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UNITED STATES DEPARTMENT OF JUSTICE

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NEWS NOTES

FAIR HOUSING PROVISIONS GO INTO EFFECT

December 31, 1968: Attorney General Ramsey Clark said that the federal government is geared for immediate and vigorous enforcement of the anti-discrimination provisions of the 1960 Civil Rights Act which became applicable January 1, 1969 to most of the nation's housing market. During 1968, only certain housing which was receiving federal financial assistance was covered.

"It is imperative that the right to buy or rent a home without discrimination on account of race, finally created by the Congress, be fully assured to every American," Mr. Clark said. "Enforcement of the vital Fair Housing law, essential as housing patterns are to other opportunities, must be a top priority for the Department of Justice."

Attorneys from the Civil Rights Division will conduct investigations of housing practices in at least a dozen major metropolitan areas immediately following the effective date of the law. A Division survey last summer covered many of these areas and turned up numerous complaints of practices that are forbidden as of January 1, 1969.

The Attorney General said that efforts to achieve voluntary compliance will be an important part of the government's implementation of the law, and expressed the hope that the real estate industry, builders and financiers, and apartment owners, will voluntarily abide by the law.

As of January 1, the law's coverage expands to reach virtually all multi-family housing, as well as single-family houses owned by persons who control the sale or rental of more than three such houses, such as builders and developers, or real estate agents, Mr. Clark said.

Also effective on January 1 is the law's prohibition of discrimination in the financing of housing. This provision is applicable to all housing, even that not subject to the law's other provisions.

Additionally, the statute makes it unlawful, after January 1, to deny any otherwise qualified person access to membership in a real estate broker's organization, or to deny participation in multiple-listing services, because of race, color, religion or national origin.

Under the law, the Attorney General has responsibility for bringing suit where necessary to end a pattern or practice of resistance to the rights of individuals to seek housing and its financing without discrimination, or resistance to other rights granted by the new law.

The law also provides for enforcement of housing rights by private litigation, and by administrative procedures through the Secretary of Housing and Urban Development. When complaints are made to HUD, that agency will investigate, and where appropriate, will attempt to resolve the complaint through conciliation. If HUD's efforts are not successful, the individual who brought the complaint still has the right to go to the courts for relief.

In litigation brought by private parties, the law provides for awards of damages, including up to $1,000 punitive damages, as well as for injunctive relief against discriminatory practices.

Under another, older federal law, interpreted by the Supreme Court last June, private individuals have a right to bring court action seeking non-discriminatory access to any housing, whether or not such housing is subject to the 1968 law.

* * *

POINTS TO REMEMBER

ASSAULTING AND KILLING OF FEDERAL OFFICERS - PUBLIC LAW NO. 90-449

ANALYSIS OF AMENDMENT OF 18 U.S.C. 111, 1114, EXTENDING STATUTES TO POSTAL EMPLOYEES.

A. Background of the Act

On August 2, 1968, H.R. 15387 (P.L. 90-449) was signed by the President. This Act amends 18 U.S.C. 111 and 1114 as respects the coverage to be afforded postal employees against assaults and killings.

The purpose of the Act is to provide a deterrent to assaults against postal field service employees while they are engaged in the performance of official duties. While the number of actual attacks is still relatively small, nonetheless the frequency of the attacks is increasing each year along with the frequency of all crimes.

B. The Effect of the Act

Sections one and three of the act do not directly concern this Department. Section one (39 U.S.C. 3108) provides specific statutory authority for the Postmaster General to take disciplinary action against postal employees who assault other employees. Section three exempts classes of postal employees from the provisions of section 201 of the Revenue and Expenditure Control Act of 1968.

Section two of the Act is of direct concern to this Department, as it amends section 1114, and thereby section 111, of Title 18, United States Code, by adding postmasters and all other employees in the postal field service to the class of postal employees (postal inspectors) who are covered by sections 111 and 1114. The "postal field service" or "field postal service" includes all operations and organization units of the Post Office Department, other than the departmental operations and organization units in the headquarters offices of the Department at the seat of the Government, and includes postal inspectors assigned to the headquarters offices of the Department at the seat of the Government. 39 U.S.C. 1. The term "employee" includes postmasters, officers, supervisors, and all other persons employed in the postal field service, regardless of title, other than persons who provide services for the Department on a fee, contract, job, or piecework basis. 39 U.S.C. 3101.

The Department did not support this amendment as our position is that 111 and 1114 coverage should only be extended to federal personnel having law enforcement, inspection, or investigative functions except where a special need for the coverage is demonstrated.

C. Comments

In the enforcement of this statute, some consideration must be given to the selection of those investigations which will be presented to the United States Attorneys for their prosecutive consideration. The Post Office inspectors will benefit from some guidance in this regard, for their reports are prepared differently depending upon whether presentation will be made to a United States Attorney or, as an alternative, to a local prosecutor. In addition, the presentment to and declination by a United States Attorney of prosecution in an investigation tends to lessen the ardor of a local prosecutor who is subsequently presented with the same investigation.

Care must be taken to distinguish the three different types of violations of 18 U.S.C. 111 relating to postal employees. These types are: those assaults involving postal inspectors, those involving assaults on non-inspector postal employees by members of the public, and those involving an assault by one postal employee upon another postal employee.

Postal inspectors are engaged in the investigation of cases, and because of the importance of their investigative role all potential violations of 18 U.S.C. 111 involving postal inspectors should be presented to the United States Attorney's office rather than to a local prosecutor. Consideration should be given to prosecution whether or not there has been a physical abuse or forcible assault on a postal inspector. The efficient operations of postal inspectors can be significantly impaired by impeding or obstructing their investigation by threats or other non-physical confrontations. These cases should continue to be evaluated according to the standards which have been in existence in the past, prior to the enlargement of this statute.

With regard to the other two classes of assaults involving postal employees, some general comments can first be made. In fiscal year 1968 there were a total of 461 incidents which would be possible violations of Section 111 as amended. It does not appear necessary, however, that all of these possible cases be presented to a United States Attorney for evaluation. Of the 461 total incidents, some 156 involved physical abuse. This is approximately 34% of the total incidents. It is to be noted from the legislative history of P.L. 90-449 that the sponsor of the original legislation stated that the "chief thrust" of the legislation "is to give protection against forcible assault". It would appear that incidents which have not involved

physical abuse could best be handled by local courts as either civil or criminal proceedings or by the administrative remedies of the Post Office Department. Accordingly, we have asked the Chief Postal Inspector's Office not to present to the United States Attorneys' offices for evaluation those matters which do not involve a physical injury which is of such substantial character that the extent of the injury can be demonstrated and conveyed to a jury in a trial in the event that such case is accepted for prosecution.

With regard to physical assaults by members of the public on postal employees, we note that there were a total of 53 such assaults in fiscal year 1967, and 18 in 1968. In many of these matters, the local courts should afford a sufficient remedy. It is requested that the United States Attorney's office evaluate and compare the capability of both the local and Federal courts to render an appropriate and expeditious remedy and that such cases be accepted or declined for Federal prosecution according to that evaluation. It is not intended that the United States Attorney's office accept for prosecution such physical abuse cases unless some significant deficiency in the local court remedy is apparent.

Turning to those assaults between postal employees, we note that in fiscal year 1968, there were a total of 138 such physical assaults. This was a 26% increase over the prior fiscal year and the preliminary figures for fiscal year 1969 show a trend towards a substantial increase over 1968. This is an area of increasing concern. Both the Department of Justice and the Post Office Department opposed the enlargement of this statute to include this category of offenses. Of these physical assaults, it is requested that prosecutive consideration be given only to those incidents which originate from and continue in such a manner as to involve job-related disputes without significant fault of the victim. Those physical assaults originating from or substantially involving personal matters not related to their employment, or which involved significant fault on the part of the victim should be referred to the local prosecutor or handled administratively by the Post Office Department.

In accordance with the April 20, 1968, agreement between the Post Office and Justice Departments, investigative jurisdiction of offenses in Post Office buildings against postal laws, or involving among other things, offenses committed by postal employees, is with the Post Office inspectors. In addition, postal inspectors also have investigative jurisdiction with respect to offenses involving the custody of the mails, the custody of Government property used in the carriage of the mails, and personal property of postal employees. Thus, the responsibility for investigating the large majority of cases that can be expected to arise under the amended Section 111, will be with the postal inspectors.

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DEPARTMENT OF JUSTICE PROFILES

JAMES JOSEPH PATRICK McSHANE

James Joseph Patrick McShane, Head of the Executive Office for U.S. Marshals, died December 23, 1968 at a rest home where he had been a pneumonia patient for about a week.

Washington Post writer John P. MacKenzie wrote the following in his obituary about Jim McShane:

> "He was a strong and good man", Sen. Edward M. Kennedy said yesterday. "President Kennedy depended upon Jim McShane, and my brother Bob and I valued his counsel and his help. The members of the Kennedy family have lost a close friend."
>
> "The Great McShane", as he jokingly called himself on occasion, had at least three careers, not counting the boxing competition that earned him a New York City welterweight championship and a broken nose. He was a Manhattan policeman for 21 years, then a congressional investigator and finally a Justice Department marshal and veteran of the major civil rights confrontations of the 1960s.
>
> Decorated and censured by his police department superiors, he could shoot it out with hoodlums in New York and, without surprising those who knew him, could comfort and keep up the morale of the grieving children of Robert Kennedy.
>
> Some said his later careers were brought on by the falling out he had with police officialdom for being photographed holding an umbrella over the head of former heavyweight champion Rocky Marciano. Detective McShane was off duty at the time but he received a temporary demotion for inadvertently creating the impression that he was on duty as a bodyguard.

Robert Kennedy wrote in "The Enemy Within" that Mr. McShane looked down the muzzle of a gangster's gun while seeking information about the juke-box racket in 1958. Mr. McShane told the gunman, "Put down your gun. I'm here from the Senate (Rackets) Committee." The man collapsed in his chair and said, "I thought you were coming to kill me."

The book also recounts a nighttime grave-digging expedition in which Mr. McShane and Robert Kennedy took part, hoping to find the body of a rackets slaying victim. The venture ended in an open-field chase by a farmer in the Joliet, Ill., area.

In 1961 Mr. McShane was named U.S. Marshal for the District of Columbia, and within a year he became head of the Justice Department office that supervised the work of 94 Federal marshals and more than 600 deputies.

Within weeks of assuming the top marshal's job, Mr. McShane was involved in the controversial death of a convicted spy and leadership on a mission to Montgomery, Ala., during the freedom ride disorders.

Technically, the spy, Dr. Robert A. Soblen, was not Mr. McShane's prisoner when he wounded himself with a steak knife on a flight from Israel, where he had gone after jumping bail. Nevertheless, Mr. McShane was to have arrested Soblen upon arrival in the United States, and the marshal regretted Soblen's second, successful suicide attempt later in a London hospital.

Other major assignments for Mr. McShane included the entry of James Meredith to the University of Mississippi, the Selma, Ala., march, the George Wallace stand-in at the University of Alabama, the Pentagon antiwar demonstration and Washington's riots last spring.

He was involved in a controversy with state police at the Mississippi University campus and only Federal immunity kept him from answering a local indictment for "inciting riot" during disturbances that endangered his life and those of his men.

Though he never went beyond eighth grade, Mr. McShane accepted an honorary degree from Xavier University in Ohio in 1965. He lived at 1325 N. Van Dorn St., Alexandria.

He is survived by his wife, Theresa; a son, Michael; a daughter, Mrs. Gerald Day, and two grandchildren.

Asked to comment about Mr. McShane, Attorney General Ramsey Clark stated: "Jim McShane was totally dedicated to justice. As a policeman, an investigator, and finally as Chief Marshal of the United States he stood for excellence in law enforcement."

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ANTITRUST DIVISION

Assistant Attorney General Edwin M. Zimmerman

DISTRICT COURT

SHERMAN AND CLAYTON ACTS

PAPER COMPANY CHARGED WITH VIOLATING SHERMAN AND CLAYTON ACTS.

United States v. Scott Paper Co., et al. (E.D. Mich., Civ. 32049; November 29, 1968, D.J. 60-175-39)

On November 29, 1968, a civil action was filed in the United States District Court for the Eastern District of Michigan under Section 1 of the Sherman Act and Section 7 of the Clayton Act, challenging the acquisition of an exclusive patent license by Scott Paper Company from Chemotronics, Incorporated, as well as know-how and research services Scott received from Chemotronics.

The patent licensed to Scott was for a method of reticulating polyurethane foam (polyurethane foam from which the membranes that bridge the skeletal walls are removed). Scott has a patent licensed to it on March 2, 1965 covering a chemical process for reticulating polyurethane foam, as well as the end product. On March 23, 1965 Chemotronics' patent issued covering a thermal process for reticulating polyurethane foam.

Beginning in 1964 Chemotronics reticulated polyurethane foam of other manufacturers on a fee basis. This foam, after reticulation, sold in competition with Scott's product.

Prior to 1965, Scott had informed Chemotronics that it regarded Chemotronics' reticulated product as an infringement of the Scott product patent claims. Chemotronics denied the contention and raised substantial questions as to the validity of Scott's product claim and as to whether Chemotronics' product infringed them.

Prior to November, 1965, Chemotronics negotiated with several companies, including Scott, with the object of either selling the rights to its patents and know-how or setting up reticulation plants for other foam manufacturers. It received one offer which it valued at $3,000,000 but made the agreement in November, 1965 with Scott, whose offer it valued in excess of $4,000,000.

In 1965 Scott and Chemotronics were the only two significant concerns reticulating polyurethane foam. Scott's share of the market was 93.2% of all sales.

The complaint alleges that the agreement had the effect to eliminate actual and potential competition between Scott and Chemotronics. The substantial terms of the agreement were:

(a) Chemotronics granted to Scott an exclusive license under Chemotronics' patents and patent applications relating to the manufacture, treatment, and fabrication of reticulated cellular material;

(b) Chemotronics agreed not to engage in the reticulation of polyurethane foam;

(c) Chemotronics agreed to conduct further research for Scott.

Further, Scott acquired exclusive control over patents covering commercially practical methods of reticulating polyurethane foam. Scott also acquired exclusive access to valuable existing and potential technology. Finally, Scott had significantly diminished the likelihood that others would challenge the validity of the Scott patent.

The complaint, besides seeking the contract to be declared illegal, seeks affirmative relief by asking the court to require Scott and Chemotronics to grant reasonable royalty, non-discriminatory licenses under all patents relating to reticulation of polyurethane foam, as well as complete production know-how. The complaint seeks the same relief with respect to patents issuing withing the next five years.

The case was assigned to Judge Freeman.

Staff: Raymond P. Hernacki, Richard L. Reinish and Richard J. Rappaport (Antitrust Division)

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CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

COURT OF APPEALS

MILITARY SELECTIVE SERVICE ACT

FAILURE TO SHOW REGISTRANT WAS CALLED UP FOR MILITARY DUTY IN PROPER ORDER.

United States v. Arnold G. Sandbank (C.A. 2, No. 32530; October 31, 1968, D.J. 25-51-4691)

The defendant appealed from a judgment of conviction in the United States District Court for the Southern District of New York before Judge Inzer B. Wyatt, sitting without a jury, for failure to report for and submit to induction. As one of the grounds for appeal Sandbank, relying on United States v. Lybrand, 279 F. Supp. 74 (E.D. N.Y. 1967), contended that the district court should have directed a judgment of acquittal by reason of the Government's failure to show as part of its case in chief that he was called up for military duty in proper order. The Court of Appeals, in a per curiam decision, did not agree with the conclusion in Lybrand stating, "We are of the view that the better rule is to require the registrant to show that the call up was invalid as part of his defense with the right to the government to rebut such evidence. Lowe v. United States, 389 F.2d 51 (5th Cir. 1968); Greer v. United States, 378 F.2d 931 (5th Cir. 1967)."

Staff: United States Attorney Robert M. Morgenthau; Assistant United States Attorneys Kevin J. McInerney and John R. Robinson (S.D. N.Y.)

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