United States Attorneys

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UNITED STATES DEPARTMENT OF JUSTICE

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NEWS NOTES

CONSENT JUDGMENT FILED IN FIRST SUIT UNDER FEDERAL CLEAN AIR ACT

November 4, 1968: A consent judgment has been filed in the district court in Baltimore, Maryland to settle the Government's first suit under the Federal Clean Air Act. The judgment directs the Bishop Processing Company of Bishop, Maryland to stop discharging malodorous pollutants from its animal rendering plant into the air across the state line into Delaware, but does not specify how this is to be accomplished. The Department filed a civil suit against Bishop last March 7 at the request of the Department of Health, Education and Welfare after HEW tried repeatedly to obtain the firm's compliance with the Federal Clean Air Act, but failed. According to the Act, HEW may request legal action in cases where an area's air pollution results from operations in another state.

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POINTS TO REMEMBER

ARREST AUTHORITY GRANTED TO POSTAL INSPECTORS

On October 12, 1968, the President approved Public Law 90-560 which in part, amends Chapter 203 of Title 18, United States Code by adding at the end thereof a new section, Section 3061. This section empowers postal inspectors to serve warrants and subpoenas, to make arrests without warrant for offenses against the United States committed in their presence, and to make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. These powers are exercisable only with regard to postal offenses.

This legislation was sought by the Post Office Department, with the endorsement of the Department of Justice, after several court decisions indicated some judicial doubt as to whether the provisions of Title 39, United States Code, Section 3523(a)(2)(k) conferred statutory authority upon postal inspectors to make arrests without warrant. In point were the adverse rulings in Alexander v. United States, 390 F.2d 101 (5th Cir. 1968), and United States v. Moderacki, 280 F. Supp. 633 (D. Del. 1968).

On October 16, 1968, the Postmaster General formally implemented the statute by authorizing postal inspectors to exercise these powers in the performance of their official duties.

AUTO THEFT PREVENTION ACT - P.L. 90-560

A. Background of the Act

On October 12, 1968, the Auto Theft Prevention Act (P.L. 90-560) was signed by the President. The Act prohibits the mailing of master keys or advertisements for their sale.

The purpose of the Act is to eliminate the use of the mails for the indiscriminate distribution of master keys and thereby to remove one of the major factors in tempting individuals, particularly juveniles, into automobile thefts and related crimes. Automobile theft is the third most serious crime in the United States in terms of magnitude. During 1966, there were more than one-half million automobile thefts, estimated to have resulted in direct financial losses of over $140 million. In 1967, it is estimated that the thefts will exceed 650,000. Also, it is estimated that 63 per cent of the auto thefts are committed by persons under 18 years of

age, whose primary purpose was to obtain temporary transportation and joyriding. This legislation was recommended by the subcommittee to investigate juvenile delinquency of the Senate Judiciary Committee in their report (Senate Report No. 823, 90th Congress).

B. The Effect of the Act

H.R. 14935, after passage by the House of Representatives, was amended by the Senate, whose amendments were agreed to by the House.

The Act provides that any motor vehicle master key, any pattern, impression, or mold from which a motor vehicle master key may be made, and any advertisement for the sale of such key, pattern, impression, or mold, is nonmailable matter, and whoever knowingly mails such matter shall be fined not more than $1,000, or imprisoned not more than one year, or both.

As originally passed by the House, the Act excepted from its provisions locksmiths, dealers in motor vehicles, officers or employees of parking facilities, common carriers, or motor vehicles rental business for use in connection with such business, or officers or employees of an automobile club or association for use in connection with the activities of the club or association, or supply or procurement personnel of a Federal, State or local government agency for use in connection with government activities. However, as amended by the Senate and as agreed to by the House, the Act contains no exceptions. Instead, the Postmaster General is authorized to make such exemptions as he deems necessary.

C. Comments

This Act becomes effective sixty days after its enactment, on December 11, 1968. To determine what exemptions he should make from the Act's provisions, the Postmaster General is publishing a notice in the Federal Register requesting suggestions from the public as to who should be exempted. It is expected that the exemptions will follow those enumerated in the House-passed version of the Act. Investigations of complaints of violations of the Act will be conducted by the Post Office Department.

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Edwin M. Zimmerman
Assistant Attorney General
Antitrust Division

Edwin Zimmerman was born in New York City, July 11, 1924. He received his A.B. from Columbia in 1944. From 1944 to 1946 he served in the Army Signal Corps as a Lieutenant. Upon receiving his LL.B. from Columbia Law School in 1949, he became a law clerk to Judge Rifkind in the Southern District of New York, and from 1950 to 1951 he was law clerk to Justice Stanley F. Reed of the U.S. Supreme Court. Mr. Zimmerman was in private practice from 1950 to 1959 during which time he joined the faculty of Stanford Law School as a Professor of Law. He came to the Department of Justice in July, 1965 as the Director of Policy Planning in the Antitrust Division, and was named First Assistant to Assistant Attorney General Donald Turner in December, 1965. He was appointed in June, 1968 to his present position of Assistant Attorney General in charge of the Antitrust Division.

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William Matthew Byrne, Jr.
United States Attorney
Central District of California

Matt Byrne was born September 30, 1930 at Los Angeles, Calif. He received his B.S. degree in Business Administration in 1953 from the University of Southern California, and his LL.B. from the Law School in 1956. From 1956 - 1958 he served in the U.S. Air Force. He was an Assistant United States Attorney for the Southern District of California from 1960 until his appointment in March of 1967 as U.S. Attorney he was a partner in a private law firm in Los Angeles. As U.S. Attorney Mr. Byrne has given special emphasis to organized crime, consumer fraud, and equal employment cases. He is President of the Federal Bar Association for Los Angeles. On October 1, 1968 Matt Byrne was nominated by President Johnson to be a federal district judge for the Central District of California.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Director John K. Van de Kamp

APPOINTMENTS

ASSISTANT UNITED STATES ATTORNEYS

Alaska - ALMON LEE PETERSEN; New York University Law School, J.D. and formerly Assistant Area Counsel, Small Business Administration.

District of Columbia - RICHARD A. HIBEY; Georgetown University Law Center, LL.B., Georgetown University Law Center, LL.M., and formerly a Staff Attorney with D.C. Legal Aid Agency.

District of Columbia - RICHARD N. STUCKEY; University of Nebraska Law School, J.D., and formerly a Graduate Assistant, University of Nebraska Law College, and Trial/Defense Counsel, U.S. Marine Corps.

Missouri, Eastern - DANIEL R. O'NEILL; St. Louis University Law School, J.D., George Washington University Law School, LL.M., and formerly in private practice.

New Jersey - JOHN PATRICK NULTY; Seton Hall University Law School, LL.B., and formerly a law clerk to U.S. District Court Judge Wortendyke, Jr.

New York, Southern - PETER L. ZIMROTH; Yale Law, LL.B., and formerly a law clerk to Judge Bazelon, U.S. Court of Appeals; also law clerk to Supreme Court Justice Fortas.

RESIGNATIONS

Illinois, Northern - RICHARD S. JALOVEC; resigned to become Assistant State's Attorney, Cook County State's Attorneys Office.

Indiana, Northern - JOSEPH F. EICHHORN; to become Judge of Wells Circuit Court.

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ANTITRUST DIVISION

Assistant Attorney General Edwin M. Zimmerman

DISTRICT COURT

SHERMAN ACT

COURT DENIES ALMOST ALL DEFENDANTS' REQUESTS FOR PARTICULARS.

United States v. Fuel Oil Dealers' Division of the Central Montgomery County Chamber of Commerce, et al. (E.D. Pa., Cr. 22756; October 25, 1968; D.J. 60-57-182)

In a memorandum opinion dated October 25, 1968, Judge Charles R. Weiner denied practically all requests for particulars contained in a motion for bill of particulars, filed on behalf of all defendants on March 17, 1967.

On January 26, 1967, an indictment was returned by the grand jury charging an association of fuel oil dealers, six corporations, and ten individuals with violating Section 1 of the Sherman Act. All defendants entered pleas of not guilty. After defendants filed their motion for bill of particulars pursuant to Rule 7(f) of the Federal Rules of Criminal Procedure, the Government filed a voluntary bill of particulars naming the co-conspirators participating in the combination and conspiracy, the dates when they entered into the combination and conspiracy, the dates of meeting held in furtherance thereof and the names of the co-conspirators whose participation in the conspiracy terminated with the dates thereof. The Government further set forth in its voluntary bill the earliest documentary material from which the existence of each term of the unlawful agreement charged in the indictment was manifest.

Defendants in their motion for bill of particulars sought disclosure of the most minute details of the Government's evidence with respect not only to the defendant conspirators, but also the non-defendant conspirators to the crime charged. The broad sweeping demands for all of the Government's evidence included such matters as the latest date of each act, event, transaction, and statement in furtherance of or connecting defendants and co-conspirators to the offense charged, the nature of the documents connecting each to the conspiracy, the persons ordering each conspirator to act, the subject matter of discussions held for effectuating the conspiracy, every price that was fixed, the names of persons to whom the sale of fuel oil was refused, and legal theories in the Government's case.

The court in denying all of the above requests, with the exception of the dates of the latest act, event or trans action connecting conspirators with the conspiracy, stated in its memorandum opinion:

> The indictment, together with the voluntary bill, fairly approximates the time in which the conspiracy was started, states the meetings held in furtherance of the combination and conspiracy, the type of business involved and the nature of the restraint alleged. Information of this nature has been held to be sufficient to apprise defendants of the nature and extent of the charges leveled against them. United States v. Pennsylvania Refuse Removal, Crim. #21558 (E. D. Pa. filed March 10, 1964); United States v. Greater Pittsburgh Linen Supply Ass'n., 10 F.R.D. 585 (W.D. Pa. 1950).

Defendants argued that the extent to which the accused must be informed must be considered in light of the recent amendment to Rule 7(f) which was designed to encourage a more liberal attitude by the courts toward bills of particulars. In response to this argument, the court stated in its memorandum opinion:

> The purpose of the bill is to guard against double jeopardy, and to inform the defendant of the nature of the charge to enable him to prepare his defense and prevent surprise at trial. United States v. Baugh & Sons Co., supra; United States v. Sherwin-Williams Co., 9 F.R.D. 69 (W.D. Pa. 1949). "The 'more liberal attitude' to be adopted with respect to a motion for a bill of particulars does not alter /these/ two basic purposes of a bill of particulars". United States v. Birrell, 263 F. Supp. 113, 114 (S.D. N.Y. 1967). As in United States v. Greater Pittsburgh Linen Supply Ass'n., supra, defendants are seeking as much evidence as this court will require the Government to disclose. Though this is not as reprehensible as the Government wishes us to believe, it is still not the function of the bill of particulars. Defendants' attempt to turn Rule 7(f) into a broad discovery rule must necessarily meet with the same negative result, except in one instance, as defendants met in the Greater Pittsburgh case. Accord, United States v. Baugh & Sons Co., supra at 333 . . . .

Staff: Morton M. Fine and Raymond D. Cauley (Antitrust Division)

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CIVIL DIVISION
Assistant Attorney General Edwin L. Weisl, Jr.

COURTS OF APPEALS

COSTS - EXTENT OF COUNSEL'S LIABILITY UNDER 28 U.S.C. 1927

COSTS AWARDED TO UNITED STATES UNDER 28 U.S.C. 1927 FROM ATTORNEY WHO CAUSED EXCESSIVE AND UNNECESSARY COSTS: ATTORNEYS' FEES, TRAVEL EXPENSES AND PER DIEM INCLUDED IN AWARD

United States v. Chelsea Towers, Inc. (C.A. 3, No. 17,187; October 30, 1968; D.J. 130-48-5904)

At an earlier stage of this proceeding, the appellant Chelsea Towers moved in the Court of Appeals for a stay of proceedings in the district court pending disposition of its appeal of an interlocutory order under 28 U.S.C. 1292(a). The stay was denied on May 14, 1968, after oral argument before a panel of the Court.

In September, the appellant moved in the Court of Appeals for an "injunction", pending disposition of the interlocutory appeal, against the district court's consideration of the Government's motion for summary judgment. The motion, which did not set forth any grounds different from those presented to the Court in connection with the prior motion for a stay, was, in our view, vexatious and without any justification. Consequently, in addition to opposing the motion, we requested that the Court tax costs against opposing counsel under 28 U.S.C. 1927. That statute permits a court to tax costs against an attorney "who so multiplies the proceedings in any case as to increase costs unreasonably and vexatiously". We filed with our request an affidavit of costs incurred or to be incurred in opposing the motion. In our list of expenses we included transportation and per diem expenses as well as $20 per hour for the time (excluding travel time) of the attorney involved. Although attorneys' fees and travel expenses are not ordinarily considered as "costs", we urged that recovery of such items should be permitted under Section 1927 in order to effectuate its purpose of discouraging vexatious litigation. Compare Rules 37(a) and 37(c), F.R.Civ.P. The total sum requested was $269.98.

The Court of Appeals found the appellant's motion for an injunction to be "without merit" and, without specifying an amount, taxed costs against it. The clerk of the Court directed opposing counsel to pay us the $269.98 requested. Opposing counsel wrote to the Court, objecting to the inclusion of attorneys' fees and travel expenses on the ground that such items were not

recoverable "costs", and arguing that, in any event, attorneys' fees were limited to actual fees paid or incurred and could not, therefore, be $20 per hour for Government attorneys. Thereafter, the Court, one judge dissenting, entered judgment in favor of the United States against opposing counsel for the amount sought.

Our recovery of costs is a significant development in that the courts have rarely invoked their powers under Section 1927, and because the Court in this case accepted our view as to the nature of the costs which may be recovered under the statute. Attempts to recover costs under Section 1927 could be very useful in preventing unnecessary and vexatious proceedings, and United States Attorneys are urged to adopt such a practice in appropriate cases.

Staff: John C. Eldridge and William Kanter
(Civil Division)

FEDERAL TORT CLAIMS ACT - JURISDICTION

28 U.S.C. 2680(h) BARS TORT CLAIM BASED ON MISREPRESENTATION BY GOVERNMENT AGENT THAT PLAINTIFF WOULD BE PAID FOR PREPARING PLANS TO CORRECT FAULTY AIR CONDITIONER

John J. Cenna v. United States (C.A. 3, No. 17,154; October 25, 1968; D.J. 157-64-266)

Cenna, a Government maintenance engineer, brought this action in the district court alleging that he and an agent of the United States had entered into an oral contract under which Cenna was to be paid for preparing plans to correct a faulty air conditioning system in a federal building. Cenna alleged that he had prepared the plans and the Government had used them, but that he had never been paid and that consequently the Government had breached the contract by converting the plans to its own use. The Government moved to dismiss the complaint on the grounds that the court lacked jurisdiction both under the Tucker Act, 28 U.S.C. 1346(a)(2), in that the claim was a contractual one in excess of $10,000, and under the Federal Tort Claims Act, 28 U.S.C. 1346(b), in that insofar as the complaint alleged a tort it was one "arising out of . . . misrepresentation, deceit, or interference with contract rights" excluded from the scope of the Tort Claims Act by 28 U.S.C. 2680(h).

The district court dismissed the action. On appeal, counsel for Cenna argued that despite his allegations of the existence of a contract, there was in fact no contract upon which suit could be maintained. He

asserted that the Government's agent had simply made an honest mistake in holding out the possibility that Cenna would be paid for his work and that a claim based on such a misrepresentation of law was not barred by Section 2680(h).

The Third Circuit affirmed, holding that jurisdiction was lacking under any of appellant's possible theories of recovery. First, a contractual action for remuneration, based on breach of contract or quantum meruit, was barred by the Tucker Act limitation of $10,000. Second, since in this case Cenna consented to the Government's use of the plans for the very purpose for which they were eventually used, he had failed to make out a claim for tortious conversion under state law and thus had failed to state a claim under the Tort Claims Act. (The Court noted that "the distinction between tort and contract mandated by the Federal Tort Claims Act and the Tucker Act" was thus preserved.) Finally, the Court discussed the theory advanced by Cenna on oral argument. It stated that Cenna could possibly make out a claim for tortious conversion if he were to allege that the Government's agent either had intentionally deceived him as to the Government's intention to pay or had negligently failed to ascertain whether the Government would pay. The Court concluded that, since such a claim would present a classic case of misrepresentation or deceit, it would have to be dismissed by reason of 28 U.S.C. 2680(h). The subsection was interpreted as barring such claims regardless of whether the misrepresentation was negligent or wilful or whether the misrepresentation was of fact or of law.

Staff: Walter H. Fleischer and Michael C. Farrar
(Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

DISTRICT COURT

SECURITIES LAWS

FRAUD IN SALE OF SECURITIES; KNOWLEDGE OF SEC RULE OR REGULATION UNDER 15 U.S.C. 78 ff(a).

United States v. Lester L. Lilley, et al. (S.D. Texas, Memorandum Opinion dated October 2, 1968; D.J. 113-74-17)

The defendants, former officers of Westec Corporation, entered pleas of guilty to charges of violations of Securities and Exchange Commission Rule 10b-5 for fraud in connection with the manipulation of the price of the stock on the American Stock Exchange. They moved to have imprisonment excluded from their sentences under the provisions of the penalty section of the Securities Exchange Act of 1934 (15 U.S.C. 78 ff(a)), which provides for a fine and/or imprisonment for violations, but excludes imprisonment for the violation of any rule or regulation if the defendant proves that he had no knowledge of it.

In ruling on the motions, the court discussed the legislative history of the section and concluded that Congress intended to ensure that no person could be imprisoned for the violation of a standard contained in a rule of which he had no knowledge, but that Congress did intend to charge every man with knowledge of the standards prescribed in the securities acts themselves. The court pointed out that Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) prohibits securities fraud in language almost identical with Rule 10b-5, and that price manipulation, to which the defendants pleaded guilty, is prohibited by Section 9(a)(2) of the 1934 Act (15 U.S.C. 78i(a)(2)). Accordingly, the "no knowledge" clause of the penalty statute should not be available to persons charged with knowledge that their conduct is in violation of the law, but who did not happen to know that it was also in violation of a rule or regulation.

In the alternative, the court held that the defendants had not satisfied their burden of showing a lack of knowledge. It was not necessary that they knew the precise rule, if they did know the substance and that their conduct was contrary to law. "Proof that a defendant knew securities fraud to be prohibited by law should prevent him from discharging his burden under the 'no knowledge' clause of proving ignorance of Rule 10b-5", and "by pleading

guilty to the charges . . . each of these defendants admitted that he knew securities fraud was a violation of law". The court rejected the defendants' testimony that they did not consider the manipulative conduct as fraudulent, stating that Rule 10b-5 does not expressly prohibit manipulation of prices but does prohibit fraud and leaves to the courts the task of defining the specific kinds of securities fraud. "A lack of knowledge that manipulative activity is fraudulent is thus irrelevant." By pleading guilty, defendants admitted that they knew securities fraud was prohibited, which is the substance of Rule 10b-5. "No more knowledge is required."

Thereafter, defendant Baker was sentenced to 18 months in prison and defendant Lilley was sentenced to one year. Under related indictments, James W. Williams was sentenced to a total of fifteen years, and Ernest M. Hall, Jr. received a sentence of eight years.

Staff: United States Attorney Morton L. Susman and Assistant United States Attorney Malcolm R. Dimmitt (S. D. Texas)

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INTERNAL SECURITY DIVISION
Assistant Attorney General J. Walter Yeagley

DISTRICT COURT

FIRING OR TAMPERING WITH VESSELS

CONSPIRACY TO BOMB VESSELS OF FOREIGN REGISTRY; FIRING UPON VESSEL OF FOREIGN REGISTRY; SENDING THREATENING TELEGRAMS CONCERNING ATTEMPTS TO DAMAGE PROPERTY BY EXPLOSIVES

United States v. Orlando Bosch Avila, et al. (S.D. Fla., October 10, 1968; D.J. 146-1-95-209)

Since early this year the FBI has been investigating intensively a number of terrorist acts which have occurred in several areas of the United States, but primarily in the Miami, Florida area. These acts, which include the bombing of foreign ships, have been directed at countries which engage in trade with Cuba. Responsibility for these activities has been claimed by an organization called "Cuban Power".

On October 10, 1968, a grand jury in Miami, Florida returned a five-count indictment against Dr. Orlando Bosch Avila and eight other Cuban exiles who are believed to be connected with "Cuban Power". Bosch has publicly acknowledged his affiliation with "Cuban Power".

The indictment charged all nine defendants with conspiring to injure vessels of foreign registry in violation of Title 18, U.S.C. 2275. Three of the defendants were charged with a substantive violation of Section 2275 in connection with the firing of a 57 mm recoilless rifle at a Polish ship docked in Miami. Dr. Bosch was charged in three counts with sending telegrams to the heads of three foreign states threatening to bomb ships registered in those countries unless those countries ceased trading with Cuba. The violation charged in those three counts is under 18 U.S.C. 837(d). There are no prior reported cases under that statute.

The trial has been set for November 5, 1968 in Miami.

Staff: United States Attorney William A. Meadows, Jr.; Assistant United States Attorney Donald I. Bierman (S.D. Fla.); and James P. Morris (Internal Security Division)

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LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Clyde O. Martz

COURT OF APPEALS

CONDEMNATION

EXCLUSION OF PROJECT-ENHANCED VALUES; UNDER RULE 71A(h), ISSUE OF SCOPE OF PROJECT WAS LEGAL QUESTION FOR COURT, NOT JURY

Wardy, et al. v. United States (C.A. 5, No. 25718, October 25, 1968; D.J. 33-45-981-753)

In 1966, the United States condemned lands in connection with the Chamizal Project in El Paso, Texas. Prior to trial, on Government motion, the district court ruled that the subject property was within the area likely to be acquired for the project, which was announced in 1963, and that the landowners' purchase prices ($546,000) in 1964 and 1965 (reflecting increases in value due to the project) could not be referred to at the trial. The landowners appealed from judgment on the jury verdict in the amount of $500,000.

The Court of Appeals affirmed, declaring that (1) testimony reflecting project-enhanced values was properly excluded under the "sound and equitable" holding of United States v. Miller, 317 U.S. 369 (1943); and (2) the question of the lands being within the scope of the project was not for the jury but was correctly determined by the district judge. In this regard, the Court said:

> Appellants contend that the jury should have been allowed to answer this question. Under rule 71A(h) the jury's function is limited to determining "just compensation". It is the duty of the court to decide the legal issues, as well as all other fact issues. /Citations omitted./ Thus, instead of infringing on the jury's functions, the judge merely decided a legal question which limited the factors necessary to the determination of "just compensation".

Staff: John G. Gill and Raymond N. Zagone
(Land and Natural Resources Division)

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TAX DIVISION
Assistant Attorney General Mitchell Rogovin

COURT OF APPEALS

COSTS; CROSS APPEALS

COSTS ON CROSS APPEALS; WHERE EACH PARTY DECIDES TO DISMISS ITS OWN, INDEPENDENT, APPEAL, EACH MUST BEAR COSTS OF ITS APPEAL

First Federal Savings & Loan Assn. of St. Joseph, Plaintiff-Appellant, Appellee v. United States, Defendant-Appellee, Appellant (C.A. 8th, Nos. 19449 and 19450; October 14, 1968, D.J. 5-43-845)

In a suit for refund of federal income taxes, two issues were decided by the district court in favor of taxpayer, the remaining issue being decided in favor of the Government. (W.D. Mo.; 68-2 U.S.T.C., par. 9490; 22 AFTR 2d 5238) The Government filed a notice of appeal to the Eighth Circuit, and thereafter the taxpayer filed a notice of appeal. Subsequently, the Government moved in the Court of Appeals to dismiss its appeal, and the taxpayer thereafter likewise moved to dismiss its appeal, but also sought to have taxed against the Government the costs on its appeal as well as on the Government's appeal, upon the theory that the taxpayer's appeal was induced entirely by the Government's appeal--and that, since the Government subsequently decided not to prosecute its appeal, which resulted in a similar decision by the taxpayer as to its own appeal, the parties should in effect be restored to the position that they were in the district court prior to any appeals, and that therefore the costs of both appeals should be taxed against the Government.

The Government took the position that the appeals taken by the parties were entirely independent, and that the taxpayer was fully at liberty to prosecute its appeal after the Government decided against the prosecution of its appeal. Therefore, while agreeing that any allowable costs incurred in connection with the Government's appeal were properly taxable against the Government, the Government took the position that no costs incurred by the taxpayer in connection with its own appeal could be taxed against the Government.

The Court of Appeals agreed with the Government, and on October 14, 1968, entered an order dismissing both appeals with prejudice "with costs to be borne by the appellant in each appeal".

Staff: United States Attorney Calvin K. Hamilton; Assistant United States Attorney John L. Kapnistos (W.D. Mo.); Harry Marselli and David E. Carmack (Tax Division)

DISTRICT COURT

SUMMONS ENFORCEMENT

TAXPAYER COMMITTED TO MARSHAL'S CUSTODY AND ORDERED TO FORFEIT BOND FOR CONTEMPT OF COURT; BUT RETURNS BASED UPON RECORDS PRODUCED SHOW HE IS ENTITLED TO $400 REFUND

United States & Revenue Officer Joanna H. Oakley v. Commie T. McAdams (USDC M. D. N. C., Civil No. C-106-D-68; October 22, 1968, D. J. 5-54M-594)

On April 24, 1968, an Internal Revenue summons was issued and served upon the respondent, Commie T. McAdams, requiring him to appear before Revenue Officer Joanna H. Oakley on May 6, 1968, and to give testimony and to produce certain records relating to his income and expenses for the year 1965. When the respondent failed to appear as required, a summons enforcement action was commenced, and an order was entered requiring the respondent to appear before the Revenue Officer on July 23, 1968 and, failing that, to appear before the Court on August 15, 1968 to show cause why he should not be compelled to testify and produce the records.

The respondent did not appear before the Revenue Officer nor did he appear before the court. He was then ordered to appear before the court on August 27, 1968 to show cause why he should not be held in contempt, but again he failed to appear. Pursuant to order of court, the respondent was arrested by the United States Marshal and brought before the court on October 4, 1968. At that time, the defendant requested a continuance for the purpose of consulting an attorney. This request was granted and the defendant was then directed to appear before the court on October 14, 1968, after signing a recognizance bond in the amount of $500.

On October 14, 1968, neither the defendant nor his counsel appeared, whereupon the court ordered the bond forfeited. On October 22, 1968, the defendant was ordered committed to the custody of the United States Marshal for a period of two weeks.

Every cloud has a silver lining, however, as the following indicates: The taxpayer produced the required records for the year 1965, together with records for 1966 and 1967, which years were not the subject of the summons; and, an audit reveals that the taxpayer will receive a refund of approximately $400 for these years.

Staff: United States Attorney William H. Murdock (M. D. N. C.)

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