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UNITED STATES DEPARTMENT OF JUSTICE

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POINTS TO REMEMBER

MARINE RESOURCES SECTION ESTABLISHED

On November 5, 1969, Assistant Attorney General Kashiwa announced the formation of a new section, designated the Marine Resources Section, to handle matters relating to rights in the submerged lands and natural resources of the territorial sea and continental shelf seaward of the coast line, including determination of the location of the coast line. The importance of this subject matter has increased rapidly in recent years, with a corresponding increase in related litigation, legislation, and governmental policy coordination activities. The subject is highly specialized, and its close relationship to aspects of international policy require constant and close coordination with the Department of State and others. Especially while the law is in its present, formative stage, it is important that positions taken by the Department of Justice reflect the considered policies of the Government as a whole. These considerations have led to establishment of the Marine Resources Section, which will handle both trial and appellate stages of litigation in this field.

Pollution problems will continue to be handled in the General Litigation Section, and other cases whose maritime situs has no significant effect on the legal issues will be handled as heretofore; but all other matters involving rights in submerged lands or natural resources of the territorial sea or continental shelf should be referred promptly to the Marine Resources Section, which will handle them directly or provide such guidance and assistance as may be needed for their handling by the United States Attorneys.

The Chief of the Marine Resources Section is Mr. George S. Swarth, who has been Assistant Chief of the Appellate Section in charge of the same subject matter. He can be reached in the Department on extension 2750.

NARCOTICS AND DANGEROUS DRUGS - CHAIN OF CUSTODY

Testimony in Narcotic and Dangerous Drug Cases

When prosecuting violations of the narcotic and dangerous drug laws, it is requested that the following procedure be observed to eliminate unnecessary expenditure of time and funds by the appearance of Bureau of Narcotics and Dangerous Drugs personnel to establish the chain of custody to introduce seized drugs into evidence.

1. If the defense will not stipulate to the chain of custody, then only the chemist should be called to testify to the receipt and the condition of the sealed package in addition to the seizing agent who prepared this package.

The Bureau of Narcotics and Dangerous Drugs has a very rigid standard procedure with regard to these packages which should be sufficient for legal proof. Clerks and others who may handle these packages should not be called to testify unless absolutely necessary.

2. If the defense will stipulate to the chain of custody and the chemical analysis of the seized drugs, then the chemist should not be asked to testify except in unusual circumstances.

* * *

ANTITRUST DIVISION

Assistant Attorney General Richard W. McLaren

DISTRICT COURT

SHERMAN ACT

CONSENT JUDGMENT ENTERED IN SMOG CASE.

United States v. Automobile Manufacturers Assn., et al. (C.D. Calif., Civ. 69-75-JWC; October 29, 1969; D.J. 60-108-96)

On September 11, 1969, a proposed final judgment was lodged with the court with the usual 30 day waiting period. On September 17, 1969, Judge Jesse W. Curtis issued an order inviting the views of all interested parties and public bodies specifically including the State of California, the County of Los Angeles, the City of Los Angeles and the Los Angeles Air Pollution Control District, and setting the matter for a hearing. On October 17, 1969, after the filing of numerous petitions to intervene and suggestions for modification, the parties consented to a single revision of the proposed judgment. On October 28, 1969, an open hearing was held at which a number of states, counties, cities, air pollution control districts, congressional groups, associations and interested parties sought to intervene, to consolidate their cases with the Government's, or to be heard as amicus curiae. After hearing from all parties the court rejected all petitions to intervene on the ground that the petitioners, most of whom were damage claimants, had no right to intervene under Federal Rule 24(a) and were not entitled to permissive intervention under Federal Rule 24(b). In addition, the court found that an order proposed by the Government, impounding all evidence obtained by the grand jury and the grand jury transcript with the Justice Department, where it would be subject to discovery upon a proper showing of sufficient cause, was enough to assure that entry of the judgment would not result in dissipation of the evidence. The court refused to release the grand jury materials and transcript from the cloak of secrecy as had been urged by many petitioners.

In both his oral opinion, and memorandum opinion of November 9, 1969, Judge Curtis found that the final judgment was enforceable, that it provided relief consistent with the prayer of the complaint, and that while it did not afford prima facie proof of liability--an "asphalt clause"--the rights of claimants to proceed with their claims were not otherwise affected. He concluded that the Government could not be forced to try the case solely to aid treble damage litigants, and that the judgment was in the public interest because: (1) it gave the Government substantially all the relief it could have obtained if it had tried the case and won; (2) it avoided the

tremendous expenditure of time and money which a trial would entail; (3) it provided immediate and assured results, whereas a trial would delay the benefits of the decree and keep the final outcome in doubt for many years. The final judgment was approved by the court on October 29, 1969.

The complaint, which was filed on January 10, 1969, charged that General Motors, Ford, Chrysler, American Motors and the Automobile Manufacturers Association had conspired with other motor vehicle manufacturers to eliminate competition in the research, development, manufacture and installation of motor vehicle air pollution control equipment, and in the purchase from others of patents and patent rights covering such equipment, in violation of Section 1 of the Sherman Act. The prayer sought and the final judgment obtained:

> 1) royalty-free licensing to all applicants of patents, patent rights and technical know-how exchanged by defendants through AMA;
>
> 2) cancellation of the AMA agreement whereby these exchanges took place;
>
> 3) an injunction against agreements to exchange company confidential information regarding emission control devices with any of the world's nine largest motor vehicle manufacturers;
>
> 4) a prohibition against any agreement to exchange future patent rights covering unborn inventions in this field;
>
> 5) specific injunctions against agreements to delay installation of, to restrict individual publicity on research and development concerning, or to employ joint assessment of or most favored purchaser treatment of outsiders patents on, emission control devices;
>
> 6) a prohibition against agreements to file unauthorized joint statements with any governmental regulatory agency in the United States (Federal or State), which issues emission standards or regulations, or with any Federal agency which issues safety standards or regulations, except in areas where the regulatory agencies felt that they were capable of evaluating the joint statement;

7) a prohibition against any joint statement which discusses the ability of a defendant to comply with a standard, or to do so by a particular time, unless the agency authorizes such a statement. In addition, defendants may not agree not to file and must file individual statements upon agency demand, even if a joint statement already has been filed; and

8) a general injunction against collusion to impede progress in the developing or marketing of anti-pollution control devices.

In general, the twin designs of the judgment are to end the anti-competitive activities charged in the complaint, and to encourage competition among the defendants and by outsiders, in the developing and marketing of anti-pollution control devices for automobiles.

Staff: Bernard M. Hollander, Raymond W. Philipps, Allen E. McAllester, Hyman B. Ritchin, Charles F. B. McAleer, C. Brooke Armat and Joseph A. Tate (Antitrust Division)

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CIVIL DIVISION

Assistant Attorney General William D. Ruckelshaus

COURTS OF APPEALS

CONSTITUTIONAL LAW - FREE SPEECH - EQUAL PROTECTION

ARMY HELD JUSTIFIED IN PROHIBITING NAZIS FROM WEARING INSIGNIA, ARMBANDS, ETC. IN NATIONAL CEMETERY.

Matt Koehl & the American Nazi Party v. Stanley R. Resor, et al. (C.A. 4, No. 13,474; November 24, 1969; D.J. 145-4-1650)

Shortly after George Lincoln Rockwell, president of the American Nazi Party, was shot and killed at a laundromat, party followers attempted to bury him at Culpeper National Cemetery. In doing so, they sought to enter the cemetery wearing Nazi Party uniforms and carrying flags, banners and floral arrangements bearing swastikas. They were prevented from doing so by the Army, which is charged with the supervision of national cemeteries.

After cremating Mr. Rockwell, the Nazis brought an action to compel the Secretary to allow them to have the type of ceremony they desired. The district court held for the Government, 296 F.Supp. 558 (E.D. Va., 1969), and the Fourth Circuit affirmed on the opinion of the lower court. Thus, the Court of Appeals accepted our view that conduct permissible in some places may be prohibited in others, even if the conduct involves the expression of ideas which are protected by the First Amendment. This distinction between places committed to other purposes, such as national cemeteries, and places traditionally reserved for the expression of ideas, such as schools and parks, was also articulated to some extent in Adderley v. Florida, 385 U.S. 39, 47-48, 54 (1966).

Also rejected by the Court of Appeals was appellants' argument that they must be treated in exactly the same manner as the Knights of Columbus, the Masons and the American Legion, which are fraternal and/or patriotic organizations, and which have been allowed to carry their insignia into national cemeteries. We argued that it was perfectly proper to distinguish between political and non-political activity. See United Public Workers v. Mitchell, 330 U.S. 75 (1947). The Court of Appeals apparently accepted the district court's reasoning that, on this record, there was no evidence of anything but an even-handed policy by the Army.

Staff: Stephen R. Felson (Civil Division)

PUBLIC INFORMATION ACT

ILLINOIS SELECTIVE SERVICE SYSTEM DOES NOT HAVE TO COMPILE INFORMATION PERTAINING TO PERSONNEL FOR DRAFT COUNSELLOR. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

Joseph Tuchinsky v. Selective Service System (C.A. 7, No. 17,556; November 17, 1969; D.J. 25-23-3497)

This was a suit under the Public Information Act brought by a draft counsellor seeking the names, home addresses, occupations, etc., of Selective Service personnel for the entire State of Illinois. We argued that the private home addresses were exempted from disclosure by 5 U.S.C. 552(b)(6) on the ground that release of such information "would constitute a clearly unwarranted invasion of personal privacy". Additionally, we argued that the information sought was not contained in "identifiable records" as required by 5 U.S.C. 552(a)(3). The Court of Appeals did not deal with the question of whether the release of such information fell within the subsection (b)(6) exclusion, but held that the Selective Service System was not required to compile information which was not contained in "identifiable records". The Court also held that plaintiff did not exhaust his administrative remedies because he did not first request the information from a local draft board as required by Selective Service Regulations (32 C.F.R. 1606.62).

Staff: Ralph A. Fine (Civil Division)

CIVIL SERVICE DISCHARGE

SCOPE OF JUDICIAL REVIEW IN ACTION CHALLENGING REMOVAL OF FED. GOVT. EMPLOYEE IS LIMITED TO WHETHER REMOVAL WAS ARBITRARY OR CAPRICIOUS OR AN ABUSE OF DISCRETION.

Donald A. McGhee v. John W. Macy, Jr. (C.A. 10, No. 165-69; December 4, 1969; D.J. 35-49-1)

The plaintiff was dismissed by the Post Office Department from his position as postmaster of the Lordsburg, New Mexico, post office because of his failure to conduct post office business in accordance with Department instructions. The Civil Service Commssion sustained the agency's action in dismissing the plaintiff. Plaintiff then filed the present action in the district court which, however, dismissed the action on the ground that the proper procedures had been followed, and that there was substantial evidence to support the decision.

The Tenth Circuit affirmed. The Court held that "(s)ince the decision to remove is a matter within agency discretion, see 5 U.S.C. 7512; Meehan v. Macy, D.C. Cir., 392 F.2d 822, 830, a federal court cannot reevaluate evidence in support of removal, but probes for arbitrary or capricious action or abuse of discretion. See Bishop v. McKee, 10 Cir., 400 F.2d 87, 88." Under this analysis the Court ruled that the record of plaintiff's removal proceedings "reveals neither caprice in the grounds for removal nor a failure of substantial compliance with the controlling procedural requisites. Vigil v. Post Office, 10 Cir., 406 F.2d 921, 924; Davis v. Berzak, 10 Cir., 405 F.2d 642, 644."

We note, therefore, that this decision rejects the broader "substantial evidence" test as applied by the Third Circuit in Charlton v. United States (C.A. 3, No. 16,670; decided June 2, 1969; see November 14, 1969 Bulletin), and the Tenth Circuit's own dictum adopting the substantial evidence test in Vigil v. Post Office, supra, at 924.

Staff: Ronald R. Glancz (Civil Division)

NEGOTIABLE INSTRUMENTS

UNIFORM COMMERCIAL CODE NOT FOLLOWED IN ESTABLISHING GOVERNMENT'S RIGHTS IN SUIT AGAINST PRESENTING BANK TO RECOVER MONIES PAID ON FORGED ENDORSEMENTS OF GOVT. CHECKS.

United States v. Philadelphia National Bank (E.D. Pa., No. 42554; October 16, 1969; D.J. 77-62-1281)

One Esther D. Graham was an employee of the U.S. Naval Air Development Center at Johnsville, Pennsylvania. During her period of employment she submitted to the Disbursing Officer of the Center numerous false vouchers made out in the names of true persons employed by the Government at the Center. Instead of forwarding these checks to the named payees, Mrs. Graham forged an endorsement in the name of the payees, cashed them and converted the proceeds to her own use. In due course, the checks were received by the defendant and paid by the Government upon presentment. The Government's theories of recovery were breach of the defendant's express warranty of prior endorsements and payment of monies by mistake.

In granting the Government's motion for summary judgment, Judge Wood recognized that under Section 3-405(1)(c) of the Uniform Commercial Code this was a "padded payroll case" and the loss, if the plaintiff were not the Government, would fall on the employer whose agent presented the padded payroll. The court concluded, however, that in order to preserve

what has been a uniform federal law and federal right, the Uniform Commercial Code should not be followed unless the Supreme Court dictates to the contrary.

The leading authorities cited by the court as entitling the Government to recover monies paid a bank on forged endorsements of Government checks were National Metropolitan Bank v. United States, 323 U.S. 454 (1945); Clearfield Trust Co. v. United States, 318 U.S. 363 (1943); Washington Loan & Trust Co. v. United States, 134 F.2d 59 (C.A. D.C., 1943); and United States v. Bank of America National Trust & Savings Assn., 288 F.Supp. 343 (N.D. Calif., 1968).

Staff: United States Attorney Louis C. Bechtle and Assistant U.S. Attorney Thomas J. McBride (E.D. Pa.)

JUDICIAL PANEL ON MULTIDISTRICT LITIGATION

CONSOLIDATED PRETRIAL PROCEEDINGS

26 ACTIONS BROUGHT BY GOVT. AGAINST RAILROADS CONTAIN SUFFICIENT COMMON QUESTIONS OF FACT TO WARRANT CONSOLIDATED PRETRIAL PROCEEDINGS UNDER 28 U.S.C. 1407.

In Re Muldistrict Commodity Credit Corp. Litigation Involving Grain Shipments (Jud. Pan. Mult. Lit., June 23, 1969; 300 F.Supp. 1402; D.J. 120-44)

The Judicial Panel on Multidistrict Litigation transferred to the District of Kansas 26 actions pending in 13 different district courts for consolidated or coordinated pretrial proceedings under 28 U.S.C. 1407.

The actions were brought by the Government against various railroads to recover damages for alleged losses of grain during shipment. The basis for the Government's claims is the same in each case and, on its own initiative, the Panel ordered the parties to show cause why the cases should not be transferred. The Government and 19 of the 26 railroads favored consolidation.

The Panel concluded that there are sufficient common questions of fact in the cases and that transfer would be for the convenience of parties and witnesses, and would promote just and efficient conduct. Two cases were not transferred in which pretrial proceedings were almost complete.

Staff: Michael A. Bander & Edward I. Swichar (Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Will Wilson

COURTS OF APPEALS

FEDERAL FOOD, DRUG AND COSMETIC ACT

WHERE ON POLL OF JURY, JUROR GAVE NO AUDIBLE RESPONSE BUT LOOKED AT FLOOR, IT WAS DUTY OF DIST. CT. TO ELICIT DEFINITE RESPONSE. FAILURE TO DO SO AND REFUSAL TO CONSIDER JURORS' AFFIDAVITS CONSTITUTED REVERSIBLE ERROR.

Sam Fox, d/b/a A & M Sales Co. v. United States (C.A. 5, No. 25374; September 30, 1969; D.J. 22B-18-22-1)

The district court entered a judgment and decree pursuant to 21 U.S.C. 334(a) of the Federal Food, Drug and Cosmetic Act condemning as misbranded quantities of a drug product marketed by appellant under the name "Odrinex". Prior to filing of the libel by the United States and seizure pursuant to monition issued out of the district court, an agent for the State of Florida, acting under Florida's Food and Drug Act, had tagged the articles as misbranded and forbade disposition. The tag had the notation "Hold for Federal Seizure".

Appellant asserted want of jurisdiction based on these facts and also asserted error because during poll of the jury, one juror, Larkin, gave no audible response but looked at the floor. All other jurors responded "yes". The district judge then discharged the jury. Appellant's counsel immediately approached Larkin and inquired whether he had in fact voted for the Government and on the call of the roll had answered in the affirmative. Larkin said he had not voted for the Government nor answered in the affirmative. Affidavits were obtained from him and four other jurors which stated that Larkin had never voted for the Government in the jury room, that all of the jurors were of the opinion that a majority was sufficient to return a verdict, and that Larkin had not responded when his name was called on the poll of the jury. These affidavits were presented to the district court on appellant's motion for a new trial but were rejected. The district court overruled the motion on the grounds that the record showed the reporter recorded an affirmative response, the clerk evidently understood the reply to be affirmative or he would not have proceeded, appellant's counsel certainly would have objected and called for a re-polling had he not thought that Larkin gave an affirmative reply, and it was the duty of appellant's attorney to raise an objection at that time and not to wait until after he had questioned the jurors outside the court.

Nevertheless, the Court of Appeals reversed and remanded the case for a new trial holding that the district court erred in concluding that Larkin's silence on the poll should be construed as an affirmative response and in refusing to consider the affidavits. The Court considered it to be the duty of the district court in polling the jury to elicit a definite response and thereby eliminate all doubts as to whether the verdict was unanimous. The Court of Appeals resolved the jurisdictional question favorably to the Government.

Staff: Assistant United States Attorney Lloyd G. Bates (S.D. Fla.); Lillian C. Scott (Criminal Division)

MILITARY SELECTIVE SERVICE ACT

WILFUL DESTRUCTION AND MUTILATION OF SELECTIVE SERVICE FILES IS PUNISHABLE CONDUCT NOTWITHSTANDING "NOBLE" MOTIVE OF OFFENDERS. SUCH DESTRUCTIVE ACTS DO NOT CONSTITUTE "FREEDOM OF SPEECH".

United States v. Berrigan and United States v. Eberhardt (C.A. 4, October 15, 1969; D.J. 25-35-1116)

Three defendants in United States v. Eberhardt, 36 Crim. L.R. 2075, were convicted of wilfully injuring Government property over $100 in value (18 U.S.C. 1361), wilfully mutilating public records (18 U.S.C. 2071), and wilfully hindering administration of the draft act (50 App. U.S.C. 462a), all accomplished by pouring blood on draft files in the Baltimore Selective Service office. While awaiting sentence, two of the three defendants in Eberhardt participated in the fiery destruction of yet another draft board's files, this time using napalm. This act resulted in their conviction in United States v. Berrigan, 6 Crim. L.R. 2074.

In reviewing both cases, the Fourth Circuit in the Berrigan opinion noted the distinction between intent and motive. In spite of the absence of "bad purpose" (indeed, the court recognized the altruistic motive of the defendants), the court held that "the statutory requirement of wilfullness is satisfied if the accused acted intentionally, with knowledge that he was breaching the statute . . . . Whatever motive may have led them to do the act is not relevant to the question of the violation of the statute." The Fourth Circuit agreed with the district court's opinion, 3 Crim. L.R. 2126, that such acts do not fall within the ambit of constitutionally protected "free speech".

Though recognizing the jury's prerogative to disregard the law and acquit in the face of conclusive evidence of guilt, the Court held that the jury should not be prompted toward "jury lawlessness" by argument or instructions apprising it of that privilege.

In Eberhardt, the Fourth Circuit remanded the cases of the two defendants involved in Berrigan for "further consideration" of their sentences by the district court. While rejecting the claim that the sentences meted out to the two demonstrators in question (which were considerably more harsh than those of their codefendants) constituted punishment for the "speech element" in their file-burning offenses, the circuit court was unable to say precisely what the sentencing judge's subjective feelings were about the second offense. Thus, while recognizing that subsequent misconduct does have some evidentiary value in setting sentences, the Fourth Circuit felt it best to remand to the district court for purely voluntary further consideration of the sentences.

Staff: United States Attorney Stephen H. Sachs and
Assistant U.S. Attorney Barnet D. Skolnik (D. Md.)

NARCOTICS AND DANGEROUS DRUGS

MEPROBAMATE ("MILTOWN") HELD TO BE A "DEPRESSANT OR STIMULANT DRUG" WITHIN THE MEANING OF 21 U.S.C. 321(v).

Carter-Wallace, Inc. v. John W. Gardner, Secy. of HEW & James L. Goddard, Commissioner of Food and Drugs (C.A. 4, No. 12,200; November 4, 1969; D.J. 12A-79-1)

The order of the Commissioner of Food and Drugs subjected meprobamate and compounds containing meprobamate in combination with other drugs to special controls under the Food, Drug and Cosmetic Act. Appellant, a manufacturer and distributor of the drug, petitioned for review and on November 4, 1969 the Court of Appeals for the Fourth Circuit affirmed the order of the Commissioner finding meprobamate to be a "depressant and stimulant drug" within the meaning of 21 U.S.C. 321(v).

In subjecting meprobamate to control as a dangerous drug the Commissioner found, first, that it has a depressant effect on the central nervous system; second, that it has a potential for abuse; and, third, that this potential results from its depressant effect on the central nervous system.

The Court found that the evidence of record left no doubt that meprobamate had a depressant effect on the central nervous system. It pointed to the testimony of medical witnesses that the major therapeutic effects of the drug are to calm the patient and to give relief from emotional tension or anxiety. Other witnesses established that large dosages cause stupor and induce apathy.

The Court further found that meprobamate does have a potential for abuse within the meaning of the drug abuse control amendments to the Food and Drug Act. In this connection it pointed out that "the existence of abuse is relevant to forecast future abuse, but the incidence of present abuse is not the test which the Commissioner must apply. Instead, he has been charged with the responsibility of assaying future or potential abuse". In arriving at its conclusion the Court of Appeals pointed to the evidence that, as the access to barbiturates was limited by controls, the abuse of meprobamate would increase unless it, also, was controlled; that barbiturates and meprobamate can suppress or relieve the withdrawal reaction that an excessive user of alcohol suffers when he is abruptly deprived of his intoxicant; the expert opinion that, of the six million alcoholics in the country, approximately four per cent (240,000) would abuse meprobamate if they had free access to it; and the evidence that the use of meprobamate as a suicidal agent would increase if not subjected to control.

This potential for abuse, the Court concluded, was because of meprobamate's depressant effect on the central nervous system. In support of this conclusion, the Court singled out the evidence, circumstantial though it might be, that meprobamate produces physical tolerance, withdrawal symptoms and euphoria which are characteristics of a drug that lead to its abuse.

Staff: Former Assistant Attorney General Fred M. Vinson, Jr. (Criminal Division); William E. Ryan, Chief, Narcotic & Dangerous Drug Section (Criminal Division); William Goodrich, Joanne S. Sisk, Eugene M. Pfeifer (Attorneys, Health, Education & Welfare)

DISTRICT COURTS

AIR POLLUTION - NATIONAL EMISSION STANDARDS ACT

United States v. Felix A. Chapa, an individual, d/b/a Arlington Cars (E.D. Va., November 10, 1969; D.J. 54-35-95)

The National Emission Standards Act and the regulations promulgated thereunder prohibit the sale, introduction into commerce or the importation into the United States for sale of any new motor vehicle knowing that the vehicles are not equipped with air pollution control systems. 42 U.S.C. 1857f-2. Neither the Act nor the regulations prohibits an individual from purchasing an automobile not equipped with pollution control systems (uncontrolled cars) in a foreign country and importing it into the United States, since the Act and regulations apply only to cars imported for the purpose of sale.

Chapa, an advertised car dealer, drafted documents in an attempt to show that the sale of the automobile took place in Europe, and that the purchaser imported it for his own use. This scheme permitted the introduction into the United States of uncontrolled cars.

Judge Oren Lewis (E.D. Va.) found that the defendant caused foreign-made motor vehicles to be imported into the United States in violation of the Act and regulations thereunder; and enjoined the defendant from importing new motor vehicles not in conformity with the Act.

Staff: United States Attorney Brian P. Gettings and Assistant U.S. Attorney Gilbert Davis (E.D. Va.)

PACKERS AND STOCKYARDS ACT

VIOLATION OF CONSENT ORDER ISSUED BY SECY. OF AGRICULTURE PURSUANT TO 7 U.S.C. 193 RESULTS IN $15,000 FINE.

United States v. John Morrell & Co. (D. Minn., No. 3-69 Criminal 57; October 15, 1969; D.J. 58-39-27)

On May 17, 1965, the Secretary of Agriculture issued a consent decree pursuant to Section 203 of the Packers and Stockyards Act (7 U.S.C. 193), requiring Morrell to cease and desist from sponsoring or conducting any sales promotion program for its refrigerated processed meat products which would give any retail food store customer, or any officer, agent or employee thereof, any personal gift of more than nominal value; said gift being conditioned on the amount of Morrell's products purchased by the customer.

Action was commenced in the district court in Minnesota pursuant to 7 U.S.C. 195 for violations of the consent order by a successor Morrell corporation.

The defendant corporation pleaded guilty and was fined $7,500 (maximum statutory fine is $10,000) on each of Counts I and II of the Information for a total fine of $15,000.

Staff: Assistant U.S. Attorney Neal A. Shapiro (D. Minn.)

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LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Shiro Kashiwa

STATE COURT

CONDEMNATION

POSSESSION BY GOVT. CANNOT BE USED TO GIVE ADVERSE TITLE TO ONE PERSON AGAINST OWNER.

Sylvia Weinblatt v. Estate of Sam Kahn, deceased (Imperial County, California Superior Court, No. 40093; October 1, 1969; D.J. 33-5-1827-5)

Since 1944, the Department of the Navy has been occupying, under various leaseholds, properties in Imperial County, California, for its vast Chocolate Mountain Aerial Gunnery Range. The range is located about 20 miles north of the Mexican border and 20 miles east of El Centro, California. About eight years after the establishment of the gunnery range, Sylvia Weinblatt acquired color of title to 640 acres of land within the range. She had never occupied the property, since the Navy prohibited entry to all members of the general public. When the question arose as to which party was entitled to the compensation for the condemnation of the leaseholds, Sylvia Weinblatt alleged that the continuous and exclusive possession, occupation and control of the property by the Government since 1944 had resulted in adverse occupation and possession by her since 1952, when she first acquired color of title to the 640 acres.

The Superior Court ruled that Sylvia Weinblatt does not have title by adverse possession to the land. It held that the Government, by virtue of its occupancy, use and control of the lands, was never an instrument whereby to give adverse title to one person against any other person, and could not enable Sylvia Weinblatt to claim actual, open, notorious and exclusive possession and control of the lands.

Staff: Assistant U.S. Attorney Ernestine Tolin (C.D. Cal.)

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TAX DIVISION

Assistant Attorney General Johnnie M. Walters

DISTRICT COURT

CHAPTER XI BANKRUPTCY PROCEEDING

REFEREE RULED NO JURISDICTION TO RESTORE BANKRUPT TO POSSESSION OF BUSINESS ASSETS SEIZED BY LEVY PRIOR TO BANKRUPTCY AND TO ENJOIN IRS FROM SELLING THOSE ASSETS.

In the Matter of James F. Cornell, d/b/a Cornell's Shoe Repair, et al., debtor (D. Nev., No. 4786; August 13, 1969; D.J. 5-46-264)

On May 30, 1969, assessments were made against taxpayer for unpaid income withholding and FICA taxes in the amount of $47,587.73, and on June 19, 1969, a notice of federal tax lien was filed for these liabilities. On June 19 and 20, 1969, notices of levy were served upon the managers of Cornell's Shoe Repair Shop at Fourth and Charleston, 1810 East Charleston Boulevard, and 604 South Decatur Street, and the entrances to each of these stores were padlocked. The Internal Revenue Service advertised in the Las Vegas, Nevada Review Journal that the equipment, merchandise, etc., in these shoe repair shops would be sold on July 11, 1969.

Prior to the sale, the taxpayer filed a petition in the district court seeking an arraignment under Chapter XI of the Bankruptcy Act. This was followed on July 9, 1969, with a request by the debtor for an order authorizing him to remain in possession of his business and directing the Government to show cause why it should not be enjoined from proceeding against his property, and the referee entered the order.

After a hearing on the order to show cause, the referee decided that the contents of the shoe repair shops were in the possession and under the effective control of the Government prior to the filing of the Chapter XI petition and that the Bankruptcy Court did not have jurisdiction to summarily restore the taxpayer to control of his property. The referee vacated his prior order which permitted the debtor to remain in possession of the seized assets.

Staff: Former United States Attorney Robert S. Linnell (D. Nev.)

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