United States Attorneys

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UNITED STATES DEPARTMENT OF JUSTICE

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NEWS NOTES

DEPARTMENT BRINGS FIRST SCHOOL DESEGREGATION COMPLAINT ON THE WEST COAST

November 19, 1968: The Department of Justice moved to bring its first school desegregation complaint on the West Coast, charging racial discrimination by the Pasadena, California school system. Attorney General Clark said the Department filed a motion in U.S. District Court in Los Angeles to intervene in a pending suit by three parents against officials of the Pasadena Unified School District.

In its proposed complaint, the Department said the officials have adjusted student assignment zones on a racial basis, causing some public schools to enroll more Negro students than they would under a non-discriminatory zoning method. The Department said the officials have adopted policies designed to maintain Negro enrollment in predominantly white schools at a level no higher than the percentage of Negro students in the entire system. The officials have failed and refused to take similar steps at schools with larger Negro enrollment, it was alleged.

The Department said the defendants have violated the school desegregation provisions of the 1964 Civil Rights Act, lawful regulations issued under the provisions and the assurance of compliance with the provisions which they furnished the Department of Health, Education and Welfare.

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POINTS TO REMEMBER

DISMISSAL OF INDICTMENTS IN FUGITIVE CASES

As often stated, fugitive status per se is not considered sufficient reason for dismissal of indictments. Accordingly, only "triable" criminal cases are counted in evaluation of the currency of office caseloads, such evaluation excluding cases in which the United States Attorney can take no action, e.g. where defendants are fugitives, in the armed forces, mentally incompetent or in state custody. (In this last category efforts should be made to dispose of the cases through writs of habeas corpus ad prosequendum.)

Recently the Department has learned of cases in which Federal judges have, sua sponte, dismissed pending indictments where the defendants were in fugitive status. Concern has been expressed that some judges may in the future dismiss fugitive cases of importance to the Department due to understandable pressure to reduce the alarming backlog of criminal cases in some districts. Accordingly, the Administrative Office of the United States Courts has announced that its Division of Procedural Studies and Statistics in its next annual report will specially identify fugitive cases, in order that these cases will not be considered as part of the backlogs in the various district courts. United States Attorneys should be alert to this new identification policy and promptly notify the clerks of the courts when a case enters fugitive status, in order to be able to properly represent the Department's position that no dismissal of an indictment should be had because of fugitivity per se.

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DEPARTMENT OF JUSTICE PROFILES

J. Walter Yeagley
Assistant Attorney General
Internal Security Division

Mr. Yeagley was born April 20, 1909 in Angola, Indiana. He received his A.B. degree from the University of Michigan, and his J.D. from Michigan Law School in 1934. He joined the FBI in 1942, and spent much of his time in the Bureau in Latin America and supervising Latin American matters. In 1948 when the Economic Cooperation Administration (now AID) was organized, Mr. Yeagley was appointed Director of the Security and Investigations Division. In 1952 he became Associate General Counsel of the Reconstruction Finance Corporation. In 1953 he returned to the Department of Justice as First Assistant in the Criminal Division and later became First Assistant in the Internal Security Division. In August, 1959, he was appointed by President Eisenhower as Assistant Attorney General, a position which he has held for nine years under three Presidents and four Attorneys General. He also served as the Chairman of the Interdepartmental Committee on Internal Security, then a permanent committee of the National Security Council, from 1954 to 1959.

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Robert E. Hauberg
United States Attorney
Southern District of Mississippi

Mr. Hauberg was born November 20, 1910 at Brookhaven, Mississippi. He attended Millsaps College and in 1932 graduated from the Jackson, Mississippi School of Law. From 1933 to 1944 he was in the private practice of law in Jackson. He served as a member of the Mississippi State Senate from 1940 to 1944. Mr. Hauberg was then appointed Assistant U.S. Attorney and served until his appointment as U.S. Attorney in 1953 by President Eisenhower. His office was one of the first to assist in the prosecution of a major antitrust case in the Sherman Act prosecution of the Gulf Coast Shrimp & Oysterman's Association in 1954. His office has also given priority to voting rights and school desegregation suits under the Civil Rights Act. Last year Mr. Hauberg assisted the Civil Rights Division in the successful prosecution of seven defendants charged with conspiracy to violate the civil rights of three civil rights workers who were murdered at Philadelphia, Mississippi. He was reappointed as U.S. Attorney by President Eisenhower in 1958, by President Kennedy in 1962, and by President Johnson in 1966.

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EXECUTIVE OFFICE FOR U.S. ATTORNEYS
Director John K. Van de Kamp

APPOINTMENTS

ASSISTANT U.S. ATTORNEYS

District of Columbia - ROBERT P. WATKINS: Harvard College, A.B.; Columbia Law School, LL.B. Formerly a law clerk to Judge William Bryant; trial attorney, Fed. Maritime Commission; attorney, Department of Justice; and claims examiner, Social Security Administration.

Mississippi, Southern - DANIEL E. LYNN: Mississippi College; Jackson School of Law, LL.B. Formerly a regional counsel, Small Business Administration; attorney-advisor, Small Business Administration; and in private practice.

Missouri, Eastern - JOHN M. SCULLY: Southeast Missouri State College, A.B.; Missouri University School of Law and Washington University School of Law, J.D. Formerly an Assistant Prosecuting Attorney, St. Louis County.

New York, Southern - PETER R. DeFILIPPI: Rutgers University and Adelphi University, B.A.; New York University School of Law, LL.B. Formerly an Assistant District Attorney, Bronx County; Legal Aid Society of Nassau County, and in private practice.

New York, Southern - GARY P. NAFTALIS: Rutgers University, B.A.; Brown University, M.A.; Columbia University Law School, LL.B.. Formerly a law clerk.

North Carolina, Eastern - WILLIAM A. SMITH: Wake Forest College, B.S.; Southern Baptist Tehological Seminary, B.D.; Washington College of Law, American University, J.D. Formerly an Assistant Counsel for U.S. Senator John L. McClellan and Custodian of Records, U.S. Senate.

RESIGNATIONS

ASSISTANT U.S. ATTORNEYS

Delaware - JOHN P. BRADY: to become resident counsel for Wilmington Savings Fund Society.

Illinois, Eastern - ARTHUR J. GINSBURG: returning to school for LL.M.

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ANTITRUST DIVISION
Assistant Attorney General Edwin M. Zimmerman

DISTRICT COURT

SHERMAN ACT, WILSON TARIFF ACT AND TITLE 18, Sec. 371 U.S.C.

INDICTMENT UNDER SHERMAN ACT, WILSON TARIFF ACT & CHARGING CONSPIRACY TO DEFRAUD UNITED STATES RETURNED

United States v. N.V. Nederlandsche Combinatie Voor Chemische Industrie, et al. (S.D. N.Y., Cr. 68-870; October 25, 1968, D.J. 60-21-138)

On October 25, 1968, a five-count indictment was returned by the federal grand jury sitting in New York City against fifteen companies and eight executives for their participation in an international conspiracy involving the production and sale of quinine, quinidine and other cinchona products. The first three counts of the indictment charge violations of the Sherman Act, i.e. a conspiracy in restraint of trade, a conspiracy to monopolize and monopolization. Count four charges a violation of Section 73 of the Wilson Tariff Act and Count five a conspiracy to defraud the United States Government.

Quinine is extracted from the bark of the cinchona tree which is grown in South America, the Congo, Indonesia, India and Guatemala. It is used for the treatment of malaria, as a muscle relaxant and as a cold remedy. It is also an important ingredient in tonic water. Quinidine whose primary use is in the treatment of heart disorders is found in small quantities in the bark of cinchona trees; however, for commercial purposes most quinidine is converted from quinine.

Since there are no facilities in the United States for the commercial extraction of quinine, quinidine or other cinchona products from cinchona bark and since there is only one firm in the United States capable of producing synthetic quinidine in commercial quantities, all of the quinine and almost all the quinidine consumed in the United States is imported from abroad.

All but three of the corporate defendants are foreign companies - of these six are Dutch, three are German, two are British and one is French. Named in the indictment were N.V. Nederlandsche Combinatie Voor Chemische Industrie (Nedchem) and its five affiliates N.V. Amsterdamsche Chininefabriek, N.V. Nederlandsche Kinenefabriek, Bandoengsche Kininefabriek Holland, N.V., ACF Farmaceutische Groothandel, N.V. and N.V. Bureau voor der Kinineverkoop "Buramic"--all of the Netherlands; C.F. Boehringer & Soehne

G.m.b.H. and its affiliate Vereinigte Chininfabriken Zimmer & Co. G.m.b.H. and Buchler & Co., German companies; Lake & Cruickshank Ltd. and Vantorex, Ltd. (a subsidiary of Rexall Drug & Chemical), both incorporated in the United Kingdom and Societe Nogentaise de Produits Chimiques, S.A. (a subsidiary of Mead Johnson & Co.), a French company. Also named in the indictment were the two U.S. drug manufacturers, Rexall and Mead Johnson, which are alleged to have controlled the affairs of their foreign subsidiaries and to have known of their participation in the conspiracy. All of the above corporate defendants were engaged either directly or through subsidiaries in the manufacture of quinine. R.W. Greeff & Co., the third American company named in the indictment, is an importer of cinchona products into the United States.

Also indicted were seven foreign and one American executive connected with the above companies. The individuals indicted were Carel N. van der Spek and John A. Massaut, Managing Director of Nedchem; Georg Tessmar, Boehringer Manage; Walter W. Buchler, Partner in Buchler; John A. Lumley, Managing Director of Vantorex, Ltd.; George Cruickshank, Director of Lake & Cruickshank; Pierre Augustins, General Secretary of Laboratories Allard, S.A., a subsidiary of Societe Nogentaise; and Harry Y. de Schepper, President of R.W. Greeff.

The indictment charges that the conspiracy extended from the fall of 1958 until at least the summer of 1966. It involved price fixing, market allocation and the establishment of sales quotas for cinchona products as well as the sharing of purchases of cinchona bark. Selective price cuts were used to eliminate manufacturers who were not members of the conspiracy and, among defendant manufacturers, the production of synthetic quinidine was confined to Nedchem (and its affiliates), Boehringer and Buchler. In addition, an integral part of the conpiracy was the designation of Nedchem to purchase the cinchona products offered for sale from the U.S. Government stockpile on behalf of the defendant manufacturers (who agreed not to bid independently) and the manipulation of the prices of cinchona products in the United States in order to influence the price to be paid by Nedchem for the stockpile.

This acquisition and sharing of the United States stockpile is the basis of count five of the indictment - the conspiracy to defraud the U.S. Government in violation of Section 371 of Title 18 of the U.S. Code. The indictment alleges that between 1960 and 1962, the Government, through GSA, offered for sale through competitive bids more than 13,800,000 ounces of cinchona products for the U.S. stockpile. Nedchem was the successful bidder for large portions of the stockpile. Delivery was to take place over a five year

period and several deliveries were made according to the contract. However, in September 1964, when about 3 million ounces of material remained to be delivered to Nedchem, further deliveries were halted by the Government and the contracts were cancelled. In November 1965, Nedchem filed a breach of contract suit against the Government in the Court of Claims but voluntarily dismissed the suit in January 1966. The indictment charges that the sharing of the stockpile and the price manipulations were concealed from GSA and other agencies of the U.S. Government.

Staff: Carl W. Schwarz, Eva L. Haas, Talbot S. Lindstrom and Curt Jernigan (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

COURTS OF APPEALS

FEDERAL TORT CLAIMS ACT - ADMINISTRATIVE CLAIMS

INFORMAL LETTER FROM CLAIMANTS' ATTORNEYS IS NOT AN ADMINISTRATIVE CLAIM WHICH, UNDER 28 U.S.C. 2401, TOLLS TIME FOR FILING SUIT UNDER FEDERAL TORT CLAIMS ACT

Bernice H. Johnson & James Johnson, Jr. v. United States (C.A. 5, No. 25,681; November 5, 1968, D.J. 145-9-221)

This Federal Tort Claims Act suit, which arose from a vehicular collision involving a General Services Administration automobile operated by an employee of the Department of Commerce Weather Bureau, was commenced after the expiration of the two year limitation period imposed by 28 U.S.C. 2401. After the district court granted the Government's motion to dismiss, the plaintiffs filed an amended complaint contending that limitations had been tolled by the filing of an administrative claim. The administrative claim plaintiffs relied on was a purported letter from their attorneys to the General Services Administration. The letter did no more than identify the date and site of, and participants in, the collusion and request that (1) the matter be referred "to the appropriate division", and (2) the attorneys be called upon for any further required information. The Government moved for summary judgment on the grounds, inter alia, that that letter was not a valid administrative claim and that it had not, in fact, been received.

The district court granted summary judgment in favor of the Government and the Fifth Circuit affirmed. The Court of Appeals held that the letter did not constitute a valid administrative claim which would toll limitations. The Court pointed out that not only was the claim not filed on Government Standard Form 95 which, under 15 CFR 2.4(c), is the form prescribed for the filing of administrative claims, but also the letter failed to meet many of the criteria embodied in that form. Specifically, the letter contained neither a statement of the amount of the claim, which could not at that time under 28 U.S.C. 2401 and 2672 exceed $2,500 (the plaintiffs had, in their suit, each claimed $3,500), nor an agreement that the stated amount would be accepted as full settlement, nor certain other detailed data such as statements of witnesses, a physician's report, and medical and hospital bills. Further, the Court held that the letter, with the request that it be referred to the appropriate division, did not satisfy the requirement of 28 U.S.C. 2401(b) that the claim be made "to the appropriate Federal agency". Since the letter did not

constitute an administrative claim, the Court noted that the further issue as to whether the letter was in fact received by GSA presented no material issue of fact precluding summary judgment.

Staff: J. F. Bishop (Civil Division)

JURISDICTION OVER CUSTOMS MATTERS

CUSTOMS COURT HAS EXCLUSIVE JURISDICTION TO DETERMINE WHETHER AN ARTICLE HAS BEEN "IMPORTED"

Argosy Limited v. Franklin Hennigan, Acting District Director of Customs (C.A. 5, No. 25,122; November 5, 1968, D.J. 61-18-242)

Argosy, a Bahamian corporation, brought a yacht to Miami for the sole purpose of undergoing major repair work. The District Director of Customs notified Argosy that the yacht would be seized under the customs laws unless a dutiable consumption entry was filed. Argosy brought this suit to enjoin the proposed seizure, claiming that the yacht was not available for sale or use and hence was neither an "import" nor an article covered by the Tariff Schedules of the United States (19 U.S.C. 1202). The district court dismissed the action.

The Court of Appeals for the Fifth Circuit has just affirmed, accepting our argument that 28 U.S.C. 1340 and 1583 commit the determination of whether an article is "imported" to the exclusive jurisdiction of the Customs Court. The Court distinguished Ex Parte Fassett, 142 U.S. 479 (1892), on the ground that that decision, which concerned the then-existing customs and jurisdictional statutes, was no longer controlling under the current laws.

Staff: Morton Hollander (Civil Division

MORTGAGES - LAW GOVERNING DEFICIENCY JUDGMENTS

ENTITLEMENT OF U.S. TO DEFICIENCY JUDGMENT ON VA MORTGAGE IS GOVERNED BY FEDERAL LAW

United States v. Wells, McKinley & Lee (C.A. 5, Nos. 25,794, 25,795, 25,796; November 12, 1968, D.J. 151-18-1261, 151-18-1494, 151-18-1154)

The Veterans Administration often obtains houses through foreclosure on VA-guaranteed mortgage loans upon which veterans have defaulted. The VA sells houses so obtained on the open market. In each of these three cases, a non-veteran purchased such a house and gave the VA a purchase-money

mortgage as part payment. After the purchaser defaulted on the note, the VA foreclosed on the mortgage. The VA then bought the house at the foreclosure sale for a price which was not sufficient to extinguish the indebtedness. The district court invoked the law of Florida in each case to deny the requested deficiency judgment on "equitable considerations".

We consolidated the cases for appeal and the Fifth Circuit reversed. The Court of Appeals held that, even in the absence of statutes or regulations, federal, and not state, law governs rights and liabilities stemming from a federal program such as this. The Court stressed that a federal rule is "particularly needed to assure the uniform administration of the nationwide Veterans Administration loan program". The Court concluded that under federal law the "traditional defenses" to a claim for deficiency judgment may be asserted but that the records in the three cases revealed no basis for denial of the deficiency judgments.

Staff: James G. Greilsheimer and Daniel Joseph (Civil Division)

RESERVISTS

SECOND CIRCUIT REJECTS RESERVISTS'S CHALLENGE TO ORDER CALLING HIM FOR ACTIVE DUTY

Thomas F. Fox v. Harold Brown, Secretary of the Air Force, et al. (C.A. 2, No. 32,584; October 21, 1968, D.J. 145-14-613)

Fox, a reservist who had enlisted in the Air National Guard in 1962, was notified in 1967 that he had been recommended for active duty, under 10 U.S.C. 673, for unsatisfactory performance in drills (19 unexcused and 12 excused absences in one year). Fox was given a hearing, at which he was represented by civilian and military counsel, on his allegations that he had attended the required number of drills, that a conspiracy against him existed, that other similarly situated reservists had not been punished, that he was under a financial hardship and that there had been a change in his physical condition. Those allegations were rejected as unsupported by evidence, and, in 1968, Fox was ordered to active duty.

Fox brought this action to annul the order which activated him. In addition to raising the issues which had been resolved against him at the administrative hearing, he asserted that in several respects the order was in violation of statutory and constitutional requirements. One of the claimed violations was that 10 U.S.C. 673, which was passed in 1966 (Pub. L. 89-687), was an unlawful "retroactive" increase by Congress of his service obligation.

The district court denied the relief sought and the Second Circuit affirmed. The Court of Appeals held that insofar as Fox sought review of acts of military discretion, he had not stated a justiciable claim, in that activation orders based on unsatisfactory reserve performance may be reviewed only to determine whether the military had acted within its jurisdiction under valid law. The Court then rejected Fox's other contentions on the merits. The Court held that Congress had not "retroactively" increased Fox's obligations, for his enlistment contracts provided for recall to active duty for failing to perform duties and 50 App. U.S.C. 456(c), which was in existence at the time he enlisted, provided that unsatisfactory performance could result in induction for two years.

Staff: United States Attorney Robert M. Morgenthau; Assistant U.S. Attorneys Patricia M. Hynes and Alan G. Blumberg (S.D. N.Y.)

DISTRICT COURT

JUDICIAL REVIEW - MILITARY ASSIGNMENTS

DISTRICT COURT UPHOLDS NAVY'S REMOVAL OF LIEUTENANT COMMANDER ARNHEITER FROM COMMAND OF DESTROYER ESCORT

Marcus A. Arnheiter v. Paul R. Ignatius, Secretary of Navy (N.D. Calif., No. 48,414; October 22, 1968, D.J. 145-6-868)

The Navy removed Lieutenant Commander Arnheiter from his command of the USS Vance, a destroyer escort which was scheduled for combat operations off Vietnam. Arnheiter commenced this suit, asserting that his removal from command had been the result of a conspiracy among his junior officers and had been in violation of Navy regulations and in deprivation of his right to procedural due process. He sought a judgment declaring his entitlement to a fair and impartial hearing by the Navy.

The district court granted the defendant's motion for summary judgment against Arnheiter. Although the court opined that the traditional rule, limiting judicial review of military proceedings to ascertaining whether the military had jurisdiction and acted within its powers, might be relaxed in such matters as court martial convictions and administrative discharges, it held, citing Orloff v. Willoughby, 345 U.S. 83, and Reaves v. Ainsworth, 219 U.S. 296, that the matters presented here, i.e. duty assignment and promotion, could not be reviewed by the courts.

The Court then held that even if it could review the Navy decision in question here, such review could extend only to determing whether there had been fundamental due process and compliance with statutory and regulatory requirements. After a full review of the record, the Court stated it was impressed with the Navy's thorough and fair investigation, hearing and review of the matter, and the Court concluded that the Navy had substantially conformed to all applicable procedural requirements.

Staff: United States Attorney Cecil F. Poole and Assistant United States Attorney Jerry K. Cimmet (N. D. Calif.)

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CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

COURT OF APPEALS

EVIDENCE - NARCOTICS

PRIOR INVOLVEMENT WITH MARIHUANA AND DRUGS CAN BE RELEVANT TO PROSECUTION FOR SMUGGLING MARIHUANA

Craft v. United States (C.A. 9, No. 22, 311; October 31, 1968)

Generally, the prior bad acts of a defendant are not to be admitted into evidence at trial. This case involves exceptions to that rule.

Defendant was charged with aiding and abetting the smuggling of marihuana into the country, with concealing and transporting illegally imported marihuana, and with illegally importing switchblade knives. To prove guilt the Government put a co-defendant on the stand who testified to certain conversations he had had with the defendant. Since these conversations contained references to previous bad acts of the defendant--that defendant had "pills" on his person, was a source of "pills" and had smoked marihuana--objection was made.

The Ninth Circuit affirmed defendant's conviction. It held that the testimony regarding the prior bad acts could be admitted as an exception to the general rule for this testimony had independent relevance. The statements about the "pills", the Court felt, tended to show that the defendant intended to defraud the United States, a necessary element for a 21 U.S.C. 176a prosecution. The statement about the defendant having smoked marihuana showed that defendant knew it was marihuana he helped import, conceal, and transport. Knowledge is also an element of a 176a prosecution.

If the connection between the co-defendant's testimony and the elements of the offense were tenuous, this was cured, in the Court's mind, by the low prejudicial effect of the statements. In other words, the Ninth Circuit searched to find any connection between the prior bad acts and the elements of 176a, and then weighed that relevance against possible prejudice to the defendant. Helped along by a curative jury instruction, the Court did not find enough prejudice to merit reversal.

Staff: United States Attorney Edwin L. Miller, Jr. (S.D. Calif.)

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IMMIGRATION & NATURALIZATION SERVICE
Commissioner Raymond Farrell

DISTRICT COURT

NATURALIZATION

COURT LIBERALLY CONSTRUES IMMIGRATION STATUTE

In Matter of Petition for Naturalization of Yuen Lan Hom (Petition No. 2270-781016, S.D. N.Y., 289 F. Supp. 204)

The above proceeding involved a petition for naturalization of a Chinese National who was admitted to the United States in 1956 as a non-quota immigrant, the wife of a U.S. citizen. Subsequent to her entry it was discovered that her husband did not acquire U.S. citizenship through his father because his father's citizenship was based on a fraudulent claim to birth in the U.S. Neither the petitioner nor her husband were aware of the fraud. The petitioner's husband was naturalized in 1965 on his record as an honorably discharged war veteran. Petitioner and her husband have three minor U.S. citizen children.

The issue before the court was whether petitioner's entry was legal and enabled her to satisfy the requirement of five years of residence after a lawful entry for permanent residence. Section 241(f) of the Immigration and Nationality Act, 8 U.S.C. 1251(f) renders non-deportable an alien who procured entry by fraud or misrepresentation if the alien is the spouse, parent or child of a U.S. citizen or a permanent resident alien. It was the Government's position that since the petitioner had not obtained entry by fraud or misrepresentation she could not benefit by the provisions of section 241(f). The court disagreed on the basis of the rationale of INS v. Errico, 385 U.S. 214, that the provisions of section 241(f) should be liberally construed to effectuate the statutory purpose of keeping family units of citizens and noncitizens together. This overriding humanitarian purpose, according to the court, was to be furthered in spite of the beneficiaries' fraud and in that light the court felt that the innocent mistake of the petitioner must be recognized as a far "lesser" defect plainly to be "included" within the beneficent rule of section 241(f). The court also observed that section 241(f) refers not only to fraud but to misrepresentation and that a misrepresentation may be unintentional as well as fraudulent.

The petition for naturalization was granted over the objection of the Immigration and Naturalization Service. The Department of Justice decided not to appeal the decision and the Immigration and Naturalization Service accepts the construction placed on section 241(f) by the court.

Staff: Naturalization Examiner Leonard Leopold (S. D. N. Y.)

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