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LEGISLATIVE NOTES

DEPARTMENT OF JUSTICE PROFILES

JOHN N. MITCHELL
ATTORNEY GENERAL

John N. Mitchell, the 66th Attorney General of the United States, was born in Detroit, Michigan on September 5, 1913. He attended Fordham University and Fordham University Law School, receiving his LL. B. degree in 1938. From 1938-1939 he did post-graduate work at St. John's University Law School. He joined the firm of Caldwell & Raymond as an associate in 1938, and in 1942 became a partner in Caldwell, Trimble & Mitchell. From 1943-1946 Mr. Mitchell was a Navy Commander in charge of PT boat squadrons in the Pacific, where one of his junior officers was John F. Kennedy, skipper of PT-109. In 1967 his former law firm and that of Richard Nixon's merged into the firm of Nixon, Rose, Guthrie, Alexander & Mitchell. He was President Nixon's campaign manager in the 1968 presidential election. In announcing the nomination of John Mitchell to be Attorney General, Mr. Nixon remarked:

> John Mitchell is more than just one of the nation's great lawyers. I have learned to know him over the past five years as a man of superb judgment, a man who knows how to pick people and to lead them and to inspire them with a quiet confidence and poise and dignity. Also, I know that he is a strong man, a man who is devoted as I am to waging an effective war against crime in this country. He also, however, is a fair man, a just man, one who recognizes the necessity to assure justice as well as law and order.

President Nixon also announced that the Attorney General will sit as a member of the National Security Council.

* * *

NEWS NOTES

A.G. URGES PRIVATE ORGANIZATIONS TO ENLIST IN WAR ON CRIME

February 3, 1969: Attorney General John Mitchell, in an address before the Conference on Crime and the Urban Crisis of the National Emergency Committee of the National Council on Crime and Delinquency, urged private organizations and the business community to "enlist in the war against crime".

Warning that "crime is crushing us", the new Attorney General based his first major speech on President Nixon's theme:

"We are approaching the limits of what government alone can do. We must reach beyond government and enlist the legions of the concerned and the committed."

"Today", the Attorney General explained, "millions of Americans want to enlist. Throughout the recent political campaign, we heard: 'What can I do? I am willing to help.'"

Mr. Mitchell then outlined a suggested program for voluntary participation, at both the national and local levels, to maximize the effectiveness of the private sector.

A Private War Chest

"While the Federal government can contribute substantially (to defeat crime)", he said, "it will not be enough to underwrite the entire nationwide program."

"Only with the aid of the private sector", he said, "can we hope to fulfill our needs. At present there is no private war chest for combatting crime."

"The logical approach", he explained, "would be a voluntary program... This fund raising could take the form of a unified national drive bringing together voluntary organizations, professional groups, business and even individuals."

He added that "it would seem advisable that--on a national scale--they pool their fund raising efforts and coordinate their project planning."

Local Crime Coordinating Councils

Mr. Mitchell said that "I must emphasize to you my belief that crime is basically a local problem... Thus, if crime is to be reduced--assaulted effectively on the local level--there must be professional guidance and cooperation between government and the private sector."

"It further would appear", he said, "that the most effective way to secure coordination of local government and the private sector is through the establishment of local crime coordinating councils--councils composed of official representatives from law enforcement, the courts, the corrections system and the social welfare agencies as well as representatives from private professional groups, volunteer organizations and private enterprise."

The Federal Role

The Attorney General explained that President Nixon is considering implementation of three proposals to further facilitate the anti-crime efforts of voluntary agencies.

"---A Cabinet Level Council on Law Enforcement." This Council, he explained, "would have the duty of suggesting over-all policies of the Federal government, of adjusting the Federal-state relationship on major crime control programs and their funding, and of delineating national priorities for this combined government-private sector cooperation."

"---'Town Hall' meetings on the crime problem." These meetings, he said, "would be held in a number of large cities and small communities... The average citizen could come to tell his side of the story..."

"---A National Information Center." This Center, he said, "would be a clearinghouse for the hundreds of projects... (It) could guide you to public and private sources of information... (and) available funding."

The Attorney General also said that he believed substantial Federal funds could reach private anti-crime programs throughout the $300 million which the Law Enforcement Assistance Administration will spend next year.

Mr. Mitchell concluded by warning that the elimination of crime in our society will require many years of dedicated, and often frustrating work.

"Crime is deep-rooted and ugly and its defeat will take many years of hard work. If your volunteer project is with juvenile delinquents, be

prepared to face rejection. If your project is prisons, be prepared to face despondency and failure-- symbols of the urban crisis. Be prepared to face poverty and ignorance, human misery and obscenities. Be prepared to endure and to fight long and hard."

LEAA ANNOUNCES REGIONAL CONFERENCES TO PLAN IMPROVEMENTS IN NATION'S CORRECTIONS SYSTEM

February 4, 1969: The Law Enforcement Assistance Administration has announced that a series of conferences will be held to help plan improvements in the nation's entire corrections system.

Patrick V. Murphy, the LEAA administrator, said the meetings will be attended by the corrections and probation directors of every state.

The four regional conferences are being sponsored by the American Correctional Association, the National Council on Crime and Delinquency, and the National Sheriffs' Association with the aid of a $99,000 LEAA grant.

The first conference will be February 9 to 12 at the University of Oklahoma at Norman for officials of Washington, Oregon, California, Nevada, Idaho, Utah, Arizona, New Mexico, Texas, Oklahoma, Louisiana, Arkansas, Hawaii, and Alaska.

Subsequent meetings covering the other regions of the country are scheduled for February 23 to 26 in Wichita, March 2 to 5 in Hyannis Port, Massachusetts, and March 16 to 19 in College Park, Maryland.

"There will be intensive discussions on how best to plan comprehensive improvements in corrections systems with funds being made available under the Omnibus Crime Control and Safe Streets Act", Mr. Murphy said.

"All 50 states are now using LEAA grants to formulate broad criminal justice improvements. It is vital that corrections be an essential part of this process, along with police and the courts.

* * *

POINTS TO REMEMBER

APPREHENSION OF MILITARY ABSENTEES

DEPARTMENT OF DEFENSE AND F. B. I. REACH AGREEMENT ON THEIR RESPECTIVE JURISDICTIONAL RESPONSIBILITIES IN APPREHENSION OF MILITARY ABSENTEES.

The agreement states that where the Federal Bureau of Investigation has been requested by military authorities to conduct an investigation to locate a deserter for return to military control, the Bureau will assume jurisdiction and apprehend the deserter as long as the military authorities do not know the deserter's whereabouts when they make their request. (Basically, this means that there exists no public claim of sanctuary by the deserter at the time of the military's request to the Bureau.) In sanctuary instances where a number of servicemen are involved, some of whom are absent without leave (AWOL) and some in a deserter status, jurisdiction will remain with the military authorities because they have authority to apprehend both deserters and AWOLs while the Bureau has jurisdiction only as to deserters. In all other instances the military departments will assume responsibility for apprehending military absentees.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Director Harlington Wood, Jr.

APPOINTMENTS

ASSISTANT UNITED STATES ATTORNEYS

District of Columbia - JAMES E. SHARP: University of Arizona, B.S.; Oklahoma University, LL.B.

Iowa, Northern - DENNIS D. MERIDITH: University of Iowa, B.A.; University of Iowa, J.D. Formerly a law clerk, Supreme Court of Iowa.

New York, Eastern - VINCENT J. FAVORITO: St. John's University, Brooklyn, B.S.; Loyola University Stritch School of Medicine; St. John's University, Brooklyn, LL.B. Formerly an attorney with Legal Aid Society; deputy clerk with U.S. Court of Appeals, Second Circuit; editor, American Law Book Co.

New York, Eastern - LOUIS R. ROSENTHAL: Long Island University, B.A.; Brooklyn Law School, J.D.; New York University Graduate Law, LL.M. Formerly in private practice.

Vermont - STUART F. JOHNSON: Williams College, B.A.; Ohio Wesleyan University; University of Virginia Law School, LL.B.

NOTE: All of the above Assistants entered on duty before January 20, 1969.

RESIGNATIONS

ASSISTANT UNITED STATES ATTORNEYS

Illinois, Northern - JOHN L. CANLON: To become associated with Hopkins, Sutter, Owen, Mulray & Wentz.

Iowa, Southern - JERRY E. WILLIAMS: To become associated with Nyemaster, Goode, McNaughlin, Emery & O'Brien, Des Moines.

New York, Northern - JAMES W. DOLAN: To become staff attorney with New York Bar Association.

* * *

ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

DISTRICT COURT

CLAYTON ACT

VIOLATION OF SECTION 7 OF ACT ALLEGED IN CASE AGAINST OIL COMPANIES.

United States v. Atlantic Richfield Company, et al. (S.D.N.Y., 69 CIV 162; January 15, 1969; D.J. 60-57-037-3)

On January 15, 1969, a civil action was filed in the United States District Court for the Southern District of New York under Section 7 of the Clayton Act, challenging the proposed merger of Atlantic Richfield and Sinclair Oil Corporation. According to the complaint the merger of Sinclair into Atlantic would result in the elimination of both actual and potential competition between the two corporations, and would form a corporation ranking sixth in total domestic gasoline sales.

Both Atlantic and Sinclair are substantial marketers of gasoline in the Northeastern States, and in 1967 accounted for approximately 7.52% and 4.80%, respectively, of the total gasoline sold in those states. Both corporations are also substantial marketers of gasoline in the Southeastern States, with Atlantic in 1967 accounting for 2.27% and Sinclair 4.79% of the total gasoline sold in those states. Atlantic's other marketing area includes the six Western States of Washington, California, Oregon, Nevada, Arizona and Idaho. Sinclair's marketing area includes 42 states; it does not market in the Western States with the exception of Idaho. The complaint alleges that the merger would eliminate competition between the two companies in the Northeastern and Southeastern States. It is further alleged that Atlantic would be eliminated as a potential entrant into gasoline marketing in the Rocky Mountain and Central States, areas in which Sinclair presently conducts gasoline marketing activities.

Both corporations are integrated petroleum companies engaged in the acquisition and development of oil and gas lands, the production of crude oil and gas, and the manufacture and marketing of refined petroleum products.

As of December 31, 1967, Atlantic had total assets of over $1.88 billion. Sinclair had total assets of over $1.8 billion. The two corporations ranked eleventh and thirteenth, respectively, among domestic petroleum companies

in total assets. In the same year, Atlantic accounted for approximately 3.50% of total domestic retail gasoline sales, and Sinclair accounted for approximately 3.8% of total domestic retail gasoline sales.

A motion for a temporary restraining order was filed with the complaint seeking an order enjoining the merger, scheduled for consummation on January 20, 1969. This motion was heard before Judge Herlands on January 16. On January 17 the court granted the Government a 10-day temporary restraining order and set January 21 as the return date for the Government's motion for a preliminary injunction. Said motion was argued on January 22; however, a decision on the motion has not yet been rendered. On January 27, the court extended the existing TRO 10 additional days.

Staff: David R. Melincoff, Donald H. Mullins and Neil E. Roberts (Antitrust Division)

* * *

CIVIL DIVISION

Assistant Attorney General William D. Ruckelshaus

COURTS OF APPEALS

FEDERAL RULES OF CIVIL PROCEDURE

WHEN GOVERNMENT CONSENTS TO DECREE GRANTING PLAINTIFF SOCIAL SECURITY BENEFITS AND SIX PERCENT INTEREST ON PAST-DUE BENEFITS, IT WAS ERROR FOR DISTRICT COURT TO GRANT GOVERNMENT'S RULE 60(b)(1) MOTION TO SET ASIDE ALLOWANCE OF INTEREST.

Ivan M. Hoffman v. Cohen (C. A. 8, No. 19,147; January 14, 1969; D. J. 137-42-78)

In an earlier decision the Eighth Circuit had held that Hoffman was entitled to an increase in Social Security benefits by reason of self-employment earnings for 1957. On remand the district court directed counsel to prepare an appropriate order. That order, agreed upon by both sides, directed the Government (1) to pay Hoffman increased benefits in the future and (2) to pay him all past-due benefits at six percent interest. This order was not appealed. More than four months later the Government moved under Rule 60, F. R. Civ. P. to modify the order by striking the words "at six percent interest", on the ground that in the absence of statutory authority interest is not recoverable from the Government. The Government did not specify which portion of Rule 60 it was relying upon to support its motion. Though no evidence in support of the motion was received, the district court, relying on the provision of Rule 60(b)(1) that an order may be amended for "mistake, inadvertence, . . . surprise, or excusable neglect", granted the motion.

The Eighth Circuit, noting that the Government had failed either to plead or prove inadvertence or excusable neglect, and that the decree was entered with the consent of both parties, ruled that Rule 60(b)(1) was never intended to be used in this type of situation, and it was an abuse of discretion for the district court to grant the Government's motion.

Staff: United States Attorney Veryl L. Riddle; Assistant United States Attorney King M. Trimble (E. D. Mo.)

PARENT WHO HAS REPRESENTED CHILD AS NEXT FRIEND IN CHILD'S SUIT FOR DAMAGES MAY AMEND COMPLAINT AFTER STATUTE OF LIMITATIONS HAS RUN TO ASSERT PARENT'S OWN CLAIM FOR LOSS OF SERVICES.

Allen Williams b/n/f Louise J. Smyre v. United States (C. A. 5, No. 25, 786; December 23, 1968; D. J. 157-19M-175)

After two prior appeals in a Federal Tort Claims Act suit arising out of injuries sustained by a minor plaintiff in an explosion, the Fifth Circuit remanded the case to the district court with instructions to enter judgment against the Government. The only issue to be resolved was the amount of damages. On remand, however, plaintiff's mother -- who had been in the case as plaintiff's next friend -- attempted to amend the complaint to join herself as party plaintiff to recover for loss of services of her child, even though the statute of limitations had run under the Act. The district court denied leave to amend.

Referring to the "unique facts of this case", the Fifth Circuit allowed the amendment, holding that under Rule 15(c), F. R. Civ. P. it would relate back so as not to be barred by the statute of limitations. In the Court's view, the basic question was whether there was a sufficiently close relationship between the two claims to warrant the conclusion that the Government had received adequate notice of the possibility that it might be called upon to defend against a broader claim. Holding that the adversary must have had notice of not only the operational facts underlying the claim, but also that a legal claim existed in, and was in effect being asserted by, the party belatedly brought in, the Court found these requirements were met in this case.

Staff: United States Attorney Floyd M. Buford; Assistant United States Attorney Manley F. Brown (M. D. Ga.)

TAX COURT

RENEGOTIATION ACT

CONTRACTOR HELD TO HAVE REALIZED NO EXCESSIVE PROFITS.

B-E-C-K McLaughlin and Associates v. Renegotiation Board (T. C. Docket No. 1036-R; January 21, 1969; D. J. 152-1036)

In this case the Government was defending a determination of the Renegotiation Board that a subcontractor had realized excessive profits of $400,000 for fiscal 1958. The subcontractor, a joint venture, was engaged under a Western Electric prime contract for the construction of the "White Alice" military communications system in Alaska.

After trial de novo, the Tax Court held that although the contractor's actual job costs of $3,950,000 were substantially lower than the Air Force's estimate of $4,800,000, two factors indicated that no excessive profits had been realized. First, the subcontracts were competitively bid, indicating that the contract prices were reasonable (citing Martin Mfg. Co. v. Renegotiation Board, 44 T.C. 559). Second, invoking the statutory risk criterion, the Court observed that it was the "fortuitous circumstances of unusually favorable weather and of . . . adverse contingencies not happening" which had resulted in higher profits. However, the absence of the usual bad weather and other contingencies had not minimized the contractor's risks in bidding on or performance of the subcontracts.

Staff: Leslie A. Nicholson (formerly of the Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Will Wilson

SUPREME COURT

SEARCH AND SEIZURE

SUFFICIENCY OF FACTS TO CONSTITUTE PROBABLE CAUSE FOR ISSUANCE OF SEARCH WARRANT.

Spinelli v. United States (No. 8, O. T. 1968; S. Ct.; January 27, 1969; D. J. 164-42-22)

The issue in this case involved the sufficiency of an affidavit in support of a search warrant. The affidavit signed by an FBI agent stated that the FBI had been informed by a "confidential reliable informant" that petitioner was operating a handbook, accepting wagers and disseminating wagering information over two specific telephone numbers; that petitioner was know to the affiant agent and to local law enforcement agents as a bookmaker; that telephone company records show that the telephones specified by the informant were located in a certain apartment; that an FBI surveillance of petitioner over a three-week period showed that he traveled in interstate commerce in the morning and frequented that apartment in the afternoon on a regular basis.

On the basis of this affidavit, the United States Commissioner issued a search warrant which resulted in the seizure of the principal evidence used against petitioner in a prosecution brought under 18 U. S. C. 1952. The Supreme Court by a vote of 5 to 3, in an opinion by Justice Harlan, held that the affidavit failed to set forth sufficient facts to constitute probable cause for the issuance of a search warrant.

While the opinion reaffirms the ruling in United States v. Ventresca, 380 U. S. 102, that affidavits with respect to search warrants are to be read with common sense, it does impose some fairly heavy requirements upon the amount of corroboration which will be deemed necessary where an "informer's tip is a necessary element in a finding of probable cause." It holds that the informer's report must first be measured against the standard of Aguilar v. Texas, 378 U. S. 108. Under that standard, the Government must show why the informant is believed to be reliable. Beyond that, the Government can rely on his hearsay information alone only if the "tip" contains a sufficient statement of the underlying circumstances so that the magistrate can have a basis for crediting it. This may consist of a statement as to how the information was gathered. It would also be sufficient if the information was in such detail as to the criminal activity as to indicate that is is more

than a casual rumor. The majority of the Court found that the tip in the Spinelli case did not meet this standard.

Even if the tip is not in itself sufficient, probable cause may be found if the tip is sufficiently corroborated. It is in the degree of corroboration required that this opinion is particularly significant. The opinion regards as entitled to no weight the fact that the defendant had a reputation as a bookmaker. Nor did it find sufficient corroboration in the fact that the defendant was observed going regularly to the apartment where the two telephone numbers were listed in the name of another. In stressing the fact that these activities could be innocent, the Court seems to be holding that the corroboration of the tip must tend to show criminality, rather than merely to corroborate other facts stated by the informant.

It is thus evident that applications for search warrants must be prepared with considerable care. Enforcement agencies should be encouraged to consult United States Attorneys' offices and attorneys in such offices should make certain that sufficient factual allegations are set forth in the affidavit for a search warrant.

* * *

TAX DIVISION

Assistant Attorney General Johnnie M. Walters

COURTS OF APPEALS

INJUNCTION AGAINST ADMINISTRATIVE PROCEEDINGS

COURT MAY NOT ENJOIN INVESTIGATION OR ASSESSMENT OF TAX DEFICIENCIES.

I

Dickerson v. Conrad (C. A. 9th, No. 22,494; September 9, 1968; D. J. 5-6-218)

Dickerson, an attorney, filed a complaint asking that Internal Revenue officials be enjoined from continuing an investigation of her income tax returns, alleging that they were harassing her and attempting to force her to incriminate herself. The district court dismissed the complaint, holding that the allegations showed that the revenue officials were simply exercising their statutory authority to ask for information under Section 7602 of the Code (26 U. S. C. 7602); that if she refused the information they would have to issue a summons and ask the court to enforce it under Section 7402(b); and that any challenge to the investigation must be raised in defense of the enforcement action. 274 F. Supp. 881 (D. Alaska).

The Ninth Circuit, in affirming the dismissal of the complaint, said:

> If appellees seek to enforce demands violating appellant's constitutional rights, appellant will have an adequate remedy at law. Reisman v. Caplin, 375 U. S. 440, 445-446 (1964).

Staff: Former United States Attorney Richard L. McVeigh and Former Assistant United States Attorney Marvin S. Frankel (D. Alaska); John P. Burke and Sidney R. Bixler (Tax Division)

II

Koin v. Coyle (C. A. 7th, No. 16,630; November 1, 1968; D. J. 5-23-5468)

Koin filed a complaint asking that the District Director, Coyle, be restrained from using certain evidence in making an assessment of wagering tax deficiencies against him. It was alleged that the evidence had been seized by revenue agents from corporate premises; that the corporation, as owner of the evidence, filed a motion in a libel action asking that it be suppressed; that the motion was granted by Judge Igoe; and that Internal Revenue officials then informed Koin that the evidence would be used to make an assessment against him. The Government moved to dismiss the complaint on the grounds (1) that Koin had an adequate remedy at law in his statutory right to contest the assessment, if made, in a refund suit; (2) that the granting of the corporation's motion to suppress was not controlling since Koin was not a party to that suit; and (3) that the seizure of the evidence had been held proper by Judge Austin in a third action, to which also Koin was not a party. The district court granted the motion to dismiss.

The Seventh Circuit brushed aside Koin's argument that the Internal Revenue officials should have returned the evidence to the corporation by pointing out that Judge Igoe's order simply directed suppression of the evidence, and not its return. The Court also held that Judge Igoe's suppression order was not controlling here since Koin had not been a party to the corporation's case.

On the main issue the Seventh Circuit ruled that the supervisory jurisdiction of the courts over questions of admissibility of evidence could not be invoked while a proceeding was still in the administrative stage. The opinion says that courts

> should not pass upon questions of weakness and proof in the "Director's" case until his function is completed, and the entire case is presented for review. The congressional policy of limiting jurisdiction in the area of federal taxes is clearly shown in the express exception from federal court jurisdiction of injunction actions in 26 U. S. C. §7421 (1964).

Staff: John P. Burke and Joseph M. Howard (Tax Division)

DISTRICT COURT

SUMMONS ENFORCEMENT

RIGHT OF TAXPAYER TO INTERVENE DENIED OR RESTRICTED IN SUMMONS ENFORCEMENT PROCEEDING WITH RESPECT TO RECORDS OF THIRD PARTIES.

United States & John P. Grady v. Joseph J. Mercurio (M. D. Fla., No. 68-490-Civ. T.; D. J. 5-17M-2520)

United States & John P. Grady v. Acme Circus Operating Company, Inc. (M. D. Fla., No. 68-491-Civ. T.; D. J. 5-17M-2532)

United States & Bruce B. Miller v. Ida Boudreaux, et al. (E. D. La., No. 68-2174; D. J. 5-32-882)

United States & Bruce B. Miller v. Errol J. Theriot, et al. (E. D. La., No. 68-2173; D. J. 5-32-883)

United States & Bruce B. Miller v. E. J. Mothe, et al. (E. D. La., No. 68-2172; D. J. 5-32-884)

United States & James M. Bittman v. Roger Newman, et al. (S. D. Fla., No. 68-1517-Civ-WM; D. J. 5-18-8056)

United States & James M. Bittman v. Gene Snyder, et al. (S. D. Fla., No. 68-1518-Civ-WM; D. J. 5-18-8057)

United States & Ronald L. Pomerantz v. Ruth Rothman (S. D. Fla., No. 68-1519-Civ-WM; D. J. 5-18-8055)

In each of the above cases a Special Agent of the Internal Revenue Service was conducting an investigation to determine the tax liability of certain taxpayers, represented by the same counsel, who had obtained injunctions against third parties doing business with the taxpayer, enjoining the third parties from producing their records with respect to transactions they had had with the taxpayers, until they had been ordered to do so by a court of competent jurisdiction. Thus the United States petitioned the appropriate district courts for enforcement of the summonses issued to the third parties. In each of the enforcement proceedings the taxpayers applied for leave to intervene under Rule 24(a)(2) alleging a right to intervene in accordance with the rationale of Reisman v. Caplin, 375 U. S. 440 (1963), for the purpose of attacking the summonses on grounds that enforcement thereof would violate the taxpayers' constitutional rights and further that the summonses were issued for an illegal purpose, i. e., to gather evidence to be used in a criminal tax prosecution.

The United States opposed the taxpayers' intervention on the grounds (1) that the taxpayers had no "interest" in the third parties' records, (2) that such interests and rights as the taxpayers might have would not be impaired by disposition of the enforcement proceeding, (3) that the taxpayers

had no question of fact or law in common with the main proceeding, (4) that the taxpayers had no standing to raise constitutional defenses to third parties' records in possession of third parties and the court could therefore afford them no relief, (5) that the taxpayers would not be bound nor otherwise legally affected by the judgment of the Court, (6) that the taxpayers were seeking to raise extrinsic issues, which were unnecessary and inappropriate at the summons enforcement hearing, all such issues being properly raised in another cause at another time, and (7) that the taxpayers' intervention would delay and encumber the expeditious adjudication of the rights of the original parties.

The District Court for the Middle District of Florida, without opinion, denied the taxpayer's motion to intervene, and the order denying intervention is now on appeal in the United States Court of Appeals for the Fifth Circuit.

The District Court for the Eastern District of Louisiana allowed intervention, but did not permit the discovery and delay in trial requested by the taxpayer, his intervention having been limited to a restricted cross examination of the Special Agent and to filing briefs.

The District Court for the Southern District of Florida is holding its ruling in abeyance pending consideration of supplemental briefs.

Staff: E. Grady Jolly, Jr. (Tax Division)

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