

A Special Summary and Forecast Of Federal and State Tax Developments

Search & seizure

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THIS WEEK'S LESSON in practical dentistry: Be kind to office help.

Consider what happened to Donn VonderAhe, a dentist in Fremont, Calif. He passed a tax audit with flying colors, but then a former employe phoned the IRS. VonderAhe kept two sets of books, she said, with payments from "emergency" patients recorded on special yellow sheets or green cards and concealed from the IRS. So in 1970, IRS agents raided VonderAhe's office and home, "ransacked" them, and "asport(ed) practically every piece of paper they could lay their hands on," the Ninth Circuit appeals court said.

The Ninth Circuit recently enjoined the IRS from using any of the seized records except the yellow sheets and green cards. There was no legitimate need to seize the dentist's other papers, the court said. It judged the search and seizure "unreasonable" because the warrant was too broad. Concerning the yellow sheets and green cards, however, the three-judge panel took an unusual step. It withdrew an opinion it issued last year suppressing their seizure, too, on Fifth Amendment grounds.

With one dissent, the Ninth Circuit panel concluded it was premature to decide the Fifth Amendment issues. No civil or criminal proceeding was yet pending against VonderAhe.

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ANOTHER DENTIST found no protection at all in the Fifth Amendment.

Former employes told the IRS that Wendell L. Shaffer of Colorado Springs, Colo., kept dual records, including a "cheat book" of unreported fees. Legally the question was whether the 1971 seizure of Shaffer's financial records violated Fifth Amendment protections against self-incrimination. District Judge Hatfield Chilson, in a scholarly opinion, decided it didn't.

"It appears there was no compulsion, in the Fifth Amendment sense," in the search and seizure, Judge Chilson concluded. He said the Fourth Amendment's requirements for a valid search warrant were adequate protection for taxpayers. Judge Chilson did note, however, that appeals courts have decided such cases at least four ways.

One precedent he reviewed cited Learned Hand: "The vice lies in the unlimited search . . . we shrink from allowing a personal diary to be the object of a search (because) the entire diary must be read to discover whether there are incriminating entries; most of us would feel rather differently (about) a 'diary' whose cover page bore the title 'Robberies. I Have Performed.'"