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POINTS TO REMEMBER

Military Selective Service Act; Validity of Registrant's Classification; Necessity to Review File With State Director

The Government Operations Section of the Criminal Division has been receiving telephone calls from various United States Attorneys for the purpose of discussing the details of a registrant's selective service file ("cover sheet"). This practice is no longer feasible, except in instances of extreme and unavoidable urgency, because the requests have become too numerous for proper handling.

Where there is doubt in regard to the validity of a defendant's classification, particularly as to the basis in fact for the classification involved or whether there was any prejudicial, vis-a-vis harmless, procedural error, the defendant's selective service file should be reviewed with the State Director of Selective Service or his appropriate representative.

If the United States Attorney and the State Director do not agree, the views of both, together with a reasonably precise statement of the question involved, should be submitted, preferably in writing if time permits, to the Government Operations Section. The "cover sheet" should be furnished only if considered necessary for proper consideration of the problem.

(Criminal Division)

Misuse of Correspondent Banking Accounts

The Department has been investigating matters in which bank officials have utilized correspondent accounts of their banks for the purpose of compensating lending banks for loans granted to these officials or their associates. By using these non-interest bearing correspondent accounts in this manner, the official may be able to obtain a loan at a preferential rate or circumvent other statutes and administrative regulations promulgated for the protection of Federally regulated or insured banks. Since the borrower maintains these balances as a condition of the loan, he is able to utilize the funds and credits of his bank for his own benefit.

Although there are no cases, at the present time, construing this practice as a misapplication, we believe that, where the facts disclose a clear detriment to the bank and a concomitant benefit to its officers, this activity would at best constitute a breach of their fiduciary duty and might in certain situations warrant prosecution under 18 U.S.C. 656.

Recently we advised the regulatory agencies that, although no prosecutions have ever been brought in this situation, nonetheless, where the facts evince a detriment to the bank and a benefit to the officer, prosecution will be considered. Since this practice has never been prosecuted, the Fraud Section will render any assistance desired in establishing these activities as misapplications. Accordingly, where matters of this nature are brought to the attention of United States Attorneys, it is requested that they be fully investigated to determine if there has been a misuse of these correspondent accounts.

(Criminal Division)

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CIVIL DIVISION

Assistant Attorney General William D. Ruckelshaus

COURTS OF APPEALS

BANKRUPTCY

STATUTE REQUIRING PAYMENT OF $50 FILING FEE AS PRECONDITION OF DISCHARGE IN BANKRUPTCY IS CONSTITUTIONAL.

In the Matter of Garland, et al., Bankrupt (C.A. 1, No. 7476; July 8, 1970; D.J. 77-36-1341)

The petitioners filed voluntary petitions in bankruptcy, but owing to their indigency did not pay the $50 in filing fees per petition required by the Bankruptcy Act, 11 U.S.C. 32(b), (c)(8), 68(c)(1), and 95(g). The referee refused to allow the petitioners to proceed on their request for discharge unless they paid the filing fee as required by statute. On petition for review, the district court refused to disturb the referee's ruling. The petitioner appealed, the United States having been invited to participate as amicus curiae because the petitioners called into question the constitutionality of the statutes requiring the payment of fees as a precondition of discharge.

On appeal the petitioners presented two contentions. First, that 28 U.S.C. 1915, the statute which generally permits indigent plaintiffs to prosecute civil actions in Federal court without payment of fees, may be read to apply to proceedings in bankruptcy. Second, and in any event, the portions of the Bankruptcy Act requiring the payment of fees as a precondition to discharge on a voluntary petition create an irrational distinction between those petitioners who can afford to pay the fees and those who cannot, and are therefore unconstitutional.

The Court of Appeals affirmed. It pointed out that before 1946 there had been provisions in the Bankruptcy Act permitting indigent voluntary petitioners to obtain discharges without the payment of filing fees. These provisions had been repealed by the 1946 amendments to the Act, and the legislative history to those amendments showed that Congress in fact intended to require payment of filing fees from all voluntary petitions before they could be discharged. In place of the pre-1946 provisions Congress had added a provision permitting indigents to pay the fees in installments. The Court concluded that Congress had not intended 28 U.S.C. 1915 to cover proceedings in bankruptcy, in view of its explicit requirement of fee payment in the Act.

The Court then held that this statutory requirement of fee payment as a precondition of discharge did not violate the due process clause of the Fifth Amendment. It stressed that the proceedings upon a voluntary petition in bankruptcy are not like the usual civil litigation. Although the Court suggested that the barring of ordinary civil litigants from the court house because of an inability to pay filing fees might be unconstitutional, it held that a proceeding on a voluntary petition for bankruptcy is primarily nonadversary and administrative, and a discharge is a Government-provided financial service. It further held that such a discharge is not a fundamental right, and that therefore Congress has the power to attach the condition of fee payment to the obtaining of that right, pointing out that Congress intends the bankruptcy system to be self-supporting, with the sums taken in through the payment of filing and other fees to pay all the costs of the system.

Staff: Alan S. Rosenthal and Daniel Joseph (Civil Division)

FEDERAL TRADE COMMISSION

RESPONDENT IN TRADE COMMISSION PROCEEDINGS MUST EXHAUST ADMINISTRATIVE REMEDIES BEFORE OBTAINING JUDICIAL REVIEW CONCERNING PRODUCTION OF EVIDENCE, EX PARTE COMMUNICATIONS, AND PLACE OF HEARING.

Maremont Corp. v. Federal Trade Commission (C.A. 7, No. 18299; September 3, 1970; D.J. 102-1498)

Plaintiff, a respondent in a Federal Trade Commission antitrust proceeding, filed suit in the district court alleging that the Commission's proceedings were depriving it of its constitutional rights. The suit, filed before any evidentiary hearing was held by the Commission, challenged the Commission's allegedly insufficient pre-hearing disclosure of evidence to plaintiff, purportedly improper ex parte communications by a Commission staff member, and the Commission's setting the place of the hearing in Washington, D.C., instead of plaintiff's home in Chicago. The district court dismissed the complaint (although restraining pendente lite the Commission proceedings).

The Court of Appeals affirmed the dismissal of the complaint. The Court pointed out that whether evidence should be disclosed to plaintiff presented factual considerations as well as legal considerations, i.e. only "relevant" evidence need be disclosed. Hence, the plaintiff would be required to exhaust the administrative fact-finding process before the Court would consider challenges to the Commission's action. "/A/ny constitutional claim that may exist at

the completion of the proceedings can be raised in the court of appeals when the Commission seeks enforcement of its order. We see no reason why this remedy is inadequate."

With respect to the charge of improper ex parte communications by a Commission staff member, the Court noted that the staff member had had no communications with the members of the Commission concerning this case subsequent to the filing of the administrative complaint; consequently, at most "the charge is that the Commissioners are prejudiced or biased" because of their earlier contact with the staff member. "Such an allegation involves questions of fact and is best resolved in the court of appeals when the final agency action is challenged."

Finally, concerning the Commission's setting the place of hearing in Washington, D.C. instead of Chicago, the Court noted that plaintiff "has failed to make any allegation from which we may conclude that the hearing examiner has acted arbitrarily and capriciously to the point of ignoring plaintiff's rights". Rather, the hearing examiner weighed the competing considerations for both places. "Under such circumstances, we conclude that the district court did not have jurisdiction to review the examiner's order."

Staff: Alan S. Rosenthal & Robert E. Kopp (Civil Division)

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CRIMINAL DIVISION

Assistant Attorney General Will Wilson

COURT OF APPEALS

FIREARMS - RECENT DEVELOPMENTS

TITLE VII OF OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968 UPHELD AS TO MERE POSSESSION OF FIREARM WITHOUT IT BEING IN COMMERCE OR AFFECTING COMMERCE.

United States v. Lane Dale Daniels (C.A. 9, No. 25,297; September 8, 1970; D.J. 80-12C-21)

In the first decision in which a Court of Appeals has focused on the statutory language of Title 18, Appendix, United States Code, Section 1202(a), "receives, possesses, or transports in commerce or affecting commerce", the Ninth Circuit in a per curiam decision stated:

> We hold that the fact that the firearm was in commerce or affected commerce is not an element of the offense stated in section 1202, adopting the rationale of the United States v. Bass (S.D. N.Y., 1970), 308 F. Supp. 1305.

A copy of this opinion may be obtained from the Weapons Control Unit of the General Crimes Section (202-739-2747).

Staff: United States Attorney Robert L. Meyer and Assistant U.S. Attorney David P. Curnow (C.D. Calif.)

NARCOTICS

PROSECUTIONS UNDER 1965 AMENDMENTS TO FEDERAL FOOD, DRUG, AND COSMETIC ACT RE LSD DISTINGUISHED FROM PROSECUTIONS UNDER 1968 AMENDMENTS. FAILURE TO RAISE FIFTH AMENDMENT CLAIM IN TRIAL COURT IS WAIVER.

United States v. Owsley Stanley, Robert W. Massey, William A. Spires & Robert D. Thomas (C.A. 9, No. 25,473; June 1, 1970; 427 F.2d 1066; D.J. 12-11-598)

Operating under a search warrant, law enforcement officers entered a house and found what was described as a small factory for the manufacture of LSD. Appellants were convicted on three counts of violating

the 1965 Amendments of the Federal Food, Drug, and Cosmetic Act for possession, manufacture, and conspiracy to manufacture and sell LSD.

Appellants contended that the Federal law requires them to register as LSD manufactures and thus wrongly forces them to incriminate themselves. Leary v. United States, 395 U.S. 6 (1969). The Court rejected this argument on two bases. First, appellants were prosecuted under the specific statutory scheme which forbids the manufacture of LSD. Their failure to register did not subject them to any penalty, nor did it lead to their arrest. Second, appellants did not raise the Fifth Amendment privilege timely. Even though they had the benefit of the pertinent self-incrimination law (Leary, 395 U.S. 6; Haynes, 390 U.S. 62; Marchetti, 390 U.S. 39), they did not raise the claim in the trial court. The Court held that, having chosen not to raise the matter at trial, appellants waived their right to raise it in the appellate court.

The district court found appellants guilty of both possession and manufacture of LSD, and sentenced them to one year in prison for each violation, with sentences to run consecutively. Appellants contended possession is a necessary ingredient in the manufacturing charge, therefore, dual convictions and consecutive sentences were improper. In rejecting this contention, the Court of Appeals distinguished the 1965 and 1968 amendments of the Federal Food, Drug, and Cosmetic Act. Although appellants were tried after the enactment of the 1968 amendments, those amendments apply only to offenses committed after October 24, 1968. Appellants' manufacturing and possession offenses took place December 21, 1967. Therefore, they were prosecuted under the provisions of the 1965 amendments.

Under the 1965 amendments, possession of LSD for personal use was not forbidden; possession for sale was. Therefore, a person who unlawfully manufactured LSD for his own use would not violate the possession section. The Government had the burden of showing such possession as being for an unlawful purpose. The Court found that the evidence showed overwhelmingly that the possession of the LSD was for the purpose of sale.

The 1968 amendments, in practical effect, made all possession criminal. It specified two categories of possession: possession for "sale, delivery, or other disposal to another", and other possession. The Court held that possession is a necessary ingredient of manufacture only as regards the "other possession" section of the 1968 amendments, and does not apply to the 1965 amendments.

Staff: United States Attorney James L. Browning, Jr. and Assistant U.S. Attorney Paul G. Sloan (N.D. Calif.)

NARCOTICS AND DANGEROUS DRUGS

CHIMEL INAPPLICABLE WHERE CIRCUMSTANCES MAKE IT AGENT'S DUTY TO CONDUCT IMMEDIATE SEARCH.

United States v. Joel Lozaw (C.A. 2, June 11, 1970; Docket No. 33991; 427 F.2d 911; D.J. 12-51-1456)

Appellant challenged his conviction for violation of 21 U.S.C. 176(a) on the ground, inter alia, that the search of his apartment was unlawful as excessive in scope and that, in consequence, the evidence seized should have been suppressed.

At trial it appeared that the Government agents making the arrest of the appellant, the search of his apartment, and the seizure of the marihuana found within it had the following reasons for making the search without a warrant:

(a) Co-defendants were seen entering appellant's apartment building with an empty suitcase and leaving with a suitcase which appeared to be heavy stating to someone in the apartment "We'll be back later for the rest of the stuff".

(b) When one of the undercover agents started to open the suitcase to examine its contents, a co-defendant said "Not here, not here . . . /we/ still have over a hundred pounds of grass up in that apartment and I don't want the area to be heated up".

(c) In an earlier phone conversation in which an undercover agent made the initial arrangements with a co-defendant to obtain the marihuana, the agent was instructed to meet at the co-defendant's apartment a few hours later between 2:00 and 6:00 a.m. but not later than 6:00 a.m. as no marihuana would be left.

After the co-defendants were arrested, they returned to the appellant's apartment with the Government agents and the appellant, upon identifying the voice of one of the co-defendants, opened the door. The agents introduced themselves, placed the appellant under arrest, arrested two others also in the apartment, and seized 36 kilograms of additional marihuana in the living room and bathroom.

In upholding the search the Court ruled it to be within permissive scope as all of the marihuana seized was in plain sight and no probing or exhaustive searches of rooms took place. But Judge Blumenfeld, in writing the opinion of the Court, went on to comment: "This search

took place prior to Chimel v. California, 395 U.S. 752 (1969), which does not apply retroactively . . ."

The dictum regarding Chimel prompted Chief Judge Lumbard to write a concurring opinion in which Judge Hays joined, urging that even were the principles of the Chimel decision applied, the search of the appellant's apartment and seizure of marihuana was nonetheless a reasonable and lawful consequence of a lawful arrest and that ". . . under all the circumstances which culminated in Lozaw's arrest, it was the clear duty of the agents to make the arrest and seizure immediately, without a search warrant, and with the least possible delay".

Although the agents searched beyond the area from within which the appellant might have obtained either a weapon or something that could have been used as evidence against him (limits set forth in Chimel at page 768), the necessities of the situation made it clear that a search had to be made immediately if the remaining marihuana was to be found. The risk to the agents at being discovered in the area should search be delayed and the fact the search warrant could not have been obtained at such short notice prompted Judges Lumbard and Hays to conclude that nothing in Chimel could be interpreted to require that a search warrant be obtained before searching an apartment which agents knew ". . . was then and there being used for unlawful sale and possession of narcotics". Further, in Chimel, unlike in the situation presented, the agents had obtained an arrest warrant and obviously had time to obtain a search warrant.

Staff: United States Attorney Whitney North Seymour, Jr.; Assistant U.S. Attorneys Arthur J. Viviani and David A. Luttinger (S.D. N.Y.)

DISTRICT COURT

AIRCRAFT HIJACKINGS - RECENT DEVELOPMENTS

FAA SCREENING PROCEDURES UPHELD IN CASE INVOLVING SEARCH OF AIRCRAFT PASSENGER BASED ON "THE TOTALITY OF THE CIRCUMSTANCES".

United States v. Frank T. Brinson (D. N.J., No. Cr. 154-70; N.J. 701108; June 18, 1970)

In the first decision focusing on the FAA's screening procedures, the search was held to be reasonable based on the rationale of Terry v.

Ohio, 392 U.S. 1, where the arresting officer's testimony was found to be creditable and the following facts were present:

(a) The ticket agent was in possession of the composite of the profiles when the defendant approached the ticket counter; (b) there was a positive reaction to the magnetometer located at the airport; (c) the defendant's nervous condition appeared when he was questioned, and (d) a bulge in the defendant's pocket was observed by the Deputy United States Marshal who subsequently conducted the search.

Staff: United States Attorney Frederick B. Lacey
and Assistant U.S. Attorney Theodore Margolis
(D. N.J.)

* * *

LAND AND NATURAL RESOURCES DIVISION
Assistant Attorney General Shiro Kashiwa

SUPREME COURT

MINES AND MINERALS

PRUDENT MAN RULE; CHANGE OF VENUE.

Pruess, Executor, et al. v. Hickel (Sup. Ct., No. 559; Misc., Dec. 8, 1969; 396 U.S. 967; D.J. 90-1-18-553)

The Supreme Court in denying certiorari has apparently put an end to the exhaustive efforts of an attorney who, while appearing pro se, has represented a pauper's estate in seeking to overturn a decision of the Secretary of the Interior which had declared certain mining claims owned by the estate to be invalid for lack of discovery. Two Courts of Appeals entered three decisions in this controversy.

The Court of Appeals in the District of Columbia, by decision reported at 359 F.2d 615 (1965), first reversed the district court's granting of summary judgment in favor of the Secretary on the principal grounds that the district judge had not based his decision on a review of the administrative record. The administrative record had been offered into evidence and then returned to trial counsel before it could possibly have been examined by the court. That court, in addition, considered various aspects of venue treated in 28 U.S.C. 1391 and 1404(a) and suggested strongly that the case be transferred to the district court in Oregon, as requested by the mineral claimant.

The same district judge, to whom the case was remanded, determined that there was no need to transfer this case to the district court of Oregon, since it was simply a question of reviewing an administrative record, and specifically exercised his discretion in refusing to so transfer the case. The district judge reviewed the entire administrative record, entered findings, and granted summary judgment for the Secretary. The Court of Appeals, in an unreported judgment dated February 20, 1967, vacated the judgment of the district court and stated that, if discretion had been properly exercised, the case must have been transferred to the district court of Oregon, which it ordered be done. The district court in Oregon, after a hearing and review of the administrative record, entered judgment for the Secretary. The district court, on the claimant's motion, vacated its decision, reheard the case, and entered an opinion which is reported at 286 F. Supp. 138 (1968), again affirming

the Secretary's conclusion that a valuable mineral deposit had not been discovered.

The Court of Appeals for the Ninth Circuit, by decision reported at 410 F.2d 750 (1969), concurred with the views expressed in the opinion of the district court and went on to state that the Secretary had properly applied the prudent man test and refused to discuss a supposed distinction in it and a marketability test. The Supreme Court denied the claimant's certiorari petition and denied subsequent petition for reconsideration.

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

COURT OF APPEALS

CONDEMNATION

RELOCATION CLAIM NOT ALLOWABLE; PORT SITE VALUE EXCLUDABLE; NO SEVERANCE DAMAGES FOR LAND NOT OWNED BY CONDEMNEES; UNIT RULE; NO COURT COSTS.

United States v. 87.30 Acres in Whitman & Garfield Counties, Washington, et al. (Stueckle) (C.A. 9, No. 23,272; August 6, 1970; D.J. 33-49-777-88)

In connection with the development of the Snake and Columbia Rivers, the United States acquired 2.37 riparian acres containing a grain storage elevator. The Court of Appeals affirmed a judgment of the district court: (1) Excluding the landowners' claim for relocation of their grain storage facility, because the Government's sole obligation in condemnation under the Fifth Amendment is to pay just compensation and consequential losses, such as relocation expenses, are not considered. The relocation claim is an impermissible claim for specific relief to which the United States has not consented. (2) Excluding evidence that the highest and best use of their land was for a port or barge shipping site, because the landowners' river improvement permit issued by the Corps of Engineers is not a vested property right, but is revocable at will without payment of compensation. (3) Excluding evidence of any severance damage to nearby cropland owned by their sons because of failure to establish unity of ownership in compliance with the unit rule. (4) Denying the landowners costs in the lower court.

Staff: Jacques B. Gelin (Land & Natural Resources Division)

DISTRICT COURTS

HIGHWAYS

FEDERAL-AID HIGHWAY ACT OF 1968, AS SUPPLEMENTED BY FEDERAL HIGHWAY ADMINISTRATION PPM 20-8, REQUIRES HOLDING OF AN ADDITIONAL "DESIGN" HEARING BEFORE WORK CAN GO FORWARD ON CONSTRUCTION OF THREE SISTERS BRIDGE.

D.C. Federation of Civic Associations, et al. v. John A. Volpe, et al. (D. D.C., No. 2821-69; August 7, 1970; D.J. 90-1-23-1522)

Section 23 of the Federal-Aid Highway Act of 1968 directed the District of Columbia Government and the Secretary of Transportation to proceed with construction (within 30 days) of four highway projects in the District of Columbia, including the Three Sisters Bridge. The Act further provided that, "such construction * * * shall be carried out in accordance with all applicable provisions of Title 23 of the United States Code".

This suit was instituted in October 1969, asserting, among other matters, that the defendants had not complied with Secs. 128(a), 134, 138 and 317 of Title 23. On cross-motions for summary judgment, the court held that (a) since none of the cited sections of the Code related to "construction" and since application of each could result in rejection of the congressional mandate that the bridge be built none could be considered "applicable", and (b) it could not have been the intention of Congress to permit stultification of its directive that the bridge be built. The court also held that, in any event, the defendants had substantially complied with all provisions of the Code.

On April 6, 1970, the Court of Appeals reversed, holding, two to one, that Congress intended that there be complete compliance with all provisions of Title 23. The Court apparently concluded that the factual issue of compliance involved genuine issues which could not be decided on summary judgment and remanded the case for a full hearing on the compliance issue.

Following a lengthy trial, Judge Sirica handed down an opinion, holding, in effect, that the defendants had complied with all of the provisions of Title 23 except (a) a "design" hearing requirement imposed by Federal Highway Administration Policy and Procedure Memorandum 20-8 promulgated under Sec. 128(a); (b) a certification requirement of Sec. 128(a); and (c) a so-called safety requirement of Sec. 109. (The plaintiffs amended their complaint during the trial to bring in the provisions of the last-mentioned section.) The court

ordered that work under way to construct the piers for the bridge be enjoined until the defendants had complied with the described sections.

The principal issue decided adversely related to a provision of Federal Highway Administration Policy and Procedure Memorandum 20-8, promulgated three months after passage of the Federal-Aid Highway Act of 1968, which required a "design" hearing for all projects that had not previously received "design approval". The Division Engineer and the Federal Highway Administrator testified that the Three Sisters Bridge had received design approval, within the meaning of the regulations, in September 1966 when the Division Engineer authorized "preliminary engineering for survey and plan preparation". The court rejected this interpretation (by an administrator of his own regulation) and held that design approval could not be considered as having been given until final plans, specifications and estimates for the bridge had been approved. The specific question, then, was whether the Federal Highway Administration requirement of "design" approval meant the approval of major design features or whether, as the court ruled, it required approval of final detailed specifications.

Because a design hearing can probably be completed with relative dispatch the District of Columbia has decided to proceed with such a hearing. Compliance can also be achieved with respect to the Sec. 128(a) certification and the "safety" provisions of Sec. 109. Although steps will then be taken to proceed with the hearing, other considerations remain which may require that an appeal be taken from (among other issues) what is considered an erroneous interpretation of the provisions of Federal Highway Administration Policy and Procedure Memorandum 20-8.

Staff: Thomas L. McKevitt (Land & Natural Resources Division)

ENVIRONMENT

PRELIMINARY INJUNCTION DENIED FOR FAILURE TO SHOW IRREPARABLE INJURY; BURDEN OF PROOF; NEPA; MULTIPLE USE-SUSTAINED YIELD ACT OF 1960.

Dorothy Thomas Foundation, Inc., et al. v. Hardin, et al. (W.D. N.C., No. 3298; September 1, 1970; D.J. 90-1-4-242)

Plaintiffs instituted this action for a declaratory judgment and injunctive relief to stop a proposed timber sale and harvesting of timber by the Forest Service and Bradley Lumber Company. Plaintiff Foundation

owns land adjoining the timber sale area and plaintiff Suncoast Girl Scout Council operates the property. Plaintiffs alleged that the cutting would threaten an area of great recreational use and natural, scenic beauty by polluting streams, cutting roads and despoiling land. Plaintiffs contended that the Secretary of Agriculture and Forest Service officials had not considered these recreational and scenic values in their deliberations and had thereby acted without authority, arbitrarily and unreasonably, in violation of the Multiple Use-Sustained Yield Act of 1960 (16 U.S.C. 528-531) and the National Environmental Policy Act of 1969 (83 Stat. 852). Plaintiffs mentioned no specific sections of the NEPA in their complaint. In addition, it was alleged that defendants violated 36 C.F.R. 221.1. Plaintiffs finally alleged that unless injunctive relief were forthcoming, irreparable damage to the values discussed, and the environment in general, would occur. The case came on for hearing on plaintiffs' motion for a preliminary injunction on August 25, 1970.

The court held that plaintiffs had shown no irreparable injury or probability of success on the merits. It indicated that defendants' expert witness (Chairman of a Task Force which studied the sale) and a report filed with the court which was prepared by that witness "tends to show that the Forest Service considered" the recreational and environmental qualities at issue. This, said the court, tends to show that the Forest Service complied with the Multiple Use-Sustained Yield Act.

The Secretary has jurisdiction of the National Forests, said the court, and "this Court can only determine whether the action of the Secretary was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law', or that said action was 'without observance of procedure required by law'." Plaintiffs did not carry this burden of proof, and the defendants tended to show compliance. For these reasons, the motion for preliminary injunction was denied and the case scheduled for trial on the merits.

Staff: United States Attorney Keith S. Snyder (W.D. N.C.) and Frederick L. Miller, Jr. (Land & Natural Resources Division)

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