Published by Executive Office for United States Attorneys,
Department of Justice, Washington, D. C.
October 30, 1953

United States
DEPARTMENT OF JUSTICE

Vol. 1 No. 7

UNITED STATES ATTORNEYS
BULLETIN

RESTRICTED TO USE OF

DEPARTMENT OF JUSTICE PERSONNEL

UNITED STATES ATTORNEYS BULLETIN

Vol. 1 October 30, 1953 No. 7

National Association of States Attorneys General

On October 13, 1953, the Attorney General announced that, at a meeting with a Committee of the National Association of States Attorneys General, he had been advised that the Association plans to file a brief in support of the constitutionality of tidelands legislation, and that individual states, through their respective Attorneys General, also would file briefs. The Association further advised that it will prepare legislation directed toward the prevention of abuses arising from writs of habeas corpus in federal courts reviewing state court convictions. The question of civil rights investigations made by federal authorities in state institutions was also discussed at this meeting and consideration was given to possible methods by which such investigations could be rendered more effective, while at the same time, reducing the disruptive effect on the general administration of an institution to a minimum.

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Constitutional Privilege Against Self-incrimination

In an address delivered before the National Press Club at Washington, D. C. on October 14, 1953, the Attorney General discussed the question of constitutional privilege against self-incrimination and the effect which the abuse of this privilege has had in the field of law enforcement. He traced the history of the privilege from its genesis in 17th century England down to the present day, and pointed out how its frequent use by witnesses before Congressional committees investigating subversive activities has thwarted the efforts of such committees to obtain information vital to the welfare of the United States. To meet this problem, the Attorney General recommended the enactment of a statute which would provide immunity from prosecution in exchange for compulsory testimony before Congressional committees. Such legislation, the Attorney General said, should authorize the Attorney General to participate in the granting of any immunity to a witness by a Congressional committee. In discussing the need for this legislation, the Attorney General said that unquestionably every effort should be asserted to protect the right of our people to think and

speak freely and that we should dread the day when the people could justifiably become wary of expressing unorthodox or unpopular opinions. He pointed out, however, as against these threats to our precious liberties, we must also weigh the possible harm to the public safety and welfare without which there could be no liberty for anyone.

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Public Defenders

In an address delivered before the New York Herald-Tribune Forum at New York City on October 20, 1953, the Attorney General pointed up the difference in the methods used in this country and those used in totalitarian countries in administering their respective systems of criminal jurisprudence. In referring to the criticism which citizens frequently voice concerning the various technicalities and delays which exist in criminal prosecutions, Mr. Brownell pointed out that the alternative to our system of criminal jurisprudence is the swift method of justice designed by the totalitarian countries in which every procedural safeguard known to our system of law and designed to insure a fair and just trial is denied to an accused. In contrast to this system, the Attorney General directed attention to the elaborate safeguards which are included in the sixth amendment to the United States Constitution and which are designed to protect the innocent who have been charged with crime. In discussing one of these safeguards, the provision that the accused shall have the assistance of counsel for his defense, Mr. Brownell stated that the system of assigning defense counsel to indigent defendants has not proved to be a satisfactory one. He stated that he believed that the time had come to remedy this defect by legislation so that the contrast between our system of criminal justice and that of the Communist nations will be even clearer and more dramatic. Accordingly, he said, the Department of Justice will support in the next session of Congress a bill which provides for the appointment, by the several district courts of the United States, of public defenders, either as full time or part time officers, as the volume of work may require. The Attorney General urged all leaders of public opinion to examine this phase of the administration of criminal justice in their own communities and to help to arouse public opinion in the curing of this defect in our federal system of justice.

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Appointments

The following recess appointments of United States Attorneys have been made:

District	Name	Date
Alaska, Div. # 3	William T. Plummer	October 20, 1953
New York, northern	Theodore F. Bowes	October 27, 1953
Vermont	Louis G. Whitcomb	October 27, 1953

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Transfer of Unit Functions

Effective October 12, 1953, the Fines-Bail Bonds-Judgment Unit of the General Crimes Section of the Criminal Division has been abolished and the functions of that Unit transferred to the Government Claims Section of the Civil Division.

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A Job Well Done

The Department recently received a letter from the Assistant Regional Commissioner, Alcohol and Tobacco Tax Division of the Treasury Department, commending Assistant United States Attorney William F. Davis of Norfolk, Virginia, for the competent manner in which he defended a Government agent.

It is always a pleasure to learn of the good work that our attorneys are doing and to publicize it.

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Visitors

The following United States Attorneys visited the Executive Office for United States Attorneys during the month of October:

Joseph H. Lesh, Northern Indiana
W. Wilson White, Eastern Pennsylvania
William A. Barlow, Hawaii
John W. McIlvaine, Western Pennsylvania
Leonard G. Hagner, Delaware
Edward A. Scruggs, Arizona (resigned)

Assistant United States Attorneys Arnold Bauman, from the Southern District of New York, and Edward V. Ryan from the District of New Jersey, were also in the Executive Office during the past month.

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Departmental Circulars

There is apparently some misunderstanding among United States Attorneys with regard to circulars issued by the Department. Many such circulars are directed only to employees of the Department at the seat of Government in Washington or to United States marshals and do not in any way relate to the work of the United States Attorneys' offices. They are distributed only to Departmental employees or the marshals, as the case may be, and are not forwarded to the United States Attorneys. For this reason the numerical sequence of circulars distributed to United States Attorneys' offices is not consecutive, but is interrupted by the numbers of those circulars which are sent to other Departmental components.

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CRIMINAL DIVISION

Assistant Attorney General Warren Olney III

CONTEMPT

Motion by Defendant to Quash Subpoena Duces Tecum. United States v. Professional Screen Guild, Inc., and United States v. John Lloyd Taylor, (E. D. Mich.) During the course of a grand jury investigation into possible mail fraud activities of the Professional Screen Guild, headed by John Lloyd Taylor, a subpoena duces tecum was served on Taylor in California, directing him to produce books and records of the Guild office, in Detroit. Minutes before the time set for Taylor's appearance before the grand jury, a motion to quash the subpoena duces tecum, supported by a sworn affidavit signed by Taylor, was filed by him through counsel. In denying the motion to quash, after argument by the Government, the affidavit attached to the motion was termed "scandalous and contemptuous" by the court. Thereafter, the United States Attorney filed a petition charging Taylor with criminal contempt under 18 U.S.C. 401.

In his defense to the criminal contempt proceedings, Taylor contended that the motion to quash, filed on the date scheduled for his appearance in obedience to the grand jury subpoena duces tecum, served as a complete defense or excuse for his non-appearance and that he had at all times acted under advice of counsel and in good faith. Although there are numerous cases on the advice of counsel issue, no authority could be found on the question of a motion to quash as a complete defense to appearance in obedience to a subpoena when such motion is filed on the date of, or prior to the time, that appearance in obedience to the subpoena has been set. The Government argued in opposition to such defense that a motion to quash does not, ipso facto, act as an excuse in a criminal contempt proceeding for failure to appear in obedience to a subpoena. It was the Government's position that if such a defense is raised the Government in the prosecution of the case and the Court in determination of the issues involved could inquire into the timeliness of filing such motion and the good faith of the motion on its face; and if a sworn affidavit is attached to the motion to quash, it becomes an integral part thereof and is likewise subject to the same scrutiny by both the Government and the court. Upholding the position of the government, the Court found the respondent guilty of criminal contempt.

CIVIL RIGHTS

Violation of 18 U.S.C. 242. United States v. Hoyle T. Efird, et al, (W. D. No. Carolina.) On September 22, 1953, Hoyle T. Efird, Sheriff, and Walter Cannon, Jr., Deputy Sheriff, of Gaston County, North Carolina, were indicted by a federal grand jury at Statesville, North Carolina, for violation of 18 U.S.C. 242. They were charged with having severely beaten Obediah Allen in order to force him to implicate himself and his employer in alleged illegal sales of liquor.

Staff: Case presented to grand jury by Assistant United States Attorney Hugh E. Monteith.

FRAUD

False Statements in Application to U. S. Coast Guard. United States v. Gordon Potts Williams, (E. D. La.) The defendant was charged on August 5, 1953 with a violation of 18 U.S.C. 1001, by knowingly making false statements in an application to the U. S. Coast Guard for validated Merchant Mariner Documents. In his application, in which he used an alias, defendant stated under oath that he had not previously received such documents or ever had them revoked. Investigation revealed that his seaman's papers, issued under his true name, had been revoked in 1946 because of misconduct. On August 26, 1953, the defendant entered a plea of guilty and was sentenced to a year and a day.

* * *

C I V I L D I V I S I O N

Assistant Attorney General, Warren E. Burger

CONTRACTS

Dismissal of Defendant's Counterclaim Asking for Affirmative Judgment against United States. United States v. Double Bend Manufacturing Company (D.C., S.D.N.Y., Civil 47-159, Sept. 1, 1953). The United States filed a suit to recover the unpaid price of certain property which the defendant purchased from the War Assets Administration. In its amended answer, the defendant presented a "Third and Partial Defense. Set-off and Counterclaim", asking that the complaint be dismissed and that judgment be entered for the defendant against the United States for $3,113.96. The basis of said counterclaim was that the Government breached its contract by shipping the property without notice to the defendant, and that the latter thereby incurred expenses for storage and reshipment. The United States moved for dismissal of the counterclaim on the ground that it was not pleaded as a set-off but for an affirmative judgment against the Government.

District Judge Kaufman sustained the Government's position and dismissed the counterclaim, giving the defendant leave to amend its answer so as to plead it as a partial defense or set-off. He pointed out in a written opinion that in recent years a more liberal view had been adopted towards statutes such as the Federal Tort Claims Act, by allowing certain counterclaims against the United States. However, Judge Kaufman reiterated the rule laid down in United States v. Nipissing Mines Co., 206 F. 431 (C.A. 2 1913), that the Tucker Act, 28 U.S.C. 1346(a)(2), is not broad enough to permit recovery of an affirmative judgment on a counterclaim filed in a suit instituted by the United States. In a recent contract case, United States v. Silverton, 200 F. (2) 824 (C.A. 1, 1952), the court noted with approval the recent trend of waiving Governmental immunity and granting judgments against the United States on counterclaims, but then proceeded to reverse, on the merits, a judgment for the defendant on a counterclaim and entered judgment for the Government. This District Court ruling should be helpful in reemphasizing the principle of the Nipissing Mines Co. case, and lessen the effect of the views expressed by the First Circuit in the Silverton case.

Staff: Harold R. Tyler, Jr., Assistant United States Attorney (S.D.N.Y.); George H. Vaillancourt (Wash.)

FRAUDS

Price-Rigging by Vendor and Purchasing Agent of Cost-Plus Contractor under False Claims Act. Murray & Sorenson, Inc. v. United States (C.A. 1, September 23, 1953). A manufacturer, who had submitted bids for the furnishing of faucets for use in connection with work being performed under a cost-plus contract with the Government, was advised by the contractor's purchasing agent, whose job was to solicit competitive bids for faucets and other materials, that his $4.25 bid was very low and that $5.00 a piece would be a fair price. The manufacturer accordingly submitted $5.00 bids which were accepted by the Government officer in charge, and during the course of supplying faucets, paid the purchasing agent a total of $350 in addition to $35 paid prior to submitting any bids. The Government's complaint urged that the vouchers submitted for payment to the cost-plus contractor, who was reimbursed therefor by the Government, were false claims under the False Claims Act. The Court of Appeals for the First Circuit affirmed the District Court's judgment for the United States. The court held that the understanding between the purchasing agent and the manufacturer was like the collusive bidding among competitors involved in Marcus v. Hess, 317 U.S. 537, in that the result was to increase the price the Government eventually has to pay. Pointing out that the manufacturer's bid made the implied false representation that the bids were at the figure he would have submitted in competition instead of the artificially higher price suggested by the purchasing agent, the court distinguished United States ex rel Weinstein v. Bressler, 160 F. 2d 403 (C.A. 2) where the fact that the bids were based on an agreement among the manufacturers, had been fully disclosed to, and in effect sanctioned by, the Government's procurement officer.

Staff: Melvin Richter and William M. Lytle (Wash.)

GOVERNMENT CORPORATIONS

Immunities of Sovereign-Laches-Want of Prosecution. United States v. Turlock Dehydrating and Packing Co., et al., (D.C. N.D. California, Civil No. 6494.) This was a civil action brought to recover back wartime subsidies paid by Commodity Credit Corporation to a dealer in raisins. A large proportion of the raisins had been found to be decomposed, rotten and unfit for human consumption and the subsidy agreement made such raisins ineligible for subsidy. In addition to raising factual issues, the defendants pleaded that the United States, acting through Commodity Credit Corporation, was guilty of laches in that suit was not filed until 5-1/2 years after the cause of action arose, and that a further delay of 18 months in serving process occurred after suit was filed. While admitting that such defenses as laches and want of prosecution cannot ordinarily be asserted against the United

States, the defendants argued that Commodity Credit Corporation had been set up as a separate entity in order to engage in commerce, and hence it should be treated like any other business corporation, and should not be entitled to the immunities which the Government has when acting in a strictly sovereign capacity. The district judge rejected these defenses and held that Commodity Credit Corporation enjoys the sovereign immunities of the Government.

Staff: William H. Lally, Assistant United States Attorney (N.D. Calif.); Robert Mandel (Wash.)

MEASURE OF DAMAGES

Common Carriers - Liability for Loss as Determined by Contract Price or Market Value. United States v. Northern Pacific Railway Company, (D. C. Minn. Civil No. 2205). Commodity Credit Corporation sold potatoes acquired in its Price Support Program for uses other than human consumption, such as livestock feed, at prices below the market price for potatoes fit for human consumption. Defendant carrier lost some potatoes so sold. The Department of Agriculture claimed the market price; the carrier offered to pay the price which was to be paid by the consignee. In an opinion dated September 17, 1953, the District Court held for the carrier. This is the second adverse ruling on this point by a District Court.

Staff: Clifford F. Hansen, Assistant United States Attorney (D. Minn.); Robert Mandel (Wash.)

WALSH-HEALEY ACT

Exhaustion of Administrative Remedies - Filing of Civil Action for Liquidated Damages Prior to Final Administrative Ruling. United States v. Rose Manufacturing Company, et al., (D.C. E.D. Pa., Civil No. 15286, decided September 18, 1953). The Supreme Court having held, in Unexcelled Chemical Corporation v. United States, 73 S. Ct. 580, that actions by the United States for liquidated damages under the Walsh-Healey Act must be brought within two years after the violation, it was necessary to bring the above action prior to completion of administrative proceedings in the Department of Labor. The defendants moved to dismiss on the ground that the rights of the United States had not been perfected and the suit was premature. The motion was denied. This is the first ruling by any court on this question.

Staff: C. H. Greenberg, Assistant United States Attorney, (E. D. Pa.); Robert Mandel (Wash.)

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ANTITRUST DIVISION

Assistant Attorney General Stanley N. Barnes

On October 11, 1953, the Attorney General stated that the Antitrust Division is placing special emphasis on getting its docket as nearly current as is possible. He pointed out that any case which has been pending over 2-1/2 years is classified as an old case, since it takes approximately that long after a case is filed before trial commences. On July 1, 1953, there were 143 cases pending, of which 54 could be termed old cases. Since that date, 9 old cases have been disposed of, as well as 8 other cases, largely through the use of consent decrees. The Attorney General stated that he believed consent decrees should be used whenever an honest decree can be obtained and he defined an honest decree as one which does not impose unnecessary requirements on defendants, but which does not lower the standards of relief maintained by the Government. Mr. Brownell stated that it has been the Department's experience that many settlements are reached only after a trial date is set and a great deal of time and expense has been put into preparation of the case for trial. He pointed out that such a procedure places an unnecessary burden on both sides and that in his opinion, much of the unnecessary delay in disposing of such cases will be avoided when attorneys engaged in antitrust litigation become fully aware of the Department's policy. In discussing the progress which has been made up to this time by the Antitrust Study Committee, Mr. Brownell stated that the appointment of the committee does not indicate any let-up in the Department's vigorous antitrust enforcement, and that the chance that the committee may recommend some changes in antitrust law administration does not mean any relaxation in the enforcement of existing antitrust policies.

Collusive and Non-Competitive Bidding Practices - Motion to Strike Surplusage in Indictment. United States v. Detroit Sheet Metal and Roofing Contractors Ass'n., Inc., et al. (E.D. Mich. S. Div., Cr. 33452.) In an opinion filed on October 13, 1953, Judge Levin of the District Court at Detroit denied defendants' motions to dismiss and to strike portions of the indictment as surplusage. The indictment was filed on December 9, 1952, and charged a conspiracy to fix prices in the sale and installation of built-up roofing in the Detroit area. It charged that the defendant association, comprising 15 of the largest roofing contractors in the Detroit area was established and operated to set up and maintain collusive and non-competitive bidding practices on construction projects in the area. The primary

objection to the indictment made by the defendants was its claimed failure to allege a restraint in interstate commerce or one which so affected interstate commerce as to produce a restraint thereon. The Court concluded that the indictment charged that roofing material purchased from out-of-state manufacturers remained in interstate commerce until it reached the ultimate consumer at the site of its installation into built-up roofs.

The Court said that to fix prices on local sales at the end of an interstate journey "is equally as offensive as the fixing of the prices at which sales across state lines are made . . ." The Court recognized the necessary effects of a per se violation on the interstate movement of commodities, and held that allegations of harmful effects were unnecessary, since the fixing and maintenance of high prices for roofing construction and repair necessarily results in a reduced volume of that activity "with a resultant reduction in the consumption of roofing materials and a retardation of the flow of such materials from the out-of-state manufacturers."

Further, the Court did not deem it material that the alleged price fixing was not on the materials themselves which had moved interstate but on construction projects into which the materials were integrated. In this connection the Court said: ". . . If an allegation of price-fixing is sufficient, without the necessity of detailed factual averments as to the effects of such a practice upon interstate commerce, such an allegation carries with it the same economic implications, at least for the purpose of charging an offense, when it is made with respect to the only other process by which defendants move such materials in interstate commerce to the ultimate consumer . . ." The Court further said, along this line, ". . . It matters not whether defendants fix the price of the roofing materials or whether they fix the contract price which includes both the cost of the roofing materials and the cost of their installation. In either event, I must infer that the practice has the same potential for affecting the consumption of roofing materials and that such an effect will inevitably be reflected in the interstate channels of distribution . . . ."

The motions of certain individual defendants that the indictment be dismissed as to them because of immunity conferred by Section 32 and 33 of the Sherman Act were likewise denied. The defendants had produced documents in response to subpoenas duces tecum served on the corporate defendants and had not testified or appeared before the Grand Jury. The Court held that since they could not have claimed the privilege against self-incrimination

in refusing to produce, they could not gain immunity because of the production. The Court also denied the motions of certain of the defendants to dismiss on the grounds that offenses charged did not fall within the applicable period of the statute of limitations, and that the indictment failed to allege that acts charged to corporate defendants were authorized by the corporations. Three of the defendants moved to strike as surplusage certain allegations of the indictment. These motions were denied. The Court found that although some of the practices charged in the indictment were not in themselves violative of Section 1 of the Sherman Act, the total pattern of the activity described did reveal such a violation.

Section: Special Litigation (Detroit Office)

Staff: John W. Neville, John J. Mulvey, Paul A. Owens, James A. Broderick

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LANDS DIVISION

Assistant Attorney General, Perry W. Morton

Valuation of Former Athletic Club Building. James F. Hickey, etc., v. United States, (C.A. 3, revising E.D. Pa.). This proceeding was brought in 1951 to condemn land in the business district of Philadelphia on which the Penn Athletic Club had erected a 14 story building particularly suiting its purposes. The Club deeded the property to a trustee for bondholders in 1942 and the building was occupied by the Securities and Exchange Commission from 1942 to 1948. In that year it was sold to the present condemnees for $1,250,000. When the Government condemned in 1951 it estimated compensation at $1,250,000. A board of review found fair value to be $2,865,000 and the United States demanded a jury trial which resulted in an award of $2,100,000.

The Court of Appeals held that the trial court had unduly limited the Government in the presentation of its case in excluding evidence as to the amount that would have to be spent in converting the building to use as an office building, in excluding evidence by a contractor as to the conditions he found when the plumbing and heating systems were explored during conversion work by the Government and in excluding evidence as to the meaning of market value in tax assessments, applications for the reduction of taxes having been introduced as admissions against the interest of the owner. The dissenting judge simply disagreed with the conclusion of the majority of the court that substantial prejudice had resulted to the Government from the court's rulings. The majority opinion also discusses rulings in which it found no error relating to the weight to be given the sale of the same property as contrasted with comparable sales, to the question whether that sale was a "forced sale", and to evidence of depreciation in connection with replacement cost.

Staff: S. Billingsley Hill (Wash.)

Effect on Valuation in Condemnation of Land Within Irrigation Project of Congressional Prohibition of Inclusion of Enhancement Due to Benefits of Project in Sale Price. United States v. Richard Douglas (C.A. 9, Affirming E.D. Wash.). This proceeding was brought to condemn land for use by the Atomic Energy Commission. The land was located within the Columbia Basin Project, an irrigation undertaking authorized by Congress in 1943. The Act required landowners who would receive the benefits of the project to contract that for five years after water became available they would not sell the land for more than the value for which it was appraised by the Secretary of the Interior. Congress

directed that the appraisal should be made "without reference to or increment on account of the project" and provided for enforcement of this requirement by specifying that within 30 days of any sale an affidavit stating the amount of consideration should be filed and in cases of failure to file or of sale for more than the appraised value, the Secretary could cancel the right of that land to receive water. The Act also (1) punished fraudulent misrepresentation in the affidavit by fine or imprisonment (2) made a transaction for excessive consideration invalid and unenforceable by the vendor as to the excess and (3) gave the purchaser two years to file a correct affidavit and to recover the excess payment together with court costs and attorney's fees.

Douglas signed the required contract and his land was appraised at $1,353.01. The tract is unused and water has not yet reached it although it will probably be available in 1954. The trial court rejected the Government's contention that the appraised value was the maximum that could be awarded and told the jury to imagine a theoretical seller who would be free to sell at any price without regard to the appraisal and a theoretical buyer who would step into the shoes of the landowner.

The Court of Appeals affirmed stating that the owner's prospect of selling his land was only one element going to make up the value which must be considered. It reasoned that the appraised value of this land could not be considered to be "its market value in the legal sense" and stated that the limitation was personal to Douglas and "had nothing whatever to do with what a willing buyer might have offered."

This case was appealed as a test case and we are informed that the same question is presented with relation to many thousands of acres, the exact amount of which is now being investigated.

Staff: John F. Cotter (Wash.)

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TAX DIVISION

Assistant Attorney General H. Brian Holland

EVASION OF CORPORATION INCOME AND EXCESS PROFITS TAXES

United States v. Shotwell Manufacturing Company, Bryon Cain, Harold Sullivan and Frank Huebner (N.D. Ill.). The defendants, officers and directors and major stockholders of the Shotwell Manufacturing Company, were charged with wilfully attempting to defeat and evade the taxes of the corporation for the years 1945 and 1946 by filing false and fraudulent returns. Additional unreported income of over $500,000 was established from the testimony of one customer who had paid this amount over the period of two years in black market cash premiums for candy and corn syrup purchased from the corporation. The proof established that the customer had paid the invoice or ceiling price for the candy and corn syrup by checks to the corporation, and had paid the over-ceiling or premium price by cash. The cash payments had been made to the defendant Huebner in every instance, although the other two defendants admitted that they were aware of some payments of this nature. The principal witness' testimony as to the payment of cash premiums was corroborated by two other witnesses who had made similar payments at his direction, and by books and records showing the purpose for which checks to cash were drawn -- this being the means by which the currency was obtained for the premium payments.

The defense was that the premium receipts were not as great as charged by the Government; that all of the receipts had been paid out for black market purchases of raw materials; that the principal witness had falsified his records of the amount paid to avoid his own income taxes; that the receipts of black market premiums were not income to the corporation, but constituted income to the individuals whose interests were adverse to the corporation and who were acting beyond the scope of their authority; and that there had been a "voluntary disclosure" (although the Court had previously determined as a matter of law on a hearing on a motion to suppress evidence that no "disclosure" had in fact been made, evidence was permitted as to the defendants' attempts to disclose for the jury's consideration on the element of intent).

The trial lasted 25 days before Judge Nordbye who had been specially designated to hear the matter. On October 16, 1953, the jury returned a verdict of guilty as to all defendants on both counts of the indictment. On October 17 Judge Nordbye sentenced Cain to imprisonment for three years on each count, to run concurrently, and fined him $5,000 on each count, or a total of $10,000. Huebner was also sentenced to three years imprisonment on each count, to run concurrently, and fined $1,000 on each count, or a total of $2,000. The Shotwell Manufacturing Company was fined $20,000 and costs.

Sentence was not imposed on Harold Sullivan pending a ruling on a motion for a judgment of acquittal. Notice of appeal has been filed.

Staff: Case tried by John Lockley, Criminal Section, Tax Division.

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IMMIGRATION AND NATURALIZATION SERVICE

Commissioner Argyle R. Mackey

ENTRY UNDER IMMIGRATION LAWS

Deportability of Filipino For Crimes Committed in the United States. Gonzales v. Barber (C.A. 9). One Gonzales, a Filipino, entered the United States in 1930 and has since resided in this country. His deportation was ordered because of his conviction and sentence in the United States for two crimes involving moral turpitude. In an opinion handed down September 15, 1953 the United States Court of Appeals for the Ninth Circuit, Judge Bone dissenting, held that while resident Filipinos had become aliens upon the grant of independence to their native country, deportation could not be predicated on criminal misconduct in the United States following their original entry as nationals of the United States. The majority adopted a narrow construction of the statutory directive which subjected to deportation aliens who had been sentenced for two crimes involving moral turpitude "committed at any time after entry". Judge Bone, on the other hand, took the view that the language of the statute should be given "its plain and obvious meaning." This holding of the Court of Appeals for the Ninth Circuit is similar to its earlier decision in Mangaoang v. Boyd, 205 F. 2d 553, in which the Government has applied for certiorari. It is anticipated that an application for certiorari also will be made in the instant case.

HABEAS CORPUS

Attachment of Jurisdiction Upon Filing of Petition for Habeas Corpus. Circella v. Neelly, (USDC, N.D. Ill., E.D.). A final order of deportation was entered against one Circella, who thereafter appeared at the office of the Immigration and Naturalization Service in Chicago, accompanied by his attorney. The District Director of the Immigration and Naturalization Service informed the attorney that he was forthwith taking Circella into custody for the purpose of effectuating the order of deportation. Although the attorney stated that he proposed to institute habeas corpus proceedings, Circella was apprehended for deportation and removed from Chicago to New York. Shortly after his apprehension, his attorney filed a petition for habeas corpus in the United States District Court at Chicago. However, the alien had been removed from the jurisdiction of the court before the writ was issued and served. He brought a second habeas corpus proceeding in New York and his petition was dismissed by Judge Alexander Holtzoff, sitting on assignment in that district. Because of the strong views expressed by Judge Campbell of the United States District Court in Chicago in relation to the procedure

followed in this case, the Department directed that Circella be returned to Chicago in order that the court in that district might consider his attack upon the deportation order. In a comprehensive opinion Judge Campbell on October 21, 1953 concluded that the United States District Court at Chicago had acquired jurisdiction over the person of Circella when he filed a petition for habeas corpus, under the circumstances presented to the court in this case, and that jurisdiction had not been divested by his subsequent removal from the judicial district. Addressing the merits, Judge Campbell found no substance in any of the petitioner's numerous challenges to the deportation order, which questioned, among other things, the fairness of the hearing, the moral turpitude of the offense, and the constitutionality of the statute. The court was critical of the removal of Circella from the judicial district at a time when habeas corpus proceedings were being instituted, and emphasized the importance of affording opportunity for judicial review, but concluded that on the merits the writ of habeas corpus in Circella's case must be dismissed.

Staff: United States Attorney Otto Kerner, Jr. (Chicago)
Assistant United States Attorney Anthony Scariano (Chicago)
Assistant United States Attorney Harold J. Raby (New York)
Acting District Counsel John M. McWhorter, Immigration and Naturalization Service (Chicago).

Court Unauthorized to Compel Production of Alien Awaiting Deportation to Enable Him to Contract Marriage. Dakka v. Garfinkel (W.D. Pa.). While awaiting deportation Dakka brought habeas corpus proceedings, contending that the Attorney General was improperly denying him release for the purpose of entering into a marriage with an American citizen. The lawfulness of the deportation order was not contested and it appeared that its accomplishment was imminent. On October 9, 1953 Chief Judge Wallace S. Gourley of the Western District of Pennsylvania denied the petition for habeas corpus stating that it is not "within the province of the courts to superintend the treatment of prisoners in penitentiaries, or interfere with the conduct of prisoners or their discipline . . . The courts have no function to superintend treatment of prisoners in penal institutions but only to deliver from imprisonment on habeas corpus those who are illegally confined."

CRIMINAL PROSECUTIONS

Overstay of Landing Privileges by Alien Seamen. United States v. Correia (W.D. Pa.). Section 252(c) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1282, making it a misdemeanor for an alien crewman willfully to remain in the United States in excess of the number of days allowed in his conditional permit to enter the United States temporarily, formed the basis for the conviction on September 16, 1953, of Manuel Coelho Correia in the Western District of Pennsylvania before United States District Judge Joseph P. Willson. The defendant, who was sentenced to serve 90 days, has appealed, challenging the constitutionality of the statute.

ALIEN COMMUNISTS

Deportability for Past Membership in Communist Party. Garcia v. Landon (C.A. 9). Carlos Alvarez Garcia, an alien of Mexican nationality, was ordered deported on the ground that he had been a member of the Communist Party of the United States while a resident of this country. He questioned the constitutionality of the statute in habeas corpus proceedings. On September 29, 1953 the United States Court of Appeals for the Ninth Circuit, following its earlier decision in Galvan v. Press, 201 F. 2d 302, sustained the deportation order and upheld the constitutionality of the statute. The point at issue is quite similar to that already decided by the Supreme Court in Harisiades v. Shaughnessy, 342 U.S. 580 (1952), except that the instant case arose under the Internal Security Act of 1950, which specifically proscribed the Communist Party, instead of making deportation dependent on membership in an organization which believed in the overthrow of the Government of the United States by force and violence. The earlier statute required proof of the organization's objectives, while the Internal Security Act of 1950 and the subsequent Immigration and Nationality Act of 1952 have designated the Communist Party by name and have made membership in that Party at any time a ground for deportation. Six cases presenting comparable issues and asking that a three-judge court be convened have been commenced in the United States District Court for the District of Columbia. That the Supreme Court regards some of the issues presented in these cases as still open is indicated by its action in granting certiorari in the Galvan case on October 19, 1953.

NATURALIZATION PROCEDURE

Change of Name of Naturalized Citizen. In Re Toth (E.D. Pa.). One John Toth was naturalized in 1926, at which time the court at his request entered an order changing his name to John Ford. In 1953 he petitioned the naturalization court to change his name back to John Toth. No error in connection with the 1926 naturalization proceeding was alleged. On September 28, 1953 Judge J. Cullen Ganey of the Eastern District of Pennsylvania dismissed the petition. The court determined that the relief sought was unavailable under Rule 60 of the Federal Rules of Civil Procedure and that an appropriate proceeding in the State courts was the only remedy available to him. The court also concluded that the federal courts have no independent jurisdiction to entertain actions for change of name, other than the authorization for such change which is ancillary to the naturalization proceeding.

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