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United States General Accounting Office
Washington, DC 20548

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Number

Office of
General Counsel

In Reply
Refer to: B-197021

MAY 9 1980

The Honorable William E. Foley
Director, Administrative Office of *AGC00439*
the United States Courts

Dear Mr. Foley:

[REQUEST FOR RELIEF OF LIABILITY]

This is in reply to your request that Ms. Jean Azure, a deputy clerk in the Office of the United States District Court for the Southern District of New York, be relieved of liability for a loss by theft of \$805 in official funds, under authority of 31 U.S.C. § 82a-1 (1976).

AGC00548

The record shows that funds collected by the New York Federal District Court's Naturalization Office from routine, over-the-counter payments are collected at the end of the day by the employee in charge of the office who carries them across Foley Square and delivers them to the Cashier's Office in the United States Courthouse. Deputy Clerk Azure, who was acting in place of an absent employee, was responsible for delivery of the funds on August 3, 1979. According to the information supplied, while proceeding across Foley Square with another employee, her "clutch purse" containing office funds in the amount of \$805 was snatched by a man who approached from behind and escaped with the purse. No witnesses were identified and, although the women screamed for assistance, no one assisted them. Police were promptly summoned and the F.B.I. later investigated the incident.

Your letter and materials submitted show that the United States Attorney and the F.B.I. have completed their investigation of this crime and found that "future investigation was unwarranted because there are no outstanding leads or any realistic outlooks of developing any new leads." Your office has concluded that Ms. Azure was acting in her official capacity when the loss of funds occurred, that she took sufficient care to protect the funds in light of her past experience and knowledge and took adequate steps to notify law enforcement officials.

An accountable officer is an insurer of public funds in his custody and is excusable only for loss due to acts of God or the public enemy. United States v. Thomas, 82 U.S. (15 Wall.) 337 (1872). Government employees charged with the handling of public funds are expected to exercise the highest degree of care. However, 31 U.S.C. § 82a-1 (1976) authorizes the Comptroller General



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to grant relief from liability when the General Accounting Office agrees with determinations by the "head of the department or independent establishment concerned" that the officer involved was performing his official duties and that the loss "occurred without fault or negligence on the part of the officer or his subordinate." As you know, we have construed this statute to cover the judicial branch. B-191440, May 25, 1979.

Nothing in the record suggests either that the robbery did not occur as reported or that the Deputy Clerk is implicated in any way in connection with the robbery. While events prove that the measures taken to safeguard the funds were inadequate, they conformed to past practices and previous experience of the Naturalization Office. Accordingly, we concur in your administrative determinations and grant relief in the amount of \$805 to Deputy Clerk Azure.

Sincerely yours,

Harry R. Van Cleve

For Milton J. Socolar
General Counsel