UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Darrell Wayne PALMER 248403

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2490

Darrell Wayne PALMER

This appeal has been taken in accordance with 46 U.S.C. SS7703 and 46 CFR SS5.701.

By order dated 18 August 1988, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's Seaman's license for three months, remitted on twelve months probation. The suspension was based upon a finding of proved of the charge of misconduct. The specifications supporting the charge allege violations of law and regulation, that while serving as Operator on board the M/V ROMAN HOLIDAY and under teh authority of the above-captioned license, Appellant, did, on or about 11 December 1987, while said vessel was located in Newport harbor, California:

a) operate said vessel without having on board a valid U.S. Coast Guard Certificate of Inspection, while carrying more than six passengers, a violation of 46 U.S.C. 3311;

b) operate said vessel without having on board a valid U.S. Coast Guard Certificate of Documentation while operating on a coastwise voyage, a violation of 46 C.F.R. 67.45-21;

c) operate said vessel in restricted visibility without a proper

sounding device, a violation of the Inland Rules of the Road, Rule 33 and Rule 35;

d) operate said vessel without having the required three fire extinguishers in serviceable condition, a violation of 46 C.F.R. 25.30-20; and

e) operate said vessel in restricted visibility without the proper masthead and side navigation lights, a violation of the Inland Rules of the Road, Rule 21 and Rule 23.

The hearing was held at Long Beach, California, on 21 January, 26 January, 3 February, 17 February, 23 March, and 13 April 1988. Appellant was represented at the hearing by professional counsel. At the hearing, Appellant entered an answer of "deny" to the five specifications and the charge of Violation of Law or Regulation.

The Investigating Officer introduced in evidence six exhibits, and the testimony of six witnesses. In defense, Appellant offered in evidence twelve exhibits, the testimony of two witnesses, and his own testimony.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and specifications had been found proved. He served a written order on Appellant suspending license No. 248403 and all other licenses issued to Appellant by the Coast Guard, for a period of three months, remitted on twelve months probation.

The entire decision was served on 20 August 1988. Appeal was timely filed on 23 August 1988, and perfected on 3 April 1989.

FINDINGS OF FACT

On 11 December 1987, Darrell Wayne PALMER (Appellant) was serving as Operator on board the M/V ROMAN HOLIDAY under the authority of Coast Guard issued license No. 248403. Owned by Mr. John Heasley, the ROMAN HOLIDAY was on an evening cruise of Newport Harbor. The cruise was arranged by Mr. Michael W. Zorn of Mastroianni Yacht Charters. Unknown to either Mr. Heasley or Mr. Zorn, the charterer was the U.S. Coast Guard Marine Safety Office Los Angeles/Long Beach, California which was conducting a covert operation involving bareboat passenger

vessel practices in the area. The cruise was terminated after the vessel was stopped and boarded by personnel from the U.S. Coast Guard Cutter POINT DIVIDE. A safety and document inspection of the vessel was conducted, resulting in Appellant being charged with misconduct supported by five specifications. Appellant now appeals from the Administrative Law Judge's finding of proved to the charge and specifications, and the sanction imposed of three months suspension of Appellant's license, remitted on twelve months probation. The following is a more detailed account of the facts of the case.

The ROMAN HOLIDAY is a 54 foot uninspected and undocumented motor powered pleasure vessel registered in the State of California, with a state number of CF 7389 GT. The vessel was built in China, and purchased new by its present owner, Mr. Heasley, in 1981. Heasley uses the ROMAN HOLIDAY for pleasure purposes, but began occasionally chartering the vessel in 1986 through various charter companies in the Newport Beach, California, area.

From time to time, the Coast Guard conducts covert operations utilizing agency personnel in furtherance of its mandated mission to promote safety at sea. In that regard, the Marine Safety Office (MSO), Los Angeles/Long Beach, California, initiated an investigation that focused on the surreptitious use of bareboat charter agreements as a means to avoid compliance with Coast Guard safety regulations. On 3 November 1987, Petty Officer Wroton from MSO Los Angeles/Long Beach contacted Mr. Zorn of Mastroianni Yacht Charters and inquired about chartering a vessel from Mastroianni for an office party. Petty Officer Wroton identified herself as Susan Mynatt, her maiden name, and the company she was employed by as Sarubbi and Associates, a fictitious firm.

Petty Officer Wroton arranged with Zorn to reserve the ROMAN HOLIDAY for an office party on 11 December 1987 between the hours of 6 p.m. and 10 p.m. at a cost of $1,800. This quote included insurance, fuel, catering, cleaning, captain and crew. Wroton and Zorn signed what appears on its face to be a valid bareboat charter agreement just before the cruise began on 11 December 1987.

Prior to the actual signing of the contract, Mr. Zorn contacted Mr. Heasley, the vessel owner, to inquire about the availability of the vessel on 11 December 1987. Heasley replied that he would require a Coast Guard licensed skipper approved by him so as to comply with the vessel's insurance policy. Heasley subsequently approved of Appellant

serving as operator of the ROMAN HOLIDAY after Appellant's name was submitted to him by Zorn. The captain/crew employment agreement indicated that the Appellant had been selected by Mastroianni to serve as operator of the ROMAN HOLIDAY.

Shortly after being hired in November, Appellant arranged for Jamie Morlett to serve as deckhand on board the evening of 11 December 1987. Morlett was to be paid by mastroianni Yacht Charters.

On 9 November 1987, Petty Officer Wroton spoke with Ms. Cyndi Grain of Jay's Catering. Jay's Catering and Mastroianni Yacht Charters are divisions of Mastroianni Family Enterprises and are located in the same office. Grain informed Wroton that while Sarubbi and Associates could provide their own food for the cruise, should they choose to use a caterer, they must utilize Jay's Catering. The catering package totaled $510, which included food, coffee and tax, and required employing a server to dispense the food and beverages.

On 10 December 1987, Petty Officer Wroton contacted Mr. Zorn to discuss various terms of the purported and not yet signed bareboat charter agreement. Wroton asked Zorn to explain the potential liabilities that her company would be exposed to if she signed the contract. Zorn advised Wroton that Sarubbi and Associates would be responsible only for the damage to the vessel caused by guests and would not be responsible for damage to teh vessel resulting from a collision, grounding, fire, etc. In fact, Zorn advised her that the wording in the bareboat charter contract concerning the charterer's liabilities was a lot of "maritime legal jargon" and not to be concerned about it.

Petty Officer Wroton also asked Mr. Zorn on 10 December 1987 if she could hire her own skipper for the cruise. Zorn replied that at that late date, one day before the cruise was scheduled, she could not employ a substitute skipper. He then modified his explanation by stating that her company could have their choice of any of his eighteen skippers. Zorn explained that he had already selected the Respondent based on his familiarity with the ROMAN HOLIDAY.

On the evening of the scheduled cruise but prior to departure, Appellant boarded the ROMAN HOLIDAY at its berth in Newport Harbor. Appellant discussed the upcoming voyage with Heasley, who told Appellant that he did not want his vessel to be taken out of the harbor that evening because of the heavy fog. Appellant then assisted

Zorn and the caterers in readying the ROMAN HOLIDAY for departure. During these preparations, Appellant discovered that the vessel's fog horn was not operating, and that a hand held unit was not on board. Nonetheless, Appellant and Zorn decided to proceed with the voyage. Petty Officer Wroton, in her role as charterer of the cruise, was not advised that the cruise was proceeding without the fog horn.

As the vessel left the Newport Beach dock at approximately 1800 on 11 December 1987, a total of 28 persons were on board consisting of: 24 Coast Guard personnel posing as employees and guests of Sarubbi and Associates; the charter agent, Mr. Michael Zorn; the Appellant serving as Operator; a deckhand; and a server for the catered food.

While underway, Lieutenant Thorkildsen, USCG, who was posing as the President of Sarubbi and Associates, asked Appellant to change course to Dana Point Harbor, about 11 miles south of Newport Harbor, for the purpose of visiting friends who could not make the cruise. Appellant advised Lieutenant Thorkildsen that he would not take the vessel outside the harbor because the swells were too high. As a result, ROMAN HOLIDAY stayed within Newport Harbor during the length of the cruise.

At approximately 2030, USCGC POINT DIVIDE stopped and boarded the ROMAN HOLIDAY. The Senior Investigating Officer from MSO Los Angeles/Long Beach, Lieutenant J.D. Sarubbi, directed the boarding party. He advised both Appellant and Mr. Zorn that he considered the vessel to be operating on an illegal bareboat charter and terminated the voyage. Lieutenant Sarubbi then instructed Appellant to return the vessel to Newport Harbor.

Once the ROMAN HOLIDAY was tied up at the Newport Harbor dock, POINT DIVIDE's boarding officer conducted an examination of the vessel to determine the vessel's compliance with applicable safety and pollution regulations. He noted the following discrepancies:

a) ROMAN HOLIDAY's fog horn and bell were not operational, in violation of the Inland Rules of the Road, Rule 33;

b) ROMAN HOLIDAY was equipped with only two (2) fully charged fire extinguishers in violation of 46 C.F.R. 25.30-20, which requires three (3) fully charged fire extinguishers;

c) the vessel's masthead light was not displaying the proper arc since the light was obstructed from abeam to 22.5 degrees abaft the beam on both the port and starboard side, in violation of the Inland Rules of the Road, Rule 21 and Rule 23;

d) the vessel's sidelights were obstructed by spotlights, and were not displaying the proper arc as required by the Inland Rules of the Road, Rule 21 and Rule 23; and

e) no pollution placard was posted in the vessel's engine room, as required by 33 C.F.R. 155.44.

In addition to the inspection of the vessel, an inspector from the MSO, measured the ROMAN HOLIDAY to determine the vessel's gross and net tonnage. The inspector reported a beam of 15'6", a length of 49'7" and a depth of 8'10". Subsequently, a Coast Guard admeasurer, utilizing these measurements, determined the ROMAN HOLIDAY's tonnage to be 45.13 gross tons and 36 net tons.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant limits this appeal to the first two specifications, and urges that the order be modified. Appellant's bases of appeal are as follows:

I. The first and second specifications should be dismissed because the Coast Guard failed to prove that more than six passengers were aboard the ROMAN HOLIDAY, and because Appellant did not know that the bareboat charter was a scam.

II. Appellant was entrapped by the Coast Guard's use of a covert sting operation.

III. Appellant was denied due process at the hearing because the Administrative Law Judge denied counsel's request for discovery and limited counsel's questioning of certain witnesses.

IV. Appellant is innocent because Coast Guard regulations prohibit a yacht skipper from determining a vessel's gross tonnage.

V. The transcript is defective, incomplete, inaccurate and overpriced.

APPEARANCE: Carlton E. Russell of Ackerman, Ling, Russell and Mirkovich, 444 West Ocean Boulevard, Suite 1000, Long Beach, California, 90802.

OPINION

I

Appellant contends on appeal that the first and second specifications are unsupported in the record, and should therefore be dismissed. I disagree.

Appellant argues that he believed that a valid bareboat charter agreement existed between Mastroianni Yacht Charters and Petty Officer Wroton (acting in her role as charterer), and that therefore it is of no consequence that the ROMAN HOLIDAY, which he was operating, was an uninspected and undocumented vessel. Appellant has chosen an avenue of argument with a steep burden because he is challenging a factual finding made by the Administrative Law Judge.

An Administrative Law Judge's finding of fact will be disturbed on appeal only if it is arbitrary and capricious, or clearly erroneous. Decision on Appeal 2427 (JEFFRIES). See *Guzman v. Pirchirilo*, 369 U.S. 698, 702, 82 S.Ct. 1095, 97 (1962). The Administrative Law Judge here found that the Appellant knew or should have known that a valid bareboat charter did not exist. Decision & Order at p. 29. It should be noted that "knowledge" is technically not a prima facia element in this case. While in Commandant v. Mann, NTSB Order EM-123 (1985), the specification alleged a knowing violation, the specification here does not allege scienter. Indeed, specific intent is not a prerequisite to a charge of misconduct or violation of law or regulation. Appeal Decision 2286 (SPRAGUE). However, if the Mann decision is controlling, the Administrative Law Judge's decision here is fully consistent with the Mann holding that the operator must have known or should have known that the bareboat charter agreement was illusory. Mann, NTSB Order EM-123 at 5-6.

It is well accepted law that there are three essential elements for a valid bareboat charter: "the owner of the vessel must completely

and exclusively relinquish 'possession, command, and navigation' thereof to the demisee." Guzman, supra, at 699, citing *United States v. Shea*, 152 U.S. 178, 14 S.Ct. 519 (1894).

While the provisions of the written agreement here arguably create a demise charter, an objective examination of the extrinsic evidence is warranted if there is any question as to the validity of the agreement. See *Federal Barge v. SCNO Barge*, 711 F.2d 110 (8th Cir. 1983). After such an examination, the Administrative Law Judge here found the purported bareboat charter agreement to be illusory. On paper, the agreement transferred everything but ownership to the charterer. In actuality, however, the owner maintained substantial control over the vessel during that period. Just before departure on 11 December 1987, the owner instructed Appellant that the ROMAN HOLIDAY should not be taken out of the harbor that evening. "Retention of control of the vessel by the owner is inconsistent with a bareboat charter agreement, as the owner must relinquish total control of the vessel to the charterer under a bareboat charter agreement. *Romano v. West India Fruit*, 151 F.2d 727, 729 (5th Cir. 1945)." *Ross Ind. v. Gretke Oldendorff*, 483 F.Supp. 195 (E.D. Tex. 1980). This fact alone, therefore, is sufficient to affirm the Administrative Law Judge's finding that the purported bareboat charter was a sham.

Under all of the circumstances, the Administrative Law Judge's factual determination that a valid bareboat charter did not exist is not clearly erroneous, and therefore will not be disturbed.

In the absence of a valid bareboat charter, the 24 individuals from Sarubbi and Associates were "passengers" within the meaning and definition in 46 U.S.C. 2101(21B). As a small passenger vessel (less than 100 gross tons) the ROMAN HOLIDAY was subject to inspection under the provisions of 46 C.F.R. 3301(8). Additionally, under 46 U.S.C. 3311, a vessel that is subject to inspection may not be operated without a valid certificate of inspection on board. 46 U.S.C. 3311(a). Therefore, the record fully supports a finding of proved as to the first specification.

The Administrative Law Judge's finding of proved to the second specification is also fully supported in the record, and will therefore not be disturbed. The requirements of law are clear on this issue:

1. "Any vessel of at least 5 net tons which engages in the fisheries, Great Lakes trade, or coastwise trade must be documented." 46 C.F.R. 67.01-5, Vessels Requiring Documentation.

2. "No vessel which is required by 67.01-5 to be documented shall engage in the coastwise trade, the Great Lakes trade, nor the fisheries without being documented." 46 C.F.R. 67.45-21, Operation Without Documentation [Prohibited].

A recent ruling by the U.S. Customs Service provides a useful discussion of the term "coastwise trade":

In interpreting the coastwise laws as applied to the transportation of passengers, we have ruled that the carriage of passengers entirely within territorial waters, even though the passengers disembark at their point of embarkation and the vessel touches no other points, is considered coastwise trade subject to the coastwise laws.

CUSTOMS SERVICE DECISIONS, 22 Cust. B. & Dec. No. 42, September 9, 1988.

The Customs Service has consistently ruled that yachts or pleasure vessels chartered under a bona fide bareboat or demise charter may be used by the charterer and his guests for pleasure cruising in the United States and between points therein without violating the coastwise laws. However, vessels contracted under a charter agreement other than a bareboat charter (e.g., a time charter) to transport the charterer and/or his guests between coastwise points or in territorial waters would be considered coastwise trade. The Customs Service recently stated that:

The nature of the particular charter arrangement is a question of fact to be determined from the circumstances of every case The crux of the matter is whether complete management and control have been wholly surrendered by the owner to the charterer so that for the period of the charter the charterer is in effect the owner. Although a charter agreement on its face may appear to be a bareboat or demise charter, the manner in which its covenants are carried out and the intention of the respective parties to relinquish or to assume complete management and control are also factors to be considered.

CUSTOMS SERVICE DECISION, 22 Cust. B. & Dec. No. 42, September 9, 1988.

Thus, the rationale previously advanced concerning inspection requirements is also applicable to the second specification; and on the record establishes that the ROMAN HOLIDAY was employed in the coastwise trade and that the vessel was not documented for such use and indeed could not possess a certificate of documentation endorsing coastwise trade. Therefore, specification two is fully supported in the record and will not be disturbed on appeal.

II

Appellant next urges that the Coast Guard's use of a covert operation in this case is improper and amounts to entrapment.

I do not agree with the Appellant. The fact that in this particular case the Coast Guard Marine Safety Office, Los Angeles/Long Beach, was working undercover is not of consequence here. Operations such as this are simply one of the many investigative tools that the Coast Guard uses in furtherance of its mission to promote safety at sea. While there are no Federal decisions concerning the applicability of entrapment in administrative proceedings, some State decisions have recognized entrapment as a defense in administrative proceedings in which revocation or suspension of a professional license is at issue. See, *Patty v. Board of Medical Examiners*, 9 Cal.3d 356, 107 Cal.Rptr. 473, 508 P.2d 1121, 61 A.L.R.3d 342 (1973). Even assuming, arguendo, that entrapment could be a valid defense in this case, the defense is not supported by the facts. It is not the deception that the defense of entrapment forbids, rather it is the inducement of one by a government agent to commit an offense. See, *United States v. Russell*, 411 U.S. 423, 435-36, 93 S.Ct. 1637, 1644-45 (1973). In this case, there was no inducement of Appellant or the charter company to engage in a bareboat charter scam. Indeed, the Coast Guard, posing as a charter party merely entered into a charter agreement as drafted and presented by the charter company representatives.

Appellant also argues that he "believed [in] and relied on the representations" made by undercover Coast Guard personnel regarding parties to and the nature of the bareboat charter. Appellant's contention here is contrary to the findings of the Administrative Law Judge. The Administrative Law Judge concluded that:

Since [Appellant] worked frequently as the licensed operator on "bareboat charters," he should have had a working knowledge of what a bareboat charter is. He certainly was aware that control, which is the key element in this type of charter, must be in the charter party for the charter to be a valid charter.

He was certainly aware that control was not in the charter party on board the ROMAN HOLIDAY and that a valid bareboat charter did not exist. He was therefore aware, or certainly should have been, that he was carrying passengers for hire.

Decision & Order at 29 (emphasis added).

Moreover, as a licensed, experienced vessel operator, it is reasonable to believe that the Appellant knew that a Certificate of Inspection is required when carrying passengers for hire. The Administrative Law Judge, as trier of fact, evaluates the evidence and testimony presented at the hearing. The Administrative Law Judge's findings will only be disturbed if they are found to be arbitrary and capricious, or clearly erroneous. Appeal Decision 2427 (JEFFRIES). Here, the Administrative Law Judge's findings that the Appellant knew or should have known that he was carrying passengers for hire is supported by the evidence on record and will not be disturbed.

III

Appellant raises questions of due process by claiming that the Administrative Law Judge foreclosed discovery by denying motions for discovery by Appellant's counsel and limited the questioning of witnesses at the administrative hearing.

Generally, discovery is not available in administrative proceedings before federal agencies. The absence of discovery in such an administrative proceeding does not violate any procedural right due to the Appellant. *Frilette v. Kimberlin*, 508 F.2d 205 (3d Cir. 1974), cert. denied, 421 U.S. 980 (1975). See also, *McCelland v. Andrus*, 606 F.2d 1278 (D.C. Cir. 1979).

The Administrative Procedure Act contains no provision for discovery in the administrative process and the provisions of the Federal Rules

of Civil Procedure for discovery do not apply to administrative proceedings.

Davis, 3 Administrative Law Treatise 14.8 at 25 (1980).

Coast Guard administrative hearings are governed by the Administrative Procedure Act. 46 C.F.R. 5.501(a). There are no additional statutory provisions regarding discovery during such hearings. Therefore, neither statute nor regulation entitle prehearing discovery or discovery during the course of the hearing. Appeal Decision 2425 (BUTTNER), Appeal Decision 2040 (RAMIREZ).

Appellant also contends that the Administrative Law Judge unfairly limited his questioning of certain witnesses. The Administrative Procedure Act assigns the task of regulating the course of the hearing to the Administrative Law Judge. 5 U.S.C. 556(c) (5). "It is the function of an Administrative Law Judge, just as it is the recognized function of a trial judge, to see that the facts are clearly and fully developed. He is not required to sit idly by and permit a confused and meaningless record to be made." Appeal Decision 2013 (BRITTON). An Administrative Law Judge's limitation of cross-examination on grounds of relevancy has been upheld. Appeal Decision 2357 (GEESE). Here, Appellant's objections appear to focus on the Administrative Law Judge's limiting of counsel's direct-examination of Lieutenant Sarubbi, the Investigating Officer, whom counsel called as a witness. The record clearly indicates that the Administrative Law Judge permitted adequate questioning of Lieutenant Sarubbi on issues relevant to the hearing.

Contrary to the assertion of Appellant, under the provisions of 5 C.F.R. 5.537, strict adherence to the Federal Rules of Evidence is not required. The Administrative Law Judge properly regulated the course of the hearing. Consequently, Appellant's contentions regarding discovery and the questioning of witnesses are without merit.

IV

Appellant's assertion that he could not know the tonnage of his vessel because Coast Guard regulations prohibit access to this information is without merit. Coast Guard regulations do not prohibit

such access. Any person may contact the Coast Guard Vessel Documentation Office for copies of the calculation sheets used to determine a vessel's tonnage. This type of information in a vessel's file is considered public information and is not restricted. Additionally, it is reasonable to believe that the owner or operator of a vessel would have a reasonable appreciation of its tonnage, particularly in this case, where the operator has substantial nautical experience as a licensed operator. Finally, Appellant's personal knowledge or lack of knowledge of the vessel's tonnage is irrelevant in this case. Appellant seems to argue that he did not know the ROMAN HOLIDAY's exact tonnage and therefore could not have knowingly and willfully been culpable of misconduct by violating the laws and regulations requiring the vessel to be documented. The elements of knowledge and willfulness are not factors in determining misconduct based upon a charge of violation of law or regulation. Here, 46 C.F.R. 67.45-21 provides that no vessel required under 46 C.F.R. 67.01-5 to be documented, shall operate in the coastwise trade without such documentation. 46 C.F.R. 67.01-5 requires vessels of at least 5 net tons to be documented. The ROMAN HOLIDAY was greater than 5 net tons and Appellant operated the vessel without a Certificate of Documentation. It is well settled that a violation of a duty imposed by formal rule or regulation may constitute misconduct and there is no requirement that willful misconduct be proved. Appeal Decision 2445 MATHISON); Appeal Decision 2248 (FREEMAN).

V

Lastly, Appellant argues that the hearing transcript is defective, incomplete, inaccurate, and overpriced.

"By statute and regulation Appellant is entitled to appeal from the decision of the [Administrative Law Judge] and to have his appeal considered on the record of the hearing including the transcript. See 46 U.S.C. 7702, [46 C.F.R. 5.503], [46 C.F.R. 5.701(b)]. The Administrative Procedure Act, under which these proceedings are conducted, also requires that agency decisions be based on the record which includes a transcript of the hearing. 5 U.S.C. 556." Appeal Decision 2394 (ANTUNEZ). See also, Appeal Decision 2399 (LANCASTER). Substantial omissions from a hearing record, which relate to significant matters in the proceeding, effectively preclude meaningful review. Appeal Decision 2276 (LUDLUM). In this case, the omissions noted in the transcript are minor in nature, relating only to the question of the ROMAN HOLIDAY's tonnage. Moreover, the

majority of the testimony regarding the vessel's tonnage is accurately reported on the record. (TR at pp.363-373). After a thorough review of the relevant portion of the record, I find the alleged defects in the transcript to be minor and of no consequence to the resolution of this case or appeal.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the provisions of applicable regulations.

ORDER

The order of the Administrative Law Judge dated in Long Beach, California, on 18 August 1988, is AFFIRMED.

CLYDE T. LUSK, JR
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 26th day of October 1989.

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CDA's Cited: 2286 (SPRAGUE), 2427 (JEFFRIES), 2425 (BUTTNER), 2040 (RAMIREZ), 2013 (BRITTON), 2357 (GEESE), 2394 (ANTUNEZ), 2399 (LANCASTER), 2276 (LUDLUM)

Federal Cases Cited: *Guzman v. Pirchirilo*, 369 U.S. 698, 82 S.Ct. 1095 (1962), *United States v. Shea*, 152 U.S. 178, 14 S.Ct. 519 (1894), *Federal Barge v. SCNO Barge*, 711 F.2d 110 (8th Cir. 1983), *Romano v. West India Fruit*, 151 F.2d 727 (5th Cir. 1945), *Ross Ind. v. Gretke Oldendorff*, 483 F.Supp. 195 (E.D. Tex. 1980), *United States v. Russell*, 411 U.S. 423, 93 S.Ct. 1637 (1973), *Frilette v. Kimberlin*, 508 F.2d 205 (3d Cir. 1974), cert. denied, 421 U.S. 980 (1975), *McCelland v. Andrus*, 606 F.2d 1278 (D.C. Cir. 1979)

Commandant v. Mann, NTSB Order EM-123 (1985).

22 Cust. B. & Dec. No. 42, September 9, 1988.

State Decisions Cited: *Patty v. Board of Medical Examiners*, 9 Cal.3d 356, 107 Cal.Rptr. 473, 508 P.2d 1121, 61 A.L.R.3d 342 (1973).

Statutes Cited: 46 U.S.C. 7702, 46 U.S.C. 7703, 46 U.S.C. 3311, 46 U.S.C. 2101(21)(B), 5 U.S.C. 556

Regulations Cited: 46 C.F.R. 5.701, 46 C.F.R. 67.45-21, 46 C.F.R. 25.30-20, 33 C.F.R. 155.44, 46 C.F.R. 3301(8), 46 C.F.R. 67.01-5,

46 C.F.R. 5.503

Other Authority: Davis, 3 Administrative Law Treatise 14.8 at 25 (1980).

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