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NEWS NOTES

A.G. CITES SIGNIFICANT CORRUPTION IN NEW YORK BNDD OFFICE

December 13, 1968: An intensive investigation by the recently-formed Bureau of Narcotics and Dangerous Drugs (BNDD) has produced indications of significant corruption during the past decade among former employees of the New York office of the Bureau of Nartocics. Attorney General Ramsey Clark said John E. Ingersoll, since his appointment as BNDD Director on August 1, has moved forcefully to both deal with past misconduct and assure integrity in the enforcement of narcotic and drug laws. The corruption included illegally selling and buying drugs, retaining contraband for personal use or sale, keeping money allocated for informants and failing to enforce laws. Each of those responsible, Mr. Clark said, was assigned at one time to the New York office of the Bureau of Narcotics although some later transferred to other Bureau of Narcotics offices or to the Bureau of Drug Abuse Control.

The Bureau of Narcotics and Bureau of Drug Abuse Control were merged and transferred into the Department of Justice as BNDD on April 8, 1968.

Thirty-two agents have resigned in the wake of an investigation begun in August 1967 and five of them have been indicted on charges involving the sale of narcotics. Two others had been arrested on counterfeiting charges earlier in 1967 and one convicted of bribery charges in 1966.

However, the Attorney General said thorough investigation shows that all but a very small percentage of personnel of both former bureaus are of the highest integrity and were never involved in corrupt practices.

U.S. ATTORNEY'S OFFICE IN ST. LOUIS BRINGS ANTITRUST INDICTMENT AGAINST FIVE SELLERS OF AGRICULTURAL FERTILIZER

December 18, 1968: A federal grand jury in St. Louis has indicted 5 sellers of anhydrous ammonia agricultural fertilizer on a charge of conspiring to fix prices. The case was prepared by the United States Attorney's office there.

Named defendants were Missouri Farmers Association, Inc., of Columbia, Missouri; W.R. Grace & Company of New York City; Phillips Petroleum Company of Bartlesville, Oklahoma; Agrico Chemical Company of New York City, a division of the Continental Oil Company; and Gulf Oil Corporation of Pittsburgh, Pennsylvania.

The five firms, and unnamed co-conspirators, were charged with conspiring to raise and maintain prices of the fertilizer in Perry County, Missouri, during 1966, in violation of the restraint-of-trade section of the Sherman Antitrust Act.

INCENTIVE AWARD WINNERS

Representatives of United States Attorneys' offices scored heavily at the annual Incentive Awards Ceremony held in the Great Hall of the Department of Justice on December 18, 1968. Among those receiving the newly created "Attorney General's Award for Distinguished Service" was Chief Assistant United States Attorney Silvio J. Mollo of the Southern District of New York, while United States Attorney Benjamin E. Franklin of the District of Kansas was one of the five who won the coveted John Marshall Award. Also honored were 25 men and women from United States Attorneys' offices who won Sustained Superior Performance awards.

The first recipient of the Attorney General's Award for Exceptional Service was a 10-year veteran of the Civil Rights Division.

DAVID ROBERT OWEN
Deputy Assistant Attorney General
Civil Rights Division

In recognition of exceptional service to the Department of Justice and the Nation. By precept and example, as a leader and a doer, he has achieved great success in meeting uniquely challenging situations. In particular, he has demonstrated great resourcefulness and personal courage in connection with the prosecution of complex civil rights cases under the most difficult conditions. He has worked with tireless and consummate skill to secure the fulfillment of the goal of equal justice under law.

Four persons were awarded the "Attorney General's Award for Distinguished Service".

DONALD R. COPPOCK
Deputy Associate Commissioner, Domestic Control
Immigration and Naturalization Service

In recognition and appreciation of distinguished service to the Department of Justice and the Nation. He has led the Border Patrol to new heights of achievement, not only in meeting the escalating demands of its assigned mission but also in responding to extraordinary demands made in connection with the enforcement of federal law and court orders under the most trying circumstances.

CARL EARDLEY
Deputy Assistant Attorney General
Civil Division

In recognition and appreciation of distinguished service to the Department of Justice and the Nation. He has been called upon for extraordinary service on many occasions and has handled the most difficult matters with great distinction. His professional competence, devotion to duty, sincerity of purpose, and counsel and assistance to his fellow attorneys have been outstanding.

NATHANIEL E. KOSSACK
Deputy Assistant Attorney General
Criminal Division

In recognition and appreciation of distinguished service to the Department of Justice and the Nation in the administration of the federal criminal law. By his accomplishments, his courage, his zeal for excellent performance and his capacity to reason and to achieve, he has provided inspiring leadership for all his associates.

SILVIO J. MOLLO
Chief Assistant United States Attorney
Southern District of New York

In recognition and appreciation of distinguished service to the Department of Justice and the Nation. His service has been characterized by the highest personal and professional

integrity, sound judgment, and fair and effective representation of the United States. By his example and through wise counsel and leadership he has been a source of inspiration to his fellow attorneys.

The third new honor awarded this year was the John Marshall Award for specialized legal ability. Recipients by category were:

Trial of Litigation: Benjamin E. Franklin of Topeka, Kansas, United States Attorney for the District of Kansas.

Preparation of Litigation: George S. Swarth, Assistant Chief of the Appellate Section of the Land and Natural Resources Division.

Support of Litigation: John J. Gobel, Associate Chief of the General Litigation Section of the Tax Division.

Handling of Appeals: Miss Beatrice Rosenberg, Chief of the Appellate Section of the Criminal Division.

Providing Legal Advice or Preparation of Litigation: Eugene N. Barkin, Legal Counsel of the Bureau of Prisons.

Sustained Superior Performance Awards were presented to 25 employees of United States Attorneys' offices. The presentations were made to the following persons by John K. Van de Kamp, Director, Executive Office for U.S. Attorneys:

Mr. Robert L. Brosio, Central District of California
Mr. Larry L. Dier, Central District of California
Mrs. Mary M. Henritze, Central District of California
Mr. Eugene Kramer, Central District of California
Mr. David R. Nissen, Central District of California
Mr. Gerald F. Uelmen, Central District of California
Mrs. Reva H. Waldron, Central District of California
Mrs. Vera A. Murphy, Southern District of California
Mr. Oakie Dyer, District of Columbia
Mrs. Louise C. Lion, District of Columbia
Mrs. Grace J. Loffland, Southern District of Indiana
Miss Mary M. Gent, Western District of Kentucky
Mrs. Norma Merritt, Western District of Louisiana
Mr. John Wall, District of Massachusetts

Miss Mary Kate Heard, Northern District of Mississippi
Mrs. Mae B. Tubbs, Northern District of Mississippi
Mr. Francis Conroy, Southern District of New York
Mrs. Lillie Belle Higgins, Southern District of New York
Miss Catherine J. Secrest, Western District of North Carolina
Mr. Hubert A. Marlow, Northern District of Oklahoma
Mrs. Shirley M. Doolan, Northern District of Texas
Mr. Kenneth J. Mighell, Northern District of Texas
Mr. William L. Bowers, Jr., Southern District of Texas
Mrs. E. Frances De Laura, Southern District of Texas
Mrs. Angeline M. Fay, Southern District of Texas

* * *

POINTS TO REMEMBER

FEDERAL COURT TRANSCRIPT RATES

The new maximum transcript rates shown in the U.S. Attorneys' Bulletin, November 1, 1968, have become effective in the following additional districts:

Ala., N.	Ga., S.	Nebr.	Texas, S.
Alaska	Idaho	N.J.	Vt.
Ark., E.	Iowa, N.	N.Y., N.	Va., E.
Calif., N.	La., W.	N.Y., E.	Wash., E.
Calif., E.	Md.	N.Y., S.	Wash., W.
Calif., C.	Mass.	Ohio, N.	W. Va., N.
Conn.	Mich., E.	Okla., W.	W. Va., S.
Del.	Miss., S.	Pa., W.	Wisc., E.
Fla., M.	Mo., W.	Tenn., E.	
Ga., N.	Mont.	Texas, E.*	

The rates in Maine have been raised to $1.00 and $.40 for ordinary with the daily to be fixed by agreement and approved by the court but not to exceed the new maximum rates.

South Dakota has raised the rates to $1.00 and $.40.

*Shall apply in forma pauperis cases only where court order authorizing furnishing of said in forma pauperis transcript is dated after October 7, 1968.

DEPARTMENT OF JUSTICE PROFILES

Stephen J. Pollak
Assistant Attorney General
Civil Rights Division

Mr. Pollak was born in Chicago, Illinois on March 22, 1928. He received his A.B. degree from Dartmouth College and his LL.B. degree from Yale Law School in 1956. He was in private practice from 1956-1961 with the Washington law firm of Covington and Burling. From 1961-64 he was Assistant to the Solicitor General at the Department, and from 1964-65 he was Legal Counsel to the President's Task Force on the War Against Poverty. In April, 1965 Mr. Pollak became First Assistant to the Assistant Attorney General for the Civil Rights Division. He was appointed Assistant Attorney General for that Division in January, 1968. The Civil Rights Division over the past year under Stephen Pollak brought a record number of equal employment discrimination cases. During fiscal 1968 the Civil Rights Division filed its first northern school case and first northern voting rights case, as well as conducting extensive surveys in metropolitan areas throughout the Nation to determine compliance with the housing provisions of the Civil Rights Act of 1968.

* * *

Rowland K. Hazard
United States Attorney
Canal Zone

Rowland Hazard was born March 7, 1913 at North Kingstown, Rhode Island. He received his A.B. magna cum laude from Holy Cross College, and his J.D. from Georgetown Law School in 1940. After serving in the Army he was employed in the Special Inspections Division, Immigration and Naturalization Service until his appointment in 1948 as an Assistant U.S. Attorney for the Canal Zone. He was appointed U.S. Attorney in 1952 by President Truman, and was reappointed in 1960 by President Eisenhower, and in 1968 by President Johnson. He was formerly a member of the Governor's Committee to Revise the Canal Zone Code, and is the President of the Canal Zone Chapter of the Federal Bar Association. The U.S. Attorney in the Canal Zone is required to represent the U.S. Government and the government of the Canal Zone in all civil and criminal proceedings, and to act as legal advisor to the Governor of the Canal Zone. Mr. Hazard handled the case of Doyle v. Fleming, et al., an action to enjoin the flying of the Panamanian flag in the Canal Zone which grew out of the anti-American riots in Panama in early 1964.

* * *

ANTITRUST DIVISION

Assistant Attorney General Edwin M. Zimmerman

DISTRICT COURT

SHERMAN ACT

COMPLAINT ALLEGING VIOLATION OF SECTIONS 1 AND 2 OF ACT IN MANUFACTURE AND SALE OF MESH WINDOW BAGS.

United States v. Union Camp Corporation, et al. (E. D. Va., Civ. 5005-A; November 4, 1968; D. J. 60-15-114)

On November 4, 1968, a civil action was filed in Alexandria, Virginia, under Sections 1 and 2 of the Sherman Act charging Union Camp Corporation (Union) and Bemis Company, Inc. (Bemis) with conspiring to exclude competitors from and control entry into the manufacture and sale of mesh window bags by asserting a patent known by the defendants to be invalid.

The complaint alleges that in the late 1940's Union developed machinery for making a mesh patch window bag, a paper bag with a mesh covered "window" which permits contents such as potatoes to be seen and ventilated, and applied for a patent on the window bag. Union was aware that its patent had less than a 50% chance of being sustained in litigation and therefore decided to license a limited number of competitors, rather than risk litigation with them.

Thereafter Bemis, one of the licensees, acquired a patent in 1953 covering the machinery previously developed by Union knowing that its patent application contained several false oaths and that it was not entitled to the patent because of prior use. Bemis then transferred all licensing rights to Union which although unaware of Bemis' false oaths, knew that the Bemis patent was invalid and unenforceable because of Union's prior use. Union then used the Bemis patent to extend its power to block additional competition beyond 1964, when its own patent on the window bag expired.

Between 1955 and 1966 Union is charged with keeping various paper bag manufacturers out of the window bag business by denying them patent licenses on the machinery and threatening them with patent suits. It is also alleged that Union consulted with its licensees with respect to the acceptance or rejection of license applications and refused to license when its licensees objected. Union and Bemis also brought a patent infringement suit in 1965 against a Maine farmers' cooperative which began to manufacture the bags even though it had been denied a license by Union.

Through the actions described above Union collected $50,000 in royalties annually, enjoyed monopoly prices and profits and together with Bemis exerted major control of the industry.

This civil action is a companion to an indictment containing similar charges against Union for attempting to monopolize the window bag industry in violation of Section 2 of the Sherman Act and against Union and Bemis for conspiring to monopolize the window bag industry in violation of Section 1 of the Sherman Act. Union and Bemis were recently convicted of these charges after entering nolo pleas, and together were fined a total of $125,000.

The Department is seeking an injunction in the civil action which would prohibit Union and Bemis from threatening anyone with patent infringement suits for any patent which either believes to be unenforceable and from consulting with any of their licensees as to which competitors would be denied patent licenses. In addition the Government also seeks an order requiring each defendant to dedicate to the public all patents which either believes to be unenforceable.

Staff: Richard H. Stern, James H. Wallace and Irene A. Bowman (Antitrust Division)

* * *

CIVIL DIVISION

Assistant Attorney General Edwin L. Weisl, Jr.

COURTS OF APPEALS

FEDERAL TORT CLAIMS ACT

GOVERNMENT IS NOT LIABLE FOR INJURIES RESULTING FROM EXPLOSION ON LAND SOLD BY IT SEVENTEEN MONTHS EARLIER, WHERE IT WARNED VENDEE OF POSSIBLE CONTAMINATION, AND VENDEE AGREED TO EFFECT DECONTAMINATION UNDER SUPERVISION OF ARMY PERSONNEL BUT NOTIFIED GOVERNMENT OF RAZING ACTIVITIES LEADING TO EXPLOSION. UNITED STATES v. DALEHITE, 346 U.S. 15, REAFFIRMED.

Raymond Wright v. United States (C.A. 7, No. 16,981; decided December 10, 1968; D.J. 157-26-56)

In 1963, the Government sold as surplus property certain real property on which ordinance activities had been conducted. The buyer, Kingsbury, was warned of the possibility that live explosives remained on the land and agreed to effect decontamination under supervision of the responsible Army agency. Seventeen months later, Kingsbury sold certain personal property on the premises to a third party, who agreed to remove the personalty from the premises. In the course of that work for the third party, plaintiff was injured when his aceylene torch cut a pipe which contained explosive powder. In a Tort Claims Act suit, the district court, on cross-motions for summary judgment, dismissed the action. The Seventh Circuit unanimously affirmed.

In affirming, the Court of Appeals held that under Dalehite v. United States, 346 U.S. 15, the Government had no absolute duty to decontaminate the premises. The Court also held that the Government was not liable under the theory of Restatement of Torts, Second, Section 427A, imposing liability on the employer of a negligent independent contractor, since Kingsbury was merely a buyer of land, for whose actions the Government was not responsible. The Court also rejected plaintiff's argument that the Government was liable because it reserved the right to supervise decontamination, since under United States v. Page, 350 F. 2d 28 (C.A. 10), certiorari denied, 382 U.S. 979, the mere reservation of a right to inspect does not create a duty, and the Government had never been told of the razing activity which led to the injury. Finally, the Court held that the Government had discharged its duty as a vendor of land under Restatement of Torts, Second, Section 353, since it had warned its vendee, Kingsbury, of the danger.

Staff: Leonard Schaitman (Civil Division)

RELIEF FROM JUDGMENTS - F. R. CIV. P. 60(b)

COURT WILL VIEW TOTALITY OF CIRCUMSTANCES IN DETERMINING WHETHER TO SET ASIDE DEFAULT JUDGMENT ENTERED AFTER DISCHARGE IN BANKRUPTCY. RULE 60(b) F. R. CIV. P.

Vincent J. Menier v. United States (C. A. 5, No. 24,704; December 5, 1968; D. J. 105-76-37)

The Government sued appellant as guarantor for the balance due on a note. An attorney representing the appellant in bankruptcy proceedings notified the United States Attorney that the appellant had no defense to the suit on the note and that a default judgment could be entered against him. A trial was held to determine lien priorities. Before a final decision was reached on priorities, the appellant was adjudged bankrupt and the Government's claim for the unpaid balance on the note was approved and allowed as a priority claim. Subsequently, a decision was rendered in the suit to determine priorities. At the request of the United States a default judgment was entered in its favor for the balance due on the note plus interest.

Two and one-half years later appellant first learned that the default judgment had been entered against him after his discharge in bankruptcy. His motion, under Rule 60(b), F. R. Civ. P., to set aside the judgment was denied by the district court.

The Court of Appeals for the Fifth Circuit, one judge dissenting, reversed and remanded. The Court reasoned that the combination of circumstances present in the instant case were such that the Court should exercise its equitable power under Rule 60(b)(6), F. R. Civ. P., to set aside the default judgment. The Court emphasized that the wrong or default necessary for relief under the rule need not be solely that of the moving party but can be that of others.

Staff: United States Attorney Ernest Morgan; Assistant United States Attorney Andrew L. Jefferson (W. D. Tex.)

* * *

CRIMINAL DIVISION

Assistant Attorney General Fred M. Vinson, Jr.

COURTS OF APPEALS

HARBORING DESERTERS

GOVERNMENT MUST REVEAL TO JURY ULTIMATE DETERMINATION OF CHARGE OF DESERTION AGAINST HARBORED SERVICEMAN WHERE GOVERNMENT INTRODUCES THAT CHARGE INTO EVIDENCE TO PROVE DESERTION AT TRIAL OF THOSE ACCUSED OF HARBORING DESERTER UNDER 18 U.S.C. 1381.

Breeze v. United States (C.A. 10, 1968, 398 F. 2d 178); Michael v. United States (C.A. 10, 1968, 393 F. 2d 22; D.J. 42-29-13)

The Breeze and Michael cases are appeals from the separate trials and convictions of two codefendants charged with harboring a deserter under 18 U.S.C. 1381. At their trials, the Government relied chiefly on the notation in the harbored serviceman's record that he was administratively declared a deserter after 30 days unauthorized absence in order to prove the fact of desertion. All attempts by the defense to introduce into evidence the fact that the harbored serviceman was never formally charged with desertion by the military were successfully blocked by the Government.

The Court of Appeals reversed both convictions, ruling that the jury must know of the ultimate determination of the administrative charge of desertion since, otherwise, the jury may conclude that this "intra-departmental accusation" affirmatively and conclusively established the fact of desertion.

The Breeze and Michael cases should not act as a deterrent to prosecution of those who harbor deserters in cases where the harbored serviceman was never formally charged with desertion by the military. The cases merely stand for the proposition that if the Government relies chiefly on the serviceman's record to prove desertion it must introduce the whole service record relevant to that charge.

Ideally the element of desertion should be proved by reference to the serviceman's conduct while on unauthorized absence. For example, the acquiring of a permanent job, the leasing of a home for a year, or unauthorized absence for a long period of time all tend to prove desertion, that is, intent to remain away from duty permanently.

It is requested that any unique problems encountered in prosecutions under 18 U. S. C. 1381 be brought to the attention of the General Crimes Section of the Criminal Division. In addition, the Criminal Division is presently reviewing a proposal to amend the Harboring Statute. Any recommendations or comments may likewise be directed to the General Crimes Section.

* * *

LAND AND NATURAL RESOURCES DIVISION

Assistant Attorney General Clyde O. Martz

COURTS OF APPEALS

SOVEREIGN IMMUNITY

INDIANS; NO JURISDICTION OVER INTERNAL CONTROVERSY AMONG INDIANS OVER TRIBAL GOVERNMENT; NO CONSENT BY UNITED STATES TO BE SUED; ADMINISTRATIVE PROCEDURE ACT IS NOT A CONSENT TO SUIT AGAINST UNITED STATES.

Lee Motah and Horace Noyabad v. United States (C. A. 10, Oct. 30, 1968; D. J. 90-2-0-622)

A tribal election conducted by the Area Director of the Bureau of Indian Affairs pursuant to 25 U. S. C. 476 was held on November 19, 1966, to determine whether the Comanche Tribe should have a constitution separate and apart from the Kiowa and Apache Tribes in Oklahoma. The election resulted in a majority vote for a separate constitution. Plaintiffs, members of the Comanche Tribe, filed a contest of the election with the Area Director, alleging that a number of Comanche Indians were wrongfully deprived of their right to vote and that if such Indians had been allowed to vote, the outcome of the election might have been different. The Area Director denied their claim and his decision was affirmed by the Commissioner of Indian Affairs and the Secretary of the Interior. Plaintiffs then sought an evidentiary hearing in the district court alleging jurisdiction to exist by "virtue of the provisions of the Constitution of the United States and laws and treaties enacted thereunder."

The district court dismissed the action for lack of jurisdiction over the defendant and the subject matter. The Court of Appeals affirmed, reaffirming a long line of decisions holding "an internal controversy among Indians over tribal government [is] a subject not within the jurisdiction of the court as a federal question". The Court also held that there was no indication that the United States had consented to such a suit. However, the significance of this case rests on its holding that the Administrative Procedure Act is not a consent to suit, reaffirming the Tenth Circuit decisions in Chournos v. United States, 355 F. 2d 918 (C. A. 10, 1964); and Cotter Corporation v. Seaborg, 370 F. 2d 686 (C. A. 10, 1966). The decision in the present case follows a specific request by the Court for a full discussion by the Government of the general subject of jurisdiction. In reaffirming its previous decisions, the Court does disregard language in some of its recent cases, Heffelman v. Udall, 378 F. 2d 109 (1967); Harvey v. Udall, 384 F. 2d 883 (1967);

Brennan v. Udall, 379 F. 2d 903 (1967), cert. den., 389 U.S. 979; and Miller v. Udall, 368 F. 2d 548 (1966), which indicated that the Administrative Procedure Act is an independent basis of jurisdiction.

Staff: Roger P. Marquis and Frank B. Friedman
(Land and Natural Resources Division)

CONDEMNATION

AUTHORITY OF DISTRICT COURT TO ALTER COMMISSION'S AWARD UNDER RULES 71A(h) AND 53(e)(2), F. R. Civ. P.; COMPETENCY OF APPRAISALS RETROSPECTIVELY MADE.

United States v. 1, 516. 90 Acres in Stewart County, Tennessee, and Cecil Boren, et al. (Tract 7307, Billy Preston Keatts) (C. A. 6, No. 18105, Nov. 25, 1968; D. J. 33-44-266-181)

The district court set aside a Rule 71A(h) commission's finding of value for lands condemned for use in the Barkley Dam and Lake Barkley Project in Tennessee, and increased the award by $5, 550, for a total of $29, 500, based on its review of the record. The commission's report was clearly erroneous, it held, because the Government's testimony--which it said had not been shown to reflect the condition of the property at the time of taking--should have been completely disregarded. The Government's witnesses had appraised the lands taken some three years after the taking. The court made no findings explaining the basis for its increased award and it specified that its award did not rest on the landowners' valuations. The Government appealed.

A divided Court of Appeals affirmed. The majority undertook its own review of the record and concluded that the increased award could be justified. It stated that the Government's "testimony should not have been totally disregarded"--the delay in appraising merely affecting the weight of the testimony, but not its admissibility or the competency of the appraisers". Later, however, the majority declared that the district court did not abuse its discretion in finding the commission's report to be clearly erroneous and, consequently, could alter the award, under its Rule 53(e)(2)-power to modify the report; and that the district court apparently had considered some of the Government's testimony. No mention was made of the failure of the district court to reveal the bases for the increased award or of any evidence in the case supporting the result. The dissent would have remanded the case "with instructions to consider this [the Government's] testimony and to make an appropriate disposition".

The Division disagrees with these opinions and has filed a petition for rehearing, contending in the main that the decision is contrary to United States v. Merz, 376 U.S. 192 (1964); United States v. Carroll, 304 F. 2d 300

(C.A. 4, 1963); and United States v. Rainwater, 325 F.2d 62 (C.A. 8, 1963), and that the majority opinion is self-contradictory.

Staff: Raymond N. Zagone (Land and Natural Resources Division)

EMINENT DOMAIN

RIGHT TO TAKE; LEGISLATIVE HISTORY; MINIMUM BASIC RECREATIONAL FACILITIES, APPELLATE COURTS WILL NOT RE-TRY FACTS.

Carl Thetford v. United States (C.A. 10, No. 9816, Dec. 4, 1968; D.J. 33-37-302-58)

In acquiring by condemnation land for the Arbuckle Reclamation Project, Oklahoma, which was to be used for recreational purposes, the Bureau of Reclamation of the Department of the Interior took considerably more acreage than had been represented to Congress in oral testimony and written proposals would be needed for this purpose. An appeal by the landowners was taken from the district court's denial of their challenge to the right of the United States to take their lands and from the award of compensation to which a Rule 71A(h), F.R. Civ. P., commission had determined they were entitled.

The Court of Appeals, in affirming the judgment of the district court, found that the Act of Congress involved had not defined the term "minimum basic recreational facilities" but had left such determination to the Secretary of the Interior. The Court of Appeals recognized that the reports made by the Department of the Interior to Congress were only feasibility reports which dealt only in broad terms of acreages and probable facilities. The Court went on to hold that it was inappropriate to use a feasibility report or any other part of the legislative history to arrive at an interpretation of the meaning of the subject Act, since the Act which contained authority for the taking was clear and unambiguous.

With respect to the adequacy of the award for the taking, the Court held that it would not "retry the facts and a finding based on sharply conflicting evidence is conclusively binding here".

Staff: George R. Hyde (Land and Natural Resources Division)

DISTRICT COURT

FEDERAL CLEAN AIR ACT

INJUNCTION AGAINST INTER-STATE POLLUTION; CONSENT DECREE ENTERED IN FIRST ENFORCEMENT ACTION UNDER FEDERAL CLEAN AIR ACT.

United States v. Bishop Processing Co. (D. Md.; Nov. 1, 1968; D.J. 90-1-2-804)

Chief Judge Thomsen of the United States District Court for the District of Maryland entered a consent decree by which the defendant, Bishop Processing Company, was permanently enjoined from discharging malodorous air pollutants into the State of Delaware. The decree further provides for the retention by the court of jurisdiction for the purpose of enforcing the decree in the following manner:

a. Upon the plaintiff's filing of an affidavit with the court by the Director, Air Pollution Control Division, State of Delaware Water and Air Resources Commission, stating that the defendant is discharging malodorous air pollution reaching the State of Delaware, the court will forthwith order the defendant to cease all manufacturing and processing operations in defendant's rendering and animal reduction plant located near Bishop, Maryland.

b. The defendant shall have no recourse or appeal from the determination of the Director, Air Pollution Control Division, State of Delaware Water and Air Resources Commission, tendered to the court in the matter described in subparagraph (a) above.

Staff: Assistant United States Attorney Theodore R. McKeldin, Jr. (D. Md.); Walter Kiechel, Jr. and David L. Osborn (Land and Natural Resources Division)

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