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NEWS NOTES

DEPARTMENT WILL CHALLENGE LTV's ACQUISITION OF JONES & LAUGHLIN STEEL COMPANY

March 26, 1969: The Department of Justice announced that Ling-Temco-Vought, Inc. and Jones & Laughlin Steel Corporation had agreed to the entry of a preliminary injunction limiting LTV's acquisition of J & L stock.

Attorney General John N. Mitchell, who announced the preliminary injunction agreement, said that it also requires LTV to maintain J & L Steel as a completely separate entity during the pendency of the Department of Justice antitrust law suit against LTV and J&L. The antitrust suit, which will be filed by April 15, will demand that LTV divest itself of all of its interest in Jones & Laughlin Steel Corporation. The preliminary injunction agreement also stipulates that LTV will waive all of its rights to any other legal alternative but complete divestiture if it loses the antitrust case. In return for this agreement, LTV is being permitted to continue its current tender offer for J&L Steel Corporation stock but may keep only 81 per cent of the outstanding common stock shares. Other provisions of the agreement are:

That no employee, officer, or director of LTV shall serve as an official or director of J&L Steel; and

All the J&L Steel stock now held by LTV or which it will acquire in the future will go into a voting trust controlled by J&L Steel Corporation management, none of whom shall be employees of LTV.

A.G. SUGGESTS USE OF ANTITRUST LAWS IN FIGHT AGAINST ORGANIZED CRIME

March 27, 1969: Attorney General John N. Mitchell, in a speech before the Antitrust Section of the American Bar Association, has suggested that the antitrust laws could be a powerful weapon in the fight against corporate structure of organized crime. The Attorney General described this "corporation" and the possible antitrust attacks which could be made upon its assets and its directors:

> Suppose I suggest to you that there is in this country a well-organized major corporation with a carefully selected board of directors, and 22 subsidiary "family" corporations, which employs a management group of 5,000 persons in a

highly stratified structure; and that this corporation is America's principal supplier of such goods and services as illegal gambling, narcotics, usurious loans, prostitution and the numbers game.

In the last decade, this corporation has invested a substantial part of its $50 billion dollar a year income in a whole realm of small and middle-sized legitimate businesses--in banks and small loan companies, trucking and transportation, food and health services, in importing and exporting, electronics, construction, real estate, restaurants, juke boxes, vending machines, and labor unions.

This nationwide corporation of gangsters is highly cohesive and maintains frequent communication. It has not been satisfied to compete on an equal basis in a free economy. It has transferred to the legitimate field of business the same strong-arm practices which have proved so successful in the past.

A manufacturer who will not use a gangster-owned trucking firm finds his life in danger. A bar tender who will not rent a gangster-owned juke box finds that his waiters go on strike. A grocery store owner who will not buy a certain type of imported food may be burned out.

Furthermore, in its legitimate business enterprises, organized crime frequently demands a higher price for its goods and services than is generally offered in the market place, and provides a lower quality of products. Because of its internal structure, there is little doubt that markets are divided among gangsters, and that prices are fixed. In addition, the close internal structure of organized crime makes it quite clear that almost every legitimate enterprise owned by an organized gangster fits, in some way, into the overall organized crime conspiracy.

Is there any question, then, in your mind, that this corporation violates the famous stricture forbidding "every contract, combination...or... conspiracy, in restraint of trade?"

What I am suggesting is that, the principles of our antitrust law may be used as a powerful weapon against organized crime's corrupt management of so-called legitimate business.

The Department is now studying the possibilities and I must say, quite honestly, that I can make you no promises as to the outcome. But if I am optimistic, my optimism stems from the enormous viability and durability of the Sherman Act theories through which we have, with the Clayton Act additions, effectively protected the free competition rules of the American market place--rules which organized crime cannot and will not obey.

We are studying the whole field of antitrust law in relation to organized crime but, specifically, we are considering the civil aspects of antitrust theory.

What intrigues me is that our antitrust laws may have a panoply of weapons to attack the "property" of organized crime--rather than the unimportant "persons" who technically head up gangster-controlled businesses.

There is the injunction with its powers of contempt and seizure. There are heavy monetary fines and treble damage actions. There could be forfeiture, a penalty which, while incorporated into the original Sherman Act, has not been utilized for more than 40 years...

Experience has shown that, in organized crime's ownership of legitimate business, men tend to be a cheaper commodity than property. If we can convict a Mafia lieutenant and place him in jail, another may take his place. Perhaps we should investigate the deterrent of heavy financial loss. If we can levy fines on their real estate corporations, if we can seek treble damages against their trucking firms and banks, if we can seize the liquor in their warehouses, I think we can strike a critical blow at the organized crime conspiracy.

I am not suggesting that we attempt this task only under the Sherman Act and Clayton Acts as they exist today. I think perhaps we would in any case, need some new legislation aimed specifically at the organized crime conspiracy

and, it would be my initial impression, that such legislation should be a complete package rather than, in any way, amending the Sherman or Clayton Acts.

DEPARTMENT ATTACKS "BLOCKBUSTING" AS VIOLATION OF CIVIL RIGHTS ACT

March 28, 1969: The Department of Justice urged a federal court to rule that a group of Negro homeowners have the legal right to attack residential "blockbusting" as a violation of the Nation's first Civil Rights Act.

Attorney General John N. Mitchell said that the landmark Justice Department petition was the federal government's first effort to break massive northern housing segregation under the Supreme Court's ruling in Jones v. Mayer last June.

In Jones v. Mayer, the Supreme Court said that Negroes, under the 1866 Civil Rights Act, have an equal right with whites to purchase housing on a non-discriminatory basis.

The Justice Department memorandum was filed in the U.S. District Court for the Northern District of Illinois as a "friend of the court" by United States Attorney Thomas A. Foran.

Jerris Leonard, Assistant Attorney General in charge of the Civil Rights Division, said the memorandum also marked the first time that the federal government has entered a housing suit, brought by private parties, at the district court level. It was also the first attack by the Justice Department on sale terms which are more onerous to Negroes than to whites.

The case in which the Justice Department became involved was originally brought by the Contract Buyers League against a group of Chicago real estate agents and investors and lending institutions. The League is an association of black persons who have purchased homes in the Lawndale area of Chicago's west side from 1958 to the present. The government petition urged the court to deny the defendants' motion for dismissal of the case and give the Contract Buyers League an opportunity to prove its allegations.

If the charges against the defendants are proved true, the memorandum said, "the harm inflicted must be remedied by reformation of the contracts to provide for such terms and conditions as white persons would have been

granted at the time (of home purchase) and any excess payments should be refunded or applied to the adjusted contract balance."

The Contract Buyers League contended in its suit that there is "a pattern and practice or custom" in the financing of housing and black residents of Chicago are unable to buy or rent homes outside of Negro districts.

The suit also contended that "certain real estate brokers and agents, and other white speculators" used blockbusting, in which a Negro would be allowed to buy a home in a previously all-white neighborhood and neighboring white homeowners would be talked into selling out to speculators at low prices out of fear of falling property values.

The Negroes contended the speculators were able to obtain mortgages on such property because they were white and that the speculators then resold the homes to Negroes at inflated prices. The suit contended the speculators would sell the homes to Negroes only on a contract basis, in which the purchaser would not accrue any equity in his property until all of the payments were made. Denied access to normal financing sources, Negroes had no choice but to accept these conditions, the suit said.

The government, in its memorandum as amicus curiae, contends that discrimination in sale and financing terms violates the 1866 Civil Rights Act, which guaranteed Negroes the same rights of contract, and the same rights concerning ownership of real estate, as enjoyed by whites.

"Inflated prices, higher interest rates, and other onerous terms and conditions plaintiffs allege were imposed upon them, are in effect badges of slavery", the memorandum said.

The 1866 Act (42 U.S.C. 1981 and 1982) "was careful, in order to make clear that no unequal terms and conditions, such as higher interest rates or purchase price--all of which are effectively a charge based solely upon race and thus amount to a 'race tax'--were imposed on black persons", the government said.

The memorandum also contended that "the (Supreme) court specifically notes that Congress intended to and did provide that a black man's dollar would purchase the identical property as would a white's, and that property would be available for blacks on like terms and conditions as for whites."

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CRIMINAL DIVISION
Assistant Attorney General Will Wilson

COURT OF APPEALS

WAGERING TAX CONVICTION

WAGERING TAX CONVICTION FINAL PRIOR TO MARCHETTI AND GROSSO UPHELD. MARCHETTI AND GROSSO DECISIONS WILL NOT BE APPLIED RETROACTIVELY.

Graham v. United States (C.A. 6, No. 18725, March 10, 1969)

Appellant was convicted and sentenced by a jury for failure to register and to pay occupational and excise taxes imposed on persons engaged in the business of accepting wagers. 26 U.S.C. 4401, 4411, 4412, 7203. The present appeal is from a denial of appellant's motion to vacate (28 U.S.C. 2255) his sentence.

Appellant's failure to register and to pay taxes was undisputed and the Court of Appeals, on direct appeal from appellant's conviction, found that there was ample evidence for the jury to find that the appellant was engaged in the business of wagering on sporting events.

Appellant did not raise any Fifth Amendment issues on his original trial or appeal and his conviction was final prior to the date of the decision of Marchetti v. United States, 390 U.S. 39 (1968), and Grosso v. United States, 390 U.S. 62 (1968). He argued on this appeal for the first time that the Marchetti and Grosso decisions should be applied with unlimited retroactivity.

The Court of Appeals, relying on the criteria set forth by the Supreme Court in Stovall v. Denno, 388 U.S. 293, 297 (1967), concluded that Grosso and Marchetti should not be applied retroactively because: "a) the purposes outlined for the reversing decisions in Marchetti and Grosso will be adequately served by applying them largely prospectively (i.e., so as not to require reversal and retrial of cases wherein judgments had become final as of the date of the Marchetti and Grosso decisions); b) obviously law enforcement authorities prior to these cases relied implicitly (and had reason to do so) upon the prior holdings of the U.S. Supreme Court in United States v. Kahriger, 345 U.S. 22 (1953), and Lewis v. United States, 348 U.S. 419 (1955); and c) the impact of unlimited retroactivity upon the administration of justice would be substantial and adverse."

The district court's denial of appellant's motion was therefore affirmed.

Staff: Former United States Attorney Gilbert S. Merritt, Jr.; Assistant U.S. Attorney Rollie L. Woodall (M.D. Tenn.)

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LAND AND NATURAL RESOURCES DIVISION
Acting Assistant Attorney General Glen E. Taylor

DISTRICT COURT

NAVIGABLE WATERS

EFFECT OF FILLING OPERATIONS UPON FISH AND WILDLIFE IS NOT VALID GROUND FOR DENIAL OF PERMIT BY SECY. OF ARMY; MANDAMUS GRANTED TO COMPEL ISSUANCE OF PERMIT.

Alfred G. Zabel, et al. v. R. P. Tabb, District Engineer, Stanley R. Resor, Secretary of the Army & United States (M. D. Fla., Tampa Div., No. 67-200-Civ-T; February 17, 1969, D. J. 90-1-23-1334)

This action was brought to review the denial by the Corps of Engineers of an application by the plaintiffs for a permit to conduct certain dredging and filling operations and the construction of a seawall and bridge in Boca Ciega Bay, Pinellas County, Florida, for a declaratory judgment, and for an order in the nature of mandamus to compel the defendants to issue the permit for which the plaintiffs applied.

Plaintiffs' application for the permit was denied by the District Engineer, the Division Engineer, the Chief of Engineers and the Secretary of the Army. The reasons given by the Secretary of the Army for the denial of the permit were as follows: The issuance of the permit (1) would result in a distinctly harmful effect on fish and wildlife resources in the bay, (2) would be inconsistent with the purposes of the Fish and Wildlife Coordination Act of 1958, as amended, 16 U.S.C. 662, (3) is opposed by the Florida Board of Conservation and other state agencies, and (4) would be contrary to the public interest.

Motion to dismiss for lack of jurisdiction was denied March 14, 1968. After answer was filed, both sides moved for a summary judgment.

On February 17, 1969, the court granted plaintiffs' motion for a summary judgment and denied defendants' motion for a summary judgment. In its order, the court directed the District Engineer and the Secretary of the Army to issue the permit applied for, order the defendants not to interfere with the plaintiffs' dredging and filling operations and granted defendants' motion for a stay until a timely appeal of the case was considered and decided by the United States Court of Appeals for the Fifth Circuit.

The primary and most important issue in this case is whether the Chief of Engineers and the Secretary of the Army have discretion to deny a permit under Section 10 of the River and Harbor Act of 1899, 33 U.S.C. 403, where the proposed work would not have an adverse effect on navigation but would not be in the public interest because the filling and dredging operations would have a harmful effect on the fish and wildlife resources in the navigable waters of the United States.

The Fish and Wildlife Coordination Act of 1958, as amended, 16 U.S.C. 662, requires the Corps of Engineers to consult with the Fish and Wildlife Service of the Department of the Interior, and the head of the state agency having jurisdiction over fish and wildlife resources of the state for the purpose of conserving such resources and preventing their loss. The act also requires that the reports of the Secretary of the Interior and the head of the agency concerned shall be an integral part of any report submitted by the Chief of Engineers to the Secretary of the Army, who is directed to give full consideration to such report and recommendations. In this case, however, the court held, in effect, that the Chief of Engineers and the Secretary of the Army have no discretion to consider matters other than the effect of the proposed work on navigation in determining whether or not to grant or deny a permit under 33 U.S.C. 403. An appeal is under consideration.

Staff: Former Assistant U.S. Attorney Charles S. Carrere (M.D. Fla.); David D. Hochstein (Land and Natural Resources Division)

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