

The State of Justice

In honor, this month, of the late Charles H. Haden II, Chief Justice of the United States District Court for the Southern District of West Virginia

The June, 2007 issue of the *Blackstone Club Commentaries* summarized the lead mountain top removal cases, particularly the case of *Bragg v. Robertson, et al.* 72 F.Supp.2d 642(1999), where then Chief Judge Charles Haden, citing state and federal regulations, relied on the “buffer zone rule,” enacted pursuant to the Surface Mining Reclamation Act, to require state and federal authorities (before permitting mountain-top removal that would bury streams by the resulting necessary valley-fills) to find that a “valley-fill” within 100 feet of an intermittent or perennial stream shall not adversely affect the normal flow or gradient of the stream, adversely affect fish migration or related environmental values or materially damage the water quantity or quality of the stream.

Although the Fourth Circuit Court of Appeals reversed Judge Haden based on its view that the federal court was without jurisdiction to hear the case, it did not disagree with Judge Haden’s interpretation of the “buffer zone rule,” and the case operated as a warning to the state’s regulators and coal industry that the law might not permit the wholesale destruction of streams in the State of West Virginia, and elsewhere, under the guise of strip or mountain-top mining.

Because of his love and respect for the law, Judge Haden would never accept congratulations for the courage of his decision (even though it often takes great courage to follow the letter and spirit of the law notwithstanding the pressures of political partisanship), but we expect that even so,

Judge Haden would be bitterly disappointed if alive today to see the effort of the Bush Administration ,

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announced in August of this year, to repeal the “buffer-zone rule,” which has been part of the nation’s environmental regulatory scheme since 1984.

The repeal of the “buffer-zone rule,” if successful, will allow coal companies to dump waste directly into streams, notwithstanding the fact that they are within 100 feet

(or less) of the stream bed.

According to the Appalachian Center for the Economy and Environment, the Administration’s failure to enforce the “buffer zone rule” has already led to hundreds of miles of stream impacts nationwide between 2001 and 2005, and it estimates that 1,000 miles of streams will be destroyed in the future every decade, if the rule repeal is successful. For more information about the “buffer-zone rule,” see their website at appalachian-center.org.

For more information about Judge Haden’s career and the repercussions of his opinion in *Bragg*, see the excellent article entitled *A Judge in Coal Country*, by Rudy Abramson, which can be accessed through Google. 