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MAY 13 1965
CLERK, U. S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
DEPUTY
[Signature]

8 UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA
10 CENTRAL DIVISION

11 UNITED STATES OF AMERICA,)
12 Plaintiff,)
13 v.)
14 CHARLES KATZ,)
15 Defendant.)

No. 34715 (CHC) CD
TRIAL MEMORANDUM

[18 U.S.C. §1084: Interstate Trans-
mission of Bets and Wagers and
Information Assisting in the Placing
of Bets and Wagers]

17 I

18 STATUS OF THE CASE

- 19 A. Trial of this case is presently set for Monday,
20 May 17, 1965, at 9:30 A.M., before the Honorable Charles H. Carr,
21 United States District Judge.
22 B. It is anticipated that trial by jury will be waived.
23 C. Defendant is at liberty on bond.
24 D. The Government expects to call approximately seven
25 witnesses.
26 E. Estimated time for trial is 3/4 of 1 day.
27 F. A motion to suppress evidence on the grounds of
28 illegal search and seizure, to wit, certain conversations overheard
29 in a telephone booth by means of microphones placed outside of the
30 telephone booth, and certain documents seized pursuant to a search
31 warrant, was denied by the Honorable Jesse W. Curtis on March 13,
32 1965. (See Pertinent Law below)

1 G. Presently pending before this Court is a Motion to
2 Dismiss the Indictment on the grounds that the statute is unconsti-
3 tutional.

4 H. The indictment in this case is in eight counts, a copy
5 of which is attached to the Court's copy of this Trial Memorandum.

6 II

7 STATUTE UNDER WHICH THE DEFENDANT IS BEING PROSECUTED

8 Title 18, United States Code, Section 1084, reads in
9 pertinent part as follows:

10 "§1084. Transmission of wagering information;
11 penalties.

12 "(a) Whoever being engaged in the business of
13 betting or wagering knowingly uses a wire communica-
14 tion facility for the transmission in interstate
15 commerce of bets or wagers or information assisting
16 in the placing of bets or wagers on any sporting
17 event or contest, or for the transmission of a wire
18 communication which entitles the recipient to receive
19 money or credit as a result of bets or wagers, or for
20 information assisting in the placing of bets or wagers,
21 shall be fined not more than \$10,000 or imprisoned
22 not more than two years, or both."

23 III

24 SUMMARY OF THE EVIDENCE TO BE OFFERED BY THE GOVERNMENT

25 The Government intends to prove each and every element
26 necessary to sustain a conviction under each count of the indictment,
27 including but not limited to the following facts:

28 1. That commencing prior to February 10, 1965, Special
29 Agents of the Federal Bureau of Investigation placed CHARLES KATZ
30 under visual surveillance.

31 2. That on February 11 and 12, 1965, Special Agents of the
32 Federal Bureau of Investigation observed CHARLES KATZ placing

1. telephone calls from a certain telephone booth.

2 3. That a check of telephone records demonstrated that
3 those calls were placed to a telephone number in Boston, Massachusetts

4 4. That on February 19, 20, 21, 23 and 24, 1965, de-
5 fendant CHARLES KATZ was observed to place telephone calls from
6 certain telephone booths on Sunset Boulevard.

7 5. That microphones were attached to the outside of
8 these two telephone booths, which stood side-by-side. At no time
9 did the microphones penetrate into the interior of the telephone
10 booths nor was there penetration by any device which was used
11 to attach the microphones to the telephone booths.

12 6. That certain tapes were obtained reflecting
13 defendant KATZ'S side of the telephone conversations.

14 7. Transcripts of those tapes will be offered into
15 evidence, it being stipulated between defendant and the Government
16 that those transcripts are accurate reproductions of the tapes
17 which were obtained.

18 8. That the transcripts will reveal that CHARLES KATZ
19 was placing bets, receiving information pertaining to the "line",
20 and was negotiating to adjust certain wagers.

21 9. That records kept by the Telephone Company in the
22 ordinary course of business reflect that the telephone calls in
23 question, placed by KATZ, were placed either to Boston,
24 Massachusetts or Miami, Florida.

25 10. That pursuant to a search warrant, certain betting
26 paraphernalia were taken from KATZ including handicap sheets and
27 "owe" sheets.

28 11) That KATZ admitted to Special Agents of the Federal
29 Bureau of Investigation that his whole source of livelihood was
30 from the business of betting.

31 12) That an expert will testify that defendant KATZ was
32 what is known as a "commission" man. A "commission" man is one who

1. bets for another for certain consideration.

2 IV

3 PERTINENT LAW

4 As indicated above, defendant CHARLES KATZ has made a
5 motion which was denied for the suppression of certain evidence.
6 With respect to the conversations that were overheard in the
7 telephone booth, he claimed that that evidence was obtained by
8 illegal search and seizure. The motion was denied on the basis of
9 Goldman v. United States, 316 U.S. 129 (1942). In that case
10 Federal agents placed a detectaphone against the outside wall of
11 the defendant's office and overheard the conversations taking
12 place within. The United States Supreme Court upheld the conviction
13 and pointed out that there was no trespass or illegal intrusion
14 into the defendant's office and therefore no illegal search and
15 seizure. At page 135, the Court said:

16 "We hold that the use of the detectaphone by
17 Government agents was not a violation of the Fourth
18 Amendment.

19 "In asking us to hold that the information
20 obtained was obtained in violation of the Forth
21 Amendment, and that its use at the trial was, there-
22 fore, banned by the Amendment, the petitioners
23 recognize that they must reckon with our decision
24 in Olmstead v. United States, 277 U.S.438. They
25 argue that the case may be distinguished. The
26 suggested ground of distinction is that the Olmstead
27 case dealt with the tapping of telephone wires, and
28 the court adverted to the fact that, in using a
29 telephone, the speaker projects his voice beyond
30 the confines of his home or office and, therefore,
31 assumes the risk that his message may be intercepted.
32 It is urged that where, as in the present case, one

1 talks in his own office, and intends his conversation
2 to be confined within the four walls of the room, he
3 does not intend his voice shall go beyond those walls
4 and it is not to be assumed he takes the risk of
5 someone's use of a delicate detector in the next room.
6 We think, however, the distinction is too nice for
7 practical application of the Constitutional guarantee,
8 and no reasonable or logical distinction can be drawn
9 between what federal agents did in the present case
10 and state officers did in the Olmstead case."

11 V

12 Counsel for the defendant is herewith informed that the
13 defendant may serve and file a similar trial memorandum at or prior
14 to commencement of the trial.

15 Respectfully submitted,

16 MANUEL L. REAL
17 United States Attorney
18 JOHN K. VAN DE KAMP
19 Assistant United States Attorney
20 Chief, Criminal Division
21 BENJAMIN S. FARBER
22 Assistant United States Attorney

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24 _____
25 BENJAMIN S. FARBER
26 Attorneys for United States of America
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CERTIFICATE OF SERVICE BY MAIL

1 I, GERTRUDE JOAN McELLISTRIM, state:

2 That I am a citizen of the United States and a
3 resident of Los Angeles County, California; that my business
4 address is 762 Post Office and Courthouse, Los Angeles,
5 California; that I am over the age of eighteen years, and
6 am not a party to the above entitled action.

7 That on MAY 13, 1965, I deposited in
8 the United States mails in the Post Office at 312 North Spring
9 Street, Los Angeles, California, in the above entitled action,
10 in an envelope bearing the requisite postage, a copy of
11

12 TRIAL MEMORANDUM,
13

14 addressed to : Burton Marks, Esquire
15 Attorney at Law
16 8447 Wilshire Blvd.
17 Beverly Hills, California
18
19
20

21 his last known address at which place there is a delivery
22 service by United States mails from said post office.

23 This certificate is executed on MAY 13, 1965
24 at Los Angeles, California.

25 I certify under penalty of perjury that the foregoing
26 is true and correct.
27

28
29 
30 GERTRUDE JOAN McELLISTRIM
31
32