

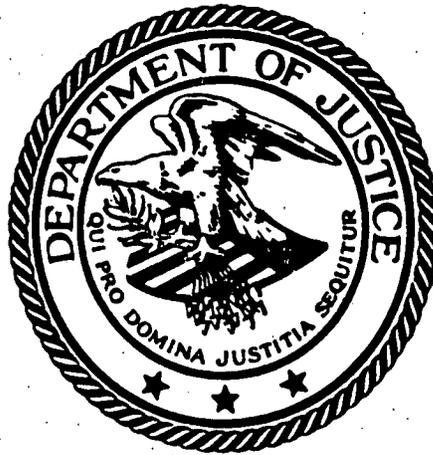
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Vol. 1

No. 11



UNITED STATES ATTORNEYS
BULLETIN

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DEPARTMENT OF JUSTICE PERSONNEL

UNITED STATES ATTORNEYS BULLETIN

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I wish to take this opportunity to extend to all of the United States Attorneys, their Assistants, and the personnel of their offices my sincere good wishes for a happy holiday season.

Herbert Brownell Jr.

FBI Handbook

The attention of the United States Attorneys and their Assistants is directed to the handbook "Services of the FBI", recently issued by the Federal Bureau of Investigation and distributed to all United States Attorneys offices. The material contained in this handbook is of immediate and practical value to all United States Attorneys and their Assistants and they are urged to familiarize themselves with the many services and facilities, described in the handbook, which are made available by the FBI.

* * * *

Visitors

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

Lester S. Parsons, Virginia, Eastern
Clifford M. Raemer, Illinois, Eastern
Frank O. Evans, Georgia, Middle

And the following Assistant United States Attorneys:

Robert E. Hauberg, Mississippi, Southern
Robert E. Joyner, Tennessee, Western
James R. Moore, Virginia, Eastern

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C R I M I N A L D I V I S I O N

Assistant Attorney General Warren Olney III

NATIONAL MOTOR VEHICLE THEFT ACT

Prosecutions; Policy of Department. We have been informed by the Federal Bureau of Investigation that thefts of automobiles have increased alarmingly in the past few years and that in 1952 alone an estimated 215,310 automobiles were stolen valued at approximately \$228,000,000. This amount exceeds the value of property stolen in all other types of crimes combined.

According to the F.B.I., in National Motor Vehicle Theft Act cases the percentage of automobiles recovered has shown a considerable increase in recent years whereas the percentage of convictions in the same period, continued to decline. Convictions dropped from 65% in the fiscal year 1937 to 31% in the fiscal year 1953.

Unquestionably there is a definite need for a more aggressive prosecutive program in connection with this type of case. Your attention is invited to the United States Attorneys' Manual, Title 2, page 89, which contains the instruction that "Individual cases as well as those involving gangs should be prosecuted. The Department's obligation under the law is to investigate and prosecute such cases whenever it appears there has been a violation of the Federal statute, notwithstanding a concurrent and perhaps more flagrant violation of the local laws."

In addition, and in further connection with this matter, your attention is directed to the section of the Manual entitled "Delivery of Armed Forces Personnel for Civil Prosecution." Under this section United States Attorneys are advised that every effort should be made to prosecute civilly military personnel who commit offenses involving violations of federal criminal law after entrance into the armed forces. Certain exceptions are listed to this instruction on page 32, Title 2, and on page 33 the following language pertaining to civilians appears, also with exceptions: "It is the policy of the Department not to forego or dismiss prosecution solely because offenders are about to become members of the Armed Forces."

Each United States Attorney should carefully review the policy pursued in his District respecting motor vehicle theft cases in order to assure that the policy of the Department as set forth herein is being followed.

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* * * *

On October 30, 1953, defendant entered a plea of guilty in the United States District Court, Southern District of Ohio, under Rule 20, to the information filed in the Western District of Texas, and was sentenced to a prison term of three years.

CIVIL RIGHTS

Peonage. United States v. Carter Robertson and Robert Alexander Kitchens (Northern District of Georgia). On November 23, 1953, a grand jury returned a three-count indictment charging the defendants with violations of 18 U.S.C. 1581(a). The investigation indicates that, in June 1951, when the victim, an employee of the defendant Robertson, a farm operator of Newton County, Georgia, did not appear for work, Robertson charged the victim in an affidavit with having committed "a misdemeanor" and a warrant was issued for his arrest. The arrest was made by County Policeman Kitchens, who, instead of taking the victim to jail, turned him over to defendant Robertson who took the victim back to his farm and put him to work. In June 1953, while the victim was employed in Atlanta, Georgia, he was again arrested and placed in jail in Newton County, Georgia, on a warrant secured by defendant Robertson. The affidavit forming the basis for the warrant again charged the victim with having committed "a misdemeanor." Both defendants were charged with arresting the victim for the purpose of placing him in a condition of peonage, and defendant Robertson was charged with holding the victim in a condition of peonage. Trial will probably be held in March 1954.

Staff: United States Attorney James W. Dorsey (N.D.Ga.).

Deprivation of Liberty without Due Process of Law; Kidnapping. United States v. William H. Rosier, et al. (Southern District of Georgia). On November 12, 1953, a grand jury returned a two-count indictment charging the defendant, a constable of Volusia County, Florida; a private individual of the same County; and the Chief of Police of Helena, Georgia, with violations of 18 U.S.C. 242 and 1201(a) (kidnapping statute). The investigation indicated that, in July 1951, the Georgia officer arrested the victim at Helena, Georgia, on a Florida warrant obtained by a Florida finance company, charging the victim with removing mortgaged property from Florida. The victim, over his protest and that of his attorney, was turned over to the Florida constable and taken to Daytona Beach, Florida. No extradition proceedings were instituted in Georgia nor did the victim execute a waiver prior to his removal.

Staff: Assistant United States Attorney William T. Morton.
(S.D. Ga.).

DISTRICT COURTFRAUD

Railroad Unemployment Insurance Act. United States v. James C. Gates, United States v. Jesse L. Gaines, United States v. Virgil Jenkins (Northern District of Georgia). Informations were filed against the defendants charging them with violating 45 U.S.C. 359(a) by making false statements in their requests for benefits under the Railroad Unemployment Insurance Act. Defendants stated they had earned no wages during specified periods when in fact they had been gainfully employed and had earned wages. All defendants entered pleas of guilty. Gates was sentenced to eight months; Gaines to six months and Jenkins to twelve months.

Staff: United States Attorney James W. Dorsey and Assistant United States Attorney Charles D. Read, Jr. (N.D. Ga.)

Veterans Administration Matter - False Claims. United States v. Miller (Northern District of Illinois). On May 23, 1953, an eight-count indictment was returned against defendant charging him with violations of 18 U.S.C. 287, for knowingly presenting to the Veterans Administration false vouchers for tuition for certain veteran students attending Miller's Business College, Inc., Chicago, Illinois, when, in fact, said veteran students were not in attendance during the period for which the vouchers were submitted. Upon trial, defendant was found guilty and on November 23, 1953, was sentenced to serve six months.

Staff: Assistant United States Attorneys Richard G. Kahn and John D. Schwartz (N.D. Ill.)

False Statements. United States v. Harold Kenneth Rain (Southern District of Ohio). On September 23, 1953, an information charging a violation of 18 U.S.C. 1001 was filed in the Western District of Texas, alleging that on or about August 17, 1951, at San Antonio, Texas, in a contract for employment with the U. S. Government as a physician, defendant falsely represented himself to be one Dr. Samuel P. Hall.

Investigation disclosed that defendant, posing as Dr. Hall, had been employed as a Contract Surgeon at the San Antonio General Depot, Fort Sam Houston, from 1950 to 1952 and that for the past five or six years, under the alias of Dr. Hall, he had held various positions as surgeon and gynecologist with private hospitals and clinics throughout the United States. Rain admitted that he had never attended any medical school.

The Supreme Court's reversal of the Ninth Circuit's decision will afford the Government a hearing on the merits of the appeal. Nevertheless, this case underscores the need for extremely careful preparation of notices of appeal and the importance of stating in such notices that the "appeal is being taken to the court of appeals from the final judgment entered in this action on [date]."

Staff: Morton Hollander (Civil Division).

COURT OF APPEALS

FEDERAL TORT CLAIMS ACT

Discretionary Function Exception - Release of Patient From Veterans' Administration Hospital Frances Irene Smart v. United States (C.A. 10, No. 4691, November 5, 1953). While en route to his home from a Veterans' Administration Hospital on a trial visit, a mentally incompetent veteran stole an automobile and injured the plaintiff by reckless driving. Plaintiff instituted suit under the Tort Claims Act alleging that the Government's employees in charge of the hospital were negligent in releasing the veteran from custody and that such negligence was the proximate cause of plaintiff's injuries. Veterans' Administration Regulation 6159 provides that when a request is made for the release of a psychotic patient not held under commitment he will be released if mentally competent at the time, but if not mentally competent, he may be permitted a trial visit if deemed advisable. Veterans' Administration Regulation 6167 (d) (1) provides that trial visits are to be encouraged. If the patient is found to be competent, he is entitled to be released. If he is not competent, he is to be released for a trial visit if, in the judgment of the hospital authorities, it is advisable. On these facts, the District Court entered a summary judgment of dismissal. The Court of Appeals affirmed, holding that the claim fell within the discretionary function exception of the Tort Claims Act. Previously, the court had held in United States v. Gray, 199 F. 2d 239, that the determination whether a veteran's wife was to be admitted to a hospital was an exercise of discretion. Applying that decision to the present case, the court stated that "by analogy the determination whether a veteran should be released for trial visit likewise involves the exercise of discretion."

Staff: Benjamin Forman and T.S. L. Perlman (Civil Division); Robert E. Shelton, United States Attorney and B. Andrew Potter, Assistant United States Attorney (W.D. Okla.)

Imposition of Liability Without Fault United States v. Praylou; United States v. Walker (C.A. 4, November 9, 1953). These suits against the United States under the Federal Tort Claims Act were filed to recover for personal injuries and property damages caused as a result of the crash of a military plane on plaintiff's land in South Carolina. No finding of any negligence in the operation or maintenance of the plane was made by the District Court. The court, nevertheless, awarded judgments to the plaintiffs on the basis of a South Carolina statute (modeled after the Uniform Aeronautics Act) which makes the "owner of every aircraft absolutely liable for

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

Assistant Attorney General Warren E. Burger

S U P R E M E C O U R TA D M I R A L T Y

Dependents of Workman Killed While Repairing Vessel on Marine Railway May Obtain Benefits Under Longshoremen's Act Avondale Marine Ways, Inc. v. Henderson (October Term 1953, No. 44, November 9, 1953). An employee of the ship repair company was killed by a flash explosion which occurred while he was cleaning the tanks of a barge located on the ways of the company's marine railway. The barge had been drawn out of the water for repairs. The ways of the marine railway ran from the water onto dry land and at the time of the explosion, the barge was about 300 feet from the water's edge. The Deputy Commissioner held that the death was within the coverage of the Longshoremen's Act and granted the awards applied for by the decedent's dependents. The District Court affirmed the Deputy Commissioner's awards as did the Court of Appeals for the Fifth Circuit, which ruled that marine railways were "dry docks" within Section 3(a) of the Longshoremen's Act extending the Act's coverage to injuries or death "occurring upon the navigable waters of the United States (including any dry dock)."

The Supreme Court affirmed the judgment of the Fifth Circuit in a per curiam opinion, which merely cited Davis v. Department of Labor, 317 U.S. 249 and related cases. In the Davis case, the Supreme Court has enunciated the doctrine that in situations in the so-called "twilight zone," i.e., where the presence of both maritime and land aspects made it difficult, in advance of judicial determination, to ascertain whether the state workmen's compensation statute or the Longshoremen's Act was applicable, an award under either should be sustained in the absence of "apparent error" in order to effectuate the statutory policy of sure and certain relief. Justices Douglas and Burton concurred in separate opinions on the ground that the case was within exclusive federal jurisdiction.

Staff: Melvin Richter (Civil Division).

A P P E A L

Dismissal of Appeal Because of Technical Defect in Notice of Appeal United States v. Arizona (October Term 1953, No. 375, December 7, 1953). The Supreme Court granted the Government's petition and at the same time summarily reversed the decision of the Court of Appeals for the Ninth Circuit. That decision, reported in the Bulletin, Vol. 1, No. 5, at page 5, had dismissed the Government's appeal to that court because of a technical defect in the notice of appeal filed by the United States Attorney.

the Ramspeck Act. Judge Keech accepted the contentions of the Government that: (1). Executive Order 10463, issued June 25, 1953, makes the Civil Service Rules and Regulations pertaining to removals inapplicable to the removal of attorneys holding Schedule A positions (excepted from the civil service) even though they had acquired competitive status under the Ramspeck Act of 1940 under which attorney positions were blanketed into the civil service. Attorney positions were subsequently excepted from the civil service by an executive order issued in 1947. (2). The Lloyd-LaFollette Act of 1912, which provides that persons in the classified civil service shall not be removed therefrom without notice of charges and opportunity to answer, is inapplicable to the removal of persons holding Schedule A positions (which attorney positions have been since the Executive order issued in 1947), even though such persons have competitive civil service status granted under the Ramspeck Act. The Court held that to interpret the Lloyd-LaFollette Act as applicable to positions excepted from the civil service would improperly limit the President's authority under the civil service laws to determine which positions shall be included in or excepted from the classified civil service.

Staff: Donald B. MacGuineas (Civil Division).

LIQUIDATED DAMAGES

Actual Damage Need not be Proved - Saving on Relet Contract Not Credited Matter of Aero Metalcraft Corporation (D.N.J., Bankruptcy No. B-7297a, November 25, 1953). The bankrupt defaulted on a contract to make davenport for Army hospital waiting rooms. The trustee in bankruptcy argued that the clause providing liquidated damages for delay was void as a penalty, in that there could be no urgency for delivery of such merchandise. The failure of the United States to prove any actual loss or damage was held not fatal to its claim. The court held it sufficient that the default "resulted in a delay in the normal progress of a Governmental activity and in a consequent damage which is ordinarily difficult of accurate determination." The contract was relet at a lower price, but the court refused to give the bankrupt credit for the saving.

Staff: Robert Mandel (Civil Division); Jerome D. Schwitzer, John R. Everitt, and John J. Barry, Assistant United States Attorneys (N.J.)

STATUTES OF LIMITATION -- LACHES

Non-applicability of Laches and State Statutes of Limitation to Claims of Reconstruction Finance Corporation for Subsidy Refunds Reconstruction Finance Corporation v. McCarthy Brothers (N.D. Cal., Civil No. 32695, November 23, 1953). Suit for recovery of certain coffee subsidy payments authorized by the Emergency Price Control Act of 1942 (50 U.S.C. App. 902), was instituted approximately six and one-half years after the cause of action accrued, and beyond the time limited by the

injuries [caused by the plane] to persons or property on the land * * * whether such owner was negligent or not."

The Court of Appeals for the Fourth Circuit affirmed on the ground "that the federal tort claims act was intended to cover cases involving liability of this sort." This decision presents a square conflict with Dalehite v. United States, 346 U.S. 15, 44, where the Supreme Court held "that the Act does not extend to such [liability without fault] situations, though of course well known in tort law generally." The Solicitor General's office is considering a recommendation that a petition for certiorari be filed.

Staff: Morton Hollander (Civil Division); Russell D. Miller, Assistant United States Attorney (E.D. S.C.)

HOME LOAN BANKS

Jurisdiction of District Court -- Appointment of Receiver and Special Master Fahey v. Calverley, et al. (C.A. 9, November 23, 1953). In this litigation the Court of Appeals for the Ninth Circuit decided in 1952 that the District Court lacked jurisdiction over actions brought against the Home Loan Bank Board challenging the validity of (1) the appointment of a conservator of a federal savings and loan association and (2) the merger of two federal home loan banks into a single bank. 196 F. 2d 336; 200 F. 2d 420. The Supreme Court denied certiorari. The Government, however, had taken five other appeals from the interlocutory orders of the District Court appointing a receiver of a home loan bank and awarding allowances of fees and expenses to the receiver and a special master, appointed by the court, out of the funds in the court's registry. After the above decisions were rendered motions were filed by the Government to remand those appeals to the District Court with directions to vacate the orders appealed from on the ground that the issues involved were disposed of by the two Court of Appeals' opinions. The Ninth Circuit granted these motions in full, on the authority of its earlier rulings. In the court's view, since the District Court lacked jurisdiction over the subject matter of the actions, its appointment of a special master and a receiver was a nullity and, therefore, the court below had no authority to allow them fees and expenses out of the funds in the registry.

Staff: Donald B. MacGuineas (Civil Division).

DISTRICT COURT

CIVIL SERVICE

Separation of Departmental Attorney Possessing Competitive Civil Service Status Leo A. Roth v. Brownell (D. D.C., December 15, 1953). In this case the District Court sustained the Department's position that a departmental attorney may lawfully be separated from his position without notice of charges even though such attorney has competitive civil service status acquired under

contracts, pointing out that the Exchanges are in the nature of private clubs, operating under their own funds and without any Congressional appropriations. The Army Regulations specifically provide that Exchange contracts are solely the obligation of the Exchange and that they are not Government contracts. However, the Regulations further provide that the funds are to be dispersed solely for the benefit of military personnel; that Post Exchanges are Government instrumentalities, entitled to all the immunities thereof, and that they shall be under the control of the Secretaries of the Army and the Air Force. The Court agreed with the Government's contention, held that the Government was not liable on Exchange contracts, and dismissed the petition. It observed, however, that the present state of the law as to the amenability of the Exchanges to suit was unfair. The Exchanges themselves cannot be sued since they are Government instrumentalities and consent has not been granted to sue them (Standard Oil Co. v. Johnson, 316 U.S. 481), and as the Court now holds, the Government also cannot be sued on account of the activities of the Exchange. Thus, one contracting with a Post Exchange has no forum whatsoever in the event of a dispute. The Court stated: "We think it is proper that this situation should be called to the attention of the Congress."

Staff: Donald D. Webster (Civil Division)

PARTIES

Right of Estonian and Lithuanian State Corporations to Sue in United States Courts Latvian State Cargo and Passenger Steamship Line, et al. v. United States (C. Cls. No. 47861); Estonian State Cargo and Passenger Steamship Line, et al. v. United States. (C. Cls. No. 47862, December 1, 1953). Certain vessels were owned by Estonian and Lithuanian citizens. Upon the incorporation of Estonia and Lithuania into the Soviet Union, these citizens fled their countries, but continued to do business elsewhere. Decrees were then passed by the respective State authorities of Estonia and Lithuania "nationalizing" all vessels of the countries. Subsequently, two such vessels happened to be in American ports, and were requisitioned by the Maritime Commission. Thereupon, the State corporations which were established by the Soviet Union to take over and operate the Estonian and Lithuanian fleet of vessels instituted these suits in the Court of Claims claiming just compensation for the taking of the vessels. However, the former private owners of the vessels intervened, contending that title to the vessels still remained in them and that consequently they were entitled to the proceeds of the just compensation fund. The Court agreed with the intervening plaintiffs, and dismissed the petitions of the Estonian and Lithuanian State corporations. It held that the Executive branch of the Government has refused to recognize the incorporation of Estonia and Lithuania into the Soviet Union and has also refused to recognize the validity of any decrees nationalizing the property of persons within such countries. It held that, accordingly, the Court would likewise refuse to recognize the validity of such decrees.

Staff: Laurence H. Axman (Civil Division).

California statute for the institution of debt actions. In an order and memorandum denying the defendant's motion for summary judgment, the Court ruled that (a) although the plaintiff was a federal corporation, the suit was on a claim of the United States; (b) such a claim is not subject to state statutes of limitation; and (c) a Congressional waiver of sovereign immunity to suit and to imposition of court costs does not infer consent to the application of state statutes of limitation to claims of Government corporations.

Staff: Maurice S. Meyer, (Civil Division); Lloyd H. Burke, United States Attorney and William D. Spohn, Assistant United States Attorney (N.D. Cal.).

COURT OF CLAIMS

CONTRACTS

Government Construction Contracts - Breach By Suspension for Lack of Appropriated Funds Reiss & Weinsier, Inc., v. United States (C. Cls. No. 49490, December 1, 1953). Plaintiff contracted with the Federal Public Housing Authority to erect emergency housing for veterans. In the midst of the work, the agency was obliged to suspend the work, and ultimately cancelled the balance of the contract. The agency's action was due to a shortage of funds to carry on the program, and it caused all work on this and other similar projects to cease until Congress passed a deficiency appropriation bill. Plaintiff stopped the work, as directed, and held together its forces for a period of time, and then refused to proceed further on a different basis suggested by the agency. It then sued in the Court of Claims for the increased costs it suffered by reason of the suspension and delays. The Court held that the Government breached the contract by the suspension and was liable for such increased costs as the contractor had incurred. The Court held: "The suspension of the work * * * was of course a breach of contract, and it was a breach of contract for which defendant is not to be excused, although the reason for the suspension was a shortage of funds. A man cannot be excused from performance of his contract because he runs short of the money necessary to perform it. The other party enters into it on the promise that the money will be paid. If it is not paid, the promise is broken. So it is with the Government."

Staff: Carl Eardley (Civil Division)

POST EXCHANGES

Liability of United States on Contracts Made by a Post Exchange Borden v. United States, (C. Cls. No. 49855, December 1, 1953). Plaintiff contracted with the Army Exchange Service to perform certain services at a Post Exchange. A dispute under his contract arose, and he sued the Government in the Court of Claims. However, the Government disclaimed liability for any Post Exchange

OFFICE OF ALIEN PROPERTY

Assistant Attorney General Dallas S. Townsend

RECIPROCAL RIGHTS OF INHERITANCE STATUTES

In the Matter of the Estate of John Krachler, deceased (Supreme Court of Oregon). John Krachler, a citizen of the United States, died in 1943 a resident of Oregon, leaving a will in which he named Marie Unsold, a citizen and resident of Germany, as sole legatee. The Attorney General vested under the Trading with the Enemy Act the interest of the German beneficiary and proceeded in the Circuit Court for Multnomah County to enforce the vesting order. The State Land Board filed a petition for a decree that Krachler died without legal heirs capable of inheriting and for an escheat. One Hagmaier intervened and claimed the estate as sole heir.

An Oregon statute (Sec. 61-107, OCLA) makes the right of non-resident aliens to take by testate or intestate succession dependent upon "the existence of a reciprocal right upon the part of citizens of the United States to take personal property or the proceeds thereof in like manner within the countries of which said aliens are inhabitants or citizens," etc.

The circuit court construed the statute as requiring that Germany grant to citizens of the United States the same inheritance rights as possessed by Germans in Germany, without discrimination. It held, after a lengthy trial featured by expert testimony covering German law, that in 1943, the date of testator's death, citizens of the United States could inherit in Germany without discrimination and awarded the estate to the Attorney General. The Supreme Court of Oregon, in an opinion filed November 12, 1953 (Brand, J.), reversed. It held that the phrase "in like manner" in the statute meant that citizens of the United States must have the same inheritance rights in Germany as Germans possessed in Oregon, and that, since certain classes of United States citizens were not permitted to inherit in Germany under the Nazi laws, the reciprocity of the rights which the statute required did not exist. Accordingly, it held that the German legatee, and the Attorney General as successor to her interest, was not entitled to inherit and remanded the case for determination of the respective rights of the State of Oregon and the intervenors.

In its opinion the Court distinguished a similar California statute and the cases decided thereunder on the ground that the California statute had been construed (as the circuit court construed the Oregon statute) to require only that foreign countries grant to citizens of the United States the same inheritance rights as their own nationals possessed, without discrimination because of their alienage. The construction placed upon the statute by the Supreme Court will

ATTORNEYS' LIENS

Subordination of Lien to Client's Indebtedness to Government Pittman v. United States (C. Cls. No. 66-53, December 1, 1953). Plaintiff, an attorney, was retained by a Government contractor, on a contingent fee basis, to prosecute a claim before the Appeal Board of the Office of Contract Settlement. The Board made an award to the contractor of over \$300,000. However, the entire award was applied by the Government to a pre-existing liability of the contractor to the Government. Plaintiff contested this set-off, contending that his fee arrangement with the contractor created in his favor an attorney's lien against the award which could not be so defeated by the Government, and sued the Government in the Court of Claims for over \$48,000, the amount he would have obtained as his fee had the award been paid to his client instead of being applied to the Government's indebtedness. The Government moved to dismiss on various grounds. The Court sustained the motion on the ground that the "lien" was in reality nothing more than an attempt to give to the attorney an interest in his client's claim against the Government, which would be in violation of the Anti-Assignment Act (31 U.S.C. § 203). It held that "any attempt to impress a lien upon the proceeds of a claim against the United States as security for the payment of an attorney's fee is within the ends to which the prohibition of [31 U.S.C. § 203] was aimed."

Staff: Walter Kiechel, Jr. and Gilbert E. Andrews (Civil Division).

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