



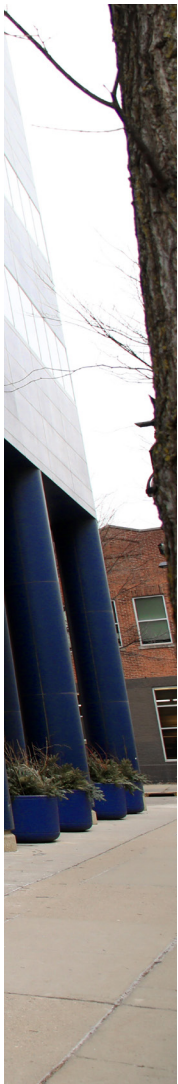
# United States Attorneys: A Law Firm Unlike Any Other





**U.S. Attorneys – lawyers employed by the U.S. Department of Justice – bring and defend cases in federal district court on behalf of the federal government. This article highlights U.S. Attorneys’ civil work, with descriptions of a few of the thousands of matters handled over the years in the Western District of Wisconsin.**

BY JOHN W. VAUDREUIL



**“**You do not serve me. You are not my attorneys, even though I appointed you. You serve the people of the United States, and you serve justice.” With these words – spoken in the West Wing of the White House in November 2010 to all 93 United States Attorneys – President Barack Obama gave us our mission.

I was one of those U.S. Attorneys. Our appointments were “political” – we were nominated by President Obama and confirmed by the U.S. Senate – but we would make decisions based on facts, not politics. The president would set policy and give us our priorities, but we would build public trust by making decisions based solely on what a person did, not on who a person is or whom a person knows or how much money or power a person has.

When most people read these words, they think of the high-profile criminal cases prosecuted by the U.S. Attorneys’ Offices (USAOs). But the same standards apply to civil cases handled by these offices, in a number and scope far exceeding the criminal work.

**Overview**

In each of the 94 federal district courts – from Maine to Guam and all areas between – a large percentage of the cases on those court dockets are civil cases in which the United States, or a U.S. governmental agency or employee, is a party, represented by a Civil Division Assistant U.S. Attorney (AUSA) in a USAO. In a time when many law firms specialize, representing solely plaintiffs or defendants, and focus on specific areas such as commercial litigation, intellectual property, employment law, personal injury cases, and so on,

the Civil Division of each USAO is truly a law firm unlike any other.

A lawyer hired to be a Civil AUSA representing the United States will generally have a case load that includes “defensive” cases, that is, cases in which the United States, a governmental agency, or governmental employees in the course of their duties have been sued, including tort claims (for example, motor vehicle accidents involving government vehicles, and “slip and fall” incidents on government property); medical malpractice (for example, claims arising from medical care at a VA Hospital or a federal prison); employment discrimination (brought by federal employees); and constitutional challenges to federal laws or programs.

Depending on the USAO and the attorney’s experience, this same Civil AUSA may also handle “affirmative” cases, that is, cases in which the United States is civilly prosecuting a violation of law, including false claims (for example, fraud against government programs, including grants); fair housing or other civil rights (for example, discrimination in housing or under the Americans With Disabilities Act); environmental (for example, Clean Air Act and Clean Water Act enforcement); or the collection of penalties (for example, the Controlled Substances Act) or debts (for example, government loans).

The AUSAs handling this wide variety of cases – from investigation to trial and frequently on appeal – are remarkable, special lawyers.

My early personal experience as an AUSA (1980-2010) gives a snapshot of the vast amount of important civil case work being done every day in the United States by these remarkable lawyers. From 1980 to 1984, I handled affirmative and defensive

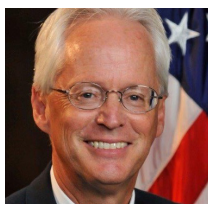


civil cases in addition to a criminal case load. Shortly after starting as a new AUSA when I graduated from the University of Wisconsin Law School, I tried a week-long condemnation jury trial as we completed the work for the Apostle Islands National Lakeshore. At the same time, and for the next several years, the office had a full docket of condemnation cases completing work on the St. Croix National Scenic Riverway.

## Protecting taxpayer dollars by preventing fraud and abuse is a priority for the president and the Department of Justice.

In addition to these affirmative cases, I also tried defensive civil jury trials arising from claims filed by inmates at the Oxford Federal Correctional Institution, including excessive force constitutional claims, race discrimination, and torts.

I was the presidentially appointed U.S. Attorney from August 2010 until March 2017. As the U.S. Attorney leading the office, I immediately saw the extent to which the civil docket had grown, not only in the amount of cases but also in their scope and complexity. The number of AUSAs in the Civil Division



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had not had corresponding growth over the years, however. When I was the U.S. Attorney, we had only four AUSAs handling the full docket of civil matters. That number is now up to seven, and today almost half of those resources (along with an investigator, paralegals, and legal assistants) are focused on affirmative enforcement.

The Western District of Wisconsin, which covers the 44, largely rural,

westernmost counties in Wisconsin, is home to two Veterans Administration hospitals, six Native American Nations, a federal prison, national forests, national wildlife refuges, the National Lakeshore, and the National Scenic Riverway. These locations, and the federal agencies that administer and manage them, lead to complex, diverse federal civil litigation.

### A Day in the Life of a Civil Division AUSA

Every day, AUSAs who handle civil litigation face caseloads of defensive civil cases, including torts, employment discrimination, and medical malpractice. But their caseloads also include affirmative cases, for which they must decide whether to file a civil case on behalf of the United States, focusing on administration policy and priorities while using discretion to determine whether to prosecute a case, based solely on the facts and law.

A few brief summaries of affirmative cases from my time as U.S. Attorney give an overview of the complex, varied caseloads Civil AUSAs encounter each day.

### Fair Housing Act Discrimination

Under the Obama administration, bringing affirmative civil cases for violations of the Fair Housing Act (FHA) was a high priority. The FHA prohibits discrimination in housing on the basis of race, color, religion, sex, familial

status, national origin, and disability. Discrimination on the basis of sex includes harassment.

**The Lowrey Hotel** – We sued the Lowrey Hotel & Cafe, a residential hotel in New Richmond that often provided housing to homeless individuals referred by local social service agencies. One of the hotel's managers sexually harassed female tenants by making unwelcome requests for sexual favors. The co-manager and owner of the hotel warned the complainant that another manager might ask for sexual favors but failed to take any steps to prevent it.

The case was ultimately settled, and the defendants paid the complainant \$50,000 in damages. The manager who engaged in the harassment was permanently enjoined from entering the hotel and from having any involvement in the management, rental, or maintenance of any rental property.

**Twin Oaks Mobile Home Park** – We filed another FHA case against the Twin Oaks Mobile Home Park in Whitewater. Twin Oaks had policies and rules prohibiting families with children from residing in certain desirable lots; prohibiting or restricting the activities of children in common areas of the property; barring children's play equipment from particular areas of the property; and threatening tenants with adverse consequences, including eviction, if residents with children violated these rules regarding children and their activities.

The case was resolved with a consent decree, barring Twin Oaks from prohibiting families with children from living in particular sections or homes; from adopting any rules prohibiting or restricting the activities of children; and from adopting rules threatening tenants with adverse consequences, including eviction, if residents violated rules regarding children and their activities.

**Dovenberg Investments** – We sued a West Salem landlord and her corporation for violating the FHA by refusing to rent a house to a single woman with a young child. The woman filed

a complaint with the Department of Housing and Urban Development, after the landlord refused to show her a rural home for rent. The landlord told the woman she would not rent to her because the woman would not have a man residing with her who could “shovel snow and stuff.”

Under the settlement, the defendants were ordered to pay the complainant \$15,000 in damages, develop and maintain nondiscrimination policies, attend fair housing training, and apologize to the woman against whom the defendants discriminated.

### Environmental Enforcement

While there is an Environment and Natural Resources Division (ENRD) within the U.S. Department of Justice, USAOs also prosecute a significant number of environmental law violations as civil matters, either individually or jointly with the ENRD, including Clean Air Act (CAA) cases. During my tenure, it was my personal priority, and a presidential priority, to allocate resources to protect air and water.

**Wisconsin Power & Light (WPL), Wisconsin Public Service Corp., Madison Gas and Electric, and Wisconsin Electric Power Co.** – To resolve violations of the CAA, the United States entered into a consent decree with the defendants to significantly reduce air pollution from three coal-fired power plants located near Portage, Sheboygan, and Cassville. WPL operated the plants covered by the settlement, and the other defendants were co-owners or former owners of the units.

As part of the resolution, the defendants agreed to invest more than \$1 billion in pollution control technology and to spend \$8.5 million on environmental mitigation projects benefiting the environment and human health in communities located near the polluting facilities. The defendants also paid a \$2.45 million penalty to resolve the violations. The consent decree’s injunctive relief provision estimated a reduction

in pollutant emissions (sulfur dioxide, nitrogen oxides, and particulate matter) of more than 50,000 tons annually.

**Murphy Oil USA Inc.** – In 2010, the United States (and the states of Wisconsin and Louisiana) entered into a consent decree with the defendants as part of a global resolution of CAA violations involving various refinery process units and compliance programs. Murphy Oil owned and operated refineries in Superior, Wis., and Mearux, La. (the Superior refinery was later sold).

In 2001, the USAO led a prosecution team, with colleagues from the ENRD, in a two-week trial against the company for environmental violations; the company was found liable for more than a dozen violations of various environmental statutes. In 2002, the company entered into a consent decree resolving the violations, including a requirement to spend over \$12 million to reduce pollution and a \$5.5 million penalty – at the time, the largest environmental civil penalty paid in Wisconsin.

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The 2010 global consent decree (which replaced the 2002 decree) required the company to spend an estimated \$142 million at both refineries, pay a \$1.25 million civil penalty, and spend over \$1.5 million on supplemental environmental projects to reduce pollution to directly benefit people living near the refineries.

### False Claims Act (FCA)

Protecting taxpayer dollars by preventing fraud and abuse is a priority for the president and the Department of Justice. The FCA is one of the most important tools for ensuring that public funds are spent properly and advance the public interest. In 2022, the Department of Justice and the individual USAOs together recovered approximately \$2.2 billion.

The FCA imposes treble damages and penalties for knowingly and falsely claiming money from the United States or knowingly failing to pay money owed to the United States. FCA cases arise

from a wide variety of complex fraudulent activities – including Medicare fraud, government contract and program fraud, and pandemic relief fraud. Cases are frequently filed by whistleblowers (*qui tam* suits), and those claims require in-depth investigation by the AUSA and investigative team before the decision is made to intervene in the suit. FCA fraud investigations may also be initiated by law enforcement referral or developed through data analytics.

**United States ex rel. Forrest v. Pharmasan Labs Inc.** – The whistleblower in this *qui tam* case alleged that Pharmasan, an independent laboratory in Osceola, NeuroScience Inc., a seller of nutritional supplements that also performed billing on behalf of Pharmasan, and its founders and owners improperly billed Medicare for food allergy testing, in violation of Medicare coverage restrictions. The defendants also improperly billed Medicare for laboratory testing that

was not ordered by physicians or other approved providers and concealed their false billings by using false information to submit and obtain payment on claims.

Following our intervention, we reached a settlement with the defendants for \$8,521,854, including forfeiture of \$2.8 million that the USAO seized during the investigation and an additional payment of \$5.7 million. The defendants also agreed to a detailed corporate integrity agreement to implement a robust compliance program.

**Prestige Healthcare** – We successfully pursued an FCA case against an independent laboratory in southern California that performed DNA testing, as well as Prestige, which owned and operated nursing homes in Wisconsin and elsewhere, for improperly billing Medicare for DNA testing performed on hundreds of residents of Prestige facilities without their consent or valid physician orders for the testing. Prestige also improperly provided a marketing company with insurance and personal medical information, as well as access to nursing home residents in Wisconsin and other states, for purposes of conducting the improper testing.

In 2017, the first settlement agreement was reached with Prestige, in which it agreed to pay the United States \$995,500 to resolve the FCA allegations. Other settlements recovering millions of dollars followed.

### Conclusion

While it often flies below the public’s radar, the work of Civil Division AUSAs is vital to residents of the United States and the Western District of Wisconsin. In addition to their crucial work defending the interests of the United States, affirmative enforcement requires civil AUSAs to conduct complex investigations to determine whether the facts violate federal law, to file the cases when warranted, and then to vigorously litigate the cases from trial through appeal. These are remarkable lawyers doing remarkable work. **WL**




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