# United States Attorneys

# Bulletin

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# NEWS NOTES

## FORDHAM'S DISTINGUISHED ALUMNUS

March 8, 1969: Attorney General John Mitchell returned to his alma mater, Fordham University in New York City to address the Fordham Law Alumni Association and told the audience, "You will be pleased to know how highly a Fordham man is regarded in the nation's capital. After one month in office, I can report that his opinions are constantly sought by the press and television and radio. His slightest comment is given the most serious analysis. A statement of present policy or future plans is quickly relayed to the public. I would be less than human if I could not enjoy this attention and, very soon now, I am going to ask Vince Lombardi how he manages to get it."

## A.G. PROMISES POSITIVE ACTION AGAINST CRIME IN D.C.

March 10, 1969: Attorney General John N. Mitchell said that "The nation is tired of being promised grand schemes" for crime control programs "without the concurring commitment to adequately finance them."

In a speech before the Federal Bar Association, the Attorney General said that the "over-riding significance" of President Nixon's District of Columbia crime control message "is a firm underlying commitment that this Administration will do everything in its power to obtain all the money necessary to implement" the White House plan.

Other aspects of President Nixon's crime control program in Washington, which the Attorney General said has "national importance" for all urban centers are:

(1) CITY-STATE COOPERATION.

"For as the federal government has marshaled its resources to help the federal city, so the states must marshal their resources to concentrate on their urban centers."

"You know the basic problem... Too often, this cooperation and help has stumbled on political rivalries and bureaucratic parochialism which divide the urban centers and the state governments."

"We cannot afford to wait any longer. We have not waited in Washington. The Mayor, the City Council and the federal government are working together on the District of Columbia crime control program in a way which should be a model guide for cities and states."

(2) URBAN-SUBURBAN COOPERATION.

"The District of Columbia crime program envisions regional coordination..."

"In reality there is no such thing as urban crime and suburban crime.... For as the residents in the metropolitan area flow from the city to the suburbs and back again without regard to geographical boundaries, so crime flows with them."

"...the only effective solution is metropolitan crime control coordinating councils to pool resources, to coordinate planning and to select common priorities for joint action."

(3) POLICE-COMMUNITY RELATIONS.

"One of the specific proposals in the District of Columbia crime message was a program to increase the size and efficiency of the police."

"While our police face increasing crime, the nation frequently has been less than willing to help them. In many cities the policeman is underpaid and undertrained. He is deprived of sufficient supporting services to do the kind of job we expect in our complex and sophisticated society."

"...many cities today still have no community relations programs or, at best, offer pro forma shams."

"One tragic result in those cities which have no intensive police-community relations programs is a serious corrosion of confidence between the police and the community."

"Well planned community relations programs...are absolute requirements but this type of program costs money. The President and the Mayor are committed to obtaining this money and we urge other urban communities to follow our example."

(4) COURTS, PROSECUTORS AND DEFENSE COUNSEL.

"Efficient police work is of little value if the administration of justice is not just and prompt."

"Thus, I believe that President Nixon's policy for the District of Columbia--in asking for more judges and for a reorganization of the court system--should be a guide for other over-crowded urban court jurisdictions."

"But the President's message also recognizes that justice is a triparte procedure in our adversary system. Not only do we need more judges, but we need more prosecutors and more defense counsel."

## BNDD AND CUSTOMS AGENTS ARREST FOUR MEMBERS OF INTERNATIONAL NARCOTICS RING

March 10, 1969: An intensive investigation by Customs and BNDD agents of an international narcotics ring culminated on March 9, 1969, with four arrests and the seizure of approximately 64 pounds of heroin in the Eastern and Southern Districts of New York. The heroin was shipped in cans purportedly containing paella from Spain to New York. Those arrested were Christian Hysohion, Edward Louis Rimbaud, Antonio Flores and Mayo Mastronardi. The latter, who rented the premises in Whitestone, Queens, New York to the ring, is alleged to have Cosa Nostra connections.

## RICHMOND FLOWERS AND TWO OTHERS SENTENCED

March 10, 1969: Richmond Flowers, former Attorney General of Alabama, Oscar Hyde and Joe Breck Gantt, previously convicted of violations of 18 U.S.C. 1951 were sentenced as follows: Flowers, 8 years on each count to be served concurrently and was fined $10,000; Oscar Hyde received 8 years on each count together with two $10,000 fines; and Joe Breck Gantt was sentences on two counts to 5 years' imprisonment suspended, with 5 years probation and on one count to one year and one day imprisonment, making a total of one year and one day, plus 5 years' probation.

## AUSA ALAN LIPSON COMMENDED FOR BANK ROBBERY PROSECUTION

Assistant U.S. Attorney Alan B. Lipson of the District of Maryland has been commended by FBI Special Agent in Charge Edwin R. Tully for his successful prosecution of three defendants charged with bank robbery. Mr. Tully, in a letter to U.S. Attorney Steve Sachs, said "the way Mr. Lipson handled himself in the court room, particularly during cross-examination of the defense witnesses, was very impressive, and undoubtedly was one of the key points which led to the conviction of the /defendants/. This successful prosecution was obtained even though none of the bank witnesses were able to identify the three defendants."

## RUBINO SENTENCED FOR TAX EVASION

March 12, 1969: Mike Rubino, an identified La Cosa Nostra member, was sentenced to 10 years imprisonment and fined $40,000 by U.S. District Judge Damon J. Keith in the Eastern District of Michigan. Rubino had

been found guilty on January 29, 1969, after trial by jury of tax evasion for the years 1958 through 1961. The case was tried by Tax Division attorney Charles McNelis and Assistant U.S. Attorney Howard O'Leary.

## A.G. RECOMMENDS ELECTORAL COMPROMISE

Attorney General John Mitchell closed House hearings on electoral reform, urging Congress to accept the compromise proposed by President Nixon or to satisfy itself with the minor changes needed to "eliminate the possibility that a third-party candidate could stalemate" future elections. Among the changes recommended by Mr. Mitchell were: Elimination of the individual electors, who are now free to vote their own choice for President; reduction of the share of the vote (either popular or electoral) needed for election from 50 per cent to 40 per cent; provision for a runoff election between the top two candidates, instead of throwing the choice to Congress.

## ASSISTANT A.G. OF CIVIL RIGHTS DIVISION PROMISES HIGH PRIORITY FOR OPEN HOUSING ENFORCEMENT

March 15, 1969: Jerris Leonard, Assistant Attorney General for the Civil Rights Division told an audience in Madison, Wisconsin that the Civil Rights Division recognizes "the urgency and importance of enforcing the open housing laws and intends to place high priority on moving ahead in this area." Speaking before the Conference on Open Housing sponsored by the Wisconsin Department of Industry, Labor and Human Relations, Mr. Leonard explained why open housing is such an important steps towards equal opportunity: "It may make little sense to talk of desegregating schools when housing patterns are such that effective desegregation is impossible without transporting children many miles to school; and it may make little sense to talk about equal opportunity in employment when our housing patterns are such as to make meaningful job opportunities unavailable for those who must commute long distances each day from the ghetto in which they live to the new industry sites. It is, therefore, evident that equal opportunity in housing is tied in very closely not only with equal opportunity in employment and education but with the broader equal opportunity to succeed in and to become a part of the mainstream of our society."

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

### APPOINTMENTS

### ASSISTANT UNITED STATES ATTORNEYS

California, Central - TOM G. KONTOS: University of Illinois - Navy Pier; DePaul University College of Law, LL.B. Former corporate counsel, The Leisure Group, Contract Administrator, and Tax Semi-Senior, accounting firm.

District of Columbia - D. WILLIAM SUBIN: Dartmouth College, A.B.; Columbia Law School, LL.B. Former Assistant County Prosecutor, New Jersey.

Nebraska - EDWARD F. FOGARTY: Creighton University, A.B.; Creighton University, J.D.

### RESIGNATIONS

### ASSISTANT UNITED STATES ATTORNEYS

Illinois, Northern - LAWRENCE E. MORRISSEY: Transfer to Department of Justice, Criminal Division, Organized Crime & Racketeering.

Massachusetts - EDWARD F. HARRINGTON: To return to private practice.

New York, Eastern - STUART C. GOLDBERG: To join Securities and Exchange Commission, New York.

New York, Southern - DAVID M. DORSEN: To join New York City's Department of Investigation.

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## ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

## DISTRICT COURT

### SHERMAN ACT

COURT DENIES MOTION TO DISMISS BASED ON DOUBLE JEOPARDY AND RES JUDICATA.

United States v. The American Oil Co., et al. (Cr. 153-65; February 18, 1969; D. J. 60-57-170)

In an opinion filed February 18, 1969, Judge Wortendyke denied a motion by seven out of eight defendants to bar trial of any of them under Count I of the indictment and to dismiss said Count as to each of them. The motion was grounded upon the argument that trial under Count I is barred by the double jeopardy clause of the Constitution and the doctrine or res judicata. The argument was predicated upon the fact that defendants had been tried in United States v. Arkansas Fuel Oil Corp., Cr. No. 3450 (E.D. Va.) (the "Tulsa" case).

The instant case charges the seven defendants, among others, with having conspired to fix gasoline prices in New Jersey, Pennsylvania and Delaware from 1955 up to and including the return date of the indictment (April 1965). The Tulsa indictment charged 29 defendants, including the seven herein, with having conspired, from sometime in 1956 to January 1957, to raise the price of crude oil and gasoline throughout most of the country in January 1957.

Both sides agreed that the question to be resolved was whether the two indictments charged separate conspiracies or a single conspiracy. Defendants argued that, given the overlap of defendants, product (gasoline), term (price fixing), and time (1956 to January 1957) there was only one conspiracy as a matter of law. The Government argued that the question was one of fact; that the defendants had the burden of showing by a preponderance of the evidence that the two alleged conspiracies were in fact one conspiracy; that defendants had failed to make such a showing; and that the Government had demonstrated, on the basis of all the materials submitted by the defendants (bills of particulars, stipulations, and the opinion of the Tulsa court granting defendants' motion for acquittal), that the two conspiracies alleged were in fact two separate conspiracies.

In his opinion denying the motion, Judge Wortendyke stated that defendants had the burden of showing, by a preponderance of the evidence,

that the two alleged offenses were one single offense; that "offenses are not the same for purposes of the double jeopardy clause of the Fifth Amendment unless the evidence required to support conviction on one of the indictments would have been sufficient to warrant conviction on the other"; that the failure of defendants to show what evidence was used by the Government in the Tulsa case made it impossible for the court to determine whether that evidence was sufficient to warrant conviction under the instant indictment; and that therefore defendants had not met their burden of proof. The court stated further that in view of the failure to show identity of causes of action, the doctrine of res judicata was not applicable.

Staff: Norman H. Seidler, Bernard Wehrmann, Edward F. Corcoran, Barry Ravech, David Leinsdorf and Bruce E. Repetto (Antitrust Division)

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## TAX DIVISION

Assistant Attorney General Johnnie M. Walters

## COURT OF APPEALS

### ENFORCEMENT OF INTERNAL REVENUE SUMMONSES

TAXPAYER HELD BY SEVENTH CIRCUIT TO HAVE UNQUALIFIED RIGHT TO INTERVENE IN JUDICIAL SUMMONS ENFORCEMENT PROCEEDING AGAINST THIRD PARTY DEMANDING CORPORATE BOOKS AND RECORDS

United States v. Benford, et al. (C.A. 6, No. 16771; February 11, 1969; D.J. 5-26-877) (Previously noted at Vol. 16, U.S. Attorneys Bulletin, No. 11, p. 373)

The taxpayer, Fred Mackey, sought to intervene in this judicial summons enforcement proceeding brought by the Government against a corporate officer who had custody of certain corporate books and records relating to Mackey's income tax liabilities.

Intervention was denied by the district court for the first time for failure to satisfy Rule 24(a) of the Federal Rules of Civil Procedure and a second time because the Court agreed with the Second Circuit in In re Cole, 342 F.2d 5 (C.A. 2, 1965), and disagreed with the Sixth Circuit in Justice v. United States, 365 F.2d 312 (C.A. 6, 1966). Those cases had to interpret the scope of intervention in judicial summons enforcement cases afforded by Reisman v. Caplin, 375 U.S. 440 (1964), and split over the question of whether a taxpayer could intervene in an enforcement action against a bank for the bank's records of its transactions with the taxpayer.

Without citing or discussing either Cole or Justice (or any of several other Circuit Court decisions treating with the issue) the Seventh Circuit declined to hold Reisman v. Caplin strictly to its facts and reversed, opting for an unqualified right of intervention. The Court did add that this does not extend carte blanche to the intervening taxpayer to obstruct or delay the proceedings and that the trial court could bar or limit discovery where appropriate. Application for certiorari is under consideration.

Staff: Joseph M. Howard and John P. Burke
(Tax Division)

## SEVENTH CIRCUIT AFFIRMS SUMMONSES TO TRUSTEES OF ALLEGEDLY TAX-EXEMPT TRUST; CRIMINAL CONSEQUENCES OF SPECIAL AGENT'S INVESTIGATION NOT A BAR TO USE OF SUMMONS; CURTAILMENT OF DISCOVERY BY DISTRICT COURT NOT ERROR

United States v. Hayes, et al. (C.A. 7, No. 16878; February 19, 1969; D.J. 5-23-5898) (69-1 U.S.T.C. par. 9231)

Americans Building Constitutionally is an allegedly not-for-profit trust engaged in a chain-letter type of scheme for avoiding federal taxation by parading as a tax-exempt foundation. In an investigation to determine ABC's tax status and liabilities, if any, a special agent of the Internal Revenue Service issued summonses to the three trustees demanding their testimony and the trust records.

After some maneuvering, characterized by the Court of Appeals as a shell game, two of the trustees divested themselves of the trust records by giving them to the third trustee, Robert D. Hayes. They then set up their non-possession as a defense to the summonses and invoked various constitutional privileges as a defense to testifying. Hayes refused to produce the records or testify on the basis of numerous constitutional defenses and other objections: ABC is a not-for-profit trust for educational purposes and tax exempt; the Government had violated the rights of Hayes, ABC, and its members under Article I, Section 1 of the Constitution as well as the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth and Fourteenth Amendments; and the Government, including a House of Representatives subcommittee, had embarked upon a course of action calculated to harass and embarrass Hayes, ABC, and its members.

Hayes invoked essentially the same defenses to testifying both at a pretrial deposition and at trial. At trial Hayes sought a continuance to conduct further discovery which was denied. After trial the district court granted an order striking Hayes' affirmative defenses and ordered compliance with the summonses.

On appeal the Seventh Circuit examined the record minutely, gave Hayes the benefit of every doubt and inference, and concluded that curtailment of his discovery and the striking of his affirmative defenses had been appropriate. The Court also held that a special agent of the Intelligence Division may properly issue summonses even though one of the objects of his investigation is to determine whether there has been a criminal violation of the revenue laws.

Staff: Joseph M. Howard, John P. Burke and James H. Jeffries, III (Tax Division)

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