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Appendix

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APPENDIX

ADMINISTRATIVE LAW

In *Walker v. Mathews*,¹ the court held that a motion to dismiss an appeal as untimely must be made by formal motion pursuant to rule 12(c) of the Federal Rules of Civil Procedure and not merely part of appellee's briefs on appeal. The court also held that a person claiming disability benefits under the Social Security Act is not foreclosed from such benefits on the basis of the availability of a few isolated jobs he could do.

In *Sherman v. Yabahi*,² the court held that allegations that a caucasian probationary employee subject to civil service requirements who was required to take a test at the end of his probationary period while three oriental employees who were also on probation were not, and that he was fired after the test results were presented at a termination review, was sufficient to state a claim under the Civil Rights Act of 1870, 42 U.S.C. §§ 1981, 1983.

In *Union Oil v. Federal Power Commission*,³ the court held that the Federal Power Commission has the authority under the Natural Gas Act to collect intrastate data from producers dealing with natural gas reserves, but it does not have the authority to require detailed information on a "by reservoir" basis as the Commission required in Federal Power Commission Form 40.

COMMERCIAL TRANSACTIONS

In *First National Park Bank v. Johnson*,⁴ the court held that guarantors of a loan could not defend against a deficiency claim on the grounds that they were not given notice of the sale of the security as required by U.C.C. § 9-504(3), where the guarantors had waived notice in the guarantee agreement.

In *Heinicke Instruments Co. v. Republic Corp.*,⁵ the court

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1. 546 F.2d 814 (9th Cir. Nov., 1976).
 2. 549 F.2d 1287 (9th Cir. Feb., 1977).
 3. 542 F.2d 1036 (9th Cir. June, 1977).
 4. 553 F.2d 559 (9th Cir. Apr., 1977).
 5. 543 F.2d 700 (9th Cir. Sept., 1976).

held that an assignee of stock did not perfect his security interest in the stock under U.C.C. § 9-305 where the stock certificate had not yet been issued.

In *Huffman v. Wikle*,⁶ the court held that creditors had not perfected a security interest in certain notes and deeds under U.C.C. §§ 9-904, 905 where the alleged agent of the creditors was the debtor.

CONSTITUTIONAL LAW

In *Baldwin v. Redwood City*,⁷ the court struck down as a violation of the first amendment, portions of a local ordinance that: 1) limited the aggregate sign or poster space employed on behalf of a political candidate or issue, 2) required application prior to use of campaign signs, 3) required an inspection fee prior to use of such signs, 4) required a refundable deposit prior to use, 5) prohibited campaign signs in residential areas and 6) permitted summary removal of campaign signs that were an immediate peril to persons or property. The court upheld a restriction of aggregate sign space on a single parcel of land and a restriction to sixteen square feet for each sign.

In *Verrilli v. City of Concord*,⁸ the court held invalid portions of a local ordinance that required a deposit prior to posting of political campaign posters. The court upheld the removal portion of the ordinance since it gave notice to the posters of the signs. It also upheld restriction of sign size and aggregate sign space for a single area.

In *Daniels v. Abors*,⁹ the court held that it is not a violation of the equal protection clause of the fourteenth amendment nor a violation of the first amendment where members of a particular political party are not appointed to standing committees of a state legislature in proportion to their numbers in the legislature.

CRIMINAL LAW & PROCEDURE

In *United States v. Myers*,¹⁰ the court held that where a

6. 550 F.2d 1228 (9th Cir. Mar., 1977).

7. 540 F.2d 1360 (9th Cir. Aug., 1976).

8. 548 F.2d 262 (9th Cir. Jan., 1977).

9. 549 F.2d 120 (9th Cir. Jan., 1977).

10. 543 F.2d 721 (9th Cir. Oct., 1976).

district judge sentenced defendant under the Youth Corrections Act he could not impose a special parole term provided for in another statute.

In *United States v. Demarco*,¹¹ the court dismissed an indictment against the defendant where the indictment was instituted in an effort to discourage defendant from exercising his statutory venue rights.

In *United States v. Stanley*,¹² the court held that government agents lacked probable cause to search a boat for marijuana when it was one of five boats which had left a harbor, and a truck with marijuana debris was discovered on the pier of that harbor. However, the court found that the search was justified as a border search.

In *United States v. Hamburg*,¹³ the court held that although warrantless screening searches at airport boarding areas are justified on the theory of implied consent, a passenger is not foreclosed from revoking consent and leaving the boarding area. The court upheld the search anyway, where guards had recently received a bomb threat and defendant acted suspiciously and tried to conceal a bulge in his trousers.

In *United States v. Sherwin*,¹⁴ the court held that no search took place within the meaning of the fourth amendment where a manager of a truck terminal searched a broken carton containing allegedly obscene books and turned them over to FBI agents.

In *United States v. Hart*,¹⁵ the court held that the government is not a guarantor of the presence of an informant at trial and the government need only use reasonable efforts to produce an informant whose presence has been requested by the defendant.

In *United States v. Stagg*,¹⁶ the court stated that the holding in *United States v. Demma*, which allows the defense of entrap-

11. 550 F.2d 1224 (9th Cir. Mar., 1977).

12. 545 F.2d 661 (9th Cir. Nov., 1976).

13. 546 F.2d 1350 (9th Cir. Nov., 1977).

14. 539 F.2d 1 (9th Cir. July, 1976).

15. 546 F.2d 798 (9th Cir. July, 1976) (en banc), cert. denied, 429 U.S. 1120 (1977).

16. 540 F.2d 1010 (9th Cir. July, 1976).

ment without requiring the defendant to admit committing the crime, *is not* a new rule of law, therefore no question of retroactivity is involved.

In *United States v. Mays*,¹⁷ the court reversed the trial court's dismissal of two indictments on the ground that defendant had not adequately shown actual prejudice from preindictment delay, where defendant showed only that one witness had died and another's memory had dimmed without indicating what the testimony of these witnesses would have been.

In *United States v. Cordova*,¹⁸ the court held that a fourteen month delay between the time of defendant's state arrest and the federal indictment arising out of that arrest was not a denial of the sixth amendment right to a speedy trial.

In *United States v. Graham*,¹⁹ the court held that the defendant was not denied his right to a speedy trial where 1) the government's conduct causing the delay was negligent; 2) the delay was only twelve to twelve and one half months; 3) the situation was complicated by defendant's difficulties in state courts and his transfer from one county to another; 4) defendant's use of an assumed name contributed to the delay and 5) defendant was not seriously prejudiced by the delay.

In *United States v. Vega-Limon*,²⁰ the court held that evidence of a conspiracy that did not implicate defendant, together with defendant's uncorroborated confession was sufficient to sustain his conviction for conspiracy, and evidence of the conspiracy was admissible.

In *United States v. Testa*,²¹ the court held that a conversation between informant and defendants charged with conspiracy was admissible to show that parties had met and had knowledge of statements, despite the fact that the plan discussed was abandoned and the alleged conspiracy that gave rise to the charge was formed at a later time.

17. 549 F.2d 670 (9th Cir. Mar., 1977).

18. 537 F.2d 1073 (9th Cir. June, 1976).

19. 538 F.2d 261 (9th Cir. June, 1976).

20. 548 F.2d 1390 (9th Cir. Mar., 1977).

21. 548 F.2d 847 (9th Cir. Feb., 1977).

In *James v. Reese*,²² the court held that a state prisoner would be denied habeas corpus relief where he failed to adequately present his claims to state appellate courts; the fact that the district court used an incorrect basis for its decision does not preclude appellate court from affirming on appropriate grounds.

In *Marsh v. Cupp*,²³ the court upheld the giving of a second “Allen charge” as not being a constitutional violation, where defendant’s counsel did not object to it at trial.

In *United States v. Seawell*²⁴ the court struck down, on the basis of its supervisory powers, use of a second “Allen charge” where counsel had objected at trial.

In *Makal v. Arizona*,²⁵ the court held it was not a denial of equal protection to refuse to grant defendant credit against his sentence for time served in a mental hospital after he was charged with the offense.

In *United States v. Segna*,²⁶ the court held that it was reversible error when the prosecutor made erroneous statement of law to the effect that defendant had burden of proving insanity.

FEDERAL PRACTICE & PROCEDURE

In *Share v. Air Properties, G., Inc.*,²⁷ the court dismissed an appeal from an order denying class certification because one individual member of the class possessed a cause of action on his own, and therefore the “death knell” doctrine would not apply.

In *Hooley v. Red Carpet Corporation*,²⁸ the court, applying *Share v. Air Properties, G. Inc.*, held that appeals from orders denying class certification will be dismissed if appellants fail to show that there are not any members of the purported class who possess a cause of action that is viable if brought individually.

In *Franchise Realty Interstate Corporation v. San Francisco*

22. 546 F.2d 325 (9th Cir. Dec., 1976).

23. 536 F.2d 1287 (9th Cir. June, 1976).

24. 550 F.2d 1159 (9th Cir. Mar., 1977).

25. 544 F.2d 1030 (9th Cir. Oct., 1976).

26. 555 F.2d 226 (9th Cir. Apr., 1977).

27. 549 F.2d 643 (9th Cir. Jan., 1977).

28. 538 F.2d 279 (9th Cir. July, 1976).

Local Joint Execution Board of Culinary Workers,²⁹ the court held that defendant's efforts in lobbying against the granting of permits to the plaintiffs to build restaurants were within the direct lobbying immunity from antitrust liability.

In *League to Save Lake Tahoe v. B.J.K. Corporation*,³⁰ the court held that a suit arising under the Tahoe Regional Planning Compact, an interstate agreement, involves a federal question and thus such suit may be maintained in the federal courts.

INDIAN LAW

In *Confederated Bands and Tribes of Yakima Indian Nation v. Washington*,³¹ the court, on rehearing, held that a statute providing for state assumption of Indian jurisdiction which authorizes a full assumption of jurisdiction as to fee lands and only partial assumption as to non-fee lands is a violation of equal protection.

In *Stray Calf v. Scott Land & Livestock Co.*,³² the court held that where a rancher leased Indian land for five years and every year thereafter the rancher and tribe would cancel the five year lease and execute a new five year lease, paying for the additional year, the arrangement did not violate the five year restriction on lease of Indian lands, in absence of proof the Indian tribe was compelled by economic pressures to re-lease the land every year.

In *United States v. Dupree*,³³ the court held that the federal assault statute covering assaults within Indian country is not impermissibly indefinite since use of the common law definition makes the statute sufficiently certain, and that the commission of a battery with a dangerous weapon does not result in a merger into the assault statute.

In *United States v. Francisco*,³⁴ the court held that a federal statute that incorporates state law for the purpose of defining and penalizing various offenses, incorporates the state law at the time

29. 542 F.2d 1076 (9th Cir. Sept., 1976).

30. 547 F.2d 1072 (9th Cir. Dec., 1976).

31. 552 F.2d 1332 (9th Cir. Apr., 1977). Prior opinion at 550 F.2d 443 (9th Cir. Jan., 1977) (en banc), *prob. juris. noted*, 98 S. Ct. 1447 (1978).

32. 549 F.2d 1209 (9th Cir. Jan., 1976).

33. 544 F.2d 1050 (9th Cir. Jan., 1976).

34. 536 F.2d 1293 (9th Cir. Jan., 1976).

of commission of the offense and not at the time of enactment of the federal statute.

LABOR LAW

In *Bio-Science Laboratories v. NLRB*,³⁵ the court held that economic strikers were entitled to vote in a representation election held within twelve months after the strike had begun if they were on strike and not entitled to reinstatement or if they were on a preferential reinstatement list resulting from an economic strike.

In *Griffith Co. v. NLRB*,³⁶ the court held that an agreement between the union and the employer whereby the employer agrees not to do business with any other person is an unfair labor practice.

In *Hawaiian Hauling Service, Ltd. v. NLRB*,³⁷ the court held that the NLRB did not abuse its discretion by rejecting an arbitration award and preventing discharge of an employee for calling manager a liar at a grievance meeting.

In *Kaiser Engineers v. NLRB*,³⁸ the court held it to be an unfair labor practice where an engineer employee was discharged, and other employees were threatened with discipline because they lobbied the legislature in opposition to a proposed change in immigration policy that would allow greater influx of foreign engineers.

In *NLRB v. Abex Corporation—Aerospace Division*,³⁹ the court held that it was not an unfair labor practice for employers to apply provisions of a collective bargaining agreement to employees unrepresented by the union when those employees voted to join the union and where both the union and the formerly non-union employees performed the same jobs.

In *NLRB v. Robertson Industries*,⁴⁰ the court upheld the NLRB decision to reinstate discharged employees where the em-

35. 542 F.2d 505 (9th Cir. Aug., 1976).

36. 545 F.2d 1194 (9th Cir. Nov., 1976), *cert. denied*, 98 S. Ct. 171 (1977).

37. 545 F.2d 674 (9th Cir. Dec., 1976), *cert. denied*, 431 U.S. 965 (1977).

38. 538 F.2d 1379 (9th Cir. Jan., 1976).

39. 543 F.2d 719 (9th Cir. Oct., 1976).

40. 560 F.2d 396 (9th Cir. Oct., 1976).

ployees refusal to work to attend a meeting at the union hall during working hours was, in part, because they were dissatisfied with working conditions.

In *NLRB v. Taylor Industries, Inc.*,⁴¹ the court held that pay raises given to certain employees pending an election was an unfair labor practice and that the firing of several employees was not an unfair labor practice where the employer was unaware of employees' involvement in union activity.

In *Stephenson v. NLRB*,⁴² the court held that where it appeared an arbitration panel had not clearly decided an issue the NLRB could not defer to the decision of the panel.

In *Burroughs v. Board of Trustees*,⁴³ the court held that it was unfair for the Board of Trustees of a pension fund to apply a "break in employment" rule retroactively to deny a disability pension to an employee since he had no notice of the rule.

In *Thurber v. Western Confederation of Teamsters Pension Plan*,⁴⁴ the court held that in the absence of any provision allowing an employer to contribute to the pension plan for the purpose of curing any breaks in service, the pension fund lacked authority to receive retroactive contribution in an attempt to cure defects in break in service of former employee.

TAXATION

In *Allen v. United States*,⁴⁵ the court upheld the trial court's findings that taxpayers were entitled to a charitable deduction resulting from the grant of several acres of redwood trees deeded to a city.

In *Cox v United States*,⁴⁶ the court held that a casualty loss deduction is not predicated on taxpayer's ability to pay nor on the out-of-pocket nature of the loss, and there is no requirement that the damage be repaired.

41. 543 F.2d 1120 (9th Cir. Oct., 1976).

42. 550 F.2d 535 (9th Cir. Mar., 1977).

43. 542 F.2d 1128 (9th Cir. Oct., 1976), *cert. denied*, 429 U.S. 1096 (1977).

44. 542 F.2d 1106 (9th Cir. Sept., 1976).

45. 541 F.2d 786 (9th Cir. June, 1976).

46. 537 F.2d 1066 (9th Cir. June, 1976).

In *Lee v. Commissioner*,⁴⁷ the court held that state law determines marital status for federal tax purposes.

In *Olk v. United States*,⁴⁸ the court held that monies or “tokens” received by a craps dealer from casino patrons was taxable income of the dealer.

In *Walker v. Commissioner*,⁴⁹ the court held that a stock dividend was taxable to the beneficial owner at the time of dividend when that person in fact received the dividend, and it is not taxable to the voting trustee to whom it had been assigned.

In *Walt Disney Productions v. United States*,⁵⁰ the court held that master negatives used in film manufacturing were tangible property for investment tax credit purposes, and because the negatives had a useful life of more than eight years the taxpayer could claim the full seven percent credit on production cost of the negatives.

47. 550 F.2d 1201 (9th Cir. Mar., 1977).

48. 536 F.2d 876 (9th Cir. June, 1976), *cert. denied*, 429 U.S. 920 (1977).

49. 544 F.2d 419 (9th Cir. Oct., 1976).

50. 549 F.2d 576 (9th Cir. Aug., 1977).

