



SHATTERED DREAMS:

One Hundred Stories
of Government Abuse



INTRODUCTION BY US REPRESENTATIVE RICHARD POMBO

A Publication of the National Center for Public Policy Research

DEED OF TRUST

Shattered Dreams: 100 Stories of Government Abuse

Fourth Edition

Written by

The staff of
the John P. McGovern MD Center for
Environmental and Regulatory Affairs
The National Center for Public Policy Research



The John P. McGovern MD Center for Environmental and Regulatory Affairs is a division of The National Center for Public Policy Research. It advocates private, free market solutions to today's environmental challenges, and highlights the perverse nature of many government-first regulations by attaching human faces to very real problems caused by over-regulation.

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“There’s a lot of small business people across this country who don’t have the opportunity to stand up for themselves; can’t afford to stand up for themselves.”

Clint Eastwood

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Introduction

Americans should be alarmed by the stories in this book. The experiences shared are from ordinary, hard-working Americans whose lives have been irreparably damaged by overreaching government agencies, bureaucrats, and even the courts they have turned to for protection.

In these stories, you will find some Americans who have spent most of their adult lives, and often hundreds of thousands of dollars, seeking to redress the wrongs inflicted on them by their government. Some lost their marriages when a spouse could no longer withstand the stress of fighting the entrenched bureaucracy. Others paid an even higher price when stress-induced illnesses took their lives or those of loved ones.

Clearly, the United States is blessed with the greatest government the world has ever known. With that said, we have strayed far from the Founding Fathers' original intent of "certain unalienable rights of Life, Liberty, and the Pursuit of Happiness." This book highlights the government actually taking away citizens' unalienable rights.

For over nine years, I have done all I can to expose the problems associated with the Endangered Species Act (ESA). I've also worked diligently to educate people about how it has become the preeminent law of the land as well as the preeminent burden to property owners.

It is no secret the ESA has been used by extremists to restrict, seize and devalue private property rights, as well as halt important government projects. In fact, this is what most "green" obstructionists groups relish most about the Act.

What most people do not realize is that the ESA has the power to halt even important and emergency life-saving operations.

In 2001, four firefighters were killed while trying to douse the deadly Thirty Mile Fire in Okanogan National Forest in Winthrop, Washington. The firefighters, Tom Craven, 30, Karen FitzPatrick, 18, Jessica Johnson, 19, and Devin Weaver, 21, were killed on July 10th by breathing superheated air as the fire burned near the area where they had deployed their emergency fire shelters.

Tragically, while these four brave firefighters were underneath their heat-resistant shelters, a bureaucratic battle was taking place over whether emergency helicopters could take water from the nearby Chewuch River.

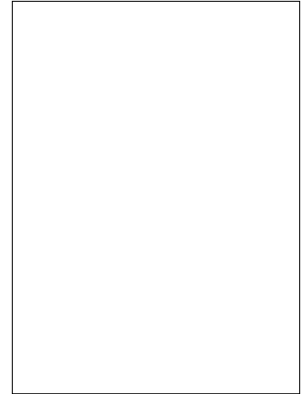
Common sense clearly dictates water from the Chewuch River be used to douse the fire immediately. Lives were on the line.

Unfortunately, common sense has little to do with the implementation of the ESA. In the Pacific Northwest, United States Forest Service practice requires fire helicopters be granted special permission before scooping out the necessary water. Even in an emergency situation when lives hang in the balance, the possible scooping of protected species of fish has become the first priority — in the Chewuch River, that means the chinook salmon, steelhead salmon, and bull trout are more important than human lives.

As a scramble was taking place to clear the bureaucratic red tape required by ESA, four firefighters died because no water was available.

As early as 5:30 A.M. on July 10th, the first request was made for a water drop in the vicinity. At 9:00 A.M., the "mop-up crew," which included the four now-deceased firefighters, was deployed in relief of an existing crew. Shortly after noon, a dispatch crew informed the "mop-up crew" that the helicopters requested could not be used.

Final permission to use the water in the Chewuch River was not granted until 2:00 P.M., and the first dumping of water did not occur until 3:00 P.M. Shortly thereafter, the helicopters were turned back because the fire had grown out of control. But for four



Richard Pombo was sworn in to his seventh term in the U.S. House of Representatives in January of 2003. He represents the Eleventh District of California. Mr. Pombo is Chairman of the House Resources Committee. The Committee oversees issues related to National Parks, public lands, forestry, fisheries, water, energy and natural resources and Native American affairs. Its jurisdiction applies to property rights, farming, water use and ranching, among others. Prior to heading the Resources Committee, Congressman Pombo chaired the Congressional Western Caucus. Mr. Pombo has been rewarded by several organizations for his activism in reducing government regulations, taxation and spending, including the United States Business and Industrial Council, the National Taxpayers Union and the Chamber of Commerce. He was born in Tracy, California in 1961, and attended California State University at Pomona. Richard and Annette Pombo have been married since 1983. They have three children, Richie, Rena and Rachel.

members of the crew on the ground deployed in their heat-resistant shelters, it was too little, too late.

One cannot help but think that had there not been a 9-1/2 hour delay in getting water from the Chewuch River, the fire could have been controlled and loss of life avoided.

Did government officials do the wrong thing by delaying the scooping of water from the Chewuch River to protect chinook salmon, steelhead salmon and the bull trout? Technically, no. The ESA has become the preeminent law of the land; in its implementation, it takes precedent over all else.

The four firefighters are not the only ones to lose their lives due to the ESA. In 1997, critical levee repairs in northern California were delayed because the levees were potential habitat for the elderberry beetle. Rains came before the repairs could be completed and the levee burst. Three people were killed in the ensuing floods and many families lost their homes.

We should also be shocked by a recent investigation which revealed that federal and state officials submitted unauthorized control samples for analysis as part of an ongoing nationwide Canadian lynx survey. The "lynx" fiasco illustrates just how vulnerable the public's access rights are to agenda-driven advocates within federal and state land management agencies.

Then there is the case of Donald Fife, a professional scientist specializing in environmental mining and engineering geology, who learned from a former U.S. Forest Service official that plants listed under the Endangered Species Act had been secretly placed on his property in an attempt to close about 30,000 acres of the highest mineral valued land in southern California.

Then, there is the case of a high-ranking official at the Northwest Regional Office at National Marine Fisheries Service (NMFS) who took the time to share her thoughts about the implementation of the Endangered Species Act. Let me share with you what she had to say.

And I quote from the International California Mining Journal (January 2002):

...when we (NMFS) make critical habitat designation we just designate everything as critical, without an analysis of how much habitat an ESU (Evolutionarily Significant Unit) needs, what areas might be key, etc. Mostly we don't do this because we lack information. What we really do is the same thing we do for section 7 consultations. We just say we need it all.

The nature of these events highlight numerous flaws within federal agencies responsible for managing public lands. The federal land agencies must be held to the same standards of truth, honesty and accountability as the private sector.

Americans must be made aware of the liberties lost, and lives destroyed, due to inappropriate use of the ESA. Luckily, there are Members of Congress who recognize these problems and are working to change them. Strong, effective voices such as the National Center for Public Policy Research are fighting for your rights. However, in the end, it will be your support and effort making reform possible.

Richard Pombo

The Good, the Bad and the Greedy

When actor Clint Eastwood converted a 19th century dairy into the 32-room Mission Ranch Inn in Carmel, California, he made every effort to comply with the Americans with Disabilities Act (ADA). But, as Eastwood noted, “Because it is an old place, we had certain obligations to the heritage of the antique value, not just the ADA.”

Eastwood was sued in 1997 by Dianne zum Brunnen. Zum Brunnen, who suffers from muscular dystrophy, claimed the hotel did not provide adequate wheelchair access. When her lawyers pressed Eastwood to accept a \$500,000 settlement, he rejected what he perceived to be a shakedown and what he saw as a use of the ADA as an instrument of blackmail. The actor said, “If you are wrong, by all means settle. But if you are right, you’ve got to stand firm.”

It took a U.S. District Court jury only four hours to decide that zum Brunnen had not been harmed by the lack of amenities at the Mission Ranch Inn, and awarded her no damages. Eastwood was cited for not posting better signs for locating restrooms for the disabled and for not installing a wheelchair ramp to the hotel office.

After the verdict, Eastwood testified before the Congress in favor of U.S. Representative Mark Foley’s (R-FL) “ADA Notification Act.” Foley’s bill would require aggrieved parties to inform businesses in writing about perceived violations of the ADA and give them 90 days to fix any problems before a lawsuit could be filed against the business.

Sources: Pacific Research Institute, E! Online, Ragged Edge online magazine

*“If you are wrong, by all means settle.
But if you are right, you’ve got to stand
firm.”*

Clint Eastwood

Housing Becomes More Expensive Thanks to Increasing Regulatory Burden

New affordable housing in the Washington, D.C. suburb of Rockville, Maryland became less affordable in September of 2002 after the city council voted to require that all new homes be built with sprinkler systems. The cost of installing fire-suppression systems in the average Rockville home is estimated by city officials to add between \$4,000 and \$5,000 to the price of a new home.

County fire and rescue spokesman Peter Piringer told the *Montgomery Journal* that installing sprinklers is “like having little firefighters sitting in every room.” The city council voted unanimously to impose the sprinkler mandate, with no one on the council standing up for those who do not want or cannot afford its installation. Rockville City Councilman Phil Andrews hopes the city’s new statute will someday be instituted on a broader scale, saying, “I think it’s probably just a matter of time before it’s something that’s a staple in new construction.” The new statute does not require sprinklers to be installed in existing homes.

Source: Montgomery Journal

Government Steps in When Home Prices Rise To Push Prices Even Higher

If you are looking for a new home on a budget near Tucson, Arizona, you may be out of luck.

That’s because Pima County, which includes Tucson, decided in early 2002 that all new homes must be constructed to accommodate the “possibility of occupancy, accessibility or visitation by a disabled person” — even if the owner doesn’t want these modifications.

An increase in population combined with a decrease in available land has an inevitable impact on home prices — it pushes them up.

The county’s population, which is 37 percent minority, grew dramatically in the 1990s — by 26.5 percent. It is expected to rise another 22 percent during this decade. Meanwhile, under pressure from environmentalists, the U.S. Fish and Wildlife Service designated part of the county as a protected habitat for the cactus ferruginous pygmy owl, making land unavailable for development.

The city of Tucson estimates 2002 per capita income for its residents at \$24,839. Median family income in the 2000 census was \$44,446.

The average sale price of single-family homes sold in Tucson in August 2002 was \$188,475.

The median new home price in Tucson rose \$19,000 from 2000-2001. The city estimates it will rise another \$18,000 from 2001-2002.

Homebuilders estimate that the cost of the new ordinance will add as much as \$5,000 more to the price of a new family home.

On October 16, 2002, U.S. Representative Jan Schakowsky (D-IL) introduced legislation to mandate similar requirements across the entire United States for any new home partially financed by U.S. government funds, including Housing and Urban Development and veterans loans.

Sources: Arizona Daily Star, Arizona Department of Commerce Mountain States Legal Foundation, Tucson Citizen



the Tucson, Arizona skyline

State of New Jersey Goes to Court Against Car; Car Wins

In 1999, Carol Thomas was a seven-year veteran of the Cumberland County, New Jersey Sheriff's Department and experienced in drug raids. The last thing she expected was that she would soon be struggling to get her own car out of police custody.

Unbeknownst to Thomas, her son sold marijuana to an undercover police officer in 1999. At the time of his arrest, Thomas' son was using her car. After his arrest, Thomas entered a guilty plea and received a fine and house arrest. Even though she had no knowledge of her son's drug-dealing and no marijuana was found in the car, the police confiscated Thomas' car in a case known as *State of New Jersey vs. One 1990 Ford Thunderbird*.

In order to get her car back, Thomas had to pay \$1,500 to the state, which was still allowed to keep the title to her car because the state's civil forfeiture law allows New Jersey's police departments to keep confiscated money and property. Thomas then took her challenge of the confiscation to the New Jersey Superior Court. In January of 2001, New Jersey Superior Court Judge Thomas Bowen dismissed the government's claim against Thomas' car and ordered that the title to her car and the \$1,500 bond be returned to her. Thomas has since filed a lawsuit against the state contesting the constitutionality of civil asset forfeiture laws.

Source: Institute for Justice

U.S. Government vs. Third World Orphans

The boys at the Mi Casa orphanage in Guatemala City, Guatemala didn't have it easy.

First came the personal circumstances that led to their placement in an orphanage in an impoverished country. Then, allegedly, some of the children were sexually and physically abused by the school's founder.

That was bad enough, but then — unbelievably — the U.S. Department of Justice (DOJ) tried to take their money.

It happened this way:

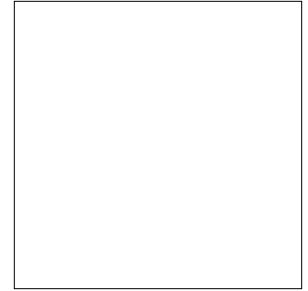
John Hugh Wetterer founded the non-profit Mi Casa orphanage in Guatemala City in 1976 to aid neglected and abandoned boys.

Then, in 1989, the television show "60 Minutes" ran an expose of the orphanage, claiming Wetterer had abused the boys. Wetterer vehemently denied the allegations on-camera.

Because the orphanage, which was now part of an expanded orphanage association, had published a newsletter describing the facility as "well run," and some of these newsletters had been mailed through the U.S. Postal Service, a warrant for Wetterer's arrest for mail fraud was issued in the United States.

Wetterer, however, remained in Guatemala, and could not be extradited. Wetterer thus did not stand trial in the U.S., and was never convicted.

Nonetheless, the DOJ assumed Wetterer's guilt. U.S. civil asset forfeiture laws allowed the U.S. government to seize assets if the government established that there was probable cause to believe that a nexus existed between the seized property and the relevant illegal activity.



*Carol Thomas and her
1990 Ford Thunderbird*

"We see aggressive but marginal claims asserted on dubious jurisdiction to seize charitable funds raised for the relief of abject orphans in an impoverished country, so that the money can be diverted for expenditure by the Department of Justice."

Judge Dennis G. Jacobs

Civil Asset Forfeiture

“The bare financial facts of this case shine a light on the corrupting incentives of this arrangement: we see aggressive but marginal claims asserted on dubious jurisdiction to seize charitable funds raised for the relief of abject orphans in an impoverished country, so that the money can be diverted for expenditure by the Department of Justice.”

Judge Dennis G. Jacobs

The DOJ choose to conclude that the assets of the orphanage association that were located in U.S. bank accounts “represented the proceeds of mail fraud,” and confiscated the orphanage association’s money.

So the kids were hit with a triple whammy: first, the loss of their families, then the alleged abuse, and then the U.S. government confiscated their money.

The amount, \$109,000, is a fortune in a third world country such as Guatemala. It’s almost nothing to the DOJ.

One month after its money was taken, the orphanage went to court to get its money back. It claimed that because the accounts were meant for the benefit of the children at the orphanage, the orphanage was the “innocent owner” of the funds, and should not be penalized because of any actions committed by Wetterer.

The orphanage association lost — at first. But then, in *U.S. v. Funds Held in the Name or for the Benefit of John Hugh Wetterer*, it appealed to the U.S. Court of Appeals for the Second Circuit. On April 14, 2000, against all odds, the orphans won.

In an opinion written by Judge Dennis G. Jacobs, the appeals court criticized the civil asset forfeiture system in which funds are confiscated by the DOJ and used as it sees fit.

Judge Jacobs did not mince words: “The bare financial facts of this case shine a light on the corrupting incentives of this arrangement: we see aggressive but marginal claims asserted on dubious jurisdiction to seize charitable funds raised for the relief of abject orphans in an impoverished country, so that the money can be diverted for expenditure by the Department of Justice.”

Coincidentally, the same month the orphans won, President Bill Clinton signed the Civil Asset Forfeiture Reform Act into law. This reform, made possible by the insistent leadership of House Judiciary Committee Chairman Representative Henry Hyde (R-IL), makes it more difficult for the federal government to confiscate property unfairly, and provides more protections for property owners.

To his credit, Hyde sought other protections for property owners in forfeiture cases as well, but his success was limited to what Congress was willing to grant.

Following passage of the act, positive as it was, the fundamental premise behind the practice of civil forfeitures remained unchanged. Furthermore, the reforms applied only to the federal system. State and local forfeiture practices, many of which are administered unfairly, were unaffected.

Sources: Malet Street Gazette, New York Law Journal

Police Department May Confiscate College Dorm Because Students Used Drugs

McIntosh College is a small New Hampshire college of about 950 students that specializes in career-oriented education.

Soon some of the students may find that training for a successful career isn't their only challenge: finding a place to live may be as well.

That's because the local police department, after arresting nine current and former McIntosh students on drug charges in August 2002, wants to confiscate the school's dormitory at 181 Silver Street in Dover under federal civil forfeiture laws.

Of the nine current and former students arrested, four faced charges relating to marijuana possession and/or sales. Two were charged with selling marijuana and/or Ecstasy, Valium and Zoloft.

Police chief William Fenniman said that over the past year another dozen or so current or former McIntosh students have been arrested on similar charges. Based on the results of a two-month undercover investigation, he termed the Silver Street dorm as an "open air drug market," although he reported that most of the undercover drug buys at the dorm occurred in the dorm parking lot or at a gas station across the street.

To seize the building, the police department must prove that the college ignored the illegal activity on its property.

College President David McGuire said the school has provided the police department with tips on illegal drug activity and increased security on campus. It also had increased the number of live-in directors at the dormitory and had kicked some of the suspects out of the school.

Fenniman acknowledged that there would be "legal hurdles" the to police department's confiscation of the school dormitory, but added: "I think we can get over them."

Sources: Foster's Daily Democrat, Associated Press

"We work here. We're honest. Our help loves us, our customers love us and here we are fighting with the federal government."

Sherry Schneider

Pub Owner Fined: Feds Say No to Whipping Cheese

Larry and Sherry Schneider of Damariscotta, Maine were fined \$11,000 by the U.S. Department of Labor (DOL) after an inspection found underage employees making cheese in their restaurant.

Schneider and his wife, Sherry, are owners of King Eider's Pub and Restaurant. They were cited for safety violations after a DOL inspector saw some of the Schneiders' employees using a home-style kitchen mixer to whip cheese. The inspector said that if the young employees had been making whipped cream there would have been no fine — but making or mixing cheese was a violation. He fined the Schneiders \$11,000.

The Schneiders spent two years and \$7,000 in legal fees fighting the charge, which eventually was dropped. Despite their victory, they feared retaliation when the overruled federal inspector said he would "tell the state of Maine" about their alleged problem. "Here we are, a small business," said Sherry Schneider. "We work here. We're honest. Our help loves us, our customers love us and here we are fighting with the federal government."

The Schneiders eventually decided to sell the pub, in part due to their battle with the DOL.

Source: Lincoln County News

Parents Arrested for Legally Having Son Home-Schooled

A Virginia couple was arrested for legally home-schooling their child. Gerald and Angela Balderson were arrested on March 17, 2000 after truancy charges were filed against them by a local public school administrator. The Baldersons, however, point out that they followed proper procedures to have their son, Brett, legally schooled at home, and therefore were not in violation of truancy laws.

Virginia law requires home schoolers to notify the local public school superintendent of intent to home school. The Baldersons had submitted the proper notice on February 25, 2000.

Bryan Almasion, assistant principal at Richmond County Elementary School, filed the charges against the Baldersons. Virginia law, however, stipulates that only school superintendents, not other school administrators, can file truancy charges. In this situation, Almasion went around the superintendent and straight to the courts.

The Home School Legal Defense Association maintains that, if Almasion had followed the law, the Baldersons could have avoided the humiliation of public arrests. Two days after the arrests the charges were dropped.

Source: Home School Legal Defense Association

"If administrators in the Richmond County Schools had followed Virginia truancy laws, a local home schooling couple would not have been arrested and detained at the Richmond County Police Station."

Woman Arrested for Home-Schooling Her Five-Year-Old

In August 2000, Theresa Horn, a home-schooling mother in Bolivar, Tennessee, was arrested in front of her husband and three young sons, ages one, three and five, allegedly for violating a compulsory student attendance law.

Horn's arrest arose from a complaint filed by her mother, who believed that her five-year-old grandson should be enrolled in a public school. Horn's mother called the local school attendance officer, Charlie Brown, who is responsible for enforcing the compulsory attendance law. Brown then signed an arrest warrant issued by a Hardeman County Sheriff's Deputy.

Horn's arrest occurred even though compulsory schooling is not required there until a child is six. Brown later admitted that he knew there was no violation of the law, but filed the warrant because of the complaint from Horn's mother. A few weeks after the arrest, Brown agreed to dismiss all charges.

Source: Home School Legal Defense Association

The Home School Legal Defense Association estimates that, depending on one's definition of home schooling, slightly more than two million students are home schooled in the United States today.

Home Schooling Meets Big Brother

After moving to Lynn, Massachusetts in 1993, Michael and Virginia Brunnelle decided not to enroll their five children in public schools, opting instead to educate them at home.

The Brunnelles' credentials for home schooling are impeccable. Virginia is a certified elementary school teacher, while Michael has a Master's Degree in Christian education. Although Lynn Public School officials approved the Brunnelles' qualifications as teachers, the contents of the curricula and the instructional materials, they still would not allow the Brunnelles to home school their children unless school officials were allowed to conduct periodic inspections of the Brunnelle home "to verify that the home instruction plan is being implemented."

The Brunnelles strongly objected to the school system's claim that it had the right to intrude on their privacy. They filed a suit against the Lynn Public Schools charging that the home inspection regulation violated state constitutional guarantees against unreasonable searches. The superintendent of the Lynn Public Schools argued that the home visit regulation is essential to make sure that the parents are providing necessary instructional space, the proper instructional materials and are following a set schedule.

The Massachusetts Supreme Judicial Court overturned the home visit regulation in 1995 as an improper attempt to apply the institutional standards governing public schools to the non-institutional environment of a family home. The court said the need for a formal schedule, for instance, was unnecessary because the intimate relationship between the parent and child permits closer monitoring than would be possible in a public school classroom. On the school system's need to insure the availability of instructional space, the court stated, "We doubt that parents like the plaintiffs, who are so committed to home education that they are willing to forgo the public schools, and devote substantial time and energy to teaching their children, will let the children's progress suffer for lack of adequate instructional space." Finally, the court held that the home visit requirement was improper because it raised issues of unwarranted government intrusion on familial privacy.

Source: Home School Legal Defense Association, Scams and Scandals

Mississippi Tries to Take African-American s Land for Auto Manufacturer s Parking Lot

Lonzo Archie is a diabetic African-American in his late 60s whose land was condemned by the state of Mississippi to make way for a new Nissan Motor Company parking lot.

Archie has lived on the property most of his life and does not want to move.

In November 2000, the Mississippi state legislature reached a deal with the Nissan Motor Company to build an auto plant in Archie's hometown of Canton. Nissan's planners hoped to build a parking lot on land belonging to Archie.

Although a state official told *The New York Times* that Archie's property was not necessary to complete the Nissan project, state officials nonetheless moved forward with plans to condemn Archie's property to turn it over to Nissan. Mississippi's apparent motive: make it clear to the business community that Mississippi has a business-friendly environment.

James Burns, Jr., executive director of the Mississippi Development Authority, was quoted as saying, "It's not that Nissan is going to leave if we don't get the land. What's important is the message it would send to other companies if we are unable to do what we said we would do."

Archie, with the help of the Institute for Justice (IJ), argued against using government authority to transfer his private property to a private company. IJ appealed to the Mississippi Supreme Court, which decided to stay the condemnation in September 2001. This temporarily blocked the eminent domain proceedings until the Court could review the constitutionality of the situation. In April 2002, the state decided to reverse its position and said Nissan would redesign its truck manufacturing facility so Archie could remain on his land.

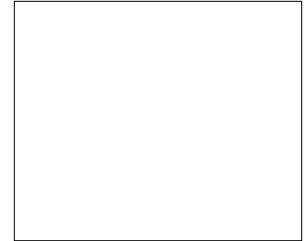
Source: Institute for Justice

New Yorkers, Beware

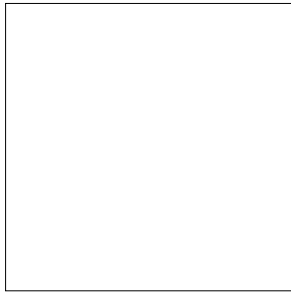
William Minnich's business produces beautiful handcrafted furniture and cabinets, some of which have appeared in New York City's Metropolitan Museum of Art. State authorities, however, apparently have no use for Minnich's talents. The state wants to turn the building housing Minnich's business into a Home Depot parking lot.

The East Harlem building has been in Minnich's family since 1927. He purchased it in 1981, and spent over \$250,000 improving the structure. In September 1999, the Empire State Development Corporation, a state agency, issued a Determination and Finding to take Minnich's property under New York's eminent domain law. The land acquired under eminent domain rules is supposed to be used for a public project, such as schools, roads or parks. In this case, the government was seeking to take the land to aid another business.

New York's eminent domain laws as currently written and enforced essentially keep property owners in the dark until they've lost their chance to argue against proposed takings of land. Government officials are only required to publish a notice in the legal ads section of the local newspaper to notify property owners of their intent to condemn property. All other states, with the exception of Indiana, require a notice be sent directly to the property owner. From the date of the newspaper publication, the unsuspecting



Mr. and Mrs. Lonzo Archie



Mr. and Mrs. William Minnich

property owner has only 30 days to make an appeal. If property owners fail to see the notice, they've lost their chance to appeal the decision. The Minnichs missed their deadline to challenge the condemnation of their property. Although they tried to follow the process, they did not realize they needed to file an appeal within 30 days after seeing the newspaper notice. Nowhere in the newspaper notices does it inform owners of their right to appeal.

On October 4, 2000, on behalf of the Minnichs, the Institute for Justice filed a federal lawsuit in the U.S. District Court for the Southern District of New York to fight New York's eminent domain procedure law. The Institute's lawsuit claimed that New York's eminent domain procedure violates due process "by failing to give owners proper notice and a hearing, thereby depriving them of the right to challenge the condemnation of their property."

On September 19, 2001 Federal District Court Judge Harold Baer, Jr. dismissed the lawsuit, saying Minnich did not have "standing" — the right to file a lawsuit. New York law operates under the assumption that clients know everything their lawyers do. Therefore, Judge Baer ruled, Minnich could not argue he did not understand New York's eminent domain proceedings because he had previously consulted a lawyer. But Judge Baer also ruled that "the rationale for [the Court's] decision has no bearing on the very serious underlying issue of what constitutes adequate notice under New York State's condemnation proceedings."

During the course of litigating the case, Minnich's wife died and his nephew experienced severe health problems. These developments prompted Minnich to settle the case out of court and sell his property. In light of Judge Baer's statements, the Institute's attorney, Dana Berliner, said that their group will file another lawsuit challenging New York's eminent domain laws representing different owners.

Sources: Institute for Justice, TheJournalNews.com, The New York Post

Church Condemned; Has No Right to Appeal

St. Luke's Church in North Hempstead, New York provides more than church services to the community. The church also helps members of the community with heating oil, rent money and drug counseling.

Unfortunately for the church and those it serves, however, the North Hempstead Community Development Agency (NHCDA) thinks its definition of urban renewal can do more for the community than can St. Luke's. NHCDA has decided to condemn the property on which the church stands for an urban renewal project, although the NHCDA's specific plans are still — to this point — unknown.

The trouble started in 1994, three years before St. Luke's bought its property in 1997 on Prospect Avenue. This is when the NHCDA added the land to the area's redevelopment plan, which made the property eligible for condemnation by the government under its power of eminent domain.

New York law does not require that the titles to properties state if land has been so designated. The previous owner mentioned nothing, and the title said nothing, so the church was unaware of the designation when it bought the property.

In 2000, the NHCDA decided it was going to take the church's land through the power of eminent domain. Unfortunately, the church had lost the right to appeal the condemnation in 1994 — before it bought the property.

Currently, church members, and others in the community who appreciate St. Luke's good works, are awaiting the NHCDA's specific plans.

Source: Institute for Justice

Brake Shop Faces Competition from Hardware Store and the Government Takes Sides

Bailey's Brake Service is a successful family-owned business that has been at the corner of Country Club Drive and Main Street in Mesa, Arizona for the 31 years. It may soon be gone. Mesa may force owner Randy Bailey to sell the city the property at a price it determines so the city can sell the land to another private owner.

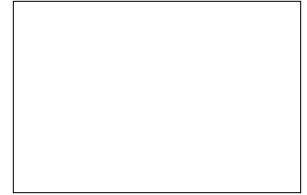
Bailey's shop is surrounded by open land and empty buildings, prompting Mesa's redevelopment director, Greg Marek, to declare the area "blighted." The city government is seeking to redevelop the nearby downtown area. As Marek told the *Arizona Business Gazette*: "One of our goals is to eliminate unsightly, substandard and obsolete uses that can't be rehabilitated."

But Bailey claims that Ken Lenhart, the owner of an Ace Hardware store in Mesa, wrote to the Mesa City Council to ask it to take Bailey's property through the power of eminent domain so Lenhart could buy it and relocate his store there. Soon after receiving the letter, the City Council approved a measure to expand the redevelopment zone to include Bailey's property. Since then, Lenhart has purchased numerous parcels of land surrounding Bailey's Brake Service.

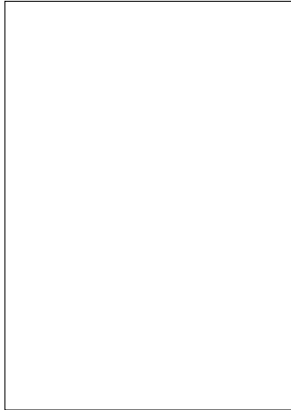
On April 29, 2002, Maricopa County Superior Court Judge Robert Myers ruled the city had the right to take the Bailey property, but stayed his own ruling two days later and prevented the city from taking the property until a special action was filed with the Court of Appeals. Bailey challenged Judge Myers' ruling. On May 31, 2002, the Arizona Court of Appeals extended the period in which Bailey's property would remain untouched until after the appeals court issues its decision.

Legal experts working with Bailey point out that eminent domain powers allow the government to take property for the public good, but not to sell to another individual for that individual's private gain.

Sources: Institute for Justice – Arizona Chapter, Arizona Business Gazette, Randy Bailey, Tim Keller



Randy Bailey



Lou and Mimi Holtzman

New York City Museum to Couple: We Want Your House

For 14 years, Lou & Mimi Holtzman have been living next to the Lower East Side Tenement Museum at 97 Orchard Street in New York City. The museum, chartered in 1988, illuminates how New York City's immigrant families lived circa 1863-1935. It attracts about 90,000 visitors a year.

According to museum president Ruth J. Abram, the museum needs more space.

She'd like Lou and Mimi Holtzman's building at 99 Orchard Street to provide the space. She'd also like the taxpayers to pay for it.

The Holtzmans, however, do not want to sell. Lou's family has lived in the building since the early 1900s.

The reasons Abram wants the space are many and varied. She'd like space for classrooms to teach English to immigrants. She'd like to have room for programs to teach local residents about the history of their neighborhood. She'd like "state of the art" storage space. She'd like to install an elevator. She'd like more room for "immigrant artists" who are "searching for places to express their experiences."

Abrams says these things must be done in the Holtzmans' building "because it is a sister building and shares a party wall." But storage and classroom space don't need shared walls. And the elevator is necessary only because the museum doesn't want to widen doorways (for wheelchair access) at its present facility, because doing so would alter the "configuration and fabric of the building."

Abrams also would like to have room for more visitors, who currently pay \$7-9 per person for tours during the museum's limited tour hours.

Ironically, Abrams also would like more space so the Museum can hold programs that "promote tolerance and teach citizenship skills," even though both those values must be violated if the space is to be obtained against the will of the owners and at taxpayers' expense.

Abrams even cites the September 11 terrorist attacks as a reason to expand the museum, because the museum is comforting to visitors.

Not taking the Holtzmans' "no" for an answer, the museum has asked the Empire State Development Corporation (ESDC), a state agency, to condemn the Holtzmans' property and acquire it for the museum through eminent domain provisions. These provisions allow governments to condemn private property for the greater public good. When property is taken through eminent domain, building owners are to be compensated by the taxpayers.

Newspaper accounts report the museum originally sought to buy the building for \$1.35 million and spend over \$2.3 million to renovate it. The Holtzmans, however, believe the building alone is worth between \$7 and \$9 million — particularly since they and a partner have just completed a multi-million dollar renovation of the 15 apartments and a restaurant in the building. The typical rent for a 375-square-foot apartment in their building is \$1,600 per month.

The Holtzmans have the support of the local community board and several state assemblymen, but the ESDC has not yet ruled on whether to proceed with eminent domain proceedings.

Sources: The New York Times, The New York Post, Lou Holtzman, The Tenement Museum

Government Takes Developer s Land for One Percent of Its Value, Sells It to Rival Developer

Developer Moshe Tal submitted plans in 1995 to develop 1.4 acres of property he owned in downtown Oklahoma City, Oklahoma into retail shops, restaurants and entertainment facilities.

The City Council condemned his land in 1997, saying it was needed for parks, recreational facilities and parking. An appraisal and sales of adjacent property in 1997 and 1998 led Tal to believe his land was worth \$5 million. The city offered him just \$50,000.

Tal sued the city, but a trial court judge ruled that the city had a right to condemn property for “public use” under its powers of eminent domain. In 1998 the city announced plans to sell the former Tal property to a rival developer for \$165,000. This new developer proposed to build restaurants, retail shops and other facilities similar to those in Tal’s original plans. Tal went back to court, arguing that the city had misrepresented its intended use for the land. A trial court dismissed Tal’s challenge. The Oklahoma Court of Civil Appeals and the Oklahoma Supreme Court also ruled in favor of Oklahoma City, ignoring the constitutional issues Tal brought up, such as his right to just compensation and due process.

In April 2002, the U.S. Supreme Court chose not to accept Tal’s case for review, exhausting his ability to appeal his case further.

Tal has since filed conspiracy charges against the developer and seven affiliated corporations for \$210 million. The American Association of Property Owners and the Atlantic Legal Foundation will represent Tal in federal court as the case proceeds.

Source: American Association of Small Property Owners, Moshe Tal

State Refuses Full Compensation After Taking Elderly Woman s Front Yard for Highway

Charlene Coffee, an 80-year-old grandmother in DeKalb County, Tennessee, can no longer look at her front yard without crying. What used to be a nice yard with chestnut trees will soon become part of a major highway.

The state of Tennessee, through a \$20.6 million project, is widening a five-mile section of Highway 70 in DeKalb County to ease traffic congestion. The state took a portion of Coffee’s property for construction of the road through its power of eminent domain. The state has refused to buy her home, which she claims is now ruined because there will be approximately ten feet between the road and her house once the project is complete.

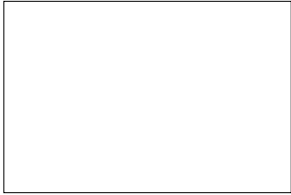
Coffee fears that such a short distance between her home and the road is an accident waiting to happen. “I’d be afraid to go to bed every night... I can’t do that.”

Coffee doesn’t want to live in fear, and — since the state refused to buy her home after condemning part of her property — she wants to sell it. She doubts she will be able to find a willing buyer for the home, where she has lived in since 1947, because it is so close to the proposed road. The state offered Coffee \$26,000 for the property it took, which is approximately 30 percent of the home’s estimated value. That amount of money is not enough for her to move.

Source: WKRN - Nashville

“I’d be afraid to go to bed every night... I can’t do that.”

Charlene Coffee



Pastor Bayless Conley in front of Cottonwood Christian Church

“Preventing a church from building a worship site fundamentally inhibits its ability to practice its religion. Churches are central to the religious exercise of most religions. If Cottonwood could not build a church, it could not exist.”

Judge David Carter

City Tries to Seize Church Property for Discount Store s Use

Cottonwood Christian Church bought 18 acres of property in Cypress, California in 1999 for \$13 million, intending to build a larger worship center there. The church must now turn people away from services every week because there is not enough room for all the parishioners.

The church suffered a setback in May 2002, when the Cypress City Council voted to condemn the church’s property so that a Costco retail store could be built on the land. The city argued that the tax revenue created from the Costco justified using the government’s power of eminent domain to take the property from the church. Community Developer Director David Belmer was quoted in *The Washington Times* saying, “We do not view the church use as consistent with the goals and objectives for development of this key piece of property.” *The Wall Street Journal* editorial page questioned the legality of the city’s actions, writing, “But the whole point of property rights is that bureaucrats don’t get to pick and choose who owns what.”

Cottonwood Church, with help of The Beckett Fund, a public interest law firm, argued in U.S. District Court that the city’s proposed taking was unjustified. Judge David Carter agreed with the church, and ruled against the city’s plan to take away the church’s property. He ruled that even if the city had a compelling reason to take the land, it should have done so in a less restrictive manner. Carter characterized the city’s actions as using a sledgehammer to kill an ant.

Sources: The Washington Times, The Wall Street Journal, The Beckett Fund

***New York Times* Says Jump, New York Government Says How High?**

Executives at *The New York Times* began to rumble that the newspaper would begin moving its workers to offices outside the city if the *Times* could not find a new building. In response, in December 2001, city and state authorities gave the newspaper a giant property located at the outskirts of Times Square for a new 52-story headquarters. Many consider it a “sweetheart deal” to keep the newspaper happy.

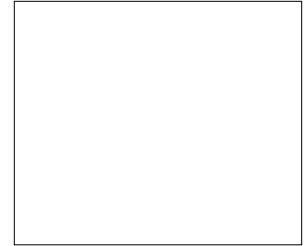
However, neither the city nor the state own the land they gave away. It is privately-owned: 11 buildings on the site house approximately 30 businesses. Officials are using the power of eminent domain to evict the current tenants in an action that contradicts the Fifth Amendment to the U.S. Constitution, which allows the use of eminent domain only for “public use” with “just compensation.”

Specifically, on December 13, 2001, New York Governor George Pataki announced that the Empire State Development Corporation (ESDC) would condemn land on Eighth Avenue between 40th and 41st Streets for the *Times*’ new building. The paper is set to pay \$85.6 million for it; a price that Massachusetts Institute of Technology real estate professor W. Tod McGrath says is “at least a 25 percent discount.” Sidney Orbach, the co-owner of one of the buildings slated to be condemned, backs up this estimate. He points out that a smaller building across from his recently sold for \$111 million.

Speaking on how the condemnation destroys his investment, Orbach told *Reason* magazine: “I would have said this couldn’t happen in the United States. [My building] used to be a factory building, and we totally converted it to an office building. It became a very, very desirable place. We just want to keep the building. We’ve put a lot of money, energy and sweat into this. I am now sitting with a tremendous amount of vacancy because no one wants to rent space that has a good chance of being condemned.” Worse, Scripps-Howard columnist Deroy Murdock has reported that the ESDC told tenants in August that they should send their rent payments to the state rather than landlords like Orbach from now on — making it hard for the owners to meet mortgage payments because the lack of rental income.

Among those businesses likely to be displaced is Arnold Hatters, which has been on the block since 1960. Mark Rubin, whose father began the business that he now manages, said: “As far as I can remember, this has always been our family’s breadbasket. I think it’s atrocious that, for the sake of a private corporation like *The New York Times*, somebody has the right to take it away from us.”

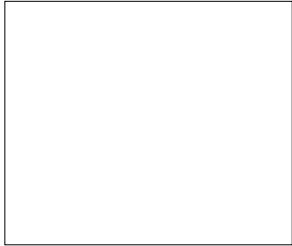
Sources: Reason Magazine, The Village Voice, Scripps-Howard Columnist Deroy Murdock



the staff of Arnold Hatters

“We just want to keep the building. We’ve put a lot of money, energy and sweat into this.”

Sidney Orbach



Billboard that was on display in Pittsburgh

"I am not interested in holding out for a better price. For there is no price. I just don't want to sell. I want to keep my family business."

George Harris

The New Fifth Amendment: Nor Shall Private Property be Taken for Public Use... Unless We Say So

Pittsburgh Mayor Tom Murphy created a plan to bring national retail stores to his city. He was going to hand over property to a private developer — the Chicago-based Urban Retail Properties — in order to entice national chain stores such as The Gap, Tiffany's and FAO Schwartz to build stores in the Fifth and Forbes neighborhood of Pittsburgh.

Murphy's plan would have required using the city's power of eminent domain to take private property and turn it over to Urban Retail Properties. The plan would have condemned over 60 buildings, housing nearly 125 businesses, some of which had been family-owned for generations.

Bonnie and Aaron Klein, for example, own a small building that houses their camera shop and three other tenants. The Kleins have a college-age son and need the camera store's revenue for his tuition. However, as the Kleins' property was slated to be taken by the government as a part of Murphy's development plan, their income would be lost.

Fortunately, things have worked out for the Kleins so far, as the mayor's retail dreams were delayed. The Seattle-based Nordstrom department store decided in November 2000 that it would not build a store in the in the Fifth and Forbes area. This decision and other factors, including legal action and a public relations effort on behalf of the small businesses by the Institute for Justice, prompted Murphy to halt eminent domain proceedings.

As reported in the *Pittsburgh Tribune-Review*, Murphy subsequently and repeatedly promised that further redevelopment efforts for the area would not include the "tool" of eminent domain.

Two years later, however, he had weakened his promise, saying only that eminent domain would be used only as a "last resort."

As George Harris, who is trying to save his 101-year-old Harris Brothers flower shop founded by his immigrant father and uncles, noted, "Of course eminent domain is a last resort. In all threats of force, the actual use of it is the last resort. 'Do as I say... or else,' is the criminal's creed."

As Harris wrote in the *Pittsburgh Post-Gazette* in May 2002: "I watched my father serve Pittsburgh patrons until he retired at age 94, and I have given 50 years of my own life to the flower shop. It is more than just a business, more than just an income — it is the very lifeblood that runs through my veins. I am not interested in holding out for a better price, for there is no price. I just don't want to sell. I want to keep my family business."

Harris may not succeed.

As columnist J.H. Huebert wrote in the *Tribune-Review*, "Even though the Founding Fathers only intended that land may be taken for truly public projects, such as roads, courthouses and city halls — and not for private commercial developments — the present day activist courts have generally let city governments slide with anything they can remotely justify as a 'public purpose.' So Mayor Murphy might just be able to condemn the property with impunity."

Sources: Institute for Justice, Pittsburgh Tribune-Review, Pittsburgh Post-Gazette

Snowy Plover Habitat Designation Protects Small Bird, But Kills 1,000 Jobs

The U.S. Fish and Wildlife Service (FWS) listed the snowy plover, a small shorebird, as a threatened species in 1993. In 1999, the FWS designated 28 areas along the West Coast as critical habitat for the plover. The habitat covered approximately 20,000 acres — over 200 miles — of coastline in Washington, Oregon and California.

The declared habitat areas include beach areas that are off-limits to camping, walking, jogging, picnicking, horseback riding, kite flying, sunbathing, beach cleaning and livestock grazing. These restrictions closed large swaths of beaches in Coos County, Oregon, blocking tourist access and taking away much-needed tourism revenue. The FWS did an economic analysis of the impact of listing the Oregon Dunes National Recreation Area as part of the critical habitat in 1999. Its analysis concluded that the listing of the snowy plover could impact the economy of the region and noted that the Dunes contribute \$20 million annually to the economy as well as 1,000 jobs and \$19 million in household income for the area.

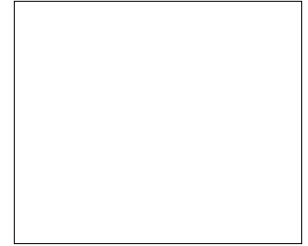
In spite of this, the FWS determined that the critical habitat designation would impose no additional hardship on the area beyond those already associated with listing the plover as threatened in 1993. Coos County Commissioners, however, asked the Pacific Legal Foundation to represent the county in court, arguing that the FWS did not properly take into account the economic impact of its decision as required by federal law. Lawyers for Coos County will cite the ruling of the Tenth U.S. Circuit Court of Appeals in Denver, which stated in May 2001 that the FWS had not properly considered economic impacts of critical habitat designation in New Mexico for the southwestern willow flycatcher. The federal government has indicated it wants to keep the habitat designation in place while it studies the economic impact of the designation — something that lawyers for the county say they will fight.

Source: Pacific Legal Foundation

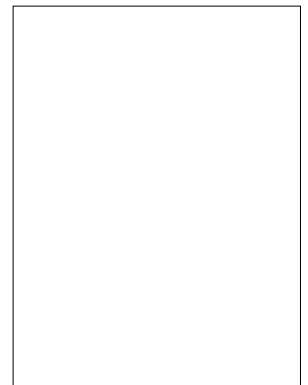
Landowner Convicted of Killing Prairie Dogs, But Are Any Dogs Dead?

In 1995, Lin Drake bought property near Enoch, Utah, intending to build a subdivision of affordable homes. He hired an engineer later that year to determine if there was a prairie dog colony on his property. A colony was found west of his land but no prairie dogs were found.

Responding to an anonymous tip that prairie dogs were on Drake's land, state wildlife officials as well as employees of the U.S. Fish and Wildlife Service (FWS) arrived to determine how many prairie dogs were on Drake's land. They claimed to have seen between 74 and 78 prairie dogs. Drake asked them to re-visit his property so he could show them an old inactive prairie dog colony and prove to them it had been abandoned for a colony farther west. FWS employees made several trips to his property in 1995 and 1996 and found no habitat or holes made by prairie dogs. One FWS employee claimed he saw two prairie dogs on the property, but was unable to prove he saw them there. He claimed the dogs moved too quickly to be caught on film.



snowy plover



prairie dog

Endangered Species

Nonetheless, Drake was fined \$15,000 in 1998 for “harming” prairie dogs and disturbing their habitat in violation of the U.S. Endangered Species Act. He requested a hearing before an administrative law judge, seeking proof that 1) prairie dogs had lived on this property, and 2) that he had caused “death or injury” to these prairie dogs. The only evidence provided on the first charge was the testimony of one FWS employee, who had no documentation. No evidence was provided of the second charge.

Nonetheless, Drake was found guilty. The judge relied upon the FWS employee’s testimony in the first instance because, the judge said, federal employees have no reason to lie. No evidence apparently was required to convict Drake of the alleged killing.

At the time, there was a disease common among prairie dogs in the region. If any prairie dogs had died on the land — note that no corpses ever were found, and no evidence of any deaths ever was provided — disease was a possible culprit. Drake, then, is being held legally responsible even if the alleged prairie dogs did exist and died of a disease Drake had no ability to control.

The Mountain States Legal Foundation is representing Drake in his appeal to the U.S. Department of Interior’s Office of Hearings and Appeal. It has yet to hear his case. Until that time Drake does not have to pay the fine. Should he lose in his appeal, he then can take his case to district court.

Source: Mountain States Legal Foundation

In New Mexico, Support for the Endangered Species Act is Drying Up

“What will we do when there is not enough water for our kids?” Albuquerque Mayor Martin Chavez wonders. “What will we say when they ask why we let our homes, our industries and our cities take a back seat to a well-meaning but outdated federal statute?”

For years, Endangered Species Act (ESA) enforcement has killed jobs in New Mexico. Now environmentalist lawsuits filed under the ESA to protect the Rio Grande silvery minnow may cut the amount of water available to New Mexico’s metropolitan areas as well as to its farmers.

Local residents say this would be a disaster for local residents. If so, it would be just one more endangered species-related blow to this hard-hit state.

Albuquerque’s Mayor Chavez isn’t the only prominent New Mexican who believes the ESA is making life harder.

As the *Albuquerque Journal* reports, Santa Fe Mayor Larry Delgado worries that lawsuits by environmentalists over the Mexican spotted owl could hinder a forest thinning project designed to reduce fire and flood in his part of the state.

Danny Fryar, county manager in New Mexico’s Catron County, located 200 miles southwest of Albuquerque, told the *Journal*, “They started closing down logging in the national forest in 1989 and by 1992 it was all over. Environmental lawsuits just about destroyed us and they haven’t quit yet.”

Alex Thal, a professor at Western New Mexico University, says of the situation in Reserve, Catron County’s county seat: “When the sawmill in Reserve closed in 1992, it reduced the economy in that area by about \$8.6 million a year, counting direct, indirect and induced income.”

Because of financial pressures, Reserve’s population has declined a whopping 25 percent. Businesses have gone under. As the public school system has been de-populated, public school classes have been cut back to just four days a week.

“[Environmentalists] don’t want us to have cows, they don’t want us to cut wood, they don’t want us to mine. They just want to set everything aside so nobody can use it.”

Antonio “Ike” DeVargas

“There’s a whole host of things that go wrong in a community when this happens. You read about divorces, substance abuse, domestic violence, truancy, suicide indicators of a social system breaking down,” Howard Hutchinson, a local resident and executive director of the Coalition of Arizona/New Mexico Counties, told the *Journal*. “We’ve had increases in every one of those areas. If what happened here with the unemployment situation were to happen in Albuquerque, 100,000 people would suddenly be out of a job.”

Northern New Mexico is likewise affected. Alberto Baros, an assistant county planner in Rio Arriba County, north of Santa Fe, believes some environmental activists are abusing the ESA. “The Act brings [people] to a point that they won’t recover. They’ll be out of business soon. And for some of those people it’s a loss of custom and culture.”

“Basically, we’re in a straitjacket,” Antonio “Ike” DeVargas of La Madera, a town in Rio Arriba County, has told the paper. “[Environmentalists] don’t want us to have cows, they don’t want us to cut wood, they don’t want us to mine. They just want to set everything aside so nobody can use it.”

Environmentalists have filed least 134 lawsuits in New Mexico since 1995 seeking greater enforcement of endangered species regulations.

In the minnow case, a federal court has ruled that the law gives minnows the greatest right to the water. Following a joint appeal by the city of Albuquerque and the state of New Mexico, in October 2002, implementation of this order was delayed, pending a full appeal of the order in January 2003.

In a September 2002 *Albuquerque Journal* poll, two-thirds of New Mexico’s registered voters said they believe the ESA goes too far. Should the city and state lose their appeal in the water case, this number is likely to go much higher.

Sources: Albuquerque Journal, United Press International

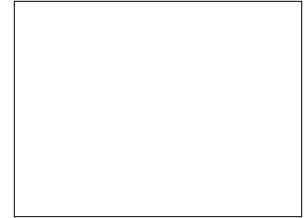
Federal Government Forbids Sale of Lawfully-Acquired Property

In November 1999, undercover U.S. Fish and Wildlife Service agent Ivar Husby, claiming to be a Norwegian collector interested in Indian artifacts, went to Timothy Kornwolf’s home in Stillwater, Minnesota and persuaded Kornwolf to sell him two items containing golden eagle feathers. Husby negotiated the sale of Kornwolf’s Indian dance shield and headdress for \$12,000, gave Kornwolf \$7,000 in cash for the shield, and wired the remaining amount. The headdress was seized after a search warrant was issued.

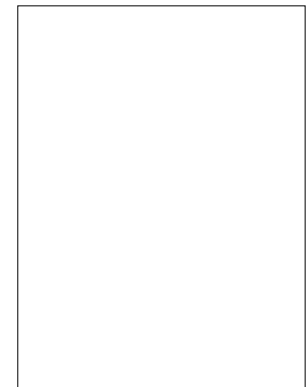
Kornwolf’s sale of his artifacts was said to violate the Bald and Golden Eagle Protection Act of 1962 and the Migratory Bird Treaty Act of 1918 — together commonly called the “Feather Act.” The laws prohibit the sale of eagles or their parts, nests, or eggs.

In the U.S. District Court of Minnesota, Kornwolf proved that the artifacts had been family property since 1904, before passage of the laws. As such, Kornwolf believes the Feather Act is unconstitutional in his case because it denies him the right to sell legally-acquired property. The court, however, disagreed.

Kornwolf chose to plead guilty to four of the eight counts for which he was indicted, reserving the right to withdraw his plea if the acts were later found unconstitutional in his situation. The District Court sentenced Kornwolf to three years of probation with 180 days in a home detention program that included electronic monitoring, a \$2,000 fine, and a special assessment of \$400. Kornwolf was allowed him to keep the \$12,000, pending an appeal.



Reserve, New Mexico



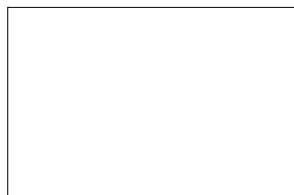
golden eagle

Endangered Species

In November 2001, Kornwolf appealed to the U.S. Court of Appeals for the Eighth Circuit, asserting that denying him the right to sell his legally-acquired artifacts is an unconstitutional “taking” of his property without compensation. In early 2002, the Eighth Circuit Court of Appeals upheld the lower court’s ruling against Kornwolf.

In April 2002, Kornwolf petitioned the U.S. Supreme Court to hear his case but, on October 8, 2002, the court declined.

Sources: Mountain States Legal Foundation, Eighth Circuit Court of Appeals



sucker fish

Land in the region that was valued at \$2,500 per acre is now valued at \$50 per acre.



the Klamath River Valley

Klamath Basin Area Struggles On One Year After Federal Government Shut Off Water

In the spring of 2001, federal authorities shut off water to 1,500 farmers and over 200,000 acres of the Upper Klamath Lake region of Oregon and northern California in order to save two endangered species: the sucker fish and the coho salmon. The federal agencies took this step in response to lawsuits filed by environmental groups that claimed the government had not adequately protected these endangered species since a 1991 drought.

With no water for irrigation, farmers lost their crops. Businesses lost revenue, as farmers had no money to spend. Other wildlife that depended on plentiful waters, such as waterfowl, suffered, but were deemed less important than the endangered fish.

Residents complained to the federal government, and the case received national attention, but the irrigation canals remained dry.

In early 2002, the National Research Council released an interim report on scientific issues relating to the water shutoff. According to the report, there is “no clear connection between water levels in Upper Klamath Lake and conditions that are adverse to suckers. In fact, the highest recorded increase in the number of adult suckers occurred in a year when water levels were low.” Because of this report, the Department of Interior released water for irrigating crops in 2002.

Many area farmers, however, did not make it through the dry summer of 2001 and had to sell equipment, livestock and, in some cases, the farms themselves.

Steve Kandra, whose family has farmed in the basin for nearly a century, said, “We are on our last run and 2002 will make or break 92 years of farming for my family.” Kandra typically had been able to produce about 140 bushels of wheat per acre on irrigated land. Last year, on un-irrigated land, his yield was only six bushels per acre.

Farmers are not the only victims of the federal decision to keep water in Klamath Lake for endangered fish. Wetlands were also cut off. Wildlife that depended on the water in Klamath wetlands — such as bald eagles and ducks — disappeared.

Local businesses that depend on farmers as customers also were hurt. Bob Gasser, who runs Basin Fertilizer in Merrill, Oregon, said, “People who have paid me for 27 years have been unable to settle their bills. Do I tell them no this year? I can’t.”

Land in the region that was valued at \$2,500 per acre is now valued at \$50 per acre. Even at this bargain price, there are few willing buyers. No one will buy farmland where the future availability of water is uncertain.

Sources: Oregon Dept. of Agriculture, The Wall Street Journal

Man Forced From Home to Accommodate Bats

Grant Griffin just can't sleep in his home anymore. His one-bedroom apartment in Bradenton, Florida has had some unwelcome company — a colony of bats. During the day, bats can often be found in his sink or other areas around his home. At night, the bats' incessant noisemaking keeps Griffin awake.

Besides being a nuisance, the bats are dangerous. Griffin and his girlfriend have both discovered small bites on their bodies.

The seemingly simple solution: have the bats exterminated. The bats, however, are classified as "native wildlife" by the state of Florida and cannot be poisoned or trapped. So Griffin is forced to live with the bats in his home. "I'm about as freaked out as I can get... I feel like there are things crawling all over me," Griffin told the *Sarasota Herald Tribune*.

If the bats were rabid, Griffin could have the colony exterminated. This is not a likely solution to Griffin's problems, however, as less than one-half of one percent of all bats are rabid. Until it can be determined if the bats are rabid, Griffin has been spending the night at friends' homes to avoid dealing with his unwelcome housemates.

Griffin's landlord offered to put screens over the holes where the bats enter and exit his home to collect food, but this posed another problem. During the summer, at the peak of the bat mating season, blocking the entrances and exits the bats use would cause the babies to die for lack of food and create an unbearable stench in the house. Griffin has another more permanent solution in mind for dealing with the bat problem in his house. He has made plans to move.

Sources: Sarasota Herald Tribune, Florida Fish and Wildlife Commission

\$200,000 Fine If Your Cats Eat Threatened Mouse

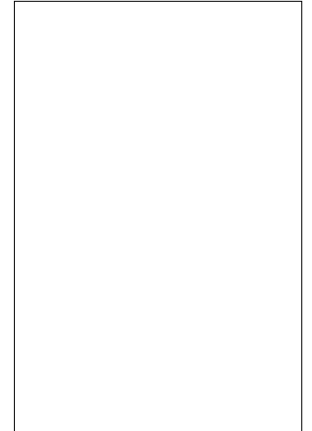
Homeowners in the Pine Creek subdivision of northern Colorado Springs, Colorado are not allowed to let their cats roam outside. The rule is not out of concern for the cats, but because the cats might eat a mouse, in particular, the Preble's meadow jumping mouse. This mouse was listed as an endangered species in 1998 and has been seen in the area.

If a cat were to eat the endangered mouse and it is determined that the Endangered Species Act was knowingly violated, the U.S. Fish and Wildlife Service (FWS) could fine the cat's owner \$200,000.

The FWS has proposed designating 60,000 acres in Colorado and Wyoming as critical habitat for the mouse with kangaroo-like hind legs.

As Robert Hoff, a Colorado Springs realtor, said, "There's not a shred of evidence that this mouse is even threatened. They ought to be spending more time on protecting the real threatened species, not the phony ones."

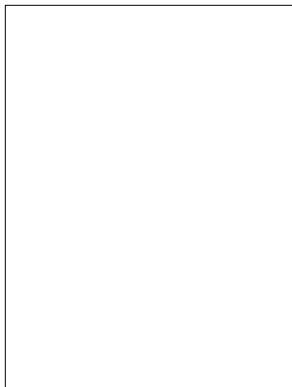
Source: The Gazette-Montreal



Grant Griffin and friends

"There's not a shred of evidence that this mouse is even threatened. They ought to be spending more time on protecting the real threatened species, not the phony ones."

Robert Hoff



Delhi Sands flower-loving fly

Six Flies Could Cost Town \$35 Million in Tax Revenue; Government Says Fly Protection is Not A Question of Specific Numbers

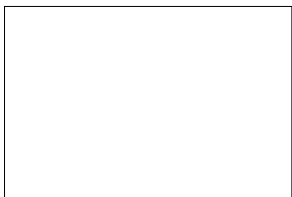
The Delhi Sands flower-loving fly was officially listed as an endangered species by the U.S. Fish and Wildlife Service (FWS) in 1993. Since then, the fly has caused problems with several southern California construction projects. Recently, the construction of a \$12 million sports complex was put on hold after the discovery of a half-dozen of the protected insects.

The FWS is now in the midst of a study of the Delhi Sand Dunes to determine the exact habitat of the endangered fly. So far — besides the construction of the sports complex that is indefinitely on hold — appearances of the fly have caused delays and changes in the construction of a school, a wing to a hospital and sewer and flood-control projects in Colton, California.

Regarding the habitat of the Delhi Sands flower-loving fly and its relationship with mankind, FWS, official Jane Hendron told *The Washington Times* that “it’s not a question of specific numbers” of the flies found near construction sites. “What we are dealing with in the case of this particular species is a dramatic reduction of what was once its historic habitat.”

Colton Town Manager Daryl Parrish is concerned that an expected \$35 million in taxes will be lost if the developer of the sports complex pulls out of the project. He’s also concerned that designated habitat that is now illegally used as a dumping ground will never be rehabilitated. Parrish said: “It’s very frustrating to us. This particular project provides economic and recreation opportunities to this community. Not only that, but the proposed property is very, very blighted with dirt, weeds and trash.”

Source: The Washington Times



soldiers in training

Marines Less Prepared for Combat Thanks to Endangered Species Restrictions

Marines at Camp Pendleton in California may not be as prepared for action as they should be because of environmental regulations have been imposed on their training.

The 125,000-acre Camp Pendleton is home to three Marine Expeditionary Units, including more than 100,000 soldiers, their families and civilian employees. Eighteen plant and animal species the government considers endangered or threatened also are found there. As a result, the U.S. Fish and Wildlife Service (FWS) has tried to make over 70,000 acres of the base, more than half, off-limits to soldiers in the name of protecting endangered habitat.

According to Colonel Bennett W. Saylor, chief of staff of the 1st Marine Division, “There are certain standards in our training and readiness manuals that we cannot conduct... To be able to come from the sea, cross the beach and occupy firing positions adjacent to a beachhead, unopposed, and to go to firing positions inland is important to us.” Local FWS representative Jane Hendron counters, “We understand that the U.S. Marine Corps has a mission, but our service has a mission, too — preserving endangered species.”

Because of the endangered species regulations, amphibious landings at Camp Pendleton are made at only a few locations and soldiers are limited to a few authorized roads during training for fear of disrupting protected habitats and incurring \$50,000 fines and other penalties. These restrictions on combat training concern military leaders. Artillery rarely practice high-angle firing or “shoot and move” exercises due to the lack of necessary firing range sizes because of the Arroyo Southwestern Toad. A 1999 amphibious assault was reduced from 2,400 participants to 800 because of the presence of the Tidewater Goby, an endangered fish.

Camp Pendleton has received several exemptions from normal regulations, but an environmental organization has sued the FWS as a result. Andrea Durbin of Greenpeace says, “We need the military to protect the nation... which means protecting the environment as well.”

Camp Pendleton employs 65 people and spends between \$20 and \$40 million specifically for environmental management and conservation programs on the base. General Richard Myers, the chairman of the Joint Chiefs of Staff, recently told a congressional panel that “Environmental concerns are... very important and we take those seriously. But we must be able to strike a balance with readiness requirements.”

Sources: Fox News, North County Times

Man Charged With Crime for Protecting His Sheep

Houston Lasater, a Colorado rancher and the owner of Lasater Sheep, Inc., holds the rights to a grazing permit in the San Juan National Forest near Durango, Colorado. In August 2000, a sheep herder employed by Lasater was injured and required medical treatment. While helping his worker obtain treatment, Lasater hired a temporary herder to watch his sheep while he was away. When Lasater returned to check on his sheep, the temporary herder — a member of the Navajo Indian tribe — said he had killed a “maii” (Navajo for bobcat). The herder killed the bobcat because it attacked and killed one of Lasater’s lambs.

Weeks later, the U.S. Fish and Wildlife Service (FWS) notified Lasater that it had found a lynx that had been shot and killed on his grazing allotment. An FWS agent came to the property to discuss the killing with Lasater. He introduced the FWS agent to the Navajo herder, but no charges were filed regarding the situation.

Almost 18 months later, FWS sought a civil penalty against Lasater, charging that the animal killed was a lynx protected under the Endangered Species Act (ESA). If convicted, Lasater could face a fine of up to \$25,000. FWS claimed Lasater had violated the ESA, which says it is unlawful to “solicit another to commit, or to cause [an ESA violation] to be committed.” The charges were later dropped, however, at the request of the Colorado Department of Natural Resources. The Colorado legislature has also called on the FWS to re-designate the lynx introduction plan “experimental.” This change, if adopted by the FWS, would allow residents to protect their livestock against the animals without fear of prosecution.

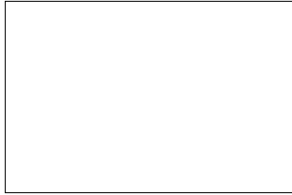
Source: Mountain States Legal Foundation

“Environmental concerns are... very important and we take those seriously. But we must be able to strike a balance with readiness requirements.”

*General Richard Myers,
chairman of the Joint Chiefs of Staff
before a congressional panel*



lynx



timber rattlesnake

Mine Closed, Lest Snakes Worry

Jay Montfort's Sour Mountain Realty is a family-owned New York company that has had a tough time with New York State's Department of Environmental Conservation (DEC).

The story begins early in the last decade, when owner Jay Montfort decided to operate a surface mine.

Immediately after he filed the required permit application to the DEC, Montfort found himself bogged down in a complicated and time-consuming process. First, the DEC did not issue its decision within the legally-required time frame, and Montfort's permitting costs soared to over \$2 million. Then, when the DEC finally approved his application, it suddenly reversed itself, saying that the mine could adversely affect a den of timber rattlesnakes located about 260 feet away from Montfort's property.

Amazingly, state officials were concerned not that the mine would kill or physically harm the rattlesnakes, but that the mine might "worry" them.

Montfort believed the company could operate the mine without harming the rattlesnakes. It built a snake-proof fence around the property keep the snakes out of harm's way.

This solution was not satisfactory to the DEC, which made Montfort tear down the fence. The DEC claimed that since the fence would prevent snakes from accessing certain snake habitats, the fence as well as the mine violated a unique feature of New York endangered species law that prohibits not only killing or harming species, but also lesser acts such as "disturbing, harrying, or worrying" a protected species.

The Pacific Legal Foundation (PLF) unsuccessfully argued in New York's Intermediate Court of Appeals that "disturbing, harrying, or worrying" a species is not prohibited under law unless it harms the species. PLF then appealed to New York's highest court to allow the mining project to continue, but the motion was denied.

Montfort was unable to operate his mine.

Meanwhile, the snakes are sleeping well.

Sources: Pacific Legal Foundation, Ken Gobetz, Carol LaGrasse, "The Property Owner's Experience"

Swim At Your Own Risk: Government Regulations in Effect

Jesse Arbogast, an eight-year-old boy from Ocean Springs, Mississippi, was attacked by a seven-foot, 250-pound bull shark while swimming in knee-deep water off the coast of Pensacola, Florida in July 2001. The shark bit through Arbogast's right arm and ripped into his right thigh. The boy almost bled to death on the way to Baptist Hospital, and had no pulse or blood pressure when he arrived. A team of doctors working for over 12 hours, however, was able to save the boy's life.

In 2001, the United States experienced 55 shark attacks like the one that almost killed young Arbogast. There were three known fatalities related to shark attacks that year, which is more than the total number recorded throughout all of the 1990s.

In 1992, the state of Florida banned commercial shark fishing and severely limited recreational shark fishing. Recreational fishing was banned within three miles of the coast on the Atlantic side, and the fishing ban extended nine miles into the Gulf of Mexico. This effectively created a shark sanctuary in waters closest to shore. This also happens to be the waters where shark encounters with humans are most likely to occur.

Opponents of shark fishing dismiss a likely link between the increased number of attacks and the fishing ban, arguing, for instance, that 2001's shark attack rate was, statistically speaking, very similar to 2000's.

This is true, but there were an unusually high number of attacks both years. In 1993, there were eight shark attacks in Florida and 21 nationwide. In 2001, Florida experienced 37 attacks while the nation as a whole suffered 55. The 55 attacks topped the record set in 2000, which was 54.

Opponents of shark fishing say a key reason for the increased shark attacks is that a greater number of people are swimming on the affected beaches. This argument is valid. However, just as an increase in the number of available shark targets (humans) tends to increase the number of attacks, an increase in the number of predators (sharks) also will tend to increase the number of attacks.

Thus, a ban on shark fishing cannot be ruled out as a contributing factor to an increased number of shark attacks, particularly over time.

Shark protectors also note that it takes years for a ban on shark fishing to result in an increase in shark populations — particularly of sharks mature enough to attack humans.

In the short run, this is reassuring.

For the long run, it is not.

Sources: ABC News, Insight Magazine, Competitive Enterprise Institute, Florida Museum of Natural History

In 2001, Florida experienced 37 shark attacks while the nation as a whole suffered 55.

Court Upholds EPA's Vast Control of Water Runoff

Guido and Betty Pronsolino purchased 800 acres of heavily-logged timberland along the Garcia River in Mendocino County, California in 1960. Over the next four decades, they spent significant time and money to manage, restore and replant the land. In 1998, the Pronsolinos obtained a permit from the California Department of Forestry to harvest 1.5 million board feet of lumber over the next 15 years. In March of 1998, however, the U.S. Environmental Protection Agency (EPA) imposed limits on sediment runoff into the Garcia River that severely restricted the Pronsolinos' ability to continue timber harvesting.

The EPA has claimed it has the authority to regulate timber harvesting on the Pronsolinos' ranch under the auspices of the Clean Water Act, which requires states to submit to it a list of "impaired water segments." California did not include the Garcia River on its list because the river only fails to meet EPA standards due to runoff from "non-point" sources such as agricultural runoff, timber harvesting and construction sites. The EPA overruled the state and mandated control of non-point agricultural activities in the Garcia River watershed and established a total maximum daily load (TMDL) for sediment in the river. TMDL is the maximum amount of a pollutant that a water segment can receive without a violation of water quality standards.

The Pronsolinos sued the EPA, claiming its regulatory actions were unlawful since the Clean Water Act reserves for the states the authority to regulate agricultural activities. They were joined in the suit by the American Farm Bureau Federation and the state and local farm bureaus. The Pronsolinos asked the federal district court to overturn the EPA's decision to regulate the Garcia River. The federal court upheld the EPA's authority and the Ninth Circuit Court of Appeals upheld the lower court's decision in May 2002, ruling that federal limits on water pollution called TMDLs apply to non-point sources of pollution including agriculture. The Pronsolinos and the American Farm Bureau Federation have filed a petition seeking a rehearing of the case before the full Ninth Circuit Court of Appeals.

Sources: Environment News, American Farm Bureau Federation, EPA

Federal Government Keeps Public Safe... From Old Tires

John Tarkowski, a 75-year-old disabled building contractor, lives on 16 acres of land in the northwest suburbs of Chicago. In the 1960s, he built the stone house on the property where he lives today. But Tarkowski has faced harassment from the Environmental Protection Agency (EPA) for over 20 years.

Tarkowski's property is full of old barrels, tires, wooden pallets and other junk. The EPA has questioned whether the property poses an environmental hazard. The EPA has tested and re-tested the land in a failed effort to prove Tarkowski's junk has been or could be an environmental hazard.

Despite a lack of evidence, the EPA continued to harass Tarkowski until he finally told the agency it could no longer test his land. The EPA then sued Tarkowski, demanding the right to continue using his land for testing and — if necessary — to haul away the debris.

"[The EPA wanted to] go onto Tarkowski's property and destroy the value of the property, regardless of how trivial the contamination that its test disclosed."

Judge Richard Posner

After losing its initial case, the EPA appealed to the Seventh Circuit Court of Appeals in Chicago. Attorneys for Tarkowski proved that in 20 years of testing, the EPA had only been able to detect trace amounts of lead near the area where Tarkowski does his welding. Federal Judge Richard Posner ruled that the amount of lead found was “consistent with household use.” Petroleum residue had also been found, but no more so than if someone had been sloppy while filling a gas tank on a lawnmower.

Posner ruled in favor of Tarkowski, saying that the EPA wanted to “go onto Tarkowski’s property and destroy the value of the property, regardless of how trivial the contamination that its test disclosed.”

Source: Fox News

They Said I Was Going To Prison

Suddenly and without warning, 21 heavily-armed federal U.S. Environmental Protection Agency (EPA) agents stormed a small Massachusetts manufacturing company that has produced plastic-coated steel wire mesh used for lobster traps and erosion control for 20 years.

During the November 7, 1997 EPA raid, frightened employees were harassed, photographed and videotaped. Later that night, some were interrogated in their homes. James M. Knott, Sr., the company’s owner, was indicted on felony charges and threatened with six years in prison and \$1.5 million in fines.

Knott’s crime? A harmless violation of an obscure technical provision in an EPA Clean Water Act regulation.

After a grueling two-year legal battle that cost Knott and his company hundreds of thousands of dollars, the charges were dropped after it was discovered that the EPA agents had altered critical evidence. U.S. District Court Judge Nathaniel Gorton characterized the EPA agents in the raid on Knott’s company as a “virtual SWAT team” that harassed the employees, “causing [them] great distress and discomfort.”

Judge Gorton also noted that Knott, a Harvard alumnus who is a recipient of the Massachusetts Governor’s Award for developing pollution control technology, had suffered “humiliation” from EPA’s “clearly vexatious” prosecution.

Knott sued the EPA in federal court under the Hyde Amendment, which gives defendants the right to file for a recovery of legal costs. The U.S. District Court in Massachusetts awarded Knott a reimbursement for his legal fees of \$68,726 — far less than the total amount he spent. The U.S. Court of Appeals overturned the decision after the federal government appealed. Knott appealed the case to the U.S. Supreme Court, which declined to hear his case in February 2002.

Knott has continued the court battle by filing a suit against the EPA and individual investigators, saying that the Federal Tort Claims Act protects him against malicious prosecution and violations of his constitutional rights. “We are just one of many companies who are finding we must defend ourselves against overzealous bureaucrats who act without merit to create enormous difficulties and unnecessary financial losses for our businesses and families,” says Knott.

Source: James Knott, Washington Legal Foundation



James M. Knott, Sr.

“We are just one of many companies who are finding we must defend ourselves against overzealous bureaucrats who act without merit to create enormous difficulties and unnecessary financial losses for our businesses and families.”

James M. Knott, Sr.

Because of Red Tape, FDA Outlaws Potentially Life-Saving Drug

Matthew Edgar could die from allergic reactions related to foods such as soy, yeast, corn, starch, chicken, fruits, fermented foods and certain vegetables. Unfortunately, the government outlaws the one treatment that could possibly cure his potentially deadly allergies.

Edgar first experienced the full effects of his allergies at age 13. One day, Edgar suddenly could not walk because of severe vertigo. Around the same time, he was hit with pneumonia that evolved into bronchitis and severely restricted his breathing. A doctor concluded that allergies related to certain foods and various environmental factors were the cause. His doctor prescribed a severe diet change for Edgar and altered his living conditions to help Edgar avoid future catastrophic allergic reactions.

Within weeks of eliminating these allergens from his diet, Edgar was walking again and had returned to a semi-normal life. But his life would be forever changed. Since his doctor was fearful of reactions to certain foods, Edgar could not eat a wide variety of foods people typically take for granted. Edgar's allergies also forced his family to rip out the carpet in his room and install tile because light mold was growing in the carpet. In short, life for Edgar was better — but still rough — because of his severe allergies.

Enzyme Potentiated Desensitization (EPD) could relieve Edgar's allergy problems. EPD is administered via skin injection, and can alleviate problems associated with allergies. It has been available in New Zealand, the United Kingdom, Canada and Mexico for approximately 30 years, and was available in the United States for approximately the last decade. EPD was initially allowed in the United States on a trial basis, falling under the category of an Investigational Review Board (IRB). The IRB study involved over 10,000 patients, none of whom suffered severe reactions or deaths associated with the drug used in the treatment. The success rate of people helped by the treatment was over 75 percent, and it worked for Edgar until the government disallowed its use in the United States.

When EPD's initial five-year IRB permit expired in 1998, the British manufacturer neglected to submit to the Food and Drug Administration (FDA) an application for an Investigational New Drug trial. This oversight prevented the extension of U.S. government permission for the treatment. In April 2000, the FDA ruled that no new patients were allowed into the American EPD program. In April 2001, the FDA announced that no patients could receive the treatment at all. Edgar criticizes the FDA for preventing this potentially life-altering treatment based solely on bureaucratic red tape instead of factors such as safety and success. Edgar said, "The doctor knows what is right for a patient — the FDA does not."

Sources: Matthew Edgar, Nickie Dumke

"The doctor knows what is right for a patient — the FDA does not."

Matthew Edgar

First Do No Harm: FDA Regulations Limit Treatment Options of Terminally Ill

In 1998, two-year-old Alexander Horwin was diagnosed with medullablastoma, the most common form of pediatric brain cancer and one that nearly always is fatal in children.

After two surgeries, Alexander was tumor-free, but doctors warned that treatment was necessary.

As Alexander's father, Michael Horwin, explained June 7, 2002 to a hearing in the U.S. House of Representatives: "We were warned that without further treatment this cancer always returns."

The Horwins investigated the treatment options.

We conducted around-the-clock research to find the cancer treatment that offered Alexander the best chance to survive. After scrutinizing therapies and speaking to parents and patients from throughout the world, we selected the Burzynski Clinic in Houston, Texas. Burzynski, a MD Ph.D., has a twenty-year track record of curing or controlling the re-growth of malignant brain tumors in children and adults with an innovative cancer therapy. In addition, his therapy is non-toxic and offers a good quality of life.

The Horwins flew to Houston and met with Dr. Burzynski, who told him that the U.S. Food and Drug Administration would not permit him to treat Alexander because Alexander — at that moment — had no tumor. The U.S. government had tied Burzynski's hands.

Finding no other options, the Horwins accepted the recommendation of doctors at the Los Angeles Childrens Hospital for a chemotherapy treatment called CCG-9921. Possible side effects included damage to the heart, lungs, liver and kidneys, possible loss of hearing, small stature, infertility, another cancer, and intellectual decline — maybe even death.

Alexander began the treatment. Michael Horwin told Congress what happened next:

After the first round of chemo, Alexander began to change. Even after two brain operations, Alexander was still a vibrant, ruddy, strong, energetic child. But as the chemotherapy repeatedly filled his small body Alexander began to die inside. First the relentless stomach pains and the horrendous projectile vomiting began. Then his beautiful curly hair fell out. Next his dark skin tone turned pale as a ghost. He got sick with fevers and spent weeks in the hospital. Then there were the blood transfusions to replace the blood cells the chemo had killed, the hearing tests to see if the chemo drug cisplatin had not devastated too much of his hearing, the nuclear medicine tests to check if his kidneys were not giving up under the strain of processing so much poison, the liver function tests to ensure that his liver was not being destroyed, etc.

During chemotherapy we had to squeeze an antibiotic into his nose called nystatin several times a day. He hated it and buried his face in a pillow when he saw it coming with all the strength his little body could muster. One of us had to pin Alexander down and keep his head immobile while the other pushed the syringe into each nostril and injected the solution. We were also called upon to give him GCSF injections at home. These injections into his legs were designed

For more information, please see <http://www.ouralexander.org>.

to raise his blood cell counts. It was horrific. We felt as if we were actively engaged in the slow but sure torture and destruction of our own child.

The Horwins began to consider stopping the chemo. But they learned that if they did so, they could lose custody of Alexander.

We weighed everything. If we said “no more chemo” to the oncologists we knew that we might get a visit from a police officer and a social worker. Alexander would be taken from us screaming. His last days alive could be spent out of our reach in some kind of foster care environment away from his home, his family, his toys, everything he knew and loved while an over-burdened legal system decided what to do with him. If we agreed to continue chemotherapy the horrific side effects would persist but the oncologists assured us that the treatment would prolong Alexander’s life if not save it. If we left the country, we would have our son but no blood tests, MRIs, or follow-up by the surgeons who operated on him. Those were our three choices, one worse than the next.

What do we do? We did not have a choice of therapies. The FDA had taken away our first choice of treatment at the Burzynski’s Clinic. The oncologists warned us that if we didn’t use chemotherapy that the tumor would probably return in three months. These doctors assured us that the chemo they were administering to our son was the current “state-of-the-art.” They told us repeatedly that this was Alexander’s best choice for a long and healthy life.

We continued the chemotherapy. As a result of the drugs, Alexander’s balance was lost, his ability to see deteriorated, and he lost hearing in one ear. The whole thing was horrendous.

“The FDA had taken away our first choice of treatment.”

Michael Horwin

The Horwins had never stopped looking for alternatives. Then they found one: a clinic in Switzerland that had a good record of accomplishment treating this type of cancer without chemo. But on January 18, 1999, doctors discovered “leptomeningeal sarcoma” — 30 tumors throughout Alexander’s small body. The FDA-approved treatment of Alexander’s cancer had failed.

The doctors prescribed painkillers, and said Alexander had but a few days to live.

Now near death, Alexander was finally legally eligible for Dr. Burzynski’s therapy. His parents chartered an air ambulance and took him to Houston. The clinic staff worked hard, but it was too late. On January 31, 1999, Alexander died.

The horror was not over. After Alexander’s death, the Horwins began investigating leptomeningeal sarcoma. They learned that CCG-9921 is at best an unproven treatment for children with Alexander’s form of cancer, and that doctors have known this for decades.

The Horwins had no options. They weren’t allowed to try an alternative treatment. And even though doctors following the conventional treatment couldn’t save Alexander, and the treatment caused immense suffering, they weren’t allowed to turn it down.

Michael Horwin sums it up this way:

...We were told that time was running out. We were told that chemo would offer Alexander a good chance of survival. We were told that he would be getting a new chemo protocol with “state-of-the-art” drugs. And we learned later that if we did not bring Alexander in for chemotherapy a court order was contemplated so that the oncologists could take him from us and administer these poisons without our consent.

Alexander spent his last months alive not on the beach that he loved so much, but in a hospital room tied to an IV pole, throwing up and in pain from being poisoned. This never should have happened.

There is no standard of care for this disease in young children. Chemo does not work and oncologists know it. They have admitted this in their medical journals. But we were told that this was a “state-of-the-art” therapy, not a 20-year toxic failure. This is not informed consent.

My wife and I have to live with the knowledge that we never gave our son a fighting chance to survive his disease. He died five months after his diagnosis, three months after starting chemo, just like the other children that had come before him. The ones that had become statistics in the oncologist’s articles. And the numbers of dead children continue to mount as these ineffective drugs continue to be used in cancer hospitals throughout the country.

When orthodox therapy has nothing to offer, parents must be allowed to exercise their parental, ethical, moral and legal right and responsibility to protect their child and fight for his life when he has a terminal disease. The FDA has no business sentencing young children to death by taking away a therapy option that could save their life.

The FDA still strictly regulates access to alternative medical treatments. In 2002 a Competitive Enterprise Institute survey of oncologists found that 70 percent believe the public doesn’t understand that the FDA approval process has a high “human cost” measurable in suffering and death. 68 percent believed unapproved drugs and medical devices should be “made available to physicians as long as they carried a warning about their unapproved status.”

On October 15, 2002, *Wired* magazine reported that oncologists are recruiting more children with medullablastoma to further test CCG-9921.

Alexander’s father, once a health care administrator, has become a lawyer. He now lobbies to give the public greater control over medical treatments.

In 2001, Rep. Peter DeFazio (D-OR) and Senator Tom Daschle (D-SD), each with bipartisan cosponsors, introduced the Access to Medical Treatment Act into the 107th Congress to give Americans greater access to alternative treatments under specified guidelines. During the 107th Congress, neither the House nor Senate voted on the legislation.

Sources: Testimony of Raphaelae and Michael Horwin before the U. S. House of Representatives Committee on Government Reform, H.R. 1964 and S. 1378 (“The Access to Medical Treatment Act of 2001”), Wired News, Competitive Enterprise Institute

“The FDA has no business sentencing young children to death by taking away a therapy option that could save their life.”

Michael Horwin

“At a time when wildfires are burning up much of the West, and Americans throughout the country face terrorist threats, it would seem to me that USDA Forest Service employees would have better things to do than to tell our citizens not to use flagpoles.”

U.S. Representative Richard Pombo

U.S. Forest Service Tells Army Veteran He Can't Fly American Flag

David Knickerbocker, an Army veteran and retired police officer, was told he would have to remove an American flag he has flown from a flagpole for 23 years or risk losing his cabin, located on land he leases in the Eldorado National Forest in the Sierra Nevadas near Sacramento, California.

Knickerbocker was sent a letter by U.S. Forest Service recreational forester Debbie Gaynor informing him that “flagpoles are not authorized for recreation residences and must be removed.” Knickerbocker also was told he must remove a clothesline and repaint the cabin’s door a darker color or risk losing his lease on the land on which the cabin is built.

U.S. Representative Richard Pombo (R-CA) wrote in a letter to Forest Service Chief Dale Bosworth: “At a time when wildfires are burning up much of the West, and Americans throughout the country face terrorist threats, it would seem to me that USDA Forest Service employees would have better things to do than to tell our citizens not to use flagpoles.”

Secretary of Agriculture Ann Veneman, whose department oversees the Forest Service, quickly labeled the incident a “misunderstanding” and assured Representative Pombo that Knickerbocker’s permit would be amended (and even said she would send Knickerbocker a flag flown above the Agriculture Department headquarters).

Correspondence from Eldorado National Forest Supervisor John Berry, however, implies that situations similar to that experienced by Knickerbocker would be repeated in the future if other patriotic leaseholders are found to have flagpoles. When asked why the Forest Service became so upset over a decades-old flagpole, Berry responded: “It appears, based on Mr. Knickerbocker’s actions, that he believes he owns the land rather than leasing it from the American public and that he can unilaterally take actions in direct violation of the terms of his lease.”

Of course, there’s no evidence that the American public disapproves of flying the American flag.

Source: The Washington Times

Boy Scout Supreme Court Victory Ignored by District of Columbia

More than 110 million boys have been members of the Boy Scouts since its founding in 1910.

The U.S. Supreme Court ruled in 2001 that the Boy Scouts of America, as a private non-profit organization, has the freedom to choose members and leaders who agree with the group’s stated convictions. By stating its belief that the commitment to be “morally straight” excludes homosexuals, the Court ruled, the Boy Scouts are protected by the First Amendment to the U.S. Constitution.

The District of Columbia’s Human Rights Commission, however, has ignored the Supreme Court ruling. The Commission filed a discrimination lawsuit against the Boy Scouts in June 2002. The Commission claimed that the Boy Scouts of America violated the city’s anti-discrimination law when it refused to accept two openly-homosexual adult

men as volunteer Boy Scout leaders. The Boy Scouts were ordered to pay each man \$50,000 in damages and accept the men as volunteers.

The Boy Scouts have contested the Commission's decision in court, and the case is currently before the D.C. Court of Appeals awaiting a ruling.

Source: Pacific Legal Foundation

High School Student Denied Free Speech Because of Political Correctness

Andrew Smith is a senior at Novato High School in Marin County, California. He is also a staff writer and opinion page editor for his high school newspaper, *The Buzz*. After the terrorist attacks on September 11, 2001, Smith wrote a commentary for the paper about the ineffective enforcement of immigration laws, suggesting that persons who cannot speak English should receive increased scrutiny by law enforcement officials.

His article appeared in November 2001 after both the journalism faculty advisor and the school principal approved it. After publication, however, many students and parents complained about the piece to the principal, alleging that it was an attack on Hispanics. The principal ordered the confiscation of all remaining issues of the paper.

Without Smith's knowledge or consent, the principal and district superintendent sent a letter to the parents of Novato High School students saying that Smith's article "negatively presented immigrants in general and Hispanics in particular." School officials also organized a meeting for students and parents at which Smith was publicly reprimanded and his article denounced. The Board of Education also denounced Smith and his article at their December 2001 meeting.

Smith's journalism advisor told him that he could not write any editorials for the next issue of the newspaper as a result. Despite this order, Smith did write and submit an editorial for the following issue entitled "Reverse Racism." The faculty advisor approved the editorial despite Smith's de-facto suspension, and sent a copy to the principal for approval. The principal withheld the submission until a copy was sent to the American Civil Liberties Union (ACLU) for review.

Even after the ACLU told the principal Smith's editorial was "protected speech" the principal withheld the article until the district superintendent decided it could be printed only if an accompanying article portrayed the opposing view. The principal asked the journalism class to "vote" to remove Smith's article and publish as scheduled. The class voted to remove his editorial, and neither Smith's nor the opposing article was published.

Smith and his father challenged the school's actions with a lawsuit in state court claiming the school district restrained his right to freedom of speech. Smith has since graduated from Novato High School, but his father, Dale, will continue the fight for the expression of free speech because he has other children who also attend the same school.

Source: Pacific Legal Foundation

*Congress shall make no law... abridging
the freedom of speech.
United States Constitution,
First Amendment*

Federal Court Bases Ruling on International Treaty the U.S. Never Ratified

Don Beharry, a legal alien residing in the U.S., was convicted of robbery in the second degree. The Immigration and Naturalization Service (INS) began deportation proceedings against Beharry under a federal statute requiring the deportation of lawful alien residents who are convicted of aggravated felonies. The statute does not require a hearing. Beharry, however, tried to avoid deportation by appealing to a provision of the Immigration and Naturalization Act that allows for a deportation waiver if it can be shown that “substantial hardship to a citizen spouse or child” would result. Beharry argued that his deportation would create hardships for his daughter, who is an American citizen.

A federal court in New York ordered the INS to give Beharry a hearing, basing its legal authority on the provisions of several international treaties including the Convention on the Right of the Child. The U.S. Senate, however, never ratified those treaties. Furthermore, their provisions conflict with federal law. The court determined that customary principles of international law control the interpretation of the U.S. law so that Americans may “reap the benefits of internationally recognized human rights — in the form of greater worldwide stability and respect for people.”

Pacific Legal Foundation has filed an amicus (friend of the court) brief with the Second Circuit Court of Appeals after the U.S. Solicitor General’s office appealed the lower court’s decision. Both the Foundation and the U.S. Solicitor General are fighting to overturn this decision that effectively gives other nations and private organizations that assist in drafting these international treaties unsupervised power to modify the individual rights of American citizens and to supercede American laws. It is their contention that these treaties do not apply to U.S. citizens, even if ratified, until the U.S. Congress has written them into law.

Source: Pacific Legal Foundation

Federal Government Misplaces Billions of Dollars From Indian Trust Fund

The Blackfeet Nation Indian tribe in Montana has only seen a fraction of billions of dollars owed to its members by the federal government, thanks to what Federal District Court Justice Royce C. Lamberth called the “most egregious misconduct by the federal government” he has ever seen.

In 1887, through the General Allotment Act, Congress essentially decided that American Indians could not be trusted to manage their own land. Government authorities seized Indian land and placed it under the control of the federal Bureau of Indian Affairs (BIA). The BIA was put in charge of leasing tribes’ land for oil, timber and agricultural uses. The profits generated by leasing the land were to be held in Individual Indian Monies (IIM) trusts to be distributed to the various Indian families.

Instead, according to reports in *The Washington Post*, the federal government has spent the last century mismanaging and misplacing the Indians’ money. For example, the Indian families were never told to whom and for what price their land was being leased. They were also randomly mailed checks with no explanations of the amounts.

On June 10, 1996, Elouise Cobell, a Montana banker and member of the Blackfeet Nation tribe, filed a class action lawsuit, representing over 500,000 IIM shareholders, in U.S. District Court against the Departments of the Interior and the Treasury. The suit demanded that the federal accounting system be fixed and that the current accounts be adjusted to reflect the true amounts owed to the Indians.

As a result, Judge Lamberth ordered the two departments to provide financial records showing the money owed to the specific Indian families. According to media reports, the two departments instead shredded 162 cartons filled with records about uncashed checks that never reached their intended recipients.

In 1997, Judge Lamberth held former Interior Secretary Bruce Babbitt and former Treasury Secretary Robert Rubin in contempt of court for failure to properly manage the Indian trust fund. Current Secretary of the Interior Gale Norton could face the same charge. On August 10, 1999, Judge Lamberth again ruled in favor of the tribe and fined Babbitt and Rubin a total of \$685,000 — a fine that was ultimately paid with U.S. tax dollars — to go toward the Indians’ legal fees. On December 21, 1999, the Interior and Treasury Departments were ordered to file quarterly reports to the court showing actions being taken to reform the current trust system. An attempt by the Justice Department to appeal the decision was unanimously rejected by a federal appeals court in February 2001.

Finally, in July 2001, Secretary Norton established the Office of Historical Trust Accounting within the Interior Department to ensure the prompt and accurate restoration of the Indian accounts. Quarterly reports have been filed, and Judge Lamberth has assigned a court monitor to oversee the process.

On July 5, 2002, Assistant Secretary of the Interior for Policy, Management and Budget Lynn Scarlett released a report entitled “Report to Congress on the Historical Accounting of Individual Indian Money Accounts” which said the Interior Department will only be able to calculate the amounts owed to IIM shareholders since 1985 — when the Department’s information was computerized. This is not acceptable to Cobell. The Interior Department also said it is unable to provide accurate information about the

“It’s not as if we’re taking money from the government. It’s our money that was taken from us.”

Elouise Cobell

leasing of tribal lands because between 60 to 75 percent of the leases were never recorded at all.

On September 17, 2002 Judge Lamberth ruled Norton in contempt of court. He ordered Interior officials back into court in May 2003 as a result of other accounting errors uncovered by the contempt case.

Sources: Elouise Cobell, The Washington Post, Department of Interior

Crusade for New School Building Another Cherokee Trail of Tears

The National Parks Conservation Association (NPCA) is preventing the Cherokee Indians in Cherokee, North Carolina from building a new school.

A special interest group, NPCA's stated goal is to protect America's national parks. It lobbies Congress for public funding of national parks and litigates for ways to establish safeguards for America's national parks.

The school buildings currently used by the Cherokees are in disrepair and overcrowded. The 40-year-old elementary school was designed to accommodate 480 students, but now houses approximately 700. Cherokee leaders also have expressed concern about the current school's downtown location, which places the students close to traffic. Traffic on the reservation has steadily increased, as the reservation has been attracting an increasing numbers of tourists.

Because developable land is scarce on the Cherokee reservation, tribal officials proposed a land swap with the government to permit them to build a new school. The tribe has offered 218 acres of the reservation's mountain terrain in exchange for 168 acres of flat land adjacent to the reservation. This flat land, known as the Ravensford Tract, is part of the Great Smoky Mountains National Park.

NPCA is opposed to the land swap because it believes the swap might set a precedent and because scientists have found 55 archaeological artifacts on the Ravensford Tract.

NCPA's associate director of the Southeast regional office, Greg Kidd, told Fox News, "Any kind of building on this piece of property, whether it's by the Park Service or the Cherokee, is going to have an impact on the resources that are currently protected."

The Cherokees, however, have spent more than \$1 million on impact studies that show that the new school complex can be built in a way that mitigates damage to the archeological interests.

Leon Jones, principal chief of the Eastern Band of Cherokee, argues that a safe school for the Cherokee children is as important as preserving artifacts, saying "I just want to use that property to educate the children of my tribe and ensure the future of this tribe."

The National Park Service is in the process of conducting public hearings and environmental impact studies. A final decision is expected by early 2003.

Source: Fox News

"I just want to use that property to educate the children of my tribe and ensure the future of this tribe."

*Leon Jones, principal chief
of the Eastern Band
of Cherokee Indians*

IRS Takes Word of Convicted Embezzler Over Honest Restaurateur and Also Takes His Heirloom Watch

Armed Internal Revenue Service agents raided John Colaprete's Virginia Beach, Virginia restaurant because they mistakenly took the word of a convicted embezzler at face value.

Colaprete suspected his bookkeeper was embezzling money from him. After confronting the bookkeeper, she admitted to stealing and said she would make restitution on the approximately \$40,000 she stole.

Instead of making restitution, however, she went to the IRS and claimed Colaprete was involved with money laundering, gunrunning and drug dealing. The woman is a convicted felon who had an outstanding warrant for her arrest when she made her claims to the IRS. After spending less than 48 hours investigating the bookkeeper's claims, IRS agents conducted raids on Colaprete's home and business as well as the home of one of his managers. At the time, a Federal Bureau of Investigation agent advised everyone involved in the case to be skeptical about the claims made by Colaprete's accuser. The FBI specifically declined to get involved in the case against Colaprete.

During the raid on Colaprete's home, the IRS kicked in his door, impounded his dogs and took his personal safe along with 12 years of personal income tax returns and supporting documents. It took four months for the IRS to return most of the confiscated documents. They did not, however, return an heirloom watch given to Colaprete by his late father. After scrutinizing the records, the IRS did not have evidence to charge Colaprete with a crime. Even though he was never charged with a crime, Colaprete never received an apology for this harassment from the IRS.

Nor did he get his watch back.

Source: Testimony of John Colaprete before the Senate Finance Committee

IRS Raids Business on Word of Man Who Stood to Make Millions From Ensuing Investigation

When W.A. Moncrief fired an incompetent accountant at his oil business in 1993, he gave the accountant a generous severance package that included a car. What Moncrief didn't realize was that the accountant was planning on padding his income by colluding with the government in building a dubious case against his former employer.

In testimony before the Senate Finance Committee, Moncrief said that the fired accountant had been stealing files from Moncrief's company in Fort Worth, Texas for about a year before his dismissal. The accountant told representatives from the federal Internal Revenue Service, Department of Justice (DOJ) and Department of Treasury that Moncrief had cheated the government of up to \$300 million in unpaid taxes. As it turned out, the accountant had made a deal with the IRS District Director in Dallas that would net him up to \$25 million if Moncrief was prosecuted

130,094,300 personal income tax returns were filed in 2001.

Moncrief felt if he didn't comply with IRS, the IRS would investigate his family business "to its demise and me to my grave."

In September 1994, IRS agents stormed Moncrief's office and took over one million documents and his entire computer system in the hope of finding missing payments owed to the IRS. But the government's investigation was a sham. No summons or subpoena ever was issued nor did an agent do an audit prior to the raid. Instead, agents entered Moncrief's office with guns drawn, using what Moncrief describes as "Gestapo-like tactics." The IRS even failed to ask the accountant where he had gotten his information.

Not long after the raid, DOJ officials began to realize that the accountant lacked credibility and that his motives and conduct were highly suspect. The IRS failed to take into consideration that a possible \$25 million reward could have swayed the accountant's actions. Moncrief maintains that he never broke any laws, and — over the federal government's strong opposition — he sought to take depositions of the accountant in a civil lawsuit. The accountant refused to be deposed, citing his Fifth Amendment rights. At this point, DOJ officials became even more suspicious of the accountant, and offered to settle the investigation.

The IRS determined at that point that Moncrief owed it \$300 million. This figure dropped to \$100 million in a matter of weeks, then \$24 million and finally \$23 million. The amount demanded was never substantiated by an audit. IRS agents forced Moncrief to sign releases promising not to sue the agency or any government employees involved. Moncrief eventually paid the \$23 million and signed the waiver out of fear. In his testimony, he said he believed that if he did not comply, the IRS would investigate his family business "to its demise and me to my grave."

In all, Moncrief spent approximately \$5.5 million in accounting and legal fees to prove he had committed no crime. Despite this, he and his company were still forced to pay \$23 million. There were no apologies, no public correction of the record and no effort to right the IRS's wrongs. Moncrief believes that after being proven wrong, the IRS was only interested in protection from litigation.

Source: Testimony of W.A. Moncrief before the Senate Finance Committee

Even the Powerful Can Be Victims of Abuse

"IRS management does what it wants, to whom it wants, when it wants, how it wants with almost complete immunity," retired Internal Revenue Service official Tommy Henderson told the U.S. Senate Finance Committee.

One of Henderson's agents attempted to frame former U.S. Senate Majority Leader Howard Baker, former U.S. Representative James H. Quillen and Tennessee prosecutor David Crockett on money-laundering and bribery charges, apparently in an attempt to promote his own career. When Henderson attempted to correct the abuse, it was Henderson, not the agent, who lost his job.

"What I had uncovered was an attempt to create an unfounded criminal investigation on two national political figures for no reason other than to redeem this agent's own career and ingratiate himself with his supervisors," Henderson testified.

Henderson attempted to reign in the rogue agent by taking away his gun and his credentials, but he failed. The agent, Henderson told the committee, had a friend in IRS upper management.

In fact, Henderson was told that management had lost confidence in him. He believed that if he did not resign, he would be fired. Henderson resigned.

*"IRS management does what it wants, to whom it wants, when it wants, how it wants with almost complete immunity."
Tommy Henderson*

“I had violated an unwritten law. I had exposed the illegal actions of another agent,” Henderson testified.

Eventually the agent was fired, but not for illegal actions within in the IRS. He was arrested on cocaine charges, and subsequently fired because the arrest was public knowledge.

Sources: Testimony of Tommy Henderson to the Senate Finance Committee, The Washington Post

Tax Accountant Indicted After Investigation by Vindictive IRS Agent

Richard Gardner owns and operates Gardner’s Tax Service in Tulsa, Oklahoma. His firm prepares between 4,500 and 6,000 tax returns a year, making it one of the largest tax services in the state. In March of 1995, approximately 15 armed Internal Revenue Service agents and five U.S. Marshals came to Gardner’s office with a search warrant. They seized his computers, printers and his clients’ tax returns. Despite the implications of wrongdoing, Gardner was not charged with any crime. Nor was he arrested.

Two years later, however, Gardner was indicted on 23 federal counts. Gardner testified before the U.S. Senate Finance Committee that during the two-year period, the IRS examined between 35,000 and 45,000 of his clients’ files looking for proof that Gardner had committed tax fraud. It had questioned hundreds of his clients — some in a threatening manner — and spent hundreds of thousands of dollars to prove their claims of wrongdoing. But the IRS failed to find any improprieties. Despite a lack of evidence of unlawful activities, the Department of Justice (DOJ) still indicted Gardner in March of 1997 on 23 federal counts.

An IRS agent who was present at the initial raid of Gardner’s business handled all 23 of the counts. Gardner testified in the Senate that this agent had a personal problem with him, saying that the agent told two of Gardner’s employees, “I’ve had a personal vendetta against Richard Gardner for 15 years.” In December of 1997, the DOJ dropped two counts against Gardner. In January 1998, in federal court, all of the other counts were dropped and the case was dismissed.

This ordeal, which lasted 33 months, put great strain on Gardner and his family. He believes the IRS — and that one agent in particular — was out to break him financially and emotionally. He said that the IRS wanted “a high-profile, guilty-even-if-you-are-not victim to use to scare other tax preparers and taxpayers.”

Source: Testimony of Richard Gardner before the Senate Finance Committee

Richard Gardner said the IRS wanted “a high profile, guilty-even-if-you-are-not victim to use to scare other tax preparers and taxpayers.”

The gross tax collections for fiscal year 2001 were \$2.14 trillion.

IRS Takes Property After Computer Error; Refuses Compensation, Declines to Apologize

Tax attorney Earl Epstein of Philadelphia testified before the U.S. Senate Finance Committee that one of his clients, whose name remained confidential, had had a lien placed on her small beauty shop by the Internal Revenue Service Collection Division. The lien was for unpaid taxes of approximately \$175.

To clear the lien IRS sold the client's shop equipment at auction, putting her out of business. At the auction, the client had produced the canceled check with which she had paid the tax to the IRS. The IRS agent refused to listen to her and proceeded with the sale.

Subsequently, the woman hired a lawyer, who obtained copies of the computer records of her account from the IRS. He was able to show that the IRS had made an erroneous double entry of the tax on their computer system. In other words, an IRS error had led to the lien.

Although the IRS acknowledged the error to the woman's lawyer, it refused to repay the money it collected on the sale of her property. Since the law at that time did not permit an award of damages for such a small amount, there was little that could be done, save alert her congressman to her plight.

As a result of a letter to her congressman, a bill was introduced in the U.S. House of Representatives to permit her to bring an action against the federal government for damages. The bill died in committee, and she was never compensated.

She also never received an apology from the IRS.

Source: Testimony of Earl Epstein before the Senate Finance Committee

Search of Private Residence Yields Family Photos

The PBS television program "Antiques Road Show" has made countless Americans wonder if they may have a priceless lamp or table.

The Internal Revenue Service does more than wonder. It has such an interest in the value of antiques that it will raid someone's home to assess their worth.

Robert Davis, a tax attorney from Dallas, Texas, told the U.S. Senate Finance Committee of an anonymous client who had problems with the IRS.

In June 1994, several IRS special agents appeared at the client's private residence around 7:30 AM. They knocked on the door, rousing Davis' client, a 45-year old woman who had inherited the home from her grandmother, from her bath. She put on a bathrobe and responded to the knock. After producing a search warrant, the agents entered her house. She was told she could either leave or stay, but if she left she would not be permitted to return as long as they were in the house.

The client elected to remain and was confined to one bedroom under the watch of an IRS agent. The remaining agents searched her home for about eight hours, and then left. The only property they confiscated was 86 old family photographs, many taken at Christmas gatherings.

The woman was very upset by this intrusion. She missed an entire day of work and had no idea why the agents had entered her house and taken the family photographs.

Later, the woman discovered the reason for the invasive search. It was not to seize contraband, weapons, drugs or evidence of any crime. Instead, the agents had brought with them a furniture appraiser who went from room to room valuing the beds, sofas, chairs, tables and other personal effects that had been left in the house by her grandmother at the time of the grandmother's death two and a half years earlier.

The IRS agents believed that the woman's father, the executor of the estate, had undervalued the furniture on her grandmother's estate's tax return. The woman was not a suspect or in any way involved in the estate tax issues, and her father did not live in the house with her.

The IRS Criminal Investigative Division later abandoned the investigation of her father.

Several years later, after the woman's attorney demanded their return, the IRS gave back the 86 family photographs.

Source: Testimony of Robert Edwin Davis before the Senate Finance Committee

Family Spends 17 Years Fighting IRS Error

Nancy Jacobs and her husband, Dr. Fredric Jacobs, were forced to spend 17 years fighting the Internal Revenue Service because of an internal problem within the federal tax-collecting agency.

When Dr. Jacobs opened an optometry practice in 1965, he was issued an Employer Identification Number (EIN). He closed his practice in 1977, but reopened in another city in 1979. At the time he reapplied for a new EIN, he did not know that they are like Social Security numbers in that it is IRS policy that employers keep the same EIN the entire life of a business, even if it is closed or moved.

Nevertheless, the IRS issued Jacobs a new EIN. The new EIN created enormous problems for Jacobs because the IRS gave him an EIN that had already been issued to another person with a similar name.

In June 1981, the IRS placed an \$11,000 lien on Jacobs' property for alleged unpaid payroll taxes. The Jacobses were unable to find anyone at the IRS who would check the lien against the EIN they were using. By 1987 they had received additional liens totaling approximately \$15,000. The Jacobses continued to fight for years more, arguing against the lien to no avail.

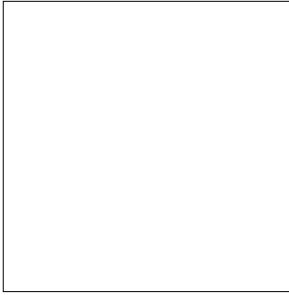
Finally, in 1992, a tax attorney reviewed the Jacobses' case and discovered that the IRS had erroneously given the same EIN to two people. The 17-year nightmare endured by the Jacobs family was the result of an IRS mistake.

Nevertheless, the IRS still would not publicly admit its error, so the Jacobses went to the media to tell their story. Approximately two hours after the story appeared in a local paper, an IRS employee called the couple and informed them that the IRS was in error. At that point, all liens were lifted and the IRS admitted fault for giving out the wrong EIN.

Source: Testimony of Nancy Jacobs before the Senate Finance Committee

"We were forced into debt, our credit was damaged and the mental stress was overwhelming."

Nancy Jacobs



the Riverdale Mills factory

OSHA Violates Laws of Physics, But Blames Businessman

The Strand Galvanizing Line of the Riverdale Mills Corporation in Northbridge, Massachusetts won factory owner James Knott the 1999 Governor's Prize for the best compliance with the state's Toxic Use Reduction Act. The production line galvanizes single strands of steel wire that the company then makes into a wire mesh for use in lobster traps, crab traps, animal cages and high-security fences. The line won the state award in part because it eliminated the use of hydrochloric and sulfuric acid while reducing energy costs by 50 percent.

This award-winning device, however, got Knott in trouble with the Occupational Safety and Health Administration (OSHA) less than a year later, in the spring of 2000. The line includes an airtight chamber 40 feet long which, while in use, is full of nitrogen and hydrogen gasses. As part of the process, workers must enter this chamber to thread wires through it. The chamber is opened prior to their entry to allow the gasses to escape. Two OSHA inspectors claimed Knott's employees could still be asphyxiated, due to lack of oxygen, when entering the chamber. Workers explained to the OSHA officials that, to the contrary, the nitrogen and hydrogen immediately dissipate when the covers are removed from the chamber and are quickly replaced with fresh air.

Knott took OSHA's non-compliance case before an administrative law judge (ALJ). OSHA officials continued to argue that hydrogen is heavier than air, even though Webster's Dictionary defines hydrogen as "a nonmetallic element that is the simplest and lightest of the elements," and the gas is well known as the lifting agent for pre-World War II dirigibles such as the Hindenburg. Despite this and other expert testimony, the ALJ agreed with OSHA. Knott is continuing to contest the case.

Source: James Knott, Lexington Institute

OSHA Targets Screen Door Company with Good History

Yvonne Hannemann and Penny Young are partners in the New England Screen Door Company, Inc., which they've owned for 16 years. They have two employees who make the old-fashioned screen doors we remember from our youth — the kind that make the nostalgic slapping sound when they close.

In August 2002, an Occupational Safety and Health Administration (OSHA) inspector arrived to tell Young and her employees, "You've been targeted for a visit."

When Young confronted him about being "targeted," the inspector said that OSHA was inspecting all woodworking shops in Maine. Among the items he cited as violations were ungrounded box fans being used to circulate the air in the mid-August heat (they are sold ungrounded, and people use them in their homes this way). He issued another citation for having a drill press without a "guard" on it (to comply with the citation, Hannemann and Young had to have a "guard" specially made because no manufacturer sells guards for drill presses).

In total, OSHA fined Hannemann and Young \$1,050 and issued six citations for items that must be fixed. OSHA offered to reduce the fine 50 percent if Hannemann and Young would agree not to contest it. After discussing the fines with an attorney, they agreed to the reduction in the fine, but sent a letter to their congressman and senators complaining about the "intimidating storm-trooper" treatment.

Shortly afterward, OSHA called and further reduced the fine to \$300 because of the company's "good history."

One of the changes Hannemann and Young were still required to make was adding signs in the workshop that read, "in case of fire, go outside."

Source: Small Business Administration's Regulatory Fairness Board, Penny Young

*An OSHA agent told Penny Young
"You've been targeted for a visit!"*

"I think this is power out of control. I'd rather have a house with bars on the windows next to me than a bunch of prostitutes living there."

Betty Deislinger

Arkansas Woman Arrested Because Home has Anti-Burglar Bars

Little Rock, Arkansas resident Betty Deislinger's home has anti-burglar bars on the windows to protect her from criminals, but nothing could protect her from local authorities.

Her crime? Violating the sensibilities of the local historic preservation commission. The 70-year-old church choir director and organist was arrested and fingerprinted because she refused to remove the bars.

The McArthur Historic District of Little Rock has a crime problem. A failed liquor store robbery a few years back resulted in one of the robbers dying of gunshot wounds on a porch near Deislinger's house. At the time she bought her home, prostitutes were illegally using the abandoned structure for their business.

Deislinger was arrested while attending a meeting of the city's historic preservation commission. She was unaware that a neighbor of hers and commission administrator, Anne Guthrie, had filed a complaint that resulted in the issuance of an arrest warrant. City attorney Tom Carpenter told the *Dallas Morning News*, "She was dealing with the commission, and we knew the warrant was there. It's not uncommon to arrest someone when you know they are present and have a warrant." He defended the commission's actions, saying, "You don't want a neon pink sign next to [a historic] mansion."

Deislinger's burglar bars were not neon pink, and she says they were already there when she purchased the house in 1998. She challenged, "And if I can find some more, I will put them up on the rest of the windows." Besides the bars, the commission was also opposed to Deislinger replacing the wooden window frames with vinyl ones and having an air conditioning unit that was visible from the street.

"I think this is power out of control," said Deislinger. "I'd rather have a house with bars on the windows next to me than a bunch of prostitutes living there."

Sources: Dallas Morning News, The Liberator Online

So-Called Negro Defendants Must Fight Government to Keep Land Family Purchased in 1874

Willie Williams wanted simply to walk on his land, plant a garden and do some hunting on 40 acres of open land his great-grandfather purchased in 1874. Until a recent injunction by Alabama Governor Don Siegelman, Williams was unable to do these things because the state wrongfully took the land from him.

In 1964, the Alabama State Lands Division (SLD) sent the Williams family a letter stating that, in its opinion and the opinion of the U.S. Bureau of Land Management, the Williamses' 40 acres belonged to the state. The letter claimed that the land in question had been designated swampland by the federal government back in 1906, and that the land should therefore be given to the state of Alabama. At that time, Circuit Court Judge Emmett Hildreth signed a decree awarding ownership to the state.

Ever since, the Williams family has pleaded with the state for the return of its land. The SLD has monitored the case, but has done so in a prejudiced manner. Memos and

letters from the SLD's files that relate to the case made numerous references to the Williamses' race, calling them, among other things, "the negro defendants." The SLD file did acknowledge that the family could trace ownership of the land back to 1874.

After 35 years, Governor Siegelman acknowledged a "severe injustice" and signed a land grant giving ownership of the property in dispute back to the Williams family in the summer of 2002.

Source: Associated Press

"As a man is said to have a right to his property, he may be equally said to have property in his rights."

James Madison

Shrubbery Violation Leads to Potential Jail Time

Kay Leibrand is a 61-year-old software engineer suffering from breast cancer who is facing up to six months in jail and a fine of up to \$1,000 because she didn't properly trim the bushes in her yard.

Government officials in Palo Alto, California started a "Visibility Project" in January 2002 to increase awareness of the health and safety of pedestrians, bicyclists and drivers in the northern California city. Part of the project is a Palo Alto Municipal Code stating that shrubs and bushes located in the small strip of property located between the street and sidewalk — the "parkway" — must be shorter than two feet or they will be deemed a public nuisance. Leibrand is the first person to face criminal charges for violations of this code.

Leibrand's shrubbery is over two feet tall — some of her shrubs measure up to six feet. But she maintains that she has substantially pruned the shrubbery to address safety concerns, and is confident that no injuries or accidents have ever been caused by her shrubs, which were planted over thirty years ago. She also notes that, if the City Council is displeased with the height of property owners' shrubbery, the city has the right to cut the bushes to the required levels and bill the owner for the work done.

Instead of trimming the shrubs and charging her for it, the Palo Alto Attorney's Office filed a criminal complaint against Leibrand on March 29, 2002. Ironically, according to Leibrand, as of February 11, 2002, four of the City Council's members had bushes on their own property that were also in violation of the parkway ordinance.

Leibrand has pleaded not guilty to the violation and had a pretrial conference in August 2002. She is scheduled to go to trial in Santa Clara County Superior Court on February 10, 2003.

Source: Kay Leibrand, City of Palo Alto, Palo Alto Weekly, Insight magazine

Man Loses Land Without Compensation Because Indians Consider it Sacred

In 1990, Dale McKinnon began leasing (and later bought) Woodruff Butte, a pyramid-shaped plateau rising out of the Arizona desert. This parcel of land is a source of very high quality aggregate, a type of gravel used to make concrete. McKinnon purchased this property intending to use the aggregate in highway projects in which his company, Cholla Ready Mix, Inc., was a contractor.

Indians of the Zuni, Hopi, and Navajo Tribes made a claim on McKinnon's property. They have repeatedly urged the Arizona Department of Transportation (ADOT) to prevent McKinnon and Cholla from mining on what they allege is sacred land.

In 1998, McKinnon contracted with Vasco, Inc. to work on a federal highway. The Hopi Tribe sued McKinnon, the U.S. Department of Transportation and the ADOT, claiming that Woodruff Butte is sacred and that the government must obtain the tribe's permission to use the aggregate found on McKinnon's land. After filing the lawsuit, the Hopi tribe withdrew it. According to Mountain States Legal Foundation, McKinnon's legal representative, McKinnon offered to protect sacred shrines. However, he could not reach a compromise with the tribe because tribal leaders would not list the specific areas they believe require protection.

Throughout the 1990s the ADOT modified its standard specifications for road and bridge construction in order to respect Native American religious concerns. In particular, the new regulations caused existing commercial source permits — which allowed McKinnon to use his aggregate in construction bids — to expire at the end of 1999. To get a new permit, the regulations required an environmental assessment of adverse impacts “on cultural or historic resources.” Even though McKinnon hired an environmental consultant who conducted the required assessment when he sought a new permit in 2000, the ADOT demanded that McKinnon's environmental consultant conduct a revised assessment that also considered historic preservation. After several further revisions, the final assessment stated that “continued mining... will have an adverse effect on historic properties, namely the butte itself.”

In order to classify the property as historically valuable, the ADOT had earlier claimed that the property was eligible for the National Register of Historic Places (NRHP), which the National Park Service considers “the nation's official list of cultural resources worthy of preservation.” By claiming that the land was eligible for the National Register, the ADOT was able to apply Section 106 of the National Historic Preservation Act to deny McKinnon's permit application. The ADOT justified its claim that the land was culturally and historically valuable by pointing to the butte's religious significance to the Indians. Consequently, it now restricts the butte's use solely to religious purposes rather than for its alleged historic value.

In June 2002, McKinnon filed suit in the Northern District Court of Arizona, alleging that the ADOT had unconstitutionally restricted McKinnon's use of his land. The ADOT's regulations violate prohibitions against the establishment of religion and the application of special laws, which deny his right to equal protection under the law. Although Woodruff Butte is not listed in the NRHP, the ADOT has restricted its use based on Indian claims to its religious significance. McKinnon's attorney, Stephen Gilmartin, asserts that the ADOT's regulations were “worded generally but specifically design[ed] to shut [McKinnon] down.”

Sources: Mountain States Legal Foundation, Stephen Gilmartin, National Park Service

According to his attorney, ADOT's regulations were “worded generally but specifically design[ed] to shut [McKinnon] down.”

Colorado Town Finds Itself in Real-Life Hitchcock Movie

As if they were living in the famous Alfred Hitchcock film “The Birds,” the residents of the Mapleton Mobile Home Park in Boulder, Colorado are under siege by a flock of nearly 4,000 European starlings. What’s worse than anything Hitchcock could have imagined, however, is that the city government is not allowing the residents to fight back.

Over the past decade, four months out of the year, the starlings roost in a stand of cottonwood trees that tower over the city-owned mobile home park. Officially called *Sturnus vulgaris*, the Audubon Society describes European starlings as “messy, quarrelsome, aggressive and noisy.”

In Boulder, the starlings have been seen chasing animals as large as deer and foxes from the Mapleton property. But it’s not only the hostile nature of the birds that angers residents. The average bird excretes 1.5 inches of droppings on Mapleton per night. Some droppings fall from as high as eight stories, and the bird dung corrodes car paint, destroys patios and decks, ruins gardens and generally causes the area to smell horribly.

Rick Hernandez, a Mapleton resident who is awaiting a lung transplant, told the *Los Angeles Times* that he keeps three air-filtration machines running constantly, burns incense, regularly pours bleach on his deck and uses a personal oxygen tank to help him breathe amidst the dried dung and feathers left by the starlings. Mary Becker, a 78-year-old handicapped diabetic, calls herself “a prisoner in my own home” because she can no longer use her home’s wheelchair ramp due to the accumulated bird excrement on it.

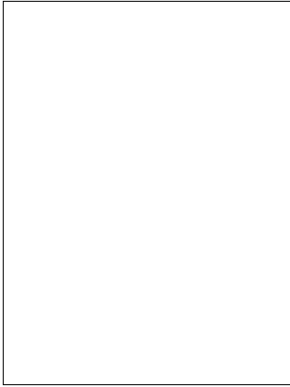
Despite previous attempts to scare off the birds with fireworks and other noisemakers, city officials are now prohibiting the 200 residents of Mapleton from trying to move the birds themselves. Boulder Assistant Director of Housing John Pollak explains: “We are certainly not going to kill the birds. No one is interested in cutting down the trees. We are exploring options for encouraging the birds to move.” City officials are also exploring the possibility of making the entire city of Boulder a bird sanctuary — something that would leave residents at the mercy of the birds (Boulder already mandates that pet owners be reclassified as “pet guardians”).

Mapleton resident Debbie Feustel disputes the logic behind the proposal, saying, “The city talks about a bird sanctuary, but what about us having a sanctuary in our own homes?”

“The city talks about a bird sanctuary, but what about us having a sanctuary in our own homes?”

Debbie Feustel

Source: The Seattle Times



Wayne Hage

*"Either you have a right to own property,
or you are property."*

Wayne Hage

U.S. Court Makes It Official: Rancher Right, Federal Agencies Wrong

In 1978, Wayne Hage and his late wife, Jean, began operating a Nevada cattle-ranch with 2,000 head of cattle. Over the next 12 years, the U.S. Forest Service and Bureau of Land Management accused them of violations that included having their cattle in impermissible areas and not maintaining their fences.

Refuting government claims, Hage provided eyewitnesses who saw Forest Service employees move the Hages' cattle into impermissible areas, and pointed out that the fence that the Forest Service said wasn't properly maintained was missing a single staple. The government later dropped the charges of illegal grazing.

By 1991, the Hages' grazing permits had either been cancelled, shortened or suspended by the government to the point that they were forced out of the cattle business. Hage filed a claim in the U.S. Court of Federal Claims asserting that the government had created a "taking" by denying him the use of his property. Jean Hage passed away after suffering a heart attack and two strokes that Wayne attributes to the stress of the legal battle.

In January 2002, Senior Judge Loren Smith issued his "Findings of Fact" with respect to the property rights aspect of the case. He concluded that Hage, who is now married to former U.S. Representative Helen Chenoweth-Hage, owned extensive water rights on federal grazing allotments adjacent to his privately-owned land. In addition, Judge Smith ruled that Hage owned the ditch right-of-ways and the land for 50 feet on either side of the ditches, so his cattle could graze there. In his ruling, Judge Smith said, "The government cannot cancel a grazing permit and then prohibit the plaintiffs from accessing the water to redirect it to another place of valid beneficial use. The plaintiffs have a right to go onto the land and divert the water."

While this constitutes a major victory for Western ranchers, Hage must still prove that government action took away his rights. If he proves that, a judge must determine how much compensation Hage is due.

Source: Stewards of the Range, McQuaid, Metzler, Bedford & VanZandt, LLP

Monastery Gives the Government an Inch, So It Tries to Take A Mile

In 1923, the Franciscan Friars of the Atonement near Garrison, New York agreed to allow the federal government to run the Maine-to-Georgia Appalachian Trail through a portion of their Greymoor Monastery. But, given an inch, the government then wanted to take a mile, and the friars may have regretted their generosity.

In 1984, the National Park Service (NPS) purchased a 58-acre easement around the trail that prevents development along the monastery's segment. The NPS demanded an additional 18 acres of the monastery's land in 2000, with the threat that the land could be condemned and taken under the government's power of eminent domain if necessary.

During the busiest of times, an estimated five to eight hikers traverse the Graymoor Monastery's property a day. Graymoor Monastery is well known among hikers as the "Hilton of the Appalachian Trail" because the friars allow the few hikers that traverse the property to camp there and offer free meals, showers and overnight lodging. Beyond kindness to the occasional hiker, the friars' ministry also includes a homeless shelter, a drug and alcohol rehabilitation center, an AIDS program and a retreat center serving an estimated 1,000 people per year.

Citing concern over the monastery's construction of a sewage treatment pump house that accidentally encroached on the government's easement, NPS representative Edie Shean-Hammond told the Associated Press that taking the additional 18 acres was a necessity: "We want to guarantee that this property will be preserved in perpetuity. Our job is to protect that corridor. The way it is now, townhouses could be built within 50 feet of the trail." Minister General Reverend Arthur Johnson noted that the monastery might choose to expand in the future, but added "The trail is [as] important to us as it is to the Park Service... [The government is acting like] a weekend guest who claims squatter's right(s) on Monday morning."

After negotiations between the friars and the government that included the participation of U.S. Senator Charles Schumer (D-NY) and U.S. Representative Sue Kelly (R-NY), in March 2001 the friars agreed to give the government over 7.5 acres of Graymoor Monastery property and the right to augment the trail in exchange for \$25,680. They also were given back almost two acres set aside in the 1984 agreement.

Sources: New York/New Jersey Trail Conference, Associated Press, White Plains Journal News

"The trail is [as] important to us as it is to the Park Service. . . [The government is acting like] a weekend guest who claims squatter's rights on Monday morning"

*Minister General Reverend
Arthur Johnson*



Julie Smithson

Little Darby Creek Escapes Designation as a Wildlife Refuge For Now

About 30 miles northwest of Columbus, Ohio lie the Big and Little Darby Creeks and the farmland they traverse. The area is approximately 100 miles long, 35 miles wide and covers eight counties. The U.S. Fish and Wildlife Service (FWS) proposed buying about 57,000 acres in the area in 1997 for the purpose of creating a wildlife refuge and to protect Little Darby Creek.

Landowners, many of them farmers, were opposed to selling their land for a refuge. They claim Founding Father George Washington gave the land to veterans of the Revolutionary War as part of the Proclamation of Virginia Military Land Grants. The Proclamation granted homesteads to “the Revolutionary War Veterans, their heirs and assigns in perpetuity” and included land along the Darby Creeks.

A group called Stewards of the Darby (SOD) was formed to oppose the refuge. The SOD claims the refuge would displace 7,500 people, 4,000 of them taxpayers. SOD spokeswoman Julie Smithson claims the FWS, in cooperation with The Nature Conservancy, The Audubon Society and Rivers Unlimited, “identified a need for 166,000 more additional acres for mid-migration for an estimated 25.7 million ducks.”

SOD rallied against the FWS’s plan, conducted local hearings and received federal congressional attention, after which the FWS withdrew their refuge proposal in October 2002. In doing so, the FWS praised the “conservation minded farmers” for their practices, which a spokesman said protected the natural heritage of the area.

Sources: Julie Smithson, Stewards of the Darby

Government Repeatedly Forces Family of Five to Walk Home

Property owner Jack McFarland must travel by foot over three miles through the snow to get to his home near West Glacier, Montana because of National Park Service (NPS) restrictions.

In 1999, McFarland, his wife and their three young children moved onto their 2.75 acre parcel of land, which is located in the Big Prairie area of Glacier National Park. Before the year was out, the NPS had barred the family from using the only road to their property. McFarland’s property is blocked by the Flathead River, and Glacier Route 7 provides the only way to get across it.

The NPS began regulating the road in November 1999 by denying the McFarland family and other inholders — those whose own land is surrounded by federal government land — motorized access after the first significant snowfall. The NPS also prohibits plowing the road during winter. NPS officials justified these restrictions by asserting that the use of motorized vehicles and snowplows in the Big Prairie area threatens wildlife and non-motorized users such as cross-country skiers. Consequently, access to the road is denied for at least five months out of the year.

McFarland initially made a deal with the NPS to use the road, but the government quickly went back on the compromise, telling him that he would have to travel the 3.2 miles to his property on foot. As a result, McFarland and his family have had to use sleds

The National Park System encompasses approximately 84.6 million acres of which more than 4.3 million acres remain in private ownership.

and skis to travel to and from their property. McFarland is unable to use a snowmobile to access his property because of a 1975 ban on snowmobiles in Glacier National Park.

In February 2000, McFarland sued the NPS in the U.S. District Court for the District of Montana. He asserted that the NPS violated Federal Statute 2477 and several state laws that provide McFarland with a right of access to his land, which was granted to his family in 1916 under the Homestead Act. Opening briefs were filed in August 2002. A date for oral arguments has yet to be announced.

Sources: Mountain States Legal Foundation, Bill Thode, billingsgazette.com

National Park Service is Eliminating Orick, California

The California town of Orick, located about 60 miles south of the California-Oregon border at the south end of Redwood National Park, is well on its way to becoming a modern-day ghost town.

When the national park was created in 1968, Congress promised that local communities would be protected. Nonetheless, government actions are slowly chipping away at the small town's ability to survive economically.

When the park was created, loggers lost work and left the area. Lately, commercial fishermen and wood gatherers have had their permits eliminated or made non-transferable so that existing tradesmen cannot pass them onto their children. In 1999, Redwood National Park eliminated wood gathering in the park altogether — an action that devastated local burl wood shops.

Ed Salsedo, co-chairman of the Save Orick Committee, said, “We had a thriving community of 1,500 inhabitants in 1968 — since then we have dwindled to a mere 300.”

Judith Schmidt, a local resident who is president of the Orick School Board, has seen school enrollment drop from 250 to only 50 students. Schmidt claims the National Park Service did not comply with regulations to conduct economic and social impact studies before considering a 1999 proposal to close overnight parking in an area near Orick.

Furthermore, a charge for overnight camping was imposed in 2001, which resulted in a significant decrease in tourism. Schmidt says many businesses have closed and those remaining open have seen a decline in business of 25 to 30 percent. Now, a plan has been proposed to make the beach a “day-use only” beach, which would further damage the town's ability to maintain one of its few remaining commercial enterprises — tourism.

Sources: Off the Road Network, Judith Schmidt



*the gate blocking access to the beach in
Orick, California*

*“We had a thriving community of 1500
inhabitants in 1968 — since then we
have dwindled to a mere three hundred.”
Ed Salsedo*

National Park Service Tries to Restrict Rancher's Grazing Rights

Tim Mantle owns a ranch, complete with grazing rights, near Hells Canyon, Colorado. Mantle's father homesteaded the property with federally-guaranteed grazing rights in 1919.

Congress designated the area surrounding the ranch as part of the Dinosaur National Monument in 1960. In 1961, the monument's park superintendent made a promise: "the grazing of domestic stock will be administered in a fair and unbiased manner."

Despite this promise, the National Park Service (NPS) has manipulated regulations regarding Mantle's land use in an attempt to compel Mantle, in his view, to become a "willing seller."

One NPS regulation prohibited anyone except family members from using the road to the Mantle Ranch. According to Mantle, at one point a former park superintendent even forbade family members from using the road, saying that they instead could use a helicopter.

NPS officials have tried to get the Mantles to violate their grazing permit by creating situations in which violations could easily occur. For example, the NPS has claimed there were pastures and fences that did not exist, hoping to prove that cattle were trespassing on federal land not included in Mantle's grazing allotment.

According to Mantle, NPS employees also released antelope on the Mantle Ranch in an attempt to prove that he had too many animals grazing on his allotment. If the trespass or overgrazing charges had been proven, the NPS could have taken away his grazing permit. Without it, Mantle's ranch would lose value.

In 1994, the Mantles filed suit against the NPS for "denial of due process; temporary taking [through grazing and access restrictions]; and violation of the Administrative Procedures Act" and spent \$400,000 and four years in U.S. District Court in Colorado. In November 1996, Judge John Kane, Jr. found that NPS officials had "unlawfully removed [a] spring box and pipes leading from it," which Mantle had set up to divert water for his cattle. According to the judge, "evidence and inspection [of the Mantle Ranch]... reveals Mantle's historic access to water sources." Judge Kane further stated, "Unless remedied, [the government's removal of the spring box and pipes] will cause irreparable harm" to Mantle's historic grazing rights.

In November 1997, Judge Kane further ruled that "if the intent of Congress is to restore [Dinosaur National Monument] and the adjacent properties belonging to Mantle... it must do so by budgeting the necessary funds to condemn such properties, rather than taking the property rights by a process of regulatory whittling."

The next month a settlement agreement was drawn up that required both sides to develop a grazing Allotment Management Plan (AMP). Until this plan could be developed, Mantle was allowed to graze a specific number of cattle on a certain amount of land. The agreement also gave the Mantle Ranch water access to maintain its water systems based on its historical use of certain springs. Mantle resumed grazing under the conditions of the settlement.

However, the NPS never negotiated an AMP as agreed in the settlement, and, in 2001, the new park superintendent refused to sign another permit based on the stocking levels agreed to in the settlement. After many delays in the permit process, Mantle finally obtained a permit in April 2002. Although the Mantles continue to graze their cattle, NPS restrictions still afflict them. For example, Mantle is now prohibited from shooting a firearm on his own land.

*"...if the intent of Congress is to restore [Dinosaur National Monument] and the adjacent properties belonging to Mantle... it must do so by budgeting the necessary funds to condemn such properties, rather than taking the property right by a process of regulatory whittling."
Judge John Kane, Jr.*

Sources: CNSNews, Tim Mantle

If the Government Prohibits You From Visiting Your Land, Do You Really Own It?

Raymond and Nancy Fitzgerald have spent the last 14 years in court trying to defend the right to access their own land.

In 1983, the Fitzgeralds bought a ranch in Holbrook, Arizona. The ranch is completely surrounded by the Apache-Sitgreaves National Forest and can only be accessed by using a federally-owned road. In 1986, the U.S. Forest Service said that in order to use the road, the Fitzgeralds must sign a special use permit. The Fitzgeralds, who believe that any restriction on their right to access the property is unlawful, refused to sign the permit. Raymond's son Michael told The National Center for Public Policy Research, "If you have no access, you don't own the property."

Since the Fitzgeralds refused to sign the permit, the Forest Supervisor completely closed the road in 1988, and USFS employees put up signs to prevent any access. In order to reach the property, Michael Fitzgerald was forced to drive an all-terrain vehicle (ATV) across national forest land. He traveled approximately 100 miles a day on a three-wheeled ATV to check on the cattle and ensure that the gates for the cattle pastures were secure. The Fitzgeralds appealed the road closure to Forest Service Chief F. Dale Robertson, but their appeal was denied in 1993.

In March 1994, the Fitzgeralds filed a complaint in the U.S. District Court of Arizona, claiming that common law grants them a right-of-way access to their land. In 1996, however, the federal court ruled in favor of the Forest Service. In 1997, the Fitzgeralds took their case to the Ninth Circuit Court of Appeals, which dismissed the case because the special use permit had expired.

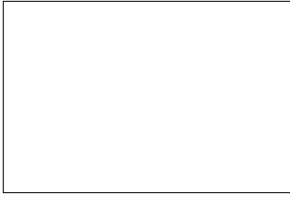
In August 2000, the Forest Service again told the Fitzgeralds that they had to sign a special use permit to access the road and informed them that permit could not be appealed. The Fitzgeralds refused to sign and filed a second complaint with the U.S. District Court of Arizona in January 2002. They are seeking to establish that inholders — people who own land inside the boundary of a national park — have the right to access their own land without a permit.

Currently, road closure signs do not prevent the Fitzgeralds from accessing their property, thanks to an agreement to allow access during litigation.

Sources: Mountain States Legal Foundation, Bill Thode, Michael Fitzgerald

"If you have no access, you don't own the property."

Michael Fitzgerald



desert tortoise

The Bureau of Land Management (BLM) is responsible for managing 262 million acres of land — about one-eighth of the land in the U.S. Most of the lands the BLM manages are in the western U.S. and are dominated by extensive grasslands, forests, high mountains, arctic tundra and deserts.

The BLM issued 18,569 grazing permits and leases in 1999 and collected \$14,022,995 on those leases.

Environmental Lawsuits Ruin Ranch

Dave Fisher is a third-generation cattle rancher at Ord Mountain, near Barstow, California. His property, which has been in his family for 75 years, is located within the area designated as the California Desert Conservation Area. The Bureau of Land Management (BLM) has granted Fisher permits, called allotments, which allow him to graze his cattle on government-owned land in addition to his own land. Fisher's livelihood depends on these grazing allotments.

In 2000, the Center for Biological Diversity, the Sierra Club and Public Employees for Environmental Responsibility filed a lawsuit in the U.S. District Court of Northern California questioning the BLM's protection of endangered species in Southern California. BLM settled the case out of court, and without notifying any of the inholders (landowners, like Fisher, whose property is surrounded by government owned land) declared that BLM lands and those lands under private ownership in affected areas were critical habitat for the desert tortoise under the Endangered Species Act.

Although grazing was not specifically mentioned in the lawsuit, the merits of grazing were discussed in the settlement. Classifying land as a critical habitat lowered by 44 percent the number of days which cattle could graze on the BLM land. This led the BLM to present Fisher with a nearly impossible task — removing his cattle from the 154,848-acre allotment he leases from the BLM in 48 hours. If his cattle were to stray into the restricted areas, Fisher could have been charged with trespassing. He could also possibly have lost his grazing privileges altogether. No fences separate the closed areas from his own, making it almost impossible for Fisher to prevent his livestock from straying into the restricted areas.

Miraculously, Fisher was able to remove his cattle from government land in the required 48 hours, but his allotted grazing time was reduced.

Fisher is currently involved in a lawsuit against the BLM in an attempt to restore his grazing privileges to what they were before the suit was filed by the three environmental groups.

Ironically, some believe grazing could benefit the tortoise since cattle tend to distribute grasses upon which the tortoises forage.

Source: Bonner Cohen, Capital Research Center, Karen Budd Falen

Should Private Property Be Taken For Public Use, Without Just Compensation?

When the Missouri, Kansas and Texas (MKT) Railroad decided to abandon a rail line that passed through Jayne and Maurice Glosemeyer's 240-acre family farm near Marthasville, Missouri, the Glosemeyers expected to recover the 12 acres of land that had been used by the railroad.

In 1889, Maurice Glosemeyer's great uncle signed an agreement that allowed the railroad to use this land, but only for railroad purposes. Missouri state law says that once a right to use someone's property for a specific purpose is abandoned, the landowner regains the right to use his property. Therefore, the Glosemeyers claim, the land used for the abandoned rail line should revert back to the family.

After the Interstate Commerce Commission authorized MKT's abandonment of its rail line, however, the MKT sold its land interests to the Missouri Department of Natural Resources for the creation of a recreational bike trail. This action was authorized by the federal Rails-to-Trails Act of 1983. Soon after, the Katy Trail, which passed through the Glosemeyers' property on the site of the old rail line, was established. When hikers travel along the 100-foot wide trail, they pose a risk to themselves and the Glosemeyers' animals if they play with or bother the animals.

Jayne Glosemeyer recalls one incident in which a little girl chased a piglet while her mother looked on approvingly. "The sow could have attacked her... and we could easily have been sued," noted Mrs. Glosemeyer. Furthermore, the Glosemeyers felt insecure about leaving their farm, even for a weekend, because of the people using a trail traversing their property.

In March 1993, the Glosemeyers filed suit for just compensation for the taking of their property in the U.S. Court of Federal Claims. The case was put on hold until a similar case, *Presault v. State of Vermont*, could be resolved in federal court. After *Presault* was decided (see the following story for details of that case), the Glosemeyers' case was allowed to proceed. In January 2000, Judge Eric Bruggink denied the government's claim that the trail serves a railroad purpose. MKT had shown no evidence that it would ever restore the land for later use as a rail line, but did show that it had completely abandoned its use of the Glosemeyers' property.

Finally, Judge Bruggink declared that a "taking" had occurred because state law had created expectations that the Glosemeyers would recover their property without any restrictions. The judge found that if the government wants to pursue a worthy cause, such as the creation of a public trail, it has to pay just compensation for any "takings" that might occur in the process. According to Jayne Glosemeyer, the family is currently negotiating with the government for attorney's fees and compensation for the taking of its land. If they cannot reach an agreed amount, the Glosemeyers could return to the U.S. Court of Federal Claims to ask a judge to determine the compensation.

Sources: Mountain States Legal Foundation, U.S. Court of Federal Claims

Vermont Couple Wins After 20 Years: The Government Took Their Land and Now Must Pay for It

As reported in The National Center for Public Policy Research's 2000 *National Directory of Environmental and Regulatory Victims*, Paul Presault and his wife, Pat, have been waging a battle against the city of Burlington, Vermont for 20 years to get compensation for the "taking" of part of their backyard for a bicycle trail.

When the Presaults bought their property in 1975, there was a railroad track in the backyard about 60 feet from the house. Shortly thereafter, the Vermont Railway — which owned the track — abandoned the line and pulled up the tracks. Under Vermont law, the land under the tracks reverts to the original landowner.

However, the city of Burlington wanted to convert the abandoned railroad track easement into a public bicycle trail traversing the Presaults' backyard. The Presaults filed a lawsuit in state court in 1981 to defend their right to their property. However, the federal Rails-to-Trails Act of 1983 allows railroad easements to remain in place for use as a trail even after railway use is discontinued.

In 1986 the railroad track easement was transferred to the city of Burlington for use as a public bicycle and pedestrian path. Since then the Presaults have had to deal with cyclists, pedestrians and rollerbladers going through their backyard. The Presaults challenged the constitutionality of the Rails-to-Trails Act before the U.S. Supreme Court in 1990. The U.S. Supreme Court ruled that the city could build the trail on the abandoned railroad track easement but agreed that the Presaults' property might have been "taken for public purpose without just compensation," which meant that, to receive compensation for their loss, the Presaults had to file a claim against the U.S. government.

On May 22, 2001, after 11 more years of legal arguments and court rulings, the U.S. Court of Federal Claims in Washington D.C. determined the Presaults were due \$234,000 plus interest from the date of the taking (February 6, 1986). The Presaults then asked the court to reimburse them for their attorneys' fees. A year later they were awarded \$894,855.60. This amount was below their request for all reasonable attorney fees and costs accrued after filing in federal court in 1990.

Sources: Mountain States Legal Foundation, Ackerson Law Group

The Presaults have had to deal with cyclists, pedestrians and rollerbladers going through their backyard.

If You Need 60 College Credits to Sell a Casket, How Many Do You Need to Dig the Grave?

Because Kim Powers has not completed 60 college hours of coursework, passed two exams and completed a one-year apprenticeship, her career as a casket saleswoman is being threatened.

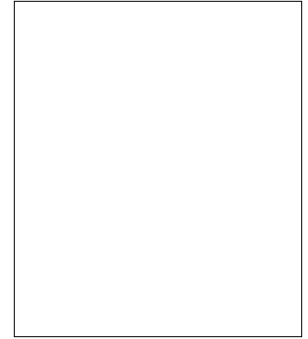
Memorial Concepts Online is an Oklahoma-based company that sells high-quality caskets at discount rates to customers across the country. For example, Memorial Concepts sells a popular casket called the “Primrose” for \$1,600, while competitors in funeral homes are charging between \$2,500 and \$3,400 for the same product.

Several states, including Oklahoma, have regulations that prohibit Powers from selling caskets. These regulations say that no person can provide funeral services or merchandise without a current license or registration issued pursuant to Oklahoma’s “Funeral Services Licensing Act.” To obtain the license, one must go through all of the requirements previously mentioned.

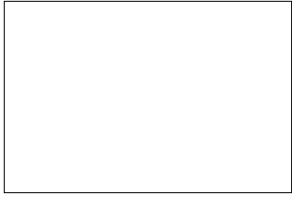
Because of these stiff conditions, licensed funeral directors (also known as morticians) enjoy a virtual monopoly on the funeral merchandise market. Consumers who want a traditional burial have no choice but to buy high-priced caskets from morticians because state regulations essentially restrict the ability of potential competitors who could offer reasonable deals to enter the market. Should Powers pursue the sale of caskets in Oklahoma while unlicensed, she risks incurring penalties such as a one-year jail sentence and a fine of up to \$5,000.

In March 2001, Powers filed suit against the Oklahoma State Board of Embalmers and Funeral Directors in the U.S. District Court for the Western District of Oklahoma. She sought to strike down the state’s licensing laws. Powers contends that Oklahoma’s licensing laws for the sale of funeral merchandise violate the right to earn a living that is guaranteed under the Fourteenth Amendment. The state requested that the case be thrown out. In 2002, however, the U.S. District Court denied the motion to dismiss, allowing the case to go to trial.

Source: Institute for Justice



Kim Powers



Hector Ricketts and Queens Van Plan employees

Regulation Kills Jobs & Reduces Convenient, Environmentally-Friendly Transportation Options for Commuters

Hector Ricketts owns the successful Queens Van Plan that provides thousands of commuters in the New York City area with safe, economical and efficient transportation to and from work. The success of Queens Van Plan is noted in the complaints of its government-run competition. According to the Institute for Justice (IJ), officials of the Metropolitan Transit Authority have said companies like Ricketts’ “are strong competitors with the Transit Authorities bus routes. They appeal to riders because they offer more frequent service, are faster, charge less... [and] can be more passenger sensitive than large buses. It is not uncommon for vans to drop off and pick up passengers at their residences... Many riders perceive [public] transit as a poor alternative.”

Through the years the New York City government has approved regulations that limit the ability of private van companies to thrive. One regulation prohibits vans from picking up passengers unless the passengers call ahead, thus preventing the vans from simply picking up interested commuters coming out of the subway at rush hour. Another regulation prohibits vans from making stops along roads that are designated as bus routes. IJ challenged this latter regulation in court, arguing that it takes away van operators’ right to make an honest living.

In July 2002, the New York Court of Appeals decided — without explanation — not to hear IJ’s appeal of a lower court’s ruling that had helped protect the city’s public bus monopoly.

Source: Institute For Justice

Environmentalists Deprive Slavery Descendants of Wealth

South Carolina farmer Joe Neal's ancestors bought the land his family now farms from a plantation owner shortly after his ancestors were emancipated from slavery. Now, Neal is virtually shackled to the 92 acres because "smart growth" restrictions on urban growth may keep him from selling or subdividing the property for future development.

Black farmers in Richland County such as Neal are afraid that the county's "2020 Town and County Vision" plan will keep them from being able to sell their property at a fair price.

The plan is meant to contain the growth of Columbia, South Carolina within tight boundaries. It designates most of the county's farmland, forests and riversides as "preservation areas" that cannot be developed. Lawrence Moore, the president of the state's Rainbow/PUSH Coalition, told *Insight* magazine: "This is going to deprive people of economic wealth. The owners of property, folks that tended this land, are losing out on that profit from that land. All it is a transfer of ownership. Government shouldn't be in the land business."

Neal adds: "What little land we now have represents wealth and potential wealth. When you take that from us... then you've robbed them of everything they've slaved and labored for all those years... State and county governments are pushing conservation and anti-sprawl at the cost of this minority population who historically have been denied the opportunity to accumulate wealth." South Carolina Sierra Club Director Dell Isham said in response, "there are no guarantees on your investments."

However, only a few black farmers in Richland County are truly interested in selling their land for development. In these cases, farmers say they can no longer compete against larger farming operations. In Neal's case, a situation faced by many families, smart growth restrictions simply may keep him from subdividing his land so his relatives can build homes — something he has already done six times.

Source: Insight magazine

"What little land we now have represents wealth and potential wealth. When you take that from us... then you've robbed them of everything they've slaved and labored for all those years."

Joe Neal

“People are doubling up and tripling up in house or living in their cars. And, unfortunately, many of the more affluent people who go to McDonald’s don’t necessarily stop to wonder, ‘How do these people afford to live.’”
housing activist Marlene Blum

Job Growth Outpaces Home Building, Leaving Employed People Homeless

“Smart growth” urban development regulations in Fairfax County, Virginia are so restrictive that there is not enough housing available to provide for employees taking the many new jobs that have been created there.

Terry Miller is a waitress who must live in a hotel with the aid of public assistance because she cannot find or afford a place for herself and her four children within a reasonable commute to her job. Before living in the hotel, the family lived in a van parked in a grocery store parking lot. This created a problem because Miller could not enroll her children in school without a fixed address. Miller has \$2,000 to spend each month, but the cost of housing in the region is such that many landlords won’t rent units she can afford to a family of their size.

During the 1990s, 166,000 jobs were created in Fairfax County while only 56,000 new housing units were built. In the area where Miller hopes to live, county planners have only allowed one new home per five acres of land. In most of the county, it’s a minimum of one-half acre per home. While Fairfax county is one of the most affluent counties in the United States — where many residents can easily afford the costs associated with smart growth restrictions — housing for lower-paid workers, such as blue collar and service industry workers, is harder to come by. As affordable housing activist Marlene Blum told the *Washington Post*, “People are doubling up and tripling up in houses or living in their cars... And, unfortunately, many of the more affluent people who go to McDonald’s don’t necessarily stop to wonder, ‘How do these people afford to live?’”

Source: The Washington Post

Man Serves Hard Time for Cleaning Dump, Environmentalists Complain Government Has Been Too Easy on Him

The day after Thanksgiving in 1990, John Pozsgai began serving a three-year prison sentence in Pennsylvania's Allenwood Federal Prison. He wasn't convicted of burglary, armed robbery or a violent crime like murder or assault. Pozsgai was serving hard time because he violated the Clean Water Act.

Pozsgai is a first-generation immigrant who escaped communist Eastern Europe during the 1956 Hungarian Revolution and settled in Morrisville, Pennsylvania, near Trenton, New Jersey, where he and his wife raised a family.

An illegal dump full of tires, cars and scrap metal, among other objects, lay adjacent to the Pozsgai residence. The dump also contained a storm water drainage system and a stormwater drainage ditch dating to 1936. The township of Morrisville was responsible for maintaining the ditch. It did not meet its responsibilities. As a result, the approximately 1,000 tires left in the ditch caused local flooding, including on the adjacent road and in the Pozsgai home, every year for 20 years.

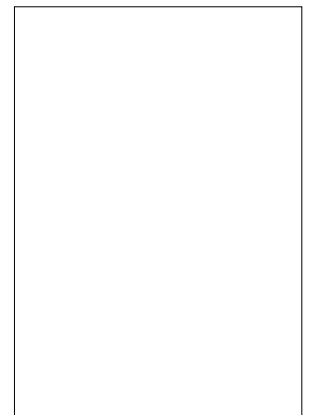
Here's what happened next, according to testimony by Pozsgai's daughter, Victoria Pozsgai-Khoury, to the U.S. House Committee on Government Reform in 2000:

On August 21, 1986, my father signed an agreement of sale and obtained title insurance for the dump across our street. He wanted to build a twelve thousand five hundred square foot building that would expand his business and enhance the community. At the very least, an ugly eyesore of a dump would be cleaned up. He removed well over five thousand tires from this dump, approximately a thousand of which were blocking the stormwater drainage ditch. However, within months of acquiring this property, notices were sent to my father from the Army Corps of Engineers informing him of the presence of wetlands. These supposed wetlands stemmed from a "stream" that was connected to "navigable waters of the United States."

Mr. Chairman, Members of the Committee, a "stream" *never* ran through our newly acquired dump. From the beginning, it was a stormwater drainage ditch that was installed by the Township of Morrisville in 1936. We repeatedly told this to the Army Corps of Engineers, yet they never believed us. It was only in this past year that the Township of Morrisville recognized their responsibility for the upkeep of this stormwater drainage ditch. And then, the Township only did so after we presented it with irrefutable evidence that it had acquired the property on which the ditch lay in 1962.

Mr. Chairman, Members of the Committee, my father is the type of man who will tell you straight to your face that he doesn't like you. That may not be politically correct in today's society, but it's honest. That is because he's honest. So, when people came to our property and trespassed on it, he told them in no uncertain terms to leave. He believed that America was still a country where a man's property was his own, and the government needed a warrant before it attempted to collect evidence to use against a citizen.

The day after Thanksgiving in 1990, John Pozsgai began serving a three-year prison sentence in Pennsylvania's Allenwood Federal Prison... because he violated the Clean Water Act.



John Pozsgai

"Because of Army Corps' actions, my father was civilly sued and had a judgment laid against him. My father was sentenced to three years in prison and a \$202,000 fine."

Virginia Pozsgai-Khoury

"I lost my job as a journalist, after my editor explained to me that my father's name was too visible in the news."

Virginia Pozsgai-Khoury

My father is also a man who always believed in complying with the law. He never meant to violate it. But, when he started receiving notices, he did not fully understand some of them. Some of the notices were forwarded to our lawyer who never told us about them. (Our lawyer was reprimanded later for drunkenness in court.) Many of them actually referred to a completely different piece of property, with another tax parcel number. And, a few my father flat-out ignored because he was totally convinced there was a mix up between the pieces of property being cited.

Remember, this was an *illegal* dump for approximately thirty years. People had deposited fill, cars and tires all over it. He never, in his wildest imaginations, thought that he would be cited for wetlands violations for cleaning up his property and adding clean fill to this dump.

In 1987, my father was informed by the Army Corps that he was being civilly sued to restore the property to its previous condition. It's important to understand that the Army Corps wanted him to reestablish the damming effect that approximately one thousand tires had in the stormwater drainage ditch. In effect, they were telling him to re-dam his property that had been an *illegal* dump for over thirty years.

When he was told by Army Corps that he needed a permit to build his truck repair shop, he obtained a water quality permit from Pennsylvania's Department of Environmental Resources. He did this, even though he was told by the Department of Environmental Resources that his new property, the dump, was not on the National Wetlands Inventory.

Mr. Chairman, Members of the Committee, at every point along the way my father kept asking, "How can we make this work?" When he was told by the Army Corps that he must do "mitigation" to build on his property, he thought he was being asked for a bribe. He went to the FBI to report it. He never fully understood what he was doing wrong, yet Army Corps sued him. Concurrently, Army Corps referred his case to the Environmental Protection Agency, who then referred it to the Department of Justice for criminal prosecution. And, at the same time he was being sued, the Army Corps was continually asking for more information to process his permit.

Talk about a Catch-22.

He was arrested. His house was searched for weapons by two federal EPA officers. Our family owns no weapons, besides the knives we use in our kitchen. We are still trying to figure out why our house was searched. Our family had little to no money for a lawyer as my father had invested most of it in the dump across the street from our home.

Because of Army Corps' actions, my father was civilly sued and had a judgment laid against him. My father was sentenced to three years in prison and a \$202,000 fine.

The effect this had upon my family was absolutely devastating. In the end, my father was imprisoned for a year and a half, lived in a halfway house for a year

and a half, and was given five years of supervised probation. My family was forced to declare bankruptcy. Our family was unable to pay the property taxes on our dump. Subsequently, the judge lowered his fine to \$5,000. I lost my job as a journalist, after my editor explained to me that my father's name was too visible in the news. But, the thing that hurt the very most was scheduling my own wedding between trials and appeals.

At the time my father was sentenced, he was the "worst environmental violator" in the history of the United States. No one had gone to prison for the Exxon Valdez disaster. No one went to prison when EPA noted 22,348 pounds of toxic TRI chemicals were released into the water in Essex, New Jersey. But, John Pozsgai went to prison for Clean Water Act violations on fourteen acres of an *illegal* dump in Morrisville, Pennsylvania.

Pozsgai's daughter, Victoria Khoury, is seeking a presidential pardon for her father.

Pozsgai's troubles, however, have yet to end. In 2002, three environmental organizations went to federal court asking for the right to take Pozsgai to court to force him to "restore" the site. As the *Philadelphia Inquirer* put it in a March 2002 article, these groups believe "the U.S. Army Corps of Engineers and the U.S. Attorney's Office have not been tough enough" on Pozsgai.

Sources: Testimony of Victoria Khoury before the House Committee on Government Reform, Property Rights Foundation of America, Alliance for America, Ray Proffitt Foundation, Bucks County Courier Times, Philadelphia Inquirer, Delaware Riverkeeper Network

As the Philadelphia Inquirer put it in a March 2002 article, these groups believe "the U.S. Army Corps of Engineers and the U.S. Attorney's Office have not been tough enough" on Pozsgai.

Regulations Increase Water Bills of Mobile Home Residents by \$230 Per Month

Residents of Utah's Heartland Mobile Home Park soon may be forced to pay up to \$230 more per month in water bills. The culprit? No, not drought. Not even higher taxes — at least, not directly.

No, the culprit will be new regulations to reduce the level of arsenic present in drinking water, set to take effect in 2006.

Arsenic is a naturally-occurring chemical present in soil, plants, water and animals. The Environmental Protection Agency (EPA) has mandated that arsenic levels in drinking water be reduced from the current 50 parts per billion (ppb) to ten ppb by 2006.

Although environmental groups such as the Natural Resources Defense Council (NRDC) believe that exposure to arsenic leads to an increased risk of bladder, lung and skin cancers, the National Academy of Sciences has said that “no human studies of sufficient power or scope have examined whether the consumption of arsenic in drinking water at the current [allowable] level results in the incidence of cancer or non-cancer effects.”

Regulations aimed at reducing the level of arsenic in the water supply include expensive water treatment regimens. The cost will be borne by local residents. Government studies show these expensive plans will unevenly target smaller communities, thus making the per-person costs higher. A 2000 report by the U.S. Geological Survey found that the majority of large cities have average arsenic levels of only two ppb. The EPA says 97 percent of those who will be forced to adhere to new arsenic standards are residents in cities of 10,000 people or fewer.

In the Heartland Mobile Home Park, the EPA estimates, residents will face an increase of \$70.01 per month on their water bills. Utah's Department of Environmental Quality believes the cost will be much higher, estimating that the monthly increase will actually be \$230.37.

The NRDC filed a lawsuit in June 2001 against the EPA in the D.C. Circuit Court of Appeals to have the arsenic standards lowered even further, to three ppb. On January 14, 2002, the Competitive Enterprise Institute filed an opposing motion in the same court on behalf of small water suppliers across the country. All cases pending on this issue will be argued in the court in April 2003.

Sources: Competitive Enterprise Institute, Townhall.com, Statistical Assessment Service, Natural Rural Water Association

Corp of Engineers Pressures Homeowners to Sell by Threatening to Condemn Their Land

An 8.5 square-mile area along the eastern edge of the Everglades National Park encompasses an unincorporated community of several thousand people — mostly of Cuban descent — who live on small, family-owned farms. The community contains about 320 homes. Residents grow fruit, vegetables and flowers and raise pigs, goats, chickens and horses.

A proposed Army Corps of Engineers' levee and seepage canal would require the taking of about 100 homes and would bisect the community.

In 1989, Congress passed the Everglades National Park Protection and Expansion Act. It requires that the Corps, which controls the flow of fresh water in the Everglades area, "improve water deliveries into" the Park. If these changes adversely affect the area, the Act requires the Corps to "construct a flood protection system for that portion of presently developed land within such area." The Corps' original 1992 plan sought construction of a levee on the western edge of the area. This plan would have protected all residents of the area and not condemned any homes.

In 2002, the Corps, along with the U.S. Department of Interior (DOI), decided on an alternative plan that would put the canal and levee right through the middle of the community, forcing residents out of all homes in the canal's path and north and west of the canal. The Corps pressured affected homeowners to sign "offers to sell" by asserting that the Corps had the authority to condemn their land if they did not voluntarily sell. Some homeowners, thinking they had no other choice, sold their land to the Corps.

Seven homeowners, with the support of a local organization, the 8.5 Square Mile Legal Defense Foundation, filed a lawsuit against the Corps.

On July 5, 2002, a U.S. District Court ruled that the Corps' new plan violated the 1989 Everglades Act. The ruling halted the Corps' plan to flood a portion of the area. The Corps returned to Congress to ask for the funds and authority to condemn homes there. The U.S. House of Representatives has declined to provide funding for the plan, but the Senate has added funding to an appropriations bill that must be reconciled with the House bill.

In 1999, DOI officials testified before a House Subcommittee that "acquisition of the area is not a requirement for restoration of Everglades National Park." The Corps' own Supplemental Environmental Impact Study shows the original 1992 plan meets the ecological goals of Everglades restoration at a cost of \$50 million less, and with less delay than the new plan.

Area resident Madeleine Fortin, says, "Congress ordered the Corps of Engineers to provide my community with flood protection but it looks like Congress is no longer in control of its federal agencies. There is no environmental benefit to be derived by the destruction of my community."

Sources: Madeline Fortin, Hunton & Williams, The Washington Times



Madeleine Fortin

Rancher Fined By EPA for Replacing Levees on His Ranch

In 1994 and 1995, state and federal agencies — including the U.S. Forest Service, Bureau of Land Management and Oregon Department of Fish & Wildlife — put \$3.2 million worth of logs in a creek upstream from Leonard Zylstra's ranch near Medford, Oregon for the purpose of enhancing fish habitat.

Waters in the creek reached a 20-year high point in 1997. This tore the logs loose, causing them to gush downstream with debris, overflowing the creek and washing away bridges and two homes. The overflow went into Zylstra's pasture, destroying 29 acres of hay and removing topsoil to a depth of five feet.

After the water subsided, Zylstra got a permit from the Oregon Department of State Lands to re-sculpt his land, re-build levees, lower the creek bed to its original depth and use that dirt to replace the soil he lost. He did not get a permit from the U.S. Army Corps of Engineers because Oregon state law does not require agriculture activities to get a "fill and remove" permit.

However, the U.S. Environmental Protection Agency (EPA) claimed Zylstra violated the Clean Water Act, and threatened him with fines up to \$43,500 per day followed by property forfeiture unless he returned his property to a "native and natural state."

Under the EPA-approved mitigation plan, Zylstra would be required to plant specific flora, fence off the creek from his cows and lower the levees that have existed for 100 years. Because he cannot afford to challenge the EPA in court, Zylstra has put his ranch up for sale and plans to move to Florida. He is refusing to cooperate with what he calls "bureau rats," especially after the EPA attorney demanded the past four years of his tax returns during the course of the EPA investigation.

Source: Leonard Zylstra

Farmers Only Allowed to Use Water Five Out of Ten Years

Due to a regional drought, the U.S. Forest Service in 1999 suspended the federal permits of Methow River irrigators in the Pacific Northwest. This action, which stopped farmers from irrigating their crops, was implemented to protect endangered or threatened salmon and steelhead species in the river.

The water cutoff has harmed farmers in Okanogan County, Washington, who rely on water from the river for their livelihood. Farms and fields in the area went dry in 2000. Steve Durbin of Early Winters Ditch Company notes, “We want to find a balanced solution that protects fish and people, but NMFS [the National Marine Fisheries Service] doesn’t seem to care about the people.” The federal government has determined that farmers cannot irrigate out of the Methow if water flows fall below what they were when people first starting taking water from the river 100 years ago.

Farmers in the county contend that this will prevent them from having access to water five out of every ten years.

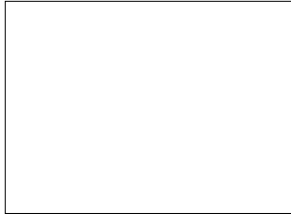
Okanogan County officials, farmers and ranchers sued the Forest Service, the NMFS, and the U.S. Fish and Wildlife Service in 2001, claiming that the federal government illegally used the Endangered Species Act to cut off their irrigation water. The plaintiffs maintain that they attempted to compromise with the federal government to no avail.

“We have tried to reach a reasonable agreement over water use, but it has become clear that the federal government doesn’t want to be reasonable,” said Okanogan County Commissioner Craig Vejraska. The county also claims that water use in the Methow River should be a state issue, not a federal matter.

In 2002, U.S. District Court Judge Robert Whaley dismissed the lawsuit, ruling that the Forest Service had the authority to close the ditches in order to provide water for endangered fish. The case is currently being appealed to the Ninth Circuit Court of Appeals by the county. In the meantime, farmers go without irrigation water, as they have for the past three years.

Sources: Associated Press, Alliance for America

*“We want to find a balanced solution that protects fish and people, but NMFS doesn’t seem to care about the people.”
Steve Durbin*



Mr. and Mrs. Ocie Mills

“...the property was probably never a wetland for purposes of the Clean Water Act.”

Judge Roger Vinson

Father and Son Do Hard Time for Filling a Dry Ditch

Ocie Mills bought two lots in Escombia Bay, Florida in 1986. He planned to build a dream home for his son, Carey. The father and son brought in 19 loads of clean building sand, cleared a dry ditch and began filling that ditch with sand to level the ground for a foundation. Shortly after the work began, Ocie Mills received a notice from the U.S. Army Corps of Engineers demanding that he immediately stop placing fill in the ditch because the Corps considered it a wetland.

When Ocie Mills tried to contact the Corps, he unknowingly spoke with someone who worked for the Florida Department of Environmental Regulation (DER). The Corps was temporarily sharing office space with the DER at that time. The DER official came to the Millses' property to determine if the property contained wetlands. Flags placed on the property by the DER showed that most of the land, including the ditch, was not a wetland. The Millses resumed dumping fill. The Corps, however, disagreed with the judgement of the DER and sent U.S. Marshals to arrest Ocie and Carey Mills.

The Millses could not afford a lawyer, and they didn't think the Corps' case would be taken seriously due to the judgement from the DER.

The case did go to trial, however. In January 1989, three federal lawyers represented the government's case against the Millses. Ocie Mills, representing himself, attempted to submit evidence showing that the DER did not agree that the ditch qualified as a wetland, since the land was completely dry. This evidence, however, was disregarded because it dealt with state law, which was superceded by federal law. Ocie and Carey Mills were both sentenced to 21 months without parole and fined \$5,250 each.

The two men served their complete sentences. In 1992, they returned to U.S. District Court and a new judge in an attempt to have their convictions erased. The Millses' lawyers raised questions regarding jurisdiction over the property, a matter which was never discussed in the original trial. Since appeals can only be made based on information argued in the initial trial, Judge Roger Vinson — though sympathetic — ruled not to reverse the convictions. He did rule, however, that “the property was probably never a wetland for purposes of the Clean Water Act.”

In March 1996, Quenton Wise, a juror from the original trial, informed Ocie Mills that the jury had been prejudiced against the father and son during the trial because the jury foreman had told the other jurors of a past encounter Ocie Mills had with environmental officials.

In light of allegations of a biased jury, the Millses filed a petition for the writ of error *coram nobis* (“error before us”) on April 11, 1996. Such writs are only granted in rare circumstances if a severe injustice can be proven, but it provided a possible way for the Millses to get a new trial. Judge Vinson ruled in the Millses' favor and set an evidentiary hearing, but the Eleventh Circuit Court of Appeals in Atlanta decided the tainting of a jury pool is not severe enough to merit the writ and overturned the ruling.

In 2001, the U.S. Supreme Court declined to hear the Millses' case.

Sources: Pacific Legal Foundation, The Washington Times, WorldNetDaily.com, The Freedom Forum

Small Business Doomed by Birds Engaging in Interstate Commerce

Larry Squires, a veterinarian since 1948, owned a corporation in New Mexico that disposed of production water from oil and gas wells until the U.S. Environmental Protection Agency (EPA) took his property without compensation.

Squires owns land that contains a playa lake (sinkholes that gather rainwater approximately once every one to two hundred years) ideal for the disposal of these wastes because its bed consists of thick, red clay that is impermeable to water.

A 1987 EPA determination said that the lake did not fall under the jurisdiction of the Clean Water Act. Therefore, the disposal of oil field brine (saltwater) on the property was allowed. Squires created Laguna Gatuna, Inc. thereafter, and the firm invested in the installation of pipelines from the lake to nearby oil and gas wells.

In 1992, the EPA monitored the playa for water quality. When it noticed dead birds in the area of the lake, the EPA decided that Laguna Gatuna, Inc. had violated the Clean Water Act by discharging pollutants without EPA's permission. The EPA claimed that the lake "provides a significant nesting, feeding, and loafing area for migrating birds, including shorebirds, ducks, coots, grebes, and raptors." On the rare occasion that natural rainwater accumulates in the sinkholes, the playa could be regulated by the Clean Water Act because birds landing on these puddles "are engaged in interstate commerce."

The EPA issued a cease and desist order to Laguna Gatuna, Inc. and threatened to impose a \$100,000-a-day fine should the company continue to dispose of production water on the land.

The company had no choice but to shut down immediately. It asked for "just compensation" for its loss of property value, but the U.S. Federal District Court in New Mexico and the U.S. Court of Appeals held that the courts did not have the jurisdiction to pursue the case because EPA orders under the Clean Water Act are not open to judicial review.

Fortunately for Squires, in 2001 the Supreme Court struck down the Migratory Bird Rule under the Clean Water Act in *SWANCC v. U.S. Army Corps of Engineers*. Since then, Squires has pursued his own case for compensation, and, in September 2001, the U.S. Court of Federal Claims ruled in his favor. The court found that the Laguna Gatuna's numerous investments made in anticipation of future company progress had been destroyed by the EPA's regulatory order. Consequently, the agency's action constituted a "taking" that warranted compensation.

Because Larry Squires has cancer, he has tried to close the deal quickly by negotiating directly with the government for compensation and attorney's fees. As a result, however, the current amount of settlement is "about half what it was worth," according to Squires.

Sources: Mountain States Legal Foundation, United States Court of Federal Claims, Larry Squires

“Career bureaucrats without farming experience and without personal accountability for the massive cost to the public for their decision-making have improperly distorted and characterized economically useful, environmentally sound, productive activities conducted by life-long caring land stewards into illegal acts.”

Charlie Johnson

Environmentally-Sound, Economically-Useful... And Illegal?

Charlie Johnson’s family has been growing cranberries on his small farm near Carver, Massachusetts since the 1920s. The federal government is now preparing to take Johnson to court, claiming that many of the cranberry bogs were created in violation of the 1972 Clean Water Act.

In 1996, the U.S. Environmental Protection Agency (EPA) asked for permission to enter Johnson’s property to collect data. Johnson gave his approval, believing he had nothing to hide. He later discovered that the EPA wanted to return his land to wetlands under the assumption that wetland conditions existed on the property before Johnson’s cranberry bogs were constructed. Johnson said the bogs were originally built on dry, sandy land that formerly contained a variety of forested uplands.

The EPA based its theory on a number of small aerial photos taken during spring thaws when much of the area is underwater because of melting snow. Over the past six years, the EPA and four hired consultants have entered Johnson’s property to dig 56 test pits and install 53 groundwater wells and gauges. To this day, EPA officials enter his property on a weekly basis to conduct further tests.

Johnson, a 69-year-old Korean War veteran, testified before the U.S. House of Representatives Subcommittee on Water Resources and Environment in 2001, saying, “Career bureaucrats without farming experience and without personal accountability for the massive cost to the public for their decision-making have improperly distorted and characterized economically-useful, environmentally-sound, productive activities conducted by life-long caring land stewards into illegal acts.”

If the government wins its case against Johnson, he will be forced to destroy his cranberry bogs and convert his property to wetlands. The case is currently in the discovery phase in U.S. District Court.

Sources: American Association of Small Property Owners, Gary Baise

Supreme Court Rules Government Can’t Take Your Land Without Compensation

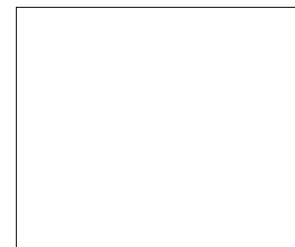
Tony Palazzolo bought approximately 18 acres of marshy property near Westerly, Rhode Island in 1959 intending to build homes or a recreational facility. During a 40-year span, both he and the company he owned tried to obtain permits necessary to develop the property. The State of Rhode Island repeatedly denied Palazzolo a permit, citing wetlands regulations. He was told that, at most, he could build one house on the upland area of the parcel — leaving 73 lots unusable.

Palazzolo took his case to court, asking for compensation from the state for depriving him of the economic value of his property. He lost his case in the Rhode Island Supreme Court, but he appealed his case to the U.S. Supreme Court. In 2002 the U.S. Supreme Court rejected the Rhode Island Supreme Court’s decision and said that a landowner could challenge land-use regulations — even if they are in effect when the property is purchased. Associate Justice Anthony Kennedy said in the majority opinion, “Future

generations, too, have a right to challenge unreasonable limitations on the use and value of land.”

While the U.S. Supreme Court did not accept Palazzolo’s contention that he had lost all of the economic value of his land (because he was told that he could build one home), it sent the case back to the Rhode Island Supreme Court instructing that the case be analyzed based on the *Penn Central* doctrine. The *Penn Central* doctrine, established by a 1978 U.S. Supreme Court ruling, requires courts to take into account the economic impact of the regulation on the property owner and the owner’s investment-backed expectations. This is an important victory for landowners because governments were previously only required to compensate property owners if all of the economic value of their land was “taken.” The Rhode Island Supreme Court has not yet ruled on the matter so Palazzolo, now 82 years old, is still paying taxes on 73 subdivided lots on which he cannot build and for which he has not received compensation.

Source: New England Legal Foundation



Tony Palazzolo

Corps of Engineers Takes Use of Couple s Properly, Then Ducks Responsibility in Court with Monopoly Money Permit

Helen and William Cooley bought a 33-acre piece of land near Coon Rapids, Minnesota in 1972 with plans to put in improvements before subdividing it and selling lots for new homes. In 1989, the Cooleys asked the U.S. Army Corps of Engineers to determine if their property contained wetlands. The Corps determined their entire property was a wetland and that a permit would be required before any building projects were undertaken.

The Cooleys initially challenged the Corps’ conclusion, but eventually applied for a permit. The Corps denied them a permit to build in 1993. The Cooleys then sued the Corps, arguing that the agency’s denial was a “taking of their property without just compensation” in violation of the Fifth Amendment to the U.S. Constitution.

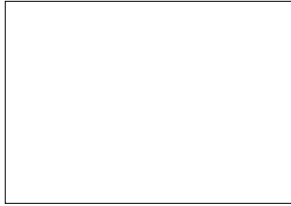
Later, in 1993, the Corps sent the Cooleys a letter suggesting they might be able to get a permit for part of their property. The Cooleys declined the offer, saying that they considered the agency’s permit denial to be final. The Corps then issued a partial permit for 14 acres, saying that the partial permit reversed any prior “taking.” Again, the Cooleys rejected the permit.

In 1996, just ten days before going to trial, the Corps issued the Cooleys a “provisional permit” for the entire property, but the permit contained the warning “not valid, do not begin work” — in essence, a permit worth no more than Monopoly money. The Corps then used the argument at trial that the partial permit and the provisional permit both reversed the earlier “final decision” and therefore no “taking” had occurred. The U. S. Court of Federal Claims disagreed and awarded the Cooleys over \$2 million in compensation plus interest, attorney’s fees and costs.

The federal government has appealed the case to the U.S. Court of Appeals.

Source: Pacific Legal Foundation

In 1997, there were an estimated 105.5 million acres of wetlands in the U.S.



Fred Williams

“How does a citizen protect himself from a government agency that doesn’t tell the truth, has deep pockets funded by the public and can string you out forever?”
Louise Williams

Couple Loses Right to Jury Trial Along With Use of Their Property

“For 14 years, we have not been able to use or enjoy our property. We have spent over \$300,000 in legal fees and other costs while the assessed value of our property has declined from \$268,000 to \$20,100. Yet we have never been able to go before a jury of our peers and explain our case,” says Louise Williams.

In 1986, Louise and her husband Fred bought five acres in Little Compton, Rhode Island, where they planned to build a three-bedroom home.

Before the Williamses bought the land, the Rhode Island Department of Environmental Management (DEM) conducted a perc and water table test on the property, which are used to determine if land can be classified as a wetland. The Williamses’ land was not classified as a wetland. The DEM also approved a design for a septic system on the property. The Williamses renewed the septic system design in 1987 and 1988, and their builder received a building permit from the local government. In October 1988, construction began and the DEM inspected and approved the scraped bottom of the septic system. It also approved the constructed foundation and issued a Certificate of Conformance in December of that year.

After receiving a call from one of the Williamses’ neighbors, the DEM reversed itself and alleged that the foundation and septic system were on a wetland or wetland buffer zone. A cease and desist order was issued against the Williamses. The DEM also filed a notice of violation, which, in effect, put a lien on the property. All construction on the home site was stopped.

When the DEM refused to give the couple a hearing to try to resolve the problem, the Williamses went to court. In 1991, the Rhode Island Superior Court ordered the DEM to give the Williamses a hearing, and a DEM hearing officer dismissed their violation. DEM Director Louise Durfee, however, later overturned the hearing officer’s ruling.

The Williamses appealed the Director’s decision to the Superior Court, which ruled that the DEM could not impose a penalty without giving the couple a jury trial. During the two-year waiting period for a jury trial, the DEM ordered the Williamses to remove the previously-approved septic system and foundation and plant over 200 trees and bushes to “restore the property.” They were given only 45 days to complete the work.

Because the DEM did not impose the \$2,000 fine it had originally demanded, but instead required them to remove their previously-approved septic system and plant 200 trees and bushes, it evaded the court’s requirement that the Williamses were due a jury trial.

Nonetheless, the Williamses did as DEM demanded.

Since this 1994 order, the Williamses have been falsely accused of having a foundation on their property and have been prohibited from mowing the grass, having a garden or even planting anything without filing a formal application and paying attendant fees to the DEM. One DEM official testified before a Rhode Island legislative hearing that “the Williamses have two buildable lots and we know where they are,” but the DEM won’t tell the Williamses where they are allowed to build.

As Louise Williams says, “The DEM has strung us out until the legal costs are greater than the value of the property. How does a citizen protect himself from a government agency that doesn’t tell the truth, has deep pockets funded by the public and can string you out forever?”

Sources: Fred & Louise Williams, Providence Journal Bulletin, New England Legal Foundation

If an EPA Official Says It s Wetlands, It s Wetlands

Bruce Dyer and his wife bought approximately 100 acres of land along the Taunton River near Bridgewater, Massachusetts in 1994 to build a home. On the remaining acreage, they constructed a cranberry bog. To construct the bog, Dyer consulted with the Bridgewater Conservation Commission and hired a botanist to delineate any wetland areas to avoid disturbing. Between 1995 and 1998, he began to build the dikes and plant cranberry vines.

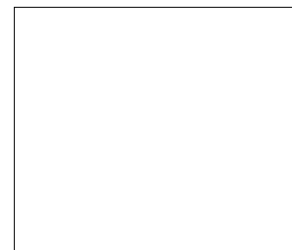
It was about that time that Dyer was contacted by the U.S. Environmental Protection Agency (EPA) and told he would have to answer eight questions for them or be subject to a fine of \$137,500. After Dyer answered their questions about his cranberry bogs, EPA Region One officials requested permission to visit his property.

After several visits, EPA officials claimed Dyer had disturbed wetlands on approximately five acres of his land. More EPA visits ensued, as EPA officials continued to take soil samples in an attempt to determine if Dyer's bogs were on wetlands. EPA consultants determined that the plant vegetation were of upland species, not wetland species. The EPA official in charge of the case, according to Dyer, later fired these consultants, because their findings didn't match her conclusions.

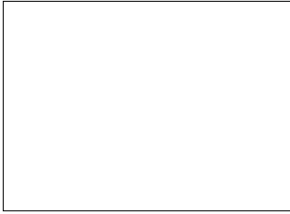
Soon, more government consultants arrived to dig test pits and take soil borings. Dyer, his wife and three others saw an EPA official telling her consultant where to put the wetland area on the map, since the EPA official said, she was "paying the bill." In spite of the fact that the tests did not follow the U.S. Army Corps of Engineers Manual Study Guide of 1987 on how to delineate wetlands, Dyer was still told his bogs were on wetlands. But, encouraged by his attorney at the time, Dyer agreed to sign a Consent Decree, pay a \$15,000 fine and restore 8.2 acres of his land to government-prescribed wetlands.

Dyer agreed to the decree after he spent \$250,000 in legal and consultants' fees and his wife began suffering from bouts of depression. Since then, Dyer has hired a new attorney and asked the EPA to amend the Consent Decree to exclude the restoration to wetlands. EPA officials have told him his appeal for an amendment is "meritless," so he has asked a federal court in Massachusetts to hear his case. Meanwhile, the EPA has told him fines for not restoring the wetlands could range from \$400,000 to \$45 million should he choose not to comply.

Sources: Gary Baise, Bruce Dyer



the Dyer property



Wetlands similar to Gary Bailey's property

Federal Agencies Target Native American Minnesota Landowner

Gary Bailey, a Native American Vietnam veteran who has been a paraplegic since 1978, has owned property near Lake of the Woods, Minnesota since 1976. Between 1996 and 1999, Bailey worked with Lake of the Woods county officials to subdivide a portion of his property into 14 residential lots. He received all of the necessary permits, including a Water Quality Certification and a Wetland Conservation Act permit from the state of Minnesota for the construction of an access road, which was deeded to the county.

After the lots had been sold and the access road had been dedicated as a public road, the U.S. Army Corps of Engineers told the county to apply for a permit for the road. The Corps then denied the permit, claiming the bulk of the subdivided property is wooded wetlands within the jurisdiction of the Corps' regulatory powers. Corps officials have ordered Bailey to tear out the access road, in which he no longer has an ownership interest, and restore the land to its original condition.

Since then, the Environmental Protection Agency (EPA) has become involved, and has charged Bailey with "unauthorized discharges into wetlands or tributaries of the Winter Road River." EPA officials have ordered Bailey to "submit a plan for restoring wetlands disturbed by road building, ditch digging and other activities over the past 10 years." It also alleges he discharged pollutants into waterways since 1980 without permits.

Bailey believes he is being targeted because he owns an elk ranch where he allows hunting.

Bailey says his wife of 31 years is divorcing him because of the stress on the marriage induced by the case. He has filed suit in the federal court of claims against the Corps under the "takings" provision of the Fifth Amendment of the U.S. Constitution. He has also filed a lawsuit in district court against the Minnesota Pollution Control Agency, the Minnesota Department of Natural Resources and Lake of the Woods County, charging them with actions that are unlawful, arbitrary and an inconsistent, capricious exercise of police power.

Sources: Alan Fish, Association of Small Property Owners, Gary Bailey

Man Jailed After Zoning Officials Renege on Where He Should Plant Trees

John Thoburn owns a driving range for golfers in a Virginia suburb of Washington, DC.

To bring him into compliance with local zoning ordinances, Thoburn was ordered by Fairfax County officials to plant over 700 trees on his driving range in 1994 at a cost of over \$125,000. Before he planted the trees, Thoburn asked the official Fairfax County arborist to approve the location of the trees, and received such approval

However, the Fairfax County Zoning Administrator later determined that some of the trees were in the “wrong” location. Zoning officials subsequently demanded that Thoburn move 98 of the trees to different locations. Since he had obtained prior government approval for the placement of the trees, Thoburn refused to move them. He was consequently convicted of contempt of court and sent to jail for over three months.

According to a letter written by Thoburn during his imprisonment, he said that — even though he was being detained for the alleged landscaping violations — the zoning officials still hadn’t told him exactly which trees were in the wrong location. After a lengthy court battle, evidence was presented in court that showed Thoburn’s compliance with the new zoning order was both financially and physically impossible. By this time, Thoburn had already been imprisoned for 98 days and was being fined \$1,000 per day. “If I can be jailed for not moving trees, do I really possess my property? There are many ways to take away property rights,” said Thoburn.

The story does not end with Thoburn’s release. After allowing his release from jail, the judge granted the county’s request to enter Thoburn’s property and complete the planting they desired. This was done the next day, and county officials presented Thoburn with the bill — nearly \$40,000, which became a lien against his property. Today, Thoburn is seeking to rezone his property in the hope of selling it to pay his legal bills.

Source: Defenders of Property Rights

“If I can be jailed for not moving trees, do I really possess my property?”

John Thoburn

County May Leave Businesses in the Dark Literally

County Supervisors in Loudoun County, Virginia are considering enacting regulations that would force residents and businesses to turn off their lights as early as 9:00 P.M. to avoid “light pollution.”

Groups such as the International Dark Sky Association have successfully lobbied local governments to impose restrictions on the strength of outdoor lighting and how late certain lights can be used. In Loudoun County, a suburb of Washington, D.C., the initial policy proposal would affect all lights above 5,500 lumens. The average bulbs found in a residential home may range from 1,650 and 4,000 lumens — but those lights do not include outdoor flood lights or decorative and security lighting. The earliest restrictions would begin at 9:00 pm, and all lights, regardless of lumens, would be required to be extinguished by midnight.

“I’ve never heard of light pollution or an organization called Dark Sky or whatever it is, but what I have heard of is people coming in and breaking into houses that are not well-lit. Are they going to stand watch outside my front door and make sure no one breaks into my house?”

*Loudoun County resident
Rita Stefkovic*

These proposed lighting restrictions would have a profound economic impact on many businesses in the county. Shakir Mallick, the manager of a Taco Bell and Pizza Hut, told *The Washington Times* that his restaurant usually earns between \$1,400 and \$1,600 a night between 9:00 P.M. and 2:00 A.M. He said, “If I had to turn off my signs it would dramatically hurt my business.” Likewise, the manager of a 24-hour gas station feared customers would bypass his darkened station in favor of lighted ones in the neighboring county if he could not keep his facilities lit after sundown.

Commenting on her concerns about the lighting ban affecting public safety, 37-year Loudoun County resident Rita Stefkovic said: “I’ve never heard of light pollution or an organization called Dark Sky or whatever it is, but what I have heard of is people coming in and breaking into houses that are not well-lit. Are they going to stand watch outside my front door and make sure no one breaks into my house?”

After a spirited opposition led by County Supervisor Eugene Delgaudio that included a costumed Darth Vader in support of the regulations and Santa Claus against them, the supervisors narrowly voted in favor of drafting lighting restrictions.

The officials who voted to adopt the restrictions promised that any approved regulations would most likely not affect holiday light displays. Since “most likely” is an enormous loophole, the promise is meaningless.

A major concern among supporters of the proposed regulations was the potential costs associated with enforcing them. The cost to local residents of having them, however, apparently was of lesser concern.

Sources: The Washington Times, Leesburg Today

County Government Uses Helicopter to Monitor Yard Debris

Eugene Mixon is an employee of the U.S. Department of Justice who lives in Fairfax County, a suburb of Washington, D.C.

By his own admission, Mixon’s quarter-acre yard could use a clean-up. The yard contains construction equipment that Mixon used to fix his roof. He also has a half-dozen cars in the yard, but all of them are in compliance with state-mandated safety and emissions standards.

After neighbors complained to the county about Mixon’s fence, which is two feet higher than allowed under local zoning regulations, Fairfax County zoning officials decided to inspect the property for the potential zoning infractions. When they visited Mixon’s property, the 65-year-old invoked his Fourth Amendment right against unreasonable search and seizure and did not allow the officials into his yard.

Rather than obtain a search warrant after being denied access, county officials flew a county-owned police helicopter over the Mixon property to survey it from above. Fairfax zoning officials later admitted that using a helicopter to investigate a single property for a zoning violation was not only unusual, but also somewhat unsuccessful, because trees blocked much of the view.

Soon after the helicopter surveillance, the county posted a large sign in Mixon’s front yard, claiming it as a junkyard. This, however, was a stretch. There is no evidence that Mixon, a full-time federal employee, has ever run such a junkyard business. All of the materials in his yard were to repair the roof on his house.

Washington Times editorial: “The intensity of the bureaucratic attack . . . is suggestive of personal animus by staff or elected county officials against Mr. Mixon.”

As *The Washington Times* editorial page wrote, “The intensity of the bureaucratic attack... is suggestive of personal animus by staff or elected county officials against Mr. Mixon.”

Sources: *The Washington Post*, *The Washington Times*

California Color Cops Outlaw Yellow Homes

Melinda and Joe Bula own a five-bedroom home in El Dorado Hills, California. The El Dorado Hills Design Review Committee ruled in the spring of 2002 that their house, which was painted yellow when they bought it six years ago, does not meet the city’s “covenants, conditions and restrictions.” The city’s rules handbook regarding homeownership restrictions states that “no primary colors — yellow, red or blue — are allowed.” Only beige and tan colored homes are allowed in this Sacramento suburb. City manager Wayne Lowery told *The New York Times*, “If you allow yellow, then when a guy comes in and says he likes purple, where do you draw the line?”

The Bulas appealed the committee’s rejection to the city board, which has subsequently assigned a task force to review the rules.

The Sacramento Bee weighed in on the Bulas’ side, editorializing, “When homeowners such as Melinda Bula give our eyes a break from boring beige, they deserve three cheers and a free pass from the color cops.”

Joe Bula adds: “The only thing stupider than fighting it is not fighting it.”

But the Bulas may have another fight after this one is resolved. The same review committee also claims that the Bulas are violating another rule because the white picket fence around their home is made of plastic instead of wood.

“First yellow, then the white picket fence,” said Melinda.

Source: *The New York Times*

Freedom to Farm, But No Freedom to Live?

Fears of obscene gestures and rising property values delayed a housing project for six years in the rapidly-growing community of Zeeland in southwestern Michigan while the courts sorted out the validity of the concerns.

Zeeland — like many communities in that part of Michigan — is experiencing explosive growth as companies attracted by a skilled workforce and an industry-friendly environment move there and/or expand their facilities. Testament to the growth is the fact that, just four years after one of the area’s largest high schools was built, a second one was built next door to handle the influx of new students.

It was only natural that developer Jim Wickstra and his partners would decide to build homes near the schools. It was equally logical that they would select land that the township’s master plan — a document drawn up to manage growth and provide a degree of predictability for investors — had designated as residential.

Logic ended there, and a six-year battle to build 250 homes on 100 acres already approved for residential development began.

Sacramento Bee: “When homeowners such as Melinda Bula give our eyes a break from boring beige, they deserve three cheers and a free pass from the color cops.”



Jim Wickstra

After six years and after losing an estimated million dollars in attorney's fees and carrying costs on the land, Wickstra and his partners are finally ready to break ground.

Farmers in the area protested the development. Among the concerns expressed by farmers in court filings: prospective homebuyers in the area “routinely ‘give us the finger’ or shout expletives and other comments about our use of the road [to move farm equipment].” Another complaint: property taxes were rising because development had increased the value of the farmers’ property by 48 percent.

In addition, farmers said complaints by new residents about the noise, dust and odors of farming would force the farmers out of business — although Michigan’s “Right to Farm” law prevents such complaints from being considered by authorities.

The local zoning board of appeals disagreed with the farmers in 1998 and allowed development to proceed, but with 29 stipulations, including wide buffer zones around the housing.

The matter then went to Michigan district court, which agreed with the zoning board of appeals. The farmers then went to the Michigan Court of Appeals, where they lost again.

Now, after six years and losing an estimated million dollars in attorney’s fees and carrying costs on the land, Wickstra and his partners are finally ready to break ground.

Source: Jim Wickstra

Hotel Must Allocate Rooms to Homeless Without Full Compensation, City Says

San Francisco’s Hotel Conversion Ordinance says that as of September 23, 1979, any room in a small hotel that had been occupied by the same guest for at least 32 days was re-designated as “residential” and must be set aside and rented at below-market prices for the city’s indigent population. This applied to hotels such as Claude Lambert’s 58-room Cornell Hotel because it historically had offered accommodations to visiting businessmen and students, who often would stay there for extended periods while conducting business or attending the university.

Claude Lambert began working as a janitor in the Cornell Hotel in 1966. After 12 years of working at the Cornell and moonlighting as a French teacher, he bought the property in 1978 and invested over \$1 million to refurbish it into a charming inn. Over half of his rooms are now subject to the Hotel Conversion Ordinance. Since Lambert is unable to charge a fair market rent for “residential” rooms, he has closed many of them because it is more economical to keep them vacant than to rent them at below-market rates as “residential” rooms. If he wanted to rent these rooms to tourists, he would have to pay the city \$600,000 for permission.

Lambert claimed a violation of his Fifth Amendment rights under the takings clause of the U.S. Constitution, which says “private property shall not be taken for public use without just compensation.” The U.S. Supreme Court declined to hear Lambert’s petition in 2001.

Source: Pacific Legal Foundation

Bureaucratic Quibbling over Paint and Light Fixtures Forces Family to Live in Moldy House

Brenda Everett, her husband Gerald and their two teenage daughters cough, suffer from chronic wheezing and have developed a nasal twang. These symptoms came after their home, located in Boulder County, Colorado, was flooded in May 1998. A private company's irrigation ditch spilled 1.6 million gallons of water onto the Everetts' property while they were on vacation.

Among other things, the spill destroyed their septic tank. With compensation for the damages tied up in court, the family needed to move out of the home because it was full of mold, mildew and effluent. Because they did not have sufficient money to move, the Everetts put down a deposit on a mobile home that they planned to locate on their property until their house was made habitable.

Unfortunately, Boulder County officials added insult to injury by needlessly complicating the family's plans.

Boulder County officials made the family jump through regulatory hoops for nine months at burdensome expense in order to obtain a permit for permission to temporarily place a mobile home in the front yard of their own property. After nine months, the county still was denying the permit on the basis that files pertaining to the permit contained insufficient information on matters such as color samples and type of lighting. The county asked the Everetts to submit a new plan.

Boulder County Commissioner Todd Tucker also argued that a mobile home in the front yard would be an eyesore, and suggested placing the mobile home in the backyard. Unfortunately, it was impossible to put the home in the Everetts' backyard. The new septic system is in the front yard. Gerald Everett said that he told Tucker he couldn't hook up to the new septic system if the mobile home was in the back yard, to which, Everett says, Tucker responded, "Well you shouldn't have put it in then, should you?"

A magistrate also had ruled that the backyard was official evidence in the lawsuit against the ditch company, and as such, altering the backyard would disrupt court evidence.

Finally, the Boulder County Commissioners voted to allow the Everetts to place a mobile home in their front yard. By this time, however, the family's health had deteriorated, they were broke and they had to release their deposit on the mobile home. They were forced to live illegally in a camping trailer in their front yard.

As a result of the Everett controversy, commissioners are now calling for the creation of an ombudsman position to alert commissioners of complicated dockets within the bureaucracy.

For the Everetts, however, it was too late.

The family's health had deteriorated, they were broke and they had to release their deposit on the mobile home. They were forced to live illegally in a camping trailer in their front yard.

Source: Boulder Weekly

"If this isn't Big Brother putting their nose under your tent, I don't know what is. What else are y'all going to start regulating in my home?"

*Committee Member Michael Subin,
Montgomery County Council*



Dick Willemin

People Smoking in Their Own Home Could Have Been Fined

Residents of Montgomery County, Maryland were threatened with a fine if the smoke from cigarettes used within the bounds of their own home offended neighbors. Montgomery County Executive Douglas Duncan eventually vetoed the measure, which was approved by the Montgomery County Council in November of 2001. The measure would have fined residents \$750 for violations of the new regulation. It stated that if cigarette smoke should waft into a neighbor's home through an open window or door, neighbors could complain to Montgomery County's Department of Environmental Protection. Smokers — and, in some cases, landlords or condominium associations — that failed to provide proper ventilation could be fined \$750 per occurrence.

The original attempt to control indoor air quality standards was designed so regulators could enforce complaints involving carbon monoxide, paint or glue odors and mold. If passed, this measure would have added tobacco smoke to the same classification system as asbestos, radon, molds and pesticides. County Council Member Michael Subin, who voted against the measure, said, "If this isn't Big Brother putting their nose under your tent, I don't know what is. What else are y'all going to start regulating in my home?"

Source: The Washington Post

Heart Patient Denied Garage Next to House, Forced to Trudge Through Snow to Car

Because the Adirondack Park Agency (APA) in New York will not allow him to build a roof over his exposed carport, Dick Willemin, who has a heart condition, must travel 150 feet — sometimes through extreme cold and snow — to reach his car.

The reason is simple. Willemin lives near Friends Lake in the Adirondack State Park. Sheltering his car so close to the shoreline would violate local zoning laws.

Willemin wears a pacemaker for a heart condition similar to Vice President Dick Cheney's, but Willemin's condition is considered more severe. Willemin's car is currently parked in a garage 150 feet away, across the road from his house.

Willemin has a paved parking area next to his house, but he doesn't park there because it has no roof. This is because the APA has zoning regulations in place that outlaw the building of "accessory structures" within 50 feet of the lakeshore. The roof Willemin planned to build above the parking space was determined to be an accessory structure.

Willemin applied for an exemption from the zoning rules so he could build a covered carport next to his house. Exemptions are granted in extreme circumstances, and Willemin petitioned on the grounds that he may need immediate access to his vehicle in case of a medical emergency. But the APA denied his exemption request. Last fall, however, Willemin was given permission to add an expansion to his house. This did not include permission for the carport, but he plans on asking permission to build the carport again when his current expansion project is completed.

Source: Property Rights Foundation of America

Urban Residents Must Do Without Modern Supermarket Amenities

A grocery store's alleged historic value is preventing the store's owners from serving their customers to the best of its ability.

Giant Food, a grocery store chain concentrated around the Washington, D.C. area, sought to expand one of its stores in the Cleveland Park neighborhood of Washington, D.C. from 12,000 square feet to 40,000 square feet. Planned additions included a deli, pharmacy and bakery. The expanded size and additions would allow this particular Giant location to offer more amenities and help it compete with larger suburban grocery stores.

Preservation activists claim that this Giant store is historic simply because it was the first area grocery store to anchor a shopping plaza. Groups citing the building's alleged historic value have forced Giant to engage in a three-year battle over renovation plans.

Giant's Vice President for Marketing Barry Scher remarked to *The Washington Post* that, "this building is about as historic as my two-year-old grandson." Local residents also rallied behind Giant and its plans to expand the store. Fortunately, the three-year battle to stop Giant's renovation plans was resolved when a compromise was reached between activists and Giant officials. Giant was prevented from implementing all of its planned renovations, but was able to install a pharmacy so local residents are able to enjoy some of the benefits of a 21st century supermarket.

If they want all the supermarket amenities enjoyed by suburban residents, however, they still have to drive.

Source: The Washington Post

"This building is about as historic as my two-year-old grandson."

Giant vice president Barry Scher

Hotel Owners Must Pay Off City in Order to Rent Rooms to Tourists

Tom & Robert Field own the San Remo Hotel in San Francisco, California, one of 500 small hotels that must set aside a percentage of their rooms for long-term, low-income residents at city-regulated, below-market prices in accordance with the city's Hotel Conversion Ordinance. Owners can avoid this regulation if they pay the city a huge one-time fee. In the Fields' case, the fee is \$567,000.

The Fields claim that, in enacting the city Hotel Conversion Ordinance, the city of San Francisco revoked zoning rights the Fields acquired when they purchased the hotel in 1971. The brothers have invested over \$1 million in renovating the 95-year-old building in order to attract more customers. However, they lost their case in California state court and were forced to pay the city so they could rent the restricted rooms to tourists.

Believing that private property owners should not have to foot the bill for social burdens that all taxpayers should bear, the Fields appealed the lower court's decision. A state appeals court decided in their favor, and said that the owners of small hotels like the San Remo should not be forced to subsidize housing for the homeless. One justice characterized the Hotel Conversion Ordinance as a "ransom." The California Supreme Court, however, overturned the Court of Appeals decision earlier this year. In September, the Fields decided to take the case to federal district court. City attorneys are asking that the case be dismissed.

Source: Pacific Legal Foundation



the San Remo Hotel

Zoning Board Denies Property Owner Full Use of Land

Frank Kottschade owns approximately 16 acres of land in Rochester, Minnesota that is zoned for single-family residences and townhomes. The city's land-use plan identifies the property as "appropriate" for high-density townhome development, so Kottschade applied to have the property rezoned to a greater density so he could build a larger number of townhomes there.

The Planning and Zoning Commission staff recommended the request be approved if Kottschade submitted a general development plan.

Kottschade submitted a plan to construct 104 townhomes on the property. However, the city's Planning and Zoning Commission had recommended nine conditions. The conditions were adopted by the city council and their adoption essentially killed the development.

According to Kottschade, the city's conditions allowed him to build only 26 townhomes instead of 104, thereby making the project economically unfeasible.

After several months of review, the city council and zoning board of appeals upheld the conditions, making just 26 townhomes possible instead of 104.

Kottschade filed suit in U.S. District Court in Minnesota arguing that the city's regulations constituted an unfair "taking" of his property and that he is due just compensation under the Fifth Amendment to the U.S. Constitution. The federal court denied Kottschade a hearing in May 2002, informing Kottschade that he must first file and be denied compensation in state court before he can claim a "taking" in federal court. Kottschade has appealed the decision to the Circuit Court of Appeals, which has not yet heard the case.

Kottschade is supported in the case by the National Association of Home Builders, which says it will, if necessary, take the case to the U.S. Supreme Court to prove that property owners have a right to bring constitutional claims in federal courts.

Source: National Association of Home Builders

San Jose Christian College Fights for Right to Move

Officials of San Jose Christian College in San Jose, California wanted to move into a defunct hospital in nearby Morgan Hill that the college had purchased in 2000. The Morgan Hill City Council said no.

Even though the facility could no longer be used as a hospital, the city council, according to a website run by the college, "voted to deny a zoning change from hospital use to education use." The college also claims the city council came to this decision despite a city study that showed the region would not need a hospital for another ten to 15 years.

The Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) is designed to give religious institutions the ability to fight local governments over zoning disputes. The college's attorney claims that, under this law, cities must accommodate religious institutions when a city's zoning policy creates a substantial burden on them and

"We are hopeful that the Ninth Circuit will choose to respect the rights of religious institutions to establish themselves in locations that allow the exercise of their religions without substantial burdens."

Attorney for San Jose Christian College

their ministry. The city can be exempt from providing an accommodation if it shows a compelling interest such as protecting the health and safety of the community.

The college took the city to court, but a U.S. District Court judge ruled in favor of the city. The judge said that RLUIPA “does not grant religious institutions immunity from land use regulations.” The court further ruled that the college was unable to show a substantial burden on the exercise of their religion and therefore was not protected under RLUIPA. As a result of not being able to make use of the property it purchased, college officials now fear they may have to turn away students and forego important ministries.

The Pacific Justice Institute of Citrus Heights, California is handling the case for the college, and has appealed the lower court’s ruling to the Ninth Circuit Court of Appeals. An attorney for the group said, “We are hopeful that the Ninth Circuit will choose to respect the rights of religious institutions to establish themselves in locations that allow the exercise of their religions without substantial burdens.”

Source: Pacific Justice Institute

College officials now fear they may have to turn away students and forego important ministries.

Family Obtains Proper Permits to Build Home; Government Commission Stops Construction Anyway

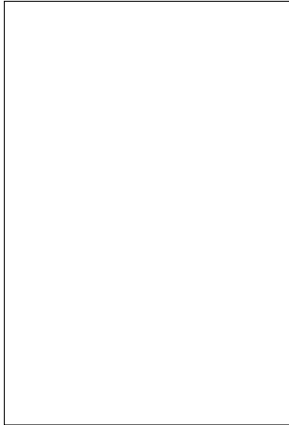
Brian and Jody Bea decided to build a home on a family-owned parcel of land overlooking the Columbia River Gorge in Washington. After spending several years acquiring the necessary permits, the Beas received a building permit from Skamania County officials in 1997.

The Beas then applied for a permit from the Columbia River Gorge Commission, a bi-state group with responsibility for overseeing developments in the gorge. The Commission had no objections to the Beas’ plans, so the county gave them final approval to build.

Almost two years later, however, the Columbia River Gorge Commission reversed the county’s decision, ordering the Beas to stop work on the nearly completed house. The Gorge Commission complained that the home was too visible in comparison to the surrounding landscape. The options presented to the Beas were: either tear down the home or re-locate it to a less visible part of the property.

The Beas took the case to state court, but in the meantime could not finish their home. They were forced to live elsewhere while making payments on the unfinished home. In 2002, the Washington State Supreme Court ruled that the Columbia River Gorge Commission had acted “without authority of law” when it overturned a valid land-use permit. However, despite the court’s decision, the Beas are still not able to move into their home. The Gorge Commission continues to argue that the home should be moved. Further litigation for damages may be necessary if the negotiations do not result in a favorable outcome for the Beas.

Source: Pacific Legal Foundation



Monarch butterfly



the Lake Tahoe region

California Coastal Commission Favors Sierra Club's Wishes Over Church's Needs

The Roman Catholic Oblates of St. Joseph operate a church in Santa Cruz, California that seeks to expand its parking lot to accommodate increasing attendance at its church services and to provide parking for staff at a private school that leases space on their property. The City Council of Santa Cruz voted to allow an expansion of 17 spaces. Two scientific studies confirmed that the expansion would not harm the wintering habitat of the Monarch butterflies since there is a nearby 36-acre state park with nectaring sources for the wintering butterflies. The California Coastal Commission even affirmed the city's decision.

But neighbors of the church and the local Sierra Club protested the parking lot expansion, and appealed the city council's ruling. As a result, the California Coastal Commission reversed its position and decided to take jurisdiction away from the city council and study the situation for another year. In the end, the Commission did decide in favor of allowing the parking lot expansion to spare itself from being taken to court, but the church was denied the right to use its own property as it wished for a year.

Source: Pacific Legal Foundation

Supreme Court Denies Lake Tahoe Property Owners Compensation for the Loss of the Right to Build on Their Lots

Lying on the Nevada-California border is beautiful Lake Tahoe, justly famous for its strikingly clear water.

The water's unusual clarity stems from the absence of algae, which cannot thrive in Lake Tahoe because the lake lacks nitrogen and phosphorus, necessary to the growth of algae.

To maintain the lake's clarity and control development in the Tahoe Basin, the states of California and Nevada formed a Tahoe Regional Planning Agency (TRPA) in 1968 to "coordinate and regulate development in the Basin and conserve its natural resources."

To achieve its goals, the TRPA halted ongoing building projects in 1981 and, through a series of development moratoria, prohibited any new construction of condominiums, apartments or subdivisions. The moratoria halted development for just 32 months, but property owners have been unable to build on their properties for more than 20 years due to associated lawsuits.

Approximately 2,000 owners of improved and unimproved land in the Tahoe Basin and another 400 owners of vacant lots later formed the Tahoe Sierra Preservation Council (TSPC). They all purchased their properties before the TRPA was formed and all intended to build single-family homes for either vacation or retirement use. At the time of their purchases, such construction was authorized.

The TSPC sued in U.S. District Court, arguing that the moratoria constituted a "taking" under the Fifth Amendment. It won. The Ninth Circuit Court of Appeals reversed the ruling, and the property owners appealed to the U.S. Supreme Court.

The Supreme Court ruled that the mere enactment of a moratorium does not constitute a taking requiring compensation under the Fifth Amendment.

Because of the ruling, property owners such retiree Dorothy Cook, who paid \$5,500 for a 60-by-100 foot lot 20 years ago, cannot build a retirement home. Cook paid property taxes for the last twenty years, but now her main asset — the lot — has little value.

Source: Pacific Legal Foundation

Elderly Washington Property Owner Denied Use of Most of His Property

Seventy-three-year-old Vinton Erickson owns a five-acre parcel of land in Clark County, Washington that has been in his family for over 100 years. He wants to build a house on his property. The county will not grant him a building permit unless he sets aside a 25,730 square foot section of his property (almost 12 percent of the land) for a conservation area, and agrees to maintain it in its natural state indefinitely. In addition, the county wants a “buffer enhancement area” on his property of 17,825 square feet (over 8 percent of the land), which he must “enhance” by planting 279 trees and shrubs. For up to three years, Erickson would have to water the trees and shrubs, hire a “qualified wetland professional” to supervise all maintenance, replace any dying trees and install a fence around the area so wildlife won’t harm the vegetation.

Additional setback requirements on the sides of the property end up making almost 95 percent of Erickson’s property unsuitable for development. He is awaiting the county’s decision on his final application for development. If it is denied, Erickson plans to file a lawsuit for the regulatory “taking” of his property.

Source: Pacific Legal Foundation

Requirements on the sides of the property end up making almost 95 percent of Erickson’s property unsuitable for development.

Glossary

Administrative Procedure Act The federal act which established the rules and regulations for applications, claims, hearings and appeals involving governmental agencies. (dictionary.law.com)

Aggregate The mineral materials, such as sand or stone, used in making concrete. (dictionary.com)

Appellate Court A court of appeals which hear appeals from lower court decisions. (dictionary.law.com)

Beneficial Use The right to enjoy the use of something (particularly such pleasant qualities as light, air, view, access, water in a stream) even though the title to the property in which the use exists is held by another. (dictionary.law.com)

Circuit Courts A movable court in which the judge holds court sessions at several different locations for pre-specified periods of time. In the effect, the judge “rides the circuit” from town to town and takes the “court” with him/her. Formerly, the Federal District Courts of Appeal were called the Circuit Courts of Appeal. (dictionary.law.com)

Condemnation The legal process by which a governmental body exercises its right of “eminent domain” to acquire private property for public uses (highways, schools, redevelopment, etc.). Condemnation includes a resolution of public need, an offer to purchase and, if a negotiated purchase is not possible, then a condemnation suit. The government may take the property at the time of suit if it deposits money with the court in the amount of the government’s appraisal. (dictionary.law.com)

District Court In the federal court system, a trial court for federal cases in a court district which is all or a portion of a state. (dictionary.law.com)

Easement The right to use the property of another for a specific purpose. The easement is itself a real property interest, but legal title to the underlying land is retained by the original owner for all other purposes. (dictionary.law.com)

Eminent Domain The power of a governmental entity to take private real estate for public use, with or without the permission of the owner. The Fifth Amendment to the U.S. Constitution provides that “private property [may not] be taken for public use without just compensation.” (dictionary.law.com)

Endangered Species Act Congress passed the Endangered Species Act (ESA) in 1973 to conserve “the ecosystems upon which endangered and threatened species depend” and to conserve and recover listed species. The law is administered by the Interior Department’s U.S. Fish and Wildlife Service and the Commerce Department’s National Marine Fisheries Service. The 1973 law has been re-authorized seven times and amended most recently in 1988. While the ESA has not been re-authorized since 1993, Congress has continued to appropriate funds to allow the law to continue to be administered. As of December 31, 2001, 1,254 U.S. species have been listed. Four animals and two plants have been recovered in nearly 30 years. A “take” under ESA means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect or attempt to engage in any such conduct.” The Secretary of the Interior, through regulations, defined the term “harm” in the previous passage to mean “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.” (U.S. Fish & Wildlife Service)

Forfeiture The loss of a right, money or especially property because of one's criminal act. (findlaw.com)

Grazing Allotments Federal lands upon which private individuals graze livestock. (nv.blm.gov)

Grazing Permits An authorization that permits the grazing of a specified number and class of livestock within a grazing district on a designated area of grazing lands during specified seasons each year (Section 3 of the Taylor Grazing Act). (blm.gov)

Just Compensation The full value to be paid for property taken by the government for public purposes guaranteed by the Fifth Amendment to the U.S. Constitution. If the amount offered by the governmental agency taking the property is not considered sufficient, the property owner may demand a trial to determine just compensation. (dictionary.law.com)

Lien Any official claim or charge against property or funds for payment of a debt or an amount owed for services rendered. A lien carries with it the right to sell property, if necessary, to obtain the money. (dictionary.law.com)

National Monument The Antiquities Act of 1906 authorizes the President to proclaim "historic landmarks, historic and prehistoric structures and other objects of historic or scientific interest" as national monuments. Congress also has the authority to establish monuments, and has done so 38 times. (National Park Service)

Patent A grant of public land by the government to an individual. (dictionary.law.com)

Quiet Title Action A lawsuit to establish a party's title to real property against anyone and everyone, and thus "quiet" any challenges or claims to the title. Such a suit usually arises when there is some question about clear title or an easement used for years without a recorded description. (dictionary.law.com)

Regulations Rules and administrative codes issued by governmental agencies at all levels — municipal, county, state and federal. Although they are not laws, regulations have the force of law, since they are adopted under the authority granted by statutes, and often include penalties for violations. One problem is that regulations are not generally included in volumes containing state statutes or federal laws but often must be obtained from the agency or located in volumes in law libraries and not widely distributed. The regulation-making process involves hearings, publication in governmental journals which supposedly give public notice, and adoption by the agency. The process is best known to industries and special interests concerned with the subject matter, but only occasionally to the general public. Federal regulations are adopted in the manner designated in the Administrative Procedure Act, and states usually have similar procedures. (dictionary.law.com)

Right of Way An easement or servitude over another's land conferring a right of passage. (findlaw.com)

Settlement Agreement In a civil lawsuit, the document that spells out the terms of an out-of-court compromise. (lectlaw.com)

Special Use Permit An authorization from an appropriate government body (as a zoning board) for a use of property that is a special exception: lawful approval for a special exception. (findlaw.com)

Glossary

Standing The right to file a lawsuit or file a petition under the circumstances. (dictionary.law.com)

Stay A court-ordered short-term delay in judicial proceedings. (dictionary.law.com)

Summary Judgement A decision made on the basis of statements and evidence presented for the record without a trial. It is used when there is no dispute as to the facts of the case, and one party is entitled to judgement as a matter of law. (lectlaw.com)

Taking A seizure of private property that is caused by government action and especially by the exercise of eminent domain and for which just compensation to the owner must be given according to the Fifth Amendment to the U.S. Constitution. *Note: A governmental action that results in a mere diminution in property value is less likely to be considered a taking than one that deprives the owner of economically viable use of the property.* (findlaw.com)

Wetlands Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. (Section 404 of the Clean Water Act: How Wetlands are Defined and Identified)

Wilderness Areas These are areas of undeveloped Federal land that retain their primeval character and influence, without permanent improvement or human habitation, and that are protected and managed so as to preserve their natural conditions. They: (1) generally appear to have been affected primarily by the forces of nature, and human imprints are substantially unnoticeable; (2) have outstanding opportunities for solitude or a primitive and unconfined type of recreation; (3) have at least 5,000 acres of land or are of sufficient size as to make practicable their preservation and use in an unimpaired condition and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value. Wilderness Areas are Congressionally designated. *Note: 100 million acres in the U.S. have been designated wilderness (ten times more acres than when the Wilderness Act was enacted in 1964). In wilderness areas, no permanent roads are allowed, no motor vehicles may be used, no commercial enterprise is allowed, aircraft may not land in these areas, no structures can be maintained and no other form of mechanical transport is allowed.* (blm.gov)

Willing Seller A person who wants to sell and is under no compulsion of any type to do so — not pressure from government as to species limitations, not pressure from regulatory agencies limiting land use and no compulsion of any kind. (paragonpowerhouse.org)

Writ An order or mandatory process in writing issued in the name of a court or judicial officer commanding the person to whom it is directed to perform or refrain from performing a specified act. (findlaw.com)

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*Congressman Richard Pombo,
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