United States Attorneys

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UNITED STATES DEPARTMENT OF JUSTICE

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COMMENDATIONS

Assistant United States Attorneys John E. Clark, San Antonio, Texas, and Edward B. McDonough, Houston, Texas, were commended by Assistant Attorney General Scott P. Crampton for their fine work in connection with the successful prosecution of George B. Parr on an eight-count income tax evasion indictment. Par is a long-time political boss of Duval County and South Texas politics. He has previously served as County Judge, Sheriff, School Board Trustee, and is presently Attorney for the Duval County Water District.

Assistant United States Attorney Ronald J. Waska, Houston, Texas, was commended by Assistant Attorney General Henry E. Petersen for his outstanding personal effort in obtaining the recent convictions against Burke A. Hargrove and Milton R. Petty for violations of the federal obscenity laws.

POINTS TO REMEMBER

Disclosure of the Identity of Informants-28 C.F.R. 16.21, et seq.

Government attorneys are not to disclose the identity of an informant in a proceeding, even if ordered to do so by a court, without the prior approval of the Department. Instructions on this appeared in The United States Attorney's Bulletin, Vol. 21, No. 21, dated October 12, 1973, at page 831.

Since these instructions appeared in the Bulletin, several inquiries have been received, reflecting a concern that compliance with the instructions may be burdensome, and reflecting also some possible misunderstanding of the matter. Your review of the regulations (28 C.F.R. 16.21, et seq) and the Bulletin item is suggested.

It may well be burdensome to comply with the regulations, especially when you may have expected the court to sustain your position and are surprised by an order to reveal the identity of an informant. Nonetheless, the court must be told respectfully that the identity of the informant cannot be revealed without the approval of this Department. Telephone the interested section of the Criminal Division, and the matter will be handled as expeditiously as possible. Preferably, call the interested section when you foresee such problems arising, because situations where an investigative agent must respectfully decline to comply with a court's ruling are certainly to be avoided as much as possible.

Some of the confusion arises because United States Attorneys are accustomed to controlling the incidents of a trial and the instant matter may appear indistinguishable from others handled without Departmental approval. Your authority in handling litigation goes back to Revised Supplement No. 4 to Order No. 3464, January 13, 1953, and may be summarized as follows: Any attorney in this Department who is in charge of actual or prospective litigation is authorized to reveal to a witness, grand jury, opposing counsel, or court, either during or preparatory to a judicial proceeding to which the United States is a party, such material and relevant documents or information (including summaries thereof) secured by the Federal Bureau of Investigation, or by any attorney or other investigator of the Department, as such attorney shall deem necessary or desirable to the discharge of his professional and official duties, except:

(1) When injury might be done to the public interest;

(2) When the name or identity of a confidential informant is involved; or

(3) When the investigative reports were not made with a view toward disclosure under 18 U.S.C. 3500.

A question was asked whether Departmental approval must be had before using as the government's witness a person whose role as an informant would thereby be revealed. No approval is required in such a situation, although the matter is certainly to be though out carefully in coordination with the investigative agency concerned. This is simply a matter of surfacing an informant as the government's witness. Prior approval of the Department is required in situations where an informer's privilege has been raised, as for example, in Roviaro v. United States, 353 U.S. 53 (1957). If the question arises in terms of who the informant was, you must consult the Department before revealing the informant's name or identity. That the investigative agency is agreeable to the disclosure is not a substitute for Departmental approval, although the Department will want to be informed of the agency's views in that regard.

Issues over the identity of informants may be arising more frequently and in different ways than in the past; this will require your careful attention and cooperation in complying with the regulations so as to minimize the potential difficulties.

(Criminal Division)

Hobbs Act Prosecutions

The Criminal Division has noted a marked increase in the rate of indictments under the Hobbs Act (18 U.S.C. 1951). The attention of all United States Attorneys is called to page 98, Title 2 of the United States Attorneys' Manual, which provides that in cases where utilization of the Hobbs Act is contemplated, which do not involve the use of or threat of force or violence, the matter should be referred to the Criminal Division for instruction.

It is imperative that a uniform policy regarding implementation of the Hobbs Act be maintained. Accordingly, the requirement for consultation with the Criminal Division prior to obtaining an indictment under the Act must be rigidly adhered to.

While a communication in writing, setting forth the facts of the case is preferable, the Management and Labor Section can be reached at Extension 3761.

Needless to say, the Section is available for consultation not only with regard to the Hobbs Act, but also with respect to any other statute under its jurisdiction.

(Criminal Division)

Subpoenas and the News Media:
Requests for Authorization.

Pursuant to Order No. 544-73, dated October 26, 1973 (78 C.F.R. 50.10), concerning, inter alia, subpoenas issued to members of the news media is agreeable to turning over the requested material but nevertheless specifically requests the issuance of a subpoena for his own purposes.

This order, which requires that a subpoena may not issue to any member of the news media without the express authorization of the Attorney General in circumstances where negotiations by Justice Department officials to obtain information from members of the news media have failed, also applies to information which has been publicly disclosed, including published material, as well as to any member of the news media, including archivists.

(Criminal Division)

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BUREAU OF PRISONS
Director Norman A. Carlson

ADMINISTRATIVE REMEDIES

The Federal Bureau of Prisons recently implemented a formal administrative remedy procedure designed to give inmates rapid and specific written answers to complaints which they initiate at correctional institutions.

An inmate who wishes to make a complaint prepares it in writing and turns it in to a Bureau of Prisons staff member who, in turn, provides the inmate with a receipt.

The staff at the institution where the complaint is initiated has a maximum of 15 days to provide the inmate with a written response. Should the answer not be satisfactory to the inmate, he can then exercise a right of appeal to the Director of the Bureau of Prisons.

Under the appeal procedure, the complaint is reviewed for the Director by the Bureau's Office of General Counsel. During the appeal period, which may take no longer than 30 days, the inmate is again supplied with a receipt as acknowledgement of his complaint.

The new procedure was devised both as a means of being more responsive to offender complaints and because of the increasing need for documentation of actions on the part of administrators.

In drafting the policy, the Bureau of Prisons was mindful of remarks on the subject last year from Chief Justice Burger in an address before the American Bar Association.

The Chief Justice cited a case in which an inmate at a state institution brought a suit to recover seven packages of cigarettes which had been taken from him by a correctional officer. By the time the litigation had run its course, it had consumed the time of 11 federal judges as well as numerous court and correctional personnel.

The Chief Justice told the ABA that we "ought to use some common sense and devise procedures that give prompt attention to valid complaints without calling on 11 federal judges and a train of other public employees to deal with $3.00 worth of cigarettes."

The new procedure was first tried in the federal prison system on a pilot basis last year at three institutions. During the trial period, 164 formal complaints were lodged at the U.S. Penitentiary, Altanta, and the Federal Correctional

Institutions at Tallahassee and Danbury. Of these complaints, 27 were appealed to the Director and one-third of the complaints were resolved in favor of the inmates.

The administrative remedy procedure does not detract in any way from the right of inmates to directly petition the courts. It should, however, help to open new and responsive channels of communication between staff and inmates and reduce the inherent problems in correctional institutions.

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CIVIL DIVISION
Assistant Attorney General Carla A. Hills

COURT OF APPEALS

DEPARTMENT OF TRANSPORTATION ACT

SIXTH CIRCUIT RULES THAT SECRETARY OF TRANSPORTATION NEED NOT SUGGEST ALTERNATIVES WHEN REJECTING A STATE'S PROPOSAL TO ROUTE FEDERAL-AID HIGHWAY THROUGH A PARK.

Citizens to Preserve Overton Park v. Volpe (C.A. 6, Nos. 73-1668 and 73-1669, April 3, 1974, D.J. #145-18-50)

This much litigated case, previously before the Supreme Court, 401 U.S. 402, is the first judicial determination of the scope of Section 4(f) of the Department of Transportation Act. 49 U.S.C. 1653(f). That section provides that the Secretary may not approve a highway through parkland unless (1) there are no feasible and prudent alternatives to the use of such land and (2) the proposal includes all possible planning to minimize harm to the park. The Secretary of Transportation originally approved a proposal to build a portion of an interstate highway through Overton Park in Memphis, Tenn. The Supreme Court ruled that Section 4(f) presents a "plain and explicit bar to the use of federal funds for construction of highways through parks -- only the most unusual situations are exempted." The Court remanded to the district court for review of the Secretary's decision in light of these standards.

The district court then remanded the case to the Secretary for a route determination in compliance with Section 4(f). The Secretary rejected the State's proposal on the grounds that he could not find that there were no prudent and feasible alternatives to the park route, nor that environmental protection objectives of the NEPA and the Federal-Aid Highway Act had been met, nor that the proposal complied with departmental noise regulations.

The State challenged this new determination. The district court held that the Secretary must specifically find that there is no feasible and prudent alternative or else specify such alternative(s); that the Secretary must state if and how the route would violate the NEPA or noise regulations; and that the Secretary must supply any additional information necessary for a consideration of alternate routes.

On appeal by the Secretary, the Sixth Circuit reversed, holding that Section 4(f) places no affirmative duty on the Secretary to specify any particular route as a feasible and

prudent alternative to the State's proposal. The Secretary need not make formal findings to support his decision, and need only approve or disapprove a particular route. The Court held that it is incumbent upon the State to come forward with a particular route and if one route is disapproved, the burden lies with the state to submit another proposal.

Staff: Judith Feigin (Civil Division)

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CIVIL RIGHTS DIVISION
Assistant Attorney General J. Stanley Pottinger

COURTS OF APPEAL

EQUAL EDUCATIONAL OPPORTUNITY

FOURTH CIRCUIT ORDERS REINSTATEMENT WITH BACK PAY FOR MINORITY TEACHERS DISCRIMINATORILY DISMISSED BY NANSEMOND COUNTY SCHOOL BOARD OF VIRGINIA

United States v. Nansemond County School Board (C.A. 4, No. 73-1493, February 19, 1974, D.J. 169-79-17)

On February 19, 1974, the Court of Appeals for the Fourth Circuit reversed the decision of District Judge Walter E. Hoffman in United States v. Nansemond County (Virginia) School Board. In an opinion by retired Justice Tom Clark, sitting by designationn, the Court of Appeals required the reinstatement with back pay and other damages of 15 black teachers dismissed because of their failure to attain a minimum score on the National Teachers Examination (NTE) at the end of the 1970-71 school year.

The district court was ordered, on remand, to "make certain" that the dismissal of other black teachers was not racially discriminatory, with the burden of proof on the school board. Injunctive relief was also ordered to prevent further discrimination in the employment and retention of teachers.

The district court had previously denied all relief sought by the United States and 13 private plaintiffs except as to the one black principal dismissed because of the closing of her school pursuant to desegregation.

The Court of Appeals held that the district court's finding of no racial motivation in the termination of black teachers overlooked the rule in Chambers v. Hendersonville City Board of Education, 364 F.2d 189 (1966), placing the burden on school boards with a history of discrimination to justify such terminations. The Court held that the district court failed to apply the standard of Griggs v. Duke Power Co., 401 U.S. 424 (1971), requiring that a test for employment "bear a demonstrable relationship to successful performance of the jobs." The court also found that there was no evidence to support the district court's finding that the NTE had "content validity," since no job samples, job analyses or validation studies were provided or conducted. Noting that district court's finding that the NTE has no predictive validity, the court said, "If this be true, the NTE cut off score of 500 is patently arbitrary and discriminatory." The court held that the NTE could not be used without proper validation studies or job analyses nor could it "be administered capriciously in derogation of the guidelines

promulgated by the Educational Testing Service (the test producer) so as to have a racially disparate impact."

Staff: Thomas Keeling (Deputy Chief, Education Section)
Daniel Bell

EQUAL EMPLOYMENT OPPORTUNITY

FIFTH CIRCUIT ENTERS LANDMARK DECISION REQUIRING MISSISSIPPI HIGHWAY PATROL TO HIRE MINORITY STATE TROOPERS

Morrow, et al. v. Crisler, et al. (C.A. 5, No. 72-1136, March 27, 1974, D.J. 170-41-47)

On March 27, 1974, the Court of Appeals for the Fifth Circuit rendered its decision on rehearing en banc in Morrow v. Crisler, the suit concerning racially discriminatory employment practices of the Mississippi Highway Patrol. The Court held that the relief granted by the district court was insufficient to remedy past racially discriminatory practices and remanded the case with the directions that the district court order affirmative hiring relief which will remain in effect until the Highway Patrol is "effectively integrated."

In 1971 the U.S. District Court (N.D. Miss.) ruled that the Patrol had used discriminatory practices and entered general injunctive relief, but denied any numerical hiring goals for minorities or other affirmative hiring relief. On appeal, a panel of the Fifth Circuit affirmed by divided court, 479 F.2d 960.

The Department of Justice had filed an amicus brief in support of the plaintiff on appeal. After the appellate court's ruling, the Department filed an additional amicus memorandum and brief in support of the plaintiff's petition for rehearing en banc and presented oral argument in support of the plaintiff's position that the district court had erred in failing to require hiring goals or other affirmative hiring relief.

Judge Gewin's majority opinion of March 27, 1974, which was joined by eight of the other circuit judges, did not specify what kind of affirmative relief should be ordered, but did specify that the relief must be effective and that effects of past discrimination must be eliminated without dilution of valid employment qualifications.

Judge Clark concurred in the result on the basis of decisions in the other circuit courts ordering affirmative relie

Judges Brown and Wisdom concurred without reservation

in Judge Gewin's opinion but noted additionally, in response to Judge Clark's concurrence, that the relief ordered here is "not new and startling," and speaking for the judges of the Fifth Circuit stated, "Rather than followers we have been in the van. We are not Johnny-come-latelys to the eradication of racial discrimination through race conscious means."

Judges Roney, Bell and Ainsworth concurred specially, stating that hiring goals and timetables may be worthy of consideration by the district court, but rejecting any portion of the majority opinion which indicates approval of a temporary hiring quota.

Judge Coleman dissented on the grounds that the majority opinion would dilute the necessary qualifications for a patrol officer. Judge Gee concurred in part and dissented in part. He disclaimed any approval of a hiring quota or freeze on white hiring.

Staff: David Rose, (Chief, Employment Section)
William Fenton

DISTRICT COURTS

EQUAL EMPLOYMENT OPPORTUNITY

TRUCKING COMPANY DEFENDANTS SIGN CONSENT DECREE IN THE FIRST INDUSTRY-WIDE EMPLOYMENT DISCRIMINATION SUIT FILED BY THE JUSTICE DEPARTMENT

United States v. Trucking Employers, Inc. et al. (D.C. D.C., No. 74-453-DDC, March 20, 1974, D.J. 170-16-46)

On March 20, 1974, the Department of Justice filed a class action law suit under Title VII of the 1964 Civil Rights Act against 349 trucking companies, alleging discriminatory employment practices with respect to blacks and Spanish-surnamed Americans. The suit, filed in the U.S. district court in Washington, D.C., also names as defendants Trucking Employers, Inc., the Teamsters and Machinists Unions, and a national negotiating committee of the Teamsters. It is estimated that the 349 companies involved in the suit employ more than 225,000 workers, including more than 50,000 long haul road drivers.

A partial consent decree between the United States and the seven companies, named as both individual defendants and class action representatives, was signed by Judge Bryant and entered on March 20 shortly after the complaint was filed. The seven named companies are: Arkansas-Best Freight System, Inc., Branch Motor Express Company, Consolidated Freightways Corp. of Delaware, I.M.L. Freight, Inc., The Mason and Dixon Lines, Inc.,

Pacific Intermountain Express Company and Smith's Transfer Corp. These seven companies have about 31,000 employees, including over 8,000 road drivers, of whom less than three percent are black or Spanish-surnamed.

The decree calls for a hiring goal of 33 1/3 percent minority persons for road driver, city and shop positions, except in areas where the minority working age population is 25 percent or more. In those areas, the decree calls for a 50 percent hiring goal. With respect to clerical and apprentice mechanic positions, the goal is 25 percent.

The decree also establishes a procedure for a back pay award of $1,500 for each member of the affected class of incumbent black and Spanish-surnamed persons who transfers to road driver and who was hired prior to January 1, 1969, with $900 being payable to those hired in 1969 or 1970, and $300 to those hired in 1971 or 1972. With respect to black and Spanish-surnamed persons who have previously transferred to road driver since January 1, 1969, those hired prior to January 1, 1969, will receive $750, those hired in 1969 or 1970 $450, and those hired in 1971 or 1972 $150. The seven companies who signed the decree have all agreed to implement the back pay procedure. The decree makes the procedure optional as to the rest of the class; however, if an individual company does not accept the procedure, that issue remains open for litigation.

The U.S. Postal Service, which is contract compliance agency for enforcement of Executive Order 11246 in the trucking industry, participated in the negotiations, and the Postal Service's Director of Equal Employment Compliance is named in the decree as the Government's compliance coordinator.

Negotiations with the union defendants in this case are continuing.

This complaint is our first brought under Title VII challenging the employment practices of a major segment of an entire industry on a nationwide basis.

Staff: David L. Rose (Chief, Employment Section)
William Fenton, Lou Jachnycky

CITY OF JACKSON, MISSISSIPPI, AGREES TO AFFIRMATIVE ACTION PLAN FOR ENDING DISCRIMINATION AGAINST MINORITIES AND WOMEN IN MUNICIPAL GOVERNMENT JOBS

United States v. City of Jackson, et al. (No. J74-66(N), S.D. Miss., March 25, 1974, D.J. 170-41-60)

On March 25, 1974, the Department of Justice obtained a consent decree requiring the City of Jackson to hire and promote more black persons and women for virtually all municipal government jobs, including the police and fire departments. Victims of the alleged discriminatory practices will receive back pay in excess of $200,000.

This case was filed on March 22, 1974, and charged the City with a pattern and practice of employment discrimination in violation of Title VII of the 1964 Civil Rights Act, as amended in 1972. This is the 20th suit filed by the Department against a public employer and the second covering all governmental agencies of a city.

Jackson, the state capital, employs approximately 3,000 persons, of whom less than 800 are blacks. More than 85 percent of the blacks are in unrated jobs for which the average monthly pay is $370. Only 6 percent of blacks hold rated civil service jobs which pay on the average of $670 per month. As of October 1973, only two of the 290 firemen were black; and of the 468 police officers, only 18 were black and two were women.

The Department's suit alleged that the city's present employment policies perpetuate a former job segregation system by which virtually all blacks were assigned to lower-paying, unrated common laborer jobs and virtually all whites were assigned to rated positions. In addition, the suit said, black applicants for rated jobs were required to meet higher employment standards than whites, and employment tests and standards were used for hiring and promotion although unrelated to job performance.

The consent decree permanently enjoins the City from engaging in any discriminatory employment practice. Specifically, the decree provides for immediate upgrading of incumbent black employees who are members of the affected class, with the only qualifying standard being ability to do the job. All employment testing is to be eliminated except tests of actual job content or of psychological stability in the police and fire departments. Current promotional exams are permitted in the police and fire departments at those levels where blacks are not in competition, and the city is obliged to develop a new, nondiscriminatory promotional system in those departments.

Hiring is to be done on a one-for-one basis in all city departments, except the fire department where the first 15 vacancies are to be filled by blacks and, thereafter, two-thirds of all future vacancies, until the proportion of blacks to whites in city employment equals those proportions in the city's population (approximately 40%). Females are to be hired into one-third of all vacancies in formerly male-dominated classifications. The city will institute a recruiting program designed to attract the applicants necessary to meet these goals.

Staff: David L. Rose (Chief, Employment Section)
Michael Middleton

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CRIMINAL DIVISION
Assistant Attorney General Henry E. Petersen

COURT OF APPEALS

CONTROLLED SUBSTANCES ACT

INADVERTENT FAILURE TO IMPOSE MANDATORY SPECIAL PAROLE TERM AT TIME OF SENTENCING PROPERLY CORRECTED BY LATER IMPOSITION OF MINIMUM SPECIAL PAROLE TERM.

Robert James Garcia v. United States (C.A. 10, February 27, 1974, Nos. 73-1575 and 73-1576)

On April 14, 1972, in the District of New Mexico, Robert Garcia, after pleading guilty to possession of marihuana with intent to distribute, was sentenced to five years imprisonment. The sentencing judge, although he had earlier informed Garcia that a special parole term would be a consequence of any prison term imposed, inadvertently forgot to impose a special parole term as part of the five year sentence. On September 14, 1972, the Court amended the sentence by adding a three year special parole term. Several days later the Court reduced the special parole term to two years, the minimum imposable under 21 U.S.C. 841(b)(1)(B). Three months later Garcia filed a 28 U.S.C. 2255 motion contending that the special parole term was invalid since it constituted an illegal enhancement of his sentence. The district court then ordered the special parole term set aside. The government appealed the order. The Tenth Circuit Court of Appeals held that the order imposing the two year special parole term was valid since it merely corrected Garcia's sentence so as to bring it into conformity with the requirements of the applicable sentencing statute. The Court summarily rejected Garcia's contention that he had not been advised at the time he pleaded guilty that a special parole term would be an adjunct of any prison sentence imposed.

Staff: United States Attorney
Victor R. Ortega

Assistant United States Attorney
William R. Hughes, Jr.

NARCOTICS AND DANGEROUS DRUGS

CIVIL FORFEITURES - HEARING PRIOR TO SEIZURES NOT REQUIRED.

United States v. One 1967 Porsche, Model 911-Targa, Serial Number 500-677, No. 72-2678, (C.A. 9, February 20, 1974)

The Court of Appeals for the Ninth Circuit affirmed the decision of the United States district court for the Northern District of California which ordered the defendant automobile forfeited to the Government because of its use to transport narcotics in violation of 49 U.S.C. 781. In affirming the lower Court's decision the Ninth Circuit noted that in United States v. United States Coin and Currency, 401 U.S. 715, 720-721 (1971), the Supreme Court indicated that a statute allowing the property of innocent persons to be forfeited might raise serious Fifth Amendment questions, and that the Court in that case stated that the manifest intent of forfeiture statutes, when viewed in their entirety, is "to impose a penalty only upon those who are significantly involved in a criminal enterprise." The Court of Appeals in the instant case however took cognizance of the fact that the claimant did not contend that the trial court erred in finding that the owner of the defendant automobile had used it to transport narcotics and therefore he did not fall within the ambit of the Court's apparent concern for the innocent being deprived of their property because of the illegal acts of others. With this statement the Court concluded it would not be justified in ignoring other Supreme Court cases, as well as its own cases, which have consistently recognized the validity of forfeitures. United States v. Ryan 284 U.S. 167 (1931); United States v. 1967 Ford Mustang 457 F.2d 931 (9th Cir.), cert denied, 409 U.S. 850 (1972); D'Agostino v. United States, 261 F.2d 154 (9th Cir.) 1958, cert. denied, 359 U.S. 953 (1958), cert denied 359 U.S. 953 (1959). The Court of Appeals also disposed of claimant's argument in substance that the seizure of the automobile without a prior hearing violated due process. As to this aspect of the case, the Court noted that none of the cases relied upon the claimant held that the Fifth Amendment mandates a hearing in every situation where the Government interferes with a private property interest. In support of this position, the Court referred to the comments of Justice Frankfurter in Joint AntiFascist Refugee Committee v. McGrath, 341 U.S. 123, 162-63 (1951) in which he said "Expressing as it does in its ultimate analysis respect enforced by law for that feeling of just treatment which has been evolved through centuries of Anglo-American constitutional history and civilization, "due process" cannot be imprisoned within the treacherous limits of any formula. Representing a profound attitutde of fairness between man and man, and more particularly between the individual and government, "due

process" is compounded of history, reason, the past course of decisions, and stout confidence in the strength of the democratic faith which we profess. Due process is not a mechanical instrument. It is not a yardstick. It is a process. It is a delicate process of adjustment inescapably involving the exercise of judgment by those whom the Constitution entrusted with the unfolding of the process." The Court commented that it would be a grossly inconsistent application of this test to allow a deprivation of personal liberty by an arrest based on probable cause and yet not allow a deprivation of property without a prior hearing when there is probable cause to believe that the owner had used the property in violation of a statute providing for seizure. The Court stated "Certainly due process does not afford greater protection for property than it does for personal liberty. Due process does not entitle an individual to a hearing prior to arrest based upon probable cause. Similarly, due process does not entitle a person who has used his property as an instrument of crime, to a hearing prior to seizure pursuant to statutory authority." The Court ruled that the interests of the government and the well being of society demand that the officers of the law be able to seize property used as an instrument of crime in violation of a statute providing for seizure. Carroll v. United States 267 U.S. 132 (1925); United States v. Arias, 453 F.2d 641 (9th Cir. 1972); Lockett v. United States, 390 F.2d 168 (9th Cir.), cert. denied, 393 U.S. 877 (1968); Sirimarco v. United States. 315 F.2d 699 (10th Cir.), cert. denied, 374 U.S. 807 (1963).

Staff: United States Attorney
James L. Browning, Jr.

Assistant United States Attorney
Dennis M. Nerney

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.

MARCH 1974

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

H & H of New York City registered as agent of the Soviet Youth Exhibit, Soviet Embassy. Registrant will act as public relations counsel in the preparation and processing of photographic material, posters, brochures. It will also arrange press and TV interviews of members of the Soviet Youth Exhibit staff. The exhibit will run from October 1973 to July 1974. Robin Harris and Harvey M. Hament filed short-form registrations as public relations consultants working directly on the Soviet account. Each reports a fee of $5,000, less expenses, for the Washington, D.C. exhibit and $4,500, less expenses, for each of the other five cities where the exhibit will appear.

Malaysian Trade Commission of San Francisco registered as agent of the Ministry of Trade and Industry of the Government of Malaysia. Registrant is to promote trade between the United States and Malaysia and its operating budget for 1974 has been set at (M) 182,000. Tom Shing Chong Ho filed a shortform statement as Trade Commissioner reporting a salary of (M) 4,726 per month.

Activities of persons and organizations already registered under the Act:

Association-Sterling Films of New York filed exhibits in connection with its representation of the Brazilian Consulate General. Registrant ships films and maintains them in good screening condition for the foreign principal, rate for this service is $4.17 per film.

Donald N. Martin, dba Donald N. Martin & Company of New York filed exhibits in connection with its representation of the Belgian National Tourist Office Brussels. Registrant conducts a promotional campaign for the Belgium's Bonus Days incentive travel program which involves the preparation of literature, developing and placing consumer and trade advertising and sales promotion activities. The estimated costs for this program are $202,842.96 for advertising and $52,150.00 for sales promotion.

Romanian Foreign Trade Promotion and Cooperation Office of Chicago filed exhibits in connection with its representation of the Embassy of the Socialist Republic of Romania, Office of the Economic Councellor. Registrant is engaged in the promotion of trade between Romanian and American companies in the Chicago and Midwest area; this includes market studies for the importation of Romanian goods and the promotion of American interests wishing to do business in Romania.

Rouss & O'Rourke of Washington, D.C. filed exhibits in connection with its representation of Union Nacional de Productores de Azucar, S.A. de C.V. (UNPASA), Mexico. Registrant

will report, counsel, negotiate, confer and prepare testimony and present for Congressional committees and executive departments, testify and appear before Congressional committees and executive departments and other activities as deemed necessary or appropriate to serve the principal's interests under the U.S. Sugar Act and U.S. sugar program.

Romanian Foreign Trade Promotion Office of San Francisco filed exhibits in connection with its representation of the Ministry of Foreign Trade of the Socialist Republic of Romania, Bucharest. Registrant engages in the promotion of trade and economic cooperation between Romanian companies and U.S. companies located on the West Coast and is fully funded by the foreign principal.

James N. Juliana Associates, Inc. of Washington, D.C. filed a copy of its new agreement with Consejo Estatal de Azucar, Dominican Republic. Registrant promotes Dominican Sugar interests in connection with pending legislation involving the Sugar Act of 1948, as amended. Registrant is to receive a monthly retainer fee of $3,500 per month plus out-of-pocket expenses.

Milbank, Tweed, Hadley & McCloy of New York filed exhibits in connection with its representation of the Export Development Corporation, Ottowa, Canada, the Government of Mexico, the Republic of Zaire and Banca Nazionale del Lavoro, Rome, Italy. For Canada registrant renders legal advice as to the applicability of U.S. tax laws and is seeking a ruling of an administrative agency of the U.S. For Mexico registrant renders legal services in connection with certain debt issues of railroads owned by the principal. For Zaire registrant renders legal services in connection with the financing of the principal's national electricity agency's project to carry power from a hydro-electric site to industrial areas and the acquisition of aircraft by the principal. For Italy registrant renders legal services on commercial banking matters. Registrant charges all its principals on an hourly basis and is reimbursed for expenditures by all the principals.

China Books & Periodicals of San Francisco filed exhibits in connection with its representation of Guozi Shudian, Peking, People's Republic of China. The foreign principal offers wholesale distributor discounts to the registrant, as national U.S. importer and distributor of their publications and products. Registrant makes payments to the principal through the National Bank of Pakistan on the exact invoice price of the items received. The principal grants the agent credits to defray 50% of registrants advertising expenses for the publications and occasionally sends the registrant surplus copies of publications and catalogs free of charge. The principal also funds registrant's representatives on expense-free business trips to China.

Jack P. Whitehouse, Whitehouse Associates, dba International Public Relations Co., Ltd., California filed exhibits in connection with its representation of the Japan External Trade Organization, Los Angeles. Registrant will conduct a public relations program to investigate and evaluate the condition of the Southwestern United States market in connection with Japanese merchandise and the promotion of trade and economic relations between Japan and the United States. For these services registrant is to receive $2,200 as agent fee per month plus reimbursement of expenses.

Williams & King of Washington, D.C. filed exhibits in connection with its representation of the Noranda Mines Limited, Toronto. Registrant is to engage in economic research and legal and political analysis on matters relating to the importation of copper into the United States and possibly formal and informal advocacy before United States government agencies and members of Congress. For these services registrant will receive a $5,000 retainer for general legal service and $5,000 for services which may involve political activities.

Philip F. King of Washington, D.C. filed exhibits in connection with his representation of Ambassador Gerard S. Bouchette, Embassy of Haiti. Registrant will advise and assist the Ambassador in matters related to agencies of the United States, including Congress, international agencies and United States industrial agencies. Registrant anticipates no fee but will be reimbursed for out-of-pocket expenses.

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

on behalf of the New South Wales Government Office of New York: Peter G. Harding as Industrial Advisor reporting a salary of (A)9,861 per year and allowances of (A)927 per month.

On behalf of Ketchum, MacLeod & Grove, Inc. of Pittsburgh whose foreign principals are Jamica Industrial Development Corporation and Japan National Tourist Organization: Tod H. Potash as Public Relations Counsel and a regular salaried employee of the registrant.

On behalf of the Japan Trade Center, Chicago: Elichi Kahikawa as Executive Vice President reporting a salary of $1,500 per month and engaged in the promotion of trade between the U.S. and Japan.

On behalf of Sontheimer & Company, Inc. of New York whose foreign principals are Netherlands Antilles Government, Jamaica Tourist Board and Government of the Island Territory of the Windward Islands: Harriet Helfand as public relations counselor and reporting a salary of $13,000 per year.

On behalf of Gleason Associates of San Francisco whose foreign principals are Secretaria de Ingegracion Turistica Centroamericana, Instituto Guatemalteco de Turismo and Instituto Salvadareno de Turismo: David C. Winslow and Branwell Fanning rendering advertising services on behalf of the foreign principals.

On behalf of the Portuguese Government Trade Office of New York City: Raymond Lozano as Market Analyst reporting a salary of $15,750 per year, Carlos P. Falcon as Market Analyst reporting a salary of $15,750 per year, Leila Metzger as Trade Analyst reporting a salary of $15,750 per year, Antonio Santos Braga as Coordinator reporting a salary of $10,000 per year and Jose do Amaral Osorio as Director reporting a salary of $23,000 per year.

On behalf of the Hong Kong Trade Development Council of Los Angeles: Peter Leung as Market Officer reporting a salary of $300 per week.

On behalf of Roy Blumenthal International Associates, Inc. of New York whose foreign principals are the Federal Republic of Germany, City-State of Berlin and German National Tourist Office, Frankfurt: L. Roy Blumenthal as Chairman of the Board and reporting a salary of $33,400 per year.

On behalf of the Japan Trade Center, Chicago: Eiichi Kahikawa as Executive Vice Director and reporting a salary of $1,500 per month.

On behalf of AC&R Public Relations, Inc. of New York whose foreign principal is the Greek National Tourist Organization: Raymond J. Chanaud as Public Relations Officer and reporting a salary of $30,000 per year.

On behalf of the Public Relations Board of Chicago, whose foreign principal is the Japan Trade Center: Lee Schooler as public relations counsel and reporting a fee to the agency of $2,500 per month.

On behalf of Robert B. Meyersburg Company of Bethesda, Maryland, whose foreign principal is European Aerospace Corporation: Robert B. Meyersburg as Aviation consultant reporting a salary of $40,000 per year.

On behalf of the Mexican Government Tourism Department of Washington, D.C.: Antonio Guzman as Director.

On behalf of the Mexican Government Tourism Department of Tucson, Arizona: Josefina Orta Uribe as administrative officer engaged in tourist promotion and reporting a salary of $548.90 per month.

On behalf of the Irish Tourist Board of New York: Pauline B. O'Brien as West Coast Representative engaged in the promotion of tourism and reporting a salary of $17,053 per year.

On behalf of the Jamaica Tourist Board, Regional Sales & Convention Office, Washington, D.C.: Thomas W. Jordan as Regional Sales and Convention Manager and reporting a salary of $20,500 per year.

On behalf of Williams & King of Washington, D.C. whose foreign principal is Noranda Mines Limited of Toronto: R. Theodore Hume, James D. Williams, Jr., William K. Ince and William N. Lawrence, all act as general legal counsel and all are regular salaried employees of registrant law firm.

On behalf of Intourist of New York the official Soviet tourist agency: Vladimir Ukhlin as Deputy Director and reporting a salary of $614 per month, and Nadezda Koulikova as Officer reporting a salary of $614 per month. Both are engaged in the promotion of tourism to the USSR.

On behalf of the Camara Official Espanola de Commercia en Puerto Rico, which is the Spanish-Puerto Rico Chamber of Commerce: Julio De La Torre and Jose Martin Monasterio both as officers on a special basis and reporting no compensation. They are engaged in the promotion of trade between Spain and Puerto Rico.

On behalf of the Japan Trade Center, New Orleans: Takeshi Yoshida as Director reporting a salary of $1,358 per month and engaged in the promotion of trade between Japan and the Southeastern United States.

* * *

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

COURTS OF APPEAL

ENVIRONMENT

CLEAN AIR ACT; REQUIREMENTS FOR APPROVAL OF STATE IMPLEMENTATION PLANS.

Natural Resources Defense Council v. Environmental Protection Agency (C.A. 2, Nos. 72-1728 and 72-2165, Mar. 13, 1974; D.J. 90-5-2-3-64)

On petition to review, the Court affirmed the EPA approval under the Clean Air Act of the New York State Implementation Plan (SIP) on most of the issues raised but remanded portions of the SIP to the Administrator for further consideration. The Court held: (1) EPA must insist that the SIP provide adequate assurance of the availability of emission data to the public; (2) EPA properly allowed New York to grant variances from its Plan, prior to the mandatory compliance date (1975) without requiring the State to comply with the Section 110(f) postponement procedures. This is consonant with First and Eighth Circuit dispositions on other SIPs regarding variances; the Fifth Circuit stands alone on this issue; (3) EPA properly granted a two-year extension for achieving the national primary standards for particulate matter in the New York Metropolitan Area; (4) EPA must reconsider whether the New York plan can achieve the primary standard for sulfur oxides in spite of New Jersey's looser standards for burning fuel with higher sulfur content; (5) EPA properly approved the New York plan even though it does not contain the binding and enforceable agreements for interstate cooperation (interstate compacts), said by NRDC to be required; (6) New York has already agreed to modify its plan to assure that its new source permit program will guarantee prior review of a project's potential interference with the State's maintenance of air quality standards; and (7) the Administrator is to provide the court with his rationale for concluding that the New York plan provides necessary assurances that it has adequate personnel, funding and authority to carry out the plan.

Staff: Henry J. Bourguignon (Land and Natural Resources Division)

ENVIRONMENT

NEPA NOT APPLICABLE TO HIGHWAY CONSTRUCTION AFTER FINAL DESIGN APPROVAL; PRELIMINARY INJUNCTION.

Robinswood Community Club, et al. v. Volpe (C.A. 9, No. 72-2251, March 26, 1974; D.J. 90-1-3-3042).

In 1971 plaintiffs sought a preliminary injunction to block construction of an interchange of Interstate I-90 near Seattle because of failure of DOT (FHWA) to comply with NEPA and highway statutes and PPMs. The district court denied the motion. The Ninth Circuit affirmed, holding that the district court did not abuse its discretion in denying preliminary injunctive relief, since NEPA is not applicable when final design approval of this ongoing project occurred prior to the date NEPA took effect. The focus of different courts on other dates or factors was stated--degree of completeness, extent of public participation, public concern with protecting the environment, and cost of halting construction. The concurring opinion, by Judge Choy, preferred a different focus but faulted this suit on each.

Staff: Jacques B. Gelin (Land and Natural Resources Division) Thomas L. Adams, Jr. (formerly of the Land and Natural Resources Division).

INDIANS

APPEALS COUNTY LAND-USE CONTROLS IN "280 STATE"; ENFORCEMENT OF INDIAN TRUST LAND; JUSTICIABLE CASE OR CONTROVERSY NOT ESTABLISHED BY "GENERAL THREAT" OF STATE-LAW ENFORCEMENT; MOOTNESS; FAILURE OF PROOF OF CIVIL RIGHTS VIOLATION NECESSITATES PROOF OF JURISDICTIONAL AMOUNT.

Rincon Band of Mission Indians v. County of San Diego, et al. (C.A. 9, No. 71-1927); Elizabeth Ricci v. County of Riverside, et al. (C.A. 9, No. 72-1256); Lela Madrigal v. County of Riverside (C.A. 9, 71-2943) (decided March 18, 1974; D.J. 90-2-10-479, 90-2-2-152).

The principal issue in these cases was whether under Public Law No. 280, 67 Stat. 986, 18 U.S.C. sec. 1162, 28 U.S.C. sec. 1360, two California counties may place restrictions on the use of lands located within Indian reservations and held in trust by the United States for the Indians. The United States appeared as amicus and urged that a state may not regulate Indian use of trust lands within a reservation. But the substantive merits were not reached by the Court of Appeals.

In Rincon the Tribe sought injunctive relief from the enforcement on the reservation of a San Diego County anti-card house ordinance. The court found that there was no case or controversy in the absence of any actual arrests by the County of persons violating the ordinance. The court found a "general threat of enforcement" insufficient to create a case or controversy.

Ricci involved the applicability of the County building code and building permit requirements to the construction by an Indian of a dwelling on her trust allotment on the reservation. The district court exempted Mrs. Ricci's dwelling from these requirements, because of special facts, but declared that county building controls were otherwise applicable on the reservation. On appeal the court held Mrs. Ricci's appeal moot.

Madrigal involved a failure to apply for a county permit in connection with a proposed outdoor festival on a reservation. Jurisdiction was invoked under 28 U.S.C. sec. 1343 on the basis of an alleged conspiracy to deprive Mrs. Madrigal of her civil rights in violation of 42 U.S.C. secs. 1985 and 1983. The court held that it lacked jurisdiction because there was no evidence whatever supporting the allegation of a conspiracy in violation of the Civil Rights Act. The remaining basis of jurisdiction was that granted by the federal-question statute, 28 U.S.C. sec. 1331, and jurisdiction thereunder was held lacking because the $10,000 jurisdictional amount was not proved.

Staff: Edmund B. Clark, Dirk Snel and Eva Datz
(Land and Natural Resources Division)

INDIAN PROBATE
NOTICE, AGENCY'S INTERPRETATION OF ITS OWN REGULATIONS

Eunice Lucero Vaile v. Rogers C. B. Morton (C.A. 9, No. 72-1437, February 26, 1974; D.J. 90-2-4-194)

By a memorandum opinion, not to be reported, the Ninth Circuit sustained the decisions of the district court and the Examiner of Inheritance, Department of the Interior.

After having approved a will of a deceased Indian, the Examiner of Inheritance, on petition by a beneficiary under a second will, reopening the probate proceeding and approved the second will and decreed distribution as therein provided.

The appellate court found the Secretary's regulations permitted reopening in this instance since this did not present a question of fraud and a regulation barring reopening after three years. The court also found that notice of death was not

actual notice of the original probate proceedings and that the Secretary's interpretation of his own regulations was entitled to great weight and, unless plainly erroneous or inconsistent becomes controlling weight.

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

PUBLIC LANDS

OIL AND GAS LEASES; NON-COMPETITIVE LEASE RIGHTS; AGENCY STATUTORY CONSTRUCTION.

McDade v. Morton (C.A. D.C., No. 73-1520, Mar. 12, 1974; D.J. 90-1-18-944)

In an action to review a decision of the Secretary of the Interior refusing to issue certain oil and gas leases, the Court of Appeals affirmed per curiam a decision of the district court which held: (1) that the Secretary properly denied the award of non-competitive leases for land determined to be within a known geologic structure, even though at the time the lease offers were filed the land was not within a known geologic structure; (2) that the filing of a non-competitive lease offer does not give the applicant a vested right to a lease; (3) that the Secretary is not estopped by its former interpretation of a statute, however long standing, from correcting that which he feels to be clearly erroneous; and (4) that the mandatory language of the Mineral Leasing Act of 1920, as amended, provides that lands within a known geologic structure of a producing oil and gas field shall be leased by competitive bidding.

Staff: Glen R. Goodsell and Gerald S. Fish (Land and Natural Resources Division)

NAVIGABLE SERVITUDES

DOMINANT NAVIGABLE SERVITUDES; RIGHT TO COMPENSATION FOR LOSS OF USE OF WHARF IN NAVIGABLE WATERS.

Mon Valley Terminal, Inc., et al. v. United States (C.A. 3, Nos. 73-1771 and 73-1980, Mar. 12, 1974; D.J. 90-1-23-1804 and 33-39-912-4)

In proceedings brought under the Tucker Act and Declaration of Taking Act to secure just compensation for the loss of use of a wharf in a navigable river caused by raising the water level to the ordinary high water mark, the Court of Appeals affirmed the judgments of the district court which

held that the parties was not entitled to any compensation against the United States because the power to regulate navigation confers upon the United States a dominant servitude which extends to the entire stream and its bed below the ordinary high water mark and the damage rendering the wharf nonfunctional was not a taking within the meaning of the Fifth Amendment, and that the owners were always subject to that dominant servitude.

Staff: Glen R. Goodsell (Land and Natural Resources Division)

DISTRICT COURTS

ENVIRONMENT

NATIONAL ENVIRONMENTAL POLICY ACT; ADEQUACY OF ENVIRONMENTAL IMPACT STATEMENT; SCOPE OF THE STATEMENT.

Trout Unlimited v. Morton (D. Idaho, Civil No. 1-71-88, Jan. 24, 1974; D.J. 90-1-4-382)

The district court denied plaintiffs' request for a permanent injunction against the Teton Basin Project, a multi-purpose Federal Reclamation Project on the Teton River in Idaho to provide supplemental water for irrigation, hydroelectric power, flood control and recreational benefits. For planning and developmental purposes, the project was divided into two phases. The first phase consisted of the Teton Dam and Reservoir, a combined power and pumping plant, several canals and wells, and transmission lines. The second phase of the project involved the disposition of water for the irrigation of 37,000 acres of land. An environmental impact statement was prepared pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq. on the first phase of the project, but none as yet had been prepared on the second phase. The Secretary of the Interior by statute could not proceed with the second phase until he submits a report containing a finding of feasibility to the President and Congress.

The court found that it had jurisdiction to hear the case under 5 U.S.C. 706(2)(A) and that plaintiffs had standing. It further found that NEPA did not require the preparation of an environmental impact statement for the second phase at this time; when the Secretary makes a finding of feasibility and submits it to the President and Congress, then a statement must be prepared on the second phase. The court also found that the statement prepared for the first was sufficient to meet the requirements of Section 102(2)(C) of NEPA.

The plaintiffs have filed a notice of appeal along with a motion for an injunction pending appeal.

Staff: United States Attorney, Sidney Smith and Assistant United States Attorney, Wilbur Nelson (D. Idaho); William M. Cohen (Land and Natural Resources Division)

NEPA

ABSENCE OF AGENCY RECORD TO SUPPORT NEGATIVE DECLARATION DID NOT WARRANT INJUNCTIVE RELIEF WHERE COURT HEARING DEMONSTRATED THAT IF ALL PLANNED MITIGATION AND ENVIRONMENTAL ENHANCEMENT MEASURES WERE ACCOMPLISHED, THERE WOULD BE NO SIGNIFICANT ENVIRONMENTAL IMPACT.

Eva Simmans, et al. v. Kenneth Grant, et al. (C.A. No. 73-H-927, S.D. Tex., January 22, 1974; D.J. 90-1-4-722)

Plaintiffs filed this suit on July 5, 1973, seeking to halt a Soil Conservation Service channel improvement project on the Big Creek Slough and Laterals in Brazos County, Texas. The complaint alleged that the SCS had failed to prepare and file an EIS for the project as required by NEPA. The SCS had classified the project as having "minor or no known adverse environmental impact" and had not prepared an EIS. However, in an effort to silence criticism of the foregoing classification by other state and federal agencies the SCS had agreed to incorporate certain mitigation and environmental enhancement measures into the project.

Plaintiffs were granted a TRO on July 11, 1973. After submission of several briefs by all parties, and a two-day hearing, Judge Carl O. Bue entered his decision on January 22, 1974.

The court initially held that the project was both a major and federal action.

The court went on to find that the absence of a negative declaration or reviewable record prepared by the SCS explaining how it reached its environmental conclusion was a serious deficiency; Hanly v. Kleindienst, 471 F.2d 823 (C.A. 2, 1972) (Hanly II). The failure to consult with other agencies or provide the opportunity for public comment regarding the project were also cited by the court as errors by SCS officials. Additionally, the court castigated the SCS officials for their ignorance regarding the requirements of NEPA.

Despite the foregoing asserted errors in the implementation of NEPA, the court refused to enjoin the project. Noting that the SCS had already agreed to incorporate certain mitigation and environmental measures into the project, the court found that if the modifications were carried out as planned, the project would have little if any adverse environmental impact (Op. p. 20). Moreover, the court held that the record of the two days of hearing would serve "* * * to satisfy certain requisites of a negative declaration" or "environmental record" (Op. pp. 21, 22).

Under the terms of the court's order of January 22, 1974, the Soil Conservation Service is permitted to resume immediately construction of the channel improvement project on Big Creek Slough in Brazos County, Texas. Concurrent with the resumption of such construction, defendants were required to prepare a documentary summary of all mitigation measures to be implemented on the project, including but not limited to five specific mitigation measures listed by the court (Op. p. 23).

On receipt of the court's order, plaintiffs filed a new request for a preliminary injunction and asked for a full trial on the merits as soon as possible. Defendants have filed a memorandum in opposition to plaintiffs' request.

Local SCS officials have prepared and filed, on February 20, 1974, a documentary summary of all mitigation measures, including those specifically prescribed by the court's order. Objections to this summary were filed by plaintiffs on March 4, 1974.

The matter is still pending.

Staff: Assistant United States Attorneys Charles B. Wolfe and Robert Darden (S.D. Texas); Joseph Leahy (Land and Natural Resources Division)

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