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United States
DEPARTMENT OF JUSTICE

Vol. 13 No. 10

UNITED STATES ATTORNEYS
BULLETIN

UNITED STATES ATTORNEYS BULLETIN

Vol. 13 May 14, 1965 No. 10

APPOINTMENTS--DEPARTMENT

As of May 10, 1965, the nominations of the following appointees were pending before the Senate:

Assistant Attorney General, Antitrust Division--Donald Frank Turner
Assistant Attorney General, Criminal Division--Fred M. Vinson, Jr.
Assistant Attorney General, Lands Division--Edwin L. Weisl, Jr.

APPOINTMENTS--UNITED STATES ATTORNEYS

In addition to those listed in the last issue of the Bulletin, the nominations of the following United States Attorneys to new four-year terms were pending before the Senate as of May 10, 1965:

Colorado--Lawrence M. Henry
New York, Northern--Justin J. Mahoney
Ohio, Southern--Joseph P. Kinneary
Utah--William T. Thurman

As of May 10, 1965, the nomination of the following appointee as United States Attorney was pending before the Senate:

Michigan, Western--Harold R. Beaton

MONTHLY TOTALS

	First 9 Months Fiscal Year 1964	First 9 Months Fiscal Year 1965	Increase or Decrease Number	%
Filed				
Criminal	25,000	24,940	- 60	- .24
Civil	20,674	21,355	+ 681	+ 3.29
Total	45,674	46,295	+ 621	+ 1.36
Terminated				
Criminal	23,796	22,885	- 911	- 3.83
Civil	19,566	20,049	+ 483	+ 2.47
Total	43,362	42,934	- 428	- .99
Pending				
Criminal	11,047	12,072	+ 1,025	+ 9.30
Civil	23,493	24,404	+ 911	+ 3.88
Total	34,540	36,476	+ 1,936	+ 5.61

	Filed			Terminated		
	Crim.	Civil	Total	Crim.	Civil	Total
July	2,321	2,460	4,781	2,230	2,391	4,621
Aug.	2,176	2,224	4,400	1,846	1,590	3,436
Sept.	3,284	2,214	5,498	2,054	2,556	4,610
Oct.	3,284	2,464	5,748	3,251	2,131	5,382

	Filed			Terminated		
	Crim.	Civil	Total	Crim.	Civil	Total
Nov.	2,497	2,005	4,502	2,741	2,132	4,873
Dec.	2,574	2,204	4,778	2,612	2,059	4,671
Jan.	2,698	2,593	5,291	2,529	2,566	5,095
Feb.	2,769	2,411	5,180	2,341	2,134	4,475
Mar.	3,337	2,780	6,117	3,281	2,490	5,771

For the month of March, 1965, United States Attorneys reported collections of $3,717,946. This brings the total for the first nine months of this fiscal year to $49,322,472. Compared with the first nine months of the previous fiscal year this is an increase of $5,375,867 or 12.23 per cent over the $43,946,605 collected during that period.

During March, 1965, $8,163,233 was saved in 104 suits in which the government as defendant was sued for $9,698,544. 68 of them involving $6,639,506 were closed by compromises amounting to $811,398 and 17 of them involving $1,745,469 were closed by judgments amounting to $723,913. The remaining 19 suits involving $1,313,569 were won by the government. The total saved for the first nine months of the current fiscal year was $81,910,747 and is an increase of $22,549,071 or 37.99 per cent over the $59,361,676 saved in the first nine months of fiscal year 1964.

The cost of operating United States Attorneys' Offices for the first nine months of fiscal year 1965 amounted to $13,960,475 as compared to $12,941,743 for the first nine months of fiscal year 1964.

DISTRICTS IN CURRENT STATUS

Set out below are the districts in a current status as of March 31, 1965.

CASES

Criminal

Ala., N.	Idaho	Mich., W.	N.C., M.	Tex., E.
Ala., S.	Ill., N.	Minn.	Ohio, N.	Tex., N.
Alaska	Ill., E.	Miss., N.	Ohio, S.	Tex., S.
Ariz.	Ill., S.	Mo., E.	Okla., N.	Tex., W.
Ark., E.	Ind., N.	Mo., W.	Okla., E.	Utah
Ark., W.	Ind., S.	Mont.	Okla., W.	Va., E.
Calif., S.	Iowa, N.	Neb.	Ore.	Va., W.
Colo.	Iowa, S.	Nev.	Pa., E.	Wash., E.
Conn.	Kan.	N.H.	Pa., M.	Wash., W.
Del.	Ky., E.	N.J.	Pa., W.	W.Va., N.
Dist. of Col.	Ky., W.	N. Mex	P.R.	W.Va., S.
Fla., N.	La., W.	N.Y., N.	R.I.	Wis., E.
Fla., S.	Maine	N.Y., E.	S.C., E.	Wyo.
Ga., M.	Md.	N.Y., S.	Tenn., E.	C.Z.
Ga., S.	Mass.	N.Y., W.	Tenn., M.	Guam
Hawaii	Mich., E.	N.C., E.	Tenn., W.	

CASES

Civil

Ala., N.	Ga., S.	Mich., W.	N.D.	Tenn., W.
Ala., M.	Hawaii	Minn.	Ohio, N.	Tex., N.
Ala., S.	Idaho	Miss., N.	Okla., N.	Tex., E.
Alaska	Ill., N.	Miss., S.	Okla., E.	Tex., S.
Ariz.	Ill., E.	Mo., E.	Okla., W.	Tex., W.
Ark., E.	Ill., S.	Mo., W.	Ore.	Utah
Ark., W.	Ind., N.	Mont.	Pa., E.	Vt.
Calif., N.	Ind., S.	Nev.	Pa., M.	Va., E.
Calif., S.	Iowa, S.	N.H.	Pa., W.	Va., W.
Colo.	Kan.	N.J.	P.R.	Wash., E.
Conn.	Ky., E.	N.Mex.	R.I.	Wash., W.
Del.	Ky., W.	N.Y., E.	S.C., E.	W.Va., N.
Dist. of Col.	La., W.	N.Y., W.	S.C., W.	W.Va., S.
Fla., N.	Me.	N.C., E.	S.D.	Wyo.
Fla., S.	Mass.	N.C., M.	Tenn., E.	C.Z.
Ga., N.	Mich., E.	N.C., W.	Tenn., M.	Guam
Ga., M.				V.I.

MATTERS

Criminal

Ala., N.	Ga., S.	Md.	Ohio, S.	Tex., S.
Ala., S.	Hawaii	Mich., W.	Okla., N.	Tex., W.
Alaska	Idaho	Miss., N.	Okla., E.	Utah
Ariz.	Ill., E.	Miss., S.	Okla., W.	Vt.
Ark., E.	Ill., S.	Mo., W.	Pa., E.	Va., E.
Ark., W.	Ind., N.	Mont.	Pa., M.	Va., W.
Calif., S.	Ind., S.	Neb.	Pa., W.	Wash., E.
Colo.	Iowa, N.	N.H.	R.I.	Wash., W.
Conn.	Iowa, S.	N.J.	S.C., E.	W.Va., N.
Del.	Kan.	N.Mex.	S.C., W.	W.Va., S.
D. C.	Ky., E.	N.C., E.	S.D.	Wyo.
Fla., N.	Ky., W.	N.C., M.	Tenn., W.	C.Z.
Ga., N.	La., W.	N.C., W.	Tex., N.	Guam
Ga., M.	Me.	N.D.	Tex., E.	

MATTERS

Civil

Ala., N.	Calif., S.	Ga., S.	Iowa, N.	Mass.
Ala., M.	Colo.	Idaho	Iowa, S.	Mich., E.
Ala., S.	Conn.	Ill., N.	Kan.	Mich., W.
Alaska	Del.	Ill., E.	Ky., W.	Miss., N.
Ariz.	Dist. of Col.	Ill., S.	La., W.	Miss., S.
Ark., E.	Fla., N.	Ind., N.	Me.	Mo., E.
Ark., W.	Ga., M.	Ind., S.	Md.	Mont.

MATTERS (cont.)

Civil

Neb.	N.C., W.	Pa., W.	Tex., E.	Wash., W.
Nev.	N.D.	R.I.	Tex., S.	W.Va., N.
N.H.	Ohio, N.	S.C., E.	Tex., W.	W.Va., S.
N.J.	Ohio, S.	S.C., W.	Utah	Wis., E.
N.Mex.	Okla., E.	S.D.	Vt.	Wyo.
N.Y., S.	Okla., W.	Tenn., M.	Va., E.	C.Z.
N.Y., W.	Pa., E.	Tenn., W.	Va., W.	Guam
N.C., M.	Pa., M.	Tex., N.	Wash., E.	V.I.

* * *

ANTITRUST DIVISION

Assistant Attorney General William H. Orrick, Jr.

Paper Company Charged With Violation of Section 7 of Clayton Act. United States v. Champion Papers Incorporated. (D. Neb.) D.J. File 60-15-110. On April 19, 1965, a civil complaint was filed against Champion Papers Incorporated, Hamilton, Ohio, seeking divestiture of the assets it acquired from Carpenter Paper Company, Whitaker Paper Company and Sample-Durick Company in violation of Section 7 of the Clayton Act.

The complaint alleges that in 1961, Champion Papers, a leading producer of pulp, paper, and paperboard, and the second largest producer of printing and writing papers, acquired all of the assets of Carpenter Paper Company of Omaha, one of the largest distributors (paper merchants) of paper and paper products in the United States.

Champion Papers is the leading manufacturer of paper for use in manufacturing envelopes and at the time of the acquisition, Carpenter owned a group of envelope manufacturers, the complaint alleges. Two years later, Champion acquired another paper merchant, Whitaker Paper Company, Cincinnati, Ohio. Both Carpenter and Whitaker purchased printing and writing papers from numerous paper producers, including Champion, which was the second largest producer of printing and writing papers in 1961, the complaint alleges.

Champion's consolidated sales for 1963 exceeded $364,000,000; Carpenter's net sales for 1959 exceeded $101,000,000, and Whitaker's sales for 1960 exceeded $48,000,000.

In November 1964, Champion also acquired Sample-Durick Company, Incorporated, Chicopee, Massachusetts, which was engaged in the manufacture and sale of folding boxes, purchasing paperboard from numerous producers, including Champion Papers. Champion is alleged to be the ninth largest producer of paper and paperboard in the United States in 1963.

The complaint charges that by these acquisitions Champion has (a) foreclosed a substantial market for printing and writing paper and paperboard consisting of the acquired companies' purchases for resale; (b) foreclosed a substantial market for envelope papers consisting of the purchases by the envelope manufacturer subsidiaries of Carpenter Paper; (c) acquired advantages as a paper merchant, as an envelope manufacturer and as a folding box manufacturer which will probably reduce the vigor of competition in the sale of printing and writing papers, envelopes and folding boxes.

The complaint asks that these acquisitions be adjudged illegal and in violation of Section 7 of the Clayton Act and that Champion Papers be required to divest itself of all assets formerly held by Carpenter Paper, by Whitaker and by Sample-Durick.

Staff: Philip L. Roache, Jr., Richard T. Colman, Joseph H. Widmar and Roy C. Cook (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General John W. Douglas

COURT OF APPEALS

ADMINISTRATIVE PROCEDURE ACT--JUDICIAL REVIEW

Challenge to Department of Defense Directive Relating to Servicemen's Insurance Held Precluded by Administrative Procedure Act and for Other Reasons. Royal Standard Ins. Co. v. McNamara (C.A. 8, No. 17,751, April 22, 1965.) DJ File 145-15-80. In this action, an insurance company which specializes in writing automobile liability insurance for servicemen challenged a Department of Defense Directive establishing uniform requirements for motor vehicle liability insurance coverage for military and civilian personnel who drive and park on military installations and for insurance companies desiring permission to solicit such insurance business on-base. In a well-reasoned opinion, the Eighth Circuit affirmed the district court's dismissal of the action and held (1) the Administrative Procedure Act's exception from review of "agency action [which] is by law committed to agency discretion" precluded court review of the Secretary's action in promulgating the Directive; (2) the Directive relates to the internal affairs of the Department of Defense and is, therefore a matter in which the court will refuse to interfere; and (3) the McCarran-Ferguson Act, 15 U.S.C. 1011-1014, which provides that "No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance * * * such act specifically relates to the business of insurance," created no rights which could form the basis for this action. The Court of Appeals also indicated its agreement with the district court's finding that the Directive was neither arbitrary, capricious, an abuse of discretion, nor otherwise not in accordance with the law.

Staff: Martin Jacobs (Civil Division)

FEDERAL TORT CLAIMS ACT

Civil Liability Provisions of Michigan "Dram Shop" Act Not Applicable to Sale of Liquor by United States on Air Force Base. Mary L. Megge, et al. v. United States (No. 15,856, C.A. 6, April 14, 1965). DJ File 157-37-219. This action was commenced by plaintiffs to recover for personal injuries and death sustained in a collision involving a car driven by an Air Force sergeant. Claimants alleged that the proximate cause of the accident was the intoxication of the sergeant, and that the United States had negligently and unlawfully sold liquor to him at the noncommissioned officers' mess at Selfridge AFB in Michigan while he was in an intoxicated condition. Plaintiffs relied upon the provisions of the Michigan Liquor Control Act which (1) make unlawful a sale by a vendor of intoxicating liquor to an intoxicated person; and (2) give a cause of action to a person injured by an intoxicated person, by reason of the unlawful selling to any such person of intoxicating liquor, against the person who, by such sale, caused or contributed to the intoxication or to such injury. The district court interpreted the Michigan statute as applying only to a sale made to an intoxicated person by a "vendor," who was defined in the Act as a person licensed by the Michigan Commission. And it held that, since the Government was

not, and was not required to be, licensed under the Michigan law for sales on the Air Force Base, the civil damage provision of the Act were not applicable.

The Court of Appeals affirmed. It held that (1) there was no similar cause of action in favor of the injured person at common law, and (2) the district court had adopted "a permissible interpretation" of the Michigan statute in ruling that the sale here made by the Government did not come within the scope of the Michigan Liquor Control Act. In view of this, the Court found it unnecessary to determine whether the Michigan statute imposed absolute liability without proof of negligence and was, therefore, outside the coverage of the Federal Tort Claims Act, as argued by the Government.

Staff: Assistant Attorney General John W. Douglas, Kathryn H. Baldwin (Civil Division)

HOUSING ACT--JUDICIAL REVIEW

Business Displaced by Urban Renewal Project Has Standing to Obtain Judicial Review of Determination of Housing and Home Finance Agency as to Amount of Relocation Payments. Merge et al. v. Sharott et al. (C.A. 3, No. 14770, February 16, 1965). DJ File 130-64-2131. Under the Housing Act of 1949, the Housing and Home Finance Agency is authorized to include in its urban renewal assistance contracts a provision for payment of relocation expenses to displaced businesses. Plaintiffs ran a business in two leased buildings located on opposite sides of a street. One building was within the boundary of an urban renewal project; the other was outside the project. The local urban renewal authority refused to pay relocation expenses for that portion of the business located outside the project, and it was stipulated that this refusal was a decision of the HHFA (which was liable under the contract with the local authority to reimburse it for relocation payments). It was also stipulated that plaintiffs' "business operation was fully integrated having a unity of use between both buildings."

Having failed to obtain reimbursement for its relocation expenses in the state condemnation proceedings, plaintiffs brought this action under Section 10 of the Administrative Procedure Act to review the HHFA decision and to obtain a declaratory judgment as to plaintiffs' entitlement to relocation expenses. The district court dismissed on the ground of lack of standing, holding that no legal right to relocation payments ran to plaintiffs. The Court of Appeals, sitting en banc, reversed.

In an opinion written for four members of the eight-member court, Judge McLaughlin held that plaintiffs were beneficiaries of the contract between HHFA and the local authority calling for relocation payments, and that, having raised a substantial question as to the merits of the denial of their claim, plaintiffs were entitled to judicial review under Section 10 of the Administrative Procedure Act. Judge McLaughlin rejected defendants' position that the provision for relocation is a subsidy statute conferring no legal rights on the intended beneficiaries, pointing out that relocation payments are in the nature of compensation rather than subsidy. Judge McLaughlin also held that plaintiffs had no remedy under state law, which did not authorize payment of relocation expenses in connection with eminent domain proceedings. Finally, Judge McLaughlin held that there was federal question jurisdiction, on the ground

that the claim "was created by Federal law and matured through the Title I contract."

Two judges concurred in the result on the sole ground that they were not certain from the present record as to the rights of the parties and that the record was accordingly insufficient to warrant dismissal or summary judgment.

Two judges dissented, on the ground that plaintiffs had an adequate remedy under state law against the local authority which they failed to pursue, and that nothing in the Housing Act gave a displaced business a right of action against the HHFA.

The statute concerning relocation payments involved in this action was 42 U.S.C. 1456(f). On September 2, 1964, this statute was repealed and a new statute passed--42 U.S.C. 1465. Subsection (d) of the new statute permits the HHFA to provide by regulation that administrative determinations as to eligibility and amount of relocation payments are final and not subject to judicial review. On January 13, 1965, the HHFA promulgated such a regulation. 30 F.R. 439. The holding in the instant case would have no applicability to urban renewal contracts covered by the new statute and regulations.

Staff: United States Attorney Gustave Diamond and Assistant United States Attorney Stanley W. Greenfield (W.D. Pa.)

LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT

Secretary of Labor May Subpoena Union Records Pursuant to Investigation Prompted by Reports of Violations of Section 501(a) of Landrum-Griffin Act, Despite Secretary's Lack of Power to Enforce Section 501(a); Secretary May Publicize Results of Investigation, Despite Pendency of Civil Action by Union Members Under Section 501(a) and Union Members' Failure to Make Demand on Union for Production of Records. International Brotherhood of Teamsters, etc. v. Wirtz (C.A.D.C., No. 18769, April 29, 1965). DJ File 156-16-117. This was an action to enforce a subpoena under Section 601 of the Labor-Management Reporting and Disclosure Act of 1959 (Landrum-Griffin Act). The subpoena was prompted by complaints of union members that union funds had been used to pay legal fees of the union's president. The union defended on the ground that the purpose of the subpoena was to uncover evidence with respect to violation of Section 501(a) of the Act (regarding fiduciary duties of union officers)--a provision which the Secretary has no power to enforce. The union also offered to comply if the Secretary made no public disclosure of the results of the investigation. The union argued that public disclosure would reveal information to union members who had brought a civil action against the union to enforce Section 501(a), and thus enable these members to bypass discovery procedures. Finally, the union argued that the union members should not be able to obtain information from the Secretary without first demanding such information from the union--such a demand being, in the union's view, a prerequisite to the civil action which union members have under Section 201(c) of the Act to compel production of records.

The Court of Appeals affirmed the district court's order enforcing the subpoena. The Court of Appeals argued that the power of the Secretary under

Section 601 to report the results of an investigation to "interested persons" should not be limited. The Court referred to legislative history establishing that one of the purposes of the Secretary's investigative power was to ensure that union members would have information concerning union affairs. The Court also rejected the union's defenses based on the civil action brought by certain union members. The Court argued that the Secretary's investigative power is independent of any action or non-action by individual union members.

Staff: Robert V. Zener (Civil Division)

OFFICIAL IMMUNITY

Feres v. United States Bars Suit by Member of Armed Service Against Another Member of Armed Service for Acts Occurring in Line of Duty. Baily v. Van Buskirk (C.A. 9, No. 19490, April 26, 1965). DJ File 145-4-1249. An Army sergeant sued an Army surgeon, alleging that defendant negligently left a suture in plaintiff's kidney during an operation, eventually necessitating removal of the kidney. The district court dismissed the complaint, relying on Feres v. United States, 340 U.S. 135, and, apparently, on Barr v. Mateo, 360 U.S. 565. On appeal, reliance on Barr v. Mateo was waived. The Court of Appeals affirmed the dismissal on the basis of Feres. Recognizing that Feres held only that the United States is immune in a military situation from suit under the Tort Claims Act, the Court nevertheless felt that immunity of the allegedly negligent individual follows as a matter of principle. The Court stated: "It is not yet within the American legal concept that one soldier may sue another for negligent acts performed in the line of duty. The idea is that an undisciplined army is a mob and he who is in it would weaken discipline if he can civilly litigate with others in the army over the performance of another man's army duty."

Staff: Carl Eardley, Second Assistant to the Assistant Attorney General and Robert V. Zener (Civil Division)

SOCIAL SECURITY ACT

Social Security Disability Claimant Not Required to Be in Insured Status on Date of Application for Benefits. Bige Mosley v. Celebrezze (C.A. 6, No. 16452, April 7, 1965). DJ File 137-30-280. This was an action to review the denial by the Secretary of Health, Education and Welfare of claimant's application for disability benefits and a period of disability under the Social Security Act. The denial was solely on the ground that claimant had failed to establish his disability during the period in which he met the special earnings requirements of the Act. However, the district court affirmed the Secretary's determination and dismissed claimant's complaint on the ground that claimant had not met the special earnings requirements, i.e., was not in an insured status, at the time he filed his application. Claimant appealed and the Secretary moved to remand the case to the district court for consideration of the merits of the Secretary's decision because the relevant sections of the Act (216(i) and 223(c), 42 U.S.C. 416(i) and 423(c)), did not require an insured status at the date of the application.

The Court of Appeals granted the Secretary's motion and remanded the case to the district court for consideration of the merits.

Staff: Harvey L. Zuckman (Civil Division)

UNITED STATES ATTORNEYS

United States Attorney May Be Authorized by Assistant Attorney General to Appear for Federal Judge Sued in Connection With Performance of Official Duties. Weiss v. Bonsal, Weiss v. Morgenthau (C.A. 2, Nos. 29376, 29377, April 9, 1965). DJ Files 145-12-880, 145-12-908. Plaintiff sued Judge Bonsal, of the Southern District of New York, alleging that Judge Bonsal was engaged in a conspiracy to deny plaintiff relief in a case pending before him. Chief Judge Ryan dismissed the complaint for plaintiff's wilful failure to submit to a pre-trial deposition. Plaintiff had asserted that the United States Attorney could not be--and had not been--authorized to appear for Judge Bonsal, and accordingly could not take plaintiff's deposition. In this connection, plaintiff also brought an action against United States Attorney Morgenthau to enjoin him from appearing for Judge Bonsal. This action was also dismissed by the district court.

The Court of Appeals held that "The Attorney General's power to authorize the United States Attorney to defend a federal judge in the circumstances here presented is clear beyond peradventure." At the Court's request, the United States Attorney submitted a letter to him from the Assistant Attorney General in charge of the Civil Division, authorizing the representation of Judge Bonsal. The Court held this letter sufficient. Accordingly, the dismissal of plaintiff's action against United States Attorney Morgenthau was affirmed. However, the Court felt that plaintiff's refusal to submit to a deposition in his action against Judge Bonsal may have been prompted by a mistaken notion that this would moot his objection to the appearance of the United States Attorney. Accordingly, the order dismissing this action was modified to provide that it would not become effective if plaintiff submitted to deposition within fifteen days of the Court's mandate.

Staff: United States Attorney Robert M. Morgenthau and Assistant United States Attorney Arthur S. Olick (S.D.N.Y.).

DISTRICT COURT

FALSE CLAIMS ACT

Bank Liable for Filing Claims on Defaulted FHA Title I Loans Approved by Ex-Bank Employee With Knowledge That Proceeds of Loans Would Not Be Used in Accordance With FHA Regulations; Government Not Required to Prove "Intent to Defraud"; Government Not Estopped by FHA Official's Advice to Bank That Claims Must Be Filed by Bank. United States v. Fox Lake State Bank and Donald Adams (No. 61 C 1498, N.D. Illinois, April 20, 1965) DJ File 130-23-2331. Adams, an employee of Fox Lake State Bank in charge of the Home Improvement Loan Department, approved a number of FHA Title I home improvement loans. Some of the proceeds of each loan were used for other than home improvement purposes. In addition, the home improvement dealers who generated the loans promised to pay, and did pay, Adams $200 for each FHA Title I loan which he approved. The borrowers' credit applications were falsified to mask their poor credit standing. Twenty-one loans defaulted, and Adams was fired from the bank. Fox Lake wished to bring a suit against its bonding company as a result of the dishonest acts of Adams, and it asked the FHA whether the loans were eligible for insurance. The FHA replied that it could not rule on the eligibility of FHA Title I loans

until formal claims were filed. Thereafter Fox Lake filed its claims, certifying that the FHA regulations had been complied with. FHA held up payment on the claims because an FBI investigation had revealed the complicity of Adams in the fraudulent scheme. Later the United States brought a False Claims Act suit against Fox Lake to recover double damages on the inadvertently paid claim plus twenty-one $2,000 forfeitures. In entering judgment in favor of the Government for the full amount sought, the Court held that (1) the knowledge and acts of Adams, the agent, were imputable to Fox Lake, the principal, even though the interests of the agent may have been adverse to those of his principal, (2) the imputability of the knowledge and acts of Adams to Fox Lake rendered inapplicable 24 C.F.R. 201.5(b) (which provides that the eligibility of a loan for FHA insurance will be preserved, notwithstanding a false credit application or misuse of the loan proceeds by the borrower, dealer, or others, if the lender promptly reports discovery thereof to the FHA), (3) the False Claims Act in its first two clauses does not require intent to defraud, (4) the Government was not estopped from bringing suit under the Act even though the FHA had advised Fox Lake that it would not rule on the eligibility of a loan unless a claim was filed. Such advice did not free Fox Lake of liability since each of its subsequent claims falsely certified that FHA regulations had been complied with, when in fact they had not been.

Staff: United States Attorney Edward V. Hanrahan and Assistant United States Attorney Thomas W. James (N.D. Ill.); John E. Archibold (Civil Division).

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CRIMINAL DIVISION

Acting Assistant Attorney General Fred M. Vinson, Jr.

GAMBLING

Enforcement of Organized Gambling Laws; Remarks of Honorable William H. Timbers. On February 8, 1965, after hearing and disposing of 49 federal gambling tax cases within the previous two-month period, Honorable William H. Timbers of the U. S. District Court for the District of Connecticut issued a statement which is called to your attention to bring to the forefront the seriousness of the problem of organized gambling and to serve as an example of how one district proposes to meet that problem. It may be that the judges and others in your area would be interested in Judge Timbers' remarks.

"Gambling," said the Chief Judge, "is the most vicious of vices, for the enormous illegal profits it produces are used to subsidize other crimes." Furthermore, he continued, such criminal activity "poses a threat to civic decency through corruption of public officials and infiltration of legitimate business." To combat this evil, Judge Timbers called for massive and determined action by local, state and federal law enforcement authorities. After assuring the public of continued vigorous and effective application of federal gambling laws, including stiff sentences and prompt convening of grand juries to hear evidence of such violations, Judge Timbers proposed that there be convened a Connecticut Conference on Law Enforcement. Participants in the Conference would include various interested state and federal officials and representatives of the public, who would consider and propose specific action to root out organized gambling through: (1) maximum utilization of present laws, manpower, and resources, and (2) enactment of new laws, acquisition of additional manpower and utilization of new resources.

MAIL FRAUD

Submission of False Information to Conventional Lending Institution in Order to Obtain Real Estate Loans. United States v. Edward Sullivan, et al. (D. Colo.). In Denver, Colorado, Edward Sullivan, Byron L. Wells and Edward A. Johnson pleaded guilty to mail fraud charges involving the submission of false and fictitious information in order to obtain $793,000 in real estate loans. Federal charges in this area usually involve the submission of false information to the Federal Housing Administration or the Veterans Administration; however, this marked one of the first cases involving conventional loans and was predicated upon a scheme to defraud a conventional lending institution.

Staff: United States Attorney Lawrence M. Henry (D. Colo.).

JENCKS ACT

Arrest Held Lawful Despite Invalidity of Warrant; Act Applicable in Section 2255 Proceeding; Statements Made by Others to Government Witnesses Not Producible Under Act; Legality of Arrest Where Officers Know Sufficient Facts Independent of Warrant. United States v. Robert Joyner White (C.A. 4, February 25, 1965). On this appeal from an order denying defendant's motion under 28 U.S.C. 2255 the Court of Appeals for the Fourth Circuit has again made it clear that

the Jencks Act does not require the Government to produce copies of statements which were made by others to the Government witness who has testified on direct examination. Three FBI agents testified at the Section 2255 proceeding about the circumstances of defendant's arrest. The Government produced all the reports which had been made by each of the three agents, but the agents denied the existence of any "field notes" embodying statements which had been given to them by informants. The Court of Appeals held that assuming such notes or other memoranda existed, they were not producible at the Section 2255 hearing even though the informants testified at the defendant's trial for bank robbery and even though the Jencks Act applies to Section 2255 proceedings.

> The statements of the informers who testified at the original trial which were made to the FBI agents were not the statements of these agents, and they therefore were not required by virtue of the Act to be furnished to the petitioner. United States v. Johnson, 337 F. 2d 180, 202 (4 Cir., 1964), cert. granted, 33 U.S.L. Week 3250 (Jan. 25, 1965) (No. 695).

This decision will prove valuable in resisting defense counsel's frequently sweeping demands for FBI reports, notes and other memoranda which do not fall within the requirements of 18 U.S.C. 3500.

The Court also followed the familiar principle that where an arrest warrant is held invalid, for example as defective under Aguilar v. Texas, 378 U.S. 108 (1964), the arrest and the search and seizure incident thereto will nevertheless be upheld if "the arresting officers had sufficient independent knowledge to justify the arrest irrespective of the warrant." See, e.g., United States v. Rabinowitz, 339 U. S. 56, 60 (1950).

> Staff: United States Attorney Claude V. Spratley, Jr.; Assistant United States Attorney T. P. Baer (E.D. Va.).

BANKS AND BANKING
18 U.S.C. 657

Embezzlement of Deposit Moneys by Branch Manager of Federal Savings and Loan Association. Robert Harry Groves v. United States (C.A. 8, April 15, 1965). D.J. File 29-42-469. Appellant was convicted of embezzling $20,000 from a Federal Savings and Loan Association, in violation of Section 657, Title 18. As Branch Manager he had proposed to a depositor that the latter deposit money with the Association to be used in purchasing deeds of trust that would mature in one, two or three years. He led the depositor to believe that, in addition to the current rate of interest, at the time of maturity the depositor would receive a bonus sufficient to make the return of his investment approximately eight to ten per cent. As these deposits were made, instead of crediting them to the depositor's account, appellant would deposit them in accounts at the association in his own name. Shortly thereafter the funds would be withdrawn from the Association and deposited in appellant's account at a commercial bank.

Appellant's contention on appeal was that, in receiving and dealing with the depositor's money, he was acting as the depositor's agent, not as an agent of the association. Therefore, he argued the funds in question at no time

became part of the "moneys, funds and credits" of the association and, thus, could not have been embezzled from it, in violation of any Federal law. The Court disposed of this argument by pointing out that the depositor himself considered that he was dealing with the association through appellant, and not with appellant personally.

In addition, the Court supported its decision on grounds of estoppel, i.e. that an agent who converts funds to his own use may not deny that his principal owns the funds when the funds came into the hands of the agent solely by virtue of the special trust and confidence reposed in him because of his position. Defendant's conviction and sentence to three years' imprisonment were upheld.

The Eighth Circuit's decision is supported by a substantial body of case law. A number of the decisions cited rest on the finding that the defendant was the bank's agent, and thus his receipt of the money was tantamount to receipt by the bank. Geiger v. United States, 162 Fed. 844 (C.A. 4, 1908); Spencer v. United States, 169 Fed. 562 (C.A. 8, 1909); Wherrell v. United States, 18 F. 2d 532 (C.A. 8, 1927). Others spell out the estoppel argument, that, "as between the principal and the agent, the agent will not be heard to dispute the ownership of embezzled funds." United States v. United States Brokerage & Trading Co., 262 Fed. 459 (S.D. N.Y. 1919); United States v. Jenks, 264 Fed. 697 (E.D. Pa. 1920).

Staff: United States Attorney Richard D. Fitzgibbon, Jr. (E.D. Mo.).

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INTERNAL SECURITY DIVISION

Assistant Attorney General J. Walter Yeagley

Subversive Activities Control Act of 1950, Registration of Communist-Front Organizations. American Committee for Protection of Foreign Born v. Subversive Activities Control Board. (U.S. Supreme Court, No. 44, October Term, 1964) DJ. File #146-28-411. The Court of Appeals for the District of Columbia Circuit had affirmed an order of the Subversive Activities Control Board, requiring the American Committee for Protection of Foreign Born to register as a Communist-front organization under Section 7 of the Subversive Activities Control Act, 50 U.S.C. 786 (1958 edition). The Supreme Court on April 26, 1965 vacated this judgment and remanded the case for further proceedings consistent with the Court's opinion. Under the statute, a determination that an organization is a Communist front must rest on findings that it is (a) substantially directed, dominated or controlled by a Communist-action organization, and (b) primarily operated for the purpose of giving aid and support to a Communist-action organization. The Board's findings with respect to the American Committee were based on evidence taken at a hearing concluded in 1955, and the evidence was based largely on the activities of Abner Green, a Communist Party member assigned in 1941 to be the organization's executive director. Green died in 1959. The Board's order was entered June 27, 1960; but no findings were made after Green's death. The Supreme Court felt that in these circumstances the record should be brought up to date and that reasonably current aid and control must be established to justify a registration order, since the order operates in futuro. The Court indicated that the decision in Communist Party v. Subversive Activities Control Board, 367 U.S. 1, on the Communist Party provisions of the Act, did not necessarily foreclose the Committee's constitutional questions with respect to the Communist-front provisions; but the Court did not reach those questions because the Committee's current status is not clear on the record. A dissenting opinion, written by Justice Douglas, with Justices Black and Harlan concurring, expressed the opinion that the case was alive and that the record was by no means stale and the Court should face up to the serious issues presented. Justice Black wrote a separate dissenting opinion finding the statute unconstitutional as violative of the First Amendment.

Staff: Bruce J. Terris, Assistant to the Solicitor General, argued the case; with him on the brief were Solicitor General Cox, Assistant Attorney General Yeagley, Kevin T. Maroney, George B. Searls, and Doris H. Spangenburg, (Internal Security)

Subversive Activities Control Act of 1950, Registration of Communist-Front Organizations. Veterans of the Abraham Lincoln Brigade v. Subversive Activities Control Board. (U.S. Supreme Court, No. 65, October Term, 1964). D.J. File #146-7-51-864. The Veterans of the Abraham Lincoln Brigade was ordered by the Subversive Activities Control Board to register as a Communist-front organization and the Court of Appeals for the District of Columbia Circuit affirmed. On the same reasoning as in the American Committee case, decided

substantial and consistent to support the conclusion that Congress implicitly approved the practice of denying passports in such instance. The court pointed out that Zemel's passport was not validated for travel to Cuba, not because of any characteristic peculiar to him, but because of foreign policy considerations affecting all citizens.

With respect to the constitutional issues, the Court recognized that the right to travel is a part of "liberty" of which the citizen cannot be deprived without due process under the Fifth Amendment; however, the extent of the Governmental restriction imposed, as well as the extent of the necessity for the restriction, must be considered. The United States and other members of the Organization of American States have determined that travel between Cuba and other countries of the Western Hemisphere is an important element in the spreading of subversion, and have taken measures to discourage such travel. Also, in the early days of the Castro regime, United States citizens were arrested and imprisoned without charges. Such incidents could involve this nation in dangerous international incidents, since the President by statute is obligated to afford certain protections to citizens travelling abroad in such a case. Further, the restriction challenged in this case "is supported by the weightiest considerations of national security", as pointed up by the Cuban missile crisis in October, 1962.

The Court refused to accept Zemel's argument that a First Amendment right was involved. The Court pointed out that Zemel's First Amendment arguments differed from those in Kent v. Dulles, supra, and Aptheker v. Secretary of State, 378 U.S. 500, because it does not result from any expression or association and he has not been forced to choose between membership in an organization and freedom to travel. The Court did not credit his argument that he had a First Amendment right to unimpaired flow of information by travelling abroad to acquaint himself first hand with the effects abroad of our Government's policies, and with conditions abroad which might affect such policies. The Court felt that to the extent that the Secretary's refusal to validate passports for Cuba is an inhibition, it is an "inhibition of action". Also, the Court rejected Zemel's contention that the 1926 Act does not contain sufficiently defined standards for the formation of travel controls by the Executive, in view of the changeable and explosive nature of contemporary international relations and the fact that the Executive is immediately privy to information which cannot be swiftly presented to, accepted by, and acted upon by Congress.

The Court held the district court properly dismissed the request for an injunction against interference with such travel by the Secretary and by the Attorney General, and refused to reach the issue of criminal liability under Section 215(b) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1185(b), 1958 edition.

Staff: Solicitor General Cox argued the case; with him on the brief were Assistant Attorney General Yeagley, Kevin T. Maroney, and Lee B. Anderson (Internal Security)

the same day, the Supreme Court on April 26, 1965 vacated and remanded this case to the Court of Appeals for further proceedings. The Supreme Court pointed out that in this case the order to register was based almost exclusively on events before 1950 and very largely on events before 1940, and the hearings were concluded in November, 1954. The Court was of the opinion that "on so stale a record we do not think it is either necessary or appropriate that we decide the serious constitutional questions raised by the order".

As in the American Committee case, a dissenting opinion was written by Justice Douglas, with Justices Black and Harlan concurring, urging that the record was sufficient for the Court to reach the important constitutional issues involved.

Staff: The case was argued by Bruce J. Terris, Assistant to the Solicitor General, and Kevin T. Maroney. With them on the brief were Solicitor General Cox, Assistant Attorney General Yeagley, and Robert L. Keuch (Internal Security)

Geographical Restrictions on Passports. (Passport Act of 1926 and Immigration and Nationality Act of 1952, Section 215). Zemel v. Rusk (U.S. Supreme Court, No. 86, October Term, 1964) D.J. File #146-1-14-432. On May 3, 1965, the Supreme Court handed down its decision, affirming the judgment of the district court, and holding that the Passport Act of 1926 authorizes the Secretary of State to refuse to validate passports of U.S. citizens for travel to Cuba, and that the exercise of such authority is constitutionally permissible. The Chief Justice wrote the opinion for the Court. Dissenting opinions were written by Justice Douglas, Justice Goldberg concurring; a separate dissent by Justice Black, and another by Justice Goldberg.

The case was on appeal from a three-judge court, which by a divided vote granted the Secretary of State's motion for summary judgment, and dismissed the action against the Attorney General which sought to enjoin enforcement of the Passport Act and the Immigration and Nationality Act of 1952. The Government, in addition to urging affirmance, asserted as an alternate position that this was not a proper case for a three-judge court and the Supreme Court should not take jurisdiction. However, the Court held that the three-judge court was proper even though Zemel's argument was two-pronged, i.e., either the Secretary's action was not authorized by Congress, or the statute granting such authority is unconstitutional. The Court referred to previous rules that the litigant did not abandon his constitutional arguments in order to obtain a three-judge court, feeling that it could not brush aside Zemel's contention that the 1926 and 1952 Acts contained no standards and are therefore an invalid delegation of legislative power.

Reaching the merits, the Court, giving consideration to the legislative history of the Act and its predecessors and to the history of Executive imposition of area restrictions, held that the Passport Act authorized the Secretary of State to impose geographical restrictions on passports. The Court distinguished Kent v. Bulles, 357 U.S. 116, involving whether a citizen could be denied a passport because of his particular beliefs or associations, in which case the Court could not find an administrative practice sufficiently

Conspiracy to Defraud United States: Sufficiency of Evidence; Declarations of Co-Conspirators; Business Records; Grand Jury Minutes; 18 U.S.C. 3500. Dennis, et al. v. United States, (C.A. 10, April 26, 1965). D.J. File 146-7-5320. On November 16, 1956, 14 officers, former officers, and employees of the International Union of Mine, Mill and Smelter Workers were indicted for conspiracy to defraud the United States by filing with the National Labor Relations Board false non-Communist affidavits under the Taft-Hartley Act. 4 U.S. Attorneys' Bulletin 777. Three defendants pleaded nolo before trial, the district judge entered judgments of not guilty in favor of two, and the jury in December, 1959, found the remaining nine defendants guilty. On appeal the Court of Appeals directed dismissal of the indictment as against two defendants, and remanded for a new trial as against the remaining seven defendants because of the admission of prejudicial hearsay evidence. 10 U.S. Attorneys' Bulletin, p. 179; 302 F(2d) 5.

On the new trial the jury convicted six of the defendants and returned a verdict of not guilty as to defendant Van Camp September 20, 1963. 11 U.S. Attorneys' Bulletin, p. 528; p. 586.

On the second appeal the Court of Appeals affirmed the convictions. It held that the evidence at the second trial, although different in some respects from that at the first, was not materially different or less convincing. It held that the Court at the conclusion of the Government's case did not err when it instructed the jury that, once it found a conspiracy, it could consider against all defendants it found to be members the declarations of co-conspirators made in furtherance thereof, although it had previously instructed the jury that statements by one defendant were not binding on other defendants who were not present when the declarations were made. Such declarations and admissions of co-conspirators, the Court held, were admissible under an exception to the hearsay rule and were not subject to the requirement of corroboration set out in Opper v. United States, 348 U.S. 84.

The Tenth Circuit adhered to its position that it is not mandatory that the trial court inspect in camera the testimony of prosecution witnesses, at least in a case where the transcripts of testimony in other trials and hearings showed no manifest inconsistencies, although it warned that it might have been "safer" to examine the minutes.

One defendant, Dichter, had offered his expense vouchers submitted to the Union to prove an alibi. The Court of Appeals held that the exclusion of the evidence by the trial judge was not error, since the dates in question were not vital to the Government's case.

The Court also approved the admission in evidence of the testimony of a prosecution witness who had died since the first trial. It pointed out that the defense at the first trial had not examined the witness on voir dire to determine whether he had given to Government representatives any "statements" producible under 18 U.S.C. 3500, and that the voir dire at the second trial of attorneys and investigators showed that none of the documents produced at the second trial (for in camera inspection), but not at the first were such "statements". With respect to the general subject of production under Section 3500 the Court held that the findings of the trial judge were not clearly erroneous, citing Campbell v. United States, 373 U.S. 487.

The Court also held that the trial court's instructions as to the testimony of former members of the Communist Party and of "informers" sufficiently protected the defendants, even assuming that any of such Government witnesses could be considered accomplices.

Staff: The appeal was argued by Donald P. MacDonald, Assistant United States Attorney (Colo.). With him on the brief were United States Attorney Lawrence M. Henry and George B. Searls, (Internal Security).

Contempt of Congress Convictions; Authorization of Issuance of Congressional Subpoenas. 2 U.S.C. 192. Herman Liveright v. United States, D.J. File #146-1-32-204; William Price v. United States, D.J. File #146-1-51-6146 (C.A. D.C., April 29, 1965). Appellants were convicted of unlawful refusal to answer questions propounded to them in January, 1956 by the Internal Security Subcommittee of the Senate Judiciary Committee. Their prior convictions on the same charge were reversed for failure of the first indictments to allege the subject under inquiry at the time the questions were asked, Russell v. United States, 369 U.S. 749.

These contempt citations grew out of the same hearings that were considered by the Court of Appeals in Shelton v. United States, 327 F. 2d 601. In that case the Court had reversed the contempt conviction of another witness because the subpoenas under which all the witnesses appeared at the Subcommittee hearing were, according to the terms of the Subcommittee's charter, (S. Res. 366, 81st Congress, 2nd Session) invalidly issued, because the decision to issue them was made not by the Subcommittee, or, by delegation, the chairman, but de facto by the Subcommittee counsel alone. The Government attempted to distinguish the present cases from the ruling in Shelton by arguing that the appellants here did not object specifically to their being called before the Subcommittee as the witness Shelton had done, and that they thus waived any objections to the subpoenas they might have had by failing to raise the objection before the Subcommittee. The Court refused to accept this argument and reversed the convictions in both cases, relying on the authority of the Supreme Court in Yellin v. United States, 374 U.S. 109. The Court pointed out that there was no way in which a witness could be aware of the improper issuance of his subpoena when he appeared before the Subcommittee and that therefore he could not be held to have waived his right to a valid subpoena by mere silence.

Staff: Kevin T. Maroney and Robert L. Keuch argued the cases. With them on the briefs were Carol M. Burke and Doris H. Spangenburg (Internal Security)

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LANDS DIVISION

Acting Assistant Attorney General J. Edward Williams

Outer Continental Shelf: Right of United States to Enjoin Trespasses and Unauthorized Activities Thereon. United States v. Louis M. Ray, et al. (S.D. Fla.) D.J. File 90-1-10-666. Defendants applied for a permit from the Corps of Engineers to build an artificial island to be used for commercial purposes on Triumph Reef, a submarine structure located approximately three and one-half miles off the coast of Florida in the vicinity of Key Largo. Despite refusal of the Corps to issue a permit, defendants proceeded to erect caissons on the reef and to conduct dredging and filling operations. The United States filed a complaint for injunction alleging that defendants' conduct was unlawful because (1) it was being carried on without authorization as required by 33 U.S.C. 403 and extended to the outer continental shelf by 43 U.S.C. 1333(f), and (2) it constituted a trespass upon property subject to the exclusive jurisdiction, control, and power of disposition of the United States under section 3 of the Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1332.

Before the Government's application for a preliminary injunction was heard, defendants extended their operations to Long Reef, a living coral reef in the same vicinity of great interest as a marine phenomenon which has been recommended for inclusion in a proposed national monument.

Noting that Triumph and Long Reefs are part of a natural wonderland which serves as a breeding, feeding and shelter area for countless species of fish and sea life unique to the area and that defendants' activities are wholly incompatible with nature's, the District Court granted the Government's application for a preliminary injunction to stop defendants' trespass and operations on the reefs.

Staff: United States Attorney William A. Meadows, Jr.;
Assistant United States Attorney Aaron A. Foosaner
(S.D. Fla.)

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TAX DIVISION

Assistant Attorney General Louis F. Oberdorfer

CIVIL TAX MATTERS
District Court Decisions

Jurisdiction; District Court Lacks Jurisdiction of Action Instituted by Judgment Creditor of Taxpayer to Recover From United States Money Collected From Taxpayer. Jules Chopak v. United States. (E.D. N.Y., November 4, 1964). (CCH 65-1 U.S.T.C. ¶9210). A judgment creditor of a taxpayer instituted this suit against the United States seeking to recover money collected from the taxpayer by the Government and applied to the taxpayer's unpaid tax indebtedness. The judgment creditor based his claim on the fact that he had secured a judgment against the taxpayer and had had it docketed, thereby becoming a lienor entitled to priority over the tax lien of the United States securing the taxpayer's indebtedness.

In granting the motion of the United States to dismiss the complaint for lack of jurisdiction, the Court stated that it was not necessary to determine whether the judgment creditor had a lien, and, if he did, whether it primed the Government's lien, because the United States had not consented to be sued upon a cause of action such as pleaded here by the judgment creditor.

Staff: United States Attorney Joseph P. Hoey; Assistant United States Attorney Irwin Smith (E.D. N.Y.); and Charles A. Simmons (Tax Div.).

Internal Revenue Summons; Attorney For Related Taxpayers Required to Produce Books and Records in His Possession Concerning Financial Activities of Taxpayers and Controlled Corporations. United States v. J. A. Donnelley. (D. Nev., February 2, 1965). (CCH 65-1 U.S.T.C. ¶9248). In this proceeding to require counsel for two taxpayers to produce records dealing with the taxpayers' inter-connected dealings with each other and with three controlled corporations, the Court made a detailed survey of their financial activities over a number of years, and concluded that their dealings constituted an involved "Tinkers to Evers to Chance" financial baseball and that these dealings ought to be fully disclosed in order to determine the correctness of the taxpayers' returns. The Court indicated that the reasons why business was done in the manner found could not be understood, and ordered the enforcement of the administrative summons to bring the facts to light.

The Court agreed with the Government that the records sought were material and relevant, and it rejected the contentions that the summons constituted a general warrant, that it violated the Fourth Amendment, that the statute of limitations had run, and that the corporations involved could claim the Fifth Amendment privilege against self-incrimination. The Court

further held that the attorney-client privilege would be determined after an in camera examination of the records for which such privilege was claimed.

Staff: United States Attorney John W. Bonner; and Assistant United States Attorney Michael A. DeFoe (D. Nev.).

State Tax Commission

Governmental Immunity; Statutory Exemption From Payment of Possessory Interest Taxes Accorded State Employees Held Applicable to Similarly Situated Federal Employees. Edwin B. Abbott, et al. v. The Assessor of Grant County, Oregon. (Oregon State Tax Commission, March 25, 1965). The Assessor of Grant County, Oregon, pursuant to an Oregon statute which provides for the taxation of private interests in federally owned property, assessed possessory interest taxes against federal employees occupying Government owned dwellings incident to their employment. The Government, representing its employees, protested the assessments on the ground that the statute under which they were made invidiously discriminated against the United States and those with whom it deals in that the Oregon statute which provides for the taxation of private interests in state-owned property, specifically exempted from its provisions state employees occupying state-owned property incident to their employment.

In striking the assessments, the Oregon State Tax Commission concluded that the Oregon statute relating to state-owned property dictated the limits in taxing both state and federal property occupied by nonexempt taxpayers and that the statutory exemption given state employees extended by implication to federal employees.

By so construing its statutes, the Tax Commission avoided the necessity of ruling on the constitutionality of the discriminatory aspects of the statute as written as well as the validity of possessory interest taxes as applied to federal employees occupying federal property in connection with their employment.

Staff: United States Attorney Sidney I. Lezak; Assistant United States Attorney Charles H. Habernigg; and Herbert N. Goodwin (Tax Div.).

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