United States Attorneys

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UNITED STATES DEPARTMENT OF JUSTICE

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NEWS NOTES

PRESIDENT SIGNS FEDERAL MAGISTRATES BILL

October 17, 1968: President Johnson has signed the Federal Magistrates Bill, which would replace the United States Commissioners with the Office of United States Magistrates. The new act requires that Magistrates be lawyers, and it replaces the fee system with the schedule of salaries that will rise to a maximum of $22,500 a year. Mr. Johnson remarked that the new act "will bring new standards of professionalism and a much higher quality of justice to an important first level of our judiciary... In addition to the duties of Commissioners, Magistrates will also be given important new responsibilities. Their trial jurisdiction will now embrace a broad range of minor criminal offenses. They also will be eligible to serve as special masters, and to supervise pretrial and post-conviction proceedings. This then will enable judges to spend more time on priority matters - and should relieve their congested dockets. There should be speedier justice, then, for all." The act requires the Director of the Administrative Office of United States Courts, within one year of the enactment of the act, to conduct a national survey to determine the number of Magistrates required, the location at which they shall serve, and their respective salaries. The Judicial Conference then makes the determination, in light of this survey, as to the number, location, and salary of the Magistrates. Such determinations will take effect in each judicial district at such time as the district court for the district shall determine, but in no event later than one year after they are promulgated.

NEW LEAA ADMINISTRATORS SWORN IN BY CHIEF JUSTICE WARREN

October 21, 1968: Patrick V. Murphy, Wesley A. Pomeroy and Dr. Ralph G. H. Siu were sworn in by Chief Justice Earl Warren to comprise the Law Enforcement Assistance Administration established by the Omnibus Crime Control and Safe Streets Act of 1968.

Mr. Murphy, former Director of Public Safety in Washington, D. C., was named by President Johnson Thursday as Administrator of Law Enforcement Assistance while Mr. Pomeroy, former Undersheriff of San Mateo County, California, and Dr. Siu, former Deputy Director of Development and Engineering of the U. S. Army Material Command, were named Associate Administrators.

"These are appointments of great promise," Ramsey Clark said in the ceremony in the office of the Attorney General. "The appointments bring proven ability, immense knowledge, invaluable experience and progressive leadership to bear on the challenge of crime in America." The three began their new assignments immediately.

ATTORNEY GENERAL APPOINTS CONSUMER COUNSEL

October 22, 1968: Attorney General Ramsey Clark has appointed Paul G. Bower, a Department of Justice lawyer and former official of the Advisory Commission on Civil Disorders, as the federal government's new Consumer Counsel.

Mr. Bower will serve directly under the Attorney General as a special assistant. He succeeds Merle M. McCurdy of Cleveland, who died last May 6 less than two months after being named the first Consumer Counsel. He will be assisted by Mrs. Barbara Garcia-Dobles, who was the Special Assistant for Program Development under Mr. McCurdy.

Since last March, Mr. Bower has been a special assistant to Deputy Attorney General Warren Christopher with emphasis on prevention and control of civil disorders. Prior to that, he was Assistant Director for Public Safety of the President's National Advisory Commission on Civil Disorders.

The Consumer Counsel will be involved in a wide range of affairs, including the coordination of all consumer matters among federal agencies. He also will prepare legislation, appear before regulatory agencies and courts, and work with the President's special assistant for consumer affairs.

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POINTS TO REMEMBER

FEDERAL COURT TRANSCRIPT RATES

New maximum transcript rates were approved by the Judicial Conference of September 1968. These rates become effective in each District only after receipt in the Administrative Office of the United States Courts of the certification by the District Court.

The new rates are:

Ordinary Transcript:	$1.00 for the original
	$ .40 for each copy
Daily Transcript:	$2.00 for the original
	$ .50 for each copy

To date the new rates have become effective in the following Districts:

Ala. -M.	Ind. -S.	N. H.	Pa. -E.
Ariz.	Kans.	N. M.	R. I.
Ark. -W.	Ky. -E.	N. Y. -W.	S. C.
Calif. -S.	La. -E.	N. C. -E.	Tenn. -M.
Colo.	Mich. -W.	N. C. -M.	Tenn. -W.
D. C.	Minn.	N. D.	Tex. -W.
Fla. -S.	Miss. -N.	Ohio-S.	Va. -W.
Ga. -M.	Mo. -E.	Okla. -E.	Wyo.
Hawaii	Nevada	Ore.	

Appropriate changes will be made in the United States Attorneys' Manual in the near future.

MILITARY AND OTHER GOVERNMENT EMPLOYEES AS WITNESSES

We frequently receive calls from the Washington offices of the Judge Advocate Generals reporting that their personnel are being called directly by our Assistant United States Attorneys as witnesses in instances requiring clearance in Washington. (United States Attorneys' Manual, Title 8, pages 122 and 122A.) You are reminded that civilian employees of the military establishments as well as the Armed Forces personnel travelling from outside your judicial district (and all Air Force personnel required to perform any travel) must have temporary duty orders from their headquarters in Washington; otherwise, they will be charged leave or leave without pay. As soon as you become aware of the need for an Armed Forces witness from outside your district, forward us a Form DJ-49 in accordance with the

instructions in the United States Attorneys' Manual. In case of an emergency, call the Department, extension 3547, and confirm later with the Form DJ-49. Please furnish serial numbers as this will save a lot of searching on the part of the military locators.

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DEPARTMENT OF JUSTICE PROFILES

Myrl E. Alexander
Director
U. S. Bureau of Prisons

Mr. Alexander was born in Dayton, Ohio, on August 23, 1909. He received an A. B. degree from Manchester College, North Manchester, Indiana, and LL. D. degrees from Manchester College and Pacific Lutheran University. He joined the Prison Service as warden's assistant at the Atlanta, Georgia, Federal Penitentiary in 1931. He worked as a parole officer at the Lewisburg, Pa., Penitentiary, supervisor of parole for the Bureau of Prisons, and associate warden at Lewisburg, before his promotion to warden of the Federal Correctional Institute at Danbury, Conn., in 1943. In 1945 - 46 he was on special assignment as chief of prisons for the office of military government in Germany. In March, 1947, he assumed the post of Assistant Director of the Bureau of Prisons which he held until retiring in 1961 to serve as Professor of Correctional Administration and Director of the Center for the Study of Crime Delinquency and Corrections at Southern Illinois University. He was appointed Director of the Bureau of Prisons in 1964. In August, 1967, he received the President's Award for Distinguished Federal Service, the highest honor bestowed on career employees of Government. Mr. Alexander was President of the American Correctional Association in 1956. He is author of the book, "Jail Administration", a survey of good practices of jail management published in 1957, and is a frequent contributor to professional journals. He was appointed in 1965 to the ten-member United Nations Advisory Committee of Experts on the Prevention of Crime and the Treatment of Offenders.

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Stephen H. Sachs
United States Attorney
Maryland

Mr. Sachs was born January 31, 1934 in Baltimore, Maryland. He attended Haverford College from 1950 to 1954 when he received his B. A. degree, and New College, Oxford, England from 1954 to 1955 (Fulbright Scholarship). He attended Yale University Law School from 1957 to 1960 when he received his LL. B. degree. Mr. Sachs was an Assistant in instruction at Yale University from 1959 to 1960. He served in the Army and Reserves from 1955 to 1961. From 1961 to 1964 he was an Assistant United States Attorney

for the District of Maryland, and from 1964 until his appointment as United States Attorney was in private practice. He was appointed United States Attorney in August, 1967. His office retried Congressman Thomas Johnson for conflict of interests this past year, which resulted in a conviction. As United States Attorney Steve Sachs has given special emphasis to the investigation of labor racketeering and organized gambling activities in his district, and has convened special grand juries this year for that purpose.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Acting Director John K. Van de Kamp

AUSA APPOINTMENTS

Arizona - DANIEL R. SALCITO; Boston College of Law, LL. B. and formerly in private practice.

California, Central - HENRY J. NOVAK, JR.; S. M. U. Law School, LL. B. and formerly Staff Law Clerk to Hon. Walter Ely. Also, Law Clerk to Hon. William M. Taylor, Jr.

Missouri, Eastern - DENNIS C. DONNELLY; St. Louis, University School of Law, J. D., formerly clerk in Circuit Attorneys Office.

Missouri, Western - PAUL A. WHITE; University of Missouri, J. D. and formerly in Office of Regional Counsel, Internal Revenue Service.

New York, Southern - MAURICE M. McDERMOTT; Fordham University Law School, LL. B. and formerly law clerk to U. S. District Court Justice Thomas Murphy.

Texas, Southern - RUSSELL W. NEISIG; University of Texas, LL. B. and formerly Chief of Criminal Division, Houston Legal Foundation, Staff Attorney Houston, Legal Foundation, Assistant District Attorney, Harris City, and briefing attorney, Texas Court of Criminal Appeals.

AUSA RESIGNATIONS

District of Columbia - THEODORE J. WESEMAN; transferred to Commission on Crime Control and Prevention for Vermont.

Illinois, Northern - GEORGE E. FABER; to private practice in the law firm of Schippers, Betar and Lamendella.

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ANTITRUST DIVISION

Assistant Attorney General Edwin M. Zimmerman

DISTRICT COURT

CLAYTON ACT

COMPLAINT FILED UNDER SECTION 7.

United States v. Combustion Engineering, Inc. (Civ. 68-4082; S.D. N.Y.; October 16, 1968; DJ. 60-358-110)

On October 16, 1968 a civil action was filed in the United States District Court for the Southern District of New York under Section 7 of the Clayton Act. The suit challenges the acquisition by Combustion Engineering, Inc. of 21 per cent of the outstanding stock of United Nuclear Corp. and seeks to require Combustion to divest itself of its United stock as well as to enjoin Combustion from voting its United shares, gaining representation on United's Board of Directors and from acquiring the stock or assets of any other firm in the United States engaged in the production or sale of nuclear fuel. The action is the Department's first important case in the nuclear industry.

Combustion Engineering (1967 assets of $364.2 million and sales of $688.6 million) is one of only four companies manufacturing and selling nuclear reactors for the generation of electric power in the United States (the others being General Electric, Westinghouse and Babcock & Wilcox). These four companies, plus United Nuclear, constitute the five domestic corporations which produce and sell the nuclear fuel used in reactors to the utility companies which purchase and operate the reactors.

The complaint alleges that the reactor manufacturers, in entering into contracts for the sale of reactor facilities to utility companies, traditionally include in such contracts the sale of the initial fuel loading as well as options covering one or more fuel replacement cores. As about one-third of a reactors' replacement cores must be replaced each year, the sale of these replacement cores will, over the life of the plant, exceed the total construction costs of the entire plant. Since the four reactor manufacturers have heretofore sold replacement cores only for use in reactors built by it, United (1967 assets of $30.7 million and sales of $61.7 million) is the only independent nuclear fuel producer which competes for the sale of such replacement fuel with each of the four reactor manufacturers. Hence, the complaint alleges that the acquisition of United stock by Combustion will violate Section 7 by eliminating United as an important competitive factor -- independent of the reactor manufacturers -- in the manufacture and sale of nuclear fuel.

The complaint also alleges that the acquisition will violate Section 7 by permanently eliminating actual and potential competition in the manufacture and sale of nuclear fuel between Combustion and United. In the replacement fuel market, during the period from January 1966 to June 1968, United's share of the dollar value of all replacement fuel orders received by all nuclear fuel producers was 12.7 percent, while orders obtained during that period of time by Combustion represented 5.7 percent of this market. More importantly, United's share for replacement fuel during the first half of 1968 represented 43.7 percent of total industry orders for that period.

Although United has not yet received orders for initial fuel loads due to the reactor manufacturers' practice of including the sale of the initial fuel in the reactor sale contract, the complaint alleges that United is a likely potential entrant into sale of initial fuel. This is particularly true since the utility companies which purchase nuclear reactors are beginning to require several manufacturers to bid on each of the major elements of the equipment needed, which may soon include the initial fuel load. United would thus be able to compete in the initial load market, as is its expressed desire.

In addition to the above, the complaint alleges that the acquisition may substantially lessen competition or tend to create a monopoly in violation of Section 7 of the Clayton Act by (1) substantially lessening competition generally between the manufacturers of nuclear fuel; (2) increasing concentration in the manufacture and sale of nuclear fuel; and (3) raising barriers to entry into the manufacture of nuclear reactors.

Staff: William H. McManus, Alan R. Malasky and Alfred I. Jacobs (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

COURTS OF APPEALS

AGRICULTURE MARKETING AGREEMENT ACT--MILK MARKETING ORDER

REGULATION OF DAIRY WITH RESPECT TO MILK SOLD OUTSIDE REGULATED MARKETING AREA, DUE TO ITS SUBSTANTIAL DISTRIBUTION OF MILK WITHIN THE MARKETING AREA, NOT SHOWN TO CREATE A PROHIBITED "TRADE BARRIER" TO DOING BUSINESS WITHIN THE MARKETING AREA.

Lewes Dairy, et al. v. Orville L. Freeman, Secretary of Agriculture (C. A. 3, No. 16, 528; September 25, 1968; D. J. 106-15-13)

Lewes Dairy operates a milk processing plant in Delaware but sells a significant portion of its milk in the Upper Chesapeake Bay area of Maryland. The marketing of milk in that area is regulated by the Secretary of Agriculture under a Marketing Order which requires Lewes, because of its Maryland sales, to pay the minimum prices established under the Order on all the milk it purchases, irrespective of whether that milk is later marketed within the Marketing Area.

Lewes asserted that insofar as the Marketing Order required it to pay the Order price for all its milk, it was placed at a competitive disadvantage vis-a-vis its unregulated Delaware competitors with respect to the marketing of milk in unregulated areas. It further contended that the result was the creation of a "trade barrier," forbidden by 7 U. S. C. 608c (5)(G) as interpreted by Lehigh Valley Cooperative Farmers v. United States, 370 U. S. 76, against its shipment of milk into the Maryland Marketing Area. The Secretary rejected the challenge to the Order. The district court accepted Lewes' argument that Lehigh Valley was controlling and held the Order invalid insofar as it required regulation of Lewes with respect to milk not sold in the Marketing Area.

On the Secretary's appeal, the Third Circuit reversed. The Court of Appeals distinguished the provision of the Marketing Order held invalid as a trade barrier in Lehigh Valley from the provision of the Maryland Order.

It went on to hold that Lewes had failed to present sufficient evidence at the administrative hearing to demonstrate that, in fact, it was under a competitive disadvantage with respect to the marketing of milk in the

unregulated area and thus had failed to establish the existence of a trade barrier.

Staff: Richard S. Salzman (formerly of Civil Division)

FEDERAL TORT CLAIMS ACT -- LIMITATIONS

TWO-YEAR PERIOD FOR BRINGING SUIT AGAINST UNITED STATES DOES NOT INCORPORATE TOLLING PROVISIONS OF STATE LAW.

Celestino Mendiola, Jr., et al. v. United States (C. A. 5, No. 25,127; decided October 11, 1968; D.J. 157-74-2014)

Mendiola sustained personal injuries on February 27, 1963. Initially, he prosecuted a Texas workmen's compensation suit against his employer's insurance carrier. That action was concluded on March 16, 1965, and on January 11, 1967, he brought this Tort Claims suit against the Government. We moved to dismiss the action on the ground that it had not been begun within two years after the claim accrued, as required by 28 U. S. C. 2401(b). The plaintiff responded that Section 2401(b) did not bar his action since his complaint was filed within two years of the termination of his compensation suit. Plaintiff argued that under Texas law the statute of limitations on an injured person's cause of action against a tortfeasor is tolled pending the outcome of the injured person's workmen's compensation suit against his employer and that an injured person's cause of action against a tortfeasor does not accrue under Texas law until the workmen's compensation suit is concluded. The plaintiff contended that consequently his action against the United States did not accrue within the meaning of Section 2401(b) until March 16, 1965.

The district court granted the Government's motion to dismiss and the Fifth Circuit affirmed. The Court of Appeals reaffirmed its holdings in earlier cases that the accrual of a cause of action under Section 2401(b) is a matter of federal law. Under federal law, the two-year statute of limitations begins to run at the time of the negligent act and injury where there is immediately discernible attendant damage. The Court of Appeals held that the provisions of Texas law were irrelevant and explained that the incorporation of diverse state tolling provisions would undermine the uniform application of the two-year period for filing suit.

Staff: United States Attorney Morton L. Susman and Assistant United States Attorneys William B. Butler and James R. Gough (S. D. Texas)

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CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

COURTS OF APPEALS

MILITARY SELECTIVE SERVICE ACT

GOVERNMENT'S PETITION FOR REHEARING DENIED.

Brede v. United States (C. A. 9, September 16, 1968; D. J. 25-11-4673)

The Court of Appeals for the Ninth Circuit has denied the Government's Petition for Rehearing in the Brede case. The Court in its opinion of May 27, 1968 (396 F. 2d 155), held the local board must order the registrant to perform civilian work subsequent to obtaining the approval of the Director of Selective Service. However, in denying the Government's petition, the Court rendered the following opinion:

Per Curiam:

> Petitioning for rehearing, the United States specifically disputes two statements made in our opinion:
>
> 1. "* * * section [1660.20(d)] requires the local board, after receiving such authorization, to meet and order the appellant to report for such civilian work."
>
> The United States contends that §1660.20(d) does not require that a meeting be held after receipt of authorization; that an order to report could be entered prior to authorization but subject to subsequent authorization and notice.
>
> We agree. In this respect our opinion is modified by striking "after receiving such authorization."
>
> 2. "At [the board] meeting [of March 14, 1966] no agreement as to a type of work in lieu of induction was reached by the board and appellant."
>
> The United States contends that under universal administrative construction of §1660.20(d), and universal administrative practice, a determination that certain work

is appropriate constitutes an implied order to report for such work, subject to authorization of the National Director and notice. Consequently at the meeting of March 14, 1966, an agreement as to work was reached and an implied conditional order to report was entered and the action of the clerk of the board was no more than ministerial implementation of the order.

The Government's contention may have merit in an appropriate case. Here, however, the record is silent as to administrative construction and practice, or as to any understanding of the board in such respects from which it might be found that the critical exercise of administrative judgment has been made.

In this respect our opinion should be read as qualified by the state of the record.

With such modification and clarification of our opinion rehearing is denied.

Staff: United States Attorney Cecil F. Poole and Assistant United States Attorney Paul G. Sloan (N. D. Calif.)

WHITE SLAVE TRAFFIC ACT

ACTUAL PHYSICAL TRANSPORTATION BY DEFENDANT OF VICTIM ACROSS STATE LINE NOT A NECESSARY PREREQUISITE TO SUCCESSFUL PROSECUTION.

Dock Talbert v. United States (C. A. 4, No. 11, 125; decided September 16, 1968; D. J. No. 31-67-43)

Petitioner moved the United States District Court for the District of South Carolina to vacate his sentence on the ground that the chief Government witness had recanted her testimony and that he could thereby prove his innocence. Following an answer by the Government, the District Court denied relief and an appeal was taken.

Talbert was convicted of transporting a female for the purpose of prostitution from Gastonia, North Carolina, to Columbia, South Carolina. The sole basis for his motion to vacate was an affidavit by the victim stating: "On the occasions I did go to Columbia with Dock Talbert he did not actually take me across the state line. When we reached the state line, I would have to get out and walk across."

In dismissing Talbert's motion, the Court of Appeals emphasized that the "hoary device" employed by the petitioner to cross state lines, "while perhaps an ingenious safeguard in the mind of the potential Mann Act defendant," did not prevent his conviction under the Act, Mellor v. United States, 160 F. 2d 757, and might well be considered as evidence of his evil intent. See Simon v. United States, 145 F. 2d 345.

Staff: United States Attorney Klyde Robinson and Assistant United States Attorney Marvin K. Smith (South Carolina)

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LAND AND NATURAL RESOURCES DIVISION

Assistant Attorney General Clyde O. Martz

COURTS OF APPEALS

FEDERAL CONTRACTS

SPECIFIC PERFORMANCE OF CONTRACTS BETWEEN UNITED STATES AND A COUNTY; INCORPORATION OF UNITED STATES, STATE AND COUNTY LAWS INTO THE CONTRACT; MEANING OF PUBLIC USE; ARTIFICIAL ACCRETION TO UPLAND BY FILLING NAVIGABLE WATERS.

United States v. Harrison County, Mississippi (C. A. 5, No. 24853, August 15, 1968, D. J. 144-41-336)

The United States contributed $1,133,000 and technical assistance to Harrison County, Mississippi, in 1951 to repair the 26-mile beach along Mississippi Sound, primarily by dredging and filling the Sound. This was done pursuant to a contract between the United States and Harrison County, wherein the latter agreed to and did dedicate the new beach to public use and assured the United States of perpetual public use of the beach. The contract and its terms were authorized by appropriate federal, state and county legislation. Beginning in 1953 and continuing to 1963, several incidents occurred in which negroes were forcibly denied use of the beach. This suit to enforce the contract was filed. The district court denied enforcement on the grounds that the artificial accretion resulted in the title to the formerly submerged land being vested in the upland owners, the public use as used in the contract created only an easement to maintain the beach and seawall, and the County was without authority to maintain the beach as a public beach in the sense urged by the Government.

On appeal, the Fifth Circuit reversed and directed specific performance of the contract with appropriate injunctive relief to accomplish that end. It rejected the County's arguments on interpretation and lack of authority as "wholly devoid of merit." As to artificial accretion, the Court rejected a Supreme Court of Mississippi decision on similar facts even as stare decisis, on the grounds that such a donation of state property violated the Mississippi Constitution and the important fact of dedication to public use was not brought to the attention of the Court.

Staff: Edmund B. Clark and Edward S. Lazowska (Land and Natural Resources Division)

CONDEMNATION

VALUATION OF STATE-OWNED LAND UNDER NAVIGABLE WATER DEDICATED TO PUBLIC USE AS CANALS AND BASINS; INAPPLICABILITY OF SUBSTITUTE FACILITY DOCTRINE TO SUCH LAND.

State of California v. U. S. (C.A. 9, 1968; D.J. 33-5-1937-31; 395 F.2d 261)

The United States condemned submerged land in San Francisco Bay for expansion of the San Francisco Naval Shipyard. Due to stipulations made early in the case to expedite favorable settlements with individual lot owners, the potential navigation servitude point was eliminated from the case. The land had passed to the State of California upon its admission to the Union in 1850. In 1868, the State platted the area into lots, streets, canals, basins, etc., and sold the lots to individuals. In a prior condemnation case, the Ninth Circuit concluded that the substitute facility doctrine applied to the submerged streets and, since no substitutes were needed, nominal compensation only was required. State of California v. United States, 169 F. 2d 914. In the instant case, involving a long rectangular area designated as a canal on the plat and a square area designated as a basin, the district court came to the same conclusion and finding as to the canal and basin, and awarded nominal compensation.

The court of appeals reversed and remanded. The basis of the reversal was that it did not clearly appear under state law that the dedication precluded the State from any profitable use of the land. If not, the court concluded that the substitute facility doctrine should not apply and compensation to the State in excess of nominal might be proved by reducing the market value of the lands if unencumbered by the dimunition in value due to the restriction of the dedication.

Staff: Edmund B. Clark (Land and Natural Resources Division)

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