

To the Bag

and the Development of A Nation. The feature of the 1942 event of greatest interest to me is the role of the two lawyer-colonels who were ordered by their commander-in-chief, President Roosevelt, to represent the Nazi offenders, but only in a special military proceeding. The colonels were Kenneth Royall from North Carolina and Cassius Dowell from Iowa. Their Presidential orders commanded them to restrict their advocacy to the military tribunal that was being specially established to handle the case very quickly so that the offenders could be promptly executed. It was in defiance of the commanding President that the lawyers took their Nazi clients' objection to the military jurisdiction to the federal court and to the Supreme Court. Their effort did not succeed, as noted in Davies' account. But it won a letter signed by the eight convicted clients expressing admiration for their moral courage and observing that no German lawyer could have the courage to defy Hitler. Royall went on to become the Secretary of War in the Truman administration and then a named partner in a large Manhattan firm. I was employed there in 1953 as a summer law clerk. In my brief encounter with Mr. Royall he recounted the *Quirin* experience, and he stated that it was his proudest moment as a professional lawyer to defy the President on behalf of clients, and he showed me the letter from his clients. I still reflect on his advice about the moral obligations of the professional lawyer. I hope that I have not myself wimped out, and I frequently shared the story with law students.

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THE PAPER CLIP FILES

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Rob James' discursion, *The Jurisprudence of Paper Clips*¹ made me revisit a case I heard about years ago in which paper clips provided the remedy, sort of.

In *Searight v. New Jersey*, Mr. Searight alleged that someone was talking to him on the inside of his brain. He accused the State of New Jersey of causing this problem when it "unlawfully injected him in the left eye with a radium electric beam" – Mr. Searight having been in the custody of the State at the time. (The opinion is unclear about why Mr. Searight found

¹ 19 Green Bag 2d 249 (2016).

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himself in that custody.) Judge Vincent Biunno held that the claim was barred by the statute of limitations because the alleged incident occurred in 1962 but the complaint was not filed until 1976.

The court went on to note that there were other insurmountable bars to the case, including possible lack of jurisdiction in the federal court and a self-help remedy that would have resolved the problem. Tongue planted in cheek – or more likely, failing to better supervise a law clerk’s lark – the court wrote:

[T]aking the facts as pleaded, and assuming them to be true, they show a case of presumably unlicensed radio communication, a matter which comes within the sole jurisdiction of the Federal Communications Commission, 47 U.S.C. § 151, *et seq.* And even aside from that, Searight could have blocked the broadcast to the antenna in his brain simply by grounding it. See, for example, *Ghirardi*, “Modern Radio Servicing”, First Edition, p. 572, ff (Radio & Technical Publishing Co., New York, 1935). Just as delivery trucks for oil and gasoline are “grounded” against the accumulation of charges of static electricity, so on the same principle Searight might have pinned to the back of a trouser leg a short chain of paper clips so that the end would touch the ground and prevent anyone from talking to him inside his brain.²

No word on what became of Mr. Searight. Judge Biunno went on to serve another 15 years on the bench.

The lowly paper clip remains a staple (as it were) of American life. It may not successfully secure allonges, but it does serve as both Microsoft’s office assistant and Apple’s tool to reset iPhones. And sometimes the paper clip can provide an object lesson in sweetheart union contracts.³

Write if you get work!

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² 412 F.Supp. 413, 414-15 (D.N.J. 1976).

³ See Bob Elliott & Ray Goulding, *A Night of Two Stars*, “Wally Ballou at the Paper Clip Factory” (interview with Hundley Pierce, president of Great Lakes Paper Clip Company of Napoleon, Ohio, which makes paper clips by hand, pays workers 14 cents a week) (available on YouTube and elsewhere www.youtube.com/watch?v=QQna34cbPpg).