United States Attorneys

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UNITED STATES DEPARTMENT OF JUSTICE

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POINTS TO REMEMBER

TRAVEL

We have again been advised by the Office of Management and Budget (OMB) that travel expenses for all agencies is at an all time high. We are, again requesting that you closely review your travel requests before contacting the Executive Office or proceeding with intra-district travel. We would like to implement a strict policy to eliminate all but absolutely essential travel.

Some methods are procedures to control and minimize travel are as follows:

Use Alternatives — Travel will not be permitted when matters could be handled over the phone. Use of mail and teletype facilities is encouraged.

Limit Travellers — Only a minimum number of persons necessary to accomplish the purpose of the trip is permitted to travel. We are suggesting only one traveller. If the need arises for more than one traveller, a complete and thorough justification for two must be given.

Utilize Field Locations — If an employee is required to travel a great distance to accomplish a task, he should contact the U.S. Attorney for that district to see if one of his employees could handle the matter.

Screening Travel Requests — All travel requests will continue to be carefully screened by the Executive Office before approval is given. The approving official must be able to ensure that:

1. The trip is absolutely necessary.
2. Coordination has been made in the office to minimize the number of travellers.
3. Only the most economical means of transportation is used.
4. The trip is as short as possible to accomplish its purpose.
5. Any travel time in excess of reconstructed air time is charged to leave when an employee is permitted to drive for his own convenience.

Limitation on Travel to Conferences	Travel to conferences, seminars, and meetings will be limited to those functions directly related to that of the U.S. Attorney. It is the policy of the Executive Office not to approve attendance at Federal, state, or local bar association meetings.
Foreign Travel	Foreign travel must be held to a minimum. Please refer to 24 USAB 955 and 28 CFR 0.76 (c) for further information on foreign travel.
Relocation	Relocation expenses are very seldom authorized and will be authorized only if the move is deemed in the best interest of the government. Transfer funds are extremely limited.

As always, the Executive Office wishes to facilitate the needs of each U.S. Attorney while acting in the best interest of all U.S. Attorneys. We hope that you will take it upon yourselves to follow the guidelines mentioned above and eliminate all but necessary travel.

(Executive Office)

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UNITED STATES ATTORNEYS' EXECUTIVE HANDBOOK

The Executive Handbook has been revised and is scheduled for for delivery about June 1. This publication is intended to be a personal desk book for U.S. Attorneys. U.S. Attorneys who do not receive a copy are requested to notify the Special Projects Unit, Executive Office for United States Attorneys, (FTS 739-4238).

(Executive Office)

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UNITED STATES ATTORNEYS' MANUAL--BLUESHEETS

The following "bluesheets" have been sent to press in accordance with USAM 1-1.550 since the last issue of the Bulletin.

Date	Affects USAM	Subject
4/13/77	9-42.510	Referral of Social Security Violations
5/5/77	9-4.541	Guide to Practice Under the Treaty on Mutual Assistance in Criminal Matters Between the United States and Switzerland
5/25/77	4-4.230	Award of Attorneys' Fees to Prevailing Governmental Defendant in Federal Employment Discrmination Cases
5/26/77	6-3.181	Order for Entry to Effect Levy
5/26/77	6-3.380	Suits Against U.S. Officers and Employees; 26 U.S.C. 7217
5/31/77	6-3.355	Suits to Review Jeopardy and Termination Assessments under Section 7429
6/6/77	9-90.700	Selective Service Act
6/6/77	9-90.500	Fishery Conservation and Management Act of 1976
6/6/77	9-90.320	Communication or Receipt of Classified Information Prohibited; 50 U.S.C. 783(b)
6/8/77	9-11.351	Grand Jury; Presence of Government Attorneys

(Executive Office)

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CIVIL DIVISION
Assistant Attorney General Barbara Allen Babcock

Brown v. Westinghouse Electric Corporation, et al., 542 F.2d 1190 (C.A. 4, 1976), certiorari denied, ____ U.S. ____, No. 76-1192, May 16, 1977). DJ 145-15-635.

Freedom of Information Act; "Reverse" Case

The Supreme Court has just denied the Government's petition for a writ of certiorari in this "reverse" Freedom of Information Act case. The Supreme Court's action leaves standing the court of appeals' ruling that private parties -- required by law to submit certain information to federal agencies -- may invoke exemption 4 of the FOIA, or, alternatively, 18 U.S.C. 1905, to block the Government's release of information the disclosure of which would cause substantial injury to the private supplier of the information.

Attorney: Paul Blankenstein (Civil Division), FTS 739-3469.

Usery v. Whitin Machine Works, ____ F.2d ____ (C.A. 1, No. 76-1373, decided May 11, 1977). DJ 145-10-389.

Trade Act of 1974

The Trade Act of 1974 authorizes the Secretary of Labor to grant federal benefits to workers who, by reason of increased imports, have lost their jobs. Under the Act, the Secretary must determine if workers are eligible for benefits "[a]s soon as possible after the date on which a petition is filed . . . but in any event not later than 60 days after that date." On November 7, 1975 a group of workers at Whitin filed for benefits under the Act. In order to determine if the workers were eligible for benefits, the Secretary sought certain business records from Whitin. When Whitin refused to produce the records, the Secretary, on January 13, 1976, issued a subpoena for their production. Whitin refused to honor the subpoena as well, and the Secretary brought an action to enforce the subpoena. The district court dismissed the action on the grounds that, (1) the Secretary's failure to make an eligibility determination within 60 days of November 7, 1975, ousted the court of jurisdiction to enforce the subpoena, and (2) the subpoena sought the compilation and analysis of data rather than the production of records. On appeal, the First Circuit accepted our arguments that (1) the Secretary's failure to comply with the 60-day deadline was not a jurisdictional defect, and (2) the subpoena did not seek the compilation and analysis of data. Accordingly, the First Circuit reversed with instructions that Whitin be compelled to furnish the requested records.

Attorney: Neil H. Koslowe (Civil Division) FTS 739-5325.

Ash Grove Cement Company v. Federal Trade Commission, et al., ___ F.2d ___ (C.A.D.C., No. 76-1621, decided May 5, 1977). DJ 102-1571.

Freedom of Information Act; FTC

Ash Grove Cement Co. sought disclosure of certain FTC documents under the FOIA. The D.C. Circuit has just adopted our argument that the documents -- FTC chronological minutes and internal memoranda -- are exempt from disclosure under exemption 5. Chronological minutes reflect the discussion and deliberations between Commissioners at Commission meetings. The internal memoranda at issue related to recommendations, guidelines and comments from either staff or individual Commissioners with respect to the FTC's Trade Regulation Rule Proceeding on vertical integration in the Cement Industry.

Attorney: Michael F. Hertz (Civil Division), FTS 739-3418.

Swain v. Hoffman, 547 F.2d 921 (C.A. 5, 1977), DJ 170-1-61; McLaughlin v. Hoffman, 547 F.2d 918 (C.A. 5, 1977), DJ 170-3-39; Simmons v. Schlesinger, 546 F.2d 1100 (C.A. 4, 1976), DJ 170-79-67.

Title VII Class Actions

As reported in 25 USAB 82-83 (March 18, 1977), the Fifth Circuit in Eastland v. TVA, 547 F.2d 901 (C.A. 5, 1977), opinion modified May 23, 1977, and two companion cases, Swain and Hoffman, ruled that under the Federal sector provisions of Title VII, a district court class action may be maintained without prior exhaustion of administrative remedies by each individual class member. It is simply necessary that a single representative plaintiff exhaust his administrative remedy. The Sixth Circuit has subsequently made a similar ruling. Williams v. TVA, C.A. Nos. 76-1606 -07, decided March 28, 1977, petition for rehearing pending. The Solicitor General has determined not to seek certiorari in Swain and Hoffman. Furthermore, the Government will abandon its argument that exhaustion of individual complaint procedures by each class member is required in order to bring a federal sector class action under Title VII. In the argument on rehearing in Simmons we have notified the Fourth Circuit of our new position.

Attorney: John M. Rogers (Civil Division) FTS 739-4792

Davis v. Alabama Power, ____ U.S. ____ (Sup. Ct. No. 76-451, decided June 6, 1977). DJ 151-1-1005.

Veterans Reemployment Rights

Represented by the Justice Department, plaintiff Davis sued his private employer, who had refused to credit his World War II military service toward his pension. On Davis' behalf, we argued that pension benefits are perquisites of seniority within the meaning of the Military Selective Service Act and hence Davis' time in military service must be credited for pension purposes. Resolving a split in the circuits, the Supreme Court unanimously adopted our contention that pension benefits are intended primarily to encourage and reward lengthy continuous service and are thus attributes of seniority. The Supreme Court's decision will result in a substantial increase in the private employer pension benefits for millions of veterans.

Attorney: Mark H. Gallant (Civil Division), FTS 739-5325.

Clark v. Kimmett, ____ U.S. ____ (Sup. Ct. No. 76-1105, decided June 6, 1977). DJ 145-11-190.

Federal Election Campaign Act; One-House Veto

Ramsey Clark brought this action last year while he was a candidate for nomination as Senator from New York, challenging the provisions of the Federal Election Campaign Act that allow either House of Congress to "veto" regulations issued by the Federal Election Commission. We intervened as a plaintiff in the district court, supporting Clark's argument that the one-house veto is unconstitutional. We also asserted the same contention in the Court of Appeals. But that Court held that the case was not ripe, because Congress had not yet "vetoed" any regulations. Clark appealed to the Supreme Court, but the Government did not appeal. The Supreme Court nevertheless asked for the Government's views and has now affirmed the judgment of the Court of Appeals.

Attorney: Anthony J. Steinmeyer (Civil Division), FTS 739-3178.

Stencil Aero Engineering Corporation v. United States, ____ U.S. ____ (45 U.S.L.W. 4598, decided June 9, 1977). DJ 157-42-329.

Tort Claims Act; Feres Doctrine

In Feres v. United States, 340 U.S. 135 (1950), the Supreme Court ruled that an on-duty serviceman who is injured

due to the negligence of Government officials may not recover against the United States under the Federal Tort Claims Act. In the instant case, the Court was faced with the question whether the Feres doctrine likewise barred an indemnity suit against the United States by a third party (a supply contractor) who was required to pay damages to a serviceman, under circumstances where the serviceman himself could not bring suit against the Government. The Court ruled that the Government was indeed immune from such suits. In the Court's view, the same three factors which in Feres justified Government immunity against a suit filed by a serviceman justified immunity in the case of a third party suit. These factors are -- (1) the distinctly federal nature of the relationship between the Government and its supply contractors; (2) the existence of a no-fault veteran's compensation system, which the Court interpreted as placing a ceiling on Government liability for service-connected injuries; and (3) the adverse effects which all tort actions would have upon military discipline.

The Stencil Aero case has additional significance since it represents a re-affirmation of the Feres doctrine itself. The Feres doctrine has recently come under an increasing amount of criticism by both commentators and various circuit courts of appeals. Any doubts as to the doctrine's continuing validity should be laid to rest by the Court's decision in this case.

Attorney: Thomas S. Martin (Office of the Solicitor General), FTS 739-4278.

Institute for Scientific Information, Inc. v. United States Postal Service, ____ F.2d ____ (C.A. 3, No. 76-2055, decided May 5, 1977). DJ 145-5-4046.

Postal Service

In Houghton v. Payne, 194 U.S. 88 (1904), the Supreme Court ruled that under the postal statutes periodical publications generally must contain "a variety of different articles by different authors." Accordingly, the Postal Service took the position that plaintiff's publication, which merely reproduced the tables of contents of scientific and technical journals, could not constitute a "periodical publication" within the meaning of 39 U.S.C. 4351 and 4354. It therefore did not qualify for second class mailing privileges. The Third Circuit has rejected this conclusion. In the court's view, a publication is a "periodical" if there is a natural connection between the contents of successive issues. Plaintiff's publication qualified as a periodical because it provided its subscribers with information about a single subject matter in a timely and continuous fashion.

Attorney: William J. McGettigan (Assistant U.S. Attorney, E.D. Pa. FTS 597-2556

Bernard Bell v. Harold Brown, ____ F.2d ____ (C.A.D.C. No. 75-1378, decided May 20, 1977). DJ 170-16-167.

Title VII

Section 717(c) of Title VII, as amended, entitles an aggrieved federal employee to bring a civil suit in federal district court "[w]ithin thirty days of receipt of notice of final [administrative] action . . . ." The court of appeals has just rejected our position that the thirty day time period commences to run when notice of final agency action is received by an employee's legal representative. Relying on the fact that Title VII is a remedial statute which depends to a large extent upon laymen, operating without legal counsel, for its enforcement, the court held that the thirty day period does not begin to run until the employee himself actually receives notice of the Civil Service Commission's final decision.

Attorney: John Polk (Assistant U.S. Attorney), D.C. FTS 426-7511.

Seymour v. Barabba, ____ F.2d ____ (C.A.D.C. No. 76-1867, decided June 6, 1977). DJ 145-9-329.

Freedom of Information Act; Census Information

By virtue of Exemption 3, the Freedom of Information Act does not apply to matters that are specifically exempted from disclosure by statute, provided that the statute (A) requires withholding without discretion, or (B) if it permits discretionary withholding, establishes particular criteria for withholding, or refers to particular types of matters to be withheld. 5 U.S.C. 552(b)(3), as amended, 90 Stat. 1247 (1976). The Census laws prohibit any official of the Census Bureau from using information furnished under the Census laws for any purpose other than statistical purposes. 13 U.S.C. 9. The District of Columbia Circuit has affirmed the ruling of the district court that names and addresses of private companies in the possession of the Census Bureau are specifically exempted from disclosure under the amended Exemption 3 and 13 U.S.C. 9.

Attorney: Michael Kimmel (Civil Division), FTS 739-3331.

CRIMINAL DIVISION
Assistant Attorney General Benjamin R. Civiletti

United States v. Ramsey, __U.S.__ 45 U.S.L.W. 4577 (No. 76-167, June 6, 1977)

International Mail and Border Search

The Supreme Court held that 19 U.S.C. 482 which authorizes customs officials to "search any trunk or envelope" in which they may have a "reasonable cause to suspect" there is merchandise which was imported contrary to law, authorizes the opening of incoming international letter class mail.

The Court also found that the statutory authorization did not violate the Fourth Amendment. Noting that border searches made pursuant to the longstanding right of the sovereign to protect itself are "reasonable" by the single fact that the person or item in question has entered the country from abroad, the Court concluded that the acknowledgement by the same Congress which proposed the Fourth Amendment of plenary customs power to search at the border without probable cause or a warrant, and the faithful adherence by the Court to Congress' judgment that border searches are not subject to the warrant provisions of the Fourth Amendment, justify the warrantless searches of persons and items entering the country from abroad. The Court rejected the notion that international letter class mail is entitled to more protection than persons or items crossing the border, and held that there is nothing in the rationale behind the border search exception which suggests that the mode of entry will be critical. Nor is the fact that there may be greater difficulty in obtaining a warrant when the subject of the search is mobile, as a car, person, or belongings, than when the subject may be readily held, as mail, significant inasmuch as the border search exception is based not on the doctrine of exigent circumstances, but rather like the "search incident to arrest" exception, is based on a long-standing, historically recognized exception to the warrant principles of the Fourth Amendment. Finally, the Court concluded, the existing system of mail searches pursuant to the statute which requires that there be reasonable cause to believe there is a customs violation and to the postal regulations which flatly prohibit the reading of correspondence without a warrant, has not been shown to invade protected First Amendment rights, and there is no reason to conclude that the potential presence of correspondence in international letter class mail makes an otherwise constitutionally reasonable search unreasonable.

Attorney: Ann T. Wallace (Criminal Division)
FTS 739-4505

Smith v. United States, __U.S.__, 45 U.S.L.W. 4463 (No. 75-1439, May 23, 1977)

Obscenity; Relevance of State Statute as Evidence of Mores

The Supreme Court held that an Iowa obscenity statute, which at the time of the federal prosecution did not proscribe the distribution of obscene materials to consenting adults, cannot bar a federal obscenity prosecution under 18 U.S.C. 1461 or conclusively define contemporary community standards for appeal to the prurient interest and patent offensiveness that under Miller v. California, 413 U.S. 15, are applied in determining whether or not material is obsence. Notwithstanding state legislation, federal obscenity prosecutions, such as this one under 18 U.S.C. 1461, raise issues of fact for the jury, to be judged in light of its understanding of contemporary community standards. The community standards aspects of § 1461 implicate federal, not state, law even where the materials are mailed entirely intrastate since the statute was enacted under Congress' postal power. The State's decision not to regulate in the obscenity field cannot compel the federal government to allow the mails to be used to distribute obscene materials. The state statute was properly admitted at trial as relevant, but not controlling, evidence of the mores of the community. The Court further found that the trial court did not abuse its discretion in refusing to question the prospective jurors about their understanding of Iowa's contemporary community standards and further held that § 1461 was not unconstitutionally vague as applied here.

Attorney: Michael Keane (Criminal Division), FTS 739-5030

United States v. Washington, __U.S.__, 45 U.S.L.W. 4465, (No. 74-1106, May 23, 1977)

Fifth Amendment Privilege

The Court held, 7-2, that testimony given by a putative defendant grand jury witness, who had been warned of his fifth amendment privilege and that any statements he did make could be used to convict him of a crime, but not of his target status, could be used against him in later prosecution for a substantive criminal offense. The administration of fifth amendment warnings, according to the Court, was sufficient to dispel any coercive elements inherent in the grand jury setting. An additional target warning would have been superfluous. Since there were no other circumstances suggesting that Washington had been subjected to improper compulsion, the court concluded that his testimony was not coerced and was therefore admissible in a subsequent trial. The decision leaves open the question whether the grand jury testimony of a putative defendant witness, who had not been given any warnings at all, may nevertheless be used against him at a subsequent trial for a substantive criminal offense.

Attorney: Michael Moore (Criminal Division)
FTS 739-5160

United States v. Wong, 45 U.S.L.W. 4464 (U.S. May 23, 1977) (No. 74-635)

Fifth Amendment Privilege; Perjury

The Court held that the failure to give a "putative defendant" grand jury witness effective warning of her fifth amendment privilege prior to testifying was not ground for suppressing her false testimony for purposes of a subsequent perjury prosecution. Respondent Wong had received warnings, but the district court found that she had not understood them. Accordingly, she was in the position of a witness who had not been warned. In his opinion for a unanimous Court, Chief Justice Burger reaffirmed the long-recognized principle that the Fifth Amendment "does not endow the person who testifies with a license to commit perjury" (quoting Glickstein v. United States, 222 U.S. 139, 142 (1911), and concluded that failure to warn a witness of the protections of the privilege could not excuse perjury. The decision clarified any possible uncertainty remaining after last Term's decision in United States v. Mandujano, 425 U.S. 564, in which the Court refused to suppress, in a subsequent perjury prosecution, the false grand jury testimony of a putative defendant witness who had been adequately warned of his rights.

Attorney: Michael Moore (Criminal Division)
FTS 739-5160

Scarborough v. United States, __U.S.__, 45 U.S.L.W. 4570, (No. 75-1344, June 6, 1977)

Convicted Felon's Possession of Firearm

In a prosecution under 18 U.S.C. App. Sec. 1202(a) making it a crime for a convicted felon to possess "in commerce or affecting commerce" any firearm, the Government can satisfy the required nexus between possession and commerce by proving that the gun had previously moved in interstate commerce at any time.

The Supreme Court has substantially eliminated the problems caused by its 1971 decision in United States v. Bass, 404 U.S. 336. In Scarborough the Government proved that the convicted felon possessed firearms that had previously moved in interstate commerce. It made no attempt to show where or when the defendant received them and in fact the defendant offered evidence to show he received one of them after his underlying felony conviction.

In an opinion that distinguished Bass, because in Bass the Government made no attempt to show any nexus at all between the firearm and commerce, the Supreme Court reviewed the sparse legislative history of 18 U.S.C. App. Sec. 1202 and held that "by prohibiting both possessions in commerce and those affecting commerce, Congress must have meant more than to outlaw simply those possessions that occur in commerce or in interstate facilities" (Slip op. p. 9). The Court approved a jury instruction that: ". . . The government may meet its burden of proving a connection between commerce and the possession of a firearm by a convicted felon if it is demonstrated that the firearm possessed by a convicted felon had previously traveled in interstate commerce . . . ."

Attorney: William C. Brown (Criminal Division)
FTS 739-5339

LAND AND NATURAL RESOURCES DIVISION
Acting Assistant Attorney General James W. Moorman

Mineral Ventures Ltd. v. The Secretary of the Interior, ___ F.2d ___ (C.A. 9, No. 75-3062; May 3, 1977). DJ 90-1-18-1062.

Mines and Minerals

The district court affirmed a decision by Interior that the United States was entitled to manage the surface resources of certain unpatented mining claims located partly in Oregon and partly in California, within the Siskiyou National Forest, because claimants had failed to establish valid discovery of a valuable mineral (here, gold) prior to July 23, 1955, the effective date of the Surface Resources Act. Since the Government's notices erroneously described all the challenged claims as being in Oregon, the court of appeals, by memorandum, vacated and remanded for entry of an amended judgment granting the Secretary relief only for those claims within Oregon. The memorandum recites the Government's initial burden of making a prima facie case, the shifting to the claimant of the burden (by a preponderance), and the function of the reviewing courts to determine whether Interior's decision is supported by substantial record evidence.

Attorney: Robert A. Kerry (Formerly of the Land and Natural Resources Division).

National Association of Government Employees v. Brown, ___ F.2d ___ (C.A. D.C., No. 76-1579; April 29, 1977). DJ 90-1-4-1469.

National Environmental Policy Act

In an unpublished judgment, the court of appeals affirmed the district court's decision that no EIS was required for the transfer of certain functions from Pueblo Army Depot, Colorado, to other depots in Utah, Pennsylvania, and Texas. The court held NEPA's requirements were inapplicable because the realignment's impacts were strictly economic (loss of jobs) and included no effect whatsoever on the physical environment.

Attorney: Kathryn A. Oberly (Land and Natural Resources Division), FTS 739-2756.

United States v. 1,036.05 Acres in Sweetwater County, Wyoming (Thoman) (C.A. 10, No. 75-1835; April 29, 1977). DJ 33-52-205.

Condemnation

The court rejected our arguments that admission of extensive evidence of the relationship of fee lands (used in a ranching operation and acquired for the Seedskadee National Wildlife Refuge in Wyoming) to Federal permit lands was reversible error. Distinguishing United States v. Fuller, the court said no witness considered the grazing permits as "elements of value," the testimony was not extensive, much was elicited by the Government itself, most was not objected to, it was not relevant to the undisputed highest and best use of recreation, and the jury was instructed without objection not to consider such evidence in ascertaining just compensation. Objection to the landowners' closing argument as inflammatory in a motion for new trial was regarded as too late and did not here constitute fundamental error.

Attorney: Larry G. Gutterridge (Land and Natural Resources Division), FTS 739-2740.

Appawora v. Brough, ___ U.S. ___ (S.Ct. No. 76-815; May 2, 1977). DJ 90-6-0-45.

Indians.

The Supreme Court vacated the judgment and remanded this case to the Utah Supreme Court for reconsideration in light of Rosebud Sioux Tribe v. Kneip, 430 U.S. ____ (1977). Appawora was a suit by an individual Indian in Utah State court to set aside a default judgment on the ground that the state court was without jurisdiction over an Indian involved in an automobile accident occurring within the Uintah Reservation. The Utah Supreme Court determined that an Indian, as a citizen, was subject to state jurisdiction (even though Utah is not a P.L. 280 state), and that the Reservation had been disestablished.

Attorneys: H. Bartow Farr (Assistant to the Solicitor General), FTS 739-2035; Maryann Walsh (Land and Natural Resources Division), FTS 739-5053.

Nguyen Tan An v. United States, ___ F.2d ___ (C.A. D.C., No. 76-1233; April 15, 1977). DJ 90-1-23-1952.

Contracts; Nonappropriated Funds Doctrine

Holding that the Army had breached a lease for furniture in Saigon, the court of appeals reversed the district court's judgment in our favor and directed that judgment be entered for plaintiffs in the amount of $9,029.63. The court also rejected our defense that this suit was barred because payments on the lease were to be made from nonappropriated funds. The court refused to apply the nonappropriated funds doctrine to an action in district court against an integral part of the United States Government. The court held that the doctrine is limited to suits in the Court of Claims, against semi-autonomous government instrumentalities such as post exchanges.

Attorney: Kathryn A. Oberly (Land and Natural Resources Division), FTS 739-2756.

E.P.A. v. Brown, ___ U.S. ___ (S.Ct. Nos. 75-909, 960, 1050 and 1055; May 2, 1977). DJ 90-5-2-3-473.

Clean Air Act

The Supreme Court reviewed the unfavorable decisions of the Fourth, Ninth and D.C. Circuits which found portions of the Transportation Control Plans, promulgated by EPA pursuant to the Clean Air Act and applicable to the States of California, Virginia, Maryland, Arizona and D.C., to be beyond EPA's authority to promulgate or contrary to the Commerce Power. After briefing and oral argument, the Supreme Court vacated the judgments below and remanded the cases for consideration of whether they are moot. The Court concluded that EPA's position, as contained in the government's brief, that the Agency would revise and clarify those regulations in the Plans which gave rise to the controversies, precluded the Court from knowing with certainty what the final regulations would be. It thus declined "the Government's invitation to pass upon the EPA regulations." Justice Stevens dissented, based on the fact that the old regulations were not yet rescinded, and that it was improper to vacate the judgments of the courts of appeals for that reason.

Attorneys: A. Raymond Randolph (Formerly Deputy Solicitor General); Neil T. Proto (Land and Natural Resources Division), FTS 739-3888.

United States v. Michigan United Conservation Clubs, ___F.2d___ (C.A. 6, No. 76-2176; April 21, 1977). DJ 90-2-0-712.

Federal Procedure; Intervention

Affirming the district court, the court of appeals held that a sportsmen's association was not entitled to intervene in an Indian fishing rights case because its interests were adequately represented by the state defendant.

Attorney: Robert L. Klarquist (Land and Natural Resources Division), FTS 739-2754.

Wilson Bobb, Sr. v. U.S. Department of the Interior, ___F.2d___ (C.A. 9, No. 77-1460; April 26, 1977). DJ 90-1-4-1602.

Court of Appeal's Jurisdiction to Review Interior's Board of Indian Appeals

The court of appeals dismissed, for lack of jurisdiction, a petition to review a decision of the Interior Board of Indian Appeals. Judicial review of such decisions, if available, lies in the district court.

Attorney: Jacques B. Gelin (Land and Natural Resources Division), FTS 739-2762.

Atchison, Topeka and Santa Fe Railway Company, et al. v. Howard H. Callaway, et al., ___F.Supp.___ (D. D.C. No. 74-1190; May 2, 1977). DJ 90-1-4-1003.

National Environmental Policy Act; EIS of Legislative Proposals

The district court held a group of railroads have standing to challenge sufficiency of the environmental impact statement on a legislative proposal by Secretary of the Army to authorize waterway improvement. The fact that Congress has not acted on the proposal does not render the action moot. The possibility of effective relief through declaratory judgment renders the matter justiciable. Congress intended that citizens have a right to judicial review of environmental impact statements on legislative proposals.

Attorneys: Irwin L. Schroeder and Fred R. Disheroon (Land and Natural Resources Division), FTS 739-2710, 2716.

Leo Sheep Co. v. United States, ___ F.2d ___ (C.A. 10, No. 76-1138, decided May 17, 1977). DJ 90-1-4-1041.

Railroad Grants Contain Implied Reservation of Access to Public Domain

The court of appeals reversed a district court ruling which had denied public access to sections of the public domain which, in a checkerboard fashion, were surrounded by privately held lands originally granted in 1862 and 1864 to the Union Pacific Railroad. The court of appeals accepted our argument that the acts granting these lands to the railroad contained an implied reservation of access to the public domain.

Attorney: Peter R. Steenland (Land and Natural Resources Division), FTS 739-2813.

Alexander v. Hills, ___ F.2d ___ (C.A. 7, No. 76-1993, decided May 20, 1977). DJ 90-1-4-1113.

Uniform Relocation Act

Affirming the district court, the court of appeals held that tenants who were displaced when HUD terminated HUD-insured housing project at a mortgage foreclosure sale are not entitled to relocation benefits under the Uniform Relocation Assistance and Real Property Acquisition Act. The court also held that no warrant of habitability may be implied into leases of HUD-owned rental housing units.

Attorney: Robert L. Klarquist (Land and Natural Resources Division), FTS 739-2754.

United States ex rel. Whitehorse v. Briggs, ___ F.2d ___ (C.A. 10, Nos. 76-1639 and 76,1640, decided May 18, 1977). DJ 90-6-0-40.

Trespass to Indian Lands

In this qui tam action to recover statutory penalties under 25 U.S.C. 179 for livestock trespasses on Indian lands, the court held that section 179 applies to Indian allotments where the allottees are not actually residing upon or using the allotments and that it was within the regulatory powers of the Secretary of the Interior to construe the statute which imposes

a "penalty of $1 for each animal of such (trespassing) stock" as authorizing a penalty of $1 per head per day of trespass. 25 C.F.R. 151.24. The United States participated as amicus curiae.

Attorney: Charles E. Biblowit (Land and Natural Resources Division), FTS 739-2956.

In re Robert W. Fri, Acting Administrator of the Energy Research and Development Administration, ___ F.2d ___ (C.A. D.C., No. 77-1211, May 26, 1977). DJ 90-1-4-503.

Mandamus

By petition under the All Writs Statute, the government sought to compel District Judge Richey to transfer NRDC v. Seamans, D. D.C., Civil No. 76-1691, to the Eastern District of Washington, where a similar, earlier suit, NRDC v. Ray, E.D. Wash., Civil No. 3924, has been pending for over 3 years. Both suits challenge the NRC-ERDA programs and procedures for the containment and disposal of radioactive wastes. The D.C. Circuit denied our petition summarily.

Attorneys: Jacques B. Gelin and William C. Cohen (Land and Natural Resources Division), FTS 739-2762 and 2775.

Barbara Harris v. James T. Lynn, ___ F.2d ___ (C.A. 8, No. 76-1284, May 24, 1977). DJ 90-1-4-84.

Uniform Relocation Act

The court of appeals affirmed the district court's decision that tenants in St. Louis, who were forced to move from the Pruitt-Igoe Housing Project, which was to be demolished at HUD's expense, were not entitled to benefits under the Uniform Relocation Act, 42 U.S.C. 4601, et seq. The court also rejected the tenants' claim that HUD denied them due process by conspiring to carry out the demolition in a manner designed to deprive them of relocation benefits. Attorney fees were denied.

Attorney: Kathryn A. Oberly (Land and Natural Resources Division), FTS 739-2756.

Mimbres Valley Irrigation Co. v. Salopek, ___ P.2d ___ (N.Mex. S.Ct. No. 11094, May 27, 1977). DJ 90-1-2-875.

Water Rights

The New Mexico Supreme Court affirmed a lower court ruling which held that recreation and minimum instream flows were not among the purposes for which national forests were

established under the 1897 Organic Act. Accordingly, the court held that the United States was not entitled to extend the doctrine of reserved water rights to these types of water uses. In adopting a literal reading of the 1897 statute, the court rejected our arguments which rested upon legislative history, administrative practice, Congressional ratification, and the terms of the Multiple-Use Sustained-Yield Act of 1960. This identical issue is currently pending in three other state court proceedings; this case is the first resolution by any state's highest judicial tribunal.

Attorney: Peter R. Steenland (Land and Natural Resources Division), FTS 739-2813.

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