

main Library

# United States Attorneys Bulletin



*Published by Executive Office for United States Attorneys  
Department of Justice, Washington, D.C.*

VOL. 25

July 22, 1977

NO. 15

UNITED STATES DEPARTMENT OF JUSTICE

## TABLE OF CONTENTS

	<u>Page</u>
COMMENDATIONS	309
POINTS TO REMEMBER	
U.S. ATTORNEYS' MANUAL BLUESHEETS	311
CASENOTES	
Civil Division	
Presidential Papers	
<u>Nixon v. Administrator of General Services</u>	313
Garnishment	
<u>Ronald Calhoun v. United States</u>	313
Veterans Employment Rights	
<u>Hanna v. American Motors Corp.</u>	314
Motor Vehicle Safety Act	
<u>U.S. v. General Motors Corp.; General Motors Corp. v. Brock Adams</u>	314
Civil Rights Act - Title VII Attorney's Fees	
<u>Parker v. Califano</u>	315
Equal Protection Rights in Employment	
<u>Beazer v. New York City Transit Authority</u>	315
Criminal Division	
Appeal by Government. Double Jeopardy	
<u>Finch v. U.S.</u>	316
Land and Natural Resources Division	
Navigation Servitude	
<u>Maynard v. U.S.</u>	317
NEPA	
<u>National Wildlife Federation v. Andrus</u>	317
<u>Environmental Defense Fund v. Adams</u>	317
<u>Realty Income Trust v. Jack Eckerd</u>	318
Contracts; Enforcement of Congressional Condition Grant	
<u>Starbuck v. City and County of San Francisco</u>	318

Page

SELECTED CONGRESSIONAL ACTIVITIES

321

APPENDIX: FEDERAL RULES OF CRIMINAL PROCEDURE

325

These pages should be placed on permanent file, by Rule, in each United States Attorney's Office Library.

Citations for the slip opinions are available on FTS 739-3754.

APPENDIX: FEDERAL RULES OF EVIDENCE

327

These pages should be placed on permanent file, by Rule, in each United States Attorney's Office Library.

Citations for the slip opinions are available on FTS 739-3754.

COMMENDATIONS

Assistant United States Attorney Ronald Garnett, Southern District of New York, has been commended by John W. Fallon, Regional Director, Drug Enforcement Administration, for his successful prosecution of Codell Griffin, a high-level narcotic trafficker.

Assistant United States Attorney Stephen G. Nelson, Southern District of California, has been commended by Jerry N. Jenson, Regional Director, Drug Enforcement Administration, for his outstanding assistance and representation of DEA in a case which brought a lengthy and sensitive DEA investigation to a successful conclusion.

Assistant United States Attorney George Wilson, Southern District of New York, has been commended by M. Keith Weikel, Ph.D., Acting Associate Administrator for Medicaid, Department of Health, Education and Welfare, for his significant contribution and support in the areas of Medicaid fraud and abuse prosecutions. Dr. Weikel also commended the Southern District for its Medicaid Fraud and Abuse Task Force which has demonstrated an outstanding capability to deter fraud and abuse through its many convictions.

Assistant United States Attorney Joseph P. Covington, District of Arizona, has been commended by United States Attorney Michael D. Hawkins for his successful prosecution of four of five defendants in a complex land fraud case. The Western Land Sales Co. case involved a loss to the public on the order of \$4.5 million.

Assistant United States Attorney Joseph R. Keilp, District of Arizona, has been commended by United States Attorney Michael D. Hawkins for his successful prosecution of the Cochise College Park land fraud case in which all five defendants were found guilty of all 33 counts of the indictment entered against them. Ms. Abigail Kelly, an attorney in the Fraud Section of the Criminal Division, was also commended for providing valuable research and informational assistance in this case.

Assistant United States Attorney Phillip G. Kelley, Western District of North Carolina, has been commended by Barbara Allen Babcock, Assistant Attorney General, Civil Division, for his thorough preparation and effective presentation in Loyd T. Riddle v. United States, a tort action for malpractice brought against a Veterans Administration Hospital. Mr. Kelley was also commended by Guy H. McMichael, III, General Counsel, Veterans Administration, for his successful defense of the Government in the action.

POINTS TO REMEMBER

## UNITED STATES ATTORNEYS' MANUAL--BLUESHEETS

The following "bluesheet" has been sent to press in accordance with USAM 1-1.550 since the last issue of the Bulletin.

<u>Date</u>	<u>Affects USAM</u>	<u>Subject</u>
7/21/77	4-4.230	Award of Attorneys' Fees to Prevailing Governmental Defendant in Federal Employment Discrimination Cases

(Executive Office)

\* \* \*

CIVIL DIVISION  
Assistant Attorney General Barbara Allen Babcock

Nixon v. Administrator of General Services, \_\_\_ U.S. \_\_\_ (Sup. Ct. No. 75-1605, decided June 28, 1977). DJ 145-171-137.

Presidential Papers.

In this action, former President Nixon challenged the constitutionality of the Presidential Recordings and Materials Preservation Act, 44 U.S.C. 2107, which directs the Administrator of GSA to take custody of Mr. Nixon's Presidential materials, which consist of 42 million pages of documents and 880 reels of tapes. Pursuant to the Act, those materials are to be processed by professional archivists with a view toward making public those materials related to Watergate or otherwise having general historical significance, subject, inter alia, to security classifications and any valid privileges of Mr. Nixon or others. Affirming the decision of the three-judge district court and adopting our position, the Supreme Court rejected Mr. Nixon's arguments that the Act violates the separation of powers doctrine, Presidential privilege, Mr. Nixon's right to privacy, the First Amendment, or the Bill of Attainder Clause. The Court noted that its inquiry was limited to the facial validity of the Act. The Court left open the question of whether Mr. Nixon owned the materials.

Attorney: Anthony J. Steinmeyer (Civil Division),  
FTS 739-3178.

Ronald Calhoun v. United States, \_\_\_ F.2d \_\_\_ (C.A. 4, No. 75-1902, decided June 21, 1977). DJ 145-6-1572.

Garnishment.

After a federal employee's salary was garnished on a state writ issued for non-payment of alimony and child support under the recently enacted 42 U.S.C. 659 et seq., the employee sued the United States for withheld wages, alleging that the decree underlying the garnishment writ was void for lack of jurisdiction. In the first published opinion construing the new federal garnishment statute, the Fourth Circuit, affirming the judgment below, adopted our position that the government has no duty to raise defenses on the employee's behalf so long as he is given notice of the garnishment and the garnishment writ is valid on its face.

Attorney: Mark H. Gallant (Civil Division),  
FTS 739-5325.

Hanna v. American Motors, Corp., F.2d \_\_\_\_\_ (C.A. 7, No. 76-1727, decided June 23, 1977). DJ 151-85-461.

#### Veterans Employment Rights.

Reversing an award of summary judgment for the defendant company, the Seventh Circuit held that American Motors violated the Military Selective Service Act in laying off a probationary employee who would have been reasonably expected to complete his probationary period "but for" absences due to pre-induction physical examinations. In a broadly worded opinion which awarded reinstatement and back pay dating from the veteran's pre-induction lay-off date, the Court has ruled for the first time that the returning veteran need not actually complete probation to be considered "other than a temporary employee" under the Act.

Attorney: Mark H. Gallant (Civil Division),  
FTS 739-5325.

United States v. General Motors Corp.; General Motors Corp. v. Brock Adams, et al., F.2d \_\_\_\_\_ (C.A.D.C. No. 17-1252, decided June 28, 1977). DJ 145-18-241 and 145-18-246.

#### Motor Vehicle Safety Act.

The D.C. Circuit has sustained the government's position that a defective steering part in 1959-60 Cadillacs was a defect "related to motor vehicle safety" within the meaning of the National Highway Traffic and Motor Vehicle Safety Act of 1966. In reversing the district court on our appeal, the majority concluded that the government had been entitled to summary judgment on the question of "safety relatedness" upon showing that steering pitman arms had failed while the automobiles were being driven, and that when the pitman arm fails the driver loses control of the car. The court thus accepted our contention that a defect affecting such a basic function as steering is safety-related as a matter of law. The case will now be returned to the district court for reinstatement of the government's order to notify Cadillac owners of the steering defect and for imposition of \$400,000 in civil penalties against General Motors.

Attorney: Neil H. Koslowe (Civil Division),  
FTS 739-5325.

Parker v. Califano, \_\_\_ F.2d \_\_\_ ( C.A.D.C., No. 76-1416, decided June 30, 1971). DJ 35-16-583.

Civil Rights Act - Title VII Attorney's Fees.

The D.C. Circuit, rejecting our arguments, has ruled that Title VII of the Civil Rights Act of 1964 gives the district courts the discretionary authority to award attorney's fees for legal services performed on behalf of federal employees at the administrative level, i.e., for work done at agency/Civil Service Commission hearings held prior to bringing suit de novo in the district court.

Attorney: Paul Blankenstein (Civil Division),  
FTS 739-3469.

Beazer v. New York City Transit Authority, \_\_\_ F.2d \_\_\_ (C.A. 2, Nos. 76-7295, 77-7092, decided June 22, 1977). DJ 35-129.

Equal Protection Rights In Employment.

The Transit Authority of New York City, operator of the city's subway system, maintained a policy of excluding from employment on the system, any person who had formerly been a narcotics user, notwithstanding that his addiction had long since ended. Plaintiffs, former narcotics users, challenged the ban on equal protection and due process grounds, contending that the wholesale exclusion from employment was arbitrary and invidious. Together with the Civil Rights Division, we filed an amicus brief on behalf of HEW, supporting the plaintiffs. The Second Circuit, relying on the grounds urged in our amicus brief, has just ruled that the Transit Authority's policy is unconstitutional.

Attorney: Robert S. Greenspan (Civil Division),  
FTS 739-3256.

CRIMINAL DIVISION  
Assistant Attorney General Benjamin R. Civiletti

Finch v. United States, \_\_\_\_ U.S. \_\_\_\_, 45 U.S.L.W.3851  
(No. 76-1206, June 29, 1977) (per curiam)

Appeal by Government. Double Jeopardy.

In Finch v. United States, the Supreme Court held that the court of appeals lacked jurisdiction to hear an appeal by the Government from a dismissal of an information for failure to state an offense. Finch was charged with knowingly fishing on a portion of the Big Horn River in Montana reserved for use by the Crow Indians, in violation of 18 U.S.C. 1165. The case was submitted to the district court on an agreed statement of facts. After reviewing these facts and the applicable treaties, the district court dismissed the indictment. The court of appeals reversed after first holding that the Government's appeal was not barred by the Double Jeopardy Clause, reasoning that, in light of the stipulated facts, no further factual proceedings would be required in the district court in the event that its legal conclusions were found to be erroneous. Relying on Lee v. United States, 45 U.S.L.W. 4661, 4663 (No. 76-5187, June 13, 1977, slip op. at 7), the Supreme Court reversed because the dismissal was granted prior to any declaration of guilt or innocence "on the ground, correct or not, that the defendant simply cannot be convicted of the offense charged."

Attorney: Frederick Eisenbud (Criminal Division)  
FTS 739-4504

LAND AND NATURAL RESOURCES DIVISION

Acting Assistant Attorney General James W. Moorman

Maynard v. United States, \_\_\_ F.Supp. \_\_\_ (E.D. La., Civ. No. 75-752, decided June 23, 1977). DJ 90-1-23-2004.

Navigation Servitude.

Plaintiff owned batture lands from which the Corps of Engineers took earth to repair a Mississippi River levee. The court held that under the Louisiana Constitution, batture lands are burdened with a servitude permitting their use for building and repairing levees and therefore there was no "taking" of plaintiff's land.

Attorney: Geoffrey A. Mueller (Land and Natural Resources Division), FTS 739-2785.

National Wildlife Federation v. Andrus, \_\_\_ F.Supp. \_\_\_ (D. D.C., Civ. No. 76-2266, decided July 1, 1977). DJ 90-1-4-1554.

National Environmental Policy Act.

Plaintiff sued to enjoin further construction of a power plant on the San Juan River on the Navajo Indian Reservation. More than \$3.5 million have been expended on the plant. It was originally approved by Congress for 15 megawatts on a tributary of the San Juan. The size has been increased to 23 megawatts and the location moved to the main stream. The court found the NEPA statement inadequate because it was not in sufficient detail, did not give sufficient weight to the effect of the operation of the plant, and did not adequately consider alternatives. The court also found the larger plant at a new location not authorized by Congress.

Attorney: Gary B. Randall (Land and Natural Resources Division), FTS 739-2712.

Environmental Defense Fund v. Adams, \_\_\_ F.Supp. \_\_\_ (D. D.C., Civ. No. 74-340, decided June 21, 1977). DJ 90-1-4-866.

National Environmental Policy Act.

The 1976 Airway Development Act requires the Secretary of DOT to prepare and publish by January 1, 1970, a system plan for the development of public airports in the United States. Plaintiff claimed this plan must be accompanied by a NEPA statement. The Secretary of DOT disagreed and claimed that NEPA requirements would be satisfied by a NEPA statement as to each airport to be federally

financed. The court disagreed with DOT. The plan on which the court ordered a NEPA statement would set forth the guidelines under which federal aid might be obtained. While a NEPA statement on the plan was ordered, the court left it to the discretion of the Secretary as to what matters should be discussed in a plan statement and what should be left for discussion in further site specific statements.

Attorney: Gary B. Randall (Land and Natural Resources Division), FTS 739-2712.

Realty Income Trust, et al. v. Jack Eckerd, \_\_\_ F.2d \_\_\_  
(C.A. D.C. Nos. 76-1062 and 1063, decided June 29, 1977).  
DJ 90-1-4-1224.

National Environmental Policy Act.

The owner of a building in Jackson, Mississippi, that leases to GSA sued to enjoin GSA from building a building in the same city on the ground that GSA had failed to file an EIS under NEPA with the Public Works Committees of both Houses of Congress at the time GSA submitted its building prospectuses with those committees. Since then GSA has filed an EIS whose adequacy has not been challenged. While refusing to enjoin construction of the building, the court of appeals held that GSA did not comply with NEPA when it prepared a draft EIS after it submitted building prospectuses to those committees. The EIS should have been filed with the committees at the time the prospectus was transmitted to Congress. The court of appeals refused to enjoin the project because the EIS was eventually filed with CEQ, its adequacy was not challenged, and no remedial purpose would be served. The decision of the district court was reversed (on timing), but there was no remand for injunctive relief. The plaintiff, the Government's current lessor, was not disqualified from asserting NEPA violations because of primary injury to its monetary interests, for it alleged environmental concerns as well.

Attorney: Glen R. Goodsell (Land and Natural Resources Division), FTS 739-2757.

Starbuck v. City and County of San Francisco, \_\_\_ F.2d \_\_\_  
(C.A. 9, No. 75-2213, decided June 28, 1977).  
DJ 90-1-2-1022.

Contracts; Enforcement of Congressional Condition Grant.

Residents and electric power consumers of the Bay Area charged violations of the Raker Act which established the Hetch Hetchy Valley as a resource of water and electric power. The City uses the Pacific Gas and Electric Company's

facilities to transmit Hetch Hetchy power. The Ninth Circuit affirmed the decision of the district court granting the City and PG&E's motion to dismiss for failure to state a claim because the Act did not create a private cause of action in favor of appellants. The court of appeals also affirmed the granting of summary judgment in favor of the Secretary of the Interior with respect to appellants' claim of the Secretary's failure to enforce the Act, under the APA and the mandamus statute, but differed with the reasoning of the district court. Although holding that the doctrine of sovereign immunity did not bar appellants' claim (they alleged that the Secretary acted beyond the scope of his statutory authority), the court of appeals found that appellants could not allege an injury-in-fact and thus was not "persons aggrieved" who were entitled to seek review under the APA. The court also denied appellants' claim for relief under the mandamus statute, holding that it does not provide an independent ground for jurisdiction. The court also held against appellants on their claims of stare decisis, collateral estoppel, res judicata, and denial of due process.

Attorney: Phyllis L. Hubbell (Land and Natural  
Resources Division), FTS 739-2766.