

Opinion in Chambers

## FEBRE v. UNITED STATES

ON APPLICATION FOR BAIL PENDING APPEAL

Decided September 10, 1969

Application for bail pending appeal from conviction held in abeyance and matter remanded to Circuit Court Judge. The District Court denied bail without making the written explanation mandated by Fed. Rule App. Proc. 9 (b), and it does not appear why the Court of Appeals did not remand the matter to the District Court for compliance with the Rule as it had done in case of a codefendant's similar bail application.

*Solicitor General Griswold* for the United States.

Memorandum of MR. JUSTICE HARLAN, Circuit Justice.

This is an application for bail pending applicant's appeal to the Court of Appeals from a narcotics conviction.

The Government, while not contending that the appeal is frivolous or taken for purposes of delay, seeks to support the lower court's denial of bail on the score that it was found that applicant, if released on bail, would present a danger to the community, and further that he was a poor bail risk. See 18 U. S. C. § 3148; Fed. Rule Crim. Proc. 46 (a)(2).

My difficulty with this position is twofold: First, so far as the papers reveal, the District Court in denying bail did not "state in writing the reasons" for its action, as required by Fed. Rule App. Proc. 9 (b). Second, it does not appear why the matter was not remanded to the District Court for compliance with Rule 9 (b), as the Court of Appeals had done in the case of an earlier similar bail application by a codefendant; and neither Judge Smith, nor Judge Anderson on reapplication, otherwise explained his refusal to disturb the District Court's determination. With no record of the proceed-

ings below before me, I cannot assume, as the Government would have me do, that either Judge Smith or Judge Anderson regarded the District Court's findings on remand respecting the codefendant as equally applicable to this applicant.

While I have always been particularly reluctant to interfere with a denial of bail below pending appeal to the Court of Appeals, I do not think that I should act in this instance without more light from the lower courts. I shall therefore remand the matter to Judge Smith or Judge Anderson, as the case may be, for appropriate explication, meanwhile holding this application in abeyance.