

# CALIFORNIA SEEKS SMITH EVIDENCE

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State Hopes to Get Secret

Data on Nixon Patron  
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By EVERETT R. HOLLES

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SAN DIEGO, Aug. 17—The State of California will go into Federal court tomorrow in an effort to obtain still-secret grand jury evidence against C. Arnholt Smith, to be used in a new criminal investigation of the once powerful financier and patron of Richard M. Nixon.

The Deputy District Attorney, Steven Davis, will ask a Federal District Judge, Edward Schwartz, to order the release of the Federal grand jury transcripts under a finding of "overriding public necessity" to determine whether Mr. Smith and several associates should be prosecuted under California laws covering grand theft, corporate embezzlement, perjury and tax evasion.

The state has been inquiring into Mr. Smith's involved financial dealings for some time, Mr. Davis said, but "we naturally defer to the Federal Government in bringing him to trial."

Mr. Smith, the 76-year-old former head of a \$2-billion banking and industrial empire, now largely in ruins, was not put on trial. He received a \$30,000 fine in Federal court on June 12 when he was allowed to enter a plea of no contest to four of 25 counts of an indictment accusing him of massive frauds that brought about the collapse of his United States National Bank here in October, 1973.

### Sentence Suspended

A two-year prison sentence was suspended, over the objections of Government prosecutors, and Mr. Smith was placed on five years probation as was his codefendant, Philip A. Toft, deposed president of Mr. Smith's Westgate-California conglomerate of 62 companies. The conglomerate has been thrown into bankruptcy and is facing claims of more than \$2-billion.

Mr. Smith's attorney, Thomas Sheridan, of Los Angeles, was expected to oppose the release of the grand jury's findings for the purpose of a new state investigation on the ground it would place Mr. Smith in double jeopardy.

### Defends Smith

Neither the plea of no contest, nor the fact that 21 counts of the Smith indictment were dismissed without trial or pleadings, can be construed to deprive Mr. Smith of that constitutional protection, he said.

The state intends to argue that double jeopardy is not incurred when the laws of two sovereignties—the Federal Government and a state—are involved.

"If we obtain access to the Federal grand jury information, we may discover violations of California laws which did not enter into the Government's prosecution, and perhaps state violations not covered in the Federal Criminal Code," Mr. Davis explained.

If the court releases the Federal grand jury testimony, he added, many of the Government witnesses may be recalled before a special county grand jury.

Mr. Smith, who still occupies a half-million-dollar home in LaJolla and travels about in a chauffeur-driven limousine, still faces an Internal Revenue Service lien of \$22.8-million for 1969 income taxes and penalties. He is also a principal defendant in more than 50 lawsuits brought by stockholders and creditors of the United States National Bank and Westgate-California Corporation, claiming damages totaling some \$3.7-billion.

Mr. Toft pleaded no contest to three of 20 counts, received a one-year suspended sentence and was fined \$25,000.

On his nolo contendere plea to the four counts, Mr. Smith could have received a maximum prison sentence of 20 years.

The one-time benefactor of the Republican party establishment in Southern California was accused of looting \$170-million of bank assets through camouflaged loans to his other businesses and to falsified bank accounts.

The four charges to which he pleaded no contest covered misapplication and falsification of about \$7-million of the \$170-million in fraudulent transactions listed in the grand jury indictment returned on July 2 last year, including \$27-million the tall silvery-haired financier allegedly embezzled for his personal benefit.

### Many Counts Dismissed

As part of the plea bargain, the remaining 21 counts against Mr. Smith and 17 counts against Mr. Toft were dismissed by Federal Judge Robert Schnacke of San Francisco who was brought here to try the case growing out of one of the largest national bank failures on record.

The state is particularly interested in the grand jury details of the 38 dismissed charges against the two men.

The Chief Assistant United States Attorney, Warren Reese, who was in charge of the Smith-Toft prosecution, said he would not oppose turning the grand jury records over to the District Attorney's office, provided that "protective provisions" were attached to any court order to safeguard their confidentiality.

Mr. Reese has sharply criticized Judge Schnacke's granting of probation to Mr. Smith.