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NEWS NOTES

Clark Reports IACP Findings on Civil Disorders

August 15, 1968: In a speech delivered at the University of North Carolina at Chapel Hill, the Attorney General reported the findings of a survey conducted by the International Association of Chiefs of Police in eight cities which experienced serious rioting in April 1968.

"Although police in the United States are trained and equipped to apply several degrees of force, most of the current public controversy centers on the use of firearms--the resort to fatal force. It was the unanimous conclusion of the interview teams that, except for two departments, policies regarding the use of fatal force were clearly understood and generally endorsed by personnel at all levels of the police structure.

"In the present study, police personnel interviewed were asked to select one or more of the following five statements that they felt best described their department's policy regarding the use of fatal force.

"(A) Use fatal force only as a last resort to prevent a direct and immediate threat to life.

"(B) Use fatal force to prevent the commission of other serious felonies such as burglary, arson, etc.

"(C) Use fatal force to prevent a fleeing felon from escaping but only after other means of effecting his arrest have failed.

"(D) Use fatal force to prevent a fleeing felon from escaping even though lesser means were not tried.

"(E) Use fatal force to stop persons from continuing to loot.

"With the two exceptions noted below, all of the personnel interviewed agreed that the policy governing the use of force in effect in their department during the recent disorders were as follows:

"6 Cities - Policy Statement A only.
"2 Cities - Policy Statements A and C only.

"The two exceptions to unanimous agreement were found, as might be expected, in the only two cities which had not reduced their firearms policy to written form. In both of these cities, operational personnel all agreed

that the policy was best described by Statement A only, while the Chiefs reported that their policy was best described by Statements A & B, and A, B & C respectively. Irrespective of any confusion created by the failure of two departments to reduce their policy to written form, this study clearly suggests that for most officers most of the time the 'preventive' use of fatal force was never considered as a legitimate alternative under existing departmental policy or legislative guidelines.

"Most of the interview teams agreed that the explanation for general police agreement regarding the use of force under riot conditions was to be found in the fact that no attempt was made to modify the fatal force policy under which police officers operate during routine operations. Only in one city were supplementary instructions issued, and these simply cautioned officers not to shoot looters. In short, the police use of fatal force is regulated by law and police are trained to comply with this law, whether under riot conditions or not."

The Attorney General concluded "A well-disciplined, well-trained, adequately-manned police department with effective communication with all segments of the public can prevent riots. That failing, it can meet and contain rioting and violence with superior force. By balanced action, it can provide us the few precious years needed to activate the massive effort required to rebuild our cities, to restore faith in our citizens, to promise every American the opportunity for his own fulfillment. Excessive force and inadequate force both promise the holocaust."

Suit Filed to Halt Maryland Bank Merger

August 16, 1968: The Department of Justice filed suit in the United States District Court in Maryland to block the acquisition by First National Bank of Maryland, second largest in the state, of First National Bank of Harford County, the county's leading bank. The complaint asserted that the merger would eliminate potential competition between the two banks, whose main offices are 25 miles apart, and eliminate First National as a potential competitor in Harford County, in violation of the Celler-Kefauver Section of the Clayton Act.

The merger would continue a trend of acquisitions throughout the state by Maryland's largest banks, the suit said. Since 1956, it said, First National has acquired eight other commercial banks with deposits of $169 million.

Roberts Named Chairman of the Board of Immigration Appeals

August 19, 1968: Maurice A. Roberts, a veteran of 27 years in the administration of immigration law, was appointed Chairman of the Board of Immigration Appeals. Mr. Roberts, 57, was named by Attorney General Ramsey Clark to succeed Thomas G. Finucane. Mr. Finucane retired last month after serving as board chairman since 1942. The board, consisting of a chairman and four members, reviews deportation orders of the Immigration and Naturalization Service. Mr. Roberts, a native of Newark, New Jersey, has for the last three years headed the Immigration Unit of the Criminal Division.

Voiding of Injunction Staging Desegregation Plan in Arkansas Sought

August 21, 1968: The Department of Justice moved to overturn a state court's order which would prevent the public schools of Warren, Arkansas from implementing their desegregation plan, asking the United States District Court in El Dorado, Arkansas to declare the order null and void. The plan was submitted to the Department of Health, Education and Welfare (HEW) by the Warren School District No. 1 on July 31. It was approved by HEW on August 13 under the 1964 Civil Rights Act, which bars federal funds for segregated programs. It called for consolidation of the two elementary schools in Warren, the county seat of Bradley County in south-central Arkansas, for the 1968-69 term. One of the schools has been all Negro and the other has been predominantly white. However, the following day a temporary injunction was issued by the Chancery Court of Bradley County forbidding the school district to enact the plan pending a hearing on a possible permanent injunction. The hearing is scheduled for September 4--nine days after the school term opens.

Attorney General Addresses Democratic Platform Committee

August 21, 1968: In remarks directed to the Democratic Platform Committee in Washington, D. C., Attorney General Ramsey Clark listed the following twelve priorities in the Administration's effort to control crime:

1. Provide adequate police manpower for every part of the country. We can no longer imperil life and property and risk division of our people by tolerating inadequate numbers of police;

2. Professionalize police through salaries raised to professional levels, standards set for professional quality, constant training to meet new and changing enforcement problems;

3. Apply the full potential of the 20th century's scientific revolution to develop the most effective equipment and techniques for the public safety;

4. Enact effective gun control laws, carefully regulating interstate commerce and registering and licensing all firearms to stop snipers, shooting of police, thousands of murders and tens of thousands of robberies and assaults;

5. Vitalize police-community relations by establishing clear direct communications between police and every element of the public it serves, building confidence and respect;

6. Make massive efforts in research, education and enforcement to protect the public from narcotics and dangerous drugs--a major element of any comprehensive anticrime effort;

7. Provide powerful federal action to eliminate organized crime which paralyzes local law enforcement. Robert F. Kennedy brought national awareness of the threat of organized crime. His leadership began a drive from a low point of 17 federal convictions in 1960 to a high of 668 in 1967; which saw 55 of 183 members of La Cosa Nostra convicted since 1955, convicted in 1967;

8. Recognize, as does every man who has walked the beat, and kept the jail, the direct and major relationship of mental health, alcoholism and drug addiction to crime bringing massive medical relief to bear;

9. Assure quick, balanced, coordinated riot control forces, ample in manpower, thoroughly trained and properly equipped, ready in every metropolitan area, capable of immediate suppression of rioting or looting;

10. Control juvenile delinquency. The growth in crime tragically is among our youth. We know today where most of the kids who will fall into lives of crime come from. We must go to them now with all the resources and skills that we have to lead them into wholesome, constructive law-abiding lives--to give each the chance to fulfill his promise.

11. Improve corrections. Of all the disciplines of criminal justice, corrections is the most sadly neglected. Four of five serious crimes are committed by individuals who have been convicted before. We must move effectively as we know we can, to rehabilitate the more than half who can be returned to useful, decent lives and to better protect the public from the incorrigibles. Today, for lack of effort, we fail to move effectively through the correctional disciplines which offer an immense opportunity to protect the public and a humanitarian duty to help individuals;

12. Support our courts. Courts are an easy target for attack. Dignified, ethical, devoted to justice, they do not answer. To attack the courts unfairly is to undermine confidence in our system--in law itself. The need is to fully support the judiciary with adequate manpower and assistance to assure a fair and speedy trial to everyone accused of crime. If the criminal law is to be a deterrent quick apprehension, speedy trial and appropriate penalties are essential.

As President Johnson has said, "We can control crime if we will, but to do so, we must act boldly."

Regional Assistant United States Attorney Conferences Held in Atlanta and Chicago

In an effort to promote better communication and coordination between Washington and the field, two conferences designed for senior Assistant U.S. Attorneys and their Department counterparts have recently been convened in Atlanta and Chicago.

On July 28, 29, and 30, 41 Assistant United States Attorneys from Districts of the Fourth and Fifth Circuits met in Atlanta with top ranking personnel from Washington to discuss recent developments and Department policy and practice in the areas of criminal, tax, civil rights, and civil law, and to toss around many of the practical problems which confront particular Districts. Particular emphasis was given to the Omnibus Crime Control and Safe Streets Act of 1968, civil disorders and administrative problems. Leading panel discussions developement within their own circuit was Assistant United States Attorney Jim Gough, Southern District of Texas (5th), and Assistant United States Attorney Roger Williams, Eastern District of Virginia (4th).

A similar conference for 6th, 7th and 8th Circuit Assistant United States Attorneys was held in Chicago August 11 - 13 at the Palmer House in Chicago, attended by 37 Assistant United States Attorneys. Directing the Circuit panel discussions were Assistant United States Attorney Dick Schultz, Deputy Chief of Criminal, Northern District of Illinois (7th), Assistant United States Attorney Bob Grace, Chief of Criminal, Eastern District of Michigan (6th), and First Assistant Frances Murrell, Eastern District of Missouri (8th).

On tap for September 2, 3 and 4 is a regional conference for 9th and 10th Circuit senior Assistant United States Attorneys to be held at Pacific Grove, California. In the meantime, plans are being formulated for an orientation program for newly appointed Assistant United States Attorneys, to be held in Washington in early October.

* * *

POINTS TO REMEMBER

Witnesses - Armed Forces and Government Employees

Many United States Attorneys' offices are failing to forward Forms USA-54 for members of the Armed Forces or Government employees upon completion of their testimony. In all cases where these witnesses do not testify relative to their official duties, we need the travel and fiscal information to reconcile with the bills the respective agencies forward for reimbursement. It is not uncommon for us to receive a bill for per diem in excess of the time necessary for the witness to travel to and from court or for excessive mileage.

Department Memo No. 383, November 2, 1964, transmitted an initial supply of Form USA-54. As a matter of clarification, please note that the form is necessary only when the testimony of these witnesses relates to other than their official duties. When our appropriation is chargeable, we need this accounting information. We regret that the original instructions lacked this clarity. It is suggested that the form be completed at the time the attendance certificate is prepared. (See the United States Attorneys' Manual, Title 8, page 124.) Whenever there is doubt, forward the form to the Budget and Accounts Office.

(From Leo M. Pellerzi, Assistant Attorney General for Administration)

* * *

CIVIL DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

COURT OF APPEALS

SHIPPING ACT OF 1916

CONGRESS HAS THE POWER TO REGULATE CONTRACTS BETWEEN FOREIGN-FLAG CARRIERS AND FOREIGN SHIPPERS RESPECTING GOODS IN FOREIGN COMMERCE OF UNITED STATES, AND INTENDED TO DO SO IN AMENDMENTS TO SHIPPING ACT OF 1916.

Armement Deppe, S. A., et al. v. United States (C. A. 5, No. 24,427; August 8, 1968; D. J. 61-18806)

The Fifth Circuit has affirmed the district court's denial of our opponent's motion to dismiss in a case brought by the United States under the Shipping Act of 1916, as amended. Under new Section 14b of that Act, 46 U. S. C. 813a, the defendants, members of a shipping conference importing goods through Gulf ports, were required to amend certain contracts with their shippers or face statutory penalties. They failed to do so, contending that the Act was not applicable; in addition, the foreign-flag shipowners contended that Congress did not have the power to regulate their contracts with foreign shippers.

The United States brought this action for penalties, and subsequently settled with the three American-flag defendants. The nine foreign-flag companies moved to dismiss; when this motion was denied, they took an interlocutory appeal under 28 U. S. C. 1292(b). The Court of Appeals held that Congress had the power (under Article I, Section 8 of the Constitution) to condition the entry to our ports upon compliance with our laws concerning the content of their contracts with foreign shippers. It further held that, in amending the Shipping Act of 1916, Congress clearly intended to regulate the contracts of foreign-flag shipowners. This group makes up the bulk of the carriers in our foreign commerce, and to except them from coverage would render these amendments meaningless.

Staff: Stephen R. Felson (Civil Division)

DISTRICT COURT

RESERVISTS

STATUTE PASSED SUBSEQUENT TO ENLISTMENT DID NOT VIOLATE CONTRACT RIGHTS OF ARMY RESERVISTS; LENGTH OF ACTIVE-DUTY REQUIREMENT WAS NOT ARBITRARY; BROAD DELEGATION TO PRESIDENT NOT UNCONSTITUTIONAL.

SP4 Bradish G. Morse, et al. v. Boswell, et al. (D. Md., Civil No. 19734; August 6, 1968; D. J. 145-4-1683)

One hundred and thirteen reservists, half of an Army Reserve support company activated pursuant to Public Law 89-687, brought an action seeking release from active duty. They contended: (1) that activation for two years was an unconstitutional abrogation of their enlistment contracts, which only called for forty-five days active duty; (2) that the twenty-four month call-up for units, when compared with the eighteen month call-up for individuals, was unconstitutionally arbitrary; and (3) that the broad delegation to the President found in P. L. 89-687 was unconstitutional.

The district court, treating the action as 113 separate applications for habeas corpus, denied all relief. The court found no violation of contract rights, since the enlistment contract incorporated then-existing statutes (10 U. S. C. 262, 263, 672, and 673), and 10 U. S. C. 673 on its face contemplated future changes (call-up permitted "when otherwise authorized by law"). The distinction in time to be served between individuals and units was held not to be arbitrary. Finally, the court noted that far broader delegations had been sustained, and that therefore the President's authority could not be attacked on this ground.

An expedited appeal is expected in the Fourth Circuit.

Staff: United States Attorney Stephen H. Sachs and Assistant United States Attorney Alan I. Baron (D. Md.)

STATE COURT

CREDITORS' RIGHTS - GOVERNMENT PRIORITY

GOVERNMENT HAS PRIORITY UNDER 31 U. S. C. 191 TO FUNDS IN HANDS OF STATE COURT RECEIVER OVER COMPETING CREDITOR WHO INSTITUTED SUPPLEMENTAL PROCEEDINGS AND OBTAINED APPOINTMENT OF RECEIVER.

United States v. Southern Growth Industries, Inc. (Sup. Ct. of South Carolina, Opinion No. 18819; August 14, 1968; D. J. 105-68-11)

The Supreme Court of South Carolina, reversing a decision of a lower South Carolina court, had held that, under 31 U. S. C. 191, the United States is entitled to funds in the hands of a state court receiver of an insolvent Small Business Investment Company. A competing judgment creditor had instituted supplemental proceedings, after a writ of execution had been returned nulla bona, and had obtained the appointment of the receiver. The

South Carolina Supreme Court assumed without deciding that an earlier specific and perfected lien would defeat the Government's priority under 31 U.S.C. 191. However, the court held that the competing creditor did not have such a specific and perfected lien. The court relied upon Section 10-1711, South Carolina Code of Laws, which states that personal property may only be bound by actual attachment or levy, and upon the statement in United States v. Gilbert Associates, 345 U.S. 361, that competing creditors must have reduced the property in question to possession in order to have a sufficiently specific and perfected lien which might defeat the Government's statutory priority.

Staff: Walter H. Fleischer (Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

DISTRICT COURT

INDICTMENT

ELECTION BETWEEN COUNTS FOR FALSE CLAIMS AND FALSE STATEMENTS ARISING OUT OF SAME TRANSACTION NOT REQUIRED WHERE ELEMENTS AND PROOF OF CRIMES DIFFER.

United States v. Johnson, 284 F. Supp 273 (W. D. Mo. 1968)

The opinion contains an excellent summarization and restatement of many salient points relative to criminal violations of Title 18 U.S.C. 287 (false claims against the United States) and Title 18 U.S.C. 1001 (false representations to the United States).

The defendant, a participant in the Conservation Reserve Program, certified pursuant to our Soil Bank Act that he had complied with and would continue to comply with the requirements of the program and that the amount shown on the application form was the correct amount due him, when in fact he had prior thereto begun to develop a subdivision on a part of the land in the program and had made arrangements for additional development in the calendar year. The indictment contained separate counts for violations of 18 U.S.C. 287 (false claims) and 18 U.S.C. 1001 (false statments), and the defendant was convicted of both offenses arising out of the same transaction. Defendant thereafter filed a motion for "Judgment or Acquittal Notwithstanding the Verdict and, In the Alternative, for a New Trial". In denying the motion, the court held it unnecessary for the Government to elect between prosecution under Section 287 and Section 1001, stating that separate offenses may be committed in the same transaction where the elements and proof required differ, a proposition in line with holdings in Cardarelo v. United States, 375 F.2d 222, 225 (8th Cir. 1967), cert den. 389 U.S. 882 (1967), Blockburger v. United States, 284 U.S. 299 (1932), and United States v. Cohn, 270 U.S. 339 (1926). While Section 287 requires a false claim for money or property upon or against the United States, Section 1001 requires only a false statement or misrepresentation and need not involve money and property. Since the elements of proof differ, the offenses are therefore not mutually exclusive.

Defendant contended the intent of Congress was to have the civil penalties prescribed in the Soil Bank Act suffice as the only penalties to which he could be subjected, arguing that the Soil Bank Act does not, in and of itself impose criminal sanctions for misstatements and false claims relating to it. The court cited United States v. Bramblett, 348 U.S. 503 (1955), and

concluded that the fact the Soil Bank Act makes no additional provision by way of criminal sanctions does not render inapplicable other sections of the Criminal Code. (Sections 287 and 1001).

Defendant's contention that the indictment was invalid because it was based partly on a statement of a possible future occurrence and hence was not a present misrepresentation was also rejected. The court relied on United States v. Uram, 148 F2d 187 (2nd Cir. 1945), and United States v. v. Rubinstein, 166 F.2d 249 (2nd Cir. 1948), cert den. 333 U.S. 868 (1948), holding that assertions of existing intent not honestly entertained are fraudulent and prosecutable.

* * *

EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Acting Director John K. Van de Kamp

APPOINTMENTS

District of Columbia - GENE S. ANDERSON; University of Illinois College of Law, LL. B., and formerly with the Criminal Division of the Department of Justice.

District of Columbia - BENTON L. BECKER; Washington College of Law of American University, J. D., and formerly with the Criminal Division of the Department of Justice.

District of Columbia - PHILIP L. KELLOGG; University of North Carolina Law School, J. D., and formerly a law clerk to Judge Tamm, U. S. Court of Appeals.

Florida, Middle - CHARLES S. CARRERE; Stetson University College, LL. B., and formerly an Assistant United States Attorney in Florida, Middle and in private practice.

Georgia, Middle - DENVER LEE RAMPEY; Walter F. George School of Law, Mercer University, LL. B.

Tennessee, Eastern - EDWARD E. WILSON; University of Tennessee College of Law, J. D., and formerly in private practice.

RESIGNATIONS

District of Columbia - RICHARD M. CAHILL, to enter private practice.

Missouri, Eastern - STEPHEN H. GILMORE, to enter private practice.

New York, Southern - ROBERT L. LATCHFORD, to enter private practice.

* * *

TAX DIVISION

Assistant Attorney General Mitchell Rogovin

DISTRICT COURT

SUMMONS ENFORCEMENT

COEXISTENCE OF CIVIL AND CRIMINAL INVESTIGATIONS DOES NOT RENDER ISSUANCE OR ENFORCEMENT OF SUMMONSES UNLAWFUL. WORK PAPERS OF TAXPAYERS' ATTORNEY, USED IN PREPARATION OF TAX RETURNS, WERE NOT PREPARED IN ANTICIPATION OF LITIGATION AND THEREFORE NOT PRIVILEGED. ATTORNEY REQUIRED TO ANSWER THOSE QUESTIONS NOT CALLING FOR PRIVILEGED INFORMATION.

United States and Patrick J. Sheedy, Special Agent v. Katherine Rodney and Charles H. Dickmann, Respondents (S. D. Ind.; June 14, 1968, Civil No. IP 67-C-314; D. J. 5-26S-1152) (68-2 U.S.T.C. par. 9464)

This action was commenced by the United States seeking to enforce two internal revenue summonses against the above-named respondents requiring testimony and production of documents relevant to the tax liabilities of Rudolph and Gertrude Wells.

The respondent Katherine Rodney, taxpayers' bookkeeper, did not honor the summons requiring her testimony on the grounds that she had been interviewed by Special Agent Sheedy prior to the issuance of the summons and further testimony would be injurious to her health.

The summons directed to Charles H. Dickmann, an attorney, required testimony and the production of work papers prepared by him and work papers given to him by the taxpayers which were used in the preparation of the taxpayers' returns. Mr. Dickmann refused to testify or produce the requested documents on the basis of the attorney-client privilege. He also contended that his work papers were protected from discovery as the work-product of a lawyer.

Both respondents contended that enforcement of the summonses would be improper because petitioners were using the summonses for an improper purpose, namely, to determine whether any violations of criminal statutes have occurred and to obtain evidence for use in possible criminal prosecutions.

The court found that the summonses were issued in the course of an investigation being conducted for a legitimate purpose, i.e., to determine

whether there is an additional tax due and owing. Further, the coexistence of civil and criminal investigations did not render the issuance or enforcement of the summonses unlawful. Tillotson v. Boughner, 333 F. 2d 515 (C. A. 7th, 1964) cert. denied 379 U. S. 913.

The court said that even though Mrs. Rodney had previously been interviewed at length by Special Agent Sheedy prior to the issuance of the summons, another interview was necessary and relevant in view of the discrepancies later discovered by Special Agent Sheedy inconsistent with Mrs. Rodney's first interview. There was no evidence in the record constituting any defense to the action insofar as Mrs. Rodney's health was concerned.

Regarding Mr. Dickmann's work product contention, the court held the work papers were not prepared in anticipation of litigation and were therefore not privileged under the rule announced in Hickman v. Taylor, 329 U.S. 495 (1947). Colton v. United States, 306 F. 2d 633 (C. A. 2d, 1962), cert. denied 371 U.S. 951.

The court ordered Mr. Dickmann to answer seven out of nine questions propounded to him, since the answers did not call for privileged information. The court stated that the petitioners are entitled to find what work papers were used in the preparation of the returns in question and the general nature of the contents thereof; and inquire into the general nature of any discussions between Mr. Dickmann and his client. Colton v. United States, supra.

According to the court, the testimony of Mr. Dickmann revealed that the work papers given to him by the taxpayers, containing summaries of income and expenses, were not intended to be confidential communications, but that the information thereon intended to be communicated to the Internal Revenue Service on Mr. Wells' tax returns, and thus not privileged.

The respondents were ordered to comply with the summonses in accordance with the court's opinion.

Staff: United States Attorney K. Edwin Applegate (S. D. Ind.); and Earl Kaplan (Tax Division)

* * *