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Recent Decisions - State and Federal: Trounced for an Ounce

John Jeffrey Ross

of the station such as to indicate an actual agency relationship. 279 Md. at 643, 370 A.2d at 560. *See Keitz v. National Paving Co.*, 214 Md. 479, 134 A.2d 296 (1957).

The law of agency by estoppel is expressed in RESTATEMENT (SECOND) OF AGENCY §267 (1958) as follows:

> One who represents that another is his servant or other agent and thereby causes a third person to rely upon the care or skill of such apparent agent is subject to liability to the third person for harm caused by the lack of care or skill of the one appearing to be a servant or other agent as if he were such.

This reliance must be actual and on the part of the person injured. It is not sufficient that third parties direct the injured based on their faith in the apparent agency. 279 Md. at 644, 370 A.2d at 561.

In order for Mabe to recover, the record must show such reliance on his part: reliance on the *skill* of the apparent agent. It was insufficient to show attraction to the station merely because it offered British Petroleum products. 279 Md. at 647, 370 A.2d at 562.

After its examination of the record, the court concluded that such reliance on Mabe's part was lacking; he entered this station rather than others in the proximate area because it provided B.P. products. In its interpretation of the record, the court cited a number of cases which held that the presence of an oil company's insignia was insufficient to establish the agency relationship (*Levine v. Standard Oil Co.*, 249 Miss. 651, 163 So.2d 750 (1964) and that the corporation's representations were limited to showing the presence of its products. *See Sherman v. Texas Co.*, 340 Mass. 606, 165 N.E.2d 916 (1960).

In reversing the Court of Special Appeals and denying recovery, the court found Mabe's attraction to the station to constitute no more than choice of products. 279 Md. at 649, 370 A.2d at 564.

Judge Levine dissented vigorously. He noted that the court of Special Appeals sitting *en banc* had found the other way with only one dissent. The implication was that the solution of the case turned on an interpretation of the record, and that the evidence viewed in the light most favorable to Mabe was sufficient to support the jury verdict. Mabe had stated at trial that he not only bought B.P. products, but that he *always dealt with B.P.*

It is apparent that this case is solved by a point over which reasonable men differ, and that there is considerable justification for a new trial. Instead, we are left with a narrow view of vicarious liability in this area, with limits of responsibility closely drawn and tightly circumscribed.

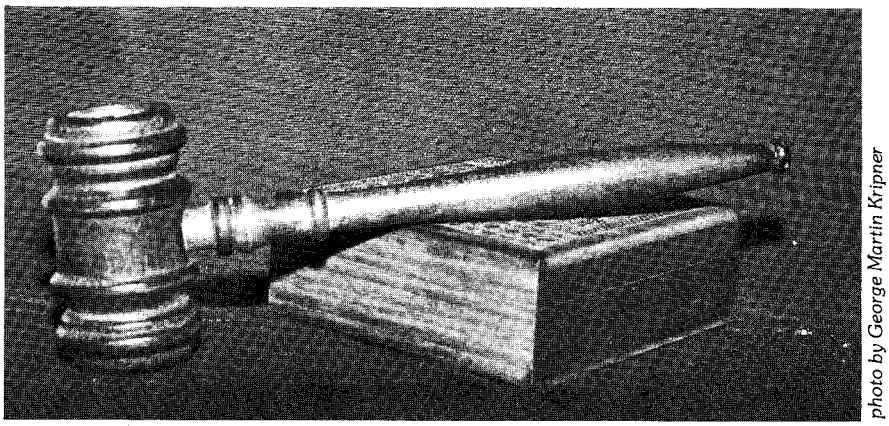


photo by George Martin Kripner

Trounced For An Ounce

by John Jeffrey Ross

Noting that the Eighth Amendment has generally been invoked to proscribe "barbarous methods of punishment," a federal judge recently called upon the flexible and dynamic nature of the Constitution to grant a petition for habeas corpus relief from two consecutive 20-year sentences. *Davis v. Zahradnick*, 432 F. Supp. 444 (W.D. Va. 1977).

Petitioner Davis had been incarcerated after convictions in a Virginia court for possession of marijuana with intent to distribute and for its actual distribution. The Virginia Supreme Court affirmed both the convictions and the sentences and Davis filed a petition for habeas corpus relief in the United States District Court pursuant to 28 U.S.C. §2254. In addition to his Eighth Amendment claims, Davis contended: that he was denied a trial by an impartial jury; that he was subjected to an illegal search and seizure; that the government failed to prove possession of marijuana beyond a reasonable doubt; and that the state failed to show that the substance involved was illegal contraband under the Virginia statute. 432 F.Supp. at 446-447.

The District Court rejected any arguments alleging error in the conduct of the trial, and the case turned solely on the Eighth Amendment claim that the 20-year sentence (plus a $20,000 fine) was constitutionally offensive in light of the nature of the offense.

After considering whether the length of a sentence can serve as a basis for "habeas relief," the court indicated that the disproportionality of the sentence in relationship to the offense constitutes excessiveness which is the "hallmark of cruel and unusual punishment." 432 F.Supp. at 450.

In granting the petition, the court considered four elements in its constitutional examination of the sentence. First considered was the nature of the offense. The fact that the amount of marijuana was less than nine ounces and the absence of any aspect of violence in the offense were crucial to the disposition of this petition.

Regarding the second factor, the legislative purpose behind the punishment, it was eminently clear to the court that the legislative frustration of the sale of a questionably harmful drug could be served by a less severe punishment.

Third, after an examination of punishment for the same offense in other jurisdictions, the court noted the relative excessiveness of the Virginia sentence.

Finally, the comparison was made between maximum sentences in Virginia for other offenses and the marijuana offense. Examples of other crimes drawing a 20-year sentence in Virginia were second degree murder, malicious shooting with intent to maim, and attempted murder.

The court thus concluded that the sentences effected exceptional hardships on the defendant and constituted an improprietous application of the law to the offenses so as to offend the Eighth Amendment to the United States Constitution.

Ban On Company Operated Gas Stations Upheld

by Robert C. Becker

Events surrounding the oil embargo of 1973 should be fresh in memory. Great inconvenience to petroleum consumers and much misinformation and rumor surrounding fuel shortages prompted the State Comptroller's office to propose and the General Assembly to pass, legislation regulating the operation of retail service stations. (Chapter 854 of the Laws of Maryland of 1974 amended by Chapter 608 of the Laws of 1975; Maryland Code Annotated, Article 56 §157E).

After July 1, 1977, no producer or refiner of petroleum products may open a retail service station to be operated by company employees, nor, after July 1, 1978, may such producer or refiner continue to operate a retail service station by use of company employees; the stations must be operated by independent service station managers. Producers, refiners and wholesalers of petroleum products must extend voluntary allowances uniformly and equitably to the retail service stations they supply. The Comptroller will have discretion to allow company operation of service stations, and extensions of the time limits of the act upon a showing of cause.

Exxon Corporation brought an action in the circuit court for Anne Arundel County challenging the validity of the legislation and asking that its enforcement be enjoined. Exxon soon was joined by other oil companies. The companies argued that the act denied them due process of law, unduly burdened interstate commerce, constituted a taking of property without compensation, denied them equal protection of the laws, was an unlawful delegation of legislative authority, conflicted with federal legislation and was void for vagueness. The circuit court agreed with the companies and granted the relief sought. The State appealed this decision, and the Court of Appeals granted certiorari.

Writing for the court, in *Gov. of the State of Md. v. Exxon Corp.*, 279 Md. 410, 370 A.2d 1102, Judge Eldridge answered the arguments of the companies point by point. The act does not deny due process of law because it is arguably of such benefit to the people of Maryland as to make it a legitimate exercise of the state's police power. It does not unduly burden interstate commerce because it regulates an activity which occurs entirely intrastate, and it is not so written as to protect a domestic industry by discriminating against products in interstate commerce.

The argument that the act is an unconstitutional taking of property without compensation fails because there is in fact no taking of property at all. The oil companies keep possession of their service stations and their right to use them as service stations. The only restriction is that company employees may not operate the service stations.

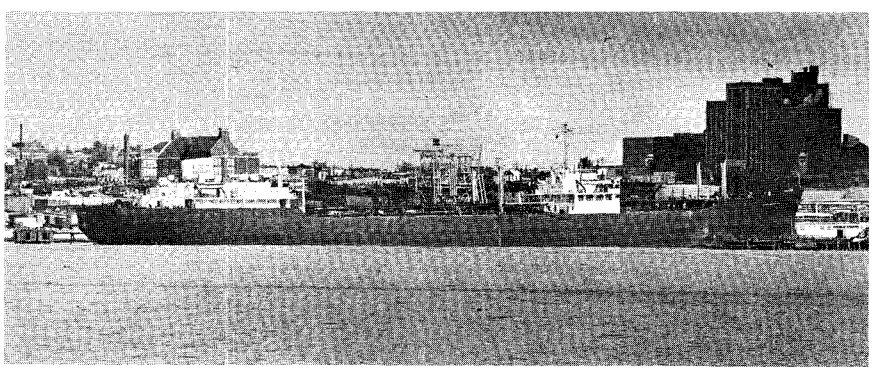
Equal protection of the laws is not denied where a classification is not purely arbitrary and has a rational basis. Here the classification is based on diligent research on the part of the Comptroller's office and the results of three hearings held as the act was being considered for passage. It cannot be said to be purely arbitrary and irrational.

The delegation of power to the Comptroller is a reasonable one under the circumstances. It would be impossible for the legislature to anticipate in detail the possible needs for modification of the terms of the act.

This act does not conflict with the Robinson-Patman Act as charged, for the laws address different problems. The Maryland statute would, in the future, be held invalid only to the extent that it actually conflicted with federal legislation. No such conflict is found here.

The statute is not void for vagueness because the terms held to be vague are terms of trade within the regulated industry. Members of that industry may reasonably be held to understand their own vernacular.

Reaction to this decision has been strong, and appeals have been made to the United States Supreme Court by Exxon Corporation, Shell Oil Company and Continental Oil Company (docket numbers 77-10, 77-11, and 77-12 respectively). The decision is most notable for its impact on the Corporation's control over their distribution of petroleum goods and services. In the balance is the future of the petroleum industry as a wholly integrated enterprise.



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