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UNITED STATES DEPARTMENT OF JUSTICE

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NEWS NOTES

Attorney General Addresses IACP Convention

October 7, 1968: Attorney General Ramsey Clark addressed the 75th Annual Convention of the International Assocation of Chiefs of Police in Honolulu, Hawaii on the role of the police in our society today. "Perhaps no activity in modern society is more complex - calls for as many skills - as police work", said Mr. Clark.

"Law enforcer-lawyer; scientist-medic; psychologist-social worker; human relations and race relations expert; marriage counsellor-youth advisor; athlete and public servant; today's policeman must be a man of many parts. In an urban, mass society he will be the chief protector of life, liberty and property until civilization has soothed our savage hearts. That will not be soon. . .

"Ghetto riots, college sit-ins, high school disruptions, anti-war and civil rights demonstrations, civil disobedience, acts arising from youth and social unrest threatening violations of law--all of these require police presence, and often action, in the most difficult confrontation between public and police that a nation can experience. The nature of that action; whether violent, permissive or clearly firm and fair; may well determine the future course of our country. If we are divided by hatred and paralyzed by fear, we will not go forward despite our immense capability. If you are effective, we will have the time needed to educate, house and employ our people; to bring health, relieve tension and anxiety, reduce injustice, offer equality, provide for each of us his chance for fulfillment. We can meet the demands of modern mass society.

"The policeman is the man in the middle. It is imperative he stay in the middle. To move right or left will widen the gulf that divides us. All history teaches us that a government can endure only if those who enforce its laws have the confidence and support of the public they serve. Without that support, law enforcement is a contest; crime is unreported; criminals are concealed. Police cannot prevent crime. . .

"Fear and prejudice can never bring stability. Those who create fear and hatred defeat our opportunity to maintain order under law. We have never been a people given to fear. Action is the strength of America. We are a nation of doers; builders not wreckers. We face problems and resolve them. . .

"The essential need is to address ourselves realistically to the problems of law enforcement: to define priorities, set clear goals, enlist specific, purposeful support and then to act.

"First, we should examine the organization of police districts and the proper content of police services. Law enforcement can never be effective or efficient when a vastly urbanizing society of more than 200 million people has 40,000 police jurisdictions. We must look to more than the historic happenchance of county lines, city limits, and scores of departments in a single metropolitan area. Organization must be relevant to the needs of today and tomorrow. Redefinition by legislators, consolidations, contracts for police services and state enforcement in sparsely populated areas are needed in most parts of the country. Control must be retained in local authority responsive to the communities served. . .

"Second, we should look realistically at the laws to be enforced from an enforcement standpoint. It is one thing to enact a law, another to enforce it. If we are to place severe restrictions on the sale and use of alcoholic beverages, if social gambling, prostitution and other vices are to be prohibited, the lawmakers should provide the manpower and method for enforcement. The effort and the failure of police to enforce such laws bring disrespect for law itself, inequality in enforcement, and all too often corruption and contempt for law enforcement. Many observers believe the high standing of the British police in the eyes of their countrymen arises from their freedom from having to ignore or partially enforce laws that can be fully enforced only by massive police effort. Over-criminalization, making conduct socially acceptable to many people a crime, brings the police into bitter conflict with those against whom the laws are applied and their supporters.

"The irony is that the police are blamed for the laws they enforce when they are only doing their duty. The laws must be constantly reformed. Laws in the books must be firmly enforced. Only then do we have a government of laws, not of men.

"Third, the police must be vitally interrelated with every segment of the public they serve. Careful efforts with juveniles, particularly in areas where delinquency is high, is an important police need. Close contact with medical and social welfare resources to work with addicts, alcoholics and persons with mental health problems aids police work.

"A nation fast approaching the time when half of our young will go to college must draw intensively from college ranks and provide continuing educational opportunities to young officers. Doubling the number of colleges offering police science courses in the past four years is of great importance to law

"enforcement. Advance research in physical,mechanical and social sciences must be greatly expanded to serve police. Recruitment from social minorities is essential to effective police work among minorities and meaningful relations with them. The police must be drawn from every segment of society. . .

"Finally, manpower must be strengthened. To fail to provide adequate protection for life and property is to fail in the first purpose of government. A department must have enough officers to enforce the laws and perform the services entrusted to it. Personnel standards must be constantly upgraded. The day is not far distant when major parts of the entire officer complement will need extensive college training or degrees. Specialists should have advance degrees in such areas as criminology, police science, public administration, law, medicine, chemistry, psychology, sociology and other disciplines. . .

"Salaries must be raised to attract, retain and develop the most talented and dedicated people we have. Standards will vary in different areas, and for different police functions, but we can commit ourselves now to rapidly raise salaries and to keep their level under constant review. Patrolmen should begin at $10,000 per year in most parts of the country and advance as patrolmen to $15,000 or more. Salaries for non-commissioned officers and specialists could range from $15,000 to $20,000. Lieutenants, Captains and division heads should earn from $20,000 to $30,000 in most major departments. Chiefs and administrative heads earn $30,000 to $50,000 and should be paid accordingly. We must recognize how important professionalization of police is and we must pay for it.

"Today, by contrast, in cities of more than 500,000, half the new patrolmen start at salaries less than $6,556 per year while half of all patrolmen regardless of length of service earn less than $7,591.

"Americans pay less than $12.50 per year each on the average for all police services. Surely we are willing, even anxious to pay more.

"A highly professional police supported in these ways will preserve public safety and individual liberty for the American people. The professional by definition never loses his discipline or control whatever the provocation. He will act with balance; clearly, fairly and firmly. He will not be repressive, abridging rights. He will not be permissive, failing to enforce the law. With tolerance for those with whom he disagrees and understanding of the many trying pressures imposed upon him, he will never forget that when he comes through this turbulence, as we will, we shall have to go on living together forever on this soil. Nothing else is possible."

U.S. Attorney's Office in St. Louis Brings Sherman Antitrust Action

October 9, 1968: A federal grand jury in St. Louis has indicted a manufacturer of industrial food machines and one of its franchised dealers on a charge of conspiring to submit collusive bids in violation of the restraint of trade section of the Sherman Antitrust Act. The case was prepared by the U.S. Attorney's office in St. Louis. The defendants are the Hobart Manufacturing Company of Troy, Ohio, which produces industrial food machines and kitchen equipment, and the Bensinger Company of St. Louis, a franchised Hobart dealer. The indictment said that the firms and unnamed co-conspirators conspired to submit collusive bids on dishwashing machine equipment to be used in a St. Louis restaurant.

Department Challenges Merger in Nuclear Power Field

October 16, 1968: The Department of Justice has raised its first challenge of a merger in the nuclear power field.

Attorney General Ramsey Clark said a civil antitrust suit was filed in United States District Court in Manhattan seeking a court order requiring Combustion Engineering, Inc., of New York City, to divest itself of the 21 percent of United Nuclear Corporation stock it acquired last June 27.

The suit asserted the acquisition violated the Celler-Kefauver Section of the Clayton Act by eliminating United Nuclear as a competitor in the sale of uranium as a power source for nuclear electric generating plants.

United Nuclear is a major producer of uranium for use as nuclear fuel. Combustion Engineering, one of only four companies manufacturing large-scale nuclear reactors for electric utilities, is itself a significant supplier of nuclear fuel, according to the complaint.

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DEPARTMENT OF JUSTICE PROFILES

Leo M. Pellerzi
Assistant Attorney General
Administrative Division

Leo Pellerzi, 43, entered Government legal service in 1949, serving with the Interstate Commerce Commission, Economic Stabilization Agency and Subversive Activities Control Board before his appointment in 1959 as a hearing examiner with the Interstate Commerce Commission. He was named Associate General Counsel of the Civil Service Commission in March, 1965 and became General Counsel ten months later. He was appointed Assistant Attorney General for Administration in March, 1968. Mr. Pellerzi served in the Army Air Corps from February, 1943 to October, 1945, and was a staff sergeant upon his discharge. He flew 32 combat missions in Europe as a gunner on a B-17 bomber and received the Air Medal with four oak leaf clusters. In 1967 he received the Tom C. Clark Award, given annually by the District of Columbia Chapter of the Federal Bar Association in recognition of outstanding service by career lawyers. Mr. Pellerzi had served as president of the Chapter in 1962 and has served two terms as President of the Federal Trial Examiners Conference. He holds three degrees from George Washington University--an Associate of Arts and both a Bachelors and Masters in Law.

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Patrick J. Foley
United States Attorney
District of Minnesota

Mr. Foley was born May 10, 1930 at Wabasha, Minnesota. He received his LL.B. degree from Catholic University in 1956. Mr. Foley was in private practice in Rochester, Minnesota from 1956 to 1959, during part of which time (1957-1958) he also served as Probate Juvenile Judge of Dodge City, Minnesota. From 1959 to 1961 he was in private practice in Washington, and in 1961 he became an Assistant United States Attorney for the District of Minnesota. As an Assistant U.S. Attorney, Mr. Foley prosecuted the first federal fraud case against a dance studio complex. In 1966 he was appointed United States Attorney. In addition to its other duties the U.S. Attorney's office under Pat Foley has involved itself in the plight of the migratory workers in the company towns of Minnesota and recently assisted a Chippewa Indian tribe of Minnesota in setting aside an irregular tribal election.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Acting Director John K. Van de Kamp

ASSISTANT UNITED STATES ATTORNEY APPOINTMENTS

California Central - DAVID P. CURNOW; University of California, J.D. and formerly research assistant University of California.

District of Columbia - JOHN F. EVANS; University of North Carolina Law School, LL.B and formerly a law clerk U.S. District Court, Eastern District of North Carolina.

District of Columbia - BRUCE P. SAYPOL; Georgetown University Law Center LL.M. and Yale University Law School, LL.B. Formerly legal intern Georgetown University Legal Intern Office.

District of Columbia - DANIEL E. TOOMEY; Georgetown University Law Center J.D. and formerly legal assistant to Chief Judge Andrew M. Hood, D. C. Court of Appeals.

Illinois, Northern - HOWARD M. HOFFMAN; Chicago-Kent College of Law, LL.B., Law Review staff member.

Louisiana, Eastern - ROBERT O. HOMES, JR.; Loyola School of Law LL.B. and formerly law clerk to U. S. District Court Judge Frederick J. R. Heebe.

ASSISTANT UNITED STATES ATTORNEY RESIGNATIONS

Ohio, Northern - CLARENCE D. ROGERS; to become Chief Police Prosecutor for the City of Cleveland.

Massachusetts - JOHN M. CALLAHAN; to join William Welch, Esq. law firm.

PERSONNEL CHANGES IN EXECUTIVE OFFICE

There have been some personnel changes in the Executive Office within the past month which should be of interest to U.S. Attorneys and Assistants. Eileen O'Connell, formerly secretary to John W. Kern, III, has followed the new associate judge to the D.C. Court of Appeals as his secretary. She has been replaced by Cathy Reuwer, who formerly processed appointments and promotions for Assistants. Sheila Crowley, a new member of our staff who comes to us from the Pentagon, will now keep track of the

appointments and promotions for Assistants. Jane Duke, who was formerly with the National Institute of Health, will replace Marilyn Gromen as our other secretary.

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ANTITRUST DIVISION

Assistant Attorney General Edwin M. Zimmerman

DISTRICT COURT

CLAYTON ACT

BANK CHARGED WITH VIOLATION OF SECTION 7 OF ACT.

United States v. Pennsylvania National Bank and Trust Company, et al. (E. D. Pa., Civ. 68-2025; September 17, 1968; D. J. 60-111-1404)

On September 17, 1968 a civil action was filed in the United States District Court for the Eastern District of Pennsylvania under Section 7 of the Clayton Act. The suit seeks to enjoin the acquisition by Pennsylvania National Bank and Trust Company, Pottsville, Schuylkill County, Pennsylvania, of Merchants National Bank of Shenandoah, Shenandoah, Schuylkill County, Pennsylvania. The complaint asserts that the merger would substantially lessen competition generally, in commercial banking in Schuylkill County and in and around the Borough of Shenandoah. Moreover, competition between the defendant banks would be permanently eliminated.

An agreement to merge was entered into by defendant banks on April 12, 1968. This Department, the Federal Reserve Board, and the FDIC all reported that the merger portended adverse competitive effects. The Comptroller, however, approved the transaction on August 19th.

Merchants, operating through a single office and having $11. 1 million in total deposits as of December 31, 1967, is the largest of three banks located within the Borough of Shenandoah and the fourth largest bank headquartered in Schuylkill County. Pennsylvania National with total deposits of $94. 4 million on that date, is the largest bank which maintains headquarters in Schuylkill County. It has its head office at Pottsville and operates 14 branches, 11 of which are located in the home county. The head offices of the banks proposing to merge are situated 12 miles apart and Pennsylvania National operates three branches located in the Shenandoah Area, within a radius of 7 miles from the Borough of Shenandoah.

Twenty-one banks operate 41 offices in Schuylkill County. The 11 offices of Pennsylvania National, which are located in the County, control about 31 percent of county-wide IPC demand deposits. If the merger is consummated the resulting bank would account for approximately 34 percent of such deposits. Six commercial banks operate eight offices in the Shenandoah Area. Pennsylvania National, by virtue of its three branches located therein,

is the largest, holding about 30 percent of the Area's IPC deposits. Merchants ranks second with 21 percent of such deposits. Consummation of the merger would endow the resulting bank with 51 percent of all IPC deposits in the Shenandoah Area.

Staff: James L. Minicus (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

SUPREME COURT

RESERVISTS

SUPREME COURT REFUSES TO GRANT STAY OF MILITARY ORDERS TO RESERVISTS SEEKING RELEASE FROM ACTIVE DUTY.

SP 4 Bradish G. Morse, et al. v. Boswell, et al. (Supreme Court, October Term 1968, No. _____; decided October 7, 1968; D. J. 145-4-1683)

In SP 4 Bradish G. Morse, et al v. Boswell, et al. (D. Md. Civil No. 19734, decided August 6, 1968), reported in the United States Attorneys Bulletin of August 30, 1968, at page 676, the district court held that 113 members of an Army Reserve Unit, who were under military orders to be sent to Viet Nam, had been properly activated pursuant to P. L. 89-67. The Court of Appeals for the Fourth Circuit affirmed per curiam for the reasons stated by the district court, and on September 6, 1968, Chief Justice Warren denied the plaintiffs' application for a stay of their military orders pending certiorari (see United States Attorneys Bulletin of September 20, 1968, at page 752). The plaintiffs then sought a stay from Justice Black, who also denied the application. The plaintiffs then sought a stay from Justice Douglas, who granted a temporary stay pending consideration by the full Court.

After Justice Douglas granted the temporary stay, several other suits were brought by reservists on active duty challenging the validity of their activation under P. L. 89-687 and seeking to restrain the Army from ordering them overseas. In those cases also, the district courts and the courts of appeals denied the requested relief, the Supreme Court Justice for the circuit refused to grant a stay, and Justice Douglas granted temporary stays pending consideration by the full Court.

On October 7, 1968, the full Court, without opinion, refused all the applications for stays of the military orders. Justice Douglas dissented.

Staff: Robert E. Kopp (Civil Division)

COURTS OF APPEALS

RES JUDICATA

DISMISSAL "WITH PREJUDICE" OF FIRST SUIT AGAINST GUARANTOR OF NOTES, ON GROUND THAT PROPER DEMAND HAD NOT BEEN MADE, DOES NOT BAR SECOND ACTION FILED AFTER MAKING PROPER DEMAND.

Ouida J. Weissinger, et al. v. United States (C. A. 5, No. 24,639; October 9, 1968; D. J. 105-19-49)

Mrs. Weissinger was a partner in a company indebted to the Reconstruction Finance Corporation. She executed guaranties on two loans to the company, one when she was twenty years old and one when she was twenty-one. More than eleven years later, after default by the company, the Government sued her on these guaranties. She then disaffirmed the first contract on the ground that she had been a minor when it was executed; she further pleaded lack of demand and nine other affirmative defenses.

After trial, the district court found for the Government on ten of these eleven defenses, but held for the defendant on the ground that the filing of suit was not equivalent to demand, and that no other demand had been made as required by the guaranty contracts. (But see Texas Water Supply Corp. v. RFC, 204 F. 2d 190 (C. A. 5), holding that the filing of suit is sufficient demand in these circumstances.) The order of dismissal read: "dismissed with prejudice."

The Government elected to send a proper demand letter and file a second action rather than appeal. Mrs. Weissinger raised the same defenses as she had to the first action; in addition, she argued that the first dismissal was res judicata and barred the second action. The district court held for the Government, and the defendant appealed.

The Fifth Circuit affirmed, one judge dissenting. First, it reasoned that the effect of the first dismissal must be determined by examining the circumstances behind it and not merely the words contained in the order. In examining those circumstances, the Court agreed with the Government that the dismissal of the first action was not on the merits, but merely involved a condition precedent (i. e., demand) to the bringing of the action on the guaranty. The first action could be res judicata only as to the issues concerning demand which were decided by the district court at that time. The Court reached the same result under Rule 41(b), F. R. Civ. P., which provides: "Unless the court in its order for dismissal otherwise specifies, a dismissal * * * other than a dismissal for lack of jurisdiction * * * operates as an adjudication upon the merits." The Court held that the order dismissing the first action, construed in the light of the circumstances behind it, had "otherwise specified." It also noted that a dismissal for failure to comply with a pre-condition to suit was a dismissal "for lack of jurisdiction" within the meaning of Rule 41(b).

The Court also ruled: (1) that state statutes of limitation do not apply to the United States; and (2) the failure of Mrs. Weissinger to disaffirm her contract for eleven years after reaching majority prevented her from exercising the right to disaffirm.

Staff: Stephen R. Felson (Civil Division)

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LAND AND NATURAL RESOURCES DIVISION

Assistant Attorney General Clyde O. Martz

COURT OF APPEALS

CONDEMNATION

PROPERTY INTEREST; URANIUM PROSPECTING PERMITS DO NOT CREATE COMPENSABLE INTEREST IN PUBLIC LAND.

Acton v. United States (C. A. 9, Nos. 21, 980 and 21, 980-A, October 4, 1968; D. J. 33-3-207-116)

The issue in this consolidated action was whether, upon the withdrawal of revocable uranium prospecting permits on the public domain by the United States, the Fifth Amendment requires payment of compensation. Summary judgment in favor of the Government, holding that such permits or licenses did not amount to any vested interest in land compensable under the Fifth Amendment, was affirmed by the Court of Appeals.

In sustaining this holding, the Court noted the parallel between these prospecting permits and Taylor Act Grazing permits which, irrespective of their value to private parties, may, too, be revoked without the payment of compensation. The Court's rationale applies with equal force to all non-vested interests, which, not rising to the status of interests in land within the meaning of the Fifth Amendment, are revocable at any time by the sovereign without the payment of compensation.

Staff: Jacques B. Gelin (Land and Natural Resources Division)

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TAX DIVISION

Assistant Attorney General Mitchell Rogovin

COURT OF APPEALS

WAGERING TAXES

LIABILITY FOR PAYMENT OF WAGERING TAXES IS NOT EXTINGUISHED BY CLAIM OF PRIVILEGE AGAINST SELF-INCRIMINATION.

United States v. Othello Washington, et al. (C. A. 4th - No. 10766 - September, 1968, D.J. 5-79-1149)

The United States filed a complaint against Othello Washington seeking a judgment for a wagering tax assessment made pursuant to Section 4401 of the Internal Revenue Code of 1954, 26 U.S.C. 4401 (1964 edition). The complaint prayed that a certain farm owned by the defendant be sold in satisfaction of the Government's tax lien. Taxpayer's wife answered alleging that she had a dower interest in the land. The district court ruled in favor of the Government and ordered the farm sold at public sale, 251 F. Supp. (E.D. Va., 1966).

The taxpayer appealed raising two questions. (1) Whether the judgment against Othello Washington based on the 10 per cent wagering excise tax should be set aside because of the intervening decisions of the Supreme Court in Marchetti v. United States, 390 U.S. 39 and Grosso v. United States, 390 U.S. 62; and (2) Whether the trial court erred in ordering the sale of the real estate belonging to the taxpayer free of the inchoate dower interest of the taxpayer's wife.

The Court first addressed itself to the taxpayer's argument that by the necessary implications of the Grosso and Marchetti decisions the wagering excise tax statute is now unconstitutional. The Fourth Circuit stated that the language in both the Marchetti and Grosso decisions indicates no finding by the Supreme Court that the excise tax statute is constitutionally impermissable or even that a properly asserted claim of the privilege of self-incrimination would extinguish the liability for the payment of these taxes. In support of this position the Fourth Circuit looked to the following language in the Marchetti decision (390 U.S. 61):

> We emphasize that we do not hold that these wagering tax provisions are as such constitutionally impermissible; we hold only that those who properly assert the constitutional privilege as to these provisions may not be criminally punished for failure to comply with their requirements.

> If, in different circumstances, a taxpayer is not confronted by substantial hazards of self-incrimination, or if he is otherwise outside the privilege's protection, nothing we decide today would shield him from the various penalties prescribed by the wagering tax statutes.

In addition, the Court cited footnote 7 of the Grosso opinion (390 U.S. 69):

> Section 4411 provides that the occupational tax must be paid "by each person who is liable for tax under section 4401" and by each person who receives wagers for one liable under §4401. It might therefore be argued that since petitioner is entitled to claim the constitutional privilege in defense of a prosecution for willful failure to pay the excise tax, he is thereby freed from liability for the occupational tax. We cannot accept such an argument. We do not hold today either that the excise tax is as such constitutionally impermissible, or that a proper claim of privilege extinguishes liability for taxation; we hold only that such a claim of privilege precludes a criminal conviction premised on failure to pay the tax. (Emphasis supplied by the Fourth Circuit.)

The Court then concluded that the civil liability for wagering taxes remains entirely valid.

Regarding the taxpayer's second argument, the Court decided that it would follow the holding in United States v. Trilling, 328 F. 2d 699 (C.A. 7th, 1964), rather than the decision in Folsom v. United States, 306 F. 2d 361 (C.A. 5th, 1962), and upheld the right of the Government to enforce its lien for these taxes with respect to real estate in which the taxpayer's wife had an inchoate dower interest.

Staff: United States Attorney Claude Spratley, Assistant United States Attorney John D. Schmidtlein (E.D. Va.); Joseph Howard and Paul T. O'Donoghue (Tax Div.)

DISTRICT COURT

TAX LIENS -- PRIORITY OVER LIEN AND ATTORNEY'S FEES OF GARNISHOR

FEDERAL TAX LIEN HAD PRIORITY OVER CLAIM OF GARNISHOR WHERE TAX WAS ASSESSED AND LIEN FILED AT TAXPAYER'S RESIDENCE BEFORE GARNISHOR REDUCED HIS CLAIM TO JUDGMENT; LIEN WAS SENIOR TO CLAIM FOR ATTORNEY'S FEES AND ATTORNEY HAD

NO EQUITABLE RIGHT TO FEE BECAUSE HIS SERVICES WERE ADVERSE TO UNITED STATES.

Lorren J. Kuffel v. United States (Supreme Court of Arizona, No. 8422; May 29, 1968; D. J. 5-11-1936)

Taxpayer was indebted to Kuffel (Garnishor). In April, 1958, federal excise taxes were assessed against taxpayer and in May, 1958, notice of tax lien was filed in the county in California where taxpayer resided. In August, 1958, Garnishor sued taxpayer on the debt in the Superior Court of Maricopa County, Arizona, and issued writs of garnishment to several local businesses. The garnishees replied that they owned taxpayer nothing. In October, 1958, the United States levied on one of the garnishees; in April, 1959, notice of tax lien was filed in Maricopa County; and in June, 1961, the Government was allowed to intervene in the garnishment proceeding and claim that its tax lien was entitled to priority. The garnishee levied upon thereafter amended its answer to the garnishment writ to admit that it was in fact indebted to taxpayer, and the trial court granted summary judgment to the United States.

On appeal, Garnishor contended (1) that the institution of the garnishment proceeding constituted an equitable assignment of the debt and hence he was a "purchaser" (1954 Code §6323(a)) entitled to record notice; (2) that the filing of a tax lien in California did not constitute record notice to him; and (3) that even if the tax lien was senior, the trial court should have set aside an amount to compensate his attorney for creating and protecting the fund prior to the Government's intervention.

The Supreme Court of Arizona sustained the Government's contentions (1) that Garnishor was not a "purchaser" since under Arizona procedure the sole effect of instituting the garnishment proceeding was to impound any assets of taxpayer in the hands of the garnishees pending resolution of the merits of the garnishor's claim; (2) that even if Garnishor was entitled to record notice, he received it when the tax lien was filed at the situs of the property -- taxpayer's residence in California, which was the most practical and central place to record liens respecting taxpayer's personal property; and (3) taxpayer's counsel was not entitled to a $2,500 fee (approximately equal to his one-third contingent fee arrangement) not only because his interest was inchoate, but also because his services did not benefit the Government, but were adverse to the interests of the United States.

The rule that the situs of intangible property for the purposes of filing federal tax liens is at the taxpayer's place of residence was enacted into law (1954 Code §6323(f)) by the Federal Tax Lien Act of 1966. The 1966 Act's amendments regarding attorney's fees (§6323(b) (8) and (e)) had no application in this case because they apply only where the attorney obtained

a settlement or judgment, or acted in the collection of a lien senior to the tax lien. Finally, the 1966 Act made no provision for garnishment creditors and consequently they are governed, as here, by the pre-1966 Act choate lien test.

Staff: Assistant United States Attorney Richard C. Gormley (D. Ariz); Joseph Kovner and J. Edward Shillingburg (Tax Division)

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