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

February 18, 1966

United States
DEPARTMENT OF JUSTICE

Vol. 14 No. 4

UNITED STATES ATTORNEYS
BULLETIN

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CASELOAD REDUCTION

The Executive Office for United States Attorneys congratulates the following districts which reduced their caseloads during the first six months of fiscal 1966:

Civil and Criminal Caseload Reduced

Arkansas, W.
Illinois, E.
Maryland
Mississippi, N.
Missouri, E.
Nebraska
New York, N.
New York, W.
North Dakota
Pennsylvania, M.
South Carolina, E.
Tennessee, E.
Tennessee, M.
Wisconsin, W.
Canal Zone

Criminal Caseload Reduced

Florida, M.
Hawaii
Iowa, N.
Iowa, S.
Louisiana, E.
Louisiana, W.
Maine
Massachusetts
Minnesota
Missouri, W.
Montana
Nevada
North Carolina, E.
North Carolina, M.
Oklahoma, W.
Pennsylvania, E.
Puerto Rico
Rhode Island
Texas, N.
Virginia, E.
Washington, E.
Wyoming
Virgin Islands

Civil Caseload Reduced

Alabama, N.
Arizona
California, S.
District of Columbia
Georgia, M.
Illinois, N.
Indiana, S.
Kansas
Michigan, W.
New York, E.
Ohio, N.
Oklahoma, N.
Oklahoma, E.
South Carolina, W.
Tennessee, W.
Vermont
Virginia, W.
West Virginia, N.
West Virginia, S.
Wisconsin, E.

Reduction of 10% or More

Criminal

Maine	64.0%	Montana	28.5%	North Dakota	17.1%
Oklahoma, W.	63.7	Virginia, E.	27.3	New York, N.	15.9
Arkansas, W.	55.1	Wisconsin, W.	26.1	Mississippi, N.	12.8
Iowa, N.	49.5	Iowa, S.	25.9	Tennessee, E.	10.4
Wyoming	46.1	Canal Zone	25.0	Nevada	10.3
Minnesota	31.4	Pennsylvania, M.	24.7		
Nebraska	30.3	Virgin Islands	18.7		

Reduction of 10% or More (Cont'd)

Civil

Tennessee, W.	57.4%	Nebraska	16.8%	Arizona	11.9%
Illinois, N.	23.5	Canal Zone	16.6	Virginia, W.	11.3
Georgia, M.	21.8	West Virginia, S.	14.8	Ohio, N.	10.8
South Carolina, W.	21.3	Missouri, E.	14.0		
Oklahoma, N.	19.3	Alabama, N.	12.5		

DISTRICTS IN CURRENT STATUS

The following districts are congratulated on their record in maintaining the workload in a current status during the first six months of fiscal 1966.

Perfect Score

Alabama, S.	Georgia, M.	Oklahoma, N.	Tennessee, W.
Alaska	Guam	Oklahoma, E.	Texas, N.
Arkansas, E.	Indiana, S.	Oklahoma, W.	Texas, W.
Colorado	Montana	Pennsylvania, W.	West Virginia, N.
Florida, N.	New Hampshire	South Carolina, E.	

Over 90%

Alabama, N.	Kentucky, W.	New Jersey	Texas, S.
Arizona	Louisiana, W.	North Carolina, M.	Utah
Arkansas, W.	Maine	Pennsylvania, M.	Washington, E.
California, S.	Michigan, W.	Rhode Island	Wyoming
Indiana, N.	Mississippi, N.	Texas, E.	

MONTHLY TOTALS

During December the pending caseload rose slightly over the month before - 79 cases. Although the increase was small, it marked the fourth time in the first six months of fiscal 1966 that the caseload has risen. During this six months the number of cases pending has risen by 1,410. The reason for the increase can be seen in the analysis of case filings and terminations set out below. The number of cases filed has exceeded the number terminated in every month except one. Unless the rate of terminations increases sharply during the remaining six months of the fiscal year, the success of the Deputy Attorney General's drive to reduce the caseload appears doubtful.

	First 6 Months Fiscal Year 1965	First 6 Months Fiscal Year 1966	Increase or Decrease Number	%
Filed				
Criminal	16,136	15,795	- 341	- 2.11

	First 6 Months Fiscal Year 1965	First 6 Months Fiscal Year 1966	Increase or Decrease Number	%
Filed (Cont'd)				
Civil	13,571	14,088	+ 517	+ 3.80
Total	29,707	29,883	+ 176	+ .59
Terminated				
Criminal	14,734	14,891	+ 157	+ 1.06
Civil	12,859	13,264	+ 405	+ 3.14
Total	27,593	28,155	+ 562	+ 2.03
Pending				
Criminal	11,484	12,012	+ 528	+ 4.59
Civil	23,928	24,752	+ 824	+ 3.44
Total	35,412	36,764	+ 1,352	+ 3.81

During December, total terminations rose slightly over the preceding month, but were exceeded by total filings. Except in October, cases filed have been higher each month than cases terminated. During the six-month period, 1,728 more cases have been filed than have been terminated - a gap of 6.1 per cent. Civil cases comprise two-thirds of the caseload, yet civil terminations have dropped by 500 cases since October.

	Filed			Terminated		
	Crim.	Civil	Total	Crim.	Civil	Total
July	2,296	2,465	4,761	2,212	2,194	4,406
Aug.	2,585	2,555	5,140	1,870	2,245	4,115
Sept.	3,162	2,103	5,265	2,448	2,258	4,706
Oct.	2,702	2,415	5,117	3,078	2,507	5,585
Nov.	2,516	2,240	4,756	2,595	2,032	4,627
Dec.	2,534	2,310	4,844	2,688	2,028	4,716

For the month of December, 1965, United States Attorneys reported collections of $5,619,192. This brings the total for the first six months of this fiscal year to $33,247,961. This is $6,016,659 or 15.32 per cent less than $39,264,620 collected in the first six months of fiscal year 1965.

During December $8,685,211 was saved in 104 suits in which the government as defendant was sued for $9,091,677. 45 of them involving $1,665,531 were closed by compromise amounting to $265,237 and 20 of them involving $534,173 were closed by judgments amounting to $141,229. The remaining 39 suits involving

$6,891,973 were won by the government. The total saved for the first six months of the current fiscal year was $86,079,224 and is an increase of $20,448,858 or 31.15 per cent over the $65,630,366 saved during the first six months of fiscal year 1965.

The cost of operating United States Attorneys' Offices for the first six months of fiscal year 1966 amounted to $9,777,223 as compared to $9,422,853 for the first six months of fiscal year 1965.

DISTRICTS IN CURRENT STATUS

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

CASES

Criminal

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

CASES

Civil

Ala., N.	Dist. of Col.	Ind., S.	Miss., S.	N.C., E.
Ala., M.	Fla., N.	Iowa, S.	Mo., E.	N.C., M.
Ala., S.	Fla., S.	Kansas	Mo., W.	N.C., W.
Alaska	Ga., N.	Ky., E.	Mont.	N.D.
Ariz.	Ga., M.	La., W.	Neb.	Ohio, S.
Ark., E.	Ga., S.	Me.	Nev.	Okla., N.
Ark., W.	Hawaii	Mass.	N.H.	Okla., E.
Colo.	Ill., N.	Mich., W.	N.J.	Okla., W.
Conn.	Ill., E.	Minn.	N.Mex.	Ore.
Del.	Ind., N.	Miss., N.	N.Y., E.	Pa., E.

CASES (Cont'd)

Civil (Cont'd)

Pa., M.	S.C., W.	Tex., E.	Wash., E.	C.Z.
Pa., W.	S.D.	Tex., W.	Wash., W.	Guam
P.R.	Tenn., E.	Utah	W.Va., N.	V.I.
R.I.	Tenn., W.	Va., E.	W.Va., S.	
S.C., E.	Tex., N.	Va., W.	Wyo.	

MATTERS

Criminal

Ala., N.	Idaho	Nev.	Pa., M.	Utah
Ala., M.	Ind., N.	N.H.	Pa., W.	Vt.
Ala., S.	Ind., S.	N.J.	S.C., E.	W.Va., N.
Alaska	Iowa, N.	N.C., E.	S.C., W.	W.Va., S.
Ark., E.	Ky., W.	N.C., M.	S.D.	Wis., W.
Ark., W.	La., W.	N.C., W.	Tenn., E.	Wyo.
Calif., S.	Mich., W.	N.D.	Tenn., M.	C.Z.
Colo.	Miss., N.	Ohio, N.	Tenn., W.	Guam
Fla., N.	Miss., S.	Okla., N.	Tex., N.	
Ga., N.	Mo., W.	Okla., E.	Tex., E.	
Ga., M.	Mont.	Okla., W.	Tex., S.	
Ga., S.	Neb.	Pa., E.	Tex., W.	

MATTERS

Civil

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

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ADMINISTRATIVE DIVISION

Acting Assistant Attorney General for Administration John W. Adler

Psychiatric Examinations - Hospitalization

Many districts fail to forward Forms 25B for hospitalization expenses incident to psychiatric examinations. (See the United States Attorneys' Manual, Title 8, page 102, item (3), and Department Memo 355, page 3, item 11, A.) Apparently, many United States Attorneys and United States Judges are not aware that government hospitals, including the Springfield Medical Center, charge us at the daily rates established by the Bureau of the Budget. Many commitments at the Springfield Medical Center are for periods of 90 days or more, which, at the rate of $27 per day, cost our witness appropriation over $2400 per prisoner to determine ability to stand trial. These costs increased greatly in the past year.

The hospitals complain that they are overcrowded and understaffed, and that these factors account for some of the longer periods for examinations. We are also disturbed over the number of prisoners who, after being returned from Springfield, require another examination by an independent doctor. It would seem that one or two private examinations in the first instance, instead of a lengthy hospitalization, would resolve many problems, expedite the trials, and be more economical. It is of interest to note that according to statistics covering the period April to September, 1965, 75 districts out of 91 have reported psychiatric examinations under 18 U.S.C. 4244; of these 75, there are 25 districts that have conducted all of their examinations on an out-patient basis. A leading psychiatrist of the Bureau of Prisons is reported to claim that 80 per cent of the prisoners committed could be examined on an out-patient basis. We note that when examinations cannot be performed in the jails, many districts make special arrangements with private doctors for examination at the doctor's office at times when other patients are not scheduled, in which case deputies accompany the prisoner to and from the office. We are compiling a record of psychiatric examinations from the information furnished on all Forms 25B and the court orders, and periodically this information is furnished the Intra-Departmental Committee to revise Chapter 313, Title 18, for its special study on this subject. For this reason, we depend on you for complete information on the Forms 25B.

When instructions were placed in the United States Attorneys' Manual, Title 8, page 128.4, encouraging the use of hospitals for psychiatric examinations, this office was billed for very few examinations, most of which were performed on an out-patient basis. We are now being billed in all instances, and are faced with extremely expensive psychiatric examinations. Furthermore, these lengthy commitments delay the prisoners' trials.

We doubt that many of the courts realize this situation. For this reason, whenever a request is made for commitment for psychiatric examinations, United States Attorneys are requested to confer with the judge in an effort to accomplish the examination in a minimum of time and at minimum cost. The following is a guide for your staff <u>if hospitalization is necessary</u>:

1. Forward a Form 25B (always showing the violation involved) in each instance in which a psychiatric examination is ordered pursuant to 18 U.S.C. 4244. The item "Estimated total expense" of hospitalization on the Forms 25B can be omitted if this is not known; the Department will complete this information. Explain why it is not feasible to have examinations made by private doctors and why commitment is necessary.

2. Make periodic follow-ups of persons committed as to progress of examinations. Request the hospital to notify the Marshal at the conclusion of each examination where the prisoner is found to be competent, so there is no delay in picking up the prisoner.

3. Examinations under 18 U.S.C. 4244 are to determine competency to stand trial and should not involve full diagnostic or therapeutic evaluation. It is the responsibility of the United States Attorney to assist the court in clarifying the orders. When the judge orders commitment for examination, please emphasize completion of the examination as soon as possible. Avoid the statement "to be hospitalized for ___ days;" instead, it is suggested you use "to be examined as promptly as possible but in no case for a period in excess of ___ days." Many court orders omit identification of the ordering party and do not clearly state the purpose of the examination; reference to 18 U.S.C. 4244 is not sufficient.

Please review the instructions in Department Memo 355. Payment for psychiatric examinations is still handled in accordance with that Memo, notwithstanding the passage of the Criminal Justice Act.

We shall welcome any suggestions or comments that will help the Department resolve problems under 18 U.S.C. 4244.

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ANTITRUST DIVISION

Assistant Attorney General Donald F. Turner

Defendant's Request for Pre-trial Disclosure of Certain Grand Jury Transcripts Denied by District Court. United States v. Max Factor & Co. (W.D. Mo.) D.J. File 60-21-113. On January 21, 1966, Judge John W. Oliver filed a memorandum and order in this case denying defendant's request for pre-trial disclosure of certain grand jury transcripts. The Court's order further established a procedure for semi-disclosure of grand jury transcripts if and when the Government "makes use of" any given witness' grand jury testimony during the taking of the scheduled pre-trial depositions. The denial of disclosure was entered without prejudice to defendant's filing of similar motions after the completion of a presently scheduled deposition program, if the requisite showing of a "particular compelling need" can then be established.

During the course of pre-trial in this civil prosecution charging a nation-wide conspiracy and combination to fix retail cosmetics prices and eliminate competition, the Government and the defendant were ordered to designate all prospective trial witnesses, to submit summaries to the court of said witnesses' expected testimony, and to exchange proposed documentary exhibits. Some of the proposed witness designees had previously appeared before 1961-1963 Western District of Missouri grand juries investigating, among other things, the business practices of cosmetic manufacturers. They had testified about the business of Max Factor & Co. to some extent. Recently, the defendant Max Factor & Co. argued that in order to insure that information which it had received in 1965 interviews with its scheduled defense witnesses was accurate and complete, to test the accuracy and truth of proposed Government witnesses testimonial summaries, to determine the necessity and scope of depositions of plaintiff's witnesses, to prepare for possible Government use of the transcript in deposition taking for impeachment and generally to prepare for trial on an "equal footing" with Government counsel, its motion under Federal Civil Rule 34 should be granted allowing it to inspect, use, and copy the Max Factor business related portions of the transcripts of two designated defense witnesses, 10 plaintiff's witnesses, and all such prospective witnesses who similarly testified before the grand jury that might be designated in the future by either party.

Defendant argued that under the circumstances of this case the above mentioned needs fulfill the "particular compelling needs" test set down by the Supreme Court in United States v. Procter & Gamble Co., 356 U.S. 677 (1958) and Pittsburgh Plate Glass Co. v. United States, 360 U.S. 395 (1959). The relevant circumstances cited by defendant as obviating need for any further secrecy included the following:

1. There were no indictments of any cosmetic manufacturers brought by the Kansas City grand juries and no criminal antitrust proceeding was pending against Max Factor, arguing that the broad discovery policies of the Federal Rules of Civil Procedure should then dictate disclosure.

2. The grand jury transcripts in question were always available to Government counsel in preparing the instant civil case, arguing a need for fairness and "equal footing."

3. The pre-trial discovery of summaries of expected testimony of plaintiff's witnesses contained certain grand jury testimony and were filed with the Court, disclosed to defendant and published in the trade press, arguing that the Government itself had thereby lifted the secrecy veil.

4. There was an affirmative consent to disclosure of his transcript to defendant by one of the defense witnesses, an employee of the defendant, and consents could be implied and were not rebutted by the Government as to the other witnesses whose transcripts were being sought, arguing that the recent United States v. Badger Paper Mills, Inc., 243 F. Supp. 443 (E.D. Wis., 1965) case showed that such consents "waived" the secrecy privilege accorded to grand jury transcripts.

The Government countered defendant's arguments generally by asserting that Max Factor's request was one for "wholesale" discovery of grand jury transcripts based only on an indicated need of mere convenience in the discovery process and preparation of its case, and as such did not sustain the burden of overcoming the "presumption" of secrecy. In particular, the following were argued:

1. The rule of grand jury secrecy is as applicable to civil litigation as to criminal.

2. A "particular compelling need" can ordinarily only be shown after use of grand jury transcripts at trial or, in view of the "Philadelphia electrical cases" disclosures, at a proceeding presided over by the trial judge, and therefore Max Factor's request was premature.

3. Disclosure when warranted at all cannot be "wholesale," but rather is to be limited to pertinent portions of a named individual's testimony that bears on essential subject matter shown to be in dispute because of specifically demonstrated recollection failure or inconsistencies, and Max Factor made no such showing.

4. A witness' "consent" to disclosure of his grand jury testimony is not a meaningful criteria for determining a "particularized need" due to possible business reprisals and intimidation problems in antitrust litigation, and because of this the institution of a consent procedure would threaten both the grand jury process itself and the Attorney General's enforcement of the antitrust laws.

5. Secrecy must be maintained about the grand jury transcripts to prevent subornation of perjury and to aid the court in ascertaining the truth.

6. Defendant's claim made for "equal footing" in preparation of its civil defense is without merit as Max Factor enjoys both the benefit of exceptionally detailed pre-trial Government disclosure via the exchange of proposed witness testimonial summaries and documents, and the real discovery advantages of its day to day business contacts with all of the witnesses whose transcripts were requested, at least two of whom concededly were "debriefed" by defendant as to their respective grand jury testimony.

Judge Oliver, relying heavily on guidelines established in the Philadelphia electrical cases, agreed with the Government that defendant's request was premature and too broad. He stated that it could be considered "limited" only in the sense that the testimony of all witnesses who testified before the grand jury was not requested. He also believed that no possible ground for disclosure other than defendant's desire to use the grand jury testimony to aid in preparation of its defense and for trial was before the court. He thus enforced the Government's assertion that this type of showing of mere convenience in pre-trial work does not outweigh the historic policy of secrecy of grand jury proceedings.

Judge Oliver found that such rulings on release of grand jury testimony should be made on a witness-by-witness basis dependent upon the particular facts developed in regard to each individual witness. He cited with favor the in camera examination process utilized by previous trial judges for comparing grand jury transcripts with either trial or deposition testimony in order to detect material discrepancies on important factual issues that might require turning over the transcript to a moving party. Judge Oliver did in fact have the grand jury transcripts in his possession when making this ruling.

Judge Oliver did, however, condition the application of this opinion to the scheduled deposition program and provided for possible semi-disclosure as follows:

1. Should plaintiff elect to make use of the grand jury testimony of any particular witness in the course of taking the presently scheduled depositions of any of the witnesses designated pursuant to pre-trial order, plaintiff shall so announce its intention for the record (a) at the commencement of direct examination of any witness called by the plaintiff; or (b) at the commencement of cross-examination, if the particular witness is called by defendant.

2. Immediately upon the making of such an announcement in regard to any particular witness, plaintiff shall not proceed with either direct or cross-examination, as the case may be, unless and until a copy of the transcript of all the grand jury testimony given by that particular witness is handed such witness by plaintiff's counsel.

3. Such particular witness shall at that time be given an immediate opportunity to read the copy of the transcript of his or her grand jury testimony. He shall not be permitted to copy any portion of said transcript nor shall he be permitted to make any notes while reading said grand jury transcript. Nor shall the particular witness be permitted to confer with any other person, including, but not limited to counsel for either party, before his entire examination shall have been completed.

4. After the particular witness shall have read his grand jury testimony, he shall immediately return it to counsel for plaintiff and his direct or cross-examination shall then proceed.

Judge Oliver further ruled that defendant could, after the completion of all depositions presently scheduled, further renew its motion for production

of particular witnesses' grand jury testimony in accordance with the above principles.

It is interesting to note in summary that Judge Oliver's opinion seems in conflict with the recent opinion of Judge R. E. Tehan in United States v. Badger Paper Mills, Inc. granting pre-trial disclosure of "consenting" witnesses' grand jury transcripts. That case was not referred to by name in this opinion, nor did Judge Oliver specifically state his opinion as to the desirability of such "consent" procedures. Using this as a showing for a "controlling question of law as to which there is substantial ground for difference of opinion," the defendant on January 31, 1966, requested Judge Oliver's certification of his order for interlocutory appeal under 28 U.S.C. 1292(b). Defendant also renewed its motion for production of the grand jury transcript of the one affirmatively requesting and consenting defense witness, one of defendant's district sales managers; and in the alternative, asked for a clarification of the Court's order as to Government "use" of the transcript at the upcoming depositions.

Staff: Robert L. Eisen, James E. Mann and John M. Furlong (Antitrust Division)

Consent Judgment Entered. United States v. Richfield Oil Corporation, et al., (S.D. Calif.) D.J. File 60-57-166. This case was filed October 9, 1962, against several individual and corporate defendants, including three integrated major oil companies -- Sinclair Oil Corporation, Cities Service Company and Richfield Oil Corporation --, charging both Sherman and Clayton Act violations. Sinclair and Cities Service each held approximately 30% of the Richfield common stock outstanding. Sinclair's and Cities Service's domestic operations, including the marketing of refined petroleum products, are confined principally to states in or east of the Rocky Mountains while Richfield's operations are generally confined to the three pacific coast states as well as the three states contiguous thereto.

The complaint charged that these corporate defendants entered into an agreement, in violation of Section 1 of the Sherman Act, whereby Sinclair and Cities Service would not compete with Richfield or each other in the latter's marketing territory and that Richfield would not compete with either of them in their respective territories. It also charged that the acquisition of Richfield stock by Sinclair and Cities Service resulted in anti-competitive effects proscribed by Section 7 of the Clayton Act. And finally, the complaint charged that the interlocking directorates existing between Sinclair and Cities Service, on the one hand, and Richfield, on the other, violated Section 8 of the Clayton Act. The Government sought, among other things, divestiture of the stock interest in Richfield and an injunction against continuation of the conspiracy and the interlocking directorates.

Upon filing of the complaint, all parties engaged in extensive discovery proceedings, defendants vigorously resisting most of the Government's discovery. On September 3, 1965, the Government filed a preliminary statement of contentions of fact and law, and trial was tentatively scheduled for the Spring of 1966.

On September 17, 1965, the Atlantic Refining Company, which was not a party to the suit, and Richfield entered into a merger agreement, Atlantic to be the surviving company. This agreement provided as a condition precedent to its consummation, settlement of the pending Richfield case and approval of the merger by the Department under its Business Review Procedure.

Under the proposed merger agreement Sinclair and Cities Service, both substantial, actual competitors of Atlantic, would each acquire approximately 12% of the Atlantic common stock outstanding in exchange for their stock interest in Richfield. The requested clearance was therefore granted only after agreement was reached on an appropriate final judgment and stipulation settling the Richfield case. Said final judgment and stipulation was approved on January 11, 1966, by Judge Curtis of the United States District Court for the Southern District of California. It provides, among other things, for the divestiture within seven years of all interests in Atlantic acquired by Sinclair or Cities Service pursuant to the Atlantic-Richfield merger; that prior to such divestiture, Sinclair and Cities Service will vote their stock interests in Atlantic as recommended by Atlantic's management, except under certain limited circumstances, and that no director, officer, employee, or other representative of Sinclair or Cities Service will serve as a director or officer of Atlantic.

Atlantic is a substantially smaller company than either Sinclair or Cities Service. Furthermore, its marketing operations are confined to approximately 19 states on the eastern seaboard or states contiguous thereto, while Sinclair and Cities Service market in 42 and 36 states, respectively, in or east of the Rocky Mountains. Thus, while the final judgment and stipulation permitted the merger of two major oil companies, it has also rendered Sinclair and Cities Service, both substantially larger than Atlantic, potential entrants into the highly concentrated west coast market, the inhibiting factor (stock interest in Richfield) no longer being present.

Staff: Harry W. Cladouhos, Richard P. Delaney, William D. Kilgore, Jr., Charles F. B. McAleer and Leonard M. Berke (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General John W. Douglas

COURT OF APPEALS

ADMINISTRATIVE LAW

Administrative Subpoenas; Good Faith Failure to Obey Administrative Subpoena Does Not Subject Subpoenaed Party to Criminal Sanctions Until After Such Time as He Is Afforded Opportunity to Contest Subpoena in Civil Enforcement Proceeding; District Court Without Jurisdiction to Enjoin Enforcement of Subpoena. Anheuser-Busch, Inc. v. Federal Trade Commission, et al. (C.A. 8, No. 18,096, January 6, 1966). D.J. File 102-1229. In the course of an investigation of the yeast industry the FTC subpoenaed certain cost and profit data of plaintiff Anheuser-Busch's yeast producing division. Plaintiffs refused to produce the data and, before the return date of the subpoena, brought an action to enjoin efforts by the FTC to enforce the subpoena and for declaratory relief. One ground for the action was that the co-plaintiff vice-president of the company would be subject to immediate criminal penalties under Section 10 of the Federal Trade Commission Act, 15 U.S.C. 50, for his failure to obey the subpoena. The district court granted FTC's motion to dismiss the complaint, inter alia, on the ground of a lack of jurisdiction in the district court.

The Eighth Circuit held that the case was controlled by Reisman v. Caplin, 375 U.S. 440, in which the Supreme Court ruled that a good faith refusal to obey an administrative subpoena would not subject the subpoenaed party to criminal sanctions until he had an opportunity to contest the subpoena in civil judicial enforcement proceeding, and that therefore there was no basis for equity jurisdiction. In the absence of equity jurisdiction the district court was also without jurisdiction to grant declaratory relief since the Declaratory Judgment Act provides no independent basis for jurisdiction.

Staff: Harvey L. Zuckman (Civil Division)

ADMIRALTY - STATUTE OF LIMITATIONS; RES JUDICATA

Claim for Contribution or Indemnification Against United States Held Barred by Res Judicata And by Two-Year Statute of Limitations of Public Vessels Act. The United New York Sandy Hook Pilots Association, etc. v. United States, (C.A. 2, No. 29265, December 20, 1965). D.J. File 61-51-3692. In November 1960 the Association, which had been sued by an employee of the Coast Guard for injuries sustained in a collision between the Associations' pilot boat and a Coast Guard cutter, filed a libel against the United States, claiming that the negligence of the United States was the sole cause of the accident, and that the United States should be held liable for any recovery by the seaman. The district court held the libel barred by the two-year Statute of Limitations of the Public Vessels Act, noting that the claim appeared to be one against the United States as a tort feasor, which would arise at the time of the accident, and not the claim of an indemnitee under a contract, for whom the statute would begin to run only when liability became fixed.

No appeal was taken. After it had settled the claim with the seaman, the Association filed another libel in the District Court for the Southern District of New York. This libel, like the first, failed to allege any indemnity agreement between the Association and the United States. The Court of Appeals affirmed the dismissal of this second libel on the ground of res judicata, noting that the pleading was identical in all material respects to that dismissed in the first action. The Court also noted that two years had by then passed since the time of settlement and that even on a theory of contract, the second libel was also barred by the Statute of Limitations.

Staff: Phillip A. Berns and Louis E. Greco (Civil Division)

AGRICULTURAL ADJUSTMENT ACT

Fifth Circuit Affirms Decision Awarding Increase Allotment From Reserve Cotton Acreage. Review Committee v. Edward L. Gladney (C.A. 5, No. 21845, January 12, 1966). D.J. File 106-33-125. Appellee, who owns farmland in Morehouse Parish, Louisiana, complained to the Agricultural Stabilization and Conservation Service (ASCS) review committee that the cotton allotment which he received from the ASCS county committee for the 1964 crop year was, when compared to his total cropland, not on a par with those of other comparable farms in the area. As far as the record showed, this disparity was the result only of the fact that appellee had cleared much wooded acreage on his farm, so that it was available for planting, and thus adding to his total cropland. The county committee's distribution of 1964 allotments to appellee and all the other farms in the parish consisted of allotments from initial cotton acreage, of which appellee did not complain, and allotments from about 8,000 acres of reserve cotton acreage designated for "inequity and hardship" cases. This latter acreage had been distributed on a pro rata basis to all farms in the parish in order to relieve what the county committee felt was a parish-wide hardship. Appellee contended that his farm should have received a larger share of the reserve acreage in order to bring the percentage of his allotment to total cropland more in line with those of the other farms. When the review committee refused to grant appellee's request for an increased allotment, he commenced this review action under the Agricultural Adjustment Act, 7 U.S.C. 1365.

The district court ruled that the pro rata distribution of the reserve acreage to all the farms in the parish, without examination on a farm by farm basis, was not a proper use of the inequity or hardship reserve. The court also concluded that appellee's case was a hardship or inequity requiring an award of additional acreage from the reserve established for that purpose.

The Court of Appeals affirmed the grant to appellee of an increased 1964 allotment, saying that the situation presented was "peculiar" and was not likely to recur. However, the appellate court warned that the increased allotment was not binding on the county committee in determining appellee's future allotments. Moreover, the Court also said that the district court had erred in holding that appellee became entitled to the increased allotment from the inequity and hardship reserve merely by virtue of his clearing additional land and making it available for planting. The availability of additional land for planting was said to be but one factor, and not necessarily a controlling one, to be considered. Although the 1964 crop year had long since passed by the time the

case reached the Court of Appeals, the Court also refused to grant appellee's motion to dismiss the appeal for mootness.

Staff: Frederick B. Abramson (Civil Division)

ALIEN PROPERTY

Residence, Not Citizenship, Determines Whether Person Was "Enemy" Under Trading With Enemy Act. Omar Schmeusser v. Nicholas deB. Katzenbach, et al. (C.A. 10, No. 8339, January 7, 1966). D.J. Files 9-21-2941 and F28-561-B-1. In 1948, the Attorney General vested in himself property belonging to Carl Schmeusser, a naturalized American citizen who had lost his citizenship by virtue of Section 404 of the Nationality Act of 1940. When Carl Schmeusser sued to recover his property, the district court held that he was not entitled to retrieve his property because he was an "enemy" as defined by the Trading with the Enemy Act.

This suit was brought by Carl's son, Omar, whose primary argument was based upon the Supreme Court's holding in Schneider v. Rusk, 377 U.S. 163 that Section 404 of the Nationality Act was unconstitutional. The district court granted summary judgment for defendants, and the Court of Appeals affirmed on the ground that the "determinative factor" in Carl's suit had been residence, not citizenship, and that, therefore, "the issue as to appellant's father's loss of citizenship under an unconstitutional statute was not important to this suit." The Court found it unnecessary to pass on our contention that the suit was also barred by both limitations and res judicata.

Staff: Florence Wagman Roisman (Civil Division)

FEDERAL RULES OF CIVIL PROCEDURE

Notice of Appeal Delivered Within 60 Days of Judgment to Office of Clerk of District Court in City Other Than Place of Trial Deemed to Have Been Timely "Filed." United States v. Howard C. Hayes, et al. (C.A. 9, No. 20374, January 26, 1966). D.J. File 105-6-4. The Court of Appeals denied a motion to dismiss our appeal in this case, which was based on the ground that the notice of appeal was not filed within sixty days of entry of the judgment. The judgment was entered on May 3, 1965, by the United States District Court sitting at Juneau, Alaska, and the notice of appeal, although brought to the office of the Clerk of the District Court for the District of Alaska, at Anchorage, on July 1, 1965, was not marked "filed" until it was forwarded to and received by the deputy clerk in Juneau on July 6, 1965, which was after the expiration of the 60 day appeal period. The Court of Appeals held that although this was a Juneau case, the notice of appeal would be deemed to have been filed when the clerk of the same district court, in Anchorage, received custody of the document.

Staff: Walter H. Fleischer (Civil Division)

SOCIAL SECURITY ACT - AVAILABILITY OF OTHER EMPLOYMENT

Secretary's Determination That Claimant Could Engage in Light Work Sustained Although Secretary Did Not Offer Proof of Local Job Availability.

Louis Gee v. Celebrezze (C.A. 7, No. 15154, January 20, 1966). D.J. File 137-85-64. In this case the Court of Appeals affirmed the ruling of the district court that the Secretary's finding that claimant's silicosis did not prevent him from performing light work was supported by substantial evidence. The Court specifically stated that the Secretary was not bound by a determination of disability made by a state industrial commission, and approved the Secretary's listing of a number of job titles within claimant's educational and physical capacities, stating that "the Secretary was not required ... to show that employment opportunities for such jobs were presently available to plaintiff."

Staff: United States Attorney James B. Brennan and Assistant United States Attorney Thomas R. Jones (E.D. Wis.)

Social Security Disability; Georgraphic Availability of Employment Opportunities Relevant Factor in Determining Disability; Geographic Area in Which Jobs Must Be Available to Be Determined by Circumstances of Each Case; Absence of Substantial Evidence to Support Secretary's Decision That Disability Claimant Could Still Work. Raymond C. Wimmer v. Celebrezze (C.A. 4, No. 9970, January 3, 1966). D.J. File 137-80-122. In this Social Security disability case, claimant asserted that he was unable to work as a result of stomach and lung trouble. The Secretary determined that claimant was able to engage in light or sedentary work, and denied benefits. While agreeing that claimant could still engage in sedentary employment, the district court reversed the Secretary's determination because there was little or no such work available to claimant in his home community.

The Fourth Circuit affirmed the judgment of the district court, holding that the factor of geographic availability of employment opportunities for claimants was relevant to the determination of their disability and that the georgraphic area in which jobs must be reasonably available is to be determined by the circumstances of each case, including the "practical mobility" of the claimant and of the types of work he might still perform. These rulings, while consistent with those of the Sixth Circuit, are in conflict with several decisions of the Fifth, Seventh and Eighth Circuits, including Gee v. Celebrezze (discussed above). The Fourth Circuit, however, also ruled that there was no substantial evidence in the record to support the Secretary's finding that claimant might still engage in light or sedentary work.

Staff: Robert J. Vollen (Civil Division)

DISTRICT COURT

FARMERS HOME ADMINISTRATION

State Court Enjoined From Entertaining Creditor's Suit to Garnish Sale Funds in Hands of Clerk, Obtained in Voluntary Sale of Property Mortgaged to Farmers Home Administration. United States v. Farmers State Bank (C.A. 65-955, D. S.D.). D.J. File 136-69-648. LeRoy E. Duke and his wife, who were in default on their loan payments to the FHA, entered into an agreement with that agency for a public sale of the security. Defendant, Farmers State Bank, signed the agreement as clerk of the sale and agreed to hold the proceeds in trust to be distributed in accordance with the terms of the agreement.

Mittan-Peterson Implement Co., which had previously obtained a judgment against the Dukes, served a garnishment on the Farmers State Bank. The Bank served a disclosure stating that it was not liable as garnishee. The Implement Co. took issue with the disclosure and the matter was placed on the calendar of the Circuit Court of Sanborn County, South Dakota.

The United States instituted suit in the District Court to recover the funds from the Bank and to restrain and enjoin the Implement Co. from pursuing its garnishment action in the state court.

The Court held, on the basis of Leiter Minerals, Inc. v. United States, 352 U.S. 220, that although the Government was not a party to the state court proceedings, the garnishment of funds in which the Government claimed an interest was equivalent to an unauthorized suit against the United States. Moreover, if a decision was rendered in the state court action, we would not be bound, but in the current suit all parties were before the court, as in the Leiter case, and the judgment of this court would conclusively determine all rights to the fund - United States v. Certified Industries, Inc., 247 Fed. Supp. 275 (S.D. N.Y. 1965).

Under the circumstances of the case the Court thought it appropriate to exercise its equitable powers to protect the interests of the United States, which were being challenged in the garnishment action, and granted the preliminary injunction.

Staff: United States Attorney Harold C. Doyle and Assistant United States Attorney Gene R. Bushnell (D. S.D.); Peter C. Charuhas (Civil Division)

IMMUNITY OF GOVERNMENT AGENCIES

Federal Reserve Bank May Assert Sovereign Immunity When Acting as Fiscal Agent for Government Department. Hart, et al. v. Federal Reserve Bank of Atlanta, et al. (M.D. Tennessee, January 13, 1966). D.J. File 145-4-494. The Department of the Army, acting through a Federal Reserve Bank, guaranteed a loan by two privately owned banks to a company which planned to build a housing project near an Army facility. Two officials of the company personally guaranteed the loan. Default and foreclosure ultimately led to a deficiency judgment against these guarantors. They then sued the Federal Reserve Bank, alleging that it had mismanaged the collateral and that they would have had no liability if the collateral had been properly liquidated. A motion to dismiss was sustained on numerous grounds, only one of which is of general interest. The hybrid semi-public nature of federal reserve banks raises problems, from time to time, as to whether they enjoy the Government's privileges and immunities. In this case, the Court stated (in dictum) that a federal reserve bank "would be clothed with the immunity of the sovereign" when acting merely as the fiscal agent of a Government department.

Staff: United States Attorney James F. Neal and Assistant United States Attorney Kent Sandidge, III (M.D. Tenn.); Robert Mandel (Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

FEDERAL FOOD, DRUG, AND COSMETIC ACT

Summary Judgment in In Rem Proceedings Under Provisions of Act Authorizing Seizure of Misbranded Devices "Held for Sale" Sustained, Even Though Certain Optometric Devices Were Held by Licensed Optometrist Solely for Use in Treatment of His Patients. United States v. An Article or Device Consisting of 4 Devices, etc., labeled Cameron Spitler Ambly-Syntonizer (Civ. No. 02099, D. Neb., January 13, 1966). This was an action by the Government for the condemnation of certain optometric devices seized under 21 U.S.C. 334 on the grounds that they were misbranded "while held for sale" after interstate shipment, in that they did not bear labeling containing "adequate directions for use" as required by 21 U.S.C. 352(f)(1).

In his answer to interrogatories, the claimant, a duly licensed optometrist, admitted using the devices in the treatment of various eye diseases and malfunctions in his patients, and that the devices when shipped in interstate commerce bore no labeling as to directions for use. On the pleadings and the claimant's admissions, the trial court granted the Government's motion for summary judgment under Rule 56, F.R.Civ.P.

The Court rejected claimant's contention that the Government had the burden of proving the devices in question did not fall within the proviso of 21 U.S.C. 352(f), which authorizes promulgation of regulations exempting drugs and devices from the requirement that their labeling bear adequate directions for use, where such labeling is "not necessary for the protection of the public health." It held, in effect, that, under existing regulations (21 C.F.R. 1.106(d)(2)(i) and (ii)) promulgated under the statute, such exemption is applicable only if the labeling contains the cautionary statement that Federal law restricts the device for sale by or on the order of a duly licensed practitioner, and further shows the method of its application or use, even though the device is not considered to be inherently dangerous, and even though it may be sold or used by such licensed practitioner exclusively.

The Court further held that the misbranded devices involved were "held for sale" within the purview of the seizure provisions of 21 U.S.C. 334, even though they were held by a licensed optometrist solely for use in the treatment of his patients, rather than for sale in a commercial sense.

Staff: United States Attorney Theodore L. Richling; Assistant United States Attorney Duane L. Nelson (D. Neb.).

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TAX DIVISION

Acting Assistant Attorney General Richard M. Roberts

CRIMINAL TAX MATTERS

Appellate Decision

Substantiality of Unreported Income in Net Worth-Expenditures Case; Objections to Mail Cover. William M. Canaday v. United States (C.A. 8), January 21, 1966. Appellant was indicted for attempted evasion of his income taxes for the years 1957 through 1960. He was acquitted as to the first two years and convicted with respect to 1959 and 1960. On appeal he urged that the net worth-expenditures computations did not disclose a sufficient understatement to support the conviction. The income tax liability as reported and as recomputed by the Government was as follows:

Year	Tax Liability Reported	Tax Liability as Corrected	Difference
1957	$ 520.46	$1,866.25	$1,345.79
1958	905.05	2,141.33	1,236.28
1959	979.48	2,329.86	1,350.38
1960	1,083.82	2,278.76	1,194.94
Totals	$3,488.81	$8,616.20	$5,127.39

The Court of Appeals affirmed the conviction, finding that the unreported income and tax liability for the years 1959 and 1960 were sufficient to sustain it. Although there was less than $2,600 of unreported tax liability for those years it was substantial in relation to the tax reported. The Court held that the word "substantial" is necessarily a relative term and not susceptible of an exact meaning, and cited United States v. Nunan, 236 F. 2d 576 (C.A. 2, certiorari denied, 353 U.S. 912), for the proposition that all the attendant circumstances must be taken into consideration; substantiality is "not measured in terms of gross or net income nor by any particular percentage of the tax shown to be due and payable."

Appellant complained that there had been used against him evidence obtained as a result of a mail cover. The Court found that there had been such a cover--though it was not initiated or requested by the agent--for several months during 1961, consisting of a recordation of information shown on the outside of first-class envelopes, viz., the name and address of sender and addressee and the post-mark. The Court found no impropriety in the mail cover, however, citing United States v. Schwartz, 283 F. 2d 107 (C.A. 3, certiorari denied, 364 U.S. 942) and United States v. Costello, 255 F. 2d 876, 881-882 (C.A. 2, certiorari denied, 357 U.S. 937).

The Court found no merit in appellant's argument that his phone had been illegally tapped, pointing out that under Nardone v. United States, 308 U.S. 338, 341, the burden is upon him to show that this was done and that his contention was founded wholly on unsubstantiated suspicions.

Staff: United States Attorney F. Russell Millin; Assistant United States Attorneys Calvin K. Hamilton and Bruce C. Houdek (W.D. Mo.)

CIVIL TAX MATTERS

District Court Decisions

Bankruptcy; Claims for Carryback Refunds Due to Loss in Year When Bankruptcy Petition Was Filed are "Property" of Trustee in Bankruptcy Under Section 70(a)(5) of Bankruptcy Act, and Thus, Government Is Not Entitled to Credit Refunds Against Penalties and Post-Bankruptcy Interest Liabilities of Bankrupt-Taxpayer. In Re Donley, et al. (E.D. Mo., June 7, 1965). (CCH 65-2 U.S.T.C. ¶9580). The taxpayer corporation filed a petition in bankruptcy on December 28, 1961. During the calendar year 1961, the bankrupt had sustained losses. With respect thereto the trustee in bankruptcy made an appropriate claim for refund of income taxes paid in prior years. The Internal Revenue Service allowed this claim for refund, but the amount thereof was credited against the following tax liabilities of the bankrupt: (a) Withholding, FICA and FUTA taxes; (b) Pre-bankruptcy interest; (c) Penalties and (d) Post-bankruptcy interest. The United States then filed an amended claim for tax liabilities not offset by the refund credits, and the trustee objected to allowance of this claim. The basis of the trustee's objection was that the United States should have appropriated the refunds to satisfy only categories (a) and (b) above, viz., the tax liabilities and pre-bankruptcy interest; the trustee contended that Section 57(j) of the Bankruptcy Act precluded appropriating any of the refunds to payment of penalties, and that City of New York v. Saper, 336 U.S. 328 (1949) precluded application of the refunds to post-bankruptcy interest. The United States argued that since In re Sussman, 289 F. 2d 76 (C.A. 3, 1961) and Fournier v. Rosenblum, 318 F.2d 525 (C.A. 1, 1963) hold that claims for refunds resulting from carrybacks of net operating losses from the year in which a taxpayer files a petition in bankruptcy are "property" of the taxpayer and not "property" which passes to the trustee under Section 70(a), the provisions of the Bankruptcy Act and cases cited by the trustee were not applicable.

The referee held for the trustee and ruled that the Government should not have credited any portion of the refunds against either penalties or post-bankruptcy interest. The Government filed a petition for review, and the District Court affirmed the order of the referee.

In its opinion, the District Court rejected the Sussman and Fournier cases cited, supra, and followed the more recent case of Segal v. Rochelle, 336 F.2d 298 (C.A. 5, 1964), recently affirmed by the Supreme Court (CCH 66-1 U.S.T.C. ¶9173), where the Fifth Circuit held that the right to a refund is "property" which does pass to the trustee in bankruptcy. Thus, the District Court observed that refund claims, when viewed as property of the trustee, are for the benefit of all the general unsecured creditors, and it would be unfair to place upon these creditors the burden of the penalties and post-petition interest claimed

by the Government. Accordingly, the Government's application of the refund claims was deemed improper under the Bankruptcy Act.

Staff: United States Attorney Richard D. Fitzgibbon, Jr., and Assistant United States Attorney Harold F. Fullwood (E.D. Mo.)

Priority of Tax Liens; Insolvency; Federal Tax Liens Held Entitled to Priority Under R.S. 3466 Over County Tax Lien on Property Which Had not Been Reduced to Possession. United States v. Louis F. Davis, Trustee, et al. (E.D. Mich., Oct. 7, 1965). (CCH 65-2 U.S.T.C. ¶9708). The United States instituted this action to foreclose certain tax liens against a fund held by defendant Louis F. Davis, as Trustee, of assets of the defendant-taxpayer, Midwest Steel Fabricators, Inc., under a trust mortgage for the benefit of creditors of assets. The Trustee made no claim to the fund and requested the Court to determine the ownership thereof. The Government filed a motion for summary judgment on the ground that, as a matter of law, it was entitled to an award of the entire fund before the Court, in partial satisfaction of its tax liens.

The County of Wayne asserted that it had a prior specific and perfected lien for unpaid ad valorem property taxes pursuant to local acts and the General Property Tax Law of Michigan. The County argued that the liability of the taxpayer to the County arose prior to the assessment by the United States and that all taxes became a debt owed to and a lien in favor of the County on the tax day provided for in the law, citing In re Ever Krisp Food Products Co., 307 Mich. 182, 11 N.W. 2d 852 (1943). No physical possession of assets subject to the County's lien was undertaken. The United States claimed priority on the theory set forth in United States v. City of New Britain, 347 U.S. 81, that local tax liens compete with federal tax liens on a first in time, first in right basis, the priority of each lien depending on the time it attached and became choate; it also claimed priority pursuant to Revised Statute, Sec. 3466 (31 U.S.C. 191).

In granting the motion of the United States for summary judgment, the Court held that although the County complied with "the statutory requirements for a specific and perfected lien," its lien did not meet the standard of specificity set forth by the Supreme Court in United States v. Gilbert Associates, 345 U.S. 361, since it had not reduced the property of the insolvent taxpayer to possession. Hence, it held that the federal tax lien had priority under R.S. 3466.

The recent decision of the Supreme Court in United States v. Vermont, 377 U.S. 351 was distinguished as involving a solvent taxpayer.

Staff: United States Attorney Lawrence Gubow; Assistant United States Attorney Robert F. Ritzenhein (E.D. Mich.); and Stephen G. Fuerth (Tax Division).

Internal Revenue Summons; Self-Incrimination; Taxpayer Held Entitled to Invoke Privilege Against Self-Incrimination With Respect to Books and Records of His Accountant in His Rightful and Indefinite Possession. United States et al v. Carl Cohen. (D. Nev., November 29, 1965). (CCH 66-1 U.S.T.C. ¶9127). Special Agents of the Internal Revenue Service demanded certain books and records from the taxpayer and were advised that they were in the possession

of his accountant. The next day the taxpayer picked up the records in the accountant's office and later refused to return them to the accountant who had requested their return at the request of the Special Agent. The accountant disclaimed any property or possessory right in the records and the taxpayer refused to honor a summons calling for the production of these records, invoking the privilege against self-incrimination.

In this enforcement action, the Government sought only the work papers, memoranda and correspondence prepared by the accountant and his staff prior to the commencement of the investigation, contending that the accountant's records were not protected by the privilege.

The Court refused to enforce the summons holding that at the time the taxpayer was served with the summons he held the work papers, memoranda and correspondence prepared by the accountant and sought in the summons in his rightful and indefinite possession in a purely personal capacity and that this was sufficient to entitle him to invoke the privilege against self-incrimination.

The Government is considering an appeal from this decision.

Staff: United States Attorney John W. Bonner (D. Nev.)

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