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# Monopolies - Combination and Conspiracy - Inducing Government Action - Constitutional Law - First Amendment - Right of Petition

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tude of vindictiveness and retribution is shifting to a more enlightened, humanitarian stance, and the goals of incarceration are now rehabilitative and corrective, not penal. But the decision taken by this Court could hardly be described as one which will be conducive to re-incorporating the ex-offender into society as a full and participating member. Ideally, these issues should be raised and settled by the legislature, but it is naive to suppose that state legislatures across the country are going to take the time and effort to alter existing legislation, and in many cases repeal and draft constitutional amendments, when their constituents care little for the lot of the ex-offender. In turning its back on the ex-felon and denying him the only realistic path for redress of his grievances, the Court makes a mockery of the concept of rehabilitation, leaving the "mark of Cain" indelibly impressed upon the ex-offender for life.

*Anne M. Nelson*

MONOPOLIES—COMBINATION AND CONSPIRACY—INDUCING GOVERNMENT ACTION—CONSTITUTIONAL LAW—FIRST AMENDMENT—RIGHT OF PETITION—The United States Supreme Court has held, in a private action under the Clayton Act, that a cause of action was stated where it was alleged that a group of interstate motor carriers conspired to monopolize trade and commerce in the transportation of goods by engaging in concerned activities to institute actions in state and federal courts and agencies to resist and defeat plaintiff's applications for operating licenses.

*California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972).

The respondents, highway carriers in California and plaintiffs below, filed a civil action under section 4 of the Clayton Act.[1] They sought injunctive relief and damages against petitioners, who are

1. 15 U.S.C. § 15 (1970) provides:
Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefore in any district court of the United States in the district in which the defendent resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

also highway carriers operating within, into and from California.[2] The amended complaint alleged that petitioners had conspired to put respondents and other competitors out of business. It was claimed that petitioners had combined their financial and other resources to carry out a systematic and constant program of bringing actions before the California Public Utility Commission, the Interstate Commerce Commission, and the courts. They allegedly opposed every one of respondents' requests or applications for certification under the public convenience and necessity provisions of the California Public Utilities Act,[3] appealing any ruling of that agency to the courts, all "with or without probable cause and regardless of the merits of the case."[4]

It was further alleged that, for this purpose, petitioners contributed to a special trust fund according to their respective yearly incomes, regardless of a contributor's interest in any particular application or request made by respondents.[5] Respondents finally alleged that petitioners' actions had deprived the courts and agencies of necessary facts and information, and that petitioners had defeated respondents' applications and requests only by their combination and conspiracy to oppose all such applications.[6]

The district court dismissed the complaint for failure to state a cause of action.[7] The circuit court of appeals reversed.[8]

## Prior Case Law

The two principal precedents in this area of antitrust law are *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*[9] and *United Mine Workers v. Pennington*.[10] In *Noerr*, the Supreme Court, for the first time, dealt with the applicability of the Sherman Act[11] to the combined efforts of members of a trade or

2. California Motor Transp. Co. v. Trucking Unlimited, 404 U.S. 508, 509 (1972).
3. Cal. Publ. Util. Code §§ 1061-73 (West 1956).
4. 404 U.S. at 512.
5. Trucking Unlimited v. California Motor Transp. Co., Trade Cas. ¶ 72,298 at 84,740 (N.D. Cal. 1967).
6. *Id.*
7. *Id.* at 84,746.
8. Trucking Unlimited v. California Motor Transp. Co., 432 F.2d 755 (9th Cir. 1970).
9. 365 U.S. 127 (1961).
10. 381 U.S. 657 (1965).
11. 15 U.S.C. §§ 1-2 (1970) provide in pertinent part that:
§ 1 Every contract, combination . . . or conspiracy, in restraint of trade or commerce

business to influence governmental action detrimental to their competitors. Noerr and other trucking companies complained that the railroads had financed a publicity campaign aimed at obtaining governmental action adverse to the business interests of the truckers.[12] The Court, in a unanimous opinion by Justice Black, reversed a judgment in favor of the trucking companies. The Court's opinion was based on the premise that no violation of the Sherman Act "can be predicated upon mere attempts to influence the passage or enforcement of laws."[13] There is no violation of the Sherman Act where the restraint results from valid governmental action rather than private action.[14]

In holding that the railroads' combined actions aimed at influencing legislative or executive action in regard to a law did not violate the Sherman Act, the Court explained that: (1) such an association and the resulting restraint would be dissimilar from the activity traditionally prohibited by the Sherman Act; (2) holding such activities violative of the Sherman Act would impair the ability of the government to act in its representative capacity by deterring the

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among the several States, or with foreign nations is declared to be illegal . . . .

§ 2 Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor . . . .

12. The Court noted:

The gist of the conspiracy alleged that the railroads had engaged [a public relations firm] to conduct a publicity campaign against the truckers designed to foster the adoption and retention of laws and law enforcement practices destructive of the trucking business, to create an atmosphere of distaste for the truckers among the general public, and to impair the relationship existing between the truckers and their customers. The campaign . . . was described in the complaint as "vicious, corrupt, and fraudulent," first, in that the sole motiviation behind it was the desire on the part of the railroads to injure the truckers and eventually destroy them as competitors . . . and secondly . . . the publicity matter circulated in the campaign . . . was largely prepared and produced by [the public relations firm] and paid for by railroads.

365 U.S. at 129-30.

The complaint also contained specific allegations of instances of the railroads' attempts to influence the passage of legislation, and a charge that the railroads had succeeded in persuading the Governor of Pennsylvania to veto a measure known as the "Fair Truck Bill," which would have allowed truckers to carry heavier loads on Pennsylvania roads. *Id.* at 130.

13. *Id.* at 135.

14. The bases of such a rule:

[R]est upon the fact that under our form of government the question of whether a law of that kind should pass, or if passed be enforced, is the responsibility of the appropriate legislative or executive branch of government so long as the law itself does not violate some provision of the Constitution.

*Id.* at 136.

incentive of people to freely inform the government of their wishes; and (3) a contrary construction would raise serious constitutional questions concerning the right of petition protected by the Bill of Rights.[15]

The Court then considered whether the railroads' actions constituted a violation of the Sherman Act in spite of the announced principle. It held that the legality of the railroads' attempt to influence governmental action was unaffected by any anti-competitive purpose they may have had.[16] The Court added that the Sherman Act "condemns trade restraints not political activity"[17] such as a publicity campaign aimed at influencing governmental action. That business competitors are directly affected by later governmental action does not render such activity illegal.[18] The Court, however, limited the sweep of its holding, noting that, where a campaign ostensibly aimed at influencing governmental action is a mere *sham* to cover what is nothing more than an attempt to directly interfere with the business relationships of a competitor, the Sherman Act would be violated.[19]

In *Pennington*,[20] the Supreme Court further expounded on the scope of its holding in *Noerr*.[21] The Court held improper the trial court's instructions which permitted the jury to find a violation of the Sherman Act if they found that the mine workers and large coal operators had an anti-competitive purpose in their approaches to the Secretary of Labor or the Tennessee Valley Authority.[22] The

15. *Id.* at 136-38.

16. *Id.* at 139-40.

17. *Id.* at 140-41.

18. *Id.* at 142-44.

19. *Id.* at 144.

20. The action was filed by the trustees of the United Mine Workers of America Welfare and Retirement Fund against respondents to recover overdue royalty payments. Respondents filed a cross claim against the mine workers and certain large coal operators supplying the Tennessee Valley Authority (TVA). They alleged that the mine workers and large operators had combined and conspired to persuade the Secretary of Labor to establish minimum wages under the Walsh-Healey Act and to persuade the TVA to curtail spot market purchases which were exempt from the Walsh-Healey Act in an effort to drive the respondent and other small operators out of business. 381 U.S. at 659-61.

21. *Id.* at 669-72.

22. The Court also rejected the circuit court's holding that *Noerr* applied only if the conduct was:

> [U]naccompanied by a purpose or intent to further a conspiracy to violate a statute. It is the illegal purpose or intent inherent in the conduct which vitiates the conduct which would otherwise be legal.

*Id.* at 669-70, *quoting* Pennington v. UMW, 325 F.2d 804, 817 (6th Cir. 1963).

Court held that *Noerr* shields any concerted effort to influence public officials regardless of intent or purpose.[23]

## THE DISTRICT AND CIRCUIT COURTS' TREATMENT OF THE CASE

The district court viewed respondents' complaint as raising the sole issue of whether petitioners' association to bring proceedings before the regulatory agencies, without any other alleged anti-competitive conduct, violated the antitrust laws by reason of petitioners' anti-competitive purpose and intent.[24] Relying on the *Noerr-Pennington* doctrine, the district court held that respondents' complaint failed to state a cause of action.[25] In so ruling, the court rejected respondents' contentions that: (1) the *Noerr-Pennington* rule only applied to activities directed at the executive or legislative branches of the government;[26] (2) petitioners' conduct fell within the *sham* exception to the *Noerr-Pennington* rule;[27] and (3) petitioners' conduct fell within the scope of the patent cases which have held

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23. The Court added that:

> Joint efforts to influence public officials do not violate the antitrust laws even though intended to eliminate competition. Such conduct is not illegal, either standing alone or as part of a broader scheme itself violative of the Sherman Act.

381 U.S. at 670.

24. Trade Cas. ¶ 72,298 at 84,740 (N.D. Cal. 1967).

25. The court, relying on the rationale announced in *Noerr*, said:

> [T]he Supreme Court has resolved the problem of bad purpose or intent *vis a vis* freedom of resort to public officials and agencies by holding that the latter is to be subserved notwithstanding the risk of tolerating an anti-competition purpose of such resort and a possible anti-competitive result.

*Id.* at 84,744.

> [T]he Supreme Court has in effect weighed these factors in balance with the factor of the antitrust intent or result of certain kinds of concerted activity and has concluded that the latter factor must be risked in order to subserve other governmental needs and political rights.

*Id.* at 84,742.

26. The district court held:

> [T]his Court is of the opinion that the rationale of the *Noerr-Pennington* doctrine is clearly and equally applicable to activities directed to courts or to regulatory agencies
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> . . . .
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> . . . .
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> The right of access to the courts and regulatory agencies is just as much a political right as the right of access to the legislative and executive branches.

*Id.* at 84,743, *citing* NAACP v. Button, 371 U.S. 415, 430 (1963).

27. The court noted that one of the exhibits attached to respondents' brief showed that petitioners had been successful in 21 of 40 matters before the agencies or courts. The court took this fact to suggest that at least some of the petitioners' claims had merit and were not shams. Trade Cas. ¶ 72,298 at 84,744 (N.D. Cal. 1967).

that patent infringement suits brought to restrain competition or create a monopoly violate the Sherman Act.[28]

The circuit court reversed for two reasons. First, it rejected the application of the *Noerr-Pennington* doctrine to concerted actions aimed at judicial and administrative adjudicative bodies;[29] and second, it ruled that, even if the *Noerr-Pennington* doctrine applied, the complaint stated a cause of action within the *sham* exception to the rule.[30] The court also disagreed with the district court's rejection of respondents' reliance on the patent cases. It noted that the significance of those cases was not that they were based on patent rights, but rather that litigation was used to restrain trade.[31] The circuit court expressed the belief that its ruling would not impede the willingness of people to make known their wishes in any "legitimate sense," nor would it impair the operation of the agencies or "deprive the government of a valuable source of information."[32]

## The Decision by the Supreme Court

Justice Douglas delivered the opinion for the majority of the Court. After reviewing the basic principle it had announced in *Noerr*,[33] the Court adopted the district court's view that the *Noerr-Pennington* doctrine applied to group approaches to the administra-

28. *Id.* at 84,745-46. Respondents had contended that petitioners' concerted actions were within the scope of the holdings in United States v. Singer Mfg. Co., 374 U.S. 174 (1963) (concerted action related to applications before the patent office, among other things, violated the Sherman Act); and Kobe, Inc. v. Dempsey Pump Co., 198 F.2d 416 (10th Cir. 1952) (plaintiff's bringing of patent infringement suits for the purpose of extending its monopoly violated the Sherman Act). The district court rejected this contention because the instant actions were not based on patent rights.

29. The court stated that the rationale of *Noerr-Pennington* immunized actions otherwise unlawful on the premise that the responsibility for enacting laws creating trade restraints and the responsibility for enforcing such laws rested with the legislative and executive branches respectively, and hence constituted a restraint resulting from legislative or executive action. That rationale, however, was not applicable to judicial or administrative adjudicative processes because it was not the function of the courts or the adjudicative branch of the agencies to determine whether laws will be adopted or enforced. 432 F.2d at 758-59.

30. The court held that where respondents alleged that petitioners' real purpose and intent was to restrain trade directly rather than indirectly through the medium of governmental action, they could prevail under the *sham* exception in *Noerr*. The court also said that petitioners' efforts to support as effectively as possible all their actions could not override their primary purpose of directly restraining competition. The fact that a valid basis existed for some of their opposition was irrelevant. *Id.* at 760-63.

31. *Id.* at 760.

32. *Id.* at 762, *citing Noerr*, 365 U.S. at 139.

33. 404 U.S. at 509-10.

tive agencies and the courts.[34] The Court, however, held that the allegations in respondents' complaint came within the *sham* exception in *Noerr*.[35]

In looking at the nature of the activities engaged in, the majority noted that there was a fundamental distinction between the present case and *Noerr*. Here, petitioners' actions were aimed at blocking respondents' meaningful access to the agencies and courts and usurping the decision-making process;[36] in *Noerr*, the railroads merely attempted to influence officials in the executive and legislative branches.[37] The majority also noted that the filing of *sham* actions did not impose a sanction and was not regulated by the Sherman Act, but that similar conduct before the adjudicative bodies could result in a prohibited sanction.[38] Although the line may be difficult to draw, when a pattern of "baseless, repetitive claims" emerges, indicating an abuse of the adjudicative process, such actions "cannot acquire immunity by seeking refuge under the umbrella of 'political expression.' "[39]

Whether respondents' first amendment rights were infringed by petitioners' alleged purpose to deny them meaningful access to the agencies and courts was not decided by the Court;[40] the Court, how-

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34. The Court held that:

> [T]he right to petition extends to all departments of the Government. The right of access to the courts is indeed but one aspect of the right of petition.
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> . . . [The Court added] that it would be destructive of the rights of association and of petition to hold that groups with common interests may not, without violating the antitrust laws, use the channels and procedures of state and federal agencies and courts to advocate their causes and points of view respecting resolution of their business and economic interests *vis-à-vis* their competitors.

*Id.* at 510-11 (citations omitted).

35. *Id.* at 513, 516.

36. It was alleged that the result of petitioners' actions "was that the machinery of the agencies and the courts was effectively closed to respondents, and petitioners . . . became 'the regulators of the grants of rights, transfers and registrations' to respondents—thereby [diminishing respondents' ability to compete.]" *Id.* at 511 (citation omitted).

37. In distinguishing *Noerr*, the Court said:

> In the present case . . . the allegations are not that the conspirators sought "to influence public officials," but that they sought to bar their competitors from meaningful access to adjudicatory tribunals and so to usurp that decisionmaking process.

*Id.* at 511-12.

38. *Id.* at 512-13. The Court cited as examples: perjury; the use of a patent obtained by fraud to exclude a competitor, Walker Process Equip. Co. v. Food Mach. & Chem. Corp., 382 U.S. 172, 175-77 (1965); and conspiracy with a licensing authority to exclude a competitor, Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690, 707 (1961).

39. 404 U.S. at 513.

40. *Id.*

ever, did note, in regard to petitioners, that first amendment rights are not immune from regulation when they are part of a scheme to violate a valid statute.[41]

The majority recognized: (1) that all carriers had the right of access to the agencies and the courts in order to defeat applications by their competitors for certificates as carriers; and (2) a carrier's intent and purpose to eliminate a competitor-applicant by denying him meaningful access to the adjudicative bodies may be implied from that opposition. The majority held that a combination or conspiracy to deter a competitor's "free and unlimited" access to the agencies and courts and to deny those rights by "massive, concerted and purposeful activities," violated the antitrust laws.[42] It was immaterial that the means used were, in themselves, lawful.[43]

Justice Stewart filed a concurring opinion, joined by Justice Brennan. He viewed the Court's opinion as a retreat from *Noerr* and an infringement on first amendment rights.[44] Justice Stewart rejected what he termed "the majority's inference" that respondents' complaint alleged any kind of fraud or misrepresentation by petitioners in the proceedings before the agencies and courts. Without such conduct, he saw "no difference, so far as the antitrust laws and the first amendment are concerned, between trying to influence executive and legislative bodies and trying to influence administrative and judicial bodies."[45] He also viewed the Court's statement that a joint agreement to exercise the right of petition is not necessarily immune from the antitrust laws as irreconcilable with the principle announced in *Noerr*.[46]

Although Justice Stewart disagreed with the reasoning of the court, he concurred in the result. He believed that the allegations, when viewed most favorably for respondents, entitled them to prove that petitioners' real intent was to directly interfere with respondents' business relationships, thus violating the antitrust laws.[47]

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41. *Id.* at 514-15, *citing* Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1948) (an injunction can be issued under a state statute banning secondary boycotts), *and* Associated Press v. United States, 326 U.S. 1 (1944) (freedom of the press does not encompass the freedom to combine to restrain others from publishing).

42. 404 U.S. at 515.

43. *Id.*

44. *Id.* at 516. Justices Powell and Rehnquist took no part in the decision.

45. *Id.* at 517.

46. Justice Stewart read the *Noerr* case to explicitly hold "that the joint exercise of the constitutional right of petition *is* given immunity from the antitrust laws." *Id.* (emphasis original).

47. *Compare* Justice Stewart's statement that:

### THE SUBTLE RETREAT

The majority and concurring opinions reaffirm the application of the *Noerr-Pennington* doctrine to group activities before the executive or legislative branches of government. The application of that doctrine in the instant case, however, suggests a subtle and unarticulated retreat when the group activity is aimed at a judicial or adjudicative body. The retreat is sound and necessary. It is based on the realization that while group activity aimed at legislative or executive action may produce an indirect restraint, such actions before judicial or adjudicative tribunals almost always yield an immediate and direct restraint. Any restraint produced by a campaign before the legislative or executive branches, if successful, is the result of governmental action, and such a restraint is not prohibited by the antitrust laws if the governmental action is valid. A similar campaign, however, before an adjudicative body, such as the California Public Utilities Commission or the Interstate Commerce Commission, does not depend on success or subsequent governmental action; it results in an immediate and direct restraint by denying meaningful access to the adjudicative bodies. In its analysis, the majority emphasizes that the determinative factor in the application of the *Noerr-Pennington* doctrine is whether the restraint resulting from the group campaign is direct or indirect. There is no immunity from the antitrust laws for a direct restraint. An indirect restraint, on the other hand, is immune under the *Noerr-Pennington* doctrine.

The Court's decision, which effectuates a balancing between the constitutionally protected right of petition and valid governmental action to protect the public interest, is not without precedent in the first amendment or patent areas. It has long been recognized that the first amendment freedoms are not absolute. The Supreme Court has recognized the government's right to enact and enforce necessary regulatory measures in the proper setting,[48] and it has held that

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> [T]he respondents are entitled to prove that the real *intent* of the conspirators was not to invoke the processes of the administrative agencies and courts, but to discourage and ultimately to prevent the respondents from invoking those processes. Such an intent would make the conspiracy "an attempt to interfere with the business relationships of a competitor and the application of the Sherman Act would be justified."

*Id.* at 518 (citations omitted), *with* UMW v. Pennington, 381 U.S. 657, 669-70 (1965), *supra* notes 22 and 23.

48. In NAACP v. Button, 371 U.S. 415, 443-44 (1963), the Court held: "Resort to the courts to seek vindication of constitutional rights is a different matter from the oppressive,

patent infringement suits cannot be used as a means of obtaining an unlawful monopoly.[49] As a result of its recognition of the distinction between direct and indirect restraints, the Court concludes that interference with a competitor's access to the adjudicative bodies could constitute a direct interference with the competitor's business relationships and therefore violate the antitrust laws. This conclusion obviates any need to consider first amendment claims the parties may have raised. It is consistent as well with the well-established rules that protected activities cannot be used for the sole purpose of violating a valid statute,[50] and that a constitutional question will not be decided if the record presents some other ground on which the case may be decided.[51]

The Court's opinion also attempts to deal with the troublesome practical application of the *sham* exception involving group activities before the adjudicative bodies. The problem is magnified because the group's primary intent and purpose is determinative of whether the Sherman Act has been violated; yet, it may well be that an attempt to determine a group's primary intent is a difficult, if not impossible, task for the fact finder. After recognizing that any attempt to obtain a decision adverse to a competitor's application is almost always an implicit attempt to eliminate that applicant as a competitor,[52] the Court implies that proof of the type of activities

malicious, or avericious use of legal process for purely private gain."

Substantial regulatory interests are valid when it is shown that "[s]ubstantive evils [are] flowing from petitioner's activities . . . ." *Id.* at 444; *accord*, Brotherhood of R.R. Trainmen v. Virginia State Bar, 377 U.S. 1 (1964).

49. In Kobe, Inc. v. Dempsey Pump Co., 198 F.2d 416, 424 (10th Cir.), *cert. denied*, 344 U.S. 837 (1952), the United States Court of Appeals for the Tenth Circuit held: "[W]e must not permit the courts to be a vehicle for maintaining and carrying out an unlawful monopoly which has for its purpose the elimination and prevention of competition." The court rejected the assertion that to allow recovery of damages would be a denial of free access to the courts.

50. Petitioner's first amendment rights are limited by the Court's holdings in United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers, 413 U.S. 548, 556 (1973); and Giboney v. Empire Storage & Ice Co., 404 U.S. 508, 514-15 (1972). In the *Letter Carriers* case the Court held that the provision of the Hatch Act prohibiting political activities by civil servants was not prohibited by the first amendment or any other provision of the Constitution. The Court reasoned that this provision was reasonable and in the public interest and that respondents' right of petition was not infringed.

51. Since respondents claim was decided on the basis of the *Noerr-Pennington* doctrine, there was no need for the Court to consider the potential first amendment question raised concerning an infringement by petitioners of respondents' right of petition. The Court's preference to avoid constitutional questions has been well established; *e.g.*, Rescue Army v. Municipal Court, 331 U.S. 549 (1947).

52. 404 U.S. at 515.

engaged in by the railroads in *Noerr* would not be immune if engaged in before the adjudicative bodies.[53]

The Court, in wrestling with a similar problem in patent cases, has held that proof that a patent was obtained by fraud or misrepresentation would strip the patent owner of his immunity unless his good faith were shown;[54] that the institution of *sham* patent infringement suits was evidence of an unlawful intent to monopolize commerce;[55] and that evidence of at least one *sham* lawsuit must be shown.[56] In spite of the difficult standard of proof, however, the instant case has been cited as authority in remanding recent cases for trial on the merits.[57] Clearly, the Court struck a balance, as in the past,[58] in favor of the interest protected by the antitrust laws, in spite of the possibility of numerous vexatious suits questioning a group's primary intent.

The majority's opinion in this case is somewhat of a retreat from the posture the Court adopted in *Noerr* and *Pennington*.[59] The breadth of the immunity created by the *Noerr-Pennington* doctrine has been narrowed when that doctrine is applied in an adjudicative setting. While the Court does not expressly narrow the immunity established under the *Noerr-Pennington* doctrine, the majority does expressly lower the standard of proof necessary to meet the *sham* exception when the action involves an adjudicative tribunal. Further, the majority's reference to the decisions in the patent cases,[60] as well as to *Noerr* and *Pennington*, indicates that petitioners' good faith would be a complete defense to respondents' claims of illegal intent.

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53. *Id.* at 513.

54. Walker Process Equip. Co. v. Food Mach. & Chem. Corp., 382 U.S. 172 (1965).

55. Lynch v. Magnavox Co., 94 F.2d 883 (9th Cir. 1938); *accord*, Darden v. Besser, Trade Cas. ¶ 68,646 at 72,602 (E.D. Mich. 1956).

56. Ronson Patent Corp. v. Sparklets Devices, 112 F. Supp. 676 (E.D. Mo. 1953).

57. Gulf States Util. Co. v. Federal Power Comm'n, 411 U.S. 747, 752 (1973); Otter Tail Power Co. v. United States, 410 U.S. 366, 380 (1973); Rogers v. Federal Trade Comm'n, 492 F.2d 228 (9th Cir. 1974), *petition for cert. filed*, 42 U.S.L.W. 3707 (U.S. May 8, 1974).

58. Walker Process Equip. Co. v. Food Mach. & Chem. Corp., 382 U.S. 172 (1965). "[T]he interest in protecting patentees from 'innumerable vexations suits' [cannot] be used to frustrate the assertion of rights conferred by the antitrust laws." *Id.* at 176. *Contra*, Eastern R.R. Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127, 136-38 (1961).

59. Joint efforts to influence public officials, even though intended to eliminate competition, were immune from the antitrust laws.

60. *See* Walker Process Equip. Co. v. Food Mach. & Chem. Corp., 382 U.S. 172 (1965); Continental Ore Co. v. Union Carbide & Carbon Corp., 370 U.S. 690 (1961).

## Conclusion

The instant case is significant for several reasons. First, it establishes a limitation on the application of the *Noerr-Pennington* doctrine to group activities and campaigns before judicial and quasi-judicial bodies. Secondly, in establishing this limitation, the Court defines the effect, direct or indirect, of such activities as the key factor in determining whether such conduct violates the antitrust laws. And finally, the Court suggests a definitive standard of proof for determining whether the *sham* exception of the doctrine applies when there is a group campaign before adjudicative bodies. The instant case reaffirms in principle the holdings in *Noerr* and *Pennington* that business competitors can unite in the exercise of their right of petition, and may do so as long as their primary purpose is the exercise of that right and not the restraint of competition. At the same time it sounds a warning to groups or associations contemplating concerted activities before adjudicative bodies.

*Daniel M. Darragh*

TORTS—IMMUNITY FROM LIABILITY—DOCTRINE OF INTERSPOUSAL IMMUNITY—MARRIED WOMEN'S PROPERTY ACT OF 1893—PRE-MARITAL TORT—SEPARATE PROPERTY—The Pennsylvania Supreme Court has reaffirmed the doctrine of interspousal immunity, rejecting the argument that an unliquidated tort claim is separate property within the meaning of the Married Women's Property Act, despite the fact that the tort was committed prior to coverture.

*DiGirolamo v. Apanavage*, 454 Pa. 557, 312 A.2d 302 (1973).

The doctrine of interspousal tort immunity precludes suit by one spouse against the other spouse to recover monetary damages for injuries caused by the actor-spouse's negligence. You may "always hurt the one you love," but that does not necessarily imply that the injured party will always find adequate avenues for compensation within the processes of our judicial system. A recent Pennsylvania Supreme Court decision, *DiGirolamo v. Apanavage*,[1] has reaffirmed

1. 454 Pa. 557, 312 A.2d 382 (1973).