

# United States Attorneys Bulletin



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TABLE OF CONTENTS

	<u>Page</u>
COMMENDATIONS	499
POINTS TO REMEMBER	
UNITED STATES ATTORNEY APPOINTMENT	501
UNITED STATES ATTORNEYS' MANUAL--BLUESHEETS	501
UNITED STATES ATTORNEYS' MANUAL---TRANSMITTALS	503
CASENOTES	
Civil Division	
Military Habeas Corpus: Reenlistment Bonuses <u>Borschowa v. Crayton</u>	505
Social Security Act; SSI Benefits <u>DeLao v. Califano</u> ; <u>Ferguson v. Califano</u> ; <u>White v. Califano</u>	505
National Housing Act; Construction Retainages <u>Spring Construction Co. v. Harris</u>	506
National Traffic and Motor Vehicle Safety Act; Safety Defect Recalls <u>U. S. v. General Motors Corp.</u>	506
SELECTED CONGRESSION AND LEGISLATIVE ACTIVITIES	509
APPENDIX: FEDERAL RULES OF CRIMINAL PROCEDURE	517
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	521
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 Jay Ethington, Northern District of Texas, has been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for his outstanding effort in the successful prosecution of two white-collar crime cases, United States v. Wilson and United States v. McCord, in which seven defendants who defrauded investors of over \$1 million were convicted.

Assistant United States Attorney Robert M. Jupiter, Southern District of New York has been commended by James W. Muskett, Executive Assistant, Criminal Division, for his fine effort in effecting a \$50,000 appearance bond forfeiture judgment against Argonaut Insurance Company, surety in the case United States v. Robinson.

Assistant United States Attorney John S. Siffert, Southern District of New York, has been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for his outstanding work in the successful prosecution of Frederick J. Montelbano.

Assistant United States Attorney Eric W. Ruschky, District of South Carolina, has been commended by T.E. Shelton, Postal Inspector in Charge, United States Postal Service, for his excellent work in the successful prosecution of a case involving violation of the Federal mail fraud statutes. The prosecution, which included three lengthy jury trials, concluded with the conviction of a former employee of Southern Railway Company and 3 other defendants for conspiring in a scheme to defraud the Company of an estimated \$42,000.

Assistant United States Attorney Edward J. Schwabenland, Western District of Pennsylvania, has been commended by Anthony J. Carmona, Special Agent in Charge, United States Secret Service, for his professional work in the successful prosecution of a United States Treasury check forgery case.

Assistant United States Attorney John M. Fitzgibbons, Southern District of Iowa, has been commended by Clarence M. Kelley, Director, Federal Bureau of Investigation, for his excellent work in the successful prosecution of a case in which two defendants were convicted of armed robbery following a difficult three week trial.

POINTS TO REMEMBER

## UNITED STATES ATTORNEY APPOINTMENTS

The following Presidentially-appointed United States Attorneys have entered on duty. The Executive Office staff takes this opportunity to extend its hearty welcome.

<u>DISTRICT</u>	<u>UNITED STATES ATTORNEY</u>	<u>ENTERED ON DUTY</u>
Iowa, N.	James H. Reynolds	11/10/77
Michigan, W.	James S. Brady	11/8/77
Montana	Robert T. O'Leary	11/7/77

(Executive Office)

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## UNITED STATES ATTORNEYS' MANUAL--BLUESHEETS

No Bluesheets have been sent to press in accordance with USAM 1-1.550 since the last issue of the Bulletin.

(Executive Office)

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## UNITED STATES ATTORNEYS' MANUAL--TRANSMITTALS

The following United States Attorneys' Manual Transmittals have been issued to date in accordance with USAM 1-1.500. This monthly listing may be removed from the Bulletin and used as a check list to assure that your Manual is up to date.

Transmittal Affecting Title	Transmittal No. / Date Mo/Day/Yr	Date of Text	Contents	
1	1	8/20/76	8/31/76	Ch. 1, 2&3
	2	9/3/76	9/15/76	Ch.5
	3	9/14/76	9/24/76	Ch.8
	4	9/16/76	10/1/76	Ch.4
	5	2/4/77	1/10/77	Ch.6, 10&12
	6	3/10/77	1/14/77	Ch.11
	7	6/24/77	6/15/77	Ch.13
2	1	6/25/76	7/4/76	Ch. 1 to 4
	2	8/11/76	7/4/76	Index
3	1	7/23/76	7/30/76	Ch.1 to 7
	2	11/19/76	7/30/76	Index
4	1	1/3/77	1/3/77	Ch.3 to 15
	2	1/21/77	1/3/77	Ch.1 & 2
	3	3/15/77	1/3/77	Index
5	1	2/4/77	1/11/77	Ch.1 to 9
	2	3/17/77	1/11/77	Ch.10 to 12
	3	6/22/77	4/5/77	Revisions to Ch. 1 - 8

6	1	3/31/77	1/19/77	Ch.1 to 6
	2	4/26/77	1/19/77	Index
7	1	11/18/76	11/22/76	Ch.1 to 6
	2	3/16/77	11/22/76	Index
8	1	1/4/77	1/7/77	Ch.4 & 5
	2	1/21/77	9/30/77	Ch.1 to 3
	3	5/13/77	1/7/77	Index
	4	6/21/77	9/30/76	Ch.3 (pp 3-6)
9	1	1/12/77	1/10/77	Ch.4,11,17,18, 34,37,38
	2	1/15/77	1/10/77	Ch.7,100,122
	3	1/18/77	1/17/77	Ch.12,14,16, 40,41,42,43
	4	1/31/77	1/17/77	Ch. 130 to 139
	5	2/2/77	1/10/77	Ch.1,2,8,10,15, 101,102,104, 120,121
	6	3/16/77	1/17/77	Ch.20,60,61,63, 64,65,66,69,70, 71,72,73,75,77, 78,85,90,110
	7	9/8/77	8/1/77	Ch. 4 (pp 81-129) Ch. 9, 39

(Executive Office)

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CIVIL DIVISION  
 Assistant Attorney General Barbara Allen Babcock

Borschowa v. Crayton, \_\_\_\_\_ F.2d \_\_\_\_\_ (C.A. 9, Nos. 76-2370  
 & 76-2438, decided October 13, 1977). DJ 145-6-1575.

Military Habeas Corpus: Reenlistment Bonuses.

The Ninth Circuit has just vacated a district court order, which directed the Navy to release a serviceman on a rescission of contract theory. The district court had held that the Navy breached a contractual obligation to award the serviceman a particular level of "variable reenlistment bonus" payments in return for the serviceman's agreement to extend his enlistment. While our appeal was pending, the Supreme Court decided that the Navy regulations governing the award of the "variable reenlistment bonus" were void (United States v. Larionoff). Accordingly, we advised the Ninth Circuit that the serviceman was correct in his contention that the Navy did not pay him the proper "variable reenlistment bonus," but we argued that the Navy's obligation to pay the proper amount was statutory and not contractual, and that the serviceman's only remedy was in damages. The Ninth Circuit agreed with both arguments, vacated the district court's order, and remanded with instructions that the serviceman be awarded damages.

Attorneys: Robert E. Kopp (Civil Division),  
 FTS 739-3389; and Neil H. Koslowe  
 (Civil Division), FTS 739-5325.

DeLao v. Califano; Ferguson v. Califano; White v. Califano  
 (Consolidated), \_\_\_\_\_ F.2d \_\_\_\_\_ (C.A. 9, Nos. 76-1365,  
 75-2633, 75-2987, 76-2756). DJ 181-8-11 & 181-44-1.

Social Security Act; SSI Benefits.

Under the Supplemental Security Income (SSI) Program, enacted in 1972, Congress provided for the automatic entitlement to federal benefits, commencing on January 1, 1974, of needy state disability recipients who had been receiving benefits prior to July, 1973. An amendment to the statute permitted those receiving state benefits after June, 1973 to be paid presumptive federal benefits only until a determination of disability was made under federal standards or the end of 1974, whichever came first. In these suits which inter alia charged that the Secretary's failure in some instances to afford pretermination hearings

before 1974 amounted to a violation of due process, the Court held that any property interests the plaintiffs might have had in the federal benefits terminated at the close of 1974. The Court also held that payment of retroactive benefits was barred by sovereign immunity.

Attorneys: John M. Rogers (Civil Division),  
FTS 739-4792; and Harry R. Silver  
(formerly of the Civil Division).

Spring Construction Company v. Harris, \_\_\_\_\_ F.2d  
(C.A. 4, No. 76-2399, decided September 29, 1977).  
DJ 145-17-440.

National Housing Act; Construction Retainages.

The owner-mortgagor of multifamily housing project insured by HUD under the National Housing Act defaulted on its mortgage loan before "final closing" of the construction phase of financing. Upon paying the mortgagee's insurance claim, HUD acquired all outstanding escrow accounts under the project, including an account containing 10% construction "holdbacks," i.e., a 10% retention of the monthly sums (costs plus profits) owing to the contractor of the project which, under the contract between HUD and the mortgagor, are only released to the mortgagor for payment-over to the contractor after the construction loan has been closed. The Fourth Circuit in this case has upheld the contractor's right to sue HUD directly to recover the retainages despite the absence of a contractual agreement between HUD and the contractor, adopting the theory endorsed by the District of Columbia Circuit in Trans-Bay Engineers, Inc. v. Hills, 551 F.2d 370 (1976), that the contractor is a party creditor-beneficiary of the mortgagor. The Fourth Circuit moreover expanded the holding of Trans-Bay in ruling that, under the special circumstances at hand, the contractor's recovery was not barred by its failure to complete construction of the project prior to the mortgagor's default.

Attorney: Robert Richardson (Civil Division),  
FTS 739-3486.

United States v. General Motors Corp., \_\_\_\_\_ F.2d  
(C.A.D.C., Nos. 76-1744 & 1745, decided October 14,  
1977). DJ 145-18-30.

National Traffic and Motor Vehicle Safety Act;  
Safety Defect Recalls.

The National Highway Traffic Safety Administrator determined that carburetors installed in certain 1965 and 1966 General Motors cars contained a "defect which relates

to motor vehicle safety" and therefore ordered GM to notify owners of the potential danger. The faulty carburetors had resulted in numerous engine fires. GM did not comply and brought suit to nullify the order; the Government brought suit to enforce the order and impose a civil penalty. The district court granted summary judgment for the Government and fined GM \$400,000. The D.C. Circuit has affirmed, rejecting GM's argument that a reduction in the risk of future carburetor failures, because of the age of the cars, raised a material question of fact as to whether the defect related to motor vehicle safety. The court of appeals remanded, however, for briefing and argument on the proper amount of the fine.

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