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Family Law--Alimony and Property Restoration--A Restatement

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reader is probably wondering how difficult it would be to bring such a plan into effect and more likely than not, may view this plan in a pessimistic manner. However one's attitude may be changed upon examination of the realistic steps that have already been taken by some states, even before the decision in Tate was rendered. A recent statute enacted by Delaware,[59] whereby a person is placed in a specific means of employment which enables him to adequately satisfy his fine, could well serve as a model for future state legislatures to follow.

The installment or deferred method of payment satisfies all the relevant factors which need to be taken into consideration. The state is economically benefited. Penological interests and sentencing motivations are advanced. More important, however, the indigent defendant's constitutional rights are protected. Under such an alternative plan, the indigent receives equal treatment—he has a choice!

John W. Oakley

FAMILY LAW—ALIMONY AND PROPERTY RESTORATION—A RESTATEMENT. —The problems of divorce, alimony,[1] and property settlement are drawing increasing attention as legalists and theologians alike begin

[59] DEL. CODE ANN. tit. 11, § 4106(b) (Supp. 1970). This statute reads in pertinent part as follows:

> Where a person sentenced to pay a fine, cost or both, on conviction of a crime is unable or fails to pay such fine, costs or both, at the time of imposition of sentence or in accordance with the terms of payment set by the court, the court may order the person to report during regular work days to the Director of Division of Corrections of the Department of Health & Social Service, or a person designated by him, for work for a number and schedule of days necessary to discharge the fine imposed. The Division may approve public work projects for assignment of convicted persons. . . . The Director of the Division, or a person designated by him, may also assign a convicted person to a private employer provided the private employer shall compensate the convicted person at a rate of pay no less than that normally paid to employees performing the same or similar services for such an employer. The Division of Corrections shall compensate any convicted person assigned to work under the supervision of any State, County or municipal agencies at a rate of pay equal to that normally paid to employees performing the same or similar services . . . The Division shall withhold from or require payment from the periodic earnings of the convicted person all amounts not deemed by the Division to be required to sustain the convicted person. . . . The amount withheld shall be paid over to the State to be applied to the fine and costs imposed until fully paid.

[1] "Alimony" is derived from the Latin *alimonia,* literally "sustenance." It is used to denote that amount of money paid by one spouse (usually the husband) to the other for support during and/or after a divorce proceeding. W. WINTER, THE NEW CALIFORNIA DIVORCE LAW 81 (1969). *See also* 24 AM. JUR. 2d *Divorce and Separation* § 600 (1966).

to realize that the archaic rules inherited from the ecclesiastical courts of common law England are, at most, of questionable value. The recent case of *Colley v. Colley*[2] purports to "correct, clarify, and restate"[3] that area of the law as it is used and abused in Kentucky. The worth of this restatement can only be adequately measured by objectively comparing it with recent attempts in other jurisdictions to cope with these problems.

While the *Colley* case is not entirely typical of most divorce litigation,[4] the facts in the case do reflect the recurring themes that appear to thread their way through case after case in this area of the law. The Colleys had been married for twenty-two years and had two children, one in college, the younger at home. Mr. Colley was an elected official of the county, and had interests in several small businesses in the area. Mrs. Colley had taught school for eighteen of her twenty-two married years and had contributed her earnings of $38,991.78 to household maintenance. The fundamental cause of the marital breakdown is virtually impossible to determine from the record, however the significant judicial conflict was centered around the basic questions of alimony and property settlement.[5] In essence, the trial judge determined what value would be assigned to Mr. Colley's estate ($148,800) and then awarded his wife one-third in lump-sum alimony,[6] a one-half interest in their residence, and child support. Mr. Colley appealed on the grounds that the award was excessive. The Court allowed his appeal and remanded the case for a redetermination of the financial obligations of the parties on the evidentiary issue of the trial judge's improper use of judicial notice in the determination of value of Mr. Colley's estate. The Court did not stop there however: "We have concluded that we should reconsider the contradictory, confusing, and unrealistic state of our case law in this field as it has painfully developed. We propose to redefine the guidelines for the trial bench and the practicing bar to follow." In examining this reconsideration of the law, it is necessary to first take a brief look at

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[2] 460 S.W.2d 821 (Ky. 1970).

[3] *Id.* at 823.

[4] Actually, most couples cannot afford divorce, and while it is true that the upper-middle, and upper class divorce cases draw the most public attention (and are more likely to end up in the Court of Appeals) the fact is that the vast majority of marital breakdowns occur in families of the lower income ranges. Additionally, it is also a fact that a majority of divorces occur during the first few years of marriage, with year number three being the peak year. Foster and Freed, *Divorce American Style*, 383 ANNALS 71, 82 (1969). *See* M. PLOSCOWE, THE TRUTH ABOUT DIVORCE 194 (1955).

[5] Ploscowe, *Alimony*, 383 ANNALS 13, 14 (1969).

[6] *Id.* at 18; *see* K. and I. DONNELSON, MARRIED TODAY, SINGLE TOMORROW 111 (1969); Hofstadter and Herzog, *Common Sense About Alimony*, HARPER'S MAGAZINE, May, 1958, at 68-70 [hereinafter cited as Hofstadter and Herzog].

divorce, alimony, and property settlements as they came to us from English common law.[7]

"In England, from the early seventeenth century until 1857, there was no absolute divorce [*a vinculo*] except by act of Parliament."[8] Divorce *a mensa et thoro,* legal separation, was obtainable in the ecclesiastical courts, and alimony was often granted to the needy wife incident to such a decree.[9] In these cases, the marriage continued to exist and, consequently, the husband's obligation to support remained. This duty to support the wife arose from the particular property laws of the time, under which the husband was given control over all the real property owned by the wife before marriage, or acquired subsequently.[10] Because he was legally entitled to all rents and profits from that realty, the wife was virtually helpless without his support. The courts imposed this obligation on the husband, and since the usufruct privilege (control of the rents and profits) was not altered by the granting of a divorce *a mensa et thoro,* the courts reasoned that the husband's support obligation incurred at marriage should likewise continue.[11] This obligation was discharged in the form of periodic payments called alimony. Thus, the concept of alimony was tied only to the divorce *a mensa et thoro* and the husband's duty of support. In the case of a divorce *a vincula,* the husband's control over his former wife's property was destroyed, and along with it, his correlative duty to support her.[12] When this concept of alimony was incorporated by the American judiciary, it became appreciably altered.[13] The development of alimony in Kentucky is concisely traced in Judge Osborne's dissenting opinion in *Reed v. Reed.*[14] The original statutes were properly interpreted at first to be a grant of power to the Court to award alimony only after a legal separation, not after an

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[7] For a complete historical analysis and tracing of the development of divorce law, see Foster and Freed, *supra* note 4, at 71-88.

[8] Mueller, *Inquiry into the State of a Divorceless Society,* 18 U. PITT. L. REV. 545, 550-51 (1957); *see also* 2 H. FOSTER and D. FREED, LAW AND THE FAMILY, vi-vii (1966) [hereinafter cited as FOSTER-FREED].

[9] FOSTER-FREED at vii; Comment, 28 KY. L.J. 233-34 (1939-1940). *See also* Reed v. Reed, 457 S.W.2d 4, 12 (Ky. 1969).

[10] *See* Paulsen, *Support Rights and Duties,* 9 VAND. L. REV. 709-10 (1956).

[11] FOSTER-FREED at vii. *See also* Reed v. Reed, 457 S.W.2d 4, 12 (Ky. 1969); Ploscow, *supra* note 4, at 184.

[12] *See generally,* Foster and Freed, *supra* note 4, at 72-73.

[13] FOSTER-FREED at vii.

Apparently, without much consideration being given to the reciprocal aspect of alimony, American courts adopted and applied that obligation to the totally different situation of an absolute divorce and to cases where there was no actual need. The fact that Married Women's Property Acts and similar legislation had changed the legal status of wives so that no longer did husbands by marriage acquire ownership, control, or management of their property, was disregarded.

[14] 457 S.W.2d 4, 12-15 (Ky. 1969).

absolute divorce. The 1852 statute[15] (essentially the same as section 403.060 of our present Kentucky Revised Statutes [hereinafter cited as KRS] allowed only a restoration of property and a limited property settlement after a divorce decree. The case of *Canine v. Canine*[16] in 1891 substantially altered this by allowing, for the first time, periodic alimony payments where the husband did not have an estate large enough to support a fair property settlement. This case now appears[17] to have been a basic misinterpretation of the law. By interpreting "estate" so as to include the husband's future earning potential, the Court succeeded in confusing the two areas of property settlement and alimony to the point where, eighty years later, the same Court felt compelled to devote almost an entire opinion to an attempt to "clarify" the situation.

Just what does the *Colley* opinion say? The Court first notes the two modern statutes which "have been the sources of the difficulty:"[18] KRS § 403.060(1), the "alimony statute," and KRS § 403.065—the "restoration of property statute." The Court's proposition is this:

> [O]ur construction of the restoration of property statute is as impermissibly narrow and overextended as our construction of the alimony statute is overexpansive and not warranted by the statutory language.[19]

The explanation of this thesis forms the basis for the guidelines laid down subsequently in the Court's opinion.

In stating that the alimony statute is overexpanded and unwarranted by the wording itself, the Court refers to Judge Osborne's dissent in *Reed.* It was his conclusion that since the *Canine* case, the alimony statute has been judicially distended far beyond its original legislative boundaries.[20] In the case of *Davis v. Davis* the Court awarded alimony to the wife, even though the divorce was granted to her husband. This was in conflict with the statute, as it allowed alimony only "on a divorce obtained by her." Then, in *Tilton v. Tilton*[21] the Court went even further by holding that if the wife is granted the divorce, alimony

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[15] Upon final decree of divorce from the bonds of matrimony, the parties shall be restored such property, not disposed of at the commencement of the suit, as either obtained from or through the other before or during the marriage, in consideration or by reason thereof; and if the wife have not sufficient estate of her own, she may, on a divorce obtained by her, have such allowances out of that of her husband as shall be deemed equitable. THE REVISED STATUTES OF KENTUCKY, ch. XLVII, Art. III, & 6 (1852).

[16] 16 S.W. 367 (Ky. 1891).

[17] Acknowledgment to that "modern" phenomenon of "20-20 hindsight."

[18] Colley v. Colley, 460 S.W.2d 821, 825 (Ky. 1970).

[19] *Id.* at 825.

[20] Reed v. Reed, 457 S.W.2d 4, 14 (Ky. 1969).

[21] 29 S.W. 290 (Ky. 1895).

follows as a matter of right.[22] This completely ignored the statutory provision that the wife must not have sufficient estate of her own.[23]

The case of *Heustis v. Heustis*[24] is cited in the *Reed* dissent as an example of the result of this continued judicial expansion of the alimony statute. In that case, the husband was granted the divorce from his wife who had made no legal contribution to his estate through work or money. And yet, the Court gave the wife one-third of the husband's estate in alimony. Judge Osborne concludes in *Reed*: "The *Heustis* case is so completely in conflict with the statute as to make the two irreconcilable."[25]

This over-expansion of the alimony statute beyond its original bounds did not, however, take place in a vacuum. It can be traced directly to the narrow interpretation and over-extension of the restoration of property statute. The restoration statute was an attempt by the legislature to soften the harsh impact of the common law on the property rights of married women. The husband, under the common law property rules, was said to "own" his wife's personal property,[26] and thus, upon dissolution of the marriage, the property would go to the husband because he had legal title. All the statute sought to do was require that each spouse return gifts received from the other by reason of the marriage (this would obviously include the wife's realty). Thus, the over-all goal was to put each spouse back, as nearly as possible, in his or her original condition.[27] The case law, however, went beyond this narrow construction and proceeded to extend coverage of the statute to that property acquired by a joint effort of both parties during the marriage.[28] Because the wife's earnings usually go toward family expenses and thus help the husband to save his money for property investment,[29] the legal or titular interest in the property is often in him. Accordingly, extending the statute to a coverage of this property would necessarily lead to a restoration and vesting of

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[22] "We understand the rule to be that, in an action for divorce, the right to alimony will follow if the wife is granted the divorce. . . ." Tilton v. Tilton, 29 S.W. 290 (Ky. 1895).

[23] Reed v. Reed, 457 S.W.2d 4 (Ky. 1969). The court stated:

> Because of confusion as to the nature of the award being made and by extending the rules originated in the *Tilton, Davis,* and *Canine* cases, the court became more lax in its awards of alimony and paid less and less attention to the provisions of the Act itself. *Id.* at 14.

[24] 346 S.W.2d 778 (Ky. 1961).

[25] Reed v. Reed, 457 S.W.2d 4, 15 (Ky. 1969) (footnote omitted).

[26] Paulsen, *supra* note 10, at 709.

[27] R. PETRILLI, KENTUCKY FAMILY LAW 359 (1969); *see* Cooke v. Cooke, 449 S.W.2d 216 (Ky. 1969).

[28] *See, e.g.,* Woford v. Woford, 103 S.W.2d 296 (Ky. 1937).

[29] *Id.* at 299.

complete title in the husband, even though the wife had substantially, but indirectly, contributed to its acquisition.

Faced with this impossible situation, the Court began to look about for different ways to circumvent this unintended application of the statute. If it could not equitably divide the estate in the property settlement, the Court soon found that it could expand the alimony statute so as to make the overall settlement more fair.[30] Thus, the narrow interpretation and over-extension of the restoration of property statute led directly to the over-expansion of the alimony statute in an effort to compensate.[31] This resulted in creating the "legal fictions" noted and explained by the Court in the *Colley* opinion.[32]

In an attempt to provide an accurate construction of the statutory provisions, the Court in *Colley* set forth certain basic guidelines for trial judges to follow in this alimony-property settlement area. Briefly stated, the steps are:

(1) A division of property acquired by the joint efforts of both parties. This type of property is acknowledged not to be covered by the restoration statute[33] because it is essentially a modern phenomenon, unforeseen to the framers of our 120 year old constitution. The standard for such division is that which is just and reasonable.[34]

(2) A decision of whether to award alimony or not is then made. Factors to be considered:

a. The wife must not be at fault.[35]

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[30] "From the standpoint of restoration alone, it is our opinion that this was an excessive return to [the husband]. Nevertheless, the matter of ultimate importance is the over-all division, including both property settlement and alimony." Goldstein v. Goldstein, 377 S.W.2d 52, 56 (Ky. 1964).

[31] Heustis v. Heustis, 346 S.W.2d 778, 780 (Ky. 1961):

> That a wife who makes the home, raises the children, gives succor and moral support to the husband and aids him in saving and investment of his money, but who does not directly convert any individual effort or earnings into the form of property, in the event of divorce has no interest in the property accumulated through the husband's earnings during the marriage is a travesty made tolerable *only by the judicial power to correct it in the form of alimony.* (emphasis added). *See generally,* FOSTER-FREED at x.

[32] (1) If the wife is or should have been granted the divorce, she gets alimony as a matter of right (ignoring the requirement of insufficiency of her own estate).

(2) Fault is not important in the determination of permanent alimony (ignoring the requirement that she be granted the divorce).

(3) Even if the husband is granted the divorce, if the wife is free from moral delinquency she is still entitled to one-third of his estate in a lump-sum alimony and property settlement (confusing the no-fault concept of dividing joint property with the fault concept of compensation to the wronged wife).

[33] Cooke v. Cooke, 449 S.W.2d 216, 218 (Ky. 1969).

[34] *Id.; see* 2 NELSON ON DIVORCE § 14.138, at 190 (1961 Revision).

[35] The Court says here that this means she must be "entitled" to the divorce, but a literal interpretation of the statute itself (as the Court seems to be calling for) would permit alimony to be awarded only "on a divorce obtained by her".

b. She must not have a sufficient estate of her own.[36]

(3) And finally, if the conditions required for the allowance of alimony are met, the amount of such award must then be determined. Here the Court allows the trial judge considerable discretion, as it is he who must hear and balance all the relevant factors, such as the amount of the husband's estate, the wife's financial condition, their earning capacities, ages, health, and the existence of minor children, etc.

Given this basic three-step outline to follow in determining the financial obligations of the parties to a divorce, it is reasonably clear that some greater degree of uniformity and adherence to the statutory language will be achieved at the trial level. But what does this mean to the average husband and wife in this state who no longer wish to be married? The conclusion is inescapable that the Court of Appeals has done nothing to relieve the inequities apparent under the present state of our divorce law. Bound by that written law, it is admitted that the Court could not, in *Colley*, call for total disregard of the statutes in deference to a more equitable judicial standard;[37] but it would appear that the Court could have taken note of the more glaring deficiencies in the hope of calling timely legislative attention to the matter. By failing to do so, it appears the Court is seeking the path of least resistance in trying to avoid a legislative conflict. In calling for a return to the 1852 standard, the Court has effectively turned its back on basic changes in the structure of our society in the past 120 years.[38] The objectives of continuity and stability in our divorce law may be achieved, but the cost, in terms of justice denied to the parties involved, will be high.

Exactly what form this badly needed re-casting of our divorce law

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[36] Insufficient to mean that she is incapable of leading her normal life upon the interest alone.

[37] *But see* J. Palmore's concurring opinion in Reed v. Reed, 457 S.W.2d 4, 11 (Ky. 1969):

> Despite the literalism of the particular statute, the legislature has also deliberately vested jurisdiction in matters of divorce and alimony in equity courts for a long time. That the powers of equity have always been adapted to meet social problems and changes as they arise is an established tradition which cannot be regarded as completely unknown to the legislative branch.

[38] Without intending to do so, the Court may actually have taken a big first step toward long needed reform by announcing a return to the literal wording of the alimony and restoration statutes as they were originally written almost 120 years ago. A conceivable result of such action would be that the trial bench, suddenly denied the use of the discretionary alternatives built up within the judiciary since Canine, will find itself bound by a rigid, impossibly outdated set of rules. Nothing, it seems, could be more conducive to setting the balky legislative process in motion than this potential coalition of frustrated trial judges, lawyers, husbands and wives.

should take is a proper matter for extensive legislative debate, and beyond the scope of this comment. But there is one factor that is crucial to any meaningful improvement in this field of law *videlicet* the elimination of *fault* as an element of consideration by the Court in divorce proceedings.[39] The traditional requirement that one party in the suit be deemed to be "at fault" has been severely criticized on several grounds:

(1) Fault is a relative, purely subjective standard, and as such, is meaningless.[40] It is common for each party to be at least partly responsible for breaking up a marriage, and any effort to base an alimony award on allocating the fault to one party rather than the other may result in an extremely inaccurate oversimplification.[41]

(2) The necessity of establishing fault changes the complexion of the divorce suit from civil to criminal. Fault necessarily incorporates the idea of "punishment." If the errant husband is to be punished by rewarding the suffering wife, he would be better off in a criminal court where he would have access to the benefit of a jury, due process procedures, and maximum penalties established by the legislature. "In contrast, virtual confiscation of property and judge-set penalty are the rule in property settlements of divorce."[42]

(3) The requirement that fault be established may actually contribute to the high divorce rate by making it extremely difficult for the divided couple to reconcile their differences. One experienced marriage counselor has estimated that half of the couples who initiate divorce proceedings actually hope something will stop them before it's

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[39] Foster and Freed, *supra* note 4, at 85-86, hold the view that more progress is likely to come in the area of adding non-fault grounds to already existing fault grounds, than in the abolishment of fault divorce altogether. This is based on the notorious legislative resistance to change, or if it is inevitable, to change as little as possible. However, it should be noted that since the publication of that article, both California and Great Britain have replaced their antiquated fault-oriented laws with a modern, no-fault approach. *See* Hayes, *California Divorce Reform: Parting is Sweeter Sorrow,* 56 A.B.A.J. 660 (July, 1970).

[40] *See* Winter, *supra* note 1, where the author stated:

> For example, I have represented a number of women who complained that they were driven crazy by their husband's demands for cleanliness. One of my client's ex-husbands used to mop the kitchen floor as soon as he got home. He even went to the point of getting down on his hands and knees and combing the carpeting in the bedroom. My client felt she was the laughing stock of the neighborhood because her husband would sweep the entire street in her block. . . .
>
> Another woman might think this antiseptic man her perfect mate, particularly after she lived with a slob who only bathed once a month. *Id.* at 89-90.

[41] Annot., 1 A.L.R. 3d 28 (1965). *See also* Hayes, *supra* note 39, at 660-61.

[42] Daggett, *Division of Property Upon Dissolution of Marriage,* 6 LAW AND CONTEMP. PROB. 225 (1939). *See* Ploscowe, *supra* note 4, at 192-93, 200; DONNELSON, *supra* note 6, at 109.

too late.[43] But the need for placing the blame forces both parties to dredge up long forgotten or forgiven incidents to prove the other spouse was at fault, effectively stifling any conciliatory lines of communication which might otherwise develop.[44]

(4) The basing of financial obligation after marriage dissolution upon fault is inherently inequitable, for a "guilty" wife may need help just as much as the "innocent" one, and a "guilty" husband may be just as unable to pay the alimony as an "innocent" one.[45]

(5) The assessment of fault upon one of the parties is not at all requisite to the proper granting of divorce and settlement of financial responsibilities. All that can be shown by establishing fault is that the spouses had marital difficulties which were insoluble. Proof of that can clearly be established without making one of the parties to blame.[46]

In recent years, several jurisdictions have re-organized their divorce laws around this no-fault concept.[47] California's century-old laws based on fault were discarded in 1969 and replaced with a statute listing only two grounds for divorce—"incurable insanity" and "irreconcilable differences."[48] And in the Divorce Reform Act 1969, the English Parliament took a surprisingly similar position by refusing to place the blame of fault on either of the parties.[49]

It is evident that fault as a basis for granting divorce, while perfectly logical to the ecclesiastical courts of sixteenth and seventeenth century England, is no longer in accord with the prevailing social forces in twentieth century America. For the highest court in this commonwealth to attempt a redefinition of that area of our law without at least calling attention to the problem of fault is difficult to understand. The need for reform is urgent. Even with a no-fault system, problems will remain.[50] But these could be worked out in a timely

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[43] *See, e.g.*, Hofstadter and Herzog *supra* note 6, at 70.

[44] Hayes, *supra* note 39, at 660.

[45] For a discussion of various factors, other than fault, to be considered in an award for alimony, *see* 1 A.L.R. 3d 25-27 (1965).

[46] Hayes, *supra* note 39, at 660.

[47] For earlier cases in other jurisdictions, see Fried v. Fried, 84 S.E.2d 576 (Ga. 1954); Richards v. Richards, 355 P.2d 188 (Hawaii 1960); Waters v. Waters, 62 A.2d 250 (Md. 1948).

[48] Hayes, *supra* note 39, at 660; *see* WINTER, *supra* note 1, at 40.

[49] Levin, *The Divorce Reform Act 1969*, 33 MOD. L. REV. 632 (1970).

> The 'sole ground' on which a petition for divorce will be granted is that the 'marriage has broken down irretrievably.' Breakdown will be held to exist only where petitioner 'satisfies' the court of one of the five facts or conditions listed in § 2(1). [Adultery, behavior terminating the duty to cohabit, and three types of separation] . . . It must be emphasized that the Act does *not* require proof that the existence of one of the five conditions was a *cause* of the marriage breakdown. Indeed it is widely accepted that matrimonial offenses . . . are generally a symptom not a cause of breakdown. *Id.* at 633-34.

[50] *See* Foster and Freed *supra* note 4, at 87-88.

and efficient manner, once a rational basis for divorce law is established.

> Under medieval law there was a kind of rough-and-tumble justice by ordeal in which the parties stood with their arms crossed over their breasts and the one who endured the longer was declared the winner. We are still too close to this kind of justice in our divorce cases. Alimony will never be an easy problem to solve, but we can help both husbands and wives by bringing our alimony customs up to date.[51]

George A. Smith

WIRETAPPING—POWER OF UNITED STATES ATTORNEY-GENERAL TO AUTHORIZE WIRETAPPING WITHOUT JUDICIAL SANCTION.—The Federal Constitution has established, in the Bills of Rights, certain precious and delicate freedoms which are the heritage of every citizen of the United States. The founders of this country have entrusted the duty of interpreting the scope of these rights solely to the judiciary. Being in the ostensibly objective position of arbiter, the judiciary must define the nature of each of these personal protections. Perhaps the most sensitive of these delicate freedoms is the freedom from unreasonable searches and seizures guaranteed by the fourth amendment. Conflicts have arisen where a government official in a more or less subjective position has attempted to define the extent of this freedom. The United States Court of Appeals for the Sixth Circuit faced this very problem in *United States v. United States District Court for the Eastern District of Michigan, Southern Division.*[1]

The defendants in this case were indicted for conspiring to commit the destruction and depredation of government property.[2] Before the

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[51] Hofstadter and Herzog, *supra* note 6, at 70.

[1] No. 71-1105 (6th Cir. April 8, 1971).

[2] The defendants were indicted under 18 U.S.C. § 371 (1964) and 18 U.S.C. § 1361 (1964). The pertinent part of section 371 reads:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Section 1361 reads:

> Whoever willfully injures or commits any depredation against any property of the United States, or of any department or agency thereof, or any property which has been or is being manufactured or constructed for the United States, or any department or agency thereof, shall be punished as follows:
> If the damage to such property exceeds the sum of $100, by a fine of not more than $10,000 or imprisonment for not more than 10 years, or both;

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