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EXECUTIVE OFFICE FOR U. S. ATTORNEYS
Philip H. Modlin, Director

Robert L. Meyer, United States Attorney for the Central District of California from May 1970 to January 1972 died November 14, 1972 of a heart attack. Over $300 has been given to the Department of Justice Scholarship Fund in memory of Mr. Meyer.

POINTS TO REMEMBER

Criminal Fines and Appearance Bond Forfeiture Judgments

In an attempt to assist United States Attorneys in collecting criminal fines and appearance bond forfeiture judgments, the Criminal Division Collection Unit now participates in Internal Revenue Service Project 719, a program which uses Internal Revenue Service computerized records to provide current address information upon specific requests. The missing debtor's Social Security Account Number keys the computer search and must be included with each request.

This new program has proved to be quite successful, providing current address information for over 55 percent of the debtors submitted by the United States Attorney.

Information concerning Internal Revenue Service Project 719 can be obtained from the Criminal Division Collection Unit, Department of Justice, 10th & Pennsylvania Avenue, Washington, D.C. 20530. (202-739-3602)

(Criminal Division)

ANTITRUST DIVISION
Assistant Attorney General Thomas E. Kauper

DISTRICT COURT

SHERMAN ACT

SECTION 1 OF SHERMAN ACT CASE ALLEGING RECIPROCITY IN TRUCK LINE INDUSTRY.

United States v. Yellow Freight System, Inc. (Civil Action No. 20632-2; October 26, 1972, DJ 60-149-18)

On October 26, 1972, a civil action was filed in the Western District of Missouri charging Yellow Freight System, Inc., a truck line based in Kansas City, Missouri, with using reciprocal purchasing arrangements with its customers and suppliers in violation of the Sherman Act.

The complaint charged that since at least 1961, Yellow Freight has violated Section 1 of the Sherman Act by entering into arrangements to purchase products and services from its suppliers upon the understanding they would use Yellow Freight as their carrier.

The complaint also charged that Yellow Freight has used its purchasing power since at least 1961 in an attempt to monopolize the truck transportation requirements of its actual and potential suppliers in violation of Section 2 of the Act.

The complaint specified that Yellow Freight's illegal program included the designation to trade relations managers and participation in the activities of the Trade Relations Association, Inc. Other aspects alleged included the policy of buying from those who would purchase transportation services from the defendant, maintaining comparative purchase and sales records and making suppliers aware of Yellow Freight's reciprocal policies.

According to the complaint, Yellow Freight's reciprocal purchasing arrangements have had the effect of foreclosing competing trucking companies from hauling for its suppliers.

The relief requested includes injunctions forbidding Yellow Freight from communicating to suppliers that it will place its purchases with or give preference to suppliers who deal with it, compiling statistics which compare purchases and sales of goods or services from companies dealing with it, transmitting purchasing information to sales personnel and transmitting sales information to purchasing personnel and assigning to any of its officials or employees any duties which relate to the conduct or effectuation of a reciprocity or trade relations program.

Yellow Freight is the fourth largest truck line in the United States. It operates over 41,700 miles of truck routes through more than 100 terminals and had total revenues in 1970 of approximately $170 million.

Staff: Joseph T. Maioriello, Irene A. Brown and Ernest Carsten (Antitrust Division)

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CIVIL DIVISION
Assistant Attorney General Harlington Wood, Jr.

COURT OF APPEALS

SOCIAL SECURITY ACT

COURT'S POWER TO EXTEND DISSATISFIED CLAIMANT'S ADMINISTRATIVE APPEAL PERIOD.

Paul R. Ensey v. Elliott Richardson (C.A. 9, No. 72-1850; October 31, 1972, D.J. 137-11E-75)

In this action the plaintiff sought reversal of the administrative decision denying his claim for disability insurance benefits. The plaintiff has previously been awarded such benefits, but, during 1964, his benefits were terminated on the ground that the disability had ceased. In 1971 the plaintiff filed a new application for benefits which was denied on the ground of res judicata. The hearing examiner issued an order of dismissal, and informed the plaintiff that he had two days to request review of the dismissal order by the Appeals Council. No such request was made, nor did the plaintiff seek an extension of time for filing a request for review. Rather, seven days after the 60-day period ran, this action was filed in the district court. The government moved to dismiss the complaint on the ground that the claimant had failed to exhaust his administrative remedies--i.e., failed to seek Appeals Council review--and, therefore, there was no "final decision" for review purposes within the meaning of 42 U.S.C. 405(g). The district court, however, entered an order remanding the matter to the Secretary "with directions to give plaintiff an additional 60 days from the date of [its] order in which to request review by the Appeals Council."

The question raised on the government's appeal was whether the district court had the power to remand the case with instructions that the Secretary extend the period of time the plaintiff had to seek Appeals Council review. The ninth Circuit, after concluding that the remand order was appealable under 28 U.S.C. 1291, went on to hold that, while the Secretary could grant an extension for Appeals Council review upon a showing of "good cause" (20 C.F.R. 404.954), the district court "had no jurisdiction to extend the time for review." Accordingly, the court reversed the order of the district court, and remanded the case with directions to dismiss the action.

Staff: Joseph Scott (Civil Division)

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CRIMINAL DIVISION
Assistant Attorney General Henry E. Petersen

COURT OF APPEALS

SEARCH AND SEIZURE

CHECKING A HOUSE FOR BURGLARS IS ANALOGOUS TO A SIMPLE FRISK.

United States v. William Byron Langley (C.A. 6, No. 71-1959, August 29, 1972; 466 F. 2d 27; D.J. 15-37-111)

The U.S. Court of Appeals for the Sixth Circuit held in this case that a check of a dwelling for a possible burglary was a search but that it was analogous to a "frisk" under Terry v. Ohio, 395 U.S. 1. Affirming an interstate theft conviction, the court held that police actions in approaching a home and looking in the windows after a neighbor called at 3:30 a.m. to report a possible burglary was mandatory police procedure under the circumstances and was no more unlawful than the simple frisk of a suspected criminal on the street under appropriate circumstances.

Just as the officer on the street who has a Terry-satisfying suspicion of criminal activity afoot has the right to stop and frisk suspicious persons, police officers investigation of neighbor's report of a rented truck in the driveway of the next house and suspicious activity occurring there have the right and the duty to investigate further. The inability of the police to gain any response from within the house, coupled with the lateness of the hour and the presence of the rental vehicle in the driveway made further investigation reasonable, if not mandatory. "Here, the intrusions upon the ... premises were geared to protect the privacy and security of the premises; they were directed not at [defendant] or other occupants of the house but rather at suspected burglars."

The court held that all the information obtained by checking the house in the course of the "burglary" investigation was reasonably obtained and was properly included in the affidavit for a warrant to search the house and the truck. However, specific information as to the contents of the truck was improperly included in the affidavit. The officer, while justified in checking the truck for possible suspects, was not justified in taking detailed information as to the packing crates located in the truck.

Staff: United States Attorney Ralph B. Guy, Jr. Assistant United States Attorney James W. Russell (E.D. Mich.)

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LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Kent Frizzell

SUPREME COURT

INDIANS

INDIAN PROPERTY RIGHTS IN THE TRIBE, NOT IN INDIVIDUALS: INDIAN "PROPERTY" IN FIFTH AMENDMENT SENSE.

United States v. James Jim; Utah v. James Jim; (S.Ct., Nos. 71-1509, 71-1612, November 20, 1972; D.J. 90-2-4-164)

The Supreme Court summarily, without briefing or argument, reversed a decision of the district court for the District of Utah which had declared unconstitutional an Act relating to Indian Lands in Utah.

Congress in 1933 has added to the Navajo Reservation a narrow strip of land in southern Utah, the Aneth extension. This 1933 Act provided that, if oil or gas should be discovered on the Aneth extension, 37 1/2 percent of the royalties would go to Utah to be used for certain narrowly defined purposes for the benefit of the Indians resident on the Aneth extension. Because of the administrative difficulties in expending the royalty funds from the oil and gas leases, Congress in 1968 amended that Act to enable the State to spend the royalty funds for more flexible purposes (the health, education and general welfare) and for all the Navajo Indians residing in San Juan County, Utah. This expanded the class of beneficiaries from the 1,500 Indians living on the Aneth extension to all 15,000 Navajo Indians living in San Juan County.

The Aneth extension Indians sued to have the 1968 Act declared void as depriving them of a vested property interest in the royalty funds without just compensation. The district court held the 1968 Act unconstitutional.

In a per curiam opinion, the Supreme Court reversed and held that the 1933 Act had created no constitutionally protected rights in the Aneth extension Indians. Reiterating establish principles of Indian law, the Court held that whatever title Indians have to land is with the tribe, not with the individual Indians. Congress in 1968 had merely altered the pattern of distribution of the 1933 Act and thereby benefited more Indians on the Navajo Reservation. The Court held that Congress had the power to enlarge the pool of Indians who are to benefit from the distribution of tribal property. Congress has not deprived the

Navajo of the benefits from the oil and gas discovered on their tribal land. No "property" in the Fifth Amendment sense was affected by the 1968 Act.

Staff: United States Attorney C. Nelson Day (D. Utah); Erwin N. Griswold, (Solicitor General); Harry R. Sachse, (Assistant to Solicitor General); Henry J. Bourguigon (Land and Natural Resources Division)

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