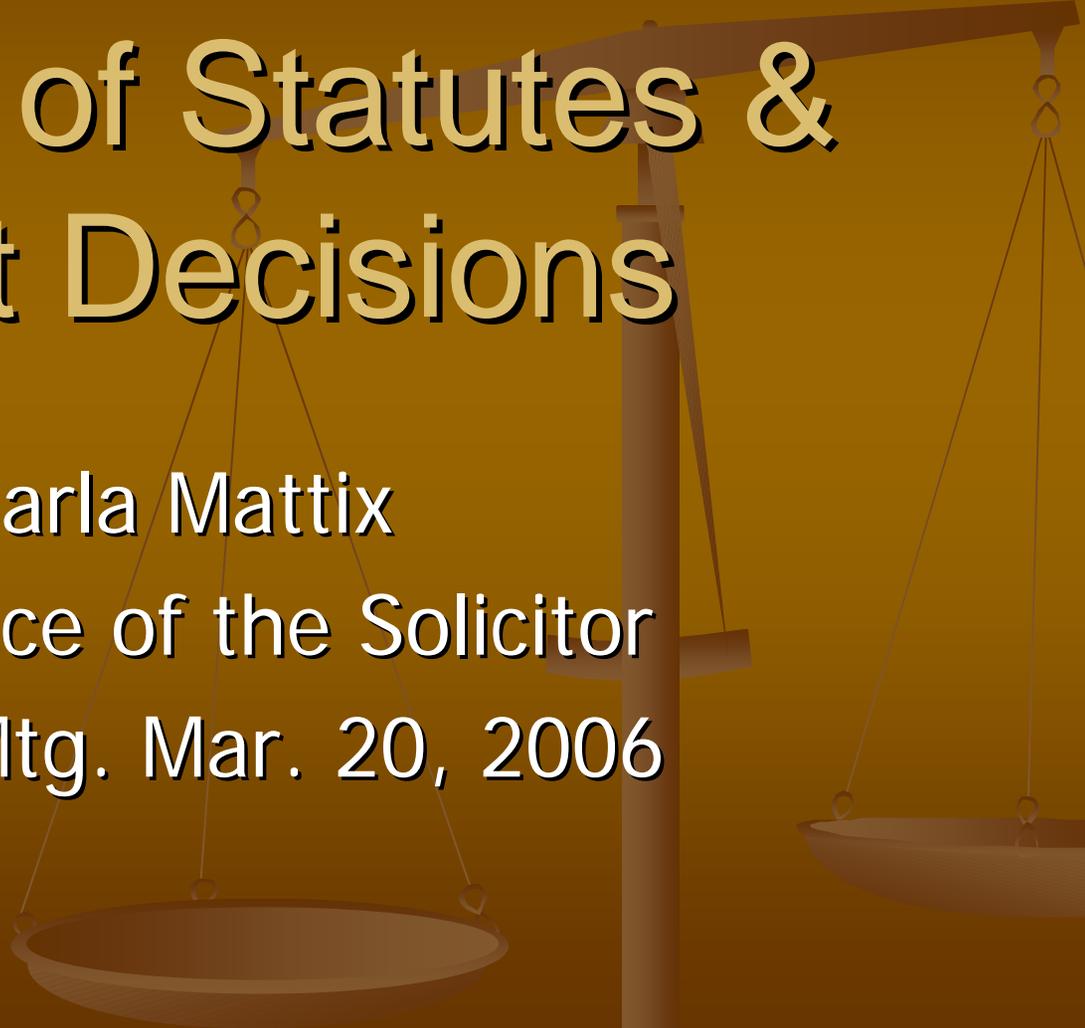


Review of Statutes & Court Decisions



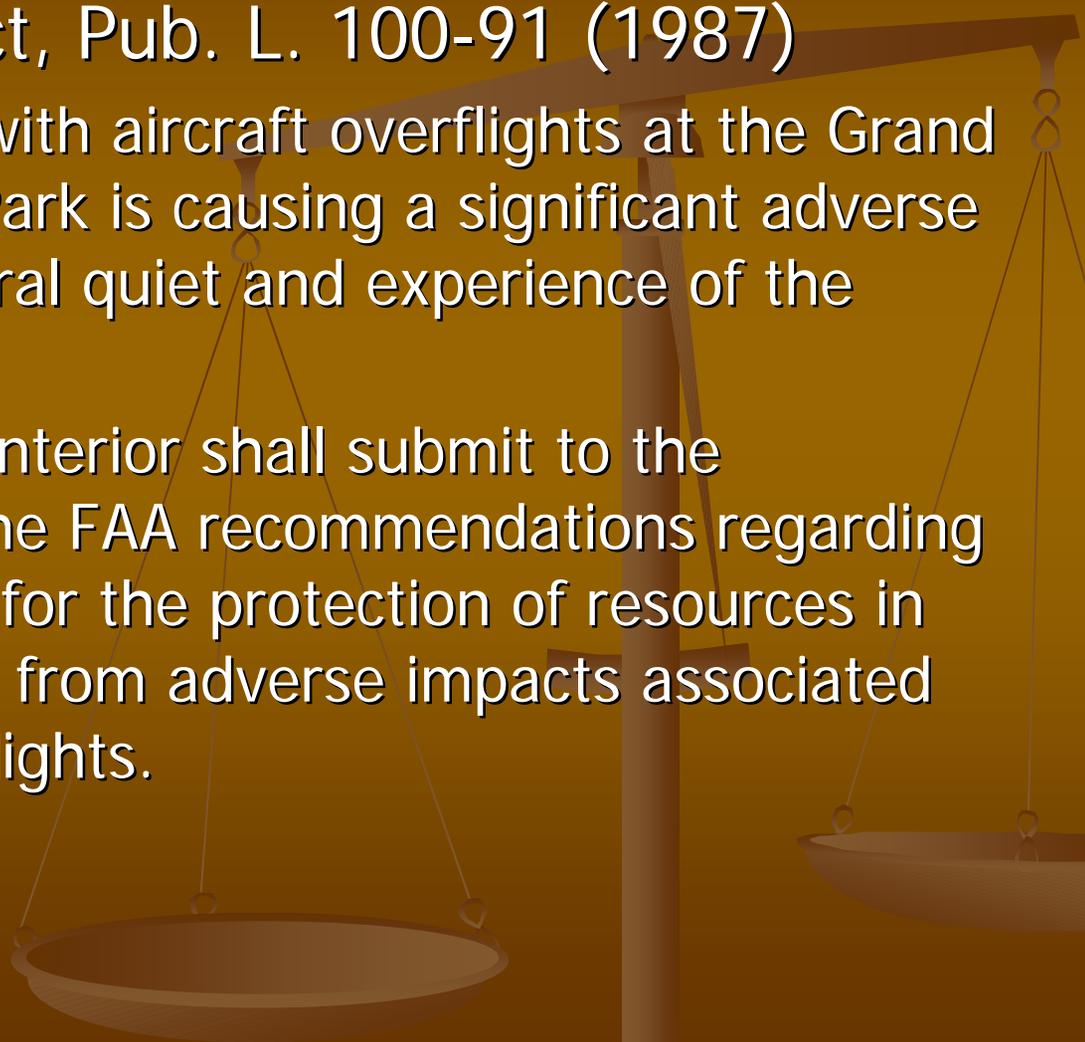
Carla Mattix

DOI Office of the Solicitor
GCWG Mtg. Mar. 20, 2006

Statutes

- Grand Canyon Enlargement Act, Pub.L. 93-620 (1975) (16 USC 228g)
 - Whenever the Secretary has reason to believe that any aircraft or helicopter activity or operation ... within Grand Canyon National Park, ..., which is likely to cause an injury to the health, welfare, or safety of visitors to the park or to cause a significant adverse effect on the natural quiet and experience of the park, the Secretary shall submit to the FAA, the EPA or any other responsible agency such complaints, information, or recommendations for rules and regulations or other actions he believes appropriate to protect the public health, welfare, and safety, or the natural environment within the park.

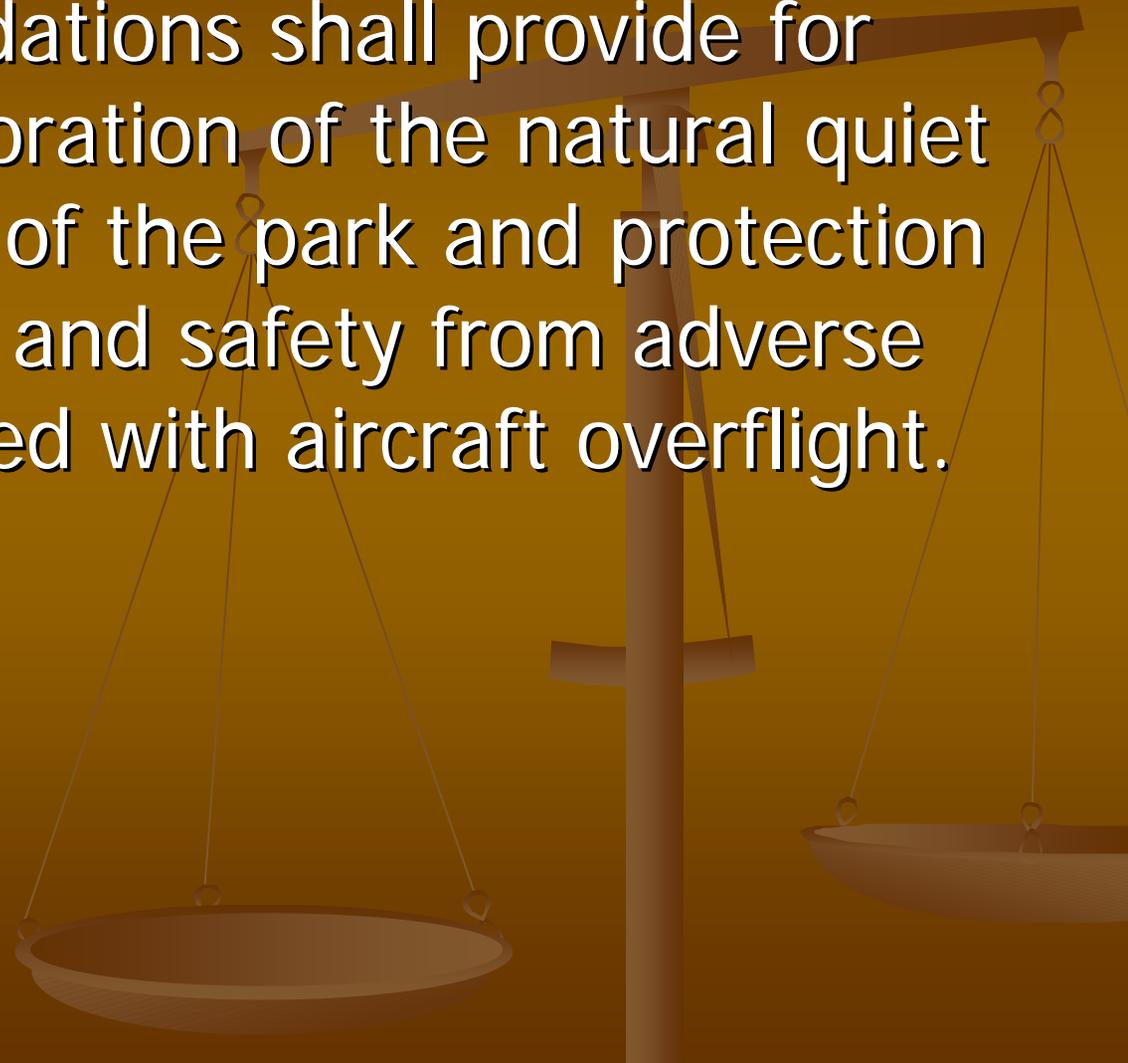
Statutes



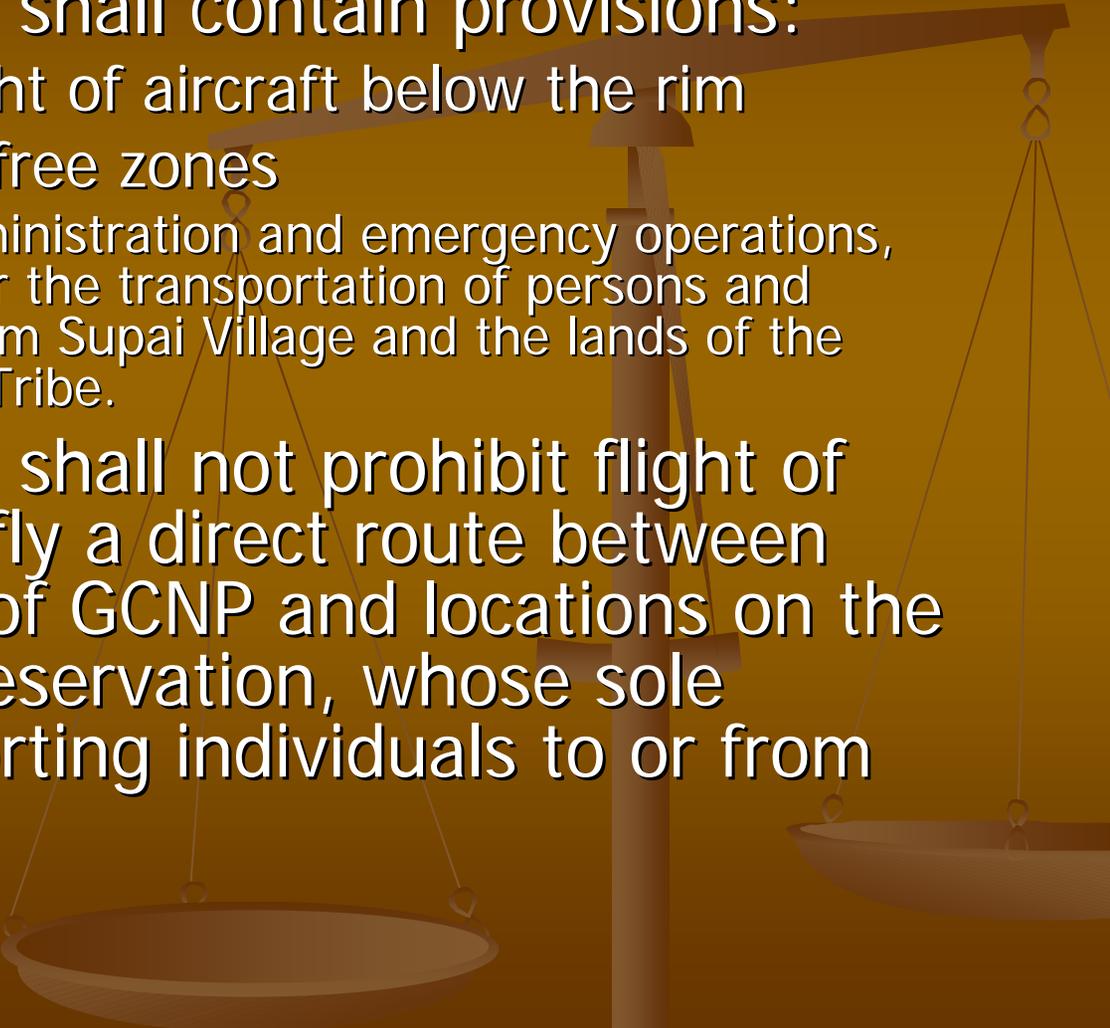
- The Overflights Act, Pub. L. 100-91 (1987)
 - Noise associated with aircraft overflights at the Grand Canyon National Park is causing a significant adverse effect on the natural quiet and experience of the park...
 - The Secretary of Interior shall submit to the Administrator of the FAA recommendations regarding actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights.

Statutes – Pub. L. 100-91

- The recommendations shall provide for substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight.

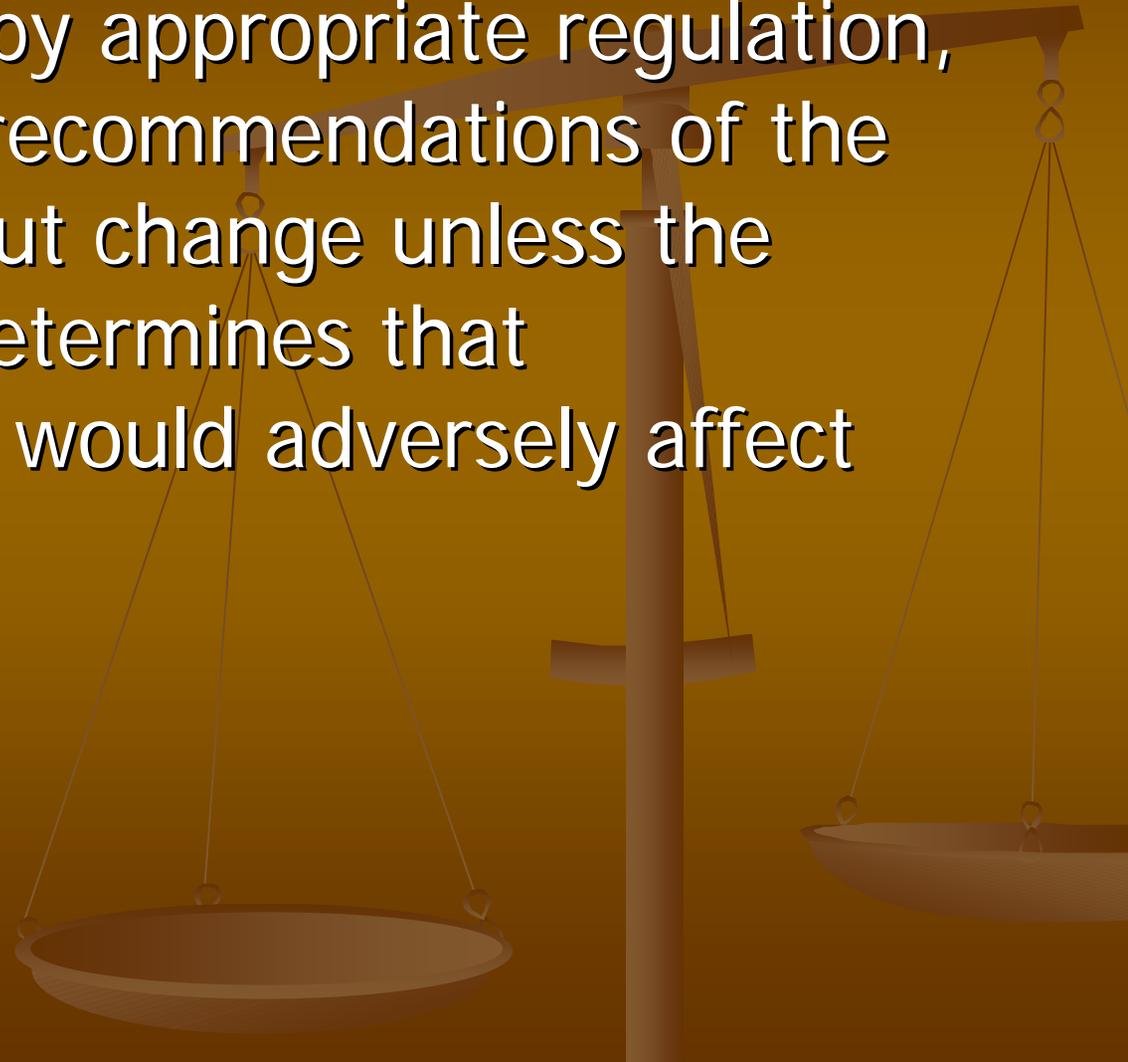


Statutes - Pub. L. 100-91

- Recommendations shall contain provisions:
 - Prohibiting the flight of aircraft below the rim
 - Designating flight free zones
 - Exceptions for administration and emergency operations, including flights for the transportation of persons and supplies to and from Supai Village and the lands of the Havasupai Indian Tribe.
 - Recommendations shall not prohibit flight of helicopters which fly a direct route between north rim outside of GCNP and locations on the Hualapai Indian Reservation, whose sole purpose is transporting individuals to or from boat trips.
- 

Statutes - Pub. L. 100-91

- The plan shall, by appropriate regulation, implement the recommendations of the Secretary without change unless the Administrator determines that implementation would adversely affect aviation safety.

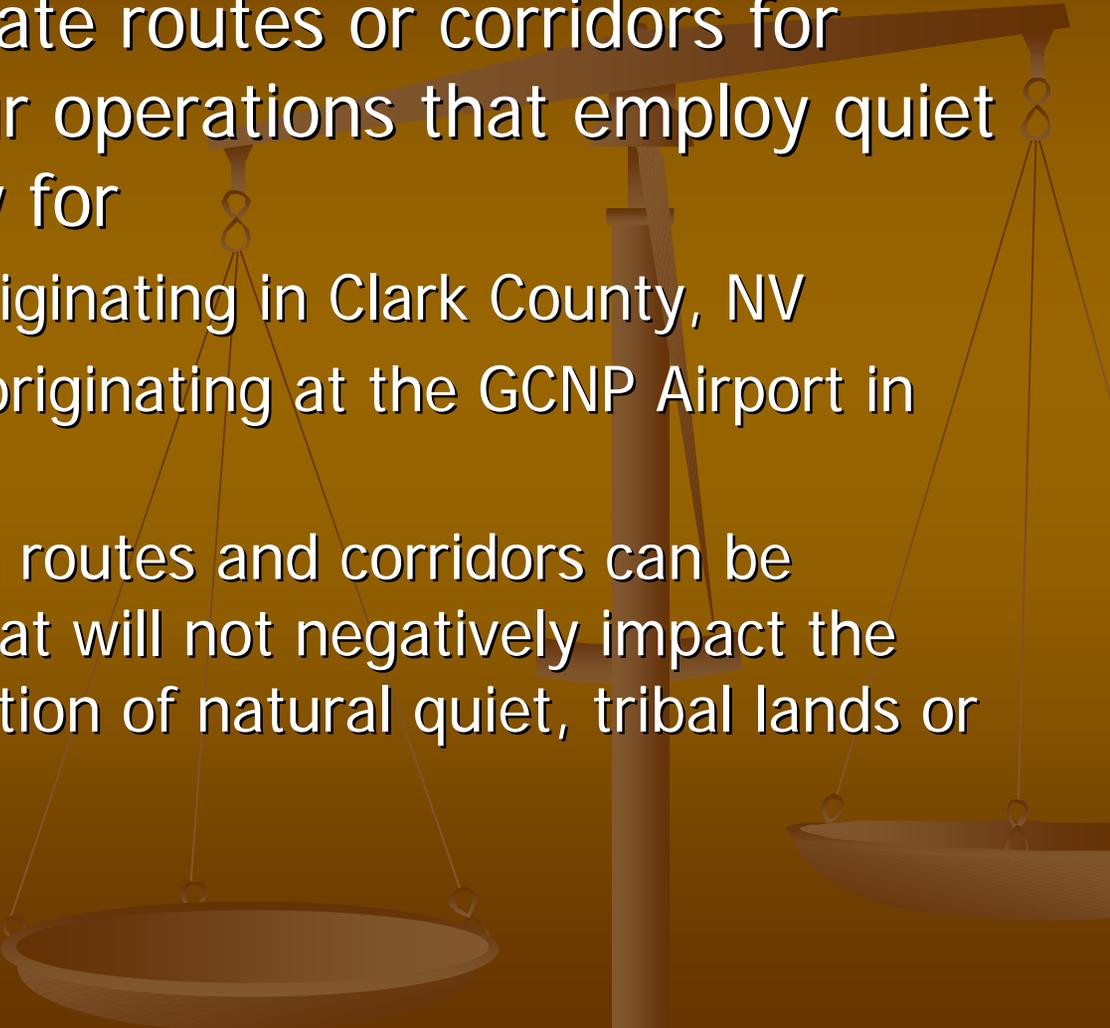


Statutes

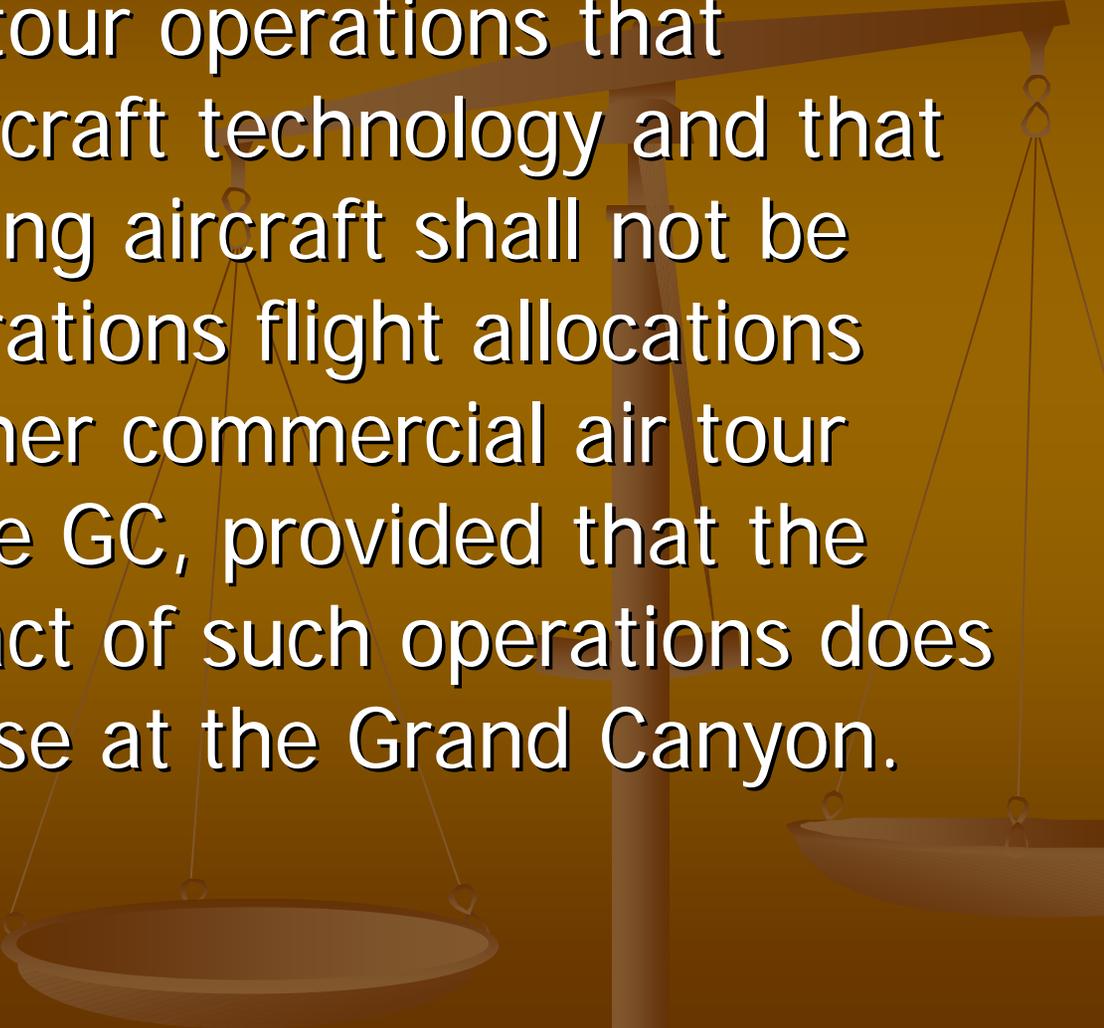


- National Parks Air Tour Management (2000) Pub. L. 106-181
 - Generally not applicable to GCNP
 - Sec. 804: Quiet Aircraft Technology for GC
 - Administrator shall designate reasonably achievable requirements for fixed-wing and helicopter aircraft necessary for such aircraft to be considered as employing quiet aircraft technology.

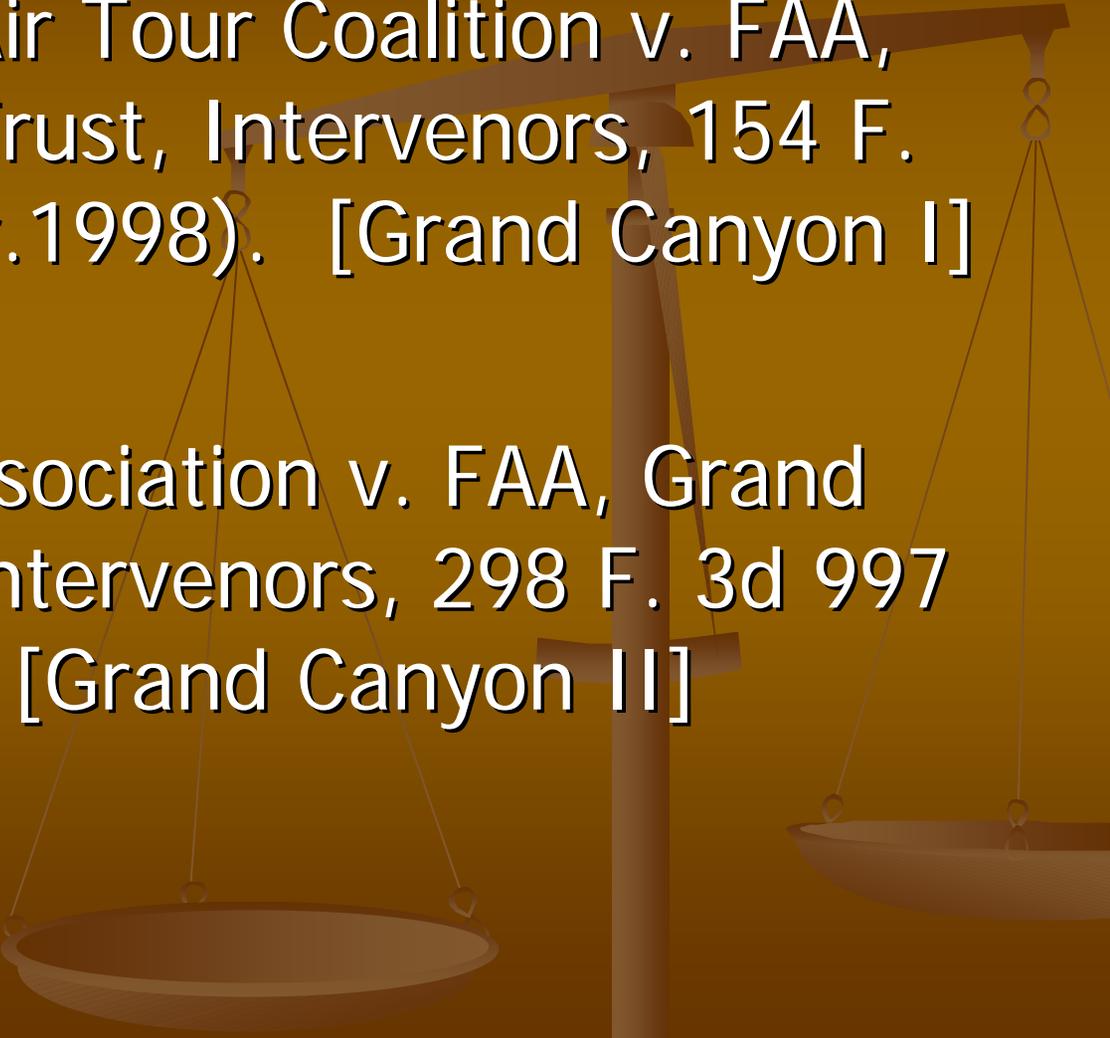
Statutes – Pub. L. 106-181

- A rule shall designate routes or corridors for commercial air tour operations that employ quiet aircraft technology for
 - Tours of the GC originating in Clark County, NV
 - “local loop” tours originating at the GCNP Airport in Tusayan, AZ
 - Provided that such routes and corridors can be located in areas that will not negatively impact the substantial restoration of natural quiet, tribal lands or safety.
- 

Statutes – Pub. L. 106-181

- Commercial air tour operations that employ quiet aircraft technology and that replace an existing aircraft shall not be subject the operations flight allocations that apply to other commercial air tour operations of the GC, provided that the cumulative impact of such operations does not increase noise at the Grand Canyon.
- 

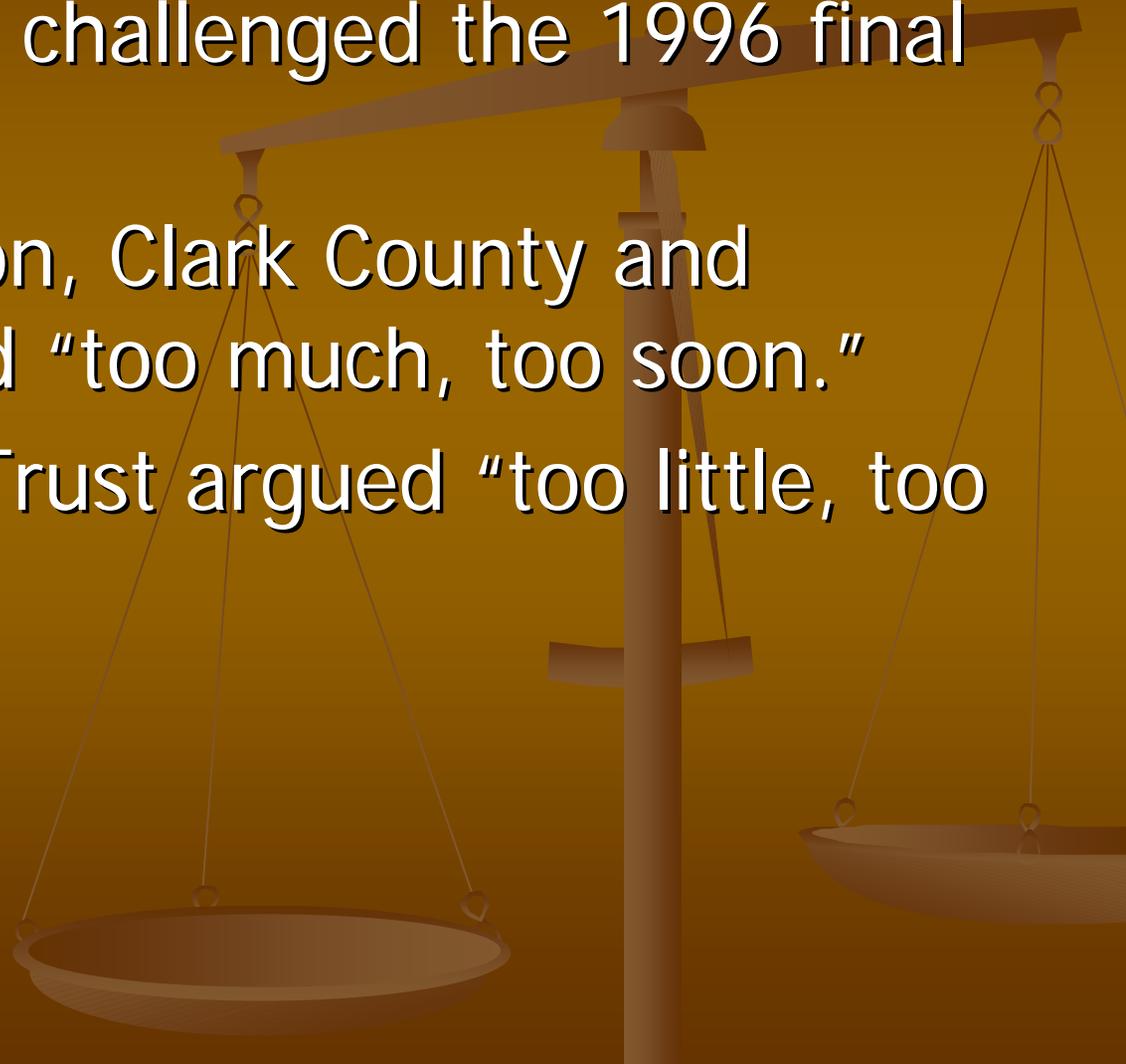
Court Decisions



- Grand Canyon Air Tour Coalition v. FAA, Grand Canyon Trust, Intervenors, 154 F. 3d 455 (D.C. Cir.1998). [Grand Canyon I]
- U.S. Air Tour Association v. FAA, Grand Canyon Trust, Intervenors, 298 F. 3d 997 (D.C. Cir. 2002) [Grand Canyon II]

Grand Canyon I

- Four petitioners challenged the 1996 final rule
- Air Tour Coalition, Clark County and Hualapai argued "too much, too soon."
- Grand Canyon Trust argued "too little, too late."



Air Tour Coalition Arguments

1. NPS/FAA interpretation of “substantial restoration...” is overly restrictive and contrary to plain meaning of the statute and has 4 principal technical problems

Court Responses

1. Rejected all arguments and deferred to agency's interpretation
 - a) Found nothing unreasonable in the agency's explanation for relying on acoustical measurements rather than visitor surveys.
 - b) Found nothing in the leg. history that is inconsistent with agency's approach

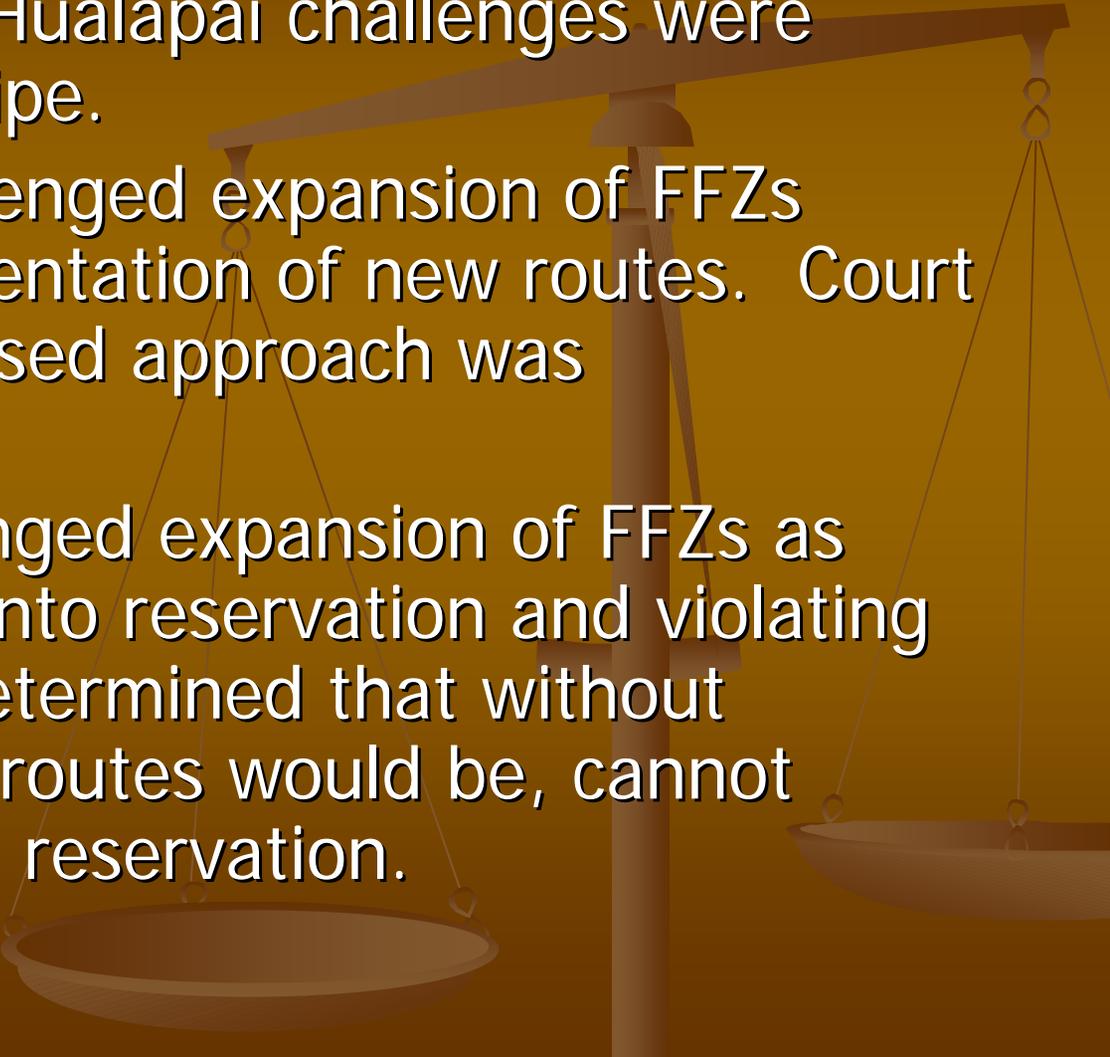
Air Tour Coalition Arguments

2. FAA committed series of procedural errors under APA
 - a. Failed to permit comment on definition
 - b. Failed to respond to comments on def.
 - c. Failed to consider interest of air tour industry

Court Responses

2. Court rejected all contentions
 - a. Park Service offered an adequate and reasonable justification for the definitions it chose.
 - b. FAA did consider impact its reg. would have on the air tour industry

Grand Canyon I

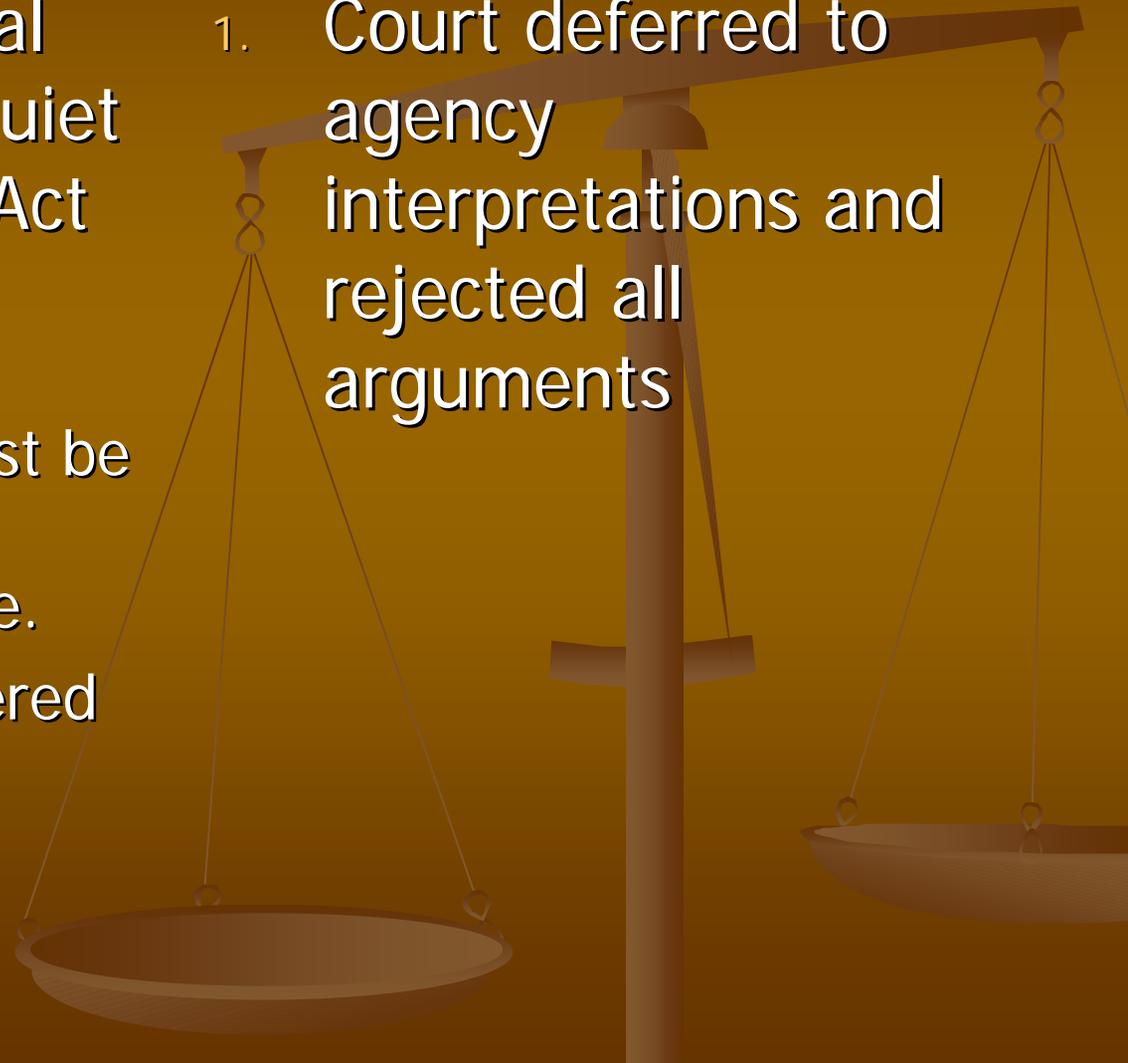
- Clark County and Hualapai challenges were dismissed as not ripe.
 - Clark Cnty challenged expansion of FFZs without implementation of new routes. Court determined phased approach was appropriate.
 - Hualapai challenged expansion of FFZs as pushing noise onto reservation and violating NHPA. Court determined that without knowing where routes would be, cannot assess affect on reservation.
- 

Grand Canyon Trust Arguments

1. Def. of substantial rest. of natural quiet does not satisfy Act
 - a. Issues with interpretation of substantial – must be more than 50%, 100% of the time.
 - b. Agencies considered air tour industry needs too much

Court Responses

1. Court deferred to agency interpretations and rejected all arguments

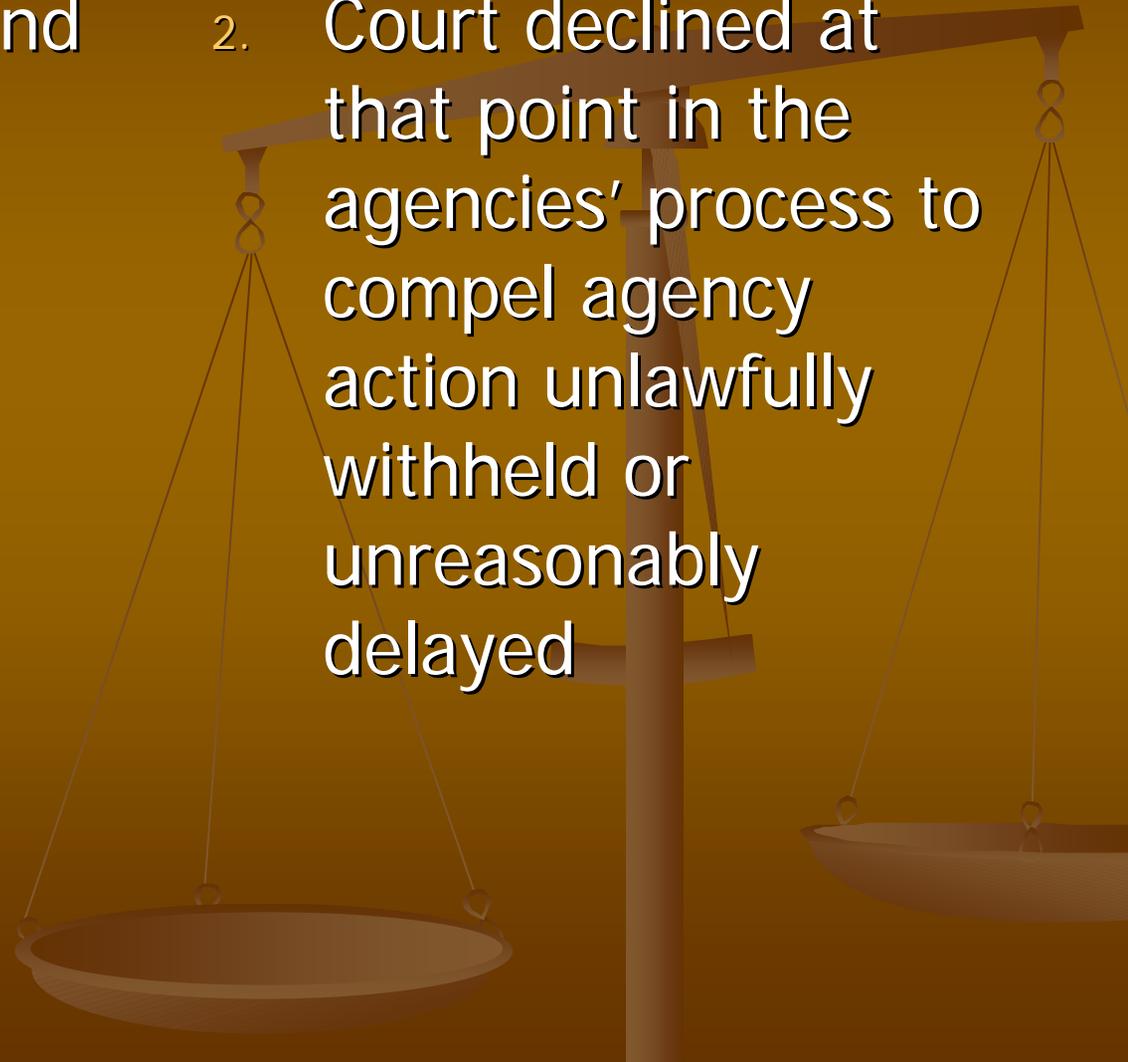


Grand Canyon Trust Arguments

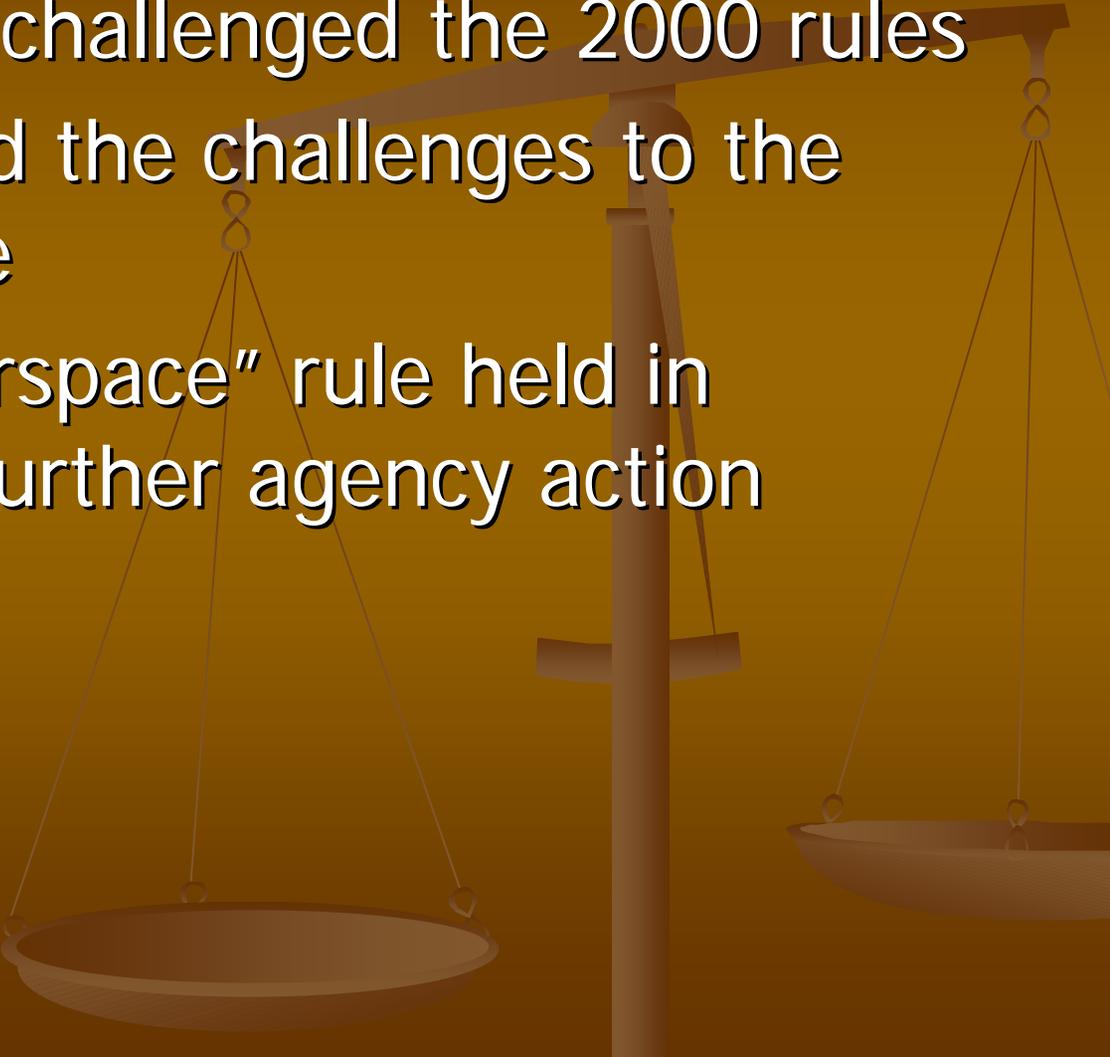
Court Responses

2. Rule is too late and violates APA

2. Court declined at that point in the agencies' process to compel agency action unlawfully withheld or unreasonably delayed



Grand Canyon II

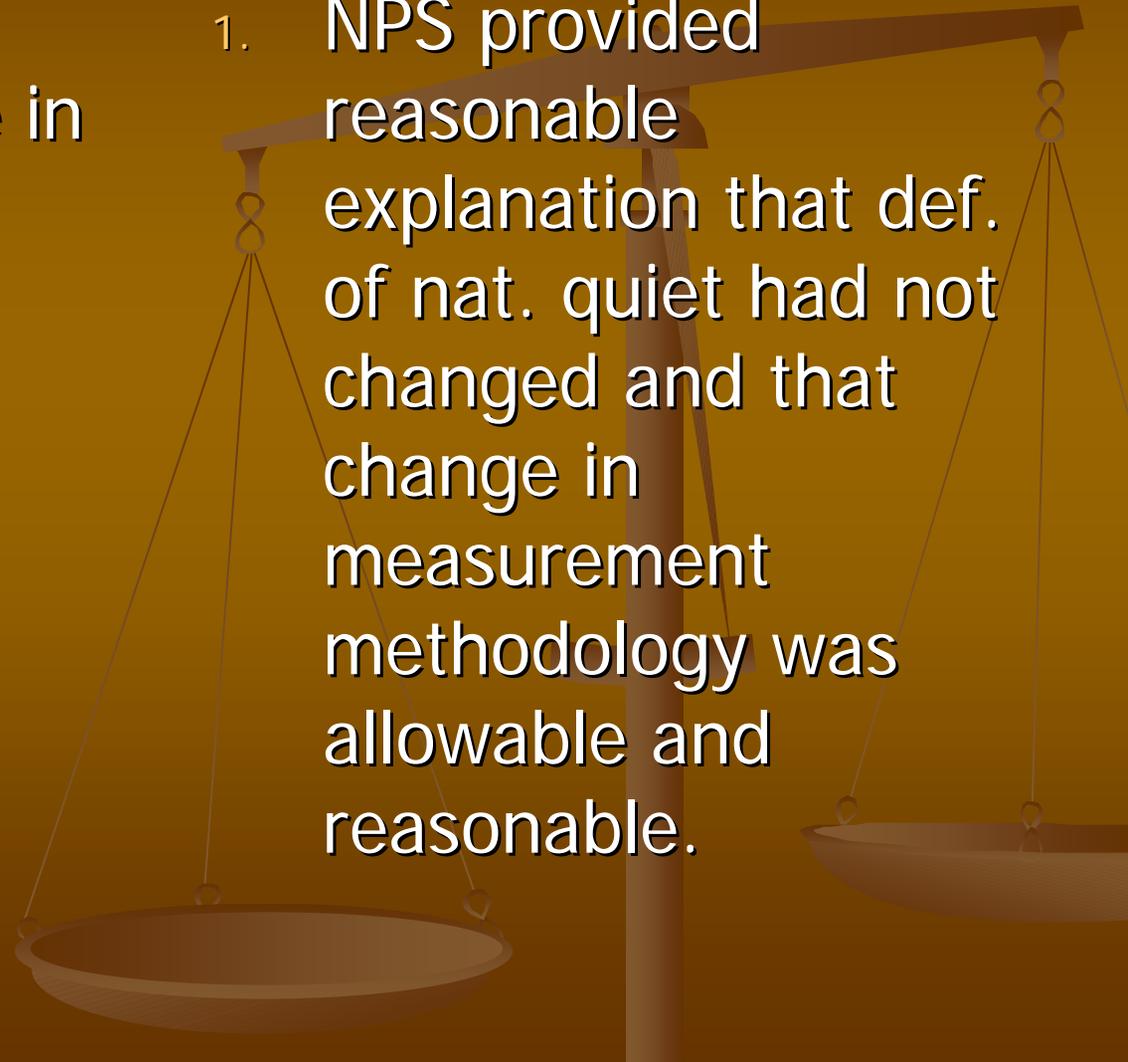
- Two petitioners challenged the 2000 rules
 - Court considered the challenges to the “limitations” rule
 - Challenge to “airspace” rule held in abeyance until further agency action completed
- 

US Air Tour Assoc. Arguments

1. Rule used an improper change in the definition of "natural quiet"

Court Responses

1. NPS provided reasonable explanation that def. of nat. quiet had not changed and that change in measurement methodology was allowable and reasonable.



US Air Tour Assoc. Arguments

2. Acoustic methodology was flawed
3. Quiet tech rule needed to be promulgated

Court Responses

2. Agencies and their experts presented a satisfactory analytic defense of their model.
3. FAA provided reasonable explanation for delay. Other measures could go forward.

US Air Tour Assoc. Arguments

4. FAA violated the Regulatory Flexibility Act by underestimating burden and failing to consider alternatives
5. Limitation rule ignores the needs of the elderly and disabled

Court Responses

4. Court stated that neither attack was justified by the facts.
5. No truth to the contention that agencies have failed to consider the needs of the elderly and disabled.

Grand Canyon Trust Arguments

1. FAA unlawfully altered NPS's definition of subst. rest. of nat. quiet by changing "any given day" to "the average annual day"

Court Responses

1. FAA's use of average annual day appears inconsistent with both NPS's definition and the premise upon which the definition is based.
 - a. Remanded for further consideration. NPS has obligation to promulgate a rule that is not arbitrary and capricious

Grand Canyon Trust Arguments

2. By failing to account for noise from other aircraft that fly over the Grand Canyon, for example, commercial jets, general aviation, and military flights, the FAA model arbitrarily overstates how quiet the Park really is.

Court Responses

2. FAA can choose to achieve the subst. rest. of nat. quiet by regulating air tours alone. But the FAA cannot dispute that whether or not non-tour aircraft are regulated, natural quiet does not exist when the sound they make is audible. Nor does the Overflights Act provide any basis for ignoring noise caused by such aircraft. The fact that FAA has chosen not to regulate certain categories of aircraft does not justify ignoring the sound those aircraft make when deciding how extensively to regulate other categories