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UNITED STATES DEPARTMENT OF JUSTICE

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Assistant Attorney General Thomas E. Kauper

DISTRICT COURT

SHERMAN ACT

NEWEST SECURITIES EXCHANGE CHARGED WITH VIOLATION OF SECTION 1 OF THE SHERMAN ACT.

United States v. Chicago Board Options Exchange, Inc., Civ. 73 C 1085; April 26, 1973; DJ 60-268-23)

On April 26, 1973, the first day of trading on the nation's newest securities exchange, the Chicago Board Options Exchange (CBOE), we filed a civil suit in the District Court for the Northern District of Illinois seeking to prohibit CBOE from fixing commission rates and brokerage fees charged by brokers trading securities options (such as "puts" and "calls") on common shares of major corporations.

The case is generally similar to the Division's pending Chicago Board of Trade and Thill securities cases, challenging fixed brokerage commissions on commodities exchanges and the New York Stock Exchange, respectively.

The CBOE members engage in trading securities options for their own accounts and as brokers for members of the public. A securities option is a contract for the right to purchase or sell a specified number of shares of a particular stock during a specified period of time at a price determined at the time the contract is entered into. In this respect it is closely analogous to a commodity futures contract. The securities option fluctuates in value depending on the anticipated future value of the underlying security. A contract for the right to purchase shares is commonly referred to as a "call" and a contract for the right to sell is commonly referred to as a "put"; the customer normally pays a premium ranging from 5 percent to 20 percent of the security for the original option. Puts and calls have been traded for many years by dealers who charge an independently determined commission for the service of buying or selling securities options. The CBOE intends to centralize such trading by bringing buyers and sellers together on its trading floor. Such a central market is potentially more efficient than the old informal trading system, provided competitively determined commission rates are charged.

The CBOE has a rule fixing the minimum rates of commission which must be charged to members of the public who wish to purchase or sell securities options. The commission rate is specified as a graduated percentage of the money involved in the order, with a

lower rate being charged on larger orders. Failure to charge the fixed rates can result in expulsion of the CBOE member.

Prior to SEC approval of the registration of CBOE (under 15 U.S.C. Section 78f) we sent a letter to the SEC arguing that fixed commission rates were not in the public interest and urging that the Commission disapprove the proposed CBOE fixed rate rule. The SEC reasoned that the nation's established securities exchanges still had such rules and indicated that it would not treat CBOE differently; the Commission expressed no opinion on the merits of fixed commission rates as such.

Ordinarily, brokerage commission rate fixing is a per se violation of the Sherman Act, United States v. National Ass'n of Real Estate Boards, 339 U.S. 485 (1950). In the context of a securities exchange regulated by the SEC under the Securities Exchange Act of 1934, such a practice is exempt from the antitrust laws only if the exchange can show that it is "necessary to make the Securities Exchange Act work, and even then only to the minimum extent necessary." Silver v. New York Stock Exchange, 373 U.S. 341 (1963); Thill Securities Corp. v. New York Stock Exchange, 433 F.2d 264 (7th Cir. 1970), cert. denied, 401 U.S. 994 (1971). See also Harwell v. Growth Program, 451 F.2d 240 (5th Cir. 1971). This is the same legal basis as that for our suit against the Chicago Board of Trade, 1/ involving the fixing of commission rates on the leading commodity exchange and for our intervention in Thill Securities v. New York Stock Exchange, 2/ which challenges fixed commission rates on the leading stock exchange.

We expect to show that fixed brokerage commissions are not "necessary" to make the Securities Exchange Act work. Such testimony from industry and expert witnesses has been presented before the SEC and in the pending Thill Securities case. At the same time, the House and Senate Subcommittees on Securities have held exhaustive hearings and unanimously reached the same conclusion on commission rates. Both Committees are on record favoring competitive commission rates and full antitrust jurisdiction as a means of insuring competition in the securities industry.

We do not believe that it will be necessary to seek the regulatory agency's views as we did in the Chicago Board of Trade case because the SEC has already spoken in its opinion declining to disapprove the fixed rate rule under the securities laws after we

1/ United States v. Board of Trade of the City of Chicago, Civ. No. 71 C 1875 (N.D. Ill.).

2/ 63 C 264 (W.D. Wis.), intervention by the United States granted May, 1972.

specifically requested it to do so. It would seem that this SEC action (usually called "non disapproval" by the Commission) would be sufficient to satisfy the Supreme Court's recent decision on "primary jurisdiction" in Ricci v. Chicago Mercantile Exchange, 93 S. Ct. 573 (1973). If the District Court finds otherwise, we shall then ask for additional information and views from the SEC, but in any event, as the Ricci decision makes clear, the ultimate decision is for the antitrust court and not the regulatory agency.

The case was filed on the trading commencement date so that we would not be accused of having delayed our suit beyond this date, thus unnecessarily exposing the CBOE's members to treble damage liability. We are not seeking preliminary relief because it appears more appropriate to have the basic legal issue resolved first in the Thill case, where there has been a plenary hearing and a long history to throw light upon the need or lack of need for commission rate fixing.

The case is assigned to Judge Philip Tone.

Staff: Robert L. Eisen, Rebecca J. Schneiderman, Richard J. Braun and David J. Roddy (Antitrust Division)

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CIVIL DIVISION
Assistant Attorney General Harlington Wood, Jr.

COURTS OF APPEAL

FOOD STAMP PROGRAM

SIXTH CIRCUIT HOLDS THAT DELAY BETWEEN INVESTIGATION AND INITIATION OF ADMINISTRATIVE PROCEEDINGS TO DISQUALITY A STORE OWNER FROM PARTICIPATION IN THE FOOD STAMP PROGRAM DOES NOT INVALIDATE PROCEEDINGS.

Levy, d/b/a Mike's Market v. United States (C.A. 6, No. 72-1567, decided April 26, 1973. DJ 147-58-31)

Levy, doing business as Mike's Market, was the subject of an investigation by the Department of Agriculture because of the high volume of food stamp redemptions at his store. The investigation revealed a number of serious violations of the Food Stamp Program, including shortchanging, overcharging, and trafficking in "authorization to purchase" cards. The case was referred to the United States Attorney for possible criminal prosecution. Eighteen months later, the United States Attorney determined not to prosecute. The Department of Agriculture thereupon commenced administrative proceedings against Levy, which resulted in an order suspending Levy from the Food Stamp Program for a period of one year. Levy sought review of this determination in the district court, which invalidated the administrative action on the ground that Levy was prejudiced by the long delay between investigation and commencement of proceedings.

The Court of Appeals reversed, holding that in the absence of a time limit fixed by statute or regulation within which administrative proceedings must be commenced, mere lapse of time cannot invalidate an administrative determination.

Staff: Michael Stein, Civil Division

FREEDOM OF INFORMATION ACT--"IDENTIFIABILITY" REQUIREMENT

National Cable Television Association, Inc. v. Federal Communications Commission (C.A.D.C., No. 24,786, decided April 17, 1973, DJ No. 82-16-376)

The National Cable Television Association in this Freedom of Information Act suit sought to compel the Federal Communications Commission to disclose to it various documents used by the Commission in formulating its rule imposing certain fees on the industry. The district court, after conducting an evidentiary hearing, granted summary judgment for the defendant, observing that the documents sought were "work papers and internal memoranda of the

agency" (Slip opinion p. 3). The Court of Appeals, per Chief Judge Bazelon, held that summary judgment was improperly granted, since the nature of the documents was in dispute and the evidence did not support the Commission's defenses that the documents were either unidentifiable or fell within exemptions of the Act. The matter was remanded to the district court for further proceedings.

The Court of Appeals stated: "To prevail the defending agency must prove that each document that falls within the class requested either has been produced, is unidentifiable, or is wholly exempt from the Act's inspection requirements" (Ibid.). Hence the Commission could not rely upon blanket allegations of unidentifiability and exemption, as it had done in its motion for summary judgment and supporting affidavits. Chief Judge Bazelon's opinion discusses at length the meaning of the "identifiability" requirement under the Act, and concludes that district court has authority to conduct discovery proceedings in order to enable the plaintiff to define or "identify" the documents he seeks. His opinion should be read in conjunction with an earlier District of Columbia Circuit decision on the "identifiability" requirement, to which the Court does not refer. Irons v. Schuyler, 465 F.2d 608, certiorari denied December 18, 1972.

Staff: Leonard Schaitman, Civil Division

GOVERNMENT BONDS

THE SIXTH CIRCUIT HOLDS THAT A BANK MUST DEMAND SUFFICIENT IDENTIFICATION BEFORE CASHING U.S. BONDS OR SUFFER THE LOSS.

The Banking and Trust Company v. John B. Connally, Secretary of the Treasury (C.A. 6, No. 72-1820, May 1, 1973, DJ 145-3-1041)

A professional forger presented six stolen Series E United States Savings Bonds to the plaintiff bank to be cashed, worth $5,054. The forger showed as identification a driver's license, Social Security card and numerous credit cards all bearing the name of the true owner of the bonds. The only discrepancy in the identification was that the bonds were issued to an individual having a New Jersey residence and the forger presented a driver's license bearing a Pennsylvania address. Based on the above identification, the bank, as a paying agent for the government, cashed the bonds and sought reimbursement.

The Sixth Circuit affirmed the district court's decision that the bank had not exercised due care in cashing the bonds. The bank was found negligent for cashing the bonds for a complete stranger without seeking to corroborate his identification documents. Under Treasury regulations, neither a Social Security card or credit cards are considered acceptable sources of

identification because they can be easily obtained without prior proof of identify, and a motor vehicle license can be relied upon if corroborated by other acceptable documents in a case where doubt as to the true identity of the presenter exists. The discrepancy in addresses was sufficient to create a doubt in the presenter's identity and because no other acceptable documents were presented, the bank was found negligent for cashing the bonds and therefore not entitled to reimbursement by the government.

Staff: Jean A. Staudt, Civil Division

MAIL FRAUD

FIRST CIRCUIT HOLDS THAT CIVIL MAIL FRAUD STATUTE APPLIES TO SELLERS OF TERM PAPERS EVEN THOUGH THEY DO NOT COMMUNICATE BY MAIL WITH THE VICTIM OF THE FRAUDULENT SCHEME.

United States v. International Term Papers Inc. (C.A. 1, No. 72-1397, decided May 3, 1973; DJ 36-36-212)

In this action the Postal Service sought to stop delivery of mail addressed to four companies which sell term papers to students for submission to universities as the students' own work. The Civil Mail Fraud Statute, 39 U.S.C. 3005, applies to persons "engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations." The district court held that the term paper companies were not engaged in such a scheme because the students who purchased term papers from them by mail were not defrauded.

On the Government's appeal, the First Circuit reversed. The Court held that a statutory violation can be established by showing that the defendants "receive money through the mail by means of assisting students to make false representations to universities." In distinguishing the case of a reputable encyclopedia publisher, the Court held that the statute applies only to those mailers who knowingly cooperate in a scheme in which their products are used by the purchaser to deceive a third party. The Court concluded that it was immaterial that the term paper companies did not misrepresent their products and that the misrepresentations by the students occurred after the use of the mails had been completed.

Staff: Anthony J. Steinmeyer (Civil Division)

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CIVIL RIGHTS DIVISION
Assistant Attorney General J. Stanley Pottinger

SUPREME COURT

VOTING RIGHTS

SUPREME COURT CLARIFIES REQUIREMENTS OF VOTING RIGHTS ACT OF 1965.

Georgia v. United States (S. Ct.; No. 72-75; decided May 7, 1973; DJ 166-0-6)

On May 7, 1973, the United States Supreme Court handed down its decision in Georgia v. United States. The case involved a suit brought by the Justice Department under 42 U.S.C. 1973j(d) to enjoin the State from conducting elections for its House of Representatives under a 1972 reapportionment law.

Under Section 5 of the Voting Rights Act of 1965, as amended in 1970, all covered political jurisdictions must submit any proposed voting changes either to the Attorney General, or to the District Court for the District of Columbia, for review as to possible racially discriminatory purpose or effect. In response to his reviewing responsibilities under the Act, the Attorney General interposed an objection to the Georgia reapportionment law, thereby rendering it unenforceable. The objection was based on the use of multi-member districts, majority run-off elections, and numbered posts which, when combined, appeared to have a racially discriminatory effect on minority voting rights.

After a three-judge court enjoined the holding of the election, the State appealed to the Supreme Court. The Court stayed the enforcement of the district court's order, pending disposition of the appeal.

The Supreme Court, with Justices White, Powell, and Rehnquist dissenting, held:

(1) Section 5 applies to state reapportionment plans;

(2) The Attorney General's regulations placing the burden on the submitting jurisdiction to prove that the "proposed changes were free of a racially discriminatory effect" are a "possible choice under the Act" and "a reasonable means of administering" Section 5;

(3) Although the state claim in this Court that the Attorney General's objection was untimely may be moot, the Attorney General's regulations that the statutory 60-day review period begins to run from the time all necessary information is furnished is reasonable and consistent with the Act; and,

(4) Since elections under the 1972 plan were held by reason of the Supreme Court's stay order, no new elections will be required.

The dissenters argued that the Attorney General's letter evincing a policy of placing the burden of proof on the submitting authority was not sufficient to constitute an objection under the Act. They would have required the Attorney General to make an affirmative finding of discriminatory effect.

Staff: John C. Hoyle and Robert Rush (Civil Rights Division)

DISTRICT COURTS

EQUAL EMPLOYMENT OPPORTUNITY

ARIZONA DISTRICT COURT ORDERS RELIEF FOR MEXICAN-AMERICANS AND AMERICAN INDIANS IN EMPLOYMENT DISCRIMINATION CASE.

United States v. Inspiration Consolidated Copper Company, et al. (Civil No. 70-91, D. Ariz.; April 9, 1973; DJ 170-8-4)

On April 9, 1973, the United States District Court for the District of Arizona entered a decision in a suit brought by the Justice Department in 1970 against the Inspiration Consolidated Copper Company and twelve unions representing the approximately 2,000 company employees.

The court held that Inspiration had engaged in a pattern and practice of discrimination, prohibited by Title VII of the Civil Rights Act of 1964 in the initial assignment of Mexican-Americans and American Indians to jobs within its copper mining and smelting operations. (Inspiration had historically assigned these two minority groups to the less skilled and least desirable jobs. The more desirable craft, railroad and guard jobs were reserved for the Anglo employees.)

The court further held that the collective bargaining agreements entered into between Inspiration and the twelve unions served to perpetuate the effects of discriminatory assignment practices by prohibiting Mexican-Americans and American Indians from transferring, with full seniority and earning protection, to the better paying, predominantly Anglo jobs.

The court directed the Government to draft a decree which will provide those employees discriminated against with the right to transfer into the better jobs without loss of earnings and with the right to exercise their full company seniority for all purposes - i.e., promotion, demotion, layoff and recall in those jobs.

The court found against the Government on the issues of discrimination in clerical and managerial positions and in the assignment of company housing. It did, however, hold that pre-employment educational and testing requirements used by Inspiration were discriminatory in that they disqualified a disproportionately high percentage of Indians and Mexican-Americans and had not been shown to be valid predictors of job performance. The court directed that the remedial decree provide for the enjoining of the further use of these requirements until such time as they have been properly validated, in accordance with the Testing Guidelines published by the Equal Employment Opportunity Commission, and approved by the court. As to Mexican-American and American Indian employees hired before 1968, the court enjoined the use of such testing and educational requirements for purposes of qualifying for transfer or promotion, irrespective of whether or not they should subsequently be validated, since contemporaneously hired Anglos were never required to meet such qualifications in order to qualify for the jobs in question.

Staff: L. Michael Thrasher and Robert T. Moore
(Civil Rights Division)

DISTRICT COURT ENTERS COMPREHENSIVE DECREE IN EMPLOYMENT DISCRIMINATION CASE AGAINST U.S. STEEL CORPORATION.

United States v. U.S. Steel Corp., et al. (Civil No. 70-906; N.D. Ala.; May 2, 1973; DJ 170-1-15)

On May 2, 1973, the District Court for the Northern District of Alabama (J. Sam Pointer) entered a decree in a case brought by the Justice Department in 1970 against the United States Steel Corporation, Fairfield Works, and the United Steel Workers of America for violation of Title VII of the 1964 Civil Rights Act.

The Court found that both the company and the United Steel Workers of America have engaged in a pattern and practice of racial discrimination against blacks in employment.

The decree, approximately 180 pages in length, contains the following major features: (a) the merger, for seniority purposes, of two black-majority plants with the largest white-majority plant (reducing the number of separate plants within the Fairfield Works from nine to seven); (b) the merger or other restructuring of approximately 100 lines of promotion; (c) the adoption of an across-the-board plant seniority system for all production and maintenance employees; (d) the unlimited right of employees to transfer to permanent vacancies in entry level jobs in production and maintenance lines of promotion; (e) the right of production and maintenance employees who are laid off from their line of promotion to be recalled on the basis of their plant seniority to a job one above the highest job in the line of promotion that they

held on a permanent basis prior to the layoff; (f) "Red Circle" earnings protection, including the protection of incentive rates, for black employees who transfer into entry level jobs in formerly white-only lines of promotion containing the better paying, more desirable jobs; (g) the establishment of 50% minority hiring goals for apprenticeship and clerical and technical positions and 33-1/3% goals for management positions; (h) the right of incumbent production and maintenance employees to transfer, with seniority carry-over, to clerical, technical and plant protection jobs, provided they bid to do so during a 120-day choice period; and (i) the creation of a three-member "implementation Committee" to ensure that the decree is correctly implemented.

The Court denied the Government's claim for back pay relief for incumbent black employees. This decree was entered five months after the conclusion of a 55-day trial in 1972.

Staff: Robert T. Moore and Louis G. Ferrand
(Civil Rights Division)

DELTA AIRLINES ENTERS INTO CONSENT ORDER PROVIDING FOR AFFIRMATIVE RELIEF TO END DISCRIMINATORY EMPLOYMENT PRACTICES BASED ON RACE AND SEX.

United States v. Delta Air Lines, et al. (Civil No. 18175; N.D. Ga.; April 27, 1973; DJ 170-19-36)

On April 27, 1973, the United States District Court for the Northern District of Georgia, entered a consent decree in this employment discrimination case directing Delta Air Lines and the union defendants to comply with an agreement negotiated by them with the Departments of Justice and Labor.

The suit against Delta, which employs approximately 25,000 persons, involved allegations of discrimination on account of race and sex. The complaint alleged that black employees have been traditionally assigned to low-level, low-opportunity jobs such as airplane cleaner, janitor, maid and general utility employer, and that women were customarily assigned almost exclusively to stewardess, reservation agent and clerical jobs. The complaint further alleged discriminatory recruiting, testing, hiring and promotion practices.

The agreement approved by the Court provides that blacks and women hired before July 1, 1971, and assigned to low-opportunity, traditionally black or female jobs, can transfer to higher opportunity jobs without loss of seniority or rate of pay. The agreement also provides for back pay to certain employees in the amount of approximately $500,000. Goals and timetables are to be set within four months on a job-by-job and facility basis. In the interim, hiring goals of 25% minority in traditionally white

entry level jobs and from 10-25% female in traditionally male jobs will be in force.

This is the Department's first employment discrimination case against a major airline. A similar suit was filed on the same date against United Air Lines.

Staff: David L. Rose, Michael Middleton
(Civil Rights Division)

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CRIMINAL DIVISION
Assistant Attorney General Henry E. Petersen

DISTRICT COURT

EXTRADITION - BASIS

BASIS FOR EXTRADITION REQUEST AND FINDING OF EXTRADITABILITY IS OFFENSE FOR WHICH FUGITIVE WAS CONVICTED AND SENTENCED, NOT FOR SUBSEQUENT PAROLE VIOLATION.

Clarence Duke McGann v. United States Board of Parole and M.R. Hogan (Warden), (M.D. of Pa., Habeas Corpus No. 1481, April 6 1973, DJ 95-100-501)

The petitioner was extradited from Jamaica and is currently housed at the Federal facilities at Lewisburg, Pennsylvania. He challenged his incarceration under the theory (1) that he was extradited for a parole violation, a non-extraditable offense unde the United States - United Kingdom Extradition Treaty, 47 Stat. 2122, which is applicable to Jamaica (See Treaties In Force, Department of State, [January 1, 1973] p. 136); and (2) that he was committed for an offense other than that for which he was extradited in violation of said treaty. The Government contended that McGann's extradition was sought and obtained on the basis of his conviction for bank robbery, for which he had 2,950 days remaining to be served; and that he was committed in order to complete service of his sentence.

In denying petitioner's contentions, United States District Court Judge Malcolm Muir ruled that whether or not a fugitive has been surrendered for an extraditable offense is an issue to be determined by the foreign court. In the judge's view a function of a court in this country is not to review a foreign court's decision, where, as in this case, the documents submitted to Jamaican authorities established the basis for the extradition request. Citing Johnson v. Browne, 205 U.S. 309, 316 (1907), the opinion declared that the final decision as to the extraditable nature of the offense was a matter for the foreign authorities. The Court concluded that the extradition treaty bound it to conclude that the petitioner's extradition proceedings were fair. In any event, it found the decision reasonable under the applicable provisions of the extradition treaty since the petitioner had not completed his sentence. The ruling by the Jamaican court was seen to be similar to that made in In re Extradition of Edmundson and Fischer, 4-72 CR 255 (D. Minn., Dec. 14, 1972), where two fugitives who escaped custody were found extraditable to Canada on the underlying offense.

However, the Court ruled that it had the power to determine whether petitioner was confined for an offense for which he was not extradited. Such confinement, a violation of Article 7 of the Treaty, has been found improper by the Supreme Court. See United States v. Rauscher, 119 U.S. 407 (1886). The Court found that petitioner was confined for violating parole, not, as petitioner alleged, for charges made by New York authorities, but for leaving a district without permission. The basis for which the parole was revoked was before the Jamaican courts. Thus, petitioner's claim that he should be given an opportunity to return to Jamaica was denied.

Staff: United States Attorney S. John Cottone; Assistant United States Attorney Harry Nagle, Murray R. Stein (Criminal Division) (M.D. Pa.)

INTERCEPTION OF COMMUNICATIONS

IN NON-JURY TRIAL DEFENDANT FOUND GUILTY OF ILLEGALLY INTERCEPTING AND ENDEAVORING TO INTERCEPT WIRE COMMUNICATIONS IN VIOLATION OF 18 U.S.C. 2511 (1)(a).

United States v. Anthony Francis Bennett (S.D. Texas, March 26, 1973; DJ 177-74-6)

In the case of United States v. Anthony Francis Bennett, tried before the Court after a waiver of a jury trial, the District Court found the defendant guilty as charged on two counts of intercepting and endeavoring to intercept wire communications in violation of Title 18, U.S.C., Section 2511(1)(a).

The defendant, after his telephone service had been disconnected by the telephone company, installed a call director device in his apartment and connected it to the telephone line of the adjacent apartment. The defendant stated that this was done only for the purpose of stealing telephone service and not for the purpose of intercepting communications. The defendant would have to hold the receiver to his ear to see if the line was being used. After the defendant's telephone service was reinstalled by the telephone company, he maintained the connection with the telephone line of the adjacent apartment and in fact connected the call director to the telephone line of still another nearby apartment. The defendant nevertheless continued to state that his only purpose was to obtain free telephone service.

The Court held that on two separate theories that the defendant endeavored to intercept wire communications as charged in both counts. By maintaining in one instance and installing in another the clandestine connections, after the defendant's own

service had been reinstated, the Court inferred that the connections were made for the purpose of interception. Further, the Court pointed out that the statute defines "intercept" to be the aural acquisition of the contents of any communication (18 U.S.C. Section 2510(4)). Contents is defined to include any information concerning the existence of the communication. (18 U.S.C. Section 2510(8)). Therefore, by raising the receiver to his ear, the defendant was endeavoring to detect the existence of wire communications.

The Court also specifically rejected the holding in United States v. Blattel, 340 F. Supp. 1140 (N.D. Iowa, 1972) that a court cannot take judicial notice after the jury has been dismissed of the fact that the telephone company is a common carrier (a matter of proof required by the definition of "wire communication" in 18 U.S.C. Section 2510(1)). 1/ The Court stated in reference to Blattel that it "finds its decision neither authoritative nor persuasive." (P. 5, Opinion).

Staff: United States Attorney Anthony J. P. Farris; Assistant United States Attorney Andrew Horne (S.D. Texas)

FOREIGN AGENTS REGISTRATION ACT

OF 1938, AS AMENDED

The Registration Unit of the Criminal Division administers the Foreign Agents Registration Act of 1938, as amended, (22 U.S.C. 611) which requires registration with the Attorney General by certain persons who engage within the United States in defined categories of activity on behalf of foreign principals.

MAY 1973

During the first half of this month the following new registrations were filed with the Attorney General pursuant to the provisions of the Act:

Communetics, Inc. of New York City registered as agent of the Chinese Information Service. Registrant is to write and produce one 16mm color general documentary with emphasis on tourism and economic development of Taiwan; to prepare and distribute printed materials on the film and deliver film prints to no less than 500 established television stations in the United States for their consideration for telecast. Registrant's fee for the above services will be $40,000 payable in four installments. John

1/ This problem should be met simply by proving at trial that the telephone company is a common carrier. See 18 U.S.C. Section 2510(1), Section 2510(10), and 47 U.S.C. Section 153(h).

Savage filed a short-form registration statement as Film Writer-Producer working directly on the Chinese account and reports a salary of $15,000 per year plus a commission of 10% of gross film contracts.

Gordon M. Quarnstrom of Wilmette, Illinois registered as agent of the Irish Tourist Board, Dublin. Registrant prepares and distributes news releases to the media on tourism in Ireland and advises the Irish Tourist Board concerning the preparation and distribution of news about travel to Ireland. Registrant's fee for these services is $400 per month including expenses.

Lebanon Tourist & Information Office of New York City registered as agent of the National Council of Tourism in Lebanon, Beirut. Registrant's sole function in the United States is the promotion of tourism to Lebanon and it reported an operating budget of $74,455.10 for the period January 10 - April 11, 1973. Percy R. Dehan filed a short-form registration as director of the registrant and reports a salary of $21,000 per year.

Committee of East Asia Travel Association Representatives of the East Coast, U.S.A. of New York City registered as agent of the East Asia Travel Association, Tokyo, Japan. Registrant is a regional committee of the principal formed to carry on promotional activities in the eastern United States. Registrant is funded by the foreign principal and promotes tourism to EATA member countries. Registrant reported receipt of $15,790.97 from the foreign principal for the period September 15, 1971 to October 11, 1972 and office facilities are provided by the Japan National Tourist Organization of New York. Toshimasa Hitomi filed a short-form registration as Chairman on a part-time basis and reports no compensation.

Williams & King of Washington, D.C. registered as agent of the Noranda Mines, Ltd., Toronto, Canada. Registrant is to receive a $5,000 retainer for general legal services and political analysis regarding the likelihood of enactment during 1973 of legislation suspending U.S. Tariff on imported copper and $5,000 for services in connection with possible formal and informal appearances before United States Government agencies and members of Congress on behalf of the foreign principal. The following filed short-form statements as attorneys involved in the Canadian account: Terrence W. Larrimer, David S. King, William K. Ince and James D. Williams, Jr. All receive a regular salary from the registrant law firm.

The Hament Corporation of New York City registered as agent of Novosti Press Agency, Moscow, U.S.S.R. Registrant will produce and distribute films for TV concerning the life and history of the Soviet people and U.S.S.R. achievements in economy, science and culture. The agreement commenced March 21, 1972 and is for a 3 year period with registrant being granted exclusive

distribution rights in the United States and Canada. Harvey M. Hament filed a short-form registration as Officer rendering services on a special basis and reports no compensation to date.

JETRO, Long Beach Office, California, registered as agent of Japan External Trade Organization (JETRO), Tokyo. Registrant conducts research in connection with the fishing industry and tuna market in the United States and inspects imported marine products from Japan. Yasuhiro Nozawa filed a short-form registration statement as Fish Inspector and reports a salary of $1,000 per month plus a monthly fish inspection allowance of $300.

Movimiento de Integracion Democratica Anti-reelecionista (MIDA) of New York City registered as agent of its parent political party in the Dominican Republic. Registrant will engage in political activities on behalf of the foreign principal and will disseminate political propaganda in the form of newspaper articles, press releases, pamphlets, letters and speeches. Pedro Fabian Soriano filed a short-form registration as Director rendering his services on a special basis and reporting no compensation.

Voltaire F. T. Andres of New York City registered as agent of the Department of Trade & Tourism, Quezon City, Philippines. Registrant is to assume tourist information services and functions and is to conduct a public relations program to promote tourism to the Philippines. No definite budget has as yet been allotted for these services. Teofilo C. Viray filed a short-form registration as Assistant engaged in tourist promotion and reports no compensation.

Activities of persons and organizations already registered under the Act:

Development and Resources Corporation of New York City filed exhibits in connection with its representation of Mahab Consulting Engineers, Tehran, Iran and Federal Union of Brazil, Ministry of Interior, Brasilia. For Iran registrant has assigned two engineers to the Zarrineh Rud Irrigation Project. Such project includes design and construction supervision of a main dam, a diversion dam and 50,000 hectares of irrigation distribution and drainage facilities. The agreement became effective September 12, 1972 and is for a duration of 25 calendar months. Registrant is to be paid $4,950 per month for the services of the Resident Engineer, $4,850 per month for the services of the Design Engineer, $40 for each half hour of part-time technical services, and expenses such as air travel and transportation in Iran. For Brazil registrant will assist the Government of Brazil in a study and determination of the development potential of the San Francisco Valley, with a view toward the rational utilization of its human and natural resources. In this connection registrant will prepare and present a comprehensive planning report concerning the

integrated development of the region, provide continuous consulting and advice throughout the duration of the contract and define and make recommendations concerning a program of collection and dissemination of data and information relating to the resources of the region and their implemention. Fee to the registrant for these services is an estimated $1,572,000, including expenses.

Rouss & O'Rourke of Colorado Springs filed copies of its new agreement with the Union Nacional de Productores de Azucar (UNPASA), Mexico. Registrant will inform the foreign principal by correspondence, wire or telephone of developments in connection with present or future U.S. sugar legislation. For these services registrant receives a monthly retainer fee of $580. Services beyond the scope of the new agreement will be on a fee basis of $75 per hour for the services rendered by Mr. O'Rourke and $55 per hour for services rendered by an associate.

Ruder & Finn, Inc. of New York City filed exhibits in connection with its representation of the New Zealand Meat Producers Board, Wellington. Registrant will provide advertising and promotion services to the foreign principal which represents New Zealand livestock farmers, with a view to increasing the sale of New Zealand meat in the U.S. market. Registrant's fee and promotion budget is to be $735,000 payable in monthly installments covering calendar 1973.

Italian Government Travel Office of San Francisco filed exhibits in connection with its representation of Ente Nazionale Italiano Per Il Turismo, Rome. Registrant is a branch office of its principal and is funded by the Italian Government. Its sole purpose in the United States is the promotion of tourism to Italy.

Modern Talking Picture Service of New York filed exhibits in connection with its representation of Industrial Development Authority of Ireland, St. Vincent Tourist Board and Turkish Tourism & Information Office. Registrant disseminates films to TV stations and receives $20 per booking for the first five bookings and thereafter $17.50 per booking plus a $2.50 service charge for the first five bookings certified each month. Registrant handles 26 color prints for non-theatrical audiences and 6 prints for TV for Ireland, 17 color TV films for St. Vincent and 2 sound TV films for Turkey.

Milbank, Tweed, Hadley & McCloy of Washington, D.C. filed exhibits in connection with its representation of the Government of Iceland. Registrant performs legal services from time to time in the negotiation and execution of contracts concerning the sale of power to foreign subsidiaries. Registrant renders these services on an usual fee basis.

British Information Services of New York City filed exhibits in connection with its representation of the Foreign and Commonwealth Office of Her Majesty's Government, London. Registrant is an overseas post of the foreign principals and is funded and controlled by such principals. Registrant's function in the United States is to furnish information in the form of press releases, radio and television material and public appearances in support of the activities and policies of the British Government.

Arthur Todd of New York City filed exhibits in connection with his representation of the National Wool Textile Corporation, Bradford, England. Registrant is engaged in the merchandising and promotion of British Woolens in the United States. Registrant's salary is $18,000 per year plus offices expenses paid by the principal.

Italian Government Travel Office of New York filed exhibits in connection with its representation of Direzione Generale dell'Enit, Rome. Registrant is a branch of the principal and is funded and controlled by the parent. Registrant's sole purpose in the United States is the promotion of tourism to Italy.

Association-Sterling Films of New York City filed exhibits in connection with its representation of the Royal Danish Consulate; the Spanish National Tourist Office; the German National Tourist Office; the Italian State Tourist Office; the Japan Trade Center; Alitalia Airlines; Olympic Airways (Greece); German Federal Railway; Swiss National Tourist Office; Government of India Tourist Office; Renault, Inc.; German National Tourist Office, Chicago; German National Tourist Office, New York; and Lufthansa German Airlines. Registrant promotes, ships and maintains prints of filmed subjects placed in its film libraries by the above foreign principals. Films are shipped by parcel post, stored in registrant's film exchanges and advertised in its catalogs and mailing pieces. Registrant receives $2.50 to $3.00 per booking of general distribution and $7.50 to $10.00 per telecast.

Short-form registration statements filed in support of registration statements already on file:

On behalf of the Mexican Tourism Department, San Francisco: Fernando A. Paredes as Director engaged in the promotion of tourism to Mexico and reporting a salary of $1,000 per month.

On behalf of the Mexican Government Tourism Department, Los Angeles: Pedro A. Jiminez as assistant director engaged in the promotion of tourism to Mexico and reporting a salary of $540 per month and Marcela Molgora de van Gelderen as assistant director engaged in tourist promotional activities and reporting a salary of $438.56 per month.

On behalf of the Mexican Government Tourism Department, New York City: Manuel Aguilar as regional director engaged in the promotion of tourism to Mexico and reporting a salary of $1,000 per month.

On behalf of Marplan Research, Inc. of Houston whose foreign principal is Communications Affiliates, Government of the Bahama Islands: Armand Ouelette as Vice President and reporting a salary of $35,000 per year.

On behalf of the German American Chamber of Commerce, New York City: Gunter Nitsche as Manager, Market Development advising German and American firms concerning selling and investing in those countries and reporting a salary of $1,310.55 per month.

On behalf of Needham, Harper & Steers, Inc. of New York City whose foreign principals are French Government Tourist Office and Italian Line: Robert S. Zach as Media Planning Supervisor in advising the clients as to the type of media and presentation adaptable to a particular campaign and reporting a salary of $16,000 per year.

On behalf of Cannon Advertising Associates, Inc. of New York City whose foreign principals are Aeromexico, El Al Israel Airlines, Banco de Mexico, Yugoslav State Tourist Office, Yugoslav Airlines and Yugoslav Steamship: Albert Kaplan as President reporting a salary of $27,500 per year; Albert J. Miller as Advertising Copywriter reporting a salary of $15,600 per year and Barbara Kaplan as Secretary-Treasurer reporting a salary of $12,500 per year.

On behalf of the European Travel Commission of New York City: Per Prag as Director and representing the Norwegian interests. Mr. Prag renders his services on a special basis and reports no compensation.

On behalf of Camara Oficial Espanola de Comercio en Puerto Rico whose foreign principal is the Ministry of Commerce of Spain, Madrid: Angel Vazquez Sole as Sub-Treasurer; Jose Perez Dias as Treasurer; Ulpiano Rodriguez del Valle as Officer; Francisco Perez as Secretary; Carlos Alvarez as Officer and Juan Pomar Bonnis as Sub-Secretary. All render services on a special basis promoting the increase of commercial relations between Spain and Puerto Rico and report no compensation.

On behalf of the British Tourist Authority of New York City: Daniel J. Serritello as Promotions Assistant reporting a salary of $18,270 per year and Andrew L. Glaze as Writer reporting a salary of $22,520 per year. Both engage in the promotion of tourism to Great Britain.

On behalf of Stitt, Hemmendinger & Kennedy of Washington, D. C. whose foreign principals are the Embassy of Japan and 8 Japanese trade and manufacturing concerns: Nelson A. Stitt, John A. Kennedy, Jr. and Noel Hemmendinger as partners all rendering legal services to the foreign principals. All render their services on a part-time basis and share in a percentage of the partnership net income.

On behalf of Package Express & Travel Agency of New York City whose foreign principals are Vnesposyltorg, Moscow, U.S.S.R and Bank of Foreign Trade of U.S.S.R.: A. Svenchansky as President engaged in the sending of gift parcels to recipients in the Soviet Union and reporting a salary of $35,000 per year.

On behalf of the European Travel Commission of New York City: P. A. de Maerel as Representative of Belgian interests on a part-time basis and reporting no compensation.

On behalf of Camara Oficial Espanola de Comercio de Puerto Rico whose foreign principal is the Ministry of Commerce, Madrid, Spain: Elias Blanco Gomez as Director engaged in the promotion of commercial relations between Spain and Puerto Rico.

On behalf of the Amtorg Trading Corporation which is the official Soviet purchasing agency in the United States: Lev Andreevich Voronin as Senior Engineer and reporting a salary of $540 per month.

On behalf of the Pan American Coffee Bureau of New York whose foreign principals are 12 coffee producing member nations in Central and South America: Kenneth W. Burgess as Executive Director reporting a salary of $2,000 per month.

On behalf of Grant Advertising, Inc. of Chicago whose foreign principals are the Consulate General of Japan and the Island Government of Curacao: Carla J. Franklin as Account Executive reporting a salary of $6,000 per year, Michael F. Breslin as Creative Director and reporting a salary of $10,000 per year and Daniel A. Wallack as Advertising Executive. All engage in public relations on behalf of the foreign principals.

On behalf of TASS, Telegraph Agency of the U.S.S.R. of New York: Ivan T. Ablamov as Journalist and reporting a salary of $513 per month.

On behalf of France Actuelle of Washington, D.C. whose foreign principal is Comite France Actuelle, Paris: Gaston Ponsart as Secretary-Treasurer engaged in the promotion of the monthly information bulletin France Actuelle reporting French business and industrial news. Mr. Ponsart renders his services on a part-time basis and reports no compensation.

On behalf of British Information Services of New York City: Pauline Bryan as Commercial Press Officer reporting a salary of $20,988 per year; Flora Armitage as Information Officer reporting a salary of $16,548 per year; Elizabeth Zackheim as Director reporting a salary of $20,000 per year; and Elizabeth C. Flynn as Press Officer reporting a salary of $16,968 per year. All are engaged in the dissemination of information about political, industrial, employment, economic, social and cultural conditions in the United Kingdom.

On behalf of Modern Talking Picture Service, Inc. of New York whose foreign principals are 32 foreign government tourist offices: Edward J. Robins as Accountant, Anna M. Cunningham as Film Library Manager, Carl D. Sallach as Account Executive working on the Turkish account, Dennis W. Hayashi as Account Executive working on the Japanese and German accounts. All are regular salaried employees of registrant.

On behalf of Galland, Kharasch, Calkins & Brown of Washington, D.C. whose foreign principals are Balair, Ltd., Condor Flugdienst G.m.b.H.; Lufthansa German Airlines; Philippine Air Lines; Qantas Airways; Swissair and Swiss Air Transport Company, Ltd.: George F. Galland as attorney reporting a fee of $87,500; G. Nathan Calkins as attorney reporting a fee of $69,250; Robert N. Kharasch as attorney reporting a fee of $69,250; Amy Ross Scupi as attorney reporting a fee of $50,000 and the following salaried Associates: Arthur D. Bernstein, $21,000 per year, William D. Karas, $19,000 per year, Rosemary Boyd Avery, $16,500 per year and Olga Boikess, $21,000 per year.

On behalf of the Netherlands Chamber of Commerce of New York: J. M. Bakels as Executive Secretary reporting a salary of $18,900 per year and the following individuals who render services on a special part-time basis and report no compensation: August Philips, International Financial Consultant; Frans J. J. Van Heemstra, Lawyer; Bernard Hamstra, Consultant; L. van Munching, Executive; Peter J. Kooiman, Lawyer; Henrik Y. de Schepper, Advisor; J. F. Hooyberg, Trade Promotion; John I. Howell, Executive; Pieter van den Berg, Chairman; Friedrich O. Kielman, Executive; Johannes C. Severiens, President; L. M. Reuvers, Director; C. Hagers, Director; J. R. Stunzi, Director; Louis R. W. Soutendijk, Director; Antonie T. Knoppers, Vice President.

On behalf of the Austrian Trade Delegate, New York: Dr. Harald Klug as Deputy Trade Delegate engaged in the promotion of trade between the United States and Austria and reporting a salary of $1,100 per month.

On behalf of Package Express & Travel Agency, Inc. of New York City whose foreign principal is Vneshposyltorg, Moscow, U.S.S.R.: Rohdan T. Pozarniuk as agent engaged in sending gift parcels to recipients in the U.S.S.R. and reporting a commission of $5 - $10 per parcel.

On behalf of the Government of India Tourist Office, San Francisco: Q. Iqbal Ahmed as Information Assistant engaged in tourist promotion and reporting a salary of $349 per month plus $400 per month housing and medical allowance.

On behalf of Ronald A. Capone of Washington, D.C. whose foreign principal is Committee of European Ship-owners: Stuart S. Dye as attorney engaged in research. Mr. Dye is a regular salaried employee of registrant's law firm.

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Wallace H. Johnson

COURTS OF APPEAL

PUBLIC LANDS

OIL AND GAS RIGHTS UNDER RAILROAD RIGHT OF WAY.

Tony Rice, et al. v. United States of America, et al., (C.A. 8, No. 72-1738; DJ 90-1-18-961)

The Court of Appeals affirmed, per curiam, the opinion of the district court that the United States had retained ownership of the oil and gas deposits underlying the Burlington Northern, Inc., railroad right of way in Stark County, North Dakota, even though subsequent grants of homestead patents did not except the area of the right of way from the grants. The district court affirmed the decision of the Secretary of the Interior that oil and gas rights in the right of way had not passed to Rice, et al., even though the patents under which they claimed had purported to grant entire 160-acre tracts, within which was the railroad right of way, and no exception of the railroad right of way was made. The Eighth Circuit affirmed the district court's determination that the grant of the right of way to the Northern Pacific Railroad had taken the 400-foot strip out of the category of public lands and that the land department could not have conveyed any interest in it to the predecessors in title of Rice, et al., when the patents were issued.

Staff: Lawrence E. Shearer
(Land and Natural Resources Division)

CONDEMNATION

COMMISSION TRIALS - TRANSCRIPT OF COMMISSION PROCEEDINGS

United States v. 444.79 Acres in Clermont County, Ohio (C.A. 6, No. 72-1942, April 18, 1973; DJ 33-36-661-23)

This condemnation case was tried before a commission which filed a report as to the fair market value of the land. The district court, acting on the objections of the landowners, without reading the transcript of the proceedings before the commission and without finding clear error in the commission report, increased the amount of the award. The Court of Appeals vacated the district court's judgment and remanded the case to the district court for further consideration in light of the transcript from the commission proceedings. The Court of Appeals failed to

reiterate that the district court should follow the "clearly erroneous" test in modifying the commission award.

Staff: Assistant United States Attorney James E. Rattan (S.D. Ohio); Henry J. Bourguignon (Land and Natural Resources Division)

ENVIRONMENT

CLEAN AIR ACT; DISAPPROVAL OF STATE IMPLEMENTATION PLAN; FINAL AGENCY ACTION.

Utah International, Inc. v. EPA and Jicarilla Apache Tribe of Indians, (C.A. 10, No. 72-1575, April 27, 1973; DJ No. 90-5-2-3-81)

Utah International, Inc., filed a petition for review challenging an order by EPA disapproving the implementation plan filed by the State of New Mexico pursuant to the Clean Air Act. The Tenth Circuit granted the Government's motion to dismiss, holding that an order disapproving a plan is not a final appealable order under the Clean Air Act. The rationale was that "by the mere act of disapproval no plan is placed into effect and the administrative process is simply reactivated."

Staff: Bradford Whitman (Land and Natural Resources Division)

DISTRICT COURTS

ENVIRONMENT

NATIONAL ENVIRONMENTAL POLICY ACT; FAILURE TO FILE IMPACT STATEMENT ON EXTENSIONS OF TIMBER SALES WAS ABUSE OF DISCRETION.

Minnesota Public Interest Research Group v. Butz, (D. Minn., No. 4-72 Civil 598, April 16, 1973, DJ 90-1-4-608)

This was an action by an organization of Minnesota college students to stop all further logging operations in the Boundary Waters Canoe Area (BWCA) as (1) forbidden by the Wilderness Act, or, alternatively, (2) until an environmental impact statement was prepared for the management of the BWCA.

Subsequent to the passage of NEPA and its effective date of January 1, 1970, the Forest Service had extended timber sales contracts on 11 timber sales in various portions of the BWCA.

The court, after an extensive analysis of forestry practices with particular emphasis on methods of reforestation, held that

the cumulative impact of the extensions of the timber sales contracts and other day-to-day management decisions in the BWCA required the filing of an environmental impact statement. The court further found that the extensions of timber sales contracts after the effective date of NEPA were the equivalent of new sales which, as part of the totality of administrative actions, constituted major federal action.

The court specifically withheld for a later determination whether the Wilderness Act permits or requires logging within the BWCA.

The court enjoined operations on some of the ongoing sales and allowed others to continue after lengthy analysis of the features of the particular areas involved.

Staff: Assistant United States Attorney Neal Shapiro (D. Minn); L. Mark Wine (Land and Natural Resources Division)

ENVIRONMENT

COURT ENJOINS CORPS OF ENGINEERS FROM DREDGING NEW HAVEN HARBOR; NO EXEMPTION IN NEPA FOR MAINTENANCE PROJECT; NO EXEMPTION FOR DREDGING PROJECT POST-DATING NEPA ALTHOUGH RELATED TO BUILDING OF HARBOR WHICH ORIGINATED BEFORE NEPA; NATURE OF PROJECT REQUIRES IMPACT STATEMENT; STANDING; RISK OF HARM NOT GROUNDS FOR DENYING INJUNCTIVE RELIEF.

Sierra Club v. John H. Mason, et al., (D. Conn., Civil No. B-582, March 26, 1973; DJ 90-1-4-564)

The Sierra Club brought an action to enjoin the Corps of Engineers from dredging the New Haven Harbor and depositing dredged materials into Long Island Sound until there was compliance with the National Environmental Policy (NEPA), 42 U.S.C. sec. 4332 et seq. The proposed dredging operation post-dated NEPA. The court granted the plaintiff's motion for preliminary injunction and, thereafter, made it permanent. The primary ground for injunctive relief was the failure of the Corps of Engineers to prepare an environmental impact statement. Individual members of the Sierra Club were not joined as plaintiffs, but several affidavits by members were filed.

Defendants moved to dismiss the action on the grounds that (1) the dredging operation was exempted from the Act because it is "maintenance" of the harbor built in 1871 and improved between 1946 and 1950; (2) even if not exempted from NEPA, the proposed dredging was an "on going project" to which NEPA applies less strictly then where a project originates after the Act's effective date; (3) that even if the Act applies, an impact statement is

not required because the project will not sufficiently affect the environment. The defendant also argued that the plaintiff lacked standing to sue.

In striking down plaintiff's first contention, the court held that there is no exception for maintenance of projects in NEPA. The court found that a maintenance action that requires disposal of more than one million tons of polluted material requires a systematic exploration of different methods of disposal.

The district court rejected defendants' argument that the proposed dredging is an "on going" project and, therefore, NEPA is less strictly applied. The court recognized that where agency action occurred prior to NEPA the courts have applied a balancing of factors approach to determine if an impact statement is required for some remaining stages of a project. But here, the court held that a special rule that considers maintenance simply a latter stage of all projects built before January 1, 1970, would undermine the Act. The court found that dredging project as having" . . . a life of its own," with the potential for harm to the environment.

In response to plaintiffs' argument that NEPA is not applicable because it will not significantly affect the environment, the court held that it does not matter whether or not there is a declaration by an official of no environmental impact. NEPA plainly requires the preparation of an impact statement if the facts indicate danger to the environment, especially in the case where pollutants would be concentrated in excess of guidelines promulgated by EPA.

The court rejected the defendants' argument that the plaintiffs lacked standing. It held that no reliance can be made on the Mineral King case, Sierra Club v. Morton, 405 U.S. 727 (1972). The court said that implicit in the Mineral King holding is the conclusion that the allegations of the club members are sufficient to afford the club standing; also, that there is nothing in Mineral King which holds that plaintiff's failure to join its members is fatal to its cause of action. The defendants contended that plaintiff had not shown that the proposed dredging operation would adversely affect the activities of the plaintiff members. But the court held that it was not necessary for the nexus between the use of a given area and the effect of the defendants' proposed action to be explicitly elaborated in the pleading. It is only necessary that a connection be reasonably alleged.

Defendants claimed that substantial harm to the public would result if the injunction were issued. In granting a preliminary injunction, the court held that". . . in the absence of extraordinary equities on the Government's side, the requirement of an

impact statement must be enforced by injunction whenever a proposed project poses a substantial risk of damage to the environment and there exists a reasonable possibility that adequate consideration of alternatives might disclose some realistic course of action with less risk of damage."

When the defendants sought to have the preliminary injunction dissolved on the ground that they agreed that the project required compliance with NEPA, the court held that acquiescence is not sufficient grounds for dissolving the injunction. The court also refused to review the sufficiency of a draft statement submitted subsequent to the preliminary injunction. The court reasoned that "if upon review of the sufficiency of the final statement, deficiency in the draft statement should be found, a new NEPA compliance can be ordered before an agency decision is finally made with respect to the project."

Staff: Assistant United States Attorney
Howard C. Eckenrode (D. Conn.)

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