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

June 24, 1966

United States
DEPARTMENT OF JUSTICE

Vol. 14 No. 13

UNITED STATES ATTORNEYS
BULLETIN

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Vol. 14 June 24, 1966 No. 13

NOTICES TO DEFENDANTS, COUNSEL, AND SURETIES

It is usually the responsibility of the Clerk of the Court to send notices of arraignment or trial date to defendants, their counsel, and sureties. However, where the United States Attorney is required to perform this function, the practice used in the Northern District of Texas might be used advantageously.

The notice to the defendant advising him when to appear for arraignment also asks him to advise whether he intends to plead guilty or not guilty. Of course, the defendant is not obligated to make known his intention in advance of arraignment, but many of them are nevertheless willing to do so. This information helps the U.S. Attorney to prepare the case for presentment and prosecution, and more time is therefore available for the subpoenaing of witnesses.

APPOINTMENTS -- UNITED STATES ATTORNEYS

The nominations of the following incumbent United States Attorneys to new four-year appointments have been confirmed by the Senate:

California, Northern - Cecil F. Poole
Louisiana, Western - Edward L. Shaheen

The nominations of the following incumbent United States Attorneys to new four-year appointments have been submitted to the Senate for confirmation:

Louisiana, Eastern - Louis C. LaCour
Texas, Eastern - W. Wayne Justice
Texas, Western - Ernest Morgan

MONTHLY TOTALS

The April figures show the pending caseload to be 840 cases higher than for the same period in fiscal 1965. This amount of increase at the 10-month mark makes it unlikely that a reduction in the pending caseload will be achieved this year. Had it not been for the unusually high rate of civil case terminations this year, the pending caseload would be considerably higher. Unless the figures for May and June show an unprecedented number of terminations, fiscal 1966 will mark the sixth consecutive fiscal year in which the caseload has risen.

	First 10 Months Fiscal Year 1965	First 10 Months Fiscal Year 1966	Increase or Decrease Number	Increase or Decrease %
Filed				
Criminal	28,187	27,495	- 692	- 2.45
Civil	23,966	25,003	+ 1,037	+ 4.32
Total	52,153	52,498	+ 345	+ .66

	First 10 Months Fiscal Year 1965	First 10 Months Fiscal Year 1966	Increase or Decrease Number	%
Terminated				
Criminal	25,899	25,829	- 70	- .27
Civil	22,524	23,833	+ 1,309	+ 5.81
Total	48,423	49,662	+ 1,239	+ 2.55
Pending				
Criminal	12,256	12,672	+ 416	+ 3.39
Civil	24,513	24,937	+ 424	+ 1.72
Total	36,769	37,609	+ 840	+ 2.28

Both filings and terminations decreased in April from the high mark established in March. April's totals were the second highest for the 10 month-period. If the rate of terminations for March and April could have been maintained throughout the year, the increase in the pending caseload would have been considerably lower.

	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
Jan.	2,823	2,542	5,365	2,501	2,349	4,850
Feb.	2,863	2,469	5,332	2,576	2,377	4,953
Mar.	3,092	3,049	6,141	2,999	3,027	6,026
April	2,922	2,855	5,777	2,863	2,816	5,679

For the month of April, 1966, United States Attorneys reported collections of $12,502,774. This brings the total for the first ten months of this fiscal year to $64,686,567. This is $11,360,609 or 21.30 per cent increase over the $53,325,958 collected during the first ten months of fiscal year 1965.

During April, 1966, $9,871,294 was saved in 107 suits in which the Government as defendant was sued for $11,301,432. 61 of them involving $2,652,690 were closed by a compromise amounting to $840,378 and 20 of them involving $957,255 were closed by judgments amounting to $589,760. The remaining 26 suits involving $7,691,487 were won by the Government. The total saved for the first ten months of this fiscal year was $114,057,151 and is an increase of $20,851,230 or 22.37 per cent over the $93,205,921 saved in the first ten months of fiscal year 1965.

The cost of operating United States Attorneys' Offices for the first ten months of fiscal year 1966 amounted to $16,138,769 as compared to $15,592,282 for the first ten months of fiscal year 1965.

DISTRICTS IN CURRENT STATUS

Set out below are the districts in a current status as of April 30, 1966.

CASES

Criminal

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

CASES

Civil

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

MATTERS

Criminal

Ala., N.	Ark., W.	Ind., S.	Minn.	N.C., E.
Ala., M.	Colo.	Ky., W.	Mo., W.	N.C., M.
Ariz.	Ga., M.	La., W.	Mont.	N.C., W.
Ark., E.	Ga., S.	Me.	N.H.	N.D.

MATTERS (Cont.)

Criminal (Cont.)

Ohio, N.	Okla., W.	R.I.	Tex., W.	Wyo.
Okla., N.	Pa., M.	Tenn., W.	Utah	C.Z.
Okla., E.	Pa., W.	Tex., E.	Vt.	Guam

MATTERS

Civil

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

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ANTITRUST DIVISION

Assistant Attorney General Donald F. Turner

Supreme Court Affirms For the Government and Remands Case On a Question Of Relief. United States v. Grinnell Corporation, et al. (Nos. 73, 74, 75, 76 and 77 - O.T. 1965, File No. 60-339-1). On June 13, 1966, the Supreme Court by a 6-3 vote affirmed Judge Wyzanski's decision holding the defendants in violation of Sections 1 and 2 of the Sherman Act, and reversed that part of the decision relating to relief.

The defendants are corporate suppliers of accredited (insurer approved) central station protective services (CSPS) which provide property protection through hazard detecting devices installed on the protected premises. These devices transmit a signal to a central station upon the occurrence of a hazard. Defendant Grinnell Corp. (Grinnell) owned 76% of defendant American District Telephone (A.D.T.), 100% of defendant Holmes Electric Protective Co. (Holmes), and 89% of defendant Automatic Fire Alarm Co. (AFA). The three subsidiaries controlled 87% of the accredited CSPS business in the nation, although Holmes supplied burglary detection service only, A.F.A. fire detection only, and A.D.T. both. There are other forms of protective devices such as watchmen, alarm systems in conjunction with local municipal stations, unaccredited CSPS, etc. available to consumers.

Defendants had achieved their dominant position by acquisitions of competitors, restrictive arrangements and other unlawful practices. In view of this and the fact that defendants controlled a predominant share of the accredited CSPS field, the court held that the ingredients of a Section 2 violation were established: (1) defendants possess monopoly power in the relevant market (2) willfully acquired or maintained. The major issue on appeal concerned the definition of the relevant market.

Defendants contended that the relevant market is not accredited CSPS, since (a) the services offered under central systems are quite diversified and (b) there are a myriad of substitute services. The court rejected this argument. It ruled that the mere existence of different services does not in itself detract from the single-market concept. It emphasized that commercial realities of combining protection resulted in a single basic service--the protection of property through use of a central service station. The availability of substitute services does not automatically pass the interchangeability test of United States v. duPont de Nemours, 351 U.S. 377, 393. It analyzed each "substitute" service and noted that the high degree of differentiation between CSPS and the other forms would preclude the latter from serving the demands met by CSPS.

The Court sustained the district court's finding that the geographic market was national, notwithstanding the fact that individual stations supply local service. Defendants' practices of national planning and of negotiating with interstate businesses reflect the national breadth of the market.

The Court directed modification of the district court's decree by providing

for divestiture of Grinnell's stock in the defendant companies and remanded for district court's consideration of a plan of divestiture of A.D.T. and reconsideration of the government's request for visitation rights.

Defendants' contention that the trial judge was prejudiced was unanimously dismissed as being without merit. Any adverse attitudes manifested did not stem from disqualifying extra-judicial sources, but from a study of the record which defendants themselves had requested.

Mr. Justice Harlan dissented on the ground that the relevant market had not been proved. He found no warrant to restrict the relevant product market to accredited CSPS.

Mr. Justice Fortas, with whom Mr. Justice Stewart joins, dissented, arguing that the geographic market is local, since the service is furnished locally. They further contend that availability of substitute service, although unaccredited by insurors, does not restrict the relevant market to CSPS.

Staff: Daniel M. Friedman (Solicitor General's Office), Robert B. Hummel, Gerald Kadish, Noel E. Story and Hugh P. Morrison, Jr. (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General John W. Douglas

COURT OF APPEALS

CONTRACTS

Doctrines of Frustration and Impossibility of Performance Held Not to Apply When Performance by Alternative Route Is Not Commercially Impracticable. Transatlantic Financing Corp. v. United States (C.A.D.C., No. 19632, May 27, 1966). D.J. File 61-16-40. The United States contracted with Transatlantic Financing in October 1956 to carry a cargo of wheat from Galveston to Iran. While Transatlantic's ship was in the mid-Atlantic heading for the Suez Canal, hostilities broke out and the canal was blocked, requiring Transatlantic to proceed around the Cape of Good Hope in order to deliver. Transatlantic sued the United States for the extra cost of proceeding by way of the Cape. It alleged that the admiralty doctrine of "deviation," which requires a ship to proceed by the usual and customary route or forfeit certain protections, implied a contract term that the voyage be via the Suez Canal even though no route was specified. In those circumstances, it argued, performance of the contract became impossible when Suez was closed, and no further action toward delivery was required on its part. Therefore, since it did deliver, it was entitled to compensation for the additional costs incurred.

The court of appeals, in affirming the district court, found that the parties had expected performance to be via Suez, but had not specifically allocated the risk of canal closure. After an exhaustive discussion of the doctrines of frustration and impossibility, and the maritime doctrine of deviation, the court pointed out that for it to construct a condition of performance into the contract, the canal closing would have had to render performance of the basic obligation commercially impracticable. Commercial impracticability was found not to have been present in this case, where the closure of the canal simply required Transatlantic to steam 13,000, rather than 10,000, miles.

Staff: Robert C. McDiarmid (Civil Division)

NATIONAL BANKING ACT

For Branch Banking Purposes, a Bank Located on Military Reservation Is Considered Located in the County in Which the Reservation Was Situated When Acquired from the State. The First Hardin National Bank v. Fort Knox National Bank and James J. Saxon (C.A. 6, No. 16906, May 26, 1966). D.J. File 145-3-765. The Sixth Circuit upheld the Comptroller of the Currency's authorization to a national bank having its principal office on the Fort Knox Military Reservation to establish a branch bank beyond the limits of the reservation but in the same county. The court held that the Comptroller acted reasonably and in accordance with law in approving the establishment of the branch because, under Kentucky law, a state bank could establish and operate a branch bank in its home county. The court rejected appellant's contention that Fort Knox was no longer in the same county because Kentucky had ceded jurisdiction over Fort Knox to the United States. In so doing, the court followed the established principle that a

military reservation within the state remains a geographical part of the municipality or county of which it was a part at the time of its cession to the United States.

Staff: Jack H. Weiner (Civil Division)

SOCIAL SECURITY ACT

Fourth Circuit Reverses Administrative Finding of Only $400 of Self-employment Income Where Uncontradicted Affidavits of Deceased's Employer Estimated Substantially Larger Sums. Odell B. White v. Celebrezze (C.A. 4, No. 10,238, April 6, 1966). D.J. File 137-79-126. Claimant sought correction of her deceased husband's social security return by the addition of self-employment income of $2,756.67, shown in his income tax return, of which claimant estimated that no more than a third was ineligible notarial fees. Although uncontradicted affidavits of former employees and an associate of her husband estimated that only $100 to $150 of the sum was attributable to nortarial fees, the Secretary ruled that $2,606.03 was from notarial fees so that only $150.64 was creditable income. That amount, added to other self-employment income reached the $400 required to afford minimum benefits to claimant; the Secretary refused, however, to credit any further portion of the remaining $2,606.03 in computing the benefits. In reversing, the Fourth Circuit held that the Secretary's decision was not supported by substantial evidence and directed amendment of the social security return to accord with the affidavit evidence.

Staff: C. V. Spratley, Jr., United States Attorney;
Roger T. Williams and Harold Gavaris, Assistant United States Attorneys (E.D. Va.)

Social Security Act Precludes Judicial Review of Administrative Allowances of Attorneys Fees for Representation of Claimants in Administrative Proceedings. Chernock v. Gardner (C.A. 3, No. 15599, May 18, 1966). D.J. File 137-62-150. Section 206 of the Social Security Act, 42 U.S.C. 406, permits the Secretary of Health, Education and Welfare to prescribe maximum fees for administrative representation of social security claimants. A regulation promulgated under the Act prescribes a maximum fee of $30 for representation before a hearing examiner, allowing the hearing examiner to set a higher fee upon "good cause shown." Plaintiff, an attorney, claimed to have spent 35 hours in representing a social security claimant who recovered back benefits of $3,100, plus monthly benefits of $189 until her child would reach age 18. For his services, plaintiff requested the hearing examiner to allow a fee of $5,000. The examiner allowed a fee of $250 plus $50 expenses.

The attorney then brought this suit to review the fee allowance, urging that the district court had jurisdiction to entertain the action under Section 205(g) of the Social Security Act, 42 U.S.C. 405(g), or alternatively, under Section 10 of the Administrative Procedure Act. The district court dismissed the complaint, holding that judicial review was unavailable. The court of appeals affirmed, holding that "the setting of fees for representation of claimants before the Secretary is committed to that agency's discretion by

Section 206 of the Social Security Act, and judicial review is therefore precluded by Section 10 of the Administrative Procedure Act." The court also stated: "While we do not reach the merits of the case, it is quite clear that, even if we were to assume that the fee allowed by the examiner was grossly inadequate and that his action in setting it was arbitrary and capricious and constituted an abuse of discretion, his order is nonetheless not reviewable."

Staff: Robert V. Zener (Civil Division)

Judicially-Committed Sexual Deviant Held Entitled to Disability Benefits. Esther Marion, Guardian of James E. Marion, Incompetent v. Gardner (C.A. 8, No. 18,163, May 2, 1966). D.J. File 137-39-90. The Eighth Circuit reversed the district court's decision upholding the Secretary's denial of Social Security Act disability benefits in this case. In so doing, the court held disabled the wage earner, a 34-year-old homosexual committed as a "psychopathic personality" by a local probate court to a maximum security hospital because of his inability to restrain himself from molesting boys. The court noted in that regard that 20 C.F.R. § 404.1519(c)(2)(iii), which provides that personality disorders such as sexual deviation, are not per se disabling, was not "a complete barrier to a sexual deviant's qualifications under the statute."

Staff: United States Attorney Hartley Nordin;
Assistant United States Attorney Patrick J. Foley (D. Minn.)

Sixth Circuit Rules That Initial Burden Is on the Claimant To Prove Disability. Montward Justice v. Gardner (C.A. 6, No. 16353, May 27, 1966). D.J. File 137-30-251. In this action for disability benefits, a 36-year-old unemployed coal miner alleged disability resulting from an ulcer and assorted other ailments. The Sixth Circuit reversed the district court's grant of benefits, pointing out that "our relevant decisions have been made in the factual contexts of each case and we did not announce a mechanical rule which would relieve each applicant from his initial burden of proving disability. It is not the burden of the Secretary to make an initial showing of non-disability." After noting that this case did not involve a post middle age coal miner having serious physical disabilities, who could work only if some sedentary and specialized employment were found for him, the court held that the burden was not on the Secretary to point to a job available to this young man in generally good condition.

Staff: Robert C. McDiarmid (Civil Division)

Sixth Circuit Unholds Secretary's Disability Determination Under Old Law; Remand Granted for Consideration Under 1965 Amendments. John Sergeant v. Gardner (C.A. 6, No. 16556, May 28, 1966). D.J. File 137-30-303. A Kentucky coal miner having little education or other vocational skills applied for disability benefits alleging that he became unable to work at age 41 primarily because of bronchiectasis (a lung condition). His application ultimately was denied on the merits and he did not seek judicial review. Later, however, he filed a new application, alleging essentially the same facts. On the second application, the Secretary held that the prior administrative decision was binding for the period it covered (see in this connection James B. Myers v. Gardner (C.A. 9, No. 20,282), a summary of which was reported in Vol. 14, No. 12 of the Bulletin),

and therefore the only question presented was whether the claimant could be considered to be disabled during the limited additional period covered by the new application. The Secretary denied claimant benefits. This decision was based in part upon a finding that the claimant's lung condition was remediable and therefore was not an impairment which could be expected to result in death or to be of long-continued and indefinite duration, as the Act required at that time. The district court, finding that substantial evidence supported the Secretary, affirmed his rulings in all respects.

The court of appeals held that the affirmance was correct under the old law. However, the court noted that the less stringent definition of disability in the Social Security Amendments of 1965 (which became effective after the administrative and district court decisions were rendered but have application to cases in litigation) might have some effect on this case. The court, therefore, followed the Government's suggestion and ordered the matter remanded to the Secretary for consideration of the possible effect of the amendments.

Staff: Frederick B. Abramson (Civil Division)

Court of Appeals Upholds Secretary's Determination That an Impaired Claimant for Benefits Can Engage in Gainful Employment by Relying on Evidence that Claimant Actually Worked. Dock Simmons v. Celebrezze. (C.A. 4, No. 10256, June 1, 1966). D.J. File 137-84-264. The Fourth Circuit agreed with the district court that the Secretary's determination that a claimant, who suffers some physical limitations but nevertheless engages in gainful activity, is not disabled within the meaning of the Social Security Act. After noting that the resolution of conflicting evidence was for the Secretary, the court of appeals upheld the Secretary's determination because of evidence in the record that after the alleged onset of disability, the claimant worked as a laborer in a program conducted by the State Rehabilitation Division, and had supervised the cutting and delivery of pulp wood on land owned by him. The court distinguished this case from numerous others in which it had reversed the Secretary's determination based on the testimony of a vocational specialist as "speculative" abstract" evidence, because here there was "concrete" evidence that the claimant can engage, and has engaged, in a particular occupation.

Staff: Jack H. Weiner (Civil Division)

STATE SUPREME COURT

FEDERAL TORT CLAIMS ACT

State Court Lacks Personal and Subject Matter Jurisdiction Over Third-Party Complaint in Tort Against the Government. United States v. The District Court and the Honorable Emmet Glore (Supreme Court of Montana, No. 11,140, May 5, 1966). D.J. 145-16-155. A Post Office Department employee brought a negligence suit in a Montana state court against an employee of the Public Health Service for injuries suffered in an accident with the latter who was driving her own automobile on government business. At the time of the accident, both employees apparently were acting within the scope of their employment. After suit was instituted, defendant "demanded" that the United States assume responsibility for the defense of the lawsuit and institute removal proceedings to the federal district court because of the Government Drivers Act, 28 U.S.C.

2679. The United States declined to do so on the ground that, since the plaintiff was entitled to Federal Employee Compensation benefits, he had no remedy against the United States under the Tort Claims Act. A third-party complaint against the United States was filed, which the United States moved to dismiss on the ground that the state court lacked jurisdiction both over the United States and the subject matter.

The state court refused to dismiss the third-party complaint and suggested that the United States remove the proceedings to a federal district court for a determination by that court as to whether an action against the United States would lie. On an application by the United States to the Montana Supreme Court for a "Writ of Supervisory Control," that court issued an order directing the lower court either to dismiss the third-party complaint or to show cause why it should not be dismissed. After being advised by counsel for the defendant-third party plaintiff that he would not appear on behalf of the state district court, that court on May 18, 1966, dismissed the third-party suit in compliance with the order of the Montana Supreme Court.

Staff: Moody Brickett, United States Attorney, and Robert J. O'Leary, Assistant United States Attorney (D. Mont.)

COURT OF CLAIMS

MILITARY PAY

On a Judgment of Wrongful Discharge, There Must Be Deducted from Recovery for Active Duty Pay, Outside Earnings During the Period Concerned. Motto v. United States (Ct. Cl. No. 43-64, May 13, 1966, 175 Ct. Cl. ___). D.J. File 154-43-64. The Court of Claims found in this military pay case that plaintiff was illegally deprived of $56,973.19 during the period of his wrongful discharge. His civilian earnings during that period amounted to $35,012.21. The court, adopting an exhaustive opinion by the trial commissioner, reaffirmed the current practice of allowing the deduction of civilian earnings as set forth in Egan v. United States, 141 Ct. Cl. 1 (1958), Clackum v. United States, 161 Ct. Cl. 34 (1963), and Garner v. United States, 161 Ct. Cl. 73 (1963). Accordingly, plaintiff was allowed a recovery of $21,960.98. (Note: In civilian pay cases the deduction is required by statute, 5 U.S.C. 652(b)(1)).

As a corollary to the above case, it should be noted that in Middleton v. United States, Ct. Cl. No. 436-61, May 13, 1966, 174 Ct. Cl.___ (D.J. File 154-436-61), the Court of Claims held that attorneys fees and expenses incurred as an incident to the suit for back pay could not be offset to reduce civilian earnings, distinguishing Egan, supra. These cases should be of significance in the handling of military pay cases in the district courts and courts of appeals.

Staff: Charles M. Munnecke (Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

FOOD STAMP PROGRAM

Forging and Counterfeiting Food Coupons - Prosecution and Investigative Jurisdiction. With the expansion of the Federal Food Stamp Program, the Department anticipates an increase in offenses in the nature of forging and counterfeiting food coupons. These coupons are issued under the authority of the Food Stamp Act of 1964, P.L. 88-525, and printed by the Bureau of Engraving and Printing, under contract to the Department of Agriculture.

Prosecutions for forging and counterfeiting food coupons can be brought under two statutes, Sections 491 and 471, Title 18, United States Code. To date there have been no prosecutions for this offense; however, for the reasons discussed below, the Department is of the opinion that Section 471 is the proper prosecutive vehicle.

Section 491(b) clearly provides, among other things, for prosecution of persons who manufacture "any token, disk, paper, or other device issued or authorized in connection with rationing of food and fiber distribution by any agency of the United States." However, the underlying purpose of this statute as revealed by its legislative history is to proscribe the making of slugs, paper or other devices which can be used to deceive coin or currency changing machines and vending machines.

The Food Stamp Act, 7 U.S.C. 2023(d), is explicit in providing that said food coupons are deemed to be obligations of the United States within the meaning of 18 U.S.C. 8. Accordingly, the Department believes that in order to effectuate the evident and obvious purpose of the Act, prosecution should be brought under 18 U.S.C. 471 for forging or counterfeiting an obligation of the United States.

This statute is under the supervisory jurisdiction of the General Crimes Section in the Criminal Division. By virtue of the statutory powers granted the United States Secret Service, Treasury Department, under 18 U.S.C. 3056, violations of this Act are within the sole investigative jurisdiction of that agency.

Offenses in the nature of theft and embezzlement of said coupons are violations of Section 2023, Title 7, United States Code. The Fraud Section of the Criminal Division has supervisory jurisdiction of this statute, while the Office of the Inspector General, Department of Agriculture, is responsible for investigating such offenses.

The United States Attorneys are instructed to vigorously prosecute the above mentioned violations as construed in this memorandum.

SUPREME COURT DECISIONS

CONTEMPT

In Cheff v. Schnackenberg, et al. (No. 67), decided June 6, 1966, the Supreme Court finally answered the question whether a jury trial is required in a criminal contempt proceeding. The answer is: "* * * in the exercise of the Court's supervisory power and under the peculiar power of the federal courts to revise sentences in contempt cases, we rule further that sentences exceeding six months for criminal contempt may not be imposed by federal courts unless a jury trial has been received or waived." Since Cheff's sentence was six months' imprisonment, it was affirmed. There was no majority opinion. Mr. Justice White took no part. As Mr. Justice Harlan (joined by Stewart, J.) points out in his opinion concurring in the result but disagreeing that a jury trial is required in any case of criminal contempt, this new rule extending the right to jury trial to criminal contempts resulting in sentences greater than six months "is the product of the views of four Justices [Warren, C.J., Clark, Brennan, and Fortas, JJ., who joined in the prevailing opinion written by Clark, J.] who rest that conclusion on the Court's supervisory power and those of two others [Black and Douglas, JJ., who dissented] who believe that jury trials are constitutionally required in all but 'petty' criminal contempts."

In the companion cases of Shillitani v. United States, No. 412, and Pappadio v. United States, No. 442, the petitioners had each been sentenced to two years' imprisonment for criminal contempt for refusal to testify before a grand jury after a grant of immunity under the Narcotics Control Act of 1956. A purge qualification had been added to each sentence, providing that should the petitioner answer the questions "before the expiration of said sentence, or the discharge of the said grand jury, whichever may first occur, the further order of this Court may be made terminating the sentence of imprisonment." Although the cases had been treated as criminal contempts and as involving the jury trial question, the Supreme Court held that they were not such, after all; that the "character and purpose of these actions clearly render them civil rather than criminal contempt proceedings," because "the judgments imposed conditional imprisonment for the obvious purpose of compelling the witnesses to obey the orders to testify," i.e., they carried the "keys of their prison in their own pockets." The power to commit for civil contempt, without a jury trial, to coerce compliance with a court order was reaffirmed; but in these instances the power was limited to the term of the grand jury. Since it had long since been discharged, the Court vacated the Second Circuit's judgments of affirmance and remanded the cases with directions that they be dismissed. Mr. Justice Harlan dissented. Mr. Justice White did not participate.

EMBEZZLEMENT

Embezzlement by Driver for Individually-owned Common Carrier Violates 18 U.S.C. 660. United States v. Cook (Sup. Ct., No. 256, 1965 Term, May 23, 1966) 34 L.W. 4407. The defendant was charged with embezzling funds from his employer, an individually-owned common carrier, accruing from an interstate shipment. The district court dismissed the indictment as failing to charge an offense within Section 660.

On appeal, the defendant contended that the phrase "firm, association, or corporation" is not sufficiently broad to include individual proprietors. In rejecting that argument and finding the term "firm" sufficiently broad, the Supreme Court stated that no plausible reason had been advanced for drawing a distinction between employees of individuals and employees of partnership or corporate common carriers.

EXPATRIATION

Constitutionality of Expatriation-by-Voting Provision Sustained. Beys Afroyim v. Dean Rusk (C.A. 2, May 24, 1965). D.J. File 38-51-4434. This case, presented in the district court on an agreed state of facts, raised the constitutionality of Section 401(e) of the Nationality Act of 1940, now 8 U.S.C. 1481(a)(5), which provides for the loss of United States nationality by voting in a political election in a foreign state. The district court sustained the statute (see Bulletin, Vol. 14, No. 7, April 1, 1966, pp. 126-127) and plaintiff appealed. The Court of Appeals affirmed. In a separate opinion, Judge Kaufman reluctantly concurred. It is anticipated that the appellant will petition for certiorari.

Staff: United States Attorney Robert M. Morgenthau; Special Assistant United States Attorneys James G. Greilsheimer and Francis J. Lyons (S.D. N.Y.).

FHA FRAUD

Forgery of FHA Commitments for Insurance; 18 U.S.C. 493. United States v. Conforti (C.A. 2, May 13, 1966), D.J. File No. 130-51-3718. After trial, defendant was convicted of forging FHA commitments for insurance, in violation of 18 U.S.C. 493. Defendant was an official of Conferglo Investment Corporation, a mortgage company which purchased home mortgages insured by FHA and resold these mortgages to long-term investors.

Conferglo financed its operations by borrowing from the Chase Manhattan Bank, which would advance funds upon receipt of a note and the mortgage documents, including FHA commitments for insurance. The loans were to be repaid when Conferglo sold the mortgages to the long-term investors.

Conforti caused a printer to print a thousand counterfeit FHA commitment forms. He then prepared and delivered false mortgage documents, including false FHA Commitments, to the Chase Manhattan Bank, in exchange for which he obtained advances of $148,799.

On appeal, Conforti argued that the presentation and delivery of the false documents to the bank was not a forgery, in violation of 18 U.S.C. 493, because the counterfeit commitments could not have bound the FHA. The Circuit Court concluded, however, that the facts clearly established that Conforti violated the statute which condemns "Whoever falsely makes, forges, counterfeits or alters any -- writing in imitation or purporting to be in imitation

of -- [an] obligation, instrument or writing, issued by the Federal Housing Administration."

Staff: United States Attorney Robert M. Morgenthau; Assistant United States Attorney John S. Martin (S.D. N.Y.).

OBSCENE LITERATURE - FORFEITURE

Forfeiture of Imported Male and Female Nudist Magazines. United States v. 392 Copies of a Magazine Entitled "Exclusive," et al.; United States v. 56 Cartons . . . of a Magazine Entitled "Hellenic Sun," et al. (D. Md.). In an opinion dated April 4, 1966, Judge Roszel C. Thomsen, in a 19 U.S.C. 1305 consolidated forfeiture action, found the magazines "Exclusive," "Review International, Vol. 6," and "International Nudist Sun, Vol. 16" obscene. "Exclusive," having no textual material, contained 34 pictures of nude or almost nude women with breasts and pubic area completely exposed. Some of the women wore garter belts and silk stockings focusing attention on their genitalia. A few of the models were posed in lewd attitudes and positions; some were chained to a chair with bound wrists. Judge Thomsen found that "Exclusive" appealed to the prurient interest of the average male, was patently offensive, and was utterly without social importance or value. The other two magazines designed primarily for homosexual consumption, contained several innocuous articles dealing with sunbathing and nature living which filled about one-half the pages of the two magazines. Each publication also contained 20 photographs of well-developed nude men, with complete pubic exposure. The focus in most instances was on the penis which, the Court noted, was "flagrantly displayed." Considering the pictures in the light of the recent case of Mishkin v. New York, _____ U.S. _____ (March 21, 1966) where Justice Brennan, delivering the opinion of the Court, stated that where "material is designed for and primarily disseminated to a clearly defined deviat sexual group, rather than the public at large, the prurient appeal requirement of the Roth test is satisfied if the dominant theme of the material taken as a whole appeals to the prurient interest in sex of the members of that group," Judge Thomsen found the magazines before him satisfied the Mishkin prurient interest test. He also found them patently offensive and utterly without redeeming social importance. The Court noted that, while the representation of male or female nudity is not per se offensive, nude men or women, or both, may be shown in such positions, poses and settings as to be patently offensive. The court also noted that the articles in the male nudist magazines were "innocuous, dreary and puerile, [bearing] little relation to the illustrations." It was also observed that the statement on "Exclusive's" title page, indicating that it was intended to furnish "serious artists and persons interested in art . . . suitable photographs to be used . . . for drawing, painting and sculpturing" was plainly a subterfuge.

Claimant had contended that 19 U.S.C. 1305 was unconstitutional on its face and also as applied against the male and female nudist magazines in that there was an unreasonable delay between seizure of the publications and filing of libels against them. Noting that Section 1305 had been held unconstitutional in a previous California forfeiture case, United States v. 18 Packages

of Magazines, 238 F. Supp. 846 (N.D. Cal., 1964), the Court, after considering recent New York decisions upholding 1305's constitutionality, viz: United States v. One Carton Positive Motion Picture Film, 247 F. Supp. 450 (S.D. N.Y., 1965); United States v. One Carton Positive Motion Picture Film, 248 F. Supp. 373 (S.D. N.Y., 1965); and United States v. One Book Entitled "The Adventures of Father Silas", 249 F. Supp. 911 (S.D.N.Y., 1966), (forfeiture denied because of unreasonable delay in filing libel) held that the statute was not unconstitutional on its face or as applied in the instant forfeiture action. Judge Thomsen noted that, as a result of expeditious procedures adopted by the Bureau of Customs, there had been only a few days' delay between arrival of the magazines in Baltimore and their being libeled by the United States Attorney. This was not, he held, an unreasonable delay.

Judge Thomsen observed in passing that, although expert testimony may be necessary to assist the judge and jury in determining what reaction deviates may have to sexual stimuli, none is necessary where the materials are so elemental that the ordinary judge or juror should be able to pass on their prurient interest appeal.

An appeal has been noted by claimant in United States v. 392 Copies of a Magazine Entitled "Exclusive," et al. It is expected that the argument will be made during the early part of June, 1966.

Staff: United States Attorney Thomas J. Kenney; Assistant United States Attorneys Arthur G. Murphy and Fred K. Grant (D. Md.).

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IMMIGRATION AND NATURALIZATION SERVICE

Commissioner Raymond F. Farrell

DEPORTATION

Aliens Return to United States After Departure to Mexico for Criminal Prosecution is an Entry Under the Immigration Law. Manuel Caudillo-Villalobos v. INS. (C.A. 5, No. 23,031, May 27, 1966) D.J. File 39-32-100. The primary question before the Court in the above case was whether the Petitioner had made an entry into the United States as defined in 8 U.S.C. 1101(a)(13) and construed in Rosenberg v. Fleuti, 347 U.S. 449.

Petitioner, a resident alien of the United States, was prosecuted by Mexican authorities and convicted in 1961 for the crime of incest. After his conviction Petitioner made several trips into Mexico of one day's duration to sign a bond book, a condition for his release from jail pending his criminal prosecution. Petitioner last returned to the United States on January 31, 1963 after a one day pleasure trip in Mexico.

Petitioner was charged with being deportable as an alien who prior to entry had been convicted of a crime involving moral turpitude, to wit, incest. The Special Inquiry Officer found that Petitioner under the rationale of the Supreme Court in Fleuti did not make an entry into the United States on the above occasions and terminated the deportation proceedings. The Immigration and Naturalization Service appealed his decision. The Board of Immigration Appeals reversed the Special Inquiry Officer and held Petitioner to be deportable. It was the Board's view that since Petitioner's departures from the United States were made in connection with his criminal prosecution, each return constituted an entry under 8 U.S.C. 1101(a)(13) as interpreted in Fleuti.

Petitioner in these proceedings contended that the decision of the Special Inquiry Officer was correct. The Fifth Circuit disagreed and ruled as follows:

> PER CURIAM: Aside from procedural complaints which we find to be without merit, the only question of substance here is the correctness of the determination by the Board of Immigration Appeals that appellant made an "entry" into the United States after his conviction of a crime abroad involving moral turpitude. We think it clear that such entry was made when the facts are considered in light of the language in 8 U.S.C.A. 1101(a)(13). The judgment is AFFIRMED.

Staff: United States Attorney Louis C. LaCour, Assistant United States Attorney John C. Ciolino, (E.D. Louisiana), Of Counsel, Maurice A. Roberts and Paul A. Nejelski, Attorneys, Department of Justice, Washington, D.C.

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LAND AND NATURAL RESOURCES DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

Indians; Soverign Immunity of Indian Tribe; Strict Construction of Waiver of Immunity; Bank Deposit of Incorporated Indian Tribe Immune from Garnishment. Maryland Casualty Company v. Citizens National Bank of West Hollywood, et al. (C.A. 5, No. 21992, May 13, 1966, D.J. File No. 90-2-6-74). - The Seminole Tribe of Florida, Inc., was granted a charter of incorporation by the Secretary of the Interior as provided by 28 U.S.C.A. sec. 477. The corporate charter approved by the Secretary contained the following "to sue or be sued" clause:

> Sec. 9. To sue or to be sued; but the grant or exercise of such power to sue and to be sued shall not be deemed a consent by the said corporation or the United States to the levy of any judgment, lien or attachment upon the property of the Seminole Tribe of Florida, Inc., other than income or chattels especially pledged or assigned.

The Tribe entered into a prime contract with Seldomridge Construction Company for the building of an office building and an arts and crafts center. The prime contract provided, in material part, that final payment for the building would not be made until satisfactory evidence was given that all the bills have been paid. This provision of the prime contract was also incorporated into a performance and payment bond, in which Maryland Casualty Company was the surety, Seldomridge Construction Company the principal, and the Tribe the named obligee.

Because Seldomridge Construction Company agreed to indemnify the Tribe from any liability it might sustain by reason of a claim by a subcontractor who furnished materials for the buildings, the Tribe paid Seldomridge the final payment due on the construction contract. However, the subcontractor was not paid for his materials and, in an original action brought by him, he recovered a judgment against Maryland Casualty Company, the surety under the bonding agreement. Maryland Casualty Company then recovered a judgment from the Tribe because of the Tribe's failure to make final payment as provided by the contract, because the Tribe made the final payment knowing the subcontractor had not been paid. Maryland Casualty Company, in satisfaction of its judgment, caused a writ of garnishment to issue attaching the tribal funds on deposit in a national bank. All the funds on deposit therein were the proceeds of a $100,000 loan from the United States for the use and benefit of the Tribe and subject to a deposit agreement between the United States, the bank and the Tribe.

The Government contended as amicus curiae, in behalf of the Tribe and itself, that the funds on deposit were immune from the garnishment proceedings.

The Fifth Circuit agreed, holding that Indian nations, as an attribute of their quasi-sovereignty, are immune from suit, either in federal or state courts, without congressional authorization and that the incorporation of the Tribe under the provision of 25 U.S.C.A. sec. 477 gave no power to the corporation.

It provided, said the Court, that the Secretary "may" convey powers to the corporation by the charter; and it is clear that the powers granted to the corporation were only those which the Secretary by the terms of the charter conveyed to them.

The court pointed out that the waiver of the immunity to being sued was expressly qualified by the charter and excluded from the waiver was the levy of any judgment, lien or attachment upon the property of the Tribe.

The court further held that the fact that the qualifying clause was written into the charter by the Secretary to protect the property of the Tribe, other than income or chattels especially pledged or assigned, must be liberally construed in favor of the Tribe and all doubtful expressions therein resolved in favor of the Tribe.

The court also pointed out that the fact that the Tribe was engaged in an enterprise, private or commerical in character, rather than governmental, is not material.

Staff: Robert M. Perry (Land and Natural Resources Division).

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TAX DIVISION

Assistant Attorney General Mitchell Rogovin

CIVIL TAX MATTERS
Appellate Decisions

Suit to Enjoin Collection of Federal Cabaret Taxes. Floyd v. United States. (C.A. 4th, decided May 4, 1966). (CCH 66-1 U.S.T.C. ¶15,691). This is a suit by a taxpayer, brought under the guise of a Section 2410 action to quiet title to property, for a declaratory judgment of non-liability for federal taxes, and to enjoin collection of those taxes. In an attempt to escape the bar of Section 7421(a) of the 1954 Code, forbidding suits to enjoin the collection of federal taxes, the plaintiff sought by his allegations to show that he was merely a third party whose property was being taken to satisfy another's tax liability. Thus, he alleged that the cabaret, the ownership and operation of which gave rise to the tax obligation involved, was in fact owned solely by his wife, and that he was not in any way financially involved in the enterprise. The United States moved to dismiss the complaint on the grounds (1) that the Court lacked jurisdiction of the subject matter of the suit because of the provisions of Section 7421(a) of the 1954 Code and 28 U.S.C., Section 2201, and (2) that the Court lacked jurisdiction of the United States since it had not consented to be sued in this type of action. The District Court granted the Government's motion and the Fourth Circuit affirmed on the primary authority of Enochs v. Williams Packing Co., 370 U.S. 1. Rejecting plaintiff's "non-taxpayer" argument, the Fourth Circuit pointed out that he did not dispute that the taxes assessed were valid taxes and were owed by the owner of the cabaret, but simply denied that he had any interest in the cabaret upon which tax liability could lawfully be predicated as to him. The Court said that this was precisely the type issue that should be resolved in the ordinary channels of tax litigation i.e., by way of refund suit. The Court pointed out that where no tax deficiency had been asserted against one whose property was seized, a suit by the person aggrieved against the Government for injunctive relief would be appropriate; here, however, as the Court stated, the complaint showed on its face that the Government had treated the plaintiff as a taxpayer--hence, this was not an exaction in "the guise of a tax" and suit was barred by Section 7421(a).

Staff: Meyer Rothwacks, George F. Lynch (Tax Division)

Insolvency Proceeding; Federal Tax Claim Entitled to Priority Under Section 3466 of the Revised Statutes over Claims of Estate Creditors with Exception of Bank's Claim as Pledgee of Collateral Transferred to Bank before Tax Liens were Filed. In re Bushway. (Supreme Court, New Hampshire, March 30, 1966). (CCH 66-1 U.S.T.C. ¶9411). The executor of the deceased taxpayer's estate filed a Petition for Instructions with the Probate Court for the County of Rockingham, New Hampshire, requesting advice as to the proper administration and distribution of the assets of the estate. The petition recited that the taxpayer died insolvent on April 30, 1963. On May 14, 1965, the District Director of Internal Revenue filed a proof of claim against the estate for unpaid income taxes for the year 1959 in the amount of $125,379.09, plus interest. An assessment for this liability was made on March 12, 1965, and a notice of federal tax lien was filed on April 21, 1965. The Probate Court appointed a commissioner of

insolvency who filed a report allowing claims totaling $48,270.37, including a claim of the Merchants National Bank of Newburyport, Massachusetts, in the sum of $16,100. The bank's claim was based on three promissory notes dated April 2, 1963 for $1,000, April 10, 1963 for $5,100, and April 20, 1963 for $10,000, respectively. The bank held as collateral security for the notes certain stock certificates having an inventory value of $8,951.50.

The executor filed a first account showing a balance of $69,927.10, which included the securities inventoried at $8,951.50 and held by the bank as collateral. The petition requested instructions from the Probate Court as to the administration and distribution of the assets of the estate. The Probate Court certified several questions to the Supreme Court of New Hampshire concerning the priorities of the various claimants to the fund held by the executor.

The Supreme Court of New Hampshire ruled that under Section 3446 of the Revised Statutes, the federal tax claims were entitled to priority over all other claims against the insolvent estate, except as to specific property of which the taxpayer had been divested of either title or possession before insolvency. Since it was unquestioned that possession of the collateral held by the bank was transferred to it prior to the filing of the federal tax liens, the Government did not challenge the bank's right to retain its security interest in the collateral. However, since the bank held other security for the same indebtedness, the Court held that the bank's claim should not be allowed in the insolvency proceeding unless the commissioner estimated the total security to be of less value than the debt. If so estimated, only the amount of the bank's claim which exceeded the value of the security would be allowed as unsecured, but the bank would have the right to surrender the security to the executor for liquidation if dissatisfied with the commissioner's estimate of value. Accordingly, the Court ruled that the fund in the hands of the executor available for distribution, exclusive of the value or proceeds of the securities held by the bank, should be paid to the Internal Revenue Service in satisfaction of the taxpayer's liability, with any remainder being distributed pro rata among the unsecured creditors whose claims were allowed by the commissioner.

The Court also held that even though the federal tax claim was presented to the commissioner more than six months after his appointment, the six-month state statute of limitations for presenting claims could not bar the federal tax claim.

Staff: United States Attorney Louis M. Janelle (N.H.); and Joseph Kovner (Tax Division).

District Court Decision

Allowable Expenses of Administration in Decedent's Estates; Accountants are not to be Employed at Estate Expense for Performing Executor's Duties; Claims for Attorney's Retaining Lien when Property Acquired after Death of Client, and for Charging Lien when Retained at a Fixed Yearly Salary Denied. Estate of Louis F. Farrell. (Surrogate's Court, Nassau County, N.Y., May 9, 1966). The Government made tax assessments against a decedent's estate for income due from the decedent for the years 1948, 1949 and 1950 in the approximate amount of $700,000. The administratrix chose to contest the assessments and hired accountants and a tax attorney in order to do so. The matter was finally settled in

1959 for about $436,000. As of the date of the decision herein, the amount due because of penalties and interest was over $800,000, but there were not enough funds to meet all claims against the estate.

The administratrix rendered her account for settlement of the estate and the United States interposed several objections dealing with the fees paid to and owing accountants, attorneys (including tax counsel), and the estate of a deceased attorney, for services rendered the estate.

Two accountants submitted fees of $11,000 and $6,295. In reviewing the services performed, the Court found a duplication of duties by the accountants that could normally be performed by the attorneys for the estate or the executor. The Court held that an accountant may not be employed at estate expense for services which the executor or his attorney can be expected to perform. As a result, the Court reduced the accountants' fees to $5,000 and $2,000, respectively.

The attorneys for the estate and the tax attorney filed claims for $75,000 and $9,250, respectively. The Court noted the amount of legal work required to liquidate the estate and to contest these tax liabilities. In reducing the fee for the estate attorneys to $50,000 and that of the tax attorney to $7,500, the Court considered the services rendered, the size of the estate, and the standing of the attorneys at the bar; it emphasized the actual financial results achieved through these sevices as they related to the size of the estate. The Court also said the tax attorney's fee should be taken into consideration in fixing the fee of the attorneys for the administratrix.

Also involved was a claim presented by the estate of one of the attorneys who had represented the taxpayer prior to his death. The estate claimed charging and retaining liens on stock owned by the deceased tax payer, while the Government argued that the estate was a mere creditor, junior to the Government by virtue of Section 212 of the Surrogate's Court Act. The stock in question came into the attorney's possession as a result of his negotiating a settlement and payment of notes of the decedent that were in default at the decedent's death. The stock was later sold by the estate but the attorney insisted that $75,000 of the sale price be placed in a special account to retain his lien. The Court held no retaining lien existed here because such a lien must arise when an attorney comes into possession of securities or money, etc., in the course of his employment. In this case the evidence clearly showed that the attorney came into possession of this stock only after decedent's death, when he was acting as attorney for the estate.

A charging lien under Section 475 of the Judiciary Law of New York is a lien for the value of services rendered in an action or proceeding. Mr. Friedlander, the attorney in this case, was retained at $5,000 a year by the decedent, which did not include litigated matters. In three years of representing the taxpayer, there was only one matter that reached the formal litigating stage. This was later settled by negotiation. The Court rejected this claim, holding that when an attorney is retained at a fixed, yearly salary, no charging lien

exists, relying on Matter of Heinsheiner, 214 N.Y. 361. As a result, the Court treated the claim as all other creditors' claims, and junior to the Government, pursuant to Section 212 of the Surrogate's Court Act.

Staff: United States Attorney Joseph P. Hoey; Assistant United States Attorney Joseph Rosenzwig, (E.D. N.Y.); and Charles A. Simmons, (Tax Division).

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I N D E X