

# Judge Says U.S. Lied in Fallout Case

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SALT LAKE CITY, Aug. 4 — A Federal district judge declared today that the United States Government had deliberately concealed evidence, pressured witnesses and engaged in deceitful conduct in a 1956 trial over whether thousands of sheep died from radioactive fallout.

In that trial, a group of southern Utah sheep ranchers sought unsuccessfully to prove that their animals' deaths were linked to above-ground atomic tests. Today, Judge A. Sherman Christensen, who ruled in favor of the Government 26 years ago, vacated his decision and ordered a new trial on behalf of the ranchers, who since 1953 have been seeking compensation for the loss of more than 4,000 sheep.

In what legal experts characterized as a rare finding, Judge Christensen concluded that the Government, as the defendant in the case, had "perpetrated a fraud upon the court." As a result of "convoluted actions," the judge said, "the processes of the court were manipulated to the improper and unacceptable advantage of the defendants."

The ruling came as a result of a lawsuit to reopen the case filed last January by the sheep ranchers. Dan S. Bushnell, the ranchers' attorney, argued that new evidence from Congressional hearings and other studies proved the Government had conspired to hide critical information and to mislead the court.

## Hearings Held in May

Four days of hearings on the new evidence were held here in May. In his decision, Judge Christensen concluded that in the original trial Government witnesses and officials made intentionally false and deceptive representations, attempted to pressure witnesses not to testify as to their real opinions, intentionally withheld information in a manner that was misleading and deceitful, and answered questions in a deceptive fashion.

Judge Christensen said he was not now ruling that radioactive fallout contributed to the deaths of the sheep, but rather that because of Government deception he did not have adequate evidence to make a proper ruling in 1956.

Even so, his decision was a sharp indictment of Government policies and attitudes of the 1950's, when the above-ground nuclear testing program was at its height. And the ruling may result in new pressure on Federal officials to settle hundreds of claims that are lingering in the courts nearly two decades after above-ground testing was replaced by underground detonations of nuclear warheads.

## Suit by 900 Utah Residents

Arguments are to begin in Federal District Court here next month on a four-year-old lawsuit in which 900 residents of southern Utah are seeking damages on behalf of themselves or family members who have contracted



United Press International, 1973  
Judge A. Sherman Christensen

illnesses, including cancer, that they say were caused by fallout. Also, scores of soldiers who were assigned to the Nevada Test Site have also been seeking compensation from Congress for illness they trace to the old testing program.

Senator Orrin G. Hatch, Republican of Utah, has proposed legislation that would provide compensation to people who could offer proof that cancer or other illnesses they suffered was linked to radioactive fallout.

According to some studies, the incidence of leukemia and certain other cancers among families in southern Utah is much higher than the national average.

In Washington, John Russell, a spokesman for the Justice Department, described Judge Christensen's decision as "disappointing," but withheld other

comment until Federal attorneys had a chance to read and study the 60-page document.

## Sheep Died in 1953

The ranchers attributed the deaths of 1,420 ewes and 2,970 lambs in the spring of 1953 to two above-ground detonations in March and May of that year.

The ranchers said that after the blasts, they found mysterious lesions on the mouths and ears of the sheep, and the lambs born that spring were listless and undersized.

The Government view, which prevailed in the earlier trial, was that the sheep losses were the result of unprecedented cold weather during the lambing and shearing, inadequate feedings, unfavorable winter range conditions and infectious diseases.

## Judge Cites Earlier Study

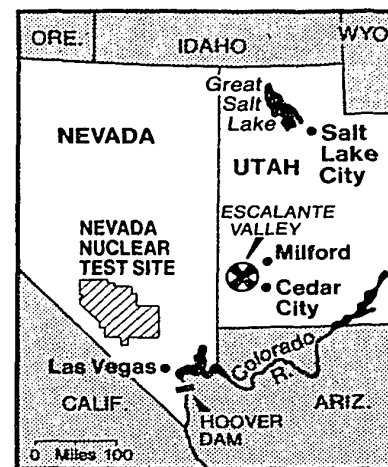
In his decision, Judge Christensen cited one study that he said the Government had concealed in the 1956 trial. The study described injuries to sheep exposed to radioactivity in laboratory tests. Those injuries, he said, were almost identical to those suffered by the grazing animals.

In 1979, a Congressional investigation of the nuclear testing program concluded that fallout "more likely than not" killed the sheep and the Government had "knowingly disregarded and suppressed" evidence linking the deaths to radioactivity.

Stewart Udall, Secretary of the Interior in the Kennedy Administration, and the attorney for the Utah residents who filed suit in 1978, said Judge Christensen's decision "has unmasked and condemned the cover-up activities which permeated the Nevada tests."

## Out-of-Court Accord Urged

Mr. Bushnell, the sheep ranchers' lawyer, said he hoped Judge Christensen's ruling would prompt Government



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Utah ranchers say that fallout killed thousands of sheep.

officials to seek an out-of-court settlement to compensate the ranchers and avoid the expense of a new trial.

"The Government has already spent thousands upon thousands of dollars more than it would have cost them to settle the claims in the first place," Mr. Bushnell said at a news conference.

In their original lawsuit, 11 ranching families from the area west of Cedar City, Utah, had sought \$226,000 in compensation.

"We're not going to be content any longer with only \$226,000, I'll tell you that," Mr. Bushnell said. He said that in addition to the lawsuit seeking compensation, another suit had been filed against six former Justice Department attorneys and other Government officials, seeking personal damages growing out of what Mr. Bushnell called "the cover-up."

"I intend to seek \$100 million in punitive damages against these people," Mr. Bushnell said. "I think it is time the Federal Government be taught a lesson that it is not above the law."