FEDERAL BUREAU OF INVESTIGATION

SUPREME COURT

PART 14 OF 14

CROSS REFERENCES

STANDARD FORM NO. 64

Office Memorandum • UNITED OVERNMENT

TO : Mr. Nease

DATE: June 11, 1958

FROM : M. A. Jones

Tolson
Boardman
Belmont
Mohr
Nease
Parsons
Rosen
Tamm
Trotter
Clayton
Tele. Room
Holloman
Gandy

SUBJECT: INDEXING OF "THE FBI STORY" AND "MASTERS OF DECEIT"

The indexes of both the Don Whitehead book, "The FBI Story," and the Director's book, "Masters of Deceit," have not been indexed into Bureau files as such. Recently, there was an instance wherein an item appearing in the Whitehead book was brought to our attention by a reporter as the basis for an erroneous conclusion on his part. The search of the Bureau files which preceded our original outgoing letter to this reporter concerned the old motion picture "G-Men" and this file search did not make reference to the fact that this particular motion picture was mentioned in the Whitehead book footnotes. No effort has been made in the Records Section to index the Director's book. As far as the Whitehead book is concerned pertinent portions concerning individuals mentioned in this work have been filed into that particular individual's main file and so indexed. This, of course, is not complete since it is hardly possible to index such items as "Pearl Harbor," the gangster era, or "Operations of the Communist Party." These nonspecific items cannot be accurately indexed.

The Records Section has advised that the actual index of both the books in question can be indexed in Bureau files and that such a procedure would indicate to an individual having a search made that a particular item appears on page so and so of either the Whitehead book or "Masters of Deceit." It should be borne in mind, however, that the index to neither book is complete due to space limitations and the feasibility of such an indexing procedure is, therefore, questionable. There is, however, a possibility of avoiding possible contradictory communications if it were possible for the individual preparing Bureau communications to have reference to a particular individual as they appear in these two books brought to his attention when a file search is made.

RECOMMENDATION:

It is recommended that the Records Branch index the indices of both "The FBI Story" and "Masters of Deceit."

1-Mr. Walkart
JTM:grs
(5)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 12/4/85 BY sp-2 TAP/SHP

7/25/85

60 JUL 15

REC-74 62-104277-795

13 JUN 20 1958

4-750 (Rev. 4-17-85)

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FEDERAL BUREAU OF INVESTIGATION
FOIPA DELETED PAGE INFORMATION SHEET

_____ Page(s) withheld entirely at this location in the file. One or more of the following statements, where indicated, explain this deletion.

☐ Deleted under exemption(s) _____ with no segregable material available for release to you.

☐ Information pertained only to a third party with no reference to you or the subject of your request.

☐ Information pertained only to a third party. Your name is listed in the title only.

☐ Documents originated with another Government agency(ies). These documents were referred to that agency(ies) for review and direct response to you.

_____ Pages contain information furnished by another Government agency(ies). You will be advised by the FBI as to the releasability of this information following our consultation with the other agency(ies).

_____ Page(s) withheld for the following reason(s):

_____

_____

☒ For your information: The enclosure to this serial was not duplicated as it can be obtained from "Masters of Deceit"

☐ The following number is to be used for reference regarding these pages:
Cross Ref 107 (62-104277-795)

XXXXXXXXXXXXXXXXXX
X DELETED PAGE(S) X
X NO DUPLICATION FEE X
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FBI/DOJ

The best copy obtainable is included in the reproduction of this microfiche/film. Pages included that are blurred, light, or otherwise difficult to read is the result of the condition of the document provided. No better copy can be reproduced.

March 26, 1936

Special Agent in Charge,
Washington, D. C.

Dear Sir:

Transmitted herewith are copies of a threatening letter received on March 6, 1936, by Mr. Justice George Sutherland of the United States Supreme Court, Washington, D. C. The envelope in which this letter was enclosed is postmarked at Everett, Washington, March 2, 1936, at 4:30 p. m. and bears no return address. Also transmitted herewith are copies of a memorandum dated March 20, 1936, prepared by Mr. Brien McMahon, Assistant Attorney General, in which is contained a statement to the effect that the mailing of this letter is a possible violation of Section 241, Title 18, United States Code. You will note that it is requested that reports in this case be sent directly to the Criminal Division rather than to the United States Attorney or Attorneys for the district or districts having jurisdiction over the case. It therefore appears that the Bureau should be furnished with four copies of reports prepared in this matter and no copies should be transmitted to the United States Attorneys.

Document and fingerprint examination of the original letter and enclosing envelope is being made in the Technical Laboratory at the present time and copies of the examination report will be forwarded to the Portland and Washington Field offices. Photographic copies of the original letter and envelope will be furnished both offices within a few days. Inasmuch as the original letter received by Mr. Justice Sutherland had apparently been handled by numerous individuals prior to its receipt in the Bureau, it appears that no effort to secure elimination fingerprints should be made at this time, pending receipt of a report showing latent examination made in the Technical Laboratory.

SEARCHED & INDEXED

62-1699-1

MAR 27 1936

FEDERAL BUREAU OF INVESTIGATION
U. S. DEPARTMENT OF JUSTICE

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secretary to Mr. Justice Sutherland, at which time he should be requested to promptly execute in cellophane any similar letters received in the future.

The Washington Field Office is hereby designated as the office of origin in this case.

Very truly yours,

John Edgar Hoover,
Director.

Enclosure 61124/65
cc-Portland - AIR MAIL

(Enclosing copies of threatening letter and copies of Mr. Mahahon's memorandum)

March 26, 1936

MEMORANDUM FOR THE TECHNICAL LABORATORY

Attached hereto are the original threatening letter and enclosing envelope received by Mr. Justice Sutherland of the United States Supreme Court, Washington, D. C., mailed at Everett, Washington, on March 2, 1936. It is requested that appropriate document and fingerprint examination be made of this letter and that copies of laboratory reports be transmitted to the Washington Field and to the Portland, Oregon, offices. Reports sent to the Portland, Oregon, office should be forwarded by air mail.

The Washington Field Office has been designated as the office of origin in this case.

It is requested that photographic copies of the letter and envelope be forwarded as soon as possible to the offices mentioned above. No elimination fingerprints are presently at hand and a decision as to the possibility of securing same prints may be made after it is seen whether latent fingerprints can be developed on the letter or envelope.

Evidently the letter has been handled by several persons prior to its receipt in the Bureau.

Very truly yours,

John Edgar Hoover,
Director.

Enclosure (2)

COMMUNICATIONS SECTION
MAILED
MAR 27 1936
P M
FEDERAL BUREAU OF INVESTIGATION
U S DEPARTMENT OF JUSTICE

9-1698-2

DJC 9-1502

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SUPREME COURT OF THE UNITED STATES.

No. 559.—October Term, 1935.

Arthur Gooch, vs. United States of America. On Certificate from the United States Circuit Court of Appeals for the Tenth Circuit.

[February 3, 1936.]

Mr. Justice McREYNOLDS delivered the opinion of the Court.

By permission of Sec. 346, 28 U. S. C. A., the Circuit Court of Appeals, 10th Circuit, has certified two questions and asked instruction:

> 1. Is holding an officer to avoid arrest within the meaning of the phrase, "held for ransom or reward or otherwise", in the act of June 22, 1932, as amended May 18, 1934 (48 St. 781), 18 U. S. C. A. 408a?
>
> 2. Is it an offense under Section 408a, *supra*, to kidnap and transport a person in interstate commerce for the purpose of preventing the arrest of the kidnaper?

The statement revealing the facts and circumstances out of which the questions arise follows:

"Gooch was convicted and sentenced to be hanged under an indictment charging that he, with one Nix, kidnaped two officers at Paris, Texas, 'for the purpose of preventing his (Gooch's) arrest by the said peace officers in the State of Texas', and transported them in interstate commerce from Paris, Texas, to Pushmataha County, Oklahoma, and at the time of the kidnaping did bodily harm and injury to one of the officers from which bodily harm the officer was suffering at the time of his liberation by Gooch and Nix in Oklahoma.

"The proof supports the charge. It established these facts: Gooch and Nix, while heavily armed, were accosted by the officers at Paris, Texas. To avoid arrest, Gooch and Nix resisted and disarmed the officers, unlawfully seized and kidnaped them and transported them by automobile from Texas to Oklahoma and liberated

NOT RECORDED

Ventress
R. H. Baker
H. R. Markes

them in the latter State. During the time Gooch and Nix were kidnaping the officers they inflicted serious bodily injury upon one of the officers, from which injury he was suffering at the time of such liberation in the State of Oklahoma".

The Act of June 22, 1932, c. 271, 47 Stat. 326, provided —

> That whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward shall, upon conviction, be punished by imprisonment in the penitentiary for such term of years as the court, in its discretion, shall determine.

The amending Act of May 18, 1934, c. 301, 48 Stat. 781, 18 U. S. C. A. 408a, declares —

> Whoever shall knowingly transport or cause to be transported, or aid or abet in transporting, in interstate or foreign commerce, any person who shall have been unlawfully seized, confined, inveigled, decoyed, kidnaped, abducted, or carried away by any means whatsoever and held for ransom or reward *or otherwise, except, in the case of a minor, by a parent thereof* shall, upon conviction, be punished (1) by death if the verdict of the jury shall so recommend, provided that the sentence of death shall not be imposed by the court if, prior to its imposition, the kidnaped person has been liberated unharmed, or (2) if the death penalty shall not apply nor be imposed the convicted person shall be punished by imprisonment in the penitentiary for such term of years as the court in its discretion shall determine: . . .".

Counsel for Gooch submit that the words "ransom or reward" import "some pecuniary consideration or payment of something of value"; that as the statute is criminal the familiar rule of *ejusdem generis* must be strictly applied; and finally, it cannot properly be said that a purpose to prevent arrest and one to obtain money or something of pecuniary value are similar in nature.

The original Act (1932) required that the transported person should be held "for ransom or reward". It did not undertake to define the words and nothing indicates an intent to limit their

meaning to benefits of pecuniary value. Generally, reward implies something given in return for good or evil done or received.

Informed by experience during two years, and for reasons satisfactory to itself, Congress undertook by the 1934 Act to enlarge the earlier one and to clarify its purpose by inserting "or otherwise, except, in the case of a minor, by a parent thereof" immediately after "held for ransom or reward." The history of the enactment emphasized this view.

The Senate Judiciary Committee made a report, copied in the margin,[1] recommending passage of the amending bill and pointing out the broad purpose intended to be accomplished.

The House Judiciary Committee made a like recommendation and said:

> This bill, as amended, proposes three changes in the act known as the "Federal Kidnaping Act." First, it is proposed to add the words "or otherwise, except, in the case of a minor, by a parent thereof." This will extend Federal jurisdiction under the act to persons who have been kidnaped and held, not only for reward, but for any other reason, except that a kidnaping by a parent of his child is specifically exempted. . . . H. Rep. 1457, 73d Cong., 2d Sess., May 3, 1934.

---

[1] The Committee on the Judiciary, having had under consideration the bill (S. 2252) to amend the act forbidding the transportation of kidnaped persons in interstate commerce, reports the same favorably to the Senate and recommends that the bill do pass.

The purpose and need of this legislation are set out in the following memorandum from the Department of Justice:

S. 2252, H. R. 6918. This is a bill to amend the act forbidding the transportation of kidnaped persons in interstate commerce—act of June 22, 1932 (U. S. C., ch. 271, title 18, sec. 408a), commonly known as the 'Lindbergh Act.' This amendment adds thereto the word 'otherwise' so that the act as amended reads: 'Whoever shall knowingly transport . . . any person who shall have been unlawfully seized . . . and held for ransom or reward or otherwise shall, upon conviction, be punished . . . .' The object of the addition of the word 'otherwise' is to extend the jurisdiction of this act to persons who have been kidnaped and held, not only for reward, but for any other reason.

In addition, this bill adds a proviso to the Lindbergh Act to the effect that in the absence of the return of the person kidnaped and in the absence of the apprehension of the kidnaper during a period of 8 days, the presumption arises that such person has been transported in interstate or foreign commerce, but such presumption is not conclusive.

I believe that this is a sound amendment which will clear up border-line cases, justifying Federal investigation in most of such cases and assuring the validity of Federal prosecution in numerous instances in which such prosecution would be questionable under the present form of this act. S. Rep. 534, 73d Cong., 2d Sess., March 22, 1934.

Evidently, Congress intended to prevent transportation in interstate or foreign commerce of persons who were being unlawfully restrained in order that the captor might secure some benefit to himself. And this is adequately expressed by the words of the enactment.

The rule of *ejusdem generis*, while firmly established, is only an instrumentality for ascertaining the correct meaning of words when there is uncertainty. Ordinarily it limits general terms which follow specific ones to matters similar to those specified; but it may not be used to defeat the obvious purpose of legislation. And while penal statutes are narrowly construed, this does not require rejection of that sense of the words which best harmonizes with the context and the end in view. *United States v. Hartwell*, 6 Wall. 385, 395; *Johnson v. Southern Pacific Co.*, 196 U. S. 1, 17, 18; *United States v. Batty*, 208 U. S. 393, 402; *United States v. Mescall*, 215 U. S. 26, 31, 32.

Holding an officer to prevent the captor's arrest is something done with the expectation of benefit to the transgressor. So also is kidnaping with purpose to secure money. These benefits, while not the same, are similar in their general nature and the desire to secure either of them may lead to kidnaping. If the word reward, as commonly understood, is not itself broad enough to include benefits expected to follow the prevention of an arrest, they fall within the broad term, "otherwise".

The words "except, in case of a minor, by a parent thereof" emphasize the intended result of the enactment. They indicate legislative understanding that in their absence a parent, who carried his child away because of affection, might subject himself to condemnation of the statute. *Brown v. Maryland*, 12 Wheaton, 419, 428.

Both questions must be answered in the affirmative.

DEPARTMENT OF JUSTICE

WASHINGTON, D.C.

FEB. 6 1931

MEMORANDUM FOR MR. J. EDGAR HOOVER,
DIRECTOR, BUREAU OF INVESTIGATION.

I have your memorandum of the 4th instant, stating that you received a subpoena calling for your appearance in the Supreme Court of the District of Columbia on last date to testify in the case of Sarah Berman v. J. Randolph Newman. You state that you responded to the subpoena and were interrogated by Crandall Mackey Esq., counsel for the plaintiff, and that you were requested to disclose information contained in the Bureau file No. 31-21708 entitled [redacted] which covered an investigation which was made of an alleged White Slave violation by such subject. You further state that you declined to disclose this information on the ground that the matter contained in the Bureau and the Department files is confidential and privileged and that you were powerless to disclose the same without specific direction from the Attorney General.

You further state that Mr. Justice Bailey deferred his decision in the matter until 1:30 P.M., at which time he overruled that [illegible]

REMORIAD & THOLAND

would notify you this morning of his decision as to whether he would insist that you testify.

At the personal direction of the Attorney General, you are informed that you should adhere to your position that the matter contained in such file is confidential and privileged and to disclose such information would be incompatible with the public interest.

Respectfully,

Nugent Dodds

NUGENT DODDS,
Acting Head of Criminal Division.

JOHN EDGAR HOOVER
DIRECTOR

U. S. Department of Justice
Bureau of Investigation
Washington, D. C.

February 5, 1931.

MEMORANDUM FOR THE FILES.

In regard to the attached subpoena directing my appearance in the Supreme Court of the District of Columbia to produce certain Bureau files and records for use in the divorce proceedings in the case of Sara Bowman vs. J. Randolph Bowman, I appeared in accordance with the command of this subpoena on Wednesday, February 4, 1931, and refused to testify and to produce the records requested in the subpoena on the grounds that the files were privileged and that I had been instructed by the Attorney General not to submit any testimony or records in this matter in the equity proceeding pending in the Supreme Court of the District of Columbia. Judge Bailey took under advisement the matter of my refusal to testify and directed me to return to Court at 1:30 at which time I again reported to the Judge and he stated that he was desirous of still continuing the matter and would advise the United States Attorney the following morning, Thursday, February 5th, as to whether I should appear again.

Assistant Attorney General Dodds, Assistant United States Attorney Burchmore, and Mr. Burton appeared at Court during the proceedings to represent me legally in this matter. Authorities and other citations were prepared and submitted to Judge Bailey for his information as to the justification [illegible]

On Thursday, February 5th, I was advised by Assistant United States Attorney Burchmore that Judge Bailey had informed him that I need not report at the Court that he, Judge Bailey, had informed him that he was of the opinion the records requested would not be required to be produced in this proceeding.

RECORDED & INDEXED
J. E. H.
Director.

31-2-4788-13

FEB 11 1931

U. S. Department of Justice

Bureau of Investigation

[illegible]
Salt Lake City, Utah.
December [illegible], 1932.

Director,
United States Bureau of Investigation,
Washington, D.C.

Dear Sir:

I am advised that a Departmental Circular has been forwarded to the U.S. Attorneys reading as follows:-

"Your attention is invited to the decision of the Supreme Court of the United States in the case of Jack Howard and Louise Wolfe Howard, petitioners -vs- The United States, No. 97, October Term 1932, involving a conspiracy to violate the White Slave Traffic Act, in which the Court held that a woman, by consenting to go and voluntarily going from one State to another with a man, with a view to immoral relations with him, does not violate the conspiracy statute, Section 88, Title 18, United States Code, and that in such case the man cannot be guilty of conspiracy unless he conspired with some person other than the woman.

Will you please, therefore, give careful consideration to the above mentioned decision in dealing with White Slave Traffic Act cases now or hereafter pending under Section 88, Title 18, United States Code."

This is being submitted for your information in the event the Department Circular above referred to has not come to your attention.

Very truly yours,

[signature] L. Board
[illegible]
Special Agent in Charge.

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DEC 30 1932

Dec 27 1932 P.M.
Department of Justice

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SUPREME COURT OF THE UNITED STATES.

No. 97.—October Term, 1932.

Jack Gerhardt and Louise Rolfe Gerhardt, Petitioners, vs. The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 7, 1932.]

Mr. Justice Stone delivered the opinion of the Court.

This case is here on certiorari, 286 U. S. 539, to review a judgment of conviction for conspiracy to violate the Mann Act (36 Stat. 825, 18 U. S. C., § 397 *et seq.*). Petitioners, a man and a woman, not then husband and wife, were indicted in the District Court for Northern Illinois, for conspiring together, and with others not named, to transport the woman from one state to another for the purpose of engaging in sexual intercourse with the man. At the trial without a jury there was evidence from which the court could have found that the petitioners had engaged in illicit sexual relations in the course of each of the journeys alleged; that the man purchased the railway tickets for both petitioners for at least one journey, and that in each instance the woman, in advance of the purchase of the tickets, consented to go on the journey and did go on it voluntarily for the specified immoral purpose. There was no evidence supporting the allegation that any other person had conspired. The trial court overruled motions for a finding for the defendants, and in arrest of judgment, and gave judgment of conviction, which the Court of Appeals for the Seventh Circuit affirmed, 57 F. (2d) 957, on the authority of United States

Section 2 of the Mann Act [18 U.S.C. § 398], violation of which is charged by the indictment here as the object of the conspiracy, imposes the penalty upon "Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose . . ." Transportation of a woman or girl whether with or without her consent, or persuading it, or for hiring it in any of the specified ways, are the acts punished when done with a purpose which is immoral within the meaning of the law. *See Hoke v. United States*, 227 U.S. 308, 320.

The Act does not punish the woman for transporting herself. It contemplates two persons—one to transport and the woman or girl to be transported. For the woman to fall within the ban of the statute she must, at the least, "aid or assist" someone else in transporting or in procuring transportation for herself. But such aid and assistance must, as in the case supposed in *United States v. Holt*, *supra*, 165, be more active than mere agreement on her part to the transportation and its immoral purpose. For the statute is drawn to include those cases in which the woman con-

"Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any Territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any Territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any Territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine [illegible], or by imprisonment of not more than [illegible] years, or both such fine and imprisonment, in the discretion

of the conspirators may be free to do alone [illegible] capacity of one to commit the substantive offense does not necessarily imply that he may [illegible] conspire with others who are able to commit it.[1] For it is the collective planning of criminal conduct at which the statute aims. The plan in itself a wrong when [illegible] any act be done to effect its object, the state has elected to treat as criminal. *Clune v. United States*, 159 U. S. 590, 595. And one may plan that others shall do what he cannot do himself. *New York Central & Hudson River R. Co. v. United States*, 212 U. S. 481, 496, 497.

But in this case we are concerned with something more than an agreement between two persons for one of them to commit an offense which the other cannot commit. There is the added element that the offense planned, the criminal object of the conspiracy, involves the agreement of the woman to her transportation by the man, which is the very conspiracy charged.

Congress set out in the Mann Act to deal with cases which frequently, if not normally, involve consent and agreement on the part of the woman to the forbidden transportation. In every case in which she is not intimidated or forced into the transportation, the statute necessarily contemplates her co-operation. Yet that acquiescence, though an incident of a type of transportation [illegible]

---

[1] The requirement of the statute that the object of the conspiracy be an offense against the United States, necessarily eliminates United States v. Rabinowich, 7 Cranch 97 avoids the question thus suggested at common law (see cases cited in Wright, The Law of Criminal Conspiracies [Carson ed. 1887] and in Hayes, Criminal Conspiracy, 35 Harv. L. Rev. 393) of the criminality of combining to do an act which any one man could do alone.

[illegible] It has been held repeatedly that one not a bankrupt may be held guilty under § 37 of conspiring that a bankrupt shall conceal property from his trustee (Bankruptcy Act § 29[b], 11 U. S. C., § 52). Tripodi v. United States, 260 Fed. 668, certiorari denied 250 U. S. 637; Julia v. United States, 268 Fed. 200, certiorari denied 241 U. S. 684; Israel v. United States, 2 F. (2d) 741; Kaplan v. United States, 7 F. (2d) 894, certiorari denied 269 U. S. 556. And see United States v. Rabinowich, 238 U. S. 78, 86, 87. There cases proceed upon the theory (see United States v. Rabinowich, supra, 86) that only a bankrupt may commit the substantive offense though we do not intimate that others might not be held as principals under Criminal Code, § 332 (18 U. S. C., § 550). Cf. Hanson v. United States, 3 F. (2d) 769.

In [illegible] Goldstein v. United States, 241 Fed. 258, sustained the conviction [illegible] of both for conspiring with an officer [illegible] and see United States v. [illegible]

the substantive offense. *United States* v. *Bostock*, 76 Fed. 464. We place it rather upon the ground that we perceive in the failure of the Mann Act to condemn the woman's participation in those transportations which are effected with her mere consent, evidence of an affirmative legislative policy to leave her as such unpunished. We think it a necessary implication of that policy that when the Mann Act and the conspiracy statute came to be construed together, as they necessarily would be, the same participation which the former contemplates as an inseparable incident of all cases in which the woman is a voluntary agent at all, but does not punish, was not automatically to be made punishable under the latter. It would contravene that policy to hold that the very passage of the Mann Act effected a withdrawal by the conspiracy statute of that immunity which the Mann Act itself confers.

It is not to be supposed that the consent of an unmarried person to adultery with a married person, where the latter alone is guilty of the substantive offense, would render the former an abettor or a conspirator, compare *In Re Cooper*, 162 Cal. 81, 85, or that the acquiescence of a woman under the age of consent would make her a co-conspirator with the man to commit statutory rape upon herself. Compare *Queen* v. *Tyrrell* [1894] 1 Q. B. 710. The principle, determinative of this case, is the same.

On the evidence before us the woman petitioner has not violated the Mann Act and, we hold, is not guilty of a conspiracy to do so. As there is no proof that the man conspired with anyone else to bring about the transportation, the convictions of both petitioners must be

Reversed.

Mr. Justice Cardozo concurs in the result.

A true copy.

Test:

Clerk, Supreme Court, U. S.

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FEDERAL BUREAU OF INVESTIGATION
FROM DIVISION #1 & DIVISION #2.

5-11 1936.

TO

Director
Mr. Nathan
Mr. Tolson
Mr. Tamm
Mr. Quinn
Mr. Edwards

Files Section
Mechanical Section
Chief Clerk's Office
Identification Division
Statistical Section
Technical Laboratory
Division Three

SUPERVISORS

Mr. Shanahore
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Mr. Foxworth
Mr. Hall
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Mr. Baintree
Mr. Smith
Mr. Berry
Mr. Ayear
Mr. Vincent
Mr. Burke

Mrs. Fisher
Typists, Room
Stenographers, Room
Messenger
Garrett

In-mail
In-box
Send file
Make out
Routine
and return

April 4, 1935

MEMORANDUM FOR THE ASSISTANT TO THE ATTORNEY GENERAL,
MR. WILLIAM STANLEY.

A complaint was filed against James Gebardi, with aliases, on June 25, 1929, at Chicago, Illinois, charging him with transporting Louise Balfe from Chicago, Illinois to Miami, Florida, on or about December 18, 1926, for immoral purposes. Gebardi was arraigned before United States Commissioner Edwin K. Walker on the same date, demanded hearing, and his bond was set at $5,000, which he made. On November 1, 1929, Indictment [illegible] was returned against Gebardi, charging him with the transportation of Louise Balfe, on or about December 18, 1926, from Chicago, Illinois to Miami, Florida, for immoral purposes. Count two of the indictment charged the transportation of Louise Balfe, on or about January 22, 1929, from Chicago, Illinois to Jacksonville, Florida, for immoral purposes. Count three charged the transportation of Louise Balfe from Gulfport, Mississippi to Chicago, Illinois, on or about January 22, 1929. This indictment is still pending.

On November 1, 1929, Indictment [illegible] was returned against James Gebardi and Louise Balfe, charging conspiracy in the transportation of Louise Balfe, for immoral purposes, from Chicago, Illinois to Miami, Florida, on or about December 18, 1926. [illegible] conspiracy to transport Louise Balfe from Gulfport, Mississippi to Chicago, Illinois on or about January 22, 1929. Count three charged conspiracy to transport Louise Balfe, for immoral purposes, from Chicago, Illinois to Jacksonville, Florida, on or about January 22, 1929. Gebardi was arraigned before Judge John P. Barnes on both indictments, at Chicago, Illinois, April 16, 1931, and entered pleas of not guilty, being released on bond.

31-[illegible]-84

Gebardi and Balfe were tried before Judge Walter C. Lindley at Chicago, Illinois on May 26, 27 and 28, 1931, on the indictment charging conspiracy, containing three counts. On July 21, 1931, Judge Lindley rendered a verdict of guilty and sentenced Gebardi to serve two years in the United States Penitentiary at Leavenworth on the first count, two years on the second count, and two years on the third count. Gebardi was placed on probation for a period of five years with reference to the [illegible] and third counts. Stay of execution was allowed to permit

2 charges

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Mr. Stanley.

Eberhardt to pursue an appeal and bond of $2,500 was made by him. He was sentenced to serve four months in the Cook County Jail. The case was appealed to the Seventh Circuit of the United States Circuit Court of Appeals at Chicago, Illinois, which Court, on April 2, 1952, handed down a decision affirming that of the United States District Court at Chicago.

Eberhardt then appealed the case to the Supreme Court of the United States, and arguments were heard there on January 9, 1953, reversing the judgment of the lower court. Justice Frankfurter, in delivering the opinion of the court, among other things, said: "

> We think it a necessary implication of that policy that when the Smith Act and the conspiracy statute are construed together, as they necessarily would be, the same construction which the former contemplates as an inseparable incident of all cases in which the crime is a voluntary agent at all, but does not punish, was not intentionally to be made punishable under the latter. It would contravene that policy to hold that the very gravamen of the Smith Act effected a withdrawal by the conspiracy statute of that immunity which the Smith Act itself conferred. On the evidence before us the women petitioner has not violated the Smith Act and, we hold, is not guilty of a conspiracy to do so. As there is no proof that the two conspired with persons else to bring about the transportation, the convictions of both petitioners must be reversed."

The United States Attorney at Chicago has kept the pending charges against Eberhardt open and the case is still pending.

Eberhardt is a known gunman, a hoodlum of Al Capone and is generally best known under his alias "Machine Gun Jack Eberhardt". He was indicted at Chicago, Illinois for the murder of seven men on February 14, 1929, but was never prosecuted on said indictment. Eberhardt, at the time of the above offense, was married to one Helen Rosenmeyer, and is the father of a thirteen year old daughter born of this union. During going to trial in the divorce from this woman and the year she received custody of the child, visits to this home. His criminal record, as reflected in the Bureau's file, is as follows:

Eberhardt was convicted October 26, 1926, at Chicago, Illinois for carrying a concealed weapon, before Municipal Court Judge William H. Dever, and was sentenced to serve one year, being placed on probation.

Eberhardt pleaded guilty at Chicago, Illinois on October 7, 1927 to a charge of carrying concealed weapons and was sentenced to the bastile for six months.

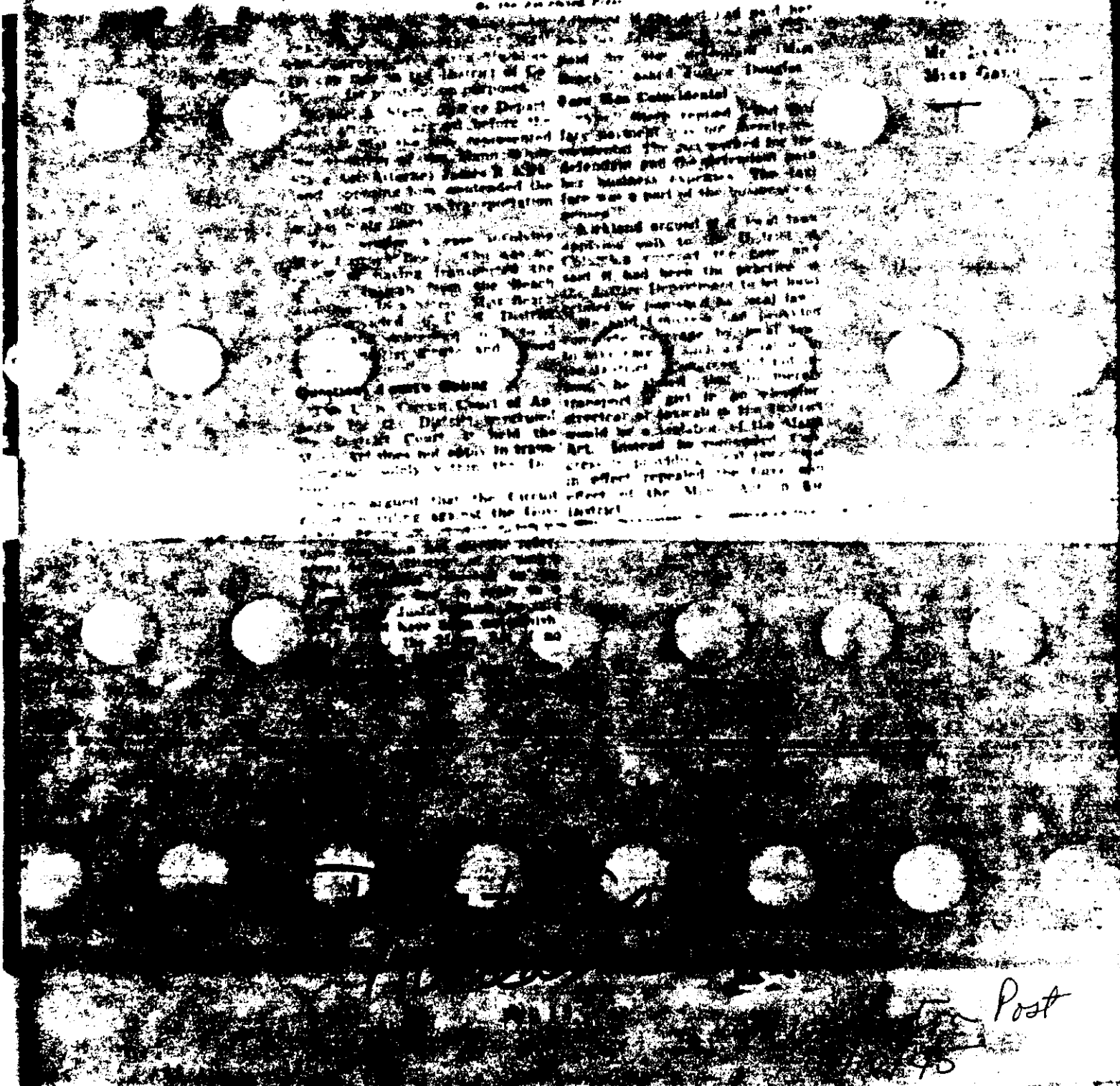
The above facts are submitted to you with the thought that the Department may desire to give a ruling relative to the future prosecution of this case, in order that the Bureau may know whether additional investigation should be made.

Very truly yours,

John Edgar Hoover,
Director.

Best Copy Available

Supreme Court Takes Beach Case Under Consideration



Post

31-66421-A

Supreme Court Hears Appeal in Beach Case

U. S. Bureau of Investigation

Department of Justice
1900 Bankers Building
Chicago Illinois

January 8, 1934

Director
Division of Investigation
U.S.Department of Justice
Washington, D.C.

RE: [redacted] et al.
CORPORATION SECURITIES
COMPANY, CHICAGO,
ILLINOIS - MAIL FRAUD

b7C

Dear Sir:

On January 4, 1934, Special Agent (A) [redacted], had a conference with United States Attorney Dwight H. Green, and Assistant United States Attorney Leo J. Hassenmeier, with respect to the matter of stock rights and the manner in which stock rights were involved in the above case.

b7C

The difference in the methods of computing the costs of rights as approved by the United States Supreme Court in its decision in the case of Miles versus Safe Deposit and Trust Company of Baltimore on May 29, 1933, and method of computing the costs of stock rights as prescribed by the treasury department in regulations, No. 69 and 94, was pointed out by Special Agent [redacted]

b7C

Mr. Green stated that he believed that the change in treasury department regulations was very likely the result of a subsequent decision of the United States Supreme Court, and stated that he would look into the matter and would advise the Chicago Division office as to his findings. Special Agent [redacted] has been instructed to follow this matter closely.

b7C

Very truly yours,

M. H. Purvis

M.H.PURVIS
Special Agent in Charge

[redacted]

RECORDED & INDEXED
JAN 12 1934

3/-1704-240
DIVISION OF
JAN 11 1934
U. S. DEPARTMENT OF JUSTICE
FBI

JOHN EDGAR HOOVER
DIRECTOR

U. S. Bureau of Investigation

Department of Justice

Washington, D. C.

VHH/AEK

July 8, 1933

49-1761-87

JUL 12 1933

NATHAN EDWARDS

MEMORANDUM FOR THE DIRECTOR

Mr. Edwards several days ago called to my attention a letter received from Raymond Benjamin, an attorney in the Shoreham Building, dated June 7, 1933, requesting the return of the fingerprints and photograph of GEORGE C. STEPHENS, convicted in the Southern District of California under the Mail Fraud Statute in 1929, Mr. Benjamin stating that inasmuch as Mr. Stephens had been granted a full pardon by the President he felt that Stephens was entitled to the return of these records.

It appeared that on receipt of this letter a memorandum was addressed to the Criminal Division of the Department seeking an opinion as to the necessity for complying with this request, and under date of June 14, 1933 a memorandum was received in the Bureau from Mr. Parrish, Acting Head of the Criminal Division, stating that in view of the fact that the Supreme Court had ruled that "a pardon reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense" it appears as though there would now be no authority to retain the fingerprints and photograph taken of Stephens. However, Mr. Parrish stated that before the fingerprints and photograph were returned verification of the pardon should be obtained from the Pardon Attorney's office. Thereupon a memorandum was directed to the Pardon Attorney, who advised under date of June 20, 1933 that the records indicated that the President on February 9, 1933, granted to George C. Stephens a full and unconditional pardon for the purpose of restoring his civil rights, effective upon the expiration of his sentence, May 11, 1933, and remitted his fine.

We certainly want to press our point in this matter.
7/10/33 H. C. N.

Mr. Edwards in calling this correspondence to my attention, pointed out that the Department had not specifically directed that the prints be returned; however, that instruction would ordinarily be inferred from the information submitted. Consequently, a letter had been prepared addressed to Mr. Benjamin, complying with his request, but that letter had not been mailed.

I thereupon requested Mr. Edwards to hold the letter until I had an opportunity to talk to Mr. Parrish concerning this matter, because I believed that a further consideration by the Department might bring about a reversal of this opinion, as the equities of the matter seemed all in favor of the Government. I then conferred with Mr. Parrish, who was rather of the opinion that the prints ought not to be returned, although there was no clear authority for the refusal either in the law or decisions. However, in view of the equities of the situation and in face of the argument that the several States having Habitual Criminal Laws do not give any weight to a pardon but count the conviction notwithstanding the pardon, he believed the matter was one worthy of a test. He suggested, however, that I confer with Mr. Ridgely, who had drafted the opinion.

Mr. Parrish's informal views were based on the presumption that a full pardon had been granted to Stephens. However, in taking the matter up with Mr. Ridgely he suggested that the Pardon Attorney's records be reviewed for the purpose of ascertaining whether the pardon had been granted because of the merits of the case or for some other reason. Mr. Ridgely's attention was thereupon invited to the fact that according to the memorandum from the Pardon Attorney's office Stephens had been granted a full pardon only upon the expiration of his sentence and for the purpose of restoring his civil rights. Mr. Ridgely then stated that he felt these facts placed an entirely different situation before him and he was of the firm opinion that the Department should not direct or approve the return of the fingerprints of a convict under these circumstances. He requested that a letter be directed to Attorney Benjamin, stating that the Department was of the view that because of the fact that the pardon was one only to restore the civil rights of the convict it did not feel that fingerprints, photograph or any other identifying data should be returned to Stephens.

I pointed out to Mr. Ridgely that the fingerprints and photograph would, of course, be of record in the penitentiary in which Stephens served his time and that surely the Department would not expect to deplete or interfere with the permanent records of an institution, and that there existed no more reason for the destruction or return of the records on file in the Identification Division of this Bureau. Mr. Ridgely fully agreed with these views, and stated that we might suggest to Mr. Benjamin that the Bureau is authorized by Congressional enactment to collect identification records and felt that it would not be authorized to return such a record merely because of the restoration of the civil rights of a convict.

In accordance with the combined opinions of Messrs. Parrish and Ridgely, I have drafted a letter of reply to Mr. Benjamin and will exhibit the same to Mr. Parrish in order to have him note his approval thereon before it is mailed.

Respectfully,

V. W. Hughes.

Federal Bureau of Investigation

United States Department of Justice

[illegible] Virginia Building

[illegible], West Virginia

July 16, 1938

Director
Federal Bureau of Investigation
Washington, D. C.

Dear Sir:

While interviewing W. H. [illegible], referee in bankruptcy, at Martinsburg, West Virginia, he had occasion to make reference to a recent ruling on bankruptcy by the United States Supreme Court, which I vaguely remember as having taken place during May, 1938.

If I am not mistaken, and there is a recent ruling by the Supreme Court affecting Bankruptcy, it is requested that I be furnished with a copy of this decision or a digest of it inasmuch as Mr. [illegible] would like information concerning the same.

Very truly yours,

R. V. McLAUGHLIN,
Special Agent in Charge

RVM:FAE

Letter Huntington W. Va. 7/21/38

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49-3699-205

JUL 18 1938

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SUPREME COURT OF THE UNITED STATES.

No. 171.—October Term, 1936.

Henry C. Hill, Warden, United States Northeastern Penitentiary, Petitioner, vs. United States *ex rel.* Joseph Weiner | On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[February 1, 1937.]

Mr. Justice Sutherland delivered the opinion of the Court.

The relator, Weiner, was convicted in a federal district court for violating a decree entered against him and numerous others by that court in a suit in equity brought by the United States under the Sherman Anti-trust Act. Title 15 U. S. C. §§ 1, 2, 4. He, with others, was charged by information with the commission of several specified acts in violation of the decree, constituting criminal contempts. Upon a trial before the court sitting without a jury, he was found guilty and sentenced for certain of the contempts to imprisonment for six months in the House of Detention, and for other contempts for two years additional in the penitentiary. Upon his application and consent, the first part of the sentence was increased from six months in the House of Detention to a year and a day in the penitentiary, but to run *concurrently* with the two years' imprisonment.

On June 5, 1935, he was committed to the penitentiary. At the end of eleven months, he applied by petition to another federal district court to be discharged on habeas corpus, on the ground that the first court was without power to sentence him for a period of more than six months; and, having served that long, that he was entitled to be set at liberty.

The district court accepted that view, granted the writ, and ordered the relator discharged. [illegible] Upon appeal, [illegible]

The case involves a consideration of §§ 21, 22 and 24 of the Clayton Act, Title 28 U. S. C. §§ [illegible] and 387.* Section 21, so far as pertinent, provides that any person who shall willfully disobey any lawful decree of the federal district court by doing any act or thing thereby forbidden to be done by him, if of a character to constitute also a criminal offense under any statute of the United States or laws of any state in which the act was committed, shall be prosecuted against as thereafter provided. Section 22 provides for trial by the court, upon admission of the accused by a jury. If found guilty, punishment may be either by fine or imprisonment or both, in the discretion of the court, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000 nor shall such imprisonment exceed the term of six months. Section 24, however, provides that "Nothing herein contained [§§ 21, 22, 23, 25] shall be construed to relate to contempts committed in disobedience of any lawful [illegible] decree [illegible] in any suit or action brought or prosecuted in the name of or on behalf of the United States, but the same, and all other cases of contempt not specifically embraced within section [illegible] may be pun-

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* Sec. 21. Any person who shall willfully disobey any lawful writ, process, order, rule, decree, or command of any district court of the United States or any court of the District of Columbia, by doing any act or thing therein, or thereby forbidden to be done by him, if the act or thing so done by him be of such character as to constitute also a criminal offense under any statute of the United States or under the laws of any State in which the act was committed, shall be prosecuted for such criminal contempt as hereinafter provided. (Title 28 U. S. C. § 385.)

Sec. 22. In all cases arising under this Act any trial may be had in the court or upon the judge thereof in term time or by a jury.

If the accused be found guilty judgment shall be entered accordingly, prescribing the punishment, either by fine or imprisonment, or both, in the discretion of the court. Such fine shall be paid to the United States or to the complainant or other party injured by the act constituting the contempt, or may be, in whole or in part, as the court may direct, but in no case shall the fine to be paid to the United States exceed, in case the accused is a natural person, the sum of $1,000 nor shall such imprisonment exceed the term of six months. (Title 28 U. S. C. § 387.)

Sec. 24. Nothing herein contained [that is in §§ 21, 22, 23, 25] shall be construed to relate to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action brought or prosecuted in the name of, or on behalf of, the United States, but the same, and all other cases of contempt not specifically embraced within section [illegible] of this Act, may be punished in conformity to the usages at law and in equity prevailing on [illegible] 1914. (Title 28 U. S. C. § 386.)

issued in conformity to the usages at law and in equity prevailing on October 15, 1914." If § 24 applies the sentence was within the statutory authority of the court.

First. The court below held and relator here contends that the limitation of imprisonment to six months is not affected by the provisions of § 24. A similar question was before this court in *United States* v. *Goldman*, 277 U. S. 229, and was there decided contrary to the views of the court below. In that case, an information was presented by the United States to a federal district court, charging Goldman and others with criminal contempts committed by acts in violation of an injunction entered by that court in an equity suit brought by the United States. The information was dismissed on the ground that under § 25 of the Clayton Act, the prosecution was barred by the statute of limitations. This court reversed. Section 25 provides that no proceeding for contempt shall be instituted unless begun within one year of the act complained of. But we held that the specific exception contained in § 24 "Nothing herein contained" applies to all provisions of the act relating to prosecutions for criminal contempts, and therefore applied to § 25 "as well as to the other sections", and that the one year limitation prescribed by § 25 was without application to a case brought for the disobedience of a decree entered in a suit prosecuted by the United States.

That decision controls here. The object of § 24 clearly was to limit the application of the provisions of § 21 and the other sections named, to prosecutions for contempts arising out of cases instituted by private litigants.

Second. We find nothing in the further contention that this view of the statute results in a discrimination in the matter of punishment so arbitrary as to deny due process of law to relator. Whatever may be the restraint against discriminatory legislation imposed by the due process of law clause of the Fifth Amendment, it is not encountered by the legislation here. The constitutional power of Congress to prescribe greater punishment for an offense involving the rights and property of the United States than for a similar offense involving the rights or property of a private person cannot be doubted. Compare *Flaw* v. *Alabama*, 186

Judgment reversed.

AIR MAIL.

60-2054

September 21, 1938.

Special Agent in Charge,
St. Louis, Missouri.

RE: STEEL INDUSTRY;
Antitrust matter.

Dear Sir:

The investigation with respect to the above entitled matter has developed information to the effect that shortly after the N. R. A. Steel Code was invalidated by the United States Supreme Court decision of May 27, 1935, the Wire Rope & Strand Association, which membership consists of manufacturers of wire rope, held a meeting, at which time they agreed to maintain the prices in effect during the time the steel code was in operation.

Mr. Harry J. Lambert of Lambert Brothers, St. Louis, Missouri, is the President of this Association and Mr. George P. Lamb, an attorney of Washington, D. C., is alleged to be its Secretary.

The Bureau desires that the St. Louis and Washington Field Offices appropriately and thoroughly interview these individuals to ascertain any evidence tending to show that this Association met and agreed to continue the practices prescribed in the Wire Rope Manufacturers' Code. Particular effort also should be made to obtain all general information these individuals may possess, of interest to this investigation.

Very truly yours,

60-2054-272

John Edgar Hoover,
Director.

SUPREME COURT OF THE UNITED STATES.

No. 12.—October Term, 1936.

Pick Manufacturing Company, Petitioner, vs. General Motors Corporation, Chevrolet Motor Company, and Buick Motor Company.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[October 26, 1936.]

Per Curiam.

By this suit petitioner challenged the validity under Section 3 of the Clayton Act (38 Stat. 730, 731, 15 U. S. C. 14) of a provision of the contracts made with dealers by selling organizations of the General Motors Corporation. The provision in the contract between the Chevrolet Motor Company and dealers is as follows:

"Dealer agrees that he will not sell, offer for sale, or use in the repair of Chevrolet motor vehicles and chassis second-hand or used parts or any part or parts not manufactured by or authorized by the Chevrolet Motor Company. It is agreed that Dealer is not granted any exclusive selling rights in genuine new Chevrolet parts or accessories."

There is a similar provision in contracts made by the Buick company.

The District Court dismissed the bill of complaint for want of equity and its decree was affirmed by the Circuit Court of Appeals. 80 F. (2d) 641. Upon the evidence adduced at the trial the District Court found that the effect of the clause had not been in any way substantially to lessen competition or to create a monopoly in any line of commerce. This finding was sustained by the Circuit Court of Appeals. *Id.*, p. 644.

Under the established rule, this Court accepts the findings in which two courts concur unless clear error is shown. *Stuart* v. *Hayden*, 169 U. S. 1, 14; *Texas & Pacific Railway Company* v. *Railroad Commission*, 283 U. S. 236; *Texas & N. O. R. Co.* v. *Bail-*

NOT RECORDED

ENDORSED N60-2091-0

way *Clerks*, 281 U. S. 548, 558; *United States* v. *Commercial Credit Co.*, 286 U. S. 63, 67, *Continental Bank* v. *Chicago, Rock Island & Pacific Ry. Co.*, 294 U. S. 648, 678. Applying this rule, the decree is affirmed.

Affirmed.

MR JUSTICE VAN DEVANTER, MR. JUSTICE STONE and MR. JUSTICE ROBERTS took no part in the consideration and decision of this cause.

A true copy.

Test:

Clerk, Supreme Court, U. S.

JOHN EDGAR HOOVER
Director

Division of Investigation
U. S. Department of Justice
Washington, D. C.

WAS/AEK

August 31, 1934

MEMORANDUM FOR MR. LAY

On the afternoon of August 30, 1934, [redacted] and [redacted], called on the writer with reference to the investigation seeking the location of [redacted] They desired to know whether there had been any further developments and they were advised that there were no definite developments but that the Division was making every effort to pick up the trail of [redacted] as well as keeping in touch with all of the persons with whom she might contact should she come East. [redacted] desired to know whether it was the opinion of the Division that publicity in the matter might be helpful. I advised him that I did not think publicity would do any good at the present time.

I asked [redacted] whether [redacted] of the Secret Service had told him that the Secret Service would take any action in the case at the time he reported the matter to him. [redacted] stated that [redacted] had advised him it was a case over which the Secret Service would have no jurisdiction but that it would probably be handled by our Division and, in the event the Division could not handle the case he, [redacted] would see what could be done.

[redacted] stated that they were relying entirely upon this Division and had not sought the assistance of any other agency, either public or private. He stated that Justice Roberts of the Supreme Court had told him that this Division would handle an investigation of this sort more efficiently than any other organization in the country.

Respectfully,

79-960-27

RECORDED & INDEXED

W. A. Smith.

SEP 4 - 1934

U. S. Bureau of Investigation

Department of Justice
[illegible] Federal Building
Chicago Illinois

January 21, 1924

Director
Division of Investigation
Department of Justice
Washington, D.C.

Dear Sir:

Mr. William M. Lytle, Attorney Representative Department of Justice, Chicago, Illinois, has handed me a copy of the decision of the Supreme Court of the United States dated January 8, 1924, No. 140, October term 1923, in the case entitled "Newton A. Carlile, Petitioner, vs. United States of America".

It is my opinion that each Special Agent will receive a great deal of benefit in connection with War Risk Insurance investigations through the reading of this decision, and it is desired that sufficient number of copies be secured and forwarded this office for the use of each Special Agent attached to this office.

Very truly yours,

M. A. Bruce

Special Agent in Charge

b7C

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[redacted]

RECORDED
JAN 21 1924

82-5-25

JAN 27 [illegible]

March 10, 1936

Special Agent in Charge,
Charlotte, North Carolina.

Re: Statute of Limitations in
War Risk Insurance Cases.

Dear Sir:

With reference to your letter dated February 11, 1936, the Bureau has now obtained the opinion of the United States Supreme Court in the War Risk Insurance case of [redacted]. Copies of this opinion are transmitted to you herewith.

It will be noted that the Court found it unnecessary to rule upon the question of the proper method of determining the legal date of denial of the claim by the Veterans Administration.

For your information the Bureau has not been advised of any action at the present session of Congress to extend the period of limitations in War Risk Insurance cases.

Very truly yours,

RECORDED & INDEXED 82-2811-15

John Edgar Hoover,
Director.

Enclosure 284690

RBJ:AJW
82-2864

March 12, 1955

Special Agent in Charge,
Birmingham, Alabama.

Dear Sir:

Reference is made to the case entitled MADISON L. MILLER, C-178,565, WAR RISK INSURANCE, your File No. 82-151.

In this connection the Bureau is in receipt of an Opinion rendered by the Supreme Court of the United States on March 4, 1955 in which the judgment of the lower court was affirmed.

This information is being brought to your attention in order that your files may be complete.

Very truly yours,

John Edgar Hoover,
Director.

82-2864-2

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RECORDED & INDEXED

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SUPREME COURT OF THE UNITED STATES

No. 454. - October Term, 1936.

Watson T. Miller, Jr.,	)	
	:	
Petitioner,	:	On Writ of Certiorari to
	:	the United States
vs.	)	Circuit Court of
	:	Appeals for the
The United States of America.	)	Fifth Circuit.

(March 4, 1936.)

Mr. Justice [illegible] delivered the opinion of the Court.

Petitioner enlisted in the United States Army June 7, 1917, and was honorably discharged April 2, 1919. On January 28, 1919, there was issued to him a war risk insurance policy, by the terms of which he was entitled to receive $57.50 per month in the event of his sustaining injuries rating in total and permanent disability. No premiums were paid after the date of his discharge, and the policy thus lapsed. Claim was made for insurance on June 1, 1931, twelve years later. The claim was disallowed by the Administrator of Veterans' Affairs on April 1, 1932. Thereupon, this suit was brought to recover judgment upon the policy.

The facts material to the action to be stated follow: On October 27, 1918, while in active service in France, petitioner sustained injuries in a railway accident resulting in the amputation of his right arm above the elbow. At the trial, for the practical purposes thereof, the use of his left eye was lost. Although the evidence showed that the defective condition of the eye was congenital, no point is made in respect of that fact; the question presented is purely legal. At the conclusion of the evidence offered at the trial court, the judge granted a motion of the government for a directed verdict, on the ground that the injuries did not, as a matter of law, result in total and permanent disability. Verdict and judgment followed accordingly. The Court of Appeals affirmed the judgment, 72 F. (2d) 301, and we brought the case here on certiorari.

Article XII of the Act of 1917 (c. 105, 40 Stat. 398, 409) relates to compensation for death or disability. The provisions in respect of [illegible] are dealt with separately (p. 409) in Article IV of the act; separation of the two subjects has been maintained in subsequent [illegible]. The provision in respect of insurance (p. 409) is that upon application to the Bureau, the United States "shall grant insurance against the [illegible] total permanent disability" of enlisted men and other classes of

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82-2864-2

persons named in the act. The provision of the act (§ 301) with respect to compensation was enlarged by the amending act of December 24, 1919, c. 16, § 11 (3), 41 Stat. 371, 373, so as to bring conclusively within the term "total permanent disability" the loss of one hand and the sight of one eye; and this has since remained the law. No such provision was carried into the insurance article of the act; and, in that respect, the statute has never been changed.

Section 17 of the 1917 act, as amended, c. 77, 40 Stat. 398, confers upon the Director of the Bureau authority to make such rules and regulations, not inconsistent with the provisions of the act, as may be necessary or appropriate to carry out its purposes. Under that provision, a regulation was issued March 9, 1918, declaring - "Any impairment of mind or body which renders it impossible for the disabled person to follow continuously any substantially gainful occupation shall be deemed, in Articles III and IV, to be total disability." It was while this regulation was in effect that § 302 of the act was amended, as stated above, to provide in respect of compensation that the loss of one hand and the sight of one eye should be deemed total permanent disability. In May, 1920, Regulation R140 was promulgated. That regulation, among other things, declares that the loss of one hand and one eye "shall be deemed to be total permanent disability under yearly renewable term insurance."

Succinctly stated, petitioner contends (1) that § 302, as amended, applies to war risk insurance as well as compensation allowances; (2) that regulation R140 is within the power of the Administrator of Veterans' Affairs (who succeeded the Director of the Bureau), and controls the present case; and (3) that, the foregoing aside, the evidence was sufficient to justify a verdict in his favor.

First. The argument as to the first point, in brief, is this: The amendment to the compensation article of the act, adopted in 1919, must be construed and applied in the light of the regulation of March 9, 1918, of which regulation congressional knowledge and approval are to be assumed. By that regulation, the Bureau adopted a uniform rule applicable alike to compensation and insurance; and, the contention seems to be, since Congress did not by express words limit the operation of the amendment of 1919 to compensation, it is fair to conclude that it was intended that the amendment, conforming to the principle of the regulation, should apply to both compensation and insurance. We see no warrant for that conclusion. When the regulation was adopted, neither Article III nor Article IV contained any specific provision in respect of the disabling effect of the loss of one hand and the sight of one eye. By the amendment, not only was the formal expression of the new rule confined to Article III, but the operative words of the amendment quite clearly indicate a legislative intention to confine the application to that article. Those words are - "If any such disability is rated as total and permanent, the rate of compensation (italics added) shall be $100 per month", etc. It is hard to see how the intention of Congress to limit the operation of the amendment to compensation allowances is not thus definitely and clearly manifested.

Second. Regulation 3140 was not adopted until eleven years after the insurance policy had lapsed and petitioner's cause of action thereon had fully matured. Undoubtedly, the regulation in terms declares that permanent loss of the use of one hand and one eye shall be deemed total permanent disability under an insurance policy such as that issued to petitioner. But the regulation is both inapplicable and invalid.

It is inapplicable because it contains nothing to suggest that it was to be given a retrospective effect so as to bring within its purview a policy which had long since lapsed and which had relation only to an alleged cause of action long since matured. The law is well settled that generally a statute cannot be construed to operate retrospectively unless the legislative intention to that effect unequivocally appears. Twenty per Cent. Cases, 20 Wall. 179, 187; Chew Heong v. United States, 112 U.S. 536, 559; Fullerton Co. v. Northern Pacific, 266 U.S. 435, 437. The principle is strictly applicable to statutes which have the effect of creating an obligation. An administrative regulation is subject to the rule equally with a statute; and accordingly, the regulation here involved must be taken to operate prospectively only.

It is invalid because not within the authority conferred by the statute upon the Director (or his successor, the Administrator) to make regulations to carry out the purposes of the act. It is not, in the sense of the statute, a regulation at all, but legislation. The effect of the statute in force at the time of the adoption of the so-called regulation is that in respect of compensation allowances, loss of a hand and an eye shall be deemed total permanent disability as a matter of law. There being no such provision with respect to cases of insurance, the question whether a loss of that character or any other specific disability constitutes total permanent disability is left to be determined as matter of fact. The vice of the regulation, therefore, is that it assumes to convert what in the view of the statute is a question of fact requiring proof into a conclusive presumption which dispenses with proof and precludes dispute. This is beyond administrative power. The only authority conferred, or which could be conferred, by the statute is to make regulations to carry out the purposes of the act - not to amend it. United States v. 200 Barrels of Whiskey, 95 U.S. 571, 576; Merrill v. Jones, 106 U.S. 466, 467; United States v. Grimaud, 220 U.S. 506, 517; Campbell v. Galena Chemical Co., 281 U.S. 599, 610.

Third. The burden was on petitioner not only to show the character and extent of his injury, but also to show that the result of the injury was to disable him permanently from following any substantially gainful occupation. Provchel v. United States, 56 F. (2d) 645, 651; United States v. McCreary, 61 F. (2d) 604, 606. Petitioner lost his right arm; and the proof shows that he had been right-handed. Before the injury he was a practical engineer operating a surveying instrument; but with the loss of his right arm he could not operate such an instrument. In 1918 he obtained employment in a packing house, but found himself unable to work in the employment because it necessitated lifting heavy quarters of meat which he could not do with one arm. He was also unable to take orders for the house because he could not hold the receiver of the telephone and write

orders at the same time. After three weeks, he was obliged to give up this employment. From time to time, he obtained other work which involved the use of both hands and which he was obliged to abandon. On the other hand, it appears that he worked for twenty-two months in the training of selling stocks on commission, and for a few months in that of selling goods, from neither of which he received much in the way of income - not because his injury incapacitated him for the work, but because he lacked ability as a salesman. It does not appear that he made any earnest endeavor to fit himself for this work, or any effort to engage in other work which ordinarily a one-armed man with one defective eye could do. See United States v. Thomas, 53 F. (2d) 192, 195. He testified that he had received an average of $90 a month from the government as compensation since his discharge. He also received $2,500 from the sale of a farm in which he had an interest. He was, therefore, not without resources with which to obtain proper training. It does not appear that he undertook to do so. It is by no means infrequent for one-armed men to make a good living and support others by performing work adapted to their condition. It is clear from the evidence that the failure of petitioner in some of the things he undertook to do was not because of his crippled condition, but because of his general ineptitude for the work. The mere fact that he was unable to follow the occupation of surveyor or to do work of the kind he had been accustomed to perform before his injury does not establish the permanent and total character of his disability. Lumbra v. United States, 100 F. (2d) 481, 483. His long delay before bringing suit is wholly incompatible with a belief on his part that he was totally and permanently incapacitated during the period while his policy was in force. Idem, supra; United States v. Hairston, 76 F. (2d) 671, 673. If petitioner thought himself totally and permanently disabled, it is difficult to understand why he waited twelve years before attempting to assert his rights. The only explanation he makes for his delay is that he thought he had to die to collect the insurance. How he discovered this extraordinary legal principle, indicated above, we are not told. He is intelligent, and has completed the third grade of high school, and has had military schools. It does not seem possible that he believed, while living, that he was entitled to total permanent disability. In the light of all the circumstances, his explanation is not credible.

The court below, after reviewing the evidence and the decisions of this and other courts, reached the conclusion that petitioner had not sustained the burden of proof and that the trial court was justified in directing a verdict for the government. That conclusion is well supported by our recent decision in the Lumbra case, supra, and by other decisions. [illegible], Prechel v. United States, supra; United States v. Thomas, [illegible]; Spencer v. United States, 69 F. (2d) 860, 861.

JUDGMENT AFFIRMED.

JOHN EDGAR HOOVER
DIRECTOR

Division of Investigation
U. S. Department of Justice
Washington, D. C.

RZJ:HAC

January 9, 1935.

MEMORANDUM FOR THE DIRECTOR

Attached hereto is an advance copy of the decision 'The United States of America, Petitioner, v. Ira D. Spaulding', a War Risk Insurance case, decided by the Supreme Court of the United States on Monday, January 7, 1935.

The decision is favorable to the Government. It holds that the existence of a work record and / or favorable physical findings by physicians subsequent to the lapse of veteran's policy, as a matter of law, precludes his recovery; that the question of whether veteran was totally and permanently disabled at a given date is not a question to be resolved by opinion evidence (medical or lay) but is the ultimate question to be decided by the jury.

The writer at 11:00 A. M. Monday morning conferred with Mr. Lawler, of the Department, in the absence of Mr. Beardslee, as to the importance of this decision. Mr. Lawler advised that the decision was favorable to the Government and would undoubtedly cause more 'directed verdicts' by the courts upon completion of the evidence, but, in his opinion very little difference would be noted as to the amount of investigation required in a case as it would be impossible to know in advance what the Court's ruling would be on the motion for a directed verdict in a particular trial; that in addition, in case the ruling was adverse, the Government would be compelled to go forward with its evidence.

In short, it is believed investigations in War Risk Insurance cases will not be materially affected, but there should be an increase in favorable terminations of these suits to the Government as a result of this decision.

Respectfully,

R. Z. Joseph.

JAN 14 1935

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62-6684-2

JAN 11 1935

[illegible]	[illegible]

[illegible]

[illegible]

The United States of America,

Petitioner,

vs.

[illegible]

Respondent.

) On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

( )

Mr. Justice [illegible] delivered the opinion of the Court.

[illegible] covered [illegible] was not submitted to the jury, [illegible] a matter of record to [illegible] and [illegible]. Ingram v. United States, 260 U.S. 672, 675. The United States contends that the evidence was not sufficient to sustain the verdict. And it also raises certain questions presented for our consideration.

The material substance of the evidence follows.

In the latter part of 1919, respondent first had kidney trouble. According to naval medical records, he was sick four times from what was finally diagnosed as a kidney stone. Those illnesses were in June and September, 1919, January and August, 1921; their duration in all was about six weeks; while they lasted urinalyses sometimes disclosed albumin, casts and corpuscles in varying quantities. Some time after the last attack, the stone was removed. November 14, 1921, respondent's upper and lower jaws were fractured in the airplane crash. He was in the naval hospital until February, 1922. He testified

that he continuously had kidney trouble and never pains in the heart until then. When testified the only defect noted was that his teeth did not meet properly. Due to that he had gastritis February 2nd. Urinalysis then disclosed very few blood cells, occasional pus cells but no albumin or casts. The gastritis disappeared. In May following his teeth were treated for the malocclusion. Respondent testified that he was then suffering kidney pains and that his left antrum was much swollen. A civilian, Dr. Quinn, treated the antrum.

May 31 respondent went again to the hospital. He then stated that two years earlier he had suffered acute illness following exposure in wet and cold, had not felt well since and for the last month had been treated for kidney trouble. The diagnosis then made was "nephritis chronic parenchymatous". June 10, 1931, he was examined for discharge from the service. The medical officers noted their opinion that the nephritis was due to toxic material absorbed from the antrum and that infection of the antrum resulted from an injury sustained in the airplane crash. He was found "not physically qualified for retention in the Navy by reason of the following physical defects found existing of a more or less temporary nature: Infection of left antrum and malocclusion of the teeth". And on that day he was certified that he had the following disabilities entitling him to compensation under the War Risk Insurance Act: Infection of the left antrum, malocclusion of the teeth, stomach trouble and heart murmur. He said to claim that he had become totally and permanently disabled or that he was entitled to the amount that under the policy are payable to him.

Respondent did nothing from the time he was discharged until February, 1932. He testified that during that period he was ill and under the care of doctors who forbade work. When he finally did work, it was against their orders and to support his family. From February, 1932, until April, 1934, he took vocational training. During that time his policy lapsed. He quit before completion of the course because, as he says, he was no better and thought outdoor work would be good for him. Then for more than a year he was employed as an automobile salesman. Much riding over rough roads aggravated his condition and prevented continuous work. He was paid a salary of $125 per month for a part of the time and commissions for the remainder.

Commencing about September 1, 1925, respondent for seven months was employed as superintendent of construction of roads and ditches at a salary of $200 per month. He next worked for an electric company during four years and two months until September, 1930. For the first five or six months he was a salesman and earned commissions amounting to about $500. He then became superintendent of electrical work at a salary of $200 per month. Except for [illegible] weeks in another year and three months in 1930, he received salary [illegible] month though not able to work full time. He was discharged because [illegible] not put in full time. Two fellow employees testified that he was ill and at home three or four days a month. That was his last employment.

An official record put in evidence by him shows that in July, 1924, he was given a special physical examination to test his qualifications for flying. It indicates recovery from the airplane crash, heart and blood pressure normal, no

recurrence of kidney trouble. As a result of the examination he was officially certified to have no defects and to be qualified for flying duty as a pilot.

Commencing in 1923 while the policy was still in force respondent was treated by Dr. Quina, to whom he went daily during the first year and three or four times weekly during the next two. His condition did not improve and, because of inability to pay the doctor, he discontinued. For a few years prior to the trial he has been going to doctors for sinus treatment as often as every other day. October 31, 1928, the Veteran's Bureau examined him, apparently in connection with his application to reinstate his insurance. He was classified as a poor risk: "This man has a chronic nephritis. Hypertension. Urine shows occasional hyaline casts and a few red blood cells". In March, 1930, he entered a veterans hospital at Washington where he remained about six weeks. The diagnoses were albuminaria, nephritis diffuse mild, moderate hypertension. It was found that no hospitalization was necessary. Dr. Fowler, a consultant in urology, found the right kidney out of position and suggested surgery. June 1, 1931, respondent went to a naval hospital for treatment of the infected antrum and remained there until July 7. It was found that his blood pressure and heart were normal. He had moderate hydronephrosis of the right kidney and a kink in the upper half of the right ureter. Urinalysis was negative.

Respondent called Dr. Quina, Dr. Bryan and Dr. Pierpont:

Dr. Quine had treated respondent for the antrum infection for several years after the latter's discharge from the navy. He testified that the antrum infection was incurable and that during the period of treatment respondent had nephritis caused by the infection; that it did not improve, that respondent had impaired his health by working and that "In my opinion at the time I first examined him and since that time he has not been capable of continuously carrying on a substantially gainful occupation without injury to his health." The doctor thought that under proper treatment respondent could live a long time. "I would put him in bed and keep him there. If he engages in any work it will make him die a little bit sooner." Although the witness did not testify to any change in respondent's condition, he said: "If a man had mild nephritis in 1923 and in 1932 has diagnosis of mild nephritis . . . his condition is much worse now than it was then because he still has a breaking down of the kidneys".

Dr. Bryan commenced to treat respondent in July, 1929, and at that time found chronic nephritis. He expressed the opinion that the disease existed in 1928. An examination a year before the trial indicated respondent had not improved. Absolute rest was the treatment for his condition, any work physical or mental would impair his health and "If he continuously engages in any kind [illegible] going to limit his days on this earth. . . . If a man has [illegible] in 1923 and actually works for seven years and quits work in [illegible] and then in 1932 still has a diagnosis of only mild nephritis I would say that he had injured himself, for a man with that type of disease would injure his health by doing any kind of work. By working he has made it worse; he might have recovered. I would . . . say he was totally and permanently disabled. I don't know about his disability from an occupational standpoint".

Dr. [illegible] was in the respondent but excluded him from [illegible] right from the trial. He found chronic neuritis, and heart [illegible] and pressure. On the [illegible] of the case he expressed opinion that re[illegible] conditions dated back to 1942 or 1943. He said: "I would prescribe absolute rest . . . If plaintiff engaged in work it . . . would impair his health. From my examination I would say that the plaintiff is not able to continuously engage in any substantially gainful occupation without impairment to his health . . . If I had a patient who had an inception or beginning of that disease in 1943 and . . . had actually worked for a period of seven years continuously and then quit work for two years and then in 1952 still had virtually the same condition as found in the beginning, I would say that the [illegible] would remain, that the [illegible] would make his condition worse".

The terms of the contract of insurance are in accordance with 38 U.S.C., Sec. V, Act of October 6, 1917, 40 Stat. 409, and extend only to death and total permanent disability occurring while it is in force whether during or after termination of the service of the insured. The policy does not cover total temporary disability or partial permanent disability and does not authorize monthly payment for physical or mental impairment that is less than "total permanent disability". Periods of total temporary disability, though likely to occur at intervals, do not constitute the disability covered by the policy, for "permanent" means that which is continuing as contrasted with that which is "temporary". The fact that one does some work after the lapse of his policy is not of itself sufficient to defeat his claim of total permanent disability. He may have been temporarily unable and at the risk of endangering his condition or life. It may not be unusual that occasional work for short periods by one suffering disability because of impairment of his mind or body does not affect the fact of total permanent disability. But it is plain that work may be such as conclusively to negative total permanent disability at an earlier time. Lumbra v. United States, supra, 290 et seq.

After careful and complete examination of the record we are of opinion that the evidence and all reasonable inferences that justifiably may be drawn from it do not constitute sufficient basis for a verdict for respondent and that therefore the trial judge should have directed the jury to find for the United States. Cannon v. Conley, 291 U.S. [illegible], 3[illegible]. Stevens v. The White City, 285 U.S. 195, 200-4.

It is shown that since a time prior to the lapse of the policy respondent had incurable infection of an antrum, malocclusion of teeth and chronic neuritis that caused illness and impaired his physical and mental powers to such an extent that generally he was partially disabled and, at times during intervening periods of substantial duration, totally disabled. In 1944 he was found unfit for service as an air pilot. During the larger part of more than eight years between the lapse of his policy and the commencement of this suit he actually did work and earn substantial compensation. In view of [illegible] his testimony that under stress of need he worked then and will cannot be given weight for he is not entitled to recover on the policy unless he became totally disabled before its lapse and thereafter remained in that condition. If not totally disabled when found fit for air service and able to perform work admittedly done, total disability occurring while the [illegible]

was in fact unable to perform substantial work. The fact that, in withdrawing his claim for the support of his family and himself, he filed for nearly nine years to sue for the insurance money to which he now strongly asserts that he had not suffered total permanent disability covered by the policy. Lemire v. United States, supra, 170. And this contradiction is emphasized by the fact that in 1944 he procured examination for reinstatement of his insurance. The testimony of respondent's medical witnesses that were impaired his mental capacity to such an extent as to substantially bear upon the question whether total disability while the policy was in force continued during the subsequent years. As against the facts directly and conclusively established, this opinion evidence furnishes no basis for opposing inferences.

The medical opinions that respondent became totally and permanently disabled before the policy lapsed are without weight. Clearly the experts failed to give proper weight to his testimony for naval air service or to the work he performed, and misinterpreted "total permanent disability" as used in the policy and statute authorizing the insurance. Moreover, that question is not to be resolved by opinion evidence. It was the ultimate issue to be decided by the jury upon all the evidence in the case, to the judge's instructions as to the meaning of the crucial phrase, and other questions of law. The experts ought not to have been asked or allowed to state their conclusions on the whole case. Wilmington, etc. Railway Co. v. Kellogg, 94 U.S. 469, 472. Schneider v. Lemmer, 138 U.S. 49, 64. Firemen's Ins. Co. v. W. H. Mellinger Co., 91 F.2d [illegible], [illegible]. Phillips Lumber Co. v. Phillips & Henry Co., [illegible], 646. Guaranty Trust Co. v. Lerner, 103 F.2d 76, 78.

In this setting in the record it at all, the significance of the findings that in 1944 respondent was fit for service as an air pilot and of the work he performed after the lapse of the policy. These facts conclusively [illegible] did not become totally and permanently disabled before his policy lapsed. Lemire v. United States, supra. Self v. United States, [illegible] U. S. 44.*

R.V.D.C.

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*Cf. United States v. Pollock, 68 F. (2d) 633, 634. United States v. [illegible], 68 F. (2d) 654, 656. Tracy v. United States, 69 F. (2d) 834, [illegible]. United States v. Burns, 69 F. (2d) 636, 638. United States v. Turner, 69 F. (2d) 772. United States v. Green, 69 F. (2d) 921. United States v. [illegible] (2d) 100. United States v. Derrick, 70 F. (2d) 1[illegible]. Heffner v. [illegible], 70 F. (2d) 200. United States v. Johnson, 70 F. (2d) 326. United States v. Lancaster, 70 F. (2d) 515. Atkins v. United States, 70 F. (2d) 768. Harris v. United States, 70 F. (2d) 889, 891.

JOHN EDGAR HOOVER
DIRECTOR

Division of Investigation
U. S. Department of Justice
Washington, D. C.

January 31, 1935

MEMORANDUM FOR MR. TAMM

Attached hereto is a copy of that portion of the Congressional Record dated January 24, 1935, that pertains to the Pretorius case (War Risk Insurance). It will be noted that the legislation has now passed both Houses of Congress by unanimous vote.

You will recall this is the case that Mr. Knowles & tried the District that the Supreme Court of the United States was attempting its decision in order that legislation might be put through Congress to keep in the pool a number of war risk insurance cases which otherwise would automatically become a charge of a judgment against the United States for the World War Veterans' Act.

By this legislation, the decision will be avoided, so to speak, and additional law suits will be prevented. The ultimate number of suits to be brought is, however, at cases already instituted for a total sum recovered, as the bill provides within ninety days from the approval of this act, and if the legislation had not been passed, at least several thousand suits would have been filed without prejudice, as being prematurely brought because no valid disagreement had been entered. If this had resulted, it is believed fully fifty percent of them would not have been refiled.

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82-8335-1

RECORDED & INDEXED

Policy Loan No. 839167

JAN 30 1935

EXCERPT FROM THE CONGRESSIONAL RECORD
OF THE JANUARY 24, 1934, PERTAINING TO
THE VETERANS' CASE (H.R. 6518, 73d Congress)

MR. LADDICK. Mr. President, I desire to bring to the attention of the Senate a joint resolution reported unanimously yesterday by the Finance Committee and which is now on the calendar. The joint resolution passed the House unanimously. It is with reference to clarifying the definition of discharge in section 19, World War Veterans' Act, 1924, as amended. It affects a great number of service men in the presentation of their claims. It would permit the claims to go to trial, and the matters involved to be cleared up. A case went to the Supreme Court and the Veterans' Administration and the Solicitor General of the Department of Justice thought the matter so important that an arrangement was made in the Supreme Court for the postponement of the case until legislation could be enacted by Congress clarifying the particular point involved.

[illegible] the statement, can the Senator state in just a few sentences the difficulty which has arisen [illegible] to be cured by this joint resolution?

MR. LADDICK. Before I do, unanimous consent for the immediate consideration of the joint resolution, I will make a brief statement as to its purposes.

Suit on a contract of war-risk insurance may be filed under the act of July 3, 1930, only after a disagreement exists between the claimant and the Veterans' Administration. The Administrator of Veterans' Affairs, in conformity with an opinion of the Attorney General of September 16, 1931, delegated authority to finally deny claims so as to create the required disagreement to [illegible] the Insurance Claims Council of the Veterans' [illegible] Council denied a claim the claimant [illegible] told that that was [illegible] suit. Hundreds of cases [illegible] kind of denial went there the [illegible] judgments have been [illegible] courts about 6,000 suits on [illegible] have this same kind of denials.

In a case which arose in the district court in Arkansas the question of the sufficiency of this kind of a disagreement was raised and the court held that there was no disagreement. Appeal to the Circuit Court of Appeals of the Eighth Circuit was taken and that court certified the question to the Supreme Court of the United States. That case, John L. Frederick against the United States, is now pending in the Supreme Court. Motion to defer decision was filed by the Government with the intention to have the Court that legislation would be sought to enact into law the practice and procedure followed by the Veterans' administration. This resolution will make good the practice which were made to these veterans and on which the returns acted. In addition, it will permit reinstatement of similar cases which were dismissed and in which the judgments of dismissal have become final. There are about 1,0 such cases. Further, since it matter by law the practice followed by the Veterans' administration, it will permit the Veterans' Administration to [illegible] the application of approximately [illegible],000 cases in which [illegible] pending.

While the joint resolution will protect the cases in court and will permit men to accept as final the denial of their claims by the Veterans' Bureau, which I delegated authority to act by the Administrator, it will in no way deprive the veteran of the right of appeal to the courts if he does not care to accept the administrative denial as final.

In other words, this is a measure which the Veterans' administration favors in order to remove the ambiguity now existing. It will help a great number of World War veterans and ex-service men.

THE CHAIRMAN. As I understand the Senator, the whole design of the measure is to eliminate a technicality which has wrought in-

[illegible]

[illegible]

[illegible]

[illegible]

CHAIRMAN. Is there unanimous consent for the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution (H. J. Res. 114) to clarify the definition of disagreement

in section 19, World War Veterans' Act, 1924, as amended, which had been reported without amendment from the Committee on Finance, and which was read as follows:

Resolved, etc., That a denial of a claim for insurance by the Administrator of Veterans' Affairs or any employee or agency of the Veterans' Administration heretofore or hereafter designated therefor by the Administrator shall constitute a disagreement for the purposes of section 19 of the World War Veterans' Act, 1924, as amended (38 U.S.C., sec. 511, 512), 31, sec. 444). This resolution is made effective as of July 3, 1950, and shall apply to all suits now pending against the United States under the provisions of section 19 of the World War Veterans' Act, 1924, as amended, and any suit which has been dismissed solely on the ground that a denial or disallowance of [illegible] constitute a disagreement as defined [illegible] 3 months from the [illegible]

SUPREME COURT OF THE UNITED STATES.

No. 154.—October Term, 1938.

United States of America, Petitioner, vs. Kathleen McClure, as Administratrix of the Estate of John F. McClure, Deceased, and Individually. On Writ of Certiorari to the United States Circuit Court of Appeals for the [illegible]

(January 3, 1939.)

Mr. Justice Black delivered the opinion of the Court.

We are called upon to determine whether Section 302 or Section 305 of the War Risk Insurance Act[1] applies to a lapsed policy of War Risk yearly renewable term insurance.

Section 301 authorizes conversion of such policies and provides (with exceptions not applicable here) that "All yearly renewable term insurance shall cease on July 2, 1927, except when death or total permanent disability shall have occurred before July 2, 1927. . . . . "

Section 305 provides that "Where any person has heretofore allowed his insurance to lapse, . . . while suffering from a compensable disability for which compensation was not collected and dies or has died or becomes or has become permanently and totally disabled" while "entitled to compensation remaining uncollected . . . his insurance . . . shall not be considered as lapsed," and the Veterans' Administration shall pay him or his beneficiaries "so much of his insurance as said uncollected compensation . . . would purchase if applied as premiums when due . . . less the unpaid premiums and interest at five per centum compounded annually in installments."

John F. McClure, a World War Veteran, allowed his yearly renewable term insurance to lapse by failing to pay the premium due February, 1919, "while suffering from a compensable disability for which compensation [illegible] collected." December 1, 1929, when [illegible] remained unpaid, [illegible] there [illegible] his policy

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allowing him an permanent disability and at the death respondent as administratrix and individually filed an amended complaint seeking recovery under Section 305. The District Court held that the insurance was not revived under Section 305 and entered judgment for the government. The Circuit Court of Appeals reversed,[5] believing Section 301 did not limit Section 305 and that respondent was entitled to judgment on the policy, contrary to the result reached by the Circuit Court of Appeals for the Tenth Circuit.[6]

[illegible] July 2, 1921 the contract of [illegible] such insurance cease to exist on July 2, 1921 because of the general exempting provisions of Section 301 or was lapsed yearly renewable term insurance which as [illegible] saved by the special benefits extended under Section 305? We find the answer in the language of the original War Risk Insurance Act as it [illegible] stands.

That original Act of October 6, 1917,[7] provided government insurance without medical examination for persons engaged in war service. Yearly renewable term insurance was granted with provision for conversion into other forms of insurance with or medical examination not later than five years after the termination of the war.

August 9, 1921, Congress amended this Act and added Section 305.[8] Section 305 greatly liberalized the rights of veterans, both to reinstate and to revive lapsed yearly renewable term insurance. First: Veterans suffering from disability contracted in active war service were permitted to reinstate their policies despite [illegible] disability. Second: Veterans' insurance which had lapsed while the veterans were suffering from service connected disabilities for which compensation had not been paid, was revived in the amount which such unpaid compensation at death or date of total disability would purchase. This first provision of Section 305 was the original predecessor of Section 301, the second provision—relied upon to enforce McClure's policy—became Section 305.

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[5] 86 Fed. (2d) 764.

[6] Nielsen v. United States, 68 Fed. (2d) 899.

[7] 40 Stat. 398, 409.

[8] [illegible]

[illegible] Act of March 4, 1925,[6] Congress broadened both benefit [illegible] Section [illegible] and left it as a single Section. [illegible] 1924 [illegible] the World War Insurance Act [illegible] as two separate and distinct paragraphs [illegible] Section 304 and [illegible]. Section 304 incorporated that portion of Section 408 which had provided for reinstatement of lapsed term insurance despite his [illegible]. Section 305 [illegible] the second provision of Section 408 which [illegible] utilization of [illegible] such lapsed insurance. [illegible] Section [illegible] to [illegible]

[illegible]

II

[illegible] purpose of Congress to [illegible] and [illegible] insurance [illegible] because the government had in its possession funds due the veteran and sufficient to pay for his insurance.

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[6] 43 Stat. 16[illegible], 1325, 1326.

[7] 43 Stat. 607, [illegible], 626.

[illegible]

[illegible] Section 305 was amended [illegible] ... [illegible] year renewals [illegible] to July 2, 1927 and [illegible] month the proviso of Section 304 was specifically amended [illegible] to the June amendment to 305, by prohibiting reinstatement [illegible] after July 2, 1927.[9] Although [illegible] of [illegible] under Section 304 [illegible] was again specifically [illegible] Congress in [illegible] any [illegible] the [illegible] under Section 305 [illegible]

[illegible]

[illegible] July 2, 1927 [illegible] Section 305 [illegible] Section 304 [illegible]

[illegible] lapsed [illegible] term [illegible] under Section 305 would be [illegible] apply [illegible] that Section by construction, the proviso which Congress attached only to 304. Sections 304 and 305 are distinct parts of the statute which contains them. While both Sections emanated from a single prior

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9 44 Stat. 799, 799.
10 45 Stat. 964, 972.
[illegible]
[illegible]

Section. Congress evidently separated them to provide for the individual treatment that has been given reinstatement as distinguished from revival of lapsed policies. A deliberate separation of the two parts of the old Section—applying a restriction to one and not the other—indicates that a change was intended. This was

[redacted]

Affirmed

A true copy

Test:

Clerk, Supreme Court, U. S.

[redacted]

Best Copy Available

62-10221-1 January 16, 1970

RMSAC

Special Agent in Charge
Seattle, Washington

Dear Sirs

Re: JOHN F. McCLURE
[illegible]

With reference to your letter of September 8, 1969, there are transmitted herewith copies of an opinion of the United States Supreme Court dated January 5, 1970, which upholds the Circuit Court of Appeals in reversing the judgment originally entered for the Government.

It is requested that you reopen the case and submit a closing report when final judgment in accordance with the Supreme Court decision is entered on the trial court docket.

Your attention is invited to the fact that the veteran's middle initial is "F." and not "J.".

Very truly yours,

John Edgar Hoover
Director

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INDEXED

62-10221-20

SUPREME COURT OF THE UNITED STATES.

No. 25.—October Term, 1942.

Benjamin McNabb, Freeman McNabb, and Raymond McNabb, Petitioners, vs. The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 1, 1943.]

Mr. Justice Frankfurter delivered the opinion of the Court.

The petitioners are under sentence of imprisonment for forty-five years for the murder of an officer of the Alcohol Tax Unit of the Bureau of Internal Revenue engaged in the performance of his official duties. 18 U. S. C. § 253. They were convicted of second degree murder in the District Court for the Eastern District of Tennessee, and on appeal to the Circuit Court of Appeals for the Sixth Circuit the convictions were sustained. 123 F. 2d 848. We brought the case here because the petition for certiorari presented serious questions in the administration of federal criminal justice. 316 U. S. 656. Determination of these questions turns upon the circumstances relating to the admission in evidence of incriminating statements made by the petitioners.

On the afternoon of Wednesday, July 31, 1940, information was received at the Chattanooga office of the Alcoholic Tax Unit that several members of the McNabb family were planning to sell that night whiskey on which federal taxes had not been paid. The McNabbs were a clan of Tennessee mountaineers living about twelve miles from Chattanooga in a section known as the McNabb Settlement. Plans were made to apprehend the McNabbs while actually [illegible]. That evening four revenue [illegible]ment's informers, drove to the [illegible] approached the rendezvous ar[illegible] the informers, the officers got [illegible] drove on and met five of the [illegible] brothers Freeman and Ray[illegible]—are the petitioners here. (The [illegible] and Barney McNabb were acquitted at the [illegible] of the trial court.) The group proceeded to a spot

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near the family cemetery where the liquor was hidden. While cans containing whiskey were being loaded into the car, one of the informers flashed a prearranged signal to the officers who thereupon came running. One of these called out, "All right, boys, federal officers!", and the McNabbs took flight.

Instead of pursuing the McNabbs, the officers began to empty the cans. They heard noises coming from the direction of the cemetery, and after a short while a large rock landed at their feet. An officer named Lawyer ran into the cemetery. He looked about with his flashlight but discovered no one. Noticing a couple of whiskey cans there, he began to pour out their contents. Shortly afterwards the other officers heard a shot, running into the cemetery they found Lawyer on the ground, fatally wounded. A few minutes later—at about ten o'clock—he died without having identified his assailant. A second shot slightly wounded another officer. A search of the cemetery proved futile, and the officers left.

About three or four hours later—between one and two o'clock Thursday morning—federal officers went to the home of Freeman, Raymond and Emuil McNabb and there placed them under arrest. Freeman and Raymond were twenty-five years old. Both had lived in the Settlement all their lives, neither had gone beyond the fourth grade in school; neither had ever been farther from his home than Jasper, twenty-one miles away. Emuil was twenty-two years old. He, too, had lived in the Settlement all his life, and had not gone beyond the second grade.

Immediately upon arrest, Freeman, Raymond, and Emuil were taken directly to the Federal Building at Chattanooga. They were not brought before a United States Commissioner or a judge. Instead, they were placed in a detention room, where there was nothing they could sit or lie down on, except the floor, and kept there for about fourteen hours, from three o'clock Thursday morning until five o'clock that afternoon. They were given some sandwiches. They were not permitted to see relatives and friends who [illegible] in the room. They had no lawyer. There is no evidence [illegible] or that they were

[illegible] Thursday morning [illegible] authorities about [illegible] twenty-eight years old; [illegible] life in the Settle-

ment had never gone beyond Jasper, and his schooling stopped at the third grade. Barney was placed in a separate room in the Federal Building where he was questioned for a short period. The officers then took him to the scene of the killing, brought him back to the Federal Building, questioned him further for about an hour, and finally removed him to the county jail three blocks away.

In the meantime direction of the investigation had been assumed by H. B. Taylor, district supervisor of the Alcohol Tax Unit, with headquarters at Louisville, Kentucky. Taylor was the Government's chief witness on the central issue of the admissibility of the statements made by the McNabbs. Arriving in Chattanooga early Thursday morning, he spent the day in study of the case before beginning his interrogation of the prisoners. Freeman, Raymond, and Emmit, who had been taken to the county jail about five o'clock Thursday afternoon, were brought back to the Federal Building early that evening. According to Taylor, his questioning of them began at nine o'clock. Other officers set the hour earlier.[1]

Throughout the questioning, most of which was done by Taylor, at least six officers were present. At no time during its course was a lawyer or any relative or friend of the defendants present. Taylor began by telling "each of them before they were questioned that we were Government officers, what we were investigating, and advised them that they did not have to make a statement, that they need not fear force, and that any statement made by them would be used against them, and that they need not answer any question asked unless they desired to do so."

The men were questioned singly and together. As described by one of the officers, "They would be brought in, be questioned possibly at various times some of them half an hour, or maybe an hour, or maybe two hours". Taylor testified that the questioning continued until one o'clock in the morning, when the defendants were taken back to the county jail.[2]

The questioning was resumed Friday morning, probably sometime between nine and ten o'clock.[3] "They were brought down

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[1] Officer Rucker testified that the questioning Thursday night began at 8 P. M., Officer Kitts at 7 P. M., and Officer Johns, at "possibly 6 or 7 o'clock".

[2] Here again Taylor's testimony is in substance with that of other officers. Officer Kitts estimated that the questioning Thursday night ended at 10 P. M., Officer [illegible] at 11:30 P. M., and Officer Johns, at midnight. No officer [illegible] that the questioning [illegible] more than three hours.

[3] [illegible] Friday morning [illegible] Some of the other officers could recall

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from the jail several times, how many I don't know. They were questioned one at a time, as we would finish one he would be sent back and we would try to reconcile the facts they had connect up the statements they made, and then we would get two of them together. I think at one time we probably had all five together trying to reconcile their statements . . . . When I knew the truth I told the defendants what I knew. I never called them damn liars but I did say they were lying to me . . . . It would be impossible to tell all the motions I made with my hands during the two days of questioning, however, I didn't threaten anyone. None of the officers were prejudiced towards these defendants nor bitter toward them. We were only trying to find out who killed our fellow officer."

Benjamin McNabb, the third of the petitioners, came to the office of the Alcohol Tax Unit about eight or nine o'clock Friday morning and voluntarily surrendered. Benjamin was twenty years old, had never been arrested before, had lived in the McNabb Settlement all his life and had not got beyond the fourth grade in school. He told the officers that he had heard that they were looking for him but that he was entirely innocent of any connection with the crime. The officers made him take his clothes off for a few minutes because as he testified, "they wanted to look at me. That scared me pretty much." He was not taken before a United States Commissioner or a judge. Instead, the officers questioned him for about five or six hours. When finally in the afternoon he was confronted with the statement that the others accused him of having fired both shots, Benjamin said, "If they are going to accuse me of that, I will tell the whole truth, you may get your pencil and paper and write it down." He then confessed that he had fired the first shot, but denied that he had also fired the second.

Because there were "certain discrepancies in their stories and we were anxious to straighten them out", the defendants were brought to the Federal Building from the jail between nine and ten o'clock Friday night. They were again questioned sometimes separately, sometimes together. Taylor testified that "We had

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the exact time. Officer Burke thought "it must have been after nine o'clock", while Officer Johns guessed that it was "somewhere around ten or eleven o'clock in the morning".

[illegible] Taylor admitted that his reasons for having Benjamin remove his clothes were that [illegible] had in his pocket a shell identical with those found in the gun [illegible] by a empty shell. He didn't know whether or not this shell [illegible] Benjamin off to order to examine [illegible] and the [illegible]

[illegible] Available

Freeman McNabb on the night of the second [Friday] for about three and one-half hours. I don't remember the time but I remember him particularly because he certainly was hard to get anything out of. He would admit he lied before, and then tell it all over again. I knew some of the things about the whole truth and it took about three and one-half hours before he would say it was the truth, and I finally got him to tell a story which he said was true and which certainly fit better with the physical facts and circumstances than any other story he had told. It took me three and one-half hours to get a story that was satisfactory or that I believed was nearer the truth than when we started."

The questioning of the defendants continued until about two o'clock Saturday morning when the officers finally "got all the discrepancies straightened out." Benjamin did not change his story that he had fired only the first shot. Freeman and Raymond admitted that they were present when the shooting occurred, but denied Benjamin's charge that they had urged him to shoot. Barney and Emuel, who were acquitted at the direction of the trial court, made no incriminating admissions.

Concededly, the admissions made by Freeman, Raymond and Benjamin constituted the crux of the Government's case against them, as [illegible] cannot stand if such evidence be excluded. Accordingly, the question for our decision is whether the [illegible] statements, made under the circumstances we have summarized,[1] were properly admitted. Relying upon

[1] To determine the admissibility of the statements secured from the defendants while they were in the custody of the federal officers, the trial court conducted a preliminary hearing in the absence of the jury. After hearing the evidence concerning practically all of the testimony of the defendants and the officers, the court concluded that the statements were admissible. An exception to this ruling was taken. When the jury was recalled, the witnesses for the Government repeated their testimony. The defendants relied upon their claim that the trial court erred in admitting these statements, and stood on their constitutional right not to take the witness stand before the jury. At the conclusion of the Government's case the defendants moved to exclude from the consideration of the jury the evidence relating to the statements made by them. This motion was denied. The motion was renewed at the conclusion of the defendants' case, and again was denied. The court charged the jury that the defendants' admissions should be disregarded if found to have been involuntarily made. The issue of fact which was decided by the trial court in admitting the statements made by the petitioners, therefore, [illegible] question of fact considered by the jury's [illegible] of guilty. Under these circumstances we have treated as [illegible] testimony offered on behalf of the Government and as much [illegible] evidence as is [illegible] consistent with [illegible]

the guarantees of the Fifth Amendment that no person "shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law", the petitioners contend that the Constitution itself forbids the use of this evidence against them. The Government counters by urging that the Constitution proscribes only "involuntary" confessions, and that judged by appropriate criteria of "voluntariness" the petitioners' admissions were voluntary and hence admissible.

It is true, as the petitioners assert, that a conviction in the federal courts the foundation of which is evidence obtained in disregard of liberties deemed fundamental by the Constitution, cannot stand. *Boyd* v. *United States*, 116 U. S. 616, *Weeks* v. *United States*, 232 U. S. 383, *Gouled* v. *United States*, 255 U. S. 298, *Amos* v. *United States*, 255 U. S. 313; *Agnello* v. *United States*, 269 U. S. 20, *Byars* v. *United States*, 273 U. S. 28, *Gros* v. *United States*, 287 U. S. 124. And this Court has, *on Constitutional grounds*, set aside convictions, both in the federal and state courts, which were based upon confessions "secured by protracted and repeated questioning of ignorant and unlettered persons, in whose minds the power of officers was greatly magnified", *Lisenba* v. *California*, 314 U. S. 219, 239-40, or "who have been unlawfully held incommunicado without advice of friends or counsel", *Ward* v. *Texas*, 316 U. S. 547, 555 and see *Brown* v. *Mississippi*, 297 U. S. 278; *Chambers* v. *Florida*, 309 U. S. 227, *Canty* v. *Alabama*, 309 U. S. 629, *White* v. *Texas*, 310 U. S. 530, *Lomax* v. *Texas*, 313 U. S. 544, *Vernon* v. *Alabama*, 313 U. S. 547.

In the view we take of the case, however, it becomes unnecessary to reach the Constitutional issue pressed upon us. For, while the power of this Court to undo convictions in state courts is limited to the enforcement of those "fundamental principles of liberty and justice", *Hebert* v. *Louisiana*, 272 U. S. 312, 316, which are secured by the Fourteenth Amendment, the scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts [illegible] standards [illegible] mercy [illegible] assuring

trial by reason which are summarized as "due process of law" and below which we reach what is really trial by force. Moreover, review by this Court of state action expressing its notion of what will best further its own security in the administration of criminal justice demands appropriate respect for the deliberative judgment of a state in so basic an exercise of its jurisdiction. Considerations of large policy in making the necessary accommodations in our federal system are wholly irrelevant to the formulation and application of proper standards for the enforcement of the federal criminal law in the federal courts.

The principles governing the admissibility of evidence in federal criminal trials have not been restricted, therefore, to those derived solely from the Constitution. In the exercise of its supervisory authority over the administration of criminal justice in the federal courts, see *Nardone v United States*, 308 U. S. 338, 341-42, this Court has from the very beginning of its history formulated rules of evidence to be applied in federal criminal prosecutions. *E. g. Ex parte Bollman & Swartwout*, 4 Cranch 75, 129-31; *United States v Palmer*, 3 Wheat. 610, 643-44; *United States v. Pirates*, 5 Wheat. 184, 199; *United States v Gooding*, 12 Wheat. 460, 468-70; *United States v Wood*, 14 Pet. 430; *United States v Murphy*, 16 Pet. 203; *Funk v United States*, 290 U. S. 371; *Wolfle v. United States*, 291 U. S. 7; see 1 Wigmore on Evidence (3d ed. 1940) pp. 170-87; Note, 47 Harv. L. Rev. 853.* And in formulating such rules of evidence for federal criminal trials the Court has been guided by considerations of justice not limited to the strict canons of evidentiary relevance.

Quite apart from the Constitution, therefore, we are constrained to hold that the evidence elicited from the petitioners in the circumstances disclosed here must be excluded. For in their treatment of the petitioners the arresting officers assumed functions which Congress has explicitly denied them. They subjected the accused to [illegible] wholly incompatible with [illegible] investigating and arresting [illegible] to undermine the in-

* [illegible] are governed by [illegible] courts: "The rules of [illegible] grown up at the hands of [illegible] something more than rules of [illegible] enough be left to them to be modified and reshaped." J. B. Thayer, A Preliminary Treatise on Evidence at the Common Law (1898) pp. 516-21.

legrity of the criminal proceeding. Congress has explicitly commanded that "It shall be the duty of the marshal, his deputy, or other officer, who may arrest a person charged with any crime or offense, to take the defendant before the United States Commissioner or the nearest judicial officer having jurisdiction under existing laws for a hearing, commitment, or taking bail for trial . . .". 18 U. S. C. § 595. Similarly, the Act of June 18, 1934, c. 595, 48 Stat. 1008, 6 U. S. C. § 300a, authorizing officers of the Federal Bureau of Investigation to make arrests, requires that "the person arrested shall be immediately taken before a committing officer." Compare also the Act of March 1, 1879, c. 125, 20 Stat. 327, 341, 18 U. S. C. § 593, which provides that when arrests are made of persons in the act of operating an illicit distillery, the arrested persons shall be taken forthwith before some judicial officer residing in the county where the arrests were made or, if none, in the county nearest to the place of arrest. Similar legislation, requiring that arrested persons be promptly taken before a committing authority, appears on the statute books of nearly all the states.[7]

The purpose of this impressively pervasive requirement of criminal procedure is plain. A democratic society, in which respect

[7] Alabama—Code, 1940, Tit. 15, § 16; Arizona—Code, 1939, §§ 44-207, 44-240, 44-241; Arkansas—Digest of Statutes, 1937, §§ 3729, 3731; California—Penal Code, 1941, §§ 825, 849-849; Colorado—Statutes, 1935, c. 48, § 424; Connecticut—Gen. Statutes, 1930, § 249; Delaware—Rev. Code, 1935, §§ 4456, 5173; District of Columbia—Code, 1940, §§ 4-140, 23-301; Florida—Statutes, 1941, §§ 901.04, 901.23; Georgia—Code, 1933, §§ 27-210, 27-212; Idaho—Code, 1932, §§ 19-515, 19-516, 19-614, 19-615; Illinois—Rev. Stats., 1941, c. 38, §§ 657, 658; Indiana—Burns' Ind. Stats. Ann., 1934, § 11-404; Iowa—Code, 1939, §§ 134.8, 13401, 13402, 13403; Kansas—Gen. Stats., 1935, § 62-616; Kentucky—Code, 1930, §§ 63.04; Louisiana—Code of Criminal Procedure, 1932, Art. 79; Maine—Rev. Stats., 1930, c. 145, § 9; Massachusetts—Ann. Laws, 1932, c. 276, § 22, 29, 30; Michigan—Stats. Ann., 1938, §§ 28.872, 28.873, 28.874; Minnesota—Mason's Stats., 1927, c. 104, §§ 9777, 10481; Mississippi—Code, 1930, c. 21, § 1230; Missouri—Rev. Stats., 1939, §§ 1562, 1563; Montana—Rev. Code, 1935, §§ 11721, 11722; Nebraska—Comp. Stats., 1929, § 29-412; Nevada—Comp. Laws, 1929, §§ 1744-44, 10972-84; New Hampshire—Pub. Laws, 1926, c. 344, § 12; New Jersey—Rev. Stats., 1937, § 2:191-8; New York—Code of Criminal Procedure, 1939, §§ 150-a, 165, 168; North Carolina—Code, 1939, §§ 4604, 4605; North Dakota—Comp. Laws, 1913, [illegible]; Ohio—[illegible]; Oklahoma—[illegible]; Pennsylvania—Purdon's Stats. Ann., Penal Laws, 1936, c. 925, § 68; Rhode Island—[illegible]; South Dakota—Code, 1939, §§ 34.10; Tennessee—Code, 1934, §§ 11515, 11546; Texas—[illegible]; Utah—Rev. Stats. 1933, §§ 105-4-6; Vermont—Code, 1947, §§ 6626, 6627a; Washington—Rev. [illegible]; Wisconsin—Code, 1937, § 4196; Wyoming—Statutes, [illegible]; Rev. Stats., 1931, §§ 33-108, 33-110, 33-118.

for the dignity of all men is central, naturally guards against the misuse of the law enforcement process. Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic. The awful instruments of the criminal law cannot be entrusted to a single functionary. The complicated process of criminal justice is therefore divided into different parts, responsibility for which is separately vested in the various participants upon whom the criminal law relies for its vindication. Legislation such as this, requiring that the police must with reasonable promptness show legal cause for detaining arrested persons, constitutes an important safeguard—not only in assuring protection of the innocent but also in securing conviction of the guilty by methods that commend themselves to a progressive and self-confident society. For this procedural requirement checks resort to those reprehensible practices known as the "third degree" which, though universally rejected as indefensible, still find their way into use. It aims to avoid all the evil implications of secret interrogation of persons accused of crime. It reflects not a sentimental but a sturdy view of law enforcement. It outlaws easy but self-defeating ways in which brutality is substituted for brains as an instrument of crime detection." A statute carrying out these purposes is expressive of a general legislative policy to which courts should not be heedless when appropriate situations call for its application.

The circumstances in which the statements admitted in evidence against the petitioners were secured reveal a plain disregard of the duty enjoined by Congress upon federal law officers. Freeman and Raymond McNabb were arrested in the middle of the night at their home. Instead of being brought before a United States Commissioner or a judicial officer, as the law requires, in order to determine the sufficiency of the justification for their detention, they were put in a barren cell and kept there for fourteen hours. For

[redacted]

two days they were subjected to unremitting questioning by numerous officers. Benjamin's confession was secured by detaining him unlawfully and questioning him continuously for five or six hours. The Mallovs had to submit to all this without the aid of friends or the benefit of counsel. The record leaves no room for doubt that the questioning of the petitioners took place while they were in the custody of the arresting officers and before any order of commitment was made. Plainly, a conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be allowed to stand without making the courts themselves accomplices in willful disobedience of law. Congress has not explicitly forbidden the use of evidence so procured. But to permit such evidence to be made the basis of a conviction in the federal courts would stultify the policy which Congress has enacted into law.

Unlike *England*, where the Judges of the King's Bench have prescribed rules for the interrogation of prisoners while in the custody of police officers,[1] we have no specific provisions of law governing federal law enforcement officers in procuring evidence from persons held in custody. But the absence of specific restraints going beyond the legislation to which we have referred does not imply that the circumstances under which evidence was secured are irrelevant in ascertaining its admissibility. The mere fact that a confession was made while in the custody of the police does not render it inadmissible. Compare *Hopt v. Utah*, 110 U. S. 574; *Sparf v. United States*, 156 U. S. 51, 55; *United States ex rel. Bilokumsky v. Tod*, 263 U. S. 149, 157; *Wan v. United States*, 266 U. S. 1, 14. But where in the course of a criminal

[1] In 1912 the Judges of the King's Bench at the request of the Home Secretary, issued rules for the guidance of police officers. See Rex v. Voisin, [1918] 1 K. B. 531, 539. These rules were amended in 1918, and in 1919 a circular was issued by the Home Office with the approval of the Judges in order to clear up difficulties in their construction. 9 Police Journal (1919) 47, containing the texts of the Judges' Rules and the Circular. See Report of the Royal Commission on Police Powers and Procedure (1929) Cmd. 3297. Although the Rules do not have the force of law (Rex v. Voisin, *supra*), the English courts insist that they be strictly observed before admitting statements made by accused persons while in the custody of the police. See 1 Taylor on Evidence (12th ed. 1931), pp. 846-8; "Questioning an Accused Person," 92 Justice of the Peace and Local Government Rev. 243, 256 (1928); Kady, Preliminary Examination of Accused Persons in England, 73 Proceedings of American Philosophical Society 133 (1934). For a favorable illustration of the English attitude towards interrogation of arrested persons by the police, see Inquiry in regard to the Interrogation by the Police of Miss Savidge (1926) Cmd. 2677.

trial in the federal courts it appears that evidence has been obtained in such violation of legal rights as this case discloses, it is the duty of the trial court to entertain a motion for the exclusion of such evidence and to hold a hearing, as was done here, to determine whether such motion should be granted or denied. Cf. *Gouled v. United States*, 255 U. S. 298, 312-13; *Amos v. United States*, 255 U. S. 313; *Nardone v. United States*, 308 U. S. 338, 341-42. The interruption of the trial for this purpose should be no longer than is required for a competent determination of the substantiality of the motion. As was observed in the *Nardone* case, *supra*, "The civilized conduct of criminal trials cannot be confined within mechanical rules. It necessarily demands the authority of limited direction entrusted to the judge presiding in federal trials, including a well established range of judicial discretion subject to appropriate review on appeal, in ruling on preliminary questions of fact. Such a system as ours must, within the limits here indicated, rely on the learning, good sense, fairness and courage of federal trial judges." 308 U. S. at 342.

In holding that the petitioners' admissions were improperly received in evidence against them and that having been based on this evidence their convictions cannot stand, we confine ourselves to our limited function as the court of ultimate review of the standards formulated and applied by federal courts in the trial of criminal cases. We are not concerned with law enforcement practices except insofar as courts themselves become instruments of law enforcement. We hold only that a decent regard for the duty of courts as agencies of justice and custodians of liberty forbids that men should be convicted upon evidence secured under the circumstances revealed here. In so doing, we respect the policy which underlies Congressional legislation. The history of liberty has largely been the history of observance of procedural safeguards. And the effective administration of criminal justice hardly requires disregard of fair procedures imposed by law.

Reversed.

Mr. Justice Burton took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 25.—OCTOBER TERM, 1942.

Benjamin McNabb, Freeman McNabb, and Raymond McNabb, Petitioners, vs. The United States of America } On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 1, 1943.]

Mr. Justice REED, dissenting.

I find myself unable to agree with the opinion of the Court in this case. An officer of the United States was killed while in the performance of his duties. From the circumstances detailed in the Court's opinion, there was obvious reason to suspect that the petitioners here were implicated in firing the fatal shot from the dark. The arrests followed. As the guilty parties were known only to the McNabbs who took part in the assault at the burying ground, it was natural and proper that the officers would question them as to their actions.[1]

The cases just cited show that statements made while under interrogation may be used at a trial if it may fairly be said that the information was given voluntarily. A frank and free confession of crime by the culprit affords testimony of the highest credibility and of a character which may be verified easily. Equally frank responses to officers by innocent people arrested under misapprehension give the best basis for prompt discharge from custody. The realization of the convincing quality of a confession tempts officials to press suspects unduly for such statements. To guard accused persons against the danger of being forced to confess, the law admits confessions of guilt only when they are voluntarily made. While the connotation of voluntary is indefinite it affords an understandable label under which can be readily classified the various acts of terrorism, promises, trickery and threats which have led this and other courts to refuse admission as evidence to con-

[1] Hopt v. Utah, 110 U. S. 574, 584; Sparf and Hansen v. United States, 156 U. S. 51, 55; Pierce v. United States, 160 U. S. 355; Wilson v. United States, 162 U. S. 613, 623; cf. Stein v. New York, 346 U. S. 156, 187.

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...coercive to hinder
...ment of any sort."
...Co. Supply, 316 U. S.

Supreme Court Ponders Plea of 'Tiger of Malaya'

Will Rule on Defense Argument That Yamashita Should Have Had Civil Trial

The Supreme Court yesterday took under advisement the plea of Japanese Gen. Yamashita, the Tiger of Malaya, that he be returned to his former prisoner-of-war status from that of a war criminal sentenced to hang.

After a five-and-a-half hour hearing into the unprecedented appeal by an enemy war leader to the nation's highest court, the seven justices present retired to deliberate.

Hear Contrary Pleas

With them they took Government's final contention that Yamashita "is guilty of violating the laws of war" in that he permitted occupation troops under his Philippines command to commit atrocities on an estimated 60,000 persons, mostly civilians.

And they had the assertion of defense counsel, three United States Army officers who defended the "Tiger" at his recent Manila trial, that the general "has committed no crime of any sort."

When Yamashita, languishing thousands of miles away in Manila's Bilibid prison, will learn whether his last avenue of appeal has been granted or denied, is a matter of speculation. The court may rule at its next regular Monday session, January 14, or it may hand down its decision on January 28, after a two-week recess.

Denies Trial "Illegal"

Assistant Solicitor General Harold Judson told the court today that any claim Yamashita was given an illegal trial because the war is over, "flies in the face of reason."

One of the major defense contentions is that the general should have been tried by a civil court, since the fighting is over.

"It is obvious that persons who have offended against the laws of humanity—from which stem the laws of war—would in most cases not be apprehended until after the fighting is over," Judson said.

"But there still are many Japanese soldiers not apprehended right in the Philippines. I read only the other day that in this sporadic fighting, 15 soldiers, three of them Americans, were killed."

Chief Justice Stone and his associates — Justices Rutledge, Murphy, Frankfurter, Douglas, Black and Burton—followed the arguments closely. Justice Reed was absent because of illness while Justice Jackson is in Europe. Virtually every seat in the great marble chamber was again filled.

Yamashita, Judson said, not only was commander of all military forces but was military governor of the Philippines as well. He read the original charge against the Tiger which specified that he had "unlawfully disregarded his responsibilities" and had permitted atrocities to occur under his command, "thereby violating the laws of war." These, the assistant solicitor general said, included executions without cause or trial, torture, looting and the like.

Duty to Be Humane

"Who determines," asked Justice Rutledge, "whether a prisoner is a violator of the laws of war?"

"The military," Judson said. He added that "Yamashita was under a legal duty to control his troops and to treat war prisoners humanely," and that the Jap general had admitted this during his trial.

From the defense table Capt. A. Frank Reel got up to present his brief rebuttal. With him were Col. Harry E. Clarke and Capt. Milton Sandberg, all of who flew from Manila to participate in the final appeal.

Reiterating that Yamashita was improperly tried by the military commission, he again raised the question of jurisdiction and said that a civil trial should have been ordered.

The defense seeks writs of habeas corpus for Yamashita's return to prisoner-of-war status, and a writ of prohibition to forestall execution of sentence.

Cites "Parallel" Case

Replying to a question asked Monday, Reel advised the court that he had discovered the case of Brig. Gen. Jacob H. Smith, U.S.A., who was court-martialed in 1901 for having ordered atrocities committed against civilians on Samar Island. He said that Smith's punishment was "to be admonished."

"I take it that your opinion is that your man should be admonished also?" Justice Stone asked.

"Our position, sir," Reel replied, "is that our man has committed no crime of any sort, and I think that it is a question for this court to determine."

Mr. Tolson
Mr. E. A. Tam
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Hendon
Mr. Pennington
Mr. Quinn Tam
Mr. Nease
Miss Gandy

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INDEXED

1946

JAN

WASHINGTON TIMES-HERALD
Page 11

Mr. Tolson
Mr. E. A. Tam
Mr. Clegg
Mr. Coffey
Mr. Glavin
Mr. Ladd
Mr. Nichols
Mr. Rosen
Mr. Tracy
Mr. Carson
Mr. Egan
Mr. Hendon
Mr. Penningto
Mr. Quinn Tar
Mr. Nease
Miss Gandy

Medley and Fisher Lose Final Appeals

Murderers Face Quick Execution As Result of Supreme Court Action

Slayers of two Washington women yesterday lost their last legal fights to escape the electric chair.

The U. S. Supreme Court refused to consider an appeal by Joseph D. Medley from his first-degree murder conviction in the shooting of Mrs. Nancy Boyer March 8, 1945. He is scheduled to die August 2.

The high court affirmed, 4 to 3, the murder conviction of Julius Fisher, Negro, 31-year-old Washington Cathedral janitor, sentenced to die October 26 for the slaying of Miss Catherine Cooper Reardon, 37, in the Cathedral March 1, 1944.

Medley, former Michigan convict who fled the District Jail here April 3 only to be captured 7 hours later in a sewer pipe, originally was sentenced to die April 30. The execution was postponed pending outcome of the appeal.

Mrs. Boyer, attractive red-haired divorcee, was found slain in her fashionable apartment after a card party and Medley was arrested in St. Louis, Mo., 10 days later.

Justices Felix Frankfurter, Frank Murphy and Wiley Rutledge dissented in the Fisher decision for the 4-to-3 result.

Fisher had testified he attacked Miss Reardon after she had complained of dirt under her desk and called him a "black nigger." Her body was found in a steam pipe tunnel in a subbasement of the Cathedral the next day.

Justice Stanley F. Reed, in delivering the Fisher opinion and recounting history of the trial, said Fisher's counsel sought an instruction from the trial judge "which would have permitted the jury to weigh the evidence of the defendant's mental deficiencies, which were short of insanity in the legal sense. The trial court refused and the United States Court of Appeals here upheld the refusal."

Justice Reed said this conforms to the law of the District of Columbia.

"Matters relating to law enforcement in the District of Columbia," he said, "are entrusted to the courts of the District.

"Our policy is not to enterfere with the local rules of law which they fashion, save in exceptional situations where egregious error has been committed."

"Where the choice of the Court of Appeals of the District of Columbia in local matters between conflicting legal conclusions seems nicely balanced, we do not interfere."

INDEXED

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87 AUG 7 1946

87 AUG 12 1946

JUN 24 1946

WASHHINGTON POST
Page

Office Memorandum • UNITED STATES GOVERNMENT

TO : The Director

DATE: 2-2-55

FROM : L.V. Boardman

SUBJECT: Surveillances

Tolson
Boardman
Nichols
Belmont
Harbo
Mohr
Parsons
Rosen
Tamm
Sizoo
Winterrow
Tele. Room
Holloman
Gandy

Pursuant to your instructions, I telephonically contacted SAC Leo Laughlin, Washington Field Office at 4:10 P.M., February 2, 1955, and advised him that effective immediately no physical surveillances were to be conducted by Bureau Agents at any time on the grounds of or in the following buildings: Supreme Court, Capitol, White House, Senate and House Office Buildings unless the specific authorization was first secured from either Belmont or myself and that specific authority would have to be requested in each instance where unusual conditions might warrant requesting such authority, said authority to be secured in advance.

I told Laughlin that these instructions were to be issued to his personnel immediately.

LVB:WMJ
(5)

cc - Belmont
Rosen
Nichols

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 8/20/87 BY SP-5 CLK/ltr
#77 Civ 519

RECORDED - 25
66-4151-229
INDEXED - 25
7 FEB 24 1955
EX-111

[redacted]

MEMO TO ALL SUPERVISORS IN ESPIONAGE SECTION 2-3-55 SBD/hmm

51 FEB 23 1955

FEDERAL BUREAU OF INVESTIGATION

_____ 1937.

✓ The Director	___ Files Section
___ Mr. Nathan	___ Personnel Files
___ Mr. Tolson	___ Chief Clerk's Office
___ Mr. Tamm	___ Identification Division
___ Mr. Quinn	___ Technical Laboratory
___ Mr. Clegg	___ Mechanical Section

SUPERVISORS

___ Mr. Brandt	___ Mr. Leckie	___ Mr. Rosen
___ Mr. Chambers	___ Mr. McDade	___ Mr. Spear
___ Mr. Chipman	___ Mr. McIntire	___ Mr. Vogel
___ Mr. Collier	___ Mr. Mertz	___ Mr. Wyly
___ Mr. Drayton	___ Mr. Pennington	___ Mr. _____
___ Mr. Lawler	___ Mr. Ranstad	

* * *

___ Miss Gandy	___ See Me
___ Mrs. Fisher	___ Send File
___ Mrs. Morton	___ Call me regarding this
___ Mr. Ward	___ Correct
___ Mr. Parsons	___ Note and Return
___ Miss Conlon	___ Search, serialize and route
___ Typists - 5257	___ Stenographers - 5730

INDEXED

NOT RECORDED

62-12114-1309X FOXWORTH - 5736.

SUPREME COURT OF THE UNITED STATES.

No. 190.—October Term, 1937.

Frank Carmine Nardone, et al., Petitioners, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 20, 1937.]

Mr. Justice Roberts delivered the opinion of the Court.

The importance of the question involved,— whether, in view of the provisions of Section 605 of the Communications Act of 1934,[1] evidence procured by a federal officer's tapping telephone wires and intercepting messages is admissible in a criminal trial in a United States District Court,—moved us to grant the writ of certiorari.

The indictment under which the petitioners were tried, convicted, and sentenced, charged, in separate counts, the smuggling of alcohol, possession and concealment of the smuggled alcohol, and conspiracy to smuggle and conceal it. Over the petitioners' objection and exception federal agents testified to the substance of petitioners' interstate communications overheard by the witnesses who had intercepted the messages by tapping telephone wires. The court below, though it found this evidence constituted such a vital part of the prosecution's proof that its admission, if erroneous, amounted to reversible error, held it was properly admitted and affirmed the judgment of conviction.[2]

Section 605 of the Federal Communications Act provides that no person who, as an employe, has to do with the sending or receiving of any interstate communication by wire shall divulge or publish it or its substance to anyone other than the addressee or his authorized representative or to authorized fellow employes, save in response to a subpoena issued by a court of competent jurisdiction or on demand of other lawful authority; and "no person not being

[1] Ch. 652, 48 Stat. 1064, 1103; U. S. C. Tit. 47, § 605.

[2] 90 F. (2d) 630. See also Smith v. United States, 91 F. (2d) 556.

authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect or meaning of such intercepted communication to any person: . . ." Section 501[3] penalizes wilful and knowing violation by fine and imprisonment.

Taken at face value the phrase "no person" comprehends federal agents, and the ban on communication to "any person" bars testimony to the content of an intercepted message. Such an application of the section is supported by comparison of the clause concerning intercepted messages with that relating to those known to employes of the carrier. The former may not be divulged to any person, the latter may be divulged in answer to a lawful subpoena.

The government contends that Congress did not intend to prohibit tapping wires to procure evidence. It is said that this court, in *Olmstead* v. *United States*, 277 U. S. 438, held such evidence admissible at common law despite the fact that a state statute made wire-tapping a crime; and the argument proceeds that since the *Olmstead* decision departments of the federal government, with the knowledge of Congress, have, to a limited extent, permitted their agents to tap wires in aid of detection and conviction of criminals. It is shown that, in spite of its knowledge of the practice, Congress refrained from adopting legislation outlawing it, although bills, so providing, have been introduced. The Communications Act, so it is claimed, was passed only for the purpose of reenacting the provisions of the Radio Act of 1927[4] so as to make it applicable to wire messages and to transfer jurisdiction over radio and wire communications to the newly constituted Federal Communications Commission, and therefore the phraseology of the statute ought not to be construed as changing the practically identical provision on the subject which was a part of the Radio Act when the *Olmstead* case was decided.

We nevertheless face the fact that the plain words of Section 605 forbid anyone, unless authorized by the sender, to intercept a telephone message, and direct in equally clear language that "*no person*" shall divulge or publish the message or its substance to "*any person*". To recite the contents of the message in testimony before a court is to divulge the message. The conclusion that the act forbids such testimony seems to us unshaken by the government's arguments.

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[3] Ch. 652, 48 Stat. 1064, 1100, U. S. C. Tit. 47, § 501.

[4] Act of Feb. 23, 1927, ch. 169, 44 Stat. 1162.

True it is that after this court's decision in the *Olmstead* case Congressional committees investigated the wire-tapping activities of federal agents. Over a period of several years bills were introduced to prohibit the practice, all of which failed to pass. An Act of 1933 included a clause forbidding this method of procuring evidence of violations of the National Prohibition Act.[5] During 1932, 1933 and 1934, however, there was no discussion of the matter in Congress, and we are without contemporary legislative history relevant to the passage of the statute in question. It is also true that the committee reports in connection with the Federal Communications Act dwell upon the fact that the major purpose of the legislation was the transfer of jurisdiction over wire and radio communication to the newly constituted Federal Communications Commission. But these circumstances are, in our opinion, insufficient to overbear the plain mandate of the statute.

It is urged that a construction be given the section which would exclude federal agents since it is improbable Congress intended to hamper and impede the activities of the government in the detection and punishment of crime. The answer is that the question is one of policy. Congress may have thought it less important that some offenders should go unwhipped of justice than that officers should resort to methods deemed inconsistent with ethical standards and destructive of personal liberty. The same considerations may well have moved the Congress to adopt Section 605 as evoked the guaranty against practices and procedures violative of privacy, embodied in the Fourth and Fifth Amendments of the Constitution.

The canon that the general words of a statute do not include the government or affect its rights unless the construction be clear and indisputable upon the text of the act does not aid the respondent. The cases in which it has been applied fall into two classes. The first is where an act, if not so limited, would deprive the sovereign of a recognized or established prerogative title or interest.[6] A classical instance is the exemption of the state from the operation of

[5] Department of Justice Appropriation Act of March 1, 1933, 47 Stat. 1381.

[6] The Dollar Savings Bank v. United States, 19 Wall. 227, 239; United States v. Herron, 20 Wall. 251, 263; United States v. American Bell Telephone Co., 159 U. S. 548, 554; United States v. Stevenson, 215 U. S. 190, 197; Title Guaranty & Surety Co. v. Guarantee Title & Trust Co., 174 Fed. 385, 388; Maxwell, Interpretation of Statutes (7th Ed.) 117, 121; Black on Interpretation of Laws (2d Ed.) 94.

general statutes of limitation.[7] The rule of exclusion of the sovereign is less stringently applied where the operation of the law is upon the agents or servants of the government rather than on the sovereign itself.[8]

The second class,—that where public officers are impliedly excluded from language embracing all persons,—is where a reading which would include such officers would work obvious absurdity as, for example, the application of a speed law to a policeman pursuing a criminal or the driver of a fire engine responding to an alarm.[9]

For years controversy has raged with respect to the morality of the practice of wire-tapping by officers to obtain evidence. It has been the view of many that the practice involves a grave wrong. In the light of these circumstances we think another well recognized principle leads to the application of the statute as it is written so as to include within its sweep federal officers as well as others. That principle is that the sovereign is embraced by general words of a statute intended to prevent injury and wrong.[10]

The judgment must be reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion.

So ordered.

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[7] United States v. Hoar, 2 Mason, 311, 314-315.

[8] "The prohibitions [against any form of action except that specified in the statute] if any, either express or implied . . . are for others, not for the government. They may be obligatory on tax collectors. They may prevent any suit at law by such officers or agents." The Dollar Savings Bank v. United States, 19 Wall. 227, 239. "These provisions unmistakably disclose definite intention on the part of Congress effectively to safeguard rivers and other navigable waters against the unauthorized erection therein of dams or other structures for any purpose whatsoever. The plaintiff maintains that the restrictions so imposed apply only to work undertaken by private parties. But no such intention is expressed, and we are of opinion that none is implied. The measures adopted for the enforcement of the prescribed rule are in general terms and purport to be applicable to all. No valid reason has been or can be suggested why they should apply to private persons and not to federal and state officers. There is no presumption that regulatory and disciplinary measures do not extend to such officers. Taken at face value the language indicates the purpose of Congress to govern conduct of its own officers and employees as well as that of others." United States v. Arizona, 295 U. S. 174, 184. Compare Stanley v. Schwalby, 147 U. S. 508, 515; Donnelley v. United States, 276 U. S. 505, 511.

[9] Balthasar v. Pacific El. Ry. Co., 187 Cal. 302; State v. Gorham, 110 Wash. 330.

[10] United States v. Knight, 14 Pet. 301, 315; United States v. Herron, 20 Wall. 251, 263; Black on Interpretation of Laws (2d Ed.) 97.

SUPREME COURT OF THE UNITED STATES.

No. 190.—October Term, 1937.

Frank Carmine Nardone, Austin L. Callahan, Hugh Brown and Robert Gottfried, Petitioners,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 20, 1937.]

Mr. Justice Sutherland, dissenting.

I think the word "person" used in this statute does not include an officer of the federal government, actually engaged in the detection of crime and the enforcement of the criminal statutes of the United States, who has good reason to believe that a telephone is being, or is about to be, used as an aid to the commission or concealment of a crime. The decision just made will necessarily have the effect of enabling the most depraved criminals to further their criminal plans over the telephone, in the secure knowledge that even if these plans involve kidnapping and murder, their telephone conversations can never be intercepted by officers of the law and revealed in court. If Congress thus intended to tie the hands of the government in its effort to protect the people against lawlessness of the most serious character, it would have said so in a more definite way than by the use of the ambiguous word "person". *Commonwealth* v. *Welosky*, 276 Mass. 398, 403-404, 406. For that word has sometimes been construed to include the government and its officials, and sometimes not. I am not aware of any case where it has been given that inclusive effect in a situation such as we have here. Obviously, the situation dealt with in *United States* v. *Arizona*, 295 U. S. 174, was quite different. There, a federal statute forbade the construction of any bridge, etc., in any port, etc., "until the consent of Congress shall have been obtained." The mere building of the designated structure, in the absence of congressional consent, violated the statute. There was no ambiguous term, such as we have here, or anything else in the language, requiring construction.

There is a manifest difference between the case of a private individual who intercepts a message from motives of curiosity or to further personal ends, and that of a responsible official engaged in the governmental duty of uncovering crime and bringing criminals to justice. It is fair to conclude that the word "person" as here used was intended to include the former but not the latter. This accords with the well-settled general rule stated by Justice Story in *United States* v. *Hoar*, 2 Mason 311, 314-315, 26 Fed. Cas. 329, 330: "In general, acts of the legislature are meant to regulate and direct the acts and rights of citizens; and in most cases the reasoning applicable to them applies with very different, and often contrary force to the government itself. It appears to me, therefore, to be a safe rule founded in the principles of the common law, that the general words of a statute ought not to include the government, or affect its rights, unless that construction be clear and indisputable upon the text of the act." And see *In the Matter of Will of Fox*, 52 N. Y. 530, 535. Compare *State* v. *Gorham*, 110 Wash. 330; *Balthasar* v. *Pacific Elec. Ry. Co.*, 187 Cal. 302, 305-308. A case in point is that of *People* v. *Hebberd* (Sup. Ct. N. Y.), 96 Misc. 617, 620-621.

In the investigations of the congressional committees, referred to in the opinion of the court, it appeared that the Attorney General had ordered that no tapping of wires should be permitted without the personal direction of the chief of the bureau, after consultation with the Assistant Attorney General in charge of the case; and that such means were to be adopted only as an emergency method. The Attorney General himself appeared before one of the committees and pointed out that crime had become highly organized, with strong political connections and illegal methods of procedure; that gangsters and desperate criminals had equipped themselves with every modern convenience and invention; that modern gangsters have no regard for life, property, decency or anything else; and he had no doubt that they tapped wires leading to offices of the United States attorneys to find out what was being done. He cited the case of a Bureau of Investigation agent who had been found shot to death under circumstances which indicated that a gang of narcotic traffickers had murdered him; and he posed the question whether, if it had appeared that the perpetrators of the crime could be detected and brought to justice by tapping their telephone wires, nevertheless, that ought not to be done.

The answer of Congress to the question has been a refusal to pass any of the bills which comprehensively proposed to forbid the practice.

My abhorrence of the odious practices of the town gossip, the peeping Tom, and the private eavesdropper is quite as strong as that of any of my brethren. But to put the sworn officers of the law, engaged in the detection and apprehension of organized gangs of criminals, in the same category, is to lose all sense of proportion. In view of the safeguards against abuse of power furnished by the order of the Attorney General, and in the light of the deadly conflict constantly being waged between the forces of law and order and the desperate criminals who infest the land, we well may pause to consider whether the application of the rule which forbids an invasion of the privacy of telephone communications is not being carried in the present case to a point where the necessity of public protection against crime is being submerged by an overflow of sentimentality.

I think the judgment below should be affirmed.

Mr. Justice McREYNOLDS joins in this opinion.

EXT:ED

December 31, 1937.

SAC	ABERDEEN	DENVER	LOUISVILLE	PITTSBURGH
	ALASKA	DES MOINES	MEMPHIS	PORTLAND
	ATLANTA	DETROIT	MIAMI	PUERTO RICO
	BIRMINGHAM	EL PASO	MILWAUKEE	RICHMOND
	BOSTON	HARTFORD	NEWARK	SALT LAKE CITY
	BUFFALO	HAWAII	NEW ORLEANS	SAN ANTONIO
	BUTTE	HUNTINGTON	NEW YORK	SAN FRANCISCO
	CHARLOTTE	INDIANAPOLIS	OKLAHOMA CITY	SEATTLE
	CHICAGO	KANSAS CITY	OMAHA	ST. LOUIS
	CINCINNATI	KNOXVILLE	PEORIA	ST. PAUL
	CLEVELAND	LITTLE ROCK	PHILADELPHIA	WASHINGTON, D. C.
	DALLAS	LOS ANGELES	PHOENIX	

Dear Sir:

On December 20, 1937, in the case of Frank Carmine Nardone, et al, against the United States, the Supreme Court held that evidence obtained by wire tapping is not admissible in the trial of a case in Federal Court. This decision has been the subject of considerable comment in the newspapers.

For your guidance in connection with the use of telephone taps, I desire to advise that the Bureau's policy with reference to the use of telephone taps will not be changed in any regard by this decision. The Manual of Rules and Regulations of the Bureau has for a period of years absolutely prohibited the installation of telephone taps without the authorization of the Director, and this policy will be continued in the future. It has always been the Bureau's policy during the period in which I have been the Director of the Bureau to utilize telephone taps only in those cases of major importance in which the proper development of the Government's case was impossible without the use of telephone taps. It is significant to note that the Bureau has never attempted to introduce into a Federal Court evidence obtained through the use of a telephone tap.

For the reasons outlined, the Bureau's policy will continue under the same restrictions and regulations which have existed heretofore and no telephone tap or other wire tap may be installed without the authorization of the Director.

62-12114-1329

RECORDED & INDEXED

Very truly yours,

J. Edgar Hoover

John Edgar Hooover,
Director.

4-750 (Rev. 4-17-85)

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FEDERAL BUREAU OF INVESTIGATION

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FEDERAL BUREAU OF INVESTIGATION

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4-572 (Rev. 7-18-63)
OPTIONAL FORM NO. 10
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GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : The Director

DATE: 7-30-68

FROM : N. P. Callahan

SUBJECT: The Congressional Record

Pages E7060-E7061. Congressman Kilberg, (D) Pennsylvania, placed in the Record a speech delivered by Justice Michael A. Musmanno of the Supreme Court of Pennsylvania at the convention of the Police Chiefs of Pennsylvania in Philadelphia on July 24. Mr. Kilberg pointed out that Justice Musmanno said that he spoke with reluctance in criticizing decisions of the U. S. Supreme Court, but he felt that it was his duty to speak as he did. There can be no doubt about Justice Musmanno's sincerity, and certainly none about his competence in this field." Mr. Kilberg advised that practically all the speakers at the convention indicated their disappointment in decisions of the Supreme Court which they felt impeded the police in the efficient discharge of their duties.

EX 110 94-50551-11

NOT RECORDED

46 AUG 9 1968

In the original of a memorandum captioned and dated as above, the Congressional Record for 7-29-68 was reviewed and pertinent items were marked for the Director's attention. This form has been prepared in order that portions of a copy of the original memorandum may be clipped, mounted, and placed in appropriate Bureau case or subject matter files.

57 AUG 20 1968

JOHN EDGAR HOOVER
DIRECTOR

CAA:EB

U. S. Bureau of Investigation

Department of Justice

Washington, D. C.

April 19, 1933.

MEMORANDUM FOR THE DIRECTOR.

It is suggested that there be placed in the file under Law, National Bank Act, False Entries, a statement with reference to the case of United States v. John G. Darby, Supreme Court [redacted]53, of the October Term, 1932, decided April 10, 1933.

Darby was charged with false entries in connection with promissory notes discounted by the bank which bore the genuine signature of J. G. Darby and what appeared to be the signature of Bessie D. Darby as co-maker or endorser. This was a forgery and with this knowledge J. G. Darby entered in the discount book the name of Bessie D. Darby as co-maker or endorser. A demurrer was sustained by the District Court on the ground that the discount of the paper had been recorded as it occurred and hence, that the entries were not false within the meaning of the Statute.

In reversing the decision of the District Court, the Supreme Court said that the aim of the Statute was to give assurance that upon an inspection of a bank, public officers and others would discover in its books of account a picture of its true condition; that the books indicated a paper had been discounted with two signatures, whereas, in fact, there were not two signatures.

Respectfully,

C. A. Appel.

C. A. Appel.

66-6200-29-X
62-24824-25-1

RECORDED & ~~INDEXED~~

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APR 22 1933

BU OF INVESTIGATION
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DEPARTMENT OF JUSTICE
CLEGG | Div. Three NELSON | FILE

AUG 7 1956

SUPREME COURT OF THE UNITED STATES.

No. 653.—October Term, 1932.

The United States of America, Appellant, *vs.* John G. Darby, Appellee.	On appeal from the District Court of the United States for the District of Maryland.

[April 10, 1933.]

Mr. Justice Cardozo delivered the opinion of the Court.

The case involves the construction of a statute of the United States which makes it a crime for an officer or employee of a Federal reserve bank, or of any member bank, to make any entry in its books with intent to defraud. R. S. sec. 5209 as amended by the Act of September 26, 1918, c. 177, sec. 7; 40 Stat. 972; 12 U. S. Code, sec. 592.*

An indictment in sixteen counts charges the appellee, John G. Darby, with a violation of this statute. Eight entries are alleged to have been falsely made. Each has relation to a separate promissory note discounted by the Montgomery County National Bank of Rockville, Maryland. The notes bore the genuine signature of J. G. Darby as maker. They bore what appeared to be the signature of Bessie D. Darby as co-maker or endorser. In fact, as the appellee well knew, her signature was a forgery. With this knowledge he entered in the discount book the name of Bessie D. Darby

*Sec. 5209. Any officer, director, agent, or employee of any Federal reserve bank, or of any member bank . . . who . . . makes any false entry in any book, report, or statement of such Federal reserve bank or member bank, with intent in any case to injure or defraud such Federal reserve bank or member bank, or any other company, body politic or corporate, or any individual person, or to deceive any officer of such Federal reserve bank or member bank, or the Comptroller of the Currency, or any agent or examiner appointed to examine the affairs of such Federal reserve bank or member bank, or the Federal Reserve Board; . . . shall be deemed guilty of a misdemeanor, and upon conviction thereof in any district court of the United States shall be fined not more than $5,000 or shall be imprisoned for not more than five years, or both, in the discretion of the court.

as co-maker or endorser, and did this in the course of his employment as assistant cashier. The odd numbered counts charge an intent to injure and defraud the bank, and the even numbered counts an intent to deceive the officers of the bank and the Comptroller of the Currency. A demurrer to the indictment was sustained by the District Court on the ground that the discount of the paper had been recorded as it occurred, and hence that the entries were not false within the meaning of the statute. The case is here under the Criminal Appeals Act (Act of March 2, 1907, c. 2564, 34 Stat. 1246; 18 U. S. Code, sec. 682; cf. Judicial Code, sec. 238; 28 U. S. Code, sec. 345) upon an appeal by the Government.

"The crime of making false entries by an officer of a national bank with the intent to defraud . . . includes any entry on the books of the bank which is intentionally made to represent what is not true or does not exist, with the intent either to deceive its officers or to defraud the association." *Agnew* v. *United States,* 165 U. S. 36, 52. The act charged to the appellee is criminal if subjected to that test. At the time of the entry, no note was in existence with the signature of Bessie D. Darby as co-maker or endorser. No note with such a signature had been discounted by the bank. The forged signature was a nullity, as much so as if the name had been blotted out before the discount, or never placed upon the notes at all. Verity was not imparted to the entry by the simulacrum of a signature known to be spurious. *Agnew* v. *United States, supra; Coffin* v. *United States,* 162 U. S. 664, 683; *United States* v. *Morse,* 161 Fed. 429, 436; *Morse* v. *United States,* 174 Fed. 539, 552; *United States* v. *Warn,* 295 Fed. 328, 330; *Billingsley* v. *United States,* 178 Fed. 653, 659, 662; *Peters* v. *United States,* 94 Fed. 127, 144. As well might it be said that dollars known to be counterfeit might have been entered in the books as cash.

To read the statute otherwise is to be forgetful of its aim. Its aim was to give assurance that upon an inspection of a bank, public officers and others would discover in its books of account a picture of its true condition. *United States* v. *Corbett,* 215 U. S. 233, 241, 242; *Billingsley* v. *United States, supra.* One will not find the picture here. Upon the face of the books there was a statement to examiners that paper with two signatures had been dis-

counted by the bank and was then in its possession. In truth, to the knowledge of the maker of the entries, there were not two signatures, but one.

Nothing at war with our conclusion was said, much less decided, in *Coffin* v. *United States,* 156 U. S. 432, 462. The opinion in that case is to be read in the light of a later opinion in the same case (162 U. S. 664), and of the still later opinion in *Agnew* v. *United States, supra.* Whether the conclusion would be the same if the signature had been genuine, but the signer had been known to be an insolvent, or a man of straw (cf. *Cooper* v. *United States,* 13 F. (2d) 16; *Morse* v. *United States, supra; United States* v. *Warn, supra, Billingsley* v. *United States, supra*), there is no occasion to determine. Our decision does not go beyond the limits of the case before us.

The judgment should be reversed and the case remanded to the District Court for further proceedings in accordance with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.

March 23, 1931.

MEMORANDUM FOR MR. HUGHES.

62-24996

With reference to your notation appearing upon the decision of the Supreme Court in the case of William W. MacBoyle, vs. The United States of America, I would appreciate your preparing a memorandum to Assistant Attorney General Dodds suggesting that proper legislation be prepared to include airplanes and motor-boats. It might be well to point out the number of cases which the Bureau has been compelled to handle prior to the rendition of this decision.

Very truly yours,

Director.

Supervision - T.V.S., T.

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SUPREME COURT OF THE UNITED STATES.

No. 552.—October Term, 1930.

William W. McBoyle, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Tenth Circuit.

[March 9, 1931.]

Mr. Justice Holmes delivered the opinion of the Court.

The petitioner was convicted of transporting from Ottawa, Illinois, to Guymon, Oklahoma, an airplane that he knew to have been stolen, and was sentenced to serve three years' imprisonment and to pay a fine of $2,000. The judgment was affirmed by the Circuit Court of Appeals for the Tenth Circuit. 43 F. (2d) 273. A writ of certiorari was granted by this Court on the question whether the National Motor Vehicle Theft Act applies to aircraft. Act of October 29, 1919, c. 89, 41 Stat. 324; U. S. Code, Title 18, § 408. That Act provides: "Sec. 2. That when used in this Act: (a) The term 'motor vehicle' shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails; . . . Sec. 3. That whoever shall transport or cause to be transported in interstate or foreign commerce a motor vehicle, knowing the same to have been stolen, shall be punished by a fine of not more than $5,000, or by imprisonment of not more than five years, or both."

Section 2 defines the motor vehicles of which the transportation in interstate commerce is punished in Section 3. The question is the meaning of the word 'vehicle' in the phrase "any other self-propelled vehicle not designed for running on rails." No doubt etymologically it is possible to use the word to signify a conveyance working on land, water or air, and sometimes legislation extends the use in that direction, e. g., land and air, water being separately provided for, in the Tariff Act, September 22, 1922, c. 356, § 401 (b), 42 Stat. 858, 948. But in everyday speech 'vehicle'

calls up the picture of a thing moving on land. Thus in Rev. Sts. § 4, intended, the Government suggests, rather to enlarge than to restrict the definition, vehicle includes every contrivance capable of being used "as a means of transportation on land". And this is repeated, expressly excluding aircraft, in the Tariff Act, June 17, 1930, c. 997, § 401 (b); 46 Stat. 590, 708. So here, the phrase under discussion calls up the popular picture. For after including automobile truck, automobile wagon and motor cycle, the words "any other self-propelled vehicle not designed for running on rails" still indicate that a vehicle in the popular sense, that is a vehicle running on land is the theme. It is a vehicle that runs, not something, not commonly called a vehicle, that flies. Airplanes were well known in 1919 when this statute was passed, but it is admitted that they were not mentioned in the reports or in the debates in Congress. It is impossible to read words that so carefully enumerate the different forms of motor vehicles and have no reference of any kind to aircraft, as including airplanes under a term that usage more and more precisely confines to a different class. The counsel for the petitioner have shown that the phraseology of the statute as to motor vehicles follows that of earlier statutes of Connecticut, Delaware, Ohio, Michigan and Missouri, not to mention the late Regulations of Traffic for the District of Columbia, Title 6, ch. 9, § 242, none of which can be supposed to leave the earth.

Although it is not likely that a criminal will carefully consider the text of the law before he murders or steals, it is reasonable that a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear. When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used. *United States* v. *Thind*, 261 U. S. 204, 209.

Judgment reversed.

TO BE RELEASED AT CONCLUSION OF
ATTORNEY GENERAL CLARK'S ARGUMENT
EXPECTED AROUND 12:30 P.M.
TUESDAY, JANUARY 14, 1947

TEXT OF ARGUMENT MADE BY

ATTORNEY GENERAL TOM C. CLARK

G.I.R.-5

BEFORE THE UNITED STATES SUPREME COURT

IN THE CASE OF

THE UNITED STATES OF AMERICA v. UNITED MINE WORKERS OF AMERICA AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA.

The jurisdiction of this Court is invoked under the provisions of Section 240(a) of the Judicial Code, as amended. The Court of Appeals has not heard, considered or decided the case. This Court has taken jurisdiction because in its view the public interest required immediate determination of the issues presented.

I shall endeavor to present to the Court the facts involved and shall describe the national emergency which existed by reason of the defendants' conduct. I shall also state the basic grounds on which the Government's position is predicated. Mr. Sonnett will document this presentation with a further discussion of the issues and decisions involved

I would like, at the outset of this case, to make it clear that the issue here is not a dispute between Government and labor. Nor is the Government seeking to infringe in the slightest upon the guarantees given by the Constitution and the statutes of the United States to labor generally. The application of the Clayton Act and the Norris-LaGuardia Act to ordinary conflicts between employers and employees is not here challenged. Wages, hours and working conditions of the miners are not here involved. The Government does not ask this Court to establish any principle which would interfere with the recognized rights of labor. The Government does seek, however, to uphold its right and authority to operate facilities, the possession of which it has taken for war purposes under a temporary wartime statutory authorization. And it seeks to vindicate the power of the [redacted] Judiciary by the issuance of a temporary restraining order to prevent irreparable injury to the people of the Nation; to prohibit interference with the sovereign functions of the United States and to protect the jurisdiction

of the courts to decide questions of law and fact pending final judicial determination.

Bituminous coal, richly bestowed upon America, is the life of our present-day industry. It is the great fountain-head of the Nation's industrial energy. The flow of soft coal—without interruption--from the rich seams underground to the furnaces is the life-line of our industrial might—almost too far-reaching and intricate for one man to grasp in its entirety. The industrial life of the Nation depends upon the steady, plentiful, unfaltering supply of soft coal. The characteristics of our economy make it completely vulnerable to a stoppage in coal production

In a normal week some twelve and one-half million tons are produced by some 400,000 soft coal miners. The court below found that approximately 43% of all energy produced in the United States came from bituminous coal. In our machine age—and during this vital period of reconversion—to lose this much energy would be catastrophic. It would mean, according to the evidence here, that in sixty days—and this strike continued for 17 days after the restraining order was issued—over 80% of our Class I railroads would be in the yards--stopped - idle--and over 60% of our public utilities and steel mills shut down. In fact, over 4/5ths of the energy used in operating such trains and in running the steel mills comes from soft coal, practically all of which is mined by the members of defendant union. Half of the energy developed by public utilities for lighting our cities—offices and homes—and for other purposes—comes from coal.

What would happen to employment during a 60 day coal stoppage? It would make idle some five million of our workers; the national income would drop 20 billion dollars, and wages paid to workers would decline by the

amazing sum of a billion dollars a month. The Government itself would lose in taxes two hundred eighty million dollars every 30 days. That is the evidence here of the irreparable injury that would come to the Nation--not to speak of the peril to the health and safety of our people.

The bituminous coal mines for the most part are worked by miners affiliated with the United Mine Workers of America, one of the defendants here. "The economic creed of the United Mine Workers"—so says the United Mine Workers Journal for June 1, 1946, is—"no contract - no work." If a new agreement has not been signed before the termination of the old, the men are advised that there is no contract--and they quit. In fact, the cry of "no contract" is the signal for "no work."

It is a matter of common knowledge that work stoppages have occurred at almost regular intervals in the last fewyears in the bituminous coal fields. In each instance it was announced that there was no contract, and the men quit work in the mines. Upon such an announcement, work stoppages occurred even in the most crucial days of the war. And one such stoppage occurred on or about April 1, 1946. That work stoppage was the predecessor of the stoppage of November 1946, which gave rise to these proceedings. The stoppage of April 1946, was in itself highly serious, even though it occurred in the spring of the year when the need for coal is not as great as in the winter. It resulted in the cessation in the flow of coal from the mines to the railroads, to shipping, public utilities, industrial plants, and the facilities owned and operated by the Government, as well as to its establishments overseas. The testimony shows that only ten per cent of the miners worked during the month of April.

The work stoppage continued into May. On May 21st, 1946, the President of the United States "in the interest of the war effort and to preserve the national economic structure in the present emergency" issued Executive Order 9728 The order, based on the powers vested in the President under the Constitution and laws of the United States, particularly the War Labor Disputes Act, directed the Secretary of the Interior to take possession of those mines which had been interrupted in their operation by the work stoppage—and to operate or arrange for their operation in such manner as he found necessary.

The Secretary of the Interior, on the same date--May 21st—took possession of practically all the bituminous coal mines of the Nation—some 2200 mines—and the United States has been in possession of them since that time.

The Secretary immediately began negotiations with the representatives of the miners, to bring about a return to work Thereafter an agreement, commonly referred to as the Krug-Lewis Agreement, was executed on May 29th by the Secretary as Coal Mines Administrator and the defendant, John L Lewis, as President of the United Mine Workers. The Government then applied to the National Wage Stabilization Board, pursuant to Section 5 of the War Labor Disputes Act, for permission to pay substantial increases in wages, and to make certain changes in the terms and conditions of employment of the miners, all of which were contained in such agreement. This application was approved by the Board on May 31st, in an order incorporating the changes made by the Krug-Lewis Agreement, and was approved by the President of the

United States on the same date. The miners then returned to work and coal operations were resumed.

The Krug-Lewis Agreement by its terms--

> " . . . covers for the period of government possession the terms and conditions of employment in respect to all mines in Government possession which were subject on March 31, 1946, to the National Bituminous Coal Wage Agreement dated April 11, 1945."

The defendant Lewis fully realized this, for on the occasion of his signing the contract he stated in a Newsreel—

> "A contract has just been covered by execution in the White House. It is a national bituminous agreement by and between the Government as represented by Secretary of the Interior Krug and the United Mine Workers of America. It settles for the period of Government operation all the questions at issue. It should be sustained and supported by the entire country, and I am confident that it will result in the immediate volume production of bituminous coal sufficient to fulfill all the requirements of the country Telegrams are being sent to all local unions at once instructing them accordingly."

Until October 1946 there was no dispute as to the duration of the contract--that is, it was to continue so long as the Government remained in possession of the mines. On October 21st the defendants wrote to the Secretary of the Interior calling for a conference on November 1st, to commence negotiations regarding wages and other terms and conditions of employment. In that letter they contended that the Krug-Lewis Agreement had incorporated by reference section 15 of a prior agreement--the National Bituminous Coal Wage Agreement of April 11, 1945--and that under section 15 of the prior agreement the miners could give notice in writing of a desire to begin negotiations, and that they could terminate their contract if they so desired after 20 days of negotiation. This provision of the old agreement was the very provision which had been used by the defendants in bringing about the work stoppage of April 1946.

The position of the Government was that section 15 of the old agreement was not incorporated in the Krug-Lewis Agreement, and that under the War Labor Disputes Act the defendants were without power to interfere by strike or work stoppage with the Government's operation of the mines. Secretary Krug so advised the defendants. He advised them that the Krug-Lewis Agreement was in full force and effect and that it was by its terms to continue for the full period of Government possession and operation. He agreed to talk over any disagreements under the contract--and to discuss any grievances--advising the defendants that they should apply as provided by law to the National Wage Stabilization Board if they wished to obtain any changes in the terms and conditions of employment.

On November 1st negotiations began--without prejudice to the contentions of either party as to section 15. The defendants' proposals for changes

in terms of employment were first advanced on November 11th—11 days after the negotiations had begun. The demands made were substantial. They would have increased the cost of coal at the pits about 300 million dollars on an annual basis. Under the circumstances the Secretary of the Interior advised the defendants that pursuant to section 5 of the War Labor Disputes Act they were entitled to make application to the National Wage Stabilization Board. He also pointed out to them that they could negotiate directly with the mine operators with a view to enabling the Government to return the mines to private operation. Such return had been described by both the defendants and the operators as being a desirable objective.

The defendants refused to take either step. By their refusal to make application under section 5 of the War Labor Disputes Act, they ignored the remedy which Congress had provided for the peaceful settlement of exactly this type of problem.

Both the Secretary of the Interior and the Department of Justice advised the defendants of their remedy under section 5. They remained adamant.

One of the most striking things in this case is the continued defiance of the defendants toward the law, the courts, and the rights of the people of the United States.

Instead, the defendants wrote a letter to Secretary Krug on November 15th, part of which is as follows:

> "Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis agreement as of 12:00 o'clock, P.M., midnight, Wednesday, November 20, 1946."

It is manifest that the defendants wrote and sent that letter as a signal—"no contract" meant "no work."

Secretary Krug replied the same day:

> "You have no power, under the Krug-Lewis Agreement of May 29 or under the law, by unilateral declaration to terminate the contract which by its terms 'covers for the period of Government possession the terms and conditions of employment'."

In addition, the Secretary urged the defendants not to take this arbitrary action. He stated that they could not terminate the agreement at will or whim. But the defendants insisted on following their own course, ignoring the rights of the other party to the contract--the Government of the United States. They refused to recall the "notice" they had given.

The strike signal was out--on the 20th of November the miners would be out too. To make that more certain the defendants, on the same date, mailed copies of their letter of November 15th to all of the members of the United Mine Workers. At the bottom of each copy, over the signature of the defendant Lewis, was typed "The foregoing is for your official information." That was the signal. Copies were posted in conspicuous places at or near the mines. The notice was tantamount to an order to strike--and it had that very result.

On November 16th the country faced a despe[illegible]ituation. If the "notice" became effective on November 20th, the coal mines would be shut down again--creeping paralysis would seize the country's industrial machine--an estimated five million men would soon be out of work; our commitments to devastated countries could not be met; our armed forces in occupation could not be properly maintained; our foreign relations would be impaired. The struggle had world-wide implications. The sovereignty of the Government of the United States was being put to the test. On the domestic scene, income would drop twenty billion dollars; wages a billion dollars every month; production during a most vital period would be down 25%; government revenues would fall 280 million dollars every 30 days. The supply of coal then on hand would last 37 days of normal consumption--if in one stockpile--but it was scattered

over the country and could not be adequately controlled.

What was the duty of the Government? Should it sit by and permit this strike to occur? -- Or should it proceed at once to obtain a judicial determination that the contract was still in effect, and that the purported notice issued by the defendants was a nullity. That was the course the Government determined to take--the only course which held promise of immediate relief and of preventing irreparable injury to the Nation. Seeking to avoid the pending disaster to the country,,the Government resorted to the courts--where every American should go for a determination of his rights.

The complaint was brought under the Declaratory Judgment Act and alleged the undisputed facts of the controversy. It prayed for a declaratory judgment, seeking a determination that the defendants had no right or authority to terminate the Krug-Lewis Agreement, and that the notice issued by the defendants on November 15th was unlawful and void. As ancillary relief we sought a temporary restraining order to prevent irreparable injury to the United States and its people, and to preserve the jurisdiction of the court. This was to maintain the status-quo--to keep the defendants from stopping the operation of the mines by inducing or coercing the miners to leave their work. The complaint and the affidavits supporting the prayer for an injunction set forth specifically the irreparable injury which would result to the United States from the action of the defendants in causing a work stoppage.

In seeking this relief the defendants say our position is inconsistent with our statement in the millwork and patterned lumber case from California. (Carpenters' Union v. United States) I tried that case in the lower court. It was an indictment under the antitrust laws. That case affected only

the San Francisco Bay Area; did not involve the temporary war powers of the President; was not an equity suit; and the main issue involved had already been decided by this Court in the Allen Bradley case. There is as much analogy between it and this case as there is between a firecracker and the atomic bomb. Counsel do not yet seem to realize that the action of the defendants here fell little short of causing a national disaster. The Carpenters' case was but a ripple in the industrial life of the San Francisco Bay Area.

To return to the case at bar--the District Court granted the relief prayed for, restraining the defendants from permitting to remain outstanding the notice issued by them on the 15th, or from issuing any further notice that the Krug-Lewis Agreement was terminated, or from coercing, instigating, inducing, or encouraging the mine workers at the mines in the Government's possession to interfere by strike, slowdown, walkout, cessation of work, or otherwise with the operation of the mines. The defendants were served with the order of the Court on the day it was issued--November 18th--but they took no steps to recall or vacate their notice of November 15th. They completely ignored the order of the United States District Court. On November 20th, a strike in all of the bituminous coal mines in the Government's possession went into effect. Production of coal virtually ceased. "The economic creed of UMWA"--no contract - no work--meant just what it said.

And so on November 21st, the following day, we realized that America's ability to administer its own laws was on trial. We filed a petition advising the court that the defendants had wilfully and unlawfully disobeyed and violated the order of the court. The Government asked for a rule to show cause why the defendants should not be punished for contempt. The

defendants were cited to appear on November 25th--one week subsequent to the filing of the suit. They appeared on that date, and admitted orally in open court that they had done nothing with reference to the notice. The defendants told the court:

> "The status of the notice and the position of each of the defendants in reference thereto remains today in the status which existed at the time of its giving and at all times subsequent thereto."

An admission that for eight days they had deliberately violated the order of the United States District Court. They had filed no motion or other paper to vacate the order or to appeal from it.

They defied it. To hold a United States court in contempt is an insult to the United States itself; it compromises all law and invites mob rule.

On the next day, November 26th, they filed a motion to discharge and vacate the rule, alleging lack of jurisdiction. After full argument and consideration, the court overruled the motion. The defendants then pleaded not guilty on the contempt charge, and the court proceeded to trial. The Government presented eight witnesses who supported the allegations as to contempt. No witnesses were called by the defendants. The court found each defendant guilty of criminal, as well as civil, contempt. It found that the defendants, by permitting the notice of November 15, 1946, to remain outstanding had instigated, induced and encouraged the miners to interfere with the Government's operation of the mines; had completed the calling of the strike by failing to obey the court's order; had interfered with and obstructed the exercise of governmental functions by the Secretary of the Interior; and had interfered with the court's jurisdiction. The court found that bituminous coal was indispensable for the continued operation of our national economy and that the work stoppage caused and continued to cause irreparable injury to the United States, to the people of the United States, and to its industry and economy. Thereafter, the court imposed a fine on defendant UMWA of $3,500,000 and on defendant John L. Lewis of $10,000. The Government's prayer for a preliminary injunction was granted.

The fine imposed on the Union was based on the injury resulting from its action as well as on its ability to pay. The testimony showed

that the Government would lose some $280,000,000 a month in taxes, not taking into account the billions that would be lost by industry and labor. The fine on defendant Lewis was based on the same principles.

The Government was acting in its sovereign capacity, by virtue of express congressional authorization, when it took possession of the coal mines to prevent a national calamity. But taking the mines was not enough. To carry out its functions the Government had to operate the mines or cause them to be operated. The unilateral termination of the Krug-Lewis Agreement by the defendants was a direct obstruction to the exercise of this governmental function. Must those charged with the duty of protecting the Government and the people stand by and see this threat bring national chaos? Surely Government has the authority and the power to defend itself against destruction from within--as it has the duty to defend the country from destruction from without. When that issue is involved no one is immunized--no person or group is beyond the reach of the arm of the court. No person is above the law--and this is a country and government of laws.

As was so well said by the late Senator Norris, in referring to wartime labor problems:

> "No man, representing either management or labor, should resort to strike methods in order to enforce demands in time of deadly national peril. It seems to me that the miners have forgotten the blessings and the rights given them by the anti-injunction law, and have followed false leaders who care more for their own ambitions than they do for freedom and civilization in the world.
>
> "Nothing contained in the provisions of the Norris-LaGuardia law, however, made it possible for the striking miners to take the course mapped in the recent crisis by