United States Attorneys

Bulletin

Published by Executive Office for United States Attorneys
Department of Justice, Washington, D.C.

Volume 20 August 4, 1972 No. 16

UNITED STATES DEPARTMENT OF JUSTICE

Vol. 20 August 4, 1972 No. 16

TABLE OF CONTENTS

Page

LEGISLATIVE NOTES

INVESTIGATION OF OBSTRUCTION OF JUSTICE AND PERJURY MATTERS
(See Points to Remember)

COMMENDATIONS

United States Attorney James L. Browning (Northern Dist. of California) and Robert Mandel of the Civil Division were commended by Brigadier General Bruce C. Babbitt, Assistant Judge Advocate General for Civil Law for the excellent and extensive assistance they rendered to the Department of the Army in terminating the Army's claim for the value of government-built improvements on a tract of land in Oakland, California. The successful conclusion of the matter has required the time and attention of numerous government agencies for more than thirty years.

Assistant U. S. Attorneys Bernard H. Dempsey, Jr., William M. James, Jr., and Harvey E. Schlesinger (Middle Dist. of Florida) were commended by L. Patrick Gray, III, Director of the FBI for their successful prosecution of Harlan Alexander Blackburn and others.

United States Attorney William R. Burkett and his Assistant James M. Peters (Western Dist. of Oklahoma) were commended by Assistant Attorney General Henry E. Petersen for their successful prosecution of Russell Edward Soneff for interstate transportation of stolen property. They were singled out for the careful and competent way in which the stolen goods were returned to the victim.

POINTS TO REMEMBER

"Investigation of Obstruction of Justice and Perjury Matters"

The last five pages of this issue of the Bulletin relate to "Investigation of Obstruction of Justice and Perjury Matters." These pages may be removed and utilized as appropriate to facilitate the ready reference of each individual.

(Criminal Division)

National Personnel Records Center Information Sheet

The National Personnel Records Center has requested the inclusion of the following information sheet. It concerns the admissibility in evidence of copies of military records authenticated by the National Personnel Records Center in St. Louis, Missouri, and is for your guidance should you find it necessary to request such records. The appearance of a center official with the records should not be necessary in view of the legal validity of the authenticating certificate and seal.

The National Personnel Records Center maintains and services only the records of COMPLETELY DISCHARGED military personnel (Army, Navy, Air Force, Marine Corps, and Coast Guard). Records for persons with status (active, reserve or retired) are, for the most part, maintained by the military departments.

NPRC is not ALWAYS able to honor letter requests for copies of records. The military services have imposed release restrictions and, under some circumstances, it is necessary to coordinate the request with the appropriate military officials. In such cases, the center's action is, of course, governed by the instructions received.

NATIONAL PERSONNEL RECORDS CENTER
NATIONAL ARCHIVES AND RECORDS SERVICE
GENERAL SERVICES ADMINISTRATION
ST. LOUIS, MISSOURI

ADMISSIBILITY IN EVIDENCE OF COPIES OF RECORDS AUTHENTICATED BY THE NATIONAL PERSONNEL RECORDS CENTER

1. GENERAL. The Administrator of General Services (hereinafter called the "Administrator"), appointed by the President of the United States with the advice and consent of the Senate, is the head of the General Services Administration. (Ref: 40 U.S.C. 751(b).)

2. AUTHORITY FOR THE NATIONAL PERSONNEL RECORDS CENTER TO MAINTAIN AND SERVICE RECORDS.

a. The Administrator established, maintains and operates the National Personnel Records Center (hereinafter referred to as "NPRC" or "this center") for the storage and servicing of certain records. (Ref.: 44 U.S.C. 2907.)

b. The records on file at NPRC were transferred, for reasons of economy, to this center for storage and servicing. (Ref.: 44 U.S.C. 3103.)

3. LEGAL CUSTODY OF RECORDS STORED AT NPRC. The Administrator has legal custody of these records. (Ref.: 41 CFR 105-60.103.)

4. AUTHORITY FOR NPRC TO HONOR LEGAL DEMANDS. This center is authorized to honor legal demands pertaining to records on file here if no restrictions have been imposed by the transferring agency. If restrictions have been imposed by the transferring agency, the authority issuing the legal demand is so notified and asked to take the matter up with that agency. (Ref.: 41 CFR 105-60.701-2(a).)

5. AUTHORITY FOR THE ADMINISTRATOR TO AUTHENTICATE COPIES OF RECORDS AND DELEGATIONS OF SUCH AUTHORITY FROM THE ADMINISTRATOR TO NPRC OFFICIALS. The Administrator is authorized to authenticate copies of records (Ref.: 44 U.S.C. 2112(b).) He delegated this authority to the Chiefs of the Reference Branches, NPRC, the Assistant Managers, NPRC, and the Center Manager, NPRC (Ref.: 41 CFR 105-61.107).

MEANING OF TERMS USED IN THIS PARAGRAPH 5

41 CFR 105-61.107 delegates authority to "the responsible director or any of his superiors." The word "director," as it applies to NPRC, is defined in 41 CFR 105-61.001-5 as the "head of a Reference

Service Branch in a Federal Records Center." The Reference Branches, NPRC, are Reference Service Branches. The NPRC is a Federal Records Center (Ref.: 41 CFR 101-11.410-1). Consequently, the Chiefs of the Reference Branches, NPRC, are the "heads of Reference Service Branches in a Federal Records Center" and therefore are "directors." The Assistant Managers, NPRC, and the Center Manager, NPRC, are the superiors of the Chiefs of the Reference Branches, NPRC, and therefore are "superiors of directors."

6. ADMISSIBILITY IN EVIDENCE OF COPIES OF RECORDS AUTHENTICATED BY NPRC OFFICIALS. The rules for proving official records for use in civil procedure are set forth in Rule 44 of the Rules of Civil Procedure, 28 U.S.C., Appendix. That rule is incorporated by reference in Rule 27 of Crimes and Criminal Procedure, 18 U.S.C. , Appendix, thus making the manner for proving records for criminal procedure the same as for civil procedure. It is noted that subdivision (a)(1) of the above cited Rule 44 indicates that a type of certification bearing an appropriate seal and the signature of TWO persons is required. However, subdivision (c) of that Rule 44 indicates that the proof of official records may be made by any other method authorized by law. The method authorized by law for GSA is set forth in 44 U.S.C. 2112(b) which indicates an authentication certificate bearing the seal of the National Archives and but ONE signature, namely that of the Administrator, is admissible in evidence. The seal of the National Archives is affixed to authenticate certificates prepared by NPRC and as noted in paragraph 5, above, the authority to authenticate copies of records has been delegated by the Administrator to specific NPRC officials.

(National Personnel Records Center)

ANTITRUST DIVISION
Assistant Attorney General Thomas E. Kauper

DISTRICT COURT

SHERMAN ACT

MANUFACTURER OF ELECTRICAL EQUIPMENT CHARGED WITH RECIPROCAL PURCHASING AGREEMENTS.

United States v. Westinghouse Electric Corporation (Civ. 72-507; June 23, 1972; DJ 60-9-187)

On June 23, 1972, a civil antitrust suit charging Westinghouse with reciprocal purchasing in violation of Section 1 of the Sherman Act, along with a proposed consent judgment were filed in the U. S. District Court in Pittsburgh.

Westinghouse, the country's second largest manufacturer of electrical equipment and related products, ranked approximately thirteenth among U. S. industrial companies in 1970, with total sales of about $4. 3 billion.

The complaint alleges that, beginning at least as early as 1962, Westinghouse has engaged in reciprocal purchasing arrangements. Except for the absence of a charge of an attempt to monopolize in violation of Section 2 of the Sherman Act, the complaint is substantially similar to other reciprocity complaints filed by the Division.

The proposed judgment would enjoin Westinghouse from:

- communicating to suppliers and customers that it will give preference to suppliers or bidders who purchase from it, must be allowed to participate in suppliers' purchases because of its purchases from such suppliers;

- comparing or exchanging statistical data with any supplier in order to facilitate, further or ascertain any relationship between purchases from sales to the supplier;

- discussing with any supplier the relationship between purchases from and sales to the supplier;

- using purchases, or the prospect of purchases, by any company in which it has an ownership interest in order to promote sales;

- preparing comparative purchase/sales figures for any supplier or class or grouping of suppliers;

- furnishing sales information to purchasing personnel and purchases information to sales personnel;

- seeking from sales personnel recommendations on the awarding of contract purchases (capital expenditure);

- participating in activities of any trade relations association.

The judgment would require Westinghouse to:

- abolish any office or job relating to reciprocal dealing;

- issue to all its sales and purchasing personnel and anti-reciprocity policy directive containing statements which are set forth in the judgment.

The judgment expressly excludes from its scope so-called "barter" transactions in international trade, where the defendant furnished goods or services "in payment for" other goods or services, and where such transactions are entered into "because of governmental fiscal policies or any currency restrictions, currency restrictions, currency valuation or other factors affecting payment."

This case was assigned to Judge Dumbauld who directed that the Government make a showing of adequate publicity prior to his entry of the judgment.

Staff: Donald H. Mullins and William G. Kelly, Jr.
(Antitrust Division)

* * *

CRIMINAL DIVISION

Assistant Attorney General Henry E. Petersen

COURTS OF APPEALS

IMMIGRATION AND NATIONALITY ACT

REFUSAL OF A CONSCIENTIOUS OBJECTOR PREVIOUSLY NATURALIZED WITHOUT TAKING THE OATH OF ALLEGIANCE PRESCRIBED IN 8 U.S.C. 1448 THEREAFTER TO TAKE THE APPROPRIATE ALTERNATIVE OATH UNDER 8 U.S.C. 1448(a) (5) (C) "TO PERFORM WORK OF NATIONAL IMPORTANCE UNDER CIVILIAN DIRECTION WHEN REQUIRED BY LAW" UNLESS SUCH OATH WERE MODIFIED BY THE ADDITION OF THE WORDS "WHEN ORDERED BY A COURT OF COMPETENT JURISDICTION" SUBJECTS HIM TO DENATURALIZATION.

United States of America v. Roman Siemzuch (C.A. 7, No. 69-C-127, May 23, 1972; D.J. 38-85-242)

The defendant-appellant, a conscientious objector, was naturalized as a United States citizen in August, 1966, by a state court. However, in 1969, the United States moved to denaturalize him under 8 U.S.C. 1451(a) because he had failed to take an oath that he would "perform work of national importance under civilian direction," as required by 8 U.S.C. 1448(a)(5)(C), when he was admitted to citizenship. In May, 1970, his citizenship was revoked by the United States District Court for the Eastern District of Wisconsin. On appeal, the Seventh Circuit ordered that defendant be allowed to become naturalized by taking a modified oath of allegiance, which he had suggested on appeal, adding the qualifying words "that would not endanger or cause the death of an individual."

Nevertheless, when defendant appeared in district court for his naturalization pursuant to the Seventh Circuit's order, he declined to take the modified oath that he earlier had suggested, but proposed a further modification which added the phrase "when ordered by a court of competent jurisdiction." The United States District Court for the Eastern District of Wisconsin then reinstated its earlier denaturalization order, stating that the newest oath was not in accordance with the Court of Appeals' mandate. The petitioner again appealed contending that his modification of his earlier suggested oath contained the substance of the required oath.

In upholding the district court's decision, the Seventh Circuit declared that the modified oath was not in accordance with its mandate nor in substantial compliance with the statute prescribing the form of oath. The Court pointed out that the condition defendant interposed

would mean that, as a conscientious objector, he would not obey the order of a Selective Service board to perform civilian work in lieu of military service, as required by law; that he would perform such work only if he were ordered to do so by a court as a condition of probation after conviction for failure to obey a Selective Service Board order; and that "[t]he citizenship oath does not contemplate such personal resistance to civilian authority."

Staff: United States Attorney David J. Cannon
Assistant United States Attorney Steven Underwood
(E. D. Wisc.)

NARCOTICS

SEARCH WARRANT AFFIDAVIT CONTAINING DOUBLE HEARSAY HELD SUFFICIENT

United States v. Larry C. Smith etc.; United States v. Marshall Carter, etc. (C. A. 8, Nos. 71-1622 and 71-1623; June 27, 1972; D. J. 12-017-39)

Federal and state law enforcement officers searched a second floor apartment of a building located on a corner with the downstairs bearing the address of Concordia Avenue while access to the apartment upstairs was through a doorway having an address of the adjacent street. The warrant was issued pursuant to an affidavit prepared by a federal agent which stated that he had interviewed a confidential informant who "within the past two days" was advised by a second individual that the defendants had cocaine and heroin. The informant was taken to the Concordia Avenue address where the second individual went to the second floor and later returned and gave a foil-wrapped package of heroin to the informant. The affidavit stated that the informant had previously provided reliable information to federal agents and in addition the affidavit included the results of the test taken of the heroin.

In the apartment the officers found a substantial quantity of packaged heroin and cocaine, packaging materials, cutting agents, hashish and marihuana and seized personal papers belonging to the defendants. Subsequently, the defendants were convicted of possessing, with intent to distribute heroin and cocaine in violation of 21 U.S.C. 841(a). On appeal to the United States Court of Appeals for the Eighth Circuit, the defendants argued that the affidavit failed to establish the requisite probable cause for the issuance of a search warrant since it "relied upon information supplied to a government informant by an anonymous second party whose reliability was in no way established . . . "; that the search was invalid because the warrant did not particularly describe the premises; that the

officers improperly seized items not enumerated in the warrant; and that the evidence was insufficient to support their convictions.

The Court, disagreeing with the defendants' first argument, ruled that a magistrate need not categorically reject double hearsay information. Spinelli v. United States, 393 U. S. 410. The magistrate should canvass the affidavit and the informer's tip as a whole and measure it against Aguilar standards in light of the added analysis of Spinelli in order to assess its probative value. McCreary v. Sigler, 406 F. 2d 1264 (8th Cir. 1969). The crucial question is not whether the affidavit can attest to the reliabilty or credibility of the second individual, but whether the information furnished by the informant, taken as a whole in light of the underlying circumstances, can be said to be reliable. The Court determined that the facts related by the informant, without reliance upon hearsay provided by the second individual, implied that narcotics were being kept at the designated location. The additional information from the second individual carried probative value when considered with the information provided by the informant's personal knowledge, thereby furnishing probable cause for the issuance of the warrant. The Court, in rejecting defendants' second argument, stated that the description "the premises known as the second floor of 678 Concordia Avenue, St. Paul, Minnesota" aptly described the particular place to be searched and thus satisfied the Fourth Amendment requirement. The Court also ruled that the officers were entitled to seize and admit into evidence the paraphernalia used in cutting and preparing individual doses of narcotics although the warrant referred only to heroin and cocaine. United States v. Cox, _ F. 2d _, n. 26 (8th Cir. 71-1108, June 5, 1972); United States v. Bridges, 419 F. 2d 963 (8th Cir. 1969). As for the seizure of personal papers, i. e., the lease to the premises and certain other papers bearing solely on the question of control of the premises, the Court was satisfied that the items were subject to seizure under the "plain view" doctrine. Coolidge v. New Hampshire, 403 U. S. 443 (1971). Finally, the Court determined that the discovery of large quantities of heroin and cocaine prepared and packaged for individual consumption together with the other corroborating evidence, served as an appropriate basis for the jury to conclude, as it did, that the defendants possessed heroin and cocaine with the intent to distribute them.

Staff: United States Attorney Robert G. Renner
Assistant United States Attorney Peter J. Thompson
(D. Minn.)

NARCOTICS

WARRANT NOT REQUIRED FOR INSPECTION OF BAGGAGE OF DEPARTING AIRLINE PASSENGER BY QUARANTINE INSPECTOR AFTER STATE QUARANTINED UNDER PLANT QUARANTINE ACT

United States v. Terry Lee Schaffer, (C.A. 9, No. 71-1004, June 5, 1972; D. J. 12-21-175)

The Secretary of Agriculture, pursuant to authority granted by the Plant Quarantine Act, has declared the State of Hawaii quarantined to prevent the distribution of certain plant diseases and insect infestations into the continental United States. He further provided for the inspection of the baggage and personal effects of aircraft passengers leaving Hawaii to ascertain if they contained any of the designated quarantined horticultural products or plant pests.

Before preparing to board an aircraft for passage to the mainland United States and pursuant to such a warrantless search, the quarantine inspector discovered a marihuana plant and LSD tablets in defendant's baggage. Defendant was placed under arrest and subsequently convicted of unlawful possession of a depressant stimulant drug. On appeal to the Court of Appeals for the Ninth Circuit the defendant argued that the warrantless search provision was invalid; that the inspection of her baggage was without probable cause to believe that she was carrying any of the quarantined articles, and that the drugs seized should be inadmissible because of the cooperation between the quarantine inspector and the local police.

The Court, distinguishing the facts of this case from that of Camara v. Municipal Court, 387 U.S. 523 (1967), ruled that time was the major consideration since the object of the search can easily be transported out of Hawaii to the continental United States by departing tourists and the movement of quarantined items carrying a plant disease or insect could cause serious effects. The search warrant requirement would only "frustrate" the purpose of the inspections because of the time delays inherent in the search warrant mechanism. The Court stated that requiring warrants for agricultural inspections of this type would effectively cripple any meaningful quarantine. See United States v. Biswell, U.S. (1972). The Court disagreed with defendant's second claim that the inspector had no probable cause to search her baggage. The Court held that in view of the fact that a quarantine inspection is not a search designed to secure information which may be used to effect a deprivation of freedom and the fact that there are no other canvassing techniques which would achieve acceptable results, the general administrative determination for the baggage searches at the airport satisfies the "probable cause" requirement of

Camara, supra. Finally, the Court determined that there was nothing in the record which suggests that the administrative search in this case was employed as an instrument of criminal law enforcement.

Staff: United States Attorney Robert K. Fukuda
Assistant United States Attorney Joseph M. Gedan
(D. Hawaii)

NARCOTICS

WIRETAP AUTHORIZATION PROCEDURE APPROVED; MINIMIZATION REQUIREMENT INTERPRETED; CONSTITUTIONALITY OF TITLE III OF CRIME CONTROL ACT UPHELD

United States v. Eddie David Cox, et al., (C. A. 8, No. 71-1108, June5, 1972; D. J. 12-43-179)

Appellants are four of some 17 persons named in a thirty count indictment which resulted from uncovering a large narcotics ring. All four were convicted of possessing heroin in violation of 18 U.S.C. 2 and 26, U. S. C. 4704 (a) and of receiving, concealing and facilitating the transportation and concealment of heroin, knowing that the drug had been illegally imported in violation of 18 U.S.C.2 and 21 U.S.C.173 and 174. Most, if not all, of the evidence against the four appellants was obtained by a wiretap as provided for under Title III of the Omnibus Crime Control Act of 1968, 18 U. S. C. 2510 et seq. The original application for the wiretap came from the Bureau of Narcotics and Dangerous Drugs and was first considered by an attorney in the Organized Crime and Racketeering Section of the Justice Department. That attorney then forwarded his favorable recommendation to the Deputy Chief of the Section, who commended the application to Henry Petersen, then Deputy Assistant Attorney General and now Assistant Attorney General. Mr. Petersen examined the file and forwarded it to the Office of the Attorney General with a detailed recommendation that the authorization be granted. The Attorney General at that time, John Mitchell, then considered the application and sent a memorandum to Will Wilson, then Assistant Attorney General, reciting that Mr. Wilson was designated to authorize Calvin K. Hamilton, Assistant United States Attorney for the Western District of Missouri, to make the application for the wiretap. Mr. Petersen thereupon sent Mr. Hamilton a letter of authorization to seek the wiretap order, signing Mr. Wilson's name to the authorization order. The order was eventually approved by the District Court on April 30, 1970. The tap commenced on that date and it continued until midnight, May 19, 1970. The tap recorded conversations almost, if not in fact, continuously, producing 90 reels of recorded conversation,

including some irrelevant conversations. On appeal to the Court of Appeals for the Eighth Circuit, the appellants, while also challenging other aspects of their convictions, concentrated their appeal on the wiretap evidence. In particular, they alleged that the authorization procedure used in this case did not comply with the statute; that there was no attempt to "minimize" the conversation recorded, as required by the statute; and finally, that Title III of the Organized Crime Control Act is unconstitutional. The Court rejected these and other points raised by the appellants and affirmed their convictions.

1. On the authorization procedure claim, appellants relied heavily on United States v. Robinson, No. 71-1058 F. 2d (5th Cir., January 12, 1972) which invalidated a wiretap order that was approved only by two officials not mentioned in the Act, the Attorney General's personal assistant and the Deputy Assistant Attorney General. However, the Court here held that since Mr. Mitchell had acted personally in this case and since the Act (§2516) authorized either him or Mr. Wilson to act, then the Act's requirements were satisfied. Because the Court found that Mr. Mitchell did approve the application, it was thus unimportant that Mr. Wilson's ministerial act of sending a letter of approval to Mr. Hamilton was actually signed by Mr. Petersen. Furthermore, the Court also ruled that it was irrelevant that the application and order recited the authorizing officer as Mr. Wilson rather than Mr. Mitchell.

2. In deciding the failure to minimize allegation of the appellants, the Court pointed to the legislative history of the Act to find that Congress had intended the minimization issue to be decided on a case-by-case basis, rather than by any one rigid standard. Thus, the Court felt that it should take into consideration all of the various factors and circumstances surrounding the particular case being investigated. In so doing, the Court pointed out that this case involved an organized conspiracy that used a colloquial code in communicating with each other and that it was almost impossible to determine the relevance of each phone call until it had terminated. Therefore, the Court found that it could not decide the minimization issue in retrospect, but must do so only by putting itself into the shoes of the listeners at the time of the interception. By so doing, the Court found that even though all of the conversations were recorded here, that did not, in and of itself, constitute a failure to minimize. The Court also went on to suggest that even if there had been a failure to minimize then, only the irrelevant conversations would still be allowed into evidence.

3. Finally, the Court upheld the constitutionality of Title III. The appellants had attacked the statute on the grounds that it is not only inherently unconstitutional, i.e., as violative of the First Amendment freedom of speech, Fourth Amendment protection from self-incrimination

and guarantee of due process, Sixth Amendment right to counsel and the penumbral right of privacy, but also that the statute was procedurally unconstitutional under recent Supreme Court decisions. The Court rejected both grounds finding that the Supreme Court had expressly upheld some forms of eavesdropping when accompanied by appropriate procedural safeguards and that those procedural safeguards (the Court listed some nine requirements) were complied with under the provisions of this Act and the circumstances of this case. Thus, the Act met both substantive and procedural requirements.

4. The Court then went on the reject the claims of the appellants concerning the presumption of importation of narcotics, jury instructions and other miscellaneous allegations and affirmed the convictions.

Staff: United States Attorney Bert C. Hurn
(W.D. Mo.)

VOTING RIGHTS CONSPIRACY (18 U.S.C. 241)

THE GOVERNMENT DID NOT NEED TO SHOW THAT THE ELECTION OCCURRED, THAT VOTE DILUTION WAS ACCOMPLISHED, THAT A SINGLE ILLEGITIMATE BALLOT WAS CAST, OR THAT ANY OVERT ACT WAS COMMITTED, BUT MERELY THAT AN ACTUAL AGREEMENT BETWEEN TWO OR MORE PERSONS TO ACCOMPLISH A PROHIBITED OBJECT EXISTED AND THAT THE APPELLANTS WERE KNOWING PARTIES TO THAT AGREEMENT.

United States of America v. Guadalupe M. Morado, et al., 454 F.2d 167 (C. A. 5, No. 71-1309, January 12, 1972; D. J. 72-74-74)

Confronted with a history of questionable elections in Starr County, Texas, numerous complaints by Starr County citizens, and the repeated failure of local authorities to investigate election irregularities, the United States Attorney's Office for the Southern District of Texas conducted an exhaustive probe into voter complaints arising out of the May 2, 1970, primary elections involving candidates for federal office.

Four months of intensive investigation in border towns along the Rio Grande River and a much publicized and turbulent trial culminating on December 11, 1970, resulted in a jury verdict of guilty against eight defendants. Among those convicted were the Sheriff of Starr County, the Assistant County Auditor, a school board trustee, and a State investigator.

The Government alleged that a systematic violation of State election law was accomplished by the improper delivery and return of the

applications for absentee ballots, by the improper delivery and return of the absentee ballots themselves, by the improper marking of the absentee ballots, and the coercion of illiterate voters and those voters suffering with bodily infirmity, all being a part of a county-wide plot to steal an election.

On appeal from the United States District Court for the Southern District of Texas, the United States Court of Appeals for the Fifth Circuit affirmed the convictions of six individuals, but reversed and remanded for new trial the convictions of two minor participants in the voting scheme due to insufficiency of the evidence. In reversing as to the individuals, the Court commented, "We do not blithely reverse two convictions. The government went to great lengths in this case to attempt to undo the intolerable, stultifying debasement of our democratic processes wrought at the hands of those who steal votes to perpetuate themselves in office."

The Court of Appeals further held that whether the appellants successfully conspired was not at issue in the case, and a showing that fraud was actually perpetuated upon legitimate voters in the election is not a requisite element of the proof. The Government need not show that the election occurred, that vote dilution was accomplished, or that illegitimate ballot was cast (18 U.S.C. A. 241 does not require that an overt act be shown). Such showing, if made, goes only to aid in the establishment of the element of an actual agreement between knowing parties to that agreement.

Staff: United States Attorney Anthony J. P. Farris
Assistant United States Attorneys
Jack Shepherd and James R. Gough
(S. D. Texas)

* * *

INTERNAL SECURITY DIVISION

Assistant Attorney General A. William Olson

FOREIGN AGENTS REGISTRATION ACT

OF 1938, AS AMENDED

The Registration Section of the Internal Security Division administers the Foreign Agents Registration Act Of 1938, as amended, (22 U.S.C. 611) which requires registration with the Attorney General by certain persons who engage within the United States in defined categories of activity on behalf of foreign principals.

JULY 1972

During this month the following new registrations were filed with the Attorney General pursuant to the provisions of the Act:

D. Parke Gibson Associates, Inc. of New York City registered as Communications Counsel to the Republic of Guyana. The agreement covers a 1 year period beginning June 1, 1972 with a fee of $36,000 per year plus charges for services of account executives and staff assistants at a standard per diem rate covering direct salary and applicable overhead. Registrant will also be reimbursed for out-of-pocket expenses. Registrant will provide counsel and services in the area of the principal's information services, its press relations, public relations, publications and will provide technical training to the principal's staff; registrant will also communicate with the United States financial community to promote greater financial assistance in the economic development of Guyana. The following persons filed short-form registration statements in connection with the Guyanese account: Raymond E. Petrie as Manager-Client Services; Mary P. Murray as Secretary of the Registrant; Ellen Hall as Management Consultant; and D. Parke Gibson as Senior Management Consultant. All are regular salaries employes of the registrant corporation.

Hugh C. Newton of Alexandria, Virginia registered on behalf of the Republic of China, Chinese Information Service, New York, New York. Registrant will act as Washington media contact for the foreign principal supplying editors, reporters and columnists with information and materials; as well as perform public relations services. Registrant is to receive a fee of $1,000 per month plus out-of-pocket expenses.

French Film Office of New York City registered on behalf of Unifrance Film, National Center for the Cinema, Ministry of Culture, Paris.

Registrant will promote and distribute French films and will engage in publicity and market evaluation. Registrant is funded by the French Government through Unifrance Film and received $30,000 for its operating budget for the period January - May 1972. Duncan McGregor filed a short-form registration as Director and lists his salary as $12,500 per year; Yvette Mallett filed a short-form statement as Cultural Director and lists her salary as $9,000 per year.

E. B. Berlingrut of New York City registered as public relations counsel for Bonaire, Netherlands Antilles. Registrant will promote tourism to Bonaire by publicity, advertising, films, brochures, radio and television interviews and maintain a general information service for tourists and the tourist media. Registrant will receive an initial fee of $30,000 with a contingent percentage increase based on the increase in tourists to Bonaire over the 1971 total. Virginia M. Casey, E. B. Berlinrut and Edith Berkowitz filed short-form registrations as performing public relations services on behalf of Bonaire. Each reports his compensation as a monthly fee.

A R & H Advertising, Inc. of New York City filed a registration statement on behalf of CONAHOTU, Caracas, Venezuela. CONAHOTU is a foreign corporation, financed by the Government of Venezuela. Registrant will prepare advertising promoting tourism to Venezuela and its compensation will be accepted agency media and production commissions. Arthur Siegal and Robert Nussbaum filed short-form registrations as Advertising Executives working directly on the Venezuelan account.

African National Congress of South Africa of New York City registered as political representative of the African National Congress of South Africa, Tanzania. Registrant intends to inform the international community and the U. S. public of the South African situation especially concerning the apartheid policies of the Government of South Africa through the United Nations, direct contact with United States Congressmen and through the dissemination of political propaganda. There is no formal agreement between registrant and the foreign principal and registrant is to operate for an indefinite period; an appropriate budget for the operating expenses of the registrant is expected to be provided in the near future. Thami Mhlambiso filed a short-form registration as Organization Representative and states that he receives an allowance for his services.

Portuguese Trade Office of New York City registered as agent of Fundo de Formento de Exportacao, Lisbon, Portugal. Registrant promotes the exportation of Portuguese products into the United States; analyses the United States market and acts as an information center for the Lisbon Office and for the U. S. import trade media. Registrant received an

operating budget of $111, 808.17 for the period April 13 - June 1, 1972. Manuel A. de Carvalho filed a short-form registration statement as Director of the registrant with a salary of approximately $16, 000 per year.

Japan National Tourist Organizations in Honolulu, Hawaii; Chicago, Illinois; Dallas, Texas; Los Angeles, California; and San Francisco, California filed registration statement as official branches of the parent Organization in Tokyo. Registrants will promote tourism to Japan and their operating expenses are funded by the parent Organization. The operating expenses for these offices totalled $108,188. 37 for the period March - May 1972 and the offices employ 9 persons in the capacities of directors or officials; Shinya Takata; Kaoru Sakurada; Yoshio Kimura; Albert Ninomiya; Hiroshi Terashima; Atsushi Ikeda; Yasuyuki Yabuki; Osamu Seejima; and Takahide Yamada.

Communetics Inc. of New York City registered as agent of the Turkish Government Tourism & Information Office. Registrant is to write and produce two 16mm color- sound motion picture for the purpose of promoting tourism to Turkey. For these services, registrant will receive $40, 000 payable in three installments. John Savage filed a short-form registration as Film Writer-Producer.

* * *

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Kent Frizzell

COURTS OF APPEALS

ENVIRONMENT; HIGHWAYS

LACHES AS DEFENSE TO INJUNCTION SUIT TO ENJOIN FEDERAL-AID HIGHWAY; ADJUDICATION OF ALLEGED VIOLATION OF NEPA AND "PARKLANDS" STATUTE BARRED BY INEXCUSABLE DELAY IN FILING SUIT.

Clark, et al. v. Volpe, et al. (C. A. 5, No. 72-1631, July 10, 1972; D. J. 90-1-4-450)

The plaintiffs, claiming to be users of City Park in New Orleans, La., brought suit to enjoin further construction of a federal-aid highway (Interstate 610) crossing the entire width of City Park. The defendants were the Secretary of Transportation and the Director of the Louisiana Highway Department. The construction contractor carrying out the work appeared as intervenor in the case.

The primary ground asserted for injunctive relief was the failure by the Secretary of Transportation to prepare an environmental impact statement called for by the National Environmental Policy Act, and to make the special determinations called for by the "parklands" statute, i.e., Section 4(f) of the Department of Transportation Act, whenever federal-aid highways cross public parks.

The defendants and the intervenor moved to dismiss the action because of plaintiffs' laches--inexcusable delay in bringing suit. After an evidentiary hearing limited to the issue of laches, the district court dismissed the action by application of the doctrine of laches, leaving the alleged NEPA and 4(f) violations unadjudicated.

In a per curiam opinion, the Court of Appeals affirmed and added the district court's opinion as an appendix to its own.

The significant facts were undisputed and the district court found that the route of the proposed highway through City Park had been in planning since 1956; a public hearing on the cross-park route was held in 1958; the State Highway Department purchased the right-of-way from the City of New Orleans in February 1966; clearance of trees and buildings along the route began in 1970; in May 1971 the Secretary of Transportation gave final construction approval and authorized the solicitation of bids;

from July 1971 until February 1972 construction work proceeded; and, at the time of suit, 25% to 30% of the construction work was complete. On February 24, 1972, the plaintiffs filed suit.

The district court's opinion concluded that, within a reasonable time after the enactment of the NEPA or Section 4(f), plaintiffs should have been prepared to invoke the rights under these statutes by timely suit. The critical date was the final construction approval of the project by the Secretary of Transportation in May 1971. "Nevertheless, plaintiffs stood idly by during the remaining months as bulldozers and chain saws stripped and leveled the land and as vast sums of public money were expended on highway construction."

The district court further concluded (Slip Op. 15):

> * * * it is logical to conclude that the Congress did not intend that plaintiffs should delay until after substantial alteration of the environment to demand studies as to the consequences of that alteration.

Staff: Dirk D. Snel (Land and Natural Resources Division); and Assistant United States Attorney John R. Schupp (E. D. La.)

ENVIRONMENT; HIGHWAYS

NEPA; DENIAL OF PRELIMINARY INJUNCTION FOR LACK OF SHOWING THAT PROJECT IS "MAJOR FEDERAL ACTION;" LOCALLY FINANCED HIGHWAY PROJECT, ALTHOUGH PART OF COMBINED FEDERAL-STATE-LOCAL MASTER PLAN PREDATING NEPA, NOT "MAJOR FEDERAL ACTION."

Civic Improvement Committee, et al. v. Volpe, et al. (C. A. 4, No. 72-1413, May 15, 1972; D. J. 90-1-4-484)

Plaintiffs sought to enjoin construction of a segment (Sharon Lane) of a perimeter road around Charlotte, North Carolina, which connects with federal-aid highways, on the ground of noncompliance with the NEPA. The road is part of the Smith Plan, a master plan developed by federal and local authorities in 1960 providing for roads through 1980. Since 1960 no project has been federally aided unless contained in the Smith Plan (or its modifications). Plaintiffs argued that the widening of Sharon Lane, although locally financed, was a portion of the Smith Plan which included federally aided highways.

The district court accepted the plaintiffs' theory that the effect of many federal decisions can be individually limited but cumulatively significant, but the court concluded that the local financing of the Sharon Lane widening project "simply does not fit the theory; its widening is not sufficiently federal to invoke [the NEPA]." The district court, therefore, denied a preliminary injunction.

Upon the United States Attorney's representation that the Sharon Lane project is entirely a state project and consequently, beyond the reach of the NEPA, the Court of Appeals upheld the denial of the preliminary injunction as a permissible exercise of discretion and vacated its partial preliminary injunction pending appeal. Stating that "there are doubtless local projects that may be destructive of environmental assets that are not within the ambit and protection of the NEPA," the court referred the plaintiffs to state and local remedies. Judge Craven, concurring and dissenting, agreed that the record failed to establish "sufficiently 'major Federal action,' " but favored a remand to allow further inquiry into the extent of federal involvement.

Staff: Assistant United States Attorney David B. Sentelle (W. D. N. C.)

* * *

INVESTIGATION OF OBSTRUCTION OF JUSTICE AND PERJURY MATTERS

United States Attorney and Assistant are urged to be thoroughly familiar with the following investigative policy. They may be confronted with the need to determine very rapidly whether the FBI or another agency will conduct an obstruction or perjury investigation. Reported obstruction violations may involve the making of threats or the offering of bribes to jurors, witnesses, or the court (judges and magistrates) for the purpose of influencing the outcome of litigation. Such allegations often are first reported by litigating counsel to the judge or other person presiding over the litigation or proceeding. Presiding officials frequently contact the United States Attorney immediately with the request that the FBI conduct an investigation of the allegation. Such requests for FBI investigation are often explained in terms of a desire for an agency not otherwise involved in the substantive litigation and/or a need for the greatest expertise to be utilized in connection with allegations which touch on or intrude heavily into the essence of the judicial system. United States Attorneys must know which reports the FBI will investigate and must be prepared to so inform the court and, if necessary, to explain the rationale of the investigative policy. If a reported violation will not be investigated by the FBI, the United States Attorney, in order to avoid subsequent embarrassment, must make that fact clear from the beginning, and be prepared to assist the investigating agency as needed.

In the past there have been instances in which obstruction of justice and perjury allegations in matters and cases not within the jurisdiction of the Federal Bureau of Investigation were not promptly and adequately investigated by other agencies. Such agencies claim that current manpower, the infrequent rate of occurrencs of such violations under their jurisdiction, and the lack of statutory power to carry firearms and/or power to make arrests do not justify staffing, training, or requests for additional statutory authorizations. They also indicate such responsibilities would be inconsistent with the current functions authorized by Congress. The serious nature of these violations necessitates an appropriate policy to insure offective and immediate investigative coverage.

By statute, 28 U.S.C. 533, the Attorney General is authorized to detect and prosecute crimes against the United States. By regulation, 28 C.F.R. O. 85(a), the Attorney General directed the FBI to investigate violations of the laws of the United States except in cases in which such responsibility is by statute or otherwise specifically assigned to another investigative agency. The FBI is the primary investigative agency for

obstruction of justice and perjury matters. The FBI's investigative policy relating to obstruction of justice and perjury has been changed; the FBI will investigate such violations for agencies that do not have a trained investigative staff.

The FBI will now investigate all obstruction of justice and perjury violations in cases came and matters involving departments and agencies of the United States, except those of the Secret Service; Internal Revenue Service; Immigration and Naturalization Service; Bureau of Customs; Bureau of Narcotics and Dangerous Drugs; Bureau of Alcohol, Tobacco and Firearms; and the Postal Inspection Servics. These agencies have the authority to carry firearms and to make arrest and are familiar with their own cases. This practice will prevent a duplication of investigation by the FBI. However, even in cases and matters coming within the jurisdiction of the above agencies, the FBI will investigate an obstruction of justice violation if it involves threatened or actual bodily harm to a judge or juror. Of course, the FBI will continue to investigate violations relating to cases and matters not involving the United States, or a department or agency thereof. For example, the FBI will investigate an obstruction of justice and perjury violation committed in connection with a civil case in a Federal court to which the United States, or a department or agency, is not a party. (Since the United States Government ordinarily should not be in the position of taking sides in private civil litigation, the United States Attorney must evaluate such allegations to determine whether the court itself may be able to resolve the matter during litigation, without investigation by the FBI.) The FBI will also continue to investigate obstruction of justice and perjury violations committed in connection with any inquiry or investigation being had by either House, or by any committee of either House, or by any joint committee of the Congress on the written request of the Department.

Title 18, United States Code, contains several sections relating to obstruction of justice and perjury. Allegations of obstruction of a criminal investigation (prohibited by 18 U.S.C. 1510) are investigated by the agency (if one of the seven listed above) which is investigating the substantive violation. See Department Memorandum No. 561, dated January 30, 1968. On the other hand, jurors of the grand jury usually consider more than a single case and contacts with them by written communication (prohibited by 18 U.S.C. 1504) or offers to such jurors of enrichment (prohibited by 18 U.S.C. 201 because the term "juror" is included in subsection (a) as a "public official") usually can be related to a particular case only after investigation of such allegations has been completed. For that reason, violations of section 201 involving "jurors" and section 1504 (and also 18 U.S.C. 505, 1505, 1506, 1507, 1508 and 1509) [1] are investigated by the FBI.

Subsections (d) and (e) of 18 U. S. C. 201 concern witnesses (rather than jurors) and as matters involving witnesses can more readily be related to a particular substantive violation, the determination of which investigative agency is to be responsible for investigation of such allegations is dependent on the factors discussed herein. The seven enumerated agencies will investigate obstruction violations relating to witnesses in their substantive cases, the FBI will handle others. Perjury (18 U. S. C. 1621) subornation of perjury (18 U. S. C. 1622), and false declarations (18 U. S. C. 1623), relate to witnesses and thus come within the rationale applicable to obstruction directed at witnesses.

When a reported obstruction of justice violation involves an attempt to influence a juror sitting in the trial of a case, the investigator and attorney directing the investigation must be exceedingly cautious. An intrusion into the privacy of the jury may cause a mistrial to be declared. Gold v. United States, 352 U.S. 985; Remmer v. United States, 350 U.S. 377 and 347 U.S. 227.

Before commencing an obstruction of justice investigation relating to pending litigation, the United States Attorney should inform the Judge to whom the case is assigned. If a person to be interviewed is sitting as a juror in litigation, clearance should be obtained from the court before conducting the interview.

There have been instances in which a pyramiding of violations has occurred. For example, in a civil action is a Federal court, not involving the United States, there are efforts made to contact jurors for the purpose of influencing the verdict. When the obstruction violation in presented to a grand jury and later tried, there are subornation and perjury violations committed to prevent indictment for and conviction of the obstruction of justice. In this case the FBI would handle the entire matter because it handled the original violation. Generally, the agency that handles the original violation will continue to handle subsequent violations, unless the violation consists of actual or threatened bodily harm to the court or a juror which would justify FBI involvement.

The FBI will furnish significent assistance to other investigative agencies that are conducting obstruction investigations. A principal form of this assistance is the completion of investigative leads which the other

---

1/ Prosecution may not be initiated under 18 U. S. C. 1509 without prior authorization from the Department of Justice. Title 10, United States Attorneys' Manual, p. 16.

agency cannot handle because it lacks the capacity to cover a distant area and the FBI is readily available for such service. If neither the other agency nor the FBI has an investigator reasonably near the scene, the other agency should handle the matter. Services of the FBI laboratory are also available to other agencies and may be used for a number of examinations. However, to eliminate duplication, evidence will not be examined by the FBI laboratory if the evidence in the same case has been or will be examined by any other experts in the same scientific field on behalf of the Government. The FBI also maintains an Identification Division which is a national clearing-house of information based on fingerprints of arrested persons. These facilities may be used by other agencies conducting obstruction of justice investigations.

In exceptional situations, the FBI may conduct an obstruction investigation to assist another agency. For example, in a customs case in Alaska, the Bureau of Customs had only two investigators, one of whom was on a full-time stake-out and the second was in travel status and a great distance away. Because the nature of the obstruction required immediate action, the FBI handled the matter.

Conduct appearing to be an obstruction of justice violation may be a violation of a criminal statute such as bribery or extortion by threatening communications (18 U. S. C. 875, 876) that is within the investigative jurisdiction of the FBI. The premise of such violation may be sufficient with other factors to cause the Special Agent in Charge for the FBI to conduct the investigation as a bribery or extortion matter, rather than obstruction of justice.

Exceptional situations will be determined on a case-by-case basis and will require consideration of the factors involved, including the personnel of the originating agency, the location of the obstruction violation, the nature of the obstruction violation, and the overall appeal of the case. FBI participation must be approved by FBI headquarters, so United States Attorneys should contact the Criminal Division to have it facilitate FBI consideration of the request.

It may be necessary for United States Attorney personnel to participate in obstruction of justice and perjury investigations if the matter is not handled by the FBI and the other agency involved is in need of assistance in completing the investigation. This assistance may be in the forms of Assistant United States Attorneys' interrogating the witnesses and/or counseling the agency's investigator. In some cases a grand jury inquiry may be not only appropriate, but recommended as the quickest and most assured method of reaching a satisfactory termination of the investigation. By statute, 18 U. S. C. 3053, United States Marshals and their deputies

have arrest authority. Depending on local conditions, the Marshal's office may be of assistance in the investigation by United States Attorney personnel of an alleged obstruction of justice.

Because obstruction of justice and perjury violations affect the integrity of the judicial process, all offenders should be vigorously prosecuted. Because of threats to the lives of witnesses, jururs, and others, time is of the essence in conducting the investigation and initiating prosecution. United States Attorneys may submit obstruction of justice and perjury matters to the grand jury for its consideration or an information may be filed without prior authorization from the Criminal Division. Obstruction and perjury matters will be under the supervisory jurisdiction of the Division and Section of the Department having responsibility for the case or matter in which the obstruction occrred. When such responsibility for the subject matter cannot be identified, supervisory responsibility is with the General Crimes Section of the Criminal Division. Attorneys in the General Crimes Section familiar with obstruction and perjury matters may be reached on extensions 2604 and 2723.