceedings, because such applications are treated under section 212(d)(5) of the I&N Act, which gives the District Director exclusive jurisdiction over the question of parole into the United States.

The Board in *Matter of Wong Kai Yuk*,[19] found that it has no jurisdiction to consider a claim to refugee status under the 1967 Protocol Relating to the Status of Refugees on appeal in exclusion proceedings.

In other noteworthy decisions involving exclusion proceedings, the Board rules that section 245(a)(1) of the I&N Act expressly bars immigration judges from considering section 245 applications for adjustment of status to permanent residence in exclusion proceedings, *Matter of Zappa*,[20] and that a returning resident who applies for admission to the United States may be paroled into the United States pending exclusion proceedings where his excludability is based on a conviction of a crime involving moral turpitude prior to entry, i.e., criminal possession of forgery devices, *Matter of Jimenez*.[21]

**Visa Petitions**

In a case involving a child legitimated under the law of Panama, the Board held that the "legal custody" provision of section 101(b)(1)(C) of the I&N Act required the father to have obtained custody by a court decree or a natural right at the time of legitimation. Immediate relative status was denied to a legitimated child whose father had not established the necessary legal custody, *Matter of Dela Rosa*.[22]

The Board brought greater consistency to the law in two decisions involving preference classification for brothers and sisters of United States citizens. In *Matter of Butterly*,[23] the Board held that for an adopted brother to qualify under section 203(a)(5), the adoption must have taken place in conformity with the age and other requirements of section 101(b)(1)(E) of the I&N Act. In *Matter of Kim*,[24] the Board held that a child whose legitimation was not in conformity with the 18-year age requirement of section 101(b)(1)(C) could not qualify for preference status as a brother of the petitioner through the paternal relationship.

The Board found the requirement that the petitioner be advised of adverse evidence of which he was unaware and be given an opportunity to rebut it, extended to adverse evidence obtained by the Service in an interview with the beneficiary of the visa petition, *Matter of Holmes*.[25] The Board also held in Holmes that the Service is not required to conduct an outside investigation in every case where the bona fides of the marriage are in doubt; the burden remains upon the petitioner and sufficient doubt to warrant denial may be engendered without an outside investigation.

The Board also decided a large number of visa petition cases involving questions of foreign law. Among these cases were several dealing with divorces obtained under the laws of various foreign countries.

In one case involving a divorce obtained in the Dominican Republic, the Board held that where the evidence indicated that the husband's name had been forged to a power of attorney, the validity of the divorce had not been satisfactorily established, *Matter of Atwater*.[26]

Another case involved an Ecuadorian divorce obtained by the beneficiary of a visa petition. The Board held that where the beneficiary was not physically present within the jurisdiction of the Ecuadorian court, there was no personal service of process upon his wife, and she did not appear or otherwise submit to the jurisdiction of the Ecuadorian court, the State of New York would not give recognition to the divorce and consequently the beneficiary's subsequent marriage to the petitioner in New York was invalid, *Matter of Moncayo*.[27]

The validity of an absentee Mexican divorce obtained by the beneficiary's first wife was at issue in *Matter of Gamero*.[28] The beneficiary and his first wife were both natives of Mexico and had been married in Mexico, and the beneficiary had also married the petitioner in Mexico. Relying on the full faith and credit provision of the Mexican Constitution, the Board found that the beneficiary's marriage to the petitioner was valid under the applicable Mexican law, and that there was no legal impediment to the recognition of the marriage in visa petition proceedings. However, the case was remanded to the District Director for further investigation because doubts had been raised as to the bona fides of the marital relationhip.



**CITATIONS**

[1]Interim Decision 2242 (November 9, 1973).
[2]Interim Decision 2264 (March 1, 1974).
[3]Interim Decision 2293 (June 6, 1974).
[4]Interim Decision 2243 (November 23, 1973).
[5]Interim Decision 2254 (January 8, 1974).
[6]Interim Decision 2288 (May 17, 1974).
[7]Interim Decision 2259 (January 25, 1974).
[8]Interim Decision 2298 (June 27, 1974).
[9]Interim Decision 2232 (August 17, 1973).
[10]Interim Decision 2237 (August 27, 1973).
[11]Interim Decision 2299 (June 28, 1974).
[12]Interim Decision 2279 (April 19, 1974).
[13]Interim Decision 2228 (September 11, 1973).
[14]Interim Decision 2270 (March 14, 1974).
[15]Interim Decision 2276 (April 5, 1974).
[16]Interim Decision 2256 (BIA' 1972, 1973; A.G., January 9, 1974).
[17]Interim Decision 2238 (October 5, 1973).
[18]Interim Decision 2217 (August 16, 1973).
[19]Interim Decision 2249 (December 10, 1973).
[20]Interim Decision 2218 (August 16, 1973).
[21]Interim Decision 2229 (September 24, 1973).
[22]Interim Decision 2297 (June 18, 1974).
[23]Interim Decision 2235 (November 1, 1973).
[24]Interim Decision 2258 (January 21, 1974).
[25]Interim Decision 2274 (March 22, 1974).
[26]Interim Decision 2220 (August 17, 1973).
[27]Interim Decision 2239 (October 26, 1973).
[28]Interim Decision 2281 (April 30, 1974).

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# 2 OF 3