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NEWS NOTES

U.S. ATTORNEY FRANKLIN RECEIVES 1968 BROTHERHOOD AWARD

February 21, 1969: Benjamin E. Franklin, United States Attorney for Kansas, was selected to receive the annual B'nai B'rith Brotherhood Award for outstanding contribution to Kansas City, Kansas in the field of inter-faith and inter-racial understanding. Mr. Franklin has served as United States Attorney since June, 1968, prior to which time he was the Chief Trial Attorney in the United States Attorney's office. In December, 1968, the Department of Justice presented him with the John Marshall Award "for trial litigation in recognition and appreciation for outstanding service to the department and to the nation".

AUSA NICHOLS COMMENDED FOR PROSECUTION OF ALIEN TRAFFICKER

February 24, 1969: C. W. Fullilane, District Director of the Immigration and Naturalization Service of the Department of Justice has commended Assistant U.S. Attorney Richard Nichols of the Eastern District of California in a letter to U.S. Attorney John Hyland for his successful prosecution of a defendant who had been suspected of illegally trafficking in aliens for several years.

U.S. ATTORNEY DILLAHUNTY AND AUSA SHERMAN COMMENDED BY POST OFFICE DEPARTMENT FOR MAIL FRAUD PROSECUTION

March 14, 1969: United States Attorney W. H. Dillahunty and Assistant U.S. Attorney William F. Sherman of the Eastern District of Arkansas have been commended by Chief Postal Inspector H. B. Montague for their handling of a complex mail fraud case. The case involved a large insurance swindle to the extent of $2.5 million and included many servicemen among its victims.

ELEVEN INMATES OF LORTON REFORMATORY INDICTED FOR NARCOTIC VIOLATIONS

March 18, 1969: Eleven inmates of the District of Columbia Reformatory at Lorton, Virginia have been indicted on charges of violating Federal narcotic laws.

The indictments, which were returned by a Federal Grand Jury at Alexandria, Virginia, followed an intensive investigation during the past two months into the illicit drug traffic at the Reformatory and the sources of supply in the District of Columbia, Attorney General John Mitchell said.

John E. Ingersoll, Director of the Department's Bureau of Narcotics and Dangerous Drugs, said that three civilians--an employee of the Reformatory machine shop and two Washington, D.C., women--were arrested in connection with the investigation.

During the investigation, undercover purchases of heroin were made from seven inmates at the Reformatory and from two sources of supply for the inmates, Ingersoll said. Narcotic drugs were found in the possession of four other inmates, he said.

The investigation was conducted by Special Agents of the Bureau of Narcotics and Dangerous Drugs in cooperation with the District of Columbia Department of Corrections and the Metropolitan Police Department.

ASSOCIATE ADMINISTRATOR - DESIGNATE VELDE OF LEAA SAYS NATION'S CORRECTIONS SYSTEM IS A FAILURE

March 19, 1969: Richard Velde, Associate Administrator, Designate of the Law Enforcement Assistance Administration, said that "the most generous observer would be compelled to say that the nation's corrections system is failing in its great tasks. It does not adequately protect society. It does not rehabilitate enough criminals. Certainly, some are reformed, but is it because of what the corrections sytem does or because of the luck of the draw?" In a speech to the Regional Institute For State and Local Assessment and Planning In Corrections at College Park, Maryland, Mr. Velde stressed that today it is within our capabilities to "wrest our corrections systems out of the eighteenth century". The vehicle, he said, can be the program of LEAA. "To receive grants, every state plan must be comprehensive--meaning that police, courts, and corrections have to be on an equal footing. In the LEAA, we are determined that this will be the case." The great hopes for prisoner rehabilitation "lie in the programs that evidence new concepts such as work release, halfway houses, community treatment, and really effective and adequately financed probation and parole", said Mr. Velde.

But the greatest failure of this country in attempting to cope with crime is "our failure to deal with the youthful offender. None is so significant, none is so frightening, for our children are our most lawless citizens. Recent figures show that persons under 21 represent some 64 percent of all those arrested for the most serious crimes: homicide, forcible rape, robbery, aggravated assault, burglary, larceny, auto theft... Our 15 and 16-year-olds are arrested more frequently than any other age group... No program can substitute for the concern that the people of this country must develop. They must know that we cannot go

on failing so many children in such profound ways and still have any real hope for tomorrow." Mr. Velde concluded by noting that today many groups across the country are aware of the shortcomings of the corrections system and are trying to effect a change in our outmoded practices. "We must now transmit that sense of urgency so that people everywhere support these efforts as though their lives depended on it. In more instances than we might like to admit, that is precisely the case."

NBC NEWS EXECUTIVE INDICTED FOR VIOLATION OF EAVESDROPPING STATUTE

March 20, 1969: A television news executive has been charged with attempting to conduct illegal electronic surveillance of two closed committee hearings at the Democratic National Convention in Chicago last August. Attorney General John N. Mitchell said the indictment was returned by a federal grand jury in U.S. District Court in Chicago.

The indictment charged Enid Roth of New York City, formerly a news director for the National Broadcasting Company, with two counts of wilfully endeavoring to use an electronic device to intercept oral communications.

Miss Roth assertedly caused microphones to be concealed in two rooms at the Sheraton-Blackstone Hotel where the Platform Committee held closed meetings on August 25 and 26.

Each count of the statute--Section 2511(1), Title 18, U.S. Code--carries a maximum penalty upon conviction of five years in prison and a $10,000 fine.

The investigation leading to the indictment was headed by United States Attorney Thomas A. Foran in cooperation with the Criminal Division of the Justice Department and the FBI.

CHICAGO GRAND JURY INDICTS 16 IN CONNECTION WITH DISORDERS DURING DEMOCRATIC CONVENTION

March 20, 1969: A federal grand jury in Chicago has indicted eight Chicago policemen and eight other persons on criminal charges stemming from the disorders during the Democratic National Convention last August. The eight civilians were the first persons to be indicted under the anti-riot provisions of the 1968 Civil Rights Act.

The eight-months long investigation was headed by United States Attorney Thomas A. Foran in cooperation with the Criminal and Civil Rights Divisions of the Justice Department and the FBI.

Charged with conspiring to use interstate commerce with the intent to incite acts of violence were: David T. Dellinger, 53, of Brooklyn, N.Y.; Rennard C. Davis, 28, of Chicago; Thomas E. Hayden, 29, of New York City; Abbott H. Hoffman, 32, of New York City; Jerry C. Rubin, 30, of New York City; Lee Weiner, 29, of Chicago; John R. Froines, 29, of Eugene, Ore.; and Bobby G. Seale, 32, of Oakland, Calif.

Also indicted were: Lt. Carl Dobrich, 39, charged with two counts of perjury; Officers Arthur R. Bischoff, Thomas Michael Mayer, George Jurich, Vincent J. D'Amico, Edward M. Becht, Thomas Michael Flemming and Ramon C. Andersen, charged with violations of the 1866 Civil Rights Act "while acting under the color of the laws... did wilfully strike, hit and assault" certain persons "with the intent of punishing" them "summarily and without due process of law..."

DEPARTMENT AND STATE ATTORNEYS GENERAL HOLD ANTI-TRUST CONFERENCE

March 26, 1969: The Department of Justice and the National Association of Attorneys General held a Federal-State Conference on Anti-Trust Problems March 26 at the Smithsonian Museum of Science and Technology in Washington, D.C. The conference was part of a cooperative program being established between the Department of Justice and state Attorneys General in several areas of mutual concern in law enforcement.

Richard W. McLaren, Assistant Attorney General in charge of the Antitrust Division, presided at the conference. The program covered specific antitrust problems, such as treble damage litigation, and explored the role of state Attorneys General and other state law enforcement officers in achieving antitrust objectives.

The conference also covered areas of federal-state cooperation and provided an opportunity for the exchange of ideas on the improvement of information and liaison in this significant field where federal-state law enforcement responsibilities are so closely aligned.

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POINTS TO REMEMBER

BANKRUPTCY MATTERS

The Administrative Office of the United States Courts has asked that the United States Attorneys be reminded of the provisions of 18 U.S.C. 3057(b), which require the United States Attorneys to report to the bankruptcy referee on the disposition of criminal matters involving bankruptcy proceedings. The procedure to be followed is set forth on pages 61 and 62 of Title 2, United States Attorneys Manual, which states, in part:

> In implementing Section 3057(b), the following procedure should be followed: Upon report of a possible bankruptcy violation, the United States Attorney shall notify the referee that (1) the case will be investigated, or (2) the case has been closed. If the United States Attorney desires investigation, he should refer the case to the local office of the FBI with a request for investigation. At the termination of such investigation, the United States Attorney shall make a second report to the referee stating that (1) prosecution has been initiated by return of an indictment or information, or (2) the case has been closed. No explanation of the conclusions reached need be made to the referee. No reports will be made when the referee himself is the subject of the investigation. In the event prosecution is declined, cogent and reasonably detailed reasons for such declination together with specific reference to the facts of the case shall be reported to the Attorney General (1) by report to the Federal Bureau of Investigation or (2) by letter addressed to the Criminal Division of the Department of Justice.

FEDERAL COURT TRANSCRIPT RATES

The new maximum transcript rates as approved by the Judicial Conference of September 1968 and shown in the United States Attorneys Bulletin of November 1, 1968, have become effective in the following additional districts:

Ala., S.
Fla., N.
Ill., E.
Ill., N. - Eastern Div.
Ind., N.
Okla., N.
Pa., M.
Tenn., E. - Northern & Southern Div.
Tex., N.
Utah
Wisc., W.

* * *

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

APPOINTMENTS

ASSISTANT UNITED STATES ATTORNEYS

California, Central - DAVID H. FOX: Los Angeles State College, B.A.; Stanford University, LL.B. Formerly in private practice.

Indiana, Northern - JAMES F. KIMBROUGH: DePauw University, B.A.; Indiana University, J.D. Formerly in private practice.

Kentucky, Eastern - SAMUEL F. KIBBEY: Georgetown College, University of Nancy; University of Kentucky, LL.B. Formerly in private practice and private industry.

RESIGNATIONS

ASSISTANT UNITED STATES ATTORNEYS

Alabama, Middle - RALPH O. HOWARD: To become regional counsel for Small Business Administration.

Arkansas, Eastern - WILLIAM F. SHERMAN: To join Securities Commission, State of Arkansas.

Illinois, Northern - JOHN J. McDONNELL: To become Chief, Organized Crime Section, State Attorneys Office, Cook County.

Missouri, Eastern - JON R. EDGAR: To join law firm of Bryan, Cave, McPheeters, McRoberts.

New York, Southern - TERRY F. LENZER: To become Special Assistant to John Doar, President of the Board of Education.

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ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

DISTRICT COURT

CLAYTON ACT

COMPLAINT UNDER SECTION 7 OF ACT.

United States v. Iowa Beef Packers, Inc., et al. (N.D. Iowa, Civ. 69-C-3008-W; February 24, 1969; D.J. 60-50-037-1)

On February 24, 1969, a civil action was filed in the U.S. District Court for the Northern District of Iowa (Sioux City), under Section 7 of the Clayton Act, challenging the proposed merger of Iowa Beef Packers, Inc. and Blue Ribbon Beef Pack, Inc. The complaint alleges that the merger of IBP and Blue Ribbon would result in the elimination of actual and potential competition between the two corporations in the purchase of fed cattle in (1) a ten county area surrounding Blue Ribbon's LeMars, Iowa packing plant; (2) The State of Iowa and (3) the four-State area of Iowa, Nebraska, Minnesota and South Dakota. The complaint also alleges that potential competition between IBP and Blue Ribbon in the sale of primal and fabricated beef cuts will be eliminated.

IBP, incorporated in 1960, is one of the two largest beef packers in the United States in terms of number of cattle slaughtered. It slaughters only fed cattle. (The complaint defines fed cattle as animals fattened for slaughter on grain or other concentrates and expected to produce a carcass which will grade U.S.D.A. good or better.) IBP owns and operates five packing plants located within a 125 mile radius of Sioux City, Iowa. Blue Ribbon is also a new entrant into the beef packing industry. It slaughters only fed cattle. Blue Ribbon owns and operates two packing plants located at Mason City, and LeMars, Iowa.

In 1968 IBP purchased about 29% and Blue Ribbon 7% of the fed cattle marketed in the ten Iowa counties in and around Blue Ribbon's LeMars plant; in the State of Iowa IBP's purchases of fed cattle represented approximately 16% and Blue Ribbon's approximately 5%; and in the four-State area of Iowa, Nebraska, Minnesota and South Dakota IBP's purchases of fed cattle represented about 15% and Blue Ribbon's about 3%.

A motion for a temporary restraining order and an application for a preliminary injunction was filed with the complaint. On the afternoon of February 24, 1969, an ex parte temporary restraining order was entered by Judge Hanson. On March 6th, the return date on the Government's application for a preliminary injunction, the court, on the consent of the defendants, entered an order extending the TRO pending determination of the complaint on its merits.

We have received extensive assistance from economists in the Packers and Stockyards Administration, Department of Agriculture, in putting together market data in this action.

Staff: J. E. Waters, Leonard J. Henzke, Jr. and Robert B. Greenbaum (Antitrust Division)

* * *

CIVIL DIVISION

Assistant Attorney General William D. Ruckelshaus

COURTS OF APPEALS

FEDERAL TORT CLAIMS ACT

SOLDIER USING HIS OWN AUTOMOBILE, WITHOUT AUTHORIZATION, TO EFFECT TEMPORARY TRANSFER OF DUTY STATION, HELD NOT ACTING WITHIN SCOPE OF HIS EMPLOYMENT AND THEREFORE U.S. IS NOT LIABLE UNDER PRINCIPLES OF RESPONDEAT SUPERIOR.

Alma Louise Stone v. United States, et al. (C.A. 5, No. 26,652; March 12, 1969; D.J. 157-17M-85)

A serviceman received orders transferring him from his permanent duty station in Key West, Florida, to a temporary assignment at New London, Connecticut and directing him to travel by individual commercial transportation. He disregarded these orders and used his own automobile to drive to his temporary assignment. In Florida, while en route to Connecticut, he was involved in the accident giving rise to this suit under the Tort Claims Act. The district court, applying Florida law, held that the serviceman was not authorized to use his private automobile, the United States had no knowledge that he would use his automobile, and the United States had no control over his driving. Hence, the serviceman was not within the scope of his employment at the time of the accident.

The Fifth Circuit affirmed, upholding the district court's determination that the use of a private automobile was unauthorized. Relying on Paly v. United States, 125 F. Supp. 798 (D. Md.), aff'd. 221 F.2d 958 (C.A. 4), and general principles of agency law, the Court held that in such circumstances the serviceman was not acting within the scope of his employment and the United States could not be held liable under principles of respondeat superior.

Staff: Norman Knopf, Patricia S. Baptiste (Civil Division)

U.S. NOT LIABLE UNDER RESPONDEAT SUPERIOR FOR NEGLIGENCE OF SOLDIER TRAVELING IN CONNECTION WITH PERMANENT CHANGE OF STATION TRANSFER.

United States v. Noel Hunt McRoberts, et al. (C.A. 9, No. 22,078; March 11, 1969; D.J. 157-12-1415)

Plaintiffs attempted to impose respondeat superior liability upon the United States under the Tort Claims Act for the negligent driving of a serviceman. The serviceman, driving his own car, was traveling pursuant to Permanent Change of Station Orders which authorized use of a privately owned automobile, and which granted leave time plus travel time within which to effect the transfer. At the time of the accident, which occurred in California, the serviceman was on the direct route to both his new duty station and to the home of his parents, where he intended to spend his leave time prior to reporting at his new duty station. The district court held that the serviceman was acting within the scope of his employment at the time of the accident.

The Ninth Circuit reversed, holding that its decision in Chapin v. United States, 258 F.2d 465, was controlling. Specifically, the Court hold that the facts of McVicar v. Union Oil Co., 138 Cal. App. 2d 370, 292 P.2d 48 (Dist. Ct. App.) were analagous to the facts here, and that case requires here, as it did in Chapin, a holding that the employee was not within the scope of his employment. The Court also distinguished its holding in Romitti v. United States, 363 F.2d 662, emphasizing that the instant case concerned a permanent change of station, and an authorization of leave time in connection with the transfer.

Staff: Robert V. Zener, Patricia S. Baptiste (Civil Division)

POSTAL WORKERS

COURT HOLDS THAT UNION CAN SUE ON BEHALF OF MEMBERS.

United Federation of Postal Clerks, AFL-CIO, et al. v. Watson, Postmaster General of the U.S. (C.A. D.C., No. 21,685; February 27, 1969; D.J. 145-5-3183)

An individual annual-rate postal employee and his union, United Federation of Postal Clerks, brought this action challenging the implementation by the Post Office Department of Section 5 of the Federal Employees Salary Act of 1965. The Court rejected our argument that the union lacked standing to sue on behalf of its members, noting that standing to maintain such suit was concomitant with its duty to represent the interests of its members.

Prior to the 1965 amendments, each annual-rate regular employee was considered to have a Monday through Friday work week, and could be compelled to work on a Saturday or Sunday provided he was granted compensatory time, for the extra work performed, within five days. By

virtue of the 1965 amendments the fixed Monday-Friday work week was eliminated, and the Postmaster General was granted authority to "establish work schedules in advance for annual-rate regular employees consisting of five eight-hour days in each week". The Postmaster General thus established a seven-day "service week" (Saturday-Friday) and assigned annual-rate regular employees to five-day basic work weeks within the service week. Plaintiff was assigned to a Monday through Friday basic work week. During one week in June, 1966, his basic work week was changed to Saturday, Sunday, Tuesday, Wednesday, and Thursday. Although he only worked 5 days in the "service" week, suit was brought seeking a declaration that the 1965 amendments compelled the payment of overtime for work performed outside of the "regular" work week.

The Court of Appeals agreed, noting that the 1965 amendments had been designed to abolish compensatory time for work performed on an employee's regular day off.

Staff: Ralph A. Fine (Civil Division)

SUPREMACY CLAUSE

STATE MAY NOT REGULATE OR CONTROL ACTIVITIES OF DEPARTMENT OF INTERIOR CONDUCTED UNDER FLOOD CONTROL ACT OF 1944.

Iowa Public Service Co. v. Iowa State Commerce Commission, et al. (C.A. 8, No. 19281; March 5, 1969; D.J. 145-7-344)

The Iowa Public Service Company, a private supplier of electric power, filed a complaint with the Iowa State Commerce Commission seeking to enjoin the United States Bureau of Reclamation from selling electric power, generated at a federal flood control project, to certain Iowa municipalities that would otherwise be served by the private power company. The Iowa Commerce Commission dismissed the power company's suit; the company sought review in Iowa state court. We removed the action to the federal district court, which also dismissed it. The power company appealed.

The Eighth Circuit affirmed. The Court held that the Supremacy Clause of Article VI of the Constitution prevented the State of Iowa from interfering with or conditioning the operation of any federal policy constitutionally mandated by Congress. Therefore, Iowa could not interfere with sales of electric power or other federal activities taken pursuant to the Federal Flood Control Act of 1944.

Alternatively, the Court held that the suit must fail as an unconsented action against the United States. It pointed out that the suit sought relief not against the federal officers actually named, but in effect against the United States itself, in that it attempted to prevent sales of electric power intended by Congress to provide funds to be applied against the cost of federal flood control projects.

Staff: Daniel Joseph (Civil Division)

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