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United States v. Jorn

400 U.S. 470 (1971)

Paul J. Wahlbeck, George Washington University

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 19, 1970

Re: No. 84 - U. S. v. Jorn

MEMORANDUM TO THE CONFERENCE:

The January 16 Conference vote was:

To reverse: C. J., Justices Harlan,
Stewart and White

To affirm: Justices, Black, Douglas
Brennan (if there is jurisdiction)
Marshall

This case will therefore be scheduled for
reargument when the ninth Justice arrives.


W.E.B.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 4, 1970

RE: No. 84 - United States v. Jorn

Dear Chief:

You may recall that at the January 16 conference I expressed doubt that there was jurisdiction of this appeal under 18 U. S. C. § 3731 authorizing an appeal by the United States "from the decision or judgment sustaining a motion in bar, when the defendant has not been put in jeopardy."

I have since had an opportunity to read the extensive legislative history of the 1907 Act. I read that history as indicating that Congress did not regard a defendant as being in "jeopardy" in any instance where he can be retried for the same offense. In other words, Congress meant to allow the Government an appeal except where the defendant was entitled to the protection of the constitutional guarantee against double jeopardy.

Since I conclude that the appellant could not be constitutionally retried after Judge Ritter's dismissal of the jury, my vote is to dismiss the appeal. And since he cannot be retried there can, of course, be no transfer to the Court of Appeals.

Sincerely,


W. J. B. Jr.

The Chief Justice

cc: The Conference