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TABLE OF CONTENTS

NEWS NOTES

FORMER POST OFFICE OFFICIAL INDICTED

May 28, 1969: A federal grand jury has indicted a former Post Office Department official on charges of bribery and corruption and conflict of interest.

Attorney General John N. Mitchell said a nine-count indictment was returned by a special grand jury in Baltimore against Joseph P. Doherty, former executive assistant to the assistant Postmaster General in charge of the Post Office Bureau of Facilities.

Each of the eight counts of bribery and corruption of a public official carries a maximum penalty of 15 years in prison and a fine of $20,000. A $5,000 fine and a one-year sentence could be imposed on the one count of conflict of interest. The indictment accused Doherty of seeking and agreeing to accept a $20,000 bribe from Dominic Piracci Sr., a Baltimore builder, and the Piracci Construction Company of Baltimore in violation of Section 201, Title 18, U.S. Code.

In return for the money and the promise of future employment, the indictment said, Doherty was to use his influence to help Piracci in obtaining a contract to build a new main Post Office in Baltimore and in the leasing of other Post Office facilities in Maryland. It also alleged that Doherty went to work for Piracci, using his influence in the Post Office Department, after he resigned from the Post Office Department in June, 1968, in violation of Section 207, Title 18, U.S. Code.

INJUNCTION SOUGHT TO INTEGRATE SWIM CLUB

June 4, 1969: The Department of Justice has filed suit for preliminary and permanent injunctions against a swimming facility in suburban Baltimore, Maryland, on the ground that it is a public accommodation and cannot exclude Negroes.

The Milford Mill Swimming Club, Inc., Catonsville, which operates two swimming pools, a quarry for swimming, a snack bar, and other recreation facilities, represents itself as a private club, the suit said, but is allegedly open to the white public and is ineligible for the private club exemption of the public accommodations section of the Civil Rights Act of 1964.

Pending trial of the suit, the Department asked the Court to order the club to admit Negroes since the swimming season has begun.

EIGHT COLUMBUS, OHIO POLICEMEN INDICTED FOR GAMBLING CONSPIRACY

June 4, 1969: A federal grand jury has indicted eight Columbus, Ohio, policemen and one of the men alleged to have made "monthly payoffs" to them for protection of a numbers operation.

Attorney General John N. Mitchell said the indictments, returned in U.S. District Court in Columbus, named the following defendants:

--Captain Jerry G. Ryan, chief of the intelligence squad of the Columbus police;

--Captain Robert C. Taylor, chief of the Columbus vice squad;

--Lieutenant William Voorhis, who was assigned to the vice squad;

--Vice Squad Sergeants Robert Brodt, and Frank Starkey;

--Vice Squad Patrolmen Gary Roach, Robert Martin, and James Marcum;

--and Frank Baldassaro, one of a group described in the indictment as numbers operators in Columbus.

The indictment accused each of the nine of conspiring to prevent the United States from lawfully collecting wagering taxes, with the police protecting the numbers operators from investigating agents of the Treasury Department, a violation of Section 371, Title 18, U.S. Code.

Ryan, Taylor and Voorhis also were indicted on two counts stemming from operation of an illegal gambling enterprise involving interstate commerce prohibited by Section 1952, Title 18, U.S. Code. Brodt and Roach were indicted on one count each under the same section.

The maximum penalty for each count in the indictment is a 5-year prison sentence and a $10,000 fine. Ryan, Taylor and Voorhis are named in three counts, Brodt and Roach in two, and Marcum, Starkey, Martin, and Baldassaro in one.

The indictment said the conspiracy and payoffs began in 1964 and continued into this year. Individual payments to police listed in the indictment ranged from $25 to $500. Part of the agreement of the conspiracy, the indictment said, was that the defendants would "frustrate and impede the investigations by agencies of the United States".

THREE CUBAN NATIONALISTS INDICTED FOR CONSPIRACY

June 4, 1969: Three members of the Cuban Nationalist Movement were indicted by a federal grand jury today on charges of conspiring to bomb Republic of Cuba property in Canada.

Attorney General John N. Mitchell said the indictment was returned in U.S. District Court in Newark, New Jersey, against Guillermo Novo Sampol, Felipe Martinez y Blanca, and Hector Diaz Limontes. The indictment charged that the three members of the militant anti-Castro organization conspired to injure and destroy the Cuban Consulate, the Cuban Trade Commission, and Cuban steamships. The conspiracy charge--under Section 965, Title 18, U.S. Code--carries a maximum penalty, upon conviction, of three years in prison and a $5,000 fine.

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POINTS TO REMEMBER

FEDERAL PROSECUTIONS OF THEFTS FROM INTERSTATE AND FOREIGN SHIPMENTS

The large number of minor cases involving thefts from interstate and foreign shipments constitutes a serious Federal law enforcement problem in many parts of the nation, particularly in waterfront areas. One United States Attorney attempted to expedite the disposition of such cases by prosecuting the offenders before a United States Commissioner by the use of the Assimilative Crimes Statute (18 U.S.C. 13) and the state penal code defining petty theft. There is no legal basis for this procedure, and the practice has been discontinued. The Assimilative Crimes Statute cannot be used in the prosecution of these cases for Congress has provided penalties for violations of section 659 (which are not petty offenses under 18 U.S.C. 1), and the United States Commissioners have no authority to make final disposition of these cases under 18 U.S.C. 3401-02. Further, the Federal Magistrates Act of October 17, 1968 cannot be utilized in the prosecution of these cases until the United States Magistrates assume office in accordance with the provisions of the Act.

Several years ago the Criminal Division approved a request by a United States Attorney that the FBI no longer present to him minor theft cases, and that such cases be referred to local authorities. United States Attorneys Bulletin, Vol. 15, No. 14, page 386, dated July 7, 1967; Department Memo No. 589, dated July 23, 1968. This procedure may be followed in other districts where there is a multiplicity of minor thefts from interstate and foreign shipments. On the other hand, aggravated cases should be given prompt and vigorous prosecutive action in the Federal court.

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ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

DISTRICT COURTS

CLAYTON ACT

COMPLAINT UNDER SECTION 7 OF ACT.

United States v. Continental Bank & Trust Co., et al. (E.D. Pa., Civ. 69-890; April 24, 1969; D.J. 60-111-1503)

On April 24, 1969, a civil suit was filed in the U.S. District Court in Philadelphia, Pennsylvania, challenging the proposed merger of Merchants National Bank of Allentown ("Merchants National") into Continental Bank and Trust Company ("Continental Bank"). The Board of Directors of the Federal Deposit Insurance Corporation had approved the transaction on March 27, 1969.

Continental Bank operates its head office and three branches in Norristown, Montgomery County, about six miles west of the Philadelphia city limits, and 38 other offices in Philadelphia, Montgomery, Delaware, and Chester counties. As of June 30, 1968, the bank had total deposits of about $435.2 million.

Merchants National operates its head office and four branches in Allentown, two branches in Whitehall, just outside Allentown, and four other branches in small communities between five and fifteen miles from Allentown, all in Lehigh County. With total deposits of $154.6 million, Merchants National has the third largest share, or 18%, of IPC deposits held by all the Allentown-Bethlehem commercial banking offices, and the second largest share, or 20%, of the total deposits of all the Lehigh County-Bethlehem commercial banking offices. As of June 30, 1968, three banks, including Merchants National, held 70% of the Allentown-Bethlehem IPC deposits and 66% of the Lehigh County-Bethlehem total deposits.

The head offices of defendants are approximately 47 miles apart, and their closest branches are more than 20 miles apart. However, there is significant potential for competition between the two banks. Under Pennsylvania law, Continental Bank is the largest bank which could be permitted to branch de novo into Lehigh County, and it has the resources and capability for such entry. It might also enter Lehigh County through merger with any one of six banks currently operating in the county, each of which holds less than $20 million in deposits.

Lehigh County is a part of the area known as the Greater Lehigh Valley. While a portion of the county remains essentially agricultural in character, Allentown-Bethlehem is a major industrial and commercial center. Allentown is an area of rapid economic growth and is noted for its great diversification of industry. More than 300 plants making more than 100 different products are located in Allentown. A large steel producer is located in Bethlehem. Lehigh County has experienced considerable growth in recent years. The total population of the county increased from 198,207 in 1950 to 227,566 in 1960. Value added by manufacturing increased from $243,708,000 in 1958 to $307,143,000 in 1963. Retail sales increased from $274,636,000 in 1958 to $360,561,000 in 1963. Total deposits held by all commercial banking offices in Lehigh County increased from $395,510,000 in 1966 to $477,296,000 in 1968. This continuing development creates an expanding market for banking services.

The complaint alleges that the merger would have the following illegal anticompetitive effects:

(a) Potential competition in commercial banking between Continental Bank and Merchants National will be permanently eliminated;

(b) Continental Bank will be eliminated as a potential entrant into commercial banking in Allentown-Bethlehem and in Lehigh County-Bethlehem; and

(c) Merchants National will be eliminated as a substantial independent factor in commercial banking in Allentown-Bethlehem and in Lehigh County-Bethlehem.

Staff: John W. Clark and Leslie M. Jeffress
(Antitrust Division)

VIRGINIA BANKS ALLEGED TO BE IN VIOLATION OF SECTION 7 OF CLAYTON ACT.

United States v. First Virginia Bankshares Corporation, et al. (Civ. 176-69-A; May 14, 1969; D.J. 60-111-1571)

On May 14, 1969, a civil action was filed in the U.S. District Court in Alexandria, Virginia, under Section 7 of the Clayton Act, challenging the proposed acquisition by The National Bank of Manassas, Manassas, Virginia, of The First National Bank of Quantico, Quantico, Virginia, an independent four-branch bank in Prince William County, which lies southwest of Arlington and Fairfax counties, Virginia. The merger had been approved

by the Comptroller of the Currency on April 15, 1969; the Department of Justice and the Federal Reserve Board had each reported to him that the proposed merger would be competitively adverse.

The proposed merger would link together two of Prince William County's four banks, thereby eliminating existing direct competition between them. It would also add the assets of the Quantico bank to those of the First Virginia Bankshares Corporation, parent company of the Manassas Bank.

Quantico Bank operates its 5 offices, and Manassas Bank 6 of its 7 offices, in Prince William County. Both banks derive significant amounts of business throughout the county. Their nearest offices are only 1 mile apart at Woodbridge, in the southeastern part of Prince William County. Accordingly, direct competition between them would be eliminated in the more localized Woodbridge area as well as the county as a whole.

It was also alleged that commercial banking in Prince William County is highly concentrated and that the proposed merger would increase that concentration by reducing the number of banks serving the county from 4 to 3. Of those 3, the resulting bank would have the largest market share--approximately 39% of the total deposits and 40% of IPC demand deposits in the county.

Furthermore, under Virginia banking law, no bank may enter Prince William County except by acquiring an existing bank therein. Since 3 of the 4 banks in the county are already affiliated with bank holding companies, it was deemed important to preserve the remaining independent bank in this market as a basis for additional entry rather than allowing it to be acquired by a competitor already in the market.

As for the economic outlook of Prince William County, the complaint alleges that in recent years the county's population figures increased 90%, from 50,164 in 1960 to about 95,000 in 1968. By 1985 it is expected that Prince William County will be nearly 10% larger than Arlington County and second only to Fairfax County among Northern Virginia jurisdictions, with a projected population in 1985 of 250,000. Total bank deposits located in the county have more than tripled in the ten year period 1958-1968, from $20.3 million to $68 million. Other economic indicators, such as retail sales figures and county employment and payroll statistics--according to the complaint--also show that substantial growth is occurring in Prince William County.

Since the proposed merger, therefore, would not only eliminate direct competition between the two banks, but would also significantly increase concentration in commercial banking in Prince William County, the complaint

alleged that its consummation would have a substantially adverse effect on competition in violation of Section 7 of the Clayton Act.

Staff: Donald A. Kinkaid and Thomas P. Ruane
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CRIMINAL DIVISION
Assistant Attorney General Will Wilson

DISTRICT COURT

MILITARY SELECTIVE SERVICE ACT

POSTPONEMENT OF INDUCTION TO CONSIDER LATE-FILED DEFERMENT CLAIM NOT CANCELLATION OF INDUCTION ORDER.

United States v. Eugene Stewart Newman (C.D. Calif., March 26, 1969; D.J. 25-12C-388)

In a prosecution for refusing induction the court held that the postponement of induction "until further notice", to permit consideration of a late-filed claim for deferment, did not effect a cancellation of the induction order. The defendant's argument that Hamilton v. Commanding Officer, 328 F.2d 799 (9th Cir., 1964), laid down the inflexible rule that postponement "until further notice" invariably effected a cancellation was rejected. In distinguishing Hamilton the court pointed out that Newman's Board indicated in its minutes that the postponement was for 30 days and in fact terminated the postponement within that period while Hamilton's Board had extended the postponement beyond the 120 day limit fixed by 32 C.F.R. 1632.2(a). The court also noted that the Court of Appeals had affirmed a conviction in Wolfe v. United States, 370 F.2d 388 (9th Cir., 1966), involving circumstances similar to those at bar without reference to Hamilton.

Staff: United States Attorney Wm. Matthew Byrne, Jr. and Assistant United States Attorney Theodore E. Orliss (C.D. Calif.)

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LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Shiro Kashiwa

COURTS OF APPEALS

PUBLIC LANDS

POWER LINE EASEMENT THROUGH NATIONAL FOREST WHEREBY UTILITY COMPANY AGREED TO PAY U.S. FOR "ANY DAMAGE RESULTING FROM THIS USE" IMPOSES ABSOLUTE LIABILITY WITHOUT REGARD TO NEGLIGENCE; SUCH BURDEN THOUGH IMPOSED ONLY ON PRIVATELY-OWNED AS OPPOSED TO PUBLICLY-OWNED COMPANIES, IS CONSTITUTIONAL.

Southern California Edison Co. v. United States (C.A. 9, No. 22,492; April 30, 1969; D.J. 90-1-643)

The United States brought an action to recover from Southern California Edison Company expenses incurred by the Forest Service in extinguishing a forest fire originating from Edison's right of way located in San Bernardino National Forest. The condition obligating Edison to pay for any damage resulting from negligence was stricken and, instead, the following clause was inserted: "The permittees shall pay the United States for any damage resulting from this use."

The Court of Appeals affirmed a summary judgment in favor of the Government holding first, that the language was not ambiguous; second, that it imposed liability without fault; third, that imposition of absolute liability against a private utility company as compared with publicly-owned utilities, did not violate the due process clause of the Fifth Amendment; and fourth, that even if the equal protection clause of the Fourteenth Amendment had applied to the Federal Government separate classification of privately and publicly-owned utilities has long been held justifiable.

Staff: Jacques B. Gelin (Land & Natural Resources Division)

WILDLIFE IN NATIONAL PARK; KILLING DEER PURSUANT TO RESEARCH PROJECT DESIGNED TO DISCOVER IF FORAGE WAS BEING OVER-BROWSED HELD WITHIN STATUTORY AUTHORITY OF SECY. OF INTERIOR; SUIT TO ENJOIN SECY. FROM KILLING SUCH DEER IS UNCONSENTED SUIT AGAINST U.S.

The New Mexico State Game Commission v. Stewart L. Udall, Secy. of the Interior, et al. (C.A. 10, No. 58-68; May 15, 1969; D.J. 90-1-4-196)

The New Mexico State Game Commission brought this action seeking a judgment declaring that the Secretary of the Interior and his subordinates did not have authority to kill deer within Carlsbad Caverns National Park in New Mexico for research purposes without state permission. The Commission also sought an injunction prohibiting further killing of deer without a state permit.

The Commission alleged that the Secretary lacked authority to kill deer within a state for research purposes without first obtaining a state permit, because resident wildlife are the property of the state, and that otherwise killing of deer was justified only if he knew there was actual depredation of park property.

The Secretary relied on his general authority to administer the Park and, specifically, on the discretion given him by statute to kill animals "as may be detrimental to the use of any of said park" as a basis for his action. The district court held that the deer-killing program was not within the Secretary's statutory authority and enjoined further killing of deer without a state permit.

The Court of Appeals reversed and remanded with instructions to dissolve the injunction and dismiss the action. The Court held, first, that the supervisory powers granted to the Secretary of the Interior over the management of national parks, under 16 U.S.C. 1 and 3, authorize the killing of deer with the Park for an ecology study to determine the Park's forage is being overbrowsed, and, second, that since the Secretary's action was within statutory authority, the case was an unconsented suit against the United States.

Staff: Jacques B. Gelin (Land & Natural Resources Division)

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TAX DIVISION

Assistant Attorney General Johnnie M. Walters

DISTRICT COURTS

ENFORCEMENT OF INTERNAL REVENUE SUMMONS

FIFTH AMENDMENT PRIVILEGE AGAINST SELF-INCRIMINATION NOT BAR TO PRODUCTION OF RECORDS OF CORPORATE NATURE.

United States v. Albert Shlom (S.D. N.Y., No. M 18-304; March 12 and April 22, 1969; D.J. 5-51-11066)

This action was one to judicially enforce a summons issued by a special agent of the Internal Revenue Service Intelligence Division. The summons demanded production of, among other things, a cash journal kept by the sole shareholder of the taxpayer corporation, who resisted production on the ground that the journal was a personal and not a corporate record. The district court found that the journal, while "personal" in the sense that it belonged to the sole shareholder alone, was sufficiently corporate in nature to be ordered produced.

On reargument the respondent raised his Fifth Amendment privilege against self-incrimination as a defense to production of the journal and the court promptly found the book to be a corporate record and ordered it produced. Other issues raised by the respondent and disposed of by the court were the contention that he had not been warned of his constitutional rights by the agent; that the investigation was solely criminal and thus an improper use of the summons power; and that he had been improperly denied pretrial discovery.

Staff: Assistant United States Attorney Sam Eisenstat (S.D. N.Y.); and James H. Jeffries, III (Tax Division)

RIGHT OF TAXPAYER TO INTERVENE IN JUDICIAL SUMMONS ENFORCEMENT ACTION NOT RIGHT TO DELAY PROCEEDING OR ADVANCE SPECIOUS DEFENSES.

United States & Special Agent Ralph H. Bergstrom v. David A. Learner, Civil No. RI-259; Kevin L. Donaldson v. David A. Learner, Civil No. RI-248 (S.D. Ill.; April 29, 1969; D.J. 5-25-913)

This consolidated action is another in a series of anticipatory assaults, brought by the same attorney, on Internal Revenue Service tax investigations.

(See Bulletin, Vol. 17, No. 7, page 165.) Initially, the taxpayer's attorney issues an official looking blue-backed notice to third parties having knowledge of the taxpayer's affairs which purports to forbid voluntary cooperation with the Internal Revenue Service and directs the recipient to notify counsel immediately of any contact by Internal Revenue Service agents. Thereafter, when the investigating agent issues a summons to the third party the taxpayer begins an injunctive action against the summoned party to prohibit any cooperation with the Service "until ordered to do so by a court of competent jurisdiction". This in turn necessitates a judicial summons enforcement action against the third party in which the taxpayer then seeks to intervene, raise esoteric questions of law, accomplish discovery, and otherwise impede the investigation.

In this case the district court denied intervention but consolidated the earlier injunctive suit by the taxpayer with the Government's enforcement action. After a hearing on the merits the court denied discovery motions by the taxpayer and ordered compliance with the summons, rejecting an "ingenious, but . . . completely specious" defense that because the taxpayer had his own copies of some of the witness' papers, compelled production of the witness' papers would violate the taxpayer's Fourth and Fifth Amendment rights. On the same day as the hearing and unknown to the district court the Court of Appeals for the Seventh Circuit decided United States v. Benford (Bulletin, Vol. 17, No. 12, page 292), ruling that taxpayers have an unqualified right of intervention in judicial summons enforcement actions.

On motion for reconsideration the district court permitted intervention nunc pro tunc "lest some technical distinction which escapes this court between consolidation and intervention in these circumstances, might confuse the real issues here". The court then reexamined its prior rulings and reaffirmed them. Specifically the court denied discovery, upheld the propriety of the summons power by special agents of the Intelligence Division, found no standing by a taxpayer to bar the records and testimony of a third party, and stated: "The only supposed defenses raised here have been found completely specious and delay is the only apparent purpose of the desired discovery because it seeks proof of an immaterial fact, namely, that Internal Revenue Service is seeking evidence of criminal violation." The court then took the unusual step of ordering immediate compliance with the summons and denying in advance any stay without tender of a supersedeas bond "shown to be adequate in amount to protect the government against any revenue losses possible due to further passage of time".

Staff: United States Attorney Richard E. Eagleton (S.D. Ill.); and James H. Jeffries, III (Tax Division)

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