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THE MANN ACT—LIMITED IN THE SECOND CIRCUIT?

Application of the Mann Act seems to be one of the more difficult tasks in administering justice under federal criminal law. The Mann Act, or as it is formally titled, the White Slave Traffic Act, has had a very troubled history of conflicting interpretations by the federal courts. The sweeping interpretation generally given the Act has been attacked sporadically in dissents since its passage in 1910. The recent case of *United States v. Ross*[1] illustrates the problem of interpretation which has been plaguing the federal courts for almost half a century.

In the *Ross* case, defendant transported Nelda Bogart, a prostitute of the call girl variety, from New York City, where she plied her trade, to Newark, New Jersey, for the weekend. In Newark, defendant and Nelda occupied an apartment as Mr. and Mrs. Ross from Saturday afternoon until Sunday evening when defendant took Nelda back to New York where she resumed her regular practice of prostitution. The indictment alleged violations of the Mann Act in that defendant transported Nelda from Newark to New York for the purpose of prostitution. Ross was convicted in the district court and appealed. The Court of Appeals for the Second Circuit, in an opinion by Judge Medina, reversed the decision below and dismissed the indictment on the grounds that the weekend trip had to be viewed as a unit and that if the trip to Newark was lawful, the return trip could not be made unlawful by arbitrarily splitting the trip into two segments. Judge Medina also reasoned that there was no evidence that defendant had paid Nelda for her services on the weekend and, "even if appellant had paid Nelda it would make no difference, as the charge is not that he took her to Newark for immoral purposes, but rather that he transported her from Newark to New York 'for the purpose of prostitution.' "[2]

The report of the case states that "indictment alleged violations of the Mann Act, 18 U.S.C. section 2421."[3] This section states: "Whoever knowingly transports in interstate or foreign commerce . . . any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose . . . Shall be fined not more than $5000 or

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[1]257 F.2d 292 (2d Cir. 1958).

[2]Id. at 293. It seems unnecessary to discuss the mercenary motive in that the point is well-settled that no pecuniary gain on the part of the woman is necessary for a conviction under the Mann Act. Brown v. United States, 237 F.2d 281 (8th Cir. 1956).

[3]257 F.2d at 292.

imprisoned not more than five years, or both."[4] It appears to be a fair assumption that an allegation of violation of this section would implictly include an allegation against defendant that he transported Nelda either for the purpose of "prostitution or debauchery, or for any other immoral purpose." The occupation by the defendant and Nelda of the Newark apartment "as Mr. and Mrs. Ross"[5] indicates immoral conduct, if not debauchery, on the part of Nelda at the point of destination.[6] Following this reasoning, it appears that Judge Medina could have sustained the conviction of the trial court on the theory that the purpose of the whole trip was unlawful; that is, the first leg of the trip was for the purpose of debauchery, and the second leg of the trip was for the purpose of prostitution.[7]

Also, the point brought out by Judge Medina that the indictment charged the defendant took Nelda from Newark to New York and not that he took her from New York to Newark is, it is submitted, of no consequence because the indictment need only show that the commission of the offense took place within the territorial jurisdiction of the court.[8] Moreover, since a violation of the Mann Act takes place when the state line is crossed,[9] the violation would be the same irres-

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[4]White Slave Traffic Act (Mann Act) § 2, 36 Stat. 825 (1910), 18 U.S.C. 2421 (1952).

[5]257 F.2d at 292. In a 1920 case the court emphasized that registering at a hotel as man and wife was material in sustaining a conviction under the Mann Act. Carey v. United States, 265 Fed. 515 (8th Cir. 1920).

[6]The courts have drawn no distinction between commercial prostitution and debauchery when considering the purpose of the interstate transportation in determining if a violation of the Mann Act has occurred. This is illustrated by the language in Brown v. United States, 237 F.2d 281, 283 (8th Cir. 1956), in which the court said, "The language of Section 2421, Title 18 U.S.C., in our opinion, covers the interstate transportation, without pecuniary motive, of a woman with intent to have illicit relations with her by force or otherwise. As the Supreme Court said in the Caminetti case, ... 'To say the contrary would shock the common understanding of what constitutes an immoral purpose when those terms are applied, as here, to sexual relations.'" (Citations omitted.) The following cases have sustained convictions for interstate transportation of women for devious purposes other than prostitution: Long v. United States, 160 F.2d 706 (10th Cir. 1947) (immoral practices); United States v. Lewis, 110 F.2d 460 (7th Cir. 1940) (girls appearing in carnival sideshow). See also Hunter v. United States, 45 F.2d 55 (4th Cir. 1930) (purpose of transportation need only be for sexual intercourse).

[7]It may be that a valid ground for reversal of the conviction is that the Government's evidence failed to support the precise offense changed, i.e., interstate transportation for the purpose of prostitution. However, Judge Medina's opinion seems to put the reversal on a broader ground as laid down by the United States Supreme Court in Mortensen v. United States, 322 U.S. 369 (1944) (splitting the trip).

[8]Butler v. United States, 197 F.2d 561 (10th Cir. 1952).

[9]Batsell v. United States, 217 F.2d 257 (8th Cir. 1954); Ellis v. United States, 138 F.2d 612 (8th Cir. 1943); Neff v. United States, 105 F.2d 688 (8th Cir. 1939).

pective of the direction of travel in that the defendant would cross the same state line whether he were going from New York to New Jersey, or vice versa.

In reaching his decision Medina relied heavily upon *Mortensen v. United States,*[10] in which the Supreme Court of the United States reversed the conviction of the lower court. In *Mortensen,* the defendants, a man and his wife, were the proprietors of a house of prostitution. Two of their girl employees accompanied them on an interstate vacation. During this time the girls committed no immoral act, the trip being solely for recreational purposes. Upon their return, the girls resumed their practice of prostitution in defendant's employ. The lower court convicted the defendants on the theory that the return trip to the place of origin violated the Mann Act. In reversing the lower court's conviction, the United States Supreme Court stated: "Whatever their faults, petitioners are entitled to have just and fair treatment under the law and not to be punished for transporting girls in interstate commerce for a purpose wholly different from any of the purposes condemned by Congress."[11] The court reasoned that the purpose of the whole trip—a vacation—was not the type that Congress intended to condemn, and that the trip should be viewed as a unit and not arbitrarily split in order to impute a criminal purpose to the return trip when a lawful purpose existed upon the embarkation.

Judge Medina in rendering his decision states that "the Supreme Court in an unbroken line of decisions on the *precise* point has held that the trip to and fro must be taken as a unit. It cannot be split up into two trips."[12] while this statement is correct as such, there is a factual distinction between the principal case and the "unbroken line of decisions" relied upon by Judge Medina. In the case cited in *Ross* as supporting this statement there was no evidence of any immoral conduct on the part of the parties transported during the course of the trip. However, in the principal case defendant and Nelda presumably engaged in immoral conduct. Therefore, the decision of the Supreme Court relied upon as being binding authority in the principal case was distinguishable on the precise point which confronted the court in the *Ross* case. Furthermore, in view of the fact that the original pur-

[10]322 U.S. 369 (1944). The court also cited Oriolo v. United States, 324 U.S. 824, reversing 146 F.2d 52 (3d Cir. 1944), as supporting its decision. Oriolo is similar to Mortensen in that the trip taken by defendant was merely a day's outing to Atlantic City, New Jersey, during the course of which no immoral acts were committed by defendant or his companion.

[11]322 U.S. at 376.

[12]257 F.2d at 293. (Emphasis added.)

pose of the trip was immoral, the necessity of splitting the trip in order to find an unlawful purpose no longer exists. It is submitted that the conviction could be upheld notwithstanding the necessity of viewing the trip as a unit, in that the purpose of the *whole* trip was immoral.

Judge Medina in this case has given a limited application to the Mann Act, thereby placing this case in the rare minority which have applied the Mann Act in accord with the intent of Congress as evidenced in part by the formal title of the Act, i.e., the White Slave Traffic Act. Further indication of the congressional intent to thwart wide-scale commercialized prostitution can be seen in the House and Senate Reports: "The legislation is needed to put a stop to a villainous interstate and international traffic in women and girls.... It does not attempt to regulate the practice of voluntary prostitution, but aims solely to prevent panderers and procurers from compelling thousands of women and girls against their will and desire to enter and continue in a life of prostitution."[13]

The federal courts have by interpretation converted the Mann Act into a statute governing the conduct of individuals engaged in infrequent, non-commercial immoralities—the exact converse of the purpose of the Act as intended by its framers. With the decision in *Athanasaw v. United States*[14] in 1912, the door was opened for courts to turn the Mann Act into "merely a means of trapping a few non-commercial minnows, while the sharks of commercialized vice carry on their predatory work with impunity and immunity."[15] In *Athanasaw*, a theatre operator was convicted under the Mann Act for supplying train tickets to a girl in order that she could come to Florida to dance in the chorus at defendant's theatre. In affirming the conviction the court said that "the employment to which she was enticed was an efficient school of debauchery of the special immorality which... the statute was designed to cover."[16] Though defendant asked the person transported to "become his girl,"[17] the only other evidence of prostitution, debauchery, or any other immoral purpose in this case was

[13]H.R. Rep. No. 47, 61st Cong., 2d Sess. 9 (1909); S. Rep. No 886, 61st Cong., 2d Sess. 14 (1910).

[14]227 U.S. 326 (1913). A later case held that the transportation of the girls to dance in a house of ill-repute was sufficient to affirm a conviction under the Mann Act on the grounds that defendants "subjected them [the girls] to all the evil influences of such surroundings." The court said even though defendants expressly instructed the girls not to engage in the practice of prostitution the conduct of defendants was still of the type which the statute prohibited. Beyer v. United States, 251 Fed. 39, 41 (9th Cir. 1920).

[15]United States v. Jamerson, 60 F. Supp. 281, 284 (N.D. Iowa 1944).

[16]227 U.S. at 333.

[17]Id. at 329.

the cursing, drinking, and smoking of the other members of the cast. Such a sweeping interpretation of the language of the Act in the *Athanasaw* case led to conviction for a single instance of immorality on the part of one man and one woman in *Caminetti v. United States.*[18] The able dissent of Mr. Justice McKenna in *Caminetti* states a valid criticism of the broad judicial interpretation of the statute by pointing out that the court "should not shut its eyes to the facts of the world and assume not to know what everybody else knows. And everybody knows that there is a difference between the occasional immoralities of men and women and that systematized and mercenary immorality epitomized in the statutes graphic phrase 'White-slave traffic'. And it was such immorality that was in the legislative mind and not the other.... Interstate commerce is not its instrument as it is of the other, nor is prostitution its object or its end."[19]

The scope of the Mann Act was considerably broadened in 1924 by bringing into its coverage an interstate transportation of a girl for the purpose of an invalid marriage.[20] However, the peak of the crescendo of repeated interpretation contrary to legislative intent was reached in *Cleveland v. United States*[21] in which members of a religious sect were convicted for transporting their plural wives across a state line. The continued erroneous interpretation of the Mann Act by the judiciary is clearly brought out by Mr. Justice Murphy, dissenting in *Cleveland:*

> "The result here reached is but another consequence of this court's long-continued failure to recognize that the White Slave Traffic Act, as its title indicates, is aimed solely at the diaboli-

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[18]242 U.S. 470 (1917).

[19]Id. at 502.

[20]Burgess v. United States, 294 Fed. 1002 (D.C. Cir. 1924). Also in 1924 a defendant was convicted under the Mann Act for merely supplying railroad tickets to a woman in order that she could return from Boise, Idaho, to Spokane, Washington, to resume an illicit cohabitation with defendant. Corbett v. United States, 299 Fed. 27 (9th Cir. 1924).

[21]329 U.S. 14 (1946). This case seems to have reached a result more repugnant to legislative intent than any other decided in the past. The courts themselves speak of a requisite intent on the part of defendant to engage in immoral practices or a requisite immoral intent as a purpose in making the interstate trip. Dunn v. United States, 190 F.2d 496 (10th Cir. 1951); Langford v. United States, 178 F.2d 48 (9th Cir. 1949); United States v. Lewis, 110 F.2d 460 (7th Cir. 1940). If the transportation was not solely for an immoral purpose, such purpose must constitute one of the reasons for the transportation. Daigle v. United States, 181 F.2d 311 (1st Cir. 1950); Long v. United States, 160 F.2d 706 (10th Cir. 1947). However, in the Cleveland case immoral conduct on the part of the women transported was neither accomplished nor facilitated by the interstate transportation. In fact, the conduct in question was not even immoral viewed in the light of defendant's religion.