

4/6/59

Memorandum

SUBJECT: Senate Bill No. 160 - Rights of Nonresident
Alien Heirs

On Friday, April 3, Messrs. Benjamin Dreyfus and Francis J. McTernan of the San Francisco law firm of Garry, Dreyfus, McTernan & Keller, called at my office to discuss Senate Bill No. 160. It is apparent that Messrs. Dreyfus and McTernan have handled a considerable number of cases involving claims made by foreign heirs, most of whom, apparently, reside in eastern European countries. They are, therefore, familiar with the legal and practical problems which have arisen under Probate Code Section 259 et seq.

Messrs. Dreyfus and McTernan believe that S. B. No. 160 should not be enacted and that the Commission should give further study to the general subject before proposing any legislation. Their reasons for this belief, as I understand them, are the following:

1. Mr. Dreyfus is generally of the view that the states should not enact special legislation governing the rights of nonresident aliens to inherit property and that this subject should be left for treatment by the Federal Government by either treaty or statute. This leads him to conclude that Probate Code Sections 259 et seq. are undesirable and that an impounding statute is equally undesirable. I am not entirely clear as to whether Mr. McTernan shares this view.

2. Mr. McTernan is of the view that the general reciprocity principle embodied in Probate Code Sections 259 et seq. is sound, pointing out that much legislation, even among the several states, is based on this principle. I am not entirely clear as to whether Mr. Dreyfus would agree (i.e., assuming that the state should legislate in this field at all).

3. Both gentlemen are of the view that Probate Code Section 259.2, which places the burden of proof with respect to the existence of reciprocal inheritance rights on the nonresident alien heir, is undesirable and would be happy to see substituted for it a statute reversing this burden of proof.

4. Both Mr. Dreyfus and Mr. McTernan believe that California should not enact the impounding statute proposed by the Commission. As I understand, this is based in part on the belief that the state (as contrasted with the national government) should not legislate in the field at all and in part on the belief that it is, in any event, inappropriate for California to concern itself with whether the beneficiary of a decedent's estate actually receives the money or other property due him thereunder. In addition to these general views, they are opposed to the legislation on two practical grounds:

(a) They report that they have considerable difficulty with many judges in getting them to order inheritances paid to nonresident aliens who live in eastern European countries because of these judges' general attitude toward countries behind the Iron Curtain. They believe that the proposed impounding statute would be seized upon by such judges to

deny the inheritance rights of such aliens with t regard to whether it had in fact been proved that such beneficiaries really would have the substantial use, benefit and control of the money or other property due them.

(b) They are particularly concerned about the creation of a presumption that an heir would not have the benefit etc. of the money or property if he resides in a country designated by the Secretary of the Treasury as being a country as to which there is not a reasonable assurance that the payee of a United States check will actually receive the check and be able to negotiate it for full value. They assert that the Secretary's list is not in fact made up on the basis of objective findings with respect to receipt and negotiability for full value of United States checks but on the basis of other and quite extraneous political and diplomatic considerations (which may be quite justifiable from the federal government's viewpoint). Thus, they assert, there are many countries on the list as to which it is perfectly clear that a nonresident alien heir residing there would in fact have the substantial use, benefit or control of money or other property due him under a California estate.* They believe that it would, however, be quite impossible to overcome the presumption established by the statute.

* In this connection they left with me four communications (one on the letterhead of the Manufacturers Trust Company of New York, one on the letterhead of the Department of State in Washington, one on the letterhead of the American Embassy in Moscow and one on the letterhead of the Chemical Corn Exchange Bank of New York), each to the general effect that in 1957 and 1958 United States funds could be and were being transmitted to Soviet citizens at par.

5. Both Mr. Dreyfus and Mr. McTernan asserted, in effect, that no particularly aggravated problems or at least insuperable difficulties exist at the present time under Probate Code Section 259 et seq. In response to my question they asserted that they do not know of any country which does not give United States citizens the same inheritance rights as it gives its own citizens. They say that while the problem of proving the existence of reciprocal rights ^{is} ~~is~~ often difficult (and ought to be alleviated by reversing the burden of proof) such proof can be made. They left with me a transcript of a proceeding in Estate of Singer, Number 126663 in the Superior Court in and for the County of San Francisco, showing that proof of reciprocal inheritance rights in Russia was made in that case through the testimony of a woman living in San Francisco who had received a substantial inheritance from her brother in Russia and through the introduction of a deposition relating to the Russian law of inheritance given by Professor Harold J. Berman of the Harvard Law School on written interrogatories.

6. Both Mr. Dreyfus and Mr. McTernan were apologetic about bringing their views and information to the attention of the Commission only after Senate Bill 160 had been introduced. I assured them, however, that the Commission is happy to have this information even at this late date and that I would bring it to the attention of the Commission and advise them as to the Commission's intentions with respect to S. B. 160.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary