United States Attorneys

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UNITED STATES DEPARTMENT OF JUSTICE

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NEWS NOTES

JOHN VAN de KAMP RESIGNS - WILL RUN FOR U.S. CONGRESS

On February 28, 1969, John Van de Kamp, former Director, Executive Office for United States Attorneys and the Deputy Director since January 21, 1969, resigned from his position to run for the Congressional seat in the 27th District of California, which was vacated when Congressman Edward Reinecke became Lieutenant Governor of California to replace HEW Secretary Robert Finch. The special Congressional election will be held on April 1.

DAG PLEDGES VIGOROUS EFFORTS AGAINST ILLEGAL DRUG TRAFFIC

February 26, 1969: Deputy Attorney General Richard Kleindienst, in a speech before the Federal Bar Association, promised that "all of the available resources of this government will be marshalled on a continuing and relentless war against the illicit traffic in and use of narcotics and dangerous drugs". Mr. Kleindienst said that President Johnson's Reorganization Plan in February 1968, which combined the Federal Bureau of Narcotics in the Treasury Department and the Bureau of Drug Abuse Control in the Department of Health, Education and Welfare into a new Federal Bureau of Narcotics and Dangerous Drugs in the Department of Justice has increased the effectiveness of the federal government in this area. The new Bureau has become "a new organization in concept, in direction, and in leadership . . . no longer are there 'old narcotic agents' and 'old drug abuse agents'- they are now special agents of the Federal Bureau of Narcotics and Dangerous Drugs". The Deputy Attorney General said that the major functions of the Bureau can be grouped under three headings: Enforcement of the drug laws against traffickers by identifying and arresting such traffickers and breaking up their distribution channels; training programs not only for its own agents but for state and local police as well; regulations of the legitimate drug industry to prevent diversion of these drugs into illicit channels. The number one priority in terms of law enforcement, Mr. Kleindienst stressed, will be to break up the organized crime syndicate which has profited for so long from illegal drug traffic.

ASSISTANT A.G. CALLS FOR INCREASED PUBLIC SUPPORT FOR POLICE

February 26, 1969: "We must not confuse the need to reduce the causes of crime with the imperative that we act swiftly against the criminal", said Will Wilson, Assistant Attorney General in charge of the Criminal Division in a speech before the Federal Bar Association. "There has been a

tendency by some to regard an insistence on strict law enforcement as somehow alien to the purposes of a free society", Mr. Wilson said. "In one way or another, the thought has grown that those who seek it are hostile to minority rights or would disregard the Constitutional demands of due process. But I submit that the protection of the citizen is the basic reason for which governments are created. Freedom does not flourish in violence; civil liberties are not enhanced by terror. Every crime of violence or theft is an invasion of someone else's rights and liberties." Mr. Wilson added that "basic to the resolution of the present problem is the quality of our police", which can be improved by a coordination among the smaller police units in the suburbs and counties and other political subdivisions, and by a raising of standards by higher salaries and competent training of recruits. "But over and above all of this", said Mr. Wilson, "what the police need and must have is the backing from the public officials who are their immediate superiors . . . I would suggest as a basic premise for a rapid increase in the effectiveness of law enforcement throughout the United States that City Councils turn their attention more to restricting criminals than to restricting the police." Mr. Wilson concluded by referring to a comment by Walter Lippman that "the balance of power within our society has turned drastically against the peace forces--against governors and mayors and legislators, and finally against the police and the courts . . . . The righting of this balance is the primary business of each community and of the nation."

A.G. RECOMMENDS BENJAMIN HOLMAN FOR DIRECTOR OF CRS

February 28, 1969: Attorney General John N. Mitchell has recommended to the White House that Benjamin F. Holman, a 38-year-old television producer of community affairs programs, be nominated as Director of the Community Relations Service.

Mr. Mitchell said that Mr. Holman is "exceptionally well qualified to head the CRS because his long experience in reporting and inter-racial social programs has given him a deep understanding of the problems faced by policy and community officials seeking to reduce tensions." Mr. Holman will leave NBC News in Washington where he organized News Four Probe, a special in-depth news report on social issues in metropolitan Washington. He is currently the producer and a reporter for the series. He has also worked as a general assignment reporter for the Chicago Daily News from 1952 to 1962; as an editorial commentator and reporter for WBBM-TV in Chicago from 1962 to 1963; and as a reporter and assignment editor for CBS News in New York City from 1963 to 1965. In 1965 he joined the CRS as an assistant director in charge of media relations.

"The CRS", Mr. Mitchell explained, "has a mandate to provide assistance to communities and persons in resolving disputes, disagreements or difficulties relating to discriminatory practices based on race, color or national origin." The Service now has field representatives in 35 cities on a continuing basis and makes police-community experts available to other communities on request.

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EXECUTIVE OFFICE FOR UNITED STATES ATTORNEYS
Director Harlington Wood, Jr.

EXECUTIVE OFFICE TELEPHONE EXTENSIONS

Due to a relocation of the Executive Office (but still on the Fourth Floor, Main Justice), a new set of extension numbers will be in use by our staff. A listing of the staff members, their general functions and new numbers are listed below for your convenience:

Mr. Harlington Wood, Director - Policy and supervision. Ext. 2121, 22, 23, 24. (Room 4307)

Miss Cathryn Reuwer, Secretary to the Director. Ext. 2121, 22, 23, 24. (Room 4307)

Mr. Philip Modlin, Deputy Director - Policy and supervision. Ext. 2121, 22, 23, 24. (Room 4307)

Miss Betty King, Secretary to the Deputy Director. Ext. 2121, 22, 23, 24. (Room 4307)

Mr. James Borra, Attorney Advisor - Budget, machine listings and examination problems. Ext. 2140. (Room 4315)

Mrs. Dale Harris, Secretary to the Attorney Advisor. Ext. 2121, 22, 23, 40. (Room 4307)

Mr. Leslie Rowe, Administrative Officer - Personnel, travel, and administrative problems. Ext. 2131, 32. (Room 4313)

Miss Sheila Crowley, Administrative Assistant - Personnel, appointments and promotions. Ext. 2131, 32. (Room 4313)

Mr. Bruce Shreves, Law Clerk - Publications and special projects. Ext. 2130. (Room 4317)

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ANTITRUST DIVISION
Assistant Attorney General Richard W. McLaren

DISTRICT COURT

CLAYTON ACT

COURT GRANTS PRELIMINARY INJUNCTION.

United States v. Atlantic Richfield Co., et al. (S. D. N. Y., 69 CIV 162; February 17, 1969; D. J. 60-57-037-3)

On February 17, 1969, the District Court for the Southern District of New York granted the Government's motion for a preliminary injunction to enjoin the proposed merger of Atlantic Richfield Company (Atlantic) and Sinclair Oil Corporation (Sinclair).

A civil action was filed on January 15, 1969, challenging the proposed merger of Atlantic and Sinclair under Section 7 of the Clayton Act. The complaint alleged that the merger would eliminate actual competition between the two companies in the Northeastern and Southeastern States. It further alleged that Atlantic would be eliminated as a potential entrant into gasoline marketing in the Rocky Mountain and Central States, areas in which Sinclair presently conducts marketing activities. On January 17, 1969, the court granted the Government a 10-day temporary restraining order. The Government subsequently moved for a preliminary injunction against consummation of the merger, pending a determination on the merits.

Since the Government had sought preliminary injunctive relief, Judge Bryan noted that the ultimate merits of the substantive issues were not before the court. The question to be determined was whether the Government had demonstrated, as an essential element for preliminary injunctive relief, that it had a reasonable probability of ultimate success upon the merits. Accordingly, the issue before the court was confined to "whether it is reasonably probable that this merger will result in substantial anti-competitive effects or the tendency to monopoly in the gasoline market in one or more of the four geographic markets which have thus far been defined".

The court took but slight cognizance of the substantial overlap in the Northeast resulting from the merger, amounting to over 12 percent. Rather, it gave full effect to an agreement between Atlantic and B. P., a subsidiary of British Petroleum Co., Ltd., for the sale of all the Sinclair assets in the Northeast to B. P., scheduled for completion the first day of the month following the month in which the merger takes effect. Judge

Bryan wrote that the withdrawal of Sinclair from the Northeast, and the substitution by B. P., would eliminate the horizontal overlap in the Northeast and create a new and viable independent competitor in that region.

The court disclaimed the Government's contention that the merger would eliminate Atlantic as a potential competitor in the Rocky Mountain and Central States. According to Judge Bryan there was no showing of any negotiations or discussions between Atlantic and other petroleum companies concerning possible entry by Atlantic into these two areas through small mergers or acquisitions. The Government had relied upon internal memoranda prepared by Atlantic staff personnel which, Judge Bryan said, merely showed that "Atlantic at various times was not without interest in the possibility of acquiring one or more companies doing business in these areas".

However, the Government's showing of the combined sales of gasoline by Atlantic and Sinclair in the Southeast, amounting to 7.4 percent, was held sufficient to establish a probability of success upon the merits. Judge Bryan noted that "/T/he combined market shares of the merging companies here would surpass those found in Brown Shoe and Pabst to constitute Section 7 violations and would almost equal those in Von's Grocery. The gasoline industry in the Southeast appears to be more concentrated than the industries in those cases."

Defendants contended that if a preliminary injunction were granted it was likely that the merger would have to be abandoned, and that the Government would thereby obtain a complete victory without having to withstand trial on the merits. Defendants also contended that Atlantic had expended substantial sums in the acquisition of Sinclair stock, and that a large number of stockholders of both companies would sustain substantial losses should the merger be enjoined. The court agreed that such matters must be considered, but concluded that they "cannot outweigh the public interest in preventing this merger from taking effect pending trial".

Judge Bryan noted that divestiture after merger "is usually fraught with difficulties and presents a whole range of problems which should be avoided if possible". "Such problems", he said, "seem particularly acute in this case, considering the size of the defendants and the wide range of their operations." He also noted that the "problem may be further complicated by the arrangements with British Petroleum."

Staff: David R. Melincoff, Donald H. Mullins, Neil E. Roberts and Gregory R. McClintock (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General William D. Ruckelshaus

COURTS OF APPEALS

FEDERAL JURISDICTION

SUIT BY FEDERAL PRISONER AGAINST INDIVIDUAL JAILER ALLEGING NEGLIGENT SAFEKEEPING AND PROTECTION DOES NOT RAISE FEDERAL QUESTION JURISDICTION

Jewell James Williams v. United States, et al. (C. A. 9, No. 22,043; January 14, 1969; D. J. 157-12-1542)

Plaintiff sued for injuries suffered while a federal prisoner housed in the San Diego County Jail under the terms of a contract between the County and the United States, authorized by 18 U. S. C. 4002. He sued the United States under the Federal Tort Claims Act, and the sheriff and supervisors of San Diego County. The district court dismissed as to the individual defendants on the ground of lack of federal jurisdiction. This appeal concerned only the dismissal as to the individual defendants. On appeal, lack of diversity jurisdiction was conceded; the only issue was whether federal question jurisdiction existed. The United States was invited by the Court to submit an amicus brief. We urged affirmance of the dismissal arguing (i) that the contract between the United States and San Diego County did not make the County jailers into federal employees, even as to federal prisoners in their custody, and (ii) that even if they were federal employees, 18 U. S. C. 4042 (which provides for the safekeeping and protection of all federal prisoners) does not create a federal cause of action against individual jailers.

The Court of Appeals agreed that there was no federal question jurisdiction. It concluded that 18 U. S. C. 4042 "does not impose a duty on any officials who may be responsible to the Bureau of Prisons, and does not establish a civil cause of action against anyone in the event the Bureau's duty is breached. * * * /I/f the duty imposed by Section 4042 is breached, the prisoner's remedy is an action against the United States, under the Federal Tort Claims Act." Moreover, the Court concluded, even if the individual jailers had a duty under Section 4042, a federal cause of action did not result: "Thus, it is not enough for appellant here to allege that there has been a violation of 18 U. S. C. 4042. He must also show that a federal cause of action was created by the statute, conferring federal question jurisdiction on the federal courts. The fact that the federal statute may supply a standard relevant to a determination of

whether the sheriff and the supervisors were negligent under state law does not mean that by the provisions of Section 4042 Congress intended to confer on federal prisoners a federal right to sue individual employees or contractors for negligence." The Court found it unnecessary to "decide at this time whether appellees were federal employees or independent contractors, for in neither case can appellant state a federal cause of action against them".

The Court also concluded that pendent jurisdiction was lacking. Prior Ninth Circuit decisions established that the Federal Tort Claims Act does not establish pendent jurisdiction over the individual tortfeasors. Sykes v. United States, 290 F. 2d 555; Benbow v. Wolf, 217 F. 2 d 203. Nor was there pendent jurisdiction under Hurn v. Oursler, 289 U. S. 238, since "federal courts should avoid needless decisions of state law, and *** if federal claims are dismissed before trial (as in the present case), the state claims should be dismissed as well".

Staff: Robert V. Zener (Civil Division)

INSURANCE

SBA'S RIGHTS AS UNNAMED MORTGAGEE IN FIRE INSURANCE POLICY NOT AFFECTED BY MORTGAGOR'S NONPAYMENT OF PREMIUMS

Standard Fire Insurance Co. v. United States (C. A. 5, No. 25, 590; February 3, 1969; D. J. 105-76-72)

In return for a loan from Main Bank & Trust Company and the Small Business Administration, Schroeder Enterprises executed a note secured by a chattel mortgage on certain of its machinery and equipment. The note obligated Schroeder to maintain insurance coverage on the secured property. As agreed, Schroeder procured a rider to his policy with Standard Fire Insurance Company which provided that any loss would be payable to Main Bank as its interest may appear. In November 1964, Main Bank transferred its interest in the note and mortgage to SBA, and on the next day Main Bank advised Standard that the beneficiary of the policy's loss payable clause should not be SBA. On the day the notice was received Standard orally notified SBA that the policy was being cancelled for non-payment of premiums. On November 19, 1964, the policy was cancelled and Schroeder was so notified in writing. No written notice of the cancellation was sent to either Main Bank or SBA. On January 28, 1965, a fire destroyed the secured property, and SBA filed claim for the policy's proceeds. Standard refused payment, SBA instituted suit on the policy and the district court awarded SBA $24, 783.

The Fifth Circuit affirmed ruling that, under both the mandatory provisions of Texas law and the policy's union mortgage clause, the obligation flowing from Standard to Main Bank and SBA (mortgagees) was separate and independent from that flowing to Schroeder (the mortgagor), and, at least in the absence of a sufficient cancellation notice to SBA, Schroeder's non-payment of premiums could not work a default of SBA's rights under the policy. The Court held that this is so even though SBA was unnamed in the policy. On the question of notice the Court said that oral notice to SBA (as well as written notice to Schroeder) was insufficient to relieve Standard of its obligation to SBA since the allowance of only oral notice would undermine the policies just enunciated by failing to accord mortgagees adequate opportunity to protect their interests. The Court did not reach the question of whether written notice to Main Bank (the named mortgagee in the loss-payable clause) would have been sufficient against SBA, but hinted that it would not.

Staff: Former United States Attorney Ernest Morgan;
Former Assistant United States Attorney Ted Butler
(W. D. Texas)

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CRIMINAL DIVISION
Assistant Attorney General Will Wilson

COURT OF APPEALS

FEDERAL FOOD, DRUG, AND COSMETIC ACT

DOCTRINAL RELIGIOUS LITERATURE DOES NOT CONSTITUTE "LABELING" WITHIN MEANING OF FEDERAL FOOD, DRUG, AND COSMETIC ACT.

The Founding Church of Scientology of Washington, D. C., et al. v. United States (C. A. D. C., February 5, 1969; D. J. 21-16-124)

The Government proceeded under the Federal Food, Drug, and Cosmetic Act to seize a quantity of devices known as Hubbard E-Meters which were in the possession of the appellant, The Founding Church of Scientology of Washington, D. C. After trial in the district court, a decree of condemnation was issued against these devices and their accompanying literature, such condemnation being based on the fact that the literature, constituted "false and misleading labeling" within the purview of the Act.

In reversing this determination, the Court of Appeals relied heavily on United States v. Ballard, 322 U. S. 78 (1944), in which the First Amendment was held to prohibit a regulation of religious action which involved testing in court the truth or falsity of religious belief. Since the "false labeling" upon which the Government's case was based could not be separated from the doctrinal literature of Scientology, the condemnation proceeding was held to violate petitioner's constitutional rights. To enable this result it was necessary for the Court to find that Scientology was, in fact, a religion. Authority for this finding came from the fact that Scientology was incorporated as a religion, and that its licensed ministers were able to perform the ceremonies of marriage and burial. The Court was careful to note, however, that it was not holding Scientology to be a religion for all legal purposes, and that the prima facie case establishing its religious status might have been rebutted had the Government chosen to pursue that line of attack.

In a dissenting opinion, Judge McGowan disputed the application of Ballard to a Federal Food, Drug, and Cosmetic Act seizure by stating that it should not be part of the Government's burden "to show that, over and above the misbranding of the device, the religious pretensions

of its sponsors were fraudulent". Because of the importance of the issues involved, the Government is presently contemplating the advisability of petitions for rehearing en banc and for certiorari.

Immediately prior to this Court of Appeals decision, two United States District Courts, when faced with motions to enjoin the Secretary of Health, Education and Welfare from enforcing provisions of the Federal Food, Drug and Cosmetic Act against Hubbard E-Meters being offered for importation into the United States, arrived at decisions favorable to the Government. In The Church of Scientology of California v. Wilbur J. Cohen, et al. (C. D. Calif., January 27, 1969), the Court held that the constitutional guarantee of religious freedom did not accord the right to import devices which were misbranded. The decision in The Church of Scientology of Texas, et al. v. Wilbur J. Cohen, et al. (W. D. Texas, February 4, 1969), did not reach this crucial religious issue, but was resolved on the theory that the petitioners had not exhausted their administrative remedies and that the case was not ripe for judicial review. These two cases are important in the present context because in each the Government's position was, to a large part, based upon the District of Columbia District Court ruling which was reversed by the decision which is the subject of this report.

Staff: United States Attorney David G. Bress;
Assistant United States Attorneys Nathan Dodell
and Frank Q. Nebeker (Dist. of Col.)

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