

琉球大学学術リポジトリ

米国管理下の南西諸島状況雑件 沖縄関係 毒ガス問題 毒ガス撤去第一次移送(1)

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アメリカ局長
参事官
北米第一課長

秘密標記 (赤色)

(報) 火第 232 号

昭和 45年4月27日

外務大臣 殿

在

在シアトル
林田 總領事

(件名) 沖縄からの毒ガス等搬去問題について(報告)

引用公・電信
日付・番号

4月21日付「The Seattle Times」紙、及び22日付「Seattle

Post-Intelligencer」紙、は Dan Evans オレゴン州知事及び

Tom McCall オレゴン州知事が 21日 Laird 国防長官を相

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本信送付先:

本信写送付先: 米, ポートランド

配付送:

要処理
首席事務官
南
渉外調査
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協力
連絡調整
調査
力子夕
局庶務

45.4.30

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889 在外公館

年どつて、連邦裁判所に対し沖縄からオレゴン州北西部へ
の神聖ガス及び他の化学兵器の搬入を停止するよう要請した。
右訴訟は国防長官が両州の軍事局及び民間防衛機^構に対し、
ワ州 Bangor 協軍弾薬庫からオ州の Hermiton 近の毒ガ
ス運搬の安全確保の責任を課し「これは不法行為であり、
右運搬の安全確保は連邦政府の責任である旨非難する」
と云い、一般大衆の^保護及び安全に如何なる危険も起ら
ないことを保証された近搬入停止命令を要請したとの
である、と報道している中で、関係記事別添の上 併参考
送し報告申上げる。

GA-4

外務省

アメリカ局長

秘密標記(赤色)

参事官

北米一課長

Handwritten signature

(報) 大 第 267号

昭和 年 月 日
昭和45年5月15日

外務大臣 殿

在

シアトル
高橋 総領事代理

(件名) シアトル市長の演説と神経毒ガス問題(報告)

引用公・電信
日付・番号 5月11日付往信才264号に依り

万博参加の演説日にいた Ullman 当地市長は6日、7日と激

しく断った。学生デモ騒ぎは心配(2訪日予定を繰り上げ完遂

罷任上、同日連邦裁判所前に集まった約10,000人の学生デモ

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本信写送付先: 米、ポトランド

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- 首席事務官
- 南
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- 局庶務



GA-3-1

在外公館

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添付あり

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向かへ演説を行なったが、その中で神経毒ガス搬入問題に
 触れ、神経毒ガスのワシントン州由 Umatilla 兵器庫(ワシントン州
 境から約150km 離れたオレゴン州内にある)への輸送は自分が
 エバンス ワシントン州知事とマッコル オレゴン州知事と連絡で
 行なっている新設が片付いていないのに遅れていると述べ、デモ
 学生から大きな拍手をあげた。

同日午後、続いてワシントン州立大学植物学教授 Kruckeberg
 もこの問題に言及し、神経毒ガス輸送の物理的、道徳的危険
 につき警告を發し、この毒ガスは貯蔵すべきではなく、破壊すべ
 きであると述べた。

なおこのデモ参加者の中には神経毒ガスの持ち込み反対
 している者が少なくあり、神経毒ガス持ち込み反対がデモのオ
 ンナの理由でもあったともあり、なお演説はデモ参加者
 から喝采をもらって受け入れられた。

南緯記事切抜を添え、何等ご参考迄に右ご報告申し上げます

GA-4

外務省

アメリカ局長
参事
北米一課長

秘密標記 (赤色)

(報) 次 第 269 号
昭和 45 年 5 月 18 日

外務大臣 殿

在

在 シアトル
高橋 総領事代理



要処理
首席事務官
南
渉外調査
業
航空
科学協力
経路調整
調査
カナダ
原庶務

45.5.25

(件名) 仲繩毒ガス持込み反対デモ(報告)

引用公・電信
日付・番号
5月17日朝当市の中心街近くで仲繩毒ガス持込み反対派の

人々(PANG)約100名が仲繩毒ガスをワシントン州を空で

オレゴン州の UMITILLAへ運が込むことに反対して、モレ河

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毒ガスがラッシュアワー時にシアトルで洩れ、警察の注意
結果を生ずるであろうとの実演デモを行ない、通行人の注目
を集めていた。

もし仲繩毒ガスの当地通過が認められるとに於ては、
約1500億人を殺害し得る量の毒ガスが当地を通過するもの
と推定されている。

関係新聞記事切抜を添え、何等ご参考までに右報告
申し上げます。

GA-4 外務省

アメリカ局長
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北米第一課長

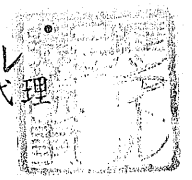
秘密標記(赤色)

(報) 第 284 号

昭和 45 年 5 月 22 日

外務大臣 殿

在
在 シ ア ト ル
総領事代理



- 要処理
- 首席事務官
- 渉外
- 漁業
- 航空
- 科学
- 連絡調整
- 調査
- カナダ
- 局庶務



(件名) 神縄毒ガス持込み反対グループ(PANG)の実態(報告)

引用公・電信 日付・番号 5月18日付往信オ269号に关し

冒頭往信にて報告申し上げたデモは規模が小さかったと等
から当地では通行人が立ち止まった。興味半分で見とれ
いた程度で、当地新聞等もさほど大きな取り上げ方は
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配付送:

しなかつたが(冒頭往信別添紙参照)このデモの方法が奇異であ
ったこと(dead-in方式)から各方面から注目された。この
デモを実施した「神縄毒ガス持込み反対グループ」即ち
PANG (peoples against nerve gas) は当地における神
縄毒ガス持込み反対の先鋒であり、これはデモやマスクを
通じて神縄毒ガスの持込み阻止努力を精力的に行っている
団体である。このPANGの実態につき当館で得た情報は要約
するにほつ次の通りである。
1. このグループはオレゴン州、ワシントン州、B.C州(カナダ)の各
大都市に支部を設置してあり、ワシントン大学教授 John
Prothero がこのグループの会長で、本拠はシアトルにある。
支部はオレゴン州、ワシントン州、B.C州(カナダ)の各大
都市に設置されている。
2. メンバーは学生、サラリーマン、家庭の主婦等多岐にわた
っており、神縄の毒ガス持込みに反対の人なら誰でも参加

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びきり止まっている。シアトル地区で常時陸路に活動し
 ているメンバーは約30人である
 3. 活動方法としてはモ、議員等への陳情書の作成、マスコミ
 (T.V. ラジオ 新聞)の利用、講演会等におよんでいる。
 またこのグループは来る24日(日)の当地紙 Seattle
 Post-Intelligencer 及び The Seattle Times にも
 大々的に「神経毒ガス持込み反対」の広告を出す予定
 を立てている。

GA-4

外務省

要処理

首席事務官
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 渉外調査
 漁業
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 査
 力子夕
 局庶務

45.6.5
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アメリカ局長
 参事官
 北米第一課長

秘密標記(赤色)

() 以次第 295 号

昭和 5年6月1日

外務大臣 殿

在

在シアトル
為橋 総領事代理



(件名) 神経毒ガスのN.W持込み中止決定に因り
当地の反響(新聞報道)

引用公・電信
日付・番号 往電才38号に因り

5月24日付当地各紙は Operation Red C Hat 計画と
 呼ばれた 神経毒ガスのN.W持込み計画が23日突如
 中止されたことを一因として取り上げ、
 直に歓迎した

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① 沖繩毒ガス

いる。しかし他方 N.W に代わってオレゴン候補にアラスカのコーディアック
 オス候補にゲーム島が上げられているとされ、これに対し当地
 では N.W を支持し、アラスカをはじめ、米国内への持込み
 のものに対し反対で、神繩又はその周辺で本件毒ガス毒
 の非毒化処理を行なうべきで、それの方がより経済的
 であるとの考え方がかなり強い。24日付の当地各紙の反
 響は要旨次の通りであるので関連記事切抜きを添え、
 何れもご参考を乞ふに右ご報告申し上げます。

1. ジャクソン議員は4月21日付書簡をもって大統領に対し、
 当地では本年当初より爆弾事件が40回以上も発生して
 いることに鑑み、神繩毒ガスの当地輸送中にサボタージュ
 が発生する危険が強い旨進言していたと云う5月23日
 大統領は同議員に対し、Operation Red C Hat
 計画を中止する旨伝えられた。

また同議員は多くの危険物が米国内を横断輸送されていることに鑑み、大統領に
 2. マクナモン議員も政府の中止決定を歓迎した。しかし

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* 直轄の Task Force を任命し調査するよう提議した。しかしこの案について
 は同人は大統領より何卒回答を待たない。

大統領がこの政府決定をジャクソン議員のみに通知し、同
 議員に対し連絡しなかったことに対して多少の感念味を
 あげた。

なお同議員は本件毒ガスがアラスカに輸送されること
 についても反対で、要するに、ともとも米国内に搬入される
 ことに反対し、従って本件毒ガスは神繩又はその他の地域
 での処分をせよとの態度をとっている。

3. P.A.N.G は5月24日(日)の当地2大紙 The Seattle
 Times (夕刊) 及び P.I (朝刊) に「神繩毒ガスの N.W
 持込み反対」の大広告を出す予定であったが(経電中
 33号4. 後段参照)、政府の突然の N.W 搬入中止決定に
 より大きく予定が狂った。しかし P.I 紙には、最初の予定
 を多少変えて広告を出し(別紙上の広告)、シアトル紙に
 への広告は中止した。

しかし政府の本件決定については P.A.N.G としても非常

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外務省

に輸入しては迎え入れた。しかし同団体としてはアラスカを
 も含む米国内への本件毒ガス持ち込みには反対と見
 本件毒ガスの伸縮又はその周辺で無毒化処理 de-
 toxicate すべき。このうち経済的でもあるとしている。
 4. アラスカでの毒ガス持ち込みに対し、反対派と賛成派に意見
 が分かれており、反対派はアラスカ州知事 アラスカ州陸軍兵員
 Mike Gravel 等が、~~賛成派~~ 賛成派は Hadick が経済的
 に不景気であるとの毒ガスの持ち込みを根拠として経済的立ち
 直りを図らうと意図しているようである。
 5. 地方

GA-4

外務省

要処理
 首席事務官
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 渉外調査
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 科学協力
 連合調整
 調査
 力十分
 局庶務

45.5.25
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秘密標記(赤色)

アメリカ局長
 参事官
 北米課長

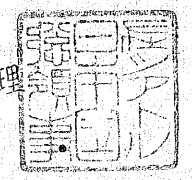
第 285 号

昭和 44 年 5 月 23 日

外務大臣 殿

在

在 シアトル
 総領事代理



(件名) 神舞毒ガス搬入差止命令請求訴訟
 裁判記録写送付

引用公・電信
 日付・番号

本件裁判記録写一部別添送付あり。

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1112 在外公館

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

WESLEY UHLMAN, WILLIAM HOUFF,
CARL WILTERMOOD and PEOPLE
AGAINST NERVE GAS, individually
and on behalf of all others
similarly situated,

Plaintiffs,

vs.

MELVIN LAIRD and JOHN J. HAYES,

Defendants.)

CIVIL ACTION NO. 8906.

BE IT REMEMBERED that Defendants' Motion for
Change of Venue in the above cause was heard before the
Honorable WILLIAM T. BEEKS, a United States District Judge,
beginning Wednesday, April 29, 1970 at 1:30 p. m.

Plaintiffs were represented by Mr. Rand Jack,
Attorney at Law.

Defendants were represented by Mr. Albert E.
Stephan, an Assistant United States Attorney.

WHEREUPON, the following proceedings were had
and done, to wit:

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THE CLERK: Wesley Uhlman and others versus
Melvin Laird and others, Cause No. 8906.

MR. STEPHAN: The United States is ready, your
Honor, for the defendants.

MR. JACK: The plaintiffs are ready, your Honor.

THE COURT: Very well. I will hear from you,
Mr. Stephan.

MR. STEPHAN: May it please the Court, this
matter comes on for hearing on the motion of the defendants,
The Secretary of Defense, Melvin Laird, and the Army
officer concerned with nerve gas, General Hayes, to transfer
the venue of this case from the Western District of Wash-
ington to the District of Oregon where there is now pending
another case involving substantially the same problems
and the identical facts.

We supported our motion for a change of venue
by my affidavit which in relevant part recites that this
case was filed April 22, 1970 and summons apparently served
upon the defendants by the Marshal at that time. No
service was made on the United States, but we were
immediately authorized to appear on behalf of the defend-
ants; that there is pending in the District Court of
Oregon a case, No. 70-252, entitled States of Oregon and
Washington versus Melvin G. Laird which has been assigned
to Judge Belloni; that the issues in said case involve the

1 possible shipping and transportation of nerve gas and other
2 chemical warfare agents across the states of Washington and
3 Oregon to a United States Army munition depot at Hermiston,
4 Oregon, and that injunctive relief is sought similar to
5 that sought in the instant case.

6 I should now correct the fourth paragraph and
7 delete the fifth paragraph of my affidavit. It recites,
8 "The defendants are advised that plaintiffs have moved
9 for the United States District Court in Oregon to convene
10 a statutory three-judge court pursuant to the provisions
11 of the code." That recital is correct, but since that
12 time I had a telephone inquiry from Mr. Jack of counsel
13 for the plaintiffs and followed through by inquiry of the
14 office of the U. S. Attorney in Portland and received
15 back a confirming wire which reads, "Confirming your
16 inquiry in Civil No. 70-252, which is States of Oregon
17 and Washington v. Laird, this is to inform you that Judge
18 Belloni on reconsideration has denied a three-judge court
19 and will retain jurisdiction in the District Court. The
20 States of Oregon and Washington do not oppose this."

21 I then recite that, "Various affidavits relating
22 to the subject matter of the transportation of nerve gas
23 have been filed in the United States District Court for
24 Oregon and that the convenience of parties and witnesses
25 and the interest of justice would accordingly be served by

1 the transfer of the Uhlman case to the District Court in
2 Oregon for hearing, trial and all further proceedings,"
3 and supported it by a brief memorandum of authorities,
4 recognizing the normal incident of plaintiffs' choice of
5 a forum but pointing out that the complaint shows on its
6 face there are only three individual Washington plaintiffs
7 and that the class action purports to represent various
8 citizens in Washington, Oregon and British Columbia with
9 chapters in each of the two states and province, and that
10 the prior pendency of the action in Oregon involves sub-
11 stantially the identical fact situation together with the
12 affidavits of record in that case as an additional reason
13 for transfer.

14 Now, in counter to our motion and affidavit we
15 received on April 27th a memorandum of authorities in
16 opposition. First of all, it is not supported by any
17 affidavit. Secondly, in light of the complaint and the
18 facts of record before this Court I think that its con-
19 tentions may be very substantially modified, and I have
20 sought to edit it. I will try to read it slowly so that
21 my friend for the plaintiffs and the Court may see the
22 changes that I think reflect the true facts.

23 Paragraph 1 is correct; the plaintiffs have
24 chosen this forum.

25 Paragraph 2 should read --

1 THE COURT: What are you reading from?
2 MR. STEPHAN: I am reading a paraphrase which
3 I think is correct of their --
4 THE COURT: Of their memorandum?
5 MR. STEPHAN: Of their memorandum of authorities.
6 THE COURT: When you refer to paragraphs then
7 you refer to the numbered paragraphs of plaintiffs'
8 memorandum?
9 MR. STEPHAN: Yes, your Honor.
10 THE COURT: All right.
11 MR. STEPHAN: Paragraph 2, contrary to its
12 language I think should read, "Only three individual
13 plaintiffs reside in the State of Washington. All of the
14 other plaintiffs comprise citizens and members of chapters
15 of an unincorporated organization called People Against
16 Nerve Gas resident in the States of Oregon, Washington and
17 British Columbia."
18 Paragraph 3 should read, "The cause of action
19 arising in the States of Washington and Oregon."
20 Paragraph 4 should read, "This suit seeks relief
21 that is explicitly expanded to the State of Washington as
22 to the water terminal and as to the State of Oregon as to
23 subsequent transportation and destination in that state."
24 Paragraph 5 should read, "Given the limited
25 geographical reach of relief sought, this is a matter of

1 particular concern to the people of both states."
2 Paragraph 6 should read, "Since the Oregon suit
3 mentioned by the defendants is to be heard by a district
4 court, this case could be consolidated with it."
5 Paragraph 7 should read, "The issues in this
6 case are substantially the same as those at issue in the
7 Oregon suit. Both cases now --"
8 THE COURT: Well, the factual issues are perhaps,
9 but maybe the legal issues are different.
10 MR. STEPHAN: Well, the factual issues are
11 identical. The legal theories I think dovetail and to
12 some extent are not exactly parallel. But once the factual
13 issues are presented and once the matter is considered on
14 various motions it would appear very likely, based upon
15 my own experience, that a motion to consolidate the two
16 cases would lie and the pretrial order could clarify just
17 what legal issues are before the Court. Whatever legal
18 issues are before the Court would have the identical impact
19 of either permitting or not permitting the relief sought,
20 which is primarily to stop the transportation of the
21 chemical commodities.
22 And the last part of paragraph 7, that last
23 phrase beginning on line 21 I think should read, "Both
24 cases now raise questions of compliance with federal
25 statutes designed to protect human safety and environment."

1 Paragraph 8 should read, "All of the attorneys
2 for the plaintiffs reside in Seattle, Washington. Attorneys
3 for defendants if venue is changed will be in Oregon and
4 from the Department of Justice without the necessity of
5 responding in both states."

6 Paragraph 9 should read, "The defendants are
7 ably represented by counsel in Seattle, Washington in
8 conjunction with identical counsel from the Department of
9 Justice in the District of Columbia who would otherwise
10 be required to appear more or less simultaneously in
11 Oregon and in Washington." The remaining portion is
12 argumentative.

13 I will come presently to the reference to 28
14 U.S.C. 1391 shown at page 3, line 4 of the memorandum.
15 I'm not sure whether the reference was really intended
16 because 28 U.S.C. 1391 was amended in 1962 by a very
17 significant and relevant amendment here, and I don't know
18 whether or not plaintiffs' counsel are aware of that. In
19 any event I will come to it shortly.

20 And then in conclusion of their memorandum I
21 would paraphrase it to read and alter it to read, "The
22 defendants have shown meritorious reasons for a change of
23 forum. There are only three plaintiffs. The attorneys
24 for plaintiffs but not for defendants and only part of
25 the cause of action and the relief sought are in the State

1 of Washington. The suit is closely parallel to the case
2 pending in Oregon arising out of identical facts and the
3 two cases can be consolidated in one district court.
4 Every circumstance of convenience and justice points to
5 the District of Oregon where the first case was filed and
6 is now pending and which is a proper transferee forum.
7 Under these conditions the choice of forum by only three
8 plaintiffs should be declined."

9 So much for our differences as to the factual
10 issues.

11 Now, I think that in considering this juris-
12 dictional matter there are two relevant sections of 28
13 U.S.C. One is 1404, to which reference has been made,
14 and the other is 1391. 1391(b)(4)(e) --

15 THE COURT: That is the venue statute?

16 MR. STEPHAN: Yes, your Honor, that is the venue
17 statute. -- provides in relevant part that, "A civil
18 action in which the defendants are United States officers
19 may be brought where the plaintiff resides."

20 Now, looking to the legislative history, and I
21 furnished to the Court's clerk and also to Mr. Jack for
22 plaintiffs the references that I rely upon and Xeroxed
23 copies of them. Turning to the portion in the legislative
24 history which is contained in 1962 Congressional and
25 Administrative News, 2784, at pages 2786 and '87, I

1 underlined so that everyone might conserve time, the portions
2 that I thought were relevant.

3 At 2786 the Court points out, "The broadened
4 venue provisions in this bill will assist in achieving
5 prompt administration of justice by making it possible to
6 bring these actions in courts throughout the country many
7 of which are not nearly as burdened as the District Court
8 for the District of Columbia."

9 And then at page 2787 I think this is particularly
10 important in understanding our position here. This bill,
11 your Honor, originated with the Administrative Office of
12 the United States Courts by Warren Olney III, Director,
13 and in his letter of June 14, 1961 to Chairman Celler of
14 the House Judiciary Committee he states in his opening
15 sentence, "This is in response to your request for a
16 report on H.R. 1960, a bill which would permit a civil
17 action to be brought against an officer of the United
18 States in any judicial district where" - and I underscore
19 the next word - "where any plaintiff in the action
20 resides."

21 Thus the terse language of the statute
22 enlightened by the legislative history shows that, given
23 a situation where these citizens of the People Against
24 Nerve Gas Associations live in Oregon, obviously it could
25 be brought there, it could be transferred there. So the

1 only question that really remains is one of jurisdictional
2 exercise of discretion, the propriety of transferring from
3 one to the other.

4 Well, there are comparatively few cases that
5 we have located on the narrow issue before us. There are
6 cases abundant that a Court has discretion, and each case
7 turns on its own particular facts. I think that it would
8 be important to look at two of these cases which I have
9 furnished to the Court and to opposing counsel.

10 Freiman versus Texas Guly Sulphur in 385 F.R.D.
11 336, an Illinois District Court decision --

12 THE COURT: That is Judge Will's decision,
13 isn't it?

14 MR. STEPHAN: Yes, your Honor, that is by
15 District Judge Will, and in that action he held that
16 discretion was properly exercised under this type of a
17 so-called spurious class action, not meaning in any way
18 to derogate the type of action but just to distinguish
19 it from a genuine class action where the true rights of
20 the parties are before the Court, and says, "One effect
21 is to enable the courts to avoid the wasteful duplication
22 of judicial effort inherent in multiple litigation with
23 its attendant burdens on other litigants whose cases must
24 mark time in the process."

25 Dropping a few lines after the citation of

1 Supreme Court cases he continues, "Where the occurrence
2 gives rise to litigation involving numerous potential
3 plaintiffs situated throughout the country, the
4 beneficial" - skipping a bit - "the beneficial effect of
5 the modern rule cannot be realized unless the multiple
6 class actions can be brought together in a single forum."

7 Then continuing over onto page 339, "Plaintiffs
8 apparently recognize that their claim to a suit in the
9 forum of their choice is weakened by the pendency of
10 related class actions here and in New York."

11 Dropping again a few lines, "Contrary to the
12 plaintiffs' suggestion, the distinction between true and
13 spurious class actions weighs more heavily in favor of
14 transferring all so-called spurious class actions to a
15 single forum."

16 The Court then continuing observes toward the
17 bottom of column one of that page, "The factor is of
18 particular importance where the courts are called upon to
19 resolve complex bail questions of substantial importance."
20 And no one can dispute that the questions presented here
21 are of substantial importance. "The validity or invalidity
22 of the legal questions raised will doubtless be reached
23 in due season by motions or by trial."

24 Another similar case is Thomas v. Silver Creek
25 Coal Company, a Pennsylvania District Court decision of

1 1967 which among other things says, "The travel inconvenience
2 to defense counsel would not require that transfer be
3 barred under change of venue." Then it quotes from a
4 Supreme Court decision in VanDusen v. Barrett in 376 U.S.
5 1964 which holds in part, "Section 1404(a) reflects that
6 increased desire to have federal civil suits tried in the
7 federal system at the place called for in a particular
8 case by considerations of convenience and justice. Thus,
9 as the Court said in an earlier Supreme Court decision," -
10 quoting within the text there - "'The purpose of the
11 section is to prevent the waste of time, energy and money
12 and to protect litigants, witnesses and the public against
13 unnecessary inconvenience and expense. To this end it
14 empowers the district court to transfer any civil action
15 to another district court if the transfer is warranted
16 by the convenience of the parties and promotes the interest
17 of justice.'" And it continues with an amplification of
18 the reason justifying this in the interest of justice.

19 I have furnished to counsel for the plaintiffs
20 and to the Court's clerk portions which I have underscored
21 which appear to me to be parallel.

22 I have only then a few other things to say. It
23 might be said, I think it is suggested somewhere here that
24 there would be inconvenience to counsel. Well, so far as
25 the United States is concerned for the defense, there would

1 be no inconvenience because either I would participate for
2 the defense of this case in this jurisdiction, assisted by
3 the office of the Department of Justice in Washington, D.
4 C. and such others as are necessary, and my counterpart in
5 Portland, Oregon would do exactly the same.

6 We turn then to whether there is any real incon-
7 venience to the plaintiffs. I think the Court can come
8 nigh to taking judicial notice and probably counsel for
9 plaintiffs would accede that their participation in this
10 case is a commendable exertion of a pro bono publico repre-
11 sentation by and through the American Civil Liberties
12 Union, and Mr. Jack is a member of a fine firm here in the
13 city.

14 Now, in Oregon exactly the same situation exists.
15 For example, and I don't want to --

16 THE COURT: Did you say that was Mr. Jack of the
17 Oregon Bar that advised you?

18 MR. STEPHAN: No, no. No, Mr. Jack of counsel
19 here is, as I say, a member of a fine --

20 THE COURT: There is a very eminent Mr. Jack
21 who is a member of the Oregon Bar. I know him quite well.
22 Are you related to him by any chance?

23 MR. JACK: No, sir, I'm not.

24 THE COURT: I see.

25 MR. STEPHAN: Well, I tried to get during the

1 noon hour some information, and I called up Allan Hart
2 of the firm of Lindsay, Nahstoll, Hart, Duncan, Dafoe &
3 Krause. He wasn't in. He happens to be a brother-in-law
4 of mine. I asked to talk to one of the other lawyers whom
5 I know down there. It's an excellent firm, and he told
6 me that one of the members of their firm, a young man
7 named Carl Neil, has participated in such activities. I
8 know the firm of Cake, Jaureguy and so forth in Portland,
9 and --

10 THE COURT: What are you establishing by this?

11 MR. STEPHAN: It just means that there is no
12 inconvenience to ACLU and its attorneys in the transfer of
13 this case from Washington to Oregon because in either
14 instance I believe it to be the fact that able pro bono
15 publico representation would be made on their behalf. It's
16 just to get over that further hurdle.

17 Lastly, I think the Court may take judicial
18 notice of the unique nature of our crowded trial calendar
19 in this Western District of Washington arising not only
20 of an increased heavy load of regular cases but arising
21 out of the impending criminal trial of the so-called
22 Seattle 8, of impending grand jury Indictments that have
23 been filed, of civil rights litigation and the like, all
24 of which are factors. It is not to say that there is not
25 similar --

1 THE COURT: Oregon may think they are busier
2 than we are, you know.

3 MR. STEPHAN: They may, your Honor, they may,
4 but they don't happen currently to have had, beyond the
5 busyness which all of us experience, some unique matters
6 that will impinge upon the time of our courts.

7 And so I conclude where I began, by supporting
8 this motion for a change of venue to the District Court
9 of Oregon based upon our own affidavit and based upon my
10 paraphrase of the memorandum of authorities of the
11 plaintiffs which I believe in the light of the record
12 before this Court abundantly support and justify its
13 exercise of discretion to transfer this case to Oregon
14 where a companion case has previously been filed and is
15 now pending before that court. Thank you, your Honor.

16 MR. JACK: May it please the Court. Your Honor,
17 I'm Rand Jack and I represent the plaintiffs in this
18 lawsuit. I very much appreciate Mr. Stephan's attempt
19 to rewrite my memorandum. However, I must disagree with
20 the substance of his rewriting, for there are some vital
21 errors in his rephrasing, I believe.

22 To begin with and perhaps most importantly, the
23 issues in this case are different than the issues pending
24 in the Oregon case.

25 THE COURT: You mean the legal issues or the

1 factual issues?

2 MR. JACK: Both the legal issues and the factual
3 issues, your Honor.

4 THE COURT: How can the factual issues be
5 different?

6 MR. JACK: The factual issues in our case
7 primarily are two. One, has the government complied with
8 the Environmental Policy Act, and two, has the government
9 complied with the considerations set forth by the Surgeon
10 General.

11 The issue of fact in the suit in Oregon is a
12 constitutional issue that merges with the legal issue,
13 and that concerns the burden and onus that has been placed
14 upon the states by the Department of Defense.

15 It seems to me that you might analogize the
16 situation with which we are confronted to the situation
17 of trying to stop the Pilots from leaving Seattle. You
18 might have one suit brought in one place, an antitrust
19 suit invoking the antitrust laws, and you might have
20 another suit brought in another place saying that the
21 Pilots couldn't leave because of a breach of contract.
22 Certainly in both cases you are trying to stop the Pilots
23 from leaving. However, in one case the issue is whether
24 or not there was a breach of contract, in the other case
25 the issue is whether or not there was a breach of the

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antitrust laws.

Simply because the parties seek to accomplish the same end does not mean that either the legal or the factual issues relevant in the case are the same. The factual issues are governed by the legal pleadings, and the legal pleadings in this case are vastly different.

If the government is going to contend that the issues are in fact the same, the burden is on the government to come forth and show that they are the same. The government has done nothing of the kind in this case.

The second point that I might bring up with regard to Mr. Stphan's rephrasing of my memorandum, he seems to have failed to carefully read the complaint. The relief asked for in this case is specifically limited to the State of Washington. We only ask that the nerve gas not be moved through the State of Washington until certain federal laws are complied with. In this case we have not tried to affect the movement of the gas in Oregon but have limited the cause of action, that is the movement of the gas through the State of Washington as well as the relief to this state. We did this specifically because the parties that we intended to be the parties to this suit live in the State of Washington and would not have standing to challenge the movement of the gas through the State of Oregon.

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We have listed a class, and again Mr. Stephan has misconstrued what persons can constitute that class. I believe it is set forth very clearly in the complaint when it says, "The plaintiffs' class is comprised of all residents of the State of Washington who reside within a 40 mile radius of the proposed route for transportation of the nerve gas." The class does not extend beyond the State of Washington. It is limited to the State of Washington.

In the enumeration of chapters of the organization called People Against Nerve Gas there was a mention of chapters that were not in the State of Washington. However, this enumeration was for the purpose of demonstrating widespread concern with regard to this government action, and --

THE COURT: It may be that you do maintain it as a class action and you ask for the Court's approval of it.

MR. JACK: Your Honor, we maintain it is a class action only as specified in the complaint, and that is for the residents of the State of Washington residing within 40 miles of the proposed route of travel of the nerve gas. The class does not extend beyond the residents of Washington. You will find on page 3 of the complaint the first paragraph on that page the class is specifically

1 limited, and if you will turn to the prayer for relief,
2 the relief is specifically limited to the State of Wash-
3 ington.

4 THE COURT: Well, that may be, the relief, but
5 one of the actions in Oregon asks for the same type of
6 relief, doesn't it?

7 MR. JACK: I'm not sure, your Honor. But with
8 the relief limited to the State of Washington any resident
9 of Oregon would have no standing before this Court to ask
10 that an injunction be issued to halt action in the State
11 of Washington. Only residents in this state would have
12 standing in those regards.

13 Furthermore, Mr. Stephan has intimated that
14 these cases could be consolidated in the State of Oregon.
15 I do not believe that under Rule 42 the cases could be
16 consolidated. Under Rule 42 cases can be consolidated
17 only if there are common questions of law and fact. Here
18 we do not have common questions of law and fact. We have
19 a different legal theory to which different facts apply.

20 Certainly if it were possible to consolidate
21 the cases in Oregon, then the pendency of the other case
22 would be a factor to be considered. However, it is well
23 established that this is only one of many factors to be
24 considered, and for this proposition I refer your Honor
25 to 1 A.L.R. Federal at page 77: "The factor as to pendency

1 of another action, however, is not controlling. Thus, in
2 some cases the courts have refused to grant a transfer
3 although an action involving the same or substantially
4 similar --"

5 THE COURT: Oh, I understand that, Mr. Jack.
6 You can save yourself the time.

7 MR. JACK: Okay. With regard to the two cases
8 that Mr. Stephan seems to rely heavily on, I have briefly
9 gone through those cases and find that in the Freiman case
10 there are seven factors that substantially differentiate
11 that case from our case.

12 In the Freiman case there were factual assertions
13 and legal theories in different --

14 THE COURT: Is that the Texas Gulf Sulphur case?

15 MR. JACK: Yes, it is, your Honor. The factual
16 assertions and legal theories in the Freiman case revolved
17 around the now well-known Texas Gulf Sulphur controversy
18 in both the legal theories and the factual assertions,
19 and all of the cases brought were exactly the same. In
20 that case, the case was brought in Illinois and the motion
21 was to remove the case to New York. At the time of the
22 motion there were 29 separate lawsuits pending in New York.
23 Several of these purported to be a class action just as did
24 the Illinois suit. So I think the persuasiveness of that
25 case for removing this case is nonexistent.

4 time in order to resolve the difficult factual disputes
5 regarding the Texas Gulf Sulphur incident. There would be
6 a number of witnesses involved and vast, vast volumes of
7 documents. All of the witnesses and all of the documents
8 or substantially all of the witnesses and all of the
9 documents were already located in New York, and therefore
10 another persuasive reason in that case for moving the case
11 to New York.

12 It should be pointed out that in our case in all
13 probability there would be very little discovery and
14 probably no witnesses, since in both cases there are
15 basically the legal issues involved.

16 A fourth issue in the Freiman case which is
17 lacking here is that in the Freiman case there were
18 literally hundreds and perhaps thousands of potential
19 plaintiffs scattered all over the country and already
20 class actions were beginning to spring up all over the
21 country, and this was a very influential and persuasive
22 factor in causing the Court to move to transfer venue.

23 Again in this case we are only looking at two
24 states and the residents of those states.

25 A fifth element in that case is that all of the

1 significant acts that had taken place with regard to Texas
2 Gulf Sulphur or nearly all of the significant acts had
3 taken place in the State of New York.

4 A sixth element is the fact that of the plaintiffs
5 joining in the Illinois suit there were a number of them
6 that had no contact at all with Illinois.

7 And the final factor that differentiates that
8 case is the fact that a large majority of the plaintiffs
9 anticipating to be coming into the Texas Gulf Sulphur
10 controversy lived in New York.

11 So I think we have seven very persuasive factors
12 in addition to the mere pendency of another action that
13 caused the action to be moved in that case.

14 With regard to the Thomas versus Silver Creek
15 Coal Company, again there were differentiating factors.
16 In this case I have picked out five.

17 One differentiating factor was the fact that
18 the plaintiffs in that case were the ones moving for
19 change of venue. The plaintiffs, who initially had the
20 opportunity to choose venue, were here changing their
21 minds.

22 In that case also the change was not the drastic
23 change from one state to another but was rather a change
24 within the state from one district in the State of
25 Pennsylvania to another district in the State of Pennsyl-

1 vania. The forum to which the plaintiffs sought to move
2 their case had at the time that the motion was made 25
3 companion cases presenting substantially the same issues,
4 in the words of the Court, which were already in the
5 district to which the transfer had been sought. On these
6 cases 36 motions had already been heard.

7 A fourth reason for differentiating the Thomas
8 case is that the Court noted consolidation appeared most
9 likely in that case. As I have pointed out here, con-
10 solidation probably would not be allowed by Rule 42.

11 The final factors noted there is that the Court
12 calendar in the district where the suit had been brought
13 meant that the suit would not come to trial for some 42
14 months. If it were moved to the other district within
15 the same state it would come to trial within 16 months.

16 THE COURT: What you ask for here is an
17 injunction enjoining the movement of this into the State
18 of Washington, isn't it?

19 MR. JACK: Into and through the State of
20 Washington, your Honor.

21 THE COURT: Well, where in your prayer do you
22 ask anything about through the state? Paragraph 2 says,
23 "from the island of Okinawa to the State of Washington."
24 3 says, "from Okinawa to the state". 5 says, "from Okinawa
25 to the state".

1 MR. JACK: Your Honor, that --
2 THE COURT: And 6 says, "from Okinawa to the
3 state".

4 MR. JACK: Your Honor, you are absolutely correct
5 and that is a misstatement on our part. It is intended,
6 and we would move to so amend at the appropriate time,
7 that it is to the state and through the State of Washington.

8 THE COURT: You do in your facts allege the route
9 of transportation after it is landed here.

10 MR. JACK: Yes. I could go on and run through
11 the factors in the memorandum but I don't think that there
12 is any need to, the fact that the plaintiffs brought the
13 case and the presumption is that the forum chosen by
14 the plaintiffs is the proper forum and that the case will
15 remain in that forum unless the defendant comes forth
16 with a strong showing that the forum should be moved, and
17 I cite for authority amongst numerous other cases another
18 Texas Gulf Sulphur case, Texas Gulf Sulphur versus Ritter,
19 at 371 Federal 2nd 145. And also the weight that should
20 be given to the place of resident of the plaintiff is well
21 known, and I cite for authority Popkin versus Eastern
22 Airlines, 353 Federal Supplement 244. The convenience of
23 the witnesses is a factor that I don't --

24 THE COURT: I am familiar with those general
25 rules.

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MR. JACK: Yes.

THE COURT: The one and only thing that is bothering me here frankly is whether this action could have been brought originally in Oregon.

MR. JACK: Your Honor, --

THE COURT: There is no authority on it.

MR. JACK: I beg pardon?

THE COURT: There is no authority on it.

MR. JACK: No, there is no authority, and we would contend that under the general venue section, and we are aware of the amendment to the general venue section, that the action could not have been brought in the State of Oregon, both because of the wording of the statute and also because of the fact that as the class is constituted it is limited to residents of the State of Washington and therefore there are no plaintiffs in the State of Oregon.

THE COURT: All of your allegations are not exactly consistent with each other, and that is one of the things I must decide.

MR. JACK: I have nothing further, your Honor.

THE COURT: All right. Anything further, Mr. Stephan?

MR. STEPHAN: I have nothing of very much moment, your Honor. I do point out that in the allegations in the first cause of action they allege that the toxic chemical

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agent is to be transported by rail across large segments of Washington and Oregon, and they name as plaintiffs these various chapters of the People Against Nerve Gas composed of, reading in part, "citizens of the State of Oregon with chapters currently in existence" --

THE COURT: Yes, and that is inconsistent with their paragraph 9 under the heading Parties, page 2, line 1.

MR. STEPHAN: That's right, your Honor. And I don't know how far you can have with propriety and in connection with the exercise of discretion --

THE COURT: Well, let me say this: I am not prepared to rule on it. I will rule within 24 hours.

I will say this, that I seek to avoid wasteful duplication of judicial effort which is inherent in multiple litigation, and I think that class actions should be brought together in a single forum if that is legally possible. I am not sure at this moment whether that is legally possible in this case. That I must resolve, and I must do it from the allegations of the complaint, and I will do so.

MR. JACK: Your Honor, if I might be heard, have you had an opportunity to examine the complaint in the Oregon case?

THE COURT: No, I have not.

MR. JACK: Because it seems to me that the burden

1 is on the government if they are going to plead that the
2 suits are essentially the same to put in some evidence that
3 they are the same. It does not seem to me that they are in
4 any way the same. The two vital issues that we have raised
5 have not been raised in that suit, and that was the sole
6 and only reason that this suit was brought.

7 THE COURT: Well, I think the basic factual
8 issues must be substantially the same. There may be
9 variations. The Oregon cases are much broader in scope
10 than these actions because I assume that they are brought
11 on behalf of all of the people in the State of Oregon and
12 all of the people in the State of Washington might be
13 affected. I may be wrong about that.

14 MR. JACK: But, your Honor, relief could be
15 granted or denied in that case without giving any con-
16 sideration to the basic theories of our case, and that
17 primarily is compliance with the Environmental Policy Act.
18 Senator Jackson has publicly stated that in his opinion
19 this action was controlled by the Environmental Policy
20 Act, and yet that is not included in their lawsuit.

21 THE COURT: Well, they may want to fall back and
22 take on that one, too.

23 MR. JACK: They may, but I don't think that
24 this Court can act on the assumption that --

25 THE COURT: Well, I don't think I have to find

1 that the legal questions are identically the same or the
2 factual questions are identically the same. If I find
3 that they are substantially the same, I think that that
4 is all that I must do. But I am not satisfied in my own
5 mind at this moment that this action could have been
6 brought in Oregon. I must find that some of the bene-
7 ficiaries are of a class on whose behalf you bring the
8 action are residents of Oregon, and as I say, there is an
9 inconsistency in your two allegations and I don't know how
10 to resolve it. You bring them in and then maybe you
11 attempt to eliminate them, I don't know. But I will rule
12 within a period of 24 hours.

(Court was recessed at 2:15 p. m.)

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Thursday, April 30, 1970.

9:30 a. m.

(All parties present as before.)

THE CLERK: Wesley Uhlman versus Melvin Laird
and others, Cause No. 8906.

THE COURT: Did you have something preliminarily
you wanted to take up with the Court, Mr. Jack?

MR. JACK: Yes, your Honor. Late yesterday
afternoon after the Court had heard oral argument on the
motion to change venue the plaintiffs submitted an amended
complaint. We did this without leave of Court, deeming
that it was our right to do so under Rule 15, which says
that a party may amend its pleadings once as a matter of
course at any time before responsive pleadings are served.
We have been served with no answer in this case, and
therefore we thought it proper to serve and to file an
amended complaint.

We would ask the Court to make the decision with
regard to change of venue on the basis of the amended
complaint, for I believe that it clarifies the ambiguities
that the Court felt were in the original complaint.

We are prepared to make argument on the question
whether or not a motion for change of venue is a responsive
pleading if the Court deems it proper at this time.

THE COURT: You are opposing the motion I take it,

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Mr. Stephan.

MR. STEPHAN: Yes, we are, your Honor.

THE COURT: I will give you permission to file
your amended complaint, but I do believe that I must pass
upon the motion upon the pleading as it appeared at the
time of the motion, and I am prepared to do so. I am
going to file this morning a memorandum order which I
will read.

"Defendants have made a motion for change of
venue under 28 United States Code, Section 1404, to have
this action transferred from the Western District of
Washington to the District of Oregon.

"28 United States Code, Section 1404(a),
provides, 'For the convenience of parties and witnesses
and the interest of justice a District Court may transfer
any civil action to any other district or division where
it might have been brought.'

"In order to consider whether this action might
have been brought in Oregon this Court must consider 28
United States Code, Section 1391(e). The question is
whether Oregon residents are included as parties plaintiff.

"While there are several inconsistencies in the
complaint, after careful review thereof in its entirety
I find that Oregon residents were not intended to be
included and were not included as parties plaintiff.

1 "I find that the reference made to Oregon
2 chapters of People Against Nerve Gas was simply to illus-
3 trate that there are others concerned with this matter and
4 it was not intended to bring these Oregon residents into
5 this action.

6 "While I am greatly opposed to needless dupli-
7 cation of judicial effort, I am without authority to
8 transfer a case to a jurisdiction where it could not have
9 been brought. Accordingly it is ordered that defendants'
10 motion for change of venue is denied."

11 MR. STEPHAN: May it please the Court, in view
12 of the Court's order and in view of the duplicate liti-
13 gation, I want to orally move, and follow it with a written
14 motion, that this action be stayed pending the determination
15 of the Oregon case, so that the parties are not needlessly
16 burdened with coming to two jurisdictions. There is
17 assurance given in both the Oregon case and in the Wash-
18 ington case that no movement of the subject commodity will
19 be made until there has been a decision in the case. It
20 would be fruitless to have two different courts consider --

21 THE COURT: You may very well be right. Of
22 course I am not going to pass on that at this time, but
23 certainly you should make it in writing properly supported
24 and give plaintiffs' counsel a chance to meet it, and it
25 may very well be that when this matter is brought to the

1 attention of the Chief Judge of the Circuit he will want
2 to assign one Judge to hear both matters, I don't know.
3 I don't know how complicated the matter will be on the
4 facts yet. One thing, as I indicated yesterday, I am
5 certain of, and that is there will be substantial factual
6 testimony that will be common to both cases, but whether
7 that will be extensive or just what it will be I have no
8 way of knowing at this time. But I am frank to say I
9 think that it is a shame really that there will be a lot
10 of duplication of judicial effort. I would have thought
11 that the best practice here from the interest of at least
12 obviating needless duplication of judicial effort would
13 have been for the plaintiffs here to have asked to inter-
14 vene in that particular case, but they did not do that.
15 They are not required to.

16 There is no way, as I view the matter after
17 studying the complaint, that I can transfer this case to
18 Oregon. I think that if such an avenue were open to me
19 I probably would have done so, solely in the interest of
20 avoiding duplication of judicial effort. We have con-
21 siderable problems these days without duplicating judicial
22 effort when there is a common cause involved.

23 MR. JACK: Your Honor, if I might ask Mr.
24 Stephan, did I understand you correctly in saying that the
25 decision that nothing would be done until the case was

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decided applied to this case as well as to the Oregon case?

MR. STEPHAN: That is my understanding, yes.

MR. JACK: I was not clear on that. If that is in fact the case, we would certainly consider stipulating that this case be stayed until that case was determined. I cannot commit myself to that position at this time.

MR. STEPHAN: I think that is a sound --

THE COURT: Why don't you gentlemen get together and see what you can work out.

MR. JACK: Fine.

THE COURT: I would like to know. I hope you can resolve that question very shortly, because I will hold up notifying the Chief Judge officially of this duplication of similar cases until I know what you intend to do.

MR. STEPHAN: I will endeavor to find out at once.

THE COURT: I wish you would do that and then let me know. I am filing this opinion. You may recess court, Mr. Bailiff.

(Hearing concluded at 10:38 a. m.)

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF WASHINGTON
NORTHERN DIVISION

REPORTER'S CERTIFICATE

I, George F. Cropp, hereby certify that I am an Official Court Reporter in and for the above-entitled Court, and that as such was in attendance upon and reported the proceedings had in the foregoing matter.

I certify further that the foregoing Transcript of Proceedings is a full, true and correct record of the proceedings had upon the hearing of defendants' motion for change of venue in said cause.

Dated at Seattle, Washington this 6th day of May, 1970.

George F. Cropp
Official Court Reporter

1 STAN PITKIN
2 United States Attorney
3 ALBERT E. STEPHAN
4 First Assistant U. S. Attorney
5 CARL F. GOODMAN
6 Attorney, Department of Justice
7 U. S. Courthouse
8 Seattle, Washington 98104
9 583-4991
10 Attorneys for Defendants

11 IN THE
12 UNITED STATES DISTRICT COURT
13 Western District of Washington
14 Northern Division

MAY 20 1970

HAROLD W. ANDERSON, CLERK
By  Deputy

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE WESTERN DISTRICT OF WASHINGTON
11 NORTHERN DIVISION

12 WESLEY UHLMAN,
13 WILLIAM HOFFER,
14 CARL WILTERWOOD,
15 PEOPLE AGAINST NERVE GAS,
16 Individually and on behalf
17 of all others similarly situated,
18 Plaintiffs,

CIVIL NO. 8906

vs.

19 MELVIN LAIRD,
20 JOHN J. HAYES,
21 Defendants.

22 MEMORANDUM IN OPPOSITION TO PLAINTIFFS'
23 CROSS MOTION FOR SUMMARY JUDGMENT

24 Plaintiffs' Cross Motion for Summary Judgment is based exclusively
25 on the provisions of the National Environmental Policy Act of 1969 (Public Law
26 91-190). Defendants oppose plaintiffs' motion on the grounds set forth in
27 Defendants' Motion to Dismiss or in the Alternative for Summary Judgment.
28 Plaintiffs contend that the National Environmental Policy Act of
29 1969 is applicable to the shipment of chemical warfare agents. As we have
30 shown in our brief in support of the motion already filed, the Act is not applica-
31 ble. In addition, we now note that on October 3, 1970, Congress considered
32 the provisions of what was to become Public Law 91-121 (effective November 19,
1969), particularly those provisions dealing with the transportation of
chemical warfare agents. Five days later the Senate considered the provisions
of S1075 (to be enacted as Public Law 91-190). While the transportation of
chemical warfare agents was clearly before the Congress at this time and subject

1 to debate, the Congressional Record will be searched in vain for any indica-
2 tion that the Senate on October 8 meant the provisions of Public Law 91-190
3 to be applicable thereto. Thus, Senator Jackson on October 8 referred to
4 such matters as the construction of a jet airport near Everglades National
5 Park and a dam in the Grand Canyon (115 Congressional Record S12113) but made
6 no reference to the transportation of chemical warfare agents. On December 1,
7 1969, the Secretary of Defense advised Governors McCall and Evans of the pro-
8 posed transportation of chemical warfare agents through the State of Washington
9 for storage at the Umatilla Depot in Oregon. On the same date the President
10 of the Senate and the Speaker of the House were advised of the proposed ship-
11 ment. On December 20, 1969, the Senate again considered S1075. While Senator
12 Jackson referred at great length to numerous types of activities, the trans-
13 portation of chemical warfare agents was nowhere referred to.

14 On April 22, 1970, plaintiffs filed this action. On April 21, 1970,
15 Senator Jackson wrote the "contemporaneous" letter relied on by plaintiffs. Of
16 course, the after-the-event-letter of a single Senator is not even legislative
17 history and is entitled to no weight in the interpretation of legislation by
18 the Court. The legislative history is clear that Congress, being fully aware
19 of the proposed transportation of chemical warfare agents, did not mean to bring
20 such transportation within the provisions of Public Law 91-190.

21 Plaintiffs' reference to the Titanic indicates the impossibility of the
22

23 1/ We see increasing evidence of this inadequacy all around us: haphazard urban
24 and suburban growth; crowding, congestion, and conditions within our central
25 cities which result in civil unrest and detract from man's social and psychologi-
26 cal well-being; the loss of valuable open spaces; inconsistent and often,
27 incoherent rural and urban land-use policies; critical air and water pollution
28 problems; diminishing recreational opportunity; continuing soil erosion; the
29 degradation of unique eco-systems; needless deforestation; the decline and
30 extinction of fish and wildlife species; faltering and poorly designed transpor-
31 tation systems; poor architectural design and ugliness in public and private
32 structures; rising levels of noise; the continued proliferation of pesticides
33 and chemicals without adequate consideration of the consequences; radiation
34 hazards; thermal pollution; an increasingly ugly landscape cluttered with
35 billboards; powerlines and junkyards; growing scarcity of essential resources;
36 and many, many other environmental quality problems. Congressional Record,
37 Proceedings and Debates of the 91st Congress, First Session, Vol. 115, No. 213,
38 S 17452.

1 construction they seek to impose on Public Law 91-190. The logical conclusion
2 from plaintiffs' argument is that the requirements of Public Law 91-190 must
3 be complied with whenever the Federal Government launches a new vessel,
4 undertakes a mission in a nuclear-powered submarine, and sends out a SAC
5 mission. These are but a few of the incredible results acceptance of plaintiffs'
6 arguments leads to. Clearly, the Act is not meant to apply to a military
7 action (a major federal action significantly affecting the quality of the human
8 environment?). Clearly the Act need not be followed before the Government may
9 ship military supplies whether such shipment be by rail, by air or by sea
10 and whether such supplies are chemical warfare agents, napalm, or TNT. Viewed
11 objectively, plaintiffs' argument would immobilize the Federal Government. Surely
12 this was not the Congressional intent.

CONCLUSION

13 Plaintiffs' motion for summary judgment should be denied and
14 defendants' motion to dismiss or in the alternative for summary judgment
15 granted.
16

17 STAN PITKIN
18 United States Attorney
19 Western District of Washington

20 *Albert E. Stephan*
21 ALBERT E. STEPHAN
22 First Assistant U. S. Attorney

23 *Carl F. Goodman*
24 CARL F. GOODMAN
25 Attorney, Department of Justice
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32

ソカヒ 万大 博飯

注意

- 1. 本電の取扱いは慎重を期せられたい。
- 2. 本電の主管変更その他については検閲班に連絡ありたい。

20/

電信写

大政外外機官
務務次 典房
臣官官審審長長
儀録人軍軍計
機機文会営給

国資長 参調折企
價移長 参價旅移

総番号 (T A) 25107 主管
70年 5月 22日 22時 00分 シアトル 着 米北1
70年 5月 23日 21時 0分 本省 着

外務大臣殿 高橋 大使 臨時代理大使 (総領事 代理)

沖縄毒ガス問題

第35号 平 至急 (優先処理)

往電第33号に附し
本日付 P. I. 紙は沖縄毒ガス問題の却下に関し
要旨次の通り述べている。

1. ワシントン大学教授 WILLIAM RODGERS JR. の見解として以下の所点をあげている

- (1) A.C.L.U は上訴することとなる。
- (2) P.A.N. にも可及的速みゆみに上訴するであろう (なお同教授は P.A.N. にも非常に協力的である)
- (3) ワシントン・オレゴン両州も上訴する事となる
- (4) 本件裁判を担当したポートランドの連邦裁判官 R. BELLONI は問題の毒ガス

ア 参地中東
長 北東西
米長 参北北保
中南審
欧 参西東洋
長 西京

近ア 参審近ア
長 次総経国万

長 参買統国
経協長 参政技二
参 国一理

参政経科
長 参社京

参海内外
長 一二

注意

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- 2. 本電の主管変更その他については検閲班に連絡ありたい。

電信写

輸送は環境に対する脅威なしとして
1969年制定の環境政策法違反という原告の申し立てを否認しているが、この法律を制定した議会の意図を毒ガス輸送中の事故の可能性についてではなかったはずであるとして、判決に反対している。

2. 政府は本件訴訟がかたずくまでは、毒ガス輸送はしないと声明している。(従ってどこか上訴すれば、その訴訟がかたずくまでは毒ガスの搬入はありえない)

3. 国防省はオレゴン州にかえてアラスカの KODIAK に貯蔵する代案を検討しているが (この点については昨日アラスカ出身上院議員 MIKE GRAVEL が公表)、これに対しアラスカ州知事は「できる限りの手段を尽して反対する」との強硬態度を取っている。これに対する記者の質問に対して国防省スポークスマンは、いまのところ UMATILLA 貯蔵に、

注意

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電信写

何ら変更なしと答えた由。査細公信。
米・ポートランド・アンカレッジへ転電した。

[3]

-3-

(24日 15:20 主管澤音に連絡済)

シカヒ 万六 博阪

大政事外務省
 事務次長 典房
 官官審審長長
 備総人厚計
 備書次会管給
 国資長 参調折企
 領移長 参領旅移

ア 参地中東
 長 北東西
 米最 参北北保
 中 参一二
 南 参西東洋
 審 西東
 歌 長

近ア 参書近ア
 長 次総経国万
 長 参買統二
 経 参政技二
 協 国一理
 長 参協協
 長 参政経科
 長 参社専
 長 参場内外
 文 長 一二

注意

1. 本電の取扱いは慎重を期せられたい。
2. 本電の主管変更その他については検閲班に連絡ありたい。

116

電信写

総番号 (TA) 25116 主管
 70年 2月 22日 22時 11分 シトル 発着 米北
 70年 3月 2日 2時 23分 本省
 外務大臣殿 高橋 大使 臨時代理大使 総領事 代理

沖縄音カス搬入をめぐり訴訟問題

ア36号 略 至急(優先処理)
 佳電ア33号及びア35号に關し
 米國政府は従来より訴訟が待付くまで音カスの搬入は行なわれないと宣明して、
 このことから、本件訴訟が待付けば音カス輸
 送が開始される可能性が強いこと、念のため
 してこの輸送を遅延させその間に何らかの
 対策を考へるべく(アラスカ、グアム島、マ
 リアナ群島への搬入を先は処分)、当地の
 (1) P.A.N.C.T. について近日中に上訴される
 公算が極めて強く、(2) A.C.L.U. も必要に応
 じて上訴の可能性があるが、(3) シアトル市に
 対して市長が上訴する可能性は少ない見込。
 米の転電した。(ア) (29日15:30 主管課長(柳) 転電)

注意

- 1. 本電の取扱いは慎重を期せられたい。
- 2. 本電の主管変更その他については検閲班に連絡ありたい。

電信写

4. マグナソン試案は抑々本件毒ガス輸送
 に反対する初まりは、(イ)わいわい々々か
 武器を必要とし、(ロ)これら
 武器は破壊されるべきものであるから
 あり、従ってわいわいが恐ろしく同じま
 うな脅威を他州の人々に背負わされて
 いるとして、暗いアラスカの持込
 みにも反対すべき態度を示し、本件毒ガ
 スが廃棄処分されたら、まづは今後とも議
 会の神絶毒ガス反対活動に継続して行く
 旨述べた。

5. 宣明地としてのアラスカの可能性の
 あり、国際者スホークスマニの発表はア
 スカにもセーシオンを捲き起し、ア
 ラスカ州知事 MIKE GRAVEL アラスカ選出
 議員等は絶対反対態度を明かした。

米、アラスカに電打

カビ 万大 博飯

注意

1. 本電の取扱いは慎重を期せられたい。
2. 本電の主管変更その他については検閲班に連絡ありたい。

98

大政外務官
事務次長
国官事務長
秘書長
文会管給

電信写

参調折企
参領旅移

ア 参地中東
北西
参北地保
参一二
参西東洋
西東

近ア 参書近ア
次総経国万

長 参賛統
経協長 参政技二
参 国一理
参 参務協規
参 参政経科
参 参社專
参 参道内外

総番号(TA) 25436 主管
70年5月25日19時45分 エアトル 発
70年5月26日12時17分 本省 着 米北

外務大臣殿 高橋 大使 臨時代理大使 総領事 代理

オキナワからのどくガス撤去問題

第38号 略

往電第33号及び第37号に関し

当地各紙はニクソン大統領のオキナワどくガスNORTH
WEST持ち込み中止決定を一面で大きくとりあげ、す
なおにかん迎している。しかし他方、たてかえ地として第
1ころ補にアラスカ、第2ころ補にグアム島が挙げられて
いるとのうわさがあり、当地では、^{北地}アラスカをも含め米
国内への本件どくガス持ち込みにはあくまで反対で本件ど
くガスは米国外で無どく化処理すべしとの機運がかなり強
い。要綱公信。
米国へ転電した。

(3)