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COMMENDATIONS

Assistant U.S. Attorney John Truelson (W.D. Texas) was commended by the Immigration and Naturalization Service, San Antonio, for his outstanding ability and presentation of facts in the Hilario San Miguel case.

Assistant U.S. Attorney Gregory Wilson (S.D. Ill.) was commended by Postal Inspector in Charge, Springfield, for his ability in the courtroom in the presentation of evidence, the summation to the jury, and the rebuttal of defense testimony in the mail fraud prosecution of Robt. S. Strauss.

Assistant U.S. Attorneys Allen Chancey, Robert Whitley and Owen Forrester (N.D. Ga.), were commended by the Special Agent in Charge, FBI, and the Air Line Pilots Association for their preparation and presentation of the aircraft hijacking case of Lorenzo Edward Ervin, Jr.

U.S. Attorney Robert Krupansky (N.D. Ohio) was commended by Judge Thomas D. Lambros for his in-depth analysis of the issues and his around-the-clock vigilance in the Air Traffic Controllers litigation resulting in a prompt termination of the nationwide work stoppage which had crippled the nation's air transportation industry.

Assistant U.S. Attorney Anthony Lombardino (E.D. N.Y.) was commended by Essex County Prosecutor for his cooperation in the prosecution of the Lawton Jamison case.

Assistant U.S. Attorney Edward McDonough, Jr. (S.D. Texas) was commended by Special Agent in Charge, FBI, for his legal expertise and diligent personal effort re Lawrence Lee Guinn, Jr.

Assistant U.S. Attorneys Edward Johnson and Charles McAtee (Kansas) were commended by the Department of Agriculture for their long hours of preparation and presentation of the grain theft case of William H. Addington.

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POINTS TO REMEMBER

Selective Service

The attention of United States Attorneys handling Selective Service criminal cases is invited to Departmental Memo No. 6660 dated January 30, 1970, entitled "DISMISSAL OF CASES INVOLVING SELECTIVE SERVICE DELINQUENCY REGULATIONS".

The authorization set forth therein does not contemplate dismissal of counts of indictments not affected adversely by the Supreme Court's decisions in the Gutknecht and Breen cases. Unaffected counts charging such offenses as failure to comply with orders to report for and submit to preinduction physical examinations, failure to keep the local board informed of the address where mail will reach the registrant, etc., should not be dismissed without prior authorization from the Department's Criminal Division.

Dismissal of those counts will not usually be authorized unless the United States Attorneys advise that the State Directors of Selective Service or their appropriate representatives are of the opinion that the registrants can be reprocessed and duly ordered for induction.

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ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

DISTRICT COURT

SHERMAN ACT

COMPLAINT AND PROPOSED JUDGMENT FILED UNDER SECTION 1 OF ACT CHARGING RECIPROCITY.

United States v. Inland Steel Co. (N.D. Ill., Civ. 70C 1305; June 1, 1970; D.J. 60-138-161)

On June 1, 1970, a civil complaint was filed in the U.S. District Court for the Northern District of Illinois, together with a proposed consent judgment.

The complaint alleged that since 1957 Inland Steel has entered into combinations with various suppliers to restrain trade by reciprocating purchases in violation of Section 1. It also alleged that Inland Steel has used its purchasing power since 1957 to promote sales in an attempt to monopolize the requirements of actual and potential supplier-customers for steel and steel products as well as other products sold by Inland.

The complaint charged that Inland utilized comparative purchase and sales data in discussing its relative sales and purchase position with actual and potential suppliers and purchased goods on the understanding that suppliers would reciprocate by purchasing from Inland. In addition to the allegations concerning primary reciprocity, the complaint charged that Inland caused or induced particular suppliers to buy from its customers and caused its suppliers to persuade other companies to buy from Inland.

The complaint alleged the dual effect of excluding competitors of Inland from the sale of goods and services to supplier-customers of Inland and of excluding actual and potential suppliers of goods and services required by Inland from selling substantial quantities thereof to Inland.

The consent judgment, lodged with Judge Abraham L. Marovitz under our 30-day waiting period procedure, prohibits the purchase or sale of products on the condition or understanding that the supplier or customer will purchase from the defendant. The judgment also prohibits Inland from communicating to suppliers or contractors that

it will give preference to those who purchase from Inland. The judgment further prohibits Inland from preparing or exchanging statistical data with any supplier or contractor to facilitate any reciprocity arrangement or of engaging in the practice of discussing with suppliers, contractors or customers the relationship between purchase and sales between them.

The judgment contains prohibitions designed to prevent Inland from exercising its power over joint ventures in which it has a partial interest, by preventing it from directing or suggesting to such a joint venture that it shall purchase from any of Inland's cutomers in order to reciprocate for purchases made by such customers from Inland. It also prohibits Inland from communicating to its suppliers or customers the fact that purchases have been made from them by a joint venture in which Inland has a partial interest.

The judgment prohibits "tertiary" reciprocity in that it orders Inland to refrain from agreeing with suppliers (1) that they will purchase from defendant's customers to reciprocate for purchases by Inland from such suppliers, or (2) that they shall attempt to persuade other companies to buy from Inland in order to reciprocate for purchases made by Inland from such suppliers.

In addition to the above relief, the judgment prohibits certain internal activities which have been the means through which Inland conducted its program. Inland is enjoined from preparing statistical compilations which compare purchases by Inland with sales by Inland to suppliers. Inland is also prohibited from engaging in the practice of issuing to personnel with primary purchasing responsibilities any types of notices which identify customers and their purchases from Inland or which specify or recommend that purchases be made from any of such customers. The judgment likewise prohibits Inland from engaging in the practice of issuing to personnel with primary sales responsibilities any type of notices which pertain to purchases that have been made by Inland from particular customers. Inland is also prohibited from referring bid lists on capital expenditures to personnel having primary sales responsibilities, in order to obtain recommendations for job placements.

The judgment orders Inland Steel to abolish certain offices which performed the duties carried out in previous years by its then Trade Relations Division and to refrain from establishing successor offices or positions or any offices having the same or similar duties. Inland is directed to issue a policy directive to each of its employees outlining the prohibitions of the judgment. This policy directive is to include the statement that violation thereof may subject any officer or employee to punishment by the court for violation of the judgment.

Inland Steel is ordered to give a copy of the final judgment to each supplier and customers from whom it has purchased or to whom it has sold more than $25,000 of products, goods or services during the past three years. This notice must also contain a statement that Inland has abolished certain offices which administered the program, and that its officers and employees are prohibited from purchasing or selling on the basis of reciprocity.

The judgment is to be in effect for 10 years.

Staff: Margaret H. Brass, Karl M. Kunz, Donald H. Mullins, Robert M. Heier, and S. Robert Mitchell (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General William D. Ruckelshaus

COURTS OF APPEALS

SERVICEMEN'S LIFE INSURANCE

ROTC CADET ATTENDING SUMMER TRAINING CAMP IS NOT "A MEMBER OF THE UNIFORMED SERVICES ON ACTIVE DUTY" FOR PURPOSES OF ELIGIBILITY FOR SERVICEMEN'S GROUP LIFE INSURANCE.

Archie W. Allison, Sr., etc. v. United States (C.A. 6, No. 19714; decided May 20, 1970; D.J. 146-55-4014)

Archie W. Allison, 20 years of age, was a student in the Senior Reserve Officers' Training Corps (ROTC) at the University of Kentucky. He died while undergoing a 6-week training course at ROTC summer camp. A claim was made by Allison's parents, as statutory beneficiaries, for the proceeds of a Servicemen's Group Life Insurance policy provided under 38 U.S.C. 765, et seq. This action was instituted in the district court after the claim was denied by the Veterans Administration on the ground that the decedent was not "a member of the uniformed services on active duty". The district court rejected the V.A.'s construction of the insurance statute (296 F. Supp. 219). It ruled that Allison, "like all advanced ROTC students attending the 6-week summer training session, is an 'enlisted member of a uniformed service' and therefore covered by the Act".

The Court of Appeals reversed. The Sixth Circuit held that, although ROTC cadets are required to "enlist in a reserve component of /the/ armed forces", they may not be ordered to "active duty" as a reservist so long as they participate in the ROTC program. The Court stated:

> The fact that service in ROTC, whether in attending drills in college or in summer camp, is not considered "active service", is made clear by /10 U.S.C. 2106(c)/ which provides that the cadet is "not credited with enlisted service for the period covered by his advanced training." (Opin., p. 4).

The Court also pointed out that "Congress has not considered ROTC training or training in the military academies as regular military

service. Neither is mentioned in the statute providing for Servicemen's Group Life Insurance, 38 U.S.C. Sec. 765 et seq., or in the legislative history." (Opin., p. 5). Having thus determined that the "active duty" requirement in the statute was not satisfied, the Sixth Circuit concluded that the decedent was not insured under the Servicemen's Group Life Insurance program and that the complaint, accordingly, must be dismissed.

Staff: Robert V. Zener and Ronald R. Glancz
(Civil Division)

STANDING

TRAVEL AGENCY LACKS STANDING TO CHALLENGE COMPETITION BY NATIONAL BANK.

Arnold Tours, Inc., et al. v. William B. Camp, etc., et al. (C.A. 1, No. 7192; June 1, 1970; D.J. 145-3-876)

Arnold Tours, a travel agency, brought this action to challenge the right of national banks to compete with it in the travel agency business. The First Circuit initially held that Arnold Tours lacked standing; this decision was vacated by the Supreme Court which returned the case for further consideration in the light of its decision in ADAPSO (Association of Data Processive Organizations, Inc. v. Camp, 397 U.S. 150). After a careful application of the ADAPSO language to the Arnold Tours facts, the First Circuit again concluded that Arnold Tours lacked standing.

Noting that the issue was whether "the interest sought to be protected by the complainant is arguably within the zone of interests to be protected or regulated by the statute /here 12 U.S.C. 24(7)/ or constitutional guarantee in question" (ADAPSO, 397 U.S. at 153), the First Circuit concluded:

> They /Arnold Tours/ have produced no scintilla of evidence tending to show that Congress was specifically concerned with the competitive interests of travel agencies; nor have they shown enough evidence of concern for general business competitors to create a "zone" within which they are arguably included.

Distinguishing this case from ADAPSO, the First Circuit explained:

> The decision in Data Processing was not based on the wording of the statute, but on a showing that Congress, in connection with authorizing entities to engage in data processing for banks, had

> protection of data processing competitors specifically in mind. Plaintiffs have demonstrated nothing else. Clearly the Court did not feel that the mere fact that they were in competition with the defendant bank gave them standing. Had it intended so substantial a change in the law it would not only have written a quite different opinion in Data Processing; it would have reversed us out of hand.

Staff: Alan S. Rosenthal (Civil Division)

COURT OF CLAIMS

COURTS-MARTIAL JURISDICTION

COURTS-MARTIAL TRIALS OF SERVICEMEN FOR NON-"SERVICE CONNECTED" OFFENSES COMMITTED ABROAD UPHELD.

Gallagher v. United States (C. Cls., No. 386-67; April 17, 1970; D.J. 154-386-67)

In O'Callahan v. Parker, 395 U.S. 258 (1969), the Supreme Court held that to be under military jurisdiction a crime must be "service connected" lest all members of the armed forces be deprived of the benefits of grand jury indictment and jury trial. (Sgt. O'Callahan, while on pass from his Army post in Hawaii and in civilian attire, had broken into a hotel room, and assaulted a girl; he was court-martialed and convicted of attempted rape.)

The plaintiff, Pfc. Gallagher, was convicted by a court-martial in Germany for assaulting and robbing a German civilian, while on leave and wearing civilian clothes. He was convicted and his punishment included a prison term, demotion, and forfeiture of pay. He sued in the Court of Claims for back pay under the Tucker Act contending, inter alia, that his court-martial lacked jurisdiction under the rationale of O'Callahan.

The Court of Claims unanimously upheld the conviction and held that O'Callahan did not govern offenses committed by servicemen overseas. Whereas in the circumstances of a serviceman who commits an off-post and off-duty offense in the United States the alternative to military trial is a trial in an American civilian court, the same alternative is not available abroad. There, the alternative is trial

in a foreign tribunal. The court noted judicially that our servicemen are stationed in a number of foreign countries which have a reputation for harsh laws and savagely operated penal institutions. If O'Callahan were to be interpreted to deny courts-martial jurisdiction for non-service connected offenses abroad, servicemen would effectively be denied all Constitutional protections, since "future Gallaghers would be tried in the local courts under the /exclusive/ provisions of /local/ criminal law".

The court also noted that the "service connection" test is devoid of substance when applied to offenses abroad: "One of our armed forces which disinterested itself in the commission of crimes of violence against local civilians by our servicemen in friendly foreign countries would surely soon find its ability to perform its mission gravely impaired. For that reason, there is no logical distinction on the ground of 'service connection' between an attack on a local civilian and one on a fellow soldier."

Staff: Bruno A. Ristau (Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Will Wilson

COURTS OF APPEALS

BANKRUPTCY

IN PROSECUTION FOR CONCEALMENT OF ASSETS BY NON-BANKRUPT DEFENDANT, STATUTE OF LIMITATIONS COMMENCED TO RUN FROM DATE OF DETERMINATION THAT BANKRUPT HAD WAIVED HIS RIGHT TO DISCHARGE.

United States v. Frank Guglielmini (C.A. 2, April 27, 1970; D.J. 49-52-276)

Appellant was convicted on two counts of concealing assets belonging to the estate of his bankrupt brother. On appeal he contended, inter alia, that the indictment, filed June 2, 1966, was barred by the statute of limitations.

The debtor was petitioned into bankruptcy on April 1, 1960 and, following an adjudication of bankruptcy, failed to file any required schedules or attend the first meeting of creditors. The Trustee's unopposed motion for an order that the bankrupt had waived his right to a discharge was granted by the Referee on February 7, 1962. In affirming the trial court's holding that the date of the determination that the bankrupt had waived a discharge was the date to be used in computing the period of limitations, the appellate court noted that 18 U.S.C. 3284 does not expressly provide for tolling the statute where there is a waiver of discharge, but only where there is a grant or denial of one. Nevertheless, the Court found that it was Congress' intent when it enacted the 1948 amendment to 18 U.S.C. 3284 that a waiver of a discharge was to have the same effect as a denial of a discharge.

Also rejected was appellant's contention that 18 U.S.C. 3284 did not apply to him because he was not the bankrupt and had no control over the bankruptcy procedure. Inasmuch as concealment of assets is a crime even where the defendant is not the bankrupt, the Court reasoned that a non-bankrupt defendant should not be in a better position than a defendant who is the bankrupt with regard to the tolling provision.

Staff: United States Attorney Edward R. Neaher (E.D. N.Y.); William T. Murphy and Denis Dillion (Criminal Division)

CUSTOMS

IMPORTED MERCHANDISE IS IN CONSTRUCTIVE CUSTODY OF CUSTOMS FROM MOMENT OF ITS ARRIVAL INTO THE COUNTRY UNTIL IT HAS BEEN INSPECTED AND CERTIFIED TO HAVE BEEN PROPERLY INVOICED BY A CUSTOMS INSPECTOR.

Grover Melvin Mungo, et al. v. United States (C.A. 4, April 9, 1970; D.J. 54-79-47)

The defendants were convicted for two violations of 18 U.S.C. 549: wilfully removing and breaking a fastener on a container in Customs custody containing 650 cases of Scotch whiskey and of transporting one case of the whiskey knowing that it had been unlawfully removed from Customs custody. The whiskey had been in a ship's container which had been removed from a ship at the Imperial Docks, Norfolk, Virginia. The container was placed on a flat-bed trailer which was parked adjacent to Imperial's warehouse. A consumption entry form for the whiskey had been filed with Customs and the estimated duties had been paid on February 26, 1968. The offense occurred in the early morning hours of the following day. The Customs inspector inspected the remaining whiskey later on February 27 and notified the importer that the merchandise was released.

The defendants challenged the jurisdiction of the trial court on the grounds that Customs had never had custody of the whiskey, and that if Customs had custody it was terminated by the payment of the estimated duties. The defendants also argued that 18 U.S.C. 549 applies only to situations in which merchandise has been taken into Customs custody and placed in a bonded warehouse or public store under the provisions of 19 U.S.C. 1490.

The Court held that the relevant portions of Title 19 indicated that Congress intended that imported merchandise should be in the constructive custody of Customs from the moment of its arrival in the country. The Court further held that this cutsody was not terminated by the payment of estimated duties, since 19 U.S.C. 1499 clearly stated that imported merchandise should not be delivered from Customs custody until it has been inspected, examined, or appraised and has been certified by a Customs inspector to have been properly invoiced. Thus, at the time of the alleged offenses, the whiskey was still in Customs custody.

Staff: United States Attorney Brian P. Gettings and
Assistant U.S. Attorney Roger T. Williams (E.D. Va.)

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IMMIGRATION AND NATURALIZATION SERVICE
Commissioner Raymond F. Farrell

DISTRICT COURT

RESCISSION OF IMMIGRATION STATUS

WHERE RESCISSION PROCEEDING IS INSTITUTED TIMELY BUT DETERMINATION CANNOT BE MADE WITHIN STATUTORY FIVE YEAR PERIOD, ACTION IS BARRED.

Jiwan Singh v. Immigration & Naturalization Service, et al. (N.D. Cal., No. C-70 351 GBH; May 27, 1970; D.J. 39-11-701)

Singh sued for a judgment declaring void, because barred by the statute of limitations, an order under Section 246 of the Immigration and Nationality Act, 8 U.S.C. 1256, rescinding his adjustment of immigration status.

After entry as a nonimmigrant student the alien married a U.S. citizen. On October 18, 1963 he was granted an adjustment of status to that of a lawful permanent resident under Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255. On September 12, 1968 he was served with notice of intention to rescind the adjustment, charging that his marriage had been entered into solely to enable him to acquire a permanent resident status. He demanded a hearing and one was conducted on December 6, 1968. The special inquiry officer, relying on Quintana v. Holland, 255 F.2d 161, C.A. 3, 1958, terminated the proceeding on the ground that since five years had already passed he would not have authority to rescind the adjustment. The Board of Immigration Appeals reversed. The Board expressed disagreement with Quintana and held that the service of the notice to rescind had tolled the running of the statute of limitations.

The court found persuasive the reasoning in Quintana that the statutory requirement, "If . . . it shall appear to the satisfaction of the Attorney General" can only be met by a determination made after investigation and hearing. The court granted summary judgment to the plaintiff.

The decision should be compared with Fojon-Casal v. Attorney General, D.C., February 26, 1970, Civ. 2063-68, digested in Vol. 18, No. 10, May 15, 1970, issue of the Bulletin, which proceeded from somewhat different facts to a judgment in favor of the Government. An appeal in the Singh case is being considered.

Staff: U.S. Attorney James L. Browning, Jr. and Assistant U.S. Attorney David R. Urdan (N.D. Cal.)

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