

The Legal Bleat

Kids, Cars and Commodities

Here is a funny little story from the *Denver Post* that just may be a harbinger of 1998. It seems a first-grader in Colorado Springs was "busted" recently by school officials for distribution of "an unknown and possibly controlled substance." He was found guilty of sharing his organic lemon drops with a classmate.

Punishment was swift and sure — suspension from school for a half day. It wasn't clear whether the young man was rehabilitated as a result of the suspension.

Surely most readers got a chuckle and went about their busy day, but is there something more here? Have we become a society so bound by laws and regulations that school kids can't share candy?

Undoubtedly the school officials had in the back, if not in the front, of their minds that failure to take action could be seen as condoning distribution of all manner of questionable substances and that in turn could lead to future legal liability.

Unfortunately, that line of reasoning is fairly sound these days. The fear of litigation is well founded in virtually any American activity. Conservative and environmental groups have long recognized the power of the judiciary in attaining goals otherwise unattainable in the legislative and administrative branches of government. Last year, environmental groups nearly elevated the practice to an art form — filing dozens of suits across the land.

The Sierra Club Legal Defense Fund (now called "EarthJustice"), the Natural Resources Defense Fund and many lesser

known but increasingly litigious groups such as the Southwest Center for Biological Diversity and the Forest Guardians have been at this game for years.

Again, the results can be almost laughable ... almost. Back in the '70s some Hawaiians decided it would be a good idea to build a 16 mile freeway (no such thing as an interstate on an island) into Honolulu. Twenty-five years later, last December, the road finally opened.

Environmental litigation increased the cost eighteen fold to a whopping \$1.3 billion dollars. That calculates to \$15,388 a foot or \$1282 an inch. Talk about streets of gold! Think about that next time you pull up to the pump and pay those highway trust fund taxes on every gallon of gas.

The road to victory for the highway proponents was littered with multiple lawsuits leading to two Supreme Court decisions — and this in the face of extraordinary federal legislation in 1986 making the highway project immune to environmental litigation.

Environmentalists are mountain biking to the courthouse as never before, bent on stopping human activity wherever it may promote health, safety and welfare.

Here is a sampler of litigation across America during one week in January:

- Ruling in Pennsylvania that placement of waste treatment facilities is racially discriminatory;

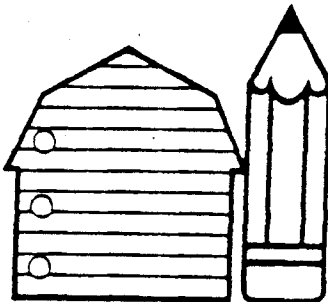


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- Suit filed in Arizona to halt plans for first major copper mine in twenty years;
- Hearing set to stop logging in Minnesota's Superior National Forest;
- Suit against the U.S. Fish and Wildlife Service to force listing of the flat-tailed horned lizard in California on the endangered species list;
- Suit against an Oregon irrigation district for failure to obtain a federal permit before applying chemicals to kill moss in irrigation canals;
- Suits against the Baltimore-Washington International Airport and Chicago's O'Hare International Airport alleging toxic runoff of de-icing chemicals;
- Ruling in Vermont that a Forest Service decision to build three miles of roads and log two square miles violated the National Environmental Policy Act.

There is little hope that 1998 will see a slowing of the litigation trend. First-graders, taxpayers and commodity users: beware. If your vocation is wilderness hiking, keep on trekking.



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