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United States of America v. Herman Raddatz, Preview of United States Supreme Court Cases

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Continued from page 5

3. Denial of effective assistance of counsel in a criminal case is not subject to the state action limitation because of the express language of the sixth amendment that "the accused shall enjoy . . . the assistance of counsel." Even if there were such a requirement, it is met by the monopolistic control by the state over lawyers' qualifications and discipline, the state's duty to provide a fundamentally fair trial, and the fact that lawyers, whether retained or appointed, hold a constitutional office that effectuates

the sixth amendment guarantee.

4. The appellate court merely applied the correct federal law to undisputed facts and drew a different conclusion; it did not engage in *de novo* fact-finding.

5. The court should adopt a prophylactic rule against joint representation to fully preserve the constitutional right to effective assistance of counsel. A waiver requirement is not likely to be effective, and appellate review of a conflict of interest dispute may be ineffectual.

UNITED STATES OF AMERICA v. HERMAN RADDATZ
(Docket No. 79-8)

Criminal procedure — Federal Magistrate Act — Motions to suppress

On a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit. Decision below: 592 F.2d 976 (1979)

Analysis prepared February 13, 1980, by LeRoy Pernell, Assistant Professor of Law, Ohio State University College of Law, 1659 North High Street, Columbus, OH 43210; telephone (614) 422-6821

Issue

Whether a district court may, consistent with due process and The Federal Magistrate Act ("Act"), rule on a motion to suppress alleged involuntary statements based on a record developed before a magistrate pursuant to 28 U.S.C. sections 636(b)(1)(B) and (C) of the Act without holding a new evidentiary hearing to resolve questions of witness credibility.

Facts

On August 8, 1976, Herman Raddatz, a convicted felon, and Jimmy Batson, both Chicago residents, were involved in a fight in which Batson was injured. Chicago police called to the scene discovered that Raddatz was armed with a pistol. A state charge of possession of a firearm was filed against Raddatz in October. The weapon recovered was subsequently determined to be the same weapon involved in a West Virginia homicide.

On November 19, 1976, two federal agents, Russell and McCulloch, representing the Bureau of Alcohol, Tobacco, and Firearms, visited Raddatz at his home, gave him his *Miranda* warnings, and questioned him as to how he had obtained the weapon. Raddatz later testified that the two agents at this November meeting promised him that if he cooperated with the federal authorities, a pending federal indictment would be dropped, an assertion denied by both agents. Russell, however, acknowledged that Raddatz was told if he helped them, the United States Attorney would be told of his cooperation in any subsequent prosecution. Raddatz subsequently made statements to the agents as to how he came into possession of the pistol.

Two months later, Raddatz met with the federal agents again, retracted his previous story, and gave an incriminating statement indicating that he had obtained the weapon from a relative and was familiar with its history. Later, Raddatz testified that he gave this incriminating statement in reliance on promises of immunity made to him by the agents. The agents again denied having made these promises. Raddatz subsequently agreed to be an informant concerning other criminal activities, but, apparently after failing to provide useful information, was indicted in March 1977 for the

federal offense of the receipt of a firearm by a convicted felon.

The Government sought to introduce Raddatz's prior statements as proof of when he received the firearm. A motion to suppress the statement as involuntary was filed by the defendant, and the court, pursuant to the Federal Magistrate Act, referred the evidentiary determination to the magistrate over the defense objection. The magistrate, after conducting a hearing, concluded that the defendant's testimony lacked credibility and recommended to the trial judge that the motion be overruled.

Background and Significance

According to 28 U.S.C. sections 636(b)(1)(B) and (C), a federal district court judge may designate a United States magistrate, who is not a federal judge appointed and approved by Congress pursuant to Article III of the Constitution, to conduct evidentiary hearings pertaining to motions to suppress. The magistrate must prepare and file proposed findings of fact and recommendations, which the judge may accept, reject, or modify in whole or in part, without hearing the testimony firsthand. With respect to any portion of the report properly objected to by a party, the judge must make a *de novo* determination.

This case raises the question of what "de novo" means in this statute. Traditionally, "de novo" has meant "to hear anew"; therefore, most *de novo* proceedings are completely new hearings where the judge starts from the beginning and hears the evidence firsthand. But in the Federal Magistrate Act, the provision calls for the judge to make a *de novo* "determination," as opposed to requiring a "hearing" or "proceeding." The Government maintains that this means that all the judge need do is review the report and transcript of testimony and make his own assessment as to the facts of the matter. The defendant argues, on the other hand, that it is not possible to resolve disputed testimony accurately without seeing and hearing the witness's behavior, because the manner in which a witness answers questions often indicates whether he is telling the truth.

The defendant in the case at hand objected to the findings of the magistrate that Raddatz was not truthful in his claim that he was induced to make incriminating statements by promises that federal charges would be dropped. The judge rejected the defendant's assertion that a new hearing must be held in order for him to determine who was telling the truth, and reviewing only the magistrate's report and the transcript of proceedings, adopted the magistrate's recommendations. Appeal on this question was taken to the United States Court of Appeals for the Seventh Circuit, which reversed the lower court, finding that *de novo* means that the trial judge is required by statute to hold a new hearing, and that when the defendant's testimony is not incredible, the truth cannot be derived wholly from a written record. The appeals court, however, rejected the defendant's assertion that the Federal

Magistrate Act violates the Constitution by allowing initial factual determinations to be made by magistrates who are not federal judges appointed pursuant to Article III.

The issues presented by this case are of great significance to the administration of the federal district courts. The system of referral to magistrates of initial fact-determination hearings was designed to aid the courts in handling ever-increasing caseloads. If the court of appeals decision is affirmed, the Government fears that judges will feel obligated, in all cases, to either hold a second full hearing or to simply decline in all cases to refer preliminary fact determinations to magistrates. Such a result would greatly delay the speedy disposition of cases.

The issue is also important because it may affect the fairness and outcome of the criminal trial. The determination of a motion to suppress evidence is often, as a practical matter, dispositive of the criminal charge, particularly when the prosecution lacks additional evidence to support the elements of the charge. Therefore, a system that allows the court to decide these motions merely on the basis of a written record may invite an intolerably high margin of error, offensive to due process of law. At issue also is the power of Congress to delegate judicial responsibilities to others than federal judges. This case may have a significant effect on future legislative attempts at judicial reform.

Arguments

For Petitioner, United States of America:

1. Legislative history indicates that the phrase "de novo determination" as used in 28 U.S.C. sections 636(b)(1)(B) and (C) does not mean that a judge must hold a second evidentiary hearing.

2. Article III of the Constitution does not prohibit reference of suppression motions to magistrates for evidentiary hearings when a federal judge appointed pursuant to Article III makes a subsequent de novo determination.

3. The referral of the suppression motion to a magistrate for an evidentiary hearing does not deprive a defendant of due process of law because the defendant's due process interest in the outcome of a suppression hearing is not the same as, or as strong as, his interest in the criminal trial itself, the de novo review process envisioned by the Federal Magistrate Act adequately protects against the admission of illegally-seized evidence at trial, and economic and administrative considerations justify the use of magistrates.

For Respondent, Herman Raddatz:

1. The intent of Congress in requiring a de novo determination was that the defendant has a right to an independent hearing at which live testimony is taken that is not prejudiced by the magistrate's suggested findings.

2. In deciding the defendant's motion to suppress, the district judge could not make an independent assessment of credibility in a manner consistent with due process without hearing and seeing the witness testify.

3. Raddatz was constitutionally entitled to a meaningful determination of his motion to suppress by an Article III judge. Congress has no authority to delegate, or allow for the delegation of, that responsibility to a non-Article III judicial officer. Only if an Article III judge actually hears the testimony will the defendant's constitutional rights be protected.

NAVARRO SAVINGS ASSOCIATION v. LAWRENCE F. LEE, JR., et al. (Docket No. 79-465)

Diversity jurisdiction — Citizenship of a business trust

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit. Decision below: 597 F.2d 421 (1979)

Analysis prepared February 15, 1980, by Jeffrey A. Parness, Assistant Professor of Law, University of Akron School of Law, Akron, OH 44325; telephone (216) 375-7331

Issue

For diversity purposes, what is the manner of determining the citizenship of a profit-oriented, unincorporated business trust operated by trustees who are elected by the trust's beneficial shareholders?

Facts

Eight individuals, all non-Texas citizens and trustees of Fidelity Mortgage Investors ("FMI"), a Massachusetts business trust, commenced an action as representatives of FMI in a federal district court against the Navarro Savings Association ("Navarro"), a corporate citizen of Texas. FMI was a profit-oriented business trust whose principal purpose was the investment of trust assets in obligations secured by mortgages on real property or other rights or interests in real property. According to the Declaration of Trust that created FMI, the trustees were given the general power to perform whatever acts were necessary, in their sole judgment and discretion, for carrying out the purposes of the trust or con-

ducting its business. Specifically, the trustees were given the power to collect, sue for, and receive all sums of money coming due to the trust, and to prosecute, join, defend, compromise, abandon, or adjust any actions, suits, claims, demands, or other litigation relating to the trust, the trust estate, or the trust's affairs. Pursuant to the Trust Declaration, the approximately 9,500 shareholders were deemed the equitable beneficiaries of the trust, had the authority to elect and remove trustees, possessed the right to approve any sale or disposition of assets comprising more than half of the trust estate, and could freely transfer their shares as personal property.

In the instant case, the trustees sought damages for Navarro's alleged fraud and breach of a contract to make a loan. Finding the citizenship of the FMI shareholders rather than of its trustees the determinative factor, the trial court dismissed the action for want of jurisdiction under the general diversity statute. The court of appeals reversed, finding the citizenship of the FMI trustees determinative due to the trustees' power to sue and be sued on behalf of the trust, as well as to their actual control of the trust.

Background and Significance

The debate regarding the citizenship of corporations for purposes of diversity jurisdiction seemingly ceased long ago when the Supreme Court established a presumption that all stockholders of a corporation are citizens of the state of its incorporation. This presumption, though today only a fiction, is recognized as having dramatically impacted upon federal diversity jurisdiction by ex-

Continued on page 8