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UNITED STATES DEPARTMENT OF JUSTICE

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NEWS NOTES

SUPREME COURT DENIES CERT. IN PATRIARCA CASE

January 13, 1969: The U.S. Supreme Court denied certiorari in the case involving New England Cosa Nostra leader Raymond Patriarca, his "underboss" Henry Tarneleo and strongarm man Ronald Cassesso. All of the defendants received sentences of five years imprisonment. The case was tried in the District of Massachusetts in March of 1968, and went through the entire appellate process in 10 months.

DEPARTMENT ACCELERATES CIVIL RIGHTS EFFORTS IN 1968

January 13, 1969: The Federal Government accelerated its civil rights efforts in 1968 and made important advances against racial discrimination in employment, education and housing, Attorney General Ramsey Clark announced.

Mr. Clark, in a year-end report on civil rights activities of the Department of Justice, listed these highlights for 1968:

--The Department filed 2-1/2 times as many cases as it had previously under the equal employment section of the 1964 Civil Rights Act.

--Congress enacted a fair housing law and the Department made preparations for enforcing its major provisions, which were to take effect in 1969 and 1970.

--The Department brought a record number of school desegregation actions and obtained significant court decisions to speed desegregation in schools.

--Enforcement of federal civil rights laws was conducted on a nationwide basis and school desegregation litigation was aimed, for the first time, at the north and west.

The Attorney General said legislative, litigative and administrative steps taken during 1968 laid the groundwork for a further acceleration of progress.

"There is no more urgent need of the nation than an effective effort to achieve equal justice for all Americans", Mr. Clark said.

"The faith of millions in our laws and in our purposes as a people depends on action. Nothing could be better calculated to irreconcilably divide the country than the failure to enforce the civil rights of all our citizens.

"Unfilled constitutional and statutory rights to equal educational and employment opportunities, to open housing and other rights essential to human dignity can only destroy faith in America."

LANDS, CIVIL AND TAX DIVISIONS SUBMIT YEAR-END REPORTS TO ATTORNEY GENERAL

January 14, 1969: The Department of Justice recovered a record $72 million in delinquent taxes in 1968, collected more than $100 million in civil claims for the government, and reduced the number of pending land condemnation cases to the lowest level in 28 years. These were among the achievements listed in year-end reports to Attorney General Ramsey Clark by the Department's three Divisions which handle the bulk of the government's civil legal work: Land and Natural Resources, Civil and Tax.

Tax Division

The Tax Division, headed by Assistant Attorney General Mitchell Rogovin, obtained judgments for delinquent taxes totalling $72 million in 1968, up $5 million from the previous record set in 1967.

Successful defenses against refund suits saved the government another $102 million.

The Division's 195 attorneys, seven fewer than the previous year, filed a record 3,734 legal memoranda of all types in pending litigation, made over 1,000 trial appearances for the 10th consecutive year, and for the sixth straight year prepared and filed over 600 formal trial and appellate briefs.

Records showed the Division won slightly more than 95 per cent of its criminal cases, obtaining convictions in 564 cases, and 75 per cent of its civil cases.

Civil Division

The Civil Division, headed by Assistant Attorney General Edwin L. Weisl, Jr., collected more than $100 million in cash and property for the government in successful litigation in 1968 and settled $412 million in claims against the government for $34 million, an average of 83 cents for each $10 claim.

During 1968, the Civil Division concluded work on 3,907 cases on behalf of the government, 4,382 suits against the government and 516 cases on appeal.

In the same period, 8,886 new cases were filed, and at year's end there were 13,693 cases pending. Of this total, the United States is defendant in 8,167 suits for a total of $19 billion, and is plaintiff in 5,526 suits seeking $628 million.

The Civil Division also terminated 43,000 cases before the U.S. Customs Court in 1968, leaving over 400,000 protests and petitions filed by importers still pending. These cases usually are disposed of in groups by decisions in test cases involving duty rates or classifications. The Civil Division has won more than 75 per cent of the test cases. Customs cases have been increasing yearly, with almost 120,000 begun in 1968.

New legislation added to the Civil Division's workload during the year. The Antipandering Act enacted in December of 1967 resulted in 235 cases being brought in 1968. Under the act, the Post Office must prohibit a mailer from sending further correspondence to an addressee who complains about the nature of the correspondence.

The first full calendar year under the Public Information Act resulted in 42 complaints being filed with federal courts by persons seeking access to government records. Of the 19 cases decided in 1968, the government's position was upheld in 15 and partially sustained in another.

Land and Natural Resources Division

The Land and Natural Resources Division, headed by Assistant Attorney General Clyde O. Martz, reduced the number of pending land condemnation actions to the lowest level since 1940 and still managed to save money.

The Division saved $150,000 of its appropriation during 1968, the seventh consecutive year it has managed to save money, while reducing the number of pending cases.

In land cases in 1968, the Division wrote 13,878 opinions disposing of 993,538 acres of land costing $192,127,431, and reduced the number of condemnation cases pending from 12,871 on December 31, 1967, to 12,701 on the same day in 1968. This compares with 31,697 cases pending in 1961 and it is the lowest number pending since 1940.

Ten per cent more general litigation cases were concluded in 1968 when compared with 1967, resulting in a decrease in the number of pending cases from 1,211 to 1,101. Appeals cases closed during the year totaled 189, up from 142 in 1967 and reducing the number of cases pending by 30 per cent.

Final judgments were entered in 35 Indian claims cases, with cash awards in 26 cases totaling $58,802,839. Nine cases were dismissed.

INS PROCESSES RECORD NUMBER OF FOREIGN PERSONS

January 15, 1969: The United States welcomed a number of persons from other nations that exceeded the population of this country in calendar 1968, Attorney General Ramsey Clark announced.

The Attorney General announced that the U.S. Immigration Service processed a record 222,147,000 foreign persons in calendar 1968, a 3.5 per cent increase over 1967. But they also intercepted a quarter-million inadmissible aliens, 15 per cent more than the previous year.

Immigration Commissioner Raymond F. Farrell, providing his agency's year-end record to the Attorney General, also reported these accomplishments:

--Streamlined processing of international air travelers, 85 per cent of whom now need see only one government inspector instead of the traditional four representing Immigration, Customs, Public Health and Agriculture.

--Speedy processing of a sudden spurt of applications for admission of refugees from Czechoslovakia after its occupation by the Soviet Union in August.

--The location by the Border Patrol of 146,000 deportable aliens, a 34 per cent increase over 1967. Of these, 115,000 had entered the country illegally, a 39 per cent jump in illegal entries. Most of these were Mexican aliens seeking jobs.

--Apprehension, also by border patrolmen, of 1,468 smugglers and 8,079 smuggled aliens, up 25 and 31 per cent, respectively, over 1967.

--Seizure by the Border Patrol of narcotics valued at $1,029,000, over $600,000 more than 1967.

DEPARTMENT FILES SUIT TO BLOCK PROPOSED MERGER OF SINCLAIR OIL AND ATLANTIC RICHFIELD COMPANY

January 15, 1969: The Department of Justice has filed a civil antitrust suit in U.S. District Court in New York City to block the proposed merger of Atlantic Richfield Company and Sinclair Oil Corporation.

According to the complaint, the proposed merger would violate the Celler-Kefauver Section of the Clayton Act by eliminating actual and potential competition between Atlantic and Sinclair in the sale of gasoline.

The government asked for a preliminary injunction to halt the transaction, or any similar agreement, until the suit can be decided on its merits by the courts. The defendants had indicated they proposed to consummate the merger as early as January 20, 1969.

On October 31, 1968, the complaint said, an agreement was reached whereby Atlantic, the nation's tenth largest seller of oil products, would acquire Sinclair, ranked eleventh, by exchanging its common stock and newly issued convertible preferred stock for Sinclair stock.

The government said the proposed acquisition, perhaps the largest in oil industry history, would make the resulting firm the nation's sixth largest oil company in sales of gasoline.

LEAA BEGINS STUDY OF MEANS OF PREVENTION OF VIOLENCE

January 17, 1969: Attorney General Ramsey Clark said that the Law Enforcement Assistance Administration is beginning a long-range research program to find new ways of reducing and preventing violence. Mr. Clark said the project will be conducted over a period of many years by the National Institute of Law Enforcement and Criminal Justice, the research body of LEAA.

Scientists will study individual and mass violence as part of the Institute's program to devise better methods for reducing all types of crime, Mr. Clark added.

Patrick V. Murphy, the LEAA administrator, said the Institute first will look at disturbances that have occurred for several months at San Francisco State College.

A four-man team headed by Dr. Ralph G.H. Siu, the Institute's director and an associate administrator of LEAA, will go to San Francisco on Sunday. They plan weeks of interviews with college spokesmen, students, city and police officials, and others in reviewing all pertinent aspects of the disturbances.

DEPARTMENT CHARGES IBM WITH ANTITRUST VIOLATIONS

January 17, 1969: The Department of Justice has charged International Business Machines (IBM) Corporation with monopolizing the general

purpose digital computer industry in violation of antitrust law. Attorney General Clark said the civil suit alleged that IBM has pursued manufacturing and marketing policies that deny other manufacturers an adequate opportunity to compete effectively. The suit, brought in U.S. District Court in New York City, seeks a court order to end IBM's monopolizing practices and to require any necessary divestiture.

IBM has discriminated among customers and limited development of computer programming and support industries, it was asserted, through a policy of quoting a single price for a computer system, programming know-how and related support. As a result, according to the suit, the ability of IBM's competitors to compete effectively was hindered.

The suit alleged that IBM has introduced selected machines with unusually low profit expectations in market segments where competitors were successful or promising, and has announced future production of new models for such markets even though production of the machines was not likely within the announced time.

The Department asked that IBM be required to price, sell and lease separately its computer systems, programming know-how and other support.

Also sought by the Department were provisions barring IBM from setting prices that fail to reflect reasonable returns and from granting special allowances that unreasonably inhibit the entry or growth of competitors.

The Department asked the court to order any divorcement, divestiture or reorganization of IBM deemed necessary to dissipate the effects of the allegedly illegal activities and to restore competitive conditions.

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POINTS TO REMEMBER

MONTHLY REPORT OF ASTERISKED PENDING CASES AND MATTERS

In recent months, the Department has received several requests for a supply of Form USA-125 Monthly Report of Asterisked Pending Cases and Matters from various United States Attorneys' Offices. In the future, please do not request these forms as they will be sent to you each month along with the Monthly Report for United States Attorney, Form USA-123.

OFFICE OF MANAGEMENT SUPPORT

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DESECRATION OF THE FLAG OF THE UNITED STATES P. L. 90-381

A. Background of the Act

On July 5, 1968, Public Law 90-381 was signed by the President and became effective on that date as new Section 700 of Title 18, United States Code. This legislation provides criminal penalties for certain public acts of desecration of the flag of the United States.

Public Law 90-381 was designed to remedy an anomaly in existing law wherein flag desecration was proscribed by Federal statute only in the District of Columbia (4 U.S.C. 3; 22 D.C. Code 3414). Although a number of states prohibit flag desecration, the penalties vary widely, and Public Law 90-381 gives Federal protection to the flag throughout the Nation.

B. Provisions of the Act

Persons violating this Act are subject to a fine of not more than $1,000 or not more than a year in jail, or both. The Act does not prohibit oral statements, political dissent or protest but prohibits knowingly casting contempt upon the flag of the United States by publicly mutilating, defacing, defiling, burning or trampling upon it. House Report No. 350 indicates that the well-defined and generally accepted meanings of these words are to be used in interpreting the Act. The term "flag of the United States" is broadly defined to include any flag, standard, colors, or ensign of the United States or any picture or representation of the flag made of any substance which the average person seeing the same without deliberation may believe it to represent the flag, standards, colors or ensign of the United States. The prohibitions of the Act apply not only within the United States but also to the action of American citizens abroad. Venue in such cases is governed by 18 U.S.C. 3238.

Subsection (c) of the Act shows that Congress did not preempt the jurisdiction of any state, territory, possession or the Commonwealth of Puerto Rico in this matter.

C. Supervisory Jurisdiction

This statute is under the supervisory jurisdiction of the General Crimes Section of the Criminal Division. The Federal Bureau of Investigation has investigative responsibility over offenses within the Act.

D. Policy

No Federal action is required if the flag desecration incident occurs on land under state jurisdiction and the state authorities promptly prosecute the offenders. Federal action should be considered when state authorities fail to act.

Federal action should be taken under 18 U.S.C. 700 when flag desecrations take place at or on Federal installations.

However, United States Attorneys should obtain Department approval prior to instituting prosecution under Section 700, except when the exigencies of the situation dictate that immediate action be taken, as when a delay in the arrest of the culpable individuals seems likely to preclude their identification or apprehension or to result in dissipation or destruction of evidence.

* * *

NATIONAL FIREARMS ACT

Newly Operative Amendments - Gun Control Act of 1968 (P.L. 90-618)

On October 22, 1968, the Gun Control Act of 1968 (P.L. 90-618) was signed into law by the President. Title II of that Act, designated as the National Firearms Act, became effective on November 1, 1968. Although reflecting the basic statutory scheme of the original National Firearms Act, Title II amends that earlier statute in several significant respects. The amended National Firearms Act is codified in Title 26 of the United States Code, Sections 5801-7273.

The provisions of the National Firearms Act are applicable to a relatively limited class of weapons. The prior statute encompassed machine guns, sawed-off and short-barreled shotguns and rifles,

mufflers and silencers. While continuing to cover these weapons 1/ the Gun Control Act amendments expand the scope of the Act by extending the definition of a "firearm" to include machine gun frames and receivers, so-called conversion kits which transform a nonautomatic weapon into a machine gun, and combinations of machine gun parts from which a machine gun, conversion kit or receiver or frame can be assembled. 2/ Smooth-bore pistols and revolvers capable of firing shotgun shells, concealable weapons such as a tear gas gun or "zip" guns designed to fire a projectile and certain weapons with combination shotgun and rifle barrels are now also covered. 3/ The single most significant extension of coverage is the inclusion of "destructive devices" within the definition of a firearm. Section 5845(f) broadly defines this term to include any explosive, incendiary or poisonous gas bomb, grenade, rocket with a propellant charge of at least four ounces, missile having an explosive or incendiary charge in excess of one quarter ounce, mine or "similar defice"; 4/ weapons with a bore of at least one-half inch, such as mortars, antitank guns and artillery pieces; and any combination of parts either designed or intended for converting a device into one of the foregoing weapons. 5/ A proviso to Section 5845(a) excludes "antique" weapons 6/

1/ Pursuant to Section 5845(a)(1), (2), (3), (4), (6), (7), these weapons are included within the Act.

2/ Section 5845(b) defines "machine gun" to include these items.

3/ Section 5845(a) incorporates such weapons with the definition of "any other weapon" now covered by the Act pursuant to Section 5845(a)(5).

4/ Molotov cocktails and other "homemade" incendiary devices fall within this definition. United States Attorneys are instructed not to initiate or authorize prosecutions for any violation of the National Firearms Act involving such destructive devices unless and until contemplated prosecutive action has first been approved by the General Crimes Section, Criminal Division.

5/ Under a proviso to Section 5845(f) the term destructive device does not include a device which the Secretary of the Treasury finds is not likely to be used as a weapon, or is an antique or is a rifle intended by its owner solely for sporting purposes.

6/ Section 5845(g) defines the term "antique" to mean "any firearm not designed or redesigned for using rim fire or conventional ceter fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system

(footnote continued on next page)

from National Firearms Act "firearm" and thus from the Act's coverage as well.

The amended National Firearms Act imposes a series of restrictions on businesses which deal in firearms covered by the Act. Section 5801 levies a special occupational tax on all persons engaging in business 7/ as an importer, 8/ dealer, 9/ or manufacturer 10/ of these weapons. All enterprises of this nature must register in each internal revenue district in which they conduct business and obtain approval from the Secretary of the Treasury prior to commencing operations at a new location or under a new trade name. Section 5861(a) makes it unlawful to engage in business without having first complied with these requirements. Pursuant to Section 5843, importers, manufacturers and dealers are also required to maintain records concerning the manufacture, receipt and disposition of firearms during the course of their business. Falsification of these, or any other documents required by the National Firearms Act, is unlawful under Section 5861(l) and should be prosecuted under that provision rather than as a violation of 18 U.S.C. 1001 in view of the more stringent penalties prescribed by the National Firearms Act.

6/ (cont.) or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade."

7/ It is important to note that neither Title II nor the regulations promulgated thereunder indicate what constitutes "engaging in business".

8/ Section 5845(l) defines this term to include "any person who is engaged in the business of importing or bringing firearms into the United States".

9/ Section 5845(k) defines this term to include "any person, not a manufacturer or importer, engaged in the business of selling, renting, leasing, or loaning firearms and shall include pawnbrokers who accept firearms as collateral for loans".

10/ Section 5845(m) defines this term to include "any person who is engaged in the business of manufacturing firearms".

The importation of National Firearms Act firearm is restricted by Section 5844 to those instances where it is demonstrated that the weapon is imported or brought in:

(a) for use in Federal or State agencies; or

(b) for scientific or research purposes; or

(c) solely for testing or use as a model by a registered manufacturer or for use as a sample by a registered importer or dealer.

Section 5861(k) makes it unlawful for any person to receive or possess a firearm which has been imported in violation of Section 5844. In this regard, reference should also be made to the general controls on the importation of firearms imposed by Title I of the Gun Control Act (18 U.S.C. 925(d)).

Paralleling the original provisions of the National Firearms Act, Section 5811 of Title II imposes a tax on the transfer of a firearm. 11/ This levy is imposed upon dispositions of every nature, and is payable by the transferor. 12/ Section 5812 makes it incumbent upon the transferor to file an application, receive the Secretary's approval and pay the applicable tax prior to executing the transfer. Applications are denied if the transfer, receipt or possession of the firearm by the transferee would constitute a violation of any law. Pursuant to subsections (b) and (e) of Section 5861, it is unlawful for any person to transfer a firearm in violation of these provisions or to receive or possess a firearm so transferred.

Sections 5821-5822 impose a tax upon the "making" of a firearm and require the Secretary's ratification of an application and the payment of the tax as a condition precedent to lawful production of a firearm. Persons "making" firearms for the use of the Federal Government and manufacturers who have paid the special occupational tax are exempt from payment of

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11 / Section 5852 exempts transfers to the United States or any department of or agency thereof from payment of the tax. Section 5852(d) likewise exempts transfers between special occupational taxpayers. However, the provisions of Section 5812 must be complied with in all such instances.

12 / Section 5845(j) defines the term "transfer" to include "selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of".

this tax. 13/ Production of a firearm in violation of the making provisions or receipt or possession of an unlawfully made firearm is unlawful. 14/

The Gun Control Act establishes a central registry of all firearms covered by Title II and restructures the registration procedures in light of the Supreme Court's decision in Haynes v. United States, 15/ which held the registration requirements of the original Act unconstitutional. The registry is maintained by the Department of the Treasury and includes information concerning each registered "firearm" and the identity of its owner. Section 5841 makes it incumbent upon every manufacturer, importer, or maker of firearms to register each weapon he produces or imports. Moreover, each firearm transferred must be registered by its transferor to the possession of the transferee. Approval by the Secretary of an application to make, transfer or import a firearm effects registration of that weapon. Notification to the Secretary by a manufacturer of the production of a firearm likewise constitutes registration. Section 5861 makes it unlawful for any person to receive or possess a firearm which is not registered to him or to transport, deliver or receive an unregistered firearm in interstate commerce.

In its original form, the National Firearms Act prohibited the receipt of a firearm which had not previously been registered in the hands of the transferor. Likewise, it was unlawful to possess an unregistered weapon. Nevertheless, firearms imported, made or transferred in compliance with other provisions of the Act were exempt from registration. Consequently, almost anyone registering a previously unregistered weapon would disclose that he was in violation of the Act. This information was freely available to any law enforcement official for use in the prosecution of an offense so disclosed, including those of a state or local nature. The Haynes decision held these provisions constitutionally unenforceable in that they compelled a registrant to provide information incriminating to himself.

13/ These exemptions provided by Section 5852(b) do not extend to compliance with the application requirements of Section 5822.

14/ See Section 5861, subsections (f) and (c). In addition, Section 5842 requires that each firearm manufactured, made or imported be marked for identification in a manner prescribed by regulation. Section 5861 proscribes the obliteration or alteration of these markings and the receipt or possession of a firearm which has been so altered or which has no serial number at all.

15/ See No. 16, United States Attorneys' Bulletin, March 15, 1968, p. 193.

Under the amended Act, every weapon covered must be registered, even though the owner has complied with applicable making, transfer or importation provisions. Thus, the registration requirements are no longer directed primarily at individuals inherently suspect of violating the Act as was the case under the original statute. In addition, Section 5848 provides that registration information may not be used against the registrant, directly or indirectly, in a criminal proceeding for an offense occurring prior to or concurrent with his registration. This section is specifically designed to protect a registrant from subjecting himself, by his act of registration, to a criminal prosecution to which he might not otherwise have been subjected. 16/ As a result, registration information cannot be used in:

(a) a Federal or State prosecution for illegal acquisition of a registered firearm, or

(b) a Federal or State prosecution or investigation for a past crime involving the use of a registered firearm, or

(c) a Federal or State prosecution for past or present illegal possession of a registered firearm.

Thus the amended National Firearms Act surmounts the constitutional debilities identified in the Haynes decision.

The registration requirements also give rise to an issue concerning the validity of using registration information in prosecutions for offenses occurring subsequent to the registrant's compliance with the Act's provisions. In Marchetti v. United States, 17/ a companion case to Haynes, the Supreme Court reversed its earlier ruling that the privilege against self-incrimination could never extend to future crimes 18/ and declared

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16/ This section does not grant immunity from prosecution for such offenses if independent evidence of the offense is discovered. It should also be noted that Section 7273 provides for a grace period of thirty days' duration after the effective date of the Act during which time theretofore unregistered firearms may be registered without fear of incrimination under the Act's provision. This period terminated on December 1, 1968.

17/ 390 U.S. 39 (1967)

18/ United States v. Kahriger, 345 U.S. 22 (1953).

that the proper standard for applying the privilege is whether the claimant is confronted by substantial and real, and not merely or imaginary, hazards of incrimination. The gambling tax statutes at issue in Marchetti involved a requirement that a person inherently suspect of criminal activity disclose a present criminal intent--disclosure with the "direct and unmistakeable consequence of incriminating". 19/ Without such a risk the self-incrimination clause is inapplicable to future offenses. Indeed, the Marchetti decision expressly recognized that the vast majority of laws requiring the submission of information ordinarily involves only speculative and unsubstantial risks of incrimination.

Registrants under the amended National Firearms Act do not face an imminent or substantial threat of future incrimination. Their compliance does not disclose any specific intent to commit some future crime with a firearm. Although such a crime may in fact occur--even shortly after registration--without the element of a compulsory confession of guilty purpose, there is no Fifth Amendment bar to the use of the registration information. Firearms registration information could be used as readily in such cases as automobile registration information could be used to trace the owner of a hold-up "getaway car".

Title II of the Gun Control Act increases the maximum penalty for a violation of the National Firearms Act to a fine of $10,000, imprisonment for ten years, or both. 20/ In addition, provision is made for the seizure and forfeiture of firearms involved in violations of the Act. 21/ The Secretary of the Treasury has charged the Alcohol, Tobacco and Firearms Division, Internal Revenue Service, with primary administrative investigative responsibility for violations of the National Firearms Act. The FBI may investigate violations of Title VII which are ancillary to investigations within its primary jurisdiction. All prosecutions under the National Firearms Act are supervised by the General Crimes Section, Criminal Division.

For analyses of Title I, Sections 922(a)(1) and 925(d) and Title III see United States Attorneys' Bulletin, Vol. 16, No. 31, pp. 955-959, November 8, 1968.

19/ 390 U.S. at 49

20/ See Section 5871.

21/ See Section 5872.

* * *

DEPARTMENT OF JUSTICE PROFILES

Commissioner Raymond F. Farrell
Immigration and Naturalization Service

Commissioner Farrell was born February 6, 1907 at Pawtucket, Rhode Island. He attended Georgetown University in Washington, D.C., and graduated from Georgetown Law School with an LL.B. degree in 1931. Mr. Farrell is a career Federal employee, who started as a messenger boy with the U.S. Civil Service Commission and who, except for World War II military service, has been with the Immigration and Naturalization Service for the last 27 years. He has also served with the Federal Bureau of Investigation (Special Agent from 1931-33) and with the Department of Interior. He went on World War II active duty in May, 1942 and was separated from service on November 30, 1945, as a Lieutenant Colonel. He was decorated with the Bronze Star Medal while in service. Mr. Farrell returned to the Immigration Service immediately afterward and, following a number of executive assignments, was made Associate Commissioner in 1957. He subsequently became Acting Commissioner for a short period, and in 1961 was named Commissioner of the Service. He is a member of the Society of Former FBI Agents, the American Legion, and the National Press Club in Washington.

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H. M. Ray
United States Attorney
Northern District of Mississippi

Mr. Ray was born August 9, 1924 in the Hinkle Creek Community, Alcorn, County, Mississippi. He received his LL.B. degree in 1949 from the University of Mississippi During World War II, he served as an Aircraft Bomber Commander in the European Theater. As a member of the Mississippi House of Representatives (1948-51), he was principal author of Mississippi's Workmens Compensation Act, which was heralded by the U.S. Secretary of Labor as a model compensation act. From 1948-50 he served as a member of an interim study committee of the state legislature studying municipal affairs, and as such member co-authored a complete re-codification of the Municipal Code of Mississippi. Except for military service, he was engaged in the private practice of law in Corinth, Mississippi from 1949 to 1961. In these years he served twice as county prosecuting attorney. He was appointed U.S. Attorney by President Kennedy in 1961 and re-appointed by President Johnson in 1965. He has been active in the trial of

all cases, among which include the successful disposition of every civil case following the aftermath of the entry of James H. Meredith in the University of Mississippi. He also has assisted in the trial of numerous voting, school and other civil rights cases.

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ANTITRUST DIVISION

Assistant Attorney General Edwim M. Zimmerman

DISTRICT COURT

CLAYTON ACT

COMPLAINT UNDER SECTION 7 OF ACT AND FINAL JUDGMENT ORDERING DIVESTITURE.

United States v. Gannett Co., Inc., et al. (Civ. 68 C 48; January 6, 1969; D.J. 60-127-037-5)

On January 6, 1969, a final judgment ordering divestiture was entered by Judge Richard B. Austin in this case. A complaint, answer and stipulated consent judgment had been filed on December 5, 1968.

The complaint charged a violation of Section 7 of the Clayton Act arising out of defendant Gannett's acquisition on April 12, 1967 of Rockford Newspapers, Inc. Gannett Co., Inc., headquartered in Rochester, New York, as of the date of the alleged acquisition, owned an expanding chain of 30 newspapers and five television stations, including WREX, Rockford. Rockford Newspapers, Inc. published the only two substantial daily newspapers of general circulation in the Rockford, Illinois area.

The complaint was premised on the theory that "local mass media engaged in the sale of advertising and the dissemination of news and advertising" constitutes a relevant line of commerce under Section 7 of the Clayton Act.

Rockford Newspapers, Inc. had approximately 95% of all advertising revenues from the sale of space in daily newspapers published in the Rockford metropolitan area. WREX-TV enjoyed almost 50% of all TV advertising time sales among the three TV stations in the area. The combined revenues of WREX-TV and Rockford Newspapers aggregated approximately 75% of the total advertising income of all local mass media engaged in the sale and dissemination of news and advertising in the Rockford market.

Rockford is the second largest commercial, industrial and population market in the State of Illinois.

The judgment required Gannett to divest itself of its equity interest in either WREX or Rockford Newspapers, Inc., at Gannett's option, to an approved purchaser within 18 months from the date of the final judgment.

Staff: Robert L. Eisen, Ronald L. Futterman and
Charles F. B. McAleer (Antitrust Division)

* * *

CIVIL DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

COURTS OF APPEALS

SOCIAL SECURITY ACT

COURT HOLDS THAT 1967 AMENDMENTS MAKE HIRING PRACTICES OF LOCAL EMPLOYERS IRRELEVANT.

Raymond Wright v. Cohen (C.A. 7, No. 16,982; decided December 4, 1968; D.J. 137-26-83)

The Social Security Administration denied an application for disability benefits, where the claimant, who had been injured in an explosion, asserted inability to work due to a number of physical impairments. The medical evidence established that the claimant had lost the use of his left arm, and that he had diabetes. The district court dismissed the claimant's action to review the administrative denial of benefits, and the Seventh Circuit affirmed per curiam.

In affirming, the Seventh Circuit held irrelevant claimant's contention that "because of the hiring practices of employers within a reasonable area of his residence, he would not in fact be hired for any light work which he can perform". The Court stated that Congress, in its wisdom, had provided, in the 1967 Amendments to the Social Security Act, that the sole issue in a disability case was whether claimant could perform gainful work, regardless of whether he would be hired for any job. The Court also stated that, in any event, the record presented a picture of a man who, although handicapped by the loss of use of his left arm, is otherwise without any significant impairment.

Staff: Leonard Schaitman (Civil Division)

VETERANS RE-EMPLOYMENT RIGHTS - JURISDICTION

DISTRICT COURTS HELD TO HAVE JURISDICTION OVER ACTIONS SEEKING TO ENFORCE VETERANS RE-EMPLOYMENT RIGHTS AGAINST FEDERAL GOVERNMENT.

Thomas H. Carter v. United States, et al. (C.A. D.C., No. 20,694; December 13, 1968; D.J. 145-12-1039)

After completing a period of military service, Carter was re-employed by the Federal Bureau of Investigation as a clerk, the position

he had held prior to entering military service. Shortly thereafter, the Bureau learned, and Carter admitted, that Carter's girl friend had on occasion stayed overnight at his apartment. Carter was then discharged from his employment for "conduct unbecoming an employee" of the Bureau.

Basing his claim on his asserted rights under the Civil Service laws and the Veterans Preference Act, Carter brought this action for reinstatement and back pay. The Government argued that Carter was not entitled to the protection of those laws, but pointed out that he was entitled, by virtue of the veterans re-employment provisions of the Universal Military Training and Service Act, 50 U.S.C. App. 459(c), not to be discharged without "cause" within one year of his restoration to employment after military service. The Government argued, however, that Carter's admitted conduct was plainly proscribed by the FBI's traditionally high standards of personal conduct reflected in its Employees' Handbook and that, therefore, Carter's discharge had been for "cause".

The district court granted summary judgment for the Government. On appeal, Carter dropped his request for reinstatement but pressed his claim for back pay and sought to have the stigma of his discharge cleared from his record. The Court of Appeals reversed, one judge dissenting. The Court agreed with the Government that Carter's only rights stemmed from the veterans re-employment provisions, but held that Carter had a right to a trial on the issues of fact involved including a determination of his claim that his discharge had not been for "cause", whether his conduct violated the ordinarily expected standards of personal conduct and whether he should have known that his conduct was prohibited by his employer.

On petition for rehearing, the Government, in addition to rearguing that Carter's discharge had been for "cause", pointed out that the veterans re-employment statute provides a judicial remedy only against private employers (50 U.S.C. App. 459(d), (e)), and provides only an administrative remedy against the Federal Government (50 U.S.C. App. 459(e)), and asserted that the district court lacked jurisdiction to enforce the veterans employment provision against the Federal Government. In denying the petition for rehearing, the Court of Appeals, one judge dissenting, rejected the jurisdictional contention, stating that it saw "no basis for concluding that Congress intended to override and remove customary judicial remedies", at least where reinstatement was not sought.

Staff: United States Attorney David G. Bress;
Assistant United States Attorneys Frank Q. Nebeker, Joseph M. Hannon, Gil Zimmerman and Thomas Lumbard (District of Columbia)

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CRIMINAL DIVISION
Assistant Attorney General Fred M. Vinson, Jr.

COURTS OF APPEALS

ASSAULTING FEDERAL OFFICERS

SCIENTER AS ELEMENT OF OFFENSE.

United States v. Harry J. Rybicki (C.A. 6, No. 18276, November 22, 1968; D.J. 5-38-354)

Rybicki was convicted under 26 U.S.C. 7212(a) of obstructing, by threats of force, two officers of the Internal Revenue Service who were then engaged in the performance of their duties, seeking to collect from him income tax owed by him to the United States. The United States Court of Appeals for the Sixth Circuit reversed and remanded the case for a new trial, holding that the failure of the district judge to instruct the jury that a necessary element of the crime was the knowledge on Rybicki's part that the people he obstructed were Government agents engaged in their official duties was prejudicial error.

As the Court noted, all the recent cases have held that scienter--i.e., knowledge of the official character of the federal employee--is not an essential element of the crime of assault under 18 U.S.C. 111. However, the Sixth Circuit distinguished these cases from the instant situation on the ground that the offenses there involved would have been crimes regardless of the person against whom they were committed. This analysis accords with the Department's position. As was stated in our brief in opposition to certiorari in Lombardozzi v. United States, 335 F.2d 414 (2d Cir.), cert. denied, 379 U.S. 914 (1964), "unjustified forcible assault can never be an innocent act; one who knowingly commits such an assault necessarily knows that he is committing a crime. Thus the question whether the person assaulted is or is not a federal officer does not go to the criminality of the act done; it goes to the question of which sovereignty shall try and punish the criminal act." (Brief, p. 6).

Here, if the federal agents had not been acting in their official capacities, Rybicki would have had the right to threaten and use reasonable force to prevent the "theft" of his property. Thus, Rybicki's actions are criminal only because he threatened federal officers acting in an official capacity.

We must be careful, however, to limit this construction of 26 U.S.C. 7212(a) to the instant situation--where the defendant's actions are criminal only because of the position and title of the person obstructed or impeded. But 7212(a) also covers

forcible obstruction, etc., and in these situations the line of cases interpreting 18 U.S.C. 111, should control, and scienter should not be an essential element of the crime where the use of force is, in itself, criminal without reference to the identity of the person against whom the force is used.

Staff: United States Attorney Harold D. Beaton (W.D. Mich.)

NARCOTICS AND DANGEROUS DRUGS

PRESUMPTIONS IN NARCOTICS STATUTES UPHELD AS BEING NOT VIOLATIVE OF DEFENDANTS FIFTH AMENDMENT GUARANTEE AGAINST SELF-INCRIMINATION.

United States v. James Turner (C.A. 3, No. 17181; December 10, 1968, D.J. 12-48-442)

Defendant challenged his conviction under 21 U.S.C. 174 and 26 U.S.C. 4704(a) on the ground that the presumptions contained therein are violative of the Fifth Amendment guarantee against self-incrimination. While recognizing that both of these sections heretofore have been held constitutional, he contended that the recent cases of Griffin v. California, 380 U.S. 609 (1965), and United States v. Jackson, 390 U.S. 570 (1968), compel a ruling in his favor on the theory that the statutory language, when used in instructions to the jury, is the substantial equivalent of unfavorable comment prohibited by Griffin and discourages the right of a defendant to remain silent just as the death penalty, struck down in Jackson, was held to discourage a plea of not guilty and the demand for a jury trial.

The Court rejected these contentions on the ground that Griffin and Jackson are not controlling because the language of the statutes in question neither constitutes unfavorable comment on the accused's failure to testify, nor does it have an "unnecessary and therefore excessive" chilling effect on the exercise of that privilege.

The opinion points out that any support relied on in Griffin is substantially reduced by United States v. Gainey, 380 U.S. 63 (1965), decided less than two months before, which upheld the constitutionality of 26 U.S.C. 5601, a statute which contains a presumption similar to those here; also, that a charge under Section 174 does not constitute an adverse comment on defendant's failure to take the stand, citing United States v. Armone, 363 F.2d 385 (C.A. 2), cert. den. 385 U.S. 957 (1966).

Staff: United States Attorney David M. Satz, Jr. and Assistant United States Attorney Marlene Gross (D. New Jersey)

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LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Clyde O. Martz

DISTRICT COURTS

SOVEREIGN IMMUNITY

SCOPE OF CONSENT TO SUIT UNDER 43 U.S.C. 666.

Michael Renzi and Antoinette Renzi v. United States and City of Portsmouth (D.C. N.H., January 7, 1969; D.J. 90-1-2-839)

On January 7, 1969, the court dismissed plaintiffs' suit to enjoin the United States from maintaining a dam and levee on the Bellamy River in New Hampshire. Plaintiffs' suit, brought under purported authority of 43 U.S.C. 666, was dismissed on the jurisdictional grounds that all the claimants to water rights on the Bellamy River were not joined in the action, as required by 43 U.S.C. 666. This case follows Dugan v. Rank, 372 U.S. 609 (1963), and City of Fresno v. California, 372 U.S. 627 (1963). It originated in the Superior Court for Strafford County, New Hampshire, and removal to the United States District Court under 28 U.S.C. 1441(a) as a case involving a federal question was unopposed.

Staff: Assistant United States Attorney William H. Barry, Jr. (D. N.H.); and Jonathan U. Burdick (Land and Natural Resources Division)

INDIANS: CIVIL RIGHTS ACT OF 1968

FEDERAL COURT JURISDICTION

John Dodge, et al. v. Raymond Nakai, et al. (Civil 1209, D. Ariz.; December 16, 1968, D.J. 90-2-0-648)

With funds furnished by the Office of Economic Opportunity, a group of Navajo Indians organized a nonprofit legal services corporation, known as DNA, to provide legal services to indigent Navajos. A nonmember of the Tribe, Theodore R. Mitchell, was appointed its Executive Director. As the culmination of a number of disagreements, the Advisory Council of the Navajo Tribe, on August 8, 1968, issued a resolution directing the Chairman of the Navajo Tribal Council and the Superintendent of the Navajo Police Department to bar Mitchell from the reservation. As required by the applicable tribal ordinance, this resolution was concurred in by the Area Director, Bureau of Indian Affairs.

This proceeding was then instituted by Mitchell, by the DNA and as a class action on behalf of indigent Navajos who secure legal assistance from the DNA. Named as defendants were the Chairman of the Navajo Tribal Council, the Superintendent of the Navajo Police Department and the Area Director, Bureau of Indian Affairs. Both injunctive relief, restraining enforcement of the order, and damages were sought. The complaint alleged that more than $10,000 was involved and that jurisdiction was based on Title 28 U.S.C. 1331, 1343(1), 1343(4), 1361 and 1651. In rejecting a motion to dismiss, Judge Craig, on December 16, 1968, handed down a decision that is of interest in view of its extended discussion of federal court jurisdiction.

The court's basic holding was that it had jurisdiction against all defendants (without the need to establish a monetary jurisdictional amount) under 28 U.S.C. 1343(4), pertaining to "any civil action authorized by law * * * (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote." The court reasoned that under this section it had jurisdiction to secure to the plaintiffs the civil rights described in Title II of the Civil Rights Act of 1968, 25 U.S.C. 1302 (P.L. 90-284, 82 Stat. 73). As applied to the plaintiff Mitchell, this holding was based on the conclusion that Title II of the Civil Rights Act of 1968 applies to non-Indians as well as to Indians.

The decision indicates that, in some instances, the court would require litigants to first seek redress in tribal courts but that for various reasons, including the fact that tribal courts would have no jurisdiction over the non-Indian defendants (including the Area Director), this "exhaustion" of remedies would not be required.

Although the issue might have been decided solely on the basis of 28 U.S.C. 1343(4), the court also held that it had jurisdiction over all defendants under 28 U.S.C. 1331 in that the plaintiffs had adequately alleged that more than $10,000 was involved and because the plaintiffs had presented a case arising under Title II of the Civil Rights Act of 1968. In its discussion of jurisdiction under Section 1331, the court refused to hold as against the Indian defendants that the plaintiffs had asserted a claim under the First, Fourth, Fifth and Sixth Amendments to the U.S. Constitution. It based this conclusion on numerous existing decisions holding that the provisions in the U.S. Constitution restricting action on the part of the United States are not binding on Indian nations. Before making the foregoing determinations, the court held that it did not have jurisdiction under 28 U.S.C. 1651(all writs), 28 U.S.C. 1361 (mandamus) or 28 U.S.C. 1343(1) (held to apply only to acts under color of state law).

The opinion closed with the following statement:

> This opinion is written in an effort to reveal some of the problems concerning the jurisdiction of the federal courts inherent in the Civil Rights Act of 1968 and the extent to which that statute requires this Court to depart from long established principles and policies.

Judge Craig's comments are confined almost entirely to a discussion of statutory jurisdictional issues. Many additional questions remain, with particular reference to whether a suit of this type can be maintained against an Area Director of the Bureau of Indian Affairs either for monetary or injunctive relief.

Staff: Assistant United States Attorney Richard C. Gormley (D. Ariz.)

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TAX DIVISION
Assistant Attorney General Mitchell Rogovin

DISTRICT COURTS

EVIDENCE

SPECIAL AGENT MAY NOT INTERVIEW TAXPAYER WITHOUT ADVISING OF RIGHT TO COUNSEL.

I.

United States v. Dickerson (N.D. Ill., No. 67 Criminal 205; October 29, 1968; D.J. 5-23-5265)

After a revenue agent had discussed Dickerson's returns with him on several occasions, the case was referred to a special agent who also interviewed Dickerson four or five times. All interviews were in Dickerson's office. The special agent identified himself as such at his first interview, but gave no warnings and no other indication that a criminal charge was possible. An indictment was returned. Dickerson then moved to suppress the evidence obtained by the special agent on the ground that the Miranda warnings (384 U.S. 436) should be given as soon as an investigation becomes criminal in nature by the assignment of a special agent. The motion relied on United States v. Turzynski, 268 F.Supp. 847 (N.D. Ill.), which was noted in the Bulletin for September 27, 1967, Vol. 15, No. 20, p. 605.

The district court granted the motion to suppress on the authority of Turzynski. The court also concluded that Dickerson's freedom of action had been significantly curtailed, within the meaning of Miranda, although this was based on no finding of fact other than the court's statement that taxpayers always feel that they are compelled to cooperate with agents of the Internal Revenue Service in the absence of a specific warning of their right to refuse.

The Solicitor General has authorized an appeal to the Seventh Circuit under Title VIII of the Omnibus Crime Control Act of 1968. See the note in United States v. Lackey (N.D. Ind.) in the last previous issue of the Bulletin. As we pointed out in our 1967 note in Turzynski, supra, that case was overruled sub silentio by the Seventh Circuit in United States v. Mansfield, 381 F.2d 961, cert. den. 389 U.S. 1015. It has since been specifically rejected by the Second Circuit in United States v. Mackiewicz, 22 A.F.T.R. 2d 5120, and by the Eighth Circuit in United States v. Cohen (No. 19181), conviction affirmed

December 18, 1968. A note on Cohen will appear in a later issue of the Bulletin.

Staff: United States Attorney Thomas A. Foran and Assistant United States Attorney Joseph K. Luby (N.D. Ill.)

II.

United States v. Habig & Schroering (S.D. Ind., No. 66 Cr. 138; November 19, 1968; D.J. 5-26S-1093)

The Solicitor General has also authorized an appeal to the Seventh Circuit in this case in the same area as Dickerson and Lackey.

Here, a revenue agent who was examining corporate records suspected fraud and referred the matter to a special agent. The revenue agent continued his examination under the direction of the special agent. The corporate officers were not informed of the special agent's interest until he appeared at the corporate offices some months later, stated that he was a criminal investigator, and requested permission to examine the corporate records. Permission was granted. After indictment (see United States v. Habig, 390 U.S. 222) the defendant corporate officers moved to suppress the evidence obtained by the agents on the grounds that it had been obtained without warrant, summons or subpoena, and that the agents had been gathering evidence for a criminal prosecution without advising defendants of that possibility.

The district court granted the motion to suppress on the ground that the defendants believed the revenue agent was conducting a civil tax audit and the agent failed to advise them when his investigation took on a criminal aspect.

There appears to be nothing in the record which would support a finding that the revenue agent affirmatively represented that his investigation was civil only. The court seems to have adopted the same purely subjective test as the courts in Dickerson and Lackey, i.e., since the defendants "believed" the audit was civil only, they should have been warned to the contrary. The ruling is contrary to a long line of authority. See e.g., United States v. Sclafani, 265 F.2d 408 (C.A. 2), certiorari denied, 360 U.S. 918; United States v. Achilli, 234 F.2d 797, 805 (C.A. 7), affirmed on other issues, 353 U.S. 373; United States v. Spomar, 339 F.2d 941 (C.A. 7), certiorari denied, 380 U.S. 975; United States v. Mansfield, 381 F.2d 961 (C.A. 7), certiorari denied, 389 U.S. 1015.

Staff: United States Attorney K. Edwin Applegate; Assistant U.S. Attorney Robert L. Baker (S.D. Ind.); James F. Walker (Tax Division)

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