no reasonable cause to believe that an unfair labor practice had occurred.

The limited effect of a §10(l) decision flows naturally from the limited role of the district court in hearing the petition. The court does not decide whether an unfair labor practice has occurred; that decision is for the NLRB, subject to review by the court of appeals. However, no persuasive reason has been offered to view that decision on that narrow issue as anything but a final decision for purposes of res judicata.

Under the traditional rule of res judicata, a final judgment on the merits bars a subsequent suit on the same cause of action by the same parties and their privies. In this case, the court in Baldovin never reached the substantive question involved in the secondary boycott issue, since it found that the NLRB had no jurisdiction over the dispute. Generally, a decision on jurisdiction is not "on the merits," as that term is usually used. However, Baldovin formerly addressed the question of the NLRB's jurisdiction, not the court's jurisdiction. Since the agency's jurisdiction depends on whether the NLRA applies to the dispute, a finding of no jurisdiction in the agency is a finding that the statute does not apply — that is, that no violation of the NLRA has been alleged. Thus, it can be argued that such a decision is more akin to a decision "on the merits" than is the usual jurisdictional ruling. Additionally, the U.S. Supreme Court has held that the principles of res judicata apply to questions of jurisdiction as well as to other issues.

The NLRB has not suggested that the two regional directors involved here and in Texas are anything but identical for purposes of res judicata. The NLRB, however, points out that each petition arises from a charge by a different charging party. The agency emphasizes the charging party's substantial interest in the proceedings and suggests that the distinct interests of the separate charging parties negate the apparent identity of the petitioners in the two cases.

Congress has entrusted to the NLRB the sole right to initiate an action for a preliminary injunction under §10(l); the charging party has no private right to seek injunctive relief. Congress provided that the NLRB may do so when it has "reasonable cause to believe" that a violation has occurred, 29 USC 160(l), not simply whenever a charge has been filed. Additionally, Congress intended §10(l) to authorize the agency to act in the public interest and not in the vindication of purely private rights in order to prevent the widespread disruption of commerce that can result from such violations as secondary boycotts. Therefore, the regional director's role as petitioner in §10(l) proceedings can be taken literally and the petitioner in each §10(l) case can be viewed as the same, regardless of the identity of the charging party.

The Baldovin case, the Mack case, and this case all arise out of a single general policy of the union against the handling of Soviet cargo and Soviet ships. In each case, however, the NLRB alleges facts regarding the refusal of a particular union local on a particular date to refer workers to a particular stevedore for the loading or unloading of particular goods on a particular ship. The NLRB thus argues that these factual distinctions make each case a separate cause of action, so that the decision in one case does not bar the others.

The union conduct in each instance is the same; each union local simply follows the announced policy of the national union when it is asked to work on Soviet cargo. To be sure, the particular application of union policy involved in this case had not occurred at the time of the Baldovin suit, and it had not therefore given rise to a cause of action which could have been sued on at that time. The union's policy, however, was announced on January 8, 1980, well before the instigation of the Baldovin suit. In Baldovin, the NLRB sought to enjoin that policy and all conduct in furtherance of it. Therefore, it was that policy, and the resulting pattern of such conduct, which gave rise to the cause of action in Baldovin, and again in this case.—Campbell, J.

—CA 1; Walsh v. Int'l Longshoremen's Assn., 9/17/80.

Food, Drugs, Cosmetics

STATE REGULATION—

Florida "head shop" statute, which imposes criminal sanctions for possession, delivery, and possession with intent to deliver drug paraphernalia, but which does not require showing of intent to use or deliver for use with controlled substances, is unconstitutional.

The statute makes it unlawful for any person "to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance * * * ."

The challengers level a barrage of constitutional challenges, but concentrate on their vagueness argument. The Due Process Clause of the Fourteenth Amendment prohibits vague statutes. Florida's "head shop" law, with a few deviations, is copied from the Model Drug Paraphernalia Act drafted by the Drug Enforcement Administration of the U.S. Department of Justice. Other courts have considered statutes based on the MDPA, construed them to require proof of a defendant's criminal intent, and found them constitutional.

The challenged statute differs significantly from the MDPA and the laws found constitutional by other courts. The model act and the other laws prohibit possession of paraphernalia "with intent to use" it illegally. Those four words create the requirement of individual intent needed to make the law constitutional. The statute here simply prohibits possession of drug paraphernalia. Consequently, it relies entirely upon the paraphernalia definition. Paraphernalia is defined by use, intent for use, or design for use with controlled substances. Nothing in the definition can be fairly said to link the use, intent, or design to the person charged with a paraphernalia crime. The definition makes illegality dependent upon past or future use or intentions of persons other than the charged defendant determinative of the crime. Criminality of a person's possession turns upon something that he cannot determine — the acts or intent of a third and possibly unknown party.

A person who buys sandwich bags at a "head shop" could be guilty of a crime, but not if he buys them at a grocery store. Purchase of a hand mirror would be a crime if the manufacturer had lines of cocaine in mind rather than primping. A tobacconist would have to guess each time he sold a water pipe whether the purchaser intended smoking tobacco or marijuana. All these scenarios are possible under the statute. The Constitution will not allow such a broadly sweeping, ambiguous law.—Higby, J.

—USDC NFla; Florida Businessmen For Free Enterprise v. Florida, 9/30/80.

Freedom of Information

NATIONAL SECURITY—

Central Intelligence Agency's "intelligence sources and methods," protected against disclosure pursuant to National Security Act and Freedom of Information Act's exemption three, constitute those persons or institutions who provide, have provided, or have been engaged to provide agency with information that is needed to perform CIA's intelligence function effectively and that could not reasonably be obtained without guarantee of confidentiality.

Plaintiffs in this Freedom of Information Act case seek disclosure of the names of those institutions and researchers who conducted chemical, biological, and radiological research for the CIA under the code name MKULTRA. Because the CIA funded MKULTRA largely through a front organization, many of the participating

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individuals and institutions apparently had no knowledge of their involvement with the agency. Most of the substantive records pertaining to the project were destroyed by the agency in 1973, but some 8,000 pages remain, including the names of those persons and institutions who had contracted to undertake research. The agency has released the names of 59 participating institutions that agreed to disclosure, but has withheld the names of 21 institutions that declined to authorize release, as well as the names of all the 185 individual researchers listed in the MKULTRA files.

This court has held consistently that Section 102(d)(3) of the National Security Act, 50 USC 403(d)(3), which authorizes the CIA director to protect "intelligence sources and methods" from unauthorized disclosure, qualifies as a withholding statute under exemption three of the FOIA. Never, however, has the court undertaken expressly to construe the term "intelligence sources and methods." We have simply assumed the phrase to have a plain meaning. The question of statutory construction presented by this case is therefore one of first impression.

The CIA argues for a standard under which "intelligence source" is defined to mean "any individual, entity, or medium that is engaged to provide, or in fact provides, the CIA with substantive information having a rational relation to the nation's external national security." The agency candidly concedes that this is a broad definition that would apply even to periodicals, such as Pravda or the New York Times, from which it culls information.

We are unable to agree that Congress intended the term "intelligence sources" to refer so broadly. In chartering the CIA Congress set out, not to protect secrecy as an end in itself, but to provide for effective collection and analysis of foreign intelligence pertinent to national security. Section 403(d)(3) thus must be interpreted in functional terms: an "intelligence source" is a person or institution that provides, has provided, or has been engaged to provide the CIA with information of a kind the agency needs to perform its intelligence function effectively, yet could not reasonably expect to obtain without guaranteeing the confidentiality of those who provide it.

Names of persons and institutions who conducted scientific and behavioral research under contract with Central Intelligence Agency are not protected against disclosure pursuant to Freedom of Information Act's exemption six, which applies only to personnel, medical, or similar files whose disclosure would constitute clearly unwarranted invasion of personal privacy.

The agency also cites exemption six as a basis for withholding the names. That exemption, however, was developed to protect intimate details of personal and family life, not business judgments and relationships. Surely it was not intended to shield matters of such clear public concern as the names of those entering into contracts with the federal government. —Wright, Ch.J.

—CA DC: Sims v. Central Intelligence Agency, 9/29/80.

Government Personnel

DRESS CODES—

County road department's ban on beards, as applied to road maintenance crew member, unconstitutionally restricts his protected rights to expression and personal liberty.

In Kelley v. Johnson, 425 U.S. 238, 44 LW 4469 (1976), the U.S. Supreme Court held that a state subdivision could constitutionally restrict facial hair on its male police officers because of its strong interest in having law enforcement personnel present a uniform appearance to the public. Whether the goal of this similarity was ready public recognition or the fostering of an esprit de corps, facial hair prohibitions were considered to be a rational means of achieving these legitimate objectives.

Since the regulation at issue would be constitutional if applied to policemen and other public servants whose roles are subsumed by the Kelley decision, the regulation will not be struck down for being overbroad. Rather, as applied to the road maintenance crew member, the regulation impermissibly restricted his protected rights to expression and personal liberty. When this interest is weighed against the county's wish to have its road maintenance crews present a uniformly clean-shaven appearance to taxpayers, the constitutional safeguards prevail. It is evident from the transcript of the county personnel board's hearing that uniforms for road workers are subsidized by the county but not required, thus indicating that the asserted goals of uniformity are not highly prized even by the enacters of the regulation.

The question of employee safety presents a more difficult question, but there is little evidence in the record on this point. The county superintendent of roads admitted that he could not recall any instance in which the crew member's beard had interfered with his work and that he would not expect any interference. In light of the type of work involved, and the fact that the weight of proof favors the crew member, the slight degree, if any, to which the rule may further safety of road workers is outweighed by the infringement of the crew member's rights.—Ward, J.

—USDC NGa; Nalley v. Douglas County, 9/29/80.

Housing

PUBLIC HOUSING—

Duty of federal and state housing officials, under Title VIII of 1968 Civil Rights Act, to further desegregation is not necessarily violated by location of public housing project in area populated predominantly by minority group members.

"Impacted" means that the minority group population of an area is greater than 40 percent of the total population. Here, the 70 new §8 units are to be built in a racially impacted area.

In Shannon v. HUD, 436 F2d 809 (CA3 1970), HUD conceded that in approving an urban renewal plan, it had considered only land use factors and had not considered the effect, if any, the plan would have on the racial composition of the area. The Third Circuit held that by limiting the scope of its review of the plan, HUD had neglected the affirmative duty imposed by Title VIII.

The business associations contend that in selecting, recommending, and approving the site in question, the officials failed to take into account the appropriate criteria, with the result that the §8 housing is about to be built in an impacted area. Unlike the situation in Shannon, the officials do not concede that approval of the project was based solely on land use considerations. While the business groups have offered no evidence that the officials failed to make the appropriate inquiry or failed to consider the appropriate socio-economic factors, the officials offered testimony that such inquiry had been undertaken.

It is also alleged that Title VIII has been violated by the placement of this project in an impacted area. However, neither the statute, the Shannon decision, nor the regulations promulgated by HUD after Shannon prohibits the building of federally subsidized housing in racially impacted areas. The Shannon court stated: "Nor are we suggesting that desegregation of housing is the only goal of the national housing policy. There will be instances where a pressing case may be made for rebuilding of a racial ghetto. We hold that the agency's judgment must be an informed one * * *." With respect to the allegation that the area is an impacted one, the evidence produced on this issue is equivocal at best.

In addition to the census tract data, other evidence bearing on the racial composition of the areas neighboring the site was introduced. Several witnesses stated that "recycling," or the displacement of low and moderate income persons by higher income home buyers, is a problem in the area. This evidence works against the business groups in two respects. First, it tends to show that even if the area is impacted, there may be an overriding need for low income