ment.[9] On the basis of these cases, Freund concluded that there is an inclination to hold that the government cannot by administrative action rescind decisions it has made in favor of an individual, although it may rescind decisions against him.[10] In a later case, however, it was held that a ruling of the Secretary of the Interior giving certain children of a mixed-blood Indian the right to share in tribal interest annuities, could be reversed eight years later by a succeeding Secretary on the basis of his different interpretation of the statute.[11] The Court based its decision on the ground that this ruling was of a "continuing" nature.[12] Again, in *United States v. Stone and Downer Co.*[13] the question in issue had been decided adversely to the government in a previous case.[14] The Supreme Court held that the decision of the Court of Customs Appeals was not *res judicata* in respect of a subsequent importation by the same person giving rise to the same issues of fact and law.[15]

Traditional views of *res judicata* support the decision in the instant case; but the courts seem to recognize the difficulties which the normal application of the doctrine of *res judicata* would impose on administrative bodies charged with continuing supervisory duties.[16] The result in each case should depend upon a careful balancing of the public interest in effective administration and the individual's interest in being free from repeated litigation of a single issue.

A. M. E.

CONSTITUTIONAL LAW—UNREASONABLE SEARCH AND SEIZURE—ADMINISTRATIVE INVESTIGATIONS—SUBPOENA DUCES TECUM — [Federal]. — Respondent, a corporation engaged in a general merchandising business throughout the United States, was an employer in interstate commerce within the terms of the Fair Labor Standards Act of 1938.[1] Petitioner, as administrator of the Wages and Hours Division, issued in the course of an investigation a *subpoena duces tecum* ordering the production of specified records[2]

9. Beley v. Naphtaly (1898) 169 U. S. 353, 364; West v. Standard Oil Co. (1929) 278 U. S. 200, 221. The Secretary of the Interior determined as a proposition of law that because of conceded facts a company's title to certain land had become unassailable. It was held that he acted without authority and that the order based on his ruling did not remove the land from the jurisdiction of the department.

10. Freund, *Administrative Powers over Persons and Property* (1928) 286.

11. Wilbur v. United States (1930) 281 U. S. 206.

12. Id. at 217.

13. (1927) 274 U. S. 225.

14. Stone and Downer Co. v. United States (1923) 12 Ct. Cust. App. 62.

15. United States v. Stone and Downer Co. (1927) 274 U. S. 225, 235.

16. See id. at 225, 235-236, for the court's discussion approving the wisdom of the Court of Custom Appeals' practice as to *res judicata*.

1. (1938) 52 Stat. 1060, c. 676, 29 U. S. C. A. (Supp. 1940) secs. 201-219.

2. The *subpoena duces tecum* was issued to require the respondent to produce (1) the records of a six months period showing wages paid to, and time clock cards of, employees in the mail order branch at Kansas City,

which respondent was required to keep. On respondent's refusal to submit to the subpoena, petitioner applied to the district court, which ordered the production of the records.[3] From this order respondent appealed on the ground that the demand violated the search and seizure clause of the Fourth Amendment because petitioner had no reasonable cause to believe that there had been a violation of the law. *Held:* There was no unreasonable search and seizure. *Fleming v. Montgomery, Ward & Co.*[4]

The Court in the instant case found that the Act authorized the administrator to conduct investigations even though he had no reasonable cause to suspect a violation of the law. A *subpoena duces tecum* issued under this authority to compel the production of books and records is not an unreasonable search and seizure within the Fourth Amendment. Rather the limitation which the Fourth Amendment imposes is that the records and papers be relevant to a lawful inquiry.[5] A lawful inquiry conducted by Congress or authorized by statute is one which concerns the procuring of information on some matter over which Congress has power.[6] The Fourth Amendment also imposes these procedural limitations: There must be (1) a demand suitably made (2) by duly constituted authority (3) expressed in lawful process (4) which limits its requirements to documents and papers clearly described.[7]

Certiorari was denied in this case by the Supreme Court of the United States.[8] This reflects a marked change of perspective on the part of the Supreme Court since *Harriman v. Interstate Commerce Commission.*[9] In that case, Mr. Justice Holmes, speaking for the majority of the court, expressed the opinion that "the power to require testimony is limited, as it usually is in English speaking countries at least, to the only cases where

(2) records showing the number of hours scheduled for each department of the mail order branch of the same period, and (3) records showing the number of hours worked by each of the departments during the period. The administrator relied on respondent's representation that these last records did not exist and withdrew his demand for them. As authorized by the Act, the administrator had ordered that all these records be kept.

3. Andrews v. Montgomery Ward & Co. (D. C. N. D. Ill. 1939) 30 F. Supp. 380.

4. (C. C. A. 7, 1940) 114 F. (2d) 384, cert. denied (1940) 61 S. Ct. 71.

5. Hale v. Henkel (1906) 201 U. S. 43; Smith v. Interstate Commerce Comm. (1917) 245 U. S. 33; Essgee Co. v. United States (1923) 262 U. S. 151; McGrain v. Daugherty (1927) 273 U. S. 135; Jurney v. MacCracken (1935) 294 U. S. 125; Electric Bond & Share Co. v. Securities and Exchange Comm. (1939) 303 U. S. 419. See Note (1936) 22 WASHINGTON U. LAW QUARTERLY 81, 93, 94; Landis, Constitutional Limitations upon the Power of Investigation (1926) 40 Harv. L. Rev. 153, 219.

6. See Interstate Commerce Comm. v. Brimson (1894) 154 U. S. 447, 473; McGrain v. Daugherty (1927) 273 U. S. 135, 175; Electric Bond & Share Co. v. Securities and Exchange Comm. (1937) 303 U. S. 419, 437.

7. Hale v. Henkel (1906) 201 U. S. 43; Essgee Co. v. United States (1923) 262 U. S. 151.

8. (1940) 61 S. Ct. 71.

9. (1908) 211 U. S. 407, 411. The newer perspective is shown in these cases: Smith v. Interstate Commerce Comm. (1917) 245 U. S. 33; Bartlett Frazier Co. v. Hyde (C. C. A. 7, 1933) 65 F. (2d) 350, cert. denied (1933) 290 U. S. 654.

the sacrifice of privacy is necessary—those where the investigations concern a specific breach of the law."

In view of the trend toward increased governmental control of business, and the need for quick and efficient investigation if control is to be effective, only the procedural requirements for reasonable search and seizure are likely in the future to be prominent in litigation. The question of relevance will probably, as a matter of expediency, be left primarily to the discretion of the administrator. Thus, in the instant case, the administrator sought records which included information about employees engaged solely in intrastate commerce and others who were exempt from the provisions of the Act.[10] Since the administrator is charged with the classification of employees, the Court decided that the information was necessary for the proper enforcement of his duties.

The effective execution of social policies involving the control of business depends upon the accessibility of pertinent information. Experience has shown that, generally, testimony and documents can be effectively secured under proper safeguards by administrative means. Whatever hardships may be imposed on individuals by such administrative demands for information are outweighed by considerations of the public interest in the more effective enforcement of the social policy.[11]

L. E. M.

COPYRIGHT—DEDICATION TO THE PUBLIC—LEGENDS ON PHONOGRAPH RECORDS—[Federal].—Paul Whiteman and his orchestra made a number of phonograph recordings. The records which were ultimately sold to the public bore the legend: "Not licensed for radio broadcast." This was eventually changed to " * * * only for non-commercial use on phonographs in homes. Manufacturer and original purchaser have agreed this record shall not be sold or used for any other purposes * * *." A distributor purchased these records from the manufacturer, and sold them to a radio station which broadcast them in total disregard of the legends. The manufacturer sued to enjoin the radio station from broadcasting the records.[1] *Held:* Injunction denied. Assuming that Whiteman and the manufacturer had "common law" property in the recordings (the former as to his performance, the latter as to the skill and art necessary for a good recording), the sale of the records was absolute and unconditional in spite of the legend. *R. C. A. Manufacturing Co. v. Whiteman.*[2]

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10. (1938) 52 Stat. 1067, c. 676, sec. 13, 29 U. S. C. A. (Supp. 1940) sec. 213.

11. See Interstate Commerce Comm. v. Brimson (1894) 154 U. S. 447, 474; Lilienthal, The Power of Governmental Agencies to Compel Testimony (1926) 39 Harv. L. Rev. 694, 720 et seq.; Handler, The Constitutionality of Investigations by the Federal Trade Commission (1928) 28 Col. L. Rev. 905, 933 et seq.

1. The manufacturer also asked that Whiteman be adjudged to have no interest in the records of his performance.

2. (C. C. A. 2, 1940) 114 F. (2d) 86.