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Alabama, together with every other state, participates in the Federal Government's aid to fatherless families with dependent children (AFDC) program which was established by the Social Security Act of 1935, as amended. The Social Security Act provides that participating states must grant applicants for AFDC payments who are denied aid "an opportunity for a fair hearing before the State agency." The Department of Pensions and Security of Alabama had adopted regulations providing for administrative review of such denials.

In June 1964 the Department of Pensions and Security of Alabama put into effect a so-called "substitute father" regulation which denied AFDC payment to children of a mother who "cohabits" in or outside her home with any single or married man.

As justification for the regulation the Department of Pensions and Security of Alabama asserted: (1) It discouraged illicit sexual relationships and illegitimate births. (2) In addition, puts families in which there is an illicit extra marital relationship on the par with those in which there is a legal marital relationship, because families of the latter class are not eligible for AFDC assistance.
The evidence showed that between June 1964, when the regulation became effective in January 1967 the total number of AFDC recipients in the state declined by about 20,000 persons, and the number of children recipients by 16,000, or 22%.

Mrs. Sylvester Smith and her four children, ages 14, 12, 11 and 9 reside in Dallas County, Alabama. For several years prior to October 1, 1966, they had received aid under the AFDC program. By notice dated October 11, 1966 they were removed from the list of persons eligible to receive such aid. This action is taken by the Dallas County Welfare authorities pursuant to the "substitute father" regulation, on the ground that a Mr. Williams regularly came to her home on week ends and had sexual relations with her. Mr. Williams, who was thus classified as a "substitute father" of Mrs. Smith's children, had nine children of his own and lived with his wife except on week ends.

Subsequent to the termination of AFDC payments Mrs. Smith and her four children lived on Mrs. Smith's salary of between $16 and $20 per week which she earned working from 3:30 a.m. to 12 noon as a cook and waitress.

Shortly after receiving the notice of termination of AFDC payments Mrs. Smith bought a class action against the officers and members of the Alabama Board of Pensions and Security in the United States District Court for the Middle District of Alabama, under 42 USC §1983, seeking declaratory and injunctive relief.
A three-judge District Court was convened to hear the case.

In her complaint Mrs. Smith alleged that the "substitute father" regulation violated the equal protection clause of the fourteenth amendment of the Constitution of the United States and also violated the Social Security Act.

Should the Court adjudicate these substantive constitutional questions, and for what reasons?

Question No. 2:

A holding company which controlled both an integrated electric utility system was ordered by the Securities Exchange Commission to divest itself of the gas utility system. §11 (B) (1) of the Public Utility Holding Company Act of 1935 provides that a holding company is to be limited in operation by the Commission "to a single integrated public-utility system", unless the Commission finds that an additional system cannot be operated as an independent system "without the loss of substantial economies which can be secured by retention of control by such holding company of such system."

The holding company brought proceedings in the Court of Appeals for the First Circuit under § 24 (A) of the Act for review of the Commission's divestment order, asserting the following grounds:

1. The Commission's construction of the term "loss of substantial economies" in the Act was incorrect and in violation of the Act.

2. That the Commission's order of divestment was not supported by the evidence of record, and that the Commission's opinion
did not reveal any application of both reason and experience to the facts which would merit endorsement by the Court as a responsible exercise of administrative expertise.

To what extent should the Court review the Commission's divestment order and for what reasons?

Question No. 3:

Banks in Texas applied to the Comptroller of the Currency for approval of bank mergers in those states pursuant to the Bank Merger Act of 1966. Although the Attorney General and the Federal Reserve System both submitted adverse reports to the mergers, the Comptroller approved them. The United States filed Civil suits under § 7 of the Clayton Act in the United States District Court for the Southern District of Texas seeking to prevent the mergers. The Comptroller intervened in the suit.

The Bank Merger Act of 1966 (12) USC § 1828 (C) provides that the Comptroller shall not approve a bank merger with anticompetitive effects unless he finds that such effects are clearly outweighed in the public interest by the probably effect of the transaction in meeting community convenience and need. The Act also provides that the Court in an anti-trust action involving the bank mergers "shall review de novo the issues presented."

The Comptroller's action in approving the merger was informal, no hearings having been held, and none being required by the Bank Merger Act.
In these suits it was contended that under the proper construction of the Bank Merger Act the banks had the burden of proof to establish that the merger is within the statutory exception that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served. It was also contended that under the provision in the Bank Merger Act that the Court "shall review de novo the issues presented" the Court should make an independent determination of the factual issues involved in whether the challenged bank merger should be approved under the standards set forth in the Act and should not in any way be bound by or required to give any special weight to the determination of the Comptroller.

What is the proper scope of review to be accorded by the Court in this case and for what reasons?

Question No. 4:

The Toilet Goods Association, Inc. an organization of cosmetics manufacturers accounting for some 90% of annual American sales in this field, and 39 individual cosmetic manufacturers and distributors brought this suit in the United States District Court for the Southern District of New York. They sought declaratory and injunctive relief against the Secretary of Health Education and Welfare and the Commissioner of Food and Drugs on the ground that certain regulations promulgated by the Commissioner exceeded his
statutory authority under the Color Additive Amendments to the Federal Food and Drug Cosmetic Act (USC §§321-376).

The regulation in issue broadens the authority of the Commissioner to control the ingredients added to foods, drugs, and cosmetics that impart color to them.

The Commissioner of Food and Drugs, exercising power delegated by the Secretary of Health, Education, and Welfare, under statutory authority to promulgate regulations for the efficient enforcement of the Act, issued the following regulation after due public notice (26 Reg. 679) and consideration of comments submitted by interested parties:

"(a) When it appears to the Commissioner that a person has:

* * *

(4) Refused to permit duly authorized employees of the Food and Drug Administration free access to all manufacturing facilities, processes, and formulae involved in the manufacture of color additives and intermediates from which such color additives are derived; he may immediately suspend certification service to such person and may continue such suspension until adequate corrective action has been taken."

The certification service referred to was the certification by the Commissioner of the color additives used by the cosmetic manufacturers.

Immediately after this regulation was issued and became effective the plaintiff filed this suit.
In this posture in the matter what is the proper scope of review, if any, by the District Court, and for what reasons?

Question No. 5:

In 1966 oral arguments in proceedings before the Federal Trade Commission for alleged violations of certain provisions of the Robinson-Patman Act were heard by the full Commission of five members. However, two Commissioners retired before the decision and a new Commissioner, appointed to fill one of the vacancies, declined to participate in the decision because he had not heard the oral argument. A cease and desist order was entered concurred in by only two of the participating Commissioners.

On petition for review of the Commission's cease and desist order filed in the Court of Appeals for the 9th Circuit it was contended that the order was invalid and unenforceable because it was concurred in by only two of the total of five Commissioners.

The Federal Trade Commission Act does not specify the number of Commissioners who may constitute a quorum. By rule of the Commission first adopted in 1915 it is provided:

"A majority of the members of the Commission constitute a quorum for the transaction of business."

How should the Court rule on the question of the validity and enforceability of the Commission's order, and for what reasons?
Question No. 6:

The Selective Service Act (USC Appex § 456 (j)) provides that in the case of an adverse ruling by a local draft board on a registrant's claim for draft exemption as a conscientious objector, the registrant may appeal to an Appeal Board. The Act requires that on such an appeal the Department of Justice, after appropriate inquiry, is required to hold a hearing and thereafter to make a recommendation to the Board as to the registrant's inductibility.

The petitioner registered under the Selective Service Laws in 1948. At that time, he did not claim to be a minister or a conscientious objector, but stated that he believed his classification should be 1A. The local Board so classified him. In 1951 he was given a dependency deferment which was terminated on October 22, 1951, thereby restoring him to a 1A classification. Within a week after his restoration to 1A classification petitioner filed a special form for conscientious objectors claiming exemption from combat and non-combat service. The petitioner stated that in December 1950 he had become an unordained minister in the Jehovah's Witnesses religious sect, and had become an ordained minister in October 1951; that he preached from house to house and on the streets, giving public expression to his conscientious objections to war.

The local Board continued him in a 1A classification and petitioner filed an appeal. The Appeal Board referred the case to the Department of Justice under the Act for appropriate inquiry and hearing and subsequent recommendation to the Board.
At the hearing the petitioner requested that he be advised as to the general nature and character of any adverse evidence in the FBI report on him. According to petitioner's uncontradicted testimony, the hearing officer told him that the FBI report disclosed that he had been hanging around pool rooms and petitioner denied this. Petitioner asked what else was in the report and the hearing officer changed the subject. At the hearing the hearing officer asked petitioner's wife how she was feeling and how petitioner was treating her. Her reply was, "fine".

The hearing officer recommended that petitioner be classified 1A because his religious activities coincided with pressure from the draft Board. In his report to the Appeal Board, the Department of Justice adopted hearing officer's recommendation, relying on the timing of petitioner's religious activities and "his abusiveness and the exercise of physical violence toward his wife" and because petitioner had been "a rather heavy drinker and crap shooter in and around local taverns and pool halls."

Petitioner refused to submit to induction and this prosecution followed. On trial, petitioner claimed that he had not been afforded a fair hearing as required by the Act because of the failure of the Department of Justice to furnish him with a fair resume of all adverse information in the FBI report in the files of the Department, and that this invalidated his 1A classification and his conviction of refusing to submit to induction.
The Supreme Court of the United States granted writ of certiorari to review the judgment of the Court of Appeals of the 7th Circuit affirming defendant's conviction in the United States District Court for the Northern District of Illinois.

How should the Supreme Court of the United States rule and for what reasons?

Question No. 7:

Applications for construction permits for standard broadcast stations were filed with the FCC, one by the Easton Publishing Company for Easton, Pennsylvania and the other by Allentown Broadcasting Corporation for Allentown, Pennsylvania. Both were for the same frequency, and, despite the fact that neither station would render service to the other community, simultaneous operation of the two stations would cause mutually destructive interference.

The hearing examiner who conducted the hearings on the two applications recommended that the Allentown application be granted. Easton filed exceptions to that initial decision of the hearing examiner with the Commission, and after oral argument the Commission issued its final decision, disagreeing with this examiner and granting the station to Easton.

The Commission made detailed findings of fact as to the qualifications of the applicants and the nature of the communities to be served. Most factors provided no basis for choosing between the applicants. Both were found
legally, technically, and otherwise qualified to become the licensee; both communities were equally in need of programs proposed to be broadcast by each applicant. One differentiating factor however was that Allentown had three local stations whereas Easton only had one station. The Commission recognized that Allentown was a city of almost triple the size of Easton and growing at a greater pace, but held that Easton's need for a choice between locally originated programs was decisive.

On judicial review of the Commission's award of the license the Allentown Broadcasting Company argued that the Commission's reversal of its hearing examiner was erroneous because the examiner's findings based on demeanor of a witness are not to be overruled by the board without a "very substantial preponderance in the testimony as recorded," and that the Board only had authority to reverse an examiner's findings only when they are "clearly erroneous."

What disposition should the reviewing Court make of this contention of Allentown Broadcasting Company, and for what reasons?

**Question No. 8:**

An employer, charged with violations of the wage stabilization provisions of the Defense Production Act of 1950 sought to enjoin administrative proceedings to determine his guilt of the violations charged, alleging that:

1. The conduct of the proposed administrative hearings would cause it irreparable damage by weakening its bank credit and
depriving it of essential working capital.

2. That the Act did not authorize such administrative action for the enforcement of the wage stabilization provisions.

The employer pointed out that the conduct of the proposed administrative hearings would cause it irreparable damage by weakening its bank credit and thereby depriving it of essential working capital regardless of the outcome, because: (1) If the National Enforcement Commission should find a violation it would certify to all governmental agencies including the Internal Revenue Service for income tax purposes, the disallowance of all illegal wage payments found by it to have been made, which would disqualify such payments as a business expense for income tax purposes. The amount of excess wage payments involved ranged from $750,000 to $5,500,000. (2) Its banks would be alerted to this possibility and would call their loans and refuse additional working capital loans.

What disposition should the Court make of the case and for what reasons?

Question No. 9:

The Administrative Procedure Act (5USC § 1001 etseq.) applies to Post Office Department Administrative procedures.

The plaintiff operates a mail-order business in Hollywood, California under the fictitious name "Male Merchandise Mart", which was duly recorded with the state authorities. Her business is selling and distributing through
the mails "publications, pin-up pictures and novelties."

On March 1, 1954 the Solicitor for the Post Office Department issued a complaint against her, charging that she was carrying, on by means of the Post Office, a scheme for obtaining money for articles of an obscene character, and further charged that she was depositing in the mails information as to where such articles could be obtained, all in violation of 39 USC §§ 255 and 259 (a), 18 USC §§ 1342 and 1461.

On the same day on which the complaint issued, the Deputy Postmaster General ordered the Postmaster at Los Angeles, California, to refuse to deliver mail addressed to petitioner at her business address. The order stated that a complaint of unlawful use of the mails had been filed, that a hearing would be held to establish whether there were any violations of the applicable statutes, and that the mail addressed to petitioner should be impounded until further order. This order continued in effect, and was issued without notice or hearing.

Petitioner answered the complaint and a hearing was held in Washington, D.C. in early March 1954.

In the latter part of March 1954, there having been no administrative adjudication as a result of the hearing, the matter being under advisement in the Post Office Department, the plaintiff filed an action for declaratory relief in the District Court for the Southern District of California.

Plaintiff sought a decree enjoining/interim impound order pending final administrative determination and pending judicial review of the validity of the
impound order. The plaintiff did not ask the Court to interfere in any way with the administrative proceeding which was being conducted.

In her complaint the plaintiff complained only of the interim impound order under which her mail was being intercepted while the administrative proceeding was being conducted. She complained that the interim impound order was entered without notice, without a hearing, and without any authority in law, statutory or otherwise, and in violation of her constitutional rights under the First, Fifth and Sixth Amendments of the United States Constitution, and that she was being irreparably injured thereby.

The statutes under which the Post Office Department was created and under which it operated contained no specific authorization to the Post Office Department to impound mail without a hearing and before there had been any final determination of illegal activity. A bill was pending in Congress which would give such power to the Post Office Department with certain judicial safeguards. The Post Office Department argued that such power was necessary for if an illicit business could continue while the administrative hearings were underway, those who operated on a fly-by-night basis would be able to stay one jump ahead of the law.

What is the proper scope of judicial review for the Court to afford on plaintiff's complaint, and for what reasons?
Proceedings in which the Interstate Commerce Commission issued a certificate of public convenience for water carrier service were later reopened and the certificate amended to restrict operations thereunder to freightage. Subsequently the amended certificate was transferred, with Commission approval. The transferee accepted the modified certificate and operated thereunder for some years. He then filed with the Commission a petition for an interpretation of the amended certificate claiming the right to engage in both towing and freighting operations. He contended that such operations were permissible under the original certificate issued to his transferor, and that the Commission's amendment of that certificate restricting the operations thereunder to freightage was unauthorized under the circumstances of the case.

The Commission issued an order interpreting the amended certificate to permit freightage only. Thereupon, the transferee filed a complaint in the District Court to have the order set aside.

Should the District Court grant or refuse the relief sought and for what reasons?