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Supreme Court Decisions: Restricting the Environmental Protection Agency: Expanding Judicial Review

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Supreme Court Decisions

Restricting the Environmental Protection Agency: Expanding Judicial Review

by Myriam Marquez Langley

The Clean Air Act of 1970 § 112 (b)(1)(B) authorizes the Administrator of the Environmental Protection Agency to regulate "emission standards" for hazardous air pollutants "at the level which in his judgment provides an ample margin of safety to protect public health."[1] The emission of an air pollutant in violation of an applicable "emission standard" is prohibited by § 112(c)(1)(B), and its violators are subject to a fine and/or imprisonment under § 113(c)(1)(C).

[1] 42 U.S.C. 1857

Accordingly, the EPA Administrator issued a "National Standard For Asbestos" regulation which specifies a certain procedure or "work practice" to be followed in demolition of buildings containing asbestos.[2] The regulation requires the owner or operator of a demolition operation to wet and remove any friable asbestos materials before wrecking is commenced.

On February 19, 1974, Adamo Wrecking Company failed to wet and remove friable asbestos material from a commercial building before demolition. Adamo was indicted in the United States District Court for the Eastern District of Michigan for violation of an emission standard under § 112(c)(1)(B). The District Court granted Adamo's motion to dismiss on the ground that no violation of § 112(c)(1)(B) [necessary to establish criminal liability under § 113(c)(1)(C)] had been alleged. The court held that, although the cited regulation is captioned as an emission standard, it is merely a procedure or work practice and thus its violation is not subject to criminal proceedings.

[2] 40 C.F.R. 61.22(d)(2)(i)

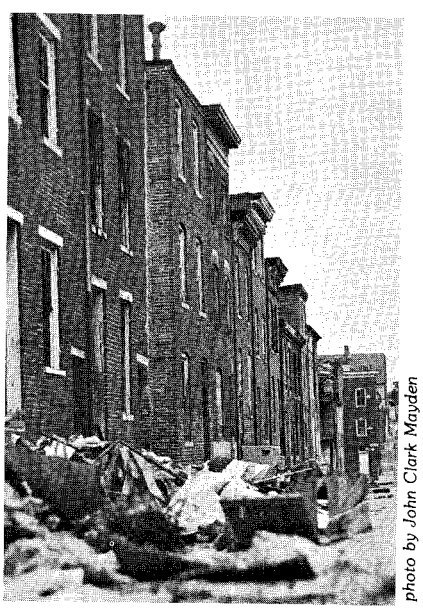

photo by John Clark Mayden

The United States Court of Appeals for the 6th Circuit reversed, citing § 307(b) of the Clean Air Act. This section provides that a petition for review of the Administrator's action in promulgating an emission standard is to be filed only in the United States Court of Appeals for the District of Columbia Circuit and that judicial review of such action is not permissible in a civil or criminal enforcement proceeding.[3] The court held that inasmuch as Adamo's appeal arose from a criminal proceeding, § 307(b) precluded him from questioning whether a regulation ostensibly promulgated by the Administrator was in fact an "emission standard."

The Supreme Court granted certiorari, and on January 10, 1978, in a 5 to 4 decision, reversed the holding of the Court of Appeals. Justice Rehnquist, joined by Chief Justice Burger, and Justices White, Marshall and Powell, delivered the opinion of the Court and concluded that because of the stringent penalty imposed by Congress for the violation of an "emission standard," those standards are intended to be "regulations of a certain type." In addition, the majority concluded that the Act did not empower the Administrator, "after the manner of Humpty Dumpty in 'Through the Looking Glass' to make a regulation an 'emission standard' by his mere designation." The Court also held that, while the preclusive and exclusivity provisions of § 307(b) of the Act would prevent Adamo from obtaining judicial review of an emission standard in a criminal proceeding, he was nonetheless entitled to claim that the regulation was not an emission standard at all.

Justice Rehnquist looked to the statutory scheme and language of the Act

[3] 545 F.2d 1 (1976)

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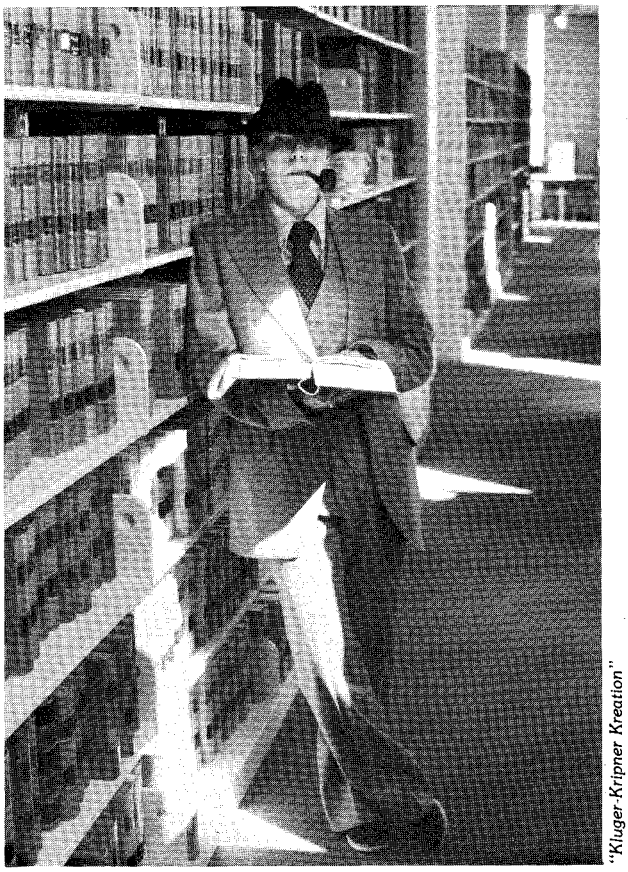

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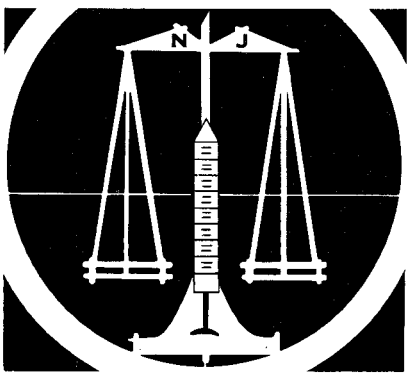

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and determined that an "emission standard" is intended to be a quantitative limit on emissions, not a "work practice" standard. Unfortunately, Justice Rehnquist disregarded the fact that asbestos emissions are impossible to measure quantitatively. The history of the regulation demonstrates that the work practice standard was chosen by the Administrator after it became clear that he could not prohibit *all* visible emissions of asbestos without destroying an entire industry. Furthermore, while numerical standards are preferred by Congress, the statute contains no express requirement that standards always be framed in numerical terms; nor has Congress expressed an overriding interest in using such terms when a less drastic control technique is available.

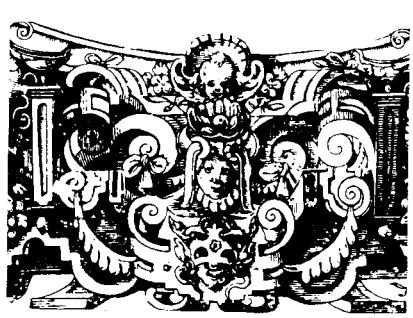
The majority also relied on the rule that "where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant." *United States v. Bass*, 404 U.S. 336,348 (1971). But in *Udall v. Tallman*, 380 U.S.1,16, (1965) the Court held that "[w]hen faced with a problem of statutory construction, this Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration. 'To sustain the application of the statutory term [as applied by the agency], we need not find that its construction is the only reasonable one, or even that it is the result we would have reached had the question arisen in the first instance in judicial proceedings.' "

Looking again to the statutory scheme, Justice Rehnquist believed that the Government was not relieved of its duty to prove that the allegedly violated regulation is an "emission standard" even though § 307(b)(2) precludes judicial review of the validity of emission standards. Under §307(b)(1), though, this regulation could have been reviewed only in the Court of Appeals for the District of Columbia, and because of this express language, Adamo should have been barred from raising the issue before any other court.

The majority distinguishes *Yakus v. United States*, 321 U.S. 414 (1944), where the Court held that in the context of criminal proceedings, Congress has the power to require that the validity of a regulatory action be challenged in a particular court at a particular time, or not at all. However, Justice Rehnquist views the statutory provisions of the Emergency Price Control Act considered under *Yakus* as a "relatively simple statutory scheme" in contrast with the Clean Air Act's "far more complex inter-relationships between the imposition of criminal sanctions and judicial review of the Administrator's actions." There is nothing ambiguous, vague or difficult in § 307(b). Its intent that a petition for review of an action of the Administrator in promulgating any emission standard may be filed only in the United States Court of Appeals for the District of Columbia Circuit could hardly be more obvious. Congress has clearly expressed that "any review of such actions" be controlled by the provisions of § 307(b).[4] Additionally, the *Adamo* opinion fails to adequately express the alleged inequities which would arise as a result of adherence to the Act's venue requirements in the current "complex" situation.

The majority's interpretation of an "emission standard" denies the Administrator the authority to effectively regulate the emission of asbestos, a poisonous substance which poses an especially grave threat to human health. Their interpretation of the plain statutory language of § 307(b) frustrates the intent of Congress to establish a unified and expedient system of judicial review under the Clean Air Act. In the words of Justice Stewart, who dissented along with Justices Brennan, Blackmun and Stevens, "the Court today has allowed the camel's nose into the tent, and I fear that the rest of the camel is almost certain to follow."

[4] S. Rep. No. 91-1196, p.41 (1970)



The Rights and Responsibility of Paternity

by Roxane Nass Sokolove

On January 10, 1978, the Supreme Court, in a unanimous decision, ruled that an unwed father's substantive due process rights were not violated by a Georgia statute which denied him the authority to prevent the adoption of his illegitimate child. Nor was the Equal Protection Clause of the 14th Amendment violated by the distinction made in the Georgia statute between the rights of fathers of legitimate children and the rights of fathers of illegitimate children.

Although the unwed father may have as great a personal interest in his child as a married father has in his child, the unwed father must establish that interest in law by either marrying the mother of his children and recognizing the offspring of the illicit relationship, or legitimizing the children as provided by statute. The authority to then bar the adoption of the children stems from this legally established interest.

In *Quilloin v. Walcott*, 98 S. Ct. 549 (1978), therefore, the absence of such legal status, and the Court's application of the "best interests of the child" standard and recognition of the state's interest in child rearing by a family unit were the vehicles used to defeat the asserted constitutional rights of an unwed father.

In December, 1964, a child was born from the illicit relationship of Ardell Williams, appellee, and Leon Webster Quilloin, appellant. The child's mother and natural father never married nor lived together as a family. In September, 1967, Ardell Williams married Randall Walcott, appellee. The following March, Randall Walcott, with the consent of the child's mother, filed a petition to adopt the child.