

OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE
THE SUPREME COURT
OF THE
UNITED STATES

CAPTION: F. DALE ROBERTSON, CHIEF, UNITED STATES
FOREST SERVICE, ET AL., Petitioners V. SEATTLE
AUDUBON SOCIETY, ET AL.

CASE NO: 90-1596

PLACE: Washington, D.C.

DATE: December 2, 1991

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1 IN THE SUPREME COURT OF THE UNITED STATES

2 -----X
3 F. DALE ROBERTSON, CHIEF, :
4 UNITED STATES FOREST SERVICE, :
5 ET AL., :
6 Petitioners :
7 v. : No. 90-1596
8 SEATTLE AUDUBON SOCIETY, :
9 ET AL. :

10 -----X
11 Washington, D.C.
12 Monday, December 2, 1991

13 The above-entitled matter came on for oral
14 argument before the Supreme Court of the United States at
15 11:02 a.m.

16 APPEARANCES:

17 KENNETH W. STARR, ESQ., Solicitor General, Department of
18 Justice, Washington, D.C.; on behalf of the
19 Petitioners.
20 TODD D. TRUE, ESQ., Seattle, Washington; on behalf of the
21 Respondents.

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1 P R O C E E D I N G S

2 (11:02 a.m.)

3 CHIEF JUSTICE REHNQUIST: We'll hear argument
4 next in 90-1596, Robertson v. Seattle Audubon Society.

5 Spectators are admonished not to talk. The
6 Court remains in session.

7 General Starr, you may proceed.

8 ORAL ARGUMENT OF KENNETH W. STARR

9 ON BEHALF OF THE PETITIONERS

10 MR. STARR: Mr. Chief Justice, and may it please
11 the Court:

12 This case brings before the Court a decision by
13 the Spotted Owl Panel of the United States Court of
14 Appeals for the Ninth Circuit declaring unconstitutional a
15 statute passed by Congress. That act embodied what is
16 known popularly as the Northwest Timber Compromise. That
17 compromise was designed to resolve ongoing controversy
18 over logging activities in various areas that serve as a
19 habitat for the northern spotted owl.

20 Specifically, section 318 of the Department of
21 Interior Appropriations Act set forth in quite elaborate
22 detail the terms of a compromise that was hard-fought over
23 logging activity in the Pacific Northwest. It had divided
24 not only industry and industrial groups; it had divided
25 communities. There was a great sense of distress and a

1 sense of urgency. Congress' response was section 318.

2 In the Ninth Circuit's view, however, one
3 critical part of that compromise -- subsection
4 (b) (6) (A) -- was unconstitutional. In the Ninth Circuit's
5 view, that subsection stepped across the permissible
6 constitutional line between the Congress repealing or
7 amending a statute and going beyond and into the province
8 of article III by directing the Federal courts how to
9 decide, in this instance, two pending cases.

10 In our view, the court of appeals erred, and in
11 so doing violated one of the cardinal principles of
12 constitutional adjudication by interpreting a statute
13 needlessly so as to raise article III questions when there
14 is an entirely plausible reading of the statute that
15 avoids the article III controversy entirely.

16 QUESTION: Mr. Solicitor General, I can't resist
17 asking you this question as kind of a predicate to the
18 whole argument. Do you think this is a plain language
19 case or a Holy Trinity case?

20 (Laughter.)

21 MR. STARR: I think it's somewhere in between.

22 QUESTION: Somewhere in between.

23 MR. STARR: I do think there is -- there's not a
24 lot of language here that's plain, and there certainly is
25 a spirit to the compromise, but my argument is going to be

1 grounded on the structure of this statute and putting
2 (b) (6) (A) into context, not some broad, vague, spiritual
3 context, but --

4 QUESTION: And also not limited to the plain
5 language.

6 MR. STARR: Well, at least not limited only to
7 the terms "determines" and "directs."

8 Now, Justice Stevens' question brings me to the
9 statute itself. It took us 13 pages to set this out in
10 the appendix to our brief, 12-1/2, to be precise. It is
11 complicated, but there are three basic aspects to this
12 statute.

13 First, it directs the Forest Service and the BLM
14 to offer timber sales at specified levels at -- during
15 fiscal year 1990, and it says this shall be done. It's
16 quite clear.

17 Second, the statute sets forth a standard that
18 is to guide the Federal agencies in the timber sales
19 process. It does something quite important from the
20 environmentalists' standpoint. It expands significantly
21 the protected areas of habitat for the spotted owls. It
22 establishes a streamlined administrative process and
23 provides, as the original version on which our colleagues
24 on the other side seek to use, something that the earlier
25 version did not. It provides for judicial review of

1 specific sales.

2 Third, and then critically for purposes of this
3 case, we come to (b) (6) (A). That does two things. I want
4 to call the Court's attention first, lest I overlook it,
5 to the second sentence. I think that's critical. The
6 Congress says in the second sentence of (b) (6) (A) that the
7 standards that the guidelines adopted by law, by
8 subsections (b) (3) and (b) (5), shall not be subject to
9 judicial review.

10 The first sentence -- and of course, it was the
11 first sentence that was held unconstitutional, and it
12 says, in short, without --

13 QUESTION: Before you leave that, what does that
14 mean? What does that mean? That's very strange.

15 MR. STARR: I don't think it's strange --

16 QUESTION: Are they overruling -- is Congress
17 repealing Marbury v. Madison?

18 (Laughter.)

19 MR. STARR: No, not at all. That they are
20 clearly not doing. What they are saying is that in this
21 compromise which embodies a comprehensive solution for a
22 single fiscal year on the public lands of the United
23 States, we, the Congress of the United States, exercising
24 our plenary power, do ordain and enact (b) (3) and (b) (5)
25 as the substantive law to govern.

1 Now, what does (b) (3) and (b) (5) do? Primarily,
2 what those two subsections do, which are insulated from
3 judicial review, is to expand the areas of protected
4 habit, the so-called SOHA's. That's what this fight is
5 all about. Are we going to protect trees and timber
6 areas, or are we not?

7 Our colleagues on the other side believe we
8 should have none of this activity. Congress is saying, it
9 is our business to step in and to resolve divisive
10 controversies that raise important questions of public
11 policy, and those questions were very emphatically
12 discussed and debated on the floor.

13 In our petition for certiorari we set forth the
14 quotation that we also allude to in our opening brief by
15 Senator Adams of Washington, who said, we no longer have
16 time to work this out at a leisurely pace. The litigation
17 has been enormously divisive and disruptive. We need a
18 solution, and here is our comprehensive solution for
19 1 year and 1 year alone. After 1990, after fiscal year
20 1990, there will be no impediment to the continuation of
21 this litigation, but more than that --

22 QUESTION: But why do they need this last
23 sentence? Why do they need this second sentence of
24 subpart (A) in order to achieve that? I mean, they say
25 there shall be no review of these sections -- judicial

1 review of these sections. Is it the Government's position
2 that that means judicial review of -- what, the
3 Secretary's implementation of those sections?

4 MR. STARR: Yes. I think fairly read, given
5 Congress' intent, it means BLM's and the Forest Service's
6 administration and management of these lands consistent
7 with these guidelines.

8 QUESTION: Well, Mr. Starr, isn't it entirely
9 possible that it could be read as having Congress
10 distinguish between designation of lands for lumbering or
11 conservation and the implementation of timber sales or
12 conservation programs?

13 MR. STARR: Well --

14 QUESTION: In other words --

15 MR. STARR: Yes.

16 QUESTION: It could be read, it seems to me, as
17 saying that the Congress has designated certain lands for
18 this 1 year as being available or not available for
19 timbering.

20 MR. STARR: That is correct. In --

21 QUESTION: But leaving the discretionary
22 administrative decisions to implement the laws in place.
23 Is that not possible -- I don't think that's the reading
24 you've given it --

25 MR. STARR: I think that is a possible reading.

1 QUESTION: But I think that is a plausible,
2 possible reading.

3 MR. STARR: I have to concede that it is a
4 plausible reading, Justice O'Connor.

5 What we think, however, is critical for purposes
6 of getting at Congress' intent is that Congress wanted to
7 permit only specific challenges, and there have been
8 those, to specific sales, but it wanted to put an end to
9 the overall controversy as to whether the Forest Service
10 and the BLM had faithfully and adequately taken
11 environmental and specifically spotted owl considerations
12 into account, and it answered that.

13 It does what Congress seeks to do. It laid down
14 a line. It laid down a legislative action, and that seems
15 to us quite far removed from what has vexed this Court in
16 United States v. Klein and its more recent progeny,
17 including Justice Blackmun's decision for this Court in
18 Sioux Nation.

19 Here, what is Congress doing? Congress is
20 saying, here is the way we want the public lands to be
21 administered during this particular year. Because this
22 has been so remarkably divisive, we do not want to intrude
23 into the arena of the courts. The opening words -- and
24 our colleagues on the other side don't have a very good
25 response to the opening words of (b) (6) (A). What Congress

1 seems to be saying is, we're not in the business of
2 deciding issues of law.

3 It uses the terms -- and this, Justice Stevens,
4 is the plain language -- without passing on the legal and
5 factual adequacy of what? The two critical administrative
6 documents that are under challenge in the litigation in
7 Oregon and Washington.

8 QUESTION: And then it goes on and says, the
9 Congress hereby determines and directs.

10 MR. STARR: Yes, it does, and Congress,
11 curiously enough, does that a lot.

12 QUESTION: It shall be deemed adequate.

13 MR. STARR: Shall be deemed adequate. As we set
14 forth in footnotes 18 and 19 of our brief, Congress when
15 it's exercising its plenary powers with respect to the
16 public lands does that all the time.

17 We have identified in footnote 18 of our brief
18 in the second paragraph 29 instances where Congress has
19 done precisely that, Justice Stevens. Indeed, it does it
20 every time it does that which ultimately the respondents
21 here are seeking to achieve.

22 What they want, in effect, is for these public
23 lands in Oregon and the national forests in Washington to
24 be declared wilderness areas, untouchable by the human
25 hand. And Congress does that. It does it on a case-by-

1 case basis and says, this area is now wilderness; we will
2 have no commercial economic activity.

3 QUESTION: Is there any difference in Congress
4 passing a statute in the first case which says X shall be
5 Y -- Franklin County, Missouri, shall be some other county
6 in Missouri.

7 MR. STARR: It has -- sorry.

8 QUESTION: And a second instance in which it
9 says, the courts shall say that X is Y --

10 MR. STARR: I believe so.

11 QUESTION: And it seems to me that we have the
12 latter case.

13 MR. STARR: I'm sorry?

14 QUESTION: That we have the latter case.

15 MR. STARR: I respectfully disagree with that.
16 I do agree, Justice Kennedy, there is a distinction. I
17 think if Congress had been trying to direct the courts to
18 enter a judgment, and they didn't. And now --

19 Go back and look at Klein. That's a two-
20 paragraph statute in Klein that this Court struck down as
21 unconstitutional. There's all sorts of language in that
22 statute saying, and the court shall do this, and the court
23 shall do that, and it shall dismiss, and the like. It is
24 chock-full of directions to a court on what to do with a
25 particular case..

1 But what Congress can do -- and that's what it
2 has done here. It does it all the time. It's the nature
3 of legislation -- is to lay down a rule of decision, and
4 Justice -- I'm sorry.

5 QUESTION: General Starr, what do you think the
6 Klein case stands for as perhaps an irreducible minimum?

7 MR. STARR: I think as an irreducible minimum,
8 Mr. Chief Justice, it stands for the proposition that
9 Congress cannot act in a way that clearly invades a
10 textually committed constitutional power, namely that of
11 the pardon power of the President, and direct the courts
12 to become parties and privy to that invasion, and that's
13 precisely what was at work in Klein.

14 Lincoln's proclamation in 1863 had said once you
15 come forward and you renounce your prior fealty to the
16 confederacy, you will in fact be forgiven, and your
17 property rights will be restored. That was a part of the
18 pardon which, before his death, Wilson accepted, and in
19 Kline his administrator said to this Court, look at what
20 the Reconstruction Congress is seeking to do. It is
21 trying to tear asunder Lincoln's exercise of his
22 Presidential power.

23 Now, what this Court also said in Justice
24 Blackmun's opinion for this Court in Sioux Nation is that
25 what Kline was getting at was directing the entry of a

1 decision in favor of the Government, and that's, again,
2 not -- that more modern reading of Kline is not at issue
3 here, I don't think fairly read.

4 Again, I think the Court has a choice. It can
5 give this statute an immensely hard reading, which is what
6 the Spotted Owl Panel chose to do -- aha, we're being
7 directed, Congress is directing us. And yet Congress
8 said, we're not passing on the factual and legal adequacy
9 of the two administrative documents that are under
10 challenge in the litigation.

11 QUESTION: Mr. Starr, let me ask it this way.
12 Does anything in subsection (b)(3) or (b)(5) conflict with
13 the statutes under which respondents in this case brought
14 suit?

15 MR. STARR: It is, I think from their
16 standpoints -- I'm going to now give you what I think
17 would be the least favorable answer to me, and that is in
18 (F), all of (b)(3)(F). What Congress says, all other
19 standards and guidelines contained in the Chief's record
20 of decision are adopted.

21 I think what they will say, Justice O'Connor, is
22 that's bad. They can't be doing that. They can't ordain
23 and say we like that agency decision.

24 We believe they can, that Congress can in fact
25 say, here's the way the public lands are going to be

1 administered because -- and here's the point, Justice
2 O'Connor. Remember what had happened. We've had years of
3 litigation in the Pacific Northwest.

4 It has been one of the most divisive
5 controversies in that part of the country, and Congress is
6 saying -- and if I may again call the Court's attention to
7 the statement by Senator Adams, the severity of the
8 crisis -- severity of the crisis this year did not give us
9 the luxury of time to slowly mull over this issue. Mills
10 were shutting down, jobs were threatened and gone, our
11 State was being torn apart, and tensions were rising with
12 a real potential of violence.

13 Congress said, we don't want to get into the
14 adjudication business, but we do want to get into the
15 policy-making business, and here is the policy for fiscal
16 year 1990. It has the power to do that.

17 QUESTION: General Starr, the brief of Northwest
18 Forest Resource Council suggests that we really don't have
19 to get to this very difficult question of 6(A), that these
20 cases are mooted by (b)(3) and (5) alone, and we can just
21 look at that and then -- it makes the case a lot less
22 interesting, but we're -- you know, it would help us to
23 get rid of it faster.

24 (Laughter.)

25 QUESTION: Is that --

1 MR. STARR: What we are most anxious for --

2 QUESTION: Do you agree with that?

3 MR. STARR: No, I don't agree with that. I
4 think this issue is, in fact, not moot. There are
5 16 sales that have been affected pursuant to applicability
6 of this statute, and I don't think the other side is in
7 disagreement that this case lives on.

8 It in fact -- there is, in effect, as we look at
9 the statute again -- returning to the structure -- looking
10 at (G), (G) provides for a challenge to specific sales,
11 specific timber sales, and that has been going on and in
12 fact 16, as I say, sales have been enjoined. And more
13 than that, in light of the court of appeals' decision,
14 there is ongoing litigation with respect to the
15 correctness of the decisions of the administrative
16 agencies under the law, because -- let's step back.

17 What is the result of the Ninth Circuit's
18 decision? The result of the Ninth Circuit decision is the
19 respondents get the benefit of (b)(3) and (b)(5) and the
20 litigation goes on with respect to whether this activity
21 complies with the other statutes, the five statutes that
22 were invoked in the original litigation. This is very
23 much alive.

24 QUESTION: But if you -- or I would say, if we
25 decide for you that probably the case is moot, but we have

1 to decide for you before it becomes moot.

2 MR. STARR: Yes, exactly. If we win, then yes,
3 those timber sales should in fact go forward and completed
4 and bring to a conclusion that which was contemplated by
5 Congress in the opening subsection of 318(a).

6 QUESTION: To decide for you, we have to say
7 that this -- that the ordinary law was changed for 1 year.

8 MR. STARR: That is correct, that Congress was,
9 Justice White, saying we understand there are a lot of
10 issues. There are about 32 statutes -- I've counted
11 them -- 31 statutes that are potentially applicable to the
12 administration of the public lands and the Forest Service
13 as to environmental consideration. That is a vast panoply
14 of statutes.

15 QUESTION: So you're saying that the -- without
16 passing on means we're not passing on the adequacy of the
17 administrative review under existing law.

18 MR. STARR: Exactly.

19 QUESTION: But under -- but here is -- here's
20 some new law.

21 MR. STARR: Exactly.

22 QUESTION: Is that it?

23 MR. STARR: That is exactly our case, Justice
24 White. Here is the new law, (b)(3) and (b)(5).

25 QUESTION: Isn't it even more limited than that?

1 New law for a particular territory.

2 MR. STARR: Exactly, for a specific territory,
3 and Justice Scalia raised amicus submissions. There's
4 been an amicus submission that sets forth a quite
5 dangerous proposition that Congress must always legislate
6 with respect to rules of general applicability. In our
7 reply brief, we have said that is simply not the way
8 Congress has done business, but more than that, at the
9 theoretical level, it's not the constitutionally mandated
10 way.

11 Congress is ultimately in charge. We, the
12 people on these lands, and Congress has the power to
13 administer these lands and to delegate that power to
14 agencies of the United States to assist it, pursuant to
15 standards that it lays down.

16 It not infrequently, not surprisingly, will
17 legislate one rule that will be applicable in the State of
18 Arizona or New Hampshire and another for Illinois. By the
19 very nature of it, different kinds of lands are going to
20 raise different kinds of questions and the like.

21 But yes, Justice Stevens, the point is very well
22 taken. Congress is rifle-shotting in on these specific
23 lands, which it has not designated as wilderness acts. It
24 has said, we're sorry, respondents, we have heard you, but
25 there is going to be timbering here. It's very important

1 that there be timbering here, because people's jobs are at
2 stake.

3 Looking ever so briefly at the legislative
4 history, one gets a flavor of what it is Congress was
5 concerned about and what Senator Adams was speaking so
6 forcefully about on the floor. Schoolchildren were seeing
7 schools closed. There are counties in Oregon that depend
8 upon these funds that are derived from timber sales to
9 keep their communities going. This has been a source of
10 profound economic distress, and so Congress was not
11 seeking, as was the Reconstruction Congress to order --

12 QUESTION: Would you agree we can appropriately
13 examine those materials in solving this problem?

14 MR. STARR: I think, Justice Stevens, that it is
15 certainly appropriate, as this Court has held time and
16 again to repair to --

17 QUESTION: And you agree with that position.

18 MR. STARR: And I have no quarrel with that
19 position. That is the law of this Court, and I do not
20 quarrel with it, that we can repair to those materials and
21 to see what it was that was animating Congress. And what
22 so clearly was of concern to Congress was this --

23 QUESTION: Well, Solicitor General --

24 MR. STARR: Yes.

25 QUESTION: The statute says is adequate

1 consideration for the purpose of meeting the statutory
2 requirements that are the basis for these consolidated
3 cases. It sounds to me like they are saying -- it doesn't
4 sound like they're amending the statute --

5 MR. STARR: You can read it --

6 QUESTION: -- even for a year. As a matter of
7 fact, they are meeting the statutory requirements that are
8 involved in the suit.

9 MR. STARR: You can read it that way, as --

10 QUESTION: How else can you read it?

11 MR. STARR: I read it this way. I think,
12 frankly, the more natural reading in light of the "without
13 passing" --

14 QUESTION: Yes.

15 QUESTION: -- language on the legal and factual
16 adequacy, it is saying to the Bureau of Land Management
17 and the Forest Service, stop all of the pussy-footing
18 around and get with the program. It is time to sell this.
19 It is no longer time to bring the biologists out and the
20 forest rangers to put on their hats and to say, here's
21 what we think should be done for purposes of FLPMA and
22 MBTA and these whole panoply of statutes.

23 Congress is saying, enough. Here is what we
24 want you to do. And so adequate consideration, Justice
25 White, yes, it can lend itself to more than one meaning.

1 I think that a natural meaning --

2 QUESTION: Yes, but adequate consideration under
3 these statutes, under the statutory provisions that are
4 involved in these lawsuits.

5 MR. STARR: It is odd, but it is not -- Justice
6 White, it is not unique. I refer you again to the
7 Wilderness Act experience --

8 QUESTION: It isn't odd enough to be Holy
9 Trinity, eh?

10 (Laughter.)

11 MR. STARR: No, I'm not reduced to arguing Holy
12 Trinity. My argument is textual and structural and
13 getting at Congress' intent. I think we know, when we
14 look at all these materials, what Congress' intent was.

15 But the purpose of my point was this: when we
16 look, for example, at the Colorado Wilderness Release Act,
17 Justice White, 94 statutes, 3270 -- this is all part of
18 the materials -- it provides that with respect to public
19 lands in Colorado that are being designated as a
20 Wilderness Act, a particular review shall be deemed for
21 the purposes of National Forest Management Act planning,
22 quote, "to be adequate consideration of the suitability of
23 such lands for other purposes."

24 Congress has gotten into the habit of doing
25 this, and I don't think it means offense to the courts in

1 doing that.

2 QUESTION: So you think this is -- we ought to
3 look at this sort of like a term of art; it's so usual.

4 MR. STARR: It is not so usual, but it is in
5 fact a term of art. I don't want to overargue my point.
6 My point is the limited one, Justice White, that this is
7 not unprecedented. In fact, Congress is accustomed to
8 doing it.

9 But I'm not just relying on bad habits. What
10 I'm saying is, those habits are in fact rooted in its
11 powers under the Constitution.

12 What is it that we're worried about in
13 article III versus article I? We're worried about whether
14 Congress is trenching on the adjudicatory function, and
15 Congress really didn't think it was doing that.

16 QUESTION: Well, certainly, if we decide for
17 you, why these cases are certainly over, aren't they?

18 MR. STARR: Oh, the cases -- no, Justice White,
19 to the contrary. The cases go on with respect to --

20 QUESTION: To what?

21 MR. STARR: -- any post-1990 sales activity.

22 QUESTION: Yes, but for a year they're over.

23 MR. STARR: For a year, for all practical
24 purposes, yes.

25 QUESTION: By that time, all the timber -- the

1 timber will all be cut.

2 MR. STARR: Not all the timber.

3 QUESTION: Well --

4 MR. STARR: At least, I'm not aware that all the
5 timber --

6 QUESTION: A lot of it.

7 MR. STARR: Yes. That I concede, because
8 Congress wanted, Justice White, a lot of timber to be cut.

9 QUESTION: Well, I suppose if what I suggested
10 to you is the meaning, the cases are not over either, even
11 for the year.

12 MR. STARR: I have to concede that, yes.

13 QUESTION: Right.

14 QUESTION: General Starr, what if the plaintiffs
15 in the case amend their complaints to name a couple more
16 statutes? Does the -- does this legislative language pick
17 up after included statutes, or do we have to look to the
18 date of the enactment, or perhaps the date of the
19 legislative history of the enactment --

20 QUESTION: OSHA --

21 QUESTION: -- to see what particular statutes
22 mentioned in the complaints are covered?

23 MR. STARR: I think that they are out of time by
24 virtue -- not so much out of time in a temporal sense, but
25 that Congress has stepped in and has insulated the rule of

1 law (b) (3) and (b) (5) from judicial review, so I think
2 that Congress has said we do not want to hear whether the
3 Endangered Species Act applies to (b) (3) and (b) (5),
4 although you will see they do have a provision with
5 respect to the Endangered Species Act.

6 QUESTION: Even if they amend their complaints,
7 any statutory requirement that's mentioned by these
8 particular plaintiffs in these particular cases gets
9 zapped by this provision.

10 MR. STARR: As long as they are challenging
11 (b) (3) and (b) (5) administration of the public lands.

12 I thank the Court and would like to reserve the
13 remainder of my time.

14 QUESTION: Thank you, General Starr.

15 Mr. True, we'll hear from you.

16 ORAL ARGUMENT OF TODD D. TRUE

17 ON BEHALF OF THE RESPONDENTS

18 MR. TRUE: Mr. Chief Justice, and may it please
19 the Court:

20 The separation of powers between Congress and
21 the judiciary does not allow Congress to enact a statute
22 that tells the courts to decide a specific, pending case
23 for one party or for another party. On that point, we and
24 the Solicitor agree.

25 Section 318, however, steps across that line,

1 because what it does is tell the courts how to decide
2 these cases and only these cases for the Government, for a
3 year.

4 QUESTION: Mr. True, you would agree, would you
5 not, that if there is a choice of possible interpretations
6 of this statute and one of them would make it
7 constitutional and one not, we should choose the one which
8 would make it constitutional?

9 MR. TRUE: Yes, Your Honor, if that choice is
10 available, but our point is that in this statute, this
11 statute that Congress enacted, all of the indicia in the
12 statute itself, in its history, all fit together and point
13 to the conclusion that Congress was deciding these cases
14 for a year in enacting this statute.

15 QUESTION: So there is only one way to construe
16 the statute, in your opinion.

17 MR. TRUE: That is correct, Your Honor.

18 QUESTION: You don't think that it could be
19 constructed in the way I suggested to General Starr that
20 it just deals with the congressional designation of
21 certain lands within which timbering could be held or
22 which -- in which it could not be used for timbering for
23 1990.

24 MR. TRUE: Yes, Your Honor --

25 QUESTION: But leaving in place all the

1 management and administration. Is that possible?

2 MR. TRUE: Yes. I agree with your construction
3 of the second sentence of subsection (b)(6)(A), that what
4 it is in effect doing is saying these areas of the forest,
5 these particular areas of the forest, are off-limits to
6 logging, and much like a designation of an area as a
7 wilderness or as a national park, there's no judicial
8 review of that. The Congress to make that --

9 QUESTION: Is that designation at issue in the
10 suits that are pending?

11 MR. TRUE: No, it is not. We are not asking
12 about what happened, or we're not challenging anything
13 that happened within those areas. The issue in this case
14 is the legal standards that guide the selection of
15 individual timber sales outside of those areas during
16 1990.

17 There is nothing in section 318 that tells the
18 agencies which particular tracts of timber to select
19 during 1990. The standards for that are in the existing
20 environmental laws. That's where the agencies looked to
21 decide which timber sales to pick, and nothing in
22 section 318 set aside or repealed or amended those laws.

23 The only thing in section 318 that tried to draw
24 a link between section 318 and the existing laws is the
25 phrase in (b)(6)(A) that says, Congress determines and

1 directs that these actions -- that is, staying outside of
2 (b)(3) and (b)(5) -- will meet the requirements of those
3 laws.

4 Now, that is a key indicator that Congress was
5 deciding these cases. It is language that courts might
6 use in deciding a case. It says what complies with the
7 law. It doesn't change or amend the law. Now --

8 QUESTION: Well, maybe it was just an inartful
9 means of identifying a list of statutes that it wanted
10 affected.

11 MR. TRUE: Your Honor, I don't believe it was an
12 inartful means of identifying --

13 QUESTION: Was this provision enacted sort of in
14 the middle of the night at the last minute, or what?

15 MR. TRUE: It is certainly an amendment to an
16 appropriations act --

17 QUESTION: Yes.

18 MR. TRUE: -- which itself indicates that this
19 shouldn't automatically be read as an amendment to the
20 substantive law. But the more fundamental point is that
21 we can't just excuse this as inartful drafting because all
22 of the other indicators in the statute and its history
23 point to the conclusion that this was intentional, this
24 was purposeful to decide these cases. If you go through
25 those indicators, the statute names the cases, and it

1 names the docket numbers, and in fact it names a
2 particular order in one of the cases, the order granting a
3 preliminary injunction.

4 QUESTION: Well, what if 318 had just expressly
5 said, we hereby are amending the -- and they list -- they
6 identify the statute, we're amending them so that they
7 will not be violated if these -- if -- as long as there's
8 compliance with (b)(3) and (b)(5)? What if they'd just
9 been expressly -- had changed the law?

10 MR. TRUE: First, Your Honor, of course you
11 would have a different statute than the one before you,
12 but again, you would use the same approach. You would
13 look at all of the indicators in the statute. If
14 everything else in the statute, the commentary and the
15 legislative history, the parts of the statute, indicated
16 that what Congress was doing was deciding these cases,
17 then it would be a very close case. But you might even
18 conclude that language like "notwithstanding," because it
19 was zeroed in only these cases, you might conclude that
20 Congress was still deciding these cases by acting that
21 particular law.

22 QUESTION: Well, of course you would. I suppose
23 the court would have to -- in your cases they would have
24 to say, well, they've now amended the statute and there's
25 no violation right now.

1 MR. TRUE: What you would have there is a strong
2 indicator that Congress is changing the law, and of course
3 that's what this is all about. Was Congress changing the
4 law, or was it telling the courts how to apply that law in
5 these cases? So in your hypothetical, you would have one
6 strong indicator going the other way. You don't have that
7 indicator here. You don't have any indicator going in the
8 direction of changing the law here.

9 QUESTION: Well, you've got a rule of
10 construction.

11 MR. TRUE: That I agree, Your Honor. You have a
12 rule of construction, but that rule doesn't overcome the
13 clear indications of the statutes.

14 Let me turn to the legislative history and add
15 some more indicators of what Congress --

16 QUESTION: Let me just interrupt, if I may.
17 Would you not agree that if your theory of the law as
18 expressed in the underlying litigation was correct, that
19 this statute has the effect of changing -- assuming -- has
20 the effect of changing the law applicable to the part of
21 the controversy that you are involved in, geographically
22 and temporally?

23 MR. TRUE: It places -- it adds the additional
24 requirement of placing certain areas of the forest off
25 limits to logging for a year. It doesn't --

1 QUESTION: And doesn't that constitute a change
2 in the law?

3 MR. TRUE: That is an additional -- yes, Your
4 Honor. That is a change in the law, but it is not a
5 change in the law that affects the application of the laws
6 that we had based our claims on in these cases.

7 In other words, the agencies can stay out of
8 those areas, but that's maybe 20 percent of the forest.
9 In the other 80 percent of the forest, they still have to
10 decide --

11 QUESTION: Yes, but it says if you live -- if
12 you stay out of these areas, then the area that should
13 be -- that is going to be logged will not be subject to
14 any challenge. Isn't that what that means?

15 MR. TRUE: The second sentence that speaks of
16 judicial review says that there will be no judicial review
17 of the statutory standards in (b)(3) and (b)(5). It's
18 much like saying that this is our decision to make, that
19 these areas are going to be off limits.

20 Now, if you go back, though, to -- (b)(3)
21 changes the law for these particular areas, but then what
22 it does, what section (b)(6)(A) does is draw a link
23 between that change and the existing law, and it says, if
24 you stay out of these areas your actions everywhere else
25 will meet the requirements of the existing laws.

1 And that isn't a change. That language doesn't
2 change the requirements of the existing law. And that's
3 what these cases were about, was enforcing the existing
4 environmental laws against the Forest Service and the
5 Bureau of Land Management. Now --

6 QUESTION: But Congress frequently speaks that
7 way. It says -- instead of amending the law, it says this
8 shall be deemed to satisfy that requirement, and it can do
9 that, can't it? I mean, its laws mean what they want it
10 to mean. It can say, you know, green shall be deemed to
11 yellow. We'll listen to that, won't we?

12 MR. TRUE: Yes, Your Honor, that is something
13 that Congress can do, but it depends on the particular
14 circumstances of the statute as to whether saying
15 something like that is simply something that Congress has
16 the power to do, or whether it's deciding a case. In
17 the -- in this --

18 QUESTION: Wait. Deciding the case. Suppose
19 that there's a prosecution of a particular individual
20 under a Federal statute, and Congress sees that
21 prosecution and says, oh, gee, we didn't mean the statute
22 to apply to something like that. With that case
23 prominently in mind, it passes a statute repealing that
24 criminal prohibition, whereupon, of course, the
25 prosecution would have to be dismissed, right?

1 MR. TRUE: That is correct. Now --

2 QUESTION: Now, is that what you mean by
3 deciding a particular case?

4 MR. TRUE: That has the effect of deciding a
5 particular case, but it also --

6 QUESTION: I know, but it was also the purpose.

7 MR. TRUE: Well, it isn't just the purpose of
8 that statute to decide the particular case. In other
9 words, if you go --

10 QUESTION: Well, wait. It isn't the purpose of
11 this one just to decide this particular case, either, or
12 the effect of it. I mean, I assume that if another suit
13 were filed -- identical to the suit referred to in the
14 legislation, that suit would, under the language here, not
15 be permissible either, would it?

16 MR. TRUE: If it were exactly identical to this
17 case, it had the same claims under the same laws against
18 the same agency actions, then you would again have
19 Congress determining that those actions meet the
20 requirements of the law.

21 QUESTION: Just as if you had another
22 prosecution in my hypothetical under the same law for the
23 same offense.

24 MR. TRUE: But I think that --

25 QUESTION: All those cases are being decided by

1 Congress' amending the law.

2 MR. TRUE: The difference, I think, Your Honor,
3 is that in your hypothetical, what you have is Congress
4 saying we -- you have indicators. Congress is saying, we
5 didn't mean that particular criminal statute to have such-
6 and-such an effect.

7 Here, it's not saying -- there's no discussion
8 in the legislative history or anywhere else that we don't
9 mean the National Environmental Policy Act to do what it
10 does, or the National Forest Management Act, or any of the
11 other laws, we just don't like the result that the court
12 has reached in these particular cases and so we're going
13 to tell the court what actions meet the requirements of
14 those laws.

15 QUESTION: Well, I'm not sure that's a fair
16 description. If you read the conference report, it says
17 in reference to this that it intended for the fiscal year
18 '90 to protect more habitat than had currently been
19 provided under the plans, and the conference report went
20 on to say this section in no way alters application of the
21 Endangered Species Act or other environmental laws to
22 Forest Service and BLM management activities.

23 MR. TRUE: Yes, Your Honor, that's --

24 QUESTION: So if all that they were doing is
25 making a congressional designation of more habitat area,

1 then I suppose there's nothing the matter with their
2 shorthand description in this statute.

3 MR. TRUE: Well, they did make the designation,
4 and they did preclude judicial review of that, but the
5 areas that they designated are only a small part of the
6 forest, and they haven't changed or specified what's to
7 happen in the rest of the forest.

8 QUESTION: I'm saying perhaps Congress didn't go
9 on and say what was to happen in the rest. Perhaps all it
10 did here was designate habitat and preclude review of
11 that.

12 MR. TRUE: If it didn't designate what is to
13 happen in the rest of the forest, then it's the existing
14 laws at issue in our cases that determine whether the
15 actions the agency takes on those areas of the forest meet
16 or don't meet the requirements of the law, and the only
17 thing that tells us whether this statute in (b)(6)(A),
18 where it says these actions meet the requirements of the
19 law, attempt to tell the courts what actions outside the
20 areas off limits meet the requirements of the law. That's
21 the ruling that the court was about to make in these
22 cases.

23 QUESTION: Mr. True, would you be making the
24 same argument if 6(a), instead of referring at the end of
25 that first sentence to, is adequate consideration for the

1 purpose of meeting the statutory requirements that are the
2 basis for the consolidated cases captioned, blah, blah,
3 blah -- instead of saying that -- and I must say, I don't
4 know why they said that -- what if they had just copied
5 the citations of the statutes, you know, gone to the
6 briefs in the cases and just copied those same statutes?
7 Would you be contending that that's unconstitutional?

8 MR. TRUE: If nothing else about the history or
9 the structure or any other aspect of the statute is
10 changed except that you have a listing --

11 QUESTION: Right.

12 MR. TRUE: -- of the statutes -- now, it has to
13 be very precise, and it has to specify a number of other
14 things that get you to these cases -- it applies only to
15 spotted owls, it applies only to logging, and so on --
16 then I think I would be making the same argument.

17 QUESTION: No, no -- that's what you said awhile
18 ago.

19 MR. TRUE: Yes, Your Honor.

20 QUESTION: No, wait, it doesn't have to say
21 spotted owls. It says "the statutes." It says, is
22 adequate for purposes of meeting the statutory
23 requirements that are the basis.

24 All it does is refer to the statutes. It
25 doesn't limit it to spotted owls, it doesn't limit it to

1 these particular locations. All it does is, instead of
2 incorporating by reference the statutory requirements that
3 are included in the lawsuits, it names the statutory
4 requirements.

5 MR. TRUE: In fact, this statute did more than
6 that. It did focus on spotted owls and loggings and these
7 cases. For example, there were cases that went forward.

8 QUESTION: The cases may have, but the statutory
9 requirements are requirements that apply to many other
10 things besides -- besides spotted owls, isn't that right?

11 MR. TRUE: Yes, Your Honor, and cases that
12 raised challenges under these same statutes to other
13 activities.

14 QUESTION: But let me put my question the way I
15 want to put it. What this hypothetical statute says is
16 exactly what this (6)(A) now says, except at the very end
17 there it cites the statutory sections that were at issue
18 in these cases, nothing more. It just cites them, for
19 purposes of meeting the following statutory requirements,
20 colon -- and then it names them.

21 Is there any doubt whether that would be
22 constitutional?

23 MR. TRUE: Your Honor, I believe -- yes, Your
24 Honor. I believe there is if what you have in the
25 legislative history, as you have here, is a focus on

1 wanting to change the result of two particular --

2 QUESTION: It's invalidated by the legislative
3 history.

4 MR. TRUE: Excuse me, Your Honor?

5 QUESTION: It's invalidated by its legislative
6 history.

7 MR. TRUE: No, it is not invalidated by the
8 legislative history, but all of the factors here, both the
9 statute and the legislative history, point to deciding
10 these cases, and that's crucial, because in your example,
11 if you change one of those -- so that Congress is talking
12 about changing the law in the legislative history, for
13 example -- you have a different case. You have a
14 different statute, and you're not just focused on the
15 particular result in these cases for a year.

16 QUESTION: Suppose I don't believe that.
17 Suppose I don't even look at the legislative history, and
18 I think that if they named this statute this would be a
19 perfectly valid amendment of the law, does it make any
20 difference if, instead of naming the statutes, they
21 incorporate them by reference? Suppose the statutes were
22 mentioned specifically somewhere else -- in Webster's
23 Dictionary, and they referred to the statutes referred to
24 in Webster's Dictionary, that would be all right, right?
25 But the vice here is that they referred to these cases

1 that mentioned the statute.

2 MR. TRUE: It does make some difference that
3 they named the cases and the orders here, because that
4 makes it even clearer what the focus of the statute is.
5 It's on these cases. If they list the laws, it is a
6 little less clear that they're focused on these cases in
7 enacting the statute, but even if they list the laws, and
8 direct what actions meet those laws, and in fact they
9 indicate that that was in order to decide a particular
10 case, I still think you're going to be at least very, very
11 close to the separation of powers line.

12 QUESTION: That's -- you have the intention.
13 That's what really does it for you. It's that they intend
14 to get a different result in these cases.

15 MR. TRUE: No, Your Honor, it's not subjective.
16 It's the objective indications in the statute and in the
17 legislative history of Congress' intent to change the
18 outcome of these cases for a year. It's the objective
19 indicators of that.

20 QUESTION: Suppose a statute were enacted the
21 day before the suit was filed.

22 MR. TRUE: Again, you would have a different
23 case than the case before you.

24 QUESTION: Well, what would your answer be?

25 MR. TRUE: But -- okay. The answer would be

1 that if you had the same statute, the same history, and
2 Congress knew that the case was going to be filed the next
3 day and it wanted to head that off, you might well have a
4 separation of powers violation between Congress and --

5 QUESTION: But why? The Congress is saying what
6 the law shall be in a future case.

7 MR. TRUE: Let me back up, because what I was
8 about to say is, the more likely separation of powers
9 violation you have at that point is Congress telling the
10 executive department how to implement the laws.

11 QUESTION: Congress does that all the time,
12 doesn't it?

13 MR. TRUE: In a specific, focused situation. In
14 other words, for example, in this statute if what Congress
15 had done is passed a law that said, the actions of the
16 Forest Service are inadequate to meet the National Forest
17 Management Act, or the environmental documents at issue
18 here are inadequate to meet the requirements of the
19 National Environmental Policy Act, I think there you would
20 again have no change in the law but just a direction to
21 the executive department to go back and try again.

22 QUESTION: Is there anything forbidden to
23 Congress for doing that?

24 MR. TRUE: Congress doesn't implement the laws.
25 It sets the standards, and then the executive branch

1 implements the laws. If --

2 QUESTION: So you don't think Congress could say
3 that they -- to the people in the Bureau of Land
4 Management or the Forest Service that with respect to
5 particular determinations you've made under the -- for
6 NEPA, they are inadequate.

7 MR. TRUE: If its focus is -- if it has no
8 focus, no attention to changing the laws, it just wants to
9 change what the executive branch is doing to implement
10 those laws in a particular, specific situation -- in other
11 words, it's overruling the executive branch's exercise of
12 its authority to implement the laws -- then I do think
13 that you have a different separation of --

14 QUESTION: So Klein applies not simply where
15 Congress tries to tell the judiciary what to do, but where
16 it tries to tell the executive what to do?

17 MR. TRUE: Your Honor, the principle that
18 Congress can't decide cases and that it can't implement
19 the laws does apply, because if Congress can control
20 specifically how individual laws are implemented in
21 individual situations, then it basically has complete
22 control of the executive.

23 QUESTION: I suppose *INS v. Chadha* would help
24 you on that point.

25 MR. TRUE: Well, that -- that case is certainly

1 an important case here, and particularly the concurring
2 opinion of Justice Powell on the separation of powers
3 point, because this is very like what happened there.

4 QUESTION: But do you take the position that
5 Congress lacks power to designate certain areas of Federal
6 forest land within which it will allow or not allow
7 timbering by specific designation, even though that
8 designation may conflict with what the BLM or the Forest
9 Service was going to designate, or had designated? You
10 think Congress lacks the power to say no, we don't like
11 that, and we're going to designate sections so-and-so and
12 so-and-so and so-and-so as habitat.

13 MR. TRUE: No, Your Honor, that is not --

14 QUESTION: Well, your argument sounds very much
15 like you say that would not be permitted constitutionally.
16 Did you mean to say that?

17 MR. TRUE: No. The Congress can certainly go
18 and designate wilderness, national parks. It can pass a
19 new law that says there shall be no logging on BLM lands.

20 QUESTION: Even though it conflicts entirely
21 with what its administrative agencies might have chosen to
22 designate.

23 MR. TRUE: That is correct, Your Honor.

24 QUESTION: And Congress can also say what used
25 to be a wilderness area is no longer a wilderness area.

1 MR. TRUE: That is correct, too, Your Honor.

2 QUESTION: So long as it acts the way Congress
3 is supposed to act by resolution of both Houses submitted
4 to the President.

5 MR. TRUE: That is correct, Your Honor.

6 QUESTION: So Chadha has nothing to do with
7 this.

8 MR. TRUE: That is -- that is true in this --

9 QUESTION: I mean, that was the problem with
10 Chadha, wasn't it? Congress was not acting --

11 MR. TRUE: That's correct. That was the basis
12 that the Court decided that case on.

13 QUESTION: Mr. True, I take it you would be
14 arguing the same if, as Justice Scalia suggested, if there
15 was a specific listing of the statutes that were involved
16 and then Congress said those statutes are repealed for a
17 year in these areas as long as (b)(3) and (b)(5) are
18 satisfied.

19 MR. TRUE: Your Honor --

20 QUESTION: They're just repealed.

21 MR. TRUE: I might not be making the same
22 argument because there I have something that indicates
23 that Congress wanted to set aside the laws, repeal the
24 laws, instead of tell the courts what actions meet those
25 laws, but it would be a very close case --

1 QUESTION: So you don't think this language is
2 readable as indicating clearly that Congress does not want
3 these other laws to be applied for a year. They just
4 don't want them to apply for a year.

5 MR. TRUE: I don't think the language is
6 readable that way when you look at the other --

7 QUESTION: Well, what else did it want?

8 MR. TRUE: It wanted to change the rulings in
9 these cases so there weren't any injunctions in place.

10 QUESTION: Well, I know they wanted to change
11 the results in these cases, but they did it in a way that
12 I would think they had the power to do, namely they
13 repealed the laws on these cases, say that the
14 administrators aren't complying with these statutes, and
15 the Congress says look, these statutes are repealed for a
16 year.

17 MR. TRUE: Your Honor, if that's what it had
18 said, we would have a different case. It didn't say that.

19 QUESTION: Well, I know, but I can't -- what
20 else did Congress want to attain by these words in this
21 statute except to not have those statutes apply for a
22 year, even if it meant doing away with the cases?

23 MR. TRUE: It did, in fact, leave those statutes
24 in place, and the agencies during the year did comply with
25 them.

1 In fact, if you look at decisions to sell timber
2 during 1990 outside these areas that were put off limits,
3 what you find is that those decisions say -- they go
4 through and say this decision to sell, this timber sale,
5 complies with section 318, and it complies with the
6 requirement of the National Forest Management Act to
7 protect the viability of these species, and so on. But we
8 don't -- but they didn't have to worry about these cases
9 because Congress had decided those. So they could
10 continue to follow the existing law, because it hadn't
11 been changed.

12 QUESTION: I don't know, I -- have you run
13 across any other effort where a statute is repealed just
14 in a certain area for a year?

15 MR. TRUE: There may be those, Your Honor. I'm
16 not aware of any, but I'm certainly not aware of any, and
17 there are none that the Solicitor cites, where you had a
18 statute where Congress had a pending case and it focused
19 on that case, and it said certain actions are going to be
20 adequate to meet the requirements of that law.

21 All of the deeming statutes that the Solicitor
22 talks about, there isn't a pending case out there saying
23 these actions don't meet the law.

24 QUESTION: Should it make any difference whether
25 the determination in question in the case is a

1 determination about vested rights based on past conduct or
2 rights simply to -- in effect to prospective relief
3 ordering certain future behavior? Is that a crucial
4 distinction?

5 MR. TRUE: No, I don't believe it is, Your
6 Honor. Let me see if I understand the question.

7 First, there were no vested rights, say, for
8 example, by any timber companies to log in any of these
9 areas that were put off limits. There are no vested
10 rights to log on the public lands at all.

11 QUESTION: And no vested rights not to log.

12 MR. TRUE: That is correct, Your Honor. There
13 are laws that say how logging, if it's going to happen, is
14 to proceed, but this law is not about prospective conduct,
15 except for conduct that the court was judging in this
16 case.

17 QUESTION: Then why would it make any difference
18 if Congress had simply repealed the law entirely? It
19 wouldn't make any difference, would it --

20 MR. TRUE: My point --

21 QUESTION: -- under your theory?

22 MR. TRUE: My point is that it might not make a
23 difference if Congress happened to use the words
24 "notwithstanding," or "hereby repealed" for these
25 particular activities in these particular States or this

1 particular year under these particular circumstances,
2 because then -- and you have legislative history that says
3 we're doing this "repeal," quote, as you do here, because
4 we want to change the injunctions in two pending cases.
5 So it might not make a difference if that language of
6 repeal gets used.

7 It's -- in every -- as this Court has said every
8 time it has looked at a statute under the separation of
9 powers, each statute has to be addressed individually and
10 on its own.

11 There aren't bright lines and automatic rules
12 here. You have to look at the indicia in each statute of
13 what the statute is doing. And if you go through those
14 here, what you find is that this statute is deciding these
15 cases.

16 QUESTION: Thank you, Mr. True.

17 Mr. -- General Starr, you have 3 minutes
18 remaining.

19 REBUTTAL ARGUMENT OF KENNETH W. STARR

20 ON BEHALF OF THE PETITIONERS

21 MR. STARR: Very briefly, Mr. Chief Justice, the
22 first point is, in our reply brief at page 12 we enumerate
23 a number of statutes passed by Congress that specifically
24 refer to pending litigation and deems the settlement that
25 is approved by the Congress of the United States to have

1 been made in accordance with the Constitution and all
2 laws. Secondly --

3 QUESTION: Are any of those deeming statutes
4 appropriations measures? That was part of the ground for
5 the decision below, that they didn't think this change
6 could be made in an appropriations measure. The
7 Government has no problem with that.

8 MR. STARR: These are claims against the United
9 States as well as against States. But the answer is, with
10 respect to appropriations act, I think the law is clear
11 that Congress is at liberty to lay down a substantive rule
12 of law in an appropriations act. We may not admire that
13 as an orderly way of proceeding legislatively, but there's
14 nothing that requires, in the Constitution at least, for
15 Congress to be orderly and careful about the way it does
16 its work.

17 Secondly, the theory that we have just heard
18 essentially amounts to a freezing theory, that the
19 pendency of a lawsuit does, in fact, have an injunctive
20 effect, as it were, against the Congress of the United
21 States. It no longer enjoys liberty to regulate the
22 public lands.

23 And thirdly and finally -- I think this is very
24 important -- what the Ninth Circuit concluded, and what
25 we've heard today, is that Congress violated the

1 separation of powers. It directed courts how to decide a
2 lawsuit.

3 Fair reading of this, including the language
4 that hurts me the most, "determines and directs," isn't
5 language that Congress uses in addresses the courts. It
6 uses the word "directs" throughout this statute when it's
7 talking to those of us who have to listen -- the Forest
8 Service and the Bureau of Land Management. It wasn't
9 directing a decision.

10 QUESTION: Mr. Starr, can I ask you one point of
11 information. In the -- you've emphasized subparagraph (F)
12 in (b)(3) as the -- is there a counterpart to subparagraph
13 (F) in (b)(5)?

14 MR. STARR: No, there is not.

15 QUESTION: There's not, okay.

16 MR. STARR: One of the incongruities of the
17 statute.

18 QUESTION: I thought we had to listen, General
19 Starr. I'm not sure that --

20 MR. STARR: I'm sorry.

21 QUESTION: -- if Congress wanted to that
22 indelicate they couldn't address us that way.

23 MR. STARR: Yes.

24 QUESTION: It's their statute, and we have to do
25 what their statutes say, don't we?

1 MR. STARR: Yes. They certainly -- since the
2 days of Schooner Peggy, even the jurisprudence of this
3 Court has been, certainly, if it speaks clearly, it has
4 the ability to lay down a rule to guide decisions. But
5 this Court has been troubled if there is an effort by
6 Congress to actually step in and to direct: John Smith
7 shall win this particular adjudication. That is not this
8 case.

9 CHIEF JUSTICE REHNQUIST: Thank you, General
10 Starr.

11 The case is submitted.

12 (Whereupon, at 12:02 a.m., the case in the
13 above-entitled matter was submitted.)
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CERTIFICATION

Alderson Reporting Company, Inc., hereby certifies that the attached pages represents and accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

NO. 90-1596 - F. DALE ROBERTSON, CHIEF, UNITED STATES
FOREST SERVICE, ET AL., Petitioners V. SEATTLE AUDUBON
SOCIETY, ET AL.

and that these attached pages constitutes the original transcript of the proceedings for the records of the court.

BY Michelle Sander

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