United States Attorneys

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UNITED STATES DEPARTMENT OF JUSTICE

Vol. 16 December 6, 1968 No. 35

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NEWS NOTES

ORGANIZED CRIME INDICTMENT RETURNED IN DETROIT

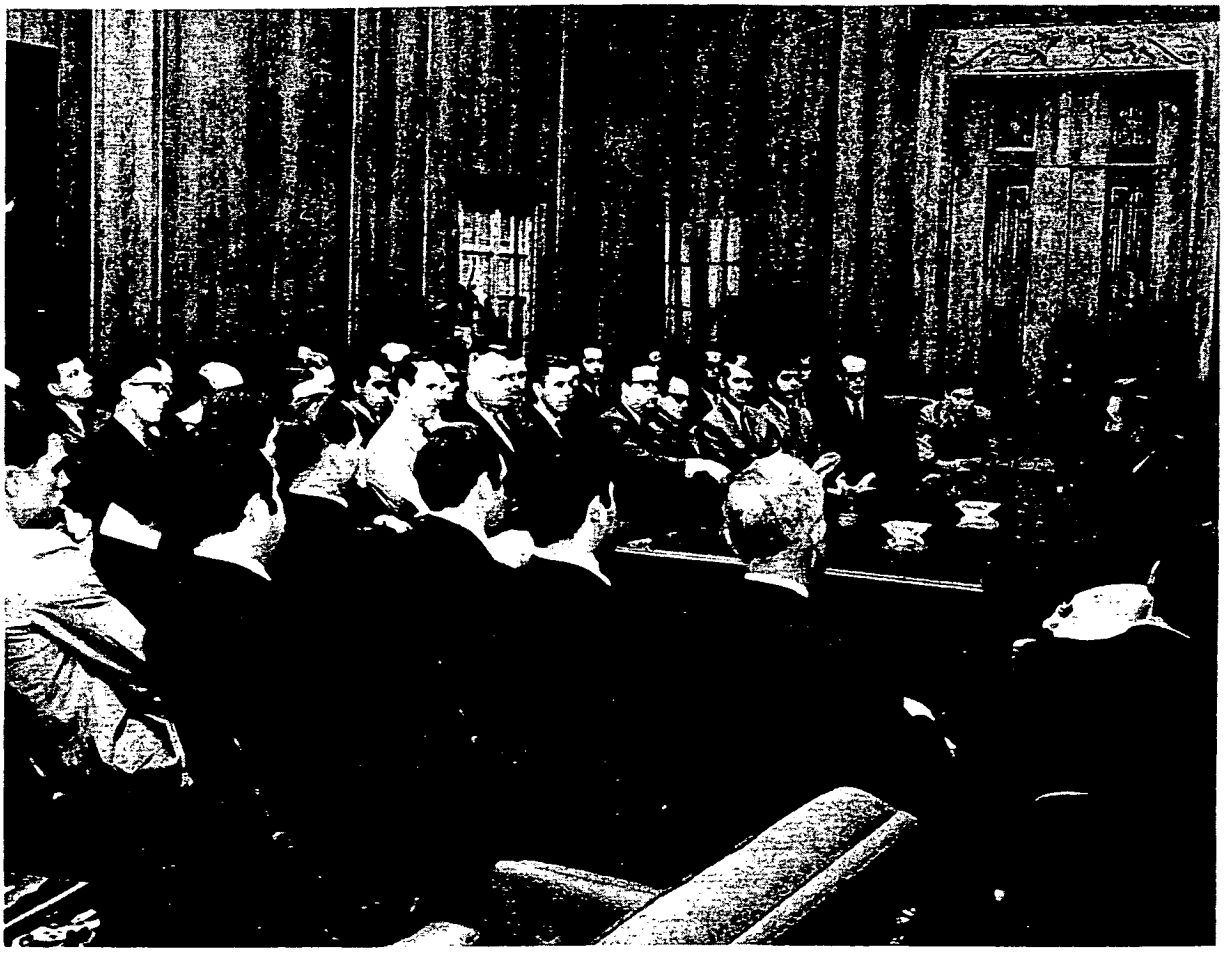
November 14, 1968: The special grand jury sitting in the Eastern District of Michigan has returned a seven count indictment charging 12 defendants with various federal offenses arising out of a widespread loan sharking operation. The indictment, which was the most significant federal indictment in the field of organized crime ever to be returned in that district, charged violations of 18 U.S.C. 1951 (conspiracy to obstruct interstate and foreign commerce by extortion). Two of the defendants are Chiefs of La Cosa Nostra in the Detroit area. The loan sharking racket has flourished without hinderance in Detroit for many years. It is expected that the return of this indictment will severly cripple La Cosa Nostra loan sharking operations. This matter was handled by Attorneys McKeon, Muellenberg and Zimmerman, all members of the Attorney General's Detroit Strike Force.

ALVIN KARPIS WILL BE PAROLED FROM FEDERAL PRISON

November 27, 1968: Alvin Karpis, who was arrested over 30 years ago by FBI Director J. Edgar Hoover himself on a New Orleans street for his part in the kidnapping of a wealthy St. Paul, Minnesota businessman, will be paroled from the Federal Penitentiary at McNeil Island, Washington on January 14, 1969, and will be deported to his native Canada. Karpis was sentenced to a life term for conspiracy in the 1933 kidnapping of William Hamm, Jr., who was released unharmed after payment of $100,000 ransom. The Board's decision to parole Karpis was based on the inmate's time served in prison, his advanced age, health, excellent record in custody, and the estimate he is not now a threat to public safety.

U.S. ATTORNEY'S OFFICE IN NEW YORK CHARGES SWISS BANK WITH MARGIN VIOLATIONS

November 29, 1968: The U.S. Attorney's office in the Southern District of New York has begun a crackdown on American investors using numbered accounts in Swiss banks to violate the margin requirements for stock trading. After filing a complaint in Federal Court in New York City charging a small Swiss bank and one of its directors with violating margin requirements, Federal agents armed with warrants seized more than $1 million in securities held by three brokerage houses for the bank. U.S. Attorney Robert Morgenthau said that the seized securities had been taken from the offices of Coggshall & Heiks, Hertz, Warner & Co., and Hirsch & Co., although no charges were made against the brokerage houses. The Swiss bank was accused of extending credit to American investors from January, 1966 until the present in violation of the margin requirements of the Federal Reserve Board.



ASSISTANT U.S. ATTORNEYS MEET WITH ATTORNEY GENERAL DURING OCTOBER ORIENTATION CONFERENCE

The above picture was taken during the four-day orientation conference for Assistant U.S. Attorneys which was held at the Department of Justice last October. Attorney General Ramsey Clark spoke to the Assistants in his office on the final day of the conference. A similar orientation session is being planned for this Spring.

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POINTS TO REMEMBER

The Jury Selection and Service Act of 1968 (P.L. 90-274, 28 U.S.C. 1861-1871) designed to assure that grand and petit juries in the Federal District Courts are selected at random from a source which represents a fair cross section of the community will go into effect December 22, 1968, with the provision that it "shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date".

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DEPARTMENT OF JUSTICE PROFILES

Frank M. Wozencraft
Assistant Attorney General
Office of Legal Counsel

Frank Wozencraft was born April 25, 1923 in Dallas, Texas. He served in the U.S. Army in World War II, and was awarded the Bronze Star and Army Commendation Medal. He received his B.A. degree summa cum laude from Williams College in 1946, and his LL.B. from Yale Law School in 1949, where he was Editor-in-Chief of the Yale Law Journal. He was a law clerk to Justice Hugo Black of the U.S. Supreme Court from 1949-1950, after which he entered private practice with a Houston, Texas law firm until 1966. He was appointed Assistant Attorney General in charge of the Office of Legal Counsel in April, 1966. He was also appointed by President Johnson in 1968 as Vice-Chairman of the Administrative Conference of the United States. He has served as a member of the Commission on Political Activity of Government Personnel (1967); of the President's National Advisory Panel on Insurance in Riot-Affected Areas (1967-68); of the U.S. Delegation to the United Nations Conference on the Law of Treaties (Vienna, 1968); and of the President's Advisory Panel on Personnel Interchange Between Business and Government (1968).

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Ernest Morgan
United States Attorney
Western District of Texas

Mr. Morgan was born December 19, 1912 at Dilley, Texas. He received his LL.B. degree from the University of Texas in 1938. From 1940 to 1942 he was Finance Officer for the National Youth Administration. From 1946 until his appointment as U.S. Attorney he was in private practice in San Marcos. He also served as City Attorney for the towns of Buda, Kyle and San Marcos. Mr. Morgan was appointed U.S. Attorney in July, 1961 by President Kennedy, and was reappointed by President Johnson in July, 1966. His office tried the first airline hi-jacking case in 1961, and was responsible for the celebrated prosecution of Bille Sol Estes in 1962. The Western District of Texas has one of the heaviest caseload volumes in the Nation, with an unusually heavy volume of narcotics and immigration violations, and Mr. Morgan himself has tried many of the more complex cases in his District in addition to the handling of the administrative responsibilities of his office.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS

Director John K. Van de Kamp

APPOINTMENTS

ASSISTANT UNITED STATES ATTORNEYS

Illinois, Northern - SAMUEL KNOX SKINNER; DePaul University J. D.; formerly in private practice.

Kansas - FRANKLIN R. THEIS; Kansas University, A.B.; Kansas University School of Law, J.D. Formerly in private practice and Chief Juvenile Probation Officer.

New Jersey - ROBERT J. CIRAFESI; Rutgers University, A.B.; Rutgers Law School, LL.B. Formerly a law clerk to Judge Furman of New York Superior Court.

New York, Southern - WILLIAM B. GRAY; Harvard College A.B.; University of Pennsylvania Law School, LL.B. Former law clerk, Second Circuit Court of Appeals.

West Virginia, Northern - LESLIE D. LUCAS, JR.; West Virginia University Law School, LL.B. Former Director of Development Alderson-Broaddus College.

RESIGNATIONS

Nebraska - THOMAS F. DOWD; to enter private practice with Nelson, Harding, Leonard & Tate.

Ohio, Northern - FREDERIC K. JUREK; to become Assistant Police Prosecutor for Cleveland, Ohio.

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ANTITRUST DIVISION

Assistant Attorney General Edwin M. Zimmerman

DISTRICT COURT

CLAYTON ACT

MANUFACTURER OF MEN'S SUITS CHARGED WITH VIOLATION OF SECTION 7 OF ACT.

United States v. Hart Schaffner & Marx (N. D. Ill., Civ. 68-C-2167; November 13, 1968; D. J. 60-148-89)

On November 13, 1968 a complaint was filed in the United States District Court for the Northern District of Illinois challenging a series of acquisitions of men's retail clothing stores by Hart Schaffner & Marx, one of the four largest manufacturers of men's suits, and the largest manufacturer of men's better priced suits in the United States. The complaint challenged the acquisitions made by Hart since January 1, 1965 of 33 corporations, operating 48 retail stores located in various metropolitan areas throughout the United States.

During 1967, Hart produced 842,000 men's suits, of which 826,000 were men's better priced suits, representing approximately 28 percent of all men's better priced suits produced in the United States during 1967. During 1967, men's better priced suits were priced at approximately $50 or more at wholesale (about $95 or more at retail). In that year Hart's retail clothing stores purchased approximately 10 percent of the total United States production of men's better priced suits.

The complaint alleges that in recent years there has been an increase in concentration in the business of manufacturing men's better priced suits. The complaint also alleges that there has been an accelerating trend during the last eight years toward the acquisition by suit manufacturers of men's retail clothing stores located throughout the United States. In addition to Hart, other major producers of better priced men's clothing have contributed to this trend by making numerous acquisitions of men's retail clothing stores.

The complaint further alleges that manufacturers of men's better priced suits may be foreclosed from selling their products to men's retail clothing stores, thereby further increasing barriers to entry; that persons and firms may be deterred from entering into the manufacture, distribution or sale of men's better priced suits; and that the trend toward acquisition of men's retail clothing stores may be fostered and accelerated.

The complaint requests divestiture of each of the 33 companies acquired by Hart since January 1, 1965, and in addition, that Hart be enjoined from acquiring the stock or assets of any firm engaged in the retailing of men's better priced suits. The case has been assigned to Judge Decker.

Staff: Walter D. Murphy, Roy E. Green and Alfred I. Jacobs (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

COURTS OF APPEALS

BRIBE MONEY--DISPOSITION AFTER CONVICTION OF DEFENDANT

DISTRICT COURTS DO NOT HAVE DISCRETIONARY AUTHORITY TO RETURN MONEY USED TO BRIBE GOVERNMENT OFFICIAL TO CONVICTED BRIBER, AND ORDINARILY GOVERNMENT ALONE IS ENTITLED TO SUCH MONEY.

United States v. Ralph Iovenelli (C. A. 7, No. 16,835; November 15, 1968; D. J. 77-23-1740)

Ralph Iovenelli was tried and convicted of attempting to bribe an Internal Revenue Agent. He was sentenced to jail for 90 days, fined $1,000 and was placed on two years probation. The amount of the bribe was $300. The money was deposited in the court registry on July 10, 1967, under the provisions of 18 U.S.C. 3612, after its use in evidence at the bribery trial.

On April 9, 1968, the United States Attorney, pursuant to 28 U.S.C. 2042, moved the district court to pay over the $300 to the Treasurer of the United States of America. This motion was denied, and the court instead directed return of the bribe money to Ralph Iovenelli.

On appeal, Iovenelli argued that he was in dire need of the money, that he supported his retarded son and that there was a "flavor of entrapment" surrounding the bribery charge against him, and that those facts, together with other facts contained in the pre-sentence report, were sufficient to enable the Court to exercise its discretionary authority to return the bribe money to him.

The Seventh Circuit reversed, one judge dissenting, holding that the district court was without authority to exercise a discretion to return bribe money to a convicted briber. The Court pointed out that 18 U.S.C. 3612 and 28 U.S.C. 2042 do not vest an indefeasible interest to bribe money in the United States, but neither do they contain a grant of discretionary power to district courts to return bribe money to the convicted briber. Rather, the Court held that 18 U.S.C. 3612 requires the person seeking the return of the money to show he has a right to it, and that a convicted briber has forfeited any right he had to the bribe money. With the exception of those instances

where the bribe money did not belong to the briber, the Court held that the Government alone is entitled to the money used to bribe its agents.

Staff: United States Attorney Thomas A. Foran; Assistant United States Attorneys John Peter Lulinski, Michael B. Nash and Eugene Robinson (N. D. Ill.)

STANDING

CITIZEN TAXPAYERS HAVE STANDING TO CHALLENGE PRINTING AND DISTRIBUTION OF 1967 CHRISTMAS STAMP IF THEY CAN SHOW THAT SUBSTANTIAL EXPENDITURES WILL BE MADE.

Protestants and Other Americans United for Separation of Church and State, et al. v. Watson (C. A. D. C., No. 21,324; November 14, 1968; D. J. 145-5-3212)

This action was brought by taxpayers to challenge the printing and distribution by the Postmaster General of a commemorative Christmas postage stamp. The stamp, which was distributed during the 1967 Christmas season, depicted a portion of a painting by the 15th Century Flemish artist, Hans Memling, entitled "Madonna and Child with Angels". Plaintiffs contended that the stamp constituted proselytization for Christianity in general and the Roman Catholic faith in particular, and that expenditures on the stamp violated the Establishment Clause of the First Amendment. The district judge dismissed the complaint on the ground that plaintiffs lacked standing under Frothingham v. Mellon, 262 U.S. 447. The district judge also ruled that the stamp was not in violation of the Establishment Clause.

While the appeal was pending, the Supreme Court held in Flast v. Cohen, 392 U.S. 83, that taxpayers have standing to challenge the constitutionality under the First Amendment of federal expenditures for elementary and secondary school aid. The Court of Appeals held that this decision would sustain the standing of taxpayers to challenge the Christmas stamp, provided they could show that "substantial expenditures" were still to be incurred with respect to the stamp. Accordingly, the Court of Appeals remanded for hearing on whether substantial expenditures remain to be made. The district court was directed, if such expenditures do remain, to hold a hearing on the merits of the constitutionality of the stamp.

Staff: Robert V. Zener (Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

COURTS OF APPEAL

MILITARY SELECTIVE SERVICE ACT

CONVICTION FOR FAILING TO REPORT FOR AND SUBMIT TO INDUCTION AFFIRMED.

United States v. Sandbank (C. A. 2, No. 32530; October 31, 1968, D. J. 25-51-4691)

On October 31, 1968, the Court of Appeals for the Second Circuit affirmed the conviction of Sandbank for failing to report for and to submit to induction. In the course of a per curiam opinion the Court noted that the draft board must reopen the case of a late claim of conscientious objection "only if the registrant has made out a prima facie case, based on objective facts, that he is entitled to be reclassified."

In addition the Court specifically criticized the decision of the United States District Court for the Eastern District of New York in United States v. Lybrand, 279 F. Supp. 74. That decision held that an essential element of the Government's case is proof of proper order of call. The Court of Appeals indicated that the better rule requires the registrant to show that the call was improper, citing Lowe v. United States, 389 F. 2d 51 (5th Cir.), and Greer v. United States, 378 F. 2d 931 (5th Cir.). The Fourth and Sixth Circuits have also refused to hold that the burden is upon the Government to prove proper order of call. Pigue v. United States, 389 F. 2d 765 (4th Cir.); Boroski v. United States, ____ F. 2d _____ (6th. Cir.).

Staff: United States Attorney Robert M. Morgenthau and Assistant United States Attorney Charles P. Sifton (S. D. N. Y.)

NARCOTICS - SELF-INCRIMINATION

NINTH CIRCUIT INDICATES DEFENDANTS SHOULD STICK TO THE POINT.

Murray v. United States (C. A. 9, No. 22, 340; November 7, 1968, D. J. 12-12-3853)

Lonnie and Johnnie Murray are brothers. On February 11, 1967, they motored together to Tijuana, Mexico. When they returned to the United States with Lonnie driving, a customs inspector brought them to a search room, and after they had removed their coats, he noticed that Johnnie had two contraceptives filled with heroin tied around the biceps of his left arm. The brothers were arrested, charged with smuggling, 21 U. S. C. 174 (1964), and convicted by the District Court for the Southern District of California sitting without a jury.

Brother Lonnie's argument was successful on appeal. Since the only evidence the Government had entered to implicate him was that he was driving the car in which the contraband was being carried, the indictment against him was dismissed. The evidence was insufficient, the Court felt, to show smuggling or knowing transportation.

Brother Johnnie did not fare so well. First he argued that under Henderson v. United States, 390 F. 2d 805 (9th Cir. 1967) his search was unreasonable. The Ninth Circuit pointed out that Henderson applied to body, not personal, searches.

Johnnie next tried to urge the unconstitutionality of the Opium Poppy Seed Act, 26 U. S. C. 4701 et seq. (1964). He cited Marchetti v. United States, 390 U. S. 39 (1964); Grosso v. United States, 390 U. S. 62 (1964); and Haynes v. United States, 390 U. S. 85 (1964). The Court pointed out that he was tried under 18 U. S. C. 174, not 21 U. S. C. 4721 or 4722.

The conviction was affirmed.

Staff: United States Attorney Edwin L. Miller, Jr.
(S. D. Calif.)

DISTRICT COURT

FORFEITURE

CONTRABAND TRANSPORTATION ACT - CIVIL FORFEITURE.

United States v. One 1964 Cadillac Automobile (Serial No. 64J054113) (S. D. Texas, No. 68-L-6 Laredo Division, October 17, 1968; D. J. 12-74-1534)

The Government sought to forfeit the defendant automobile under the provisions of 49 U. S. C. 782 because of its alleged use in facilitating the transportation, sale, barter, etc. of contraband narcotics in violation of §781 of said Title. At the trial, the evidence showed that Kenneth J. Brown

rented a 1967 Pontiac and checked into a motel in Victoria, Texas. The following day he was placed under surveillance as he was driving the defendant Cadillac from McAllen to Victoria, Texas. One Gilbert accompanied Brown from McAllen and went into the motel room rented by Brown. During the day the two made several short trips around Victoria in the Cadillac and again returned to the motel. Later that same day, Brown and Gilbert were arrested in the 1967 Pontiac just after receiving a package of narcotics from two Latin males who were driving a 1955 Chevrolet. During this transaction, the defendant Cadillac was parked in front of the motel room rented by Brown. The District Court rendered its opinion in which it ruled that, although no narcotics were transported in the Cadillac and no part of the transaction took place in the car, it was nonetheless subject to forfeiture under 49 U. S. C. 782 as having been used by Brown and Gilbert to facilitate the transportation, sale, barter, purchase, etc. of the narcotics and that the Government would be granted a decree of forfeiture. In concluding as it did, the court was guided by United States v. One 1951 Oldsmobile Sedan Model 98, 126 F. Supp. 515 (D. Conn. 1954); United States v. One Dodge Coupe, etc., 43 F. Supp. 60 (S. D. N. Y. 1942); and United States v. One Pontiac Sedan, 83 F. Supp. 999 (S. D. N. Y. 1948). It distinguished the cited cases and the instant case from Platt v. United States, 163 F. 2d 165 (10th Cir. 1947) and United States v. One 1949 Ford Sedan, 96 F. Supp. 341 (W. D. N. C. 1951) noting that in the latter decision the court recognized the distinction between cases in which the claimant was an innocent third party. It is, of course, the Department's position that innocence of the owner or lien holder of knowledge of the unlawful use of a vehicle is no defense to its forfeiture because of such use.

Staff: United States Attorney Morton L. Susman
(S. D. Tex.)

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LAND AND NATURAL RESOURCES DIVISION

Assistant Attorney General Clyde O. Martz

TRIAL COUNSEL SHOULD MAKE SURE THAT GOVERNMENT SECURES TITLE FOR WHICH IT IS REQUIRED TO PAY

Too often, in condemnation cases, where the declaration of taking provides for less than a fee taking, the Government, after a trial on the merits, ends up paying for the fee value. To remedy this situation insofar as it proves possible to do so, where an estate less than the fee has been taken (flowage easement, subordination of minerals, etc.) and when the evidence admitted is based upon the fee value or when a charge has been given to the jury or a commission has been instructed that the easement or subordination of minerals, in effect, amounted to a fee taking, please file a motion to amend the complaint to conform to the proof by taking a fee title, rather than an easement, and enter judgment accordingly.

Such action will not only clarify the Government's title, but it will also serve to reduce interference and litigation by owners of land under subordination who may want to drill in the area. The declaration of taking usually provides that the owner may drill in the area with the permission of the acquiring agency. Moreover, the motion to amend the complaint will preclude landowners from being "twice blessed", since absent such a motion they get the full fee value and still retain the remaining interest less the subordination or easement acquired. In the subordination situation, if the complaint were amended as requested, being vested with the full fee title, the Government would have the right to lease the minerals and thus recoup some of the cost of these projects.

It is believed that a policy of filing such motions will help to create a situation where the claims of landowners who want to retain any interest in the minerals or lands being occasionally flooded at all will, in the future, have to present more realistic claims with respect to the value of what the Government took. This would be especially true if the landowners and the court were informed before the trial that the United States would file this type motion if the evidence were developed along the line that the Government had, in effect, taken the fee.

Analogous action is taken where there is a question raised as to the extent of the right acquired by the condemnation. For example, in cases where

an easement to flood partially is taken, the landowner is entitled to a reservation in the judgment of a right to a second suit if the dam is altered, substantially increasing the flooding. Slattery Company, Inc. v. United States, 231 F. 2d 37 (C.A. 5, 1956); United States v. Holmes, 238 F. 2d 229 (C.A. 4, 1956).

Comments and suggestions with respect to this proposal will be welcomed.

COURTS OF APPEALS

PUBLIC LAND

MINING CLAIMS; JURISDICTION OF FEDERAL COURT OF EJECTMENT SUIT BY UNITED STATES EVEN THOUGH MINING LOCATION HAS NOT BEEN FINALLY INVALIDATED; JURISDICTION TO DETERMINE GOOD FAITH; AUTHORITY TO CONFINE USE TO MINING PURPOSES.

United States v. Nogueira (C.A. 9, November 4, 1968, No. 21,754, D.J. 90-1-18-695)

In 1960, a mining claim on lands within the Cleveland National Forest was declared invalid by a final decision of the Interior Department. Between May 1 and May 18, 1961, the widow of the claimant quitclaimed it to her son, the son leased it to Maria Nogueira, daughter of a Brazilian citizen, and the son filed a new mining location performing the statutory minimum amount of excavation. In 1962, the Forest Service sought to oust the Nogueiras and in 1965, this suit was brought. At the suggestion of the district court, the defendants moved for summary judgment and the case was dismissed on the ground that under Best v. Humboldt Mining Co., 371 U.S. 334 (1963), the court lacked jurisdiction until the Interior Department should finally invalidate the new claim.

The Court of Appeals reversed. Noting that the United States urged three independent grounds for jurisdiction and, hence, for reversal of the judgment, it first discussed the contention that the Court could determine the validity of the mining claim in connection with determining the Government's right to possession. It examined the Best decision at length, decided that the district court had misconstrued that decision to support its rejection of jurisdiction and concluded:

> * * * while a proceeding on a claim is pending before the Department of the Interior, the courts will not entertain actions by private litigants seeking to restrain the Department, compel its decision or interfere with the administrative processes; that the authorities do not hold that the

> government has no right to enter the United States courts, set up particularly for the handling of government cases, and seek to vindicate its rights to title, its rights to possession or damages for waste or trespass upon land, the title of which is in the government.

The Court then said it did not have to consider the question whether the Government could litigate in court the issue of validity of the mining claims.

Turning to the second ground, that under the facts of this case the filing and reliance on the mining claim was not in good faith, the Court held:

> * * * we think the district court had jurisdiction to pass on the good faith or lack of good faith in the filing of a mining claim without necessarily passing on its validity otherwise, under the mining statutes. We are led to this conclusion by the delays and confusion which would follow, if as soon as one mining claim were held invalid, another was filed. If in each instance the government would have to await the determination of the validity of the mining claim to be made by the Department of the Interior, the government could thus be forever kept out of possession of its property.

The Court also sustained the Government's third claim that, even if the 1961 claim were valid, it would not justify occupation of the land for other than mining purposes. It concluded after considering earlier decisions and the Multiple Use Act of July 23, 1955, 30 U. S. C. 612, that:

> Thus the government can prohibit occupation of a mining claim and collect damages for past trespass where the land is not being used for mining purposes, regardless of whether or not the claim was valid.

Elaborating, it said:

> Any use permitted by the district court should be only the uses described in the statute. Certainly permanent residence of the possessor not reasonably related to prospecting, mining or processing operations is not within the uses described. If the claim is permitted to be worked pending decision on its ultimate validity, the district court can frame a decree which permits the time and extent of valid use, and yet gives the United States the relief it is entitled to under 30 U. S. C. § 612.

The Department's position in the first point is that it is historic practice under the mining laws for the courts to adjudicate the right of possession between two claimants, including issues as to discovery, validity of location, etc., even while Interior Department proceedings are pending. See Bowen v. Chemi-Cote Perlite Corporation, 432 P. 2d 435 (Ariz. 1967). Possession is for the courts, while title (i. e., right to patent) is for the Interior Department. The United States has the same rights to protect its possession by court proceedings, as do other claimants to possession; therefore it may secure a determination of invalidity of a purported discovery, for possessory purposes, even though administrative proceedings are pending, for example, upon a patent application. This is not giving the Government a favored position but simply according it the same rights that other claimants to possession have.

Staff: Roger P. Marquis (Land and Natural Resources Division)

CONDEMNATION

VALUATION OF WHERRY HOUSING PROJECT; EXCESS MORTGAGE PROCEEDS PROPERLY CONSIDERED; WITHDRAWN RESERVE FOR REPLACEMENT FUND PROPERLY DEDUCTED FROM VALUATION.

United States v. Chesapeake Gardens, Inc., et al. (C. A. 4, No. 12, 504; November 22, 1968, D. J. 33-21-64-78)

The United States condemned a Wherry Housing Project at Aberdeen Proving Ground, Maryland. The owner corporation appealed from the award of just compensation, urging error in the admission of valuation opinions (a) which considered the fact that the owner had received excess mortgage proceeds (a windfall) at the commencement of the project under its mortgage guaranteed by F. H. A., and (b) which deducted from the values found the amount of the reserve for replacement of short-lived items which had been returned to the owner at the time the project was condemned. The Fourth Circuit affirmed, agreeing with the Government's position that a prospective buyer would consider whether F. H. A. might refuse future rental increases until the amount of the windfall was returned and would also consider the fact that, to operate the project, he would be required to place in the reserve for replacement exactly the amount withdrawn.

Staff: S. Billingsley Hill (Land and Natural Resources Division)

CONDEMNATION

VALUATION OF PUMICE CLAIMS; DISTANT COMPARABLE SALES; MULTIPLYING UNITS BY PRICE.

United States v. American Pumice Company (C. A. 9, No. 20,290; November 15, 1968, D. J. 33-5-1281-1 and 33-5-1281-2)

The United States condemned outstanding pumice mining claims on the public domain in California. The district court rejected the Government's comparable sales and refused to follow an earlier decision in that district which denounced multiplying estimated tons by estimated price to reach value. The court returned an award by such multiplication. On appeal by the United States, the Ninth Circuit affirmed, but with two qualifications. It disagreed with the district court that pumice claims cannot be comparable "unless adjacent or nearly so." It said: "There may be cases where quite distant properties can be shown to be comparable in an economic or market sense, due allowance being made for variables such as those mentioned by the court. Here, however, no showing of such comparability was made." In addition, the Court found it "unnecessary to decide whether we agree or disagree with" the earlier decision which the district court declined to follow. Although the affirmance is adverse, this decision considerably weakens the force of the district court's reported opinion (236 F. Supp. 44) and leaves the Ninth Circuit with two somewhat contradictory opinions. The appeal was long delayed because of related bankruptcy matters and consequently there has been considerable development in other circuits, supporting our view, since the district court opinion.

Staff: S. Billingsley Hill (Land and Natural Resources Division)

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