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ANTITRUST DIVISION
Acting Assistant Attorney General Walker B. Comegys

DISTRICT COURT

SHERMAN ACT

AIRCRAFT COMPANIES CHARGED WITH VIOLATION OF SECTION 1 OF THE SHERMAN ACT.

United States v. Manufacturers Aircraft Association, et al. (72 Civ. 1307; March 29, 1972; DJ 60-228-102)

On March 29, 1972 a complaint was filed in the Southern District of New York charging the Manufacturers Aircraft Association and 20 major aircraft companies who are present and former members of the Association with violating Section 1 of the Sherman Act by contracting and combining not to compete in the research, development and acquisition of aircraft patents.

The Manufacturers Aircraft Association was formed in 1917. Each of its members agreed to license each under all aircraft patents within their control. They also agreed not to acquire outside inventions unless the patents are available to the other members on the same terms and conditions. While members can claim royalties on their patents, the royalties have always been nominal. Since all of the aircraft firms were members of the patent pool, no firm could use patents to gain an advantage over the others. The result was that, except for Government financed research, the members did not engage in aggressive research and development on aircraft. In addition, private inventors could not sell their patents on reasonable terms to any member because the member could not use it to get an advantage over their competitors.

The Defendants are:

Manufacturers Aircraft Association, Inc.
Aeronca, Inc.
Beech Aircraft Corporation
Bell Aerospace Corp.
Boeing Company
Cessna Aircraft Company
Curtiss-Wright Corporation
Fairchild Hiller Corp.
General Dynamics Corporation

Goodyear Aerospace Corp.
Grumman Aircraft Engineering Corp.
Kaman Corp.
Ling-Temco-Vought, Inc.
Lockheed Aircraft Corporation
Martin-Marietta Corporation
McDonnell Douglas Corporation
North American Rockwell Corporation
Northrop Corporation
Piper Aircraft Corporation
Ryan Aeronautical Co.
United Aircraft Corporation

The complaint asks for dissolution of the association, injunctions against any similar agreements, and royalty free licensing of the patents presently cross licensed.

Staff: Allen E. McAllester (Antitrust Division)

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CIVIL DIVISION
Assistant Attorney General L. Patrick Gray, III

SUPREME COURT

PUBLIC HEALTH CIGARETTE SMOKING ACT OF 1969

SUPREME COURT AFFIRMS JUDGMENT OF THREE-JUDGE DISTRICT COURT UPHOLDING CONSTITUTIONALITY OF STATUTORY BAN ON TELEVISION AND RADIO CIGARETTE ADVERTISING.

Capital Broadcasting Co., et al. v. John Mitchell (Sup. Ct. Nos. 71-891 and 71-919; decided March 27, 1972; D. J. 82-16-393)

Section 6 of the Public Health Cigarette Smoking Act of 1969, 15 U.S.C. 1335, provides that "[a]fter January 1, 1971, it shall be unlawful to advertise cigarettes on any medium of electronic communication subject to the jurisdiction of the Federal Communications Commission." Six independent standard broadcast radio stations, joined by the National Association of Broadcasters as an intervener plaintiff, instituted an action seeking a declaratory judgment that Section 6 is unconstitutional and a permanent injunction against its enforcement. They alleged that Section 6 violates the First Amendment because it prohibits them from selling, and cigarette manufacturers from buying, broadcast time for the advertisement of cigarettes, a product whose manufacture, sale, and consumption are unrestricted. They further alleged that Section 6 imposes prohibitions upon them without imposing like prohibitions upon the print media, in violation of their Fifth Amendment right to be free of invidious discrimination.

A three-judge court, with one judge dissenting, upheld the constitutionality of Section 6 and denied plaintiffs' request for declaratory and injunctive relief. The dissenting judge thought that the statute violated the First Amendment because cigarette advertising over the nation's airways had been answered by antismoking commercials thereby fostering public discussion of a controversial issue.

On direct appeal to the Supreme Court, the Government moved for affirmance. Concerning appellants' First Amendment allegations, the Government argued that at most Section 6 deprives radio and television stations only of a source of income because the stations remain free to broadcast their views on any aspect of smoking; that, in any event, the statute affects only purely commercial advertising, a form of speech not protected by the First Amendment; and that the electronic media may appropriately by regulated in the public interest. With respect to

appellants' Fifth Amendment allegation, the Government maintained that the significantly harmful impact of broadcast cigarette advertising upon youth provides the reasonable basis for the ban necessary to sustain the statute. Over the dissents of Justices Douglas and Brennan, who were of the opinion that probable jurisdiction should be noted, the Supreme Court affirmed.

Staff: Morton Hollander and James Hair (Civil Division)

SELECTIVE SERVICE - PRE-INDUCTION REVIEW

SECTION 10(b)(3) BARS PRE-INDUCTION DUE-PROCESS CHALLENGE TO SELECTIVE SERVICE APPEAL PROCEDURES.

Oliver T. Fein v. Selective Service System Local Board No. 7 (Sup. Ct., No. 70-58; decided March 21, 1972; D.J. 25-51-4709)

A Selective Service registrant brought this pre-induction action challenging the constitutionality of the procedures employed by Selective Service in rejecting his application for conscientious objector status. His local board had awarded him such status, but the Appeal Board, on the State Director's appeal, reversed that determination without giving any reasons. The Supreme Court, in a 4 - 3 decision, upheld the Government's position that this pre-induction suit is barred by Section 10(b)(3) of the Military Selective Service Act, 50 U.S.C. App. 460(b)(3), notwithstanding the registrant's challenge to the constitutionality of the Selective Service procedure. Indicating that the exceptions to Section 10(b)(3) recognized in Oestereich v. Selective Service Local Board, 393 U.S. 233, and Breen v. Selective Service Board, 396 U.S. 460, are to be narrowly confined, the Court stated that Section 10(b)(3) "does not foreclose pre-induction judicial review in that rather rare instance where administrative action, based on reasons unrelated to the merits of the claim to exemption or deferment, deprives the registrant of the classification to which, otherwise and concededly, he is entitled by statute, * * *."

Staff: Robert E. Kopp (Civil Division)

COURT OF APPEALS

ARMED SERVICES - STATUS OF FORCES

DISTRICT OF COLUMBIA CIRCUIT HOLDS THAT IT CANNOT INTERFERE WITH ARMY'S RETURNING SERVICEMEN TO GERMANY TO SERVE SENTENCES IMPOSED BY GERMAN COURT.

Nathaniel Holmes, et al. v. Melvin Laird, et al. (C. A. D. C., No. 71-1518; decided March 24, 1972; D. J. 25-16-712)

Holmes and Tucker, two U. S. Army servicemen stationed in West Germany, were tried in a German court, convicted of attempted rape, and sentenced to three years' imprisonment. Pursuant to the Status of Forces Agreement between the United States and West Germany, the servicemen were permitted to remain in American custody during the pendency of the German judicial proceedings. When their convictions were affirmed by the German Supreme Court, the treaty obligated the United States to surrender the servicemen to the German authorities for service of their sentence. However, before the servicemen could be surrendered, they left Germany without authorization and fled to the United States. They then brought this action in the District of Columbia to enjoin the Army from returning them to Germany. They alleged that their German trial had been unfair and conducted in violation of the fair trial guarantees contained in the Status of Forces Agreement.

The district court dismissed the complaint, and the Court of Appeals in a comprehensive opinion by Judge Robinson, unanimously affirmed. The Court noted that Germany's power to try individuals within its territory for crimes against its laws was complete, except as modified by international agreements. The Status of Forces Agreement between the United States and Germany, however, did not withdraw such power from Germany; indeed, it imposed upon the United States the obligation to surrender convicted American servicemen to the German authorities for service of sentence. Rejecting plaintiffs' contention that the German trial had not met American constitutional standards of fairness, the Court noted that an American citizen, when tried in a foreign court, does not enjoy the rights of the United States Constitution. While the Status of Forces Agreement between the United States and Germany did contain various fair trial guarantees for American citizens, it was not within the power of the American courts to examine the foreign trial for compliance with the agreement, particularly since the agreement expressly stated that any disputes concerning alleged violations were to be resolved by diplomatic means.

Staff: Robert E. Kopp (Civil Division)

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CRIMINAL DIVISION
Assistant Attorney General Henry E. Petersen

COURTS OF APPEALS

GOVERNMENT'S OFFER OF LENIENCY

THE COURT HOLDS THAT THE GOVERNMENT HAS A DUTY TO DISCLOSE EVIDENCE OF PROMISES OF LENIENCY AND SPECIAL CONSIDERATION MADE TO A KEY WITNESS IN RETURN FOR HIS TESTIMONY.

Giglio v. United States (C.A. 2, No. 34973, September 23, 1970; D.J. 55-52-109)

In this case the petitioner was convicted of passing forged money orders and sentenced to five years' imprisonment. The Government's case depended almost entirely on a witness' testimony; without it there could have been no indictment and no evidence to carry the case to the jury. The witness testified during the trial that he had received no promise of consideration from the Government for his testimony. While appeal was pending in the Court of Appeals, new evidence was discovered by the defense counsel that one Assistant United States Attorney--the first one who dealt with the witness--promised the witness that if he testified to the grand jury and later at the trial he would not be prosecuted.

This opinion is noteworthy in that it reflects but one of several successful appeals based on newly discovered evidence indicating that the Government failed to disclose an alleged promise of leniency made to a key witness in return for his testimony. The Court also held that neither the Assistant United States Attorney's lack of authority nor his failure to inform his superiors and associates is controlling. The Court has determined that it is the prosecution's duty to present all material evidence to the jury, and failure to fulfill that requirement constitutes a violation of due process requiring a new trial.

Consistent with the decision in Giglio, the effect of such a promise by an Assistant United States Attorney is that the Government is required to disclose that fact during the trial if the defense introduces the issue. This duty on the part of the Government is not affected by the fact that the Assistand United States Attorney made the promise of leniency without proper authorization or failure on his part to inform his superior or colleagues of the offer.

Staff: Solicitor General Erwin N. Griswold, Former Assistant Attorney General Will Wilson, Beatrice Rosenberg and Craig M. Bradley (Criminal Division)

IMMIGRATION AND NATIONALITY ACT

STATUTE OF LIMITATIONS TOLLED WHEN ALIEN RECEIVES NOTICE FROM IMMIGRATION SERVICE THAT IT INTENDS TO SEEK RESCISSION OF ADJUSTMENT OF STATUS GRANTED TO HIM.

Jiwan Singh v. Immigration and Naturalization Service (C. A. 9, No. 26, 512; February 25, 1972; D.J. 39-11-701)

The alien had been admitted to this country as a nonimmigrant but, as a result of his marriage to a United States citizen, was able, pursuant to Section 245 of the Immigration and Nationality Act, 8 U.S.C. 1255, to have his status adjusted to that of a permanent resident alien.

Within five years of the adjustment, the Immigration Service formally advised the alien that it intended to rescind that adjustment, pursuant to Section 246(a) of the Immigration and Nationality Act, 8 U.S.C. 1256(a), because the marriage was a fraud used to gain a benefit under our immigration laws. Because the rescission hearing was held beyond the five-year statute of limitations period in Section 246(a), the Special Inquiry Officer found that the statute had lapsed and terminated the proceedings. However, the Board of Immigration Appeals reversed that finding, holding that the statute was tolled by the alien's receipt of the notice to rescind. The Board's decision, in turn, was reversed by the district court for the Northern District of California, Singh v. Immigration and Naturalization Service, 313 F. Supp. 532, which adopted the ruling of the Third Circuit in Quintana v. Holland, 255 F. 2d 161 (C.A. 3, 1958). Quintana held that notice to rescind was an insufficient basis upon which to toll the statute.

In reversing the district court's decision, the Ninth Circuit found that the language in Section 246(a) does not compel the conclusion reached in Quintana. Changes in the pertinent regulations, 8 C.F.R. 242, the Court stated, undermined the applicability of Quintana. Permitting service of a notice of intent to rescind to toll the statute, the Court reasoned, would better serve the interests of aliens as it should promote fair and impartial decisions reached after expeditious, but not hasty, adjudication. The Court felt that basing the limitation upon the notice of intent, allowing time for development of the case, would prevent premature institution of rescission proceedings which could occur if an opposite conclusion had been reached.

Staff: John L. Murphy, Chief, Administrative Regulations Section; Paul C. Summitt (Criminal Division)

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LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Kent Frizzell

COURT OF APPEALS

ENVIRONMENT

NEPA'S REQUIREMENT OF IMPACT STATEMENT HELD APPLICABLE TO INTERSTATE HIGHWAY SEGMENT; CONSTRUCTION NOT ENJOINED PENDING COMPLIANCE WITHIN 60 DAYS; INTERPRETATION OF "USE."

Brooks, et al. v. Volpe, et al. (C.A. 9, No. 71-1908, Mar. 2, 1972; D.J. 90-1-4-245)

Individual and corporate plaintiffs appealed from dismissal of their action which sought to enjoin construction of a segment of Interstate Highway I-90 in the State of Washington. Federal and state officials were named defendants. The district court held that the National Environmental Policy Act did not apply, 319 F. Supp. 90 (1970); 329 F. Supp. 118 (1971). This view of NEPA had been recently rejected in a case dealing with another segment of this same highway. Lathan v. Volpe, et al. (C.A. 9, No. 71-1149, Nov. 15, 1971) not yet reported. The Department of Transportation, by the issuance of its Policy and Procedures Memorandum (PPM 90-1) on August 24, 1971, required that there be compliance with the NEPA, including the preparation of an impact statement.

The federal defendants conceded that compliance was now necessary. Lathan, the Court held, allows no further debate. Sixty days in which to fully comply was given by the Court. If there is no compliance, the Court of Appeals orders the district court to enjoin further construction.

The district court's decision construing the word "use," in 23 U.S.C. sec. 138, was also reversed. The proposed segment of the road would have put a public campground between two lanes of the highway. This, the Court of Appeals found to be a "use" of the campground within the meaning of 23 U.S.C. sec. 138 which it found should be broadly construed. The State of Washington has filed a petition for rehearing.

Staff: George R. Hyde and Howard O. Sigmond (Land and Natural Resources Division)

DISTRICT COURT

INDIANS

EXCLUSIVE RIGHT TO FISH, HUNT, AND GATHER WILD RICE WITHIN THE BOUNDARY OF THE LEECH LAKE RESERVATION UNREGULATED BY THE STATE OF MINNESOTA.

Leech Lake Bank of Chippewa Indians, et al. v. Robert L. Herbst, Commissioner of Natural Resources of the State of Minnesota, D. Minn., Civil No. 3-69-65, Jan. 25, 1972; D.J. 90-2-0-659

United States v. State of Minnesota, D. Minn., Civil No. 3-70-228, Jan. 25, 1972; D.J. 90-2-0-683

The Leech Band of Chippews Indians on its own behalf and the United States on behalf of Chippewa Tribe and the Leech Lake Band brought these actions for declaratory judgment to determine the rights of the Indians to fish, hunt and harvest wild rice on the public lands and waters within the boundary of the Leech Lake Reservation without complying with the laws of Minnesota. The two cases were consolidated for trial.

The plaintiffs contended that the Indians acquired the right to fish, hunt and gather wild rice pursuant to the Treaty of 1855 (10 Stat. 1165, 11 Kappler, p. 685) which created the reservation. The Treaty was in fact silent as to the claimed rights but the plaintiffs contended that the rights should be inferred.

The State of Minnesota contended that, even if the Indians had once owned the claimed rights, such rights were terminated by Congress with the enactment of the Nelson Act in 1889 (25 Stat. 642).

The court held that the Indians acquired the claimed rights pursuant to the 1885 Treaty; that the Nelson Act did not abrogate those rights; that the guardian-ward relationship between the United States and the Band continues to exist; and that the Indians had the right to fish, hund and gather wild rice on public lands and waters of the Leech Lake Reservation, free of the game and fish laws of the State of Minnesota. The court held against the position of the Band, which was supported by the United States, that the Indians' rights were exclusive.

Staff: United States Attorney Robert J. Renner (D. Minn.) and Rembert A. Gaddy (Land and Natural Resources Division

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INTERNAL SECURITY DIVISION
Assistant Attorney General Robert C. Mardian

DISTRICT COURTS

FALSE DECLARATIONS

United States v. David Hilliard (N. D. Calf.)

On March 2, 1972, a grand jury in San Francisco, California returned a three count indictment charging David Hilliard, Chief of Staff of the Black Panther Party, with violating the False Declarations Statute (18 U. S. C. 1623).

The indictment alleges that the false statements were made on January 28, 1971 during the course of his testimony before a Federal court to determine if he was indigent and entitled to receive government funds for his defense on a charge of threatening to kill President Nixon. Count one charges that Hilliard falsely denied that he was able to draw against and use funds of the Black Panther Party, Count two charges that he falsely denied having access to the funds of the Black Panther Party and Count three charges that he falsely denied receiving checks payable to him personally for speaking engagements.

Bail was set at $30, 000.

Staff: United States Attorney James L. Browning, Jr. (N. D. Calf.); Brandon Alvey and Robert Merkle (Internal Security Division)

MAIL FRAUD, BANK ROBBERY, FALSE STATEMENTS

United States v. John Doe, a/k/a William Hollis Coquillette, a/k/a William James Talbot III, a/k/a christopher Baker, a/k/a James Bombardier (D. Utah)

A grand jury in the District of Utah returned a twenty-four count indictment on March 2, 1972 charging an unknown subject with violations of the mail fraud statute (18 U. S. C. 1341 and 1342), the bank robbery statute (18 U. S. C. 2113(a)), and making a false statement to a federally insured bank.

Staff: United States Attorney C. Nelson Day (D. Utah); Guy L. Goodwin (Internal Security Division)

GUN CONTROL ACT

United States v. Gary Shlian (E. D. N. Y.)

A two count indictment was returned on March 2, 1972 charging Gary Shlian, aseventeen year old member of the Jewish Defense League, in falsely identifying himself in purchasing a rifle (18 U. S. C. 924(a)), and possessing a false selective service card (50 U. S. C. Appendix 462(b) (5)). This rifle was the one used to fire four bullets into the Soviet Mission to the United Nations on October 20, 1971.

Bond was set at $35, 000

Staff: Assistant United States Attorney
Edward Korman (E. D. N. Y.)

EXPLOSIVES STATUTE

United States v. Jaan Karl Laaman and Kathryn Holt (D. N. H.)

Laaman and Holt were indicted on March 1, 1972 as a result of the bombing of the Manchester Police Department on February 16, 1972. The nine count indictment charged violations of the new explosives statute (18 U. S. C. 844(f)), and the Gun Control Act of 1968 (26 U. S. C. 5861(c) and (d)).

Bail was set at $25, 000.

Staff: Assistant United States Attorney
William Cullmore (D. N. H.)

FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

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

MARCH 1972

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

The Monaco Government Tourist Office of New York City registered as an official tourist office on behalf of the Government of Monaco. Caroline Cushing filed a short-form registration statement as director of the registrant and reported a salary of $30,000 per year. Registrant engages in public relations activities in promoting tourism to Monaco.

The New Zealand Government Tourist Office of New York City registered as an official tourist office on behalf of the New Zealand Government Department of Tourism and Publicity. Registrant engages in public relations activities in promoting tourism to New Zealand and reported the receipt of $26,367.39 in operating expenses for the six month period ending August, 1971. Raymond R. Kerr filed a short-form registrantion as Travel Commissioner of the registrant.

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TAX DIVISION
Assistant Attorney General Scott P. Crampton

DISTRICT COURT

WRONGFUL LEVY AND LIABILITY OF LENDER FOR PAYROLL TAXES

UNITED STATES' COUNTERCLAIM FOR PRIORITY TO PORTION OF ESCROW FUND UPHELD AND BANK HELD LIABLE FOR PAYROLL TAXES UNDER 26 U.S.C. 3505(b)

Farmers-Peoples Bank v. United States, Civil No. 2020 (WD Tenn. ED) March 6, 1972; D.J. 5-72-435

A plaintiff bank held a security interest on the property of a taxpayer. The Internal Revenue Service levied on the property but was unable to sell the property due to the influence of the Bank in the community. The only sums received came from accounts receivables. Subsequently the Bank sold the property and placed the proceeds in the amount of $21,000 in escrow pursuant to an agreement with the District Director of Internal Revenue, as provided by Section 6325(b)(3) of Title 26 U.S.C., for later determination as to priority.

Thereafter, the Bank brought suit pursuant to 26 U.S.C. 7426(a)(3) to recover the escrow fund claiming a superior security interest therein based upon a security agreement with the taxpayer in the amount of $35,000 with future advances up to $50,000. The Bank also sued under 26 U.S.C. 7426(a)(1) for the proceeds recovered by levy claiming the levy to be wrongful in view of the Bank's superior security interest.

The United States answered denying the validity of the security agreement, the wrongfulness of the levy and counterclaimed alleging a superior right by reason of the tax liens to the escrow fund. Prior to trial, the United States supplemented its counterclaim by alleging that the Bank was liable under 26 U.S.C. 3505(b) for supplying funds, by permitting overdrafts on the taxpayer's payroll checking account with the knowledge that the taxpayer could not pay his payroll taxes.

The court found that the levy was not wrongful because the Bank failed to make any showing that the property was other than the taxpayer's. The court limited the Bank's recovery on the escrow fund to $8,000 because the Bank failed to produce a credible security agreement and the court found that the Bank had seized other property of the taxpayer (after the creation of the escrow fund) which had been applied to the taxpayer's indebtedness to the Bank. The United States prevailed as to the balance

of the escrow fund by reason of its tax liens and because the court found the Bank liable under 26 U.S.C. 3505(b) for supplying funds through overdrafts on the payroll account to an insolvent taxpayer while knowing the taxpayer could not pay its payroll taxes.

Staff: John M. Dowd (Tax Division);
Kemper B. Durand, Assistant United States Attorney (W.D. Tenn.)

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